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The President

Proclamation 7330 of July 14, 2000

Captive Nations Week, 2000

By the President of the United States of America

A Proclamation

When President Eisenhower signed the first Captive Nations Week Proclamation in 1959, the fate of freedom around the world was still far from certain. While the United States and our Allies had defeated Adolf Hitler and the Axis Powers in World War II, a partitioned Berlin stood as a bleak symbol of a divided Europe, and millions throughout Asia, Africa, and South America continued to suffer under communist and authoritarian regimes.

Today, as we embark on a new century, democracy is on the rise across the globe. More than half the world's people live under governments of their own choosing. The Iron Curtain has been lifted, allowing the light of liberty into the nations of Central and Eastern Europe. Democratic rule has swept through the countries of Latin America, replacing abusive military regimes with elected civilian governments. And in Africa and Asia, many nations have finally gained independence.

This rising tide of freedom is no accident of history; it was achieved through the courage, determination, and sacrifice of millions of men and women here in America and in captive nations around the world. Whether speaking out in the halls of the United Nations for those silenced by oppressive regimes, standing guard through frigid nights on the DMZ in Korea, or sharing the fruits of liberty through the Peace Corps, generations of Americans have made sure that our country is an ally and source of hope for all people yearning for freedom and dignity. Around the globe, freedom-loving people have risked and often sacrificed their lives to end oppression, whether uniting against tyranny through the Solidarity movement in Poland or defying intimidation and violence to vote in free elections in El Salvador and Nicaragua.

The tide keeps turning toward democracy, human rights, and free market economies. Yet there remain tyrants who use brutality, ethnic cleansing, guns, and prisons to silence voices of reason and tolerance within their countries. As a Nation born of the ideals of freedom, justice, and human dignity, America has a solemn obligation to continue speaking out on behalf of these still-captive nations and their people and lend them our support. We draw strength for this task from the knowledge that our cause is right and inspiration from the people of former captive nations who are flourishing today.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 16 through July 22, 2000, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to rededicate ourselves to the principles of freedom, human rights, and self-determination for all the peoples of the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of July, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

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Rules and Regulations

Federal Register
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Wednesday, July 19, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AJ16

Pretax Allotments for Health Insurance Premiums

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to enable employees to pay Federal Employees Health Benefits (FEHB) premiums through an allotment from the employee's pay to the employing agency. Use of this allotment mechanism allows FEHB premiums to be paid with pre-tax dollars, as provided under section 125 of the Internal Revenue Code. These allotment regulations are connected to a separate interim rule, published in this issue of the **Federal Register**, which will amend the FEHB regulations to establish the premium conversion program.

DATES: This interim rule is effective September 18, 2000. Comments must be received on or before September 18, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200 (FAX: (202) 606–0824 or EMAIL: *payleave@opm.gov).*

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858 or FAX: (202) 606–0824 or EMAIL: *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION: At the President's direction, OPM will implement a health insurance premium conversion plan for employees participating in the FEHB Program. The premium conversion plan is part of a "cafeteria plan" under Section 125 of the Internal Revenue Code.

The premium conversion plan will take effect on October 1, 2000. Under the plan, employees' FEHB premium withholdings are treated as a pre-tax salary reduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

Employees in the Executive Branch of the Federal Government who are participating in the Program and whose pay is issued by an Executive Branch agency, will automatically have their salaries reduced and their health benefit premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an agency of the Executive Branch, will have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agrees to offer participation in the plan. However, any individual enrolled in the FEHB Program who does not want to participate in premium conversion may waive participation, subject to certain limitations.

Premium conversion has no effect on: statutory pay provisions or the General Schedule; the amount of any employee's health insurance premium; or on the amount of the Government share towards the FEHB Program premium on behalf of any employee. Base pay for retirement, life insurance and Thrift Savings Plan purposes is unaffected.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM is amending its allotment regulations at 5 CFR part 550, subpart C. Each employee participating in premium conversion will make an allotment to his or her employing agency in the amount of the employee share of the FEHB premium. The agency will then use that amount to pay the employee's FEHB premium. The allotment will be automatic unless the employee elects to waive premium conversion.

We are also amending the allotment regulations to make clear that except where there is an authority specific to Federal employees (i.e., a statute, Executive order, Presidential directive, or OPM regulations) agencies may not authorize allotments for the purpose of reducing taxable income. For example, a salary reduction for a transportation fringe benefit under 26 U.S.C. 132(f)(4) is another type of pre-tax allotment that is permitted by 5 U.S.C. 7905(b) and Executive Order 13150.

OPM is issuing a separate interim rule amending its FEHB regulations to establish the premium conversion program effective in October 2000. No FEHB premium may be allotted except as allowed under the premium conversion program. Therefore, no allotment of FEHB premiums is permitted until the first day of the first pay period beginning on or after October 1, 2000.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders. OPM followed the Internal Revenue Code to develop a plan document and regulations that comply with tax law and parallel the practices of private sector employers. It is necessary that payroll offices begin work on systems changes so that this benefit will be available at the start of Fiscal Year 2001—a logical time in terms of Federal agency budget and payroll administration.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect tax withholdings for Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart C—Allotments and Assignments From Federal Employees

1. The authority citation for subpart C of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

§ 550.301 [Amended]

2. Section 550.301 is amended by removing the definition of *pay*.

3. In § 550.311:

A. Paragraph (a) is amended by removing the period at the end of paragraph (a)(7) and adding a semicolon in its place;

B. A new paragraph (a)(8) is added; and

C. Paragraph (b) is revised.

The addition and revision read as follows:

§ 550.311 Authority of agency.

(a) * * *

(8) An allotment to the employing Federal agency to pay an employee's share of Federal Employees Health Benefits premiums, consistent with part 892 of this chapter.

(b) In addition to those allotments provided for in paragraph (a) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency. This authority does not extend to allotments to the paying agency for the purpose of reducing taxable income, except where there is an authority specific to Federal employees (statute, Executive order, Presidential directive, or OPM regulations) permitting agencies to provide the pretax benefit in question.

* * * * *

4. In § 550.312, paragraph (f) is added to read as follows:

§ 550.312 General limitations.

* * * * *

(f) Notwithstanding the requirements in paragraphs (a) and (c) of this section, an agency may make an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) without specific authorization from the employee, unless the employee specifically waives such allotment. Agency procedures for processing employee waivers must be consistent with procedures established by the Office of Personnel Management. (See part 892 of this chapter.)

5. Section 550.313 is added to read as follows:

§ 550.313 Order of precedence when there is insufficient pay to cover all deductions.

(a) Except as provided in paragraph (b) of this section, an agency must deduct allotments from any net pay remaining after applying all deductions authorized by law, including any deductions for retirement and other benefits, Social Security and income tax withholdings, collection of a debt to the Government via levy or salary offset, and garnishment. If there is insufficient net pay to cover all of the employee's allotments, the agency must deduct allotments in the order specified under its established rules of precedence.

(b) An agency must deduct an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) before deducting any type of tax withholding.

[FR Doc. 00–18232 Filed 7–14–00; 3:19 pm]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206–AJ17

Health Insurance Premium Conversion

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to enable employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided under section 125 of the Internal Revenue Code. These regulations establish the basic rules under which this premium conversion plan will operate, beginning October 2000.

DATES: This interim rule is effective September 18, 2000. Comments must be received on or before September 18, 2000.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Laurie Bodenheimer, (202) 606–0004, or email to *lrbodenh@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

At the President's direction, OPM will implement a health insurance premium conversion plan for employees participating in the FEHB Program. The premium conversion plan is part of a "cafeteria plan" under Section 125 of the Internal Revenue Code. OPM will execute a separate plan document to comply with Section 125 requirements and will make that document available on OPM's website: *www.opm.gov*. OPM is also issuing separate instructions to personnel and payroll offices.

The premium conversion plan will take effect on October 1, 2000. Under the plan, employees' health benefit premium withholdings are treated as a pre-tax salary deduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

While most Federal employees are currently not covered by a premium conversion plan, the Federal Judiciary, the United States Postal Service, and some smaller Executive Branch agencies with independent compensation-setting authority have already implemented their own premium conversion plans. Employees of those entities will not be covered by the premium conversion plan described here.

All other employees in the Executive Branch of the Federal Government who are participating in the FEHB Program, and whose pay is issued by an Executive Branch agency, will automatically have their salary reduced (through a Federal allotment) and their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an agency of the Executive Branch, will have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agrees to offer participation in the plan. However, any individual enrolled in the FEHB

Program who does not want to participate in premium conversion may waive participation, subject to the limitations in these regulations.

Premium conversion has no effect on: statutory pay provisions or the General Schedule; the amount of any employee's health insurance premium; or the amount of the Government share towards the FEHB premium on behalf of any employee. Base pay for retirement, life insurance and Thrift Savings Plan purposes is unaffected.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM is also amending its allotment regulations at 5 CFR part 550, subpart C in a separate interim rule issued simultaneously with this rule. Each employee participating in premium conversion will make an allotment to his or her employing agency in the amount of the employee share of the FEHB insurance premium. The agency will then use that amount to pay the employee's premium. The allotment will be automatic unless the employee elects to waive premium conversion.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders. OPM followed the Internal Revenue Code to develop a plan document and regulations that comply with tax law and parallel the practices of private sector employers. It is necessary that payroll offices begin work on systems changes so that this benefit will be available at the start of Fiscal Year 2001—a logical time in terms of Federal agency budget and payroll administration.

Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866, "Regulatory Planning and Review." Because this regulation has an economic impact exceeding $100 million annually it is defined by that Executive Order as being "economically significant." It is classified as a major regulation in accordance with the Congressional Review Act because of its economic impact.

Analysis of Costs and Benefits

In OPM's view, the benefits of this regulation substantially outweigh the costs. Under this regulation, Federal employees with health insurance through the FEHB Program will begin paying their insurance premiums with pre-tax dollars, similar to how millions of private sector employees currently pay their health insurance premiums. The benefits of this change in tax status are significant: the Federal Government will become a more competitive employer and the tax liability of Federal employees will decrease.

Costs of this regulation include a start-up cost in the first year to implement the program; a decrease in Medicare, Social Security and income taxes paid by Federal employees; and a decrease in Federal employer payments to the Medicare and Social Security Trust Funds. The benefits and costs of this regulation are described in more detail in the following sections.

Statement of Need for Proposed Action

In his 2001 Budget, the President directed OPM to implement health insurance premium conversion. Premium conversion will bring the Federal Government in line with private sector practices regarding employee payments of health insurance premiums. Over 60 million private sector employees with employment based health insurance pay their premiums with pre-tax dollars. This regulation will take advantage of current law to allow over 1.5 million Federal employees, representing more than 3 million lives including dependents, to have the same benefit as private sector workers. As a result, the Federal Government will become a more competitive employer and health insurance will become more affordable for Federal employees.

Examination of Alternative Approaches

In order to implement the President's premium conversion directive, regulatory action is necessary. In developing this regulation, OPM considered various ways to put premium conversion into operation. OPM also hired a contractor with substantial experience in employee benefits tax compliance to write a plan document that conforms to IRS Section 125 rules.

OPM met with those Federal agencies that have already implemented a premium conversion plan: the U.S. Postal Service, the Federal Judiciary, and some small Executive Branch agencies with independent compensation-setting authority. It studied the range of implementation issues that these organizations encountered, from payroll system changes and educational outreach to complying with the tax code, and identified the key issues that OPM would need to address. OPM has developed these regulations by using the "best practices" of other employers in terms of premium conversion program development and implementation.

Benefits Analysis

Over the last few decades, the U.S. labor market has become increasingly competitive. Unemployment rates have hovered at about 4 percent, the lowest rates since 1970. Labor force participation rates are at all time highs—67 percent in recent months, up from around 60 percent in 1970. Given these tight labor market conditions, the Federal Government, like all employers, must use every means possible to attract and retain high quality employees. Currently, the Federal Government is at a competitive disadvantage in the labor market because its employees pay their health insurance premiums with after-tax dollars. In the private sector, many employees pay their health insurance premiums with pre-tax dollars, resulting in reduced tax liabilities and greater take-home pay. This regulation will eliminate the Federal Government's competitive disadvantage in this area, giving it an additional tool to attract and retain high quality workers and increase employee satisfaction.

Another advantage of this regulation is that it lowers the tax liability of Federal employees. Under this regulation, Federal employees will enjoy the same benefit as private sector employees and no longer will pay income tax, Social Security tax or Medicare tax on their health insurance premium dollars. This tax cut increases the take-home pay of Federal workers; Federal workers enrolled in the FEHB Program can save over $430 per year on average.

Cost Analysis

The costs associated with this regulation are the start-up costs to implement the premium conversion program; the decrease in Medicare, Social Security, and income taxes paid by Federal employees; and the decrease in Federal employer payments to the Medicare and Social Security Trust Funds.

The start-up costs of this regulation will be incurred in the first year of the program as individual Federal Government Agencies update their payroll systems to accommodate

premium conversion and as OPM and individual Agencies educate the Federal employee population, including benefits officers, about the new program. OPM estimates the start-up cost to be $3 million in 2001, with $2.5 million coming from Agency implementation costs and the remaining $.5 million from educational outreach programs such as information pamphlets for employees and benefits officers. The cost estimate is based on an assumption that each of the 164 discrete non-Postal payroll systems would incur $15,000 in spending on systems analysis, programming, testing, and overhead.

In Fiscal Year 2001, the tax benefit to Federal employees caused by premium conversion is estimated to be about $670 million; $550 million in Federal income taxes, $85 million in Social Security taxes, and $35 million in Medicare taxes. The decrease in Federal employer payments to the Medicare and Social Security Trust Funds is estimated to be $85 million and $35 million dollars respectively. Assuming that health insurance premiums will continue to increase at recent rates, the change in tax benefits and Federal employer payments from premium conversion is expected to grow at roughly a proportional rate in each subsequent year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small entities, the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

OPM has determined that this rule will not have a significant economic impact on a substantial number of small entities. The regulation does not impact small entities.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this interim-final rule does not include any Federal mandate that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determine that this final rule will not have any negative impact on the rights, roles, and responsibilities of State, local or Tribal governments.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Wages, Taxes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 890 and adding part 892 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403 p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. Amend § 890.301 to revise the heading and paragraph (e)(1) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(e)(1) *Change to self only.* (1) An employee may change the enrollment from self and family to self only at any time, except that an employee participating in health insurance premium conversion as provided in part 892 of this chapter may make this change only during an open season or on account of and consistent with a qualifying life event as defined in § 892.101 of this chapter that affects eligibility for coverage.

* * * * *

3. Amend § 890.304 to revise paragraph (d)(1) to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d)(1) An enrollee may cancel his or her enrollment at any time by filing an appropriate request with the employing office except that an employee participating in health insurance premium conversion as provided in part 892 of this chapter may make this change only during an open season or on account of and consistent with a qualifying life event defined in § 892.101 of this chapter that affects eligibility for coverage. The cancellation takes effect on the last day of the pay period in which the appropriate request canceling the enrollment is received by the employing office.

* * * * *

4. Add part 892 to read as follows:

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

Subpart A—Administration and General Provisions

Sec.

892.101 Definitions
892.102 What is premium conversion and how does it work?
892.103 What can I do if I disagree with my agency's decision about my pre-or post-tax election?

Subpart B—Eligibility and Participation

892.201 Who is covered by the premium conversion plan?
892.202 Are retirees eligible for the premium conversion plan?
892.203 When will my premium conversion begin?
892.204 How do I waive participation in premium conversion before the benefit first becomes effective?
892.205 May I waive participation in premium conversion after the initial implementation?
892.206 Can I cancel my waiver and participate in premium conversion?
892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?
892.208 Can I change from self-and-family enrollment in FEHB to self-only enrollment at any time?
892.209 Can I cancel FEHB coverage at any time?
892.210 Does premium conversion change the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment?
892.211 What happens if I go on leave without pay (LWOP)?

Subpart C—Contributions and Withholdings

892.301 How do I pay my premium?
892.302 Will the Government contribution continue?
892.303 Can I pay my premiums directly by check under the premium conversion plan?

Subpart D—Reemployed Annuitants

892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

Subpart A—Administration and General Provisions

§ 892.101 Definitions.

Days mean calendar days.

Dependent means a family member who is both eligible for coverage under the FEHB Program and a dependent as defined in section 152 of the Internal Revenue Code.

FEHB Program means the Federal Employees Health BenefitsProgram described in 5 U.S.C. 8901.

Open Season means the period of time each year as described in § 890.301(f) of this chapter when all individuals eligible for FEHB coverage have the opportunity to enroll or change their enrollment. These changes become effective with the first pay period that begins in the following year. For additional open seasons authorized by OPM, the effective date is specified.

OPM means the Office of Personnel Management.

Qualifying life event means events that may permit election changes as described in Treasury regulations at 26 CFR 1.125–4 and includes the following:

(1) Addition of a dependent;
(2) Birth or adoption of a child;
(3) Changes in entitlement to Medicare or Medicaid for you, your spouse or dependent;
(4) Change in work site;
(5) Change in your employment status or that of your spouse or Dependent from either full-time to part-time, or the reverse;
(6) Death of your spouse or Dependent;
(7) Divorce or annulment;
(8) Loss of a Dependent;
(9) Marriage;
(10) Significant change in the health coverage of you or your spouse related to your spouse's employment;
(11) Start or end of an unpaid leave of absence by you or your spouse; or
(12) Start or end of your spouse's employment.

§ 892.102 What is premium conversion and how does it work?

Premium conversion is a method of reducing your taxable income by the amount of your contribution to your FEHB insurance premium. If you are a participant in the premium conversion plan, Section 125 of the Internal Revenue Code allows you to reduce your salary (through an employer allotment) and provide that portion of your salary back to your employer. Instead of being paid to you as taxable income, this allotted amount is used to purchase your FEHB insurance for you. The effect is that your taxable income is reduced. Because taxable income is reduced, the amount of tax you pay is reduced. You save on Federal income tax, Social Security and Medicare tax and in most States and localities, State and local income taxes.

§ 892.103 What can I do if I disagree with my agency's decision about my pre-or post-tax election?

You may use the reconsideration procedure set out at § § 890.104 of this chapter to request an agency to reconsider its initial decision affecting your participation in the premium conversion plan.

Subpart B—Eligibility and Participation

§ 892.201 Who is covered by the premium conversion plan?

(a) All employees in the Executive Branch of the FederalGovernment who are participating in the FEHB Program (as described in 5 U.S.C.8901), and whose pay is issued by an agency of the ExecutiveBranch of the Federal Government, are automatically covered by the premium conversion plan. Certain reemployed annuitants may be considered employees for purposes of premium conversion, as described in subpart D of this part.

(b) Employees of organizations that have established a premium conversion plan under separate authority prior to October 2000 may not participate in the premium conversion plan described here because they are already covered by their employing agency's plan.

(c) Individuals enrolled in FEHB who are not employees of the Executive Branch of the Federal government or are not employees of the Federal government, will be covered by the premium conversion plan if their employer signs an adoption agreement that is accepted by OPM.

(d) Individuals enrolled in FEHB who are appointed by an agency in the Executive Branch, but whose pay is not issued by that agency, will be covered by the premium conversion plan if the entity that makes their FEHB contribution signs an adoption agreement that is accepted by OPM.

(e) Individuals may waive premium conversion by filing a waiver form with their employer in accordance with this part.

§ 892.202 Are retirees eligible for the premium conversion plan?

No, only current employees who are enrolled in the FEHBProgram are covered by the premium conversion plan. Former employees are not eligible. If you are a reemployed annuitant, see subpart D of this part.

§ 892.203 When will my premium conversion begin?

Your salary reduction (through a Federal allotment) and pre-tax benefit become effective with the first day of the first pay period beginning on or after October 1, 2000, if you are employed in a covered Executive Branch agency as described in § 892.201(a). Otherwise, your salary reduction (through a Federal allotment) and pre-tax benefit will be effective on the first day of the first pay period beginning on or after the date that your employer officially adopts the premium conversion plan (see § 892.201(c), (d)).

§ 892.204 How do I waive participation in premium conversion before the benefit first becomes effective?

You must file a waiver form by the date set by your employing office, but not later than the day before the effective date of coverage. The waiver form is available from your employing office.

§ 892.205 May I waive participation in premium conversion after the initial implementation?

Yes, but the opportunity to waive premium conversion is limited. You may waive premium conversion:

(a) During the annual FEHB open season. The effective date of the waiver will be the first day of the first pay period that begins in the following calendar year;

(b) At the same time as you sign up for FEHB when first hired or hired as a reemployed annuitant. Employees who leaveFederal service and are rehired after a three-day break in service or in a different calendar year also may waive;

(c) In conjunction with a change in FEHB enrollment, on account of and consistent with a qualifying life event (see § 892.101); or

(d) When you have a qualifying life event and the waiver is on account of and consistent with that qualifying life event(even if you do not change your FEHB enrollment). You have 60 days after the qualifying life event to file a waiver with your employer. The waiver is effective on the first day of the pay

period following the date your employer receives the waiver.

§ 892.206 Can I cancel my waiver and participate in premium conversion?

Yes, you may cancel a waiver and participate in premium conversion if:

(a) You have a qualifying life event; the change in FEHB coverage is consistent with the qualifying life event; and you complete an election form to participate in premium conversion within 60 days after the qualifying life event; or

(b) You cancel your waiver during an open season, including an extended open season authorized by OPM.

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

Generally, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter. However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self-and-family enrollment to self-only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations only apply to changes you may wish to make outside open season.

§ 892.208 Can I change from self-and-family enrollment in FEHB to self-only enrollment at any time?

If you are participating in premium conversion you may change your FEHB enrollment from self-and-family to self-only:

(a) During the annual open season; or

(b) Within 60 days after you have a qualifying life event. Your change in enrollment must be consistent with and correspond to your qualifying life event. For example, if you get divorced, changing to self-only would be consistent with that qualifying life event. If you adopt a child, a change from self-only to self-and-family coverage would also be consistent with that qualifying life event.

§ 892.209 Can I cancel FEHB coverage at any time?

If you are participating in premium conversion you may cancel your FEHB coverage:

(a) During the annual open season; or

(b) Within 60 days after you have a qualifying life event. Your cancellation of coverage must be consistent with and correspond to your qualifying life event. For example, if you get married and your spouse is employed by a company that provides health insurance for you, then canceling FEHB coverage would be consistent with that qualifying life event. If you adopt a child, canceling coverage would not be consistent with that qualifying life event.

§ 892.210 Does premium conversion change the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment?

No. If you are participating in premium conversion, the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment is the same effective date as provided in § 890.301 of this chapter.

§ 892.211 What happens if I go on leave without pay (LWOP)?

(a) Your commencement of LWOP is a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive).

(b)(1) You may continue your FEHB coverage by agreeing in advance of LWOP to one of the payment options described in paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(2) *Pre-pay.* Prior to commencement of your LWOP you may pay the amount due for your share of your FEHB premium during your LWOP period, if your employing agency, at its discretion, allows you to do so. Contributions under the pre-pay option may be made through premium conversion on a pre-tax basis. Alternatively, you may pre-pay premiums for the LWOP period on an after-tax basis.

(3) *Direct pay.* Under the direct pay option, you may pay your share of your FEHB premium on the same schedule as payments would be made if you were not on LWOP, as described in § 890.502(b) of this chapter. You must make the premium payments directly to your employing agency. The payments you make under the direct pay option are not subject to premium conversion, and are made on an after-tax basis.

(4) *Catch-up.* Under the catch-up option, you must agree in advance of the LWOP period that: you will continue FEHB coverage while on LWOP; your employer will advance your share of your FEHB premium during your LWOP period; and you will repay the advanced amounts when you return from LWOP. (Described in § 890.502(b) of this chapter.) Your catch-up contributions may be made through premium conversion.

(5) If you remain in FEHB upon your return from LWOP, your catch-up premiums and current premiums will be paid at the same time.

(c) Your return from LWOP constitutes a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). The election you choose upon return from LWOP will apply to your current as well as your catch-up premiums.

Subpart C—Contributions and Withholdings

§ 892.301 How do I pay my premium?

As a participant in premium conversion, instead of having your premium withheld from after-tax salary, your salary will be reduced (through a Federal allotment) by the amount equal to yourFEHB premium, which you will allot to your agency. The allotment from salary satisfies the FEHB premium payment requirement of 5U.S.C. 8906. Your employer is authorized to accept this allotment under § 550.311(a)(8) and § 550.312 of this chapter or, for employers not subject to those regulations, a similar mechanism. Your agency will use the allotment to pay your share of your FEHB premium. This will reduce your taxable income as described in § 892.102.

§ 892.302 Will the Government contribution continue?

Yes, your employer will still pay the same share of your premium as provided in the Federal Employees Health Benefits Act, and § 890.501 of this chapter. Employee allotments do not count toward the Government's statutory maximum contribution.

§ 892.303 Can I pay my premiums directly by check under the premium conversion plan?

No, your employer must take your contribution to your FEHB premium from your salary to qualify for pre-tax treatment.

Subpart D—Reemployed Annuitants

§ 892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?

(a) If you are a retired individual enrolled in FEHB who is receiving an annuity and you are reemployed in a position that conveys FEHB eligibility and is covered by the premium conversion plan, you are automatically covered by premium conversion, unless you waive participation as described in § 892.205.

(b)(1) If you do not waive premium conversion, your FEHB coverage will be transferred to your employing agency, and your employing agency will assume responsibility for contributing the

government share of your FEHB coverage. Your coverage will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

(2) If you elect to waive participation in premium conversion, you will keep your FEHB coverage as an annuitant, but your contributions towards yourFEHB premiums will be made on an after-tax basis. Your employing agency must receive your waiver no later than 60 days after the date you return to Federal employment. A waiver will be effective at the beginning of the first pay period after your employer receives it.

(c) If you did not carry FEHB into retirement and you are reemployed as an employee in a position covered by the premium conversion plan, you may enroll in the FEHB Program as a new employee as described in § 890.301 of this chapter. Upon enrolling in FEHB, you are automatically covered by the premium conversion plan, unless you waive participation as described in § 892.205.

(d) Your status as an annuitant under the retirement regulations and your right to continue FEHB as an annuitant following your period of reemployment is unaffected.

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BILLING CODE 6325–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

RIN 3150 AG38

Antitrust Review Authority: Clarification

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is clarifying its regulations to reflect more clearly its limited antitrust review authority by explicitly limiting the types of applications that must include antitrust information. Specifically, because the Commission is not authorized to conduct antitrust reviews of post-operating license transfer applications, or at least is not required to conduct this type of review and has decided that it no longer will conduct them, no antitrust information is required as part of a post-operating license transfer application. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews.

EFFECTIVE DATE: This final rule is effective August 18, 2000.

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SUPPLEMENTARY INFORMATION:

I. Background

In a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCP&L) (Applicants), Commission approval pursuant to 10 CFR 50.80 was sought of a transfer of the Applicants' possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Wolf Creek is jointly owned by the Applicants, each of which owns an undivided 47 percent interest. The remaining 6 percent interest is owned by Kansas Electric Power Cooperative, Inc. (KEPCo). The Applicants requested that the Commission amend the operating license for Wolf Creek pursuant to 10 CFR 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place. KEPCo opposed the transfer on antitrust grounds, claiming that the transfer would have anticompetitive effects and would result in "significant changes" in the competitive market. KEPCo petitioned the Commission to intervene in the transfer proceeding and requested a hearing, arguing that the Commission should conduct an antitrust review of the proposed transfer under section 105c of the Atomic Energy Act, 42, U.S.C. 2135(c). Applicants opposed the petition and request for a hearing.

By Memorandum and Order dated March 2, 1999, CLI–99–05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a "significant changes" review in connection with certain kinds of license transfers, it intended to consider in the Wolf Creek case whether to depart from that practice and "direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case." In deciding this matter, the Commission stated that it expected to consider a number of factors, including its statutory mandate, its expertise, and its resources. Accordingly, the Commission directed the Applicants and KEPCo to file briefs on the single question: "whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith." *Id.* at 200.

Because the issue of the Commission's authority to conduct antitrust reviews of license transfers is of interest to, and affects, more than only the parties directly involved in, or affected by, the proposed Wolf Creek transfer, the Commission in that case invited *amicus curiae* briefs from "any interested person or entity." CLI–99–05, 49 NRC at 200, n.1. (Briefs on the issue subsequently were received from a number of nonparties.) In addition, widespread notice of the Commission's intent to decide this matter in the Wolf Creek proceeding was provided by publishing that order on the NRC's web site and in the **Federal Register** (64 FR 11069; March 8, 1999), and also by sending copies to organizations known to be active in or interested in the Commission's antitrust activities. *Id.*

After considering the arguments presented in the briefs, and based on a thorough *de novo* review of the scope of the Commission's antitrust authority, the Commission concluded that the structure, language, and history of the Atomic Energy Act do not support its prior practice of conducting antitrust reviews of post-operating license transfers. The Commission stated:

> It now seems clear to us that Congress never contemplated such reviews. On the contrary, Congress carefully set out exactly when and how the Commission should exercise its antitrust authority, and limited the Commission's review responsibilities to the anticipatory, prelicensing stage, prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective antitrust relief was at its maximum. The Act's antitrust provisions nowhere even mention post-operating license transfers.
>
> The statutory scheme is best understood, in our view, as an implied prohibition against additional Commission antitrust reviews beyond those Congress specified. At the least, the statute cannot be viewed as a requirement of such reviews. In these circumstances, and given what we view as strong policy reasons against a continued expansive view of our antitrust authority, we have decided to abandon our prior practice of conducting antitrust reviews of post-operating license transfers. * * *.
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> Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441, 446 (1999) (Wolf Creek).

II. Discussion

The Commission's decision in Wolf Creek was based on a thorough consideration of the documented

purpose of Congress's grant of limited antitrust authority to the NRC's predecessor, the Atomic Energy Commission, the statutory framework of that authority, the carefully-crafted statutory language, and the legislative history of the antitrust amendments to the Atomic Energy Act. The Commission's Wolf Creek decision explained that, in eliminating the theretofore government monopoly over atomic energy, Congress wished to provide incentives for its further development for peaceful purposes but was concerned that the high costs of nuclear power plants could enable the large electric utilities to monopolize nuclear generating facilities to the anticompetitive harm of smaller utilities. Therefore, Congress amended the Atomic Energy Act to provide for an antitrust review in the prelicensing stages of the regulatory licensing process. Congress focused its grant of antitrust review authority on the two steps of the Commission's licensing process: The application for the facility's construction permit and the application for the facility's initial operating license. It is at these early stages of the facility's licensing that the Commission historically was believed by Congress to be in a unique position to remedy a situation inconsistent with the antitrust laws by providing ownership access and related bulk power services to smaller electric systems competitively disadvantaged by the planned operation of the nuclear facility. Congress emphasized that the Commission's review responsibilities were to be exercised at the anticipatory, prelicensing stages prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective relief was at its maximum. See Wolf Creek at 446–448.

The Commission next focused on the structure and language of its antitrust review authority found exclusively in section 105 of the Atomic Energy Act, 42 U.S.C. 2135. Section 105c provides for a mandatory and complete antitrust review at the construction permit phase of the licensing process when all entities who might wish ownership access to the nuclear facility and who are in a position to raise antitrust concerns are able to seek an appropriate licensing remedy from the Commission prior to actual operation of the facility. The construction permit antitrust review contrasts markedly from the only other review authorized by the statute. Specifically, section 105c explicitly provides that the antitrust review provisions "shall not apply" to an application for an operating license unless "significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * in connection with the construction permit for the facility." Section 105c.(2). Following this more limited and conditional review prior to initial operation of the facility, Section 105 makes clear that traditional antitrust forums are available to consider asserted anticompetitive conduct of Commission licensees, which are not relieved of operation of the antitrust laws. Section 105a, b. Further, if any Commission licensee is found to have violated any antitrust law, the Commission has the authority to take any licensing action it deems necessary. Section 105a. *See id.* at 447–452.

After describing this statutory framework and structure, the Commission then closely examined the language of its statutory antitrust review authority. The Commissien found that it focused on only two types of applications, namely those for a construction permit and those for an initial operating license, but not for other types of applications explicitly mentioned in Section 103 of the Atomic Energy Act, such as applications to "acquire" or "transfer" a license. Even if an application to transfer an operating license were considered an application for an operating license for the transferee, the Commission found that the specific "significant changes" review process mandated by Section 105 does not lend itself to an antitrust review of post-operating license transfer applications. The Commission noted that its past practice of conducting "significant changes" reviews of post-operating license transfer applications did not use the construction permit review as the benchmark for comparison as mandated by Section 105, but instead examined whether there were significant changes compared with the previous *operating license review*. Like the statutory framework, the statutory language was found to be inconsistent with authorization to conduct post-operating license antitrust reviews and certainly could not be found to support a required review at that time. See id. at 452–456.

Finally, the Commission reviewed the legislative history of the antitrust amendments. It found that the Joint Committee on Atomic Energy, in its authoritative report on the Commission's prelicensing antitrust authority, explicitly clarified the scope of the terms "license application" and "application for a license" in the language which was enacted as Section 105. The Commission stated:

> In its Report, the Joint Committee [11] made clear that the term "license application" referred only to applications for construction permits or operating licenses filed as part of the "initial" licensing process for a new facility not yet constructed, or for modifications which would result in a substantially different facility:
>
> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic-renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application", "an application for a license", and "any application" as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

[11] The Joint Committee Report is the best source of legislative history of the 1970 amendments. *See Alabama Power Co.* v. *NRC*, 692 F.2d, 1362, 1368 (11th Cir. 1982). The Report was considered by both houses in their respective floor deliberations on the antitrust legislation and is entitled to special weight because of the Joint Committee's "peculiar responsibility and place * * * in the statutory scheme." *See Power Reactor Development Co.* v. *International Union*, 367 U.S. 396, 409 (1961).

See id. at 458, quoting Report By The Joint Committee On Atomic Energy: Amending The Atomic Energy Act of 1954, As Amended, To Eliminate The Requirement For A Finding Of Practical Value, To Provide For Prelicensing Antitrust Review Of Production And Utilization Facilities, And To Effectuate Certain Other Purposes Pertaining To Nuclear Facilities, H.R. Rep. No. 91–1470 (also Rep. No. 91–1247), 91st Cong., 2nd Sess., at 29 (1970), 3 U.S. Code and Adm. News 4981 (1970) ("Joint Committee Report") (*quoting* from legislative history of 1954 Act).

In summary, the Commission concluded that neither the language of the Commission's statutory authority to conduct antitrust reviews nor its legislative history support any authority to perform antitrust reviews of post-operating license transfer applications and certainly cannot be interpreted to require such reviews.

The Commission's Wolf Creek decision is published in its entirety at 64 FR 33916, June 24, 1999, and in the NRC Issuances at 49 NRC 441 (1999).

Because of the Commission's past practice of conducting antitrust reviews of license transfer applications, including those at the post-operating license stage of the regulatory process, the Commission in the Wolf Creek case also closely examined its rules of practice to determine whether they required or warranted revision to conform to its decision in the Wolf Creek decision. The Commission concluded that, notwithstanding its past interpretation of its rules as being consistent with an antitrust review of all transfer applications, including those involving post-operating license transfers, the rules themselves do not explicitly mandate such reviews. *Id.* at 462, 467.

The Commission's practice has been to perform a "significant changes" review of applications to directly transfer section 103 construction permit and operating licenses to a new entity, including those applications for post-operating license transfers. While the historical basis for such reviews in the case of post-operating license transfer applications remains cloudy—it does not appear that the Commission ever explicitly focused on the issue of whether such reviews were authorized or required by law, but instead apparently assumed that they were [14]—the reasons, even if known, would have to yield to a determination that such reviews are not authorized by the Act. *See American Telephone & Telegraph Co.* v. *FCC*, 978 F.2d 727, 733 (D.C. Cir. 1992). We now in fact have concluded, upon a close analysis of the Act, that Commission antitrust reviews of post-operating license transfer applications cannot be squared with the terms or intent of the Act and that we therefore lack authority to conduct them. But even if we are wrong about that, and we possess some general residual authority to continue to undertake such antitrust reviews, it is certainly true that the Act nowhere requires them, and we think it sensible from a legal and policy perspective to no longer conduct them.

It is well established in administrative law that, when a statute is susceptible to more than one permissible interpretation, an agency is free to choose among those interpretations. *Chevron*, 467 U.S. at 842–43. This is so even when a new interpretation at issue represents a sharp departure from prior agency views. *Id.* at 862. As the Supreme Court explained in *Chevron*, agency interpretations and policies are not "carved in stone" but rather must be subject to re-evaluations of their wisdom on a continuing basis. *Id.* at 863–64. Agencies "must be given ample latitude to 'adapt its rules and policies to the demands of changing circumstances.'" *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 42 (1983), *quoting Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968). An agency may change its interpretation of a statute so long as it justifies its new approach with a "reasoned analysis" supporting a permissible construction. *Rust* v. *Sullivan*, 500 U.S. 173, 186–87 (1991); *Public Lands Council* v. *Babbit*, 154 F.3d 1160, 1175 (10th Cir. 1998); *First City Bank* v. *National Credit Union Admin Bd.*, 111 F.3d 433, 442 (6th Cir. 1997); *see also Atchison, T. & S. F. Ry. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Hatch* v. *FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1971).

We therefore give due consideration to the Commission's established practice of conducting antitrust reviews of post-operating license transfer applications but appropriately accord little weight to it in evaluating anew the issue of Section 105's scope and whether, even if such reviews are authorized by an interpretation of Section 105, they should continue as a matter of policy. Moreover, as we noted above, the Commission's actual practice of reviewing license transfer applications for significant changes is on its face inconsistent with the statutory requirement regarding how significant changes must be determined. The fact that the statutory method does not lend itself to post-operating license transfer applications, while the different one actually used does logically apply, also must be considered and suggests that such a review is not required by the plain language of the statute and was never intended by Congress.

In support of the arguments advanced in KEPCo's briefs and some of the amicus briefs that the Commission must conduct antitrust reviews of transfer applications, various NRC regulations and guidance are cited. Just as the Commission's past practices cannot justify continuation of reviews unauthorized by statute, neither can regulations or guidance to the contrary. Before accepting the argument that our regulations require antitrust reviews of post-operating license transfer applications, however, they warrant close consideration.

Section 50.80 of the Commission's regulations, 10 CFR § 50.80, "Transfer of licenses," provides, in relevant part:

(b) An application for transfer of a license shall include [certain technical and financial information described in §§ 50.33 and 50.34 about the proposed transferee] as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by § 50.33a.

Section 50.33a, "Information requested by the Attorney General for antitrust review," which by its terms applies only to applicants for construction permits, requires the submittal of antitrust information in accordance with 10 CFR part 50, Appendix L. Appendix L, in turn, identifies the information "requested by the Attorney General in connection with his review, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants." "Applicant" is defined in Appendix L as "the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and affiliate." "Subject unit" is defined as "the nuclear generating unit or units for which application for construction or operation is being made." Appendix L does not explicitly apply to applications to transfer an operating license.

KEPCo argues that the § 50.80(b) requirement, in conjunction with the procedural requirements governing the filing of applications discussed below, requires the submittal of antitrust information in support of post-operating license transfer applications and that the Wolf Creek case cannot lawfully be dismissed without a "significant changes" determination. *See* KEPCo Brief at 11. While we agree that § 50.80 may imply that antitrust information is required for purposes of a "significant changes" review, linguistically it need not be read that way. The Applicants plausibly suggest that the phrase "the license *to be* issued" could be interpreted to apply only to entities that have not yet been issued an initial license. *See* App. Brief at 11.[15] Moreover, neither this regulation nor any other states the purpose of the submittal of antitrust information. For applications to construct or operate a proposed facility, it is clear that § 50.80(b), in conjunction with § 50.33a and Appendix L, requires the information specified in Appendix L for purposes of the section 105c antitrust review, for construction permits, and for the "significant changes" review for operating licenses. But for applications to transfer an existing operating license, there are other section 105 purposes which could be served by the information. Such information could be useful, for example, in determining the fate of any existing antitrust license conditions relative to the transferred license, as well as for purposes of the Commission's section 105b responsibility to report to the Attorney General any information which appears to or tends to indicate a violation of the antitrust laws.

While we acknowledge that information submitted under § 50.80(b) has not been used for these purposes in the past, and has instead been used to develop "significant changes" findings, the important point is that § 50.80(b) is simply an information submission rule. It does not, in and of itself, mandate a "significant changes" review of license transfer applications. No Commission rule imposes such a legal requirement. Nonetheless, in conjunction with this decision, we are directing the NRC staff to initiate a rulemaking to clarify the terms and purpose of § 50.80(b).[16]

KEPCo also argues that the Commission's procedural requirements governing the filing of license applications supports its position that antitrust review is required in this case. *See* KEPCo Brief at 11–13. The Applicants disagree, arguing that nothing in those regulations states that transfer applications will be subject to antitrust reviews. *See* App. Reply Brief at 3. For the same reasons we believe that the specific language in section 105c does not support antitrust review of post-operating license transfer applications, we do not read our procedural requirements to indicate that there will be an antitrust review of transfer applications. Indeed, the language in 10 CFR 2.101(e)(1) regarding operating license applications under section 103 tracks closely the process described in section 105c. As stated in 10 CFR 2.101(e)(1), the purpose of the antitrust information is to

[14] ???????

enable the staff to determine "whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the *previous antitrust review in connection with the construction permit.*" (Emphasis added.) As explained above, this description of the process for determining "significant changes" is consistent with an antitrust review of the initial operating license application for a facility but wholly inconsistent with an antitrust review of post-operating license transfer applications.

[14] Until recently, the Commission's staff applied the "significant changes" review process to both "direct" and "indirect" transfers. Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license. The vast majority of indirect transfers involve the purchase or acquisition of securities of the licensee (*e.g.*, the acquisition of a licensee by a new parent holding company). In this type of transfer, existing antitrust license conditions continue to apply to the same licensee. The Commission recently did focus on antitrust reviews of indirect license transfer applications and approved the staff's proposal to no longer conduct "significant changes" reviews for such applications because there is no effective application for an operating license in such cases. *See* Staff Requirements Memorandum (November 18, 1997) on SECY–97–227, Status Of Staff Actions On Standard Review Plans For Antitrust Reviews And Financial Qualifications And Decommissioning-Funding Assurance Reviews.

[15] This reading is consistent with the history of section 50.80(b). Its primary purpose appears to have been to address transfers which were to occur before issuance of the initial (original) operating license, transfers which unquestionably fall within the scope of section 105c. *See Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, 587–88 (1978). When § 50.80(b) was revised in 1973 to require submission of the antitrust information specified in section 50.33a, the stated purpose was to obtain the "*prelicensing* antitrust advice by the Attorney General." 38 FR 3955, 3956 (February 9, 1973) (emphasis added).

[16] In one important respect the language of § 50.80(b), quoted above, in fact supports the Commission's analysis of section 105 and its legislative history. The phrase "if the application were for an *initial license*" certainly demonstrates that, consistent with the clearly intended focus of section 105c on antitrust reviews of applications for initial licenses, the Commission has long distinguished initial operating license applications from license transfer applications. Be that as it may, clarification of § 50.80(b) will be appropriate in the wake of our decision that our antitrust authority does not extend to antitrust reviews of post-operating license transfer applications. Id. at 459–463 (footnotes in original).

Indeed, after considering the various interpretations of the rules advanced by the parties and *amici curiae* in the Wolf Creek proceeding, the Commission concluded: "Not one comma of the Commission's current regulations need be changed in the wake of a cessation of such reviews, although because of the NRC's past practice of conducting such reviews, we have decided that clarification of our rules is warranted." *Id.* at 467. Therefore, the Commission directed that the rules be clarified "by explicitly limiting which types of applications must include antitrust information," *Id.* at 463, and that Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with Its Antitrust Review of Operating License Applications for Nuclear Power Plants," and NUREG–1574, "Standard Review Plan on Antitrust Reviews," also be clarified.

On November 3, 1999 (64 FR 59671), the Commission published for comment a proposed rule to clarify its regulations consistent with its Wolf Creek decision. Substantive and timely comments were received from (1) the law firm of Akin, Gump, Strauss, Hauer & Feld, on behalf of the FirstEnergy Nuclear Operating Company (FENOC), the licensed operator of the Perry, Davis-Besse, and Beaver Valley nuclear power plants, for the subsidiary owners of those facilities, namely Ohio Edison Company, The Cleveland Electric Illuminating Company, the Toledo Edison Company, and Pennsylvania Power Company, (2) the Nuclear Energy Institute (NEI), on behalf of the nuclear energy industry, (3) the law firm of ShawPittman on behalf of Western Resources, Inc., Kansas Gas and Electric Company, Wisconsin Electric Power Company, Public Service Electric and Gas Company, and Rochester Gas and Electric Corporation (ShawPittman Utilities), (4) Florida Power & Light Company (FPL), the owner and operator of the St. Lucie and Turkey Point nuclear power plants, (5) the law firm of Spiegel & McDiarmid, on behalf of the American Public Power Association, the City of Cleveland, Ohio, the Florida Municipal Power Agency, the City of Gainesville, Florida, Public Citizen, and the American Antitrust Institute (collectively APPA), and (6) Florida Power Corporation. In addition, late comments were received from (7) Jonathon M. Block on behalf of Citizens Awareness Network, Inc. (CAN).

III. Summary and Analysis of Public Comments

All commenters, except for APPA and CAN, support the Commission's initiative, reflected in the proposed rule, to clarify its regulations regarding the submission of antitrust information so the rules are consistent with the Commission's limited antitrust review authority. All commenters, except for APPA and CAN, endorsed the adoption of the changes to the regulations exactly as proposed. There were no suggestions for different or additional changes. APPA and CAN did not suggest specific alternative rule changes other; they oppose the rule in its entirety.

FENOC emphasized that the Commission's antitrust authority in section 105 of the Atomic Energy Act is specific, not plenary, and that the Commission's Wolf Creek decision appropriately characterized the "progressively diminishing role" that Congress intended for the Commission on antitrust matters from the construction permit phase of licensing to the operating license stage, with no review authority granted for post-operating license transfers. FENOC stated that NRC regulations do not require any antitrust reviews in license transfer cases, and that any such review would be duplicative ("redundant and unnecessary") in light of other express federal governmental antitrust authorities.

NEI believes that the Commission was correct in reconsidering its antitrust authority and that the structure, language and history of the Atomic Energy Act support the Commission's conclusion that antitrust reviews should not be conducted in operating license transfer cases. NEI stated that the approach taken by the Commission to eliminate any ambiguities in its regulations regarding antitrust reviews is sound and should be adopted. NEI also believes that the Commission should initiate a "separate effort" to develop guidelines for the disposition of existing antitrust license conditions in license transfer cases.

The ShawPittman Utilities support the Commission's proposed rule clarifying its antitrust authority and, based on both legal and sound public policy justifications, urged the Commission to adopt the revisions set forth in the proposed rule. The ShawPittman Utilities agree with the Commission that the Atomic Energy Act does not authorize the Commission to perform antitrust reviews of license transfer applications, and that such reviews, if authorized, would be "an inefficient, unnecessary, and duplicative use of the Commission's resources."

FPL agrees with the Commission's Wolf Creek decision that its limited antitrust authority does not extend to operating license transfer applications and urges the Commission to issue a final rule as proposed. FPL further

encouraged the Commission continue its efforts to seek legislation to divest itself from all antitrust authority. FPL commended the Commission for its willingness and open-minded approach to reconsider its antitrust authority and practices and believes that this will contribute to streamlining agency practices and will result in a more efficient NRC, which in turn will improve its mission to protect the public health and safety.

Florida Power Corporation endorses the comments on the proposed rule submitted by the Nuclear Energy Institute.

APPA believes that the Wolf Creek decision is at odds with a prior Commission antitrust decision, Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, aff'd, ALAB–475, 7 NRC 752 (1978) (Fermi), which held that an antitrust review is required when an applicant is added to a construction permit. APPA believes that there is difficulty interpreting the Atomic Energy Act's antitrust review provisions regarding post-operating license transfers but that the Commission's analysis in Wolf Creek is erroneous. APPA also believes that, even if the Commission's statutory analysis in Wolf Creek is correct, the Commission plainly would err if it eliminates antitrust filing requirements for license transfers involving existing antitrust license conditions and that there is no reasoned basis to eliminate antitrust filings in such circumstances. Finally, APPA believes that if the language of section 105c is sufficiently ambiguous to permit more than one interpretation, the Commission erred by concluding that, considering other federal antitrust authorities, its antitrust review authority is superfluous.

CAN believes that the Commission's proposed rule unlawfully purports to change the substance of the Atomic Energy Act and should be withdrawn in favor of seeking legislative changes from Congress. CAN believes that the purpose of the Commission's antitrust authority in section 105 of the Atomic Energy Act, in conjunction with the inalienability of licenses provided in section 184, is to prevent regulatory gaps in the approval of highly dangerous activities, and that the proposed rule would undermine that purpose. CAN mentions the possibility of multiplied dangers if licensees cannot meet financial obligations, cost cutting by nuclear power plant owners in a competitive environment, potentially serious accidents triggered by overtime patterns, and foreign ownership of nuclear power plants, as well as increased regulatory burdens on the NRC, resulting in an inability of the NRC to inspect large-scale licensees for health and safety violations. CAN asserts that the NRC has failed to evaluate the health and safety and national security consequences of the proposed rule and also has failed to evaluate the environmental impacts of the proposed rule, in violation of the National Environmental Policy Act.

The commenters can be divided into two categories: Those who support a final rule identical to the proposed rule and those who oppose the rule in its entirety and would have the Commission leave in place the current antitrust information reporting requirements (or at least leave them in place for transfers involving nuclear power plants with existing antitrust license conditions). Since no commenter suggested any alternative provisions or language to what was proposed by the Commission, the decision for the Commission is whether the comments opposed to the rule as proposed warrant withdrawal of the proposed rule (or leaving the current reporting requirement in place for transfers involving existing antitrust conditions). For the reasons explained below, the Commission does not believe its analysis of its statutory antitrust review authority is flawed or that, if it has authority but is not required to conduct antitrust reviews of post-operating license transfers, its reasons for discontinuing such reviews are unsound as a matter of law or policy. The Commission therefore agrees with the commenters who support the rule and disagrees with the comments opposing the rule, which are addressed in detail.

Comment: APPA asserts that the Commission's Wolf Creek decision on the limits of its antitrust review authority is wrong and at odds with a prior Commission decision involving the Fermi nuclear plant. See Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, aff'd, ALAB–475, 7 NRC 752 (1978) (Fermi). APPA states that Fermi "holds that antitrust review is required when an applicant is added to a construction permit. By departing from its Fermi analysis without explanation, the Commission also fails to construe the Atomic Energy Act in light of the express statutory purpose of promoting competition." APPA comments at 3 (emphasis in original).

Response: The Commission was mindful of the Fermi decision when it decided the Wolf Creek case. See, *e.g.*, Wolf Creek at 462 n.15. See also the November 3, 1999, proposed rule, 64 FR 59673. As noted in Wolf Creek, none of the Commission's prior adjudicatory decisions (nor any other Commission issuances) explicitly addressed the Commission's authority to conduct antitrust reviews of post-operating license transfers. *Id.* at 450 n.4. At most, the prior antitrust adjudicatory decisions reflect an assumption on the part of the Commission that it had such authority. In part, for that reason, the Commission carefully focused on its post-operating license antitrust review authority for the first time in Wolf Creek.

The Fermi case involved an application by Detroit Edison Company (the licensee) for an amendment to its *construction permit* for the Fermi nuclear plant to add the Northern Michigan Electric Cooperative, Inc. and the Wolverine Electric Cooperative, Inc. as minority co-owners. The licensee moved to dismiss on the grounds, *inter alia*, that the NRC's Licensing Board had no jurisdiction to conduct an antitrust review of such an application since a construction permit review already had been conducted and no further review was provided by section 105c unless there was a finding of significant changes at the operating license stage. The Licensing Board reasoned that the statutory language in section 105c "does not answer the question as to the effect of a proposed amendment to an original *construction permit* to add new co-owners." Fermi, LBP–78–13, 7 NRC 583, 587 (emphasis added). The Board, relying on the Commission's South Texas decision, Houston Lighting and Power Company (South Texas Project, Unit Nos. 1 and 2), CLI–77–13, 5 NRC 1303 (1977), emphasized the importance of a " 'thorough' and 'in-depth' antitrust review at the *construction permit stage*, so that 'once an initial, full antitrust review has been performed, only 'significant changes' warrant reopening.'" LBP–78–13, 7 NRC at 588 (emphasis added), quoting South Texas, 5 NRC at 1310, 1312, 1317. The Board concluded that the two cooperatives' application to become co-licensees was their initial application for a construction permit and therefore subject to the *construction permit* stage antitrust review.

It is clear beyond any question that the Fermi case did not involve or address in any respect the Commission's antitrust review authority over applications to transfer operating licenses, cases where there already had been a construction permit review and a significant changes review. Fermi involved not the post-operating license time frame but the pre-initial operating license, construction phase, where, as Wolf Creek made clear, Congress

carefully focused the Commission's antitrust authority. Wolf Creek analyzed this limitation on the Commission's antitrust authority from the perspective of both the statutory language and its legislative history. The Board's *holding* in Fermi is consistent with the Wolf Creek *decision*.

A careful reading of APPA's comments suggests that not even APPA disagrees with this, and its comments are instructive as much for what they do not say as for what they do. APPA does not assert (as it reasonably could not) that Fermi addressed and resolved the Commission's post-operating license antitrust review authority, and that the Wolf Creek holding is contrary to that of Fermi. APPA says only that Wolf Creek departs from the Fermi "analysis" (APPA comments at 3) and "rationale" (APPA Comments at 17) without explanation. This refers to the Licensing Board's reasoning that the cooperatives' applications "constitute *their* "initial application for a construction permit." LBP–78–13, 7 NRC at 588 (emphasis in original). APPA criticizes the Wolf Creek decision for departing from this rationale with no explanation. Extrapolating that rationale to post-operating license transfers, of course, would result in considering the prospective transferees as applicants for *their* initial operating licenses and thus subject to the Section 105c "significant changes" review, contrary to the decision in Wolf Creek.

There are two responses to this argument. First, the Commission did not fail to address this reasoning in its Wolf Creek decision. The Commission explicitly considered whether the language of section 105c could accommodate construing the post-operating license transfer application as an application for an operating license and found that it could not. See Wolf Creek at 454–56. So, while the Fermi Licensing Board's reasoning led it to a result for new *construction permit licensees* which was consistent with section 105's language and legislative history, similar reasoning was shown in Wolf Creek to be incompatible with the language and legislative history of section 105's operating license review provisions, and also was shown to be flawed as a practical matter and when measured against the Commission's past practices. Id. at 451–52, 454–59. Second, a rationale suitable to interpreting one provision of a statute—construction permit antitrust reviews—in a manner which is supported by the statutory language and its legislative history cannot be used to interpret another provision—post-operating license antitrust reviews—if it cannot be reconciled with the statutory language and Congressional intent. The Commission's Wolf Creek's decision explains why the rationale used in Fermi does not work for post-operating license transfers (actually a step removed from the initial operating license reviews for the facility contemplated by Congress).

One final comment in response to APPA's comment that Wolf Creek inexplicably departs from the Fermi decision. The Fermi Licensing Board's threshold ruling that it had jurisdiction to consider antitrust issues associated with the addition of new construction permit applicants was affirmed by the Commission's Appeal Board. The Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB–475, 7 NRC 752, 755 n.7 (1978). (The Commission explicitly noted its agreement with this result in Wolf Creek at 362 n.15.) It is not clear, however, that the Appeal Board endorsed the Licensing Board's rationale that APPA urges the Commission now adopt. The Appeal Board in Fermi devoted only one footnote of its opinion to the issue of the Commission's antitrust review authority for the addition of new construction permit applicants and found it "sufficient simply to note our *essential agreement with the decision on this point.*" *Id.* (emphasis added). What this means with respect to the Appeal Board's opinion of the Licensing Board's *reasoning* is and must remain a matter of speculation. It does suggest, however, something less than full agreement with everything the Licensing Board said on the issue and literally may reflect only "essential agreement" with the *decision* and little or no agreement with the *rationale*. Be that as it may, as explained above, the Commission addressed this rationale in its Wolf Creek decision and found it unsound for determining its antitrust review authority over post-operating license transfers.

APPA states that "there is a difficulty in interpreting the statute to require a 'significant changes' review" for post-operating license transfers, but the Commission erred in its analysis and its conclusion that the statute does not require such reviews. APPA Comments at 15. APPA offers this analysis:

> It is obvious that there can be no "significant changes" review of the activities of a transferee that is new to an operating license, because there was no prior review against which to measure changes. With respect to a transfer of a license to a new entity, the Commission rejects a forced interpretation of the statute as require [sic] a significant changes review and concludes that therefore no antitrust review is called for. This is not reasonable. Rather, with respect to a new license, the application for transfer is properly viewed as not falling within the proviso of section 105c(2) *at all*. That is, such a transfer application is *not* an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.
>
> This construction of section 105c(2) as focusing on the *applicant* rather than the *facility* eliminates the difficulty that was fastened upon by the Commission in Wolf Creek. * * *
>
> By the logic of Fermi, then, a transfer of an operating license to an entity that was not previously a licensee is an *initial* application for an operating license not preceded by a construction permit, and therefore an antitrust review is necessary. This avoids the linguistic difficulties that the Commission noted in Wolf Creek.

APPA Comments at 15–17 (emphasis in original). The Commission has several responses to this argument.

First, as the Commission explained in Wolf Creek, the language of the statute, as well as its legislative history, undeniably focuses on *certain applications* for licenses for production or utilization *facilities*. See generally Wolf Creek at 448–59. For a given facility, the applications for which section 105c requires an antitrust review are applications for construction permits and applications for operating licenses. Post-operating license transfers are certainly not applications for a construction permit, so to be within the scope of the antitrust review requirements of section 105c, they must be deemed to be applications for a license to operate the facility. But section 105c(2) clearly states that the antitrust review required by paragraph (1) "shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * under this subsection in connection with the construction permit for the facility." APPA's alternative interpretation of this provision cannot be reconciled with its specific language. The heart of APPA's analysis is its characterization of the request for Commission approval of a post-operating license transfer as an application for an initial operating license by the transferee entity. Putting aside for a moment the fact that such approvals do not result in issuing an initial or any other type of operating license, but rather an amendment to a previously-issued operating license, if we consider such a request as seeking

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an initial operating license for the transferee, then we must look first to the language of section 105c(2) to determine whether an antitrust review is required. Since we are considering an application for an operating license, we are governed by the proviso, which, absent a determination of significant changes, clearly and unambiguously prohibits ("shall not") a review of an application to operate a "*facility* for which a construction permit *was issued*." Since the transferee's application is for an operating license for a facility for which a construction permit was issued, the plain language of the statute prohibits an antitrust review unless the Commission first determines that there are significant changes, which even APPA concedes as "obvious that there can be no significant changes review." APPA Comments at 15. APPA's reasoning simply cannot be justified by the specific language in the statute.

Neither is APPA's analysis consistent with the legislative history in general, which emphasized the need to conduct the complete antitrust review early in the construction phase of the licensing process and a conditional operating license review only if there are "significant changes in the licensee's activities or proposed activities," and that portion of the legislative history which explicitly addressed the limitation on the Commission's antitrust review authority to certain specified applications for a given facility.

> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic-renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application", "an application for a license", and "any application" as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

Joint Committee Report at 29. Just as the language of the statute focuses on certain applications for a given facility, so too does this explanation of which types of applications for a given facility are within the statute's scope of review: "the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility." For a post-operating license transfer application to be included, it would have to be deemed "the initial application for an operating license" as that phrase is used in this explanation in the Joint Committee Report. But is it? It may appear to be included at first thought, but only if the last sentence of the Committee's explanation is ignored. The last sentence makes clear that "the initial" applications subject to antitrust review were those filed during the traditional, two-step licensing process eventually leading to the issuance of the initial operating license for the facility: "The phrases do not include, for purposes of triggering subsection 105 c, *other applications which may be filed during the licensing process.*" (Emphasis added.) While APPA might argue that the post-operating license transfer application is an application filed during the licensing process because its review constitutes a "licensing action," such a characterization clearly is not the two-step licensing process which Congress addressed when it provided the antitrust review authority contained in Section 105c and focused that authority on the antitrust situation which existed prior to initial operation of the facility. Post-operating license transfer applications certainly fall outside the two-step licensing process and, therefore, are not applications included in the statute or intended to be included by any explanation in the legislative history.

APPA's construction of the statute amounts to reading three types of applications into the scope of section 105c: (1) Applications for facility construction permits, (2) applications for facility operating licenses for which a construction permit antitrust review had been conducted, and, to use APPA's description, (3) "with respect to a new licensee, the application for transfer is properly viewed as not falling within the proviso of section 105c(2) *at all*." That is, such a transfer application is not an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit." It is this third type of application which APPA equates to a post-operating license transfer application in order to avoid the inherent problem it acknowledges exists in treating post-operating license transfer applications as type (2) applications subject to the requirement that "significant changes" be measured from the previous construction permit review. There are two fundamental problems with this construction. First, it literally makes no sense because it treats a post-operating license transfer application as "not an application for a license to operate a *facility for which a construction permit was issued*, because the *applicant* in question was never issued a construction permit." (Emphasis added.) But under the two-step licensing process existing when the statute was passed, every facility issued an operating licenses is a "facility for which a construction permit was issued." Second, this construction in inconsistent with the language of the statute. The statutory language in the section 105c(2) proviso links the issuance of the construction permit to the *facility* ("*facility for which* a construction permit was issued), not to the *applicant*, as APPA's construction requires. And third, this construction would result in an unconditional, full-blown antitrust review perhaps even decades *after* initial operation of the facility, a prospect that is wholly unsupported by the legislative history, which specifically reflects Congress's rejection of a proposal for an unconditional operating license review even *before* initial operation of the facility. See Wolf Creek discussion at 457–58.

Finally, assuming we accept APPA's concession that "there is a difficulty in interpreting the statute," the Commission's interpretation in Wolf Creek certainly is no less reasonable than APPA's has been shown above to be. See *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). In this regard, it is important to emphasize that the Commission's decision in Wolf Creek to no longer conduct antitrust reviews of post-operating license transfers rested on two alternative grounds, either one of which is sufficient to support that decision: First, the Commission's analysis of the relevant statutory provisions and their legislative history led it to conclude that the scope of its antitrust authority does not include post-operating license transfer reviews; second, even if its antitrust authority is concluded to be broad enough to include such reviews, no reasonable reading of the statute warrants a conclusion that such reviews are mandatory, and the Commission, therefore, has chosen, for the reasons stated in Wolf Creek, to not conduct such reviews as a matter of sound policy. See Wolf Creek at 463–65.

APPA's final argument that the Commission's Wolf Creek analysis is wrong involves the Commission's statement that, absent section 105, the Commission would have no antitrust

authority. APPA Comments at 21. There is no need to argue this academic point of dicta in Wolf Creek, since the Commission was given very specific and limited antitrust authority in section 105. As noted in Wolf Creek, a statutory duty to act under certain specifically-defined circumstances does not include the discretion to act under different circumstances unless the statute warrants such a reading. Wolf Creek at 454, citing *Railway Labor Executives' Association* v. *National Mediation Board*, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc). For the reasons explained in Wolf Creek and herein, the Commission has concluded that its specific antitrust authority does not include antitrust reviews of post-operating license transfers.[1]

Comment: APPA believes that, even if the Commission's Wolf Creek statutory analysis is correct for license transfers in general, the Commission would err if it eliminates antitrust filing requirements for license transfers where there are existing antitrust license conditions, since such conditions must be dispositioned in conjunction with the license transfer.

Response: It is true that there may be a number of post-operating license transfers that involve nuclear facilities whose (transferor) licensees are subject to antitrust license conditions imposed by the NRC as a result of the construction permit (or initial operating license) review. In such cases, consideration must be given to the appropriate disposition of the existing license conditions. This was addressed in the Wolf Creek decision. The Commission stated that it would entertain proposals by the parties as to the proper treatment of existing license conditions. Wolf Creek at 466. In fact, that is precisely what the Commission did in the Wolf Creek transfer case itself, although, because the parties reached a settlement, no decision was required by the Commission. The Commission continues to believe that this approach is workable and that retention of the reporting rule for all post-operating license transfer cases where there are existing antitrust conditions is unnecessary. For example, the proper disposition of existing antitrust conditions may be obvious and agreeable to all involved in some cases, or in other cases may be satisfactorily accomplished after considering submissions by the applicants and others much less burdensome than the full scope reporting urged by APPA. In other cases, such reporting might be unnecessary for some transfer applicants, or could be burdensome out of proportion to the benefits. While the possibility cannot be ruled out that the entirety of the information covered by the current rule may be useful or even necessary in some cases to achieve proper disposition of antitrust license conditions, that does not warrant a generally applicable rule that *all* transfer applicants must submit the full scope of information covered by the current rule. Even in cases where it is determined that the current scope of information—or even more—is necessary to dispose of existing antitrust conditions, the Commission is not powerless to obtain and make available the necessary information in the absence of the current rule. The Commission has ample power to require (on its own initiative or at the request of another) whatever information is deemed necessary or appropriate to carry out its responsibility to assure appropriate disposition of existing antitrust license conditions. See, *e.g.*, Atomic Energy Act sections 161b, c, i, o and 182; 10 CFR 2.204, 50.54(f). The Commission need not retain what it considers at best to be an overly broad reporting requirement for the limited purpose of deciding the fate of existing antitrust conditions in certain post-operating license transfer cases. Indeed, in the only case of that nature that has occurred recently—the Wolf Creek case itself—the reporting requirement proved entirely unnecessary when the applicants agreed that the existing antitrust conditions should apply to the entire, post-transfer organization, as APPA has acknowledged (APPA Comments at 9).

Comment: Finally, APPA argues that even if the language of section 105c is sufficiently ambiguous to permit more than one interpretation, the Commission erred in concluding that its antitrust review authority would be superfluous.

Response: As was made clear in the Wolf Creek decision, the Commission has concluded that it has no authority to conduct antitrust reviews of post-operating license transfers. In the absence of statutory authority for such reviews, it is irrelevant whether such reviews would be largely duplicative of others. While the Commission does not believe the statute is sufficiently ambiguous to result in agency discretion to conduct such reviews, the Commission's Wolf Creek decision made clear that if the statute does permit such reviews, it does not mandate them, and therefore the Commission could cease performing them for the policy and practical reasons explained therein. See Wolf Creek at 463–65. Contrary to APPA's assertion that the Commission relied on statutory and regulatory developments which postdate the 1970 amendments to the Atomic Energy Act to reach its conclusion about the scope and intent of those amendments, APPA Comments at 18–19, the Commission considered those developments not in interpreting its statutory authority but rather only in partial support for what would be an appropriate *policy decision* to terminate antitrust reviews of post-operating license transfers *if* it had statutory authority to conduct them but was not required to do so. The Commission recognizes that APPA views the competitive and regulatory climate as being more hostile to the antitrust interests of it and its members. But as explained in Wolf Creek, *id.*, there are other antitrust authorities and forums with far greater antitrust expertise than the Commission to address potential antitrust problems with proposed mergers and acquisitions of owners of nuclear power facilities.

Subsequent to the Wolf Creek decision and the publication of the proposed rule notice, the issue of multijurisdictional merger notification and review in the United States was addressed in the Final Report of the International Competition Policy Advisory Committee to the Attorney General and Assistant Attorney General for Antitrust (February 28, 2000) (ICPAC Report). As stated therein, "[t]he majority of Advisory Committee members believe that the overlapping review in the United States is more often than not a defect of the U.S. system and that a more rational or sensible approach would be to give exclusive federal jurisdiction to determine competition policy and the competitive consequences of mergers in federally regulated industries to the DOJ and FTC." ICPAC Report at 143. In a discussion of the cost implications of multiple reviews remarkably applicable to those conducted of NRC licensees

[1] The Commission's specific antitrust authority does include other authority which applies both to the post-operating license conduct of a licensee and to conduct occurring before issuance of the operating license. Specifically, even after issuance of the facility operating license, the Commission will refer to the Justice Department any information it has suggesting that a licensee is in violation of the antitrust laws and, upon a finding of an antitrust violation, the Commission has clear authority to fashion a license-related remedy if warranted. See sections 105a and b of the Act. This same authority is available should the Commission encounter a situation where an operating license is transferred from antitrust-compliant licensees to a transferee who may be violating the antitrust laws. If such were the case, it would be brought to the attention of the Justice Department (and perhaps other antitrust law enforcement agencies), the aggrieved parties could bring a private antitrust action, and, if any court found a Commission licensee in violation, a Commission-imposed licensing remedy could be sought.

and applicants for post-operating license transfers, the ICPAC Report states:

> From an industry participant's perspective, in theory, such costs might include the uncertainty generated when multiple entities possess the authority to review the competitive effects of a transaction or practice, but reach differing conclusions on the issue; the increased transaction costs flowing from the need to defend a proposed transaction before multiple agencies; and the uncertainty created by agencies' different time frames for review. From the agencies' perspective, agencies suffer when the duplicative expenditure of resources inherent in concurrent jurisdiction creates an inefficient allocation of scarce resources, particularly when the specialized agency is not bound by the recommendations of the competition agencies with respect to an assessment of competitive effects. Further inefficiencies (and perhaps bad policy) can be created when one agency has the ultimate authority to make decisions that fall within another agency's area of comparative advantage.

Id. at 145–46. One expert indicated that the "sector regulators" have a long way to go before they can approximate the skills of the antitrust agencies. Addressing the FCC and FERC, this expert said that "the antitrust agencies remain decidedly preeminent in their capacity to examine competition policy questions in the communications and energy sectors. Only significant increases in resources and experience would enable the FCC and FERC to match the skills of the DOJ and FTC in this field." *Id.* at 153 n.174, citing Kovacic Submission, at 24.

For the similar reasons stated in Wolf Creek and in the proposed rule notice, the Commission has decided that its scarce resources should be focused on its core mission of protecting the public health, safety and environment and the common defense and security. This is not to say that the Commission would ignore those who stand to suffer antitrust injury as a result of an operating license transfer involving existing antitrust conditions. As the Commission made clear in Wolf Creek, they will be heard and their views fully considered. But retaining a generic, "one size fits all" reporting requirement is not the only way to fulfill that responsibility, and the Commission will fulfill that responsibility with other, more narrowly crafted means.

Comment: CAN believes that the Commission's proposed rule unlawfully changes the substance of the Atomic Energy Act and should be withdrawn in favor of the NRC's seeking legislative changes from Congress.

Response: The Commission has not changed the "substance" of the Atomic Energy Act but instead has sought to conform its rules and practices to the authority actually granted it by the Act. The very purpose of the Commission's careful consideration of its antitrust review authority, based on the views of the parties to the Wolf Creek case, the amicus briefs filed therein at the Commission's invitation, and the commenters in this rulemaking, is to ensure that its practices and rules will *conform* to the Act, not depart from it or "change" its substance. CAN provides no discussion or statutory analysis to support its position that the Commission's decision in the Wolf Creek case and this rulemaking are inconsistent with the antitrust authority actually granted by Congress in the Act. CAN merely asserts that the NRC is "attempting to alter a federal statute by agency rulemaking." To the contrary, the Wolf Creek decision and this rulemaking will achieve adherence to the limited antitrust authority provided by the Act. While the Commission agrees with CAN that not acting in accordance with a clear statutory mandate would be a breach of its responsibility, the Commission is equally mindful that it also would be irresponsible to act beyond the scope of its statutory authority. That is precisely what the Commission decided in the Wolf Creek case about its past practice of performing antitrust reviews of post-operating license transfers, and why that practice must cease.

Comment: CAN asserts that the proposed rule would create regulatory gaps in the NRC's approval of highly dangerous activities, citing licensees' financial obligations, cost cutting by nuclear power plant owners in the competitive environment, potentially serious accidents triggered by overtime patterns, foreign ownership of nuclear power plants, and increased regulatory burdens on the NRC resulting in an inability to inspect large-scale licensees for health and safety violations.

Response: This rule will not result in any gaps in the Commission's regulation of its licensees to ensure adequate protection of the public health and safety. This rule, which is narrowly confined to relieving certain applicants of filing antitrust information, will not change one iota the Commission's review of proposed license transfers for all other purposes, such as operational safety, foreign ownership, financial qualifications, and for every other purpose that such reviews are conducted. Commission reviews and oversight in those and all other areas of Commission responsibility will continue unabated and are unaffected by this rule. Neither will this rule affect in any way the Commission's inspection capabilities or practices. In fact, by freeing up resources no longer utilized for unauthorized and unnecessary antitrust reviews, the Commission actually will be better able to perform its core mission of regulating to protect the public health, safety and environment. As far as the Commission's ability to inspect large-scale licensees, that too is unaffected by this narrow rule and, in any event, is being separately addressed as part of the Commission's oversight of the nuclear power industry's deregulation and consolidation. There simply is no basis to believe that this rule could result in any of the consequences identified by CAN.

Comment: CAN asserts that the NRC has failed to evaluate the health and safety and national security consequences of the proposed rule.

Response: This comment seems to be related to CAN's previous comment that this rule will result in gaps in the Commission's regulatory program to protect public health and safety and to review license transfers to ensure that the prohibition on foreign ownership of nuclear power plants is met. As explained above, there will be no such gaps and no health and safety or national security consequences of the rule.

Comment: CAN asserts that the NRC has failed to evaluate the environmental impacts of the proposed rule, in violation of NEPA.

Response: For the same reasons that this rule will have no impact on the Commission's public health and safety responsibilities, it will have no environmental impacts. The rule simply relieves some applicants of the need to submit antitrust information for a review which no longer will be conducted and in no way affects the Commission's environmental obligations or those of its licensees. The Commission has fully complied with the National Environmental Policy Act of 1969, as amended, (NEPA) in promulgating this rule. The proposed rule stated the Commission's determination that this rule, if adopted, falls within the categorical exclusions in 10 CFR 51.22(c)(1), (2) and (3)(i) and (iii) for which neither an Environmental Assessment nor an Environmental Impact Statement is required (64 FR 59671, 59674). No comments were received which disagreed with that determination. CAN's comments do not address that determination but simply assert that the Commission has failed to evaluate the environmental impacts of the rule in violation of NEPA. As stated below, the Commission adheres to that determination.

IV. Summary of Final Revisions

This final rule, which is identical to the proposed rule, makes clear that, consistent with the decision in the Wolf Creek case, no antitrust information is required to be submitted as part of any application for Commission approval of a post-operating license transfer. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews and its decision that such reviews of post-operating license transfer applications are not authorized or, if authorized, are not required and not warranted.[2]

Direct transfers of facility licenses which are proposed *prior* to the issuance of the initial operating license for the facility, however, are and continue to be subject to the Commission's antitrust review.[3] In order to make clear that the Commission's regulations do not require antitrust information as part of applications for post-operating license transfers, the amended regulations specify that antitrust information must be submitted only with applications for construction permits and "initial" operating licenses for the facility and applications for transfers of licenses prior to the issuance of the "initial" operating license. Thus, the word "initial" has been inserted to modify "operating license" in appropriate locations and the word "application" has been modified where necessary to make clear that the application must be for a construction permit or initial operating license. Appendix L to 10 CFR part 50, "Information Requested by the Attorney General for Antitrust Review [of] Facility License Applications," similarly is amended and clarified and a new definition is added there to define "initial operation" to mean operation pursuant to the first operating license issued by the Commission for the facility.

V. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes were made in the proposed revisions to improve the organization and readability of the existing language of paragraphs being revised. No comments were received on these types of changes and they are not discussed further in this notice.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is eliminating the submission of antitrust information in connection with post-operating license applications for transfers of facility operating licenses. This rule does not constitute the establishment of a standard that establishes generally-applicable requirements.

VII. Finding of No Significant Environmental Impact and Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule falls within the categorical exclusions appearing at 10 CFR 51.22(c)(1), (2), and (3)(i) and (iii) for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

VIII. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

IX. Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

X. Regulatory Analysis

These revisions to the regulations clarify that antitrust information is required to be submitted only in connection with applications for construction permits and initial operating licenses and not in connection with applications for post-operating license transfers. Therefore, to the extent that, in the past, antitrust information was submitted with applications for post-operating license transfers, these revisions will reduce the burden on such applicants by eliminating the submission of antitrust information and the costs associated with preparing and submitting that information. In short, the revisions will result in no additional burdens or costs on any applicants or licensees and will reduce burdens and costs on others. Clearly, because the revisions only affect when antitrust information need be submitted to the Commission, there will be no effect on the public health and safety or the common defense and security, and they will continue to be adequately protected. The cost savings to applicants resulting from these revisions justify taking this action.

To determine whether the amendments contained in this rule were appropriate, the Commission considered the following options:

1. The No-Action Alternative

This alternative was considered because the current rules are not explicitly inconsistent with the Commission's decision that antitrust reviews of post-operating license transfers are not authorized, or at least are not required and should be discontinued. Because the current rules have been interpreted to be consistent with the Commission's practice of conducting such reviews, however, in that they have been interpreted to require the submission of antitrust information with post-operating license transfer applications, the Commission concluded that clarification of the rules are appropriate. Therefore, the Commission determined that this alternative is not acceptable.

2. Clarification of 10 CFR Parts 2 and 50

For the reasons explained above and in the Commission's Wolf Creek decision, the Commission decided that its rules could and should be made clearer that no antitrust information should be submitted with applications for post-operating license transfers because antitrust reviews of such applications are not authorized or, if

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[2] The same principle holds in the context of part 52 of the Commission's regulations. Under that part, the operating license is issued simultaneously with the construction permit in a combined license. The application for the combined license is subject to the agency's antitrust review, but antitrust reviews of post-combined license transfer applications are not authorized or, if authorized, are not required and not warranted.

[3] The paragraph speaks only to the historically typical case in which a construction permit (CP) is issued first, and then years later an operating license (OL). Under part 52, a combined operating license that has the attributes of both a CP and OL are issued and the antitrust review is done before issuance. Thus, there could be no direct transfer of the facility CP before issuance of the initial OL.

authorized, should be discontinued as a matter of policy. Therefore, to make clear that there is no need to submit antitrust information in connection with post-operating license transfers, and because the revisions would result in cost savings to certain applicants, with no additional costs or burdens on anyone, this option was chosen.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. This rule affects only the licensing and operation of nuclear power plants. The entities that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). Furthermore, this rule does not subject any entities to any additional requirements, nor does it require any additional information from any entity. Instead, the rule clarifies that certain information is not required to be submitted in connection with applications for post-operating license transfers.

XII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109. The rule does not constitute a backfit because it does not propose a change to or additions to requirements for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility. Rather, this rule eliminates the need for certain applicants to submit antitrust information with their applications.

XIII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

XIV. Final Rule

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified Information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.101 paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 2.101 Filing of application.

* * * * *

(e)(1) Upon receipt of the antitrust information responsive to Regulatory Guide 9.3 submitted in connection with an application for a facility's initial operating license under section 103 of the Act, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall publish in the **Federal Register** and in appropriate trade journals a "Notice of Receipt of Initial Operating License Antitrust Information." The notice shall invite persons to submit, within thirty (30) days after publication of the notice, comments or information concerning the antitrust aspects of the application to assist the Director in determining, pursuant to section 105c of the Act, whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the previous antitrust review in connection with the construction permit. The notice shall also state that persons who wish to have their views on the antitrust aspects of the application considered by the NRC and presented to the Attorney General for consideration should submit such views within thirty (30) days after publication of the notice to: U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Chief, Policy Development and Technical Support Branch.

(2) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, after reviewing any comments or information received in response to the published notice and any comments or information regarding the applicant received from the Attorney General, concludes that there have been no significant changes since the completion of the previous antitrust review in connection with the construction permit, a finding of no significant changes shall be published in the **Federal Register**, together with a notice stating that any request for reevaluation of such finding should be

submitted within thirty (30) days of publication of the notice. If no requests for reevaluation are received within that time, the finding shall become the NRC's final determination. Requests for a reevaluation of the no significant changes determination may be accepted after the date when the Director's finding becomes final but before the issuance of the initial operating license only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority section for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

4. In § 50.42 paragraph (b) is revised to read as follows:

§ 50.42 Additional standards for class 103 licenses.

* * * * *

(b) Due account will be taken of the advice provided by the Attorney General, under subsection 105c of the Act, and to any evidence that may be provided during any proceedings in connection with the antitrust aspects of the application for a construction permit or the facility's initial operating license.

(1) For this purpose, the Commission will promptly transmit to the Attorney General a copy of the construction permit application or initial operating license application. The Commission will request any advice as the Attorney General considers appropriate in regard to the finding to be made by the Commission as to whether the proposed license would create or maintain a situation inconsistent with the antitrust laws, as specified in subsection 105a of the Act. This requirement will not apply—

(i) With respect to the types of class 103 licenses which the Commission, with the approval of the Attorney general, may determine would not significantly affect the applicant's activities under the antitrust laws; and

(ii) To an application for an initial license to operate a production or utilization facility for which a class 103 construction permit was issued unless the Commission, after consultation with the Attorney General, determines such review is advisable on the ground that significant changes have occurred subsequent to the previous review by the Attorney General and the Commission.

(2) The Commission will publish any advice it receives from the Attorney General in the **Federal Register**. After considering the antitrust aspects of the application for a construction permit or initial operating license, the Commission, if it finds that the construction permit or initial operating license to be issued or continued, would create or maintain a situation inconsistent with the antitrust laws specified subsection 105a of the Act, will consider, in determining whether a construction permit or initial operating license should be issued or continued, other factors the Commission considers necessary to protect the public interest, including the need for power in the affected area.[1]

[1] As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Atomic Energy Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the **Federal Register** of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to the antitrust aspects of the application, provided that the permit or license so issued contains the condition specified in § 50.55b.

5. In § 50.80 paragraph (b) is revised to read as follows:

§ 50.80 Transfer of licenses.

* * * * *

(b) An application for transfer of a license shall include as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 construction permit or initial operating license, the information required by § 50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. The application shall include also a statement of the purposes for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

* * * * *

6. In Appendix L to Part 50, the heading of Appendix L and Definition 1 are revised, Definitions 3 through 6 are redesignated as Definitions 4 through 7, and a new Definition 3 is added, to read:

Appendix L to Part 50—Information Requested by the Attorney General for Antitrust Review of Facility Construction Permits and Initial Operating Licenses

* * * * *

I. Definitions

1. "Applicant" means the entity applying for authority to construct or initially operate subject unit and each corporate parent, subsidiary and affiliate. Where application is made by two or more electric utilities not under common ownership or control, each utility, subject to the applicable exclusions contained in § 50.33a, should set forth separate responses to each item herein.

* * * * *

3. "Initially operate" a unit means to operate the unit pursuant to the first operating license issued by the Commission for the unit.

* * * * *

Dated at Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–18250 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–12–AD; Amendment 39–11818; AD 2000–14–09]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that requires affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the use of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager,International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on May 19, 2000 (65 FR 31839). That action proposed to require affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $900, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–09 Short Brothers Plc: Amendment 39–11818. Docket 2000–NM–12–AD.

Applicability: Model SD3–60 series airplanes, certificated in any category, serial numbers SH3716 through SH3763 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the display of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure, accomplish the following:

Label Replacement and AFM Revision

(a) Within 6 months after the effective date of this AD: Replace the existing engine-limitations label with a new label containing revised engine limitations, and revise the Limitations section of the FAA-approved airplane flight manual to reflect the revised engine limitations; in accordance with Shorts Service Bulletin SD360–11–23, dated November 17, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Shorts Service Bulletin

SD360–11–23, dated November 17, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 015–11–98.

Effective Date

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 7, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17759 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–103–AD; Amendment 39–11823; AD 2000–14–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–200, –300, –400, and –500 series airplanes, that requires replacement of existing door handle mounting hub assemblies with new, improved hub assemblies. This amendment is prompted by reports of cracked or broken mounting hub assemblies for the interior door handles on the cabin doors. The actions specified by thisAD are intended to prevent cracking or breaking of the door handle mounting hub, which could result in the interior door handle breaking off while the door is being opened. In an emergency situation, this could impede evacuation of the airplane.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –300, –400, and –500 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30019). That action proposed to require replacement of existing door handle mounting hub assemblies with new, improved hub assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters state no objections to the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,575 airplanes of the affected design in the worldwide fleet. The FAA estimates that 632 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane (3 work hours per door) to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,150 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,813,840, or $2,870 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–13 Boeing: Amendment 39–11823. Docket 2000–NM–103–AD.

Applicability: Model 737–200, –300, –400, and –500 series airplanes; as listed in Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking or breaking of the door handle mounting hub, which could result in the interior door handle breaking off while the door is being opened, and, in an emergency situation, could impede evacuation of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace existing door handle mounting hub assemblies in the forward and aft entry doors, forward galley door, and aft service door, with new, improved hub assemblies, in accordance with Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–25–1322, dated January 19, 1995, or Revision 1, dated December 19, 1996, are considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group,P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 12, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18126 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–64–AD; Amendment 39–11821; AD 2000–14–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines, that requires repetitive inspections and tests of the thrust reverser control and indication system, and corrective actions, if necessary. This amendment also requires installation of a thrust reverser actuation system (TRAS) lock, repetitive functional tests of that installation, and repair, if necessary. Installation of the TRAS lock terminates the repetitive inspections and certain tests. This amendment is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions specified by this AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind

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Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines was published in the **Federal Register** on October 27, 1999 (64 FR 57802). That action proposed to require repetitive inspections and tests of the thrust reverser control and indication system, and corrective actions, if necessary. That action also proposed to require installation of a thrust reverser actuation system (TRAS) lock, repetitive functional tests of that installation, and repair, if necessary. Installation of the TRAS lock would terminate the repetitive inspections and certain tests.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

One commenter supports the proposed rule.

Request To Revise Repetitive Interval in Paragraph (a)

One commenter requests that the interval for the repetitive inspections and tests required by paragraph (a) of the proposed rule be extended from 1,300 flight hours to 1,500 flight hours. The commenter states that Work Package I of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995 [the service information referenced in paragraph (a) for accomplishment of the inspections and tests] has a repetitive interval of 1,500 flight hours, as specified in the service bulletin. The commenter adds that a 1,400-flight-hour-interval aligns with its "2A" check for the fleet, but the 1,300-flight-hour-interval will require additional downtime and place an undue burden on maintenance personnel. The commenter suggests, as another option, that the interval be changed to, "1,500 flight hours or 450 flight cycles, whichever occurs later." Another commenter requests that the interval be changed to "1,300 flight hours or 450 flight cycles, whichever occurs later." Both commenters state that the deterioration of the entire system is based on flight cycles, rather than flight hours.

The FAA partially concurs. The FAA does not concur with the commenters' requests to revise the repetitive inspection interval to add the option of flight cycles. The FAA agrees that deterioration of certain thrust reverser components is related to flight cycles because the thrust reversers are typically operated once per flight, causing wear of the components of the actuation system and the thrust reverser brake. However, deterioration of the majority of thrust reverser components is related to flight hours. For example, deterioration of wiring, seals, and proximity sensors and switches is more commonly due to damage due to vibration, temperature extremes, and exposure to moisture. Such factors are flight-hour dependent. Based on this flight hour dependency, the FAA has determined that the inspection interval will not be revised to add the option of flight cycles.

However, the FAA concurs with the commenters' request to extend the repetitive interval stated in the final rule to 1,500 flight hours. Based on discussions with the manufacturer, the FAA has determined that an extension of the interval for the repetitive inspections and tests required by paragraph (a) of the final rule will not have an adverse affect on fleet safety. Therefore, paragraph (a) of the final rule has been revised accordingly.

Request To Extend Compliance Time in Paragraph (d)

One commenter requests that the compliance time for accomplishment of the modification required by paragraph (d) of the proposed rule be extended from 36 months to 60 months in order to allow the modification to be accomplished during the time of its regularly scheduled "D" check. The commenter states that the major portion of the modification involves installation of wiring provisions, and this installation requires a downtime of 250 hours. Another commenter requests the compliance time be extended to 84 months in order to allow the modification to be accomplished during the time of its regularly scheduled "D" check. The commenter states that the proposed requirement to accomplish the complete modification within 36 months, including all service bulletins, would create added problems instead of solutions. The commenter notes that the complete modification would require approximately 1,850 man hours to accomplish, and requests the extension to 84 months so airplanes will not be removed from service.

The FAA partially concurs with the commenters' requests. The FAA concurs that the compliance time for accomplishment of the modification required by paragraph (d) of the final rule may be extended beyond 36 months. Based on information supplied by the commenters and the manufacturer, the FAA acknowledges that a compliance time of 48 months corresponds more closely to the operators' normal maintenance schedules. The FAA has determined that this extension will not adversely affect safety. However, the FAA has concluded that a compliance time of 48 months represents the maximum interval in which the affected airplanes could continue to operate without compromising safety. Paragraph (d) of the final rule has been revised to require accomplishment of the modification within 48 months after the effective date of this AD.

Request To Remove Mandatory Terminating Action in Paragraph (d)

One commenter disagrees with the mandatory requirement to incorporate a TRAS lock as specified in paragraph (d) of the proposed rule. The commenter states that an equivalent level of safety is achieved by accomplishing the thrust reverser health checks at the intervals specified in Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. The commenter cites fleet statistics that Model 747 series airplanes have flown over 47,212,499 hours to date without any corresponding thrust reverser deployments that have impacted the safety of flight. The commenter further states that the events which triggered regulatory action happened due to thrust reverser deployment of a Model 767 series airplane having two engines and subsequent controllability problems. The commenter also states that there is insufficient documentation from the manufacturer for troubleshooting and correcting operational problems with the TRAS lock. Additionally, there were no adverse operational trends indicated that would impact safety of flight of the Model 747 series airplane; therefore, incorporation of the additional TRAS lock is not justified.

The FAA does not concur with the commenter's request. The FAA recognizes that in-flight thrust reverser deployments have occurred on Model 747 series airplanes in certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following such a deployment.

The manufacturer acknowledges that, in the event of thrust reverser deployment during high-speed climb using high engine power, or during cruise, these airplanes may not be controllable.

Although the commenter states that there were no adverse operational trends that would impact safety of flight, the safety analyses performed by the manufacturer and reviewed by the FAA has not established that the risks for uncommanded thrust reverser deployment during critical flight conditions are low enough to prevent a thrust-reverser-related incident during the fleet operation of the Model 747 series airplane. This AD addresses an unsafe condition identified as deployment of a thrust reverser during flight, and requires the installation of an additional thrust reverser system locking feature to correct that unsafe condition. The periodic inspections and tests (thrust reverser health checks) contained in paragraphs (a) and (b) of this AD are a means of verifying proper operation of the thrust reverser components. The FAA has determined that the terminating action required by paragraph (d) of this AD is necessary because the repetitive inspections and tests do not provide an adequate level of safety for the remainder of the life of the fleet of Model 747 series airplanes. Regarding the insufficiency of documentation from the manufacturer, the FAA has been advised by the manufacturer that additional documentation is being developed. No change to the final rule is necessary in this regard.

Comment on Repetitive Inspection Interval in Paragraph (e)

One commenter does not fully agree with the repetitive inspection interval required by paragraph (e) of the proposed rule, "since limited data is available." The commenter makes no specific request for a change to the proposed rule.

The FAA infers that the commenter is requesting an extension of the repetitive inspection interval for the functional test required by paragraph (e) of the final rule. The FAA does not concur with the commenter's request. In developing an appropriate repetitive interval for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but accomplishment of the required repetitive functional test within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. However, under the provisions of paragraph (h) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Request To Revise Cost Impact Estimate

One commenter asserts that the proposed rule underestimates the work hours required to accomplish the proposed installation of the TRAS lock. The commenter states that, based upon feedback from operators that have installed the TRAS lock, approximately 1,850 work hours per airplane is needed for accomplishment of the installation; these hours include all pre-requisite service bulletins. The commenter also notes that it uses third party labor and does not agree that $60 per work hour is the industry average labor rate. The commenter estimates that $100 per work hour is more realistic. Using these figures, the commenter estimates its costs for the proposed installation as $185,000 per airplane, or $4,070,000 for its entire fleet. The commenter adds that it would take an additional 40 work hours per airplane to accomplish the proposed repetitive inspections and tests of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valves, and the microswitch packs, which equates to $4,000 per airplane. The proposed rule estimates 11 work hours for accomplishment of these repetitive inspections and tests.

The FAA infers that the commenter is requesting that the cost impact information in the final rule be revised to reflect the estimate derived from operator feedback. The FAA does not concur with the commenter's request. The cost impact information in AD rulemaking actions describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 138 airplanes of the affected design in the worldwide fleet. The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD.

It will take approximately 12 work hours per airplane to accomplish the inspections and tests of the thrust reverser stow/deploy switches, the bullnose seals, and the airmotor brakes, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these repetitive inspections and tests required by this AD on U.S. operators is estimated to be $19,440, or $720 per airplane, per inspection and test cycle.

It will take approximately 11 work hours per airplane to accomplish the inspections and tests of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valves, and the microswitch packs, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these repetitive inspections and tests required by this AD on U.S. operators is estimated to be $17,820, or $660 per airplane, per inspection and test cycle.

It will take approximately 791 work hours per airplane to accomplish the installation of TRAS locks, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $1,281,420, or $47,460 per airplane.

This cost impact figure does not reflect the cost of the modifications described in the service bulletins listed in paragraph I.K.1.h. of Boeing Service Bulletin 747–78–2150, Revision 1, that are required to be accomplished prior to, or concurrently with, the installation of the TRAS lock. (The cost impact figure does reflect the cost of the modifications described in the service bulletins listed in paragraph I.K.1.j. of the service bulletin that are also required to be accomplished prior to, or concurrently with, the installation of the

TRAS lock.) Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in paragraph I.K.1.h. of Boeing Service Bulletin 747–78–2150.

It will take approximately 4 work hours per airplane to accomplish the functional test of the TRAS lock, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive functional tests required by this AD on U.S. operators is estimated to be $6,480, or $240 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–11 Boeing: Amendment 39–11821. Docket 99–NM–64–AD.

Applicability: Model 747 series airplanes; certificated in any category; equipped with General Electric Model CF6–45 or –50 series engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections and Tests

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(a) Within 90 days after the effective date of this AD, perform the applicable detailed visual inspections and tests to verify proper operation of the thrust reverser stow/deploy switches, the bullnose seals, and the airmotor brake on each engine, in accordance with Work Package I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 1,500 flight hours, until accomplishment of paragraph (d) of this AD.

(b) Within 6 months after the effective date of this AD, perform the applicable detailed visual inspections and tests to verify proper operation of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valve, and the microswitch pack for each engine, in accordance with Work Package II of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 18 months, until accomplishment of paragraph (d) of this AD.

Corrective Actions

(c) If any of the inspections and tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is detected during the inspections and tests, accomplish paragraphs (c)(1) or (c)(2) of this AD, as applicable.

(1) Prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (a) or (b) of this AD must be repeated and successfully accomplished.

(2) Accomplish both paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SPDispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph.

Note 3: The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(ii) Within 10 days after deactivation of any thrust reverser in accordance with paragraph (c)(2)(i) of this AD, the affected thrust reverser must be repaired in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (a) or (b) of this AD must be repeated and successfully accomplished; once such inspections and tests have been successfully accomplished, the thrust reverser may then be reactivated.

Modification

(d) Within 48 months after the effective date of this AD, install a thrust reverser actuation system (TRAS) lock on each thrust reverser half of each engine, in accordance with Boeing Service Bulletin 747–78–2150, Revision 1, dated July 2, 1998. All of the modifications described in the service bulletins listed in paragraphs I.K.1.h. and I.K.1.j. of Boeing Service Bulletin 747–78–2150, Revision 1, must be accomplished, as applicable, in accordance with those service bulletins, prior to, or concurrently with, the accomplishment of the installation of the TRAS lock. Accomplishment of these actions constitutes terminating action for the

repetitive inspections required by paragraphs (a) and (b) of this AD.

Note 4: Accomplishment of the installation specified in Boeing Service Bulletin 747–78–2150, dated March 20, 1997, is acceptable for compliance with the installation required by paragraph (d) of this AD.

Functional Tests

(e) Within 3,000 flight hours after accomplishing the modification required by paragraph (d) of this AD, or within 1,000 flight hours after the effective date of this AD, whichever occurs later, perform a functional test of the TRAS lock on each reverser half, in accordance with Chapter 78–34–00 of the Boeing 747 Maintenance Manual, dated April 25, 1998.

Corrective Actions

(1) If no discrepancy is detected, repeat the functional test thereafter at intervals not to exceed 3,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, repair in accordance with the procedures specified in the Boeing 747 Maintenance Manual. Additionally, prior to further flight, the functional test must be successfully accomplished. Repeat the functional test thereafter at intervals not to exceed 3,000 flight hours.

Spares

(f) If, after incorporation of the modification required by paragraph (d) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that does not have the TRAS locks installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that the thrust reverser assembly that does not have the TRAS locks installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that has the TRAS locks installed and reactivate the thrust reverser.

(g) If, prior to incorporation of the modification required by paragraph (d) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that has the TRAS locks installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that the thrust reverser assembly that has the TRAS locks installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that does not have the TRAS locks installed and reactivate the thrust reverser.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (c)(2)(i), (e), (e)(2), (f), and (g) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995; and Boeing Service Bulletin 747–78–2150, Revision 1, dated July 2, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18037 Filed 7–18–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–228–AD; Amendment 39–11820; AD 2000–14–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 SeriesAirplanes; Model MD–10–10F and MD–10–30F Series Airplanes; and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires repetitive inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That AD also requires a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. This amendment adds a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. This amendment is prompted by reports of failure of certain fasteners installed in the banjo No. 4 fitting of the vertical stabilizer. The actions specified by this AD are intended to prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane.

DATES: Effective August 23, 2000.

The incorporation by reference of McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996; and McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998; as listed in the regulations, is approved by the Director of the Federal Register as of August 23, 2000.

The incorporation by reference of McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992; and McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; as listed in the regulations, was approved previously by the Director of the Federal Register as of April 24, 1997 (61 FR 12015, March 25, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–07–01, amendment 39–9549 (61 FR 12015, March 25, 1996), which is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 11, 2000 (65 FR 19350). The action proposed to continue to require repetitive inspections to detect any failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer, a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. The action also proposed to add a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Eliminate a Certain Inspection Requirement for Certain Airplanes

One commenter requests that the FAA further clarify the requirements of paragraph (b)(2) of the proposed AD. Specifically, the commenter requests that, for airplanes that have repairs previously installed in accordance with paragraph (c)(3)(i) of the proposed AD, the requirement to accomplish an eddy current surface inspection of the forward and aft flanges be removed. The commenter states that paragraph (c)(3)(i) of the proposed AD requires the actions specified in paragraph (b) of the proposed AD to be accomplished on any fastener hole that has part number (P/N) S4931917–8Y fasteners installed. Paragraph (b) of the proposed AD requires an eddy current surface inspection to detect cracking of the forward and aft flanges of the banjo No. 4 fitting. The commenter contends that some airplanes will have repairs previously installed in accordance with paragraph (b)(2) of the proposed AD. Such repairs would prevent accomplishment of the eddy current inspection required by paragraph (b) of the proposed AD.

The FAA concurs. The FAA finds that, for airplanes on which the repair required by paragraph (b)(2) of the AD has been accomplished prior to the effective date of this AD, it is not possible to accomplish the eddy current surface inspection to detect cracking of the forward and aft flanges required by paragraph (b) of the AD. However, it is possible to accomplish the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting required by paragraph (b) of the AD. The FAA also finds that it is not likely that cracking would develop in the repaired area between December 17, 1992 (the issue date of McDonnell Douglas Service Bulletin 55–23, which is referenced in the AD as a source of service information), and April 24, 1996 (the effective date of AD 96–07–01 for accomplishing the inspection of the flanges), and during the compliance time [*i.e.*, within 5 years after April 24, 1996, or within 1,500 landings from the inspection required by paragraph (c)(3) of this AD] for accomplishing the installation of P/N S4931917–8Y Hi-Lok fasteners. Therefore, the FAA has revised paragraph (c)(3)(i)(B) of the final rule to provide an exception for the subject airplanes for accomplishing the requirements of paragraph (b) of the AD. A new paragraph (d) has also been added to the final rule.

Explanation of Change to the Applicability of the Proposed AD

On May 9, 2000 (*i.e.*, after issuance of the supplemental NPRM), the FAA issued a Type Certificate (TC) for McDonnell Douglas Model MD–10–10F and MD–10–30F series airplanes. Model MD–10 series airplanes are Model DC–10 series airplanes that have been modified with an Advanced cockpit. The banjo No. 4 fitting installed on Model MD–10–10F and MD–10–30F series airplanes (before or after the modifications necessary to meet the type design of a Model MD–10 series airplane) are identical to those on the affected Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition. In addition, the manufacturer's fuselage number and factory serial number are not changed during the conversion from a Model DC–10 to Model MD–10. The FAA finds that Model DC–10–10F and MD–10–30F series airplanes were not specifically identified by model in the applicability of the supplemental NPRM; however, they were identified by manufacturer's fuselage numbers in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993 (which was referenced in the applicability statement of the AD for determining the specific affected airplanes). Therefore, the FAA has revised the applicability throughout the final rule to include Model MD–10–10F and MD–10–30F series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 420 Model DC–10–10, –15, –30, and –40 series airplanes,Model MD–10–10F and MD–10–30F series airplanes, and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 242 airplanes of U.S. registry will be affected by this AD.

Since the issuance of AD 96–07–01, the manufacturer has revised its estimate of the work hours necessary to perform the actions that are currently required by that AD. McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, reflects the manufacturer's revised estimates; and the cost information, below, also has been revised to refer to the new estimates.

The visual inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection currently required by that AD on U.S. operators is estimated to be $14,520, or $60 per airplane, per inspection cycle.

The eddy current inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection currently required by

that AD on U.S. operators is estimated to be $58,080, or $240 per airplane.

The replacement of the 12 attachment fasteners of the banjo No. 4 fitting that is currently required by AD 96–07–01, and retained in this AD, takes approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the replacement currently required by that AD on U.S. operators is estimated to be $263,780, or $1,090 per airplane.

The new inspection that is required by this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $14,520, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator that has already completed the replacement of the attachment fasteners of the banjo No. 4 fitting in accordance with AD 96–07–01 be required to repeat the replacement, it will take approximately 14 additional work hours, at an average labor rate of $60 per work hour. Additional parts will cost $150 per airplane. Based on these figures, the cost impact of any necessary repetition of the replacement is estimated to be $990 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9549 (61 FR 12015, March 25, 1996), and by adding a new airworthiness directive (AD), amendment 39–11820, to read as follows:

2000–14–10 McDonnell Douglas: Amendment 39–11820. Docket 98–NM–228–AD. Supersedes AD 96–07–01, Amendment 39–9549.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, Model MD–10–10F and MD–10–30F series airplanes, and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane, accomplish the following:

External Visual Inspection

(a) Except as required by paragraph (c)(3) of this AD, within 1,500 landings after April 24, 1996 (the effective date of AD 96–07–01, amendment 39–9549): Perform an external visual inspection, using a minimum 5X power magnifying glass, to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer (as specified in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998). Perform this inspection in accordance with procedures specified in McDonnell Douglas Nondestructive Testing Manual, Chapter 20–10–00, or McDonnell Douglas Nondestructive Testing Standard Practice Manual, Part 09.

No Failure Condition: Repetitive Inspections

(1) If no failure is detected, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

Any Failure Condition: Corrective Actions

(2) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

Eddy Current Surface Inspection and Eddy Current Bolt Hole Inspection

(b) Except as required by paragraphs (a)(2) and (c)(3)(ii) of this AD, within 5 years after April 24, 1996: Perform an eddy current surface inspection to detect cracking of the forward and aft flanges; and an eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting; in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

Note 2: Paragraph (b) of this AD does not require that eddy current bolt hole inspections be accomplished for the bolt holes of the banjo No. 4 fitting if the attachment fasteners were replaced prior to April 24, 1996, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992.

No Cracking Condition: Replacement

(1) If no cracking is detected, prior to further flight, replace the 12 attachment fasteners located on the banjo No. 4 fitting with new, improved attachment fasteners, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992, or Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998. After the effective date of this AD, only Revision 03 of the service bulletin shall be used.

(i) Accomplishment of the replacement in accordance with the original issue of the

service bulletin constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges is accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

(ii) Accomplishment of the replacement in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998; constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges, and the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting, are accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, or Revision 03.

Any Cracking Condition: Repair

(2) If any cracking is detected, prior to further flight, repair either in accordance with Figure 6 or Figure 7, as applicable, of Chapter 55–20–00, Volume 1, of the DC–10 Structural Repair Manual; or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

One-Time Detailed Visual Inspection and Follow-On Actions, If Necessary

(c) For airplanes that have not accomplished the requirements of paragraph (b) in accordance with McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998: Within 1,500 landings after the effective date of this AD, perform a one-time detailed visual inspection to determine whether second oversize fasteners having part number (P/N) S4931917–8Y are installed in the banjo No. 4 fitting of the vertical stabilizer.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have been accomplished, no further action is required by this AD.

(2) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have *not* been accomplished: Within 1,500 landings after the last inspection performed in accordance with paragraph (a) of this AD, repeat that inspection, and perform the follow-on actions specified by paragraph (a) of this AD.

(3) If second oversize fasteners having P/N S4931917–8Y *are* installed, prior to further flight, perform an external visual inspection to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer in accordance with paragraph (a) of this AD.

(i) If no failure is detected, accomplish the actions specified in paragraph (c)(3)(i)(A) and (c)(3)(i)(B) of this AD.

(A) For any hole that has a P/N S4931917–8Y fastener installed: Repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(B) For any hole that has a P/N S4931917–8Y fastener installed: Within 5 years after April 24, 1996, or within 1,500 landings from the inspection required by paragraph (c)(3) of this AD, whichever occurs later, accomplish the requirements of paragraph (b) of this AD, except as provided in paragraph (d) of this AD.

(ii) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD for the failed fastener and its associated fastener hole only.

(d) For airplanes on which the repair required by paragraph (b)(2) of this AD has been accomplished prior to the effective date of this AD to comply with paragraph (c)(3)(i)(B) of this AD, accomplish only the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting required by paragraph (b) of this AD.

Spares

(e) As of the effective date of this AD, no person shall install a second oversize fastener having P/N S4931917–8Y in the banjo No. 4 fitting of the vertical stabilizer on any airplane.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (a), (b)(2), and (c) of this AD, the actions shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992; McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998; as applicable.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996; and McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992; and McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; was approved previously by the Director of the Federal Register as of April 24, 1996 (61 FR 12015, March 25, 1996).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18038 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–335–AD; Amendment 39–11810; AD 2000–14–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires replacement of any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps. This

amendment is prompted by reports of fractures of aluminum end caps on brake system accumulators. The actions specified by this AD are intended to prevent high-velocity separation of a brake system accumulator barrel, piston, or end cap, which could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on January 5, 2000 (65 FR 401). That action proposed to require replacement of any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

One commenter supports the proposed rule.

Request to Reference Corresponding Supplier Part Numbers in Spares Paragraph

One commenter, the airplane manufacturer, requests that the FAA revise paragraph (b) of the proposed rule (the "Spares" paragraph) to reference the supplier's part numbers for the brake system accumulator that correspond to the airplane manufacturer's part numbers listed in paragraph (b) of the proposed rule. The commenter states that including the supplier's part numbers in this AD will assist operators in identifying affected parts. The FAA concurs with the commenter's request, and has revised paragraph (b) of this final rule to reference the applicable supplier's part numbers that correspond to the airplane manufacturer's part numbers.

Request To Extend Compliance Time

Three commenters request that the FAA extend the compliance time for the actions in paragraph (a) of the proposed rule. The FAA proposed a compliance time of 3,000 flight hours after the effective date of this AD. The commenters' suggestions for extending the compliance time range from 10 months to 2 years or 6,000 flight hours. One commenter's justification for its request is the number of affected airplanes (estimated at 70 airplanes), the lead-time for modification kits (estimated at 10 months), and the lead-time for new parts (estimated at 4 months). Another commenter notes that the lead-time for new accumulators or modifications parts is 90 days for the initial production order; however, it will take two years to produce the quantity of new accumulators or modifications kits that will be necessary to accomplish the proposed replacement throughout the fleet. Another commenter states that the proposed actions are appropriate for accomplishment in a hangar environment and, with the proposed compliance time of 3,000 flight hours, special maintenance visits would be necessary to accomplish the proposed actions within that compliance time. That commenter suggests that a compliance time of 18 months would allow the proposed actions to be accomplished at a "C"-check for most affected airplanes.

The FAA concurs that the compliance time for accomplishment of the replacement described in this AD may be extended somewhat, and that accomplishment of the required actions during a "C"-check is appropriate. In developing an appropriate compliance time for this AD, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the normal intervals for operators' "C"-checks (as stated in Maintenance Review Board documents). The FAA has determined that 6,000 flight hours represents an appropriate interval of time wherein an ample number of required parts will be available for modification of the U.S. fleet, and wherein operators will be able to accomplish the replacement during a "C"-check. The FAA also finds that such a compliance time will not adversely affect the safety of the affected airplanes. Paragraph (a) of this final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,217 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 324 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per accumulator (airplanes may have three, four, or five accumulators of various types) to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately between $7,650 and $13,418 per airplane (depending on the number and type of affected accumulators). Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $7,830 and $13,718 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–01 Boeing: Amendment 39–11810. Docket 99–NM–335–AD.

Applicability: Model 747 series airplanes; as listed in Boeing Special Attention Service Bulletin 747–32–2461, dated August 19, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high velocity separation of a brake system accumulator barrel, piston, or end cap; which could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit; accomplish the following:

Replacement

(a) At the next "C"-check, not to exceed 6,000 flight hours after the effective date of this AD, replace any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps in accordance with Boeing Special AttentionService Bulletin 747–32–2461, dated August 19, 1999.

Spares

(b) As of the effective date of this AD, no person shall install a brake system accumulator having part number (P/N) BACA11E1 (Parker P/N 2660472–1 or 2660472M1) or BACA11E5 (Parker P/N 2660472–5 or 2660472M5) on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 747–32–2461, dated August 19, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington,DC.

Effective Date

(f) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager,, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18039 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–246–AD; Amendment 39–11822; AD 2000–14–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. This amendment is prompted by reports of burning and smoldering blankets in the forward crew rest area due to a reading light fixture that came into contact with the blankets after the light was inadvertently left on. The actions specified by this AD are intended to prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California

90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–11 series airplanes was published in the **Federal Register** on November 22, 1999 (64 FR 63764). That action proposed to require replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that it is not affected by the proposed rule.

Recommendation for a Smoke Detection System

One commenter recommends that the proposed AD require a smoke detection system for the forward crew rest compartment, since there will still be conditions existing that could cause a fire which could clearly be a hazard to flight safety. The commenter further states that the FAA should require a smoke detection system in any area where there are combustible materials and ignition sources, to ensure that any fire event is rapidly communicated to the crew.

The FAA does not concur with the commenter's suggestion. The final rule requires replacement of the upper and lower reading lights of the affected crew rest area with a redesigned light fixture to preclude a possible flammable condition as stated previously in the preamble. In addition, due to the current design of the forward crew rest area and its close proximity to the cockpit, the flight crew would detect smoke or fire in the forward crew rest compartment. Therefore, no change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 71 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $238 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,172, or $298 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–12 McDonnell Douglas: Amendment 39–11822. Docket 99-NM–246-AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the upper and lower reading lights in the forward crew rest area with a redesigned light fixture, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999.

Note 2: McDonnell Douglas Alert Service Bulletin MD11–25A233 refers to AIM Aviation Service Incorporated Service Bulletin AIM-MD11–25–2, Revision C, datedMarch 8, 1999; as an additional source of service information for accomplishment of the replacement of the upper and lower reading lights in the forward crew rest area.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June

9, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-18040 Filed 7-18-00; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, and 1307

[DEA-143F]

RIN 1117-AA36

Establishment of Freight Forwarding Facilities for DEA Distributing Registrants

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This rule defines the term freight forwarding facility and establishes storage, security, and recordkeeping requirements for controlled substances that transit such facilities. It also provides a waiver to a freight forwarding facility from the requirement for registration with the Drug Enforcement Administration. This rule will afford a registrant who is authorized to engage in the general distribution of controlled substances a more efficient and competitive means to distribute controlled substances and should minimize in-transit losses.

EFFECTIVE DATE: August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION:

Why Is DEA Taking This Action and Whom Does It Affect?

On December 18, 1996, DEA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (61 FR 66637) entitled Establishment of Freight Forwarding Facilities for DEA Distributor Registrants. The NPRM was published in response to requests by registrants within the controlled substances distribution industry that registrant-operated freight forwarding facilities be exempted from the registration requirement. (Currently there is no provision in the regulations that would allow the storage and distribution of controlled substances from such a location without a DEA registration.) Following discussion with registrants and trade association representatives within the affected industries, DEA determined that such a waiver could be provided to registrants within the controlled substances distribution industry, pursuant to 21 U.S.C. 822(d), subject to certain requirements with respect to the activity conducted, security, and recordkeeping.

What Requirements Were Proposed in the NPRM?

The NPRM proposed to define freight forwarding facility as a separate facility operated by a DEA distributor registrant through which sealed, packaged controlled substances, in unmarked (*i.e.*, without indication of the contents) containers, are stored for less than 24 hours while being routed to the ultimate DEA registrant consignee. The proposed definition specifically excluded a facility through which controlled substance returns are processed. Freight forwarding facilities would be granted a waiver from the registration requirement, provided that the registrant operating the facility gave required notice to DEA of the intent to operate such a facility and DEA issued no objection.

With respect to security, the NPRM proposed that during temporary storage at the facility, all Schedule II-V controlled substances must be under constant observation by designated responsible individuals in a segregated area, or, if not under constant observation, stored in a caged and alarmed area that meets the requirements set forth in Title 21, Code of Federal Regulations (CFR), Section 1301.72(b). Proposed recordkeeping consisted of the requirement that the registrant maintain records documenting the transfer of the controlled substances from the long-distance conveyance to the local conveyance, reflecting the date, time of transfer, the number of cartons, crates, drums, or other packages in which commercial containers of controlled substances were shipped and authorized signatures for each transfer.

What Comments Were Received in Response to the NPRM?

Six comments were received in response to the NPRM: three from DEA pharmacy registrants, two from trade associations representing the affected industries, and one from a state regulatory agency. While the comments expressed general support for the changes, concerns were raised regarding each specific facet of the proposed rule. With regard to several of the matters, DEA adopted changes suggested by the commenters to make the rule more flexible and the waiver from registration for a freight forwarding facility more broadly available.

1. Use of the Freight Forwarding Facility by More Than One Registrant

Four commenters objected to the proposed requirement that a freight forwarding facility be for the exclusive use of the named DEA distributor registrant, precluding its use by another DEA registrant. The commenters suggested that the new regulations allow multiple registrants to utilize a single freight forwarding facility. Two of the four commenters addressed the issue in terms of multiple registrants of the same company, while the other two addressed the use of a single freight forwarding facility by multiple unrelated registrants. Another commenter questioned whether it would be possible for a non-DEA registrant to lease space at a freight forwarding facility to more than one DEA registered distributor.

The proposal to exempt a freight forwarding facility from the DEA registration requirement was based upon the facility being an extension of a specific distributing registrant, thus simplifying the issue of responsibility for any diversion or lack of compliance with the regulations at the facility. However, taking such a simplified approach does limit use of the facility to only that one distributing registrant.

DEA acknowledges the comments that limiting the definition to such as extent, while simplifying the issue of responsibility under the law and regulations, could result in complex, inefficient, and duplicative efforts for a company that operates multiple distributing registrations. The company would be required to maintain and operate a separate freight forwarding facility for each registered distributing location. Therefore, the proposal is

being amended to allow a corporate entity that maintains multiple distributing registrations the ability to operate a single freight forwarding facility for shipments in transit from any of its registered distributing locations. Such a provision remains consistent with the existing framework of DEA's requirements because the controlled substances remain in the custody and control of the corporate entity who maintains both the freight forwarding facility and the various registrations with DEA. That corporate entity is responsible for ensuring that the laws and regulations are adhered to and for the safekeeping of the controlled substances transiting the facility. The ultimate responsibility for compliance would, of course, rest with the DEA registered location making the shipment, should there be any violations or thefts or losses of controlled substances from the shipment.

The exemption of a freight forwarding facility is based on the premise that Company A ships controlled substances to its customers utilizing an in-transit location owned or leased by Company A. In this instance the controlled substances remain the legal responsibility of Company A until they are actually received by the customers. If, on the other hand, Company A were to ship controlled substances to its customers utilizing a freight forwarding facility which is owned by Company B, the custody and control of the shipment, as well as the legal responsibility, shifts from Company A to Company B at the freight forwarding facility. DEA is waiving the registration requirement only with respect to freight forwarding facilities operated by the distributing registrant; a transfer of custody, control, and legal responsibility of controlled substances between two different companies remains subject to the registration requirements set forth in 21 U.S.C. 822 and may only occur between registered locations of the two companies. Additionally, all applicable records, reports, and security required for controlled drug transactions would continue to apply to such transactions.

With respect to the question of whether a non-registrant could lease space at a freight forwarding facility to more than one DEA registrant, it should be noted that the definition of a freight forwarding facility refers to a facility operated by the company that maintains one or more distributing registrations with DEA. It is expected that the facility will be under the full direction and control of that company and will be staffed by employees of that company. Therefore, the sharing of the same freight forwarding facility by more than one company would not be possible. However, this does not preclude different companies from operating separate freight forwarding facilities within a single building, provided that each is maintained as a physically separate facility from the others.

One commenter suggested that registrants other than distributors may wish to operate a freight forwarding facility. DEA recognizes that, in addition to distributors, there are other registrants (*i.e.* manufacturers and importers) who are authorized to distribute controlled substances under their registration. Therefore, DEA is amending the proposal to include controlled substances distributors, manufacturers, and importers.

2. Storage and Security of Controlled Substances

Four commenters expressed concerns with the proposed requirement that controlled substance storage at a freight forwarding facility be limited to less than 24 hours. Questions were raised about dealing with emergency circumstances (bad weather, natural disaster, and other unforeseen circumstances) that may require the temporary storage of controlled substances at the freight forwarding facility for more than the allowable 24 hour time limit. One commenter suggested that a plan for unforeseen emergencies be submitted at the time of application.

One of the factors in DEA's decision to establish the waiver of the registration requirement for freight forwarding facilities was that in the normal course of freight forwarding activities, shipments of controlled substances will transit a facility with minimal delay. As one commenter noted, "* * * Product arrives at the facility via the long distance conveyance and is transferred to the appropriate short distance conveyance, typically within a matter of 2 hours or less * * *" However, recognizing that there are a variety of factors, such as bad weather, mechanical breakdowns, scheduling errors, etc., that may interfere with the timely transit of shipments through the facility, DEA included in the definition of a freight forwarding facility the provision that controlled substances may be stored for less than 24 hours. DEA expects that any registrant operating a freight forwarding facility will ensure that any controlled substances transiting the facility will remain there for less than 24 hours.

DEA does recognize that there may be emergency circumstances that may temporarily prevent full compliance with the regulations.

In such a case, the registrant operating the facility must take the necessary steps to safeguard the controlled substances and effect a return to normal operations as quickly as possible. Additionally, the registrant must notify the local DEA office of the circumstances and what actions are being taken to address the situation. DEA will not penalize a registrant for non-compliance with the requirements in such emergency circumstances, provided the registrant has taken appropriate steps to safeguard the controlled substances and to return to normal operations as soon as possible.

With respect to what constitutes emergency circumstances, DEA wishes to note that the commenters included in their description of emergency circumstances such events as late delivery before a holiday weekend and inclement weather. These are not, in and of themselves, emergency circumstances that would warrant allowing the storage of controlled substances at a freight forwarding location in excess of the 24 hour time limit. Certainly unpredictable circumstances that are entirely beyond a registrant's control (fire, earthquake, flash flood, tornado, etc.) would be emergency events that may require storage for 24 hours or more. However, where an event can be predicted or anticipated (winter storm, hurricane, mechanical breakdowns, labor disturbances, etc.), DEA expects that a registrant will have in place contingency plans (rescheduling or re-routing shipments, emergency backup transportation or labor arrangements, etc.) to try to insure that controlled substances are not stored at the facility for 24 hours or more.

DEA is not going to attempt to define in these regulations what would constitute an emergency. Any attempt to do so would inevitably fall short of its intended purpose. There are simply too many variables that could influence whether an event would, or would not, qualify as an emergency. Each event will have to be looked at individually, not only in terms of what has occurred, but also in terms of what efforts the registrant had taken prior to the event to anticipate and prevent any disruption of operations and what efforts are taken following the event to safeguard the controlled substances and return to normal operations. Registrants should approach this issue from the perspective of taking all possible steps to anticipate unusual events and ensure that these events do not prevent compliance with the regulations.

Two commenters objected to the proposed security requirement that controlled substances be stored in accordance with 21 CFR 1301.72(b) whenever they are not under continuous observation by designated individuals.

DEA believes that in the normal course of freight forwarding activities, shipments of controlled substances will transit a facility with minimal delay and there would be no need for the distributing registrant to implement specific physical security measures to guard against losses since the loading/unloading areas would be continuously attended and under the general observation of employees. However, when circumstances arise requiring temporary storage of controlled substances, the distributing registrant must either maintain continuous observation of the controlled substances or implement physical security measures that meet the requirements of 21 CFR 1301.72(b) in order to guard against losses.

As an alternative to continuous observation of controlled substances, two commenters suggested a "lock down" of the facility.

DEA believes that a distributing registrant who has the ability to "lock down" a freight forwarding facility equipped with the appropriate alarm system or kept under constant visual surveillance by security patrols would, in effect, secure the controlled substances in a manner equivalent to the security requirements stated in 21 CFR 1301.72(b)(3), thus satisfying the requirement in the new 21 CFR 1301.77(a)(2).

Two commenters noted that controlled substance containers are required to be unmarked, this making identification of those containers in a large shipment extremely difficult, if not impossible, and requiring that the entire facility be subject to the security requirements of 21 CFR 1301.72(b) or that all containers in the facility be kept under constant observation. One commenter suggested that discrete marking or coding of the containers of controlled substances should be allowed.

In evaluating these comments, the presumption exists that all containers transiting a freight forwarding facility have a certain amount of controlled substances in them. As noted earlier in this document, DEA believes that specific security measures should not be necessary in the normal course of operations since the loading/unloading areas would be continuously attended and under the general observation of employees. It is only when circumstances require the temporary (less than 24 hours) storage of these containers that they must be maintained in a segregated area of the facility under continuous observation in order to prevent access by unauthorized individuals (*i.e.* maintenance personnel, non-employee service personnel). Whether continuous observation is performed by an authorized employee of the facility or by contracted security personnel is the responsibility of the distributing registrant. If there is not continuous observation of these containers, the distributing registrant would be required to have the appropriate physical security measures in place that are consistent with the requirements of 21 CFR 1301.72(b).

With respect to the issue of discrete marking or coding of containers of controlled substances, the intent of unmarked containers is to prevent the identification of those that contain controlled substances, thus helping to prevent diversion of the controlled substances. As the commenters noted, the identification of such containers in a large shipment would be extremely difficult, if not impossible. The act of segregating, during temporary storage, only the marked or coded containers would defeat this basic security measure by specifically identifying the containers with controlled substances, making them easier targets for diversion. Under the circumstances, DEA will hold with the requirement that the controlled substances be in unmarked containers.

3. Recordkeeping

Four commenters suggested that DEA allow a person the ability to store controlled substance records for freight forwarding facilities at a central location.

A distributing registrant who operates a freight forwarding facility must maintain complete records of controlled substance activity including a clearly defined audit trail for all controlled substances transferred through the facility. Records of controlled substances must contain the dates, times of transfer, authorized signatures and the number of cartons, crates, drums or other packages in which commercial containers of controlled substances are shipped. This will enable the distributing registrant to trace the flow of controlled substances from the long distance conveyance through the freight forwarding facility to the local conveyance or from the long distance conveyance directly to the local conveyance.

Records are required to be maintained at the freight forwarding facility, however, a distributing registrant may request central recordkeeping authority with the initial facility exemption request. Approval of this request will be granted as part of the approval of the waiver by DEA. Subsequent requests for maintaining records at a central location would be handled in accordance with 21 CFR 1304.04.

4. Returns

One commenter suggested that controlled substance returns should be allowed to transit a freight forwarding facility.

The NPRM prohibited the use of a freight forwarding facility for handling the transit of controlled substance returns due to concerns that the custody and control of the controlled substance returns would be transferred from the registered customer at a non-registered location. DEA is amending its proposal to allow controlled substance returns within a single corporate structure to be routed through the corporate owned or operated freight forwarding facility only when the distributing registrant provides the same transfer, storage, security, and recordkeeping controls as outlined in this regulation for controlled substance distributions through a freight forwarding facility. In other words, a distributing registrant may pick up a pre-authorized customer return in the same manner it makes deliveries. DEA is amending Section 1307.12 of the regulations to acknowledge the fact that a person may return controlled substances to a supplier either directly or through a freight forwarding facility provided that the return is pre-arranged and the returning registrant delivers the controlled substance(s) directly to an agent on employee of the receiving registrant. DEA is also making a technical correction in this section to the U.S. Code citation which should read "21 U.S.C. 822(c)" rather than "21 U.S.C. 823(c)".

In order to accept transfer of controlled substance returns, a distributing registrant must have received advance notification from the customer of its intent to return controlled substances. Controlled substance returns can only be transferred from a customer to an authorized representative of a distributing registrant in sealed, packaged, unmarked containers. The transfer of controlled substance returns from the customer to the authorized representative must be properly documented by both parties to the transaction so that there is an ability to track the flow of the returns from the customer back through the freight forwarding facility to the distributing registrant. Controlled substance returns cannot be shipped by a customer

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directly to a freight forwarding facility nor can controlled substance returns be distributed from the freight forwarding facility to any other registrant except the original seller since the freight forwarding facility is a non-registered entity. Further, returns must transit the freight forwarding facility in less than 24 hours.

The distributing registrant is to submit, along with the required notification requesting exemption from registration for a freight forwarding facility, specific procedures for the processing of controlled substance returns.

5. Miscellaneous Comments

Three commenters suggested that a denial of an application(s) should be communicated to the applicant.

DEA has addressed this issue by indicating in the final regulations that written approval or disapproval will be provided to the distributing registrant within thirty days after confirmed receipt of the notice of intent to operate a freight forwarding facility. If a request to operate a facility is disapproved, the reasons for disapproving the request will be provided in writing to the requesting registrant.

Two commenters suggested that facilities operating under current agreements with the DEA should be grandfathered.

With the publication of this final rule, a person who is operating or desiring to operate a freight forwarding facility is required to notify DEA of both the location(s) of the facility and the registrant(s) who will utilize the facility and fully abide by the regulations set forth in this publication. Those freight forwarding facilities currently operating pursuant to Memoranda of Understanding (MOU) with the DEA must initiate the approval process within thirty days of the effective date of this final rule. Failure to initiate the approval process within the specified time period will void the existing MOU.

One commenter questioned whether DEA would coordinate with the appropriate State authorities regarding freight forwarding facilities. The waiver of the registration requirement by DEA does not imply similar exemption at the state level. The appropriate state agency should be contacted by the requesting registrant prior to obtaining authorization from the DEA to determine whether state licensure is required. Notice regarding whether state licensure is, or is not, required should be provided to DEA as part of the request to operate a freight forwarding facility. DEA will coordinate with the appropriate state authorities to ensure that freight forwarding operations within their states are in full compliance with state requirements.

What Do These Final Regulations Allow?

Under these final regulations, a distributing registrant (*i.e.*, a distributor, manufacturer, and/or importer) may establish a freight forwarding facility through which the distributing registrant may transfer controlled substances in the course of delivery to customers. If the distributing registrant maintains multiple registrations as a distributor, manufacturer, and/or importer, all of those registered locations may transfer controlled substances through the facility. The distributing registrant and the freight forwarding facility must be part of the same corporate entity; a distributing registrant from a different corporate entity may not transfer controlled substances through the facility.

The registration requirement for a freight forwarding facility will be waived provided that the distributing registrant submits proper notice to DEA of their intent to operate the facility.

Controlled substances that are being transferred through a freight forwarding facility may be stored in the facility for less than 24 hours. During storage, containers with controlled substances must be kept under continuous observation by designated individuals or maintained in a secured area that meets the present requirements for storage of Schedule III through V controlled substances. 'Locking down' a facility that also has a monitored alarm system or is subject to continuous monitoring by security personnel is consistent with the security requirements under 21 CFR 1301.72(b)(3) and 1301.77(a)(2).

If controlled substances are stored in the facility for 24 hours or more, then the facility does not meet the definition of freight forwarding facility and does not qualify for waiver of the registration requirement.

Records are required to be maintained by the distributing registrant at the freight forwarding facility regarding the transfer of controlled substances through the facility. The records must reflect the date; time of transfer; number of cartons, crates, drums, or other packages in which controlled substances are shipped; and authorized signatures for each transfer. The records may be maintained centrally, provided that the registrant operating the facility has been approved to maintain central records. In addition, each shipment should contain the usual documentation of controlled substances in the shipment, *i.e.*, invoices, packing slips, etc.

Customer returns may be transferred through a freight forwarding facility, provided that the returns are pre-authorized, the official transfer from the customer to the distributor takes place upon pick-up at the customer's registered location, and the returns are treated in the same manner as distributions to customers through the facility.

These final regulations represent the best possible provisions that could be established while remaining consistent with the requirements of the CSA. Certain other provisions were considered in the establishment of these regulations, such as inter-company freight forwarding; however, the difficulties associated with the assignment of responsibility under the law and regulations that such activities would present, prevents their adoption.

OMB Information Collection Requirements

This final rule contains a new information collection requirement, Notice of Intent to Operate a Freight Forwarding Facility, that has been reviewed and approved by OMB and assigned the OMB approval number 1117–0035.

Plain English

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and certifies that it will not have a significant economic impact on a substantial number of small entities. This final rule provides an alternative system that may allow certain person(s) authorized to distribute controlled substances a more efficient means of delivering controlled substances. In fact, the regulated industry has represented that this procedure will benefit the industry by allowing it to lower costs associated with shipping controlled substances.

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Deputy Assistant Administrator, Office of Diversion Control, has determined that this rule is not a significant regulatory action under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. This regulation provides an exemption for freight forwarding facilities operated by a person from certain requirements of the CSA, thus allowing them a more efficient and cost effective means of doing business.

Executive Order 13132

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132 and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

It should be noted that due to earlier amendments to the regulations, certain section designations in the NPRM have changed. The appropriate adjustments have been made in the final rule to reflect the new section designations.

List of Subjects

21 CFR Part 1300

Definitions, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting requirements.

21 CFR Part 1307

Drug traffic control.

For reasons set out above, DEA is amending 21 CFR Parts 1300, 1301, 1304 and 1307 to read as follows:

PART 1300—[AMENDED]

1. The authority citation for Part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f)

2. Section 1300.01 is amended by adding a new paragraph (b) (42) to read as follows:

§ 1300.01 Definitions.

* * * * *

(b) * * *

(42) The term *freight forwarding facility* means a separate facility operated by a distributing registrant through which sealed, packaged controlled substances in unmarked shipping containers (i.e., the containers do not indicate that the contents include controlled substances) are, in the course of delivery to, or return from, customers, transferred in less than 24 hours. A distributing registrant who operates a freight forwarding facility may use the facility to transfer controlled substances from any location the distributing registrant operates that is registered with the Administration to manufacture, distribute, or import controlled substances, or, with respect to returns, registered to dispense controlled substances, provided that the notice required by § 1301.12(b)(4) of Part 1301 of this chapter has been submitted and approved. For purposes of this definition, a distributing registrant is a person who is registered with the Administration as a manufacturer, distributor, and/or importer.

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, unless otherwise noted.

2. Section 1301.12 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1301.12 Separate registrations for separate locations.

* * * * *

(b) * * *

(4) A freight forwarding facility, as defined in § 1300.01 of this part, provided that the distributing registrant operating the facility has submitted written notice of intent to operate the facility by registered mail, return receipt requested (or other suitable means of documented delivery) and such notice has been approved. The notice shall be submitted to the Special Agent in Charge of the Administration's offices in both the area in which the facility is located and each area in which the distributing registrant maintains a registered location that will transfer controlled substances through the facility. The notice shall detail the registered locations that will utilize the facility, the location of the facility, the hours of operation, the individual(s) responsible for the controlled substances, the security and recordkeeping procedures that will be employed, and whether controlled substances returns will be processed through the facility. The notice must also detail what state licensing requirements apply to the facility and the registrant's actions to comply with any such requirements. The Special Agent in Charge of the DEA Office in the area where the freight forwarding facility will be operated will provide written notice of approval or disapproval to the person with thirty days after confirmed receipt of the notice. Registrants that are currently operating freight forwarding facilities under a memorandum of understanding with the Administration must provide notice as required by this section no later than September 18, 2000 and receive written approval from the Special Agent in Charge of the DEA Office in the area in which the freight forwarding facility is operated in order to continue operation of the facility.

3. Part 1301 is amended by adding a new § 1301.77 to read as follows:

§ 1301.77 Security controls for freight forwarding facilities.

(a) All Schedule II–V controlled substances that will be temporarily stored at the freight forwarding facility must be either:

(1) stored in a segregated area under constant observation by designated responsible individual(s); or

(2) stored in a secured area that meets the requirements of Section 1301.72(b) of this Part. For purposes of this requirement, a facility that may be locked down (*i.e.*, secured against physical entry in a manner consistent

with requirements of Section 1301.72(b)(3)(ii) of this part) and has a monitored alarm system or is subject to continuous monitoring by security personnel will be deemed to meet the requirements of Section 1301.72(b)(3) of this Part.

(b) Access to controlled substances must be kept to an absolute minimum number of specifically authorized individuals. Non-authorized individuals may not be present in or pass through controlled substances storage areas without adequate observation provided by an individual authorized in writing by the registrant.

(c) Controlled substance being transferred through a freight forwarding facility must packed in sealed, unmarked shipping containers.

PART 1304—[AMENDED]

1. The authority citation for Part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(e), 965, unless otherwise noted.

2. Section 1304.03 is proposed to be amended by adding a new paragraph (g) to read as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(g) A distributing registrant who utilizes a freight forwarding facility shall maintain records to reflect transfer of controlled substances through the facility. These records must contain the date, time of transfer, number of cartons, crates, drums or other packages in which commercial containers of controlled substances are shipped and authorized signatures for each transfer. A distributing registrant may, as part of the initial request to operate a freight forwarding facility, request permission to store records at a central location. Approval of the request to maintain central records would be implicit in the approval of the request to operate the facility. Otherwise, a request to maintain records at a central location must be submitted in accordance with § 1304.04 of this part. These records must be maintained for a period of two years.

PART 1307—[AMENDED]

1. The authority citation for Part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b), unless otherwise noted.

2. Section 1307.12 is revised to read as follows:

§ 1307.12 Distribution to supplier.

(a) Any person lawfully in possession of a controlled substance listed in any schedule may distribute (without being registered to distribute) that substance to the person from whom he obtained it or to the manufacturer of the substance, provided that a written record is maintained which indicates the date of the transaction, the name, form, and quantity of the substance, the name, address, and registration number, if any, of the person making the distribution, and the name, address, and registration number, if known, of the supplier or manufacturer. In the case of returning a controlled substance in Schedule I or II, an order form shall be used in the manner prescribed in part 1305 of this chapter and be maintained as the written record of the transaction. Any person not required to register pursuant to sections 302(c) or 1007(b)(1) of the Act (21 U.S.C. 822(c) or 957(b)(1) shall be exempt from maintaining the records required by this section.

(b) Distributions referred to in paragraph (a) may be made through a freight forwarding facility operated by the person to whom the controlled substance is being returned provided that prior arrangement has been made for the return and the person making the distribution delivers the controlled substance directly to an agent or employee of the person to whom the controlled substance is being returned.

Dated: July 13, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 00–18147 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 8891]

RIN 1545–AW59

Increase in Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the increase from $3,500 to $5,000 of the limit on distributions from qualified retirement plans that can be made without participant or spousal consent. This increase is contained in the Taxpayer Relief Act of 1997. In addition, these regulations eliminate the "lookback rule" pursuant to which certain qualified plan benefits are deemed to exceed this limit on involuntary distributions. The final regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans.

DATES: *Effective Date:* These regulations are effective October 17, 2000.

Applicability Date: These regulations generally apply to distributions made on or after October 17, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1998, a notice of proposed rulemaking (REG–113694–98) was published in the **Federal Register** (63 FR 70356) regarding the "cash-out limit" under sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code. That same day, temporary and final regulations (TD 8794) were published in the **Federal Register** (63 FR 70335) which amended the Income Tax Regulations and the Employment Tax Regulations (26 CFR parts 1 and 31) relating to the increase in the cash-out limit enacted by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788 (1997) (TRA '97). The text of the temporary regulations served as a portion of the text of the proposed regulations. Very few comments were submitted on the proposed regulations; no hearing was requested or held. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations.

Explanation of Provisions

The temporary regulations made several changes to the cash-out rules under sections 411(a)(7), 411(a)(11), and 417(e)(1). In accordance with section 1071 of TRA '97, the temporary regulations increased the cash-out limit from $3,500 to $5,000. Thus, a qualified plan can generally distribute vested accrued benefits valued at $5,000 or less without participant or spousal consent. The temporary regulations also provided that, for purposes of section 411(a)(7)(B)(i), an involuntary distribution of an employee's vested accrued benefit valued at $5,000 or less could be treated as made due to termination of the employee's participation if the distribution could have been made at termination of

participation but for the fact that the benefit was then valued at more than $3,500. Finally, the temporary regulations amended § 1.411(a)–11(c)(3) to eliminate the "lookback rule" for distributions other than those made pursuant to an optional form of benefit under which at least one scheduled periodic distribution remained payable. Prior to this amendment, the lookback rule in § 1.411(a)–11(c)(3) provided that the present value of a vested accrued benefit was deemed to exceed the cash-out limit if it had exceeded the cash-out limit at the time of any previous distribution. The temporary regulations did not change the parallel lookback rule under § 1.417(e)–1(b)(2)(i).

The proposed regulations generally included the provisions of the temporary regulations, but they also proposed the complete removal (on a prospective basis) of the lookback rule under both §§ 1.411(a)–11(c)(3) and 1.417(e)–1(b)(2)(i). Thus, under the proposed regulations, the lookback rule would be eliminated both for plans subject to the spousal-consent provisions of sections 401(a)(11) and 417 and for plans not subject to those provisions. Under this removal of the lookback rule, a participant's vested accrued benefit valued at $5,000 or less could be distributed without consent even if the benefit had been valued at more than $5,000 at the time of a previous distribution. However, in accordance with section 417(e)(1), the proposed regulations also provided that, in the case of plans subject to sections 401(a)(11) and 417, consent would be required after the annuity starting date for the immediate distribution of the present value of an accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value.

Very few comments were received on the proposed regulations. One commentator inquired whether a cash-out could be made of a benefit presently valued at $4,500 that had been valued at $4,000 upon termination of the employee's employment more than two years earlier. As indicated in the preamble to the final and temporary regulations published with the proposed regulations, that benefit could be cashed out.

Another commentator indicated support for the content of the proposed regulations but expressed concern about the rule, derived from section 417(e)(1), prohibiting a cashout after the annuity starting date of a benefit being distributed in any form by a plan subject to sections 401(a)(11) and 417. The commentator observed that, under section 417(f)(2)(A), the annuity starting date for a benefit payable upon termination of employment in non-annuity form could be the date of termination. The commentator argued that the rule in the proposed regulations prohibiting a cashout after the annuity starting date could be read to preclude a cashout of a non-annuity benefit payable at termination, regardless of the present value of that benefit. To address this, the commentator urged the IRS and Treasury to redefine "annuity starting date" such that a cashout would be permitted as long as a benefit remains immediately distributable (that is, until the later of normal retirement age or age 62).

The provision in the proposed regulations prohibits a cashout after the annuity starting date of a benefit "being distributed in any form." The rule does not apply to any benefit that is not yet "being distributed"—that is, to any benefit with respect to which no payment has been made. If the present value of a benefit payable on or after termination of employment does not exceed the cashout limit, the rule of section 417(e)(1), as set forth in the proposed regulations, would not prohibit a cashout prior to the date on which a payment is first made (disregarding, obviously, the cashout payment itself). Thus, no change has been made to the regulations on this point.

Another commentator objected to the complete elimination of the lookback rule under the proposed regulations. The commentator cited three reasons for its opposition: first, that an amount distributed in a hardship or other type of distribution remains part of a participant's benefit; second, that a participant could manipulate a distribution in order to evade the spousal-consent requirements; and, third, that permitting cash-outs after a hardship or other distribution is contrary to the policy of discouraging non-retirement distributions.

In contrast, a comment received prior to the issuance of the proposed regulations noted problems faced by plan administrators due to the lookback rule. The commentator noted, for example, that if a plan provides for hardship distributions, the plan administrator must review its records to determine the value of the participant's benefits at the time of any prior distribution. The commentator added that this can be particularly difficult and costly where plans sponsored by other employers have merged into the plan. The commentator further stated that the cash-out provisions are designed to allow plans to reduce their administrative costs by making lump sum payments to participants with small benefits and that the lookback rule is contrary to that design because the rule (1) makes it more costly for administrators to determine whether the provisions apply and (2) can prevent a plan from relying on the provisions in many cases where the value of the participant's current benefit is well below $5,000.

After consideration of the comments, the IRS and Treasury have decided to adopt the regulation eliminating the lookback rule as proposed. The IRS and Treasury believe that the statutory cash-out provisions represent a balancing of the interests of participants in maintaining their benefits in qualified plans with the reasonable administrative needs of plan sponsors and administrators. The lookback rule prevents plans from cashing out a benefit currently valued below the cash-out limit simply because it had been valued above the cash-out limit at the time of an earlier distribution. This creates disparity in the treatment of benefits of equivalent value and requires plans to incur additional recordkeeping and other administrative costs.

The IRS and Treasury note that removal of the lookback rule is unlikely to present significant opportunities for participants to evade the spousal-consent rules. In the case of any plan subject to the spousal-consent provisions of sections 401(a)(11) and 417, a distribution that draws a participant's accrued benefit from a value above the cash-out limit to a value at or below the cash-out limit will itself require spousal consent. Furthermore, these final regulations strengthen the spousal-consent rules by clarifying that a plan subject to sections 401(a)(11) and 417 may not distribute a benefit after the annuity starting date without consent. This prohibition on cash-outs after the annuity starting date, which is statutory in source, applies without regard to the value of the benefit at the annuity starting date and without regard to the distribution form.

Finally, the IRS and Treasury note that concerns about non-retirement distributions of benefits are mitigated by the availability of rollovers. In almost all cases, an amount distributed from a qualified plan in a cash-out distribution will be an eligible rollover distribution that can be paid directly (or indirectly, through a 60-day rollover) to another qualified retirement plan or individual retirement arrangement.

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Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the AdministrativeProcedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert M. Walsh, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.411(a)–7T and by adding a new entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(a)–7 also issued under 26 U.S.C. 411(a)(7)(B)(i). * * *

Par. 2. Section 1.411(a)–7 is amended as follows:

1. Paragraph (d)(4)(i) is revised;
2. Paragraphs (d)(4)(vi) and (d)(4)(vii) are added.

The revision and additions read as follows:

§ 1.411(a)–7 Definitions and special rules.

* * * * *

(d) * * *

(4) *Certain cash-outs of accrued benefits*—(i) *Involuntary cash-outs.* For purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution;

(B) The requirements of section 411(a)(11) are satisfied at the time of the distribution;

(C) The distribution is made due to the termination of the employee's participation in the plan; and

(D) The plan has a repayment provision which satisfies the requirements of paragraph (d)(4)(iv) of this section in effect at the time of the distribution.

* * * * *

(vi) For purposes of paragraph (d)(4)(i) of this section, a distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs, or if such distribution would have been made under the plan by the close of such second plan year but for the fact that the present value of the nonforfeitable accrued benefit then exceeded the cash-out limit in effect under § 1.411(a)–11(c)(3)(ii). For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in paragraph (d)(2)(i) of this section.

(vii) *Effective date.* Paragraphs (d)(4)(i) and (vi) of this section apply to distributions made on or after March 22, 1999. However, an employer is permitted to apply paragraphs (d)(4)(i) and (vi) of this section to plan years beginning on or afterAugust 6, 1997. Otherwise, for distributions prior to March 22, 1999, §§ 1.411(a)–7 and 1.411(a)–7T, in effect prior to October 17, 2000 (as contained in 26 CFR part 1, revised as of April 1, 2000) apply.

* * * * *

§ 1.411(a)–7T [Removed]

Par. 3. Section 1.411(a)–7T is removed.

Par. 4. Section 1.411(a)–11 is amended by revising paragraph (c)(3) to read as follows:

§ 1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see § 1.417(e)–1(d).

(ii) The cash-out limit in effect for a date is the amount described in section 411(a)(11)(A) for the plan year that includes that date. The cash-out limit in effect for dates in plan years beginning on or after August 6, 1997, is $5,000. The cash-out limit in effect for dates in plan years beginning before August 6, 1997, is $3,500.

(iii) *Effective date.* Paragraphs (c)(3)(i) and (ii) of this section apply to distributions made on or after October 17, 2000. However, an employer is permitted to apply the $5,000 cash-out limit described in paragraph (c)(3)(ii) of this section to plan years beginning on or after August 6, 1997. Otherwise, for distributions prior to October 17, 2000, §§ 1.411(a)–11 and 1.411(a)–11T in effect prior to October 17, 2000 (as contained in 26 CFR Part 1 revised as of April 1, 2000) apply.

* * * * *

§ 1.411(a)–11T [Removed]

Par. 5. Section 1.411(a)–11T is removed.

Par. 6. Section 1.417(e)–1 is amended by revising the last sentence of paragraph (b)(2)(i) and by adding new paragraph (b)(2)(iii) to read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(2) * * * (i) * * * After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of such present value.

* * * * *

(iii) Paragraph (b)(2)(i) of this section applies to distributions made on or after October 17, 2000. For distributions prior to October 17, 2000, § 1.417(e)–1(b)(2)(i) in effect prior to October 17, 2000 (as

contained in 26 CFR part 1 revised as of April 1, 2000) applies.

* * * * *

PARTS 1 AND 31—[AMENDED]

Par. 7. In the table below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.401(a)–20, Q&A–6, paragraph (d), first sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)–20, Q&A–24, paragraph (a)(1), fourth sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)(4)–4, paragraph (b)(2)(ii)(C)	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)(26)–4, paragraph (d)(2), last sentence	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)(26)–6, paragraph (c)(4), first sentence	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.411(a)–11, paragraph (b), first sentence	§ 1.411(a)–11T(c)(3)(ii)	paragraph (c)(3)(ii) of this section.
1.411(a)–11, paragraph (c)(7), third sentence	§ 1.411(a)–11T(c)(3)(ii)	paragraph (c)(3)(ii) of this section.
1.411(d)–4, Q&A–2, paragraph (b)(2)(v), second, third, and fourth sentences.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.411(d)–4, Q&A–4, paragraph (a), eighth sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.417(e)–1, paragraph (b)(2)(i), first, fourth, and fifth sentences.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
31.3121(b)(7)–2, paragraph (d)(2)(i), last sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).

Approved: July 10, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–18119 Filed 7–18–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 2314–2000]

Delegation of Authority: Settlement Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule delegates authority to the Director of the Federal Bureau of Investigation (FBI) to settle administrative claims presented pursuant to the Federal Tort Claims Act (FTCA), where the amount of the settlement does not exceed $50,000. Currently, the Director of the FBI has authority to settle FTCA claims not exceeding $10,000. This rule will alert the general public to the Federal Bureau of Investigation's new authority and is being codified in the Code of Federal Regulations to provide a permanent record of this delegation.

EFFECTIVE DATE: July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, U.S. Department of Justice, 935 Pennsylvania Ave. NW, Washington, DC 20535; (202) 324–3000.

SUPPLEMENTARY INFORMATION: This rule has been issued to delegate settlement authority and is a matter solely related to the division of responsibility within the Department of Justice. It relates to matters of agency policy, management, or personnel, and is therefore exempt from the usual requirements of prior notice and comment, and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), (b)(A).

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This rule pertains to delegations of authority within the Department of Justice and does not affect the Department of Justice's overall authority to act on tort claims.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Larry R. Parkinson at the address and telephone number given above.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees,

Organization and functions (Government agencies), Whistleblowing.

Accordingly, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.89a of part 0, subpart P, is amended by revising paragraph (a) to read as follows:

§ 0.89a Delegations respecting claims against the FBI.

(a) The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General Under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, and settle any claim thereunder not exceeding $50,000 in any one case caused by the negligent or wrongful act or omission of any employee of the Federal Bureau of Investigation.

* * * * *

Dated: July 11, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–18213 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–62–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048; FRL–6837–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revision to Opacity Limit for Drier Stacks at Georgia-Pacific Corporation Softboard Plant in Jarratt, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revised opacity limit for drier zone stacks #1 and #2 associated with the softboard drier at the Jarratt Softboard Plant. The plant is owned by Georgia-Pacific Corporation (GP) and is located in Jarratt, VA. The new opacity limit is contained in a consent agreement between the Commonwealth of Virginia and GP. The consent agreement was submitted by the Department of Environmental Quality of the Commonwealth of Virginia (VADEQ) as a revision to its State Implementation Plan (SIP) on February 3, 1999. The increased opacity limit only applies to the drier zone stacks which emit particulate emissions while drying the softboard. Mass emission limits from the drier are not being changed.

DATES: This rule is effective on September 18, 2000 without further notice, unless EPA receives adverse written comment by August 18, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at knapp.ruth@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used we mean EPA.

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I. What Is the EPA Approving?

We are approving Consent Order No. 50253 (effective September 28, 1998) signed by John M. Daniels for Dennis H. Treacy, Director of the Department of Environmental Quality of the Commonwealth of Virginia and Mr. John Masaschi, Vice President, Industrial Wood Products, Georgia-Pacific Corporation, as a SIP revision. The consent order was submitted, as a SIP revision, to EPA on February 3, 1999. The consent order provides a revised opacity limit for the two drier zone stacks from the drier located at the Jarratt Softboard Plant located in Jarratt, Virginia. The revised limit allows for a higher opacity limit; however, mass emission rates are not being changed.

II. What Facilities/Operations Does This Action Apply To?

We are approving a revised opacity limit for a process at a GP Softboard plant. The plant manufactures softboard used in construction. Manufacturing begins with refining wood chips from pine and hardwood to produce wood fiber. Wax is added to the fiber to give it water resistance and then asphalt slurry is added as a binder. A continuous ribbon of wet mat is formed and conveyed through a press to remove water. The mat is then cut and placed into the drier. Dried mats are then re-sawn to construction dimensions. Particulate emissions from the drier are emitted from two drier zone stacks and nine roof vents. The revised opacity limit applies to emissions from drier zone stack #1 and drier zone stack #2 only.

III. What Are the Provisions of the New Opacity Limit?

The new limit is contained in the consent agreement which states "GP shall not exceed 50% opacity from the Softboard drier zone stacks one and two except for one six-minute period in any one hour of not more than 60% opacity * * *" Although the language of the Commonwealth's consent order provides that the source may also have an exemption from the opacity limit during startup, shutdown and malfunction, the Commonwealth of Virginia has not included these provisions as part of its SIP revision request. Therefore, the portion of the text of Provision 1 of Section E of Consent Order No. 50253 which reads "* * * and during periods of start-up, shutdown and malfunction." are not being approved or incorporated into the Virginia SIP. GP must conduct quarterly visible emission evaluations of drier zone stacks #1 and #2. Stack tests must be performed on drier zone stacks #1 and #2 every two years. GP must provide stack tests results to VADEQ in addition to maintaining visible emission records.

IV. What Are the Current Limits on These Sources?

The drier zone stacks #1 and #2 are currently subject to Virginia Regulations 9 VAC 5–40–80 Standard for Visible Emissions which provides for visible emissions up to 20% opacity except for one six-minute period in any one hour of not more than 60% opacity. The mass

emission limit for the drier is found in 9 VAC 5–40–260. This regulation provides for a mass particulate limit based on the process weight rate which varies depending on how much softboard is being processed.

V. What Supporting Material Did Virginia Provide?

Virginia provided information on emissions from the drier vents and the stacks along with opacity readings. Stack testing and visible emissions readings were performed in July 1997 and September 1997. Stack test data indicates that the drier is within its allowable emission limit while visible emissions data indicates that one of the drier zone stacks is out of compliance with the 20% opacity limit. The average opacity observed during July testing was 38% with some individual 15 second readings as high as 55%. The average opacity during the September testing was 50%.

VI. What Are the Environmental Effects of This Action?

The revised opacity limit will allow darker smoke to be emitted from specific stacks at the facility, then does the current SIP. No mass emission limits are being revised and the revised opacity limit is protective of the existing mass emission limit.

VII. Special Provisions Pertaining to Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties asserting either the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

VIII. EPA Rulemaking Action

We are approving, through direct final rulemaking, Consent Order No. 50253, except as noted above, submitted by the Commonwealth of Virginia as a SIP revision on February 3, 1999. The revision consists of a revised opacity limit for drier zone stack #1 and #2 located at the Georgia-Pacific softboard facility in Jarratt, VA.

We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 18, 2000 without further notice unless we receive adverse comment by August 18, 2000. Should we receive such comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

IX. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will

not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability that only effects the Georgia-Pacific Corporation Softboard plant located in Jarratt, VA.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action related to the Georgia-Pacific Corporation Softboard plant located in Jarratt, VA may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (d) is amended by adding an entry for "Georgia-Pacific Corporation—Jarratt Softboard Plant" to the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source Name	Permit/order or registration No.	State effective date	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
Georgia-Pacific Corporation—Jarratt Softboard Plant.	Registration No. 50253	September 28, 1998	[Insert 7/19/2000 and page cite].	In Section E, Provision 1, the portion of the text which reads "* * * and during periods of start-up, shutdown, and malfunction." is not part of the SIP.

[FR Doc. 00–18105 Filed 7–18–00; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX NO. MD097–3050a; FRL–6735–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised 15% Plan for the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is converting its conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland to a full approval. This revision satisfies the 15 percent reasonable further progress implementation plan (15% plan) requirements of the Clean Air Act (the Act) for Maryland's portion of the Metropolitan Washington, DC ozone nonattainment area (the Washington, DC area). EPA is converting its conditional approval to a full approval because the State has fulfilled the conditions listed in the conditional approval of the original 15% plan for the Maryland portion of the Washington, DC area. The intended effect of this action is to covert our conditional approval of the 15% plan submitted by the State of Maryland to a full approval.

DATES: This direct final rule is effective on September 18, 2000 without further notice, unless EPA receives adverse comment by August 18, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency—Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov. Please note that while questions may be submitted via e-mail, comments on the rulemaking action must be submitted, in writing, to the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

On May 5, 1998 the Maryland Department of the Environment (MDE) submitted a revision to its SIP for the Washington, DC area. The revision consists of an amended plan to achieve a 15% reduction from 1990 base year levels in volatile organic compound (VOC) emissions. Maryland's original 15% plan for the Maryland portion of the Washington, DC area was conditionally approved on September 23, 1997 (62 FR 49611). Maryland's revisions to its 15% plan were made to satisfy the conditions imposed in the September 23, 1997 conditional approval.

The Washington, DC ozone nonattainment area consists of the District of Columbia, five counties in Northern Virginia and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland.

Virginia, Maryland and the District all must demonstrate reasonable further progress for the Washington, DC nonattainment area. The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated 15% plan for the entire Washington, DC area (regional 15% plan). This was done under the auspices of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and with the assistance of the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning. Although the plan was developed by a regional approach, each jurisdiction is required to submit the 15% plan to EPA for approval as a revision to its SIP.

Because the reasonable further progress requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been heavily involved in air quality planning in the Washington, DC area. As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required under the reasonable further progress requirement in the entire Washington, DC area. Maryland, Virginia and the District agreed to apportion this total amount of required creditable reductions among the three jurisdictions. EPA is taking action today only on Maryland's revised 15% plan submittal for the Washington, DC area. This rulemaking is being taken to convert the September 23, 1997 conditional approval of Maryland's 15% plan for the Washington, DC area to a full approval based upon EPA's determination that Maryland has fulfilled the conditions imposed in the conditional approval.

A. Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source categories: stationary point, area, on-road mobile sources, and off-road mobile sources. The base year inventory includes emissions of all sources within the nonattainment area and certain large point sources within twenty-five miles of the boundary. A subset of the 1990 base year inventory is the 1990 rate-of-progress (ROP) inventory which includes only anthropogenic (man-made) emissions actually within the nonattainment area boundaries. EPA approved this base year inventory SIP revision for the entire Washington, DC area on July 8, 1998 (63 FR 36854).

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% reasonable further progress requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in VOC emissions, in addition to a 15% reduction of VOC emissions. For a detailed description of the growth methodologies used by the State, please refer to EPA's conditional

approval of Maryland's 15% plan (62 FR 49611, September 23, 1997) and the Technical Support Document (TSD) for that action.

The one area of concern relating to growth projections in the original 15% plan was that of the point source inventory. Condition 1 of the September 23, 1997 (62 FR 49611) conditional approval required that Maryland revise its plan to properly account for growth in point sources between 1990 and 1996. EPA's analysis of the revised 15% plan supports removal of this condition, since Maryland used the appropriate methodology in reappraising its point source inventory growth between 1990 and 1996.

EPA here notes that the revised 15% plan has a point source inventory number that differs from Maryland's SIP approved inventory—5.3 tons per day (tpd) in the revised 15% plan submittal versus 5.5 tpd in the approved inventory. EPA is not revising the SIP approved inventory by this action. The 5.3 tpd number is acceptable for use in the revised 15% plan, since the discrepancy serves to lower the 15% plan's target level, thus making the plan's VOC reductions more restrictive than required if one were to use the approved inventory numbers. EPA is approving the State of Maryland's 1990–1996 emissions growth projections in this revised 15% plan.

C. Enhanced Vehicle Inspection and Maintenance (I/M) Program

Condition 2 of EPA's conditional approval of the original 15% plan required Maryland to meet the conditions EPA imposed in its October 31, 1996 conditional approval of Maryland's enhanced motor vehicle inspection and maintenance (I/M) program. Maryland was also required to remodel the I/M benefits claimed in the 15% plan using the following two EPA guidance memoranda: "Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation," from John Seitz and Margo Oge dated August 13, 1996, and "Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance," from Gay MacGregor and Sally Shaver dated December 23, 1996.

Maryland has remedied condition 2 imposed on its original 15% plan. On October 29, 1999 (64 FR 58340), EPA published a direct final rule converting its October 31, 1996 conditional approval of the Maryland Enhanced I/M SIP revision to a full approval. This was done because EPA determined that all of the conditions of the October 31, 1996 conditional approval of the enhanced I/M SIP had been satisfied by the State of Maryland. Further, EPA has determined that Maryland has appropriately remodeled the I/M benefits of the program, and that there are no adverse affects on the 15% plan due to this remodeling.

D. Target Level Emissions/Emission Reductions Needs

As part of the conditional approval of its original 15% plan, Maryland was required to remodel to determine affirmatively the creditable reductions from reformulated gasoline (RFG) and the Tier 1 FMVCP in accordance with EPA guidance. Maryland was required to remodel the benefits of enhanced I/M, RFG and Tier 1 under the revised plan. This remodeling demonstration was to compare the mobile source target level in 1999 versus the target level for mobile sources which was created for the original plan.

EPA concurs with the remodeling demonstration submitted as part of the revised 15% plan, and with the revised mobile source target level calculation. Maryland's portion of the corrected target level is 178.6 tpd.

The regional 15% plan calculates a target level of emissions to meet the 15% reasonable further progress requirement over the entire nonattainment area. The regional 15% plan contains a projection of emissions growth from 1990 to 1996 and, in effect, apportions among Maryland, Virginia and the District of Columbia (the three jurisdictions) the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOC emissions net of growth. Each jurisdiction then adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get a 15% reduction accounting for any growth. The regional plan calculated the "target level" of 1996 VOC emissions, in accordance with applicable EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions in VOC emissions that would have occurred from the pre-1990 FMVCP and RVP programs. To meet EPA's applicable guidance on this requirement, the regional plan contains a calculation of the reductions occurring between 1990 and 1996 from the pre-1990 Tier 0 FMVCP and RVP programs and the result of subtracting these reductions from the 1990 ROP inventory. The net result of this calculation yielded the "1990 base year inventory adjusted to 1996".

Maryland's 15% plan relies upon reductions from Maryland's revised, enhanced I/M program to achieve the required 15% level as soon after November 15, 1996 as practicable, but not later than 1999. Under EPA's applicable guidance for 15% plans that rely upon reductions from enhanced I/M after 1996, the target level must also take into account the effects of the pre-1990 Tier 0 FMVCP on 1990 emissions due to turnover in vehicles between 1996 and 1999. Therefore, to meet EPA's applicable guidance for this requirement, Maryland's 15% plan contains a calculation of the non-creditable reductions from the pre-1990 Tier 0 FMVCP and RVP programs between 1990 and 1999 and the result of subtracting these reductions from the 1990 ROP inventory. The result of this calculation yielded the "1990 base year inventory adjusted to 1999." Maryland's 15% plan clearly identifies the difference between the "1990 base year inventory adjusted to 1996" and "1990 base year inventory adjusted to 1999" as the "fleet turnover correction" (FTC) necessary to meet EPA's guidance.

In its plan, Maryland calculates a "base" 1996 VOC target level as 85% of the "1990 adjusted base year inventory for 1996." In accordance with EPA's guidance discussed in the preceding paragraph, Maryland subtracts the FTC from the "base" 1996 VOC target level to yield a "final" 1996 VOC target level for the 15% plan. In Table 1 below, we have provided a summary of the calculations for the 1996 VOC target level for the entire Washington, DC area.

Metropolitan Washington, DC Nonattainment Area Target Level Calculation

TABLE 1.—REQUIRED REDUCTIONS FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA 15% PLAN

[Tons/day]

	Item	District of Columbia	Maryland	Virginia	Washington DC area totals
1	1990 ROP Inventory	60.3	241.7	226.5	528.5
2	1990 Adjusted Base Year Inventory adjusted to 1996	51.2	215.1	196.8	463.1
3	1990 Adjusted Base Year Inventory adjusted to 1999	49.9	210.9	193.3	454.1
4	FTC Adjustment (Line 2 minus Line 3)	1.3	4.2	3.5	9.0
5	Base 1996 target Level = 85% of Line 2 (0.85 × Line 2)	43.5	182.8	167.3	393.6
6	Final 1996 Regional Target Level (Line 5 minus Line 4)	42.2	178.6	163.8	384.6
7	Projected 1996 Uncontrolled Emissions	48.5	234.7	219.4	502.4
8	Required Regional Emission Reductions (Line 8 minus Line 7)*				117.8
9	Apportioned State Emission Reductions*	8.5	57.5	51.7	117.7
10	Total Reductions Claimed in Maryland's15% Plan		61.9		

*The small discrepancy between values is due to rounding the apportioned emission reductions to the nearest tenth.

The emission reductions required to meet the 15% reasonable further progress requirement equals the difference between the projected 1996 emissions under the current control strategy (the 1996 uncontrolled emissions) and the target level. This amount of emission reductions reflects a 15% reduction from the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996. The Washington, DC area's regional VOC target level is 384.8 tpd. EPA has determined that this regional target level and emission reduction needed for the Washington, DC area have been properly calculated in accordance with EPA guidance.

The three Washington, DC area jurisdictions have agreed to apportion the amount of emisson reductions needed for the entire area to achieve the 15% reduction among themselves. This apportionment is also shown in Table 1 above. Maryland's share is 57.5 tpd.

E. Reasonable Further Progress

The final condition for full approval of the 15 % plan was for Maryland to demonstrate, using appropriate documentation methodologies and credit calculations, that it had satisfied the 15 % plan requirement for the Washington, DC area. As part of the revised 15% plan, recalculations to the inventory, target level and 15 % reduction amounts were adjusted. Under the new plan, Maryland's portion of the 15% plan requirement increased from 56.4 tpd to 57.5 tpd.

EPA agrees with the credit calculation methodology used in the revised plan to justify this number. As demonstrated in Chapter 5 of the revised plan SIP submittal, appropriate assumptions and calculation methodologies were employed, as per EPA guidance, in calculating the new figures. EPA therefore concurs that Maryland must achieve at least 57.5 tpd in creditable emission reductions to demonstrate that Maryland has met its 15% VOC reduction requirement for the Washington, DC area.

EPA believes that Maryland's revised plan has made all the necessary corrections to establish the creditability of sufficient control measures to met the 15% VOC reduction requirement. Maryland has demonstrated there are sufficient creditable measures in the revised 15% plan to achieve at least 60.1 tpd of reductions. This 60.1 tpd reduction results from either rules promulgated by EPA or measures contained in the approved Maryland SIP.

Table 2 below summarizes the creditable measures from Maryland's 15% plan for the Washington, DC area.

TABLE 2.—CREDITABLE REDUCTIONS IN MARYLAND'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA

[Tons VOC per day]

Creditable reductions	
Enhanced Inspection and Maintenance	19.0
Tier 1 FMVCP	6.3
Phase II Gasoline Volatility Controls	0.1
Stage II Recovery Nozzles	7.9
Reformulated Gasoline:	
On-Road	4.1
Off-Road	1.0
Auto Refinishing	3.8
AIM—Reformulated Surface Coating	7.6
Reformulated Consumer/Commercial Products	2.1
Stage I Enhancement	0.9
Surface Cleaning and Degreasing	2.6
Graphic Arts	1.0
Seasonal Open Burning Ban	3.7

TABLE 2.—CREDITABLE REDUCTIONS IN MARYLAND'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA—Continued

[Tons VOC per day]

Creditable reductions	
Total Fully Creditable Reductions	60.1

F. Transportation Conformity Budgets

As is the case with any 15% plan, Maryland's 15% plan for the Washington, DC area contains a budget for VOC emissions from on-road mobile sources. By approving Maryland's 15% plan, EPA is granting a de facto approval of the budget in this plan. However, EPA wishes to clarify that the budget in Maryland's 15% plan will not be the applicable budget for any future conformity determinations because there are budgets for the Washington, DC area that apply in 1999 and all subsequent years. To verify which budgets apply in the Washington, DC area, please contact the EPA Regional office listed in the **ADDRESSES** section above or consult EPA's "Adequacy Review of SIP Submissions for Conformity" web page at http://www.epa.gov/oms/transp/conform/adequacy.htm.

EPA's review of this material indicates that Maryland's revised 15% plan SIP revision meets the requirements of the Act and applicable EPA guidance. EPA is therefore converting its conditional approval of Maryland's 15% plan to a full approval.

EPA is converting its conditional approval of Maryland 15% plan to a full approval by this rule without prior proposal because the Agency views this

as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to convert the conditional approval to a full approval should adverse or critical comments be filed. This rule will be effective September 18, 2000 without further notice unless the Agency receives adverse comments by August 18, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 18, 2000 and no further action will be taken on the proposed rule.

II. Final Action

EPA is converting its conditional approval of Maryland's 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area to a full approval based upon the evaluation of the SIP revision submittal made by Maryland on May 5, 1998 consisting of its revised 15% plan.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting EPA's conditional approval of Maryland's 15% plan for Metropolitan Washington, DC ozone nonattainment area to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1072(b) is removed and reserved.

§ 52.1072 Conditional approval.

(a) * * *

(b) [Reserved.]

3. Section 52.1076 is amended by revising the title and adding paragraph (d) to read as follows:

§ 52.1076 Control strategy and rate-of-progress plans: ozone.

* * * * *

(d) EPA approves the Maryland's 15 Percent Rate of Progress Plan for the Maryland portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by the Secretary of the

Maryland Department of the Environment on May 5, 1998.

[FR Doc. 00–18110 Filed 7–18–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301016; FRL–6593–9]

RIN 2070–AB78

Butyl Acrylate-Vinyl Acetate-Acrylic Acid Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of butyl acrylate-vinyl acetate-acrylic acid copolymer when used as an inert ingredient in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or to animals. Rohm and Haas submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of butyl acrylate-vinyl acetate-acrylic acid copolymer.

DATES: This regulation is effective July 19, 2000, Objections and requests for hearings, identified by docket control number OPP–301016, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301016 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Minor Use, Inerts and Emergency Response Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301016. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 16, 2000 (65 FR 14278) (FRL–6494–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Rohn and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5).

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, butyl acrylate-vinyl acetate-acrylic acid copolymer, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, butyl acrylate-vinyl acetate-acrylic acid copolymer, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 18,000 daltons is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, butyl acrylate-vinyl acetate-acrylic acid copolymer meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to butyl acrylate-vinyl acetate-acrylic acid copolymer.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that butyl acrylate-vinyl acetate-acrylic acid copolymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of butyl acrylate-vinyl acetate-acrylic acid copolymer is 18,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since butyl acrylate-vinyl acetate-acrylic acid copolymer conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since the Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to butyl acrylate-vinyl acetate-acrylic acid copolymer a tolerance is not necessary.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not butyl acrylate-vinyl acetate-acrylic acid copolymer share a common mechanism of toxicity with any other chemicals. However, butyl acrylate-vinyl acetate-acrylic acid copolymer conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of butyl acrylate-vinyl acetate-acrylic acid copolymer.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of butyl acrylate-vinyl acetate-acrylic acid copolymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that butyl acrylate-vinyl acetate-acrylic acid copolymer is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are no existing exemptions from a tolerance.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for butyl acrylate-vinyl acetate-acrylic acid copolymer nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting butyl acrylate-vinyl acetate-acrylic acid copolymer from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301016 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301016, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et*

seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 3, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c)* * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5), minimum number average molecular weight 18,000 daltons.	.....	Surfactants, related adjuvants of surfactants
* * * * * * *		

* * * * *

(e)* * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5), minimum number average molecular weight 18,000 daltons.	.....	Surfactants, related adjuvants or surfactants
* * * * * * *		

* * * * *

[FR Doc. 00–18095 Filed 7–18–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301020; FRL–6596–5]

RIN 2070–AB78

Pendimethalin; Re-establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for combined residues of the herbicide pendimethalin and its metabolites in or on fresh mint hay and mint oil at 0.1 part per million (ppm) and 5.0 ppm, respectively, for an additional 19–month period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on mint. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective July 19, 2000. Objections and requests for hearings, identified by docket control number OPP–301020, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301020 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9362; and e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301020. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of May 23, 1997 (62 FR 28355) (FRL–5718–5), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the combined residues of pendimethalin and its metabolites in or on fresh mint hay and mint oil at 0.1 ppm and 5.0 ppm, respectively, with an expiration date of May 31, 1998. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of pendimethalin on mint for this year's growing season due to the continued emergency situation for Idaho, Oregon, South Dakota, Utah, and Washington mint growers. Due to the potential spread of Verticillium wilt by tillage equipment, mechanical control of kochia and redroot pigweed is no longer considered a viable option. The continuous use of terbacil in past years has resulted in development of resistance to this chemical in kochia has resulted in development of resistance to this chemical in kochia and pigweed, resulting in inadequate control of this pest by registered alternatives. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of pendimethalin on mint for control of kochia and redroot pigweed in the states listed above.

EPA assessed the potential risks presented by residues of pendimethalin in or on mint commodities. In doing so,

EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 23, 1997 (62 FR 28355). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 19–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on fresh mint hay and mint oil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301020 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301020, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32) requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 5, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.361 [Amended]

2. In § 180.361, amend the table in paragraph (b) by revising the expiration/revocation date "5/31/00" to read "12/31/01" each place it occurs.

[FR Doc. 00–18094 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301012; FRL–6594–1]

RIN 2070–AB78

Azoxystrobin or Methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances forcombined residues of the fungicide azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- and its metabolites in or on strawberries at 10.0 parts per million (ppm), soybean forage at 0.2 ppm, soybean hay at 1.0 ppm, soybean hulls at 2.0 ppm, soybean meal at 0.3 ppm, soybean oil at 2.0 ppm, soybean seed at 0.1 ppm, soybean silage at 2.0 ppm, and sugar beet roots at 0.05 ppm, sugar beet, molasses at 0.70 ppm, and sugar beet, pulp, dried at 1.0 ppm, and sugar beet refined sugar at 0.70 ppm for an additional 18 month period. These tolerances will expire and are revoked on December 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries, soybeans, and sugar beets. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemptionfrom the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective July 19, 2000. Objections and requests for hearings, identified by docket control number OPP–301012, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301012 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jackie Mosby-Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6792; and e-mail address: gwaltney.jackie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICScodes	Examples of potentially affectedentities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register-Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301012. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** ofJanuary 29, 1999 (64 FR 4572) (FRL–6050–6), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]–3- and its metabolites inor on strawberries at 10.0 ppm, soybean forage at 0.2 ppm, soybean hay at1.0 ppm, soybean hulls at 2.0 ppm, soybean meal at 0.3 ppm, soybean oil at 2.0 ppm, soybean seed at 0.1 ppm, soybean silage at 2.0 ppm, and sugar beet roots at 0.05 ppm, sugar beet, molasses at 0.70 ppm, and sugar beet, pulp, dried at 1.0 ppm, and sugar beet refined sugar at 0.70 ppm with an expiration date of December 30, 2001. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues infood that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- on strawberries for this year's growing season because the Florida Department of Agriculture and Consumer Services requested an emergency exemption on September 28, 1998, for the control of anthracnose on strawberries. Anthracnose adversely affect the plants in a variety of ways. It can cause plant losses (crown rot, root rot, anthracnose of the stolon and petiole, but rot, and leaf spots) and fruit losses (anthracnose fruit rot and flower blight). There are several fungicides currently labeled for use on Florida grown strawberries. These include:Ridomil, Rovral, Captan, Sulfur, Aliette, Copper, Benlate, and Topsin. Of all these products, only two have demonstrated efficacy toward anthracnose: Benlalte and Captan. An experiment conducted by the University of Florida demonstrates the lack of efficacy of both products last season. Thus, both products have only limited utility against anthracnose.

The two factors that have brought about this emergency condition include variety shift and lack of efficacy of previously effective fungicides. No single variety has all the desirable characteristics. Among these desirable characteristics important to Florida growers are: season-long production, early and late production, disease resistance, insect and mite resistance, etc. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- on strawberries for control of anthracnose disease in strawberries.

EPA also received requests to extend the use of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- on soybean, and sugar beets for this year's growing season because the Minnesota Department of Agriculture requested an emergency exemption in April of 1998, for the control of cercospora leafspots on sugar beets. The registered alternative fungicides benomyl, thiabendazole thiophanate methyl, triphenyltin hydroxide, EBDCs (Mancozeb and Meneb), and copper hydroxide for controlling cercospora leaf spots do not control the disease effectively because of resistance and/ortolerance in the pathogen. Moderately resistant cultivars of sugar beet are available, but their yield potentials are lower than the susceptible. Cultural practices are not very effective in managing the disease. During 1998, the disease severity is expected to be higher and yield losses significant due to mild winter temperature (El Nino effects).

Minnesota also claims that triphenyl tin hydroxide (TPTH) is still used in controlling the disease, but it is significantly less effective than in the past.

In August 1998, the Arkansas Department of Agriculture also requested anemergency exemption for the control of aerial blight on soybeans. The disease is particularly aggressive in years of above-normal night temperatures, high humidity, and

frequent rainfall. Conditions in 1998, have been near perfect for development of sheath blight of rice, with night temperatures in the 78–82 range and oppressively high relative humidity within crop canopies. Rainfall in northeast Arkansas has also contributed to theproblem. Soybean has just entered the most susceptible flowering and early pod formation stages and aerial blight has become exceptionally aggressive as weather conditions continue to favor its development. Damage to soybean yield is through destruction of foliage, and to a greater extent-flowers, pods and seeds. Yield losses in some Arkansas field in the past have been estimated as high as 50%, however, this is a very rare occurrence most years.

EPA assessed the potential risks presented by residues of azoxystrobin ormethyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- in or on strawberries,soybeans, and sugar beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of January 29, 1999 (64 FR 4572) for strawberries, and November 25, 1998 (63 FR 65078) (FRL–6045–4) for soybeans, and sugar beets. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries, soybeans, and sugar beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301012 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301012, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited exemption from the tolerance requirement under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.507 [Amended]

2. In § 180.507, by amending the table in paragraph (b), by revising the expiration/revocation date for the following commodities: "Strawberries" from "7/30/00" to read "12/30/01" and "Soybean forage," "Soybean hay," "Soybean hulls," "Soybean meal," "Soybean oil," "Soybean seed," "Soybean silage," "Sugar beet roots," "Sugar beet tops," "Sugar beets molasses", "Sugar beet, pulp, dried" and "Sugar beet, refined sugar" from "6/30/00" to read "12/30/01".

[FR Doc. 00–18096 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 54

[CC Docket No. 98–121, FCC 00–173]

Applications of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana .

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies to reconsider the Commission's Second BellSouth Louisiana Order with respect to the issues on which reconsideration is sought, no petitioner raises arguments that would cause us to change our decision to deny BellSouth's application to provide long distance service in the state of Louisiana.

DATES: Effective July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Janice M. Myles, Paralegal Specialist; Johanna Mikes; and/or Ann Stevens, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration adopted May 15, 2000, and released June 19, 2000. The full text of this Order is available for inspection and copying during normal business

hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc00–173.wp, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street NW, Washington, DC 20036.

Regulatory Flexibility Certification

In this present Order, the Commission promulgates no additional final rules, and our action does not affect the previous analysis.

Synopsis of Order on Reconsideration

1. BellSouth Corporation (BellSouth), AT&T Corp. (AT&T), and Sprint Communications Company (Sprint) filed petitions for reconsideration and/or clarification of the Commission's order denying BellSouth's application for authority to provide in-region, interLATA services in the state of Louisiana pursuant to section 271 of the Communications Act of 1934, as amended (Act). For the reasons discussed below, we deny these petitions.

2. With respect to the issues on which reconsideration is sought, no petitioner raises arguments that would cause us to change our decision to deny BellSouth's application to provide long distance service in the state of Louisiana. Section 271's statutory framework requires the Commission to evaluate complex issues arising in the relevant state's local telecommunications market as it transitions to competitive market conditions. In this context, the Commission frequently relies upon its specialized judgment and expertise to render informed decisions and predictions about market conditions. Having done so in this case, the Commission finds that the petitioners have not raised any new facts or arguments that warrant reconsideration of the Second BellSouth Louisiana Order. Therefore, there is no reason to reconsider our initial analysis.

3. As to the range of issues for which the petitioners seek further guidance for future section 271 applications, we believe that we have provided sufficient guidance on the requirements of section 271. The Second BellSouth Louisiana Order followed four prior orders addressing section 271 applications, including a prior application by BellSouth for Louisiana. Each of these orders informed parties of the requirements of section 271. Moreover, the Commission recently approved Bell Atlantic's section 271 application to provide long distance services in New York. In the order approving that application, the Commission included a comprehensive recitation of the requirements for in-region, interLATA entry under section 271.

4. The petitions for reconsideration and/or clarification filed in the captioned docket *are Denied.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18187 Filed 7–18–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 071400B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Central Regulatory Area was established as 9,240 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,240 mt, and is setting aside the remaining 1000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18257 Filed 7–14–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 071400D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 14, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the West Yakutat District was established as 840 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 790 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18258 Filed 7–14–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 071400C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Central Aleutian District was established as 3,247 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,947 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18259 Filed 7–14–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0182–03–03; I.D. 121099C, 011100D]

RIN 0648–AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rules to Implement Major Provisions of the American Fisheries Act; Extension of Expiration Dates; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rules; correction.

SUMMARY: This document corrects Table 1 of the extension of expiration dates for the emergency interim rules to implement major provisions of the American Fisheries Act, which in part revises 2000 final harvest specifications.

DATES: The correction for the interim final rule published January 28, 2000, (65 FR 4520) is effective July 20, 2000, through January 16, 2091.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: This document contains corrections to the interim final rule for the extension of the expiration dates of emergency interim rules to implement the American Fisheries Act. The extension of the effective date of an interim final rule provides inshore pollock cooperatives with allocations of pollock for the second half of the 2000 fishing year and maintains sideboard restrictions to protect participants in other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

Correction

In the interim final rule, Fisheries of the Exclusive Economic Zone Off Alaska, Emergency Interim Rules to Implement the American Fisheries Act: Extension of Expiration Dates, published on June 23, 2000 (65 FR 39107), FR Doc. 00–15857, corrections are made as follows:

1. In the document, Emergency Interim Rules to Implement the American Fisheries Act: Extension of Expiration Dates, published on June 23, 2000 (65 FR 39107), FR DOC 00–15857, on page 39109, mathematical errors were made in Table 1. Table 1 is corrected to read as follows:

* * * * *

TABLE 1.—FINAL C/D SEASON BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY. AMOUNTS ARE EXPRESSED IN METRIC TONS

	C/D season TAC	C season inside SCA [1]	D season inside SCA
Cooperative sector			
Vessels > 99 ft	n/a	n/a	53,502
Vessels ≤ 99 ft	n/a	n/a	8,192
Total	274,200	37,016	61,695
Open access sector	17,953	2,424	4,039 [2]
Total inshore	292,153	39,440	65,734

[1] Steller sea lion conservation area established at § 679.22(a)(11)(iv).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)(iv)(D)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A, B and D seasons to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

* * * * *

Dated: July 13, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18260 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 139
Wednesday, July 19, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Dive Sticks; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a rule to ban certain dive sticks under the authority of the Federal Hazardous Substances Act. Dive sticks are used for underwater activities, such as retrieval games and swimming instruction. They are typically made of rigid plastic and stand upright at the bottom of a swimming pool. Due to these characteristics, if a child jumps onto a dive stick in shallow water he or she may suffer severe injuries.

DATES: Written comments in response to this notice must be received by October 2, 2000.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "NPR for DiveSticks."

FOR FURTHER INFORMATION CONTACT: Scott R. Heh, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1308.

SUPPLEMENTARY INFORMATION:

A. Background

As of October 1999, the Commission is aware of eight confirmed impalement incidents involving dive sticks that were submerged and standing vertically. These incidents resulted in injuries to the perineal region of young children. The products were cylindrical batons, approximately 7⅞ to 8⅝ inches long and ⅞ to one inch in diameter. They were all constructed of rigid plastic.

In early 1999, when the Commission staff first learned of incidents involving dive sticks, the staff worked with product manufacturers to recall hazardous dive sticks. On June 24, 1999, the Commission announced that it had reached agreements with 15 manufacturers and importers to voluntarily recall their dive sticks. The recalls have removed most dive sticks from the market.[1][1] However, because the hazard posed by dive sticks appeared to be inherent to the product and not related to any specific model or manufacturer, the Commission began a proceeding to ban all dive sticks with hazardous characteristics.

On July 16, 1999, the Commission issued an advance notice of proposed rulemaking ("ANPR") announcing the Commission's intent to issue a rule addressing the risk of injury presented by dive sticks. 64 FR 38387 (1999). One alternative discussed in the ANPR was a rule declaring certain dive sticks to be banned hazardous substances. The Commission received one comment on the ANPR from the Department of Fair Trading, New South Wales ("NSW"), Australia. Although the NSW Department of Fair Trading states that it is unaware of any similar incidents in Australia, NSW is taking certain steps to protect against such injuries occurring, including issuing a design guide requiring that underwater toys be designed to reduce the hazard of impalement.[3]

B. Statutory Authority

This proceeding is conducted pursuant to the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury or illness "(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)–(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding began with an ANPR. 64 FR 38387 (1999). After considering the comment submitted in response to the ANPR, the Commission is now issuing a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. The Commission will then consider the comments received in response to the proposed rule and decide whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i)(1). Before the Commission can issue a final rule it must find (1) if an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* 1261(i)(2).

C. The Product

Dive sticks are used in swimming pools for underwater retrieval activities, such as retrieval games and swimming instruction. They are made of rigid plastic. They are often cylindrical in shape, typically ten inches or less in length with a diameter one inch or less, but some have novelty shapes such as shark silhouettes. They are or can be weighted so that when dropped into water they sink and stand upright on the bottom. Dive sticks are sold under a variety of names such as dive sticks,

[1] Numbers in brackets refer to documents listed at the end of this notice.

diving sticks, fish sticks, sticks, and batons. The Commission believes that the characteristics most important to creating the risk of impalement injury are that dive sticks (1) are rigid, (2) submerge and come to rest at the bottom of a pool of water, and (3) stand upright once submerged. [5]

Before the June 1999 recalls, dive sticks were usually sold in sets of 3 to 6 sticks. They were often sold as part of a package that contained other toys, such as dive disks, eggs, and rings (*e.g.*, a package may include 3 dive sticks, 3 dive rings, and 3 dive disks). Retail prices usually ranged from $4 to $7 per set or about $1 per individual stick. Retail prices were almost always less than $10, even when sold with other products such as disks, rings, and snorkels. [8]

An estimated 4 to 5 million dive sticks were sold in both 1997 and 1998. Altogether, about 20 million dive sticks have been sold since 1990. Sales of dive sticks increased substantially during the 1990's. About 1 million households may have owned dive sticks during any given year. [8]

In 1997, retail sales of water/pool/sand toys exceeded $450 million. Since dive sticks retail for approximately $1 per stick, dive sticks likely made up less than 1.0 percent of retail sales in this category. Before the June 1999 recalls, the CPSC staff identified at least 15 firms that manufactured or imported dive sticks into the United States. Most of the importers obtained their products from China, Hong Kong, or Taiwan. Since the product is inexpensive and simple to manufacture, it is relatively easy for firms to enter or leave the dive stick market. Therefore, firms that have not supplied dive sticks in the past, and were not part of the June 1999 recalls, could begin or renew producing or supplying dive sticks. [8]

D. The Risk of Injury

1. *Description of Injury.* Impalement injuries have occurred when a child accidently fell or jumped buttocks-first into shallow water and landed on a dive stick. Serious rectal or vaginal injuries can result. Less serious injuries such as facial and eye injuries are also possible when a child attempts to retrieve a dive stick under the water. [2]

Falls on vertical objects may result in traumatic injuries to the perineum. The severity of injuries depends on the degree of penetration by the object. This in turn is dependent on the force of impact and the physical properties of the dive stick (size and surface characteristics). The injuries could range from laceration of the rectum and sphincter, to puncture wounds and tears of the colon. High impact forces may also cause injuries to the vulva, vaginal canal, and blood vessels beneath the perineal skin in females. In males, such impacts may cause perforation injuries to the genitalia, urethra, ureter and bladder. All these types of perforation and impalement injuries in males and females require hospitalization and surgery.

Because of the nature of the area, the main complication after perineum injuries is lesion infection, which may lead to abscess and possible sepsis in extreme cases. To avoid subsequent septic complications, surgery may be necessary. Perineal injuries (with or without rectal injury) often require fecal diversion (proximal colostomy), wound drainage, and the use of a broad-spectrum antibiotic in pre- and post-operative stages. The damage caused by deep penetration into the rectal or vaginal area may have devastating effects on a child's health. In addition to long-term physiological effects, these types of injuries have the potential to cause long-lasting emotional trauma.

2. *Impalement Injury data.* As of October 1999, the Commission is aware of eight confirmed impalement injuries involving submerged vertically-standing dive sticks, including three since the Commission issued its ANPR. All the victims were children ranging in age from five to nine years old. [2]

Four females (ages 7 to 9) sustained injuries when the dive stick penetrated the vagina. One male (age 7) and two females (ages 5 and 6) suffered injuries when the dive stick penetrated the rectum. In the remaining incident, a seven year-old female received external lacerations around the rectum after landing on a dive stick. Medical attention was sought after each incident, and five of the injuries required surgery to address multiple internal and external injuries. [2]

These eight incidents involved vertical-standing dive sticks. The products were cylindrical batons, approximately 7 7/8 to 8 5/8 inches long and 7/8 to one inch in diameter.[2] One of the dive sticks was white in color, another was blue; the colors of the remaining dive sticks are unknown. In one incident, it was reported that the victim could not see the dive stick because of the white color and the faded blue numbers. [2]

The victims in seven of these eight confirmed incidents were injured while playing in shallow depths of water. Of these, four occurred in small wading pools with water levels between 12 and 24 inches. Of the remaining three incidents, one occurred in a spa with unknown water depth, one occurred in a pool measuring three feet in height with approximately 27 inches of water, and the final incident occurred in a bathtub with approximately 6 inches of water. The eighth incident reportedly took place in a pool; however, neither the type of pool nor the water depth is known.[3] [2]

The July ANPR provided summaries of impalement incidents reported at that time. Below are summaries of the impalement injuries reported since the ANPR was published.

a. June 9, 1999—The five year-old female victim was playing in an inflatable wading pool. The victim was jumping up and down in the pool when she slipped and fell directly on top of one of four vertically standing dive sticks in the pool. The victim was impaled rectally by the dive stick. She was hospitalized overnight for observation. She was treated for an anal tear and an internal laceration to her rectum.

b. April 1999—The seven year-old female was taking a bath under the supervision of her mother. The dive stick was in the bathtub, standing vertically in the water. The child stood up to lather her legs, sat back down to rinse off and sat on a dive stick which went into her vagina. The victim was hospitalized overnight and underwent surgery for vaginal lacerations. Long term prognosis was unavailable. [2]

3. *Non-impalement injury data.* In addition to genital and rectal injuries, the Commission received reports of four injuries to other body parts that occurred when the victim submerged onto the vertical-standing dive stick. The injuries occurred when the children attempted to retrieve the dive sticks from the bottom of the pool. A female victim, age 6, received a facial laceration when she stuck her face in the water and contacted the product. One boy, age 8, dived head first into the pool and hit his forehead on the product. The third victim, a 7 year-old male, jumped into the pool feet first and punctured his foot on the sharp edge of the dive stick after it broke from the initial contact. The fourth victim, a 9 year-old male, lacerated his back on the sharp edge of a dive stick when he dived into the pool to retrieve the product. [2]

The Commission has also received reports of six incidents of victims struck by a thrown dive stick. Three of the

[2] Two incident reports approximated the length between 6 and 8 inches; however, the products were not available for measurement.

[3] A ninth unconfirmed incident was reported to CPSC, but many details of the incident remain unclear.

injuries were facial lacerations, two resulted in an eye injury and one child broke a tooth. Two other children were reportedly injured when they fell while carrying dive sticks. [2]

E. The Proposed Ban

The Commission is proposing to ban dive sticks with certain hazardous characteristics. Although voluntary recalls have removed most, if not all, of these products from the market for the present time, the Commission is concerned that, without a rule banning them, they could reappear on the market.

The proposed rule would ban dive sticks that (1) are rigid, (2) submerge to the bottom of a pool of water, and (3) stand upright in water. After considering the reported impalement injuries, the Commission believes that these are the essential characteristics that create the impalement hazard. Dive sticks and similar articles that do not have these characteristics, as well as dive rings and dive discs, would still be allowed.

All dive stick impalement incidents and other rectal or vaginal impalement cases reported in the medical literature involved objects that were rigid. The staff is not aware of any impalement injuries to the perineum that involved a flexible object. In order to prevent serious injuries, the dive stick should be of sufficient flexibility that it would bend to a degree that prevents penetration when impact occurs with the perineal area. The staff developed a test to distinguish dive sticks that are sufficiently flexible so as to effectively limit the potential for serious impalement injury.

The Commission believes that it is appropriate to base a rigidity test on a fraction of the weight of a child who is first beginning to walk. Although the youngest child involved in a reported impalement incident was five years old, if a child can walk independently it is possible that he or she might be playing in a shallow body of water and fall onto a dive stick in the same manner that occurred in the impalement incidents. Children begin to walk on their own at about 11½ months. Therefore, the test uses the weight of a 10 to 12 month-old child. The weight of a 5th percentile 10 to 12 month-old child is 16.5 pounds (7.5 kg). The Commission believes that a failure criterion of 5-lbf (approximately ⅓ of the weight of a 10 to 12 month-old child) will provide a margin of safety to effectively limit the potential for a serious impalement injury.

The proposed performance test applies a gradual compression load to the top of the dive stick for a period of 40 seconds. If the force reaches 5 lbf the dive stick is too rigid and fails the test. The Commission is aware that some manufacturers are developing dive sticks that are constructed of flexible material that would pass this test. The Commission believes that such flexible articles would not pose an impalement hazard. [5, 7]

All confirmed impalement injuries occurred with dive sticks that had submerged to the bottom of a pool of water. It is unlikely that a child falling onto a dive stick floating on the water would suffer impalement. A floating dive stick is likely to move away before the child's body strikes the bottom of the pool. [3, 6]

The vertical orientation of a submerged dive stick is a key factor in these impalement incidents. The Commission's Human Factors staff examined the reported incidents and concluded that when force is applied in line with the long axis of the dive sticks (as it is when a child lands on it in a vertical position), the sticks do not move. "Because the stick is braced against the floor, the impact causes a relatively rapid deceleration of the body part which is struck, with the force of the impact concentrated on the small area at the end of the stick." The Human Factors staff believes that the potential for impalement injury declines as the angle of impact moves away from the vertical. However, the orientation of a child landing on a stick is variable, and impact at precisely the wrong angle may reorient the stick perpendicular to the bottom surface. Thus, slight deviations of the stick's position from vertical may not be adequate to avoid impalement. If the angle of the stick is sufficiently away from vertical, both impact in line with the axis and impact at an angle to the axis would tend to move the stick and limit the possibility of impalement. The Commission believes that a position at least 45 degrees from vertical would provide a sufficient safety margin to effectively limit the potential for impalement injuries. [3, 6]

F. Alternatives

The Commission has considered other alternatives to reduce the risk of impalement injury related to dive sticks. However, as discussed below, the Commission does not believe at this point that any of these would adequately reduce the risk of injury.

Voluntary Recalls. Before beginning this proceeding the Commission negotiated voluntary recalls with many companies that manufactured or imported dive sticks, and many other firms voluntarily removed their dive sticks from the market. One alternative to the banning rule is for the Commission to continue pursuing recalls on a case-by-case basis. However, it appears that the impalement hazard is present in all dive sticks that have the hazardous characteristics the staff has identified. The hazard is not limited to one particular model or brand. Therefore, a rule banning all dive sticks with the identified characteristics is more efficient. While the recalls have removed hazardous dive sticks from the market for now, proceeding with future recalls in the absence of a banning rule would allow hazardous dive sticks to return to the market until the Commission had a chance to act on the new dive sticks. [8]

Voluntary Standard. Currently, there is no applicable voluntary standard, nor was one submitted in response to the ANPR. Moreover, because dive sticks are relatively inexpensive and easy to manufacture, compliance with a voluntary standard may be low.[8]

Labeling. One alternative to a banning rule would be to require cautionary labeling for dive sticks. Most dive sticks carry some warnings regarding small parts (in reference to the end caps); use only under the supervision of a competent swimmer, and/or against diving in shallow water. In order for a label warning of the impalement hazard to be fully effective, consumers must notice, read, and understand it, then comply with it 100% of the time. People are less likely to comply with a warning if the connection between the product and the injury potential is not clear, if they cannot imagine what the injury is, or if they do not fully understand how to avoid the hazard. As the impalement hazard presented by dive sticks is not apparent, the label would have to convey clearly that severe rectal or genital injuries can result if children jump into the water and land on the sticks. Further, a "safe" water depth would have to be identified to give consumers adequate information on which to base their purchasing decision. A label that meets these criteria could have a significant impact at the point of purchase, but would need to be reinforced with an on-product warning. It would be difficult, however, to develop a label that is highly noticeable and easy to read because of the small and typically curved surface area of the dive stick. Moreover, a label may not last the life of the product because it is used in water. In contrast, the effectiveness of banning hazardous dive sticks is not in question, because the impalement hazard would be minimized or eliminated.[3,8]

Change in Scope. A final alternative considered was to modify the scope of the rule so that it would apply only to pre-weighted dive sticks. However, it is easy to add weight to certain unweighted dive sticks with water, sand or similar materials so that they too can stand vertically at the bottom of a pool. Because such unweighted dive sticks can pose the same risk as pre-weighted ones, the Commission is including them in the rule.

G. Preliminary Regulatory Analysis

Introduction

The Commission has preliminarily determined to ban dive sticks with certain hazardous characteristics. Section 3(h) of the FHSA requires the Commission to prepare a preliminary regulatory analysis containing a preliminary description of the potential benefits and costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms; an identification of those likely to be affected; discussion of existing or developing standards submitted in response to the ANPR; and a description of reasonable alternatives. 15 U.S.C. 1261(h). The following discussion addresses these requirements.[8]

Potential Benefits of a Rule Banning Certain Dive Sticks

The purpose of the proposed rule is to prevent serious impalement injuries that can result when children jump or fall on dive sticks that are being used in shallow water. The benefits of the proposed rule would therefore be the resulting reduction in injuries.

The CPSC is aware of eight confirmed impalement injuries (to the perineum) since 1990 involving dive sticks that were standing upright on the bottom of a pool.[4] All of the victims received medical attention after the injury and at least five required surgery. In one case a temporary colostomy was performed. No fatalities are known to CPSC.

The societal costs of these eight impalement injuries, based on estimates from the CPSC Injury Cost Model, range from about $8,000 for injuries that do not require hospitalization to about $90,000 for injuries that do require hospitalization. These estimates are based on the costs of injuries involving punctures or lacerations to the victims' lower trunk or pubic region for children 5 to 11 years-of-age. These cost estimates include the cost of medical treatment, pain and suffering, and legal and liability costs.

If we assume that the only cases that required hospitalization were the five incidents that required surgery, the total societal costs of the known incidents is about $474,000 (5 cases × $90,000 and 3 cases × $8,000) or an average of $47,400 a year since 1990. This is a low estimate of the total societal cost of dive stick impalement injuries because it is based only on the cases known to CPSC. There may have been other injuries of which CPSC is not aware.

The potential benefit of a standard that would prevent dive stick impalement injuries is the expected societal costs of the injuries prevented. To compare the benefits of a proposed rule to the costs (which will be discussed in the next section) it is useful to estimate the expected societal costs of dive stick injuries (and hence, the potential benefits) on a per dive stick in use basis.

The average number of dive sticks in use since 1990 probably ranged from about 3 million units (assuming a one-year product life) to about 5.5 million units (assuming a 4-year product life). Therefore, the annual societal costs of dive stick injuries may range from about one cent per dive stick in use ($47,400 ÷ 5.5 million sticks) to about 2 cents per dive stick in use ($47,400 ÷ 3 million sticks).

Since dive sticks may last for one to four years, the potential benefits of the rule per dive stick (if it eliminates all impalements) may range from about 2 cents per dive stick ($0.02 × 1 year) to about 4 cents per dive stick ($0.01 × 4 years). The potential benefits would be higher if there have been dive stick injuries of which the Commission is not aware. Therefore, the 2 to 4 cents per dive stick probably represents a minimum estimate of the potential benefits, if all injuries can be prevented.

The benefits would accrue primarily to households with children, since all victims have been 11 years old or younger. However, since medical costs are generally pooled through insurance, the monetary benefits of the proposed rule would be diffused through society as a whole.

Potential Costs of the Proposed Rule

If the rule under consideration is adopted, manufacturers that continue to produce and sell dive sticks will have to modify their product to conform to the requirements of the proposed rule. Some manufacturers may be able to continue using the molds and production processes they use now, but with a softer or more flexible plastic. Other manufacturers may be able to adjust the weight or center of gravity of the dive sticks so that they do not stand upright when submerged.

The costs of these alternatives are not known, but the CPSC staff believes that these changes can be made with minimal impact on tooling and other production processes. Consequently, it seems reasonably likely that when the incremental costs of the proposed rule are spread over large production runs, the cost will be no more than the benefits of the rule—2 to 4 cents per dive stick manufactured.

Moreover, the production of dive sticks does not require much in the way of specialized facilities or dedicated equipment, other than certain product molds. Therefore, even if a manufacturer opted not to redesign the dive sticks, the cost to the manufacturer would be limited to the premature disposal of certain dedicated equipment, such as molds. However, for the most part, the manufacturers' facilities and equipment could be used for manufacturing other products.

The proposed rule could reduce consumer utility if consumers prefer the banned dive sticks to the substitute products (*i.e.*, dive sticks and eggs that do not stand upright, dive rings, dive disks, and so on). However, because these substitute products serve essentially the same purposes and would cost about the same, negative impact on consumer utility, if any, is unlikely to be significant.

Existing or Developing Standards Submitted in Response to the ANPR

No existing voluntary standards were submitted in response to the ANPR. Nor were any proposals to develop such a standard submitted to the Commission. As stated above, the Commission is not aware of any voluntary standards applicable to dive sticks.

Alternatives Considered

As discussed above, the Commission considered the other alternatives of pursuing voluntary recalls, following a voluntary standard, requiring labeling, or changing the scope. Because the hazard affects all dive sticks with the hazardous characteristics the Commission has identified, a banning rule would be more effective than case-by-case recalls. No applicable voluntary standard exists and compliance may be low if one did. As discussed above, labeling could help reduce the risk of injuries from dive sticks, but would be less effective than a banning rule. Finally, the Commission is including non-weighted dive sticks that can be weighted because they pose the same risk of injury as weighted ones.

[4] An additional incident was reported to CPSC, but there are some questions surrounding the nature of the incident and whether or not it is the result of the hazard that the rule under consideration would address.

H. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act ("RFA"), when an agency issues a proposed rule it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities. 5 U.S.C. 605(b).

Most of the firms that manufactured or imported dive sticks are small businesses according to the Small Business Administration guidelines since they have fewer than 100 employees for importers or 500 employees for manufacturers. However, staff analysis suggests that the rule is unlikely to have a significant effect on any businesses, large or small.[8]

The Commission has previously worked with companies to recall hazardous dive sticks. Most manufacturers removed their dive sticks from the market in response to the recalls. Some manufacturers have already taken steps to redesign their products. If the redesigned products conform to the proposed rule, the manufacturers would not incur any additional costs.[8]

In addition, as discussed above, the costs of the rule are likely to be small. To the extent that the costs of the product increase, they are likely to be passed on to consumers in the form of higher retail prices.[8]

Finally, dive sticks probably account for only a small percentage of any individual firm's sales. Several dive stick manufacturers market various types of pool or other toys. Others have additional product lines such as pool supplies and equipment. Additionally, most of the firms that manufactured or imported dive sticks also distribute similar toys (such as dive rings and disks and certain dive eggs that do not rest vertically on the bottom) that would not be covered by the ban. If firms stopped producing and selling dive sticks, sales of these substitute products may increase, offsetting any loss due to a ban on dive sticks.[8]

For the reasons stated above, the Commission certifies that the proposed rule banning dive sticks would not have a significant effect on a substantial number of small entities.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule banning certain dive sticks.

The Commission's regulations state that rules providing design or performance requirements for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.[8]

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state the preemptive effect, if any, of new regulations.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U,S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the proposed rule banning certain dive sticks would preempt non-identical state or local requirements applicable to dive sticks designed to protect against the same risk of injury.

The Commission has also evaluated this proposed rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the proposed rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

K. Effective Date

The rule would become effective 30 days from publication of a final rule in the **Federal Register** and would apply to dive sticks entering the chain of distribution on or after that date. The Commission believes a 30-day effective date is appropriate because (1) due to the 1999 recalls, few, if any, dive sticks should be currently on the market; (2) redesigning products to comply with the rule should be fairly simple; and (3) substitute products are readily available.[1,8]

L. Proposed Findings

For the Commission to issue a rule under section 2(q)(1) of the FHSA classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include these findings in the regulation. 15 U.S.C. 1262(i)(2). The Commission proposes the following findings.

Voluntary standard. The FHSA requires the Commission to make certain findings concerning compliance with and adequacy of a voluntary standard if a relevant voluntary standard has been adopted and implemented. *Id.* The Commission is not aware of any voluntary standards addressing the risk of injury posed by dive sticks. Therefore, no findings concerning voluntary standards are necessary.

Relationship of benefits to costs. The FHSA requires the Commission to find that the benefits expected from a regulation bear a reasonable relationship to its costs. The Commission estimates the potential benefits of removing hazardous dive sticks from the market to be 2 to 4 cents per dive stick. With the availability of substitutes and the expected low cost of modifying dive sticks to conform to the proposed rule, the Commission anticipates that necessary changes will be minimal. The Commission estimates that the costs of the rule will be no more than 2 to 4 cents per dive stick. Thus, the Commission proposes to find that there is a reasonable relationship between the expected benefits of the rule and its costs.

Least burdensome requirement. The FHSA requires the Commission to find that a regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* The Commission considered pursuing voluntary recalls, following a voluntary standard, or requiring labeling. A

banning rule would be more effective than case-by-case recalls because the impalement hazard affects all dive sticks, not a specific brand or model. Awaiting recalls would allow these hazardous items on the market until the Commission obtained recalls. As explained above, no applicable voluntary standard exists, and compliance may be low if one did. Although labeling could help reduce the risk of injuries from dive sticks, it would be less effective than a banning rule. It may be difficult for a label to convey the necessary information at the time of use. Thus, the Commission proposes that a ban of dive sticks with the hazardous characteristics it has identified is the least burdensome alternative that would adequately reduce the risk of injury.

Conclusion

For the reasons stated above, the Commission preliminarily concludes that the dive sticks described in the proposed rule are hazardous substances under section 2(f)(1)(D) of the FHSA. They are intended for children and present a mechanical hazard because their design or manufacture presents an unreasonable risk of injury. 15 U.S.C. 1261(s).

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Therefore, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.18 is amended by adding a new paragraph (a)(19) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) * * *

(19) Dive sticks, and other similar articles, that are used in swimming pools or other water environments for such activities as underwater retrieval games or swimming instruction, and which, when placed in the water, submerge and rest at the bottom of the pool. This includes products that are pre-weighted to sink to the bottom and products that are designed to allow the user to adjust the weight. Dive sticks and similar articles that come to rest underwater at an angle greater than 45 degrees from vertical when measured under the test at § 1500.86(a)(7) and dive sticks and similar articles that maintain a compressive force of less than 5-lbf under the test at § 1500.86(a)(8) are exempt from this banning rule. Articles that have a continuous circular shape, such as dive rings and dive disks are also exempt.

3. Section 1500.86 is amended by adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(7) Dive sticks and similar articles described in § 1500.18(a)(19) that come to rest at the bottom of a container of water in a position in which the long axis of the article is greater than 45 degrees from vertical when measured in accordance with the following test method:

(i) *Test equipment.* (A) A container that is filled with tap water to a depth at least 3 inches [76 mm] greater than the longest dimension of the dive stick. The container shall: be sufficiently wide to allow the dive stick to lie along the bottom with its long axis in a horizontal position; have clear side walls to permit observation of the dive stick under water; and be placed on a level surface and have a flat bottom.

(B) A protractor or other suitable angle measurement device that has an indicator for 45 degrees from vertical.

(ii) *Testing procedure.* (A) If the dive stick is sold such that the consumer is required to attach an additional component(s) to the dive stick, then the product shall be tested both with and without the attachment(s).

(B) From just above the water surface, drop the dive stick into the container.

(C) Let the dive stick sink and come to rest at the bottom of the container. If the dive stick is designed so that the weight can be adjusted by adding water or other substance, adjust the weight so that the dive stick sinks and comes to rest with its long axis positioned as close to vertical as possible.

(D) Align the angle measurement device alongside the dive stick underwater and wait for the dive stick to come to rest if there is any water disturbance. Determine whether the long axis of the dive stick is greater than or less than 45 degrees from vertical.

(8) Dive sticks and similar articles described in § 1500.18(a)(19) in which the maximum force measured in the following test method is less than 5-lbf [22N]. The test shall be conducted in the ambient environment of the laboratory and not under water.

(i) *Test equipment.* (A) A compression rig that has a force gauge or equivalent device that is calibrated for force measurements within a minimum range of 0 to 5 lbf [0–22 N] and with an accuracy of ±0.1 lbf [±0.44 N] or better. The test rig shall have a system to guide this force application in the vertical direction and shall have a means to adjust the rate of load application.

(B) Compression disk—the loading device that is attached to the force gauge shall be a rigid metal disk with a minimum diameter of 1.125 inches[29 mm].

(C) Vise or other clamping device.

(ii) *Testing procedure.* (A) Position the bottom of the dive stick in the clamping device so that the longest axis of the dive stick is vertical. The bottom end of the dive stick is the end that sinks to the bottom of a pool of water. Secure the bottom of the dive stick in the clamp such that the clamping mechanism covers no more than the bottom ½ inch [13 mm] of the dive stick.

(B) Apply a downward force at a rate of 0.05 in/sec (±0.01 in/sec) [1.3 mm.sec ±0.3 mm/sec] at the top of the dive stick with the compression disk positioned so that the plane of the disk contact surface is perpendicular to the long axis of the dive stick.

(C) Apply the load for a period of 40 seconds or until the maximum recorded force exceeds 5-lbf [22 N].

(D) Record the maximum force that was measured during the test.

Dated: July 11, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Ronald Medford, AED, Office of Hazard Identification and Reduction and Scott Heh, Project Manager, Directorate for Engineering Sciences, to the Commission, "Dive Sticks," June 8, 2000.

2. Memorandum from Debra Sweet, Directorate for Epidemiology, to Scott Heh, Project Manager, "Injury Data Related to Dive Sticks," March 21, 2000.

3. Memorandum from Catherine A. Sedney, Division of Human Factors, to Scott Heh, Project Manager, "Human Factors Assessment of Dive Sticks," April 10, 2000.

4. Comment Received in Response to the ANPR, Steve Hutchison, Department of Fair Trading, NSW Consumer Protection Agency, Australia, dated August 30, 1999.

5. Memorandum from Scott Heh, Project Manager, to File, "Banning Definition and Test Methods for Dive Sticks," May 3, 2000.

6. Memorandum from Catherine A. Sedney, Division of Human Factors, to Scott Heh, Project Manager, "Prevention of

Impalement Injuries: Specification of the Position of Dive Sticks in Water," January 27, 2000.

7. Memorandum from Suad Nakamura, Ph.D., Physiologist, Division of Health Sciences, and Scott Heh, Mechanical Engineer, Directorate for Engineering Sciences, to File, "Development of an Exemption for Non-rigid Dive Sticks," May 3, 2000.

8. Memorandum from Robert Franklin, Economist, Directorate for Economic Analysis, to Scott Heh, Project Manager, "Preliminary Regulatory Analysis: Dive Sticks," May 18, 2000.

[FR Doc. 00–18058 Filed 7–18–00; 8:45 am]
BILLING CODE 6565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107644–98]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking which was published in the **Federal Register** on May 19, 2000 (65 FR 31841) relating to the dollar-value LIFO regulations.

FOR FURTHER INFORMATION CONTACT: Jeffery G. Mitchell at (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 472 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–107644–98), which was subject to FR. Doc. 00–12174, is corrected as follows:

1. On page 31844, column 1, in the preamble under the paragraph heading "*New Base Year for IPIC Method Changes*", line 1, the language "Section 1.472–8(e)(vi) requires a" is corrected to read "Section 1.472–8(e)(3)(vi) requires a".

2. On page 31849, column 1, § 1.472–8(e)(3)(iii)(F), paragraph (xii) of *Example 1.*, line 2, in the paragraph heading, the language "*the 1997 taxable year.* R computes the" is corrected to read "*the 1998 taxable year.* R computes the".

3. On page 31849, column 2, § 1.472–8(e)(3)(iii)(F), paragraph (xiii) of *Example 1.*, fourth line from the bottom of paragraph, the language "inventory at the end of the 1997 taxable year" is corrected to read "inventory at the end of the 1998 taxable year".

4. On page 31850, column 1, § 1.472–8(e)(3)(iii)(F), paragraph (vi) of *Example 2.*, line 2, in the paragraph heading, the language "*the 1997 taxable year.* R computes the" is corrected to read "*the 1998 taxable year.* R computes the".

5. On page 31850, column 2, § 1.472–8(e)(3)(iv)(A), second line from the bottom of column, the language "election of an appropriate representative" is corrected to read "election of a representative appropriate".

6. On page 31852, column 1, § 1.472–8(e)(3)(iv)(C)(*2*)(*ii*), paragraph (ii) of *Example.*, sixth line from the bottom of the paragraph, the language "($241,980.60 * 1.438793). Finally, the" is corrected to read "($124,180.60 * 1.438793). Finally, the".

7. On page 31852, column 1, § 1.472–8(e)(3)(iv)(C)(*2*)(*ii*), paragraph (ii) of *Example.*, fourth line from the bottom of the paragraph, the language "sold and increases Y's gross income for the" is corrected to read "sold and increase Y's gross income for the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel(Modernization and Strategic Planning).

[FR Doc. 00–18139 Filed 7–18–00; 8:45 am]
BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048b; FRL–6837–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revision to Opacity Limit for Drier Stacks at Georgia-Pacific Corporation Softboard Plant in Jarratt, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of establishing a higher opacity limit for drier zone stacks #1 and #2 located at the Georgia-Pacific Softboard plant in Jarratt, Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 18, 2000.

ADDRESSES: Written comments should be addressed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at knap.ruth@epa.gov.

SUPPLEMENTARY INFORMATION: For further information on this source specific revision related to the drier stacks at the Georgia-Pacific softboard facility in Jarratt, VA. please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 30, 2000.
Bradley M. Campbell,
Regional Administrator, Region III.
[FR Doc. 00–18104 Filed 7–19–00; 8:45 am]
BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD087–3050b; FRL–6735–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional approval of the Maryland State Implementation Plan (SIP) revision to achieve a 15 percent reduction in volatile organic compound emissions (15% plan SIP revision) in the Metropolitan Washington, D.C. ozone nonattainment area to a full approval. In the "Rules and Regulations" section of this **Federal Register**, we are converting our conditional approval of Maryland's 15% plan SIP revision to a full approval as a direct final rule because we view this as a noncontroversial amendment and because we anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments, we will not undertake further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in providing comments on this action should do so at this time.

DATES: Comments must be received in writing by August 18, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final rule, with the same title, located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 30, 2000.
Bradley M. Campbell,
Regional Administrator, Region III.
[FR Doc. 00–18111 Filed 7–18–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 30

Cost Accounting Standards Administration

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed Federal Acquisition Regulation rule on Cost Accounting Standards Administration published in the **Federal Register** at 65 FR 20854 on April 18, 2000. The Director of Defense Procurement would like to hear the views of interested parties on what they believe to be the key issues pertaining to the proposed rule. A listing of some of the possible issues is included on the Internet Home Page of the Office of Cost, Pricing, and Finance at http://www.acq.osd.mil/dp/cpf.

Upon identification of the key issues, subsequent public meetings will be held to hear views of interested parties regarding specific proposed language and/or recommendations. The dates and times of those meetings will be published on the Internet Home Page of the Office of Cost, Pricing, and Finance.

DATE: The first meeting will be held on August 2, 2000, from 9 a.m. until 1 p.m.

ADDRESSES: The meeting will be held at the National Contract Management Association, 1912 Woodford Drive, Vienna, VA 22182. Directions may be found on the Internet at http://www.acq.osd.mil/dp/cpf.

FOR FURTHER INFORMATION CONTACT: David Capitano, Office of Cost, Pricing, and Finance, by telephone at (703) 695–9764, by FAX at (703) 693–9616, or by e-mail at capitadj@acq.osd.mil.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.
[FR Doc. 00–18252 Filed 7–18–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2000–7666]

RIN 2127–AH50

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This document is intended to inform the public about NHTSA's research findings to date on advanced glazing materials that may prevent ejection of vehicle occupants through motor vehicle windows during crashes. The agency has published a report titled "Ejection Mitigation Using Advanced Glazing: Status Report II." The agency invites the public to comment on the report and share information and views with the agency.

DATES: Comments must be received by November 16, 2000.

ADDRESSES: Comments should refer to the docket and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC. 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC. 20590:

For non-legal issues: Mr. John Lee, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–2264, facsimile (202) 493–2739, electronic mail "jlee@nhtsa.dot.gov"

For legal issues: Mr. Stephen P. Wood, Office of the Chief Counsel, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail "swood@nhtsa.dot.gov"

SUPPLEMENTARY INFORMATION:

I. Background

In response to the National Highway Traffic Safety Administration (NHTSA)

Authorization Act of 1991 and ongoing research into the overall issues of rollover and ejection mitigation, NHTSA initiated a specific research program concerning occupant protection in motor vehicle rollover crashes. NHTSA is addressing this occupant protection issue from two perspectives: (1) Preventing a rollover from occurring; and (2) protecting vehicle occupants if a rollover occurs, including reducing the likelihood of ejections. Almost 60 percent of rollover fatalities occur in the 10 percent of rollovers involving either complete or partial ejection of vehicle occupants. Occupant ejections occur either through structural failures, such as door openings, or through window openings. NHTSA is evaluating the potential of improved door latches, side head air bags, and advanced glazing systems [1] to reduce occupant ejection.

These activities are detailed in the report "Ejection Mitigation Using Advanced Glazing: Status Report II." This report has been placed in docket NHTSA–1996–1782.

This report evaluates the progress of research since NHTSA issued its November 1995 report on occupant protection research to mitigate ejection through window openings. Each year, on average, about 7,300 people are killed and 7,800 people are seriously injured because of partial or complete ejection through glazing openings such as windows and moon roofs. Of the fatalities, more than 4,400 are associated with vehicle rollovers. The majority of these rollover victims were not using seat belts. In fact, 98 percent of occupants completely ejected and killed during rollover crashes were unbelted.

It is estimated that advanced glazing systems could save between 500 and 1,300 lives per year. This estimate assumes a national seat belt use rate of about 66 percent (the yearly average and effectiveness percentages are based on data from 1992–1996 National Automotive Sampling System (NASS) Crashworthiness Data System (CDS)) and a 20 to 51 percent range of effectiveness for advanced glazing systems in preventing ejection. Higher seat belt use rates directly reduce the estimated benefits of advanced glazing systems. For example, a 71 percent seat belt use rate would reduce likely glazing benefits by 11 percent. An 81 percent use rate would reduce glazing benefits by 34 percent. As of the end of 1999, the U.S. national average seat belt use rate was 67 percent.

In NHTSA's research program, four types of advanced glazing systems were evaluated: a high-penetration resistant (HPR) trilaminate (glass-plastic-glass), a non-HPR trilaminate (a thinner glass-plastic-glass sandwich than the HPR window), a bilaminate (glass-plastic), and a polycarbonate (rigid plastic). Pilkington/Libbey-Owens-Ford assisted the agency in manufacturing prototype window systems for a General Motors C/K pickup side door. The original equipment window encapsulation (rigid plastic around the outer edge of the side window) was modified and replaced with advanced glazing design systems. Modifications were also made to the front door window frames to better retain the window during impact, while maintaining the window's ability to be raised and lowered. To date, this research has not evaluated the practicability or suitability of the proposed glazing systems in actual production vehicles. One known problem with the proposed designs is that they do not work on vehicles with frameless side windows. The proposed door modifications would either require significant redesign or not be suitable for these vehicles. Even for framed windows, some additional work (laceration, entrapment, test speeds, etc.) is needed to further examine the appropriate depth of the proposed designs. Although facial lacerations injuries are relative minor (AIS 1 or 2), they are very common and can be disfiguring. The agency plans to assess whether advanced glazings are more likely to cause lacerations than current glass. In regards to entrapment, analysis on the extracting of trapped occupants in vehicles with advanced glazing needs to be conducted. The agency plans to evaluate the ability of emergency rescue squad tools to cut through advanced glazing. In regards to test speeds, the advanced glazing systems were evaluated for their occupant retention potential at speeds of 24 kmph (15 mph). Additional tests and benefit analyses will be conducted at lower impact speeds.

The previous status report ("Ejection Mitigation Using Advanced Glazing A Status Report," November 1995. Docket NHTSA 1996–1782 had estimated incremental production costs of $48 per vehicle for front side windows if trilaminate glazing were used and $79 per vehicle for front side windows if rigid plastic were used. The projected lead-time estimated in the previous status report was about 3 years. The cost, weight, and lead-time estimates are only applicable to vehicles with framed windows. The designs tested in this report should have incremental costs similar to the previous estimates.

Three series of tests were performed on the advanced side glazing systems. First, NHTSA used an 18 kg (40 lb.) impactor (simulating upper body/head impacts) to evaluate potential occupant retention capabilities. Second, the agency used the free motion headform (FMH)(a 4.5 kg (10 lb) device) specified for testing to the requirements of Federal Motor Vehicle Safety Standard No. 201 "Occupant Protection in Interior Impact" to evaluate the glazing systems' potential for causing head injuries. Third, the agency conducted sled tests with a full-sized 50th percentile adult male Side Impact Dummy (SID)/Hybrid III dummy to further evaluate the glazing systems' potential for causing head injuries and to evaluate neck injuries. Since ejection mitigation glazings will generally allow for greater contact time between the head and glazing than conventional side windows, the agency was concerned that there may be an increased risk of serious, head and neck injuries from contact with these new systems.

The results indicated that all but the non-HPR trilaminate had good potential for providing adequate occupant retention. Impact with the advanced glazings with the FMH produced similar potential for head injuries as impacts with tempered glass in the current side windows. In the sled tests, the neck injury measurements from dummy impacts into glazings were not repeatable, especially for impacts into current production tempered side glass. Despite this wide variability of test results, impacts with tempered glass resulted in lower neck shear loads and moments than those with advanced glazings. In each case, tempered glass impacts produced the lowest neck injury measurements.

Advanced glazing systems may yield significant safety benefits by reducing partial and complete ejections through side windows, particularly in rollover crashes. However, to ascertain the efficacy and safety of advanced glazing systems more fully, more research will be conducted into both the practicability of the prototype systems and the risk of negative, unintended consequences. Research needed to make a regulatory decision will be completed by the end of 2000. This additional research will include evaluation of the repeatability of the test procedures, refinement of the test procedures, evaluation of the likelihood of increased injuries due to partially opened windows, evaluation of impact speed, evaluation of the necessary door modifications, and development of performance criteria.

[1] Glazing systems is an automotive industry term for transparent openings.

Future and ongoing research, beyond the regulatory decision point, will include full vehicle testing conducted for both rollover and side impact crash scenarios. Evaluations will be conducted on the likelihood of increased injuries to belted occupants, the potential reduction in driving visibility due to thicker window frames and smaller windows, the potential for entrapment due to more rigid side windows.

Standard test for laceration, window clarity and glass durability will be redone. As stated earlier, lacerations injuries are relative minor. Lacerations tests will be performed on available technology. The advanced glazing must still be clear for driving visibility. They will need to meet the light stability and luminous transmittance requirements of FMVSS 205 for driver visibility. Durability will still be required as with glass. The fleet field test results from the cooperative research agreement with PPG on daily wear of advanced glazing in GSA vehicles will be analyzed.

Additionally, advanced glazing systems will be evaluated against other ejection prevention and mitigation strategies. These alternate ejection countermeasures, such as the recently introduced inflatable head protection systems, will also be evaluated at the same time in making a regulatory decision. General Motors has said that side head air bags will be standard equipment on all its vehicles by 2003. Ford Motor Company will make side head air bags available in some of its 2001 sport utility vehicles.

In a highway special investigation "Bus Crashworthiness Issues" from the National Transportation Safety Board in September 1999, NHTSA has received a safety recommendation to expand its research on current advanced glazing to include its applicability to motorcoach occupant ejection prevention, and revise window glazing requirements for newly manufactured motorcoaches based on the results of this research.

For several years, NHTSA has conducted research on ejection mitigating glazing systems for use in light passenger vehicle side windows. Many of the advanced glazing systems and test procedures identified and developed in this research are probably applicable to motorcoach passenger side windows. However, because the crash environment that produces ejections in motorcoaches may be different from that for light passenger vehicles, some specific aspects of the test procedures may need to be modified.

The agency has expanded its research plan on advanced glazing to include motorcoach passenger side windows. The first task in this new research is to identify the crash environment that produces occupant ejections in motorcoach crashes, and based on that, analytically determine the occupant-to-glazing impact conditions. Other important first steps in this research are to identify the types of glazing systems currently used in motorcoaches, and to determine if some of these have ejection mitigating capabilities. The agency will seek cooperation from outside sources in obtaining the glazing systems required for this research. These systems will be evaluated for their ability to mitigate ejections, while limiting increases to head, neck, and laceration injuries. Practicability and cost issues will also be examined. We expect to begin our evaluation of the glazing systems and test procedures in the fall of 2000.

II. Questions for the Public

To assist the agency in acquiring the information it needs, NHTSA is including a list of questions and requests for data in this notice. For easy reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses for each question for which they have information or views. In order, to facilitate tabulation of the written comments in sequence, please identify the number of each question to which you are responding.

NHTSA requests that the rationale for positions taken by commenters be very specific, including analysis of safety consequences. NHTSA encourages commenters to provide scientific analysis and data relating to materials, designs, testing, manufacturing and field experience.

The following is a list of questions for which the agency would like to have answers. However, it does not purport to be an all-inclusive list of subjects relevant to this research. NHTSA encourages commenters to provide any other data, analysis, argument or views they believe are relevant.

1. Is the technology available for encapsulating windows in vehicles with frameless windows and for convertibles? Is it cost effective?

2. How much crash damage could be done to the new encapsulated window frame and modified door frame designs and still have them be effective in preventing occupant ejection?

3. Are there any known disadvantages of encapsulation and modified door frame design in vehicles with inflatable side impact air bags?

4. Are there any known safety disadvantages of the encapsulation glazing and modified door frame design, such as entrapment?

5. Is any work being done on human facial laceration measurement? If so, please describe that work and its results to date.

6. Are the neck injury criteria discussed in this report sufficient? Can you recommend others? Do you have test data? If so, please provide them.

7. Are the side head injury criteria discussed in this report sufficient? Can you recommend others? Do you have test data? If so please provide them.

8. Do you have any information that addresses the repeatability of glazing impact tests? If so, please provide it.

9. NHTSA used 24 kmph test speeds, simulating rollover. Are the glazing impact test speeds used by NHTSA in its testing adequate? If not why? What test speed is recommended and why?

10. Please provide any comments and supporting material on the cost, weight increase, and lead-time to manufacture advanced glazing systems.

11. Are side head airbags an alternative solution for reducing occupant ejection out of windows?

12. Would side head air bags provide any benefits that would not be provided by advanced glazing?

13. What benefits would advanced glazings offer that would not be derived from side head air bags?

14. Beyond glazing and air bags are there other alternatives that might also be effective in reducing window ejections?

15. Should the agency be working on both the advanced glazing and inflatable head restraint systems as viable, complementary technologies to solve the window ejection problem?

16. Would the test procedures being considered for evaluating the retention capability of side glazings, as described in the report, also be suitable for evaluating this capability for inflatable retention devices?

17. Based on the outcome of this research project, should the research show that the prevent of ejection can be mitigated without substantially increasing the potential for injury, should the agency require advanced glazing for passenger windows on motorcoaches and passenger windows on all types of buses categories?

III. Submission of Written Comments

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

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Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage the preparation of comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

In addition, for those comments of 4 or more pages in length, we request that you send 2 additional copies, as well as one copy on computer disc, to: Mr. John Lee, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

We emphasize that this is not a requirement. However, we ask that you do this to aid us in expediting our review of all comments. The copy on computer disc may be in any format, although we would prefer that it be in WordPerfect 8.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

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Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a proposal (assuming that one is issued), we will consider that comment on that proposal.

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(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You can then download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued: July 13, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–18245 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2000–7629; Notice 1]

RIN 2127–AH11

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year 2001 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

DATES: Comments are due on the proposed rule August 18, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Introduction

On June 24, 1996, at 61 FR 32411, we published a notice that discussed in full the rulemaking history of 49 CFR part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, Pub. L. 100–562, since recodified as 49 U.S.C. 30141–47. The reader is referred to that notice for background information relating to this rulemaking action. Certain fees were initially established to become effective January 31, 1990, and have been in effect and occasionally modified since then.

The fees applicable in any fiscal year are to be established before the beginning of such year. We are proposing fees that would become effective on October 1, 2000, the beginning of FY 2001. The statute authorizes fees to cover the costs of the importer registration program, to cover the cost of making import eligibility determinations, and to cover the cost of processing the bonds furnished to the Customs Service. We last amended the fee schedule in 1998; it has applied in Fiscal Years 1999–2000.

The fees are based on actual time and costs associated with the tasks for which the fees are assessed and reflect the slight increase in hourly costs in the past two fiscal years attributable to the approximately 3.68 and 4.94 percent raise (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective on January 1 each year in the years 1999 and 2000.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49 U.S.C. provides that RIs must pay "the annual fee the Secretary of Transportation establishes * * * . to pay for the costs of carrying out the registration program for importers * * *." This fee is payable both by new applicants and by existing RIs. In order for it to maintain its registration, at the time it submits its annual fee, each RI must also file a statement affirming that the information it previously furnished in its registration application (or as later amended) remains correct (49 CFR 592.5(e)).

In accordance with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees which would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We have tentatively determined that this fee should be increased from $290 to $345 for new applications. We have also tentatively determined that the fee representing the review of the annual statement should be increased from $149 to $177. The adjustments proposed reflect our recent experience in time spent reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the past two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program which arise from our need to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to possible revocation or suspension of registrations.

Based upon our review of the costs associated with this program, the portion of the fee attributable to the maintenance of the registration program is approximately $239 for each RI, an increase of $38. When this $239 is added to the $345 representing the registration application component, the cost to an applicant equals $584, which is the fee we propose. This represents an increase of $93 from the existing fee. When the $239 is added to the $177 representing the annual statement component, the total cost to the RI is $416, which represents an increase of $66.

Sec. 594.6(h) recounts indirect costs that were previously estimated at $12.12 per man-hour. This should be raised $1.78, to $13.90, based on the agency costs discussed above.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay "other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter." This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by RIs or manufacturers, or pursuant to the Administrator's initiative.

The fee for a vehicle imported under an eligibility decision made pursuant to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated *pro rata* share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and the small raises under the General Schedule also must be taken into account in the computation of costs. However, we have been able to reduce our processing costs through combining several decisions in a single **Federal Register** notice as well as achieving efficiencies through improved word processing techniques. Accordingly, we propose to reduce the fee of $199 presently required to accompany a "substantially similar" petition to $175, but to increase from $721 to $800 the fee for petitions for vehicles that are not substantially similar and that have no certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection will remain at $550 for each of those types of petitions.

The importer of each vehicle determined to be eligible for importation pursuant to a petition currently must pay $125 upon its importation, the same fee applicable to those whose vehicles covered by an eligibility determination on the agency's initiative (other than vehicles imported from Canada that are covered by code VSA 80–83, for which no eligibility determination fee is assessed). This fee will change due to the different costs associated with petitions. For petitions based on non-substantially similar vehicles, the fee would remain at $125. For petitions based on substantially similar vehicles, the fee would be reduced from $125 to $105. Costs associated with previous eligibility determinations on the agency's own initiative will have been recovered by October 1, 2000. We would apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on and after October 1, 2000.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay "any other fees the Secretary of Transportation establishes * * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that we will make a reasonable determination of the cost to the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 1999 and 2000, we propose that the current processing fee be increased by $0.35, from $5.40 per bond to $5.75.

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Section 594.10—Fee for Review and Processing of Conformity Certificate

This fee currently requires each RI to pay $16 per vehicle to cover the cost of the agency's review of the certificate of conformity furnished to the Administrator. However, if a RI enters a vehicle with the U.S. Customs Service through the Automated Broker Interface (ABI), has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the fee is $13. Based upon an analysis of the direct and indirect costs for the review and processing of these certificates, we find that the costs continue to average $16 per vehicle for non-automated entries, and we therefore are not proposing a change in this fee. We estimate that there has been a reduction in cost to the agency for automated entries of approximately $7, and this would be passed on to the RI by reducing the fee from $13 to $6 per vehicle if all the information in the ABI entry is correct. Because errors in ABI entries eliminate the time-saving advantages of electronic entry, the processing cost will remain at $16 for certificates of conformity or ABI entries containing incorrect information.

Effective Date

The proposed effective date of the final rule is October 1, 2000.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12886. Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this action will not have a substantial economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendment would primarily affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that a substantial number of these companies cannot pay the fees proposed by this action which are only modestly increased (and in some instances decreased) from those now being paid by these entities, and which can be recouped through their customers. The cost to owners or purchasers of altering nonconforming vehicles to conform with the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 "Federalism" and 12875 "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Executive Order 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because a final rule based on this proposal would not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language include consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Request for Comments

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List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 594 would be amended as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

1. The authority citation for part 594 would remain to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.6 would be amended by;

(a) Revising the introductory text of paragraph (a),

(b) Revising paragraph (b),

(c) Revising the year "1998" in paragraph (d) to read "2000,"

(d) Revising the final sentence of paragraph (h); and

(e) Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2000, must pay an annual fee of $584, as calculated below, based upon the direct and indirect costs attributable to: * * * * * * * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2000, is $345. The sum of $345, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is $13.90 per man-hour for the period beginning October 1, 2000.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2000, is $239. When added to the costs of registration of $345, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $584. The annual renewal registration fee for the period beginning October 1, 2000, is $416.

* * * * *

3. Section 594.7 would be amended by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2000, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $800. If the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

4. Section 594.8 would be amended by revising paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(c) If a determination has been made on or after October 1, 2000, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

5. Section 594.9 would be amended by revising paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2000, for which a certificate of conformity is furnished, is $5.75.

5. Section 594.10 would be amended by adding two new sentences at the end of paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) * * * However, if the vehicle covered by the certificate has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $16.

Issued on: July 7, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 00–18012 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG24

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Plant Lesquerella thamnophila (Zapata Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplementary information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant Lesquerella thamnophila (Rollins & Shaw) (Zapata bladderpod). Proposed critical habitat includes approximately 2,157 hectares (ha) (5,330 acres(ac)) of the Lower Rio Grande Valley National Wildlife Refuge property in Starr County, Texas, a 402 meter (m) (0.25 mile (mi)) length of highway right-of-way at each of two sites located along Highway 83, in Zapata County, Texas, and a 0.55 ha (1.36 ac) site on private land in Starr County, Texas. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of the critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We are preparing an economic analysis of this action and will announce its availability for public review and comment at a later date. In addition, we are preparing an Environmental Assessment of this action pursuant to the National Environmental Policy Act. The draft Environmental Assessment may be obtained for review and comment by contacting us (see **ADDRESSES**). We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until September 18, 2000. We will hold a public meeting and hearing in Rio Grande City on August 24, 2000, regarding this proposal. We will hold the meeting from 5:00 p.m. to 7:00 p.m., and, immediately following the meeting, we will hold the hearing from 7:00 p.m. to 9:00 p.m.

ADDRESSES: Send comments and materials to: Field Supervisor,U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Texas A&M University-Corpus Christi, Campus Box 338, 6300 Ocean Drive, Corpus Christi, TX 78412. We will make comments and materials received available for public inspection, by appointment, during normal business hours at the above address. We will hold the public meeting and public hearing at the Rio Grande City Activity Center, Fort Ringgold Highway (Highway 83), Rio Grande City, Texas.

FOR FURTHER INFORMATION CONTACT: Loretta Pressly, Corpus Christi Ecological Services Field Office, at the address above (Telephone 361/994–9005; facsimile 361/994–8262).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella thamnophila is a pubescent (covered with short hairs), somewhat silvery-green herbaceous perennial plant, with sprawling stems 43–85 centimeters (cm) (17–34 inches (in)) long. The plant exhibits a taproot system demonstrating a perennial life habit. It possesses narrow basal leaves 4–12 cm (1.5–4.8 in) long, and 7–15 millimeters (mm) (0.3–0.6 in) wide, with entire (undivided) to wavy or slightly toothed margins. Stem leaves are 3–4 cm (1–1.5 in) long and 2–8 mm (0.1–0.3 in) wide, with margins similar to basal leaves. The bright yellow-petaled flowers are bunched loosely on a single stem. The flowers appear at different seasons of the year depending upon timing of rainfall, with the lower flowers maturing first. Fruits are round, 4.5–6.5 mm (0.2–0.8 in) in diameter, and located on short, downward curving pedicels (slender stalks) (Poole 1989). Little is known of the population genetics, structure, or dynamics of the species.

Lesquerella thamnophila, a member of the Brassicaceae (Cruciferae-Mustard) Family, was first collected in Zapata County, Texas, by R. C. Rollins in 1959. The species was named *Lesquerella thamnophila* in 1973 by R. C. Rollins and E. A. Shaw in their review of the genus *Lesquerella* (Rollins and Shaw 1973). The few collected specimens of *Lesquerella thamnophila* have all come from Starr and Zapata Counties in Southern Texas, except for one specimen that has been identified from Tamaulipas, Mexico.

Habitat Characteristics

All known populations of *Lesquerella thamnophila* in the United States occur in Starr and Zapata Counties, Texas, within approximately 3.22 kilometers (km) (2 mi) of the Rio Grande. These populations are found on upland sites that have not had previous soil disruption and are relatively free of nonnative species. Soil types sites suggest that the species is not closely tied to a specific soil texture; but the soil textures ranges from clay (Catarina soils) to fine sandy loam (Copita soils). Many of the known populations occur on soils with moderate alkalinity.

Lesquerella thamnophila can occur on graveled to sandy-loam upland terraces above the Rio Grande floodplain. The known populations are associated with

three Eocene-age geologic formations, Jackson, Laredo, and Yegua, which have yielded fossiliferous (containing fossils) and highly calcareous (composed of calcium carbonate) sandstones and clays.

Known Starr County populations occur within the Jimenez-Quemado soil association and on Catarina series soils. Jimenez-Quemado soils are well-drained, shallow, and gravelly to sandy loam underlain by caliche (a hard soil layer cemented by calcium carbonate). This soil association is broad, dissected, and irregularly shaped, and occurs on huge terraces 6–15 m (20–50 feet (ft)) above the floodplains of the Rio Grande. In most areas, the Jimenez soils occupy the slope breaks extending from the tops of ridges to the bottoms of the slopes, and in the narrow valleys between them. Quemado soils occur as narrow areas on ridge tops, where the slope ranges from 3 to 20 percent. Steep escarpments can be present with rocky outcrops adjacent to the river floodplain.

The Catarina series consists of clayey, saline upland soils developed from calcareous, gypsiferous (containing gypsum), or saline clays; areas dominated by Catarina series soils usually contain many drainages and other erosional features. The underlying material contains calcareous concretions (rounded masses of mineral matter), gypsum crystals, and marine shell fragments (Thompson *et al.* 1972).

Bladderpod populations in Zapata County occur within the Zapata-Maverick soil association. Zapata soils are shallow, loamy or mixed, hyperthermic (high temperature), well-drained, and nearly level with undulating slopes ranging from 0 to18 percent, primarily on uplands occurring over caliche. The upper portion of the soil horizon ranges from 5 to 25 cm (2 to 10 in) thick, with chert gravel and course fragments consisting of a few to 25 percent of angular caliche 2.5 to 20 cm (1 to 8 in) long.

Maverick soils consist of upland clayey soils occurring over caliche with underlying calcareous material containing shale and gypsum crystals (Thompson, et al. 1972). The upper zone consists of well-drained, moderately deep soft shale bedrock, sloping 1 to 10 percent and forming clayey sediments. Ancient deposition of rock material from the Rio Grande can be found in portions of these soils, and rock and Indian artifact collecting has become a pastime for residents and visitors in the area.

Lesquerella thamnophila grows opportunistically; that is, the density of *Lesquerella* thamnophila plants and the sizes of populations fluctuate in response to rainfall during the growing season. Populations can respond dramatically to rainfall events, going from barely detectable to a substantial assemblage of thousands of individuals.

Lesquerella thamnophila occurs as an herbaceous component of an open *Leucophyllum* frutescens (cenizo) shrub community that grades into an *Acacia rigidula* (blackbrush) shrub community. Both plant communities dominate upland habitats on shallow soils near the Rio Grande (Diamond 1990). These shrublands are sparsely vegetated due to the shallow, fast-draining, highly erosional soils and semi-arid climate (Poole 1989). Other related plant species in the cenizo and blackbrush communities include *Acacia berlandieri* (guajillo), *Prosopis* sp. (mesquite), *Celtis pallida* (granjeno), *Yucca treculeana* (Spanish dagger), *Zizyphus obtusifolia* (lotebush), and *Guaiacum angustifolium* (guayacan).

The coverage of an aggressively invasive, nonnative grass, *Cenchrus ciliaria* (buffelgrass), is extensive at three of the four extant sites (see below) and present at the fourth. *Dichanthium annulatum* (Kleberg bluestem grass), which is used for erosion control on roadways, has also begun to invade natural areas and is present at all four *Lesquerella thamnophila* sites; although not as extensively as buffelgrass.

Biologists have located a total of 10 populations of *Lesquerella thamnophila*, including the type locality (the area from which the specimens that were used to first describe the species were taken) discovered by Rollins and Correll in Zapata County in 1959. Of the 10 total populations found, 4 sites either are known to still support or have recently supported live plants, including one on private land in Starr County, one on Service refuge property in Starr County, one on the Highway 83 right-of-way (ROW) near the Tigre Chiquito Bridge in Zapata County, and a fourth site discovered in March 2000 on a bluff on private land.

The site located on refuge property supports the largest known population. Biologists confirmed, through multiple site visits performed since 1994, that the plant's vegetational growth is highly dependent upon rainfall. The Texas Parks and Wildlife Department (TPWD) discovered this site initially, finding approximately 50 plants. During subsequent surveys, TPWD and Service personnel found 131 plants in 1996 and up to 8,000 plants in 1997. Few individuals were found in 1998 when drought conditions were severe. In June of 1999, after 4–6 inches of rain fell in the area, we observed a large number of plants flowering and producing fruit. In March of 2000, we found numerous rosettes, but few plants reproducing.

Plants have not been observed on the Highway 83 ROW site near the Tigre Chiquito bridge since 1998. Although this site may still support the plant, drought conditions have prevented above-ground vegetative growth, making observation impossible. This site also has been invaded by buffelgrass. The Texas Department of Transportation (TxDOT) and TPWD had developed a management agreement to protect the site by excluding mowing practices, but, due to the almost complete coverage of buffelgrass at the site, management plans at the area may have to be modified.

One population in a subdivision near Falcon Lake supported up to 1,000 plants in the past. When this site was visited in 1999, only one plant was found. Extensive housing construction, invasion of buffelgrass, and continued soil erosion from land disturbance may have completely eliminated this population.

Three other populations are believed extirpated, including the type locality in Zapata County. The remaining two populations have not been re-verified due to inaccessibility on private land. While the extent of occupied habitat can be estimated, access to private land has curtailed survey efforts by various State and Federal biologists. The plant likely occurs in other areas within its historical range in Texas, and recent reports provide reliable evidence of the plant in the State of Tamaulipas, Mexico.

Previous Federal Action

Federal action involving this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. The Smithsonian Institution presented the report, designated as House Document No. 94–51, to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition to list the species within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and announcing that we would initiate a review of the status of those plants. *Lesquerella thamnophila* was included as threatened in the Smithsonian report and in our notice.

On June 16, 1976 (41 FR 24523), we published a proposed rule to list approximately 1,700 species of vascular plants as endangered. *Lesquerella thamnophila* was included in this

proposal. However, the 1978 amendments to the Act required the withdrawal of all proposals over 2 years old (although a 1-year grace period was allowed for those proposals already over 2 years old). On December 10, 1979 (44 FR 70796), we published a notice withdrawing that portion of the June 16, 1976, proposal that had not been made final, which included *Lesquerella thamnophila*.

On December 15, 1980 (45 FR 82823), we published a list of plants under review for listing as threatened or endangered, which included *Lesquerella thamnophila* as a category 2 candidate. "Category 2 candidates" were those species for which available information indicated listing as threatened or endangered may have been appropriate, but for which substantial data were not available to support preparation of a proposed rule.

Section 4(b)(3)(B) of the Act requires that we make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The 1975 Smithsonian report was again accepted as a petition, and all the plants noted within the report, including *Lesquerella thamnophila*, were treated as being newly petitioned on October 13, 1982. In each subsequent year from 1983 to 1993, we determined that listing *Lesquerella thamnophila* was warranted, but precluded by other listing actions of higher priority, and that we were still compiling additional data on vulnerability and threats.

A status report on *Lesquerella thamnophila* was completed on August 8, 1989 (Poole 1989). That report provided sufficient information on biological vulnerability and threats to warrant designating the species as a category 1 candidate and to support preparation of a proposed rule to list *Lesquerella thamnophila* as endangered. "Category 1 candidates" were those species for which we had substantial information indicating that listing under the Act was warranted.

Notices revising the 1980 list of plants under review for listing as endangered or threatened were published in the **Federal Register** on September 27, 1985 (50 FR 39626), February 21, 1990(55 FR 6184), and September 30, 1993 (58 FR 51171). *Lesquerella thamnophila* was included in the September 30, 1993, notice as a category 1 candidate.

Upon publication of the February 28, 1996, Notice of Review(61 FR 7605), we ceased using category designations for candidate species and included *Lesquerella thamnophila* simply as a candidate species. Candidate species are those species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered. We retained *Lesquerella thamnophila* as a candidate species in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398).

On January 22, 1998, we published a proposed rule to list *Lesquerella thamnophila* as endangered, without critical habitat(63 FR 3301). We invited the public and State and Federal agencies to comment on the proposed listing.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine a species to be endangered or threatened. Regulations at 50 CFR 424.12 state that critical habitat designation is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

In the proposed rule we indicated that designation of critical habitat was not prudent for *Lesquerella thamnophila* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered. However, after consideration of recent court decisions overturning "not prudent" determinations for other species (see discussion below), we reconsidered the issue. We published a final rule listing *Lesquerella thamnophila* as endangered on November 22, 1999, (64 FR 63745), and stated that, based on limited funding for our listing program, we would defer critical habitat designation until other higher-priority listing actions were completed.

Subsequent to the final rule listing the species as endangered, the Southwest Center for Biological Diversity filed suit to compel us to designate critical habitat for several species, including *Lesquerella thamnophila* (Southwest Center for Biological Diversity *et al.* v. *Babbitt* Civil No. 99–D–1118). We entered into settlement negotiations with the plaintiff and agreed to propose critical habitat by July 14, 2000, with a final determination to be made no later than December 15, 2000.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat designations upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could develop the physical and biological features that are essential for the conservation of a listed species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the habitat have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act prohibits Federal agencies from funding, authorizing, or carrying out actions likely to jeopardize the continued existence of a threatened or endangered species, or that are likely to destroy or adversely modify critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) occurs when a Federal action significantly reduces the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are similar.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat). Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas that have the features that are essential to the conservation of a listed species and that may require special management considerations or protection. Unoccupied areas that we determine are essential to the conservation of the species may also be designated as critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, germination, or seed dispersal; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for *Lesquerella thamnophila* are:

(1) Arid upland habitats of various soil types, including highly calcareous sandy loam to loamy sand, with low to moderate salinity levels on low, sloping hills;

(2) Absence of substantial previous soil disturbance and seeding or sodding of exotic grasses; and

(3) A sparse overstory of shrub species typical of the Tamaulipian biotic province, but lacking a complete canopy as might be provided by a continuous overstory dominated by mesquite (*Prosopis glandulosa*).

Proposed Critical Habitat Designation

We are proposing critical habitat to provide for the conservation of *Lesquerella thamnophila* within a large portion of its geographic range in the United States. One segment of the proposed critical habitat contains the largest known population of the species. Another proposed area is known to have had an extant population as recently as 1998. The additional proposed segments contain the necessary primary constituent elements and are believed capable of supporting the species, although it has not been documented on these sites. These areas are within the historical range of the species, contain habitats that are protected from disturbance, support the ecological requirements of *Lesquerella thamnophila*, and are essential to the conservation of the species.

Because of this species' precarious status, mere stabilization of *Lesquerella thamnophila* populations at their present levels will not achieve conservation. Maintenance and enhancement of the existing populations, plus reestablishment of populations in suitable areas within the historical range, are necessary for the species' survival and recovery. One of the most important conservation actions will be establishment of secure, self-reproducing populations in suitable habitats. Thus, we find that it is essential for the conservation of the species that critical habitat for *Lesquerella thamnophila* include both areas known to currently sustain the species and other areas where *Lesquerella thamnophila* is not currently present but support the primary constituent elements where additional populations can be established for the recovery of the species.

We are proposing to not include one site, in a subdivision near Falcon Lake, which has undergone significant development in recent years and has been invaded by buffelgrass. This site does not contain and is unlikely to develop, the primary constituent elements that are essential to the conservation of the species. This population may have already been eliminated, and we have little hope that the site can contribute to the species' recovery. Therefore, this site is not essential to the conservation of *Lesquerella thamnophila* and thus, does not meet the definition of critical habitat.

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the species' conservation. However, we seek additional information regarding the importance of areas proposed for critical habitat as well as identification of additional areas.

We are proposing seven Lower Rio Grande National Wildlife Refuge tracts in Starr County for critical habitat designation, including the Cuellar, Chapeno, and Arroyo Morteros Tracts located south/southwest of the Falcon Heights subdivision; the Las Ruinas, Los Negros, and Arroyo Ramirez tracts located west and northwest of the City of Roma; and the La Puerta Tract located southeast of Rio Grande City. We are also proposing to designate one currently populated and one historically populated area (i.e. currently unoccupied) owned by the State of Texas along the Highway 83 ROW in Zapata County. One of these areas is located near the Siesta Shores subdivision on the east side of Highway 83, and the other is located farther south, also on the east side of Highway 83, near the Tigre Chiquito bridge. Additionally, we are proposing to designate one of the known populations that occur on private land. This area, located on a high bluff, is less than 1.6 km (1.0 mi) northeast of the Rio Grande, and approximately 3.44 km (2.136 mi) northeast of the town of Salineno.

Table 1 shows land ownership for areas of critical habitat that are currently occupied and unoccupied.

TABLE 1.—ACRES/HECTARES OF PROPOSED OCCUPIED AND UNOCCUPIED CRITICAL HABITAT FOR FEDERAL AND STATE PROPERTIES.

County	State occupied acres/ hectares	State unoccupied acres/ hectares	Federal occupied acres/ hectares	Federal unoccupied acres/ hectares	Private occupied acres/ hectares	Private unoccupied acres/ hectares	Total acres/ hectares
Starr	0.0/0.0	0.0/0.0	45.0/18.2	5,284.0/ 2,138.0	1.36/0.552	0.0/0.0	5,330.36/ 2,156.75
Zapata	1.51/0.60	1.51/0.60	0.0/0.0	0.0/0.0	0.0/0.0	0.0/0.0	3.02/1.2

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Under section 7(a)(2), if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Lesquerella thamnophila* or its critical habitat will require section 7 consultation. Activities on non-Federal lands requiring a permit or utilizing funding from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or Federal funding of a highway project, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted, would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Lesquerella thamnophila* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species when affecting areas currently occupied by the species. When determining whether any of these activities may adversely modify critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or segments of critical habitat generally do not result in an adverse modification determination unless that loss, when added to the environmental baseline, is likely to appreciably diminish the

capability of the critical habitat to satisfy essential requirements of the species. For *Lesquerella thamnophila*, activities that appreciably degrade or destroy native Tamaulipan thornscrub communities, such as road building, land clearing for oil or gas exploration and other purposes, soil disturbance for pasture improvement, livestock overgrazing, introducing or encouraging the spread of nonnative species, and heavy recreational use may destroy or adversely modify critical habitat.

Critical habitat on the National Wildlife Refuge tracts could be affected directly by actions on the refuge, as well as indirectly by actions taken on surrounding lands. These actions include, but are not limited to, recreation management, road construction, granting of utility rights of way, and habitat restoration projects by the Fish and Wildlife Service; oil and gas exploration, extraction, and/or transportation permitted by Bureau of Land Management and the Federal Energy Regulatory Commission; road construction and brush clearing by the Immigration and Naturalization Service; and range improvement projects, including establishment of nonnative grasses, by the Natural Resource Conservation Service.

On the TxDOT tracts, actions, when carried out, funded, or authorized by a Federal agency, that may destroy or adversely modify critical habitat include highway construction projects funded by the Federal Highway Administration.

On the private land site, indirect as well as direct actions such as road construction and brush clearing by the Immigration and Naturalization Service, and range improvement projects, including establishment of nonnative grasses by the Natural Resource Conservation Service may adversely affect the population of Zapata bladderpod.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ecological Services Field Office, in Corpus Christi, Texas (see **ADDRESSES** section). If you want copies of the regulations on listed wildlife or have inquiries about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 248–6920, facsimile (505) 248–6922).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as part of critical habitat. We cannot exclude areas from critical habitat if the exclusion would result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. The economic analysis will be available for public review and comment; when completed, we will announce its availability in the **Federal Register** and local newspapers, and we will open a 30-day comment period at that time.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. No tribal lands are proposed for designation as critical habitat, and no effects on tribal trust resources are anticipated if this proposal is made final.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, the Republic of Mexico, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designating areas as critical habitat will outweigh the benefits of excluding those areas from the designation;

(2) Specific information on the amount and distribution of *Lesquerella thamnophila* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for *Lesquerella thamnophila*, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

Executive order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this document easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this peer review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite

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them to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal. We will hold a public meeting in the Rio Grande City Activities Center (see **ADDRESSES**) from 5 p.m. to 7 p.m. on August 24, 2000, to share information on this proposal and answer questions from interested persons. Immediately following the meeting, we will hold a public hearing from 7 p.m. to 9 p.m., to provide the public with the opportunity to provide formal testimony on this proposal.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB). We will prepare a draft economic analysis of this proposed action to determine the economic consequences of designating the specific areas as critical habitat. We will announce in the **Federal Register** the availability of the draft economic analysis for public review and comment.

(a) We do not anticipate that this rule will have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. We will conduct an analysis of the economic impact of this proposed designation prior to making a final determination. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we believe that anyFederal action or federally authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. Non-Federal persons who do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species). Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. Table 2 shows a comparison of the effects on Federal actions resulting from the species' listing versus those expected to result from critical habitat designation. For areas currently occupied by *Lesquerella thamnophila*, Federal agencies have already been required to consult with us through section 7 of the Act to ensure that their actions do not jeopardize the continued existence this species since it was listed. Designation of critical habitat in these areas will not change or add to this requirement. We will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) The proposed rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have significant incremental effects.

(d) This rule will not raise novel legal or policy issues.

The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF DESIGNATING CRITICAL HABITAT FOR LESQUERELLA THAMNOPHILA

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities that remove or destroy occupied habitat whether by mechanical, chemical, or other means (*e.g.*, soil disturbance for purposes including pasture improvement, heavy recreational use, inappropriate application of herbicides, etc.); sale, exchange, or lease of Federal land that contains occupied habitat that is likely to result in the habitat being destroyed or appreciably degraded.	Same activities, except for herbicide application, which appreciably degrade or destroy unoccupied critical habitat.

TABLE 2. IMPACTS OF DESIGNATING CRITICAL HABITAT FOR LESQUERELLA THAMNOPHILA—Continued

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private and other non-Federal Activities Potentially Affected [4].	Activities that require a Federal action (permit, authorization, or funding) and which: (1) Remove or destroy occupied habitat, whether by mechanical, chemical, or other means (*e.g.*, road building and other construction projects, inappropriate application of herbicides, land clearing for purposes including oil and gas exploration, soil disturbance for purposes including pasture improvement, significant overgrazing, etc.); or (2) appreciably decrease habitat value or quality through indirect effects (*e.g.*, introducing or encouraging the spread of nonnative species).	Same activities, except herbicide application, which appreciably degrade or destroy unoccupied critical habitat.

[1] This column represents the activities potentially affected by listing the Zapata bladderpod as an endangered species on November 22, 1999, under the Endangered Species Act (64 F 63745).
[2] This column represents the activities potentially affected by the critical habitat designation beyond the effects resulting from the species' listing.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant economic effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any significant restrictions in addition to those currently in existence.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. No land is being designated that is under the jurisdiction of any small governments.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of *Lesquerella thamnophila*. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of *Lesquerella thamnophila*.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required.

In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Texas. We will continue to coordinate any future designation of critical habitat for *Lesquerella thamnophila* with the appropriate State agencies. The designation of critical habitat will impose few additional restrictions beyond those currently in place and, therefore, will have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

Our position is that, outside the U.S. Tenth Circuit, we do not need to prepare an environmental analysis as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48F.3d 1495 (Ninth Circuit Oregon 1995), *cert. denied* 116 S. Ct.698 (1996). However, when critical

habitat involves States within the Tenth Circuit, pursuant to the ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*,75 F.3d 1429 (10th Circuit 1996), we undertake a NEPA analysis for critical habitat designation. Although *Lesquerella thamnophila* does not occur in any 10th Circuit States, this designation is subject to 10th Circuit review because the case compelling the settlement agreement was filed in New Mexico. Thus, we are preparing an environmental assessment of this action. Send your request for copies of the draft environmental assessment for this proposal to the Field Supervisor, Corpus Christi Ecological Services Field Office (see **ADDRESSES**).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We determined that no Tribal lands are essential for the conservation of *Lesquerella thamnophila* because no Tribal lands support populations of this plant or suitable habitat. Therefore, we are not proposing to designate critical habitat for *Lesquerella thamnophila* on Tribal lands.

References Cited

Diamond, D. 1990. Plant Communities of Texas (series level). Texas Parks and Wildlife Department. Austin, Texas.

Poole, J. 1989. Status Report on *Lesquerella thamnophila*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Rollins, R. C. and E. A. Shaw. 1973. The Genus *Lesquerella*. Harvard University Press, Cambridge, Massachusetts.

Thompson, C.M., R.R. Sanders, and D. Williams. 1972. Soil Survey of Starr County, Texas. U.S. Department of Agriculture. Soil Conservation Service, Temple, Texas.

Authors

The authors of this notice are Loretta Pressly and Lee Elliott (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend 50 CFR part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h), by revising the entry for *"Lesquerella thamnophila"* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Lesquerella thamnophila	Zapata bladderpod	U.S.A (TX), Mexico.	Brassicaceae	E	671	17.96(a)	N/A
*	*	*	*	*	*	*	*

3. Amend § 17.96 by adding critical habitat for *Lesquerella thamnophila*, Zapata bladderpod, in alphabetical order by scientific name under Family Brassicaceae to read as follows:

§ 17.96 Critical habitat-plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae * * *

Lesquerella thamnophila (Zapata bladderpod).

1. Critical habitat units are depicted for Starr and Zapata

Counties, Texas, on the maps below. Critical habitat includes

National Wildlife Refuge tracts, highway right-of-way sites, and one site on private land.

2. Within these areas, the primary constituent elements are:

(1) Arid upland habitats of various soil types, including highly calcareous sandy loam to loamy sand, with low to moderate salinity levels on low, sloping hills;

(2) Absence of substantial previous soil disturbance and seeding or sodding of exotic grasses; and

(3) A sparse overstory of shrub species typical of the Tamaulipian biotic province, but lacking a complete canopy as might be provided by a continuous overstory dominated by mesquite (*Prosopis glandulosa*).

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Map 1. General Vicinity Map of South Texas

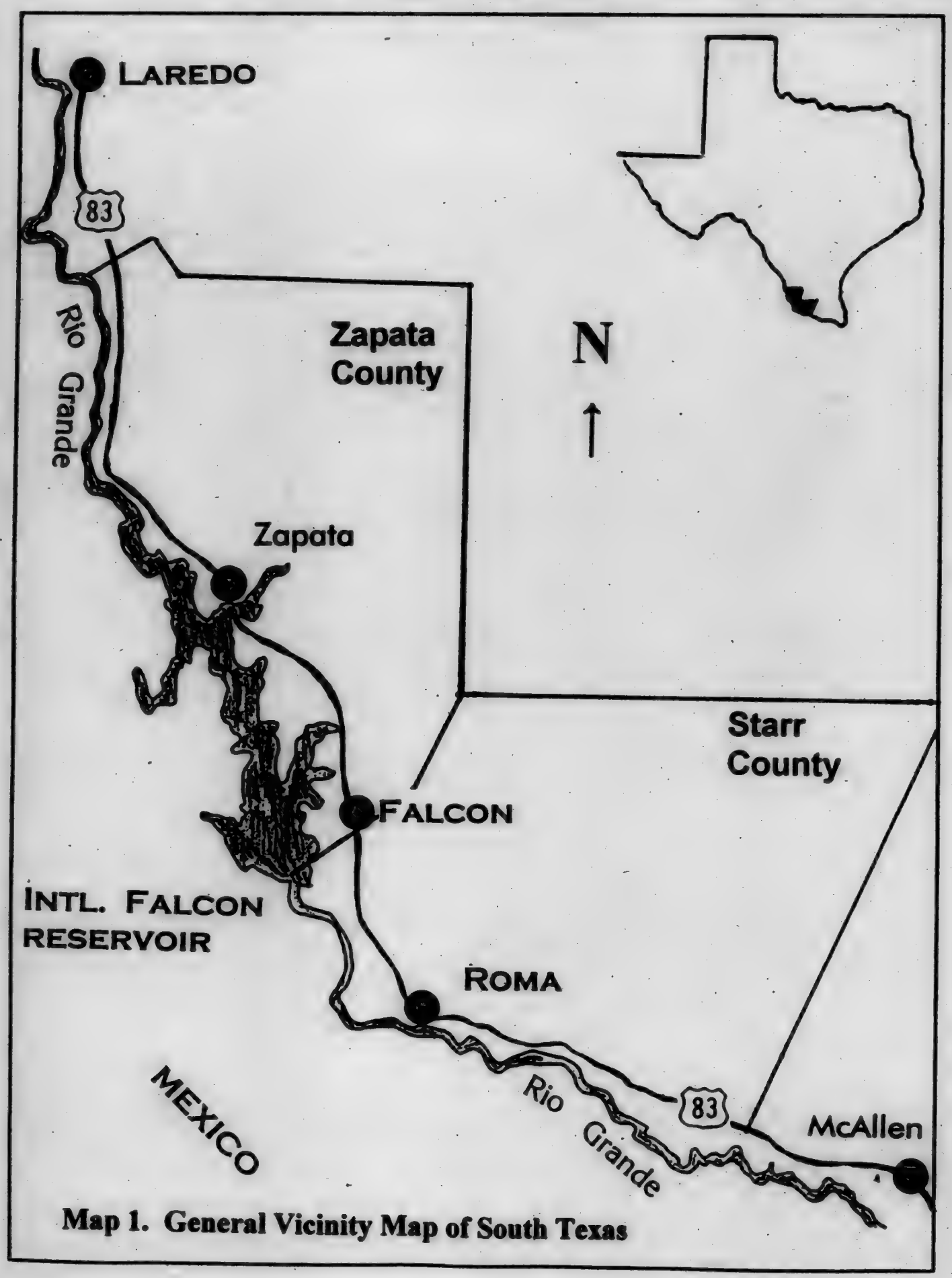

Map 1. General Vicinity Map of South Texas

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Map 2. General Locations of Critical Habitat Units

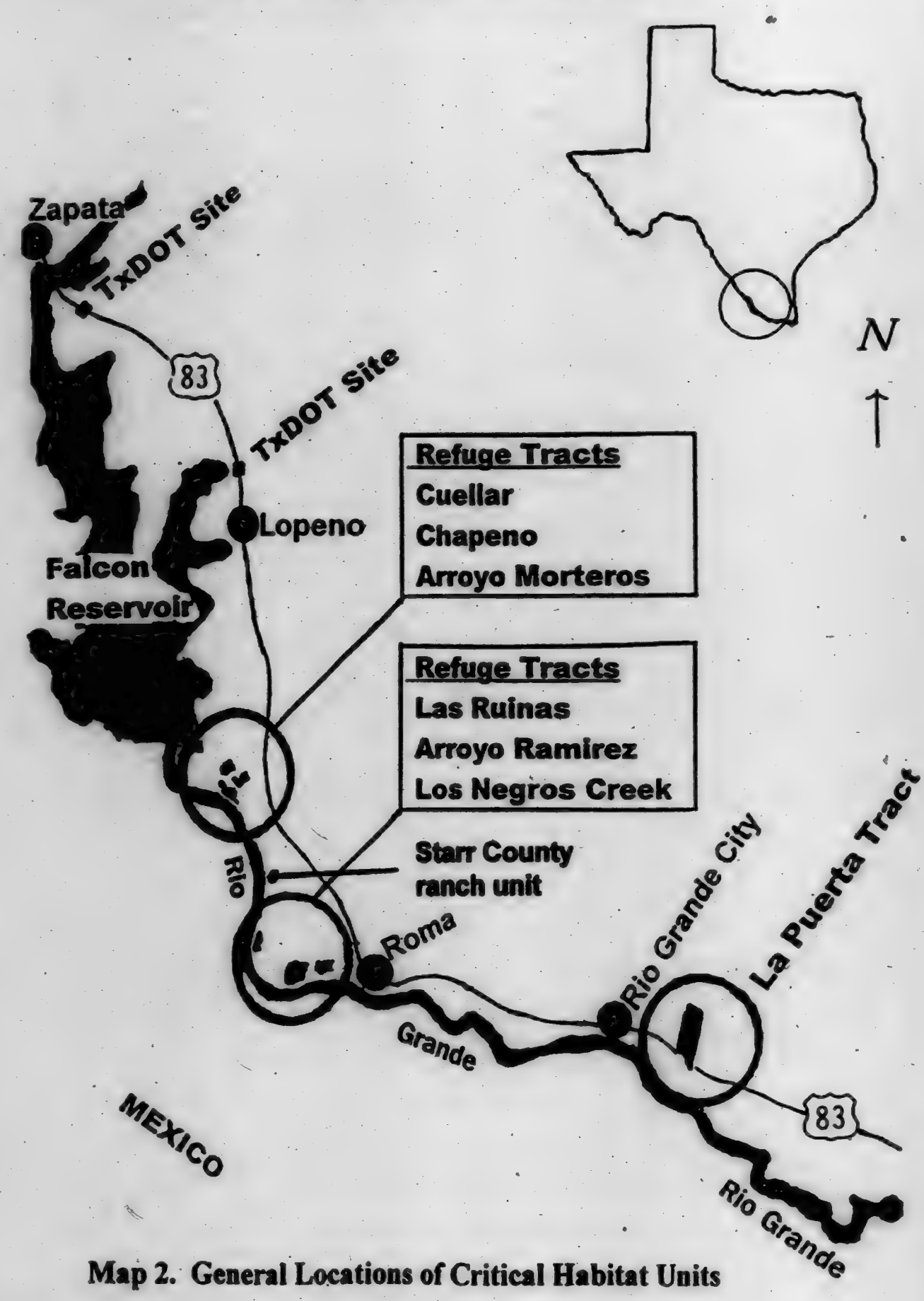

Map 2. General Locations of Critical Habitat Units

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Critical Habitat on Lower Rio Grande Valley National Wildlife Refuge Tracts, Starr County, Texas (Area measurements are approximate.):

Unit 1, Cuellar Tract (18 hectares (ha); 45 acres (ac))—(Segment 669). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by the National Geodetic Survey Triangulation Station "LABRA" (not found) having State plane coordinates of N=331,881.065, E=1,794,777.75. The scale factor used is *0.9999252*, and the theta angle is *−00°37′32″*. All areas and distances are true surface measurements. Beginning at a standard U.S. Fish and Wildlife Service (FWS) aluminum monument set for corner on the southeasterly line of Porcion No. 59 and the northeast corner of Share 35 and stamped "Tract 669, COR No. 1, R.P.L.S. #4303" and having a State plane coordinate value of N=320,083.51, E=1,799,578.77, from which triangulation station "LABRA", bears N 22° 08′38″W, 12,737.98 feet; thence, in a southwesterly direction along the common line of Porcion 59 and 60, S 54°32′24″W, 2,290.19 feet, to a standard FWS aluminum monument set for corner, being the common corner of Shares 35 and 26 and stamped "Tract 669, COR No. 2, R.P.L.S. No. 4303; thence, in a northwesterly direction along the common line of Share 35 with Shares 26 and 27, N 35°27′36″W, 640.00 feet to a standard FWS aluminum monument set for corner, being the most southerly common corner of Shares 35 and 34 and stamped "Tract 669, COR. No. 3, R.P.L.S. No. 4303"; thence, in a northeasterly direction along the common line of Shares 35 and 34; N 54°32″24″E, 2,290.19 feet to a standard FWS aluminum monument set for corner, being the most northerly common corner of shares 35 and 34 and stamped "Tract 669, COR No. 4, R.P.L.S. No. 4303; thence, in a southeasterly direction along the common line of Shares 35 and 36 Parcel–A; S 35°27′36″ E, 640.00 feet to the point of beginning and containing 33.648 acres of land.

(Cuellar Tract—Segment 672). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by U.S. Fish and Wildlife Service GPS Monument No. 105 having State plane coordinates (NAD 27) of N=311,099.90, E=1,799,824.45. The scale factor used is *0.9999252*, and the theta angle is *−00°37′32″*. All areas and distances are true surface measurements. Beginning at a standard FWS aluminum monument set for corner on the common line between Porcions 59 and 60, and being the northeast corner of Share 26 and stamped "Tract 672, COR. No. 1, R.P.L.S. No. 3680" and having a State plane coordinate value of N=318,737.64, E=1,797,725.36, from which FWS GPS Monument No. 105 bears S 15°22′02″E, 7,920.94 feet; thence, in a southeasterly direction along the common line of Porcion 59 and 60, S 54°27prime 12″W, 806.50 feet to a standard FWS aluminum monument set for corner, being the southeast corner of said north one-half (½) of Share 26, same being the northeast corner of the south one-half (½) of Share 26 and stamped "Tract 672, COR. No. 2, R.P.L.S. No. 3680"; thence, in a northwesterly direction along the common line of said north and south one-half (½) of Share 26; N 35°27″36″W, 463.31 feet to a standard FWS aluminum monument set for corner in the common line between Shares 26 and 27 and stamped "Tract 672, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northeast direction along the common line of Shares 26 and 27; N 54°32′24″E, 806.50 feet to a standard FWS aluminum monument set for corner, being the most northerly common corner of Shares 26 and 27 in the south line of Share 35 and stamped "Tract 672, COR. No. 4, R.P.L.S. No 3680"; thence, in a southeasterly direction along the common line of Shares 35 and 26; S 35°27′36″E, 462.09 feet to the point of beginning and containing 8.567 acres of land.

(Cuellar Tract—Segment 673). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by FWS GPS Monument No. 105 having State plane coordinates (NAD 27) of N = 311,099.90, E = 1,799,824.45. The scale factor used is *0.9999252*, and the theta angle is *−00° 37′ 32″*. All areas and distances are true surface measurements. Beginning at a standard FWS aluminum monument set for the common north corner of Shares 26 and 27, in the south line of Share 35 and stamped "Tract 672, COR. No. 4, R.P.L.S. No. 3680" and having a state plane coordinate value of N = 319,114.02, E = 1,797,457.29, from which FWS GPS Monument No. 105 bears S 16° 27′ 21″ E, 8,356.40 feet; thence, in a southwesterly direction along the common line of Shares 26 and 27, S 54° 32′ 24″ N, 806.50 feet to a standard FWS aluminum monument set for corner, being the southeast corner of said north one-half (½) of Share 27, same being the northeast corner of the south one-half (½) of Share 27 and stamped "Tract 672, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northwesterly direction along the common line of said north and south one-half (½) of Share 27; N 35° 27′ 36″ W, 592.30 feet to a standard FWS aluminum monument set for corner in the common line between Shares 27 and 28 and stamped "Tract 674, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northeasterly direction along the common line of Shares 27 and 28, N 54° 32′ 24″ E, 806.50 feet to a standard FWS aluminum monument set for corner, being the most northerly common corner of Shares 27 and 28 in the south line of Share 34 and stamped "Tract 674, COR. No. 2, R.P.L.S. No. 3680"; thence, in a southeasterly direction along the common line of Shares 34 and 27, S 35° 27′ 36″ E, 592.30 feet to the point of beginning and containing 10.966 acres of land.

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(Cuellar Tract—Segment 674). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by FWS GPS Monument No. 105 having State plane coordinates (NAD 27) of N = 311,099.90, E = 1,799,824.45. The scale factor used is *0.9999252*, and the theta angle is *−00° 37′ 32″*. All areas and distances are true surface measurements. Beginning at a standard FWS aluminum monument set replacing a 1-inch iron pipe found for the common north corner of Shares 28 and 29, in the south line of Share 33 and stamped "Tract 674, COR. No. 1, R.P.L.S. No. 3680" and having a state plane coordinate value of N = 320,078.90, E = 1,796,770.06, from which FWS GPS Monument No. 105 bears S 18° 47′ 11″ E, 9,484.36 feet; thence, in a southeasterly direction along the common line of Share 28 and Shares 33 and 34, S 35° 27′ 36″ E, 592.30 feet to a standard FWS aluminum monument set for corner, being the common northerly corner of Shares 28 and 27 and stamped "Tract 674, COR. No. 2, R.P.L.S. No. 3680"; thence, in a southwesterly direction along the common line of said Share 28 and 27; S 54° 32′ 24″ W, 806.50 feet to a standard FWS aluminum monument set for the southeasterly corner of said north one-half (½) of Share 28, same being the northeasterly corner of the south one-half (½) of Share 28 and stamped "Tract 674, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northwesterly direction along the common line of the north and south one-half (½) of Share 28, N 35° 27′ 36″ W, 592.30 feet to a standard FWS aluminum monument set for corner in the common line between Shares 28 and 29 and stamped "Tract 674, COR. No. 4, R.P.S. No. 3680"; thence, in a northeasterly direction along the common line of Shares 28 and 29; N 54° 32′ 24″ E, 806.50 feet to the point of beginning and containing 10.966 acres of land.

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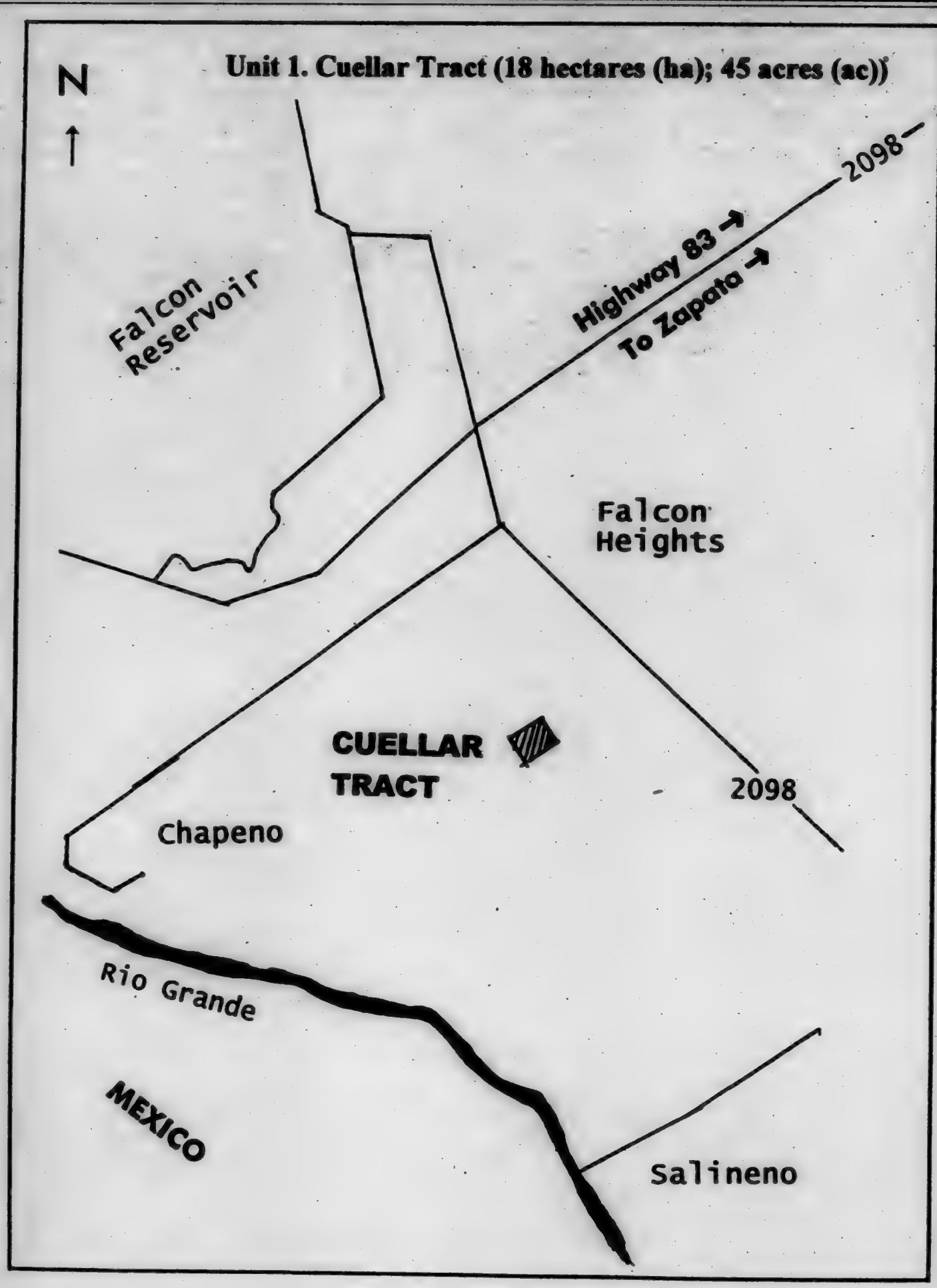

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Unit 2, Chapeno Tract (28 ha; 69 ac)—(Chapeno Tract—Segment 660). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G. S. Triangulation Station "LABRA." The scale factor used is *0.9999252*, and the theta angle is *−00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 02° 08′ 43″ W, a distance of 9,020.47 feet to the northwesterly boundary line of said 44.900-acre tract for the northmost corner of said Share No. 17 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 17 and the southwesterly boundary line of a 35-foot perpetual easement, S 32° 11′ 36″ E, 840.62 feet to the easternmost corner of said Share No. 17 and being corner No. 2 of this tract; thence, along the southeasterly boundary line of Share No. 17 and the northwesterly boundary line of Share No. 18, S 47° 29′ 30″ W, 293.59 feet to a said point on a fence line along the southwesterly boundary line of said 44.900-acre tract for the southernmost corner of said Share No. 17 and being corner No. 3 of this tract; thence, following said fence line along the southwesterly boundary line of Share No. 17 and the southwesterly boundary line of said 44.900-acre tract, N 30° 16′ 28″ W, 166.16 feet to a standard FWS aluminum monument stamped "Tract (660), R.P.S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 4 of this tract; thence, continuing along said fence line along the southwesterly boundary line of Share No. 17 and the southwesterly boundary line of said 44.900-acre tract, N 31° 04′ 59″ W, 684.02 feet to a standard FWS aluminum monument stamped "Tract (660), R. P. S. No. 4731" set for the westernmost corner of said 44.900-acre tract and being corner No. 5 of this tract, thence, following a fence line along the northwesterly boundary line of Share No. 17 and the northwesterly boundary line of said 44.900-acre tract, N 48° 42′ 36″ E, 273.46 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 661). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U. S. C. & G. S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 00° 48′ 20″ E, a distance of 9,702.45 feet to the northernmost corner of said Share No. 18 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 18 and the southwesterly boundary line of Share No. 19, S 42° 40′ 05″ E, 623.01 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of said Share No. 18 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 18 and the southeasterly boundary line of said 44.900-acre tract, S 54° 58′ 43″ W, 14.82 feet to a standard FWS aluminum monument stamped "Tract (661), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along said fence line along the southeasterly boundary line of Share No. 18 and the southeasterly boundary line of said 44.900-acre tract, S 54° 17′ 40″ W, 442.61 feet to a standard FWS aluminum monument stamped "Tract (661), R. P. S. No. 4731" set for the southernmost corner of said 44.900-acre tract and being corner No. 4 of this tract; thence, following a fence line along the southwesterly boundary line of Share No. 18 and the southwesterly boundary line of said 44.900-acre tract, N 30° 16′ 28″ W, 581.86 feet to a point for the westernmost corner of said Share No. 18 and being corner No. 5 of this tract; thence, along the southeasterly boundary line of Share No. 17 and the northwesterly boundary line of Share No.18, N 47° 29′ 30″ E, 329.16 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 662). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is 00.9999252, and the theta angle is −00° 37′ 32″; (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 00° 53′ 22″ E, a distance of 9,308.99 feet to the northernmost corner of said Share No. 19 and being corner No.1 and the northernmost corner and the place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 19 and the southwesterly boundary line of Share No. 20, S 41° 14′ 45″ E, 941.54 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of said Share No. 19 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 19 and the southeasterly boundary line of said 44.900-acre tract, S 55° 22′ 51″ W, 8.49 feet to a standard FWS aluminum monument stamped "Tract (662), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along said fence line along the southeasterly boundary line of Share No. 19 and the southeasterly boundary line of said 44.900-acre tract, S 54° 58′ 43″ W, 243.72 feet to the southernmost corner of Share No. 19 and being corner No. 4 of this tract; thence, along the northeasterly boundary line of Share No. 18 and the southwesterly boundary line of Share No. 19, N 42° 40′ 05″ W, 623.01 feet to a corner of Share No. 19 and being corner No. 5 of this tract; thence, along the northeasterly boundary line of a 35-foot perpetual easement and the southwesterly boundary line of Share No. 19, N 32° 08′ 41″ W, 293.64 feet to the westernmost corner of said Share No. 19 and being corner No. 6 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 19, N 48° 23′ 35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 663). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 01° 55′ 50″ E, a distance of 9,166.26 feet to the northernmost corner of said share No 20, and being corner No. 1, and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 20 and the southwesterly boundary line of Share No. 21, S 44° 17′ 45″ E, 975.87 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost

corner of said Share No. 20 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 20 and the southeasterly boundary line of said 44.900-acre tract; S 55° 22′ 51″ W, 273.48 feet to the southernmost corner of Share No. 20 and being corner No. 3 of this tract; thence, along the northeasterly boundary line of Share No. 19 and the southwesterly boundary line of Share No. 20, N 41° 14′ 45″ W, 941.54 feet to the westernmost corner of Share No. 20 and being corner No. 4 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 20, N 48° 23′ 35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 664). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 03° 00′ 15″ E, a distance of 9,027.56 feet to the northernmost corner of said Share No. 21 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 21 and the southwesterly boundary line of Share No 22, S 46 ° 18′ 57″ E, 1,008.60 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of Share No. 21 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 21 and the southeasterly boundary line of said 44.900-acre tract, S 54° 17′ 59″ W, 56.04 feet to a standard FWS aluminum monument stamped "Tract (664), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along said fenceline along the southeasterly boundary line of Share No. 21 and the southeasterly boundary line of said 44.900-acre tract, S 55° 22′ 51″ W, 202.51 feet to the southernmost corner of Share No. 21 and being corner No. 4 of this tract; thence, along the northeasterly boundary line of Share No. 20 and the southwesterly boundary line of Share No. 21, N 44° 17′ 45″ W, 975.87 feet to the westernmost corner of Share No. 21 and being corner No. 5 of this tract; thence, along the southeasterly boundary line of a 35-foot perpetual easement and the northwesterly boundary line of Share No. 21, N 48° 23′ 35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 665). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. Triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00°37′32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U.S.C. & G.S. Triangulation station "LABRA," having coordinate values: x = 1794,777.75, y = 331,881.06; thence, S 04°06′38″E, a distance of 8,892.12 feet to the northernmost corner of said Share No. 22 and being corner No.1 and the northernmost corner and place of beginning of the tract herein-described; thence, following a fence line along the northeasterly boundary line of Share No. 22 and the southwesterly boundary line of Share No. 23, S 47°33′31″E, 1,036.06 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of said Share No. 22 and being corner No. 2 of this tract; thence, following said fenceline along the southeasterly boundary line of Share No. 22 and the southeasterly boundary line of said 44.900-acre tract, S 54°17′59″W, 245.67 feet to the southernmost corner of Share No. 22 and being corner No. 3 of this tract; thence, along the northeasterly boundary line of Share No. 21 and the southwesterly boundary line of Share No. 22, N 46°18′57″W, 1,008.60 feet to the westernmost corner of Share No. 22 and being corner No. 4 of this tract; thence, along the southeasterly boundary line of a 35-foot perpetual easement and the northwesterly boundary line of Share No. 22, N 48°23′35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 666). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00°37′32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U.S.C. & G.S. Triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y =331,881.06; thence, S 05°15″E, a distance of 8,710.10 feet to the northernmost corner of said Share No. 23 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, following a fenceline along the northeasterly boundary line of Share No. 23 and the southwesterly boundary line of said Share No. 24, S 48°10′23″E, 1,061.62 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of Share No.23 and being corner No. 2 of this tract; thence, following said fenceline along the southeasterly boundary line of Share No. 23 and the southeasterly boundary line of said 44.900-acre tract, S 54°17′59″W, 234.95 feet to the southernmost corner of Share No.23 and being corner No. 3 of this tract; thence, along the northeasterly boundary line of Share No. 22 and the southwesterly boundary line of Share No. 23, N 47°33′31″W, 1,036.06 feet to the westernmost corner of Share No. 23 and being corner No. 4 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 23, N 48°23′35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 667). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. Triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00°37′32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U.S.C. & G.S. Triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 06°25′32″E, a distance of 8,631.65 feet to the northeasterly boundary line of said 44.900-acre tract for corner No. 1 and the place of beginning of the tract herein-described; thence, following a fence line along the northeasterly boundary line of share No. 24 and the northeasterly boundary line of said 44.900-acre tract, S 51°42′47″E, 679.97 feet to a standard FWS aluminum monument stamped "Tract (667), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 2 of this tract; thence, continuing along the fenceline along the northeasterly boundary line of Share No. 24 and the northeasterly boundary line of said 44.900-acre tract, S 01°11′46″E, 136.46 feet to a standard FWS aluminum monument stamped "Tract (667), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along the fenceline along the northeasterly boundary line of Share No. 24 and the

northeasterly boundary line of said 44.900-acre tract, S 54°15′17″E, 309.21 feet to a standard FWS aluminum monument stamped "Tract (667), R. P. S. No. 4731" set on a fenceline for the easternmost corner of Share No. 24 and being on the southeasterly boundary line of said 44.900-acre tract and being corner No. 4 of this tract; thence, following said fence line along the southeasterly boundary line of share No. 24 and the southeasterly boundary line of said 44.900-acre tract, S 54°17′59″W, 197.94 feet to the southernmost corner of Share No. 24 and being corner No. 5 of this tract; thence, following said fenceline along the southwesterly boundary line of Share No. 24 and the northeasterly boundary line of Share No. 23, N 48°10′23″W, 1,061.62 feet to the westernmost corner of Share No. 24 and northernmost corner of Share No. 23 and being corner No. 6 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 24, N 48°23′35″E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

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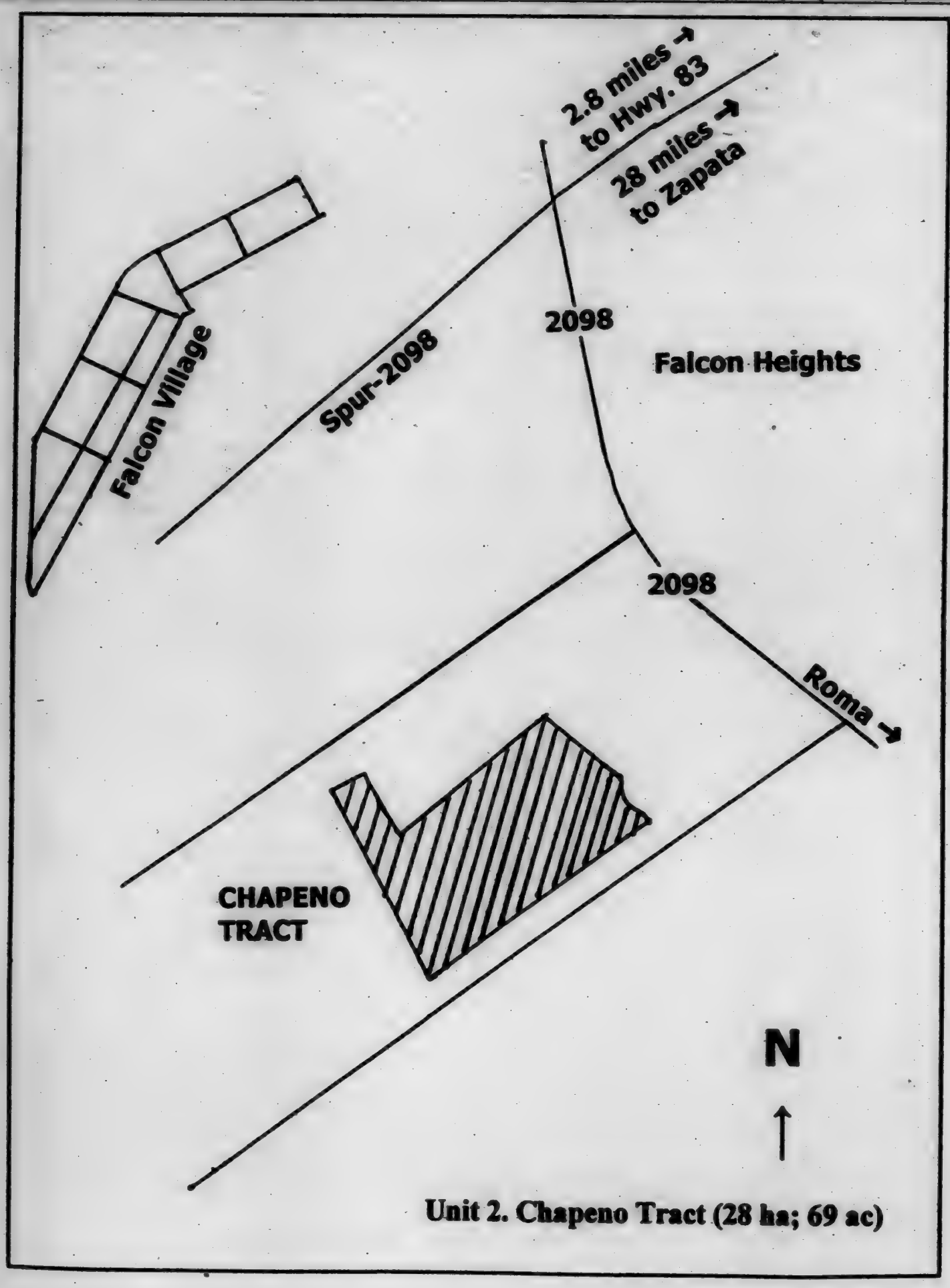

Unit 2. Chapeno Tract (28 ha; 69 ac)

BILLING CODE 4910-62-C

Unit 3, Arroyo Morteros Tract (41 ha; 102 ac)—Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, (NAD 27), as referenced by FWS GPS Monument No. 105 having State plane coordinates of N = 311,099.90, E = 1,799,824.45. The scale factor used is *0.9999252*, and the theta angle is *−00°37′32″*. All areas and distances are true surface measurements. Beginning at a ½-inch iron rod found for corner No. 1 on the common line between Porcions 59 and 60, and being the northwest corner of that certain 127.71-acre tract and having a State plane coordinate value of N = 315,746.07, E = 1,793,538.58, from which FWS GPS monument No. 105 bears S 53°31′49″E, 7,816.59 feet; thence, in a northeasterly direction along the common line of Porcion 59 and 60; N 54°27′12″E, 510.43 feet to a standard FWS aluminum monument set for corner replacing a ½-inch iron rod found, being the northwest corner of the herein described tract and stamped "Tract 670, Cor. No. 2, R. P. L. S. No. 3680"; thence, in a easterly direction through the interior of said 536.485 acre tract; S 35°20′27″E, 3,621.01 feet to a standard FWS aluminum monument set for corner replacing a ½-inch iron rod found, being the northeast corner of the herein-described tract and stamped "Track 670, Cor. No. 3, R.P.L.S. No. 3680"; thence, in a southerly direction continuing through the interior of said 536.485 acre tract; S 61°16′54″W, 219.24 feet to a fence corner post found for a northwesterly corner of that certain 17.408 acre tract and being corner No. 4; thence, in a easterly direction along the common line between said 17.408 acre tract and the herein described tract; S 88°47′16″W, 110.41 feet to a fence post found for angle point and corner No. 5; thence, in a easterly direction continuing along said common line between a 17.408 acre tract and herein described tract; N 79°11′33″W, 67.63 feet to a fence post found for angle point and corner No. 6; thence, in a easterly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 71°49′04″W, 50.57 feet to a fence post found for angle point and corner No. 7; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 15°40′49″W, 44.43 feet to a fence post found for angle point and corner No. 8; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 00°18′59″E, 253.83 feet to a fence post found for angle point and corner No. 9; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 06°36′21″W, 182.88 feet to a fence post found for angle point and corner No. 10; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 26°38′19″W, 125.18 feet to a fence post found for angle point and corner No. 11; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 67°33′26″W, 129.76 feet to a fence post found for angle point and corner No. 12; thence, in a southerly direction continuing along said common line between a 17.408-acre tract and herein described tract; S 45°58′19″W, 73.00 feet to a fence post found for angle point and corner No. 13; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 35°10′19″W, 113.60 feet to a fence post found for angle point and corner No. 14; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 19°34′19″W, 42.80 feet to a fence post found for angle point and corner No. 15; thence, in a southerly direction continuing along said common line between a 17.408-acre tract and herein described tract; S 15°23′41″W, 28.84 feet to a ½-inch iron rod found on the apparent gradient boundary of the Rio Grande for the southeast corner hereof and corner No. 16; thence, in a westerly direction along said apparent gradient boundary of the Rio Grande; N 62°26′09″W, 81.47 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 7; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 36°34′14″W, 122.63 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 18; thence, in a northerly direction continuing along said apparent gradient boundary of the Rio Grande; N 20°15′10″W, 58.91 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 19; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 34°02′20″W, 118.95 feet to a point on said apparent gradient boundary of the Rio Grande for Corner No. 20; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; S 73°36′56″W, 17.73 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 21; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 43°36′30″W, 118.21 feet to a point on said apparent gradient boundary of the Rio Grande corner No. 22; thence, in a northerly direction continuing along said apparent gradient boundary of the Rio Grande; N 28°12′58″W, 168.21 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 23; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 49°09′29″W, 149.82 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 24; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; N 66°23′26″W, 123.27 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 25; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; N 77°18′49″W, 240.49 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 26; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; S 80°06′32″W, 129.98 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 27; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; N 79°54′48″W, 218.17 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 28; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; S 81°13′28″W, 136.03 feet to a ½-inch iron rod found on said apparent gradient boundary of the Rio Grande for the southeast corner of the aforementioned 127.71 acre tract, same being the southwest corner hereof and corner No. 29; thence, in a northerly direction along the common line between said 127.71-acre tract and the herein described tract; N 06°09′33″W, 237.00 feet to a fence post found for angle point and corner No. 30; thence, in a northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 05°51′34″W, 198.49 feet to a fence post found for angle point and corner No. 31; thence, in a Northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 07°49′27″E, 161.97 feet to a fence post found for angle point and corner No. 32; thence, in a Northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 07°47′00″E, 302.39 feet to a fence post found for

angle point and corner No. 33; thence, in a northerly direction continuing along the common line between said 127.71 acre tract and the herein described tract; N 07°17′37″E, 493.82 feet to a fence post found for angle point and corner No. 34; thence, in a northeasterly direction continuing along the common line between said 127.71-acre tract and the herein described tract, as fenced; N 46°28′41″E, 643.50 feet to a fence post found for angle point and corner No. 35; thence, in a northwesterly direction continuing along the common line between said 127.71 acre tract and the herein described tract; N 47°51′47″W, 1,087.49 feet to a fence post found for angle point and corner No. 36; thence, in a northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 21°22′25″W, 375.05 feet to the point of beginning and containing 89.90 acres of land.

BILLING CODE 4310-55-P

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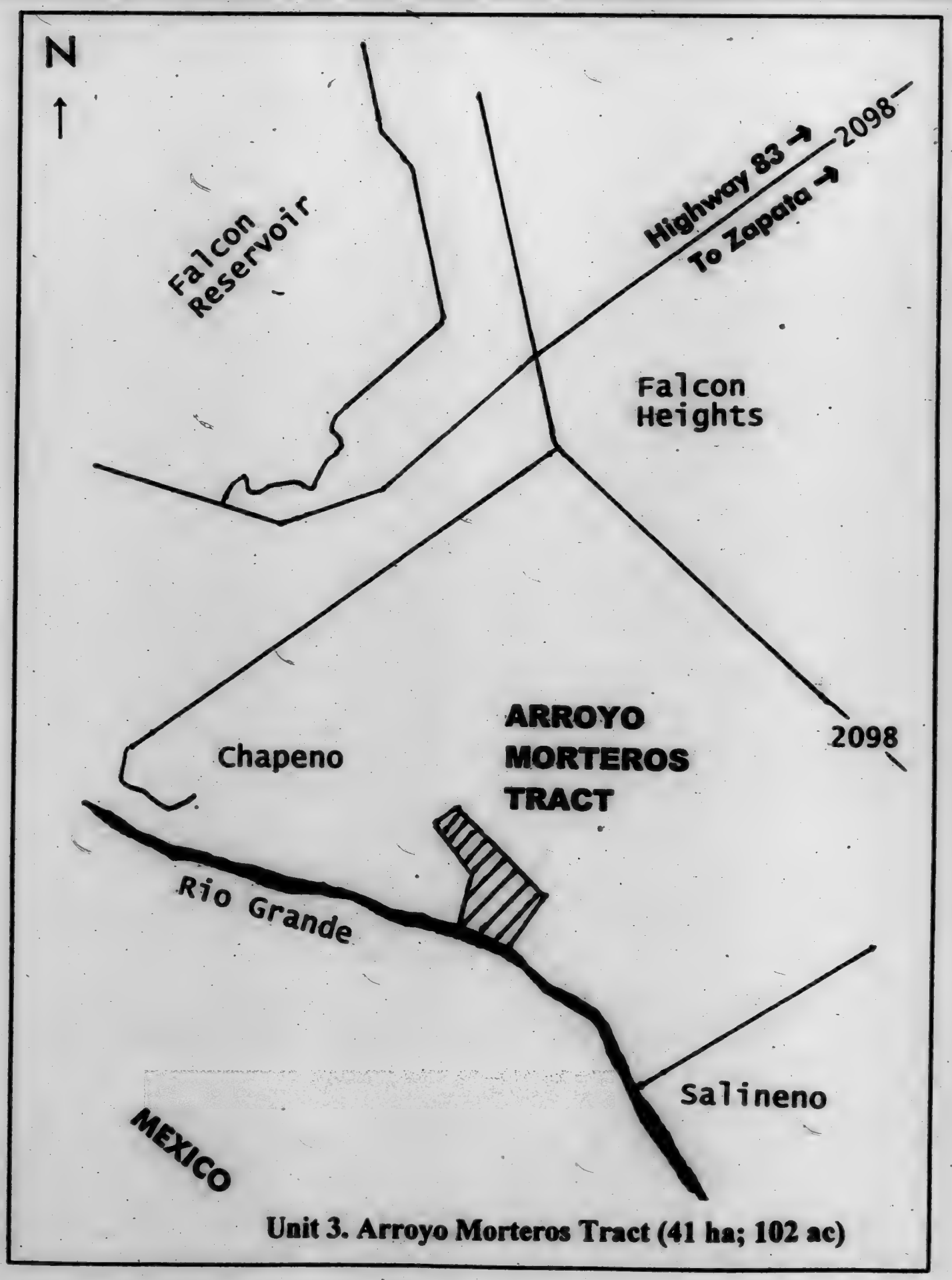

Unit 3. Arroyo Morteros Tract (41 ha; 102 ac)

BILLING CODE 4310-55-C

Unit 4, Las Ruinas Tract (104 ha; 256 ac)—Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by National Geodetic Survey (NGS.) Triangulation Station "GORGORA" having State plane coordinates (NAD 27) of N = 275,335.73, E = 1.833,217.01. The scale factor used is *0.9999421*, and the theta angle is *−00°16′22″*. All areas and distances are true surface measurements. Beginning at a 2-inch iron pipe having State plane coordinates of N = 280,488.40, E = 1,804,584.01 for the northerly southeast corner of the herein described tract, from which said triangulation station "GORGORA" bears S 79°47′55″ E, a distance of 29,092.93 feet, same being the southwest corner of Share 96, of said Porcion 66, and the southwest corner of a 1455.52-acre tract of land as described, same being in the north line of Share 94, of said Porcion 66, same being in the north line of Tract "K", a 26.82-acre tract of land as described, for corner No. 1 and point of beginning of the herein described tract of land. Thence, westerly along the common line between said northerly line of tract "K" and the southerly line hereof N 80°30′29″ W, 871.09 feet to a 6″ iron pipe found for corner No. 2, same being the northwest corner of said Tract "K"; thence, southerly along the common line between the westerly line of said Tract "K" and the easterly line hereof S 09°22′35″ W, 837.18 feet, to a 1¾″ iron pipe found for the southwest corner of said tract "K" and the northwest corner of a 23.5131-acre tract of land at corner No. 3, thence, southerly along the common line between said 23.5131-acre tract and the most southerly easterly line hereof, S 09°22′35″ W, 540.00 feet to a standard FWS aluminum monument set, said monument being in the north line of a 56.82-acre tract of land as described for corner No. 4 and stamped "Tract 630, Ref. No. 4,RPLS 3680"; thence, westerly along the common northerly line between said 56.82 acre tract and the southerly line hereof, N 80°31′16″ W, 3295.18 feet to the apparent gradient boundary of the Rio Grande, and passing a standard FWS aluminum monument set for reference at a distance of 3,210.08 feet and stamped "Tract 630, Ref. No. 5, RPLS 3680"; thence, northerly along the apparent gradient boundary of the Rio Grande N 63°00′17″ E, 192.97 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 6; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 62°39′49″ E, 398.99 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 7; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 60°14′39″ E, 722.34 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 8; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 57°28′43″ E, 416.75 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 9; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 57°55′40″ E, 171.44 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 10; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 47°49′48″ E, 287.44 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 11; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 43°00′00″ E, 246.79 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 12; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 39°40′14″ E, 295.08 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 13; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 35°41′43″ E, 380.79 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 14; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 31°28′24″ E, 370.58 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 15; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 33°19′15″ E, 293.00 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 16; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 13°43′08″ E, 146.31 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 17; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 11°00′57″ E, 189.14 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 18; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 02°10′54″ W, 305.51 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 19; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 01°31′51″ W, 416.25 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 20; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 00°01′29″ W, 441.45 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 21; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 03°29′26″ E, 405.03 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 22; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 08°08′02″ E, 308.09 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 23; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 39°03′01″ E, 218.95 feet to a point on the apparent gradient boundary line of the Rio Grande, for Corner No. 24 and northwest corner of this tract, same being the southwest corner of a 60.77-acre tract of land; thence, easterly along the common line between the south line of said 60.77-acre tract and the northerly line hereof S 80°31′16″ E, 1942.92 feet to a standard FWS aluminum monument set and stamped "Tract 630, Ref. No. 25, RPLS 3680" for corner No. 25, same being the southeast corner of said 60.77-acre tract, same being in the west line of Share 339 of said Porcion 66, same being in the west line of said 1,455.52-acre tract of land, and passing a standard FWS aluminum monument set for Reference at a distance of 38.95 feet and stamped "Tract 630, Ref. No. 24, RPLS 3680"; thence, southerly along the common line between the west line of said Share 339, Share 319, Share 227, Share 231, Share 230,Share 229, Share 518, Share 226, Share 225, Share 224, and saidShare 96, same being the west line of said 1,455.52-acre tract and the east line hereof S 09°28′44″ W, 3,845.12 feet and passing a 2-inch iron pipe found for the southwest corner of Share 339, same being the northwest corner of Share 319 at a distance of 315.48 feet, and being 0.46 feet easterly of and perpendicular to this line, and also passing a 1½ inch iron pipe found for the southwest corner of Share 319, same being the northwest corner of Share 227 at a distance of 711.48 feet, and being 0.39 feet easterly of and perpendicular to this line, and also passing a 2-inch iron pipe found for the southwest corner of Share 231, same being the northwest corner of Share 230 at a distance of 1,320.71 feet, and being 0.09 feet easterly of and perpendicular to this line, to the point of beginning of the herein described tract and containing 254.42 acres of land.

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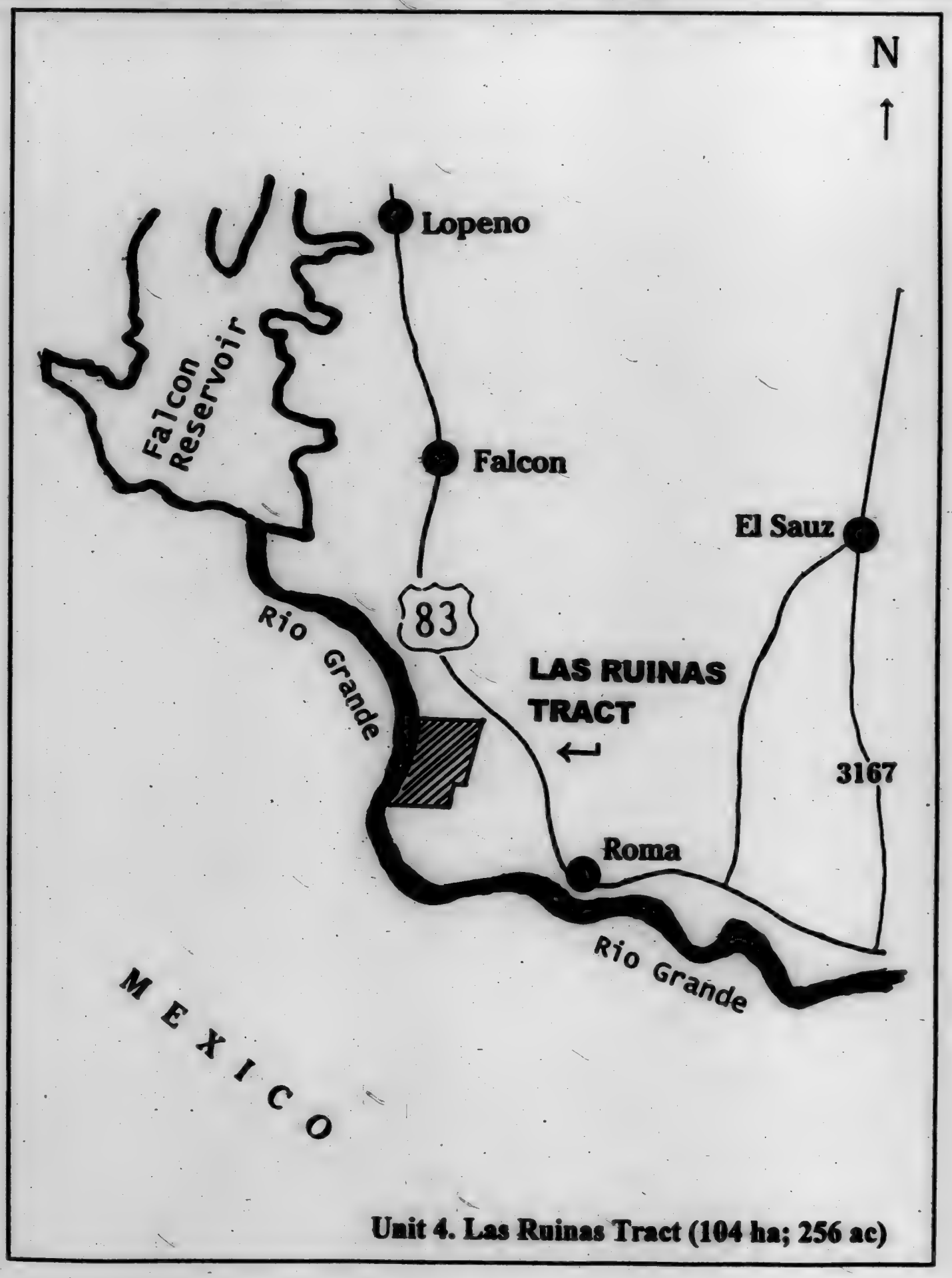

Unit 4. Las Ruinas Tract (104 ha; 256 ac)

Unit 5, Arroyo Ramirez Tract (273 ha; 675 ac)—Formal surveying of the tract has not been performed. Described as, "All of Share 79, Porcion 68, Abstract 191, Former Jurisdiction of Mier,Mexico, now Starr County, Texas, and all of Share 166, Porcion 69, Abstract No. 160, Former Jurisdiction of Mier, Mexico, nowStarr County, Texas. Description by approximated latitude/longitude coordinates (attached maps): Beginning at Latitude/Longitude 26°24′00.9″ N/099°03′23.9″ W, westward to Latitude/Longitude 026°24′04.7″ N/099°03′46.5″ W, northward to Lat/Long 026°24′25.2″ N/099°03′43.3″ W, westward to Lat/Long 026°24′26.0″ N/099°03′49.8″ W, northward to Lat/Long 026°25′05.5″ N/099°03′42.6″ W, eastward to Lat/Long 026°24′56.6″ N/099°02′40.3″ W to the apparent gradient boundary of the Rio Grande River.

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Unit 5. Arroyo Ramirez Tract (273 ha; 675 ac)

Unit 6, Los Negros Creek Tract (47 ha; 116 ac)—The following described tract of land is located in Starr County, Texas, about 1 mile northwest of the town of Roma, being 111.67 acres out of Share 13, Porcion 70, and being more particularly described as follows: Beginning at Cor. No. 1, an iron pin set for the northeast corner of Share No. 13 of Porcion No. 70; thence, along an old fenceline and the dividing line between Share Nos. 13, 1–B and 12–A, S 09°15′ W, 2,694.00 feet to Cor. No. 2 an iron pin set on the Old High Bank of the Rio Grande and the southeast corner of this tract; thence leaving said fence line and along said Old High Bank with the following two courses, N 63°17′27″ W, 1,161.54 feet to Cor. No. 3 and N 87°10′00″ W, 612.00 feet to Cor. No. 4, a set iron pin and the southwest corner of this tract; thence leaving said Old High Bank and along the dividing line of Tract 2 and 3 of said Share 13 and an old fenceline with the following three courses, N 09°15′ E, 841.30 feet to Cor. No. 5, a set iron pin; N 80°45′ W, 397.50 feet to Cor. No. 6, a set iron pin; and N 09°15′ E, 1,572.60 feet to Cor. No. 7 & iron pin set for the northwest corner of this tract; thence leaving said dividing line and along the north line of this tract and an old fenceline, S 60°45′ E, 2,113.70 feet to Cor. No. 1 and the true place of beginning, containing 111.67 acres of land bounded on the West, North, and East by lands of unknown owner and on the South by the Rio Grande.

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Unit 6. Los Negros Creek Tract (47 ha; 116 ac)

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Unit 7, La Puerta Tract (1,577 ha; 3,895 ac) (Segment 590). Note: All bearings and distances are based on the Texas State Plane Coordinate System, South Zone, as referenced by National Geodetic Survey (NGS) triangulation station "Fordyce 2" and NGS triangulation station "Monument". Scale factor used was *0.99993949*; theta angle used was *−00°06′ 15″*. All areas are true ground measured areas. Beginning at corner No. 1, a standard U.S. Fish and Wildlife Service (FWS) aluminum monument stamped "TR 590 COR 1" set in the west boundary of Porcion 86, said point being at the southwest corner of the aforementioned 8,061-acre tract, and also being the northeast corner of a 160-acre tract recorded in volume 60, pages 47–48, Deed Records, Starr County, Texas, from which NGS triangulation station "Monument" bears N. 68°59′27″ W, 8,477.20 feet; thence, from corner No. 1, along the western boundary line of said 8,061-acre tract and Porcion 86, N 09°02′27″ E, 25,125.17 feet to corner No. 2, a standard FWS aluminum monument stamped "TR 590 COR 2", set at a fence corner from which NGS triangulation station "Monument" bears S 28°34′49″ W, 24,795.18 feet; said corner No. 2 also being the northwest corner of the herein described tract, thence, from corner No. 2, departing said western boundary line, with fence, S. 78°52′36″ E, 1,889.04 feet, to corner No. 3, a standard FWS aluminum monument stamped "TR 590 COR 3" set at fence corner; thence, from corner No. 3, continuing with fence, N 06°16′07″ E, 1,007.99 feet to corner No. 4, a standard FWS aluminum monument stamped "TR 590 COR 4" set at fence corner; thence, from corner No. 4, continuing with fence, S 78°42′12″ E, 2,691.33 feet to corner No. 5, a standard FWS aluminum monument stamped "TR 590 COR 5" set for angle; thence from corner No. 5, continuing with fence, S 72°35′38″ E, 2,000.57 feet to corner No. 6, a standard FWS aluminum monument stamped "TR 590 COR 6" set at fence corner, said point being a perpendicular distance of 20.20 feet from the eastern boundary line of Porcion 87, said point also being the Northeast corner of the herein described tract; thence, from corner No. 6, continuing with fence, S 09°01′08″ W, 10,831.38 feet to corner No. 7, a standard FWS aluminum monument stamped "TR 590 COR 7" set for angle adjacent to a found ⅝-inch iron pin; thence, from corner No. 7, continuing with fence, S 08°56′57″ W, 10,030.04 feet, to corner No. 8, a standard FWS aluminum monument stamped "TR 590 COR 8" set for angle point, said point being at the intersection of said fence with the east boundary line of Porcion 87; thence, from corner No. 8, departing said fence, along the east boundary line of Porcion 87, S 09°02′27″ W, 4,824.69 feet to corner No. 9, a standard FWS aluminum monument stamped "TR 590 COR 9" set for corner; thence, from corner No. 9, departing said east line, N 80°47′09″ W,6,527.80 feet to the place of beginning and containing 3,844.674 acres.

(La Puerta 590a). Note: All bearings and distances are based on the Texas State Plane Coordinate System, South Zone, (NAD 27), as referenced by the National Geodetic Survey (NGS) Triangulation Station "Monument" having a coordinate value of N = 250,167.56 ; E = 1,912,489.81. Scale factor applied equals *0.99993949*; theta angle equals −00°06′15″. All areas are based on true ground measurements. Beginning at corner No. 1, a standard FWS aluminum monument stamped "TR 590A COR 1" set over a 2-inch iron pipe found in the west boundary line of Porcion 87, east boundary line of Porcion 86, at the northwest corner of said Lot 22, also being the northeast corner of a 2.83-acre tract as described by deed recorded in Volume 516,Page 62, Official Records, Starr County, Texas and being in the south boundary line of USA Tract (590) as described by deed recorded in Volume 608, Page 309, Official Records, Starr County, Texas said point having a coordinate value of N = 246,550.96; E = 1,923,962.74 and bearing S 72°30′13″ E,12,029.47 feet from NGS Triangulation Station "Monument"; thence from corner No. 1, with south boundary line of said USA Tract (590), the north boundary line of said Lot 22, S 80°47′09″ E, 2,922.00 feet to corner No. 2, a standard FWS aluminum monument stamped "TR 590 COR 9" found at the southeast corner of said USA Tract (590), also being the northeast corner of said Lot 21, and being in the east boundary line of Porcion 87, west boundary line of Porcion 88 for the northeast corner of the herein-described tract of land; thence, from Corner No. 2, with the said east boundary line of Porcion 87, west boundary line of Porcion 88, and also being the east boundary line of said Lot 21, S 08°18′30″ W, 1,130.60 feet to corner No. 3, a standard FWS aluminum monument stamped "TR 590A COR 3" set in the existing north right-of-way line of U.S. Highway 83 with the intersection of said east boundary line of Porcion 87, west boundary line of Porcion 88 for the southeast corner of the herein described tract of land; thence, from corner No. 3, with and along the said existing north right-of-way line of U.S. Highway 83, N 66°14′23″ W, 18.20 feet to corner No. 4, a standard FWS aluminum monument stamped "TR 590A COR 4" set for an angle point; thence, from corner No. 4, continuing along said existing north right-of-way line, N 60°81′23″ W,100.39 feet to corner No. 5, a standard FWS aluminum monument stamped "TR 590A COR 5" set for an angle point; thence, from corner 5, continuing along said existing north right-of-way line, N 66°14′23″ W, 499.97 feet to corner No. 6, a standardFWS aluminum monument stamped "TR 590A COR 6" set for an angle point; thence, from corner No. 6, continuing along said existing north right-of-way line, N 71°57′23″ W, 100.39 feet to a corner No. 7, a standard FWS aluminum monument stamped "TR 590A COR 7" set for an angle point; thence, from corner No. 7, continuing along said existing north right-of-way line, N 66°14′14″ W, 1,084.94 feet to corner No. 8, a ⅝ inch iron rod found at the intersection of the said existing north right-of-way line with the proposed north right-of-way line of U.S. Highway 83; thence, from corner No. 8, departing said existing north right-of-way line with and along the proposed north right-of-way line of U.S. Highway 83, N 60°43′04″ W, 200.90 feet to corner No. 9, a ⅝-inch iron rod found for an angle point; thence, from corner No. 9, continuing along said proposed north right-of-way line, N 69°54′31″ W, 300.83 feet to corner No. 10, a ⅝-inch iron rod found at the intersection of said proposed north right-of-way line with the existing north right-of-way line of U.S. Highway 83; thence, from corner No. 10, with the said existing north right-of-way line of U.S. Highway 83, N 66°16′51″ W, 399.70 feet to corner No. 11, a standard FWS aluminum monument stamped "TR 590A COR 11" set over a ½-inch iron rod found for an angle point; thence, from corner No. 11, continuing along said existing North right-of-way line, N 64°31′54″ W, 335.45 feet to corner No. 12, a standard FWS aluminum monument stamped "TR 590A COR 12" set at the intersection of said existing north right-of-way line with the west boundary line of Porcion 87, east boundary line of Porcion 86; thence, from corner No. 12, departing said existing north right-of-way line with the said west boundary line of Porcion 87, east boundary line of Porcion 86, N 08°56′59″ E, 357.90 feet to corner No. 1, the point of beginning and containing 50.033 acres of land.

(La Puerta Tract—Segment 590b). Note: All bearings and distances are

based on the Texas State Plane Coordinate System, South Zone, (NAD 27), as referenced by the National Geodetic Survey (NGS) Triangulation Station "Monument" having a coordinate value of N = 250,167.56' E = 1,912,489.81. Scale factor applied equals *0.00003040*; theta angle equals *−00°06'15"*. All areas are based on true ground measurements. Beginning at corner No. 1, a ⅝-inch iron rod found at the intersection of the west boundary line of Porcion 87, east boundary line of Porcion 86 with the proposed south right-of-way line of U.S. Highway 83, said point bears S 08°57'33" W, 139.55 feet from a ⅝-inch iron rod found in the existing south right-of-way line of U.S. Highway 83, said point having a coordinate value of N = 245,880.85, E = 1,923,857.21 and bearing S 69°20'18" E, 12,148.81 feet from NGS Triangulation Station "Monument"; thence, from corner No. 1, with the said proposed south right-of-way line, S 66°14'23" E, 3,043.33 feet to corner No. 2, a ⅝-inch iron rod found at the intersection of the east boundary line of Porcion 87, the west boundary line of Porcion 88 and the said proposed south right-of-way line, thence, from corner No. 2, with the said east boundary line of Porcion 87, west boundary line of Porcion 88, S 08°59'29" W, 2,925.70 feet to corner No. 3, a standard FWS aluminum monument stamped "TR 590B COR 3" set over a ½-inch iron rod found at the intersection of said east boundary line of Porcion 87, west boundary line of Porcion 88 with the north right-of-way line of the Missouri-Pacific Railroad; thence, from corner No. 3, with the said north right-of-way line of the Missouri-Pacific Railroad, N 52°58'07" W, 3,333.49 feet to corner No. 4, a standard FWS aluminum monument stamped "TR 590B COR 4" set over a ⅜-inch iron rod found at the intersection of the said north right-of-way line with the said west boundary line of Porcion 87, the east boundary line of Porcion 86, said point also being the southeast corner of a 39.492-acre tract, thence from corner No. 4, with the said west boundary line of Porcion 87, east boundary line of Porcion 86, N 08°56'13" E, 1,715.55 feet to corner No. 5, a standard FWS aluminum monument stamped "TR 590B COR 5" set over a ½-inch iron rod found at the southeast corner of a 2.0-acre tract, thence, from corner No. 5, continuing along said west boundary line of Porcion 87, east boundary line of Porcion 86, N 09°06'05" E, 418.93 feet to corner No. 1, the point of beginning and containing 170.950 acres of land.

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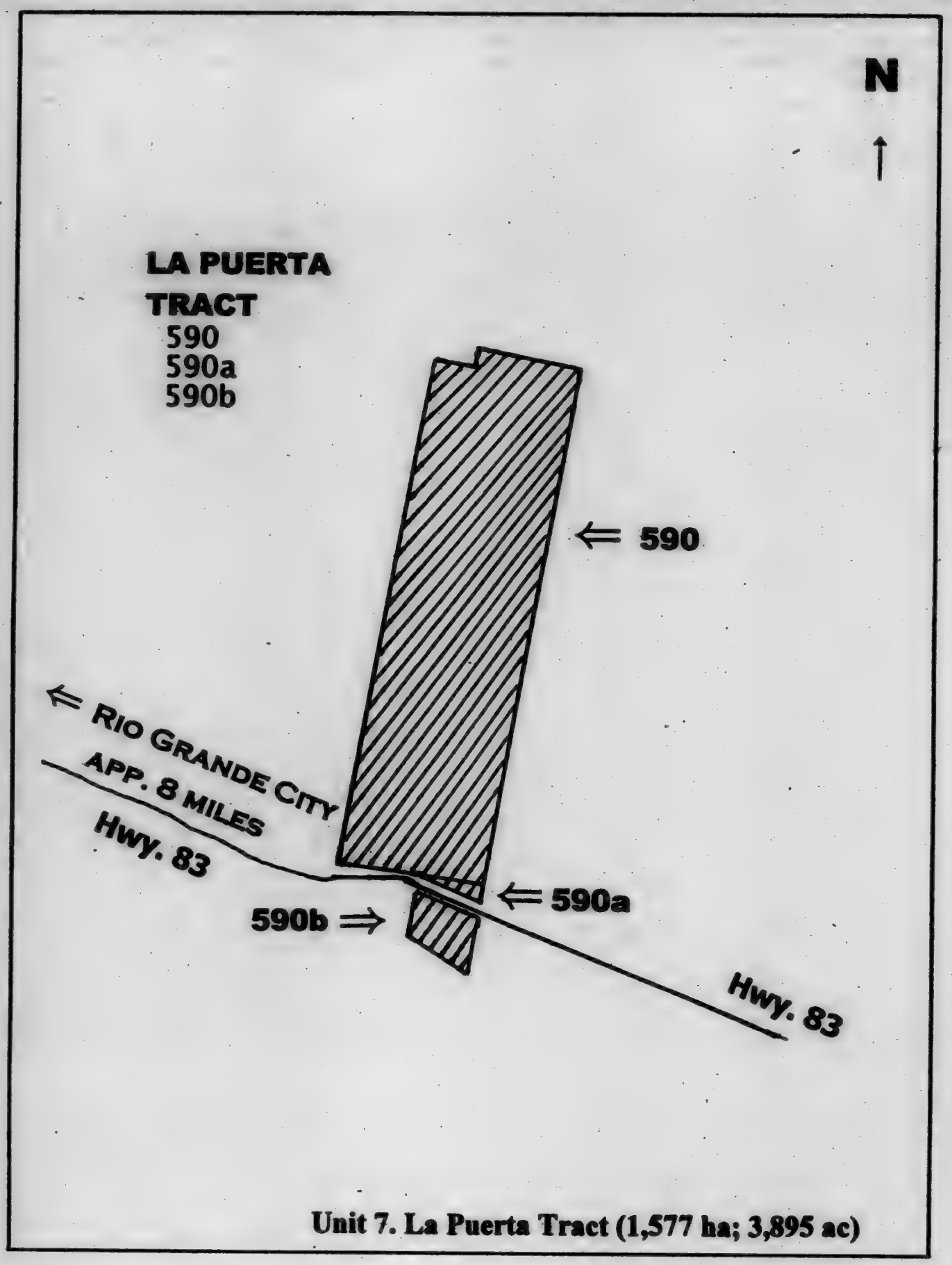

Unit 7. La Puerta Tract (1,577 ha; 3,895 ac)

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Critical Habitat on Texas Department of Transportation Highway Rights of Way, Zapata County, Texas:

Unit 6 includes the existing maintained highway right of way along Highway 83, extending 201.2 m (0.125 mi) each direction, along the east side of the highway and approximately 15.2 m (50 ft) away from the road's edge, from the known *Lesquerella thamnophila* population located at Lat/Long 26°51′45″/99°14′48″.

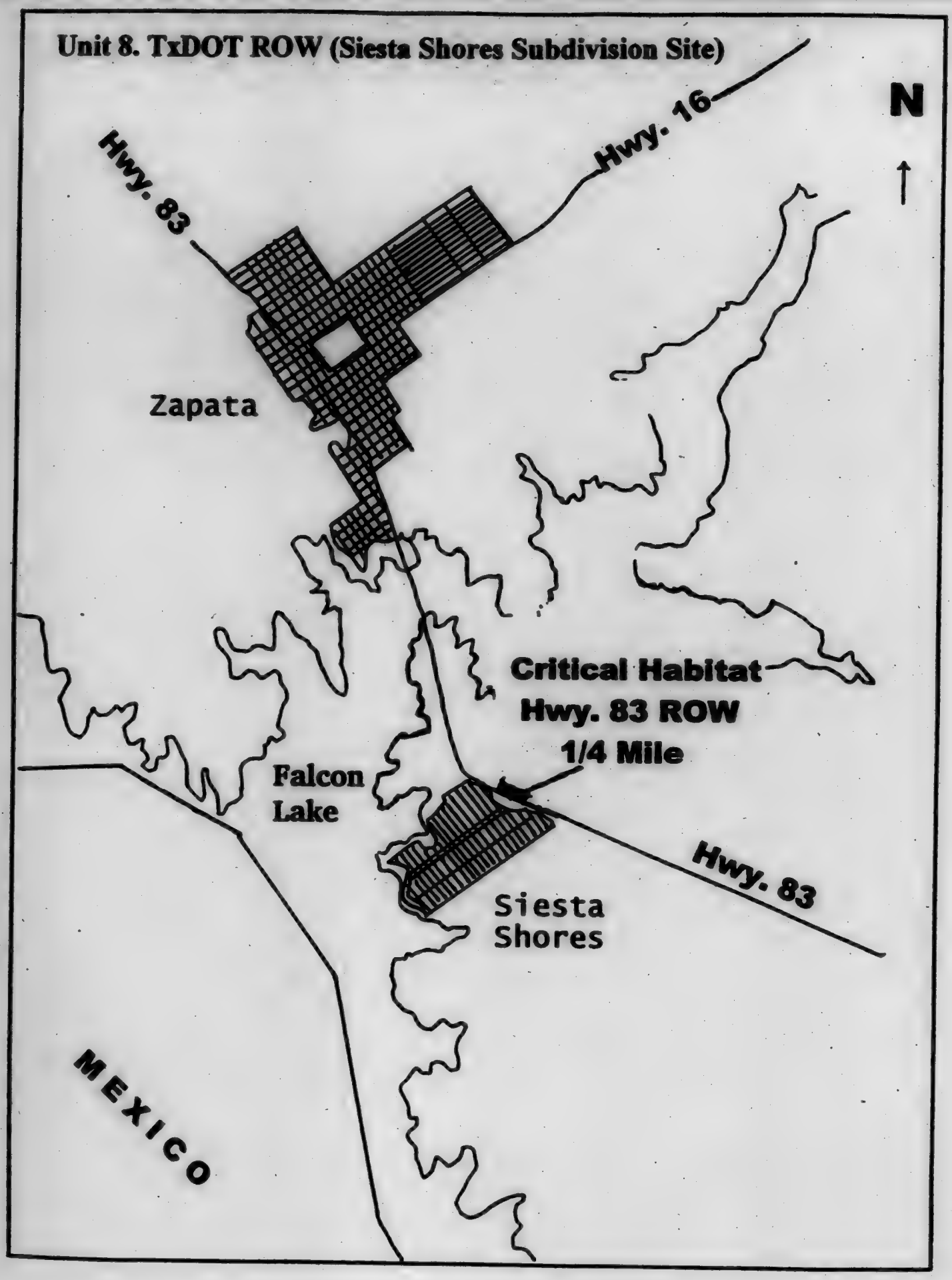

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Unit 9 includes the existing maintained highway right of way along Highway 83, extending 201.2 m (0.125 mile) each direction, along the east side of the highway and approximately 15.2 m (50 ft) away from the road's edge, from the known *Lesquerella thamnophila* population located at Lat/Long 26°41'55"/99°06'31".

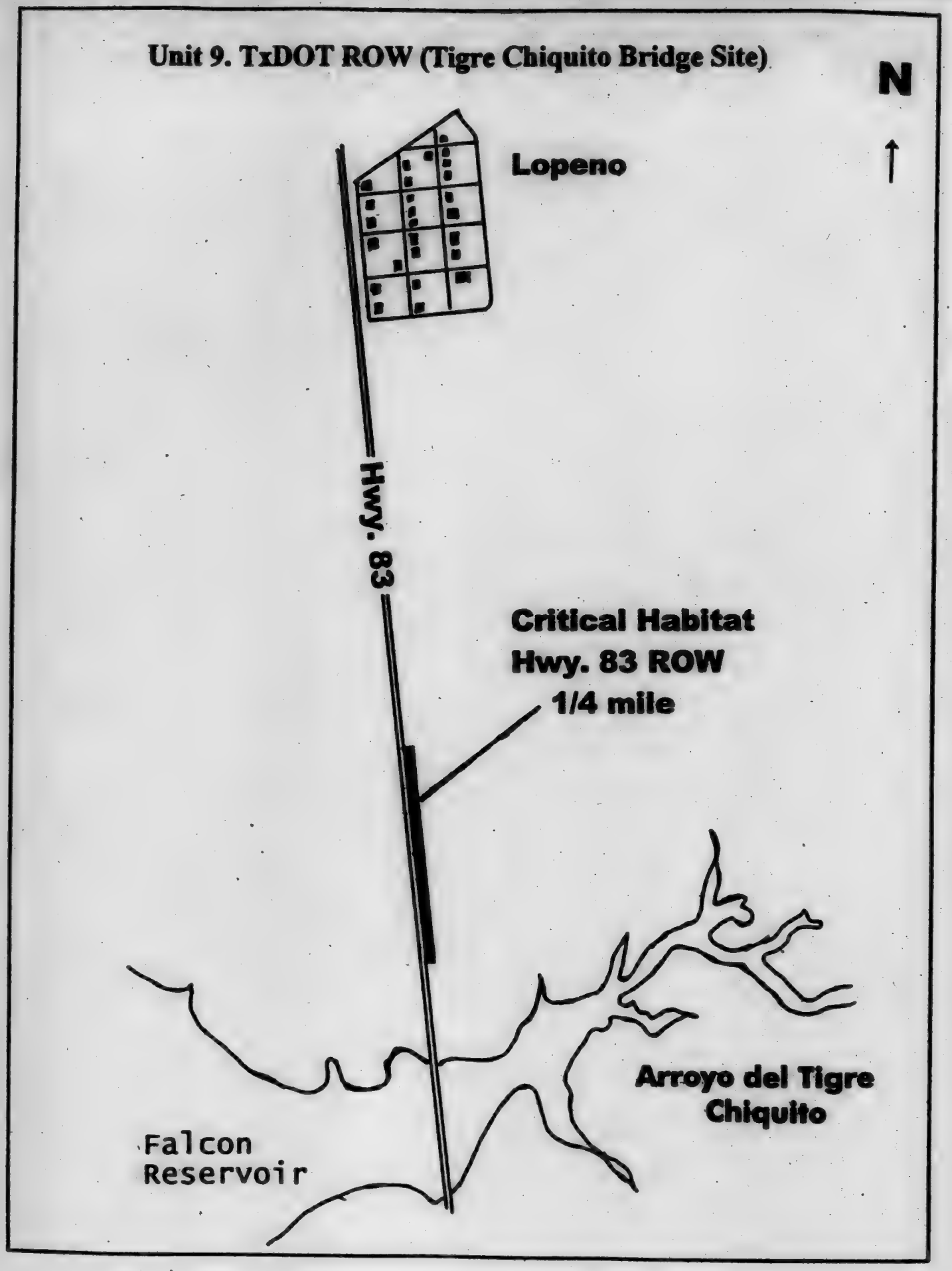

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Unit 10—Private ranch site comprises 0.552 hectares (1.36 acres) within the Universal Transverse Mercator, Zone 14 and begins at UTM 490706 E, 2929709 N; thence to 490729 E, 2929706 N; to 490748 E, 2929720 N; to 490762 E, 2929722 N; to 490767 E, 2929704 N; to 490767 E, 2929679 N; to 490769 E, 2929654 N; to 490770 E, 2929637 N; to 490770 E, 2929629 N; to 490760 E, 2929619 N; to 490743 E, 2929614 N; to 490732 E, 2929612 N; to 490720 E, 2929614 N; to 490709 E, 2929670 N; and thence to point of beginning.

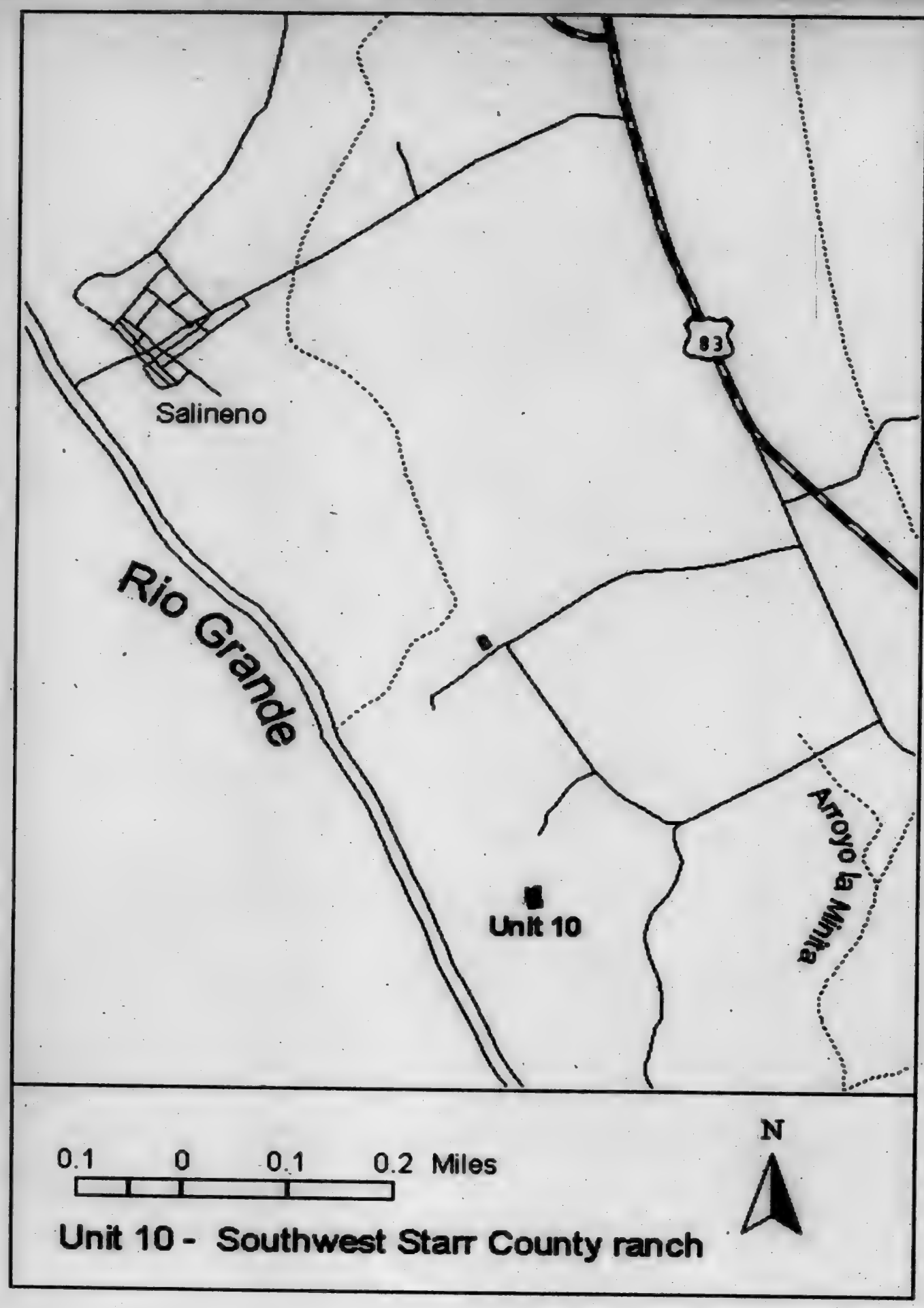

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Dated: July 13, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–18279 Filed 7–18–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 070500C]

Atlantic Highly Migratory Species (HMS) Fisheries; Bycatch Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS); notice of availability of Biological Opinion; announcement of scoping meetings.

SUMMARY: NMFS announces its intent to prepare an SEIS to address requirements of the Biological Opinion dated June 30, 2000, that was issued pursuant to a formal consultation under section 7 of the Endangered Species Act (ESA); and, relative to fishing activities for Atlantic HMS, to assess the impacts of potential management options on the natural and human environment. The purpose of this notice is to inform the interested public of the intent to prepare the SEIS; announce the availability of, and provide information on, the Biological Opinion; announce that NMFS is considering regulatory and non-regulatory measures to address the requirements of the Biological Opinion for the Atlantic HMS fisheries for the current fishing year and for the long-term; and announce public scoping meetings on issues and management options that NMFS should consider in addressing the requirements of the Biological Opinion and in preparing the SEIS.

DATES: Public scoping meetings will take place in July and August, 2000. See **SUPPLEMENTARY INFORMATION** for dates and times of the scoping meetings. Additional scoping meetings may be scheduled at a later date and will be announced in the **Federal Register**.

ADDRESSES: Comments on the proposal to prepare the SEIS and suggestions for the times and locations of additional scoping meetings should be sent to: Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. See **SUPPLEMENTARY INFORMATION** for the locations of the scoping meetings.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic HMS fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), Amendment 1 to the Atlantic Billfish Fishery Management Plan, and their implementing regulations found at 50 CFR part 635. The Atlantic shark regulations are issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act)(16 U.S.C. 1801 *et seq.*). The Atlantic tunas, swordfish, and billfish fisheries are managed under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*).

Biological Opinion Requirements

In 1999, the Atlantic pelagic longline fishery exceeded its authorized take of loggerhead sea turtles as set out in the Incidental Take Statement previously issued with the April 23, 1999, Biological Opinion. As required under the ESA, NMFS requested, on November 19, 1999, a re-initiation of consultation under Section 7 of the ESA. On June 30, 2000, NMFS issued a new Biological Opinion that concluded the operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of the leatherback and loggerhead sea turtles.

In order to eliminate the threat of jeopardy, NMFS must address the level of sea turtle takes in the pelagic longline fishery. The Biological Opinion provides a framework for development of reasonable and prudent alternatives (RPAs) designed to remove the threat of jeopardy by reducing the number of loggerhead and leatherback sea turtles that are incidentally captured, injured, and killed by pelagic longline gear. The Biological Opinion provides two RPAs that, if implemented, would avoid the jeopardy finding. However, any combination of management measures, regulatory and/or non-regulatory, that have the effect of reducing the number of loggerhead and leatherback turtles that are incidentally captured, injured, and killed by pelagic longline gear by 75 percent will meet the requirements of the Biological Opinion. These combinations could include monitoring requirements, gear and/or fishing method modifications, and time/area closures. During the scoping period, NMFS plans to meet with fishery participants, particularly pelagic longline vessel operators who fish the northeast distant water statistical area (Grand Banks), to determine which combination of measures will reduce turtle takes to the required level while mitigating impacts to the industry.

The Biological Opinion also identified required reasonable and prudent measures (RPMs) and terms of conditions (T&Cs) for all HMS fisheries as part of the revised Incidental Take Statement. For example, education and outreach, monitoring requirements, and sea turtle resuscitation requirements were identified for several HMS fisheries. NMFS will work with fishery constituents to implement these required provisions of the Incidental Take Statement.

Management Measures Under Consideration

Because of the findings of the Biological Opinion, participants in the HMS fisheries may be required to operate under alternative management measures that may redistribute fishing effort and alter current fishing methods in order to avoid jeopardizing protected species. NMFS will consider regulatory and non-regulatory measures for managing the Atlantic tunas, swordfish, sharks, and billfish fisheries consistent with the requirements of the ESA. These measures will address the RPAs, RPMs, and T&Cs identified in the June 30, 2000, Biological Opinion, and may implement time/area closures, gear restrictions, crew training, monitoring and reporting requirements.

Scoping Meetings

Scoping for the SEIS will be held in consultation with the HMS and Billfish Advisory Panels. Public scoping meetings will be scheduled at times and locations convenient for affected parties. The following scoping meetings have been scheduled:

Monday, July 31, 2000—Silver Spring, MD, 1–3:30 p.m.

NMFS, SSMC2, 1325 East-West Highway, Room 2358, Silver Spring, MD 20910.

Tuesday, August 1, 2000—Barnegat Light, NJ, 7–9:30 p.m.

Barnegat Light Firehouse, Barnegat, NJ 08006.

Wednesday, August 2, 2000—Fairhaven, MA, 7–9:30 p.m.

The Seaport Inn (Holiday Inn), 110 Middle Street, Fairhaven, MA 02719.

Thursday, August 3, 2000—Islandia, NY, 7–9:30 p.m.

Islandia Marriott, 3635 Express Drive North, Islandia, NY 11749

Friday, August 4, 2000—Gloucester, MA, 1–3:30 p.m.

NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

Interested parties should contact Rebecca Lent (see **ADDRESSES**) regarding suggested times and locations for additional scoping meetings.

Special Accommodations

These meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen at (301) 713–2347 at least 5 days prior to the hearing date.

Timing of the Analysis and Tentative Schedule

Input on the issues to be addressed in preparing the SEIS and potential options for reducing take of protected species in the Atlantic HMS fisheries will be accepted and discussed at the scoping meetings. Given the jeopardy opinion, NMFS must take prompt action to reduce interactions with loggerhead and leatherback sea turtles. Therefore, NMFS is considering issuing regulations under the emergency provisions of the Magnuson-Stevens Act on an interim basis. In particular, immediate action may be required for the pelagic longline fishery operating on the Grand Banks, an area of high turtle takes during the summer and early fall. These emergency regulations would serve to implement provisional take reduction measures until a more comprehensive approach can be developed under the framework procedures of the HMS FMP, in conjunction with the SEIS. NMFS requests input from vessel captains on both the short term and long term solutions for reducing turtle interactions.

Dated: July 13, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18144 Filed 7–13–00; 4:10 pm]

BILLING CODE 3510–22–F

VOL 65 ISS 139 JL 19 2000 UMI

Notices

Federal Register
Vol. 65, No. 139
Wednesday, July 19, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–380–1, Food Stamp Program Quality Control Review Schedule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of Form FNS–380–1, Food Stamp Program Quality Control Review Schedule. The proposed collection is an extension of collection currently approved under OMB No. 0584–0299.

DATES: Written comments must be submitted on or before September 18, 2000.

ADDRESSES: Send comments and requests for copies of this information collection to Retha Oliver, Chief, Quality Control Branch, Room 1024, Program and Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. You may FAX comments to us at (703) 305–0928. You may also download an electronic version of this notice at http://www.fns.usda.gov/fsp/ and comment via the Internet at the same address. If you do not receive a confirmation from the system that we have received your message, contact us directly at (703) 305–2474.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Retha Oliver at (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Quality Control Review Schedule, Form FNS–380–1.

OMB Number: 0584–0299.

Expiration Date: December 31, 2000.

Type of Request: Revision of a currently approved collection.

Abstract: The Form FNS–380–1, Food Stamp Program Quality Control Review Schedule, collects quality control (QC) and household characteristics data. The information needed to complete this form is obtained from the Food Stamp case record and state quality control findings. The information is used to monitor and reduce errors, develop policy strategies, and analyze household characteristic data.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53 State agencies.

Estimated Number of Affected Households: 54,663 households.

Estimated Total Number of Responses Per Year: 54,663.

Estimated Hours Per Response: 1.0736.

Total Annual Burden: 58,686.

Dated: June 28, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–18142 Filed 7–18–00; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2000 to June 30, 2001

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be provided in the 2001 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2000 Through June 30, 2001

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1) (B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the

Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 15 cents for the period July 1, 2000 through June 30, 2001.

The Price Index is computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 1.9 percent from 129.37 for March, April and May of 1999 to 131.78 for the same three months in 2000. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1999 through June 30, 2000 will be 15 cents per meal. This is an increase of 0.25 cents from the school year 2000 rate.

In addition to the 15 cents per meal, Congress has authorized additional funds to be used to purchase foods under section 6(e) of the Act (42 U.S.C. 1755). Therefore, for this school year, schools will receive more than 15 cents per meal in commodities.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs." For the 2001 school year, commodity only schools shall be eligible to receive donated food assistance valued at 34 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2001. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), 14(f) and 17(h)(1) (B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and 6(e)(1), 1762a(f), and 1766(h)(1)(B)).

Dated: July 12, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–18164 Filed 7–18–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committe

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on August 3, 2000 at Diamond Lake Resort, east of Roseburg, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Diamond Lake Fish Rehabilitation; (2) BLM Off-Highway Vehicle Strategy; (3) Province Large Woody Material Follow-up; (4) Implementing Ecosystem Management on the Umpqua National Forest; (5) Public Comment; and (6) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Terrie Davis, Province Advisory Committee Staff Assistant, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3210.

Dated: July 13, 2000.

Michael D. Hupp,

Acting Designated Federal Official.

[FR Doc. 00–18183 Filed 7–18–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Wisconsin

AGENCY: Natural Resources Conservation Service (NRCS) in Wisconsin, US Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Wisconsin for review and comment.

SUMMARY: It is the intention of NRCS in Wisconsin to issue four revised conservation practice standards in Section IV of the FOTG. The revised standards are Pond (Code 378), Grade Stabilization Structure (Code 410), and Water and Sediment Control Basin (Code 638). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received for a 30-day period commencing on July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Donald A. Baloun, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 6515 Watts Road, Suite 200, Madison, WI 53719–2726. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to don.baloun@wi.usda.gov.

FOR FURTHER INFORMATION CONTACT: Donald A. Baloun, 608–276–8732.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Wisconsin will receive comments relative to the proposed

change. Following that period, a determination will be made by the NRCS in Wisconsin regarding disposition of those comments and a final determination of change will be made.

Dated: July 11, 2000.

John R. Ramsden,

Acting State Conservationist, Madison, Wisconsin.

[FR Doc. 00–18275 Filed 7–18–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

USDA Policy Advisory Committee on Farmland; Public Forums

AGENCY: Natural Resources Conservation Service (NRCS) and Forest Service.

ACTION: Notice of meeting.

SUMMARY: Maintaining Agriculture and Forestry in Rapidly Growing Areas Listening Forums hosted by members of the USDA Policy Advisory Committee on Farmland Protection. The USDA Policy Advisory Committee on Farm and Forest Lands Protection is holding listening forums this summer to solicit policy feedback and anecdotal information on what works and what doesn't from a community's perspective in working with federal tools designed to maintain land as farmland and forest land. The input received from these forums will be synthesized into a report that USDA will issue on this subject later this year.

Specifically, the forums will ask for public comment on the following questions:

1. What are the economic, environmental and social benefits of farms and forested lands for communities, especially those in rapidly growing regions?

2. What are the challenges that communities and individuals face in trying to maintain farms and forested lands, especially in rapidly growing areas?

3. What sorts of opportunities exist to capitalize on market opportunities (*e.g.*, direct marketing and agri-tourism) to encourage maintenance of farmland and forestland?

4. What role could the federal government play to better support farmers and forest operators in taking advantage of these opportunities?

DATES: The first forum will convene on Thursday morning, July 13 at the Dekalb County Farm Bureau Center for Agriculture, 1350 West Prairie Drive, Sycamore, Illinois 60178. The second forum is scheduled for Friday, July 21, 2000, beginning at 9 a.m. and continuing until 12 p.m., at the University of California, Davis, Alumni and Visitors Center, in Room AGR, located on Old Davis Road and Mark Hall Drive, Davis, California. The third forum will be held on Monday, July 31, 2000, from 9 a.m. until 12 p.m., at the Yale Street Landing, 1001 Fairview Avenue North, Seattle, Washington 98109. The fourth forum will take place on Wednesday, August 9, 2000, from 9 a.m. until 12 p.m. at the Frelinghuysen Arboretum, 53 East Hanover Avenue, Morristown, New Jersey 07962–1295. An additional meeting will be scheduled for Atlanta, Georgia in early August.

ADDRESSES: Are included in the above information under **DATES**.

SUPPLEMENTARY INFORMATION: Notice of these forums is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the USDA Policy Advisory Committee, including any revised agendas for the forums may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at http://www.usda.gov.

Draft Agenda for the Forums

A. Opening remarks.
B. Panel presentations.
C. Public participation: oral statements, questions and answer period.
D. Closing remarks.

Procedural

The forums are open to the general public. Members of the general public will have an opportunity to present their ideas and opinions during each forum. Persons wishing to make oral statements must pre-register by contacting Ms. Mary Lou Flores at (202) 720–4525. Those who wish to submit written statements can do so by submitting 25 copies of their statements on or before July 17, 2000, for the UC Davis, CA forum, July 26, 2000, for the Seattle, WA forum, and August 4, 2000, for the Morristown, NJ forum. Please send them to Ms. Stacie Kornegay, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, Room 6013. The written form of the oral statements must not exceed 5 pages in 12 point pitch. At each forum, reasonable provisions will be made for oral presentations of no more than three minutes each in duration.

FOR FURTHER INFORMATION: Requests for special accommodations due to disability, questions or comments should be directed to Roeann Durrah, Designated Federal Official, telephone (202) 720–4072, fax (202) 690–0639, email *roeann.durrah@usda.gov*.

Dated: July 13, 2000.

James R. Lyons,

Under Secretary, Natural Resources and Environment, USDA.

[FR Doc. 00–18255 Filed 7–14–00; 4:23 pm]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the committee, which will be open to the public.

DATES: The fourth meeting of the committee is scheduled for August 16 through 18, 2000, beginning at 9:00 a.m. and ending at 5:30 p.m. each day.

ADDRESSES: The meeting will be held at the Bill Graham Civic Auditorium, 99 Grove Street, San Francisco, CA 94102.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail windley@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (http://www.access-board.gov/notices/prowmtg.htm).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee

(committee) to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. 64 FR 56482 (October 20, 1999).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee during the public comment period at the end of each meeting day. Members of groups or individuals who are not members of the committee may also have the opportunity to participate with subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the Federal Register by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by August 2, 2000. Notices of future meetings will be published in the Federal Register.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–18273 Filed 7–18–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on Thursday, September 21, 2000, at the Hilton Anchorage Hotel, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 7, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–18167 Filed 7–18–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census 2000 Evaluation: Multiple Response Follow-up.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,500 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 12 minutes.

Needs and Uses: As part of Census 2000, the Census Bureau is conducting a comprehensive program of evaluations designed to measure how well our programs, operations, and procedures performed. The Multiple Response Follow-up (MRFU) is included in this evaluation program. This evaluation will help determine how well the Primary Selection Algorithm (PSA) resolves multiple returns. The Census 2000 is the first census to provide a wide-range of methods of responding to the public, *e.g.*, returning a questionnaire by mail, responding by telephone, or accessing the Internet. These methods will increase the likelihood of persons responding, but they will also create multiple responses (or "multiple returns") for some addresses (or Census IDs). PSA is the algorithm used to determine which persons from each of the multiple returns will and will not be included in the Census households for a given Census ID. It includes unduplication between returns and other types of resolution. We will select a nationally representative sample of Census IDs which had more than one Census 2000 return and conduct an interview of all those persons on any of the multiple returns to determine who was a resident on Census Day (April 1, 2000) and who was not. We will compare this information with the persons identified by PSA to be census residents. Evaluation results will be used to determine if PSA was successful in meeting its goals, and to identify areas of future research that will help us learn how we can improve the algorithm.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 14, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–18253 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062700D]

Advisory Committee and Species Working Group Technical Advisor Appointments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for technical advisors to the Advisory Committee's species working groups.

DATES: Nominations are due by August 18, 2000.

ADDRESSES: Nominations to the Advisory Committee or to a species working group should be sent to: Mr.

Rolland A. Schmitten, Deputy Assistant Secretary for International Affairs, NOAA, Department of Commerce, Herbert C. Hoover Building, Room 5809, 14th Street and Constitution Avenue, Washington, D.C. 20230. A copy should also be sent to Patrick E. Moran, International Fisheries Division, Office of Sustainable Fisheries, NMFS, Room 13114, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301-713-2276.

SUPPLEMENTARY INFORMATION: Section 971b of the ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be composed of (1) not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. Each member of the Advisory Committee appointed under item (1) shall serve for a term of 2 years and shall be eligible for reappointment. Members of the Advisory Committee may attend all public meetings of the ICCAT Commission, Council, or any Panel and any other meetings to which they are invited by the ICCAT Commission, Council, or any Panel. The Advisory Committee shall be invited to attend all nonexecutive meetings of the U.S. Commissioners to ICCAT and, at such meetings, shall be given the opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the ICCAT Commission. Members of the Advisory Committee shall receive no compensation for their services as such members. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee.

There are currently 20 appointed Advisory Committee members. The terms of these members expire on December 31, 2000. New appointments will be made as soon as possible, but will not take effect until January 1, 2001.

Section 971b-1 of the ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four scientific or technical personnel, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners. Specifically, there is a Bluefin Tuna Working Group, a Swordfish Working Group, a Billfish Working Group, and a BAYS (Bigeye, Albacore, Yellowfin, and Skipjack) Tunas Working Group. Technical Advisors to species working groups serve at the pleasure of the U.S. Commissioners; therefore, the Commissioners can choose to alter appointments at any time.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Letters of recommendation are useful but not required. Self-nominations are acceptable. When making a nomination, please clearly specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Requesting consideration for placement on both the Advisory Committee and a species working group is acceptable. Those interested in a species working group technical advisor appointment should indicate which of the four working groups is preferred. Placement on the requested species working group, however, is not guaranteed.

Dated: July 13, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18145 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071300B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Scallop Committee and Scallop Advisory Panel in August and September, 2000 to consider actions affecting New England fisheries in the exclusive economic zone. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between Friday, August 4, 2000 and Tuesday, September 19, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Mansfield, MA and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Friday, August 4, 2000, at 10:00 a.m.—Scallop Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

The Scallop Committee will evaluate technical advice from the Scallop Plan Development Team (PDT) on areas to close during the 2000 fishing year to conserve small scallops. If the committee recommends action, the management measures could take effect in late 2000.

The Scallop Committee also will continue development of management alternatives for Amendment 10 to the Scallop Fishery Management Plan (FMP). Issues to be discussed include, but are not limited to measures that would close areas with concentrations of small scallops through a notice action, mechanisms to fund monitoring and research activities in support of scallop area management, and other issues related to an industry proposal presented by the Fishermen's Survival Fund. The committee will re-consider adding additional area management alternatives to Amendment 10.

Monday, September 18, 2000, at 10:00 a.m. and Tuesday, September 19, 2000 at 8:30 a.m.—Joint Scallop Committee and Scallop Advisory Panel Meeting.

Location: Radisson Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

The Scallop PDT will present the 2000 Stock Assessment and Fishery Evaluation (SAFE) Report and recommend management adjustments for the 2001 fishing year to meet the FMP objectives. The advisors and oversight committee will evaluate these recommendations in preparation for a Council discussion on Framework Adjustment 14 at the September 26–28, 2000 Council meeting.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 14, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18261 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071400A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will be begin Monday, August 14, 2000 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, August 15 through Friday, August 18.

ADDRESSES: The meetings will be held at the Pacific Fishery Management Council office, Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: 503–326–6352.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to review groundfish stock assessment information and prepare recommendations regarding harvest levels and management for 2001. Members of the Council's Scientific and Statistical Committee's Groundfish Subcommittee and the Groundfish Advisory Subpanel will meet jointly with the GMT to discuss the results of recent stock assessments and 2001 harvest levels. The GMT will also prepare reports, recommendations, and analyses in support of various Council decisions through the remainder of the year. The GMT will discuss, receive reports, and/or prepare reports on the following topics during this working session: (1) Stock Assessment Review (STAR) Panel reports; (2) rebuilding plans for canary rockfish, cowcod, lingcod, and Pacific ocean perch, including allocation and bycatch reduction; (3) preliminary acceptable biological catch and optimum yield recommendations for 2001, including management issues; (4) preliminary economic/social analysis of proposed harvest levels and management; (5) Stock Assessment and Fishery Evaluation (SAFE) document preparation; (6) recreational data issues; (7) inseason management; (8) groundfish strategic plan; and (9) permit stacking proposal and analysis.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 14, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18256 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.071200D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to modify permits (984)(1058) and issued modifications to existing permits (994)(1134)(1194).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a request to modify permit (984) from Dr. Steve Ross, of the North Carolina National Estuarine Research Reserve, and from the Idaho Fishery Resource Office of the U.S. Fish and Wildlife Service at Ahsahka, ID (FWS) (1058); NMFS has issued modifications to a scientific research permit to the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC)(1134), a scientific research permit to the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU)(994) and a scientific research permit to the Fish Ecology Division, Northwest Fisheries Science Center, National Marine Fisheries Service at Seattle, WA (NWFSC)(1194).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 pm eastern standard time on August 18, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 994, 1058, 1134, 1194: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

For permit 984: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West

Highway, Silver Spring, MD 20910 (ph: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permit 984: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

For permits 994, 1058: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

For permit 1134, 1194: Leslie Schaeffer, Portland, OR (503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR).

Chinook salmon (*O. tshawytscha*): endangered uppet Columbia River (UCR) spring, threatened SnR spring/summer, threatened SnR fall, threatened lower Columbia River (LCR).

Steelhead (*O. mykiss*): endangered UCR; threatened SnR; threatened middle Columbia River (MCR); threatened LCR.

Shortnose sturgeon (*Acipenser brevirostrum*).

Modification Requests Received

Permit 984

Dr. Steven Ross requests modification 3 to ESA section 10(a)(1)(A) scientific research permit 984. Permit 984 authorizes the take of shortnose sturgeon from rivers throughout the state of North Carolina. This permit authorizes capture in gillnets, handling, weighing, photographing, dorsalm din clipping for genetic material collection, external and internal tagging and release. Currently both Dr. Mary Moser of the National Marine Fisheries Service—Northwest Fisheries Science Center in Seattle, WA and Dr. Steven Ross are co-investigators, modification #3 would remove Dr. Moser from the permit as co-investigator and extend the expiration date of the permit to December 31, 2001.

Permit 1058

FWS requests modification 2 to ESA section 10(a)(1)(A) scientific research permit 1058. Permit 1058 authorizes FWS annual takes of adult and juvenile, threatened, Snake River fall chinook salmon associated with two scientific research studies. The purpose of Study 1 is to monitor and evaluate adult returns of hatchery-origin fall chinook salmon released as juveniles above Lower Granite Dam on the Snake River in the Pacific Northwest. Currently, information on ESA-listed, natural-origin fish is needed to assess the impacts of fish management actions (e.g., hatchery supplementation), as well as other human activities (e.g., regulated river flows), on wild fish populations. Study 1 has two components: (1) Radio-tagging returning adult salmon at Lower Granite Dam to document the movements and spawning distribution of known natural-origin fall chinook salmon above the dam, and (2) collecting data and scale/tissue samples from spawned-out adult fish in the Snake River and tributaries above Lower Granite Dam to augment information on spawning distribution collected from the radio-tagged fish. The purpose of Study 2 is to obtain a better understanding of the factors leading to residualism and interactions between residuals and wild or natural stocks of juvenile fish in the Clearwater River Basin in ID. For modification 2, FWS requests an increase in the annual take of ESA-listed adult fish associated with Component 1 of Study 1.

Due to increases in adult salmon runsize estimates in the Snake River, a greater number of ESA-listed fish are likely to be captured and handled (checked for tags and sampled for tissues and/or scales) by FWS. Tissue samples and scales will subsequently be analyzed for genetic attributes and population determinants. Modification 2 is requested to be valid for the duration of the permit which expires on December 31, 2001.

Permits and Modifications Issued

Permit 984

Notice was published on March 21, 2000 (65 FR 15131) that ICFWRU applied for a modification to permit 994. Modification 5 to permit 994 was issued on July 5, 2000. Permit 994 authorizes ICFWRU annual takes of adult SnR sockeye salmon, adult SnR spring/summer and fall chinook salmon, and adult UCR steelhead associated with scientific research designed to assess the passage success and homing behavior of adult salmonids that migrate upriver past the eight dams and reservoirs in the lower Columbia and lower Snake Rivers, evaluate specific flow and spill conditions, and evaluate measures to improve adult anadromous fish passage. For modification 5, ICFWRU is authorized a take of adult UCR spring chinook salmon associated with the research. With regard to ICFWRU's request for an increase in take of adult SnR sockeye salmon and takes of adult LCR chinook salmon, adult MCR steelhead, and adult LCR steelhead associated with the research, NMFS is not acting on that part of ICFWRU's application at this time. NMFS will make a decision regarding ICFWRU's proposed additional takes following the completion of ESA Section 7 consultations on this and other scientific research permit actions that have been requested for the 2000 research season. Modification 5 is valid for the duration of permit 994, which expires on December 31, 2000.

Permit 1134

Notice was published on September 27, 1999 (64 FR 51959) that the CRITFC had applied for a modification to permit 1134. Modification 1 to permit 1134 was issued on July 10, 2000, and authorizes CRITFC annual takes of adult and juvenile fish associated with three new projects: (1) biological and chemical monitoring, and physical habitat assessment in steelhead waters; (2) tagging juvenile Hanford Reach upriver bright fall chinook salmon; and (3) SnR steelhead kelt identification study. Annual takes of adult and juvenile,

naturally produced and artificially propagated UCR spring chinook salmon and adult and juvenile LCR chinook salmon associated with the research are also authorized. Modification 1 is valid for the duration of permit 1134, which expires on December 31, 2002.

Permit 1194

Notice was published on March 21, 2000 (65 FR 15131) that the NWFSC had applied for a modification to permit 1194. Modification 1 to permit 1194 was issued on June 6, 2000, and authorizes NWFSC annual takes of adult artificially propagated UCR spring chinook salmon. Modification 1 is valid for the duration of permit 1194, which expires on December 31, 2003.

Dated: July 14, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–18262 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of Currently Approved Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed revision of its AmeriCorps*NCCC Service Project Application Form (OMB Control Number 3045–0010). Copies of the information collection requests can be obtained by contacting the office below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section on or before September 18, 2000.

ADDRESSES: Send comments to Corporation for National and Community Service, AmeriCorps*NCCC, Attention: Mr. Wayne E. Verry, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Wayne E. Verry, (202) 606–5000, ext. 108.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

This form is used by community non-profit organizations, government agencies, and other prospective service project sponsors in the submission of proposed service projects for consideration by AmeriCorps*National Civilian Community Corps.

Current Action

The Corporation seeks renewal of the current form as it is under revision. The revised form incorporates lessons learned since program inception, and will be used for the same purpose as the existing form. The current form is due to expire November 30, 2000.

The principal revisions of the new Project Application are:

- Additional information in the Instructions regarding electronic preparation and submission;
- A request for a description of the compelling community needs to be addressed rather than a general description of the proposed project;
- A request for a work plan for accomplishing the project rather than a calender and timeline.
- A request for tasks to be performed in the event of inclement weather (as appropriate);
- A request for an estimated number of volunteers from the community who might participate in the project rather than a general description of community participation;
- A clarification of the term "Service Learning" as part of the Corps Member Development aspect of the project;
- A statement confirming that an assurance of non-discrimination is included in the Sponsor Agreement, to be signed after the Project Application is approved.

Type of Review: Renewal.
Agency: Corporation for National and Community Service.
Title: AmeriCorps*NCCC Service Project Application.
OMB Number: 3045–0010.
Agency Number: N/A.
Affected Public: Various non-profit organizations/project sponsors.
Total Respondents: 900.
Frequency: Annually.
Average Time Per Response: 8 hours.
Estimated Total Burden Hours: 7,200 hours.
Total Burden Cost (capital/startup): N/A.
Total Burden Cost (operating/maintenance): N/A.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 13, 2000.

Fred L. Peters,

*Acting Director, AmeriCorps*NCCC.*

[FR Doc. 00–18211 Filed 7–18–00; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995

(Public Law 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Daniel Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Description

The application for funds to conduct outreach to individuals with a disability to increase their participation in national service provides the background, requirements and instructions that potential applicants need to complete an application to the Corporation. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Application for Outreach to Individuals with a Disability.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 300.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 3,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 13, 2000.

Gary Kowalczyk,

Coordinator, National Service Programs, Corporation for National and Community Service.

[FR Doc. 00–18212 Filed 7–18–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Defense Systems Management College.

ACTION: Notice.

In compliance of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Defense Systems Management College, announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 18, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Systems Management College, Attention: Ms. Alberta Ladymon, Ft. Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Alberta Ladymon, Defense Systems Management College, (703) 805–5406.

Title, Associated Form, and OMB Number: Defense Systems Management College (DSMC) Information Technology Study, OMB Control Number 0704–XXXX.

Needs and Uses: The collection of information is needed to characterize the personality characteristics, behaviors, and workplace climate needs common among Information Technology specialists. The results from the analysis of these data will be used to determine the management practices most effective for working with these specialists and to develop management curricula based upon these findings.

Affected Public: Businesses or other for-profit; Small Businesses or organizations; Non-profit institutions.

Annual Burden Hours: 2,500 Hours.

Number of (Annual) Respondents: 1,000 (approximately 2,000 over two years).

Responses to Respondent: 1.

Average Burden Per Response: 2.5 Hours.

Frequency: One time only.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are information technology professionals from approximately 300 companies within the U.S. The purpose of this study is to develop a quantitative and qualitative understanding of what successful IT teams "look like" in terms of personnel composition and structure, and to learn about how successful IT teams operate. The goal of this effort is to use this information to form a basis for new Software Best Management Practices, to be encapsulated into the DSMC curriculum, as well as that of the Defense University's Chief of Information Officers program and civilian programs. Teams will be selected using a variety of sources, including DSMC listings, organizational listings held by industry experts, and professional contacts within the industry. Participation by team members is fully voluntary; all participants will be asked to sign a Study Participation Agreement form, explaining that the study is fully voluntary and describing how the data will be used. Data will be collected by two methods: completion of self-report personality/behavioral instruments by the participants, and observations of

team behavior during a workshop conducted by qualified researchers. Data generated for the study will be entered into a study database by the research team. Each individual and team will be assigned a participant and team code at the beginning of the effort. This code will be the primary identifier during data entry as well as analysis. Data that personally identify a participant may be stored in the master database for tracking purposes, but will not be reported or released without the specific consent of that individual. Aggregate data and resulting conclusions may be released in the form of summary reports, technical and academic papers, and formal briefings or presentations. The study team also plans to establish a public Internet site, where the IT Team members participating may go to learn about the study results and conclusions.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18196 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form Number, and OMB Number: Application for Correction of Military Records Under the Provisions of Title 10, United States Code, Section 1552; DD Form 149; OMB Number 0704–0003.

Type of Request: Revision.

Number of Respondents: 28,000.

Responses per Respondent: 1.

Annual Responses: 28,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 14,000.

Needs and Uses: Under Title 10 U.S.C. 1552, the Secretary of a Military Department may correct any military record within their Department when the Secretary considers it necessary to correct an error or remove an injustice. The DD Form 149, "Application for Correction of Military Records Under the Provisions of Title 10 U.S. Code, Section 1552," allows an applicant to request correction of a military record. The form provides an avenue for active duty Service members and former Service personnel who believe an error is contained in their military records and/or they have suffered an injustice to request relief.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18193 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Associated Form, and OMB Number: Application for Trusteeship; DD Form 2827; OMB Number 0703—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 50.

Responses per respondent: 1.

Annual Responses: 50.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 13.

Needs and Uses: This form is used by the Defense Finance and Accounting Service (DFAS—Cleveland Center) to appoint a trustee to act on behalf of a member of the uniformed services. The authority for the collection of information is 37 U.S.C. sections 602–604. When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. This requirement helps alleviate the opportunity for fraud, waste, and abuse of Government funds and protect member benefits.

Affected Public: Individuals of Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18194 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Associated Form, and OMB Number: Trustee Report, DD Form 2826; OMB Number 0703—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 150.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services. The authority for the collection of information is 37 U.S.C. sections

602–604. When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received. The trustee is required to report dates, amounts, and reasons for payments made. This reporting requirement helps alleviate the opportunity for fraud, waste, and abuse of Government funds and member benefits.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18195 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance and Related Clauses at 252.228; OMB Number 0704–0216.

Type of Request: Extension.

Number of Respondents: 49.

Responses per Respondents: 1.

Annual Responses: 49.

Average Burden per Response: 17.53 hours.

Annual Burden Hours: 859.

Needs and Uses: The Department of Defense uses the information obtained through this collection to determine the allowability of a contractor's costs of providing warhazard benefits to its employees; to determine the need for an investigation regarding an accident that occurs in connection with a contract; and to determine whether a contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Office: Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 15, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18196 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Physician Certificate for Child Annuitant; DD Form X405; OMB Number 0730–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 120.

Responses Per Respondent: 1.

Annual Responses: 120.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 24.

Needs and Uses: The form will be used by the Directorate of Annuity Pay, Defense Finance and Accounting Service, Denver Center (DFAS–DE/FRB), in order to establish and start the annuity for a potential child annuitant. When the form is completed, it will serve as a medical report to substantiate a child's incapacity. The law requires that an unmarried child who is incapacitated must provide a current certified medical report. When the incapacity is not permanent a medical certification must be received by DFAS–DE/FRB every two years in order for the child to continue receiving annuity payments. The respondents are the incapacitated child annuitants and/or their legal guardians, custodians and legal representatives.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18197 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Cost Accounting Standards

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement, in conjunction with the National Contract Management Association, is sponsoring a public meeting to discuss potential areas for streamlining the Cost Accounting Standards. The Director of Defense Procurement would like to hear the views of interested parties regarding any standards or parts of standards that present streamlining opportunities (elimination, revision, and/or amendment) in light of changes that

have occurred since the standards were promulgated, including the evolution of Generally Accepted Accounting Principles, the advent of Acquisition Reform, and experience gained from implementation. A listing of some possible streamlining area can be found on the Internet Home Page of the Office of Cost, Pricing, and Finance at http://www.acq.osd.mil/dp/cpf.

Upon identification of the particular standards or parts of standards that present streamlining opportunities, subsequent public meetings will be held to discuss specific provisions, details, and/or recommendations. The dates and times of those meetings will be published on the Internet Home Page of the Office of Cost, Pricing, and Finance. Upon completion of this effort, recommendations will be provided to the Cost Accounting Standards Board for the Board's consideration.

DATES: The first meeting will be held on August 3, 2000, from 9:00 a.m. until 1:00 p.m.

ADDRESSES: The meeting will be held at the National Contract Management Association, 1912 Woodford Drive, Vienna, VA 22182. Directions may be found on the Intenet at http://www.acq.osd.mil/dp/cpf.

FOR FURTHER INFORMATION CONTACT: Mr. David Capitano, Office of Cost, Pricing, and Finance, by telephone at (703) 695–9764, by FAX at (703) 693–9616, or by e-mail at capitadj@acq.osd.mil.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–18251 Filed 7–18–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: August 9, 2000 from 0830 to 1710 and August 10, 2000 from 0830 to 1615.

Place: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: July 13, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18192 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on August 18, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on July 6, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: July 13, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–5

SYSTEM NAME:

Database of Retired Navy Flag Officers.

SYSTEM LOCATION:

Office of the Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired Navy Flag Officers who voluntarily request to be part of the Retired Flag Officer Web Site.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains personal and professional information, such as full name and nickname, rank, work and/or home address, home and/or office telephone/FAX/pager numbers, e-mail address, and spouse's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To maintain a directory of retired Navy flag officers for the purpose of providing briefings and outreach materials, and facilitating interaction between retired and active duty Navy flag officers via a limited access web site.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized data base.

RETRIEVABILITY:

Individual's name.

SAFEGUARDS:

Computerized data base is password protected and access is limited. The office is locked at the close of business.

The office is located in the Pentagon which is guarded.

RETENTION AND DISPOSAL:

Records are kept until the person is deceased or the person seeks removal of information, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–18191 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF ENERGY

Revision to the Record of Decision on the Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Revision to Record of Decision.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 1021.315, is revising the Record of Decision issued on May 13, 1996 (61 FR 25092) to allow the shipment of up to sixteen casks of spent nuclear fuel on a single ocean-going vessel transporting foreign research reactor spent nuclear fuel to the United States. That Record of Decision was issued after completion of the Environmental Impact Statement on the Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, DOE–218F, February 1996 (The Final EIS).

FOR FURTHER INFORMATION CONTACT: For further information on the DOE program for the management of foreign research reactor spent nuclear fuel or the Record of Decision, contact: Mr. David G. Huizenga, Deputy Assistant Secretary for Integration and Disposition, Office of Environmental Management (EM–20), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5151. For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

DOE, in consultation with the Department of State, issued the Final EIS in February 1996. The Final EIS considered the potential environmental impacts of a proposed policy to manage spent nuclear fuel and target material from foreign research reactors. The Record of Decision was issued on May 13, 1996, and was published in the **Federal Register** on May 17, 1996 (61 FR 25092). In the Record of Decision, DOE announced the decision to implement the proposed policy as identified in the Preferred Alternative contained in the Final EIS, subject to additional stipulations specified in Section VII of the Record of Decision. Three revisions to the Record of Decision have been issued, one regarding taking title of the spent fuel at locations other than the U.S. port of entry for countries with other-than-high-income economies, and the other two regarding the fee policy for acceptance of foreign research reactor spent nuclear fuel (61 FR 38720, July 25, 1996; 61 FR 26507, May 28, 1996; and 64 FR 18006, April 13, 1999, respectively).

II. Reason for This Revision

The May 1996 Record of Decision limits the number of casks containing spent nuclear fuel on a single ocean-going vessel to eight. Based upon the experience gained during the implementation of the Foreign Research Reactor Spent Nuclear Fuel Acceptance Program, DOE has come to recognize that a need may arise during implementation of the policy for the United States to ship up to sixteen casks of spent nuclear fuel on a single ocean-going vessel.

DOE committed in the Record of Decision, and in subsequent discussions with representatives of the state and local jurisdictions through which spent nuclear fuel foreign research reactors is transported, to minimize the number of spent fuel shipments made over the 13-year period of the acceptance program. At the time those commitments were made, the worldwide supply of spent fuel casks available for use in transporting foreign research reactor spent nuclear fuel was very limited, and thus DOE forecasted that no more than eight casks could be made available to support any one shipment. Subsequent to the issuance of the Record of Decision, however, the worldwide supply of spent fuel casks has increased to the point where it is possible to transport more than eight casks on a single ocean-going vessel. As a planning basis, DOE believes that it would now be possible to transport up to 16 casks on a single ocean-going vessel.

DOE has reviewed the potential environmental impacts of transporting up to 16 casks on a single ocean-going vessel and compared the potential impacts with the analysis in the Final EIS, as part of a Supplement Analysis that DOE prepared in accordance with 10 CFR 1021.314 (Supplement Analysis of Acceptance of Foreign Research Reactor Spent Nuclear Fuel Under Scenarios Not Specifically Mentioned in the EIS, DOE/EIS–0218–SA–2, issued August 1998). Based on that Supplement Analysis, DOE determined that the potential environmental impacts of transporting up to 16 casks would be less than the impact estimated in the Final EIS, and that a supplement to the Final EIS is not required.

For example, the Supplement Analysis concludes that increasing the number of casks per vessel from eight to sixteen would not effect the radiological risk from accidents. The Supplement Analysis also concludes that the potential incident-free radiological risk would be expected to remain essentially the same for the program, but increase slightly on a per voyage basis. However, as the Supplement Analysis explains, experience has shown that the Final EIS estimates of doses during daily spent fuel inspections aboard ship were very conservative (i.e. tending to overstate risk). To date, all exposures of ship personnel have been well below the regulatory limit and well within the conservative estimates made in the Final EIS. Nevertheless, DOE will continue to implement the mitigative measures outlined in the Mitigation Action Plan that will prevent ships'

crews from receiving doses greater than those allowed by regulatory limits.

The use of up to sixteen casks per shipment would not change the total number of spent fuel casks or elements that will be accepted by DOE over the term of the acceptance program. Because the total number of spent fuel casks to be accepted remains the same, and the incident free and accident risks of transporting up to sixteen casks would not be materially different from the risks of transporting eight casks, DOE has concluded that the impacts from shipping up to sixteen casks on a single vessel, and subsequent train or truck shipments, would be within the bounds of potential environmental impacts discussed in the Final EIS. Further, adding up to eight more casks per shipment whenever possible would better promote the commitment set forth in the Record of Decision to reduce the number of spent fuel shipments.

For the reasons set forth above, Section VII ("Decision"), Paragraph A, of the Record of Decision issued on May 13, 1996, is revised to read as follows:

A. DOE will reduce the number of shipments necessary by coordinating shipments from several reactors at a time (*i.e.*, by placing multiple casks [up to sixteen] on a ship). DOE currently estimates that a maximum of approximately 150 to 300 shipments through the Charleston Naval Weapons Station and five shipments through the Concord Naval Weapons Station will be necessary during the 13 year spent fuel acceptance period.

In addition, Section VIII ("Use of All Practicable Means to Avoid or Minimize Harm"), Paragraph C of the Record of Decision is revised to read as follows:

C. DOE will reduce the risk associated with shipment of the spent fuel by shipping multiple casks per shipment, up to a maximum of sixteen, whenever possible, thus reducing the total number of shipments.

Issued in Washington, D.C., this 10th day of July, 2000.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 00–18229 Filed 7–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 8, 2000, 6 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Conversation with new site manager, Barbara Mazurowski.
2. Presentation on Rocky Flats Closure Project Baseline.
3. Update by the Defense Nuclear Facilities Safety Board.
4. Other Board business may be conducted as necessary.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting.

Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday–Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on July 14, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–18227 Filed 7–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, August 11, 2000, 3 p.m.–9 p.m.

ADDRESSES: Best Western Valley View Lodge, 7726 E. Lamar Alexander Pkwy., Townsend, TN.

FOR FURTHER INFORMATION CONTACT: Dave Adler, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831; phone (865) 576–4094; fax (865) 576–9121, or e-mail: adlerdg@oro.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Training on various laws and regulations and risk assessment issues pertaining to environmental management cleanup efforts will be provided.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Dave Adler at the

address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes

Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m., Monday through Friday, or by writing to Dave Adler, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling him at (865) 576–4094.

Issued at Washington, DC on July 14, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–18228 Filed 7–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Orders Granting and Amending Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2000, it issued Orders granting and amending authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on July 13, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting and Amending Import/Export Authorizations

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1600	06/06/00	IGI Resources, Inc., 00–39–NG	350 Bcf		Import from Canada beginning on August 1, 2000, and extending through July 31, 2002.
1601	06/06/00	Coral Energy Resources, L.P., 00–38–NG	730 Bcf	730 Bcf	Import combined total, including LNG, from Canada and Mexico, and export combined total, including LNG, to Canada and Mexico, beginning on July 1, 2000, and extending through June 30, 2002.
1602	06/13/00	WGR Canada, Inc., 00–40–NG	73 Bcf	73 Bcf	Import and export from and to Canada beginning on July 14, 2000, and extending through July 13, 2002.
1603	06/13/00	Duke Energy LNG Marketing and Management Company, 00–41–LNG.	700 Bcf		Import LNG from various international sources to existing facilities in the U.S. and its territories, over a two-year term beginning on June 13, 2000, and extending through June 12, 2002.
1604	06/14/00	Fortuna (U.S.) Inc., 00–37–NG	75 Bcf		Import and export a combined total from and to Canada, over a two-year term beginning on the date of first delivery.
1151–B	06/14/00	Hess Energy Inc. (Successor to Statoil Energy Services, Inc.), 96–02–NG.			Transfer of long-term import authority.
1440–A	06/14/00	Hess Energy Inc. (Successor to Statoil Energy Services, Inc.), 96–95–NG.			Transfer of blanket import and export authority.
1152–B	06/14/00	Hess Energy Inc. (Successor to Statoil Energy Services, Inc.), 96–03–NG.			Transfer of long-term import authority.
1569–A	06/16/00	Alliance Pipeline L.P., 00–08–NG	Increase of 41.2 Bcf.		Increase in volumes to blanket import authority.
261–F	06/20/00	Phillips Alaska Natural Gas Corporation and Marathon Oil Company: 88–22–LNG, 96–99–LNG.			Amendment to price formula April 1, 1998, through March 1, 2009.
1605	06/21/00	Premstar Energy Canada Ltd., 00–42–NG	400 Bcf		Import and export a combined total from and to Canada beginning on July 1, 2000, and extending through June 30, 2002.
1606	06/23/00	St. Lawrence Gas Company, Inc., 00–43–NG.	16.3 Bcf		Import from Canada beginning on July 26, 2000, and extending through July 25, 2002.
1581–A	06/28/00	Anadarko Energy Services Company, 00–20–NG.	100 Bcf		Amendment to include import of LNG from various international sources to existing facilities in the U.S. and its territories through April 30, 2002.

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1607	06/30/00	New York State Electric & Gas Corporation, 00–45–NG.	(1) 50 Bcf	.....	Import and export a combined total from and to Canada beginning on July 1, 2000, and extending through June 30, 2002.

[FR Doc. 00–18230 Filed 7–18–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2737]

Central Vermont Public Service Corporation; Notice of Authorization for Continued Project Operation

July 13, 2000

On June 25, 1998, Central Vermont Public Service Corporation, licensee for the Middlebury Lower Project No. 2737, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2737 is located on Otter Creek in Addison County, Vermont.

The license for Project No. 2737 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2737 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Central Vermont Public Service Corporation is authorized to continue operation of the Middlebury Lower Project No. 2737 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18207 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2110]

Consolidated Water Power Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 26, 1998, Consolidated Water Power Company, licensee for the Stevens Point Project No. 2110, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2110 is located on the Wisconsin River in the Town of Stevens Point, Portage County, Wisconsin.

The license for Project No. 2110 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2110 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Stevens Point Project No. 2110 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18203 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2192]

Consolidated Water Power Company; Notice of Authorization for Continued Project Operation

July 13, 2000

On June 26, 1998, Consolidated Water Power Company, licensee for the Biron Project No. 2192, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2192 is located on the Wisconsin River in Wood and Portage Counties, Wisconsin.

The license for Project No. 2192 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2192 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Biron Project No. 2192 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,
Secretary.

[FR Doc. 00–18205 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–34–000]

Dauphin Island Gathering Partners; Notice of Proposed Change in FERC Gas Tariff

July 13, 2000.

Take notice that on July 7, 2000, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective August 7, 2000.

First Revised Sheet No. 2
First Revised Sheet No. 3
Original Sheet No. 359
Original Sheet No. 427

DIGP states that the revised tariff sheets reflect the Commission's Regulations which state that any contract or executed service agreement that deviates in any material aspect from the form of service agreement must be filed with the Commission and such nonconforming agreement must be referenced in the pipeline's tariff.

DIGP states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18199 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–382–000]

Iroquois Gas Transmission System L.P.; Notice of Fuel Calculations

July 13, 2000.

Take notice that on June 30, 2000, Iroquois Gas Transmission System L.P., (Iroquois) tendered for filing schedules with reflect calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 2000 through June 30, 2000.

Iroquois states that the schedules include calculations supporting each of the following three components of Iroquois' composite Measurement Variance/Fuel Use Factor:

1. Lost and unaccounted-for gas (Measurement Variance Factor);
2. Fuel use associated with the transportation of gas by others on behalf of Iroquois (Account 858 Fuel Use Factor); and
3. Fuel use associated with the transportation of gas on Iroquois' pipeline system (Account 854 Fuel Use Factor).

Iroquois states the Account 858 Fuel Use Factor was implemented effective September 1, 1993, and includes the tracking of Account No. 858 fuel effective August 20, 1993; as approved by the Commission in Docket No. RP93–8–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18208 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 420]

City of Ketchikan; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 30, 1998, the City of Ketchikan, licensee for the Ketchikan Lakes Project No. 420, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 420 is located on Ketchikan Creek within and adjacent to the City of Ketchikan, Alaska.

The license for Project No. 420 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 15 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission act on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 420 is issued to the City of Ketchikan for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order ot notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Ketchikan is authorized to continue operation of the Ketchikan Lakes Project No. 420 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,
Secretary.

[FR Doc. 00–18200 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2567]

Northern States Power Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 18, 1998, Northern States Power Company, licensee for the Wissota Project No. 2567, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2567 is located on the Chippewa River in Chippewa County, Wisconsin.

The license for Project No. 2567 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordacne with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2567 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Northern States Power Company is authorized to continue operation of the Wissota Project No. 2567 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,
Secretary.

[FR Doc. 00–18206 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161]

Rhinelander Paper Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 26, 1998, Rhinelander Paper Company, licensee for the Rhinelander Project No. 2161, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2161 is located on the Wisconsin River in the Town of Rhinelander, Oneida County, Wisconsin.

The license for Project No. 2161 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the

prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2161 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issue of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Rhinelander Paper Company is authorized to continue operation of the Rhinelander Project No. 2161 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18204 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895]

South Carolina Electric and Gas Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 30, 1998, South Carolina Electric and Gas Company, licensee for the Columbia Project No. 1895, filed an application for a new or subsequent license pursuant to the Federal Act (FPA) and the Commission's regulations thereunder. Project No. 1895 is located on the Broad and Congaree Rivers in Richland County and the City of Columbia, South Carolina.

The license for Project No. 1895 was issued for a period ending June 30, 2000. Section 15(a)(1) of the EPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the projects's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 1895 is issued to South Carolina Electric and Gas Company for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that South Carolina Electric and Gas Company is authorized to continue operation of the Columbia Project No. 1895 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18201 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–46–000, et al.]

Texas-New Mexico Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 12, 2000.

Take notice that the following filings have been made with the Commission:

1. Texas-New Mexico Power Company

[Docket No. ES00–46–000]

Take notice that on June 29, 2000, Texas-New Mexico Power Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make short-term borrowings under a bank syndicated revolving credit agreement in an amount not to exceed $325 million.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Utilities Company

[Docket No. ER00–3078–000]

Take notice that on July 6, 2000, Citizens Utilities Company (Citizens), tendered for filing on behalf of itself and The Legacy Energy Group, LLC, a Service Agreement for Non-Firm Point-to-Point Transmission Service under Citizens' Open Access Transmission Tariff. Also Citizens tendered for filing a revised Attachment E, Index of Point-to-Point Transmission Service Customers to update the Open Access Transmission Tariff of the Vermont Electric Division of Citizens Utilities Company.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. K2 Development LLC

[Docket No. ER00–3092–000]

Take notice that on July 6, 2000, K2 Development LLC, tendered a Notice of Name Change pursuant to Sections 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16 and 131.51.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Ameren Services Company

[Docket No. ER00–3093–000]

Take notice that on July 7, 2000, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Entergy Power Marketing Corp. (Entergy). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Entergy pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Energy Company and International Transmission Company

[Docket No. ER00–3094–000]

Take notice that on July 7, 2000, Consumers Energy Company and International Transmission Company tendered for filing their joint open access transmission tariff, Original Volume 1, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994).

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18171 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 13, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2047–004.

c. *Date filed:* June 23, 1998.

d. *Applicant:* Erie Boulevard Hydropower, L.P..

e. *Name of Project:* Stewarts Bridge Hydroelectric Project.

f. *Location:* On the Sacandaga River, about 3 miles upstream from its confluence with the Hudson River, in the town of Hadley, Saratoga County, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Hydro Licensing Coordinator, 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088, (315) 413–2787.

i. *FERC Contact:* Lee Emery, E-mail address, Lee.Emery@ferc.fed.us, or telephone (202) 219–2779.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The existing, operating project consists of: (1) A 1,860-foot-long dam consisting of: (a) A 1,646-foot-long rolled, compacted earth-fill structure 112 feet high at its highest point (crest elevation of 714.0 feet) with a base that varies from 120 feet to 680 feet in width; (b) a reinforced concrete Taintor gate spillway measuring 151 feet long, 49.7 feet wide, and 34 feet high, containing five 27-foot-long by 14.5-foot-high steel Taintor gates; (c) a 63-foot-long reinforced concrete intake structure equipped with two 25-foot-high by 22-foot-wide steel gates with 3⅝-inch clear spaced steel bar trashracks located directly in front of the gates; and (d) a 29-foot-wide roadway along the crest of the dam; (2) a reservoir (Stewart's Bridge Reservoir) with a surface area of 480 acres at a normal water surface elevation of 705.0 feet National Geodetic Vertical Datum; (3) a 10-foot-diameter, plugged diversion conduit used to pass river flows during project construction; (4) an 850-foot-long plastic concrete seepage barrier constructed through the impervious dam core; (5) a 216-foot-long, 22-foot inside diameter steel penstock; (6) an 88-foot-long by 78-foot-wide brick-faced structural steel framed powerhouse with one vertical Francis turbine/generator unit; (7) a tailrace which extends 450 feet downstream from the powerhouse; (8) an outdoor transformer, switching station, and 400-foot-long transmission line; and (9) appurtenant facilities. There is no bypassed reach. The project has an installed capacity of 30.0 megawatts and an annual average energy production of 116,678 megawatt hours.

The project currently operates as a peaking facility in tandem with the upstream E.J. West Project (P–2318), generating 12 hours a day (typically between 8 AM to 10 PM). Daily reservoir fluctuations are less than one foot most of the year except for maintenance drawdowns that approach 15 feet and are timed to coincide with the drawdowns of Great Sacandaga Lake which begin in mid-March.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service or Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments,

recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–18202 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–4]

Final Notification of Alternative Tier 2 Requirements for Methylcyclopentadienyl Manganese Tricarbonyl (MMT)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Environmental Protection Agency (EPA) has notified the Ethyl Corporation (Ethyl), manufacturer of the motor fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), and other affected registrants of motor fuels and additives containing MMT, of Alternative Tier 2 health and exposure testing requirements.

DATES: The Alternative Tier 2 testing requirements for MMT are effective upon receipt by Ethyl of the notification letter discussed in this notice.

ADDRESSES: Written requests for information regarding this notification should be addressed to Public Docket Number A–98–35, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. A copy of the notification transmitted to Ethyl and the notification transmitted to other affected registrants have been placed in Docket A–98–35. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 564–9034.

SUPPLEMENTARY INFORMATION:

Regulated Entities.

Entities who may be regulated pursuant to the notifications referenced in this notice are those that manufacture or use the fuel additive MMT. Regulated categories and entities include:

Category	Examples of regulated entities	SIC Codes
Industry	The Ethyl Corporation, petroleum refiners, gasoline importers, fuel additive manufacturers.	2911, 5172, 2899.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA has concluded could potentially be regulated pursuant to the notifications. Other types of entities not listed in this table could also be regulated. If you have any questions regarding the applicability of the notifications to a particular entity, consult the person listed in the preceding section dealing with EPA contacts.

I. Introduction

The Clean Air Act (CAA), as amended, required the Administrator of EPA to promulgate regulations requiring manufacturers of fuels and fuel additives ("F/FAs") to conduct tests to determine potential health effects of such products. The final rule, promulgated on May 27, 1994, established new health effects testing requirements for the registration of designated F/FAs as authorized by CAA sections 211(b)(2) and 211(e) of the CAA.

The registration requirements are organized within a three-tier structure. Tier 1 requires F/FA manufacturers to supply to EPA (1) the identity and concentration of certain emission products of designated F/FAs and an analysis of potential emission exposures, and (2) any available information regarding the health and welfare effects of the whole and speciated emissions. 40 CFR 79.52. Tier 2 requires that combustion emissions of each F/FA subject to the testing requirements be tested for subchronic systemic and organic toxicity, as well as the assessment of specific health effect endpoints. 40 CFR 79.53. Tier 3 testing may be required, at EPA's discretion, when remaining uncertainties as to the significance of observed health or welfare effects, or emissions exposures interfere with EPA's ability to reasonably assess the potential risks posed by emissions from a F/FA. 40 CFR 79.54. EPA's regulations permit submission of adequate existing test

data in lieu of conducting new duplicative tests. 40 CFR 79.53(b).

At its discretion, EPA may modify the standard Tier 2 health effects testing requirements for a F/FA (or group thereof) by substituting, adding, or deleting testing requirements, or changing the underlying vehicle/engine specifications. 40 CFR 79.58(c). EPA will not, however, delete a testing requirement for a specific endpoint in the absence of existing adequate information, or an alternative testing requirement for that endpoint. 40 CFR 79.58(c). When EPA exercises its authority under this special provision, it will allow an appropriate time for completion of the prescribed alternative tests.

II. Proposed Alternative Tier 2 Requirements for MMT

On January 29, 1999, Ethyl was notified by certified letter of certain tests which the Agency proposed to require under the Alternative Tier 2 provisions for MMT, and the proposed schedule for completion and submission of such tests. Other affected registrants of fuels and fuel additives containing MMT were also notified by certified letter. An associated **Federal Register** notice (64 FR 6294) initiated a 60-day public comment period. Copies of the documents associated with the proposed tests and schedule under the Alternative Tier 2 provisions have been placed in the docket.

The purpose of this notice is to announce that the Environmental Protection Agency (EPA) has notified Ethyl, the manufacturer of MMT, and other affected registrants of fuels and additives containing MMT, of the adoption of Alternative Tier 2 testing requirements under 40 CFR 79.58(c) for fuels containing up to 1/32 gram per gallon (gpg) manganese in the form of MMT.

The purpose of the Alternative Tier 2 test requirements is to address specific research needs related to assessment of the potential risks associated with use of fuels containing MMT. The Alternative Tier 2 test requirements are within two general categories, pharmacokinetic testing of manganese compounds and characterization of manganese emissions from vehicles utilizing fuels containing MMT. These Alternative Tier 2 testing requirements are intended to be the first stage in a two-stage Alternative Tier 2 test program. EPA intends to evaluate the results produced in the first stage of testing, as well as any other information which may be submitted to or obtained by EPA in the meantime, in determining the specific nature and scope of the second stage of Alternative Tier 2 testing. Any additional Alternative Tier 2 tests proposed for fuels and additives containing MMT in the future will be announced in a separate **Federal Register** notice.

On May 19, 2000, Ethyl was notified by a certified letter of the specific tests which the Agency is requiring under the Alternative Tier 2 provisions for MMT, and the schedule for completion and submission of such tests. Other affected registrants of fuels and additives containing MMT were also notified by certified letter. A copy of the notification to Ethyl and the notification to other registrants, including a description of the Alternative Tier 2 tests and the schedule for such tests, has been placed in the Public Docket Number A–98–35, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. The notifications are also available on the internet via EPA's Mobile Source home page at *http://www.epa.gov/OMSWWW/*.

III. Environmental Impact

EPA's health effects testing notifications for MMT will result in no immediate environmental impact. Section 211(c) of the CAA, however, authorizes EPA to take regulatory action to control or prohibit manufacture or sale of fuels and fuel additives if testing information submitted by registrants or other information available to EPA indicates that use of such products may be reasonably anticipated to endanger public health or welfare. Thus, information obtained from health effects testing conducted by manufacturers of F/FAs may provide a basis for subsequent regulatory action.

IV. Economic Impact

The testing requirements which are the subject of this notice will have a potential economic impact on the affected registrants, who are obligated to make expenditures to conduct any required testing. EPA does not anticipate that there will be any direct economic impact on registrants of fuels and additives containing MMT other than Ethyl, because Ethyl has stated that it will be responsible for satisfying any test requirements imposed by EPA for the group of fuels and additives containing MMT.

The regulations at 40 CFR 79.58(d) also contain special provisions limiting testing obligations for those fuel or fuel additive manufacturers whose total annual sales are less than $10 million. EPA does not believe that the testing requirements which are the subject of these notifications will have any economic impact on small entities.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Gasoline, Conventional gasoline, Methylcyclopentadienyl manganese tricarbonyl, and Motor vehicle pollution.

Dated: June 20, 2000.

Robert A. Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–18276 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100159; FRL–6597–5]

The Cadmus Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to The Cadmus Group, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). The Cadmus Group, Inc. has been awarded multiple contracts to perform work for OPP and the Office of Water (OW). Access to this information will enable The Cadmus Group, Inc. to fulfill the obligations of the contract.

DATES: The Cadmus Group, Inc. will be given access to this information on or before July 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific

entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–C0–0113 work assignment 009, the contractor will perform the following:

Review the Environmental Fate and Effects Division's (EFED) carbofuran RED chapter; review other pertinent documents; participate in conference calls with the Work Assignment Manager (WAM), the Probabilistic Risk Assessment Implementation Team; develops methods for conducting probabilistic risk assessments; develop data input distributions for probabilistic risk assessments for designated agricultural crops (using methods discussed and agreed upon with the WAM) and provide supporting model development and other technical aspects of risk assessment development including literature searches, data extraction, interpretation and analysis to complete the quantitative risk assessment.

These contracts involve no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under the contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with The Cadmus Group, Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, The Cadmus Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to The Cadmus Group, Inc. until the requirements in this document have been fully satisfied. Records of information provided to The Cadmus Group, Inc. will be maintained by EPA Project Officers for these contracts. All information supplied to The Cadmus Group, Inc. by EPA for use in connection with these contracts will be returned to EPA when The Cadmus Group, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 6, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–18152 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100158; FRL–6597–2]

GRAM, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to GRAM, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). GRAM, Inc. has been awarded multiple contracts to perform work for the Office of Water (OW). Access to this information will enable GRAM, Inc. to fulfill the obligations of the contracts.

DATES: GRAM, Inc. will be given access to this information on or before July 26, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–C9–9232, work assignment B–17, the contractor will perform the following: Provide technical and regulatory support services to the Health and Ecological Criteria Division (HECD) in the Office of Water's Office of Science and Technology (OST) during the development of human health criteria, health advisories, maximum contaminate level goals, and pollutant limits, and to conduct laboratory and/or field studies and/or derive from the published literature detailed and comprehensive data bases for microbiological pollutants encountered in drinking water, ambient water, wastewater/sewage sludge, sediment/dredge spoils, fish, wildlife and sewage sludge for the EPA.

These contracts involve no subcontractors.

OPP has determined that the contracts described in this document involve

work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under the contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with GRAM, Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, GRAM, Inc., is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to GRAM, Inc., until the requirements in this document have been fully satisfied. Records of information provided to GRAM, Inc., will be maintained by EPA Project Officers for these contracts. All information supplied to GRAM, Inc., by EPA for use in connection with these contracts will be returned to EPA when, Inc., has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 6, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–18153 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100160; FRL–6587–6]

Oracle Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Oracle Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Oracle Corporation has been awarded multiple contracts to perform work for OPP, and access to this information will enable Oracle Corporation to fulfill the obligations of the contract.

DATES: Oracle Corporation will be given access to this information on or before July 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**"

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number GS–35F–0108J, Blanket Purchase Agreement Number: OD–5038–NBLX, the contractor will perform the following:

Oracle Corporation will provide technical and operational support services to OPP in support of the migration of OPP systems to the Oracle environment in order to make OPP information readily available to OPP personnel via the LAN and external customers via the Internet and electronic bulletin boards. The contractor will provide or acquire the personnel to complete the following tasks:

- Assistance with general Oracle data base management and administration.
- Assistance with the development of an enterprise model for OPP systems.
- Assistance with development of the data model and object design for each module of the OPP system.
- Applications development for data accessibility by OPP LAN users and by the general public via the Internet and electronic bulletin boards.
- Systems installations and implementation.

These contracts involves no subcontractors.

EPA has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under the contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Oracle Corporation, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Oracle Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Oracle Corporation until the requirements in this document have been fully satisfied. Records of information provided to Oracle Corporation will be maintained by EPA Project Officers for these contracts. All information supplied to Oracle Corporation by EPA for use in connection with these contracts will be returned to EPA when Oracle Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 10, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–18154 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00295; FRL–6596–2]

Request for Contractor Access to TSCA Confidential Business Information; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), EPA is seeking public comment and information on the following Information Collection Request (ICR): Request for Contractor Access to TSCA Confidential Business Information (EPA ICR No. 1250.05, OMB No. 2070–0075). This ICR involves a collection activity that is currently approved and scheduled to expire on December 31, 2000. The information collected under this ICR helps EPA evaluate the suitability of employees of firms under contract to EPA for access to TSCA Confidential Business Information (CBI), thereby helping to protect the confidentiality of information submitted to EPA by industry. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00295 and administrative record number AR–229, must be received on or before September 18, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00295 and administrative record number AR–229 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Deborah Williams, Information Management Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1734; fax number: (202) 260–1657; e-mail address: williams.deborah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company working under contract to the Federal government whose employees need access to TSCA CBI, or if you are an employee of such a company. Potentially affected categories and entities may include, but are not limited to:

Type of business	SIC codes
Help Supply Services	7363
Computer Facilities Management Services	7376
Management Consulting Services	8742
Facilities Support Management Services	8744
Services, Not Elsewhere Classified	8999

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4082 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00295 and administrative record number AR–229. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00295 and administrative record number AR–229 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics

(OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: "oppt.ncic@epa.gov," or submit your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00295 and administrative record number AR–229. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. In What Information is EPA Particularly Interested?

Pursuant to section 3506(c)(2)(A) of PRA (44 U.S.C. 3501 *et seq.*), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Request for Contractor Access to TSCA Confidential Business Information.

ICR numbers: EPA ICR No. 1250.05, OMB No. 2070–0075.

ICR status: This ICR is currently scheduled to expire on December 31, 2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Certain employees of companies working under contract to EPA require access to CBI collected under the authority of TSCA in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA CBI, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance, primarily the name, Social Security Number and EPA identification badge number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI. EPA will observe strict confidentiality precautions with respect to the information collected on individual employees, based on the Privacy Act of 1974, as outlined in the ICR and in the collection instrument.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this

collection of information is estimated to average about 1.56 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 432.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: One.

Estimated total annual burden hours: 675.

Estimated total annual burden costs: $40,727.

VI. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 139 hours (from 814 hours to 675 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change reflects a lower estimate of the number of employees at contracting firms that need to obtain clearance to access TSCA CBI.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 12, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–18264 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64048; FRL 6596–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on January 16, 2001, unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall No. 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in six pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name/active ingredient and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
*000264–00637	Thiodan Technical	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non-bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or part of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program), juniper, locust, maple, willow, commercially grown greenhouse/out-of-doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris, lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily, hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence or domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens, and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.
*000279–02306	Thiodan Technical Insecticide	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non-bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or parts of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program), juniper, locust, maple, willow, commercially grown greenhouse/out-of-doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris, lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily, hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence or domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens, and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.
002217–00703	Acme Hi-Dep Herbicide	Diethanolamine (2,4-dichlorophenoxy) acetate	Vineyard use
010951–00010	Britz BT 25 Sulfur Dust	*Bacillus thuringiensis* subsp. Kurstaki; Sulfur)	Use on cucumbers (Southeastern U.S. only)

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TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
*011678–00005	Thionex Endosulfan Technical	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non- bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or parts of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program), juniper, locust, maple, willow, commercially grown greenhouse/out-of-doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris, lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence or domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens, and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.
*019713–00319	Endosulfan Technical	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non-bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or parts of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program, juniper, locust, maple willow, commercially grown greenhouse/out of doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris, lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily, hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence of domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.

Note: *30–day comment period.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 16, 2001, unless a shorter comment was indicated, to discuss withdrawal of the application for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes, the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
000264	Aventis CropScience, 2 TW Alexander Drive, Research Triangle Park, NC 27709.
000279	FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103.
002217	PBI/Gordon Corporation, P.O. Box 014090, Kansas City, MO 64101.
010951	Britz Fertilizers, Inc., P.O. Box 336, Five Points, CA 93624.
011678	Makhteshim-Agan of North America, Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.
019713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail.* Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked January 16, 2001, unless indicated otherwise.

2. *In person or by courier.* Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 30, 2000.

Richard D. Schmitt,

Associate Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 00–18265 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 12, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 18, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0710.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996–CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 12,250 respondents; 1,070,250 responses.

Estimated Time Per Response: 124.86 hours (average).

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 1,529,620 hours.

Total Annual Cost: $937,500.

Needs and Uses: The Commission adopted rules and regulations to implement part of Sections 251 and 252 that affect local competition. Incumbent local exchange carriers (LECs) are required to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services at rates that are cost-based and just and reasonable and provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

This submission is being sent to the Office of Management and Budget (OMB) to extend the current three-year approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18186 Filed 7–18–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

July 14, 2000.

FCC TO HOLD OPEN COMMISSION MEETING FRIDAY, JULY 21, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, July 21, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common carrier and consumer information	Title: The Use of N11 Codes and Other Abbreviated Dialing Arrangements (CC Docket No. 92–105). Summary: The Commission will consider a Second Report and Order concerning the nationwide implementation of 711 access to telecommunications relay services (TRS).
2	Common carrier	Title: Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) to Services Nationwide (NSD–L–99–24); Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code (NSD–L–98–80); and The Use of N11 Codes and Other Abbreviated Dialing Arrangements (CC Docket No. 92–105). Summary: The Commission will consider a Third Report and Order and Order on Reconsideration concerning petitions for assignment of N11 codes for access to community information and referral services, and for access to traveler information services.
3	Common carrier	Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 94–129). Summary: The Commission will consider a Third Report and Order and Second Order on Reconsideration concerning the amendment of its carrier change authorization and verification rules, including the use of internet letter of authorization, and other proposals set forth in the Second Report and Order and Further Notice of Proposed Rule Making.
4	Mass media	Title: Implementation of Video Description of Video Programming (MM Docket No. 99–339). Summary: The Commission will consider a Report and Order concerning rules requiring certain broadcast stations and multichannel video programming distributors to provide programming with video description.
5	Office of Engineering and Technology	Title: Closed Captioning Requirements for Digital Television Receivers (ET Docket No. 99–254); and Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (MM Docket No. 95–176). Summary: The Commission will consider a Report and Order concerning technical standards for the display of closed captions on digital television (DTV) receivers.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at http://www.fcc.gov/realaudio/. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–18443 Filed 7–17–00; 3:34 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2425]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

July 12, 2000.s

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800.

Oppositions to these petitions must be filed by August 3, 2000. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Changes to the Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21).

Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 21.

Subject: Reexamination of the Comparative Standards for Noncommercial Educational Applicants (MM Docket No. 95–31).

Number of Petitions Filed: 17.

Subject: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS (GEN Docket No. 90–314, ET Docket No. 92–100).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Narrowband PCS (PP Docket No. 93–253).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18188 Filed 7–18–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Appraisal Standards."

DATES: Comments must be submitted on or before September 18, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Appraisal Standards." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@ fdic.gov]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Appraisal Standards.

OMB Number: 3064–0103.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 5,800.

Estimated Number of Responses: 328,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden: 82,150 hours.

General Description of Collection: FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with Federally related transactions under its jurisdiction. The information collection activities attributable to 12 CFR part 323 are a direct consequence of the statutory requirements and the legislative intent.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of July, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–18249 Filed 7–18–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting; Sunshine Act Notices

AGENCY: Federal Election Commission.

Previously Announced Date & Time: Thursday, July 20, 2000, 10:00 a.m., Meeting Open to the Public

The following item was added to the agenda:

Draft Advisory Opinion 2000–12: Bill Bradley for President, Inc. and McCain 2000, Inc. by counsel, Robert F. Bauer and Trevor Potter.

DATE & TIME: Tuesday, July 25, 2000 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 27, 2000, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2000–16—Third Millennium: Advocates for the Future, Inc. by counsel, B. Holly Schadler and Brian G. Svoboda.

Advisory Opinion 2000–17—Extendicare Health Services, Inc. by counsel, Joseph A. Rieser, Jr.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–18417 Filed 7–17–00; 2:48 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011716.

Title: P&O Nedlloyd-Farrell/Hapag-Lloyd Mediterranean Space Charter Agreement.

Parties: P&O Nedlloyd Limited/P&O Nedlloyd B.V., Farrell Lines Incorporated, Hapag Lloyd Container Linie GmbH.

Synopsis: Under the proposed agreement, the parties agree to exchange/charter space on vessels in the trade between the U.S. East Coast and countries on the Mediterranean Sea (together with Portugal). It also authorizes the parties to discuss and agree on the number, size and characteristics of vessels deployed and provides the number of slots allocated. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: July 14, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–18268 Filed 7–18–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Terminations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 4107.
Name: A.J. Int'l Cargo, Inc.
Address: 12000 S.W. 45th Street, Miami, FL 33175.
Date Revoked: April 19, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14635N.
Name: Aboard Cargo Service, Inc.
Address: 8565 N.W. 29 Street, Miami, FL 33126.
Date Revoked: May 17, 2000.
Reason: Failed to maintain a valid surety bond.

License Number: 8930N.
Name: Amber Marine International, Ltd.
Address: 1554 Carmen Drive, Elk Grove Village, IL 60007.
Date Revoked: April 9, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14368N.
Name: B.W.I. Shippers and Movers Ltd.
Address: 654 Flatbush Avenue, Brooklyn, NY 11225.
Date Revoked: April 26, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3881.
Name: Czop, Inc.
Address: 13301 Biscayne Blvd., Suite 102, North Miami, FL 33181.
Date Revoked: April 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4102.
Name: Desert Net, Inc.
Address: 410 East Pratt Street, Suite 1623, Baltimore, MD 21202.
Date Revoked: April 15, 2000.
Reason: Failed to maintain a valid bond.

License Number: 1538.
Name: Division M, Inc.
Address: 1352 E. Industrial Drive, Itasca, IL 60143.
Date Revoked: April 29, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13315N.
Name: Eagle International Shipping, Inc.
Address: 5531 N.W. 72nd Avenue, Miami, FL 33166.
Date Revoked: May 20, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3267.
Name: Global Transport Services, Inc.
Address: 15710 JFK Blvd., Suite 380, Houston, TX 77032.
Date Revoked: April 12, 2000.
Reason: Failed to maintain a valid bond.

License Number: 8504N.
Name: Hyun Dae Trucking Co., Inc.
Address: 3022 S. Western Avenue, Los Angeles, CA 90018.
Date Revoked: April 20, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4653.
Name: Indus Shipping Company Ltd.
Address: 27 Park Place, Suite 200, New York, NY 10007.
Date Revoked: April 13, 2000.
Reason: Failed to maintain a valid bond.

License Number: 1417–R.
Name: Interconex Transport International, Inc.
Address: 50 Main Street, 11th Floor, White Plains, NY 10606.
Date Revoked: May 27, 2000.
Reason: Failed to maintain a valid bond.

License Number: 206.
Name: Marine Forwarding Company, Incorporated
Address: 17 Battery Place, New York, NY 10004.
Date Revoked: April 27, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4321.
Name: Matrix Worldwide, Inc.
Address: 154–09 146th Avenue, Suite 302, Jamaica, NY 11434.
Date Revoked: April 17, 2000.
Reason: Failed to maintain a valid bond.

License Number: 11333N.
Name: Multi-Link Services
Address: 9009 N. Loop East, Suite 270, Houston, TX 77029.
Date Revoked: May 17, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13936N.
Name: Ocean Spanners, Inc.
Address: 452 Hudson Terrace, Englewood Cliffs, NJ 07632.
Date Revoked: April 9, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4643.
Name: Overseas Freight Forwarding & Consolidation, Corp.

Address: 4 Lagoon Place, San Rafael, CA 94903.

Date Revoked: April 14, 2000.

Reason: Failed to maintain a valid bond.

License Number: 1929–R.

Name: Perez International Forwarders, Inc.

Address: 4115 S.W. 98th Avenue, Miami, FL 33165.

Date Revoked: April 14, 2000.

Reason: Failed to maintain a valid bond.

License Number: 13589N.

Name: Promate Freight Service, Inc.

Address: 550 W. Patrice Place, Unit A, Gardena, CA 90248.

Date Revoked: May 13, 2000.

Reason: Failed to maintain a valid bond.

License Number: 11611N.

Name: Skyway Freight Systems, Inc.

Address: 225 Westridge Drive, Watsonville, CA 95076.

Date Revoked: June 1, 2000.

Reason: Failed to maintain a valid bond.

License Number: 11269N.

Name: Navajo Shipping Agency, Inc. d/b/a Africa Mid-East Line d/b/a The Nautilus Line d/b/a The Gold Line of Latin America

Address: 9050 Pines Blvd., Suite 460 Pembroke Pines, FL 33024.

Date Revoked: June 7, 2000.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–18266 Filed 7–18–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant

Jenkar International Freight Ltd., 150–30 132nd Avenue, Jamaica, NY 11434, Officer: (Qualifying Individual), Donald James Wolfe, Director.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

JES Shipping, Inc., 2913 El Camino Real, Suite 241, Tustin, CA 92782 Officer: (Qualifying Individual), James Chik, President.

Dated: July 14, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–18267 Filed 7–18–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Caixa Geral De Depositos, S.A.*, Lisbon, Portugal; to retain approximately 8.8 percent of the voting shares of Banco Comercial Portugues, S.A., Oporto, Portugal, and thereby indirectly acquire voting shares of BPABank, National Association, Newark, New Jersey.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Dacotah Banks, Inc.*, Aberdeen, South Dakota; to merge with Bowbells Holding Company, Bowbells, North Dakota, and thereby indirectly acquire voting shares of First National Bank, Bowbells, North Dakota.

Board of Governors of the Federal Reserve System, July 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18143 Filed 7–18–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Revision

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) seeks public comments on proposed additions to an Office of Management and Budget (OMB) clearance for FTC administrative activities. This request concerns three consumer complaint forms and a survey to be used to evaluate the effectiveness of the FTC's complaint handling system. The proposed additions will be submitted to OMB for review, as required by the Paperwork Reduction Act (PRA), following this opportunity for public comment.

DATES: Comments must be submitted on or before September 18, 2000.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *frnotice0047@ftc.gov*. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned "PRA/Consumer

Complaint system." All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed survey questions should be addressed to Joseph Brooke, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., H–292, Washington, DC 20580, (202) 326–3484. The consumer complaint forms may be found at the following websites: https://www.ftc.gov/ftc/complaint.htm (general complaint form); https://www.ftc.gov/ftc/knowfraudcomplaint.htm (fraud complaints); and https://www.ftc.gov/ftc/idtheftform.htm (identity theft).

SUPPLEMENTARY INFORMATION: Under section 3507(h)(3) of the PRA, 44 U.S.C. 3501–3520, a Federal agency may not materially change an approved collection of information [1] unless OMB has approved the modification. OMB previously granted approval for various collections of information grouped under the category "FTC Administrative Activities" (OMB Control Number 3084–0047) on August 16, 1999. This category consists of applications to the FTC, including those pertaining to its Rules of Practice, primarily those under Parts 1, 2, and 4 of CFR Title 16. On July 12, 2000, OMB granted an expedited provisional clearance for the forms and survey and, under 5 CFR 1320.13(d), waived the requirement to publish a notice of the emergency clearance request.

As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before submitting its certification and the forms and survey to OMB for its non-provisional clearance relating to FTC administrative activities. The FTC will ask that OMB extend its approval for these proposed additions through August 31, 2002, to coincide with the expiration of the existing clearance.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Description of the Collection of Information and Proposed Use

The forms and survey are to improve public access to the Bureau of Consumer Protection's (BCP) Consumer Response Center (CRC), and are voluntary. Consumers may call a hotline phone number or may log on to the FTC's website to electronically register a complaint using the applicable complaint form. There are three different consumer complain forms: (1) the general www.ftc.gov complain form (for other than indentify theft complaints); (2) the www.consumer.gov "Know Fraud" complain form (essentially another way to access complaint from #1); and (3) the "Identity Theft On-Line Complaint Form."

General and Fraud Complaint Systems

Telephone complaints and inquiries to the FTC are answered both by FTC staff and an offsite contractor. Telephone counselors ask for the same information that consumers would enter on the applicable online form. For the general complaint and fraud systems, BCP has set a target time of 4.5 minutes per call to gather information, somewhat less time than it estimates for consumers to enter their complaints online.[2] This target was determined by the BCP's standard telemarketing best practices for consumer calls. Frequently, part of these incoming calls is devoted to the agency's providing requested information to consumers, not collecting information. The burden estimate, however, conservatively assumes that all of the estimated time is devoted to collecting information from consumers.

Identity Theft

To handle complaints about identity theft, the FTC must obtain more detailed information than is required of other complainants. BCP designed the online identity theft form to be as short as practicable, seeking only the minimum information needed for initial evaluation and potential follow up. Obtaining further information through the initial consumer contact was dropped as unwieldy. With call-ins, however, staff and the contractor seek to obtain more detailed and comprehensive information up front to minimize the need for follow up calls.

Since investigating identity theft requires more information (e.g., credit history, credit bureau information, respondent social security number, identifying multiple suspects) than general consumer complaints and complaints about fraud, identity theft calls and online entries take longer. A significant portion of caller time (approximately 4 minutes per call), however, involves counseling consumers, no collecting information. Accordingly, the estimated telephone time shown below accounts only for the information collection part of the calls.

Customer Satisfaction Survey

The customer satisfaction survey would collect information concerning the overall effectiveness and timeliness of the CRC. The CRC will survey roughly 2 percent of complainants. Subsets of consumers contacts throughout the year will be questioned about specific aspects of CRC customer service.

Each consumer surveyed would be asked 8–10 questions chosen from the list noted above. Half of the questions would ask consumers to rate CRC performance on a scale or call for yes or no responses. The second half of the survey would ask more open-ended questions seeking a short written or verbal answer. BCP staff estimates that each respondent will require four minutes to answer the questions (approximately 20–30 seconds per question).

What follows are preliminary estimates of burden for these various collections of information, including the questionnaire. The figures for the online forms and consumer hotlines are an average of annualized volume-to-date for the respective programs and projected volume for the next two years (the period of the existing clearance for FTC administrative activities), and are rounded to the nearest thousand.

Annual hours burden:

[1] "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), and includes, as relevant here, agency requests for answers to identical questions from ten or more persons that extend beyond mere identification of the respondent.

[2] Because the fraud-related form is closely patterned after the general complain form, burden estimates per respondent for each are the same.

Activity	Number of respondents	Number of minutes activity	Total hours
Miscell. and fraud-related consumer complaints (phone)	300,000	4.5	23,000
Miscell. and fraud-related consumer complaints (online)	35,000	5.0	3,000
IDT complaints (phone)	90,000	8	12,000
IDT complaints (online)	26,000	7.5	3,000
Customer Satisfaction Questionnaire	9,000	4.0	600
Total	460,000		41,600

Annual Cost Burden

The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures of respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

Debra A. Valentine,

General Counsel.

[FR Doc. 00–18190 Filed 7–18–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Public Workshop: Competition Policy in the World of B2B Electronic Marketplaces

AGENCY: Federal Trade Commission.

ACTION: Notice announcing extension of deadline.

SUMMARY: the Federal Trade Commission ("FTC" or "Commission") will extend to July 21, 2000, the date by which it will accept written presentations relating to the June 29–30, 2000, FTC workshop examining issues of competition policy that arise in connection with business-to-business ("B2B") electronic marketplaces.

DATES: Written presentations may be submitted by July 21, 2000.

ADDRESSES: Any interested person may submit by July 21, 2000, a written presentation that will be considered part of the public record of the workshop. Written presentations should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments regarding B2B Electronic Marketplaces." Electronic submissions may be sent by electronic mail to *b2bmarketplaces@ftc.gov*. Alternatively, electronic submissions may be filed on a 3½ inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: To obtain information about the workshop, please contact Gail Levine, Assistant Director for Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone (202) 326–3193, e-mail *glevine@ftc.gov*.

SUPPLEMENTARY INFORMATION: On June 29–30, 2000, the FTC held a workshop that brought together designers, owners, and operators of B2B electronic marketplaces, and the buyers and sellers who use or wish to use them. The goal was to enhance understanding of how B2B electronic marketplaces function and the means by which they may generate efficiencies, and to identify any antitrust issues that they raise. A transcript of the discussions will be posted on the FTC website as soon as it is available. Some of the questions that the workshop addressed are available in a previously issued Federal Register notice, available at http://www.ftc.gov/os/2000/05/b2workshopfrn.htm.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 00–18189 Filed 7–18–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of Special Emphasis Panel meetings.

A Special Emphasis Panel (SEP) is a committee of a few experts selected to conduct scientific reviews of applications related to their areas of expertise. The committee members are drawn from a list of experts designated to serve for particular individual meetings rather than for extended fixed terms of services.

Substantial segments of the upcoming SEP meetings listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. Name of SEP: Systems-Related-Best Practices to Improve Patient Safety.

Date: July 27–28, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

2. Name of SEP: Translating Research Into Practice II.

Date: July 27–28, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

3. Name of SEP: Violence Against Women: Evaluating Health Care Interventions.

Date: Aug 7–8, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

4. Name of SEP: Primary Care Practice-Based Research Networks (PBRNs).

Date: Aug 10–11, 2000 (Open from 8 a.m. to 8:15 a.m and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of these meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East

Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the July 27–28 meetings due to the time constraints of reviews and funding cycles.

Dated: July 11, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–18146 Filed 7–18–00; 8:45 am]

BILLING CODE 4160–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of FY 1999 Funds for Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that fiscal year (FY) 1999 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment *to States, territories, and Tribes and tribal organizations receiving FY 2000 direct LIHEAP funding.* No subgrantees or other entities may apply for the funds, Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 *et seq.*), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount in excess of certain levels allotted to a grantee for any fiscal year will not be used by the grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to LIHEAP grantees during the following fiscal year. If reallotted, the LIHEAP block grant allocation formula will be used to distribute the funds. (No funds may be reallotted to entities that are not direct LIHEAP grantees during FY 2000). It has been determined that $496,085.78 may be available for reallotment during FY 2000. This determination is based on revised reports from the State of Wyoming and the Pala Band of Mission Indians, which were submitted to the Office of Community Services as required by 45 CFR 96.82.

The statute allows grantees who have funds unobligated at the end of the fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to DHHS and are subject to reallotment under section 2607(b)(1) of the Act. The amount described in this notice was reported as unobligated FY 1999 funds in excess of the amount that the State of Wyoming and the Pala Band of Mission Indians could carry over to FY 2000.

The State of Wyoming was notified by certified mail that $493,063.78 of its FY 1999 funds may be allotted. Additionally, the Pala Band of Mission Indians was notified by certified mail that $3,022 of its FY 1999 funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers of the State of Wyoming and of the Pala Band of Mission Indians have 30 days from the date of the letter to submit comments to: Donald Sykes, Director, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. The comment period expires August 18, 2000.

After considering any comments submitted, the Chief Executive Officers will be notified of the decision, and the decision also will be published in the **Federal Register**. If funds are reallotted, they will be allocated in accordance with section 2604 of the Act and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 2000. As FY 2000 funds, they will be subject to all requirements of the Act, including section 2607(b)(2), which requires that a grantee obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401–9351.

Dated: June 30, 2000

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 00–18141 Filed 7–18–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0009]

International Conference on Harmonisation; Draft Revised Guidance on Impurities in New Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft revised guidance entitled "Q3B(R) Impurities in New Drug Products." The draft revised guidance, which updates a guidance on the same topic published in the **Federal Register** of May 19, 1997 (the 1997 guidance), was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft revised guidance clarifies the 1997 guidance, adds information, and provides consistency with more recently published ICH guidances. The draft revised guidance is intended to provide guidance for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State. The draft revised guidance is a complement to the ICH guidance entitled "Q3A Impurities in new Drug Substances," which is being revised also.

DATES: Submit written comments by September 18, 2000.

ADDRESSES: Submit written comments on the draft revised guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft revised guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft revised guidance may be obtained by mail from the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX

Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:
Regarding the guidance: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5169.
Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In October 1999, the ICH Steering Committee agreed that a draft revised guidance entitled "Q3B(R) Impurities in New Drug Products" should be made available for public comment. The draft revised guidance is a revision of a guidance on the same topic published in the **Federal Register** of May 19, 1997 (62 FR 27454). The draft revised guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document is now being called a guidance, rather than a guideline.

In the **Federal Register** of January 4, 1996 (61 FR 372), the agency published an ICH guidance entitled "Q3A Impurities in New Drug Substances." ICH Q3A, which is being revised also, provides guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical synthesis and not previously registered in a country, region, or member State.

This draft revised guidance is a complement to the ICH Q3A guidance and provides guidance for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State. The draft revised guidance addresses only those impurities in drug products classified as degradation products of the active ingredient or reaction products of the active ingredient with an excipient and/or immediate container/closure system. Impurities arising from excipients present in the drug product are not addressed in this draft revised guidance.

The draft revised guidance includes revised text on threshold limits, revised text on degradation products, and new guidance on rounding. Additions to the glossary include definitions for the terms "identification threshold," "qualification threshold," "reporting threshold," and "rounding." The draft revised guidance was updated to include references to ICH guidances on analytical validation and specifications. Minor editorial changes were made to improve the clarity and consistency of the document.

This draft revised guidance represents the agency's current thinking on impurities in new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft revised guidance by September 18, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft revised guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm.

The text of the draft revised guidance follows:

Q3B(R) Impurities in New Drug Products[1]

1. Introduction

1.1 Objective of the Guidance

This document provides guidance recommendations for registration or applications for marketing on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State.

1.2 Background

This guidance is a complement to the ICH Q3A guidance on impurities in new drug substances, which should be consulted for basic principles.

1.3 Scope of the Guidance

This guidance addresses only those impurities in drug products classified as degradation products of the drug substance or reaction products of the drug substance with an excipient and/or immediate container/closure system (collectively referred to as "degradation products" in this guidance). Impurities arising from excipients present in the product are not covered by this guidance. This guidance also does not address the regulation of products used during the clinical research stages of development. Biological/biotechnological products, peptides, oligonucleotides, radiopharmaceuticals, fermentation and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin are not covered. Also excluded from this guidance are: Extraneous contaminants that should not occur in drug products and are more appropriately addressed as good manufacturing practice issues, polymorphic form, a solid state property of the new drug substance, and enantiomeric impurities. Impurities present in the new drug substance need not be monitored or specified in drug products unless they are also degradation products (see ICH Q6A guidance for specifications).

[1] This draft revised guidance represents the agency's current thinking on impurities in new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

2. Guidance

2.1 Analytical Procedures

The application for a marketing authorization should include documented evidence that the analytical procedures have been validated and are suitable for the detection and quantitation of degradation products. Analytical methods should be validated to demonstrate that impurities unique to the new drug substance do not interfere with, or are separated from, specified and unspecified degradation products in the product (see ICH Q2A and Q2B guidances for analytical validation).

Degradation product levels can be measured by a variety of techniques, including those which compare an analytical response for a degradation product to that of an appropriate reference standard or to the response of the new drug substance itself. Reference standards used in the analytical procedures for control of degradation products should be evaluated and characterized according to their intended uses. The drug substance may be used to estimate the levels of degradation products. In cases where the response factors are not close, this practice may still be used if a correction factor is applied or the degradation products are, in fact, being overestimated. Specifications and analytical procedures used to estimate identified or unidentified degradation products are often based on analytical assumptions (e.g., equivalent detector response). These assumptions should be discussed in the application for marketing authorization. Differences in the analytical procedures used during development and those proposed for the commercial product should be discussed.

2.2 Rationale for the Reporting and Control of Impurities

The applicant should summarize those degradation products observed during stability studies of the drug product. This summary should be based on sound scientific appraisal of potential degradation pathways in the drug product and impurities arising from the interaction with excipients and/or the immediate container/closure system. In addition, the applicant should summarize any laboratory studies conducted to detect degradation products in the drug product. This summary should include test results of batches manufactured during the development process and batches representative of the proposed commercial process. A rationale should be provided for exclusion of those impurities that are not degradation products, e.g., process impurities from the drug substance and excipients and their related impurities. The impurity profile of the batches representative of the proposed commercial process should be compared with the profiles of batches used in development, and any differences discussed.

Degradation products observed in stability studies conducted at recommended storage conditions should be identified when present at a level greater than (>) the identification thresholds given in Attachment 1. When identification of a degradation product is not feasible, a summary of the laboratory studies demonstrating the unsuccessful effort should be included in the application for marketing authorization.

Degradation products present at a level of not more than (≤) the threshold generally would not need to be identified. However, analytical procedures should be developed for those degradation products that are suspected to be unusually potent, producing toxic or significant pharmacologic effects at levels lower than indicated. Conventional rounding rules should be applied, and the results presented with the same number of decimals as given in the limit.

2.3 Reporting Impurity Content of Batches

Analytical results should be provided in tabular format for all relevant batches of new drug product used for clinical, safety, and stability testing, as well as batches that are representative of the proposed commercial process. Because the degradation test procedure can be an important support tool for monitoring the manufacturing quality as well as for deciding the expiration dating period of the product, the reporting level should be set below the identification threshold. The recommended target value for the reporting threshold (expressed as a percentage of the drug substance) is found in Attachment 1. A higher reporting threshold should only be proposed, with justification, if the target reporting threshold cannot be achieved.

In addition, where an analytical method reveals the presence of impurities in addition to the degradation products (e.g., impurities arising from the synthesis of the drug substance), the origin of these impurities should be discussed. Chromatograms or equivalent data (if other methods are used) from representative batches including long-term and accelerated stability conditions should be provided. The procedure should be capable of quantifying at least at the reporting threshold, and the chromatograms should show the location of the observed degradation products and impurities from the new drug substance.

The following information should be provided:

- Batch identity, strength, and size
- Date of manufacture
- Site of manufacture
- Manufacturing process, where applicable
- Immediate container/closure
- Degradation product content, individual and total
- Use of batch
- Reference to analytical procedure(s) used
- Batch number of the drug substance used in the drug product
- Storage conditions

2.4 Specification Limits for Degradation Products

The specifications for a new drug product should include limits for degradation products expected to occur during manufacture and under recommended storage conditions. Stability studies, knowledge of degradation pathways, product development studies, and laboratory studies should be used to characterize the degradation profile. Specifications should be set taking into account the qualification of the degradation products, the stability data, the content arising from the drug substance specification, the expected expiry period, and the recommended storage conditions for the product, allowing sufficient latitude to deal with normal manufacturing, analytical, and stability profile variation. The specifications for the product should include, where applicable, limits for:

- Each specified degradation product
- Any unspecified degradation product
- Total degradation products

Although some variation is expected, significant variation in batch to batch degradation profiles may indicate that the manufacturing process of the new drug product is not adequately controlled and validated. A rationale for the inclusion or exclusion of impurities in the specifications should be presented. This rationale should include a discussion of the impurity profiles observed in the safety and clinical studies, together with a consideration of the impurity profile of the product manufactured by the proposed commercial process. All impurities at a level greater than (>) the reporting threshold should be summed and reported as Total Impurities. The summation should be performed on the unrounded individual values, and the total value should be rounded and reported as described in section 2.2.

2.5 Qualification of Degradation Products

Qualification is the process of acquiring and evaluating data that establishes the biological safety of an individual degradation product or a given degradation profile at the level(s) specified. The applicant should provide a rationale for selecting degradation product limits based on safety considerations. The level of any degradation product present in a new drug product that has been adequately tested and found safe in safety and/or clinical studies is considered qualified. Therefore, it is useful to include any available information on the actual content of degradation products in the relevant batches at the time of use in safety and/or clinical studies. Degradation products that are also significant metabolites, present in animal and/or human studies, do not need further qualification. It may be possible to justify a higher level of a degradation product than the level administered in safety studies. The justification should include consideration of factors such as: The amount of degradation product administered in previous safety and/or clinical studies and found to be safe; the percentage change in the degradation product; and other safety factors, as appropriate.

If data are not available to qualify the proposed specification level of a degradation product, studies to obtain such data may be needed (see Attachment 2) when the usual qualification thresholds set out in Attachment 1 are exceeded. Higher or lower thresholds for qualification of degradation products may be appropriate for some individual products based on scientific rationale and level of concern, including drug class effects and clinical experience. For example, qualification may be especially important when there is evidence that such degradation products in certain drug products or therapeutic classes have previously been associated with adverse

reactions in patients. In these instances, a lower qualification threshold may be appropriate. Conversely, a higher qualification threshold may be appropriate for individual products when the level of concern for safety is less than usual based on similar considerations (e.g., patient population, drug class effects, and clinical considerations). In unusual circumstances, technical factors (e.g., manufacturing capability, a low drug substance to excipient ratio, or the use of excipients that are also crude products of animal or plant origin) may be considered as part of the justification for selection of alternative threshold limits based upon manufacturing experience with the proposed commercial process. Proposals for alternative thresholds would be considered on a case-by-case basis.

The "Decision Tree for Safety Studies" (Attachment 2) describes considerations for the qualification of impurities when thresholds are exceeded. Alternatively, if data are available in the scientific literature, then such data may be submitted for consideration to qualify a degradation product. If neither is the case, additional safety testing should be considered. The studies desired to qualify a degradation product will depend on a number of factors, including the patient population, daily dose, and route and duration of product administration. Such studies should normally be conducted on the product or substance containing the degradation products to be controlled, although studies using isolated degradation products are considered acceptable.

2.6 New Degradation Products

During the course of drug development studies, the qualitative degradation profile of a new drug product may change, resulting in new degradation products that exceed the identification and/or qualification threshold. In this event, these new degradation products should be identified and/or qualified. Such changes call for qualification of the level of the degradation product unless it is present at a level of not more than (≤) the threshold values as set out in Attachment 1.

When a new degradation product exceeds the threshold, the "Decision Tree for Safety Studies" should be consulted. Safety studies should provide a comparison of results of safety testing of the product or substance containing a representative level of the degradation product with previously qualified material, although studies using the isolated degradation products are also considered acceptable (these studies may not always have clinical significance).

3. Glossary

Degradation product: A molecule resulting from a chemical change in the substance brought about over time and/or by the action of, e.g., light, temperature, pH, or water or by reaction with an excipient and/or the immediate container/closure system (also called decomposition product).

Degradation profile: A description of the degradation products observed in the drug substance or drug product.

Development studies: Studies conducted to scale-up, optimize, and validate the manufacturing process for a drug product.

Identification threshold: A limit above which (>) an impurity needs identification.

Identified degradation product: A degradation product for which a structural characterization has been achieved.

Impurity: Any component of the drug product that is not the chemical entity defined as the drug substance or an excipient in the product.

Impurity profile: A description of the identified and unidentified impurities present in a drug product.

New drug substance: The designated therapeutic moiety that has not been previously registered in a region or member State (also referred to as a new molecular entity or new chemical entity). It may be a complex, simple ester, or salt of a previously approved substance.

Potential degradation product: An impurity that, from theoretical considerations, may arise during or after manufacture or storage of the drug product. It may or may not actually appear in the substance or product.

Qualification: The process of acquiring and evaluating data that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Qualification threshold: A limit above which (>) an impurity needs to be qualified.

Reaction product: Product arising from the reaction of a substance with an excipient in the drug product or immediate container/closure system.

Reporting threshold: A limit above which (>) an impurity needs to be reported.

Rounding: The process of reducing a result to the number of significant figures or number of decimal places as dictated by the appropriate limit. For example, a result greater than or equal to (≥) 0.05 and less than (<) 0.15 is rounded to 0.1.

Safety information: The body of information that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Specified degradation product: An identified or unidentified degradation product that is selected for inclusion in the new drug product specifications and is individually listed and limited in order to ensure the safety and quality of the new drug product.

Toxic impurity: An impurity having significant undesirable biological activity.

Unidentified degradation product: A degradation product that is defined solely by qualitative analytical properties, e.g., chromatographic retention time.

Unspecified degradation product: A degradation product that is not included in the list of specified degradation products.

ATTACHMENT 1.

Thresholds for Reporting of Degradation Products in New Drug Products

Maximum Daily Dose [1]	Threshold [2]
≤ 1 gram (g)	0.1%
> 1 g	0.05%

Thresholds for Identification of Degradation Products in New Drug Products

Maximum Daily Dose [1]	Threshold [2]
< 1 milligram (mg)	1% or 5 micrograms (µg) TDI,[3] whichever is lower
1 mg–10 mg	0.5% or 20 µg TDI, whichever is lower
>10 mg–2 g	0.2% or 2 mg TDI, whichever is lower
> 2 g	0.1%

Thresholds for Qualification of Degradation Products in New Drug Products

Maximum Daily Dose [1]	Threshold [2]
< 10 mg	1% or 50 µg TDI, whichever is lower

Thresholds for Qualification of Degradation Products in New Drug Products

Maximum Daily Dose[1]	Threshold[2]
10 mg–100 mg	0.5% or 200 µg TDI, whichever is lower
>100 mg–2 g	0.2% or 2 mg TDI, whichever is lower
> 2 g	0.1%

[1] The amount of substance administered per day.
[2] Threshold is based on percent of the substance. Higher reporting thresholds should be scientifically justified.
[3] Total daily intake.

BILLING CODE 4160-01-F

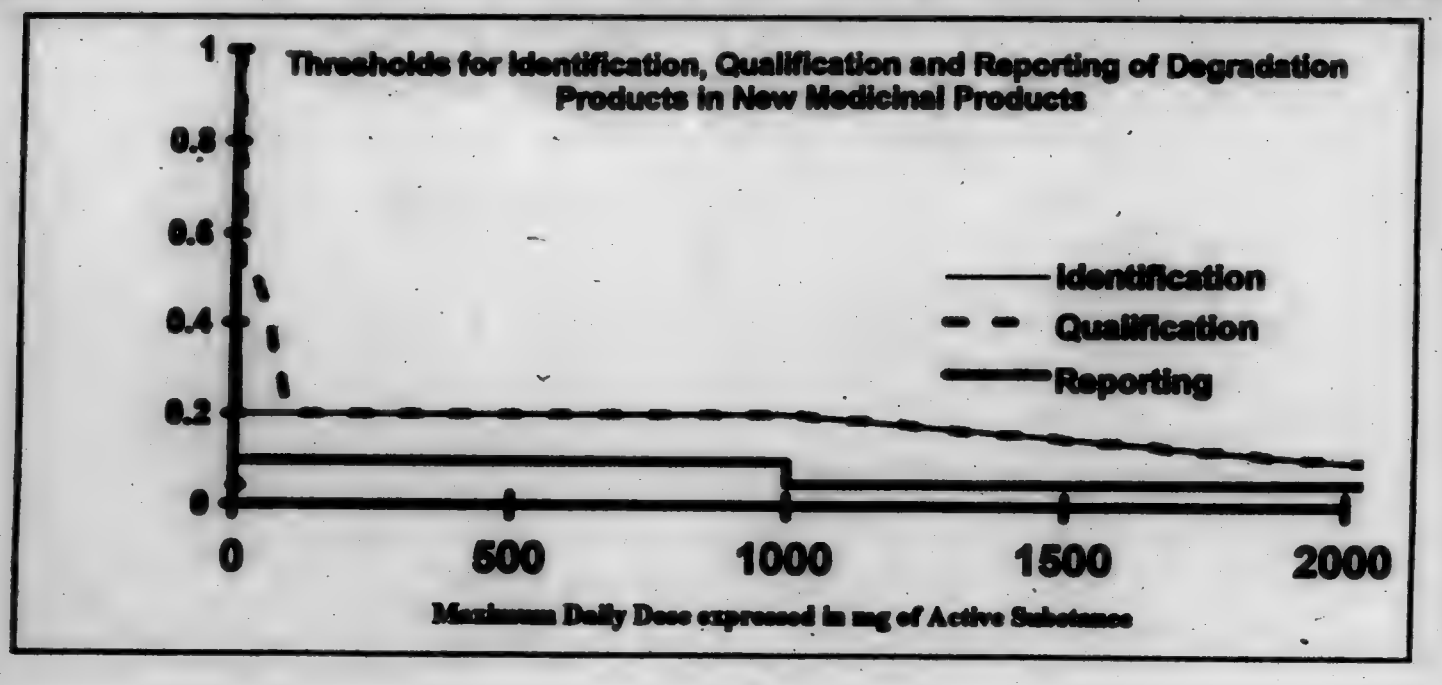

Expanded scale:

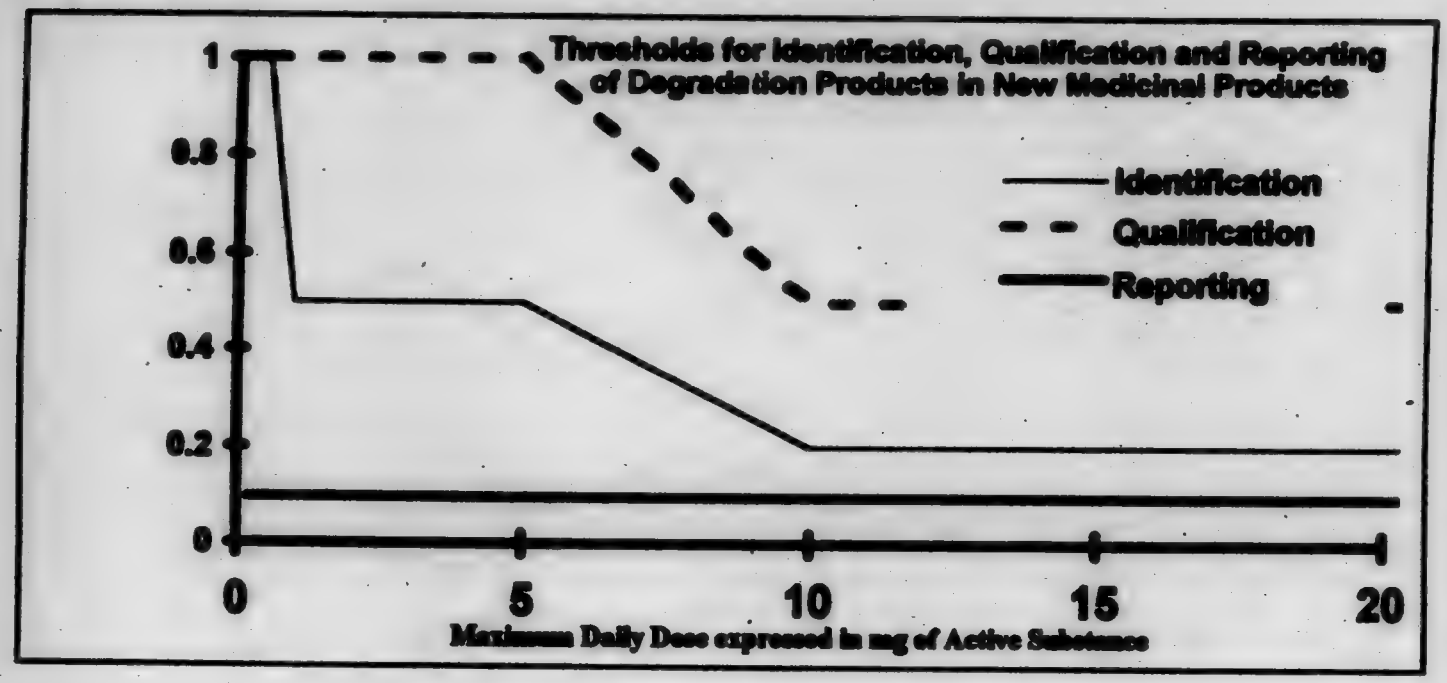

ATTACHMENT 2: DECISION TREE FOR SAFETY STUDIES

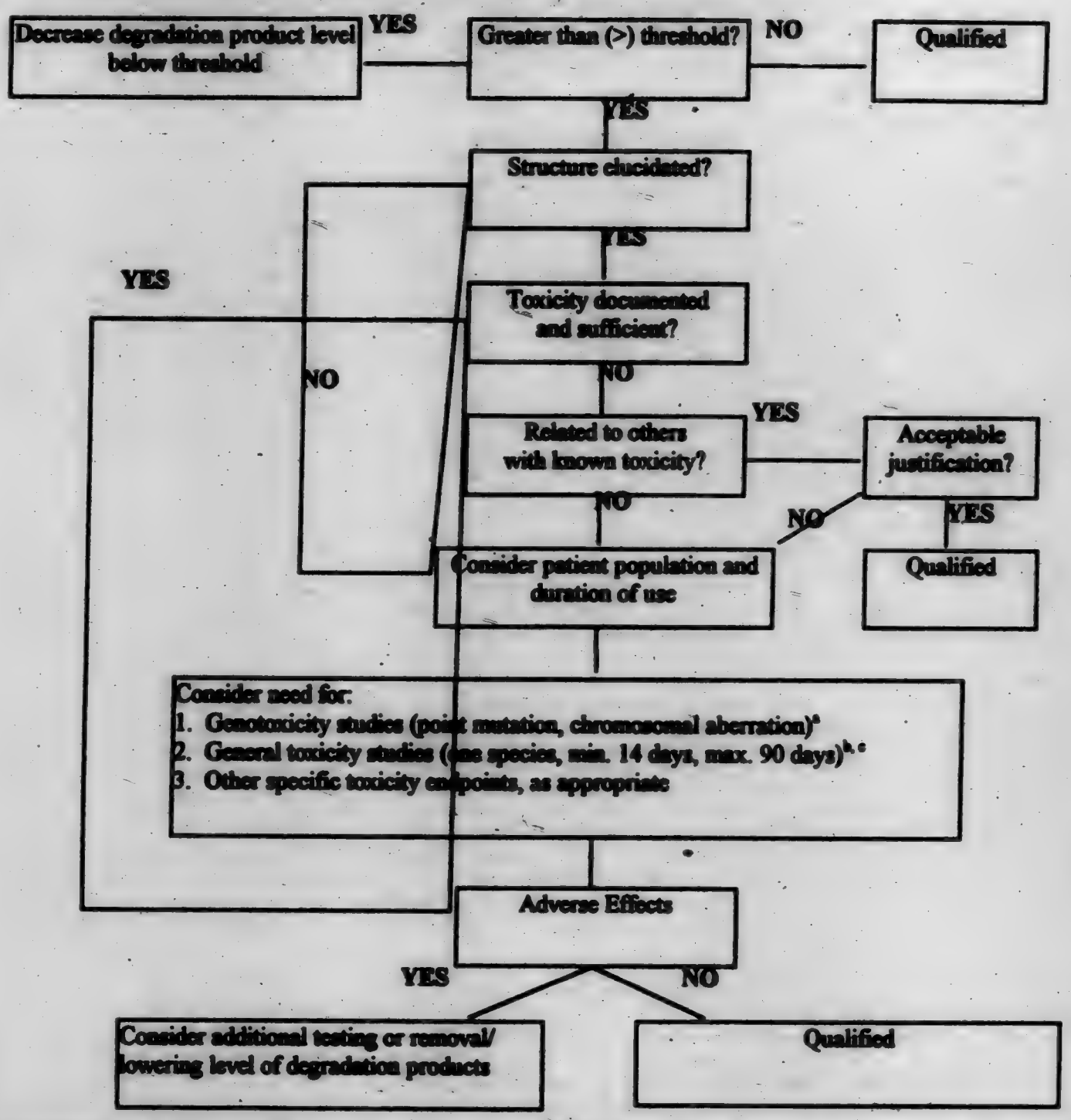

[a] If considered desirable, a minimum screen, e.g., genotoxic potential, should be conducted. A study to detect point mutations and one to detect chromosomal aberrations, both in vitro, are recommended as an acceptable minimum screen, as discussed in the ICH guidances: "S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals" and "S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals."

[b] If general toxicity studies are desirable, study(ies) should be designed to allow comparison of unqualified to qualified material. The study duration should be based on available relevant information and performed in the species most likely to maximize the potential to detect the toxicity of an impurity. In general, a minimum duration of 14 days and a maximum duration of 90 days would be acceptable.

[c] On a case-by-case basis, single-dose studies may be acceptable, especially for single-dose drugs. If repeat-dose studies are desirable, a maximum duration of 90 days would be acceptable.

Dated: July 10, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–18150 Filed 7–18–00; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–313]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection.

Title of Information Collection: Medicare DMEPOS Competitive Bidding Demonstration: Follow-up to Original Survey.

Form No.: HCFA–R–313.

Use: This collection is the "follow-up" or "second round" to the original Competitive Bidding Demonstration collection to compare the results of the two surveys to make inferences about the impact of the competitive bidding demonstration on issues measured by the survey (*i.e.*, access and quality, and goods and services).

Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price.

Each demonstration project may be conducted in up to three metropolitan areas for a three-year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six- month period required between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. HCFA intended to operate the demonstration in two rounds, the first of two years, and the second of one year.

HCFA has operated its first demonstration in Polk County, Florida, which is the Lakeland-Winter Haven Metropolitan Area. This "second round" evaluation is necessary to determine whether access to care, quality of care, and diversity of product selection are affected by the competitive bidding demonstration. Although secondary data will be used wherever possible in the evaluation, primary data from beneficiaries themselves is required in order to gain an understanding of changes in their level of satisfaction and in the quality and selection of the medical equipment.

The follow-up beneficiary surveys will take place July to September 2000. We will sample beneficiaries from claimant lists provided by the durable medical equipment regional carrier (DMERC). The sample will be stratified into two groups: beneficiaries who use oxygen and beneficiaries who are non-oxygen users, *i.e.*, users of the other four product categories covered by the demonstration (hospital beds, enteral nutrition, urological supplies, and surgical dressings) but not oxygen. To draw a comparison, we will sample in both the demonstration site (Polk County, Florida) and a comparison site (Brevard County, Florida) that matches Polk County on characteristics such as number of Medicare beneficiaries and DME/POS utilization. Information collected in the beneficiary survey will be used by the University of Wisconsin-Madison (UW–M), Research Triangle Institute (RTI), and Northwestern University (NU) to evaluate the Competitive Bidding Demonstration for DME and POS. Results of the evaluation will be used by HCFA and the Congress in formulating future Medicare policy on Part B competitive bidding.

The research questions to be addressed by the surveys focus on access, quality, and product selection. Our collection process includes fielding a survey for oxygen users and a survey for non-oxygen users before the demonstration begins and again after the new demonstration prices were put into effect. The baseline beneficiary survey was conducted between March and May 1999. The same data collection process will be followed in the comparison site (Brevard County). In the analysis of the data, we will also control for socioeconomic factors. This will allow us to separate the effects of the demonstration from beneficiary or site-specific effects.

In the survey, we will also ask beneficiaries about the types of equipment that they use. This will allow us to determine if certain users are affected while others are not. For example, we will be able to evaluate whether oxygen users experience a greater increase or decrease in access and quality than beneficiaries who receive enteral nutrition.

The information that this survey will provide about access, quality, and product selection will be very important to the future of competitive bidding within the Medicare program.

Frequency: Other: One time.

Affected Public: Individuals or households.

Number of Respondents: 2,128.

Total Annual Responses: 2,128.

Total Annual Hours: 637.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 3, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–18166 Filed 7–18–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: August 17–18, 2000.

Time: 8:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8056, Bethesda, MD 20814, 301–496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18172 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic and Preclinical.

Date: August 17–18, 2000.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Virginia P. Wray, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8046, Rockville, MD 20892–7405, 301/496–9236.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18173 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The will be closed to the public in accordance with the provisions set forth sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee A—Cancer Centers.

Date: August 3–4, 2000.

Time: 8:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18174 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 9, 2000.

Time: 3:30 pm to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: 6700B Rockledge Drive, Bethesda, MD 20892–2616, (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18176 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 24, 2000.

Time: 10:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: 2401 M Street N.W., Washington, D.C. 20037.

Contact Person: Anna L. Ramsey-Ewing, PhD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18177 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 31, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Room 2103, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M. Sayeed Quraishi, PHD, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18178 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Disease Special Emphasis Panel.

Date: July 19–21, 2000.

Time: 7:30 PM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton-Four Points Den Cherry Creek, Cherry Creek Center, 600 S. Colorado Boulevard Denver, CO 80246.

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 643, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Disease and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18180 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 18, 2000.
Time: 11:00 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24–25, 2000.
Time: 8:30 am to 3:30 pm
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24, 2000.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Sooja K. Kim, RD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7892, Bethesda, MD 20892, (301) 435–1780.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24–26, 2000.
Time: 5:00 pm to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: Jumer's Castle Lodge, 209 South Broadway, Urbana, IL 61801.
Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175, bakerh@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 25, 2000.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hotel Allegro Chicago, 171 West Randolph Street, Chicago, IL 60601.
Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel VISB (03).
Date: July 25, 2000.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Leonard Jakubczak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 25, 2000.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 11:30 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ellen K. Schwartz, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2000.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 6.

Date: July 27–28, 2000.

Time: 8 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 27, 2000.

Time: 9 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 28, 2000.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7806, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 31, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18175 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method for production of Layered Expression Scans for Tissue and Cell Samples.

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 60/145,613 entitled "Method for Production of Layered Expression Scans for Tissue and Cell Samples", filed July 26, 1999, to 20/20 genomics, LLC. having a place of business in Rockville, Maryland. The United States of America is an assignee to the patent rights of this invention.

The contemplated exclusive license may be limited to the development of instruments for medical diagnostics and research, based on the novel Layered Expression Scans (LES) technique.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before September 18, 2000 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Uri Reichman, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 240; Facsimile: (301) 402–0220; E-mail: reichmau@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION:

LES is a new approach to comprehensive molecular analysis of biological samples that uses a layered array of capture membranes coupled to biological binders (antibodies, receptors, or DNA sequences) to perform multiplex protein, DNA or mRNA analysis. Cell or tissue samples are transferred through a series of individual capture layers, each linked to a separate binder. As the biomolecules in the sample traverse the membrane set, each targeted protein, mRNA or DNA is specifically captured by the layer containing its corresponding binder and then identified and quantified by molecular staining. The two-dimensional relationship of the cell populations of a tissue sample is maintained during the transfer process, thereby producing a molecular profile of each cell type present. The LES technology, when fully developed, will have multiple applications in both clinical and research areas. In particular, it will have applications in diagnostic and prognostic analysis of diseased tissues (i.e., tumors).

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes

that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 12, 2000.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–18179 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP), Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS) announce the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled National Community Collaborative Involvement in Reducing Racial and Ethnic in Mental Health and/or Substance Abuse Service Disparities Cooperative Agreement. Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000 (in millions)	Estimated number of awards	Project period
Community disparities	8/29/00	$1.6	45	3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organizations specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*. (* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is August 29, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

3.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 2000 SAMHSA Activities

National Community Collaborative Involvement in Reducing Racial and Ethnic in Mental Health and/or Substance Abuse Service Disparities Cooperative Agreement (short title: Community Disparities, SP00–007)

- *Application Deadline:* The receipt date is August 29, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's CSAP, CSAT, and CMHS announce the availability of funds for a knowledge development and application (KD&A) cooperative agreement to capitalize on the collaborative strength of racial/ethnic communities to address disparities in access to substance abuse prevention, treatment and mental health services they may experience. This mental health and/or substance abuse prevention or treatment initiative is intended to achieve those goals by employing existing racial/ethnic focused national and/or regional organizations and their collaborating affiliates to increase awareness, to develop/adapt programs, and/or to evaluate current models for specific populations with particular disparate issues. The involvement of national and/or regional organizations (whose existing infrastructure and experience give them both the management experience and target population base needed) will assure the applicant is well known to, and respected by, its respective constituency(s) and will facilitate access to these racial/ethnic communities through either their local community-based affiliates or other non-affiliated local organizations willing to quickly join in collaboration in order to ensure culturally competent, effective and timely strategies to reduce service disparities.
- *Eligible Applicants:* Applications may only be submitted by national or regional domestic non-profit organizations that can demonstrate collaborative relationships with community based organizations that are based in racial/ethnic minority communities which are capable of achieving the program design/approach and prepared to enter into contractual agreement for the purpose of this GFA with the national/regional organization. Applicants and collaboratives must be culturally competent to address the specialized needs of one of the target population groups listed below. Examples of suitable collaboratives may include local affiliates, chapters, community-based organizations, faith-based groups, and Indian tribes or tribal organizations, etc. Target populations are: Alaska Natives, African Americans, Asian Americans, Hispanic/Latinos, American Indians, and/or Native Hawaiians, and Pacific Islanders.
- *Amount:* SAMHSA is making $1.6 million available to support approximately four to five awards under this GFA in FY2000. The average award is expected to range from $200,000 to $400,000 in total costs (direct plus indirect costs). The awardee will only be entitled to actual cost or 20%, whichever is less for administering sub-awards and providing program management. The applicant is expected to administer at least 4 sub-awards to local organizations. Actual funding levels will depend upon the availability of appropriated funds.

Period of Support: Support may be requested for a period of up to 3 years.

- *Catalog of Federal Domestic Assistance Number:* 93.230.
- Program Contact: For questions concerning program issues, contact: Laura J. Flinchbaugh, MPH, Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Room 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4564.

For questions regarding grants management issues, contact: Edna Frazier, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II,

Suite 630, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6816.

• Application kits are available from:

National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433

and/or

Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Telephone: 1–800–789–2647, TTY: (301) 443–9006, Fax: (301) 984–8796.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to:

Division of Extramural Activities, Policy, and Review Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 13, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–18149 Filed 7–18–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4506–N–09]

Announcement of OMB Approval Number for the Continuum of Care Homeless Assistance Application

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the Continuum of Care Homeless Assistance Application.

FOR FURTHER INFORMATION CONTACT: Alma Thomas, Department of Housing and Urban Development, 451, 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–21240. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the Continuum of Care Homeless Assistance Application. The OMB approval number for this information collection is 2506–0112, which expires on June 30, 2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: July 13, 2000.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 00–18161 Filed 7–18–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4506–N–10]

Announcement of OMB Approval Number for the Consolidated Plan

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the Consolidated Plan.

FOR FURTHER INFORMATION CONTACT: Sal Sclafani, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1283. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the Consolidated Plan. The OMB approval number for this information collection is 2506–0117, which expires on June 30, 2002.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: July 13, 2000.

Kenneth Williams,

Deputy Assistant Secretary for Grants Program.

[FR Doc. 00–18182 Filed 7–18–00; 8:45 am]

BILLING CODE 4310–89–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Meeting

AGENCY: Office of the Secretary, Interior; National Oceanic and Atmospheric Administration, Commerce.

SUBJECT: U.S. Coral Reef Task Force; meeting.

ACTION: Notice of public meeting.

SUMMARY: On behalf of the U.S. Coral Reef Task Force, the Department of the Interior and the Department of Commerce announce a meeting to be held as a supplement to the upcoming U.S. Coral Reef Task Force meeting in American Samoa.

DATES: The public meeting will be held Thursday, July 27, 2000, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held in the Secretary's Conference Room, Room 5160, at the Department of the Interior, 1849 C Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jessica Jenkins, telephone (202) 219–0710, fax (202) 219–0229, e-mail Jessica_Jenkins@doi.gov.

SUPPLEMENTARY INFORMATION: The upcoming U.S. Coral Reef Task Force meeting to be held in American Samoa in August may be logistically difficult for some individuals to attend due to its remote location. A meeting in Washington, DC has been planned so that those people unable to travel to American Samoa are able to receive information and attend this meeting. For that reason, we have scheduled a "pre-meeting" to be held in Washington, DC on July 27. Please see the notice in today's **Federal Register** for details of that meeting.

A draft agenda for the meeting is available on the Task Force web site located at http://coralreef.gov. Participants are encouraged to submit their views on issues included in the agenda. Please provide the Task Force with your written comments either at the July 27 meeting or via mail to: Jessica Jenkins, Department of the Interior, 1849 C Street NW, Mail Stop 6635, Washington, DC 20240 or Jessica_Jenkins@doi.gov. You may also hand-deliver written comments to the address above, Room 3058. We will consider comments and information received by close of business Monday, August 7.

You may obtain additional information about the U.S. Coral Reef Task Force from the Internet at http://coralreef.gov.

Dated: July 13, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

Rolland Schmitten,

Deputy Assistant, Secretary for International Affairs, Department of Commerce.

[FR Doc. 00–18184 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting

AGENCY: Office of the Secretary, Interior; National Ocean and Atmospheric Administration, Commerce.

SUBJECT: Fifth meeting of the U.S. Coral Reef Task Force.

ACTION: Notice of public meeting.

SUMMARY: On behalf of the U.S. Coral Reef Task Force, the Department of the Interior and the Department of Commerce announce the upcoming U.S. Coral Reef Task Force meeting, to be held in American Samoa. This will be the Task Force's fifth meeting, and it will be open to the public.

DATES: The public meeting will be held Saturday August 5, and Monday, August 7, 2000, at times to be determined.

ADDRESSES: The meeting will be held in Pago Pago, American Samoa.

FOR FURTHER INFORMATION CONTACT: Matt Stout, National Oceanic and Atmospheric Administration, telephone (301) 713–3145, 0173, Fax (301) 713–0404, E-mail matthew.stout@noaa.gov

SUPPLEMENTARY INFORMATION: If you plan to attend the meeting in American Samoa, please contact Matthew Stout at the information provided above. We understand that it may be difficult for some individuals to provide comments on issues that will be on the August agenda. Members of the Task Force or their representatives will lead the meeting and background materials will be provided.

Participants are encouraged to submit their views on issues included in the August agenda, a draft of which can be found at http://coralreef.gov. Please provide the Task Force with your written comments either at the July 27 meeting or via mail to: Jessica Jenkins, Department of the Interior, 1849 C Street NW, Mail Stop 6635, Washington, DC 20240 or Jessica_Jenkins@doi.gov. You may also hand-deliver written comments to the address above, Room 3058. We will consider comments and information received by close of business Monday, August 7.

If you plan to attend the Washington, DC meeting, please RSVP to Jessica_Jenkins@doi.gov or (202) 219–0719 by July 25.

Dated: July 13, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

Rolland Schmitten,

Deputy Assistant Secretary for International Affairs, Department of Commerce.

[FR Doc. 00–18185 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Crystal Power Generating Station and Associated Facilities, Moapa Indian Reservation, Clark County, Nevada

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Moapa Band of Paiutes and Calpine Corporation (Calpine), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the approval of a long-term land lease for the proposed Crystal Power Generating Station, and associated infrastructure, that Calpine would construct and operate on approximately 50 acres of Indian trust land within the Moapa Indian Reservation, Clark County, Nevada. The purpose of the proposed action is to provide economic development and job opportunities for the tribe and to allow Calpine to meet the electrical power needs of Southern

Nevada and, possibly, California and Arizona. The proposed plant would have a nominal 760-megawatt base load rating. Details on the project location, proposed action and initial areas of environmental concern to be addressed in the EIS are provided below (See Supplementary Information). This notice also announces public scoping meetings regarding the content of the EIS.

DATES: Comments on the scope and implementation of this proposal must arrive by August 18, 2000. The public scoping meetings will be held on August 10, 2000, from 6:00 p.m. to 9:00 p.m., and August 11, 2000, from 6:00 p.m. to 9:00 p.m.

ADDRESSES: If you wish to comment, you may submit comments by any one of several methods. You may mail or hand carry written comments to either (1) Amy L. Heuslein, Regional Environmental Protection Officer, Western Regional Office, Bureau of Indian Affairs, Environmental Quality Services, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6750 or Telefax (602) 379–3833, or (2) Deborah Hamlin, Realty Specialist, Southern Paiute Field Station, P.O. Box 720, St. George, Utah 84771, Telephone (435) 674–9720 or Telefax (435) 674–9714. You may also comment via the Internet to AmyHeuslein@bia.gov or DeborahHamlin@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive confirmation from the system that your message was received, contact us directly at (602) 379–6750 or (435) 674–9720, respectively.

Comments, including the names and home addresses of respondents will be available for public review at the above addresses during regular business hours, 8 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or your address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals representing themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The August 10, 2000, public scoping meeting will be held at the Tribal Hall, Number 1 Lincoln Street, Moapa Indian Reservation, Moapa, Nevada. The August 11, 2000, public scoping meeting will be held in the First Floor Conference Room of the North Las Vegas Airport, 2730 Airport Drive, North Las Vegas, NV 89032.

FOR FURTHER INFORMATION CONTACT: Amy L. Heuslein, (602) 379–6750 or Deborah Hamlin, (435) 674–9720.

SUPPLEMENTARY INFORMATION: The EIS would evaluate the effects of a proposed land lease of approximately 50 acres (at 40°46'N Latitude, 6°97'W Longitude) on the Moapa Indian Reservation, where Calpine proposes to construct and operate a 760-megawatt combined cycle power plant. The proposed plant would be fueled by natural gas from the existing Kern River (Williams) Natural Gas Pipeline, which is located on the Reservation approximately 2,500 feet from the plant site. The plant would employ three gas turbines and one heat recovery steam generator. The stack height would be approximately 150 to 175 feet, with a diameter of about 18 feet. Groundwater would be used in operations and for cooling. Water is expected to be discharged to an on-site 10 to 15 acre evaporation pond.

The project is also proposed to include: (1) A gas supply lateral pipeline on reservation land; (2) a power grid interconnection at the Harry Allen substation, approximately 12 miles southwest of the plant site; (3) two parallel 230kV lines traversing both reservation land and Bureau of Land Management land, mostly within an existing utility corridor; and (4) a roadway connecting the site to Interstate Highway 15. The exact location of the roadway is still being evaluated due to design considerations.

Significant issues to be covered during the scoping process may include, but not be limited to, air quality, geology and soils, surface and groundwater resources, biological resources, cultural resources, socio-economic conditions, land use, aesthetics, environmental justice, and Indian trust assets.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 14, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–18274 Filed 7–18–00; 8:45 am]

BILLING CODE 4310–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–035]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 26, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–539–C, E, and F (Review) (Uranium from Russia, Ukraine, and Uzbekistan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 7, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 13, 2000.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18321 Filed 7–14–00; 5:09 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on June 27, 2000, a proposed Settlement Agreement *In re CML, Inc.*, Case No. 98–49286–HJB (Bkr. D. Mass.), was lodged with the United States Bankpuptcy Court for the District of Massachusetts (Western Division). The proposed Settlement Agreement will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et*

seq., on behalf of the U.S. Environmental Protection Agency ("EPA") against CML Group, Inc. (the "Debtor") and its subsidiary OCR, Inc. (together, the "Settling Parties") relating to the Kearsarge Metallurgical Corporation ("KMC") Superfund Site (the "Site") located in Conway, New Hampshire. The Complaint alleges that each defendant is liable under section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Pursuant to the Settlement Agreement, the Debtor's insurer agrees to reimburse to the Untied States $575,000 out of $1,700,000 in past response costs. In exchange, the United States covenants not to bring a civil action or take administrative action against the Settling Parties, or their predecessors, successors and assigns, pursuant to Sections 106 and 107 of CERCLA relating to the Site, or to file any Proof of Claim in the Debtor's bankruptcy proceedings, or to seek to obtain any payment from the Debtor's Estate, on account of any matter relating to the EPA claim for the Site. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Settling Parties and their insurer of their obligations under this Settlement Agreement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, PO Box 7611, Department of Justice, Washington, DC 20044–7611, and should refer to, *In re CML, Inc.*, Civil Action No. 98–49286 HJB (Bkr. D. Mass.), D.J. Ref. 90–11–3–761/2.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney, District of Massachusetts, 1 Courthouse Way, Boston, MA 02210 and at Region I, Office of the Environmental Protection Agency, Superfund Records Center, One Congress Street, Boston, MA 02114. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $2.00 payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18159 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Oil Pollution Act of 1990

Notice is hereby given that a proposed consent decree in the action entitled *United States and State of Rhode Island v. EW Holding Corp.*, Civil Action No. 00332T, was lodged on July 6, 2000, with the United States District Court for the District of Rhode Island. The proposed consent decree resolves the claims of the United States under subsections 1002(b)(1) and (b)(2) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. 2702 (b)(1) and (b)(2), for removal costs and damages, against EW Holding Corp. (as successor to Thor Towing Corporation and Odin Marine Corporation), K-Sea Transportation Corp. (as successor to Eklof Marine Corporation), West of England Ship Owners Mutual Insurance Association (Luxembourg), and Gregory R. Aitken ("Settling Defendants"), in connection with the oil spill that occurred, on January 19, 1996, in the waters of Block Island Sound, State of Rhode Island, that resulted from the grounding of the barge *North Cape* and the tug *Scandia* (the *"North Cape* Oil Spill"). The proposed consent decree also resolves the claims of the United States against the officers, directors, and employees of the corporations listed above to the extent that their liability arises from actions taken in their official capacities as officers, directors, or employees of these corporations. The proposed consent decree also resolves similar claims filed by the State of Rhode Island and Providence Plantations ("State").

The proposed settlement resolves the claims of the United States and the State filed in a complaint on July 6, 2000. The complaint alleges that Odin Marine Corp. was the owner of the tank barge *North Cape* at the time of the *North Cape* oil spill, that Thor Towing Corp. was the owner of the tug *Scandia* at the time of the spill, and that Eklof Marine Corp. was the operator of both the tank barge *North Cape* and the tug *Scandia* at the time of the spill. West of England Ship Owners Mutual Insurance Association (Luxembourg) provided insurance coverage with respect to the spill, and Gregory R. Aitken was the Captain of the tug *Scandia* at the time of the spill. The complaint seeks damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, resulting from the *North Cape* Oil Spill.

Pursuant to the proposed consent decree, the Settling Defendants will implement a lobster restoration program that will involve the v-notching and restocking of 1.248 million female legal-size lobsters into the waters of Block Island Sound by December 31, 2004. In addition, the Settling Defendants will make a payment to the United States and the State in the amount of $8 million, which will be used by the natural resource Trustees (the United States National Oceanic and Atmospheric Administration ("NOAA"), the United States Department of the Interior ("DOI"), and the Rhode Island Department of Environmental Management ("RIDEM")), to implement the following restoration projects: shellfish restoration (quahog transplanting), salt pond land acquisition, loon restoration (acquisition of land or easements to protect loon nests), sea bird restoration (acquisition of land or easements to protect eider nests), piping plover restoration project, and a fish run project. Finally, the Settling Defendants have paid the Trustees the following amounts toward their costs of assessment that have not previously been reimbursed: $2,714,940.20 to NOAA, $358,474.60 to DOI, and $250,000 to RIDEM.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, 960 Pennsylvania Avenue, NW., Washington, DC. 20530, and should refer to *United States and State of Rhode Island* v. *EW Holding Corp.*, DOJ Ref. Number 90–5–1–1–4337.

The proposed consent decree may be examined at the offices of the United States Attorney's Office for the District of Rhode Island, 50 Kennedy Plaza, 8th Floor, Providence, R.I. (contact Michael Iannotti, 401–538–5477). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC, 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $18 (25 cents per page reproduction costs).

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18155 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Ninth Consent Decree in United States v. Nalco Chemical Company, et al., Under the Comprehensive Environment Response, Compensation and Liability Act

Notice is hereby given that a proposed ninth Consent Decree in *United States* v. *Nalco Chemical Company, et al.*, Case No. 91–C–4482 (N.D. Ill.) entered into by the United States on behalf of U.S. EPA and Amerock Corporation was lodged on June 23, 2000 with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves certain claims of the United States against the settling party under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* relating to the Byron Salvage Superfund site in Ogle County, Illinois. The ninth Consent Decree is a past costs only settlement and provides for a payment of $300,000 to the Hazardous Substances Superfund.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Nalco Chemical Company et al.*, D.J. Ref. No. 90–11–3–687. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by request addressed to the Department of Justice Consent Decreed Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the Consent Decree, please enclose a check in the amount of $5.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18214 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Eighth Consent Decree in United States v. Nalco Chemical Company, et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed eighth Consent Decree in *United States* v. *Nalco Chemical Company, et al.*, Case No. 91–C–4482 (N.D. Ill.) entered into by the United States on behalf of U.S. EPA and Commonwealth Edison Company was lodged on August 3, 1999 with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves certain claims of the United States against the settling party under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* relating to the Byron Salvage Superfund Site in Ogle County, Illinois. Under the eighth Consent Decree, Commonwealth Edison Company will pay $860,900 to the Hazardous Substances Superfund in reimbursement of past response costs, will perform certain soil remediation work, and may make an additional payment as provided in the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Nalco Chemical Company, et al.*, D.J. Ref. No. 90–11–3–687. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by request addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the Consent Decree, please enclose a check in the amount of $37.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18215 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Royal Oak Enterprises, Inc.*, Civil Action No. 99–1506–A (E.D. Va.) was lodged with the Court on June 23, 2000.

The proposed decree resolves the claims of the United States against Royal Oak Enterprises, Inc. under the Clean Air Act, 42 U.S.C. 7401, *et seq.*, for civil penalties and injunctive relief to redress violations occurring at Royal Oak's Kenbridge, Virginia charcoal briquet manufacturing facility. Under the decree, Royal Oak Enterprises, Inc. is required to pay a civil penalty of $450,000 and is subjected to injunctive relief designed to ensure future compliance.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be address to: Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314, *Attention:* Richard W. Sponseller, Assistant United States Attorney, and should refer to *United States* v. *Royal Oak Enterprises, Inc.*, Civil Action No. 99–1506–A (E.D. Va.), U.S. Attorney's Office File Number 1998–V–00570.

The proposed consent decree may be examined and copied at the Office of the United States Attorney for the Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314; or at the Region III Office of the environmental Protection Agency, c/o Neil R. Bigioni, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box No. 7611, Washington DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction

costs), payable to the Consent Decree Library.

Richard W. Sponseller,

Assistant United States Attorney, Eastern District of Virginia.

[FR Doc. 00–18156 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Allied Waste Industries, Inc. and Superior Services, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States* v. *Allied Waste Industries, Inc., and Superior Services, Inc.*, Civil No. 1:00CV 01067 on May 12, 2000. A Competitive Impact Statement was filed on June 22, 2000. The Complaint sought to enjoin the following transactions: Allied Waste Industries, Inc.'s ("Allied") proposed acquisition of Superior Services, Inc.'s ("Superior") waste hauling assets in Mansfield. Ohio; Superior's proposed acquisition of Allied's waste hauling assets in Milwaukee, Wisconsin; and Superior's proposed acquisition of a landfill owned by Allied in Leeper, Pennsylvania. The Complaint alleged that these three transactions between Allied and Superior would lessen competition substantially in waste collection and municipal solid waste disposal services in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that (1) Allied divest certain commercial waste collection operations and a transfer station in the Milwaukee area, (2) Superior divest certain commercial waste collection operations and a transfer station in the Mansfield area, and (3) Superior abandon its purchase of an Allied Landfill in the Leeper area.

A Competitive Impact statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and remedies to be implemented by Allied and Superior. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Waste Industries, Inc., and Superior Services, Inc., Defendants.*

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Superior" means defendant Superior Services, Inc., a Wisconsin corporation with its headquarters in Milwaukee, Wisconsin, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Relevant Milwaukee Assets" means:

(1) Allied's two front-end loader and three rear-end loader small container commercial routes 6, 14, 21, 89, and 95 and recycling routes 73, 75, 705 and 708 that serve Milwaukee and the eastern half of Waukesha (east of route 83) counties, WI; and

(2) Allied's BFI Town & Country Transfer Station, located at W143 S. 6400 College Court, Muskego, WI 53150.

Relevant Milwaukee Assets includes, with respect to each of Allied's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route). Relevant Milwaukee Assets also includes, with respect to the BFI Town & Country Transfer Station described above, all of Allied's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

D. "Relevant Mansfield Assets" means:

(1) Superior's small container commercial routs 1, 2, 3 and 4 that serve Richland and Ashland counties, OH; and

(2) Superior's Transfer Station, located at 621 Newman Street, Mansfield, OH 44905.

Relevant Mansfield Assets includes, with respect to each of Superior's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route); and, if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). Relevant Mansfield Assets also includes, with respect to the Superior Transfer Station described above, all of Superior's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Relevant Milwaukee Assets and Relevant Mansfield Assets for the purpose of establishing viable competitors in the waste disposal

business or the commercial waste hauling business, or both, to remedy the effects that the United States alleges would otherwise result from the exchange of assets between Allied and Superior. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Relevant Milwaukee Assets and Relevant Mansfield Assets are independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Allied, in the case of the Relevant Mansfield Assets, and Superior, in the case of the Relevant Milwaukee Assets; and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transactions sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and operate the Relevant Milwaukee Assets and Relevant Mansfield Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from the operations of Superior, in the case of the Relevant Milwaukee Assets, and from Allied, in the case of the Relevant Mansfield Assets. Superior shall not coordinate the marketing of, or negotiation of sales by, any Relevant Milwaukee Asset with its other operations. Allied shall not coordinate the marketing of, or negotiation of sales by, any Relevant Mansfield Asset with its other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) The Relevant Milwaukee Assets and Relevant Mansfield Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the commercial waste hauling business; (2) the management of the Relevant Milwaukee Assets will not be influenced by Superior, and the management of the Relevant Mansfield Assets will not be influenced by Allied; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Milwaukee Assets will be kept separate and apart from Superior's other operations, and the books, records, competitively sensitive sales marketing, and pricing information, and decision-making concerning the Relevant Mansfield Assets will be kept separate and apart from Allied's other operations. Superior's influence over the Relevant Milwaukee Assets and Allied's influence over Relevant Mansfield Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Milwaukee Assets and Relevant Mansfield Assets, and shall maintain at 1999 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Milwaukee Assets and Relevant Mansfield Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Milwaukee Assets and Relevant Mansfield Assets as economically viable and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Milwaukee Assets and Relevant Mansfield Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Milwaukee Assets and Relevant Mansfield Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and

Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or Superior employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) Works with a Relevant Milwaukee Asset or a Relevant Mansfield Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Milwaukee Assets and Relevant Mansfield Assets are divested pursuant to the terms of the Final Judgment, the Relevant Milwaukee Assets shall be managed by Ray Bruckert and the Relevant Mansfield Assets shall be managed by Richard J. Wojahn. Messrs. Bruckert and Wojahn shall have complete managerial responsibility for the Relevant Milwaukee Assets and Relevant Mansfield Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that either Mr. Bruckert or Mr. Wojahn is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

For Plaintiff United States of America

David R. Bickel,
DC Bar #393409, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20005, (202) 307–1168.

For Defendant Allied Waste Industries, Inc.

Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.

For Defendant Superior Services, Inc.

James T. McKeown,
Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202–5367, (414) 271–2400.
Joseph D. Edmondson, Jr.,
Foley & Lardner, Washington Harbour, 3000 K Street, NW, Washington, DC 20007, 202–672–5354.

Order

It is so ordered on this ____ day of _____, 2000.
United States District Judge

Parties Entitled to Notice of Entry of Order:

Counsel for Plaintiff United States of America,

David R. Bickel,
U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW, Washington, DC 20037.

Counsel for Defendant Allied Waste Industries, Inc.,

Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113.

Counsel for Superior Services, Inc.,

James T. McKeown,
Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202–5367,
and

Joseph D. Edmondson, Jr.,
Foley & Lardner, Washington Harbour, 3000 K Street, NW, Washington, DC 20007.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Waste Industries, Inc., and Superior Services, Inc., Defendants.*

Final Judgment

Whereas, Plaintiff, the United States of America, having filed its Complaint in this action on May 12, 2000, and plaintiff and defendants, Allied Waste Services, Inc. ("Allied") and Superior Services, Inc. ("Superior"), by their respective attorneys, having consented to the entry of this Final Judgment without trial and adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, The essence of this Final Judgment is the prompt and certain divestiture of certain relevant assets to assure that competition is not substantially lessened;

And Whereas, Defendants Allied and Superior shall make certain divestitures for the purpose of establishing one or more viable competitors in the commercial waste hauling business, in the specified areas of Milwaukee, Wisconsin and Mansfield, Ohio; and

And Whereas, Defendant Superior shall be enjoined from acquiring the County Environmental Landfill in Leeper, Pennsylvania except as provided in this Final Judgment;

And Whereas, Defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the injunctive provisions contained below;

Now, Therefore, Before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Superior" means defendant Superior Services, Inc., a Wisconsin corporation with its headquarters in Milwaukee, Wisconsin, and includes its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Relevant Milwaukee Assets" means:

(1) Allied's two front-end loader and three rear-end loader small container commercial routes 6, 14, 21, 89, and 95 and recycling routes 73, 75, 705 and 708 that serve Milwaukee and the eastern half of Waukesha (east of route 83) Counties, WI; and

(2) Allied's BFI Town & Country Transfer Station, located at W143 S. 6400 College Court, Muskego, WI 53150.

Relevant Milwaukee Assets includes, with respect to each of Allied's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route). Relevant Milwaukee Assets also includes, with respect to the BFI Town & Country Transfer Station described above, all of Allied's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

D. "Relevant Mansfield Assets" means:

(1) Superior's small container commercial routes 1, 2, 3 and 4 that serve Richland and Ashland counties, OH; and

(2) Superior's Transfer Station, located at 621 Newman Street, Mansfield, OH 44905.

Relevant Mansfield Assets includes, with respect to each of Superior's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route); and, if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). Relevant Mansfield Assets also includes, with respect to the Superior Transfer Station described above, all of Superior's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

E. "Hauling" means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hayling, as used herein, does not include collection of roll-off containers.

F. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (e.g., waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

G. "Disposal" means the business of disposing of waste into approved disposal sites.

H. "Landfill" means a waste management facility where waste is placed into the land.

I. "Small container commercial waste collection service" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front- or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

J. "Milwaukee area" means the City of Milwaukee, Milwaukee County, and the eastern half of Waukesha (east of route 83) County, Wisconsin.

K. "Mansfield area" means the City of Mansfield and Richland and Ashland Counties, Ohio.

L. "Leeper area" means the City of Leeper and Clarion, Elk, Forest, and Jefferson Counties, Pennsylvania.

III. Applicability

A. The provisions of this Final Judgment apply to Allied and Superior, as defined above, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of a lesser business unit that includes defendants' Relevant Milwaukee Assets or Relevant Mansfield Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

Milwaukee and Mansfield Areas

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Milwaukee Assets as a viable, ongoing business to a single purchaser acceptable to the United States, in its sole discretion, and to sell the Relevant Mansfield Assets, as a viable, ongoing business, to a single purchaser acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture an additional period of time, not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Milwaukee Assets and Relevant Mansfield Assets customarily provided in a due diligence process except such information or documents subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any Allied or Superior employee who, prior to the entry of the Hold Separate Stipulation and Order, works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the

Relevant Milwaukee Assets and Relevant Mansfield Assets.

E. Defendants shall permit prospective purchasers of the Relevant Milwaukee Assets and Relevant Mansfield Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Relevant Milwaukee Assets and Relevant Mansfield Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the permitting, operation, or divestiture of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

H. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the divestiture of each asset, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section VI of this Final Judgment, shall include all Relevant Milwaukee Assets and Relevant Mansfield Assets, and shall be accomplished by selling or otherwise conveying the assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Relevant Milwaukee Assets and Relevant Mansfield Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, (1) Shall be made to a purchaser that, in the United State's sole judgment, has the capability and intent (including the necessary managerial, operation and financial capability) of competing effectively in the waste disposal or hauling business in the Milwaukee and Mansfield areas; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

V. Ban on Acquisition

Leeper Area

A. Superior shall abandon the purchase agreement between Superior and Allied, dated August 4, 1999, to acquire the County Environmental Landfill located at 344 Walley Run Drive, Leeper, PA 16233 ("County Landfill"). Superior shall not directly or indirectly acquire or propose to acquire any assets of or any interest, including any financial, security, loan equity or management interest, in the County Landfill except as provided in Paragraph V(B).

B. If a new landfill opens in the Leeper area which accepts MSW, Superior may propose to acquire assets or an interest in the County Landfill but shall provide advance notification to the Antitrust Division of any such plan. The obligation to provide notice under this Paragraph is met when Superior files a premerger notification pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"). In the event that such a transaction is not subject to the reporting and waiting period prerequirements of the HSR Act, notification under this Paragraph shall be provided to the Antitrust Division in the same format as, and in accordance with, the instructions relating to the Notification and Report Form set forth in the appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the Leeper area. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If, within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Superior shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and the rules promulgated thereunder. This Paragraph shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Paragraph shall be resolved in favor of filing notice.

VI. Appointment of Trustee

A. If defendants have not divested the Relevant Milwaukee Assets and Relevant Mansfield Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Milwaukee Assets and Relevant Mansfield Assets. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to the Untied States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Section IV, VI, and VII of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, reasonably necessary in the trustee's judgment to assist in the divestiture and such professionals and agents shall be accountable solely to the trustee.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the

divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which the divestitures are accomplished.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall develop financial and other information relevant to the Relevant Milwaukee Assets and Relevant Mansfield Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development or commercial information.

F. After the trustee's appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall included the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Milwaukee Assets and the Relevant Mansfield Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to sell the Relevant Milwaukee Assets and the Relevant Mansfield Assets.

G. If the trustee has not accomplished such divestitures within six months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestitures. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive agreement to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets to be divested that are the subject of the binding contract, together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants and the trustee, if applicable that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or VI of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section VI(C), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every twenty (20) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for the Relevant Milwaukee Assets and Relevant Mansfield Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Compliant in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets pursuant to Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets that were divested and to effect the ordered divestitures.

IX. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Relevant Milwaukee Assets or the Relevant Mansfield Assets.

X. Financing

Defendants shall not finance all or any part of any purchase by any person made pursuant to Section IV or VI of this Final Judgment.

XI. Compliance Inspection

A. For purposes of determining or securing compliance with the Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. To interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters. The interview shall be subject to reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order as may be requested.

C. No information or documents obtained by the means provided in Section XI of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated_____, 2000.

United States District Judge_____

Parties Entitled to Notice of Entry of Final Judgment:

Counsel for Plaintiff United States of America,

David R. Bickel,

U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW., Washington, DC 20037.

Counsel for Defendant Allied Waste Industries, Inc.,

Tom D. Smith,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW., Washington, DC 20001–2113.

Counsel for Superior Services, Inc.,

James T. McKeown,

Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202–5367.

and

Joseph D. Edmondson, Jr.,

Foley & Lardner, Washington Harbour, 3000 K Street, NW., Washington, DC 20007.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Waste Industries, Inc. and Superior Services, Inc., Defendants.*

File No.: 1:00 CV 01067
Judge: Ricardo M. Urbina
Deck Type: Antitrust

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on May 12, 2000, seeking to enjoin the acquisition of certain waste hauling and disposal assets by Allied Waste Industries, Inc. ("Allied") and Superior Services, Inc. ("Superior"). Allied and Superior had entered into purchase agreements pursuant to which Superior would acquire hauling assets from Allied in Milwaukee, Wisconsin; Allied would acquire hauling assets from Superior in Mansfield, Ohio; and Superior would acquire Allied's County Environmental Landfill in Leeper, Pennsylvania. The Complaint alleges that the likely effects of these acquisitions would be to substantially lessen competition for waste collection and disposal services in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection and disposal of waste.

At the same time the Complaint was filed, the United States also filed a

proposed Final Judgment and a Hold Separate Stipulation and Order that were designed to eliminate the anticompetitive effects of the acquisitions. Under the proposed Final Judgment, which is explained more fully below, the defendants are required within 90 days after the filing of the Hold Separate Stipulation and Order, or five (5) days after notice of the entry of the Final Judgment by the Court, to divest, as viable business operations, certain waste hauling assets and related transfer stations in the Milwaukee and Mansfield areas. The proposed Final Judgment also requires Superior to abandon its proposed acquisition of Allied's landfill in Leeper. Under the terms of the Hold Separate Stipulation and Order, the defendants are required to take certain steps to ensure that the assets to be divested will be preserved and held separate from the defendants' other assets and businesses.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transactions

Allied, with revenues in 1999 of approximately $6 billion, is the nation's second largest waste hauling and disposal company, operating throughout the United States. Superior, with 1999 revenues of approximately $319.7 million, is a multi-state waste collection and disposal company. On August 4, 1999, Allied and Superior entered into nine separate agreements in which they agreed to exchange certain waste hauling and disposal assets. Three of those nine agreements involve acquisitions of waste hauling and disposal assets in the Milwaukee, Mansfield, and Leeper areas. These acquisitions are the subject of the Complaint and proposed Final Judgment filed by the United States on May 12, 2000.

B. The Competitive Effects of the Transaction

Waste collection firms, or "haulers," contract to collect municipal solid waste ("MSW") from residential and commercial customers; they transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. Allied and Superior compete in operating waste collection routes and waste disposal facilities.

1. The Effects of the Transaction on Competition in the Markets for Small Container Commercial Waste Collection Services.

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard container for waste storage, plus front-end and rear-end loader vehicles for collection and transportation—is uniquely well suited for the provision of small container commercial waste collection service. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*, side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service., for analyzing the effects of the acquisitions.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that the Milwaukee and Mansfield areas constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and Superior in the provision of small container commercial waste collection services. The Milwaukee area includes the City of Milwaukee, Milwaukee County and the eastern half east of route 83 of Waukesha County, Wisconsin. The Mansfield area includes the city of Mansfield, and Richland and Ashland counties, Ohio.

In the Milwaukee area, Superior's acquisition of Allied's assets would reduce from three to two the number of significant firms competing in small container commercial waste collection service. After the acquisition, Superior would control approximately 40%, and two firms would control over 80%, of total market revenue, which is about $22 million annually. The acquisition would increase the Herfindahl-Hirschmann Index ("HHI"),[1] a measure of market concentration, by about 700 points to about 4700 in the Milwaukee area.

In the Mansfield area, Allied's acquisition of Superior's assets would reduce from two to one the number of significant firms that compete in small container commercial waste collection service. After the acquisition, Allied would control over 80% of the market. The acquisition would increase the HHI by over 3000 points to about 7300 in the

[1] The Herfindahl-Hirschmann Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared (900) plus 30 squared (900) plus 20 squared (400) plus 20 squared (400) = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

Mansfield area, where total revenues exceed $3.5 million annually.

New entry into these markets would be difficult, time consuming, and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into long-term contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.*, selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be unprofitable to serve. Taken together, the prevalence of long-term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of Allied and Superior in Milwaukee and Mansfield would likely lead to an increase in prices charged to consumers of small container commercial waste collection services. The two acquisitions would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers.

2. The Effects of the Transaction on Competition in the Leeper Area for Disposal of Municipal Solid Waste.

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can be sent for disposal only to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposal of MSW. The disposal of MSW therefore constitutes a line of commerce, or relevant service, for the purposes of analyzing the acquisition.

Disposal of MSW generally tends to occur in localized markets. Disposal costs are a significant component of waste collection services, often comprising 40% or more of overall operating costs. It is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (e.g., mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discriminate, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, the Leeper area is a relevant geographic market for disposal of MSW. The Leeper area includes the City of Leeper, and Clarion, Elk, Forest, and Jefferson counties, Pennsylvania.

In the Leeper area, Superior's acquisition of Allied's County Environmental Landfill would reduce from two to one the number of significant firms competing in the disposal of MSW, resulting in a monopoly. In 1998, approximately 66,000 tons of MSW were generated from this market. In that same year, these two landfills disposed of about 97% of that MSW. Based on quantity disposed, the post-merger HHIs for disposal of MSW would be about 9500, with an increase of approximately 4500 points.

Obtaining a permit to construct or expand an existing disposal site is an expensive and time consuming task. Local public opposition often makes it more difficult and costly and increases the uncertainty of successfully permitting a facility. Significant new entry in the Leeper area is unlikely to prevent the exercise of market power after the acquisition.

The elimination of one of only two significant competitors, such as would occur as a result of the proposed transaction in the Leeper area, virtually ensures that consumers in this market will face higher prices for the disposal of MSW or the collection of small container commercial waste.

III. Explanation of the Proposed Final Judgment

A. Divestitures in the Milwaukee and Mansfield Areas

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small containerized commercial waste collection services in the Milwaukee and Mansfield areas by establishing a new, independent and economically viable competitor in each of those markets. The proposed Final Judgment requires defendants, within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later to divest, as a viable ongoing business or businesses, small container commercial waste collection assets (*e.g.*, routes, trucks, containers, and customer lists) relating to the Milwaukee and Mansfield markets, as well as a transfer station in each market. The transfer stations must be divested because they are likely to make the buyer of the waste collection assets a more effective competitor.

These assets must be divested in such a way as to satisfy the United States that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business that can compete effectively in each relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestitures within the above-described period, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that the defendant affected will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth its efforts to accomplish divestitures. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The relief sought in the Milwaukee and Mansfield areas will maintain the

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pre-acquisition structure of each market and thereby ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition—lower prices and better service.

B. Ban on Acquisition of County Environmental Landfill

The proposed Final Judgment also requires Superior to abandon its purchase agreement with Allied, dated August 4, 1999, to acquire the County Environmental Landfill ("County Landfill") in Leeper, Pennsylvania. Superior is banned from acquiring the landfill for the ten-year term of the Final Judgment unless a new landfill opens in the Leeper area. If a new landfill opens, Superior may propose to acquire County Landfill, but it must give the Antitrust Division advance notice of any such plan.

Typically, the United States does not require parties who have abandoned an acquisition to enter into a Final Judgment preventing them from engaging in the same or a similar transaction in the future. In this case, however, such a provision was necessary because the acquisition of County landfill, standing alone, probably would not be large enough to trigger the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a. Absent such a provision, Superior could subsequently acquire the landfill without the United States knowing about the acquisition until well after it had taken place.

As noted above, the proposed Final Judgment does not completely bar Superior from acquiring County Landfill, but, rather, it permits superior to propose such an acquisition in the event that another landfill opens in the Leeper area. The United States does not believe entry is likely within the next two years or that foreseeable entry would be sufficient to counteract the anticompetitive effects of Superior's acquisition of County Landfill. The proposed Final Judgment has a term of ten years, however, and it is possible that entry during that period would sufficiently alter the market conditions so as to render competitively harmless an acquisition of County Landfill by Superior. Hence, the proposed Final Judgment requires Superior to provide the Antitrust Division with notice before consummating an acquisition of County Landfill. This will give the Antitrust Division time to evaluate the proposed transaction and take action to block the deal if the situation so warrants.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Allied and Superior. The United States could have continued the litigation and sought preliminary and permanent injunctions against Allied's acquisition of the Superior assets, and Superior's acquisition of the Allied assets. The United States is satisfied, however, that the divestiture of hauling assets and the abandonment of the County Landfill acquisition will preserve competition for small containerized commercial waste collection services in the Milwaukee and Mansfield areas, as well as competition for the disposal of MSW in the Leeper area.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individual alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly

settlement through the consent decree process."[2] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States.* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States.* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)); see also Microsoft, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[4]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case," Microsoft, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are not determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 22, 2000.

Respectfully submitted,

David R. Bickel,
DC Bar #393409, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc. and Superior Services, Inc. by placing a copy of this Competitive Impact Statement in the U.S. mail, postage prepaid directed to each of the above-named parties at the addresses given below, this 22nd day of June, 2000.

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith,
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and

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David R. Bickel,
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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Dairy Farmers of America, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States of America* v. *Dairy Farmers of America, et al.*, Civil Action No. 00–1663. On March 31, 2000, the United States filed a Complaint alleging that the proposed acquisition by Dairy Farmers of America, Inc. ("DFA") of substantially all the assets of SODIAAL North America Corporation ("SODIAAL"), would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on May 18, 2000, allows DFA to complete the proposed acquisition of SODIAAL but prohibits it from entering into any federation with Land O' Lakes, Inc. with respect to the marketing, promotion, sale, or distribution of branded butter. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to J. Robert Kramer

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[2] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[3] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716; see also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), quoting *United States* v. *Gillette Co.*, supra, 406 F. Supp. at 716 aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

II, Chief, Litigation II Section, Antitrust Division. Department of Justice, 1401 H St. NW, Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

United States District Court, Eastern District of Pennsylvania

Civil Action No. 00–1663
United States of America, Plaintiff, vs. Dairy Farmers of America, et al., Defendants.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Eastern District of Pennsylvania.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

(3) Defendants shall (a) act in accordance with, abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, (b) from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court, and (c) continue to comply with those terms and provisions until superseded by an Order of this Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) Defendants waive any claim that the Capper-Volstead Act, 7 U.S.C. 291, constitutes a defense to any breach or violation of this Stipulation and Order or to any violation of any provision of the Final Judgment once entered by the Court.

(6) In the event the Plaintiff withdraws its consent, as provided in Paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, this Stipulation shall have no binding effect on Plaintiff whatsoever, and the making of this Stipulation shall be without prejudice to Plaintiff in this or any other proceeding. Regardless of whether Plaintiff withdraws its consent, Defendants shall continue to abide by this Stipulation and Order until such time as it is superceded by Order of the Court.

(7) Defendants represent that the conduct ordered in the proposed Final Judgment can and will be performed, and that Defendants will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained therein.

(8) Upon entry of this Stipulation as an Order of the Court, and consistent with this Stipulation, insofar as the Defendants were enjoined by Orders of the Court on March 31, 2000, April 4, 2000, and April 17, 2000, from consummation of their proposed transaction and from bringing their operations under common ownership and control, this Stipulation and Order, and the incorporated terms of the proposed Final Judgment shall supersede any inconsistent provisions of those earlier orders.

(9) Unless otherwise indicated, from the date of filing of this proposed Stipulation and Orders of the Court and until consummation of the transaction, Societe De Diffusion Internationale Agro-Alimentaire and SODIAAL North America Corporation shall:

a. Preserve, maintain, and operate the SODIAAL North America Corporation butter assets as an independent competitor with management, production, sales and operations held entirely separate, distinct and apart from those of Diary Farmers of America ("DFA");

b. Take all steps reasonably necessary to ensure that the SODIAAL North America Corporation butter assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the markets alleged in the Complaint; that the management of SODIAAL North America Corporation will not be influenced by DFA, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the SODIAAL North America Corporation butter assets will be kept separate and apart from the operations of DFA;

c. Use all reasonable efforts to maintain the operations of the SODIAAL North America Corporation butter assets, and maintain at current or previously approved levels, whichever are higher, internal funding, promotional, advertising, sales, technical assistance marketing and merchandising support for the SODIAAL North America Corporation butter assets;

d. Provide and maintain sufficient working capital to maintain the SODIAAL North America Corporation butter assets as an economically viable, ongoing business;

e. Provide and maintain sufficient lines and sources of credit to maintain the SODIAAL North America Corporation butter assets as an economically viable, ongoing business;

f. Take all steps reasonably necessary to ensure that the SODIAAL North America Corporation butter assets are fully maintained in operable condition at no lower than their current rated capacity levels, and to maintain and adhere to normal repair and maintenance schedules of the SODIAAL North America Corporation butter assets; and,

g. Cause the management of the SODIAAL North America Corporation butter assets to maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of the SODIAAL North America Corporation butter assets.

Respectfully submitted,

Mark J. Botti

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Christopher Rooney, Esq.
Carmody & Torrance LLP 18th Floor, 195 Church Street, New Haven, CT 06509–1950, Counsel for Societe De Diffusion, Internationale Agro-Alimentaire and SODIAAL North America Corporation.

So ordered:
This 19th day of May, 2000.

United States District Court Eastern district of Pennsylvania

Civil Action No. 00–1663
United States of America Plaintiff, vs. Dairy Farmers of America, et al., Defendants.

Final Judgment

Whereas Plaintiff, the United States of America (hereinafter "United States"), having filed its Complaint on March 31, 2000, this Court having issued a temporary restraining order on the same date, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendant Societe de Diffusion Internationale Agro-Alimentaire, while not agreeing that it does business in the United States generally, has agreed to be bound by the provisions of this Final Judgment;

And whereas, Defendants SODIAAL North America Corporation and Dairy Farmers of America, Inc. have agreed to be bound by the provisions of this Final Judgment;

Now, therefore, before the taking of any testimony, and without trial or final adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Butter LLC" means the limited liability company formed pursuant to Section IV of this Final Judgment and includes each of its successors, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by its, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, and employees, and each and any successor to its interest in the Keller's, Hotel Bar, or Breakstone's brands.

B. "Dairy Farmers of America, Inc." or "DFA", means Defendant Dairy Farmers of America, Inc., a Kansas corporation with its headquarters in Kansas City, Missouri, and includes each of its successors, divisions, parents, subsidiaries, and majority-owned affiliates, and each other person, directly or indirectly, majority-owned by it, including, but not limited to, Mid-Am Capital LLC and Butter LLC, and each majority-owned partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and employees.

C. "DFA butter assets" means (a) assets currently employed by DFA to produce and process butter at DFA's Winnsboro, Texas facility and (b) DFA's interest in the Breakstone's brand (the transfer of which is subject to the consent of Kraft Foods, Inc.), which shall include, but not be limited to, all customer lists, inventory, contracts, and promotional materials.

D. "Federation" means:

(1) An agency in common, federation, pooling arrangement, merger or other combination or collaboration, including, but not limited to, any agreement on price or output, involving DFA's and/or Land O'Lakes' Branded Butter operations; or

(2) An agreement, directly or indirectly, between DFA and Land O'Lakes with regard to the price, quantity, sale or supply of cream, milk, or butter to Butter LLC pursuant to which DFA, Land O'Lakes, or both would charge Butter LLC more for cream, milk or butter than either one or both charge other customers. However, nothing in this paragraph shall prohibit price differentials that are reasonably based on differences in purchase volume, freight or shipping costs, federal regulation or product quality.

E. "Land O'Lakes" means Land O'Lakes, Inc., each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and employees.

F. "Societe de Diffusion Internationale Agro-Alimentaire" means Defendant Societe de Diffusion Internationale Agro-Alimentaire, each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents, and employees.

G. "SODIAAL North America Corporation" means Defendant SODIAAL North America Corporation and includes each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and employees.

H. "SODIAAL North America Corporation butter assets" means the real property, equipment, vehicles, inventories, accounts receivables, information and records, intellectual property, and other assets used to produce, process or market butter including, but not limited to, the Keller's and Hotel Bar brands, and which assets are to be acquired by DFA pursuant to the Transaction, defined in Paragraph II.I., herein.

I. "Transaction" means the proposed acquisition of certain assets of SODIAAL North America Corporation by DFA, described in the December 15, 1999, letter agreement between DFA and Societe De Diffusion Internationale Agro-Alimentaire, and includes all related agreements among Defendants.

J. "Agricultural Cooperative" means an entity eligible for classification as an "agricultural cooperative" under the terms of the Capper Volstead Act, 7 U.S.C. 291, as "[p]ersons engaged in the production of agricultural products such as farmers, planters, ranchmen, dairymen, nut or fruit growers," acting individually or "together in associations, corporate or otherwise," as such terms are used in the Capper-Volstead Act.

K. "Branded Butter" means butter, as currently defined by the Food and Drug Administration at 7 CFR 58.305(a), sold in a retail grocery channel under a brand owned or licensed by the butter manufacturer.

L. "Majority-owned" means either (a) holding more than 50 percent of the voting interests in a corporation, partnership, or limited liability company, or (b) having the right to designate more than 50 percent of the board of directors or similar body.

M. "Competitively Sensitive Information" means information that is not public and could be used by a competitor or supplier to make production, pricing, or marketing decisions including, but not limited to, information relating to costs, capacity, distribution, marketing, supply, market territories, customer relationships, the terms of dealing with any particular customer (including the identity of individual customers and the quantity sold to any particular customer), and current and future prices, including discounts, slotting allowances, bids, or price lists. "Competitively Sensitive Information" does not include information that must be disclosed to implement a supply arrangement in the ordinary course of business.

III. Applicability

A. The provisions of this Final Judgment apply to:

(1) Defendant Dairy Farmers of America, Inc., as defined above, so long as DFA or Butter LLC (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the Keller's or Hotel Bar brands;

(2) Defendants Societe de Diffusion Internationale Agro-Alimentaire and SODIAAL North America Corporation, as defined above, so long as either of them (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the Keller's or Hotel Bar brands;

(3) Butter LLC, as defined above, so long as DFA or Butter LLC (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the Keller's or Hotel Bar brands;

(4) Any person under Paragraph III.B. of this Final Judgment; and

(5) All other persons in active concert or participation with anyone named in Paragraphs III.A.(1), III.A.(2), III.A.(3), or III.A.(4) above, who receive actual notice of this Final Judgment by Personal service or otherwise.

B. DFA and/or Butter LLC shall require as a condition of the sale or other disposition of either the Keller's or Hotel Bar brands (or both) to an Agricultural Cooperative or to an entity in which DFA has a non-majority ownership interest that such person or persons agree to be bound by the provisions of this Final Judgment. However, except as provided in Paragraph III.A.(2) or III.A.(5) above, this Final Judgment shall not apply to transferees of either the Keller's or Hotel Bar brands (or both) who are neither an Agricultural Cooperative nor an entity in which DFA has an ownership interest.

IV. Formation of Limited Liability Company and Contribution of Assets

A. Within 30 days after the consummation of the Transaction, DFA shall cause to be formed "Butter LLC," a limited liability company to be partially owned by persons other than DFA which will cause Butter LLC to be ineligible for classification as an Agricultural Cooperative. Butter LLC shall, within 15 days of its formation, stipulate in writing to be bound by this Final Judgment and subject to the jurisdiction of this Court and shall serve a copy of its stipulation on Plaintiff and file that stipulation with the Court within those 15 days.

B. Within 30 days after the consummation of the Transaction, DFA and/or Societe de Diffusion Internationale Agro-Alimentaire shall contribute to Butter LLC (a) the DFA butter assets including, subject to the consent of Kraft Foods, Inc., DFA's interest in the Breakstone's brand; and (b) the SODIAAL North America Corporation butter assets. Prior to that contribution, DFA shall take no steps to reduce eliminate, or otherwise divest those assets.

C. Without prior written approval of Plaintiff, Butter LLC shall not sell, transfer, divest, license, or in any way grant, direct or indirect, control over the pricing, production, sales, promotion, or marketing of any or all of Keller's, Hotel Bar, or Breakstone's brands to Land O'Lakes.

D. Without prior written approval of Plaintiff, Butter LLC shall not obtain, receive, or in any way acquire, direct or indirect, control over the pricing, production, sales, promotion, or marketing of any or all Branded Butter from Land O'Lakes.

E. Without 30 days prior notice to Plaintiff, Butter LLC shall not sell, transfer, or divest either the Keller's or Hotel Bar brands, or both, to any entity in which DFA has an ownership interest. This Final Judgment shall apply to any such entity pursuant to Paragraph III.B.

F. Without 30 days prior notice to Plaintiff, Butter LLC shall not sell, transfer, or divest either the Keller's or Hotel Bar brands, or both, to any entity in which neither DFA nor Land O'Lakes has an ownership interest. Notice provided under this Paragraph shall include the production to the Plaintiff of copies of any and all supply contracts then existing or contemplated between Butter LLC and the transferee.

V. Injunctive Provisions

A. DFA and Butter LLC are hereby enjoined, individually and/or collectively, from entering into a Federation with Land O'Lakes, provided, however that, except as set forth in Paragraphs IV.C. and IV.D., nothing contained herein shall prohibit either DFA or Butter LLC from entering into a supply arrangement with Land O'Lakes whereby one party processes and packages (but does not market, promote, sell, or distribute) Branded Butter on the other's behalf.

B. DFA and Butter LLC are further enjoined, individually and/or collectively, from disclosing to Land O'Lakes, directly or indirectly, any Competitively Sensitive Information regarding Branded Butter.

VI. Compliance Program

DFA and Butter LLC shall maintain a judgment compliance program that shall include:

A. Distributing, within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all directors, officers and Branded Butter sales and marketing personnel;

B. Distributing, in a timely manner, a copy of this Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VI.A;

C. Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment and Competitive Impact Statement to Land O'Lakes;

D. Briefing, annually, in writing or orally, those persons designated in Paragraphs VI.A. and VI.B. on the meaning and requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;

E. Obtaining from those persons designated in Paragraphs VI.A. and VI.B. annual written certifications that they (1) have read, understand, and agree to abide by this Final Judgment, (2) understand that their noncompliance

with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported violations, if any, of this Final Judgment of which they are aware to counsel for the respective Defendant; and

F. Designating a specific individual for each company who shall be responsible for maintaining for inspection by Plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

VII. Certification and Notification

A. Within 75 days after entry of this Final Judgment, DFA and Butter LLC each shall certify to Plaintiff that it has made the distribution of the Final Judgment and Competitive Impact Statement as required by Paragraph VI.A.

B. For each year after the entry of this Final Judgment, on or before its anniversary date, DFA and Butter LLC each shall certify to Plaintiff its compliance with any provisions of Sections IV, V, and VI then applicable to it; and

C. Butter LLC shall notify the Plaintiff at least 30 days prior to, as applicable, any proposed (1) dissolution, (2) sale or assignment of claims or assets resulting in a successor person, or (3) change in company structure that may affect compliance with this Final Judgment.

D. All certifications, notices and communications required to be made to Plaintiff pursuant to this Final Judgment shall be in writing and shall be deemed to be delivered when (1) hand delivered; or (2) when deposited in the United States mail, postage prepaid, registered or certified U.S. mail, return receipt requested, and addressed, in each such case, to the address set forth in this Paragraph, or the address as changed pursuant to the requirements of this Paragraph.

United States Department of Justice—Antitrust Division, Director of Operations and Merger Enforcement, 601 D Street, N.W., Room 10103, Washington, DC 20530.

With a copy to:

United States Department of Justice—Antitrust Division, Chief, Litigation II Section, 1401 H Street, N.W., Washington, DC 20530.

Plaintiff may change the address for notices to be sent to it by written notice delivered to the Defendants by one of the methods described above in this Paragraph.

VIII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any Defendant or Butter LLC, be permitted:

(1) Assess during office hours to inspect and copy, or at Plaintiff's option, demand Defendants or Butter LLC to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants or Butter LLC, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendants or Butter LLC and without restraint or interference from them to interview, either informally or on the record, directors, officers, employees, and agents of Defendants or Butter LLC, who may have their individual counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, Defendants and Butter LLC shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants or Butter LLC to the United States, Defendants or Butter LLC represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants or Butter LLC mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Defendants or Butter LLC ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

IX. Retention of Jurisdiction

This Court retains jurisdiction for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the Provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. Termination of Final Judgment

This Final Judgment will continue in force until terminated pursuant to an order of this Court.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 00–1663

UNITED STATES OF AMERICA, Plaintiff, v. DAIRY FARMERS OF AMERICA, et al. Defendants.

Certificate of Service

I, Michael H. Knight, hereby certify that on May 17, 2000, I caused copies of the foregoing proposed Final Judgment and the United States' Explanation of Consent Decree

Procedures to be served by telecopier and by mail upon the following:

Todd Miller, Esq.,
Baker & Miller, PLLC, Counsel for Dairy Farmers of America, suite 1000, 915 15th Street, NW., Washington, DC 20005–2302.

Burton Z. Alter, Esq.,

Christopher Rooney, Esq.
Carmody & Torrance LLP, Counsel for SODIAAL North America Corporation and for Societe de Diffusion Internationale Agro-Alimentaire, 18th Floor, 195 Church Street, New Haven, CT 06509–1950.

Michael H. Knight,
Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Room 4000, Washington, DC 20530, Phone: 202–514–9109 Fax: 202–514–9033.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 00–1663

UNITED STATES OF AMERICA, *Plaintiff*, vs. DIARY FARMERS OF AMERICA, *et al.*, *Defendants.*

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 16(b), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

1. Nature and Purpose of the Proceeding

On March 31, 2000, the United States filed a civil antitrust suit alleging that the proposed acquisition by Dairy Farmers of America, Inc. ("DFA") of SODIAAL North America Corporation ("SODIAAL") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the combination of DFA and SODIAAL would substantially lessen competition in the markets for the sale of branded whipped and branded stick butter in the Philadelphia and New York City metropolitan areas. The United States District Court for the Eastern District of Pennsylvania entered a Temporary Restraining Order on March 31, 2000, prohibiting the parties from consummating their proposed transaction and setting the government's Motion for Preliminary Injunction for hearing.

According to the Compliant, the proposed acquisition would create a duopoly in the markets for branded stick and branded whipped butter in Philadelphia and New York metropolitan areas. Land O' Lakes is the chief competitor to the SODIAAL brands in these regions. Combined, DFA (including the SODIAAL brands) and Land O' Lakes would control more than 90 percent of the sales of branded stick and branded whipped butter in these markets.

Moreover, because both DFA and Land O' Lakes are agricultural cooperatives they are entitled to federate their branded butter businesses under the Capper-Volstead Act, 7 U.S.C. 291, which exempts from antitrust scrutiny collective marketing by or on behalf of agricultural production cooperatives. SODIAAL, however, does not have the benefit of the Capper-Volstead exemption. Thus, DFA's acquisition of the SODIAAL assets would bring the important SODIAAL brands under the control of an exempt cooperative. As a result, prices for branded stick and branded whipped butter sold to retailers and consumers in the Philadelphia and New York metropolitan areas likely would increase.

The prayer for relief in the Compliant seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act and (2) temporary and permanent injunctive relief that would prevent DFA from acquiring control of, or otherwise combining its assets with SODIAAL.

On May 18, 2000, the United States filed a proposed Stipulation and Order and proposed Final Judgment that would permit DFA to complete its acquisition of SODIAAL but prohibit it from federating with Land O' Lakes, Inc. with respect to the marketing and sale of branded butter.

The proposed Final Judgment requires DFA to form "Butter LLC," a limited liability company to be majority-owned by DFA and minority-owned by persons other than DFA (*i.e.*, former SODIAAL managers).[1] DFA and/or SODIAAL must contribute to Butter LLC assets necessary to produce and market the brands of butter DFA and SODIAAL have sold in New York and Philadelphia. Butter LLC will not be an agricultural cooperative and thus will not be entitled to Capper-Volstead immunity.

The proposed Final Judgment also enjoins DFA and Butter LLC, individually and collectively, from entering into any federation with Land O' Lakes with respect to the marketing, promotion, sale, or distribution of branded butter. DFA and Butter LLC are further prohibited from disclosing to Land O'Lakes any competitively sensitive information regarding branded butter.

[1] Butter LLC will do business under the name *Keller's Creamery, L.L.C.*

The Stipulation and Order, which was entered by the Court on May 19, 2000, permits the defendants to close their transaction but requires that they act in accordance with, abide by, and comply, with, the terms of the proposed Final Judgment pending its entry by the Court. The parties have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

A. The Defendants and the Proposed Transaction

DFA is an agricultural cooperative based in Kansas City, Missouri. It owns and operates dairy processing plants throughout the United States, including butter-producing plants in Winnsboro, Texas, and Goshen, Indiana. DFA produces, processes, markets, advertises, and sells Breakstone's branded butter (under license from Kraft Food, Inc.) throughout the eastern United States, including the greater Philadelphia and New York metropolitan areas. The Breakstone's brand was founded in 1882. In 1998, the company recorded net sales of approximately $7.3 billion.

SODIAAL, headquartered in Harleysville, Pennsylvania, is a privately held subsidiary of a French cooperative, Societe de Diffusion Internationale Agro-Alimentaire. It owns and operates one butter-producing plant, Mayfair Creamery, in Somerset, Pennsylvania. SODIAAL produces, markets, advertises, and sells Keller's and Hotel Bar branded butter in the northeastern United States, including the greater Philadelphia and New York metropolitan areas. The Keller's brand was founded in 1906; the Hotel Bar brand was founded in 1885. In 1998, SODIAAL had net sales of approximately $238 million.

On or about December 15, 1999, DFA entered into a letter agreement with Societe de Diffusion Internationale Agro-Alimentaire, to purchase, for about $36 million, substantially all of the assets of SODIAAL. This transaction, which would eliminate the sole remaining, significant, privately held (*i.e.*, non-cooperative) branded butter producer in the Philadelphia and New York markets, precipitated the government's suit.

B. The Competitive Effects of the Transaction

1. The Relevant Product Markets for Branded Stick and Branded Whipped Butter

Butter is sold to consumers at retail in a variety of forms (*e.g.*, quarter-pound butter sticks, whipped butter, lightly salted butter, and unsalted butter) and package sizes (*e.g.*, one-pound packages comprising four quarter-pound sticks, one-half pound packages comprising two quarter-pound sticks, and eight-ounce tubs of whipped butter). In the greater Philadelphia and New York metropolitan areas combined, approximately 84 percent of butter sold at retail is in stick form. An additional 14 percent is whipped and is typically sold in half-pound (eight-ounce) tubs.

The unique characteristics of butter differentiate if from potential substitutes such as margarine. While spreads such as margarine compete in a limited way with butter, because of butter's unique qualities and characteristics, if the price of butter were increased by a small but significant amount, a sufficient number of purchasers would not switch to other products to make such a price increase unprofitable.

Most butter is sold to consumers through retail outlets, such as grocery stores and mass merchandisers. Consumers purchase two distinct categories of butter—branded butter (such as Keller's, Hotel Bar, Breakstone's, and Land O' Lakes) and private label butter (*i.e.*, butter marketed under a label owned or controlled by the retailer)—and two distinct forms of butter—stick and whipped.[2]

The sale of branded whipped butter through retail outlets is a relevant product market for antitrust purposes. Retail consumers of branded whipped butter consider it to be a distinct product from private label whipped butter, stick butter, and other products. With respect to private label whipped butter, consumers perceive branded whipped butter to possess different quality characteristics. These perceptions have been reinforced by years of promotions and brand advertising. In addition, branded whipped butter has different principal users and is manufactured and packaged differently from stick butter (branded and private label) and other products. Accordingly, a small but significant increase in the price of branded whipped butter will not cause a sufficient number of consumers of branded whipped butter to substitute other products (including private label whipped butter and stick butter) to dissuade a hypothetical monopolist from such a price increase.

The sale of branded stick butter through retail outlets is also a relevant product market for antitrust purposes. Retail consumers of branded stick butter consider it to be a distinct product from private label stick butter, whipped butter, and other products. As with branded whipped butter, consumers perceive quality differences between branded stick butter and private label stick butter. In addition, branded stick butter has different principal users and is manufactured and packaged differently from whipped butter and other products. A small but significant increase in the price of branded stick butter will not cause a sufficient number of consumers of branded stick butter to substitute other products (including private label stick butter and whipped butter) to dissuade a hypothetical monopolist from such a price increase.

Although branded products do not always comprise relevant markets, there is no principle of law or economics that implies that relevant markets cannot be limited to such products. Whether the market is properly limited to branded products is determined by an application of the general market delineation principles articulated in the Horizontal Merger Guidelines. In Section 1.0, the Guidelines state:

> A market is defined as a product or group of products and a geographic area in which a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future producer or seller of those products in that area likely would impose at least a "small but significant and nontransitory" increase in price, assuming the terms of sale of all other products are held constant. A relevant market is a group of products and a geographic area that is no bigger than necessary to satisfy this test.

Stated differently, relevant product markets are delineated by determining the likely buyer response to a "small but significant and nontransitory" price increase (typically in the range of 5–10%) imposed by a hypothetical monopolist. If, in response to a price increase, buyers would switch to products outside the candidate market in sufficient numbers so that the hypothetical monopolist would not find it profit maximizing to increase price at least a "small but significant and nontransitory" amount, the candidate market is drawn too small.

A critical factor in applying the Merger Guidelines' market definition principles is "elasticity of demand," which measures the responsiveness of the quantity demanded for a product to changes in its price. Elasticity of demand is generally defined as the ratio of the percentage change in quantity demanded of a product to the percentage change in price that induced the quantity change. A high elasticity of demand for a product or group of products implies that good substitutes exist (and thus that the product or group of products is not likely to comprise a relevant market for antitrust purposes), while a low elasticity implies that substitutes are poor (and thus that the product or products may comprise a relevant market).

When the requisite data are available, the Merger Guidelines' market definition principles are applied empirically. Using data supplied by the parties to determine product margins, the United States can employ standard economic analysis to determine the "critical elasticity of demand" (*i.e.*, the demand elasticity value below which a hypothetical monopolist would impose at least the requisite "small but significant nontransitory price increase"), and compare it to the estimated elasticity of demand for candidate market.[3] An essentially equivalent approach identifies a critical sales loss corresponding to a designated threshold for a significant price increase. The latter approach has been used by several courts. *FTC v. Tenet Health Care Corp.*, 186 F.3d 1045, 1050–51, 1053–54 (8th Cir. 1999); *California v. Sutter Health System*, 84 F. Supp. 2d 1057, 1076–80 (N.D. Cal. 2000), *aff'd mem.* __F.3d__, 2000 WL531847 (9th Cir. 2000). The results of a critical elasticity analysis performed using data provided by the merging firms and Land O'Lakes during the course of the government's investigation of the proposed merger support the alleged relevant product markets for branded stick and branded whipped butter.

2. The Relevant Geographic Markets of Philadelphia and New York Metropolitan Areas.

Both DFA's and SODIAAL's brands of butter are sold and compete directly in the greater Philadelphia and New York metropolitan areas. DFA sells its Breakstone's brand in both the Philadelphia and New York metropolitan areas, while SODIAAL sells its Keller's brand primarily in the Philadelphia metropolitan area and its Hotel Bar brand primarily in the New

[2] A small percentage of butter sold at retail (approximately 2% in Philadelphia and New York) is purchased in "specialty" forms such as shaped holiday molds.

[3] For a more detailed discussion of the use of critical demand elasticities in delineating antitrust markets, see Gregory J. Werden, *Demand Elasticities in Antitrust Analysis*, 66 Antitrust L.J. 363, 384–86 (1998).

York metropolitan area. Due to local consumer preferences for specific brands, retailers and other consumers would not readily substitute brands of butter that had not been promoted and sold in the greater Philadelphia and New York metropolitan areas, and are likely to pay higher prices as a result of the proposed acquisition.

Differing consumer preferences in different geographic areas cause DFA and SODIAAL to charge different net prices for the same product sold in different geographic areas. The variations in price do not simply reflect differences in costs, but rather reflect local differences in brand strength, competition, and competitive strategy. Price variations often take the form of advertising allowances, local promotions, and couponing campaigns. DFA and SODIAAL develop distinct marketing plans for the Philadelphia metropolitan area and for the New York metropolitan area.

It would not be practical for retailers located in a higher-priced area to purchase branded stick or branded whipped butter from retailers in a lower-priced area. Such arbitrage, also known as "diversion," is not practical for retailers because of the control producers maintain over the distribution and sale of their products. Producers, like the defendants, structure locally targeted price concessions to prevent arbitrage and often require proof of local advertising, coupon limitations, and other promotional restrictions.

Accordingly, for the purposes of antitrust analysis, the greater Philadelphia and New York metropolitan areas each constitute a relevant geographic market.

3. The Effects of the Transaction on Competition in the Markets for Branded Stick and Branded Whipped Butter in Philadelphia and New York.

According to the Complaint, the proposed acquisition will reduce competition substantially for the sale of branded stick and branded whipped butter in the Philadelphia and New York metropolitan areas.

The Complaint alleges harm resulting from post-acquisition anticompetitive coordination between DFA and Land O' Lakes, Inc. DFA and SODIAAL are two of only three significant suppliers of branded butter in the greater Philadelphia and New York metropolitan areas. The third is Land O' Lakes, a cooperative with approximately $6 billion in annual sales, and the largest butter manufacturer in the United States. Post-transaction, more than 90 percent of the branded stick and branded whipped butter sold in the greater Philadelphia and New York metropolitan markets will be supplied by either DFA or Land O' Lakes. Economic analysis predicts that DFA and Land O' Lakes would find anticompetitive coordination to be profit-maximizing, particularly because both firms (unlike SODIAAL) are agricultural cooperatives between whom explicit collusion would be legal and could not be challenged under the antitrust laws. As a result, in the absence of relief, post-transaction prices would likely increase.

The Complaint also alleges that entry into the sale of branded stick and branded whipped butter in the greater Philadelphia and New York metropolitan areas is difficult. Such entry requires substantial, sunk promotional, and advertising expenditures. Establishing a branded butter product takes years of effort and would not be timely, likely, or sufficient to deter any exercise of market power by branded butter suppliers in the relevant markets following the acquisition by DFA of SODIAAL.

In order to prevent the consummation of the proposed acquisition, the Complaint had to be prepared on the basis of a preliminary analysis. That analysis suggested that the acquisition likely would also give rise to a unilateral anticompetitive effect resulting directly from the loss of competition between DFA and SODIAAL. Consequently, the Complaint also alleged this sort of anticompetitive effect. However, extensive post-Complaint analysis of the competitive interaction between DFA's Breakstone's brand and SODIAAL's Keller's and Hotel Bar brands has indicated that the proposed acquisition would not likely give rise to significant unilateral anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The relief described in the proposed Final Judgment is designed to eliminate the anticompetitive effects of the acquisition in the markets for the sale of branded butter in the Philadelphia and New York metropolitan areas.

A. The Formation of Butter LLC as a Non-Cooperative Entity

The proposed Final Judgment requires DFA to form Butter LLC and ensures the transfer to Butter LLC of all assets necessary to manufacture and market the Breakstone's, Keller's, and Hotel Bar brands. Butter LLC will be owned in part by persons other than DFA (*i.e.*, members of the premerger SODIAAL management team) and thus, unlike DFA, it will not qualify as an agricultural cooperative entitled to engage in collective marketing under the Capper-Volstead Act. In addition, both DFA and Butter LLC would be bound by the injunctive provisions of the Final Judgment described below.

Neither DFA nor Butter LLC may dispose of either the Keller's or Hotel Bar brands (or both) to an "Agricultural Cooperative" (as defined in the proposed Final Judgment) unless the transferee agrees to be bound by the provisions of the Final Judgment. Similarly, disposition of these brands to any entity in which DFA holds a minority ownership interest, but which is not included within the definition of DFA in the Final Judgment, requires that the transferee agree to be bound by the Final Judgment. Disposition of the brands to any other entity (except Land O' Lakes) cannot be made without 30 days prior notice to the Department of Justice. Such notice shall include the provision of all supply contracts then existing or contemplated between the transferor and transferee. Finally, any transfer of control over the brands to Land O' Lakes would require the Department's prior written approval, as would receipt by Butter LLC (or DFA) of control over any Land O' Lakes brand.

B. The Injunctive Provisions

The proposed Final Judgment also enjoins DFA and Butter LLC from entering into any Federation with Land O'Lakes with respect to branded butter. "Federation" is defined in the proposed Final Judgment as:

> (1) An agency in common, federation, pooling arrangement, merger or other combination or collaboration, including, but not limited to, any agreement on price or output, involving DFA's and/or Land O'Lakes' Branded Butter operations; or
>
> (2) An agreement, directly or indirectly, between DFA and Land O'Lakes with regard to the price, quantity, sale or supply of cream, milk, or butter to Butter LLC pursuant to which DFA, Land O'Lakes, or both would charge Butter LLC more for cream, milk or butter than either one or both charge other customers. However, nothing in this paragraph shall prohibit price differentials that are reasonably based on differences in purchase volume, freight or shipping costs, federal regulation or product quality.

For purposes of illustration, the defendants have acknowledged that a federation between DFA and Land O'Lakes "involving (their) Branded Butter operations," prohibited by paragraph (1) above, would include an agreement on non-Branded Butter that has the purpose and effect of tying up substantial capacity otherwise available (and used) to produce Branded Butter. Similarly, an "indirect" agreement between DFA and Land O'Lakes of the

type prohibited by paragraph (2) above would exist if a non-majority-owned affiliate of DFA forms an agreement with Land O'Lakes with regard to the price, quantity, sale, or supply of cream, milk, or butter to Butter LLC and the non-majority-owned affiliate forms a related agreement with DFA with regard to the price, quantity, sale or supply of cream, milk, or butter to Butter LLC.

DFA and Butter LLC are also enjoined from disclosing to Land O'Lakes, directly or indirectly, competitively sensitive information regarding branded butter. "Competitively Sensitive Information" is defined as:

information that is not public and could be used by a competitor or supplier to make production, pricing, or marketing decisions including, but not limited to, information relating to costs, capacity, distribution, marketing, supply, market territories, customer relationships, the terms of dealing with any particular customer (including the identity of individual customers and the quantity sold to any particular customer), and current and future prices, including discounts, slotting allowances, bids, or price lists. "Competitively Sensitive Information" does not include information that must be disclosed to implement a supply arrangement in the ordinary course of business.

C. Compliance Provisions

DFA and Butter LLC are required under the proposed Final Judgment to distribute copies of the proposed Final Judgment and this Competitive Impact Statement to: (1) All current and future directors, officers and Branded Butter sales and marketing personnel; and (2) Land O'Lakes, Inc. In addition, DFA and Butter LLC must brief, annually, those directors, officers, and employees receiving copies of the Final Judgment and Competitive Impact Statement, on the meaning and requirements of the Final Judgment and the antitrust laws, including penalties for violation thereof. DFA and Butter LLC must also obtain written certifications from these individuals that they: (1) Have read, understand, and agree to abide by the Final Judgment; (2) understand that noncompliance with the Final Judgment may result in a conviction for criminal contempt of court; and (3) have reported violations, if any, of the Final Judgment of which they are aware to counsel for the respective company. Finally, both DFA and Butter LLC must designate a specific individual for each company to be responsible for ensuring that the compliance provisions are satisfied.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suited 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants DFA, SODIAAL and Societe de Diffusion International Agro-Alimentaire. The Untied States could have continued the litigation to seek preliminary and permanent injunctions against DFA's acquisition of SODIAAL. The United States is satisfied, however, that the requirements and prohibitions contained in the proposed Final Judgment will establish, preserved and ensure viable competitors in each of the relevant markets identified by the government. To this end, the United States expects that the proposed relief, once implemented by the Court, will likely prevent DFA's acquisition of SODIAAL from having significant adverse competitive effects.

VII. Standard or Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to sixty (60 days comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56, F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process"[4] Rather,

[4] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D.C. Mass. 1975). A "public interest" determined can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures. 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 CCH Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bethtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981)); *see also Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest."[6]

[5] *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States v. BNS, Inc.* 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. *See also United v. American Cyanamid Co.*, 719 F.2d at 565.

[6] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting *United States* v. *Gillette Co., supra*, 406 F. Supp. at 716) (citations omitted), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 29, 2000.

Respectfully submitted,

Mark J. Botti

Michael H. Knight

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0827.

Certificate of Service

I hereby certify under penalty of perjury that on this 29th day of June, 2000, I caused a true and correct copy of the foregoing Competitive Impact Statement to be served by telecopier and by mail to:

W. Todd Miller, Esq.

Baker & Miller, PLLC, Suite 1000, 915 15th Street, N.W., Washington, D.C. 20005–2302, Counsel for Dairy Farmers of America, Inc.

Burton Z. Alter, Esq.

Christopher Rooney, Esq.

Carmody & Torrance LLP, 18th Floor, 195 Church Street, New Haven, CT 06509–1950, Counsel for Societe De Diffusion Internationale Agro-Alimentaire and SODIAAL North America Corporation.

Michael H. Knight

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 4000, Washington, D.C. 20530, Telephone: 202–514–0109, Facsimile: 202–514–9033.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. JDS Uniphase Corporation and E–TEK Dynamics, Inc. Civil Action No. C 00–2227 TEH (N.D. Cal); Proposal Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a Proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Northern District of California in *United States* v. *JDS Uniphase Corp. and E-TEK Dynamics, Inc.*, Civil Action No. C00–2227 TEH. On June 22, 2000, the United States filed a Complaint which alleged that JDS Uniphase Corp.'s proposed merger with E-TEK Dynamics, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the production and sale of dense wavelength division multiplexer and demultiplexer modules of 16 or fewer channels ("DWDMs"). The proposed Final Judgment, filed the same time as the Complaint, requires the newly merged firm to divest certain contractual rights in supply agreements the merged entity holds with several thin film filter suppliers. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the Office of the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Christopher S. Crook, Chief, San Francisco Field Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Ave., Box 36046, Room 10–0101, San Francisco, California 94102 (telephone: (415) 436–6660).

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

Stipulation and Order

It is hereby STIPULATED by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of California.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the entry of this Stipulation and Order, comply with all the terms and provisions of the

proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that the plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, this Stipluation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any part in this or any other proceeding.

6. Defendants agree not to consummate their transaction before the Court has signed this Stipulation and Order.

Respectfully submitted,

Howard J. Parker, Esq.,
U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Room 10–0101, Box 36046, San Francisco, CA 94102, Telephone (415) 436–6660, Facsimile (415) 436–6687, Attorney for Untied States of America.

W. Stephen Smith, Esq.
Morrison & Foerster LLP, 2000 Pennsylvania AVenue, N.W., Washington, D.C. 20006–1888, Telephone (202) 887–1514, Facsimile (202) 887–0763, Attorney for JDS Uniphase Corporation.

Charles T.C. Compton, Esq.,
Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304–1050, Telephone (650) 493–9300, Facsimile (650) 565–5100, Attorney for E–TEK Dynamics, Inc.

Dated: June 22, 2000.

So Ordered:

This __ day of June, 2000.

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America ("United States"), filed its Complaint on June 22, 2000, plaintiff and defendants, defendant JDS Uniphase Corporation ("JDS") and defendant E–TEK Dynamics, Inc. ("E–TEK"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, plaintiff requires defendants to refrain from enforcing or reacquiring contractual rights effecting control over the output of any coating chambers owned by or on the premises of certain merchant suppliers, for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the plaintiff that the defendants can and will refrain from effecting such control, as ordered herein, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the prohibitions contained below;

Now Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact, or law, and upon consent of the parties, it is Ordered, Adjudged and Decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of he parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "E–TEK" means defendant E–TEK Dynamics, Inc., a Delaware corporation with its headquarters in San Jose, California, its successors and assigns, and it subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Filter Vendor(s)" means Barr Associates, Inc., Herrmann Technology, Inc., Hoya Corporation USA, Optical Coating Japan Corporation, and their successors and assigns.

C. "JDS" means defendant JDS Uniphase Corporation, a Delaware corporation with its headquarters in San Jose, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Optical Filter(s)" means dielectric thin film filters used in optical networks for the telecommunications industry, such as, but not limited to, wideband, narrowband and gain flattening filters.

E. "Rights of First Refusal" means: (1) The contractual rights held by defendants of first refusal over all other persons with respect to the output of coating chambers for the manufacture of Optical Filters by the Filter Vendors, such as set forth in the Supply Agreements; (2) any right obligating a Filter Vendor to accept a defendant's purchase order for Optical Filters; and (3) any right that effect of which would be to enable a defendant, through unilateral action, to prevent a Filter Vendor from selling Optical Filters to persons other than a defendant.

F. "Security Interest and Rights of Repayment" means E–TEK's contractual rights under the Supply Agreements: (1) a priority security interest in the chambers that are subjects of the Supply Agreements; and (2) repayment, through discounts on Optical Filter purchases or otherwise, of funds advanced to the Filter Vendors in connection with the purchase or upgrade of the chambers that are subjects of the Supply Agreements.

G. "Supply Agreements" means the following contracts, including all amendments to these contracts: (1) Supply Agreement between E–TEK and Barr Associates, Inc. dated October 8, 1996; (2) Supply Agreements between E–TEK and Herrmann Technology, Inc. dated December 14, 1998, February 11, 1999 (both "First * * * Agreement" and "Second * * * Agreement"), and May 5, 1999; (3) Supply Agreement between E–TEK and Hoya Corporation USA dated July 20, 1999; and (4) Supply Agreement between E–TEK and Optical Coating Japan Corporation dated February 25, 1999.

H. "Transition Period" means the ninety (90) days following the filing of the Complaint in this matter.

III. Applicability

This Final Judgment applies to JDS and E–TEK, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibition on Enforcement of Rights

A. After the expiration of the Transition Period, defendants shall not enforce the Rights of First Refusal in the Supply Agreements.

B. After the first thirty (30) days of the Transition Period, defendants shall not enforce the Rights of First Refusal in the Supply Agreements with respect to thirty (30) percent of each Filter Vendor's Optical Filter manufacturing capacity subject to those Rights. After the second thirty (30) days of the Transition Period, defendants shall not enforce the Rights of First Refusal in the Supply Agreements with respect to sixty (60) percent of each Filter Vendor's Optical Filter manufacturing capacity subject to those Rights. During the Transition Period, and unless the

plaintiff otherwise consents in writing, defendants shall refrain from making or enforcing any purchase orders to the Filter Vendors unless the period for deliveries of Optical Filters under the purchase orders is not longer than thirty (30) days in duration.

C. After the filing of the Complaint in this matter, defendants shall not enforce the Security Interest and Rights of Repayment in the Supply Agreements.

D. Defendants promptly shall notify, by usual and customary means, the firms that defendants have identified to the plaintiff, in response to Second Request Specifications 3(h) and 9, of the prohibitions under the terms of this Final Judgment on the Defendants' enforcement of the Rights of First Refusal and Security Interest and Rights of Repayment.

V. Affidavits

Within forty (40) calendar days of the filing of the Complaint in this matter, and every forty (40) calendar days thereafter, through and including one hundred twenty (120) calendar days thereafter, defendants shall deliver to plaintiff an affidavit as to the fact and manner of their compliance with Section IV of this Final Judgment.

VI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option demand defendants provide copies of, all books, ledgers, accounts, records, correspondence, memoranda, and documents in the possession or control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the interviewee's reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. No Reacquisition

Defendants shall not reacquire, directly or indirectly, any Right of First Refusal over any coating chambers owned by or located on the premises of the Filter Vendors as of the filing of the Complaint in this matter. After the expiration of the Transition Period, nothing in this Final Judgment shall preclude defendants from purchasing Optical Filters from the Filter Vendors pursuant to purchase orders so long as the period for deliveries of Optical Filters under the purchase orders is no longer than sixty (60) days in duration, unless the plaintiff otherwise consents in writing. The provisions of this paragraph shall remain in effect for three years from expiration of the Transition Period.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

X. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this Civil Antitrust proceeding.

Nature and Purpose of the Proceeding

On June 22, 2000, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of E–TEK Dynamics, Inc. ("E–TEK") by JDS Uniphase Corporation ("JDS") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that JDS and E–TEK are two of the leading manufacturers of components for fiber optic communication systems. JDS competes against E–TEK in the production and sale of dense wavelength division multiplexer and demultiplexer modules of 16 or fewer channels ("DWDMs"). DWDMs are important components that increase the transmission capacity of fiber optic networks. These two manufacturers are each other's primary competitor in the production and sale of DWDMs.

Competition between JDS and E–TEK has benefited customers through higher output, lower prices, increased quality, and faster delivery time. The acquisition of E–TEK by JDS will substantially lessen competition in the production and sale of DWDMs in violation of Section 7 of the Clayton Act. The proposed acquisition will substantially increase the incentive and likelihood for the combined company to engage unilaterally in anticompetitive behavior, such as suppressing output and increasing prices of DWDMs.

The request for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing JDS and E–TEK from merging; (3) an award to the United States of its costs in bringing the lawsuit; and (4) such other relief that the Court deems proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment that would permit JDS and E–

TEK to merge, but would require the modification of certain supply agreements the merged entity will hold with several thin film filter suppliers.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish Violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Defendants and Proposed Transaction

JDS is a Delaware corporation, with its principal offices in San Jose, California. It designs, manufactures and distributes fiber optic products for communications applications. It is one of the world's largest independent suppliers of passive and active components for fiber optic communications networks. Passive components are composed of optical parts, while active components contain both optical and electronic parts. In 1999, JDS reported net sales of $282.8 million.

E–TEK is a Delaware corporation, with its principal offices in San Jose, California. It designs, manufactures and distributes passive components for fiber optic communications networks. In 1999, E–TEK reported net sales of $172.7 million.

On January 17, 2000, JDS and E–TEK entered into an agreement whereby JDS will acquire E–TEK by exchanging the outstanding shares of E–TEK common stock for shares of JDS common stock. The transactions is valued at approximately $15–18 billion.

B. Revelant Market

The volume of traffic carried by communications networks has increased rapidly over the last several years as a result of the explosion of bandwidth intensive applications such as Internet access, e-mail, remote access for computing, and electronic commerce. In the past, one fiber strand in a fiber optic communications network could carry only a single channel of voice or data traffic. Using a variety of different technologies, dense wavelength division multiplexers and demultiplexers separate the light signal in a fiber optic strand into multiple wavelengths, or colors, with each wavelength capable of carrying a separate communications channel. These multiplexers and demultiplexers enable the simultaneous transmission of multiple channels on a single strand fiber, and thereby increase the total transmission capacity of the fiber optic network.

Thin film filters are a critical component part at the core of the DWDMs that are designed, manufactured and sold by JDS and E–TEK. Thin film filters are made in a vacuum coating chamber by depositing thin alternating layers of two dielectric materials on a polished glass substrate. When packaged with other parts into a DWDM, each thin film filter will transmit a certain wavelength of light and reflect or absorb other wavelengths. The packaged filters are then assembled into modules of up to 16 channels, depending on a customer's desired channel count.

Because dense wavelength division multiplexers and demultiplexers are typically priced on a per channel basis—The higher the channel count, the greater the price of the module—a customer will only purchase the number of channels needed for its network design. A customer desiring a 16 channel multiplexer, for example, would not find it cost effective to substitute a 40 channel multiplexer. A small but significant increase in the price of DWDMS would not cause a significant number of customers to substitute multiplexers and demultiplexers which can achieve channal counts higher than 16 channels. Because there are no good substitutes for DWDMs, the production and sale of DWDMs, whether based on thin filter or some other technology, is a relevant product market, or "line of commerce," within the meaning of Section 7 of the Clayton Act.

JDS and E–TEK produce and ship DWDMs to customers throughout the United States and the world. The world constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Harm to Competition as a Result of the Proposed Transaction

Upon consummation, the proposed acquisition will substantially lessen competition in the manufacturing and sale of DWDMs in the world market. JDS and E–TEK are the two most significant manufacturers and sellers of DWDMs, with market shares of 41% and 27% respectively. Their combined market share of 68% represents a substantial increase in concentration in the market. As measured by the commonly used Herfindahl-Hirschman Index (HHI), concentration in DWDMs will rise by about 2100 points to an HHI of about 4700 after the acquisition.

Customers view JDS and E–TEK as next best alternatives for DWDMs. During individuals purchase negotiations, customers compare product offerings from one company with offerings from the other to ensure that they are obtaining competitive prices, product specifications, and timely delivery. After the acquisition, customers will be left with inferior alternatives to the merged entity, with the result that JDS will have greater incentive and ability to reduce output below and raise prices above the levels they would have been had JDS been competing against E–TEK. JDS will also have reduced incentives to meet customer product specifications and delivery requirements without the competitive presence of E–TEK.

Competing firms are unlikely to constrain anticompetive behavior—a price increase, for example—by the merged firm in a timely manner. The DWDM market is characterized by increasing demand and supply shortages. Competing firms are currently operating at or near capacity. To expand output quickly enough to discipline a price increase by JDS would require overcoming time-consuming obstacles. One major obstacle faced by an existing firm or a new entrant is the availability of a sufficient supply of thin film filters. JDS has obtained virtually all of its supply of thin film filters from Optical Coating Laboratories, Inc. ("OCLI"), with which JDS established a strategic alliance in 1997 and which it acquired in February of 2000. E–TEK has obtained its supply of thin filters primarily through supply agreements that have included the acquisition of rights of first refusal over thin filter coating chambers located on the premises of merchant suppliers. E–TEK has also supplied itself with thin film filters produced at coating chambers located on company premises. Together, JDS and E–TEK in 1999 controlled approximately 80% of the world's thin film filter output.

It is a difficult and time consuming process to develop the capability of producing thin film filters cost effectively. Vacuum coating chambers and sophisticated optical monitoring systems to control the thin film deposition process must either be designed and constructed internally or be acquired from commercial venders of such equipment. Once coating chambers are installed, a potentially lengthy trial and error development process is needed to approach the manufacturing yields of the leading incumbents.

In addition to these limitations on the supply of thin film filters, there are further obstacles to timely and sufficient

new entry as a supplier of DWDMs. These obstacles include the need to design a DWDM that can be produced cost effectively in commercial volume and that meets specifications and is acceptable to customers for use in fiber optic communications networks. Customers commonly require rigorous and extensive testing over a substantial period of time before previously untested DWDMs are qualified and accepted for use in such networks. These obstacles are less significant for fringe firms already producing DWDMs.

In the world market for DWDMs, the proposed acquisition threatens substantial and serious harm to purchases of DWDMs. By significantly increasing the market share of JDS in DWDMs, the proposed acquisition will provide the combined company with substantially enhanced control over the output and price of DWDMs. Furthermore, customers of DWDMs will lose the competition between JDS and E–TEK which has resulted in faster product delivery times and improvement in product specifications.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the market for DWDMs by requiring defendants to eliminate control over the supply of thin film filters by four merchant filter vendors. The proposed Final Judgment effectively eliminates such control by prohibiting the merged firm from enforcing E–TEK's rights of first refusal over coating chambers used by four merchant vendors to produce thin film filters. The elimination of control is intended to ensure that firms other than the merged firm have access to a supply of thin film filters and thereby are able to serve as competitive alternatives to the merged firm in the supply of DWDMs.

A. Modification of Thin Film Filter Supply Agreements

E–TEK currently holds contractual rights of first refusal over a significant portion of the output of the four major merchant vendors of thin film filters. After a 90-day transition period that starts with the filing of the Complaint in this matter, Section IV.A. of the proposed Final Judgment directly requires the merged firm to cease enforcing these contractual rights. The 90-day transition is necessary for the merged firm to readjust settled commercial relationships. The effect of the cancellation of the rights of first refusal is an elimination of E–TEK's control over the supply of filters from the merchant vendors.

JDS, and its current subsidiary OCLI, in 1999 produced over 50% of the 100 GHz and 200 GHz world output of thin film filters. E–TEK produced about 5% of the world output in coating chambers located on company premises. E–TEK controlled an additional estimated 23% of the 1999 world output through rights of first refusal over chambers located on the premises of the four merchant vendors. Under the relief provisions of the proposed Final Judgment, this 23% of the 1999 world output of thin film filters will be released from control by the merged entity and available to other firms and new entrants. Control over this production will transfer to the established merchant vendors, who will be free to use the filters internally or to sell them to new entrants or established producers of DWDMs.

B. Transition Period

During the 90-day transition period specified in Section IV.B. of the proposed Final Judgment, the merged firm's reliance on its contractual control of coating machines at the four filter vendors is gradually phased out. After 30 days, 30% of the rights of first refusal at each filter vendor become unenforceable. After 60 days, 60% of the rights of first refusal become unenforceable. After 90 days, the transition period expires and all of the rights of first refusal are unenforceable.

The transition period will provide an opportunity for the merged firm to being expansion of its internal supply of thin film filters, thus facilitating an uninterrupted flow of thin film filters to the merged firm for production of DWDMs. OCLI is a long established supplier of optical coatings that the merging parties believe has significantly superior technology and significantly superior manufacturing yields in the production of thin film filters for use in DWDMs. Upon consummation of their merger, JDS and E–TEK expect they will be able to expand internal thin film filter capacity at the merged firm by transferring OCLI technology to E–TEK.

The 90-day transition period also provides an opportunity for the merged firm to compete with other potential purchasers for short term purchases of thin film filters from the merchant vendors. Thus, although the merged firms' rights of first refusal are gradually phased out during the transition period, its right to purchase in competition with others for short term purchase orders is not eliminated. Market forces, including competition from the merged firm, will determine the price of, and the customer receiving delivery of, each merchant vendor's thin film filters that are no longer controlled by rights of first refusal.

During the transition period, and under the terms of the proposed Final Judgment, defendants do not have unlimited rights to substitute long term purchase arrangements with the merchant filter vendors in replacement of their abrogated rights of first refusal. There is a 30-day limitation on the length of the period during which the merged firm can receive thin film filter deliveries under a purchase order. Thirty days is a commercially common length of time for thin film filter purchase orders and is the period expressly contemplated for the length of purchase orders under certain of E–TEK's existing supply agreements for thin film filters. The 30-day limitation on purchase orders during the transition period is intended to facilitate implementation of the relief by providing competitors and potential competitors of the merged firm with improved and unrestricted access to thin film filters.

C. Rights of Repayment

To reduce the incentive for the merged firm to purchase from these merchant filter vendors, rather than expand internal capacity, Section IV.C. of the proposed Final Judgment prohibits the merged firm from enforcing its contractual rights of repayment for money E–TEK advanced to the merchant filter vendors and prohibits the merged firm from enforcing its security interests in the coating chambers. The prohibition is effective immediately upon filing of the Complaint.

The rights of first refusal over coating chambers on the premises of the four merchant filter vendors commonly arose in connection with advance payments by E–TEK to a filter vendor that were to be repaid over a period of time by means of discounts of up to 20% off the market price the filter vendor otherwise would charge for the filters. The security interests were to secure the repayment of the advances. As of the date of the filing of the Complaint in this matter, the aggregate balance of the amounts advanced or currently due to be advanced to the four filter vendors was under $4 million. The effect of the merged firm having the right to obtain thin film filters from the merchant suppliers at this discounted price would be an incentive to continue to purchase from the merchant suppliers.

The provision of the proposed Final Judgment eliminating the merged firm's right to obtain filters at the discounted price will increase the incentive for the merged firm to expand its own

production capacity, rather than rely on purchase from the merchant filter vendors. Increased production capacity for thin film filters at the merged firm will increase total industry thin film filter capacity and will lower prices for DWDMs. The increased thin film filter capacity will have this effect because the supply of DWDMs is currently limited by capacity constraints in the total industry supply of thin film filters.

D. Notification to Competitors and Potential Competitors

Section IV.D. of the proposed Final Judgment requires the merged firm to notify a set of firms of the opportunity the Final Judgment will provide for improved and unrestricted access to the supply of thin film filters to be available from the merchant filter vendors. The firms to be notified are competitors and potential competitors of JDS and E–TEK who the merging parties have identified to the Antitrust Division.

E. No Reacquisition

For a period of three years from the date the defendants relinquish all rights of first refusal, the merged firm, in accordance with Section VII. of the proposed Final Judgment, cannot reacquire any right of first refusal over any coating chamber located on the premises or owned by the merchant filter vendors as of the date the Complaint was filed. The purpose of the bar on reacquisition is to protect the integrity of the intended elimination of control by preventing evasion of the required relief. This proposed Final Judgment seeks to prevent possible evasion by broadly defining rights of first refusal in Section II, and by specifying in Section VII. that the bar extends to acquisition of rights of first refusal over any coating chambers on the premises or owned by any of the four merchant filter vendors. Such acquisition would be a prohibited reacquisition under the terms of the proposed Final Judgment.

The bar on reacquisition by the merged firm of long term control over the four filter vendors' coating machines is not intended to foreclose the commercial opportunity for the merged firm to compete with other DWDM producers to purchase thin film filters from these four filter vendors on a spot market basis, with purchase orders of a duration for delivery of 60 or fewer days. A safe harbor provision in Section VII. of the proposed Final Judgment makes clear that nothing in the decree is intended to preclude such purchases.

The bar on reacquisition extends for three years. In this case, the evidence indicated that this time period would be sufficient to protect competition.

F. Other Provisions

In order to monitor and ensure compliance with the Final Judgment, Section V. requires periodic affidavits on the fact and manner of defendants' compliance with the Final Judgment. Section VI. gives the United States various rights, including the ability to inspect defendants' records, to conduct interviews and to take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and any information the United States obtains using these powers is protected by specified confidentiality obligations.

The Court retains jurisdiction under Section VIII., and Section IX. provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court.

Through the modification of the supply agreements with merchant vendors of thin film filters, the proposed Final Judgment's prohibitions will lower obstacles to entry and expansion by new and fringe DWDM suppliers and thereby improve, enhance and preserve competitive alternatives to the merged firm in the world DWDM market. Absent these prohibitions, the likely result of a combined JDS and E–TEK would be higher prices and lower output than there otherwise would be for DWDMs.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal courts to recover three times the damages a person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available For Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Christopher S. Crook, Chief, San Francisco Field Office, United States Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, Room 10–0101, San Francisco, CA 94102.

The proposed Final Judgment provides, in Section VIII., that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the JDS/E–TEK merger and a full trial on the merits. The United States is satisfied, however, that the modification of supply agreements and other relief contained in the proposed Final Judgment will preserve competition in the market for DWDMs. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits on the violations alleged in the complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if the supply agreements are modified in the manner required by the proposed Final Judgment.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the United States Court of Appleas for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties See *United States* v. *Microsoft*, 56 F.3d 1448; 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather.

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

[1] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F .2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981), see also Microsoft, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decrees.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *American Tel. & Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983) (quoting Gillette Co., 406 F. Supp. at 716); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." Microsoft, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. Id.

[2] Bechel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also Microsoft, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

VIII. Determinative Documents

There are no determinative materials within the meaning of the APPA that were considered by the Untied States in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

Dated this 30th day of June 2000.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES

Joel I. Klein,
Assistant Attorney General.
Donna E. Patterson,
Deputy Assistant Attorney General.
Constance K. Robinson,
Director of Operations and Merger Enforcement.
Christopher S. Crook,
Chief, San Francisco Field Office.
Howard J. Parker
Pauline T. Wan
Jeane Hamilton
Niall E. Lynch
Lisa V. Tenorio
Trial Attorneys, U.S. Department of Justice, Antitrust Division, San Francisco Field Office.

Certificate of Service

United States v. Uniphase Corporation and E–TEK Dynamics Inc.

I, Brenda J. Fautt, declare that I am a citizen of the United States, over the age of 18 years and not a party to the within action.

I hereby certify that a copy of the foregoing:

Competitive Impact Statement

was served today by placing it in Federal Express at San Francisco, California in a postage-paid envelope, sealed and addressed to the attorneys for the parties listed below:

W. Stephen Smith, Esq.
Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW., Washington, DC 20006–1888.

Charles T. C. Compton, Esq.
Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304–1050.

I declare under penalty of perjury that the foregoing is true and correct, and that this certificate was executed at San Francisco, California.

Dated: June 30, 2000

Brenda J. Fautt.

Secretary, Antitrust Division, U.S. Department of Justice, San Francisco, California.

[FR Doc. 00–18158 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #186R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2000

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2000 aggregate production quotas.

SUMMARY: This notice proposes revised 2000 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before August 18, 2000.

ADDRESSES: Send comments or objectives to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On February 10, 2000, DEA published a notice of established initial 2000 aggregate production quotas for certain controlled substances in Schedules I and II (65 FR 6635). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 2000 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2000 aggregate production quotes represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2000 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 1999 year-end inventories, 1999 disposition data submitted by quota applicants, estimates of the medical needs of the United States, and other information available to the DEA.

In addition, in a final rule published in the **Federal Register** on March 13, 2000 (65 FR 13235) gamma-hydroxybutyric acid (GHB) and its salts, isomers, and salts of isomers was placed into Schedule I of the CSA. Applications for quota for this substance were submitted and the aggregate production quota for gamma-hydroxybutyric acid is proposed as listed below.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Administrator hereby proposes the following revised 2000 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Previously established initial 2000 quotas	Proposed revised 2000 quotas
SCHEDULE I		
2,5-Dimethoxyamphetamine	10,001,000	10,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	14	14
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	20	20
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30	30
3,4-Methylenedioxymethamphetamine (MDMA)	20	20
3,4, 5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2–CB)	2	2
4-Methoxyamphetamine	201,000	201,000
4-Methylaminorex	3	3
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	7	7
Allylprodine	2	2
Alphacetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	2	2
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	7	7
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2

Basic class	Previously established initial 2000 quotas	Proposed revised 2000 quotas
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	9	9
Codeine-N-oxide	2	2
Diethyltryptamine	2	2
Difenoxin	10,000	10,000
Dihydromorphine	508,000	508,000
Dimethyltryptamine	3	3
Gamma-hydroxybutyric acid	.....	15,000,000
Heroin	2	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	38	63
Mescaline	7	7
Methaqualone	17	17
Methcathinone	9	9
Morphine-N-oxide	2	2
N,N-Dimethylamphetamine	7	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphenol	2	2
Normethadone	7	7
Normorphine	7	7
Para-fluorofentanyl	2	2
Pholcodine	2	2
Propiram	415,000	415,000
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	101,000	115,000
Thiofentanyl	2	2
Trimeperidine	2	2
SCHEDULE II		
1-Phenylcyclohexylamine	12	12
1-Piperidiocyclohexanecarbonitrile (PCC)	10	10
Alfentanil	8,000	8,000
Alphaprodine	2	2
Amobarbital	12	12
Amphetamine	9,007,000	6,491,000
Cocaine	251,000	251,000
Codeine (for sale)	54,504,000	43,248,000
Codeine (for conversion)	52,384,000	52,384,000
Dextropropoxyphene	114,078,000	121,017,000
Dihydrocodeine	268,000	133,000
Diphenoxylate	931,000	931,000
Ecgonine	36,000	36,000
Ethylmorphine	12	12
Fentanyl	300,000	300,000
Glutethimide	2	2
Hydrocodone (for sale)	20,208,000	21,417,000
Hydrocodone (for conversion)	20,700,000	20,700,000
Hydromorphone	1,239,000	1,239,000
Isomethadone	12	12
Levo-alphacetylmethadol (LAAM)	201,000	12
Levomethorphan	2	2
Levorphanol	27,000	27,000
Meperidine	11,335,000	9,870,000
Metazocine	1	1
Methadone (for sale)	8,347,000	8,347,000
Methadone (for conversion)	600,000	0
Methadone Intermediate	9,503,000	9,503,000
Methamphetamine	2,049,000	1,984,000
[750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,225,000 grams for methamphetamine for conversion to a Schedule III product; and 9,000 grams for methamphetamine (for sale)]		
Methylphenidate	14,957,000	14,957,000
Morphine (for sale)	14,706,000	14,706,000

Basic class	Previously established initial 2000 quotas	Proposed revised 2000 quotas
Morphine (for conversion)	97,160,000	97,410,000
Nabilone	2	2
Noroxymorphone (for sale)	25,000	25,000
Noroxymorphone (for conversion)	3,813,000	3,813,000
Opium	720,000	720,000
Oxycodone (for sale)	29,826,000	32,575,000
Oxycodone (for conversion)	271,000	1,389,000
Oxymorphone	166,000	477,000
Pentobarbital	22,037,000	22,037,000
Phencyclidine	41	41
Phenmetrazine	2	2
Phenylacetone	10	10
Secobarbital	22	22
Sufentanil	1,700	1,700
Thebaine	41,300,000	45,444,000

The Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c) and 1303.32.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 12, 2000.

Donnie R. Marshall,

Administrator.

[FR Doc. 00–18148 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following information collections: (1) Office of Federal Contract Compliance Programs (OFCCP), RECORDKEEPING AND REPORTING REQUIREMENTS-CONSTRUCTION; (2) Office of Workers' Compensation (OWCP), Division of Coal Mine Workers' Compensation (DCMWC), RESUBMISSION TURNAROUND DOCUMENT; (3) OWCP, DCMWC, RELEASE OF MEDICAL INFORMATION; and (4) REGULATIONS GOVERNING THE ADMINISTRATION OF THE LONGSHORE AND HARBOR WORKERS' ACT. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below within 60 days of the date of this Notice.

ADDRESSEE: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

OFCCP Recordkeeping and Reporting Requirements: Construction

I. Background

The OFCCP is responsible for the administration of three equal opportunity programs which prohibit employment discrimination and require affirmative action by government contractors and subcontractors. The Acts administered by the OFCCP are Executive Order 11246, as amended;

Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), 38 U.S.C. 4212. The OFCCP has promulgated regulations implementing these programs, which are found at Title 41 of the Code of Federal Regulations, Chapter 60. For purposes of this clearance request, the programs have been divided functionally into two categories, construction and supply and service. This information collection request covers the recordkeeping and reporting requirements for the construction industry. A separate information collection request covers the recordkeeping and reporting requirements for supply and service industries, and is approved under OMB number 1215–0072.

II. Review Focus

The Department of Labor (DOL) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to enforce the affirmative action and anti-discrimination provisions of the three Acts which it administers.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements, Construction.

OMB Number: 1215–0163.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 100,000.

Total Annual Responses: 103,711.

Average Time per Response, Recordkeeping:

Records Maintenance: 8 to 24 hours.

Affirmative Action Plan, Initial Development: 18 hours.

Affirmative Action Plan, Annual Update: 7.5 hours.

Affirmative Action Plan, Maintenance: 7.5 hours.

Average Time per Response, Reporting:

CC–41 Quarterly Administrative Committee Report: 25 minutes.

Compliance Reviews: 1–2 hours.

Total Burden Hours, Recordkeeping and Reporting: 4,841,475.

Frequency (Reporting): Quarterly.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $5.76.

Resubmission Turnaround Document (CM–1173)

I. Background

The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901) and 20 CFR 725.701 provides DCMWC with responsibility for payment of covered black lung related medical treatment rendered to miners who are awarded black lung benefits. The Resubmission Turnaround Document (CM–1173) is used to request specific medical data to ensure the processing of Form OWCP–1500 (for payment of out-patient bills and for services and supplies provided to beneficiaries) and Form UB–92 (for payment of hospital bills).

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The DOL seeks extension of approval to collect this information on order to carry out its responsibility to ensure that black lung beneficiaries receive benefits as mandated in the legislation. The Resubmission Turnaround Document is sent to medical providers when information critical to bill payment is missing from a provider submitted medical bill (OWCP–1500 or UB–92). With use of the Resubmission Turnaround Document, a provider receives a document identifying all billing deficiencies based on a computer review of the bill. The bill remains in the system and processing continues once the necessary information is received. This in turn expedites payment to the provider, reduces processing time, maintains an audit trail, and is administratively cost effective.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Resubmission Turnaround Document.

OMB Number: 1215–0177.

Agency Number: CM–1173.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 89,000.

Frequency: On occasion.

Total Responses: 89,000.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 7,417.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $32,040.

Release of Medical Information (CM–936)

I. Background

The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 923), and 20 CFR 725.405 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is a form that gives the claimant's consent for release of information covered by the Privacy Act of 1974, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to obtain the claimant's consent for medical institutions and private physicians to release medical information to the Division of Coal Mine Workers' Compensation as evidence to support their claim for benefits. Failure to gather this information would inhibit the adjudication of black lung claims because pertinent medical data would not be considered during claims processing.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Authorization for Release of Medical Information.

OMB Number: 1215–0057.

Agency Number: CM–936.

Affected Public: Individuals or households.

Total Respondents: 2,700.

Frequency: Once.

Total Responses: 2,700.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 225.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act

I. Background

The Longshore and Harbor Workers' Compensation Act, as amended (20 CFR 702.162, 702.174, 702.175, 20 CFR 702.242, 20 CFR 702.285, 702.321, 702.201, and 702.111) pertains to the provision of benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel, as well as coverage extended to certain other employees. The Longshore Act administration requirements include: payment of compensation liens incurred by Trust Funds; certification of exemption and reinstatement of employers who are engaged in the building, repairing, or dismantling of exclusively small vessels; settlement of cases under the Act; reporting of earnings by injured claimants receiving benefits under the Act; filing applications for relief under second injury provisions; and, maintenance of injury reports under the Act. The forms contained in this information collection request have been developed to capture the information required by various sections of the regulations.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to insure that Longshore beneficiaries are receiving appropriate benefits. Failure to request this information would result in no way to insure beneficiaries are receiving the correct amount of benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

OMB Number: 1215–0160.

Agency Numbers: LS–200, 201, 203, 204, 262, 267, 271, 274, 513, ESA–100.

Affected Public: Individuals or households, Businesses or other for profit, Small businesses or organizations.

Total Respondents: 189,144.

Frequency: On occasion.

Total Responses: 189,144.

Average Time Per Response for Reporting:

LS–200—10 minutes
LS–201, 203, 204, 262—15 minutes
LS–267—2 minutes
LS–271—2 hours
LS–274—1 hour
LS–513—30 minutes

Estimated Total Burden Hours: 84,576.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $60.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 13, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–18217 Filed 7–18–00; 8:45 am]

BILLING CODE 4510–49–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 664—General Licensee Registration.

2. *Current OMB approval number:* None.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* NRC general licensees who possess devices subject to registration under 10 CFR 31.5.

5. *The number of annual respondents:* 4,300.

6. *The number of hours needed annually to complete the requirement or request:* 1,433 hours annually (4300 respondents × 20 minutes per form).

7. *Abstract:* NRC Form 664 would be used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program is intended to allow NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Submit, by September 18, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 13th day of July 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–18237 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Amergen Vermont, LLC, Vermont Yankee Nuclear Power Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station (Vermont Yankee), currently held by Vermont Yankee Nuclear Power Corporation, as the owner and licensed operator.

A direct transfer of this license from Vermont Yankee Nuclear Power Corporation to AmerGen Vermont, LLC (AmerGen Vermont) was approved by the Nuclear Regulatory Commission by an order dated July 7, 2000. The conforming amendment to the license to reflect this transfer will be issued upon completion of the purchase of the facility by AmerGen Vermont. Upon completion of this transfer, AmerGen Vermont will hold the license as the owner and licensed operator of Vermont Yankee.

AmerGen Energy Company, LLC (AmerGen) and its wholly owned subsidiary AmerGen Vermont submitted an application to the Commission dated February 28, 2000, which was supplemented by submittals dated May 12, June 1, and June 28, 2000, for a subsequent indirect transfer of the license following the acquisition of Vermont Yankee by AmerGen Vermont. The indirect transfer proposed in the February 28, 2000, application as supplemented would result from the acquisition of PECO Energy Company's (PECO's) existing interest in AmerGen by a new generation company. This company, Exelon Generation Company, LLC, is to be a subsidiary of Exelon Ventures Company, which will be a wholly owned subsidiary of a new holding company, Exelon Corporation. Exelon Corporation will be formed from a planned merger between PECO and Unicom Corporation (Unicom). The facility is located in Vernon, Vermont.

According to the application filed by AmerGen and AmerGen Vermont, AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. AmerGen Vermont is a limited liability company formed by AmerGen to acquire and operate Vermont Yankee. British Energy, Inc., and PECO each own 50 percent of AmerGen. Following completion of the merger between Unicom and PECO, Exelon Generation Company will acquire PECO's existing 50-percent ownership interest in AmerGen. AmerGen Vermont, as a wholly owned subsidiary of AmerGen, as owned by Exelon Generation Company and British Energy, Inc., will continue to be responsible, after the completion of the transfer of Vermont Yankee to AmerGen Vermont, for the operation, maintenance, and eventual decommissioning of Vermont Yankee. No direct transfer of the license is being proposed. Also, no physical changes to the facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license if the Commission determines that the underlying transaction effectuating the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 8, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR

2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Kevin P. Gallen, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street NW, Washington, DC 20036–5869; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by August 18, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 28, 2000, and supplemental letters dated May 12, June 1, and June 28, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*httpwww.nrc.gov*).

Dated at Rockville, Maryland this 13th day of July 2000.

For the Nuclear Regulatory Commission.

Richard P. Crotean,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18238 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Coordination Meeting With American Society for Quality Energy and Environmental Division Nuclear Power Production Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC has been meeting annually with the ASQ EED NPPC Executive Board and interested members to discuss quality assurance matters of mutual interest. Following the meeting with NRC this year, the NPPC will take advantage of the meeting site to conduct a committee meeting and to work on two good practice papers. This notice provides the date and agenda for the next meeting.

DATES: July 20–21, 2000—The NRC part of the meeting will begin at 8 a.m. on 7/20 and will last until noon. Attendees should enter the One White Flint North lobby by 7:45 a.m. to complete the required badging process.

Location: U.S. Nuclear Regulatory Commission Headquarters, One White Flint North, 11555 Rockville Pike, Room O–4–B6, Rockville, Maryland 20852–2738.

Contact: Owen P. Gormley, USNRC, Telephone: (301) 415–6793; Fax: (301) 415–5074; Internet: opg@nrc.gov

Attendance: This meeting is open to the general public. All individuals planning to attend are requested to pre-register with Mr. Gormley by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

Program: The purpose of the meeting is to continue the annual communication between NRC and quality assurance professionals, and to continue support to the NPPC as it prepares good practice papers pooling and sharing successful QA activities experienced by the various participants.

Among the topics to be discussed are:

QA for Probablistic Risk Analysis.

Approach to QA on digital I&C systems.

Presentation by BG&E on the NRC inspection of problem identification and resolution, using the new NRC Inspection Module, 71152.

Other activities will include:

A NPPC meeting covering general committee business.

Work on revisions to the good practices papers on performance indicators and self assessments.

Dated in Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Engineering Research Applications Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 00–18235 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 17, 24, 31, August 7, 14, and 21, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 17

There are no meetings scheduled for the Week of July 17.

Week of July 24—Tentative

Tuesday, July 25

3:25 p.m. Affirmation Session (Public Meeting) (If necessary).

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

Tuesday, August 15.

9:25 a.m. Affirmation Session (Public Meeting) (If necessary).

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Ron Hauber, 301–415–2344).

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of August 21—Tentative

Monday, August 21

1:55 p.m. Affirmation Session (Public Meeting) (If necessary).

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS

OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:
http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 14, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–18349 Filed 7–17–00; 1:00 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Human Interaction With Reused Soil: A Literature Search; Draft NUREG–1725 for Public Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of Draft NUREG for public comment.

SUMMARY: The Nuclear Regulatory Commission is issuing draft NUREG–1725 "Human Interaction with Reused Soil: A Literature Search" for public comment.

DATES: Submit comments by September 18, 2000. Comments received after this date will be considered if its is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: David L. Meyer, Chief, Rules and Directives Branch, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of the Draft NUREG report can be obtained through the NRC homepage address: *http:///www.nrc.gov/NUREGS/SR1725/index.html* or by request to the NRC staff contact, Thomas J. Nicholson.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nicholson; e-mail: *tjn@nrc.gov.* telephone: (301) 415–6268; Office of Nuclear Regulatory Research, Mail Stop T–9F31, USNRC, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is issuing draft NUREG–1725 "Human Interaction with Reused Soil: A Literature Search" for a 60-day public comment period. The report was compiled by National Agriculture Library (NAL) staff of the U.S. Department of Agriculture working under an Interagency Agreement with the NRC, and NRC technical staff. The report presents the literature and INTERNET search strategies for identifying documented information sources on types of soil reuse. The report discusses how this information will be used to establish the technical bases for evaluating possible dose impacts from the reuse of soils from NRC-licensed facilities. Information received through the public comment process will assist the NRC staff in developing technical bases for characterizing soil reuse practices and related dose assessment scenarios.

Specifically, the NRC staff is seeking information through comments on draft NUREG–1725 regarding potential uses of soil which may be excavated and transported offsite from NRC-licensed facilities for use in commerce or by the general public. This information will assist in developing a reasonably complete characterization of relevant usages for these reused soils. These soil reuse scenarios would include, but not be limited to, soil processing, construction and agricultural uses of reused soils, and various commercial and residential uses of reused soil and soil-related products. The goal of the solicitation of comments on the draft NUREG–1725 report is to further the development of technical bases and the supporting documentation that could be used to characterize the soil reuse scenarios.

Electronic Access: Information on draft NUREG–1725 for public comment can be accessed using the following NRC homepage address: *http:///www.nrc.gov/NUREGS/SR1725/index.html* or by notifying the NRC staff contact, Thomas J. Nicholson.

Dated at Rockville, Maryland, this 13th day of July 2000.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection, Environmental Risk and Waste Management Branch, Division of Risk Assessment and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 00–18239 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43082; File No. SR–CSE–00–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Amending Its Rules To Mandate Decimal Pricing Testing

July 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2000, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CSE. The CSE has designated this proposal as one concerned solely with the administration of the CSE under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its rules by adopting new CSE Rule 4.6 to mandate that member firms test computer systems in order to ensure preparedness for the industry's conversion to decimal pricing.

The text of the proposed rule change is available upon request from the CSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As the securities industry prepares for the conversion to decimal pricing, it will be necessary for various constituents of the securities industry to test their computer systems in order to avoid widespread problems. The CSE, in cooperation with the Commission and other self-regulatory organizations, has been working toward a successful transition to decimal pricing. The purpose of the proposed rule change is to require CSE member firms to participate in tests of computer systems designed to prepare for the industry's conversion to decimal pricing.

The proposed rule change would create new CSE Rule 4.6 to require CSE members to participate in the testing of computer systems in a manner and frequency to be prescribed by the Exchange. It is the CSE's understanding that other self-regulatory organizations, including the National Association of Securities Dealers, Inc., the New York Stock Exchange, the American Stock Exchange, and the Chicago Board Options Exchange are also proposing rule changes to require testing by their members in connection with the industry's conversion to decimal pricing.

The Securities Industry Association has undertaken to coordinate industry-wide computer testing to ensure that the securities industry is adequately prepared to convert to decimal pricing. Industry constituents to participate in the testing will include, among others, national securities exchanges, registered clearing corporations, data processors, and broker-dealers. Several industry-wide tests have been planned, the first of which took place in April 2000.

The CSE will employ its new rule 4.6 to require that its members participate in these tests. New CSE Rule 4.6 further provides that any firm having an electronic interface with the Exchange would be required to conduct point-to-point testing with the Exchange. Point-to-point testing refers to tests conducted between two entities, in this case a member having an electronic interface and the Exchange.[4]

Under the proposal, the Exchange would require member firms to participate in industry-wide testing to the extent such firms can be accommodated by the testing schedule. The Exchange would exercise its authority under new CSE Rule 4.6 to the extent it deems that the participation of particular members in the testing is important, and to the extent those members would otherwise not voluntarily choose to participate.

The proposed rule change would also allow the CSE to require members to file reports with the CSE concerning the required tests in the manner and frequency determined by the Exchange. A member subject to new CSE Rule 4.6. who failed to participate in the mandatory tests or who failed to file any required reports, would be subject to disciplinary action pursuant to Chapter VIII of the Exchange's rules.[5]

The proposed new CSE Rule 4.6 would expire automatically upon the completion of decimal pricing implementation.

2. Statutory Basis

The CSE believes proposed new CSE Rule 4.6, whose purpose is to ensure the participation of Exchange members in important testing prior to the securities industry's conversion to decimal pricing, is consistent with section 6(b) of the Act[6] in general and further the objectives of section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(3) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–00–04 and should be submitted by August 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18234 Filed 7–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43029; File No. SR–OCC–00–02]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to OCC Clearing Members Pledging Long Options Positions

July 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[4] A member that has its electronic interface with the Exchange through a service provider may be exempted from this requirement if such service provider conducts successful tests with the Exchange on behalf of the firms its serves, and if the member conducts successful point-to-point testing with the service provider by a time to be designated by the Exchange.

[5] *See* CSE Rules, Chapter VIII, "Discipline."

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

("Exchange Act"),[1] notice is hereby given that on March 6, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to expand the categories of accounts from which a clearing member can pledge long option positions and the categories of permitted pledgees.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the categories of accounts from which clearing members may pledge long option positions to third party lenders and to expand the categories of permitted pledgees. The proposed rule change is intended to reflect liberalizing amendments to Regulation T (12 CFR part 220) and Regulation U (12 CFR part 221) made by the Board of Governors of the Federal Reserve System ("Fed Board").

Options have traditionally had no loan value under the Fed Board's margin regulations. The Only relevant exception was for "special purpose credit" extended to broker-dealers.[4] A bank or another broker-dealer could extend credit on long options carried for the account of market makers and specialists to secure credit for financing their market making functions. Accordingly, when OCC adopted Rule 614, which allowed long options to be pledged to a bank or another broker-dealer, OCC specified that options could only be pledged from clearing members' market-maker and specialist accounts.[5] In addition, the permitted pledgees under Rule 614 were limited to banks and broker-dealers as these were the only categories of lenders from which a broker-dealer such as a clearing member or market maker was permitted to borrow.[6]

In 1996, the Fed Board eliminated the general prohibition against extending credit on long options and instead deferred to the rules of the options exchanges regarding option loan value by incorporating those rules by reference into Regulation T.[7] Although exchange margin rules then in effect also prohibited extensions of credit against long options, these rules have subsequently been amended to permit broker-dealers to extend credit on certain long option positions in a customer margin account.[8]

In 1998, the Board amended the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against all long positions in listed options.[9] The Fed Board also modified the margin regulations to reflect amendments to the Exchange Act. The National Securities Markets Improvement Act of 1996 ("NSMIA") repealed section 8(a) of the Exchange Act which, among other things, had prohibited broker-dealers from obtaining credit against the collateral of exchange-traded equity securities from lenders other than broker-dealers and certain banks. For that reason, the Fed Board deleted provisions of Regulations T and U that implemented section 8(a) of the Exchange Act.

As a result of all of the foregoing statutory and regulatory changes, credit may now be extended by broker-dealers, banks and other lenders against long option positions whether carried for the account of a market-maker or specialist, another broker-dealer, a public customer, or for the clearing member's own proprietary account. This renders the provisions of Rule 614, restricting the types of OCC accounts from which long options may be pledged and the kinds of entities that may be pledgees, obsolete. In recognition of this fact, OCC now proposes to amend Rule 614 to delete the obsolete restrictions.

Of course, Regulations T and U continue to impose certain restrictions on extensions of credit secured by OCC-issued options. For example, the 50 percent loan limit would generally be applicable, with certain exceptions such as when the credit is extended to an "exempted borrower."[10] As is the case with other securities credit transactions, lenders and borrowers who use the OCC pledge program are obligated to comply with the Fed Board's margin regulations.

OCC is also proposing to make certain technical amendments to Rule 614. These reflect, among other things, revisions to section 8 and 9 of the Uniform Commercial Code adopted since Rule 614 was originally drafted. Conforming changes are being made to Rules 601, 602, 1105, and 1106.

OCC believes that the proposed rule change is consistent with the requirements of the Section 17A of the Exchange Act[11] and the rules and regulations thereunder because it increases the ability of clearing members and their customers to arrange for or maintain financing for their positions while maintaining OCC's overall protection against default.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] The complete text of the proposed rule change is included in OCC's filing, which is available for inspection and copying at the Commission's public reference room and through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Long options may also be given value in a customer's margin account when used to offset margin otherwise required on short option positions and are in turn given margin credit in the clearing member's account at OCC. However, that use of long option value does not involve the pledging of options to third party lenders, and Rule 614 therefore has no application to such use.

[5] In recognition of the ability of a clearing member to pledge long options to a commodity clearing organization for the purpose of securing obligations to such clearing organization on related futures and futures option contracts, OCC later amended Rule 614 to permit this particular form of pledge. In 1999, OCC also amended its rules to permit pledging of long positions to third party lenders from a non-proprietary cross-margining account. Securities Exchange Act Rel. No. 41883 (September 17, 1999), 64 FR 51619 (September 24, 1999).

[6] As noted in the footnote above, the rule was later amended to permit pledging of long options to a commodity clearing organization.

[7] Fed Board Release, 61 FR 20385 (May 6, 1996).

[8] *E.G.*, Securities Exchange Act Rel. Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) [SR–CBOE–97–67] and 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) [SR–NYSE–99–03].

[9] Fed Board Release, 63 FR 2806 (January 16, 1998).

[10] Exempted borrower is defined in Section 220.2 of Regulation T and in Section 221.2 of Regulation U.

[11] 15 U.S.C. 78–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC.

All submissions should refer to File No. SR–OCC–00–02 and should be submitted by August 11, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18233 Filed 7–18–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3271]

State of Minnesota (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated July 12, 2000, the above-numbered Declaration is hereby amended to include Dakota, Fillmore, Houston, and Mower Counties in the State of Minnesota as a disaster area due to damages caused by severe storms and flooding beginning on May 17, 2000, and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous Counties may be filed until the specified date at the previously designated location: Dodge, Freeborn, Goodhue, Hennepin, Olmsted, Ramsey, Rice, Scott, Steele, Washington, and Winona Counties in Minnesota; Pierce County, Wisconsin; and Howard, Mitchell, Winneshiek, and Worth Counties in Iowa. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The economic injury number for Wisconsin is 9H8500 and for Iowa the number is 9H8600.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 29, 2000 and for economic injury the deadline is March 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18270 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269]

State of North Dakota (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency, dated July 11, 2000, the above-numbered Declaration is hereby amended to change the incident period for this disaster from beginning on June 12, 2000 to beginning on April 5, 2000 and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 26, 2000 and for economic injury the deadline is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 12, 2000.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18271 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3272]

State of Wisconsin

As a result of the President's major disaster declaration on June 23, 2000 for Public Assistance only, and an amendment thereto on July 11 adding Individual Assistance, I find that Crawford, Dane, Grant, Kenosha, Milwaukee, Vernon, and Walworth Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 26, 2000, and continuing through July 5, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 9, 2000 and for economic injury until the close of business on April 11, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Columbia, Dodge, Green, Iowa, Jefferson, Juneau, LaCrosse, Lafayette, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Washington, and Waukesha Counties in Wisconsin; Allamakee, Clayton, and Dubuque Counties in Iowa; and Boone, Jo Daviess, Lake, and McHenry Counties in Illinois. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.375%

Homeowners without credit available elsewhere: 3.687%

Businesses with credit available elsewhere: 8.000%

Businesses and non-profit organizations without credit available elsewhere: 4.000%

Others (including non-profit organizations) with credit available elsewhere: 6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%

The number assigned to this disaster for physical damage is 327206. For economic injury the numbers are 9H8100 for Wisconsin, 9H8300 for Iowa, and 9H8400 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18269 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6.375 (6 ⅜) percent for the July–September quarter of FY 2000.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 00–18272 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Intent To Use the Central Contractor Registration System

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) has partnered with the Joint Electronic Commerce Program Office (JECPO) of the U.S. Department of Defense (DOD) to use the Central Contractor Registration (CCR) system to obtain financial electronic funds transfer (EFT) information. EFT information is inputted and maintained by contractors using DOD's web-based CCR program (www.ccr2000.com), which currently has information on over 160,000 contractors.

DATES: Effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Direct questions on DOT's use of CCR to Susan Abrams at (202) 366–9650 or Lesley Field at (202) 366–4960. Submit questions on the CCR system via e-mail to the JECPO office at contact.ccr@us.pwcglobal.com.

SUPPLEMENTARY INFORMATION: All DOT contracts will contain (FAR) 48 CFR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration in lieu of (FAR) 48 CFR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration and 52.232–35, Designation of Office for Government Receipt of Electronic Funds Transfer Information. This means contractors receiving payments under DOT contracts, purchase orders, delivery orders, or other contractual vehicles must be registered in the CCR. The EFT information in the CCR must be accurate in order for contractors' invoices or contract financing requests to be considered proper invoices for the purpose of prompt payment under DOT contracts. Current and prospective contractors are encouraged to register in the CCR without delay. By registering, the paperwork burden imposed by (FAR) 48 CFR 52.232–34 and (FAR) 48 CFR 52.232–35 will no longer exist. In lieu thereof, contractors will update their EFT information electronically through the CCR.

David J. Litman,

Senior Procurement Executive.

[FR Doc. 00–18241 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Advisory Circular (AC) 23.143–1, Ice Contaminated Tailplane Stall

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning ice contaminated tailplane stall.

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Send all comments on the proposed AC to: Preferred e-mail address: <bill.marshall@faa.gov> or Federal Aviation Administration, Attention: Mr. Bill Marshall, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), DOT Building, 901 Locust, Room 301, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Marshall, <bill.marshall@faa.gov>, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 329–4124.

SUPPLEMENTARY INFORMATION: You may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Comments Invited: We invite you to submit comments on the proposed AC. You must identify AC 23.143–1 and submit comments to the (e-mail preferred) address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. You may inspect the proposed AC and comments received at the Standards Office (ACE–110), Room 301, DOT Building, 901 Locust, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

This proposed advisory circular (AC) sets forth an acceptable way, but not the only way, of demonstrating compliance with the pitch axis flight characteristics with ice contamination requirements in Title 14 of the Code of Federal Regulations (14 CFR) part 23. Accordingly, the FAA is proposing and requesting comments on AC 23.143–1, which will provide more detailed and uniform guidance in showing compliance with the existing regulation.

Issued in Kansas City, Missouri on July 5, 2000.

Marvin Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18243 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Ardmore Municipal Airport, Ardmore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposed to rule and invites public comment on the

release of land at Ardmore Municipal Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 18, 2000.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Edward Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to D. Weston Stuckey, President, Ardmore Development Authority, at the following address: Ardmore Development Authority, 410 West Main, Ardmore, OK 73401.

FOR FURTHER INFORMATION CONTACT: Glenn Boles, Program Manager, Federal Aviation Administration, AR/OK ADO, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0630.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Ardmore Municipal Airport under the provisions of the AIR 21.

On June 27, 2000, the FAA determined that the request to release property at Ardmore Municipal Airport submitted by the City met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than August 27, 2000.

The following is a brief overview of the request: The Ardmore Development Authority requests the release of 121.84 acres of airport property. The release of property will allow for two industrial development projects to proceed. The sale is estimated to provide $163,750 to allow construction of a new terminal facility at the airport and improvements to the control tower.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Ardmore Municipal Airport.

Issued in Fort Worth, Texas on June 27, 2000.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 00–18242 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revocation of Type Certificate

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of a type certificate.

SUMMARY: Notice of revocation of Type Certificate No. H12EU.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5961.

SUPPLEMENTARY INFORMATION: Westland Helicopters Limited (Westland), current owner of Type Certificate (TC) No. H12EU, has returned that TC to the United Kingdom Civil Aviation Authority (UKCAA), which is the airworthiness authority for the United Kingdom. The UKCAA has requested that the FAA revoke the TC, which includes Model Westland 30 series 100 and series 100–60 helicopters. There are 9 of the subject model helicopters on the U.S. Registry; however, all 9 helicopters have been purchased by Westland and are being destroyed.

Effective today, TC No. H12EU is revoked, and there is no further FAA approval status for the Westland 30 series 100 and series 100–60 helicopters.

Issued in Forth Worth, Texas on July 11, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–18244 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7139]

Notice of Receipt of Petition for Decision that Nonconforming 1999–2000 Mercedes Benz Gelaendewagen Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999–2000 Mercedes Benz Gelaendewagen multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999–2000 Mercedes Benz Gelaendewagen MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 18, 2000.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141 (a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then

publishes this decision in the Federal Register

J.K. Motors of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1999–2000 Mercedes Benz Gelaendewagen MPVs are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1999–2000 Mercedes Benz Gelaendewagen MPVs that were manufactured for importation into, and sale in, the United States, and certified by Europa International, Inc. ("Europa"), as conforming to all applicable Federal motor vehicle safety standards, prior to their importation into the United States.

By way of explanation, in March 1998, Daimler Benz, A.G., as the company was then known, provided a letter of understanding to Europa under which Gelaendewagens manufactured in Graz, Austria, would be produced to Europa's specifications, and then shipped to a Mercedes facility in Germany for installation of additional electronic equipment (OBD II) needed to effect compliance with Federal emissions control requirements. DaimlerChrysler A.G. modified the letter of understanding in December 1999 to state that incomplete vehicles, for which it would make no representation of compliance, would be sent to the German facility for completion. At the end of either process, Europa certifies compliance with all applicable Federal requirements of the Department of Transportation and the Environmental Protection Agency. Under these factual circumstances, the agency regards Europa as the "manufacturer" of the Gelaendewagens that it has certified to U.S. standards, and JK Imports as entitled to petition for an eligibility determination on the basis that the Gelaendewagens it wishes to import are substantially similar to vehicles certified by their original manufacturer for sale in the United States.

The petitioner claims that it carefully compared non-U.S. certified 1999–2000 Mercedes Benz Gelaendewagen MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2000 Mercedes Benz Gelaendewagen MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999–2000 Mercedes Benz Gelaendewagen MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passengers Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps; (b) modification of U.S.-model taillamp assemblies and addition of U.S.-model marker light assemblies; (c) installation of a U.S.-model high mounted stop lamp assembly.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component etched with the appropriate warning statement.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warner buzzer microswitch in the steering lock assembly on vehicles that are not already so equipped.

Standard No. 118 *Power Window Systems:* installation, on vehicles that are not already so equipped, of a relay in the power window system so that the windows will not operate when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles imported and replacement of the air bags, control units, sensors, and seat belts with U.S.–model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with driver's and passenger's side air bags and knee bolsters, with combination lap and shoulder belts that are self-tensioning and that release by means of a single red push button at the front and rear outboard seating positions, and with a lap belt at the rear center seating position.

Standard No. 214 *Side Impact Protection:* Installation of doorbars in vehicles that are not already so equipped.

Before submitting its request, the petitioner asked on July 2, 1999, for a determination of confidentiality regarding certain modifications it planned to make in conforming the vehicle to FMVSS No. 108 and 208. The petitioner asserted that the engineering modifications necessary for testing were substantial and considered proprietary due to the expense of development, and that the information could result in substantial competitive harm if disclosed. The agency granted the petitioner's request on September 1, 1999. Accordingly, the petition that was filed on April 4, 2000, and that is available to the public states, with respect to FMVSS No. 108 that the modifications to the taillamp assemblies have been previously granted confidentiality. With respect to FMVSS No. 208, the petition states that "This vehicle will meet frontal impact test requirements with structural modifications described in a submission that has been granted confidentiality by NHTSA's Office of Chief Counsel under 49 CFR 512."

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on July 13, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–18246 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7555]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1995 Mercedes-Benz E Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1995 Mercedes-Benz E Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1995 Mercedes-Benz E Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 18, 2000.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL")(Registered Importer 90–005) has petitioned NHTSA to decide whether 1991–1995 Mercedes-Benz E Series passenger cars are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1991–1995 Mercedes-Benz E Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer, which is calibrated in kilometers, with a component that conforms to the standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Replacement of the headlight and taillight lenses with lenses that conform to the standard; (b) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement in the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport mechanism is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the driver's seat belt latch and installation of a safety belt warning buzzer; (b) replacement of the driver's side air bag and knee bolster with U.S.-model components on 1991–1993 190E model

vehicles, replacement of the driver's side air bag and knee bolster with U.S.-model components on all other 1991–1992 E Series vehicles, and replacement of the driver's and passenger's side air bags and knee bolsters on 1993–1995 E Series vehicles. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with Type II seat belts, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams in the doors which comply with the standard.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with U.S.-model anti-theft devices, and that all vehicle that are not so equipped will be modified to comply with the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm.] It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 13, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–18247 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7523]

Notice of Receipt of Petition for Decision That Nonconforming 1997 Chevrolet Blazer Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997 Chevrolet Blazer multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1997 Chevrolet Blazer manufactured for the European and other foreign markets that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 18, 2000.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc., of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1997 Chevrolet Blazer MPVs manufactured for the European and other foreign markets are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1997 Chevrolet Blazer that was manufactured for sale in the United States and certified by its manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1997 Chevrolet Blazer to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1997 Chevrolet Blazer, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1997 Chevrolet Blazer is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 119 *New Pneumatic Tires*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention*

Components, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) installation of a conforming brake failure warning light on vehicles that are not already so equipped; (b) inspection of the speedometer and replacement, if necessary, with one reading in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* inspection of all equipment subject to standard and replacement with U.S. model headlights, taillights, front and rear sidemarker light assemblies, and high mounted stop lamps on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror or inscription of the required warning statement on that mirror.

Standard No. 120 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* installation of U.S.-model driver's side air bag and knee bolster. The petitioner states that the vehicle is equipped with combination lap and shoulder belts in the front and rear outboard designated seating positions and with a lap belt in the center designated seating position.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles and installation of U.S. model door bars on vehicles that are not already so equipped.

Additionally, the petitioner states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

The petitioner also states that all vehicles will be inspected prior to importation and that parts identification markings will be added, where necessary to ensure compliance with the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 13, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–18248 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to the Office of the Management and Budget for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Requesting approval of revision of a currently approved collection.

SUMMARY: The Surface Transportation Board submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Annual Waybill Compliance Survey.

Office: Office of Economics, Environmental Analysis, and Administration.

OMB Form No.: OMB 2140–0010.

Frequency: Annually.

No. of Respondents: 600.

Total Burden Hours: 300.

DATES: Persons wishing to comment on this information collection should submit comments by August 18, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the title of the information collection.

FOR FURTHER INFORMATION CONTACT: Harold J. Warren, (202) 565–1433. Requests for copies of the information collection may be obtained by contacting Arlene Jeffcoat, (202) 565–1661.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of railroads operating in the United States. The Carload Waybill Sample is collected to support the Board's regulatory activities as is the information concerning railroad revenue. The Annual Waybill Compliance Survey, which collects on the number of carloads terminated and operating revenue, is required to be filed by all railroads operating in the United States pursuant to authority in title 49 U.S.C. 1145, 11144,11901,11326(b), 11327, and 11328(b) of the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995). Our regulations at 49 CRF 1244.2(f) specifically require the survey to be filed annually.

Decided: July 13, 2000.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18231 Filed 7–18–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33901]

Hi-Tech Trans, LLC—Operation Exemption—Over Lines Owned Canadian Pacific Railway and Connecting Carriers

Hi-Tech Trans, LLC (HTT), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to commence operations over approximately 641 miles of rail line from Oak Island Yard in Newark, NJ to points in Irwin, Buffalo and Niagara, NY, and Lowellville and or Canton. OH.[1] The specific route has not been established because HTT asserts that the route may be changed in the future to afford more efficient service. HTT certifies that its projected revenues will not exceed those that would qualify it as a Class III railroad.

HTT states that operations will not commence until it reaches lease or trackage rights agreements with other railroads. HTT further states that it expects that those agreements can be finalized by August 1, 2000 and that it can commence operations before January 1, 2001.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

[1] HTT states that it expects to enter into sub-lease or trackage rights agreements with the Canadian Pacific Railway and its affiliates and will arrange connections with the Finger Lakes Railroad, Norfolk Southern Railway Company, and CSX Corporation.

a petition to revoke will not automatically stay the transaction.[2]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33901, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John F. McHugh, McHugh & Barnes, P.C., 20 Exchange Place, New York, NY 10005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 13, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18263 Filed 7–18–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Denatured Spirits.

DATES: Written comments should be received on or before September 18, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8176.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Applications and Notices Relating to Denatured Spirits.

OMB Number: 1512–0336.

Recordkeeping Requirement ID Number: ATF REC 5150/2.

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal and household products. Permits and applications control the authorized use and flow. Tax revenue and public safety is protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,111.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,556.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18219 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Comment; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Inventory-Manufacturer of Tobacco Products.

DATES: Written comments should be received on or before September 18, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Inventory-Manufacturer of Tobacco Products.

OMB Number: 1512–0162.

Form Number: ATF F 3067 (5210.9).

Abstract: ATF F 3067 (5210.9) is used by tobacco product manufacturers to record inventories that are required by law. This form provides a uniform format for recording inventories and establishes tax liability on tobacco products enabling ATF to determine that correct taxes have been or will be paid. The record retention requirement for this information collection is 3 years after the close of the year for which inventories and reports are filed.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 34.

[2] On July 6, 2000, a petition for stay of the exemption filed by HTT was filed by Samuel J. Nasca, on behalf of the United Transportation Union—New York Legislative Board. The petition for stay was denied by the Board in *Hi-Tech Trans, LLC—Operation Exemption—Over Lines Owned By Canadian Pacific Railway and Connecting Carriers*, STB Finance Docket No. 33901 (STB served July 10, 2000).

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 170.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18220 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Tax-Free Alcohol.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

OMB Number: 1512–0334.

Recordkeeping Requirement ID Number: ATF REC 5150/3.

Abstract: Tax-free alcohol is used for nonbeverage purposes by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diversion to taxable beverage use. Records maintain spirits accountability and protect tax revenue and public safety. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4,560.

Estimated Time Per Respondent: The recordkeeping requirement involves usual and customary business records therefore, there is no burden on the respondent.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18221 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Release and Receipt of Imported Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marie Pollard, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

OMB Number: 1512–0019.

Form Number: ATF F 6A (5330.3C).

Abstract: The information collection is needed to verify importation of firearms, ammunition and implements of war. ATF F 6A (5330.3C) is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S. and aliens immigrating to the United States.

Current Actions: There are no changes to this information collection and it is

being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individual or households, business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 8,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18222 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit for Importation of Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marie Pollard, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.

OMB Number: 1512–0017.

Form Number: ATF F 6–Part 1 (5330.3A).

Abstract: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The form is used to secure authorization to import such articles. All persons who desire to import such articles except for persons who are members of the United States Armed Forces must complete this form.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18223 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Manufacturers—Records of Operations.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Manufacturers—Records of Operations.

OMB Number: 1512–0358.

Recordkeeping Requirement ID Number: ATF REC 5210/1.

Abstract: Tobacco manufacturers must maintain a system of records that

provide accountability over tobacco products received and produced. The information collection is needed to ensure tobacco transactions can be traced and ensure that tax liabilities have been totally satisfied. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 108.

Estimated Time Per Respondent: 150 hours per year.

Estimated Total Annual Burden Hours: 16,200.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18224 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Removal of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

DATES: Written comments should be received on or before September 18, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Notice of Removal of Tobacco Products, or Cigarette Papers, or Cigarette Tubes.

OMB Number: 1512–0119.

Form Number: ATF F 2149/2150 (5200.14).

Abstract: Tobacco manufacturers or export warehouse proprietors are liable for tax on tobacco products removed from their premises, tobacco products, cigarette papers and tubes may be recovered without payment of tax for special purposes. This form verifies these removals. The record retention requirement for this information collection is 3 years after the close of the year in which evidence of clearance or delivery was received.

Current Actions: Item 10 of the form has been revised to add letter (F) Return to Factory, and (G) Return to Export Warehouse to better serve the respondent. The Item 12, column headings, have been re-formated for better clarification.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 221.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 18,225.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18225 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert P. Ruhf,

Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

OMB Number: 1512–0368.

Recordkeeping Requirement ID Number: ATF REC 5230/1.

Abstract: This information collection is used by tobacco products importers or manufacturers who import or make large cigars. Records are needed to verify wholesale prices of those cigars and tax is based on those prices. The collection also ensures that all tax revenues due to the government are collected. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 108.

Estimated Time Per Respondent: 2 hours and 30 minutes.

Estimated Total Annual Burden Hours: 252.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18226 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–255–82]

Proposed Collection; Comment Request for Regulation Project; Correction

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments which was published in the **Federal Register** on June 23, 2000 (65 FR 39228), relating to an invitation to comment on a proposed information collection.

FOR FURTHER INFORMATION CONTACT: Larnice Mack at (202) 622–3179.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, this notice and request for comments contains an error that is misleading and needs clarification.

Correction of Publication

Accordingly, the publication of the notice and request for comments (FI–255–82), which is the subject of FR. Doc 00–15869 is corrected as follows:

On page 39228, column 1, under the caption "SUMMARY", last line in the paragraph, the language "(§ 1.149–1(c)(4))." is corrected to read "(§ 5f.103–1(c))."

Cynthia Grigsby,

Chief, Regulations Unit, Office of Special Counsel, (Modernization and Strategic Planning).

[FR Doc. 00–18140 Filed 7–18–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 65, No. 139
Wednesday, July 19, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Antitrust Division

Joint Motion To Modify Final Judgment and United States' Memorandum in Support of Motion To Modify; United States vs. Barold Corp., et al.

Correction

In notice document 00–9746 beginning on page 21027 in the issue of Wednesday, April 19, 2000, make the following correction:

On page 21028, in the first column, six lines from the bottom, "50 " should read "60".

[FR Doc. C0–9746 Filed 7–18–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0176(2000)]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904 Recording and Reporting Injuries and Illnesses (1218–0176)

Correction

In notice document 00–17266 beginning on page 42034 in the issue of Friday, July 7, 2000, make the following correction:

1. On page 42035, in the second column, in the fourth full paragraph, in the fourth line, "28 CFR" should read "29 CFR".

2. On the same page, in the third column, in the 12th line, "1,395,516." should read "1.5 hours".

[FR Doc. C0–17266 Filed 7–18–00; 8:45 am]

BILLING CODE 1505–01–D

VOL 65 ISS 139 JL 19 2000 UMI

Federal Register

Wednesday,
July 19, 2000

Part II

Department of Transportation

Maritime Administration

46 CFR Part 356

Fishery Endorsement; Eligibility of U.S.-Flag Vessels of 100 Feet or Greater; Final Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–00–5609]

RIN 2133–AB36

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration ("MARAD," "we," "our," or "us") is publishing this final rule implementing the new U.S. citizenship requirements set forth in the American Fisheries Act of 1998 ("AFA") for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought.

The rule implements new statutory requirements of the AFA by raising the U.S. ownership and control requirements for U.S.-flag fishing vessels of 100 feet or greater in registered length that are operating in U.S. waters, by eliminating exemptions for fishing vessels that cannot meet current citizenship standards, by phasing out of operation many of the largest fishing vessels, and by establishing new criteria to be eligible to hold a preferred mortgage on vessels of 100 feet or greater with a fishery endorsement to the vessel's documentation. The regulations set out which transactions are permissible, which transactions will require prior approval, and which transactions are impermissible and, to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives. Pursuant to 5 U.S.C. 553(d)(3), this final rule will become effective immediately upon the date of publication. The immediate effective date is necessary to provide extra time before the compliance date for vessel owners and mortgagees to request letter rulings from MARAD regarding their citizenship status and potential waivers from the rule by virtue of a conflict with an international agreement or treaty.

DATES: *Effective Date:* July 19, 2000.

Compliance Date: Vessel owners and Mortgagees are required to comply with the new citizenship requirements by October 1, 2001, in order to obtain a fishery endorsement to the vessel's documentation. The rule requires owners to submit an Affidavit of U.S. Citizenship by June 1, 2001, so that MARAD can make render citizenship decisions by the compliance date.

ADDRESSES: The complete file for this rule is available for inspection with the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. You may also view the comments submitted to the docket via the Internet at *http://dms.dot.gov* by using the search function and entering the docket number 5609.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366–5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 7th St., SW, Washington, DC, 20590–0001, or you may contact him by e-mail at John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The AFA imposes new citizenship requirements for the owners of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought. The AFA, among other things:

(1) Raises, with some exceptions, the U.S. Citizen ownership and control standards for U.S.-flag Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels operating in U.S. waters from a controlling interest to a 75 percent interest requirement as set forth in 2(c) of the Shipping Act, 1916, as amended ("1916 Act");

(2) Sets forth certain criteria for purposes of determining whether "control" of the owner of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels is vested in Citizens of the United States;

(3) Requires state or federally chartered financial institutions to comply with the Controlling Interest (51%) requirements of 2(b) of the 1916 Act in order to hold a preferred mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel of 100 feet or more in registered length;

(4) Requires preferred mortgagees of vessels of 100 feet or more in registered length that are not state or federally chartered financial institutions to comply with the requirements of 2(c) of the 1916 Act which provides that 75% of the interest in the entity must be owned and controlled by Citizens of the United States, or use an approved Mortgage Trustee that complies with the citizenship requirements of 2(c) of the 1916 Act and other requirements of the AFA;

(5) Prohibits certain foreign-built factory trawlers from participating in the fisheries of the United States; and,

(6) Prohibits, with some exceptions, vessels above 165 feet or 750 gross tons or with engines of 3,000 horsepower or more from obtaining a fishery endorsement to the vessel's documentation.

We are required by § 203(c) of the AFA to "rigorously" scrutinize any transfer of ownership and control over Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and to pay particular attention to leases, charters, financings, mortgages, and other arrangements to determine if they constitute an impermissible conveyance of control to persons not eligible to own a vessel with a fishery endorsement. These regulations set out which transactions are permissible, which transactions will require prior approval, and which transactions are impermissible. Pursuant to 203(b) of the AFA, these regulations also, "to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives."

The rule provides procedures for owners, Mortgagees, Mortgage Trustees, and charterers to request letter rulings regarding citizenship status and for Owners and Mortgagees to request letter rulings regarding exemptions from the regulations as a result of conflicts between the regulations and an international treaty or law upon publication of the rule in the **Federal Register**. However, the new ownership and control standards, including the 75% ownership and control requirement, will not become effective until October 1, 2001.

Prior Federal Action

As the first step in this rulemaking process, we issued an Advance Notice of Proposed Rulemaking (ANPRM) entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater To Obtain Commercial Fisheries Documents, 64 FR 24311 (May 6, 1999). The ANPRM provided an explanation of the changes in the law and requested comments, suggestions, and information from the public relating to the development of regulations necessary to implement the new statutory requirements to obtain a fishery endorsement for a documented vessel of 100 feet or greater in registered length. Based on the comments that we received in response to the ANPRM, we

issued a Notice of Proposed Rulemaking (NPRM) entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation Commercial Fisheries Documents, 65 FR 645 (January 5, 2000).

The NPRM set forth a proposed rule to implement the new statutory requirements to obtain a fishery endorsement for a documented vessel of 100 feet or greater in registered length. In response to the NPRM, we received approximately 20 written comments. In addition, we held three public meetings in Seattle, WA, Anchorage, AK, and Washington, DC, and met with one interested party who requested a meeting with us. The written comments, transcripts of the public meetings, and a memorandum summarizing a meeting with an interested party are available for review in the rulemaking docket. Following is a summary of those comments and our response.

Comments on the Proposed Rule

Subpart A—General Provisions

Section 356.3 Definitions

Several commenters noted that a state or federally chartered financial institution that meets the controlling interest requirements of 2(b) of the 1916 Act would be deemed a Non-Citizen under the definitions of "Citizen of the United States" in § 356.3(d), "Non-Citizen" in § 356.3(n), and "Non-Citizen Lender" in § 356.3(o). Accordingly, the commenters state that the benefit accorded to state or federally chartered financial institution under 202 of the AFA to be eligible to hold a Preferred Mortgage on a Fishing Vessel, Fish Tender Vessel or Fish Processing Vessel would be rendered without meaning. The commenters suggested that the rule should clarify in § 356.19 or in one of the definitions in § 356.3 that a state or federally chartered financial institution is considered to be a U.S. Citizen when functioning as a Preferred Mortgagee with respect to a Fishing Vessel, Fish Processing Vessel or Fish Tender Vessel.

We agree that the rule should be clarified with regard to the citizenship status of state or federally chartered financial institutions that meet the controlling interest requirements of 2(b) of the 1916 Act and that are acting as Preferred Mortgagees. Accordingly, the definitions of "Controlling Interest" and "Non-Citizen Lender" in § 356.3 have been amended to indicate that a state or federally chartered financial institution that meets the controlling interest requirements is considered a Citizen of the United States for purposes of Subpart D of the regulation.

One commenter reasoned that it is commercially impractical to expect parties to wonder whether a bona fide limited liability company will be treated by the Maritime Administration as a general partnership for AFA purposes under proposed § 356.3(d)(2)(vii) or § 356.3(f)(2)(vi). The commenter noted that every state, or almost every state, now has a limited liability company statute and that MARAD should provide certainty in the rule regarding the citizenship status of limited liability companies ("LLCs") by concluding that it will accept the status of these entities as determined by state law or by specifying which state limited liability company statutes create, for AFA purposes, general partnerships.

This rule marks the first time that we have set out in a regulation how we plan to deal with LLCs in the context of determining U.S. Citizenship. Because LLCs can vary greatly in their structure, we feel that it is important to reserve some flexibility for ourselves in this area. Furthermore, we do not believe that it makes sense to list every state limited liability company statute that could potentially present a problem as these statutes can easily be amended over time. Therefore, the final rule will follow our proposal in the NPRM that an LLC that is deemed to be a general partnership will be treated as such, and we will evaluate each LLC citizenship application individually.

The same commenter also stated that the definitions of Citizen of the United States and Controlling Interest in §§ 356.3(d)(2)(i)(a) and 356.3(f)(2)(i)(a) were unnecessarily broad because they state that all officers authorized to act in the absence of the chief executive officer and chairman of a corporation must be citizens, whereas the relevant statutes refer only to the citizenship of chairmen, presidents and chief executive officers. The commenter suggested that the relevant statutes identify chairmen, presidents and chief executive officers as the officers who must be U.S. Citizens and that MARAD should allow a Non-Citizen Vice President or Non-Citizen Vice Chairman unless a vacancy that temporarily places such a person in the senior position of responsibility is left unfilled with the intent of evading the law. The commenter proposed that the rule should allow a vacancy in the offices of chairman, president or chief executive officer that is filled with a Citizen of the United States before the earlier of the next required filing date for an annual meeting or the next actual meeting of directors for which a notice of meeting has not already been set at the time at which the vacancy occurs.

We disagree with the commenter's assertion that 2 of the 1916 Act limits our citizenship analysis to the citizenship of chairmen, presidents and chief executive officers or restricts us from taking into consideration the rights of a Non-Citizen to act in the absence of the chief executive officer or chairman of a corporation. Moreover, this analysis is consistent with our past practice of determining citizenship under 2 of the 1916 Act. Accordingly, we do not plan to amend the final rule.

Several commenters also noted that we had used the terms "affiliated" and "unrelated" in the rule, but that the terms were not defined. Accordingly, we have added definitions for the terms "Affiliate or Affiliated" and "Related Party" to § 356.3 and have renumbered the section accordingly.

Subpart B—Ownership and Control

Section 356.7 Methods of Establishing United States Ownership

One commenter stated that the fair inference rule is outdated and does not take into consideration the sweeping changes that have occurred in the way that shares of publicly traded companies are held since the establishment of the fair inference method in 1936. In particular, the commenter stated that because the vast majority of shares in corporations are held today by brokerage houses in "street" name for beneficial owners, the stock ownership records of corporations do not provide information as to the beneficial owners. In addition, the commenter noted that many shares are held for the benefit of pension trusts or mutual funds, the true beneficial owners of which change frequently and are not discernible from any available records. Accordingly, the commenter proposed that a different rule be adopted for use by publicly traded corporations with some minimum number of shareholders (perhaps keyed to the reporting requirements of the Securities Exchange Act of 1934) pursuant to which it may be inferred that shares held in street name or similar manner are held by U.S. Citizens if the record holder has a U.S. address unless the party claiming U.S. citizenship for the corporation has actual notice to the contrary. Under the commenter's proposal, the shares held by greater than 5% beneficial owners, who are obligated to file with the Securities Exchange Commission would be treated as owned by their actual beneficial owners as reflected on the pertinent forms and all other shares would be deemed held by and in the domicile of the record holder, absent

actual knowledge or information to the contrary.

We disagree with the commenter's assertion that the information required for entities to demonstrate the citizenship of beneficial owners under the fair inference rule is not available to corporations because stocks today are widely held in "street" name by brokerages. Although the citizenship information for beneficial owners where the stock is held by a brokerage company or other entity may not be part of the corporation's stock records, it is readily available from the brokerage company, trust, pension plan, or other entity that is holding the stock for the benefit of the true owner. In fact, a corporation or other entity proving its citizenship is required to obtain from any brokerage firm, trust, pension plan, or other entity that is holding stock for the benefit of other persons, confirmation as to how many shares are held for the benefit of holders with a U.S. address and whether any shareholders hold more than 5% of the outstanding shares of a class of stock. We regularly deal with large publicly traded companies that are required to demonstrate their citizenship for other MARAD programs using the fair inference method, and we have not found it to be a problem for corporations or other entities to obtain this information.

Section 356.9 Tiered Ownership Structures

Section 202 of the AFA requires that 75% of the interest in an entity that owns or controls a vessel eligible for a fishery endorsement under 46 U.S.C. 12108 be held by Citizens of the United States "at each tier of ownership of such entity and in the aggregate." In the NPRM, we proposed to interpret the phrase "in the aggregate" to mean that no individual Non-Citizen may own or control more than 25% of the interest in a vessel or vessel-owning entity. In the NPRM, we stated that our belief was that a restrictive interpretation of the phrase "in the aggregate" would limit the ability of companies to have tiered ownership and would limit their ability to raise capital through equity participation.

There were three different comments relating to MARAD's interpretation of "in the aggregate" under proposed § 356.9. One commenter supported MARAD's interpretation and noted that it is both workable and appropriate where publicly traded companies and complex ownership structures are involved. The commenter noted that there is virtually no possibility that varied, disparate and unrelated Non-Citizen interests throughout a complex ownership structure could come together to control the entity or its vessels and that the reservation of authority to reject excessive tiering arrangements provides a safeguard against abuse of the flexibility in the proposed provisions. Further, the commenter highlighted that there is well established precedent for a similar mechanism, the fair inference rule. The commenter agreed that a restrictive interpretation of "in the aggregate" would not only significantly complicate the process, but would also likely be disruptive to the industry and could reduce the availability of conventional financing.

Two commenters opposed MARAD's interpretation of "in the aggregate" as overly broad and stated that it does not reflect the basic intent of the AFA to insure at least 75% U.S. ownership and control of fishing vessels "at each tier and in the aggregate." The first commenter stated that the proposed rule could be interpreted to allow 25% ownership by three different Non-Citizens at three ownership tiers which would result in an aggregate Non-Citizen ownership in excess of 50%. The commenter reasoned that such ownership structures run contrary to the intent of the AFA; therefore, MARAD should use a more restrictive interpretation of the ownership and control standards.

The second commenter opposed to MARAD's interpretation of "in the aggregate" noted that even if MARAD's concern that an overly restrictive reading of "in the aggregate" would result in limiting the ability of owners to obtain equity participation in their companies, Congress had already decided the issue otherwise. The commenter stated that there is nothing in the AFA that limits the "aggregation" to each particular Non-citizen and that such an interpretation would turn the statutory requirement on its head by permitting Non-U.S. Citizens to own more than 25% in the aggregate of the equity interest in a vessel, with the result that less than 75% of the interest in an entity in the aggregate will be owned and controlled by U.S. Citizens. The commenter asserts that this interpretation contradicts the plain language of the statute and cannot be a "reasonable" interpretation of the law. The commenter further states that the final rule, including the definitions and the Affidavit of U.S. Citizenship, must comply with the Congressional requirement that at least 75% of the interest in a vessel seeking a fishery endorsement be owned and controlled by U.S. Citizens, at each tier of ownership and in the aggregate. This means that no more than 25% of such interest may be held "in the aggregate" by either a particular foreign citizen or any combination of foreign citizens.

Upon further consideration, we agree that the plain language of the statute leaves little room for flexibility of interpretation in the regulation and that the phrase "in the aggregate" precludes more than 25% Non-Citizen ownership whether for an individual or several entities if taking into account all tiers. As a matter of clarification, we do not conclude that this interpretation prohibits use of the fair inference method to determine citizenship of publicly traded companies, *i.e.*, 95% U.S. Citizen addresses establishes a fair inference of 75% U.S. ownership, provided that there is not clear evidence of more than 25% ownership and control by a Non-Citizen. For example if a U.S. Citizen owns 80% of a vessel-owning entity and a Non-Citizen owns 20% of the vessel-owning entity, we would permit the U.S. Citizen to demonstrate its citizenship using the fair inference rule and demonstrating that 95% of the addresses of shareholders are U.S. addresses. However, if a U.S. Citizen owns 75% of a vessel-owning entity and a Non-Citizen owns 25% of the vessel-owning entity, the U.S. Citizen could not use the fair inference method to demonstrate that it is a U.S. Citizen unless it could demonstrate 100% U.S. Citizen addresses as the Non-Citizen ownership already amounts to 25% and does not provide for any leeway for additional Non-Citizen participation. Accordingly, the interpretation of "in the aggregate" proposed in the NPRM will be so modified in the final rule.

This interpretation eliminates the need to caution against unlimited tiering because MARAD will deem it to be excessive foreign ownership and control if the sum of the ownership and control in Non-Citizens through subsequent tiering is in excess of 25% as computed by MARAD. As a practical matter, there will be very limited opportunities for any tiering involving Non-Citizen ownership and control.

Section 356.11(a)—Absolute Indicia of Control

Several commenters provided comments on the various indicia of control. One commenter noted that, as a general matter, the AFA (46 U.S.C. 12102(c)(2)(B)) expressly authorized Non-Citizens simply to participate in certain activities that would otherwise be deemed control; however, this language is not included in the rule. We agree with the commenter that certain

limited rights of participation that may limit the authority of directors and possibly additional personnel aboard the vessel were statutorily intended. We have added language to § 356.11(a)(1) and (3) to indicate that a Non-Citizen has the right simply to participate in certain activities.

One commenter noted that every partnership and shareholder agreement involving minority investors typically includes limitations in favor of the minority investors on "the actions of * * * the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which owns the fishing industry vessel." Such agreements typically prohibit the majority investors and the management they control from selling all or substantially all of the assets of the entity without the consent of the minority investors, from going into a different business, and from entering into contracts with or guaranteeing the obligations of the majority investors or their affiliates without the consent of the minority investors. The commenter noted that none of these restrictions permit the Non-Citizen to intrude into the day-to-day operations of the vessel or the vessel owner. Furthermore, the commenter stated that measures that restrict the actions of the management, board of directors, general partner, etc., are inconsistent with the types of restrictive loan covenants approved in § 356.23(a). For example, the commenter stated that § 356.23(a)(1) authorizes mortgage loan covenants that prohibit the borrower from selling part or all of its assets; however, these covenants would be deemed impermissible under § 356.11(a)(2). The commenter suggested that § 356.11(a)(2) should provide that these and similar restrictions are not deemed impermissible control. We agree with commenter that certain rights of minority shareholders that do not deal with day-to-day activities should be authorized and have amended § 356.11(a)(2) to make clear that certain standard minority shareholder rights are permitted.

The same commenter suggested that § 356.11(a)(2) is inconsistent with § 356.11(a)(4), which states that it is impermissible control if a Non-Citizen has the right to unduly restrict the day-to-day activities and management policies through loan covenants or other means. We do not believe that these provisions are inconsistent. However, § 356.11(a)(4) has been amended to make clear that the limitation on the ability of a Non-Citizen to unduly restrict the day-to-day activities and management policies through loan covenants applies to covenants other than those approved for use by the Citizenship Approval Officer.

The commenter also indicated that § 356.11(a)(2) is inconsistent with § 356.11(b)(2) which states that the authority to preclude the owner from engaging in other business activities is just one factor that *may*, in conjunction with other factors, lead to a finding of impermissible control by a Non-Citizen. We intend for the two sections to be distinguishable and for § 356.11(a)(2) to address the right of a Non-Citizen to participate in day-to-day business activities conducted in the ordinary course of business. Section 356.11(a)(2) has been amended accordingly to distinguish it from § 356.11(b)(2).

Four commenters pointed out that traditional arrangements in the fishing industry could be technically read to confer a "disproportionate" benefit on the Non-Citizen. The commenters claimed that limited disproportion in economic benefits in the range of 1–5% are common in the fishing industry, and are not a meaningful indicia of control. Accordingly, the commenters suggested that § 356.11(a)(5), which defines as an absolute indicia of control the right to derive through a minority shareholder a "disproportionate" share of the economic benefits from the ownership or operation of a vessel, is overly vague. The commenters recommended that § 356.11(a)(5) be moved to subsection (b) and defined as a possible indicia of control, thus giving the agency discretion to determine on a case-by-case basis if disproportionate economic benefit is conferred upon Non-Citizens. In the alternative, the commenters suggested that some measure of materiality be added to § 356.11(a)(5) by requiring that the disproportion be "substantial," "considerable," "significant," or "material." We agree with the latter suggestion and have amended § 356.11(a)(5) to indicate that ability of a Non-Citizen to derive a "significantly disproportionate" share of the economic benefit will be deemed impermissible control.

One commenter further suggested that § 356.11(a)(5) be tightened to clearly state that the disproportionate benefit be in favor of the Non-Citizen in order to result in a loss of Citizenship. Otherwise an arrangement where the Non-Citizen owns 24% of the interest but derives 10% of the economic benefit would result in the automatic loss of U.S. citizenship. We agree with this comment and have amended § 356.11(a)(5) accordingly.

One commenter argued that the language of § 356.11(a)(6), which indicates that impermissible control will be found where a Non-Citizen has the right to be or is "a controlling factor" in the entity, is too vague. The commenter explained that a Non-Citizen who is a 20% shareholder and has one fifth of the votes would be a deciding factor if the other four Citizens are split. We disagree with the assertion that the term "controlling factor" is too vague. This provision is intended to address more direct involvement by a Non-Citizen; therefore, we do not consider the ability of a Non-Citizen to act as a tie breaker where the Citizen owners are deadlocked to be a "controlling factor."

Section 356.11(a)(7), which prohibits a Non-Citizen shareholder or limited partner from having the right to cause the sale of the vessel, was thought to be overly restrictive by one commenter. The commenter stated that most shareholder agreements and partnership agreements contain provisions for terminating the association of the investors. The usual mechanism for terminating the relationship between investors is for one to buy out the other(s). Because there is no market for a minority interest in a closely held company and a Non-Citizen is prevented from buying out the interest of the U.S. Citizens, the commenter recommended that a Non-Citizen minority shareholder should have the ability to force the sale of the vessel to a qualified third party. We agree that minority shareholders should have the ability to exit the arrangement, but we do not believe that a Non-Citizen should have the ability to force the sale of the assets in other situations. Accordingly, we have amended § 356.11(a)(7) to make clear that in the event of the dissolution of the arrangement the Non-Citizen may require the sale of its interest in the vessel.

The deletion of § 356.11(a)(9) was suggested by one commenter who believed that responsibility of a Non-Citizen for the procurement of insurance on a Fishing Vessel is completely unrelated to control of the vessel or vessel owner. We disagree with the commenter. The responsibility for procuring insurance on a vessel is generally the responsibility of the vessel owner or a bareboat charterer who steps into the shoes of a vessel owner. It is a definitive control responsibility because it determines disposition of loss proceeds as well as forward condition and likelihood of recovering loss proceeds. Therefore, it is an element of ownership that will be deemed impermissible control if it is the responsibility of a Non-Citizen.

Section 356.11(a)(10) states that it will be considered an absolute indicia of control if a Non-Citizen "[h]as the

ability through any other means whatsoever to control the entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel." Several commenters stated that it was inappropriate to include as an absolute indicia of control what appears to be a "catch all" provision. The commenters submitted that while other factors of contractual arrangement may accurately be considered "indicia" of control (as described in § 356.11(b)), § 356.11(a) should only include specific descriptions of impermissible transfers of control and thus § 356.11(a)(10) should be deleted. Because every instance of control cannot be identified in the rule, we disagree with the commenter and believe that a flexible provision such as § 356.11(a)(10) is needed in the final rule. Further the provision is firmly rooted in statute (see, 46 App. U.S.C. 802).

Section 356.11(b) Discretionary Indicia of Control

One commenter suggested that the undefined term "foreign involvement" used in the first sentence of § 356.11(b) should be changed to the defined term "Non-Citizen" in order to avoid confusion. We agree with the commenter and have amended § 356.11(b) to use the term "Non-Citizen."

Section 356.11(b)(5) states that one factor to be considered in determining whether impermissible control by a Non-Citizen is present is whether a Non-Citizen absorbs "many of the costs and normal business risks of the ownership and operation of a vessel." One commenter suggested that the term "many" could make it difficult to interpret this provision and, therefore, suggested that the term "many" should be replaced with "most" to clarify that only an inequity of cost and risk may suggest impermissible control. We agree with the commenter that the language should be clarified and have amended § 356.11(b)(5) to replace the phrase "many of" with "considerable."

Section 356.11(b)(6) states that if a Non-Citizen provides start up capital for an owner or bareboat charterer on "less than an arm's length basis," this may be deemed impermissible. Two commenters remarked that the provision should only apply to "prospective" start up capital arrangements as to do otherwise would penalize parties who entered into arrangements that complied with the law prior to the AFA. While we understand the commenters' concern, this is only one factor to be considered and weighed, and it will not necessarily constitute control. Therefore, we intend to apply § 356.11(b)(6) to all citizenship determinations.

Section 356.11(b)(7) states that if a Non-Citizen has the general right to inspect the books and records of the owner or bareboat charter, this may be deemed impermissible control. Three commenters noted that under state and common law, the right to inspect the books and records of a company at a proper time and for a proper purpose has long been basic among rights of minority partners and shareholders. The commenters explained that this right has been essential to prevent abuse and fraud by the majority partner or shareholder upon the minority and is more indicative of a lack of control. The commenters recommended that this provision be deleted. Section 356.11(b)(7) was intended to implement MARAD's long standing policy that one indicia of control to be considered is whether a Non-Citizen time charterer has the right to inspect the books of an owner or a bareboat charterer. Consequently, 356.11(b)(7) has been amended so that it restricts the right of a time charterer, and not all Non-Citizen minority shareholders, to examine the books of an owner, bareboat charterer, or time charterer.

Several commenters stated MARAD should not consider the use of the same legal representation, accounting firms, etc., as an indicia of control in § 356.11(b)(8). The commenters explained that many fishermen in Seattle use the same law firms, accounting firms, etc., because these firms have experience in the fishing industry and understand the idiosyncrasies of the fishing industry. We inadvertently failed to include the use of law firms and accounting firms by participants in the fishing industry and have so amended the provision. However, it is only one factor to be considered in the full context of each particular situation, and is not an absolute indicia of control.

Two commenters noted that the right to control a vessel's co-op allocation share is the practical equivalent of control over the vessel. One of the commenters pointed out that the owners of several fishing boats have sold or leased the pollock co-op share allocations corresponding to certain vessels for the year 2000 pollock season and, as a result, the vessels are tied up at the dock, not operating in any fishery. Both commenters explained that if the co-op share allocated to a vessel is sold or leased, the co-op share holder can prevent the vessel from participating in the pollock fishery for the next five years, which is the duration of the fishing allocation under subtitle II of the AFA. Accordingly, the commenters stressed that Non-Citizen ownership or control over a Fishing Vessel's fishing privileges, whether in the form of the sale or lease of co-op allocation shares or some other fishing privilege reserved exclusively for that vessel under any future fishery management regime, must be prohibited by MARAD's regulations as an impermissible transfer of control to a Non-Citizen. One commenter also suggested that such a transfer should be considered as the equivalent of a prohibited time or voyage charter of a Fishing Vessel. We received no other comments on this issue either at the NPRM or ANPRM stage. We agree with the commenters that control over a vessel's co-op share or fishing rights by a Non-Citizen is an element of control that should be considered; therefore, we have added a new § 356.11(b)(9) to include control over the fishing quota or fishing rights allocated to a vessel or vessel owner as an indicia of control to be considered.

One commenter stated that § 356.11(d) should indicate that MARAD will not seek to revoke a vessel's fishery endorsement or impose penalties for violation of the Non-Citizen control restrictions until the agency has notified the vessel owner of its concerns and sought to resolve the matter by agreement. The commenter argued that the rule should provide a process for working out any problems that the agency has with previously executed agreements and provide for a reasonable time for owners to cure the problem. The commenter believed that such an approach would ensure that owners do not seek advance rulings from MARAD in every case. In addition, the commenter asserted that the rules should include basic principles of due process and the right to an adjudicative hearing. The commenter suggested that the rule should state that a fishery endorsement will not become invalid for violation of the Non-Citizen ownership or control restrictions until formally revoked and that before MARAD can formally request that the Coast Guard revoke a fishery endorsement, it must give the owner written notice and an opportunity for a formal adjudicative hearing.

We agree with the commenter that prior to the imposition of penalties or the revocation of a vessel's fishery endorsement, we should attempt to notify the vessel owner and work out any problems, assuming no involvement of fraud. In fact, that is precisely the intent of § 356.11(d). To the extent possible and consistent with our long-standing practice in making citizenship determinations for other programs, we

intend to work through any issues related to citizenship determinations under the AFA. However, we do not agree that it is necessary to prescribe any additional process for working through such issues or to establish a formal adjudicative hearing process for such determinations.

Subpart C—Requirements for Vessels Owners

Section 356.13 Information Required To Be Submitted by Vessel Owners

A commenter recommended that MARAD should limit the documentation to be submitted in support of a citizenship determination to those documents and agreements involving transactions with Non-Citizens. Specifically, the commenter noted that § 356.13(a)(5) requires vessel owners to submit loan agreements and other financing documents applicable to a fishing industry vessel even when the loan is with a U.S.-Citizen Bank. We agree with the commenter and have amended § 356.13(a)(5) to require the submission of loan agreements and financing documents where the lender has not been approved by MARAD as a U.S. Citizen, except for standard loan agreements from Non-Citizen Lenders where the Non-Citizen Lender has been granted approval from the Citizenship Approval Officer pursuant to § 356.21 to enter into such standard loans without transactional approval from MARAD.

The commenter also noted that § 356.13(a)(6) applies to management agreements with both U.S. Citizens and Non-Citizens, and suggested that information related to management agreements should only be required where the agreement is with a Non-Citizen. We have amended § 356.13(a)(6) to clarify that information related to operating and management agreements is only required where the agreement is between the owner or bareboat charterer and an entity that has not been determined by MARAD to be a U.S. Citizen.

One commenter suggested that § 356.13(a)(7) should only require information on exclusive sales agreements where the agreement is with or for the benefit of a Non-Citizen as opposed to all exclusive sales agreements. We agree that information regarding agreements with U.S. Citizens should not be required. Therefore, we have amended § 356.13(a)(7) to state that copies of any sales, purchase, or marketing agreements that relate to the sale or purchase of all or a significant portion of a vessel's catch must only be submitted where the agreement is with an entity that has not been determined by MARAD to be a U.S. Citizen and the agreement contains provisions that could convey control to a Non-Citizen other than those provisions expressly authorized in § 356.43. For agreements that only contain the provisions expressly authorized in § 356.43, the owner or bareboat charterer is still required to identify the agreements and the parties to the agreement, but copies of the agreements are not required to be submitted.

The commenter also noted that §§ 356.13(a)(8) and (9) would require submission of stockholders' agreements, voting trust agreements, pooling agreements, proxy appointments, options to buy or sell stock or other comparable equity interests and agreements that restrict the sale of such stock or equity interests for the vessel owner and for any entity whose interest is being relied upon to establish 75% U.S. Citizen ownership, without regard to whether a Non-Citizen is a party to such agreements or receives any rights or benefits thereunder. The commenter stated that such information should only be required where the agreements or contracts are with a Non-Citizen or where a Non-Citizen receives rights or benefits. It is important for MARAD to be able to identify the true owners of an entity for which it is making a Citizenship determination. Accordingly, we disagree with the commenter's suggestion and will continue to require the information identified in §§ 356.13(a)(8) and (9).

The commenter suggested that § 356.13(a)(10) should only require documents relating to a merger, consolidation, liquidation, or dissolution of the vessel owner or any parent corporation where a Non-Citizen is involved in or affected by the transaction or will benefit from the transaction. We agree that where the parties involved have already been determined by MARAD to be U.S. Citizens the information required by § 356.13(a)(10) is not necessary. However, because the transactions identified in § 356.13(a)(10) involve significant changes to the ownership structure of an entity that can have major implications to its citizenship status, this information will continue to be required for parties that have not been deemed to be U.S. Citizens by MARAD.

As noted in the discussion under § 356.11(b), we agree with one commenter's suggestion that agreements to sell, lease, or otherwise transfer to a Non-Citizen a fishing quota, fishing right, processing quota, or any other right allocated to a vessel or vessel owner is an element that should be considered in determining whether impermissible control has been conveyed to a Non-Citizen. Accordingly, we have added a new § 356.13(a)(12) to require that such agreements or contracts be submitted to the Citizenship Approval Officer.

Section 356.15 Filing of Affidavit of U.S. Citizenship

We received a number of comments regarding the timing and ongoing availability of letter rulings. Several commenters requested that entities be allowed to request letter rulings under § 356.15 regarding their citizenship status as soon as the rules become final as opposed to being forced to wait until October 1, 2000. The commenters explained that delaying the time for accepting letter requests to October 1, 2000, has the effect of shortening the time period that Congress intended to give vessel owners, mortgagees, and others with a stake in the fishing industry to adjust to the new requirements. One commenter noted that in some cases, lenders have required that owners obtain their citizenship status by December 31, 2000. We agree with the commenters and have amended § 356.15(a) to indicate that we will begin accepting requests for letter rulings as soon as the final rules are published in the **Federal Register**. Parties can request an advance letter ruling up to June 1, 2001; however, owners will still be required to submit their citizenship information no later than June 1, 2001, to ensure that we have enough time to make a citizenship determination before the rules go into effect on October 1, 2001. In addition, the time period for submission of the required certification indicating that the information submitted in support of a letter ruling remains true and accurate has been amended to require submission of the certification between September 10, 2001 and September 20, 2001, in order to provide time for the Citizenship Approval Officer to review the certifications prior to October 1, 2001.

Several commenters requested that the rule expressly state that letter rulings will be available after October 1, 2001. We do not currently plan to issue letter rulings after October 1, 2001 because letter rulings necessarily involve hypothetical transactions and can absorb an inordinate amount of time and resources.

A couple of commenters stated that the 120-day time period in § 356.15(a) for MARAD to respond to a request for a letter ruling is too long. The commenters suggested shortening the time period to 60 days or 30 days after

the submission of any supplemental material, whichever is longer. We plan to respond to letter ruling requests as expeditiously as possible; however, we feel that given the uncertainty regarding the number of letter ruling requests that we may receive and the level of difficulty that each one will present, the 120-day time period is reasonable.

One commenter noted that § 356.15(c) requires vessel owners to submit an Affidavit and supporting documentation by June 1, 2001, so that MARAD can issue a citizenship determination by October 1, 2001; however, the rule is unclear as to whether the existing fishery endorsements will expire on October 1, 2001, thus requiring a new fishery endorsement to be obtained prior to October 1, 2001; whether existing fishery endorsements will be subject to revocation if the required affidavit and supporting documentation are not submitted; or whether the requirements of § 356.15(c) apply only to owners seeking new fishery endorsements on or after October 1, 2001. The commenter stated that if the intent of the rules is that all existing fishery endorsements will expire on October 1, 2001, unless MARAD reviews and approves them in advance, the rules should provide for adequate notice and an opportunity for a formal hearing before a vessel loses its fishery endorsement.

We agree with the commenter that the intent of § 356.15(c) should be clarified. We have added a new § 356.15(d) to make clear that a fishery endorsement for a vessel of 100 feet or greater in registered length will not be valid after October 1, 2001, unless the Citizenship Approval Officer has determined that the owner is eligible to own a vessel with a fishery endorsement. If the Citizenship Approval Officer determines that the owner is eligible to own a vessel with a fishery endorsement, the vessel's fishery endorsement will continue to be valid and will not be required to be renewed until its normal expiration. If the Citizenship Approval Officer determines that the owner is not eligible to own a vessel with a fishery endorsement, the endorsement will be deemed invalid as of October 1, 2001. In order to obtain a new fishery endorsement, the owner must demonstrate to the Citizenship Approval Officer that it is eligible to own a vessel with a fishery endorsement and apply to the Coast Guard for a new fishery endorsement.

The same commenter suggested that the rule should clearly state that MARAD will notify the owner of any defects in its Affidavit or related filings and give the owner an opportunity to cure the defect before any action is taken against the vessel's fishery endorsement. The commenter also stated that the rules should provide for adequate notice and an opportunity for a formal hearing before a vessel loses its fishery endorsement. We agree with the commenter that the rule should make clear that we will generally notify the applicant of any defects in its citizenship information and provide an opportunity to cure those defects. In fact, § 356.11(d) states that we will notify an owner if we have concerns regarding its citizenship status and that we will work with them to reach a satisfactory resolution, provided there is no verifiable evidence of fraud.

One commenter suggested that proposed § 356.15(d) should be clarified to indicate whether a "new owner" can document a vessel with a fishery endorsement (or operate it in the fisheries) before MARAD has made an affirmative determination that the new owner is eligible for a fishery endorsement. The commenter stated that if MARAD's involvement is required in every sale before an owner can operate the vessel, the purchase and sale of fishing vessels could be greatly complicated and delayed. According to the commenter, it would be a major mistake for MARAD to delay the purchase and transfer of every vessel. Given that most of these transactions take place between U.S. citizens with no foreign involvement, the commenter felt that it is likely that the cost of MARAD's involvement and the burdens placed on the industry will vastly exceed any benefits. Accordingly, the commenter urged that, at a minimum, MARAD provide for expedited approval of a fishery endorsement if the Citizenship Approval Officer has previously determined that a purchaser is eligible to own a vessel with a fishery endorsement and the purchaser certifies that no change has occurred since that determination was made or since the most recent filing of its Citizenship Affidavit. The commenter suggested that MARAD should be required to act within 15 days where the buyer has previously been approved by MARAD as a U.S. Citizen, and in all other cases there should be a deadline for action of 60 days. In addition, the commenter stated that MARAD should permit advance determinations to minimize disruptions of vessel sales.

We agree with the commenter that proposed § 356.15(d) (now § 356.15(e)) could be clarified to indicate that a vessel may not be documented with a fishery endorsement until the Citizenship Approval Officer has made a determination that the vessel owner is eligible to document a vessel with a fishery endorsement or operated in the fisheries of the United States until a fishery endorsement has in fact been issued by the Coast Guard. However, we do not agree that it will be necessary to provide for an expedited approval process where the vessel buyer has already been approved by the Citizenship Approval Officer as a Citizen of the United States. Such approvals should naturally be turned around very quickly if there are no significant changes. Similarly, we do not believe that it is necessary to create a deadline for action with regard to a sale that involves parties whose citizenship has not been previously reviewed by the Citizenship Approval Officer. We would expect to respond to these applications in a timely and expeditious manner; however, without knowing the parties involved or the particulars of each transaction and how complicated the citizenship analysis will be, we are reluctant to establish a deadline for action by the Citizenship Approval Officer at this time.

Section 356.17 Annual Requirements for Vessel Owners

One commenter stated that § 356.17 should clearly state that a vessel owner submitting its annual Affidavit need not include all the documentary material or information anticipated in its first submission if to do so would be repetitive of information already submitted to MARAD. We agree that the information should not have to be resubmitted unless the Citizenship Approval Officer requests copies of specific documents and have amended § 356.17 to incorporate the comment.

In order to simplify the renewal process and to coordinate better with the Coast Guard, we have decided on our own initiative to amend § 356.17(b) so that the date for the annual citizenship submission is tied to the renewal date for the vessel's documentation and fishery endorsement rather than the stockholder's meeting. Otherwise, owners would be forced to re-document each vessel so that the expiration of the fishery endorsement and the citizenship approval coincide. Owners of multiple vessels with different documentation dates are only required to file an Affidavit of U.S. Citizenship and supporting documentation in conjunction with the first vessel renewal during each calendar year. In order to avoid requiring an owner of multiple vessels to submit a separate Affidavit of U.S. Citizenship and supporting documentation in conjunction with the

annual renewal of the fishery endorsement for each vessel, the rule allows the owner to rely on the Affidavit of U.S. Citizenship and supporting documentation submitted with the first vessel that is subject to renewal in a given calendar year. For every other vessel for which the owner has to demonstrate that it is a Citizen eligible to own a vessel with a fishery endorsement, the owner must submit a certification to the Citizenship Approval Officer at least 45 days prior to the renewal date for the vessel's fishery endorsement stating that the Affidavit of U.S. Citizenship and supporting documentation already on file with Citizenship Approval Officer for the first renewal in that calendar year of a fishery endorsement for a vessel or 100 feet or greater in registered length continues to be true and accurate. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of Part 356 such as charters, management agreements, loans or financing agreements, long-term agreements for the sale of a vessels catch, or exemptions claimed under the rule must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

Subpart D—Mortgages

Section 356.19 Requirements To Hold a Preferred Mortgage

Several commenters noted that state or federally chartered financial institutions meeting the controlling interest requirements of section 2(b) of the 1916 Act are deemed eligible under section 202 of the AFA to hold a preferred mortgage on a Fishing Vessel. However, the commenters stated that this benefit, which is conferred upon state or federally chartered financial institutions through § 356.19, is vitiated by the definition of Non-Citizen in proposed § 356.3(n), which includes any entity that does not meet the 75% U.S. Citizen ownership and control standard, including a state or federally chartered financial institution that meets the controlling interest standard. The commenters recommended that either the definition section be amended or that § 356.19 be amended to state specifically that for purposes of Subpart D of the regulations these lenders are considered U.S. Citizens as though they met the 75% ownership standard. We agree with the commenters and have added a new subsection 356.3(g)(3) to clarify under the definition of "Controlling Interest" that a state or federally chartered financial institution is considered a Citizen of the United States for purposes of Subpart D of this Part for all purposes other than operation of the vessel pursuant to § 356.25. Similar language was also added to the definition of "Non-Citizen Lender" at § 356.3(p).

Section 356.21 General Approval for Non-Citizen Lender's Standard Loan or Mortgage Agreements

Several commenters suggested that § 356.21(a) should be clarified to make clear that general approval of loan documents is not limited to "financial institutions engaged in the business of financing fishing vessels." They contend that this language should only be descriptive and not limiting, otherwise, it could restrict sources of financing. The commenters recommended that pre-approval of loan documents be available to all Non-Citizen Lenders seeking to lend to the owner of a U.S. fishing industry vessel through a Mortgage Trustee. In addition, one of the commenters recommended that any Non-Citizen whose business includes making loans to vessel owners should be able to obtain prior approval.

The language used in § 356.21(a) is intended to be limiting and to apply to financial institutions that are engaged in the business of financing fishing vessels. We want to provide an avenue through the rule for financing institutions to get approval of their standard loan and mortgage packages to minimize the burden of the rule and to provide certainty for traditional financial institutions regarding the covenants that can be used. However, we are concerned about loans from other Non-Citizen entities that may have additional dealings with the vessel owner or bareboat charter that when considered together with the loan may result in excessive control by the Non-Citizen. Accordingly, we believe that it is necessary to examine the loan agreements between vessel owners and Non-Citizens other than financial institutions engaged in the business of financing fishing vessels on more of a case-by-case basis and that general approval of loan agreements should not be granted to other Non-Citizens.

A couple of commenters noted that § 356.21(e) imposes stiff penalties on owners as well as lenders when the lender strays from the pre-approved documents. In addition to the loss of the vessel's fishery endorsement, this subsection subjects lenders to civil and criminal penalties. The commenters suggest that the loss of economic value of the capital should be sufficient. The commenters felt that criminal liability resulting from some minor variance in the loan documents was excessive and that it would likely deter lenders from lending or encourage them to get every loan approved to avoid the potential liability. The commenters recommend that the civil and criminal penalties be deleted or that, at a minimum, the regulations set a materiality benchmark for variations.

The civil and criminal penalties included in § 356.21(e) were intended to discourage willful misconduct and material fraud and were not intended to result in overly harsh penalties for essentially harmless mistakes. We agree with the commenters that some measure of materiality would be an improvement to this subsection, and we have amended § 356.21(e) to indicate that the penalties apply where there has been material fraud or the lender has knowingly violated this subsection.

Section 356.23 Restrictive Loan Covenants Approved for Use by Non-Citizens

Although § 356.23 provides a general conceptual framework for restrictive loan covenants that would be permissible, several commenters noted that loan covenants may vary from one transaction to the next. Because it will be crucial during the final negotiations of a transaction to know whether covenants will pass muster, the commenters stated that it would be helpful for the rule to provide for a quick response time, such as 15 business days, to confirm that similar provisions fall within the general approval authority or are similarly approved. We understand the need for a quick response time during the final stages of negotiations and in response to questions related to the regulation in general, and we will endeavor to provide quick responses. However, without knowing how complicated the transactions or questions put forth to us will be or what the workload to implement these rules will be at any given point in time, we feel that we must evaluate each question on a case-by-case basis and that we can not include a set time frame in the regulation at this point.

One commenter noted that § 356.23(a) provides a list of approved covenants for use by a Non-Citizen Lender that is "unrelated" to the vessel owner. The commenter suggested that the term "unrelated" should be deleted so that the approved covenants could be used by related parties as well as unrelated parties or, at a minimum, that it should be defined so that owners do not have to seek prior approval for every loan where they may have some other

business dealing with the Non-Citizen Lender. In addition, the commenter stated that § 356.23 should provide that Non-Citizen Lenders who use the covenants approved in this section do not have to obtain prior MARAD approval before entering into the mortgage. As with § 356.45, the commenter suggested that the owner should only have to submit a description of the loan within 30 days.

We do not agree to the extension of approved covenants to related parties. The predicate of a list of approved restrictive loan covenants is that there are no other relationships between the lender and the vessel owner. The restrictive loan covenants in conjunction with other relationships between related parties may result in impermissible control. Therefore, we have not extended the coverage of approved covenants to related parties, and we have added a definition of "Related Parties" to § 356.3 to provide additional clarification.

Subpart E Mortgage Trustees

Section 356.27 Mortgage Trustee Requirements

Section 356.27(b)(6) contains a "catch all" requirement which states that Mortgage Trustees must "meet any other requirements prescribed by the Citizenship Approval Officer." Several commenters noted that while this is consistent with MARAD's discretion under the AFA, it creates continued uncertainty regarding the Mortgage Trustee requirements and could discourage potential Mortgage Trustees who may be considering engaging in the business. The commenters noted that MARAD always has the right to amend the rule at a later date if other conditions need to be included and, therefore, suggested that the "catch all" requirement of § 356.27(b)(6) be deleted in order to provide certainty regarding the Mortgage Trustee provisions. Although MARAD has the authority to promulgate a new regulation to respond to any unforeseen circumstances that could arise related to Mortgage Trustees, promulgating a new rule is a cumbersome, time consuming approach. We believe that the "catch all" requirement § 356.27(b)(6) provides a reasonable way to handle any unforeseen issues and that it would not serve as a significant deterrent to U.S-Citizen financial institutions to act as Mortgage Trustees.

A couple of commenters stated that they believed § 356.27(e) presents a problem by creating a conflict between the fiduciary duties that the Mortgage Trustee has to the Non-Citizen Lender and the requirement of the regulations that the Mortgage Trustee not assume any fiduciary duty in favor of a Non-Citizen Lender that is in conflict with the U.S. Citizen ownership and control provisions of the AFA. State and common law requirements subject trustees to a fiduciary duty in favor of the beneficiary—in this case, the Non-Citizen Lender. Therefore, the commenters suggest that a financial institution may be wary of litigation and unlikely to place itself in this conflict and face the possible civil and criminal penalties of § 356.27(g). The commenters recommend that MARAD modify the section to provide that a Mortgage Trustee that utilizes a trust agreement form that is pre-approved by MARAD will be deemed not to be in conflict with the U.S. Citizen ownership and control requirements. We agree with the commenter and have amended § 356.27(e) to provide for requests for pre-approval of trust documents to the Citizenship Approval Officer if the Mortgage Trustee desires additional assurance that the agreement is consistent with the requirements of Part 356 and the AFA.

Section 356.31 Maintenance of Mortgage Trustee Approval

A couple of commenters recommended that § 356.31 be amended to make clear that if a Mortgage Trustee loses its qualification and the Non-Citizen Lender is forced to find a new Mortgage Trustee, the preferred status of the mortgage will be preserved during the 30-day transition period. We agree with the comment and have amended § 356.31(c) to implement the commenters' suggestion.

Subpart F—Charters, Management Agreements, and Exclusive or Long-Term Contracts

Section 356.39 Charters

One commenter suggested that MARAD should not accept as a valid practice in the fishing industry so-called "service agreements," in which a contract is made between a party and a vessel owner to have certain services (for example delivery of 100 tons of pollock) performed without specifying which vessel or for what time period. The commenter stated that such agreements have been used in marine transportation to avoid charter limitations. Accordingly, the commenter suggested that MARAD should review all agreements involving Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and Non-Citizens, to ensure that:

(1) The owner retains management and operation of the vessel, deciding when to fish, what species to catch, and where and when to deliver the catch;

(2) A Non-Citizen, whether a processor or another entity, may not hire the vessel for any period of time or for any voyage as such an arrangement would be a prohibited time or voyage charter. The commenter intimated that a foreign-owned processor, for example, could not contract with a fishing vessel for a season or for a year, since that would be the equivalent of a time charter; and

(3) A bareboat charter is indeed a bareboat charter and not a time charter.

The commenter stated that MARAD should examine all agreements to determine who has the right to hire the crew, who has the obligation to pay expenses and insurance, and who is liable to third parties. For a Fishing Vessel used to harvest fish, the commenter stated that if a Non-Citizen has any of these rights or obligations the agreement should be prohibited.

We agree with the commenter that provisions in various agreements must be regulated to limit the transfer of control over a vessel or vessel-owning entity to Non-Citizens. Accordingly, we feel that a well-grounded approach is to define provisions that are deemed acceptable and others that are deemed prohibited and to require a copy of the charters to be submitted to the Citizenship Approval Officer to ensure that time charters are indeed time charters and that impermissible control is not transferred to a Non-Citizen. However, we do not agree with the commenter that any agreement with a Non-Citizen processor, which for instance sets a delivery schedule for fish to be delivered for processing should be deemed a time charter and prohibited. Certain provisions will be necessary in any such agreements to allow parties to coordinate their operations without determining that coordination equates to control by a Non-Citizen. We discuss management agreements and long-term sales agreements in greater detail under § 356.41 and § 356.43 respectively.

One commenter stated that § 356.39(a)(1), which requires a bareboat charterer to submit an Affidavit of U.S. Citizenship to MARAD for review and approval prior to entering into such charter, is inconsistent with the requirements of the regulations unless MARAD plans to require pre-approval before the sale of each vessel. If so, the commenter suggested that MARAD should minimize the disruption of transactions by permitting a charterer to get an advance determination from the Citizenship Approval Officer that it is a

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U.S. Citizen. The commenter also suggested that a vessel owner should be protected if it enters into a voyage or time charter with a person who has been determined by the Citizenship Approval Officer to be a U.S. Citizen. We intend to require approval of a bareboat charterer's citizenship before the parties may enter into the charter. However, an owner may enter into a bareboat charter without prior MARAD approval if the charterer has already been approved by the Citizenship Approval Officer as a U.S. Citizen. Accordingly, we would make a citizenship determination for an entity before it entered into a bareboat charter, minimizing the disruption to transactions between U.S. Citizens. In addition, the owner would be free to rely on the certification of the charterer that it was deemed by the Citizenship Approval Officer within the last year to be a U.S. Citizen where the owner did not otherwise have reason to know that the charterer no longer qualified as a U.S. Citizen.

One commenter noted that § 356.39(b)(1) contains typographical errors. The terms "Fishing Vessel" and "Fish Processing Vessel" should be plural and the words "including Fish Tender Vessels and Fish Processing Vessels" should be deleted. We agree and have made the technical corrections to § 356.39(b)(1).

The same commenter stated that § 356.39(b)(2) should not require prior approval by MARAD of time and voyage charters of Fish Processing and Fish Tender Vessels to charterers who are Non-Citizens. The commenter asserted that the differences between a bareboat charter and time charter are readily apparent and the penalty, loss of the fishery endorsement, is sufficiently severe to keep people honest. Accordingly, the commenter suggested that such charters should be allowed to be submitted to MARAD within 30 days of execution as in § 356.39(a)(2) for charters to U.S. Citizens.

We do not agree with the commenter that MARAD review of the time and voyage charters to Non-Citizens is unnecessary. In order to ensure that an owner has not entered into a prohibited charter with a Non-Citizen, we must know whether the parties to the charter are U.S. citizens and into what type of charter the parties have entered. Because any charter of a Fishing Vessel to a Non-Citizen for the purposes of harvesting fish is prohibited, we must confirm that all charterers of Fishing Vessels are U.S. Citizens. Accordingly, we have required in § 356.39(a)(2) that a charterer claiming to be a U.S. Citizen submit an Affidavit of U.S. Citizenship. However, in § 356.39(b)(2) we are authorizing time and voyage charters of Fish Processing Vessels and Fish Tender Vessels to Non-Citizens. Because a bareboat charterer steps into the shoes of the owner and is considered the owner *pro hac vice*, we believe that it is necessary to ensure that a charter with a Non-Citizen is indeed a time charter or voyage charter to ensure that such impermissible control is not transferred to a Non-Citizen. Therefore, we will continue to require the approval of time and voyage charters to Non-Citizens prior to their execution. As we gain more experience over time with the participants and charters in the fishing industry, we may revisit whether it is necessary to pre-approve time and voyage charters to Non-Citizens.

The commenter also noted that § 356.39(b)(2), which authorizes time or voyage charters to Non-Citizens of dedicated Fish Processing or Fish Tender Vessels, should be clarified to make clear that the vessel only needs to be "dedicated" as a fish harvesting or fish processing vessel during the period that it is on charter. The commenter stated that there is no policy reason for prohibiting a Fishing Vessel from being utilized as a Fish Tender Vessel or Fish Processing Vessel on a charter to a Non-Citizen when it is not being used as a Fishing Vessel. We agree that the ultimate use of the vessel should determine whether or not it can be chartered under a time or voyage charter to a Non-Citizen. However, we disagree with the commenter's suggestion to allow Fishing Vessels to be chartered to Non-Citizens for use as Fish Processing Vessels and Fish Tender Vessels when not being used to harvest fish because it would be too difficult to track and police time and voyage charters of Fishing Vessels to Non-Citizens. If an owner wishes to time charter or voyage charter a Fishing Vessel for use as a Fish Processing Vessels or Fish Tender Vessel in order to fully utilize its vessel, it still has the option of chartering to a U.S. Citizen.

One commenter suggested that § 356.39 should allow bareboat charters of Fish Tender Vessels or Fish Processing Vessels to Non-Citizens for operation outside of the United States. The commenter noted that this would be perfectly legal and, unlike Fishing Vessels for which there is a rationale to avoid operation outside of the United States, there is not a rationale for preventing what would be a logical use of the vessel outside of the United States. Furthermore, the commenter stated that there is no statutory authority to immediately invalidate the fishery endorsement of a Fish Tender Vessel or Fish Processing Vessel. We agree with the commenter that the same compelling reasons for limiting the use of Fishing Vessels outside of the United States do not exist for the charter of Fish Processing Vessels and Fish Tender Vessels. Accordingly, § 356.39(b)(1) has been amended to allow bareboat charters of Fish Processing Vessels or Fish Tender Vessels to Non-Citizens for use outside of the United States.

One commenter noted that the rule should make clear that a Non-Citizen time charterer of a Fish Processing Vessel may hire, supervise, manage and direct the processing workers employed in the processing operations of the vessel without rendering the charter a bareboat charter. The commenter urged that the term "crew" be defined as limited to navigational and deck crew where restrictions on Non-Citizen control of the vessel's crew are described. We agree with the commenter that the term "crew" is intended to apply to the navigational and deck crew. Personnel that are solely involved in processing the catch may be hired and managed by a Non-Citizen time charterer, provided that they are engaged solely in the processing of the vessel's catch and are in no way responsible for or authorized to control the navigation, fish harvesting activities, or general operation of the vessel.

Two commenters provided suggestions on § 356.39(d). One commenter suggested that the section is unnecessary and should be deleted because it is clear that a violation of the rules could lead to a loss of the fishery endorsement. The commenter did not believe that it was necessary to restate the penalty here while the rule is silent elsewhere. At a minimum, the commenter thought that the provision should be amended to indicate that the fishery endorsement will be lost only if the vessel is chartered to a Non-Citizen and used for harvesting fish. The commenter stated that loss of the fishery endorsement for a violation of this section for a reason other than using the vessel for harvesting fish goes beyond the requirements of the AFA. The second commenter did not oppose the specification in § 356.39(d) of the penalty for violating this section; however, the commenter thought it should provide for notice to the charterer if it was determined that there was a violation. We disagree with the first commenter's assertion that a loss of the fishery endorsement for a violation of the chartering restrictions goes beyond the scope of the AFA. If a charterer is deemed to have violated the chartering provisions, we would deem there to be an impermissible transfer of control to a Non-Citizen, which would

mean that the vessel owner is not eligible to own a vessel with a fishery endorsement. Accordingly, we do not plan to delete § 356.39(d) from the rule. However, we agree with the second commenter that the owner should be notified if the Citizenship Approval Officer determines that there has been a violation of § 356.39 and that the fishery endorsement is, therefore, being revoked.

Section 356.41 Management Agreements

Several commenters suggested that § 356.41(b) be amended to authorize quality control activities, management of fish processors and other non-navigational crew as elements of a management agreement with a Non-Citizen. Similarly, the commenters suggested that for time or voyage charters to Non-Citizens of Fish Processing Vessels and Fish Tender Vessels that are not used for harvesting fish, the Non-Citizen time charterer or voyage charterer should be permitted to hire, supervise, manage and direct the processing workers employed in the processing operations of the vessel without violating the Non-Citizen control provisions of the rule. The commenters noted that such quality control personnel are critical to maintain quality assurance of surimi and other processed products. Accordingly, the commenters urged that the term "crew" be defined as limited to navigational and deck crew and that the term "operation of the vessel" should be defined to exclude processing activities.

We agree with the commenters that control of employees who are engaged solely in the processing operations of a vessel, including quality control personnel, is distinguishable from control over crew responsible for the navigation and general operation of the vessel. Accordingly, we will not consider the term "crew" to include any employees who are engaged solely in the processing of the fish and who are in no way responsible for or authorized to control the navigation, fish harvesting activities, or general operation of the vessel.

Section 356.43 Long-Term or Exclusive Sales and/or Marketing Contracts

Several commenters stated that the AFA does not grant authority to MARAD to regulate long-term marketing arrangements or exclusive sales contracts of processed products. Even if MARAD did conclude that it had such authority, the commenters urged that the rule include elements of long-term sales contracts that are permissible and that reference to approval of long-term marketing arrangements be dropped. We agree with the commenters that the regulation of long-term marketing arrangements of a vessel's catch is unnecessarily broad and should be dropped from § 356.43. However, we do not agree that the requirement of section 203(c)(2) of the AFA that MARAD review contracts or agreements with Non-Citizens related to the sale of all, or substantially all, of the living marine resources harvested by a fishing vessel was intended to apply only to the sale of whole fish. Catcher/processors that sell all or substantially all of the living marine resources harvested by that vessel after performing some level of processing on the catch are still subject to control through such agreements by Non-Citizens. Accordingly, even if the living marine resources harvested by a vessel have been processed in some way, long-term contracts for the sale of those products that account for all or a significant portion of the vessel's catch are still covered by this regulation.

One of the commenters who supported the approval of long-term or exclusive sales agreements without prior approval elaborated on the above comment by pointing out that the provisions in the regulation focus on harvesting vessels delivering to shoreside processors and do not address factory trawlers. The commenter stated that factory trawler agreements include additional contractual elements such as species and product type, expected quantities to be purchased, quality standards, conditions for consignment, responsibility for various costs of sales, terms and methods of payments, shipping instructions, and the possible engagement of a buyer's representative or technician. However, the commenter did not provide specific suggestions regarding contractual provisions that should be approved and no other information relating to standard provisions for such agreements with factory trawlers was submitted. Therefore, the final rule has not been amended and any additional terms that are specific to agreements with factory trawlers will have to be approved by the Citizenship Approval Officer.

One commenter suggested that § 356.43(b)(8) should be revised to allow the Non-Citizen purchaser also to provide processing or quality control technicians. We agree with this comment, provided the quality control technician or processing technician does not have the ability to control navigation, operation, or harvesting activities of the vessel.

One commenter opposed our approach in § 356.43 and stated that the rule should not allow exclusive sales or marketing contracts for all or a significant portion of a vessel's catch without prior review and approval in any case involving a Non-Citizen. The commenter stated that, as proposed, the regulations would allow a Non-Citizen to enter into an arrangement with a Fishing Vessel that is indistinguishable from a prohibited time or voyage charter. For example, the commenter pointed out that § 356.43(a) would permit "the employment of certain vessels on an exclusive basis for a certain period of time," while § 356.43(b)(2) would permit the contract to specify the type of fish to be caught and the place at which the fish is to be delivered. The commenter stated that these provisions are identical to the requirements of a time or voyage charter and that the effort to "minimize disruptions to the fishing industry" should not be translated into loopholes to the express limitations of the AFA. Therefore, the commenter recommended that § 356.43 be revised to require that all contracts with a Non-Citizen for the sale of all or a significant portion of a Fishing Vessel's catch be submitted for approval prior to implementation, and that the rule prohibit any such contract if it permits the Non-Citizen to control the time, location, operation, or nature of the fishing activities.

We believe that a long-term sales contract is distinguishable from a charter of the vessel and that certain provisions related to the timing and scheduling of deliveries are a necessary requirement for any processor to conduct an efficient operation and to avoid bottlenecks. These contracts may specifically provide that the purchaser has the right of first refusal to purchase all or a certain portion of an owner's or bareboat charterer's catch and/or that the owner or charterer agrees to sell all production of its vessels or a portion of the production of its vessels to the processor at fair market value.

Section 356.45 Advance of Funds

One commenter suggested we make clear in § 356.45(a)(1) that it addresses both funds advanced for products prior to delivery of the product to the buyer and provisional payments for product already delivered for consignment sales, but not yet sold. We agree that an advance of funds should also be allowed for provisional payments from a Non-Citizen for product already delivered for consignment but not yet sold.

Several commenters stated that § 356.45(a)(1) should not restrict the

advancement of funds to working capital expenditures or restrict the use of funds in any way. Rather, the commenters suggested that MARAD should focus on permissible and prohibited security, collateral, and other obligations by the vessel owner to the Non-Citizen in exchange for the advancement. The commenters stated that the inquiry should be whether the advance of funds is for a bona fide need of the vessel or would otherwise improve the operation of the vessel or its access to fish. Further, the commenters explained that the decision is often artificial or uncertain regarding whether the funds are used for capitalized improvements, so this requirement does not further the purposes of the AFA. Therefore, the commenters suggested that no restriction should be placed on an unsecured, uncollateralized advancement of sales proceeds. The commenters stated that the use of an unsecured advancement of funds for capital improvements to a Fishing Vessel should not be deemed evidence of a transfer of control to a Non-Citizen.

Another commenter elaborated on the advancement of funds and noted that such loans from processors to vessel owners are common in the fishing industry. The commenter explained that often these loans from fish processors to vessel owners are necessary because the vessel owner does not have enough collateral to provide security for the loan. In almost every situation, there is no unencumbered security available, and the processor is asked to take a junior credit position. The borrower is generally required to commit to the delivery of fish to the processor on a right of first refusal basis for a period of time or at least until the loan has been paid off; and to grant security for the loan including a preferred ship mortgage in the vessel. According to the commenter, Non-Citizen owned processors would be placed at a competitive disadvantage if they could not make such loans or had to wait 30, 60, or 90 days for MARAD to approve a transaction.

Likewise, another commenter stated that the requirement in § 356.45(a)(5) that advances of funds not be secured with an interest in the vessel is not appropriate as such a requirement would disrupt the standard practice in the fishing industry. Moreover, the commenter pointed out that even if a Non-Citizen processor did not require a preferred mortgage, an advance of funds for the purpose of procuring goods or services for the vessel (*i.e.*, necessaries) likely gives rise to a lien on the vessel whether or not a mortgage is granted.

We agree with the commenters that an advancement of funds should not be limited on the basis of whether those funds are used for working capital or capitalized improvements to the vessel because dollars are not readily traceable. A more appropriate consideration is what type of security is granted for the loan. Accordingly, we have amended the rule by striking the requirement that an advance of funds from a Non-Citizen can only be used for working capital. Although we recognize that loans from Non-Citizen processors secured by a preferred mortgage on the vessel may have been widely utilized in the past, the parties that can hold a preferred mortgage on a vessel are specifically delineated in section 202 of the AFA. A Non-Citizen is specifically prohibited from holding a preferred mortgage on a vessel.

Several commenters requested that we clarify whether a Non-Citizen processor can obtain a preferred mortgage through a Mortgage Trustee as security for a loan to a vessel owner. We do believe that such a security interest in the vessel conveys too much control to a Non-Citizen when considered in conjunction with other leverage that it may have over a vessel owner or charterer through a long term sales contract. Therefore, advancements of funds from Non-Citizen processors will not be permitted where the security for the loan is a security interest in the vessel. If a Non-Citizen processor wishes to lend money to a vessel owner or charterer it may only do so if the loan is unsecured or if the security for the loan is based on a sales agreement for the sale of a percentage of the catch from the vessel owner's vessels.

One commenter stated that § 356.45(a)(3) should not prohibit an advance of funds on the basis of a sales agreement if the agreement provides "any right whatsoever to control the operation, management, and harvesting activities" of a vessel. Instead, it should permit an advance of funds on the basis of a sales agreement which contains the terms approved in proposed § 356.43(b). The commenter asserted that § 356.43(b) clearly contemplates some degree of control over the management and harvesting activities of a vessel by a Non-Citizen and that it does not make sense to authorize these terms in one section and negate their use in another. We agree with the commenter and have amended § 356.45 to clarify that the limitations on the ability of the Non-Citizen to control the operation and harvesting activities of the vessel are limited to those actions not explicitly authorized by § 356.43.

One commenter requested that § 356.45(a)(2) be clarified to indicate what is meant by "the annual value of the sales contract" or why such a standard makes sense as a limit for the amount of the advance. We have amended the rule to clarify that the "annual value of the sales contract" refers to the total sums paid by the processor under the supply contract.

A commenter noted that § 356.45(b) provides a safe harbor for loans that are not secured by a sales or marketing agreement. The commenter stated that the reference to a Non-Citizen Lender with a "U.S. branch" suggests that proposed § 356.45(b) was intended to provide a safe harbor for Non-Citizen financial institutions. However, the language of the section is not so limited and the commenter asserts that there is no reason why the provision should be limited to a financial institution with a U.S. branch. The commenter suggests that the practical result of excluding processors from the safe harbor provisions of § 356.43 and § 356.45 will be to require case-by-case approval of all financial arrangements between Non-Citizen processors and vessel owners. The commenter claims that this will severely burden such arrangements and leave vessel owners with few alternatives to obtain necessary financing for operating costs, repairs or capital improvements. Therefore, the commenter requests that "U.S. branch" be deleted from the provision to make clear that it is available to any Non-Citizen. We do intend to allow Non-Citizens other than financial institutions to enter into unsecured loans with vessel owners. However, the rule restricts the allowance of unsecured loans to a parties with a "U.S. branch" to assure that the foreign entity is subject to service of process in the United States.

Subpart G—Special Requirements for Certain Vessels

Section 356.47 Special Requirements for Large Vessels

There were only a few comments related to the special requirements for larger vessels contained in § 356.47. Two commenters requested that the rule be amended to state that for purposes of 46 U.S.C. 12102(c)(6)(A)(iii) a vessel exceeding the length, tonnage, and horsepower threshold cannot be rendered ineligible for a fishery endorsement by reason of the failure to file an application for a new fishery endorsement within 15 business days after an event causing the endorsement to become invalid unless the owner failed to file such an application after

having received written notice that the fishery endorsement was invalidated and a complete statement as to the grounds for such invalidation. The commenters noted that this concept was discussed in the preamble of the NPRM but was not actually included in the rule. We agree with the comment and have amended § 356.47 accordingly.

Another commenter claimed that the 15 business-day time period to respond to an invalidated endorsement is too short under any circumstances to respond. The commenter pointed out that senior personnel in the fishing industry are often away from their desks for extended periods of time during the fishing season, and notice of this kind could easily be overlooked, without fault of the company, for longer than 15 business-days. In addition, in cases where the invalidation of a fishery endorsement was due to an impermissible change in Non-Citizen ownership, or failure of a Non-Citizen owner or Mortgagee to qualify for or retain a treaty exemption, the proposed 15 business-day cure period is entirely too short and would result in a fire sale of the vessel. We understand the commenter's concern; however, the 15 business-day time period is a statutory requirement and MARAD does not have discretion to provide for a longer period of time.

One commenter stated that while the requirement in § 356.47(a)(3) that a vessel possess an engine or engines "capable of producing a total of more than 3,000 shaft horsepower" is consistent with the language of the statute, it is overly broad and could be misinterpreted. The commenter suggested that the intent of the statute was to limit the power of the vessel's propulsion engines, but that the term "shaft horsepower" does not necessarily refer to the output at the vessel's propeller shafts and could be interpreted to include all engines aboard the vessel including auxiliaries for hydraulics, electrical equipment, etc.

In addition, the commenter noted that use of the term "capable of" to describe the horsepower produced by the engines is overly broad as the term could refer to the maximum possible horsepower rating rather than the horsepower that the engine produces in its actual service rate. For example, the commenter noted that a Caterpillar 3516 marine diesel engine would be rated at 3,000 horsepower at 1,925 rpm for fast passenger vessels and patrol craft, but would only be rated at 1,200 horsepower at 900 rpm when "A" rated for continuous duty operation. Therefore, a new fishing vessel with two 3516's in continuous duty operation would have a combined output of 2,400 horsepower, well within the limits of the law and regulation. However, under the proposed regulation the vessel could be in interpreted as having engines "capable of producing a total of" 6,000 horsepower, nearly double the threshold of the regulations.

We agree with the commenter that the AFA was intended to limit the propulsion horsepower of the vessel's engines as they are rated for their intended use. Accordingly, we have amended § 356.47(a)(3) to clarify that rule applies to the rated horsepower and does not include other auxiliary engines.

Section 356.51 Exemptions for Specific Vessels

One commenter pointed out that there was a technical error in § 356.51(c) and that it should read that the NORTHERN VOYAGER and NORTHERN TRAVELER must be used in a fishery governed by the authority of either the New England Fishery Management Council or the Mid-Atlantic Fishery Council rather than a fishery other than one governed by one of these fishery councils. The technical correction was made to the final rule.

One commenter noted that pursuant to the newly enacted 46 U.S.C. 12102(c)(5), the new citizenship regime does not apply at all to some of the Western Pacific fisheries. The commenter stated that it expected the Coast Guard to implement two fishery endorsements, one applicable generally under the AFA and one limited to service in the relevant Pacific fisheries. The commenter suggested that the regulations deal with these vessels either in a scope provision that serves as a gloss on all of part 356, or at least at the places where phrases like "eligible for a fishery endorsement" or the like are used.

We recognize that these vessels are exempt from the new citizenship requirements and have already addressed this in the proposed rule. Section 356.51(e) (now section 356.51(d)) exempts Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) from compliance with the new citizenship standards and Mortgagee requirements established by the AFA and part 356. In order to obtain a fishery endorsement, the vessel owner is still required to demonstrate in an Affidavit of U.S. Citizenship that it complies with the ownership and control requirements in effect prior to the passage of the AFA and to note on its Affidavit of U.S. Citizenship that it is claiming an exemption pursuant to this subpart, so that we can appropriately notify the Coast Guard if the vessel owner qualifies for a fishery endorsement.

Subpart H—International Agreements

Section 356.53 Conflicts With International Agreements

We received a number of comments related to section 356.53 and the process to exempt vessel owners and Mortgagees from the requirements of the rule where there is deemed to be a conflict between the requirements of the rule and an international agreement or treaty to which the United States is a party. Several commenters noted that they believed that there was indeed a conflict between the requirements of the AFA and the Treaty of Friendship, Commerce, and Navigation ("FCN") between the United States and Japan and the FCN between the United States and Korea. These commenters stated that harming Japanese interests violates the AFA's provisions requiring that MARAD "minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives."

The commenters noted that Article V of the U.S.-Japan FCN prohibits "unreasonable measures that would impair the legally acquired rights or interests" of Japanese nationals or companies. These commenters stated that the regulations and the AFA are in conflict with the U.S.-Japan FCN because the law fails to provide for "prompt payment and compensation" for what amounts to a taking. The commenters further explained that failure of the rule to address the treaty issue has placed relationships with Japanese owned entities in the fishing industry in unnecessary jeopardy and is likely to have a significant adverse economic effect on the U.S. fishing industry as this uncertainty may cause Japanese interests to sell rather than wait for the final rule or determination by MARAD.

Several commenters asserted that the final rule should acknowledge that the rules and the U.S.-Japan FCN are inconsistent and that it should state that any owner or Mortgagee that makes the required factual showing that it is covered by the U.S.-Japan FCN will be exempted from the final rule. The commenters also stated that the

proposed rule ignores the affirmative obligation of the United States to rule on the applicability of the U.S.-Japan FCN, and thus attempts to shift the burden to the Japanese investors and lenders to assert the conflict on an individual, case-by-case basis. The commenters stated that all Japanese companies would not be assured of an exemption from the requirements of the AFA due to the procedural review mechanism, which would require a private company to provide interpretations of the FCN, a matter which they asserted is the obligation of the U.S. Government.

In contrast, one commenter stated that a liberal interpretation of the investment treaties with Japan and Korea would eliminate the intended effect of the new ownership requirements in the nation's largest fishery. The commenter stated that Congress could not have intended such a result inasmuch as all of the treaties were given advice and consent of the Senate and were thus known to Congress. Nevertheless, the commenter pointed out that the Conference Report states that "[w]hile Congress does not believe that any of the requirements of the American Fisheries Act violate any international agreements relating to foreign investment to which the United States is a party, subsection [213](g) is included as a precaution." Furthermore, the commenter stated that the FCN treaties were general in nature and were negotiated for the purpose of granting most-favored-nation trading status to the other nations with respect to tariffs.

The commenter noted that the U.S. has consistently exempted vessel ownership statutes from multilateral agreements dealing with trade and investment. The final act establishing the World Trade Organization, signed on April 15, 1994, adopted a series of additional understandings, one of which made it clear that the new WTO provisions did not apply to national legislation restricting vessel ownership and use within a nation's territorial sea or exclusive economic zone. In addition, the commenter stated that the North American Free Trade Agreement (NAFTA) contains a reservation in Annex II dealing with water transportation which states that the U.S. reserved the right to adopt any new measure or maintain any existing measure covering investments, ownership, control and operation of vessels engaged in fishing in the U.S. territorial sea or exclusive economic zone. Among the statutes identified in the Act are the Commercial Fishing Industry Vessel Anti-Reflagging Act, which established majority U.S. ownership and control requirements for all fishing industry vessels. The commenter asserted that the United States clearly must have believed that it could apply existing and new requirements to nationals of Canada and Mexico.

In any event, the commenter noted that the Anti-Reflagging Act contained requirements that all fishing vessels be majority owned and controlled by U.S. Citizens. Even if the U.S.-Korea and U.S.-Japan FCN treaties are stretched to cover fishing industry investment, the commenter suggested that any investment made after January 11, 1988, must now comply with the majority ownership and control requirements implemented by the Anti-Reflagging Act, regardless of any previous grandfathering that may have applied to a specific vessel under section 7(b) of that Act. By repealing section 7(b) in 204 of the AFA, the commenter stated that Congress eliminated the exemption provided to vessels and clearly intended that all Non-Citizen investment in the U.S. fishing industry must meet the majority ownership requirements after January 11, 1988.

The final rule promulgates a process under which a vessel owner or Mortgagee may petition MARAD for a determination that there is a conflict between the requirements of the final rule and an international agreement and that the vessel owner or Mortgagee is therefore exempt from the requirements of the rule. We do not agree with the comments that it is an affirmative duty of the United States Government to pronounce its interpretation of the treaties in the rule or that it would be a hardship on private sector companies to advance an argument as to why they believe they should be exempt from the requirements of the rule. Therefore, we intend to maintain our process in the final rule for making determinations regarding the exemption of certain vessel owners and Mortgagees on the grounds that there is a conflict with an international agreement or treaty and the AFA as implemented in the rule.

Several commenters noted that the proposed rule implicitly invites submission of petitions any time after issuance of the rule in final form, but fails to state this explicitly. The commenters urged that the rule explicitly state that the petitions will be received as soon as the rule becomes final. We agree and have amended the final rule accordingly.

In addition, several commenters noted that there is no time schedule for review of petitions by MARAD. The commenters pointed out that a time frame is included for analogous situations in the rule, such as citizenship determinations under § 356.15(a) and suggested that we include a time frame for decision-making related to exemptions under § 356.53. The suggested time frames ranged from 45 days to120 days. The commenters stated that failure to provide a prompt response to an exemption petition will have the effect of a denial, since uncertainty can have the same adverse effect as a definitive requirement to divest. We agree with the commenters that a time frame for MARAD decision should be included in the rule, and we have amended § 356.53 to indicate that absent any extenuating circumstances, a decision will be rendered within 120 days of the receipt of a fully completed petition. After consulting with the federal agencies who have responsibility for interpreting investment treaties, we have concluded that under most circumstances we should be able to render a decision within the 120 day time frame. However, because we do not know how many petitions we may receive, how complicated the petitions will be, how many investment agreements we may be required to address simultaneously, or what other unforeseen circumstances may be presented, it is possible that the work load at a given point in time or other extenuating circumstances could prevent us from rendering a decision within 120 days. We recognize the importance of obtaining a decision on a petition in a timely manner and of knowing when that decision will be rendered; therefore, if the Chief Counsel concludes that it will not be possible to render a decision within the 120 day time frame, the petitioner will be notified around the 90th day after the completed petition is received that a decision will not be rendered within 120 days. The Chief Counsel will advise the petitioner at the time of that notification of the date on which MARAD expects to render a decision.

Other commenters suggested that any petitions should be subject to publication in the **Federal Register** with an opportunity for the public to comment given the precedential value of these decisions. We agree with the commenters and have amended the rule to include a requirement that each application be noticed in the **Federal Register** with an opportunity for comment. The **Federal Register** notice will include the petitioner's description regarding how the AFA and Part 356 are in conflict with a particular investment treaty or agreement, but it will not include proprietary or confidential information about the petitioner. The Chief Counsel, in consultation with other departments and agencies within

the Federal Government that have responsibility or expertise related to the interpretation or application of international investment agreements (*e.g.*, the Department of State, United States Trade Representative, Department of Treasury, etc.), will review the petition and the public comments to determine whether the international agreement and the requirements of the AFA and Part 356 are in conflict.

Several commenters noted that information in §§ 356.53(b), (d), and (e) only addresses owners of vessels and would be either inappropriate or irrelevant for a foreign mortgagee. They pointed out that the rule does not describe the information that a foreign mortgagee must submit. We agree with the comments and have amended § 356.53(b), (d) and (e) to address the particular information that must be submitted by a Non-Citizen mortgagee. It should be noted that § 356.53(d) has been divided and the second part has been renumbered as § 356.53(e). Subsection (e) and (f) have been renumbered as (f) and (g) respectively.

A number of commenters stated that the rule should recognize that the owner of a vessel may be seeking an exemption from any of the control provisions of the AFA and should clearly state that an owner that is deemed to be exempt does not have to abide by the control provisions in its dealings with Non-Citizens since the owner is now outside the scope of the rule. The commenters stated that the rule should be clarified to anticipate petitions for exemption from the "control" provisions with respect to other types of business arrangements (such as exclusive sales contracts) incidental to a mortgage. Further, the commenters stated that the rule should make clear that anyone that has an ownership interest may utilize the petition process, *e.g.*, a minority shareholder with a direct or indirect interest. We agree with the commenters that a minority shareholder should be allowed to petition for an exemption.

One commenter offered a technical correction to § 356.53(d) of the NPRM, pointing out that the language should include a reference to a conflict with 46 U.S.C. 31322(a). We agree with the commenter and have amended § 356.53(d).

One commenter noted that § 356.53(d) should also include a statement that the pre-AFA documentation requirements included a prohibition on control by a foreign national. Those issues are not addressed in this rule and will be considered when acting on requests under § 356.53.

One commenter noted that the rule does not provide for an opportunity for comment or appeal if the agency rules against a petition for exemption. Accordingly, the new § 356.53(e) will allow for an appeal to the Maritime Administrator within 15 business-days of the issuance of a decision by the Chief Counsel.

Section 356.53(f)(2) of the NPRM states that an exemption under § 356.53 is terminated "if any ownership interest in [the owner of a fishing industry vessel] is transferred to or otherwise acquired by a Non-Citizen after [October 1, 2001]." Several commenters felt that it was clear from the AFA, and should be made explicit in the regulations, that the term "owner" in this provision relates only to the U.S. vessel-owning company and not to the mere change of one share of the foreign investor, which may be publicly traded. The commenters supported their argument by noting that the balance of stock shares of a Non-Citizen investor, which by definition is not relied upon for citizen ownership or control requirement, is of no concern under the AFA. The commenters recommend that the rule clarify that such an exemption-ending ownership change refers only to an equity shift in the U.S. vessel-owning company, not any parent foreign companies, which, for example, may be publicly traded on foreign markets.

We agree with the commenters and have made clear in § 356.53(g)(2) of the final rule that an ownership interest is deemed to be transferred under this subsection when there is a transfer of interest in the primary vessel-owning entity. The amendments further clarify that we will not consider a transfer of interest in the primary vessel-owning entity to take place where: (1) The primary vessel-owning entity is a publicly traded company and the transfer is of disparately held shares totaling less than 5% of the shares in that class; (2) the transfer is of shares in a parent company of the primary vessel-owning entity and the transfer does not result in a transfer of the parent company to another Non-Citizen; or (3) the transfer is pursuant to a divorce or death. However, an interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner.

We made one additional change to § 356.53 on our own initiative to require that a petition for an exemption be filed with the Chief Counsel of the Maritime Administration as opposed to the Citizenship Approval Officer. References in § 356.53 to the Citizenship Approval Officer have therefore been changed to the Chief Counsel. In addition, we have clarified in § 356.53 that the Chief Counsel will make his decision in consultation with other departments and agencies within the Federal Government that have responsibility or expertise related to the interpretation or application of international investment agreements (*e.g.*, the Department of State, United States Trade Representative, Department of Treasury, *etc.*).

Subpart I—Review of Harvesting and Processing Compliance

Section 356.55 Review of Compliance With Harvesting and Processing Quotas.

One commenter noted that MARAD should suspend rulemaking under subpart I until the National Marine Fisheries Service ("NMFS") has promulgated a processing and excessive share regulation and should adopt whatever definition of "entity" is used in the fishery regulations. We determined that it is not necessary to suspend our rulemaking under Subpart I; however, we decided that a number of changes to § 356.55 are appropriate. Those changes include:

- Making the Chief Counsel of the Maritime Administration the appropriate official to make the necessary findings under § 356.55.
- Describing in § 356.55(b) the type of information that the Chief Counsel will request from the National Marine Fisheries Service or the North Pacific Fishery Management Council ("NPFMC").
- Clarifying in a new paragraph § 356.55(c) that any requests for information from the parties involved will be transmitted to the parties by the Chief Counsel through the Secretary of Commerce and/or the NPFMC.
- Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f) respectively.
- Amending the newly designated paragraph (f) to clarify that it is within the Secretary of Commerce's discretion to determine either, on the basis of MARAD's finding or other evidence, if there is enough evidence to pursue an enforcement action for a violation of the harvesting or processing caps contained in § 210(e) of the AFA.
- Deleting former paragraph (f) relating to penalties. Penalties will be assessed by the National Oceanic and Atmospheric Administration.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

This final rule is a significant regulatory action under section 3(f) of

Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is not economically significant under section 3(f)(1) of the Executive Order. The rule is significant under the Regulatory Policies and Procedures of the Department of Transportation, 44 FR 11034 (February 26, 1979), because of significant public and congressional interest.

This final rule establishes regulations pursuant to the AFA. The AFA raises the U.S. citizen ownership and control requirements for U.S.-flag Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels operating in U.S. waters from 51% to 75%. The AFA also eliminates exemptions for vessels that cannot meet current citizenship standards and phases out of operation many of the largest vessels. Section 203 of the AFA requires that we promulgate regulations that: (1) Prohibit impermissible transfers of ownership or control; (2) identify transactions that will require our prior approval; and (3) identify transactions that will not require our prior approval. To the extent practicable, the regulations are required to minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the formation of fishery cooperatives.

The new statutory requirement that 75% of the ownership and control of an entity owning a documented vessel of 100 feet or greater in registered length be vested in Citizens of the United States in order for the vessel to be eligible for a fishery endorsement is expected to impact a relatively small segment of the fishing industry. There are over 36,000 vessels that currently have a fishery endorsement. Based on information from the Coast Guard Vessel Documentation Center, we believe that fewer than 550 of these vessels are 100 feet or greater in registered length and thus subject to these final regulations. These approximately 550 vessels are owned by roughly 400 different entities. We estimate that less than 6% of the nearly 550 vessels are currently owned by entities that do not meet the 75% ownership requirement and that may be required to increase the level of United States Citizen participation in their ownership structure so as to comply with the requirements of the AFA.

The AFA also requires that 75% of the control over a vessel or vessel-owning entity be vested in Citizens of the United States. Therefore, owners that comply with the ownership requirements may still be affected by this rule if they have entered into contracts or agreements that would convey impermissible control to Non-Citizens. Agreements that convey impermissible control over a vessel or vessel-owning entity are prohibited by the AFA. However, we have attempted in this rulemaking to minimize the review of certain contracts and agreements so as not to interfere unduly with the operation of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels.

Some lenders financing Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels could also be affected by this rule if they do not meet the requisite United States Citizenship requirements to hold a Preferred Mortgage on such vessels. A Non-Citizen Lender that does not qualify to hold a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel in its own right may receive a Preferred Mortgage through the use of an approved Mortgage Trustee that qualifies as a Citizen of the United States. It has been our experience that the use of a Mortgage Trustee imposes minimal cost and burden compared to the overall benefits of receiving a Preferred Mortgage or security for a loan. Therefore, while Non-Citizen Lenders may incur some cost associated with using a qualified Mortgage Trustee to hold the Preferred Mortgage, the burden will be minimal; Non-Citizen Lenders will not be prohibited from financing Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels; and, no more than minimal costs are likely to be passed on to vessel owners.

We do not have additional cost estimates regarding the total cost of the requirements of the statute or this rule because little cost information was submitted by the industry in response to the ANPRM and the NPRM and no one disputed the above assessment. The preliminary regulatory analysis reflects the comments that were received in response to the ANPRM and NPRM.

Discussion of Alternatives

The AFA specifically requires that we issue regulations that set out the requirements for owners of vessels to file, on an annual basis, a statement of citizenship setting forth all relevant facts regarding vessel ownership and control that are necessary to demonstrate compliance with 2(c) of the Shipping Act of 1916, 46 App. U.S.C. 802(c), and with 46 U.S.C. 12102(c). Section 203(b) of the AFA requires that the regulations conform, to the extent practicable, with our regulations establishing the form of citizenship affidavit set forth in 46 CFR part 355, as in effect on September 25, 1997. The form of the statement is also required to be written in a manner that will allow the owner of each vessel to satisfy any annual renewal requirements for a certificate of documentation. Section 203(c) requires transfers of ownership and control of vessels after October 1, 2001, to be rigorously scrutinized for violations of the ownership and control requirements, with particular attention given to leases, charters, mortgages, financing, contracts for the purchase over time of all or substantially all of a Fishing Vessel's catch, and other arrangements that may convey control over the management, sales, financing, or other operations of an entity. In contrast to the specific requirement of 203(c) that we rigorously scrutinize certain transactions, is the more general mandate of 203(b) that the regulations, to the extent practicable, minimize disruptions of the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

The Affidavit of U.S. Citizenship required for an entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to provide evidence of United States citizenship is modeled after our existing regulations in 46 CFR part 355. We have considered various alternatives to implement the AFA and the impact of these alternatives on the regulated community and on small business entities in the fishing industry. Although the AFA grants broad authority to us to regulate transactions related to the ownership and control of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, we have attempted to promulgate requirements that pose the least possible burden on the regulated public, while still providing us with the information necessary to implement our responsibilities under the AFA.

We have also reviewed alternatives with respect to the approval and oversight of mortgages and Mortgage Trustees. While 203(c) of the AFA requires us to rigorously scrutinize mortgages and financing agreements, we do not believe that it will be necessary to require transactional approval of each financing and mortgage transaction. Accordingly, we propose to allow Non-Citizens who are in the business of financing vessels to obtain general approval of their standard loan agreement, provided that the standard loan covenants are acceptable to us. Section 356.21 allows a Non-Citizen Lender to get general approval for its standard loan documents if it does not include covenants that would convey

impermissible control to the Non-Citizen. Once a Non-Citizen Lender has received approval for its standard loan agreements, it may enter into loans for Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels without having to obtain the approval of the Citizenship Approval Officer for each loan agreement. The general approval should reduce the paperwork required for lenders and owners, provide certainty regarding the loan covenants that will be considered permissible, streamline the process for financing Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, and increase the range of financing options for vessel owners, including small business entities.

A Non-Citizen Lender is required to use an approved Mortgage Trustee in order to hold a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. As with the above general approval for Non-Citizen Lenders, a Mortgage Trustee may obtain approval from the Citizenship Approval Officer on an annual basis to act as a Mortgage Trustee and will not be required to obtain transactional approval. The Mortgage Trustee will be required simply to provide an annual certification in the form of an Affidavit of United States Citizenship to demonstrate that it is still a Citizen of the United States, a current copy of its Articles of Incorporation and Bylaws, a copy of its most recent published report of condition, and a list of the vessels and lenders for which it is acting as Mortgage Trustee. The freedom for Mortgage Trustees to enter into agreements without being required to get transactional approval will minimize the burden of using a Mortgage Trustee, will provide certainty for vessel owners and Non-Citizen Lenders regarding qualified Mortgage Trustees, and will simplify the process for owners to obtain financing from Non-Citizens.

With regard to long-term or exclusive contracts for the sale of all or a significant portion of a vessel's catch, we again considered requiring that these agreements be approved on a transactional basis. However, because we do not wish to impose requirements on owners of Fishing Vessels that will interfere with their ability to enter into such agreements in a timely manner, we have elected to authorize such standard agreements, provided that they do not convey impermissible control to a Non-Citizen. We have determined that certain standard provisions do not convey impermissible control to Non-Citizens and may be included in these agreements. The NPRM will thus permit owners and bareboat charterers of Fishing Vessels to enter into these agreements with Non-Citizens in a timely manner without imposing additional costs or time consuming regulatory requirements.

Finally, with respect to management agreements, rather than requiring approval of each agreement to determine whether there is an impermissible transfer of ownership or control over the vessel to a Non-Citizen, we opted to establish a set of criteria for such agreements and to generally approve certain management agreements, provided that they are for technical and administrative services and are advisory in nature.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires us to consider whether our proposals will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). We believe that the cost of complying with these proposed regulations will be minimal. Therefore, MARAD certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In our effort to determine whether there are a substantial number of small entities that may be affected by this rule, we issued an ANPRM entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater to Obtain Fisheries Documents, 64 FR 24311 (May 6, 1999), and a NPRM entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation, 65 FR 646 (January 5, 2000) and requested input from the public regarding the potential economic impact of the new citizenship and control requirements of the AFA. We specifically requested information regarding: (1) Any unique issues within the fishing industry regarding the ownership, operation, management, control, financing, or mortgaging of Fishing Vessels; and (2) costs relating to the new citizenship and control requirements that would likely be incurred by vessel owners, operators, lending institutions, Mortgagees, and other participants in the fishing industry. We conducted five public meetings during the 60-day comment period for the ANPRM and three public meetings during the 45-day comment period for the NPRM to obtain oral and written comments from the public. Although the comments in response to the ANPRM and the NPRM provided us with some valuable information, we only received four comments from entities that identified themselves as small entities, and we did not receive specific information regarding the economic impact on small entities that may result from this rulemaking.

This rulemaking may reasonably be expected to affect small businesses or entities that currently own documented Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels, that have financed such vessels, or that are engaging in the fisheries of the United States with such vessels. The Small Business Administration defines businesses within the fishing industry that have annual receipts of $3 million or less as small businesses, 13 CFR 121.201. While we recognize that a number of vessel owners may be classified under the Small Business Administration regulations as small entities, we have not received any comments indicating that the rulemaking will have a significant economic impact on small entities. We estimate that of the nearly 33,000 vessels that have a fishery endorsement, fewer than 550 are 100 feet or greater in registered length and thus subject to this final rule. We further estimate that there are approximately 400 vessel owners within this group of 550. Only one commenter responded to the NPRM that several of its members who are subject to the rule would be classified as small businesses; however, the commenter did not provide a specific number of small entities that would be subject to the rule or argue that the rule would result in a significant economic impact on a substantial number of small entities.

We estimate that less than 6 percent of the 550 vessels potentially subject to this final rule have less than the 75% United States Citizen ownership required by the AFA. It is possible that some of these vessel owners, who otherwise meet the 75% United States Citizen ownership requirement may still be affected by the proposed rule if the

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vessel is mortgaged to a financial institution that does not qualify to hold a Preferred Mortgage on the vessel or if the owner does not meet the requirement that control over 75% of the interest in the entity owning the vessel be vested in Citizens of the United States. However, even if the mortgage on the vessel is held by a financial institution that does not qualify, the financial institution will still be able to secure a Preferred Mortgage on the vessel through the use of an approved Mortgage Trustee. Based on our 30 years of experience using Mortgage Trustees in other programs, we have concluded that the use of a Mortgage Trustee imposes minimal cost and burden compared to the overall benefit of receiving a Preferred Mortgage as security for a loan. The use of a Mortgage Trustee will allow the Non-Citizen Lender to continue to receive a First Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Therefore, the new citizenship requirements for Mortgagees are expected to have minimal economic impact.

In our regulatory analysis, we considered a variety of alternatives in order to find ways to minimize the regulatory burden on the affected public, specifically on small business entities, and to foster the ability of vessel owners to obtain financing for their vessels. A discussion of these alternatives is contained under the above section marked "Executive Order 12866 (Regulatory Planning and Review)".

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations that clearly have no environmental impact.

Paperwork Reduction Act

This rulemaking establishes a new requirement for the collection of information. The Office of Management and Budget ("OMB") has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and assigned OMB control number 2133–0530. Comments received on this information collection are discussed in the "Comments on the Proposed Rule" section of this notice of final rule.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves the objective of the rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishery endorsement, Fishing vessels, Mortgages, Mortgage trustee, Penalties, Preferred mortgages, Reporting and recordkeeping requirements, Vessels.

Accordingly, we are adding a new 46 CFR part 356 to read as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

Subpart A—General Provisions

Sec.

356.1 Purpose.
356.3 Definitions.

Subpart B—Ownership and Control

356.5 Affidavit of U.S. Citizenship.
356.7 Methods of establishing ownership by United States Citizens.
356.9 Tiered ownership structures.
356.11 Impermissible control by a Non-Citizen.

Subpart C—Requirements for Vessel Owners

356.13 Information required to be submitted by vessel owners.
356.15 Filing of affidavit of U.S. Citizenship.
356.17 Annual requirements for vessel owners.

Subpart D—Mortgage

356.19 Requirements to hold a Preferred Mortgage.
356.21 General approval of Non-Citizen Lender's standard loan or mortgage agreements.
356.23 Restrictive loan covenants approved for use by Non-Citizen Lenders.
356.25 Operation of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels by Mortgagees.

Subpart E—Mortgage Trustees

356.27 Mortgage Trustee requirements.
356.31 Maintenance of Mortgage Trustee approval.
356.37 Operation of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by a Mortgage Trustee.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

356.39 Charters.
356.41 Management agreements.
356.43 Long-term or exclusive sales contracts.
356.45 Advance of funds.

Subpart G—Special Requirements for Certain Vessels

356.47 Special requirements for large vessels.
356.49 Penalties.
356.51 Exemptions for specific vessels.

Subpart H—International Agreements

356.53 Conflicts with international agreements.

Subpart I—Review of Harvesting and Processing Compliance

356.55 Review of compliance with harvesting and processing quotas.

Authority: 46 App. U.S.C. 12102; Pub. L. 105–277, Division C, Title II, Subtitle I, section 203 (46 App. U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; 46 CFR 1.66.

Subpart A—General Provisions

§ 356.1 Purpose.

(a) Part 356 implements the U.S. Citizenship requirements of the American Fisheries Act of 1998, as amended, Title II, Division C, Public Law 105–277, for owners, Mortgage Trustees, and Mortgagees of vessels of 100 feet or greater in registered length that have a fishery endorsement to the vessel's documentation or where a fishery endorsement to the vessel's documentation is being sought. This part also addresses ancillary matters of charters, management agreements, exclusive sales or marketing contracts, conflicts with international agreements, determinations regarding violations of harvesting or processing limits, and exceptions for certain vessels, vessel owners and Mortgagees from the general requirements of the rule.

(b) An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. Part 356 establishes a new requirement for the collection of information. The Office of Management and Budget ("OMB") has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and assigned OMB control number 2133–0530 to the information collection requirements of this part 356.

§ 356.3 Definitions.

For the purpose of this part, when used in capitalized form:

(a) *1916 Act* refers to section 2 of the Shipping Act, 1916, as amended, 46 App. U.S.C. 802. The Controlling Interest requirements of the Shipping Act are found in section 2(b), 46 App. U.S.C. section 802(b). The citizenship requirements for eligibility to own a vessel with a fisheries endorsement are found in section 2(c), 46 App. U.S.C. 802(c), and 46 U.S.C. 12102(c).

(b) *AFA* means the American Fisheries Act of 1998, as amended, Title II, Division C, of Public Law 105–277;

(c) *Affiliate or Affiliated* refers to a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first Person. For the purposes of this definition the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

(d) *Charter* means any agreement or commitment by which the possession or services of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel are secured for a period of time, or for one or more voyages, whether or not a bareboat charter of the vessel. A long-term or exclusive contract for the sale of all or a portion of a Fishing Vessel's catch is not considered a Charter.

(e) *Citizen of the United States, Citizen or U.S. Citizen:*

(1) Means an individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law, or an entity that in both form and substance, at each tier of ownership and in the aggregate, satisfies the requirements of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c). In order to satisfy the statutory requirements an entity other than an individual must meet the requirements of paragraph (e)(2) of this section and the following criteria:

(i) The entity must be organized under the laws of the United States or of a State;

(ii) Seventy five percent (75%) of the ownership and control in the entity must be owned by and vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any Non-Citizen;

(iii) No arrangement may exist, whether through contract or any understanding, that would allow more than 25% of the voting power of the entity to be exercised, directly or indirectly, in behalf of any Non-Citizen; and

(iv) Control of the entity, by any other means whatsoever, may not be conferred upon or permitted to be exercised by a Non-Citizen.

(2) Other criteria that must be met by entities other than individuals include:

(i) In the case of a corporation:

(A) The chief executive officer, by whatever title, and chairman of the board of directors and all officers authorized to act in the absence or disability of such persons must be Citizens of the United States; and

(B) No more of its directors than a minority of the number necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) All of the members are Citizens of the United States;

(B) The chief executive officer, by whatever title, and the chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(C) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or a partnership; and

(B) Each co-venturer is a Citizen of the United States;

(v) In the case of a Trust that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel:

(A) The Trust is domiciled in the United States or a State;

(B) The Trustee is a Citizen of the United States; and

(C) All beneficiaries of the trust are persons eligible to document vessels pursuant to the requirements of 46 U.S.C. 12102;

(vi) In the case of a mortgage Trust:

(A) The Trust is domiciled in the United States or a State;

(B) The Mortgage Trustee is a Citizen of the United States; and

(C) The Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to § 356.5.

(vii) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to a Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation are Citizens of the United States; and

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC.

(f) *Citizenship Approval Officer* means MARAD's Citizenship Approval Officer within the Office of Chief Counsel. The Citizenship Approval Officer's address is: Maritime Administration, United States Department of Transportation, Citizenship Approval Officer, MAR–220, Room 7232, 400 7th Street, SW., Washington, DC 20590.

(g) *Controlling Interest:*

(1) Means, in the context of an entity, that in both form and substance, at each tier of ownership and in the aggregate, the entity satisfies the controlling interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b). In order to satisfy the statutory requirements, an entity other than an individual must meet the requirements of paragraph (g)(2) of this section and the following criteria:

(i) The entity must be organized under the laws of the United States or of a State;

(ii) A majority of the ownership and control in the entity must be owned by and vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any Non-Citizen;

(iii) No arrangement may exist, whether through contract or any understanding, that would allow a majority of the voting power of the entity to be exercised, directly or indirectly, in behalf of any Non-Citizen; and

(iv) Control of the entity, by any other means whatsoever, may not be conferred upon or permitted to be exercised by a Non-Citizen.

(2) Other criteria that must be met by entities other than an individual include:

(i) In the case of a corporation:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or partnership; and

(B) A majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Non-Citizen;

(v) In the case of a mortgage trust:

(A) The Trust is domiciled in the United States or a State;

(B) The Mortgage Trustee is a Citizen of the United States;

(C) The Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to § 356.5;

(vi) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to the Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation and any Persons authorized to act in their absence are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC;

(3) A state or federally chartered financial institution that meets the Controlling Interest requirements of paragraphs (g)(1) and (2) of this section is deemed to be a Citizen of the United States for all purposes under subpart D of this part other than operation of the vessel pursuant to § 356.25.

(h) *Fishing Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially engages in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation or an activity that can reasonably be expected to result in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation;

(i) *Fish Processing Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling;

(j) *Fish Tender Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially supplies, stores, refrigerates, or transports (except in foreign commerce) fish, fish products, or materials directly related to fishing or the preparation of fish to or from a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel or a fish processing facility;

(k) *Harvest* means to commercially engage in the catching, taking, or harvesting of fish or fishery resources or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish or fishery resources;

(l) *MARAD* means the Maritime Administration within the United States Department of Transportation. The terms "we, our, and us" may also be used to refer to the Maritime Administration;

(m) *Mortgagee* means a Person to whom a Fishing Vessel or other property is mortgaged. (*See* the definition of Non-Citizen Lender and Preferred Mortgage in this section)

(n) *Mortgage Trustee*, for purposes of holding a Preferred Mortgage on a Fishing Vessel, means a corporation that:

(1) Is organized and doing business under the laws of the United States or of a State;

(2) Is a Citizen of the United States;

(3) Is authorized under those laws to exercise corporate trust powers;

(4) Is subject to supervision or examination by an official of the United States Government, or of a State;

(5) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(6) Meets any other requirements prescribed by the Citizenship Approval Officer.

(o) *Non-Citizen* means a Person who is not a Citizen of the United States within the meaning of paragraph (d) of this section, 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c).

(p) *Non-Citizen Lender* means a lender that does not qualify as a Citizen of the United States. A state or federally chartered financial institution that meets the requirements of § 356.3(g) is considered a Citizen of the United States for all purposes of subpart D of this part other than operation of the vessel pursuant to § 356.25.

(q) *Person* includes an individual, corporation, partnership, joint venture, association, limited liability company, Trust, and other entities existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, of any foreign country.

(r) *Preferred Mortgage* means a mortgage on a Fishing Vessel that has as the Mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A state or federally chartered financial institution that satisfies the Controlling Interest criteria of section 2(b) of the 1916 Act (46 App. U.S.C. 802(b)) and paragraph (f) of this section; or

(3) A person that complies with the provisions of 46 U.S.C. 12102(c)(4).

(s) *Related Party* means a holding company, subsidiary, affiliate, or associate of a Non-Citizen or an officer, director, agent, or other executive of the Non-Citizen or of a holding company, subsidiary, affiliate or associate thereof.

(t) *State* means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(u) *Submitted* means sent by mail and postmarked on that date, or sent by another delivery service or by electronic means, including E-mail and facsimile, and marked with an indication of the date equivalent to a postmark;

(v) *Trust* means:

(1) In the case of ownership of a Fishing Vessel, Fish Processing Vessel,

or Fish Tender Vessel, a trust that is domiciled in and existing under the laws of the United States or of a State, of which the Trustee is a Citizen of the United States, and 100% of the interest in the Trust is held for the benefit of a Citizen of the United States; or

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, of which the Mortgage Trustee is a Citizen of the United States and for which the Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to §§ 356.27 through 356.37.

(w) *United States*, when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(x) *United States Government* means the Federal Government acting by or through any of its departments or agencies.

Subpart B—Ownership and Control

§ 356.5 Affidavit of U.S. Citizenship.

(a) In order to establish that a corporation or other entity is a Citizen of the United States within the meaning of section 2(c) of the 1916 Act, or where applicable, section 2(b) of the 1916 Act, the form of Affidavit is hereby prescribed for execution in behalf of the owner, charterer, Mortgagee, or Mortgage Trustee of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Such Affidavit must include information required of parent corporations and other stockholders whose stock ownership is being relied upon to establish that the requisite ownership in the entity is owned by and vested in Citizens of the United States. A certified copy of the Articles of Incorporation and Bylaws, or comparable corporate documents, must be submitted along with the executed Affidavit.

(b) This Affidavit form set forth in paragraph (d) of this section may be modified to conform to the requirements of vessel owners, Mortgagees, or Mortgage Trustees in various forms such as partnerships, limited liability companies, etc. A copy of an Affidavit of U.S. Citizenship modified appropriately, for limited liability companies, partnerships (limited and general), and other entities is available on MARAD's internet home page at http://www.marad.dot.gov.

(c) As indicated in § 356.17, in order to renew annually the fishery endorsement on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, the owner must submit annually to the Citizenship Approval Officer evidence of U.S. Citizenship within the meaning of section 2(c) of the 1916 Act and 46 App. U.S.C. 12102(c).

(d) The prescribed form of the Affidavit of U.S. Citizenship is as follows:

State of _____ County of _____ Social Security Number: _____

I, _____, (Name) of _____, (Residence address) being duly sworn, depose and say:

1. That I am the _____ (Title of office(s) held) of _____, (Name of corporation) a corporation organized and existing under the laws of the State of _____ (hereinafter called the "Corporation"), with offices at _____, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws, should be filed within 45 days of the annual documentation renewal date for vessel owners. Other parties required to provide evidence of U.S. citizenship status must file within 30 days after the annual meeting of the stockholders or annually, within 30 days after the original affidavit if there has been no meeting of the stockholders prior to that time.];

2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;

3. That the names of the Chief Executive Officer, by whatever title, the Chairman of the Board of Directors, all Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer or Chairman of the Board of Directors, and the Directors of the Corporation are as follows: [1]

Name	Title	Date and Place of Birth

(The foregoing list should include the officers, whether or not they are also directors, and all directors, whether or not they are also officers.) Each of said individuals is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of all Non-Citizen officers and directors, if any). The By-laws of the Corporation provide that _____ (Number) of the directors are necessary to constitute a quorum; therefore, the Non-Citizen directors named represent no more than a minority of the number necessary to constitute a quorum.

4. Information as to stock, where Corporation has 30 or more stockholders:[2].

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of _____, (Date) the Corporation had issued and outstanding _____ (Number) shares of _____, (Class) the only class of stock of the Corporation issued and outstanding [if such is the case], owned of record by _____ (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder owned of record as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class. [If different classes of stock exist, give the same information for each class issued and outstanding, showing the monetary value and voting rights per share in each class. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class of stock owned should be stated and the required citizenship information on such stockholder must be submitted.] That the registered addresses of _____ owners of record of _____ shares of the issued and outstanding _____ (Class) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said _____ shares being _____ per centum (_____%) of the total number of shares of said stock (each class). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum for a state or federally chartered financial institution holding a Preferred Mortgage, or not less than 95 per centum for an entity that is demonstrating ownership in a vessel for which a fishery endorsement is sought or a Mortgage Trustee. These per centum figures apply to corporate stockholders as well as to the primary corporation.] (The same statement should be made with reference to each class of stock, if there is more than one class.) or

4. Information as to stock, where Corporation has less than 30 stockholders: That the information as to stock ownership, upon which the Corporation relies to establish that 75% of the stock ownership is vested in Citizens of the United States, is as follows:

_____

Name of Stockholder

_____

Number of shares owned (each class)

_____

Percentage of shares owned (each class)

_____

[1] Offices that are currently vacant should be noted when listing Officers and Directors in the Affidavit.

[2] Strike inapplicable paragraph 4.

and that each of said individual stockholders is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law. Note: If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders and the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5% or more of any class of stock and the beneficial owners thereof should be named and their U.S. citizenship information submitted to MARAD.

5. That 75% of the interest in (each) said Corporation, as established by the [3] information hereinbefore set forth, is owned by Citizens of the United States; that the title to 75% of the stock of (each) class of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that more than 25% the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is any interest in said Corporation in excess of 25% conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

Note: For state or federally chartered financial institutions acting as Preferred Mortgagees, the Controlling Interest language, which is set forth below, is applicable.

5. That the Controlling Interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to a majority of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that the majority of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

6. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

_____

_____

(Name and title of affiant)

_____

(Signature of affiant)

_____

Date

Penalty for False Statement: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also, 18 U.S.C. 286, 287).

[3] Strike inappropriate Paragraph 5.

(e) The format for an Affidavit of United States Citizenship, modified appropriately for limited liability companies, partnerships, etc., will be available from the Citizenship Approval Officer and on MARAD's internet web site at *http://www.marad.dot.gov*.

(f) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class) in the Affidavit as those observed for the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. If, on the other hand, the "fair inference rule" is applied with respect to stock ownership as outlined in § 356.7(c), the extent of U.S. Citizen ownership of stock should be ascertained in the requisite percentage (65 % for state or federally chartered financial institutions and 95 % for Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel owners, bareboat charterers, trustees, as well as entities owning 5% or more of the stock of such entities). Any entity that must establish its U.S. citizenship has to submit proof of U.S. citizenship of any five percent stockholder of each class of stock in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by MARAD.

(g) It shall be incumbent upon the parties filing affidavits under this part to notify the Citizenship Approval Officer in writing within 30 calendar days of any changes in information last furnished with respect to the officers, directors, and stockholders, including 5 percent or more stockholders of the issued and outstanding stock of each class, together with information concerning their citizenship status. If other than a corporation, comparable information must be filed by other entities owning Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels, including any entity whose ownership interest is being relied upon to establish 75% ownership by Citizens of the United States.

(h) If additional material is determined to be essential to clarify or support the evidence of U.S. citizenship, such material shall be furnished by the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel upon request by the Citizenship Approval Officer.

§ 356.7 Methods of establishing ownership by United States Citizens.

(a) An entity may demonstrate that the interest in the entity (75% for Citizens of the United States or 51% for entities meeting the Controlling Interest requirements) is owned by Citizens of the United States either by direct proof or through the fair inference method depending on the size of the entity.

(b) The "direct proof" method is used for closely held companies that have 30 or fewer stockholders. Under the direct proof method, the following information must be set forth in paragraph four of the Affidavit of U.S. Citizenship:

(1) The identity of the holders of stock or other equitable interests;

(2) The amount of stock or interest that each stockholder owns;

(3) A representation as to the citizenship of the stockholder; and

(4) If the stockholder is a corporation or other entity, the names and citizenship of officers, directors, stockholders, etc. must be set out in the Affidavit of U.S. Citizenship.

(c) The "fair inference method" is used by corporations whose stock is publicly traded (more than 30 stockholders). Use of the fair inference method requires that:

(1)(i) At least 95% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 75% ownership by U.S. Citizens, or

(ii) At least 65% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 51% ownership by U.S. Citizens in the case of a state or federally chartered financial institution acting as a Mortgagee; and,

(2) Disclosure be made in the Affidavit of U.S. Citizenship of the names and citizenship of any stockholders who holds five percent or more of the corporation's stock (including all classes of stock, voting and non-voting), officers, and directors.

(d) If the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel is consecutively owned by several "parent" corporations, the facts revealing the stock ownership of each entity must be set forth in the Affidavit of U.S. Citizenship.

§ 356.9 Tiered ownership structures.

Non-Citizens may not own or control, either directly through the first tier of ownership or in the aggregate through an interest in other entities at various tiers, more than 25% of the interest in an entity which owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The prohibition against Non-Citizens owning or controlling more

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than 25%, in the aggregate, of the interest in an entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel means, for example, that:

(a) Non-Citizens that own or control a 25% stake in the ownership entity of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel at the first tier may not have any interest whatsoever in any entity that is being relied upon to establish the required 75% U.S. Citizen ownership; and

(b) Non-Citizens that own or control less than a 25% stake at the first tier may participate in the ownership and control of other entities that are being relied upon to establish the required 75% U.S. Citizen ownership and control at the first tier. However, the total ownership and control by Non-Citizens of the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may not exceed 25% in the aggregate as computed by MARAD.

§ 356.11 Impermissible control by a Non-Citizen.

(a) An impermissible transfer of control will be deemed to exist where a Non-Citizen, whether by agreement, contract, influence, or any other means whatsoever:

(1) Has the right to direct the business of the entity which owns the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The right to "direct the business of the entity" does not include the right to simply participate in the direction of the business activities of an entity which owns a Fishing Vessel, Fish Tender Vessel or Fish Processing Vessel;

(2) Has the right in the ordinary course of business to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which owns the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Standard rights of minority shareholders to restrict the actions of the entity are permitted provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all of the assets, to enter into a different business, to contract with the majority investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(3) Has the right to direct the transfer, operation, or manning of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The right to "direct the transfer, operation, or manning" of such vessels does not include the right to simply participate in the direction of the transfer, operation, and manning of such vessels;

(4) Has the right to restrict unduly the day-to-day business activities and management policies of the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel through loan covenants other than those approved for use by the Citizenship Approval Officer or other means;

(5) Has the right to derive, through a minority shareholder and in favor of a Non-Citizen, a significantly disproportionate amount of the economic benefit from the ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(6) Has the right to control the management of or to be a controlling factor in the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(7) Has the right to cause the sale of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, other than through approved loan covenants where there is a Preferred Mortgage on the vessel or where it is necessary in order to allow a Non-Citizen to dissolve its interest in the entity;

(8) Absorbs all of the costs and normal business risks associated with ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(9) Has the responsibility for the procurement of insurance on the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or assumes any liability in excess of insurance coverage; or,

(10) Has the ability through any other means whatsoever to control the entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(b) In addition to the actions in paragraph (a) of this section that are considered absolute indicia of control, we will consider other factors which, in combination with other elements of Non-Citizen involvement, may be deemed impermissible control. The following factors may be considered indicia of control:

(1) If a Non-Citizen minority stockholder takes the leading role in establishing an entity that will own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) If a Non-Citizen has the right to preclude the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel from engaging in other business activities;

(3) If a Non-Citizen and owner use the same law firm, accounting firm, etc.;

(4) If a Non-Citizen and owner share the same office space, phones, administrative support, etc.;

(5) If a Non-Citizen absorbs considerable costs and normal business risks associated with ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(6) If a Non-Citizen provides the start up capital for the owner or bareboat charterer on less than an arm's-length basis;

(7) If a Non-Citizen time charterer has the general right to inspect the books and records of the owner, bareboat charterer, or time charterer of a Fish Processing Vessel or Fish Tender Vessel;

(8) If the owner or bareboat charterer uses the same insurance agent, law firm, accounting firm, or broker of any Non-Citizen with whom the owner or a bareboat charterer has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement; or

(9) If a Non-Citizen has the right to control, whether through sale, lease or other method, the fishing quota, fishing rights or processing rights allocated to a vessel or vessel-owning entity.

(c) In most cases, any single factor listed in paragraph (b) of this section will not be sufficient to deem an entity a Non-Citizen. However, a combination of several factors listed in paragraph (b) of this section may increase our concern as to whether the entity complies with the U.S. Citizen ownership and control provisions of the AFA and any single factor listed in paragraph (b) of this section may be the basis for a request from us for further information.

(d) If we have a concern regarding a Non-Citizen, we will notify the entity of the concern and work with the entity toward a satisfactory resolution, provided there is no verifiable evidence of fraud. Resolution of any control issues may result in a request by us for additional information to clarify the intent of the provision or to amend or delete the provision in question.

(e) Information that is specifically required to be submitted for our consideration is set out in § 356.13. However, in determining whether an entity has control over a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, we may review any contract or agreement that may, by any means whatsoever, result in a transfer of control to a Non-Citizen.

Subpart C—Requirements for Vessel Owners

§ 356.13 Information required to be submitted by vessel owners.

(a) In order to be eligible to document a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel with a fishery endorsement, the entity that owns the vessel must submit documentation to demonstrate that 75 percent (75%) of the interest in such entity is owned and controlled by Citizens of the United States. Unless otherwise exempted, the following documents must be submitted to the Citizenship Approval Officer in support of a request for a determination of U.S. Citizenship:

(1) An Affidavit of U.S. Citizenship. This affidavit, set out in § 356.15, must contain all required facts, at all tiers of ownership, needed for determining the citizenship of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(2) A certified copy of the Articles of Incorporation and Bylaws of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, and any parent corporation, must be submitted. The certification must be by the Secretary of State in which the corporation is incorporated or by the Secretary of the corporation. For entities other than corporations, comparable certified documents must be submitted. For example, for a limited liability company, a copy of the Certificate of Formation filed with a State must be submitted, along with a certified copy of the Limited Liability Company Operating Agreement;

(3) An Affidavit of U.S. Citizenship for each charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, with the exception of time or voyage charterers of Fish Processing Vessels and Fish Tender Vessels permitted under § 356.39(b)(2);

(4) A copy of any time charter or voyage charter to a Non-Citizen of a Fish Tender Vessel or Fish Processing Vessel;

(5) Any loan agreements or other financing documents applicable to a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel where the lender has not been approved by MARAD as a U.S. Citizen, excepting standard loan agreements from Non-Citizen Lenders where the Non-Citizen Lender has been granted approval from the Citizenship Approval Officer pursuant to § 356.21 to enter into such loans without transactional approval from MARAD;

(6) A description of any operating and/or management agreements entered into between the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and an entity that has not been determined by MARAD to be a U.S. Citizen, accompanied by a representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen;

(7) Copies of any sales or purchase agreements that relate to the sale or purchase of all or a significant portion of a vessel's catch where the agreement is with an entity that has not been determined by MARAD to be a U.S. Citizen and the agreement contains provisions that could convey control to a Non-Citizen other than those expressly authorized in § 356.43. Agreements that only contain provisions expressly authorized in § 356.43 do not have to be submitted; however, the agreements and the parties to the agreements must be identified;

(8) Any stockholder's agreement, voting trust agreements, or any other pooling agreements, including any proxy appointment, relating to the ownership of all classes of stock, whether voting or non-voting of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation or other stockholder whose stock is being relied upon to establish 75 percent U.S. Citizen ownership;

(9) Any agreements relating to an option to buy or sell stock or other comparable equity interest in the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or any agreement that restricts the sale of such stock or equity interests in the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation or other stockholder whose stock is being relied upon to establish 75 percent U.S. Citizen ownership;

(10) Any documents relating to a merger, consolidation, liquidation or dissolution of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation where all of the parties have not been determined by the Citizenship Approval Officer to be U.S. Citizens;

(11) Disclosure of any interlocking directors or other officials by and between the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel (including any parent corporation) and any Non-Citizen minority stockholder of the owner and any parent corporation. This requirement is also applicable to any lender, purchaser of fish catch, or other entity that is a Non-Citizen; and

(12) Any contract or agreement that purports to sell, lease or otherwise transfer to a Non-Citizen the fishing rights, a fishing quota, a processing quota or any other right allocated to a vessel owner, bareboat charterer, or a particular Fishing Vessel, Fish Processing Vessel or Fish Tender Vessel.

(b) In the event the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel enters into any agreement reflected in any of the documents set forth in paragraph (a) of this section after the submission of the Affidavit of U.S. Citizenship, the owner or bareboat charterer must notify the Citizenship Approval Officer within 30 calendar days. Failure to notify the Citizenship Approval Officer of such agreements within the prescribed time may result in the vessel owner being deemed ineligible to document the vessel with a fishery endorsement.

§ 356.15 Filing of affidavit of U.S. Citizenship.

(a) Prior to June 1, 2001, the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may request a letter ruling from the Citizenship Approval Officer that the owner is a U.S. Citizen eligible to own a vessel with a fishery endorsement. The owner must submit to the Citizenship Approval Officer a request for a letter ruling that includes an Affidavit of U.S. Citizenship and all other documentation required by § 356.13. The Citizenship Approval Officer will issue a letter ruling within 120 calendar days of receiving all applicable documents.

(b) An owner that receives a letter ruling pursuant to paragraph (a) of this section must submit a certification that the information contained in the Affidavit of U.S. Citizenship and in documents submitted in support of the request for a letter ruling remains true and accurate. The certification must be submitted no earlier than September 10, 2001 and no later than September 20, 2001. If changes in the information have occurred between the time of the request for the letter ruling and the time of the certification, the owner must notify the Citizenship Approval Officer of those changes as required by § 356.5 and § 356.17. The owner is still required to inform the Citizenship Approval Officer of any changes as they occur as required by § 356.17 and not merely at the time of the certification.

(c) An owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that does not request a letter ruling prior to June 1, 2001, and who wishes to be eligible to obtain a fishery endorsement on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on October 1, 2001, must submit the

required Affidavit of U.S. Citizenship and all other documentation required by § 356.13 to the Citizenship Approval Officer no later than June 1, 2001. If a completed Affidavit of U.S. Citizenship including all required documentation is not submitted by June 1, 2001, the Citizenship Approval Officer may not have sufficient time to make a citizenship determination and the Vessel may be prohibited from operating in the fisheries of the United States until an eligibility determination is made by the Citizenship Approval Officer.

(d) A vessel owner that has a valid fishery endorsement prior to October 1, 2001, must obtain a citizenship determination from the Citizenship Approval Officer no later than October 1, 2001, which states that the owner is a U.S. Citizen eligible to own a vessel with a fishery endorsement. If the owner obtains the required determination from the Citizenship Approval Officer, the fishery endorsement will remain valid and will be subject to renewal at the time of its next regularly scheduled annual filing to document the vessel with the Coast Guard, at which point the owner will be required to obtain an annual ruling from the MARAD's Citizenship Approval Officer that it is still a U.S. Citizen. If a vessel owner that owns a vessel with a valid fishery endorsement prior to October 1, 2001, does not obtain the required determination from the Citizenship Approval Officer by October 1, 2001, the vessel's fishery endorsement will necessarily be deemed invalid. In order to obtain a new fishery endorsement, the vessel owner will be required to obtain a citizenship determination from the Citizenship Approval Officer and to apply to the U.S. Coast Guard for a new fishery endorsement.

(e) New owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels after October 1, 2001, must file the Affidavit of U.S. Citizenship and other required documentation with the Citizenship Approval Officer in order for the Citizenship Approval Officer to make a determination whether the owner is eligible to own a vessel with a fishery endorsement to the vessel's documentation. A vessel may not receive a fishery endorsement to its documentation or operate in the fisheries of the United States before this determination has been made.

(f) If the Citizenship Approval Officer believes that there is a defect in the Affidavit of U.S. Citizenship or the supporting documentation, the applicant will be notified and will be given an opportunity to work with the Citizenship Approval Officer to resolve the matter before a determination is made whether the applicant qualifies as a U.S. Citizen.

§ 356.17 Annual requirements for vessel owners.

(a) An owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit a certification in the form of an Affidavit of United States Citizenship to the Citizenship Approval Officer on an annual basis as provided in paragraph (b) of this section. The vessel owner does not have to submit duplicate copies of documents that have already been submitted and that have not changed, provided a copy is still retained by us. This annual certification requirement does not excuse the owner from the requirements of § 356.5 to notify the Citizenship Approval Officer throughout the year when changes in the citizenship information occur.

(b) The annual certification required by paragraph (a) of this section must be filed at least 45 days prior to the renewal date for the vessel's documentation and fishery endorsement. Owners of multiple vessels with different documentation renewal dates are only required to file an Affidavit of U.S. Citizenship and supporting documentation in conjunction with the first vessel renewal during each calendar year. To satisfy the citizenship approval requirements for the renewal of a fishery endorsement for another vessel in the same calendar year, the owner must submit a certification to the Citizenship Approval Officer at least 45 days prior to the renewal date for the vessel's fishery endorsement stating that the Affidavit of U.S. Citizenship and supporting documentation already on file with the Citizenship Approval Officer for the first renewal in that calendar year of a fishery endorsement for a vessel of 100 feet or greater in registered length belonging to that owner continues to be true and accurate. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of this part 356 such as charters, management agreements, loans or financing agreements, sales, purchase or marketing agreements, or exemptions claimed under the rule must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

(c) Failure to file the annual certification in a timely manner may result in the expiration of the vessel's fishery endorsement, which will prohibit the vessel from operating in the fisheries of the United States.

Subpart D—Mortgages

§ 356.19 Requirements to hold a Preferred Mortgage.

(a) In order for Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, it must be:

(1) A Citizen of the United States;

(2) A state or federally chartered financial institution that complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b); or

(3) A Mortgage Trustee that qualifies as a Citizen of the United States and that has satisfied the requirements of §§ 356.27 through 356.31.

(b) The Mortgagee must file an Affidavit of United States Citizenship demonstrating that it complies with the citizenship requirements that correspond to the provisions of paragraph (a) of this section under which the Mortgagee qualifies.

(c) In addition to the Affidavit of U.S. Citizenship, a certified copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents must be submitted to the Citizenship Approval Officer.

(d) A Preferred Mortgagee must provide an annual certification to the Citizenship Approval Officer in the form of an Affidavit of United States Citizenship evidencing its continued status as a Citizen of the United States or, if a state or federally chartered financial institution, that it complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b), during the period that it holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The certification must be submitted at least 30 calendar days prior to the annual anniversary date of the original filing.

§ 356.21 General approval of Non-Citizen Lender's standard loan or mortgage agreements.

(a) A Non-Citizen Lender that is a financial institution engaged in the business of financing Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels may apply to the Citizenship Approval Officer for general approval of its standard loan and mortgage agreements for such vessels. In order to obtain general approval for its standard loan and mortgage agreements, a Non-Citizen Lender using an approved Mortgage Trustee must submit to the Citizenship Approval Officer:

(1) A copy of its standard loan or mortgage agreement for Fishing Vessels, Fish Processing Vessels, and Fish

Tender Vessels, including all covenants that may be included in the loan or mortgage agreement; and,

(2) A certification that it will not use covenants or restrictions in the loan or mortgage agreement outside of those approved by the Citizenship Approval Officer without obtaining the prior approval of the Citizenship Approval Officer.

(b) A Non-Citizen Lender that receives general approval may enter into loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels without prior approval from us of each individual loan or mortgage; *provided*, that the loan or mortgage conforms to the standard agreement approved by the Citizenship Approval Officer and does not include any other covenants that have not been approved by the Citizenship Approval Officer.

(c) The Non-Citizen Lender must provide an annual certification to the Citizenship Approval Officer certifying that all loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels entered into under this general approval conform to the standard agreement approved by us and do not contain deviations from the standard agreement or covenants that were not reviewed and approved by the Citizenship Approval Officer. The certification must be submitted at least 30 calendar days prior to the annual anniversary date of the previous approval.

(d) If the Non-Citizen Lender wishes to use covenants that were not approved pursuant to this section, it must submit the new covenants to the Citizenship Approval Officer for approval.

(e) A Non-Citizen Lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that have not been approved by the Citizenship Approval Officer will be subject to loss of its general approval and the Citizenship Approval Officer may determine that there has been an impermissible transfer of control to a Non-Citizen resulting in a loss of the vessel owner's eligibility to document the vessel with a fishery endorsement. If the Non-Citizen Lender knowingly files a false certification with the Citizenship Approval Officer or has used covenants in a loan or mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that are materially different from the approved covenants, it may also be subject to civil and criminal penalties pursuant to 18 U.S.C. 1001.

§ 356.23 Restrictive loan covenants approved for use by Non-Citizen Lenders.

(a) We approve the following standard loan covenants, which may restrict the activities of the borrower without the lender's consent and which may be included in loan agreements or other documents between an owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and an unrelated Non-Citizen Lender that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the Non-Citizen Lender, so long as the lender's consent is not unreasonably withheld:

(1) Borrower cannot sell part or all of its assets;

(2) Borrower cannot merge, consolidate, reorganize, dissolve, or liquidate;

(3) Borrower cannot undertake new borrowing or contingent liabilities;

(4) Borrower cannot insure, guaranty or become otherwise liable for debt obligations of any other entity, Person, etc.;

(5) Borrower cannot Charter or lease a vessel that is collateral for the loan;

(6) Borrower cannot incur liens, except any permitted liens that may be set forth in the loan or other financing documents;

(7) Borrower must limit its investments to marketable investments guaranteed by the United States or a State, or commercial paper with the highest rating of a generally recognized rating service;

(8) Borrower cannot make structural alterations or any other major alteration to the vessel;

(9) Borrower, if in arrears in its debt obligations to the lender, cannot make dividend payments on its capital stock; and,

(10) Borrower, if in arrears in its debt obligations to the lender, cannot make excessive contributions to pension plans, make payment of employee bonuses, or make excessive contributions to stock option plans, or provide other major fringe benefits in terms of dollar amount to its employees, officers, and directors, such as loans, etc.

(b) The mortgage may not include covenants that allow the Mortgagee to operate the vessel except as provided for in § 356.25.

§ 356.25 Operation of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels by Mortgagees.

(a) A Mortgagee that has demonstrated to MARAD that it qualifies as a Citizen of the United States and is eligible to own a vessel with a fishery endorsement may operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(b) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot operate or cause operation of, the vessel in the fisheries of the United States. Except as provided in paragraph (c) of this section, the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer.

(c) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may operate the vessel for a non-commercial purpose to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a Citizen of the United States and for no longer than 15 calendar days.

(d) A Mortgagee that is holding a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel but that is not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document. However, the vessel may not be operated, or caused to be operated in commerce, except as provided in paragraph (c) of this section or with the approval of the Citizenship Approval Officer..

(e) A Non-Citizen Lender that has brought a civil action in rem for enforcement of a Preferred Mortgage lien on a Citizen-owned Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel pursuant to 46 U.S.C. 31325(b)(1) may petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver, and, if the receiver is a Person eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, to authorize the receiver to operate the mortgaged vessel pursuant to terms and conditions consistent with this part 356. If the receiver is not a Citizen of the United States that meets the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and 46 U.S.C. 12102(c), the vessel may not be operated in the fisheries of the United States.

Subpart E—Mortgage Trustees

§ 356.27 Mortgage Trustee requirements.

(a) A lender who does not qualify as a Citizen of the United States or is not a state or federally chartered financial institution that meets the Controlling Interest requirements of section 2(b) of

the 1916 Act and Section 356.3(g) can obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by using an approved Mortgage Trustee to hold the mortgage and the debt instrument that the mortgage is securing.

(b) In order to qualify as an approved Mortgage Trustee, the Mortgage Trustee must:

(1) Qualify as a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) Be organized as a corporation and doing business under the laws of the United States or of a State;

(3) Be authorized under the laws of the United States or of the State under which it is organized to exercise corporate trust powers;

(4) Be subject to supervision or examination by an official of the United States Government, or of a State;

(5) Have a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(6) Meet any other requirements prescribed by the Citizenship Approval Officer.

(c) The Mortgage Trustee must submit to the Citizenship Approval Officer the following documentation in order to be an approved Mortgage Trustee:

(1) An application for approval as a Mortgage Trustee as set out in paragraph (g) of this section;

(2) An Affidavit of U.S. Citizenship setting forth the required information necessary to determine that the applicant qualifies as a Citizen of the United States;

(3) A certified copy of the Articles of Incorporation and Bylaws, or other comparable documents;

(4) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(5) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

(d) Any right set forth in a mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot be issued, assigned, or transferred to a person who is not eligible to be a Mortgagee without the approval of the Citizenship Approval Officer.

(e) Mortgage Trustees approved by the Citizenship Approval Officer must not assume any fiduciary obligations in favor of Non-Citizen Lenders that are in conflict with the U.S. Citizen ownership and control requirements set forth in the AFA, without the approval of the Citizenship Approval Officer. An approved Mortgage Trustee may request that the Citizenship Approval Officer pre-approve a trust agreement form to ensure that the fiduciary duties assumed by the Mortgage Trustee in favor of a Non-Citizen Lender are consistent with the ownership and control requirements of this part and the AFA.

(f) We will periodically publish a list of Approved Mortgage Trustees in the **Federal Register**, but current information as to the status of any particular Mortgage Trustee must be obtained from the Citizenship Approval Officer.

(g) An application to be approved as a Mortgage Trustee should include the following:

The undersigned (the "Mortgage Trustee") hereby applies for approval as Mortgage Trustee pursuant to 46 U.S.C. 12102(c)(4) and the Regulation (46 CFR part 356), prescribed by the Maritime Administration ("MARAD"). All terms used in this application have the meaning given in the Regulation.

In support of this application, the Mortgage Trustee certifies to and agrees with MARAD as hereinafter set forth:

I. The Mortgage Trustee certifies:

(a) That it is acting or proposing to act as Mortgage Trustee on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels documented, or to be documented under the U.S. registry;

(b) That it—

(1) Is organized as a corporation under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel within the meaning of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, as amended, (46 App. U.S.C. 802(c)) and is eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(4) Is subject to supervision or examination by an official of the United States Government or a State; and

(5) Has a combined capital and surplus of at least $3,000,000 as set forth in its most recent published report of condition, a copy of which, dated _____, is attached.

II. The Mortgage Trustee agrees:

(a) That it will, so long as it shall continue to be on the List of Approved Mortgage Trustees referred to in the Regulation:

(1) Notify the Citizenship Approval Officer in writing, within 20 days, if it shall cease to be a corporation which:

(i) Is organized under the laws of the United States or of a State, and is doing business under the laws of the United States or of a State;

(ii) Is authorized under those laws to exercise corporate trust powers;

(iii) Is a Citizen of the United States;

(iv) Is subject to supervision or examination by an authority of the U.S. Government or of a State; and

(v) Has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000.

(2) Notify the Citizenship Approval Officer in writing, of any changes in its name, address, officers, directors, stockholders, articles of incorporation or bylaws within 30 calendar days of such changes;

(3) Furnish to the Citizenship Approval Officer on an annual basis:

(i) An Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(ii) A current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

(iii) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(iv) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(4) Furnish to the Citizenship Approval Officer any further relevant and material information concerning its qualifications as Mortgage Trustee under which it is acting or proposing to act as Mortgage Trustee, as the Citizenship Approval Officer may from time to time request; and,

(5) Permit representatives of the Maritime Administration, upon request, to examine its books and records relating to the matters referred to herein;

(b) That it will not issue, assign, or in any manner transfer to a person not eligible to own a documented vessel, any right under a mortgage of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or operate such vessel without the approval of the Citizenship Approval Officer; except that it may operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States for a period not to exceed 15 calendar days;

(c) That after a responsible official of such Mortgage Trustee obtains knowledge of a foreclosure proceeding, including a proceeding in a foreign jurisdiction, that involves a documented Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on which it holds a mortgage pursuant to approval under the Regulation and to which 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) are applicable, it shall promptly notify the Citizenship Approval Officer with respect thereto, and shall ensure that the court or other tribunal has proper notice of those provisions; and

(d) That it shall not assume any fiduciary obligation in favor of Non-Citizen beneficiaries that is in conflict with any restrictions or requirements of the Regulation.

III. This application is made in order to induce the Maritime Administration to grant approval of the undersigned as Mortgage Trustee pursuant to 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) and the Regulation, and may be relied on by the Citizenship Approval Officer for such purposes. False statements in this application may subject

the applicant to fine or imprisonment, or both, as provided for violation of the proscriptions contained in 18 U.S.C. 286, 287, and 1001.

Dated this_____day of _____, 20__.
ATTEST:

(Print or type name below)
(SEAL)
MORTGAGE TRUSTEE'S NAME & ADDRESS

By:
(print-or type name below)
TITLE

§ 356.31 Maintenance of Mortgage Trustee approval.

(a) A Mortgage Trustee that holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit the following information to the Citizenship Approval Officer during each calendar year that it is acting as a Mortgage Trustee:

(1) An Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(2) A current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

(3) A copy of the most recent published report of condition of the Mortgage Trustee; and

(4) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(b) The Mortgage Trustee must file the documents required in paragraph (a) of this section within 30 calendar days of the annual stockholder's meeting of the Mortgage Trustee, or if no annual meeting is held, then the filing must be within 30 calendar days prior to the anniversary date of the original Affidavit of U.S. Citizenship filed with MARAD.

(c) If at any time the Mortgage Trustee fails to meet the statutory requirements set forth in the AFA, the Mortgage Trustee must notify the Citizenship Approval Officer of such failure to qualify as a Mortgage Trustee not later than 20 calendar days after the event causing such failure. We will publish in the **Federal Register** a disapproval notice and will so notify the U.S. Coast Guard and the Mortgage Trustee of such disapproval by providing them a copy of the disapproval notice. Within thirty 30 calendar days of such publication in the **Federal Register**, the disapproved Mortgage Trustee must transfer its fiduciary responsibilities to a successor Mortgage Trustee, approved by the Citizenship Approval Officer. The preferred status of the mortgage will be maintained during the 30 day period following publication of the disapproval notice in the **Federal Register** pending transfer of the Mortgage Trustee's fiduciary responsibilities to a successor Mortgage Trustee.

§ 356.37 Operation of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by a Mortgage Trustee.

An approved Mortgage Trustee cannot operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel without the approval of the Citizenship Approval Officer, except where non-commercial operation is necessary for the immediate safety of the vessel and the vessel is operated under the command of a Citizen of the United States for a period of no more than 15 calendar days.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

§ 356.39 Charters.

(a) Charters to Citizens of the United States:

(1) Bareboat charters may be entered into with Citizens of the United States subject to approval by the Citizenship Approval Officer that the charterer is a Citizen of the United States. The bareboat charterer of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer for review and approval prior to entering into such charter.

(2) Time charters, voyage charters and other charter arrangements that do not constitute a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may be entered into with Citizens of the United States. The charterer must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer within 30 calendar days of execution of the charter.

(b) Charters to Non-Citizens:

(1) Bareboat or demise charters to Non-Citizens of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels for use in the United States are prohibited. Bareboat charters to Non-Citizens of Fish Processing Vessels and Fish Tender Vessels for use solely outside of the United States are permitted.

(2) Time charters, voyage charters and other charters that are not a demise of the vessel may be entered into with Non-Citizens for the charter of dedicated Fish Tender Vessels and Fish Processing Vessels that are not engaged in the Harvesting of fish or fishery resources. A copy of the charter must be submitted to the Citizenship Approval Officer prior to being executed in order for the Citizenship Approval officer to verify that the charter is not in fact a demise of the vessel.

(3) Time charters, voyage charters and other charters of Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels to Non-Citizens are prohibited if the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel will be used to Harvest fish or fishery resources.

(c) We reserve the right to request a copy of any time charter, voyage charter, contract of affreightment or other Charter of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel in order to confirm that the Charter is not a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(d) Any violation of this section will render the vessel's fishery endorsement immediately invalid upon notification from the Citizenship Approval Officer.

§ 356.41 Management agreements.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may enter into a management agreement with a Non-Citizen in which the management company provides marketing services, consulting services or other services that are ministerial in nature and do not convey control of the vessel to the Non-Citizen.

(b) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may not enter into a management agreement that allows the Non-Citizen to appoint, discipline or replace the crew or the master, direct the operations of the vessel or to otherwise effectively gain control over the management and operation of the vessel or vessel-owning entity.

(c) The owner or bareboat charterer must file with the Citizenship Approval Officer a description of any management agreement entered into with a Non-Citizen. The description must be submitted within 30 days of the execution and must include:

(1) A description of the agreement with a summary of the terms and conditions, and,

(2) A representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

(d) The Citizenship Approval Officer may request a copy of any management agreement to determine if it contains provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

§ 356.43 Long-term or exclusive sales contracts.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel,

or Fish Tender Vessel may enter into an agreement or contract with a Non-Citizen for the sale of all or a significant portion of its catch where the contract or agreement is solely for the purpose of employment of certain vessels on an exclusive basis for a specified period of time. Such contracts or agreements will not require our prior approval; provided, that the contract or agreement does not convey control over the owner or bareboat charterer of the vessel or the vessel's operation, management and harvesting activities.

(b) Provisions of a long-term or exclusive contract or agreement for the sale of all or a significant portion of a vessel's catch entered into pursuant to paragraph (a) of this section that are not considered to convey impermissible control to a Non-Citizen and do not require our approval include provisions that:

(1) Specify that the owner or bareboat charterer agrees to sell and purchaser agrees to procure, on a preferential basis, a certain quantity of fish caught by a vessel owner or bareboat charterer on a specific vessel;

(2) Specify that the vessel owner or charterer is responsible for supplying a specific type of fish to off-loading points designated by the purchaser;

(3) Provide for the replacement by the vessel owner of vessels covered by the contract or agreement in the event of loss or damage;

(4) Specify refrigeration criteria;

(5) Provide that the owner or bareboat charterer has to comply with fishing schedules that specify the maximum age of fish to be delivered and a method to coordinate delivery to the purchaser;

(6) Provide for methods of calculating price per pound or other price schedules and a schedule for payment for delivered fish;

(7) Provide for an arbitration mechanism in the event of dispute; and

(8) Provide for the purchaser to furnish off-loading crew and/or processing or quality control technicians but no other vessel crew members.

(c) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must obtain the approval of the Citizenship Approval Officer prior to entering into any agreement or contract with a Non-Citizen for the sale of all or a significant portion of a vessel's catch if the agreement or contract contains provisions that in any way convey to the purchaser of the vessel's catch control over the operation, management or harvesting activities of the vessel, vessel owner, or bareboat charterer other than as provided for in paragraph (b) of this section.

(d) An owner or bareboat charterer must submit, with its Affidavit of United States Citizenship and annually thereafter, a list of any long-term or exclusive sales agreements to which it is a party and the principal parties to those agreements. If requested, a copy of such agreements must be provided to the Citizenship Approval Officer.

§ 356.45 Advance of funds.

(a) A Non-Citizen may advance funds to the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel:

(1) As provisional payment for products delivered for consignment sales, but not yet sold; or

(2) Where the basis of the advancement is an agreement between the Non-Citizen and the vessel owner or bareboat charterer to sell all or a portion of the vessel's catch to the Non-Citizen and the agreement meets the following conditions:

(i) The amount of the advancement does not exceed the annual value of the sales contract, measured as the value of the product to be supplied to the processor;

(ii) The Non-Citizen is not granted any rights whatsoever to control the operation, management and harvesting activities of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel other than as provided for in § 356.43;

(iii) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen does not convey control over the vessel, the vessel owner or bareboat charterer in any manner whatsoever other than as provided for in § 356.43; and,

(iv) No security interest in the vessel is conveyed as collateral for the advance of funds.

(b) An owner or bareboat charterer may enter into an unsecured letter of credit or promissory note with a U.S. branch of a Non-Citizen Lender if:

(1) The Non-Citizen Lender is not affiliated with any party with whom the owner or bareboat charter has entered into a mortgage, long-term or exclusive sales or purchase agreement, or other similar contract;

(2) The Non-Citizen Lender is not granted any rights whatsoever to control the owner or the operation, management and harvesting activities of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel; and,

(3) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen Lender does not convey control over the vessel, the vessel owner or bareboat charter in any manner whatsoever.

(c) The Citizenship Approval Officer may request a copy of any agreement for an advance of funds or letter of credit in order to determine if it contains an impermissible conveyance of control to a Non-Citizen.

Subpart G—Special Requirements for Certain Vessels

§ 356.47 Special requirements for large vessels.

(a) Unless exempted in paragraph (b), (c) or (d) of this section, a vessel is not eligible for a fishery endorsement under 46 U.S.C. 12106 if:

(1) It is greater than 165 feet in registered length;

(2) It is more than 750 gross registered tons; or

(3) It possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower; such limitation shall not include auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or similar purposes.

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

(1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(2) The vessel is not placed under foreign registry after October 21, 1998; and,

(3) In the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the receipt of written notification from MARAD or the Coast Guard identifying the reason for such invalidation;

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and

management measures in accordance with the American Fisheries Act of 1998, Title II, Division C, Public Law 105–277, to allow such vessel to be used in fisheries under such council's authority.

(d) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if the vessel is engaged exclusively in the menhaden fishery in the geographic region governed by the South Atlantic Fisheries Council or the Gulf of Mexico Fisheries Council.

§ 356.49 Penalties.

If the owner or the representative or agent of the owner has knowingly falsified or concealed a material fact or knowingly made a false statement or representation with respect to the eligibility of the vessel under 46 U.S.C. 12102(c), in applying for or applying to renew the vessel's fishery endorsement, the following penalties may apply:

(a) The vessel's fishery endorsement may be revoked;

(b) A fine of up to $100,000 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States; and

(c) The owner, representative or agent may be subject to additional fines, penalties or both for violation of the proscriptions of 18 U.S.C. 286, 287, and 1001.

§ 356.51 Exemptions for specific vessels.

(a) The following vessels are exempt from the requirements of 46 U.S.C. 12102(c) as amended by the AFA until such time as 50% of the interest owned and controlled in the vessel changes; *provided*, the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect prior to the enactment of the AFA:

(1) EXCELLENCE (United States official number 296779);

(2) GOLDEN ALASKA (United States official number 651041);

(3) OCEAN PHOENIX (United States official number 296779);

(4) NORTHERN TRAVELER (United States official number 635986); and

(5) NORTHERN VOYAGER (United States official number 637396) or a replacement for the NORTHERN VOYAGER that complies with paragraphs 2, 5, and 6 of section 208(g) of the AFA.

(b) The NORTHERN VOYAGER (United States official number 637396) and NORTHERN TRAVELER (United States official number 635986) will forfeit the exemption under paragraph (a) of this section if the vessel is used in a fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(A) and (B)).

(c) The EXCELLENCE (United States official number 296779), GOLDEN ALASKA (United States official number 651041), and OCEAN PHOENIX (United States official number 296779) will forfeit their exemption under paragraph (a) of this section if the vessel is used to Harvest fish.

(d) The following Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels are exempt from the new ownership and control standards under the AFA and this part 356 for vessel owners and Mortgagees:

(1) Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)); and

(2) Purse seine vessels when they are engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty.

(e) Owners of vessels exempt from the new ownership and control requirements of the AFA and this part 356 by paragraph (a) or (d) of this section must still comply with the requirements for a fishery endorsement under the federal law that was in effect on October 20, 1998. The owners must also submit to the Citizenship Approval Officer on an annual basis an Affidavit of United States Citizenship in accordance with § 356.15 demonstrating that they comply with the Controlling Interest requirements of section 2(b) of the 1916 Act. In addition:

(1) The owners of the Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels listed in paragraph (a) of this section that are exempt from the new requirements of 46 U.S.C. 12102(c) must specifically outline the current ownership structure at the time of filing, any changes in the ownership structure that have occurred since the filing of the last Affidavit, and a chronology of all changes that have occurred since October 21, 1998; and,

(2) The owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels exempted under paragraph (e) of this section must note on the Affidavit that the owner is claiming an exemption from the requirements of this part 356 pursuant to § 356.51(e).

Subpart H—International Agreements

§ 356.53 Conflicts with international agreements.

(a) If the owner or Mortgagee of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel believes that there is a conflict between the AFA or 46 CFR part 356 and any international treaty or agreement to which the United States is a party on October 1, 2001, and to which the United States is currently a party, the owner or Mortgagee may petition the Chief Counsel of the Maritime Administration at any time after July 19, 2000 to request a ruling that all or part of the requirements of this part 356 do not apply to that particular owner or particular Mortgagee with respect to a specific vessel; provided, the petitioner had an ownership interest in the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or a mortgage on the vessel in the case of a Mortgagee, on October 1, 2001, and is covered by the international agreement. Petitions may be filed prior to October 1, 2001 by owners or Mortgagees with respect to international treaties or agreements in effect at the time of the petition which are not scheduled to expire prior to October 1, 2001.

(b) A petition for exemption from the requirements of this part 356 must include:

(1) Evidence of the ownership structure, or mortgage structure in the case of a Mortgagee, of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel as of October 1, 2001 (or on the date of the petition, for petitions filed prior to October 1, 2001), and any subsequent changes to the ownership structure, or mortgage structure in the case of a Mortgagee, of the vessel;

(2) A copy of the provisions of the international agreement or treaty which the owner or mortgagee believes are in conflict with the regulations in this part 356;

(3) A detailed description of how the provisions of the international agreement or treaty and the regulations in this part 356 are in conflict;

(4) A certification in all petitions filed on or after October 1, 2001, that no interest in the vessel-owning entity has been transferred to a Non-Citizen after September 30, 2001; and,

(5) For all petitions filed prior to October 1, 2001, a certification that the owner does not intend to transfer interest in the vessel-owning entity to a Non-citizen prior to October 1, 2001.

(c) A separate petition must be filed for each Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel for which the vessel owner or a Mortgagee is requesting an exemption unless the Chief Counsel authorizes consolidated filing. Petitions should include two copies of all materials and should be sent to the following address: Maritime Administration, Chief Counsel, Room 7228, 400 7th Street, SW., Washington, DC 20590.

(d) Upon receipt of a complete petition, the Chief Counsel will publish a notice in the Federal Register requesting public comment. The Federal Register notice will include the petitioner's descriptions regarding how the AFA and this part 356 are in conflict with a particular investment treaty or agreement, but it will not include proprietary or confidential information about the petitioner. The Chief Counsel, in consultation with other departments and agencies within the Federal Government that have responsibility or expertise related to the interpretation or application of international investment agreements (*e.g.*, the Department of State, United States Trade Representative, Department of Treasury, etc.), will review the petition and the public comments to determine whether the international agreement and the requirements of the AFA and this part 356 are in conflict and, absent any extenuating circumstances, will render a decision within 120 days of the receipt of a fully completed petition. If MARAD's Chief Counsel determines after the receipt of a fully completed petition that there are extenuating circumstances that will preclude a decision from being rendered on the petition within 120 days, the petitioner will be notified around the 90th day and provided with an estimated date on which a decision will be rendered.

(e) To the extent that it is determined that an international agreement covering the petitioner is in conflict with the requirements of this part 356, the AFA, 46 U.S.C. 31322(a), 46 U.S.C. 12102(c), and this part 356 will not be applied to the petitioner with respect to the specific vessel. If the petitioner is a vessel owner, it will be required to comply with the documentation requirements as in effect prior to passage of the AFA on October 21, 1998. If the petitioner is a Mortgagee, it will be subject to requirements of 46 U.S.C. 31322(a) as in effect prior to passage of the AFA with regard to the mortgage on the particular vessel covered by the petition. Decisions of the Chief Counsel may be appealed to the Maritime Administrator within 15 business days of issuance.

(f) The owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that is determined through the petition process to be exempt from all or part of the requirements of this part 356 must submit evidence of its ownership structure to the Chief Counsel on an annual basis. The owner must specifically set forth:

(1) The Vessel's current ownership structure;

(2) The identity of all Non-Citizen owners and the percentage owned;

(3) Any changes in the ownership structure that have occurred since the filing of the last Affidavit; and,

(4) A certification that no interest in the vessel was transferred to a Non-Citizen after September 30, 2001.

(g) The provisions of this part 356 shall apply:

(1) To all owners and Mortgagees of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel who acquired an interest in the vessel after October 1, 2001; and

(2) To the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on October 1, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen after such date. An ownership interest is deemed to be transferred under this section when there is a transfer of interest in the primary vessel-owning entity. A transfer of interest in the primary vessel-owning entity does not include:

(i) Transfers of disparately held shares of the vessel-owning entity if it is a publicly traded company and the total of the shares transferred in a particular transaction equals less than 5% of the shares in that class. An interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner;

(ii) Transfers of shares in a parent company that do not result in a transfer of the parent company to another Non-Citizen; or

(iii) Transfers pursuant to a divorce or death.

Subpart I—REVIEW OF HARVESTING AND PROCESSING COMPLIANCE

§ 356.55 Review of compliance with harvesting and processing quotas.

(a) Upon the request of either the North Pacific Fishery Management Council ("NPFMC") or the Secretary of Commerce, the Chief Counsel will review any allegation that an individual or entity has exceeded the allowable percentage for harvesting or processing pollock as provided for in section 210(e)(1) or (2) of the AFA.

(b) Following a request for MARAD review under paragraph (a) of this section, the NPFMC and the Secretary of Commerce (through the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service) will transmit to MARAD any relevant information in their possession including, but not limited to:

(1) The identity of the parties alleged to have exceeded the excessive share caps;

(2) The relevant harvesting or processing data (the amount harvested or processed by particular parties);

(3) Any information that would be helpful in determining if the parties are related;

(4) Any information regarding the ownership structure of the parties, including:

(i) Articles of incorporation;

(ii) Bylaws;

(iii) Identity of shareholders and the percentage owned;

(iv) Any contracts or agreements that would demonstrate ownership or control of one party by another allegedly related party; and

(v) Any other evidence that would demonstrate ownership or control of one party by another allegedly related party.

(c) If MARAD determines during the course of its review that additional information is required from the parties alleged to have exceeded the excessive share cap, the Chief Counsel will advise the Secretary of Commerce and/or the NPFMC what information is required. The Secretary and/or the NPFMC will request that specific parties submit the required information to MARAD.

(d) The Chief Counsel will make a finding as soon as practicable and will submit it to the Secretary of Commerce and the NPFMC.

(e) For purposes of this section, if 10% or more of the interest in an entity is owned or controlled either directly or indirectly by another individual or entity, the two entities will be considered the same entity for purposes of applying the harvesting and processing caps.

(1) For purposes of this section, an entity will be deemed to have an ownership interest in a pollock harvesting or processing entity if it either owns a percentage of the pollock harvesting or processing entity directly

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or if ownership can be traced through intermediate entities to the pollock harvesting or processing entity. To determine the percentage of ownership interest that an entity has in a pollock harvesting or processing entity where the ownership interest passes through one or more intermediate entities, the entity's percentage of direct interest in an intermediate entity is multiplied by the intermediate entity's percentage of direct or indirect interest in the pollock harvesting or processing entity.

(2) For purposes of this section, an entity will be deemed to exercise 10% or greater control over a pollock harvesting or processing entity if:

(i) It has the right to direct the business of the pollock harvesting or processing entity;

(ii) It has the right to appoint members to the management team of the pollock harvesting or processing entity such as the directors of a corporation or is a general partner or joint venturer in a harvesting or processing entity;

(iii) It has the right to direct the business of an entity that directly or indirectly owns or controls 10% of a harvesting or processing entity; or

(iv) It owns 50% or more of an entity that owns or controls 10 percent of a pollock harvesting or processing entity.

(f) If the Secretary of Commerce determines that there is enough evidence to pursue an enforcement action for violation of the harvesting or processing caps contained in section 210(e) of the AFA, the Person against whom an enforcement action is taken is entitled to notice and an opportunity for a hearing before the Secretary of Commerce in accordance with 5 U.S.C. 554.

Dated: July 6, 2000.

By Order of the Maritime Administrator

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–17495 Filed 7–17–00; 10:09 am]

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Part III

Department of the Interior

National Park Service

Simplified Concession Contracts; Revision

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DEPARTMENT OF THE INTERIOR

National Park Service

Simplified Concession Contracts; Revision

ACTION: Final revision of the National Park Service simplified concession contracts.

SUMMARY: The National Park Service (NPS) authorizes certain business entities to operate concessions in areas of the national park system. The agreements embodying these authorizations are concession contracts (and, previously, concession permits) that incorporate NPS terms and conditions established by law and prudent contract administration. In 1998, Public Law 105–391 (the 1998 Act) was enacted and which in many significant ways affects the content of concession contracts to be entered into after its effective date. NPS has amended its existing standard concession contract (Category I contract) to conform to the requirements of the 1998 Act and to otherwise make improvements to the standard form (65 FR 26052, May 4, 2000).

Under this notice, NPS adopts two simplified versions of its standard concession contract (Category II and Category III contracts) that will be used for smaller concession operations. Although not required to do so by law, NPS sought by publication in the Federal Register on December 21, 1999, public comments on the proposed simplified contracts to assist it in developing final versions as a matter of public comment. NPS, after consideration of public comments has adopted these simplified versions of its standard concession contract. NPS points out that these simplified versions of the standard concession contract serve as a guideline for the form of concession contracts used to authorize smaller concession operations. These forms reflect the current policies of NPS with regard to concession operations, but may be changed by the Director of NPS when necessary to accommodate the circumstances of any particular contracting situation, so long as the contract form used is consistent with the 1998 Act and 36 CFR Part 51.

EFFECTIVE DATE: August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, Concessions Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 10140 (202/565–1210).

SUPPLEMENTARY INFORMATION: The 1998 Act, among other matters, amended the statutory policies and procedures under which NPS operated its concession program. The new law required adoption of new regulations governing the award, content and management of concession contracts. On June 30, 1999, NPS published for public comment proposed regulations implementing the new law. The final new regulations were published in the Federal Register on April 17, 2000. On September 3, 1999, NPS published for public comment a new standard concession contract (Category I contract). The final Category I contract language was published in the Federal Register on May 4, 2000. On December 21, NPS published for public comment its proposed simplified concession contracts (Category II and Category III contracts) that will be used for smaller concession operations that do not involve the concessioner's obtaining a compensable interest in real property located on park lands. The simplified concession contracts set forth in this notice reflect the requirements of the 1998 Act and the requirements of the amended 36 CFR Part 51. They also reflect a variety of improvements NPS wishes to make to its standard form contracts, including a new organizational structure for the sake of clarity.

NPS will utilize the three contract categories as follows:

Category I contracts will be used in situations where the concessioner will be required or allowed to construct or install capital improvements on park area lands, thereby acquiring in certain conditions a leasehold surrender interest. Category I contracts will also require that the concessioner perform capital maintenance on assigned concession facilities, as necessary, and may require the establishment of a maintenance reserve for this purpose.

Category II contracts will be used in situations where a concessioner will operate on assigned land or in an assigned concession facility, but will not be allowed to construct or install capital improvements. As an example, a Category II contract might be used to authorize a gift shop operation in a portion of a park visitor center, or a small snack bar operation in an assigned building.

Category III contracts will be used in situations where no lands or buildings are assigned to the concessioner; consequently, the concessioner will not be allowed to construct or install any capital improvements and the concessioner will not obtain any leasehold surrender interest. Many outfitter/guide operations will be authorized by Category III contracts.

Public Comments

Twenty-two public comments were received in response to the public notice. Twenty of these comments were from outfitters and guides, or groups representing outfitters and guides. The remaining two comments were submitted by an organization representing some 150 existing concessioner members (the "general concessioner organization"), and by one large concessioner supporting the comments made by that organization.

Two commenters expressly incorporated by reference objections they had made to the proposed Category I contract. Those comments are not addressed here, as they have been addressed in the preamble to the Category I contract. Additionally, several comments directed to specific provisions of the Category II and Category III contracts have been addressed in response to similar comments received on the Category I contract. These comments will be noted here, and the response will give reference to the section of the Category I preamble where they have been addressed. Changes made to the Category I contract in response to public comments are incorporated in the final simplified contracts where applicable.

General Comments

All but one commenter stated that the simplified contracts must specifically recognize the right of preference provided to outfitters and guides and small businesses under the 1998 Act. See NPS response in paragraph 7, Additional Provisions Section of the Category I contract.

One commenter who submitted comments on behalf of Alaska hunting guides identified several sections where conflicts may exist between the contracts and the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) or other laws specific to Alaska. NPS wishes to point out that the proposed simplified contracts have been developed for nationwide application. If, in the development of individual contracts, it appears that modifications are necessary in order to comport with specific legislative requirements, they will be considered and incorporated, as appropriate, on a case-by-case basis. The NPS further notes that the 1998 Act specifically states that the Act does not amend, supersede or otherwise affect any provision of ANILCA relating to revenue producing visitor services (Sec. 415(c) of the 1998 Act).

Only one of the 22 commenters objected to the length and level of detail

of the proposed simplified contracts. NPS has made every effort to streamline the simplified contracts to the extent possible. However, it considers that all of the provisions are required in order to give NPS the ability to properly preserve and protect the resources of areas of the national park system and their visitors. Further, the simplified contracts provide added protections to small concessioners that were not afforded under the terms of concession permits with regard to NPS administrative actions.

In developing these final simplified contracts, NPS has incorporated the changes it has made to the Category I contract in response to public comment, to the extent applicable. Those changes, and the discussion of those changes, are incorporated and made a part of this notice, as if repeated fully herein. In addition, discussions of comments and/or changes made in response to public comments on 36 CFR part 51 as amended, to the extent that they are applicable to the simplified contracts, are also incorporated and made a part of this notice. NPS has also made several editorial and conforming changes to the simplified contracts in addition to the changes discussed below.

Section-by-Section Analysis of Comments and Changes

The following discusses significant comments made on the several sections of the proposed simplified contracts. Unless otherwise noted, comments relate to both Category II and Category III contracts. Where section numbers differ between Category II and III contracts, both section numbers will be identified (for example, Section 10/7). The first number will refer to the applicable section number in the Category II contract. The second number will refer to the related section number in the Category III contract.

Opening Paragraphs

One commenter expressed concern that the opening paragraphs assume that concessioners will be a corporation, partnerships or sole proprietorships, and suggested that the contracts be revised to allow for other possibilities. NPS has included opening paragraphs for these three forms of business organization because they are the ones most commonly encountered in the award of concession contracts. Appropriate opening paragraphs will be developed for other legally recognized forms of business entities on a case-by-case basis as the need arises.

Section 1. Term of Contract

Several commenters felt that the proposed contracts should specify a 10-year term for outfitters and guides. NPS has left the proposed term of contract blank because the appropriate term for each individual contract will be determined on a case by case basis in accordance with 36 CFR Part 51 and NPS policies.

Section 2. Definitions

Many commenters objected to the definition of "Applicable Laws" in Section 2(a) as providing NPS unilateral authority to amend contracts to reflect future changes in agency regulations, rules, requirements or policies. See NPS response to comments on Section 2(a), Applicable Laws, of the Category I contract.

Several comments stated that Section 7, Fees, should reflect that fees should be charged only on the portion of gross receipts related to park visitation. See NPS response to comments on Section 2(g), Definition of gross receipts, of the Category I contract.

Section 3. Services and Operations

Several commenters felt that the requirement in Section 3(d) that all promotional or interpretive material must be approved is unreasonable and unworkable. See NPS response to comments on Section 3(d)(2) of the Category I contract.

Section 4. Concessioner Personnel

Most outfitters and guides objected to the requirement in Section 4(c) that concessioner employees must wear a uniform or badge, and stated that this is inappropriate for most outfitter and guide operations. NPS points out that this section only requires the wearing of a uniform or badge by employees who come in direct contact with the public "so far as practicable" (emphasis added). NPS considers this to be a reasonable requirement.

One commenter expressed concern that the language of Section 4(e) concerning the hiring of people interested in serving the public and being positive contributors to the park's purposes would require concessioners to base hiring decisions on subjective judgement. This clause has been deleted (see NPS response to comments on Section 4(a)(5) of the Category I contract).

Section 5. Legal, Regulatory and Policy Compliance

No comments were received on this section.

Section 6. Environmental and Cultural Protection

Several comments were received on this section. However, on February 23, 2000, NPS published for public comment a revised Section 6. The public comments received in response to that public notice are discussed in the preamble to the final Category I contract. The comments received on this section in response to the simplified contracts notice were also considered in that connection and are addressed in the preamble to the Category I contract.

Section 7. Interpretation of Area Resources (Category II Only)

No comments were received on this section.

Section 8. Concession Facilities Used in Operation by Concessioner (Category II Only)

One commenter, the general concessioner organization, objected to Section 8(a) of the Category II contract, in that the contract imposes maintenance obligations on the concessioner and feels that, to the extent these obligations result in construction of capital improvements, the concessioner would be entitled to leasehold surrender interest. Given the stated purpose of Category II contracts, the commenter feels that NPS should be responsible for maintenance and collect a greater franchise fee. NPS is confused by this comment. Section 8(a)(1) specifically states that the concessioner shall not be authorized to construct any capital improvements on parklands. The fact that the concessioner is not authorized to make capital improvements should not, however, excuse the concessioner from responsibility for maintenance obligations. NPS has added the phrase "Subject to the limitations set forth in Section 8(a)(1)," at the beginning of Section 9 to clarify that maintenance projects that would require the concessioner to make capital improvements will not be required or authorized. See also NPS response to comments on Section 51.75 (Section 51.67 in the final rule) concerning the relationship of concessioner repair and maintenance requirements and leasehold surrender interest.

The same commenter questions why the phrase "or real property improvements" was deleted from subsection 8(b). NPS agrees with this comment and has reinserted the phrase "or real property improvements." See also discussion in Section 8(b) of the Category I contract.

Section 9. Maintenance (Category II Only)

The general concessioner organization raises the same comments with regard to this section as it expressed on Section 8(a) of the Category II contract. See NPS response to comment on Section 8(a) of the Category II contract.

Section 10/7. Fees

Two commenters expressed concern about the monthly fee payment requirement of Section 10/7 (b)(1). One suggested that NPS consider annual payments, and the other suggested that payments be required twice yearly, or monthly only if annual gross receipts exceed $250,000. NPS points out that standard government accounting practices require monthly payment of fees. However, in revising its administrative practices regarding concessioners, NPS will look into other possible payment schedules that may lessen the burden of monthly payments on small concessioners.

Another commenter suggested that fees for outfitters be based on a per head, per day basis for each day the guide operates on park lands. Again, in reviewing and revising its administrative practices regarding concessioners, NPS may look into alternative methods of structuring fees for specific types of operations.

Several commenters suggested that this section should be more specific about the methodology to be used to determine whether there is diversion or concealment of profits. NPS considers that such methodology is not the subject of contract terms and conditions, but, more appropriately, belongs in related administrative policies and procedures.

One commenter noted that the Fees section of the simplified contract omits fee adjustment language. NPS agrees that, in compliance with section 407 of the 1998 Act, this language should be included in contracts with terms of more than 5 years. Accordingly, NPS has included the fee adjustment language from the Category I contract along with instructions to this effect.

Section 11/8. Indemnification and Insurance

Many commenters felt that this section is unnecessarily vague on the types of insurance that a concessioner will be required to obtain and maintain, and suggested that these insurance types and limits should be specifically reflected in the contract, as was the case in the past. NPS will identify on a case-by-case basis the specific types and minimum amounts of insurance applicable to each contract in the Insurance Exhibit (Exhibit D) that will be attached to each simplified contract.

One commenter objected to Section 11(d) requiring concessioner to insure concession facilities assigned to it in the context of a Category II contract. This commenter further objected to Section 11(d)(1) of the Category II contract to the extent it purports to impose requirements on the insurance of concessioner facilities located outside of the park. NPS assumes that the first comment relates to "shared use" facilities (for example, where a concessioner occupies a small portion of a visitor center). The extent to which, if at all, the concessioner may be required to provide property insurance in these circumstances is determined on a case-by-case basis in accordance with NPS administrative guidelines. These guidelines have been in place for many years and have proved to be fair and workable. With regard to the second comment, NPS does not consider that Section 11(d)(1) purports to impose requirements on the insurance of concessioner facilities located outside of the park.

Section 12/9. Bonds and Liens

Several commenters suggest that NPS should limit its first lien to only that property used exclusively in the performance of the contract. See NPS response to comments on Section 13(b), Liens, of the Category I contract.

One commenter felt that for the types of operations envisioned under the simplified contracts, there is no justification for bonding requirements, and that it is unfair for the Government to have any lien rights. NPS does not agree that bonding requirements are inappropriate under the simplified contracts. As an example, bonding could be utilized under a Category III contract if considered necessary to mitigate anticipated resource impacts of a particular concession operation. However, in light of changes made to the Category I contract as a result of public comment (see NPS response to comments on Section 13(b) of the Category I contract), NPS considers that it is appropriate to delete the lien provision from the Category III contract, because the concessioner's real and personal property will, in almost all instances, be located outside the park area.

Section 13/10. Accounting Records and Reports

No comments were received on this section.

Section 14/11. Other Reporting Requirements

One commenter questioned whether concessioners would be required under Section 14/11(b) to submit reports on environmental compliance if no reportable actions or incidents had occurred. There is no requirement of this nature except in the limited circumstances described in this section.

One commenter points out that the requirement of Section 14/11(a) that concessioners provide the Director with certificates of insurance for all coverages at specified times is inconsistent with the requirements of Section 8/11(c) which also require them to be provided at specified times, but only at the request of the Director. NPS agrees that these provisions appear to be inconsistent, and has added the conditional language "At the request of the Director" at the beginning of Section 8/11(b)(3).

Section 15/12. Suspension and Termination

Several commenters felt that Section 15/12 grants an undue degree of discretion by allowing NPS to suspend or terminate contracts when necessary for administrative purposes or to enhance or protect park resources. Another commenter stated that the contract should not be able to be unilaterally amended or terminated. NPS has modified these sections in response to public comment on the Category I contract. See NPS response to comments on Sections 16(a) and 16(b)(1) of the Category I contract.

One commenter felt that concessioners should be allowed 1 month rather than 15 days to cure monetary breaches under Section 16(b)(3). NPS disagrees, and feels that 15 days should be an adequate period of time in which to cure a monetary breach of the contract.

One commenter stated that the Director should not have the discretion to suspend operations after one breach before the concessioner has had an opportunity to cure under Section 16(b)(3).

NPS does not agree with this comment, and notes that Section 16(b)(3) limits the Director's authority to suspend a contract pending cure to that set forth in Section 16(a), *i.e.*, to protect park visitors or to conserve and preserve park area resources. NPS considers this provision necessary for proper management of park area resources and visitor protection. See NPS response to comments on Section 16 of the Category I contract.

One commenter requested that NPS specify a time period for how promptly

a concessioner will be required to vacate the area after termination, and stated that the vacating concessioner should be compensated for its personal property. See NPS response to comments on Section 17(e) of the Category I contract.

Section 16/13. Assignment, Sale or Encumbrance of Interests

Most commenters felt that Section 16/13 needs to be rewritten to reflect the intent of the 1998 Act that contracts be transferable to a qualified buyer. As this section of the contract simply incorporates by reference the requirements of 36 CFR part 51 with regard to assignments, sales and encumbrances, this comment is addressed in the NPS response to comments on Subpart I, 36 CFR part 51.

Section 17/14. General Provisions

No comments were received on this section.

Section 18/15. Special Provisions

No comments were received on this section.

Exhibits

See the discussion of exhibits contained in the preamble to the final Category I contract.

Based on the foregoing, NPS adopts the following standard form Category II and III concession contract for use in its concession management program, with the understanding that they are only internal guidelines. The Director, in his discretion, may utilize any form of concession contract it may choose consistent with the requirements of the 1998 Act and 36 CFR part 51.

Category II Contract

United States Department of the Interior; National Park Service

[Name of Area] _____
[Site] _____
[Type of Service] _____
Concession Contract No. _____
[Name of Concessioner] _____
[Address, including email address and phone number] _____
Doing Business As _____
Covering the Period _____
through _____

Concession Contract

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[CORPORATION]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, (hereinafter referred to as the "Director"), and _____, a corporation organized and existing under the laws of the State of _____ (hereinafter referred to as the "Concessioner"):

[PARTNERSHIP]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director", and _____ a partnership organized under the laws of the State of _____, hereinafter referred to as the "Concessioner":

[SOLE PROPRIETORSHIP]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, _____, an individual of, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH:

That Whereas, [Name of Park, Recreation Area, etc.] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

Whereas, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

Now, Therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (Pub. L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____ ("CONTRACT") shall be effective as of _____, and shall be for the term of _____ (_____) years until its expiration on _____, 20_____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (*e.g.*, 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of *[Name of Park Unit].*

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.

(f) "Days" shall mean calendar days.

(g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(2) Charges for employees' meals, lodgings, and transportation;

(3) Cash discounts on purchases;

(4) Cash discounts on sales;

(5) Returned sales and allowances;

(6) Interest on money loaned or in bank accounts;

(7) Income from investments;

(8) Income from subsidiary companies outside of the Area;

(9) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(l) "Superintendent" means the manager of the Area.

(m) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by Section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) *Required Visitor Services.* The Concessioner is required to provide the following visitor services during the term of this CONTRACT:

[Provide a detailed description of required services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used.]

(2) *Authorized Visitor Services.* The Concessioner is authorized but not required to provide the following visitor services during the term of this CONTRACT:

[Provide detailed description of authorized services. See note in subsection (a)(1) above.]

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services

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under the terms of this CONTRACT is non-exclusive.

(c) Operating Plan

[Optional—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit A. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (*i.e.* printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit B.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(f) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(g) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(h) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(i) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, and Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the

administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) *Policy.* The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) *Goals and Targets.* The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (*i.e.* measurable results and schedules) to achieve these goals.

(iii) *Responsibilities and Accountability.* The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) *Documentation.* The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) *Documentation Control and Information Management System.* The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) *Reporting.* The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) *Communication.* The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) *Training.* The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) *Monitoring, Measurement, and Corrective Action.* The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, a least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) *Inventory of Hazardous Substances and Inventory of Waste Streams.* The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) *Reports.* The Concessioner shall submit to the Director copies of all documents, reports, monitoring data,

manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) *Notification of Releases.* The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) *Notice of Violation.* The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) *Communication with Regulatory Agencies.* The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with Section 11 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(h) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Interpretation of Area Resources

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director review of content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (*i.e.* printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

Sec. 8. Concession Facilities Used in Operation by the Concessioner

(a) Assignment of Concession Facilities

(1) The Director hereby assigns Concession Facilities as described in Exhibit C to the Concessioner for the purposes of this CONTRACT. The Concessioner shall not be authorized to

construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to Section 15. No compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) *Personal Property Provided by the Concessioner.* The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) *Personal Property Provided by the Government.* The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit D to the Concessioner as of the effective date of this CONTRACT. This Exhibit D will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

(g) Utilities

(1) The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

Sec. 9. Maintenance

(a) Maintenance Obligation

Subject to the limitations set forth in Section 8(a)(1) of this CONTRACT, the Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan

[OPTIONAL—This section may be deleted and maintenance requirements incorporated under Section 18, Special Provisions.]

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit E. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

Sec. 10. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ percent (_____%) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

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(d) Adjustment of Franchise Fee

[OPTIONAL-Include only if contract term is greater than 5 years.]

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this section shall be prospective only.

(9) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

Sec. 11. Indemnification and Insurance

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit F to revise the minimum required limits or to require additional types of insurance,

provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit F in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit F.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest (as defined in Applicable Laws including without limitation 36 CFR Part 51) or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit F.

Sec. 12. Bonds and Liens

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area.

Sec. 13. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

Sec. 14. Other Reporting Requirements

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 11, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or

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otherwise, including, but not limited to, operational information.

Sec. 15. Suspension, Termination, or Expiration

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 15(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

Sec. 16. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the

requirements of Applicable Law and this CONTRACT.

Sec. 17. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

Section 18. Special Provisions

[Optional—To be used when operating and maintenance requirements are incorporated in the body of the contract, rather than as separate operating and maintenance plans.]

In Witness Whereof, the duly authorized representatives of the parties have executed this CONTRACT as of the _____ day of_____, _____.

Concessioner

By _____
(Title) (Company Name)

United States of America

By _____
Director, National Park Service

[Corporations]

Attest:

By: _____

Title: _____

[Sole Proprietorship]

Witnesses:

Name: _____

Address: _____

Title: _____

Name: _____

Address: _____

Title: _____

[Partnership]

Witnesses as to Each:

Name: _____

Address: _____

[*Concessioner*]

_____
(Name)

_____
(Name)

Exhibit A—Operating Plan

I. Introduction

This Operating Plan between _____ (hereinafter referred to as the "Concessioner") and [Park Unit Name] (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within [Park Unit Name] which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of [Park Unit Name].

Any revisions shall not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

[From this point on, this document is tailored to the requirements of each individual park.]

Exhibit B—Nondiscrimination

Section I: Requirements Relating to Employment and Service to the Public

A. Employment

During the performance of this CONTRACT the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that

generates gross receipts which exceed $50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. Construction, Repair, and Similar Contracts

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contacts by the Concessioner.

C. Facilities

(1) Definitions: As used herein:

(i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;

(ii) facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

(i) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;

(ii) Discriminating by segregation or other means against any person.

Section II: Accessibility

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

A. Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

B. Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Exhibit C—Assigned Land and Real Property Improvements (Concession Facilities)

Land Assigned: Land is assigned in accordance with the boundaries shown on the following map[s]:

Real Property Improvements Assigned: The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Number Description

Approved, effective_____, 20_____.

By: _____

Regional Director, _____ Region

Exhibit D—Assigned Government Personal Property

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

Property Number Description of Item

Effective, this_____ day of _____, 20_____.

By: _____

Regional Director, _____ Region

Exhibit E—Maintenance Plan

I. Introduction

This Maintenance Plan between _____ (hereinafter referred to as the "Concessioner") and [Park Unit Name], National Park Service (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It sets forth the maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within [Park Unit Name] which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any apparent conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of [Park Unit Name]. Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT. Revisions must be reasonable and in furtherance of the purposes of this CONTRACT.

[From this point on, this document is tailored to the requirements of each individual park.]

Exhibit F—Insurance Requirements

I. Insurance Requirements

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT:

II. Liability Insurance

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

A. Combercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit
Products/Completed Operations Limit
Personal Injury & Advertising Injury Limit
General Aggregate
Fire Damage Legal Liability "per fire"

2. The liability coverages may not contain the following exclusions/limitations:

a. Athletic or Sports Participants
b. Products/Completed Operations
c. Personal Injury or Advertising Injury exclusion or limitation
d. Contractual Liability limitation
e. Explosion, Collapse and Underground Property Damage exclusion
f. Total Pollution exclusion
g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)

3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

B. Automobile Liability

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Each Accident Limit

C. Liquor Liability (if applicable)

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit
Aggregate Limit

D. Watercraft Liability (or Protection & Indemnity) (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit

E. Aircraft Liability (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit
Property Damage Limit
Each Accident Limit

F. Garage Liability (if applicable)

This coverage is not required, but may be used in place of Commercial General Liability and Auto Liability coverages for some operations. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limits—Garage Operations Auto Only
Other Than Auto Only
Personal Injury & Advertising Injury Limit
Fire Damage Legal Liability "per fire"
Aggregate Limit—Garage Operations Other Than Auto Only

If owned vehicles are involved, Liability coverage should be applicable to "any auto" ("Symbol 21") otherwise, coverage applicable to "hired" and "non-owned" autos ("Symbols 28 & 29") should be maintained.

G. Excess Liability or Excess "Umbrella" Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

H. Care, Custody and Control—Legal Liability (Describe Specific Coverage)

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any One Loss

I. Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit
Aggregate Limit

J. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

K. Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed $5,000.

L. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

III. Property Insurance

A. Building(s) and/or Contents Coverage

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Coverage is to be provided on a blanket basis.

7. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

8. Flood Coverage shall be maintained with a limit of not less than $

9. Earthquake Coverage shall be maintained with a limit of not less than $

10. Ordinance or Law Coverage shall be maintained with a limit of not less than $

B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities.

2. The policy shall provide for loss recovery on a Replacement Cost basis.

3. The amount of insurance should represent no less than 75% of the Replacement Cost value of the insured property.

4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

5. Coverage is to be provided on a blanket basis.

6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.

7. Ordinance or Law Coverage shall be maintained with a limit of not less than $

C. Builders Risk Coverage

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Any occupancy restriction must be eliminated.

7. Any collapse exclusion must be eliminated.

8. Any exclusion for loss caused by faulty workmanship must be eliminated.

9. Flood Coverage shall be maintained with a limit of not less than $

10. Earthquake Coverage shall be maintained with a limit of not less than $

D. Business Interruption and/or Expense

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

E. Deductibles

Property Insurance coverages described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or $25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding $50,000).

2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed $25,000.

F. Required Clauses

1. Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. _____ dated _____, between the United States of America and [*the Concessioner*] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America."

IV. Construction Project Insurance

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

V. Insurance Company Minimum Standards

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A− by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

VI. Certificates of Insurance

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

VII. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.

Category III Contract

United States Department of the Interior; National Park Service

_____
[Name of Area]

_____
[Site]

_____
[Type of Service]
Concession Contract No. _____

_____
[Name of Concessioner]

_____
[Address, including email address and phone number]
Doing Business As _____
Covering the Period _____
through _____

Concession Contract

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[Corporation]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, (hereinafter referred to as the "Director"), and _____ a corporation organized and existing under the laws of the State of _____ (hereinafter referred to as the "Concessioner"):

[Partnership]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director", and _____ a partnership organized under the laws of the State of _____, hereinafter referred to as the "Concessioner":

[Sole Proprietorship]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, _____, an individual of, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH:

That Whereas, [*Name of Park, Recreation Area, etc.*] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

Whereas, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

Now, Therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (Pub.L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____ ("CONTRACT") shall be effective as of _____, and shall be for the term of _____ (_____) years until its expiration on _____, 20_____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (*e.g.,* 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of [*Name of Park Unit*].

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities. (4)

(e) "Days" shall mean calendar days.

(f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(g) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(h) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(5) Charges for employees' meals, lodgings, and transportation;

(6) Cash discounts on purchases;

(7) Cash discounts on sales;

(5) Returned sales and allowances;

(6) Interest on money loaned or in bank accounts;

(7) Income from investments;

(8) Income from subsidiary companies outside of the Area;

(9) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(i) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(j) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(k) "Superintendent" means the manager of the Area.

(l) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by Section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

[Provide a detailed description of required services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used.]

The Concessioner shall not be authorized to construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest (as defined in Applicable Laws, including without limitation 36 CFR Part 51) or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(b) Operation, Maintenance and Quality of Operation

(1) The Concessioner shall provide, operate and maintain the required and authorized visitor services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(2) The Concessioner shall provide and maintain all personal property necessary for its operations under this CONTRACT.

(3) The Director may provide certain items of government personal property, including without limitation removable equipment, and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit A to the Concessioner as of the effective date of this CONTRACT. This Exhibit A will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(c) Operating and Maintenance Plan

[Optional—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating and Maintenance Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating and Maintenance Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating and Maintenance Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

(e) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (*i.e.*, printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established

by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(f) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(g) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(h) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(i) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, and Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where to Send Notice

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) *Policy.* The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) *Goals and Targets.* The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (*i.e.* measurable results and schedules) to achieve these goals.

(iii) *Responsibilities and Accountability.* The EMP shall identify environmental responsibilities for Concessioner employees and

contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) *Documentation.* The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) *Documentation Control and Information Management System.* The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) *Reporting.* The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) *Communication.* The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) *Training.* The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) *Monitoring, Measurement, and Corrective Action.* The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, a least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) *Inventory of Hazardous Substances and Inventory of Waste Streams.* The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) *Reports.* The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) *Notification of Releases.* The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) *Notice of Violation.* The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) *Communication with Regulatory Agencies.* The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with Section 8 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(j) Protection of Cultural and Archeological Resources,

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ percent (_____ %) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fee except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

[OPTIONAL–Include only if contract term is greater than 5 years.]

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

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(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this section shall be prospective only.

(10) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

Sec. 8. Indemnification and Insurance

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit D. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit D. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit D.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit D to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

Sec. 9. Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

Sec. 10. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

Sec. 11. Other Reporting Requirements

. The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 8, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

Sec. 12. Suspension, Termination, or Expiration

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 12(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury occasioned by removal of such property. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not

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removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

Sec. 13. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

Sec. 14. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

Section 15. Special Provisions

[Optional—To be used when operating and maintenance requirements are incorporated in the body of the contract, rather than as separate operating and maintenance plans.]

In Witness Whereof, the duly authorized representatives of the parties have executed this CONTRACT as of the_____day of_____, _____.

Concessioner

By _____
(Title) (Company Name)

United States of America

By _____
Director, National Park Service

[Corporations]

Attest:

By: _____

Title: _____

[Sole Proprietorship]

Witnesses:

Name _____
Address _____
Title _____

Name _____
Address _____
Title _____

[Partnership]

Witnesses as to Each:

Name _____
Address _____

Name _____
Address _____

[*Concessioner*]

_____
Name

_____
Name

Exhibit A—Assigned Government Personal Property

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

Property Number Description of Item

Effective, this_____day of_____, 20_____.

By: _____
Regional Director,_____Region

Exhibit B—Operating and Maintenance Plan

I. Introduction

This Operating and Maintenance Plan between _____ (hereinafter referred to as the "Concessioner") and [Park Unit Name] (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It describes specific operating and maintenance responsibilities of the Concessioner and the Service with regard to those lands utilized by the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating and Maintenance Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of [Park Unit Name].

Any revisions shall not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

[From this point on, this document is tailored to the requirements of each individual park.]

Exhibit C—Nondiscrimination

Section I: Requirements Relating to Employment and Service to the Public

C. Employment

During the performance of this CONTRACT the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed $50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

D. Construction, Repair, and Similar Contracts

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contacts by the Concessioner.

C. Facilities

(2) Definitions: As used herein:

(k) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;

(ii) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

(j) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;

(ii) Discriminating by segregation or other means against any person.

Section II: Accessibility

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

A. Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

B. Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity,

when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Exhibit F—Insurance Requirements

I. Insurance Requirements

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT:

II. Liability Insurance

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit
Products/Completed Operations Limit
Personal Injury & Advertising Injury Limit
General Aggregate
Fire Damage Legal Liability "per fire"

2. The liability coverages may not contain the following exclusions/limitations:

a. Athletic or Sports Participants
b. Products/Completed Operations
c. Personal Injury or Advertising Injury exclusion or limitation
d. Contractual Liability limitation
e. Explosion, Collapse and Underground Property Damage exclusion
f. Total Pollution exclusion
g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)

3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

B. Automobile Liability

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Each Accident Limit

C. Liquor Liability (if applicable)

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit
Aggregate Limit

D. Watercraft Liability (or Protection & Indemnity) (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit

E. Aircraft Liability (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit
Property Damage Limit
Each Accident Limit

F. Garage Liability (if applicable)

This coverage is not required, but may be used in place of Commercial General Liability and Auto Liability coverages for some operations. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limits—Garage Operations
Auto Only
Other Than Auto Only
Personal Injury & Advertising Injury Limit
Fire Damage Legal Liability "per fire"
Aggregate Limit—Garage Operations
Other Than Auto Only

If owned vehicles are involved, Liability coverage should be applicable to "any auto" ("Symbol 21") otherwise, coverage applicable to "hired" and "non-owned" autos ("Symbols 28 & 29") should be maintained.

G. Excess Liability or Excess "Umbrella" Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

H. Care, Custody and Control—Legal Liability (Describe Specific Coverage)

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any One Loss

I. Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit
Aggregate Limit

J. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

K. Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed $5,000.

L. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

III. Insurance Company Minimum Standards

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A– by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

IV. Certificates of Insurance

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

V. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.

Dated: July 3, 2000.

Cynthia Orlando,

Associate Director, Park Operations and Education, National Park Service.

[FR Doc. 00–17431 Filed 7–18–00; 8:45 am]

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Part IV

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2000; Notice

VOL 65 ISS 139 JL 19 2000 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4891–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the granting of regulatory waivers from January 1, 2000 through March 31, 2000.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on January 1, 2000 and ending on March 31, 2000.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from January 1, 2000 through March 31, 2000. Additionally, this notice contains two reports of regulatory waivers granted during December 1999 by the Office of Housing, but which were inadvertently not included in HUD's **Federal Register** notice of waiver grant activity from October 1, 1999, to December 31, 1999.

For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between April 1, 2000 through June 30, 2000.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: July 12, 2000.

Andrew Cuomo,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2000 through March 31, 2000

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory Waivers granted by the Office of Community Planning and Development.

II. Regulatory Waivers granted by the Office of Housing.

III. Regulatory Waivers granted by the Office of Multifamily Housing Assistance Restructuring.

IV. Regulatory Waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

- *Regulation:* 24 CFR 91.520(a).

Project/Activity: The City of Fayetteville, Arkansas requested a waiver of the submission deadline for the City's FY 2000 program year performance report.

Nature of Requirement: HUD's regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 28, 2000.

Reasons Waived: The City experienced personnel changes which delayed completion of the report. The City would not be able to submit a complete and accurate expenditure report on its FY 1999 program if the extension is not granted.

• *Regulation:* 24 CFR 92.2.

Project/Activity: The State of Maine requested a waiver of the definition of housing in the HOME final rule to permit two projects funded with HOME funds for children with disabilities.

Nature of Requirement: The HOME regulation definition at 24 CFR 92.2 states that housing does not include emergency shelters of facilities such as nursing homes, convalescent homes, hospitals residential treatment facilities, correctional facilities and student dormitories.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 8, 2000.

Reasons Waived: HUD determined that denial of this request would be an undue hardship for the nine disabled children residing in the Meadow Way and Turning Point Farm facilities. These circumstances constituto a good cause for the waiver.

• *Regulation:* 24 CFR 92.254(a)(5)(ii)(A)(7).

Project/Activity: Delaware County, Pennsylvania, requested a waiver to allow low income buyers of HOME-assisted property to have 48 months to complete the purchase of their homes.

Nature of Requirement: HUD's regulation at 24 CFR 92.254(a)(5)(ii)(A)(7) requires persons participating in HOME's lease-purchase program to purchase their homes within 36 months of signing the lease-purchase agreement.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 1, 2000.

Reasons Waived: The County stated in its request that due mainly to poor credit ratings and changing financial circumstances for a number of households, it will take 48 months for the lease-purchaser to accumulate sufficient funds and repair their credit ratings before purchase of the properties will become possible. HUD determined that disqualification of these initial program participants would create an undue hardship.

• *Regulation:* 24 CFR 92.500(d)(1)(c).

Project/Activity: The State of California requested a waiver to allow the State to retain $50,000 of its remaining HOME disaster funds for ongoing program administrative costs, while deobligating the remaining balance of $3,407,153.60 of program funds.

Nature of Requirement: HUD's regulation at 24 CFR 92.500(d)(1)(c) states that HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of any funds in the United States Treasury that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 28, 2000.

Reasons Waived: HUD determined that deobligation of the entire remaining balance of the State's HOME disaster funds would create a significant hardship. The HOME disaster funds will be used for monitoring and on-site inspection requirements for disaster-related HOME projects. The $50,000 is granted for a period of no more than twelve months. Funds that remain uncommitted at the end of the twelve months will be recaptured by HUD.

• *Regulations:* 24 CFR 570.200(b)(2).

Project/Activity: The City of Reading, Pennsylvania, requested a waiver of the provision requiring that fees for use of its Civic Center facility be reasonable so as to not preclude its use by low-and moderate-income persons.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(b)(2) requires that fees charged at the facility be reasonable so as not to preclude its use by low-and moderate-income persons.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 22, 2000.

Reasons Waived: This activity will meet the national objective of elimination or prevention of slums or blight through completion of an urban renewal project originally approved in 1965. HUD never contemplated at that time there would be special provisions related to use of the facility by low-and moderate-income persons. Failure to grant the waiver would be an undue hardship for the City of Reading.

• *Regulation:* 24 CFR 570.200(h).

Project/Activity: Lexington County, South Carolina requested a waiver to allow the County to use CDBG funds to reimburse costs incurred as a result of preparing the CDBG-specific portions of its first Consolidated Plan.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(h)(1)(i) states that a grantee may only use CDBG funds to reimburse for pre-award costs if, among other things, the activity for which the costs are being incurred is included in a Consolidated Plan or an amended Consolidated Plan Action Plan prior to the costs being incurred.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 4, 2000.

Reasons Waived: The November 1995 revision to the CDBG pre-award regulations was meant to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs, but in making that revision, the authorization for new grantees to pay for planning and administrative start-up costs with CDBG funds was inadvertently omitted. This is the first Consolidated Plan for the County. Failure to grant the requested waiver would result in undue hardship.

• *Regulation:* 24 CFR 570.200(h).

Project/Activity: The City of Opelika, Alabama, requested a waiver to allow the City to use CDBG funds to reimburse costs incurred as a result of preparing the CDBG-specific portions of its first Consolidated Plan.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(h)(1)(i) states that a grantee may only use CDBG funds to reimburse for pre-award costs if, among other things, the activity for which the costs are being incurred is included in a Consolidated Plan or an amended Consolidated Plan Action Plan prior to the costs being incurred.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 2, 2000.

Reasons Waived: The November 1995 revision to the CDBG pre-award regulations was meant to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs, but in making that revision, the authorization for new grantees to pay for planning and administrative start-up costs with CDBG funds was inadvertently omitted. This is the first Consolidated Plan for the City. Failure to grant the requested waiver would result in undue hardship.

• *Regulation:* 24 CFR 570.200(h).

Project/Activity: The City of Corvallis, Oregon, requested a waiver to allow the City to use CDBG funds to reimburse costs incurred as a result of preparing the CDBG-specific portions of its first Consolidated Plan.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(h)(1)(i) states that a grantee may only use CDBG funds to reimburse for pre-award costs if, among other things, the activity for which the costs are being incurred is included in a Consolidated Plan or an amended Consolidated Plan Action Plan prior to the costs being incurred.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 3, 2000.

Reasons Waived: The November 1995 revision to the CDBG pre-award regulations was meant to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs, but in making that revision, the authorization for new grantees to pay for planning and administrative start-up costs with CDBG funds was inadvertently omitted. This is the first Consolidated Plan for the City. Failure to grant the requested waiver would result in undue hardship.

• *Regulation:* 24 CFR 576.21(b)(2).

Project/Activity: The City of Boston requested a waiver of the 30 percent Emergency Shelter Grant Program spending limitation on essential services.

Nature of Requirement: HUD's regulation in 24 CFR 576.21(b)(2) imposes the statutory requirement that no more than thirty percent of the Emergency Shelter Grant funds be expended for essential services. This regulatory section also notes that the statute (42 U.S.C. 11374) also permits waiver of this requirement if the grantee demonstrates that other eligible activities are already being carried out in the locality with other resources.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 17, 2000.

Reasons Waived: The City stated in its request that the reallocated funds would be used to provide short term hotel/motel accommodations for homeless families who are not immediately eligible for state-funded emergency shelter. The City also certified that other eligible activities under the program are being carried out in the locality with other resources.

• *Regulation:* 24 CFR 576.21(b)(2).

Project/Activity: The City of Niagara Falls, New York, requested a waiver of the Emergency Shelter Grant Program 30 percent spending limitation on essential services.

Nature of Requirement: HUD's regulation at 24 CFR 576.21(b)(2) imposes the statutory requirement that no more than thirty percent of the Emergency Shelter Grant funds be expended for essential services. This regulatory section also notes that the statute (42 U.S.C. 11374) also permits waiver of this requirement if the grantee demonstrates that other eligible activities are already being carried out in the locality with other resources.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development,

Date Granted: February 22, 2000.

Reasons Waived: The City stated in its request that since the inception of its Emergency Shelter Grant program, the City provided funding to homeless services providers in the form of rehabilitation assistance for the renovation and/or expansion of emergency shelters. Therefore, the City is requesting the waiver of the essential services spending limitation so that 100 percent of the City's FY 2000 ESG grant can be spent on essential services.

• *Regulation:* 24 CFR 582.105(e).

Project/Activity: The Housing Authority for the City of Santa Barbara, California, requested a waiver of the eight percent administrative cap on its Shelter Plus Care grant.

Nature of Requirement: HUD's regulation at 24 CFR 582.105(e) establishes a cap of eight percent of a Shelter Plus Care grant for administrative costs.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 17, 2000.

Reasons Waived: In this case, at the request of the Housing Authority, in order to provide administrative coverage during the extension period, the administrative cap was waived to allow it to be raised proportionately to the time needed to spend out the funds. With the granting of the waiver, the Housing Authority will be able to continue to administer the grant with no additional funds and serve additional persons within the existing grant award. Therefore, 11% of the grant funds may be expended for administrative costs.

II. Regulatory Waivers Granted by the Office of Housing

A. *For further information about the following waiver action, contact:* Willie Spearmon, Director, Office of Business Products, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000, telephone (202) 708–3000. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Kimberly Court Apartments, Atlanta, Georgia, Project Number: 061–35503. Request for project completion funding.

Nature of Requirement: HUD's regulation at 24 CFR 200.54(a) provides that for project completion funding, an agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under the requirements of § 200.54 must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds, except for the funds described in § 200.54(b).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1999.

Reason Waived: A waiver of the requirement that 100 percent of the tax credit equity be funded before disbursement of mortgage proceeds will result in the lowest interest rate on the FHA-insured loan.

B. *For further information about the following waiver actions, contact:* Joy L. Hadley, Director, Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000, telephone (202) 708–2830. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: FHA Title II mortgagees. To raise the threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the HUD Field Office default and claim rate.

Nature of Requirement: HUD's regulation at 24 CFR 202.3(c)(2)(iii) provides that the Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 12, 2000.

Reason Waived: Waiving the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver will adjust the Credit Watch threshold from being between 150% and 200.9% of the HUD Field Office default and claim rate to being between 200% and 300.9% of that rate. This waiver is limited to Credit Watch reviews conducted in the fourth quarter of FY 1999.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: FHA Title II mortgagees. To raise the threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the HUD Field Office default and claim rate.

Nature of Requirement: HUD's regulation at 24 CFR 202.3(c)(2)(iii) provides that the Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 31, 2000.

Reason Waived: Waiving the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver will adjust the Credit Watch threshold from being between 150% and 200.9% of the HUD Field Office default and claim rate to being between 200% and 300.9% of that rate. This waiver is limited to Credit Watch reviews conducted in the first quarter of FY 2000.

C. *For further information about the following waiver action, contact:* Vance T. Morris, Director, Office of Single Family Product Development, Department of Housing and Urban Development, Room 9266, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2121. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 203.49(c).

Project/Activity: Mortgagee, Homeside Lending, Incorporated, Jacksonville, Florida, requested waiver of the requirements to extend the initial adjustment dates for adjustable rate mortgage loan (ARM) loans beyond the 12 to 18 month window currently provided for in the regulation.

Nature of Requirement: HUD's regulation at 24 CFR 203.49(c) provides that lenders may extend the initial interest rate adjustment dates on ARM loans thus rendering the loans eligible for placement in Ginnie Mae pools. Ineligibility of the loans for delivery to Ginnie Mae would result in financial hardship to the mortgagee and will not have an adverse impact on any mortgagors.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 2, 2000.

Reasons Waived: Mortgagee, Homeside Lending, Incorporated, requested an extension of the initial change date for an ARM loan beyond the 12–18 month window period as required by 24 CFR 203.49(c). Approving the waiver enabled the lender to securitize the loans and rendered no harm to the borrowers or the Department.

D. *For further information about the following waiver actions, contact:* Willie Spearmon, Director, Office of Business Products, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000, telephone (202) 708–3000. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Kimberly Court Apartments, Atlanta, Georgia, Project Number: 061–35503. Request for project completion funding.

Nature of Requirement: HUD's regulation at 24 CFR 200.54(a) provides that for project completion funding, an agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under the requirements of § 200.54 must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds, except for the funds described in § 200.54(b).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1999.
Reason Waived: A waiver of the requirement that 100 percent of the tax credit equity be funded before disbursement of mortgage proceeds will result in the lowest interest rate on the FHA-insured loan.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Riley Cheeks House, Washington, DC, Project Number: 000–HD030/DC39–Q961–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary-Federal Housing Commissioner.
Date Granted: January 3, 2000.
Reason Waived: Additional funds were needed for increased construction costs due to the project being 100% accessible, and features required for compliance with neighborhood compatibility. The project is comparable to a similar project, does not feature any excessive features, and the Sponsor cannot raise any additional funds nor do they have the capacity to provide funds.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Lenore Street Senior Housing, Willits, California, Project Number: 121–EE107/CA–S971–006.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 14, 2000.
Reason Waived: The original contractor could not honor the proposed costs that HUD had based its Firm Commitment processing on, and the Sponsor had to rebid the contract.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Citrus Gardens, Orlando, Florida, Project Number: 067–EE062/FLF29–S971–008.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Waived: January 19, 2000.
Reason Waived: Additional funds were needed due to an increase in impact fees by the City of Orlando.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Canterburg Place, Columbus, Ohio, Project Number: 043–EE056/OH16–S971–002.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary-Housing Federal Housing Commissioner.
Date Granted: January 19, 2000.
Reason Waived: The Sponsor/Owner made every attempt to secure additional funding from outside sources, the project is modest in design and is comparable to similar projects in the area.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Nutley Senior Housing, Inc., Nutley, New Jersey, Project Number: 031–EE025/NJ39–S941–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 19, 2000.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the Owner has exhausted all efforts to provide additional funds from other sources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Melrose Villa Hermosa, Bronx, New York, Project Number: 012–EE124/NY36–S041–017.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 8, 2000.
Reason Waived: The project had to comply with local design modifications which increased costs. The Sponsor does not have the financial capacity to fund the increase.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Coosa Valley Apartments, Sylacauga, Alabama, Project Number: 062–EE043/AL09–S961–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: Although the Owner has tried to reduce the construction costs, and the project is comparable to similar projects, amendment funds are needed to develop this project. The Owner has contributed substantially to the project development cost.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Royale Gardens, Chicago, Illinois, Project Number: 071–EE125/IL06–S961–016.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project is modest in design comparable in costs to other similar projects and Sponsor has exhausted all means of obtaining the funds through other resources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Rochester VOA Elderly Housing, Rochester, Minnesota, Project Number: 092–EE056/MN45–S961–007.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project is modest in design, comparable in costs to other similar projects and the Sponsor has exhausted all means of obtaining the funds through other resources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: HIS/Elois McCoy Village Apartments, Chicago, Illinois, Project Number: 071–EE115/IL06–S961–006.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project is modestly designed, and the Owner has exhausted all efforts to find additional funds from other sources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Mary's Apartments for the Elderly, Waltham, Massachusetts, Project Number: 023–EE077/MA06–S961–013.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 6, 2000.
Reason Waived: Local opposition delayed the project which resulted in the loss of funding from other sources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Coyne Road, Newton, Massachusetts, Project Number: 023–HD098.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 6, 2000.
Reason Waived: The Sponsor has exhausted all available resources and due to the escalating costs to acquire property in the Boston area.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Landmark House, Nantucket, Massachusetts, Project Number: 023–EE095.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 6, 2000.
Reason Waived: The Sponsor has exhausted all available resources, the project is modestly designed and comparable to similar projects.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: AHEPA Daughters of Penelope Elderly Housing, Peabody, Mass., Project Number: 023–EE084;

Family Quarters Housing, Peabody, Mass., Project Number: 023–HDO103;

13th Association, Springfield, Mass., Project Number: 023–HD112,

Florida Street, Springfield, Mass., Project Number: 023–HD125;

Natick Village, Natick, Mass., Project Number: 023–HD133

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: AHEPA Daughters of Penelope, 023–EE085—The presence of significant historical artifacts caused delays in the development of the project which resulted in increased development costs.

Family Quarters, 023–HD103—A change in contractors due to delays in securing secondary financing resulted in increased costs.

13th Association, 023–HD112—The project is modest in design and the Sponsor is contributing significantly to the project.

Florida Street, 023–HD125—The Sponsor has exhausted all means to find the funds from other sources.

Natick Village (Advocates Incorporated) 023–HD133—The project requires additional funds for project feasibility and the Sponsor has been unable to secure funds from other sources.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Eagle Point, Brewster, Mass., Project Number: 023–DH124.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: The Sponsor has exhausted all available resources and additional costs are attributable to the removal of prohibited amenities from the existing structure.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Woodside Village II, Martha's Vineyard, Mass., Project Number: 023—EE067.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: The Sponsor has exhausted all available resources and the project is comparable in costs to similar projects and is efficiently designed.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hillside Village II, Martha's Vineyard, Massachusetts, Project Number: 023–EE086.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: The Sponsor has exhausted all available resources and the development costs are comparable to similar projects developed in the area.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: California Street, Newton, Massachusetts, Project Number: 023–HD100.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: The Sponsor has exhausted all available resources and the cost to development this project is comparable to similar developments in this area.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Eaton Knolls, Central Islip, Suffolk County, New York, Project Number: 012–HD076/NY36–Q971–005.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: March 17, 2000.

Reason Waived: The project is economically designed, comparable to other HUD projects developed in the area and all efforts to lower the cost of the project have been exhausted.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Our Lady of Senior Manor, Bronx, New York, Project Number: 012–EE219/NY36–S971–006. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2000.

Reason Waived: The project was delayed due to the Sponsor encountering difficulties in soliciting a general contractor who could complete the project within the cost limits. The project is modest in design, comparable to similar project and the Sponsor has been unable to secure the funds from other resources.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Castleton Manor, New York, NY, Project Number: 012–EE221/NY36–S971–008. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 24, 2000.

Reason Waived: The project was delayed because the Sponsor had to seek an alternative site when it was discovered that the original site had outstanding tax liens against it. The project is modest in design, comparable to similar projects and the Sponsor has exhausted all means to secure the funds through other resources.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Crockett Senior Housing, Crockett, California, Project Number: 121–EE104/CA39–S971–003. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891:165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary Housing-Federal Housing Commissioner.

Date Waived: March 2, 2000.

Reason Waived: Additional time is needed due to HUD caused delays. Because of these delays the contractor could not honor the originally proposed costs based HUD's Commitment processing.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: HIS/Elois McCoy Village Apartments, Chicago, Illinois, Project Number: 071–EE115/IL06–S961–006. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 2, 2000.

Reason Waived: The project is modestly designed and the owner has exhausted all efforts to find additional funds from other sources. The project experienced delays as it sought secondary financing from the City of Chicago.

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• *Regulation:* 24 CFR 891.165.

Project/Activity: Wynn House, Pasadena, California, Project Number: 122–HDI–1–WDD–NP/CA16–Q971–007. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Delays that this project experienced in achieving a construction start have been because the Owner needed additional time to secure funds to meet their cash requirement.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Request for fund reservation extension by: Zeigler Homes II, Toledo, Ohio, Project Number: 042–HD058/OH12–961–005; Canaan Manor, Dayton, Ohio, Project Number: 046–HD018–Q961–001, Centerburg Place, Centerburg, Ohio, Project Number: 043–EE056/OH16–S971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 3, 2000.

Reason Waiver: Ziegler Homes II experienced delays as Owner tried to resolve unforeseen zoning issues and unacceptable deed restrictions.

Canaan Manor and Centerburg experienced delays due to extensive local government reviews.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Barbara Chappelle Manor, Grenada, Mississippi, Project Number: 065–EE019/MS28–S961–002. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 17, 2000.

Reason Waived: Additional time is needed for the Owner to secure funding for the projects.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Royale Gardens Residences, Chicago, Illinois, Project Number: 071–EE125/IL06–S961–016. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2000.

Reason Waived: The Sponsor has exhausted all efforts to get funds from other sources. Application for additional funds from the City of Chicago Department of Housing and the State of Illinois Department of Energy are pending.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Diocese of Buffalo, Buffalo, New York, Project Number: 014–HD066/NY06–Q971–013. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Date Granted: January 24, 2000.

Reason Waived: The project experienced delays because the Sponsor was forced to seek a replacement site.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Request for fund reservation extension by: St. Mary's, Waltham, Mass., Project Number: 023–EE077/MA06–S971–005; Hillside Village II, Martha's Vineyard, Mass. Project Number: 023–EE066/MA06–S971–006;

Woodside Village II, Martha's Vineyard, Mass., Project Number: 023–EE067/MA06–S971–007;

Landmark House, Nantucket, Mass., Project Number: 023–EE095/MA06–S971–015;

Coyne Road, Newton, Mass., Project Number: 023–HD098/MA06–Q961–001;

California Street, Newton, Mass., Project Number: 023–HD100/MA06–Q961–006;

Family Quarters, Peabody, Mass., Project Number: 023–HD103/MA06–Q961–006;

13th Association Properties, West Springfield, Mass., Project Number: 023–HD112/MA06–Q961–015;

Lexington Avenue, Somerville, Mass., Project Number: 023–H118/MA06–Q961–021;

Eagle Point, Brewster, Mass., Project Number: 023–HD124/MA06–Q971–005;

Florida Street, Springfield, Mass., Project Number: 023–HD125/MA06–Q971–006;

Advocates, Natick, Mass., Project Number: 023–HD133/MA06–Q971–014.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 28, 2000.

Reason Waived: St. Mary's delays were attributed to changes to the Massachusetts Building Code requiring the redrawing of plans and specifications, for zoning variances, and for securing a comprehensive permit.

AHEPA project's site was found to be of archaeological and historical significance and the process of securing approval for development as well as preservation and removal of antiquities caused delays.

Hillside Village II, Woodside Village II, Landmark House—The Sponsors of these projects had a very difficult time finding and keeping general contractors. The Nantucket project also experienced local opposition to federal requirements.

Coyne Road delays occurred because the sponsor needed additional time to acquire other half of the building which is being developed with its own resources to serve a larger number of individuals.

California Street was forced to change contractors and to perform value engineering due to the high development cost in the current real estate market.

Family Quarters needed additional time to secure secondary financing.

13th Association Properties has been delayed due to the Sponsor/Owner having to secure additional funds for project feasibility.

Lexington Avenue—Site control issues and local opposition have delayed this project and the Sponsor had to seek secondary financing.

Eagle Point—This project experienced delays pertaining to high development costs and secondary financing to perform value engineering.

Florida Street—Delays have been caused by the need to secure secondary financing and to perform value engineering.

Advocates—the project experienced delays as the Sponsor sought additional funds for the project as well as a new contractor.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ralston Mercy-Douglass House, Philadelphia, Pa., Project Number 034–EE061/PA26–S961–005. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 31, 2000.

Reason Waived: The Initial Closing was delayed in order to allow for the re-negotiation of lease revisions affecting the project.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Maison de Rayne, Rayne, Louisiana, Project Number: 064–HD040–WPD–NP–L8. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 8, 2000.

Reason Waived: Additional time was needed by HUD to complete its processing.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Greater St. Stephen Manor, New Orleans, Louisiana, Project Number: 064–EE083–WAH–NP–L8. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner
Date Granted: February 8, 2000.
Reason Waived: Delays were due to third party opposition to the project.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Sumac Trail Apartments, Inc., Rhinelander, Wisconsin, Project Number: 075–HD050/WI39–Q971–001. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project has experienced delays due to difficulties obtaining State approval of the building plans and working with both the architect and the general contractor to develop the project within the Capital Advance budget.

• *Regulation:* 24 CFR 891.165.
Project/Activity: East 21st Midwood Residence, New York, NY, Project Number: 012–HD052/NY36–Q961–005. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project's secondary financing source, the New York State Office of Mental Retardation and Developmental Disabilities has encountered delays in obtaining necessary sign-offs.

• *Regulation:* 24 CFR 891.165.
Project/Activity: QLS Meadows, Atlanta, Georgia, Project Number: 061–EE053/GA06–S961–007. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: Because the seller of the original site increased the price of the site above the appraised value, the Sponsor needed time to find a new site and to prepare new plans and specifications.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Transitional Learning Community Supportive Housing, Galveston, Texas, Project Number: 114–HDD013/TX24–Q971–001. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: This project had to change from the original site. Additional time was needed from the environment's assessment to be completed since the site is in a floodplain.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Request for fund reservation extension by:
Ailbe III, Chicago, Illinois, Project Number: 071–HD106/IL06–Q971–006; Ozanam Village, Chicago, Illinois, Project Number: 071–EE112/IL06–S961–003;
Ailbe II, Chicago, Illinois, Project Number: 071–EE139/IL06–S971–013;
Victoria Jennings Residences, Chicago, Illinois, Project Number: 071–HD088/IL06–Q961–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: Ailbe III, Project Number: 071–HD106/IL06–Q971–006—The project experienced delays while the Owner tried to find additional funds for the project.
Ozanam Village, Project Number: 071–EE112/IL06–S961–003—Additional time was needed for HUD to complete firm commitment processing and for the initial closing to be submitted.
Ailbe II, Project Number: 071–EE139/IL06–S971–013—Additional time is needed for HUD to complete firm commitment processing.
Victoria Jennings Residences, Project Number: 071–HD088/IL06–Q961–003—Because all the construction companies bids were significantly higher than the capital advance amount, additional time was needed for the Owner to redesign the project.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Casa D'Oro II, Pasadena, California, Project Number: 122–HD098, Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The delays that this project has experienced in achieving construction startup have been caused by circumstances beyond the Sponsor's control and involved delays in the local government's approval of secondary financing.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Kaneohe, Oahu, Hawaii, Project Number: 140–EH015–WAH/H110–Q961–003 and HI10–Q971–002. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2000.
Reason Waived: The project experienced delays due to difficulties in coordinating numerous sources of funding and reviewing legal documents.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Presbyterian Home at Franklin Township, Franklin Township, NJ, Project Number: 031/EE045/NJ39-S971–002. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2000.
Reason Waived: The project experienced delays due to obtaining Planning Board approval, getting the utilities extended to the site and overcoming local opposition to this development.

• *Regulation:* 24 CFR 891.165
Project/Activity: Pathways, Greenwich, Connecticut, Project Number: 017–HD022/CT26–Q981–001. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2000.
Reason Waived: The projects experienced delays due to neighborhood opposition and in the appeal of an adverse decision by Planning and Zoning.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Edison Consumer Home, Edison, New Jersey, Project Number: 031–HD081. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: The Sponsor/Owner had difficulty securing a site and HUD needs additional time for technical processing.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Reese Village, San Diego, California, Project Number: 129–HD005/CA33–Q941–003. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 2000.

Reason Waived: HUD needs time to issue the firm commitment and review the initial closing documents for this project.

• *Regulation:* 24 CFR 891.310(b)(1).

Project/Activity: Arc HUD IV, Inc., Philadelphia, Pennsylvania, Project Number: 032–D020–WDD/DE26–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.310(b)(1) provides that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 3, 2000.

Reason Waived: The Sponsor proposes to make one of the three properties fully accessible to persons with physical disabilities. To make all these projects fully accessible would render the project financially infeasible.

E. *For further information about the following waiver actions, contact:* Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.205 and 891.410(c).

Project/Activity: West Union, Ohio (Mariaview Apartments—Project Number 046–EE037). The Columbus Multifamily Hub requested a waiver for a tenant erroneously admitted to the Section 202/PRAC project. ("PRAC" refers to project rental assistance contract.) The tenant is non-elderly with no disabilities.

Nature of Requirement: HUD regulations in 24 CFR 891.205 and 891.410(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 3, 2000.

Reason Waived: This waiver of the regulation was granted to be fair with the current ineligible VLI resident and still recognize the purpose and intent of the Supportive Housing for the Elderly Program. Management did not use the 202/PRAC rules and regulations but used the occupancy requirements of the Section 202/8 program for this tenant. These requirements allow a non-elderly disabled person with mobility impairments to live in one of a Section 202/8 project's accessible units. The tenant meets the VLI criterion with an income of $500 per month. The project must remain a 202/PRAC for the elderly and Hub staff must review the project's occupancy plan, tenant selection criteria and management plan and request revision as appropriate for Hub approval. This waiver is restricted to this ineligible tenant and should not be offered to any additional non-elderly or disabled families or elderly families who are not VLI.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Columbia, Mississippi (East Columbia Apartments—Project No. 065–EH024). The Jacksonville Multifamily Hub requested an age waiver for the subject project due to continual vacancy problems.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 610(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: This waiver was granted based on the area's soft market due to the Department of Agriculture's Rural Housing Services' development of other senior projects in the area. Vacancies persist even though measures such as raising the income ceiling to lower income were instituted. This waiver would allow management additional flexibility in renting up these units through marketing 90% of units that are for elderly persons to persons with or without disabilities between the ages of 52 and 62 for a period of one (1) year.

F. *For further information about the following waiver action, contact:* Margaret Keels, Eastern and Atlantic Service Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2654. Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Lumberton, North Carolina (First Baptist Homes I—Project Number 053–EH471/NC19–T861–087). The Greensboro Multifamily Hub requested an age waiver for the subject project due to high vacancy problems. Management has aggressively marketed its units but are unable to rent up these units.

Nature of Requirement: HUD regulations at 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 17, 2000.

Reason Waived: This waiver was granted based on difficulty in renting up vacant units due to the soft housing market there for persons 62 years of age and older. This waiver would allow project management additional flexibility in attempting to rent up the vacant units for a period of one (1) year.

G. *For further information about the following waiver actions, contact:* Ronald Wallace, Western and Pacific Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2654 (this is not a toll free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Trenton, New Jersey (Cathedral Square—Project Number 035–EH082). The Newark Multifamily Program Center requested an age waiver for the subject project because of vacancy problems due to a soft housing market.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 891.610(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 11, 2000.

Reason Waived: This waiver was granted based on the soft housing market and the potential market for persons between the ages 55 and 61 in the City of Trenton. This would allow additional flexibility in attempting to rent up the vacant units. The waiver is granted for a period of one (1) year.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Pynette, Wisconsin (Pioneer Place I—Project No. 075–EH090). The Milwaukee Multifamily Program Center requested an age waiver for the subject project due to a soft housing market.

Nature of Requirement: HUD regulations at 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at a time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2000.

Reason Waived: This waiver was granted based on the area's soft housing market resulting in difficulty in renting up vacant units. This waiver would allow project rent up by allowing management additional flexibility by marketing 90% of the units that are set aside for elderly persons to people between the ages of 55 and 62 for a period of one (1) year.

H. *For further information about the following waiver action, contact:* Richard Harrington, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2654 (this is not a toll free number). Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Mt. Sterling, Ohio (Meadowview Village—Project Number 043–EH110). The Columbus Multifamily Hub requested an age waiver to allow management additional flexibility in attempting to rent up vacant units. Approval to market units that are for elderly persons to persons with or without disabilities between the ages of 55 and 62 for prescribed period of one (1) year.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 610(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 20, 2000.

Reason Waived: This waiver was granted based on constant vacancy problems and over-saturation of elderly housing projects in the area. This waiver would allow project management additional flexibility in attempting to rent up vacant units.

I. *For further information about the following waiver action, contact:* Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.640 and 891.650.

Project/Activity: Kennet, Missouri (Cotton Roll Group Homes—Project Number 085–EH047). The Kansas City Multifamily Hub has requested waiver of the vacancy payments/rent increase process to offset income shortfalls due to changing State law.

Nature of Requirement: HUD regulations in 24 CFR 891.640 and 891.650 require for rent adjustments that the housing assistance payment (HAP) contract provide or has been amended to provide that contracts rents will be adjusted based upon a HUD-approved budget. Contract rent adjustments will be made based on the sum of the project's operating costs and debt service as calculated by HUD. Adjustments for vacancies longer than 60 days—the Borrower may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up top 12 months.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 3, 2000.

Reason Waived: This waiver was granted to allow vacancy payments above normal approved by the Field Office, retroactive to July 1997. The project was put on notice to reduce operating expenses consistent with the drop in tenants from nine to six, based on changing State law for group homes. The reduction needed to take place within 30 days of the waiver memorandum. The new budget levels were to be consistent with normally allowable costs consistent with a six-person group home, and adjusted as appropriate from July 1997.

III. Regulatory Waivers Granted by the Office of Multifamily Housing Assistance Restructuring (OMHAR)

For further information about the following waiver actions, contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12 month limit at above-market rents (24 CFR 401.600):

FHA no.	Project name	State
14035071	Wilikina Apts.	HI
03355032	Westgate Village II	PA
10538006	Holly Haven I	UT
07535214	Euclid Arms	WI
10835025	Sheridan Square Apts	WY

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: January 12, 2000.

Reasons Waived: The attached list of projects were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA no.	Project name	State
17635014	Executive Estates	AK
17635013	Parkwest Apartments	AK
08244073	Summerchase Apts	AR
12244452	Rodeo Drive Apartments	CA
06535245	Sunflower Lane Apartments	MS
03444171	Sherman Hills Apartments	PA
03335083	Station Square	PA
03344022	Third East Hills Park	PA
03344087	Towne Towers	PA
03344059	Valley Terrace Apts	PA
11494012	Missionary Village	TX
05135239	Shawnee II	VA

FHA no.	Project name	State
12738049	Village Green Apartments	WA
07544106	Meadow Village Apartments	WI
07535218	Westport Meadows	WI
04538001	Riverview Manor	WV

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: February 8, 2000.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

FHA No.	Project name	State
13644125	Florin Gardens Coop East	CA
12235609	Kilgore Manor	CA
12144337	Kings Canyon	CA
12258508	New Venice Partners 1D	CA
12258507	New Venice Partners 2D	CA
06155056	Martin Luther King Jr	GA
14044027	Hale Hoaloha	HI
07435110	Floyd Valley Apartments	IA
07435106	Valley View of Cherokee	IA
02344134	Cathedral Hill Apartments	MA
06592502	Brookville Gardens	MS
06535246	Moore Manor	MS
03555003	All American Gardens	NJ
03135124	Center City 9C	NJ
03135119	Park Terrace	NJ
01257026	1018 Development	NY
01235242	President Street	NY
01257004	Riverstone Houses	NY
04335166	Bellfontaine Manor	OH
04335196	Lansing Gardens	OH
11744096	Buena Vista	OK
03444106	Hillrise Mutual Housing	PA
03435104	Kephart Plaza	PA
03436009	Lutheran Manor	PA
05436003	Hampton House	SC
11444026	Cedarwood Apartments	TX
11535187	Woodland Creek	TX
07535136	Juneau Gardens	WI
07535080	Sunny Hill Apartments	WI

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: March 10, 2000.

Reasons Waived: The attached list of projects were not assigned to the RAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

- *Regulation:* 24 CFR 401.600

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
17635012	Bayview Terrace	AK
17635015	KBL Apartments	AK
1755119	Antillean Manor	CT
09435029	Prairie View I	ND
04235273	Ashland Village	OH
04644100	Miami Manor	OH
03344007	East Mall	PA
03344142	Leechburg	PA
03344002	Penn Circle	PA
17135177	Hawaiian Village II	WA
17138007	Kenwood Square	WA

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for

restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: March 30, 2000.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

IV. Regulatory Waivers Granted by the Office of Public and Indian Housing

A. *For further information about the following waiver actions, contact:* Tracy C. Outlaw, National Office of Native American Programs (ONAP), Office of Public and Indian Housing, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 761.30(1)(b),(2) and (4)

Project/Activity: A request was made by the Gila River Housing Authority to waive the terms of the grant agreement beyond 24-months for the Public and Indian Housing Drug Elimination Program (PIHDEP). The tribe requested an extension because they did not anticipate extended delays in organizing elders, teachers and traditionalists for certain activities that they wanted to implement.

Nature of Requirement: The regulations state that any funds not expended at the end of the grant term shall be remitted to HUD. The regulations also state that the maximum extension allowable for any program period is six months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 4, 2000.

Reason Waived: Based on the narrative justification that was submitted to the Department on behalf of the Gila River Housing Authority and their submission of required documents, good cause was found to waive the extension/grant term requirements of 24 CFR 761.30(1)(b),(2) and (4).

• *Regulation:* 24 CFR 761.30(1)(b),(2) and (4)

Project/Activity: A request was made by the Reno Sparks Indian Housing Authority (RSIHA) to waive the terms of the grant agreement beyond 24-months for the Public and Indian Housing Drug Elimination Program (PIHDEP). The tribe requested an extension so that they would have additional time to complete an environmental design project to eliminate crime in the RSIHA developments which involved installing wire fencing around three playground areas in the community.

Nature of Requirement: The regulations state that any funds not expended at the end of the grant term shall be remitted to HUD. The regulations also state that the maximum extension allowable for any program period is six months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 9, 2000.

Reason Waived: Based on the narrative justification that was submitted to the Department on behalf of the Gila River Housing Authority and submission of required documents, good cause was found to waive the extension/grant term requirements of 24 CFR 761.30(1)(b),(2) and (4).

• *Regulation:* FY 1996 Notice of Funding Availability (NOFA), Economic Development and Supportive Services (EDSS) section (3)(f).

Project/Activity: A request as made by the Cherokee Nation to waive the grant term requirement for the Economic Development and Supportive Services (EDSS) program that all funds must be expended within three years of the effective date of the grant agreement. The Cherokee Nation experienced significant, unexpected delays caused by their proposed partner who needed additional time in obtaining the required community charter approvals for the expansion of the credit union in Tahlequah, Oklahoma. The Cherokee Nation had also proposed in their Indian Housing Plan to use their proceed of sales funds to purchase and renovate the proposed credit union facility, but were informed by the SPONAP that this was an ineligible affordable housing activity.

Nature of Requirement: The grant term requirement for the Economic Development and Supportive Services (EDSS) program, as provided in the Fiscal Year 1996 NOFA, states that all funds must be expended within three years of the effective date of the grant agreement. The language in the NOFA also states that grant terms may not be extended without substantial good cause (circumstances reasonably unforeseen and reasonably beyond the grantee's control) and subject to HUD approval.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 21, 2000.

Reason Waived: Based on the narrative justification submitted to the Department on behalf of the Cherokee Nation and submission of required documents, good cause was found to waive the grant term requirements stated in the EDSS NOFA.

B. For further information about the following waiver actions, contact Sonia L. Burgos, Director, Community Safety and Conservation Division Department of Housing and Urban Development, Room 4206, 451 Seventh Street, S.W., Washington, DC 20410–5000 (202) 708–1197 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend a 1997 PHDEP Grant for the Lancaster City Housing Authority (LCHA), Pennsylvania.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 20, 2000.

Reason Waived: LCHA's prevention program was delayed while they searched for and hired a new PHDEP contractor and staff for the program. The waiver is for 6 months from the date the grant agreement (HUD–1044) is modified and signed by both parties.

• *Regulations:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for the Housing Authority of the City of Key West (KWHA), Florida.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 24, 2000.

Reason Waived: Implementation of the PHDEP grant was delayed as a result of litigation surrounding the Campus South educational project. Additionally, the Girls and Boys Club terminated its contract due to the lack of community support and additional operating funds. KWHA plans to utilize the remaining grant funds for the provision of drug prevention activities targeting the youth population.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) to extend the PHDEP 1996 grant for Bethlehem Housing Authority (BHA), Bethlehem, Pennsylvania.

Nature of Requirement: HUD's regulation at 24 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 29, 2000.

Reason Waived: The BHA is requesting this waiver to expend the remaining PHDEP funds under budget line item 9110 (Reimbursement of Law Enforcement). Due to contractual problems and the loss of essential personnel the BHA encountered delays in the implementation of the PHDEP schedule.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Public Housing Drug Elimination Program (PHDEP) Grant #M128DEP0090197. Waiver of 24 CFR 761.30(b) to extend a 1997 Set-Aside PHDEP grant for Flint Housing Commission (FHC), Flint, Michigan.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 3, 2000.

Reason Waived: FHC experienced problems in obtaining proposals for installation security cameras and security doors. It was necessary to tender a new RFP for additional proposals. FHC expended time to resolve issues before awarding a contract. By the time all this was completed the grant reached termination. FHC has advised that it can complete the activity in 6 months if granted a waiver.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Public Housing Drug Elimination Program (PHDEP) Grant #MI28DEP0090198. Waiver of 24 CFR 761.30(b) was requested to extend a 1998 PHDEP grant for Flint Housing Commission (FHC), Flint, Michigan.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 3, 2000.

Reason Waived: FHC was not able to complete the computer learning center relocation, special programs, and fully fund the security guard services due to the grant funds not being available until January 1999.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for Bethlehem Housing Authority (BHA), Bethlehem, Pennsylvania.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 25, 2000.

Reason Waived: The BHA is requesting this waiver to expend the remaining funds ($97,807) that they were unable to spend because of contractual problems encountered and the loss of essential personnel.

• *Regulation:* 24 CFR 761.30(b)

Project/Activity: Public Housing Drug Elimination Program (PHDEP) Grant #NM00DEP0090197. Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for Santa Fe Civic Housing Authority (SCHA), Santa Fe, New Mexico.

Nature of Requirement: Section 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 25, 2000

Reason Waived: SCHA experienced numerous turnovers of personnel, which delayed the timely drawdown of PHDEP funds. SCHA also experienced jurisdictional issues between the district and the municipality causing additions delays.

• *Regulation:* 24 CFR 761.30(b)

Project/Activity: South Charleston Housing Authority, South Charleston, West Virginia. Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1999 grant for South Charleston Housing Authority, South Charleston, West Virginia (SCHA).

Nature of Requirement: Section 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 28, 2000

Reason Waived: The SCHA requested an extension to their 1998 grant to use PHDEP funds (approximately $7,163.00) to conduct classes at the agency's new on-site computer lab. These classes will enable the adults to enhance their computer skills. Also, school age children will be granted access to the lab for the purpose of preparing reports for class reports for class assignments.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) to extend the PHDEP 1997 grant for Delaware State Housing Authority, Delaware County, Pennsylvania.

Nature of Requirement:

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 28, 2000.

Reason Waived: The Delaware State Housing Authority (DSHA) seeks this waiver so that contractors can expend all appropriated PHDEP funds. Since program costs were not as high as anticipated under Law Enforcement they have $6,225 remaining and under Drug Prevention $17,035.99 for an overall total of $23,260.99.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for Providence Housing Authority (PHA), Providence, Rhode Island.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 30, 2000.

Reason Waived: The PHA has achieved substantial cost savings in its FY 1997 PHDEP Program. The unanticipated savings resulted in the PHA making adjustments to its grant activities and delivery of programs. Adding to this is the fact that the PHAs fiscal date is in conflict with the HUD's grant execution date. The grant execution date was in December and the PHA's fiscal date had already started six months prior. This extension will allow for closure of this grant and coincide with the PHA's fiscal year.

C. *For further information about the following waiver action, contact:* Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–0477 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 982.306(d).

Project/Activity: Warren Metropolitan Housing Authority, Ohio, Section 8 voucher program.

Nature of Requirement: The regulation limits the circumstances under which a landlord could lease a unit with tenant-based assistance to a relative of the landlord.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 27, 2000.

Reason Waived: Approval of the waiver prevented a hard-to-house family that had completed the transitional housing program from becoming homeless by allowing the family to lease a unit from a relative. There were no other units available in the public housing agency's jurisdiction large enough to accommodate the family.

D. *For further information about the following waiver actions, contact:* Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1872 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of the County of Kern, CA. A request was made to permit the Authority to benefit from energy performance contracting for developments

which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of the County of Kern has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 2, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of the County of Kern requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

- *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of the County of Kern, CA. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of the County of Kern has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 2, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of the County of Kern requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

- *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of Conway, South Carolina. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of Conway has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 8, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of Conway requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

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Part V

Department of Transportation

Office of the Secretary
Federal Highway Administration
Federal Railroad Administration
Federal Transit Administration

49 CFR Part 80
Credit Assistance for Surface Transportation Projects; Final Rule
Applications for TIFIA Credit Assistance; Notice

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 80

[OST Docket No. OST–2000–7401]

RIN 2105–AC87

Credit Assistance for Surface Transportation Projects

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) continues to implement the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), under which the DOT may provide secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The DOT published original implementing regulations for the TIFIA on June 2, 1999. With this rule, the DOT revises certain of these prior regulations, as codified within 49 CFR Part 80, as follows: clarifies that funds will be disbursed based on the project's anticipated financing needs; clarifies that the borrower must obtain ongoing credit surveillance for the life of the TIFIA credit instrument; assigns specific weights to each of the eight statutory selection criteria; specifies that loan servicing fees are to be paid by the borrower; modifies the time period for audited financial statements from 120 days to within no more than 180 days; and provides that administrative offsets will be employed only in cases of fraud, misrepresentation, or criminal acts, and will not be employed as a result of revenue shortfalls.

EFFECTIVE DATE: This final rule is effective August 18, 2000.

FOR FURTHER INFORMATION CONTACT: *FHWA:* Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; or Mr. Steven M. Rochlis, Office of the Chief Counsel, (202) 366–1395. *FRA:* Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493–6051. *FTA:* Mr. Paul Marx, Office of Policy Development, (202) 366–1675; or Ms. Paula Schwach, Office of the Chief Counsel, (816) 523–0204. *OST:* Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; or Mr. Terence W. Carlson, Office of the General Counsel, (202) 366–9161. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets by using the universal resource locator (URL) http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

Additional general information on the TIFIA program and credit assistance for surface transportation projects is available on the TIFIA web site at http://tifia.fhwa.dot.gov.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, created the TIFIA. The TIFIA, as amended by section 9007, Public Law 105–206, 112 Stat. 685, 849 and codified at 23 U.S.C. 181–189, authorizes the DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Regulations governing the TIFIA program appear at 49 CFR Part 80 and provide specific guidance on the program requirements. For additional information, the TIFIA Program Guide is available from the TIFIA website (http://tifia.fhwa.dot.gov).

The TIFIA authorizes annual levels for both credit assistance (as measured by the principal amounts of the secured loans, guaranteed loans, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority appropriated from the Highway Trust Fund, other than the Mass Transit Account. Both funding (budget authority) and credit assistance authority for this program are limited, so projects seeking assistance are evaluated and selected by the DOT on a competitive basis. Following selections, term sheets are issued and credit agreements are developed through negotiations between the project sponsors and the DOT.

Total Federal credit assistance amounts authorized for the TIFIA program are $1.8 billion in FY 2000; $2.2 billion in FY 2001; $2.4 billion in FY 2002; and $2.6 billion in FY 2003. These amounts lapse if they are not awarded by the end of the fiscal year for which they are provided. To support these credit assistance amounts, the TIFIA provides budget authority to fund the required subsidy amounts of $90 million in FY 2000; $110 million in FY 2001; $120 million in FY 2002; and $130 million in FY 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority that is not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid highway obligation limitation, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation limitation, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For FY 2000, this reduction is 12.9 percent, or $11.6 million. The credit assistance amounts authorized in the TIFIA are not subject to this annual reduction.

The DOT expects that approximately $81 million in net budget authority will be available in FY 2000 to fund the TIFIA credit assistance program. This approximation takes into account unused FY 1999 budget authority, the reduction in FY 2000 budget authority due to the annual obligation limitation, and administrative expenses authorized by the TIFIA statute. The amount of net budget authority available for new TIFIA commitments in FY 2000 may also be affected by credit subsidy

adjustments to obligations for prior TIFIA commitments.

The total amount of Federal credit assistance available for new TIFIA commitments in FY 2000 is approximately $1.673 billion, which is less than the $1.8 billion authorization level as a result of TIFIA contingent commitments made in FY 1999. The size of the annual TIFIA program may be limited by either budget authority or credit assistance authorization, depending on the risk assessments made for individual projects selected for that fiscal year's program.

Credit Instruments

Three types of credit instruments are permitted under the TIFIA: secured (direct) loans, loan guarantees, and lines of credit, as provided for generally at 23 U.S.C. 183 and 184. More specific terms for individual projects will be determined during negotiations between the DOT and successful applicants.

Eligible Projects

Highway, rail, transit, and intermodal projects may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Limitations on Assistance

The amount of credit assistance that the DOT may provide to a project under the TIFIA is limited to not more than 33 percent of eligible project costs.

Rating Opinions

A project sponsor must submit a preliminary rating opinion letter from one or more of the nationally recognized credit rating agencies with its application, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The preliminary rating opinion letter will confirm the potential for the project's senior debt obligations to achieve an investment grade rating and provide an assessment of the default risk on the requested TIFIA credit instrument. Projects selected for TIFIA credit assistance must obtain an investment grade rating on the senior debt obligations and a revised opinion of the default risk on the TIFIA credit instrument before the DOT will execute a credit agreement and disburse funds.

Application Process

Detailed application information is contained in the TIFIA Program Guide and the TIFIA Application for Federal Credit Assistance, which are posted on the TIFIA web site at http://tifia.fhwa.dot.gov or which may be obtained through one of the DOT program contacts listed in this notice. From time to time, the TIFIA Program Guide and Application may be revised. Applicants are encouraged to refer to the TIFIA web site or to TIFIA program contacts for information regarding recent program clarifications.

Fees

The DOT requires payment of a non-refundable fee with each credit assistance application under the TIFIA. For FY 2000, the DOT will assess an application fee of $5,000 for each project applying for credit assistance; however, there will be no additional credit processing fee for FY 2000. For fiscal years 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of any potential credit processing fee or any other fee based on program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

NPRM

The DOT published a notice of proposed rulemaking (NPRM) on May 30, 2000, in the **Federal Register** (65 FR 34428). Comments were filed by the Florida Department of Transportation, Scully Capital Services Inc., and the Washington State Department of Transportation. The DOT is now issuing this final rule concerning administration of the TIFIA credit assistance program. This rule reflects the DOT's consideration of the comments filed in response to the NPRM.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the DOT by the three commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations.

Discussion of Comments and Responses by Section

Section 80.5 Limitations on Assistance

Section 80.5(g). One of the commenters voiced concern about the DOT's intent to establish the timing of loan disbursements in the credit agreement. The commenter indicated its supposition that the motivation for the language appearing in Section 80.5(g) was to preclude cash advances to project sponsors that would subsequently bank and earn interest on the funds. The commenter suggested that the section be modified to allow for changes to project schedules after execution of the credit agreement. Further, the commenter recommended that it may be more appropriate for the credit agreement to include a tentative funding schedule, a set of conditions necessary to modify the schedule, and a review process for parties to approve modifications to the credit agreement.

DOT Response: The commenter's characterization of the primary intent of section 80.5(g)—namely, to prevent circumstances in which a sponsor would request that the DOT advance all cash up front, irrespective of the project's actual funding requirements, so that the sponsor could bank the proceeds—is accurate. To this end, the DOT drafted Section 80.5 to specify that the credit agreement shall indicate scheduled disbursements that align with the project's actual needs. Nothing in the proposed language states or implies that the schedule of disbursements appearing in the credit agreement is permanently fixed, and in practice, the DOT will implement the section much as the commenter has suggested. To underscore the flexibility necessary to respond to a particular project's funding requirements, the DOT has modified the language in this section.

Section 80.11 Investment-Grade Ratings

Section 80.11(a). One commenter stated that the DOT should not rely on a senior debt rating (as an indicator of the TIFIA instrument's credit quality) if that rating is based on a revenue source that is unrelated to or of a materially different credit quality from the revenue source that will repay the TIFIA instrument. The commenter suggested that the rule clarify whether the senior debt rating is related to (*i.e.*, based on) the source of funds that will repay the TIFIA instrument.

DOT Response: The DOT agrees with the commenter's point that an investment-grade rating on a project's senior obligations is not a meaningful indicator of a TIFIA obligation's creditworthiness if the two sets of obligations are backed by different sources of repayment. The DOT believes that the proposed language, which defines senior obligations as those which have "a lien senior to that of the TIFIA credit instrument on the pledged security," underscores this point, and

the DOT will interpret the language appearing in section 80.11(a) as such.

Section 80.11(b). Three commenters voiced concern regarding the DOT's proposal to require project sponsors to provide the DOT with an investment-grade rating not only prior to the execution and initial funding of a credit agreement but also prior to each subsequent draw on the credit instrument.

DOT Response: Upon review of statutory language appearing in the TIFIA and comments to the NPRM, the DOT concurs with the comments. Accordingly, relevant language proposed under the NPRM has been dropped, and section 80.11(b) of 49 CFR remains unchanged.

Section 80.11(d). Two commenters responded to section 80.11(d) but offered differing views. One commenter linked its approval for this section to its objection to the proposed Section 80.11(b), stating that ongoing credit surveillance would obviate the need for a project sponsor to provide a new investment grade rating prior to each disbursement of funds. This commenter also stated that project sponsors are prepared to fund on-going surveillance on an annual basis, described the practice as normal and customary, and indicated that this action would cost significantly less than updating the debt rating prior to each loan disbursement. In contrast, another commenter stated that rating agencies already monitor the creditworthiness of the issues they rate on an ongoing basis and of their own accord. In this commenter's opinion, the DOT's requirement for project sponsors to pay for this service throughout the life of a TIFIA credit agreement was unnecessary.

DOT Response: The commenters appear to have differing views on what services rating agencies provide on a fee basis. It is not the DOT's role to advise project sponsors what services ought or ought not be provided by rating agencies and at what cost. Rather, section 80.11(d) is intended to make two points: First, that recipients of TIFIA credit assistance must furnish information deriving from ongoing credit surveillance of all debt obligations (including the TIFIA instrument) throughout the life of the TIFIA instrument; and second, that this information is to be provided by the project sponsor at no cost to the Federal Government. To underscore these points and avoid any implications regarding the costs of credit surveillance services, the DOT has modified this section as follows: "The project sponsor must annually provide, at no cost to the Federal Government, ongoing credit evaluations of the project and related debt obligations, including an annual assessment of the TIFIA credit instrument. The evaluations are to be performed by a nationally recognized credit rating agency and provided to the DOT throughout the life of the TIFIA credit instrument. In addition, the project sponsor will furnish the DOT with any other credit surveillance reports on the TIFIA-assisted project as soon as they are available."

Section 80.15 Selection Criteria

Section 80.15. Two commenters addressed the DOT's proposed weighting of project selection criteria. Both commenters specifically suggested that the DOT reduce the proposed weight of 20 percent for the criterion concerning the extent to which the project helps maintain or protect the environment.

One commenter expressed concern that the proposed weighting of the environmental criterion unfairly favors projects that are environmental in nature, and therefore alters the ultimate purpose and goals of the TIFIA program. This commenter also drew a parallel between the criteria related to creditworthiness and environmental impacts, noting that the DOT proposed a weighting of 12.5 percent for creditworthiness given that obligations of TIFIA credit assistance are conditioned on a preliminary rating opinion letter, and that similarly, the DOT should set a lower weight for the environmental criterion given that obligations are also to be conditioned on projects having received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision.

The other commenter suggested that weightings be dropped altogether, or alternatively, that the weights assigned to both creditworthiness and the use of new technologies (such as intelligent transportation systems) be elevated.

DOT Response: The DOT disagrees with the commenters and believes that the proposed weights properly reflect the program's goals, will maximize the effectiveness of the program's credit assistance, and are consistent with the DOT's overall strategic and performance goals. In special regard to the comparison between creditworthiness and environmental benefits, the DOT believes that the parallel drawn by the first commenter is not accurate. While the DOT is highly concerned with a project's capacity to repay the TIFIA instrument, the Department also recognizes that a project with very high creditworthiness is probably one that could advance without any credit assistance whatsoever, and thus might not represent the best use of limited TIFIA funds. In contrast, projects with very high environmental benefits, balanced with other attributes, almost always represent a desirable Federal investment. The system of weights appearing in this rule affirms the DOT's view that the evaluation process should and will support projects that maintain or improve the environment.

Section 80.19 Reporting Requirements

Section 80.19. One commenter suggested that the 180-day financial reporting period is unusually long for commercial practice and renders the statement six months from the period to which it pertains.

DOT Response: While eager to gather financial information that is as current as possible, the DOT recognizes that 180 days is the reporting period recommended by the Government Finance Officers Association. To balance the desire for timely information with a recognition that some governmental borrowers have had difficulty meeting the 120-day reporting period, the DOT has modified the language in this rule to state that audited financial statements must be furnished to the DOT within no more than 180 days.

Section 80.21 Use of Administrative Offset

Section 80.21. One commenter approved the proposed clarification that administrative offsets will be employed only in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance and wrongdoing, and will not be employed as a result of revenue shortfalls.

General Comments

One commenter requested clarification as to whether this rule applies to the applications solicited under the Notice of Funds Availability (NOFA) published in the **Federal Register** on May 10, 2000 (Vol. 65, No. 91).

DOT Response: As stated explicitly in the NOFA, "the Final Rule as published in the **Federal Register** on June 2, 1999 remains applicable to this notice [published May 10, 2000]." The DOT re-emphasizes that the modifications to the rule will apply only to future application cycles occurring after the effective date of this rule.

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Executive Order 12866 (Regulatory Planning And Review) and DOT Regulatory Policies and Procedures

The DOT has determined that issuance of a rule is necessary to implement the TIFIA, and has concluded that this action does not represent a "significant regulatory action" within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866.

This regulation would affect only those entities that voluntarily elect to apply for TIFIA assistance and are selected to receive assistance through a Federal credit instrument. It would not impose any direct involuntary costs on non-participants.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354, 5 U.S.C. 601–612) requires an assessment of the extent to which proposed rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. The DOT hereby certifies that this action would not have significant economic impact on a substantial number of small entities because this rule simply clarifies or makes minor modifications to the TIFIA credit assistance program.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Rather, this rule clarifies certain provisions of a Federal credit assistance program.

Executive Order 12372 (Intergovernmental Review)

Given that projects receiving assistance under the TIFIA may fall under the programmatic jurisdiction of the Federal Highway Administration, the Federal Railroad Administration, or the Federal Transit Administration, the relevant Catalog of Federal Domestic Assistance Program Numbers are: 20.205 highway planning and construction; 20.310 rail rehabilitation and improvement; and 20.500 transit capital improvement grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

As specified under section 1503 of the TIFIA, and codified under section 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This rulemaking simply proposes to clarify the procedures to apply for credit assistance and therefore, by itself, will not have any effect on the quality of the environment.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have substantial direct effect or sufficient federalism implications on States that would limit the policy-making discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The DOT has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern any environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 80

Credit programs—transportation, Highways and roads, Mass transit, Railroads, Investments, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 80 as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 1501 *et seq.*, Pub.L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48, 1.49, and 1.51.

2. Amend § 80.3 by adding the definition "administrative offset" and by placing it in alphabetical order to read as follows:

§ 80.3 Definitions.

* * * * *

Administrative offset means the right of the government to apply moneys held by the government and otherwise owed to a debtor for the extinguishment of claims due the government from the debtor.

* * * * *

3. Add § 80.5(g) to read as follows:

§ 80.5 Limitations on assistance.

* * * * *

(g) The Secretary shall fund a secured loan based on the project's financing needs. The credit agreement shall include the anticipated schedule for such loan disbursements.

4. In § 80.11 revise paragraph (a) and add paragraph (d) to read as follows:

§ 80.11 Investment-grade ratings.

(a) At the time a project sponsor submits an application, the DOT shall require a preliminary rating opinion letter. This letter is a conditional credit assessment from a nationally recognized credit rating agency that provides a preliminary indication of the project's overall creditworthiness and that specifically addresses the potential of

the project's senior debt obligations (those obligations having a lien senior to that of the TIFIA credit instrument on the pledged security) to achieve an investment-grade rating.

* * * * *

(d) The project sponsor must annually provide, at no cost to the Federal Government, ongoing credit evaluations of the project and related debt obligations, including an annual assessment of the TIFIA credit instrument. The evaluations are to be performed by a nationally recognized credit rating agency and provided to the DOT throughout the life of the TIFIA credit instrument. In addition, the project sponsor will furnish the DOT with any other credit surveillance reports on the TIFIA-assisted project as soon as they are available.

* * * * *

5. Amend § 80.15 by revising paragraph (a) set forth below; by removing paragraphs (c) and (d); and by redesignating paragraph (e) as paragraph (c).

§ 80.15 Selection criteria.

(a) The Secretary shall assign weights as indicated to the following eight selection criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system (20 percent);

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment (12.5 percent);

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment (20 percent);

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (12.5 percent);

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project (5 percent);

(6) The amount of budget authority required to fund the Federal credit instrument made available (5 percent);

(7) The extent to which the project helps maintain or protect the environment (20 percent); and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project (5 percent).

* * * * *

6. Revise § 80.17 to read as follows:

§ 80.17 Fees.

(a) The DOT will require a non-refundable application fee for each project applying for credit assistance under the TIFIA. The DOT may also require an additional credit processing fee for projects selected to receive TIFIA assistance. Any required application initiation or credit processing fee must be paid by the project sponsor applying for TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such fees will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For FY 2000, the DOT will require payment of a fee of $5,000 for each project applying for credit assistance under the TIFIA, to be submitted concurrently with the formal application. The DOT will not impose any credit processing fees for FY 2000. For each application and approval cycle in FY 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of the credit processing fee based on program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

(b) Applicants shall not include application initiation or credit processing fees or any other expenses associated with the application process (such as fees associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(d) The DOT will require borrowers to pay servicing fees for each credit instrument approved for funding. Separate fees may apply for each type of credit instrument (*e.g.*, a loan guarantee, a secured loan with a single disbursement, a secured loan with multiple disbursements, or a line of credit), depending on the costs of servicing the credit instrument as determined by the Secretary. Such fees will be set at a level to enable the DOT to recover all or a portion of the costs to the Federal Government of TIFIA credit instruments.

7. Revise § 80.19 to read as follows:

§ 80.19 Reporting requirements.

At a minimum, any recipient of Federal credit assistance under this part shall submit an annual project performance report and audited financial statements to the DOT within no more than 180 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the DOT. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

8. Add § 80.21 to read as follows:

§ 80.21 Use of administrative offset.

The DOT will not apply an administrative offset to recover any losses to the Federal Government resulting from project risk the DOT has assumed under a TIFIA credit instrument. The DOT may, however, use an administrative offset in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance or wrongdoing.

Issued this 14th day of July, 2000 at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 00–18314 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

Office of the Secretary of Transportation

Applications for TIFIA Credit Assistance

AGENCIES: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The revised TIFIA regulations (49 CFR Part 80, as published elsewhere in this issue of the **Federal Register**, provide specific guidance on the program requirements.

These revised regulations, which will apply to applications filed under this notice, amend the June 2, 1999 rule to: clarify that funds will be disbursed based on the project's anticipated financing needs; clarify that the borrower must obtain ongoing credit surveillance for the life of the TIFIA credit instrument; assign specific weights to each of the eight statutory selection criteria; specify that loan servicing fees are to be paid by the borrower; modify the time period for audited financial statements from 120 days to within no more than 180 days; and provide that administrative offsets will be employed only in cases of fraud, misrepresentation, or criminal acts.

Funding for this program is limited, and projects requesting assistance will be evaluated and selected by the DOT on a competitive basis. Following selections, term sheets will be issued and credit agreements will be developed through negotiations between the project sponsors and the DOT. The TIFIA statute provides budget authority of $110 million for FY 2001 to fund the subsidy costs of up to $2.2 billion in credit assistance. However, as described below, the amount of actual net budget authority available in FY 2001 depends on several additional factors.

DATES: For consideration in this application cycle, letters of interest must be submitted by 4:30 p.m. EDT on Thursday, August 17, 2000. The deadline for receipt of the completed application and the non-refundable $5,000 application fee is 4:30 p.m. EDT on Wednesday, September 6, 2000. Applications received in the offices of the DOT after that date and time will not be considered. Applications sent to the DOT electronically or by facsimile will not be accepted. Applicants should refer to the TIFIA Application for Federal Credit Assistance, which specifies the number of hard copies (plus original) required for each section of the application as well as those sections of the application requiring electronic versions.

ADDRESSES: Both the letters of interest and completed applications should be submitted to the attention of Ms. Stephanie Kaufman, Office of Budget and Program Performance, Department of Transportation, Room 10105, B–10, 400 Seventh Street, SW., Washington DC, 20590.

FOR FURTHER INFORMATION CONTACT: FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; FRA: Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; FTA: Mr. Paul Marx, Office of Policy Development, (202) 366–1675; OST: Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; Department of Transportation, 400 Seventh Street, SW, Washington, D.C., 20590. Hearing-and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the TIFIA program guide and application materials, can be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov.

SUPPLEMENTARY INFORMATION:

Types of Credit Assistance Available

The DOT may provide credit assistance in the form of secured (direct) loans, loan guarantees, and lines of credit. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Program Funding and Limitations on Assistance

The TIFIA provides annual funding levels for both total credit amounts (*i.e.*, the total principal amounts that may be committed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (*i.e.*, the amounts of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund (other than the Mass Transit Account). Total Federal credit amounts authorized for the TIFIA program in FY 2001 and beyond are $2.2 billion in FY 2001; $2.4 billion in FY 2002; and $2.6 billion in FY 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support these credit amounts, the TIFIA provides budget authority to fund the maximum subsidy amounts of $110 million in FY 2001; $120 million in FY 2002; and $130 million in FY 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid highway obligation limitation, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation limitation, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. The credit amounts authorized in the TIFIA are not subject to this annual reduction.

As noted above, the TIFIA statute provides budget authority of $110 million for FY 2001. The DOT will determine the amount of net budget authority available in FY 2001 to fund the TIFIA credit assistance program by taking into account unused FY 2000 budget authority, any reductions necessitated by the FY 2001 obligation limitation, and administrative expenses

authorized by the TIFIA statute. The amount of net budget authority available for new TIFIA commitments in FY 2001 also may be affected by new obligations (if any) for projects that received conditional approval in the previous fiscal year and credit subsidy adjustments to obligations for prior TIFIA commitments.

The total amount of Federal credit assistance available for new TIFIA commitments in FY 2001 may be less than the $2.2 billion authorization level, as a result of contingent TIFIA commitments made in FYs 1999 and 2000.

The amount of credit assistance that may be provided to a project under the TIFIA is limited to not more than 33 percent of eligible project costs.

Eligible Projects

Highway, rail, transit, and "intermodal" projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Rating Opinions

A project sponsor must submit with its application a preliminary rating opinion letter from one or more of the nationally recognized credit rating agencies, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The letter must indicate the reasonable potential for the senior obligations funding the project (those which have a lien senior to that of the TIFIA credit instrument on the pledged security) to receive an investment grade rating. This preliminary rating agency opinion will be based on the financing structure proposed by the project sponsor. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered by the DOT.

The DOT will also use the preliminary rating opinion letter to assess the potential default risk on the requested TIFIA instrument. Therefore, the letter should also provide a preliminary assessment of the strength of either the overall project or the requested TIFIA instrument, whichever assessment best reflects the rating agency's preliminary evaluation of the default risk on the requested TIFIA instrument.

Each project selected for TIFIA credit assistance must obtain an investment grade rating on its senior debt obligations and a revised opinion on the default risk of its TIFIA credit instrument before the DOT will execute a credit agreement and disburse funds.

Application and Selection Process

Each applicant for TIFIA assistance will be required to submit a letter of interest and subsequently an application to the DOT to be considered for approval. The following describes the application process:

1. *Letter of Interest.* Initially, any applicant seeking TIFIA assistance must submit a brief letter of interest to the DOT by Thursday, August 17, 2000. The letter of interest should include a brief project description (including its purpose, basic design features, and estimated capital cost), basic information about the proposed financing for the project (including a preliminary summary of sources and uses of funds and the type and amount of credit assistance requested from the DOT), and a description of the proposed project participants. The letter also should summarize the status of the project's environmental review (*i.e.*, has the project received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or at a minimum, has a draft Environmental Impact Statement been circulated). The letter of interest should not exceed five pages. A multi-modal DOT Credit Program Working Group will review this preliminary submission to ensure that the project meets the most basic requirements for participation in the TIFIA program. The Working Group will then designate a lead modal agency (FHWA, FRA, or FTA) for the project.

2. *Application.* Once approved for further review, the applicant will be notified by a representative from the designated modal agency of its eligibility to submit a formal application. The applicant must submit all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application) to the DOT by Wednesday, September 6, 2000. The TIFIA application and additional program information may be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov or through one of the program contacts listed in this notice.

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the application for completeness and satisfies the threshold criteria will be invited to make an oral presentation to the DOT on behalf of its project. The DOT plans to schedule presentations within two weeks of the application deadline, and will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based on the application and oral presentation, the DOT will evaluate each project according to specific weights assigned to each of the eight statutory selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15 as follows: National or regional significance, 20 percent; creditworthiness, 12.5 percent; private participation, 20 percent; project acceleration, 12.5 percent; use of new technologies, 5 percent; consumption of budget authority, 5 percent; environmental benefits, 20 percent; and reduced Federal grant assistance, 5 percent.

The Secretary of Transportation intends to make final project selections within five to eight weeks of the application deadline.

Fees

For this application cycle, the DOT will require each TIFIA applicant to pay a non-refundable application fee of $5,000. Checks should be made payable to the Federal Highway Administration. The project sponsor applying for TIFIA assistance must submit this payment by the application deadline of September 6, 2000. There will be no credit processing fee for this application cycle. Selected applicants will, however, be required to pay fees for loan servicing activities associated with their TIFIA credit instruments. For subsequent application cycles, the DOT may adjust the amount of the application fee and may establish a credit processing fee (to recover all or a portion of the costs to the DOT of evaluating applications, selecting projects to receive assistance, and negotiating term sheets and credit agreements) on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

Applicants shall not include application or credit processing fees or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

If there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under the TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the

time of execution of a term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

Dated: July 14, 2000.

Rodney E. Slater,

Secretary, U.S. Department of Transportation.

[FR Doc. 00–18315 Filed 7–18–00; 8:45 am]

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Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

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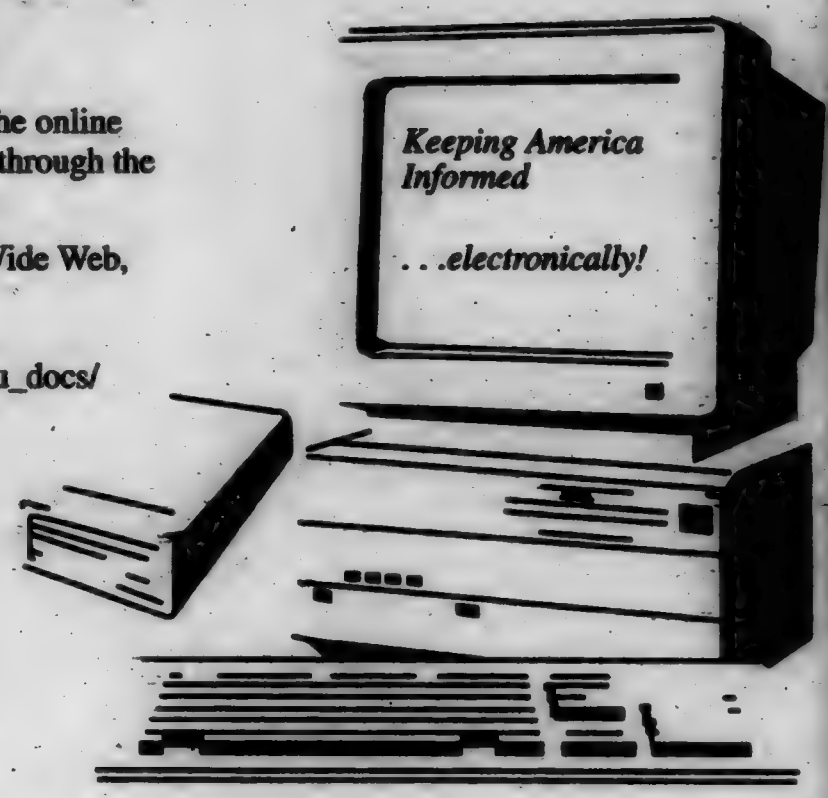

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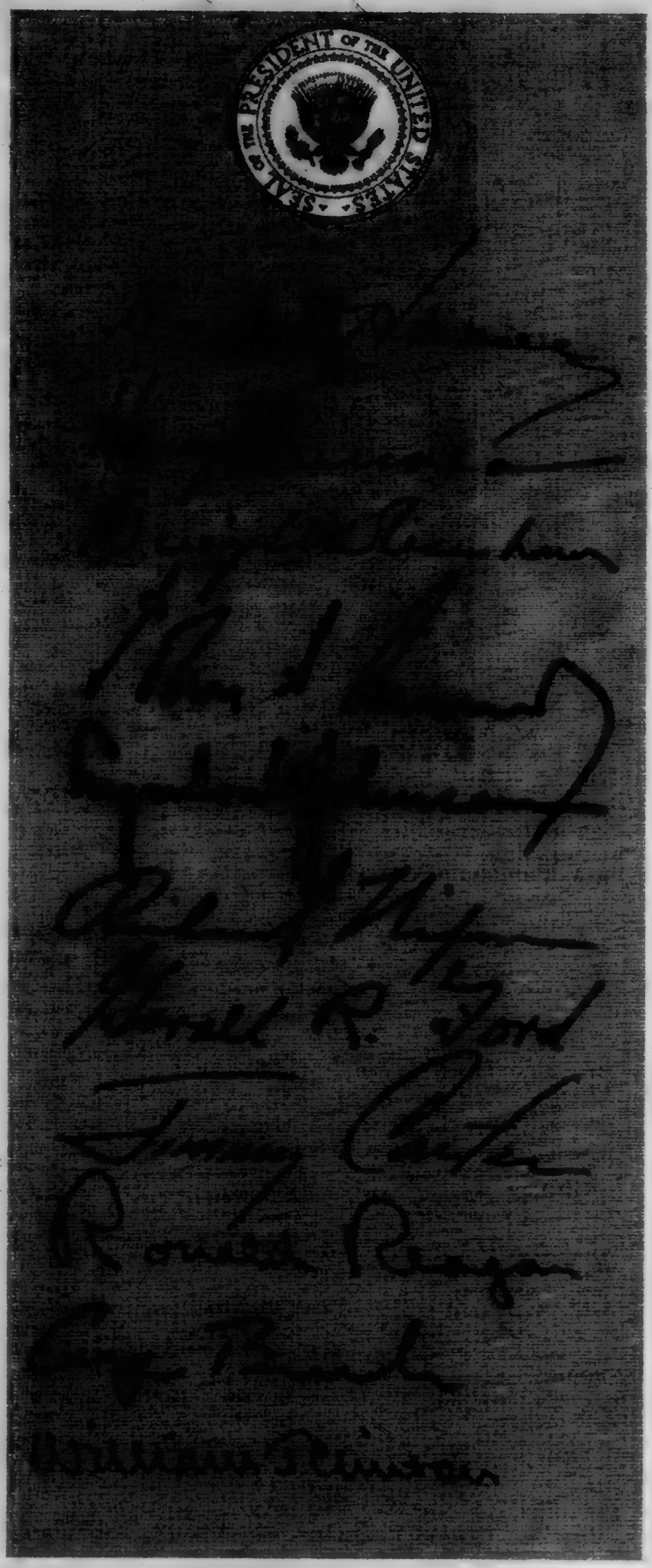

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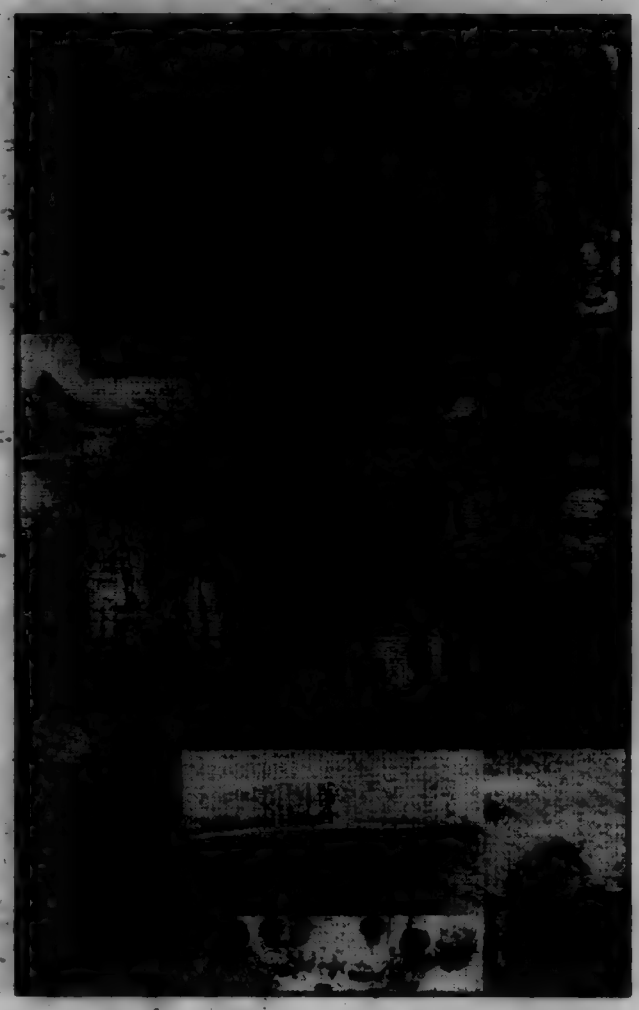

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Rules and Regulations

Federal Register
Vol. 65, No. 140
Thursday, July 20, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 177

RIN 3206–AI70

Administrative Claims Under the Federal Tort Claims Act

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations for administrative claims filed under the Federal Tort Claims Act. The final regulations will reflect the changes for filing administrative claims with OPM for the loss of or damage to property, personal injury, or death resulting from the negligent or wrongful act or omission of its employees while acting within the scope of their office or employment.

EFFECTIVE DATE: August 21, 2000.

FOR FURTHER INFORMATION CONTACT: James S. Green, Associate General Counsel, or Gloria Clark, Paralegal Specialist, Office of the General Counsel, (202) 606–1700.

SUPPLEMENTARY INFORMATION: On June 22, 1999, the Office of Personnel Management (OPM) published proposed regulations (64 FR 33326) on the Federal Tort Claims Act. The Federal Tort Claims Act provides that the United States may be held liable for property damage, personal injury, or death caused by the negligent or wrongful act or omission of its employees, while they are acting within the scope of their office or employment. The Federal Tort Claims Act authorizes the head of each Federal agency, or his or her designee, the authority to consider, compromise, and settle any claim for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

The Department of Justice (DOJ) administers the Federal Tort Claims Act for the United States Government. The DOJ has authorized each Federal agency to issue regulations and establish procedures for implementing the Federal Tort Claims Act. The Director of OPM has delegated the responsibility for this function to the General Counsel of OPM. However, any award, compromise, or settlement in excess of $25,000, can be effected only with the prior written approval of the Attorney General.

The final regulations on the Federal Tort Claims Act have been updated and revised in consistency with the DOJ regulations at 28 CFR part 14. In addition, the final regulations will include revisions to reflect the changes for filing administrative claims with OPM and the delegation of authority for this function within OPM by the General Counsel.

During the comment period, OPM did not receive any comments on the proposed regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions), since it only applies to Federal employees and agencies.

List of Subjects in 5 CFR Part 177

Claims.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is revising Part 177 of title 5 of the Code of Federal Regulations as follows:

PART 177—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

177.101 Scope of regulations.
177.102 Administrative claim; when presented; appropriate OPM office.
177.103 Administrative claim; who may file.
177.104 Investigations.
177.105 Administrative claim; evidence and information to be submitted.
177.106 Authority to adjust, determine, compromise, and settle.
177.107 Limitations on authority.
177.108 Referral to Department of Justice.
177.109 Final denial of claim.
177.110 Action on approved claim.

Authority: 28 U.S.C. 2672; 28 CFR 14.11.

§ 177.101 Scope of regulations.

The regulations in this part apply only to claims presented or filed with the Office of Personnel Management (OPM) under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM while acting within the scope of his or her office or employment.

§ 177.102 Administrative claim; when presented; appropriate OPM office.

(a) For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim is deemed to have been presented when OPM receives from a claimant, his or her authorized agent or legal representative, an executed Standard Form 95 (Claim for Damage, Injury or Death), or other written notification of an incident, accompanied by a claim for money damages stating a sum certain (a specific dollar amount) for injury to or loss of property, personal injury, or death alleged to have occurred as a result of the incident.

(b) All claims filed under the Federal Tort Claims Act as a result of the alleged negligence or wrongdoing of OPM or its employees will be mailed or delivered to the Office of the General Counsel, United States Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–1300.

(c) A claim must be presented to the Federal agency whose activities gave rise to the claim. A claim that should have been presented to OPM, but was mistakenly addressed to or filed with another Federal agency, is presented to OPM, as required by 28 U.S.C. 2401(b), as of the date the claim is received by OPM. When a claim is mistakenly presented to OPM, OPM will transfer the claim to the appropriate Federal agency, if ascertainable, and advise the

claimant of the transfer, or return the claim to the claimant.

(d) A claimant whose claim arises from an incident involving OPM and one or more other Federal agencies, will identify each agency to which the claim has been submitted at the time the claim is presented to OPM. OPM will contact all other affected Federal agencies in order to designate the single agency that will investigate and decide the merits of the claim. In the event a designation cannot be agreed upon by the affected agencies, the Department of Justice will be consulted and will designate an agency to investigate and determine the merits of the claim. The designated agency will notify the claimant that all future correspondence concerning the claim must be directed to that Federal agency. All involved Federal agencies may agree to conduct their own administrative reviews and to coordinate the results, or to have the investigation conducted by the designated Federal agency. But, in either event, the designated agency will be responsible for the final determination of the claim.

(e) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments must be in writing and signed by the claimant or his or her authorized agent or legal representative. Upon timely filing of an amendment to a pending claim, OPM will have 6 months in which to make a final disposition of the claim as amended and claimant's option under 28 U.S.C. 2675 (a) will not accrue until 6 months after the filing of an amendment.

§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his or her authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert a claim under the applicable State law.

(d) A claim for loss totally compensated by an insurer with the rights to subrogate may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights to subrogate may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights to subrogate, he or she will present with the claim appropriate evidence that he or she has the rights to subrogate.

(e) A claim presented by an agent or legal representative must be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

OPM may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth date, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support from the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injuries and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by OPM or another Federal agency. On written request, OPM will make available to the claimant a copy of the report of the examining physician employed by the United States, provided the claimant has furnished OPM with the report referred to in the first sentence of this subparagraph. In addition, the claimant must have made or agrees to make available to OPM all other physician's reports previously or thereafter made of the physical or mental condition that is the subject matter of his or her claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full-or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for

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the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of OPM, or his or her designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of 28 U.S.C. 2672, and this part. The General Counsel, in his or her discretion, has the authority to further delegate the responsibility for adjudicating, considering, adjusting, compromising, and settling any claim submitted under the provisions of 28 U.S.C. 2672, and this part, that is based on the alleged negligence or wrongful act or omission of an OPM employee, with the exception of claims involving personal injury. All claims involving personal injury will be adjudicated, considered, adjusted, compromised and settled by the Office of the General Counsel.

§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under 28 U.S.C. 2672, and this part, in excess of $25,000 can be effected only with the prior written approval of the Attorney General or his or her designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim will be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part, only after consultation with the Department of Justice when, in the opinion of the General Counsel of OPM, or his or her designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and OPM is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled under 28 U.S.C. 2672, and this part, only after consultation with the Department of Justice when, OPM is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required, or the advice of the Department of Justice is otherwise to be requested, under § 177.107, the written referral or request will be transmitted to the Department of Justice by the General Counsel of OPM or his or her designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim must be in writing and sent to the claimant, his or her attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial. But, it must include a statement that, if the claimant is dissatisfied with the OPM action, he or she may file suit in an appropriate United States district court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of a Standard Form 95 (Claim for Damage, Injury or Death); a claims settlement agreement; and a Standard Form 1145 (Voucher for Payment), as appropriate. When a claimant is represented by an attorney, the Voucher for Payment will designate both the claimant and his or her attorney as payees, and the check will be delivered to the attorney, whose address is to appear on the Voucher for Payment.

(b) Acceptance by the claimant, his or her agent, or legal representative, of an award, compromise, or settlement made under 28 U.S.C. 2672 or 28 U.S.C. 2677 is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Federal Government whose act or omission gave rise to the claim, by reason of the same subject matter.

[FR Doc. 00-18344 Filed 7-19-00; 8:45 am]
BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98-045-3]

Veterinary Services User Fees; Pet Food Facility Inspection and Approval Fees; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting an error in the rule portion of a final rule concerning user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. The rule replaced hourly rate user fees for those services with flat rate user fees. The final rule was published in the Federal Register on June 20, 2000 (65 FR 38179–38182, Docket No. 98–045–2), and is effective on July 20, 2000.

EFFECTIVE DATE: July 20, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION: On June 20, 2000, we published in the Federal Register a final rule that amended the user fee regulations to replace the hourly rate user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities with flat rate user fees that would cover the cost of all inspections required for annual approval.

In the rule portion of the final rule, the flat rate user fee for the renewal of approval of pet food spraying and drying facilities was listed as $162.00 for all inspections required during the year. As explained in the SUPPLEMENTARY INFORMATION section of the final rule, the correct flat rate user fee for this service is $162.50. This document corrects that error.

In Docket No. 98–045–2, published on June 20, 2000 (65 FR 38179–38182), make the following correction: On page 38181, in § 130.11, in the table, under the column User Fee, correct "$162.00" to read "$162.50".

Done in Washington, DC, this 14th day of July 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–18366 Filed 7–19–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 590

[Docket No. 99–012F]

RIN 0583–AC71

Fee Increase for Egg Products Inspection—Year 2000

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees that it charges egg product plants for providing overtime and holiday inspection services. These fee increases reflect the total cost of inspection, including the national and locality pay raise for Federal employees, inflation, applicable overhead costs, and other inspection costs.

EFFECTIVE DATE: July 30, 2000.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130-S, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3552.

SUPPLEMENTARY INFORMATION:

Background

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*) provides for the inspection of egg products by Federal inspectors at official plants. Federal inspection protects the health and welfare of consumers by ensuring that egg products are wholesome, not adulterated, and properly labeled and packaged.

The Agricultural Marketing Service (AMS) was responsible for administering the EPIA from its enactment in 1970 until 1995. At that time, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354; 7 U.S.C. 6981) delegated food safety responsibilities to the Under Secretary of Agriculture for Food Safety. The Department subsequently revised its regulations to transfer egg product inspection functions under the EPIA to FSIS. AMS retained only those functions related to their shell egg surveillance program. The regulations governing the inspection of eggs and egg products (9 CFR Part 590) were transferred to Part 9 of the Code of Federal Regulations on December 31, 1998 (63 FR 72352).

FSIS bears the cost of mandatory inspection. However, the EPIA specifies that plants pay for overtime and holiday inspection services (21 U.S.C. 1053). There has not been a change in overtime and holiday fees for egg products inspection services since the transfer of program functions from AMS to FSIS in May 1995. AMS established and implemented the current fees in November 1994. These fees reflect only the direct costs of inspection at that time and are insufficient to recover FSIS's current costs for delivery of inspection service.

In order to recover the full cost of inspection, FSIS is increasing its rates to charge overtime and holiday fees for egg products inspection services that are the same as overtime and holiday fees for meat and poultry inspection. The Agency is making the fees for meat, poultry, and egg inspection services the same because these services are indistinguishable from a cost standpoint. Although these fee increases are large, they reflect the total cost of inspection, including national and locality pay raises for Federal employees, inflation, applicable overhead costs, and other inspection costs. The current and new FSIS overtime and holiday inspection services fees for egg products plants are reported in Table 1.

TABLE 1.—CURRENT AND NEW FEES FOR OVERTIME AND HOLIDAY INSPECTION SERVICES FOR EGG PRODUCTS PLANTS

Service ($/hr.)	Current	New
Overtime Inspection Services	26.16	39.76
Holiday Inspection Services	17.44	39.76

Table 2 shows salary, overhead, and other inspection costs for Fiscal Year (FY) 1998, and the projected added inflation and Federal pay increases for FY 1999 and FY 2000 used to obtain the total amount from which the new rates are derived. These costs are the total costs for meat, poultry, and egg products inspection services. Overhead costs are the indirect costs for administration and management associated with providing inspection services. Other inspection costs include direct costs for travel and laboratory support costs associated with inspection services.

TABLE 2.—COMPONENTS OF FEE INCREASE—AGENCY TOTAL INSPECTION COSTS

Component	$Thousand	Percent
Direct Salaries	57,242	56.86
Inflation and Pay Increase	7,951	7.90
Overhead	22,197	22.05
Other Inspection Costs (Travel and Laboratory Support)	13,282	13.19
Total	100,672	100

Beginning with the Federal fiscal year 2001, FSIS intends to annually review its fees for overtime and holiday egg products inspection services, as well as fees for meat and poultry inspection services, to allow for necessary adjustments on a fiscal year basis. The fiscal year approach is an accepted accounting principle that will facilitate more consistent and timely proposals to adjust both fees and assist the Agency and affected industry in planning for these fee adjustments. The Agency intends to explore the possibility of publishing a three to five year plan of fee rate adjustments based on estimates of cost escalation.

FSIS loses from $80,000 to $100,000 in revenue for every two-week period that the final rule is delayed in being published. To recover the increased costs in an expeditious manner, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**. Therefore, the increases in fees will be effective July 30, 2000.

Proposed Rule and Comments

On March 3, 2000, FSIS published a proposed rule (65 FR 11486) to increase the fees that it charges egg products plants for providing overtime and holiday inspection services. FSIS initially provided 60 days for public comment, ending on May 2, 2000. In response to a request for more time to

comment to allow for the development of supporting data related to the impact of the proposed rule, FSIS extended the comment period for 30 days, until June 1, 2000. The Agency received no additional comments during the extended comment period.

The Agency received two comments from industry organizations opposing the increase in fees. The Agency addresses their specific objections.

Comment: Commenters opposed the increase in fees because it is a significant increase.

Response: The Agency agrees that the increase in overtime and holiday inspection fees for egg products inspection services is significant. However, as the Agency stated in the proposed rule, the Agency has not increased these fees for several years despite the escalation of the cost of performing inspection. FSIS is required to recover the full costs of overtime and holiday inspection services.

Comment: A commenter stated that the increase in fees would seriously damage the profitability of most egg processing firms operating on a contractual basis of sales with its customers for FY 2000.

Response: The commenter included no data to characterize the extent of the perceived impact. The increase in fees provided for by this final rule will not be effective until late in FY 2000. Therefore, any impact on the profitability of egg processing firms operating on a contractual basis of sales with its customers for FY 2000 should be minimized. Regardless, as was mentioned earlier, FSIS is required to recover the full costs of overtime and holiday inspection services.

Comment: One commenter asserted that nearly half of the fee is administrative expense, which, the commenter stated, is an unacceptable Federal administrative inefficiency.

Response: "Overhead" accounts for 22.05% of the cost of the fees and the "Other Inspection Costs" category makes up 13.19% of the cost of the fees. "Other Inspection Costs" include expenditures for travel and laboratory support, both of which are a necessary expense for inspection services.

Comment: A commenter disagreed with the Agency's assessment that the fee increases will amount to a $0.0003 increase in cost per pound of product. The commenter calculated that costs per pound will be 33% greater than the Agency estimated.

Response: Since the commenter did not submit any data to verify or support its claim, the Agency has no reason to change its original estimate.

Comment: One commenter recommended phasing in the fee increases over a period of a minimum of three to five years.

Response: FSIS cannot phase-in the cost increase because it is obliged by law to recover the full cost of providing overtime and holiday inspection services. The Agency currently charges meat and poultry establishments the same fees for overtime and holiday inspection services that are being required for egg products plants by this rule. The Agency derived its new fee by considering costs for meat, poultry, and egg products inspection services.

Comment: A commenter stated that the yearly increase of costs of $13,700 per firm, "would be devastating to many small, family-owned poultry operations."

Response: FSIS had estimated in the proposed rule that the proposed overtime and holiday inspection services fee increases would result in an increase in costs per firm of $13,700 for FY 2000. The $13,700 figure is an average cost estimate. As mentioned later in the preamble, small plants in the egg products industry will not be affected adversely by the fee increases because these increases represent only a small increase in the costs currently borne by those plants that elect to use overtime and holiday services. Some firms may not avail themselves of overtime or holiday inspection services or use them only a very limited basis. Therefore, their additional expenses would be negligible.

Summary of the Final Rule

FSIS is amending § 590.126 of 9 CFR to increase the fee for providing overtime inspection services from $26.16 per hour per program employee to $39.76 per hour per program employee. For holiday services, FSIS is amending § 590.128(a) to increase the fee from $17.44 per hour per program employee to $39.76 per hour per program employee.

The Agricultural Marketing Act of 1946, as amended, provides the authority for collection of fees approximately equal to the cost of voluntary egg grading programs. AMS retains the responsibility of changing the fees set out in the regulations governing the grading of eggs (7 CFR part 55). FSIS is amending 9 CFR 590.130 to delete the reference to regulations governing the collection of fees associated with the voluntary grading of eggs.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this action will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities. There are 73 egg products firms, and all but 5 would be classified as small on the basis of the Small Business Administration size definitions (having under 100 employees in a stand-alone establishment or under 500 employees in an in-line establishment).

Small plants in the egg products industry will not be affected adversely by the fee increases provided for because these increases reflect only a small increase in the costs currently borne by those entities that elect to use overtime and holiday inspection services. These holiday and overtime inspection services are generally sought by plants with larger production volume, greater complexity and diversity in the products they produce, and the need for on time delivery of large volumes of product by their clients—generally large commercial or institutional establishments. Plants with smaller production are unlikely to use a significant amount of overtime and holiday inspection services. Plants seeking FSIS services are likely to have calculated that the incremental costs of overtime and holiday inspection services would be less than the incremental expected benefits of additional revenues they would realize from additional production.

Economic Effects

Under the new fees, the Agency would expect to collect nearly $2.5 million in revenues in a year, compared to the $1.5 million under current fees. The total volume of U.S. egg product production in 1998 was 3.2 billion pounds. The increase in cost per pound of product associated with the overtime and holiday fee increase is $0.0003. Even in a competitive industry like egg products, this amount of increase in annual production costs, if firms choose to use the service, would have an insignificant impact on profits and prices. The increase in costs per firm would be about $13,700. On average, this would not be a significant increase in annual production costs given the volume of production. Egg product

firms produce an average of 44.3 million pounds of product annually.

TABLE 3.—REVENUES FOR INSPECTION SERVICES

[In thousands]

Current	Proposed
$1,482	$2,460

The industry is also likely to pass through a significant portion of the fee increase to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to significantly reduce demand for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete System of U.S. Demand for Food. USDA/ERS Technical Bulletin No. 1821, 1993, p.24). Because of this inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share due to an increase in inspection fees.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 590.320 through 590.370 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons stated in the preamble, 9 CFR part 590 is amended as follows:

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

2. Sections 590.126 and 590.128(a) are revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $39.76.

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $39.76.

* * * * *

§ 590.130 [Amended]

3. Section 590.130 is amended by removing the last sentence of the section.

Done in Washington, DC, on: July 13, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–18254 Filed 7–19–00; 8:45 am]

BILLING CODE 3410–DM–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700 and 702

Prompt Corrective Action; Risk-Based Net Worth Requirement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: In 1998, the Federal Credit Union Act was amended to require NCUA to adopt a system of prompt corrective action for federally-insured credit unions. As a separate component of that system, NCUA is required to define credit unions that are "complex" by reason of their portfolio of assets and liabilities and to develop a risk-based net worth requirement to apply to such credit unions in the "well capitalized" or "adequately capitalized" statutory net worth categories. The NCUA Board issued a proposed rule consisting of a three-step process for defining a "complex" credit union and for determining its risk-based net worth requirement under either of two methods. As revised to reflect public comments and to incorporate other improvements, the final rule narrows the definition of "complex" by minimum asset size and minimum risk-based net worth requirement; modifies the composition of certain risk portfolios; adjusts certain corresponding thresholds and risk weightings; and adds a risk mitigation credit.

DATES: Effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: *Technical:* Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, telephone 703/518–6360; *Legal:* Steven W. Widerman, Trial Attorney, Office of General Counsel, telephone 703/518–6557, at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Credit Union Membership Access Act

On August 7, 1998, Congress enacted the Credit Union Membership Access Act, Pub. L. No. 105–219, 112 Stat. 913 (1998). Section 301 of the statute added a new section 216 to the Federal Credit

Union Act, 12 U.S.C. 1790d (hereinafter referred to as "CUMAA" or "the statute" and cited as "§ 1790d"). Section 1790d requires the NCUA Board to adopt by regulation a system of "prompt corrective action" ("PCA") to commence when a federally-insured "natural person" credit union becomes undercapitalized. The statute designated three principal components of PCA: (1) a framework of mandatory actions prescribed by statute, § 1790d(c), (e), (f) and (g), and discretionary actions developed by NCUA, which are indexed to five statutory net worth categories and their corresponding net worth ratios, § 1790d(c); (2) an alternative system of PCA to be developed by NCUA for credit unions that CUMAA defines as "new," § 1790d(a)(2); and (3) a risk-based net worth ratio to apply to credit unions that NCUA defines as "complex." § 1790d(d). The third component alone is the subject of this final rule.

2. New Part 702—Prompt Corrective Action

Following the statutory mandate, the NCUA Board adopted as a final rule ("part 702") a comprehensive system of PCA consisting of a framework of mandatory and discretionary supervisory actions and an alternative system of PCA to apply to "new" credit unions. 12 C.F.R. 702 *et seq.* (2000); 65 FR 8560 (February 18, 2000).[1] For credit unions that do not meet the statutory definition of a "new" credit union, part 702 establishes a framework of mandatory and discretionary supervisory actions, indexed to the five net worth categories, and implements statutory conditions triggering conservatorship and liquidation. 12 C.F.R. 702.201—702.206. For credit unions that CUMAA defines as "new"—those having been in operation less than ten years and having $10 million or less in assets, § 1790d(o)(4)—part 702 establishes a similarly-structured alternative system of PCA that recognizes that "new" credit unions initially have no net worth, need reasonable time to accumulate net worth, and must have incentives to ultimately become "adequately capitalized." § 1790d(b)(2)(B). Under part 702, the net worth ratio and category of a credit union, whether "new" or not, are determined quarterly. 12 C.F.R. 702.101(a)(1), 702.302(a).

In addition to the substantive components of PCA, an independent appeal process is available to affected credit unions and officials to appeal decisions by NCUA staff imposing certain discretionary supervisory actions, and decisions by the NCUA Board reclassifying a credit union to a lower net worth category on safety and soundness grounds. 12 C.F.R. 747.2001 *et seq.* (2000). Part 702 also prescribes reserving and dividend payment requirements to conform to CUMAA's earnings retention requirement. § 1790d(e); 12 C.F.R. 702.401 *et seq.*

3. Risk-Based Net Worth Requirement

Independently of the general system of PCA in part 702, CUMAA requires NCUA to develop a definition of a "complex" credit union based on the risk level of a credit union's portfolio of assets and liabilities, § 1790d(d)(1), and to formulate a risk-based net worth ("RBNW") requirement to apply to credit unions meeting that definition. The RBNW requirement must "take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized [6 percent] may not provide adequate protection." § 1790d(d)(2). NCUA was encouraged to, "for example, consider whether the 6 percent requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks. The design of the [RBNW] requirement should reflect a reasoned judgment about the actual risks involved." S. Rep. No. 193, 105th Cong., 2d Sess. 13 (1998) (S. Rep.).

These specifications reflect the Department of the Treasury's recommendation to Congress to require NCUA to develop a supplemental RBNW requirement "for larger, more complex credit unions * * * to take account of risks * * * that may exist only for a small subset of credit unions." U.S. Dept. of Treasury, *Credit Unions* (1997) at 71.

CUMAA demands that a credit union that meets the definition of "complex," and whose net worth ratio initially places it in either of the "adequately capitalized" or "well capitalized" net worth categories, must satisfy a separate RBNW requirement, which may exceed the minimum net worth ratio corresponding to its initial category (6 percent and 7 percent, respectively), in order to remain classified in that category.[2] § 1790d(c)(1)(A)(ii) and (c)(1)(B)(ii). A "well capitalized" or "adequately capitalized" credit union that fails to meet its RBNW requirement is classified by statute in the "undercapitalized" net worth category, and will be subject to the mandatory and discretionary supervisory actions applicable to that category. § 1790d(c)(1)(c)(ii).

CUMAA set August 7, 2000, as the deadline for issuing the final rule, and January 1, 2001, as its effective date. CUMAA § 301(d)(2)(B) and (e)(2). Accordingly, the RBNW requirement for credit unions meeting the definition of "complex" will first apply on the basis of data in the Call Report due to be filed by quarterly filers on April 23, 2001, reflecting activity in the first quarter of 2001.

4. Rulemaking Process

As directed by CUMAA, NCUA commenced rulemaking by issuing an Advance Notice of Proposed Rulemaking ("ANPR") which, among other things, both suggested and invited proposed concepts for an RBNW requirement and criteria for defining "complex." CUMAA § 301(d)(2)(A). 63 FR 57938 (October 29, 1998). By the comment deadline of January 27, 1999, NCUA received 34 comment letters from 32 commenters, the majority of which addressed the RBNW requirement.

On February 3, 2000, NCUA issued a proposed rule establishing a three-step process. 65 FR 8597 (February 18, 2000). The first step determined whether a credit union meets the definition of "complex." The second step relied on Call Report data to determine a credit union's RBNW requirement. The final step permitted a credit union to substitute certain alternative calculations that may reduce its RBNW requirement. The proposed rule discussed and reflected comments that NCUA had received in response to the ANPR. 65 FR at 8598–8599.

By the close of the comment period for the proposed rule, April 18, 2000, NCUA received 119 letters submitted by 113 public commenters (a few of whom submitted more than one comment). Comments were received from 42

[1] Except for sections 702.103 through 702.106, which are the subject of this final rule, new part 702 takes effect August 7, 2000, and will first apply on the basis of data in the Call Report due to be filed January 22, 2001, reflecting activity in the fourth quarter of 2000.

[2] The RBNW requirement also indirectly impacts credit unions in the "undercapitalized" and lower net worth categories, which are required to operate under an approved net worth restoration plan. The plan must provide the means and a timetable to reach the "adequately capitalized" category. § 1790d(f)(5); 12 CFR 702.206(c). However, for "complex" credit unions in the "undercapitalized" or lower net worth categories, the minimum net worth ratio "gate" to that category will be 6 percent or the credit union's RBNW requirement, if higher than 6 percent. In that event, a complex credit union's net worth restoration plan will have to prescribe the steps a credit union will take to reach a higher net worth ratio "gate" to that category. *See* 12 CFR 702.206(c)(1)(i)(A).

federal credit unions, 26 state credit unions, 4 corporate credit unions, 21 state credit union leagues, 4 individuals serving as credit union directors, 4 credit union industry trade associations, an association of state credit union supervisors, 2 state financial institution regulators, and a bank which co-sponsors a collective investment fund for credit unions. In addition, comments were received from 2 consultants, 2 accounting firms, and 3 securities dealers and/or advisors, each of which serves credit union clients. A banking industry trade association also commented on the proposed rule.

A preponderance of commenters advocated a minimum asset size as a criterion for defining "complex," and criticized labeling a credit union "complex" when its RBNW requirement is 6 percent or less. For the various risk portfolios, commenters generally suggested upward adjustments to the threshold levels and downward adjustments to the corresponding risk weightings; however, most provided no justification or empirical evidence to support the suggested adjustment. The unsupported comments are noted but not discussed in the preamble.[3] The handful of comments urging NCUA to abandon or ignore the purpose and criteria that Congress expressly prescribed for the RBNW requirement, and which NCUA lacks discretion to modify, are neither noted nor discussed in the preamble.[4] All other comments are analyzed generally in section C. below, except for the single banking industry trade association comment, which is addressed separately in section D.2. below.

B. Principal Differences Between Proposed Rule and Final Rule

As revised to incorporate public comments and improvements initiated by NCUA staff, the final rule differs from the proposed rule in the following principal respects:

1. *Applicability of RBNW requirement.* The proposed rule featured a "four-trigger" test defining the term "complex" according to whether any one of four risk portfolios is exceeded by a corresponding threshold percentage of total assets. The final rule abandons that test in favor of a simple standard of applicability—an RBNW requirement is applicable, and must be met, only if a credit union's total assets exceed $10 million and its RBNW requirement exceeds 6 percent. § 702.103.

2. *Classification and weighting of "Investments" by weighted-average life.* For purposes of defining "complex" and for calculating a credit union's RBNW requirement, the proposed rule generally identified an investment as long-term if its weighted-average life or next rate adjustment period was greater than three years. The final rule expands the proposed "Long-term investments" risk portfolio into a comprehensive "Investments" risk portfolio consisting of all investments permitted by law, regardless whether short- or long-term. § 702.104(c). A weighted-average life is specified for each type of credit union investment. § 702.105. When calculating the RBNW requirement, the contents of the "Investments" risk portfolio is classified among weighted-average life "buckets." Each bucket then receives a corresponding risk weighting. §§ 702.106(c), 702.107(c). Investments in CUSOs are defined as having a weighted-average life of greater than 1 year, but less than or equal to 3 years, § 702.105(e), and are subsequently risk weighted at 6 percent. § 702.106(c)(2).

3. *Redefinition and zero weighting of "Low risk assets."* The proposed "Low-risk assets" risk portfolio consisted of cash and cash equivalents and was risk weighted at 3 percent. The final rule moves cash on deposit in financial institutions and cash equivalents (*e.g.*, investments with a maturity of 90 days or less)—which carry low risk—to the "Investments" risk portfolio, where they continue to be weighted at 3 percent. § 702.106(c)(1). The "Low risk assets" risk portfolio is left to consist exclusively of cash on hand (*e.g.*, coin and currency) and the National Credit Union Share Insurance Fund ("NCUSIF") deposit. § 702.104(d). Because those assets carry virtually no risk, the final rule reduces the risk weighting of that portfolio to zero. § 702.106(d).

4. *5-year maturity and repricing threshold for "Long-term real estate loans."* The proposed "Long-term real estate loans" risk portfolio established a minimum maturity and repricing threshold of 3 years. The final rule increases the maturity and repricing threshold to 5 years in order to achieve general parity between consumer and real estate loans. § 702.104(a). This will ensure a risk-weighting consistent with relative economic value exposure for all real estate loans (other than member business loans) that mature or reprice within 5 years, regardless of underlying real estate-related collateral. The 5-year threshold will omit a significant amount of home equity loans from this risk portfolio, yet still capture the majority of real estate loans with above average interest rate risk.

5. *Risk mitigation credit.* For credit unions that do not meet their RBNW requirement under the "standard calculation" or by using "alternative components," the final rule introduces a "risk mitigation credit." Under guidelines to be adopted by the NCUA Board, a credit union may apply for a credit to reduce the RBNW requirement to reflect mitigation of credit risk and/or interest rate risk. § 702.108. The NCUA Board may, in its discretion, grant a risk mitigation credit based on quantitative evidence of mitigation.

C. Section-by-Section Analysis of Final Rule

1. Structural Overview

(a) *Three-step process.* The final rule retains in restructured form a three-step process, applicable to all federally-insured credit unions.[5] The first step, reflected in section 702.103, determines whether an RBNW requirement is applicable. The proposed rule defined a credit union as "complex" if any one of four "risk portfolios" exceed a corresponding "trigger" percentage of total assets. 65 FR at 8609. The final rule replaces the four-trigger test with a simple standard of applicability based on minimum asset size ($10 million) and a minimum RBNW requirement (more than 6 percent).

If an RBNW requirement is applicable, the second step, reflected in section 702.106, prescribes the "standard calculation," which relies on the eight risk portfolios identified in § 702.104. Under the standard calculation, each of the risk portfolios is multiplied by one or more corresponding risk weightings to produce eight "standard components." (Risk weightings are applied to credit union investments by weighted-average life category, as specified in section 702.105.) The aggregate of the standard components equals the RBNW requirement a credit union must meet.

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[3] For this reason, references to the total number of comments received on a topic may not equal the number of comments specifically discussed in the preamble. In addition, nearly all comment letters contained multiple comments addressing various provisions of the proposed rule.

[4] For example, such comments advocated exempting from the RBNW requirement credit unions having a CAMEL "1" or "2" rating; urged NCUA to prescribe a 5 percent net worth ratio to be "well capitalized," as bank regulators do, even though CUMAA mandates a 7 percent minimum net worth for that category, § 1790d(c)(1)(A); proposed limiting the RBNW requirement to off-balance sheet items; and urged approval of State rules allowing federally-insured, State chartered credit unions to grant member business loans to non-members.

[5] Throughout the final rule, including the tables in the preamble and the rule text, and the appendices to subpart A which follow the rule text, the terms "credit union" and "CU" refer to federally-insured credit unions, whether federal- or State-chartered. 12 CFR 702.2(c).

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The third step, reflected in section 702.107, permits a credit union to substitute any of three specific "standard components" in section 702.106 with a corresponding "alternative component" that may reduce the RBNW requirement against which the credit union's net worth ratio is measured. The alternative components recognize finer increments of risk.

Finally, a "risk mitigation credit" is introduced in section 702.108 to permit a credit union that fails its RBNW requirement under the "standard calculation" (step 2), and as computed using the "alternative components" (optional step 3), to apply for a credit against its RBNW requirement, reflecting mitigation of credit risk or interest rate risk.

When the three-step process is completed, an "adequately capitalized" (6 to 6.99 percent net worth ratio) or "well capitalized" (7 percent or greater net worth ratio) credit union retains its original net worth category classification if its net worth ratio meets or exceeds its RBNW requirement under the standard calculation, or as computed using one or more alternative components, or as reduced by a "risk mitigation credit". An otherwise "adequately capitalized" or "well capitalized" credit union whose net worth ratio falls short of its RBNW requirement declines by one and two net worth categories, respectively, to the "first tier" of the "undercapitalized" category, § 1790d(c)(1)(A)(ii) and (B)(ii), where it is subject to four mandatory supervisory actions. 12 CFR 702.202(c).

(b) *Reliance on Call Report data.* For the following reasons, the NCUA Board has decided as a matter of policy to rely primarily on the objective data collected in the Call Report to administer PCA generally, and to implement the RBNW requirement in particular. First, use of the Call Report will minimize any additional recordkeeping burden and intrusion on credit unions because credit unions already file Call Reports either quarterly or semiannually. Second, Call Reporting is an efficient system of measurement that is an appropriate vehicle for implementing minimum risk-based capital requirements on an industry-wide scale. Third, the "PCA Worksheet" that will accompany the Call Report will permit credit unions to readily compare their net worth ratio and corresponding category classification with an applicable RBNW requirement at any time, rather than to depend on notice from NCUA. Fourth, reliance on objective numerical standards will ensure uniformity in measurement and enforcement of the RBNW requirement.

Beginning with the 4th quarter of 2000, the Call Report will be accompanied by a "PCA Worksheet" which extracts data from the Call Report to populate two different schedules.[6] The first will compute a credit union's net worth ratio. The second will perform the "standard calculation" to first determine whether an RBNW requirement is applicable, and if so, to determine whether it is met by the credit union's net worth ratio. Independent of the Call Report, a separate form will be available to calculate the "alternative components" to determine if any reduce the RBNW requirement under the standard calculation.

Numerous commenters have encouraged NCUA to substantially expand and modify the Call Report on the theory that enhanced precision in the collection of PCA-related data would give them a greater opportunity to demonstrate mitigation of balance sheet risk. However, mandating such additional detail in the Call Report would increase the reporting burden for all credit unions while any resulting augmented level of precision would benefit a small minority. For this reason, NCUA plans only incremental expansion and modification of the Call Report as warranted by experience in implementing PCA. To that end, the NCUA Board adopts the practice of occasionally sacrificing precision for some in favor of simplicity for all.

Other commenters have encouraged NCUA to conduct a subjective assessment of credit unions' success, through modeling and other risk management techniques, to mitigate credit and interest rate risk, in spite of what an RBNW requirement may indicate. In this regard, the NCUA Board prefers not to circumvent the final rule's reliance on Call Report data as reflected in the "PCA Worksheet." However, NCUA will evaluate quantitative evidence of risk mitigation submitted by those credit unions that apply for a risk mitigation credit. § 702.108.

2. Section 700.1(i)—Withdrawal of Definition of "Risk Assets"

The proposed rule failed to delete part 700's definition of "risk assets" to reflect the repeal of section 116 of the Federal Credit Union Act ("FCUA"), 12 U.S.C. 1762. Current section 700.1(i) defines the term "risk assets" exclusively "[f]or the purpose of establishing the reserves required by section 116 of the [FCUA]." Former section 116 required a credit union to transfer a percentage of gross income to its regular reserve until the reserve equaled a prescribed percentage of the credit union's outstanding loans and risk assets. Former part 702 prescribed rules for implementing the statutory requirement to establish and maintain a regular reserve. CUMAA repealed section 116 of the FCUA. CUMAA § 301(f)(3). Former part 702 is in force under separate statutory authority until August 7, 2000—the effective date of new part 702, 65 FR 8560, which implements CUMAA's earnings retention requirement. *See* 12 U.S.C. 1790d(e). Under new part 702, neither PCA generally, nor the RBNW requirement specifically, utilizes the concept or the term "risk assets." Accordingly, the final rule abolishes that term as obsolete.

3. Section 702.2(k)—Definition of Weighted-Average Life

Both the standard component and the alternative component for "Investments" categorize investments according to weighted-average life for purposes of risk weighting. §§ 702.106(c), 702.107(c). The proposed rule defined "weighted-average life" ("WAL") as the "time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received, and then summing and dividing by the total amount of principal." 65 FR at 8068. *See* Fabozzi, Frank, and T. Dessa, eds., *The Handbook of Fixed Income Securities* (5th ed. 1997) (hereinafter "Fabozzi") at 539.

Twenty-two commenters addressed the proposed definition of WAL. All were content to use WAL to characterize relative interest rate risk, but ten preferred using "effective duration" or "modified duration" instead,[7] reasoning that they are more refined measures of interest rate risk exposure. In contrast, one commenter supported using the remaining term to maturity of the investment.

NCUA concedes that "effective duration," appropriately calculated, can be a more refined measure of interest

[6] December 1999 data indicates that all but 60 credit unions with assets of $10 million or more file their Call Reports electronically and, therefore, will benefit from the electronic flow of data from the Call Report to the accompanying "PCA Worksheet."

[7] "Effective duration" and "modified duration" are estimates of the percentage price change of an investment for a one percent change in interest rates. *See* Fabozzi at 104. "Duration" provides a time measure of when on average the cash flows of an investment are received based on the present value of the cash flows, rather than on the actual amounts to be received in the future. *See* Woelfel, Charles J., ed., *Encyclopedia of Banking and Finance* (10th ed. 1994) at 317.

rate risk exposure. In contrast, using remaining term to maturity, although simple, can dramatically overstate the risk of certain investments. Examination experience indicates that WAL provides a fair indicator of interest rate risk exposure for typical credit union investments. Furthermore, the current Call Report requires investments to be reported according to WAL. To change the basis for reporting investments in Schedule C of the Call Report would be unduly disruptive to the process of acclimating to PCA.

One commenter urged NCUA to go beyond a general WAL definition and establish approved methodologies and sources for determining WAL. NCUA believes this is unwarranted because the definition as proposed is sufficiently clear. Reliable models, and reasonable and supportable estimates of the time periods for cash flows, are readily available from investment industry sources. In addition, to establish a process for approving WAL sources and methodologies would be burdensome and unnecessarily intrusive.

The final rule retains the general WAL definition as proposed, § 702.2(k); however, to facilitate classification by WAL in the standard and the alternative components for "investments," the final rule specifies the WAL for certain categories of credit union investments. § 702.105.

4. Section 702.103—Applicability of Risk-Based Net Worth Requirement

To decide which credit unions must comply with "an applicable risk-based net worth requirement," §§ 702.101(a)(2), 702.102(a), 702.302(a), the proposed rule (in former § 702.104) featured a "four-trigger" test defining a credit union as "complex" if its holdings in any of four "risk portfolios," representing above-average risk, exceeded a corresponding "trigger" percentage of its total assets. 65 FR at 8609. This provision drew 124 comments—more than all but one other provision of the proposed rule—generally falling into three categories: those seeking to elevate the proposed "trigger" percentages, those critical of the test's methodology; and those preferring entirely different criteria for determining whether an RBNW requirement is applicable.

Addressing the trigger percentages of total assets, ten commenters urged raising the proposed 25 percent trigger for the "Long-term real estate loans" portfolio to between 30 and 50 percent, contending that a low percentage trigger would discourage lending. Two commenters disputed the validity of NCUA's reliance on comparable thrift institution data on long-term real estate loans to justify the 25 percent trigger. Nineteen commenters advocated increasing the proposed 12.25 percent trigger for the portfolio combining "Member business loans outstanding" and "Unused member business loan commitments," generally surmising that the 12.25 percent trigger was arbitrarily borrowed from elsewhere in CUMAA. *See* 12 U.S.C. § 1757a(a). Thirty-three commenters supported increasing the proposed 15 percent trigger for the "Long-term investments" portfolio to between 20 and 33 percent; citing the importance of investment income to profitability when loan volume is low. One commenter suggested setting the trigger percentages based on the decline in portfolio value based on gradual periodic rate increases, rather than based on a 300 basis point "rate shock." Six commenters insisted upon raising the proposed 5 percent trigger for the "Loans sold with recourse" portfolio to at least 10 percent of total assets, leaving a single commenter who was content with the 5 percent trigger.

Addressing the methodology of the proposed four-trigger test, seven commenters insisted that a credit union should be deemed to meet the definition of "complex" only if it exceeds one or more of the trigger percentages for a period of consecutive quarters, not just a single quarter. Under this scenario, the RBNW requirement would be a lagging indicator of risk, inconsistent with the purpose of PCA. Ten commenters suggested merging the "Long-term real estate loans" and "Long-term investments" portfolios under a single threshold ranging between 30 and 60 percent of total assets. Going further, another commenter proposed merging all four portfolios representing above-average risk under a single omnibus trigger percentage.

Notably, a substantial number of commenters appealed to the NCUA Board to replace the four-trigger test altogether. Thirty-one commenters sought to establish in its place a minimum asset "floor" as a criterion for defining "complex," reflecting the minimal level of risk to the NCUSIF posed by the aggregate assets of credit unions below a certain asset size. Commenters suggested setting that floor at amounts ranging from $5 million to $100 million in assets. In contrast, two commenters objected to the exclusion of credit unions based on asset size.

Taking an alternative approach, nineteen commenters suggested defining as "complex" only those credit unions that have an RBNW requirement exceeding 6 percent. This would entail a reversal in sequence—instead of requiring only those credit unions that meet the definition of "complex" to calculate and meet an RBNW requirement, all credit unions would have to review an RBNW calculation to determine if they exceed 6 percent. Those with an RBNW requirement in excess of 6 percent would be deemed "complex" and then must meet that requirement. Departing even further from the four-trigger test, another commenter apparently would have all credit unions calculate an RBNW requirement, but only those which ultimately fail to meet that requirement, whether more or less than 6 percent, would be designated "complex." Regardless which approach is adopted in the final rule, five commenters implored NCUA to minimize, if not to abandon, use of the statutory term "complex" due to what they perceive as its pejorative connotation.

The difference of opinion among commenters over the appropriate criteria for defining a "complex" credit union has caused the NCUA Board to review the statutory criteria for designing the RBNW requirement, § 1790d(d); to assess the impact of the four trigger-test compared to commenters' suggested alternatives, based on the most recent Call Report data; and to consider which approach will, in the end, most efficiently capture the risks to the NCUSIF that are the intended target of the RBNW requirement. In addition, the NCUA Board shares commenters' concern that a significant number of credit unions that met the definition of "complex" under the four-trigger test had an RBNW requirement of 6 percent or less. This reevaluation has persuaded the NCUA Board to abandon the four-trigger test in favor of a simple standard of applicability that combines minimum asset size and a minimum RBNW requirement.

Accordingly, the final rule provides that "a credit union is defined as 'complex' and an RBNW requirement is applicable" only if its total assets exceed $10 million and its RBNW requirement under the standard calculation exceeds 6 percent.[8] § 702.103. Both measures rely on quarter-end total assets as reflected in a credit union's most recent Call Report

[8] The final rule effectively exempts "new" credit unions under subpart C being defined as "complex" and subject to an RBNW requirement because, by definition, they have $10 million or less in assets. *Compare* §§ 702.310(b) *and* 702.103(a)(2). Therefore, the final rule deletes references to an RBNW requirement for "new" credit unions from sections 702.302(a) and (c) in subpart C.

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filed either quarterly or semiannually. [9] Wherever possible, the final rule uses the statutory term "applicable risk-based net worth requirement," *e.g.*, § 1790d(c)(1)(B)(ii) instead of the statutory label "complex." An RBNW is not "applicable" to a credit union that does not meet both criteria; its net worth category classification is decided solely by its net worth ratio.

(a)(1) *Minimum asset size.* The prerequisite $10 million asset "floor" imposed in the final rule reflects the conclusion that the aggregate assets of credit unions in that asset bracket do not expose the NCUSIF to material risk. CUMAA directed NCUA to develop an RBNW requirement that "take[s] account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized [6 percent] may not provide adequate protection." § 1790d(d)(2) (emphasis added); S. Rep. at 13 (1998). Aggregate insured shares of credit unions with $10 million or less in assets equal $17,269,585,004, or 5.15 percent of all insured shares. Of the 6195 credit unions in this asset bracket, currently 105 would be subject to an RBNW requirement under § 702.103(a)(2), representing $423,344,277 in insured shares. This would be the NCUSIF's maximum exposure in a worst case scenario that assumes all 105 credit unions with assets of $10 million or less fail and the NCUSIF is forced to absorb losses at the rate of 100 cents to the dollar. By comparison, today only 5 of the 105 credit unions meeting the definition of "complex" in that asset group would fail their RBNW requirement under the standard calculation. Under typical circumstances, the NCUSIF's risk exposure from credit unions with $10 million or less in assets is insufficient to be considered material.

With a sacrifice of minimal risk protection, the $10 million asset floor dramatically reduces the burden the RBNW requirement would impose. Credit unions with assets of $10 million or less number 6195, representing 58 percent of all credit unions. Thus, the $10 million asset floor relieves the majority of credit unions of any burden whatsoever associated with an RBNW requirement.

The $10 million asset floor parallels use of a $10 million measure elsewhere in CUMMA to trigger other PCA provisions. A maximum of $10 million in assets is one criterion of the statutory definition of a "new" credit union, which is subject to an alternative system of PCA. § 1790d(o)(4). CUMAA requires NCUA to provide assistance in preparing net worth restoration plans to credit unions having less than $10 million in assets. § 1790d(f)(2). In addition, excluding credit unions beneath the $10 million asset floor is consistent with the Treasury Department recommendation that led Congress to enact an RBNW component of PCA—that it is needed "for larger, more complex credit unions * * * to take account of risks * * * that may exist only for a small subset of credit unions." U.S. Dept. of Treasury, *Credit Unions* (1997) at 71.

(a)(2) *Minimum RBNW requirement.* The minimum 6 percent RBNW "floor" which the final rule imposes on credit unions with assets above $10 million reflects the conclusion that credit unions whose RBNW requirement is 6 percent or less fall outside the intended target of the RBNW requirement. CUMAA is explicit in concentrating the RBNW requirement on "material risks against which the [6 percent] net worth ratio required * * * to be adequately capitalized may not provide adequate protection." § 1790d(d). Further, NCUA was instructed to "consider whether the 6 percent requirement provides adequate protection against * * * relevant risks." S. Rep. at 13. The NCUA Board has determined that a 6 percent net worth ratio is sufficient to protect against an average level of risk, but that a measure of additional net worth is needed to compensate for risks which are above average. For this reason, the final rule limits the scope of its RBNW requirement to credit unions that have an above average level of risk exposure.

Under the proposed rule, all credit unions, through the "PCA Worksheet," were required to conduct the four trigger test, and once meeting the definition of "complex," were required to calculate and meet an RBNW requirement. 65 FR at 8609. With the minimum 6 percent RBNW floor, that process is reordered as explained above; all credit unions with assets above $10 million will now have to review a standard RBNW calculation reflected in the "PCA Worksheet" to determine whether the result exceeds 6 percent. If so, the RBNW requirement is applicable and must be met; if not, an RBNW requirement is not applicable and the credit union retains its original net worth category classification. Although all credit unions with assets above $10 million now will have to review an RBNW calculation, fewer will be required to meet an RBNW requirement.

Primarily as a result of the final rule's $10 million asset floor, it is estimated that 452 credit unions will be required to meet an RBNW requirement under the final rule—less than one-third the number required to do so under the proposed rule. *See* section E below.

(b) *Optional Call Report filing.* The proposed rule required the RBNW requirement to be determined according to a credit union's Call Report schedule—quarterly for quarterly filers, and semiannually for semiannual filers. 65 FR at 8599. *Compare* 12 CFR 702.101(a) (quarterly determination of net worth and corresponding category). One commenter protested that this would deprive semiannual filers of the means to demonstrate either that an RBNW requirement no longer is applicable, or that their RBNW requirement has declined (and perhaps has been met) in the 1st and 3rd quarters. Another commenter proposed a solution—optional 1st and 3rd quarter Call Report filing for semiannual filers. Another would mandate quarterly Call Report filing by all credit unions that meet the definition of "complex."

Mandatory quarterly Call Report filing for credit unions that meet the definition of "complex" currently is not warranted; however, NCUA concurs that optional 1st and 3rd quarter Call Report filing would give those credit unions maximum flexibility. The final rule is modified accordingly. § 702.103(b).

5. Section 702.104—Risk Portfolios Defined.

The proposed rule (in former § 702.103) established eight "risk portfolios," representing various levels of risk. 65 FR at 8608. The portfolios consist of assets, liabilities and contingent liabilities, as reflected in Call Report data to be collected in the "PCA Worksheet" accompanying the Call Report. In subsequent sections, the contents of each risk portfolio will be multiplied by one or more corresponding risk weightings. The final rule retains the eight proposed risk portfolios, modified as follows in section 702.104 (*see* Table 1 in § 702.104):

(a) *Long-term real estate loans.* The proposed risk portfolio for "Long-term real estate loans" consisted of all fixed-rate real estate loans and lines of credit that mature or reprice in greater than 3 years. 65 FR at 8606. NCUA examination experience and research confirmed that a vast majority of member loans with above average exposure to interest rate changes are real estate related. 65 FR at 8600. The 124 overlapping comments addressing this provision generally seek either to

[9] When part 702 or the Call Report refers to total assets at quarter-end, it means the month-end balance as of the end of calendar quarter. *E.g.*, §§ 702.2(j)(1)(i) and (iv), 702.104, 702.106, 702.107.

increase the 3-year maturity and repricing threshold or to narrow the composition of the portfolio by excluding certain types of loans.

Forty-eight commenters urged an increase in the 3-year maturity and repricing threshold to either 5 or 7 years on various grounds. Although careful not to advocate an augmented risk portfolio for consumer loans, the majority of commenters protested that a threshold as low as 3 years discriminates against real estate loans compared with consumer loans, even though they have similar economic value exposure,[10] indicating little difference in interest rate risk. The commenters predicted that this unequal treatment would cause credit unions to migrate to consumer lending at the expense of real estate lending in order to elude this risk portfolio. This would result in an increase in credit risk exposure due to the generally better performance and more stable collateral of real estate loans when compared with consumer loans. On similar grounds, nineteen commenters urged NCUA to exclude home equity loans with maturities of fewer than 6 or 7 years.

Commenters supporting a 5-year maturity and repricing threshold for this portfolio observed that NCUA adopted a 5-year threshold in its pre-PCA definition of "risk assets." 12 C.F.R. § 700.1(i); *but see* section C.2. above. Others pointed elsewhere in the proposed rule, observing that the alternative component for "Long-term real estate loans" features a 3-to-5 year remaining maturity bucket that receives the risk weighting designated for average risk assets (6 percent). In contrast, a single commenter was content with the 3-year threshold, and another went even further to boldly suggest applying it to consumer loans as well.

With regard to the composition of the "Long-term real estate loans" portfolio, a commenter suggested excluding loans having a government guarantee against default. While a guarantee against default mitigates credit risk, it does not affect interest rate risk. Because this portfolio measures primarily interest rate risk, it is appropriate that long-term, government guaranteed loans remain in this risk portfolio.

Seeking a means to demonstrate risk mitigation, twenty-three commenters wished to exclude loans, or even the whole portfolio, upon proof that "matching" loans against liabilities or "hedging" through derivatives mitigates corresponding balance sheet risk. Fourteen commenters wanted to adopt WAL instead of contractual maturity to report real estate loans because WAL is more accurate and would reflect anticipated mortgage loan prepayments. If adopted, both suggestions would substantially narrow the scope of this risk portfolio.

NCUA concedes that "matching" and "hedging" are prudent risk management tools, and that WAL is a potentially more accurate measure of risk exposure. As explained in section C.1(b) above, the NCUA Board has decided as a matter of policy to rely on objective data captured in the Call Report and reflected in the "PCA Worksheet" as the most efficient means to implement PCA. For this reason, the final rule neither incorporates WAL in the "Long-term real estate loans" risk portfolio, nor excludes "matched" or "hedged" loans.[11]

Two commenters recommended that this portfolio combine mortgage-backed securities with long-term real estate loans. Due to the similarity in risk characteristics, NCUA concurs that this is the preferred business practice to manage balance sheet risk on an aggregate basis (*See* NCUA Letter to Credit Unions No. 99–CU–12, "Real Estate Lending and Balance Sheet Risk Management," August 1999); however, since aggregate measurement is less accurate than measurement of the specific components, and would impose an undue burden on some credit unions to estimate reliable prepayment assumptions, NCUA declines to mandate the practice for all credit unions.

Seeking a fundamental modification, three commenters recommended applying the three-year contractual maturity exclusion to the scheduled principal payments of all real estate loans. This is unnecessary because scheduled principal repayments are already taken into consideration in the risk weighting assigned as a result of NCUA's evaluation of the potential economic value exposure of long-term real estate loans.

To achieve general parity among all types of loans, the final rule increases the maturity and repricing threshold for the "Long-term real estate loans" risk portfolio to 5 years. § 702.104(a). This will ensure a risk-weighting consistent with relative economic value exposure for all types of loans (other than member business loans) that mature or reprice within 5 years, regardless of underlying collateral. The 5-year threshold will omit a significant amount of home equity loans from this risk portfolio, yet still capture the vast majority of real estate loans with above average interest rate risk.

(b) *Member business loans outstanding.* The proposed risk portfolio for "Member business loans outstanding" consisted of loans outstanding that qualify as member business loans ("MBLs") under NCUA's definition, 12 CFR 723.1, or under a State's NCUA-approved definition. 65 FR at 8608. Unused MBL commitments were expressly excluded because they are addressed in a separate risk portfolio, § 702.104(g).

NCUA received several comments generally seeking to exclude certain MBLs from this risk portfolio. Eleven commenters sought to exclude portions of MBLs that are government guaranteed, and six urged excluding portions with credit enhancements, such as those secured by shares or deposits in a federally-insured financial institution, or guaranteed by a non-governmental organization. NCUA's rule on MBLs ("Part 723") already excludes from the loans-to-one-borrower limit, § 723.8, portions of an MBL that are either: "fully or partially" government guaranteed; subject to a government's advanced commitment to purchase; or fully secured by shares or deposits in a federally-insured financial institution. § 723.9(a)(3). *See also* § 723.1(b)(4), 64 FR 28721, 28722 (May 27, 1999). Consistent with part 723, NCUA declines to exclude MBLs guaranteed by a non-governmental organization from the "Member business loans outstanding" risk portfolio.

Purporting to seek further consistency with part 723, five commenters insisted upon excluding those MBLs having an aggregate remaining balance equal to or less than $50,000. § 723.1(b)(3). However, the NCUA Board has determined that part 723's $50,000 threshold is measured against the original balance of the loan at the time it is originated, not its subsequent remaining balance. If a loan qualifies as an MBL when it is originated, it remains so until it has been repaid in full, sold, or otherwise disposed of.

Four commenters urged excluding loans secured by real estate from this risk portfolio, contending that long-term

[10] "Economic value exposure" refers to price sensitivity of a credit union's assets (changes in the value of the assets over different interest rate/yield curve scenarios). NCUA Interpretive Ruling and Policy Statement No. 98–2, "Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities," 63 FR 24097, 24101 (May 1, 1998).

[11] Federally-charted "natural person" credit unions may apply to participate directly, or through a corporate credit union acting as a vendor, in an interest-rate-risk-hedging program involving derivative transactions. 12 CFR 703.140. Corporate credit unions may apply under Appendix B to 12 CFR 704 for expanded authorities to engage in derivative transactions.

fixed-rate MBLs belong in the "Long-term real estate loans" risk portfolio because not all MBLs are long-term and fixed-rate. This would potentially lead to a higher than necessary risk weighting for shorter-term MBLs. Similarly, four commenters suggested excluding loans secured by automobiles, as well as loans with maturities less than 3 years, asserting that they belong in the "Average risk assets" risk portfolio because such loans present minimal interest rate risk. Part 723 defines an MBL as any loan, line of credit, or letter of credit where the proceeds are used for commercial, corporate or agricultural purposes, or for other business investment property or venture. § 723.1(a). A loan that is fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence is not an MBL. § 723.1(b)(1). Such a loan would be included in either the "Long-term real estate loans" risk portfolio or the "Average risk assets" risk portfolio depending on its remaining maturity. Part 723 also excludes other loans from its definition of an MBL, § 723.1(b)(2)–(5), which would be included in the "Average risk assets" portfolio.

Finally, a single commenter sought to eliminate the "MBLs outstanding" risk portfolio altogether on ground that CUMAA did not explicitly mandate additional net worth for MBLs. In fact, CUMAA did not identify any particular assets warranting additional net worth; rather, the statute instructed NCUA to generally identify credit unions which meet a definition of "complex" based on their portfolios of assets and liabilities and to design an RBNW requirement that takes account of material risks not addressed by a 6 percent net worth ratio.

The final rule retains the "Member business loans outstanding" risk portfolio without modification. § 702.104(b).

(c) *Investments.* The proposed risk portfolio for "Long-term investments" (here renamed simply "Investments") consisted of investments with a WAL greater than 3 years or which reprice more frequently than 3 years, and investments in a collective investment fund or a registered investment company. 65 FR 8608. NCUA research and experience indicated that such investments have greater economic value exposure to interest rate changes than do investments with shorter terms. 65 FR at 8600. Investments which fell below the threshold for this portfolio qualify for either of the proposed "Low risk assets" or "Average risk assets" risk portfolios.

The 46 commenters who addressed this risk portfolio fall into two categories—those challenging the 3-year WAL and repricing threshold, and those who contend that certain investments belong in other risk portfolios. Forty-two insisted upon raising the threshold to between a low of 4 years and a high of 10 years, although few provided any rationale for the adjustment. In contrast, one commenter cited valuation modeling confirming that the 3-year threshold is reasonable. NCUA maintains that the 3-year WAL threshold is valid according to valuation modeling of fixed-rate investments. 65 FR 8600.

In regard to composition of the portfolio, one commenter suggested reducing the dollar balances of investments above the 3-year threshold by the amount of projected amortizations within 3 years. Another would offset that balance by the amount of investments having a WAL of less than one year. Two commenters proposed to exclude investments classified as "available-for-sale" under Statement of Financial Accounting Standards No. 115 ("SFAS 115") on the theory that marking-to-market takes into account their current market values. NCUA disagrees, however, because these investments have potential interest rate risk and the current mark-to-market is not reflected in net worth, which is generally limited to retained earnings. § 702.2(f); *See also* 65 FR at 8565. To put different assets in parity with each other, thirteen commenters insisted on putting investments with a WAL of less than one year in the "Low risk assets" portfolio.

NCUA concurs with commenters that the RBNW requirement should treat similar investments similarly in terms of risk, and has determined that the most comprehensive and efficient means to that end is to define investments at the outset by WAL only, as specified in § 702.105, and to subsequently apply the same risk weighting to all investments in the same WAL category. To implement this fundamental modification to the proposed rule, the final rule eliminates altogether the WAL and repricing threshold to distinguish long-term from short-term investments. Instead, the risk portfolio for investments is now expanded to consist of all investments permitted by law for federally-insured credit unions, including investments in CUSOs. § 702.104(c). To reflect this modification, this risk portfolio is renamed simply "Investments."

(d) *Low-risk assets.* The proposed risk portfolio for "Low risk assets" consisted of cash and cash equivalents as defined by Generally Accepted Accounting Principles ("GAAP"). 65 FR at 8608. GAAP generally interprets cash equivalents as investments with remaining maturities of 3 months or less. 65 FR at 8600 n.6.

Thirty commenters insisted that cash be treated as a "no risk asset" so that it receives a risk weighting of zero, instead of the 3 percent weighting that the proposed rule applied to this portfolio. Similarly, fourteen commenters inquired why a credit union's NCUSIF deposit was not also treated as a "no risk asset." Three commenters asserted that mutual funds with portfolios maturing within 90 days constitute cash equivalents and should be classified as "Low risk assets."

NCUA agrees that cash held by a credit union for normal operations—such as vault cash, ATM cash and teller cash—typically presents no risk because it is protected from loss by a credit union's fidelity bond. However, cash equivalents such as demand deposits and short-term investments at other financial institutions carry some degree of credit risk when they exceed applicable insuring limits. In contrast, the NCUSIF deposit clearly poses no credit risk to the NCUSIF or to the credit union. Further, although the NCUSIF deposit represents 1 percent of insured shares and deposits on a credit union's balance sheet, it typically is augmented by a maximum of 30 basis points in NCUSIF retained earnings. This 30 basis point cushion is available to absorb losses before the NCUSIF deposit would be impaired.

To distinguish no risk assets from low risk assets, the final rule deletes cash on deposit in financial institutions and cash equivalents (*e.g.*, investments with a maturity of 90 days or less) from the "Low risk assets" portfolio, effectively shifting them to the "Investments" risk portfolio, where they will subsequently be categorized in the one year or less WAL bucket and weighted at 3 percent. *See* §§ 702.106(c)(1), 702.107(c)(1). Cash on hand and the NCUSIF deposit remain in the "Low risk assets" risk portfolio, § 702.104(d); however, because those assets carry no appreciable risk, the final rule reduces to zero the risk weighting subsequently given to that portfolio in the corresponding standard component. § 702.106(d).

(e) *Average-risk assets.* The proposed risk portfolio for "Average risk assets" consists of assets which do not fall within the scope of any other risk portfolio because such assets are neither below nor above average in risk. 65 FR at 8608. This portfolio typically includes consumer loans, short-term

real estate loans and fixed assets, 65 FR at 8609, and is subsequently weighted at 6 percent to reflect the 6 percent net worth ratio required to be classified "adequately capitalized."

Two commenters argued that fixed assets should be put in the "Low risk assets" risk portfolio because land and buildings typically increase in value. However, NCUA research shows that credit unions with high levels of fixed assets on average have lower net income.

Addressing investments which had been subject to the proposed rule's 3-year WAL and repricing threshold—since abandoned—sixteen commenters argued that investments having a WAL of less than 1 year appropriately belong in the "Low risk assets" portfolio, where they would be weighted at 3 percent instead of 6 percent. Twenty-three commenters believed that mutual funds with a WAL of less than one year—which had been included in the proposed "Long-term investments" portfolio regardless of WAL or repricing date—also belong in this portfolio. The final rule addresses these suggestions elsewhere by classifying all investments by WAL, as specified in § 702.105, and applying a corresponding risk weighting, §§ 702.106(c), 702.107(c). Because the "Average risk assets" risk portfolio contains only those assets that do not belong in the risk portfolios discussed in sections 5.(a) through (d) above, the final rule retains the "Average risk assets" risk portfolio without modification. § 702.104(e).

(f) *Loans sold with recourse.* The proposed risk portfolio for "Loans sold with recourse" consisted of a credit union's outstanding balance of loans sold or swapped with recourse. 65 FR at 8608. As contingent liabilities, they are an off-balance sheet item and, therefore, do not fall in any of the other risk portfolios.

To avoid what was perceived as double-counting, seven commenters favored deducting recourse loans from this portfolio to the extent that they already have been reserved for through the provision for loan and lease losses expense in accordance with GAAP. NCUA disagrees because the "Allowance" standard component gives an offsetting credit for the Allowance for Loan and Lease Losses, § 702.106(h); thus, there is no redundant reserving. Loans sold with recourse are treated no differently than on-balance sheet loans that also require GAAP reserving but still receive a minimum 6 percent risk weighting. *See* 702.106(a)(1).

Two commenters asserted that this risk portfolio should include only the portion of a loan that is subject to recourse against the credit union. The final rule does not recognize partial recourse because the Call Report does not collect data in sufficient detail to distinguish partial from full recourse. *See* "Risk Based Capital Standards: Recourse and Direct Credit Substitutes," 65 FR 12320, 12344 (March 8, 2000) (proposal to require banks to maintain capital against full amount of assets supported by a partial recourse obligation).

One commenter requested corroboration on the risk exposure associated with recourse loans. NCUA maintains that examination experience with credit unions' limited activity in this area thus far suggests that the credit risk exposure associated with recourse loans is analogous to that associated with similar loans retained on the balance sheet. *See* 65 FR at 8601. In this regard six commenters urged NCUA to collect more detailed data to measure incremental levels and conditions of associated risk exposure. NCUA concurs that this information would be useful in developing risk gradations, identifying potential exclusions, and differentiating loans with only partial recourse. At present, however, only 55 credit unions report any recourse loan activity. Until this activity expands significantly, NCUA prefers to keep the burden and level of detail in recourse loan reporting to a minimum.

The proposed rule's silence about loans sold in the secondary mortgage market prompted a commenter to request NCUA to clarify whether such loans are considered loans sold with recourse. In response, the final rule expressly excludes loans sold to the secondary mortgage market that feature representations and warranties customarily required by the U.S. Government (*e.g.*, Ginnie Mae) and government-sponsored enterprises (*e.g.*, Fannie Mae, Freddie Mac). § 702.104(f). These include warranties that the credit union has underwritten the loan and appraised the collateral in conformity with identified standards. These warranties provide for the return of assets in instances of incomplete documentation or fraud. However, credit enhancing representations and warranties beyond the usual agency requirements are considered recourse and, therefore, are not excluded from this risk portfolio. The "Loans sold with recourse" risk portfolio is otherwise retained as proposed.

(g) *Unused member business loan commitments.* The proposed risk portfolio for "Unused member business loan commitments" segregates unused MBL commitments from actual loans because commitments represent off-balance sheet, contingent liabilities. 65 FR at 8608. Large draws on unused MBL commitments may cause liquidity problems and heighten exposure to credit risk. 65 FR at 8601.

Attempting to demonstrate a lower level of credit risk, two commenters wished to discount an unused commitment when it is revocable, *e.g.*, on grounds of a "material adverse condition." However, examiner experience indicates that MBL commitments typically do not feature a "material adverse conditions" clause as grounds for revocation.

From a different approach, three commenters proposed discounting unused commitments by half due to the unlikelihood that all of a credit union's unused commitments would be drawn upon simultaneously. As explained above, part 723 does not discount or reduce a loan's original balance when aggregating MBLs or unused commitments to apply the $50,000 exclusion under section 723.1(b)(3). To remain consistent with part 723, the final rule retains this risk portfolio as proposed. § 702.104(g). Commenters' observations already are reflected in the lower risk weighting (6 percent) the standard calculation applies to the entire contents of the "Unused member business loan commitment" portfolio, § 702.106(g), compared to the 12 percent risk weighting it applies to the proportion of the "Member business loans" risk portfolio in excess of 12.25 percent of total assets. § 702.106(b)(2).

(h) *Allowance.* As proposed, the "Allowance " risk portfolio provides a credit of 100 percent of a credit union's Allowance for Loan and Lease Losses ("ALL") not to exceed the equivalent of 1.5 percent of total loans. 65 FR at 8609. This credit is given to recognize that a credit union's ALL already mitigates risk.

The commenters were at odds in addressing the composition of the "Allowance" portfolio. One commenter suggested expanding the "Allowance" portfolio to include the "Allowance for investment losses," apparently unaware that SFAS 115 eliminated the need for that account. In bold contrast, another favored doing away with the portfolio altogether, objecting that it unnecessarily complicates the rule.

A single commenter suggested that the "Allowance" portfolio consist of the equivalent of a fixed 1.5 percent of loans regardless whether a credit union's actual ALL is less than 1.5 percent of total assets. In that event, a credit union would receive a credit to reduce its RBNW requirement for reserves that it does not actually have.

The other commenters challenged the portfolio's maximum of 1.5 percent of total loans. Several predicted that it will be a disincentive to fund the ALL above the equivalent of that ceiling. This claim is not persuasive, however, because credit unions are bound by GAAP and § 702.401(d) to compute the ALL accurately and in good faith, without regard to maximizing the credit derived from the "Allowance" risk portfolio. In any event, NCUA research indicates that two-thirds of all credit unions' ALL does not reach 1.5 percent of total loans.

The "Allowance" risk portfolio recognizes the credit risk mitigation resulting from reserving for losses in the ALL. Yet reserves in excess of 1.5 percent of total loans reflect higher than typical levels of credit exposure. 65 FR at 8601. To capture this higher risk, the ceiling on the "Allowance" risk portfolio remains intact in the final rule. § 702.104(h).

6. Section 702.105—Weighted-Average Life of Investments

Both the standard component and the alternative component for "Investments" categorize the contents of the corresponding risk portfolio according to weighted-average life for purposes of risk weighting. §§ 702.106(c), 702.107(c). For this purpose, section 702.2(k), discussed above, provides a general definition of WAL. Section 702.105 prescribes rules for determining the WAL of certain investments (see Table 2 in § 702.105).

(a) *Registered investment companies and collective investment funds.* The proposed rule made an exception to the general WAL definition only for investments in registered investment companies or collective investment funds (other than money market mutual funds), assigning them a WAL of greater than 5 years, but less than or equal to 7 years. 65 FR at 8608.

Commenters who addressed the single proposed exception for registered investment companies and collective investment funds insisted that the target or maximum WAL disclosed in a prospectus or trust instrument is the most accurate measure of interest rate risk. NCUA concurs in this suggestion, but prefers to use maximum disclosed WAL because a mutual fund's actual WAL may exceed its stated target.

The maximum WAL may be disclosed directly, or indirectly by reference to a maximum duration no greater than that of a bullet security (*i.e.*, a security with all principal due at maturity). A bullet security is analogous because, by definition, its WAL is equal to the time period until its maturity, since all of its principal cash flow occurs on its maturity date. For example, a mutual fund that limits its duration to that of a two-year Treasury note would be defined as having a WAL of two years, since a Treasury note with a period remaining to maturity of two years has a WAL of two years.

Five commenters insisted that short-term investment funds ("STIFs") and money market funds be treated equally for purposes of defining WAL because of their similarly low interest rate risk. Indeed, collective investment funds that adhere to STIF rules for national banks must have an average portfolio maturity of 90 days or less. 12 CFR 9.18(b)(4)(ii)(B)(1)–(3). NCUA concurs in this recommendation.

For registered investment companies and collective investment funds, the final rule is revised to incorporate maximum WAL as disclosed in a prospectus or trust instrument. § 702.105(a)(1). If not directly or indirectly disclosed there, however, the final rule retains the proposed WAL of greater than 5 years but less than or equal to 7 years. § 702.105(a)(3). Treating STIFs and money market funds equally, the final rule classifies them as having a WAL of 1 year or less. § 702.105(a)(2). To conform to these WAL classifications, the Call Report instructions will be revised to clearly classify mutual funds and collective investment funds by WAL.

(b) *Callable fixed-rate debt obligations and deposits.* As determined under the general WAL definition, the WAL of a callable fixed-rate debt obligation or deposit would be its actual maturity date. Five commenters addressed this result—two contending that the rule should take into consideration an option to redeem an investment prior to maturity; another urging use of "effective WAL," since the WAL of callable investments may change; and yet another preferring, without explanation, to rely on the WAL for callable "Agency" investments. One commenter criticized the use of WAL for callable investments as not appropriately recognizing the extent of risk.

Typical credit union investments in callable securities (such as "Agency" callable securities) are callable at the option of the issuer, not of the credit union. Investments in which credit unions hold an option to redeem prior to maturity typically would be characterized as "putable" investments,[12] rather than callable investments. Examination experience indicates credit unions rarely hold "putable" investment securities. In such rare instances, however, the general WAL definition would permit the WAL of "putable" securities to be computed on the basis of reasonable and supportable estimates of the times for principal cash flow.

To clarify reporting of debt obligations and deposit investments that are callable in whole at the option of the issuer, the final rule explicitly adopts the current Call Report practice of reporting such callable instruments with a WAL equal to the period remaining until the final maturity date, § 702.105(b), instead of the period remaining until a call date. The final rule does not rely on WAL for the entire portfolio of callable instruments because such a dollar-weighted average measure would reduce the accuracy of the risk measure.

(c) *Variable-rate debt obligations and deposits.* Under the proposed rule, a variable-rate debt obligation or deposit would be categorized by its next rate adjustment period, rather than by its WAL. 65 FR at 8608. NCUA received no comments on this outcome. To clarify reporting of variable-rate investments, the final rule explicitly adopts the current Call Report practice of reporting variable-rate debt obligations and deposits in the WAL category corresponding to the period remaining to the next rate adjustment. § 702.105(c).

(d) *Capital in mixed-ownership Government corporations and corporate credit unions.* The proposed WAL definition did not explicitly address the determination of WAL of stock in mixed-ownership Government corporations (*e.g.*, Federal Home Loan banks and NCUA's Central Liquidity Facility) or capital in corporate credit unions. However, a commenter's inquiry about the WAL of Federal Home Loan bank stock that may be redeemed after a notice period led the NCUA Board to examine the WAL of stock in mixed-ownership Government corporations, and member paid-in capital and membership capital in corporate credit unions. While such investments may have credit risk exposure, membership in such entities can provide credit unions with access to substantial sources of liquidity or funding. To better protect the NCUSIF from the risk of losses arising from liquidity events, NCUA encourages

[12] An investment is "putable" if the owner of the investment (*i.e.*, the holder) has the right, but not the obligation, to sell to the issuer at a given price (*i.e.*, the strike price) on or during a specified time period (*i.e.*, the exercise period). The issuer of a "putable" investment has the obligation to purchase the investment from the holder in the event the holder elects during the exercise period to sell to the issuer at the strike price. *See* Fabozzi at 11.

credit unions to join such entities that provide contingent liquidity.

To ensure that the WAL of investments in liquidity-enhancing entities does not excessively increase an RBNW requirement, thereby deterring such investments, the final rule explicitly specifies capital stock in mixed-ownership Government corporations, and member paid-in capital and membership capital in corporate credit unions, as having a WAL of greater than 1 year, but less than or equal to 3 years. § 702.105(d).

(e) *Investments in CUSOs.* The proposed rule did not explicitly address investments in CUSOs. By properly structuring a CUSO, a credit union may limit its losses resulting from such operations to the amount of its investment in, and loans to, the CUSO. NCUA believes that the NCUSIF will be better protected from the risk of losses arising from service operations, and credit union members will be better served, if credit unions are not discouraged from forming and participating in CUSOs. In the absence of a CUSO, balance sheet assets used to support CUSO service operations would be treated as average risk assets and would be risk weighted as such. To ensure that CUSO investments are treated similarly, the final rule defines investments in CUSOs as having a WAL of greater than 1 year, but less than or equal to 3 years, § 702.105(e), and subsequently weights them the same as average risk assets.

(f) *Other equity securities.* The final rule adds this provision to address equity securities (in which some federally-insured, State-chartered credit unions ("FISCUs") may be permitted to invest) for which a WAL is not explicitly defined elsewhere in § 702.105, or cannot be determined because they do not have maturity dates (although certain preferred instruments may have conversion dates). Because there is no scheduled time for the return of principal, such securities have an infinite WAL. Accordingly, the final rule defines WAL for "other equity securities" as greater than 10 ten years, § 702.105(f), corresponding to the final rule's maximum WAL category for investments. § 702.106(c)(4).

7. Section 702.106—Standard Calculation of Risk-Based Net Worth Requirement

To implement the second step of the three-step process, called the "standard calculation," section 702.106 multiplies either the whole or different percentage tiers of each risk portfolio in section 702.104 by a corresponding risk weighting to yield a standard component. The sum of the eight standard components equals the RBNW requirement. *See* Table 3 in § 702.106, and Appendix A. If a credit union's RBNW requirement under the standard calculation exceeds 6 percent, the credit union "is defined as 'complex' and [an RBNW] requirement is applicable." § 702.103(a)(2). The RBNW requirement is met when it is exceeded by a credit union's net worth ratio (generally, retained earnings as a percentage of total assets). The final rule retains the proposed components (formerly called "RBNW components"), modified as follows in section 702.106:

(a) *Long-term real estate loans.* The proposed standard component for "Long-term real estate loans" divided the contents of the corresponding risk portfolio into three percentage tiers of total assets—zero to 25 percent, weighted at 6 percent to represent average risk; 25 to 40 percent, weighted at 14 percent to protect against the higher marginal risk; and in excess of 40 percent, weighted at 16 percent to reflect corresponding increases in credit concentration risk and in the ratio of new loans to seasoned loans. 65 FR at 8609.

Twenty-five commenters sought to restructure the tiers and to reduce the corresponding weightings for each, but generally provided no justification for the adjustments. Five were content to apply the 14 percent weighting to the 25 to 40 percent tier, but objected that the 16 percent weighting applied to the tier in excess of 40 percent of total assets was excessive. Their rationale is that a credit union with a 40 percent concentration in long-term real estate loans does not necessarily have a greater percentage of new 30-year mortgages than a credit union with a 25 percent concentration. To acknowledge that credit union liabilities typically do not all reset overnight, NCUA agrees to reduce to 14 percent the proposed 16 percent weighting.

One commenter challenged as too conservative NCUA's reliance on a 300 basis point interest rate "shock test" to corroborate the assigned risk weightings. The 300 basis point shock test is a widely accepted measure of interest rate risk adopted for financial institution investment pre-purchase analysis by the Federal Financial Institutions Examination Council. FFIEC, "Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities," 63 FR 20191, 20195 (April 23, 1998). For balance sheet-wide application, see Office of Thrift Supervision, "Thrift Bulletin 13a: Management of Interest Rate Risk, Investment Securities, and Derivative Activities," 63 FR 66351, 66361 (December 1, 1998). Therefore, the 300 basis point "shock test" is a legitimate basis for determining appropriate risk weightings.

In response to criticism of the 16 percent weighting, the final rule modifies the standard component for "Long-term real estate loans" by reducing it from three to two percentage tiers—up to and including 25 percent of total assets, weighted at 6 percent; and in excess of 25 percent of total assets, weighted at 14 percent. § 702.106(a).

(b) *Member business loans outstanding.* The proposed standard component for "Member business loans outstanding" divided the contents of the corresponding risk portfolio by a single threshold of 12.25 percent of total assets. The tier below was weighted at 6 percent, and the tier in excess was weighted at 14 percent. 65 FR at 8609.

Asserting various justifications, fourteen commenters advocated reducing the proposed weightings to as low as 4 percent and reserving the 14 percent weighting only for MBLs in excess of 20 percent of total assets. Some compared losses for consumer loans against the losses for MBLs over an 8-year period and noted that actual losses for MBLs for that period were only 57 basis points, or 75 percent of the amount for consumer loans. Others pointed to the risk mitigating characteristics of MBLs with low loan-to-value ("LTV") ratios (*e.g.*, 60 percent) which typically reprice within 3 to 5 years; and to short-term, seasonal loans secured by land, which are subject to greater regulation and higher reserving.

The commenters focused on credit risk exposure only, overlooking the interest rate risk and other relevant risks associated with MBLs. As the amount of MBLs outstanding increases, interest rate risk also typically increases, as does credit concentration risk. Accordingly, the final rule retains the proposed standard component without modification. § 702.106(b).

(c) *Investments.* The proposed standard component for "Long-term investments" (since renamed simply "Investments") divided the contents of the corresponding risk portfolio by a single threshold of 15 percent of total assets. The tier below was weighted at 6 percent, and the tier in excess was weighted at 14 percent. 65 FR at 8609.

Although content with the 6 percent weighting, thirty-four commenters, generally without explanation, advocated increasing the threshold to a higher percentage of total assets. Two commenters suggested introducing an intermediate tier of 15 to 25 percent of total assets, weighted at 8 percent, with

the excess over 25 percent weighted at no more than 10 percent.

Other commenters questioned NCUA's reliance on the 300 basis point interest rate "shock test" to develop risk weightings for investments. One commenter preferred using a gradual 1 or 2 percent rate "ramp," while another supported using a 200 basis point "shock test." Because the Call Report data does not provide mark-to-market valuation of all investments, the 300 basis point rate shock is appropriate to capture both current and potential mark-to-market loss. As explained above, it is widely accepted as a basis for financial institution investment pre-purchase analysis.

Finally, a commenter observed that the proposed 6 percent and 14 percent weightings for credit union investments exceed the weightings applied to investments under the credit-risk-weighted capital requirements applicable to banks under their system of PCA. *See, e.g.*, 12 CFR 325.103. Indeed, the risk weightings proposed for credit unions are higher because the banks' credit-risk-weighted capital standards consider only credit risk, whereas CUMAA mandates that the RBNW requirement for credit unions take account of material risks, such as market risk, interest rate risk and other relevant risks. *See* § 1790d(d)(2); S. Rep. at 13.

Consistent with the NCUA Board's determination to treat similar investments similarly in terms of risk, the final rule abandons the proposed 15 percent threshold in favor of uniform classification by WAL—a more refined measure of risk. To implement this fundamental modification, the final rule establishes the following four WAL buckets: 1 year or less; greater than 1 year, but less than or equal to 3 years; greater than 3 years, but less than or equal to 10 years; and greater than 10 years. The four WAL buckets are risk-weighted at 3, 6, 12 and 20 percent, respectively. § 702.106(c). In the Call Report investment schedule, credit unions will now report their investments solely by WAL as specified in section 702.105.

In ascending order, the 3 percent weighting applied to the first WAL bucket, § 702.106(c)(1), is the same weighting originally proposed for the "Low risk assets" risk portfolio, as explained in section C.5(d) above. The 6 percent weighting applied to the second bucket, § 702.106(c)(2), is the same as that applied to the "Average risk assets" risk portfolio, § 702.106(e), and reflects the inclusion of average risk investments in the "Investments" risk portfolio. The 12 percent weighting applied to the third bucket, § 702.106(c)(3), mirrors the weighting that the "Investments" alternative component applies to the WAL bucket for greater than 5 years, but less than 7 years, § 702.107(c)(4), and reflects an average level of risk across the three more refined buckets of that component having a WAL greater than 3 years, but less than 10 years. Finally, the 20 percent weighting for the fourth bucket, § 702.106(c)(4), is based on the weighting that the "Investments" alternative component applies to investments with a WAL greater than 10 years. § 702.107(c)(6).

(d) *Low-risk assets.* The proposed standard component for "Low risk assets" applied a risk weighting of 3 percent to the entire contents of the corresponding risk portfolio. 65 FR at 8609. As explained in section C.5(d) above, the "Low risk assets" risk portfolio has been modified to consist only of cash on hand and the NCUSIF deposit. § 702.104(d). Because these assets carry virtually no risk, the final rule reduces to zero the risk weighting applied to the standard component for "Low risk assets." § 702.106(d).

(e) *Average-risk assets.* The proposed standard component for "Average risk assets" applied a risk weighting of 6 percent to the entire contents of the corresponding risk portfolio. 65 FR at 8609. This weighting corresponds to the 6 percent net worth ratio required by CUMAA to be classified "adequately capitalized." § 702.102(a)(2). No commenters addressed the risk weighting applied to this component; therefore, it is retained as proposed. § 702.106(e).

(f) *Loans sold with recourse.* The proposed standard component for "Loans sold with recourse" applies a risk weighting of 6 percent to the entire contents of the corresponding risk portfolio, 65 FR at 8609, to account for retained credit risk and the operational risk of servicing such loans. The 6 percent weighting also parallels the minimum weighting required for on-balance sheet loans that have similar credit risk exposure. *See, e.g.*, § 702.106(a)(1) and (e). Two commenters advocated replacing the fixed 6 percent weighting for this component with a sliding scale of weights based on the loss experience of like assets as measured by, for example, the five-year loan loss ratio. At present, the limited number of credit unions that sell or swap loans with recourse does not justify the increased burden of reporting the data needed to analyze loss experience for this purpose. Accordingly, the final rule retains the fixed 6 percent risk weighting proposed for this component. § 702.106(f).

(g) *Unused member business loan commitments.* The proposed standard component for "Unused member business loans" applied a risk weighting of 6 percent to the entire contents of the corresponding risk portfolio. 65 FR 8609. Eleven commenters invited NCUA to reduce the weighting for this component to between 3 and 4.5 percent, but generally gave no rationale. Others proposed inserting a threshold to divide the contents of the portfolio according to a minimum percentage of either assets, equity, or an historical rate at which MBL commitments convert to actual loans. The commenters would give the tier below that threshold a zero percent weighting. No empirical evidence was provided to support weighting different portions of the portfolio differently, much less to support weighting any portion of it at zero. Accordingly, the final rule retains the risk weighting for this standard component without modification. § 702.106(g).

(h) *Allowance.* The proposed standard component for the "Allowance" risk portfolio applies a risk weighting of negative 100 percent to the entire contents of the corresponding risk portfolio (which itself is limited to the equivalent of 1.5 percent of total loans). § 702.106(h). This effectively offsets the RBNW requirement otherwise resulting from the standard calculation, to reflect mitigation of risk through reserving for loan losses in the ALL. No commenters addressed the negative 100 percent risk weighting applied to this component to produce a credit against the RBNW requirement; therefore, it is retained as proposed. § 702.106(h).

8. Section 702.107—Alternative Components for Standard Calculation.

The third step of the three-step process gives a credit union the option to reduce the amount of its RBNW requirement under the standard calculation. To implement that step, section 702.107 (formerly section 702.106) multiplies the different remaining maturity or WAL buckets in each of three risk portfolios representing above average risk by a corresponding risk weighting to yield an "alternative component." *See* Table 4 in § 702.107, and Appendix F. Compared to the standard components, the alternative components classify real estate loans, member business loans and investments in finer remaining maturity and WAL increments based on additional data provided by the credit union. Each alternative component that produces a smaller percentage than its

corresponding standard component may then be substituted for its counterpart in section 702.106 to reduce the RBNW requirement originally determined under the standard calculation.

The sole commenter addressing the structure of section 702.107 insisted upon allowing all or none of the alternative components to be substituted for their counterpart standard components. NCUA disagrees, preferring to give credit unions maximum flexibility in meeting an RBNW requirement. Therefore, the final rule retains the proposed alternative components, modified as follows in section 702.107:

(a) *Long-term real estate loans.* The proposed alternative component for "Long-term real estate loans " divided the contents of the corresponding risk portfolio by remaining maturity buckets: greater than 3, but less than or equal to 5 years; greater than 5, but less than or equal to 12 years; greater than 12, but less than or equal to 20 years; and greater than 20 years. The four remaining maturity buckets were weighted at 6, 8, 12 and 16 percent, respectively. 65 FR at 8610–8611. The sum of the weighted buckets equals the "alternative component."

Seeking wholesale modification, one commenter condemned this alternative component as completely unnecessary, while another praised it as important in aiding credit unions to comply with PCA. Two commenters urged NCUA to require reporting of real estate loan balances by WAL instead of remaining maturity. Due to the inherent difficulty of relying on objective data in the Call Report to validate prepayment assumptions that affect the WAL of long-term real estate loans, NCUA considers remaining maturity to be the most reliable and least burdensome means of reporting real estate loans.

Ten other commenters generally sought to modify the maturity buckets and corresponding risk weightings. Two protested that the weightings were too harsh and should be adjusted downward to account for low LTV ratios. In contrast, a single commenter felt the weightings were too low. Two others indicated that the maturity ranges of the buckets were too broad, while another insisted there were too many buckets. Upon reconsideration, NCUA considers the maturity ranges of the buckets and all but one of the risk weightings to be reasonable based on examiner judgment of credit risk and interest rate risk in typical fixed-rate real estate loans.

The final rule modifies this alternative component in two respects. First, to parallel the 5-year maturity threshold adopted in the corresponding risk portfolio, § 702.104(a), the 3-to-5 year remaining maturity bucket is deleted altogether from the "Long-term real estate loans" alternative component. Second, to parallel the 14 percent weighting adopted for loans above the 25 percent threshold in the corresponding standard component, § 702.106(a)(2), the weighting applied in the alternative component to the remaining maturity bucket for loans in excess of 20 years is reduced from 16 to 14 percent. § 702.107(a)(3); see Appendix C. The final rule otherwise retains the proposed alternative component without modification.

(b) *Member business loans outstanding.* The proposed alternative component for "Member business loans outstanding" categorized the contents of the corresponding risk portfolio first by fixed-versus variable-rate MBLs, and then by remaining maturity in five buckets for each category—3 years or less; greater than 3, but less than or equal to 5 years; greater than 5, but less than or equal to 7 years; greater than 7, but less than or equal to 12 years; and greater than 12 years.[13] 65 FR at 8610–8611. The five maturity buckets for fixed-rate MBLs were weighted at 6, 9, 12, 14 and 16 percent, respectively. The five maturity buckets for variable-rate MBLs were weighted at 6, 8, 10, 12 and 14 percent, respectively. The sum of the weighted buckets equals the "alternative component."

Two commenters addressed this alternative component, suggesting structural modifications. The first argued that fixed-rate MBLs should be classified by WAL to take account of the interest rate premium, but that variable-rate MBLs should be weighted at a static 6 percent, regardless of WAL or remaining maturity, since it is unrealistic to require reserves equivalent to the decline in market value. The second commenter proposed weighting MBLs on a sliding scale to take account of the LTV ratios, *e.g.*, 6 percent for an LTV ratio of less than 60 percent, and a 7 percent weighting for an LTV ratio between 60 and 70 percent.

NCUA declines to depart from the proposed rule for the following reasons. First, as explained in the preceding section, due to the inherent difficulty of relying on objective Call Report data to validate prepayment assumptions, NCUA considers remaining maturity to be the most reliable and least burdensome means of reporting MBLs. Second, while the value of a variable-rate MBL may decline less in value than a similar fixed-rate MBL as a result of a given interest rate change, credit risk of a variable-rate MBL typically increases in a higher rate environment, as the borrower is forced to meet increased interest expense burden. Third, the proposed rule already recognized the inherent variation in risk between fixed-rate and variable-rate MBLs; in the 3-to-5 year remaining maturity bucket, the weighting applied to fixed-rate MBLs is 100 basis points higher than that applied to variable-rate MBLs; in the three buckets for remaining maturities greater than 5 years, the weighting applied to fixed-rate MBLs is 200 basis points higher than that applied to variable-rate MBLs. 65 FR at 8611 (Table 4.b.).

For these reasons, the final rule retains this alternative component without modification. § 702.107(b) and Appendix D.

(c) *Investments.* The proposed alternative component for "Long-term investments" (here renamed simply "Investments") classified the contents of the corresponding risk portfolio into four WAL buckets: greater than 3, but less than or equal to 5 years; greater than 5, but less than or equal to 7 years; greater than 7, but less than or equal to 10 years; and greater than 10 years. The four WAL buckets are weighted at 8, 12, 16 and 20 percent, respectively. 65 FR 8604. The sum of the weighted buckets yields the alternative component.

According to one commenter, NCUA did not select representative securities with sufficient interest rate risk, resulting in inadequate weightings. Although the representative securities reflect the shorter end of each WAL bucket, NCUA's research indicates that the proposed weighting applied to each WAL bucket approximates the economic value exposure. 65 FR at 8605. In addition, these securities implicitly acknowledge that credit union liabilities typically do not all reset overnight. As a result, the proposed weightings are adequate to protect the NCUSIF from material risk, and do not need to be increased.

Protesting that the proposed WAL buckets do not adequately recognize WAL differences within buckets, another commenter compared the U.S. Securities and Exchange Commission's ("SEC") use of smaller "haircuts" (*i.e.*, percentage deductions) in computing net capital requirements for broker-dealers. 17 C.F.R. 240.15c3–1(c)(2)(vi).

[13] For federally-chartered credit unions, maturity of MBLs is limited to 12 years, except "lines of credit are not subject to a statutory or regulatory maturity limit." 12 C.F.R. 701.21(c)(4). This limit does not apply to MBLs and lines of credit issued by federally-insured, State-chartered credit unions. Thus, the alternative component for MBLs includes a bucket to accommodate MBLs and lines of credit "with a remaining maturity greater than 12 years." § 702.107(b)(1)(v) and (b)(2)(v).

However, the SEC uses haircuts in what is generally a marked-to-market environment, and broker-dealers subject to its requirements are able to issue equity to increase net worth. In contrast, investments by credit unions generally are not marked-to-market. Even a credit union's gain or loss on "available-for-sale" securities is not reflected in net worth. *See* § 702.2(f); 65 FR at 8565. Further, credit unions typically cannot issue equity instruments to increase net worth.

Principally to capture cash on deposit and cash equivalents (formerly within the "Low risk assets" risk portfolio) and other investments (formerly in the "Average risk assets" risk portfolio), the final rule modifies the alternative component for "Investments" by adding two buckets at the bottom of the WAL scale: one for investments having a WAL of one year or less, and another for investments with a WAL of greater than one year but less than or equal to 3 years. These buckets are weighted at 3 percent and 6 percent, respectively. § 702.107(c)(1) and (2), and Appendix E. This alternative component is otherwise unchanged from the proposed rule.

9. Section 702.108—Risk Mitigation Credit To Reduce Risk-Based Net Worth Requirement.

Sixty-four commenters appealed to the NCUA Board to adopt a subjective or quantitative means for credit unions to demonstrate that the actual level of risk exposure to the NCUSIF is less than that indicated by the RBNW requirement resulting from the standard calculation, § 702.106, or alternative components, § 702.107.

To recognize mitigation of interest rate risk, forty-four commenters suggested considering the structure of funding liabilities and the results of "hedging" strategies. Commenters generally advocated flexibility toward sophisticated credit unions that implement internal modeling of an economic value exposure measure such as net economic value ("NEV"). A few commenters urged NCUA to consider a maturity gap, a "matched book," or an earnings exposure measure such as income simulation. For example, one commenter argued for an adjustment to the RBNW requirement in response to internal modeling that demonstrates limited interest rate risk through an NEV fluctuation calculation, with the calculation to be certified by NCUA. More subjectively, another commenter proposed an RBNW adjustment in consideration of a credit union's history, policies, practices, and risk management techniques.

To recognize mitigation of credit risk, fourteen commenters recommended considering the impact of such quantitative factors as low LTV ratio and private mortgage insurance. Ten advocated evaluating the quality of loan underwriting and standards.

Upon consideration of the comments, the NCUA Board is persuaded to permit credit unions to demonstrate interest rate risk mitigation through internal modeling of an economic value exposure measure such as NEV, and to demonstrate credit risk mitigation through quantitative indicators of below average credit risk in loan portfolios. To this end, the final rule introduces a "risk mitigation credit" ("RMC") to offset a credit union's applicable RBNW requirement.

Under section 702.108, a credit union which fails to meet its applicable RBNW requirement under both the standard calculation, § 702.106, and the alternative components, § 702.107, may apply to the NCUA Board for an RMC to reduce that requirement. The NCUA Board may, in its discretion, grant an RMC upon proof of mitigation of credit risk, or interest rate risk as demonstrated by economic value exposure measures. To ensure uniformity, an RMC request will be evaluated according to guidelines to be duly adopted by the NCUA Board. § 702.108(a).

In the case of a FISCU seeking an RMC, the request must first be submitted to the appropriate State official (as defined in 12 C.F.R. 702.2(b) and appropriate Regional Director having jurisdiction over the FISCU. § 702.108(b)(1). When evaluating a FISCU's request, the NCUA Board is required to "consult and seek to work cooperatively" with the appropriate State official and to provide prompt notice to him or her of its decision on the request. § 702.108(b)(2).

The RMC is available only to credit unions which otherwise fail an RBNW requirement, because of the substantial commitment of NCUA resources required to administer the process of evaluating and deciding RMC applications. NCUA will be responsible for ensuring the validity and reliability of the quantitative measures used to demonstrate mitigation of risk through individual qualitative assessment of each applicant credit union. Under guidelines to be adopted before the effective date of the final rule, NCUA envisions a process for evaluating RMC applications which resembles the process used to consider requests for expanded authority by corporate credit unions under Appendix B to part 704, 12 C.F.R. 704.

D. General Comments on Proposed Rule

1. *Regulatory capital.* Numerous commenters reiterated the call for new forms of "regulatory capital" to play a role in PCA. NCUA may have the statutory authority to permit new sources of capital for federally-chartered credit unions. 12 U.S.C. 1757(7), 1757(9) (permitting NCUA to authorize regulatory capital in the form of shares and subordinated debt). However, CUMAA's express, limited definition of net worth—retained earnings under GAAP—clearly precludes all but low income-designated credit unions from classifying such regulatory capital as net worth for PCA purposes. § 1790d(o)(2). Nevertheless, NCUA recognizes that, if established, regulatory capital would be available to absorb losses, thereby insulating the NCUSIF from such losses. *See* § 702.206(e) (criterion in evaluating net worth restoration plans). Depending on how it is structured, regulatory capital on the balance sheet of a credit union that meets the definition of "complex" could conceivably reduce the risk for which the RBNW requirement is designed to compensate. In the future, therefore, NCUA may consider proposals to amend part 702 to allow regulatory capital to offset an RBNW requirement. *See, e.g.,* § 702.106(h) ("Allowance" component).

2. *Banking industry trade association comments.* In its comment letter, a trade association of the banking industry made four principal comments on the proposed rule. First, that the final rule should exempt credit unions having assets of $10 million or less. This proposal to establish a minimum asset floor, made by many commenters, is adopted. Second, that a credit union should be deemed "complex" if it has either $50 million or more in assets, any MBLs in its asset portfolio, or any investments for which it is required to submit a quarterly monitoring report to NCUA. *See* 12 C.F.R. 703.70(a), 703.90(b). These three sweeping criteria, while simple, are overwhelmingly overinclusive; NCUA's objective is to develop an RBNW requirement that is tailored to a credit union's individual risk profile. Third, that CUMAA and the Treasury Department intended that NCUA model the RBNW requirement on the banks' risk-based capital framework. On the contrary, neither CUMAA nor the Treasury Department envisioned a clone of the banks' risk-based capital standards; rather, Congress instructed NCUA to develop a credit union-specific RBNW requirement, § 1790d(i), which takes account of a full range of relevant risks. S. Rep. at 13. As explained in section C.7(d) above, the

banks' approach addresses credit risk only. Third, that the proposed rule fails to take account of differences in credit quality among assets. The banks' risk-based capital standards create many broad categories of assets and do not further distinguish credit quality within a category. The final rule establishes fewer categories (*i.e.*, risk portfolios, § 702.104) and designates risk weightings to account for a broader range of risks (*e.g.*, credit and interest rate risk). As explained in section C.4. above, NCUA's approach efficiently captures the risks to the NCUSIF that are the intended target of the RBNW requirement.

3. *Recognition of unrealized gains and losses.* Five commenters inquired about treatment of unrealized gains and losses on "available-for-sale" securities under SFAS 115. NCUA research indicated that failure to adjust net worth to reflect such gains and losses would rarely result in artificially misstating a credit union's net worth category classification. 65 FR at 8565. Thus, neither part 702 nor this final rule recognizes such gains and losses. NCUA reiterates that unrealized gains and losses are not reflected in net worth, the numerator of the net worth ratio, but do affect the denominator, total assets. § 702.2(f).

4. "*PCA Oversight Task Force.*" Ten commenters requested NCUA to periodically review implementation of the final rule and to revise it as needed. Another commenter was concerned that NCUA would modify the final rule in response to changing economic conditions, without giving credit unions sufficient notice and opportunity to comply. In response to these concerns, the NCUA Board in February 2000 established a "PCA Oversight Task Force" and directed its members to review at least a full year of implementation of PCA and to recommend modifications in the Fall of 2001. Any such modifications (apart from RMC guidelines) will be made by formal rulemaking, including public notice and an opportunity to comment.

5. *Method of calculating total assets.* Several commenters inquired why a credit union is required to use its calendar quarter-end account balances to calculate an RBNW requirement, but may elect among four methods to calculate total assets in determining its net worth ratio. *See* § 702.2(j). Similarly, another proposed calculating the RBNW requirement using average assets. The RBNW requirement must rely on quarter-end balances, rather than average balances, for consistency; because Call Report asset accounts are reported as of calendar quarter-end, the denominator for the eight "risk portfolios" also must be calendar quarter-end total assets. Otherwise, the sum of the balances in asset accounts (reported on a calendar quarter-end basis) would not necessarily equal the total assets (on other than a calendar quarter-end basis). To reconstruct the Call Report so that asset accounts are reported on an average basis does not appear to be cost justified for NCUA or for credit unions at this time.

E. Impact of Final Rule

Under the proposed rule's four-trigger test, December 1999 Call Report data indicates that an estimated 1408 credit unions, or 13.2 percent of all credit unions, met the definition of "complex" and would be required to meet an RBNW requirement. *Compare* 65 FR at 8605 (6/99 data). As a result, an estimated twelve credit unions—representing 2.3 percent of credit unions defined as "complex" and .08 percent of all credit unions—would have failed their RBNW requirement under the proposed standard calculation.

By contrast, December 1999 Call Report data indicates the final rule's minimum asset "floor" would exempt 6195 credit unions having assets of $10 million or less. Of the remaining 4434 credit unions, 3982 would fall below the minimum 6 percent RBNW "floor." Thus, a total of 96 percent of all credit unions would be exempt from meeting an RBNW requirement at the outset.

The remaining 452 credit unions, by virtue of having an RBNW requirement in excess of 6 percent, would meet the definition of "complex" and be required to meet an "applicable risk-based net worth requirement." § 702.103(a). Among these, the average RBNW requirement is estimated at 6.8 percent. Seventy-five percent of these credit unions have an RBNW requirement of 7.02 percent or less. For 90 percent of them, the RBNW requirement is 7.83 percent or less.

In contrast, the average net worth ratio is an estimated 12.16 percent—more than 500 basis points higher than the average RBNW requirement. As a result, only an estimated 17 credit unions—representing 3.7 percent of the 452 credit unions meeting the definition of "complex," and .0015 percent of all credit unions—would have failed their RBNW requirement under the standard calculation. § 702.106. Some of these undoubtedly would meet that requirement by substituting alternative components, § 702.107, or by obtaining an offsetting RMC. § 702.108.

As Table 1 below indicates, as asset size increases toward $500 million, it becomes more likely that an RBNW requirement will be applicable.

TABLE 1.—ESTIMATED APPLICABILITY AND IMPACT OF RBNW REQUIREMENT [14]

Source: 12/99 data: Range of total assets for credit unions (CUs) > $10 million (in $millions)	A Number of CUs >$10 million	B Number of CUs to which RBNW applies	C Percentage of CUs to which RBNW applies /All CUs B/A = C	D Percentage of All CUs to which RBNW applies B/B total = D	E Estimated number failing RBNW
Greater than $500	122	19	15.6%	4.2%	0
Greater than $100 to $500	696	137	19.6%	30.3%	5
Greater than $50 to $100	688	88	12.8%	19.5%	5
Greater than $20 to $50	1,473	133	9.0%	29.4%	5
Greater than $15 to $20	572	34	5.9%	7.5%	0
Greater than $10 to $15	881	41	4.7%	9.1%	2

TABLE 1.—ESTIMATED APPLICABILITY AND IMPACT OF RBNW REQUIREMENT [14]—Continued

Source: 12/99 data: Range of total assets for credit unions (CUs) > $10 million (In $millions)	A Number of CUs >$10 million	B Number of CUs to which RBNW applies	C Percentage of CUs to which RBNW applies /All CUs B/A = C	D Percentage of All CUs to which RBNW applies B/B total = D	E Estimated number failing RBNW
Total	4,434	452	10.2%		17

[14] NCUA has relied on estimates to assess the impact of certain modifications to the final rule because the present Call Report does not collect the necessary data in sufficient detail. As a result, the use of Call Report data has the following impact: (1) the "Long-term real estate loans" risk portfolio includes loans with a remaining maturity between 3 to 5 years, resulting in an overestimate of the RBNW requirement under the standard calculation, § 702.104(a); (2) the "Investments" risk portfolio includes mutual funds in the WAL bucket of one year or less, resulting in an underestimate of the RBNW requirement under the standard calculation, §§ 702.104(c), 702.105(a)(1); (3) the "Low risk assets" risk portfolio includes cash on deposit and cash equivalents, resulting in an underestimate of the RBNW requirement under the standard calculation, § 702.104(d); and (4) the "Unused member business loan commitments" risk portfolio includes only unused commitments for commercial real estate construction and land development, resulting in an underestimate of the RBNW requirement under the standard calculation. § 702.104(g).

The estimates in Table 1 above are based on December 1999 Call Report data as indicated in Table 2 below. The line item references are subject to change when the Call Report is revised to conform with part 702 and to incorporate the "PCA Worksheet."

TABLE 2.—PRESENT CALL REPORT LINE ITEMS FOR ESTIMATING RBNW REQUIREMENT

Risk Portfolio	Call report items used to estimate risk portfolios	Call report estimate
(a) Long-term real estate loans.	Total real estate loans less:	Schedule A, line 3 (Acct. codes 710) less:
	i. The amount of real estate loans that meet the definition of a member business loan.	i. Schedule A, line 9 (Acct. code 718).
	ii. Real estate loans that will contractually refinance, reprice or mature within 3 years.	ii. Schedule A, line 11 (Acct. code 712).
(b) Member business loans	Outstanding member business loans	Schedule B, line 3 (Acct. code 400).
(c) Investments	All credit union investments categorized by weighted-average life or repricing interval:.	Schedule C:
	i. Less than 1 Year	i. Line 12 (Acct. code 799A).
	ii. 1–3 Years	ii. Line 12 (Acct. code 799B).
	iii. 3–10 Years	iii. Line 12 (Acct code 799C).
	iv. Greater than 10 Years	iv. Line 12 (Acct code 799D).
(d) Low-risk Assets	i. Cash and cash equivalents	i. Assets, line 1 (Acct. code 730).
	ii. NCUSIF Deposit	ii. Assets,line 25 (Acct code 794).
(e) Average-risk Assets	Total Assets less: Risk Portfolios (a) through (d)	Assets, line 27 (Acct. code 010) less: Risk Portfolio line items (a) through (d) above.
(f) Loans sold with recourse	Outstanding balance of loans sold or swapped with recourse.	Schedule G, line 2.B. (Acct. code 819).
(g) Unused MBL Commitments.	Commercial real estate construction and land development.	Schedule G, line 1.D. (Acct. code 814).
(h) Allowance	Allowance for Loan and Lease Losses	Assets, line 21 (Acct. code 719) (Limited to equivalent of 1.5 percent of total loans.).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a final regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final rule establishes an RBNW requirement to apply to federally-insured credit unions which meet the definition of "complex." The RBNW requirement is expressly mandated by CUMAA as a component of NCUA's system of prompt corrective action. § 1790d(d).

For the purpose of this analysis, credit unions under $1 million in assets will be considered small entities. As of June 30, 1999, there were 1,690 such entities with a total of $807.3 million in assets, with an average asset size of $0.5 million. These small entities make up 15.6 percent of all credit unions, but only 0.2 percent of all credit union assets.

The proposed rule implements a three-step process involving eight "risk portfolios." The first step is to determine whether a credit union meets the definition of "complex" and an RBNW requirement is applicable, based on a minimum asset size of $10 million and minimum RBNW requirement of 6 percent. The second step uses eight standard components (which multiply the "risk portfolios" by corresponding risk weightings) to determine the applicable RBNW requirement. The third step provides a credit union the opportunity to substitute any of three specific standard components with a corresponding alternative component that may reduce the RBNW requirement against which the credit union's quarterly net worth ratio is measured. Credit unions that do not meet an applicable RBNW requirement under both the standard calculation and the alternative components may apply for a risk mitigation credit to reduce that

requirement to reflect mitigation of credit risk or interest rate risk.

The NCUA Board does not believe that the final rule would impose reporting or recordkeeping burdens that require specialized professional skills not available to small entities. Further, NCUA estimates that, due to the $10 million asset minimum, none of these small entities will be subject to an applicable RBNW requirement under the additional requirements of the final rule. There are no other relevant federal rules that duplicate, overlap, or conflict with the final rule.

Paperwork Reduction Act

The reporting requirements in this rule have been submitted to the Office of Management and Budget. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB number. Control number 3133–0161 has been issued and will be displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This final rule will apply to all federally-insured credit unions, including federally-insured, State-chartered credit unions. Accordingly, it may have a direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This impact is an unavoidable consequence of carrying out the statutory mandate to adopt a system of prompt corrective action to apply to all federally-insured credit unions. Throughout the rulemaking process, NCUA staff has consulted with a committee of representative state regulators regarding the impact of the RBNW requirement on state-chartered credit unions. The committee's comments and suggestions are reflected in the final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act, 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule.

List of Subjects

12 CFR Part 700

Credit unions.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 13, 2000.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR parts 700 and 702 are amended as set forth below:

PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757(6) and 1766.

§ 700.1 [Amended]

2. Section 700.1 is amended by removing paragraph (i) and redesignating paragraphs (j) and (k) as paragraphs (i) and (j), respectively.

PART 702—PROMPT CORRECTIVE ACTION

3. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

4. Section 702.2 is amended in paragraph (j)(2) by removing "702.106" and adding "702.108" in its place; and by adding paragraph (k) to read as follows:

§ 702.2 Definitions

* * * * *

(k) *Weighted-average life* means the weighted-average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time), and then summing and dividing by the total amount of principal.

§ 702.102 [Amended]

5. Section 702.102 is amended in paragraphs (a)(1), (a)(2) and (a)(3) by removing the phrase "702.105 and 702.106" and by adding "702.103 through 702.108" in its place.

6. Sections 702.103, 702.104, 702.105, 702.106, 702.107 and 702.108 are added to subpart A of part 702 to read as follows:

§ 702.103 Applicability of risk-based net worth requirement.

(a) *Criteria.* For purposes of § 702.102, a credit union is defined as "complex" and a risk-based net worth requirement is applicable only if the credit union meets both of the following criteria as reflected its most recent Call Report:

(1) *Minimum asset size.* Its quarter-end total assets exceed ten million dollars ($10,000,000); and

(2) *Minimum RBNW calculation.* Its risk-based net worth requirement as calculated under § 702.106 exceeds six percent (6%).

(b) *Optional Call Report filing.* For purposes of this part, a credit union which is required to file a Call Report only semiannually may elect to file a Call Report for the first and/or third quarter of a calendar year.

§ 702.104 Risk portfolios defined.

A risk portfolio is a portfolio of assets, liabilities, or contingent liabilities as specified below, each expressed as a percentage of the credit union's quarter-end total assets reflected in its most recent Call Report, rounded to two decimal places (Table 1):

(a) *Long-term real estate loans.* Total real estate loans and real estate lines of credit outstanding, exclusive of those outstanding that will contractually refinance, reprice or mature within the next five (5) years, and exclusive of all member business loans (as defined in 12 CFR 723.1 or as approved under 12 CFR 723.20);

(b) *Member business loans outstanding.* All member business loans as defined in 12 CFR 723.1 or as approved under 12 CFR 723.20;

(c) *Investments.* Investments as defined by 12 CFR 703.150 or applicable State law, including investments in CUSOs (as defined by § 702.2(d));

(d) *Low-risk assets.* Cash on hand (*e.g.*, coin and currency, including vault, ATM and teller cash) and the NCUSIF deposit;

(e) *Average-risk assets.* One hundred percent (100%) of total assets minus the sum of the risk portfolios in paragraphs (a) through (d) of this section;

(f) *Loans sold with recourse.* Outstanding balance of loans sold or swapped with recourse, excluding loans sold to the secondary mortgage market that have representations and warranties consistent with those customarily required by the U.S. Government and government sponsored enterprises;

(g) *Unused member business loan commitments.* Unused commitments for member business loans as defined in 12 CFR 723.1 or as approved under 12 CFR 723.20; and

(h) *Allowance.* The Allowance for Loan and Lease Losses not to exceed the

equivalent of one and one-half percent (1.5%) of total loans outstanding.

TABLE 1 – §702.104 RISK PORTFOLIOS DEFINED

Risk portfolio	*Assets, liabilities or contingent liabilities*
(a) Long-term real estate loans	Total real estate loans and real estate lines of credit (excluding MBLs) with a maturity (and next rate adjustment period if variable rate) greater than 5 years
(b) MBLs outstanding	Member business loans outstanding
(c) Investments	As defined by federal regulation or applicable State law.
(d) Low-risk assets	Cash on hand and NCUSIF deposit.
(e) Average-risk assets	100% of total assets minus sum of risk portfolios above
(f) Loans sold with recourse	Outstanding balance of loans sold or swapped with recourse, except for loans sold to the secondary mortgage market with a recourse period of 1 year or less.
(g) Unused MBL commitments	Unused commitments for MBLs
(h) Allowance	Allowance for Loan and Lease Losses limited to equivalent of 1.50 percent of total loans

§ 702.105 Weighted-average life of investments.

Except as provided below (Table 2), the weighted-average life of an investment for purposes of §§ 702.106(c) and 702.107(c) is defined pursuant to § 702.2(k):

(a) *Registered investment companies and collective investment funds.*

(1) For investments in registered investment companies (*e.g.*, mutual funds) and collective investment funds, the weighted-average life is defined as the maximum weighted-average life disclosed, directly or indirectly, in the prospectus or trust instrument;

(2) For investments in money market funds, as defined in 17 CFR 270.2a–7, and collective investment funds operated in accordance with short-term investment fund rules set forth in 12 CFR 9.18(b)(4)(ii)(B)(1)–(3), the weighted-average life is defined as one (1) year or less; and

(3) For other investments in registered investment companies or collective investment funds, the weighted-average life is defined as greater than five (5) years, but less than or equal to seven (7) years;

(b) *Callable fixed-rate debt obligations and deposits.* For fixed-rate debt obligations and deposits that are callable in whole, the weighted-average life is defined as the period remaining to the maturity date;

(c) *Variable-rate debt obligations and deposits.* For variable-rate debt obligations and deposits, the weighted-average life is defined as the period remaining to the next rate adjustment date;

(d) *Capital in mixed-ownership Government corporations and corporate credit unions.* For capital stock in mixed-ownership Government corporations, as defined in 31 U.S.C. 9101(2), and member paid-in capital and membership capital in corporate credit unions, as defined in 12 CFR 704.2, the weighted-average life is defined as greater than one (1) year, but less than or equal to three (3) years;

(e) *Investments in CUSOs.* For investments in CUSOs (as defined in § 702.2(d)), the weighted-average life is defined as greater than one (1) year, but less than or equal to three (3) years; and

(f) *Other equity securities.* For other equity securities, the weighted average life is defined as greater than ten (10) years.

TABLE 2 – §702.105 WEIGHTED-AVERAGE LIFE OF INVESTMENTS

Investment	*Weighted-average life*
(a) Registered investment companies and collective investment funds	i. *Registered investment companies and collective investment funds:* As disclosed in prospectus or trust instrument, but if not disclosed, greater than five (5) years, but less than or equal to seven (7) years. ii. *Money market funds and STIFs:* One (1) year or less.
(b) Callable fixed-rate debt obligations and deposits	Period remaining to maturity date.
(c) Variable-rate debt obligations and deposits	Period remaining to next rate adjustment date.
(d) Capital in mixed-ownership Government corporations and corporate credit unions	Greater than one (1) year, but less than or equal to three (3) years.
(e) Investments in CUSOs	Greater than one (1) year, but less than or equal to three (3) years.
(f) Other equity securities	Greater than ten (10) years.

§ 702.106 Standard calculation of risk-based net worth requirement.

A credit union's risk-based net worth requirement is the aggregate of the following standard component amounts, each expressed as a percentage of the credit union's quarter-end total assets as reflected in its most recent Call Report, rounded to two decimal places (Table 3):

(a) *Long-term real estate loans.* The sum of:

(1) Six percent (6%) of the amount of long-term real estate loans less than or equal to twenty-five percent (25%) of total assets; and

(2) Fourteen percent (14%) of the amount in excess of twenty-five percent (25%) of total assets;

(b) *Member business loans outstanding.* The sum of:

(1) Six percent (6%) of the amount of member business loans outstanding less than or equal to twelve and one-quarter percent (12.25%) of total assets; and

(2) Fourteen percent (14%) of the amount in excess of twelve and one-quarter percent (12.25%) of total assets;

(c) *Investments.* The sum of:

(1) Three percent (3%) of the amount of investments with a weighted-average life (as specified in § 702.105 above) of one (1) year or less;

(2) Six percent (6%) of the amount of investments with a weighted-average life greater than one (1) year, but less than or equal to three (3) years;

(3) Twelve percent (12%) of the amount of investments with a weighted-average life greater than three (3) years, but less than or equal to ten (10) years; and

(4) Twenty percent (20%) of the amount of investments with a weighted-average life greater than ten (10) years;

(d) *Low-risk assets.* Zero percent (0%) of the entire portfolio of low-risk assets;

(e) *Average-risk assets.* Six percent (6%) of the entire portfolio of average-risk assets;

(f) *Loans sold with recourse.* Six percent (6%) of the entire portfolio of loans sold with recourse;

(g) *Unused member business loan commitments.* Six percent (6%) of the entire portfolio of unused member business loan commitments; and

(h) *Allowance.* Negative one hundred percent (−100%) of the balance of the Allowance for Loan and Lease Losses account, not to exceed the equivalent of one and one-half percent (1.5%) of total loans outstanding.

TABLE 3 – §702.106 STANDARD CALCULATION OF RBNW REQUIREMENT

Risk portfolio	*Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting*	*Risk weighting*
(a) Long-term real estate loans	0 to 25.00% over 25.00%	.06 .14
(b) MBLs outstanding	0 to 12.25% over 12.25%	.06 .14
(c) Investments	*By weighted-average life:* 0 to 1 year >1year to 3 years >3 years to 10 years >10 years	.03 .06 .12 .20
(d) Low-risk assets	All %	.00
(e) Average-risk assets	All %	.06
(f) Loans sold with recourse	All %	.06
(g) Unused MBL commitments	All %	.06
(h) Allowance	Limited to equivalent of 1.50% of total loans (expressed as a percent of total assets)	(1.00)

A credit union's RBNW requirement is the sum of eight standard components. A standard component is calculated for each of the eight risk portfolios, equal to the sum of each amount of a risk portfolio times its risk weighting. A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement.

§ 702.107 Alternative components for standard calculation.

A credit union may substitute one or more alternative components below, in place of the corresponding standard components in § 702.106 above, when any alternative component amount, expressed as a percentage of the credit union's quarter-end total assets as reflected in its most recent Call Report, rounded to two decimal places, is smaller (Table 4):

(a) *Long-term real estate loans.* The sum of:

(1) Eight percent (8%) of the amount of such loans with a remaining maturity of greater than 5 years, but less than or equal to 12 years;

(2) Twelve percent (12%) of the amount of such loans with a remaining maturity of greater than 12 years, but less than or equal to 20 years; and

(3) Fourteen percent (14%) of the amount of such loans with a remaining maturity greater than 20 years;

(b) *Member business loans outstanding.* The sum of:

(1) *Fixed rate.* Fixed-rate member business loans outstanding as follows:

(i) Six percent (6%) of the amount of such loans with a remaining maturity of 3 or fewer years;

(ii) Nine percent (9%) of the amount of such loans with a remaining maturity greater than 3 years, but less than or equal to 5 years;

(iii) Twelve percent (12%) of the amount of such loans with a remaining maturity greater than 5 years, but less than or equal to 7 years;

(iv) Fourteen percent (14%) of the amount of such loans with a remaining maturity greater than 7 years, but less than or equal to 12 years; and

(v) Sixteen percent (16%) of the amount of such loans with a remaining maturity greater than 12 years; and

(2) *Variable-rate.* Variable-rate member business loans outstanding as follows:

(i) Six percent (6%) of the amount of such loans with a remaining maturity of 3 or fewer years;

(ii) Eight percent (8%) of the amount of such loans with a remaining maturity greater than 3 years, but less than or equal to 5 years;

(iii) Ten percent (10%) of the amount of such loans with a remaining maturity greater than 5 years, but less than or equal to 7 years;

(iv) Twelve percent (12%) of the amount of such loans with a remaining maturity greater than 7 years, but less than or equal to 12 years; and

(v) Fourteen percent (14%) of the amount of such loans with a remaining maturity greater than 12 years.

(c) *Investments.* The sum of:

(1) Three percent (3%) of the amount of investments with a weighted-average life (as specified in § 702.105 above) of one (1) year or less;

(2) Six percent (6%) of the amount of investments with a weighted-average life greater than one (1) year, but less than or equal to three (3) years;

(3) Eight percent (8%) of the amount of investments with a weighted-average life greater than three (3) years, but less than or equal to five (5) years;

(4) Twelve percent (12%) of the amount of investments with a weighted-average life greater than five (5) years, but less than or equal to seven (7) years;

(5) Sixteen percent (16%) of the amount of investments with a weighted-average life greater than seven (7) years, but less than or equal to ten (10) years; and

(6) Twenty percent (20%) of the amount of investments with a weighted-average life greater than ten (10) years.

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TABLE 4 – §702.107 ALTERNATIVE COMPONENTS FOR STANDARD CALCULATION

(a) LONG-TERM REAL ESTATE LOANS

Amount of long-term real estate loans by remaining maturity	*Alternative risk weighting*
> 5 years to 12 years	.06
> 12 years to 20 years	.12
> 20 years	.14
The "alternative component" is the sum of each amount of the Long-term real estate loans risk portfolio by remaining maturity (as a percent of quarter-end total assets) times its alternative factor. Substitute for corresponding standard component if smaller.	

(b) MEMBER BUSINESS LOANS

Amount of member business loans by remaining maturity	*Alternative risk weighting*
Fixed-rate MBLs 0 to 3 years	.06
> 3 years to 5 years	.09
> 5 years to 7 years	.12
> 7 years to 12 years	.14
> 12 years	.16
Variable-rate MBLs 0 to 3 years	.06
> 3 years to 5 years	.08
> 5 years to 7 years	.10
> 7 years to 12 years	.12
> 12 years	.14
The "alternative component" is the sum of each amount of the member business loans risk portfolio by fixed and variable rate and by remaining maturity (as a percent of quarter-end total assets) times its alternative factor. Substitute for corresponding standard component if smaller.	

(c) INVESTMENTS

Amount of investments by weighted-average life	*Alternative risk weighting*
0 to 1 year	.03
>1 year to 3 years	.06
>3 years to 5 years	.08
>5 years to 7 years	.12
>7 years to 10 years	.16
> 10 years	.20
The "alternative component" is the sum of each amount of the Investments risk portfolio by weighted-average life (as a percent of quarter-end total assets) times its alternative factor. Substitute for corresponding standard component if smaller.	

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§ 702.108 Risk mitigation credit to reduce risk-based net worth requirement.

(a) *Application for credit.* Upon application by a credit union which fails to meet its applicable risk-based net worth requirement, and pursuant to guidelines duly adopted by the NCUA Board, the NCUA Board may in its discretion grant a credit to reduce a risk-based net worth requirement under sections 702.106 and 702.107 upon proof of mitigation of:

(1) Credit risk; or

(2) Interest rate risk as demonstrated by economic value exposure measures.

(b) *Application by FISCU.* In the case of a FISCU seeking a risk mitigation credit—

(1) Before an application under paragraph (a) above may be submitted to the NCUA Board, it must be submitted in duplicate to the appropriate State official and the appropriate Regional Director; and

(2) The NCUA Board, when evaluating the application of a FISCU, shall consult and seek to work cooperatively with the appropriate State official, and shall provide prompt notice of its decision to the appropriate State official.

7. Appendices A through F are added to subpart A to read as follows:

BILLING CODE 7535-01-P

APPENDICES TO SUBPART A

APPENDIX A – EXAMPLE STANDARD COMPONENTS FOR RBNW REQUIREMENT, §702.106
(EXAMPLE CALCULATION IN BOLD)

Risk portfolio	*Dollar balance*	*Amount as percent of quarter-end total assets*	*Risk weighting*	*Amount times risk weighting*	*Standard component*
Quarter-end total assets	200,000,000	100.0000 %			
(a) Long-term real estate loans	60,000,000	30.0000 % =			2.20 %
Threshold amount: 0 to 25%		25.0000 %	.06	1.5000 %	
Excess amount: over 25%		5.0000 %	.14	0.7000 %	
(b) MBLs outstanding	25,000,000	12.5000 % =			0.77 %
Threshold amount: 0 to 12.25%		12.2500 %	.06	0.7350 %	
Excess amount: over 12.25%		0.2500 %	.14	0.0350 %	
(c) Investments	50,000,000 =	25.0000 % =			1.51 %
Weighted-average life:					
0 to 1 year	24,000,000	12.0000 %	.03	0.3600 %	
>1 year to 3 years	15,000,000	7.5000 %	.06	0.4500 %	
>3 years to 10 years	10,000,000	5.0000 %	.12	0.6000 %	
>10 years	1,000,000	0.5000 %	.20	0.1000 %	
(d) Low-risk assets	4,000,000	2.0000 %	.00		0 %
Sum of risk portfolios (a) through (d) above	139,000,000	69.5000 %			
(e) Average-risk assets	61,000,000	30.5000 % [1]	.06		1.83 %
(f) Loans sold with recourse	40,000,000	20.0000 %	.06		1.20 %
(g) Unused MBL commitments	5,000,000	2.5000 %	.06		0.15 %
(h) Allowance	2,040,000.00 [2]	1.0200 %	(1.00)		(1.02) %
Sum of standard components: RBNW requirement [3]					6.64 %

[1] The Average-risk assets risk portfolio percent of quarter-end total assets equals 100 percent minus the sum of the percentages in the four risk portfolios above (i.e., Long-term real estate loans, MBLs outstanding, Investments, and Low-risk assets).
[2] The Allowance risk portfolio is limited to the equivalent of 1.50 percent of total loans. For an example computation of the permitted dollar balance of Allowance, see worksheet in Appendix B below.
[3] A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement. The dollar equivalent of RBNW requirement may be computed for informational purposes as the RBNW requirement percent of total assets.

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APPENDIX B – ALLOWANCE RISK PORTFOLIO DOLLAR BALANCE WORKSHEET
(EXAMPLE CALCULATION IN BOLD)

Balance sheet account	*Dollar balance*	*Percent of total loans*	*Range of ALL permitted*	*Permitted ALL percent of total loans*	*Permitted dollar balance of Allowance*
Allowance for Loan and Lease Losses (ALL)	2,400,000	1.7647%	0 to 1.50%	1.50%	2,040,000
Total loans	136,000,000				

APPENDIX C – EXAMPLE LONG-TERM REAL ESTATE LOANS ALTERNATIVE COMPONENT, §702.107(a)
(EXAMPLE CALCULATION IN BOLD)

Remaining maturity	*Dollar balance of Long-term real estate loans by remaining maturity*	*Percent of total assets by remaining maturity*	*Alternative risk weighting*	*Alternative component*
> 5 years to 12 years	40,000,000	20.0000 %	.06	1.6000 %
> 12 years to 20 years	15,000,000	7.5000 %	.12	0.9000 %
> 20 years	5,000,000	2.5000 %	.14	0.3500 %
Sum of above equals Alternative component*				2.85 %

* Substitute for standard component if lower.

APPENDIX D – EXAMPLE OF MEMBER BUSINESS LOANS ALTERNATIVE COMPONENT, §702.107(b)
(EXAMPLE CALCULATION IN BOLD)

Remaining maturity	*Dollar balance of MBLs by remaining maturity*	*Percent of total assets by remaining maturity*	*Alternative risk weighting*	*Alternative component*
Fixed-rate MBLs				
0 to 3 years	6,000,000	3.0000 %	.06	0.1800 %
> 3 years to 5 years	4,000,000	2.0000 %	.09	0.1800 %
> 5 years to 7 years	2,000,000	1.0000 %	.12	0.1200 %
> 7 years to 12 years	0	0.0000 %	.14	0.0000 %
> 12 years	0	0.0000 %	.16	0.0000 %
Variable-rate MBLs				
0 to 3 years	7,000,000	3.5000 %	.06	0.2100 %
> 3 years to 5 years	4,000,000	2.0000 %	.08	0.1600 %
> 5 years to 7 years	2,000,000	1.0000 %	.10	0.1000 %
> 7 years to 12 years	0	0.0000 %	.12	0.0000 %
>12 years	0	0.0000 %	.14	0.0000 %
Sum of above equals Alternative component*				0.95 %

* Substitute for standard component if lower.

APPENDIX E -- EXAMPLE OF INVESTMENTS ALTERNATIVE COMPONENT, §702.107(c)
(EXAMPLE CALCULATION IN BOLD)

Weighted-average life	*Dollar balance of investments by weighted-average life*	*Percent of total assets by weighted-average life*	*Alternative risk weighting*	*Alternative component*
0 to 1 year	24,000,000	12.0000 %	.03	0.3600 %
> 1 year to 3 years	15,000,000	7.5000 %	.06	0.4500 %
> 3 years to 5 years	8,000,000	4.0000 %	.08	0.3200 %
> 5 years to 7 years	1,000,000	0.5000 %	.12	0.0600 %
> 7 years to 10 years	1,000,000	0.5000 %	.16	0.0800 %
> 10 years	1,000,000	0.5000 %	.20	0.1000 %
Sum of above equals Alternative component*				1.37 %

* Substitute for standard component if lower.

APPENDIX F -- EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS
(EXAMPLE CALCULATION IN BOLD)

Risk portfolio	*Standard component*	*Alternative component*	*Lower of standard or alternative component*
(a) Long-term real estate loans	2.20 %	2.85 %	2.20 %
(b) MBLs outstanding	0.77 %	0.95 %	0.77 %
(c) Investments	1.51 %	1.37 %	1.37 %
			Standard component
(d) Low-risk assets			0 %
(e) Average-risk assets			1.83 %
(f) Loans sold with recourse			1.20 %
(g) Unused MBL commitments			0.15 %
(h) Allowance			(1.02) %
RBNW requirement* Compare to Net Worth Ratio			6.50 %

* A credit union is "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement.

8. Section 702.302 is amended by removing the phrase "and any risk based net worth requirement applicable to a new credit union defined as 'complex' under §§ 702.103 through 702.106" from paragraph (a); and by removing the phrase "and also meets any applicable risk-based net worth requirement under §§ 702.105 and 702.106" from paragraphs (c)(1), (c)(2) and (c)(3).

[FR Doc. 00-18278 Filed 7-19-00; 8:45 am]
BILLING CODE 7535-01-C

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union loan rate is scheduled to revert to 15 percent on September 9, 2000, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period September 9, 2000, through March 8, 2002. Loans and lines of credit balances existing prior to May 18, 1987, may continue to bear their contractual rate of interest, not to exceed 21 percent. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

DATES: Effective August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, (703) 518-6623.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for federal credit unions from one percent per month (12 percent per year) to 15 percent per year. It also authorized the Board to set a higher limit, after consulting with the Congress, the Department of Treasury and other federal financial agencies, for a period not to exceed 18 months, if the Board determined that: (1) money market interest rates have risen over the preceding six months; and (2) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for nine months to 21 percent. In the unstable environment of the first-half of the 1980s, the Board lowered the loan rate ceiling from 21 percent to 18 percent, effective May 18, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present.

The Board believes that the 18 percent ceiling will permit credit unions to continue to meet their current lending programs, permit flexibility so that credit unions can react to any adverse economic developments, and ensure that any increase in the cost of funds would not affect the safety and soundness of federal credit unions.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. Credit unions are cooperatives and balance loan and share rates consistent with the needs of their members and prevailing market interest rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of their members. Congress has, however, imposed loan rate ceilings since 1934. In 1979, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent, if conditions warrant. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Recent Economic Activity

A number of measures of inflation continue to reflect price pressures on the economy. The Gross Domestic Price Deflator, a broad measure of inflation, rose at a three percent annual rate in the first quarter, the largest increase since a similar rise in the first quarter of 1995. The Consumer Price Index rose 3.1 percent from May 1999 through May 2000, compared to 2.7 percent for all of last year. The personal consumption expenditure price index, a separate measure tied to Gross Domestic Product, rose at a 3.1 percent annual pace in the first quarter, above the 2.5 percent rate of increase in the last three months of 1999.

The economy is continuing to expand at a rapid rate increasing inflationary concerns. Gross Domestic Product grew at a very strong 5.5 percent annual rate in the first three months of this year, after a 7.3 percent increase in the fourth quarter of 1999 and a 5.7 percent rise in the third quarter of 1999. Consumer spending, which has been the engine of this long-term expansion, soared at 7.7 percent annual rate in the first quarter of 2000, the largest increase in 17 years. The University of Michigan's measure of consumer confidence remains close to the level reached last year, suggesting high consumer spending will be sustained.

Money Market Interest Rates

Inflationary concerns and expectations about the future level of economic activity have led to a substantial tightening by the Federal Reserve. Table 1 indicates that the Federal Reserve has raised its target fed funds rate six times between June 1999, when the target rate was increased from 4.75 percent to 5.00 percent, and June 2000, when the target rate was increased 50 basis points from 6.00 to 6.50 percent. In choosing to raise rates in May 2000, the Federal Reserve concluded that gains in worker productivity "could no longer" offset the impact of higher costs.

The 6.50 percent target rate is the highest such target in nine years. Although the Federal Reserve chose not to raise the target rate again last month, its accompanying statement suggested inflation is still of substantial concern. In its official statement, the Federal Reserve indicated that "the risks continue to be weighted mainly toward conditions that may generate heightened inflation pressures in the foreseeable future * * * [s]igns that growth in demand is moving to a sustainable pace are still tentative and preliminary."

Individual Federal Reserve officials have elaborated on the Federal Reserve's official statement. For example, the President of the Chicago Federal Reserve, Moskow, said, "we still are in a period where aggregate demand is growing at a pace that is exceeding potential supply. * * * I haven't seen any significant adjustment up to this point." Richmond Federal Reserve President Broaddus said that core prices, excluding food and energy prices, "have shown signs of acceleration."

The implied rate on futures contracts for September is 6.70 percent, suggesting financial markets anticipate another increase in the fed funds target rate at the August Federal Reserve Open Market Committee meeting.

TABLE 1.—RECENT CHANGES IN FEDERAL RESERVE TARGET FED FUNDS RATE

Date	Fed funds target rate (percent)
May 2000	6.50
March 2000	6.00
February 2000	5.75
November 1999	5.50
August 1999	5.25
June 1999	5.00

Table 2 shows that that in the last six months there has been an increase in interest rates in the three-month to two-year maturities, of greatest relevance to a credit union's cost of funds.

TABLE 2.—YIELDS ON GOVERNMENT SECURITIES

Maturity	December 31, 1999 (percent)	June 30, 2000 (percent)	Change (percent)
3 month	5.31	5.82	.51
6month	5.73	6.19	.47
1 year	5.96	6.05	.09
2 year	6.24	6.35	.11
5 year	6.34	6.19	−.16
10 year	6.44	6.03	−.41

TABLE 2.—YIELDS ON GOVERNMENT SECURITIES—Continued

Maturity	December 31, 1999 (percent)	June 30, 2000 (percent)	Change (percent)
30 year	6.48	5.88	−.60

Financial Implications For Credit Unions

For at least 731 credit unions, representing 11[1] percent of the reporting federal credit unions, the most common rate on unsecured loans was above 15 percent. While the bulk of credit union lending is below 15 percent, small credit unions and credit unions that have instituted risk-based lending programs require interest rates above 15 percent to maintain liquidity, capital, earnings, and growth. Loans to members who have not yet established a credit history or have weak credit histories have more credit risk. Credit unions must charge rates to cover the potential of higher than usual losses for such loans. There are undoubtedly more than 731 federal credit unions charging over 15 percent for unsecured loans to such members. Many credit unions have "Credit Builder" or "Credit Rebuilder" loans, but only report the "most common rate" on the Call report for unsecured loans. Lowering the interest rate ceilng for federal credit unions would discourage these credit unions from making these loans. Credit seekers' options would be reduced and most of the affected members would have no alternative but to turn to other lenders who will charge much higher rates.

Small credit unions would be particularly affected by lower loan rate ceilings since they tend to have a higher level of unsecured loans, typically with lower loan balances. Thus small credit unions making small loans to members with poor or no credit histories are struggling with far higher costs than the typical credit union. Both young people and lower-income households have limited access to credit and, absent a credit union, often pay rates of 24 to 30 percent to other lenders. Rates between 15 and 18 percent are attractive to such members.

Table 3 shows the number of credit unions in each asset group where the most common rate is more than 15 percent for unsecured loans.

[1] Of the 6489 federal credit unions, 5,002 had zero balances in the 15 percent and above unsecured loan rate category or did not report a balance for the December 1999 reporting period.

TABLE 3.—ACTIVE FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT

[December 1999]

Peer group by asset size	Total all FCUs	Number of FCUs*
$0–2 million	1,697	178
$2–10 million	2,212	258
$10–50 million	1,725	202
$50 million+	855	93
Total	6,489	731

*With Loan Rates equal or greater than 15 percent.

Among the 731 credit unions where the most common rate is more than 15 percent for unsecured loans, 121 have 20 percent or more of their assets (Table 4) in this category. For these credit unions, lowering the rates would damage their liquidity, capital, earnings, and growth.

TABLE 4.—ACTIVE FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT AND MORE THAN 20 PERCENT OF ASSETS IN UNSECURED LOANS

[December 1999]

Peer group by asset size	Average percentage of loan rates greater than 15 percent to total assets	Number of FCUs with loan rates equal or greater than 15 percent.
$0–2 million	40	81
$2–10 million	28	32
$10–50 million	36	5
$50 million+	21	3
Total	125	121

In conclusion, the Board has continued the federal credit union loan interest rate ceiling of 18 percent per year for the period September 9, 2000 to March 8, 2002. Loans and line of credit balances existing on May 16, 1987, may continue to bear interest at their contractual rate, not to exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period should changes in economic conditions warrant.

Regulatory Procedures

Administrative Procedure Act

The Board has determined that notification and public comment on this rule are impractical and not in the public interest. 5 U.S.C. 553(b)(3)(B). Due to the need for a planning period prior to the September 9, 2000, expiration date of the current rule, and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (those under one million dollars in assets). This final rule provides added flexibility to all federal credit unions regarding the permissible interest rate that may be used in connection with lending. The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that this rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interest. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule applies only to federal credit unions and, thus, will not have substantial direct effects on the states, on the relationship between the national government and the states, nor materially affect state interests. The NCUA has determined that the rule does not constitute a policy that has any federalism implication for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. NCUA has recommended to the Office of Management and Budget that it determine that this is not a major rule and is awaiting its determination.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Loan interest rates.

By the National Credit Union Administration Board on July 13, 2000.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS (AMENDED)

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.21(c)(7)(ii)(C) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(C) *Expiration.* After March 8, 2002, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii)(A) and (B) of this section, on loans and line of credit balance existing on or before May 16, 1987.

* * * * *

[FR Doc. 00–18277 Filed 7–19–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–216–AD; Amendment 39–11828; AD 2000–13–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting airworthiness directive (AD) 2000–13–51 that was sent previously to certain U.S. owners and operators of Boeing Model 737–200 and –300 series airplanes by individual notices. This AD requires repetitive special detailed inspections to detect cracking of the main deck cargo door frames, their existing reinforcing angles (where applicable), and the attach holes of the latch fittings between frame station (FS) 361.67 and FS 498.12, and between water line (WL) 202.35 and WL 213.00, in the area where the main deck cargo door latch fittings attach to the frames, and corrective actions, if necessary. This action is prompted by a report indicating that three of the subject airplanes had multiple cracks in the lower portion of the main deck cargo door frames and, in some cases, the reinforcing angles. The actions specified by this AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

DATES: Effective July 25, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–13–51, issued July 3, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before September 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–216–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rany Azzi, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748, telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On July 3, 2000, the FAA issued emergency AD 2000–13–51, which is applicable to all Boeing Model 737–200 and –300 series airplanes equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate (STC) SA2969SO.

That action was prompted by a report indicating that three of the subject airplanes had multiple cracks in the lower portion of the main deck cargo door frames and, in some cases, the reinforcing angles. The exact cause of the cracking is unknown at this time. The area of the cracking is between frame station (FS) 361.67 and FS 498.12 where the latch fittings attach to the main deck cargo door frames. Such cracking in the lower portion of the main deck cargo door frames could cause reduced structural integrity of the main deck cargo door. This condition, if not corrected, could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2000–13–51 to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization; loss or opening of the main deck cargo door during flight, and loss of control of the airplane. The AD requires repetitive special detailed inspections to detect cracking of the main deck cargo door frames, their existing reinforcing angles (where applicable), and the attach holes of the latch fittings between FS 361.87 and FS 498.12, and between WL 202.35 and WL 213.00, in the area where the main deck cargo door latch fittings attach to the frames, and corrective actions, if necessary.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on July 3, 2000 to all known U.S. owners and operators of Boeing Model 737–200 and –300 series airplanes equipped with a main deck cargo door installed in accordance with STC SA2969SO. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Reporting Requirements

This AD also requires that operators report the results of the special detailed inspection to the FAA. Because the cause of the addressed cracking is not currently known, the intent of these required inspection reports is to enable the FAA to determine how widespread such cracking problems may be in the affected fleet.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–216–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–13–51 Boeing: Amendment 39–11826. Docket 2000–NM–216–AD.

Applicability: Model 737–200 and –300 series airplanes equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate (STC) SA2969SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane, accomplish the following:

(a) Prior to further flight after the effective date of this AD, perform a special detailed inspection using a borescope to detect cracking of the main deck cargo door frames, their existing reinforcing angles (where applicable), and the attach holes of the latch fittings between frame station (FS) 361.87 and FS 498.12, and between water line (WL) 202.35 and WL 213.00, in the area where the main deck cargo door latch fittings attach to the frames.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 150 flight cycles.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of

either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace all discrepant parts with new parts having the same part numbers and repeat the special detailed inspection using a borescope thereafter at intervals not to exceed 150 flight cycles.

(ii) Repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA.

Note 2: For the purpose of this AD a special detailed inspection is defined as: "An intensive examination of a specific item(s), installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and or equipment. Intricate cleaning and substantial access or disassembly procedure may be required."

Reporting Requirements

(b) Within 10 days after accomplishing the actions required by paragraph (a) of this AD, submit a report of any findings of cracking to the Manager, FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia, fax (770) 703–6097. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on July 25, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–13–51, issued on July 3, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18280 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ88

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to veterans under the Montgomery GI Bill—Active Duty must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty for fiscal year 2000 (October 1, 1999, through September 30, 2000) are changed to show a 1.6% increase in these rates.

DATES: *Effective Date:* This final rule is effective July 20, 2000.

Applicability: However, the changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3015(g) for fiscal year 2000, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty payable to students pursuing a program of education full time must be increased by 1.6%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 1998, through June 30, 1999, exceeds the total of the monthly Consumer Price Index-W for July 1, 1997, through June 30, 1998.

It should be noted that some veterans will receive an increase in monthly payments that will be less than 1.6%. The increase does not apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (so-called "kickers"). It does not apply to amounts payable for dependents. Veterans who previously had eligibility under the Vietnam Era GI Bill receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased by 1.6%.

38 U.S.C. 3015(a) and (b) require that the Department of Veterans Affairs (VA) pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the Montgomery GI Bill—Active Duty in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter-time have had their payments limited to 50% or less of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter-time or less have had their payments limited to 25% or less of the full-time institutional rate. Changes are made consistent with the authority and formula described in this paragraph.

In addition, 38 U.S.C. 3032(c) requires that monthly rates payable to veterans in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there is a 1.6% raise for such training as well.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied retroactively from October 1, 1999 in accordance with the applicable statutory provisions discussed above.

Changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Executive Order 12866

The Office of Management and Budget has reviewed this final rule under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 13, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7136, paragraphs (b), (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 1999, and before October 1, 2000, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$536.00
¾ time	402.00
½ time	268.00
Less than ½ but more than ¼	268.00
¼ time	134.00

(Authority: 38 U.S.C. 3015)

(2) If a veteran's service is described in paragraph (a) of this section, the monthly rate payable to the veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1999, and before October 1, 2000, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$402.00
Second six months of pursuit of training	294.80
Remaining pursuit of training	187.50

(Authority: 38 U.S.C. 3015, 3032(c))

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

(i) $528.00 for training that occurs after September 30, 1998, and before October 1, 1999; and

(ii) $536.00 for training that occurs on or after September 30, 1999, and before October 1, 2000.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 1999, and before October 1, 2000, is the rate stated in the following table.

Training	Monthly rate
Full time	$436.00
¾ time	327.00
½ time	216.00
Less than ½ but more than ¼ time	216.00
¼ time or less	108.00

(Authority: 38 U.S.C. 3015, 3032(c))

(2) The monthly rate of educational assistance payable to a veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1999, and before October 1, 2000, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$327.00
Second six months of pursuit of training	239.80
Remaining pursuit of training	152.60

(Authority: 38 U.S.C. 3015, 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is:

(i) $429.00 for training that occurs after September 30, 1998, and before October 1, 1999; and

(ii) $436.00 for training that occurs on or after October 1, 1999, and before October 1, 2000.

(Authority: 38 U.S.C. 3015)

3. Section 21.7137 is amended by:

A. In paragraph (c)(2) introductory text, removing "1998, and before October 1, 1999" and adding, in its place, "1999, and before October 1, 2000".

B. In paragraph (c)(2)(i), removing "$716.00" and adding, in its place, "$724.00".

C. In paragraph (c)(2)(ii), removing "$537.50" and adding, in its place, "$543.50".

D. In paragraph (c)(2)(iii), removing "$358.00" and adding, in its place, "$362.00".

E. In paragraph (c)(2)(iv), removing "$179.00" and adding, in its place, "$181.00".

F. Revising paragraph (a) to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 1999, and before October 1, 2000, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$724.00	$760.00	$791.00	16.00
¾ time	543.00	570.00	593.00	12.00
½ time	362.00	380.00	395.00	8.50
Less than ½ but more than ¼ time	362.00			
¼ time or less	181.00			

(Authority: 38 U.S.C. 3015(e), (f), and (g))

(2) For veterans pursuing apprenticeship or other on-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 1999, and before October 1, 2000, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$504.75	$517.13	$528.00	$5.25
2nd six months of pursuit of program	351.18	360.53	368.23	3.85
3rd six months of pursuit of program	211.40	217.53	222.25	2.45
Remaining pursuit of program	199.50	205.28	210.53	2.45

(Authority: 38 U.S.C. 3015(e), (f), (g))

(3) The monthly rate payable to a veteran who is pursuing a cooperative course is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Oct. 1, 1998–Sept. 30, 1999	$716.00	$752.00	$763.00	$16.00
On or after Oct. 1, 1999, and before Oct. 1, 2000	724.00	760.00	791.00	16.00

(Authority: 38 U.S.C. 3015)

* * * * *

[FR Doc. 00–18326 Filed 7–19–00; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 045–2020a; FRL–6839–5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the District of Columbia, which formalizes the District's commitment to accept sales of motor vehicles that comply with the requirements of the National Low Emission Vehicle (National LEV) program.

The District of Columbia submitted its National LEV SIP revision to EPA on February 16, 2000. Through its adopted regulations submitted as part of its National LEV SIP revision, the District has agreed to the sale of National LEV compliant vehicles within its borders, in lieu of implementation of a California LEV program. Under the National LEV Program, auto manufacturers have agreed to sell cleaner vehicles meeting National LEV standards throughout the District and other participating states for the duration of the manufacturers' commitments to the National LEV Program. A SIP revision from each participating state is required as part of the agreement between the states and automobile manufacturers to ensure continuation of the National LEV Program to supply clean cars throughout most of the country. The sale of vehicles complying with the National LEV program standards began with 1999 model year vehicles in Northeast states. The National LEV program will then be expanded to include states outside the Northeast beginning with 2001 model year vehicles.

DATES: This rule is effective on September 18, 2000 without further notice, unless EPA receives adverse comment by August 21, 2000. If we receive such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania

19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of District of Columbia-specific materials may be reviewed at the District's offices at: District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, or by e-mail at rehn.brian@epa.gov

SUPPLEMENTARY INFORMATION:

I. Background

The National Low Emission Vehicle (National LEV) program is a voluntary, nationwide clean car program, designed to reduce ground level ozone (or smog) and other air pollution produced by emissions from newly manufactured motor vehicles. On June 6, 1997 (62 FR 31192) and on January 7, 1998 (63 FR 926), the Environmental Protection Agency (EPA) promulgated rules outlining the framework for the National LEV program. These National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA could otherwise mandate under the authority of the Clean Air Act in that time frame. The regulations provided that the program would come into effect only if Northeast states and auto manufacturers agreed to participate. On March 9, 1998 (63 FR 11374), EPA published a finding that the program was in effect. Nine northeastern states (Connecticut, Delaware, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, and the District of Columbia) and 23 auto manufacturers (BMW, Chrysler, Fiat, Ford, General Motors, Honda, Hyundai, Isuzu, Jaguar, Kia, Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Nissan, Porsche, Rolls-Royce, Saab, Subaru, Suzuki, Toyota, Volkswagen, and Volvo) opted to participate in the National LEV program. Once in effect, the National LEV Program became enforceable in the same manner as any other Federal new motor vehicle emission control program.

The National LEV Program will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of Federal and California standards for new motor vehicles and new motor vehicle test procedures. This program enables manufacturers to move towards the design and testing of vehicles to satisfy one set of nationwide standards. The National LEV Program demonstrates how cooperative partnership efforts can produce a smarter, cheaper emissions control program that reduces regulatory burden while increasing protection of the environment and public health.

The National LEV Program will result in substantial reductions in non-methane organic gases (NMOG) and nitrous oxides (NO_X), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently. National LEV vehicles were estimated to cost an additional $76 above the price of vehicles otherwise required today, but the actual per vehicle cost is now expected to be even lower, due to factors such as economies of scale and historical trends related to emission control costs. This predicted incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV Program will help ozone nonattainment areas across the country improve their air quality, as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to take effect, and will remain in effect, only if the participating auto manufacturers and Northeastern States commit to the program and abide by their commitments. The states and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the state commitments are to be made through SIP revisions that incorporate those state commitments to National LEV into state regulations. EPA will then take rulemaking action to approve each state's regulation into its respective federally-enforceable SIP. The National LEV regulations laid out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve that revision as adequately committing the state to the National LEV Program. In today's action, EPA is approving the National LEV SIP revision for the District of Columbia as adequately committing the District to the program. With this rulemaking action, EPA will have completed rulemaking action to approve commitments to the National LEV program by all the Northeast states that have elected to join the National LEV Program.

II. EPA's Evaluation of the District's Submittal

At present, the District of Columbia has not exercised the option, pursuant to section 177 of the Clean Air Act, to adopt state standards to regulate new motor vehicles identical to California's LEV program. Rather, the District adopted regulations that provide for the National LEV Program to be in place. These provide that for the duration of the District's participation in the National LEV program, manufacturers may comply with National LEV standards or equally stringent mandatory Federal standards in lieu of compliance with any state-adopted California LEV program pursuant to section 177 of the Clean Air Act. The District has adopted regulations that accept National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. The District's regulation provides for participation in the National LEV program until model year 2006. Through its regulations, which were submitted to EPA as a SIP revision, the District of Columbia has adequately committed to the National LEV Program, as provided in the final National LEV rule.

EPA's final National LEV rule stated that if a state submits a SIP revision containing regulatory language substantively identical to the language in EPA's regulation without additional conditions, and if such a submission otherwise meets the Clean Air Act requirements for approvable SIP submissions, EPA would not need to conduct notice-and-comment rulemaking to approve that SIP revisions. In its National LEV rulemaking, EPA provided full opportunity for public comment on the language to be contained in each state's subsequent SIP revision. Thus, as discussed in more detail in the EPA National LEV final rule, the requirements for EPA SIP approval are easily verified objective criteria (see 63 FR 936, January 7, 1998). While we could appropriately approve the submission from the District of Columbia without providing for additional notice and requesting comments, we have nonetheless

decided to take this action in the form of a direct final rulemaking, which allows an opportunity for further public comment. In this instance, EPA is not under a timing constraint that would support a shorter rulemaking process, and thus we have decided there is no need to deviate from the Agency's usual procedures for SIP approvals.

III. Final Action

EPA has evaluated the SIP revision submitted by the District of Columbia. The Agency has determined that this SIP revision is consistent with the EPA National LEV regulations and satisfies the general SIP approval requirements of section 110 of the Clean Air Act. Therefore, EPA is approving the District of Columbia low emission vehicle rule submitted on February 16, 2000 into the District's SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective September 18, 2000 without further notice, unless the Agency receives adverse comment by August 21, 2000.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments received in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the District of Columbia's National LEV Program SIP revision must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. In § 52.470, the entry for Chapter 9, section 915 entitled "National Low

Emission Vehicle Program" in the "EPA Approved Regulations in the District of Columbia SIP" table in paragraph (c) is added to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA—APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * *	* * *	* * *	* * *	* * *
Chapter 9	Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants			
* * *	* * *	* * *	* * *	* * *
Section 915	National Low Emission Vehicle Program.	February 11, 2000	[July 20, 2000 and FEDERAL REGISTER cite].	
* * *	* * *	* * *	* * *	* * *

[FR Doc. 00–18108 Filed 7–19–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1331; MM Docket No. 99–271; RM–9606; RM–9800]

Radio Broadcasting Services; Boulder City, NV; Bullhead City, Lake Havasu City, Kingman, Dolan Springs, and Mohave Valley, AZ; Ludlow, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Centennial Broadcasting Licensee, LLC, and Mag Mile Media, L.L.C.: (1) Substitutes Channel 274C for Channel 288C2 at Boulder City, NV, and modifies the license of Station KSTJ to specify the higher class channel; (2) substitutes Channel 289C for Channel 274C and reallots the channel from Bullhead City to Dolan Springs, AZ, as the community's first local aural service, and modifies the license of Station KFLG–FM to specify the alternate Class C channel and Dolan Springs as its community of license; (3) substitutes Channel 272C2 for Channel 224C2 at Lake Havasu City, AZ, and modifies the license of Station KJJJ to specify the alternate Class C2 channel; (4) substitutes Channel 224C1 for Channel 290C1 at Kingman, AZ, and modifies the license of Station KRCY to specify the alternate Class C1 channel; (5) substitutes Channel 273A for Channel 289A at Ludlow, CA, and modifies the license of Station KDUQ to specify the alternate Class A channel; and (6) Channel 240A to Mohave Valley, AZ, as the community's first local aural service. See 64 FR 47483, August 31, 1999, and counterproposals thereto. A filing window for Channel 240A at Mohave Valley will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–271, adopted June 7, 2000, and released June 16, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Channel 274C can be allotted to Boulder City in compliance with the Commission's minimum distance separation requirements at Station KSTJ's presently licensed transmitter site, 35–59–45 North Latitude; 114–51–51 West Longitude. Channel 289C can be allotted to Dolan Springs with a site restriction of 27 kilometers (17 miles) north, at coordinates 35–50–00 NL; 114–19–00 WL, to accommodate Mag Mile's desired transmitter site. Channel 272C2 can be allotted to Lake Havasu City at Station KJJJ's licensed transmitter site, at coordinates 34–33–06 NL; 114–11–37 WL. Channel 224C1 can be allotted to Kingman at Station KRCY's licensed transmitter site, at coordinates 35–01–58 NL; 114–21–57 WL. Channel 240A can be allotted to Mohave Valley without the imposition of a site restriction, at coordinates 34–55–40 NL; 114–35–51 WL. Channel 273A can be allotted to Ludlow at Station KDUQ's licensed transmitter site, at coordinates 34–43–21 NL; 116–10–04 WL. Mexican concurrence in the allotments at Kingman, Lake Havasu City and Ludlow have been obtained since they are located within 320 kilometers (199 miles) of the U.S.-Mexican border. Concurrence in the allotment at Mohave Valley has been requested but not yet received. Therefore, if a construction permit is granted prior to receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the USA-Mexico FM Broadcasting Agreement."

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Bullhead City, Channel 274C; adding Dolan Springs, Channel 289C; removing Channel 290C1 and adding Channel 224C1 at Kingman; removing Channel 224C2 and adding Channel 272C2 at Lake Havasu City; adding Mohave Valley, Channel 240A.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 289A and adding Channel 273A at Ludlow.

4. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 288C2 and adding Channel 274C at Boulder City.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18291 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1392; MM Docket No. 99–351; RM–9785]

Radio Broadcasting Services; Holbrook, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 253C1 for Channel 221C1 at Holbrook, Arizona, and modifies the license for Station KZUA–FM accordingly, as requested on behalf of Navajo Broadcasting Company, Inc. *See* 64 FR 73461, December 30, 1999. Coordinates used for Channel 253C1 at Holbrook, Arizona, are 34–41–25 NL and 110–06–00 WL.

DATES: Effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–351, adopted June 14, 2000, and released June 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 221C1 at Holbrook, and adding Channel 253C1 at Holbrook.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18292 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1324; MM Docket No. 99–349; RM–9786]

Radio Broadcasting Services; Hemet, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273A to Hemet, California, as that community's second local FM transmission service, in response to a petition for rule making filed on behalf of Arana Productions. *See* 64 FR 73463, December 30, 1999. Coordinates used for Channel 273A at Hemet, California, are 33–44–41 NL and 116–59–13 WL. As Hemet is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government was requested but has not been received. As the allotment complies with the terms of the 1992 USA-Mexico FM Broadcast Agreement ("Agreement"), Channel 273A has been allotted to Hemet with an interim operating condition which may be removed once an official response from the Mexican government has been obtained.

DATES: Effective July 31, 2000. A filing window for Channel 273A at Hemet, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 273A at Hemet, California, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–349, adopted June 7, 2000, and released June 16, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 273A at Hemet.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18293 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1438; MM Docket No. 99–285; RM–9717, RM–9808]

Radio Broadcasting Services; Keeseville and Dannemora, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dannemora Broadcasting and John Anthony Bulmer, allots Channel 250A to Dannemora, NY, as the community's first local aural service. *See* 64 FR 55223, October 12, 1999, and counterproposals thereto. This action also dismisses the request of John Anthony Bulmer to allot Channel 250A to Keeseville, NY. Channel 250A can be allotted to Dannemora in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, without the imposition of a site restriction, at coordinates 44–43–12 NL; 73–43–36 WL. Concurrence by the

Canadian Government in the allotment, as a specially negotiated, short-spaced allotment, has been obtained. A filing window for Channel 250A at Dannemora will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–285, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Dannemora, Channel 250A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18294 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1447, MM Docket No. 00–23; RM–9619]

Radio Broadcasting Services; Hayward, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232C2 to Hayward, Wisconsin, in response to a petition filed by Escanaba License Corp. *See* 65 FR 10044, February 25, 2000. The coordinates for Channel 232C2 at Hayward, Wisconsin, are 46–15–04 NL and 91–23–01 WL. A filing window for Channel 232C2 at Hayward, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–23, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 232C2 at Hayward.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18331 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1312; MM Docket No. 95–88; RM–8641, RM–8688, RM–8689]

Radio Broadcasting Services; Rose Hill, Trenton, and Aurora, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration and supplement to petition for reconsideration filed by Conner Media Corporation of the *Report and Order*, 61 FR 66618 (December 18, 1996) which allotted Channel 283A to Aurora, North Carolina, and denied a mutually exclusive proposal by Station WBSY(FM), Channel 284A, Rose Hill, NC to substitute Channel 284C2 for Channel 284A, to reallot the upgraded Channel to Trenton, NC, and to modify the license for Station WBSY (FM) accordingly. The document affirms the Report and Order's decision not to use an alternate channel to remove the conflict between the competing proposals because of a short spacing to a vacant allotment.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 95–88, adopted June 9, 2000 and released June 16, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W. Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th, N.W. Washington, D.C. 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18345 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 140
Thursday, July 20, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–98–507]

RIN 1904–AA98

Alternative Fuel Transportation Program: Requirements for Local Government and Private Fleets; Intergovernmental Consultation

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshops and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) announces that it will hold three informal public workshops to discuss regulatory options and other issues related to potential alternative fuel transportation requirements for local government and private fleets under the Energy Policy Act of 1992. To meet new government consultation requirements, two of these public workshops will be open only to State and local government officials or their representatives.

DOE also announces that it is pausing its rulemaking efforts regarding whether and what to propose as a regulatory requirement on local government and private fleets with respect to alternative fueled vehicles until after consultations with State and local government officials have occurred. DOE is preserving the option of promulgating a local government and private fleet rulemaking after the State and local government consultation process has concluded.

DATES: Oral views, data, and recommendations may be presented at the public workshops, which are scheduled as follows:

1. In Chicago, IL, beginning at 9 a.m. on August 1, 2000.
2. In Denver, CO, beginning at 9 a.m. on August 22, 2000.
3. In Washington, DC, beginning at 9:30 a.m. on September 26, 2000.

The public workshops held in Chicago and Denver are open only to those directly employed by State and local governments. The Washington, DC public workshop is open to all. Due to security check-in procedures for visitors, workshop attendees are advised to arrive at the workshop facilities at least one-half hour before the published starting time for each workshop.

ADDRESSES: The public workshops will be held at the following addresses:

1. Chicago, IL—Argonne National Laboratory, Advanced Photon Source Conference Center, Building 402, 9700 S. Cass Avenue, Argonne, IL 60439.

Directions to Argonne National Laboratory, including maps, can be found at: *www.anl.gov/OPA/anlil.html*. The Advanced Photon Source is designated as APS Facility on the Illinois Site Map (*www.anl.gov/OPA/ilsitemap.html*) and is found in the lower left corner of the map outlined in light blue.

2. Denver, CO—National Renewable Energy Laboratory, Building 17, Fourth Floor Conference Room, 1617 Cole Boulevard, Golden, CO 80401–3393.

Directions to the National Renewable Energy Laboratory, including maps, can be found at: *www.nrel.gov/visiting_nrel/centraloffice.html*.

3. Washington, DC—U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

To assist DOE in planning for these workshops, we ask that interested parties call the regulatory information line, at (202) 586–9171, or e-mail Kenneth Katz, Program Manager, Office of Transportation Technologies, at: Kenneth.Katz@hq.doe.gov, to reserve a space at one or more of the workshops. When reserving a space please identify yourself, spell your name (if placing a reservation over the phone), whom you are employed by (or whom you represent), and provide your address, phone number and e-mail address (if applicable). Workshop attendees may also send a facsimile, with all the necessary information, to Kenneth Katz at (202) 586–1610. DOE will confirm your reservation by phone or e-mail.

Written comments are welcome, including from those who desire to submit their comments following attendance at a workshop. All written comments (eight copies) must be received by DOE by October 16, 2000. Commenters should identify the specific program option and/or issue they are addressing. Written comments should be addressed to: U.S. Department of Energy, Office of Transportation Technologies, EE–34, Docket No. EE–RM–98–507, 1000 Independence Avenue, SW, Washington, DC 20585.

Copies of the public workshop summaries, public comments received, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585; telephone (202) 586–3142, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The docket file material will be filed under "EE–RM–98–507."

FOR FURTHER INFORMATION CONTACT: Kenneth R. Katz, Office of Energy Efficiency and Renewable Energy, EE–34, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Kenneth.Katz@hq.doe.gov; or phone (202) 586–9171.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Energy Policy Act of 1992 (EPACT) (Pub. L. 104–486) requires Federal government fleets, State government fleets, and alternative fuel providers to acquire alternative fuel vehicles (AFVs) for their light-duty fleets. Section 507(g) of EPACT authorizes DOE to pursue a rulemaking to extend alternative fueled vehicle acquisition requirements to certain local government and private fleets. Fleets would be covered if they are located in one of 125 areas specified by EPACT (see the complete list of the Program's Metropolitan Statistical Areas and its component cities and counties at *www.afdc.doe.gov/pdfs/msacnty.pdf*), and if they meet certain size and operational requirements. If implemented, a requirement for local government and private fleets could start as early as model year 2002 (which runs from September 1, 2001 to August 31, 2002).

In order to implement any section 507(g) requirement, section 507(c) of EPACT requires DOE to publish an Advance Notice of Proposed

Rulemaking (ANOPR) to begin a rulemaking process to evaluate and examine EPACT's replacement fuel goals, and to determine whether alternative fueled vehicle (AFV) acquisition requirements for local government and private fleets are necessary to achieve EPACT's energy security and other goals. 42 U.S.C. 13256(c). DOE published an ANOPR for the purposes described in section 507(c) on April 17, 1998. 63 FR 19372. This notice was intended to stimulate comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles. Three hearings were held to receive oral comments on the ANOPR. They were held on May 20, 1998 in Los Angeles, California; on May 28, 1998 in Minneapolis, Minnesota; and on June 4, 1998, in Washington, DC. A total of 110 persons spoke at the three hearings and/or submitted written comments, which were received by July 16, 1998.

II. Decision To Defer Proposed Rulemaking Until After Consultations Have Occurred

Before any alternative fueled vehicle regulation can be implemented, DOE must propose regulatory requirements, along with accompanying discussion and analysis, in a Notice of Proposed Rulemaking (NOPR). Since late 1998, DOE has been reviewing comments, conducting analytical work, and exploring various approaches to implementing section 507(g) of EPACT.

DOE has undertaken analytical initiatives, and participated in public forums, to gain an understanding of the potential effects a rule would have on fleets, EPACT's replacement fuel goals, the energy security of the Nation, and the environment. The feedback, analyses and data that have been received have resulted in multiple options for promulgating an alternative fueled vehicle requirement for local government and private fleets. Before proceeding with the rulemaking, however, additional work is needed.

Under Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), and DOE's recent statement of policy regarding intergovernmental consultation (65 FR 13735, March 14, 2000), DOE must consult with State and local governments before issuing any proposed rule that may have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The consultation requirements specified in Executive Order 13132 became effective in November 1999.

Previously, this office had engaged in stakeholder meetings in late 1998 (which are described below) to discuss the possible regulatory options for a local government and private fleet rulemaking. State and local government officials were active participants in these stakeholder meetings. As a result of these new consultation requirements, and because a final rule under section 507(g) of EPACT may have substantial effects on local governments, DOE has decided to hold public workshops to discuss its possible regulatory options for a local government and private fleet rulemaking.

Because DOE must engage in consultation with State and local governments, DOE is pausing its rulemaking efforts regarding whether, and what, to propose as an alternative fueled vehicle or fuel use requirement on local government and private fleets until after consultations with State and local government officials. DOE preserves the option of promulgating a local government and private fleet rulemaking after the State and local government consultation process has concluded.

III. State and Local Government Consultation Requirement

The President issued Executive Order 13132, "Federalism," on August 4, 1999 (64 FR 43255, Aug.10, 1999). Section 6(a) of the Order requires each covered Federal agency to have "an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "State and local officials" is defined in section 1(d) of the Order to mean "elected officials of State and local governments or their representative national organizations." "Regulatory policies that have federalism implications" refers to actions that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." E.O. 13132, Section 1(a).

On October 28, 1999, the Administrator, Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB), issued, to heads of executive departments and agencies, guidance for implementing Executive Order 13132. Pursuant to section 6 of the Order, the Administrator requested that each agency federalism official submit a description of the agency's consultation process to OMB by January 31, 2000. In response, DOE published a statement of policy on intergovernmental consultation in the development of regulations that have federalism implications ("Statement of Policy"). 65 FR 13735. Because the intergovernmental consultation procedures required by Executive Order 13132 and by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) are similar, DOE modeled its policy on its final policy statement on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995, which DOE published on March 18, 1997 (62 FR 12820). The Statement of Policy provides for DOE to use the same basic consultation process for development of a regulation that contains a significant Federal intergovernmental mandate and may have federalism implications.

Because a rulemaking requiring local governments to acquire alternative fueled vehicles may have federalism implications, the Secretarial Officer responsible for the rulemaking is tasked, under DOE's Statement of Policy, with providing adequate notice to pertinent State and local officials and engaging in consultation with them concerning regulatory options that DOE is considering. For this specific rulemaking, the responsible Secretarial Officer is the Assistant Secretary for Energy Efficiency and Renewable Energy.

To ensure maximum participation by government officials, DOE's Statement of Policy requires a notice to State and local officials to: (1) Describe the nature and authority for the rulemaking(s); (2) give DOE's estimate of the effects on State and local governments of the regulatory options being considered for proposal; and (3) invite them to participate in the development of the regulation by participating in the public workshops or by presenting their views in writing on the likely effects of regulatory options being considered by DOE staff or legally available policy alternatives that they wish DOE to consider. With respect to State governments, DOE's policy requires that actual notice by letter, using a mailing list maintained by the DOE Office of Intergovernmental and External Affairs, is provided to the National Governors Association, the National Conference of State Legislatures, and the Council of State Governments. With respect to local governments, DOE's policy requires giving notice through the **Federal Register** and by letter to the Executive Director of the National League of Cities, the National

Association of Counties, the U.S. Conference of Mayors, the International City/County Management Association, and any State Municipal League not represented by a national association. Additionally, DOE is giving actual notice by letter to the coordinators of all Clean Cities coalitions.

In consultation with State and local officials, DOE is responsible for seeking comment on: (1) The need for Federal regulation; (2) compliance costs of regulatory options DOE is considering for proposal; (3) legally available policy alternatives; and (4) ways to avoid or minimize conflict between State law and federally protected interests. The Statement of Policy requires that the timing, nature, and detail of the consultation with State and local officials be appropriate to the nature of the regulation involved.

IV. Previous Stakeholder Meetings

In the fall of 1998, DOE held a series of informal meetings with several stakeholder groups. The specific groups included: private fleets, transit bus operators, medium/heavy duty fleets, local government fleets, State government fleets, electric utilities, liquid fuel providers, natural gas fuel providers, and propane fuel providers. Other participants included regulatory agencies, technology research organizations, vehicle fuel systems providers, consulting firms, vehicle manufacturers, and related associations and coalitions.

These meetings were held because DOE desired an opportunity to present several regulatory options under consideration at the time, and to gauge stakeholder reactions. At these meetings, DOE discussed the issues affecting the development of a requirement under section 507(g), including DOE's processes, requirements, and authority. In addition to responding to the options presented, stakeholders were presented with an opportunity to identify key barriers to increased use of alternative fuels, and to suggest possible solutions. No efforts were made during the meetings to achieve a consensus.

In addition, DOE held several informal meetings or discussions with automobile manufacturers with the same purposes and information as the stakeholder meetings discussed above. These included meetings with the following companies: American Honda Motor Company, DaimlerChrysler Corporation, Ford Motor Company, General Motors, and Toyota Motor Corporation.

DOE began each meeting by discussing the EPACT replacement fuel goals, the authority to modify these goals, the possible regulatory options for a fleet requirement rule, and the additional statutory authority related to urban transit buses. At each meeting, DOE presented the following four regulatory options under consideration at the time:

(1) A rule based solely upon the AFV acquisition requirements specified by section 507(g) of the Energy Policy Act;

(2) All the elements of Option #1, but with a requirement that the alternative fueled vehicles must operate on alternative fuels wherever available;

(3) All the elements of Option #1, but with a provision for the allocation of credits for actual use of replacement fuels; and

(4) A replacement fuels program, focused on requiring fleets to reduce their light-duty fleet petroleum consumption through the use of replacement fuels.

V. Consultation Through Public Workshops

As set forth in the **DATES** section of this notice, DOE is holding three informal public workshops to discuss regulatory options, issues, and stakeholder concerns. DOE will also utilize these workshops to gather information from local government and private fleets about the type and size of fleets they operate, and how flexibility in meeting a possible requirement would affect the operation of their fleets. The workshops will be an opportunity for DOE to listen to concerns of State, local and private stakeholders.

In short, DOE wishes to consult with stakeholders on whether to promulgate a rule requiring local government and private fleets to acquire AFVs, or use replacement fuel, and, if so, what type of rule and which optional rule formulations should be proposed. In particular, DOE would prefer that any proposed rule results in the largest practical number of AFVs acquired; the greatest displacement of oil; and minimal cost to covered fleets. Specifically, DOE requests comment and feedback on several options:

1. No Regulatory Requirement for Local Government and Private Fleets Is Proposed

DOE could elect not to propose any requirements, with respect to alternative fueled vehicles, for local government and private fleets. If DOE were eventually to determine not to propose a local government and private fleet requirement program, section 509 of EPACT requires DOE to submit to Congress recommendations for possible requirements, or incentives, for fuel suppliers, vehicle suppliers, and motorists that would achieve EPACT's replacement fuel goals.

2. The Local Government and Private Fleet AFV Acquisition Program as Provided by Section 507(g) of EPACT

If DOE elects to propose an AFV acquisition requirement, this option would adopt the language provided by section 507(g) of EPACT, and require local government and private fleets to acquire AFVs as a percentage of their light-duty vehicle acquisitions during specific model years. For model year 2002, the requirement would be that 20 percent of the light-duty vehicles acquired by a local government or private fleet would have to be AFVs. The acquisition requirement would then rise to 40 percent in model year 2003; 60 percent in model year 2004; and 70 percent in model year 2005 and thereafter. DOE could propose a regulation that lowered these percentages or extended the time frame. This program would work similar to the existing State and alternative fuel provider program and would not impose an alternative fuel use requirement for the AFVs acquired by local government and private fleets. Like the existing program, fleets could earn AFV credits for the early or excess acquisition of AFVs.

DOE is requesting comment on this approach, specifically on ways to implement the program with minimal cost and reporting burden on covered fleets.

3. The Fleet Rewards Program

If DOE elects to propose AFV acquisition requirements for local government and private fleets, it could propose flexible compliance strategies to increase the use of alternative fuel. For example, DOE could allow fleets that are required to obtain alternative fueled vehicles under section 507(g) to voluntarily opt into a Fleet Rewards Program.

As currently conceptualized, the Fleet Rewards Program would use the number of light-duty vehicles acquired by a fleet in a model year as the basis for determining a fleet's requirements. A fleet's requirement would still be based on acquiring a specific percentage of its light-duty vehicles as AFVs. However, the Fleet Rewards Program would differ by allowing fleets to take specific actions, called AFV-Equivalency actions, to achieve compliance with its AFV acquisition requirements and to encourage the use of alternative fuel. Those actions that would be allowable under the Fleet Rewards Program, and

would receive AFV-Equivalency Credits, would be the acquisition of any size and class of alternative fueled vehicle, and the consumption of each 500 gasoline gallon equivalent of alternative fuel.

Each AFV acquired, regardless of size and/or class, would earn an AFV-Equivalency Credit for a fleet. Each discrete use of 500 gasoline gallon equivalents of alternative fuel would earn an AFV-Equivalency Credit for a fleet. Two AFV-Equivalency credits would be allocated for the acquisition of dedicated alternative fueled vehicles. The operation of an existing dedicated alternative fueled vehicle in a fleet would also be eligible for AFV-Equivalency Credit.

DOE is requesting comments on this approach, specifically as to whether the Fleet Rewards Program would provide greater flexibility for fleets and encourage alternative fuel use.

4. The Replacement Fuel Program

If DOE elects to propose requirements on local government and private fleets, it could orient the program away from AFVs and toward replacement fuel utilization. As currently conceived, the Replacement Fuel Program would require local government and private fleets to reduce their light-duty vehicle petroleum usage by increasing the percentage of replacement fuels used in their light-duty vehicles. The current definition of fleet used under the EPACT AFV acquisition programs—Metropolitan Statistical Area (MSA) of more than 250,000 people, 50 vehicles total, 20 vehicles in a single MSA—would apply for determining which local government and private fleets may be covered by the program.

A fleet would calculate the total gasoline gallon equivalents (GGE) used by its light-duty vehicles and then multiply that amount by the applicable percentage required for that model year. Fleets would be allowed to count fuel use from any size-class and type of vehicle they operate, regardless of whether these vehicles are newly acquired or existing vehicles.

The Replacement Fuel Program would provide replacement fuel credits for both early replacement fuel use, as well as replacement fuel use in excess of requirements. These credits would be valued on a gasoline gallon equivalent basis, so they would be easily tradeable.

DOE is requesting comments on this approach, specifically as to whether the Replacement Fuel Program would provide greater flexibility for fleets and encourage replacement and alternative fuel use.

5. Extending Flexibile Options to Other Fleets

DOE is considering whether it is possible to allow State government fleets to participate in the Fleet Rewards and/or the Replacement Fuel Program discussed above. State government fleets are not required by EPACT to use alternative fuels in their AFVs. In spite of this, many State fleets are using alternative fuels, and others have expressed an interest in using alternative fuels. DOE is requesting comments on whether it should propose to allow State fleets to participate in these options, with or without a requirement for local government and private fleets.

DOE is also considering whether it is possible to allow non-covered fleets and private citizens to generate AFV-Equivalency Action credits, or replacement fuel use credits, for the acquisition of AFVs and the use of alternative fuel and replacement fuels. If allowable under law, non-covered fleets and private citizens could be allocated credits, which could be sold to any EPACT mandated fleet that is required to achieve compliance with the Fleet Rewards or Replacement Fuel Program.

These fleets and individuals would be under no reporting requirement, but would have to report their actions to DOE to obtain credits. DOE is requesting comments on this approach, specifically as to whether the benefits of allowing the involvement of non-covered fleets and individuals would outweigh the complexities of enabling these groups to obtain credits.

DOE is also considering ways to reward alternative fuel providers for establishing fueling infrastructure and for supporting the use of AFVs in their local communities. DOE is seeking comments and suggestions as to how this could be accomplished within a regulatory framework.

6. An Alternative Fueled Urban Transit Bus Acquisition Program as Provided by Section 507(k) of EPACT

Section 507(k) of the Energy Policy Act provides DOE with the authority to propose a program requiring the acquisition of alternative fueled urban transit buses if this program would "contribute to achieving the goal described in section 502(b)(2)(B), as modified under section 504." DOE must determine if such an action would be consistent with energy security goals and the objective of encouraging greater use of urban buses by the public, and how such a program could be implemented in concert with or instead of a local government and private fleet program.

A possible option for a potential urban transit bus program would be one under which transit operators would be required to acquire alternative fuel buses as a portion of their new urban transit bus acquisitions, such as under a 507(g) fleet program.

Another possible option would be allowing urban transit bus operators the opportunity to "opt into" the Fleet Rewards Program as an optional compliance path. Under this program, urban transit bus operators might receive credit either for acquisitions of alternative fuel vehicles or for alternative fuel use. As with the light-duty vehicle program, an AFV-Equivalency would have to be established, which would have to be a fair and appropriate AFV-Equivalency for an urban transit bus.

A third possible option is a Replacement Fuel Program for urban transit bus fleets. DOE is requesting comments on whether urban transit bus operators should have a separate Fleet Rewards or Replacement Fuel Program, or whether it should be a subset of a possible Fleet Rewards or Replacement Fuels Program for local government and private fleets.

DOE also is considering what might be the appropriate minimum fleet size required for an urban transit bus operator to be covered by a section 507(k) requirement. Because EPACT does not explicitly provide guidance on this issue, DOE will be seeking comments as to what the appropriate minimum fleet size could be. DOE is seeking comments on these various approaches to encouraging alternative and replacement fuel use in transit buses.

VI. Conduct of the Workshops

The workshops will be conducted in an informal, conference style. As opposed to hearings, at which speakers make formal oral statements before a panel of DOE officials who can question them, the workshops will have no formal presentations by workshop participants. DOE officials will present the issues to be discussed and then will act as facilitators for the ensuing discussions. Workshop participants will be allowed to speak, offer information and raise issues/questions at any point during a workshop.

The draft agenda described below is subject to modification to ensure that those who attend will have an adequate opportunity to state their views, offer information, raise issues, and interact with other attendees. There will be no discussion of proprietary information,

costs or prices, market shares, or other commercial matters regulated by antitrust law. A summary of what is discussed at each workshop will be prepared and made available to participants and the general public, along with a more detailed description of the options on the Office of Transportation Technologies' Website; *www.ott.doe.gov/epact/private_fleets.html*.

VII. Preliminary Agenda

Purpose of Meeting
Introduction of Attendees
DOE Presentation of Workshop Issues
  DOE's Authority
  DOE's Process/Requirements
  Consultation Requirements
  Previous Stakeholder Meetings
  Regulatory Options
  DOE's Questions
Breakout Sessions
  Questions Concerning DOE's Regulatory Options/Deferral Decision
  Response to DOE's Regulatory Options/Deferral Decision
  Other Possible Regulatory Concepts
  Incentives
  Non-Financial incentives
  Other Issues

Issued in Washington, DC on July 17, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 00–18369 Filed 7–19–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–322–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R Series Airplanes (A300–600)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (A300–600), that currently requires an inspection to detect cracks of certain attachment holes; and installation of new fasteners and follow-on inspections or repair, if necessary. This action would require a reduction in the inspection threshold and repetitive intervals and an increase in the number of attachment holes to be inspected. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the forward fitting of fuselage frame FR47, which could result in reduced structural integrity of the frame.

DATES: Comments must be received by August 21, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–322–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–322–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–322–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–322–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 25, 1997, the FAA issued AD 97–16–06, amendment 39–10097 (62 FR 41257, August 1, 1997) [A correction was published in the **Federal Register** on August 25, 1997 (62 FR 44888)], applicable to all Airbus Model A300 B4–600 (A300–600), A300 B4–600R, and A300 F4–600R series airplanes (A300–600), to require an inspection to detect cracks of certain attachment holes; and installation of new fasteners and follow-on inspections or repair, if necessary. That action was prompted by reports of cracking on the forward fitting of fuselage frame FR47 at the level of the last fastener of the external angle fitting. The requirements of that AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the airframe.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–16–06, the Direction Gonorale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has

informed the FAA that cracks have been found in the internal angle fittings of the wing center box at fuselage frame FR 47 on airplanes that had not reached the threshold of the fastener hole inspections required by AD 97–16–06. The DGAC also has informed the FAA that cracks have been found in additional fastener holes that were not required to be inspected by AD 97–16–06.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–57–6049, Revision 3, dated December 15, 1998, which describes procedures for performing a rotating probe inspection to detect cracks of the attachment holes H, I, K, L, M and N, and various follow-on actions. (These follow-on actions include reaming/drilling holes and installing new fasteners.) The service bulletin also describes procedures for repair of certain cracking conditions. The repair procedures include reaming/drilling holes, re-inspecting the hole, and trimming the external fitting. The service bulletin permits further flight, under certain conditions, with attachment holes that are cracked within certain limits. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–147–279(B) R1, dated July 12, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–16–06 to require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and Relevant Service Information

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the attachment holes. The FAA has determined that, due to safety implications and consequences associated with such cracking, the subject attachment holes that are found to be cracked must be repaired prior to further flight. Repairs would be required to be accomplished in accordance with a method approved by the FAA, the DGAC (or its delegated agent), or the service bulletin described previously, as applicable.

Operators also should note that, unlike particular provisions in the service bulletin regarding adjustment of the compliance times using an "adjustment-for-range" formula, this proposed AD would not permit formulaic adjustments of the inspection compliance times. The FAA has determined that such adjustments may present difficulties in determining if the applicable inspections and modifications have been accomplished within the appropriate time frame. Further, while such adjustable compliance times are utilized as part of the Maintenance Review Board program, they do not fit practically into the AD tracking process for operators or for Principal Maintenance Inspectors attempting to ascertain compliance with AD's. Therefore, the FAA has determined that fixed compliance times should be specified for accomplishment of the actions required by this AD.

Additionally, after discussions with the DGAC and the manufacturer, the FAA has determined that flight-hour maximums should be included as part of the compliance threshold and repetitive intervals for the inspections required by this proposed AD. Inclusion of a compliance threshold in terms of total flight hours as well as total flight cycles, and requiring inspection at the earlier of those times, will ensure that airplanes with longer-than-average flight times are inspected at a threshold and intervals necessary to maintain safety. Accordingly, the FAA has specified that the initial inspection must be accomplished at the earliest time an airplane reaches certain accumulated total flight cycles or total flight hours, and that repetitive inspections are to be accomplished at intervals not to exceed certain flight cycles or flight hours, whichever occurs first.

Furthermore, the service bulletin specifies that operators need not count touch-and-go landings in determining the total number of landings between two consecutive inspections, when those landings are less than five percent of the landings between inspection intervals. Since fatigue cracking that was was found on the forward fitting of fuselage frame FR47 at the level of the last fastener of the external angle fitting is aggravated by landing, the FAA finds that all touch-and-go landings must be counted in determining the total number of landings between two consecutive inspections.

The service bulletin also recommends a grace period of 1,500 flight cycles (after receipt of the service bulletin) for accomplishing the rotating probe inspection, unless the threshold has been exceeded by more than 2,000 flight cycles; in which case, the grace period is 750 flight cycles (after receipt of the service bulletin). The FAA has determined that a grace period of 750 flight cycles and 1,700 flight hours, as applicable, would address the identified unsafe condition in a timely manner. In developing an appropriate grace period for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (7 work hours). In light of all of these factors, the FAA finds a grace period of 750 flight cycles and 1,700 flight hours, as applicable, for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Explanation of Change to Applicability

The applicability throughout AD 97–16–06 reads "all Model A300–600 series airplanes." The FAA has revised the applicability of this proposed AD to identify the specific affected model designations as published on the type certificate data sheet [*i.e.*, Model A300 B4–600 (A300–600), A300 B4–600R, and A300 F4–600R series airplanes].

Cost Impact

There are approximately 74 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are proposed in this AD action would take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost as

much as $6,327 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to cost as much as $499,278, or $6,747 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10097 (62 FR 44888, August 25, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–322–AD. Supersedes AD 97–16–06, Amendment 39–10097.

Applicability: All Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (A300–600), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the forward fitting of fuselage frame FR47, which could result in reduced structural integrity of the airframe, accomplish the following:

Inspection of Holes H, I, K, L, M, and N

(a) Perform a rotating probe inspection to detect cracks of the attachment holes H, I, K, L, M, and N on the left and right internal angles of the wing center box, in accordance with Airbus Service Bulletin A300–57–6049, Revision 3, dated December 15, 1998, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes on which Airbus Modification 10454 (reference Airbus Service Bulletin A300–57–6050) and Airbus Modification 10155 have not been installed: Inspect at the earlier of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 10,400 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later; or

(ii) Prior to the accumulation of 23,900 total flight hours, or within 1,700 flight hours after the effective date of this AD, whichever occurs later.

(2) For airplanes on which Airbus Modification 10454 (reference Airbus Service Bulletin A300–57–6050) or Airbus Modification 10155 has been installed: Inspect at the earlier of the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 14,200 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later; or

(ii) Prior to the accumulation of 32,600 total flight hours, or within 1,700 flight hours after the effective date of this AD, whichever occurs later.

No Cracking Found: Installation of New Fastener and Repetitive Inspections

(b) If no crack is found during any rotating probe inspection required by paragraph (a) of this AD, prior to further flight, install new fasteners in accordance with Airbus Service Bulletin A300–57–6049, Revision 3, dated December 15, 1998. Repeat the rotating probe inspection thereafter at intervals not to exceed 5,900 flight cycles or 13,500 flight hours, whichever occurs first.

Cracking Found: Corrective Actions

(c) If any crack is found during any rotating probe inspection required by paragraph (a) of this AD that is within the limits specified in Airbus Service Bulletin A300–57–6049, Revision 3, dated December 15, 1998, prior to further flight, except as required by paragraph (d) of this AD, accomplish all applicable corrective actions (including reaming, drilling, drill-stopping holes, chamfering, follow-on inspections, and installing new or oversize fasteners), in accordance with the service bulletin. Repeat the rotating probe inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 5,900 flight cycles or 13,500 flight hours, whichever occurs first.

(d) If any crack is found during any rotating probe inspection required by paragraph (a) of this AD that exceeds the limits specified in Airbus Service Bulletin A300–57–6049, Revision 3, dated December 15, 1998, or if any cracking remains after the applicable repairs required by paragraph (c) of this AD, prior to further flight, repair the crack in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–16–06, amendment 39–10097, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the

Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–147–279(B) R1, dated July 12, 2000.

Issued in Renton, Washington, on July 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18403 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–24–AD]

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This proposal would require inspecting the brackets that attach each horizontal stabilizer slat (slat) to the stabilizer for a crack and replacing the slat assembly if a crack is found. Installing airworthy segmented slat assemblies would be required prior to flight after December 31, 2000 and would constitute terminating action for the requirements of this AD. This proposal is prompted by an incident in which a slat separated from a helicopter. The actions specified by the proposed AD are intended to prevent a slat from separating, impact with a main or tail rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–24–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–24–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–24–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 407 helicopters. Transport Canada advises that a slat could depart, contact one of the rotors, and lead to loss of control of the helicopter. To ensure that there is no pre-load condition on the brackets that secure the slats to the stabilizer, BHTC has introduced segmented slat assemblies, P/N 407–023–001–101.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 407–99–32, dated December 7, 1999, which specifies replacing the slat assemblies. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–2000–09, dated March 21, 2000, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA has identified an unsafe condition that is likely to exist or develop on other BHTC Model 407 helicopters of the same type design registered in the United States. The proposed AD would require visually inspecting the brackets, part number (P/N) 206–023–119–109 or –110, or P/N 407–023–801–127 or –128, for a crack. The inspections must occur within the next 50 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS until the installation of airworthy segmented slat assemblies, P/N 407–023–001–101, is accomplished. Installing airworthy segmented slat assemblies would be required prior to flight after December 31, 2000 and would constitute terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 348 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per helicopter to perform the visual inspections, 1 work hour to replace a slat assembly, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,364 per segmented slat assembly. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,697,544, assuming 1 inspection per helicopter and replacement of the 2 slat assemblies on each helicopter.

The regulations proposed herein would not have a substantial direct

effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 2000–SW–24–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53347, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a horizontal stabilizer slat (slat) from separating, impact with a main or tail rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, visually inspect the brackets, part number (P/N) 206–023–119–109 or –110 or P/N 407–023–801–127 or –128, that attach the slats, P/N 407–023–002–117, to the horizontal stabilizer for a crack.

(1) If any crack is found, replace the slat assembly, P/N 407–023–002–117, with an airworthy segmented slat assembly, P/N 407–023–001–101, before further flight. Replace the slat assembly in accordance with Part II of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. ASB 407–99–32, dated December 7, 1999.

(2) If no crack is found, replace each slat assembly, P/N 407–023–002–117, with an airworthy segmented slat assembly, P/N 407–023–001–101, prior to flight after December 31, 2000.

(b) Installing airworthy segmented slat assemblies, P/N 407–023–001–101, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2000–09, dated March 21, 2000.

Issued in Fort Worth, Texas, on July 12, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–18404 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–25–AD]

Airworthiness Directives; Eurocopter France Model AS–350B, BA, B1, B2, B3, C, D, and D1, and AS–355E, F, F1, F2 and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD) that applies to Eurocopter France Model AS–350B, BA, B1, B2, C, D, and D1, and AS–355E, F, F1, and F2 helicopters. That AD currently requires inspections of the main rotor head components, the main gearbox (MGB) suspension bars, and the ground resonance prevention system components. This action would require those same inspections, but would also apply to Model AS–350B3 and AS–355N helicopters. This proposal is prompted by the inadvertent omission of those model helicopters from the previous AD. The actions specified by the proposed AD are intended to prevent ground resonance due to reduced structural stiffness, which could lead to failure of a main rotor head or MGB suspension component and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

You may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On April 4, 2000, the FAA revised AD 86–15–10, Amendment 39–5517 (52 FR 13233, April 22, 1987) by issuing AD 86–15–10 R2, Amendment 39–11681 (65 FR 20721, April 18, 2000). That revision requires an initial inspection at 10 hours time-in-service (TIS) and then repetitive inspections at intervals not to exceed 500 hours TIS of the main rotor head components, the MGB suspension bars, and the ground resonance prevention system components. The revision was prompted by reports of confusion and unnecessary costs associated with the difference in the previously-required 400 hours TIS inspection interval and the current manufacturer's master service recommendation of 500 hours TIS inspection interval. The requirements of that revised AD are intended to eliminate confusion and unnecessary costs and to prevent ground resonance due to reduced structural stiffness, which could lead to failure of a main rotor head or MGB suspension component and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that Model AS–350B3 and AS–355N helicopters were inadvertently omitted from the applicability of the revised AD. Model AS–350B3 was omitted because it is a newer model helicopter and was not part of the Type Certificate Data Sheet when the revised AD was issued. Model AS–355N was included in the preamble of AD 86–15–10 R2, but was inadvertently omitted in the applicability list of that AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Model AS–350B, BA, B1, B2, B3, C, D, and D1, and AS–355E, F, F1, F2 and N helicopters of the same type design, the proposed AD would supersede AD 86–15–10, AD 86–15–10 R1, and AD 86–15–10 R2 to require repetitive inspections of the main rotor head components, the MGB suspension bars, and the ground resonance prevention system components at intervals not to exceed 500 hours TIS.

The FAA estimates that 586 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $480 per helicopter, or $281,280 for the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11681 (65 FR 20721, April 18, 2000), Amendment 39–6515 (55 FR 5833, February 20, 1990) and Amendment 39–5517 (52 FR 13233, April 22, 1987), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 2000–SW–25–AD. Supersedes AD 86–15–10 R2, Amendment 39–11681, Docket No. 98–SW–82–AD; AD 86–15–10R1, Amendment 39–6515, Docket No. 86–ASW–22; and AD 86–15–10, Amendment 39–5517, Docket No. 86–ASW–22.

Applicability: Model AS–350B, BA, B1, B2, B3, C, D, and D1, and AS–355E, F, F1, F2 and N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ground resonance due to reduced structural stiffness, which could lead to failure of a main rotor head or main gearbox (MGB) suspension component and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS):

(1) For Model AS–350B, BA, B1, B2, B3, C, D, and D1 helicopters, inspect the main rotor head components, the MGB suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with paragraph CC.3 of

Aerospatiale Service Bulletin (SB) No. 01.17a (not dated).

(2) For Model AS–355E, F, F1, F2, and N helicopters, inspect the main rotor head components, the MGB suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with paragraph CC.3 of SB No. 01.14a (not dated).

(b) Rework or replace damaged components in accordance with SB No. 01.17a or SB No. 01.14a, as applicable.

(c) Repeat the inspections and rework required by paragraphs (a) and (b) of this AD at intervals not to exceed 500 hours TIS.

(d) If the helicopter is subjected to a hard landing or to high surface winds when parked without effective tiedown straps installed, repeat the inspections required by paragraph (a) of this AD for the main rotor head star arms and the MGB suspension bars (struts) before further flight.

(e) After a landing with abnormal self-sustained dynamic vibrations (ground resonance type vibrations), repeat all the inspections required by paragraph (a) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 12, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–18405 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–35–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80A3 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to General Electric Company CF6–80A3 series turbofan engines. The existing AD currently requires initial and repetitive on-wing borescope inspections of the left hand aft engine mount link assembly for cracks, bearing migration, and, bearing race rotation, and if necessary, replacement with serviceable parts. This proposal would require initial and repetitive visual inspections of both left hand and right hand aft engine mount link assemblies for separations, cracks, and bearing race migration. Cracked or separated parts would have to be replaced prior to further flight. If spherical bearing race migration is discovered, a borescope inspection for cracks is also proposed. If no cracks are discovered by the additional borescope inspection, assemblies would have a 75-cycle grace period for remaining in service before replacement. Finally, installation of improved aft engine mount link assemblies would constitute terminating action to the inspections of this proposed AD. This proposal is prompted by a recent analysis of internal bearing friction and bearing migration and inspections which revealed migrated spherical bearing races on two CF6–80A3 series and ten CF6–80C2 series aft engine mount links. The actions specified by the proposed AD are intended to prevent aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure.

DATES: Comments must be received by September 18, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rohr, Inc., 850 Lagoon Dr., Chula Vista, CA 91910–2098; telephone 619–691–3102, fax 619–498–7215. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7192, fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On July 15, 1998, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 98–15–17, Amendment 39–10666 (63 FR 39489, July 23, 1998), applicable to General Electric Company (GE) CF6–80A3 series turbofan engines. That AD requires initial and repetitive on-wing borescope inspections of the left hand aft engine mount link assembly for cracks, bearing migration, and bearing race rotation, and, if necessary, replacement with serviceable parts. That action was

prompted by a report of a fractured left hand aft engine mount link discovered during a scheduled engine removal. That condition, if not corrected, could result in aft engine mount link failure, which can result in adverse redistribution of the aft mount loads and possible aft mount system failure.

Due to the similarities between the link assembly designs, on June 28, 2000, the FAA also published a comparable rule for CF6–80C2 engine models installed on A300, A310, and MD–11 applications (AD 2000–12–08).

Recent Analysis

Since the issuance of AD 98–15–17, analysis into internal bearing friction and bearing race migration that could result in higher stress levels and reduced fatigue capability of aft engine mount links has been conducted. The analysis indicates that aft engine mount link spherical bearing race migration adversely affects link fatigue life and that right hand, as well as left hand, aft engine mount link assemblies are affected. Recent inspections also revealed migrated spherical bearing races on two CF6–80A3 series and ten CF6–80C2 series aft engine mount links. This condition, if not corrected, could result in aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure.

Service Information

The FAA has reviewed and approved the technical contents of Rohr Service Bulletin CF6–80A3–NAC–A71–064, dated April 4, 2000, that describes the aft engine mount link replacement. The FAA also has reviewed and approved the technical contents of Rohr Service Bulletin CF6–80A3–NAC–A71–061, Revision 1, dated February 22, 2000, that describes procedures for visual inspections of existing left hand and right hand aft engine mount link assemblies for separations, cracks, and spherical bearing race migration and provides rejection criteria.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–15–17 to require initial and repetitive visual inspections of both left hand and right hand aft engine mount link assemblies for separations, cracks, and bearing race migration. If bearing race migration is discovered, this proposal would require a borescope inspection for cracks. Aft engine mount link assemblies found cracked would have to be replaced with serviceable parts prior to further flight. Aft engine mount link assemblies discovered with bearing race migration would be able to remain in service for another 75 cycles-in-service (CIS) following borescope inspection prior to replacement with serviceable parts. All left hand and right hand aft engine mount link assemblies would have to be replaced at the next engine shop visit with improved assemblies, which would constitute terminating action to the inspections. These actions would be required to be accomplished in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 120 engines of the affected design in the worldwide fleet. The FAA estimates that 59 engines installed on aircraft of US registry would be affected by this proposed AD, that the cost of replacement link assemblies is approximately $9,737, that it would take approximately 2 work hours per engine to accomplish the proposed interim inspections, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD over 3 years on US operators is estimated to be $588,614.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10668 (63 FR 39489, July 23, 1998) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. 98–ANE–35–AD. Supersedes AD 98–15–17, Amendment 39–10668.

Applicability: General Electric Company (GE) CF6–80A3 series turbofan engines, with left hand aft engine mount link assemblies, part numbers (P/Ns) 224–1608–501, 224–1608–503, or 224–1608–505 installed, or right hand aft engine mount link assemblies, P/Ns 224–1609–503, 224–1609–505, or 224–1609–507 installed. These engines are installed on but not limited to Airbus Industrie A310–200 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure, accomplish the following:

Initial Inspection

(a) Inspect aft engine mount link assemblies as follows:

Not Previously Inspected

(1) Within 400 cycles-in-service (CIS) after the effective date of this AD, if not previously inspected using Rohr Service Bulletin CF6–80A3–NAC–A71–061, Revision 1, dated

February 22, 2000, or Rohr Service Bulletin CF6–80A3–NAC–A71–061, dated April 16, 1999; or

Previously Inspected

(2) Within 400 cycles-since-last-inspection (CSLI), if previously inspected using Rohr Service Bulletin CF6–80A3–NAC–A71–061, Revision 1, dated February 22, 2000, or Rohr Service Bulletin CF6–80A3–NAC–A71–061, dated April 16, 1999.

(3) Visually inspect for: separations, cracks, and spherical bearing race migration.

(4) Inspect in accordance with the Accomplishment Instructions of Rohr Service Bulletin CF6–80A3–NAC–A71–061, Revision 1, dated February 22, 2000.

Cracked or Separated Parts

(5) If a crack or separation is discovered, prior to further flight, remove the cracked or separated aft engine mount link assembly and the attaching hardware from service, and replace with serviceable parts.

Removal of Aft Engine Mount Link Assemblies With Spherical Bearing Race Migration

(6) If an aft engine mount link assembly is found with spherical bearing race migration, but no cracks or separations, prior to further flight, do either of the following:

Removal

(i) Remove the aft engine mount link assembly and the attaching hardware from service and replace with serviceable parts; or

Additional Borescope Inspection of Aft Engine Mount Link Assemblies With Spherical Bearing Race Migration

(ii) Perform an additional borescope inspection for cracks in accordance with paragraphs (2)(D)(5) and (2)(G)(5) of the Accomplishment Instructions of Rohr Service Bulletin CF6–80A3–NAC–A71–061, Revision 1, dated February 22, 2000, and perform the following:

After Additional Borescope Inspection, if Parts Are Cracked

(A) If a crack indication is discovered, prior to further flight, remove the cracked aft engine mount link assembly and the attaching hardware from service, and replace with serviceable parts.

After Additional Borescope Inspection, If Parts Are Not Cracked (Grace Period)

(B) If crack indications are not discovered, within 75 CIS after the inspection performed in accordance with paragraph (a)(6)(ii) of this AD, remove the aft engine mount link assembly from service, and replace with serviceable parts.

Attaching Hardware

(iii) Attaching hardware may be returned to service after inspection in accordance with paragraphs 2(D)(6)(a) or 2(G)(6)(a) of Rohr Service Bulletin CF6–80A3–NAC–A71–061, Revision 1, dated February 22, 2000, only if inspection of the removed link shows no cracks or separations.

Note 2: Link attaching hardware includes the nuts, bolts and washers that secure the link.

Repetitive Inspections

(b) Thereafter, perform the actions required by paragraph (a) and associated subparagraphs at intervals not to exceed 400 CSLI.

Replacement With Improved Link Assemblies

(c) Replace aft engine mount link assemblies with improved aft engine mount link assemblies at the next engine shop visit (ESV), or prior to accumulating 29,000 engine cycles since new (CSN), whichever occurs first.

(1) Replace in accordance with the Accomplishment Instructions of Rohr Service Bulletin CF6–80A3–NAC–A71–064, dated April 4, 2000.

Left Hand Aft Engine Mount Link Assemblies

(2) Replace left hand aft engine mount link assemblies, P/Ns 224–1608–501, 224–1608–503, or 224–1608–505, with improved left hand aft engine mount link assemblies, P/Ns 224–1608–507 or 224–1608–509.

Right Hand Aft Engine Mount Link Assemblies

(3) Replace right hand aft engine mount link assemblies, P/Ns 224–1609–503, 224–1609–505, or 224–1609–507, with improved right hand aft engine mount link assemblies, P/Ns 224–1609–509 or 224–1609–511.

Terminating Action

(4) Installation of improved aft engine mount link assemblies in accordance with paragraph (c) and its subparagraphs constitutes terminating action to the inspections required by paragraphs (a) and (b) of this AD.

Alternate Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 14, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–18406 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AJ80

Accelerated Benefits Option for Servicemembers' Group Life Insurance and Veterans' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Veterans Programs Enhancement Act of 1998 authorizes the payment of accelerated benefits to terminally ill persons in the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs. This document proposes to amend the Department of Veterans Affairs (VA) regulations to establish a mechanism for implementing these statutory provisions.

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to "*OGCRegulations@mail.va.gov*". Comments should indicate that they are submitted in response to "RIN 2900–AJ80." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Greg Hommer, Senior Attorney/Insurance Specialist, Insurance Program Administration and Oversight, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, ext. 4280 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document proposes to amend VA regulations for the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs to add accelerated death benefit (Accelerated Benefit) provisions that permit terminally ill policyholders access to the death benefits of their policies before they die. Traditionally, an individual purchases life insurance in order to safeguard his or her dependents against major financial loss due to his or her death. Life insurance serves to replace the lost income of an insured and to provide for his or her

final expenses. In recent years, the insurance industry has recognized the financial needs of terminally ill policyholders and has begun offering policies with accelerated benefit provisions. A recent statutory amendment (section 302 of the Veterans Programs Enhancement Act of 1998, Pub. L. 105–368, 112 Stat. 3315, 3332–3333) added section 1980 to title 38, United States Code, which extends an accelerated benefit option to terminally ill persons insured in the SGLI and VGLI programs.

Proposed paragraph (a) is informative in that it explains that an Accelerated Benefit is a payment to the insured of a portion of a SGLI or VGLI insurance benefit before the insured dies.

Proposed paragraph (b), among other things, states that a person insured under SGLI or VGLI is eligible to receive an Accelerated Benefit if the person has a written medical prognosis from a physician of nine months or less to live. These provisions are proposed pursuant to 38 U.S.C. 1980(a) which states that a person is considered to be terminally ill and eligible for an Accelerated Benefit if, based on a medical prognosis, "the life expectancy of the person is less than a period prescribed by the Secretary * * * not [to] exceed 12 months." We believe that a written medical prognosis from a physician is consistent with the statutory intent. Further, we propose that the time period of life expectancy for allowing the payment of an Accelerated Benefit should be nine months or less. The nine-month maximum is the same period that is provided for civilian Federal employees who are insured by the Federal Employees Group Life Insurance (FEGLI) program, as authorized by the "FEGLI Living Benefits Act," Public Law 103–409. We believe that it is reasonable to have the same time period for individuals regardless of whether the program concerns military or civilian service.

Proposed paragraph (c) states that only the insured member can apply for an Accelerated Benefit. We believe this is necessary so that the insured is responsible for the determination to obtain an Accelerated Benefit.

Under the provisions of proposed paragraph (d) an insured may request as an Accelerated Benefit an amount up to a maximum of 50% of the face value of coverage and the request must be $5,000 or a multiple of $5,000. Under paragraph (e) the insured may receive such an amount requested, minus an interest reduction determined based on actuarial principles to be lost because of early payment. We believe this is the maximum amount that we can pay an insured under our statutory authority in 38 U.S.C. 1980 in accordance with our mandate to prescribe a maximum amount that we find to be "administratively practicable and actuarially sound."

Proposed paragraph (f) provides that application for an Accelerated Benefit must be made on a form entitled "Claim for Accelerated Benefits," a form which must be completed by the terminally ill applicant, his or her physician, and, if on active duty, the personnel office of the servicemember's unit. This is necessary to ensure that sufficient information is submitted for determinations under this section.

Under proposed paragraph (g) and other provisions of this proposed rule, the Office of Servicemembers' Group Life Insurance (OSGLI) would administer the Accelerated Benefits program. This includes making the necessary determinations regarding the payment of Accelerated Benefits. This is authorized under 38 U.S.C. 1966 and 1980.

Proposed paragraph (h) states that an Accelerated Benefit will be paid in a lump sum. This reflects statutory provisions at 38 U.S.C. 1980(b) and (c).

According to 38 U.S.C. 1980(f)(1), an election to receive Accelerated Benefits is irrevocable. We proposed to define the term "election" for purposes of section 1980(f)(1) in paragraph (i) of the proposed rule as the time when an insured member cashes or deposits an accelerated benefit. After that election, the request for an accelerated benefit could not be cancelled. However, until that time, the insured member may cancel the request by informing OSGLI in writing and by returning the check if one was received. An insured member could later reapply by requesting the same or a different amount of benefits. Also, if an insured member died before cashing or depositing an accelerated benefit payment, the check must be returned to VA. These provisions are consistent with the provisions of 38 U.S.C. 1980.

Proposed paragraph (j) states that an insured member is not eligible for additional accelerated benefits once he or she cashes or deposits an accelerated benefit payment. This is mandated by the provisions of 38 U.S.C. 1980 which state that an individual may not make more than one election for accelerated benefits.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501–3520), this proposed rule includes information collection provisions in 38 CFR 9.14(e). In accordance with section 3507(d) of the Act and 5 CFR 1320.11, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AJ80."

Title: Application by Insured Terminally Ill Person for Accelerated Benefit.

Summary of collection of information: In proposed 38 CFR 9.14(e), VA would require that a terminally ill person insured under Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) who wants to receive a lump-sum payment to the insured prior to the insured's death of a portion of the insurance must submit to Prudential Life Insurance's Office of Servicemembers' Group Life Insurance a completed application for an Accelerated Benefit. The application must be on a form set forth in § 9.14(e) which includes a medical prognosis by a physician stating the life expectancy of the insured person and a statement by the insured of what portion of the insurance he or she requests.

Description of need for information and proposed use of information: The information is needed to comply with the statutory provisions permitting an insured person who is terminally ill to request payment of a portion of the face value of the insured person's SGLI or VGLI insurance as an Accelerated Benefit.

Description of likely respondents: Terminally ill persons insured under SGLI or VGLI and their physicians.

Estimated number of respondents: 200 annually.

Estimated frequency of responses: Once.

Estimated total annual reporting and recordkeeping burden: 2,400 minutes.

Estimated average burden per collection: 12 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

Executive Order 12866

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program number for this rule is 64.103.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: February 22, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 9 is proposed to be amended as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 is revised to read as follows:

Authority: 38 U.S.C. 501, 1965–1980, unless otherwise noted.

2. Section 9.14 is added to read as follows:

§ 9.14 Accelerated Benefits.

(a) *What is an Accelerated Benefit?* An Accelerated Benefit is a payment of a portion of your Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to you before you die.

(b) *Who is eligible to receive an Accelerated Benefit?* You are eligible to receive an Accelerated Benefit if you have a valid written medical prognosis from a physician of 9 months or less to live, and otherwise comply with the provisions of this section.

(c) *Who can apply for an Accelerated Benefit?* Only you, the insured member, can apply for an Accelerated Benefit. No one can apply on your behalf.

(d) *How much can you request as an Accelerated Benefit?*

(1) You can request as an Accelerated Benefit an amount up to a maximum of 50% of the face value of your insurance coverage.

(2) Your request for an Accelerated Benefit must be $5,000 or a multiple of $5000 (for example, $10,000, $15,000).

(e) *How much can you receive as an Accelerated Benefit?* You can receive as an Accelerated Benefit the amount you request up to a maximum of 50% of the face value of your insurance coverage, minus the interest reduction. The interest reduction is the amount the Office of Servicemembers' Group Life Insurance actuarially determines to be the amount of interest that would be lost because of the early payment of part of your insurance coverage. This means that if you have $100,000 in coverage and you request the maximum amount that you are eligible to request as an Accelerated Benefit, you will be paid $50,000 minus the interest reduction.

(f) *How do you apply for an Accelerated Benefit?* (1) You can obtain an application form entitled "Claim for Accelerated Benefits" by writing the Office of Servicemembers" Group Life Insurance, 213 Washington Street, Newark, New Jersey 07102–2999; calling the Office of Servicemembers' Group Life Insurance toll-free at 1–800–219–1473; or downloading the form from the internet at *www. va. insurance.gov*. You must submit the completed application form to the Office of Servicemembers' Group Life Insurance, 213 Washington Street, Newark, New Jersey 07102–2999.

(2) As stated on the application form, you will be required to complete part of the application form and your physician will be required to complete part of the application form. If you are an active duty servicemember, your branch of service will also be required to complete part of the form.

To Be Completed by Insured

Claim for Accelerated Benefits

Your name: _____
Social Security Number: _____
Your home address: _____
Date of birth: _____
Branch of Service (if covered under SGLI): _____
Your mailing address (if different from above): _____
Amount of SGLI coverage: $ _____
Amount of claim (can be no more than one-half of coverage in increments of $5,000): _____
Type of coverage (check one):

- ☐ SGLI (circle one of the following): Active Duty Ready Reserve Army or Air National Guard Separated or Discharged
- ☐ VGLI

Note: If you checked SGLI, you must also have your military unit complete the attached form.

I acknowledge that I have read all of the attached information about the accelerated benefit. I understand that I can get this benefit only once during my lifetime and that I can use it for any purpose I choose. I further understand that the face amount of my coverage will reduce by the amount of accelerated benefit I choose to receive now.

Your signature: _____
Date: _____

Authorization To Release Medical Records

To all physicians, hospitals, medical service providers, pharmacists, employers, other insurance companies, and all other agencies and organizations:

You are authorized to release a copy of all my medical records, including examinations, treatments, history, and prescriptions, to the Office of Servicemembers' Group Life Insurance (OSGLI) or its representatives.

Printed name: _____
Signature: _____
Date: _____

A photocopy of this authorization will be considered as effective and valid as the original.

Valid for one year from date signed.

To Be Completed by Physician

Attending Physician's Certification

Patient's name: _____
Patient's Social Security Number: _____
Diagnosis: _____
ICD–9–CM Disease Code *: _____
Description of present medical condition (please attach results of x-rays, E.K.G. or other tests): _____
Is the patient capable of handling his/her own affairs? _____
☐ Yes__ ☐ No __
The patient applied for an accelerated benefit under his/her government life insurance coverage. To qualify, the patient must have a life expectancy of nine (9) months or less. Does your patient meet this requirement? _____
☐ Yes__ ☐ No
Attending Physician's name (please print): __
State in which you are licensed to practice:
Specialty: _____
Mailing address: _____
Telephone number: _____
Fax Number: _____
Signature: _____
Date: _____

* ICD–9–CM is an acronym for International Classification of Diseases, 9th revision, Clinical Modification.

To Be Completed by Personnel Office of Servicemember's Unit

(Complete this form only if the applicant for Accelerated Benefits is covered under SGLI.)

Branch of Service Statement

Servicemember's name: _____
Social Security Number: _____
Branch of Service: _____
Amount of SGLI coverage: $ _____
Monthly premium amount: $ _____
Name of person completing this form: _____
Telephone Number: _____
Fax Number: _____
Title of person completing this form: _____
Duty Station and address: _____
Signature of person completing this form: __
_____
Date: _____

Notice: It is fraudulent to complete these forms with information you know to be false or to omit important facts. Criminal and/or civil penalties can result from such acts.

(g) *Who decides whether or not an Accelerated Benefit will be paid to you?* The Office of Servicemembers' Group Life Insurance will review your application and determine whether you meet the requirements of this section for receiving an Accelerated Benefit.

(1) They will approve your application if the requirements of this section are met and may deny your application if the requirements of this section are not met.

(2) If the Office of Servicemembers' Group Life Insurance determines that your application form does not fully and legibly provide the information requested by the application form, they will contact you and request that you or your physician submit the missing information to them. They will not take action on your application until the information is provided.

(h) *How will an Accelerated Benefit be paid to you?* An Accelerated Benefit will be paid to you in a lump sum.

(i) *What happens if you change your mind about an application you filed for Accelerated Benefits?* (1) An election to receive the Accelerated Benefit is made at the time you have cashed or deposited the Accelerated Benefit. After that time, you cannot cancel your request for an Accelerated Benefit. Until that time, you may cancel your request for benefits by informing the Office of Servicemembers' Group Life Insurance in writing that you are canceling your request and by returning the check if you have received one. If you want to change the amount of benefits you requested or decide to reapply after canceling a request, you may file another application in which you request either the same or a different amount of benefits.

(2) If you die before cashing or depositing an Accelerated Benefit payment, the payment must be returned to the Office of Servicemembers' Group Life Insurance. Their mailing address is 213 Washington Street, Newark, New Jersey 07102–2999.

(j) *If you have cashed or deposited an Accelerated Benefit, are you eligible for additional Accelerated Benefits?* No.

(Authority: 38 U.S.C. 1966, 1980)

[FR Doc. 00–18327 Filed 7–19–00; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 045–2020b; FRL–6838–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia which commits the District to accept sales of motor vehicle that comply with the requirements of the National Low Emission Vehicle (National LEV) Program that applies to newly manufactured motor vehicles sold in the District, starting with the 1999 model year. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments, we will not take further action on this proposed rule. If EPA does receive adverse comments, we will withdraw the related direct final rule and it will not take effect. We will address any public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action must do so at this time.

DATES: Comments must be received in writing by August 21, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, at the EPA Region III address above, or by e-mail at: rehn.brian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–18109 Filed 7–19–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6731–2]

Approval and Promulgation of Implementation Plans: Revision of the Visibility FIP for Nevada

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a review of, and proposing to revise, the long-term strategy portion of the Nevada federal implementation plan (FIP) for Class I visibility protection (Nevada Visibility FIP). EPA proposes to revise the Nevada Visibility FIP to include emissions reduction requirements for the Mohave Generating Station (MGS), which is located in Clark County, Nevada. The proposed requirements are based on a consent decree entered into by the owners of MGS and the Grand Canyon Trust (GCT), the Sierra Club, and the National Parks and Conservation Association (NPCA). EPA believes that the emissions reductions that will result from compliance with the consent decree will address concerns raised by the Department of the Interior (DOI or Department) regarding the Mohave Generating Station's contribution to visibility impairment at the Grand Canyon National Park (GCNP) due to sulfur dioxide (SO_2) emissions. EPA also believes that adopting the requirements of the consent decree into the long-term strategy of the Nevada Visibility FIP will allow for reasonable progress toward the Clean Air Act national visibility goal with respect to the Mohave Generating Station's contribution to visibility impairment at the Grand Canyon National Park due to SO_2 emissions.

DATES: Comments on this proposed rule must be submitted no later than August 21, 2000.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler (Phone: 415–744–1251).

Docket: EPA has established a docket for this notice, Docket Number A2–99–01. Materials related to the development of this notice have been placed in this docket. The docket is available for review at: EPA Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Regina Spindler, (415) 744–1251, to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

Electronic Availability: This document is also available as an electronic file on the EPA Region IX Web Page at http://www.epa.gov/region09/air/mohave.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

Outline

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- A. Statutory and Regulatory Framework
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  - 2. EPA's Visibility Regulations
  - 3. Federal Implementation Plans for Visibility Protection
- B. Visibility Impairment at the Grand Canyon National Park
  - 1. The Department of the Interior Certification of Visibility Impairment
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- A. Emission Controls and Limitations
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- E. Regulatory Flexibility Act
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- G. National Technology Transfer and Advancement Act

I. Background

A. Statutory and Regulatory Framework

1. Clean Air Act Visibility Requirements

Section 169A of the Clean Air Act (Act or CAA), 42 U.S.C. 7491, provides for a visibility protection program and sets forth as a national goal "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." (The terms "impairment of visibility" and "visibility impairment" are defined in the Act to include reduction in visual range and atmospheric discoloration.) Section 169A requires EPA, after consultation with the Secretary of the Interior, to promulgate a list of "mandatory Class I Federal areas" where visibility is an important value. These areas include international parks, national wilderness areas and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Each mandatory Class I Federal area is the responsibility of a Federal Land Manager (FLM), the Secretary of the federal department with authority over such lands. Section 302(i) of the Act, 42 U.S.C. 7602(i). On November 30, 1979, EPA identified 156 such mandatory Class I Federal areas, including the Grand Canyon National Park (GCNP) in Arizona. 44 FR 69122.

Section 169A(a)(1) of the Act states that "Congress declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." Section 169A(a)(4) requires EPA to promulgate regulations to assure reasonable progress toward meeting these national visibility protection goals. EPA's regulations must require each state with a mandatory Class I Federal area (or states with emissions that may reasonably be anticipated to cause or contribute to visibility impairment in a mandatory Class I Federal area) to revise the applicable implementation plan for that state (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national visibility protection goal. CAA section 169A(b)(2), 42 U.S.C. 7491(b)(2). The SIP revisions for these subject states must require each existing stationary facility [1] that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in a mandatory Class I Federal area to install and operate "best available retrofit technology" (BART) for controlling emissions from such source to eliminate or reduce visibility

[1] For purposes of the visibility protection requirements, the term "existing stationary facility" means a source that falls within any of 26 listed categories, has the potential to emit 250 tons per year or more of any air pollutant, and which was not in operation prior to August 7, 1962, but was in existence on August 7, 1977. 40 CFR § 51.301.

impairment. CAA section 169A(b)(2)(A), 42 U.S.C. 7491(b)(2)(A). Pursuant to section 169A(b)(2)(B) of the Act, 42 U.S.C. 7491(b)(2)(B), EPA's regulations must further require these states to include long-term strategies in their SIP revisions for making reasonable progress toward meeting the national goal. Section 110(a)(2)(J) of the Act, 42 U.S.C. 7410(a)(2)(J), provides a corollary provision that requires SIPs to meet the visibility protection requirements of part C of the Clean Air Act.

2. EPA's Visibility Regulations

On December 2, 1980, EPA promulgated what it described as the first phase of the required visibility regulations, codified at 40 CFR 51.300–51.307. 45 FR 80084. These visibility regulations apply to 36 states, including Nevada, that contain mandatory Class I Federal areas. The visibility regulations require these 36 states to comply with the requirements set forth above, including (1) coordinating development of SIP requirements with appropriate FLMs; (2) developing a program to assess and remedy visibility impairment from new and existing sources; (3) developing a long-term strategy (10–15 years) to assure reasonable progress toward the national visibility goal; (4) developing a visibility monitoring strategy to collect information on visibility conditions; and (5) considering in all aspects of visibility protection any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area) identified by the FLMs as critical to a visitor's enjoyment of the Class I area. 40 CFR 51.300–51.307.[2]

An FLM may, at any time, certify to a state that impairment of visibility exists in a mandatory Class I Federal area. 40 CFR 51.302(c). If the FLM certifies such impairment at least 6 months prior to submission of a revised SIP, an affected state must (1) identify each existing stationary facility which may "reasonably be anticipated to cause or contribute" to any impairment which is "reasonably attributable to that existing stationary facility," and (2) analyze and determine what emission limitation represents the "best available retrofit technology" at each such facility. 40 CFR 51.302(c)(4). Visibility impairment is "reasonably attributable" to a facility if it is "attributable by visual observations or any other technique the state deems appropriate." 40 CFR 51.301(s). The state must also include in its plan an assessment of visibility impairment and a discussion of how each element of the plan relates to preventing future or remedying existing impairment in any mandatory Class I Federal area in the state. 40 CFR 51.302(c)(2)(ii). The visibility regulations also provide for periodic review, and revision as appropriate, of the long-term strategy for making reasonable progress toward the visibility goals at a minimum frequency of every three years. 40 CFR 51.306(c). The 36 affected states were required to submit revisions to their SIPs to comply with these requirements by September 2, 1981. 40 CFR 51.302(a)(1).

3. Federal Implementation Plans for Visibility Protection

Most states did not meet the September 2, 1981 deadline for submitting a SIP revision to address visibility protection. A number of environmental groups sued EPA alleging that the Agency had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility FIPs. In settlement of the lawsuit, EPA agreed to promulgate visibility FIPs according to a specified schedule. On July 12, 1985, EPA promulgated a FIP for the visibility monitoring strategy and new source review (NSR) requirements of 40 CFR 51.304 and 51.307. 50 FR 28544. See also, 51 FR 5504 and 51 FR 22937. These provisions have been codified at 40 CFR 52.26, 52.27 and 52.28. On November 24, 1987, EPA continued its visibility FIP rulemaking by promulgating its plan for meeting the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306. 52 FR 45132. The long-term strategy provisions have been codified at 40 CFR 52.29; the provisions specifically pertaining to Nevada are at 40 CFR 52.1488.

In the proposed rulemaking for the general visibility plan and long-term strategy requirements, EPA addressed certifications of existing visibility impairment submitted by the FLMs. 52 FR 7802 (March 12, 1987). EPA found that the information provided was not adequate to enable the Agency to determine whether the impairment was traceable to a single source and therefore addressable under the visibility regulations. For this reason, EPA determined that the implementation plans need not require BART or other control measures at that time. EPA also acknowledged, however, that FLMs may certify the existence of visibility impairment at any time and, therefore, FLMs might in the future provide additional information on impairment that would allow EPA to attribute it to a specific source. EPA stated that in such cases, the information regarding impairment and the need for BART or other control measures would be reviewed and assessed as part of the periodic review of the long-term visibility strategy. 52 FR 7808. EPA affirmed these determinations in its final rulemaking.

B. Visibility Impairment at the Grand Canyon National Park

1. The Department of the Interior Certification of Visibility Impairment

On November 14, 1985, the Department of the Interior certified to EPA the existence of visibility impairment in all Class I Federal areas within the Department's jurisdiction in the lower 48 states. On August 19, 1997, DOI sent a letter to EPA that reaffirmed the Department's 1985 certification of visibility impairment at the Grand Canyon National Park and stated DOI's belief that there is sufficient information available to support a "reasonable attribution" finding concerning the Mohave Generating Station (MGS). The DOI provided, as an attachment to its August 1997 letter, a summary prepared by the National Park Service (NPS) of studies that DOI believes demonstrate that emissions from MGS contribute to visibility impairment at GCNP. The DOI requested that if EPA agreed with DOI's assessment of "reasonable attribution," EPA comply with its statutory obligation to determine the best available retrofit technology for MGS.

2. Mohave Generating Station

The Mohave Generating Station is a 1580 MW coal-fired power plant located in Laughlin, Nevada, approximately 75 miles southwest of GCNP. It was built between 1967 and 1971. It currently emits over 40,000 tons of SO_2 per year. MGS is operated by Southern California Edison Company, the majority owner of the plant. The Los Angeles Department of Water and Power, Nevada Power Company, and Salt River Project also own interests in the plant. The coal for the plant comes from the Black Mesa

[2] These visibility regulations only address the type of visibility impairment that is "reasonably attributable" to a single source or small group of sources. In 1980 when EPA promulgated these regulations, EPA deferred setting SIP requirements to address visibility impairment caused by "regional haze" (*i.e.*, a widespread, regionally homogeneous haze from a multitude of sources which impairs visibility in every direction over a large area) due to the complexity and technical limitations inherent in attempting to identify, measure, and control this type of widespread visibility impairment. In 1993, the National Academy of Sciences concluded that "current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility." EPA published final regulations to address regional haze on July 1, 1999 at 64 FR 35714.

Coal Mine on the Hopi and Navajo Reservations via a 273-mile coal slurry pipeline. The mine, operated by Peabody Western Coal Company, is jointly owned by the Navajo Nation and the Hopi Tribe. Groundwater from an aquifer underlying the Navajo and Hopi reservations provides the water for the slurry pipeline.

3. Project MOHAVE

In 1991, Congress directed EPA to conduct a tracer study to ascertain the extent to which MGS contributes to visibility impairment at GCNP. The tracer study was developed as a cooperative effort among EPA, the NPS, and Southern California Edison Company. This cooperative effort was named Project Measurement Of Haze And Visibility Effects, more commonly referred to as Project MOHAVE.

Project MOHAVE was an extensive monitoring, modeling, and data assessment project designed to estimate the contributions of the MGS to haze at GCNP. The field study component of the project was conducted in 1992 and contained two intensive monitoring periods (approximately 30 days in the winter and approximately 50 days in the summer). Tracer materials were continuously released from the MGS stack during the two intensive periods to enable the tracking of emissions specifically from MGS. Tracer, ambient particulate composition and SO_2 concentrations were measured at about 30 locations in a four-state region. Two of these monitoring sites, Hopi Point, near the main visitor center at the south rim of GCNP and Meadview near the far western end of GCNP, were used as key receptor sites representative of GCNP.

The findings of Project MOHAVE are discussed briefly in section II.A.4. below. The Project MOHAVE final report is available on the Mohave page of the EPA Region IX web site and in Docket Number A2–99–01 at the EPA Region IX office.

C. Grand Canyon Trust/Sierra Club Lawsuit

1. Overview of Complaint

On February 19, 1998, Grand Canyon Trust filed a citizen suit in the federal district court for the District of Nevada against the owners of MGS. GCT alleged that the defendants had violated several SIP provisions that apply to MGS. GCT included allegations that MGS had exceeded emission limits in the Nevada and Clark County SIPs for opacity and sulfur dioxide, and had failed to conduct necessary reporting. Sierra Club and the National Parks and Conservation Association subsequently joined GCT as plaintiffs in the citizen suit. See *Grand Canyon Trust* v. *Southern California Edison (District of Nevada)* CV–S–98–00305–LDG.

2. Settlement and Consent Decree

The litigation was eventually resolved through a consent decree entered by the court on December 15, 1999 (Mohave consent decree). The Mohave consent decree requires the installation of pollution control equipment that will reduce visibility impairing SO_2 emissions as well as particulate matter emissions and nitrogen oxides (NO_X). The consent decree requires the plant owners to install dry scrubber technology (lime spray dryers) to reduce SO_2 emissions from each boiler by at least 85% based on a 90-day rolling average. Each unit must also meet an SO_2 emission limit of .150 lb/mmbtu based on a 365-day rolling average. The owners will also install baghouses to control particulate matter emissions and ensure that each unit meets a 20% opacity limit based on a 6-minute average. New burners will also be installed in the boilers to reduce emissions of NO_X. Unit 1 must be in compliance with all pollution control requirements and emission limits by January 1, 2006 and Unit 2 by April 1, 2006. If any of the current owners sell a portion of or all of their interest in the plant, the new owners must comply with the terms of the consent decree. If all the current owners sell their interests in the plant (100% sale), the new owners would be required to install the pollution controls within 3 years and 3 months of the sale, but no later than the January 1 and April 1, 2006 dates discussed above. Prior to the final compliance dates, an interim SO_2 emissions limit of 1.0 lb/mmbtu, based on a 90-day rolling average, will apply to each boiler. The interim opacity limit is 30%, based on a 6-minute average.

D. Advance Notice of Proposed Rulemaking

On June 17, 1999, EPA published an advance notice of proposed rulemaking (ANPR) (64 FR 32458)) regarding the assessment of visibility impairment at GCNP. The ANPR provided background information on statutory and regulatory requirements for protecting visibility in national parks and wilderness areas and provided a brief summary of the methodologies and results of Project MOHAVE. In the ANPR, EPA also asked the public to submit additional information that the Agency should consider before determining whether visibility problems at GCNP can be reasonably attributed to MGS and information regarding appropriate pollution control requirements for the facility, should EPA find that any portion of the visibility impairment is reasonably attributable to MGS.

The public comment period for the ANPR closed on November 15, 1999. EPA received comments from 83 entities. Most of the comments received were from private citizens expressing concern about the environmental impact of MGS on both GCNP and the local community. Other commenters submitted their views on the findings of Project MOHAVE and whether EPA should proceed with a "reasonable attribution" finding and BART determination. While some commenters believe that there is ample evidence to substantiate a "reasonable attribution" finding, others argue that Project MOHAVE does not sufficiently prove that the MGS is causing visibility impairment at GCNP. Some commenters believe that the plant's contribution is not significant enough to warrant the imposition of pollution control requirements and that such controls would not result in a meaningful improvement in visibility at GCNP. Several commenters emphasized the economic importance of MGS to the local community and to the Navajo and Hopi, who supply coal to the plant. These commenters asked that EPA fully evaluate the economic impact of pollution control requirements on not only MGS owners but on the local community and tribes. EPA did receive a number of comments that were submitted after the environmental groups and owners of MGS signed the consent decree discussed above. While the views of these commenters varied with regard to the need for EPA to proceed with a rulemaking given the agreement to install pollution controls, all agreed that any EPA rulemaking and/or requirements for pollution controls at the power plant should be consistent with the requirements of the consent decree. All comments that EPA received in response to the ANPR are in Docket Number A2–99–01.

E. Further Actions in Light of the Mohave Consent Decree

The NPS commented, in response to the ANPR, that MGS's compliance with the emission limitations contained in the Mohave consent decree would address the concern expressed in its 1997 letter that sulfur dioxide emissions from MGS are contributing to visibility impairment at GCNP. In its November 12, 1999 comment letter on the ANPR, the NPS stated: "We request that EPA give strong consideration in its future rule-making action to incorporate the components of the consent decree as

appropriate as a means to address our concerns over the visibility impairment at GCNP by MGS. The NPS has reviewed the consent decree and find that the restrictions on future plant operation would address the visibility concerns raised in our certification of impairment sent to EPA on November 14, 1985 and reaffirmed on August 19, 1997." Considering the NPS comments, EPA believes that if the terms of the Mohave consent decree are incorporated into the long-term strategy of the Nevada Visibility FIP, then EPA need not address the issue of "reasonable attribution" or proceed with a BART determination. In taking this action, EPA is not making a decision with respect to whether there is sufficient information to proceed with a "reasonable attribution" finding or to establish a BART emission limitation. EPA is determining that such a decision is not necessary because the NPS has indicated that its concerns regarding the impact of sulfur dioxide emissions on visibility impairment at GCNP will be resolved if the terms of the Mohave consent decree are contained within the Nevada Visibility FIP.

EPA agrees that inclusion of the Mohave consent decree provisions in the Nevada Visibility FIP is an appropriate way to address the impact of sulfur dioxide emissions from MGS on visibility impairment at GCNP. EPA also believes that incorporation of the Mohave consent decree provisions into the Nevada Visibility FIP will allow for reasonable progress toward the national visibility goal and will ensure that the emission limitations and other requirements applicable to MGS are federally enforceable. (A detailed analysis of how the Mohave consent decree requirements represent reasonable progress is contained below in section II.A.4.) Thus, EPA is proposing to adopt the requirements of the Mohave consent decree into the Nevada visibility FIP. Today's action, however, does not address MGS's contribution to visibility impairment in the form of regional haze. Under EPA's regional haze regulations, the State of Nevada has the responsibility to prepare a SIP that contains a strategy for reducing emissions of air pollutants from sources that contribute to regional haze.

II. Review and Revision of Nevada Visibility FIP Long-Term Strategy

A. Long-Term Strategy Review

As part of the long-term strategy to address visibility protection, EPA is required to conduct a review of the Nevada Visibility FIP every three years to determine whether the plan is sufficient or if additional measures are necessary for visibility protection. 40 CFR 52.29(c)(4). (Because the State of Nevada does not have an approved SIP for visibility, EPA is required to assume responsibility for visibility protection until the State submits, and EPA approves, a SIP that adequately provides for visibility protection.) Pursuant to 40 CFR 52.29, EPA must include in its triennial report an assessment of: (1) The progress achieved in remedying existing impairment of visibility in any mandatory Class I Federal area; (2) the ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I Federal area; (3) any change in visibility since the last such report, or in the case of the first report, since plan approval; (4) additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal; (5) the progress achieved in implementing best available retrofit technology (BART) and meeting other schedules set forth in the long-term strategy; (6) the impact of any exemption granted under section 51.303; and (7) the need for BART to remedy existing visibility impairment of any integral vista identified pursuant to section 51.304.

In November 1998, the Environmental Defense Fund (EDF) submitted a letter to the EPA Region IX Regional Administrator noting its concern over EPA's failure to conduct a review of the Nevada Visibility FIP. EDF noted that EPA had not updated the FIP or conducted any required reviews, even though DOI had notified EPA of visibility impairment at GCNP and submitted information indicating that such impairment is attributable to emissions from MGS. EDF further referred to studies that have been conducted (including Project MOHAVE) which EDF believes indicate that emissions from MGS contribute to visibility impairment. On April 20, 1999, EDF sent EPA notice of its intent to sue the Agency, pursuant to section 304(b)(1) of the Act, 42 U.S.C. 7604(b)(1), and 40 CFR part 54. EDF's notice of intent to sue made the same claims as contained in its November 1998 letter to EPA.

In today's notice, EPA is proposing its first report assessing the long-term visibility strategy for Nevada. This is the first report that EPA has made since promulgating the Nevada Visibility FIP. EPA is reviewing the long-term strategy only for the purpose of addressing the DOI's certification of existing visibility impairment at GCNP and MGS's contribution to that impairment and evaluating whether the terms of the Mohave consent decree will make reasonable progress toward the national visibility goal. EPA is not conducting a comprehensive review of the long-term strategy of the Nevada Visibility FIP at this time. FLMs have not provided any information and EPA is not aware of any evidence that visibility impairment at any other Class I area can be attributed to a specific source or group of sources located in Nevada. For this reason, EPA does not believe that a comprehensive review of the Nevada long-term strategy is necessary at this time.

1. The Progress Achieved in Remedying Existing Impairment of Visibility in any Mandatory Class I Federal Area

As discussed above, DOI first certified the existence of visibility impairment at GCNP in 1985. DOI subsequently stated its belief in 1997 that MGS is contributing to that impairment. Since that time, EPA has been working with DOI, including the NPS, to address these concerns. Part of that effort was the completion of the Project MOHAVE study, discussed in sections I.B.3. and II.A.4. of this action, to determine the extent to which MGS contributes to visibility impairment at GCNP. In addition, EPA published the June 17, 1999 ANPR to inform the public of the study's findings and to request the submission of any other information that EPA should consider before proceeding further. Following EPA's publication of the ANPR, the GCT, Sierra Club, NPCA and the owners of MGS began the process of negotiating a settlement of the environmental groups' lawsuit against MGS. Ultimately the parties agreed that MGS would install pollution control equipment that is expected to significantly reduce visibility impairing pollutants. While EPA was not a party to the Mohave consent decree, the Agency did provide technical consultation to the parties during their negotiations.

As discussed above, both EPA and DOI believe that implementation of the provisions of the Mohave consent decree and inclusion of such requirements in the long-term strategy of the FIP will address the concerns expressed by DOI regarding the impact of MGS's sulfur dioxide emissions on visibility impairment at GCNP. EPA also believes the level of improvement that will result from compliance with the Mohave consent decree will achieve reasonable progress toward the national visibility goal as it relates to MGS and GCNP. A detailed analysis of how the consent decree requirements will address the visibility concerns and

achieve reasonable progress is contained below in section II.A.4.

2. Ability of Long-Term Strategy To Prevent Future Impairment of Visibility in any Class I Area

In general, EPA's process for reviewing new and modified emissions sources under the Prevention of Significant Deterioration program (40 CFR 52.21) and New Source Review program (40 CFR 52,28) is designed to address future impairment of visibility in Class I areas within Nevada or affected by sources in Nevada. Because today's review of the long-term strategy concerns only MGS's contribution to existing visibility impairment at GCNP and whether the proposed controls make reasonable progress toward the national visibility goal, EPA is not formally reviewing the effect on future impairment at this time.

3. Any Change in Visibility Since Plan Approval

Today's long-term strategy review addresses only MGS' contribution to visibility impairment at GCNP and the steps that will be taken to address its contribution. This review, therefore, will not address the broader changes in visibility since promulgation of the Nevada Visibility FIP.

4. Additional Measures, Including the Need for SIP Revisions, That May Be Necessary To Assure Reasonable Progress Toward the National Visibility Goal.

EPA believes that the level of improvement that will result from implementation of the Mohave consent decree represents reasonable progress toward the national visibility goal and, therefore, that it is necessary to revise the Nevada Visibility FIP to adopt the provisions of the Mohave consent decree. In making such a determination, EPA must consider the amount of visibility improvement expected from the emissions limits. MGS currently emits over 40,000 tons of SO_2 per year. Under certain meteorological conditions, SO_2 converts to particulate sulfate in the atmosphere. It is these sulfate particles that cause light to scatter which creates hazy conditions and poor visibility. Project MOHAVE found that for the summer study period, MGS contributed between 1.7 and 3.3 percent, depending on the methodology used, of the measured sulfate concentrations at Meadview, on the western edge of GCNP. The 90th percentile estimate of MGS's contribution to sulfate, reported as 8.7 to 21 percent of total measured sulfate, can be used as an estimate of the episodic effects of MGS emissions during the summer intensive study period. Ten percent of the time, impacts higher than this range could be expected but were too uncertain to quantify. The Project MOHAVE estimates of MGS's contribution to total extinction, or total visibility impairment, are 0.3 to 0.8 percent and 1.9 to 4.0 percent for the average and 90th percentile conditions, respectively, during the summer intensive study period. Again, impacts higher than the 90th percentile range could be expected ten percent of the time. These estimates are based only on MGS's contribution to visibility impairment due to SO_2 emissions. Project MOHAVE did not examine how other emissions from the facility, such as particulate matter, NO_X or organics, may affect visibility impairment. EPA also notes that there is considerable uncertainty surrounding the quantitative estimates of the effect of pollutant emissions on visibility within the boundaries of GCNP.

Once MGS is in compliance with the final emission limits established in the Mohave consent decree, the 85% reduction in sulfur dioxide emissions should remove most of the visibility impacts noted above. During ten percent of the summer period, there will likely be a noticeable improvement. The impact of particulate matter and NO_X emissions from MGS on visibility impairment at GCNP was not estimated as part of Project MOHAVE. MGS must, however, reduce particulate matter and NO_X emissions as required by the Mohave consent decree. There may be some additional visibility benefit from reducing these emissions, though there has been no quantification of that potential benefit. EPA believes, however, that it is appropriate to adopt all of the emission limits and pollution controls required by the Mohave consent decree since they were established as part of a complete package. Therefore, EPA is proposing to include the NO_X and particulate matter control requirements in the revision to the Nevada Visibility FIP.

Pursuant to CAA section 169A(g)(1), EPA must also consider the following factors when determining reasonable progress: (1) the cost of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of the source. The following is EPA's evaluation of these factors in determining whether implementation of the terms of the Mohave consent decree constitutes reasonable progress relative to MGS and its impact on GCNP:

a. *Cost of compliance.* By signing the consent decree, the owners of the Mohave Generating Station have demonstrated their willingness to bear the costs associated with the retrofit. The owners estimate the capital cost of the MGS retrofit will be $300 million. This figure includes $220 million for installation of the lime spray dryers and integral baghouses, $20 million for installation of the low-NO_X burners, and $60 million for other site-specific modifications related to installation of the pollution control equipment. Upon examination of capital costs at other coal-fired power plants that have installed similar pollution control equipment in recent years, EPA believes the estimated costs to be reasonable. For example, in 1999, the Navajo Generating Station (NGS), a 2250 MW plant in Page, Arizona, completed installation of limestone wet scrubber technology on its three boilers. The capital cost for this retrofit was $420 million dollars or $187/kW.[3] The estimated capital cost to install lime spray dryers and baghouses at the Hayden Generating Station, a 440 MW coal-fired plant in Colorado, was $129 million, or $294/kW.[4] The $177/kW ($280 million divided by 1580 MW) estimate for installing the lime spray dryers and baghouses and other associated retrofits at MGS is less than the costs for both Hayden and NGS. In a 1991 EPA study of retrofit costs for SO_2 and NO_x control options at 200 coal-fired power plants, the 50th percentile cost for lime spray drying is estimated to be $213/kW.[5] For a plant the size of MGS, this equals a capital cost of $336 million. In calculating the 50th percentile estimate, EPA included all or part of the cost of baghouses for some of the boilers studied, so the $336 million estimate should be compared to the $280 million that Southern California Edison estimates the lime spray dryer, integral baghouses, and related retrofits will cost. Again, the estimated costs for MGS fall below the 50th percentile number. Finally, EPA used its Integrated Air Pollution Control System Costing Program to estimate a capital cost of $210 million, or $133/kW, for the lime spray dryers and baghouses. This is comparable to Southern California Edison's $220 million capital cost estimate. (The EPA program did not include the other modifications related to installation of the control equipment in its estimate. Southern California Edison estimates these modifications will cost $60 million.) EPA's cost program estimates that annual costs for the MGS retrofit will be $38 million and that the additional cost of producing power will be .63 cents/kWH annually. The model also predicts that the control strategy will cost $147/ton of particulate removed and $1297/ton of SO_2 removed. The Public Service

[3] Salt River Project web site, Navajo Generating Station page. (www.srpnet.com/power/stations/navajo.html)

[4] "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements," August 15, 1996. Costs adjusted to 1999 dollars.

[5] "Project Summary: Retrofit Costs for SO_2 and NO_x Control Options at 200 Coal-Fired Plants," EPA/600/S7–90–021, March, 1991. Costs adjusted to 1999 dollars.

Company of Colorado (operators of Hayden Station) estimated a cost of approximately $2000/ton SO_2 removed and $100/ton particulate matter removed (in 1996 dollars). Southern California Edison's estimated capital cost of the pollution controls required by the consent decree appear to be lower than or similar to estimates for other similar retrofit projects. In addition, the owners of MGS have voluntarily agreed to bear the cost of the retrofit. EPA concludes, therefore, that the cost of compliance with the requirements that EPA is proposing to adopt in the revised Nevada visibility FIP is reasonable.

b. *Time necessary for compliance.* The Mohave consent decree requires that MGS be in full compliance with all emission limits applicable to Unit 1 by January 1, 2006 and to Unit 2 by April 1, 2006. If a 100% sale of the facility is completed prior to December 30, 2002, the plant would be required to come into compliance even sooner (3 years and 3 months from the final sale). The parties to the consent decree agreed that the compliance deadlines allow an appropriate period of time for installation of pollution control equipment. For comparison purposes, if EPA were to make a "reasonable attribution" finding and BART determination, such a rulemaking would likely not be complete until early to mid-2001. CAA sections 169A(b)(2)(A) and 169A(g)(4) require that BART be installed "as expeditiously as practicable but in no event later than five years after the date" that EPA would complete the reasonable attribution/BART rulemaking. Under this scenario, EPA estimates that installation of control equipment and compliance with emission limits would occur by early to mid-2006, depending on when EPA finalized the rulemaking. The time frame could be longer if there were administrative and/or judicial appeals of the agency's decision. EPA believes the MGS settlement offers emissions reductions on a more rapid timetable than would likely be achievable through a possibly controversial reasonable attribution finding and BART process. Thus, EPA believes the time frame for compliance is reasonable.

c. *Energy and non-air quality environmental impacts.* There are a number of impacts associated with installation of lime spray dryers and baghouses that should be considered and evaluated, including increased energy consumption, water usage and solid waste disposal. Southern California Edison estimates, assuming an 85% generating capacity factor, that MGS will need an additional 20 MW or 150,000 MWhrs/yr to operate the control equipment. Included in the cost estimates discussed above is the capital cost for constructing a new auxiliary substation to serve the increased load created by the new control equipment. EPA believes that this additional energy consumption is reasonable given the emission reductions and improvements in visibility that will occur once the pollution controls are operational. It is also worth noting that the increased energy needs are less than would be required for a wet scrubber system. SCE estimates that such a system would use 30 MW or 225,000 MWhrs/yr. Regarding increased water usage, SCE estimates that 1400 gallons per minute, or 1900 acre-ft/yr will be required to operate the SO_2 scrubbers. This is nearly 30% less than the 1800 gallons per minute (2500 acre-ft/yr) that would be required for a wet scrubber system. Once operating, the lime spray dryers at MGS will generate 160,000 tons/year of waste. A wet scrubber system would generate 170,000 tons/year of waste. The MGS lime spray dryer waste can potentially be sold for use as fertilizer; whether that will occur depends on the distance to potential markets, transportation costs, etc. If the waste cannot be sold, it will be disposed of at an on-site waste disposal facility so there will be no impacts from shipping waste off-site. Other impacts that could affect the local community include increased truck traffic for transporting the lime and other reagents necessary for operating the scrubbers. The number of trips depends on which supplier is used. If the lime is shipped from Arizona, SCE estimates there will be 11 additional trucks/day. If a Nevada supplier is chosen, truck traffic will be increased by 7 trucks/day. This additional traffic is not expected to have a significant impact on the local community and its air quality, including the area's ability to remain in compliance with EPA's health-based National Ambient Air Quality Standards for pollutants such as particulate matter, ozone, and carbon monoxide. EPA believes that the issues discussed above will not have a significant adverse impact on the environment or the local community. EPA also believes that these impacts are reasonable in consideration of the significant emission reductions and visibility improvement that will occur as a result of the pollution control equipment.

d. *Remaining useful life of the source.* Southern California Edison estimates that MGS will continue to operate until 2025. This was the original projection for the life of the source and is largely dependent on the remaining coal reserves at the Black Mesa Mine which is the sole supplier of coal to the facility. Given that MGS will operate for 20 years beyond installation of the pollution control equipment and compliance with the emission limits, the proposed level of control is reasonable and will allow progress toward the national visibility goal over that time.

Considering the improvements in visibility that will likely occur, that the cost of compliance is similar to or lower than compliance costs for other coal-fired power plants, that the compliance deadlines are consistent with compliance time frames if EPA were to undertake a BART rulemaking, that the other environmental impacts are minimal, and that the source will operate for another 20 years beyond the compliance deadline, the requirements that EPA proposes to adopt into the Nevada Visibility FIP meet the reasonable progress requirements of the Clean Air Act.

5. Progress Achieved in Implementing BART and Meeting Other Schedules Set Forth in the Long-Term Strategy

The Nevada Visibility FIP that was promulgated in 1987 did not contain any requirements for BART or set out any schedules for compliance with emission limits or control strategies. Although Nevada has one Class I area, FLMs have not certified visibility impairment in this area. Moreover, though the FLMs had certified visibility impairment at the Grand Canyon National Park prior to promulgation of the Nevada Visibility FIP, at that time neither the FLMs nor EPA had identified any specific sources in Nevada as contributing to the impairment. No sources in Nevada were identified as potential contributors to the impairment until the August 1997 letter from DOI indicated that MGS was a likely source of visibility impairment. Today's notice proposes to address that visibility impairment by revising the long-term strategy of the Nevada Visibility FIP to incorporate emission reduction requirements and compliance deadlines for MGS.

6. The Impact of any Exemption (From BART) Granted Under Section 51.303

The long-term strategy contains no requirements for BART and therefore no exemptions from BART for any source.

7. The Need for BART To Remedy Existing Visibility Impairment of Any Integral Vista Identified Pursuant to Section 51.304

To date, FLMs have not identified integral vistas with existing visibility impairment.

B. Consultation With Federal Land Managers

Section 52.29(c)(3) of EPA's visibility FIP requires that EPA consult with the appropriate FLMs during the review and revision of the long-term strategy. Since DOI sent EPA the August 1997 letter reaffirming its certification of visibility impairment at GCNP, EPA has been working with the Department, including the National Park Service, on possible approaches for resolving the MGS's contribution to the visibility impairment. Since the Mohave consent decree was signed, EPA has consulted with DOI and NPS regarding the approach proposed in today's notice. As discussed earlier in this notice, NPS has reviewed the consent decree and believes that an EPA rulemaking which adopts the emission limits and other requirements from the decree is an appropriate means of addressing its concerns regarding the impact of SO_2

emissions from MGS on visibility impairment at GCNP.

III. Proposed Action

EPA proposes to revise the long-term strategy of the Nevada Visibility FIP to adopt the emission limits, compliance deadlines and other requirements of the consent decree between the Grand Canyon Trust, Sierra Club, National Parks and Conservation Association and the owners of the Mohave Generating Station (Southern California Edison, Nevada Power, Salt River Project, Los Angeles Department of Water and Power) as approved by the U.S. District Court of Nevada on December 15, 1999. A summary of the requirements that EPA is proposing to include in the FIP is contained below. A complete description of the requirements that EPA is proposing to adopt into the long-term strategy of the FIP is contained in the proposed amendment to 40 CFR 52.1488 at the end of this notice.

A. Emission Controls and Limitations

The owners of MGS will install and operate lime spray dryer technology on both units at the plant. This technology must provide for SO_2 reductions of at least 85% for each unit on a 90-boiler-operating-day rolling average basis. A boiler-operating-day is defined as any calendar day in which coal is combusted in the boiler of a unit for more than 12 hours. SO_2 emissions from each unit shall not exceed .150 pounds per million BTU heat input on a 365-boiler-operating-day rolling average basis. Compliance with the SO_2 limits will be determined using continuous SO_2 monitors. The first boiler-operating-day of a rolling average period for a unit shall be the first boiler-operating-day that occurs on or after the compliance date for the unit. Once the unit has operated the necessary number of days to generate an initial 90 or 365 day average, consistent with the applicable limit, each additional day the unit operates a new 90 or 365 day ("rolling") average is generated. The owners of MGS may substitute other control technology provided that technology achieves the applicable emission limits, subject to approval by EPA.

The owners will install and operate fabric filter dust collectors (polishing baghouses), without a by-pass, on both units at MGS. Opecity of emissions shall be no more than 20.0%, averaged over each separate 6-minute period within an hour. Compliance with the opacity limit will be determined using a continuous opacity monitor. The owners are excused from meeting the opacity limit during cold startup if the failure to meet such limit was due to the breakage of one or more bags caused by condensed moisture. In addition, exceedances of the opacity limit during a malfunction will not be considered a violation if certain notification and mitigation requirements are met.

B. Emission Control Construction Deadlines

Issue binding contract to design the SO_2, opacity and NO_X control systems—3/01/03

Issue binding contract to procure SO_2, opacity and NO_X control systems—9/01/03

Commence physical, on-site construction of SO_2 and opacity equipment—4/01/04

Complete construction of SO_2, opacity and NO_X control equipment and complete tie in for first unit—7/01/05

Complete construction of SO_2, opacity and NO_X control equipment and complete tie in for second unit—12/31/05

There will be no penalty for failure to meet these deadlines if the final emission limitation compliance deadlines described in section III.C. below are met, if coal-fired units at MGS are not in operation after December 31, 2005, or if coal-fired units are not in operation after December 31, 2005 and then recommence operation in compliance with all emission controls and limitations.

C. Emission Limitation Compliance Deadlines

Unless subject to a force majeure event as described in section III.F. below, one unit at MGS must be in compliance with the SO_2 and opacity emission limitations and NO_x control requirements by January 1, 2006 and the second unit by April 1, 2006. The second unit may only be operated after December 31, 2005 if the control equipment has been installed and is in operation. The control equipment on the second unit may be taken out of service between December 31, 2005 and April 1, 2006 as necessary to assure its proper operation or compliance with the final emission limits.

If the owners' entire (*i.e.* 100%) ownership interest in MGS is sold, and the closing date of such sale occurs on or before December 30, 2002, the applicable emission limitations shall become effective for one unit three years from the date of the last closing, and for the second unit three years and three months from the date of the last closing.

D. Interim Emission Limits

Until the final emission limitation compliance deadlines discussed above in section III.D., each unit at MGS must meet an interim SO_2 emissions limit of 1.0 pounds per million BTU of heat input calculated on a 90-boiler-operating-day rolling average basis. Each unit must also meet an opacity limit of 30%, as averaged over each separate 6-minute period within an hour, with no more than 375 exceedances of 30% allowed per calendar quarter.

E. Reporting

Beginning January 1, 2001, and continuing on a biannual basis through April 1, 2006, or the date the owners of MGS demonstrate compliance with the applicable emission limits, the owners will provide to EPA a report that describes all significant events in the preceding six-month period that may impact the installation and operation of pollution control equipment, including the status of a full or partial sale of MGS. These reports will also provide all opacity readings in excess of 30% and all SO_2 90-boiler-operating-day rolling averages for each unit for the preceding two quarters.

Once the final emission limits take effect, the owners of MGS must provide quarterly reports containing compliance information related to the SO_2 and opacity emissions limitations.

F. Force Majeure Provisions

MGS may assert that noncompliance with a deadline imposed by the FIP is attributable to a force majeure event. MGS must notify EPA of the need for an extension and submit a report to EPA which describes the delay and includes a schedule with extended deadlines.

IV. Request for Public Comments

EPA is requesting comments on all aspects of the Nevada Visibility FIP long-term strategy review and proposal to revise the long-term strategy portion of the FIP. As indicated at the outset of this document, EPA will consider any comments received by August 21, 2000.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments or impose direct compliance costs on those communities. This federal action adopts into federal regulation pre-existing requirements under a court-enforceable consent decree and imposes no new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to adopt into federal regulation the requirements from a court-enforceable consent decree, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because it does not create any new requirements but simply adopts into federal regulation existing requirements from a court-enforceable consent decree. Therefore, because the proposed FIP revision does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed FIP revision does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action adopts into federal regulation pre-existing requirements under a court-enforceable consent decree, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides.

VOL 65 ISS 140 JL 20 2000 UMI

Dated: June 29, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.1488 is amended by adding paragraph (d) to read as follows:

§ 52.1488 Visibility protection.

* * * * *

(d) This paragraph (d) is applicable to the Mohave Generating Station located in the Las Vegas Intrastate Air Quality Control Region (§ 81.80 of this chapter).

(1) *Definitions.—Administrator* means the Administrator of EPA or her/his designee.

Boiler-operating-day shall mean any calendar day in which coal is combusted in the boiler of a unit for more than 12 hours. If coal is combusted for more than 12 but less than 24 hours during a calendar day, the calculation of that day's sulfur dioxide (SO_2) emissions for the unit shall be based solely upon the average of hourly Continuous Emission Monitor System data collected during hours in which coal was combusted in the unit, and shall not include any time in which coal was not combusted.

Coal-fired shall mean the combustion of any coal in the boiler of any unit. If the Mohave Generating Station is converted to combust a fuel other than coal, such as natural gas, it shall not emit pollutants in greater amounts than that allowed by paragraph (d) of this section.

Current owners shall mean the owners of the Mohave Generating Station on December 15, 1999.

Owner or operator means the owner(s) or operator(s) of the Mohave Generating Station to which paragraph (d) of this section is applicable.

Rolling average shall mean an average over the specified period of boiler-operating-days, such that, at the end of the first specified period, a new daily average is generated each successive boiler-operating-day for each unit.

(2) *Emission controls and limitations.* The owner or operator shall install the following emission control equipment, and shall achieve the following air pollution emission limitations for each coal-fired unit at the Mohave Generating Station, in accordance with the deadlines set forth in paragraphs (d) (3) and (4) of this section.

(i) The owner or operator shall install and operate lime spray dryer technology on Unit 1 and Unit 2 at the Mohave Generating Station. The owner or operator shall design and construct such lime spray dryer technology to comply with the SO_2 emission limitations, including the following percentage reduction and pounds per million BTU requirements:

(A) SO_2 emissions shall be reduced at least 85% on a 90-boiler-operating-day rolling average basis. This reduction efficiency shall be calculated by comparing the total pounds of SO_2 measured at the outlet flue gas stream after the baghouse to the total pounds of SO_2 measured at the inlet flue gas stream to the lime spray dryer during the previous 90 boiler-operating-days.

(B) SO_2 emissions shall not exceed .150 pounds per million BTU heat input on a 365-boiler-operating-day rolling average basis. This average shall be calculated by dividing the total pounds of SO_2 measured at the outlet flue gas stream after the baghouse by the total heat input for the previous 365 boiler-operating-days.

(C) Compliance with the SO_2 percentage reduction emission limitation in paragraph (d)(2)(i) of this section shall be determined using continuous SO_2 monitor data taken from the inlet flue gas stream to the lime spray dryer compared to continuous SO_2 monitor data taken from the outlet flue gas stream after the baghouse for each unit separately. Compliance with the pounds per million BTU limit shall be determined using continuous SO_2 monitor data taken from the outlet flue gas stream after each baghouse. The continuous SO_2 monitoring system shall comply with all applicable law (*e.g.*, 40 CFR part 75). The inlet SO_2 monitor shall also comply with the quality assurance-quality control procedures in 40 CFR part 75, Appendix B.

(D) For purposes of calculating rolling averages, the first boiler-operating-day of a rolling average period for a unit shall be the first boiler-operating-day that occurs on or after the specified compliance date for that unit. Once the unit has operated the necessary number of days to generate an initial 90 or 365 day average, consistent with the applicable limit, each additional day the unit operates a new 90 or 365 day ("rolling") average is generated. Thus, after the first 90 boiler-operating-days from the compliance date, the owner or operator must be in compliance with the 85 percent sulfur removal limit based on a 90-boiler-operating-day rolling average each subsequent boiler-operating-day. Likewise, after the first 365 boiler-operating-days from the compliance date, the owner or operator must be in compliance with the .150 sulfur limit based on a 365-boiler-operating-day rolling average each subsequent boiler-operating-day.

(E) Nothing in this paragraph (d) shall prohibit the owner or operator from substituting equivalent or superior control technology, provided such technology meets applicable emission limitations and schedules, upon approval by the Administrator.

(ii) The owner or operator shall install and operate fabric filter dust collectors (also known as FFDCs or baghouses), without a by-pass, on Unit 1 and Unit 2 at the Mohave Generating Station. The owner or operator shall design and construct such FFDC technology (together with or without the existing electrostatic precipitators) to comply with the following emission limitations:

(A) The opacity of emissions shall be no more than 20.0 percent, as averaged over each separate 6-minute period within an hour, beginning each hour on the hour, measured at the stack.

(B) In the event emissions from the Mohave Generating Station exceed the opacity limitation set forth in paragraph (d) of this section, the owner or operator shall not be considered in violation of this paragraph if they submit to the Administrator a written demonstration within 15 days of the event that shows the excess emissions were caused by a malfunction (a sudden and unavoidable breakdown of process or control equipment), and also shows in writing within 15 days of the event or immediately after correcting the malfunction if such correction takes longer than 15 days:

(1) To the maximum extent practicable, the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practices for minimizing emissions;

(2) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations would be exceeded or were being exceeded. Individuals working off-shift or overtime were utilized, to the maximum extent practicable, to ensure that such repairs were made as expeditiously as possible;

(3) The amount and duration of excess emissions were minimized to the maximum extent practicable during periods of such emissions;

(4) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality; and

(5) The excess emissions are not part of a recurring pattern indicative of

inadequate design, operation, or maintenance.

(C) Notwithstanding paragraphs (d)(2)(ii) (A) and (B) of this section the owner or operator shall be excused from meeting the opacity limitation during cold startup (defined as the startup of any unit and associated FFDC system after a period of greater than 48 hours of complete shutdown of that unit and associated FFDC system) if they demonstrate that the failure to meet such limit was due to the breakage of one or more bags caused by condensed moisture.

(D) Compliance with the opacity emission limitation shall be determined using a continuous opacity monitor installed, calibrated, maintained and operated consistent with applicable law (*e.g.*, 40 CFR part 60).

(iii) The owner or operator shall install and operate low-NO_X burners and overfire air on Unit 1 and Unit 2 at the Mohave Generating Station.

(3) *Emission control construction deadlines.* The owner or operator shall meet the following deadlines for design and construction of the emission control equipment required by paragraph (d)(2) of this section. These deadlines and the design and construction deadlines set forth in paragraph (d)(4)(iii) of this section are not applicable if the emission limitation compliance deadlines of paragraph (d)(4) of this section are nonetheless met; or coal-fired units at the Mohave Generating Station are not in operation after December 31, 2005; or coal-fired units at the Mohave Generating Station are not in operation after December 31, 2005 and thereafter recommence operation in accordance with the emission controls and limitations obligations of paragraph (d)(2) of this section.

(i) Issue a binding contract to design the SO_2, opacity and NO_X control systems for Unit 1 and Unit 2 by March 1, 2003.

(ii) Issue a binding contract to procure the SO_2, opacity and NO_X control systems for Unit 1 and Unit 2 by September 1, 2003.

(iii) Commence physical, on-site construction of SO_2 and opacity equipment for Unit 1 and Unit 2 by April 1, 2004.

(iv) Complete construction of SO_2, opacity and NO_X control equipment and complete tie in for first unit by July 1, 2005.

(v) Complete construction of SO_2, opacity and NO_X control equipment and complete tie in for second unit by December 31, 2005.

(4) *Emission limitation compliance deadlines.* (i) The owner's or operator's obligation to meet the SO_2 and opacity emission limitations and NO_X control obligations set forth in paragraph (d)(2) of this section shall commence on the following dates, unless subject to a force majeure event as provided for in paragraph (d)(7) of this section:

(A) For one unit, January 1, 2006; and

(B) For the other unit, April 1, 2006.

(ii) The unit that is to meet the emission limitations by April 1, 2006 may only be operated after December 31, 2005 if the control equipment set forth in paragraph (d) (2) of this section has been installed on that unit and the equipment is in operation. However, the control equipment may be taken out of service for one or more periods of time between December 31, 2005 and April 1, 2006 as necessary to assure its proper operation or compliance with the final emission limits.

(iii) If the current owners' entire (*i.e.*, 100%) ownership interest in the Mohave Generating Station is sold either contemporaneously, or separately to the same person or entity or group of persons or entities acting in concert, and the closing date or dates of such sale occurs on or before December 30, 2002, then the emission limitations set forth in paragraph (d)(2) of this section shall become effective for one unit three years from the date of the last closing, and for the other unit three years and three months from the date of the last closing. With respect to interim construction deadlines, the owner or operator shall issue a binding contract to design the SO_2, opacity and NO_X control systems within six months of the last closing, issue a binding contract to procure such systems within 12 months of such closing, commence physical, on-site construction of SO_2 and opacity control equipment within 19 months of such closing, and complete installation and tie-in of such control systems for the first unit within 36 months of the last closing and for the second unit within 39 months of the last closing.

(5) *Interim emission limits.* For the period of time between [the effective date of paragraph (d) of this section] and the date on which each unit must commence compliance with the final emission limitations set forth in paragraph (d)(2) of this section ("interim period"), the following SO_2 and opacity emission limits shall apply:

(i) SO_2: SO_2 emissions shall not exceed 1.0 pounds per million BTU of heat input calculated on a 90-boiler-operating-day rolling average basis for each unit;

(ii) Opacity: The opacity of emissions shall be no more than 30 percent, as averaged over each separate 6-minute period within an hour, beginning each hour on the hour, measured at the stack, with no more than 375 exceedances of 30 percent allowed per calendar quarter (including any pro rated portion thereof), regardless of reason. If the total number of excess opacity readings from [the effective date of paragraph (d) of this section] to the time the owner or operator demonstrates compliance with the final opacity limit in paragraph (d)(2) of this section, divided by the total number of quarters in the interim period (with a partial quarter included as a fraction), is equal to or less than 375, the owner or operator shall be in compliance with this interim limit.

(6) *Reporting.* (i) Commencing on January 1, 2001, and continuing on a bi-annual basis through April 1, 2006, or such earlier time as the owner or operator demonstrates compliance with the final emission limits set forth in paragraph (d)(2) of this section, the owner or operator shall provide to the Administrator a report that describes all significant events in the preceding six month period that may or will impact the installation and operation of pollution control equipment described in this paragraph, including the status of a full or partial sale of the Mohave Generating Station based upon non-confidential information. The owner's or operator's bi-annual reports shall also set forth for the immediately preceding two quarters: All opacity readings in excess of 30 percent, and all SO_2 90-boiler-operating-day rolling averages in BTUs for each unit for the preceding two quarters.

(ii) Within 30 days after [the end of the first calendar quarter for which the emission limitations in paragraph (d)(2) of this section first take effect], but in no event later than April 30, 2006, the owner or operator shall provide to the Administrator on a quarterly basis the following information:

(A) The percent SO_2 emission reduction achieved at each unit during each 90-boiler-operating-day rolling average for each boiler-operating-day in the prior quarter. This report shall also include a list of the days and hours excluded for any reason from the determination of the owner's or operator's compliance with the SO_2 removal requirement.

(B) All opacity readings in excess of 20.0 percent, and a statement of the cause of each excess opacity reading and any documentation with respect to any claimed malfunction or bag breakage.

(C) Each unit's 365-boiler-operating-day rolling average for each boiler-operating-day in the prior quarter following [the first full 365 boiler-operating-days after the .150 pound SO_2

limit in paragraph (d)(2) of this section takes effect].

(7) *Force majeure provisions.* (i) For the purpose of this paragraph, a "force majeure event" is defined as any event arising from causes wholly beyond the control of the owner or operator or any entity controlled by the owner or operator (including, without limitation, the owner's or operator's contractors and subcontractors, and any entity in active participation or concert with the owner or operator with respect to the obligations to be undertaken by the owner or operator pursuant to this paragraph), that delays or prevents or can reasonably be anticipated to delay or prevent compliance with the deadlines in paragraphs (d)(3) and (4) of this section, despite the owner's or operator's best efforts to meet such deadlines. The requirement that the owner or operator exercise "best efforts" to meet the deadline includes using best efforts to avoid any force majeure event before it occurs, and to use best efforts to mitigate the effects of any force majeure event as it is occurring, and after it has occurred, such that any delay is minimized to the greatest extent possible.

(ii) Without limitation, unanticipated or increased costs or changed financial circumstances shall not constitute a force majeure event. The absence of any administrative, regulatory, or legislative approval shall not constitute a force majeure event, unless the owner or operator demonstrates that, as appropriate to the approval: they made timely and complete applications for such approval(s) to meet the deadlines set forth in paragraph (d)(3) of this section or paragraph (d)(4) of this section; they complied with all requirements to obtain such approval(s); they diligently sought such approval; they diligently and timely responded to all requests for additional information; and without such approval, the owner or operator will be required to act in violation of law to meet one or more of the deadlines in paragraph (d)(3) of this section or paragraph (d)(4) of this section.

(iii) If any event occurs which causes or may cause a delay by the owner or operator in meeting any deadline in paragraphs (d)(3) or (4) of this section and the owner or operator seeks to assert the event is a force majeure event, the owner or operator shall notify the Administrator in writing within 30 days of the time the owner or operator first knew that the event is likely to cause a delay (but in no event later than the deadline itself). The owner or operator shall be deemed to have notice of any circumstance of which their contractors or subcontractors had notice, provided that those contractors or subcontractors were retained by the owner or operator to implement, in whole or in part, the requirements of paragraph (d) of this section. Within 30 days of such notice, the owner or operator shall provide in writing to the Administrator a report containing: an explanation and description of the reasons for the delay; the anticipated length of the delay; a description of the activity(ies) that will be delayed; all actions taken and to be taken to prevent or minimize the delay; a timetable by which those measures will be implemented; and a schedule that fully describes when the owner or operator proposes to meet any deadlines in paragraph (d) of this section which have been or will be affected by the claimed force majeure event. The owner or operator shall include with any notice their rationale and all available documentation supporting their claim that the delay was or will be attributable to a force majeure event.

(iv) If the Administrator agrees that the delay has been or will be caused by a force majeure event, the Administrator and the owner or operator shall stipulate to an extension of the deadline for the affected activity(ies) as is necessary to complete the activity(ies). The Administrator shall take into consideration, in establishing any new deadline(s), evidence presented by the owner or operator relating to weather, outage schedules and remobilization requirements.

(v) If the Administrator does not agree in her sole discretion that the delay or anticipated delay has been or will be caused by a force majeure event, she will notify the owner or operator in writing of this decision within 20 days after receiving the owner's or operator's report alleging a force majeure event. If the owner or operator nevertheless seeks to demonstrate a force majeure event, the matter shall be resolved by the Court.

(vi) At all times, the owner or operator shall have the burden of proving that any delay was caused by a force majeure event (including proving that the owner or operator had given proper notice and had made "best efforts" to avoid and/or mitigate such event), and of proving the duration and extent of any delay(s) attributable to such event.

(vii) Failure by the owner or operator to fulfill in any way the notification and reporting requirements of this section shall constitute a waiver of any claim of a force majeure event as to which proper notice and/or reporting was not provided.

(viii) Any extension of one deadline based on a particular incident does not necessarily constitute an extension of any subsequent deadline(s) unless directed by the Administrator. No force majeure event caused by the absence of any administrative, regulatory, or legislative approval shall allow the Mohave Generating Station to operate after December 31, 2005, without installation and operation of the control equipment described in paragraph (d)(2) of this section.

(ix) If the owner or operator fails to perform an activity by a deadline in paragraphs (d)(3) or (4) of this section due to a force majeure event, the owner or operator may only be excused from performing that activity or activities for that period of time excused by the force majeure event.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6734–7]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Publicker Industries Superfund Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the Publicker Industries Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that the remedial action for the site has been successfully executed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before August 21, 2000.

ADDRESSES: Comments may be mailed to: Kristine Matzko (3HS21), Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

Comprehensive information, including the deletion docket, on this Site is available for viewing at the Site information repository at the following location: Regional Center for Environmental Information, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, 215–814–5254.

FOR FURTHER INFORMATION CONTACT: Kristine Matzko (3HS21), Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Telephone 215–814–5719, e-mail address, matzko.kristine@epa.gov

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency, Region III announces its intent to delete the Publicker Industries Superfund Site located in Philadelphia, Pennsylvania, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 CFR part 300, and requests public comments on this proposed action. EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that future conditions at the site warrant such action.

EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that remedial activities conducted at the Site have been successfully executed.

EPA will accept comments on the proposal to delete this Site for thirty calendar days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Publicker Industries Superfund Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP established the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) The responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate. Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA will conduct a review of the site at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment.

In the case of this Site, the selected remedy is protective of human health and the environment so long as the property is used only for industrial purposes. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

(i) EPA Region III has recommended deletion and has prepared the relevant documents. All appropriate responses under CERCLA have been implemented as documented in the Final Close-Out Report dated March 19, 2000.

(ii) PADEP has concurred with the deletion decision in a letter dated June 13, 2000. Concurrent with this Notice of Intent to Delete, an advertisement in a local paper presents information on the Site and announces the commencement of the thirty (30) day public comment period on the deletion package.

(iii) The EPA Regional Office has made all relevant documents supporting the proposed deletion available for the public to review in the EPA Regional Office.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the EPA Region III Regional Administrator places a final notice, a Notice of Deletion, in the **Federal Register**. Generally, the NPL will reflect deletions in the final update. Public notices and copies of the Responsiveness Summary will be made available to the public by the EPA Regional Office.

IV. Basis for Intended Site Deletion

The following summary provides the EPA's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Publicker Industries Superfund Site (the Site) is located in southeastern Philadelphia, Pennsylvania. The Site is bordered to the east by the Delaware River, to the north by the Ashland Chemical Company, to the south by the Packer Marine Terminal and New Orleans Cold Storage, and to the west by Christopher Columbus Boulevard (formerly Delaware Avenue). The Site is adjacent to, and partially under the Walt Whitman Bridge, which spans the Delaware River from Pennsylvania to New Jersey. The Site covers approximately 42 acres.

From 1912 to early 1986, Publicker Industries, Incorporated, owned and operated a liquor and industrial alcohol manufacturing plant. The Publicker Plant (Plant) fermented potatoes, molasses, corn and other grains to form various kinds of alcohols. The alcohols were used in numerous products, including whiskey, solvents, cleansers, antifreeze, and rubbing alcohol. Petroleum products and chemicals were also stored at the Plant during the late 1970's and early 1980's.

Plant operations were discontinued in February 1986 and, later that year, Publicker Industries sold the property to the Overland Corporation. Overland Corporation declared bankruptcy and abandoned the site in November 1986.

The Site initially included numerous large tanks, production buildings/warehouses, and an estimated several hundred miles of above-ground process lines. Many of the process lines were wrapped with asbestos insulation. The

majority of the existing structures had deteriorated due to weather, fire, neglect, and vandalism.

Superfund Response Activities

Large amounts of hazardous wastes and materials were discovered at the Site following an extensive fire in June 1987. During subsequent investigations, EPA determined that the conditions on Site posed an imminent threat to human health and environment. Consequently, EPA completed several emergency actions from December 1987 to December 1988. These actions included the stabilization of structures, characterization of the contents of drums and tanks, bulking and securing of over 850,000 gallons of numerous waste streams, off-site disposal of laboratory containers, and removal of liquids from above-grade process lines.

In May 1989, the Site scored 59.99 on the Hazard Ranking System, and was added to the National Priorities List in October 1989.

EPA began the Remedial Investigation/Feasibility Study (RI/FS) activities in November 1989. In January 1995, EPA finalized the RI/FS.

The Site was divided into three operable units. Below is a summary of each operable unit and the remedial actions: Operable Unit #1 Site Stabilization, Operable Unit #2 Asbestos Remediation, Operable Unit #3 Soil and Ground Water.

In June 1989, the first Record of Decision (ROD) for the Site was issued. The ROD addressed Site Stabilization. The remedial actions detailed in the ROD consisted of transportation and off-site disposal of known waste streams, draining and demolition of above-grade process lines, and transportation and off-site disposal of wastes discovered in above-grade process lines. During this remediation, asbestos-containing materials were encountered on the process lines. This asbestos-containing material was bagged and stored on-site. Remedial activities began in October 1989 and were completed in December 1990.

Many of the above-grade process lines were wrapped with asbestos insulation. As a result of Operable Unit #1 remediation, asbestos-containing materials remained on-site in bags as well as on pipes. The asbestos was investigated in the early spring of 1991. A Focused Feasibility Study (FFS) was completed in the spring of 1991 and EPA subsequently issued a ROD for Operable Unit #2 on June 28, 1991. The remedy included: the removal of remaining asbestos from piping staged throughout the Site; placement in secure packaging (plastic bags); and staging and preparation for transport and disposal; the collection of asbestos previously packaged and staged at the Site; repackaging it, if necessary; and preparation for transport and disposal; and transportation of asbestos to a permitted off-site disposal facility.

An initial remedial design was developed in September 1991; however, a site fire in April 1992 delayed remedial action until February 21, 1995. The Site was divided into five work areas. The asbestos-containing material was removed using three methodologies: gross removal, glove bag, and remote containment. The material was then packaged and transported to off-site disposal facilities. The remedial action was completed on May 19, 1995. A total of 199.87 tons of asbestos-containing materials were disposed during the remedial action.

EPA used the Superfund Trust Fund to pay for the site cleanup costs for Operable Unit #1 and Operable Unit #2. Operable Unit #3 was remediated by the current site owner after negotiating a Prospective Purchaser Agreement (PPA) with EPA.

In December 1994, EPA and the PADEP, finalized a Prospective Purchaser Agreement (PPA) for the Site. The primary purpose of the PPA was to settle and resolve the potential liability of the Delaware Avenue Enterprises, Incorporated (DAE), Cresmont Limited Partnership, and Holt Cargo Systems Incorporated (collectively referred to as the Parties).

In exchange for covenants not to sue, the Parties agreed to pay EPA and PADEP a total of $2.3 million. Additionally, the PPA stated that the Parties may petition EPA to be allowed to perform all or a discrete portion of the CERCLA response selected in the ROD for Operable Unit #3. The agreed-upon value of such work may offset any balance of payments still outstanding to EPA and/or PADEP under this PPA. In January 1996, DAE petitioned to do the remedial work. An amendment to the PPA was signed on December 19, 1996 allowing DAE to implement the remedy.

The third and final ROD for the Site was signed on December 28, 1995. Before beginning the remedial work, the Remedial Action Work Plan (RAWP) was approved by EPA on July 17, 1997. DAE's contractor proceeded on August 6, 1997; mobilization took place on August 7, 1997; and construction activities started on August 11, 1997.

The selected remedy involved: abandoning on-site groundwater wells; removal, treatment, and off-site disposal of liquids and sediments in contaminated electric utilities; removal, treatment, and off-site disposal of liquids and sediments in contaminated storm water trenches and utilities; and removal, treatment and off-site disposal of miscellaneous wastes.

The ROD required that if excavation should occur on-site in the future, that monitoring will be conducted to ensure worker safety. A deed notice has been filed which notifies future owners of the listing of the Site on the National Priorities List, the releases of hazardous substances, and the existence of RODs for the Site. Furthermore, the deed notice alerts future owners that they "shall not put the Site to any use which could disturb or be inconsistent with the remedial response action implemented at the Site."

EPA and PADEP conducted several inspections during the remediation of Operable Unit #3. These inspections included: an inspection of the abandoned wells on September 5, 1997; an inspection of the stormsewers on October 10, 1997; an inspection of the electric utilities on December 2 and 9, 1997; an inspection of the stormwater trenches on December 2, 1997; and finally an inspection of the additional storm water lines on January 13 and 16, 1998. The remedial activities were performed according to design specifications set forth in the Remedial Action Work Plan.

EPA issued a Preliminary close Out Report on December 2, 1997 which documented the completion of construction activities., Remedial actions were completed on May 11, 1998. DAE submitted a Final Report on Operable Unit #3 dated June 1998 which described the remedial activities. A follow-up site-visit and interview was held on September 8, 1999 as part of the review of the Final Report and as part of the five year review. An addendum to the Final Report was later submitted to EPA, and EPA accepted the final report on September 29, 1999.

None of the Operable Units require operation and maintenance or post-remedial action monitoring. Neither the OU#1 nor the OU#2 ROD remedies required Operation and Maintenance or post-remedial action monitoring. Originally, for Operable Unit #3 the stormwater outfalls were to be monitored to assess if the Delaware River was receiving any contamination. However, the stormwater outfalls and connections to the city sewer were sealed to eliminate the need to monitor the outfalls.

Five Year Reviews

EPA conducted two five year reviews of the Site. The first five year review was completed in October 1996 and the second review was completed in

February 2000. During the first five year review, the remedy for Operable Unbite #3 had not yet been completed and, therefore, the five year review concluded that the remedy for the entire Site was not protective. The second five year review concluded that the remedies are protective of the environment and human health for non-residential uses and that further reviews need to continue.

Final Close-Out Report

EPA issued a Final Close Out Report (FCOR) on March 19, 2000 that documented the completion of all construction activities for the Publicker Industries Superfund Site. As part of the FCOR, EPA and PADEP conducted a site visit on September 8, 1999. The site visit and review information concluded that all the remedial actions have been successfully executed.

Applicable Deletion Criteria

EPA is proposing deletion of this Site from the NPL. In a letter dated June 13, 2000 PADEP concurred with EPA that all appropriate responses under CERCLA have been implemented. Documents supporting this action are available from the docket. EPA believes that the criteria state in section II(i) and (ii) for deletion of this Site have been met. Therefore, EPA is proposing the deletion of the Publicker Industries Superfund Site from the NPL.

Dated: June 21, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–17752 Filed 7–19–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1472; MM Docket No. 99–314; RM–9754]

Radio Broadcasting Services; Metropolis IL and Paducah, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: Sun Media, Inc. requested the reallotment of Channel 252C1 from Metropolis, Illinois to Paducah, Kentucky, and the modification of Station WRIK–FM's construction permit accordingly. *See* 64 FR 59728, November 3, 1999. The petitioner's rule making proposal was denied because the difference in population between the two communities did not justify removing the third local transmission service from the smaller community of Metropolis to provide the larger community of Paducah with its sixth local transmission service.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–314, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18295 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1437; MM Docket No. 99–223; RM–9604]

Radio Broadcasting Services; Leeds, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 287C2 at Leeds, Utah. *See* 64 FR 34751, June 29, 1999. Based on the information submitted by Mountain West Broadcasting, we believe it has failed to establish that Leeds qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel to Leeds.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–223, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857-3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18296 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1438; MM Docket No. 99–227; RM–9634]

Radio Broadcasting Services; Trego, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, denial.

SUMMARY: This document denies a petition for rule making filed by the Battani Corporation requesting the allotment of Channel 296C2 at Trego, Montana. *See* 64 FR 34754, June 29, 1999. Based on the information submitted by the Battani Corporation, we believe it has failed to establish that Trego qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel to Trego.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–227, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18297 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1460; MM Docket No. 00–120; RM–9902]

Radio Broadcasting Services; Meeker and Craig, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Western Slope Communications, L.L.C., permittee of Station KAYW, Channel 251C, Meeker, Colorado, requesting the reallotment of Channel 251C to Craig, Colorado, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Petitioner is requested to provide additional information to support a claim of proposed service to an unserved area at Craig. Coordinates used for this proposal are 40–20–35 NL and 108–04–56 WL.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Tom W. Davidson and Michael K. Hamra, Esqs., Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue, NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–120, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18330 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register
Vol. 65, No. 140
Thursday, July 20, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–072–2]

Declaration of Emergency Because of an Atypical Transmissible Spongiform Encephalopathy (Prion Disease) of Foreign Origin

A transmissible spongiform encephalopathy (TSE) (prion disease) of foreign origin has been detected in the United States. It is different from TSE's previously diagnosed in the United States. The TSE was detected in the progeny of imported sheep. The imported sheep and their progeny are under quarantine in Vermont.

Transmissible spongiform encephalopathies are degenerative fatal diseases that can affect livestock. TSE's are caused by similar, as yet uncharacterized, agents that usually produce spongiform changes in the brain.

Post-mortem analysis has indicated positive results for an atypical TSE of foreign origin in four sheep in Vermont. Because of the potentially serious consequences of allowing the disease to spread to other livestock in the United States, it is necessary to seize and dispose of those flocks of sheep in Vermont that are affected with or exposed to the disease, and their germ plasm.

The existence of the atypical TSE of foreign origin represents a threat to U.S. livestock. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce.

APHIS has insufficient funds to carry out the seizure and disposal of animals and germ plasm necessary to eliminate this disease risk. These funds would be used to compensate the owners of the animals and germ plasm for their seizure and disposal in accordance with 21 U.S.C. 134a.

Therefore, in accordance with the provisions of the Act of September 25, 1981, as amended (7 U.S.C. 147b), I declare that there is an emergency that threatens the livestock industry of this country and hereby authorize the transfer and use of such funds as may be necessary from appropriations or other funds available to agencies or corporations of the United States Department of Agriculture to seize and dispose of animals that are affected with or exposed to this TSE, and their germplasm, in accordance with 21 U.S.C. 134a.

Dated: This declaration of emergency shall become effective July 14, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–18368 Filed 7–19–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–072–1]

Declaration of Extraordinary Emergency Because of an Atypical Transmissible Spongiform Encephalopathy (Prion Disease) of Foreign Origin

A transmissible spongiform encephalopathy (TSE) (prion disease) of foreign origin has been detected in the United States. It is different from TSE's previously diagnosed in the United States. The TSE was detected in the progeny of imported sheep. The imported sheep and their progeny are under quarantine in Vermont.

Transmissible spongiform encephalopathies are degenerative fatal diseases that can affect livestock. TSE's are caused by similar, as yet uncharacterized, agents that usually produce spongiform changes in the brain.

Post-mortem analysis has indicated positive results for an atypical TSE of foreign origin in four sheep in Vermont. Because of the potentially serious consequences of allowing the disease to spread to other livestock in the United States, it is necessary to seize and dispose of those flocks of sheep in Vermont that are affected with or exposed to the disease, and their germ plasm.

The existence of the atypical TSE of foreign origin represents a threat to U.S. livestock. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The Department has reviewed the measures being taken by Vermont to quarantine and regulate the flocks in question and has consulted with appropriate officials in the State of Vermont. Based on such review and consultation, the Department has determined that Vermont does not have the funds to compensate flock owners for the seizure and disposal of flocks affected with or exposed to the disease, and their germ plasm. Without such funds, it will be unlikely to achieve expeditious disposal of the flocks and germ plasm. Therefore, the Department has determined that an extraordinary emergency exists because of the existence of the atypical TSE in Vermont.

This declaration of extraordinary emergency authorizes the Secretary to seize, quarantine, and dispose of, in such manner as he deems necessary, any animals that he finds are affected with or exposed to the disease in question, and their germ plasm, and otherwise to carry out the provisions and purposes of the Act of July 2, 1962 (21 U.S.C. 134–134h). The State of Vermont has been informed of these facts.

Dated: This declaration of extraordinary emergency shall become effective July 14, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–18367 Filed 7–19–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–00–05]

United States Standards for Grades of Swiss Cheese, Emmentaler Cheese

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on proposals to change the voluntary United States Standards for

Grades of Swiss Cheese, Emmentaler Cheese. AMS is proposing changes that would: (1) Increase the allowable eye size range in Grade A Swiss cheese and define an allowable eye size range for Grade B Swiss cheese; (2) remove the block height recommendation for cheeses produced in rindless blocks; (3) add more clarity to the color requirements for Grades A and B Swiss cheese; (4) correct minor errors that currently exist in the tables; and (5) make minor editorial changes that will make the standard more uniform in appearance and easier to use. These changes are being proposed to strengthen the standard by providing Swiss cheese characteristics that incorporate changes in consumer preferences and facilitate the use of automated portioning and packaging equipment. Editorial changes are also proposed to provide consistency with other dairy product standards.

DATES: Comments must be submitted on or before September 18, 2000.

ADDRESSES: Written comments may be submitted to Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, Stop 0230, P.O. Box 96456, Washington, DC 20090–6456; faxed to (202) 720–2643; or e-mailed to *Duane.Spomer@usda.gov*.

Comments should reference the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above address during regular business hours.

The current United States Standards, along with proposed changes, are available either through the above addresses or by accessing AMS" Home Page on the Internet at *www.ams.usda.gov/dairystand.htm*.

FOR FURTHER INFORMATION CONTACT: Charlsia Fortner, Dairy Products Marketing Specialist, Dairy Standardization Branch, AMS/USDA/ Dairy Programs, Room 2746-S, P.O. Box 96956, Washington, DC, 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and will make copies of official standards available upon request. The United States Standards for Grades of Swiss Cheese, Emmentaler Cheese no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Dairy Programs.

When Swiss cheese is officially graded, the USDA voluntary standards governing the grading of manufactured or processed dairy products are used. The Agency believes this proposal would accurately identify quality characteristics in Swiss cheese. AMS is proposing to change the United States Standards for Grades of Swiss Cheese, Emmentaler Cheese using the procedures that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

The grade standards were last revised in September 1987. AMS has reviewed this standard and discussed possible changes with the dairy industry. The Wisconsin Dairy Products Association and the Wisconsin Cheese Makers Association, trade associations representing the Swiss cheese industry, provided specific recommendations.

Proposed by the Wisconsin Dairy Products Association and the Wisconsin Cheese Makers Association

The Wisconsin Dairy Products Association and the Wisconsin Cheese Maker's Association recommend changes to:

- Allow smaller eyes in Grade A Swiss cheese; and
- Remove block size recommendations for rindless Swiss cheese.

Proposed by Dairy Programs, Agricultural Marketing Service

- Lower the minimum eye size requirement for Grade A Swiss cheese as recommended by the Wisconsin Dairy Products Association and the Wisconsin Cheese Makers Association and include provisions to clarify uniformity of eye size. Also, Dairy Programs proposes to include the same eye size range for Grade B Swiss cheese;
- Remove the block height recommendation for rindless Swiss cheese as recommended by the Wisconsin Dairy Products Association and the Wisconsin Cheese Makers Association;
- Add a more descriptive representation of acceptable color for Grades A and B Swiss cheese by defining the range of acceptable color as white to light yellow;
- Correct errors in the table that summarizes eye and texture characteristics of Swiss cheese; and
- Reformat information in these standards to make the standards easier to use and provide a uniform appearance with other U.S. Grade Standards.

The Wisconsin Dairy Products Association and the Wisconsin Cheese Maker's Association have requested that the USDA revise Federal Swiss cheese grade standards to allow a smaller eye size and to remove cheese block size recommendations. Individuals representing a number of Swiss cheese manufacturers and buyers have also expressed strong support of these changes. Their suggested revisions, along with others identified by AMS, would increase the flexibility of the standard for use in satisfying consumer demands and promote consistency among USDA dairy product grade standards.

The current eye size requirement for Grade A Swiss cheese specifies that a majority of the eyes shall be between $^{11}/_{16}$ and $^{13}/_{16}$ of an inch in diameter. This is a very narrow range. While cheese makers are able to produce cheese with eyes in this range, the resulting product does not perform well on modern slicing equipment, and consumer preference points toward a smaller eye than the lower limit of $^{11}/_{16}$ of an inch. The trade associations have suggested revising the lower limit of this eye size allowance to $^{3}/_{8}$ of an inch. The Department agrees that this revision would result in Swiss cheese grade standards that more accurately reflect current marketing practices. The Department feels that uniformity of eye size is a measure of quality in Swiss cheese and therefore proposes to recognize the significance of uniformity of eye sizes within this larger range for Grade A Swiss cheese.

There are currently no eye size requirements for Grade B Swiss cheese under the established grading procedures. Eye size requirements for Grade B Swiss cheese do appear in the alternate grading procedures which are included as supplemental information to the standards. With the proposed expansion of the eye size range for Grade A Swiss, consideration of the eye size requirements for Grade B Swiss is appropriate. The Department feels that the larger range proposed for Grade A Swiss cheese should be relevant to Grade B Swiss as well. It is proposed that the same eye size requirements be included in standards for Grade B Swiss under all grading procedures; however, the additional provisions for uniformity of eye size would not be included in the Grade B requirements. The inclusion of the eye size range in the Grade B requirements would require 51 percent of the eyes of a Grade B Swiss cheese to fall within the range of $^{3}/_{8}$ to $^{13}/_{16}$ of

an inch, with no further consideration as to uniformity.

The current standards recommend a block height for rindless blocks of Grades A and B Swiss cheese of between 6½ and 8½ inches. Swiss cheese manufacturers and buyers indicate that a need no longer exists for this block height requirement. Technology exists to make a high quality rindless Swiss cheese in a variety of block sizes, and they feel that the standard should not restrict the block sizes available. USDA agrees that the block height requirement for rindless Swiss cheese is no longer necessary, and proposes to remove it from these grade standards.

Additional color descriptors are proposed for Grades A and B Swiss cheese to provide greater clarity to those utilizing these grade standards. Swiss cheese color is largely dependent on the milk from which it is produced, more so than many other cheeses. Additionally, bleaching of milk for Swiss cheese manufacturing is allowed under the Food and Drug Administration's standards of identity for Swiss cheese (21 CFR 133.195). Current Grade A standards require Swiss cheese to present a natural, attractive and uniform color. USDA proposes to add a more descriptive representation of acceptable color by defining the range of acceptable color as white to light yellow. These color descriptors are proposed in an effort to provide consistent interpretation of the terms "natural" and "attractive" by users of these grade standards.

Five tables appear in these standards to provide an easy reference for Swiss cheese characteristics and their acceptable levels at each grade. One of these tables, "Classification of Eyes and Texture," contains classification information that is not supported in the text of the standard. USDA proposes revisions to the "small-eyed" and "splits" table entries to provide consistency with the narrative portion of the standard.

This notice provides for a 60 day comment period for interested parties to comment on proposed revisions to the standards. The following is an outline of these changes.

UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]

Current standard	Proposed	Discussion
Definitions	No change	N/A.
Swiss cheese, Emmentaler cheese	No change	N/A.
(a) For the purpose of this subpart, the words "Swiss" and "Emmentaler" are interchangeable.	No change	N/A.
(b) Swiss cheese is cheese made by the Swiss process or by any other procedure which produces a finished cheese having the same physical and chemical properties as cheese produced by the Swiss process. It is prepared from milk and has holes, or eyes, developed throughout the cheese by microbiological activity. It contains not more than 41 percent of moisture, and its solids contain not less than 43 percent of milkfat. It is not less than 60 days old and conforms to the provisions of 21 CFR 133.195, "Cheese and Related Cheese Products," Food and Drug Administration.	No change	N/A.
Styles	No change	N/A.
(a) Rind. The cheese is completely covered by a rind sufficient to protect the interior of the cheese.	No change	N/A.
(b) Rindless. The cheese is properly enclosed in a wrapper or covering which will not impart any objectionable flavor or color to the cheese. The wrapper or covering is sealed with a sufficient overlap or satisfactory closure to exclude air. The wrapper or covering is of sufficiently low permeability to water vapor and air so as to prevent the formation of a rind through contact with air during the curing and holding periods.	No change	N/A.
U.S. Grades	No change	N/A.
Nomenclature of U.S. grades	No change	N/A.
The nomenclature of the U.S. grades is as follows:	No change	N/A.
(a) U.S. Grade A	No change	N/A.
(b) U.S. Grade B	No change	N/A.
(c) U.S. Grade C	No change	N/A.
Basis for determination of U.S. grades	No change	N/A.
(a) The determination of U.S. grades of Swiss cheese shall be on the basis of rating the following quality factors:	No change	N/A.
(1) Flavor	No change	N/A.
(2) Body	No change	N/A.
(3) Eyes and texture	No change	N/A.
(4) Finish and appearance, and	No change	N/A.
(5) Color	No change	N/A.

UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
(b) The rating of each quality factor shall be established on the basis of characteristics present in a randomly selected sample representing a vat of cheese. In the case of institutional-size cuts, samples may be selected on a lot basis.	No change	N/A.
(c) To determine flavor and body characteristics, the grader will examine a full trier plug of cheese withdrawn at the approximate center of one of the largest flat surface areas of the sample. For some institutional-size samples, it may not be possible to obtain a full trier plug. When this occurs, a U.S. grade may be determined from a smaller portion of a plug.	No change	N/A.
(d) To determine eyes and texture as well as color characteristics, the wheel or block shall be divided approximately in half, exposing two cut surfaces, for examination. The exposed cut surfaces of institutional-size packages shall be used to determine eye and texture as well as color characteristics.	No change	N/A.
(e) A U.S. grade may be assigned to institutional-size packages. In some instances, it may not be possible to obtain a full trier plug. When this occurs, a U.S. grade determination may be assigned on a smaller portion of a plug. The exposed cut surfaces of these size packages shall be used to determine eye and texture as well as color characteristics.	Delete	We propose to delete this paragraph. Instructions for grading institutional sized packages of Swiss cheese is adequately addressed in paragraph (c) of this section.
(f) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.	(e) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.	We propose to redesignate this paragraph as (e) for editorial clarity.
Specifications for U.S. grades	No change	N/A.
(a) U.S. grade A. U.S. grade A Swiss cheese shall conform to the following requirements (See Tables I, II, III, IV, and V of this section):	No change	N/A.
(1) Flavor: Shall be a pleasing and desirable characteristic Swiss cheese flavor, consistent with the age of the cheese, and free from undesirable flavors.	No change	N/A
(2) Body: Shall be uniform, firm, and smooth	No change	N/A.
(3) Eyes and texture: The cheese shall be properly set and shall possess well-developed round or slightly oval-shaped eyes which are uniformly distributed.	(3) Eyes and texture: The cheese shall be properly set and shall possess well-developed round or slightly oval-shaped eyes which are relatively uniform in size and distribution.	We propose to reword this description to include a provision for uniformity of eye size. Uniformity of eye size within the proposed larger range is necessary to address quality issues in Grade A Swiss cheese.
The majority of the eyes shall be 11/16 to 13/16 inch in diameter.	The majority of the eyes shall be 3/8 to 13/16 inch in diameter.	We propose to increase the allowable range of eye sizes for Grade A Swiss cheese to include eyes of a smaller diameter. This broadened range more accurately reflects current marketing practices.
The cheese may possess the following eye characteristics to a very slight degree: dull, rough, and shell; and the following texture characteristics to a very slight degree: checks and picks.	The cheese may possess the following eye characteristics to a very slight degree: dull, rough, and shell; and the following texture characteristics to a very slight degree: checks, picks and streuble.	We propose to revise this list of allowable defects to include very slight streuble. The change brings this paragraph into agreement with Table III of this standard.
(4) Finish and appearance—(i) Rind. The rind shall be sound, firm, and smooth, providing good protection to the cheese. The surface of the cheese may exhibit mold to a very slight degree. There shall be no indication that mold has penetrated into the interior of the cheese.	No change	N/A.
(ii) Rindless. Rindless blocks of Swiss cheese should not be less than 6 ½ inches nor more than 8½ inches in height, reasonably uniform in size, and well shaped.	(ii) Rindless. Rindless blocks of Swiss cheese should be reasonably uniform in size, and well shaped.	We propose to remove recommendations for block heights of rindless Swiss cheese. Technological improvements have made it possible to produce quality Swiss cheese in a variety of sizes; therefore, these limitations are no longer necessary.

UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
The wrapper or covering shall adequately and securely envelop the cheese, be neat, unbroken, and fully protect the surface of the cheese, but may be slightly wrinkled. The surface of the cheese may exhibit mold to a very slight degree. There shall be no indication that mold has penetrated into the interior of the cheese.	No change	N/A.
(5) Color: Shall be natural, attractive, and uniform.	(5) Color: Shall be natural, attractive, and uniform. The cheese shall be white to light yellow in color.	We propose to include additional descriptors for color to provide greater clarity to those utilizing these grade standards. These descriptors are proposed to provide consistent interpretation of the terms natural and attractive.
(b) U.S. grade B. U.S. grade B Swiss cheese shall conform to the following requirements (See Tables I, II, III, IV, and V of this section):	No change	N/A.
(1) Flavor: Shall be a pleasing and desirable characteristic Swiss cheese flavor, consistent with the age of the cheese, and free from undesirable flavors. The cheese may possess the following flavors to a slight degree: acid, bitter, feed, flat, and utensil.	No change	N/A
(2) Body: Shall be uniform, firm, and smooth. The cheese may possess a slight weak body.	No change	N/A.
(3) Eyes and texture: The cheese shall possess well-developed round or slightly oval-shaped eyes.	No change	N/A.
	The majority of the eyes shall be ⅜ to 11/16 inch in diameter.	We propose to include the broadened eye size range in standards for Grade B Swiss cheese. This addition will promote consistency within the standards, since eye size requirements appear in the current Grade B standard under the alternate method for determining grades.
The cheese may possess the following eye characteristics to a very slight degree: dead eyes, nesty and small eyed; and the following to a slight degree: dull, frogmouth, one sided, overset, rough, shell, underset, and uneven.	The cheese may possess the following eye characteristics to a very slight degree: dead eyes and nesty; and the following to a slight degree: dull, frogmouth, one sided, overset, rough, shell, underset, and uneven.	We propose deleting the very slight level of the small eyed defect. The proposed lower eye size requirement is ⅜ of an inch. Definitions of small eyed at both the very slight and slight levels are not necessary to determine product grades given this narrow margin between acceptable eyes and blind Swiss cheese.
The cheese may possess the following texture characteristics to a slight degree: checks, picks and streuble.	No change	N/A.
(4) Finish and appearance—(i) Rind. The rind shall be sound, firm, and smooth; providing good protection to the cheese. The cheese may exhibit the following characteristics to a slight degree: huffed, mold, soiled, uneven, and wet rind. There shall be no indication that mold has penetrated into the interior of the cheese.	No change	N/A.
(ii) Rindless. Rindless blocks of Swiss cheese should not be less than 6½ inches nor more than 8½ inches in height.	Delete	We propose to delete references to block heights in the standard. Technology improvements have made it possible to produce quality Swiss cheese in a variety of sizes; therefore, these limitations are no longer necessary.
The wrapper or covering shall adequately and securely envelop the cheese, be neat, unbroken and fully protect the surface, but may be slightly wrinkled.	(ii) The wrapper or covering of rindless blocks of Swiss cheese shall adequately and securely envelop the cheese, be neat, unbroken and fully protect the surface, but may be slightly wrinkled.	We propose this rewording for increased editorial clarity in the absence of the introductory sentence of the paragraph.
The cheese may exhibit the following characteristics to a slight degree: huffed, mold, uneven, and wet surface. There shall be no indication that mold has penetrated into the interior of the cheese.	No change	N/A.

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UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
(5) Color: The cheese may possess to a slight degree a bleached surface.	(5) Color: The cheese shall be white to light yellow in color. The cheese may possess to a slight degree a bleached surface.	We propose to include additional descriptors for color to provide greater clarity to those utilizing these grade standards. These descriptors are proposed to provide consistent interpretation of the terms natural and attractive.
(c) U.S. grade C. U.S. grade C Swiss cheese shall conform to the following requirements (See Tables I, II, III, IV, and V of this section):	No change	N/A.
(1) Flavor: Shall possess a characteristic Swiss cheese flavor which is consistent with the age of the cheese.	No change	N/A.
The cheese may possess the following flavors to a slight degree: barny, flat, fruity, rancid, metallic, old milk, onion, sour, weedy, whey-taint, and yeasty; and the following to a definite degree: acid, bitter, feed, and utensil.	The cheese may possess the following flavors to a slight degree: barny, fruity, metallic, old milk, onion, rancid, sour, weedy, whey-taint, and yeasty; and the following to a definite degree: acid, bitter, feed, flat and utensil.	We propose to place the term rancid in correct alphabetical order within the list for clarity, and place flat in the definite category as it appears in Table III.
(2) Body: Shall be uniform and may possess the following characteristics to a slight degree: coarse, pasty, and short; and to a definite degree the cheese may be weak.	No change	N/A.
(3) Eyes and texture: The cheese may possess the following eye characteristics to a slight degree: afterset, cabbage, collapsed, irregular, large eyed, and small eyed, and the following to a definite degree: dead eyes, dull, frog mouth, nesty, rough, one sided, overset, shell, underset, and uneven.	(3) Eyes and texture: The cheese may possess the following eye characteristics to a slight degree: afterset, cabbage, collapsed, irregular, large eyed, and small eyed, and the following to a definite degree: dead eyes, dull, frog mouth, nesty, one sided, overset, rough, shell, underset, and uneven.	We propose this editorial change to place the term rough in correct alphabetical order within the list of defects.
The cheese may possess the following texture characteristics to a slight degree: gassy, splits and sweet holes; and the following to a definite degree: checks, picks and streuble.	No change	N/A.
(4) Finish and appearance—(i) Rind. The rind shall be sound, providing good protection to the cheese. The cheese may exhibit the following characteristics to a slight degree: checked rind, and soft spots; and the following to a definite degree: huffed, mold, soiled, uneven, and wet rind. There shall be no indication that mold has penetrated into the interior of the cheese.	No change	N/A.
(ii) Rindless. The wrapper or covering shall adequately and securely envelop the cheese, be unbroken, fully protect the surface and may be wrinkled. The cheese may exhibit a very slight soiled surface and contain soft spots to a slight degree. The cheese may possess the following characteristics to a definite degree: huffed, mold, uneven, and wet surface. There shall be no indication that mold has penetrated into the interior of the cheese.	No change	N/A.
(5) Color. The cheese may possess the following color characteristics to a slight degree: acid cut, bleached, colored spots, dull or faded, mottled and pink ring; and to a definite degree bleached surface.	(5) Color. The cheese may possess the following color characteristics to a slight degree: acid cut, colored spots, dull or faded, mottled and pink ring; and to a definite degree bleached surface.	We propose to delete bleached from the list of slight defects. Swiss cheese color is defined as white, and bleaching of the milk used to make the cheese is allowed under the Food and Drug Administration's standard of identity for Swiss cheese.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

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Table I.--Classification of Flavor
Identification of Flavor Characteristics

	U.S. Grade		
	A	B	C
Acid	-----	S	D
Barny	-----	-----	S
Bitter	-----	S	D
Feed	-----	S	D
Flat	-----	S	D
Fruity	-----	-----	S
Rancid	-----	-----	S
Metallic	-----	-----	S
Old Milk	-----	-----	S
Onion	-----	-----	S
Sour	-----	-----	S
Utensil	-----	S	D
Weedy	-----	-----	S
Whey-Taint	-----	-----	S
Yeasty	-----	-----	S

S--Slight. D--Definite.

Table II.--Classification of Body
Identification of body characteristics
U.S. Grade

	A	B	C
Coarse	-----	-----	S
Pasty	-----	-----	S
Short	-----	-----	S
Weak	-----	S	D

S--Slight. D--Definite.

Table I.--Classification of Flavor
Identification of Flavor Characteristics

	U.S. Grade		
	A	B	C
Acid	-----	S	D
Barny	-----	-----	S
Bitter	-----	S	D
Feed	-----	S	D
Flat	-----	S	D
Fruity	-----	-----	S
Metallic	-----	-----	S
Old Milk	-----	-----	S
Onion	-----	-----	S
Rancid	-----	-----	S
Sour	-----	-----	S
Utensil	-----	S	D
Weedy	-----	-----	S
Whey-Taint	-----	-----	S
Yeasty	-----	-----	S

S--Slight. D--Definite.

We propose placing the term rancid in proper alphabetical order within the list in this table.

No change.

N/A.

Table III.--Classification of Eyes and Texture

(For the evaluations of cut surfaces)

Identification of eyes and texture characteristics	U.S. Grade		
	A	B	C
Afterset	-----	-----	S
Cabbage	-----	-----	S
Checks	VS	S	D
Collapsed	-----	-----	S
Dead	-----	VS	D
Dull	VS	S	D
Frog mouth	-----	S	D
Gassy	-----	-----	S
Irregular	-----	-----	S
Large eyed	-----	-----	S
Nesty	-----	VS	D
One sided	-----	S	D
Overset	-----	S	D
Picks	VS	S	D
Rough	VS	S	D
Shell	VS	S	D
Small eyed	-----	VS	S
Splits	-----	-----	D
Streuble	VS	S	D
Sweet holes	-----	-----	S
Underset	-----	S	D
Uneven	-----	S	D

VS--Very Slight .S--Slight.
D--Definite.

Table III.--Classification of Eyes and Texture

(For the evaluations of cut surfaces)

Identification of eyes and texture characteristics	U.S. Grade		
	A	B	C
Afterset	-----	-----	S
Cabbage	-----	-----	S
Checks	VS	S	D
Collapsed	-----	-----	S
Dead	-----	VS	D
Dull	VS	S	D
Frog mouth	-----	S	D
Gassy	-----	-----	S
Irregular	-----	-----	S
Large eyed	-----	-----	S
Nesty	-----	VS	D
One sided	-----	S	D
Overset	-----	S	D
Picks	VS	S	D
Rough	VS	S	D
Shell	VS	S	D
Small eyed	-----	-----	S
Splits	-----	-----	S
Streuble	VS	S	D
Sweet holes	-----	-----	S
Underset	-----	S	D
Uneven	-----	S	D

VS--Very Slight .S--Slight.
D--Definite.

We propose modification of Table III to remove the allowance of very slight small eyed in Grade B Swiss cheese. The very slight defect level is no longer relevant with the larger range of acceptable eye sizes that has been proposed for the standard. The proposed lower eye size requirement is $^{3}/_{8}$ of an inch. Definitions of small eyed at both the very slight and slight levels are not necessary to determine product grades given this narrow margin between acceptable eyes and blind Swiss cheese. Additionally, we propose to change the splits defect from definite to slight in Grade C Swiss cheese. This change is proposed to be consistent with the text of the Grade C standard as well as with the classification of defects in other dairy product standards.

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Table IV.--Classification of Finish and Appearance
Identification of finish and appearance characteristics

	U.S. Grade		
	A	B	C
Checked rind	-----	-----	S
Huffed	-----	S	D
Mold on rind surface	VS	S	D
Mold under wrapper or covering	VS	S	D
Soft spots	-----	-----	S
Soiled surface (Rind)	-----	S	D
Soiled surface (Rindless)	-----	-----	VS
Uneven	-----	S	D
Wet rind	-----	S	D
Wet surface (Rindless)	-----	S	D

VS--Very Slight S--Slight.D--Definite.

No change.

N/A.

Table V.--Classification of Color
Identification of color characteristics

	U.S. Grade		
	A	B	C
Acid cut	-----	-----	S
Bleached surface	-----	S	D
Colored spots	-----	-----	S
Dull or faded	-----	-----	S
Mottled	-----	-----	S
Pink ring	-----	-----	S

S--Slight. D--Definite.

No change.

N/A.

U.S. Grades: U.S. grade names for Swiss cheese and Emmentaler cheese are optional grade designations:

(a) Fails to meet the requirements for U.S. Grade C because of one or more defects; or

(b) Fails to meet the requirements for any other requirements specified in the applicable ministration.

(c) Produced in a plant which does not be using sanitary practices, equipment, sanitizing under the applicable regulations.

(d) Produced in a plant which does not USDA inspection.

Explanation of Terms:

(a) *With respect to rind or surface:*

(1) Rind.—The natural outer layer or surface and wheel shape.

(2) Rindless.—The cheese is protected from contamination aged with the use of a suitable covering or rectangular shape.

(3) Instituting.—The cheese is wrapped from a large piece of taurants.

(b) *With respect to flavor and odor:*

(1) Slight.—Lacks full development nation.

(2) Definite.—Pronounced.

(3) Undesirable.—Pronounced and of the intensity usually listed.

(4) Acid.—Sharp taste characteristic

(5) Barny.—Unclean taste a cow stable.

(6) Bitter.—Unpleasant taste of

(7) Feed.—Taste of clover, silage through the cheese

(8) Flat.—Lacks characteristic

(9) Fruity.—Suggestive apples; pineapples; the cheese

(10) Rancid.—Pronounced butyric acid

(11) Metallic.—Suggestive of metal

(12) Old Milk.—Stale

(13) Onion.—Suggestive peculiar name. Produced cows have eaten

(14) Sour.—Acid vinegar.

(15) Utensil.—Suggestive proper cleaning of milking equipment

UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—CONTINUED

Current standard	Proposed	Discussion
U.S. Grades—Continued:		
U.S. grade not assignable	No change	N/A.
Swiss cheese shall not be assigned a U.S. grade for one or more of the following reasons:	No change	N/A.
(a) Fails to meet or exceed the requirements for U.S. Grade C.	No change	N/A.
(b) Fails to meet composition, minimum age, or other requirements of the Food and Drug Administration.	No change	N/A.
(c) Produced in a plant found on inspection to be using unsatisfactory manufacturing practices, equipment, or facilities, or to be operating under unsanitary plant conditions.	No change	N/A.
(d) Produced in a plant which has not been USDA inspected and approved.	Delete	We propose this deletion because requirements contained in 7 CFR Part 58, Subpart A sufficiently address this issue.
Explanation of terms	No change	N/A.
Explanation of terms	No change	N/A.
(a) *With respect to style:*	No change	N/A.
(1) Rind.—Cheese which has a hard protective outer layer formed by drying the cheese surface and by the addition of salt (usually wheel shaped).	No change	N/A.
(2) Rindless.—Cheese which has been protected from rind formation and which is packaged with an impervious type of wrapper or covering enclosing the cheese (usually cube or rectangular shaped).	No change	N/A.
(3) Institutional-size packages.—Multipound, wrapped portions of cheese, generally cut from a larger piece, intended for use by restaurants, delicatessens, schools, and etc.	No change	N/A.
(b) *With respect to flavor:*	No change	N/A.
(1) Slight.—Detected only upon critical examination.	No change	N/A.
(2) Definite.—Not intense but detectable	No change	N/A.
(3) Undesirable.—Identifiable flavors in excess of the intensity permitted, or those flavors not listed.	No change	N/A.
(4) Acid.—Sharp and puckery to the taste, characteristic of lactic acid.	No change	N/A.
(5) Barny.—A flavor characteristic of the odor of a cow stable.	No change	N/A.
(6) Bitter.—A distasteful flavor similar to the taste of quinine.	No change	N/A.
(7) Feed.—Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the cheese.	No change	N/A.
(8) Flat.—Insipid, practically devoid of any characteristic Swiss cheese flavor.	No change	N/A.
(9) Fruity.—A sweet fruit-like flavor resembling apples; generally increasing in intensity as the cheese ages.	No change	N/A.
(10) Rancid.—A flavor suggestive of rancidity or butyric acid, sometimes associated with a bitterness.	No change	N/A.
(11) Metallic.—A flavor having qualities suggestive of metal, imparting a puckery sensation.	No change	N/A.
(12) Old Milk.—Lacks freshness	No change	N/A.
(13) Onion.—This flavor is recognized by the peculiar taste and odor suggestive of its name. Present in milk or cheese when the cows have eaten onions, garlic or leeks.	No change	N/A.
(14) Sour.—An acid, pungent flavor resembling vinegar.	No change	N/A.
(15) Utensil.—A flavor that is suggestive of improper or inadequate washing and sanitizing of milking machines, utensils or factory equipment.	No change	N/A.

UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
(16) Weedy.—A flavor due to the use of milk which possesses a common weedy flavor. Present in cheese when cows have eaten weedy feed or grazed on common weed-infested pastures.	No change	N/A.
(17) Whey-Taint.—A slightly acid taste and odor characteristic of fermented whey, caused by too slow expulsion of whey from the curd.	No change	N/A.
(18) Yeasty.—A flavor indicating yeast fermentation.	No change	N/A.
(c) *With respect to body:*	No change	N/A.
(1) Slight.—Detected only upon critical examination..	No change	N/A.
(2) Definite.—Not intense but detectable	No change	N/A.
(3) Smooth.—Feels silky; not dry and coarse or rough.	No change	N/A.
(4) Firm.—Feels solid, not soft or weak	No change	N/A.
(5) Coarse.—Feels rough, dry and sandy	No change	N/A.
(6) Pasty.—Usually weak body and when the cheese is rubbed between the thumb and fingers it becomes sticky and smeary.	No change	N/A.
(7) Short.—No elasticity to the plug when rubbed between the thumb and fingers.	No change	N/A.
(8) Uniform.—Not variable	No change	N/A.
(9) Weak.—Requires little pressure to crush, is soft but is not necessarily sticky like pasty cheese.	No change	N/A.
(d) *With respect to eyes and texture in general:*	No change	N/A.
(1) Blind.—No eye formation present	No change	N/A.
(2) Set.—The number of eyes in any given area of cheese.	No change	N/A.
(3) Well developed eyes.—Eyes perfectly developed, glossy or velvety, with smooth even walls, round or slightly oval in shape, and fairly uniform in distribution throughout the cheese.	No change	N/A.
(e) *With respect to eyes and texture as it relates to cabbage, collapsed, dead, dull, frog mouth, irregular, rough and shell:*.	No change	N/A.
(1) Very Slight.—Characteristic exhibited in less than 5% of the eyes.	No change	N/A.
(2) Slight.—Characteristic exhibited in 5% or more but less than 10% of the eyes.	No change	N/A.
(3) Definite.—Characteristic exhibited in 10% or more but less than 20% of the eyes.	No change	N/A.
(4) Cabbage.—Cheese having eyes so numerous within the major part of the cheese that they crowd each other, leaving only a paper-thin layer of cheese between the eyes, causing the cheese to have a cabbage appearance and very irregular eyes.	No change	N/A.
(5) Collapsed.—Eyes which have not formed properly and do not appear round or slightly oval but rather flattened and appear to have collapsed.	No change	N/A.
(6) Dead.—Developed eyes that have completely lost their glossy or velvety appearance.	No change	N/A.
(7) Dull.—Eyes that have lost some of their bright shiny luster.	No change	N/A.
(8) Frog mouth.—Eyes which have developed into a lenticular or spindle-shaped opening.	No change	N/A.
(9) Irregular.—Eyes which have not formed properly and do not appear round or slightly oval and which are not accurately described by other more descriptive terms.	No change	N/A.
(10) Rough.—Eyes which do not have smooth, even walls.	No change	N/A.
(11) Shell.—A rough nut shell appearance on the wall surface of the eyes.	No change	N/A.
(f) *With respect to eyes and texture as it relates to streuble:*	No change	N/A.

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UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
(1) Very Slight.—Extends no more than 1/8 inch into the body of the cheese.	No change	N/A.
(2) Slight.—Extends 1/8 inch or more but less than 1/4 inch into the body of the cheese.	No change	N/A.
(3) Definite.—Extends 1/4 inch or more but less than 1/2 inch into the body of the cheese.	No change	N/A.
(4) Streuble—An overabundance of small eyes just under the surface of the cheese.	No change	N/A.
(g) *With respect to eyes and texture as it relates to checks, picks, and splits:*	No change	N/A.
(1) Very Slight.—Infrequent occurrence, not more than 1 inch from the surface.	No change	N/A.
(2) Slight.—Limited occurrence, not more than 1 inch from the surface.	No change	N/A.
(3) Definite.—Limited occurrence throughout cheese.	No change	N/A.
(4) Checks.—Small, short cracks within the body of the cheese.	No change	N/A.
(5) Picks.—Small irregular or ragged openings within the body of the cheese.	No change	N/A.
(6) Splits.—Sizable cracks, usually in parallel layers and usually clean cut, found within the body of the cheese.	No change	N/A.
(h) *With respect to eyes and texture as it relates to large eyed and small eyed:*.	No change	N/A.
(1) Very Slight.—Majority of the eyes less than 11/16 and more than 1/2 inch.	Delete	We propose removal of the very slight defect level of these characteristics. The proposed lower eye size requirement is 3/8 of an inch. Definitions of small eyed at both the very slight and slight levels are not necessary to determine product grades given this narrow margin between acceptable eyes and blind Swiss cheese.
(2) Slight.—Majority of the eyes less than inch 1/2 but more than 5/16 inch or more than 13/16 inch but less than 1 inch.	(1) Slight.—Majority of the eyes less than 3/8 inch but more than 1/8 inch or more than 13/16 inch but less than 1 inch..	We propose these changes to place the definition of this defect level in agreement with the newly proposed eye size range.
(3) Large eyed.—Eyes in excess of 13/16 inch ...	(2) Large eyed.—Eyes in excess of 13/16 inch	We propose this editorial change for clarity of the standard.
(4) Small eyed.—Eyes less than 11/16 inch	(3) Small eyed.—Eyes less than 11/16 inch	We propose this editorial change for clarity of the standard.
	(4) Relatively uniform eye size.—The majority of eyes fall within a 1/4 inch range.	We propose to include this explanation of uniform eye size to apply to Grade A Swiss cheese. Uniformity of eye size is considered to be a measure of quality in Swiss cheese and should be recognized at this grade, particularly in light of the proposed broadening of the range of acceptable eye sizes.
(i) *With respect to eyes and texture as it relates to gassy and sweet holes:*.	No change	N/A.
(1) Slight.—No more than 3 occurrences per any given 2 square inches.	No change	N/A.
(2) Gassy.—Gas holes of various sizes which may be scattered.	No change	N/A.
(3) Sweet holes.—Spherical gas holes, glossy in appearance; usually about the size of BB shot.	No change	N/A.
(j) *With respect to eyes and texture as it relates to nesty:*	No change	N/A.
(1) Very Slight.—Occurrence limited to no more than 5% of the exposed cut area of the cheese.	No change	N/A.
(2) Slight.—Occurrence more than 5% but less than 10% of the exposed cut area of the cheese.	No change	N/A.
(3) Definite.—Occurrence more than 10% but less than 20% of the exposed cut area of the cheese.	No change	N/A.
(4) Nesty.—An overabundance of small eyes in a localized area.	No change	N/A.
(k) *With respect to eyes and texture as it relates to one-sided and uneven:*	No change	N/A.

UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
(1) Slight.—Eyes evenly distributed throughout at least 90% of the total cheese area.	No change	N/A.
(2) Definite.—Eyes evenly distributed throughout at least 75% but less than 90% of the total cheese area.	No change	N/A.
(3) One sided.—Cheese which is reasonably developed on one side and underdeveloped on the other as to eye development.	No change	N/A.
(4) Uneven.—Cheese which is reasonably developed in some areas and underdeveloped in others as to eye development.	No change	N/A.
(l) *With respect to eyes and texture as it relates to afterset, overset, and underset:*	No change	N/A.
(1) Very slight.—Number of eyes present exceed or fall short of the ideal by limited amount.	No change	N/A.
(2) Slight.—Number of eyes present exceed or fall short of the ideal by a moderate amount.	No change	N/A.
(3) Afterset.—Small eyes caused by secondary fermentation.	No change	N/A.
(4) Overset.—Excessive number of eyes present.	No change	N/A.
(5) Underset.—Too few eyes present	No change	N/A.
(m) *With respect to finish and appearance:*	No change	N/A.
(1) Very slight.—Detected only upon very critical examination.	No change	N/A.
(2) Slight.—Detected only upon critical examination.	No change	N/A.
(3) Definite.—Not intense but detectable	No change	N/A.
(4) Checked rind.—Numerous small cracks or breaks in the rind.	No change	N/A.
(5) Huffed.—The cheese becomes rounded or oval in shape instead of flat.	No change	N/A.
(6) Mold on rind surface.—Mold spots or areas which have formed on the rind surface.	No change	N/A.
(7) Mold under wrapper or covering.—Mold spots or area that have formed under the wrapper or on the cheese.	No change	N/A.
(8) Soft spots.—Spots which are soft to the touch and usually faded and moist.	No change	N/A.
(9) Soiled surface.—Milkstone, rust spots, grease, or other discoloration on the surface of the cheese.	No change	N/A.
(10) Uneven.—One side of the cheese is higher than the other.	No change	N/A.
(11) Wet rind.—A wet rind is one in which the moisture adheres to the surface of the rind and which may or may not soften the rind or cause discoloration.	No change	N/A.
(12) Wet surface (rindless).—A wet surface is one in which the moisture appears between the wrapper and the cheese surface.	No change	N/A.
(n) *With respect to color:*	No change	N/A.
(1) Slight.—Detectable only upon critical examination.	No change	N/A.
(2) Definite.—Not intense but detectable	No change	N/A.
(3) Acid cut.—Bleached or faded appearance which sometimes varies throughout the cheese.	No change	N/A.
(4) Bleached surface.—A faded coloring beginning at the surface and extending inward a short distance.	No change	N/A.
(5) Colored spots.—Brightly colored areas (pink to brick red or gray to black) of bacteria growing in readily discernible colonies randomly distributed throughout the cheese.	No change	N/A.
(6) Dull or faded.—A color condition lacking in luster.	No change	N/A.

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UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
(7) Mottled.—Irregular-shaped spots or blotches in which portions are light colored and others are higher colored. Also, unevenness of color due to combining two different vats, sometimes referred to as "mixed curd.".	No change	N/A.
(8) Pink ring.—A color condition which usually appears pink to brownish red and occurs as a uniform band near the cheese surface and may follow eye formation.	No change	N/A.
Supplement to U.S. Standards for Grades of Swiss Cheese, Emmentaler Cheese.	No change	N/A.
Alternate method for determination of U.S. grades.	No change	N/A.
(a) This alternate method shall be used only when requested by the applicant. With this method, the eyes and texture and color factors are rated on the basis of trier plugs rather than by slicing the cheese. A statement shall appear on the grading certificate indicating that the alternate method was used as requested by the applicant.	No change	N/A.
(b) The following quality factors shall be rated when using the alternate method for determining U.S. grades:	No change	N/A.
(1) Flavor	No change	N/A.
(2) Body	No change	N/A.
(3) Eyes and texture	No change	N/A.
(4) Finish and appearance, and	No change	N/A.
(5) Color	No change	N/A.
(c) Flavor and body ratings shall be determined by the methods prescribed in § 58.2573 (b) and (c).	(c) Flavor and body ratings shall be determined by the methods prescribed in the section titled, "Basis for determination of U.S. grades," (b) and (c).	When U.S. grade standards were removed from the Code of Federal Regulations, it was no longer appropriate to reference particular sections of the Code. We propose to modify this sentence accordingly.
(d) Finish and appearance ratings shall be determined as prescribed in § 58.2574.	(d) Finish and appearance ratings shall be determined as prescribed in the section titled, "Specifications for U.S. grades".	When U.S. grade standards were removed from the Code of Federal Regulations, it was no longer appropriate to reference particular sections of the Code. We propose to modify this sentence accordingly.
(e) Eyes and texture, and color ratings shall be determined by drawing and examining at least two full trier plugs, withdrawn at the approximate center of one of the largest flat surface areas of the sample. For some institutional-size samples, it may not be possible to obtain a full trier plug. When this occurs, a U.S. grade may be determined from a smaller portion of a plug.	No change	N/A.
(f) The final U.S. grade shall be established on the basis of the lowest rating of any one quality factor.	No change	N/A.
Specifications for U.S. grades when using the alternate method.	No change	N/A.
(a) U.S. grade A. U.S. grade A Swiss cheese shall conform to the following requirements (See Tables I, II, IV, and V of § 58.2574).	(a) U.S. grade A. U.S. grade A Swiss cheese shall conform to the following requirements (See Tables I, II, IV, and V of these standards).	When U.S. grade standards were removed from the Code of Federal Regulations, it was no longer appropriate to reference particular sections of the Code. We propose to modify this sentence accordingly.
(1) Eyes and texture. The cheese shall be properly set and shall possess well-developed round or slightly oval-shaped eyes which are uniformly distributed.	(1) Eyes and texture. The cheese shall be properly set and shall possess well-developed round or slightly oval-shaped eyes which are relatively uniform in size and in distribution.	We propose to reword this description to include a provision for uniformity of eye size.
A full plug drawn from the cheese shall be free from splits, and not appear gassy or large eyed; it may possess checks and picks within 1 inch from the surface, and may possess a limited number of checks and picks beyond 1 inch from the surface.	No change	N/A.

UNITED STATES STANDARDS FOR GRADES OF SWISS CHEESE, EMMENTALER CHEESE [1]—Continued

Current standard	Proposed	Discussion
The majority of the eyes shall be 11/16 to 13/16 inch in diameter.	The majority of the eyes shall be 3/8 to 13/16 inch in diameter.	We propose to increase the allowable range of eye sizes for Grade A Swiss cheese to include eyes of a smaller diameter.
The cheese shall have at least two but not more than eight eyes to a trier plug.	No change	N/A.
(2) Color. Shall be natural, attractive and uniform.	(2) Color. Shall be natural, attractive and uniform. The cheese shall be white to light yellow in color.	We propose to include additional descriptors for color to provide greater clarity to those utilizing these grade standards. These descriptors are proposed to provide consistent interpretation of the terms natural and attractive.
(b) U.S. grade B. U.S. grade B Swiss cheese shall conform to the following requirements (See Tables I, II, IV, and V of § 58.2574).	(b) U.S. grade B. U.S. grade B Swiss cheese shall conform to the following requirements (See Tables I, II, IV, and V of these standards).	When U.S. grade standards were removed from the Code of Federal Regulations, it was no longer appropriate to reference particular sections of the Code. We propose to modify this sentence accordingly.
(1) Eyes and texture. The cheese shall possess well-developed round or slightly oval-shaped eyes. A full plug drawn from the cheese shall be free from splits, and not appear gassy or large eyed; and may be moderately overset and have a limited amount of checks and picks.	No change	N/A.
The majority of the eyes shall be in the range of 1/2 to 13/16 inch in diameter.	The majority of the eyes shall be in the range of 3/8 to 13/16 inch in diameter.	We propose this change to make the existing requirement consistent with changes proposed for Grade A and Grade B under the regular grading procedures.
The cheese shall have at least one but not more than ten eyes to a trier plug.	No change	N/A.
(2) Color. The cheese may possess, to a slight degree, a bleached surface.	(2) Color. The cheese shall be white to light yellow in color. The cheese may possess, to a slight degree, a bleached surface.	We propose to include additional descriptors for color to provide greater clarity to those utilizing these grade standards. These descriptors are proposed to provide consistent interpretation of the terms natural and attractive.
(c) U.S. grade C. U.S. grade C Swiss cheese shall conform to the following requirements (See Tables I, II, IV, and V of § 58.2574).	(c) U.S. grade C. U.S. grade C Swiss cheese shall conform to the following requirements (See Tables I, II, IV, and V of these standards).	When U.S. grade standards were removed from the Code of Federal Regulations, it was no longer appropriate to reference particular sections of the Code. We propose to modify this sentence accordingly.
(1) Eyes and texture. A full plug drawn from the cheese may be overset, shell or dead eyed; have splits, checks, picks, and gassy; and may be large eyed to a slight degree. The cheese is not totally blind or totally gassy.	No change	N/A.
(2) Color. The cheese may possess the following color characteristics to a slight degree: acid cut, colored spots, dull or faded, mottled and pink ring; and, to a definite degree, a bleached surface.	No change	N/A.

Authority: (7 U.S.C. 1621–1627).

Dated: July 12, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–18074 Filed 7–19–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Pacific Southwest Region; California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Pacific Southwest Region to publish legal notices of all decisions subject to appeal under 36 CFR 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of a timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice will begin with decisions subject to appeal that are made on or after August 1, 2000. The list of newspapers will remain in effect until

August 2001, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals Manager, Pacific Southwest Region, 1323 Club Drive, Vallejo, California 94592, 707–562–8945.

SUPPLEMENTARY INFORMATION: On November 4, 1993, 36 CFR parts 215 and 217 were published requiring publication of legal notice of decisions subject to appeal. Sections 215.5 and 217.5 require notice published in the **Federal Register** advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the primary newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (primary) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Regional Forester Decisions

Sacramento Bee, published daily in Sacramento, Sacramento County, California, for decisions affecting National Forest System lands and for any decision of Region-wide impact.

Angeles National Forest, California

Forest Supervisor Decisions

Los Angeles Times, published daily in Los Angeles, Los Angeles County, California..

District Rangers Decisions

Los Angeles Ranger District: *Daily News*, published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Los Angeles District Ranger decisions: *Pasadena Star News*, published in Pasadena, California; and *Foothill Leader*, published in Glendale, California.

San Gabriel River Ranger District: *Inland Valley Bulletin*, published daily in Los Angeles, Los Angeles County, California.

Newspaper providing additional notice of San Gabriel River District Ranger decisions: *San Gabriel Valley Tribune*, published in the eastern San Gabriel Valley, California.

Santa Clara/Mojave Rivers Ranger District: *Daily News*, published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Santa Clara/Mojave Rivers District Ranger decisions: *Antelope Valley Press*, published in Palmdale, California; and *Mountaineer Progress*, published in Wrightwood, California.

Cleveland National Forest, California

Forest Supervisor Decisions

San Diego Union-Tribune, published daily in San Diego, San Diego County, California.

District Rangers Decisions

Descanso Ranger District: *San Diego Union-Tribune*, published daily in San Diego County, California.

Palomar Ranger District: *San Diego Union-Tribune*, published daily in San Diego, San Diego County, California.

Newspaper providing additional notice of Palomar District Ranger decisions: *Riverside Press Enterprise*, published daily in Riverside, Riverside County, California.

Trabuco Ranger District: *Riverside Press Enterprise*, published daily in Riverside, Riverside County, California.

Newspaper providing additional notice of Trabuco District Ranger decisions: *Orange County Register*, published daily in Santa Ana, Orange County, California.

Eldorado National Forest, California

Forest Supervisor Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California

District Rangers Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California.

Inyo National Forest, California

Forest Supervisor Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

District Rangers Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

Klamath National Forest, California

Forest Supervisor Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

District Rangers Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

Lake Tahoe Basin Management Unit, California and Nevada

Forest Supervisor Decisions

Tahoe Daily Tribune, published daily (five-times weekly) in South Lake Tahoe, El Dorado County, California.

Lassen National Forest, California

Forest Supervisor Decisions

Lassen County Times, published weekly in Susanville, Lassen County, California.

District Rangers Decisions

Eagle Lake Ranger District: *Lassen County Times*, published weekly in Susanville, Lassen County, California.

Almanor Ranger District: *Chester Progressive*, published weekly in Chester, Plumas County, California.

Hat Creek Ranger District: *Intermountain News*, published weekly in Burney, Shasta County, California.

Los Padres National Forest, California

Forest Supervisor Decisions

Santa Barbara News Press, published daily in Santa Barbara, Santa Barbara County, California.

District Rangers Decisions

Monterey Ranger District: *Monterey County Herald*, published daily in Monterey, Monterey County, California.

Santa Lucia Ranger District: *Telegram Tribune*, published daily in San Luis Obispo, San Luis Obispo County, California.

Santa Barbara Ranger District: *Santa Barbara News Press*, published daily in Santa Barbara, Santa Barbara County, California.

Ojai Ranger District: *Ventura Star*, published daily in Ventura Ventura County, California.

Mt. Pinos Ranger District: *The Bakersfield Californian*,, published daily in Bakersfield, Kern County, California.

Mendocino National Forest, California

Forest Supervisor Decisions

Chico Enterprise-Record, published daily in Chico, Butte County, California.

District Rangers Decisions

Grindstone Ranger District: *Chico Enterprise-Record*, published daily in Chico, Butte County, California.

Upper Lake and Covel Districts: *Ukiah Daily Journal*, published daily in Ukiah, Mendocino County, California.

Modoc National Forest, California

Forest Supervisor Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

District Rangers Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

Plumas National Forest, California

Forest Supervisor Decisions

Feather River Bulletin, published weekly in Quincy, Plumas County, California.

Newspaper providing additional notice for Environmental Impact Statements: *Sacramento Bee*, published daily in Sacramento, Sacramento County, California.

District Rangers Decisions

Beckwourth Ranger District: *Feather River Bulletin*, published weekly in Quincy, Plumas County, California.

Newspaper occasionally providing additional notice of Beckwourth District Ranger decisions: *Portola Reporter*, published in Portola, Plumas County California.

Feather River Ranger District: *Oroville Mercury Register*, published daily in Oroville, Butte County, California.

Newspaper occasionally providing additional notice of Feather River District Ranger decisions: *Feather River Bulletin*, published weekly in Quincy, Plumas County, California.

Mt. Hough Ranger District: *Feather River Bulletin*, published weekly in Quincy, Plumas County, California.

Newspaper occasionally providing additional notice of Mt. Hough District Ranger decisions: *Portola Reporter*, published in Portola, Plumas County, California.

San Bernardino National Forest, California

Forest Supervisor Decisions

San Bernardino Sun, published daily in San Bernardino, San Bernardino County, California.

District Rangers Decisions

Arrowhead Ranger District: *Mountain News*, published weekly in Blue Jay, San Bernardino County, California.

Big Bear Ranger District: *Big Bear Life and Grizzly*, published weekly in Big Bear, San Bernardino County, California.

Cajon Ranger District: *San Bernardino Sun*, published daily in San Bernardino County, California.

San Gorgonio Ranger District: *Yucaipa News Mirror*, published weekly in Yucaipe, Riverside County, California.

San Jacinto Ranger District: *Idyllwild Town Crier*, published weekly in Idyllwild, Riverside County, California.

Sequoia National Forest, California

Forest Supervisor Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

District Rangers Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

Shasta-Trinity National Forest, California

Forest Supervisor Decisions

Record Searchlight, published daily in Redding, Shasta County, California.

District Rangers Decisions

Record Searchlight, published daily in Redding, Shasta County, California.

Sierra National Forest, California

Forest Supervisor Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

District Rangers Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

Six Rivers National Forest, California

Forest Supervisor Decisions

Times Standard, published daily in Eureka, Humboldt County, California.

District Rangers Decisions

Smith River National Recreation Area: *Del Norte Triplicate*, published daily in Crescent City, Del Norte County, California.

Orleans and Lower Trinity Districts: *The Kourier*, published weekly in Willow, Humboldt County, California.

Mad River District: *Times Standard*, published daily in Eureka, Humboldt County, California.

Stanislaus National Forest, California

Forest Supervisor Decisions

The Union Democrat, published daily (fives-times weekly) in Sonora, Tuolumne County, California.

District Rangers Decisions

The Union Democrat, published daily (five-times weekly) in Sonora, Tuolumne County, California.

Newspaper sometimes providing additional notice of Groveland District Ranger decisions: *Mariposa Gazette*, published weekly in Mariposa, California.

Newspaper sometimes providing additional notice of *Calaveras Enterprise*, published twice weekly in San Andreas, California.

Tahoe National Forest, California

Forest Supervisor Decisions

The Union, published daily (except Sunday) in Nevada City, Nevada County, California.

District Rangers Decisions

Downieville and Sierraville Ranger Districts: *Mountain Messenger*, published weekly in Downieville, Sierra County, California.

Newspaper providing additional notice of Sierraville District Ranger decisions: *Sierra Booster*, published weekly in Loyalton, Sierra County, California; and *Portola Recorder*, published weekly in Portola, Plumas County, California.

Foresthill Ranger District: *Auburn Journal*, published daily in Auburn, Placer County, California.

Nevada City Ranger District: *The Union*, published daily (except Sunday) in Nevada City, Nevada County, California.

Truckee Ranger District: *Sierra Sun*, published weekly in Truckee, Nevada City, Nevada County, California.

Newspaper providing additional notice of Truckee District Ranger decisions: *Tahoe World*, published weekly in Tahoe City, Placer County, California.

Dated: July 7, 2000.

Gilbert J. Espinoza,

Deputy Regional Forester.

[FR Doc. 00–18375 Filed 7–19–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1106]

Grant of Authority for Subzone Status; Premcor Refining Group Inc. (Oil Refinery), Cook County, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, an application from the Illinois International Port District, grantee of FTZ 22, for authority to establish special-purpose subzone status at the oil refinery complex of Premcor Refining Group Inc. (formerly Clark Refining & Marketing, Inc.) in Cook County, Illinois, was filed by the Board on February 2, 1999, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 5–99, 64 FR 6877, 2/11/99; amended, 65 FR 11038, 3/1/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application, as amended, would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 22L) at the oil refinery complex of Premcor Refining Group Inc. (formerly Clark Refining & Marketing, Inc.) in Cook County, Illinois, at the locations described in the application, as amended, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #.2710.2500 and #2710.0.4510 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix "C");
—products for export;
—and, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2003, subject to extension.

Signed at Washington, DC, this 11th day of July 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–18414 Filed 7–19–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1110]

Approval of Processing Activity Within Foreign-Trade Zone 37, Orange County, New York; Newburgh Dye & Printing, Inc. and Prismatic Dyeing & Finishing, Inc. (Textile Finishing)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the County of Orange, New York, grantee of FTZ 37, and the FTZ of Orange, Ltd., have requested authority under 15 CFR 400.32(b)(1) of the Board's regulations on behalf of Newburgh Dye & Printing, Inc., and Prismatic Dyeing & Finishing, Inc., to process foreign textile products for the U.S. market and export under zone procedures, subject to restriction, within FTZ 37 (filed 4–26–2000, FTZ Docket 15–2000);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed zone benefits being sought do not involve the election of nonprivileged foreign status on foreign textile products (15 CFR 400.32(b)(1)(iii)); and,

Whereas, the application seeks FTZ authority for only the following processes: Dyeing, printing, shrinking, sanferizing, desizing, sponging, bleaching, cleaning/laundering, calendaring, hydroxilating, decatizing, fulling, mercerizing, chintzing, moiring, framing/beaming, stiffening, weighting, crushing, tubing, thermofixing, anti-microbial finishing, shower proofing, flame retardation, and embossing; and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including 15 CFR 400.28, and further subject to the restrictions listed below.

1. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign status fabric admitted to FTZ 37 for the Newburgh Dye & Printing, Inc., and Prismatic Dyeing & Finishing, Inc., activity;

2. No activity under FTZ procedures shall be permitted that would result in a shift in HTSUS classification or a change in textile quota classification or country of origin; and,

3. All FTZ activity shall be subject to Section 146.63(d) of the U.S. Customs Service regulations (19 CFR part 146).

Signed at Washington, DC, this 11th day of July 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–18415 Filed 7–19–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (1999) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of July 2000, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings:	
Armenia: Solid Urea*, A–831–801	7/1/99–12/31/99
Azerbaijan: Solid Urea*, A–832–801	7/1/99–12/31/99
Belarus: Solid Urea, A–822–801	7/1/99–6/30/00
Brazil:	
Industrial Nitrocellulose, A–351–804	7/1/99–6/30/00
Brazil:	
Silicon Metal, A–351–806	7/1/99–6/30/00
Chile: Fresh Atlantic Salmon, A–337–803	7/1/99–6/30/00
Estonia: Solid Urea, A–447–801	7/1/99–6/30/00
France: Stainless Steel Sheet and Strip in Coils, A–427–814	1/4/99–6/30/00
Georgia: Solid Urea*, A–833–801	7/1/99–12/31/99
Germany: Industrial Nitrocellulose, A–428–803	7/1/99–6/30/00
Stainless Steel Sheet and Strip in Coils, A–428–825	1/4/99–6/30/00
Iran: In-Shell Pistachio Nuts, A–507–502	7/1/99–6/30/00
Italy: Pasta, A–475–818	7/1/99–6/30/00
Stainless Steel Sheet and Strip in Coils, A–475–824	1/4/99–6/30/00
Japan:	
Cast Iron Pipe Fittings, A–588–605	7/1/99–6/30/00
Clad Steel Plate, A–588–836	7/1/99–6/30/00
Japan: Professional Electric Cutting Tools*, A–588–823	7/1/99–12/31/99
Japan: E L Flat Panel Displays, A–588–817	7/1/99–6/30/00
Japan: High Power Microwave Amplifiers*, A–588–005	7/1/99–12/31/99
Japan: Industrial Nitrocellulose, A–588–812	7/1/99–6/30/00
Japan: Stainless Steel Sheet and Strip in Coils, A–588–845	1/4/99–6/30/00
Japan: Synthetic Methionine*, A–588–041	7/1/99–12/31/99
Kazakhstan: Solid Urea*, A–834–801	7/1/99–12/31/99
Kyrgyzstan: Solid Urea*, A–835–801	7/1/99–12/31/99
Latvia: Solid Urea*, A–449–801	7/1/99–12/31/99
Lithuania: Solid Urea, A–451–801	7/1/99–6/30/00
Mexico: Stainless Steel Sheet and Strip in Coils, A–201–822	1/4/99–6/30/00
Moldova: Solid Urea*, A–841–801	7/1/99–12/31/99
Republic of Korea:	
Industrial Nitrocellulose, A–580–805	7/1/99–6/30/00
Stainless Steel Sheet and Strip in Coils, A–580–834	1/4/99–6/30/00
Romania: Solid Urea, A–485–801	7/1/99–6/30/00
Russia:	
Ferrovanadium and Nitrided Vanadium, A–821–807	7/1/99–6/30/00
Solid Urea, A–821–801	7/1/99–6/30/00
Tajikistan: Solid Urea, A–842–801	7/1/99–6/30/00
Taiwan: Stainless Steel Sheet and Strip in Coils, A–583–831	1/4/99–6/30/00
Thailand:	
Butt-Weld Pipe Fittings, A–549–807	7/1/99–6/30/00
Canned Pineapple, A–549–813	7/1/99–6/30/00
Furfuryl Alcohol**, A–549–812	7/1/99–6/30/00
The People's Republic of China: Butt-Weld Pipe Fittings, A–570–814	7/1/99–6/30/00
Industrial Nitrocellulose, A–570–802	7/1/99–6/30/00
Persulfates, A–570–847	7/1/99–6/30/00
Sebacic Acid, A–570–825	7/1/99–6/30/00
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/99–6/30/00
Turkmenistan: Solid Urea, A–843–801	7/1/99–6/30/00
Turkey: Pasta, A–489–805	7/1/99–6/30/00
Ukraine: Solid Urea, A–823–801	7/1/99–6/30/00
Uzbekistan: Solid Urea, A–844–801	7/1/99–6/30/00
Countervailing Duty Proceedings:	
Brazil: Certain Hot-Rolled Carbon Steel Flat Products, C–351–829	1/1/99–12/31/99

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	Period
European Economic Community: Sugar, C–408–046	1/1/99–12/31/99
Italy: Pasta, C–475–819	1/1/99–12/31/99
Turkey: Pasta, C–489–806	1/1/99–12/31/99
Suspension Agreements:	
Brazil:	
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, C–351–829	1/1/99–12/31/99
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–351–828	1/1/99–12/31/99
Russia: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–821–809	1/1/99–12/31/99

*Order revoked effective 01/01/2000 as a result of sunset review.

**This order is currently undergoing a "sunset" review pursuant to section 751(c) of the Act. If, subsequent to publication of this opportunity notice, the order should be revoked pursuant to "sunset," any review (if requested) or automatic liquidation instruction (if no review is requested) will only cover through the last day prior to the effective date of revocation.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of July 2000. If the Department does not receive, by the last day of July 2000, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 14, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, for Import Administration.

[FR Doc. 00–18416 Filed 7–19–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–819, A–557–810, A–570–858]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rope From India, Malaysia, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 20, 2000.

FOR FURTHER INFORMATION CONTACT: James Kemp, Office V, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1276.

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of steel wire rope from India, Malaysia, and the People's Republic of China (PRC).

On March 17, 2000, the Department initiated antidumping investigation of steel wire rope from India, Malaysia, the PRC, and Thailand.[1] *See Initiation of Antidumping Duty Investigations: Steel Wire Rope from India, Malaysia, the People's Republic of China, and Thailand*, 65 FR 16173 (March 27, 2000). The notice stated that the Department would issue its prelimiary determinations no later than 140 days after the date of initiation (*i.e.*, August 4, 2000).

On July 7, 2000, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the petitioners) requested that the Department postpone the issuance of the preliminary determinations in these investigations. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, we are postponing the deadline for issuing these determinations until September 25, 2000.

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: July 13, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–18413 Filed 7–19–00; 8:45 am]

BILLING CODE 3510–DS–M

[1] The International Trade Commission issued a negative preliminary determination in the case involving Thailand, on April 20, 2000. Therefore, that case was terminated.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 063000C]

Availability of a Final Environmental Impact Statement for the Proposed Issuance of Incidental Take Permits to Simpson Timber Company, Northwest Operations, Thurston, Mason, and Grays Harbor Counties, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a final environmental impact statement.

SUMMARY: This notice announces the availability of a Final Environmental Impact Statement (Statement) for public review. The Statement addresses the proposed issuance of Incidental Take Permits (Permits) to Simpson Timber Company, Northwest Operations (Simpson), for forest management and timber harvest on their lands in Thurston, Mason, and Grays Harbor Counties, Washington. Simpson submitted applications on September 29, 1999, to the Fish and Wildlife Service and the National Marine Fisheries Service (together, the Services) for Permits pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed Permits would authorize take of the following endangered or threatened species incidental to otherwise lawful management activities: marbled murrelet (*Brachyramphus marmoratus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), Puget Sound chinook salmon (*Oncorhynchus tshawytscha*), Hood Canal summer run chum salmon (*Oncorhynchus keta*), and bull trout (*Salvelinus confluentus*). Simpson is also seeking coverage for 47 currently unlisted species under specific provisions of the Permits, should these species be listed in the future. The duration of the proposed Permits is 50 years. This notice is provided pursuant to the Act, and National Environmental Policy Act regulations.

ADDRESSES: Requests for the documents should be made by calling the U.S. Fish and Wildlife Service at (360)534–9330. Copies are also available for viewing, or partial or complete duplication, at the following libraries: Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360)352–0595; William G. Reed Library, Reference Desk, 710 West Alder Street, Shelton, WA, (360)426–1362; Hoodsport Timberland Library, 40 North Schoolhouse Hill Road, Hoodsport, WA, (360)877–9339; Elma Timberland Library, Information Desk, 118 North 1st Street, Elma, WA, (360)482–3737; W.H. Abel Public Library, Information Desk, 125 Main Street South, Montesano, WA, (360)249–4211; and, Aberdeen Timberland Library, Reference Desk, 121 East Market Street, Aberdeen, WA, (360)533–2360.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. U.S. Fish and Wildlife Service regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. National Marine Fisheries Service regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307. A permit decision will occur, and a Record of Decision will be published, no sooner than 30 days from this notice.

Background

Simpson owns and manages approximately 261,575 acres of commercial timberland in Thurston, Mason and Grays Harbor counties, Washington. These properties are located from just south of Highway 8, north into the southern foothills of the Olympic Mountains, and west across the Wynoochee River valley to the City of Aberdeen's Wishkah watershed. Management activities on the tree farm include forest management and timber harvest.

Some forest management and timber harvest activities have the potential to impact species subject to protection under the Act. Section 10 of the Act contains provisions for the issuance of Permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the landowner or permit applicant must prepare and submit to the Services for approval, a Habitat Conservation Plan (Plan) containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Simpson has developed a Plan with technical assistance from the Services, to obtain Permits for their activities on the subject lands. Activities proposed for this Permit include the following: all aspects of mechanized timber harvest, log transportation, road construction, road maintenance and abandonment, site preparation, tree planting, fertilization, silvicultural thinning, experimental silviculture, controlled burns, wild fire suppression, stream restoration, and the management, harvest, and sale of minor forest products. The Permits and Plan would also cover certain monitoring activities and related scientific experiments in the Plan area. The duration of the proposed Permits and Plan is 50 years.

As an additional measure, Simpson worked with the Environmental Protection Agency and the Washington Department of Ecology to prepare a Total Maximum Daily Load (TMDL) for heat energy to streams. The TMDL was developed to address general and specific water quality concerns within the Action Area, to recognize efforts to meet expectations under the Clean Water Act for protection of beneficial uses, and to provide an additional level of technical rigor that increases the Services assurances about water quality for covered species. The TMDL addresses heat energy delivery to waters in the Plan Area, employing sediment as an "other measure as appropriate" along with shade to assess the effectiveness of land management activities with respect to water quality. Both heat energy and sediment are water quality parameters that affect aquatic life, including salmon and other fishes. Although neither the Plan or TMDL are legally dependant on the other, much of the information and analysis developed for the preparation of the Plan was used in developing the TMDL. The primary link between the Plan and TMDL is that sediment and heat load allocations will serve as benchmarks to assess attainment and progress towards water quality in the adaptive management program set forth

in the Plan. The TMDL Technical Assessment Report is included as an appendix to the Plan.

The Services formally initiated an environmental review of the project through a Notice of Intent to prepare a Statement in the Federal Register on February 9, 1999 (64 FR 6325). This notice also announced a 30-day public scoping period, during which other agencies, tribes, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the Statement. A draft Statement was subsequently produced and made available for a 62-day public review period on October 22, 1999 (64 FR 57630). Comments received on the draft Statement and responses to those comments are included in the final Statement.

The final Statement fully analyzes a No Action alternative, the Proposed Action, a Forests and Fish Report Alternative, and a Modified Northwest Forest Plan Alternative. Under the No Action Alternative, incidental take permits would not be issued and Simpson would continue a forest management program which avoids take of federally listed species. Under the Forests and Fish Report Alternative incidental take permits would not be issued and Simpson would conduct forest management according to the proposed revisions to the Washington State Forest Practices Act, and avoid take of federally listed species. Under the Proposed Action, the Services would issue Incidental Take Permits and Simpson would implement their proposed Plan on 261,575 acres of Simpson's Washington timberlands. Under a Modified Northwest Forest Plan Alternative, the Services would issue Incidental Take Permits, and Simpson would implement a Plan with riparian conservation measures providing protective buffers approximately mid-way between the buffers provided by the Northwest Forest Plan and the Proposed Action. Current Washington Forest Practices would be applied where Northwest Forest Plan guidelines are not available.

Dated: June 27, 2000.

Dan Weathers,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: July 14, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–18418 Filed 7–19–00; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071300A]

Marine Mammals; File No. 526–1523

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Allied Whale, College of the Atlantic,105 Eden Street, Bar Harbor, ME 04609–1198 (Principal Investigator: Sean K. Todd, Ph.D) has been issued a permit to take humpback (*Megaptera novaeangliae*), finback (*Balaenoptera physalus*) and minke (*B. acutorostrata*) whales for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (978/281–9138).

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 13, 2000, notice was published in the **Federal Register** (62 FR 19877) that a request for a scientific research permit to take humpback *(Megaptera novaeangliae*), finback (*Balaenoptera physalus*) and minke (*B. acutorostrata*) whales had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 14, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–18419 Filed 7–19–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.062700B]

Marine Mammals; Permit No. 455–1445

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Denial of permit amendment.

SUMMARY: Notice is hereby given that a request for a scientific research permit amendment [No. 455–1445] submitted by Waikiki Aquarium has been denied.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Pacific Islands Area Office, Southwest Region, NMFS,1601 KAPIOLANI BLVD, RM 1110, HONOLULU, HI 96814–4700 (808)973–2935 x210).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 14, 2000, notice was published in the **Federal Register** (65 FR 13723) that an application to amend Permit 455–1445 had been filed by the above named organization. The requested permit has been denied subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Scientific research and enhancement permit No. 455–1445 was issued on May 26, 1998. The Permit authorizes Waikiki to maintain and care for three male Hawaiian monk seals (*Monachus*

schauinslandi) for enhancement purposes, and to make them available for scientific research. Research project I involves assessing the efficiency with which seals assimilate and metabolize amino acids and fatty acids from common prey types, and elucidating and monitoring how reproductive and metabolic activity of male Hawaiian monk seals are related. Dr. Shannon Atkinson is the principal researcher/co-investigator for this project is.

The permit holder requested authorization to amend the Permit to allow training of seals to accept a rectal temperature probe to take daily temperature measurements. The purpose of the research is to establish baseline temperatures as a diagnostic tool, and use the values to calculate heat transfer budgets for seals as part of a master's thesis conducted under the advisement of Dr. Shannon Atkinson. The application did not contain sufficient information for NMFS to determine that the research was bona fide.

Dated: July 17, 2000.

Ann D. Terbush,

Chief, Permits and Documentation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–18420 Filed 7–19–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its AmeriCorps*VISTA Alumni Locator Card (OMB Control Number 3045–0048, with an expiration date of 08/31/2000). Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by September 18, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, AmeriCorps*VISTA, Attn: Michael Wagner, 1201 New York Avenue, N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Michael Wagner, (202) 606–5000, ext. 316, or e-mail to mwagner@cns.gov.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Corporation proposes to send out AmeriCorps*VISTA Alumni Locator Cards to former AmeriCorps*VISTA members' home addresses requesting that they complete the card and return it to the AmeriCorps*VISTA Program Office. The card will be used by Corporation personnel and other organizations (only with the explicit written permission of the respondent). The purpose of the card is to enhance communications between the Corporation and former AmeriCorps*VISTA members to provide them with information on Corporation activities, and to seek their assistance in volunteer recruitment activities.

Current Action

The Corporation proposes to revise the AmeriCorps*VISTA Alumni Locator Card by deleting unused information from the existing version of the card, such as removing one of the AmeriCorps*VISTA project site fields and collecting the following data from the former member:

- The exact dates of service from the person filling out the AmeriCorps*VISTA Alumni Locator Card.
- The name of the VISTA project.
- The geographical location of the project (city and state).

The Corporation also proposes to revise the AmeriCorps*VISTA Alumni Locator Card by requesting the "e-mail address" of former members to provide a more inexpensive and faster way to communicate and share information.

The Corporation also proposes to revise the AmeriCorps*VISTA Alumni Locator Card by seeking consent to release contact information, including a former member's name, address (including e-mail), and telephone number to the following groups:

1. Alumni Organizations.
2. Educational organizations that can accept the AmeriCorps education award.
3. Service organizations.

Further, the Corporation proposes to revise the AmeriCorps*VISTA Alumni Locator Card by asking former members to identify his or her involvement with the Corporation or community.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA Alumni Locator Card. (Previously named the AmeriCorps*VISTA Locator Card.)

OMB Number: 3045–0048.

Agency Number: None.

Affected Public: Individuals and households.

Total Respondents: 6,000.

Frequency: Continuous.

Average Time Per Response: 2 minutes.

Estimated Total Burden Hours: 200 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 18, 2000.

Matt B. Dunne,

*Director, AmeriCorps*VISTA.*

[FR Doc. 00–18346 Filed 7–19–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive License; Dow Chemical Company

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Dow Chemical Company, a revocable, nonassignable, exclusive license in the United States to practice the Government-Owned inventions described in:

U.S. Patent Number 4,911,902 Mullite Whisker Preparation and U.S. Patent Number 4,948,766 Rigid Mullite Whisker Felt and Method of Preparation.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 18, 2000.

ADDRESSES: Written objections are to be filed with Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, telephone (301) 227–4299.

Dated: July 11, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–18340 Filed 7–19–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Non-Exclusive, Partially Exclusive, or Exclusive Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404, announcement is made of the availability of Navy patent #5,520,331 entitled "Liquid Atomizing Nozzle", for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Navy, Washington, DC.

This patent covers a convergent/divergent gas nozzle, which atomizes a liquid provided through a delivery tube, providing an extremely fine mist having a high momentum. The nozzle is particularly well suited to fire extinguishment.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Navy, as represented by the Naval Air Warfare Center, wishes to license the patent in a non-exclusive, exclusive, or partially exclusive manner to a party interested in manufacturing, using, and/or selling devices or processes involved in this patent.

FOR FUTHER INFORMATION CONTACT: Hans Kohler Business Development Office NAWCAD Lakehurst, New Jersey 08733, phone (732) 323–2948, E-mail: kohlerhk@navair.navy.mil.

Dated: July 11, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–18339 Filed 7–19–00; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, July 26, 2000. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 10:30 a.m. It will include a presentation by Delaware Water Coordinator Gerald Kauffman on an integrated resource plan to address water supply problems in New Castle County, Delaware. Summaries of the following four meetings also will be offered: June 26 meeting on the Estuary PCB Monitoring Plan; July 13 meeting of the Water Management Advisory Committee; and July 20 meetings of the Toxics Advisory Committee and Flow Management Technical Advisory Committee. A brief account of briefings on the Christina River TMDL also will be provided.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting will include, in addition to the dockets listed below, a proposed Resolution concerning the control of certain toxic substances, including PCBs, in the Delaware Estuary.

The dockets scheduled for public hearing are as follows:

1. *Village of Deposit D–99–64 CP.* An application for approval of a ground water withdrawal project to supply up to 5.4 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 5 in the West Branch Delaware River watershed, and to increase the existing withdrawal limit from all wells from 15 mg/30 days to 30 mg/30 days. The project is located in the Village of Deposit, Delaware County, New York.

2. *Borough of Dublin D–2000–11 CP.* An application for approval of an increase in ground water withdrawal allocation from 4.36 mg/30 days to 6.9 mg/30 days for the applicant's public water distribution system from existing Wells Nos. 1, 2, 3 and 5 in the mixed zone of the Lockatong and Brunswick Formations. The project is located in Dublin Borough, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

3. *Little Washington Treatment Company D–2000–24.* An application to upgrade and expand the applicant's Willistown Woods (formerly Chesterdale) sewage treatment plant (STP) from 0.12 million gallons per day (mgd) advanced secondary treatment to 0.225 mgd tertiary treatment. The STP is located just south of State Route 3 in Willistown Township at its border with Westtown Township, both in Chester County, Pennsylvania, and will continue to serve portions of Willistown and Westtown Townships. Treated effluent will continue to discharge to a tributary of Hunters Run in the Ridley Creek watershed.

4. *Dennis C. Christman D–2000–42.* An application to construct a 0.08 mgd STP to replace failing on-lot septic systems at the applicant's Christman Lake development located off Christman Road (Township Route 771) in Windsor Township, Berks County, Pennsylvania. The proposed plant is designed to provide secondary treatment via the

sequencing batch reactor process. Treated effluent will discharge to a marsh area that flows 120 feet directly to an unnamed tributary of Maiden Creek in the Schuylkill River watershed.

In addition to the public hearing, the Commission will address the following at its 1:30 p.m. business meeting: minutes of the June 16, 2000 business meeting; announcements; report on hydrologic conditions in the basin; and reports of the Executive Director and General Counsel.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Secretary at (609) 883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

Dated: July 11, 2000.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 00–18376 Filed 7–19–00; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 21, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 17, 2000.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Evaluation of GEAR UP.

Frequency: Monthly, Annually, Weekly.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 11,565; Burden Hours: 3,981.

Abstract: The evaluation responds to the legislative requirement in Public Law 105–244, Section G to evaluate and report on the effectiveness of projects funded under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. Students' and parents' expectations for postsecondary education, their knowledge of the academic preparation needed and availability of financial resources, and students' academic performance will be compared over time for students in schools participating in GEAR UP and in schools not receiving GEAR UP services. Outcomes for GEAR UP participants will be analyzed by type and intensity of service.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–18387 Filed 7–19–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–197, DOE/EIS–0307]

Notice of Reopening Scoping Period and Schedule for Public Scoping Meetings; Public Service Company of New Mexico

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that it is reopening the scoping period and will hold additional public scoping meetings for the environmental impact statement (DOE/EIS–0307) that is being prepared in connection with an application for a Presidential permit filed by Public Service Company of New Mexico (PNM). PNM has applied for a Presidential permit to construct electric transmission lines across the U.S.-Mexican border. An EIS is being prepared because DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). The purpose of this notice is to open a new scoping period to obtain comments on two additional alternative transmission corridors that have been identified. One of these new corridors has been designated by PNM as its "preferred alternative."

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues not

previously identified and in determining the appropriate scope of the EIS. This new scoping period starts with the publication of this notice in the **Federal Register** and will continue until September 8, 2000. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by September 8, 2000, in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent possible.

Dates, times, and locations for the public scoping meetings are:

1. August 22, 7 p.m., Rio Rico Resort, 1069 Camino Caralampi, Rio Rico, Arizona.

2. August 23, 7 p.m., Presidio Plaza Hotel (formerly Holiday Inn City Center), 181 W. Broadway Boulevard, Tucson, Arizona.

Requests to speak at a public scoping meeting(s) should be received by the NEPA Document Manager, Mrs. Ellen Russell, at the address indicated below on or before August 18, 2000. Requests to speak may also be made at the time of the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, NEPA Document Manager, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or by electronic mail at Ellen.Russell@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION: Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, connected, operated, or maintained at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR §§ 205.320–205.329. Issuance of a Presidential permit does not mandate that the project be completed; in fact, prior to construction, the recipient must obtain approval from all other Federal, state and local authorities with jurisdiction over the project.

On December 28, 1998, PNM filed an application for a Presidential permit with the Office of Fossil Energy of DOE. PNM proposed to construct up to two transmission lines on a single right-of-way extending approximately 140 to 230 miles from the electric switchyard near the Palo Verde Nuclear Generating Station, located approximately 30 miles west of Phoenix, Arizona, to the U.S.-Mexico border in the vicinity of the western boundary of the Tohono O'odham Nation, Nogales, or Sasabe, Arizona. South of the border, PNM would extend the line(s) approximately 60 to 120 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Comision Federal de Electricidad (CFE), the national electric utility of Mexico. In its application for a Presidential permit, PNM identified three alternative corridors for construction of the cross-border transmission lines. These corridors, Alternatives 1, 2 and 3, were the subject of public meetings conducted in Nogales, Tucson, Patagonia, Sells, Ajo, Gila Bend, and Casa Grande, Arizona, in March 1999, during a scoping period that extended from February 12 to April 14, 1999 (64 FR 7173, February 12, 1999, and extended by 64 FR 13553, March 19, 1999). Later, three additional alternative corridors (Alternatives 4, 5, and 6) were developed and were the subject of public meetings conducted in Green Valley, Tubac, Sasabe, Three Points (Robles Junction), and Tucson in June 1999, during a second scoping period that extended from June 10 to July 14, 1999 (64 FR 31204, June 10, 1999).

On June 18, 2000, PNM submitted a letter to DOE in which it:

1. Amended its application to include two additional alternative corridors (Alternatives 7 and 8) and identified Alternative 7 as its "preferred alternative";

2. Notified DOE that it prefers to construct the transmission lines as alternating current (AC) lines rather than direct current (DC) lines; and,

3. Notified DOE that it was in discussions with Citizens Utilities of Nogales, Arizona, regarding the potential for providing back-up electrical service to the utility.

Selection of the AC option would require construction of a back-to-back AC/DC/AC converter station inside the U.S. in the vicinity of the border. If power is supplied to Citizens Utilities in the Nogales area, the "step-down" equipment also would be installed within the confines of this converter station. The AC transmission line(s) would be operated at 345 kV inside the U.S. and at 230 kV between the converter station and CFE's Santa Ana Substation. Use of the AC option means that two electrical circuits would be required. In some locations, both circuits would be installed on the same set of support structures. In other areas, two separate sets of support structures would be required with the need for a wider right-of-way. Each line would have an electrical transfer capability of approximately 400 megawatts (MW). If the AC option is not selected, PMN likely would not provide electrical service to Citizens Utilities.

The EIS is being prepared to satisfy the environmental review requirements of any Federal agency having jurisdiction over the proposed project or any segment of it. Potential Federal cooperating agencies include the U.S. Departments of Agriculture (including the U.S. Forest Service), Interior (including the Bureau of Land Management, Bureau of Indian Affairs and the Fish and Wildlife Service), and State (including the International Boundary and Water Commission).

Description of New Alternatives

Alternative 7 (PNM Preferred Alternative)—This alternative corridor extends southeasterly from the electrical switchyard adjacent to the Palo Verde Nuclear Generating Station (PVNGS), approximately three miles north of Red Rock, Arizona. From this point, the line continues in a southeasterly direction, following highway I–10 and existing electric transmission and natural gas pipelines until approximately Marana. At Marana, this alternative corridor turns south, largely running parallel to an existing powerline corridor approximately eight miles west of Saguaro National Park. Near Orange Grove Road, the corridor turns east until it intersects with a current gas pipeline that runs southeast. It follows the pipeline until it approaches the Central

Arizona Project (CAP) where it follows the CAP around the Garcia Strip of the Tohono O'odham Nation. It then heads southwest over Sandario Road and turns due south. Near the existing Bicknell substation, this proposed corridor turns due south following a gas pipeline through the copper mines and west of the mine residue piles that border Green Valley. The corridor would follow the pipeline until a point just north of Arivaca Road (near Amado) where the corridor would head due east, cross I–19, and cross to the east of the existing 115-KV line owned by Citizens Utilities. The corridor would then run south, paralleling the Citizen's line past Tubac and Tumacacori National Historic Park and then head west again, recrossing I–19. The corridor then rejoins the pipeline corridor and follows it through Coronado National Forest until west of Nogales where it crosses the U.S.-Mexico border. If PNM provides service to Citizens Utilities, a converter station and step down substation would be constructed in the vicinity of Nogales.

Alternative 8—This alternative corridor is almost identical to Alternative 7. It differs from Alternative 7 in only one area. North of Arivaca Road (near Amado) this corridor proceeds due south (where Alternative 7 turns east) and continues to parallel the existing gas pipeline to Coronado National Forest, then through the forest, and crosses the border west of Nogales.

A description of alternative transmission corridors 1 thru 6 can be found in the **Federal Register** notice for the second scoping period, referenced above. This notice can be accessed from the project web site maintained for DOE by Battelle Memorial Institute at *http://projects/battelle.org/pnmeis/*. In addition, from this site, interested persons can download the PNM Presidential permit application as well as the project fact sheet, maps, verbatim transcripts from previous scoping meetings, and other project-related information.

Scoping Process

Interested parties are invited to participate in the scoping process. Public scoping meetings will be held at the locations, dates, and times indicated above under the **DATES** and **ADDRESSES** sections. These scoping meetings will be informal. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. Speakers will be allocated approximately 10 minutes for their oral statements. Persons who have not submitted a request to speak in advance may register to speak at the scoping meetings, but advance requests are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE. Oral and written comments previously submitted on Alternatives 1 through 6 have been entered in the official record of this proceeding and need not be resubmitted.

Issued in Washington, DC on July 14, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–18436 Filed 7–19–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–233–002]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 14, 2000.

Take notice that on July 7, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Substitute Fourth Revised Sheet No. 90 and Second Substitute Second Revised Sheet No. 98. Midwestern requests an effective date of May 1, 2000.

Midwestern states that this filing is in compliance with the Commission's June 28, 2000 Letter Order in the above-referenced docket (June 28 Order). Midwestern Gas Transmission Company, 91 FERC ¶ 61,299 (2000). Midwestern further states that the June 28 Order required Midwestern to file revised tariff language to clarify the requirements of the waiver set forth in 18 CFR 284.8(i) of the Commission's regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18306 Filed 7–19–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–384–000]

Overthrust Pipeline Company; Notice of Tariff Filing

July 14, 2000.

Take notice that on July 12, 2000, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective March 26, 2000:

Fifth Revised Sheet No. 4
Fourth Revised Sheet No. 5
Third Revised Sheet No. 47
Sixth Revised Sheet No. 48
Sixth Revised Sheet No. 49
Fifth Revised Sheet No. 49A
Second Revised Sheet No. 49B
Original Sheet No. 49C
Fourth Revised Sheet No. 51
Third Revised Sheet No. 52
Third Revised Sheet No. 52A
Original Sheet No. 52B

On February 9, 2000, and May 19, 2000, the Commission issued Order No. 637 and 637–A, respectively, in Docket Nos. RM98–10 and RM98–12 requiring pipeline companies to, among other things, waive the price ceiling for short-term capacity-release transactions. The filing reflected modifications in Overthrust's tariff to incorporate this requirement.

Overthrust states that a copy of this filing has been served upon it customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be

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taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–18333 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3105–000]

PJM Interconnection, L.L.C.; Notice of Filing

July 14, 2000.

Take notice that on July 11, 2000, PJM Interconnection, L.L.C. (PJM), submitted for filing an amended unexecuted interconnection service agreement between PJM and Statoil Energy/Paxton, L.P. to reflect the amount of the Attachment Facilities Charge.

PJM requests a waiver of the Commission's 60-day notice requirement and an effective date of July 12, 2000.

Copies of this filing were served upon Statoil Energy/Paxton, L.P. and the Pennsylvania Public Utility Commission..

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 1, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–18298 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–363–000]

Questar Pipeline Company; Notice of Tariff Filing

July 14, 2000.

Take notice that on July 10, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective March 26, 2000:

Fourteenth Revised Sheet No. 5
Twelfth Revised Sheet No. 5A
Ninth Revised Sheet No. 6
Eighth Revised Sheet No. 6A
Fourth Revised Sheet No. 58
Sixth Revised Sheet No. 59
Sixth Revised Sheet No. 60
Second Revised Sheet No. 60B
Fourth Revised Sheet No. 62
Fourth Revised Sheet No. 63
Second Revised Sheet No. 64
Original Sheet No. 64A
Fifth Revised Sheet No. 163
Fifth Revised Sheet No. 164

On February 9, 2000, and May 19, 2000, the Commission issued Order Nos. 637 and 637–A, respectively, in Docket Nos. RM98–10 and RM98–12 requiring pipeline companies to among other things, waive the price ceiling for short-term capacity-release transactions. This filing reflects revisions in Questar's tariff to incorporate this requirement with the clarifications added by Order 637–A.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–18332 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–274–001]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 14, 2000.

Take notice that on July 11, 2000, Reliant Energy Gas Transmission Company (REGT), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2000.

Second Revised Sheet No. 1
First Revised Sheet No. 59
Original Sheet No. 70
Original Sheet No. 71
Original Sheet No. 72
Original Sheet No. 73
Original Sheet No. 74
Original Sheet No. 75
Original Sheet No. 76
First Revised Sheet No. 286
Second Revised Sheet No. 289
First Revised Sheet No. 290

REGT states that the filing is being made in compliance with the Commission's order issued June 28, 2000 in Docket No. RP00–274–000 (Order).

REGT states that the filing implements the pro forma tariff sheets applicable to Rate Schedule ANS (AutoNom Service). REGT also states that in compliance with the Order these tariff sheets incorporate an alternative provision affording the use of an AutoNom Service to split-connect end users as well as single-connect end users.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Lindwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–18307 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–401–000]

Suprex Energy Corporation; Notice of Application For Presidential Permit and Natural Gas Act Section 3 Authorization

July 14, 2000.

Take notice that on July 7, 2000, Suprex Energy Corporation (Suprex Energy) 435–4th Avenue S.W., Suite 450, Calgary, Alberta T2P 3A8, filed an application in Docket No. CP00–401–000 seeking a Presidential Permit, pursuant to Executive Orders Nos. 10485 and 12038, and a Natural Gas Act Section 3 authorization, pursuant to Part 153 of the Commission's Regulations, all as more fully described in Suprex Energy's application. The details of Suprex Energy's application are set forth in its application, which is on file with the Commission and open to public inspection.

The text of this application may also be viewed at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for help). Any initial questions regarding the application should be directed to Nello W. Marano, the company President, at the above address or by phone at (403) 294–1454.

Suprex Energy seeks authority to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Canada in Toole County, Montana, for purposes of importing unprocessed natural gas into the United States from Canada. Suprex Energy currently an owner of a natural gas gathering system in the Province of Alberta. Suprex Energy proposes to construct certain natural gas gathering and metering facilities in Alberta near the International Boundary. It proposes to construct a 2,543 feet, 6-inch diameter pipeline extending directly south from the metering station and across the Canada-United States border at Section 6 T37N R3W in the Toole County. The distance of Suprex Energy's 6-inch diameter pipeline in the United States will be 30 feet. This 30 foot section of pipeline will connect with a new 6-inch diameter gathering pipeline to be constructed by Suprex Energy Inc. (SEI), a Montana incorporated company that is a wholly owned subsidiary of Suprex Energy Corporation.

The purpose of the project is to gather and transport shut-in, unprocessed natural gas from natural gas wells in the Coutts Red Coulee area of Alberta, across the International Boundary to eventually be delivered to the existing gas gathering system owned and operated by the Montana Power Gas Company in the Border Field area of northern Montana which has available gas processing capacity.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214, and the Commission's Regulations under the Natural Gas Act, 18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules of Practice and Procedure.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3 and 15 of the Natural Gas Act and the Commission Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Coral Mexico to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–18300 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–229–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

July 14, 2000.

Take notice that on July 7, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1: The following revised tariff sheets, with a proposed effective date of May 1, 2000:

Second Substitute Fifth Revised Sheet No. 329
Second Substitute Third Revised Sheet No. 336
Second Substitute Second Revised Sheet No. 342A
Second Substitute Fifth Revised Sheet No. 347

Tennessee states that this filing is in compliance with the Commission's June 28, 2000 Letter Order in the above-referenced docket. *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,298 (2000). Tennessee states that the June 28, 2000 Letter Order required Tennessee to file revised tariff language to change all reference in the tariff's capacity release terms of "more than one year" to "one year or more" and to clarify the requirements of the waiver set forth at Commission regulation 18 CFR 284.8(i) (2000).

Tennessee states that a copy of this filing has been served on all parties who intervened in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission' Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–18305 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–009]

TransColorado Gas Transmission Company; Notice of Tariff Filing

July 14, 2000.

Take notice that on July 11, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Ninth Revised Sheet No. 21 and Fifth Revised Sheet No. 22, to be effective July 11, 2000.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's Tariff to implement an amended negotiated-rate interruptible transportation service agreement between TransColorado and Burlington Resources Trading, Inc. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective July 11, 2000.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–18304 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. ER00–3106–000]

Wisvest-Connecticut, LLC; Notice of Application

July 14, 2000.

Take notice that on July 11, 2000, Wisvest-Connecticut, LLC (Wisvest-Connecticut) submitted to the Commission for filing copies of an executed long-term service agreement with Select Energy, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 1, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–18299 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169–013 North Carolina—Tennessee]

Alcoa Power Generating, Inc.; Notice of Availability of Draft Environmental Assessment

July 14, 2000.

A draft environmental assessment (EA) is available for public review. The EA analyzes the environmental effects of a request to amend the license to authorize upgrades of turbines and generators at three of the four developments of the Tapoco Hydroelectric Project located on the Little Tennessee and Cheoah Rivers, in Graham and Swain Counties, North Carolina, and Blount and Monroe Counties, Tennessee. The project utilizes approximately 370 acres Nantahala National Forest lands. The Tapoco Hydroelectric Project includes the following reservoirs: Santeetlah, Cheoah, Calderwood, and Chilhowee.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. The proposed upgrade would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the EA. The public, federal and state resource agencies are encouraged to provide comments. All written must be filed within 30 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked and with the project number P–2169–013 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please contact R. Feller at telephone: (202) 219–2796 or e–mail: *rainer.feller@ferc.fed.us*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–18301 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: A New Major License.

b. Project No.: 2042–013.

c. Date filed: January 21, 2000.

d. Applicant: Public Utility District No. 1 of Pend Oreille County.

e. Name of Project: Box Canyon Hydroelectric Project.

f. Location: On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho. About 709 acres within the project boundary are located on lands of the United States, including Kalispel Indian Reservation (493 acres), U.S. Forest Service Colville National Forest (182.93 acres), U.S. Department of Energy, Bonneville Power Administration (24.14 acres), U.S. Fish and Wildlife Service (2.45 acres), U.S. Army Corps of Engineers (5.29 acres), and U.S. Bureau of Land Management (1.44 acres).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Robert Geddes, Public Utility District No. 1 of Pend Oreille County, P.O. Box 190, Newport, WA 99156; (509) 447–3137.

i. FERC Contact: Mr. Timothy J. Welch, *Timothy.Welch@FERC.FED.US* or telephone (202) 219–2666.

j. Deadline for filing scoping comments is 60 days from the date of this Notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application is not ready for environmental analysis at this time.

l. Description of the Project: The Box Canyon Project is located in the northeast corner of Washington state in Pend Oreille County. The project dam is located at river mile 34.4 from the Pend Oreille River's confluence with the Columbia River. The site is 13 miles from the Canadian border, 14 miles from the Idaho border, and 90 miles north of city of Spokane, WA. The existing Box Canyon Project consists of: (1) 46-foot-high, 160-foot-long reinforced concrete dam with integral spillway, (2) 217-foot-long, 35-foot-diameter diversion tunnel, (3) 1,170-foot-long forebay channel, (4) auxiliary spillway, (5) powerhouse containing four generating units with a combined capacity of 72 MW, (6) 8,850-acre reservoir at maximum operating pool elevation of 2030.6 feet, and other associated facilities. PUD No. 1 operates the project in a run-of-river mode.

PUD No. 1 proposes to upgrade all four turbines with new high efficiency, fish-friendly runners and to rewind the four generators to increase generating capacity to 90 MW. No new structures will be built and no construction in the river will be required. No operational changes will be needed although peak flow through each turbine will be increased from 6,850 cfs to 8,100 cfs which will ultimately result in an 8% increase in average annual energy output.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm [or call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h. above.

n. Scoping Process.

The Commission intends to prepare an Environmental Impact Statement (EIS) for the proposed relicensing of the Box Canyon Hydroelectric Project (FERC No. 2042–013) The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold two scoping meetings, one in the afternoon and one in the evening, to help identify the scope of the issues to be addressed in the EIS. The afternoon meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations and agencies are invited to attend one or both meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Afternoon Meeting: August 14, 2000, 2:00 p.m., Airport Ramada Inn, Spokane International Airport, Spokane, WA, (509) 838–5211.

Evening Meeting: August 16, 2000, 7:00 p.m., Newport High School, 1400 West 5th Street, Newport, WA, (509) 447–3167.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EIS, to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The PUD and the Commission staff will conduct a project site visit in two segments on August 15 and August 16, 2000. On the first day we will meet at 8:30 am in the parking lot of the Pend Oreille PUD No. 1 at 130 North Washington St., Newport. The second day we will meet at Box Canyon Dam at 8:30 am. Site visitors will be transported by bus through the project area. If you would like to attend, please contact Mark Cauchy at (509) 447–9331 no later than August 8, 2000.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceedings for this project.

Individuals, organizations and agencies with environmental expertise and concerns are encouraged to attend the meetings to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18302 Filed 7–19–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

July 14, 2000.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 8436–118.

Date Filed: June 8, 2000.

Applicants: Smith Falls Hydropower and Eugene Water and Electric Board.

e. Name of Project: Smith Creek.

f. Location: The project is located on Smith Creek, a tributary of the Kootenai River, in Boundary County, Idaho. The project occupies lands of the United States within the Panhandle National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contacts: Smith Falls Hydropower: David B. Van Otten, Smith Falls Hydropower, P.O. Box 1328, Bountiful, Utah 84011–1328; and Eugene Water and Electric Board: Everett Jordan, Generation Manager, 500 East 4th Avenue, P.O. Box 10148, Eugene, Oregon 97440–2148.

i. FERC Contract: Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. Deadline for filing comments and or motions: August 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (8436–118) on any comments or motions filed.

k. Description of Transfer: Smith Falls Hydroelectric (transferor), licensee of the Smith Creek Project, and Eugene Water and Electric Board (transferee) jointly and severally apply for approval of the transfer of the project license to the transferee.

1. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18303 Filed 7–19–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 14, 2000.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* New Major Licenses.

b. *Project Nos.:* 1975–014; 2061–004; 2777–007; 2778–005.

c. *Dates filed:* December 20, 1995 and May 27, 1997.

d. *Applicant:* Idaho Power Company.

e. *Name of Projects:* Bliss, Lower Salmon Falls, Upper Salmon Falls, Shoshone Falls Water Power Projects.

f. *Locations:*

Bliss Project—On the mainstem Snake River, about 6 miles west of the town of Bliss, in Gooding, Twin Falls, and Elmore Counties, Idaho. The project is partially located within federal lands administered by the Bureau of Land Management.

Lower Salmon Falls—On the mainstem Snake River, about 2 miles north of the town of Hagerman, in Gooding and Twin Falls Counties, Idaho. The project is partially located within federal lands administered by the Bureau of Land Management.

Upper Salmon Falls—On the mainstem Snake River, about 3 miles south of the town of Hagerman, in Gooding and Twin Falls Counties, Idaho. The project does not involve any federal lands.

Shoshone Falls—On the mainstem Snake River, about 4 miles east of the town of Twin Falls, in Jerome and Twin Falls Counties, Idaho. The project is partially located within federal lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.

i. *FERC Contact:* John Blair, john.blair@ferc.fed.us, (202)–219–2845.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. These applications has been accepted for filing and are now ready for environmental analysis.

l. The Bliss project consists of the following existing facilities: (1) a 384-foot-long, 38-foot-high concrete dam

with a 216-foot-long spillway; (2) a 5-mile-long, 255-acre reservoir with a water surface elevation of 2,654.0 feet above mean sea level (msl), with a total storage capacity of 11,100 acre-feet; (3) a powerhouse (integral with the dam) with a total installed capacity of 75 megawatts, producing about 493 gigawatthours (GWh) annually; (4) a 10.5-mile-long, 138-kilovolt primary transmission line; and other appurtenances.

The Lower Salmon Falls project consists of the following existing facilities: (1) A 700-foot-long, 38-foot-high concrete dam with a 312-foot-long spillway; (2) a 6.6-mile-long, 750-acre reservoir with a water surface elevation of 2,798 feet msl, with a total storage capacity of 11,100 acre feet; (3) a powerhouse with a total installed capacity of 60 megawatts, producing about 343 GWh annually; (4) two 138-kV primary transmission lines (0.10- and 0.15-mile-long).

The Upper Salmon Falls project consists of the following existing facilities: (1) A 1,620-foot-long, 14-foot-high concrete dam with a 240-foot-long spillway; (2) a 5.8-mile-long, 50 acre reservoir with a surface elevation of 2,878 feet msl, with a total storage capacity of 600 acre feet; (3) a powerhouse with a total installed capacity of 34 megawatts, producing about 321 GWh annually.

The Shoshone Falls project consists of the following existing facilities: (1) A 779-foot-long, 16-foot-high dam with a 380-foot-long spillway; (2) a 1.8 mile long, 86 acre reservoir with a water surface elevation of 3,354 feet msl with a total storage capacity of 11,100 acre feet; (3) a powerhouse with a total installed capacity of 12.5 megawatts, producing about 110 GWh annually

m. A copy of the applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The applications may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the address in item "h" above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in capital letters the title "COMMENTS ", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18334 Filed 7–19–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2318–002.

c. *Date filed:* December 13, 1991.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* E.J. West Hydroelectric Project.

f. *Location:* On the Sacandaga River, 6 miles upstream from its confluence with the Hudson River, in the towns of Hadley, Day, Edinburg, Providence (Saratoga County), Broadalbin, Mayfield, Northampton (Fulton County), and Hope (Hamilton County), New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Hydro Licensing Coordinator, 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088, (315) 413–2787.

i. *FERC Contact:* Lee Emery, E-mail address, Lee.Emery@ferc.fed.us, or telephone (202) 219–2779.

j. Deadline for comments recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing, operating project consists of: (1) A 1,100-foot-long and 100-foot-high earth fill and concrete dam (Conklingville dam) with an outlet consisting of two spillways and a spillway weir; (2) a reservoir (Great Sacandaga Lake) with a surface area of 25,950-acres, a gross storage capacity of 792,000-acre-feet (ac-ft), and a usable storage capacity of 681,000 ac-ft, at normal maximum surface elevation of 768 feet National Geodetic Vertical Datum; (3) a concrete canal; (4) a log

boom to exclude debris and boaters from entering the canal; (5) an intake structure with 4½-inch clear spaced trashracks located directly in front of the gates; (6) four penstocks; (7) a powerhouse with two vertical Francis turbines (10 megawatts each) and two generators; (8) appurtenant equipment and controls; and (9) a control house. There is no bypassed reach. The project has a total installed capacity of 20 megawatts and an annual average energy production of 63,188 megawatt-hours.

The project operates in a limited peaking mode, using water stored in the Great Sacandaga lake. The Hudson River Black River Regulating District determines the amount of water to be released on any given day and Erie determines how that volume will be released over each 24-hour period. Great Sacandaga lake is typically drawn down for a 3 week period in the spring to allow collection of water during high flow events. Outflow from the lake during this 3 week period is restricted. The lake's average annual water fluctuation is 23 feet. Water from the powerhouse is discharged directly into the upper reach of the Stewarts Bridge Project (FERC No. 2047) reservoir.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulation (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) (set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–18335 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2554–005.

c. *Date filed:* December 20, 1991.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Feeder Dam.

f. *Location:* On the Hudson River, at river mile 203 in the towns of Moreau (Saratoga County) and Queensbury (Warren County), New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Hydro Licensing Coordinator, 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088, (315) 413–2787.

i. *FERC Contact:* Lee Emery, E-mail address, Lee.Emery@ferc.fed.us, or telephone (202) 219–2779.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is now ready for environmental analysis.

l. *Description of the Project:* The existing, operating project consists of: (1) A 615-foot-long and 21-foot-high uncontrolled overflow concrete gravity dam with 3-feet-high flashboards; (2) a reservoir with a surface area of 717 acres, a usable storage capacity of 1,690 acre-feet (ac-ft), and a gross storage capacity of 10,000 ac-ft, at a surface elevation ranging between 284.1 and 281.1 feet National Geodetic Vertical Datum; (3) a headgate structure with 4½-inch clear spaced steel bar trashracks and eight stoplog openings; (4) five waste gates and two Champlain Feeder Canal inlet gates at the north dam abutment; and (5) a powerhouse at the dam with five identical vertical fixed blade propeller turbines and generator units (1.2 megawatts each). There is no bypassed reach. The project has a total installed capacity of 6.0 megawatts and an average annual energy production of 25,019 megawatt-hours. The New York State Thruway Authority owns the dam, waste gates, and Feeder Canal inlet gates at the Feeder Dam Project, and the licensee owns the powerhouse and appurtenant structures.

Feeder Dam servers as a re-regulating dam to even the flows released from peaking operations upstream at the Sherman Island Development (Hudson River Project, FERC No. 2482). Daily pond fluctuations range from three feet to six feet when the flashboards are in place. Water from the powerhouse is discharged directly into the upper reach of the Glens Falls (FERC No. 2385) and South Glens Falls (FERC No. 5461) reservoir.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–18336 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

July 14, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt: None.
Prohibited: None.

Linwood A. Watson, Jr.,
Acting Secretary

[FR Doc. 00–18337 Filed 7–19–00; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[SW–FRL–6838–6]

No-Migration Variance From Land Disposal Restrictions for Exxon Mobil Corporation, Billings, MT South Land Treatment Unit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision.

SUMMARY: EPA is reissuing a no-migration variance ("variance") for land disposal of hazardous waste to Exxon Mobil Refining & Supply Company Billings Refinery ("Exxon"), a division of Exxon Mobil Corporation, formerly known as Exxon Company U.S.A. Authority for the decision has been delegated to the EPA Regional Administrator. This variance approved under Resource Conservation and Recovery Act (RCRA) regulations allows Exxon to place certain untreated hazardous wastes subject to the RCRA land disposal restrictions (42 U.S.C. 36901 *et seq.*) at their Billings (Montana) refinery South Land Treatment Unit (SLTU). Exxon submitted a request to EPA on March 24, 1998 for renewal of the no-migration variance in conjunction with their State of Montana hazardous waste permit reissuance. Exxon also petitioned to amend the variance by adding the newly listed hazardous waste, Petroleum Refinery Primary Oil/Water/Solids Separation Sludge (EPA hazardous waste code F037) generated at the Exxon Refinery in Billings, Montana.

The variance granted today covers the following wastes generated at the Exxon Billings Refinery: Slop Oil Emulsion Solids (K049); API Separator Sludge (K051); Toxicity Characteristic Contaminated Soils (D018); and Petroleum Refinery Primary Oil/Water/Solids Separation Sludge (F037). Exxon may continue to dispose of non-hazardous solid wastes and non-restricted hazardous wastes at the SLTU in compliance with its Montana hazardous waste permit (No. MTHWP–99–02). The variance does not relieve Exxon of its responsibilities in the management of hazardous waste under 40 CFR part 260 through part 271. If Exxon wishes to dispose of additional restricted wastes at the SLTU it will have to apply for an amendment to its no-migration variance. EPA will evaluate the amendment petition and propose a decision for public comment in the **Federal Register**, with a notice in the local press, before a final decision is made.

In granting the original variance on July 27, 1993, we concluded that Exxon demonstrated to a reasonable degree of certainty that hazardous constituents would not migrate out of the land treatment facility at levels exceeding no-migration criteria for as long as the wastes remain hazardous. We reviewed the SLTU monitoring data submitted by Exxon for the period the original variance was in effect along with other relevant information, and it supported our original conclusion on Exxon's no-migration demonstration. We also concluded that Exxon adequately met the conditions of the original variance, which were included to ensure compliance with their no-migration demonstration. The variance reissuance again includes specific conditions (below) Exxon must meet to maintain the variance. In accordance with 40 CFR 268.6(k), the variance is valid for up to ten years from the date of EPA approval of the petition, but no longer than the term of Exxon's RCRA permit. The term of the variance expires upon the termination or denial of Exxon's Montana hazardous waste permit No. MTHWP–99–02), which will expire on June 28, 2009, or when the volume limit of waste to be land disposed during the term of the variance is reached.

RCRA regulations require that we provide for public comment on a proposed no-migration variance decision. EPA published notice of our proposed decision in the local press and in the **Federal Register** on April 21, 2000 (65 FR 21419). We also provided opportunity for public participation through a 45-day comment period, and held a public hearing in Billings, Montana on April 23, 2000. The public comment period closed on June 5, 2000. We did not receive any comments on our proposed decision. Therefore, EPA decided to reissue the variance and add Primary Sludge (F037) as described in the preceding **Federal Register** document (65 FR 21419). RCRA regulations require that we publish notice of our final decision in the **Federal Register**.

DATES: This final decision becomes effective July 20, 2000.

ADDRESSES: The record supporting this decision is located in Helena, Montana, at the EPA Region VIII, Montana Operations Office, Federal Building, 301 South Park. The public may make arrangements to view the documents in Helena by calling Tina Diebold at (406) 441–1130. The record is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays. Another copy of the record is available to the public at the Parmly Library at 510 North Broadway, Billings, Montana, and is available for public review during regular library hours for the next thirty days.

FOR FURTHER INFORMATION CONTACT: Tina Diebold, Mail Code 8MO, Montana Office, U.S. EPA Region VIII, 301 S. Park, Drawer 10096, Helena, Montana 59626–0096, at (406) 441–1130.

SUPPLEMENTARY INFORMATION: Wherever "we" is used throughout this notice, it refers to EPA.

A. Conditions and Reporting Requirements for the Exxon No-Migration Variance Reissuance

As part of this reissuance of the no-migration variance and addition of Primary Sludge (F037), Exxon must comply with the following conditions. These conditions are in addition to those required of Exxon under 40 CFR 268.6. EPA would directly enforce these conditions, and a violation of a condition would constitute a violation of the RCRA land disposal restrictions. Unless otherwise notified by EPA, Exxon shall provide the required notices and reports to the EPA Region VIII Montana Operations Office, Federal Building, 301 South Park, Drawer 10096, Helena, MT, 59626. Exxon shall provide a separate copy to the State of Montana of any report or notice required by the variance if the information is not combined with the reports required under its Montana hazardous waste permit. Exxon shall provide copies to the State at the address specified for its Montana hazardous waste permit reporting requirements.

We interpret the no-migration standard to mean that concentrations of hazardous constituents cannot exceed EPA-approved health-based levels in any environmental medium at the boundary of the land disposal unit. Hazardous constituent levels exceeding those presented in Table 1 of our proposed decision (65 FR 21421) constitute migration into ground water at the unit boundary, as measured by soil-pore liquid and below treatment zone (BTZ) soil-core monitoring, and as measured by ground water monitoring under the Exxon Montana hazardous waste permit and as defined below. In the event that Exxon should detect other RCRA hazardous constituents (defined in 40 CFR part 261, appendix VIII) above health-based levels, this event would also be subject to the notification requirements in 40 CFR 268.6(f). Definitions of the unit boundaries (i.e., points of compliance for no-migration purposes) remain the same as in the original variance (57 FR 10478). Metals levels in the SLTU zone of incorporation (ZOI) soils (the top 23 centimeters of the treatment zone) exceeding the limits listed in item 1.a. below are also evidence of a no-migration standard exceedance. EPA will determine within 60 days of receiving notice of migration whether Exxon can continue to receive prohibited waste in the unit and whether the variance is to be revoked.

Exxon must report to EPA within ten days any significant changes in operating conditions from those described or modeled in its original petition or reissuance petition, including the petition to amend the variance to include Primary Sludge (F037), or at least 30 days in advance of initiating any change at or to the unit (40 CFR 268.6(e)). EPA will determine the appropriate response, including termination of waste acceptance and revocation of the variance, or variance modification.

The term of the variance expires upon the termination or denial of Exxon's Montana hazardous waste permit No. MTHWP–99–02), which will expire on June 28, 2009, or when the volume limit of waste to be land disposed during the term of the variance is reached.

1. Montana Hazardous Waste Permit Conditions

Exxon must comply with conditions of the Montana hazardous waste permit effective June 28, 1999 (No. MTHWP–99–02) regarding characterization of wastes disposed of at the SLTU, and monitoring of ground water, soil and soil-pore liquids at that unit. Exxon must provide the results of this

characterization and monitoring to EPA on the same schedule as they are provided to the State of Montana under Exxon's Montana hazardous waste permit.

In addition, Exxon must follow the monitoring provisions below specific to this variance, which are intended to supplement the existing Montana hazardous waste permit conditions. Exxon may provide the information required as a condition of the variance to EPA in the annual reports required by its Montana hazardous waste permit. Exxon shall submit annual reports for the previous calendar year by April 30.

a. ZOI Metals Loading Limit: Exxon shall determine if any of the following risk limits have been exceeded when it evaluates the annual SLTU ZOI soil samples for the metals loading limits under its Montana hazardous waste permit: 31 mg/kg for antimony; 15 mg/kg for arsenic; 2 mg/kg for beryllium; 140 mg/kg for total chromium; 400 mg/kg for lead; and 7 mg/kg for mercury. In the event one or more of these criteria are exceeded, Exxon may only place wastes on the SLTU areas(s) for which the metals concentrations are less than or equal to the in-soil concentration limits. Exxon shall submit the analytical results and comparisons in an annual report to EPA. Exxon shall report exceedances of these limits to EPA within ten days of receiving the analytical results.

b. Soil-Pore Liquid Monitoring: Exxon shall evaluate the following metals as part of semi-annual SLTU soil-pore lysimeter monitoring requirements under the Montana hazardous waste permit: antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, vanadium, and zinc. Samples from each of the three SLTU lysimeters shall be .45-micron filtered prior to analysis for metals. SW–846 [1] or equivalent analytical methods shall be used which can provide reporting limits of .001 mg/l, except .0002 mg/l for mercury. Exxon shall attempt to collect sufficient sample volumes to meet these performance criteria, following the general analytical priority scheme in its Montana hazardous waste permit. Should sample volumes be insufficient, Exxon shall investigate collecting additional sample volumes in a reasonable time frame for metals analysis once the Montana hazardous waste permit conditions have been met. Additionally, analyses of soil-pore organic monitoring constituents shall meet the SW–846 estimated quantitation limits (EQL) specified for water samples in Exxon's Montana hazardous waste permit and as listed in Table 1 of our proposed decision (65 FR 21421), to the extent possible.

c. Soil-Pore Liquid Monitoring Evaluation And Reporting: Exxon shall compare the organic hazardous constituents and the metals results to the leachate soil-pore health-based standards identified in Table 1 of our proposed decision (65 FR 21421). Exxon shall submit the analytical results and comparisons including information on sample volumes collected, analytical methods used, and EQLs achieved for all sample constituents, in an annual report to EPA. Exxon shall report exceedances of these limits to EPA within ten days of receiving the analytical results, and immediately suspend receipt of prohibited waste at the unit 40 CFR 268.6(f) upon determination of migration. Exxon shall notify EPA and the State if sufficient sample volumes cannot be collected or EQLs cannot be achieved in any semi-annual sampling period.

d. BTZ Soil-Core Monitoring: When collecting the five (5) annual soil cores from the SLTU Below Treatment Zone (BTZ) as required by its Montana hazardous waste permit, Exxon shall also collect intermediate level treatment zone soil samples at three depth intervals of 2–2.5 feet below ground surface (bgs), 3–3.5 feet bgs, and 4–4.5 feet bgs and in the BTZ itself (5–5.5 feet bgs), sufficient for analyses of oil and grease and soil pH. Oil and grease and soil pH results shall be reported for the four depth intervals in each of the five soil core samples. Exxon shall use an oil and grease analytical method which can provide detection limits in the range of 10 to 100 mg/kg consistent with the Montana hazardous waste permit. Exxon also shall analyze any BTZ resamples required under the Montana hazardous waste permit for oil and grease and soil pH. Exxon shall submit the results of the annual BTZ sampling (including the pH and oil and grease results from the intermediate levels) in an annual report to EPA. Exxon shall submit the results of any resampling to EPA on the same schedule as provided to the State under Exxon's hazardous waste permit.

e. Evaluation of BTZ Soil-Core Monitoring: Analyses for organic monitoring constituents shall meet soil low-level required EQLs as specified in Exxon's Montana hazardous waste permit and as specified in Table 1 of our proposed decision (65 FR 21421). Exxon shall compare the results of BTZ soil samples with soil-core health-based standards identified in Table 1 of our proposed decision (65 FR 21421). Exxon shall submit the analytical results and comparisons in an annual report to EPA. Exxon shall report exceedances of these limits to EPA within ten days of receiving the analytical results, and immediately suspend receipt of prohibited waste at the unit on determination of migration.

2. Annual Benzene Loading Limit

The total amount of benzene that may be disposed of at the SLTU may not exceed a cumulative mass loading of 49 Kg per calendar year. Exxon must determine the benzene content of each wastestream, including each load of Primary Sludge (F037) prior to placement at the land treatment unit. Representative samples of each wastestream must be analyzed for benzene as they are generated during the land application season in accordance with the promulgated edition of SW–846. The term "as generated" means each time the wastes are removed from the wastewater system, created through a spill, or a tank is cleaned out, and the wastes are taken or will be taken to the land treatment unit, which may be several times a year. A tracking system must be in place which continually estimates and updates the cumulative benzene waste loading during the operating season. Exxon must submit a summary of these waste analyses demonstrating its compliance with the loading limit to EPA in an annual report. When the 49 Kg benzene limit is reached, Exxon must not dispose of any additional waste containing detectable levels of benzene at the SLTU until the next calendar year. Exxon shall notify EPA when the 49 Kg limit is reached within ten days of receiving the analytical results.

3. Waste Characterization

Exxon must identify in the annual report to EPA the following additional information for each applied waste at the SLTU: the location of waste generation (*e.g.*, Tank 17 sewer, Tank 108 contaminated soil); analytical results of waste determination for any wastes for which the hazardous status was not known when it was generated, mass of waste; application date(s); the hazardous waste code (if any); and the matrix (*e.g.*, soil or sludge). In the report, Exxon must distinguish between the F037 waste generated from the sewer (*e.g.*, "F037 sewer sludge") and the F037 waste generated from the

[1] These methods are found in the third edition of "Test Methods for Evaluating Solid Waste Physical/Chemical Methods," EPA, SW–846, which is available from the Government Printing Office (GPO). This compendium of EPA test methods is commonly referred to as "SW–846" and we will use this term to refer to the compendium throughout this notice.

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Alkyllation Unit Neutralization Basins (*e.g.*, "F037 lime sludge"). In the annual report, Exxon must also include the total quantity of waste applied at the SLTU during the last operating season and a break down of the total quantity of hazardous and of non-hazardous waste.

4. Application of F037 Sewer Sludge

Exxon's application of Primary Sludge generated from the sewer system (F037 sewer sludge) to the SLTU is restricted to times when Exxon also applies API Separator Sludge (K051). Exxon must combine the F037 sewer sludge with the API Separator Sludge prior to or during application at the SLTU. Exxon shall incorporate this condition in its waste tracking system to ensure that any time F037 sewer sludge is cleared for application to the SLTU, it is accompanied by K051 waste.

5. Application of F037 Lime Sludge

Exxon's application of Primary Sludge generated from the Alkyllation Unit Neutralization Basin (F037 lime sludge) to the SLTU is limited to when it has determined pH adjustment of the ZOI soils is needed according to the applicable criteria and methods identified in its Montana hazardous waste permit. For the years in which Exxon uses F037 lime sludge to adjust the pH of the ZOI soils at the SLTU, Exxon must submit to EPA the following information in the annual report: pH of the F037 lime sludge applied to the SLTU, and the other measurements and tests used to determine the need for pH adjustment as well as the quantity of F037 lime sludge applied and the quantity of any other substance (*e.g.*, lime) used to adjust the pH of the ZOI soil at the SLTU.

6. Waste Tracking

As part of its waste tracking process, Exxon must confirm receipt of analytical results for any wastes for which the hazardous status is not currently known prior to application of the waste at the SLTU. Exxon must comply with its Montana hazardous waste permit conditions with regard to restrictions on the application of waste to the SLTU, such as any restrictions based on the pH of the waste.

7. Information Requests

Upon request by EPA, Exxon shall provide to the EPA within a reasonable time, any relevant information requested to determine compliance with the conditions of this variance.

8. Access

Exxon shall allow EPA, or authorized representatives, upon the presentation of credentials and other documents as may be required by law to: (a) Inspect at reasonable times any records, facilities, equipment (including monitoring and control equipment), practices, or operations related to the disposal of restricted hazardous wastes at the SLTU; and (b) sample or monitor at reasonable times, for the purposes of assuring compliance with the conditions of this variance or to determine migration or as otherwise authorized by RCRA, any wastes intended or proposed for disposal at the SLTU and the soil, air, soil-pore liquids or ground water in or surrounding the SLTU.

Dated: July 11, 2000.

Rebecca Hanmer,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–18437 Filed 7–19–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00670; FRL–6596–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency pertaining to an assessment of the human carcinogenic potential of malathion. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under "FOR FURTHER INFORMATION CONTACT" at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on August 17 and 18 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at Holiday Inn—Ballston, 4610 North Fairfax Drive, Arlington, VA. The telephone number for the Holiday Inn Hotel is: (703) 243–9800.

Requests to participate may be submitted by mail, electronically, or inperson. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your request must identify docket control number OPP–00670 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy (7101C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. GENERAL INFORMATION

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda and copies of EPA primary background documents for the meeting will be available by mid-July. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document, on the Home Page select **Federal Register**— Notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00670. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to an assessment of the carcinogenic potential of malathion, including any information claimed as Confidential Business Information (CBI). This administrative

record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00670 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the person listed under "FOR FURTHER INFORMATION CONTACT," interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the person listed under "FOR FURTHER INFORMATION CONTACT" and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00670. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

This 2-day meeting concerns the evaluation of the human carcinogenic potential of malathion. In accordance with the EPA Guidelines for Carcinogen Risk Assessment (Preliminary Draft, July 1999), the EPA, Office of Pesticide Programs, has proposed to classify malathion as having "suggestive evidence of carcinogenicity but not sufficient to assess human carcinogenic potential" by all routes of exposure. This classification was based on the following factors: (1) occurrence of liver tumors in male and female B6C3F1 mice and in female Fischer 344 rats only at excessive doses; (2) the presence of a few rare tumors, oral palate mucosa in females and nasal respiratory epithelium in male and female Fischer 344 rats. These tumors cannot be distinguished as either treatment-related or due to random occurrence; (3) the evidence for mutagenicity is not supportive of a mutagenic concern in carcinogenicity; and (4) malaoxon, a structurally-related chemical, is not carcinogenic in male or female Fischer 344 rats. With the exception of one nasal and one oral tumor in female rats, all other tumor types were determined to occur at excessive doses or were unrelated to treatment with malathion. The toxicology data considered included chronic toxicity, carcinogenicity, subchronic toxicity, and mutagenicity studies on malathion and as well as carcinogenicity and mutagenicity studies on malaoxon.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: July 13,2000.

Steven Galson,

Director, Office of Science Coordination and Policy, Office of Pesticide Programs.

[FR Doc. 00–18516 Filed 7–18–00; 1:23 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6838–1

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), The Board of Scientific Counselors (BOSC), will hold its Executive Committee Meeting (Teleconference).

DATES: The Teleconference will be held on August 10, 2000.

ADDRESSES: On Thursday, August 10, 2000, the teleconference will begin at 10:00 a.m. and will adjourn at 12:00 Noon. All times noted are Eastern Time.

SUPPLEMENTARY INFORMATION: The entire agenda of the BOSC Executive Committee teleconference will be dedicated to the discussion and approval of the BOSC Ad-Hoc Subcommittees' Reviews of ORD's Particulate Matter Research Program. The teleconference is open to the public. Any member of the public wishing to speak on the teleconference should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460; or telephone at (202) 564–6853. In general each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCER (MC 8701R), 1200

Pennsylvania Avenue, N.W. Washington, D.C. 20460, (202) 564–6853.

Dated: July 12, 2000.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 00–18433 Filed 7–19–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6838–9]

Proposed Additions to the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Proposed Allocation Methodology for Funding to States for the Operator Certification Expense Reimbursement Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; solicitation of comments.

SUMMARY: In this Notice, the Environmental Protection Agency (EPA) is seeking comment on proposed additions to the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, which were published in the **Federal Register** on February 5, 1999 (64 FR 5916). Specifically, EPA is seeking comment on the approach and schedule for review of State operator certification programs for the purpose of making Drinking Water State Revolving Fund (DWSRF) withholding determinations, and the intent of the term "validated exam". EPA is also seeking comment on the proposed allocation methodology and program for funding that will be used to award grants to States for the Operator Certification Expense Reimbursement Grants Program.

DATES: Submit written comments on or before September 5, 2000.

ADDRESSES: Send written comments on this **Federal Register** notice to the Operator Certification Comment Clerk, Water Docket MC–4101 (Docket #W–98–07), United States Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC, 20460. Please submit an original and three copies of your comments and enclosures (including references). Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may be hand-delivered to EPA's Water Docket, Room EB57, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically to ow-docket@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by Docket #W–98–07. Comments and data will also be accepted on disks as a WordPerfect 8 file. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for these proposals has been established under Docket #W–98–07, and includes supporting documentation as well as printed paper versions of electronic comments. The record is available for review at EPA's Water Docket, Room EB57, 401 M Street SW, Washington DC 20460. For access to the Docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment and reference Docket #W–98–07.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Jenny Jacobs, Office of Ground Water and Drinking Water (4606), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC, 20460. The telephone number is (202) 260–2939 and the e-mail address is *jacobs.jenny@epa.gov*. For copies of this document, contact the Safe Drinking Water Hotline, toll free at (800) 426–4791. Copies can also be obtained from EPA's website at *http://www.epa.gov/ogwdw/opcert/opcert.htm*. Copies of EPA's Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems may be obtained by contacting the Safe Drinking Water Hotline or EPA's website at *http://www.epa.gov/ogwdw/opcert/opguide.html*.

SUPPLEMENTARY INFORMATION:

I. Proposed Additions to the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems
A. Background
B. General Review and Withholding Process Information
C. Review Process and DWSRF Withholding Determinations for Substantially Equivalent State Operator Certification Programs
D. Review Process and DWSRF Withholding Determinations for Revised State Operator Certification Programs
E. Validated Exam Issue
II. Proposed Allocation Methodology for the Operator Certification Expense Reimbursement Grants Program
A. Background
B. Administration of the Grants Program
C. Program Funding
D. Allocation Methodology

I. Proposed Additions to the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems

A. Background

The operator certification guidelines were developed to meet the requirements of section 1419(a) of the Safe Drinking Water Act (SDWA), as amended in 1996. Section 1419(a) directs the United States Environmental Protection Agency (EPA) to develop guidelines specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity public water systems and to publish final guidelines by February 6, 1999. The final guidelines were published in the **Federal Register** on February 5, 1999 (64 FR 5916)—see Docket #W–98–07, Operator Cert., II–A.1. Pursuant to section 1419(b) of the SDWA, beginning two years after the date on which EPA publishes guidelines for the certification (and recertification) of operators of community and nontransient noncommunity public water systems (or February 5, 2001), EPA shall withhold 20 percent of the funds a State is otherwise entitled to receive under SDWA section 1452 unless a State has adopted and is implementing a program that meets the requirements of EPA's operator certification guidelines. Section 1452 establishes a Drinking Water State Revolving Fund (DWSRF) program to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the Act. Section 1452 authorizes EPA to award capitalization grants to States, which in turn provide low cost loans to eligible systems and other types of assistance. Under section 1452, States can also set aside a portion of their capitalization grant to use for State program management purposes relating to implementation of the public water system supervision, source water protection, operator certification and capacity development programs. States must meet the requirements contained in EPA's operator certification guidelines to avoid DWSRF capitalization grant withholding. There are no other sanctions for States with operator certification programs that do not meet the requirements of the

guidelines. All funds withheld by EPA shall be reallotted based on the formula originally used to allot those funds. These withheld funds will be realloted to States who are implementing a program that meets EPA's guidelines. A State that has not met the requirements of the guidelines is not eligible to receive reallotment of withheld funds.

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA must obtain approval from the Office of Management and Budget (OMB) to collect information from the States required under the Operator Certification Guidelines as well as the Operator Certification Expense Reimbursement Grants Program. EPA is expecting to obtain approval of an Information Collection Request (ICR) for this information later this year. Advance notice of the ICR will be published in the **Federal Register** for public comment before it is submitted to OMB. EPA may not conduct, or sponsor, and a person is not required to submit to a collection of information unless the Agency has OMB approval for collection of the information.

B. General Review and Withholding Process Information

This proposal covers the deadlines for States to submit their operator certification programs to EPA, time frames for EPA to review States programs, time frames for States to address any identified deficiencies, and time frames for EPA to make withholding decisions. DWSRF withholding decisions will be made on an annual basis once a State has received EPA approval that its program meets EPA's guidelines. Annual decisions will be based upon a State's ongoing implementation of its operator certification program.

In developing an approach for reviewing State operator certification programs and making withholding decisions, EPA sought to: (a) Establish a consistent date for all States to meet the requirements of the guidelines; (b) provide States with sufficient time to make changes in their programs in response to EPA review before EPA permanently withholds funds; and (c) allow future operator certification program decisions to be made at the beginning of the fiscal year so that States can plan for their use of DWSRF program funds.

States have two options for submitting their programs to EPA for review. Section 1419(c) recognizes that some States may have existing operator certification programs that meet the public health objectives of the guidelines and allows those States to submit their existing programs as "substantially equivalent" to the guidelines instead of requiring those States to make revisions to their programs. Alternatively, States that must make changes to their existing programs may submit revised programs to meet the requirements of EPA's guidelines.

Section C explains EPA's proposed schedule for States that intend to submit their existing operator certification programs as "substantially equivalent" programs. Section D explains EPA's proposed schedule for States planning to revise their operator certification programs.

EPA is specifically seeking comment on the process for reviewing and making withholding determinations for operator certification program submittals. The two approaches will be finalized and published in the **Federal Register** after receiving public comment. These approaches will then be included as part of the final operator certification guidelines in section III (Program Submittal Process), subsection A (Submittal Schedule and Withholding Process), which is currently reserved.

C. Review Process and DWSRF Withholding Determinations for Substantially Equivalent State Operator Certification Programs

As required by section 1419(c) of the SDWA, any State which submits its existing program to EPA as "substantially equivalent" to the EPA guidelines must do so by August 5, 2000. If EPA does not act on a program submitted as "substantially equivalent" within nine months of submittal, the program is deemed to meet the requirements of the guidelines. However, EPA will strive to complete its reviews of State programs within six months. States are encouraged to submit their final operator certification programs to EPA for review before the August 5, 2000 deadline (Diagram 1 at the end of this section has been included as a visual aid for understanding the following schedule).

The proposed approach for review of a State's initial operator certification program is:

- A State must submit its program to EPA for review by August 5, 2000. Any State program that is submitted after August 5, 2000 will be considered a revised program and will follow the schedule in section D.
- Within six months of a State submittal, and no later than February 5, 2001, EPA will complete its review of a State program. At that time, EPA will either make a determination that the program is substantially equivalent or will issue a Notice of Disapproval and will provide a list of deficiencies to the State.
- A State has six months after receipt of a Notice of Disapproval to correct deficiencies and submit the changes to EPA. EPA will approve or disapprove the State's program by September 30, 2001.

The proposed approach for withholding decisions based on a State's initial operator certification program submittal is:

- If a State program is submitted but EPA has not yet determined that it meets the guidelines on February 5, 2001, 20% of unawarded FY 2001 funds will be held back (but not permanently withheld).
- If a State program is approved by September 30, 2001, held back FY 2001 funds will be released to the State.
- On October 1, 2001, a State with a disapproved program will permanently lose any held back funds from FY 2001, plus 20% of FY 2002 funds.

The proposed approach for withholding decisions based on a State's annual operator certification program submittal is:

- Any State whose program is approved on or before September 30, 2000 is required to undergo its first annual review of its operator certification program on or before September 30, 2001.
- If EPA finds that the State's annual submittal does not meet the guidelines, the State will permanently lose 20% of FY 2002 funds on October 1, 2001.
- On or before September 30, 2002, and annually thereafter, EPA will review a State's operator certification program and make any necessary determinations to withhold funds from the upcoming fiscal year's allotment.

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Proposed Submittal Schedule for "Substantially Equivalent" Programs (Diagram #1)

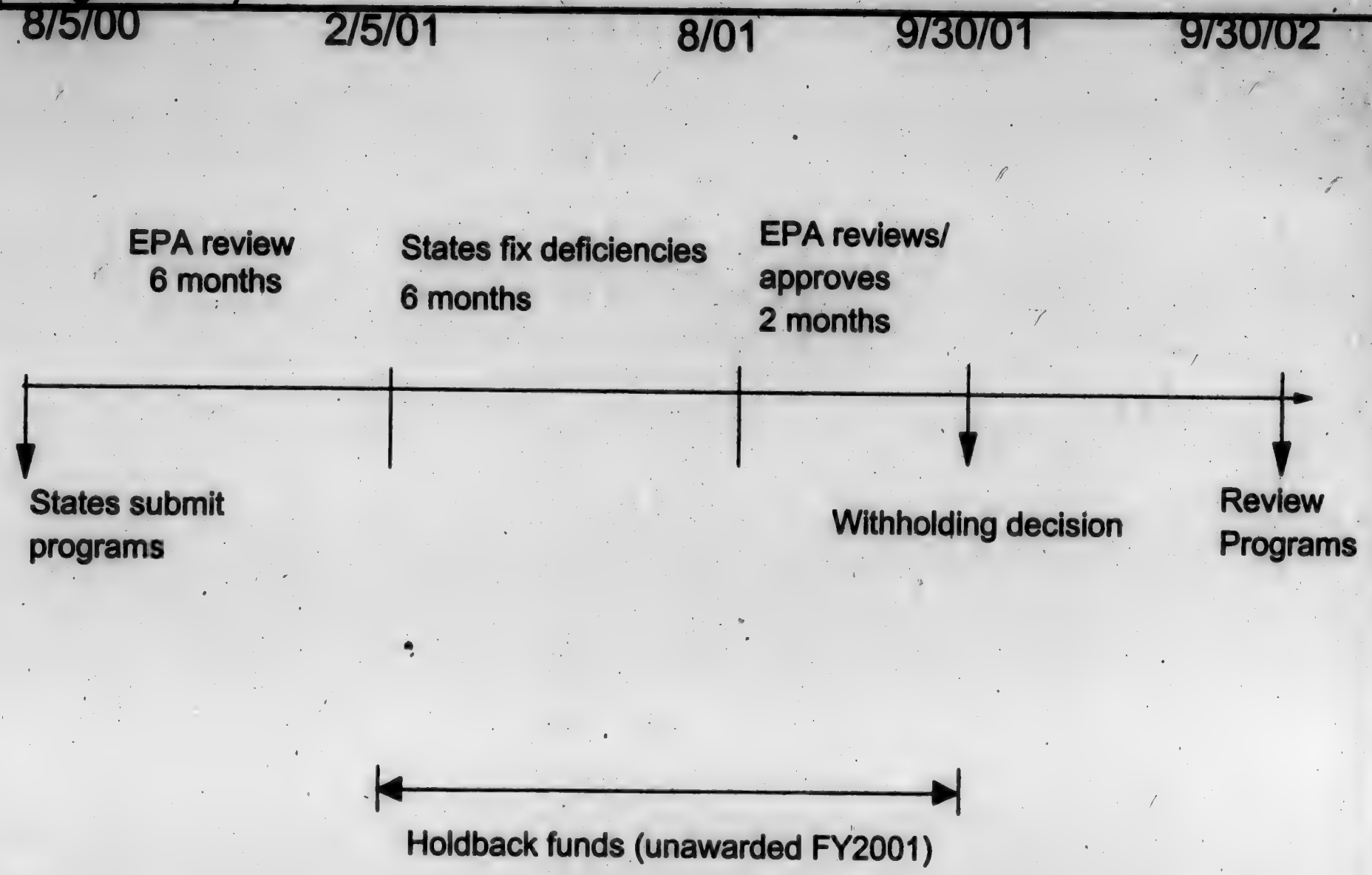

D. Review Process and DWSRF Withholding Determinations for Revised State Operator Certification Programs

If a State makes revisions to its existing program in order to meet the requirements of the guidelines, the State will submit its program as a revised program. States are required to submit their revised programs by February 5, 2001, however all States are encouraged to submit their operator certification programs to EPA for review before this deadline (Diagram 2 at the end of this section has been included as a visual aid for understanding the following schedule).

The proposed approach for review of a State's initial operator certification program and for making withholding decisions is:

• A State must submit its initial operator certification program to EPA for review by February 5, 2001. If a State does not submit its program to EPA by February 5, 2001, the State will immediately lose 20% of unawarded FY 2001 funds. The guidelines require States to submit an Attorney General's certification, a full description and explanation of how the State's operator certification program complies with the requirements of the guidelines and a copy of the State's operator certification regulations. There may be situations where a State's legislative schedule would not allow a State to have final regulations certified by the Attorney General by February 5, 2001. In these situations, States must submit regulations that have been adopted by the implementing agency or agencies but are awaiting legislative approval, a schedule for final adoption by the State legislature and a full description of how the State's program complies with the requirements of the guidelines. The State must submit its Attorney General's certification immediately once its regulations have been approved by the legislature, but no later than September 30, 2002.

• Between February 5, 2001, and September 30, 2002, EPA will hold back 20% of unawarded FY 2001 and FY 2002 funds from any State that submits its program to EPA by the February 5, 2001 deadline but that has not yet received EPA approval of its program.

• Within six months of a State's submittal date, EPA will complete its review of State programs that were submitted by the February 5, 2001 deadline. At that time, EPA will determine that either the State's program meets EPA's guidelines or will provide a list of deficiencies to the State.

• States have until September 30, 2002 to correct deficiencies and to receive EPA approval of its operator certification program in order to receive any FY 2001 and FY 2002 funds that were held back from the State.

• On September 30, 2002 a State that does not have an EPA approved program will lose any held back FY 2001 and FY 2002 funds.

• On October 1, 2002, a State that does not have an EPA approved program will lose 20% of its FY 2003 funds.

The proposed approach for withholding decisions based on a State's annual operator certification program submittal is:

• Any State that has received EPA approval of its initial operator certification program before September 30, 2000 is required to undergo its first annual review of its operator certification program on or before September 30, 2001. If EPA finds that the State's annual submittal does not meet the guidelines, the State will permanently lose 20% of its FY 2002 funds on October 1, 2001.

• Any State that receives EPA approval of its initial operator certification program between October 1, 2000 and September 30, 2001 is required to undergo its first annual review of its operator certification program between October 1, 2001 and September 30, 2002. If EPA finds that the State's annual submittal does not meet the guidelines, the State will permanently lose 20% of its FY 2003 funds on October 1, 2002.

• On or before September 30, 2003, and annually thereafter, EPA will review a State's operator certification program and make any necessary determinations to withhold funds from the upcoming fiscal year's allotment.

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Proposed Submittal Schedule for "Revised" Programs (Diagram #2)

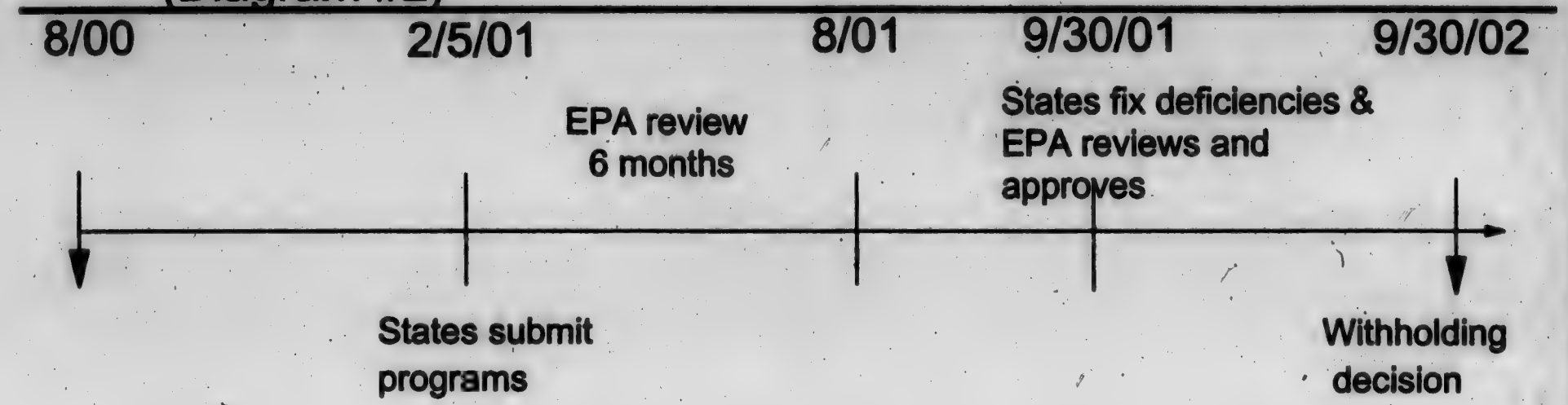

Holdback funds (unawarded FY2001 and FY2002)

EPA permanently withholds 20% of FY 2001 DWSRF funds if a State fails to submit its program for review by Feb 5, 2001

E. Validated Exam Issue

The Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems contains nine baseline standards that States are required to adopt and implement in their operator certification programs. States are required to classify all of their community and nontransient noncommunity water systems (including all treatment facilities and/or distribution systems). States are also required to develop specific operator certification and renewal requirements for each level of classification. The baseline standard for Operator Qualifications specifies that State programs must require that for an operator to become certified, the operator must "take and pass an exam that demonstrates that the operator has the necessary skills, knowledge, ability and judgement as appropriate for the classification". Furthermore, this baseline standard specifies that "all exam questions must be validated". At the end of the guidelines, EPA includes a definition of "validated exam". EPA defines a validated exam to be "an exam that is independently reviewed by subject matter experts to ensure that the exam is based on a job analysis and related to the classification of the system or facility". EPA is requiring States to validate exams for operators because it will ensure that exams cover the fundamental skills, knowledge, ability and judgement required to safely operate water systems as well as determine the competency of operators.

The requirement that "all exam questions must be validated" is not entirely consistent with the reference to "validated exam". EPA believes that an exam that is made up of validated questions may not include the full spectrum of information that an operator needs to know in order to properly operate a water system. EPA is therefore requesting comment on an amendment to the guidelines that would clarify EPA's intent that all exams, not just exam questions, be validated.

II. Proposed Allocation Methodology for the Operator Certification Expense Reimbursement Grants Program

A. Background

Section 1419(d) of the SDWA requires EPA to reimburse the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating community and nontransient noncommunity public water systems serving 3,300 persons or fewer that are required to undergo training pursuant to EPA's operator certification guidelines. The reimbursement is to be provided through grants to States. Each State is to receive an amount sufficient to cover the reasonable costs for training all such operators in the State. The amount each State will receive to cover the reasonable costs for training will be determined by the Administrator of EPA. Section 1419(d) also authorizes an appropriation of $30 million in funding for this reimbursement each year from FY 1997 through FY 2003 and stipulates that, if this appropriation is not sufficient, EPA shall reserve these funds from the national DWSRF program appropriation. It is EPA's intention to set aside funds for expense reimbursement from the national DWSRF program appropriation.

The grants are first to be used to provide reimbursement for training and certification costs of persons operating community and nontransient noncommunity water systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for capitalization grants under section 1452 of the SDWA.

B. Administration of the Grants Program

States may apply for and receive the expense reimbursement grant funds in accordance with the requirements of 40 CFR part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments) once their operator certification program has received approval by EPA. A State has two years from the date of initial program approval to apply for and receive its expense reimbursement grant. Funds not obligated within this two year period will be reallotted to States for use in the DWSRF program based on the formula used to allot the DWSRF funds. If sufficient funds are not available to fully fund the expense reimbursement grant, the two year period shall begin on the date the funds become available. EPA will notify States of the availability of funds.

In order to receive funding, a State must submit an application for an expense reimbursement grant. EPA will require States to submit a work plan and annual progress report on how these funds are to be used in meeting the requirements of section 1419(d). After a State has reimbursed all such costs pursuant to section 1419(d)(1), the State may, after notice to the Administrator of EPA, use any remaining funds from the grant for any of the other purposes authorized for capitalization grants under section 1452 of the SDWA. The notification for using the remaining expense reimbursement grant funds for any of the other purposes authorized for capitalization grants under section 1452 must include supporting documentation that the State has met the requirement for training and certifying its operators. The State will also be required to explain in a work plan how the remaining funds will be used. States will be given broad discretion on how to implement the expense reimbursement grants program to best meet the needs of the systems in the State and to minimize the administrative expenses in carrying out this program.

EPA's intention to set aside funds for the expense reimbursement grants program from the national DWSRF program appropriation has triggered questions concerning whether EPA should require a 20% State match pursuant to section 1452(e). Even though the funds have been appropriated under section 1452, EPA believes that since the expense reimbursement grants program is authorized under section 1419(d), there should be no 20% match requirement for this grant because there are no match requirements for funds awarded pursuant to that section. EPA, however, believes that any remaining funds from this grant program that States may use for any of the other purposes authorized for capitalization grants under section 1452 should require a 20% match, and is specifically seeking comment on this issue.

C. Program Funding

EPA estimates that between $97 million to $131 million will be needed for the expense reimbursement grants program between FY 1999, when the final operator certification guidelines were published, and FY 2003, the last year for which these grants are authorized. This estimate represents the range of the total amount of funding that EPA believes is necessary to initially train and certify operators of community and nontransient noncommunity water systems serving 3,300 persons or fewer to meet the requirements of the guidelines. EPA has developed this estimate based on the assumptions listed below:

Funding Assumptions

1. Total number of community and nontransient noncommunity water systems serving 3,300 or fewer persons = 65,255 (from Safe Drinking Water Information System (SDWIS) database).

2. Number of operators per system (see options listed below).

3. ½ of the operators would be unsalaried and therefore would be eligible for per diem.

4. Per diem = $100/day (Per diem is a daily allowance that would cover the costs of lodging and meals; for unsalaried operators only).

5. Four days of per diem assumed for class attendance (two days per training class).

6. The cost of all training classes estimated at $300/class.

7. Two training classes per operator for initial certification or certification renewal.

8. $75 fee for initial certification/ certification renewal.

9. For mileage purposes, assume two round trips (one round trip for each training class).

10. Number of miles per round trip = 200.

11. Mileage reimbursement estimated at $.31/mile (for all operators).

The range of the total amount of funding necessary for reimbursement is primarily driven by the number of operators per system who would require reimbursement. EPA is proposing three options for this assumption:

- 2 operators per system
- 1.5 operators per system
- 2 operators per community water system (CWS) and 1 operator per nontransient noncommunity water system (NTNCWS)

EPA will determine the allotment for each State by substituting the number of community and nontransient noncommunity water systems serving 3,300 persons or fewer for a particular State under Assumption #1.

For example, if a State has 1,000 eligible water systems, the allocation would be calculated as follows using the option of 2 operators per system:

Funding Assumptions

1.Total number of community and nontransient noncommunity water systems serving 3,300 or fewer persons = 1,000.

2. Number of operators per system = 2×1,000 = 2,000.

3. ½ of the operators would be unsalaried and therefore would be eligible for per diem = 2,000×½ = 1,000.

4. Per diem = $100/day (Per diem is a daily allowance that would cover the costs of lodging and meals; for unsalaried operators only) = 1,000×$100 = $100,000.

5. Four days of per diem assumed for class attendance (two days per training class) = 4×$100,000 = $400,000.

6. The cost of all training classes estimated at $300/class.

7. Two training classes per operator for initial certification or certification renewal = 2×$300×2,000 = $1,200,000.

8. $75 fee for initial certification/ certification renewal = $75×2,000 = $150,000

9. For mileage purposes, assume two round trips (one round trip for each training class).

10. Number of miles per round trip = 200×2 = 400.

11. Mileage reimbursement estimated at $.31/mile (for all operators) = 400×$.31×2,000 operators = $248,000.

By adding the dollar amounts listed under assumptions 5, 7, 8 and 11, the proposed amount of money for the grant would be $1,998,000.

EPA is seeking comment on the method for estimating costs, and specifically, on the following issues:

1. Which one of the three options for the number of operators per system is the most reasonable for purposes of calculating the total amount of funding?

2. Are the additional assumptions (1, 3–11) proposed for calculating the total amount of funding reasonable assumptions?

3. Are there other assumptions that should be used?

D. Allocation Methodology

EPA evaluated several options for allocating the funds among States. Four options that were evaluated for allocating the funds to States were: (1) An allocation methodology based on the 1999 Drinking Water Infrastructure Needs Survey; (2) an allocation methodology based on the Public Water System Supervision grants formula; (3) an allocation methodology based on the number of community and nontransient noncommunity water systems serving 3,300 or fewer in each State; and (4) an allocation methodology based solely on systems which must have a certified operator for the first time as a result of the newly published guidelines.

EPA recommends allocating the funds based on the number of community and nontransient noncommunity water systems serving 3,300 or fewer in each State (option three). EPA believes that this allocation methodology is the most easily understood and it appears to be the most equitable option of those which were evaluated. The number of systems serving 3,300 persons or fewer is readily available from EPA's national SDWIS database.

EPA's recommended approach of allocating the funds based on the number of community and nontransient noncommunity water systems serving 3,300 or fewer in each State is supported by the National Drinking Water Advisory Council, which is a group of stakeholders consisting of members of the general public, State and local agencies, water systems and private groups concerned with safe drinking water.

EPA believes that an allocation methodology based on the number of systems which must have a certified operator for the first time would penalize those States which already require small systems to have certified operators or would penalize those States that moved ahead to improve their operator certification programs before the guidelines were published. Currently, EPA cannot accurately predict the number of new operators that must be certified and/or identify systems with operators whose certification must be upgraded to meet the guidelines.

EPA will finalize the allocation methodology and publish it in the **Federal Register** after receiving public comment.

Dated: June 27, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–18434 Filed 7–19–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6734–6]

Notice of Availability of Proposed National Pollutant Discharge Elimination System ("NPDES") General Permit for Offshore Oil and Gas Exploration, Development and Production Operations off Southern California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed NPDES General Permit (Reissuance).

SUMMARY: The Regional Administrator, EPA, Region 9, is proposing to issue an NPDES general permit (permit No. CAG280000) for discharges from oil and gas exploration, development and production operations in Federal waters offshore of the State of California. This document announces the availability of the proposed general permit and fact sheet for public comment. When issued, the proposed permit will establish effluent limitations, prohibitions, and other conditions on discharges from facilities in the general permit area. These conditions are based on the administrative record.

This document also announces the availability of the following documents

for public review: (1) Ocean Discharge Criteria Evaluation ("ODCE") which evaluates the proposed discharges for compliance with the requirements of section 403(c) of the Clean Water Act ("CWA"), (2) two biological assessments ("BAs") (for two different groups of species) which evaluate the proposed discharges for compliance with the requirements of the Endangered Species Act, and (3) an essential fish habitat ("EFH") assessment which evaluates the proposed discharges for compliance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments on the proposed general permit must be received or postmarked no later than September 5, 2000.

Public Hearing: A public hearing to receive public comment concerning the proposed general permit will be held at the time and location provided below:

Date: August 23, 2000.
Time: 2 p.m.
Place: Santa Barbara County Administration Building, 105 E. Anapamu Street, Santa Barbara, CA 93101

ADDRESSES: Public comments and requests for coverage should be sent to: Environmental Protection Agency, Region 9, Attn: CWA Standards and Permits Office, WTR–5, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, EPA, at the address listed above or telephone (415) 744–1906. Copies of the proposed general permit and fact sheet will be provided upon request and are also available at EPA, Region 9's website at http://www.epa.gov/region09/water/.

SUPPLEMENTARY INFORMATION: *State Consistency Review:* This document will also serve as Public Notice of the intent of the State of California, California Coastal Commission ("CCC"), to review this action for consistency with the approved California Coastal Management Program ("CCMP"). Persons wishing to comment on the issue of consistency with the CCMP should submit written comments to the California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105–2219. Comments should be addressed to the attention of California Coastal Management Program Consistency Review. Comments may be submitted to the CCC from the date of publication of this notice in the **Federal Register** until the CCC has conducted its review of this action (which will occur as soon as possible after close of the 45-day comment period announced by this notice, but in no event later than 180 days after commencement of the CCC's review).

Administrative Record: The proposed NPDES general permit and other related documents in the administrative record are on file and may be inspected any time between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays, at the addresses shown below. U.S. EPA, Region 9, CWA Standards and Permits Office (WTR–5), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Summary of Terms and Conditions of Proposed General Permit

A. Facility Coverage. The proposed general permit would apply to existing development and production platforms, and new exploratory drilling operations in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, located in and discharging to 83 specified lease blocks in Federal waters on the Pacific Outer Continental Shelf ("OCS"), offshore Southern California. There are currently 22 existing production platforms on the Pacific OCS. New source production platforms would not be covered by the proposed permit and would require individual permits.

All dischargers requesting coverage under the permit would be required to submit a Notice of Intent ("NOI"). Information to be provided includes the legal name and address of the owner or operator, the facility name and location, type of facility and discharges, lease block, previous permits, and the receiving water. EPA may require any person authorized by the general permit to apply for and/or obtain an individual NPDES permit if the terms of the general permit are determined to not be appropriate for a particular facility.

B. Types of Discharges Authorized. The proposed general permit would authorize the following discharges (subject to the terms and conditions of the permit) in all areas of coverage: drilling fluids and drill cuttings; produced water; well treatment, completion and workover fluids; deck drainage; domestic and sanitary waste; blowout preventer fluid; desalination unit discharge; fire control system test water; non-contact cooling water; ballast and storage displacement water; bilge water; boiler blowdown; test fluids; diatomaceous earth filter media; bulk transfer material overflow; uncontaminated freshwater; water flooding discharges; laboratory wastes; excess cement slurry; hydrotest water; and hydrogen sulfide gas processing waste water.

C. Effluent Limitations. The proposed general permit includes effluent limitations based on Best Conventional Pollutant Control Technology ("BCT") for the control of conventional pollutants, Best Available Treatment Economically Achievable ("BAT") for the control of toxic and nonconventional pollutants and (3) additional effluent limitations based on section 403(c) (ocean discharge requirements) of the CWA. BAT and BCT effluent limitations guidelines were promulgated by EPA on March 4, 1993 (58 FR 12454) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. These BAT/BCT effluent limitations have been included in the proposed permit, along with certain additional effluent limitations based on section 403(c) of the CWA. In addition, monitoring requirements have been included to ensure compliance with the effluent limitations.

EPA currently lacks sufficient information to establish appropriate final effluent limitations for certain pollutants (primarily heavy metals and toxic organics) in produced water discharges. For these pollutants, the proposed permit would require monitoring to evaluate whether the discharges have a reasonable potential to cause or contribute to exceedances of marine water quality criteria. Based on the results of the monitoring (which would be available approximately 2½ years into the term of the permit), the permit may be reopened to include additional effluent limitations.

In view of the variety of pollutants in produced water, the proposed permit also requires chronic whole effluent toxicity ("WET") monitoring to measure the aggregate toxic effects of the pollutants. If toxicity is detected, accelerated testing would be required by the permit, and if the toxicity persists, a Toxicity Reduction Evaluation ("TRE") would be required along with a Toxicity Identification Evaluation ("TIE") to identify the specific chemical(s) causing the toxicity.

D. Ocean Discharge Criteria Evaluation (ODCE). Section 403 of the CWA requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the potential degradation of the marine environment. Guidelines for evaluating proposed discharges are found at 40 CFR part 125, subpart M (Ocean Discharge Criteria regulations).

An ODCE has been prepared entitled "Ocean Discharge Criteria Evaluation South and Central California for NPDES

Permit No. CAG280000" dated January 2000, which evaluates the discharges which would be authorized by the proposed general permit. After review of the ODCE, and other available data and studies in the administrative record for the permit, EPA has tentatively concluded that the proposed discharges would not cause unreasonable degradation of the marine environment. However, this conclusion will be re-evaluated based on comments received on the proposed permit.

E. Endangered Species Act. The area covered by the proposed permit potentially includes species under the jurisdiction of both the U.S. Fish and Wildlife Service ("USFWS") and the National Marine Fisheries Service ("NMFS"). As such, EPA prepared separate BAs to assess the potential impacts of the permit reissuance on listed species under the jurisdiction of the USFWS and NMFS. Both BAs concluded that there would be no effect on listed species. EPA is providing copies of the draft permit and fact sheet along with the appropriate BA to the Long Beach office of the NMFS and the Ventura Field Office of the USFWS for review and comment on EPA's conclusions concerning the effects of the proposed discharges on listed species.

F. Coastal Zone Management Act. The Coastal Zone Management Act ("CZMA") provides that a Federal license or permit for activities affecting the coastal zone of a state may not be granted until a state with an approved Coastal Management Plan ("CMP") concurs with a certification that the activities authorized by the permit are consistent with the CZP (CZMA section 307(c)(3)(A)). In California, the CZMA authority is the CCC. In this case, EPA will be preparing and submitting to the CCC the required certification. Since the necessary consistency concurrence has not been obtained, the proposed permit provides that the permit will not become effective until the required concurrence of the CCC is obtained.

G. Magnuson-Stevens Fishery Conservation and Management Act. In accordance with the requirements of the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act, EPA prepared an assessment of the effects of the proposed discharges on EFH in the area covered by the permit. The assessment concludes that while there may be effects on EFH from certain discharges near an outfall, these effects should be minor overall given the small area which may be affected relative to the size of the EFH off the Pacific Coast, and the mitigation provided by the various effluent limitations which are proposed for the permit. EPA has provided a copy of the assessment to NMFS to initiate a consultation. Upon completion of the consultation, NMFS will provide conservation recommendations to EPA based on its review of the EFH assessment. Although NMFS's recommendations are non-binding on Federal agencies, the final permit may nevertheless include additional or modified requirements based on NMFS's review.

H. Permit Effective Date and Appeal Procedures. To ensure smooth transition and allow current operators time to apply and prepare for the new requirements, the effective date of the general permit is proposed as the first day of the month that begins at least 45 days after the CCC concurs with the certification provided by EPA that the discharges authorized by the permit are consistent with the approved California CMP.

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any condition of the individual permit (40 CFR 124.19 as modified on May 15, 2000, 65 FR 30886).

I. Paperwork Reduction Act. The information collection required by this permit has been approved by Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

J. Economic Impact (Executive Order 12866). Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this proposed general permit is not a "significant regulatory action" under the terms of Executive Order 12866.

K. Unfunded Mandates Reform Act. Section 201 of the Unfunded Mandates Reform Act ("UMRA"), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)"). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act ("RFA"). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act ("APA")], or any other law. * * *"

As discussed in the RFA section of this document, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA has determined that the proposed general permit does not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

EPA also believes that the proposed general permit will not significantly nor uniquely affect small governments. For UMRA purposes, "small governments"

is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The proposed general permit also will not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the proposed general permit.

L. Regulatory Flexibility Act. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA takes the position that NPDES general permits are not subject to rulemaking requirements under APA section 553 or any other law. The requirements of APA section 553 apply only to the issuance of "rules," which the APA defines in a manner that excludes permits. See APA section 551(4), (6) and (8). The CWA also does not require publication of a general notice of proposed rulemaking for general permits. EPA publishes draft general NPDES permits for public comment in the **Federal Register** in order to meet the applicable CWA procedural requirement to provide "an opportunity for a hearing." CWA section 402(a), 33 U.S.C. 1342(a).

M. Signature. Accordingly, I hereby find consistent with the provisions of the RFA, that this proposed general permit will not have a significant impact on a substantial number of small entities.

Authority: CWA, 33 U.S.C. 1251 *et seq.*

Dated: July 5, 2000.

Alexis Strauss,

Acting Regional Administrator, Region 9.

[FR Doc. 00–17750 Filed 7–19–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

National Charters Booklet

Notice and Request for Comment

AGENCY: Farm Credit Administration.

SUMMARY: The Farm Credit Administration (FCA or Agency) is seeking comment on its May 3, 2000, publication entitled *National Charters* (Booklet). This Booklet, which the FCA sent to all Farm Credit System (System or FCS) institutions, provides guidance on the national charter application process and the national charter territory. Specifically, the Booklet explains how a direct lender association can apply for a national charter; what the territory of a national charter will be; and what conditions the FCA will impose in connection with granting a national charter. As explained in the Booklet, the FCA began accepting applications from System institutions on July 1, 2000. The FCA has received several requests from interested parties to publish the Booklet for public comment. Additionally, several interested parties have raised safety and soundness issues concerning national charters. While it is not subject to a notice and comment requirement, the Booklet has been on our Web site and available to the public since May 3, 2000. We agree that publishing the Booklet in the **Federal Register** and providing an additional opportunity for interested parties to comment will assist the FCA Board as it makes future chartering decisions.

DATES: Please send your comments to us on or before August 31, 2000.

ADDRESSES: You may send comments by electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

Our objectives are to:

- Provide guidance for System institutions to apply for a national charter;
- Provide an additional opportunity for the public to comment on this guidance; and
- Address any safety and soundness concerns regarding national charters.

II. General Information

In July 1998, the FCA Board issued a philosophy statement that, among other things, announced the FCA's support for removing regulatory geographic barriers imposed on FCS institutions. Initially, the FCA approached this objective with a proposed rulemaking. On November 9, 1998, we published a proposed rule that would have eliminated geographic restrictions on direct lending, related services, and certain loan participations by amending or repealing several regulations in parts 611, 614, and 618. *See* 63 FR 60219 (Nov. 9, 1998). Although the 90-day comment period was scheduled to expire on February 9, 1999, we extended it until May 10, 1999, at the request of several commenters. *See* 63 FR 69220 (Dec. 16, 1998).

The FCA received considerable comments and insight during the 6-month public comment period on the proposed rule. On April 25, 2000, we published a final rule that deleted the requirements for a System institution to provide notice to or seek consent from other System institutions when it buys participation interests in loans originated outside its chartered territory. *See* 65 FR 24101 (Apr. 25, 2000). This final rule became effective on May 25, 2000. *See* 65 FR 33743 (May 25, 2000). Other parts of our original proposal—those that would have removed restrictions on direct lending and related services outside an institution's designated territory—remain pending.

III. National Charters

Through an Informational Memorandum dated March 8, 2000, issued to all FCS institutions, the FCA Board announced plans to remove the restrictions on direct lending and related services through the chartering process. The FCA exercises its powers to issue or amend charters under sections 2.0, 2.10 and 5.17 of the Farm Credit Act of 1971, as amended.

Through a second Informational Memorandum to all FCS institutions dated May 3, 2000, the FCA Board provided guidance on national charters by publishing a booklet entitled *National Charters*. The Booklet explains (1) how a direct lender association can apply for a national charter; (2) what the territory of a national charter will be;

and (3) that the FCA will impose certain conditions in connection with granting a national charter. The FCA published this Booklet after gathering information on removing regulatory geographic restrictions during the listening sessions at the Agency's annual Information Exchange meetings between the FCS institutions and the FCA Board held in March and April 2000.

The FCA believes removing unnecessary geographic restrictions through national charters is in the best economic interest of rural America. National charters will help level the playing field for all participants and provide benefits to farmers, ranchers and rural America.

National charters can improve safety and soundness risk by diluting the geographic risk in a System institution's loan portfolio. The FCA believes associations that hold national charters will be more geographically diverse and financially stronger than if we continue to restrict institutions to limited geographic areas, which can be prone to isolated weather and economic adversities.

As the safety and soundness regulator of the Farm Credit System, we are sensitive to any risk affecting System institutions. In order to correct any safety and soundness problems in the Farm Credit System, the FCA will continue to use its examination and enforcement powers to correct problems in FCS institutions.

National charters further support our July 1998 philosophy statement by removing existing geographic constraints on System entities. Removing these artificially imposed constraints will promote greater efficiency, improve customer service, and enhance the System's ability to meet the current and future needs of rural America. Furthermore, this action will allow FCS institutions to better structure their businesses as market forces and customer demands change. The FCA believes national charters will provide farmers, ranchers, and other eligible rural residents with more choices, which we believe will improve the availability, price, and quality of agricultural credit. Finally, national charters benefit rural communities as artificial regulatory territorial boundaries are removed. System institutions may elect to form new partnerships and alliances with each other and other commercial firms, which will benefit all of agriculture and rural America over time.

National charters will enable direct lender associations in the System to provide seamless credit to agricultural producers that do business across the United States without the burdensome and unnecessary notice and consent requirements currently in place. Removing these geographic constraints also will allow System institutions to better manage their credit risks by diversifying the geographic risk in their loan portfolios.

The Booklet imposes no requirements on System institutions or others. Rather, it is an announcement of our intended position on future chartering actions. Accordingly, it is not subject to a notice and comment requirement. Nevertheless, we are providing this notice and additional opportunity to comment to allow input from all interested parties as the FCA Board considers its future chartering decisions. We are taking this action in response to several requests from interested parties.

IV. National Charter Applications

The Booklet states that we will process all national charter applications we receive between July 1, 2000, and September 30, 2000, so that, if the FCA Board approves them, they will all be effective on January 1, 2001. By this notice, we seek additional comments on the Booklet and on the issues that national chartering raises. The Booklet is set forth below in its entirety. If you prefer to download the Booklet from our Web site, it has been posted there since May 3, 2000. The FCA Board will consider all comments as it makes future chartering decisions.

Dated: July 14, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

BILLING CODE 6705-01-P

FARM CREDIT ADMINISTRATION

National Charters

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National Charters:
What You Need to Know to Apply

This booklet provides guidance on the national charter application process and the national charter territory.

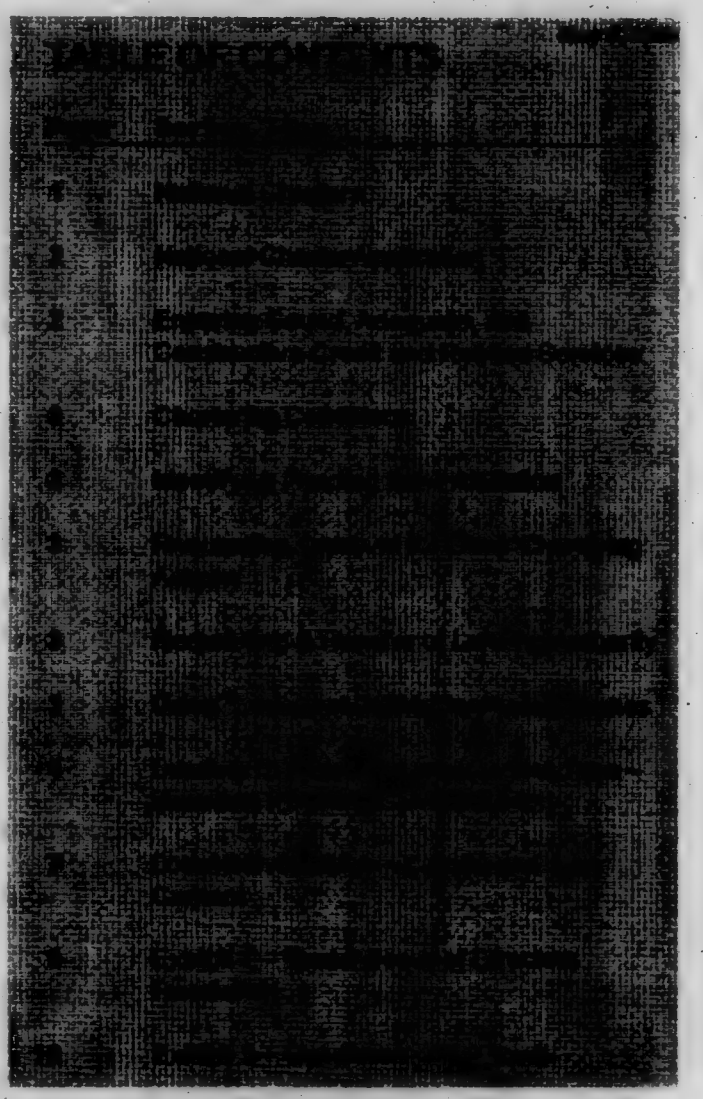

If you have any questions about applying for a national charter or other chartering matters, please contact:

Tom McKenzie, Director
Office of Policy and Analysis
(703) 883-4414
mckenziet@fca.gov

Ed Harshbarger, Director
Risk Analysis Division
(703) 883-4455
harshbargere@fca.gov

For additional information, visit the FCA's Web site:
www.fca.gov

National Charters

Any Farm Credit System (FCS or System) direct lender association can apply for a national charter. If a direct lender association is part of a parent/operating subsidiary structure, both the parent and all subsidiaries must apply for a national charter at the same time. A full national charter includes the 50 states and the Commonwealth of Puerto Rico where a direct lender association can provide credit and related services. The Farm Credit Act of 1971 (Act), however, provides for various consents before the Farm Credit Administration (FCA) may amend the charters of direct lender associations to include the territories of certain other institutions. Those institutions are:

- Federal Land Bank Association of North Alabama, FLCA,
- Federal Land Bank Association of North Mississippi, FLCA,
- Federal Land Bank Association of South Alabama, FLCA,
- First South Production Credit Association,
- FLBA of South Mississippi,
- Louisiana Federal Land Bank Association, FLCA,
- Production Credit Association of Eastern New Mexico,
- Production Credit Association of New Mexico, and
- Production Credit Association of Southern New Mexico.

National charters will not permit associations to extend lending authorities in the listed institutions' territories unless the stockholders of those institutions consent. Those institutions' funding banks, and, for the New Mexico PCAs, their boards of directors, must also consent to the charter changes. National charters will include the territory of any of the above listed institutions for which consent is provided. Separately, the FCA is proposing a rule that will provide specific direction on voting procedures by these institutions. Also, associations can continue to seek consent from these institutions on a case-by-case basis under existing regulation § 614.4070.

Having a national charter will allow a direct lender association to expand its lending and related services activities. Even if a particular association does not apply for a national charter, its territory will be included in the charter of other associations that receive a national charter (except for institutions for which consent is required, as discussed above).

An association that receives a national charter must comply with certain business planning requirements. As discussed more fully in the section of this booklet entitled "Ensuring Sound, Adequate, and Constructive Credit and Related Services," each association must identify its competitive strategy and incorporate this strategy into its business planning process. An appropriate planning process will help associations take advantage of their special skills and operational capacities in identifying specific geographic regions, markets, or products for expanded activities.

A national charter will not change FCA regulations covering FCS corporate governance issues. A borrower who is an eligible farmer, rancher, aquatic producer or harvester, or eligible cooperative is entitled to hold voting stock and to serve as a director in the System association from which he or she has a loan, regardless of geographic location. The national charter provides more geographic diversification for selecting eligible stockholder directors. Each association's bylaws should address qualification requirements for members of its board of directors and any restrictions for serving on the board of more than one System association. See FCA regulations for additional guidance on association governance issues.

National Charter Application

Beginning July 1, 2000, any direct lender association may submit its application to the Secretary of the FCA Board. For most associations that apply by September 30, 2000, the application will consist of only one document — a certified resolution approved by the association's board of directors. The association does not need to submit its application to its supervising bank nor does the application need to include any other items listed in subpart G of part 611 of FCA regulations. The FCA may, however, require an association to submit additional information in its application if circumstances warrant. For example, the FCA may require associations operating under an order to cease and desist or a formal agreement to provide additional information in their national charter applications. The FCA may deny an association's request for a national charter if, for example, safety and soundness concerns exist.

Exhibit 1 contains a "model" resolution that associations may use. An association's board may adopt a different resolution, but to satisfy the FCA's application requirement the resolution must incorporate the association board's acceptance of the FCA's conditions of approval (discussed in the section of this booklet entitled "Chartering Conditions" and contained in Exhibit 2). The Corporate Secretary of the association's board must sign the resolution to certify board approval.

The FCA plans to expedite action on national charter applications received by September 30, 2000. All national charter applications received by this date, if the FCA Board approves them, will become effective on January 1, 2001. National charters will define the territory covered by the amended charter and the conditions the FCA imposes. The FCA will process applications received on or after October 1, 2000, using standard procedures.

Ensuring Sound, Adequate, and Constructive Credit and Related Services

System institutions must remain responsive to the needs of all types of agricultural producers and eligible FCS customers having a basis for sound and constructive credit. Each institution must continue to do its part in meeting the System's public-policy mission as defined in sections 1.1, 4.19, and other relevant provisions of the Act.

Each association that receives a national charter must revise its business plan (required by FCA regulation § 618.8440) to define where it plans to provide new or expanded services and demonstrate that it has sufficient capacity to provide those services in a safe and sound manner. In the context of national charters, revised business plans must be commensurate with lending and related services activities. The section of this booklet entitled "Lending Outside the Local Service Area — Business Planning Considerations," provides guidance on revising business plans to reflect the new opportunities that national charters offer.

System institutions must also continue to serve local customers by providing adequate credit and related services to them. Each association's national charter will define its Local Service Area (LSA). An association's LSA is its chartered territory as it exists on the day before the effective date of its national charter. The FCA expects associations to serve their LSAs by providing adequate credit and related services as contemplated in the Act. Associations must develop LSA Plans that address how they will continue to serve their local customers. These LSA Plans will supplement the business plan required by § 618.8440 of the regulations. The section of this booklet entitled "Local Service Area — Criteria and Plan Content" provides additional guidance for developing an LSA Plan.

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Chartering Conditions

To ensure associations consider the requirements discussed in the previous section, the FCA will impose the following conditions on approving an association's request for an amended charter to expand its territory:

- The association will be obligated to extend credit and offer related services to all eligible and creditworthy customers in its LSA;
- The association may exercise only those authorities authorized by its previous charter until it transmits to the FCA[1] a revised business plan, including an LSA Plan, that has been adopted by its board of directors and that incorporates the requirements set forth in this booklet; and
- The association must update its LSA Plan annually as part of adopting the operational and strategic business plan required by § 618.8440.

The association's board, as part of the resolution seeking a national charter, must accept these conditions. The "model" resolution in Exhibit 1 contains language that will meet this requirement. The exact language of the conditions is provided in Exhibit 2. The conditions must be attached to the association board's resolution.

Identifying Funding Bank Affiliation

A national charter will not change the funding and supervisory bank with which an association is affiliated. If an association wishes to change its funding bank affiliation, it must seek concurrence from its funding bank and submit a request separately from its national charter application.

Requesting Approval for Other Chartering Actions

In addition to accepting national charter applications, the FCA will continue to accept applications for mergers, consolidations, and ACA restructurings. Associations should keep these applications separate from national charter requests for several reasons. First, these applications require stockholder disclosure and approval, while national chartering requests do not. Second, the FCA will process all national chartering requests received by September 30, 2000, on a separate track to provide a uniform effective date. The FCA may not be able to meet this objective for a request that is combined with other applications. If associations with national charters merge or consolidate, their national charters will be transferred to the continuing associations.

PCAs and FLCAs may submit applications to convert to ACAs without merging with existing associations by creating temporary companion entities. To clarify the application process, the FCA anticipates issuing additional information later this year on how to apply for an ACA conversion. As with other chartering applications, associations should keep ACA conversion applications separate from national charter applications.

Those associations whose mergers, consolidations or restructurings will be effective by the close of business on December 31, 2000, may submit a national charter application for the continuing or resulting association. Each constituent association's board must submit a resolution requesting the national charter, which will be effective on January 1, 2001. If the transaction will not be effective until after January 1, 2001, the constituent associations should apply separately for national charters, which will be effective from January 1, 2001, until the transaction becomes effective.

Requesting a Transfer of Lending Authority

All remaining Federal land bank associations (FLBAs) should be direct lender associations by October 1, 2000. Any current FLBA that will become a direct lender association by October 1, 2000, may submit an application before September 30 for a national charter for the resulting FLCA. Otherwise, an FLBA may not apply for a national charter. The FCA will not issue national charters to FLBAs because they are lending agents of System banks and not direct lender associations.

Using Trade and Official Institution Names

The FCA Board is adopting a new policy on FCS institution names that explains how System institutions may use official and trade names and the criteria for official names. Institutions may continue to seek new official names. The FCA will process name change requests separately from national charter applications.

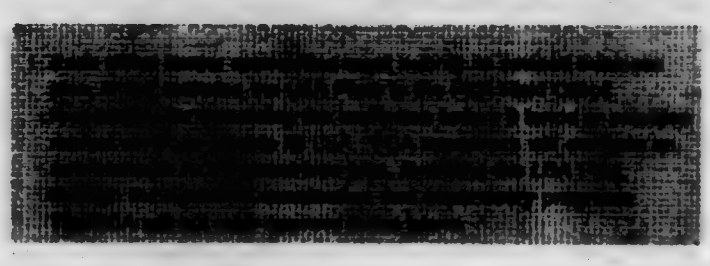

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Lending Outside the Local Service Area — Business Planning Considerations

A direct lender association may offer all lending and related service programs authorized by the Act and FCA regulations within its national charter territory. The FCA expects associations' boards of directors and senior management to establish appropriate controls to effectively implement their national charters and manage risk. The association's board and senior management must ensure that adequate operational and financial capacity exists and that appropriate procedures and controls are in place before lending and providing related services outside the LSA. If an institution extends loans and offers related services beyond its LSA, the potential exists that its risk exposure will increase, particularly if the institution offers new products, expands product delivery, or operates in new regions. The section of this booklet entitled "Local Service Area – Criteria and Plan Content" describes the LSA and related planning requirements.

An institution's business plan is a cornerstone of sound business management and risk control. Accordingly, an association with a national charter must revise its business plan to reflect the change in its operating environment created by the national charter. Revisions to the business plan should be commensurate with planned lending and related services activities outside its LSA. The revised business plan must comply with § 618.8440 and must:

- Assess the economic and market conditions facing the association;
- Define where an association's board plans to expand the association's lending and related services activities outside its LSA. The board may choose to target neighboring counties, states, or the entire national chartered territory.[2] The association may also choose to target a specific geographic area or a specific market or product, depending on its strategic focus; and
- Evaluate the effects that lending outside the association's LSA may have on meeting the association's objectives within its LSA.

This section provides guidance to System associations for developing their revised business plans as they expand their business activities.

Why do associations need to revise their business plans?

Associations need to revise their business plans to ensure they implement their national charters in a safe and sound manner. They also need to revise their business plans so they can identify appropriate market segments for their associations and address how they plan to lend outside their LSA. The business plan is the primary control for an association's board to ensure its lending is consistent with its financial and operational capacities. Business planning requires an association's board to consider all implications (risks and rewards) of lending in expanded areas. Therefore, the revised business plan ensures the association conducts lending outside its LSA in a reasonable manner, while not adversely affecting service to its LSA.

How should an association evaluate its existing market area in preparing its revised business plan to lend outside its LSA?

An association should evaluate its existing market area and identify its strengths and weakness. It should also identify geographic areas or market segments within its national charter where it can take advantage of its special skills or expertise, broaden its lending base, or diversify its loan portfolio. To help determine an association's goals and objectives for lending and providing related services outside its LSA, it should match its skills, expertise and financial capacity with the opportunities provided by a national charter.

What are the association board's responsibilities and how have they changed?

An association board's responsibilities increase in direct relationship to the new opportunities implemented and additional risks associated with lending outside traditional areas of expertise and the LSA. The board of directors should be actively involved in planning and carrying out new strategies. The board should consider appropriate operating parameters for lending outside the LSA commensurate with the association's risk-bearing capacity and the board and management's ability to control any risks associated with its business expansion plans.

2. Subject to statutory restrictions in certain geographic areas where the consent of other institutions and certain institutions is required.

When can a direct lender association begin to lend and provide related services outside its LSA?

An association can lend and provide related services outside its LSA after its national charter is effective and it submits a revised business plan, including an LSA Plan, to the FCA. The conditions for a national charter require an association's board to develop, approve, and implement a business plan, in accordance with § 618.8440, that fully incorporates the institution's plans for expansion of lending activities before making any loans and providing related services outside its LSA.

Does an association have to revise its business plan if it only wants to make a few loans or provide limited related services in a neighboring county?

Yes, but the depth of analysis in the business plan addressing lending and related services outside the LSA should be commensurate with the planned level of activity. For example, if the association plans to make only a few loans in neighboring counties outside its LSA, and this additional activity is inconsequential relative to risk funds, then the discussion in the business plan need not be extensive.

However, even if an association makes only a few loans outside its LSA, it may need to revise its loan pricing and underwriting policies to document clearly how these two critical areas will be affected. As with all lending, the association must comply with applicable regulations governing loan pricing and underwriting.

Must an association apply for a national charter to lend and provide related services outside its LSA?

Each association's board must choose whether to apply for a national charter. If the association chooses not to apply for a national charter, it still should consider revising its business plan to reflect changes in its operating environment. As other associations with national charters begin to offer products and services to customers in its territory, the competitive environment may change significantly. Accordingly, business planning is important for all institutions.

A national charter does not require an association to lend or provide related services outside its LSA. An association's board should use its business plan to direct "how, when, and where" the association intends to lend and provide related services outside its LSA.

How will revised business plans be evaluated and who will perform the evaluation?

Each direct lender association will be required to submit its revised business plan (including the LSA Plan discussed in the section of this booklet entitled "Local Service Area – Criteria and Plan Content") to the Office of Examination (OE) Field Office responsible for the ongoing examination of the association. Business plans must be submitted before the association begins to lend or provide related services outside of its LSA. After the first year, each association will submit a revised business plan as part of its annual submission to OE. Examiners will evaluate each association's business plan as part of the FCA's risk-based examination and supervisory program for that association. The FCA may require associations to submit additional information to facilitate the monitoring of their lending and related services inside and outside their LSAs. The FCA may also ask associations to submit their business plans in electronic format to facilitate storage and review.

What key elements should be addressed in a revised business plan?

The association's board and management should assess the economic and market conditions facing the association and its financial and operating capacity to succeed. Specifically, a board of directors should consider:

- How extending loans and offering related services outside the association's LSA will affect the association's ability to meet its goals within the LSA;
- How it will direct and control its association's lending and related service activities conducted beyond the LSA to ensure that such activities are conducted in a safe and sound manner;
- How programs for providing credit and related services to a broader customer base will affect organizational efficiency, customer service, risk management, and operational capabilities;
- What are the specific operating objectives and strategies for each program initiative;
- What types and amount of loans and related services will be offered in new markets;
- What is its risk-tolerance for loan volume outside the LSA, in relation to the association's risk-bearing capacity and loan portfolio concentrations;

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Lending Outside the Local Service Area — Business Planning Considerations

A direct lender association may offer all lending and related service programs authorized by the Act and FCA regulations within its national charter territory. The FCA expects associations' boards of directors and senior management to establish appropriate controls to effectively implement their national charters and manage risk. The association's board and senior management must ensure that adequate operational and financial capacity exists and that appropriate procedures and controls are in place before lending and providing related services outside the LSA. If an institution extends loans and offers related services beyond its LSA, the potential exists that its risk exposure will increase, particularly if the institution offers new products, expands product delivery, or operates in new regions. The section of this booklet entitled "Local Service Area – Criteria and Plan Content" describes the LSA and related planning requirements.

An institution's business plan is a cornerstone of sound business management and risk control. Accordingly, an association with a national charter must revise its business plan to reflect the change in its operating environment created by the national charter. Revisions to the business plan should be commensurate with planned lending and related services activities outside its LSA. The revised business plan must comply with § 618.8440 and must:

- Assess the economic and market conditions facing the association;
- Define where an association's board plans to expand the association's lending and related services activities outside its LSA. The board may choose to target neighboring counties, states, or the entire national chartered territory.[2] The association may also choose to target a specific geographic area or a specific market or product, depending on its strategic focus; and
- Evaluate the effects that lending outside the association's LSA may have on meeting the association's objectives within its LSA.

This section provides guidance to System associations for developing their revised business plans as they expand their business activities.

[redacted]

Associations need to revise their business plans to ensure they implement their national charters in a safe and sound manner. They also need to revise their business plans so they can identify appropriate market segments for their associations and address how they plan to lend outside their LSA. The business plan is the primary control for an association's board to ensure its lending is consistent with its financial and operational capacities. Business planning requires an association's board to consider all implications (risks and rewards) of lending in expanded areas. Therefore, the revised business plan ensures the association conducts lending outside its LSA in a reasonable manner, while not adversely affecting service to its LSA.

[redacted]

An association should evaluate its existing market area and identify its strengths and weakness. It should also identify geographic areas or market segments within its national charter where it can take advantage of its special skills or expertise, broaden its lending base, or diversify its loan portfolio. To help determine an association's goals and objectives for lending and providing related services outside its LSA, it should match its skills, expertise and financial capacity with the opportunities provided by a national charter.

[redacted]

An association board's responsibilities increase in direct relationship to the new opportunities implemented and additional risks associated with lending outside traditional areas of expertise and the LSA. The board of directors should be actively involved in planning and carrying out new strategies. The board should consider appropriate operating parameters for lending outside the LSA commensurate with the association's risk-bearing capacity and the board and management's ability to control any risks associated with its business expansion plans.

[redacted]

An association can lend and provide related services outside its LSA after its national charter is effective and it submits a revised business plan, including an LSA Plan, to the FCA. The conditions for a national charter require an association's board to develop, approve, and implement a business plan, in accordance with § 618.8440, that fully incorporates the institution's plans for expansion of lending activities before making any loans and providing related services outside its LSA.

[redacted]

Yes, but the depth of analysis in the business plan addressing lending and related services outside the LSA should be commensurate with the planned level of activity. For example, if the association plans to make only a few loans in neighboring counties outside its LSA, and this additional activity is inconsequential relative to risk funds, then the discussion in the business plan need not be extensive.

However, even if an association makes only a few loans outside its LSA, it may need to revise its loan pricing and underwriting policies to document clearly how these two critical areas will be affected. As with all lending, the association must comply with applicable regulations governing loan pricing and underwriting.

[redacted]

Each association's board must choose whether to apply for a national charter. If the association chooses not to apply for a national charter, it still should consider revising its business plan to reflect changes in its operating environment. As other associations with national charters begin to offer products and services to customers in its territory, the competitive environment may change significantly. Accordingly, business planning is important for all institutions.

A national charter does not require an association to lend or provide related services outside its LSA. An association's board should use its business plan to direct "how, when, and where" the association intends to lend and provide related services outside its LSA.

[redacted]

Each direct lender association will be required to submit its revised business plan (including the LSA Plan discussed in the section of this booklet entitled "Local Service Area – Criteria and Plan Content") to the Office of Examination (OE) Field Office responsible for the ongoing examination of the association. Business plans must be submitted before the association begins to lend or provide related services outside of its LSA. After the first year, each association will submit a revised business plan as part of its annual submission to OE. Examiners will evaluate each association's business plan as part of the FCA's risk-based examination and supervisory program for that association. The FCA may require associations to submit additional information to facilitate the monitoring of their lending and related services inside and outside their LSAs. The FCA may also ask associations to submit their business plans in electronic format to facilitate storage and review.

[redacted]

The association's board and management should assess the economic and market conditions facing the association and its financial and operating capacity to succeed. Specifically, a board of directors should consider:

- How extending loans and offering related services outside the association's LSA will affect the association's ability to meet its goals within the LSA;
- How it will direct and control its association's lending and related service activities conducted beyond the LSA to ensure that such activities are conducted in a safe and sound manner;
- How programs for providing credit and related services to a broader customer base will affect organizational efficiency, customer service, risk management, and operational capabilities;
- What are the specific operating objectives and strategies for each program initiative;
- What types and amount of loans and related services will be offered in new markets;
- What is its risk-tolerance for loan volume outside the LSA, in relation to the association's risk-bearing capacity and loan portfolio concentrations;

- What will the underwriting criteria be for loans and related services that will be offered in new geographic markets, taking into consideration the association's management capabilities and credit expertise and the servicing requirements of loans made outside the LSA; and
- How its loan pricing policies and strategies will achieve equitable rate treatment for lending activities inside and outside the LSA.

How should associations price their lending in the context of national charters?

Loan pricing is a critically important function in an association's operations and takes on added importance as national charters are implemented. Associations must establish equitable interest rates for all borrowers. Loan-pricing decisions directly affect the safety and soundness of associations through their impact on earnings, credit risk and, ultimately, capital adequacy. As such, associations must price loans in a manner sufficient to cover costs, provide the capitalization needed to ensure the association's financial viability, protect the association against losses, provide for stockholder needs, and allow for growth. Associations must have appropriate policy direction, controls, and monitoring and reporting mechanisms to ensure appropriate loan pricing both inside and outside their LSAs.

An association's board and management have the responsibility to establish appropriate loan pricing policies. Loan pricing decisions should ensure that the association is generating an adequate level of earnings, as measured by business plan goals to ensure the association achieves and maintains the optimum level of capital prescribed in the business and capital plans. Loan pricing must also achieve equitable interest rate treatment for lending activities among borrowers.

The importance of loan pricing requires that the association's board establish a formal policy that directs and controls pricing decisions. Section 614.4150(f) of FCA regulations requires each association to adopt a formal policy for loan pricing. As national charters are implemented, an association board should update loan pricing policies to ensure equitable treatment of borrowers in the new lending environment.

Do associations need to comply with special capital requirements to receive a national charter?

No. Associations must continue to comply with the existing capital requirements in part 615 of FCA regulations and make any necessary adjustments in their capital and business plans to reflect projected levels of risk in their loan portfolios. However, boards of directors may need to reevaluate the associations' optimum capital levels in light of the new environment. Depending on the business strategy selected, capital needs could go up or down.

What other regulations do association boards and management need to consider?

Existing regulations address several important matters that apply to all lending activities, whether inside or outside the LSA. Associations must ensure continued compliance with all applicable FCA regulations and revise their related policies and procedures to ensure they are appropriate for extending lending and related services beyond the LSA. Pertinent regulations that association boards should review as they revise business plans include:

§ 614.4150	Lending policies and loan underwriting standards.
§ 614.4155	Interest rates (requires adoption of an interest rate plan).
§ 614.4160	Differential interest rate programs.
§ 614.4510	General (loan servicing requirements).
§ 615.5200	General (capital adequacy).
§ 618.8015	Policy guidelines (related services).
§ 618.8430	Internal controls.
§ 618.8440	Planning.

When should associations contact if they have questions about these regulations as they revise their business plans?

An association should contact the Director of the OE Field Office with oversight responsibility for that association.

Will associations be required to disclose information about lending and related services outside their LSA?

Summary information on lending and related services inside and outside of the LSA should be made available to the stockholders and the public. One option would be to include this explanation in the Management Discussion and Analysis (MD&A) section of an association's annual report. Consequently, associations must segment their loan portfolios to ensure easy identification of loans made both within and outside their LSA.

The FCA Call Report provides routine information for reporting and monitoring of System activities and risk exposure. The FCA may revise submission requirements to include information on lending and related services offered inside and outside an association's LSA. Any revisions to the Call Report requirements will be made as part of the annual update process.

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Local Service Area — Criteria and Plan Content

As national charters are implemented, the FCA expects System institutions to continue to serve their local customers by providing adequate credit and related services. Associations should be responsive to the credit needs of all types of local agricultural producers having a basis for credit. As previously discussed, the FCA will require each direct lender association applying for a national charter to develop an LSA Plan to address how it will continue to serve its local customers.

When the FCA Board adopted its Philosophy Statement on July 14, 1998, it realized that removing geographic restrictions will help ensure the System continues to meet the current and future needs of agriculture and rural America. The FCA believes section 1.1 of the Act provides an excellent summary of the System's public-policy mission. As charters are expanded, each association should accomplish this mission mandate first in its LSA before expanding to new markets.

This section provides guidance to System associations for developing their LSA Plans to better serve their public-policy mission.

What is the [illegible] an LSA?

An LSA is that part of a direct lender association's chartered territory where it is obligated to extend credit and offer related services to all eligible and creditworthy customers.

The purpose of an LSA is to ensure each direct lender association does its part to help the FCS meet its public-policy mission. This mission includes providing dependable, sound, adequate, competitive, and constructive credit and related services to all eligible farmers and ranchers, aquatic producers and harvesters, their cooperatives, select farm-related businesses, and rural homeowners (collectively called "customers").

What is an LSA Plan?

An institution's LSA Plan includes an assessment of its LSA and strategies to ensure adequate service in its LSA. The LSA Plan is an integral supplement to the business plan required by § 618.8440. As discussed in the section entitled " Lending Outside the Local Service Area — Business Planning Considerations," the FCA will evaluate the LSA Plan as part of its examination and supervisory programs for each association.

The LSA Plan defines how the institution will meet the goals for its obligation to provide credit and related services to eligible customers.

How should each direct lender association assess service in its LSA territory?

Each association should assess service in its LSA territory by describing all segments of its existing market and evaluating how well it is serving each segment. In this context, market is defined broadly to include all existing and potential customers in each segment found within the LSA and is not limited only to those segments currently being served.

The assessment should identify any underserved segments of the territory and should be used to establish strategies to better serve any underserved segments identified in the LSA.

What types of information should the LSA territory assessment include?

Each direct lender association should gather information for its LSA that will allow it to develop strategies and consider alternatives to ensure the institution is providing adequate service to all market segments. Examples of such information include:

- Potential and existing customers in all market segments of the LSA.
- Farm typology (including ranching and aquaculture) — size, number, and commodities.
- Demographic data on median farm income, distribution of farm income, and the nature of farming enterprises.
- Sources and amounts of off-farm income and other employment opportunities.
- Level of competition from others for lending, investments, or related services.

- What will the underwriting criteria be for loans and related services that will be offered in new geographic markets, taking into consideration the association's management capabilities and credit expertise and the servicing requirements of loans made outside the LSA; and

- How its loan pricing policies and strategies will achieve equitable rate treatment for lending activities inside and outside the LSA.

[redacted]

Loan pricing is a critically important function in an association's operations and takes on added importance as national charters are implemented. Associations must establish equitable interest rates for all borrowers. Loan-pricing decisions directly affect the safety and soundness of associations through their impact on earnings, credit risk and, ultimately, capital adequacy. As such, associations must price loans in a manner sufficient to cover costs, provide the capitalization needed to ensure the association's financial viability, protect the association against losses, provide for stockholder needs, and allow for growth. Associations must have appropriate policy direction, controls, and monitoring and reporting mechanisms to ensure appropriate loan pricing both inside and outside their LSAs.

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When the FCA Board adopted its Philosophy Statement on July 14, 1998, it realized that removing geographic restrictions will help ensure the System continues to meet the current and future needs of agriculture and rural America. The FCA believes section 1.1 of the Act provides an excellent summary of the System's public-policy mission. As charters are expanded, each association should accomplish this mission mandate first in its LSA before expanding to new markets.

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- Sources and amounts of off-farm income and other employment opportunities.
- Level of competition from others for lending, investments, or related services.

- The direct lender association's capacity and constraints, including the size and financial condition of the institution, the economic climate, safety and soundness considerations, and any other factors that significantly affect the institution's ability to provide lending, investments, or related services in its LSA.
- The institution's current performance for serving each segment of its market and the performance of other lenders serving the market.

[redacted]

The LSA Plan must incorporate a broad variety of data from many different sources. A valuable place to start is the United States Department of Agriculture 1997 Census of Agriculture. You can visit their Web site at: http://www.nass.usda.gov/census/

[redacted]

The LSA establishes where each direct lender association is obligated to extend credit and offer related services. Each direct lender association must provide dependable, sound, adequate, competitive, and constructive credit and related services to all eligible and creditworthy customers within its LSA.

The LSA Plan should also make clear that the association must spend its resources to first achieve its public-policy mission within its LSA. Mission achievement creates the expectation that if left with only $1 to lend, the direct lender association would select the customer in its LSA over a comparable opportunity outside the LSA.

[redacted]

1. Lending Activity to Meet Core Objectives of the Farm Credit System in the LSA: Providing dependable, sound, adequate, competitive, and constructive credit and related services to all eligible and creditworthy customers. The LSA Plan should also address providing credit to rural homeowners within statutory requirements.
2. Innovative or Flexible Underwriting Practices: Using innovative or flexible lending practices in a safe and sound manner to address the credit needs of underserved and limited resource individuals or geographies. Examples include participation with Federal, state and local credit assistance programs to provide agricultural credit to specific market segments.
3. Alliances: Rural community development activities that may range from partnerships, strategic alliances, application of technology, legislative, and regulatory changes that provide more services to market segments within the LSA.
4. Related Services: Related financial services and technical assistance offered to eligible customers.
5. Use of Investment Opportunities: Purchase of assets that finance agriculture and related industries or otherwise support the mission of the Farm Credit System to increase the flow of funds to agriculture and rural markets.

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Exhibit 1

XXX Association[1]
Board of Directors Resolution

WHEREAS, the Farm Credit Administration (FCA) has announced that its priority is to remove geographic barriers in the Farm Credit System by granting national charters to direct lender associations, provided the associations requesting national charters agree to certain Conditions of Approval (Conditions);

WHEREAS, a national charter will offer XXX Association the potential of lowering its cost of credit, improving its customer service and enhancing its risk management, thereby enabling it to meet the current and future credit needs of agriculture and rural America;

WHEREAS, the Board of Directors of XXX Association believes it would be in the best interests of its stockholders to exercise its authorities in those areas it deems appropriate throughout the United States and the Commonwealth of Puerto Rico;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of XXX Association hereby authorizes its officers to apply to the FCA for a national charter and take any other action the officers deem necessary to obtain such charter.

BE IT FURTHER RESOLVED that the Board of Directors of XXX Association agrees to the attached Conditions, which the FCA requires in granting a national charter.

I, (name of corporate secretary), Corporate Secretary of XXX Association, certify that this resolution was adopted by the Board of Directors of XXX Association at a meeting duly held on (date).[2]

_____ (Date)

_____ (Name), Corporate Secretary

1. Replace XXX Association with the name of your institution.
2. Bolded text is required.

Exhibit 2

Conditions of Approval

The Farm Credit Administration (FCA) imposes these Conditions of Approval under 12 U.S.C. § 2261 in connection with granting XXX Association's application for an amended charter to expand its territory. These Conditions are effective on the effective date of XXX Association's amended charter.

1. XXX Association is obligated to extend credit and offer related services to all eligible and creditworthy customers in its Local Service Area (LSA).

2. XXX Association may exercise only those authorities authorized by its previous charter until it transmits to the FCA a revised business plan, including an LSA Plan, that has been adopted by its board of directors and that incorporates FCA's guidance on these plans. This guidance is contained in FCA's booklet entitled "National Charters" dated May 3, 2000.

3. XXX Association must update its LSA Plan annually as part of adopting the operational and strategic business plan required under FCA regulation § 618.8440.

These Conditions will remain in effect until the FCA amends, waives, or terminates them. If, at any time, the FCA believes it appropriate to take any action affecting XXX Association, nothing in these Conditions prevents the FCA from doing so.

[FR Doc. 00–18283 Filed 7–19–00; 8:45 am]
BILLING CODE 6705–01–C

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 13, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 21, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0280.

Title: Section 90.633(f) and (g), Conventional Systems Loading Requirements (Wide Area Systems).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and State, local, or tribal Governments.

Number of Respondents: 15.

Estimate Time Per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 10 hours.

Total Annual Costs: $2,200.

Needs and Uses: The Commission normally authorizes licenses 800 and 900 MHz radio systems to cover a confined area of operation. The Commission's responsibility is necessary, in part, to maintain spectrum efficiency since other licensees reuse these frequencies. However, rule sections 47 U.S.C. Sections 154(j) and 309(j), as amended, provide applicants who need specially configured wide area or ribbon systems the opportunity to request authorization for such systems upon a showing of need.

OMB Control Number: 3060–XXXX.

Title: Accessibility of Programming Providing Emergency Information, Section 79.2

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; and Individuals or households; not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 200.

Estimate Time Per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 300 hours.

Total Annual Costs: $16,200.

Needs and Uses: With adoption of MM Docket 95–176, FCC 00–136, Second Report and Order, the FCC will require all video programming distributors to make local emergency information that they provide to viewers accessible to persons with hearing disabilities through closed captioning or by another method of visual presentation. Previously the Commission adopted rules to increase gradually the amount of captioned new programming offered over a period of years, and generally, will require that 100% of all new programming be captioned at the end of a transition period. This rule ensures that people with hearing disabilities will receive critical emergency information in an accessible format during the transition period. Viewers may file complaints alleging violation of the new rule, 47 CFR Section 79.2. The Commission will notify video programming distributors of the complaint, and the distributor will provide the Commission with a response to the complaint.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18442 Filed 7–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–33–E (Auction No. 33); DA 00–1558]

Auction of Guard Band Manager Licenses for the 700 MHz Bands Updated Attachments and Filing Deadlines Reminder; Additional Due Diligence Information

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document amends two of the attachments previously provided in the Auction No. 33 Announcing Public Notice for the upcoming auction of Guard Band Manager licenses in the 700 MHz bands ("Auction No. 33") scheduled to commence on September 6, 2000. This document also provides additional due diligence information.

DATES: Auction No. 33 is scheduled for September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Attorney, Auctions Legal Branch at (202) 418–0660, or Linda Sanderson, Project Manager, Auctions Operations Branch at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released July 12, 2000. The complete text of the public notice, including Attachments C and H, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, D.C. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

List of Attachments available at the FCC:

Attachment C—Electronic Filing and Review of the FCC Form 175

Attachment H—Accessing the FCC Network to File FCC Form 175

1. The Wireless Telecommunications Bureau ("Bureau") issued a *Public Notice* that set forth the filing requirements, minimum opening bids, and other procedural matters to govern Auction No. 33. *See* Auction of Licenses for the 700 MHz Guard Bands,

Scheduled for June 14, 2000, Auction Notice and Filing Requirements for 104 Licenses in the 700 MHz Guard Band, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, DA 00–781, 65 FR 21182, (April 20, 2000), (''*Auction No. 33 Announcing Public Notice*''). Effective Monday, July 17, 2000, the Bureau will permit the filing of FCC Forms 175 (''short-form applications'') via the Internet. As a result, two of the attachments previously provided in the *Auction No. 33 Announcing Public Notice* have been updated. Specifically, the Bureau has amended Attachment C and Attachment H.

2. As a reminder, the filing deadlines associated with Auction No. 33 are listed below:

Opening of the FCC Form 175 Filing Window—July 18, 2000; 12:00 noon ET
Filing Deadline for FCC Form 175—August 1, 2000; 6:00 PM ET
Upfront Payment Deadline—August 18, 2000; 6:00 PM ET
Deadline For Remote Bidding Software Orders—August 21, 2000; 6:00 PM ET
Mock Auction—August 31, 2000
Auction Start Date—September 6, 2000

Due Diligence Information

3. The Bureau also provides the following additional due diligence information to supplement the information included in the *Auction No. 33 Announcing Public Notice*. In addition to the filings listed in the *Auction No. 33 Announcing Public Notice*, potential bidders should also be aware of a Petition For Review of the *700 MHz Second Report and Order*, filed in the United States Court of Appeals for the District of Columbia Circuit. The case is *FreeSpace Communications, L.L.C.* v. *FCC*, Case No. 00–1164 (DC Circuit filed April 18, 2000). *See*, Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order*, 65 FR 17594 (April 4, 2000).

4. This information was compiled as of July 11, 2000 and supplements the list in the *Auction No. 33 Announcing Public Notice*, which was compiled as of April 10, 2000. This list is subject to additional supplementation. The Commission makes no representation that the April 10, 2000 compilation and the July 11, 2000 supplement include every proceeding pending as of July 11, 2000 relevant to the 700 MHz Guard Band licenses or licensees. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 33 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 33 are strongly encouraged to continue such research during the auction.

Federal Communications Commission.

Margaret W. Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–18444 Filed 7–19–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 18, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve's Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* The HMDA Loan/Application Register.
Agency form number: FR HMDA–LAR.
OMB control number: 7100–0247.
Frequency: Annual.
Reporters: State member banks, subsidiaries of state member banks, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations under section 25 or 25A of the Federal Reserve Act.
Annual reporting hours: 121,714 hours.
Estimated average hours per response: Banks, 202 hours; mortgage subsidiaries, 160 hours.
Number of respondents: Banks, 517; mortgage subsidiaries, 108. Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 2801 *et seq.*). The data are not given confidential treatment, however, information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).
Abstract: The Federal Reserve's Regulation C, including the information collection, applies both to depository and to for-profit non-depository institutions. The information reported and disclosed pursuant to this collection is used to further the purposes of HMDA. These include: (1) to help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statues.

2. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K.
Agency form number: FR K–2.
OMB control number: 7100–0284.
Frequency: Event-generated.
Reporters: Foreign banks.
Annual reporting hours: 600 hours.
Estimated average hours per response: 40 hours.
Number of respondents: 15.
Small businesses are not affected.
General description of report: This information collection is required to obtain or retain a benefit sections 7 and 10 of the International Banking Act (12 U.S.C. 3105 and 3107). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.
Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office or to acquire ownership or control of a commercial lending company in the United States or to change the status of any existing office in the United States. The Federal Reserve needs the information to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

Board of Governors of the Federal Reserve System, July 17, 2000.
Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 00–18440 Filed 7–19–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. Caixa Geral De Depositos, S.A., Lisbon, Portugal; to retain approximately 8.8 percent of the outstanding voting shares of Banco Commercial Portugues, S.A., Oporto, Portugal and thereby indirectly acquire shares of BPABank, National Association, Newark, New Jersey.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of First Security Corporation, Salt Lake City, Utah, and thereby indirectly acquire voting shares of First Security Bank, N.A., Ogden, Utah; First Security Bank of New Mexico, N.A, Albuquerque, New Mexico; First Security Bank of Nevada, Las Vegas, Nevada; and First Security Bank of California, N.A., West Covina, California.

In connection with this application, Wells Fargo proposes to acquire the nonbanking subsidiaries of First Security Corporation, including First Security Mortgage Company, Salt Lake City, Utah, and thereby engage in lending activities pursuant to § 225.28(b)(1) of Regulation Y; First Security Leasing Company and Bankers Equipment Alliance, Inc., both of Salt Lake City, Utah, and thereby engage in leasing activities pursuant to § 225.28(b)(3) of Regulation Y; First Security Investment Services, Inc., and First Security Investment Management Inc., both of Salt Lake City, Utah, and thereby engage in investment and financial advisory activities pursuant to § 225.28(b)(6) of Regulation Y; First Security Specialized Services, Inc., Salt Lake City, Utah, and thereby engage in providing financial advisory and management consulting services pursuant to §§ 225.28(b)(6) and (9) of Regulation Y; First Security Life Insurance Company of Arizona, Phoenix, Arizona, and thereby engage in reinsuring credit-related insurance pursuant to § 225.28(b)(11)(i) of Regulation Y; and First Security Processing Services, Inc., Salt Lake City, Utah, and thereby engage in providing

bankcard and ATM transaction services for other financial institutions pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, July 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–18323 Filed 7–19–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Central Texas Bankshare Holdings, Inc.*, Columbus, Texas; and Colorado County Investment Holdings, Inc., Wilmington, Delaware; to acquire 47 percent of the voting shares of Hill Bancshares Holdings, Inc., Weimar, Texas, and thereby indirectly acquire Hill Bancshares, Inc., Wilmington, Delaware, and Hill Bank & Trust Company, Weimar, Texas.

Board of Governors of the Federal Reserve System, July 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18373 Filed 7–19–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President), 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Patapsco Bancorp, Inc.*, Dundalk, Maryland; to acquire Northfield Bancorp, Inc., and thereby indirectly acquire Northfield Federal Savings Bank, both of Baltimore, Maryland, and thereby to operate a savings association pursuant to Section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–18322 Filed 7–19–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. *Union Bankshares Company*, Ellsworth, Maine; to acquire 100 percent of the common stock of Mid-Coast Bancorp, Inc., Waldoboro, Maine, and thereby indirectly acquire The Waldoboro Bank, F.S.B., Waldoboro, Maine, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 17, 2000.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–18374 Filed 7–19–00; 8:45 am]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement To Support the Waste-Management Education and Research Consortium, New Mexico State University; Notice of Intent to Accept and Consider a Single Source Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement to the Waste-Management Education and Research Consortium (WERC), New Mexico State University, to support the Annual International Environmental Design Contest. The estimated amount is $100,000 per annum. Competition is limited because the WERC International Environmental Design Contest is the only college level environmental design competition of its kind.

DATES: Submit applications by August 21, 2000.

ADDRESSES: An application is available from and should be submitted to: Maura Stephanos, Grants Management Specialist, Grants Management Office (HFA–520), Division of Contracts and Procurement Management, Office of the Director, Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183. (Applications hand-carried or commercially delivered should be addressed to rm. 2129, 5630 Fishers Lane, Rockville, MD 20857; FAX 301–827–7106; e-mail address: mstepha1@oc.fda.gov.

FOR FURTHER INFORMATION CONTACT:
Regarding the administrative and financial management aspects of this notice: Maura Stephanos (address above).
Regarding the programmatic aspects: Wendy Buckler, Office of Plant and Dairy Foods and Beverages (HFS–300), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–2923.

SUPPLEMENTAL INFORMATION: This project is authorized under section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance at 93.103. The application will not be subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Program (45 CFR part 100).

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

I. Background

While the American food supply is among the safest in the world, every year there are still millions of Americans stricken by illness caused by the food they consume, and the very young and elderly die as a result. In 1997, the President announced his Food Safety Initiative (FSI), the goal of which is to reduce the annual incidence of foodborne illnesses by enhancing the safety of the nation's food supply. As directed, agencies are exploring ways to strengthen systems of coordination, surveillance, inspections, research, risk assessment, and education. Through a collaborative effort between the FDA, the U.S. Department of Agriculture (USDA), and the Environmental Protection Agency (EPA), a report titled "Food Safety from Farm to Table: A National Food Safety Initiative" was released in May 1997.

Over the last several years, the detection of outbreaks of foodborne illnesses associated with domestic and imported fresh fruits and vegetables has also increased. Imports have doubled over the past 7 years and they are expected to increase by 30 percent by 2002. Thus, FDA is directing surveillance, inspection, compliance, and education efforts to detect and prevent harmful pathogens from reaching the consumer in a food safety "farm to table" approach. These food safety efforts apply to both domestic and imported produce. To that end, FDA and USDA issued a guidance document that is intended to assist the U.S. and foreign produce industry in enhancing the safety of domestic and imported produce by addressing common areas of concern in the growing, harvesting, sorting, packing, and distribution of fresh produce.

WERC is a program of the College of Engineering at New Mexico State University established in 1990 under a cooperative agreement with the U.S. Department of Energy. Starting in 1991, WERC has conducted an Annual Environmental Design Contest (Contest), which is a unique educational experience for students from throughout the world. The Contest is open to any 2-year, 4-year, or graduate degree institution. Since 1998, there has been a separate concurrent competition for high school students. The Contest provides an opportunity for students to apply all the theories they have learned and to develop innovative solutions for real environmental issues. Most of the problems in the past dealt with waste disposal, ground water contamination, nuclear waste treatment, and similar subjects. The scope of problems has recently been broadened to include food safety and disciplines such as microbiology.

Major engineering and physical science departments at leading U.S. universities and some foreign countries regularly compete in the Contest. In the ninth annual Contest in 1998 to 1999, 56 universities and 8 high school teams presented and demonstrated technical solutions combined with economics, public policy, regulations and other considerations vital to the environment.

Government and industry sponsors provide tasks for the Contest. The tasks are technological problems for which known solutions are not readily available.

In 1999, FDA entered a task entitled "Detection of Human Waste on Imported Fresh Fruits and Vegetables" for the Contest. There are several areas in the production of fresh fruits and vegetables that can contribute to food safety concerns. One of the areas is the use of municipal biosolids or sewage sludge (the treated by-product of human waste treatment) as a soil amendment for the production of fresh fruits and vegetables. Improperly treated sewage sludge represents a significant source of human pathogens. Because the consumption of produce contaminated by human waste poses a potential health risk, FDA is seeking a mechanism by which it can: (1) Determine if sewage sludge has been adequately treated to eliminate pathogenic microorganisms and (2) determine if fresh fruits and vegetables are contaminated on the surface by improper sewage sludge. Three schools selected the FDA task.

II. Purpose

FDA will be one of the sponsors for the Contest administered by WERC and will submit task(s) to be considered by the schools. The school teams' imagination, fresh ideas, and innovative solutions can be of great importance to

improving the safety of the American food supply.

WERC reviews the tasks, adjusts them to stay within Contest parameters, and publicizes the Contest within the academic community. WERC will discuss and work with FDA on revising the agency's task. FDA will work closely with WERC throughout the Contest; the agency can also have a minimum of four judges participate in the competition.

WERC announces the Contest in the fall. The competitors are self-selected and, they may come from anywhere in the world. The student teams and their faculty advisors can accept the challenge of one or more of the tasks.

The teams conduct research for potential solutions, develop a concept for a process to complete the task, and present their findings (including a bench-scale demonstration of their solution) during the competition that is held in April. The goal of the competition is to design, develop, and test actual environmental processes for real-world problems.

The Contest is conducted in four parts: (1) A paper that presents a full-scale process analysis and design, (2) an oral presentation, (3) a bench-scale process demonstration (with samples taken of the product for analysis), and (4) a poster board presentation. All of the above Contest elements are part of a process used to communicate and to advance ideas and projects towards implementation in today's business environment.

The judges for the competition come from all walks of life and are respected as leaders within their professional communities. They are selected from industry, government, and academia.

The judges will critique each student team's performance, the performance of the contestants against the guidance provided, and the technical merits and applicability of the team's proposed solutions. A preliminary judges' meeting is held each February to review and revise the criteria for judging the different tasks and to finalize the judging process for the upcoming Contest. The recommendations resulting from the meeting are recorded for subsequent Contests. The broad base of judges have expertise in the physical and biological sciences, engineering, business, economics, health and safety regulations, environmental regulations, public policy, and communications.

To enhance the learning experience, WERC provides feedback on the teams' performance after each Contest. The faculty advisor for each task will be provided with the high score, the low score, the average score, and the score for the paper, oral, bench-scale process, and poster. Related comments from the judges may also be provided.

Each year, WERC tries to bring new sponsors to the program to maintain diversity and to address current environmental problems.

III. Delineation of Substantive Involvement

FDA will have substantial involvement in the activities of the Contest being funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will work closely with WERC throughout the annual Contest. This may include involvement in the selection of appropriate tasks for the next year's contests, in order to assure that selected tasks are diversified and address current environmental problems. Such involvement may include participation by FDA staff in conference calls and at meetings as well as through correspondence. FDA staff may also act as judges.

2. As one of several sponsors of the contest, FDA will submit task(s) for the Contest. The task must: (1) Represent an actual environmental, waste management decontamination, or microbiological problem for which there is no known solution, or for which existing solutions do not meet the desired performance criteria and (2) be adaptable to a bench-scale demonstration within the limitations of the Contest. All submitted tasks are reviewed by WERC staff and discussed with the tasks' sponsors before the final selection is made. Priorities of the FDA and possible current health issues/topics may impact on future task(s) that would be submitted to WERC.

3. As a sponsor of the contest, FDA will also provide qualified judges, one being the project officer for the submitted task(s), for the Contest. All judges are bound by the WERC contest ethic to make as objective a decision as possible on the awards. If a judge has a precontest bias for or against a particular university, he or she will excuse themselves from judgment of that university. Other judges will be selected from other sponsoring companies or agencies and from industry, government, and academia.

IV. Review Procedures

The application submitted by the WERC will undergo a noncompetitive, dual peer review. The application will be reviewed for scientific and technical merit by a panel of experts in the subject field of the specific application. If the application is recommended for approval it will then be presented to the National Advisory Environmental Health Sciences Council for concurrence with the recommendations made by the first level reviewers. The final funding decision will be made by the Commissioner of Food and Drugs or her designee.

V. Reporting Requirements

A Program Progress Report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF–269) on time may be grounds for suspension or termination of the agreement. Progress reports will be required quarterly within 30 days following each fiscal year quarter (January 31, April 30, July 30, October 31), except that the fourth report will serve as the annual report and will be due 90 days after the budget expiration date. CFSAN program staff will advise the recipient of the suggested format for the Program Progress Report at the appropriate time. A final FSR (SF–269), Program Progress Report and Invention Statement, must be submitted within 90 days after the expiration of the project period, as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer and the Project Advisory Group. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

VI. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a cooperative agreement. This agreement will be subject to all policies and requirements that govern the research grant program of the PHS, including provisions of 42 CFR part 52 and 45 CFR part 74.

B. Length of Support

The length of support will be for up to 5 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year, and/or (2) the availability of Federal fiscal year funds.

VII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98) with copies of the appendices for each of the copies, should be submitted to Maura Stephanos (address above). Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

VIII. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: July 10, 2000.

Margaret M. Detzel,

Associate Commissioner for Policy.

[FR Doc. 00–18290 Filed 7–19–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0325]

International Conference on Harmonisation; Draft Revised Guidance on Impurities in New Drug Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft revised guidance entitled "Q3A(R) Impurities in New Drug Substances." The draft revised guidance, which updates a guidance on the same topic published in the Federal Register of January 4, 1996 (the 1996 guidance), was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft revised guidance clarifies the 1996 guidance, adds information, and provides consistency with more recently published ICH guidances. The draft revised guidance is intended to provide guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a country, region, or member State.

DATES: Submit written comments by September 18, 2000.

ADDRESSES: Submit written comments on the draft revised guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft revised guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5169.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In October 1999, the ICH Steering Committee agreed that a draft revised guidance entitled "Q3A(R) Impurities in New Drug Substances" should be made available for public comment. The draft revised guidance is a revision of a guidance on the same topic published in the Federal Register of January 4, 1996 (61 FR 372). The draft revised guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document is now being called a guidance, rather than a guideline.

The draft revised guidance is intended to provide guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a country, region, or member State. The draft revised guidance is not intended to apply to new drug substances used during the clinical research stage of development or clinical trials. The draft revised guidance also does not apply to biological/biotechnological substances, peptides, oligonucleotides,

radiopharmaceuticals, fermentation and semisynthetic products derived from that process, herbal products, and crude products of animal or plant origin. Impurities in new drug substances are addressed in the draft revised guidance from two different perspectives: (1) Chemistry aspects—classification and identification of impurities, report generation, setting specifications, and a brief discussion of analytical procedures; and (2) safety aspects—guidance for qualifying impurities that were not present in batches of the new drug substance used in safety and clinical studies and/or impurity levels substantially higher than in those batches.

The draft revised guidance includes revised text on threshold limits, revised text on specification limits for impurities, and new guidance on rounding. Additions to the glossary include definitions for the terms "identification threshold," "qualification threshold," "reporting threshold," and "rounding." References to validated limit of quantitation were removed. The section on solvents references a more recently published ICH guidance entitled "Q3C Impurities: Residual Solvents." Minor editorial changes were made to improve the clarity and consistency of the document.

This draft revised guidance represents the agency's current thinking on impurities in new drug substances. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft revised guidance by September 18, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft revised guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm.

The text of the draft revised guidance follows:

Q3A(R) Impurities in New Drug Substances[1]

1. Preamble

This document is intended to provide guidance for registration applications on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a region or member State. It is not intended to apply to the regulation of new drug substances used during the clinical research stage of development. Biological/biotechnological, peptide, oligonucleotide, radiopharmaceutical, fermentation and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin are not covered.

Impurities in new drug substances are addressed from two perspectives:

Chemistry aspects include classification and identification of impurities, report generation, setting specifications, and a brief discussion of analytical procedures; and

Safety aspects include specific guidance for qualifying impurities that were not present in batches of new drug substance used in safety and clinical studies and/or impurity levels substantially higher than in those batches. Threshold limits are defined, at or below which qualification is not needed.

2. Classification of Impurities

Impurities may be classified into the following categories:

- Organic Impurities (Process- and Drug-Related)
- Inorganic Impurities
- Residual Solvents

Organic impurities may arise during the manufacturing process and/or storage of the new drug substance. They may be identified or unidentified, volatile or nonvolatile, and include:

- Starting Materials
- By-Products
- Intermediates
- Degradation Products
- Reagents, Ligands, and Catalysts

Inorganic impurities may derive from the manufacturing process. They are normally known and identified, and include:

- Reagents, Ligands, and Catalysts
- Heavy Metals or Other Residual Metals
- Inorganic Salts

Solvents are organic or inorganic liquids used during the manufacturing process. Since these are generally of known toxicity, the selection of appropriate controls is easily accomplished (see ICH Q3C Impurities: Residual Solvents).

Excluded from this document are: Extraneous contaminants (other materials such as filter aids, charcoal) that should not occur in new drug substances and are more appropriately addressed as good manufacturing practice (GMP) issues; polymorphic form, a solid state property of the new drug substance; and enantiomeric impurities.

[1] This draft revised guidance represents the agency's current thinking on impurities in new drug substances. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

3. Rationale for the Reporting and Control of Impurities

3.1 Organic Impurities

The applicant should summarize those actual and potential impurities most likely to arise during the synthesis, purification, and storage of the new drug substance. This summary should be based on sound scientific appraisal of the chemical reactions involved in the synthesis, impurities associated with raw materials that could contribute to the impurity profile of the new drug substance, and possible degradation products. This discussion may include only those impurities that may reasonably be expected based on knowledge of the chemical reactions and conditions involved.

In addition, the applicant should summarize the laboratory studies conducted to detect impurities in the new drug substance. This summary should include test results of batches manufactured during the development process and batches from the proposed commercial process, as well as results of intentional degradation studies used to identify potential impurities arising during storage. Assessment of the proposed commercial process may be deferred until the first batch is produced for marketing. The impurity profile of the drug substance lots intended for marketing should be compared with those used in development, and any differences discussed.

The studies conducted to characterize the structure of actual impurities present in the new drug substance at a level greater than (>) the threshold given in Attachment 1 (e.g., calculated using the response factor of the drug substance) should be described. Note that all specified impurities at a level greater than (>) the identification threshold in batches manufactured by the proposed commercial process should be identified. Degradation products observed in stability studies at recommended storage conditions should be similarly identified. When identification of an impurity is not feasible, a summary of the laboratory studies demonstrating the unsuccessful effort should be included in the application. Where attempts have been made to identify impurities present at levels of not more than (≤) the identification thresholds, it is useful to also report the results of these studies.

Identification of impurities present at an apparent level of not more than (≤) the identification threshold is generally not necessary. However, analytical procedures should be developed for those potential impurities that are expected to be unusually potent, producing toxic or pharmacologic effects at a level less than or equal to (≤) the identification threshold. All impurities should be qualified as described later in this guidance. Conventional rounding rules should be applied, and the results presented with the same number of decimals as given in the limit (see glossary).

3.2 Inorganic Impurities

Inorganic impurities are normally detected and quantitated using pharmacopoeial or other appropriate procedures. Carryover of catalysts to the new drug substance should be evaluated during development. The need for

inclusion or exclusion of inorganic impurities in the new drug substance specifications should be discussed. Limits should be based on pharmacopoeial standards or known safety data.

3.3 Solvents

The control of residues of the solvents used in the manufacturing process for the new drug substance should be discussed and presented according to the ICH Q3C guidance for residual solvents.

4. Analytical Procedures

The registration application should include documented evidence that the analytical procedures are validated and suitable for the detection and quantitation of impurities (see ICH Q2A and Q2B guidances for analytical validation). Differences in the analytical procedures used during development and those proposed for the commercial product should be discussed in the registration application.

Organic impurity levels can be measured by a variety of techniques, including those which compare an analytical response for an impurity to that of an appropriate reference standard or to the response of the new drug substance itself. Reference standards used in the analytical procedures for control of impurities should be evaluated and characterized according to their intended uses. It is considered acceptable to use the drug substance as a standard to estimate the levels of impurities. In cases where the response factors are not close, this practice may still be acceptable, provided a correction factor is applied or the impurities are, in fact, being overestimated. Specifications and analytical procedures used to estimate identified or unidentified impurities are often based on analytical assumptions (e.g., equivalent detector response). These assumptions should be discussed in the registration application.

5. Reporting Impurity Content of Batches

Analytical results should be provided for all batches of the new drug substance used for clinical, safety, and stability testing, as well as for batches representative of the proposed commercial process. The content of individual identified and unidentified and total impurities observed in these batches of the new drug substance should be reported with the analytical procedures indicated. A tabulation (e.g., spreadsheet) of the data is recommended. Impurities should be designated by code number or by an appropriate descriptor, e.g., retention time. Levels of impurities that are not more than (>) the reporting threshold given in Attachment 1 need not be reported. A higher reporting threshold should only be proposed with justification. All impurities at a level greater than (>) the reporting threshold should be summed and reported as Total Impurities. The summation should be performed on the unrounded individual values, and the total value should be rounded and reported as described in section 3.1. When analytical procedures change during development, reported results should be linked to the procedure used, with appropriate validation information provided. Representative chromatograms should be provided. Chromatograms of such representative batches from methods validation studies showing separation and detectability of impurities (e.g., on spiked samples), along with any other impurity tests routinely performed, can serve as the representative impurity profiles. The applicant should ensure that complete impurity profiles (i.e., chromatograms) of individual batches are available if requested.

A tabulation should be provided that links the specific new drug substance batch to each safety study and each clinical study in which it has been used.

For each batch of the new drug substance, the report should include:

- Batch Identity and Size
- Date of Manufacture
- Site of Manufacture
- Manufacturing Process
- Impurity Content, Individual and Total
- Use of Batches
- Reference to Analytical Procedure Used

6. Specifications for Impurities

The specifications for a new drug substance should include limits for impurities. Stability studies, chemical development studies, and routine batch analyses can be used to predict those impurities likely to occur in the commercial product. The selection of impurities to include in the new drug substance specifications should be based on the impurities found in batches manufactured by the proposed commercial process. Those impurities selected for inclusion in the specifications for the new drug substance are referred to as "specified impurities" in this guidance. Specified impurities may be identified or unidentified and should be individually listed in the new drug substance specifications.

A rationale for the inclusion or exclusion of impurities in the specifications should be presented. This rationale should include a discussion of the impurity profiles observed in the safety and clinical development batches, together with a consideration of the impurity profile of material manufactured by the proposed commercial process. Specific identified impurities should be included along with specified unidentified impurities estimated to be present at a level greater than (>) the qualification/identification threshold given in Attachment 1. For impurities known to be unusually potent or to produce toxic or unexpected pharmacological effects, the quantitation/detection limit of the analytical methods should be commensurate with the level at which the impurities must be controlled. For unidentified impurities, the procedure used and assumptions made in establishing the level of the impurity should be clearly stated. Specified unidentified impurities included in the specifications should be referred to by an appropriate qualitative analytical descriptive label (e.g., "unidentified A," "unidentified with relative retention of 0.9"). Finally, a general specification limit of not more than (≤) the qualification/identification threshold (Attachment 1) for any unspecified impurity should be included.

Limits should be set no higher than the level that can be justified by safety data and consistent with the level achievable by the manufacturing process and the analytical capability. Where there is no safety concern, impurity specifications should be based on data generated on batches of the new drug substance manufactured by the proposed commercial process, allowing sufficient latitude to deal with normal manufacturing and analytical variation, and the stability characteristics of the new drug substance. Although normal manufacturing variations are expected, significant variation in batch-to-batch impurity levels may indicate that the manufacturing process of the new drug substance is not adequately controlled and validated (see ICH Q6A guidance on specifications).

In summary, the new drug substance specifications should include, where applicable, limits for:

Organic Impurities

- Each Specified Identified Impurity
- Each Specified Unidentified Impurity at a level greater than (>) the qualification/identification threshold
- Any Unspecified Impurity with a limit of not more than (≤) the qualification/identification threshold
- Total Impurities

Residual Solvents

Inorganic Impurities

7. Qualification of Impurities

Qualification is the process of acquiring and evaluating data that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified. The applicant should provide a rationale for selecting impurity limits based on safety considerations. The level of any impurity present in a new drug substance that has been adequately tested in safety and/or clinical studies is considered qualified. Impurities that are also significant metabolites present in animal and/or human studies do not need further qualification. A level of a qualified impurity higher than that present in a new drug substance can also be justified based on an analysis of the actual amount of impurity administered in previous relevant safety studies.

If data are not available to qualify the proposed specification level of an impurity, studies to obtain such data may be needed when the usual qualification threshold limits given in Attachment 1 are exceeded.

Higher or lower threshold limits for qualification of impurities may be appropriate for some individual drugs based on scientific rationale and level of concern, including drug class effects and clinical experience. For example, qualification may be especially important when there is evidence that such impurities in certain drugs or therapeutic classes have previously been associated with adverse reactions in patients. In these instances, a lower qualification threshold limit may be appropriate. Conversely, a higher qualification threshold limit may be appropriate for individual drugs when the level of concern for safety is less than usual based on similar considerations (e.g., patient population, drug class effects, clinical considerations). Technical factors (manufacturing capability and control

methodology) may be considered as part of the justification for selection of alternative threshold limits based on manufacturing experience with the proposed commercial process. Proposals for alternative threshold limits are considered on a case-by-case basis.

The "Decision Tree for Safety Studies" (Attachment 2) describes considerations for the qualification of impurities when thresholds are exceeded. In some cases, decreasing the level of impurity below the threshold may be simpler than providing safety data. Alternatively, adequate data may be available in the scientific literature to qualify an impurity. If neither is the case, additional safety testing should be considered. The studies desired to qualify an impurity will depend on a number of factors, including the patient population, daily dose, and route and duration of drug administration. Such studies are normally conducted on the new drug substance containing the impurities to be controlled, although studies using isolated impurities are acceptable.

8. New Impurities

During the course of a drug development program, the qualitative impurity profile of the new drug substance may change, or a new impurity may appear as a result of synthetic route changes, process optimization, scale-up, etc. New impurities may be identified or unidentified. Such changes call for qualification of the level of the impurity unless it is not more than (>) the threshold values as noted in Attachment 1. When a new impurity exceeds the threshold, the "Decision Tree for Safety Studies" should be consulted. Safety studies should compare the new drug substance containing a representative level of the new impurity with previously qualified material, although studies using the isolated impurity are also acceptable (these studies may not always have clinical relevance).

9. Glossary

Chemical development studies: Studies conducted to scale-up, optimize, and validate the manufacturing process for a new drug substance.

Enantiomers: Compounds with the same molecular formula as the drug substance, which differ in the spatial arrangement of atoms within the molecule and are nonsuperimposable mirror images.

Extraneous substance: An impurity arising from any source extraneous to the manufacturing process.

Herbal products: Medicinal products containing, exclusively, plant material and/or vegetable drug preparations as active ingredients. In some traditions, materials of inorganic or animal origin may also be present.

Identification threshold: A limit above which (>) an impurity needs identification.

Identified impurity: An impurity for which a structural characterization has been achieved.

Impurity: Any component of the new drug substance that is not the chemical entity defined as the new drug substance.

Impurity profile: A description of the identified and unidentified impurities present in a new drug substance.

Intermediate: A material produced during steps of the synthesis of a new drug substance that must undergo further molecular change before it becomes a new drug substance.

Ligand: An agent with a strong affinity to a metal ion.

New drug substance: The designated therapeutic moiety that has not been previously registered in a region or member State (also referred to as a new molecular entity or new chemical entity). It may be a complex, simple ester, or salt of a previously approved drug substance.

Polymorphism: The occurrence of different crystalline forms of the same drug substance.

Potential impurity: An impurity that, from theoretical considerations, may arise from or during manufacture. It may or may not actually appear in the new drug substance.

Qualification: The process of acquiring and evaluating data that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Qualification threshold: A limit above which (>) an impurity needs to be qualified.

Reagent: A substance, other than a starting material or solvent, that is used in the manufacture of a new drug substance.

Reporting threshold: A limit above which (>) an impurity needs to be reported.

Rounding: The process of reducing a result to the number of significant figures or number of decimal places as dictated by the appropriate limit. For example, a result greater than or equal to (≥) 0.05 and less than (<) 0.15 is rounded to 0.1.

Safety information: The body of information that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Solvent: An inorganic or an organic liquid used as a vehicle for the preparation of solutions or suspensions in the synthesis of a new drug substance.

Specified impurity: Identified or unidentified impurity that is selected for inclusion in the new drug substance specifications and is individually listed and limited in order to ensure the safety and quality of the new drug substance.

Starting material: A material used in the synthesis of a new drug substance that is incorporated as an element into the structure of an intermediate and/or of the new drug substance. Starting materials are normally commercially available and of defined chemical and physical properties and structure.

Toxic impurity: An impurity having significant undesirable biological activity.

Unidentified impurity: An impurity that is defined solely by qualitative analytical properties (e.g., chromatographic retention time).

Unspecified impurity: An impurity that is not included in the list of specified impurities.

ATTACHMENT 1

Maximum Daily Dose	Qualification Threshold and Identification Threshold	Reporting Threshold[1]
≤ 2 grams (g)/day	0.1 percent or 1 milligram per day intake (whichever is lower)	0.05 percent
> 2 g/day	0.05 percent	0.03 percent

[1] Higher reporting thresholds should be scientifically justified.

BILLING CODE 4160-01-F

ATTACHMENT 2

DECISION TREE FOR SAFETY STUDIES

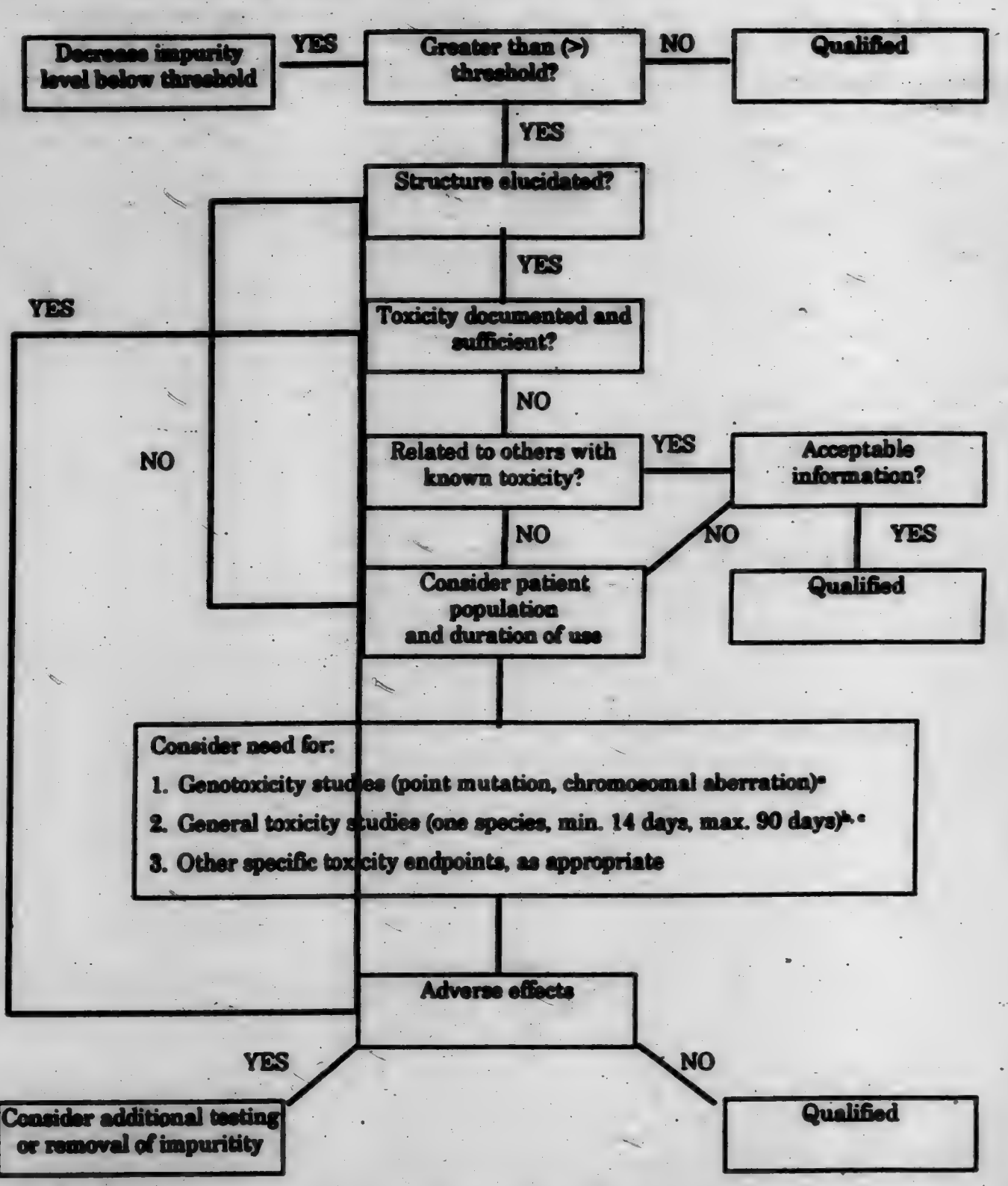

Notes on Attachment 2

[a] If considered desirable, a minimum screen for genotoxic potential should be conducted. A study to detect point mutations and one to detect chromosomal aberrations, both in vitro, are recommended as an acceptable minimum screen.

[b] If general toxicity studies are desirable, study(ies) should be designed to allow comparison of unqualified to qualified material. The study duration should be based on available relevant information and performed in the species most likely to maximize the potential to detect the toxicity of an impurity. In general, a minimum duration of 14 days and a maximum duration of 90 days are recommended.

[c] On a case-by-case basis, single-dose studies may be acceptable, especially for single-dose drugs. If repeat-dose studies are desirable, a maximum duration of 90 days would be acceptable.

Dated: July 10, 2000.
Margaret M. Dotzel,
Associate Commissioner for Policy.
[FR Doc. 00–18151 Filed 7–19–00; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–264 A–H]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Medicare DMEPOS Competitive Bidding Demonstration;

Form No.: HCFA–R–264 A–H (OMB #0938–0748);

Use: Section 1847 of the Social Security Act, as added by Section 4319 of the Balanced Budget Act (BBA), mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The demonstration currently operating in Polk County, Florida and the demonstration planned for San Antonio, Texas involve competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The new set of products to be offered for competitive bidding in San Antonio are: Oxygen equipment and supplies, hospital beds, non-customized orthotic devices, manual wheelchairs and accessories, and nebulizer inhalation drugs. Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002.

There are eight forms that are required for this demonstration. Form A will be used by the bidding supplier to provide information about the characteristics of the company. Form B will be used by the bidding supplier to provide specific information about the prices it bids for specific product categories, and to provide information about the attributes of the supplier in relation to the specific product category. Form C will be used by HCFA or its agents to obtain information on site regarding the bidding supplier. Form D will be used by HCFA or its agents to obtain financial references on the bidding supplier from banks and other financial sources. Form E will be used by HCFA or its agents to obtain information about the bidding suppliers from referral sources such as home health agencies and hospital discharge planners. Form F will be used to obtain information about the suppliers' financial status and to assure that they have sufficient fiscal resources to operate in a competitive environment where the prices being paid for some products are less than what have been customarily paid. It is required only from suppliers whose bids are in the competitive range. Form G will be used for nursing homes to identify their suppliers of products and services who have not been awarded Demonstration Supplier status for services to beneficiaries in their home. This is to permit payment to those suppliers for products and services furnished to nursing homes. Form H will be used to monitor the performance of Demonstration Suppliers to assure their adherence to the quality standards established for the project.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not it should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Assure beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

Frequency: On occasion;
Affected Public: Business or other for-profit, and not-for-profit institutions;
Number of Respondents: 5,100;
Total Annual Responses: 1,700;
Total Annual Hours: 12,420.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 11, 2000.
John P. Burke III,
HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.
[FR Doc. 00–18378 Filed 7–19–00; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–694A–I and HCFA–695]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: End-Stage Renal Disease (ESRD) Network Business Proposal Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112;

Form No.: HCFA–684A–I (OMB# 0938–0658);

Use: The submission of business proposal information by current ESRD networks and other bidders, according to the business proposal instructions, meets HCFA's need for meaningful, consistent, and verifiable data when evaluating contract proposals.;

Frequency: Other: Every 3 years;

Affected Public: Not-for-profit institutions;

Number of Respondents: 18;

Total Annual Responses: 36;

Total Annual Hours: 1,080.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: End-Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112.;

Form No.: HCFA–685 (OMB# 0938–0657);

Use: Submission of semi-annual cost reports allow HCFA to review, compare, and project ESRD network costs. The reports are used as an early warning system to determine whether the networks are in danger of exceeding the total cost of the contract. Additionally, HCFA can analyze line item costs to identify any significant aberrations.

Frequency: Semi-annually;

Affected Public: Not-for-profit institutions;

Number of Respondents: 18;

Total Annual Responses: 36;

Total Annual Hours: 1,080.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: July 11, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–18379 Filed 7–19–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifiers: HCFA–R–286 (OMB # 0938–0781)]

Intent of Emergency Clearance: Public Information Collection Meeting To Discuss Requirements To Be Resubmitted to the Office of Management and Budget (OMB) Concerning the Home Health Agency Beneficiary Notices

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, in the near future, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), will be submitting to the Office of Management and Budget (OMB) a request for Emergency review of the revised Home Health Advance Beneficiary Notice (HHABN).

We will be requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. Due to the requirement to implement the home health agency (HHA) prospective payment system (PPS), on or about October 1, 2000, the Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result because eligible individuals will not receive their health insurance protections required under Federal law.

In order to fairly evaluate whether an information collection should be approved by OMB, consistent with section 3506(c)(2)(A) of the PRA, HCFA will hold a public meeting to permit interested parties an opportunity to give their views on how the content and distribution of the HHABNs may need to be revised in order to accomodate the changes associated with the implementation of the HHA prospective payment system. Representatives of the HHA industry, health care consumer advocacy groups, and provider groups, and other members of the public who wish to participate in the public meeting are asked to notify the Agency in advance of their interest in attending. At this meeting, the Health Care Financing Administration will solicit comments on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.
- Relevance of comments received on the HHABNs previously published in the **Federal Register**.

The public meeting will be held on Tuesday, July 25, 2000, from 1–5 p.m., in the Multipurpose Room (Capacity: 100 persons) of the Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland 21244. Interested parties should provide notification of their planned attendance to John Burke either via telephone (401) 786–1325, fax (410) 786–0262, or e-mail: *jburke1@hcfa.gov.* by no later than 3 p.m., Friday, July 21, 2000.

Dated: July 17, 2000.

Edward A. King,

Deputy Director, Office of Information Services, Security and Standards Group, Health Care Financing Administration.

[FR Doc. 00–18441 Filed 7–19–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–482]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and

Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Methodology for Estimating Waiver Costs of HCFA Demonstration Projects;

Form No.: HCFA–482 (OMB# 0938–0408);

Use: The information collected is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in analysis of potential costs and benefits associated with implementing a proposed policy;

Frequency: Other: On Occasion;

Affected Public: State, Local or Tribal Government, Individuals or Households, Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 25;

Total Annual Responses: 25;

Total Annual Hours: 2,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 12, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–18377 Filed 7–19–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Children's Hospital Graduate Medical Education Program (OMB No. 0915–0247)

Public Law 106–129 amended the Public Health Service Act to provide for the support of graduate medical education (GME) in children's hospitals. The provision authorizes payments in Fiscal Years 2000 and 2001 for direct and indirect expenses associated with operating approved GME programs. Section 340E(c)(1) of the PHS Act, as amended, states that the amount determined under this subsection for payments for direct medical expenses for a fiscal year is equal to the product of (a) the updated per resident amount as determined, and (b) the average number of FTE residents in the hospital's approved graduate medical residency training programs as determined under section 1886(h)(4) of the Social Security Act during the fiscal year. Section 340E(d)(2) requires the Secretary to determine the appropriate amount of indirect medical education for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs to a children's hospital by considering variations in case mix among children's hospitals, and the hospitals' number of FTE residents in approved training programs.

Administration of the Children's Hospital Graduate Medical Education Program relies on the reporting of the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect expense payments to participating children's hospitals. Indirect expense payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals.

Hospitals will be requested to submit such information in an annual application. The statute also requires reconciliation of the estimated numbers of residents with the actual number determined at the end of the fiscal year. Participating children's hospitals would be required to complete an adjusted report to correct such information on an annual basis.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form name	Number of respondents	Responses per respondents	Total responses	Hrs. per response	Total hour burden	Wage rate ($/hr)	Total hour cost ($)
Form-2001E	54	1	54	24	1,296	$45	$58,320
Form-2001F	54	1	54	8	432	45	19,440
IME data	54	1	54	14	756	45	34,020
Required GPRA tables	54	1	54	28	1,512	45	68,040

ESTIMATES OF ANNUALIZED HOUR BURDEN—Continued

Form name	Number of respondents	Responses per respondents	Total responses	Hrs. per response	Total hour burden	Wage rate ($/hr)	Total hour cost ($)
Total	54		54		3,996		$179,820

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before September 18, 2000.

Dated: July 13, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–18289 Filed 7–19–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS:	
ADAMS, JENINE M, KINGMAN, AZ	07/20/2000
AEROMEDICAL SERVICES, INTER, LAS VEGAS, NV	07/20/2000
AGAZARIAN, MARTIROS, LOS ANGELES, CA	07/20/2000
AVETISSIAN, ASHOT ART, RESEDA, CA	07/20/2000
BAKER, VANCE, LEWISBURG, PA	07/20/2000
BAKER, ROSIE, FT WORTH, TX	07/20/2000
BARSEGUYAN, ARTAK, LONG BEACH, CA	07/20/2000
BURTON, EDWINA L, MEMPHIS, TN	07/20/2000
CABRAL, NARCISO, DOMINICAN REPUBLIC	07/20/2000
CAMBRA, JOSEFA, MIAMI, FL	07/20/2000
CARBAJAL, LOURDES, EAGLE PASS, TX	07/20/2000
CHERKEZIAN, WILLIAM A, LONG BEACH, CA	12/20/1999
CHURCHILL, SHANE K, W DES MOINES, IA	07/20/2000
CHURCHILL, CURTIS J, DES MOINES, IA	07/20/2000
CORNEJO, MARTHA, NEW HYDE PARK, NY	07/20/2000
DAUB, KENNETH, ROCKFORD, IL	07/20/2000
DELEON, ANGELO M, BAYSIDE, NY	07/20/2000
DICKENSON, W DAVID, WICHITA FALLS, TX	07/20/2000
DUNCAN, ELENA S, OLYMPIA FIELDS, IL	07/20/2000
ENGLAND, GRANT D, COFFEYVILLE, KS	07/20/2000
ESCUDERO, PEDRO LUIS JR, PEMBROKE PINES, FL	07/20/2000
ESCUDERO, DAVID, MIAMI, FL	08/22/2000
ESCUDERO, PEDRO L SR, MIAMI, FL	07/20/2000
FELTON, VERNELL, ALBION, NY	07/20/2000
FLAGLER-KNIGHT, JENNIFER L, SARASOTA, FL	07/20/2000
FOCUS COUNSELING CENTER, INC, MEDIA, PA	07/20/2000
FRANK, VLADISLAVA, BEDFORD HILLS, NY	07/20/2000
FRAZIER, MARK R, OMAHA, NE	12/21/1999
FREITAG, GEORGIA R, WILMINGTON, IL	07/20/2000
GAYTAN, MARIA THERESA, EAGLE PASS, TX	07/20/2000
GOMEZ, MIRIAM G, MIAMI, FL	07/20/2000
GONZALEZ, JOSE D, PHILADELPHIA, PA	07/20/2000
GREEN, SAMUEL M, MORGANTOWN, WV	07/20/2000
GRIGORYANTS, ANZHELA, GLENDALE, CA	01/31/2000
HIGH, RONALD, RANDALLSTOWN, MD	07/20/2000
JENKINS, SHANNON LEE, SHERIDAN, AR	07/20/2000
JOHNSON, FLOYD E, CAIRO, IL	07/20/2000
KNIGHT, RICHARD DONALD II, SARASOTA, FL	07/20/2000
MOUN, KHEMARA, PROVIDENCE, RI	07/20/2000
NICHOLAS, BRIAN JOSEPH, COWEN, WV	07/20/2000
NIETO, MARTA LAZARA, MIAMI, FL	07/20/2000
OVASAPYAN, RAZMIK, GLENDALE, CA	07/20/2000
PEREZ, CLARA ARYAN, MIAMI, FL	07/20/2000
PEREZ, GENEVA HENRIETTA, PORTLAND, OR	07/20/2000
PERRY, SHABAZZ, BROOKLYN, NY	07/20/2000
PIERCE, GREGORY H, PHILADELPHIA, PA	07/20/2000
POH-EIKOM, VIKKI, PAULSBORO, NJ	07/20/2000
QUINONES, MAYRA M, MIAMI LAKES, FL	07/20/2000
RAWANA, VIVEKANAND, GANADO, AZ	07/20/2000
ROBERTS, ANNETTE, YULEE, FL	07/20/2000
ROBERTS, CLARENCE ROCHELLE, ENID, OK	07/20/2000
ROGERS, CHARLES PAUL, LEWISBURG, GA	07/20/2000
S & A RESPIRATORY CARE, INC, LOUISVILLE, KY	07/20/2000
SHEA, DAVID, LAS VEGAS, NV	07/20/2000
SPERRAZZA, CONNIE E, MESA, AZ	07/20/2000
STITH, TERRI, ROCHESTER, NY	07/20/2000
TALYANSKY, OLEG, BROOKLYN, NY	07/20/2000
TAYLOR, MARIE ANTOINETTE, QUEENS VILLAGE, NY	07/20/2000
VALLE, PEDRO, HIALEAH, FL	07/20/2000

Subject, city, state	Effective date
WEAR, LAURIE A, MEDFORD, OR	07/20/2000
WILLIFORD WILSON, ALBERTA JOYCE, BAY CITY, TX	07/20/2000
WORSHAM, CHRISTINA J, MOODY, MO	07/20/2000
FELONY CONVICTION FOR HEALTH CARE FRAUD:	
EVERGATES, SANDRA J, CLINTON, MA	07/20/2000
RYALS, CHANDRA L, TOWNSEND, GA	07/20/2000
SMITH FONTENOT, TONYA, JENKS, OK	07/20/2000
TAULMAN, CHRISTINE, LOVELAND, CO	07/20/2000
FELONY CONTROL SUBSTANCE CONVICTION:	
CLAAR, ELIZABETH A, WARREN, OH	07/20/2000
COLEMAN, THOMAS CLINTON JR, DUBLIN, GA	07/20/2000
FEENEY, MARY ANN, HAZLETON, PA	07/20/2000
HODGES, MELANIE CLARK, EVINGTON, VA	07/20/2000
KIRSTEIN, KENNETH F, MEDINA, OH	07/20/2000
OSER, CATHERINE ANN, LONG BEACH, CA	07/20/2000
PENNINGTON, FRANK R, JACKSON, TN	07/20/2000
REED, REGINA LEA, SILVERTON, TX	07/20/2000
YERGER, KAREN A, MIDDLEBURG, PA	07/20/2000
PATIENT ABUSE/NEGLECT CONVICTIONS:	
ALLEN, CHERMAINE JOAN, LAUREL, MS	07/20/2000
ALLGOOD, JENICE C, STARKVILLE, MS	07/20/2000
AYAP, EUSTALIA GUTIERREZ, SAN JOSE, CA	07/20/2000
BATOFF, STEVEN B, CAMP HILL, PA	07/20/2000
CONROY, KERRY ANNE, DENVER, CO	07/20/2000
DELEON, BARBARA M, AMSTERDAM, NY	07/20/2000
EWART, CAROL, BRONX, NY	07/20/2000
FACKLER, CRYSTAL L, GARETTSVILLE, OH	07/20/2000
FELDER, GLORIA, NEW YORK, NY	07/20/2000
GAMMILL, DEMETRA KAY, NEW ORLEANS, LA	07/20/2000
GRAEFF, WILLIS SHERWOOD III, WINFIELD, KS	07/20/2000
JACKSON, ROSALINDA LUZ, SAN RAMON, CA	07/20/2000
JONES, CHARLES EDFORD, BETHEL SPRINGS, TN	07/20/2000
KANE, BARBARA S, LOCKPORT, NY	07/20/2000
KIRK, KATHLEEN, SAYVILLE, NY	07/20/2000
LEVELS, KATHERINE N, DELHI, LA	07/20/2000
MALACHOWSKI, DEBBIE, HAMBURG, NY	07/20/2000
MAYS, JOHN LEE, SACRAMENTO, CA	07/20/2000
MOORE, SHANIKA, ROCHESTER, NY	07/20/2000
MORROW, THOMAS, GOWANDA, NY	07/20/2000
MULLINIKS, LAURIE JEAN, ADA, OK	07/20/2000
RIDDLE, SCOTT WESLEY, GREENWOOD, AR	07/20/2000
ROLDAN, ESTRELLITA MONTOYA, WALNUT CREEK, CA	07/20/2000
SMIGELSKI, SALLY A, EUCLID, OH	07/20/2000
STEVENSON, STONYA R, DAYTON, OH	07/20/2000
TIBO, EDNA KIKO, POMPANO BCH, FL	07/20/2000
WICKLINE, ANGELINE M, NEWARK, OH	07/20/2000
CONVICTION FOR HEALTH CARE FRAUD:	
CHHEDA, JAYANTILAL K, COPIAGUE, NY	07/20/2000
ROYAL, ANNETTE J, NEW ORLEANS, LA	07/20/2000
CONTROLLED SUBSTANCE CONVICTIONS:	
FOX, JOHN PAUL, HARPER WOODS, MI	07/20/2000
LICENSE REVOCATION/SUSPENSION/SURRENDERED:	
ACHEY, LORI B, ANNVILLE, PA	07/20/2000
ALSTON-MARSHALL, KELLY N, CHICAGO HGTS, IL	07/20/2000
AMABA, SAMANTHA D, MIAMI, FL	07/20/2000
AUSTIN, ROBIN DAWN, CASTAIC, CA	07/20/2000
AYCOCK, JOSEPH P, MEMPHIS, TN	07/20/2000
BECKWITH, JUDY LAVERNE, HAYWARD, CA	07/20/2000
BELT, LATOYA T, CHICAGO, IL	07/20/2000
BERKLEY, WANDA G, HALIFAX, VA	07/20/2000
BIONDI, GIOVANNI, SCARSDALE, NY	07/20/2000
BISANTI, EMILIO, SPRINGFIELD, MA	07/20/2000
BLASCZIENSKI, DEBRA, NEW ORLEANS, LA	07/20/2000
BLEVINS, BRENT L, COTTONTOWN, TN	07/20/2000
BOARD, ELIZABETH MAUDE, SMYRNA, GA	07/20/2000
BOBBITT, BRENDA E, BLACKSTONE, VA	07/20/2000
BOHANAN, TERRI W, SEYMOUR, TN	07/20/2000
BRADLEY, REGINALD DWAYNE, RICHMOND, VA	07/20/2000
BRASSFIELD, DENNIS WAYNE, DUMAS, TX	07/20/2000
BRATZ, KENNETH M, INGLESIDE, IL	07/20/2000
BRENNAN, KATHERINE, LEE, NH	07/20/2000
BROWN, FRANCINE B, CORBIN, KY	07/20/2000
BROWN, RICHARD C, ORO VALLEY, AZ	07/20/2000
BUCKLER, THOMAS B, LEBANON, TN	07/20/2000
CALLAHAN, PEGGY IMOJEAN, MODESTO, CA	07/20/2000
CALLOWAY, NINA A, CHICAGO, IL	07/20/2000
CAMPBELL, SHEILA D, ROANOKE, VA	07/20/2000
CANTERO, WILLIAM MENDOZA, LOS ANGELES, CA	07/20/2000
CARROLL, SANDRA B, ROGERSVILLE, TN	07/20/2000
CHAGNON, KENNETH P, MILTON, VT	07/20/2000
CHATMAN, SUSAN E, RINGGOLD, GA	07/20/2000
CHERNOFF, BETTYE F, WINCHESTER, TN	07/20/2000
CLARK, GIITA, MILTON, VT	07/20/2000
COLE, WILSON M, SAN DIEGO, CA	07/20/2000
COLLINS, PATRICK SHAWN, S BYRON, NY	07/20/2000
CONN, DENISE, VIRGINIA BEACH, VA	07/20/2000
COOK, JAY D, ANDERSON, CA	07/20/2000
COOPER, ROXANNE MARIE, VALRICO, FL	07/20/2000
CORTELYOU, MARIE, PECOS, NM	07/20/2000
COVINGTON, NANCY, CHICAGO, IL	07/20/2000
CREIGHTON, WILLIAM T, NORTHBOROUGH, MA	07/20/2000
CROSBY, JAMES ERNEST, PANAMA CITY BCH, FL	07/20/2000
DANIEL, JAMES LYNN, ORMOND BEACH, FL	07/20/2000
DAVID, LUC CLAUDE, PITTSFORD, NY	07/20/2000
DAVIS, CASSUANDRA PORTER, HEMET, CA	07/20/2000
DELAINI, JACQUELIN L, WICKHAVEN, PA	07/20/2000
DEWITT, MARIAN LOUISE, GALESBURG, IL	07/20/2000
DIBENEDITTO, JOSEPH P, BOWLING GREEN, KY	07/20/2000
DIXON, DONN HOWELL, AUSTIN, TX	07/20/2000
DONOGHUE, WILLIAM JOSEPH, CHICAGO, IL	07/20/2000
ELUL, RAFAEL, SAN FRANCISCO, CA	07/20/2000
ENGLE, DEBORAH J, BERWYN, IL	07/20/2000

Subject, city, state	Effective date
FANTONE, ROSALIND HELENE, ANN ARBOR, MI	07/20/2000
FELDMAN, RICHARD W, NASHVILLE, TN	07/20/2000
FINCHAM, IDA K, CULPEPER, VA	07/20/2000
FITCH, KIMBERLY L, CHICAGO, IL	07/20/2000
FLEMING, DEIRDRE LYNNE REESE, FLAGSTAFF, AZ	07/20/2000
FLETCHER, CHRISTINE, SHAW, MS	07/20/2000
FORESTER, MARGARET G, JOHNSON CITY, TN	07/20/2000
FREEBURGER, MICHAEL E, MAYFIELD, KY	07/20/2000
FUSSELL-THACKER, JACQUELINE MA, WOODLAND, CA	07/20/2000
GABBARD, SARAH D, HADDIX, KY	07/20/2000
GALVAN, KAREN MISCHELL, HARPER WOODS, MI	07/20/2000
GATES, DEBORAH, PITTSBURGH, PA	07/20/2000
GHIORGHIS, EDEN H, SPRINGFIELD, IL	07/20/2000
GIANTURCO, MICHAEL JAMES, EGGERTSVILLE, NY	07/20/2000
GIETL, JOSEPH P, BUFFALO, IL	07/20/2000
GILBERT, JACQUELYN L, CHELSEA, MI	07/20/2000
GILBERT, CYNTHIA M, SPRINGFIELD, VA	07/20/2000
GO, JAIME YU, BATH, NY	07/20/2000
GOLEM, JUDITH ELAINE, CANTON TWP, MI	07/20/2000
GONZALEZ, LORENA, CHICAGO, IL	07/20/2000
GRANGER, ELIZABETH DIANNE, HOOVER, AL	07/20/2000
GUNN, JAMES PATRICK, SANTA MARIA, CA	07/20/2000
HANDSFIELD, RODNEY G, LAS VEGAS, NV	07/20/2000
HARRIS, JANICE, HENDERSONVILLE, TN	07/20/2000
HARRISON, HUBERT, KNOXVILLE, TN	07/20/2000
HENRY, JERRY C, ACKERMAN, MS	07/20/2000
HILL, ROBERT S, TIPPECANOE, IN	07/20/2000
HILSE, KARL F JR, LAWRENCE, MA	07/20/2000
HOFFMAN, JAMES DAVID, ARLINGTON, VA	07/20/2000
HOWER, DENISE M, THOMPSONTOWN, PA	07/20/2000
HUGENTOBLER, SHELLI, EPHRAIM, UT	07/20/2000
JAMES, JEFFERY CRAIG, LATHROP, CA	07/20/2000
JOHNSON, DIANE L, PITTSBURGH, PA	07/20/2000
JOHNSON, CINDY KING, JACKSONVILLE, FL	07/20/2000
KAUFMAN, MARK CHARLES, VALLEY STREAM, NY	07/20/2000
KELLEY, EDWARD M, AUBURN, ME	07/20/2000
KLINGBEIL, ROBERT T, MARIETTA, GA	07/20/2000
KOCH, KATHRYN L, MEBANE, NC	07/20/2000
LAROSE, CHRISTINE L, WATERTOWN, MA	07/20/2000
LEAMON, YOLANDA G, BATTLE CREEK, MI	07/20/2000
LISKANICH, MICHAEL J, SAN DIMAS, CA	07/20/2000
LONG, BRENDA PENNINGTON, DAYTON, OH	07/20/2000
LONG, DAVID E, EL CENTRO, CA	07/20/2000
LONGAKER, WILLIAM D, BROOKTONDALE, NY	07/20/2000
LONGSWORTH, CYNTHIA MARIE, MIAMI, FL	07/20/2000
LOUIS, NATACHA, NYACK, NY	07/20/2000
LUCAS, DARRELL FREDERICK, CLEARLAKE, CA	07/20/2000
LUNAU, SUE LEMASTERS, MOUNDSVILLE, WV	07/20/2000
LUTSCH, PATRICIA F, LOUISVILLE, KY	07/20/2000
MAGGARD, CHRISTOPHER, HERMITAGE, TN	07/20/2000
MARBUTT, CHRISTOPHER JOE, LAFAYETTE, AL	07/20/2000
MARTINEZ, MARY J, LANSING, IL	07/20/2000
MCINTIRE, VICTOR K, CORINTH, MS	07/20/2000
MITCHELL, JERRY III, DADE CITY, FL	07/20/2000
MONEY, MARY, CAPON BRIDGE, WV	07/20/2000
MONICK, PHYLLIS H, BENNINGTON, VT	07/20/2000
MOORE, VALERIA F, DANVILLE, VA	07/20/2000
MORAN, JEFFREY, SAN CLEMENTE, CA	07/20/2000
MORTIMER, ANTHONY EDWARD, ANTIOCH, TN	07/20/2000
MOSS, JODI M, FORT WORTH, TX	07/20/2000
MUKAI, JANET ELIZABETH, LOS ANGELES, CA	07/20/2000
OLSON, DAN A, MESA, AZ	07/20/2000
OTT, JOHN DAVID, FOREST GOVE, OR	07/20/2000
PARRIS, DELLA M B, PARIS, TN	07/20/2000
PAUL, BRIAN KEITH, ROYAL OAK, MI	07/20/2000
PUSSER, CYNTHIA L, REAGAN, TN	07/20/2000
REESE, JACK D, LIBERAL, KS	07/20/2000
REICHEK, JODI, E SWANZEY, NH	07/20/2000
REID, SHAWN WAYNE, SAN GABRIEL, CA	07/20/2000
REIMERS, WILLIAM NEIL, SAUGUS, CA	07/20/2000
ROBINSON, MICHELLE N, RICHMOND, VA	07/20/2000
RODRIGUEZ, SANDRA, PROVIDENCE, RI	07/20/2000
ROELLCHEN, THOMAS JAY, KALAMAZOO, MI	07/20/2000
ROSS, NEIL WELBON, BERKELY, CA	07/20/2000
ROSS, DANIEL JOSEPH, CONCORD, CA	07/20/2000
RUDDER, ANN S, KNOXVILLE, TN	07/20/2000
RUEDA, ORLANDO JULIAN, HOLLYWOOD, FL	07/20/2000
SAAFIR, CONSTANCE D, DURHAM, NC	07/20/2000
SANTANGELO, ROBIN EILEEN POSEY, CORAL SPRINGS, FL	07/20/2000
SAXE, MARYANN, ROCHESTER, NY	07/20/2000
SCHAEFFER, NINA B, NEW YORK	07/20/2000
SHERWIN, DORIS W, WAVELAND, MS	07/20/2000
SHULTICE, ROBERT W, BLAIRSTOWN, IA	07/20/2000
SHUWARGER, COLEMAN, CHATSWORTH, CA	07/20/2000
SIVAMURTHY, SHETRA, HUNTINGTON STATION, NY	07/20/2000
SMITH, NOELENE F, ALBANY, NY	07/20/2000
SMITH, CHRISTOPHER TREMEL, SAN FRANCISCO, CA	07/20/2000
STALKER, RAYMOND L, LEXINGTON, KY	07/20/2000
STECKMEYER, PAUL J, HAMBURG, NY	07/20/2000
STOOTS, MARY H, BRISTOL, TN	07/20/2000
SUDTELGTE, JERRY, MEDFORD, OR	07/20/2000
TAYLOR, LEE ANN, LYNDONVILLE, VT	07/20/2000
TERRY, KEVIN MICHAEL, OAKDALE, CA	07/20/2000
TESCHKE, GERD C, MELROSE, MA	07/20/2000
TESTA, RICKI L, BOSTON, MA	07/20/2000
THOMPSON, BRIAN THOMAS, VANCOUVER, WA	07/20/2000
THORNTON, JEAN A, LEWISBURG, OH	07/20/2000
TURCHETTA, BERNARD V JR, N SCITUATE, RI	07/20/2000
TYNER, SANDRA J, GRANTS PASS, OR	07/20/2000
VARTULI, JEFFREY A, BRATTLEBORO, VT	07/20/2000

Subject, city, state	Effective date
WEST, LINDA CAROLINE, DORA, AL	07/20/2000
WHITLEY, CAROLYN L, HOPEWELL, VA	07/20/2000
WHITLOCK, CLAUDIA S, DANDRIDGE, TN	07/20/2000
WILDS, LAURA ANN, DALLAS, TX	07/20/2000
WILLIS, BETH ANNE M, BEEBE PLAIN, VT	07/20/2000
WILSON, DOYLE CLARENCE JR, HOUSTON, TX	07/20/2000
WILSON, MARLA A, MILLINGTON, TN	07/20/2000
WOJTKOWIAK, SANDRA LYNN, E LANSING, MI	07/20/2000
WOODFIELD, BRENT ELMAN, CHATHAM, MA	07/20/2000
WURTZ, RICHARD F, PHOENIX, AZ	07/20/2000
ZELANO, SALVATORE, NEW YORK, NY	07/20/2000
FEDERAL/STATE EXCLUSION/SUSPENSION:	
SILVER LAKE MEDICAL SUPPLY, LOS ANGELES, CA	07/20/2000
FRAUD/KICKBACKS:	
RESNICK, MARK GARY, TAMPA, FL	01/28/2000
OWNED/CONTROLLED BY CONVICTED EXCLUDED:	
A K CHIROPRACTIC CLINIC, HOLLAND, MI	07/20/2000
ALL CHIROPRACTIC CENTER, STAMFORD, CT	07/20/2000
CARR CHIROPRACTIC CENTER, MAYVILLE, WI	07/20/2000
CYNTHIA D GRAY, M D, P C, VANCOUVER, WA	07/20/2000
EAST COAST MEDICAL GROUP, INC, NEW SMYRNA BEACH, FL	07/20/2000
JAYMEE J FRIMML, D C, NAMPA, ID	07/20/2000
LANE P BUNKER, D C, P C, LONGMONT, CO	07/20/2000
MIGVA MEDICAL CENTER, GROUP, MIAMI, FL	07/20/2000
MQ PROFESSIONAL SERVICES, INC, MIAMI LAKES, FL	07/20/2000
MURPHY CHIROPRACTIC, INC, MADISON, WI	07/20/2000
OASIS EYE CARE, JAMAICA, NY	07/20/2000
OZARK CHIROPRACTIC CLINIC, P C, OZARK, MO	07/20/2000
P & M MEDICAL EQUIPMENT, MIAMI, FL	07/20/2000
RAPID OXIMETRY SERVICES, INC, MIAMI, FL	07/20/2000
SARTZ CHIROPRACTIC, CHANDLER, AZ	07/20/2000
VECTOR HEALTH CARE CONSULTANTS, NEW PORT RICHEY, FL	07/20/2000
VICKERS CHIROPRACTIC CENTER, HOLLAND, MI	07/20/2000
DEFAULT ON HEAL LOAN:	
AVERA, GEORGE EARLIN, DENTON, TX	07/20/2000
BENNETT, HUGH M, HONOLULU, HI	07/20/2000
BENSON, DAVID M, SAN FRANCISCO, CA	07/20/2000
BISHOP, LARRY C, EVANSVILLE, IN	07/20/2000
BUGG, JAMES H, OKLAHOMA CITY, OK	07/20/2000
CARTER, BENJAMIN M JR, GAINSEVILLE, GA	07/20/2000
DEAN, RANDY M, INVERNESS, FL	07/20/2000
DIMATTEO, LUCA, SIMSBURY, CT	07/20/2000
HOUGH, REGINIO T JR, LANCASTER, CA	07/20/2000
HUNT, EDWARD, JACKSON, MS	07/20/2000
JOHNSON, STEVEN R, CAMDEN, TN	07/20/2000
MACKUSE, DONNA MARIE, SOMERS POINT, NJ	07/20/2000
MADDEN, PATRICK J, QUINCY, MA	07/20/2000
MAYER, FREDERICK G, AVON BY THE SEA, NJ	07/20/2000
MITCHELL, WARREN A, ANCHORAGE, AK	07/20/2000
NORDNESS, PAUL J, CHARLOTTE, NC	07/20/2000
NUTTER, BARRY J, HONOLULU, HI	07/20/2000
OBATA, NWAEBUNI M, RIVERDALE, GA	07/20/2000
PAUNOVIC, SUSAN J, HOPEWELL JUNCTION, NY	07/20/2000
PREVEDELLO, BARBARA A, TOPEKA, KS	07/20/2000
RIVEROY, ISAAC, CHINO HILLS, CA	07/20/2000
SAINTLOUIS, JOSEPHUS H, BOSTON, MA	05/25/2000
SELLITTO, ROCCO V, BROOKLYN, NY	07/20/2000
SMITH, STACEY D, MALIBU, CA	07/20/2000
SPATAFORA, JOHN A JR, GRAN JUNCTION, CO	07/20/2000
STAUFFER, KELLY J, MOUNTAIN VIEW, CA	07/20/2000
STEFANIC, RICHARD, TORREON, COAH MEXICO,	07/20/2000
STRAUGHAN, CAROL J, MINNEAPOLIS, MN	07/20/2000
VESSEY, NED S, ARCADIA, CA	07/20/2000
WAKEFIELD, ELIZABETH A, MCGROGER, MN	05/25/2000
WALL, MICHAEL J, SANDY, UT	07/20/2000
ZITARELLI, JOSEPH A, HAZLETON, PA	07/20/2000
OWNERS OF EXCLUDED ENTITIES:	
DECKER, ANGELA, LOUISVILLE, KY	07/20/2000
JACKSON, SHARON, LOUISVILLE, KY	07/20/2000

Dated: July 11, 2000.

Kathi Petrowski,

Acting Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–18380 Filed 7–19–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Telephone Conference Call meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in July 2000.

The meeting will include the review, discussion and evaluation of individual grant applications and detailed discussion of information about the Center's procurement plans. Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3)(4) and (6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Date: July 31, 2000 (Closed).

Time: 1 p.m. to 2:30 p.m.

Place: Rockwall II Building, 5515 Security Lane, Conference Room II, Rockville, Maryland 20852.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455.

Dated: July 10, 2000.

Tolan Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–18412 Filed 7–19–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4539–FA–02]

Announcement of Funding Awards for Fiscal Year 2000 Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2000 Community Development Work Study Program (CDWSP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract economically disadvantaged and minority students to careers in community and economic development, community planning and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1537, extension 5918. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–1455. (Telephone numbers, other than the two "800" numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The CDWSP is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education and creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The CDWSP was enacted in the Housing and Community Development Act of 1988. (Earlier versions of the program were funded by the Community Development Block Grant Technical Assistance Program from 1982 through 1987 and the Comprehensive Planning Assistance Program from 1969 through 1981.) Eligible applicants include institutions of higher education having qualifying academic degrees, and States and areawide planning organizations who apply on behalf of such institutions. The CDWSP funds graduate programs only. Each participating institution of higher education is funded for a minimum of three students and a maximum of five students under the CDWSP. The CDWSP provides each participating student up to $9,000 per year for a work stipend (for internship-type work in community building) and $5,000 per year for tuition and additional support (for books and travel related to the academic program). Additionally, the CDWSP provides the participating institution of higher education with an administrative allowance of $1,000 per student per year.

The Catalog of Federal Domestic Assistance number for this program is 14.512.

On December 13, 1999 (64 FR 69622) HUD published a Notice of Funding Availability (NOFA) announcing the availability of $3 million in FY 1999 funds for the CDWSP. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2000 Community Development Work Study Program Funding Competition, By Name, Address, Phone Number, Grant Amount and Number of Students Funded

New England

1. Massachusetts Institute of Technology, Professor Langley C. Keyes, Massachusetts Institute of Technology, Department of Urban Studies & Planning, 77 Massachusetts Avenue, Cambridge, MA 02139, (617) 253–1540. Grant: $90,000, to fund three students.

2. University of Rhode Island, Dr. Marcia Marker Feld, University of Rhode Island, 70 Lower College Road, Kingston, RI 02881, (401) 277–5235. Grant: $90,000 to fund three students.

New York/New Jersey

3. Hunter College of CUNY, Dr. William J. Milczarski, Hunter College of CUNY, Graduate Program in Urban Planning, 695 Park Avenue, New York, NY 10021, (212) 772–5601. Grant: $90,000 to fund three students.

4. State University of New York-Buffalo, Dr. Henry L. Taylor, Jr., Center for Urban Studies, 101C Fargo Quad, Building 1, Ellicott Complex, Buffalo, NY 14261, (716) 645–2374. Grant: $90,000 to fund three students.

Mid-Atlantic

5. Carnegie Mellon University, Dr. Barbara Brewton, Carnegie Mellon University, H. John Heinz III School of Public Policy and Management, 5000 Forbes Avenue, Pittsburgh, PA 15213, (412) 268–2162. Grant: $90,000 to fund three students.

6. Virginia Polytechnic and State University, Dr. Ted Koebel, Virginia Polytechnic and State University, 301 Burruss Hall, Blacksburg, VA 24061, (540) 231–3993. Grant: $90,000 to fund three students.

7. Washington Council of Governments, Kristin O'Connor, Washington Council of Governments, 777 North Capitol Street, NE, Washington DC 20002, (202) 962–3278. Grant: $360,000 to fund three students each at the University of Maryland, the University of the District of Columbia, Howard University, and George Mason University.

8. West Virginia University, Dr. Allen Martin, West Virginia University, 886 Chestnut Ridge Road, Box 6845, Morgantown, WV 26506, (304) 293–3998. Grant: $89,670 to fund three students.

Southeast

9. University of Alabama at Birmingham, Dr. Janice Hitchcock, University of Alabama at Birmingham, 701 South 20th Street, Suite 1170, Birmingham, AL 35294, (205) 934–3500. Grant: $90,000 to fund three students.

10. Alabama A&M University, Dr. Constance J. Wilson, Alabama A&M University, P.O. Box 411, Normal, AL 35762, (256) 851–5425. Grant: $90,000 to fund three students.

11. Clemson University, Dr. M. Grant Cunningham, Clemson University, Brackett Hall, Box 345702, Clemson, SC 29634, (864) 656–1587. Grant: $75,879 to fund three students.

12. Eastern Kentucky University, Dr. Terry Busson, Eastern Kentucky University, 521 Lancaster Avenue, Richmond, KY 40475, (606) 622–1019. Grant: $90,000 to fund three students.

13. Jackson State University, Dr. Curtina Moreland-Young, Jackson State University, 3825 Ridgewood Road, Box 18, Jackson, MS 39211, (601) 432–6266. Grant: $90,000 to fund three students.

14. University of Memphis, Dr. David Cox, University of Memphis, Center for Urban Research and Extension, Memphis, TN 38152, (901) 687–3365. Grant: $88,800 to fund three students.

15. University of North Carolina at Chapel Hill, Dr. Emil Malizia, University of North Carolina at Chapel Hill, CB#4100, Room 300—Bynum Hall, Chapel Hill, NC 27599, (909) 962–4759. Grant: $83,670 to fund three students.

16. State University of West Georgia, Dr. George Larkin, State University of West Georgia, 1600 Maple Street, Carrollton, GA 30118, (770) 836–6504. Grant: $82,464 to fund three students.

17. University of Tennessee at Chattanooga, Dr. Diane Miller, University of Tennessee at Chattanooga, Office of Graduate Studies, 615 McCallie Avenue, Chattanooga, TN 37403, (423) 755–4431. Grant: $90,000 to fund three students.

18. University of West Florida, Dr. C.E. Teasley, University of West Florida, 11000 University Parkway, Pensacola, FL 32514, (850) 474–2372. Grant: $90,000 to fund three students.

Midwest

19. University of Cincinnati, Dr. David Varady, University of Cincinnati, School of Planning, P.O. Box 21067, Cincinnati, OH 45221, (513) 556–0215. Grant: $79,446 to fund three students.

20. Cleveland State University, Dr. Dennis Keating, Cleveland State University, 1983 East 24th Street, Cleveland, OH 44115, (216) 687–2298. Grant: $90,000 to fund three students.

21. University of Michigan, Dr. Margaret Dewar, University of Michigan, Fleming Administration Building, 503 Thompson Street, Ann Arbor, MI 48109, (734) 763–2528. Grant: $90,000 to fund three students.

22. Ohio State University, Dr. Dale Bertsch, Ohio State University, 1960 Kenny Road, Columbus, OH 43210, (614) 292–2370. Grant: $90,000 to fund three students.

23. Southern Illinois University Edwardsville, Dr. T.R. Carr, Southern Illinois University Edwardsville, Campus Box 1046, Edwardsville, IL 62026, (618) 650–3762. Grant: $88,200 to fund three students.

Southwest

24. North Central Texas Council of Governments, Mr. R. Michael Eastland, P.O. Box 5888, Arlington, TX 76005, (817) 695–9101. Grant: $270,000 for three students each at University of North Texas, University of Texas at Arlington, and the University of Texas at Dallas.

Great Plains

25. University of Kansas, Dr. Stephen Maynard-Moody, University of Kansas, 318 Blake Hall, Lawrence, KS 66045, (785) 864–3527. Grant: $90,000 to fund three students.

26. University of Nebraska-Omaha, Dr. Burton Reed, University of Nebraska-Omaha, Department of Public Administration, 60th and Dodge Streets, Omaha, NE 68182, (402) 554–2682. Grant: $85,102 to fund three students.

Pacific

27. University of California Berkeley, Dr. Robert Ogilvie, University of California-Berkeley, Sponsored Projects Office, 316 Wurster Hall #1870, Berkeley, CA 94720, (510) 643–1903. Grant: $90,000 to fund three students.

28. University of California, Los Angeles, Dr. Jacqueline Leavitt, University of California, Los Angeles, 405 Hilgard, Los Angeles, CA 90024, (310) 825–4380. Grant: $89,849 to fund three students.

Northwest/Alaska

29. Eastern Washington University, Dr. Bill Kelley, Eastern Washington University, 526 5th Street, MS–10, Cheney, WA 99004, (509) 358–2226. Grant: $90,000 to fund three students.

30. University of Washington, Dr. Donald Allen, University of Washington, Box 353055, Seattle, WA 98195, (206) 543–4043. Grant: $90,000 to fund three students.

Dated: July 12, 2000.

Lawrence L. Thompson,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 00–18310 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–82–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Columbus Zoo and Aquarium, Powell, OH, PRT–028330

The applicant requests a permit to import biological samples from one captive-held and one captive-born female pygmy Chimpanzee (*Pan paniscus*) from Dr. Vet. W. De Meurichy, Royal Zoological Society of Antwerp, Antwerp, Belgium, for health status evaluation prior to subsequent import of the live specimens, for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: The Brookfield Zoo, Brookfield, IL, PRT–030185

The applicant requests a permit to re-export blood and DNA samples obtained from wild and captive Leadbeater's possum, (*Gymnobelideus leadbeateri*), to the Centre for Resources and Environmental Studies, Australian National University, Acton, Australia, for the purpose of enhancement of the species through scientific research.

Applicant: John R. Cassidy, Northville, MI, PRT–030196

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Frank Huschitt, Grayslake, IL, PRT–030199

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Mark A. David, Shirley, AR, PRT–030201

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Cincinnati Zoo & Botanical Garden, Cincinnati, OH, PRT–025093

The applicant requests a permit to purchase in interstate commerce wild and captive born Thick-billed parrots (*Rhynchopsitta pachyrhycha*) from Endangered Parrot Trust, Ocala, FL, for the purpose of enhancement of the survival of the species through propagation and zoological display.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and

the regulations governing marine mammals (50 CFR 18).

Applicant: Ronald Schauer, Danville, CA, PRT–027545

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted polar bear trophy from the Griesfiord polar bear population, Northwest Territories, Canada for personal use.

Applicant: William A. Niederer, Anchorage, AK, PRT–030197

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted polar bear trophy from the Northern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 13, 2000.

Kristen Nelsen,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–18169 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Action Statement and Receipt of an Application for a Permit To Enhance the Survival of the Northern Idaho Ground Squirrel in Adams County, Idaho Under a Safe Harbor Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Bob and Peggy Mack (Applicants) have applied to the Fish and Wildlife Service (Service) for an enhancement of a survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicants and the Service. The Agreement and permit application are available for public comment.

The Agreement allows for management and conservation of the threatened northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) on approximately 14 acres of private land, owned by the Applicants, approximately 5.5 miles northwest of New Meadows, Idaho. Northern Idaho ground squirrels currently occupy less than 5 of the 14 acres. The proposed duration of the Agreement is 10 years, and the proposed term of the enhancement of a survival permit is 20 years.

Under the Agreement, a 5-acre area, which includes all the habitat currently occupied by northern Idaho ground squirrels on the Applicants' property, is identified as a protected area. This 5-acre protected area would have a baseline greater than zero (0), and no incidental take would be authorized under the permit within this area. The Agreement allows for a variety of conservation measures to be carried out by the Service within the 5-acre protected area to benefit the conservation of northern Idaho ground squirrels. The permit would authorize the Applicants to return the 9 acres outside of the 5-acre protected area to the existing baseline condition of zero (0) northern Idaho ground squirrels. We expect this Agreement to result in a net conservation benefit by enhancing northern Idaho ground squirrel habitat within the 5-acre protected area, and expanding the northern Idaho ground squirrel population to lands outside the protected area. Recovery of northern Idaho ground squirrels is expected to be enhanced under the Agreement by improving habitat, expanding the northern Idaho ground squirrel population at this site, and potentially providing a population with surplus individuals for transplanting to other sites in need of supplementation. Under the Agreement, the Applicants will receive funding under the Service's Endangered Species Act Private Landowner Incentive Program.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969. We explain the basis for this determination in an Environmental Action Statement, which also is available for public review.

We request comments from the public on the permit application, and Agreement. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before August 21, 2000.

ADDRESSES: Comments should be addressed to Dennis Mackey, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (telephone: 208/378–5267; facsimile: 208/378–5262).

FOR FURTHER INFORMATION CONTACT: Dennis Mackey at the above address or telephone 208/378–5267.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the individual named above. You also may make an appointment to view the documents at the above address during normal business hours. The documents are also available electronically on the World Wide Web at *http://www.fws.gov/r1srbo/*.

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Endangered Species Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with the Applicants to develop the proposed Agreement for the conservation of northern Idaho ground squirrels on their 14 acres of land in Adams County, Idaho. Less than 5 of the 14 acres are currently occupied by northern Idaho ground squirrels. Under the proposed Agreement, the Applicants will: (1) Protect 5 acres of occupied, suitable northern Idaho ground squirrel habitat from land use activities that may result in "take" of ground squirrels; (2) allow Service personnel access to the property to conduct ground squirrel conservation activities such as habitat enhancement, artificial feeding, ground squirrel surveys, and translocation of excess ground squirrels should the current population expand beyond the 5-acre protected area; (3) if appropriate, in cooperation with the Service, develop signs to discourage shooting of ground squirrels; and (4) work cooperatively with the Service on other issues

necessary to further the purposes of the Agreement.

Threats to the northern Idaho ground squirrel include: habitat loss due to seral forest encroachment into suitable meadow habitats; competition from Columbian ground squirrels (*Spermophilus columbianus*); land use changes; recreational shooting; and naturally occurring events. The Agreement provides a net conservation benefit to northern Idaho ground squirrels by providing measures for ground squirrel habitat protection and enhancement, managing competition from Columbian ground squirrels, and controlling recreational shooting. The biological goal of ground squirrel conservation measures in the Agreement is to expand the northern Idaho ground squirrel population at this site beyond the 5-acre protected area by reducing threats to the species. The Agreement is expected to contribute to recovery of northern Idaho ground squirrels by reducing threats and expanding the ground squirrel population at this site. Recovery of the species would be enhanced by increasing the viability of the population at this site and potentially allowing ground squirrels to be translocated to other sites in need of population supplementation.

Consistent with the Service's Safe Harbor policy, under the Agreement, the Service would issue a permit to the Applicants authorizing incidental take of northern Idaho ground squirrels, as a result of activities on 9 acres of their property, outside the 5-acre protected area. These activities include construction and use of the Applicants' house, garage, and other associated out-buildings proposed for development on the property; installation of a well, underground power and telephone lines, a septic system/drainfield, and other required utilities; and operation of all terrain vehicles. We expect that the maximum level of incidental take authorized under the proposed Agreement will never be realized. The level of incidental take would be dependent on if, and how rapidly, northern Idaho ground squirrels expand beyond the 5-acre protected area.

We are providing this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to the Applicants for take of northern Idaho ground squirrels incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: July 3, 2000.

William F. Shake,

Acting Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 00–18182 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–3808]

Notice of Availability for the Record of Decision and Plan of Operations Approval for the South Pipeline Project; Expansion of Existing Gold Mining/Processing Operations; Lander County, NV

AGENCY: Bureau of Land Management, DOI.

COOPERATING AGENCIES: Nevada Division of Wildlife, US Army Corps of Engineers.

ACTION: Notice of Availability of the Record of Decision and Plan of Operations Approval for the South Pipeline Project, Lander County, Nevada.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, the Bureaus of Land Management (BLM) has issued a Record of Decision for the South Pipeline Final Environmental Impact Statement (EIS) and Plan of Operations Approval for the Cortez Gold Mines' South Pipeline Project.

EFFECTIVE DATE: Appeals of the decision must be post-marked or otherwise delivered by 4:30 p.m. July 27, 2000.

ADDRESSES: Copies of the Record of Decision are available at the BLM, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Gary Foulkes, Project Manager, Battle Mountain BLM at (775) 635–4060.

SUPPLEMENTARY INFORMATION: Cortez Gold Mines, Inc. (CGM) has been approved to extend gold mining operations at the Pipeline Mine within the Gold Acres Mining District in Lander County, approximately 30 miles southeast of Battle Mountain, Nevada. The South Pipeline Project (Project) (as approved) includes an expansion of the existing open pit and waste rock disposal sites, and the development of heap leach and ancillary facilities. The Project will require additional surface disturbance of 4,450 acres, all of which is public land administered by the Bureau of Land Management. Operations are expected to occur seven days a week, 24 hours a day, for an additional 10 years.

Gerald M. Smith,

Field Manager, Battle Mountain Field Office.

[FR Doc. 00–18341 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–1020–XU: GPO–0285]

Notice of Meeting of John Day/Snake Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Meeting of John Day/Snake Resource Advisory Council: Walla Walla, Washington.

SUMMARY: On September 6, 2000 at 10 a.m. there will be a panel discussion to define and clarify the Endangered Species Act (ESA). The meeting will be held at the Cascade Natural Gas Corporation conference room, 324 W. Rose Street, Walla Walla, Washington. The meeting is open to the public. Public comments will be received at 10 a.m. on September 7, 2000. The following topics will be discussed by the council: Status and future of the RAC subgroups; RAC's position on the over stocked timber stands issue/ prescribed fire; Meeting quorum issues; OHV issues; A 15 minute round table for general issues.

FOR FURTHER INFORMATION CONTACT: Juan Palma, Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

Juan Palma,

District Manager.

[FR Doc. 00–18168 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 134974]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

July 10, 2000.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW1349744 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstatement lease WYW134974 effective February 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Therese M. Stevens,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–18381 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Invitation for Bids on Crude Oil From Federal Leases and State of Wyoming Properties in Wyoming

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of IFB on Federal and State of Wyoming crude oil in the State of Wyoming.

SUMMARY: The Minerals Management Service (MMS), in cooperation with the State of Wyoming, will post on MMS's Internet Home Page and make available in hard copy a public competitive offering of approximately 6,600 barrels per day (bpd) of crude oil, to be taken as royalty in kind (RIK) from a combination of Federal and State properties in Wyoming's Bighorn and Powder River Basins through an Invitation For Bids (IFB), Number 1435–02–00–RP–40329.

DATES: The IFB will be posted on MMS's Internet Home Page on or about July 25, 2000. Bids will be due for both, MMS and the State, at the posted receipt location on or about August 21, 2000. MMS and the State will notify successful bidders on or about August 25, 2000. The Federal Government and the State will begin actual taking of awarded royalty oil volumes for delivery to successful bidders for a 6-month period beginning October 1, 2000.

ADDRESSES: The IFB will be posted on RMP's Home page at http://www.rmp.mms.gov under the icon "What's New." The IFB may also be obtained by contacting Mr. Todd Leneau at the address in the FURTHER INFORMATION section. Bids should be submitted to the address provided in the IFB.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the IFB document, terms, and process for Federal leases, contact Mr. Todd Leneau, Minerals Management Service, MS 2730, P.O. Box 25165, Denver, Co 80225–0165; telephone number (303) 275–7385; fax (303) 275–7303; e-mail Todd.Leneau@mms.gov. For additional information concerning the IFB document, terms, and process for State of Wyoming properties, contact Mr. Harold Kemp, Office of State Lands and Investments, Herschler Building, 3rd Floor West, 122 West 25th Street, Cheyenne, WY 82002–0600; telephone number (307) 777–6643; fax (307) 777–5400; e-mail: hkemp@missc.state.wy.us.

SUPPLEMENTARY INFORMATION: The offering in this IFB continues the ongoing RIK program in Wyoming. The State and MMS believe that taking oil royalties as a share of production, or RIK, from the properties offered in the IFB is a viable alternative to the agencies' usual practice of collecting oil royalties as a share of the value received by the lessee for sale of the production. Both agencies will continue to monitor the effectiveness of the RIK approach to taking crude oil royalties in Wyoming.

This sale involves approximately 6,600 bpd of crude oil from 380 Federal and State properties located in Wyoming's Bighorn and Powder River Basins. The volume represents an increase of about 1,700 bpd compared to the most recent IFB, No. 31053, which offered 4,900 bpd of crude oil for delivery to purchasers for production months April 2000 through September 2000. Most production is pipeline-connected. In the few instances where there is also some trucked production on a property, Exhibit A to the IFB will detail those properties.

Purchasers may bid on specific pipeline subgroups and/or on the entire packages of Wyoming sweet crude oil, Wyoming general sour crude oil, or Wyoming asphaltic sour crude oil. Bids will be due as specified in the IFB on or about August 21, 2000, and successful bidders will be notified on or about August 25, 2000.

MMS is allowing bidders to self-certify their financial solvency for the purpose of pre-qualifying to bid without the need for a letter of credit. Details will be available in the IFB.

The following are some of the additional details regarding the offerings that will be posted in the IFB on or about July 25, 2000:

- List of specific properties;
- For each property—tract allocations, royalty rate(s), average daily royalty volume, quality, current transporter, and operator;
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

The internet posting and availability of the IFB in hard copy are being announced in oil and gas trade journals as well as in this Federal Register notice.

Dated: July 14, 2000.

Lucy Querques Denett,

Associate Director for Royalty, Management Program.

[FR Doc. 00–18342 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 177

AGENCY: Minerals Management Service, Interior.

ACTION: Final notice of Sale 177.

On August 23, 2000, the Minerals Management Service (MMS) will open and publicly announce bids received for blocks offered in Sale 177, Western Gulf of Mexico, pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR part 256). Bidders can obtain a "Final Notice of Sale 177 Package" containing this Notice of Sale and several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard,

New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region's Internet site at http://www.gomr.mms.gov. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703. The "Final Notice of Sale 177 Package" contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

Location and Time: Public bid reading will begin at 9 a.m., Wednesday, August 23, 2000, in the Grand Ballroom of the Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m., prior to the Bid Submission Deadline at 10 a.m., Tuesday, August 22, 2000. If the bids are mailed, mark on the envelope containing all the sealed bids the following:

Attention: Mr. John Rodi—Contains Sealed Bids for Sale 177

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, August 22, 2000. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0557 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all the blocks and partial blocks listed in the document "List of Blocks Available for Leasing, Sale 177" included in the Sale Notice Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Leasing Maps—Texas, Nos. 1 through 8. These 16 maps sell for $2.00 each:

TX1 South Padre Island Area (revised 09/01/99)
TX1A South Padre Island Area, East Addition (revised 09/09/98)
TX2 North Padre Island Area (revised 09/01/99)
TX2A North Padre Island Area, East Addition (revised 09/01/99)
TX3 Mustang Island Area (revised 09/01/99)
TX3A Mustang Island Area, East Addition (revised 09/01/99)
TX4 Matagorda Island Area (revised 09/01/99)
TX5 Brazos Area (revised 09/01/99)
TX5B Brazos Area, South Addition (revised 09/01/99)
TX6 Galveston Area (revised 09/01/99)
TX6A Galveston Area, South Addition (revised 09/01/99)
TX7 High Island Area (revised 09/01/99)
TX7A High Island Area, East Addition (revised 05/30/97)
TX7B High Island Area, South Addition (revised 03/15/99)
TX7C High Island Area, East Addition, South Extension (revised 03/15/99)
TX8 Sabine Pass Area (revised 05/30/97)

Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each:

NG14–03 Corpus Christi (revised 09/01/99)
NG14–06 Port Isabel (revised 09/09/98)
NG15–01 East Breaks (revised 09/01/99)
NG15–02 Garden Banks (revised 03/15/99)
NG15–04 Alaminos Canyon (revised 09/09/99)
NG15–05 Keathley Canyon (revised 04/27/89)
NG15–08 (Unnamed) (revised 04/27/89)

Note: A CD–ROM (in ARC/INFO format) containing all of the Gulf of Mexico Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Regional Office Public Information Unit for a price of $15.00. Only NG15–05 and NG15–08 in the Western Gulf are not available on the CD–ROM. The Leasing Maps and Official Protraction Diagrams are also available on our Internet site. See also 65 FR 2191, published on January 13, 2000, for the current status of all Gulf of Mexico Leasing Maps and Official Protraction Diagrams.

Acreage of all blocks is shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this sale is shown in the document "List of Blocks Available for Leasing, Sale 177" included in the Sale Notice Package. Some of these blocks may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line, or partially included in the Flower Garden Banks National Marine Sanctuary (in accordance with the President's June 1998 withdrawal directive, portions of blocks lying within National Marine Sanctuaries are no longer available for leasing). Information on the unleased portions of such blocks, including the exact acreage, is found in the document titled "Western Gulf of Mexico Lease Sale 177—Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease," included in the Sale Notice Package.

Areas Not Available for Leasing: The following blocks in the Western Gulf of Mexico Planning Area are not available for leasing:

Blocks currently under lease; and

The following unleased block: High Island Area Block 170 (which is currently under appeal); and

High Island Area, East Addition, South Extension, Blocks A–375 and A–398 (at the Flower Garden Banks), and the portions of other blocks within the boundary of the Flower Garden Banks National Marine Sanctuary; portions of High Island Area, East Addition, South Extension, Block A–401; High Island Area, South Addition, Blocks A–502 and A–513; and Garden Banks Area Block 135; and

Mustang Island Area Blocks 793, 799, and 816 (blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel); and

The following blocks which are beyond the United States Exclusive Economic Zone and have been temporarily deferred from leasing by the Department of the Interior. These blocks are contained in an area subject to a treaty only recently negotiated and signed by the United States and Mexico (but not yet ratified). These blocks were deferred from this sale in the proposed Notice of Sale for Sale 177:

Keathley Canyon (Area NG 15–05)

Blocks

722 through 724
764 through 770
807 through 816
849 through 861
892 through 907
934 through 953
978 through 999

Area NG 15–08

Blocks

11 through 34
56 through 81
102 through 128
148 through 173
194 through 217
239 through 261

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284 through 305
336 through 349

Leasing Terms and Conditions: Primary lease terms, minimum bids, annual rental rates, royalty rates, and royalty suspension areas are shown on the map "Lease Terms and Economic Conditions, Sale 177, Final" for leases resulting from this sale:

Primary lease terms: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in water depths of 800 meters or deeper;

Minimum bids: $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper;

Annual rental rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, until a discovery in paying quantities of oil or gas is made;

Royalty rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension;

Minimum royalty: After a discovery in paying quantities of oil or gas is made: $5 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper;

Royalty Suspension Areas: Royalty suspension *may* apply for blocks in water depths of 200 meters or deeper; see the map for specific areas. See 30 CFR 260 for the final rule specifying royalty suspension terms. Threshold prices will be applied to royalty suspension determinations; see paragraph (l) of the document "Information To Lessees, Western Gulf of Mexico Sale 177" included in the Sale Notice Package. The minimum royalty requirement is not applicable during periods of royalty suspension.

The map titled "Stipulations and Deferred Blocks, Sale 177, Final" depicts the blocks where the Topographic Features, Military Areas, and Naval Mine Warfare Area stipulations apply. The texts of the lease stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 177, Final" included in the Sale Notice Package. Also shown on this map are the deferred blocks noted above.

Rounding: The following procedure must be used to calculate minimum bid, rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing, Sale 177" included in the Sale Notice Package.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 177, not to be opened until 9 a.m., Wednesday, August 23, 2000." The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the Sale Notice Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 65 FR 16957, on March 30, 2000. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the ⅛ bonus on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the Sale Notice Package).

Bid Deposit: Submitters of high bids must deposit the ⅛ bonus by using electronic funds transfer (EFT) procedures, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the Sale Notice Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Note: Certain bid submitters (*i.e.*, those that do not currently own or operate an OCS mineral lease OR those that have ever defaulted on a ⅛ bonus payment (EFT or otherwise)) are required to guarantee (secure) their ⅛ bonus payment. For those who must secure the EFT ⅛ bonus payment, one of the following options may be used: 1. Provide a third-party guaranty; 2. Amend Development Bond Coverage; 3. Provide a Letter of Credit; or 4. Provide a lump-sum check. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560 of July 12, 1999), is available from the MMS Gulf of Mexico Regional Office Public Information Unit.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification (Debarment Certification Form) certifying that the

bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D. A copy of the Debarment Certification Form is contained in the Sale Notice Package.

Affirmative Action: The MMS requests that the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to bidding. In any event, these forms are required to be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to execution of any lease contract. Bidders must also comply with the requirements of 41 CFR 60.

Information to Lessees: The Sale Notice Package contains a document titled "Information to Lessees." These Information to Lessees items provide information on various matters of interest to potential bidders.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

Approved: July 14, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 00–18365 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Badlands National Park; Environmental Statements; Notice of Intent

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a general management plan and environmental impact statement for Badlands National Park, South Dakota.

SUMMARY: The National Park Service (NPS) will prepare a general management plan (GMP) and an associated environmental impact statement (EIS) for Badlands National Park, South Dakota, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses or meetings. The NPS will conduct public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters should be directed to: Ms. Jan Harris, National Park Service, Denver Service Center, P.O. Box 25287, Denver, Colorado 80225. E-mail: jan_harris@nps.gov

Requests to be added to the project mailing list should be sent to Ms. Constance Lemos, Badlands National Park, P.O. Box 6, Interior, SD 57750. Telephone: 605–433–5361, ext. 281. E-mail: constance_lemos@nps.gov

FOR FURTHER INFORMATION CONTACT: Constance Lemos, Badlands National Park, at the address and telephone number listed above.

SUPPLEMENTARY INFORMATION: Badlands National Park consists of nearly 244,000 acres of sharply eroded buttes, pinnacles and spires blended with the largest, protected mixed grass prairie in the United States. The Badlands Wilderness Area is made up of 64,000 acres and is the site of the reintroduction of the black-footed ferret, the most endangered land mammal in North America. The Stronghold Unit is co-managed with the Oglala Sioux Tribe and includes sites of 1890s Ghost Dances. Established as Badlands National Monument in 1939, the area was redesignated "National Park" in 1978. Badlands National Park contains the world's richest Oligocene epoch fossil beds, dating 23 to 35 million years old. The evolution of mammal species such as the horse, sheep, rhinoceros and pig can be studied in the Badlands formations.

In accordance with NPS Park Planning policy, the GMP will ensure the Park has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with Servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for Historic Site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

Dated: July 10, 2000.

William W. Schenk,

Regional Director.

[FR Doc. 00–18338 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES–00–26]

CALFED Bay-Delta Program, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Programmatic Environmental Impact Statement/Environmental Impact Report (Final Programmatic EIS/EIR).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, and the California Environmental Quality Act, the Bureau of Reclamation, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, Natural Resources Conservation Service, Army Corps of Engineers, and the California Resources Agency, as joint lead agencies, have prepared a Final Programmatic EIS/EIR for the CALFED Bay-Delta Program. The CALFED Bay-Delta Program is a cooperative effort of 18 State and Federal agencies with regulatory and management responsibilities in the San Francisco Bay-Sacramento/San Joaquin River Bay-Delta to develop a long-term plan to restore ecosystem health and improve water management for beneficial uses of the Bay-Delta system. This Final Programmatic EIS/EIR is a result of this collaborative planning

process and identifies comprehensive solutions to the problems of ecosystem quality, water supply reliability, water quality, and Delta levee and channel integrity. The Final Programmatic EIS/EIR identifies four alternatives including a preferred alternative, to implement these solutions and programmatically analyzes the environmental impacts of each of those alternatives.

DATES: The lead agencies will not make a decision on the proposed action until 30 days after release of the Final Programmatic EIS/EIR. After the 30-day waiting period, the lead agencies will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: To request printed or electronic copies of the Final Programmatic EIS/EIR or for additional information, contact Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, California 95814, telephone: (800) 900–3587. See the **SUPPLEMENTARY INFORMATION** section for a listing of the available documents and formats in which they may be obtained. Copies of the Final Programmatic EIS/EIR are also available for public inspection and review. These locations are listed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Breitenbach, CALFED Bay-Delta Program, telephone: (800) 900–3587.

SUPPLEMENTARY INFORMATION:

Available Formats

1. *CALFED Bay-Delta Program Website:* http://calfed.ca.gov—The Final Programmatic EIS/EIR is posted on the CALFED website. The website also provides several other documents released by CALFED since August 1996. Sections or pages of all these documents can be copied and pasted into any word processing application or e-mail to make reviewing and sharing the documents easier and faster.

2. *CD–ROM*—The CD–ROM contains all of the documents listed below. The CD–ROM is easy to use and indexed for easy navigation. The software required to view the documents is free and included with instructions on the CD. The search capability is one of the CD's most desirable features. For example, if you enter a word, such as "watershed," the search function will find every reference to "watershed" in the document. The complete document, or portions of it, can be copied or printed from the CD.

3. *Printed Documents*—The Final Programmatic EIS/EIR and appendices are printed in 18 individual volumes totaling approximately 6,200 pages. Either individual documents or the entire package can be requested. The following documents are part of the Final Programmatic EIS/EIR package:

- Final Programmatic EIS/EIR Main Document (Impact Analysis)
- Executive Summary of the Final Programmatic Environmental Impact Statement/Environmental Impact Report
- Phase II Report
- Implementation Plan
- Response to Comments Document, 3 Volumes
- Ecosystem Restoration Program Plan, 3 Volumes
- Levee System Integrity Program Plan
- Water Quality Program Plan
- Water Use Efficiency Program Plan
- Water Transfer Program Plan
- Watershed Program Plan
- Multi-species Conservation Strategy
- Comprehensive Monitoring Assessment and Review Program Report

Copies of the Final Programmatic EIS/EIR are available for public inspection at:

- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street, NW, Washington DC; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO; telephone: (303) 445–2072.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento CA; telephone: (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW, Main Interior Building, Washington DC.

Copies will also be available for inspection at the following libraries:

Amador County Library; Auburn-Placer County Library; Berkeley Public Library; Butte County Library; Calaveras County Library; California State Archives; California State Library; California State Polytechnic University, Pomona; California State Resources Library; California State University, Bakersfield; California State University, Chico; California State University, Fresno; California State University, Long Beach; California State University, Sacramento; California State University, San Diego; California State University, San Francisco; California State University, San Jose; California State University, Stanislaus; Colusa County Free Library; Contra Costa County Library; The Council of State Governments; County of Los Angeles Public Library, Government Publications; County of Los Angeles Public Library, Lancaster Library; Dixon Unified School District Library; El Dorado County Library; Fresno County Public Library; Golden Gate University; Grass Valley Library, Nevada County Library; Humboldt County Library; Inyo County Free Library; Kern County Library; Kings County Library; Lake County Library; Library of Congress; Lodi Public Library; Los Angeles County Law Library; Los Angeles Public Library; Los Banos Branch Library, Merced County Library; Madera County Library; Marin County Library; Mariposa County Library; Mendicino County Library; Merced County Library; Mono County Free Library; Monterey County Free Libraries; Napa City-County Library; Natural Resources Library; Nevada County Library; Oakland Public Library; Orange County Public Library; Orland Free Library; Plumas County Library; Quincy Library; Sacramento County Law Library; Sacramento Public Library; San Diego County Library; San Diego Public Library; San Diego State University, Malcolm A. Love Library; San Francisco Public Library; San Jose Public Library; San Luis Obispo City-County Library; Santa Barbara Public Library; Santa Clara County Library; Santa Cruz Public Library; Shasta County Library; Solano County Library; Sonoma County Library; Stanford University, Green Library; Stanislaus County Free Library; Stockton-San Joaquin County Public Library; Sutter County Library; Tehama County Library; Tulare County Free Library; Tulare Public Library; Tuolumne County Free Library; University of California, Berkeley; University of California, Davis, Shields Library; University of California, Los Angeles, Bruman Library; University of California, San Diego; University of California, Santa Barbara; Willows Public Library; Yolo County Library; Yuba County Library.

Dated: July 12, 2000.

John F. Davis,

Acting Regional Director.

[FR Doc. 00–18240 Filed 7–19–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Review)]

Pure Magnesium From China

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping

duty order on pure magnesium from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On July 6, 2000, the Commission determined that the domestic interested party group response to its notice of institution (65 FR 17531, April 3, 2000) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 1, 2000, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 4, 2000, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 4, 2000. However, should Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 14, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18317 Filed 7–19–00; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the response submitted by Magcorp to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

United States Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec 552b)

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately three p.m. on Wednesday, July 12, 2000, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide two appeals from the National Commissioners' decisions pursuant to 28 CFR section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Marie F. Ragghianti, Edward F. Reilly, Jr., John R. Simpson, and Janie L. Jeffers.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 14, 2000.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 00–18483 Filed 7–18–00; 11:02 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

July 10, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation of ESA, MSHA, OSHA, and VETS contact Darrin King

((202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Employment and Training Administration.

Title: Job Corps Application Data.

OMB Number: 1205–0025.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
ETA 652	94,792	One-time	94,792	25 Min	39,497
ETA 655	91,732	One-time	91,732	5 Min	7,644
ETA 682	7,768	On occasion	7,768	5 Min	640
Totals					47,781

Total annualized capital/startup costs: $2,680,000.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: These forms are used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps Program. They are prepared by the admissions counselor for each applicant and have no further impact on the public.

Ira L. Mills,

Departmental Clearance Office.

[FR Doc. 00–18350 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,435 and NAFTA–3754]

Oshkosh B'Gosh, Inc., Distribution Center, Oshkosh, Wisconsin; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Oshkosh B'Gosh, Inc., Distribution Center, Oshkosh, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37, 435 and NAFTA–3754; Oshkosh B'Gosh, Inc., Distribution Center, Oshkosh, Wisconsin (July 10, 2000)

Signed at Washington, D.C. this 12th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18357 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,803]

A. Schulman, Inc., Dispersion Division, Orange, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 28, 2000, the petitioner, PACE Local 4–836, requests administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 25, 2000, and published in the **Federal Register** on June 29, 2000 (65 FR 40135).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at A. Schulman, Inc., Dispersion Division, Orange, Texas, produce polypropylene and polyethylene products (TPPs and PBAs). The workers were denied eligibility to apply for TAA based on the finding that criterion (3) of the worker group eligibility requirements of Section 223 of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to worker separations at the subject firm.

The petitioner asserts that the production equipment moved to Mexico will be used to produce articles like or directly competitive with those produced by the workers of A. Schulman, Inc. at the Orange, Texas plant.

The Trade Act of 1974 does not contain provisions to certify a worker group based on a shift in production to a foreign country.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 12th day of July 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18352 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,820]

Ametek U.S. Gauge, Inc., Sellersville, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 19, 2000, in response to a petition which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers at Ametek U.S. Gauge, Inc., Sellersville, Pennsylvania.

The petitioner has withdrawn the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 26th day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–18363 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37, 612]

AST Research, Inc., Fort Worth, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at AST Research, Inc., Fort Worth, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37, 612; AST Research, Inc., Fort Worth, Texas (July 10, 2000)

Signed at Washington, DC this 12th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18355 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,647 and 647D]

Cluett, Peabody and Company, Inc. the Enterprise Plant, Enterprise, AL and Cluett, Peabody and Company, Inc., Corporate Office and Administration, Smyrna, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 16, 1999, applicable to workers of Cluett, Peabody and Company, Inc., The Enterprise Plant, Enterprise, Alabama. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55750).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's shirts. New information shows that worker separations will occur at the Corporate Office and Administration, Smyrna, Georgia location of Cluett, Peabody and Company, Inc. The workers provide administration and support function services for the subject firm's production facilities located in Alabama and Georgia.

Accordingly, the Department is amending the certification to cover workers of Cluett, Peabody and Company, Inc., Corporate Office and Administration, Smyrna, Georgia.

The Intent of the Department's certification is to include all workers of Cluett, Peabody and Company, Inc. adversely affected by increased imports of men's shirts.

The amended notice applicable to TA–W–36,647 is hereby issued as follows:

All workers of Cluett, Peabody and Company, Inc., The Enterprise Plant, Enterprise, Alabama (TA–W–36,647) and Corporate Office and Administration, Smyrna, Georgia (TA–W–36,647D) who became totally or partially separated from employment on or after August 10, 1998 through September 16, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 30th day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–18360 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37, 606]

Concord Fabrics, Inc., New York City, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Concord Fabrics, Inc., New York City, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,606; Concord Fabrics, Inc. New York City, New York (July 12, 2000)

Signed at Washington, D.C. this 12th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18356 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,796]

Ivensys Best Power, Necedah, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 19, 2000, in response to a petition which was filed on behalf of workers at Ivensys Best Power, Necedah, Wisconsin. The workers produce power protection equipment.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 29th day of June, 2000.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–18364 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. TA–W–37,885]

Makco Manufacturing Co., Inc., Edinboro, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 22, 2000, in response to a worker petition which was filed on behalf of workers at Makco Manufacturing Co., Inc., Engineering Department, Edinboro, Pennsylvania.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 30th day of June, 2000.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–18362 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,409 and NAFTA–3738]

Quaker Oats Company, St. Joseph, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Quaker Oats Company, St. Joseph, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,409 and NAFTA–3738; Quaker Oats Company, St. Joseph, Missouri (July 10, 2000)

Signed at Washington, D.C. this 12th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18358 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,425]

SKF USA Inc., Hub Bearing United Division, Glasgow, Kentucky; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 15, 2000, one of the petitioners request administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 31, 2000, and published in the **Federal Register** on June 29, 2000 (65 FR 40134).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at SKF USA Inc., Hub Bearing Unit Division, Glasgow, Kentucky, producing hub wheel bearings on a contract basis for automobile manufacturers were denied TAA because the "contributed importantly" criterion of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The investigation revealed that the subject firm sales increased and imports declined during the relevant time period. Layoffs occurred as the inventory levels of product mix changed with demand from subject firm's contract customers.

The petitioner feels that the petition investigation was not conducted in a proper manner and was not given the full consideration necessary in the petitioners' special case. The Department acknowledges the decision was not issued in the statutorily required 60 day time limit; a final determination for the petition, instituted on March 6, 2000, was not rendered by the Department until May 31, 2000. Additional time was required by the investigator in order to obtain all of information necessary to present the findings of the petition investigation to the Certifying Officer.

The petitioner asserts in the application for reconsideration that while sales may have increased due to a stockpile of inventory, the company has not recalled workers affected by the initial round of layoffs. The petition investigation revealed that layoffs occurred and production declined at the subject firm. Therefore, criteria (1) and (2) of the worker group eligibility requirements of Section 222 of the Trade Act of 1974 are met.

The petitioner states that there are companies abroad shipping product (like those produced by the subject firm workers) to Glasgow, Kentucky for repackaging. The petitioner states that there is reason to believe (without providing evidence) that the CDW and the EN/FN bearings produced in Glasgow are manufactured overseas and are imported to the Glasgow, Kentucky for repackaging. Import data provided by the subject firm included imports of the articles cited by the petitioner. Total company imports of articles like or directly competitive with those produced by workers in the Glasgow plant decreased during the time period covered by the investigation. Criterion (3) of the group eligibility requirements of Section 222 of the Trade Act of 1974 requires that increased imports of articles like or directly competitive with those produced by the subject firm workers contribute importantly to declines in sales or production and worker separations.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 7th day of July 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18359 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–TAA–3846]

Lebanon Machine, Lebanon, Oregon; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Lebanon Machine, Lebanon, Oregon. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–TAA–3846; Lebanon Machine, Lebanon, Oregon (July 10, 2000.

Signed at Washington, DC this 12th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18354 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3849]

A. Schulman, Inc., Dispersion Division, Orange, Texas; Notice of Revised Determination on Reopening

By letter of June 28, 2000, the petitioner, PACE Local 4–836, requested administrative reconsideration of the Department's denial North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) for workers and former workers of the subject firm.

The workers at A. Schulman, Inc., Dispersion Division, Orange, Texas, produce polypropylene and polyethylene products (TPPs and PBAs). The workers were denied eligibility to apply for NAFTA–TAA based on the finding that criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. The A. Schulman, Inc., Dispersion Division, Orange, Texas, did not import polypropylene and polyethylene products from Mexico or Canada, nor did it shift production from Orange, Texas to those countries. The notice was published in the **Federal Register** on June 8, 2000 (65 FR 36470).

New information provided by the petitioner and review of the investigation findings show that there was a shift in production from the Orange, Texas plant to Mexico.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that the workers of A. Schulman, Inc., Dispersion Division, Orange, Texas, were adversely affected by a shift in production to Mexico of articles like or directly competitive with the articles produced at the subject firm.

All workers of A. Schulman, Inc., Dispersion Division, Orange, Texas, who became totally or partially separated from employment on or after March 21, 1999 through two years from the date of this issuance, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of July 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18353 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply to NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than July 31, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than July 31, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 10th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Hearst Entertainment (Wkrs)	Los Angeles, CA	05/26/2000	NAFTA–3,960	television movies.
Cast Alloys (Wkrs)	Northridge, CA	06/05/2000	NAFTA–3,961	golf club heads.
Texas Instruments (Co.)	Versailles, KY	06/05/2000	NAFTA–3,962	pressure controls.
Sagaz Industries (Wkrs)	Miami, FL	06/07/2000	NAFTA–3,963	car seat covers.
Seton Company (Co.)	Saxton, PA	06/07/2000	NAFTA–3,964	leather.
Memphis Chair (Wkrs)	Gainesboro, TN	06/08/2000	NAFTA–3,965	chairs.
O'Neill (Co.)	San Francisco, CA	06/07/2000	NAFTA–3,966	wet suits & life jackets.
ALCO Controls (Co.)	Wytheville, VA	06/08/2000	NAFTA–3,967	valve products.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Mar Kel Lighting (IAMAW)	Paris, TN	06/12/2000	NAFTA–3,968	ceramic & metal lamps.
UFE (Wkrs)	El Paso, TX	06/05/2000	NAFTA–3,969	automotive ignition parts.
Craft House (Co.)	Kalkaska, MI	06/08/2000	NAFTA–3,970	children's toys.
Edgewater Steel (Wkrs/)	Oakmont, PA	06/12/2000	NAFTA–3,971	forded rings & railroad wheels.
Ametek U.S. Guage Division (IAMAW).	Sellersville, PA	06/06/2000	NAFTA–3,972	guages.
Grand Haven Brass Foundry (PACE).	Grand Haven, MI	06/16/2000	NAFTA–3,973	plumbing fixtures.
Hitachi Koki Imaging Solutions (Wkrs).	Simi Valley, CA	06/07/2000	NAFTA–3,974	data products.
Shorewood Packaging Corp. of Alabama (Wkrs).	Andalusia, AL	06/19/2000	NAFTA–3,975	customized packaging.
I.C. Isaacs (Co.)	Raleigh, MS	06/08/2000	NAFTA–3,976	jeans.
Eagle River Knits (Co.)	Monroe, NC	06/13/2000	NAFTA–3,977	circular knitted fabric.
Key Industries (Co.)	Buffalo, MO	06/07/2000	NAFTA–3,978	work clothes.
VDO North America (Co.)	Cheshire, CT	05/19/2000	NAFTA–3,979	automotive Components.
Morton Forest (Co.)	Morton, WA	06/16/2000	NAFTA–3,980	lumber.
Tweco Products (Co.)	Wichita, KS	06/02/2000	NAFTA–3,981	welding accessories.
Friedman Bag (Wkrs)	Portland, OR	06/21/2000	NAFTA–3,982	textile bags.
Four Seasons of Georgetown (Co.).	Georgetown, SC	06/22/2000	NAFTA–3,983	screen print garments.
La Crosse Footwear (Wkrs)	Clintonville, WI	06/20/2000	NAFTA–3,984	ladies tops.
Frink American (IAMAW)	Clayton, NY	06/12/2000	NAFTA–3,985	snow plows.
Tri Quest Precision Plastic (Co.)	Vancouver, WA	06/22/2000	NAFTA–3,986	plastics.
K and R Sportswear (Co.)	Spring Hope, NC	06/26/2000	NAFTA–3,987	sewing & finishing apparel.
P.H. Glatfelter (Wkrs)	Pisgah Forest, NC	06/26/2000	NAFTA–3,988	printing paper, tea bags, bible paper.
Indiana Knitwear (Wkrs)	Greenfield, TN	06/26/2000	NAFTA–3,989	men's & boys' knits shirts & pants.
Collins Products (IAM)	Klamath Falls, OR	06/23/2000	NAFTA–3,990	plywood.
Sims Deltec (Co.)	St. Paul, MN	05/03/2000	NAFTA–3,991	disposable medical devices.
Mascotech Forming Technologies (USWA).	Ypsilanti, MI	06/01/2000	NAFTA–3,992	screw machine products.
Whitehall Leather Company (Co.)	Whitehall, MI	06/27/2000	NAFTA–3,993	raw animal hides.
WildFire Pacific ()	Kent, WA	06/30/2000	NAFTA–3,994	Fire Fight Apparatus.
Johns Manville Int'l. (Co.)	Saco, ME	06/29/2000	NAFTA–3,995	Foam Insulation
Federal Mogul Corporation (UAW).	Milan, MI	05/31/2000	NAFTA–3,996	fuel pump seals.
PL Garment Finishers ()	McRae, GA	06/23/2000	NAFTA–3,997	Blue Jeans.
Trinity Industries (UAW)	Mt. Orab, OH	04/19/2000	NAFTA–3,998	railcars.
Johnson Controls, Inc. (IBEW)	Goshen, IN	06/30/2000	NAFTA–3,999	machining equipment.
Springs Industries, Inc. (Co.)	Griffin, GA	06/28/2000	NAFTA–4,000	knitted infant & toddler apparel.
Flowserve Corporation (Wkrs)	Temecula, CA	06/26/2000	NAFTA–4,001	shaft seals.
American Meter ()	Erie, PA	06/28/2000	NAFTA–4,002	Radial Flow Valve Machining and Assembly.
Wallowa Forest Products (Wkrs)	Wallowa, OR	06/28/2000	NAFTA–4,003	Demensional lumber, chips and hog fuel.
McGuire Nicholas (Wkrs)	Commerce, CA	06/15/2000	NAFTA–4,004	business products.
Graphic Vinyl Products (Wkrs)	Newark, NY	06/30/2000	NAFTA–4,005	CD cases.
Chipman Union (Co.)	Belmont, NC	07/03/2000	NAFTA–4,006	socks.
Key Industries (Co.)	Fort Scott, KS	06/30/2000	NAFTA–4,007	work clothes.
ITT Industries (Co.)	Tawas City, MI	06/29/2000	NAFTA–4,008	vacuum harnesses.

[FR Doc. 00–18361 Filed 7–19–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "National Longitudinal Survey of Women." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before September 18, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Women (NLSW) has been conducted since the late 1960s. Historically, the NLSW was collected as two surveys, the Survey of Work Experience for Mature Women (which includes women born from April 2, 1923 to April 1, 1937) and the Survey of Work Experience for Young Women (which includes women born in the years 1944 to 1954). In 1995, the Bureau of the Census, which collects the data for the Bureau of Labor Statistics, combined the mature and young women's cohorts into a single survey, a change that has improved the efficiency of survey operations.

The data collected in the NLSW contribute to the knowledge about opportunities and services for women who are in the labor force, want to re-enter the labor force, or choose not to participate in the labor force. Survey data also contribute to the knowledge about women's ability to succeed in the job market and how their levels of success relate to educational attainment, vocational training, prior occupational experiences, general and job-specific experiences, and retirement decisions.

Research based on the NLSW contributes to the formation of national policy in the areas of education, training and employment programs, unemployment compensation, and retirement income from pensions and Social Security. In addition, members of the academic community publish articles and reports based on NLSW data for the Department of Labor (DOL) and other funding agencies. The DOL uses the measurement of changes in the labor market to design programs that would ease employment and unemployment problems. The survey design provides data gathered over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, and the DOL could not perform its policy- and report-making activities, as described above.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The 2001 NLSW will document work experience, labor force attachment, participation in educational or training programs, financial status, health, and health insurance coverage. The survey will be used to identify any significant trends in women's work experience as a whole. The survey will continue to obtain detailed information on the work history and pension coverage of respondents' husbands. In addition, the survey will obtain information on intergenerational transfers of time and money between respondents and their parents or their spouses' parents.

As in previous administrations of the NLSW, 10 percent of the sample in 2001 will be asked to participate in a brief follow-up interview that will last approximately 5 minutes. This reinterview is a quality-control tool, in which managers at the Census Bureau ask respondents a few questions to verify that an interview took place.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Women.

OMB Number: 1220–0110.

Affected Public: Individuals or households.

Total Respondents: 7,575.

Frequency: Biennially.

Total Responses: 7,575.

Average Time Per Response: 60 minutes for pretest and main fielding; 5 minutes for reinterview.

Estimated Total Burden Hours: 6,976.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden (in hours)
Pretest	30	Biennially	30	60 minutes	30
Main Fielding	6,859	Biennially	6,859	60 minutes	6,889
Reinterview	686	Biennially	686	5 minutes	57
Totals	7,575	////////	7,575	60 minutes	6,976

An allowance of 30 extra hours has been added to the burden estimate for the main fielding to account for the possibility of a complete pretest failure, which would necessitate interviewing pretest respondents during the main fielding period.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 14th day of July 2000.

Karen A. Krein,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–18351 Filed 7–19–00; 8:45 am]

BILLING CODE 4510–24–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1 Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (FENOC) (the licensee) to withdraw its January 25, 2000, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No.1, located in Ottawa County, Ohio.

The proposed amendment would have revised the Once-Through Steam Generator (OTSG) tube repair roll process for use during the Twelfth Refueling Outage. At a meeting on April 6, 2000, the Babcock and Wilcox Owners Group, of which FENOC is a member, announced they are developing a Topical Report that will support eliminating certain accidents from consideration in OTSG design. This Topical Report is scheduled to be submitted to the Nuclear Regulatory Commission (NRC) in the summer of 2000 for review and approval. Since the subject license amendment request content will be affected by the Topical Report, and since the OTSG repairs for the Twelfth Refueling Outage were completed without using the repair roll process, FENOC is withdrawing the subject license amendment.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 23, 2000 (65 FR 9008). However, by letter dated May 9, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 25, 2000, and the licensee's letter dated May 9, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 14th day of July 2000.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18424 Filed 7–19–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410]

Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Nine Mile Point Nuclear Station, Units 1 and 2; Notice of Withdrawal of Application for Approval of Transfer of Facility Operating Licenses and Conforming Amendments

The U.S. Nuclear Regulatory Commission (the Commission) has permitted the withdrawal of the application dated September 10, 1999, filed by Niagara Mohawk Power Corporation (NMPC), New York State Electric & Gas Corporation (NYSEG) and AmerGen Energy Company, LLC (AmerGen), which had requested Commission approval of the proposed transfer of the licenses for Nine Mile Point Nuclear Station, Units 1 and 2, to the extent held by NMPC and NYSEG, to AmerGen.

The Commission had previously published a Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing (64 FR 52798, dated September 30, 1999). Pursuant to such notice, three current co-owners of the facility (Rochester Gas And Electric Corporation, Central Hudson Gas & Electric Corporation, and Long Island Lighting Company) filed hearing requests and petitions to intervene in opposition to the application. The Attorney General of the State of New York also filed a petition to intervene. By a joint letter dated May 24, 2000, the applicants NMPC, NYSEG and AmerGen withdrew their application. In addition, by a motion filed that same date, the applicants requested dismissal of the proceeding regarding the hearing requests that have been pending before the Commission. By order dated June 13, 2000, the Commission terminated that proceeding.

For further details with respect to this withdrawal, see (1) NMPC, NYSEG and AmerGen's letter dated May 24, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC; and (2) the Commission's Order dated June 13, 2000, dismissing the license transfer proceeding. Alternately, these documents may be viewed electronically under Accession Numbers ML003719110 and ML003723369 thru the ADAMS Public Electronic Reading Room link at the NRC website (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18426 Filed 7–19–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Sequoyah Nuclear Plant, Units 1 and 2 Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA or the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2 located in Soddy-Daisy, Tennessee.

The proposed amendments would change Technical Specification 3.7.5.c to allow an increase in the average essential raw cooling water (ERCW) supply header temperature from 84.5°F to 87°F until September 30, 2000.

Exigent circumstances arose due to significant increases in the average water temperature of the Tennessee River (Chickamauga Reservoir), which serves as the ultimate heat sink (UHS) for the Sequoyah Nuclear Plant (SQN), Units 1 and 2. This temperature, as measured at SQN's ERCW header, has increased as the result of drought-induced low flow conditions and on July 12, 2000, had reached 81.4°F. TVA estimates that continuing weather conditions could cause the average temperature to reach the Technical Specification (TSs) limit of 84.5°F as early as July 22, 2000. SQN TSs Section 3.7.5.c currently limits ERCW supply header temperature to less than or equal to 84.5°F when the Chickamauga Reservoir water level is above elevation 680 feet mean sea level.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence or the consequences of an accident are not increased as presently analyzed in the safety analysis since the objective of the event mitigation is not changed. No changes in event classification as discussed in Final Safety Analysis Report Chapter 15 will occur due to the increased river water temperature (with respect to both containment integrity and safety-system heat removal). Therefore, the probability of an accident or malfunction of equipment presently evaluated in the safety analyses will not be increased. The containment design pressure is not challenged by allowing an increase in the river water temperature above that allowed by the TSs, thereby ensuring that the potential for increasing offsite dose limits above those presently analyzed at the containment design pressure of 12.0 pounds per square inch is not a concern. In addition, SQN's essential raw cooling water (ERCW) and component cooling system (CCS) piping, pipe supports remain qualified to the design basis and code allowables. Therefore, the proposed variance to TS 3.7.5.c will not significantly increase the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a new or different accident situation occurring as a result of this condition is not created. The ERCW system is not an initiator of any accident and only serves as a heat sink for normal and upset plant conditions. By allowing this change in operating temperatures, only the assumptions in the containment pressure analysis are changed. The variance in the ERCW temperature results in minimal increase in peak containment accident pressure. As for the net positive suction head requirements relative to the essential core cooling system and containment spray system, it has been demonstrated that this operational variance will not challenge the present design requirements. In addition, increased river temperatures will not significantly affect the design basis analysis of ERCW or CCS piping, pipe supports, and components. Therefore, the potential for creating a new or unanalyzed condition is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety as reported in the basis for the TSs is also not reduced. The design pressure for the containment and all supporting equipment and components for worse-case accident condition is 12.0 pounds per square inch gauge (psig). This variance in river water temperature will not challenge the design condition of containment. Further, 12.0 psig design limit is not the failure point of containment, which would lead to the loss of containment integrity. In addition, analysis of the margins associated with ERCW and CCS piping, pipe supports, and components indicate these remain enveloped by the proposed increase in river temperature. Therefore, a significant reduction in the margin to safety is not created by this variance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 21, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

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petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 13, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 14th day of July 2000.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18421 Filed 7–19–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on 10 CFR Part 70; Standard Review Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion of stakeholder comments on the revised Standard Review Plan (SRP) chapters and Nuclear Energy Institute's (NEI) revised Integrated Safety Analysis (ISA) Summary guidance document. The revised SRP can be reviewed on the Internet at the following website: http://techconf.llnl.gov/cgi-bin/library?source=*&library=Part_70_lib&file

PURPOSE: This meeting will provide an opportunity to discuss any comments on the staff's recently revised SRP chapters.

DATES: The meeting is scheduled for Thursday, August 3, 2000, from 9 a.m. to 4:30 p.m. The meeting is open to the public.

ADDRESSES: ASLBP Hearing Room at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Philip Ting, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7156, e-mail *pxt@nrc.gov*.

Dated at Rockville, Maryland this 14th day of July, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 00–18422 Filed 7–19–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

On June 28, 2000, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 39961, under Southern Nuclear Operating Company, Inc., *et al.*, Docket Nos. 50–424 and 50–425, the Date of amendment request should have been March 6, 2000.

Dated at Rockville, Maryland, this 14th day of July, 2000.

For the Nuclear Regulatory Commission.
John A. Zwolinski,
Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.
[FR Doc. 00–18423 Filed 7–19–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance about Materials Licensees: Guidance about Administrative Licensing Procedures

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The NRC is announcing the availability of, and requesting comments on, draft NUREG–1556, Volume 20, "Consolidated Guidance about Materials Licensees: Guidance about Administrative Licensing Procedures," dated July 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the 20th guidance document developed for the new process.

This guidance is intended for use by the NRC staff, and will also be available to Agreement States, applicants, and licensees. This document combines and updates the guidance for NRC license reviewers and licensing assistants previously found in the documents listed in Appendix A of the NUREG. When published in final form, NRC licensing staff will use these administrative procedures to process license applications and prepare licenses. Note that this document is strictly for public comment and is not for use in preparing or reviewing license applications until it is published in final form. It is being distributed for comments to encourage public participation in its development.

DATES: The comment period ends October 3, 2000. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 20, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9-C24, Washington, D.C. 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to cxb@nrc.gov. A copy of draft NUREG–1556, Volume 20, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20555-0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION, CONTACT: Mrs. Carrie Brown, TWFN 9-F-C24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

Electronic Access

Draft NUREG–1556, Vol. 20 is available electronically by visiting the NRC's Home Page (http://www.nrc.gov/nrc/nucmat.html).

Dated at Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission,
Catherine Haney,
Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.
[FR Doc. 00–18427 Filed 7–19–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licensees: Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study Licenses

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the final NUREG–1556, Volume 14, "Consolidated Guidance about Materials Licensees: Program-Specific Guidance about Well Logging, Tracer, and Field Flood Study Licenses," dated June 2000. This final NUREG report is the 14th program-specific guidance document developed to support an improved material licensing process. NRC is using Business Process Redesign (BPR) techniques to redesign its material licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports.

This final guide has been developed in parallel with the final revision of 10 CFR Part 39, "Energy Compensation Sources for Well Logging and Other Regulatory Clarifications," published as a Final Rule on April 17, 2000 (65 FR 20337). It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel.

This final report takes a more risk-informed, performance-based approach to licensing of well logging, tracer, and field flood study operations, and reduces the information (amount and level of detail) needed to support an application to use these devices.

A free single copy of final NUREG–1556, Volume 14, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9-C24, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to *cxb@nrc.gov*. A copy of final NUREG–1556, Volume 14, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION, CONTACT: Mrs. Carrie Brown, Mail Stop TWFN 9-C24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

Electronic Access

Final NUREG–1556, Vol. 14 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–18428 Filed 7–19–00; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (0420–0510).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35) the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collection, OMB Control Number 0420–0510, the Peace Corps Health Status Review Form (PC–1789) and the Report of Medical Exam Form (PC–1790). The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from David O'Neill, Office of Medical Services, Peace Corps, 1111 20th Street, NW, Room 5305, Washington, DC 20526. Mr. O'Neill may be contacted by telephone at 202–692–1577. Comments on these forms should also be addressed to the attention of David O'Neill. You must submit your comments by September 18, 2000.

Information Collection Abstract

Title: Health Status Review From (PC–1789); (Report of Medical Exam Form (PC–1790).

Need For and Use of This Information: This collection of information is necessary to comply with the Peace Corps Act (Section 5(e)) which states that "applicants for enrollment shall receive such health examinations preparatory to their service * * * as the President may deem necessary or appropriate * * * to provide the information needed for clearance, and to serve as a reference for any future Volunteer medical clearance, and to serve as a reference for any future Volunteer disability claim." The Peace Corps uses this information to determine the physical and mental suitability for service as a Peace Corps Volunteer.

Respondents: Peace Corps Applicants.

Respondent's Obligation to Reply: Mandatory.

Burden on the Public:

Health Status Review Form (PC–1789)

a. Annual reporting burden: 1,625 hours
b. Annual record keeping burden: 0 hours
c. Estimated average burden per response: 15 minutes
d. Frequency of response: one time
e. Estimated number of likely respondents: 6,500
f. Estimated Cost to Respondents: $3.04 per

Burden on the Public:

Report of Medical Exam Form (PC–1789)

a. Annual reporting burden: 3,000 hours
b. Annual record keeping burden: 0 hours
c. Estimated average burden per response: 30 minutes
d. Frequency of response: one time
e. Estimated number of likely respondents: 6,000
f. Estimated Cost to Respondents: $6.08 per

Responses will be returned by postage-paid reply mail.

This notice is issued in Washington, DC, on July 7, 2000.

Doug Greene,

Chief, Information Officer and Associate Director for Management.

[FR Doc. 00–18348 Filed 7–17–00; 4:24 pm]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Director, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on June 22, 2000 (65 FR 38867). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1, 2000, and May 31, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during May 2000.

Schedule B

No Schedule B authorities were established or revoked during May 2000.

Schedule C

The following Schedule C authorities were established during May 2000:

Department of Agriculture

Confidential Assistant to the Administrator, Farm Service Agency. Effective May 23, 2000.

Department of Commerce

Senior Advisor for Communications to the Under Secretary for Export Administration, Bureau of Export Administration. Effective May 26, 2000.

Special Assistant to the General Counsel. Effective May 26, 2000. Special Assistant to the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office. Effective May 30, 2000.

Department of Defense

Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective May 12, 2000.

Department of Education

Confidential Assistant to the Director, White House Liaison. Effective May 4, 2000.

Confidential Assistant to the Senior Advisor to the Secretary. Effective May 4, 2000.

Confidential Assistant to the Senior Advisor to the Secretary. Effective May 17, 2000.

Department of Energy

Staff Assistant to the Assistant Secretary for International Affairs. Effective May 19, 2000.

Special Assistant to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 19, 2000.

Associate Director to the Director, Office of Policy. Effective May 23, 2000.

Senior Advisor for Intergovernmental Affairs to the Deputy Assistant Secretary for Intergovernmental and External Affairs. Effective May 25, 2000.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective May 4, 2000.

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective May 4, 2000.

Special Assistant to the Director, Office of Executive Scheduling. Effective May 11, 2000.

Congressional Relations Officer to the Deputy Assistant Secretary for Congressional Relations. Effective May 11, 2000.

Special Assistant to the General Counsel. Effective May 12, 2000.

Special Assistant to the Assistant Secretary for Policy, Development and Research. Effective May 15, 2000.

Director, Office of Executive Scheduling to the Chief of Staff. Effective May 17, 2000.

Special Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective May 17, 2000.

Department of the Interior

Director of Scheduling and Advance to the Deputy Chief of Staff. Effective May 8, 2000.

Special Assistant to the Deputy Chief of Staff. Effective May 8, 2000.

Department of Justice

Assistant to the Attorney General. Effective May 11, 2000.

Department of Labor

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 17, 2000.

Department of State

Special Assistant to the Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs. Effective May 3, 2000.

Supervisory Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective May 26, 2000.

Department of Transportation

Scheduling and Advance Assistant to the Director of Scheduling and Advance. Effective May 4, 2000.

Department of the Treasury

Director, Public and Business Liaison to the Deputy Assistant Secretary for Public Liaison. Effective May 30, 2000.

Export-Import Bank of the United States

Administrative Specialist to the President and Chairman. Effective May 4, 2000.

Administrative Specialist to the President and Chairman. Effective May 4, 2000.

Administrative Assistant to the Director. Effective May 10, 2000.

Administrative Specialist to the President and Chairman. Effective May 19, 2000.

General Services Administration

Senior Advisor to the Chief of Staff. Effective May 3, 2000.

National Aeronautics and Space Administration

Legislative Affairs Coordinator to the Associate Administrator for Legislative Affairs. Effective May 30, 2000.

National Credit Union Administration

Confidential Assistant to the Board Member. Effective May 26, 2000.

Office of Management and Budget

Legislative Assistant to the Associate Director, Legislative Affairs, Office of Management and Budget. Effective May 5, 2000.

Small Business Administration

Senior Advisor to the Associate Deputy Administrator for Capital Access. Effective May 4, 2000.

U.S. International Trade Commission

Staff Assistant (Legal) to the Commissioner. Effective May 25, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management,

Janice R. Lachance,

Director.

[FR Doc. 00–18343 Filed 7–19–00; 8:45 am]

BILLING CODE 6325–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 11:30 a.m., July 21, 2000.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Annual budget submission for fiscal year 2001.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, 202–789–6820.

Dated: July 17, 2000.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 00–18481 Filed 7–17–00; 5:00 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24557; 812–10776]

Massachusetts Mutual Life Insurance Company, et al., Notice of Application

July 13, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under sections 6(c) and 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act to permit certain joint transactions. The requested order would amend an existing order ("Existing Order").[1]

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered investment companies to co-invest with certain affiliated entities.

APPLICANTS: Massachusetts Mutual Life Insurance Company and its successors [2] ("MassMutual"); David L. Babson & Company Inc. and its successors ("Babson"), and any other person controlling, controlled by, or under common control with MassMutual that serves as investment adviser to any Registered Fund or any Private Fund (as each is defined below) (together with MassMutual, "MassMutual Adviser"); MassMutual Corporate Investors ("CI"); MassMutual Participation Investors ("PI" and with CI, the "Registered Funds"); MassMutual High Yield Partners II LLC, MassMutual Corporate Value Partners Limited ("CVP"); MassMutual/Darby CBO LLC, SAAR

[1] Massachusetts Mutual Life Insurance Company, et al., Investment Company Act Release Nos. 20381 (June 30, 1994) (notice) and 20427 (July 26, 1994) (order).

[2] For purposes of the requested order, the term "successors" means an entity that results from a reorganization or a change in the type of business organization.

Holdings CDO, Limited, Somers CDO, Limited, Perseus CDO I, Limited, MassMutual Global CBO I Limited, Simsbury CLO, Limited, each existing or future entity excepted from the definition of investment company under section 3(c)(1), 3(c)(5), or 3(c)(7) of the Act, or from investment company registration and regulation under section 2(b) of the Act, and for which a MassMutual Adviser serves as investment adviser (respectively, the "3(c) Funds" and the "2(b) Funds"), and any existing or future employees' securities company (as defined in section 2(a)(13) of the Act) established by MassMutual (a "2(a)(13) Company" and, collectively with the 3(c) Funds and 2(b) Funds, the "Private Funds").

FILING DATES: The application was filed on September 16, 1997, and amended on June 23, 2000. Applications have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 7, 2000, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Massachusetts Mutual Life Insurance Company, MassMutual Corporate Investors, MassMutual Participation Investors, and MassMutual High Yield Partners II LLC, 1295 State Street, Springfield, Massachusetts 01111; David L. Babson & Company Inc., One Memorial Drive, Cambridge Massachusetts 02141; MassMutual Corporate Value Partners Limited, c/o BankAmerica Trust & Banking (Cayman) Limited, Fort Street, George Town, Grand Cayman, Cayman Islands, British West Indies; and MassMutual Darby CBO LLC, c/o MassMutual Darby CBO IM Inc., c/o Lord Securities Corporation, Two Wall Street, New York, New York, 10005; SAAR Holdings CDO, Limited, Somers CDO, Limited, and Simsbury CLO, Limited, P.O. Box 1984 GT, Elizabeth Square, George Town, Grand Cayman, Cayman Island, British West Indies; and Perseus CDO I, Limited and MassMutual Global CBO I Limited, c/o Queensgate SPV Service Limited, P.O. Box 1093 GT, The Compass Centre, 2nd Floor, Crewe Road, Grand Cayman, Cayman Island, British West Indies.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Director, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Registered Funds, both organized as Massachusetts business trusts, are registered under the Act as closed-end management investment companies. CI invests primarily in privately placed fixed income securities with equity features. PI invests primarily in publicly-traded securities and in privately placed fixed income securities with or without equity features. CVP is a special purpose Cayman Islands corporation and is expected from the definition of investment company under section 3(c)(1) of the Act.

2. MassMutual, organized under the laws of the Commonwealth of Massachusetts, is a mutual life insurance company and is registered under the Investment Advisers Act of 1940 ("Advisers Act"). Babson is an indirect subsidiary of MassMutual and an investment adviser registered under the Advisers Act. MassMutal and/or Babson advise the Registered Funds and the Private Funds.

3. Under the Existing Order, MassMutual, the Registered Funds and CVP may coinvest in private placement securities. Applicants seek to amend the Existing Order to extend the relief to additional Private Funds and MassMutual Advisers and modify certain conditions of the Existing Order.[3] For purposes of the requested order, MassMutual or a MassMutual Adviser that coinvests with the Registered Funds is referred to as a "MassMutual Investor."

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 under the Act provides that in passing upon applications under section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) of the Act and rule 17d–1 under the Act to amend the Prior Order to permit the Registered Funds to coinvest in private placement securities with a MassMutual Investor and Private Funds.

3. Applicants state that the Registered Funds were originally organized and sold to the public as being able to coinvest in private placement securities jointly with MassMutual, and that this strategy has been successful over a period of years. Applicants also state that the Registered Funds benefit from coinvestments as the increased size of the investment creates an advantage in negotiating the price and protective covenants and in receiving a larger portion of the securities offered in the case of a partial fill (*i.e.*, a situation when the amount of securities offered is less than the amount originally requested). Applicants also state that, because the assets of Private Funds are far greater than the Registered Funds' assets, the Registered Funds are able to participate in offerings that otherwise might not be available to them. Applicants further contend that the conditions of the requested order would assure that the Registered Funds participate in the coinvestment transactions on a basis no less advantageous than the other participants, and that the transactions are consistent with the protection of investors and the provisions, policies and purposes of the Act.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

[3] All existing Private Funds that currently intend to rely on the order are named as applicants, and any other existing or future Private Fund that subsequently relies on the order will comply with the terms and conditions of the application.

1. Each time MassMutual (or a MassMutual Adviser to a Registered Fund) proposes to acquire private placement securities, the acquisition of which would be consistent with the investment objectives and policies of a Registered Fund, the Registered Fund's MassMutual Adviser will offer the Registered Fund the opportunity to acquire an amount of each class of the private placement securities equal to the amount proposed to be acquired by MassMutual (or such MassMutual Adviser). Each Registered Fund may choose to acquire none of the private placement securities or any amount of such securities up to the entire amount being offered to it by the MassMutual Adviser. If one Registered Fund declines the offer or accepts a portion of the private placement securities offered to it, the MassMutual Adviser shall offer the other Registered Fund up to 50% of the aggregate amount of the private placement securities then available for acquisition; provided that the amount of such private placement securities acquired by either Registered Fund shall not exceed the amount of private placement securities acquired by the MassMutual Investor. For purposes of this condition, the amount of any private placement securities acquired or proposed to be acquired by a MassMutual Investor shall be deemed also to include the amount acquired or proposed to be acquired by a Private Fund that is attributable to the MassMutual Investor's direct or indirect percentage ownership interest in that Private Fund.

2. Prior to any co-investment by a Registered Fund, a MassMutual Adviser will make an initial determination of whether the acquisition of the private placement security is consistent with the investment objectives and policies of the Registered Fund and, if so, will submit the proposed coinvestment, including the amount proposed to be acquired by the Registered Fund, the other Registered Fund, a MassMutual Investor and any Private Fund, to the members of the Registered Fund's board of trustees who are not interested persons as defined in section 2(a)(19) of the Act ("Joint Transactions Committee"). A Registered Fund may coinvest in a private placement security only if a majority of the members of the Joint Transactions Committee who have no direct or indirect financial interest in the transaction ("Required Majority") determine that:

a. The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Registered Fund and its shareholders and do not involve overreaching of the Registered Fund or its shareholders on the part of any person concerned;

b. The transaction is consistent with the Registered Fund's investment objectives and policies as recited in its registration statement and its reports to shareholders; and

c. The coinvestment by another Registered Fund, a MassMutual Investor, or a Private Fund would not disadvantage the Registered Fund, and participation by the Registered Fund would not be on a basis different from or less advantageous than that of other participants.

3. If a MassMutual Adviser determines that a Registered Fund should not acquire any private placement securities offered to it by a MassMutual Adviser pursuant to condition 1 above, the MassMutual Adviser will submit its determination to the Required majority for approval.

4. The Registered Funds, a MassMutual Investor and any Private Fund shall acquire private placement securities in reliance on the order only if the terms, conditions, price, class, registration rights, if any, and any other rights are the same for each Registered Fund, MassMutual Investor and any Private Fund participating in the coinvestment (except that a Registered Fund also may have voting rights). When more than one Registered Fund proposes to coinvest in the same private placement securities, the Required Majority of each Registered Fund shall review the transaction, and make the determinations set forth in condition 2 above, on or about the same time.

5. Except as described below, no Registered Fund may make a follow-on investment (*i.e.*, an additional investment in the same entity in which the Registered Fund and a MassMutual Investor or a Private Fund hold a coinvestment made pursuant to condition 1 above) ("Follow-on Investment") or exercise warrants, conversion privileges, or other rights unless the MassMutual Investor or the Private Fund makes such Follow-on Investment or exercises such warrants, conversion rights, or other rights at the same time and in amounts proportionate to their respective holdings of the private placement securities. If a MassMutual Investor or a Private Fund anticipates participating in a Follow-on Investment or exercising warrants, conversion rights, or other rights in an amount disproportionate to its holding, the MassMutual Adviser will formulate a recommendation as to the proposed Follow-on Investment or exercise of rights by each Registered Fund and submit the recommendation to each Registered Fund's Required Majority. That recommendation will include an explanation why a MassMutual Investor or a Private Fund, as the case may be, is not participating to the extent of or exercising its proportionate amount. Prior to any such disproportionate Follow-on Investment or exercise, a Registered Fund must obtain approval for the transaction as set forth in condition 2 above. For purposes of this condition 5, the amount of any private placement securities acquired or proposed to be acquired by a MassMutual Investor shall be deemed also to include the amount acquired or proposed to be acquired by a Private Fund that is attributable to the MassMutual Investor's direct or indirect percentage ownership investment in that Private Fund. Transactions pursuant to this condition 5 will be subject to the other conditions set forth in the order granted pursuant to this application.

6. Neither a MassMutual Investor nor a Private Fund will sell, exchange, or otherwise dispose of any interests in any private placement securities acquired pursuant to the order unless each Registered Fund has the opportunity to dispose of the interests at the same time, for the same unit consideration, on the same terms and conditions and in amounts proportionate to their holdings of the private placement securities. With respect to any such transaction, the MassMutual Adviser will formulate a recommendation as to the proposed participation by a Registered Fund and submit the recommendation to the Required Majority. The Registered Fund will dispose of such private placement securities to the extent the Required Majority determines that the disposition is in the best interests of the Registered Fund, is fair and reasonable, and does not involve overreaching of the Registered Fund or its shareholders by any person concerned.

7. The expenses, if any, associated with acquiring, holding or disposing of any private placement securities (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act of 1933) shall, to the extent not payable solely by a MassMutual Adviser under its investment management agreements with the Registered Funds and the Private Funds, be shared by the MassMutual Investor, the Private Funds and the Registered Funds in proportion to the relative amounts of such private placement securities held or being acquired or disposed of, as the case may be, by the MassMutual Investor, the

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Private Funds, and the Registered Funds.

8. The Joint Transactions Committee of each Registered Fund will be provided quarterly for review all information concerning co-investments made by the MassMutual Investor, the Private Funds, and the Registered Funds, including investments made by a MassMutual Investor or the Private Funds in which a Registered Fund declined to participate, so that the Joint Transactions Committee may determine whether all investments made during the preceding quarter, including those investments in which the Registered Fund declined to participate, comply with the conditions of the order. In addition, the Joint Transactions Committee will consider at least annually the continued appropriateness of the standards established for co-investments by a Registered Fund, including whether the use of the standards continues to be in the best interests of the Registered Fund and its shareholders and does not involve overreaching on the part of any person concerned.

9. Except for a Follow-on Investment made pursuant to condition 5 above, no coinvestment will be made by a Registered Fund in private placement securities of any entity if another Registered Fund, MassMutual, a MassMutual Adviser or a Private fund then currently holds a security issued by that entity.

10. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e)(2) of the Act) received by the applicants in connection with a transaction will be distributed to the participants on a *pro rata* basis. If any transaction fee is to be held by a MassMutual Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the MassMutual Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided *pro rata* among the participants. No MassMutual Adviser will receive additional compensation or remuneration of any kind as a result of or in connection with a co-investment, or compensation for its services in sponsoring, structuring, or providing managerial assistance to an issuer of private placement securities that is not shared *pro rata* with the other coinvestors.

11. Each applicant will maintain and preserve all records required by section 31 of the Act and any other provisions of the Act and the rules and regulations thereunder applicable to the applicant. The Registered Funds will maintain records required by section 57(f)(3) of the Act as if each of the Registered Funds were a business development company and the coinvestments and any follow-on investments (or exercise of warrants, conversion rights or other rights) were approved under section 57(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18347 Filed 7–19–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to Intergovernmental review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 36 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2001, subject to the availability of funds. Ten states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding on or before August 21, 2000 to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Michael York, State Director, Maricopa Community College, 2411 West 14th Street, Tempe, AZ 85281–6941, (480) 731–8720

Ms. Kimberly Neri, State Director, California Trade & Comm. Agency, 801 K Street, Suite 1700, Sacramento, CA 95814, (916) 324–9538

Mr. Malcolm Barnes, Executive Director, Howard University, 2600 6th St., NW, Room 125, Washington, D.C. 20059 (202) 806–1550

Mr. Michael Finnerty, State Director, Salt Lake Community College,1623 South State Street, Salt Lake City, UT 84115, (801) 957–3481

Ms. Mary Madison, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202 (303) 892–3794

Mr. Jerry Cartwright, State Director, University of West Florida, 19 West Garden Street, Pensacola, FL 32501, (850) 595–6060

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (706) 542–6762

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717

Ms. Debbie Bishop, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204, (317) 264–2820 x17

Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 200 West Kawili Street, Hilo, HI 96720, (808) 974–7515

Mr. Mark Petrilli, State Director, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856

Ms. Mary Collins, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (603) 862–6975

Mr. Charles Davis, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420

Mr. Scott Daugherty, State Director, University of North Carolina, 333 Fayetteville Street Mall, Suite 1150, Raleigh, NC 27514, (919) 715–7272

Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (405) 924–0277

Mr. Ronald Hall, State Director, Small Business Development Center, 2727 Second Avenue, Detroit, MI 48201, (313) 964–1798

Mr. Wally Kearns, State Director, University of North Dakota, P.O. Box 7308, Grand Forks, ND 58202, (701) 777–3700

Ms. Erica Kauten, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–7794

Mr. Greg Higgins, State Director, University of Pennsylvania, The

Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219

Mr. John Lenti, State Director, University of South Carolina, College of Business Administration, 1710 College Street, Columbia, SC 29208, (803) 777–4907

Mr. Albert Laabs, Acting State Director, Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 324, Nashville, TN 37217–2833, (615) 366–3900

Mr. Jack Peters, Executive Director, University of Guam, P.O. Box 5061, UOG Station, Mangilao, GU 96923 (671) 735–2590

Mr. Robert Hamlin, Acting State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111

Mr. Wade Druin, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5287

Ms. Carolyn Clark, State Director, Washington State University, 601 West First Avenue, Spokane, WA 99202–3899, (509) 358–7765

Dr. Bruce Whitaker, Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799 (684) 699–9155

FOR FURTHER INFORMATION CONTACT: Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW, Suite 4600, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: July 10, 2000.

Johnnie L. Albertson,

Associate Administrator for Small Business Development Centers.

[FR Doc. 00–18170 Filed 7–19–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3364]

Bureau for International Narcotics and Law Enforcement Affairs; Anti-Crime Training and Technical Assistance Program (ACTTA)

AGENCY: Office of Europe and the NIS; Bureau for International Narcotics and Law Enforcement Affairs, State.

ACTION: Notice.

SUMMARY: State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) developed the Anti-Crime Training and Technical Assistance Program (ACTTA) in 1994 to bring U.S. Federal law enforcement agencies together to provide training and technical assistance in consultation with their counterparts in Central and Eastern Europe. The goal of the program is to increase professionalism and develop the technical capabilities of law enforcement institutions to combat organized crime and promote rule of law while facilitating international law enforcement cooperation.

The ACTTA program continues to include the participation of non-Federal agencies (*e.g.*, universities, private non-profit organizations) in the delivery of law enforcement training and technical assistance to Central and Eastern Europe. This non-Federal component of the ACTTA program has a timeframe of 2000–2002.

DATES: Strict deadlines for submission to the FY 2000 process are: Full proposals must be received at INL no later than Friday, August 18, 2000. Letters of intent are not required. We anticipate that review of full proposals will occur during August 2000. November 1, 2000 should be used as the proposed start date on proposals, unless otherwise directed by a program manager. Applicants should be notified of their status within 3 months, of submission dead line. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Navy Hill South, 2430 E Street NW., Washington, DC 20520, Attn: Linda Gower, Grants Officer.

FOR FURTHER INFORMATION CONTACT: Maren Brooks at above address, TEL: 202–776–8555, FAX: 202–776–8703, email: *m.brooks@state.gov* or Linda Gower at above address, TEL: 202–776–8774, FAX: 202–776–8775.

Once the RFA deadline has passed, DOS staff may not discuss this competition in any way with applicants until the proposal review process has been completed.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for projects to be conducted by agencies/programs outside the Federal government, over a period of up to two years. Actual funding levels will depend upon availability of funds. Current plans are for $400,000 for Slovakia to be available for the new (or renewing) ACTTA award. The funding instrument will be a grant or a cooperative agreement. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. This program, though encouraged, does not require matching share. No proposal should exceed a total cost of $400,000.

Program Authority

Authority: Section 635(b) of the Foreign Assistance Act, of 1961 as amended.

Program Objectives

The ACTTA program has been designed to provide assistance to foreign governments which will complement the training and assistance provided by US Federal agencies. All training and assistance of the ACTTA program should be focused on city or local police forces.

The program objectives of the ACTTA program are: (1) Combat the growing threat to U.S. national security posed by the broad range of organized crime activities, (2) help emerging democracies strengthen their national and law enforcement institutions to counter illegal criminal activities, and (3) help emerging democracies develop laws and prosecutorial frameworks to counter organized crime activities.

Program Priorities

The primary focus of this program is Slovakia.

All training conducted under this program must utilize a "training-of-trainers" format.

The FY 2000 ACTTA Program Announcement invites training and technical assistance program proposals for community policing methods and promoting ethnic relations in Slovakia.

Eligibility

Eligibility is limited to non-Federal agencies and organizations, and is encouraged with the objective of developing a strong partnership with the state/local law enforcement community. Non-law enforcement proposers are urged to seek collaboration with state/local law enforcement institutions. Letters of support must be included in the proposal. Universities and non-profit organizations are included among entities eligible for funding under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address the Program Priorities identified above and meet the following evaluation criteria:

(1) Relevance (20%): Importance and relevance to the goal and objectives of the ACTTA program identified above.

(2) Methodology (25%): Adequacy of the proposed approach and activities, including development of relevant training curricula, training methods proposed, evaluation methodology, project milestones, and final products.

(3) Readiness (25%): Relevant history and experience in conducting training/technical assistance in the program priority areas identified above, strength of proposed training/technical assistance or evaluation teams, past performance record of proposers.

(4) Linkages (15%): Connections to existing law enforcement agencies in Central and Eastern European countries (especially Slovakia), letters of support, from those law enforcement agencies, in addition to previous training or related assistance experience in these countries.

(5) Costs (15%): Adequacy/efficiency of the proposed resources and a percentage of cost sharing.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Federal USG agency law enforcement experts. The program managers will consider the panel's recommendations and evaluations in the final selection. Those ranked by the panel and program as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposal rated for possible funding, the program managers will: (a) Ascertain which proposals meet the objectives, fit the criteria posted, and do not duplicate other projects that are currently funded by INL, other USG agencies or foreign governments, or international (Note: proposals or elements that duplicate existing activities of USG agencies will not receive award. end note); (b) select the proposal to be funded; (c) determine the total duration of funding for the proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to INL must include the original and three unbound copies of the proposal.

(2) Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed.

(3) Program descriptions must be limited to 20 pages (numbered), not including budget, personnel vitae, letters of support and all appendices, and should be limited to funding requests for one to two year duration. Federally mandated forms are not included within the page count.

(4) Proposals should be sent to INL at the above address.

(5) Facsimile transmissions of full proposals will not be accepted.

(b) Required Elements

(1) Signed title page: The title page should be signed by the Project Director (PD) and the institutional representative and should clearly indicate which program priority or priorities are being addressed. The PD and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period. A budget period is normally two years.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear as a separate page, headed with the proposal title, institution(s) name, investigator(s), total proposed cost and budget period.

(3) Prior training experience: A summary of prior law enforcement training experience should be described, including training related to program priorities identified above and/or conducted in Central and Eastern Europe, especially Slovakia. Reference to each prior training award should

include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, project objectives, proposed training methodology, relevance to the goal and objectives of the ACTTA program, and the program priority listed above. Benefits of the proposed project to U.S. law enforcement efforts should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. Statement of work, including and excluding figures and other visual materials, must not exceed 20 pages of length.

(5) Budget: Applicants must submit a Standard form 424 (4–92) "Application for Federal Assistance," including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs." Forms are available on the Internet. Go to whitehouse.gov/omb/grants, click on forms. The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Budget text must be included to justify expenses. Additional text should include salaries and benefits by each proposed staff person; direct costs such as travel (airfare, per diem, miscellaneous travel costs); equipment; supplies; contractual, and indirect costs. Indicate if indirect rates are DCAA or other Federal agency approved or proposed rates and provide a copy of the current rate agreement. In addition, furnish the same level of information regarding subgrantee costs, if applicable, and submit a copy of your most recent A–110 audit report. Consultant fees should not exceed $250 per day.

(6) Vitae: Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

(c) Other Requirements

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

1. Non procurement Department and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non procurement Deberment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants of more than $100,000; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for sub-grants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure Form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOS in accordance with the instructions contained in the award document.

(2) Recipients and sub-recipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of State to cover pre-award costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular No. A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," and 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associate with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) a negotiated repayment schedule is established and at least one payment is received, or

(iii) other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are reminded that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from the INL ACTTA program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: July 6, 2000.

Jo Ann Moore,

Coordinator, Office of Europe and New Independent States,, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State.

Dated: July 12, 2000.

Jo Ann Moore,

Coordinator, Office of Europe and New Independent States, Bureau for International Narcotics and Law Enforcement, U.S. Department of State.

[FR Doc. 00–18122 Filed 7–19–00; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of each of the information collections and the expected burdens. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on May 9, 2000, [FR 65, pages 26871–26872].

DATES: Comments must be submitted on or before August 21, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0614.

Forms(s): None.

Affected Public: 90 respondents (Affected operators under 14 CFR part 121).

Abstract: The information collection from part 121 and 135 carriers is necessary to ensure the operators's compliance to the upgrade of the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments.

Estimated Annual Burden Hours: 720 burden hours annually.

2. *Title:* Revisions to Digital Flight Data Recorders.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0616.

Forms(s): None.

Affected Public: 2960.

Abstract: This rule requires that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions require additional information to be collected to enable more thorough accident or incident investigations and to enable industry to predict certain trends and make necessary modifications before an accident or incident happens.

Estimated Annual Burden Hours: 1 burden hour.

3. *Title:* Bird/Other Wildlife Strike.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0045.

Forms(s): FAA Form 5200–7.

Affected Public: 5,000 pilots, air traffic control operators, or other individuals who are involved in or see a bird/wildlife strike.

Abstract: Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure. The respondents would include the pilot-in command of an aircraft involved in an aircraft wildlife collision, or ATCT personnel, or other airport or airline personnel who have knowledge of the incident.

Estimated Annual Burden Hours: 400 burden hours annually.

Address: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 14, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–18408 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held August 8, 2000 at 11 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Room 1014, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Regina Jones, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9822; fax (202) 267–5075; e-mail Regina.Jones@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on August 8, 2000, at the Federal Aviation Administration, 800 Independence Ave., SW., Room 1014, Washington, DC 20590. The agenda will include:

- New ARAC taskings
- Voting policy
- Meeting locations
- New ARAC members

Attendance is open to the interested public but will be limited to the space

available. The public must make arrangements by August 1, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 14, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–18409 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bossier, Caddo, & DeSoto Parishes, Louisiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed Interstate highway project in Bossier, Caddo, and DeSoto Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: William Farr, Program Operations Manager, Federal Highway Administration, 5304 Flanders Avenue, Suite A, Baton Rouge, Louisiana 70808, Telephone: (225) 767–7615, or Vincent Russo, Environmental Engineer Administrator, Louisiana Department of Transportation and Development, Post Office Box 94245, Baton Rouge, Louisiana 70804–9245, Telephone: (225) 929–9190.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (DOTD), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a segment of the proposed Interstate Highway 69 (I–69) in Bossier, Caddo, and DeSoto Parishes, Louisiana. This proposal will provide a divided four-lane, limited access highway on new location between US Highway 171 (US 171) near the Town of Stonewall in DeSoto Parish, to Interstate Highway 20 (I–20) near the Town of Haughton in Bossier Parish, a distance of approximately 30 miles. The proposed new highway is a portion of the planned improvements to Congressionally-designated High Priority Corridor Number 18, which will link Indianapolis, Indiana to the lower Rio Grande Valley in Texas. The purpose of this proposal is to improve international and interstate trade in accordance with national and state goals and to facilitate economic development in accordance with state, regional, and local policies, plans, and surface transportation consistent with national, state, regional, and local needs and with the Congressional designation of the corridor.

The location of the proposed new highway generally follows a proposed alignment as developed in the City of Shreveport's 1992 study entitled "Interstate 69 and the Inner Loop Extension: Compatibility Report". However, social, economic, and environmental considerations will determine the number and location of alternatives to be developed during the preparation of the EIS. The western terminus of the proposed highway will be an interchange at US 171 near the Town of Stonewall in DeSoto Parish. The eastern terminus of the proposed highway will be an interchange at I–20 near the Town of Haughton in Bossier Parish.

Alternatives under consideration include (1) the construction of a new controlled access highway, including interchanges providing access at I–20, US Highway 71, Louisiana Highway 1, Interstate Highway 49 and US 171, and (2) taking no action and using existing road network to connect the other segments of the proposed highway in the corridor. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Federal and State agencies with jurisdiction by law with regards to the social, economic and environmental impact of this proposal will be requested to act as a Cooperating Agency in this matter in accordance with 40 CFR 1501.6. Numerous public involvement initiatives, including public meetings, newsletters, and advisory committee meetings will be held throughout the course of this study. Additionally, a Public Hearing will be held. Public notice will be given, in local newspapers, of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review prior to the Public Hearing. A formal scoping meeting will be held upon initiation of this project.

To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the DOTD at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: July 10, 2000.

William A. Sussmann,

Division Administrator, FHWA.

[FR Doc. 00–18385 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7283; Notice No. 00–7]

Hazardous Materials Safety: Public Meeting Related to Customer Service and Regulatory Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: RSPA will hold a public meeting to seek information from the public on improving safety, reducing costs (especially to small businesses) and increasing customer service through RSPA's management of the national hazardous materials transportation safety program. This meeting is being held in conjunction with a Hazardous Materials Multimodal Training Seminar sponsored by RSPA on September 12 and 13, 2000.

ADDRESSES: The public meeting will be held at the Sheraton Airport Hotel Cleveland, 5300 Riverside Drive, Cleveland, OH (216–267–1500). For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Charles Betts at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

DATES: The public meeting will be held on Wednesday, September 13, 2000, 1:00 p.m. to 5:00 p.m.; however, the meeting may end prior to 5:00 p.m., dependent upon public interest.

FOR FURTHER INFORMATION CONTACT: Charles Betts, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001. Phone (202) 366–8553.

SUPPLEMENTARY INFORMATION: *Focus on Issues of Interest to Affected Parties.* RSPA ("we" and "our") is interested in soliciting comments on the kind and quality of services our customers want and their level of satisfaction with the services we currently provide to promote understanding and compliance with the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). These services include the following:

(1) *Hazardous Materials Information Center (HMIC).* A staff of three persons is available Monday to Friday (except Federal holidays) between 9:00 a.m. and 5:00 p.m. (Eastern time) to address telephonic inquiries from shippers, carriers, packaging manufacturers and other persons concerning requirements in the HMR for the safe transportation of hazardous materials. In 1999, the HMIC handled more than 28,000 calls. The toll-free number is 1–800–HMR–4922.

(2) *Internet Access.* Our site on the worldwide web (http://hazmat.dot.gov) provides information concerning hazardous materials rulemakings, exemptions, letters of clarification, international activities, incident data, the *2000 Emergency Response Guidebook* and much more.

(3) *Fax on Demand.* For persons who do not have access to the internet, we operate an automated fax-back system that allows callers access to more than 600 pages of informational materials, including letters of clarification and recently published rulemakings, through their own fax machines. A facsimile copy of the catalog of available documents may be obtained by accessing the fax-on-demand feature through our HMIC number 1–800–HMR–4922.

(4) *Training.* To promote compliance with the HMR, we distribute brochures, charts, publications, training materials, videotapes, and other safety-related information to hazmat employers and hazmat employees in the private and government sectors, as well as to the general public. Hazardous materials training is provided to Federal, State and local enforcement agencies, industry, and emergency response personnel. In addition, we provide personal computer based self-study programs through a CD–ROM modular training series.

(5) *Government-Industry Partnerships.* To the extent permitted through our limited resources, we participate in meetings, conferences, training workshops, and the like sponsored by public sector, industry, and international organizations having an interest in the safe transportation of hazardous materials.

Regulations and Administrative Procedures. On December 20, 1999, we published a notice of regulatory review (Docket No. RSPA–99–5143, 64 FR 71098) requesting comments on the economic impact of the regulations on small entities. This year we are analyzing rules in 49 CFR Part 106, Rulemaking Procedures, Part 107, Hazardous Materials Program Procedures, and Part 171, General Information, Regulations, and Definitions. Meeting participants are invited to take this opportunity to suggest whether specific rules in these parts should be revised or revoked to lessen the impact on small entities.

We are interested, also, in receiving comments on the quality of our processing of written requests for information, applications for exemption and approval, registration statements, and other administrative actions. Meeting participants are encouraged to provide suggestions on how we may improve our performance in processing these administrative actions.

We welcome all comments on ways to improve understanding and compliance with the HMR, including removal of obsolete requirements, revisions to conflicting or confusing requirements, and the use of plain language in regulations. We will address inquiries concerning new or proposed requirements recently published in rulemaking actions concerning RSPA's registration and fee assessment program (Docket No. RSPA–99–5137; 65 FR 7297, February 14, 2000); harmonization of requirements in the HMR pertaining to the transportation of radioactive materials with standards published by the International Atomic Energy Agency (Docket No. RSPA–99–6283; 64 FR 72633, December 28, 1999); and the permitted use, until October 1, 2001, of internationally recognized POISON and POISON GAS labels on packages intended for transportation in international commerce (Docket No. RSPA–99–6195, 64 FR 50260, September 16, 1999 and 64 FR 51719, September 24, 1999).

Representatives from the United States Coast Guard, Federal Aviation Administration, Federal Railroad Administration and Federal Motor Carrier Safety Administration will participate with RSPA in this public meeting and address modal-specific issues.

Conduct of the Meeting. This is an informal meeting intended to produce a dialogue between agency personnel and persons affected by the hazardous materials transportation safety program. The presiding official may find it necessary to limit the time available to each person to ensure that all participants have an opportunity to speak. Conversely, this meeting may conclude early if all persons wishing to participate have been heard. While there will be no transcript of the meeting, RSPA will prepare a written summary of the meeting and post it in this notice's docket (RSPA–00–7283). Persons interested in participating in this public meeting need not be registered for the Hazardous Materials Multimodal Training Seminar.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–18312 Filed 7–19–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 10, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 21, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0996.

Regulation Project Number: EE–113–82.

Type of Review: Extension.

Title: Required Distributions From Qualified Plans and Individual Retirement Plans.

Description: The regulations provide rules regarding the minimum distribution requirements applicable to section 403(b) contracts and accounts. Such minimum distribution rules do not apply to benefits accrued before January 1, 1987.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 8,400.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–18318 Filed 7–19–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 13, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 21, 2000 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0004.

Form Number: IRS Form 4789.

Type of Review: Extension.

Title: Currency Transaction Report.

Description: Banks and other financial institutions must report transactions in cash of more than $10,000 conducted by their customers. The reports are used to investigate financial and other crimes, especially those involving money laundering.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 180,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 min.

Response time—19 min.

Frequency of Response: Other (as required).

Estimated Total Reporting/ Recordkeeping Burden: 4,000,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–18319 Filed 7–19–00; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 13, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 21, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0160.

Form Number: IRS Form 3520.

Type of Review: Revision.

Title: Annual Information Return of Foreign Trust With a U.S. Owner.

Description: Section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520–A. The form is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in it's gross income.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—36 hr., 50 min.

Learning about the law or the form—3 hr., 5 min.

Preparing and sending the form to the IRS—3 hr., 49 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 21,860 hours.

OMB Number: 1545–0192.

Form Number: IRS Form 4970.

Type of Review: Extension.

Title: Tax on Accumulation Distribution of Trusts.

Description: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 30,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 12 min.

Learning about the law or the form—15 min.

Preparing the form—1 hr., 26 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 96,600.

OMB Number: 1545–0193.

Form Number: IRS Form 4972.

Type of Review: Revision.

Title: Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

Description: Internal Revenue Code (IRC) Section 402(e) allows taxpayers to compute a separate tax on lump-sum distribution from a qualified retirement plan. Form 4972 is used to correctly figure that tax. The data is used to verify the correctness of the separate tax. Form 4972 is also used to make the special 20% capital gain election attributable to pre-1974 participation from the lump-sum distribution.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 35,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—52 min.

Learning about the law or the form—20 min.

Preparing the form—1 hr., 11 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 95,550.

OMB Number: 1545–0890.

Form Number: IRS Form 1120–A.
Type of Review: Extension.
Title: U.S. Corporation Short-Form Income Tax Return.
Description: Form 1120–A is used by small corporations, those with less than $500,000 of income and assets, to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether corporations have correctly computed their tax liability.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 285,777.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120	71 hr., 59 min	41 hr., 10 min	71 hr., 8 min	7 hr., 47 min.
1120–A	44 hr., 43 min	22 hr., 51 min	40 hr., 25 min	4 hr., 29 min.
Schedule D (1120)	6 hr., 56 min	3 hr., 31 min	5 hr., 39 min	32 min.
Schedule H (1120)	5 hr., 59 min	35 min	43 min	0 min.
Schedule PH (1120)	15 hr., 19 min	6 hr., 12 min	8 hr., 35 min	32 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 32,161,344.
OMB Number: 1545–1014.
Form Number: IRS Form 1066 and Schedule Q (Form 1066).
Type of Review: Extension.
Title: U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return (Form 1066); and Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation (Schedule Q).
Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 4,917.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1066	Schedule Q (Form 1066)
Recordkeeping	31 hr., 49 min	6 hr., 28 min.
Learning about the law or the form	8 hr., 27 min	1 hr., 41 min.
Preparing the form	12 hr., 8 min	1 hr., 52 min.
Copying, assembling, and sending the form to the IRS	48 min	0 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 753,776.
OMB Number: 1545–1020.
Form Number: IRS Form 1041–T.
Type of Review: Extension.
Title: Allocation of Estimated Tax Payments to Beneficiaries.
Description: This form was developed to allow a trustee of a trust or an executor of an estate to make an election under Internal Revenue Code (IRC) section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—20 min.
Learning about the law or the form—5 min.
Preparing the form—18 min.
Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Other (When such election is made.).
Estimated Total Reporting/Recordkeeping Burden: 1,010.
OMB Number: 1545–1181.
Form Number: IRS Form 8752.
Type of Review: Extension.
Title: Required Payment or Refund Under Section 7519.
Description: This form is used to verify that partnerships and S corporations that have made a section 444 election have correctly reported the payment required under section 7519.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 72,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hr., 44 min.
Learning about the law or the form—1 hr., 0 min.
Preparing, copying, assembling, and sending the form to the IRS—1 hr., 7 min.
Frequency of Response: 72,000
Estimated Total Reporting/Recordkeeping Burden: 565,920.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–18320 Filed 7–19–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–50]

Cancellations of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Brokers licenses cancellations.

I, as Assistant Commissioner, Office Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following

Customs broker licenses without prejudice.

Name	Port	License No.
Nicholas C. D'Ambrosio.	New York	03268
Kurt O. Engel	New York	03966
Robbins Fleisig Forwarding, Inc.	New York	07973
Geraldine R. Lyons.	New York	04993
Modern-Aire Expediters, Inc.	New York	04208
Horizon Shipping, Inc.	Houston	14054
Fujiwara America Inc.	Seattle	16400
George H. Reynolds.	San Francisco	07475
William Homes	San Francisco	05621
Samuel G. Scott	Tampa	03779
The Copeland Co., Inc.	Tampa	04206
William Seeger	Miami	07820

Dated: July 10, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–18386 Filed 7–19–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TREASURY

Customs Service

[T.D. 00-48]

Bonds; Approval to Use Authorized Facsimile Signatures and Seals

Editorial Note: Notice document FR-Document 00-17808 was originally scheduled to publish on Friday, July 14, 2000. It was inadvertently omitted from the issue. It is being printed in today's issue in its entirely.

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date:

Lincoln General Insurance Company
Authorized facsimile signatures on file for:
Gary C. Bhojwani, Attorney-in-fact
Michael S. Brown, Attorney-in-fact

The corporate surety has provided the Customs Service with copies of the signatures to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Dated: July 10, 2000.

Larry L. Burton,

Acting Chief, Entry Procedures and Carriers Branch.

[FR Doc. 00–17808 Filed 7–13–00; 8:45 am]

Editorial Note: Notice document FR-Document 00-17808 was originally scheduled to publish on Friday, July 14, 2000. It was inadvertently omitted from the issue. It is being printed in today's issue in its entirely.

[FR Doc. 00–17808 Filed 7–19–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Securities Offering Disclosure program.

DATES: Submit written comments on or before September 18, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0035. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: Paul Glenn, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6203.

SUPPLEMENTARY INFORMATION:

Title: Securities Offering Disclosure.

OMB Number: 1550–0035.

Form Numbers: SEC forms S–4, S–8, SB–1, SB–2, and OTS Forms PS, OC, and G–12.

Abstract: OTS collects information for disclosure in securities offerings by savings associations related directly to U.S. Securities and Exchange Commission requirements for offering of information to potential securities purchasers.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 71.

Estimated Time Per Respondent: 439 hours.

Estimated Total Annual Burden Hours: 31,194 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 13, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–18410 Filed 7–19–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on

proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Annual Reporting Requirements and Disclosures Required by the Securities Exchange Act of 1934.

DATES: Submit written comments on or before September 18, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0019. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: Paul Glenn, Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6203.

SUPPLEMENTARY INFORMATION:

Title: Annual Reporting Requirements and Disclosures Required by the Securities Exchange Act of 1934.

OMB Number: 1550–0019.

Form Numbers: SEC Schedules 13D, 13g, 14D–1, 14C, 14A, and 14B. SEC Forms 15, 8–A, 10, 10–K, 10–KSB, 8–K, 12b-25, 10–Q, 10–QSB, 3,4,5, and Annual Report.

Abstract: OTS collects periodic disclosure documents required to be filed by savings associations pursuant to the Securities Exchange Act of 1934 on forms promulgated by the S.U. Securities and Exchange Commission for its registrants.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or for profit.

Estimated Number of Respondents: 90.

Estimated Time Per Respondent: 3,029 hours.

Estimated Total Annual Burden Hours: 272,613 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 13, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–18411 Filed 7–19–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 21, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–NEW."

SUPPLEMENTARY INFORMATION:

Title: Study of Individuals at Risk for Stress Related Illnesses, VA Form 10–21036(NR).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: This survey collection is intended for the development of "psychological and biomedical measurements for early identification of individuals at risk for stress-related illnesses." VA proposes to design and validate a psychometrically sound inventory of psychosocial risk and resilience factors that will be empirically related to self-reported physical and mental health and health-related quality of life in Gulf War veterans. The inventory will include assessments of multiple dimensions of war-zone stress, predeployment vulnerabilities, and reentry-postwar circumstances.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2000, at page 19434.

Affected Public: Individuals or households.

Estimated Annual Burden: 525 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 700.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

Dated: June 30, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–18286 Filed 7–19–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

System Name: Privacy Act of 1974, Altered System of Records, General Personnel Records (Title 38)—VA 76VA05

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is republishing the system of records entitled General Personnel Records (Title 38)—VA (76VA05) as set forth in the **Federal Register** 53 FR 27258 (7/19/

88) and amended in 55 FR 42534 (10/19/90), 58 FR 40852 (7/30/93), and 61 FR 14853 (4/3/96). Changes in law, regulation, technology, function, and organization have resulted in the system notice being out of date. Alterations include the paragraphs for System Location, Individuals Covered by the System of Records, Categories of Records in the System, Routine Uses of the Information, Legal Authority to Maintain the System of Records, and Procedures Related to Storing, Retrieving, Accessing, Retaining, and Disposing of Information in the System of Records. VA is republishing the system notice in its entirety at this time.

DATES: Submit comments on or before August 21, 2000.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this system of records to the Director, Office of Regulations Management (02D), 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1154, 810 Vermont Avenue, NW, Washington, DC 20420 only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the reissued system of records is effective August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McVeigh, Department of Veterans Affairs (051A), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–9821.

SUPPLEMENTARY INFORMATION: The system location is being changed to include the VA Shared Service Center, 3401 SW 21st Street, Topeka, Kansas 66604 and the offices of non-Federal contractors or subcontractors who may maintain these records. VA is improving its human resources and payroll services and part of that process may include permanently moving records to a centralized location. At this time, the records of employees in Veterans Integrated Service Network 2 and the Atlanta VA Medical Center have been temporarily relocated to the Shared Service Center as a prototype. If the records of employees covered by this system of records are permanently relocated to either of these newly added locations, notice will be provided in the **Federal Register**. The name of the VA Data Processing Center is also being changed to reflect its current title, the VA Austin Automation Center.

The categories of individuals covered by this system of records are being modified to exclude residents appointed on an intermittent basis under 38 U.S.C. 7406 if their stipends are centrally administered under the provisions of 38 U.S.C. 7406(c). VA will no longer maintain records on these employees, since they are ineligible for Federal benefits as a result of their VA service. Coverage is also clarified to indicate that the system of records does not cover employees appointed on a fee or without compensation basis under 38 U.S.C. 7405. They are covered by the system of records entitled Individuals Serving on a Fee Basis or Without Compensation (Consultants, Attendings, Others) Personnel Records-VA (14VA135). In addition, this system of records does not cover VA employees appointed under chapter 3 or 71 of Title 38, U.S. Code.

The categories of records in the system are being changed as follows:

a. Because of the Veterans Health Care Eligibility Reform Act of 1996, Pub.L. 104–262, dated October 9, 1996, employee certification of outside professional activities is no longer required and has not been collected since October 9, 1996. Information concerning certifications prior to October 9, 1996, will remain in the system of records.

b. Information concerning competency assessments, proficiency reports, employee statements regarding proficiency reports given and any recommendations based on them, as well as professional standards board actions and any documents associated with those actions, are being removed from this system. These records are being included in a new system of records entitled Professional Standards Board Action and Proficiency Rating Folder (Title 38)—VA (101VA05), which is being released simultaneously with this notice.

c. Records associated with processing disciplinary and adverse actions, actions based on inaptitude, inefficiency, misconduct, disqualification during probation, physical disqualification, agency-initiated disability retirements, and suitability determinations are being removed from this system of records. This includes any notice of proposed action, materials relied on by VA to support the reason(s) for the action, replies by employees or their representatives, statements of witnesses, hearing notices and reports related to these actions. These records are being included in a new system of records entitled Agency-Initiated Personnel Actions (Title 38)—VA (102VA05), which is being released simultaneously with this notice.

d. Certain records relating to an employee's participation in the Federal Retirement Investment Thrift Savings Board's Thrift Savings Plan are being added as a relevant and necessary part of this system of records.

The authority for maintenance of the system is being modified to reflect the 1992 reorganization of Title 38, United States Code.

Information concerning the purpose of this system of records has been added. The previous system notice was published before such information was required.

The routine uses of information in this system of records, including categories of users and the purposes of such uses, are being modified as follows:

a. Routine use 1 relating to disclosures to the Office of Personnel Management has been deleted. Such disclosures are only made from the system of records entitled Personnel and Accounting Pay System-VA (27VA047).

b. Routine use 3 relating to disclosures of information to colleges and universities has been split into two routine uses (numbers 2 and 3), since such disclosures are made for two different reasons.

c. Routine uses 8 and 9 relating to awards, honors, and other types of employee recognition have been modified to more clearly indicate what disclosures are made, to whom the disclosures are made and the purposes of such disclosures.

d. Routine use 10 is being modified to clarify the conditions under which data is disclosed to officials of labor organizations recognized under 5 U.S.C., chapter 71. The clarification ties such disclosures to the law authorizing the disclosures, *i.e.*, 5 U.S.C. 7114(b)(4). The former version authorized disclosures to officials of labor organizations "when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions."

e. Routine use 11 is modified. VA is prohibited from promulgating routine uses that would permit disclosures in response to requests for information for civil or law enforcement purposes or in response to court orders. Such requests must be submitted under the provisions of 5 U.S.C. 552a(b)(7) or (b)(11), as applicable. See *Doe* v. *DiGenova*, 779 F. 2d 74 (D.C Cir. 1985) and *Doe* v. *Stephens*, 851 F. 2d 1457 (D.C. Cir. 1988), and an August 28, 1989, opinion from the Office of Legal Counsel, Department of Justice. Routine use 11

no longer includes such disclosures; however, it has been modified to permit VA to disclose, on its own initiative, relevant information if there is reason to believe that a violation of statute, rule or regulation has occurred.

f. Routine use 14 no longer permits disclosures at the request of agencies in the executive, legislative, or judicial branch of the Federal government, or to the government of the District of Columbia for investigative purposes. Such requests must be submitted under the provisions of 5 U.S.C. 552a(b)(7). That portion of the routine use has been deleted.

g. Routine use 15 has been modified to limit the reason for such disclosures to obtaining accreditation or other approval ratings. It also now permits disclosures to other Federal agencies for this purpose. The former version of this routine use was overly broad.

h. Routine use 18 has been modified so that it no longer permits disclosures in response to subpoenas or court orders. Applicable case law (see paragraph e above) prohibits disclosures in response to subpoenas. Court orders directing the production of information must also meet the requirements of 5 U.S.C. 552a(b)(11). The revised routine use would permit VA to disclose relevant information on its own initiative in certain legal proceedings if VA is party to those proceedings and disclosure is necessary to protect its interests.

i. Routine use 19, relating to requests for discovery or for the appearance of witnesses, has been deleted, since it is no longer consistent with applicable case law (see paragraph e above).

j. Routine use 24 related to disclosures to VA-appointed representatives concerning fitness for duty examinations and disability retirement procedures has been deleted. The information is being removed from this system of records and placed in a new system entitled Agency-Initiated Personnel Actions (Title 38)—VA (102VA05).

k. Routine use 25, concerning disclosures because an individual may have contracted an illness, been exposed to, or suffered from a health hazard while employed by the Federal government, is being deleted. This subject is addressed in 5 U.S.C. 552a(b)(8).

l. Routine use 29 (now 26), is being changed to delete the language concerning disclosures to the Equal Employment Opportunity Commission to ensure compliance with the Uniform Guidelines on Employee Selection Procedures, since VA has not chosen to adopt the Uniform Guidelines for use in its Title 38 employment procedures.

m. Routine use 30 (now 27), is being clarified to indicate that disclosures to the Federal Labor Relations Authority and Federal Service Impasses Panel may only be made after appropriate jurisdiction has been established. Matters or questions concerning or arising out of (1) professional conduct or competence, (2) peer review and (3) the establishment, determination or adjustment of compensation shall be decided by the Secretary of Veterans Affairs and is not itself subject to collective bargaining and may not be reviewed by another agency. See 38 U.S.C. 7422.

n. Routine use 32 (now 29) is being modified to include Federal agencies. For example, disclosures will be made to the Department of Health and Human Services Exclusionary Database as required by Pub. L. 105–53.

o. Routine use 33 regarding disclosures of information in response to requests from agencies responsible for the issuance, retention or revocation of licenses, certification or registrations required to practice a health care profession has been deleted. Such requests must conform to the requirements of 5 U.S.C. 552a(b)(7).

p. Routine uses 35 and 36, relating to disclosures of information through computer matching, have been deleted, as such disclosures are not made from this system of records.

q. Routine use 39 (now 33) concerning disclosures to license monitoring agencies is being modified to exclude language concerning computer matching. Such disclosures are not made from this system of records.

r. New routine uses are proposed as follows:

(1) Number 35 would permit disclosures to contractors, subcontractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government. However, such disclosures must be in the interest of VA and compatible with the intended purposes for which the record was created.

(2) Number 36 permits, upon request, disclosure to a spouse or dependent child (or a court-appointed guardian thereof) of a VA employee enrolled in the Federal Employees Health Benefits Program, whether the employee changed from a self-and-family enrollment to self-only health benefits enrollment. Such disclosures are made to ensure proper administration of Federal health benefits.

(3) Number 37 permits disclosing information to the Federal Retirement Thrift Investment Board certain information concerning employee participation in the Thrift Savings Plan.

(4) Number 38 permits disclosing information concerning information to the Department of Health and Human Services' Healthcare Integrity and Protection Data Base pursuant to section 221(a), Pub. L. 104–191, and the associated Department of Health and Human Services regulations, 45 CFR part 61.

The policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system are being modified to reflect changes in technology and to provide additional information concerning the safeguards used to protect these records. For example, when VA updates the way it provides personnel and payroll services, individuals will be given remote on-line access to certain documents pertaining to them, *e.g.*, the Notification of Personnel Action, Standard Form 50–B. In the course of providing access, VA will maintain automated information found in this system of records on its Intranet web site. Employees will remotely access this information from access points located at VA stations and/or from their computer desktop. Access will be read-only with printing capability, but restricted through the issuance of user identification codes and personal identification numbers (PINS). User identification codes and PINS will be issued by the VA Shared Service Center. They will not retain a copy of the PIN. If an employee forgets the PIN, he or she must have the PIN reset by the VA Shared Service Center, which will then mail a new PIN to the employee's home address. Security devices (*e.g.* passwords, firewall) are used to control access by VA users and to shield VA networks and systems from users outside the firewall. VA employees, contractors, or subcontractors responsible for maintaining this system of records will be required to establish the necessary controls to ensure that records are protected against loss or unauthorized adulteration and can be located when necessary. They will also be required to ensure that records are protected against unauthorized access and that they understand and apply Privacy Act restrictions on disclosing information from this system of records. Employees are subject to disciplinary action and contractors or subcontractors are subject to sanction for knowingly making an unauthorized disclosure from this system or records or otherwise failing to comply with the requirements related to maintaining and disposing of records. Information concerning the exchange of

data between the VA Austin Automation Center and VA facilities is also being updated to reflect changes in technology. Exchange of information between the Austin Automation Center and VA health care facilities will be over VA's Intranet. The reference to the VADATS telecommunications network has been deleted since it is no longer in operation.

Notification procedures, records access procedures and procedures for contesting the contents of records are being changed to reflect the realignment of these functions within the Department of Veterans Affairs.

Approved: July 6, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

76VA05

SYSTEM NAME:

Altered System of Records, General Personnel Records (Title 38)–VA.

SYSTEM LOCATION:

Active records are maintained at the Department of Veterans Affairs (VA) Central Office, 810 Vermont Avenue, NW., Washington, DC 20420; VA field facilities; VA Austin Automation Center, 1615 East Woodward Street, Austin, Texas 78772; VA Shared Service Center, 3401 SW 21st Street, Topeka, Kansas 66604; and offices of contractors or subcontractors who may maintain these records. When VA determines that portions of these records need to be maintained at different locations or that copies of these records need to be maintained at more than one location, *e.g.*, at the Shared Service Center and administrative offices closer to where employees actually work, such records are covered by this system. Inactive records are retired to the National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered long-term records, but which may be retained in this system or elsewhere during employment, and which are also included in this system, may be retained for a period of time after the employee leaves service. However, such records will be disposed of in accordance with the procedures for retention and disposal outlined below. The phrase "long-term" record describes records that are filed on the right side of the Merged Records Personnel Folder (MRPF) (Standard Form 66–C).

Note 1: It is not VA's intent to limit this system of records to those records physically within the MRPF. Records may be filed in other folders located in offices other than where the MRPF is located, *e.g.*, working files that supervisors or other agency officials use that are derived from 76VA05 may be kept in a more convenient location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees appointed under 38 U.S.C. 7306, 7401(1), 7401(3), and 38 U.S.C. 7405 except those appointed on a fee or without compensation basis, and residents appointed under 38 U.S.C. 7406 whose stipends and fringe benefits are not centrally administered under the provisions of 38 U.S.C. 7406(c). This includes employees such as physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, certified respiratory therapy technicians, registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, occupational therapists, and pharmacists. Current and former employees appointed under 38 U.S.C. Chapter 78 to positions in the Veterans Canteen Service are covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as names(s), date of birth, home address, mailing address, Social Security number, and telephone number(s). Records in this system are:

a. Records reflecting work experience, licensure, credentials, educational level achieved, and specialized education or training occurring outside of Federal service.

b. Records reflecting Federal service and documenting work experience, education, training, and/or awards received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, staffing adjustments or reductions-in-force, resignations, separations, suspensions, removals, retirements, and approval of disability retirement applications.

c. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

d. Records regarding Government-sponsored training or participation in employee development programs designed to broaden an employee's work experiences or for the purposes of advancement.

e. Printouts of information from automated personnel systems, *e.g.*, information from the Personnel and Accounting Pay System-VA (27VA047).

f. Records reflecting enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employees' Health Benefits Program as well as forms showing designations of beneficiary.

g. Elections to participate in the Thrift Savings Plan, Notices that Thrift Savings Plan Contributions cannot be made because a financial hardship withdrawal has been issued and transcripts of Thrift Savings Plan changes approved for use by the Federal Retirement Thrift Investment Board.

h. Records relating to designations for lump-sum leave benefits.

i. Records relating to access to classified information and other nondisclosure agreements.

j. Records related to certification of outside professional activities prior to enactment of the Veterans Health Care Eligibility Reform Act of 1996, Pub. L. 104–262, dated October 9, 1996.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501(a), 7304, 7406(c)(1), and 7802.

PURPOSE(S):

The personnel records in these files are the official repository of the records, reports of personnel actions and the documents and papers associated with these actions. The personnel action reports and other documents give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses, including screening qualifications of employees; determining status, eligibility, and rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

2. To disclose information to educational institutions about the appointment of their recent graduates to VA positions. These disclosures are made to enhance recruiting relationships between VA and these institutions.

3. To provide college and university officials with information about students who are working at VA to receive academic credit for the experience.

4. To disclose to the following agencies information needed to adjudicate retirement, insurance or health benefits claims: Department of Labor, Social Security Administration, Department of Defense, Federal agencies having special civilian employee retirement programs, and state, county, municipal, or other publicly recognized charitable or income security administration agencies (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance or health benefits programs of the Office of Personnel Management or an agency cited above. Information may also be disclosed to agencies to conduct an analytical study or audit of benefits being paid under such programs.

5. To disclose to the Office of Federal Employees' Group Life Insurance information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

6. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefits provisions of such contracts.

7. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

8. To disclose relevant information to third parties considering VA employees for awards or recognition and to publicize information about such awards or recognition. This may include disclosures to public and private organizations, including news media, which grant or publicize employee awards or honors.

9. To disclose information about incentive awards and other awards or honors granted by VA. This may include disclosure to public and private organizations, including news media, which publicize such recognition.

10. To disclose the information listed in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

11. VA may, on its own initiative, disclose relevant information to a Federal agency (including Offices of the Inspector General), State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation if there is reason to believe that a violation may have occurred. This routine use does not authorize disclosures in response to requests for information for civil or criminal law enforcement activity purposes, nor does it authorize disclosure of information in response to court orders. Such requests must meet the requirements of 5 U.S.C. 552a(b)(7) or (b)(11), as applicable.

12. To disclose pertinent information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

13. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit.

14. To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant or other benefit by the requesting agency, or the lawful statutory or administrative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

15. To disclose relevant information to Federal and non-Federal agencies (*i.e.*, State or local governments), and private sector organizations, boards, bureaus, or commissions (*e.g.*, the Joint Commission on Accreditation of Healthcare Organizations) when such disclosures are required to obtain accreditation or other approval ratings.

16. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

17. To provide information to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of the individual.

18. VA may, on its own initiative, disclose information to another Federal agency, court, or party in litigation before a court or other administrative proceeding conducted by a Federal agency, if VA is a party to the proceeding and VA needs to disclose such information to protect its interests.

19. To disclose information to the National Archives and Records Administration (NARA) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

20. To disclose to persons engaged in research and survey projects information necessary to locate individuals for personnel research or survey response, and to produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

21. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files in support of the functions for which the records were collected and maintained.

22. When an individual to whom records pertain is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person or entity responsible for managing the individual finances to the extent necessary to ensure payment of benefits to which the individual is entitled.

23. To disclose to the Department of Defense specific civil service employment information required under law on individuals identified as members of the Ready Reserve, to ensure continuous mobilization readiness of Ready Reserve units and members, and to identify characteristics of civil service retirees for national mobilization purposes.

24. To disclose information to officials of the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, and the U.S. Coast Guard

needed to effect any adjustments in retired or retainer pay required by the dual compensation provisions of 5 U.S.C. 5532.

25. To disclose information to officials of the Merit Systems Protection Board, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

26. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

27. To disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

28. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former employee: Tenure of employment; civil service status; length of service in VA and the Government; and when separated, the date and nature of action as shown on the Notification of Personnel Action-Standard Form 50 (or authorized exception).

29. Records from this system of records may be disclosed to a Federal, State, or local government agency or licensing board and/or to the Federation of State Medical Boards or a similar non-government entity. These entities maintain records concerning an individual's employment or practice histories or concerning the issuance, retention or revocation of licenses or registration necessary to practice an occupation, profession or specialty. Disclosures may be made for the Agency to obtain information determined relevant to an Agency's decision concerning the hiring, retention, or termination of an employee. Disclosures may also be made to inform licensing boards or the appropriate non-governmental entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional practice as to raise reasonable concern for the health and safety of patients.

30. To disclose relevant information to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

31. To disclose hiring, performance, or other personnel-related information to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

32. Identifying information in this system, including name, address, Social Security number, and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention, or termination of the applicant or employee.

33. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank or to a State or local government licensing board which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty when under the following circumstances, through peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to a physician or licensed or certified health care practitioner: (1) On any payment in settlement (or partial settlement of, or in satisfaction of a judgement) in a medical malpractice action or claim; or, (2) on any final decision that adversely affects the clinical privileges of a physician or practitioner for a period of more than 30 days.

34. Relevant information from this system of records concerning the departure of a former VA employee, who is subject to garnishment pursuant to a legal process as defined in 5 U.S.C. 5520a, as well as the name and address of the designated agent for the new employing agency or the name and address of any new private employer, may be disclosed to the garnishing party (garnisher). Information from this system of records may be disclosed in response to legal processes, including interrogatories, served on the agency in connection with garnishment proceedings against current or former VA employees under 5 U.S.C. 5520a.

35. To disclose information to contractors, subcontractors, grantees, or others performing or working on a contract, grant or cooperative agreement for the Federal government, provided disclosure is in the interest of the Government and the information to be disclosed is relevant and necessary for accomplishing the intended uses of the information and necessary to perform services under the contract, grant or cooperative agreement.

36. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of a VA employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from a self-and-family to a self-only health benefits enrollment.

37. To disclose to the Federal Retirement Thrift Investment Board information concerning an employee's election to participate in the Thrift Savings Plan, the employee's ineligibility to make contributions to the Thrift Savings Plan because a financial hardship in-service withdrawal has been issued, or information from a transcript of thrift savings plan changes that has been approved by the Federal Retirement Thrift Investment Board.

38. Information from this system of records will be disclosed to the Healthcare Integrity and Protection Data Base as required by section 1122E of the Social Security Act (as added by Sec. 221(a) of Pub. L. 104–191) and the associated implementing regulations issued by the Department of Health and Human Services, 45 CFR Part 61. For example, VA is required to report adjudicated adverse personnel actions based on acts or omissions that either affected or could have affected the delivery of health care services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

These records may be maintained in file folders, on lists and forms, on microfilm or microfiche, and in computer processable storage media.

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RETRIEVABILITY:

These records may be retrieved using various combinations of name, birth date, Social Security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Access to areas where these records are maintained is restricted to VA employees, contractors, or subcontractors on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. File areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service or other types of alarm systems.

Access to the VA Austin Automation Center and VA Shared Service Center are restricted to authorized VA employees and authorized representatives of vendors. Access to computer rooms within these facilities is further restricted to especially authorized VA personnel and vendor personnel.

Access to computerized records is limited through the use of access codes and entry logs. Additional protection is provided by electronic locking devices, alarm systems, and guard services.

Electronic data is made available to VA field facilities via VA's Intranet. Strict control measures are enforced to ensure that disclosure is limited to the individual on whom the record is being maintained or on a "need to know" basis. Security devices (*e.g.* passwords, firewalls) are used to control access by VA users to Internet services, and to shield VA networks and systems from outside the firewall.

RETENTION AND DISPOSAL:

The Merged Personnel Records Folder (MPRF) is maintained for the period of the employee's service in VA and is then transferred to the National Personnel Records Center (NPRC) for storage, or, as appropriate, to the next employing Federal agency. Other records are either retained at VA for various lengths of time in accordance with the National Archives and Records Administration records schedules or destroyed when they have served their purpose or the employee leaves VA.

a. VA maintains the MPRF as long as VA employs the individual. Within 90 days after the individual separates from VA's employment, the MPRF is sent to the NPRC for long-term storage. The MPRF of a retired employee or an employee who dies in service is sent to the Records Center within 120 days of the retirement or death.

b. Records in this system must be maintained and disposed of in accordance with General Records Schedule 1, and VA Records Control Schedule 10–1, the Office of Personnel Management Guide to Federal Recordkeeping, and the Memorandum of Understanding concerning this subject between VA, the Office of Personnel Management, and the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Human Resources Management (05), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate office as follows:

a. Federal employees should contact the responsible official (as designated by their agency) regarding records in this system.

b. Former Federal employees should contact the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system. Individuals must furnish the following information so their records can be located and identified: full name(s), date of birth, Social Security number, last employing agency (including duty station, when applicable), and approximate dates of employment. All requests must be signed.

RECORD ACCESS PROCEDURES:

(See Notification Procedure.)

CONTESTING RECORD PROCEDURES:

Current and former VA employees wishing to request amendment of their records should contact the Director, Department of Veterans Affairs Shared Service Center (00), 3401 SW 21st Street, Topeka, Kansas 66604. Individuals must furnish the following information for their records to be located and identified: Full name(s), date of birth, Social Security number, and signature. To facilitate identification of records, former employees must also provide the name of their last Department of Veterans Affairs facility and approximate dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual employee, examining physicians, educational institutions, VA officials, and other individuals or entities; *e.g.*, job references and supporting statements; testimony of witnesses; and correspondence from organizations or persons, *e.g.*, licensing boards.

[FR Doc. 00–18287 Filed 7–19–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, New System of Records: Professional Standards Board Action and Proficiency Rating Folder (Title 38)—VA 101VA05

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is proposing to issue a new system of records entitled Professional Standards Board Action and Proficiency Rating Folder (Title 38)—VA (101VA05). VA is simultaneously altering and reissuing the system of records entitled General Personnel Records (Title 38)—VA (76VA05). The alteration removes information from 76VA05 concerning competency assessments and related documents, proficiency reports, and employee statements regarding proficiency reports given and recommendations based on them. It also removes professional standards board actions and documents associated with those board actions that are not specifically covered under other systems of records. A new system of records is proposed because the purposes for which these records are maintained and used differ from other records currently in 76VA05. For example, the employees covered, the types of records, purpose for the records, legal authority for maintenance of the systems, and routine uses associated with each of these systems of records are different. The physical location of these records may also differ from the records covered by 76VA05.

DATES: Submit comments on or before August 21, 2000.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this system of records to the Director, Office of Regulations Management (02D), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420 only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. If no public comment is received during the 30-day review period allowed for public

comment, or unless otherwise published in the **Federal Register** by VA, the reissued system of records is effective August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McVeigh, Department of Veterans Affairs (051A), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–9821.

SUPPLEMENTARY INFORMATION:

VA issued a system of records entitled General Personnel Records (Title 38)—VA (76VA05) in the **Federal Register** 53 FR 27258 (7/19/88) and amended that system in 55 FR 42534 (10/19/90), 58 FR 40852 (7/30/93) and 61 FR 14853 (4/3/96). This system included all personnel records other than medical records for most Veterans Health Administration employees appointed under Title 38, United States Code.

This system of records would include information removed from 76VA05 concerning proficiency reports, employee statements regarding proficiency reports given and recommendations based on them, and competency assessments and documents associated with those assessments. It also includes professional standards board actions and documents associated with those board actions that are not specifically covered under the system of records entitled Agency-Initiated Personnel Actions (Title 38)—VA (102VA05).

A new system of records is being proposed because the characteristics of the records in this system differ from those in 76VA05. The employees covered, the types of records, purposes of the systems, legal authority for maintenance of the systems, and routine uses associated with these systems of records are different. The physical location of these records may also differ from the records covered by 76VA05.

Further, 76VA05 had 40 routine uses. Only 26 routine uses were determined to be appropriate for records in this new system. The changes to the routine uses formerly in 76VA05 are as follows:

a. Routine use 1 relating to disclosures to the Office of Personnel Management has been deleted. Such disclosures are only made from the system of records entitled Personnel and Accounting Pay System-VA (27VA047).

b. Routine uses 3 through 7 were deleted. This information would be disclosed from another system of records (76VA05).

c. Routine uses 8 and 9 (now 2 and 3) relating to awards, honors and other types of employee recognition have been modified to more clearly indicate what disclosures are made, to whom the disclosures are made and the purposes of such disclosures.

d. Routine use 10 (now 4) is being modified to clarify the conditions under which data is disclosed to officials of labor organizations recognized under 5 U.S.C., chapter 71. The clarification ties such disclosures to the law authorizing the disclosures, *i.e.*, 5 U.S.C. 7114(b)(4). The former version authorized disclosures to officials of labor organizations "when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions."

e. Routine use 11 is modified. VA is prohibited from promulgating routine uses that would permit disclosures in response to requests for information for civil or law enforcement purposes or in response to court orders. Such requests must be submitted under the provisions of 5 U.S.C. 552a(b)(7) or (b)(11), as applicable. See *Doe* v. *DiGenova*, 779 F. 2d 74 (D.C. Cir. 1985) and *Doe* v. *Stephens*, 851 F. 2d 1457 (D.C. Cir. 1988), and an August 28, 1989, opinion from the Office of Legal Counsel, Department of Justice. Routine use 11 (now 5) no longer includes such disclosures; however, it has been modified to permit VA to disclose, on its own initiative, relevant information if there is reason to believe that a violation of statute, rule or regulation has occurred.

f. Routine use 14 (now 8) no longer permits disclosures at the request of agencies in the executive, legislative, or judicial branch of the Federal government or to the government of the District of Columbia for investigative purposes. Such requests must be submitted under the provisions of 5 U.S.C. 552a(b)(7). That portion of the routine use has been deleted.

g. Routine use 15 (now 9) has been modified to limit the reason for such disclosures to obtaining accreditation or other approval ratings. It also now permits disclosures to other Federal agencies for this purpose. The former version of this routine use was overly broad.

h. Routine use 18 (now 12) has been modified so that it no longer permits disclosures in response to subpoenas or court orders. Applicable case law (see paragraph e above) prohibits disclosures in response to subpoenas. Court orders directing the production of information must also meet the requirements of 5 U.S.C. 552a(b)(11). The revised routine use would permit VA to disclose relevant information on its own initiative in certain legal proceedings if VA is party to those proceedings and disclosure is necessary to protect its interests.

i. Routine use 19, relating to requests for discovery or for the appearance of witnesses, has been deleted, since it is no longer consistent with applicable case law (see paragraph f above).

j. Routine use 24 related to disclosures to VA-appointed representatives concerning fitness for duty examinations and disability retirement procedures has been deleted. The information is being removed from this system of records and placed in a new system entitled Agency-Initiated Personnel Actions (Title 38)—VA (102VA05).

k. Routine use 25, concerning disclosures because an individual may have contracted an illness, been exposed to, or suffered from a health hazard while employed by the Federal government, is being deleted. This subject is addressed in 5 U.S.C. 552a(b)(8).

l. Routine uses 26 and 27 have been deleted. These disclosures would be made from another system of records (76VA05).

m. Routine use 29 (now 18), is being changed to delete the language concerning disclosures to the Equal Employment Opportunity Commission to ensure compliance with the Uniform Guidelines on Employee Selection Procedures, since VA has not chosen to adopt the Uniform Guidelines for use in its Title 38 employment procedures.

n. Routine use 30 (now 19) is being clarified to indicate that disclosures to the Federal Labor Relations Authority and Federal Service Impasses Panel may only be made after appropriate jurisdiction has been established. Matters or questions concerning or arising out of (1) professional conduct or competence, (2) peer review, and (3) the establishment, determination or adjustment of compensation shall be decided by the Secretary of Veterans Affairs and is not itself subject to collective bargaining and may not be reviewed by another agency. See 38 U.S.C. 7422.

o. Routine use 31 has been deleted. These disclosures would be made from another system of records.

p. Routine use 32 (now 20) has been modified to permit disclosures to Federal agencies for the purposes outlined in the routine use. For example, such disclosures will be made to the Department of Health and Human Services Exclusionary Database to comply with the requirements of the Balanced Budget Act of 1997, Pub.L. 105–53.

q. Routine use 33 regarding disclosures of information in response to requests from agencies responsible for the issuance, retention, or revocation of

licenses, certification, or registrations required to practice a health care profession has been deleted. Such requests must conform to the requirements of 5 U.S.C. 552a(b)(7).

r. Routine uses 35 and 36 were deleted. Such disclosures would be made from another system of records.

s. Routine use 39 (now 24) concerning disclosures to license monitoring agencies is being modified to exclude language concerning computer matching. Such disclosures are not made from this system of records.

t. Routine use 40 concerning disclosures to a garnishing party was not included in this system of records. Such information would be disclosed from 76VA05.

u. A new routine use (25) permits disclosures to contractors, subcontractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government. However, such disclosures must be in the interest of VA and compatible with the intended purposes for which the record was created.

v. A new routine use (26) permits disclosing information concerning information to the Department of Health and Human Services' Healthcare Integrity and Protection Data Base pursuant to section 221(a), Pub. L. 104–191, and the associated Department of Health and Human Services regulations, 45 CFR part 61.

Notices concerning the alteration of 76VA05 and another related new system of records entitled Agency-Initiated Personnel Actions (Title 38)—VA (102VA05) are being released simultaneously.

Approved: July 6, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

101VA05

SYSTEM NAME:

Professional Standards Board Action and Proficiency Rating Folder (Title 38)—VA.

SYSTEM LOCATION:

Active records are maintained at the Department of Veterans Affairs (VA) Central Office, 810 Vermont Avenue, NW, Washington, DC 20420 and VA field facilities. Inactive records are retired to the National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118. When VA determines that all or a portion of these records need to be maintained in a different location, *e.g.*, VA Central Office, such records are covered by this system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees appointed under 38 U.S.C. 7306, 7401(1), 7401(3), and 7405, except students, trainees, medical support personnel, and those appointed on a fee or without compensation basis. This includes employees such as physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, certified respiratory therapy technicians, registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, occupational therapists, and pharmacists. This system of records does not cover applicants for positions covered by this system of records. Such individuals are covered by the system of records entitled Applicants for Employment Under Title 38, USC–VA (02VA135). It also does not cover the performance appraisals of Title 38 employees appointed under 38 U.S.C. 7306, facility Directors appointed under 38 U.S.C. 7401(1), or "hybrid" title 38 employees appointed under 38 U.S.C. 7401(3) or 7405(a)(1)(B). The performance appraisals of these employees are covered under the Employee Performance File System of Records (OPM/GOVT–2).

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name, date of birth, Social Security number, service computation date, facility number, current position title, and the employee's current grade, level, and step rate. Records in this system include:

a. Copies of the employee's employment application, curriculum vitae, and transcripts of higher education. The original documents are maintained in the General Personnel Records (Title 38)—VA (76VA05).

b. Board Actions (VA Form 2543) and recommendations/documentation associated with those actions. The Title 38 personnel system utilizes a peer review process for making recommendations concerning appointments, advancements, awards, promotion reconsideration, conversions from one type of Title 38 appointment to another, and other personnel actions. After receiving input from an employee's supervisor, the appropriate Professional Standards Board (the employee's peers) makes recommendations for consideration by appropriate management officials. The recommendations and management action taken are recorded on the VA Form 2543. The VA Form 2543 documenting recommendations and management actions taken because of a probationary review, separation based on pre-employment suitability, or separation based on failure to meet required physical standards are also included in this system of records. However, all supporting documents associated with the actions in the preceding sentence are to be included in the records system 102VA05. This includes notices of proposed action, materials relied on by VA to support the reason(s) for the action, replies by employees, statements of witnesses, hearing notices, and other reports related to these actions.

c. Proficiency reports documenting the proficiency ratings of employees and any comments associated with those proficiency reports.

d. On-going, periodic assessments of an employee's education, experience, and training to ensure they can effectively meet the requirements of their position (*i.e.*, competency assessments and associated documents).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501(a), 7304 and 7406(c)(1).

PURPOSE(S):

This system is a repository for Professional Standards Board recommendations and the information needed to make those recommendations (*e.g.*, employment applications, transcripts of higher education, and proficiency reports). It also contains a record of management actions taken with respect to Professional Standards Board recommendations. The actions taken give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment. They also provide a basic source of factual data about a person's VA employment. Records in this system assist Professional Standards Boards and others to determine whether a variety of personnel actions are appropriate. They are also used to obtain information needed to provide other personnel services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To disclose information to government training facilities (Federal, State and local) and to non-government training facilities (private vendors of training course or programs, private schools, etc.) for training purposes.

2. To disclose relevant information to third parties considering VA employees for awards or recognition and to

publicize information about such awards or recognition. This may include disclosures to public and private organizations, including news media, which grant or publicize employee awards or honors.

3. To disclose information about incentive awards and other awards or honors granted by VA. This may include disclosure to public and private organizations, including news media, which publicize such recognition.

4. To disclose the information listed in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

5. VA may, on its own initiative, disclose relevant information to a Federal agency (including Offices of the Inspector General), State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, or regulation if there is reason to believe that a violation may have occurred. This routine use does not authorize disclosures in response to requests for information for civil or criminal law enforcement activity purposes, nor does it authorize disclosure of information in response to court orders. Such requests must meet the requirements of 5 U.S.C. 552a(b)(7) or (b)(11), as applicable.

6. To disclose pertinent information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

7. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit.

8. To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant or other benefit by the requesting agency, or the lawful statutory or administrative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

9. To disclose relevant information to non-Federal agencies (*i.e.*, State or local governments), and private sector organizations, boards, bureaus, or commissions (*e.g.*, the Joint Commission on Accreditation of Healthcare Organizations) when such disclosures are required to obtain accreditation or other approval ratings.

10. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

11. To provide information to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of the individual.

12. VA may, on its own initiative, disclose information to another Federal agency, court, or party in litigation before a court or other administrative proceeding conducted by a Federal agency, if VA is a party to the proceeding and VA needs to disclose such information to protect its interests.

13. To disclose information to the National Archives and Records Administration (NARA) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

14. To disclose to persons engaged in research and survey projects information necessary to locate individuals for personnel research or survey response, and to produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

15. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files in support of the functions for which the records were collected and maintained.

16. When an individual to whom records pertain is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person or entity responsible for managing the individual finances to the extent necessary to ensure payment of benefits to which the individual is entitled.

17. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

18. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law.

19. To disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel.

20. Records from this system of records may be disclosed to a Federal, State, or local government agency or licensing board and/or to the Federation of State Medical Boards or a similar non-government entity. These entities maintain records concerning individuals' employment or practice histories or concerning the issuance, retention, or revocation of licenses or registration necessary to practice an occupation, profession, or specialty. Disclosures would be made for the Agency to obtain information determined relevant to an Agency decision concerning the hiring, retention, or termination of an employee. Disclosures may also be made to inform licensing boards or the appropriate non-governmental entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional practice as to raise reasonable concern for the health and safety of patients.

21. To disclose relevant information to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States and to Federal agencies upon their request in connection with review of administrative tort claims

filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

22. To disclose relevant and necessary hiring, performance, or other personnel-related information to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

23. Identifying information in this system, including name, Social Security number, and other information as is reasonably necessary to identify such an individual, may be disclosed to the National Practitioner Data Bank (NPDB) at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention, or termination of the applicant or employee.

24. Relevant information from this system of records may be disclosed to the NPDB or to a State or local government licensing board which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession, or specialty when under the following circumstances, through peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to a physician or licensed or certified health care practitioner: (1) On any payment in settlement of (or partial settlement of, or in satisfaction of) a judgement in a medical malpractice action or claim; or, (2) on any final decision that adversely affects the clinical privileges of a physician or practitioner for a period of more than 30 days.

25. To disclose information to contractors, subcontractors, grantees, or others performing or working on a contract, grant, or cooperative agreement for the Federal government, provided disclosure is in the interest of the Government and the information to be disclosed is relevant and necessary for accomplishing the intended uses of the information and necessary to perform services under the contract, grant, or cooperative agreement.

26. Information from this system of records will be disclosed to the Healthcare Integrity and Protection Data Base as required by section 1122E of the Social Security Act (as added by Sec. 221(a) of Pub. L. 104–191) and the associated implementing regulations issued by the Department of Health and Human Services, 45 CFR Part 61. For example, VA is required to report adjudicated adverse personnel actions based on acts or omissions that either affected or could have affected the delivery of health care services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records may be maintained in file folders, on lists and forms, on microfilm or microfiche, and in computer processable storage media.

RETRIEVABILITY:

These records may be retrieved using various combinations of name, birth date, Social Security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Access to areas where these records are maintained is restricted to VA employees, contractors, or subcontractors on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. File areas are locked after normal duty hours and are protected from outside access by VA police officers or other types of alarm systems.

RETENTION AND DISPOSAL:

The Professional Standards Board Action and Proficiency Rating Folder is maintained for the period of the employee's service in VA and is then transferred with the Merged Records Personnel Folder to the National Personnel Records Center (NPRC) for storage, or, as appropriate, to the next employing Federal agency.

a. VA maintains the Professional Standards Board Action and Proficiency Rating Folder as long as VA employs the individual. Within 90 days after the individual separates from Federal employment, the record is sent with the Merged Records Personnel Folder to the NPRC for long-term storage. The records of retired employees or employees who die in service are sent to the Records Center within 120 days of the retirement or death.

b. Records in this system must be maintained and disposed of in accordance with General Records Schedule 1, VA Records Control Schedule 10–1, the Office of Personnel Management Guide to Federal Recordkeeping, and the Memorandum of Understanding concerning this subject between VA, the Office of Personnel Management, and National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Human Resources Management (05), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate office as follows:

a. Non-VA Federal employees should contact the responsible office (as designated by their agency) regarding records in this system. VA employees should contact the office responsible for human resources management at their installation.

b. Former Federal employees should contact the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system. Individuals must furnish the following information so their records may be located and identified: full name(s), date of birth, Social Security number, last employing agency (including duty station), approximate dates of employment, and signature.

RECORD ACCESS PROCEDURES:

(See Notification Procedure).

CONTESTING RECORD PROCEDURES:

Current employees wishing to request amendment of their records should contact the office responsible for human resources management at their current installation. Former employees should contact the Deputy Assistant Secretary for Human Resources Management. (See System Manager and Address.) Individuals must furnish the following information for their records to be located and identified: Full name(s); date of birth; Social Security number; and signature. To facilitate identification of records, former employees must also provide the name of their last Department of Veterans Affairs facility and approximate dates of employment.

RECORD SOURCE CATEGORIES:

Employees, supervisors, managers, members of Professional Standards Boards, and other VA officials provide the information in this system of records. Individuals or other entities outside of VA may also provide relevant and necessary information. For example, organizations where the subject previously worked may provide information.

[FR Doc. 00–18288 Filed 7–19–00; 8:45 am]
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Corrections

Federal Register
Vol. 65, No. 140
Thursday, July 20, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1430–EQ; AZA 25117]

Arizona: Expiration of Segregative Effect, and Opening Order for Proposed Airport Lease AZA 25117, Arizona

Correction

In notice document 00–14715 in the issue of Monday, June 12, 2000, appearing on page 36840, make the following corrections:

1. In the second column, in the heading, the docket line should appear as set forth above.

2. In the same column, in the second paragraph under the **SUMMARY** heading, in the line beginning "within lot 4", "SE½" should read "S½".

3. In the third column, in the Dated heading, "June 6, 2000 " should read "June 2, 2000 ".

[FR Doc. C0–14715 Filed 7–19–00; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Help Supply Services

Correction

In rule document 00–14015 beginning on page 35810, in the issue of Tuesday, June 6, 2000, make the following correction:

§ 121.201 [Corrected]

On page 35812, in the third column, in § 121.201, in amendatory instruction 3., in the fourth line, "SEC" should read "SIC".

[FR Doc. C0–14015 Filed 7–19–00; 8:45 am]

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Federal Register

Thursday,
July 20, 2000

Part II

Department of Transportation

Maritime Administration

46 CFR Part 298

Putting Customers First in the Title XI Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. MARAD–98–3468]

RIN 2133–AB32

Putting Customers First in the Title XI Program

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule which amends certain provisions of the existing regulations implementing Title XI of the Merchant Marine Act, 1936, as amended ("Act"). This rule amends existing regulations by simplifying existing administrative practices governing the following areas: the ship financing guarantee process; and standards for evaluation and approval of applications. These changes will make the entire process easier for applicants.

EFFECTIVE DATE: This final rule is effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Linda W. Reaves, Financial Analyst, Office of Ship Financing, Maritime Administration, Room 8122, 400 Seventh Street SW., Washington, DC 20590. Telephone 202 366–1899.

SUPPLEMENTARY INFORMATION: Title XI of the Act authorizes the Secretary of Transportation (Secretary) to guarantee debt issued for the purpose of financing or refinancing: (a) the construction, reconstruction, or reconditioning of U.S.-flag vessels or eligible export vessels built in United States shipyards, and (b) the construction of advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States. MARAD administers financial assistance under Title XI of the Act in the form of obligation guarantees for all types of vessel construction and shipyard modernization and improvement, except for fishing vessels. The part of the Title XI program related to fishing vessels is administered by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, ("NOAA"), pursuant to NOAA regulations, which appear at 50 CFR part 253. The Title XI program enables applicants to obtain long-term financing on terms and conditions that may not otherwise be available. Applications for obligation guarantees are made to the Maritime Administration (we, us, or our), acting under authority delegated by the Secretary, to the Maritime Administrator. Once an applicant submits a Title XI application to us and prior to execution of a guarantee, we must, among other things, make determinations of economic soundness of the project, and the applicant's financial and operating capability.

National Performance Review

In response to a 1993 recommendation from Vice President Gore's National Performance Review team, President Clinton issued Executive Order 12862, September 11, 1993, calling for a revolution within the Federal government to change the way it does business by putting customers first and striving for a customer-driven government that matches or exceeds the best service available in the private sector. In October 1997, the National Performance Review team reported that Federal agencies, implementing the Executive Order, had launched a massive effort to improve governmental service and had made a noticeable difference.

On December 1, 1997, in a memorandum to heads of Operating Administrations and Departmental offices at the United States Department of Transportation, Secretary of Transportation Rodney E. Slater urged all Departmental offices and heads of Operating Administrations to ask their customers what is important to them in the kinds and quality of services they want and what is their level of satisfaction with existing services. Secretary Slater emphasized that it is "this customer feedback that will be the basis for improving, revising, adding, or deleting standards when it makes sense and, ultimately, for helping us become a more customer focused DOT."

Plain Language

Executive Order 12866 and the President's memorandum on plain language in government writing of June 1, 1998, require each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, this final rule is written in plain language. This final rule is written in plain language for easier understanding and does not change the substance of the proposed rule published at 64 FR 44152 (August 13, 1999), except as explained in the Discussion of Public Comments and the Rulemaking Text Section. Our goal is to improve the clarity of the regulation.

Advance Notice of Proposed Rulemaking

An advance notice of proposed rulemaking (ANPRM), published on February 17, 1998 (63 FR 7744), solicited comments on ten sets of questions which were grouped into the following categories:

—The standard application Form MA–163, including the requirement for vessel plans and specifications.
—The requirements for information on the applicant's and/or operator's qualifications.
—The requirements for financial information and certain financial tests.
—The requirements for information on economic soundness and the economic soundness criteria.
—The inclusion in the Title XI regulations of the provisions of Maritime Administrative Order (MAO) No. 520–1, Amendment 2.
—The documentation requirements for a closing on a commitment to guarantee obligations.

Our consideration of comments received in response to the categories above concerning the application form and closing documents were published separately in a **Federal Register** Notice dated July 30, 1998 (63 FR 40690). The other comments received from nine commenters on the ANPRM were reviewed and taken into consideration in preparation of a notice of proposed rulemaking discussed below. These comments, in general, dealt with applicant and operator qualifications, financial requirements, and economic soundness.

Notice of Proposed Rulemaking

In response to customer feedback on the ANPRM, we published a notice of proposed rulemaking (NPRM) on August 13, 1999, in the **Federal Register** (64 FR 44152). The NPRM reflected all comments received in response to the ANPRM. MARAD is now issuing this final rule concerning Title XI program administration which reflects consideration of all comments received in response to the NPRM.

Discussion of Public Comments and Rulemaking Text

The discussion that follows summarizes the comments submitted to MARAD by six commenters on the NPRM, states why particular recommendations/suggestions have or have not been adopted and the rationale therefore. Note that where the first letter of one or more words is capitalized, that term is defined in § 298.2 Definitions. The discussion also notes where

proposed changes have been adopted to the Title XI regulations and the rationale therefore, and where relevant, states why particular recommendations/suggestions have not been adopted. Additionally, we have made clarifications throughout 46 CFR Part 298 for easier understanding and to more fully express implications. Such clarifications do not change the substance of the regulations. We have rewritten the entire part 298 in plain language. The following sections have only plain language and no substantive changes from the existing part 298: §§ 298.10 Citizenship; 298.17 Evaluation of applications; 298.26 Lease Payments; 298.27 Advances; 298.37 Examination and audit; 298.39 Exemptions; 298.40 Defaults; and 298.42 Reporting Requirements-financial statements.

We have adopted the following changes to Obligation Guarantees regulations at 46 CFR Part 298. The amendments are summarized as follows:

Section 298.1 Purpose

This section has been modified to advise that "you" and "we" have been used throughout in writing this part in plain language. You and your refer to the applicant for Title XI assistance unless we note or imply otherwise. We, us, and our refer to the Maritime Administration, the Secretary of the Maritime Administration, or the Secretary of Transportation.

Section 298.2 Definitions

Section 298.2 is intended to provide convenient reference to the meaning of significant terminology used in part 298. The definitions, as follows, are based principally on statutory derivations:

"Advanced Shipbuilding Technology" is changed in order to include other modernization elements which are not previously listed in the definition and which contribute to a shipyard's efficiency or productivity.

"Guarantee Fee" is changed to delete the reference to an annual fee and continuing Guarantees. In accordance with the Act, the regulations now require that the guarantee fee for the entire term of the financing be paid in advance at the initial funding of the transaction, with no refund in the event the Obligations are retired early.

"Indenture Trustee" is changed to increase the amount of combined capital and surplus an indenture trustee must have to at least $25,000,000 as the current amount of $3,000,000 is not adequate.

"Shipyard Project" is a defined term added to this section which was not previously proposed in the NPRM. Shipyard Project refers to either Advanced Shipbuilding Technology or Modern Shipbuilding Technology.

Section 298.3 Applications

In § 298.3 of the NPRM, we proposed to modify certain provisions to reflect current practices and procedures and to clarify certain provisions. Additionally, we proposed to delete the priority given to applications from general shipyard facilities formerly in 298.3(e) that have engaged in naval vessel construction and that have pilot projects for shipyard modernization and vessel construction because all the funds previously appropriated to the Department of Defense and transferred to the Department of Transportation for the Title XI program have been expended.

One commenter recommended that MARAD not eliminate the provision that gives priority for processing applications from General Shipyard Facilities that have engaged in naval vessel construction. The commenter stated that Congress adopted this element when it enacted the National Shipyard Initiative in recognition of the need to sustain the defense shipbuilding industrial base and the basis for the priority and the procedure are just as valid today as they were when Congress enacted the National Shipbuilding Initiative. Additionally, the commenter stated that the mere fact that all existing funds that the Department of Defense (DOD) transferred to MARAD has been expended does not justify the elimination of the procedure.

MARAD Response: We believe that the President's plan for the National Shipbuilding Initiative (NSI) is to assist the shipbuilding industry to compete internationally. The NSI was also planned as a transitional program structured to assist in the transition from naval to commercial markets. The NSI regulations provide that in making loan guarantee commitments using funds provided under the NSI, priority shall be given to applications from shipyards that have engaged in naval vessel construction. This provision does not apply to other funds appropriated to the Title XI program. Funds appropriated for the NSI from DOD for this transitional period did not extend beyond 1998, and all such funds have been expended.

Therefore, this priority provision has no application. MARAD's elimination of priority given to applications from shipyards that have engaged in naval vessel construction is consistent with the plans of the NSI to facilitate the transition period, permitting funds appropriated to expire in five years, and therefore not intended as an ongoing priority. Because Title XI financing continues to be available for shipyard modernization and export vessels, Title XI assistance to the shipbuilding industry to compete internationally continues. If Congress elects to appropriate additional funds or DOD transfers funds, if required, a priority processing procedure could be reimplemented without an inordinate undertaking by us. Therefore, we have adopted our proposal to eliminate the priority provision to General Shipyard Facilities of this section.

We have adopted, as proposed in the NPRM, under this section a change to reflect that only two sets of documentation must be submitted to us for review.

This section is also changed to delete the provision that, if an applicant does not claim a Freedom of Information Act (FOIA) exemption at the time an application or amendment is filed, we will not oppose any subsequent request for disclosure pursuant to FOIA. Deletion of this provision reflects actual agency practice, which is to allow a request for exemption under FOIA at any time.

Also, this section is changed to clarify that priority will be given for processing applications for vessels capable of serving as United States naval and military auxiliary in time of war or national emergency.

Finally, this section was modified to change the word "financing" to "refinancing" to clarify the provision that states that we will give priority processing for applications that request financing construction of equipment or vessels less than one year old as opposed to the "refinancing" of existing equipment or vessels that are one year old or older.

Section 298.11 Vessel Requirements

Under § 298.11 of the NPRM, we proposed to: (1) Clarify that the vessel must be constructed in the United States; (2) provide that we may contact the shipyard to request that it submit additional technical data, backup cost details, and other evidence if we have insufficient data; (3) delete the last sentence of paragraph (c) which is redundant with the last sentence of paragraph (a) of this section, and (4) conform the regulations to our present practices which permit a U.S.-flag constructed vessel to meet the highest classification standard of the American Bureau of Shipping or of a classification society other than the American Bureau of Shipping so long as the society meets the inspection standards of the United States Coast Guard.

In response to the NPRM, one commenter requested that MARAD not modify the provision of paragraph (c) of § 298.11 to conform to MARAD's present practice which permit a U.S.-flag constructed vessel to meet the highest classification standard of the American Bureau of Shipping or of a classification society other than the American Bureau of Shipping (ABS) so long as the society meets the inspection standards of the United States Coast Guard. The commenter stated that statute and the Title XI regulations require A–1, ABS classification and that these provisions refer to another standard, not another society.

MARAD Response: We disagree with the commenter's interpretation that the existing provision provides that ABS is the only acceptable classification society for U.S.-flag vessels. We had previously made a review of this provision and based on the results of our review interpreted the provision to permit a U.S.-flag constructed vessel to meet the highest classification standard of a classification society other than the ABS so long as the society meets the inspection standards of the United States Coast Guard. Hence, we adopted the practice of permitting other classification societies. We have considered the commenter's position; yet, we affirm our position to permit other classification societies. Because the phrase "or other such standards as may be approved by the United States Coast Guard" does not specify "ABS" standards, we do not believe another society is precluded. Therefore, as proposed in the NPRM, the regulations are being modified to clearly permit a U.S.-flag constructed vessel to meet the highest classification standard of a classification society of ABS or other classification society so long as the society meets the inspection standards of the United States Coast Guard.

Section 298.11 is changed, as proposed in the NPRM, to clarify that the vessel must be constructed in the United States. This section is also revised to provide that we may contact the shipyard to request that it submit additional technical data, backup cost details, and other evidence if we have insufficient data.

Additionally, this section is changed to clarify that all Vessels other than Eligible Export Vessels must be documented under U.S. registry.

Section 298.12 Applicant and Operator's Qualifications

We concur with comments that too much information is requested in this section, particularly with respect to the applicant's existing vessels, and certain background data. Therefore, this section has been modified to reduce the information required. With respect to the suggestion that we utilize the endorsement of industry associations, the regulations do not preclude our consideration of such an endorsement when evaluating the applicant's and/or operator's qualifications.

A paragraph is added to this section to reflect the MAO 520–1 provision requiring that an operator's historical performance record be considered in evaluating operating ability.

Section 298.13 Financial Requirements

In the NPRM, we did not propose any changes to this section, as suggested by a commenter to the ANPRM, to eliminate the requirement for a waiver in order for foreign items to be included in Actual Cost. Our interest is in promoting a shipbuilding industry including both shipyards and suppliers. Therefore, it would be inappropriate to permit wholesale use of foreign items in Title XI financings when comparable items are available from U.S. suppliers. We believe such a practice would have an adverse impact on the U.S. shipbuilding industry as a whole. However, request for waivers to include foreign items have not been unreasonably withheld, so that the no-foreign content requirement without a waiver has not had a negative impact on the shipyards or shipowners. Therefore, we will continue to review inclusion of foreign items on a case-by-case basis. A correction was made in this section to state that in deciding whether to grant a waiver for foreign components and services you must submit a certification that the "domestic" item is not of sufficient quality. The existing regulations inadvertently refer to the "foreign" item.

We believe that the current inclusion of the illustration in this section of how the cost of foreign components of the hull and superstructure may be used to satisfy an applicant's equity requirements is unnecessary and confusing. Therefore, we are deleting the illustration and the one sentence which refers to the illustration in existing § 298.13(a)(2)(i).

The reference to guarantee fees in existing paragraph (a)(2)(iv) is deleted as guarantee fees are eligible for inclusion in Actual Cost.

We have adopted our proposal to permit, in the case of Eligible Export Vessels, financial statements that are not reconciled to U.S. generally accepted accounting principles (GAAP) if a satisfactory justification is provided concerning the inability to reconcile. We further adopted the proposed change to eliminate the requirement for a debt amortization schedule and sources and uses statement, and to incorporate current financial definitions.

We have adopted the proposal to eliminate the special financial requirements set forth in this section due to the restrictive nature of the covenants that accompany these requirements and the fact that companies have not elected this alternative in the recent past. In order to make clear that there is only one set of financial requirements, the word "primary" before financial requirements is deleted here and later in the regulation under § 298.35.

Section 298.14 Economic Soundness

Under § 298.14 of the NPRM, we proposed to reduce or eliminate information required under this section. We proposed to add a new paragraph which differentiates between applications for vessel financing and shipyard modernization projects.

We proposed to clarify the criteria used for economic soundness finding by including provisions of MAO 520–1 relating to economic soundness.

We also proposed requirements concerning the ability of the project to service its debt at the time of delivery which will be based on market conditions at that time, and that primary consideration shall be given to operating cash flow.

One commenter stated that the requirement for a detailed breakdown of estimated daily operating expenses needs to be clarified and that it would be inappropriate to require a detailed breakdown of individual salaries and wages as this would be unduly cumbersome and cover proprietary information that would need to be protected from Freedom of Information Act (FOIA) requests. The commenter further stated that all that should be required is an aggregate cost of salary for the shipyard.

MARAD Response: The daily operating expense information requested for a Title XI application is information that is necessary for us to make an assessment of cash flow for the project. The application does not request individual wages and salaries but an item of expense for wages. With respect to disclosure of proprietary information, the applicant can assert a claim of exemption from disclosure under a FOIA request of any proprietary information submitted in connection with the company's application. We do not believe that providing a breakdown of estimated daily operating expenses

would be unduly cumbersome as this type of information is typically prepared for the company's own projections in the initial planning stages of its proposed project. Therefore, we have not eliminated the requirement to provide us with a detailed breakdown of daily operating expenses.

We have adopted the NPRM's proposed changes to § 298.14. We recognize that much of the information requested under § 298.14 was developed for applications from companies involved in a liner service. We have taken steps to simplify the regulations by reducing or eliminating requested information. Specifically, certain paragraphs under this section requesting information on expenses, have been deleted and are replaced by a new paragraph which will encompass all expenses. The new paragraph differentiates between applications for vessel financing and shipyard modernization projects.

We have not added a requirement to the economic soundness section concerning the applicant's financial strength because the existing requirements of § 298.13, Financial Requirements, already require us to make certain determinations concerning the financial position of the ultimate transaction credit.

In order to clarify the criteria used for economic soundness findings, we adopted the NPRM's proposal to include in this section the provisions of MAR 520–1 relating to economic soundness. Specifically, we have modified this section to include requirements concerning the ability to service debt at the time of delivery which will be based on market conditions at that time, and that primary consideration shall be given to operating cash flow. To enable us to analyze cash flow, the applicant is requested to provide a five-year forecast of operating cash flow.

Section 298.15 Investigation Fee

As proposed in the NPRM, this section is revised by correcting the reference to the filing fee to $5,000.

Section 298.16 Substitution of Participants

As proposed, this section is revised to delete the last sentence which references an annual guarantee fee.

Section 298.18 Financing Shipyard Projects

Under § 298.18, we proposed to eliminate from the initial criteria for Guarantee approval, consideration of whether Guarantees will aid in the transition of a shipyard from naval to commercial shipbuilding.

One commenter stated that the proposed elimination of the weighted consideration given for transitioning from naval to commercial shipbuilding is totally inconsistent with the goals of the National Shipbuilding Initiative and is inconsistent with the emphasis that DOD and the Navy have placed on major shipbuilders to transition back to commercial shipbuilding.

MARAD Response: We proposed to eliminate one of the factors in considering Guarantees for financing Advanced or Modern Shipbuilding Technology. We disagree with the commenter that our proposal to eliminate the initial criteria to financing Advanced or Modern Shipbuilding Technology projects to aid in transitioning from naval to commercial shipbuilding is inconsistent with the goals of the National Shipbuilding Initiative (NSI). It is our position that promoting the growth and modernization of the U.S. merchant marine and U.S. shipyards in general also assists in sustaining the defense shipbuilding base as the workforce and facilities for defense and commercial shipbuilding are to some extent interchangeable. Therefore, we do not believe that elimination of the initial criteria provision of whether the Guarantee will aid in the transition from naval shipbuilding to commercial ship construction would have an adverse effect on the defense shipbuilding base. Therefore, as proposed, we are eliminating the provision in our regulations requiring applications for Advanced or Modern Shipbuilding Technology projects to aid in transitioning from naval to commercial shipbuilding.

Section 298.19 Financing Eligible Export Vessels

We have made a conforming change not previously proposed under this section to eliminate the entire paragraph referencing use of funds transferred form DOD to the Title XI program. As discussed under § 298.3, funds transferred from DOD to the Title XI program have been expended and therefore regulations regarding such funds have no application.

We have adopted, as proposed, under this section to make a modification by deleting the reference to the Export-Import Bank of the United States to now refer to the Inter-agency Country Risk Assessment System since the Export-Import Bank's risk assessments are reflected in the Inter-agency Country Risk Assessment System.

Section 298.20 Term, Redemptions and Interest Rate

We have adopted, as proposed, under this section, to clarify that for multiple vessels the maturity date of the Guarantees may be less than but in no event more than twenty-five years from the date of delivery from the shipyard of the last of multiple vessels but that the amount of the Guarantees shall relate to the depreciated actual cost of the multiple vessels as of the date of the Closing.

Section 298.21 Limits

We have adopted, as proposed, under this section, to specify that no foreign, federal, state or local taxes, user fees, or other governmental charges shall be included in Actual Cost. Additionally, we have changed the reference to the Federal Ship Financing Account to the Credit Reform Financing Account to reflect the current account title for deposits held by us with respect to moneys received in connection with construction contracts.

Section 298.22 Amortization of Obligations

We have adopted, as proposed, to replace the parenthetical phrase "straight line basis" with the phrase "level principal" to reflect our current terminology. Additionally, other references to "straight line basis" in this section have been changed to "level principal". Reference to "level debt" amortization in this section have been changed to "level payment" to reflect current finance terminology.

Section 298.23 Refinancing

We have adopted, as proposed, under this section to clarify our position regarding the refinancing of debt on Advanced or Modern Shipbuilding Technology. Refinancing of non-Title XI debt on Advanced or Modern Shipbuilding Technology is not permitted. Additionally, we have eliminated the reference to "mortgage insurance" or "contracts of insurance" in this section and throughout this part, including § 298.43 as we no longer issue mortgage insurance and all loans financed with mortgage insurance have expired.

Section 298.24 Financing a Vessel More Than a Year After Delivery

We proposed to delete § 298.24 because we believed there is no current authority for us to finance facilities and equipment related to marine operations.

Two commenters objected to the proposed deletion of § 298.24. The commenters believed that deletion of this section is not warranted and our

reasoning is an incorrect statement of our authority.

MARAD Response: We have reconsidered our proposal to delete § 298.24 and have determined that we may finance facilities and equipment related to marine operations under limited circumstances. Based on our interpretation of the Act, we have revised this section to clarify the provisions for issuing Guarantees to finance older vessels and using Title XI debt proceeds to finance vessels or facilities and equipment related to marine operations.

Section 298.30 Nature and Content of Obligations

We have adopted, as proposed, under this section, to clarify that an indenture trustee is not required under our documents.

Section 298.31 Mortgage

We have adopted, as proposed, to correct that, except for Eligible Export Vessels, a mortgage must be filed with the United States Coast Guard's National Vessel Documentation Center. The existing regulations require, except for Eligible Export Vessels, that the mortgage be filed with the United States Coast Guard at the Vessel's port of record.

Section 298.32 Required Provisions in Documentation

Proposed § 298.32 regarding the furnishing of insurance and a performance bond remain unchanged. Under the current Title XI regulations, the Secretary may waive or modify the performance bond requirement, upon determining that the shipyard or manufacturer of Advanced or Modern Shipbuilding Technology has sufficient financial resources and operational capacity to complete the project. In instances where sufficient resources cannot be demonstrated, our interests as a guarantor must be fully protected. Furthermore, inasmuch as § 298.21 provides for performance bond premiums to be included as an item of Actual Cost and therefore financeable up to a maximum of 87½ percent, we find that the bonding requirement does not constitute an inordinate out of pocket expense.

We have adopted as proposed to modify § 298.32 to delete the word "annual" in this section in reference to citizenship filing requirements. The citizenship requirements for the Title XI program were modified by a final rule which was published in the **Federal Register** and became effective on September 8, 1997, which no longer required the filing of annual citizenship affidavits for the Title XI Obligors. Additionally, we have clarified that with respect to Shipyard Projects, the contract must contain provisions for making periodic payments for the work in accordance with an agreed schedule, submitted by the "contractor". The existing regulations only make reference to a "shipyard" containing this provision in its contract for construction of a vessel.

Section 298.33 Escrow Fund

We have adopted, as proposed, to modify this section to conform to the documentation in the general provisions of the new security agreement.

Section 298.34 Construction Fund

Under § 298.34, we proposed to clarify the requirements regarding the construction fund and to eliminate the current redundancies of this section regarding withdrawals and deposits, the procedure for which is described in § 298.33.

One commenter believes that we should eliminate the requirement for a construction fund and disburse to the Obligor the bond proceeds applicable to cost already paid equaling 87.5% or 75%, as applicable. Basically, the commenter stated that there is no statutory authority for the construction fund set out in the proposed § 298.34 and that in Section 1108 of the Merchant Marine Act, 1936, (the Act) Congress intended for all payments for eligible costs to be shared 12.5% or 25% by the Obligor through payment of equity and 87.5% or 75% out of the Title XI guaranteed bond proceeds. The commenter further stated that MARAD has consistently misinterpreted Section 1108 of the Act and required payment by the Obligor of 12.5% or 25% of the entire cost of the project up front before any payment out of the bond proceeds thereby increasing the cost of the project to the Obligor because the cost of equity is indisputably greater than the cost of debt. The commenter stated that because this interpretation does not comport with the Act, MARAD had to create a device called the Construction Fund in order to deposit bond proceeds that could not be deposited in the escrow fund due to the explicit language of Section 1108 but also could not be paid to the shipbuilder or to reimburse the Obligor because of MARAD's incorrect requirement for payment of 12.5% or 25% of the entire cost of the project prior to any disbursement of the escrow fund.

MARAD Response: We disagree with the commenter's assertion that we have no statutory authority for creation of the Construction Fund. Section 1104A(c)(1) of the Act provides that "The security for the guarantee of an obligation by the Secretary under this title may relate to more than one vessel and may consist of any combination of types of security." Section 1103(c) of the Act requires the Obligor to provide 12.5% or 25% equity in the project. It is entirely consistent with the statutory requirement that the applicant have all of its equity raised before the issuance of a commitment to guarantee. To provide us with the assurance that this equity is available for the project and not diminished, we require that the Obligor expend its 12.5% or 25% on the project before our collateral is at risk. This is analogous to a downpayment requirement when purchasing a significant asset. In addition, with the applicant funding the equity up front, the applicant has the greatest incentive to make the project a financial success.

The commenter also indicated that our funding requirements result in a higher cost to the applicant as the cost of equity is greater than the cost of debt. If we were to adopt the funding mechanism proposed by the commenter, we would require that any unused equity funds be placed in non-risk type of investment similar to those utilized by the Escrow and Construction Funds. In this case the earnings on the equity would approximate the earnings on the debt and therefore there would not be a greater cost by utilizing the full amount of the equity funds before utilizing the Title XI proceeds. We believe that requiring the Obligor to provide the initial expenditures for the project is in the Government's best interest and the Construction Fund accomplishes this goal.

We believe that it is in the best interest of the Government to require the initial expenditures for the project to be provided by the Obligor and therefore would need a mechanism such as the Construction Fund to accomplish this goal. Therefore, we are not accepting the commenters proposal to eliminate the Construction Fund.

Section 298.35 Title XI Reserve Fund and Financial Agreement and Financial Agreement

We proposed to modify § 298.35 entirely. We proposed to delete the provision regarding financial covenants for companies meeting the special financial requirements because this provision had not been elected by applicants in the recent past. The references to an applicant being governed by either the section 12 or section 13 requirements are deleted and all companies will be subject to the same two sets of covenants. The first set

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of covenants, the primary covenants, is to apply to all companies regardless of their financial condition and the second set of covenants, referred to as supplemental covenants, is to apply to only those companies that do not meet the specific financial conditions.

One commenter stated that the covenant regarding restriction on mergers or sales (a primary covenant) is unduly restrictive and needs to be clarified to ensure that we do not consent only when the integrity of a loan would be jeopardized by the sale or merger.

MARAD Response: The Title XI Reserve Fund and Financial Agreement requires our consent prior to the Obligor entering into a merger or sale. The purpose of requiring our consent prior to a merger or sale is to allow us the opportunity to do a due diligence review of the transaction to determine whether or not the transaction would have an adverse effect or impose unacceptable risk to the Government. To accomplish this review, each merger or sale must be analyzed on a case-by-case basis prior to effectuating the transaction. Therefore, we believe that our review and prior consent are warranted, and we have not modified this provision.

One commenter provided comments on a proposed provision of the Title XI Reserve Fund and Financial Agreement dealing with the restriction the Agreement places on the Obligor with respect to payment of dividends. The commenter believes that the dividend restrictions are excessively restrictive to well capitalized Sub-Chapter S corporations or Limited Liability Companies (LLCs) who qualify as "strong" companies (positive working capital and debt to equity ratio less than 2 to 1), whose tax liabilities flow through to their owners and thus may require "tax dividends" to those owners to reimburse them for payment of said liabilities.

MARAD Response: The purpose of the dividend restriction is to provide further assurance that funds are available for payment of principal and interest due on the Obligations. We recognize the unique tax situation of sub-chapter S corporations and LLCs and, when we deem appropriate, we consent to dividend payments for tax purposes. We do not believe an amendment to the dividend provision is necessary as special provisions are negotiated in the Title XI Reserve Fund and Financial Agreement to address these situations on a case-by-case basis. Therefore, we have not modified this section to reduce the restrictions with respect to the payment of dividends.

Additionally, we have adopted, as proposed, to modify this section in its entirety. The section regarding financial covenants for companies meeting the special financial requirements has been deleted in its entirety pursuant to the discussion above in § 298.13. The references to a Title XI company being governed by either section 12 or section 13 company are deleted and all Title XI companies will be subject to the same two sets of covenants. One set of covenants will be imposed regardless of the company's financial conditions (primary covenants) and the second set of covenants will only apply if the company does not meet the specific financial conditions (supplemental covenants). Also, we have deleted the paragraph in the existing regulations referring to dividend restrictions applicable to companies who are parties to an operating-differential subsidy contract because we no longer issue operating-differential subsidy contracts and have no plans to resume.

Section 298.36 Guarantee Fee

We have adopted, as proposed, to delete the word "annual" in describing the Guarantee fee. The Guarantee is no longer required annually but is now a one-time fee due upon issuance of our guarantee. In the NPRM we inadvertently proposed to delete in paragraph (e) of this section, the provision stating that the Guarantee fee is non-refundable. Section 1104 A(e)(4) of the Act provides that the Guarantee fee is not refundable. Accordingly, we have included a statement the Guarantee fee is non-refundable.

We proposed to include in this section, a statement that "In calculating the present value used in determining the amount of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the "Department of Commerce's Economic Bulletin Board annual rates". In order to reflect the current source for the discount rate, we have changed this statement to provide that "In calculating the present value used in determining the amount of the Guarantee Fee to be paid, we will use a discount rate based on information contained in the "President's annual Budget".

Section 298.41 Remedies After Default

We have adopted, as proposed, to delete that Security proceeds to us will be applied to guarantee fees as there will be no guarantee fees due because all guarantee fees are now paid concurrently with the issuance of Obligations.

Section 298.43 Applicability of the Regulations

We have deleted the reference to "contracts of insurance" and "mortgage contracts" because we no longer issue "contracts of insurance" or "mortgage contracts" and all such loans previously insured have expired.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that it is not a significant regulatory action under section 3(f). It is also not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Due to the limited economic impact of this final rule, no further analysis is necessary. These amendments are intended only to simplify and clarify the procedural requirements for obtaining Guarantees, principally to expedite the process for our review of applications. The intended effect is to encourage the construction of ships in U.S. shipyards both for the domestic and the Eligible Export Vessel programs and the modernization and improvement of U.S. general shipyard facilities by improving Title XI program administration.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires MARAD to determine whether this final rule will have a significant economic impact on a substantial number of small entities. Although a substantial number of Title XI applicants may meet the United States Small Business Administration's criteria for small entity, these amendments to part 298 simplify and clarify the procedural requirements for obtaining loan Guarantees under the Title XI ship financing program. These simplifications and clarifications will merely expedite our application review process. While the simplified procedures will enhance customer service, these procedures will not result in a significant economic impact. Therefore, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The

regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13084

We do not believe the revised regulations evolving from this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Paperwork Reduction Act

This rulemaking contains requirements that have been approved previously by the Office of Management and Budget (Approval No. 2133–0005, 2133–0012, and 2133–0018).

Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 298

Loan programs-Transportation, Maritime carriers, Mortgages, Reporting and recordkeeping requirements, Vessels.

Accordingly, 46 CFR part 298 is revised to read as follows:

PART 298—OBLIGATION GUARANTEES

Subpart A—Introduction

Sec.

298.1 Purpose.
298.2 Definitions.
298.3 Applications.

Subpart B—Eligibility

298.10 Citizenship.
298.11 Vessel requirements.
298.12 Applicant and operator's qualifications.
298.13 Financial requirements.
298.14 Economic soundness.
298.15 Investigation fee.
298.16 Substitution of participants.
298.17 Evaluation of applications.
298.18 Financing Shipyard Projects.
298.19 Financing Eligible Export Vessels.

Subpart C—Guarantees

298.20 Term, redemptions, and interest rate.
298.21 Limits.
298.22 Amortization of Obligations.
298.23 Refinancing.
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298.25 Excess interest or other consideration.
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Subpart D—Documentation

298.30 Nature and content of Obligations.
298.31 Mortgage.
298.32 Required provisions in documentation.
298.33 Escrow fund.
298.34 Construction fund.
298.35 Title XI Reserve Fund and Financial Agreement.
298.36 Guarantee Fee.
298.37 Examination and audit.
298.38 Partnership agreements and limited liability company agreements.
298.39 Exemptions.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations.

298.40 Defaults.
298.41 Remedies after default.
298.42 Reporting requirements—financial statements.
298.43 Applicability of the regulations.

Subpart F—Administration [Reserved]

Authority: 46 App. U.S.C. 1114(b), 1271 *et seq.*; 49 CFR 1.66.

Subpart A—Introduction

§ 298.1 Purpose.

This part prescribes regulations implementing Title XI of the Merchant Marine Act, 1936, as amended, governing Federal ship financing assistance (46 App. U.S.C. 1271 *et seq.*). This part uses "you" and "we" throughout. You and your refer to the applicant for Title XI financing assistance unless we note or imply otherwise. We, us, and our refer to the Maritime Administration, the Secretary of the Maritime Administration, or the Secretary of Transportation, as applicable.

§ 298.2 Definitions.

For the purpose of this part:

Act means the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1101 through 1294).

Actual Cost of a Vessel or Shipyard Project means, as of any specified date, the aggregate, as determined by us, of all amounts paid by or for the account of the Obligor on or before that date and all amounts which the Obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such Vessel or Shipyard Project.

Advanced Shipbuilding Technology means:

(1) Numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production which advance the state-of-the-art; and

(2) Novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers; and

(3) Other elements contributing to a shipyard's efficiency or productivity assisting it to more effectively operate in the shipbuilding industry.

Citizen of the United States means a person who, if an individual, is a Citizen of the United States by birth, naturalization or as otherwise authorized by law or, if other than an individual, meets the requirements of Section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802), as further described at 46 CFR 221.3(c).

Closing means a meeting of various participants or their representatives in a Title XI financing, at which a commitment to issue Guarantees is executed, or at which all or part of the Obligations are authenticated and issued and the proceeds are made available for a purpose set forth in section 1104(a) of the Act, or at which a Vessel is delivered and a Mortgage is executed as security to us or a Shipyard Project is completed and a Mortgage or other security is executed to us.

Commitment Closing means a meeting of various participants or their representatives in a Title XI financing at which a commitment to issue Guarantees is executed and the forms of the Obligations and the related Title XI

documents are also either agreed upon or executed.

Depository means a bank or other financial institution organized and doing business under the laws of the United States, any State or territory thereof, the District of Columbia or the Commonwealth of Puerto Rico that is authorized under such laws to exercise corporate trust powers, is a member of the Federal Deposit Insurance Corporation, and accepts deposits for purposes of implementing the program authorized by Title XI of the Act; but in the case of an Eligible Export Vessel can also mean, with our specific approval of foreign branches, but not the foreign subsidiaries, of such United States financial institutions.

Depreciated Actual Cost of a Vessel or Shipyard Project means the Actual Cost of the Vessel or Shipyard Project, as defined in this section (less a residual value of 2½ percent of United States shipyard construction cost or, in the case of Shipyard Project, a residual value as appropriate), depreciated on a straightline basis over the useful life of the Vessel or Shipyard Project as determined by us, not to exceed twenty-five years from the date the Vessel or Shipyard Project was delivered by the shipbuilder or manufacturer or, if the Vessel or Shipyard Project has been reconstructed or reconditioned, the Actual Cost of the Vessel or Shipyard Project depreciated on a straightline basis from the date the Vessel or Shipyard Project was delivered by the shipbuilder or manufacturer to the date of such reconstruction or reconditioning, on the basis of the original useful life of the Vessel or Shipyard Project, and from the date of said reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the Vessel or Shipyard Project determined by us, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis and on the basis of a useful life of the Vessel or Shipyard Project determined by us.

Documentation means all or part of the agreements relating to an entire Title XI financing which must be furnished to us, irrespective of whether we are a party to each agreement.

Eligible Export Vessel means a Vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

Eligible Shipyard means a private shipyard located in the United States.

General Shipyard Facility means:

(1) For operations on land, any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment, or rebuilding of any Vessel, including graving docks, building ways, ship lifts, wharves and pier cranes; the land necessary for any structures or appurtenances; and equipment necessary for the performance of any function referred to in this definition; and

(2) For operations other than on land, any Vessel, floating drydock, or barge constructed in the United States, within the meaning of § 298.11(a), and used for, or a type that is usually used for, activities referred to in paragraph (1) of this definition.

Guarantee means the contractual commitment of the United States of America, represented by us, endorsed on each Obligation, to make payment to the Obligee or an agent, upon demand, of the unpaid interest on, and the unpaid balance of the principal of such Obligation, including interest accruing between the date of default and the date of payment.

Guarantee Fee means the fee payable to us in consideration for the issuance of the Guarantees.

Indenture Trustee means a bank with corporate trust powers, or a trust company, with a capital and surplus of at least $25,000,000, which is located in and organized and doing business under the laws of the United States, any State or territory thereof, the District of Columbia or the Commonwealth of Puerto Rico, which has duties under the terms of a Trust Indenture, entered into with the Obligor, providing for the issuance and registration of the ownership and transfer of Obligations, the disbursement of funds held in trust by the Indenture Trustee for the redemption and payment of interest and principal with respect to Obligations, demands by the Indenture Trustee for payment under the Guarantees in the event of default and the remittance of payments received to the Obligees. Pursuant to our specific authorization, the Indenture Trustee may also authenticate the Guarantees.

Letter Commitment means a letter from us to you, setting forth specific determinations made by us with respect to your proposed project, as required by the Act and regulations of this part, and stating our commitment to execute Guarantees, subject to compliance by you with any conditions specified therein.

Maritime Administration means the agency created within the Department of Transportation by Reorganization Plan No. 21 of 1950 (64 Stat. 1273), amended by Reorganization Plan No. 7 of 1961 (75 Stat. 840), as amended by Public Law 91–469 (84 Stat. 1036).

Modern Shipbuilding Technology means a technology to be introduced into the shipyard that is comprised of the best available proven technology, techniques, and processes appropriate to advancing the state-of-the-art of the applicant shipyard, or exceeds the best available processes of American shipbuilding, and that will enhance its productivity and make it more competitive internationally.

Mortgage means a first Preferred Mortgage on any Vessel or a first mortgage with respect to a Shipyard Project.

Obligation means any note, bond, debenture, or other evidence of indebtedness, as defined in section 1101(c) of the Act, issued for one of the purposes specified in section 1104(a) of the Act.

Obligee means the holder of an Obligation.

Obligor means any party primarily liable for payment of principal of or interest on any Obligation.

Paying Agent means any Person appointed by the Obligor to pay the principal of or interest on the Obligations on behalf of the Obligor.

Person means any individual, estate, foundation, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other acceptable legal business entity, government, or any agency or political subdivision thereof.

Preferred Mortgage means:

(1) In the case of a mortgage on a Vessel documented under United States law, whenever made, a mortgage that—

(i) Includes the whole of a Vessel;

(ii) Is filed in substantial compliance with 46 U.S.C. 31321;

(iii) Covers a documented Vessel or a Vessel for which an application for documentation has been filed that is in substantial compliance with the requirements of 46 U.S.C. Ch. 121 and the regulations prescribed under that Chapter by the United States Coast Guard; and

(iv) Is otherwise in compliance with the provisions of Chapter 313 of Title 46 of the U.S. Code.; and

(2) In the case of a mortgage on an Eligible Export Vessel, whenever made, a mortgage that—

(i) Constitutes a mortgage that is established as security on an Eligible Export Vessel under the laws of a foreign country;

(ii) Was executed under the laws of that foreign country and under which laws the ownership of the Vessel is documented;

(iii) Is registered under the laws of that foreign country in a public register at the port of registry of the Vessel or at a central office;

(iv) Otherwise satisfies the requirements of 46 U.S.C. 31301(6)(B) to constitute a Preferred Mortgage; and

(v) Has us as the mortgagee, or such other mortgagee as is permitted by the applicable foreign law and approved by us.

Related Party means as that term is defined by generally accepted accounting principles outlined in paragraph 24 of Statement of Financial Accounting Standards No. 57, Related Party Disclosures.

Secretary means the Secretary of Transportation, acting by and through the Maritime Administrator, Department of Transportation, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary of Transportation or the Maritime Administrator, Department of Transportation.

Secretary's Note means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

Security Agreement means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in certain described property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the Obligor to the Secretary as security for the issuance of Guarantees.

Shipyard Project means Advanced Shipbuilding Technology and Modern Shipbuilding Technology or both unless otherwise specified.

Vessel means all types of vessels, whether in existence or under construction, including passenger, cargo and combination passenger-cargo carrying vessels, tankers, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels, which are owned by citizens of the United States; except that an Eligible Export Vessel will not be documented under the laws of the United States.

§ 298.3 Applications

(a) *Process and certification.* When you apply for a commitment to execute Guarantees, you must:

(1) Complete Form MA 163 and send it to the Secretary, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(2) Certify the application in the manner that Form MA 163 prescribes.

(b) *Required information.* You must include all required information on Form MA 163 or in attached exhibits and schedules submitted with the application. You must also include the following regarding the Vessel or Vessels, if applicable:

(1) Any demise charters,

(2) Time charters in excess of six months,

(3) Contracts of affreightment,

(4) Drilling contracts, and/or

(5) Other contractual arrangements.

(c) *Declaration of Lobbying form.* You must also file the Declaration of Lobbying form as required by 31 U.S.C. 1352 with the initial application as part of the formal submission.

(d) *Attachments.* Each exhibit, schedule, and attachment must contain a statement, on the first page clearly identifying the document as an attachment to the application. You must state on each attachment the:

(1) Name of the applicant; and

(2) Date of the application.

(e) *Amendment.* You must mark "Amendment," on any amendment of data contained in the application. Each first page must contain a statement clearly identifying the document as an amendment to your application and must include the:

(1) Name of the applicant;

(2) Date of application; and

(3) Certification required on Form MA 163.

(f) *Application time schedule.* You must submit each application to us at least four (4) months prior to the anticipated date by which you require a Letter Commitment.

(1) We may consider applications with less than four (4) months notice, prior to the anticipated date by which you require a Letter Commitment, if you submit written documentation to us that extenuating circumstances exist.

(2) During the first fifteen (15) calendar days after you submit your application, we will preliminarily review your application for adequacy and completeness.

(i) If we find that your application is incomplete, or if we require additional data, we will notify you promptly in writing, and you will have fifteen (15) calendar days, from the date of each request for additional information, to correct deficiencies.

(ii) If you have not corrected the deficiencies or have not made substantial progress toward correcting them, within the 15 calendar days, then we may terminate the processing of your application without prejudice.

(3) Once we consider your Title XI application complete, we will act on the application within a period of 60 calendar days, unless for good cause, we find it necessary to extend the 60 day period.

(4) If you do not complete your application and we do not act upon your application within four (4) months from the submission date, unless we extend the time period, we will notify you in writing that processing of the application is terminated and that you may reapply at a later date.

(i) If we terminate your application without prejudice, we will not require you to pay a new filing fee for a later application for a similar project that you file within one year of the termination date.

(ii) If you submit an application for a substantially different project, you must pay a new filing fee. We will determine whether the application is substantially different on a case-by-case basis.

(5) If we issue you a Letter Commitment, you must submit two (2) sets of the Closing documentation to us for review at least six (6) weeks prior to the anticipated Closing. The six weeks time period will give us time to complete an adequate review of the documentation. You must use our standard form of documentation.

(g) *Degrees of risk.* When processing applications, we will consider the different degrees of risk involved with different applications.

(h) *Additional assurances.* Before we approve your application, we may require additional assurances if you are not a well established firm with strong financial qualifications and strong market shares seeking financing guarantees for replacement vessels in an established market in which projected demand exceeds supply. The additional assurances may include:

(1) Firm charter commitments;

(2) Parent company guarantees;

(3) Greater equity participation;

(4) Private financing participation;

(5) Security interest on other property; and

(6) Similar arrangements to any of these additional assurances.

(i) *Filing Fee.* When you submit your application, you must include a $5,000 filing fee, which will be non-refundable, irrespective of whether we issue a Letter Commitment. However, the $5,000

filing fee is credited toward the investigation fee described in § 298.15(b).

(j) *Confidential Information.* (1) If we receive a request for release of your information, we will notify you. If you believe that your application, including attachments, contains information you consider to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), you may assert a claim of confidentiality. When submitting your application, you should mark "Confidential" on the pages that you consider confidential. The same requirement applies to any amendment to the application.

(2) *FOIA requests.* We will apply the procedures contained in the Department of Transportation's regulations at 49 CFR 7.17 regarding FOIA requests for information that the submitter has designated as confidential. We will consider your claim of confidentiality at the time someone requests the information under FOIA.

(3) *Statement of objections.* If we receive a request for release of your information, we will notify you. We will give you a reasonable period of time to give us a written, detailed statement explaining your objections to our release of the information. We will not give you notice if:

(i) We determine that we should not disclose the information;

(ii) The information has been lawfully published or made available to the public; or

(iii) Law (other than 5 U.S.C. 552) requires us to disclose the information.

(4) *Our notification of intent to disclose.* If your objections to release of the information do not persuade us, we will notify you of our intent to disclose in a reasonable number of days before we intend to disclose the information. The written notice will include:

(i) A statement explaining our reasons for not accepting the submitter's disclosure objections;

(ii) A description of the business information that we will disclose; and

(iii) A specific disclosure date.

(k) *Priority.* We will give priority for processing applications to:

(1) Vessels capable of serving as a United States naval and military auxiliary in time of war or national emergency,

(2) Requests for financing construction of equipment or vessels less than one year old as opposed to the refinancing of existing equipment or vessels that are one year old or older,

(3) Any applications involving the purchase of vessels currently financed under Title XI if the purpose is to process the assumption of the obligations,

(4) Applications from those willing to take guarantees for less than the normal term for that class of vessel.

(5) *Eligible Export Vessels.* We may issue a commitment to guarantee Obligations for an Eligible Export Vessel if we determine, in our sole discretion, that the issuance of a commitment to guarantee Obligations for an Eligible Export Vessel will not cause us to deny an economically sound application to issue a commitment to guarantee Obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States, after considering:

(i) The status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States;

(ii) The economic soundness of the applications referred to in paragraph (k)(5)(i) of this section; and

(iii) The amount of guarantee authority available.

(Unless indicated otherwise in this part 298, information collection requirements have been approved by the Office of Management and Budget under control number 2133–0018.)

Subpart B—Eligibility

§ 298.10 Citizenship.

(a) *Applicability.* Before you receive a legal or beneficial interest in a Vessel financed under Title XI of the Act which is operating in or will be operated in the U.S. coastwise trade, you and any other Person, (including the shipowner and any bareboat charterer), must establish your United States citizenship, within the definition of "Citizen of the United States" in § 298.2.

(b) *Prior to Letter Commitment.* Before we issue the Letter Commitment, you and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship must establish United States citizenship in the form and manner stated in 46 CFR part 355.

(c) *Commitment Closing.* (1) Within 10 days before every Commitment Closing, unless we waive this requirement for good cause, you and all Persons identified with the project who have previously established United States citizenship in accordance with paragraphs (a) and (b) of this section, must submit pro forma Supplemental Affidavits of Citizenship which we have approved for Closing as to form and substance, and

(2) On the date of the Closing, three (3) executed copies of Supplemental Affidavits of Citizenship that:

(i) Show evidence of the continuing United States citizenship of the Persons in paragraph (a) of this section; and

(ii) Bear the date of the Closing.

(d) *Additional information.* If we request additional material essential to clarify or support evidence of U.S. citizenship, you, the Obligor, or any Person identified in paragraph (a) of this section must submit the additional information.

(Approved by the Office of Management and Budget under control number 2133–0012.)

§ 298.11 Vessel requirements.

When you apply for a Guarantee, the Vessel for which you intend to receive financing for construction, reconstruction, or reconditioning must meet the following criteria:

(a) *United States Construction.* A Vessel, including an Eligible Export Vessel, financed by an Obligation Guarantee must be constructed in the United States. United States construction means that the Vessel is assembled in a shipyard geographically located within the United States.

(1) A U.S.-flag Vessel must meet the applicable United States Coast Guard requirements.

(2) An Eligible Export Vessel must be constructed in accordance with the requirements of the International Maritime Organization and must meet the applicable:

(i) Laws, rules, and regulations of its country of documentation,

(ii) Treaties, conventions on international agreements to which that country is a signatory, and

(iii) Laws of the ports it serves.

(b) *Actual Cost.* We must approve your estimated Actual Cost for the construction, reconstruction, or reconditioning of a Vessel as a condition for issuance of the Letter Commitment. The estimated cost of the Vessel may include escalation for the anticipated construction period of the Vessel. We may contact the shipyard directly and may require you to have the shipyard that has contracted to build the Vessel to submit additional technical data, backup cost details, and other evidence if we have insufficient data.

(c) *Class, condition, and operation.* The Vessel must be constructed, maintained, and operated so as to meet the highest classification, certification,

rating, and inspection standards for vessels of the same age and type imposed by:

(1) The American Bureau of Shipping (ABS), or

(2) Another classification society that also meets the inspection standards of the United States Coast Guard with respect to the documentation of U.S.-flag vessels, or

(3) In the case of an Eligible Export Vessel, such standards as may be imposed by a member of the International Association of Classification Societies (IACS), classification societies to be ISO 9000 series registered or Quality Systems Certificate Scheme qualified IACS members who have been recognized by the United States Coast Guard as meeting acceptable standards with such recognition including, at a minimum, that the society meets the requirements of IMO Resolution A.739(18) with appropriate certificates required at delivery, so long as the home country of the IACS member accords equal reciprocity, as determined by us, to United States classification societies.

(4) Except in the case of an Eligible Export Vessel, the Vessel must be in compliance with all applicable laws, rules, and regulations as to condition and operation, including, but not limited to, those administered by the:

(i) United States Coast Guard,

(ii) Environmental Protection Agency,

(iii) Federal Communications Commission,

(iv) Public Health Service, or

(v) Their respective successor agencies, and

(vi) All applicable treaties and conventions to which the United States is a signatory, including, but not limited to, the International Convention for Safety of Life at Sea.

(d) *Documentation.* (1) An Eligible Export Vessel must be documented in a country that is party to the International Convention for Safety of Life at Sea, or other treaty, convention, or international agreement governing vessel inspection to which the United States is a signatory, and must comply with the applicable laws, rules, and regulations of its country of documentation, all applicable treaties, conventions on international agreements to which that country is a signatory, and the laws of the ports it serves.

(2) All other Eligible Vessels must be documented under U.S. registry.

(e) *Reconstruction or reconditioning.* Repairs necessary for the Vessel to meet the classification standards approved by us, or any regulatory body, or for previous inadequate maintenance and repair, will not constitute reconstruction or reconditioning within the meaning of this paragraph.

(f) *Condition survey.* If your application involves a reconstructed or reconditioned Vessel, you must make the Vessel available at a time and place acceptable to us so that we may conduct a condition survey. You must:

(1) Pay the cost of the condition survey.

(2) Ensure that the scope and extent of the condition survey will not be less effective than that required by the last ABS special survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age.

(3) Ensure that the Vessel meets the standard of the survey necessary for retention of class (if the Vessel is classified), and

(4) Ensure that the operating records of the Vessel reflect normal operation of the Vessel's main propulsion and other machinery and equipment, consistent with accepted commercial experience and practice.

(g) *Metric Usage.* Our preferred system of measurement and weights for Vessels and Shipyard Projects is the metric system.

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* We will not issue a Letter Commitment without a prior determination that you, the bareboat charterer, or other Person identified in the application as the operator of the Vessel(s) or Shipyard Project, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel(s) or Shipyard Project which serve as security for the Guarantees. You must also comply with all requirements of this part.

(b) *Identity and ownership of applicant.* In order for us to assess the likelihood that the project will be successful, we need information about you and the proposed project. To permit this assessment, you must provide the following information in your application for Title XI guarantees:

(1) *Incorporated companies.* If you or any bareboat charterer is an incorporated company, you must submit the following identifying information:

(i) Name of company, place and date of incorporation, and tax identification number, or if appropriate, international identification number of the company;

(ii) Address of principal place of business; and

(iii) Certified copy of certificate of incorporation and bylaws.

(2) *Partnerships, limited partnerships, limited liability companies, joint ventures, associations, unincorporated companies.* If you or any bareboat charterer is a partnership, limited partnership, limited liability company, joint venture, association, or unincorporated company, you must submit the following identifying information:

(i) Name of entity, place and date of formation, and tax identification number, or if appropriate, international identification number of entity;

(ii) Address of principal place of business; and

(iii) Certified copy of certificate of formation, partnership agreement or other documentation forming the entity.

(3) *Other entities.* For any entity that does not fit the descriptions in paragraphs (b)(1) and (b)(2) of this section, we will specify the information that the entity must submit regarding its identity and ownership.

(4) You and any bareboat charterer must provide a brief statement of the general effect of each voting agreement, voting trust or other arrangement whereby the voting rights of any interest in you or the bareboat charterer are controlled or exercised by any person who is not the holder of legal title to such interest.

(5) You and any bareboat charterer must provide the following information regarding the entity's officers, directors, partners or members:

(i) Name and address;

(ii) Office or position; and

(iii) Nationality and interest owned (for example, shares owned and whether voting or non-voting).

(c) *Business and affiliations of applicants.* You must include:

(1) A brief description of your principal business activities during the past five years.

(2) A list of all business entities that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with you.

(3) The nature of the business transacted by each listed entity and the relationship between these entities. This information may be presented in the form of a chart.

(4) Whether any of the affiliated entities have previously applied for or received Title XI assistance.

(5) A statement indicating whether the applicant, any predecessor or affiliated entity has been in bankruptcy or reorganization under any insolvency or reorganization proceeding and if so, give details.

(6) A statement indicating whether the applicant or any predecessor or affiliated entity is now, or during the past five years has been, in default

under any agreement or undertaking with others or with the United States of America, or is currently delinquent on any Federal debt, and if so, provide explanatory information.

(7) A list of your banking references:

(i) Principal bank(s) or lending institutions(s)—name and address;

(ii) Nature of relationship; and

(iii) Individual references—name(s), telephone and fax number of banking officer(s).

(d) *Management of applicant.* You must include:

(1) A brief description of the principal business activities during the past five years of each officer, director, partner or member you listed in paragraph (b)(5) of this section and if these persons (have) act(ed) as executive officers in other entities, indicate the names of these entities and whether such entities have defaulted on any U.S. Government debt, and

(2) The name and address of each organization engaged in business activities which have a direct financial relationship to those carried on or to be carried on by you with which any person listed in paragraph (d)(1) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* You must provide:

(1) A brief description of the general character and location of the principal assets employed in your business and those of your affiliate, other than vessels. Describe financial encumbrances, if any;

(2) A general description of the vessels currently owned and/or operated by you or your affiliates and a description of the areas of operation; and,

(3) In the case of an Eligible Shipyard which is an applicant for a guarantee for a Shipyard Project, a brief description of the general character (that is, the number of building ways, launch method, drydocks and size) and location (that is, water depth, length of riverfront) of the principal properties of the applicant employed in its business. You must also describe any financial encumbrances.

(f) *Operating ability.* (1) You must submit a detailed statement showing your ability to successfully operate the financed Vessel(s).

(2) If a company other than you will operate the Vessel(s), then the information in paragraph (f)(1) of this section must be provided for the operating company together with a copy of the operating agreement.

(3) You must submit a copy of any management agreement(s) between you and any related or unrelated organization(s) which will affect the management of the Title XI Vessel or shipyard.

(4) In the case of an Eligible Shipyard, which is an applicant for a guarantee for a Shipyard Project, a detailed statement must be submitted showing your ability to successfully operate the Shipyard Project and construct/reconstruct Vessels, including name, education, background of, and licenses held by, all senior supervisory personnel concerned with the physical operation of the Shipyard Project.

(5) Where an operator has an historical performance record, we will consider this record in evaluating your operating ability. For newly formed entities, we will evaluate the performance of affiliates and/or companies associated with the principals (where the principals have a significant degree of control) in determining your operating ability. However, unless the affiliates or principals have an obligation with respect to the debt, we will not consider historical performance in evaluating your creditworthiness.

§ 298.13 Financial requirements.

(a) *In general.* To be eligible for guarantees, you and/or your parent organization (when applicable), and any other participants in the project having a significant financial or contractual relationship with you must submit information, respectively, on their financial condition. You must submit this information at the time of the application. You must supplement this information if we require it in subsequent requests. You must submit information satisfactory to us to show that financial resources are available to support the Title XI project.

(b) *Cost of the project.* You must submit the following cost information with respect to the project:

(1) *Vessel financing Guarantees.* A detailed statement of the estimated Actual Cost of construction, reconstruction, or reconditioning of the Vessel(s) including those items which would normally be capitalized as Vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to Vessel(s) delivery.

(2) *Foreign components.* (i) You must exclude each item of foreign components and services from Actual Cost, unless we specifically grant a waiver for the item. We will not grant a waiver for major foreign components of the hull and superstructure.

(ii) In deciding whether to grant a waiver for foreign components and services, we will consider your certification, to be reviewed by us, stating that:

(A) A foreign item or service is not available in the United States on a timely or price-competitive basis, or

(B) The domestic item or service is not of sufficient quality.

(iii) Although excluded from Actual Cost, foreign components of the hull and superstructure can be regarded as owner-furnished equipment that may be used in satisfying your equity requirements imposed by paragraph (f) of this section.

(3) *Costs incurred by written contracts.* If any of the costs have been incurred by written contracts such as shipyard contract, management or operating agreement, you should forward signed copies with the application. We may require you to have the contracting shipyard submit back-up cost details and technical data. You must submit this information in the format given in the Title XI application procedures.

(4) *Shipyard Project.* In the case of Shipyard Project, a detailed statement of the actual cost of such technology, including those items which would normally be capitalizable. If you incurred any of the costs through written contracts, you should forward signed copies of the contract with the application. We may require you to have manufacturers submit back-up cost details and technical data. You must submit this information in the format given in the Title XI application procedures.

(5) *Shore facilities, cargo containers, etc.* A detailed statement showing the actual cost of any shore facilities, cargo containers, etc., required to be purchased in conjunction with the project.

(6) *Additional project costs.* A detailed statement showing any other costs associated with the project which were not included in paragraphs (b)(1) through (5) of this section, such as:

(i) Legal and accounting fees;

(ii) Printing costs;

(iii) Vessel insurance;

(iv) Underwriting fees;

(v) Fee to a Related Party; and

(vi) Other fees.

(7) *Request for Actual Cost Approval and Reimbursement.* If the project involves refinancing, you must also submit the exhibit entitled Request for Actual Cost Approval and Reimbursement, its summary sheet and

supplemental schedules at the time of filing the application.

(c) *Financing.* (1) You must:

(i) Describe, in detail, how the costs of the project (sums referred to in paragraph (b) of this section) will be funded and the timing of such funding.

(ii) Include any vessel trade-ins, related or third party financings, etc.

(iii) Provide the proposed terms and conditions of all private funding, from both equity and debt sources and clearly identify all parties involved.

(iv) Obtain our approval of the terms and conditions for co-financing (involving a blend of Title XI and private financing for the debt portion), including the ability of the co-financiers to exercise their rights against collateral shared with us for any transaction.

(v) Demonstrate with financial statements that at least 12½ percent, or 25 percent as applicable, of the construction or reconstruction costs of the Vessel(s) or the cost of the Shipyard Project will be in the form of equity and not additional debt, except to the extent allowed by paragraph (h) of this section.

(vi) Disclose all of the Vessel(s), Shipyard Project financing in the format given in the Title XI application procedures.

(2) *Financial Information.* You must provide us with financial statements, prepared in accordance with U.S. generally accepted accounting principles (GAAP), and include notes that explain the basis for arriving at the figures except that for Eligible Export Vessels, your financial statements must be in accordance with GAAP if formed in the U.S., or reconciled to GAAP if formed in a foreign country unless a satisfactory justification is provided explaining the inability to reconcile. The financial statements must include the following:

(i) The most recent financial statements for you, your parent company and other significant participants, as applicable (year end or intermediate), and the three most recent audited statements with details of all existing debt. If you are a new entity and are to be funded from or guaranteed by external source(s), you must provide such statements for such source(s);

(ii) Your pro forma balance sheet and that of any guarantor (if applicable) as of the estimated date of execution of the Guarantees reflecting the assumption of the Title XI Obligations, including the current liability; and

(iii) Your pro forma balance sheets and that of the guarantor (if applicable) for five years after the Closing.

(Approved by the Office of Management and Budget under control number 2133–0005.)

(d) *Financial definitions.* For the purpose of this section and §§ 298.35 and 298.42 of this part:

(1) "Company" means any Person subject to financial requirements imposed under paragraph (f) of this section and in § 298.35, as well as the reporting requirements imposed by § 298.42.

(2) "Working Capital" means the excess, if any, of current assets over current liabilities, both determined in accordance with GAAP and adjusted as follows:

(i) In determining current assets you must exclude:

(A) Any securities, obligations or evidence of indebtedness of a Related Party or of any stockholder, director, officer or employee (or any member of his family) of the Company or of such Related Party, except advances to agents required for the normal current operation of the Company's vessels and current receivables arising out of the ordinary course of business and not outstanding for more than 60 days; and

(B) An amount equal to any excess of unterminated voyage revenue over unterminated voyage expenses.

(ii) In determining current liabilities, you must deduct any excess of unterminated voyage expenses over unterminated voyage revenue and add one half of all annual charter hire and other lease obligations (having a term of more than six months) due and payable within the succeeding fiscal year, other than charter hire and such other lease obligations already included and reported as a current liability on the Company's balance sheet.

(3) "Equity" or "net worth" means, as of any date, (the total of paid-in-capital stock, paid-in surplus, earned surplus and appropriated surplus,) and all other amounts that would be included in net worth in accordance with GAAP, but does not include:

(i) Any receivables from any stockholder, director, Officer or employee (or their family) of the Company or from any Related Party (other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days), and

(ii) Any increment resulting from the reappraisal of assets.

(4) "Long-Term Debt" means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in long term debt in accordance with GAAP. You must include any guarantee or other liability for the debt of any other Person not otherwise included on the balance sheet.

(5) "Capitalizable Cost" means the aggregate of the Actual Cost of the Vessel or Shipyard Project and those other items which customarily would be capitalized as Vessel costs or Shipyard Project costs under GAAP.

(6) "Depreciated Capitalizable Cost" means the Capitalizable Cost of a Vessel or Shipyard Project, depreciated on a straightline basis over the same useful life as determined by us for Actual Cost, and depreciated as required by § 298.21(g).

(e) *Applicability.* The financial resources must be adequate to meet the Equity requirements in the project and Working Capital requirements, as set forth in paragraph (f) of this section.

(1) The various financial requirements shall be met by the owner of the Vessel or Vessels or Shipyard Project to be security to us for the Guarantees, except that if the owner is not the operator, the overall financial requirements will be allocated among the owner, the operator and other parties as determined by us.

(2) The Company must satisfy the applicable financial requirements, in addition to any other financial requirements already imposed or which may be imposed upon it in connection with other Vessels financed under the Title XI program or in connection with other Shipyard Project financed under the Title XI program.

(3) A determination as to whether the Company has satisfied all financial requirements shall be based on the assumption that the projected financing has been completed. Accordingly, you must submit:

(i) A pro forma balance sheet at the time of the application, reflecting any adjustment made pursuant to paragraph (f)(1)(i) of this section, and

(ii) A revised pro forma balance sheet, reflecting the completion of the projected financing, at least five business days before the first Closing at which the Obligations are issued.

(f) *Financial requirements at Closing.* Financial requirements can apply to one or more Companies, and are determined as follows:

(1) Owner as operator. Where the owner is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) Working Capital. The Company's Working Capital shall not be less than one dollar. This Working Capital requirement is based on the premise that the Company engages in a service-type activity with only normal vessel inventory. If Working Capital includes other inventory, in addition to such normal Vessel inventory, we may adjust the requirement as appropriate. Also, if we determine that the Company's

Working Capital includes amounts receivable that it reasonably could not expect to collect within one year, we may make adjustments to the Working Capital requirements.

(ii) Long-Term Debt. The Company's Long-Term Debt must not be greater than twice its Equity.

(iii) Equity (net worth). The Company's Equity must be:

(A) The greater of:

(1) 50 percent of its Long-Term Debt; or

(2) 90 percent of its Equity as shown on the last audited balance sheet, dated not earlier than six months before the date of issuance of the Letter Commitment; or

(B) Such other amount as may be specied by us.

(2) Lessee or charterer as operator. Where a lessee or charterer is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) Working Capital. The operator's Working Capital requirement will be the same as that which would have otherwise been imposed on the owner as operator under paragraph (f)(1)(i) of this section and based on the same premise stated in that paragraph.

(ii) Long-Term Debt. The operator's Long-Term Debt will be the same as that which would have otherwise been imposed on the owner as operator under paragraph (f)(1)(ii) of this section.

(iii) Equity (net worth). The operator's equity requirement will be the same as that which would have otherwise been imposed on the owner as operator under paragraph (f)(1)(iii) of this section.

(iv) The owner's Equity shall at least be equal to the difference between the Capitalizable Cost or Depreciated Capitalizable Cost of the Vessel (whichever is applicable) and the total amount of the Guarantees.

(3) Owner as General Shipyard Facility. Where the owner of Shipyard Project is a General Shipyard Facility, minimum requirements at Closing will be the same as those set forth in paragraph (f)(1) of this section for an owner as operator.

(g) *Adjustments to financial requirements at Closing.* If the owner, although not operating a Vessel, assumes any of the operating responsibilities, we may adjust the respective Working Capital and Equity requirements of the owner and operator, otherwise applicable under paragraph (f) of this section, by increasing the requirements of the owner and decreasing those of the operator by the same amount.

(h) *Subordinated debt considered to be Equity.* With our consent, part of the Equity requirements applicable under paragraphs (c) and (f) of this section may be satisfied by debt, fully subordinated as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Title XI Reserve Fund and Financial Agreement (described in § 298.35). Such subordinated debt shall not be secured by any interest in property that is security for Guarantees under Title XI, unless the Obligor and the lender enter into a written agreement, satisfactory to us, providing, among other things, that if any Title XI financing or advance by us to the Obligor shall occur in the future, such security interest of the lender shall become subordinated to any indebtedness to us incurred by the Obligor and to any security interest obtained by us in that property or other property, with respect to the subsequent indebtedness.

(i) *Modified requirements.* We may waive or modify the financial terms or requirements otherwise applicable under this section and §§ 298.35 and 298.42, upon determining that there is adequate security for the Guarantees. We may impose similar financial requirements on any Person providing other security for the Guarantees.

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* We shall not issue a Letter Commitment for guarantees unless we find that the proposed project, regarding the Vessel(s) or Shipyard Project for which you seek Title XI financing or refinancing, will be economically sound. The economic soundness and your ability to repay the Obligations will be the primary basis for our approval of a Letter Commitment. We will consider the value of the collateral for which we will issue the Obligations as only a secondary consideration in determining your ability to repay the Obligations.

(b) *Basic feasibility factors.* In making the economic soundness findings, we shall consider all relevant factors, including, but not limited to:

(1) The need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(2) The market potential for the employment of the Vessel or utilization of the Shipyard Project of a General Shipyard Facility over the life of the guarantee;

(3) Projected revenues and expenses associated with employment of the Vessel or utilization of the Shipyard Project of a General Shipyard Facility;

(4) Any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the Vessel or utilization of the Shipyard Project of a General Shipyard Facility;

(5) For inland waterways, the need for technical improvements including but not limited to increased fuel efficiency, or improved safety; and

(6) Other relevant criteria.

(c) *Project Feasibility.* To demonstrate the economic feasibility of the project over the Guarantee period, you must submit the following information:

(1) *Purpose.* A detailed purpose for the obligations to be guaranteed.

(2) *Necessary exhibits.* Necessary exhibits to support your project feasibility as supplements to the application.

(3) *Relevant market information.* Information regarding the relevant market including a written narrative of the market (or potential market) for the project including full details on the following, as applicable:

(i) Nature and amount of cargo/passengers available for carriage and your projected share (provide also the number of units; that is containers, trailers, etc.);

(ii) Services or routes in which the Vessel(s) will be employed, including an itinerary of ports served, with the arrival and departure times, sea time, port time, hours working or idle in port, off hire days and reserve or contingency time, proposed number of annual sailings and number of annual working days for the Vessel(s) or, with respect to Shipyard Project, how the equipment will be employed;

(iii) Suitability of the Vessel(s) or Shipyard Project for their anticipated use;

(iv) Significant factors influencing your expectations for the future market for the Vessel(s) or Shipyard Project, for example, competition, government regulations, alternative uses, and charter rates; and

(v) Particulars of any charters, contracts of affreightment, transportation agreements, etc. You should supplement the narrative by providing copies of any marketing studies and/or supporting information (for instance, existing or proposed charters, contracts of affreightment, transportation agreements, and letters of intent from prospective customers).

(vi) The potential for purchasing existing equipment of a reasonable

condition and age from another source, including information regarding:

(A) Market assessment concerning the availability and cost of existing equipment that may be an alternative to new construction or the new Shipyard Project;

(B) The cost of modification, reconditioning, or reconstruction of existing equipment to make it suitable for intended use; and

(C) Descriptions of any bids or offers which you had made to purchase existing equipment, especially Vessels which currently are financed with Title XI Obligations including date of offer, Vessels, and amount of offer.

(4) *Revenues.* A detailed statement of the revenues expected to be earned from the project based upon the information in paragraph (c) of this section. Vessel revenue projections shall include shipping/hire rates for current market conditions or market conditions expected to exist at the time of Vessel delivery taking into account seasonal or temporary fluctuations. The revenues shall be based on a realistic estimate of the Vessel(s) or the new Shipyard Project utilization rate and at a breakeven rate for the project. A justification for the utilization rate shall be supplied and should indicate the number of days per year allowed for maintenance, drydocking, inspection, etc.

(5) *Expenses for Vessel financing.* For applications for Vessel financing, a detailed statement of estimated Vessel expenses including the following (where applicable):

(i) Estimated Vessel daily operating expenses, including wages, insurance, maintenance and repair, fuel, etc. and a detailed projection of anticipated costs associated with long term maintenance of the Vessel(s) such as drydocking and major mid-life overhauls, with a time frame for these events over the period of the Guarantee;

(ii) If applicable, a detailed breakdown of those expenses associated with the Vessel(s) voyage, such as port fees, agency fees and canal fees that are assessed as a result of the voyage; and

(iii) A detailed breakdown of annual capital costs and administrative expenses, segregated as to:

(A) Interest on debt;

(B) Principal amortization; and

(C) Salaries and other administrative expenses (indicate basis of allocation).

(6) *Expenses for a Shipyard Project.* For applications for a Shipyard Project, a statement of estimated expenses related to the Shipyard Project, including the following (where applicable):

(i) A detailed breakdown of estimated daily operating expenses for the shipyard, such as wages, including staffing, and segregated as to straight-time, overtime and fringe benefits; utility costs; costs of stores, supplies, and equipment; maintenance and repair cost; insurance costs; and, other expenses (indicate items included); and

(ii) A detailed breakdown of annual capital costs and administrative expenses, segregated as to:

(A) Interest on debt;

(B) Principal amortization; and

(C) Salaries and other administrative expenses (indicate basis of allocation).

(7) *Forecast of Operations.* Utilizing the revenues and expenses provided in paragraphs (c)(4),(5) and (6) of this section, you shall provide a forecast of operating cash flow, as defined in paragraph (d)(4) of this section, for the Title XI project for the first full year of operations and the next four years. The cash flow statements should be footnoted to explain the assumptions used.

(d) *Objective Criteria.* We must make a finding of economic soundness as to each project based on an assessment of the entire project. In order for the project to receive approval, we must determine that a project meets the following criteria:

(1) The projected long-term demand (equal to length of time that you request financing) for the particular Vessel(s) or new Shipyard Project to be financed must exceed the supply of similar vessels or new shipyard project in the applicable markets. We will determine the supply of similar vessels and similar shipyard projects based on:

(i) Existing equipment,

(ii) Similar vessels or new shipyard project under construction, and

(iii) The projected need for new equipment in that particular segment of the maritime industry.

(2) We will base our determination of the project's economic soundness on the following:

(i) Conformity of your projections with our supply and demand analyses;

(ii) Availability of charters, letters of intent, outstanding contractual commitments, contracts of affreightment, transportation agreements or similar agreements or undertakings; and

(iii) Your existing market share compared with the market share necessary to meet projected revenues.

(3) In cases where market conditions are temporarily inadequate for you to service the Obligation indebtedness at the time of Vessel delivery, or completion of the Shipyard Project, we may approve your application only if you have sufficient outside sources of cash flow to service your indebtedness during this temporary period.

(4) With respect to the asset for which Obligations are to be issued, the operating cash flow to Obligation debt service ratio over the term of the Guarantee must be in excess of 1:1. Operating cash flow means revenues less operating and capital expenses including taxes paid but exclusive of interest, accrued taxes, depreciation and amortization for the Title XI asset. Debt service means interest plus principal.

§ 298.15 Investigation fee.

(a) *In general.* Before we issue a Letter Commitment, you shall pay us an investigation fee. The Letter Commitment will state the fee which is based on the formula in paragraph (b) of this section.

(1) The investigation fee covers the cost of the investigation of the project described in the application and the participants in the project, the appraisal of properties offered as security, Vessel inspection during construction, reconstruction, or reconditioning (where applicable) and other administrative expenses.

(2) If, for any reason, we disapprove the application, you shall pay one-half of the investigation fees.

(b) *Base Fee.* (1) The investigation fee shall be one-half (½) of one percent on Obligations to be issued up to and including $10,000,000, plus

(2) One-eighth (⅛) of one percent on all Obligations to be issued in excess of $10,000,000.

(c) *Credit for filing fee.* You will receive credit for the $5,000 filing fee that you paid upon filing the original application (described in § 298.3) towards the investigation fee.

§ 298.16 Substitution of participants.

(a) You may request our permission to substitute participants to a Mortgage and/or Security Agreement in a financing that is receiving assistance authorized by Title XI of the Act.

(b) A non-refundable fee of $3,000 is due, payable at the time of the request. The fee defrays all costs of processing and reviewing a joint application by a mortgagor and/or Obligor and a proposed transferee of a Vessel or Shipyard Project, which is security for Title XI debt, if the proposed transferee is to assume the Mortgage and/or the Security Agreement.

§ 298.17 Evaluation of applications.

(a) In evaluating project applications, we shall also consider whether the application provides for:

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(1) The capability of the Vessel(s) serving as a naval and military auxiliary in time of war or national emergency.

(2) The financing of the Vessel(s) within one year after delivery.

(3) The acquisition of Vessel(s) currently financed under Title XI by assumption of the total obligation(s).

(4) The Guarantees extend for less than the normal term for that class of vessel.

(5) In the case of an Eligible Shipyard, the capability of the shipyard to engage in naval vessel construction in time of war or national emergency.

(6) In the case of Shipyard Project, the Guarantees extend for less than the technological life of the asset.

(b) In determining the amount of equity which you must provide, we will consider, among other things, the following:

(1) Your financial strength;

(2) Adequacy of collateral; and

(3) The term of the Guarantees.

§ 298.18 Financing Shipyard Projects.

(a) *Initial criteria.* We may issue Guarantees to finance a Shipyard Project at a General Shipyard Facility. We may approve such Guarantees after we consider whether the Guarantees will result in shipyard modernization and support increased productivity.

(b) *Detailed statement.* You must provide a detailed statement, with the Guarantee application, which will provide the basis for our consideration.

(c) *Required conditions.* We shall approve your application for loan guarantees under this section if we determine the following:

(1) The term for such Guarantees will not exceed the reasonable economic useful life of the collective assets which comprise this Shipyard Project;

(2) There is sufficient collateral to secure the Guarantee; and

(3) Your application will not prevent us from guaranteeing debt for a Shipyard Project that, in our sole opinion, will serve a more desirable use of appropriated funds. In making this determination, we will consider:

(i) The types of vessels which will be built by the shipyard,

(ii) The productivity increases which will be achieved,

(iii) The geographic location of the shipyard,

(iv) The long-term viability of the shipyard,

(v) The soundness of the financial transaction,

(vi) Any financial impact on other Title XI transactions, and

(vii) The furtherance of the goals of the Shipbuilding Act.

§ 298.19 Financing Eligible Export Vessels.

(a) *Notification to Secretary of Defense.* (1) We will provide prompt notice of our receipt of an application for a loan Guarantee for an Eligible Export Vessel to the Secretary of Defense.

(2) During the 30-day period, beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee if the Secretary of Defense makes an assessment that the Vessel's potential use may cause harm to United States national security interests.

(3) The Secretary of Defense may not disapprove a loan Guarantee under this section solely on the basis of the type of vessel to be constructed with the loan Guarantee. The authority of the Secretary of Defense to disapprove a loan Guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate. We will not approve a loan guarantee disapproved by the Secretary of Defense.

(b) *Vessel eligibility.* We may not approve a Guarantee for an Eligible Export Vessel unless:

(1) We find that the construction, reconstruction, or reconditioning of the Vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency;

(2) The owner of the Vessel agrees with us that the Vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States; and

(3) We determine that the countries in which the shipowner, its charterers, guarantors, or other financial interests supporting the transaction, if any, have their chief executive offices or have located a substantial portion of their assets, present an acceptable financial or legal risk to our collateral interests. Our determination will be based on confidential risk assessments provided by the Inter-Agency Country Risk Assessment System and will take into account any other factors related to the loan guarantee transaction that we deem pertinent.

Subpart C—Guarantees

§ 298.20 Term, redemptions, and interest rate.

(a) *In general.* The maturity date of the Obligations must be satisfactory to us and must not exceed the anticipated physical and economic life of the Vessel or Vessels or Shipyard Project, and may be less than but no more than:

(1) Twenty-five years from the date of delivery from the shipbuilder of a single new Vessel which is to be security for Guarantees;

(2) Twenty-five years from the date of delivery from the shipyard of the last of multiple Vessels which are to be security for the Guarantees but that the amount of the Guarantees will relate to the amount of the depreciated actual cost of the multiple Vessels as of the Closing;

(3) The later of twenty-five years from the date of original delivery of a reconstructed, or reconditioned Vessel which is to be security for the Guarantees, or at the expiration of the remaining useful life of the Vessel, as we determine; or

(4) The technological life of the Shipyard Project.

(b) *Required redemptions.* Where multiple Vessels or multiple Shipyard Project assets are to be used as security for the Guarantees, as set forth in paragraph (a) of this section, we may require payments of principal prior to maturity (redemptions) regarding all related Obligations, as we may deem necessary to maintain adequate security for the Guarantees.

(c) *Interest rate.* We will make a determination as to the reasonableness of the interest rate of each Obligation, taking into account the range of interest rates prevailing in the private market for similar loans and the risks that we assume.

§ 298.21 Limits.

(a) *Actual Cost basis.* We will issue a guarantee on an amount of the Obligation satisfactory to us based on the economic soundness of the transaction. The Obligation amount may be less than but not more than 75 percent or 87½ percent, whichever is applicable, under the provisions of section 1104A(b)(2) or section 1104B(b)(2) of the Act of the Actual Cost of the Vessel or Vessels or Shipyard Project asset(s).

(1) If minimum horsepower of the main engine is a requirement for Guarantees up to 87½ percent of the Actual Cost, the standard for the horsepower will be continuous rated horsepower.

(2) Where we refinance existing debt, the amount of new Obligations we issue for the existing debt may not exceed the lesser of:

(i) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(ii) Seventy-five or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel or Shipyard Project with respect to which the new Obligations are being issued.

(b) *Actual Cost items.* Actual Cost is comprised essentially of those items which would customarily be capitalized as Vessel or Shipyard Project construction costs such as designing, engineering, constructing (including performance bond premiums that we approve), inspecting, outfitting and equipping.

(1) Cost items include those items usually specified in Vessel or Shipyard Project construction contracts, *e.g.*, changes and extras, cost of owner furnished equipment, shoreside spare parts and commitment fees and interest on the Obligations or other borrowings incurred during the construction period (excluding interest paid on subordinated debt considered to be Equity), and less income realized from investment of Escrow Fund deposits during the construction period.

(2) Commissions (which represent a portion of the total shipyard contract price) may be included in the foreign equipment and services amount of the Actual Cost of an export project, provided:

(i) A majority of the work done by the parties receiving the commissions is in the form of design and engineering work, and

(ii) The commissions represent a small amount of the total contract price.

(3) You may include Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act as an item of Actual Cost.

(4) In approving an item of Actual Cost, we will consider all pertinent factors.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

(1) Legal fees or expenses;

(2) Accounting fees or expenses;

(3) Commitment fees or interest other than those specifically allowed;

(4) Fees, commissions or charges for granting or arranging for financing;

(5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing documents relating to the application for Guarantees;

(6) Underwriting or trustee's fees;

(7) Foreign, federal, state or local taxes, user fees, or other governmental charges;

(8) Investigation fee determined in accordance with section 1104(f) of the Act and § 298.15;

(9) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under GAAP;

(10) The cost of the condition survey required by § 298.11(f) and all work necessary to meet the standards set forth in that paragraph;

(11) The cost to the Shipowner of a Vessel which is to be reconstructed, or reconditioned, *e.g.*, cost of acquisition or repair work;

(12) Generally, any amount payable to the shipyard for early delivery of the Vessel;

(13) Generally, any amount payable to the manufacturer of the Shipyard Project for early delivery of the equipment to the General Shipyard Facility;

(14) Predelivery Shipyard Project expenses which may not be properly capitalized by the General Shipyard Facility as costs of the Shipyard Project under GAAP; and

(15) The cost of major foreign components and other foreign components for which there is no waiver and their assembly when comprising any part of the hull and superstructure of a Vessel.

(d) *Substantiation of Actual Cost.* (1) Before we make distribution from the Escrow Fund or Construction Fund (described in §§ 298.33 and 298.34), and prior to our final Actual Cost determination for each Vessel or Shipyard Project, you must submit to us documents substantiating all claimed costs eligible under paragraph (b) of this section or, alternatively, appropriate certification of such costs by an agent who has received our approval.

(2) These documents may include, but need not be limited to, copies of invoices, change orders, subcontracts, and where we require, statements from independent certified or independent licensed public accountants that the costs for which you seek payment or reimbursement were actually paid or are payable for the construction of a Vessel or Shipyard Project.

(3) You must summarize, index and arrange these documents according to cost categories by following the directions contained in our forms.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to our approval. After a review of the base contract price and the escalation clauses, we shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by us. We must subsequently approve the amount of escalation cost you claimed as a component of Actual Cost.

(f) *Monies received in respect of construction.* (1) If you or any Person acting on your behalf, from time to time receives moneys due for construction of a Vessel or Shipyard Project (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, you shall give us written notice of such fact.

(2) As long as we have not paid the Guarantees, you or other recipient shall promptly deposit these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from us as to their disposition.

(3) We will determine the extent to which Actual Cost is to be reduced by these moneys.

(4) In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel or Shipyard Project owner of liquidated damages for late delivery of the Vessel or Shipyard Project .

(5) If we have paid the Guarantees, you or other recipient must promptly pay these moneys, including any liquidated damages, to us for deposit into the Maritime Guaranteed Loans account.

(g) *Depreciated Actual Cost.* After a Vessel or Shipyard Project has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees will be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel or Shipyard Project.

§ 298.22 Amortization of Obligations.

(a) Generally, after delivery or completion of Shipyard Project, and until maturity of the Obligations, provisions of the Trust Indenture or other part of the Documentation require you to make periodic payment of principal and interest on the Obligations.

(b) Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case the amortization shall be in equal payments of principal (level principal), unless we consent to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level payment). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the level principal or level

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payment basis at any time prior to maturity of the Obligations, except where:

(1) You can demonstrate to our satisfaction that there will be adequate funds to discharge the Obligations at maturity;

(2)You establish a fund acceptable to us in which you deposit an equal annual amount necessary to redeem the outstanding Obligations at maturity; or

(3) With regard to Eligible Export Vessels, in accordance with such other terms as we determine to be more favorable and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

§ 298.23 Refinancing.

(a) We may approve guarantees of Obligations to be secured by one or more Vessels or a Shipyard Project issued to refinance existing Title XI debt for either Vessels or for Shipyard Project and existing non-Title XI debt, so long as the existing debt has been previously issued for one of the purposes set forth in sections 1104(a)(1) through (4) of the Act. Section 1104 (a) (1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel or Shipyard Project, the proceeds of such Obligations will be applied to the construction, reconstruction or reconditioning of other Vessels or Shipyard Project or as provided in § 298.24.

(b) We shall require any security lien on the Vessel(s) or Shipyard Project to be discharged immediately before we place a Mortgage or other security interest on any of the above assets. You must satisfy all necessary eligibility requirements as set forth in subpart B of this part, including economic soundness.

§ 298.24 Financing a Vessel more than a year after delivery.

(a) We may approve Guarantees for a Vessel which has been delivered (or redelivered in the case of reconstruction or reconditioning of a Vessel) more than one year prior to the issuance of the Guarantees only if:

(1) The issuance of the Guarantees would otherwise satisfy the requirements of the Act and the regulations in this part, and

(2) The proceeds of the Obligation financing such existing Vessel are used to finance:

(i) The construction, reconstruction, or reconditioning of a different Vessel within one year of that Vessel's delivery or redelivery, as the case may be, or

(ii) Facilities or equipment pertaining to marine operations. Such facilities or equipment must be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the berthing area, excluding over-the-road equipment (other than chassis and containers), permanent or semipermanent structures and real estate, as well as new or less than one year old.

(b) At the Closing of Guarantees covered by this section, you must deposit the proceeds of the Obligation into an Escrow Fund established to pay for the cost unless you demonstrate to our satisfaction that all such costs have been paid.

§ 298.25 Excess interest or other consideration.

We shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for:

(a) The payment to an Obligee of interest, or other compensation for services which have not been performed, in a manner that such compensation or payment is being provided as interest in excess of the rate approved by us; or

(b) Grants of security to an Obligee in addition to the Guarantees.

§ 298.26 Lease payments.

You must obtain our approval of the amount and conditions of lease or charter hire payments if the payment of principal and interest on Obligations would be dependent, in any way, upon the lease or charter hire payments for a Vessel or Shipyard Project.

§ 298.27 Advances.

(a) *In general.* (1) In accordance with section 207 and Title XI of the Act, we have the discretion to make or commit to make an advance or payment of funds to, or on behalf of the owner, or operator or directly to any other person or entity for items, including, but not limited to:

(i) Principal,

(ii) Interest,

(iii) Insurance, and

(iv) Other vessel-related expenses or fees.

(2) We will make advances or payments only to protect, preserve or improve the collateral held as our security for Title XI debt.

(3) When requesting an advance, you must demonstrate that:

(i) Your problems are short term (less than two years) by using market and cash flow analysis and other projections.

(ii) An advance(s), would assist you over temporary difficulties; and

(iii) There is adequate collateral for the advance.

(b) *Filing requirements.* (1) You shall apply for an advance or other payment as early as is reasonably possible.

(2) *Principal and interest payments.* We must receive a request for an advance for principal and interest payments at least 30 days before the initial payment date.

(3) *Insurance payments.* We must receive a request for an advance of insurance payments at least 30 days before a renewal or termination date.

(4) *Extenuating circumstances.* We may consider requests for assistance with less notice, upon written documentation of extenuating circumstances.

(5) *Supporting data.* Any requests for assistance must be accompanied by supporting data regarding:

(i) Need for the advance,

(ii) Financial assistance you sought from other sources,

(iii) The measures that you are taking and have taken to alleviate the situation,

(iv) Financial projections,

(v) Proposed term of the repayment,

(vi) Current and projected market conditions,

(vii) Information on other available collateral,

(viii) Liens and other creditor information, and

(ix) Any other information which we may request.

Subpart D—Documentation

§ 298.30 Nature and content of Obligations.

(a) *Single page.* An Obligation, in the form of a note, bond of any type, or other debt instrument, when engraved, printed or lithographed on a single sheet of paper must include on its face the:

(1) Name of the Obligor,

(2) Principal sum,

(3) Rate of interest,

(4) Date of maturity, and

(5) Guarantee of the United States, authenticated by the Indenture Trustee, if any.

(b) *Several pages.* If the Obligation is typewritten, printed or reproduced by other means on several pages of paper, the Guarantee of the United States and the authentication certificate of the Indenture Trustee, if any, may appear at the end of the typewritten Obligation.

(c) *Rights and responsibilities.* The instrument which is evidence of indebtedness shall also contain all information necessary to apprise the Obligees of their rights and responsibilities including, but not limited to:

(1) Time and manner for payment of principal and interest,

(2) Redemptions,
(3) Default procedure, and
(4) Notification (in case of registered Obligations) of sale or other transfer of the instruments.

§ 298.31 Mortgage.

(a) *In general.* Under normal circumstances, a Guarantee shall not be endorsed on any Obligation until we receive satisfactory evidence that we hold a Mortgage in one or more Vessels or a Mortgage or other security interest in the Shipyard Project. During construction of a new Vessel or any Shipyard Project, a security interest may be perfected by a filing under the Uniform Commercial Code.

(b) *Ensuring validity of security interest.* In order to ensure that our Mortgages or other security interests are valid and enforceable, we shall require that the Obligor obtain legal opinions, in form and substance satisfactory to us, from independent, outside legal counsel satisfactory to us, including foreign independent outside legal Counsel for Eligible Export Vessels, which opinions shall state, among other things, that the Mortgage or other security interest(s) are valid and enforceable:

(1) In the country in which the Vessel is documented (or, in the case of a security interest, in jurisdictions acceptable to us);

(2) In the United States; and

(3) For vessels operating on specified trade routes, in the country or countries involved in this service, unless we determine that those destinations are too numerous, in which case, we will instead require an opinion of foreign validity and enforceability in the Vessel's primary port of operation.

(c) *Alternative forms of security.* In the case where a Mortgage or security interest on the financed assets may not be available or enforceable, we will require alternative forms of security.

(d) *Mortgage in our favor.* The Security Agreement shall provide that upon delivery of a new Vessel or upon final completion of the Shipyard Project, or at the time Guarantees are issued with respect to an existing Vessel or the Shipyard Project, a Mortgage on the Vessel and a Mortgage or other security interest on the Shipyard Project will be executed in our favor, unless we determine that a Mortgage or a security interest is not available or enforceable in accordance with paragraph (c) of this section.

(e) *Filing.* You must file the Mortgage with the United States Coast Guard's National Vessel Documentation Center. You must file the Mortgage for an Eligible Export Vessel with the proper foreign authorities. For assets of a General Shipyard Facility, you must file a Mortgage and security interest with the proper authorities within the appropriate state for recording. After you have recorded the Mortgage, you must deliver to us the Mortgage and evidence of the filing of the security interest.

(f) *Mortgage secured by multiple Vessels.* (1) When two or more Vessels are to be security for Guarantees, the Security Agreement may provide that one Mortgage relating to all the Vessels (Fleet Mortgage) shall be executed, perfected and delivered to us by the Obligor.

(2) If the Fleet Mortgage relates to undelivered Vessels, the Fleet Mortgage will be executed upon delivery of the first vessel. At the time of each subsequent Vessel delivery, the Obligor shall execute a supplement to the Fleet Mortgage which makes that Vessel subject to our Mortgage lien.

(3) The Fleet Mortgage shall provide that payment by the Obligor of the entire amount of Obligations covered or to be covered by Guarantees shall be required to discharge the Fleet Mortgage, regardless of the amount of the Secretary's Note or Notes issued and outstanding at the time of execution and delivery of the Fleet Mortgage or the number of Vessels covered by the Fleet Mortgage.

(4) The discharge date of the Fleet Mortgage shall be the maturity date of the Secretary's Note. We may require, as authorized by section 1104(c)(2) of the Act, such payments of principal prior to maturity (redemptions), regarding all related Obligations, as deemed necessary to maintain adequate security for the Guarantees.

(5) Each Fleet Mortgage shall provide that in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage, indebtedness represented by the Obligations shall be paid, unless we otherwise determine that there remains adequate security for the Guarantees, and the Vessel shall be discharged from the Mortgage lien.

(g) Adequacy of collateral. (1) Under normal circumstances, a First Preferred Mortgage on the Vessel(s) or Shipyard Project will be adequate security for the Guarantees.

(2) If, however, we determine that the Mortgage on the Vessel(s) or Shipyard Project is not sufficient to provide adequate security, as a condition to approving the Letter Commitment or processing the application, we may require additional collateral, such as a mortgage(s) on other vessel(s) or Shipyard Project or on other assets, special escrow funds, pledges of stock, charters, contracts, notes, letters of credit, accounts receivable assignments, and guarantees.

§ 298.32 Required provisions in documentation.

(a) Performance under shipyard and related contracts. Generally, shipyard and related contracts must contain provisions for:

(1) Furnishing by the shipyard or contractor of the Shipyard Project of satisfactory insurance and a satisfactory performance bond where Obligations are issued during the construction period, except that if the shipyard or contractor of the Shipyard Project demonstrates to our satisfaction that it has sufficient financial resources and operational capacity to complete the project, posting of a bond will not be required;

(2) Allowing access to the Vessel or Shipyard Project, as well as all related work projects being performed by the contractor and subcontractors, to our representative, at all reasonable times, to inspect performance of the work and to observe trials and other tests for the purpose of determining that the Vessel or Shipyard Project is being constructed, reconstructed, or reconditioned in accordance with contract plans and specifications approved by us;

(3) Submitting to us, upon request, one set of shipyard plans, in form and substance satisfactory to us, for the Vessel or Shipyard Project as built;

(4) Making periodic payments for the work in accordance with an agreed schedule, submitted by the shipyard or contractor, as appropriate, in a form acceptable to us, based on percentage of completion, after such percentage and satisfactory performance are certified by the Obligor, shipyard or contractor, as appropriate, and our representative as to each payment;

(5) Prohibiting the use of proceeds from the sale of Obligations for the payment of work performed outside the shipyard, unless we consent in writing to such use; and

(6) Requiring that all components of the hull and superstructure of a U.S.-documented Vessel and an Eligible Export Vessel shall be assembled in the United States.

(7) If Obligation will not be issued during the construction period of the Vessel and Shipyard Project, requiring that shipyard-related contracts shall generally include the provisions specified in paragraphs (a)(2), (a)(3) and (a)(6) of this section.

(b) *Assignments and general covenants from Obligor to us.* The Obligor shall assign rights and shall covenant with us, as we require,

including, but not limited to, the following:

(1) Assignment of all or part of the right, title and interest under the construction contract and related contracts, except those rights expressly reserved therein by the Obligor relating to such things as patent infringement and liquidated damages;

(2) Assignment of rights to receive all moneys which from time to time become due regarding Vessel or Shipyard Project construction;

(3) Assignment, where applicable, of all or a part of the bareboat charter, time charter, contracts of affreightment or other agreements relating to the use of the Vessel or Shipyard Project and all hire payable to the Obligor, and delivery to us of required consents by appropriate parties to any such assignments;

(4) Covenants relating to the filing of satisfactory evidence of continuing United States citizenship, in accordance with 46 CFR part 355, with the exception of Eligible Export Vessels and shipyards with Shipyard Projects; warranty of Vessel or Shipyard Project title free from all liens other than those specifically excepted; maintaining United States documentation of the Vessel or documentation under the laws of a country other than the United States with regard to an Eligible Export Vessel; compliance with the provisions of 46 U.S.C. 31301–31343, except that Eligible Export Vessels shall comply with the definition of a "preferred mortgage" in 46 U.S.C. 31301(6)(B), requiring, among other things, that the Mortgage shall comply with the mortgage laws of the foreign country where the Vessel is documented and shall have been registered under those laws in a public register; Notice of Mortgage, payment of all taxes (except if being contested in good faith); annual financial statements audited by independent certified or independent licensed public accountant.

(5) Covenants to keep records of construction costs paid by or for the Obligor's account and to furnish us with a detailed statement of those costs, distinguishing between:

(i) Items paid or obligated to be paid, attested to by independent certified public accountants unless otherwise verified by us; and

(ii) Costs of American and foreign materials (including services) in the hull and superstructure.

(6) Covenants to maintain Marine and War Risk Hull and Machinery insurance on the Vessel or Eligible Export Vessel in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the Vessel or Eligible Export Vessel, whichever is greater; Marine and War Risk Protection and Indemnity insurance; Interim War Risk Binders for Hull and Machinery, and Protection and Indemnity coverages underwritten by us as authorized by Title XII of the Act; and such additional insurance as may be required by us. All insurance required to be maintained shall be placed with the United States Government and American and/or British (and/or other foreign, if permitted by us by prior written notice) insurance companies, underwriters' associations or underwriting funds approved by us through marine insurance brokers and/or underwriting agents approved by us. All insurance required to be maintained shall be placed under the latest (at the time of issue) forms of American Institute of Marine Underwriters policies approved by us and/or under such other forms of policies which we may approve in writing and/or policies issued by or for us insuring the Vessel or Eligible Export Vessel against the usual risks provided for under such forms, including such amounts of increase value or other forms of "that total loss only" insurance permitted by the Hull and Machinery insurance policies;

(7) Collateralize other debt due to us under other Title XI financings;

(8) Covenants to maintain shipyard insurance on the Shipyard Project in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the Shipyard Project, whichever is greater, and such additional insurance as may be required by us; and

(9) Covenants to maintain additional types of insurance as may be required by us with respect to Eligible Export Vessels, *i.e.* political risk insurance, to cover such items as the political, financial, and/or economic risk in a foreign country.

§ 298.33 Escrow fund.

(a) *Escrow Fund Deposits.* At the time of the sale of the Obligations, the Obligor shall deposit with us in an escrow fund (the "Escrow Fund") all of the proceeds of that sale unless the Obligor is entitled to withdraw funds under paragraph (b) of this section. The Obligor must also deposit into the Escrow Fund on the Closing date an amount equal to six months interest at the rate borne by the Obligations, unless we find the existence of adequate consideration or accept other consideration in lieu of the interest deposit.

(b) *Escrow Fund Withdrawals.* You, as Obligor, may make a written request for us to disburse funds from the Escrow Fund. Within a reasonable time thereafter, we shall disburse directly to the Indenture Trustee, any Paying Agent for such Obligations, or any other Person entitled to payment any amount which you are obligated to pay or have paid, on account of the items and amounts or any other item approved by us, provided that we are satisfied with the accuracy and completeness of the information contained in the following submissions:

(1) A responsible officer of the Obligor shall deliver an officer's certificate, in form and substance satisfactory to us, stating that:

(i) There is no default under the construction contract or the Security Agreement;

(ii) There have been no occurrences which have or would adversely and materially affect the condition of the Vessel, its hull or any of its component parts, or the Shipyard Project;

(iii) The amounts of the request are in accordance with the construction contract including the approved disbursement schedule and each item in these amounts is properly included in our approved estimate of Actual Cost;

(iv) With respect to the request, once the contractor is paid there will be no liens or encumbrances on the applicable Vessel, its hull or component parts, or the Shipyard Project for which the withdrawal is being requested except for those already approved by us; and

(v) If the Vessel or Shipyard Project has already been delivered or completed, it is in class, if required, and is being maintained in the highest and best condition. The Obligor must also attach an officer's certificate of the shipyard and other general contractors, in form and substance satisfactory to us, stating that there are no liens or encumbrances as provided in paragraph (b)(1)(iv) of this section and attaching the invoices and receipts supporting each proposed withdrawal to our satisfaction.

(2) No payment or reimbursement under this section shall be made:

(i) To any Person until the Construction Fund, if any, has been exhausted,

(ii) To any Person until the total amount paid by or for the account of the Obligor from sources other than the proceeds of such Obligations equals at least 12½ percent or 25 percent as applicable, of the Actual Cost of the Vessel or Shipyard Project is made;

(iii) To the Obligor which would have the effect of reducing the total amounts paid by the Obligor pursuant to paragraph (b)(2)(ii) of this section; or

(iv) To any Person on account of items, amounts or increases

representing changes and extras or owner furnished equipment, if any, unless such items, amounts and increases shall have been previously approved by us; provided, however, that when the amount guaranteed by us equals 75 percent or less of the Actual Cost and the Obligor demonstrates to our satisfaction the ability to pay in the remaining 25 percent, or more, then after the initial 12½ percent of Actual Cost has been paid by or on behalf of the Obligor for such Vessel or completed Shipyard Project and up to 37½ percent of Actual Cost has been withdrawn from the Escrow Fund for such Vessel or Shipyard Project, the Obligor must pay the remaining Obligor's equity of at least 12½ percent (as determined by us) before additional monies can be withdrawn from the Escrow Fund relating to such Vessel or Shipyard Project.

(3) We will not be required to make any disbursement except out of the cash available in the Escrow Fund. If any sale or payment on maturity results in a loss in the principal amount of the Escrow Fund invested in securities so sold or matured, the requested disbursement from the Escrow Fund shall be reduced by an amount equal to such loss, and the Obligor must pay to any Person entitled thereto, the balance of the requested disbursement from the Obligor's funds other than the proceeds of such Obligations.

(4) If we assume the Obligor's rights and duties under the Obligations or we pay the Guarantees, all amounts in the Escrow Fund (including realized income which has not yet been paid to the Obligor), shall be paid to us and be credited against any amounts due or to become due to us under the Security Agreement and the Secretary's Note.

(5) Other rights and duties with respect to withdrawals from the Escrow Fund shall be set out in the closing documentation in form and substance satisfactory to us.

(c) *Investment and liquidation of the Escrow Fund.* We may invest the Escrow Fund in obligations of the United States. We will deposit amounts in the Escrow Fund into an account with the U.S. Treasury Department and upon agreement with the Obligor, shall deliver to the U.S. Treasury Department instructions for the investment, reinvestment and liquidation of the Escrow Fund. We will have no liability to the Obligor for acting in accordance with such instructions.

(d) *Income on the Escrow Fund.* Unless there is an existing default, any income realized on the Escrow Fund shall be paid to the Obligor upon our receipt of such income.

(e) *Termination date of the Escrow Fund.* The Escrow Fund shall terminate 90 days after the delivery date of the last Vessel or Shipyard Project covered by the Security Agreement (the "Termination Date"). In the event that on such date the payment of the full amount of the aggregate Actual Cost of all of the Vessels or Shipyard Project has not been made or the amounts with respect to such Actual Cost are not then due and payable, then we and the Obligor by written agreement shall extend the Termination Date for such period as we and the Obligor shall determine is sufficient to allow for such contingencies. Any amounts remaining in the Escrow Fund on the Termination Date which are in excess of 87½ percent or 75 percent of Actual Cost, as the case may be, shall be applied to retire a pro rata portion of the Obligations.

§ 298.34 Construction fund.

(a) *Circumstances requiring deposits.* (1) When the Security Agreement provides for the establishment of an Escrow Fund, the Obligor shall also make Construction Fund deposits when the Obligor:

(i) Submits a claim to the agency that it has previously paid for items of Actual Cost and

(ii) Is seeking reimbursement at the Closing.

(2) The Obligor shall make the Construction Fund deposits as follows:

(i) At the time of the sale of the Obligations, the Obligor shall deposit with the Depository cash equal to the principal amount of the Obligations issued at such time less the sum of the aggregate principal amount then required to be in the Escrow Fund, and

(ii) The amount in excess of 12½ or 25 percent of Actual Cost or Depreciated Actual Cost, as applicable (whichever is payable under § 298.33(b) which we determine has been paid by or for the account of the Obligor.

(b) *Security interest and control.* We must have a security interest in and control over the Construction Fund and its proceeds.

(c) *Balance of the proceeds.* The Obligor will retain the balance of the proceeds, if any, from the sale of the Obligations, after depositing the amounts required to be deposited in the Escrow Fund and/or the Construction Fund.

(d) *Withdrawals and redeposits.* We shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund under the same procedures and conditions as from the Escrow Fund in § 298.33(b), except the request for withdrawal will not be subject to § 298.33(b)(2)(i) and (e). The administration of the Construction Fund shall also be subject to the terms and conditions of § 298.33.

§ 298.35 Title XI Reserve Fund and Financial Agreement.

(a) *Purpose.* In order to provide us with further security and to ensure payment of the interest and principal due on the Obligations, we will require the Company to enter into a Title XI Reserve Fund and Financial Agreement (Agreement) at the first Closing at which the Company issues Obligations. We may waive or modify provisions of the Agreement based on our evaluation of the aggregate security for the Guarantees.

(b) *Financial covenants.* There will be two sets of covenants. One set of covenants will be imposed regardless of the Company's financial condition (primary covenants). The other set of covenants will be imposed only if the Company does not meet specific financial conditions (supplemental covenants). The primary and supplemental covenants are to be set forth in the Agreement. Covenants shall be imposed on the Company as follows:

(1) *Primary covenants.* So long as Guarantees are in effect the Company shall not, without our prior written consent:

(i) Make any distribution of earnings, except as may be permitted as follows:

(A) From retained earnings in an amount specified in paragraph (b)(1)(i)(C) of this section, provided that, in the fiscal year in which the distribution of earnings is made there is no operating loss to the date of such payment of such distribution of earnings, and there was no operating loss in the immediately preceding three fiscal years, or there was a one-year operating loss during the immediately preceding three fiscal years, but such loss was not in the immediately preceding fiscal year, and there was positive net income for the three year period;

(B) If distributions of earnings may not be made under paragraph (b)(1)(i)(A) of this section, a distribution can be made in an amount equal to the total operating net income for the immediately preceding three fiscal year period, provided that:

(*1*) There were no two successive years of operating losses;

(*2*) There is no operating loss to the date of such distribution in the fiscal year in which such distribution is made; and

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(3) The distribution of earnings made would not exceed an amount specified in paragraph (b)(1)(i)(C) of this section;

(C) Distributions of earnings may be made from earnings of prior years in an aggregate amount equal to 40 percent of the Company's total net income after tax for each of the prior years, less any distributions that were made in such years; or the aggregate of the Company's total net income after tax for such prior years, provided that, after making such distribution, the Company's Long-Term Debt does not exceed its Net Worth. In computing net income for purposes of this paragraph (b)(1)(i)(C), extraordinary gains, such as gains from the sale of assets, will be excluded;

(ii) Enter into any service, management or operating agreement for the operation of the Vessel or the Shipyard Project (excluding husbanding type agreements), or appoint or designate a managing or operating agent for the operation of the Vessel or the Shipyard Project (excluding husbanding agents) unless approved by us;

(iii) Sell, mortgage, transfer, or demise charter the Vessel or the Shipyard Project or any assets to any non-Related Party except as permitted in paragraph (b)(1)(vii) of this section or sell, mortgage, transfer, or demise charter the Vessel or any assets to a Related Party, unless such transaction is at a fair market value as determined by an independent appraiser acceptable to us, and is a total cash transaction;

(iv) Enter into any agreement for both sale and leaseback of the same assets so sold unless the proceeds from such sale are at least equal to the fair market value of the property sold;

(v) Guarantee, or otherwise become liable for the obligations of any other Person, except with respect to any undertakings as to the fees and expenses of the Indenture Trustee, except endorsement for deposit of checks and other negotiable instruments acquired in the ordinary course of business and except as otherwise permitted in this section;

(vi) Directly or indirectly embark on any new enterprise or business activity not directly connected with the business of shipping or other activity in which the Company is actively engaged;

(vii) Enter into any merger or consolidation or convey, sell, demise charter, or otherwise transfer, or dispose of any portion of its properties or assets (any and all of which acts are encompassed within the words "sale" or "sold" as used in this section), provided that, the Company will not be deemed to have sold such properties or assets if the net book value of the aggregate of all the assets sold by the Company during any period of 12 consecutive calendar months does not exceed ten percent of the total net book value of all of the Company's assets; the Company retains the proceeds of the sale of assets for use in accordance with the Company's regular business activities; and the sale is not otherwise prohibited by paragraph (b)(1)(iii) of this section. The Company may not consummate such sale without our prior written consent if the Company has not, prior to the time of such sale, submitted to us, as required, its most recently audited financial statements referred to in § 298.42(a) and any attempt to consummate a sale absent such approval will be null and void *ab initio*.

(2) *Supplemental Covenants which may become applicable.* Unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, the Company's Working Capital is equal to at least one dollar, the Company's Long-Term Debt does not exceed two times the Company's Net Worth and the Company's Net Worth is at least the amount specified by us, the Company shall not, without our prior written consent:

(i) Withdraw any capital;

(ii) Redeem any share capital or convert any of the same into debt;

(iii) Pay any dividend (except dividends payable in capital stock of the Company);

(iv) Make any loan or advance (except advances to cover current expenses of the Company), either directly or indirectly, to any stockholder, director, officer, or employee of the Company, or to any other Related Party;

(v) Make any investments in the securities of any Related Party;

(vi) Prepay in whole or in part any indebtedness to any stockholder, director, officer, or employee of the Company, or to any Related Party, which has a stated maturity of more than one year from such date;

(vii) Increase any direct employee compensation (as defined in this paragraph) paid to any employee in excess of $100,000 per annum; nor increase any direct employee compensation which is already in excess of $100,000 per annum; nor initially employ or re-employ any person at a direct employee compensation rate in excess of $100,000 per annum; provided, however, that beginning with January 1, 2000 the $100,000 limit may be increased annually based on the previous years' closing Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. For the purpose of this paragraph, the term "direct employee compensation" is the total amount of any wage, salary, bonus commission, or other form of direct payment to any employee from all companies with guarantees under the Act as reported to the Internal Revenue Service for any fiscal year.

(viii) Acquire any fixed assets other than those required for the maintenance of the Company's existing assets, including normal maintenance and operation of any vessel or vessels owned or chartered by the Company;

(ix) Either enter into or become liable (directly or indirectly) under charters and leases (having a term of six months or more) for the payment of charter hire and rent on all such charters and leases which have annual payments aggregating in excess of an amount specified by us;

(x) Pay any indebtedness subordinated to the Obligations or to any other Title XI obligations;

(xi) Create, assume, incur, or in any manner become liable for any indebtedness, except current liabilities, or short term loans, incurred or assumed in the ordinary course of business as such business presently exists;

(xii) Make any investment whether by acquisition of stock or indebtedness, or by loan, advance, transfer of property, capital contribution, guarantee of indebtedness or otherwise, in any Person, other than obligations of the United States, bank deposits or investments in securities of the character permitted for monies in the Title XI Reserve Fund; and,

(xiii) Create, assume, permit or suffer to exist or continue any mortgage, lien, charge or encumbrance upon, or pledge of, or subject to the prior payment of any indebtedness, any of its property or assets, real or personal, tangible or intangible, whether now owned or thereafter acquired, or own or acquire, or agree to acquire, title to any property of any kind subject to or upon a chattel mortgage or conditional sales agreement or other title retention agreement, except loans, mortgages and indebtedness guaranteed by us under Title XI of the Act or related to the construction of a vessel approved for Title XI by us, and liens incurred in the ordinary course of business as such business presently exists.

(c) *Title XI Reserve Fund Net Income.* The Agreement shall provide that within 105 days after the end of its accounting year, the Company will compute its net income attributable to the operation of the Vessel(s) that were constructed, reconstructed, reconditioned or refinanced with Title XI financing assistance (Title XI Reserve Fund Net Income). The computation utilizes a ratio expressed as a

percentage, and applies this percentage to the Company's total net income after taxes. The numerator of the ratio is be the total original capitalized cost of all Company Vessels (whether leased or owned) which were constructed, reconstructed, reconditioned or refinanced with the assistance of Guarantees. The denominator shall be the total original capitalized cost of all the Company's fixed assets. In the case of Shipyard Project, the Agreement shall provide that within 105 days after the end of its accounting year, the Company shall submit its audited financial statements showing its net cash flow in a manner acceptable to us, in lieu of any other computation of Reserve Fund Net Income specified in this section for Vessels. The net income after taxes, computed in accordance with GAAP, will be adjusted as follows:

(1) The depreciation expense applicable to the accounting year shall be added back.

(2) There shall be subtracted:

(i) An amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Company (other than from the Title XI Reserve Fund) during the year; and

(ii) The principal amount of Obligations retired or paid (as defined in the Security Agreement), prepaid or redeemed, in excess of the required redemptions or payments which may be used by the Company as a credit against future required redemptions or other required payments with respect to the Obligations.

(d) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the financial requirements set forth in paragraph (b)(2) of this section, the Company shall make one or more deposits to a special joint depository account with us (the Title XI Reserve Fund) to be established pursuant to an agreement in writing (Depository Agreement) at the time the first deposit is required to be made. The amount of deposit as to any year, or period less than a full year, where applicable, will be determined as follows:

(1) Fifty percent of the Title XI Reserve Fund Net Income, less an amount equal to 10% of the Company's total original equity investment in the Vessel or Vessels, (if the Company is the owner of the assets), will be deposited into the Title XI Reserve Fund.

(2) In the case of Shipyard Project, the shipyard shall make a deposit at two percent of its net cash flow, as defined by GAAP, and as shown on its audited financial statements.

(3) Any additional amounts that may be required pursuant to the Security Agreement or any other agreement in the documentation to which the Company is a party.

(4) Any additional amounts that may be required, pursuant to provisions of the Security Agreement or any other agreement in the documentation to which the Company is a party.

(5) Irrespective of the Company's deposit requirement, as stated in paragraphs (d) (1) through (4) of this section, the Company will not be required to make any deposits into the Title XI Reserve Fund if any of the following events will have occurred:

(i) The Company will have discharged the Obligations and related Secretary's Note and will have paid other sums secured under the Security Agreement and Preferred Mortgage;

(ii) All Guarantees with respect to outstanding Obligations will have terminated pursuant to the provisions of the Security Agreements, other than by reason of payment of the Guarantees; or

(iii) The amount in the Title XI Reserve Fund, (including any securities at market value), is equal to, or in excess of 50 percent of the principal amount of outstanding Obligations.

(e) *Fund in lieu of Title XI Reserve Fund.* If the Company has established a Capital Construction Fund (CCF), pursuant to section 607 of the Act, whether interim or permanent, at any time when a deposit would otherwise be required to be made into the Title XI Reserve Fund, and the Company elects to make such deposits to the CCF, the Company must enter into an agreement, satisfactory to us, providing that all such deposits of assets therein will be security (CCF Security Amount) to the United States in lieu of the Title XI Reserve Fund. The deposit requirements of the Title XI Reserve Fund and Financial Agreement will be deemed satisfied by deposits of equal amounts in the CCF, and withdrawal of the CCF Security Amount will be subject to our prior written consent. If, for any reason, the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount will be deposited or redeposited in the Title XI Reserve Fund.

§ 298.36 Guarantee Fee.

(a) *Rates in general.* (1) For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel or Shipyard Project, we shall charge a Guarantee Fee set at a rate of not less than ¼ of 1 percent and not more than ½ of 1 percent of the excess of the average principal amount of the Obligations estimated to be outstanding during the annual periods covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund during said annual period (Average Principal Amount of Obligations Outstanding).

(2) For annual periods beginning with the delivery date of a Vessel or Shipyard Project, the Guarantee Fee shall be set at an annual rate of not less than ½ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual periods covered by the Guarantee Fee. You will be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* (1) The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long-Term Debt (Variable Rate) of the Person who we consider to be the primary source of credit in the transaction (Credit Source), for example,

(i) The long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations),

(ii) The guarantor of the Obligations,

(iii) The Obligor, or

(iv) The bareboat charterer.

(2) Where the Variable Rate is used, we may make such adjustments to the computation of Equity and Long-Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source.

(3) We shall base our determination of Equity and Long-Term Debt on information contained in forms or statements on file with us prior to the date on which the Guarantee Fee is to be paid.

(4) With our consent, you may include in Equity and exclude from Long-Term Debt, any subordinated indebtedness representing loans from any credit source.

(5) We may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to Vessel or Shipyard Project.* For annual periods beginning prior to the delivery date of a Vessel or Shipyard Project being constructed, reconstructed, or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long-Term Debt, the Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the

annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long-Term Debt, but less than the Long-Term Debt, the Guarantee Fee rate shall be ⅜ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long-Term Debt, the Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(d) *Variable Rate after Vessel or Shipyard Project delivery or completion.* For annual periods beginning on or after the Vessel or Shipyard Project delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long-Term Debt, the Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long-Term Debt but less than 60 percent of the Long-Term Debt, the Guarantee Fee rate shall be ¾ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is at least 60 percent of the Long-Term Debt, but less than the Long-Term Debt, the Guarantee Fee rate shall be ⅝ of 1 percent of the Average Principal Amount of Obligations outstanding during the annual period covered by the Guarantee Fee.

(4) If the Equity is equal to or exceeds the Long-Term Debt, the Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations outstanding during the annual period covered by the Guarantee Fee.

(e) *Payment of Guarantee Fee.* (1) The Guarantee Fee covering the full period of the stated maturity of the Obligations commencing with the date of the Security Agreement shall be paid to us concurrently with the execution and delivery of said Agreement. The project's entire Guarantee Fee payment shall be made by you to us in an amount equal to the sum of the present value of the separate products obtained by applying the pertinent pre or post delivery Guarantee Fee rate or rates to the projected amount of the Average Principal Amount of Obligations Outstanding for each year of the stated maturity of the Obligations. In calculating the present value used in determining the amount of the Guarantee Fee to be paid, we shall use a discount rate based on information contained in the President's most recently submitted budget.

(2) The Guarantee Fee may be included in Actual Cost, is eligible to be financed, and is non-refundable.

(f) *Proration of Guarantee Fee.* The Guarantee Fee shall be prorated where a Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) Undelivered Vessel. If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period in which the delivery occurs.

(2) Multiple Vessels. If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations will be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

§ 298.37 Examination and audit.

(a)(1) We shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has an agreement with respect to control of, or a financial interest in, a Vessel or Shipyard Project, as well as records of a Related Party and domestic agents connected with such Persons, and shall have full, free and complete access to these items at all reasonable times.

(2) We shall have the right to full, free and complete access, at all reasonable times, to each Vessel or Shipyard Project for which Guarantees are in force.

(3) When a Vessel is in port or undergoing repairs, we may make photostatic or other copies of any books, records and other relevant documents or papers being examined or audited.

(b) The Person in control of the premises where we conduct the examination or audit must furnish, without charge, adequate office space and other facilities that we reasonably require in performing the examination, audit or inspection.

§ 298.38 Partnership agreements and limited liability company agreements.

Partnership and limited liability company agreements must be in form and substance satisfactory to us prior to any Guarantee Closing, especially relating, but not limited to:

(a) Duration of the entity;

(b) Adequate partnership or limited liability company funding requirements and mechanisms;

(c) Dissolution of the entity and withdrawal of a general partner or member;

(d) The termination, amendment, or other modification of the entity without our prior written consent; and

(e) Distribution of funds or ownership interest.

§ 298.39 Exemptions.

We may exempt an applicant from any requirement of this part, unless required by statute or other regulations, in exceptional cases, on written findings that:

(a) The case materially involves factors not considered in the promulgation of this part;

(b)(1) A national emergency makes it necessary to approve the exemption, or

(2) The exemption will substantially relieve the financial liability of the United States;

(c) The exemption will not substantially impact effective regulation of the Title XI program, consistent with the objectives of this part;

(d) The exemption will not be unjustly discriminatory; and

(e) For Eligible Export Vessels, such exemption would assist in creating financing terms that would be compatible with export credit terms for the sale of vessels built in shipyards other than those in the United States.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

§ 298.40 Defaults.

(a) *In General.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Principal and interest Payment Default.* Unless we have assumed the Obligor's rights and duties under the Obligation and agreements and have made any payments in default under terms in the Obligation or related agreements, the following procedures regarding principal and interest payment default shall apply:

(1) No demand shall be made for payment under the Guarantees unless

the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days afterward.

(3) After demand for payment is made by or on behalf of the Obligees, we shall make payment under the Guarantees, except if we determine that a Payment Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement which is other than a Payment Default (Security Default), section 1105(b) of the Act allows us, in our sole discretion, to declare such default a Security Default, and we may notify the Obligee or agent of the Obligee of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days after the date of such notification.

(d) *Payment of Guarantees.* If we receive notice of demand for payment of the Guarantees, we shall, no later than 30 days after the date of such demand (provided that we shall not have, upon such terms as may be provided in the Obligations or related agreements, prior to that demand, assumed the Obligor's rights and duties under the Obligation and agreements and shall have made any payments in default), make payment to the Obligees, Indenture Trustee or any other agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

§ 298.41 Remedies after default.

(a) *In general.* The Security Agreement or other parts of the Documentation shall include provisions governing remedies after a default, which relate to our rights and duties, the rights and duties of the Obligor, and other appropriate Persons.

(b) *Action by the Secretary.* (1) We may take the Vessel or Shipyard Project and hold, lease, charter, operate or use the Vessel or Shipyard Project, accounting only for the net profits to the Obligor after a default has occurred and is continuing and before making payment required under the Guarantees.

(2) After making payment required under the Guarantees, we may initiate or otherwise participate in legal proceedings of every type, or take any other action considered appropriate, to protect rights and interests granted to us under:

(i) Sections 1105(c), 1105(e) and 1108(b) of the Act,

(ii) The Security Agreement,

(iii) Other applicable provisions of law, and

(iv) The Documentation.

(c) *Security proceeds to Secretary.* Our interest in proceeds realized from the disposition of or collection regarding the security granted to us in consideration for the Guarantees (except all proceeds from the sale, requisition, charter or other disposition of property purchased by us at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in us), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) All moneys due and unpaid and secured by the Mortgage or Security Agreement;

(2) All advances, including interest thereon, by us, under the Security Agreement and all our reasonable charges and expenses;

(3) The accrued and unpaid interest on the Secretary's Note;

(4) The accrued and unpaid balance of the principal of the Secretary's Note; and

(5) To the extent of any collaterization by the Obligor of other debt due to us from the Obligor under other Title XI financings, such other Title XI debt.

(d) *Security proceeds to Obligor.* You shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of the amounts described in paragraphs (c)(1) through (5) of this section.

§ 298.42 Reporting requirements—financial statements.

(a) *In general.* The financial statements of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants licensed to practice by the regulatory authority of a State or other political subdivision of the United States or, licensed public accountants licensed to practice by the regulatory authority or other political subdivision of the United States on or before December 31, 1970.

(b) *Eligible Export Vessels.* In the case of Eligible Export Vessels, the accounts of the Company shall be audited at least annually, and unless otherwise agreed to by us, we shall require that the financial statements be in accordance with generally accepted accounting principles, by accountants as described in paragraph (a) of this section or by independent public accountants licensed to practice by the regulatory authority or other political subdivision of a foreign country, provided such accountants are satisfactory to us. The accountants performing such audits may be the regular auditors of the Company.

(c) *Reports of Company and other Persons.* Except as we require otherwise, the Company must file a semiannual financial report and an annual financial report, prepared in accordance with generally accepted accounting principles, with us as specified in the Documentation. You must include:

(1) The balance sheet and a statement of paid-in-capital and retained earnings at the close of the required reporting period,

(2) A statement of income for the period, and

(3) Any other statement that we consider necessary to accurately reflect the Company's financial condition and the results of its operations.

(d) *Required form.* We will specify in a letter to the Company the form required for reporting and the number of copies that you must submit

(e) *Other Persons.* We may after providing the Company notice, also require the Company to submit financial statements of any other Person, directly or indirectly participating in the project, if the financial condition of that Person affects our security for the Guarantees.

(f) *Timeliness.* The required financial report for the annual period will be due within 105 days after the close of each fiscal year of the Company, commencing with the first fiscal year ending after the date of the Security Agreement. The required semiannual report will be due within 105 days after each semiannual period, commencing with the first semiannual period ending after the date of the Security Agreement.

(g) Public accountant's report. The annual report will be accompanied by the public accountant's report based on an audit of the company's financial statements. We may require an audit by the public accountants of the financial statements contained in the company's semiannual report. We also may require certification of the semiannual report by the accountants. Where independent certification is not required, a responsible corporate officer will attach a certification that such report is based on the accounting records and, to the best of that officer's knowledge and belief, is accurate and complete.

(h) *Leveraged lease financing.* If the method of financing involved is a leveraged lease financing, or a trust is the owner of the Vessels, we may modify the requirements for annual and semiannual accounting reports of the Obligor accordingly.

(i) *Letter of confirmation.* The Company must furnish, along with its financial report, a letter of confirmation

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issued by its insurance underwriter(s) or broker(s) that the Company has paid premiums on insurance applicable to the preservation, protection and operation of the asset, which information must state the term for which the insurance is in force.

§ 298.43 Applicability of the regulations.

(a) The regulations in this part are effective August 21, 2000, and apply to all applications made, Letter Commitments, Commitments to Guarantee Obligations or Guarantees issued or entered into on or after August 21, 2000, under section 1104(a) of the Merchant Marine Act, 1936, as amended.

(b) The regulations in this part do not apply to any applications made, Letter Commitments, Commitments to Guarantee Obligations, or Guarantees issued under those regulations in effect before August 21, 2000. See 46 CFR, parts 200 to 499, edition revised as of October 1, 1996 and 46 CFR, parts 200 to 499, edition revised as of October 1, 1999 for regulations that apply to applications made, Letter Commitments, Commitments to Guarantee Obligations, or Guarantees issued before August 21, 2000.

Subpart F—Administration [Reserved]

Dated: July 6, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–17496 Filed 7–19–00; 8:45 am]

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Part III

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–741

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities; Separate Facility Waivers; Final Rule

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DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–741

RIN 1215–AA84

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities; Separate Facility Waivers

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the regulation that permits Federal contractors to seek waivers from the requirements of Section 503 of the Rehabilitation Act of 1973 for those facilities that are not connected with the performance of a covered contract. Section 503 requires Government contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. The Rehabilitation Act Amendments of 1992 expressly incorporated into Section 503 the existing separate facility waiver regulation. The 1992 Amendments also required publication of regulations that list the standards to be used for granting separate facility waivers and, accordingly, this rule lists factors that will be considered when determining whether to grant such waivers.

EFFECTIVE DATE: August 21, 2000.

FOR FURTHER INFORMATION CONTACT: James I. Melvin, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Room N–3424, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 693–0102 (voice), (202) 693–1308 (TDD/TTY). Copies of this final rule in alternate formats may be obtained by calling OFCCP at (202) 693–0119 (voice) or (202) 693–1308 (TDD/TTY). The alternate formats available are large print, electronic file on computer disk and audio-tape. The final rule also is available on the Internet at http://www.dol.gov/dol/esa.

SUPPLEMENTARY INFORMATION:

I. Background

Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503 or the Act), requires parties holding Federal Government contracts and subcontracts in excess of $10,000 to take affirmative action to employ and advance in employment qualified individuals with disabilities. OFCCP administers Section 503 and has published implementing regulations at 41 CFR Part 60–741, 61 FR 19336 (May 1, 1996).

One provision in the regulations permits Federal contractors and subcontractors to seek a waiver from the requirements of Section 503 for facilities that are not connected with the performance of a covered contract or subcontract, that is, "separate facilities." 41 CFR 60–741.4(b)(3). The history of the Section 503 separate facility waiver regulation was recounted in the notice of proposed rulemaking (NPRM), 61 FR 5902, 5902–03, published on February 14, 1996, and readers interested in that background information may refer to that discussion. Most importantly to this rulemaking is that the Rehabilitation Act Amendments of 1992, Pub. L. 102–569, 106 Stat. 4344 (1992 Amendments), revised Section 503 to provide that if an entity holds a covered contract all its establishments and all its workforce are subject to Section 503, absent the granting of a waiver. Section 505(b) of the 1992 Amendments (Waiver Amendment) expressly incorporated the existing separate facility waiver regulation (with minor editorial changes) into Section 503.

The text of the Waiver Amendment, as it appears at 29 U.S.C. 793(c)(2)(A)–(B), reads as follows:

> (A) The Secretary of Labor may waive the requirements of the affirmative action clause required by the regulations promulgated under [Section 503(a)] with respect to any of a prime contractor's or subcontractor's facilities that are found to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, if the Secretary of Labor also finds that such a waiver will not interfere with or impede the effectuation of this Act.
>
> (B) Such waivers shall be considered only upon the request of the contractor or subcontractor. The Secretary of Labor shall promulgate regulations that set forth the standards used for granting such a waiver.

The affirmative action clause referenced in the statute is published at 41 CFR 60–741.5 and lists contractors' basic obligations under Section 503, including the obligation to comply with the regulations. Accordingly, a waiver of the affirmative action clause exempts covered contractors from the obligation to comply with Section 503 and its implementing regulations.

The Amendment requires OFCCP to make two separate findings to justify granting a waiver. As a threshold requirement, OFCCP must find that the facility for which the waiver is sought is in all respects separate and distinct from activities related to the performance of a covered contract. If the facility satisfies this "separate and distinct" requirement, OFCCP must additionally find that granting the waiver will not interfere with or impede the effectuation of the Act.

On February 14, 1996, OFCCP issued a proposed rule, 61 FR 5902, that set forth the standards that the agency would use to determine whether to grant separate facility waivers. A notice correcting certain technical errors in the NPRM was published on March 8, 1996, 61 FR 9532. The comment period ended April 15, 1996.

An individual Government contractor, an organization representing Government contractors and an organization representing disability rights agencies submitted comments. The submissions have been logged into the record for this rulemaking as Comments 1, 2 and 3, respectively, and they have been considered in the development of this final rule. Below is a discussion of the comments (referenced as "Com." or "Coms.") and an explanation of the changes made from the proposed rule to this final rule. For an explanation of provisions adopted unchanged from the proposed rule and on which no comments were made, see the NPRM preamble.

II. Analysis of Public Comments and Revisions

General Issues Concerning Regulatory Approach

On May 1, 1996, a final rule was issued that comprehensively revised the Section 503 regulations published at 41 CFR Part 60–741. 61 FR 19336. The revision continued the existing separate facility waiver regulation without substantive change. 41 CFR 60–741.4(b)(3). Today's final rule amends § 60–741.4(b)(3).

The NPRM announced that the long-standing practice of interpreting the separate facility waiver regulation narrowly so as to "jealously guard" the granting of waivers would be continued. 61 FR 5903. One commenter thought that the OFCCP position might be contrary to the intent of Congress as expressed in the Waiver Amendment. (Com. 2.) However, both the plain language of the amendment and its legislative history militate against this conclusion.

As is noted above, the Waiver Amendment adopted the pre-existing Section 503 separate facility waiver regulation, implicitly approving of the narrow manner in which OFCCP had administered the regulation. In addition,

the Waiver Amendment is narrow on its face. The statute makes the granting of separate facility waivers discretionary; the waiver "may" be granted if it is determined that the facility is qualified to receive a waiver. Moreover, the legislative history of the 1992 Amendments indicates that the scope of coverage under Section 503 was being clarified to parallel coverage under Executive Order 11246. S. Rep. No. 357, 102d Cong., 2d Sess. 72, *reprinted in* 1992 U.S. Code Cong. & Admin. News 3783. OFCCP traditionally has jealously guarded separate facility waivers under the Executive Order as well. Finally, a narrow construction of the waiver provision comports with the well established rule of statutory interpretation that exceptions to remedial statutes, such as the Rehabilitation Act, are strictly and narrowly construed. Accordingly, OFCCP will continue its long-standing practice of jealously guarding the granting of separate facility waivers.

One commenter expressed general support for the proposed rule, noting that it contained a "number of safeguards which will help ensure fair application of Section 503's very important mandate—to foster equal employment opportunity for qualified individuals with disabilities." (Com. 3.) This commenter supported, for example, the concept of broad discretion in the agency to evaluate waiver requests.

Two commenters, however, felt that the proposal gave OFCCP too much discretion in determining whether to grant or deny a waiver. (Coms. 1 & 2.) These commenters noted that the proposal's list of factors was non-exhaustive and that other, unspecified, factors might be considered by OFCCP. One commenter recognized that "[i]t is acceptable to have tough requirements for a waiver" but thought that all standards should be listed and that if the standards are satisfied "then a waiver should be granted as the rule and not as an exception." (Com. 1.)

The rule adopted today modifies the proposed rule to address the suggestions of greater certainty as to the factors that will be considered by the agency. The final rule replaces the word "may" in the introductory language in paragraphs (b)(3)(ii) and (iii) with the word "shall" to obligate the Deputy Assistant Secretary to consider the factors listed under those two provisions.

However, deciding whether to grant a separate facility waiver requires an individual, fact-based analysis, and this weighs against adopting the rigid approach suggested by two of the commenters. Federal contractors covered by Section 503 present a wide variety of organizational structures and staffing patterns. Accordingly, a wide range of possible relationships between a contractor's facilities also exists. The relationships between facilities may take many forms, for instance, two or more facilities might do exactly the same work, or one facility may be a supplier of materials, a distributer of goods, a provider of administrative support or management direction, or a source of capital or equipment. Facilities also may be related due to staffing patterns used by the contractor, such as, temporary reassignment or detailing of employees from one facility to another, rotating workers among facilities, and using one facility as a training ground for eventual assignment at another facility.

Because of the wide range of relationships that might exist among contractors' facilities, the rule must be flexible to enable the Deputy Assistant Secretary to consider any additional, relevant facts in determining whether a particular facility is separate and distinct in "all" respects and that a waiver will not interfere with or impede effectuation of the Act. Consequently, the final rule adopts proposed paragraphs (b)(3)(ii)(F) and (b)(3)(iii)(D), which authorize the Deputy Assistant Secretary to consider additional factors when he or she deems it necessary or appropriate.

Paragraph (b)(3)(i)

Proposed paragraph (b)(3)(i) listed the general standards that would be required to obtain separate facility waivers. Subparagraphs (b)(3)(i)(A) and (B) recited the two threshold requirements codified in the statutory waiver amendment and present in the old regulation. Paragraph (b)(3)(i) also specified that waivers only will be considered by the Deputy Assistant Secretary upon the written request of a prime contractor or subcontractor, and that the contractor or subcontractor bears the burden of demonstrating that a waiver is appropriate.

No objections were raised regarding the language proposed in paragraph (b)(3)(i) and one commenter expressed its approval of the requirement that Federal contractors demonstrate their eligibility for the waiver. (Com. 3.) The final rule adopts unchanged proposed paragraph (b)(3)(i).

One commenter recommended that the rule also list the type of documentation the contractor should submit with the request. (Com. 3.) Given the variety of contractors subject to Section 503, however, OFCCP neither wants to overly dictate the content of requests nor unnecessarily constrain contractors in the manner in which they choose to make their case that a waiver is appropriate. The waiver rule clearly informs contractors that they have the burden of demonstrating that a waiver is appropriate and sets forth the standards OFCCP will use to evaluate their request. If contractors do not factually support their requests, OFCCP may ask for additional details or deny the requests. The final rule, therefore, does not specify the documents needed to be submitted with waiver requests.

One commenter suggested that a provision be added to the rule to require that OFCCP respond to a waiver request within a set period of time. (Com. 2.) OFCCP considers setting an across-the-board regulatory time limit in which to respond to waiver requests as inappropriately restrictive given the individual nature of waiver determinations and the multitude of organizational structures and staffing patterns that may be involved. Before making a decision, the Deputy Assistant Secretary may need to get more information from the contractor or conduct an on-site investigation to verify that the facility is separate and distinct in all respects. The fact-based nature of these inquiries, and the possibility that more information may need to be gathered, militates against setting a rigid deadline for responding to waiver requests. Of course, OFCCP will respond as quickly as is possible to requests for separate facility waivers.

Paragraph (b)(3)(ii)

Proposed paragraph (b)(3)(ii) listed factors to be considered to determine whether the facility is separate and distinct in all respects from activities related to the performance of a covered contract. The factors focused on the activities and employees at the facility for which the waiver is requested. No criticisms of these factors were expressed in the comments. Indeed, the organization representing Government contractors stated that it was in general agreement that the factors listed in proposed paragraph (b)(3)(ii) were reasonable for purposes of making a waiver determination. (Com. 2.)[1] The final rule adopts these factors.

[1] This commenter also expressed its belief that OFCCP previously made decisions about whether to grant a separate facility waiver using standards articulated in *Ernst-Theodore Arndt*, 52 Comp. Gen. 145 (1972). That Comptroller General opinion, however, addresses whether a parent company and its subsidiary are to be considered a single entity for purposes of being covered by Executive Order 11246. OFCCP has not previously used the parent-subsidiary criteria to determine whether to grant separate facility waivers because these inquiries

Continued

Another commenter suggested adding to the rule two factors pertaining to the "separate and distinct" determination: (1) Whether employees at facilities at which Government contract work is performed are typically recruited for higher level positions at facilities unrelated to the performance of a Government contract; and (2) whether employees at facilities at which Government contract work is performed are interchangeable with employees at facilities at which no such work is performed. (Com. 3.) This commenter reasoned that:

> Many employers' operations are organized in such a way that similar jobs are performed at multiple facilities (only some of which happen to perform Government contract work). Such employers may be tempted to relegate (either through transfer or original placement) employees with disabilities to exempted facilities. Similarly, employers may seek to avoid affirmative action obligations by promoting employees with disabilities into jobs stationed at these facilities.

The commenter believed that adoption of these factors into the final rule could help to minimize these practices. OFCCP agrees with this commenter and believes that these factors should be incorporated into the final rule. It is important to note that limiting or segregating qualified employees with disabilities to particular facilities or jobs because of their disabilities would constitute discrimination prohibited by Section 503: *See, e.g.*, 41 CFR 60–741.21(b).

OFCCP considers these suggested factors to be corollaries of the proposed factors in (b)(3)(ii)(D) and (E), respectively, involving the contractor's employee staffing patterns. The suggested factor concerning recruitment into a facility unrelated to the performance of a Government contract encompasses the example contained in the NPRM preamble regarding subparagraph (D):

> [I]f employees who work on a Federal contract at one facility must, at some future time, work at another facility for which a waiver is sought in order for them to advance in employment, the facility for which a waiver is sought may be inexorably linked to the employees working on the contract and, therefore, not "separate and distinct."

61 FR 5904. To clarify the factor expressed in subparagraph (D), the final rule incorporates the recommended element into the rule. Thus, paragraph (b)(3)(ii)(D) of the final rule states that the Deputy Assistant Secretary will consider whether working at the facility for which a waiver is sought is a prerequisite for advancement in job responsibility or pay and the extent to which employees at facilities connected to a Government contract are recruited for positions at the facility for which a waiver is sought. In determining whether a waiver is appropriate given the totality of circumstances, the Deputy Assistant Secretary will weigh the extent to which any recruitment among the facilities occurs, including recruitment for details, transfers or promotions.

OFCCP considers the suggested factor regarding the interchangeable nature of employees as being within the scope of proposed subparagraph (E), which addressed whether employees or applicants for employment at the facility may perform work related to a Government contract at another facility. To clarify subparagraph (E), the final rule incorporates the recommended element into this subparagraph. Accordingly, the final rule at paragraph (b)(3)(ii)(E) specifies that the Deputy Assistant Secretary will consider whether employees or applicants for employment at the facility may perform work related to a Government contract at another facility and the extent to which employees at the facility are interchangeable with employees at facilities connected to a Government contract.

Paragraph (b)(3)(iii)

Proposed paragraph (b)(3)(iii)(A) indicated that OFCCP would consider, when determining if granting a waiver will interfere with or impede the effectuation of the Act, whether the waiver was being used as a subterfuge to circumvent the contractor's obligations under the Act or implementing regulations. The NPRM stated that OFCCP may consider, for example, whether the contractor sought a waiver only after learning that the facility at issue was being scheduled for a Section 503 compliance review. 61 FR 5904. One commenter believed that a waiver request made after a Section 503 complaint investigation or compliance review is scheduled should not be considered as an attempt at subterfuge, and claimed that the question of whether the facility is separate and distinct is a jurisdictional issue that may be raised at any time. (Com. 2.) OFCCP disagrees.

As is noted above, the statute provides that granting separate facility waivers is discretionary. As long as an entity holds a covered contract all its establishments are subject to Section 503, absent a waiver being granted. A request for a waiver does not stay application of the Section 503 obligations and does not have a retroactive effect.

The same commenter also asserted that it would be burdensome to require contractors to request waivers for all facilities that genuinely appear separate and distinct just to anticipate the possibility that an OFCCP review might be scheduled. This argument ignores the express intent of the 1992 Amendments; that all establishments of a covered contractor are subject to Section 503 absent a waiver. Under Section 503, a Federal contractor's compliance obligations begin when the contractor gains a covered contract, not when it gets notice of an OFCCP review.

Compliance with Section 503, as it is with any law, cannot be dependent upon the presence of a Government official at the entity's doorstep. OFCCP relies in good measure upon the law-abiding nature of Government contractors to comply with the Act and its implementing regulations, and to provide equal employment opportunity for qualified individuals with disabilities. To condone the filing of an application for a separate facility waiver only after a complaint investigation or compliance review has been scheduled may encourage contractors to disregard their Section 503 obligations until OFCCP decides to investigate compliance. The view of the agency, therefore, is that whether the contractor requested a separate facility waiver only after a Section 503 complaint investigation or compliance review has been scheduled is a relevant factor to consider in determining if a waiver should be granted.

It should also be noted that OFCCP's jurisdiction to investigate Section 503 complaints that have been filed against a contractor prior to its requesting a waiver is not dependent on the Deputy Assistant Secretary's decision, favorable or unfavorable, to grant a waiver. A waiver does not have a retroactive effect (*i.e.*, a waiver does not relieve a contractor from liability for a violation pre-dating the granting of the waiver). A waiver is in effect only from the time it is issued until the time it terminates. Accordingly, there is no basis for suspending a complaint investigation pending a decision of whether to grant a separate facility waiver.

Under factor (B), the NPRM explained that the results of any past Section 503 complaint investigations or compliance reviews of the facility at issue, or of other facilities of the contractor, may be considered. 61 FR 5904. One commenter

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examine different aspects of business relationships for different purposes. The question of whether a waiver is appropriate for facilities not connected to the performance of Government contracts only arises if the facility is a component of a covered entity.

believed that complaints filed against facilities for which waivers were not requested should be irrelevant. (Com. 2.) OFCCP disagrees.

Section 503 requires covered contractors to review their corporate-wide employment policies and practices to ensure that there is no discrimination and that affirmative action is taken to employ and advance in employment qualified individuals with disabilities. If, for example, corporate-wide policies have been found to discriminate against qualified individuals with disabilities at other facilities, such may also be the case at the facility for which the waiver is requested. Significant compliance problems at other facilities of the contractor may also indicate corporate-level disregard for the Section 503 nondiscrimination and affirmative action obligations. Granting a separate facility waiver to a contractor with significant compliance problems at other facilities may further impede effectuation of the Act at the remaining covered facilities.

One commenter recommended that factor (B) be broadened expressly to include consideration of the contractor's compliance with Titles I, II, and III of the Americans with Disabilities Act of 1990 (ADA), which prohibit discrimination on the basis of disability in employment, public services and public accommodations, and with state and local laws prohibiting disability discrimination in these areas. (Com. 3.) The commenter considered this expansion necessary because OFCCP investigates a relatively small percentage of covered contractors each year. A contractor's compliance with other Federal, state or local laws requiring equal opportunity for disabled persons may indicate whether the general environment or atmosphere in the contractor's workplace embraces equal employment opportunity for individuals with disabilities.

It is current OFCCP practice during compliance reviews to ask the Equal Employment Opportunity Commission (EEOC) and the state and local Fair Employment Practices (FEP) agencies whether complaints have been filed against the contractor and for any other information that may be pertinent in assessing the contractor's equal employment opportunity posture. *See, e.g.*, OFCCP Federal Contract Compliance Manual, at 2B05. Existing regulations provide for coordination with EEOC and any state or local FEP agencies in the processing and resolution of complaints/charges filed against Federal contractors that fall within the scope of both Section 503 and the ADA. In certain instances, OFCCP acts as EEOC's agent. *See, e.g.*, 41 CFR 60–742.2(a) and (c), 60–742.5(a). *See also* 41 CFR 60–741.1(c)(1) and (2) (describing the relationship of the rules implementing Section 503 to other Federal, state or local laws providing protections for the rights of individuals with disabilities).

Consequently, today's final rule broadens the types of laws that might be considered under factor (B) to include any other Federal, state or local law requiring equal opportunity for disabled persons. The new language mirrors language in the Section 503 anti-retaliation rule published at 41 CFR 60–741.69(a)(2) and (3). That rule prohibits contractors, among other things, from retaliating against an individual who has assisted or participated in any activity related to the administration of, or opposed any practice made unlawful by, Section 503 or of "any other Federal, State or local law requiring equal opportunity for disabled persons." *See also* 41 CFR 60–741.44(a)(2)–(3). The objective of this change to factor (B) is not to enforce the other Federal, state or local laws, but to specify that, in determining whether a waiver might interfere with or impede the effectuation of Section 503, OFCCP will consider information regarding a contractor's compliance with other disability-related laws.

Paragraph (b)(3)(iii)(C) focuses on the impact of granting a waiver on OFCCP enforcement efforts. A number of examples were provided in the NPRM preamble of the types of facts that might be considered under this factor. 61 FR 5904. One commenter stated that two of those preamble examples were irrelevant to a determination of whether a particular facility is separate from another facility with a contract: (1) Whether the waiver would simplify or complicate OFCCP's compliance review activity; and (2) whether the contractor is a large employer in a small town. (Com. 2.)

Considering whether granting a waiver would have an impact on compliance review activity is necessary because the Act mandates that waivers must not interfere with or impede the effectuation of the Act. An adverse impact on OFCCP enforcement activity would impede OFCCP administration of the Act. On the other hand, OFCCP acknowledges that whether the facility for which the waiver is sought is the largest employer in a small town would probably not be relevant to a separate facility waiver determination. Accordingly, this latter criterion is not codified in the final rule.

Another commenter suggested that the extent to which the facility at issue employs, and is physically accessible to, persons with disabilities is another factor relevant to the question of whether a waiver might preclude effective enforcement of the Act. (Com. 3.) OFCCP declines including this suggestion in the rule, but notes that the rule does not prohibit contractors from including such information with their waiver request as evidence, for example, that the waiver request is not a subterfuge to avoid Section 503 obligations. Further, a contractor's hiring of individuals with disabilities and maintaining an accessible facility would not be a defense to an instance of unlawful disability-based employment discrimination (*e.g.*, in promotions or job assignments, or in establishing rates of pay or fringe benefits). *See* 41 CFR 60–741.20. Consequently, OFCCP does not believe it is necessary to include this suggested factor in the rule.

Paragraph (b)(3)(iv)

Proposed paragraph (b)(3)(iv) provided that waivers granted in accordance with paragraph (b)(3) may be withdrawn by the Deputy Assistant Secretary at any time when, in his or her judgment, such action is necessary or appropriate to achieve the purposes of the Act. Two commenters agreed that withdrawing a waiver would be appropriate if circumstances changed and the contractor no longer satisfied the requirements for a waiver. (Coms. 2 & 3.) One commenter opposed the broadness of the discretion to withdraw a waiver. (Com. 2.) This commenter was concerned, for instance, that such broad discretion would make it difficult to determine when a waiver would remain in force. Another commenter recommended that a waiver be effective for a specific period, suggesting one or two years as suitable. (Com. 3.) This commenter, however, also recommended that the contractor should have to demonstrate its continuing eligibility throughout the period.

OFCCP agrees with the general thrust of the comments that the regulation should describe more clearly the period a waiver will remain in force. A number of the commenters' recommendations regarding the duration and termination of separate facility waivers are reflected in the final rule under new paragraph (b)(3)(v), which is described below.

The final rule replaces proposed paragraph (b)(3)(iv) to address the comments that the rule assure that contractors granted separate facility waivers satisfy the rule's requirements during the duration of the waiver. Under paragraph (b)(3)(iv)(A),

contractors granted separate facility waivers must promptly inform OFCCP of any changed circumstances that were not reflected in the waiver requests. Changed circumstances include, for instance, the award of additional Government contracts and changes in the allocation of personnel to perform the Government contracts. To retain the waiver, the contractor must demonstrate that despite any changed circumstances, the facility remains in all respects separate and distinct and that continuing the waiver will not interfere with or impede the effectuation of the Act.

As one commenter recognized, the duty to demonstrate that the contractor continues to be eligible for the waiver once the waiver has been granted contemplates that OFCCP could investigate this issue during the waiver period. (See Com. 3.) Accordingly, paragraph (b)(3)(iv)(B) of the final rule clarifies that a contractor that has been granted a separate facility waiver must permit OFCCP access to the contractor's records and places of business (including the facility granted a waiver and other facilities) for the purpose of investigating whether the facility granted a waiver meets the standards and requirements of the paragraph (b)(3). If an investigation reveals that a waiver is inappropriate, the waiver will be terminated and the facility must comply with Section 503 and the implementing regulations as described in paragraph (b)(3)(v) below.

Paragraph (b)(3)(v)

In accordance with the comments described directly above (Coms. 2 & 3), new paragraph (b)(3)(v) provides contractors who have been granted separate facility waivers with greater certainty as to the period the waiver will remain in effect. Under paragraph (b)(3)(v)(A), a separate facility waiver will terminate on one of three dates, as is described in paragraphs (b)(3)(v)(A)(*1*) through (*3*), whichever is earliest.

Under paragraph (b)(3)(v)(A)(*1*), the waiver will end two years after the date the waiver was granted. OFCCP believes that waivers for a two-year period will meet contractors' needs to have greater certainty as to the period of a waiver's effectiveness, as well as to provide the agency with a reasonable time period in which to check the appropriateness of continuing a waiver. (See Coms. 2 & 3.) Under the rule, if a Government contractor wants a separate facility waiver to continue beyond two years, the contractor would have to apply for another waiver before the end of the initial two-year period even if circumstances did not change. The request for another waiver must meet the same standards as the original waiver request, including demonstrating that the facility satisfies the rule.

Applying for another separate facility waiver before the end of the initial two-year period will not stay the termination of a waiver. If the Deputy Assistant Secretary does not act on a waiver renewal request before the two-year termination date, the original waiver terminates at the end of the two-year period. Absent a valid separate facility waiver, the facility must comply with Section 503 and the implementing regulations as described in paragraph (b)(3)(v)(B) below. If another waiver is granted it will be subject to the same termination provisions as the original waiver, including termination at least two years from the date of approval. OFCCP intends to process separate facility waiver renewal requests in a timely manner upon receipt.

Paragraph (b)(3)(v)(A)(*2*) provides that the waiver will terminate before the two-year period when the facility performs any work that directly supports or contributes to the satisfaction of the work performed on a Government contract. Therefore, the waiver is automatically terminated by operation of the regulation when the facility gets a Government contract or performs work to satisfy a Government contract. A facility that gets a Government contract or to which Government contract work has been shifted by the contractor is the ultimate "changed circumstance." Such direct Government contract performance by a facility so clearly defeats its eligibility for a separate facility waiver that it is reasonable to terminate the waiver without need for the contractor to first submit a report or for the Deputy Assistant Secretary to issue a determination that ending the waiver is appropriate. Direct Government contract performance requires the contractor to comply with Section 503.

New paragraph (b)(3)(v)(A)(*3*) adopts a modified version of the provision OFCCP originally proposed for paragraph (b)(3)(iv). Proposed paragraph (b)(3)(iv) provided that waivers could be withdrawn by the Deputy Assistant Secretary at any time when, in his or her judgment, such action was necessary or appropriate to achieve the purposes of the Act. The final rule addresses comments that the proposed rule gave OFCCP too much discretion in withdrawing waivers. The language is revised to indicate that a waiver may be terminated by the Deputy Assistant Secretary before the two-year waiver period only when it is determined that the separate facility waiver requirements are not being met. Termination may be based on information from the contractor regarding changed circumstances or contained in a request for another waiver. Termination also may be based on any other relevant information including, but not limited to, information from contracting agencies, employees and job applicants, or from the results of an OFCCP investigation.

To further clarify when a terminated waiver triggers compliance obligations, the final rule adopts new paragraph (b)(3)(v)(B). This provision specifies that contractors must meet the Section 503 obligations on the date of termination. The rule provides one exception to this compliance deadline. If the written affirmative action program (AAP) requirements published at 41 CFR 60–741.40 through 60–741.45 are applicable to the facility the contractor must comply with these requirements within 120 days of the termination of the waiver.

OFCCP believes that these compliance deadlines are reasonable. Contractors whose separate facility waivers terminate under the rule are on notice of their impending compliance responsibilities. These contractors also are familiar with their Section 503 obligations because they are required to comply at all their other facilities. The 120-day compliance deadline for preparing and maintaining an AAP at the facility, if applicable, is the same time period allowed a newly covered contractor to develop an AAP. *See* 41 CFR 60–741.40(b).

Paragraph (b)(3)(vi)

One commenter suggested that the rule specify that OFCCP will impose sanctions against contractors that make fraudulent or misleading waiver requests. (Com. 3.) OFCCP agrees. The NPRM stated that waivers would be withdrawn if OFCCP discovered that the facts upon which it relied in granting the waiver did not accurately or fully describe the relationship between the facility and the contractor's activities related to the performance of a contract. 61 FR 5904. Many Federal programs explicitly prohibit fraudulent and false statements and representations; indeed, the Federal Acquisition Regulations provide that contractors may be debarred or suspended for such activity, *see* 48 CFR 9.406–2(a)(1), (a)(3); 9.407–2(a)(1), (a)(3). Certainly OFCCP cannot countenance fraudulent and misleading waiver requests. Otherwise, Government resources will be wasted, the ability of OFCCP to consider legitimate requests from contractors will be hampered, and

the benefits of the program will be reduced.

Therefore, new paragraph (b)(3)(vi) expressly prohibits false or fraudulent statements and representations under § 60–741.4(b)(3). This prohibition applies to all statements and representations made under the separate facility waiver rule including, but not limited to, waiver requests, reports of changed circumstances, and requests to extend previously-granted waivers. False or fraudulent statements or representations may subject a contractor to sanctions and penalties under this part, as well as criminal prosecution under 18 U.S.C. 1001, which makes it a crime for anyone to make such misrepresentations to any department or agency of the U.S. Government. Of course, should OFCCP discover that false or fraudulent statements or representations were made in conjunction with a waiver request the request will also be denied (or if previously granted, the waiver will be withdrawn).

III. Regulatory Analyses and Procedures

Executive Order 12866

The Secretary of Labor has determined that this final rule is not a significant regulatory action as defined in Executive Order 12866, and therefore a regulatory impact analysis is unnecessary.

Regulatory Flexibility Act

This final rule will not change existing equal employment obligations for Federal contractors but will only clarify the standards OFCCP uses for determining whether to grant separate facility waivers. Consequently, under the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Secretary of Labor certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform

Executive Order 12875—This final rule does not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Executive Order 13132

These regulations have been reviewed in accordance with Executive Order 13132 regarding Federalism. The order requires that agencies, to the extent practicable and permitted by law: (1) Not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute; and (2) not promulgate any regulation that has federalism implications and that preempts State law, unless specified preconditions are met. Since this rule does not have federalism implications, does not impose substantial direct costs on State and local governments and does not preempt State law, it complies with the principles of federalism and with Executive Order 13132.

Paperwork Reduction Act

This final rule does not contain substantive or material modifications to previously approved information collection requirements, but will only clarify existing standards for the granting of separate facility waivers. In view of this fact, and because the final rule does not change existing obligations for Federal contractors, the rule creates no additional information collection requirements above those in the current information collection requests approved by the Office of Management and Budget under control numbers 1215–0072 (Supply and Service) and 1215–1063 (Construction).

List of Subjects in 41 CFR Part 60–741

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

Signed at Washington, D.C. this 12th day of July 2000.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

For the reasons set out in the preamble, 41 CFR part 60–741 is amended as set forth below:

PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

1. The authority citation for part 60–741 continues to read as follows:

Authority: 29 U.S.C. 706 and 793; and E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

2. In § 60–741.4, paragraph (b)(3) is revised to read as follows:

§ 60–741.4 Coverage and waivers.

* * * * *

(b) * * *

(3) *Facilities not connected with contracts.* (i) Upon the written request of the contractor, the Deputy Assistant Secretary may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities if the Deputy Assistant Secretary finds that the contractor has demonstrated that:

(A) The facility is in all respects separate and distinct from activities of the contractor related to the performance of a contract; and

(B) Such a waiver will not interfere with or impede the effectuation of the act.

(ii) The Deputy Assistant Secretary's findings as to whether the facility is separate and distinct in all respects from activities of the contractor related to the performance of a contract shall include consideration of the following factors:

(A) Whether any work at the facility directly or indirectly supports or contributes to the satisfaction of the work performed on a Government contract;

(B) The extent to which the facility benefits, directly or indirectly, from a Government contract;

(C) Whether any costs associated with operating the facility are charged to a Government contract;

(D) Whether working at the facility is a prerequisite for advancement in job responsibility or pay, and the extent to which employees at facilities connected to a Government contract are recruited for positions at the facility;

(E) Whether employees or applicants for employment at the facility may perform work related to a Government contract at another facility, and the extent to which employees at the facility are interchangeable with employees at facilities connected to a Government contract; and

(F) Such other factors that the Deputy Assistant Secretary deems are necessary or appropriate for considering whether the facility is in all respects separate and distinct from the activities of the contractor related to the performance of a contract.

(iii) The Deputy Assistant Secretary's findings as to whether granting a waiver will interfere with or impede the effectuation of the act shall include consideration of the following factors:

(A) Whether the waiver will be used as a subterfuge to circumvent the contractor's obligations under the act;

(B) The contractor's compliance with the act or any other Federal, State or local law requiring equal opportunity for disabled persons;

(C) The impact of granting the waiver on OFCCP enforcement efforts; and

(D) Such other factors that the Deputy Assistant Secretary deems are necessary or appropriate for considering whether the granting of the waiver would interfere with or impede the effectuation of the act.

(iv) A contractor granted a waiver under paragraph (b)(3) of this section shall:

(A) Promptly inform the Deputy Assistant Secretary of any changed circumstances not reflected in the contractor's waiver request; and

(B) Permit the Deputy Assistant Secretary access during normal business hours to the contractor's places of business for the purpose of investigating whether the facility granted a waiver meets the standards and requirements of paragraph (b)(3) of this section, and for inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation.

(v)(A) A waiver granted under paragraph (b)(3) of this section shall terminate on one of the following dates, whichever is earliest:

(*1*) Two years after the date the waiver was granted.

(*2*) When the facility performs any work that directly supports or contributes to the satisfaction of the work performed on a Government contract.

(*3*) When the Deputy Assistant Secretary determines, based on information provided by the contractor under this section or upon any other relevant information, that the facility does not meet the requirements of paragraph (b)(3) of this section.

(B) When a waiver terminates in accordance with paragraph (b)(3)(v)(A) of this section the contractor shall ensure that the facility complies with this part on the date of termination, except that compliance with §§ 60–741.40 through 60–741.45, if applicable, must be attained within 120 days of such termination.

(vi) False or fraudulent statements or representations made by a contractor under paragraph (b)(3) of this section are prohibited and may subject the contractor to sanctions and penalties under this part and criminal prosecution under 18 U.S.C. 1001.

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Part IV

Environmental Protection Agency

40 CFR Parts 50 and 81
Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 81

[FRL–6733–3]

RIN 2060–ZA08

Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA is rescinding its prior findings that the 1-hour ozone national ambient air quality standard (NAAQS) and the accompanying designations and classifications no longer apply in certain areas. As part of a transition to a new, more protective 8-hour ozone standard (promulgated in July 1997), in 1998 and 1999, EPA took final action determining that the 1-hour standard would no longer apply in almost 3,000 counties. Now, however, the public health protection that would be afforded by the 8-hour ozone standard is being delayed because continued litigation regarding the 8-hour ozone standard has created uncertainty regarding when and whether EPA may be able to fully implement that standard. It is important to have a fully enforceable Federal ozone standard to help protect people from the respiratory and other harmful effects of ozone pollution. Under this final rule, the designations and classifications that previously applied in such areas with respect to the 1-hour standard would also be reinstated. This rule will become effective in 90 days for most areas, and will become applicable in 180 days for areas with clean air quality data that had a nonattainment designation when the 1-hour standard was revoked. Furthermore, today EPA is taking final action to amend 40 CFR 50.9(b) to provide by rule that the 1-hour ozone standard will continue to apply to all areas notwithstanding promulgation of the 8-hour ozone standard; and that after the 8-hour standard has become fully enforceable under part D of title I of the Clean Air Act (CAA) and is no longer subject to further legal challenge, the 1-hour standard set forth in section 50.9(a) will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard.

DATES: Effective Date: This rule is effective on October 18, 2000.

Applicability Dates: This rule applies on October 18, 2000 for all areas where EPA had revoked the 1-hour ozone standard except for those nonattainment areas with clean data listed in section III. F., Table 1 of the preamble, and applies on January 16, 2001 for such areas listed in Table 1 of the preamble.

ADDRESSES: *Public Inspection.* You may read the final rule (including paper copies of comments and data submitted electronically, minus anything claimed as confidential business information) and the Response to Comments Document at the Docket and Information Center (6102), Docket No. A–99–22, U.S. Environmental Protection Agency, 401 M Street, SW, Waterside Mall, Room M–1500, Washington, DC 20460, telephone (202) 260–7548. They are available for public inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. We may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Questions about this final rule should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238 or e-mail to nikbakht.annie@epa.gov or gilbert.barry@epa.gov. To ask about policy matters or monitoring data for a specific geographic area, call one of these contacts:

Region I—Richard P. Burkhart (617) 918–1664,
Region II—Ray Werner (212) 637–3706,
Region III—Marcia Spink (215) 814–2104,
Region IV—Kay Prince (404) 562–9026,
Region V—Todd Nettesheim (312) 353–9153,
Region VI—Lt. Mick Cote (214) 665–7219,
Region VII—Royan Teter (913) 551–7609,
Region VIII—Tim Russ (303) 312–6479,
Region IX—Morris Goldberg (415) 744–1296,
Region X—William Puckett (206) 553–1702.

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I. Background

The EPA promulgated a revised 8-hour ozone standard in July 1997[1] (62 FR 38856, July 18, 1997). At that time, EPA also promulgated 40 CFR 50.9(b), governing when the previous health-based ozone standard—the 1-hour standard—would no longer apply to areas. Several parties challenged EPA's revised ozone standard and EPA's revised particulate matter standard, which was promulgated on the same day. *American Trucking Assoc.* v. *EPA*, (D.C. Cir., Nos. 97–1440 and 97–1441) (*ATA* v. *EPA*).

[1] For both the 1-hour and 8-hour ozone standards, EPA has promulgated secondary standards that are identical to the primary standard. Because the primary and secondary standards are identical, EPA refers to the 1-hour and 8-hour standards in the singular. However, both EPA's initial rule determining that the 1-hour standard no longer applied and this rule reinstating the applicability of that standard apply for purposes of both the primary and secondary 1-hour ozone standards. Similarly, EPA's references to the 8-hour standard encompass both the primary and secondary 8-hour standards.

On June 5, 1998 (63 FR 31014), July 22, 1998 (63 FR 39432), and June 9, 1999 (64 FR 30911), in accordance with 40 CFR 50.9(b), we issued final rules for many areas that were attaining the 1-hour standard, finding that the 1-hour ozone standard no longer applied to these areas.[2] At that time, we amended the Code of Federal Regulations (CFR) to remove the designations and classifications that had applied to those areas for the 1-hour standard under sections 107, 172 and 181 of the CAA.[3]

On May 14, 1999, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an opinion in the cases challenging EPA's revised ozone and particulate matter standards. *ATA* v. *EPA*, 175 F.3d 1027 (D.C. Cir., 1999). The court questioned the constitutionality of the CAA authority to review and revise NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. The Court stopped short of finding the statutory grant of authority unconstitutional, instead providing EPA with an opportunity to articulate a determinate principle for revising the ozone and particulate matter NAAQS under the statute. 175 F.3d at 1034–40. The court also addressed EPA's authority to classify areas and to set attainment dates for a revised ozone standard. 175 F.3d at 1034–40. Based on language in sections 172(a) and 181(a) of the CAA, the court concluded that EPA could only classify and set attainment dates for areas for purposes of any ozone NAAQS under the provisions of section 181(a) of the CAA, and that EPA could not enforce an ozone NAAQS more quickly than contemplated under the provisions triggered by classifications under section 181(a) nor could EPA enforce an ozone standard, such as the 8-hour standard, that was more stringent than the 1-hour standard.[4] 175 F.3d at 1049–50. The court also held that EPA must consider the beneficial effects of tropospheric ozone in protecting against the harmful effects of ultraviolet rays (UV–B). 175 F.3d at 1051–53. The court remanded, but did not vacate, the 8-hour standard on the basis that it would not "engender costly compliance activity" in light of the court's decision "that it cannot be enforced by virtue of CAA § 181(a)." 175 F.3d at 1057. The EPA filed a petition for rehearing with respect to these three aspects of the court's decision.[5]

On October 25, 1999, EPA published the preamble to the proposed rule, "Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas," (64 FR 57424), noting that the proposed regulatory language for part 81 would be published shortly. On November 5, 1999, EPA published the proposed regulatory language for part 81 (64 FR 60477). As proposed, the 1-hour ozone standard would be reinstated in areas where it had previously been revoked and the associated designations and classifications that previously applied in such areas with respect to the 1-hour NAAQS also would be reinstated. In today's final rule, EPA is taking final action to reinstate the area designations and classifications that applied prior to revocation. Throughout this final rule all references to reinstating designations refer to reinstating both designations and classifications as well. In addition, EPA proposed to amend 40 CFR 50.9(b) to provide by rule that the 1-hour ozone standard would continue to apply in all areas notwithstanding promulgation of the 8-hour standard, and that after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standard set forth in section 50.9(a) would no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard.

On October 29, 1999, the D.C. Circuit issued an opinion addressing EPA's petition for rehearing. *ATA* v. *EPA*, 195 F.3d 4 (D.C. Cir. 1999). The three-judge panel that decided the case granted rehearing on limited issues regarding EPA's ability to implement a revised ozone standard. Both the panel and the full court denied all other aspects of EPA's petition for rehearing.[6] With respect to EPA's authority to implement a revised 8-hour standard, the court modified its initial decision to provide that EPA may enforce a revised ozone NAAQS only in conformity with the control requirements triggered by a classification under section 181(a)—*i.e.*, the provisions in subpart 2 of part D of title I of the CAA. 195 F.3d at 8. Judge Tatel filed a separate opinion, holding that the court should have deferred to EPA's reasonable interpretation of the implementation scheme for the revised NAAQS, but concurring in the majority's decision because it "leaves open the possibility that EPA can enforce the new ozone NAAQS without conflicting with subpart 2's classifications and attainment dates." 195 F.3d at 11.

At the request of commenters, on December 8, 1999, EPA published a notice in the **Federal Register** (64 FR 68659) to reopen the comment period for the proposed rulemaking from December 1, 1999 until January 3, 2000, thus affording the public a total of 60 days to comment on the proposed reinstatement action.

On January 27, 2000, EPA filed a petition with the Supreme Court, seeking review of the court of appeals decision regarding the constitutionality of the provisions of the CAA for setting NAAQS and the court's decision regarding implementation of a revised ozone NAAQS. Other parties also sought review by the Supreme Court.[7] The court granted EPA's petition on May 22, 2000.[8]

II. In Summary, What Action Is EPA Finalizing Today?

Today, we are taking final action to rescind the findings that the 1-hour standard no longer applies in those areas where the Agency had previously determined that the 1-hour standard had been attained. As a result, the 1-hour standard will again become applicable in nearly 3,000 counties.

Where the 1-hour ozone standard again becomes applicable as a result of this rulemaking, the attainment and nonattainment designations and classifications applicable to such areas prior to the determination of inapplicability will again apply. The designations are inextricably linked to the applicability of the standard and were removed solely because the standard no longer applied. *See e.g.*, Interim Implementation Policy Statement, 61 FR 65752, 65754 (Dec. 13, 1996) ("the designations would remain

[2] Two of these final actions were challenged and these cases are currently pending. *Environmental Defense Fund* v. *EPA*, (D.C. Cir., No. 98–1363) (challenge to June 1998 final rule); *Appalachian Mountain Club* v. *EPA*, (1st Cir., No. 99–1880) (challenge to June 1999 rule).

[3] These rules are commonly referred to as the "revocation" rules. Technically, however EPA did not revoke the 1-hour standard through these rulemakings. The 1-hour standard remains an effective regulatory standard under EPA's regulations. 40 CFR 50.9(a).

[4] Sections 172(a) and 181(a) provide EPA with authority to classify areas that are designated nonattainment and to set attainment dates for those areas. Section 172(a) applies generally to any new or revised NAAQS, while section 181(a) is specific to certain ozone nonattainment areas.

[5] The court decided other issues raised by the petitioners. These issues were not raised on rehearing and are not relevant here.

[6] The full court voted 5–4 in favor of rehearing with two judges not participating. Since a majority vote of the active members of the court is needed to grant rehearing, the request for rehearing was denied.

[7] The American Lung Association and the Commonwealth of Massachusetts and State of New Jersey also filed petitions for certiorari. In addition, groups led by the American Trucking Associations and Appalachian Power Company filed conditional cross petitions for certiorari.

[8] The court also granted the industry cross petitions regarding the consideration of costs in setting NAAQS on May 30, 2000.

in effect so long as the current 1-hour ozone NAAQS remains in effect"). Thus, since the only basis for removing the designations was the inapplicability of the 1-hour standard, area designations for the standard must also be reinstated upon reinstatement of the 1-hour standard.

Given that the previous designations and classifications of these areas were based upon the 1-hour ozone standard, which will again apply as a result of this reinstatement action, EPA is amending the tables in part 81 of the CFR to identify the designation and classification of the area that applied prior to EPA's determinations that the 1-hour standard no longer applied. The regulatory language located at the end of this final rule amends the ozone tables in 40 CFR part 81 for each State and provides a list of the areas affected by this rule. A copy of these tables may also be viewed at the following Internet website address: *http://www.epa.gov/ttn/oarpg*. In addition, the areas are identified by air quality designations in the docket for this rulemaking at Docket No. A–99–22.

The EPA's regulation, 40 CFR 50.9(b), provides that the 1-hour ozone standard would no longer apply once EPA determined that an area attained that standard. Today's action revises section 50.9(b) to indicate that the 1-hour standard remains applicable to all areas notwithstanding the promulgation of the 8-hour standard. Furthermore, today's action establishes that after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standard set forth in section 50.9(a) will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard.

In light of many areas' needs to quickly develop additional State Implementation Plan (SIP) programs in response to the actions EPA is finalizing today, the actions finalized today will become effective 90 days after today's publication for most areas. However, for areas that were designated nonattainment prior to revocation but that currently have clean air quality data sufficient to support a redesignation to attainment, actions will not generally become applicable until 180 days after today's publication.[9] This additional time will allow areas to submit redesignation requests and, if they do so, for EPA to take appropriate rulemaking action on such requests prior to the applicability date of this rule for the area.

[9] The EPA notes that in the proposal for this action, EPA proposed to make the final reinstatement effective after 90 days for all areas, and specifically requested comment on this issue. Certain commenters requested a longer delay in the effective date of the rule, and EPA has agreed that for areas with clean data that were previously designated nonattainment a longer period would be appropriate. However, "effective date" is a term of art relating to when rules published in the **Federal Register** will be incorporated in the Code of Federal Regulations, and Office of Federal Register requirements do not allow varying effective dates for entries in a table. Therefore, this action as a whole will become effective for all areas 90 days after publication. However, EPA will use the term "applicability date" in the rule to describe the date on which the reinstatement of the 1-hour standard will begin to apply to an area. That date will generally be 180 days after publication for those areas with clean data previously designated nonattainment, as listed in Table 1 of the preamble. In addition, if States are able to submit redesignation requests and EPA is able to process such requests to the point of final action prior to 180 days from publication, the final action approving the redesignation may provide that the applicability date of the reinstatement will be the same date as the effective date of the redesignation approval, so that the redesignations may take effect in a timely manner.

III. What Major Comments Were Submitted on the Proposed Rule and What Are EPA's Responses to Such Comments?

In our October 25, 1999 proposal, we solicited comment on whether EPA should rescind findings that the 1-hour ozone standard no longer applies in certain areas, and if EPA acted to rescind the 1-hour ozone standard, what the effects of a rescission would be. In section IV of the proposal, EPA specifically requested comment on the effect of the rescission for five types of areas: (1) Areas designated as attainment with no violation since revocation; (2) areas designated attainment (without maintenance plans) with violations since revocation; (3) areas designated attainment (with maintenance plans) with violations since revocation; (4) areas designated nonattainment with no violations since revocation; and (5) areas designated nonattainment with violations since revocation. Also, the Agency requested comment on the programmatic effects of reinstatement, such as the applicability of new source review (NSR) and conformity, as well as how to deal with sanction and Federal Implementation Plan (FIP) clocks that were in effect at the time of the revocations. A total of 72 comment letters were received on the proposal. Most of the commenters generally supported reinstating the 1-hour standard; however, they voiced individual preferences as to how EPA should proceed to carry out this action with respect to designations, planning obligations and timing. For each of the relevant issues, the following discussion summarizes EPA's proposed action, explains the approach EPA is adopting in this final rule and responds to the major comments received. All comments are addressed in the separate Response to Comments Document located in the docket.

A. Reinstatement of the Applicability of the 1-Hour Ozone Standard and the Designation and Classification That Existed for Each Area at the Time EPA Determined the Standard No Longer Applied

The EPA generally proposed to reinstate the applicability of the 1-hour standard in all areas for which EPA had taken action determining that the standard no longer applied. In addition, EPA proposed that the designation and classification for each such area would also be reinstated. The EPA proposed to restore areas to the same position they were in at the time EPA determined that the 1-hour standard no longer applied, *i.e.*, that the designation and classification that applied at the time the 1-hour standard was revoked for an area would once again apply upon reinstatement.

Comment: Several commenters believe that the Agency has no legal authority to rescind findings that the 1-hour ozone standard no longer applies in certain areas. Some commenters claim that EPA cited no statutory authority for its action and that none exists. At least one commenter contends that EPA's regulation at 40 CFR 50.9(b) does not provide a basis for reinstating the 1-hour standard and challenges EPA's statements that the basis for promulgating 40 CFR 50.9(b) was the existence of an enforceable 8-hour standard.

Response: The EPA disagrees with the commenters' allegations that EPA has no authority to rescind its findings that the 1-hour standard no longer applies in certain areas. The EPA made those findings in accordance with its rule at 40 CFR 50.9(b), which provided that the 1-hour standard would no longer apply once an area attained that standard. The EPA promulgated that regulation using its general rulemaking authority under section 301(a) of the CAA and thus has authority to revise that regulation (and to revise or repeal actions taken pursuant to that regulation) under that same authority. The changed circumstances regarding the status of the 8-hour standard provide ample support for EPA to take this regulatory action under section 301(a).

Sections 108 and 109 of the CAA provide for the promulgation or revision of NAAQS on a periodic basis. However, those provisions are silent regarding how areas should transition

from implementation of one NAAQS for a pollutant to a revised, more stringent NAAQS for the same pollutant.[10] Where, as in the rule promulgating the revised 8-hour NAAQS, EPA determines not to retain the pre-existing standard as an independent NAAQS, EPA must determine how areas should transition away from the pre-existing NAAQS. Since the CAA does not include specific provisions addressing this transition, EPA relied on its general rulemaking authority under section 301(a) of the CAA. *See* 62 FR 38894, July 18, 1997. Section 301(a) provides that the Agency has authority "to prescribe such regulations as are necessary to carry out" its functions under the CAA. In general, the statutory authority for promulgating a regulation also provides authority for an Agency to revise that regulation. The EPA is relying on its general rulemaking authority under section 301(a) to rescind the findings that the 1-hour standard no longer applies.

The present circumstances provide ample support for EPA to take this action rescinding its earlier determinations. The EPA promulgated 40 CFR 50.9(b) based on the existence of an implementable 8-hour standard. In promulgating a revised 8-hour standard, EPA determined that it did not need to retain a separate 1-hour standard in order to protect the public health with an adequate margin of safety and to protect public welfare (62 FR 38863, July 18, 1997). Thus, EPA needed to consider how to transition away from the existing 1-hour standard to the revised 8-hour standard. *See e.g.*, Proposed Interim Implementation Policy, (61 FR 65752, December 13, 1996). In the final rule promulgating the revised 8-hour standard, EPA concluded that Congress intended areas to remain subject to the planning requirements of subpart 2[11] of the CAA for as long as they continued to have air quality not meeting the 1-hour standard. In order to facilitate the continued applicability of subpart 2 to areas that had not yet met that standard, EPA determined to delay removal of the 1-hour standard from its regulations by promulgating 40 CFR 50.9(b). It is clear from the context of the rule and the statements in the preamble to the final 8-hour NAAQS rule that the decision to find that the 1-hour standard no longer applied was based on the existence of an enforceable 8-hour standard that was protective of public health and welfare, such that the 1-hour standard would no longer be necessary to protect public health and welfare. (62 FR 38873, July 18, 1997.)

However, because the court decision has raised doubts about the enforceability of the 8-hour standard and EPA's ability to implement the standard fully at this time, the basis for the regulation revoking the applicability of the 1-hour standard in certain areas no longer exists. Contrary to what EPA believed would occur at the time it promulgated 40 CFR 50.9(b), generally areas are not currently moving forward to implement the 8-hour standard due to the uncertainty created by the litigation over the ozone NAAQS. Thus, EPA believes that it is necessary at this time to retain the 1-hour standard in all areas to protect public health and welfare at least until the status of the 8-hour standard and any issues concerning its enforceability have been fully resolved.[12]

Comment: Some commenters believe that the proposed action to reinstate the 1-hour ozone standard constitutes promulgation of a new or revised NAAQS under section 109 of the CAA and that the action is therefore subject to a public hearing under section 307(d). Other commenters contend that EPA must or should vacate the 8-hour standard before EPA can reinstate the applicability of the 1-hour standard. These and other commenters contend that section 109 contemplates only a single air quality standard for a particular pollutant in any given area and, therefore, object to having dual standards apply. They also claim that the existence of two ozone standards is confusing.

Response: The EPA does not believe that the action to reinstate the 1-hour standard constitutes the promulgation of a new or revised NAAQS under section 109 of the CAA. The 1-hour standard EPA is reinstating today is the same 1-hour standard that has been in existence since its original promulgation on February 8, 1979 and that continues to be a part of EPA's regulations at 40 CFR 50.10, (44 FR 8202). The EPA is not revising that standard in any way. The EPA is merely reinstating the applicability of that standard in certain areas. Unlike a regulatory action promulgating a new or revised NAAQS, this rulemaking is not concerned with selecting the appropriate level or form of ozone standards requisite to protect public health and welfare. The particular processes specified in sections 108 and 109, requiring the development of detailed scientific assessments and consultation with science advisory boards, are not implicated by this action. The EPA undertook those processes when it promulgated the 1-hour standard in 1979. This action does not purport to revise or re-promulgate that standard; it only specifies the applicability of the existing 1-hour standard, which is specified in section 50.10, to certain areas.

Because this action rescinding a previous regulatory determination and revising the regulation governing the transition from the 1-hour to a revised 8-hour NAAQS does not constitute either an amendment or revision to either the 1-hour or the 8-hour ozone NAAQS, EPA disagrees with the commenters that the procedural provisions in section 307(d) are triggered by section 307(d)(1)(A) (requiring compliance with section 307(d) for all rules promulgating or revising any NAAQS). Since the administrative requirements of section 307(d) do not apply, EPA has complied with the public notice and comment process specified under the Administrative Procedure Act, 5 U.S.C. 553, which does not require the Agency to hold a public hearing.

Nor does EPA agree that the proper approach is to vacate the 8-hour standard. In the *ATA* decision, the D.C. Circuit did not dispute the public-health basis for the NAAQS and did not vacate the 8-hour standard. The EPA sees no reason to take such an action on its own. The EPA has filed with the Supreme Court a petition for review of the D.C. Circuit's decision. The EPA sees no need to vacate the 8-hour standard for the purpose of revising the transition scheme from the 1-hour standard to the 8-hour standard. Because the CAA does not provide how EPA must transition from one standard for a pollutant to a revised, more stringent standard for that same pollutant, EPA continues to believe it has authority to establish and to revise the appropriate transition scheme. Due to the uncertainty created

[10] Section 172(e) provides guidance for transitioning from a more stringent NAAQS for a pollutant to a less stringent NAAQS for the same pollutant.

[11] Subpart 2 of part D of title 1 provides detailed requirements for certain ozone nonattainment areas. These provisions were enacted in 1990 in response to the States' continued failure to meet the ozone standard. Rather than providing continued flexibility and a one-size-fits-all approach, Congress created a tiered planning scheme that provided more and tougher requirements for areas with significant ozone problems, but also provided more time for these areas to meet the standards.

[12] The fact that EPA's regulation at 40 CFR 50.9(b) does not reference the 8-hour standard is not controlling for determining the underlying basis for EPA's promulgation of that regulation. The fact that 50.9(b) was promulgated simultaneous with the 8-hour standard and placed in the subchapter of the CFR governing NAAQS is sufficient evidence that § 50.9(b) was premised on the existence of the 8-hour ozone standard. Furthermore, it is clear from the preamble that EPA believed that the 8-hour standard would be enforceable, (62 FR 38856, July 18, 1997).

by the court's opinion, EPA believes it is a reasonable exercise of its authority to revise the transition scheme by reinstating the applicability of the 1-hour standard and the associated designations and classifications. For these reasons, EPA does not agree that it must vacate the 8-hour standard in order to reinstate the applicability of the 1-hour standard.

To the extent the commenters are concerned about the existence of two NAAQS for the same pollutant, EPA made the decision in the 1997 NAAQS rulemaking by determining to retain the 1-hour standard until areas met that standard. As provided above, EPA is not taking action to revise or promulgate a revised NAAQS in this rule and is not re-opening its previous decision that the statute allows the applicability of more than one NAAQS for a pollutant, such as ozone.

Comment: Some commenters claim that EPA cannot restore the designation for areas except through one of the designation processes provided under section 107 of the CAA. Some commenters contend that EPA should treat these designations as initial designations under section 107(d)(1) and that EPA should provide time for Governors to make recommendations before EPA may designate areas. Other commenters contend that EPA must use the redesignation provisions under section 107(d)(3). Under that provision, they contend, EPA must notify the Governor first of its intent to redesignate and then must rely on current air quality data.[13] Some of these commenters agree with EPA that the designation in place at the time EPA revoked the standard should be put back into place. Other commenters suggest that EPA cannot consider air quality data from the period when the standard did not apply and that EPA should reinstate designations based on air quality data from the period after the standard is reinstated.

Response: The EPA does not believe it needs to go through the procedures of section 107 of the CAA to reestablish the designations that were in place prior to revocation of the 1-hour standard. In this action, EPA is reversing its revocation of the standard because the recent court decision has called into question the underlying bases for that action. In the revocation action, EPA did not change an area's designation for the 1-hour standard, but determined that since the 1-hour standard no longer applied to an area, the designation associated with that standard also no longer applied.[14]

As explained above, EPA's action today is not the promulgation of new or revised NAAQS. Therefore, the initial designation provisions in section 107(d)(1), which apply only upon promulgation of a new or revised NAAQS, do not apply.

Nor is EPA redesignating areas for purposes of the 1-hour standard. These areas currently do not have in place a designation for the 1-hour standard. The provisions in section 107(d)(3), which apply only to redesignations from attainment or unclassifiable to nonattainment or from nonattainment to attainment simply do not apply where, as here, there is not a current designation in place for a standard.

The EPA's primary action through this action is to reinstate the applicability of the 1-hour standard. At the time EPA promulgated 40 CFR 50.9(b), it determined that the designations should follow the applicability of the 1-hour standard and that the current designation was inextricably linked with the applicability of the 1-hour standard. Therefore, just as EPA determined that an area's designation no longer applied once the 1-hour standard on which it was based no longer applied, the reinstatement of the 1-hour standard necessarily brings back the applicability of the designation. Similarly, as EPA relied on its general rulemaking authority to revoke the standard and thus the area's designation, EPA is relying on that same authority to reverse the action taken in its earlier rule. Once areas have a designation for the 1-hour standard in place, EPA may redesignate those areas if they meet the requirements of section 107(d)(3)(E). As discussed in section III.F, below, EPA will consider redesignating those areas that have clean air quality data based on the three most recent years of data and that submit a redesignation request meeting the requirements of section 107(d)(3)(E).

Finally, some commenters suggest that EPA is prohibited from considering air quality data that became available after EPA revoked the standard. The EPA disagrees with this comment. Because EPA is reinstating the designations that existed at the time EPA revoked the standard, this rulemaking does not reflect more recent air quality data. However, in future actions to redesignate areas, EPA intends to consider all relevant air quality data including data that became available during the revocation. To the extent these commenters continue to have concerns about this issue, they can raise them in any future rulemaking action EPA may take to redesignate an area on the basis of that data.

Comment: A few commenters stated that we cannot rely on the argument that the 8-hour standard cannot be enforced as the basis for revocation since this is not supported by the Court's October 29, 1999, decision on rehearing. In the October 29 opinion, the Court retracted its earlier conclusion that "the 8-hour standard cannot be enforced," providing instead that the 8-hour standard "can be enforced only in conformity with subpart 2" of part D of title I of the CAA. *Compare* 175 F.3d at 1057 *with* 195 F.3d at 10. Some commenters also suggest that it is too late for us to reconsider the revocations and to reinstate the applicability of the 1-hour standard. Most commenters, however, support reinstatement on the basis of continued uncertainty regarding the 8-hour standard.

Response: The EPA believes that the uncertainty engendered by the litigation surrounding the 8-hour standard justifies reinstating the 1-hour standard. It is true, that on rehearing, the Court revised its original opinion to indicate that EPA can enforce the 8-hour standard in conformity with subpart 2 of the CAA. However, in that same sentence, the Court provided that it was remanding the 8-hour standard. The Court did not vacate the 8-hour standard because "the parties have not shown that the standard is likely to engender costly compliance activities." As the petitions for certiorari before the Supreme Court demonstrate, there continues to be uncertainty regarding when the standard could be implemented in light of the ongoing litigation.[15] Because of the continuing litigation and the differing views of the many parties to the litigation, EPA is not currently taking any action that could be construed as inconsistent with the

[13] Other commenters, without referencing any specific statutory authority, also claim that EPA should use current air quality data to designate areas.

[14] In revoking the standard, EPA did not redesignate areas pursuant to section 107 and did not require areas to meet the redesignation requirements of section 107(d)(3)(E), such as development of a maintenance plan. In fact, EPA has been challenged on two of the revocation rules for not following, and not requiring States to follow, redesignation procedures. *Environmental Defense Fund* v. *EPA*, (D.C. Cir., No. 96–1363); *Appalachian Mountain Club* v. *EPA*, (1st Cir., No. 99–1660).

[15] In addition to EPA, two other parties have requested that the Supreme Court review portions of the D.C. Circuit's decision regarding the ozone and particulate matter NAAQS. Other parties have opposed Supreme Court review of the implementation issues. In their papers before the Court, several of these parties have suggested that EPA is barred from enforcing the more stringent 8-hour NAAQS, while others raise concerns that the Court's opinion is unclear regarding the enforceability of the 8-hour standard.

Court's decision.[16] In light of the continuing uncertainty regarding EPA's authority to implement the 8-hour standard, EPA believes it is prudent to reinstate the 1-hour standard to ensure public health protection from ozone.

Contrary to the suggestions of some commenters, EPA does not believe it is too late to rescind the revocations of the 1-hour standard. The commenter does not cite and EPA is unaware of any limitation on when an Agency may change a regulation based on new information. The EPA acted quickly in response to the uncertainty raised by the Court's decision, proposing action only 5 months after the original decision by the court. During that time, EPA was assessing the impacts of the opinion on implementation of the 8-hour standard, determining options for rehearing and appeal, and developing the proposed rule to rescind the revocations of the 1-hour standard. Based on requests for an extension of the comment period, EPA provided a comment period of 60 days on this action. Thus, EPA is acting in a timely fashion by issuing this rule approximately a year afer the court issued its original decision.

Comment: A few commenters suggested that EPA was proposing to reinstate the standard in too many areas. One set of commenters noted that EPA's goal of providing protection in areas now violating the 1-hour standard could be accomplished by reinstating the standard only in those areas that were violating the 1-hour standard. Other commenters suggested that we not reinstate the 1-hour standard in States that have adopted the 8-hour standard or where the most recent data for an area indicate that it would be designated attainment for the 8-hour standard. These commenters are concerned that resources will be wasted on meeting the 1-hour standard rather than the more protective 8-hour standard.

Response: The EPA determined that it is critical to have a fully enforceable standard for ozone in each area of the country in order to protect the public health and welfare and to minimize public confusion. The EPA believes that it is important to have a fully-implementable ozone standard in place in order to ensure adequate protection of public health. A fully enforceable 1-hour standard will ensure that sufficient control measures remain in place to prevent violations in areas attaining the standard and to continue improvements in air quality in areas not attaining the standard. The options presented by the commenters would not result in the applicability of a fully-enforceable ozone standard and thus could erode public health protection for people living and working in areas that might violate the standard in coming ozone seasons.

With respect to those commenters that suggest that EPA not reinstate the standard in areas that have adopted the 8-hour standard, EPA is concerned, in light of the *ATA* decision, that it will be unable to enforce fully the 8-hour standard in the short term. Without a fully enforceable, Federal 8-hour standard, EPA does not have the ability to require States to implement an 8-hour standard. This is true even in States that may have adopted the 8-hour standard as a State rule. Since State adoption of the 8-hour standard does not ensure implementation and enforcement of that standard in conformity with Federal requirements for clean air, EPA believes it is necessary to reinstate the 1-hour standard in all areas pending resolution of litigation over the 8-hour NAAQS. The EPA acknowledges that it may be more efficient to concentrate resources on planning to implement a more protective 8-hour standard, but EPA lacks the ability to require States to do so at this time. For these reasons, EPA believes that the existence of the 8-hour standard does not provide the same certainty of public health protection as does the 1-hour standard at this time.

Finally, with respect to the comment that EPA not reinstate for areas that will be designated attainment for the 8-hour standard, EPA has not designated any areas for the 8-hour standard. The States have not recommended boundaries for purposes of the 8-hour standard and EPA has not yet determined boundaries or designated any 8-hour areas. In fact, EPA guidance on the determination of boundaries was issued only recently. (Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS or Standard), March 28, 2000). The EPA has advised States to consider the guidance and make recommendations to EPA by June 30, 2000. The EPA must then respond to these recommendations and give States 4 months comment on its response. Only after this process could EPA make final designations. Given the many steps that must occur before EPA promulgates designations for the 8-hour standard, EPA believes it is far too early to presume precisely which areas would be designated attainment for the 8-hour standard.

B. Revision to 40 CFR 50.9(b) to Provide That EPA Will Again Determine the 1-Hour Ozone Standard No Longer Applies to an Area Once EPA's Authority to Implement and Fully Enforce the 8-Hour Standard Is No Longer in Question

The EPA proposed to revise 40 CFR 50.9(b) to provide that once the 8-hour ozone standard is fully enforceable and no longer subject to legal challenge, the 1-hour standard will no longer apply to an area if EPA determines that the area has air quality meeting the 1-hour standard.[17] The EPA's final rule adopts this position.

Comment: Some commenters disagree with EPA's proposed revision to § 50.9(b). These commenters feel that the promulgation of an 8-hour standard should not be the basis for revoking the applicability of the 1-hour standard. Some of the commenters believe that removing the applicability of a NAAQS and associated control measures based solely on air quality is inconsistent with the law and that we should consider both the 1-hour and 8-hour ozone standards. Some commenters believe that future revocations should not be allowed without first following the redesignation process as prescribed by the CAA. Other commenters suggest that once the 8-hour ozone standard is enforceable, we should revoke the 1-hour standard everywhere regardless of what the air quality is. Finally, one commenter claims that EPA should not amend section 50.9(b) now since the 8-hour standard may never be enforceable.

Response: The EPA believes that it has the authority upon issuance of a new or revised standard to determine the continued validity of the pre-existing standard and when, if ever, it should no longer apply. In the final rule promulgating the 8-hour standard, EPA determined that the 1-hour standard was no longer necessary to protect public health and welfare in light of the revised 8-hour standard, which States would be required to implement and enforce. However, EPA also determined that Congress intended areas that remained nonattainment for the 1-hour standard to meet the requirements of subpart 2, until the 1-hour standard is attained. As EPA explained in the

[16] For example, EPA has stayed the applicability of its final regulatory determinations under section 126 of the CAA to the extent they were based on the 8-hour NAAQS. (65 FR 2674, January 17, 2000). Similarly, EPA recently proposed to stay the 8-hour basis of its NO_X SIP call rule, which calls on 22 States and the District of Columbia to reduce emissions of nitrogen oxides that contribute to ozone problems in other States. (65 FR 11024, March 1, 2000).

[17] If the 8-hour standard promulgated in July 1997 does not become enforceable because of Agency action taken in response to any unappealable decision by the court in the *ATA* v. *EPA* litigation, then the second sentence of 40 CFR 50.9(b) would not have any legal effect. As appropriate, EPA could reconsider this regulation at the time it takes any action in response to an unappealable decision.

preamble to the NAAQS rule, section 109 of the CAA clearly authorizes EPA to promulgate revisions to a standard, which necessarily includes the authority to revoke previous standards that have been revised (62 FR 38857, July 18, 1997). On the other hand, subpart 2 of the CAA sets out numerous requirements specifically applicable to areas not attaining the 1-hour ozone standard. To accommodate both of these provisions, EPA concluded that after promulgation of the 8-hour standard, subpart 2 must continue to apply as a matter of law in each area until the 1-hour standard is attained (62 FR 38873). Thus, to facilitate continued applicability of the subpart 2 requirements, EPA established a transition scheme in 40 CFR section 50.9(b) that provided the 1-hour standard would continue to apply until an area had air quality meeting the 1-hour standard.

The EPA does not agree that in order to determine a pre-existing standard no longer applies, EPA must require areas to meet the requirements for redesignation and formally redesignate an area from nonattainment to attainment under section 107(d)(3). As a general matter, Congress has not specified any procedure for determining that a pre-existing NAAQS no longer applies once EPA promulgates a revised standard. Moreover, although Congress gave some guidance on how to transition to a less stringent NAAQS, see CAA section 172(e), it did not provide clear guidance on how to transition to a more stringent NAAQS. The EPA believes that in determining how to transition to a revised NAAQS, it must make common-sense decisions, considering the intent of Congress in light of the statutory scheme, including how best to ensure public health protection without imposing unduly burdensome requirements on States and sources.[18]

With respect to the transition from the 1-hour standard to the 8-hour standard, EPA determined that Congress intended areas to remain subject to the 1-hour standard until such time as that standard is met. Since all areas of the country were subject to the revised, more stringent 8-hour standard, EPA determined that it did not make sense to require areas that had met the 1-hour standard but remained designated nonattainment to complete a maintenance plan since generally these areas would be required to develop an attainment plan for the more stringent 8-hour standard. The EPA continues to believe that, if a fully enforceable 8-hour standard were in effect, it would be unreasonable to require States to demonstrate that an area will maintain the 1-hour standard for 10 years (with a later update for a subsequent 10 years) when these areas would be developing attainment plans and, ultimately, maintenance plans for the more stringent 8-hour standard.

This interpretation is consistent with the approach Congress employed in the one area where the statute does address revocation of a prior standard. Section 172(e) of the CAA provides that where EPA relaxes a standard, it must require all areas that have not yet attained the more stringent prior standard to provide for controls that are at least as stringent as those that applied to areas designated nonattainment of the prior standard. This provision both clarifies that Congress intended EPA to revoke standards and associated control requirements in certain circumstances where they have been revised, and that an appropriate criterion for determining when a prior standard should be revoked is whether or not an area has attained that standard. Congress did not, however, require redesignation of areas with development of maintenance plans prior to removal of control obligations. Rather, Congress required only that control measures continue to apply until an area has attained a prior standard and implicitly allows for revocation of the prior standard.

The EPA also disagrees with the commenter who suggests that EPA should not amend § 50.9(b) because it has been struck down by the court and that the 8-hour standard might never be enforceable. The EPA disagrees with the claim that the court struck down 40 CFR 50.9(b). The court did not vacate any aspect of EPA's July 1997 rulemaking, which included the promulgation of section 50.9(b).[19] The EPA believes that its proposed revision to section 50.9(b) addresses the contingency that the 8-hour standard may never become enforceable. The EPA believes that it is better to promulgate revisions to section 50.9(b) at this time so that interested parties are aware of EPA's planned transition approach if and when the 8-hour standard becomes fully enforceable.

Finally, for the reasons explained above, EPA believes that subpart 2 continues to apply as a matter of law to all areas that have not yet attained the 1-hour standard. Therefore, EPA does not believe it has the authority to determine the 1-hour standard inapplicable to any area that has not yet attained that standard, even after the 8-hour standard has become fully enforceable.

C. Areas Designated as Attainment With No Violations Since Revocation

The EPA proposed that upon reinstatement of the standard, areas designated as attainment with no violations after revocation would not be subject to any new planning requirements under subpart 2 of the CAA, beyond continuing compliance with any requirements in an approved maintenance plan. The EPA is adopting this position in today's action.

Comment: Some commenters contend that all areas designated as attainment should be treated on an equal basis. The EPA should either require all attainment areas to have maintenance plans, including the obligation to comply with conformity, or free all areas from the maintenance plan requirement.

Response: The EPA does not have the authority to require all areas designated as attainment either to have a maintenance plan or to relieve them of that obligation. The CAA specifically provides that areas seeking redesignation from nonattainment to attainment must develop and submit maintenance plans. Upon redesignation, these areas are required to continue to implement their maintenance plans, including complying with the conformity provisions. Areas that were initially designated as attainment after the 1990 CAA Amendments are not subject to this requirement. In addition, section 176(c)(5)(B) of the CAA makes clear that areas with maintenance plans continue to be subject to conformity and that areas that have historically been designated as attainment are not subject to conformity.

D. Areas Designated Attainment (Without Maintenance Plans) With Violations Since Revocation

The EPA proposed to provide areas designated attainment without

[18] EPA's scheme for transitioning to the 8-hour ozone standard is consistent with the Agency's approach in the one other case where it promulgated a more stringent NAAQS revision. *See* 52 FR 24672 (July 1, 1987). When EPA revised the particulate matter standard to change the indicator from total suspended particulates (TSP) to particulate matter with a diameter of 10 microns or less (PM–10), it retained the TSP designations for a limited purpose because the statutory limitations for certain areas under the Prevention of Significant Deterioration (PSD) program were linked to TSP designations. *See* CAA section 163. Congress subsequently codified EPA's decision in section 107(d)(4)(B) of the CAA. Similarly, EPA here is retaining the 1-hour standard and associated designations for purposes of continued application of subpart 2 of the CAA, until the purpose of subpart 2—attainment of the 1-hour standard—is met.

[19] Furthermore, no party in the *ATA* case challenged EPA's promulgation of 40 CFR 50.9(b) and the court did not address this regulatory provision in either its May 14, 1999 or its October 29, 1999 decisions.

maintenance plans, that have had violations since revocation, a reasonable time to come back into attainment prior to taking action to designate them as nonattainment. There are only four areas which fall into this category: Berrien Co., MI; Hamilton Co., IN; Hamilton Co., TN; Rowan Co., NC.

Comment: Several commenters asked that we define what is a "reasonable time frame" to bring areas back into attainment. Some commenters reference measures that States have already taken to address ozone problems.

Response: The CAA does not mandate that EPA redesignate areas from attainment to nonattainment. Rather, section 107(d)(3)(A) provides the general criteria that EPA may consider in determining whether to redesignate an area.[20] In particular, EPA may consider air quality data, planning and control considerations or any other air-quality related considerations.

The Agency commends areas for any initiatives they may have taken, such as voluntary emission reduction programs, to help improve air quality. The EPA will consider this information in determining whether and when to move forward with a redesignation to nonattainment. States should work with the appropriate EPA Regional Offices to determine whether additional measures are necessary to address a recent violation.

To the extent additional measures are needed, EPA believes that it is reasonable for States to adopt measures to address any violations within 6–9 months of the effective date of this final action. The EPA is recommending 6–9 months as the presumptive period for action, however, each State should work with the relevant EPA Regional Office to develop a strategy for specific areas. States have been on notice of EPA's planned reinstatement of the standard and should have begun an analysis of measures to address any violation. In addition, since reinstatement for these areas will not be effective until 90 days after publication of this final action in the **Federal Register**, this approach will allow States 9–12 months from promulgation of this final rule to adopt any necessary measures and well over a year from the time of EPA's proposal to reinstate the standard. The EPA believes that this period is comparable to the 1-year time period provided under section 179(d) for States to adopt measures based on a finding that the State failed to attain the standard.

[20] For areas designated as nonattainment seeking redesignation to attainment, section 107(d)(3)(E) sets forth additional criteria that must be met before EPA may redesignate the area.

E. Areas Designated Attainment (With Maintenance Plans) With Violations Since Revocation

For areas designated attainment with maintenance plans and with violations since revocation, EPA proposed that the contingency measures in the area's approved SIP should be implemented to address any violations of the 1-hour ozone standard. If a State had removed any contingency measures after EPA determined the 1-hour standard no longer applied, EPA proposed the State should place the contingency measure back into the SIP. There are seven areas which fall into this category: Charlotte-Gastonia, NC; Huntington-Ashland, WV–KY; Knoxville, TN; Nashville, TN; Portland-Vancouver Air Quality Management Area, OR–WA; Richmond, VA; Sheboygan, WI.

Comment: Several commenters question whether it is appropriate to require States to implement contingency measures and question whether contingency measures will provide any real air quality benefits. They disagree that automatic implementation of such measures is the correct solution to addressing the current air quality problem. Some commenters believe that since the 1-hour standard did not apply in the areas after revocation, the areas cannot be considered to be violating the 1-hour standard based on data from that time; thus in their view, violations that occurred after revocation but prior to reinstatement cannot trigger contingency measures. Some commenters argue that even if a violation occurred during the period in which the standard was revoked, the most recent 3 years of air quality data should have precedence. They state that if those data indicate the area is not violating the standard, the State should not be required to implement contingency measures.

In addition, some commenters were concerned that the schedule specified in the SIPs for implementation of contingency measures is often triggered as of the date of the violation. Thus, under these SIPs, some portion of the implementation period may already have passed by the time the reinstatement becomes effective.

Other commenters claim that EPA should use its authority under section 110(k)(6) to place deleted contingency measures back into the SIP. Section 110(k)(6) provides that EPA may revise its prior approval removing the contingency measures if it determines that the approval action was in error.

Response: Section 175A(d) of the CAA requires that a maintenance plan include such contingency measures as are necessary to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The EPA believes that areas designated as attainment that have maintenance plans in place and that have had violations of the NAAQS since revocation, are required by the CAA and by their approved SIPs to move forward to implement contingency measures. Since the purpose of these measures is to protect public health, EPA believes it is appropriate to require areas to implement contingency measures to ensure that future air quality will meet or be lower than the NAAQS.

The EPA has allowed States a great deal of flexibility with respect to contingency measures. First, EPA has allowed flexibility in terms of the selection and adoption of contingency measures for the maintenance plan. The EPA does not require that contingency measures be fully adopted in order for the maintenance plan to be approved. The maintenance plan need only ensure that the contingency measures be adopted expeditiously once they are triggered. (Procedures for Processing Requests to Redesignate Areas to Attainment, September 4, 1992, John Calcagni).

In addition, when an area violates the standard, States have discretion in selecting which of the contingency measures in the approved maintenance plan should be implemented. In the past, EPA has allowed States to substitute and implement new, more appropriate and effective contingency measures. (64 FR 28753 and 64 FR 28757, May 27, 1999). The EPA would allow States with areas violating the standard to do so here through the SIP process, if substitution of measures would not unreasonably delay air quality benefits. Therefore, if, as at least one commenter suggests, existing, approved contingency measures may no longer be appropriate or effective, the State may seek a substitution. However, the fact that existing contingency measures may not be effective or appropriate does not support a decision not to require implementation of contingency measures to address the air quality problem.

Finally, although EPA has indicated that it would provide a reasonable period of time for violating attainment areas without maintenance plans to correct their air quality problem before designating them to nonattainment, EPA does not believe it has the ability to delay the triggering of the States' obligation to select and adopt contingency measures for areas with maintenance plans that are experiencing violations. The CAA contemplates that

contingency measures will be implemented "promptly" in such areas. In addition, the terms of the maintenance plans themselves require adoption and implementation of contingency measures upon violations. Thus, the CAA requires areas to adopt appropriate contingency measures once violations occur. States may submit SIP revisions to substitute appropriate measures at any time.

The EPA disagrees that violations are not valid if they occurred during the period when the 1-hour standard did not apply for an area. The fact that an air quality standard does not apply during a period of time does not invalidate air quality data gathered at that time or invalidate the exceedances or violations demonstrated by that data. In fact, the statutory period for initial designations belies that interpretation. Under section 107(d)(1), Governors must recommend designations within 1-year of promulgation of a standard and EPA must designate areas within 2 years of promulgation. For standards that are measured over a period of longer than 2 years, such as the 1-hour and 8-hour ozone standards, EPA would necessarily be required to consider monitoring data that preceded promulgation of the standard in making designations. In addition, the State and sources are not unreasonably disadvantaged. The EPA is not requiring that the time for States to implement contingency measures runs from the time of the violation, but rather from the effective date of the reinstatement of the standard.

This approach is consistent with the approach EPA is taking concerning tolling of applicable clocks for conformity obligations and sanctions. As EPA states elsewhere in this notice (sections III.I and III.J), EPA believes that clocks related to the timing of conformity determinations and sanctions should not be considered to have run during the period that the 1-hour standard was not applicable to an area. It would be unfair to areas to have such clocks expire during a time that the area was not subject to the planning obligations associated with the clocks. Thus, EPA has concluded that any such clocks would be tolled during the time the standard was not applicable. When this rule becomes applicable, the clock will begin to run again based on whatever time remained when EPA revoked the standard for an area. Similarly, EPA believes that the duty to implement contingency measures should be triggered on the effective date of this reinstatement action rather than the date of any past violation.

If an area has a SIP in which the timing for contingency measures is triggered on the date of the violation, EPA believes that it would be appropriate to interpret the violation as occurring on the effective date of the reinstatement. If States still remain concerned about the approved language in existing SIPS regarding the timing for triggering contingency measures, they should work with the relevant EPA Regional Office to determine an appropriate manner to address the issue. Since the 1-hour standard was not in effect for the area during the revocation period, EPA does not believe that the area should be subject to a shorter time than contemplated in the State's adoption and EPA's approval of the SIP.

With respect to commenters that claim that an area may have had a violation (during 1996–1998) and once again is attaining (during 1997–1999), EPA believes that such areas should work with the relevant EPA Regional Office to determine an appropriate course of action. If there are additional control measures that applied during 1999, but did not apply during the period of the violation, it may not be necessary to implement further contingency measures at this time.

The EPA allowed States to remove contingency measures from approved SIPs where they were linked to the 1-hour standard or air quality ozone concentrations and EPA had taken action to determine that the 1-hour standard no longer applied. *See* "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, December 29, 1997. The EPA believed that such revisions would be consistent with section 110(l) of the CAA since EPA was determining that the 1-hour standard no longer applied and, therefore, removal of the contingency measures would not interfere with any applicable requirement concerning attainment and reasonable progress, or any other applicable requirement of the CAA. *Id.*

Because EPA believes it is now appropriate and necessary to reinstate the 1-hour standard, EPA believes it is no longer appropriate for States not to have those contingency measures in the approved SIP. States will need to move forward to put contingency measures back into the SIP. The EPA believes that States should have some discretion in selecting these contingency measures considering what measures would be appropriate, and adopting such measures, as necessary. Thus, at this time, EPA is not moving forward to use section 110(k)(6) to retract its earlier approval of SIP revisions removing contingency measures. Since EPA is not now proposing to move forward under section 110(k)(6), EPA is not addressing whether that provision provides the legal authority to take the action suggested by the commenters.

F. Areas Designated Nonattainment With No Violations Since Revocation

For areas designated nonattainment with no violations since the standard was revoked in these areas, EPA proposed that the nonattainment designation would again apply, but recommended that the State submit a redesignation request that meets the requirements of section 107(d)(3)(E). In addition, EPA noted that its May 10, 1995, "Clean Data Policy" could provide relief from some subpart 2 measures for these areas as long as they continued to have clean data. However, other subpart 2 requirements would apply unless and until an area was redesignated to attainment. There are 45 areas which fall into this category. The following table (Table I) lists the areas in this category:

Table 1.—Areas Designated Nonattainment With No Violations Since Revocation

Includes 45 areas (96 counties) that are not violating the 1-hour standard based on 1996–98 data.

Serious Classification:
- Boston-Lawrence-Worcester (E. MA), MA–NH (12 counties)
- Portsmouth-Dover-Rochester, NH (1 county)
- Providence (All RI), RI (5 counties)

Moderate Classification:
- Atlantic City, NJ (2 counties)
- Knox & Lincoln Cos., ME (2 counties)
- Lewiston-Auburn, ME (2 counties)
- Muskegon, MI (1 county)
- Portland, ME (3 counties)
- Poughkeepsie, NY (3 counties)

Marginal Classification:
- Albany-Schenectady-Troy, NY (6 counties)
- Allentown-Bethlehem-Easton, PA–NJ (4 counties)
- Altoona, PA (1 county)
- Buffalo-Niagara Falls, NY (2 counties)
- Door Co., WI
- Erie, PA (1 county)
- Essex Co., NY
- Harrisburg-Lebanon-Carlisle, PA (4 counties)
- Jefferson Co., NY
- Johnstown, PA (2 counties)
- Manchester, NH (1 county)
- Reno, NV (1 county)
- Scranton-Wilkes-Barre, PA (5 counties)
- Smyth Co., VA (White Top Mtn)
- York, PA (2 counties)
- Youngstown-Warren-Sharon, OH–PA

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(3 counties)
Section 185A Areas (Section 185A areas, previously called transitional areas, had 3 complete years of clean data from 1987–89):
Chico, CA (1 county)
Denver-Boulder, CO (6 counties)
Flint, MI (1 county)
Yuba City, CA (2 counties)
Incomplete Data Classification (Incomplete data areas had no data or less than 3 complete years of data at time of classification):
Allegan Co., MI
Cheshire Co., NH
Crawford Co., PA
Franklin Co., PA
Greene Co, PA
Juniata Co., PA
Lawrence Co., PA
Northumberland Co., PA
Pike Co., PA
Saginaw-Bay City-Midland, MI (3 counties)
Salem, OR (2 counties)
Schuylkill Co., PA
Snyder Co., PA
Susquehanna Co., PA
Warren Co., PA
Wayne Co., PA

Comment: A number of commenters were opposed to reinstating prior designations and classifications, particularly in the case of areas that were designated nonattainment at the time of the revocation and that have remained clean. They want EPA to consider current monitoring data as the basis of an area's designation. These commenters claim that EPA's proposed approach creates inequities among the various types of areas where the standard would be reinstated. For example, they point to areas that will be designated attainment but that are violating the 1-hour standard. The commenters contend that it is inequitable that those areas will not be subject to subpart 2 control requirements, including new source review and conformity, but that certain nonattainment areas that have remained clean since revocation will be. One commenter did not seem to object to this approach, but recommended that EPA approve pending redesignation requests within 1 to 3 months of the final reinstatement.

Other commenters supported EPA's proposal to restore the designations and classifications that applied at the time of the revocation action. Several of these commenters claimed that EPA should not or could not consider violations that occurred while the standard was not applicable. Others recommended that EPA designate as nonattainment all areas that have current violations of the 1-hour standard.

Specifically, some commenters request that EPA now designate as attainment areas that were designated as nonattainment and that have never been approved for redesignation in accordance with the criteria in section 107(d)(3)(E). Thus, the commenters request EPA to rely on its revocation action as a justification for avoiding those requirements.

Response: As provided in section III.A, above, in today's action EPA is only reversing its earlier determination that the 1-hour standard no longer applies in these and other areas. Therefore, EPA is not considering current air quality data in establishing designations under this action as EPA would do when establishing initial designations for areas under section 107(d)(1) or redesignating areas under section 107(d)(3). In promulgating 40 CFR 50.9(b), EPA determined that the designations and classifications were linked to the applicability of the 1-hour standard. On that basis, in applying section 50.9(b), EPA removed not just the applicability of the 1-hour standard, but also the associated designation and classification for the 1-hour standard. Because EPA is rescinding its prior findings concerning the applicability of the 1-hour standard, the designations and classifications that accompanied that standard at the time of revocation come back into place with the standard.

The EPA disagrees with the commenters as a matter of law and policy. It is clear from the CAA, as amended in 1990, that Congress intended areas to meet specific criteria for redesignation with respect to an existing, applicable NAAQS. As discussed above in section III.A & B, EPA believes it was appropriate to transition from the 1-hour ozone standard to the 8-hour ozone NAAQS by requiring only that areas attain the 1-hour standard—one of the five criteria [21] for redesignation. However, EPA believes it would circumvent Congressional intent to reinstate the 1-hour standard because of the uncertainty surrounding the 8-hour standard and permit areas effectively to be redesignated from nonattainment to attainment without meeting the other four redesignation criteria. The EPA does not believe that it can rely on its rule determining the 1-hour standard no longer applies, the basis for which has been undermined by the ATA decision, as support for sidestepping the redesignation criteria.

Moreover, because EPA cannot be sure how long it will take to resolve the issues surrounding the 8-hour standard, EPA believes that it is important to ensure that areas will maintain the 1-hour standard. The statutory redesignation criteria are designed to accomplish that goal. Thus, EPA believes it is essential that they be met.

However, EPA believes that it is appropriate to provide additional time to nonattainment areas with clean air quality data since revocation in order to complete the redesignation process. Therefore, EPA is taking final action today to delay the applicability date of the final rule for up to 180 days for areas that were designated nonattainment at the time of revocation and continue to have clean data, in order to allow States to submit redesignation requests and EPA time to act on them prior to the applicability date. These areas are identified in Table 1. In the proposed action to reinstate the standard, EPA recommended that areas begin to develop redesignation requests (or revise, as necessary, any existing requests) so that EPA could move forward quickly to approve the requests upon reinstatement. The EPA understands that some States are now ready, or close to being ready, to submit these requests to EPA. If requests are submitted within the next 2 months, EPA believes it can complete action on them before this rule becomes applicable. The EPA will work with States to ensure that review of redesignation requests occurs expeditiously. In addition, if States are able to submit redesignation requests and EPA is able to process such requests to the point of final action prior to 180 days from publication, the final action approving the redesignation may provide that the applicability date of the reinstatement will be the same date as the effective date of the redesignation approval, so that the redesignations will occur simultaneously with the reinstatement.

Once EPA approves a redesignation request, an area would be subject to the requirements of the approved maintenance plans. Redesignation to attainment does not relieve an area of its conformity obligations.

With respect to all of the areas previously designated nonattainment which currently have clean air quality data, as listed in Table 1, EPA concluded at the time of revocation that these areas had clean air quality data. These findings remain applicable unless

[21] Section 107(d)(3)(E) provides that EPA may not redesignate an area from nonattainment to attainment unless EPA: (1) determines that the area has attained the relevant NAAQS; (2) has fully approved the area's SIP; (3) determines that the improvement in air quality is due to permanent and enforceable reductions in emissions; (4) has fully approved a maintenance plan for the area; and (5) has determined that the State has met all of the applicable SIP planning requirements.

more recent air quality data indicates that a violation has occurred. The EPA intends to complete rulemaking prior to the applicability date of this rule to determine the eligibility of these areas to use EPA's May 10, 1995 clean data policy. (Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, John S. Seitz).

The EPA acknowledges that reinstating the designations as they were prior to revocation arguably may produce some inequities among areas; however, these potential inequities are inherent in the redesignation process set forth in section 107. As provided in section III.D, above, Congress provided EPA with discretion in determining whether to redesignate areas from attainment to nonattainment and specified factors for EPA to consider. In comparison, Congress prohibited EPA from redesignating an area from nonattainment to attainment unless EPA determined that the area meets five specific criteria. In addition, any redesignation must occur through notice-and-comment rulemaking. Thus, at any point in time, an area can be attaining the standard, yet still be designated nonattainment, or designated attainment and be violating the standard, including the period while rulemaking to effect a redesignation is proceeding.[22]

Areas where EPA is today reinstating the applicability of the 1-hour standard will be placed back into the same position they were in prior to revocation. The EPA does not believe that this creates any additional inequities for these areas. It is true that EPA had previously relieved areas of the obligation to develop a maintenance plan for the 1-hour standard since they were to begin implementing the 8-hour standard. However, since it is now uncertain when areas will be required to implement the 8-hour standard, EPA does not believe it is inequitable to require these areas, as any other area, to develop maintenance plans prior to redesignating them to attainment.

Comment: A few commenters made requests that specific types of areas not be designated nonattainment. One commenter suggested that EPA should designate as attainment areas that were previously designated marginal or rural transport areas and that are clean without requiring redesignation. A few commenters suggested that EPA not penalize areas with violations where the cause of the violations is clearly one of transport and dislike the "unfair" label of nonattainment.

Response: For the reasons provided above, EPA does not see a legal avenue for changing the designation of marginal or rural nonattainment areas or areas affected by transport based solely on the reinstatement of the standard. Nor do the commenters identify a legal mechanism for treating these areas differently from other nonattainment areas with clean data.[23] Some commenters set forth conflicting arguments, arguing that EPA should generally establish the designations that were in place at the time of the revocation while simultaneously claiming that certain types of areas should be designated based on current air quality. The EPA does not see how it can reconcile these conflicting positions. As provided above, EPA believes the only proper interpretation of this reinstatement action is that prior actions are reversed such that prior designations are put back into place. The EPA will consider current air quality data in determining whether to redesignate areas under section 107(d)(3).

In addition, EPA already has provided relief to areas subject to transport in a number of ways. Such areas may continue to take advantage of appropriate EPA policy relating to areas affected by transport.[24] In addition, EPA has issued final rules requiring States or sources to address transported NO_X and ozone in accordance with section 110(a)(2)(D) of the CAA. Final NO_X SIP Call Rule (63 FR 57356, October 27, 1998); Final Rule on Section 126 Petitions (64 FR 28250, May 25, 1999). Areas affected by transport will benefit from these rules.

Comment: Some commenters were concerned about redesignation requests and maintenance plans submitted prior to the time that EPA determined that the 1-hour standard no longer applied. These commenters thought that it would be unfair for EPA to require the areas to update the maintenance plan to provide maintenance for 10 years from the time of EPA's approval.

Response: The EPA appreciates the concerns of those few areas that may have had pending redesignation requests that demonstrate continued maintenance for some period shorter than 10 years from the time of EPA's final action, due to the passage of time. In such areas, EPA will work with those States and respective transportation agencies to develop technically sound future budgets. Such future emissions projections will consider growth for existing and future sources, forecasting for vehicle miles traveled, other federally mandated programs, particularly the more recent mobile fuels rules and other applicable measures; the resulting budgets will undergo normal public process review. The EPA will work with the affected areas on an individual basis to determine the extent to which additional maintenance demonstrations may be needed to support redesignation, and will take appropriate final action on maintenance demonstrations in connection with future action on pending redesignation requests.

G. Areas Designated Nonattainment With Violations Since Revocation

For areas designated nonattainment with violations since the standard was revoked in those areas, EPA proposed that the nonattainment designation would again apply and that the area would be subject to the subpart 2 requirements once the reinstatement became effective. The EPA proposed that these areas have a reasonable time to meet the applicable planning requirements and that EPA would work with each area to establish a submittal schedule. This only applies to one area, Sussex Co., DE., based on 1996–98 data.

Comment: Most commenters did not raise separate issues with respect to this specific group of areas. A few commenters specifically noted that they supported reinstating the nonattainment designation for these areas. Some commenters requested EPA to be clear about what the implications are for reinstatement. In particular, they were concerned about what planning and control requirements might apply and what would be the timing.

Response: The planning and control requirements that will apply for this area are the applicable planning and control requirements in subpart 2 of the CAA. The EPA will work with Delaware to determine appropriate SIP submittal

[22] One court, in an unpublished opinion, upheld EPA's interpretation of the redesignation provisions of the CAA that an area must attain the standard and remain in attainment during the time that a redesignation request is pending in order to qualify for redesignation. *Commonwealth of Kentucky, et al.* v. *US EPA*, No. 96–4274 (6th Cir. Sept. 2, 1998).

[23] One commenter suggests that we could do so as we did in revoking the standard. However, that was not a case of simply telling areas that they did not need to submit maintenance plans notwithstanding their nonattainment designation. It was a case of telling areas that they were no longer subject to any obligations with respect to the 1-hour standard based on expected implementation of the 8-hour standard, which would no longer be the case for marginal or rural nonattainment areas or areas affected by transport where the 1-hour standard is reinstated.

[24] *E.g.*, "Extension of Attainment Dates for Downwind Transport Areas," from Richard Wilson, Acting Assistant Administrator for Air and Radiation, dated July 16, 1998, published at 64 FR 14441, March 25, 1999.

deadlines for any programs that have not yet been submitted.

H. Effective Date and Applicability Dates of Reinstatement

The EPA proposed to delay the effective date [25] of any final reinstatement notice by 90 days in order to provide areas with a short period of time in which to prepare for the applicability of conformity and new source requirements which will be triggered by the reinstatement of the 1-hour standard and the designations for that standard. In the final rule, EPA has retained the 90-day effective date. However, for areas that were designated as nonattainment at the time EPA revoked the 1-hour standard and that have continued to have clean air quality since revocation, EPA is establishing an applicability date for the reinstatement of up to 180 days after publication of the final rule. These areas are listed in Table 1. During this period, EPA will review any pending redesignation requests or requests that may be submitted shortly after this final action is published. If EPA is able to complete final rulemaking action to redesignate an area to attainment during that 180-day period, EPA will provide in the final redesignation rule that the area will be designated attainment as of the applicability date of this rule, so that by the time reinstatement is applicable for any such area, the area will receive an attainment designation. In addition, if States are able to submit redesignation requests and EPA is able to process such requests to the point of final action prior to 180 days from publication, the final action approving the redesignation may provide that the applicability date of the reinstatement will be the same date as the effective date of the redesignation approval, so that the redesignations will occur simultaneously with the reinstatement. As mentioned before, the 45 areas listed in Table 1 may elect to submit redesignation requests.

Comment: Some commenters disagreed with the proposed 90-day delay in effectiveness, claiming it would be too short a time frame to complete conformity determinations on transportation improvement plans (TIPs) or for redesignation to occur. One commenter suggested a 180-day delay in the effective date. Other commenters believed that the final action reinstating the standard and the associated designation should be effective immediately. Finally, some commenters supported EPA's proposal to make the reinstatement and the associated designations effective 90 days after publication.

Response: With respect to the effective date of the rule, EPA has determined, based upon the comments submitted, that a 90-day delayed effective date is an appropriate time period for most areas. The time from the October 25th proposal to the end of the 90-day period is approximately 10 months. The EPA believes this period is sufficient for States to complete air quality analyses for conformity determinations on transportation plans prior to the effective date of the final rule. Thus, areas should not experience any delays in transportation projects. At the same time, reinstatement of the standard with the associated public health and welfare protections will not be significantly delayed. The EPA does not anticipate that areas will attempt to complete transportation activities inconsistent with reinstatement of the 1-hour standard prior to the effective date, but rather that they will use the delay to ensure they are ready to meet the applicable requirements when the reinstatement becomes effective. Thus, EPA concludes that a 90-day delayed effective date is a reasonable accommodation between the competing interests of public health protection and transportation planning for most areas.

The EPA agrees with commenters to the extent it concludes that up to a 180-day delay in the applicability of this rule is appropriate for areas that were designated nonattainment prior to revocation but that currently have clean air quality data sufficient to support a redesignation to attainment. Since these areas have continued to have clean air since revocation, EPA believes it is appropriate to provide up to an additional 90-day delay in the applicability of the rule to allow these areas time to quickly complete and submit redesignation requests and for EPA to act on submitted requests. Where EPA approves such requests on or before the applicability date of this rule, the area would be designated attainment at the time the reinstatement of the 1-hour standard becomes applicable. The EPA notes again that if EPA is taking final action to approve a redesignation prior to 180 days from publication of this rule, the final action approving the redesignation may provide that the applicability date of the reinstatement will be the same date as the effective date of the redesignation approval, so that the redesignations will occur simultaneously with the reinstatement. Where EPA does not approve a redesignation request or one is not submitted, the area will receive the nonattainment designation which applied to the area prior to revocation upon the applicability date of this rule.

The EPA notes that all of these areas will again be subject to conformity upon the applicability date of the reinstatement of the 1-hour standard and associated designations, since conformity applies to both nonattainment and maintenance areas. As indicated above, EPA anticipates that areas will use the delay to complete modeling efforts and the consultation process so that they can have a conforming plan and TIP in place by the applicability date.

I. Sanction and FIP Clocks

The EPA's proposed rule provided that any sanctions and FIP clocks that were running at the time of the revocation should restart at the point that they left off. In other words, if there were 6 months remaining in the 2-year period for promulgation of a FIP, those remaining 6 months would start to run for that area on the applicability date of this action. The EPA is retaining this approach in the final rule.

Comment: Some commenters stated that areas should not be subject to any penalties or sanctions. Another commenter requested that EPA impose sanctions immediately not only for those areas for which a clock was running but also for those areas which may not have submitted a required SIP but for which EPA never made a finding that started sanctions and FIP clocks. This commenter suggested that sanctions should be imposed no later than 90 days after the effective date of the reinstatement for all such areas. In contrast, a number of commenters supported EPA's approach. These commenters generally contended that treating the clocks as if they continued to run during the time when the standard did not apply would be considered enforcing the standard when it was not in effect. One commenter seemed to support starting the clock where it left off at the time of the revocation, but noted that sanction clocks with time remaining should not allow States to delay progress. The commenter states that areas violating the 1-hour standard or contributing to violations in other areas must move forward "as expeditiously as practicable."

Response: The EPA believes that the most equitable approach is to restart clocks for sanctions or FIPs where they left off at the time of the revocation. Because States and sources relied on EPA's final rule determining that the standard no longer applied, States were not affirmatively moving forward with

[25] See footnote 9, above.

1-hour SIPs.[26] Thus, EPA believes that it would be unfair to States and affected sources to treat those clocks as if they continued to run during the time that the 1-hour standard no longer applied.

Similarly, EPA does not believe that it has authority, nor would it be appropriate, to begin these clocks over again upon reinstatement or to treat these clocks as no longer in effect. The FIP and sanctions obligations under sections 110 and 179 of the CAA were previously triggered for a State's failure to make a complete SIP submission or an approvable submission as required under the CAA. By today's action, areas will once again be subject to the same requirements to make submissions. There is no basis for ignoring or discharging the State's obligation with respect to these submissions. Moreover, EPA agrees that sanctions clocks should not be treated by States as a "grace period" that allows deferral of compliance dates. Where a sanctions clock is in place, States should submit plans to stop the clock as expeditiously as practicable and should not delay submission until the last minute before sanctions are put into place.

Because EPA is taking action to put areas back in the place they were in prior to the revocation, the most appropriate course of action is to restart these clocks where they left off. Therefore, upon the applicability date of today's action, any sanctions or FIP clocks that were running based on a State's default for a required submission will restart at the point it was on the effective date of the revocation. States should work to submit SIPs as expeditiously as practicable. Any questions regarding the status of a sanction or FIP clock for a specific area should be directed to the appropriate EPA Regional Office. Finally EPA has no authority to impose sanctions where EPA has not made appropriate findings to trigger clocks under section 179.

J. Conformity

The EPA proposed that conformity would apply upon the effective date of the rule to all areas again designated nonattainment. The EPA noted that these areas would need to have a conforming transportation plan and program in place by the effective date of the rule in order to fund new transportation projects after that date. The EPA also noted that conformity has continued to apply to all attainment areas with maintenance plans even after revocation, and that conformity does not apply at all to attainment areas without maintenance plans. Upon the applicability date[27] of this final action, conformity will apply to all designated nonattainment and maintenance areas as proposed.

Several commenters expressed concerns about the conformity requirements that apply to nonattainment and maintenance areas and the timing of conformity determinations. The specific comments and responses follow.

Comment: The transportation conformity rule requires conformity to be determined at least every 3 years. Commenters requested that we not consider the 3-year clock to have been running in nonattainment areas where the 1-hour ozone standard was revoked and conformity did not apply.

Response: We agree that in ozone nonattainment areas where the ozone standard was revoked and conformity stopped applying, any of the 3-year or 18-month clocks (described in 40 CFR 93.104[28]) that were running at the time of the revocation were stayed on the effective date of the revocation. On the applicability date of this final rule, those clocks will pick up again at the point where they left off.

In practice, this means that if an ozone nonattainment area had a conforming TIP at the time of the revocation and did not amend the plan and TIP with respect to any non-exempt projects during the time conformity did not apply, the transportation plan and TIP would continue to be considered "currently conforming" even if more than 3 years have elapsed since the conformity determination.

The area would need to document that the transportation plan and TIP have not changed since the time of the last conformity determination in a manner that would have required a new conformity determination. The area should also clearly identify how much time remains on the 3-year clock and any 18-month clock that was triggered by 40 CFR 93.104.

We are not concerned that the temporary halt of the clocks in 40 CFR 93.104 will result in transportation plans and TIPs that are relying on very old conformity determinations. The Department of Transportation (DOT) requires transportation plans and TIPs to be regularly updated, and those planning clocks have been running regardless of the revocation. The plan and TIP updates require conformity determinations. Therefore, any plans and TIPs with conformity determinations from before the revocation will be updated soon under DOT's planning regulations.

For any plans and TIPs that were amended with respect to non-exempt projects while the ozone standard was revoked, a new conformity determination will be required by the time the reinstatement is applicable. This is because these plans and TIPs will generally not yet have been found to conform and would have to be found to conform by the applicability date of reinstatement to enable projects to proceed.

Comment: One commenter asked what process is required for areas that voluntarily complied with conformity requirements while the ozone standard was revoked.

Response: If an area amended its plan and TIP while the ozone standard was revoked, but the amendment(s) fully met the requirements of the conformity rule (including public participation), the area would simply need to document this and receive confirmation from the Federal agencies that the transportation plan and TIP are considered "currently conforming."

Comment: Some commenters were concerned that they do not have enough time to determine conformity before the reinstatement is applicable, and/or that it is burdensome to determine conformity of the current plan and TIP when they are updating the plan and TIP very soon (which will also require a conformity determination).

Response: We understand that this final rule changes the usual cycle for determining conformity. Counting from the time we proposed to reinstate the standard, areas will have had at least ten months to complete the conformity process prior to the applicability date of this rule. We believe this is a reasonable time frame, although we recognize that the timing for this conformity process may not be optimal for some areas.

We must balance the desire for additional time for transportation planning with the need to protect public health with the 1-hour ozone standard and statutory requirement for conformity determinations. In some areas, transportation investments were planned or approved during the

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[26] One commenter suggests that EPA's actions revoking the 1-hour standard and related designations were not legally valid at the time they were taken. Thus, this commenter claims, that rule cannot support a further delay in sanctions or FIPs. The EPA disagrees. The EPA revoked the standard in full compliance with its regulation, 40 CFR 50.9(b), which was not challenged at the time it was promulgated.

[27] See footnote 9 and section H. above for explanation of terms "effective date" and "applicability date."

[28] The EPA's conformity regulations require States to redetermine conformity for all transportation plans and programs every 3 years. 40 CFR 93.104(b)(3) and (c)(3). The regulations also require a conformity determination within 18 months of various SIP submittal and approval actions. 40 CFR 93.104(e).

revocation without a demonstration that they will not interfere with attainment of the one-hour ozone standard. It is important to conduct such a demonstration expeditiously so that areas do not irreversibly commit to transportation projects that are inconsistent with healthy air.

Comment: One commenter stated that the proposed criteria for conformity are not consistent with the March 2, 1999 decision of the Court of Appeals in *EDF v. EPA*, 167 F.3d 641,650 (1999) on conformity. The commenter argues that the court required EPA to develop a test to ensure conformity consistent with CAA 176(c)(1) and that this must be done now for all areas where the standard is to be reinstated.

Response: Conformity determinations should comply with the CAA, as recently interpreted in the EPA and DOT guidance issued in response to the March 1999 court decision (EPA's May 14, 1999 guidance entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision" and DOT's June 18, 1999 guidance entitled, "Additional Supplemental Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity"). We believe that these guidance documents are consistent with the court's decision and that conformity determinations performed consistent with the guidance are legally sound. We will be formally proposing to amend the transportation conformity rule to incorporate this guidance, pursuant to CAA section 176(c)(4)(A).

The commenter appears to believe that the court decision required EPA to develop additional criteria to satisfy the obligations of section 176(c)(1) of the CAA, which require Federal agencies and Metropolitan Planning Organizations (MPOs) to determine that Federal actions will not interfere with timely attainment, in situations where they are determining conformity to budgets in submitted SIPs. However, EPA believes that the court in actuality merely remanded EPA's rules, stating that "where EPA fails to determine the adequacy of motor vehicle emissions budgets in a SIP revision within 45 days of submission, * * * there is no reason to believe that transportation plans and programs conforming to the submitted budgets will [meet the statutory tests in section 176(c)(1)(B)]." The EPA interprets this aspect of the decision to require it to revise its regulations to mandate that EPA make affirmative findings of adequacy on all submitted SIPs before they can be used for conformity purposes. The procedure for doing this is outlined in the guidance mentioned above. The EPA does not believe the court addressed any deficiency in EPA's regulations governing conformity determinations in situations where EPA has made a positive finding of adequacy. The EPA concludes that the court only remanded the aspect of EPA's regulations at 40 CFR 93.118(e)(1) which allows use of submitted SIPs which EPA has not yet found adequate, since it did not remand either EPA's regulations at 40 CFR 93.118(e)(4) establishing criteria for finding budgets adequate or 93.118(e)(6) requiring additional findings by Federal agencies and MPOs where conformity determinations are made to submitted SIPs. Therefore, EPA believes that conformity determinations consistent with these two provisions and our guidance on finding budgets adequate fully satisfy the requirements of the CAA and we intend to revise our regulations consistent with that guidance. Of course, commenters will have the opportunity to comment on those regulatory changes when they are proposed and to raise any issues associated with EPA's interpretation of the court opinion at that time. The EPA does not believe that such comments are directly relevant to this rulemaking and, therefore, is not making any changes to the conformity rules in connection with this final action.

Comment: One commenter argued that conformity to adequate SIP budgets in nonattainment areas, should continue even after any future revocations until new adequate budgets are submitted for the 8-hour standard.

Response: Section 176(c)(5) of the CAA clearly provides that conformity requirements only apply in nonattainment areas and areas that had been nonattainment and were subsequently redesignated to attainment and are subject to the requirement to develop a maintenance plan. Since nonattainment areas where EPA may in the future revoke the 1-hour standard once an 8-hour standard becomes fully enforceable will no longer be designated nonattainment or subject to the requirement to submit a maintenance plan, for the reasons explained above, EPA concludes that it would have no authority under section 176(c) to require conformity to previously submitted 1-hour budgets after any future revocations.

K. New Source Review

In the October 25th proposal, EPA solicited comment on what NSR requirements should apply in areas that had, subsequent to our findings that the 1-hour standard no longer applied, revoked their nonattainment NSR programs. Specifically, EPA asked whether 40 CFR part 51, Appendix S should be followed or the higher offset/major source thresholds in subpart 2 of the CAA should be followed in nonattainment areas where the SIP lacks the applicable nonattainment NSR provisions.

Comment: Several commenters wanted flexibility in applying NSR requirements. There was a mixed reaction for and against using 40 CFR appendix S. As to the question of whether States must issue permits consistent with the additional requirements of subpart 2, even in the absence of an approved NSR SIP, one commenter stated that it was not supportive of any EPA action that would cause enforcement of NSR on facilities that were or are under no legal obligation to comply with NSR requirements. Another commenter urged EPA to require sources to comply with subpart 2 notwithstanding the lack of an approved SIP, citing a 1992 EPA policy memorandum as support.

Response: The EPA solicited comment on how to address areas that were designated nonattainment prior to the findings that the 1-hour standard no longer applied and which, since revocation, had amended their SIPs to remove the applicable nonattainment NSR provisions. The EPA has determined that it is unnecessary to resolve this question in this rulemaking, as we have determined that no area has amended its SIP since the nonattainment designations were removed. Thus, the applicable SIPs in each area will specify the nonattainment NSR responsibilities of sources in the area, without any action by EPA.

Comment: Sources that have applied for PSD permits during the period that the 1-hour ozone standard did not apply should not have to seek part D NSR permits. Allowing sources with complete applications to avoid more stringent requirements is consistent with EPA policy. Such an approach is also consistent with how EPA acted following the adoption of PM_{10} as the indicator for particulate matter in 1987. At that time, EPA allowed sources with complete PSD permit applications that did not account for the sources' PM_{10} emissions to be grandfathered.

Response: Whether or not sources must apply for part D nonattainment NSR permits upon reinstatement of the 1-hour standard will be determined by the applicable SIP. The EPA expects that most, if not all, SIPs already specify that sources in designated nonattainment areas must obtain part D permits. Accordingly, some sources may have to revise their permit applications. Even if EPA were to agree that it would

be appropriate to allow such sources to obtain PSD permits rather than nonattainment NSR permits, EPA cannot override by policy the legal requirements of a more stringent applicable SIP. Regarding the PM_{10} transition policy to which the commenter refers, that policy is inapplicable in the present situation because it did not deal with the kind of situation at issue currently—where areas will be switching from one designation status (no designation) to nonattainment. The EPA had concluded in that rulemaking that part D, including part D NSR, did not apply at all to the revised particulate matter NAAQS, so there was not a question about which NSR program would apply. See 52 FR 24672, 24678 (July 1, 1987).

L. Miscellaneous Comments

Comment: One commenter noted that EPA should notify the public of the terms of a stipulation agreement reached between EPA and the Environmental Defense Fund (EDF) wherein EPA agreed to accept comment on certain items in the reinstatement notice.

Response: In its notice reopening the comment period on Dec. 8, 1999, EPA explicitly provided that it would accept comment on the list of issues recited in the stipulation filed in *EDF* v. *EPA*, (D.C. Cir., No. 98–1363). (64 FR 68659, December 8, 1999).

Comment: Several commenters supported applying the reinstatement retroactively, such that areas would be treated as if the standard and the associated designations have always applied. Some were not supportive of retroactively applying the 1-hour standard during the time it was revoked. With respect to conformity determinations, one commenter believed that we shouldn't allow "grandfathering" of projects if prior conformity determinations would have lapsed during the time the standard was not applicable; they believe that in cases where it is not possible to reverse actions, then they must be subject to some mitigation procedure to address actions that allowed for emission increases during that time.

Response: The EPA concludes that it is not appropriate to apply the reinstatement of the 1-hour standard retroactively. The EPA believes that it had full authority to revoke the 1-hour standard initially, and that its actions were legal and proper at the time they were taken. Although EPA now concludes that it should rescind those actions due to changed circumstances, it would be unfair to areas that had relied on the initial revocations (and to sources located in those areas) to apply the rescissions retroactively. Many areas took actions during the period of time that the 1-hour standard was not applicable that properly relied on the inapplicability of that standard. Rules altering prior actions are generally applied only prospectively and are applied retroactively only in unusual cases, for instance where an agency did not have the authority to take a prior action initially. Courts generally view retroactive application of administrative rules with disfavor unless such application is specifically sanctioned by statute. *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988). The CAA does not specifically provide for retroactive application of regulations under title I. Therefore, although EPA might have authority to apply the reinstatement retroactively if a court determined that EPA's action in revoking the standard was illegal, EPA does not believe it is appropriate to do so here where EPA believes it was fully authorized to revoke the standard at the time it took such action.

The EPA also concludes for similar reasons that it would not be appropriate for conformity purposes to treat conformity determinations as having lapsed during the time that the 1-hour standard was not applicable to an area. Because the 1-hour standard no longer applied during that period, areas were not on notice that conformity determinations were to lapse. It would be equally unfair to areas to achieve a similar result by denying grandfathering status under the conformity rules to any project approved during a time period when conformity status would have lapsed if the standard had been applicable. The EPA concludes that areas should be allowed to continue to rely on the inapplicability of the 1-hour standard during the period between revocation and reinstatement because EPA had the authority to revoke the standard and properly revoked it initially.[20]

For these same reasons, EPA concludes that where highway projects or new sources have already been constructed, areas should not be required to immediately implement mitigation measures to remedy any resulting emissions increases. Areas will effectively have to provide for mitigation in future transportation and air quality planning once the 1-hour standard is reinstated. All future air quality planning for attainment and reasonable further progress as well as conformity determinations will have to account for emissions from such activities. However, EPA believes that it would be inequitable to require areas to immediately institute specific mitigation measures to account for any emissions increases that may have occurred during the time that the standard was not applicable to an area.

Comment: Several commenters took the opportunity to comment on the 8-hour ozone standard. Many requested that designations for the 8-hour standard not be made until legal issues are resolved. Many asked for guidance to States on meeting the 8-hour standard in the interim. Several called upon the Agency to revoke the 8-hour standard.

Response: The numerous comments concerning the 8-hour standard, including those relating to designations under the 8-hour standard, guidance on implementation of the 8-hour standard, and requests for revocation of the 8-hour standard, are not relevant to this rulemaking on reinstatement of the 1-hour standard. The EPA will address issues relating to the 8-hour standard in separate rulemaking actions or guidance documents.

Comment: One commenter suggested that we explore the Flexible Attainment Region (FAR) approach to provide flexibility to States in determining measures to prevent air quality deterioration and to improve air quality. The commenter suggests that EPA give these "voluntary programs" time to work before triggering nonattainment designations. The same commenter also requests EPA to extend to ozone areas the flexibility provided in EPA's draft guidance for PM–10 nonattaiment areas with respect to limited maintenance plans.

Response: The EPA has used the FAR approach in the past with respect to areas designated attainment but that are violating the ozone standard. As provided above, EPA has some discretion in deciding whether to redesignate such areas as nonattainment. In exercising that discretion, EPA may consider "planning and control" activities. Thus, in the past, EPA has not moved forward to redesignate to nonattainment attainment areas that were voluntarily adopting and implementing measures to address violations. The EPA plans to continue this approach for such areas as explained in sections III.D and E, above.

[20] One commenter notes that some areas should have been on notice that revocations were questionable since one action promulgating revocations was not published in the Federal Register until after May 14, 1999, the date of the adverse court decision in *ATA* (64 FR 30911, June 9, 1999). However, that final action of the Administrator was taken (final rulemaking notice signed by the Administrator) on May 12, 1999, prior to the court decision; only publication occurred after the decision. The EPA did not take any further actions revoking the 1-hour standard in any areas after the date of the *ATA* decision.

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However, as also explained above, EPA does not believe it has the authority to reinstate the standard and not designate as nonattainment those areas designated as nonattainment at the time of the revocation action. These areas would be subject to the specific planning requirements that Congress provided under the CAA until they qualify for redesignation. The EPA cannot ignore the statutory mandate in favor of more flexible means of achieving attainment that could be allowed under the FAR approach. Therefore, designated nonattainment areas cannot use a FAR because the statutory requirements apply.

With respect to the comment regarding EPA's draft limited maintenance plan guidance for PM–10 areas seeking redesignation from nonattainment to attainment, EPA notes that it has an existing limited maintenance plan policy for ozone ("Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," November 16, 1994, Sally Shaver) This policy provides some flexibility, *e.g.*, no requirement to project emissions out into the future, no need for maintenance demonstration since met by meeting the NAAQS, etc. The commenter appears not to recognize that such a policy exists and does not further explain what flexibilities in the draft PM–10 policy they would like extended to ozone areas.

IV. What Administrative Requirements Are Considered in Today's Final Rule?

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is a "significant regulatory action" under the terms of Executive Order 12866; therefore, it was submitted to OMB for their review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The EPA is certifying that this final rule will not have a significant impact on a substantial number of small entities because the determination that the 1-hour standard again applies does not itself directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rule merely establishes that the 1-hour standard again applies in certain areas. For the most part, any requirements applicable to small entities that may indirectly apply as a result of this action would be imposed independently by the State under its SIP, not by EPA through this action. Moreover, to the extent this rule would automatically trigger the applicability of certain SIP requirements to small entities (*e.g.*, NSR), this rule cannot itself be tailored to address small entities that would be subject to those requirements.

One requirement that may apply immediately upon this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. However, those rules only apply directly to Federal agencies and MPOs, which by definition are designated only for metropolitan areas with a population of at least 50,000 and thus do not meet the definition of small entities under the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or tribal governments in the aggregate or to the private sector. This rule would reinstate the applicability of the 1-hour ozone standard and alter the designation status of areas. The consequences of this action may result in some additional costs within the affected areas, but these costs would not exceed $100 million per year in the aggregate.[30] In view of recent concerns about increased gas prices in

[30] *See* Docket A–99–32, III–B–04, "Preliminary Assessment of the Incremental Burden Associated with Reinstatement of the 1-Hour Ozone Standard for UMRA, dated October 14, 1999.

certain areas, we specifically note that this action will not impose any requirements on gasoline and will not affect current gas prices.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and MPOs making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate annually.[31]

In addition, some areas with recent air quality violations will have to take the additional steps specified in their maintenance plans to limit emissions of air pollutants. These measures could, for example, include revising the threshold for NSR, establishing reasonable available control technology (RACT) level control for additional sources, and establishing or enhancing inspection and maintenance (I/M) programs within the area. These measures vary substantially in terms of the expected emissions reductions and their potential cost. Because the affected jurisdictions have some flexibility to choose among these measures, it is difficult to estimate the overall cost of these additional controls. The EPA believes that the affected areas are already carrying out many of the other obligations associated with this action. For example, most areas that would have a nonattainment designation reinstated upon reinstatement of the 1-hour standard already have NSR requirements under their existing SIP programs. In addition, many of these areas are located in the Northeast Ozone Transport Region and are already carrying out many of the requirements associated with the reinstatement of the 1-hour standard. Therefore, EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those major regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not meet either of the above criteria. It is not economically significant as defined under Executive Order 12866, and it implements a previously promulgated health or safety-based Federal standard and does not itself involve decisions that affect environmental health or safety risks.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

As indicated in the proposal, EPA does not believe that this final rule has federalism implications within the meaning of the Executive Order. EPA has reached this conclusion for several reasons. As discussed above in connection with UMRA, this action will not impose substantial direct compliance costs on the States nor will it alter the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. As noted previously, this rule simply reinstates the applicability of the 1-hour ozone standard and the associated air quality designations for various areas that had applied prior to revocation. These actions do not preempt any State authority or otherwise affect State flexibility to comply with the Clean Air Act. Although reinstatement will alter the number of areas within various states that are designated under the 1-hour standard, it will not alter the relationships that currently exist between the States and the federal government with respect to areas designated under the 1-hour standard. Thus, EPA concludes that the requirements of section 6 of the Executive Order do not apply to this rule.

In the spirit of the Executive Order however, the Agency has consulted extensively with representatives of State and local governments, including elected officials. As EPA was developing the proposal and again when EPA issued the proposal, we phoned elected officials or their staff for many of the areas that could be affected by the rule to notify them that EPA was considering reinstating the 1-hour ozone standard and to solicit their advice and concerns. The EPA also notified national organizations of state and local government officials and made EPA staff available to discuss the proposed action with the organization staff and their members. These organizations included the U.S. Conference of Mayors (USCM), the National Conference of Black Mayors, the National Governors Association, the National Council of State Legislators, the National Association of Counties, ECOS, STAPPA/ALAPCO, the National

[31] See footnote 30, above.

Association of Local Government Environmental Professionals, and the Ozone Transport Commission. For example, EPA's Assistant Administrator for Air and Radiation held a conference call with the USCM Energy and Environment Committee members when the proposal was announced. In addition, EPA sent letters to the Governors and their environmental commissioners to ensure that they were aware of the proposal and could comment on it. It was in response to concerns raised by these contacts that EPA proposed to delay the effective date of the reinstatement for 90 days so that areas would have adequate time to comply with any requirements triggered by reinstatement. In addition, based on comments received from States after publication of the proposal, EPA decided to provide a 180-day delayed applicability date for areas that were designated nonattainment but currently have clean air data. EPA also notes that, while it received no adverse comments regarding the statements in the proposal concerning the lack of federalism implications of this rule, it received numerous comments on the rule from state and local governments. EPA has responded fully to all comments raised by the various State and local governments, as explained above in the sections of this notice describing the comments and EPA's response to them.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This final action does not involve or impose any requirements that directly affect Indian tribes. Under EPA's tribal authority rule, tribes are not required to implement CAA programs but, instead, have the opportunity to do so. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Paperwork Reduction Act

This final action does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's final action to reinstate the applicability of the 1-hour standard in certain areas does not have a disproportionate adverse affect on minorities and low-income populations.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this final action. Today's final action does not require the public to perform activities conducive to the use of VCS.

K. Rule Effective Date and Applicability Dates

The EPA finds that there is good cause for this final action to become effective [22] and applicable either 90 or 180 days after publication, depending upon type of area, since this would afford areas time to get programs, such as conformity SIPs or redesignation requests, in place. The EPA believes these are reasonable periods of time to accommodate the competing interests of efficient air quality and transportation planning and prompt public health protection. The EPA has general administrative authority under section 301(a) of the CAA and 5 U.S.C. 553(d) to establish the effective date and applicability dates of a rule provided any delay in effective date or applicability dates is reasonable. *ASG Industries* v. *Consumer Product Safety Commission*, 593 F.2d 1323, 1335 (D.C. Cir. 1979). A 90- or 180-day delay in effective or applicability date for a rule where areas will have to develop various SIP emission control programs by the effective or applicability date of the rule is reasonable. *See Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506 (D.C. Cir. 1983) (EPA's decision to grant an 8-month period between date of promulgation and effective date was reasonable where regulated entities needed time to implement controls). The longer time period for areas that are not experiencing violations is reasonable because no violations are occurring in these areas. Moreover, EPA will need additional time to take final action to redesignate areas as attainment after States submit their plans to EPA.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

[22] See footnote 9, above.

Dated: July 5, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, Parts 50 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 50—[AMENDED]

1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 50.9 is amended by revising paragraph (b) to read as follows:

§ 50.9 National 1-hour primary and secondary ambient air quality standards for ozone.

* * * * *

(b) The 1-hour standards set forth in this section will remain applicable to all areas notwithstanding the promulgation of 8-hour ozone standards under § 50.10. In addition, after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard.

Area designations and classifications with respect to the 1-hour standards are codified in 40 CFR part 81.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 81.301, the table entitled "Alabama-Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Birmingham Area:				
Jefferson County	11/15/90	Nonattainment	11/15/90	Marginal.
Shelby County	11/15/90	Nonattainment	11/15/90	Marginal.
Rest of State		Unclassifiable/Attainment		
Autauga County				
Baldwin County				
Barbour County				
Bibb County				
Blount County				
Bullock County				
Butler County				
Calhoun County				
Chambers County				
Cherokee County				
Chilton County				
Choctaw County				
Clarke County				
Clay County				
Cleburne County				
Coffee County				
Colbert County				
Conecuh County				
Coosa County				
Covington County				
Crenshaw County				
Cullman County				
Dale County				
Dallas County				
De Kalb County				
Elmore County				
Escambia County				
Etowah County				
Fayette County				
Franklin County				
Geneva County				
Greene County				
Hale County				
Henry County				
Houston County				
Jackson County				
Lamar County				
Lauderdale County				
Lawrence County				
Lee County				
Limestone County				
Lowndes County				
Macon County				
Madison County				
Marengo County				
Marion County				
Marshall County				
Mobile County				

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ALABAMA-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Monroe County				
Montgomery County				
Morgan County				
Perry County				
Pickens County				
Pike County				
Randolph County				
Russell County				
St. Clair County				
Sumter County				
Talladega County				
Tallapoosa County				
Tuscaloosa County				
Walker County				
Washington County				
Wilcox County				
Winston County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

3. In § 81.302, the table entitled "Alaska—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 08 Cook Inlet Intrastate		Unclassifiable/Attainment		
Anchorage Election District				
Kenai Penninsula Election District				
Matanuska-Susitna Election District				
Seward Election District				
AQCR 09 Northern Alaska Intrastate		Unclassifiable/Attainment		
Barrow Election District				
Denali Borough				
Fairbanks Election District				
Kobuk Election District				
Nome Election District				
North Slope Election District				
Northwest Arctic Borough				
Southeast Fairbanks Election District				
Upper Yukon Election District				
Yukon-Koyukuk Election District				
AQCR 10 South Central Alaska Intrastate		Unclassifiable/Attainment		
Aleutian Islands Election District				
Aleutians East Borough				
Aleutians West Census				
Bethel Election District				
Bristol Bay Borough Election District				
Bristol Bay Election District				
Cordova-McCarthy Election District				
Dillingham Election District				
Kodiak Island Election District				
Kuskokwim Election District				
Lake and Peninsula Borough				
Valdez-Cordova Election District				
Wade Hampton Election District				
AQCR 11 Southeastern Alaska Intrastate		Unclassifiable/Attainment		
Angoon Election District				
Haines Election District				
Juneau Election District				
Ketchikan Election District				
Outer Ketchikan Election District				
Prince Of Wales Election District				
Sitka Election District				
Skagway-Yakutat Election District				

ALASKA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Wrangell-Petersburg Election District				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

4. In § 81.303, the table entitled "Arizona—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Phoenix Area:				
Maricopa County (part)	11/15/90	Nonattainment	2/13/96	Serious.
The Urban Planning Area of the Maricopa Association of Governments is bounded as follows:				
1. Commencing at a point which is at the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning;				
2. Thence, proceed northerly along the eastern line of Range 7 East which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and showed on the U.S. Forest Service 1969 Planimetric Maps;				
3. Thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Usery Mountain Semi-Regional Park;				
4. Thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Usery Mountain Semi-Regional Park;				
5. Thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Sections 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East;				
6. Thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel;				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
7. Thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902;				
8. Thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation;				
9. Thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East;				
10. Thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park;				
11. Thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park;				
12. Thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest;				
13. Thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of Tonto National Forest;				
14. Thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest;				
15. Thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant);				
16. Thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11-109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek;				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
17. Thence, southerly along the center line of Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964;				
18. Thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road;				
19. Thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail;				
20. Thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West;				
21. Thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West;				
22. Thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South;				
23. Thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park;				
24. Thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation;				
25. Thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statues Section 11–109 and 11–113, which is the eastern line of Range 1 East;				
26. Thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River;				
27. Thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
28. Thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East				
Tucson Area:				
Pima County (part)				
Tuscon area	.....	Unclassifiable/Attainment		
Rest of State	.....	Unclassifiable/Attainment		
Apache County				
Cochise County				
Coconino County				
Gila County				
Graham County				
Greenlee County				
La Paz County				
Maricopa County (part) area outside of Phoenix				
Mohave County				
Navajo County				
Pima County (part) Remainder of county				
Pinal County				
Santa Cruz County				
Yavapai County				
Yuma County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

5. In § 81.304, the table entitled "Arkansas—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.304 Arkansas.

* * * * *

ARKANSAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 016 Central Arkansas Intrastate (part) Pulaski County:	.....	Unclassifiable/Attainment		
AQCR 016 Central Arkansas Intrastate (Remainder of)	.....	Unclassifiable/Attainment		
Chicot County				
Clark County				
Cleveland County				
Conway County				
Dallas County				
Desha County				
Drew County				
Faulkner County				
Garland County				
Grant County				
Hot Spring County				
Jefferson County				
Lincoln County				
Lonoke County				
Perry County				
Pope County				
Saline County				
Yell County				
AQCR 017 Metropolitan Fort Smith Interstate	.....	Unclassifiable/Attainment		
Benton County				
Crawford County				
Sebastian County				
Washington County				
AQCR 018 Metropolitan Memphis Interstate	.....	Unclassifiable/Attainment		
Crittenden County				
AQCR 019 Monroe-El Dorado Interstate	.....	Unclassifiable/Attainment		
Ashley County				
Bradley County				
Calhoun County				

ARKANSAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Nevada County				
Ouachita County				
Union County				
AQCR 020 Northeast Arkansas Intrastate		Unclassifiable/Attainment		
Arkansas County				
Clay County				
Craighead County				
Cross County				
Greene County				
Independence County				
Jackson County				
Lawrence County				
Lee County				
Mississippi County				
Monroe County				
Phillips County				
Poinsett County				
Prairie County				
Randolph County				
Sharp County				
St. Francis County				
White County				
Woodruff County				
AQCR 021 Northwest Arkansas Intrastate		Unclassifiable/Attainment		
Baxter County				
Boone County				
Carroll County				
Cleburne County				
Franklin County				
Fulton County				
Izard County				
Johnson County				
Logan County				
Madison County				
Marion County				
Montgomery County				
Newton County				
Pike County				
Polk County				
Scott County				
Searcy County				
Stone County				
Van Buren County				
AQCR 022 Shreveport-Texarkana-Tyler Interstate		Unclassifiable/Attainment		
Columbia County				
Hempstead County				
Howard County				
Lafayette County				
Little River County				
Miller County				
Sevier County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

6. In § 81.305, the table entitled "California—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Chico Area:				
Butte County	(3)	Nonattainment	(3)	Sec. 185A Area.[2]
Imperial County Area:				
Imperial County	11/15/90	Nonattainment	11/15/90	Sec. 185A Area.[2]
Los Angeles-South Coast Air Basin Area	11/15/90	Nonattainment	11/15/90	Extreme.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Los Angeles County (part)—that portion of Los Angeles County which lies south and west of a line described as follows: 1. Beginning at the Los Angeles—San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; 2. then north along the range line common to Range 8 West and Range 9 West; 3. then west along the Township line common to Township 4 North and Township 3 North; 4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; 5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; 6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); 7. then west along the Township line common to Township 7 North and Township 6 North; 8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; 9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; 10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); 11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; 12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Orange County	11/15/90	Nonattainment	11/15/90	Extreme.
Riverside County (part)—that portion of Riverside County which lies to the west of a line described as follows: 1. Beginning at the Riverside—San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; 2. then east along the Township line common to Township 8 South and Township 7 South; 3. then north along the range line common to Range 5 East and Range 4 East; 4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; 5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; 6. then west along the Township line common to Township 5 South and Township 6 South;	11/15/90	Nonattainment	11/15/90	Extreme.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
7. then north along the range line common to Range 4 East and Range 3 East; 8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; 9. then north along the range line common to Range 2 East and Range 3 East; 10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West; 11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West; 12. then north to the Riverside-San Bernardino County line,				
San Bernardino County (part)—that portion of San Bernardino County which lies south and west of a line described as follows:. 1. Beginning at the San Bernardino—Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; 2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino—Los Angeles County boundary;	11/15/90	Nonattainment	11/15/90	Extreme.
Monterey Bay Area		Attainment		
Monterey County				
San Benito County				
Santa Cruz County				
Sacramento Metro Area	11/15/90	Nonattainment	6/01/95	Severe-15.
El Dorado County (part):				
All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.				
Placer County (part):				
All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian (M.D.B.&M.), and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, M.D.B.&M., thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B.&M., to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.	11/15/90	Nonattainment	6/01/95	Severe-15.
Sacramento County	11/15/90	Nonattainment	6/01/95	Severe-15.
Solano County (part) That portion of Solano County which lies north and east of a line described as follows:	11/15/90	Nonattainment	6/01/95	Severe-15.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Description of boundary in Solano county between San Francisco and Sacramento: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T. 6 N., R. 2 W., M.D.B.&M., thence east along said ¼ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W., thence east along a line common to T. 5 N. and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10, T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8, T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties	11/15/90	Nonattainment	6/01/95	Severe-15.
Sutter County (part—southern portion)South of a line connecting the northern border of Yolo Co. to the SW tip of Yuba Co. and continuing along the southern Yuba County border to Placer County.	11/15/90	Nonattainment	6/01/95	Severe-15.
Yolo County	11/15/90	Nonattainment	6/01/95	Severe-15.
San Diego Area:				
San Diego County	2/21/95	Nonattainment	2/21/95	Serious.
San Francisco-Bay Area	8/10/98	Nonattainment	8/10/98	Not classified/Moderate under 23 U.S.C.
			8/23/99	104(b)(2).
Alameda County	8/10/98	.....do	8/23/99	Do.
Contra Costa County	8/10/98	.....do	8/23/99	Do.
Marin County	8/10/98	.....do	8/23/99	Do.
Napa County	8/10/98	.....do	8/23/99	Do.
San Francisco County	8/10/98	.....do	8/23/99	Do.
San Mateo County	8/10/98	.....do	8/23/99	Do.
Santa Clara County	8/10/98	.....do	8/23/99	Do.
Solano County (part)	8/10/98	.....do	8/23/99	Do.
That portion of the county that lies south and west of the line described that follows: Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection at the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T.6 N., R. 2 W., M.D.B.&M., thence east along said ½ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W, thence east along a line common to T. 5 N., and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10 T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8 T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.				
Sonoma County (part)	8/10/98	.....do	8/23/99	Do.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
That portion of Sonoma county which lies south and east of a line described as follows: Beginning at the south-easterly corner of the Rancho Estero Americano, being on the boundary line between Marin Sonoma Counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive, thence running along said boundary of Rancho Canada de Jonive westerly,; northerly and easterly to its intersection with the easterly line of Granton Road; thence running along the easterly and southerly line of Granton Road northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State Highway 116, to the westerly and northerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road: thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Ranco Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to its intersection with the Township line common to Townships 8 and 9 north, Mt. Diablo Base and Meridian; thence running easterly along said Township line to its intersection with the boundary line between Sonoma and Napa Counties, State of California.				
San Joaquin Valley Area:				
Fresno County	11/15/90	Nonattainment	11/15/90	Serious.
Kern County	11/15/90	Nonattainment	11/15/98	Serious.
Kings County	11/15/90	Nonattainment	11/15/90	Serious.
Madera County	11/15/90	Nonattainment	11/15/90	Serious.
Merced County	11/15/90	Nonattainment	11/15/90	Serious.
San Joaquin County	11/15/90	Nonattainment	11/15/90	Serious.
Stanislaus County	11/15/90	Nonattainment	11/15/90	Serious.
Tulare County	11/15/90	Nonattainment	11/15/90	Serious.
Santa Barbara-Santa Maria-Lompoc Area:				
Santa Barbara County	11/15/90	Nonattainment	1/09/98	Serious.
Southeast Desert Modified AQMA Area	11/15/90	Nonattainment	11/15/90	Severe-17.
Los Angeles County (part)—that portion of Los Angeles County which lies north and east of a line described as follows: 1. Beginning at the Los Angeles—San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; 2. then north along the range line common to Range 8 West and Range 9 West; 3. then west along the Township line common to Township 4 North and Township 3 North; 4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;				

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; 6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); 7. then west along the Township line common to Township 7 North and Township 6 North; 8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; 9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; 10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); 11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; 12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Riverside County (part)—that portion of Riverside County which lies to the east of a line described as follows: 1. Beginning at the Riverside—San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; 2. then east along the Township line common to Township 8 South and Township 7 South; 3. then north along the range line common to Range 5 East and Range 4 East; 4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; 5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; 6. then west along the Township line common to Township 5 South and Township 6 South; 7. then north along the range line common to Range 4 East and Range 3 East; 8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; 9. then north along the range line common to Range 2 East and Range 3 East; 10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West; 11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West; 12. then north to the Riverside-San Bernardino County line, and that portion of Riverside County which lies to the west of a line described as follows:	11/15/90	Nonattainment	11/15/90	Severe-17.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
13. beginning at the northeast corner of Section 4, Township 2 South, Range 5 East, a point on the boundary line common to Riverside and San Bernardino Counties; 14. then southerly along section lines to the centerline of the Colorado River Aquaduct; 15. then southeasterly along the centerline of said Colorado River Aquaduct to the southerly line of Section 36, Township 3 South, Range 7 East; 16. then easterly along the Township line to the northeast corner of Section 6, Township 4 South, Range 9 East; 17. then southerly along the easterly line of Section 6 to the southeast corner thereof; 18. then easterly along section lines to the northeast corner of Section 10, Township 4 South, Range 9 East; 19. then southerly along section lines to the southeast corner of Section 15, Township 4 South, Range 9 East; 20. then easterly along the section lines to the northeast corner of Section 21, Township 4 South, Range 10 East; 21. then southerly along the easterly line of Section 21 to the southeast corner thereof; 22. then easterly along the northerly line of Section 27 to the northeast corner thereof; 23. then southerly along section lines to the southeast corner of Section 34, Township 4 South, Range 10 East; 24. then easterly along the Township line to the northeast corner of Section 2, Township 5 South, Range 10 East; 25. then southerly along the easterly line of Section 2, to the southeast corner thereof; 26. then easterly along the northerly line of Section 12 to the northeast corner thereof; 27. then southerly along the range line to the southwest corner of Section 18, Township 5 South, Range 11 East; 28. then easterly along section lines to the northeast corner of Section 24, Township 5 South, Range 11 East; 29. then southerly along the range line to the southeast corner of Section 36, Township 8 South, Range 11 East, a point on the boundary line common to Riverside and San Diego Counties.				
San Bernadino County (part)—that portion of San Bernardino County which lies north and east of a line described as follows: 1. Beginning at the San Bernardino—Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; 2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino—Los Angeles County boundary; and that portion of San Bernardino County which lies south and west of a line described as follows: 3. latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west.	11/15/90	Nonattainment	11/15/90	Severe-17.
Ventura County Area:				
Ventura County	11/15/90	Nonattainment	11/15/90	Severe-15.
Yuba City Area:				
Sutter County (part—northern portion)	(3)	Nonattainment	(3)	Sec. 185A Area.2.

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CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
North of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County.				
Yuba County	([3])	Nonattainment	([3])	Sec. 185A Area.[2]
Great Basin Valleys Air Basin		Unclassifiable/Attainment		
Alpine County				
Inyo County				
Mono County				
Lake County Air Basin		Unclassifiable/Attainment		
Lake County				
Lake Tahoe Air Basin		Unclassifiable/Attainment		
El Dorado County (part).				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Placer County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Mountain Counties Air Basin (Remainder of):				
Amador County	11/15/90	Unclassifiable/Attainment	11/15/90	
Calaveras County	11/15/90	Unclassifiable/Attainment	11/15/90	
Mariposa County		Unclassifiable/Attainment		
Nevada County		Unclassifiable/Attainment		
Plumas County		Unclassifiable/Attainment		
Sierra County		Unclassifiable/Attainment		
Tuolumne County		Unclassifiable/Attainment		
North Coast Air Basin		Unclassifiable/Attainment		
Del Norte County				
Humboldt County				
Mendocino County				
Sonoma County (part)				
Remainder of County				
Trinity County				
Northeast Plateau Air Basin		Unclassifiable/Attainment		
Lassen County				
Modoc County				
Siskiyou County				
Sacramento Valley Air Basin (Remainder of):				
Colusa County		Unclassifiable/Attainment		
Glenn County		Unclassifiable/Attainment		
Shasta County		Unclassifiable/Attainment		
Tehama County		Unclassifiable/Attainment		
South Central Coast Air Basin (Remainder of):				
Channel Islands		Unclassifiable/Attainment		
San Luis Obispo County		Unclassifiable/Attainment		
Southeast Desert NON-AQMA:				
Riverside County (part)				
Remainder of county		Unclassifiable/Attainment		
San Bernadino County (part)				
Remainder of county		Unclassifiable/Attainment		

[1] This date is October 18, 2000 unless otherwise noted.
[2] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of the 1990 that did not violate the ozone NAAQS during the period of 1987–1989.
[3] This date is January 16, 2001.

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7. In § 81.306, the table entitled "Colorado—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Denver—Boulder Area:				
Adams County (part)				
West of Kiowa Creek	([3])	Nonattainment	([3])	Sec. 185A Area.[2]
Arapahoe County (part)				
West of Kiowa Creek.	([3])	Nonattainment	([3])	Sec. 185A Area.[2]

COLORADO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Boulder County (part) excluding Rocky Mtn. National Park.	(3)	Nonattainment	(3)	Sec. 185A Area.[2]
Denver County	(3)	Nonattainment	(3)	Sec. 185A Area.[2]
Douglas County	(3)	Nonattainment	(3)	Sec. 185A Area.[2]
Jefferson County	(3)	Nonattainment	(3)	Sec. 185A Area.[2]
State AQCR 01		Unclassifiable/Attainment		
Logan County				
Morgan County				
Phillips County				
Sedgwick County				
Washington County				
Yuma County				
State AQCR 02		Unclassifiable/Attainment		
Larimer County				
Weld County				
State AQCR 03 (Remainder of)		Unclassifiable/Attainment		
Adams County (part) East of Kiowa Creek				
Arapahoe County (part) East of Kiowa Creek				
Boulder County (part) Rocky Mtn. National Park Only				
Clear Creek County				
Gilpin County				
State AQCR 11		Unclassifiable/Attainment		
Garfield County				
Mesa County				
Moffat County				
Rio Blanco County				
Rest of State		Unclassifiable/Attainment		
Alamosa County				
Archuleta County				
Baca County				
Bent County				
Chaffee County				
Cheyenne County				
Conejos County				
Costilla County				
Crowley County				
Custer County				
Delta County				
Dolores County				
Eagle County				
El Paso County				
Elbert County				
Fremont County				
Grand County				
Gunnison County				
Hinsdale County				
Huerfano County				
Jackson County				
Kiowa County				
Kit Carson County				
La Plata County				
Lake County				
Las Animas County				
Lincoln County				
Mineral County				
Montezuma County				
Montrose County				
Otero County				
Ouray County				
Park County				
Pitkin County				
Prowers County				
Pueblo County				
Rio Grande County				
Routt County				
Saguache County				
San Juan County				
San Miguel County				
Summit County				

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COLORADO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Teller County				

[1] This date is October 18, 2000, unless otherwise noted.
[2] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of the 1990 that did not violate the ozone NAAQS during the period of 1987–1989.
[3] This date is January 16, 2001.

8. In § 81.307, the table entitled "Connecticut—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Greater Connecticut Area:				
Fairfield County (part)		Nonattainment		Serious.
Shelton City				
Hartford County		Nonattainment		Serious.
Litchfield County (part)		Nonattainment		Serious.
all cities and townships except: Bridgewater Town, New Milford Town				
Middlesex County		Nonattainment		Serious.
New Haven County		Nonattainment		Serious.
New London County		Nonattainment		Serious.
Tolland County		Nonattainment		Serious.
Windham County		Nonattainment		Serious.
New York—N. New Jersey-Long Island Area:				
Fairfield County (part)		Nonattainment		Severe-17.
all cities and towns except Shelton City				
Litchfield County (part)		Nonattainment		Severe-17.
Bridgewater Town, New Milford Town				

[1] This date is November 15, 1990, unless otherwise noted.

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9. In § 81.308, the table entitled "Delaware—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.308 Delaware.

* * * * *

DELAWARE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Philadelphia-Wilmington-Tfenton Area:				
Kent County		Nonattainment		Severe-15.
New Castle County		Nonattainment		Severe-15.
Sussex County Area:				
Sussex County	(2)	Nonattainment	(2)	Marginal.

[1] This date is November 15, 1990, unless otherwise noted.
[2] This date is October 18, 2000.

* * * * *

10. In § 81.309, the table entitled "District of Columbia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.309 District of Columbia.

* * * * *

DISTRICT OF COLUMBIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Washington Area:				
Washington Entire Area		Nonattainment		Serious.

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

11. In § 81.310, the table entitled "Florida—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Alachua County				
Baker County				
Bay County				
Bradford County				
Brevard County				
Broward County				
Calhoun County				
Charlotte County				
Citrus County				
Clay County				
Collier County				
Columbia County				
Dade County				
De Soto County				
Dixie County				
Duval County				
Escambia County				
Flagler County				
Franklin County				
Gadsden County				
Gilchrist County				
Glades County				
Gulf County				
Hamilton County				
Hardee County				
Hendry County				
Hernando County				
Highlands County				
Hillsborough County				
Holmes County				
Indian River County				
Jackson County				
Jefferson County				
Lafayette County				
Lake County				
Lee County				
Leon County				
Levy County				
Liberty County				
Madison County				
Manatee County				
Marion County				
Martin County				
Monroe County				
Nassau County				
Okaloosa County				
Okeechobee County				
Orange County				
Osceola County				
Palm Beach County				
Pasco County				
Pinellas County				
Polk County				

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FLORIDA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Putnam County				
Santa Rosa County				
Sarasota County				
Seminole County				
St. Johns County				
St. Lucie County				
Sumter County				
Suwannee County				
Taylor County				
Union County				
Volusia County				
Wakulla County				
Walton County				
Washington County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

12. In § 81.311, the table entitled "Georgia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Atlanta Area:				
Cherokee County	11/15/90	Nonattainment	11/15/90	Serious.
Clayton County	11/15/90	Nonattainment	11/15/90	Serious.
Cobb County	11/15/90	Nonattainment	11/15/90	Serious.
Coweta County	11/15/90	Nonattainment	11/15/90	Serious.
De Kalb County	11/15/90	Nonattainment	11/15/90	Serious.
Douglas County	11/15/90	Nonattainment	11/15/90	Serious.
Fayette County	11/15/90	Nonattainment	11/15/90	Serious.
Forsyth County	11/15/90	Nonattainment	11/15/90	Serious.
Fulton County	11/15/90	Nonattainment	11/15/90	Serious.
Gwinnett County	11/15/90	Nonattainment	11/15/90	Serious.
Henry County	11/15/90	Nonattainment	11/15/90	Serious.
Paulding County	11/15/90	Nonattainment	11/15/90	Serious.
Rockdale County	11/15/90	Nonattainment	11/15/90	Serious.
Spalding County Area:				
Spalding County	11/15/90	Unclassifiable/Attainment	11/15/90	
Rest of State		Unclassifiable/Attainment		
Appling County				
Atkinson County				
Bacon County				
Baker County				
Baldwin County				
Banks County				
Barrow County				
Bartow County				
Ben Hill County				
Berrien County				
Bibb County				
Bleckley County				
Brantley County				
Brooks County				
Bryan County				
Bulloch County				
Burke County				
Butts County				
Calhoun County				
Camden County				
Candler County				
Carroll County				
Catoosa County				
Charlton County				
Chatham County				

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GEORGIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chattahoochee County				
Chattooga County				
Clarke County				
Clay County				
Clinch County				
Coffee County				
Colquitt County				
Columbia County				
Cook County				
Crawford County				
Crisp County				
Dade County				
Dawson County				
Decatur County				
Dodge County				
Dooly County				
Dougherty County				
Early County				
Echols County				
Effingham County				
Elbert County				
Emanuel County				
Evans County				
Fannin County				
Floyd County				
Franklin County				
Gilmer County				
Glascock County				
Glynn County				
Gordon County				
Grady County				
Greene County				
Habersham County				
Hall County				
Hancock County				
Haralson County				
Harris County				
Hart County				
Heard County				
Houston County				
Irwin County				
Jackson County				
Jasper County				
Jeff Davis County				
Jefferson County				
Jenkins County				
Johnson County				
Jones County				
Lamar County				
Lanier County				
Laurens County				
Lee County				
Liberty County				
Lincoln County				
Long County				
Lowndes County				
Lumpkin County				
Macon County				
Madison County				
Marion County				
McDuffie County				
McIntosh County				
Meriwether County				
Miller County				
Mitchell County				
Monroe County				
Montgomery County				
Morgan County				
Murray County				
Muscogee County				

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Taliafe
Tattna
Taylor
Telfair
Terrell
Thoma
Tift Co
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GEORGIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Newton County				
Oconee County				
Oglethorpe County				
Peach County				
Pickens County				
Pierce County				
Pike County				
Polk County				
Pulaski County				
Putnam County				
Quitman County				
Rabun County				
Randolph County				
Richmond County				
Schley County				
Screven County				
Seminole County				
Stephens County				
Stewart County				
Sumter County				
Talbot County				
Taliaferro County				
Tattnall County				
Taylor County				
Telfair County				
Terrell County				
Thomas County				
Tift County				
Toombs County				
Towns County				
Treutlen County				
Troup County				
Turner County				
Twiggs County				
Union County				
Upson County				
Walker County				
Walton County				
Ware County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
White County				
Whitfield County				
Wilcox County				
Wilkes County				
Wilkinson County				
Worth County				

[1] This date is October 18, 2000, unless otherwise noted.

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13. In § 81.312, the table entitled "Hawaii—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.312 Hawaii.

* * * * *

HAWAII—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Hawaii County				
Honolulu County				
Kalawao				
Kauai County				

HAWAII—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Maui County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

14. In § 81.313, the table entitled "Idaho—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 61 Eastern Idaho Intrastate		Unclassifiable/Attainment		
Bannock County				
Bear Lake County				
Bingham County				
Bonneville County				
Butte County				
Caribou County				
Clark County				
Franklin County				
Fremont County				
Jefferson County				
Madison County				
Oneida County				
Power County				
Teton County				
AQCR 62 E Washington-N Idaho Interstate		Unclassifiable/Attainment		
Benewah County				
Kootenai County				
Latah County				
Nez Perce County				
Shoshone County				
AQCR 63 Idaho Intrastate		Unclassifiable/Attainment		
Adams County				
Blaine County				
Boise County				
Bonner County				
Boundary County				
Camas County				
Cassia County				
Clearwater County				
Custer County				
Elmore County				
Gem County				
Gooding County				
Idaho County				
Jerome County				
Lemhi County				
Lewis County				
Lincoln County				
Minidoka County				
Owyhee County				
Payette County				
Twin Falls County				
Valley County				
Washington County				
AQCR 64 Metropolitan Boise Interstate		Unclassifiable/Attainment		
Ada County				
Canyon County				

[1] This date is October 18, 2000, unless otherwise noted.

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15. In § 81.314, the table entitled "Illinois—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Chicago-Gary-Lake County Area:				
Cook County	11/15/90	Nonattainment	11/15/90	Severe-17.
Du Page County	11/15/90	Nonattainment	11/15/90	Severe-17.
Grundy County (part)				
Aux Sable Township	11/15/90	Nonattainment	11/15/90	Severe-17.
Goose Lake Township	11/15/90	Nonattainment	11/15/90	Severe-17.
Kane County	11/15/90	Nonattainment	11/15/90	Severe-17.
Kendall County (part)				
Oswego Township	11/15/90	Nonattainment	11/15/90	Severe-17.
Lake County	11/15/90	Nonattainment	11/15/90	Severe-17.
McHenry County	11/15/90	Nonattainment	11/15/90	Severe-17.
Will County	11/15/90	Nonattainment	11/15/90	Severe-17.
Jersey County Area:				
Jersey County		Attainment[2].		
St. Louis Area:				
Madison County	11/15/90	Nonattainment	11/15/90	Moderate.
Monroe County	11/15/90	Nonattainment	11/15/90	Moderate.
St. Clair County	11/15/90	Nonattainment	11/15/90	Moderate.
Adams County		Unclassifiable/Attainment		
Alexander County		Unclassifiable/Attainment		
Bond County		Unclassifiable/Attainment		
Boone County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Bureau County		Unclassifiable/Attainment		
Calhoun County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Cass County		Unclassifiable/Attainment		
Champaign County		Unclassifiable/Attainment		
Christian County		Unclassifiable/Attainment		
Clark County		Unclassifiable/Attainment		
Clay County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Coles County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Cumberland County		Unclassifiable/Attainment		
De Kalb County		Unclassifiable/Attainment		
De Witt County		Unclassifiable/Attainment		
Douglas County		Unclassifiable/Attainment		
Edgar County		Unclassifiable/Attainment		
Edwards County		Unclassifiable/Attainment		
Effingham County		Unclassifiable/Attainment		
Fayette County		Unclassifiable/Attainment		
Ford County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gallatin County		Unclassifiable/Attainment		
Greene County		Unclassifiable/Attainment		
Grundy County (part) All townships except Aux Sable and Goose Lake.		Unclassifiable/Attainment		
Hamilton County		Unclassifiable/Attainment		
Hancock County		Unclassifiable/Attainment		
Hardin County		Unclassifiable/Attainment		
Henderson County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Iroquois County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jasper County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Jo Daviess County		Unclassifiable/Attainment		
Johnson County		Unclassifiable/Attainment		
Kankakee County		Unclassifiable/Attainment		
Kendall County (part) All townships except Oswego		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
La Salle County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Lee County		Unclassifiable/Attainment		
Livingston County		Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Macon County		Unclassifiable/Attainment		
Macoupin County		Unclassifiable/Attainment		

ILLINOIS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Marion County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
Mason County		Unclassifiable/Attainment		
Massac County		Unclassifiable/Attainment		
McDonough County		Unclassifiable/Attainment		
McLean County		Unclassifiable/Attainment		
Menard County		Unclassifiable/Attainment		
Mercer County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Moultrie County		Unclassifiable/Attainment		
Ogle County		Unclassifiable/Attainment		
Peoria County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Piatt County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Pope County		Unclassifiable/Attainment		
Pulaski County		Unclassifiable/Attainment		
Putnam County		Unclassifiable/Attainment		
Randolph County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Rock Island County		Unclassifiable/Attainment		
Saline County		Unclassifiable/Attainment		
Sangamon County		Unclassifiable/Attainment		
Schuyler County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Stark County		Unclassifiable/Attainment		
Stephenson County		Unclassifiable/Attainment		
Tazewell County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
Vermilion County		Unclassifiable/Attainment		
Wabash County		Unclassifiable/Attainment		
Warren County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
White County		Unclassifiable/Attainment		
Whiteside County		Unclassifiable/Attainment		
Williamson County		Unclassifiable/Attainment		
Winnebago County		Unclassifiable/Attainment		
Woodford County		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.
[2] April 13, 1995.

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16. In § 81.315, the table entitled "Indiana—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Chicago-Gary-Lake County Area:				
Lake County	11/15/90	Nonattainment	11/15/90	Severe-17
Porter County	11/15/90	Nonattainment	11/15/90	Severe-17
Evansville Area:				
Vanderburgh County		Attainment		
Indianapolis Area:				
Marion County		Attainment		
Louisville Area: Clark County	11/15/90	Nonattainment	11/15/90	Moderate[2]
Floyd County	11/15/90	Nonattainment	11/15/90	Moderate[2]
South Bend-Elkhart Area:				
Elkhart County		Attainment		
St Joseph County		Attainment		
Allen County		Unclassifiable/Attainment		
Adams County		Unclassifiable/Attainment		

INDIANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Bartholomew County		Unclassifiable/Attainment		
Benton County		Unclassifiable/Attainment		
Blackford County		Unclassifiable/Attainment		
Boone County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Cass County		Unclassifiable/Attainment		
Clay County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Daviess County		Unclassifiable/Attainment		
De Kalb County		Unclassifiable/Attainment		
Dearborn County		Unclassifiable/Attainment		
Decatur County		Unclassifiable/Attainment		
Delaware County		Unclassifiable/Attainment		
Dubois County		Unclassifiable/Attainment		
Fayette County		Unclassifiable/Attainment		
Fountain County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gibson County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Greene County		Unclassifiable/Attainment		
Hamilton County		Unclassifiable/Attainment		
Hancock County		Unclassifiable/Attainment		
Harrison County		Unclassifiable/Attainment		
Hendricks County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Howard County		Unclassifiable/Attainment		
Huntington County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jasper County		Unclassifiable/Attainment		
Jay County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Jennings County		Unclassifiable/Attainment		
Johnson County		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
Kosciusko County		Unclassifiable/Attainment		
La Porte County	11/15/90	Unclassifiable/Attainment	11/15/90	
Lagrange County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Madison County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
Martin County		Unclassifiable/Attainment		
Miami County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Newton County		Unclassifiable/Attainment		
Noble County		Unclassifiable/Attainment		
Ohio County		Unclassifiable/Attainment		
Orange County		Unclassifiable/Attainment		
Owen County		Unclassifiable/Attainment		
Parke County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Posey County		Unclassifiable/Attainment		
Pulaski County		Unclassifiable/Attainment		
Putnam County		Unclassifiable/Attainment		
Randolph County		Unclassifiable/Attainment		
Ripley County		Unclassifiable/Attainment		
Rush County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Spencer County		Unclassifiable/Attainment		
Starke County		Unclassifiable/Attainment		
Steuben County		Unclassifiable/Attainment		
Sullivan County		Unclassifiable/Attainment		
Switzerland County		Unclassifiable/Attainment		
Tippecanoe County		Unclassifiable/Attainment		

INDIANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Tipton County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
Vermillion County		Unclassifiable/Attainment		
Vigo County		Unclassifiable/Attainment		
Wabash County		Unclassifiable/Attainment		
Warren County		Unclassifiable/Attainment		
Warrick County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
Wells County		Unclassifiable/Attainment		
White County		Unclassifiable/Attainment		
Whitley County		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

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17. In § 81.316, the table entitled "Iowa—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.316 Iowa.

* * * * *

IOWA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Adair County				
Adams County				
Allamakee County				
Appanoose County				
Audubon County				
Benton County				
Black Hawk County				
Boone County				
Bremer County				
Buchanan County				
Buena Vista County				
Butler County				
Calhoun County				
Carroll County				
Cass County				
Cedar County				
Cerro Gordo County				
Cherokee County				
Chickasaw County				
Clarke County				
Clay County				
Clayton County				
Clinton County				
Crawford County				
Dallas County				
Davis County				
Decatur County				
Delaware County				
Des Moines County				
Dickinson County				
Dubuque County				
Emmet County				
Fayette County				
Floyd County				
Franklin County				
Fremont County				
Greene County				
Grundy County				
Guthrie County				
Hamilton County				
Hancock County				
Hardin County				
Harrison County				

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IOWA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Henry County				
Howard County				
Humboldt County				
Ida County				
Iowa County				
Jackson County				
Jasper County				
Jefferson County				
Johnson County				
Jones County				
Keokuk County				
Kossuth County				
Lee County				
Linn County				
Louisa County				
Lucas County				
Lyon County				
Madison County				
Mahaska County				
Marion County				
Marshall County				
Mills County				
Mitchell County				
Monona County				
Monroe County				
Montgomery County				
Muscatine County				
O'Brien County				
Osceola County				
Page County				
Palo Alto County				
Plymouth County				
Pocahontas County				
Polk County				
Pottawattamie County				
Poweshiek County				
Ringgold County				
Sac County				
Scott County				
Shelby County				
Sioux County				
Story County				
Tama County				
Taylor County				
Union County				
Van Buren County				
Wapello County				
Warren County				
Washington County				
Wayne County				
Webster County				
Winnebago County				
Winneshiek County				
Woodbury County				
Worth County				
Wright County				

[1]This date is October 18, 2000, unless otherwise noted.

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18. In § 81.317, the table entitled "Kansas—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.317 Kansas.

* * * * *

KANSAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Allen County		Unclassifiable/Attainment		
Anderson County		Unclassifiable/Attainment		
Atchison County		Unclassifiable/Attainment		
Barber County		Unclassifiable/Attainment		
Barton County		Unclassifiable/Attainment		
Bourbon County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Butler County		Unclassifiable/Attainment		
Chase County		Unclassifiable/Attainment		
Chautauqua County		Unclassifiable/Attainment		
Cherokee County		Unclassifiable/Attainment		
Cheyenne County		Unclassifiable/Attainment		
Clark County		Unclassifiable/Attainment		
Clay County		Unclassifiable/Attainment		
Cloud County		Unclassifiable/Attainment		
Coffey County		Unclassifiable/Attainment		
Comanche County		Unclassifiable/Attainment		
Cowley County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Decatur County		Unclassifiable/Attainment		
Dickinson County		Unclassifiable/Attainment		
Doniphan County		Unclassifiable/Attainment		
Douglas County		Unclassifiable/Attainment		
Edwards County		Unclassifiable/Attainment		
Elk County		Unclassifiable/Attainment		
Ellis County		Unclassifiable/Attainment		
Ellsworth County		Unclassifiable/Attainment		
Finney County		Unclassifiable/Attainment		
Ford County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Geary County		Unclassifiable/Attainment		
Gove County		Unclassifiable/Attainment		
Graham County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Gray County		Unclassifiable/Attainment		
Greeley County		Unclassifiable/Attainment		
Greenwood County		Unclassifiable/Attainment		
Hamilton County		Unclassifiable/Attainment		
Harper County		Unclassifiable/Attainment		
Harvey County		Unclassifiable/Attainment		
Haskell County		Unclassifiable/Attainment		
Hodgeman County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Jewell County		Unclassifiable/Attainment		
Johnson County	7/23/92	Unclassifiable/Attainment		
Kearny County		Unclassifiable/Attainment		
Kingman County		Unclassifiable/Attainment		
Kiowa County		Unclassifiable/Attainment		
Labette County		Unclassifiable/Attainment		
Lane County		Unclassifiable/Attainment		
Leavenworth County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Linn County		Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Lyon County		Unclassifiable/Attainment		
Marion County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
McPherson County		Unclassifiable/Attainment		
Meade County		Unclassifiable/Attainment		
Miami County		Unclassifiable/Attainment		
Mitchell County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morris County		Unclassifiable/Attainment		
Morton County		Unclassifiable/Attainment		
Nemaha County		Unclassifiable/Attainment		
Neosho County		Unclassifiable/Attainment		
Ness County		Unclassifiable/Attainment		
Norton County		Unclassifiable/Attainment		
Osage County		Unclassifiable/Attainment		

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KANSAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Osborne County		Unclassifiable/Attainment		
Ottawa County		Unclassifiable/Attainment		
Pawnee County		Unclassifiable/Attainment		
Phillips County		Unclassifiable/Attainment		
Pottawatomie County		Unclassifiable/Attainment		
Pratt County		Unclassifiable/Attainment		
Rawlins County		Unclassifiable/Attainment		
Reno County		Unclassifiable/Attainment		
Republic County		Unclassifiable/Attainment		
Rice County		Unclassifiable/Attainment		
Riley County		Unclassifiable/Attainment		
Rooks County		Unclassifiable/Attainment		
Rush County		Unclassifiable/Attainment		
Russell County		Unclassifiable/Attainment		
Saline County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Sedgwick County		Unclassifiable/Attainment		
Seward County		Unclassifiable/Attainment		
Shawnee County		Unclassifiable/Attainment		
Sheridan County		Unclassifiable/Attainment		
Sherman County		Unclassifiable/Attainment		
Smith County		Unclassifiable/Attainment		
Stafford County		Unclassifiable/Attainment		
Stanton County		Unclassifiable/Attainment		
Stevens County		Unclassifiable/Attainment		
Sumner County		Unclassifiable/Attainment		
Thomas County		Unclassifiable/Attainment		
Trego County		Unclassifiable/Attainment		
Wabaunsee County		Unclassifiable/Attainment		
Wallace County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wichita County		Unclassifiable/Attainment		
Wilson County		Unclassifiable/Attainment		
Woodson County		Unclassifiable/Attainment		
Wyandotte County	7/23/92	Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

19. In § 81.318, the table entitled "Kentucky—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.316 Kentucky.

* * * * *

KENTUCKY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Cincinnati-Hamilton Area:				
Boone County	7/5/00	Attainment		
Campbell County	7/5/00	Attainment		
Kenton County	7/5/00	Attainment		
Edmonson County Area:				
Edmonson County		Unclassifiable/Attainment		
Louisville Area:				
Bullitt County (part): The area boundary is as follows: Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 2723; proceeding north on Ky 2723 to the junction of Chilliocop Road; proceeding northeast on Chilliocop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Jefferson County	11/15/90	Nonattainment	11/15/90	Moderate.[2]

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Oldham County (part): The area boundary is as follows: Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road and Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northeast on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on Ky 53 to the north-northwest to the junction of New Moody Lane and Ky 53; proceeding on New Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the north-bound lane of Interstate 71 until inter-secting with the North Fork of Currys Fork; proceeding south-southwest beyond the con-fluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Owensboro Area:				
Daviess County	.....	Unclassifiable/Attainment		
Hancock County	.....	Unclassifiable/Attainment		
The area boundary is as follows: Beginning at the intersection of U.S. 60 and the Hancock-Daviess County Line; proceeding east along U.S. 60 to the intersection of Yellow Creek and U.S. 60; proceeding north and west along Yellow Creek to the confluence of the Ohio River; proceeding west along the Ohio River to the confluence of Blackford Creek; proceeding south and east along Blackford Creek to the beginning.				
Adair County	.....	Unclassifiable/Attainment		
Allen County	.....	Unclassifiable/Attainment		
Anderson County	.....	Unclassifiable/Attainment		
Ballard County	.....	Unclassifiable/Attainment		
Barren County	.....	Unclassifiable/Attainment		
Bath County	.....	Unclassifiable/Attainment		

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Bell County		Unclassifiable/Attainment		
Bourbon County		Unclassifiable/Attainment		
Boyd County		Unclassifiable/Attainment		
Boyle County		Unclassifiable/Attainment		
Bracken County		Unclassifiable/Attainment		
Breathitt County		Unclassifiable/Attainment		
Breckinridge County		Unclassifiable/Attainment		
Bullitt County (part)				
Remainder of county		Unclassifiable/Attainment		
Butler County		Unclassifiable/Attainment		
Caldwell County		Unclassifiable/Attainment		
Calloway County		Unclassifiable/Attainment		
Carlisle County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Carter County		Unclassifiable/Attainment		
Casey County		Unclassifiable/Attainment		
Christian County		Unclassifiable/Attainment		
Clark County		Unclassifiable/Attainment		
Clay County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Crittenden County		Unclassifiable/Attainment		
Cumberland County		Unclassifiable/Attainment		
Elliott County		Unclassifiable/Attainment		
Estill County		Unclassifiable/Attainment		
Fayette County		Unclassifiable/Attainment		
Fleming County		Unclassifiable/Attainment		
Floyd County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gallatin County		Unclassifiable/Attainment		
Garrard County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Graves County		Unclassifiable/Attainment		
Grayson County		Unclassifiable/Attainment		
Green County		Unclassifiable/Attainment		
Greenup County		Unclassifiable/Attainment		
Hancock County (part)				
Remainder of county		Unclassifiable/Attainment		
Hardin County		Unclassifiable/Attainment		
Harlan County		Unclassifiable/Attainment		
Harrison County		Unclassifiable/Attainment		
Hart County		Unclassifiable/Attainment		
Henderson County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Hickman County		Unclassifiable/Attainment		
Hopkins County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jessamine County		Unclassifiable/Attainment		
Johnson County		Unclassifiable/Attainment		
Knott County		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
Larue County		Unclassifiable/Attainment		
Laurel County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Lee County		Unclassifiable/Attainment		
Leslie County		Unclassifiable/Attainment		
Letcher County		Unclassifiable/Attainment		
Lewis County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Livingston County		Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Lyon County		Unclassifiable/Attainment		
Madison County		Unclassifiable/Attainment		
Magoffin County		Unclassifiable/Attainment		
Marion County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
Martin County		Unclassifiable/Attainment		
Mason County		Unclassifiable/Attainment		
McCracken County		Unclassifiable/Attainment		
McCreary County		Unclassifiable/Attainment		

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
McLean County		Unclassifiable/Attainment		
Meade County		Unclassifiable/Attainment		
Menifee County		Unclassifiable/Attainment		
Mercer County		Unclassifiable/Attainment		
Metcalfe County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Muhlenberg County		Unclassifiable/Attainment		
Nelson County		Unclassifiable/Attainment		
Nicholas County		Unclassifiable/Attainment		
Ohio County		Unclassifiable/Attainment		
Oldham County (part)				
Remainder of county		Unclassifiable/Attainment		
Owen County		Unclassifiable/Attainment		
Owsley County		Unclassifiable/Attainment		
Pendleton County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Powell County		Unclassifiable/Attainment		
Pulaski County		Unclassifiable/Attainment		
Robertson County		Unclassifiable/Attainment		
Rockcastle County		Unclassifiable/Attainment		
Rowan County		Unclassifiable/Attainment		
Russell County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Simpson County		Unclassifiable/Attainment		
Spencer County		Unclassifiable/Attainment		
Taylor County		Unclassifiable/Attainment		
Todd County		Unclassifiable/Attainment		
Trigg County		Unclassifiable/Attainment		
Trimble County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
Warren County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
Webster County		Unclassifiable/Attainment		
Whitley County		Unclassifiable/Attainment		
Wolfe County		Unclassifiable/Attainment		
Woodford County		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

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20. In § 81.319, the table entitled "Louisiana—Ozone (1-Hour Standard)" is revised to read as follows:

81.319 Louisiana.

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LOUISIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Baton Rouge Area:				
Ascension Parish	11/15/90	Nonattainment	11/15/90	Serious.
East Baton Rouge Parish	11/15/90	Nonattainment	11/15/90	Serious.
Iberville Parish	11/15/90	Nonattainment	11/15/90	Serious.
Livingston Parish	11/15/90	Nonattainment	11/15/90	Serious.
West Baton Rouge Parish	11/15/90	Nonattainment	11/15/90	Serious.
Beauregard Parish Area:				
Beauregard Parish		Attainment.		
Grant Parish Area:				
Grant Parish		Attainment.		
Lafayette Area:				
Lafayette Parish		Attainment.		
Lafourche Parish Area:				
Lafourche Parish	1/05/96	Nonattainment	1/05/96	Incomplete Data.

LOUISIANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Lake Charles Area:				
Calcasieu Parish		Attainment.		
New Orleans Area:				
Jefferson Parish		Attainment.		
Orleans Parish		Attainment.		
St. Bernard Parish		Attainment.		
St. Charles Parish		Attainment.		
Pointe Coupee Area:				
Pointe Coupee Parish		Attainment.		
St. James Parish Area:				
St. James Parish		Attainment.		
St. Mary Parish Area:				
St. Mary Parish		Attainment.		
AQCR 019 Monroe-El Dorado Interstate		Unclassifiable/Attainment.		
Caldwell Parish				
Catahoula Parish				
Concordia Parish				
East Carroll Parish				
Franklin Parish				
La Salle Parish				
Madison Parish				
Morehouse Parish				
Ouachita Parish				
Richland Parish				
Tensas Parish				
Union Parish				
West Carroll Parish				
AQCR 022 Shreveport-Texarkana-Tyler Interstate		Unclassifiable/Attainment		
Bienville Parish				
Bossier Parish				
Caddo Parish				
Claiborne Parish				
De Soto Parish				
Jackson Parish				
Lincoln Parish				
Natchitoches Parish				
Red River Parish				
Sabine Parish				
Webster Parish				
Winn Parish				
AQCR 106 S. Louisiana-S.E. Texas Interstate				
St. John The Baptist Parish		Unclassifiable/Attainment		
AQCR 106 S. Louisiana-S.E. Texas Interstate		Unclassifiable/Attainment		
Acadia Parish				
Allen Parish				
Assumption Parish				
Avoyelles Parish				
Cameron Parish				
East Feliciana Parish				
Evangeline Parish				
Iberia Parish				
Jefferson Davis Parish				
Plaquemines Parish				
Rapides Parish				
St. Helena Parish				
St. Landry Parish				
St. Martin Parish				
St. Tammany Parish				
Tangipahoa Parish				
Terrebonne Parish				
Vermilion Parish				
Vernon Parish				
Washington Parish				
West Feliciana Parish				

[1] This date is October 18, 2000, unless otherwise noted.

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21. In § 81.320, the table entitled "Maine—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.320 Maine.

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MAINE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Franklin County Area:				
Franklin County (part)		Unclassifiable/Attainment		
Hancock County and Waldo County Area:				
Hancock County		Attainment		
Waldo County		Attainment		
Knox County and Lincoln County Area:				
Knox County	(3)	Nonattainment	(3)	Moderate.
Lincoln County	(3)	Nonattainment	(3)	Moderate.
Lewiston-Auburn Area:				
Androscoggin County	(3)	Nonattainment	(3)	Moderate.
Kennebec County	(3)	Nonattainment	(3)	Moderate.
Oxford County Area:				
Oxford County (part)		Unclassifiable/Attainment		
Portland Area:				
Cumberland County	(3)	Nonattainment	(3)	Moderate.[2]
Sagadahoc County	(3)	Nonattainment	(3)	Moderate.[2]
York County	(3)	Nonattainment	(3)	Moderate.[2]
Somerset County Area:				
Somerset County (part)		Unclassifiable/Attainment		
AQCR 108 Aroostook Intrastate		Unclassifiable/Attainment		
Aroostook County (part) see 40 CFR 81.179.				
AQCR 109 Down East Intrastate		Unclassifiable/Attainment		
Penobscot County (part), as described under 40 CFR 81.181				
Piscataquis County (part) see 40 CFR 81.181				
Washington County				
AQCR 111 Northwest Maine Intrastate (Remainder of)		Unclassifiable/Attainment		
see 40 CFR 81.182				
Aroostook County				
Franklin County (part)				
Oxford County (part)				
Penobscot County (part)				
Piscataquis County (part)				
Somerset County (part)				

[1] This date is October 18, 2000, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.
[3] This date is January 16, 2001.

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22. In § 81.321, the table entitled "Maryland—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.321 Maryland.

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MARYLAND—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baltimore Area:				
Anne Arundel County	11/15/90	Nonattainment	11/15/90	Severe-15.
Baltimore				
City of Baltimore	11/15/90	Nonattainment	11/15/90	Severe-15.
Baltimore County	11/15/90	Nonattainment	11/15/90	Severe-15.
Carroll County	11/15/90	Nonattainment	11/15/90	Severe-15.
Harford County	11/15/90	Nonattainment	11/15/90	Severe-15.
Howard County	11/15/90	Nonattainment	11/15/90	Severe-15.
Kent County and Queen Anne's County Area:				
Kent County	1/6/92	Nonattainment	1/6/92	Marginal.
Queen Anne's County	1/6/92	Nonattainment	1/6/92	Marginal.
Philadelphia-Wilmington-Trenton Area:				
Cecil County	11/15/90	Nonattainment	11/15/90	Severe-15.
Washington, DC Area:				
Calvert County	11/15/90	Nonattainment	11/15/90	Serious.
Charles County	11/15/90	Nonattainment	11/15/90	Serious.

MARYLAND—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Frederick County	11/15/90	Nonattainment	11/15/90	Serious.
Montgomery County	11/15/90	Nonattainment	11/15/90	Serious.
Prince George's County	11/15/90	Nonattainment	11/15/90	Serious.
AQCR 113 Cumberland-Keyser Interstate		Unclassifiable/Attainment.		
Allegany County				
Garrett County				
Washington County				
AQCR 114 Eastern Shore Interstate (Remainder of)		Unclassifiable/Attainment		
Caroline County				
Dorchester County				
Somerset County				
Talbot County				
Wicomico County				
Worcester County				
AQCR 116 Southern Maryland Intrastate (Remainder of)		Unclassifiable/Attainment		
St. Mary's County				

[1] This date is October 18, 2000, unless otherwise noted.

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23. In § 81.322, the table entitled "Massachusetts—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.322 Massachusetts.

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MASSACHUSETTS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Boston-Lawrence-Worcester (E. Mass) Area:				
Barnstable County	(2)	Nonattainment	(2)	Serious.
Bristol County	(2)	Nonattainment	(2)	Serious.
Dukes County	(2)	Nonattainment	(2)	Serious.
Essex County	(2)	Nonattainment	(2)	Serious.
Middlesex County	(2)	Nonattainment	(2)	Serious.
Nantucket County	(2)	Nonattainment	(2)	Serious.
Norfolk County	(2)	Nonattainment	(2)	Serious.
Plymouth County	(2)	Nonattainment	(2)	Serious.
Suffolk County	(2)	Nonattainment	(2)	Serious.
Worcester County	(2)	Nonattainment	(2)	Serious.
Springfield (W. Mass) Area:				
Berkshire County		Nonattainment		Serious.
Franklin County		Nonattainment		Serious.
Hampden County		Nonattainment		Serious.
Hampshire County		Nonattainment		Serious.

[1] This date is November 15, 1990, unless otherwise noted.
[2] This date is January 16, 2001.

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24. 81.323, the table entitled "Michigan—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.323 Michigan.

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MICHIGAN—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Allegan County Area:				
Allegan County	(2)	Nonattainment	(2)	Incomplete Data.
Barry County Area:				
Barry County		Unclassifiable/Attainment		
Battle Creek Area:				
Calhoun County		Unclassifiable/Attainment		
Benton Harbor Area:				
Berrien County		Unclassifiable/Attainment		

MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Branch County Area:				
Branch County	.....	Unclassifiable/Attainment		
Cass County Area:				
Cass County	.....	Unclassifiable/Attainment		
Detroit-Ann Arbor Area:				
Livingston County	.....	Attainment		
Macomb County	.....	Attainment		
Monroe County	.....	Attainment		
Oakland County	.....	Attainment		
St. Clair County	.....	Attainment		
Washtenaw County	.....	Attainment		
Wayne County	.....	Attainment		
Flint Area:				
Genesee County	(3)	Nonattainment	(3)	Sec. 185A Area.[2]
Grand Rapids Area:				
Kent County	.....	Attainment		
Ottawa County	.....	Attainment		
Gratiot County Area:				
Gratiot County	.....	Unclassifiable/Attainment		
Hillsdale County Area:				
Hillsdale County	.....	Unclassifiable/Attainment		
Huron County Area:				
Huron County	.....	Unclassifiable/Attainment		
Ionia County Area:				
Ionia County	.....	Unclassifiable/Attainment		
Jackson Area:				
Jackson County	.....	Unclassifiable/Attainment		
Kalamazoo Area:				
Kalamazoo County	.....	Unclassifiable/Attainment		
Lansing-East Lansing Area:				
Clinton County	.....	Unclassifiable/Attainment		
Eaton County	.....	Unclassifiable/Attainment		
Ingham County	.....	Unclassifiable/Attainment		
Lapeer County Area:				
Lapeer County	.....	Unclassifiable/Attainment		
Lenawee County Area:				
Lenawee County	.....	Unclassifiable/Attainment		
Montcalm Area:				
Montcalm County	.....	Unclassifiable/Attainment		
Muskegon Area:				
Muskegon County	(3)	Nonattainment	(3)	Moderate.
Saginaw-Bay City-Midland Area:				
Bay County	(3)	Nonattainment	(3)	Incomplete Data.
Midland County	(3)	Nonattainment	(3)	Incomplete Data.
Saginaw County	(3)	Nonattainment	(3)	Incomplete Data.
Sanilac County Area:				
Sanilac County	.....	Unclassifiable/Attainment		
Shiawassee County Area:				
Shiawassee County	.....	Unclassifiable/Attainment		
St. Joseph County Area:				
St. Joseph County	.....	Unclassifiable/Attainment		
Tuscola County Area:				
Tuscola County	.....	Unclassifiable/Attainment		
Van Buren County Area:				
Van Buren County	.....	Unclassifiable/Attainment		
AQCR 122 Central Michigan Intrastate (Remainder of):	.....	Unclassifiable/Attainment		
Arenac County				
Clare County				
Gladwin County				
Iosco County				
Isabella County				
Lake County				
Mason County				
Mecosta County				
Newaygo County				
Oceana County				
Ogemaw County				
Osceola County				
Roscommon County				
AQCR 126 Upper Michigan Intrastate (part) Marquette County.	.....	Unclassifiable/Attainment		

MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 126 Upper Michigan Intrastate (Remainder of):	.....	Unclassifiable/Attainment		
Alcona County				
Alger County				
Alpena County				
Antrim County				
Baraga County				
Benzie County				
Charlevoix County				
Cheboygan County				
Chippewa County				
Crawford County				
Delta County				
Dickinson County				
Emmet County				
Gogebic County				
Grand Traverse County				
Houghton County				
Iron County				
Kalkaska County				
Keweenaw County				
Leelanau County				
Luce County				
Mackinac County				
Manistee County				
Menominee County				
Missaukee County				
Montmorency County				
Ontonagon County				
Oscoda County				
Otsego County				
Presque Isle County				
Schoolcraft County				
Wexford County				

[1] This date is October 18, 2000, unless otherwise noted.
[2] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of the 1990 that did not violate the ozone NAAQS during the period of 1987–1989.
[3] This date is January 16, 2001.

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25. In § 81.324, the table entitled "Minnesota—Ozone (1–Hour Standard)" is revised to read as follows:

§ 81.324 Minnesota.

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MINNESOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Minneapolis-Saint Paul Area:				
Anoka County	.....	Unclassifiable/Attainment		
Carver County	.....	Unclassifiable/Attainment		
Dakota County	.....	Unclassifiable/Attainment		
Hennepin County	.....	Unclassifiable/Attainment		
Ramsey County	.....	Unclassifiable/Attainment		
Scott County	.....	Unclassifiable/Attainment		
Washington County	.....	Unclassifiable/Attainment		
Rest of State	.....	Unclassifiable/Attainment		
Aitkin County	.....	Unclassifiable/Attainment		
Becker County	.....	Unclassifiable/Attainment		
Beltrami County	.....	Unclassifiable/Attainment		
Benton County	.....	Unclassifiable/Attainment		
Big Stone County	.....	Unclassifiable/Attainment		
Blue Earth County	.....	Unclassifiable/Attainment		
Brown County	.....	Unclassifiable/Attainment		
Carlton County	.....	Unclassifiable/Attainment		
Cass County	.....	Unclassifiable/Attainment		
Chippewa County	.....	Unclassifiable/Attainment		
Chisago County	.....	Unclassifiable/Attainment		

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MINNESOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Clay County		Unclassifiable/Attainment		
Clearwater County		Unclassifiable/Attainment		
Cook County		Unclassifiable/Attainment		
Cottonwood County		Unclassifiable/Attainment		
Crowe County		Unclassifiable/Attainment		
Dodge County		Unclassifiable/Attainment		
Douglas County		Unclassifiable/Attainment		
Faribault County		Unclassifiable/Attainment		
Fillmore County		Unclassifiable/Attainment		
Freeborn County		Unclassifiable/Attainment		
Goodhue County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Houston County		Unclassifiable/Attainment		
Hubbard County		Unclassifiable/Attainment		
Isanti County		Unclassifiable/Attainment		
Itasca County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Kanabec County		Unclassifiable/Attainment		
Kandiyohi County		Unclassifiable/Attainment		
Kittson County		Unclassifiable/Attainment		
Koochiching County		Unclassifiable/Attainment		
Lac qui Parle County		Unclassifiable/Attainment		
Lake County		Unclassifiable/Attainment		
Lake of the Woods County		Unclassifiable/Attainment		
Le Sueur County		Unclassifiable/Attainment		
Lincon County		Unclassifiable/Attainment		
Lyon County		Unclassifiable/Attainment		
Mahnomen County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
Martin County		Unclassifiable/Attainment		
McLeod County		Unclassifiable/Attainment		
Meeker County		Unclassifiable/Attainment		
Mille Lacs County		Unclassifiable/Attainment		
Morrison County		Unclassifiable/Attainment		
Mower County		Unclassifiable/Attainment		
Murray County		Unclassifiable/Attainment		
Nicollet County		Unclassifiable/Attainment		
Nobles County		Unclassifiable/Attainment		
Norman County		Unclassifiable/Attainment		
Olmsted County		Unclassifiable/Attainment		
Otter Tail County		Unclassifiable/Attainment		
Pennington County		Unclassifiable/Attainment		
Pine County		Unclassifiable/Attainment		
Pipestone County		Unclassifiable/Attainment		
Polk County		Unclassifiable/Attainment		
Pope County		Unclassifiable/Attainment		
Red Lake County		Unclassifiable/Attainment		
Redwood County		Unclassifiable/Attainment		
Renville County		Unclassifiable/Attainment		
Rice County		Unclassifiable/Attainment		
Rock County		Unclassifiable/Attainment		
Roseau County		Unclassifiable/Attainment		
Saint Louis County		Unclassifiable/Attainment		
Sherburne County		Unclassifiable/Attainment		
Sibley County		Unclassifiable/Attainment		
Stearns County		Unclassifiable/Attainment		
Steele County		Unclassifiable/Attainment		
Stevens County		Unclassifiable/Attainment		
Swift County		Unclassifiable/Attainment		
Todd County		Unclassifiable/Attainment		
Traverse County		Unclassifiable/Attainment		
Wabasha County		Unclassifiable/Attainment		
Wadena County		Unclassifiable/Attainment		
Waseca County		Unclassifiable/Attainment		
Watonwan County		Unclassifiable/Attainment		
Wilkin County		Unclassifiable/Attainment		
Winona County		Unclassifiable/Attainment		
Wright County		Unclassifiable/Attainment		
Yellow Medicine County		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.

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26. In § 81.325, the table entitled "Mississippi—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.325 Mississippi.

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MISSISSIPPI—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Memphis:				
De Soto County	11/15/90	Unclassifiable/Attainment	11/15/90	
Statewide		Unclassifiable/Attainment		
Adams County				
Alcorn County				
Amite County				
Attala County				
Benton County				
Bolivar County				
Calhoun County				
Carroll County				
Chickasaw County				
Choctaw County				
Claiborne County				
Clarke County				
Clay County				
Coahoma County				
Copiah County				
Covington County				
Forrest County				
Franklin County				
George County				
Greene County				
Grenada County				
Hancock County				
Harrison County				
Hinds County				
Holmes County				
Humphreys County				
Issaquena County				
Itawamba County				
Jackson County				
Jasper County				
Jefferson County				
Jefferson Davis County				
Jones County				
Kemper County				
Lafayette County				
Lamar County				
Lauderdale County				
Lawrence County				
Leake County				
Lee County				
Leflore County				
Lincoln County				
Lowndes County				
Madison County				
Marion County				
Marshall County				
Monroe County				
Montgomery County				
Neshoba County				
Newton County				
Noxubee County				
Oktibbeha County				
Panola County				
Pearl River County				
Perry County				
Pike County				
Pontotoc County				
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Quitman County				
Rankin County				
Scott County				
Sharkey County				
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MISSISSIPPI—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Smith County				
Stone County				
Sunflower County				
Tallahatchie County				
Tate County				
Tippah County				
Tishomingo County				
Tunica County				
Union County				
Walthall County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wilkinson County				
Winston County				
Yalobusha County				
Yazoo County				

[1] This date is October 18, 2000, unless otherwise noted.

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27. In § 81.326, the table entitled "Missouri—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.326 Missouri.
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MISSOURI—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Kansas City Area:.				
Clay County	7/23/92	Unclassifiable/Attainment		
Jackson County	7/23/92	Unclassifiable/Attainment		
Platte County	7/23/92	Unclassifiable/Attainment		
St. Louis Area:				
Franklin County	11/15/90	Nonattainment	11/15/90	Moderate.
Jefferson County	11/15/90	Nonattainment	11/15/90	Moderate.
St. Charles County	11/15/90	Nonattainment	11/15/90	Moderate.
St. Louis	11/15/90	Nonattainment	11/15/90	Moderate.
St. Louis County	11/15/90	Nonattainment	11/15/90	Moderate.
AQCR 094 Metro Kansas City Interstate (Remainder of).				
Buchanan County				
Cass County				
Ray County				
AQCR 137 N. Missouri Intrastate (part)				
Pike County		Unclassifiable/Attainment		
Ralls County		Unclassifiable/Attainment		
AQCR 137 N. Missouri Intrastate (Remainder of)		Unclassifiable/Attainment		
Adair County				
Andrew County				
Atchison County				
Audrain County				
Boone County				
Caldwell County				
Callaway County				
Carroll County				
Charlton County				
Clark County				
Clinton County				
Cole County				
Cooper County				
Daviess County				
DeKalb County				
Gentry County				
Grundy County				
Harrison County				
Holt County				
Howard County				

MISSOURI—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Knox County				
Lewis County				
Lincoln County				
Linn County				
Livingston County				
Macon County				
Marion County				
Mercer County				
Moniteau County				
Monroe County				
Montgomery County				
Nodaway County				
Osage County				
Putnam County				
Randolph County				
Saline County				
Schuyler County				
Scotland County				
Shelby County				
Sullivan County				
Warren County				
Worth County				
Rest of State		Unclassifiable/Attainment		
Barry County				
Barton County				
Bates County				
Benton County				
Bollinger County				
Butler County				
Camden County				
Cape Girardeau County				
Carter County				
Cedar County				
Christian County				
Crawford County				
Dade County				
Dallas County				
Dent County				
Douglas County				
Dunklin County				
Gasconade County				
Greene County				
Henry County				
Hickory County				
Howell County				
Iron County				
Jasper County				
Johnson County				
Laclede County				
Lafayette County				
Lawrence County				
Madison County				
Maries County				
McDonald County				
Miller County				
Mississippi County				
Morgan County				
New Madrid County				
Newton County				
Oregon County				
Ozark County				
Pemiscot County				
Perry County				
Pettis County				
Phelps County				
Polk County				
Pulaski County				
Reynolds County				
Ripley County				
Scott County				

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Lincoln C
Madison
McCone C
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Mineral C
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Musselsh
Park Cou
Petroleum
Phillips C
ervation

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MISSOURI—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Shannon County				
St.Clair County				
St. Francois County				
Ste. Genevieve County				
Stoddard County				
Stone County				
Taney County				
Texas County				
Vernon County				
Washington County				
Wayne County				
Webster County				
Wright County				

[1] This date is October 18, 2000, unless otherwise noted.

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28. In § 81327, the table entitled "Montana—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.327 Montana

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MONTANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Beaverhead County	.....	Unclassifiable/Attainment		
Big Horn County (part) excluding Crow, Northern Cheyenne Indian Reservations.	.....	Unclassifiable/Attainment		
Blaine County (part) excluding Fort Belknap Indian Reservation				
Broadwater County	.....	Unclassifiable/Attainment		
Carbon County	.....	Unclassifiable/Attainment		
Carter County	.....	Unclassifiable/Attainment		
Cascade County	.....	Unclassifiable/Attainment		
Chouteau County (part) excluding Rocky Boy Indian Reservation.	.....	Unclassifiable/Attainment		
Custer County	.....	Unclassifiable/Attainment		
Daniels County (part) excluding Fort Peck Indian Reservation.	.....	Unclassifiable/Attainment		
Dawson County	.....	Unclassifiable/Attainment		
Deer Lodge County	.....	Unclassifiable/Attainment		
Fallon County	.....	Unclassifiable/Attainment		
Fergus County	.....	Unclassifiable/Attainment		
Flathead County (part) excluding Flathead Indian Reservation.	.....	Unclassifiable/Attainment		
Gallatin County	.....	Unclassifiable/Attainment		
Garfield County	.....	Unclassifiable/Attainment		
Glacier County (part) excluding Blackfeet Indian Reservation	.....	Unclassifiable/Attainment		
Golden Valley County	.....	Unclassifiable/Attainment		
Granite County	.....	Unclassifiable/Attainment		
Hill County (part) excluding Rocky Boy Indian Reservation	.....	Unclassifiable/Attainment		
Jefferson County	.....	Unclassifiable/Attainment		
Judith Basin County	.....	Unclassifiable/Attainment		
Lake County (part) excluding Flathead Indian Reservation	.....	Unclassifiable/Attainment		
Lewis and Clark County	.....	Unclassifiable/Attainment		
Liberty County	.....	Unclassifiable/Attainment		
Lincoln County	.....	Unclassifiable/Attainment		
Madison County	.....	Unclassifiable/Attainment		
McCone County	.....	Unclassifiable/Attainment		
Meagher County	.....	Unclassifiable/Attainment		
Mineral County	.....	Unclassifiable/Attainment		
Missoula County (part) excluding Flathead Indian Reservation.	.....	Unclassifiable/Attainment		
Musselshell County	.....	Unclassifiable/Attainment		
Park County	.....	Unclassifiable/Attainment		
Petroleum County	.....	Unclassifiable/Attainment		
Phillips County (part) excluding Fort Belknap Indian Reservation.	.....	Unclassifiable/Attainment		

MONTANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Pondera County (part) excluding Blackfeet Indian Reservation.		Unclassifiable/Attainment		
Powder River County		Unclassifiable/Attainment		
Powell County		Unclassifiable/Attainment		
Prairie County		Unclassifiable/Attainment		
Ravalli County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Roosevelt County (part) excluding Fort Peck Indian Reservation.		Unclassifiable/Attainment		
Rosebud County (part) excluding Northern Cheyenne Indian Reservation.		Unclassifiable/Attainment		
Sanders County (part) excluding Flathead Indian Reservation.		Unclassifiable/Attainment		
Sheridan County (part) excluding Fort Peck Indian Reservation.		Unclassifiable/Attainment		
Silver Bow County		Unclassifiable/Attainment		
Stillwater County		Unclassifiable/Attainment		
Sweet Grass County		Unclassifiable/Attainment		
Teton County		Unclassifiable/Attainment		
Toole County		Unclassifiable/Attainment		
Treasure County		Unclassifiable/Attainment		
Valley County (part) excluding Fort Peck Indian Reservation		Unclassifiable/Attainment		
Wheatland County		Unclassifiable/Attainment		
Wibaux County		Unclassifiable/Attainment		
Yellowstone County (part) excluding Crow Indian Reservation.		Unclassifiable/Attainment		
Yellowstone Natl Park		Unclassifiable/Attainment		
Blackfeet Indian Reservation		Unclassifiable/Attainment		
Glacier County (part) area inside Blackfeet Reservation				
Pondera County (part) area inside Blackfeet Reservation				
Crow Indian Reservation		Unclassifiable/Attainment		
Bighorn County (part) area inside Crow Reservation				
Yellowstone (part) area inside Crow Reservation				
Flathead Indian Reservation		Unclassifiable/Attainment		
Flathead County (part) area inside Flathead Reservation				
Lake County (part) area inside Flathead Reservation				
Missoula County (part) area inside Flathead Reservation				
Sanders County (part) area inside Flathead Reservation				
Fort Belknap Indian Reservation		Unclassifiable/Attainment		
Blaine County (part) area inside Fort Belknap Reservation				
Phillips County (part) area inside Fort Belknap Reservation				
Fort Peck Indian Reservation		Unclassifiable/Attainment		
Daniels County (part) area inside Fort Peck Reservation				
Roosevelt County (part) area inside Fort Peck Reservation				
Sheridan County (part) area inside Fort Peck Reservation				
Valley County (part) area inside Fort Peck Reservation				
Northern Cheyenne Indian Reservation		Unclassifiable/Attainment		
Bighorn County (part) area inside Northern Cheyenne Reservation				
Rosebud County (part) area inside Northern Cheyenne Reservation				
Rocky Boy Indian Reservation		Unclassifiable/Attainment		
Chouteau County (part) area inside Rocky Boy Reservation				
Hill County (part) area inside Rocky Boy Reservation				

[1] This date is October 18, 2000, unless otherwise noted.

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29. In § 81328, the table entitled "Nebraska—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81328 Nebraska

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NEBRASKA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Adams County				
Antelope County				
Arthur County				
Banner County				
Blaine County				
Boone County				
Box Butte County				
Boyd County				
Brown County				
Buffalo County				
Burt County				
Butler County				
Cass County				
Cedar County				
Chase County				
Cherry County				
Cheyenne County				
Clay County				
Colfax County				
Cuming County				
Custer County				
Dakota County				
Dawes County				
Dawson County				
Deuel County				
Dixon County				
Dodge County				
Douglas County				
Dundy County				
Fillmore County				
Franklin County				
Frontier County				
Furnas County				
Gage County				
Garden County				
Garfield County				
Gosper County				
Grant County				
Greeley County				
Hall County				
Hamilton County				
Harlan County				
Hayes County				
Hitchcock County				
Holt County				
Hooker County				
Howard County				
Jefferson County				
Johnson County				
Kearney County				
Keith County				
Keya Paha County				
Kimball County				
Knox County				
Lancaster County				
Lincoln County				
Logan County				
Loup County				
Madison County				
McPherson County				
Merrick County				
Morrill County				
Nance County				
Nemaha County				
Nuckolls County				

NEBRASKA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Otoe County				
Pawnee County				
Perkins County				
Phelps County				
Pierce County				
Platte County				
Polk County				
Red Willow County				
Richardson County				
Rock County				
Saline County				
Sarpy County				
Saunders County				
Scotts Bluff County				
Seward County				
Sheridan County				
Sherman County				
Sioux County				
Stanton County				
Thayer County				
Thomas County				
Thurston County				
Valley County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
York County				

[1] This date is October 18, 2000, unless otherwise noted.

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30. In § 81.329, the table entitled "Nevada—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.329 Nevada.

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NEVADA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Reno Area:				
Washoe County	(2)	Nonattainment	(2)	Marginal.
Rest of State		Unclassifiable/Attainment		
Carson City				
Churchill County				
Clark County				
Douglas County				
Elko County				
Esmeralda County				
Eureka County				
Humboldt County				
Lander County				
Lincoln County				
Lyon County				
Mineral County				
Nye County				
Pershing County				
Storey County				
White Pine County				

[1] This date is October 18, 2000, unless otherwise noted.
[2] This date is January 16, 2000.

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31. In § 81.330, the table entitled "New Hampshire—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.330 New Hampshire.

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NEW HAMPSHIRE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Belknap County Area:				
Belknap County		Unclassifiable/Attainment		
Boston-Lawrence-Worcester Area:				
Hillsborough County (part)	(1)	Nonattainment	(2)	Serious.
Pelham Town, Amherst Town, Brookline Town, Hollis Town, Hudson Town, Litchfield Town, Merrimack Town, Milford Town, Mont Vernon Town, Nashua City Wilton Town.				
Rockingham County (part)				
Atkinson Town, Brentwood Town, Danville Town, Derry Town, E. Kingston Town, Hampstead Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town Windham Town.	(2)	Nonattainment	(2)	Serious.
Cheshire County Area:				
Cheshire County	(2)	Nonattainment	(2)	Incomplete Data.
Manchester Area:				
Hillsborough County (part)	(2)	Nonattainment	(2)	Marginal.
Antrim Town, Bedford Town, Bennington Town, Deering Town, Francestown Town, Gofflestown Town, Greenfield Town, Greenville Town, Hancock Town, Hillsborough Town, Lyndeborough Town, Manchester city, Mason Town, New Boston Town, New Ipswich Town, Petersborough Town, Sharon Town, Temple town, Weare Town, Windsor Town.				
Merrimack County	(2)	Nonattainment	(2)	Marginal.
Rockingham County (part)	(2)	Nonattainment	(2)	Marginal.
Auburn Town, Candia Town, Chester Town, Deerfield Town, Epping Town, Fremont Town, Northwood Town, Nottingham Town, Raymond Town.				
Portsmouth-Dover-Rochester Area:				
Rockingham County (part)	(2)	Nonattainment	(2)	Serious.
Exeter Town, Greenland Town, Hampton Town, New Castle Town, Newfields Town, Newington Town, Newmarket Town, North Hampton Town, Portsmouth city, Rye Town, Stratham Town.				
Strafford County	(2)	Nonattainment	(2)	Serious.
Sullivan County Area:				
Sullivan County		Unclassifiable/Attainment		
AQCR 107 Androscoggin Valley Interstate:				
Coos County		Unclassifiable/Attainment		
AQCR 149 Central New Hampshire Interstate:				
Carroll County		Unclassifiable/Attainment		
Grafton County		Unclassifiable/Attainment		

[1] This date is October 18, 2000 unless otherwise noted.
[2] This date is January 16, 2001.

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32. In § 81.331, the table entitled "New Jersey—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.331 New Jersey.

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NEW JERSEY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allentown-Bethlehem Easton Area:				
Warren County	(2)	Nonattainment	(2)	Marginal.
Atlantic City Area:				
Atlantic County	(2)	Nonattainment	(2)	Moderate.
Cape May County	(2)	Nonattainment	(2)	Moderate.
New York-N. New Jersey-Long Island Area:				
Bergen County		Nonattainment		Severe-17.
Essex County		Nonattainment		Severe-17.
Hudson County		Nonattainment		Severe-17.

NEW JERSEY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Hunterdon County		Nonattainment		Severe-17.
Middlesex County		Nonattainment		Severe-17.
Monmouth County		Nonattainment		Severe-17.
Morris County		Nonattainment		Severe-17.
Ocean County		Nonattainment		Severe-17.
Passaic County		Nonattainment		Severe-17.
Somerset County		Nonattainment		Severe-17.
Sussex County		Nonattainment		Severe-17.
Union County		Nonattainment		Severe-17.
Philadelphia-Wilmington-Trenton Area:				
Burlington County		Nonattainment		Severe-15.
Camden County		Nonattainment		Severe-15.
Cumberland County		Nonattainment		Severe-15.
Gloucester County		Nonattainment		Severe-15.
Mercer County		Nonattainment		Severe-15.
Salem County		Nonattainment		Severe-15.

[1] This date is November 15, 1990, unless otherwise noted.
[2] This date is January 16, 2001.

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33. In § 81.332, the table entitled "New Mexico—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.332 New Mexico.

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NEW MEXICO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 012 New Mexico-Southern Border Intrastate		Unclassifiable/Attainment		
Grant County				
Hidalgo County				
Luna County				
AQCR 014 Four Corners Interstate		Unclassifiable/Attainment		
see 40 CFR 81.121				
McKinley County (part)				
Rio Arriba County (part)				
San Juan County				
Sandoval County (part)				
Valencia County (part)				
AQCR 152 Albuquerque-Mid Rio Grande Intrastate		Unclassifiable/Attainment		
Bernalillo County (part)				
AQCR 152 Albuquerque-Mid Rio Grande		Unclassifiable/Attainment		
Sandoval County (part) see 40 CFR 81.83				
Valencia County see 40 CFR 81.83				
AQCR 153 El Paso-Las Cruces-Alamogordo	7/12/95	Nonattainment	7/12/95	Marginal.
Dona Ana County (part)—(Sunland Park Area) The Area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.				
Remainder of Dona Ana County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Otero County		Unclassifiable/Attainment		
Sierra County		Unclassifiable/Attainment		
AQCR 154 Northeastern Plains Intrastate		Unclassifiable/Attainment		
Colfax County				
Guadalupe County				
Harding County				
Mora County				
San Miguel County				
Torrance County				
Union County				
AQCR 155 Pecos-Permian Basin Intrastate		Unclassifiable/Attainment		
Chaves County				

NEW MEXICO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Curry County				
De Baca County				
Eddy County				
Lea County				
Quay County				
Roosevelt County				
AQCR 156 SW Mountains-Augustine Plains		Unclassifiable/Attainment		
Catron County				
Cibola County				
McKinley County (part) see 40 CFR 81.241				
Socorro County				
Valencia County (part) see 40 CFR 81.241				
AQCR 157 Upper Rio Grande Valley Intrastate		Unclassifiable/Attainment		
Los Alamos County				
Rio Arriba County (part) see 40 CFR 81.239				
Santa Fe County				
Taos County				

[1] This date is October 18, 2000, unless otherwise noted.

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34. In § 81.333, the table entitled "New York—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.333 New York.

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NEW YORK—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Albany-Schenectady-Troy Area:				
Albany County	(2)	Nonattainment	(2)	Marginal.
Greene County	(2)	Nonattainment	(2)	Marginal.
Montgomery County	(2)	Nonattainment	(2)	Marginal.
Rensselaer County	(2)	Nonattainment	(2)	Marginal.
Saratoga County	(2)	Nonattainment	(2)	Marginal.
Schenectady County	(2)	Nonattainment	(2)	Marginal.
Buffalo-Niagara Falls Area:				
Erie County	(2)	Nonattainment	(2)	Marginal.
Niagara County	(2)	Nonattainment	(2)	Marginal.
Essex County Area:				
Essex County (part) The portion of Whiteface Mountain above 4500 feet in elevation in Essex County.	(2)	Nonattainment	(2)	Rural Transport (Marginal).
Jefferson County Area:				
Jefferson County	(2)	Nonattainment	(2)	Marginal.
New York-Northern New Jersey-Long Island Area:				
Bronx County	11/15/90	Nonattainment	11/15/90	Severe-17.
Kings County	11/15/90	Nonattainment	11/15/90	Severe-17.
Nassau County	11/15/90	Nonattainment	11/15/90	Severe-17.
New York County	11/15/90	Nonattainment	11/15/90	Severe-17.
Orange County (part) Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury.	1/15/92	Nonattainment	1/15/92	Severe-17.
Queens County	11/15/90	Nonattainment	11/15/90	Severe-17.
Richmond County	11/15/90	Nonattainment	11/15/90	Severe-17.
Rockland County	11/15/90	Nonattainment	11/15/90	Severe-17.
Suffolk County	11/15/90	Nonattainment	11/15/90	Severe-17.
Westchester County	11/15/90	Nonattainment	11/15/90	Severe-17.
Poughkeepsie Area:				
Dutchess County	(2)	Nonattainment	(2)	Moderate.
Orange County (remainder)	(2)	Nonattainment	(2)	Moderate.
Putnam County	(2)	Nonattainment	(2)	Moderate.
AQCR 158 Central New York Intrastate (Remainder of)		Unclassifiable/Attainment		
Cayuga County				
Cortland County				
Herkimer County				
Lewis County				
Madison County				
Oneida County				
Onondaga County				

NEW YORK—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Oswego County				
AQCR 159 Champlain Valley Interstate (Remainder of)	.....	Unclassifiable/Attainment		
Clinton County				
Franklin County				
Hamilton County				
St. Lawrence County				
Warren County				
Washington County				
AQCR 160 Genesee-Finger Lakes Intrastate	.....	Unclassifiable/Attainment		
Genesee County				
Livingston County				
Monroe County				
Ontario County				
Orleans County				
Seneca County				
Wayne County				
Wyoming County				
Yates County				
AQCR 161 Hudson Valley Intrastate (Remainder of)	.....	Unclassifiable/Attainment		
Columbia County				
Fulton County				
Schoharie County				
Ulster County				
AQCR 163 Southern Tier East Intrastate	.....	Unclassifiable/Attainment		
Broome County				
Chenango County				
Delaware County				
Otsego County				
Sullivan County				
Tioga County				
AQCR 164 Southern Tier West Intrastate	.....	Unclassifiable/Attainment		
Allegany County				
Cattaraugus County				
Chautauqua County				
Chemung County				
Schuyler County				
Steuben County				
Tompkins County				

[1] This date is October 18, 2000, unless otherwise noted.
[2] This date is January 16, 2001.

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35. In § 81.334, the table entitled "North Carolina—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.334 North Carolina.

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NORTH CAROLINA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide	.....	Unclassifiable/Attainment		
Alamance County				
Alexander County				
Alleghany County				
Anson County				
Ashe County				
Avery County				
Beaufort County				
Bertie County				
Bladen County				
Brunswick County				
Buncombe County				
Burke County				
Cabarrus County				
Caldwell County				
Camden County				
Carteret County				

NORTH CAROLINA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Caswell County				
Catawba County				
Chatham County				
Cherokee County				
Chowan County				
Clay County				
Cleveland County				
Columbus County				
Craven County				
Cumberland County				
Currituck County				
Dare County				
Davidson County				
Davie County				
Durham County				
Duplin County				
Edgecombe County				
Forsyth County				
Franklin County				
Gaston County				
Gates County				
Graham County				
Granville County				
Greene County				
Guilford County				
Halifax County				
Harnett County				
Haywood County				
Henderson County				
Hertford County				
Hoke County				
Hyde County				
Iredell County				
Jackson County				
Johnston County				
Jones County				
Lee County				
Lenoir County				
Lincoln County				
McDowell County				
Macon County				
Madison County				
Martin County				
Mecklenburg County				
Mitchell County				
Montgomery County				
Moore County				
Nash County				
New Hanover County				
Northhampton County				
Onslow County				
Orange County				
Pamlico County				
Pasquotank County				
Pender County				
Perquimans County				
Person County				
Pitt County				
Polk County				
Randolph County				
Richmond County				
Robeson County				
Rockingham County				
Rowan County				
Rutherford County				
Sampson County				
Scotland County				
Stanly County				
Stokes County				
Surry County				

NORTH CAROLINA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Swain County				
Transylvania County				
Tyrrell County				
Union County				
Vance County				
Wake County				
Warren County				
Washington County				
Watauga County				
Wayne County				
Wilkes County				
Wilson County				
Yadkin County				
Yancey County				

[1] This date is October 18, 2000, unless otherwise noted.

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36. In § 81.335, the table entitled "North Dakota—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.335 North Dakota.

* * * * *

NORTH DAKOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 130 Metropolitan Fargo-Moorhead Interstate.				
Cass County		Unclassifiable/Attainment		
Rest of State, AQCR 172		Unclassifiable/Attainment		
Adams County				
Barnes County				
Benson County				
Billings County				
Bottineau County				
Bowman County				
Burke County				
Burleigh County				
Cavalier County				
Dickey County				
Divide County				
Dunn County				
Eddy County				
Emmons County				
Foster County				
Golden Valley County				
Grand Forks County				
Grant County				
Griggs County				
Hettinger County				
Kidder County				
La Moure County				
Logan County				
McHenry County				
McIntosh County				
McKenzie County				
McLean County				
Mercer County				
Morton County				
Mountrail County				
Nelson County				
Oliver County				
Pembina County				
Pierce County				
Ramsey County				
Ransom County				
Renville County				
Richland County				
Rolette County				

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NORTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Sargent County				
Sheridan County				
Sioux County				
Slope County				
Stark County				
Steele County				
Stutsman County				
Towner County				
Traill County				
Walsh County				
Ward County				
Wells County				
Williams County				

[1] This date is October 18, 2000, unless otherwise noted.

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37. In § 81.336, the table entitled "Ohio—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Canton Area:				
Stark County		Attainment		
Cincinnati-Hamilton Area:				
Butler County	7/5/00	Attainment		
Clermont County	7/5/00	Attainment		
Hamilton County	7/5/00	Attainment		
Warren County	7/5/00	Attainment		
Cleveland-Akron-Lorain Area:		Attainment		
Ashtabula County				
Cuyahoga County				
Geauga County				
Lake County				
Lorain County				
Medina County				
Portage County				
Summit County				
Clinton County Area:				
Clinton County		Attainment		
Columbiana County Area:				
Columbiana County		Attainment		
Columbus Area:				
Delaware County		Attainment		
Franklin County		Attainment		
Licking County		Attainment		
Dayton-Springfield Area:				
Clark County		Attainment		
Greene County		Attainment		
Miami County		Attainment		
Montgomery County		Attainment		
Preble County Area:				
Preble County		Attainment		
Steubenville Area:				
Jefferson County		Attainment		
Toledo Area:				
Lucas County		Attainment		
Wood County		Attainment		
Youngstown-Warren-Sharon Area:				
Mahoning County		Attainment		
Trumbull County		Attainment		
Adams County		Unclassifiable/Attainment		
Allen County		Unclassifiable/Attainment		
Ashland County		Unclassifiable/Attainment		
Athens County		Unclassifiable/Attainment		

OHIO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Auglaize County		Unclassifiable/Attainment		
Belmont County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Champaign County		Unclassifiable/Attainment		
Coshocton County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Darke County		Unclassifiable/Attainment		
Defiance County		Unclassifiable/Attainment		
Erie County		Unclassifiable/Attainment		
Fairfield County		Unclassifiable/Attainment		
Fayette County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gallia County		Unclassifiable/Attainment		
Guernsey County		Unclassifiable/Attainment		
Hancock County		Unclassifiable/Attainment		
Hardin County		Unclassifiable/Attainment		
Harrison County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Highland County		Unclassifiable/Attainment		
Hocking County		Unclassifiable/Attainment		
Holmes County		Unclassifiable/Attainment		
Huron County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Madison County		Unclassifiable/Attainment		
Marion County		Unclassifiable/Attainment		
Meigs County		Unclassifiable/Attainment		
Mercer County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Morrow County		Unclassifiable/Attainment		
Muskingum County		Unclassifiable/Attainment		
Noble County		Unclassifiable/Attainment		
Ottawa County		Unclassifiable/Attainment		
Paulding County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Pickaway County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Putnam County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Ross County		Unclassifiable/Attainment		
Sandusky County		Unclassifiable/Attainment		
Scioto County		Unclassifiable/Attainment		
Seneca County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Tuscarawas County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
Van Wert County		Unclassifiable/Attainment		
Vinton County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
Williams County		Unclassifiable/Attainment		
Wyandot County		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.
[2] Attainment date extended to November 15, 1998.

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38. In § 81.337, the table entitled "Oklahoma—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.337	Oklahoma.	

* * * * *

OKLAHOMA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 017 Metropolitan Fort Smith Interstate		Unclassifiable/Attainment		
Adair County				
Cherokee County				
Le Flore County				
Sequoyah County				
AQCR 022 Shreveport-Texarkana-Tyler Intrastate		Unclassifiable/Attainment		
McCurtain County				
AQCR 184 Central Oklahoma Intrastate (part).				
Cleveland County		Unclassifiable/Attainment		
Oklahoma County		Unclassifiable/Attainment		
AQCR 184 Central Oklahoma Intrastate (Remainder of)		Unclassifiable/Attainment		
Canadian County				
Grady County				
Kingfisher County				
Lincoln County				
Logan County				
McClain County				
Pottawatomie County				
AQCR 185 North Central Oklahoma Intrastate		Unclassifiable/Attainment		
Garfield County				
Grant County				
Kay County				
Noble County				
Payne County				
AQCR 186 Northeastern Oklahoma Intrastate		Unclassifiable/Attainment		
Craig County				
Creek County				
Delaware County				
Mayes County				
Muskogee County				
Nowata County				
Okmulgee County				
Osage County				
Ottawa County				
Pawnee County				
Rogers County				
Tulsa County				
Wagoner County				
Washington County				
AQCR 187 Northwestern Oklahoma Intrastate		Unclassifiable/Attainment		
Alfalfa County				
Beaver County				
Blaine County				
Cimarron County				
Custer County				
Dewey County				
Ellis County				
Harper County				
Major County				
Roger Mills County				
Texas County				
Woods County				
Woodward County				
AQCR 188 Southeastern Oklahoma Intrastate		Unclassifiable/Attainment		
Atoka County				
Bryan County				
Carter County				
Choctaw County				
Coal County				
Garvin County				
Haskell County				
Hughes County				
Johnston County				
Latimer County				
Love County				
Marshall County				
McIntosh County				
Murray County				
Okfuskee County				
Pittsburg County				

OKLAHOMA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Pontotoc County				
Pushmataha County				
Seminole County				
AQCR 189 Southwestern Oklahoma Intrastate		Unclassifiable/Attainment		
Beckham County				
Caddo County				
Comanche County				
Cotton County				
Greer County				
Harmon County				
Jackson County				
Jefferson County				
Kiowa County				
Stephens County				
Tillman County				
Washita County				

[1] This date is October 18, 2000, unless otherwise noted.

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39. In § 81.338, the table entitled "Oregon—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA Area:		Attainment		
Air Quality Maintenance Area				
Clackamas County (part)				
Multnomah County (part)				
Washington County (part)				
Salem Area:				
Salem Area Transportation Study				
Marion County (part)	(2)	Nonattainment	(2)	Incomplete Data.
Polk County	(2)	Nonattainment	(2)	Incomplete Data.
AQCR 190 Central Oregon Intrastate (Remainder of)		Unclassifiable/Attainment.		
Crook County				
Deschutes County				
Hood River County				
Jefferson County				
Klamath County				
Lake County				
Sherman County				
Wasco County				
AQCR 191 Eastern Oregon Intrastate		Unclassifiable/Attainment		
Baker County				
Gilliam County				
Grant County				
Harney County				
Malheur County				
Morrow County				
Umatilla County				
Union County				
Wallowa County				
Wheeler County				
AQCR 192 Northwest Oregon Intrastate		Unclassifiable/Attainment		
Clatsop County				
Lincoln County				
Tillamook County				
AQCR 193 Portland Interstate (part)		Unclassifiable/Attainment		
Lane County (part) Eugene Springfield Air Quality Maintenance Area				
AQCR 193 Portland Interstate (Remainder of)		Unclassifiable/Attainment		
Benton County				
Clackamas County (part) Remainder of county				
Columbia County				

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OREGON—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Lane County (part) Remainder of county				
Linn County				
Marion County (part) area outside the Salem Area Transportation Study				
Multnomah County (part) Remainder of county				
Polk County (part) area outside the Salem Area Transportation Study				
Washington County (part) Remainder of county				
Yamhill County				
AQCR 194 Southwest Oregon Intrastate (part)				
Jackson County (part)				
Medford-Ashland Air Quality Maintenance Area	.....	Unclassifiable/Attainment		
AQCR 194 Southwest Oregon Intrastate (Remainder of)	.....	Unclassifiable/Attainment		
Coos County				
Curry County				
Douglas County				
Jackson County (part) Remainder of county				
Josephine County				

[1] This date is October 18, 2000, unless otherwise noted.
[2] This date is January 16, 2001.

* * * * *

40. In § 81.339, the table entitled "Pennsylvania—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allentown-Bethlehem-Easton Area:				
Carbon County	(3)	Nonattainment	(3)	Marginal.
Lehigh County	(3)	Nonattainment	(3)	Marginal.
Northampton County	(3)	Nonattainment	(3)	Marginal.
Altoona Area:				
Blair County	(3)	Nonattainment	(3)	Marginal.
Crawford County Area:				
Crawford County	(3)	Nonattainment	(3)	Incomplete Data.
Erie Area:				
Erie County	(3)	Nonattainment	(3)	Marginal.
Franklin County Area:				
Franklin County	(3)	Nonattainment	(3)	Incomplete Data.
Greene County Area:				
Greene County	(3)	Nonattainment	(3)	Incomplete Data.
Harrisburg-Lebanon-Carlisle Area:				
Cumberland County	(3)	Nonattainment	(3)	Marginal.
Dauphin County	(3)	Nonattainment	(3)	Marginal.
Lebanon County	(3)	Nonattainment	(3)	Marginal.
Perry County	(3)	Nonattainment	(3)	Marginal.
Johnstown Area:				
Cambria County	(3)	Nonattainment	(3)	Marginal.
Somerset County	(3)	Nonattainment	(3)	Marginal.
Juniata County Area:				
Juniata County	(3)	Nonattainment	(3)	Incomplete Data.
Lancaster Area:				
Lancaster County	11/15/90	Nonattainment	11/15/90	Marginal.
Lawrence County Area:				
Lawrence County	(3)	Nonattainment	(3)	Incomplete Data.
Northumberland County Area:				
Northumberland County	(3)	Nonattainment	(3)	Incomplete Data.
Philadelphia-Wilmington-Trenton Area:				
Bucks County	11/15/90	Nonattainment	11/15/90	Severe-15.
Chester County	11/15/90	Nonattainment	11/15/90	Severe-15.
Delaware County	11/15/90	Nonattainment	11/15/90	Severe-15.
Montgomery County	11/15/90	Nonattainment	11/15/90	Severe-15.
Philadelphia County	11/15/90	Nonattainment	11/15/90	Severe-15.

PENNSYLVANIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Pike County Area:				
Pike County	(3)	Nonattainment	(3)	Incomplete Data.
Pittsburgh-Beaver Valley Area:				
Allegheny County	11/15/90	Nonattainment	11/15/90	Moderate [2].
Armstrong County	11/15/90	Nonattainment	11/15/90	Moderate [2].
Beaver County	11/15/90	Nonattainment	11/15/90	Moderate [2].
Butler County	11/15/90	Nonattainment	11/15/90	Moderate [2].
Fayette County	11/15/90	Nonattainment	11/15/90	Moderate [2].
Washington County	11/15/90	Nonattainment	11/15/90	Moderate [2].
Westmoreland County	11/15/90	Nonattainment	11/15/90	Moderate [2].
Reading Area:				
Berks County		Unclassifiable/Attainment		
Schuylkill County Area:				
Schuylkill County	(3)	Nonattainment	(3)	Incomplete Data.
Scranton-Wilkes-Barre Area:				
Columbia County	(3)	Nonattainment	(3)	Marginal.
Lackawanna County	(3)	Nonattainment	(3)	Marginal.
Luzerne County	(3)	Nonattainment	(3)	Marginal.
Monroe County	(3)	Nonattainment	(3)	Marginal.
Wyoming County	(3)	Nonattainment	(3)	Marginal.
Snyder County Area:				
Snyder County	(3)	Nonattainment	(3)	Incomplete Data.
Susquehanna County Area:				
Susquehanna County	(3)	Nonattainment	(3)	Incomplete Data.
Warren County Area:				
Warren County	(3)	Nonattainment	(3)	Incomplete Data.
Wayne County Area:				
Wayne County	(3)	Nonattainment	(3)	Incomplete Data.
York Area:				
Adams County	(3)	Nonattainment	(3)	Marginal.
York County	(3)	Nonattainment	(3)	Marginal.
Youngstown-Warren-Sharon Area:				
Mercer County	(3)	Nonattainment	(3)	Marginal.
AQCR 151 NE Pennsylvania Intrastate (Remainder of):				
Bradford County		Unclassifiable/Attainment		
Sullivan County		Unclassifiable/Attainment		
Tioga County		Unclassifiable/Attainment		
AQCR 178 NW Pennsylvania Interstate (Remainder of):				
Cameron County		Unclassifiable/Attainment		
Clarion County		Unclassifiable/Attainment		
Clearfield County		Unclassifiable/Attainment		
Elk County		Unclassifiable/Attainment		
Forest County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
McKean County		Unclassifiable/Attainment		
Potter County		Unclassifiable/Attainment		
Venango County		Unclassifiable/Attainment		
AQCR 195 Central Pennsylvania Intrastate (Remainder of):				
Bedford County		Unclassifiable/Attainment		
Centre County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Huntingdon County		Unclassifiable/Attainment		
Lycoming County		Unclassifiable/Attainment		
Mifflin County		Unclassifiable/Attainment		
Montour County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
AQCR 197 SW Pennsylvania Intrastate (Remainder of):				
Indiana County		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.
[2] Attainment date extended to 11/15/97.
[3] This date is January 18, 2001.

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41. In § 81.340, the table entitled "Rhode Island—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.340 Rhode Island.

* * * * *

RHODE ISLAND—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Providence (all of RI) Area:				
Bristol County		Nonattainment		Serious.
Kent County		Nonattainment		Serious.
Newport County		Nonattainment		Serious.
Providence County		Nonattainment		Serious.
Washington County		Nonattainment		Serious.

[1] This date is January 16, 2001, unless otherwise noted.

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42. In § 81.341, the table entitled "South Carolina—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.341 South Carolina.

* * * * *

SOUTH CAROLINA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Abbeville County				
Aiken County				
Allendale County				
Anderson County				
Bamberg County				
Barnwell County				
Beaufort County				
Berkeley County				
Calhoun County				
Charleston County				
Cherokee County				
Chester County				
Chesterfield County				
Clarendon County				
Colleton County				
Darlington County				
Dillon County				
Dorchester County				
Edgefield County				
Fairfield County				
Florence County				
Georgetown County				
Greenville County				
Greenwood County				
Hampton County				
Horry County				
Jasper County				
Kershaw County				
Lancaster County				
Laurens County				
Lee County				
Lexington County				
Marion County				
Marlboro County				
McCormick County				
Newberry County				
Oconee County				
Orangeburg County				
Pickens County				
Richland County				
Saluda County				
Spartanburg County				
Sumter County				
Union County				
Williamsburg County				
York County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

43. In § 81.342, the table entitled "South Dakota—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.342 South Dakota.

* * * * *

SOUTH DAKOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Aurora County				
Beadle County				
Bennett County				
Bon Homme County				
Brookings County				
Brown County				
Brule County				
Buffalo County				
Butte County				
Campbell County				
Charles Mix County				
Clark County				
Clay County				
Codington County				
Corson County				
Custer County				
Davison County				
Day County				
Deuel County				
Dewey County				
Douglas County				
Edmunds County				
Fall River County				
Faulk County				
Grant County				
Gregory County				
Haakon County				
Hamlin County				
Hand County				
Hanson County				
Harding County				
Hughes County				
Hutchinson County				
Hyde County				
Jackson County				
Jerauld County				
Jones County				
Kingsbury County				
Lake County				
Lawrence County				
Lincoln County				
Lyman County				
Marshall County				
McCook County				
McPherson County				
Meade County				
Mellette County				
Miner County				
Minnehaha County				
Moody County				
Pennington County				
Perkins County				
Potter County				
Roberts County				
Sanborn County				
Shannon County				
Spink County				
Stanley County				
Sully County				
Todd County				
Tripp County				
Turner County				
Union County				
Walworth County				
Yankton County				

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SOUTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Ziebach County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

44. In § 81.343, the table entitled "Tennessee—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Jefferson County Area:				
Jefferson County	11/15/90	Unclassifiable/Attainment	11/15/90	
Statewide		Unclassifiable/Attainment.		
Anderson County				
Bedford County				
Benton County				
Bledsoe County				
Blount County				
Bradley County				
Campbell County				
Cannon County				
Carroll County				
Carter County				
Cheatham County				
Chester County				
Claiborne County				
Clay County				
Cocke County				
Coffee County				
Crockett County				
Cumberland County				
DeKalb County				
Decatur County				
Dickson County				
Davidson County				
Dyer County				
Fayette County				
Fentress County				
Franklin County				
Gibson County				
Giles County				
Grainger County				
Greene County				
Grundy County				
Hamblen County				
Hamilton County				
Hancock County				
Hardeman County				
Hardin County				
Hawkins County				
Haywood County				
Henderson County				
Henry County				
Hickman County				
Houston County				
Humphreys County				
Jackson County				
Johnson County				
Knox County				
Lake County				
Lauderdale County				
Lawrence County				
Lewis County				
Lincoln County				
Loudon County				

TENNESSEE—OZONE (1–HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Macon County				
Madison County				
Marion County				
Marshall County				
Maury County				
McMinn County				
McNairy County				
Meigs County				
Monroe County				
Montgomery County				
Moore County				
Morgan County				
Obion County				
Overton County				
Perry County				
Pickett County				
Polk County				
Putnam County				
Rhea County				
Roane County				
Robertson County				
Rutherford County				
Scott County				
Sequatchie County				
Sevier County				
Shelby County				
Smith County				
Stewart County				
Sullivan County				
Sumner County				
Tipton County				
Trousdale County				
Unicoi County				
Union County				
Van Buren County				
Warren County				
Washington County				
Wayne County				
Weakley County				
White County				
Williamson County				
Wilson County				

[1] This date is October 18, 2000, unless otherwise noted.

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45. In § 81.344, the table entitled "Texas—Ozone (1–Hour Standard)" is revised to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Beaumont/Port Arthur Area:				
Hardin County	11/15/90	Nonattainment	6/03/96	Moderate.
Jefferson County	11/15/90	Nonattainment	6/03/96	Moderate.
Orange County	11/15/90	Nonattainment	6/03/96	Moderate.
Dallas-Fort Worth Area:				
Collin County	11/15/90	Nonattainment	3/20/96	Serious.
Dallas County	11/15/90	Nonattainment	3/20/96	Serious.
Denton County	11/15/90	Nonattainment	3/20/96	Serious.
Tarrant County	11/15/90	Nonattainment	3/20/96	Serious.
El Paso Area:.				
El Paso County	11/15/90	Nonattainment	11/15/90	Serious.
Houston-Galveston-Brazoria Area:				
Brazoria County	11/15/90	Nonattainment	11/15/90	Severe-17.
Chambers County	11/15/90	Nonattainment	11/15/90	Severe-17.

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TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Fort Bend County	11/15/90	Nonattainment	11/15/90	Severe-17.
Galveston County	11/15/90	Nonattainment	11/15/90	Severe-17.
Harris County	11/15/90	Nonattainment	11/15/90	Severe-17.
Liberty County	11/15/90	Nonattainment	11/15/90	Severe-17.
Montgomery County	11/15/90	Nonattainment	11/15/90	Severe-17.
Waller County	11/15/90	Nonattainment	11/15/90	Severe-17.
Longview Area:				
Gregg County	11/15/90	Unclassifiable/Attainment	11/15/90	
Victoria Area:				
Victoria County		Attainment		
AQCR 022 Shreveport-Texarkana-Tyler Interstate		Unclassifiable/Attainment		
Anderson County				
Bowie County				
Camp County				
Cass County				
Cherokee County				
Delta County				
Franklin County				
Gregg County				
Harrison County				
Henderson County				
Hopkins County				
Lamar County				
Marion County				
Morris County				
Panola County				
Rains County				
Red River County				
Rusk County				
Smith County				
Titus County				
Upshur County				
Van Zandt County				
Wood County				
AQCR 106 S Louisiana-SE Texas Interstate (Remainder of)		Unclassifiable/Attainment		
Angelina County, Houston County, Jasper County, Nacogdoches County, Newton County, Polk County, Sabine County, San Augustine County, San Jacinto County, Shelby County, Trinity County, Tyler County				
AQCR 153 El Paso-Las Cruces-Alamogordo Interstate		Unclassifiable/Attainment		
Brewster County				
Culberson County				
Hudspeth County				
Jeff Davis County				
Presidio County				
AQCR 210 Abilene-Wichita Falls Intrastate		Unclassifiable/Attainment		
Archer County, Baylor County, Brown County, Callahan County, Clay County, Coleman County, Comanche County, Cottle County, Eastland County, Fisher County, Foard County, Hardeman County, Haskell County, Jack County, Jones County, Kent County, Knox County, Mitchell County, Montague County, Nolan County, Runnels County, Scurry County, Shackelford County, Stephens County, Stonewall County, Taylor County, Throckmorton County, Wichita County, Wilbarger County, Young County				
AQCR 211 Amarillo-Lubbock Intrastate		Unclassifiable/Attainment		
Armstrong County, Bailey County, Briscoe County, Carson County, Castro County, Childress County, Cochran County, Collingsworth County, Crosby County, Dallam County, Deaf Smith County, Dickens				

TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
County, Donley County, Floyd County, Garza County, Gray County, Hale County, Hall County, Hansford County, Hartley County, Hemphill County, Hockley County, Hutchinson County, King County, Lamb County, Lipscomb County, Lubbock County, Lynn County, Moore County, Motley County, Ochiltree County, Oldham County, Parmer County, Potter County, Randall County, Roberts County, Sherman County, Swisher County, Terry County, Wheeler County, Yoakum County				
AQCR 212 Austin-Waco Intrastate		Unclassifiable/Attainment		
Bastrop County				
Bell County				
Blanco County				
Bosque County				
Brazos County				
Burleson County				
Burnet County				
Caldwell County				
Coryell County				
Falls County				
Fayette County				
Freestone County				
Grimes County				
Hamilton County				
Hays County				
Hill County				
Lampasas County				
Lee County				
Leon County				
Limestone County				
Llano County				
Madison County				
McLennan County				
Milam County				
Mills County				
Robertson County				
San Saba County				
Travis County				
Washington County				
Williamson County				
AQCR 213 Brownsville-Laredo Intrastate		Unclassifiable/Attainment		
Cameron County				
Hidalgo County				
Jim Hogg County				
Starr County				
Webb County				
Willacy County				
Zapata County				
AQCR 214 Corpus Christi-Victoria Intrastate (Remainder of)		Unclassifiable/Attainment		
Aransas County, Bee County, Brooks County, Calhoun County, De Witt County, Duval County, Goliad County, Gonzales County, Jackson County, Jim Wells County, Kenedy County, Kleberg County, Lavaca County, Live Oak County, McMullen County, Refugio County, San Patricio County,				
AQCR 214 Corpus Christi-Victoria Intrastate (part)		Unclassifiable/Attainment		
Nueces County				
AQCR 215 Metro Dallas-Fort Worth Intrastate (Remainder of)		Unclassifiable/Attainment		
Cooke County				
Ellis County				
Erath County				

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TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Fannin County				
Grayson County				
Hood County				
Hunt County				
Johnson County				
Kaufman County				
Navarro County				
Palo Pinto County				
Parker County				
Rockwall County				
Somervell County				
Wise County				
AQCR 216 Metro Houston-Galveston Intrastate (Remainder of).	.....	Unclassifiable/Attainment		
Austin County, Colorado County, Matagorda County, Walker County, Wharton County				
AQCR 217 Metro San Antonio Intrastate (part)	.....	Unclassifiable/Attainment		
Bexar County				
AQCR 217 Metro San Antonio Intrastate (Remainder of)	.....	Unclassifiable/Attainment		
Atascosa County, Bandera County, Comal County, Dimmit County, Edwards County, Frio County, Gillespie County, Guadalupe County, Karnes County, Kendall County, Kerr County, Kinney County, La Salle County, Maverick County, Medina County, Real County, Uvalde County, Val Verde County, Wilson County, Zavala County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (part)	.....	Unclassifiable/Attainment		
Ector County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (Remainder of).	.....	Unclassifiable/Attainment		
Andrews County, Borden County, Coke County, Concho County, Crane County, Crockett County, Dawson County, Gaines County, Glasscock County, Howard County, Irion County, Kimble County, Loving County, Martin County, Mason County, McCulloch County, Menard County, Midland County, Pecos County, Reagan County, Reeves County, Schleicher County, Sterling County, Sutton County, Terrell County, Tom Green County, Upton County, Ward County, Winkler County				

[1] This date is October 18, 2000, unless otherwise noted.

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46. In § 81.345, the table entitled "Utah—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Salt Lake City Area:				
Davis County	.....	Attainment		
Salt Lake County	.....	Attainment		
Rest of State	.....	Unclassifiable/Attainment		
Beaver County				
Box Elder County				
Cache County				
Carbon County				

UTAH—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Daggett County				
Duchesne County				
Emery County				
Garfield County				
Grand County				
Iron County				
Juab County				
Kane County				
Millard County				
Morgan County				
Piute County				
Rich County				
San Juan County				
Sanpete County				
Sevier County				
Summit County				
Tooele County				
Uintah County				
Utah County				
Wasatch County				
Washington County				
Wayne County				
Weber County				

[1] This date is October 18, 2000, unless otherwise noted.

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47. In § 81.346, the table entitled "Vermont—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.346 Vermont.

* * * * *

VERMONT—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 159 Champlain Valley Interstate (part)				
Addison County Unclassifiable		Unclassifiable/Attainment		
Chittenden County		Unclassifiable/Attainment		
AQCR 159 Champlain Valley Interstate (Remainder of)		Unclassifiable/Attainment		
Franklin County				
Grand Isle County				
Rutland County				
AQCR 221 Vermont Intrastate (part)		Unclassifiable/Attainment		
Windsor County				
AQCR 221 Vermont Intrastate (Remainder of)		Unclassifiable/Attainment		
Bennington County				
Caledonia County				
Essex County				
Lamoille County				
Orange County				
Orleans County				
Washington County				
Windham County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

48. In § 81.347, the table entitled "Virginia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Norfolk-Virginia-Beach Newport News (Hampton Roads) Area.				
Chesapeake		Attainment		
Hampton		Attainment		
James City County		Attainment		
Newport News		Attainment		
Norfolk		Attainment		
Poquoson		Attainment		
Portsmouth		Attainment		
Suffolk		Attainment		
Virginia Beach		Attainment		
Williamsburg		Attainment		
York County		Attainment		
Richmond Area:				
Charles City County (part) Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/ 156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/ Charles City County line to State Route 156..		Attainment		
Chesterfield County		Attainment		
Colonial Heights		Attainment		
Hanover County		Attainment		
Henrico County		Attainment		
Hopewell		Attainment		
Richmond		Attainment		
Smyth County Area:				
Smyth County (part) The portion of White Top Mountain above the 4,500 foot elevation in Smyth County..	([2])	Nonattainment	([2])	Rural transport (Marginal).
Washington Area:				
Alexandria	11/15/90	Nonattainment	11/15/90	Serious.
Arlington County	11/15/90	Nonattainment	11/15/90	Serious.
Fairfax	11/15/90	Nonattainment	11/15/90	Serious.
Fairfax County	11/15/90	Nonattainment	11/15/90	Serious.
Falls Church	11/15/90	Nonattainment	11/15/90	Serious.
Loudoun County	11/15/90	Nonattainment	11/15/90	Serious.
Manassas	11/15/90	Nonattainment	11/15/90	Serious.
Manassas Park	11/15/90	Nonattainment	11/15/90	Serious.
Prince William County	11/15/90	Nonattainment	11/15/90	Serious.
Stafford County	11/15/90	Nonattainment	11/15/90	Serious.
AQCR 207 Eastern Tennessee—SW Virginia Interstate (Remainder of)		Unclassifiable/Attainment		
Bland County				
Bristol				
Buchanan County				
Carroll County				
Dickenson County				
Galax				
Grayson County				
Lee County				
Norton				
Russell County				
Scott County				
Smyth County (part) Remainder of county				
Tazewell County				
Washington County				
Wise County				
Wythe County				
AQCR 222 Central Virginia Intrastate		Unclassifiable/Attainment		
Amelia County				
Amherst County				
Appomattox County				
Bedford				
Bedford County				
Brunswick County				

VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Buckingham County				
Campbell County				
Charlotte County				
Cumberland County				
Danville				
Franklin County				
Halifax County				
Henry County				
Lunenburg County				
Lynchburg				
Martinsville				
Mecklenburg County				
Nottoway County				
Patrick County				
Pittsylvania County				
Prince Edward County				
South Boston				
AQCR 223 Hampton Roads Intrastate (Remainder of).		Unclassifiable/Attainment		
Franklin				
Isle Of Wight County				
Southampton County				
AQCR 224 NE Virginia Intrastate (Remainder of).		Unclassifiable/Attainment		
Accomack County				
Albemarle County				
Caroline County				
Charlottesville				
Culpeper County				
Essex County				
Fauquier County				
Fluvanna County				
Fredericksburg				
Gloucester County				
Greene County				
King and Queen County				
King George County				
King William County				
Lancaster County				
Louisa County				
Madison County				
Mathews County				
Middlesex County				
Nelson County				
Northampton County				
Northumberland County				
Orange County				
Rappahannock County				
Richmond County				
Spotsylvania County				
Westmoreland County				
AQCR 225 State Capital Intrastate (Remainder of)				
Charles City County (part)		Unclassifiable/Attainment		
Remainder of County				
Dinwiddie County				
Emporia				
Goochland County				
Greensville County				
New Kent County				
Petersburg				
Powhatan County				
Prince George County				
Surry County				
Sussex County				
AQCR 226 Valley of Virginia Intrastate		Unclassifiable/Attainment		
Alleghany County				
Augusta County				
Bath County				
Botetourt County				
Buena Vista				
Clarke County				
Clifton Forge				

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VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Covington County				
Craig County				
Floyd County				
Frederick County				
Giles County				
Harrisonburg				
Highland County				
Lexington				
Montgomery County				
Page County				
Pulaski County				
Radford				
Roanoke				
Roanoke County				
Rockbridge County				
Rockingham County				
Salem				
Shenandoah County				
Staunton				
Warren County				
Waynesboro				
Winchester				

[1] This date is October 18, 2000, unless otherwise noted.
[2] This date is January 16, 2001.

* * * * *

49. In § 81.348, the table entitled "Washington—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA Area:				
Clark County (part) Air Quality Maintenance Area	.....	Attainment		

WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Seattle-Tacoma Area:				
The following boundary includes all of Pierce County, and all of King County except a small portion on the north-east corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually river extend northwesterly along the Pierce County line to the southernmost point of the west county line of King County; thence northerly along the county line to the southernmost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Hewning Rd., to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. N.E. and Menzel Lake Rd.; thence south-southeasterly along the Menzel Lake Rd. and the Lake Roesiger Rd. a distance of approximately 6 miles to the northernmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King County; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River.	.....	Attainment		
AQCR 062 E Washington-N Idaho Interstate (part)	.....	Attainment		
Spokane County	.....	Unclassifiable/Attainment		
AQCR 062 E Washington-N Idaho Interstate (Remainder of)	.....	Unclassifiable/Attainment		
Adams County				
Asotin County				
Columbia County				
Garfield County				
Grant County				
Lincoln County				
Whitman County				
AQCR 193 Portland Interstate (Remainder of)	.....	Unclassifiable/Attainment		
Clark County (part) Remainder of county				
Cowlitz County				
Lewis County				
Skamania County				
Wahkiakum County				
AQCR 227 Northern Washington Intrastate	.....	Unclassifiable/Attainment		
Chelan County				
Douglas County				
Ferry County				
Okanogan County				
Pend Oreille County				
Stevens County				
AQCR 228 Olympic-Northwest Washington Intrastate	.....	Unclassifiable/Attainment		
Clallam County				
Grays Harbor County				

WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Island County				
Jefferson County				
Mason County				
Pacific County				
San Juan County				
Skagit County				
Thurston County				
Whatcom County				
AQCR 229 Puget Sound Intrastate (Remainder of)		Unclassifiable/Attainment		
King County (Part) Remainder of County				
Kitsap County				
Snohomish County (Part) Remainder of County				
AQCR 230 South Central Washington Intrastate		Unclassifiable/Attainment		
Benton County				
Franklin County				
Kittitas County				
Klickitat County				
Walla Walla County				
Yakima County				

[1] This date is October 18, 2000, unless otherwise noted.

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50. In § 81.349, the table entitled "West Virginia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Charleston Area:.				
Kanawha County		Unclassifiable/Attainment		
Putnam County		Unclassifiable/Attainment		
Greenbrier Area:				
Greenbrier County		Unclassifiable/Attainment		
Huntington-Ashland Area:				
Cabell County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
Parkersburg-Marietta Area:				
Wood County		Unclassifiable/Attainment		
Rest of State		Unclassifiable/Attainment		
Barbour County				
Berkeley County				
Boone County				
Braxton County				
Brooke County				
Calhoun County				
Clay County				
Doddridge County				
Fayette County				
Gilmer County				
Grant County				
Hampshire County				
Hancock County				
Hardy County				
Harrison County				
Jackson County				
Jefferson County				
Lewis County				
Lincoln County				
Logan County				
Marion County				
Marshall County				
Mason County				
McDowell County				
Mercer County				
Mineral County				

WEST VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Mingo County				
Monongalia County				
Monroe County				
Morgan County				
Nicholas County				
Ohio County				
Pendleton County				
Pleasants County				
Pocahontas County				
Preston County				
Raleigh County				
Randolph County				
Ritchie County				
Roane County				
Summers County				
Taylor County				
Tucker County				
Tyler County				
Upshur County				
Webster County				
Wetzel County				
Wirt County				
Wyoming County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

51. In § 81.350, the table entitled "Wisconsin—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Door County Area:				
Door County	([3])	Nonattainment	([3])	Rural Transport (Marginal).
Kewaunee County Area:				
Kewaunee County		Attainment.		
Manitowoc County Area:				
Manitowoc County	1/6/92	Nonattainment	8/22/97	Moderate. [2]
Milwaukee-Racine Area:				
Kenosha County	11/15/90	Nonattainment	11/15/90	Severe-17.
Milwaukee County	11/15/90	Nonattainment	11/15/90	Severe-17.
Ozaukee County	11/15/90	Nonattainment	11/15/90	Severe-17.
Racine County	11/15/90	Nonattainment	11/15/90	Severe-17.
Washington County	11/15/90	Nonattainment	11/15/90	Severe-17.
Waukesha County	11/15/90	Nonattainment	11/15/90	Severe-17.
Sheboygan County Area:				
Sheboygan County		Attainment		
Walworth County Area:				
Walworth County		Attainment		
Adams County		Unclassifiable/Attainment		
Ashland County		Unclassifiable/Attainment		
Barron County		Unclassifiable/Attainment		
Bayfield County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Buffalo County		Unclassifiable/Attainment		
Burnett County		Unclassifiable/Attainment		
Calumet County		Unclassifiable/Attainment		
Chippewa County		Unclassifiable/Attainment		
Clark County		Unclassifiable/Attainment		
Columbia County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Dane County		Unclassifiable/Attainment		
Dodge County		Unclassifiable/Attainment		
Douglas County		Unclassifiable/Attainment		

WISCONSIN—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Dunn County		Unclassifiable/Attainment		
Eau Claire County		Unclassifiable/Attainment		
Florence County		Unclassifiable/Attainment		
Fond du Lac County		Unclassifiable/Attainment		
Forest County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Green County		Unclassifiable/Attainment		
Green Lake County		Unclassifiable/Attainment		
Iowa County		Unclassifiable/Attainment		
Iron County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Juneau County		Unclassifiable/Attainment		
La Crosse County		Unclassifiable/Attainment		
Lafayette County		Unclassifiable/Attainment		
Langlade County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Marathon County		Unclassifiable/Attainment		
Marinette County		Unclassifiable/Attainment		
Marquette County		Unclassifiable/Attainment		
Menominee County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Oconto County		Unclassifiable/Attainment		
Oneida County		Unclassifiable/Attainment		
Outagamie County		Unclassifiable/Attainment		
Pepin County		Unclassifiable/Attainment		
Pierce County		Unclassifiable/Attainment		
Polk County		Unclassifiable/Attainment		
Portage County		Unclassifiable/Attainment		
Price County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Rock County		Unclassifiable/Attainment		
Rusk County		Unclassifiable/Attainment		
St. Croix County		Unclassifiable/Attainment		
Sauk County		Unclassifiable/Attainment		
Sawyer County		Unclassifiable/Attainment		
Shawano County		Unclassifiable/Attainment		
Taylor County		Unclassifiable/Attainment		
Trempealeau County		Unclassifiable/Attainment		
Vernon County		Unclassifiable/Attainment		
Vilas County		Unclassifiable/Attainment		
Washburn County		Unclassifiable/Attainment		
Waupaca County		Unclassifiable/Attainment		
Waushara County		Unclassifiable/Attainment		
Winnebago County		Unclassifiable/Attainment		
Wood County		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.
[2] Attainment date temporarily delayed until November 15, 2007.
[3] This date is January 16, 2001.

* * * * *

52. In § 81.351, the table entitled "Wyoming—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.351 Wyoming.

* * * * *

WYOMING—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Albany County				
Big Horn County				
Campbell County				
Carbon County				
Converse County				
Crook County				
Fremont County				

WYOMING—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Goshen County				
Hot Springs County				
Johnson County				
Laramie County				
Lincoln County				
Natrona County				
Niobrara County				
Park County				
Platte County				
Sheridan County				
Sublette County				
Sweetwater County				
Teton County				
Uinta County				
Washakie County				
Weston County				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

53. In § 81.352, the table entitled "American Samoa—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.352 American Samoa.

* * * * *

AMERICAN SAMOA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

54. In § 81.353, the table entitled "Guam—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.353 Guam.

* * * * *

GUAM—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

55. In § 81.354, the table entitled "Northern Mariana Islands—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.354 Northern Mariana Islands.

* * * * *

NORTHERN MARIANA ISLANDS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Whole State		Unclassifiable/Attainment		

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

56. In § 81.355, the table entitled "Puerto Rico—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.355 Puerto Rico.

* * * * *

PUERTO RICO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Adjuntas Municipio				
Aguada Municipio				
Aguadilla Municipio				
Aguas Buenas Municipio				
Aibonito Municipio				
Anasco Municipio				
Arecibo Municipio				
Arroyo Municipio				
Barceloneta Municipio				
Barranquitas Munic.				
Bayamon County				
Cabo Rojo Municipio				
Caguas Municipio				
Camuy Municipio				
Canovanas Municipio				
Carolina Municipio				
Catano County				
Cayey Municipio				
Ceiba Municipio				
Ciales Municipio				
Cidra Municipio				
Coamo Municipio				
Comerio Municipio				
Corozal Municipio				
Culebra Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guanica Municipio				
Guayama Municipio				
Guayanilla Municipio				
Guaynabo County				
Gurabo Municipio				
Hatillo Municipio				
Hormigueros Municipio				
Humacao Municipio				
Isabela Municipio				
Jayuya Municipio				
Juana Diaz Municipio				
Juncos Municipio				
Lajas Municipio				
Lares Municipio				
Las Marias Municipio				
Las Piedras Municipio				
Loiza Municipio				
Luquillo Municipio				
Manati Municipio				
Maricao Municipio				
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Mayaguez Municipio				
Moca Municipio				
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Naguabo Municipio				
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Orocovis Municipio				
Patillas Minicipio				
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Quebradillas Municipio				
Rincon Municipio				
Rio Grande Municipio				
Sabana Grande Municipio				
Salinas Municipio				
San German Municipio				
San Juan Municipio				
San Lorenzo Municipio				
San Sebastian Municipio				
Santa Isabel Municipio				
Toa Alta Municipio				

PUERTO RICO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Toa Baja County				
Trujillo Alto Municipio				
Utuado Municipio				
Vega Alta Municipio				
Vega Baja Municipio				
Vieques Municipio				
Villalba Municipio				
Yabucoa Municipio				
Yauco Municipio				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

57. In § 81.356, the table entitled "Virgin Islands—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.356 Virgin Islands.

* * * * *

VIRGIN ISLANDS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
St. Croix				
St. John				
St. Thomas				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 00–17472 Filed 7–19–00; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

Last List July 12, 2000

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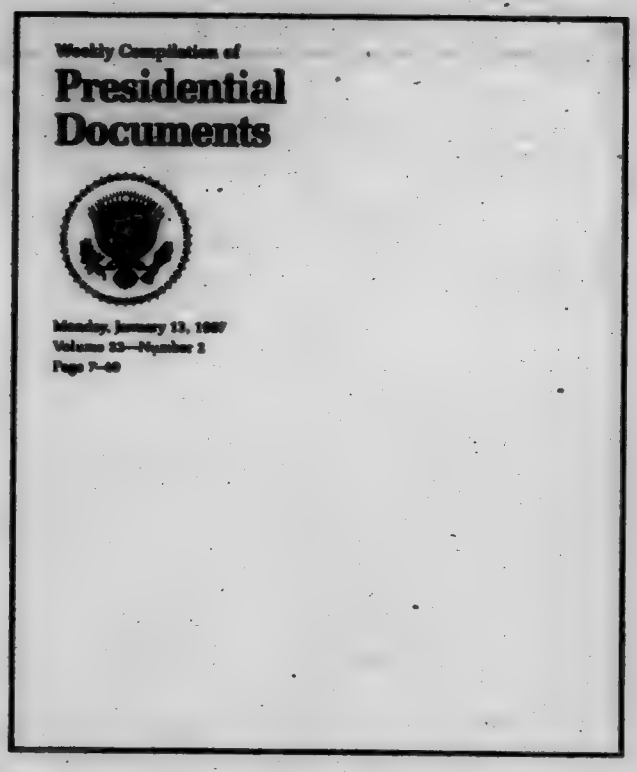

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 74

[Docket No. 00–016–2]

Interstate Movement of Certain Land Tortoises

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are allowing the interstate movement of certain land tortoises if they are accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. This action is warranted to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease.

DATES: This interim rule was effective July 17, 2000. We invite you to comment on this docket. We will consider all comments that we receive by September 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–016–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–016–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. D. D. Wilson, Senior Staff Entomologist, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2000, we published in the **Federal Register** (65 FR 15216–15218, Docket No. 00–016–1) an interim rule that prohibits, until further notice, the importation of the following tortoises into the United States: All species and subspecies of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*). The interim rule also prohibits the interstate movement of all species and subspecies of these land tortoises. These prohibitions were established in order to prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants.

We solicited comments on our interim rule for 60 days, ending May 22, 2000. We received 53 comments by that date. They were from tortoise breeders and owners, representatives of the reptile industry, animal advocacy groups, and other interested individuals. Many commenters supported the prohibition on importation of these tortoises, but most expressed concerns about the effect of prohibiting the interstate movement of these tortoises. Because of the prohibition, these tortoises may not be moved interstate for sale, health care, or adoption. In addition, many domestic tortoise breeders who must move their tortoises interstate prior to exporting them can no longer export these tortoises.

Therefore, based on these comments, we are taking immediate action to amend the regulations at 9 CFR part 74 to allow the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if the tortoises are accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. The certification will help ensure that the interstate movement of these tortoises will pose no risk of spreading exotic ticks. This action is warranted to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease.

In the future, we will publish another document in the **Federal Register** that addresses all of the issues raised by the commenters.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. As a result of an interim rule published and effective on March 22, 2000, the importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise has been prohibited. While this action has been effective in preventing the spread of exotic ticks known to be vectors of heartwater disease, it has also resulted in increased health risks for some tortoises that may not be moved interstate for health care or adoption and resulted in financial burdens for owners who have not been able to move to their tortoises interstate sale or for export. The latter problem may also put some tortoises at risk if owners are unable to provide adequate care for those tortoises. This interim rule will allow the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if the tortoises are accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. Immediate action is warranted to enable the export, interstate commerce, health care, and adoption of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553

to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are allowing the interstate movement of certain land tortoises if they are accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. This action is warranted to enable the export, interstate commerce, health care, and adoption of these types of tortoises.

The United States accounts for about 80 percent of the world's live reptile trade. In 1998, a total of 1,921,272 reptiles were imported, valued at approximately $6.37 million. Of these, turtles, including tortoises, accounted for about 26.5 percent of imports. Three states, California (48 percent), Florida (33.2 percent), and Louisiana (11.7 percent), accounted for nearly 93 percent of turtle imports.

The United States exports about 9 million live reptiles annually. Red-eared slider turtles make up about 85 percent of these exports every year. South Korea, Japan, and European countries are the major importers of U.S. turtles. However, Canada appears to be the major importer of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. In 1995, the United States exported to Canada 32 leopard tortoises, 527 African spurred tortoises, and 2,332 Bell's hingeback tortoises. During the same year, U.S. imports of these species were 2,683, 1,223 and 952, respectively.

In 1996, between 1.5 million and 2.5 million households in the United States owned various reptiles as pets. Of these, about 534,000 households, or about 35 percent, owned a total of 950,000 turtles, including tortoises. Overall, turtles represented about 27 percent of the total reptile pet population. The prices paid for turtles ranged between $25 and $750, depending on species, size, and age. Between 1993 and 1996, the average price in the United States for a leopard tortoise was $190, for an African spurred tortoise $578, and for a Bell's hingeback tortoise $35.

This rule will positively affect individuals involved in the interstate movement of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. This rule will require persons wishing to move these tortoises interstate to acquire a health certificate from a Federal or accredited veterinarian. This will cost about $16 to $25 dollars per health certificate. These costs are small when compared to the potential losses in revenue and animals that may result from continuing to prohibit the interstate movement of these species of tortoises. Another benefit for U.S. exporters of these tortoises is that a health certificate will help ensure the acceptability of these animals in international markets and prevent the spread of exotic ticks known to be vectors of heartwater disease.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0156 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 00–016–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. Please state that your comments refer to Docket No. 00–016–2 and send your comments within 60 days of publication of this rule.

This interim rule requires that, prior to interstate movement of certain land tortoises, a Federal or accredited veterinarian must sign a health certificate stating that the tortoises have been examined by that veterinarian and found free of ticks. The health certificate must accompany the tortoises during interstate movement. This certification will help ensure that the interstate movement of these tortoises will pose no risk of spreading exotic ticks. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.083 hour per response.

Respondents: Tortoise breeders and owners, and members of tortoise adoption organizations, in the United States.

Estimated annual number of respondents: 150.

Estimated annual number of responses per respondent: 6.

Estimated annual number of responses: 900.

Estimated total annual burden on respondents: 75 hours.

Copies of this information collection can be obtained from Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

List of Subjects in 9 CFR Part 74

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are revising 9 CFR part 74 to read as follows:

PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES

Sec.
74.1 General prohibition.

Authority: 21 U.S.C. 111–113, 114a, 115, 117, 120, 122–126, 134b, 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 74.1 General prohibition.

The interstate movement of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*) is prohibited except when tortoises are accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks.

Done in Washington, DC, this 17th day of July 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–18566 Filed 7–20–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–210–AD; Amendment 39–11824; AD 2000–14–14]

RIN 2120–AA64

Airworthiness Directives; BFGoodrich Main Brake Assemblies as Installed on Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain BFGoodrich main brake assemblies as installed on Airbus Model A319 and A320 series airplanes. This action requires repetitive inspections to determine the length of the wear indicator pins of the main brake assemblies of the main landing gear (MLG); follow-on inspections; and corrective actions, if necessary. This amendment is prompted by reports from several operators that severe oxidation was found on the rotor disk assemblies of the main brake assemblies. This action is necessary to detect and correct thermal oxidation of the main brake assemblies, which could result in deterioration of the MLG brakes, and consequent reduced braking performance.

DATES: Effective August 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 7, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 21, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–210–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from BFGoodrich Aerospace Wheel & Brake Systems Division, P.O. Box 340, Troy, Ohio, 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 24, 1999, the FAA issued AD 99–25–07, amendment 39–11450 (64 FR 68620, December 8, 1999), which is applicable to certain BFGoodrich main brake assemblies having part number (P/N) 2–1598 or P/N 2–1600 as installed on Airbus Model A319 and A320 series airplanes. That AD requires a one-time inspection of the wear indicator pins to determine the level of wear of the main brake assemblies of the main landing gear (MLG), and corrective actions, if necessary. That AD also requires modification of the main brake assemblies of the MLG to shorten the wear indicator pins, and change P/N 2–1598 to P/N 2–1598–1 or change P/N 2–1600 to P/N 2–1600–1. In addition, that AD requires incorporation of specified wear limits into the maintenance inspection program.

Since the issuance of AD 99–25–07, the FAA has received reports from several operators of severe oxidation on the carbon heat sinks used on BFGoodrich main brake assemblies, P/N 2–1598–1 and P/N 2–1600–1, installed on Airbus Model A319 and A320 series airplanes. Those reports indicate that the accomplishment of AD 99–25–07 did not adequately address the problem of oxidation on the main brake assemblies in time to correct the identified unsafe condition. Investigation has revealed that deterioration of the BFGoodrich main brake assemblies was caused by thermal oxidation of the carbon material on the heat sinks used in the main brake assemblies, P/N 2–1598–1 and P/N 2–1600–1, due to exposure to elevated temperatures for prolonged periods of time.

Further investigation revealed that the oxidation inhibitor process used by BFGoodrich does not completely prevent oxidation of the carbon brake material. BFGoodrich advises that the carbon brakes, which are susceptible to this oxidation condition, are used only on Airbus Model A319 and A320 series airplanes. Such oxidation first develops on the inner diameter of the rotor disk assemblies when the brake assembly is almost worn-to-limit. This condition, if not corrected, could result in deterioration of the MLG brakes, and consequent reduced braking performance.

Explanation of Relevant Service Information

BFGoodrich has issued Service Bulletins 2–1598–32–2 and 2–1600–32–3, both dated June 16, 2000, which describe procedures for an initial inspection to determine the length of the wear indicator pins of the MLG main brake assemblies and repetitive inspections thereafter at certain intervals. Procedures include follow-on inspections if the length of either wear indicator pin measures between 0.60 and 0.70 inches, or if the length of the pin measures between 0.20 and 0.30 inches; and corrective actions, if necessary. Follow-on inspections

include inspecting the rotor disks located in the center of the heat sinks of the main brake assemblies of the MLG to detect the level of oxidation on the brake assemblies. Corrective actions include replacement of the main brake assembly with a new assembly if any oxidation exceeding the limits specified in the applicable service bulletin is detected. Following such replacement, repetitive inspections of the wear indicator pins are continued.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct thermal oxidation of the main brake assemblies, which could result in deterioration of the MLG brakes, and consequent reduced braking performance. This AD requires repetitive inspections to determine the length of the wear indicator pins of each main brake assembly of the MLG; follow-on inspections; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the applicable service bulletin described previously, except as discussed below.

Differences Between AD and Service Information

Operators should note that the previously referenced BFGoodrich service bulletins recommend accomplishment of an initial inspection on all MLG brake assemblies to determine the length of the wear indicator pins "as soon as possible." However, the FAA finds that a definitive compliance time is necessary. Therefore, paragraph (a) of this AD requires the accomplishment of the repetitive inspections within 10 days after the effective date of this AD, or within 500 flight cycles after replacement of any brake assembly, whichever occurs later. The FAA considers that such a compliance time represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should note that the previously referenced service bulletins include procedures for a one-time inspection on all brakes when any wear indicator pin measures between 0.60 to 0.70 inches, and another such inspection when any pin measures between 0.20 to 0.30 inches. However, the FAA has determined that it is necessary to change those wear indicator pin measurements in this AD to ensure that all brakes are inspected at appropriate intervals. Paragraph (b) of this AD requires a one-time inspection of the brake if either wear indicator pin measures between 0.31 and 0.70 inches, and paragraph (c) of this AD requires an inspection of the brake if either wear indicator pin measures 0.30 inches or less. In the event that the special detailed inspection required by paragraph (c) of this AD is accomplished prior to paragraph (b) of this AD, the inspection required by paragraph (b) of this AD is deemed unnecessary.

Interim Action

This is considered to be interim action. The brake manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–210–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–14 BFGoodrich: Amendment 39–11824. Docket 2000–NM–210–AD.

Applicability: Model BFGoodrich main brake assemblies having part number (P/N) 2–1598–1 or P/N 2–1600–1, as installed on Airbus Model A319 and A320 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct thermal oxidation of the main brake assemblies, which could result in deterioration of the main landing gear (MLG) brakes, and consequent reduced braking performance, accomplish the following:

Initial and Repetitive Inspections

(a) Within 10 days after the effective date of this AD, or within 500 flight cycles after replacement of any brake assembly, whichever occurs later: Perform an inspection to determine the length of the wear indicator pins of each main brake assembly of the MLG, in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1598–32–2 or 2–1600–32–3, both dated June 16, 2000, as applicable. Repeat the inspection thereafter for each brake assembly as specified by paragraph (a)(1), (a)(2), (a)(3), or (a)(4), as applicable.

(1) If the length of both wear indicator pins is greater than 2.00 inches, repeat the inspection thereafter at intervals not to exceed 500 flight cycles.

(2) If the length of the shortest wear indicator pin is between 2.00 and 1.50 inches, repeat the inspection thereafter at intervals not to exceed 250 flight cycles.

(3) If the length of the shortest wear indicator pin is between 1.49 and 1.0 inches, repeat the inspection thereafter at intervals not to exceed 100 flight cycles.

(4) If the length of the shortest wear indicator pin is between 0.31 and 0.99 inches, repeat the inspection thereafter at intervals not to exceed 10 days.

(5) If the length of the shortest wear indicator pin is less than 0.31 inches, no further action is required by this paragraph until the brake is replaced.

Follow-on Inspections and Corrective Actions

(b) During any inspection required by paragraph (a) of this AD, if the length of the shortest wear indicator pin measures between 0.31 and 0.70 inches: Prior to further flight, perform a one-time special detailed inspection of the rotor disks located in the center of the heat sinks of the main brake assemblies of the MLG to detect the level of oxidation on the main brake assemblies in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1598–32–2 or 2–1600–32–3, both dated June 16, 2000, as applicable. The inspection required by this paragraph is required only the first time the length of the shortest wear indicator pin measures between 0.31 and 0.70 inches.

(1) If no oxidation is detected, or if oxidation within the limits specified in the applicable service bulletin is detected on any brake assembly, continue the inspections required by paragraph (a) of this AD.

(2) If any oxidation exceeding the limits specified in the applicable service bulletin is detected on any brake assembly, prior to further flight, replace the brake assembly with a new brake assembly in accordance with the applicable service bulletin. Within 500 flight cycles following such replacement, continue the inspections required by paragraph (a) of this AD.

Note 2: For the purposes of this AD, a special detailed inspection is defined as: "An intensive examination of a specific item(s), installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedures may be required."

(c) During any inspection required by paragraph (a) of this AD, if the length of the shortest wear indicator pin measures 0.30 inches or less: Prior to further flight, perform a one-time special detailed inspection of the rotor disks located in the center of the heat sinks of the main brake assemblies of the MLG to detect the level of oxidation on the main brake assemblies in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1598–32–2 or 2–1600–32–3, both dated June 16, 2000, as applicable. The inspection required by this paragraph is required only the first time the length of the shortest wear indicator pin measures 0.30 inches or less.

(1) If no oxidation is detected, or if oxidation within the limits specified in the applicable service bulletin is detected on any brake assembly, no further action is required by this AD until the brake is replaced in accordance with the FAA-approved maintenance program. Within 500 flight cycles following such replacement, continue the inspections required by paragraph (a) of this AD.

(2) If any oxidation exceeding the limits specified in the applicable service bulletin is detected on any brake assembly, prior to further flight, replace the brake assembly with a new brake assembly in accordance with the applicable service bulletin. Within 500 flight cycles following such replacement, continue the inspections required by paragraph (a) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install on any airplane a BFGoodrich main brake assembly having P/N 2–1598–1 or P/N 2–1600–1 if the wear indicator pin measures 0.70 inches or less, unless an inspection to detect oxidation of the brake assembly has been accomplished in accordance with paragraph 3.A.(3) of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1598–32–2 or 2–1600–32–3, both dated June 16, 2000, as applicable.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (c)(1) of this AD, the inspections and replacement actions shall be done in accordance with BFGoodrich Service Bulletin 2–1598–32–2, dated June 16, 2000, or BFGoodrich Service Bulletin 2–1600–32–3, dated June 16, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Aerospace Wheel & Brake Systems Division, P.O. Box 340, Troy, Ohio, 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 7, 2000.

Issued in Renton, Washington, on July 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18281 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 98F–0165]

Irradiation in the Production, Processing and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ionizing radiation for the reduction of *Salmonella* in fresh shell eggs. This action is in response to a petition filed by Edward S. Josephson.

DATES: This rule is effective July 21, 2000. Submit written objections and requests for a hearing by August 21, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William J. Trotter, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3088.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of March 20, 1998 (63 FR 13675), FDA announced that a food additive petition (FAP 8M4584) had been filed by Edward S. Josephson, University of Rhode Island, Food Science and Nutrition Research Center, 530 Liberty Lane, West Kingston, RI 02892–1802. The petitioner proposed that the food additive regulations in part 179 Irradiation in the Production, Processing and Handling of Food (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for the reduction of *Salmonella* in fresh shell eggs.

II. Safety Evaluation

Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)), a source of radiation used to treat food is defined as a food additive. The additive is not, literally, added to food. Instead, a source of radiation is used to process or treat food such that, analogous to other food processes, its use can affect the characteristics of the food. In the subject petition, the intended technical effect is a change in the microbial load of the food, specifically, a reduction in the numbers of *Salmonella*, a human pathogen, in or on fresh shell eggs.

The petitioner submitted published articles and other study reports containing data and information related to eggs and other kinds of food in the areas of radiation chemistry, nutrition, toxicology, and microbiology. FDA has fully considered the data and studies submitted in the petition, as well as other information in its files relevant to the safety and nutritional adequacy of eggs treated with ionizing radiation.

The effects of ionizing radiation on the characteristics of treated foods are a direct result of the chemical reactions induced by the absorbed radiation. Scientists have compiled a large body of data regarding the effects of ionizing radiation on different foods under various conditions of irradiation. Research has established that the types and amounts of products generated by radiation-induced chemical reactions (hereinafter referred to as "radiolysis products") depend on the chemical constituents of the food and on the conditions of irradiation (e.g., temperature and presence or absence of air and moisture). Furthermore, the principles of radiation chemistry govern the extent of changes both in the nutrient levels and in the microbial load of irradiated foods. Key factors include the specific nutrient or microorganism of interest, the food, and the conditions of irradiation. (See the agency's final rule permitting the irradiation of meat (the meat final rule) in the **Federal Register** of December 3, 1997 (62 FR 64107) for FDA's discussion of radiation chemistry, nutrition, toxicology, and microbiology related to irradiation of foods composed primarily of water, protein, and lipids under various conditions of irradiation.)

FDA has reviewed the relevant data and information submitted in the petition regarding the radiation chemistry of fresh shell eggs, and data available in the agency's files. Fresh whole eggs are composed mainly of water (75.3 percent), protein (12.5 percent), and lipid (10.0 percent) (Ref. 1). As discussed in the meat final rule, the radiation chemistry associated with these types of compounds is well known. FDA has concluded that the concentrations and types of radiolysis products formed by the irradiation of eggs will be comparable to those products produced by the irradiation of other foods of similar composition, such as meat (Ref. 2). In addition, the petitioner's data support the conclusion that there is little change in the levels of individual fatty acids, or in the structure, digestibility, or biological value of protein, when shell eggs are treated with ionizing radiation up to 3 kiloGray (kGy) (Refs. 2 and 3). Most of the radiolysis products are either the same as, or structurally similar to, compounds found in foods that have not been irradiated, and are formed in very small amounts. In summary, an absorbed dose of 3 kGy for the irradiation of fresh shell eggs will result in only minimal changes in the macronutrients (protein, lipid, or carbohydrate), and the chemical composition of eggs will not differ in any significant manner from eggs that have not been irradiated.

The petitioner submitted studies and published reports relevant to the safety of irradiated foods, in general. In addition, a variety of irradiated foods including: Red meat, chicken, fish, and eggs, have been tested in earlier animal feeding studies and genotoxicity studies; and they were previously reviewed by FDA (see, *e.g.*, 62 FR 64107, December 3, 1997). Included in the information considered by FDA in the review of this petition are three studies conducted specifically on irradiated eggs (Ref. 4). In the first such study, rats were fed a biscuit diet containing whole eggs irradiated at 5 kGy at a dietary level of 25 percent on a dry weight basis for 3 years (two generations). No adverse effects were observed compared to the control group fed a diet containing nonirradiated eggs. In the second study, mice and rats were fed a diet containing dried eggs irradiated at 93 kGy and irradiated pork brain. No effects were observed that were attributed to the irradiated food. In the third study, rats were fed canned eggs irradiated at 5 kGy in their diet for two generations. No effects were observed that were attributed to the irradiated diet. Taken as a whole, based on the totality of evidence from all evaluated data and studies, FDA concludes that the petitioned use of

irradiation on fresh shell eggs raises no toxicity concerns (Refs. 4 and 5).

FDA also evaluated the effects of irradiation processing on micronutrients (*e.g.*, minerals, water-soluble vitamins, and fat-soluble vitamins). Minerals are unaffected by irradiation, but the levels of some vitamins may be reduced as a result of irradiation. For example, vitamin A levels did decrease with an increasing radiation dose. Not all vitamin loss is significant, however. The extent to which a reduction in a specific vitamin level is significant depends on the relative contribution from the food in question to the dietary intake of the vitamin and the overall sufficiency of the vitamin in the diet. Based upon data in the agency's files, FDA concludes that the intake of vitamins from other foods compensates for the vitamin loss from the irradiation of eggs (Refs. 4 and 5). For example, a fresh unirradiated egg contains approximately 95 retinol equivalents (RE) of Vitamin A (Ref. 4). In a study, shell eggs irradiated at 1.0 kGy and stored for 24 days contained approximately 72 RE's (Ref. 3). In comparison, 1 tablespoon of butter contains 108 RE's, one-half cup of bran cereal contains 258 RE's, and one-half cup of canned carrots contains 1,620 RE's of vitamin A (Ref. 4). FDA, therefore, concludes, based upon all the evidence before it, that irradiation of fresh shell eggs under the conditions set forth in the regulation below will not have an adverse impact on the nutritional adequacy of a person's diet.

Increased irradiation levels can also cause organoleptic changes in the egg. For example, data in the petition showed an increased color loss in the irradiated egg yolk and a change in the egg's viscosity as the radiation dose was increased. Thus, FDA expects that the acceptability of irradiated shell eggs, based on their color and viscosity, will limit, in a practical way, the maximum dose of irradiation applied to fresh shell eggs. Therefore, FDA has determined that there is no need to limit the irradiation level based on changes in micronutrient levels or organoleptic characteristics of the eggs.

Irradiation of fresh shell eggs at the doses requested in the petition will reduce, but not entirely eliminate, microorganisms in eggs. The stated purpose of this petition is for approval of radiation of fresh shell eggs to reduce the number of *Salmonella*. The data show that low dose irradiation in the range requested by the petitioner can reduce the levels of *S. enteritidis* in fresh shell eggs (Ref. 6). *Salmonella* strains, in addition to *S. enteritidis*, in fresh shell eggs should also be reduced by irradiation since *S. enteritidis* was found to have similar sensitivities to ionizing radiation as five other strains of *Salmonella* that were tested in various media (Ref. 7).

Based on the data and studies submitted in the petition and other information in the agency's files, FDA concludes that: (1) The proposed use of irradiation on fresh shell eggs at levels not to exceed 3.0 kGy is safe, (2) the irradiation can achieve its intended technical effect and, therefore, (3) the regulations in § 179.26 (21 CFR 179.26) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the filing notice for FAP 8M4584 (63 FR 13675, March 20, 1998). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IV. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by August 21, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Nutrient Data Laboratory Food Composition Data, USDA Agricultural Research Service, available at Internet address: http://www.nal.usda.gov/fnic/foodcomp.

2. Memorandum from K. Morehouse, FDA, to W. Trotter, FDA, May 14, 1999.

3. Memorandum from K. Morehouse, FDA, to W. Trotter, FDA, April 11, 2000.

4. Memorandum from I. Chen, FDA, to W. J. Trotter, FDA, December 11, 1998.

5. Memorandum from I. Chen, FDA, to W. J. Trotter, FDA, March 31, 2000.

6. Memorandum from V. K. Bunning, FDA, to W. J. Trotter, FDA, April 4, 2000.

7. Thayer, D.W., et al., "Radiation Resistance of *Salmonella*," *Journal of Industrial Microbiology*, 5:383–390, 1990.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

2. Section 179.26 is amended in the table in paragraph (b) by adding entry "9." under the headings "Use" and "Limitations" to read as follows:

§ 179.26 Ionizing radiation for the treatment of food.

* * * * *

(b) * * *

Use	Limitations
* * * * * * *	
9. For control of *Salmonella* in fresh shell eggs.	Not to exceed 3.0 kGy.

* * * * *

Dated: July 14, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–18496 Filed 7–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Selamectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for topical veterinary prescription use of selamectin solution for the additional indication for control of intestinal hookworm and roundworm infections in cats.

DATES: This rule is effective July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed supplemental NADA 141–152 that provides for topical veterinary prescription use of Revolution™ (selamectin) in dogs and cats for the additional indication for control of intestinal hookworm (*Ancylostoma tubaeforme*) and roundworm (*Toxocara cati*) infections in cats. The supplemental NADA is approved as of June 13, 2000, and the regulations are amended in 21 CFR 524.2098 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning June 13, 2000, because the application contains substantial evidence of effectiveness of the drug involved or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.2098 is amended by revising the third sentence in paragraph (d)(2) to read as follows:

§ 524.2098 Selamectin.

* * * * *

(d) * * *

(2) * * * Treatment and control of intestinal hookworm (*Ancylostoma tubaeforme*) and roundworm (*Toxocara cati*) infections in cats. * * *

* * * * *

Dated: July 3, 2000.

David R. Newkirk,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18458 Filed 7–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Parts 124, 125 126

[Public Notice 3365]

Amendments to the International Traffic in Arms Regulation: NATO Countries, Australia and Japan

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic In Arms Regulations to implement reforms announced by the Secretary of State at the NATO Ministerial in Florence, Italy on May 24, 2000. The reforms of the U.S. export controls system are available to NATO Allies, Japan and Australia and are intended to streamline the U.S. defense export control licensing process and forge closer industrial linkage between the U.S. and allied defense suppliers. It is contemplated that it will increase our mutual security by enhancing NATO member defense capabilities, promoting interoperability with our allies and friends and promoting trans-Atlantic defense industrial cooperation. Part 124 of the International Traffic In Arms Regulations is being amended to permit U.S. companies to perform, using an exemption, certain maintenance and maintenance training for NATO government, Australia and Japan on US-origin inventoried defense articles. Part 125 is amended to provide authorization, without a license, to transfer technical data to support procurement of defense articles from defense firms in NATO countries,

Australia and Japan for use in the United States. This amendment also establishes four comprehensive export authorizations for use in circumstances where the full parameters of a commercial export endeavor, including the needed defense exports, can be well anticipated and described in advance.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ATTN: Regulatory Change NATO, Australia and Japan at (202) 663–2862 or FAX (202) 261–8264.

SUPPLEMENTARY INFORMATION: In implementing the Secretary of State's announcement at the NATO Ministerial, May 24, 2000, in Florence, Italy, the International Traffic In Arms Regulations is being amended. Section 124.2 is amended to add a new paragraph (c) to permit U.S. companies to provide, without a license, defense services necessary to perform maintenance on and maintenance training for inventoried US-origin equipment of NATO countries, Australia and Japan, provided the maintenance and maintenance training does not result in any modification, enhancement, upgrade or other form of alteration or improvement that enhances the performance or capability of the defense article. Also, the export must not include the transfer of certain technologies; such as, design methodology, engineering analysis and manufacturing know-how. Section 125.4 is amended to add a new paragraph (c) to permit the transfer of technical data to NATO countries, Australia and Japan of technical data necessary to support offshore procurement of defense articles for use in the United States. In addition, Part 126 is amended to add, in § 126.9, a new paragraph (b) and a new § 126.14. These additions are being made to create four new comprehensive authorizations developed to limit the number of export approvals necessary to authorize the export of U.S. technology to NATO countries, Australia and Japan that will encourage government-to-government cooperative research and development, support joint ventures and teaming arrangements and facilitate a U.S. company's role in a cooperative project when covered by a government-to-government Memorandum of Understanding (MOU).

In implementing these initiatives, Part 124, 125, and 126 are being amended.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with § 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, NATO, Australia and Japan, 13th Floor, H1304, 2401 E Street, NW., Washington, DC 20037. Such persons must be so registered with the Department of State's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of § 38 of the Arms Export Control Act.

List of Subjects

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 125

Arms and munitions, Exports.

22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 124, 125 and 126, are being amended as follows:

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

1. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub L. 105–261.

2. Section 124.2 is amended by adding paragraph (c) to read as follows:

§ 124.2 Exemptions for training and military service.

* * * * *

(c) NATO countries, Australia and Japan, in addition to the basic maintenance training exemption provided in § 124.2(a) and basic maintenance information exemption in § 125.4(b)(5), no technical assistance agreement is required for maintenance training or the performance of maintenance, including the export of supporting technical data, when the following criteria can be met:

(1) Defense services are for unclassified U.S.-origin defense articles lawfully exported or authorized for export and owned or operated by and in the inventory of NATO or the Federal Governments of NATO countries, Australia or Japan;

(2) This defense service exemption does not apply to any transaction involving defense services for which congressional notification is required in accordance with § 123.15 and § 124.11 of this subchapter.

(3) Maintenance training or the performance of maintenance must be limited to inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components; and excluding any modification, enhancement, upgrade or other form of alteration or improvement that enhances the performance or capability of the defense article. This does not preclude maintenance training or the performance of maintenance that would result in enhancements or improvements only in the reliability or maintainability of the defense article, such as an increased mean time between failure (MTBF).

(4) Supporting technical data must be unclassified and must not include software documentation on the design or details of the computer software, software source code, design methodology, engineering analysis or manufacturing know-how such as that described in paragraphs (c)4)(i) through (c)(4)(iii) as follows:

(i) *Design Methodology,* such as: The underlying engineering methods and design philosophy utilized (*i.e.,* the "why" or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.* lessons learned); and the rationale and associated databases (*e.g.* design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.,* performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article.

(ii) *Engineering Analysis,* such as: Analytical methods and tools used to design or evaluate a defense article's performance against the operational requirements. Analytical methods and

tools include the development and/or use of mockups, computer models and simulations, and test facilities.

(iii) *Manufacturing Know-how*, such as: Information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article.

(5) This defense service exemption does not apply to maintenance training or the performance of maintenance and service or the transfer of supporting technical data for the following defense articles:

(i) All Missile Technology Control Regime Annex Items;

(ii) Firearms listed in Category I; and ammunition listed in Category III for the firearms in Category I;

(iii) Nuclear weapons strategic delivery systems and all components, parts, accessories and attachments specifically designed for such systems and associated equipment;

(iv) Naval nuclear propulsion equipment listed in Category VI(e);

(v) Gas turbine engine hot sections covered by Categories VI(f) and VIII(b);

(vi) Category VIII(f);

(vii) Category XII(c);

(viii) Chemical agents listed in Category XIV (a), biological agents in Category XIV (b), and equipment listed in Category XIV (c) for dissemination of the chemical agents and biological agents listed in Categories XIV (a) and (b);

(ix) Nuclear radiation measuring devices manufactured to military specifications listed in Category XIV(d);

(x) Category XV;

(xi) Nuclear weapons design and test equipment listed in Category XVI;

(xii) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d);

(xiii) Miscellaneous articles covered by Category XXI.

(6) *Eligibility Criteria for Foreign Persons.* Foreign persons eligible to receive technical data or maintenance training under this exemption are limited to nationals of the NATO countries, Australia or Japan.

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSFIED DEFENSE ARTICLES

3. The authority citation for part 125 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658.

4. Section 125.4 is amended by revising paragraph (a) and by adding paragraph (c) to read as follows:

§ 125.4 Exemptions of general applicability.

(a) The following exemptions apply to exports of technical data for which approval is not needed from the Office of Defense Trade Controls. These exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under § 126.1 of this subchapter or for persons considered generally ineligible under § 120.1(c) of this subchapter. The exemptions are also not applicable for purposes of establishing offshore procurement arrangements or producing defense articles offshore (see § 124.13), except as authorized under § 125.4 (c). If § 126.8 of this subchapter requirements are applicable, they must be met before an exemption under this section may be used. Transmission of classified information must comply with the requirements of the National Industrial Security Program Operating Manual and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

(b) * * *

(c) Defense services and related unclassified technical data are exempt from the licensing requirements of this subchapter, to nationals of NATO countries, Australia and Japan, for the purposes of responding to a written request from the Department of Defense for a quote or bid proposal. Such exports must be pursuant to an official written request or directive from an authorized official of the U.S. Department of Defense. The defense services and technical data are limited to those listed in paragraphs (c)(1), (c)(2), and (c)(3) and must not include those listed in paragraphs (c)(4), (c)(5), and (c)(6) which follow:

(1) *Build-to-Print.* "Build-to-Print" means that a foreign consignee can produce a defense article from engineering drawings without any technical assistance from a U.S. exporter. This transaction is based strictly on a "hands-off" approach since the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation such as acceptance criteria, and specifications, may be released on an as-required basis (*i.e.* "must have") such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (*i.e.* "nice to have") is not considered within the boundaries of a "Build-to-Print" data package;

(2) *Build/Design-to-Specification.* "Build/Design-to-Specification" means that a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based strictly on a "hands-off" approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information;

(3) *Basic Research.* "Basic Research" means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include "Applied Research" (*i.e.* a systemic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.);

(4) *Design Methodology*, such as: The underlying engineering methods and design philosophy utilized (*i.e.*, the "why" or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.* lessons learned); and the rationale and associated databases (*e.g.* design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.*, performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article. (Final analytical results and the initial conditions and parameters may be provided.)

(5) *Engineering Analysis*, such as: Analytical methods and tools used to design or evaluate a defense article's performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters may be provided.)

(6) *Manufacturing Know-how*, such as: information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article. (Information may be provided in a

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build-to-print package that is necessary in order to produce an acceptable defense article.)

PART 126—GENERAL POLICIES AND PROVISIONS

5. The authority citation for Part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR 1994 Comp., p 899.

6. Section 126.9 is revised to read as follows:

§ 126.9 Advisory opinions and related authorizations.

(a) Any person desiring information as to whether the Office of Defense Trade controls would be likely to grant a license or other approval for the export or approval of a particular defense article or defense service to a particular country may request an advisory opinion from the Office of Defense Trade Controls. These opinions are not binding on the Department of State and are revocable. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service

(b) *Related authorizations.* The Office of Defense Trade Controls may, as appropriate, in accordance with the procedures set forth in paragraph (a) of this section, provide export authorization, subject to all other relevant requirements of this subchapter, both for transactions that have been the subject of advisory opinions requested by prospective U.S. exporters, or for the Office's own initiatives. Such initiatives may cover pilot programs, or specifically anticipated circumstances for which the Office considers special authorizations appropriate.

7. Section 126.14 is added to read as follows:

§ 126.14. Special comprehensive export authorizations for NATO, Australia, and Japan.

(a) With respect to NATO members, Australia, and Japan, the Office of Defense Trade Controls may provide the comprehensive authorizations described below for circumstances where the full parameters of a commercial export endeavor including the needed defense exports can be well anticipated and described in advance, thereby making use of such comprehensive authorizations appropriate.

(1) *Major Project Authorization.* With respect to NATO members, Australia, and Japan, the Office of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed "major projects", where a principal registered U.S. exporter/prime contractor identifies in advance the broad parameters of a commercial project including defense exports needed, other participants (e.g., exporters with whom they have "teamed up", subcontractors), and foreign government end users. Projects eligible for such authorization may include a commercial export of a major weapons system for a foreign government involving, for example, multiple U.S. suppliers under a commercial teaming agreement to design, develop and manufacture defense articles to meet a foreign government's requirements. U.S. exporters seeking such authorization must provide detailed information concerning the scope of the project, including other exporters, U.S. subcontractors, and planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(2) *Major Program Authorization.* With respect to NATO members, Australia, and Japan, the Office of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed "major program". This variant would be available where a single registered U.S. exporter defines in advance the parameters of a broad commercial program for which the registrant will be providing all phases of the necessary support (including the needed hardware, tech data, defense services, development, manufacturing, and logistic support). U.S. exporters seeking such authorization must provide detailed information concerning the scope of the program, including planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth below in paragraph (b) of this section.

(3)(i) *Global Project Authorization.* With respect to NATO members, Australia and Japan, the Office of Defense Trade Controls may provide a comprehensive "Global Project Authorization" to registered U.S. exporters for exports of defense articles, technical data or defense services in support of government to government cooperative projects (covering research and development or production) with one of these countries undertaken pursuant to an agreement between the USG and the government of such country, or a memorandum of understanding between the Department of Defense and the country's Ministry of Defense.

(ii) A set of standard terms and conditions derived from and corresponding to the breadth of the activities and phases covered in such a cooperative MOU will provide the basis for this comprehensive authorization for all U.S. exporters (and foreign end users) identified by DoD as participating in such cooperative project. Such authorizations may cover a broad range of defined activities in support of such programs including multiple shipments of defense articles and technical data and performance of defense services for extended periods, and re-exports to approved end users.

(iii) Eligible end users will be limited to ministries of defense of MOU signatory countries and foreign companies serving as contractors of such countries.

(iv) Any requirement for non-transfer and use assurances from a foreign government may be deemed satisfied by the signature by such government of a cooperative agreement or by its ministry of defense of a cooperative MOU where the agreement or MOU contains assurances that are comparable to that required by a DSP–83 with respect to foreign governments and that clarifies that the government is undertaking responsibility for all its participating companies. The authorized non-government participants or end users (*e.g.*, the participating government's contractors) will still be required to execute DSP–83's.

(4) *Technical Data Supporting an Acquisition, Teaming Arrangement, Merger, Joint Venture Authorization.* With respect to NATO member countries, Australia and Japan, the Office of Defense Trade Controls may provide a registered U.S. defense company a comprehensive authorization to export technical data in support of the U.S. exporter's consideration of entering into a teaming arrangement, joint venture, merger, acquisition, or similar arrangement with prospective foreign partners. Specifically the authorization is designed to permit the export of a broadly defined set of technical data to qualifying well established foreign defense firms in NATO countries, Australia or Japan in order to better facilitate a sufficiently in depth

assessment of the benefits, opportunities and other relevant considerations presented by such prospective arrangements. U.S exporters seeking such authorization must provide detailed information concerning the arrangement, joint venture, merger or acquisition, including any planned exports of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(b) *Provisions and Requirements for Comprehensive Authorizations.* Requests for the special comprehensive authorizations set forth in paragraph (a) of this section should be by letter addressed to the Office of Defense Trade Control. With regard to a commercial major program or project authorization, or technical data supporting a teaming arrangement, merger, joint venture or acquisition, registered U.S. exporters may consult the Director of the Office of Defense Trade Controls about eligibility for and obtaining available comprehensive authorizations set forth in paragraph (a) of this section or pursuant to § 126.9(b).

(1) Requests for consideration of all such authorizations should be formulated to correspond to one of the authorizations set out in paragraph (a) of this section, and should include:

(i) A description of the proposed program or project, including where appropriate a comprehensive description of all phases or stages; and

(ii) Its value; and

(iii) Types of exports needed in support of the program or project; and

(iv) Projected duration of same, within permissible limits; and

(v) Description of the exporter's plan for record keeping and auditing of all phases of the program or project; and

(vi) In the case of authorizations for exports in support of government to government cooperative projects, identification of the cooperative project.

(2) Amendments to the requested authorization may be requested in writing as appropriate, and should include a detailed description of the aspects of the activities being proposed for amendment.

(3) The comprehensive authorizations set forth in paragraph (a) of this section may be made valid for the duration of the major commercial program or project, or cooperative project, not to exceed 10 years.

(4) Included among the criteria required for such authorizations are those set out in Part 124, *e.g.*, §§ 124.7, 124.8 and 124.9, as well as §§ 125.4 (technical data exported in furtherance of an agreement) and 123.16 (hardware being included in an agreement). Provisions required will also take into account the congressional notification requirements in §§ 123.15 and 124.11 of the ITAR. Specifically, comprehensive congressional notifications corresponding to the comprehensive parameters for the major program or project or cooperative project should be possible, with additional notifications such as those required by law for changes in value or other significant modifications.

(5) All authorizations will be consistent with all other applicable requirements of the ITAR, including requirements for non-transfer and use assurances (see §§ 123.10 and 124.10), congressional notifications (*e.g.*, §§ 123.15 and 124.11), and other documentation (*e.g.*, §§ 123.9 and 126.13).

(6) Special auditing and reporting requirements will also be required for these authorizations. Exporters using special authorizations are required to establish an electronic system for keeping records of all defense articles, defense services and technical data exported and comply with all applicable requirements for submitting shipping or export information within the allotted time.

Dated: July 14, 2000.

Pamela L. Frazier,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 00–18530 Filed 7–20–00; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 126

[Public Notice 3366]

Amendment to the International Traffic in Arms Regulation: FMS LOA Authorized Defense Services

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Final rule.

SUMMARY: The International Traffic In Arms Regulations (ITAR), § 126.6, Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program is being amended to clarify the use of the exemption when providing defense services authorized by the Foreign Military Sales (FMS) Program.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Deputy Director, Licensing, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ATTN: Regulatory Change, Section 126.6 FMS Defense Service at (202) 663–2862 or FAX (202) 261–8264.

SUPPLEMENTARY INFORMATION: Section 126.6 currently provides for the export of defense services when authorized by the Foreign Military Sales (FMS) Program without a license or other approval. However, companies, lacking clear guidance often sought approval of the Office of Defense Trade Controls which delayed the provision of the service or frequently also entailed seeking assurances that the foreign government believed it had already provided to the USG. Thus, this amendment to § 126.6 which clarifies the exemption on the basis of specific criteria will assist registered defense firms by making it clear when to use the exemption to provide defense services authorized by the Department of Defense in an LOA.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the Nation, USG or any State, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, FMS LOA Authorized Defense Services, 13th Floor, Room H1304, 2401 E Street, N.W., Washington, D.C. 20037. Such persons must be so registered with the Department of State's Office of Defense Trade Controls (ODTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter 1, subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for Part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub.L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Com., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.E. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.6 is revised to read as follows:

§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.

(a) A license from the Office of Defense Trade Controls is not required if:

(1) The article or technical data to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

(2) The article or technical data is delivered to representatives of such a country or organization in the United States; and

(3) The article or technical data is to be exported from the United States on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS).

(b) *Foreign military aircraft and naval vessels.* A license is not required for the entry into the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be performed. However, Department of State approval for overflight (pursuant to the 49 U.S.C. 1508) and naval visits must be obtained from the Bureau of Political-Military Affairs, Office of International Security Operations.

(c) *Foreign Military Sales Program.* A license from the Office of Defense Trade Controls is not required if the defense article or technical data or a defense service to be transferred was sold, leased or loaned by the Department of Defense to a foreign country or international organization under the Foreign Military Sales (FMS) Program of the Arms Export Control Act pursuant to an Letter of Offer and Acceptance (LOA) authorizing such transfer which meets the criteria stated below:

(1) Transfers of the defense articles, technical data or defense services using this exemption may take place only during the period which the FMS Letter of Offer and Acceptance (LOA) and implementing USG FMS contracts and subcontracts are in effect and serve as authorization for the transfers hereunder in lieu of a license. After the USG FMS contracts and subcontracts have expired and the LOA no longer serves as such authorization, any further provision of defense articles, technical data or defense services shall not be covered by this section and shall instead be subject to other authorization requirements of this subchapter; and

(2) The defense article, technical data or defense service to be transferred are specifically identified in an executed LOA, in furtherance of the Foreign Military Sales Program signed by an authorized Department of Defense Representative and an authorized representative of the foreign government, and

(3) The transfer of the defense article and related technical data is effected during the duration of the relevant Letter of Offer and Acceptance (LOA), similarly a defense service is to be provided only during the duration of the USG FMS contract or subcontract and not to exceed the specified duration of the LOA, and

(4) The transfer is not to a country identified in § 126.1 of this subchapter, and

(5) The U.S. person responsible for the transfer maintains records of all transfers in accordance with Part 122 of this subchapter, and

(6) For transfers of defense articles and technical data,

(i) The transfer is made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Defense Trade Controls pursuant to Part 122 of this subchapter, and

(ii) At the time of shipment, the District Director of Customs is provided an original and properly executed DSP–94 accompanied by a copy of the LOA and any other documents required by U.S. Customs in carrying out their responsibilities. The Shippers Export Declaration or, if authorized, the outbound manifest, must be annotated "This shipment is being exported under the authority of Department of State Form DSP–94. It covers FMS Case [insert case identification], expiration [insert date]. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____," and

(iii) If, classified hardware and related technical data are involved the transfer must have the requisite USG security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual, or

(7) For transfers of defense services:

(i) A contract or subcontract between the U.S. person(s) responsible for providing the defense service and the USG exists that:

(A) Specifically defines the scope of the defense service to be transferred;

(B) Identifies the FMS case identifier,

(C) Identifies the foreign recipients of the defense service

(D) Identifies any other U.S. or foreign parties that may be involved and their roles/responsibilities, to the extent known when the contract is executed,

(E) Provides a specified period of duration in which the defense service may be performed, and

(ii) The U.S. person(s) identified in the contract maintain a registration with the Office of Defense Trade Controls for the entire time that the defense service is being provided. In any instance when the U.S. registered person(s) identified in the contract employs a subcontractor, the subcontractor may only use this exemption when registered with DTC, and when such subcontract meets the above stated requirements, and

(iii) In instances when the defense service involves the transfer of classified technical data, the U.S. person transferring the defense service must have the appropriate USG security clearance and a transportation plan, if appropriate, in compliance with the Department of Defense National Industrial Security Program Operating Manual, and

(iv) The U.S. person responsible for the transfer reports the initial transfer, citing this section of the ITAR, the FMS case identifier, contract and subcontract number, the foreign country, and the duration of the service being provided to the Office of Defense Trade Controls using DTC's Direct Shipment Verification Program.

Dated: July 14, 2000.

Pamela L. Frazier,

Assistant Secretary (Acting), Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 00–18531 Filed 7–20–00; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Nonavailability Statement Requirement for Maternity Care

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65), which requires that a nonavailability-of-health-care statement shall be required for a beneficiary not enrolled in TRICARE Prime for TRICARE cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The Act reestablishes a requirement which was previously eliminated under the broad direction of the National Defense Authorization Act for FY 1997, section 734, which removed authority for nonavailability statements (NASs) for outpatient services. Therefore, the Act changes the provisions which require an NAS for inpatient delivery, but do not require an NAS for outpatient prenatal and post-partum care. The change will significantly contribute to continuity of care for maternity patients. In furtherance of that principle, and consistent with the previous policy, an NAS for maternity care shall not be required when a beneficiary has other health insurance for primary coverage.

EFFECTIVE DATE: This rule is effective October 5, 1999, the effective date of Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65), which imposes the requirement.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3801.

SUPPLEMENTARY INFORMATION:

I. Final Rule Provisions

This final rule implements section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65) which requires that a nonavailability-of-health-care statement shall be required for TRICARE/CHAMPUS cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The nonavailability statement (NAS) requirement applies to non-enrolled TRICARE beneficiaries who live in a catchment area of a military treatment facility (MTF). Except for an emergency or when there is other primary health insurance coverage, these beneficiaries are required to obtain all maternity care from the MTF. If care is unavailable at the MTF, an NAS will be issued for the beneficiary. The Act changes the existing provisions which require an NAS for inpatient delivery but do not require an NAS for outpatient prenatal, outpatient delivery and post-partum care. The change will provide for continuity of care for maternity patients. Beneficiaries will need one NAS for the entire episode of maternity care which shall remain valid until 42 days following termination of the pregnancy. We published the interim final rule on December 23, 1999.

II. Public Comments

We provided a 60-day comment period on the interim final rule. We received no public comments, and no comments were received from other federal agencies with which we are required to coordinate.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This is not a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget. In addition, this final rule will not significantly affect a substantial number of small entities. The changes set forth in the final rule are minor revisions to the existing regulation.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.4(a) is amended by revising paragraphs (a)(9) and (a)(9)(i)(B).

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) Nonavailability Statements within a 40-mile catchment area. In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required medical care can be provided through an Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD Form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with non-emergency inpatient hospital care and outpatient and inpatient maternity care if such services are available at a facility of the Uniformed Services located within a 40-mile radius of the residence of the beneficiary, except that an NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. For maternity care, an NAS is required for services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit that confirms the pregnancy. The requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

* * * * *

Dated: July 17, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18451 Filed 7–20–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 00–010]

RIN 2115–AA97

Safety Zone; U. S. Marine Corps Water Jump, Resurrection Bay, Seward, Alaska

AGENCY: Coast Guard, DOT

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 1100 yard radius safety zone around a point located at 60°02′28.7″N latitude, 149°23′02.8″W longitude in Resurrection Bay, Seward, AK. This safety zone is implemented to ensure the safety of approximately 25 U. S. Marine Corps personnel who will be jumping from a C–130 aircraft into the waters of Resurrection Bay at a time when this waterway will be extremely busy with commercial and recreational vessels. Entry into, transit through, anchoring or remaining in this zone is prohibited unless authorized by the Captain of the Port, Western Alaska, or his authorized representative.

DATES: This regulation is effective from 12:30 p.m. until 4:30 p.m. on July 20, 2000.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office Anchorage, 510 "L" Street, Suite 100, Anchorage, AK 99501. Comments received will be available for inspection and copying at Coast Guard Marine Safety Office Anchorage. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mark McManus, USCG Marine Safety Office, Anchorage, at (907) 271–6762.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of the activities requiring this safety zone, and other logistical details surrounding this port visit, were not finalized until a date fewer than 30 days prior to the project date. Furthermore, immediate action is necessary to provide for the safe transit of the vessel.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Those providing comments should identify the docket number for the regulation (COTP Western Alaska 00–010) and also include their name, addresses, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing the Marine Safety Office in Anchorage, Alaska at the address listed in **ADDRESSES** in this preamble.

Background and Purpose

Due to the fact that Resurrection Bay is a relatively narrow waterway, that commercial vessel traffic transits routinely through this area conducting business at the Port of Seward, and the large amount of recreational vessel traffic that utilize this waterway, the Coast Guard is establishing a 1100 yard radius safety zone to ensure the safety of 25 U.S. Marine Corps personnel that will be jumping into Resurrection Bay from a C–130 aircraft on July 20, 2000.

Discussion of the Regulation

The Coast Guard is establishing a temporary 1100 yard safety zone around a point located at 60°02′28.7″N latitude, 149°23′02.8″W longitude in Resurrection Bay, Seward, AK. This safety zone is implemented to ensure the safety of approximately 25 U. S. Marine Corps personnel who will be jumping from a C–130 aircraft into the waters of Resurrection Bay at a time when this waterway will be extremely busy with commercial and recreational vessels. The proposed safety zone is intended to become effective at 12:30 a.m. on July 20, 2000, and terminate at 16:30 p.m. on July 20, 2000. Entry into, transit through, anchoring or remaining in this zone is prohibited unless authorized by the Captain of the Port or his authorized representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. Commercial and recreational vessel traffic will be able to transit into and out of the Port of Seward via the traffic lanes that will be open on the east and west sides of the safety zone area during the entire effective period of this regulation. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Mark McManus, Coast Guard Marine Safety Office Anchorage, AK, at (907) 271–6762.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water). Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.401–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–010 is added to read as follows:

§ 165.T17–010 Safety Zone; U. S. Marine Corps Water Jump, Resurrection Bay, Seward, Alaska

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 1100 yard radius around a point located at 60°02′28.7″N latitude, 149°23′02.8″W longitude in Resurrection Bay, Seward, AK.

(b) *Effective Dates.* This proposed regulation is effective at 12:30 p.m. on July 20, 2000, and terminates at 16:30 p.m. on July 20, 2000.

(c) *Regulations.* (1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf.

(2) The general regulations governing safety zones contained in 33 CFR 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his on scene representative.

The U. S. Coast Guard Cutter *Mustang* will be enforcing the safety zone and can be reached on marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271–6700.

Dated: June 27, 2000

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 00–18533 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–187]

RIN 2115–AA97

Safety Zone: Oil Spill Cleanup Zone, Middletown, Rhode Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters of Narragansett Bay shoreward of the area marked by a high flyer (flagged metal pole) at the westernmost end of Midway Pier in Portsmouth; southwest to a high flyer 250 yards west of McAllister Point; south to a high flyer at the first bend in the Coddington Cove Breakwater. The safety zone is needed to safeguard the public and pollution response personnel during oil cleanup operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

EFFECTIVE DATES: This rule is effective from 3 p.m., Wednesday July 12, 2000, until 6 p.m. on Monday July 31, 2000.

ADDRESSES: You may mail comments and related material to Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island 02914. The Prevention Department maintains the public docket for this rulemaking.

Comments and related material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Providence between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR James McLaughlin at Marine Safety Office Providence, (401) 435–2300.

SUPPLEMENTARY INFORMATION

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. This temporary final rule establishes a safety zone around the cleanup operations being conducted after the spill of No. 6 oil from the barge Penn 460. The safety zone is needed to safeguard the public, and cleanup personnel, from the hazards associated with cleanup vessels and beach response personnel operating in the area. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close portions of Narragansett Bay to protect the public and response personnel.

Background and Purpose

Barge Penn 460 experienced an oil spill of approximately 14,000 gallons of No. 6 oil on July 5, 2000. Due to heavy recreational traffic in vicinity of the spill, a safety zone is needed to ensure the safety of recreational traffic and response vessels and personnel. The exclusion of recreational traffic will minimize the risk of wake damage to response vessels and personnel, and will eliminate the risk of collision. Entry into this safety zone is prohibited unless authorized by the Captain of the Port (COTP), Providence, RI. A safety zone [CGD01–00–250] was previously established on Friday July 7, 2000, for this same event. This previous safety zone prohibited entry into the waters of Narragansett Bay within 500 yards of the shoreline from the base of the Coddington Cove, Middletown, Rhode Island, breakwater to the waterside end of the pier located 2,500 yards Northeast of Coddington Cove. However, the

Rhode Island Department of Health and Department of Environmental Management reopened a significant portion of the area to commercial fishing at 12:00 p.m. on July 12, 2000. This new safety zone prohibits entry into the area which remains closed to commercial fishing.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone prevents traffic from transiting in the immediate area of cleanup operations. This regulation will not be significant as all vessel traffic may safely pass around this safety zone, no commercial entities are located within the zone, a State of Rhode Island fisheries closure is in effect in this zone, and extensive maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this action under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in section 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" will be available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under the authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–187 to read as follows:

§ 165.T01–187 Safety Zone: Oil Spill Cleanup Zone, Middletown, Rhode Island.

(a) *Location.* All waters in Narragansett Bay shoreward of the area marked by a high flyer (flagged metal pole) at the westernmost end of Midway Pier in Portsmouth, RI; southwest to a high flyer 250 yards west of McAllister Point; south to a high flyer at the first bend in the Coddington Cove.

(b) *Effective Period.* This section is effective from 3 p.m. on Wednesday July 12, 2000, until 6 p.m. on Monday July 31, 2000.

(c) *Regulations.* (1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene U.S. Coast Guard patrol personnel. The personnel comprise commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 12, 2000.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 00–18557 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 01–00–186]

RIN 2115–AA97

Safety Zone: Village of Bellport Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Village of Bellport Fireworks Display to be held in Bellport Bay, Bellport, NY, on July 22, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 8:30 p.m. on July 22, 2000, until 10 p.m., on July 23, 2000.

ADDRESSES: Documents relating to this temporary final rule are available for inspection or copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512 between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer C. D. Stubblefield, Command Center, Captain of the Port, Long Island Sound at (203) 468–4428.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Village of Bellport, is sponsoring a 12 minute fireworks display in Bellport Bay, Bellport, NY. The safety zone will be in effect from 8:30 p.m. until 10:00 p.m., July 22, 2000. The safety zone covers all waters of Bellport Bay within a 600 foot radius of the fireworks launching barge which will be located in Bellport Bay, Bellport, NY, in approximate position; 40°44′58″N, 072°55′43″W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Bellport Bay and entry into this zone will be restricted for only 90 minutes on July 22, 2000. Although this regulation prevents traffic from transiting this section of Bellport Bay, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Bellport Bay from 8:30 p.m. until 10:00 p.m. July 22, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–186 to read as follows:

§ 165.T01–186 The Village of Bellport Fireworks Display, Bellport, NY.

(a) *Location.* The safety zone includes all waters of Bellport Bay within a 600 foot radius of the launch barge located in Bellport Bay, Bellport, NY. in approximate position 40°44′58″ N, 072°55′43″ W (NAD 1983).

(b) *Effective date.* This section is effective on July 22, 2000 from 8:30 p.m. until 10 p.m., July 23, 2000.

(c)(1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 10, 2000.

David P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 00–18556 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 00–065]

RIN 2115–AA97

Safety Zone Regulation for San Juan Harbor, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within a 1500 foot radius surrounding the drill boat *Apache* while it is engaged in drilling or blasting operations. The drill boat will operate at the entrance to San Juan Harbor, Puerto Rico. The safety zone is necessary to protect vessels and personnel in the vicinity of the drilling and blasting operations. Entry into this zone is prohibited, unless authorized by the Captain of the Port.

DATES: This rule is effective from 7 a.m., Atlantic Standard Time, on July 11, 2000, to 11:59 p.m., Atlantic Standard Time, October 31, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, Chief of Port Operations, Coast Guard Marine Safety Office San Juan, telephone (787) 706–2440.

ADDRESSES: Documents indicated in this preamble are available in the docket, are part of docket COTP San Juan 00–065, and are available for inspection or copying at the USCG Marine Safety Office, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, between the hours of 7:30 a.m. to 3:30 p.m., Monday through Friday, excluding federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It was impracticable to attempt to publish a NPRM for this situation due to the inherent difficulties in scheduling marine dredging operations, and the temporary nature of this regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the operational schedule for the drilling and blasting was not finalized until a June 21, 2000 meeting between the U.S. Coast Guard, Army Corps of Engineers and Contract Drilling and Blasting.

Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters from hazards associated with drilling and blasting operations that will occur at the entrance to San Juan Harbor, Puerto Rico.

The drilling and blasting operations will be conducted to the west of the San Juan Harbor bar entrance channel, between buoys number 1 and number 4, in the approximate position of 18°28.3691′ N, 066°07.6889′ W. The drilling and blasting operations will occur outside of the navigation channel.

To further ensure the safety of life, the contractor conducting the drilling and blasting operations will, 15 minutes prior to any detonation, send two small boats outside the safety zone to advise mariners of the operation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary as the operation will not significantly impede navigation and commercial activity due to the low frequency of occurrence and extremely short duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in a portion of San Juan Harbor from July 11, 2000 to October 31, 2000. This special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will be in effect sporadically, and vessel traffic can pass safely around the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because it is establishing a temporary safety zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Safety measures, Waterways.

For the reasons discussed in the Preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED AREAS AND LIMITED NAVIGATION AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Temporary § 165.T00–065 is added to read as follows:

§ 165.T00–065 Safety Zone; San Juan Harbor, Puerto Rico.

(a) *Regulated Area.* A temporary safety zone is established within a 1500-foot radius surrounding the drill boat *Apache*, operating at the entrance to San Juan Harbor in the approximate position of 18° 28.3691′ N, 066° 07.6889′ W, when the vessel is conducting drilling or blasting.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, anchoring, mooring or transiting in this zone is prohibited when the vessel *Apache* is displaying the flashing blue strobe light, unless authorized by the Coast Guard Captain of the Port.

(2) Notifications of blasting or drilling operations will be broadcast via VHF–FM radio Channel 16 beginning 2 hours prior to drilling or blasting operations.

(c) *Dates.* This section is effective at 7 a.m., Atlantic Standard Time, on July 11, 2000, and expires at 11:59 p.m., Atlantic Standard Time, October 31, 2000.

Dated: July 11, 2000.

J. Servidio,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.

[FR Doc. 00–18555 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0245a; FRL–6734–5]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District's portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from degreasers. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 19, 2000 without further notice, unless EPA receives adverse comments by August 21, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Agency	Rule #	Rule Title	Adopted	Submitted
VCAPCD	74.6.1	Cold Cleaners	07/09/96	10/18/96
VCAPCD	74.6.2	Batch Loaded Vapor Degreasers	07/09/96	10/18/96
VCAPCD	74.6.3	Conveyorized Degreasers	07/09/96	10/18/96

On December 19, 1996, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of these rules in the SIP, although the VCAPCD adopted earlier versions of these rules on December 10, 1991, and CARB submitted them to us on June 19, 1992. While we can act on only the most recently submitted versions, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules?

Rules 74.6.1, 74.6.2, and 74.6.3 set equipment and operating requirements for cold cleaners, batch loaded vapor degreasers, and conveyorized degreasers. These requirements ensure that these sources will be operated in a way which limits VOC emissions. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 74.6.1, 74.6.2, and 74.6.3 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. The Control Technique Guideline (CTG) entitled, "Control of Volatile Organic Emissions from Solvent Metal Cleaning" (November 1977; EPA–450/2–77–022)
4. The California Air Resources Board (CARB) document entitled, "Determination of Reasonably Available Control Technology and Best Available Control Technology for Organic Solvent Cleaning and Degreasing Operations" (July 18, 1991).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 21, 2000, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 19, 2000. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because these rules approve pre-existing requirements under state law and do not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, these rules also do not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). These rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because they merely approve state rules implementing a federal standard, and do not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. These rules also are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rules in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 28, 2000.

Nora L. McGee,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(241)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(241) * * *

(i) * * *

(C) * * *

(*2*) Rules 74.6.1, 74.6.2, and 74.6.3, adopted on July 9, 1996.

* * * * *

[FR Doc. 00–18431 Filed 7–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 063–0243; FRL–6733–7]

Revisions to the California State Implementation Plan, El Dorado County Air Pollution Control District and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the El Dorado County (EDCAPCD) Air Pollution Control District, and Kern County Air Pollution Control District (KCAPCD) portions of the California State Implementation Plan (SIP). The actions were proposed in the **Federal Register** on May 5, 1999, and March 22, 2000, respectively, and concern control of emissions of oxides of nitrogen (NO_X) from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, and Stationary Piston Engines. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on August 21, 2000.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

El Dorado County Environmental Management Department, Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667, or

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On May 5, 1999 (64 FR 24119), and March 22, 2000 (65 FR 15287), respectively, EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
EDCAPCD	229	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	09/27/94	10/20/94
KCAPCD	427	Stationary Piston Engines (Oxides of Nitrogen)	07/2/98	08/21/98

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

- Alternate Emission Control Plan (AECP) in Section 229.3 (D) and Rule 427 Section VIII C.2.d.
- Compliance schedule in Section 229.4 (A) and Rule 427 Section VIII C.1.
- Heat input language in Section 229.3 (A).
- Flow rate meter language in Section 229.3 (C).
- Group testing of engines in Rule 427 Section VIII C.2.d.
- Exemption of engines between 25 and 250 bhp in Rule 427 Section V.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittals.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. No comments were submitted regarding our proposed action on EDCAPCD Rule 229.

KCAPCD Rule 427: KCAPCD commented orally that EPA should not object to exempting engines between 50 and 250 bhp from NO_X emission limits or testing requirements. KCAPCD argued that these engines are not likely to emit greater than 50 tons/year of NO_X and are therefore not major sources subject to the RACT requirement in serious ozone nonattainment areas like Southeastern Kern County. EPA concurs with this comment and withdraws this as a basis for disapproving Rule 427 at this time. We note, however, that Southeastern Kern County may soon be reclassified as severe nonattainment and thus be subject to a 25 ton/year major source threshold. If and when that occurs, this exemption will need to be modified since engines smaller than 250 bhp are capable of emitting more than 25 tons/year NO_X.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action except for the comment discussed above. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rules deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rules deficiencies within 24 months. Note that the submitted rules have been adopted by the El Dorado County Air Pollution Control District and Kern County Air Pollution Control District, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rules on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The rules are not subject to Executive Order 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rules do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the rules.

D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to the rules.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The rules are not "major" rules as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2000. Filing a petition for reconsideration by the Administrator of the final rules does not affect the finality of the rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 7, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (203)(i)(A)(*2*) and (c) (230)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(203) * * *

(i) * * *

(A) * * *

(*2*) Rule 229 adopted on September 27, 1994.

* * * * *

(230) * * *

(i) * * *

(C) * * *

(*2*) Rule 427 adopted on July 2, 1998.

* * * * *

[FR Doc. 00–18436 Filed 7–20–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 93]

RIN 3090–AH27

Federal Travel Regulation; Maximum Per Diem Rates in Minnesota

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) Amendment 87, published in the **Federal Register** on Thursday, December 2, 1999 (64 FR 67670). In order to provide adequate per diem reimbursement for Federal employee travel in Duluth, Minnesota, the maximum lodging allowance is changed to reflect seasonal rates.

DATES: This final rule is effective July 21, 2000, and applies to travel performed on or after July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Joddy Garner, Office of Governmentwide Policy, Travel and Transportation Management Policy Division, at 202–501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), after an analysis of additional data, has determined that the current lodging allowance for Duluth, Minnesota, does not adequately reflect the cost of lodging in this area. To provide adequate per diem reimbursement for Federal employee travel for this area, the maximum lodging allowance is changed to reflect seasonal rates.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Appendix A to chapter 301 is amended by revising the entry in the table under the State of Minnesota, city of Duluth, St. Louis County. The page of the table beginning with Frankfort and ending with Gulfport, which includes the Duluth revision, reads as follows:

BILLING CODE 6820–34–M

Appendix A to Chapter 301—Prescribed Maximum per Diem Rates for Conus

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Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Frankfort	Benzie					
(June 1-September 30)		62		34		96
(October 1-May 31)		55		34		89
Gaylord	Otsego	68		38		106
Grand Rapids	Kent	60		34		94
Grayling	Crawford					
(June 1-September 30)		69		34		103
(October 1-May 31)		55		34		89
Holland	Ottawa					
(May 1-September 30)		79		34		113
(October 1-April 30)		59		34		93
Lansing	Ingham (except East Lansing)	61		34		95
Leland	Leelanau					
(June 1-September 30)		75		34		109
(October 1-May 31)		60		34		94
Mackinac Island	Mackinac					
(June 1-August 31)		165		46		211
(September 1-May 31)		130		46		176
Manistee	Manistee					
(June 1-September 15)		62		30		92
(September 16-May 31)		55		30		85
Midland	Midland	59		34		93
Mount Pleasant	Isabella	60		34		94
Muskegon	Muskegon	60		30		90
Ontonagon	Ontonagon	65		30		95
Petoskey	Emmet	60		38		98
Pontiac/Troy/Auburn Hills	Oakland and City limits of Auburn Hills (see Bay County)	93		38		131
Sault Ste Marie	Chippewa	60		34		94
South Haven	Van Buren	76		34		110
Traverse City	Grand Traverse					
(June 1-September 30)		110		42		152
(October 1-May 31)		60		42		102
	Macomb	83		34		117
MINNESOTA						
Anoka County	Anoka County	68		34		102
Dakota County	Dakota County	75		34		109
Duluth	St. Louis					
(June 1-October 31)		75		42		117
(November 1-May 31)		56		42		98
Minneapolis/St. Paul	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount; and Ramsey County	91		46		137
Rochester	Olmsted	72		34		106
MISSISSIPPI						
Bay St. Louis	Hancock					
(May 1-September 30)		72		38		110
(October 1-April 30)		65		38		103
Biloxi	City limits of Biloxi (see Harrison County)	72		38		110
Gulfport	Harrison (except Biloxi)					

* * * * *

Dated: July 13, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–18329 Filed 7–20–00; 8:45 am]

BILLING CODE 6820–34–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

45 CFR Part 96

RIN 0930–AA04

Application Deadline for the Substance Abuse Prevention and Treatment (SAPT) Block Grant Program

AGENCY: HHS.

ACTION: Final Rule.

SUMMARY: On February 4, 2000, the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) proposing a new submission date for its Substance Abuse Prevention and Treatment (SAPT) Block Grant program under section 1921 of the Public Health Service (PHS) Act which authorizes the Secretary to provide block grants to States for the purposes of prevention and treatment of substance abuse which includes alcohol and other drugs. The Secretary requested comments on the NPRM and gave 45 days for individuals to submit their comments to the Department. The Secretary has considered the comments received during the open comment period and has finalized the rule.

EFFECTIVE DATE: August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas M. Reynolds, Room 13C–20, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857 Tel. (301)443–0179.

SUPPLEMENTARY INFORMATION: The Department is finalizing the rule entitled "Application Deadline for SAPT Block Grant Program," 45 CFR Part 96, which was published as a NPRM in the **Federal Register** on February 4, 2000 (65 FR 5474).

Background on the Notice of Proposed Rulemaking and Summary of Responses to Public Comment

A. Notice of Proposed Rulemaking (NPRM)

When SAMHSA first implemented the SAPT Block Grant program a primary concern was affording States sufficient time to develop the increased information required to apply for a grant under this program as compared to the generally less detailed application required under the predecessor Alcohol, Drug Abuse, and Mental Health Services Block Grant program administered by the Alcohol, Drug Abuse, and Mental Health Administration. This was accomplished by affording States the opportunity to submit their applications as late as March 31, fully six months into the Federal fiscal year (FFY) for which funding is requested (See 45 CFR 96.122(d)). This relatively late receipt date results in insufficient time to administer the SAPT Block Grant program in accordance with all the governing provisions of law. This is most noted under circumstances calling for the clarification of application data and, if necessary, the conduct of hearings in a timely manner and consistent with the requirements of section 1945(e) of the Public Health Service (PHS) Act.

States are now fully aware of the application requirements and can reasonably be expected to respond to an earlier submission date. Accordingly, starting with Federal fiscal year 2001, the Department proposed to establish a new date of October 1 of the Federal fiscal year for which Block Grant funding is being requested for receipt of applications for such funding. However, if a State determines that it will not be able to submit by October 1 either the report as required at 45 CFR 96.130(e) on Synar enforcement efforts and State success in reducing youth access to tobacco products during the preceding Federal fiscal year, or the information on maintaining State expenditures (MOE) during the preceding year as required at 45 CFR 96.134(d), the State, under the proposed rule, could request an extension of the due date(s) for a limited period, not to extend past December 31 of the Federal fiscal year for which application is made. The request for the extension would need to be signed by the official with the authority to apply for the grant or the Governor, and be submitted no later than September 1 of the prior Federal fiscal year. Under the proposed rule, the extension request must indicate for which requirement the extension is requested; include an explanation of why the State is unable to comply with the due date of October 1; state the date of submission the State is requesting; and discuss whether there are steps the State can take to avoid requiring an extension in future years. Extensions for the deadlines for these requirements are to be granted in writing by the SAMHSA official with delegated authority to grant the extension. All other components of the SAPT Block Grant application not covered by the extension are due by October 1 of the Federal fiscal year for which funds are being sought.

After considering the comments on the NPRM, HHS is finalizing the rule as proposed. Below is the Department's response to the comments to the proposed rule.

B. Public Comments and the Department's Responses

The Department received comments from 9 States and one national organization, the National Association of State Alcohol and Drug.

Abuse Directors (NASADAD), during the 45-day comment period. All written comments were reviewed and taken into consideration in the preparation of the final rule. The substantive concerns raised in the public comments and the Department's responses to the comments are set out below. Similar comments are considered together.

One commenter, the national organization, indicated that the proposed change will negatively impact half of the 60 SAPT Block Grant applicants. The commenter stated that while some States may be able to complete their applications earlier than others, this may be due to the fact that their State fiscal years, data collection, and reporting systems are more consistent with the Federal fiscal year, or because they have additional staff or resources to commit to the processes of planning, collecting and analyzing data, and reporting information. However, for the other half of the States that submit their application between October 1 and March 31, the proposed rule would create a hardship. Five other commenters expressed similar concerns related to their specific States, with one State commenting that the change to advance the application date should be delayed for at least one year.

SAMHSA has engaged in a number of interactions with the States regarding the proposed change in due date for the Block Grant application as follows:

Regional Team Building Workshops: The first formal discussions of the proposed change in the application due date were held at these regional workshops. Fifty-eight of 60 Single State Agency Directors and their Staff as well as NASADAD attended at least one of this series of meetings held in San Antonio, Texas (December 8–9, 1998); Hilton Head Island, South Carolina (March 2–3, 1999), Providence, Rhode Island (April 13–14, 1999), and Juneau, Alaska (May 25–26, 1999). Some States indicated that they would not be able to comply with the new due date

requirement unless they could delay reporting MOE and Synar information. As a result, SAMHSA decided to propose a 90-day extension for Synar and MOE data reporting.

State by State inquiry: In developing the proposed rule, SAMHSA queried the States in July 1999 as to their ability to meet the proposed deadline. All States responded that, while the change would pose some difficulty for some of them, they would be able to meet the deadline given the ability to receive extensions for the required Synar and MOE data. Although some States may need to make some changes in internal procedures, the Department believes the earlier application date is feasible, and the fact that we received few comments on this proposal reinforces our belief that States can adapt to the earlier due date.

NASADAD Annual Meeting: On June 5, 2000, SAMHSA staff discussed this issue with the States again at the NASADAD Leadership Forum in Reno, Nevada. The States responded that the task could be accomplished if the extensions were made available.

National Meeting: On June 22 and 23, 2000, at the Center for Substance Abuse Treatment's (CSAT) Fifth State Systems Development Program (SSDP), in Orlando, Florida, the Director of CSAT's Division of State and Community Assistance presented two workshops around Block Grant Administration issues in which most of the Single State Agency Directors participated. Again, the States responded that they can submit the application on October 1 if SAMHSA can provide the opportunity for an extension until December 31 for Synar or MOE reporting.

Two States also said that they would have difficulty because their public review and comment processes are currently (and have been since 1993) established around the March 31 deadline. It would, therefore, take time to change these long established procedures and mechanisms at the State level. The Department recognizes that these States will need to change these procedures but believes that the States and their constituent groups should be able to accommodate an October 1 deadline. Further, as we indicated in the NPRM, published in early February, States should be preparing to move toward an October 1 due date.

Commenters were concerned that the Block Grant applications and instructions have historically been received by the States from SAMHSA between May and September prior to the start of the Federal fiscal year for which they were applying. One State expressed concern but supported the rule change as long as this issue is addressed. We agree that the provision of application forms and instructions to the States so close to the next Federal fiscal year would not be appropriate with an October 1 deadline. SAMHSA has anticipated this problem, and consistent with one commenter's request that the application forms be available about six months prior to the due date, the FY 2001 Block Grant application forms and software were sent to all 60 Block Grant applicants by overnight mail on April 3, 2000. SAMHSA will continue this practice of providing sufficient lead time.

Two commenters indicated that recent changes, such as the requirement for multi-year reporting on the 16 Federal goals in the Federal fiscal year 2000 Block Grant application, have, in their view, added more work to complete the application. In turn, this increases the potential difficulty States will face in complying with the change in rule. However, the Department notes that the changes in the application simply consolidate previously existing reporting requirements into one place. These changes have been well received by most States that have discussed them with SAMHSA.

Another State indicated that the Block Grant Application System (BGAS) software distributed to the States is cumbersome and not always compatible with State software. The Department notes, however, that approximately 85 percent of States utilize the BGAS software in submitting their applications. Further, SAMHSA maintains a help desk during office hours to assist States in using the system and has provided successful on-site technical assistance to those having difficulty. SAMHSA will offer individual assistance to this commenter.

One State indicated that, although they have historically submitted their application in November, it would not have necessary MOE and Synar data available for the October due date. It should be noted that the Department has allowed for the opportunity for a State to seek an extension of the reporting date for this information until no later than December 31, which should accommodate this State's needs. With regard to the provision for an extension, a few States, and one in particular, stated a concern that the extension request provision is burdensome and unnecessary. Further, it was suggested that the due date not be changed, the due date be December 31, or that only a simple notification with the application should be required for granting an extension. We do not believe that the requirement to request an extension is unduly burdensome. States will, necessarily, have already considered their ability to submit a timely and complete application by the October 1 due date, and will be aware of the valid reasons why this is impossible. The requirement to submit an extension request is, therefore, simply a request to submit this reasoning in writing accompanied by a request for an extension. The suggestion that the due date not be changed from the current date is addressed elsewhere. The proposed alternative due date of December 31 would provide insufficient time to effectively address the needs we are addressing in this rule. Finally, the Department believes simply allowing an applicant to notify us that they will be taking until December 31 to submit an application component does not guarantee the level of attention by senior State officials which we believe essential to a process intended to assure extensions are an exception to normal practice. However, if a State wished to incorporate an extension request which fully complied with the requirements found in § 96.122(d) into its application, and it submitted that application no later than September 1 of the prior Federal fiscal year, it would be eligible for consideration as a validly submitted extension request.

Another commenter expressed concern that other required expenditure information will not be available by October 1. It should be noted, the application requires reporting on expenditures that occurred three years prior to the application submission, and it is the Department's belief that such expenditures data should be available to meet the October 1 due date.

Three commenters stated that the reporting requirements for the Block Grant application have expanded to require increased reporting which makes it more difficult to meet an October 1 due date. These changes include expansion of Synar reporting requirements, reporting on planned and actual requirements for the supplemental funding authorized by Pub. L. 104–121, the addition of Form 10 (State Use of Needs Assessment Information), and extensive treatment and prevention outcome measures. One State is concerned that the new Sections IV–A and IV–B, (Voluntary Treatment and Prevention Performance Measures), will become "required" at some point in the future. It should be noted that the reporting requirements related to Pub. L. 104–121 are minimal requirements necessary for reporting under the Block Grant, are time limited, and expire with the FFY 2001 application. Form 10 was added to correct a deficiency in reporting in previous applications and

was designed to require minimal increased effort. The voluntary reporting on outcome measures is the product of agreement and extensive consensus development with the States and the national organization, NASADAD. At this time, the reporting is voluntary and the measures are being further refined through the consensus process. Although there has been an increase in the reporting of data, the Department believes that these data can be reported by the October 1 due date.

Several commenters stated that the SAPT Block Grant application is already a complex document that requires substantial involvement from both program and fiscal staff to complete. They believe the estimate provided in the NPRM of 60 additional hours required for the annual reporting burden as a result of the changed receipt date may lead to a perception that the proposed change in rule will pose no difficulties for grant applicants. Some commenters stated that they believe the 60 hours is too low an estimate. The Department recognizes the complexity of the statutorily mandated reporting required by the Block Grant application. The Department also recognizes that the change in rule will require some adjustments in current practices. However, while changing the due date for submission of the SAPT Block Grant application, the Rule does not change the basic reporting requirements. Further, the Department believes that this change is necessary to meet its responsibilities under the Block Grant program in a timely manner. The comments regarding reporting burden are more fully discussed below in the "Paperwork Reduction Act of 1995" section.

Three commenters stated that SAMHSA has limited staff to review each of the 60 Block Grant applications and that even if all applications were received on October 1 they believe it would be difficult for the SAMHSA State Project Officers to review all 60 applications in a timely manner. It should be noted that SAMHSA, with NASADAD input, has instituted a rigorous SAPT Block Grant review and approval process and a complementary tracking system that holds SAMHSA State Project Officers accountable for a timely review of all Block Grants assigned to them. SAMHSA time lines are being adjusted to accommodate the change in rule.

Two commenters recommended staggering the submission dates based on either the State fiscal year or their Synar circumstances. However, given the significant variances in State fiscal years and Synar circumstances the Department has sought to establish a process that most of the States have indicated will work for them.

Three States and NASADAD expressed concerns related to the Synar reporting requirements and processes; these are fully discussed below.

One State expressed concern regarding what it viewed as constant delays in the Federal review process due to frequent requirements for revisions of the Synar portion of the Block Grant application. The Department is aware that reporting on Synar activities requires time and resources in order to ensure that all the necessary data are included in the final report for review and analysis. However, the expressed concern is only true for States whose initial submission did not meet application requirements. In an effort to streamline the review process, SAMHSA has centralized the responsibilities for monitoring State Synar activities in the Division of State and Community System Development, System Development Branch. This change was implemented during the Federal fiscal year 2000 reviews. The Department believes that the new review process will facilitate the Synar report reviews and reduce the amount of time it takes to approve these reports. We note, however, that some States have experienced delays in funding when they have not met their negotiated Synar retailer compliance rates. The Department hopes that with the earlier application due date decisions will be made earlier in the Federal fiscal year. Further, the earlier deadline will allow SAMHSA more time to work with the States that are having Synar compliance problems, resulting in earlier funding decisions.

Another State suggested that all States be required to develop a plan that would enable them to complete their Synar reporting requirements by the required October 1 deadline, thereby making it unnecessary to institute a process for granting extensions. SAMHSA believes that, given the fact that all but three States rely on youth for the conduct of the Synar inspections, and given the fact that the summer months are the time when most youth are available to participate in the Synar inspections, many States will not be able to complete the required number of inspections, analyze the survey data and report the results back to SAMHSA by October 1. These factors will likely result in a number of States needing extensions for submitting their Synar reports. While SAMHSA is not adopting the suggested requirement, we are willing to provide assistance and work with States that may choose this approach.

Another State's comment made reference to specific circumstances for that State that seem to pose difficulties with meeting the October 1 deadline for submitting the annual Synar report. SAMHSA understands this State's concerns and is willing to provide technical assistance to the State in order to assist with adjusting the State's time lines for completing annual Synar inspections (current deadline for completing all Synar inspections is September 30), and collecting and reporting Synar information. It is SAMHSA's intent to provide assistance to all States to support the timely submission of required Synar-related materials.

The comment from NASADAD regarding Synar reporting focused on a concern about delays experienced by some States in securing SAPT Block Grant funding even when they believe they are in compliance with Synar requirements. While it is SAMHSA's desire to issue SAPT Block Grant awards as promptly as possible, if it is determined during the initial review that a Synar report is not complete, the State is asked to submit additional information to complete it. SAMHSA is only able to perform a thorough review of a State's application and make a determination of compliance with the Synar requirements after it receives a complete report from the State. In order to assure timely review, SAMHSA has implemented internal procedures designed to streamline the review process, including the development of enhanced and improved Synar plan reviews. The change to an October 1 due date for the Block Grant application should further enhance Federal review and approval of the applications. The earlier date provides SAMHSA additional time to work with the States in completing full and accurate applications in accordance with the Block Grant requirements. It also affords SAMHSA and the Department the time necessary to provide States with due process in the event that a State's application indicates possible non-compliance with Block Grant requirements.

Economic Impact

This rule does not have cost implications for the economy of $100 million, or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulatory impact analysis. Further, this regulation will not have a significant impact on a substantial number of small entities, and therefore does not require

a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Federalism Impact

As was detailed earlier in the preamble, SAMHSA consulted with the States concerning the proposed change in application due date. During 1998 and 1999, SAMHSA discussed the proposed change at several regional team building workshops. As a result of these meetings, SAMHSA decided to propose a 90-day extension for Synar and MOE reporting. Also, SAMHSA staff participated in two National meetings where the States responded that the proposed task could be accomplished if extensions were made available for reporting MOE and Synar data. Further, in developing the proposed rule, SAMHSA queried all the States and the States indicated that it would not be an undue hardship on them to meet this new requirement if there can be an extension when necessary until December 31 with regard to both maintenance of effort and Synar provisions.

The primary concern set forth by the national organization, NASADAD, focused on the ability to obtain the critical information required for the SAPT Block grant application that would permit its inclusion by the proposed October 1 due date. Also, the national organization noted that while some States may be able to complete their applications earlier than others, this may be due to the fact that their State fiscal years, data collection, and reporting systems are more consistent with the Federal fiscal year, or because they have additional staff or resources to commit to the processes of planning, collecting and analyzing data, and reporting information. As a consequence of the meetings discussed in detail earlier in the preamble, and above, as well as the discussions with SAMHSA regarding such areas as making the application guidance and software available at the earliest possible date, and that guidance would be provided to the States for use in applying for extensions for MOE and Synar reporting, the Department believes that these concerns of the national organization have been addressed. Further, since Section 96.122(d) allows for an extension with regard to the MOE and Synar reporting elements of the application, we do not believe that there is a significant Federalism impact.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order and has been exempted from review by the Office of Management and Budget under that Order.

Paperwork Reduction Act of 1995

This final rule contains information collection provisions which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Application Deadline for SAPT Block Grant Program.

Description: The Secretary is issuing regulations to change the receipt date of SAPT Block Grant applications starting with the Federal Fiscal Year (FY) 2001 from March 31 to October 1. All elements of the application reporting requirements will be due October 1. However, States may request an extension of time for reporting State expenditures necessary to determine compliance with the Maintenance of Effort (MOE) requirement and/or to submit required Synar information for a period up to December 31. This change will allow HHS to review Block Grant applications and make Block Grant awards to all States earlier in the fiscal year. It will also provide additional time for sufficient planning in the event of any penalty actions that may be required, while recognizing the inability of some States to report the MOE and Synar data prior to December 31.

Description of Respondents: State and tribal governments.

In response to the Secretary's invitation in the NPRM to comment on the information collection requirements, three states and the national organization included comments on the response burden associated with the SAPT Block Grant application.

Comment: Two commenters indicated that the annual application is a complex submission that requires much more time to prepare than the 60 hours indicated.

Discussion: The current burden estimate for the annual application (approved under OMB control number 0930–0080) is 655 hours per State. The 120 hours of burden shown for the first year and the 60 hours for future years reflect only additional burden associated with the change in the due date. This rule does not change those basic reporting requirements. It does add one burden hour per State annually for the purpose of sending a letter requesting an extension of the due date for reporting maintenance of effort and/or Synar. The new burden estimate assumes, conservatively, that all States will submit such a request.

Change: None.

Comment: Two States commented that the burden associated with the change in due date is much more than the estimate of one hour per State.

Discussion: The Department recognizes the complexity of the statutorily mandated reporting required by the Block Grant application. This rule changes the due date for submission of the SAPT Block Grant application, but it does not change the basic reporting requirements for the SAPT Block Grant. There will be a need for some States to adjust their work schedules in order to submit the application by the new due date. However, because of the series of meetings and discussions with the national organization and its members, over the past two years, on the plan to change the due date, States have been aware of the planned change and have been planning for the transition. The additional burden hour per State estimated for the first year is in recognition of the transition.

Change: None.

Response burden estimate: Information collection language for the current rule is approved by OMB under control number 0930–0165 (Synar reporting requirements on youth access to tobacco) and control number 0930–0163 (for all other aspects of the annual application). The Substance Abuse Prevention and Treatment Block Grant Uniform Application format for FY 2000–FY 2002 is approved by OMB under control number 0930–0080. None of the specifics of these reporting requirements are being changed. Only the due date of the Uniform Application is impacted by this final rule.

At present, approximately half of all eligible Block Grant applicants routinely submit their Uniform Application for Block Grant funds on or before September 30 of the fiscal year preceding the fiscal year for which they are applying for funds. Approximately one half of all eligible applicants submit their uniform applications between October 1 and March 31 of the fiscal year for which block grant funds are being made available.

SAMHSA recognizes that the earlier receipt date will have an impact on the applicants, particularly those that have

typically submitted their Uniform Application after September 30. Since the contents of the Uniform Application are not changing, it is difficult to estimate the additional response burden and associated costs for the first year of this change of receipt date (no additional burden is estimated for this change for future years). Therefore, a nominal response burden for each applicant of one hour is provided. In addition, it is conservatively assumed that all applicants will request an extension of the MOE and Synar reporting, and one hour is estimated for preparation of such a request.

Thus, for the first year of implementation, total response burden is estimated at 120 hours. For subsequent years, the burden estimate is 60 hours.

ANNUAL REPORTING BURDEN

45 CFR citation and purpose	Number of respondents	Responses per respondent	Hours per response	Total hours
96.122(d) Due date for annual report	60	1	1	60
96.122(d) Extension requests associated with MOE and Synar	60	1	1	60
Total	60			120

Individuals and organizations may submit comments on these burden estimates or any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to: SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The information collection provisions in this final rule have been approved under OMB control number 0930–0163. This approval expires February 28, 2001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 45 CFR Part 96

Alcohol abuse, Alcoholism, Confidentiality, Drug abuse, Health records, Tobacco use by minors.

Dated: June 29, 2000.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, Subpart L of Part 96 of Title 45 of the Code of Federal Regulations is amended as follows:

PART 96—BLOCK GRANTS

1. The authority citation for Subpart L of Part 96 continues to read as follows:

Authority: 42 U.S.C. 300x–21 to 300x–35 and 300x–51 to 300x–64.

2. Section 96.122(d) is revised to read as follows:

§ 96.122 Application content and procedures.

* * * * *

(d) Beginning with the fiscal year 2001 application, the application (in substantial compliance with the statutory and regulatory provisions for the Block Grant) must be submitted no later than October 1 of the fiscal year for which Block Grant funding is being requested. The submission date for the report required by § 96.130(e) to be submitted with the application and/or the information required by § 96.134(b) may be extended for good cause shown in a request signed by the official authorized to apply for the Block Grant funding on behalf of the State, or the Governor. The State should request an extension for only the amount of time necessary. In no event will an extension be granted past December 31 of the fiscal year for which application is made. All requests to extend the due date must be submitted no later than September 1 of the prior fiscal year and addressed to the same address as specified for the grant application. Extension requests must state for which requirement an extension is sought, the date of submission sought, why the State is unable to meet the October 1 due date, and discuss if there are steps the State will be able to take to avoid requiring an extension in future years, or if not, why not. Extension requests complying with these requirements will be acted upon no later than September 20 of the fiscal year prior to the year for which application is to be made. Due date extensions regarding the § 96.130(e) report and regarding the § 96.134(d) information shall only be granted in writing. In order for an applicant to have complied with the requirements of section 1932(a)(1) of the Public Health Service Act (42 U.S.C. 300x–32(a)(2)), it is necessary that the components of the application have been submitted by the date indicated or as extended pursuant to this paragraph.

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[FR Doc. 00–18316 Filed 7–20–00; 8:45 am]

BILLING CODE 4160–90–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1815, and 1825

Acquisition Planning

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to: include additional circumstances when NASA field installations are required to identify certain acquisitions through the Master Buy Plan (MBP) process; add NASA's policy regarding the use of the structured approach for developing profit or fee when contracting with non-profit organizations which was mistakenly removed; and make editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Bruce King, NASA Headquarters Office of Procurement, Program Operations Division (Code HS), Washington, DC 20546, (202) 358–0481, e-mail: *bruce.king@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Current Master Buy Plan (MBP) submission guidance does not address high value acquisitions from or through other government agencies and Chiles Act cooperative agreements, and any acquisition deemed to be of significant importance to the Agency regardless of its dollar value. This final rule provides that NASA field installations identify these acquisitions through the MBP process for possible Headquarters review and approval. The change to NASA's structured approach for developing a profit or fee objective (64 FR 51472–51476, September 23, 1999) mistakenly deleted NASA's policy

regarding the use of the structured approach for non-profit organizations and NASA's policy not to pay profit or fee on contracts with educational institutions. This final rule corrects this error by adding the previous language as section 1815.404–471–6. Additionally, editorial corrections and miscellaneous changes are made to correct the MBP format instructions, revise Internet reference citations, and correct the instructions for completing the Customs Form 7501, Entry Summary.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subparts in 48 CFR Parts 1807, 1815, and 1825

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1815 and 1825 are amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1815 and 1825 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1807—ACQUISITION PLANNING

2. In section 1807.103 revise paragraph (d)(iii)(E) to read as follows:

1807.103 Agency-head responsibilities.

(d) * * *

(iii) * * *

(E) From or through other Government agencies except when the value of the acquisition meets the Master Buy Plan threshold (see 1807.7101(a));

* * * * *

3. Amend section 1807.7000 by removing "(http://ec.msfc.nasa.gov /hq/cci/first.html)" and adding "(*http://procurement.nasa.gov/cgi-bin/CCI/first.cgi*)" in its place.

4. In section 1807.7101, revise paragraph (a) and add paragraphs (c)(3) and (c)(4) to read as follows:

1807.7101 Applicability.

(a) The Master Buy Plan applies to each negotiated acquisition, including supplemental agreements and acquisitions through or from other Government agencies, where the dollar value, including the aggregate amount of options, follow-on acquisitions, or later phases of multi-phase acquisitions, is expected to equal or exceed $50,000,000.

* * * * *

(c) * * *

(3) Any cooperative agreement notice where the total value (the Government's contribution plus the contribution of the recipient) of any resulting cooperative agreement is expected to equal or exceed $50,000,000.

(4) Any acquisition designated by NASA Headquarters regardless of its value.

* * * * *

5. In Table 1807–1, the second sentence of items (5)–(9) in the section titled "Supplementary instructions by heading number" is amended by removing the words "column (8)" and adding "column (7)" in its place.

PART 1815—CONTRACTING BY NEGOTIATION

6. Add section 1815.404–471–6 to read as follows:

1815.404–471–6 Modification to structured profit/fee approach for nonprofit organizations.

(a) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach must be used as a basis for arriving at profit/fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (b) of this section. It is NASA policy not to pay profit or fee on contracts with educational institutions.

(b) For contracts with nonprofit organizations under which profit or fee is involved, an adjustment of up to 3 percent of the costs in Block 13 of NASA Form 634 must be subtracted from the total profit/fee objective. In developing this adjustment, it is necessary to consider the following factors:

(1) Tax position benefits;

(2) Granting of financing through letters of credit;

(3) Facility requirements of the nonprofit organization; and

(4) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

PART 1825—FOREIGN ACQUISITION

7. Revise section 1825.903 to read as follows:

1825.903 Exempted supplies.

(a) Through delegation from the Associate Administrator for Procurement, procurement officers are authorized to certify duty free entry for articles imported into the United States, if those articles are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government in accordance with the terms of the contract or subcontract. Procurement officers shall complete the certification set forth in 14 CFR 1217.104(a) or 1217.104(c) (http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1). Upon arrival of foreign supplies at a port of entry, the consignee, generally the commercial carrier or its agent (import broker), will file Customs Form 7501, Entry Summary. This form is available from Service Ports (http://www.customs.ustreas.gov/location/ports/index.htm) or from NASA Headquarters' forms library (https://extranet.hq.nasa.gov/nef/user/form_search.cfm). All duty-free certificates must be coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

[FR Doc. 00–18390 Filed 7–20–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827, 1835 and 1852

Submission of Final Reports under NASA Research and Development Contracts

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule revises the report submission requirements under NASA research and development (R&D) contracts and clarifies that contractors cannot release these final reports until NASA has completed its Document Availability Authorization (DAA) review and the availability of the report has been determined.

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC, 20546, (202) 358–1645.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on April 18, 2000 (65 FR 20791–92). No comments were received. This final rule adopts the proposed rule without change. NASA's Center for AeroSpace Information (CASI) serves as a repository of NASA scientific and technical information (STI). This includes information developed under NASA-sponsored research and development efforts. The NFS currently requires that copies of the final report and other progress reports under R&D contracts be submitted to CASI. The need for other progress reports no longer exists. Copies of only the final report required under an R&D contract must be submitted to CASI. Before NASA STI is made available, it is subject to a NASA Document Availability Authorization (DAA) review and release determination. Contractors cannot release final reports resulting from NASA R&D contracts until NASA has completed its Document Availability Authorization (DAA) review (NASA Form 1676).

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it only affects small business entities whose R&D contracts required progress reporting.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any new record keeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1827, 1835 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1827, 1835, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1827, 1835, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. Revise section 1827.406–70 to read as follows:

1827.406–70 Reports of work.

(a) When considered necessary for monitoring contract performance, contracting officers must require contractors to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement), interagency agreements, or in cost-reimbursement supply contracts. This purpose may be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(1) *Monthly progress reports.* Reports should be in narrative form, brief, and informal. They should include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(2) *Quarterly progress reports.* In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(3) *Final report.* This report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract. The final report must comply with NPG 2200.2A, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information.

(4) *Report Documentation Page.* The final report must include a completed Report Documentation Page, Standard Form (SF) 298 as the final page of the report.

(b) The contracting officer must consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the contract.

(c) *Submission of final report.* In addition to the original of the final report submitted to the contracting officer, contracts containing the clause at 1852.235–70, Center for AeroSpace Information—Final Scientific and Technical Reports (see 1835.070(a)), must require the concurrent submission of a reproducible copy and a printed or reproduced copy of the final report to the NASA Center for AeroSpace Information (CASI).

(d) *NASA review of final report.* When required by the contract, final reports submitted to NASA for review, shall be reviewed for technical accuracy, conformance with applicable law, policy and publication standards, and to determine the availability and distribution of NASA-funded documents containing scientific and technical information (STI) (NASA Form 1676, NASA Scientific and Technical Document Availability Authorization (DAA)). The final report must not be released outside of NASA until NASA's DAA review has been completed and the availability of the document has been determined. The document is considered available when it is accessible through CASI.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

3. In section 1835.070, revise paragraph (a) to read as follows:

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer must insert the clause at 1852.235–70, Center for AeroSpace Information—Final Scientific and Technical Reports, in all research and development contracts, interagency agreements, and in cost-reimbursement supply contracts involving research and development work.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Revise section 1852.235–70 to read as follows:

1852.235–70 Center for AeroSpace Information—Final Scientific and Technical Reports.

As prescribed in 1835.070(a), insert the following clause:

Center for Aerospace Information—Final Scientific and Technical Reports July 2000

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information

(CASI) (http://www.sti.nasa.gov) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information, which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) In addition to the final report, as defined at 1827.406–70(a)(3), submitted to the contracting officer, a reproducible copy and a printed or reproduced copy of the final report or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, Maryland 21076–1320, Phone: 301–621–0390, FAX: 301–621–0134.

(d) The last page of the final report submitted to CASI shall be a completed Standard Form (SF) 298, Report Documentation Page. In addition to the copy of the final report, the contractor shall provide, to CASI, a copy of the letter transmitting the final report to NASA for its Document Availability Authorization (DAA) review.

(e) The contractor shall not release the final report, outside of NASA, until the DAA review has been completed by NASA and availability of the report has been determined.

(End of clause)

[FR Doc. 00–18388 Filed 7–20–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1842

Exemption of SBIR/STTR Phase II Contracts from Interim Past Performance Evaluations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) to make interim past performance evaluations under FAR Part 42 optional for SBIR/STTR Phase II contracts.

EFFECTIVE DATES: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20456–0001, (202) 358–0481, e-mail: pbrundage@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

NASA centers have reported that interim evaluations on SBIR/STTR contracts are usually perfunctory and without substance because there is seldom anything to evaluate until contract completion. This final rule makes interim evaluations for SBIR/STTR Phase II contracts optional.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it only affects NASA's internal implementation of existing regulatory requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Lists of Subjects in 48 CFR Part 1842

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1842 is amended as follows:

1. The authority citation for 48 CFR Part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Revise section 1842.1502 to read as follows:

1842.1502 Policy.

(a) Within 60 days of every anniversary of the award of a contract having a term exceeding one year, contracting officers must conduct interim evaluations of performance on contracts subject to FAR subpart 42.15 and this subpart. On such contracts, both an interim evaluation covering the last period of performance and a final evaluation summarizing all performance must be conducted. However, interim past performance evaluations are optional for SBIR/STTR Phase II, procurements.

[FR Doc. 00–18389 Filed 7–20–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347–0347; I.D. 071200C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to trip limits in the Pacific Coast groundfish fishery and the season dates for the limited entry, fixed gear sablefish fishery. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to help the fisheries achieve optimum yield (OY).

DATES: Changes to management measures are effective 0001 hours local time (l.t.) July 18, 2000, except that changes to management measures for minor shelf rockfish and lingcod are effective 0001 hours l.t. August 1, 2000, unless modified, superseded, or rescinded. These changes are in effect until the effective date of the 2001 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through August 7, 2000.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070 or to Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Katherine King (Northwest Region, NMFS) 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council,) in consultation with the States of Washington, Oregon, and California, at its June 27–30, 2000, meeting in Portland, OR. Pacific coast groundfish landings will be monitored throughout

the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the annual specifications and management measures for the groundfish fishery, published in the **Federal Register** (65 FR 221, January 4, 2000, as amended at 65 FR 17805, April 5, 2000; 65 FR 25881, May 4, 2000; 65 FR 31283, May 17, 2000; and 65 FR 33423, May 23, 2000). Unless otherwise specified, these changes are effective through October 31, 2000. At its September meeting, the Council will consider whether changes recommended for August through October should apply also to the November and December fishing periods. If the Council does not recommend changes at that meeting, the trip limits that have already been published for those periods (January 4, 2000, 65 FR 221; May 17, 2000, 65 FR 31283) will remain in effect.

Yellowtail Rockfish Taken in Limited Entry Trawl Fisheries for Flatfish; New Trip Limit for Arrowtooth Flounder

At the June 27–30, 2000, Council meeting, the Council and its advisory entities heard testimony from commercial trawlers that the current combination of yellowtail rockfish and flatfish landings limits and gear requirements were resulting in yellowtail rockfish discard. Under year 2000 management measures, most flatfish taken with small footrope trawl (8 inches, 20 cm, or less in diameter) have no landings limits. Historically, landings for most flatfish have not been restricted because the fisheries have not achieved the acceptable biological catches for those species. To protect non-flatfish species associated with targeted flatfish on the continental shelf, the 2000 management measures encouraged use of small footrope trawls by prohibiting flatfish landings (except Dover and rex soles) taken with large footrope trawl (greater than 8 inches, 20 cm, in diameter). In May, the limits were modified to allow 400 lb (181 kg) of flatfish per trip (excluding Dover and rex soles) with large footrope trawls.

Landings of yellowtail rockfish are lower than expected for this fishery. Yellowtail rockfish may not be landed by vessels fishing with large footrope trawl, and the small footrope bottom trawl limits has been at 1,500 lb (680 kg) per month since the beginning of the year. This is a low limit for this relatively abundant species, which was set to protect overfished species that associate with yellowtail rockfish. By contrast, midwater trawl limits for yellowtail rockfish were higher, at 10,000 lb (4,536 kg) per 2-month period in January through April and at 30,000 lb (13,608 kg) per 2-month period, May through October; overfished species are not vulnerable to midwater trawl gear.

During the summer months, yellowtail rockfish tend to move away from their rockier habitats and associate more closely with flatfish. This seasonal migration, in combination with a low yellowtail rockfish small footrope trawl limit, has resulted in yellowtail rockfish discards for fishers targeting both flatfish and yellowtail rockfish. Trawlers currently use small footrope bottom trawl gear to target the more liberal flatfish limits, but may keep only 1,500 lb (680 kg) of incidentally caught yellowtail rockfish. Any incidentally caught yellowtail rockfish above the 1,500 lb (680 kg) limit is discarded. Trawlers may switch to midwater gear to directly target yellowtail, so as to achieve the 30,000 lb (13,608 kg) landings limit.

To make yellowtail rockfish and flatfish management more consistent with natural catch association patterns and to reduce discards of yellowtail rockfish taken with small footrope bottom trawl gear, the Council recommended a new "per trip" limit for yellowtail rockfish taken with small footrope bottom trawl gear equivalent to the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder, not to exceed 7,500 lb (3,402 kg,) per trip and not to exceed 30,000 lb (13,608 kg) per 2-month period. This limit prevents direct yellowtail targeting with small footrope bottom trawl gear by restricting all bottom trawl landings of yellowtail rockfish to vessels that also land flatfish. This change is expected to reduce yellowtail rockfish discard by making the management measures more reflective of summer groundfish catch associations while discouraging fishing patterns that would take overfished species. With these protections, the Council could justify recommending an increase in the small footrope trawl 2-month cumulative limit to the same level as the current midwater trawl limit.

In a separate action, the Council recommended increasing the arrowtooth flounder large footrope bottom trawl per trip limit from 400 lb (181 kg) to 5,000 lb (2,268 kg) to accommodate incidental catch in the deeper water fisheries for sablefish, Dover sole, and thornyheads, primarily on the continental slope. Arrowtooth flounder are not a high-value species, and this limit is not expected to increase targeted effort on that species.

Limited Entry Fixed Gear and Open Access Minor Nearshore Rockfish

Minor nearshore rockfish landings in both the limited entry fixed gear and open access fisheries have been low during the first half of 2000. The best available information at the June Council meeting indicated that limited entry fixed gear fisheries had landed 5.2 percent of the allocation for that fishery north of 40°10′ N. lat. and 13.2 percent of the allocation for that fishery south of 40°10′ N. lat. through May 31, 2000. Similarly, the best available information at that meeting also indicated that open access fisheries had landed 14.5 percent of the allocation for that fishery north of 40°10′ N. lat. and 6.4 percent of the allocation for that fishery south of 40°10′ N. lat. To allow fisheries access to these stocks without exceeding 2000 OYs, the Council recommended significant increases to the minor nearshore rockfish landings limits for these two fisheries.

North of 40°10′ N. lat. and starting with the July-August period, the limited entry minor nearshore rockfish fixed gear limit increases from 3,000 lb (1,361 kg) to 5,000 lb (2,268 kg) per 2-month period, and the sublimit for minor nearshore rockfish other than blue or black rockfish increases from 1,400 lb (635 kg) to 1,800 lb (816 kg.) South of 40°10′ N. lat. and starting with the July-August period, the limited entry minor nearshore rockfish fixed gear limit increases from 1,300 lb (590 kg) to 2,000 lb (907 kg) per 2-month period. North of 40°10′ N. lat. and starting with the July-August period, the open access minor nearshore rockfish limit would double from 1,500 lb (680 kg) to 3,000 lb (1,361 kg) per 2-month period, and the sublimit for minor nearshore rockfish other than blue or black rockfish increases from 700 lb (318 kg) to 900 lb (408 kg.) South of 40°10′ N. lat. and starting with the July-August period, the open access minor nearshore rockfish limit doubles from 800 lb (363 kg) to 1,600 lb (726 kg) per 2-month period. With the new management strategies implemented in 2000, it is difficult to predict the effect on industry. Increases in the nearshore rockfish limits increase the risk of reaching an allocation or OY before the end of the year and may result in early closures of the minor nearshore rockfish fishery in the north.

Limited Entry Trawl and Fixed Gear Minor Shelf Rockfish South of 40°10′ N. lat.

The limited entry minor shelf rockfish landings for trawl and fixed gear south of 40°10′ N. lat. were slow in January–April partly because fixed gear shelf

rockfish landings were closed south of 36° N. lat. in January–February, and closed between 40°10′ N. lat. and 36° N. lat. in March–April. Shelf rockfish landings rose in May, and by the end of May the fleet had taken 5.0 percent of the limited entry minor shelf rockfish allocation. Although the overall minor shelf rockfish landings are low, the Council had concerns about shelf rockfish fisheries intercepting bocaccio, an overfished stock. Bocaccio is managed under an overfished species rebuilding plan and is caught incidentally in commercial and recreational fisheries targeting many other different species.

The best available information at the June 2000 Council meeting indicated that the recreational fisheries have exceeded the 45 mt of bocaccio estimated for recreational landings in 2000. In order to protect bocaccio from excess incidental harvest in the commercial fishery, the Council recommended decreasing the limited entry minor shelf rockfish monthly limit for both trawl and fixed gear from 1,000 lb (454 kg) to 500 lb (227 kg) per month effective August 1, 2000. (An earlier effective date would not reduce fishing mortality because most fishers would have taken the July limit of 1,000 lb (454 kg) before this notice would take effect.)

Recreational bocaccio landings occur almost exclusively in California. The State has agreed to ask its Fish and Game Commission, which sets recreational fishing policies in State waters (0–3 nm offshore), to make inseason changes that further reduce recreational fishing pressure on overfished species (bocaccio, lingcod, canary rockfish, cowcod). This may include prohibiting landings of bocaccio taken in State waters for the remainder of 2000. The Council also asked NMFS to coordinate with the State of California to implement consistent changes to recreational rockfish fishery management measures in Federal waters (3–200 nm offshore).

Limited Entry Trawl and Fixed Gear, and Open Access Minor Slope Rockfish South of 40°10′ N. lat.

As with nearshore and shelf rockfish, minor slope rockfish landings south of 40°10′ N. lat. have been slow in the first half of 2000. The best available information at the June Council meeting indicated that limited entry fisheries south of 40°10′ N. lat. had landed 10.1 percent of slope rockfish set aside for those fisheries and that open access fisheries had landed only 1.0 percent of their minor slope rockfish allocation through the end of May 2000. Given these low landings rates, the Council recommended increasing cumulative landings limits to levels that would allow higher landings without jeopardizing overfished and depleted stocks. The Council recommended increasing the limited entry minor slope rockfish cumulative landings limit for both trawl and fixed gear south of 40°10′ N. lat. from 5,000 lb (2,268 kg) to 7,000 lb (3,175 kg) per 2-month period. The Council also recommended increasing the open access, minor slope rockfish cumulative landings limit south of 40°10′ N. lat. from 500 lb (227 kg) to 1,000 lb (454 kg) per 2-month period.

Open Access Fishery for Lingcod to Close August 1, 2000

The best available information at the June Council meeting indicated that the open access fishery will achieve its lingcod allocation before the end of July. This fishery was closed January through April and was scheduled to be closed in November and December, following a 400 lb (181 kg) monthly cumulative limit in May through October 2000. Lingcod is an overfished species managed under a rebuilding plan. To eliminate further open access lingcod landings for the rest of the year, the Council recommended closing open access lingcod landings from August 1 through the end of the year. This closure also applies to vessels in the pink shrimp trawl fishery.

Limited Entry, Fixed Gear and Open Access Daily Trip Limit Fisheries for Sablefish North of 36° N. lat.

Daily trip limit sablefish landings in both the 2000 limited entry fixed gear and the open access fisheries have been relatively low through the spring months. The best available information at the June Council meeting indicated that limited entry fixed gear fisheries had landed 11.9 percent of the sablefish set aside for small daily landings and that the open access fisheries had landed 7.0 percent of their sablefish allocation, both of which are taken under the small landings limit of 300 lb (136 kg) per day. To allow fisheries access to sablefish allocations during the more active summer fishing months, the Council recommended increasing the sablefish 2-month cumulative landings limits for both limited entry and open access fisheries north of 36° N. lat. from 2,400 lb (1,089 kg) to 3,300 lb (1,497 kg.) The 300 lb (136 kg) per day landings limit would remain in effect.

Limited Entry, Fixed Gear, Regular Sablefish Fishery

At its June 2000 meeting, the Council considered season structure options for the 2000 limited entry, fixed gear regular sablefish fishery. For 2000, the Council recommended that the regular season begin on August 6, 2000, at noon l.t. and last for 9 days, ending at noon on August 15, 2000. There will be no limited entry, daily trip limit fishery for sablefish taken with fixed gear during the regular season. During the regular season, each vessel with a limited entry permit and a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for the tier to which the permit is assigned. The Council recommended the following tier limits: Tier 1, 81,000 lb (36,741 kg); Tier 2, 37,000 lb (16,783 kg); Tier 3, 21,000 lb (9,525 kg). These tier limits are expected to keep the overall fleet landings from exceeding the 2065.5 mt of sablefish available to this fishery.

The pre-season and post-season closures described for this fishery at 50 CFR 660.323 (a)(2) will be in effect. The pre-season closure will begin on August 4, 2000, at noon l.t., last for 48 hours, and end when the regular season begins on August 6, 2000, at noon l.t. During the pre-season closure, sablefish taken with fixed gear in the limited entry or open access fisheries north of 36° N. lat. may not be retained or landed. Also during the pre-season closure, all fixed gear used to take and retain groundfish must be out of the water. The post-season closure will begin when the regular season ends on August 15, 2000, at noon l.t., last for 30 hours, and end on August 16, 2000, at 1800 hours l.t. No sablefish taken with fixed gear north of 36° N. lat. during the post-season closure may be retained. Sablefish taken and retained during the regular season may be possessed and landed during the post-season closure, and gear may remain in the water during the post-season closure. However, during the post-season closure, fishers may not set or pull from the water fixed gear used to take and retain groundfish.

Fixed Gear Permit Transfers

Under 50 CFR 660.333, limited entry permits may not be transferred more than once every 12 months, and permit transfers are effective only on the first date of a major cumulative limit period. Each year, the major cumulative limit periods are defined in the annual specifications and management measures according to when the Council schedules its cumulative limit periods for the majority of the groundfish fleet. In 1999 and prior years, trawl and fixed gear landings limit periods have been the same for most species. However, the 2000 annual specifications and management measures set separate cumulative limit periods and

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cumulative landings limits for limited entry trawl gear and for fixed gear.

Under 50 CFR 660.333, limited entry permits may not be transferred more than once every 12 months, and permit transfers are effective only on the first date of a major cumulative limit period. Each year, the major cumulative limit periods are defined in the annual specifications and management measures according to when the Council schedules its cumulative limit periods for the majority of the groundfish fleet. In 1999 and prior years, trawl and fixed gear landings limit periods have been the same for most species. However, the 2000 annual specifications and management measures set separate cumulative limit periods and cumulative landings limits for limited entry trawl gear and for fixed gear.

In July 1999, about 20 fixed gear permit holders transferred their permits so that the transfers would be effective in time for the August 1999 regular sablefish fishery. Changes to the major cumulative landings limits periods in 2000 meant that the first start date of a major cumulative limit period after July 1, 2000, was September 1, 2000. Thus, permit holders constrained by the regulatory restriction of one transfer every 12 months who had last transferred their permits in July 1999 would have missed the August 2000 fixed gear regular sablefish season, described above. The restriction that requires that permit transfers become effective on the first date of a major cumulative limit period would have prevented these permit holders from transferring their permits until September 1, 2000. Several of these permit holders testified at the June 2000 Council meeting that without changes to these restrictions, they would not be able to participate in the primary sablefish fishery. For participants in this fishery, this opportunity is often a significant portion of their annual incomes. To ensure that these 20 permit holders have the opportunity to transfer their permits and to participate in the regular fixed gear sablefish fishery, the Council recommended at its June 2000 meeting that a major cumulative trip limit period be added at August 1, 2000, for limited entry fixed gear fisheries, for purposes of allowing permit transfers in 2000. This added major cumulative limit period start date reflects the primarily month-long cumulative limit periods for limited entry fixed gear fisheries. The regulatory restriction that limited entry permit transfers may not occur more than once every 12 months would not be altered by this change to major cumulative limit start dates.

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2000 annual management measures (65 FR 221, January 4, 2000, as amended at 65 FR 17805, April 5, 2000, 65 FR 25881, May 4, 2000, 65 FR 31283, May 17, 2000, and 65 FR 33423, May 23, 2000) as follows:

In Section IV, paragraph (15), under A. *General Definitions and Provisions*, and paragraph (2)(b)(i); under B. *Limited Entry Fishery*, are revised; under C. *Trip Limits in the Open Access Fishery*, a new paragraph (3)(a)(ii)(C) is added; and Tables 3, 4, and 5 are revised to read as follows:

IV. NMFS Actions

* * * * *

A. General Definitions and Provisions

* * * * *

(15) *Permit transfers.* Limited entry permit transfers are to take effect only on the first day of a major cumulative limit period (50 CFR 660.333(c)(1)), which in 2000 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the "B" platoon. For limited entry fixed gear (longline and pot) permits, August 1 is also the first day of a major cumulative limit period.

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B. Limited Entry Fishery

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BILLING CODE 3510-22-F

Table 3. 2000 Trip Limits 1/ and Gear Requirements 2/ for Limited Entry Trawl Gear

Read Section IV. A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North	3,000 lb / 2 months		5,000 lb / 2 months			1,500 lb / month
3	South	3,000 lb / 2 months		May-Jun, 5,000 lb / 2 months; Jul-Oct, 7,000 lb / 2 months			1,500 lb / month
4	Splitnose-South	8,500 lb / 2 months		14,000 lb / 2 months			4,000 lb / month
5	POP-North	500 / month		2,500 lb / month			500 lb / month
6	Sablefish	7,000 lb / 2 months; 22-inch size limit 3/		10,000 lb / 2 months; 22-inch size limit 3/			3,500 lb / month ; 22-inch size limit 3/
7	Longspine thornyhead	12,000 lb / 2 months		4,000 lb / 2 months			6,000 lb / month
8	Shortspine thornyhead	3,000 lb / 2 months		1,000 lb / 2 months			1,500 lb / month
9	Dover sole	55,000 lb / 2 months		20,000 lb / 2 months			20,000 lb/ month
10	Arrowtooth flounder	10,000 lb / trip		Small footrope: May-Oct, no pound limit 2/; Large footrope: May-Jun, in "other flatfish" limit; Jul-Oct, 5,000 lb/trip			10,000 lb / trip
11	Petrale sole	No restriction	Small footrope required	Small footrope--No pound limit; Large footrope--included in "other flatfish" trip limit 2/			No restriction
12	Rex sole	No limit					
13	Other flatfish 4/	Small footrope--No pound limit; Large footrope--400 lb per trip 2/					
14	Whiting shoreside 5/	20,000 lb / trip before primary season		Primary season			20,000 lb / trip after primary season
15							
16	Use of small footrope bottom trawl or midwater trawl required for landing all the following species: 6/						
17	Minor shelf rockfish						
18	North	300 lb / month		1,000 lb / month			300 lb / month
19	South	500 lb / month		May-Jul, 1,000 lb / month; Aug-Oct, 500 lb / month			500 lb / month
20	Canary rockfish	100 lb / month		300 lb / month			100 lb / month
21	Widow rockfish						
22	mid-water trawl	30,000 lb / 2 months		30,000 lb / 2 months			30,000 lb / 2 months
23	small footrope trawl	1,000 lb / month		1,000 lb / month			1,000 lb / month
24	Yellowtail-North 7/						
25	mid-water trawl	10,000 lb / 2 months		30,000 lb / 2 months			10,000 lb / 2 months
26	small footrope trawl	1,500 lb / month		May-Jun, 1,500 lb / month. Jul-Oct, per trip limit is sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder; not to exceed 7,500 lb/trip, and 30,000 lb/2 months. Yellowtail rockfish may not be landed without flatfish.			1,500 lb / month
27	Bocaccio-South 7/	300 lb / month		500 lb / month			300 lb / month
28	Chilipepper-South 7/						
29	mid-water trawl	25,000 lb / 2 months		25,000 lb / 2 months			25,000 lb / 2 months
30	small footrope trawl	7,500 lb / 2 months		7,500 lb / 2 months			7,500 lb / 2 months
31	Cowcod - South 7/	1 fish per landing		1 fish per landing			1 fish per landing
32	Minor Nearshore rockfish						
33	North and South	200 lb / month		200 lb / month			200 lb / month
34	Lingcod	CLOSED		400 lb / month; 24-inch size limit 8/			CLOSED

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N.lat. to the US-Canada border. "South" means 40°10' N.lat. to the US-Mexico border. 40°10' N.lat. is about 20 nm south of Cape Mendocino CA.

2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14).

3/ No more than 500 lb/trip of sablefish smaller than 22 inches (56 cm) total length, which counts toward cumulative limit.

4/ Other flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit (excludes rex sole and arrowtooth flounder.)

5/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb / trip throughout the year (See IV.B.(3)(c)).

6/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. Midwater gear also may be used; the footrope must be bare. See paragraph IV.A.(14).

7/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

8/ Lingcod must be greater than or equal to 24 inches (61 cm) total length. See IV.A.(8).

To convert pounds to kilograms, divide by 2.28462, the number of pounds in one kilogram.

Table 4. 2000 Trip Limits 1/ for Limited Entry Fixed Gear

Read Section IV. A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JULY-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North	3,000 lb / 2 months		5,000 lb / 2 months			1,500 lb / month
3	South	3,000 lb / 2 months		May-Jun, 5,000 lb / 2 months; Jul-Oct, 7,000 lb / 2 months			1,500 lb / month
4	Splitnose-South	8,500 lb/2 mo.		14,000 lb / 2 months			4,000 lb / month
5	POP-North	500 lb / month		2,500 lb / month			500 lb / month
6	Sablefish (daily trip limit fishery) 2/						
7	North of 36° N. lat.	300 lb/day, 2,100 lb/2 mo OR 1 landing between 300 lb and 600 lb/ week, less than 1,600 lb/2 mo		May-Jun, 300 lb/day, 2,400 lb/2 mo; Jul-Oct, 300 lb/day, 3,300 lb/2 mo			300 lb / day, 2,400 lb / 2 months
8	South of 36° N. lat.	350 lb/day or 1 landing above 350 lb/week, up to 1,050 lb					
9	Longspine thornyhead	12,000 lb / 2 months		4,000 lb / 2 months			6,000 lb / month
10	Shortspine thornyhead	1,000 lb / month		1,000 lb / month			1,000 lb / month
11	Dover sole	55,000 lb / 2 months		20,000 lb / 2 months			20,000 / month
12	Arrowtooth flounder	10,000 lb / trip		No restriction			10,000 lb / trip
13	Petrale sole	No restriction		No restriction			No restriction
14	Rex sole	No restriction		No restriction			No restriction
15	Other flatfish 3/	No restriction		No restriction			No restriction
16	Shoreside whiting 4/	20,000 lb / trip		Open			20,000 lb / trip
17	Minor shelf rockfish						
18	North	300 lb / month		1,000 lb / month			300 lb / month
19	South	500 lb / month 5/		May-Jul, 1,000 lb/month; Aug-Oct, 500 lb/month			500 lb / month
20	Canary-Coastwide						
21	North	100 lb / month		300 lb / month			100 lb / month
22	South	100 lb / month 5/		300 lb / month			100 lb / month
23	Widow rockfish-Coastwide:						
24	North	3,000 lb / month		3,000 lb / month			3,000 lb / month
25	South	3,000 lb/month 5/		3,000 lb / month			3,000 lb / month
26	Yelloweye-North 6/	1,500 lb / month		1,500 lb / month			1,500 lb / month
27	Bocaccio-South 6/	300 lb/ month 5/		500 lb / month			300 lb / month
28	Chilipepper-South 6/	2,000 lb /month 5/		2,000 lb / month			2,000 lb / month
29	Cowcod - South 6/	1 fish per landing 5/					
30	Minor nearshore rockfish						
31	North 7/ 8/	2,400 lb/2 months, of which no more than 1,200 lb may be species other than black or blue rockfish		May-Jun, 3,000 lb/2 months, of which no more than 1,400 lb may be species other than black or blue rockfish; Jul-Oct, 5,000 lb/2 months of which no more than 1,800 lb may be species other than black or blue rockfish			3,000 lb/2 months, of which no more than 1,400 lb may be species other than black or blue rockfish
32	South	1,000 lb / 2 months 5/		May-Jun, 1,300 lb/2 months; Jul-Oct, 2,000 lb/2 months			1,300 lb / 2 months
34	Lingcod 8/	CLOSED		400 lb / month			CLOSED

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N.lat. to the US-Canada border. South means 40 10' N. lat. to the US-Mexico border.

2/ The sablefish size limit applies only during the "regular" and "mop-up" seasons north of 36° N. lat. See IV.B.(2).

3/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 4 with a trip limit.

4/ The whiting "per trip" limit in the Eureka area for catch inside 100 fathoms is 10,000 lb / trip throughout the year.

5/ South of 40°10' N. lat., minor shelf and minor nearshore rockfish, as well as canary, widow, bocaccio, chilipepper, and cowcod were managed with area closures in Jan-Apr. In Jan-Feb, limited entry fixed gear fisheries for these species were closed south of 36° N. lat., yet open with limits shown between 40°10' N. lat. and 36° N. lat. In Mar-Apr, these fisheries were closed between 40°10' N. lat and 36° N. lat., yet open with limits shown in waters south of 36° N. lat. "Closed" means it is prohibited to take and retain, possess, or land the designated species in the time or area indicated (see IV.A.(7)).

6/ Yelloweye rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in trip limits for minor shelf rockfish (Table 2).

7/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).

8/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510-22-C

(2) * * *
(b) * * *

(i) *Regular season.* The regular season will begin at 12 noon l.t. on August 6, 2000, and end at noon on August 15, 2000. Pre-season and post-season closures described at 50 CFR 660.323(a)(2) are in effect. The pre-season closure will begin at 12 noon l.t. on August 4, 2000, and end when the regular season begins, at 12 noon l.t. on August 6, 2000. The post-season closure will begin when the regular season ends at noon (local time) on August 15, 2000, and end at 1800 hours (local time) on August 16, 2000. During the regular season, each vessel with a limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for the tier to which the permit is assigned. For 2000, the following tier limits are in effect: Tier 1, 81,000 lb (36,741 kg); Tier 2, 37,000 lb (16,783 kg); Tier 3, 21,000 lb (9,525 kg).

* * * * *

C. Trip Limits in the Open Access Fishery

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Table 5. 2000 Trip Limits 1/ for All Open Access Gear except Exempted Trawl Gear Engaged in Fishing for Pink Shrimp

Read Section IV. A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JULY-AUG	SEP-OCT	NOV	DEC
1	Minor slope rockfish							
2	North	500 lb / 2 months		500 lb / 2 months			500 lb / 2 months	
3	South	500 lb / 2 months		May-Jun, 500 lb / 2 months; Jul-Oct, 1,000 lb / 2 months			500 lb / 2 months	
4	Splitnose-South	200 lb / month		200 lb / month			200 lb / month	
5	POP-North	100 lb / month		100 lb / month			100 lb / month	
6	Sablefish 2/							
7	North of 36°	300 lb / day, but no more		May-Jun, 300 lb / day, 2,400 lb 2 months			300 lb / day, but no more	
8		than 2,100 lb / 2 months		Jul-Oct, 300 lb / day, 3,300 lb / 2 months			than 2,400 lb / 2 months	
9	South of 36°	350 lb / day		350 lb / day			350 lb / day	
10	Thornyheads (longespine and shortspine combined)							
11	North of Pt. Conception	CLOSED 3/		CLOSED			CLOSED	
12	South of Pt. Conception	50 lb / day		50 lb / day			50 lb / day	
13	Arrowtooth	200 lb / month		200 lb / month			200 lb / month	
14	Dover sole	(included in "other" flatfish limit)						
15	Petrale sole	(included in "other" flatfish limit)						
16	Nearshore flatfish	(included in "other" flatfish limit)						
17	"Other" flatfish 4/	300 lb / month		300 lb / month			300 lb / month	
18	Shoreside whiting	300 lb / month		300 lb / month			300 lb / month	
19	Minor shelf rockfish							
20	North	100 lb / month		100 lb / month			100 lb / month	
21	South	200 lb/ month 5/		200 lb / month			200 lb / month	
22	Canary							
23	North	50 lb / month		50 lb / month			50 lb / month	
24	South	50 lb / month 5/		50 lb / month			50 lb / month	
25	Widow							
26	North	3,000 lb / month		3,000 lb / month			3,000 lb / month	
27	South	3,000 lb / month 5/		3,000 lb / month			3,000 lb / month	
28	Yellowtail-North 6/	100 lb / month		100 lb / month			100 lb / month	
29	Bocaccio - South 6/	200 lb / month 5/		200 lb / month			200 lb / month	
30	Chilipepper-South 6/	2,000 lb / month 5/		2,000 lb / month			2,000 lb / month	
31	Cowcod - South 6/	1 fish per landing 5/		1 fish per landing			1 fish per landing	
32	Minor nearshore rockfish							
33	North 7/8/	1,000 lb / 2 months, of which no more than 500 lb may be species other than black or blue rockfish		May-Jun, 1,500 lb/2 mo, of which no more than 700 lb may be species other than black or blue rockfish; 2,500 lb/2 mo; Jul-Oct, 3,000 lb/2 mo, of which no more than 900 lb may be species other than black or blue rockfish			1,00 lb / 2 months, of which no more than 00 lb may be species other than black or blue rockfish	
34	South	550 lb / 2 months 5/		May-Jun, 800 lb/2 months;			800 lb / 2 months	
35				Jul-Oct, 1,600 lb / 2 months				
36	Lingcod 9/	CLOSED		May-Jul, 400 lb/month; Aug-Oct, CLOSED.			CLOSED	

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N. lat. to the US-Canada border. "South" means 40°10' N. lat. to the US-Mexico border.

2/ There is no size limit for sablefish taken and retained with nontrawl gear in the open access fishery. See IV.B.2.

3/ Closed means it is prohibited to take and retain, possess, or land the species in the time or area indicated (see IV.A.(7)).

4/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 5 with a trip limit.

5/ South of 40° 10' N. lat., minor shelf and nearshore rockfish, as well as canary, widow, bocaccio, chilipepper, and cowcod were managed with area closures in Jan-Apr. In Jan/Feb, open access fisheries for these species were closed south of 36° N. lat., yet open with limits shown between 40° 10' N. lat. and 36° N. lat. In Mar/Apr these fisheries were closed between 40° 10' N. lat. and 36° N. lat., and open with limits shown in waters south of 36° N. lat. (see IV.A.(7)).

6/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

7/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).

8/ Provisions for landing groundfish in Pacific City, OR are found at paragraph IV.C.(4).

9/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length (May through July.)

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510-22-C

(3) * * *

(a) * * *

(ii) * * *

(C) August 1–December 31, 2000: closed.

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures and by the emergency rule published at 65 FR 221 (January 4, 2000) and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B) because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the current cumulative limit period began on July 1, 2000, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY. The increases to trip limits and the addition of a major cumulative limit period for fixed gear relieve burdens on the public. In addition, the affected public had the opportunity to comment on these actions at the June 27–30, 2000, Council meeting. This action should be implemented as close as possible to the beginning of the cumulative trip limit period to avoid confusion and provide fishers the opportunity to achieve the increased trip limits and arrange for permit transfers. The reduced limits and closures that take effect August 1 are intended to prevent overfishing or to protect overfished species. For these reasons, good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18534 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000706201–0201–01; I.D. 060700A]

RIN 0648–AO00

Fisheries of the Exclusive Economic Zone Off Alaska; Removal of Vessel Moratorium of the GOA and BSAI

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a final rule to remove the obsolete text implementing the Vessel Moratorium Program (VMP), which expired on December 31, 1999, and was replaced by the License Limitation Program (LLP). In addition, several paragraphs in the regulations are revised to account for the removal of the moratorium text. These revisions are necessary to remove obsolete text, clarify and simplify existing text, promote compliance with the regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the Federal fishery management programs for crab groundfish fisheries off Alaska.

DATES: Effective July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska and the crab fisheries in the EEZ of the Bering Sea and Aleutian Islands area according to fishery management plans (FMPs) prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C., 1801 *et seq.* The FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H of 50 CFR part 600.

NMFS published a final rule in the **Federal Register** on August 10, 1995, (60 FR 40763) implementing the VMP and, on January 25, 1999 (64 FR 3651), published a final rule extending the program for 1 year. The VMP expired on December 31, 1999, when it was succeeded by the LLP, which became effective on January 1, 2000. This technical amendment is designed to remove obsolete regulatory text that implemented the VMP without making any substantive change in the LLP implementing regulations or other rules.

The changes implemented with this rule in each section are described as nfollows.

Purpose and Scope (§ 679.1)

Paragraph (c) is removed and reserved because it is no longer effective.

Definitions (§ 679.2)

Definitions of terms that were relevant only to the VMP are removed. Some defined terms that also are used in existing and currently effective regulations are revised or renumbered to remove only the parts of the definitions that were applicable to the VMP. Terms and their definitions that are removed by this action are "Lost or destroyed vessel," "Moratorium crab species," "Moratorium groundfish species," "Moratorium species," "Moratorium qualification," "Original qualifying LOA," "Original qualifying vessel," and "Qualifying period." Definitions of terms that are revised or renumbered by this action are "Catcher/processor," "Catcher vessel," "Directed fishing," "Maximum LOA (MLOA)," "Person," and "Reconstruction."

Permits (§ 679.4)

Criteria required for a VMP permit specified at § 679.4(c) are no longer effective and are removed by this action. Paragraph (c) is reserved to maintain the designation sequence of the succeeding paragraphs. Some of these VMP permit criteria were integrated into the LLP and were referenced in the LLP qualification requirements at § 679.4(k). Hence, this action revises regulations implementing the LLP at § 679.4(k)(4) to add specified VMP qualification criteria that are included in the LLP licensing criteria previously included only by reference.

Prohibitions (§ 679.7)

Paragraphs (d)(13) and (14) in § 679.7 are revised by substituting the term "license limitation groundfish" for the term "moratorium groundfish species." This change is made necessary by the substitution of the LLP for the VMP. Also in paragraph (e) of this section, the heading and text are removed and the paragraph reserved. Although paragraph (e) did not explicitly expire with the VMP, its continued existence no longer is necessary and could be confusing if it were not removed.

Western Alaska Community Development Quota Program (CDQ) (§ 679.30)

A reference in paragraph (a)(5)(i)(A)(*1*) of this section to catcher vessels and catcher/processors that could be exempt from the VMP is revised to reference the same exemption provided under the LLP. Although the Council originally recommended that this exemption for specific CDQ vessels be transferred to the LLP, more recently, it recommended its deletion because it is no longer necessary. Removing the CDQ exemption is beyond the scope of this action and will be included in a future proposed rule.

Classification

Because this technical amendment makes only minor, non-substantive changes to an existing rule, NMFS finds that there is good cause to waive the requirement to provide notice and an opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures are unnecessary. For the same reasons, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Because prior notice, delayed effectiveness and opportunity for public comment are not required for this final rule by U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 9, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

§ 679.1 [Amended]

2. In § 679.1, paragraph (c) is removed and reserved.

3. In § 679.2, definitions for the terms "Lost or destroyed vessel (applicable through December 31, 1998)," "Moratorium crab species (applicable through December 31, 1999)," "Moratorium groundfish species (applicable through December 31, 1999)," "Moratorium qualification (applicable through December 31, 1999)," "Moratorium species," "Original qualifying LOA (applicable through December 31, 1999)," "Original qualifying vessel (applicable through December 31, 1999)," "Qualifying period (applicable through December 31, 1999)," and "Reconstruction (applicable through December 31, 1999)" are removed, definitions for the terms "Catcher/processor," "Catcher vessel" "Directed fishing," "Maximum LOA (MLOA)", and "Person," are revised, and a new definition of "Reconstruction" is added to read as follows:

§ 679.2 Definitions.

* * * * *

Catcher/processor means:

(1) *With respect to groundfish recordkeeping and reporting*, a vessel that is used for catching fish and processing that fish.

(2) *With respect to subpart E of this part*, a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

* * * * *

Catcher vessel means a vessel that is used for catching fish and that does not process fish on board.

* * * * *

Directed fishing means:

(1) *With respect to groundfish recordkeeping and reporting*, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 679.20.

(2) *With respect to license limitation groundfish species*, directed fishing as defined in paragraph (1) of this definition, or, with respect to license limitation crab species, the catching and retaining of any license limitation crab species.

(3) (*Applicable through July 20, 2000*) *With respect to the harvest of groundfish by AFA catcher/processors and AFA catcher vessels*, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 679.20.

* * * * *

Maximum LOA (MLOA) means, with respect to the groundfish and crab license limitation program, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(1) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(2) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(3) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

* * * * *

Person means:

(1) *For IFQ and CDQ Programs and General Usage* the term "person" means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen.

(2) *For High Seas Salmon Fishery permits* issued under § 679.4(h), the term "person" excludes any nonhuman entity.

* * * * *

Reconstruction means a change in the LOA of the vessel from its original qualifying LOA.

* * * * *

4. In § 679.4, paragraph (c) is removed and reserved, and paragraphs (k)(4)(i)(A)(*3*), (k)(4)(i)(B)(*3*), and (k)(5)(i)(B) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *
(4) * * *
(i) * * *
(A) * * *

(*3*) January 1, 1988, through June 17, 1995, provided that, during the period January 1, 1988, through February 9, 1992, the vessel made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area, and, during the period February 10, 1992, through December 11, 1994, made a legal landing of any groundfish species harvested in the GOA or BSAI using trawl gear or a legal landing harvested in the GOA or BSAI of any groundfish species using longline gear, except sablefish landed using fixed gear.

(B) * * *

(*3*) January 1, 1988, through June 17, 1995, provided that, during the period January 1, 1988, through February 9, 1992, the vessel made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area, and during the period February 10, 1992, through December 11, 1994, made a legal landing of any groundfish species harvested in the GOA or BSAI using trawl gear or a legal landing of any groundfish species harvested in the GOA or BSAI using longline gear, except sablefish landed using fixed gear.

* * * * *

(5) * * *
(i) * * *

(B) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and December 31, 1994, providing that, during the period January 1, 1988, through February 9, 1992, the vessel for which the documented harvest was made also made a legal landing of any groundfish species harvested in the GOA or BSAI with any authorized gear, except sablefish caught with fixed gear, and, during the period February 10, 1992, through December 11, 1994, made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area.

* * * * *

5. In § 679.7, paragraphs (d)(13) and (d)(14) are revised to read as set forth below and paragraph (e) is removed and reserved:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(13) For the operator of a catcher vessel, catch, retain on board, or deliver groundfish CDQ species together with license limitation groundfish.

(14) For the operator of a catcher/processor, catch groundfish CDQ species together with license limitation groundfish in the same haul, set, or pot.

* * * * *

6. In § 679.30, paragraph (a)(5)(i)(A)(*1*) is revised to read as follows:

§ 679.30 General CDQ regulations

(a) * * *
(5) * * *
(i) * * *
(A) * * *

(*1*) *Information required for all vessels.* A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership). For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from license limitation requirements under § 679.4(k)(2)(iv) of this part must be identified as such.

* * * * *

[FR Doc. 00–18564 Filed 7–20–00; 8:45 am]
BILLING CODE 3510–22–F

VOL 65 ISS 141 JL 21 2000 UMI

Proposed Rules

Federal Register
Vol. 65, No. 141
Friday, July 21, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

Notice of Public Meeting on the Rural Economic Development Loan and Grant Program Proposed Rule

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This Notice announces a Public Meeting on the Rural Economic Development Loan and Grant Program. On December 15, 1999, (64 FR 69937), the Agency published a proposed rule on the Rural Economic Development Loan and Grant Program. The public comment period on the proposed rule was extended through February 14, 2000. During the comment period, the Agency received 28 written comments. The Agency has decided to conduct a single meeting on this proposed rule. The intent of the meeting is to allow the Agency to listen to oral presentations from the general public on the proposed rule.

DATES: The meeting, which is open to the general public, will be conducted on August 2, 2000. The meeting will begin at 9:00 a.m. and conclude no later than 12:00 noon.

ADDRESSES: The meeting will be held in the Jefferson Auditorium, U.S. Department of Agriculture, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: If you wish to make an oral presentation, please contact Cheryl Thompson, Rural Development, U.S. Department of Agriculture, via fax on (202) 692–0013 or send an e-mail message to *cthompso@rus.usda.gov* at least three (3) business days before the hearing. Please indicate any special needs. You should receive a confirmation by telephone or e-mail that the Agency has received your request.

The Agency will listen to each presentation at the hearing. If a large number of participants desires to make presentations, a time limitation will be imposed on each presentation. Since this is a listening session and the rule is still being developed, Agency officials will not be responding to the comments during the hearing. The Agency will respond to the comments made at the hearing in the preamble to the final rule as part of the rule-making process under the Administrative Procedures Act. Since the Agency received written comments on the rule during the comment period, the Agency will not be accepting additional written comments on the proposed rule. The presentation may not include questions for other attendees of the general public or Agency officials, nor may it address comments to other attendees of the general public. If you have questions about the meeting or proposed rule, you may contact Mark Wyatt, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW, Washington, DC 20250–3225, Telephone (202) 720–2383 or e-mail *mwyatt@rus.usda.gov*.

Dated: July 13, 2000.

Wilbur T. Peer,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–18324 Filed 7–20–00; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–29–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede three existing airworthiness directives (AD's) that apply to certain The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31P, PA–31T, and PA–31T1 airplanes. These AD's currently require you to repetitively inspect and/or modify the elevator structure. The proposed AD would: initially retain the inspection and modification requirements that are currently required; add certain other airplane models to the AD applicability; and require a modification at a certain time period, as terminating action for the currently required repetitive inspections. This action coincides with the Federal Aviation Adminstration's policy of incorporating modifications, when available, that will terminate the need for repetitive inspections. The actions specified by the proposed AD are intended to continue to detect and correct damage to the elevator structure. A damaged elevator structure could lead to reduced or loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 8, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may get the service information referenced in the proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You may examine this information at FAA.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097; e-mail: william.o.herderich@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this AD? We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

How can we communicate more clearly with you? The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.faa.gov/language/*.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–29–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action to this point? The following AD's currently require you to repetitively inspect and/or modify the elevator structure on certain Piper Models PA–31, PA–31–300, PA–31P, PA–31T, and PA–31T1 airplanes.

—AD 70–26–06, Amendment 39–1132, which requires you to repetitively inspect the elevator structure on Piper Models PA–31 and PA–31–300 airplanes, serial numbers 31–2 through 31–694. The AD requires you to modify the elevator structure if cracks are found;

—AD 76–03–01, Amendment 39–2505, which requires you to modify the elevator structure on Piper Models PA–31T airplanes, serial numbers 31T–7400002 through 31T–7620007. This AD requires you to inspect the elevator support and replace any defective parts on Piper Model PA–31T airplanes, serial numbers 31T–7400002 through 31T–7520020, 31T–7520022 through 31T–7520038; and 31T–7520040 through 31T–760012; and

—AD 80–02–15, Amendment 39–3676, which requires you to inspect and alter the elevator structure and replace any defective parts on Piper Model PA–31P airplanes, serial numbers 31P–1 through 31P–7730012; Model PA–31T airplanes, serial numbers 31T–7400002 through 31T–7920075; and Model PA–31T1 airplanes, serial numbers 31T–7804001 through 31T–7904036 and 31T–7904038 through 31T–7904044.

What has happened to necessitate further AD action? Piper has informed FAA of reports of damage in the elevator structure area on additional airplanes. These are Piper Models PA–31–325, PA–31–350, PA–31T3, and PA–31P–350 airplanes.

On December 24, 1996, FAA issued a special airworthiness information bulletin (SAIB) to encourage compliance with new service information related to the elevator structure on the above-referenced airplanes. We continue to receive reports of damage in the elevator structure area on these airplanes.

Relevant Service Information

Is there service information that applies to this subject? Piper has issued the following:

—Service Bulletin No. 323, dated September 21, 1970;

—Service Bulletin No. 897B, Date: July 15, 1997; and

—Service Bulletin No. 1008, Date: September 30, 1997.

What are the provisions of these service bulletins? These service bulletins specify and include procedures for the following:

Service bulletin	Applies to	Specifies and includes procedures for	Other information
Piper Service Bulletin No. 323	Certain Piper Models PA–31 and PA–31–300 airplanes.	Inspecting replacing the rudder and elevator spars and elevator butt ribs. Modifying the rudder and elevator spar assemblies through new rudder and elevator spar hinges.	Procedures for installing the new rudder and elevator spar hinges are included in Piper Kit No. 760 465.
Piper Service Bulletin No. 897B	Certain Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31T3 airplanes.	Incorporating an elevator butt rib refinement kit, Piper part number 766–219.	The intent of this service bulletin is met when Piper Service Bulletin 897A is accomplished.
Piper Service Bulletin No. 1008	Certain Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P–350 airplanes.	Incorporating an elevator butt rib refinement kit, Piper part number 766–642.	You must have accomplished actions of Piper Service Bulletin 323; and Piper Service Bulletin 998 or 998A prior to or in conjunction with accomplishing Piper Service Bulletin No. 1008.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, we have determined that:

—an unsafe condition is likely to exist or develop on Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 of the same type design;

—the actions of the above-referenced service bulletins should be accomplished on the affected airplanes; and

—AD action should be taken to detect and correct damage to the elevator structure. A damaged elevator structure could lead to reduced or loss of control of the airplane.

What are the provisions of the proposed AD? The proposed AD would supersede AD 70–26–06, AD 76–03–01, and AD 80–02–15, with a new AD that would:

—initially retain the inspection and modification requirements that are currently required;

—add certain other airplane models to the AD applicability; and
—require a modification at a certain time period, as terminating action for the currently required repetitive inspections.

Does this proposed AD follow FAA's aging commuter-class aircraft policy? The actions proposed in this NPRM are consistent with FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on our determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, we consider (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to modifying the elevator structure on the affected airplanes would be to require you to repetitively inspect this area for the life of the airplane.

Cost Impact

How many airplanes does this proposed AD impact? We estimate that 2,344 airplanes in the U.S. registry would be affected by the proposed AD.

What is the cost impact of the proposed modification for affected airplanes on the U.S. Register? We estimate that it would take approximately 20 workhours per airplane to accomplish the proposed modification, at an average labor rate of $60 an hour. Parts to accomplish the proposed modification cost approximately $600 per airplane.

Based on these figures, FAA estimates the cost to accomplish the proposed modification at $4,219,200, or $1,800 per airplane.

What is the cost impact of the proposed inspections for affected airplanes on the U.S. Register? We estimate that it would take approximately 8 workhours per airplane to accomplish each proposed inspection, at an average labor rate of $60 an hour. Based on these figures, FAA estimates the cost to accomplish each proposed inspection at $480 per airplane. Accomplishment of the proposed modification would eliminate the need for the proposed inspections.

Regulatory Impact

How does this AD impact relations between Federal and State governments? The proposed regulations would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

How does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 70–26–06, Amendment 39–1132; AD 76–03–01, Amendment 39–2505; and AD 80–02–15, Amendment 39–3676, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 99–CE–29–AD; Supersedes AD 70–26–06, Amendment 39–1132; AD 76–03–01, Amendment 39–2505; and AD 80–02–15, Amendment 39–3676.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes, certificated in any category:

(1) Part I of this AD: Inspection, replacement, and installation as specified in Piper Service Bulletin No. 323, dated September 21, 1970:

Models: PA–31 and PA–31–300—Serial Numbers: 31–2 through 31–694.

(2) Part II of this AD: Modification as specified in Piper Service Bulletin No. 897B, Date: July 15, 1997:

Models: PA–31P—Serial Numbers 31P–1 through 31P–7730012.

PA–31T—31T–7400002 through 31T–8120104.

PA–31T1—31T–7804001 through 31T–8304003, and 31T–1104004 through 31T–1104017.

PA–31T2—31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008.

PA–31T3—31T–8275001 through 31T–8475001 and 31T–5575001.

(3) Part III of this AD: Modification as specified in Piper Service Bulletin No. 1008, Date: September 30, 1997:

Models: PA–31, PA–31–300, and PA–31–325—Serial Numbers: 31–2 through 31–8312019.

PA–31–350—31–5001 through 31–8452021.

PA–31–350—31–8253001 through 31–8553002.

PA–31P–350—31P–8414001 through 31P-8414050.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the elevator structure. A damaged elevator structure could lead to reduced or loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

(1) Part I of this AD: For the airplane models and serial numbers listed in paragraph (a)(1) of this AD, accomplish the actions in the following chart:

Action	Compliance time	Service information	Other information
(i) Initially inspect the rudder and elevator spars and elevator butt ribs for cracks.	(i) Within 100 hours time-in-service (TIS) after the last inspection required by AD 70–26–06, and thereafter at intervals not to exceed 100 hours TIS until Piper Elevator and Rudder Hinge Installation Kit No. 760 465 is incorporated.	Do this inspection in accordance in accordance with the instructions in Piper Service Bulletin No. 323, dated September 21, 1970.	This inspetion is retained from AD 70–26–06.
(ii) If cracks are found in the elevator structure during any inspection required by this portion of the AD, replace the cracked part, and either continue to reinspect or incorporate Kit No. 760 465.	Prior to further flight after the inspection where the cracks were found.	(A) Do the inspections in accordance with the instructions in Piper Service Bulletin No. 323, dated September 21, 1970; OR (B) Do the kit incorporation in accordance with the instructions to Piper Elevator and Rudder Hinge Installation Kit No. 760 465, Revised October 25, 1989..	
(iii) Incorporate Piper Elevator and Rudder Hinge Installation Kit No. 760 465.	Upon accumulating 2,000 hours TIS on the airplane or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Do this kit incorporation in accordance with the instructions to Piper Elevator and Rudder Hinge Installation Kit No. 760 465, Revised October 25, 1989.	

(2) Part II of this AD: For the airplane models and serial numbers listed in paragraph (a)(2) of this AD, accomplish the actions in the following chart:

Action	Compliance time	Service information	Other information
(i) Modify the elevator trim tab system and elevator control tube, through the incorporation of Piper Kit No. 760 989.	Upon accumulating 2,000 hours TIS or within 100 hours TIS after the effective date of this AD, whichever occurs later.	Do this modification in accordance with the instructions to Piper Kit No. 760 989, as referenced in Piper Service Bulletin No. 477A, dated November 3, 1975.	(A) This modification is retained from AD 76–03–01, and applies to Piper Model PA–31T airplanes, serial numbers 31T–400002 through 31T–7620012. (B) Unless already accomplished credit may be taken for this portion of the AD if the airplane is in compliance with the actions of AD 76–03–01.
(ii) Incorporate Elevator Butt Rib Reinforcement Kit, Piper Part Number 766–219.	Upon accumulating 2,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Do this kit incorporation in accordance with the instructions to Elevator Butt Rib Reinforcement Kit, Piper Part Number 766–219, as referenced in Piper Service Bulletin No. 897B, Date: July 15, 1997.	Reinforcement Kit, Piper Part Number 766–219, may have been incorporated as specified in Piper Service Bulletin 897A. If so, unless already accomplished credit may be taken for this portion of the AD.

(3) Part III of this AD: For the airplane models and serial numbers listed in paragraph (a)(3) of this AD, accomplish the actions in the following chart:

Action	Compliance time	Service information	Other information
(i) Incorporate Elevator Butt Rib Refinement Kit, Piper Part Number 766–642.	Upon accumulating 2,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Do this kit incorporation in accordance with the instructions to Elevator Butt Rib Refinement Kit, Piper Part Number 766–642, as specified in Piper Service Bulletin No. 1006, Date: September 30, 1997.	(A) If AD 99–12–05, Amendment 39–11189 (63 FR 31687, June 14, 1999), applies to one of the above-referenced airplanes, then the actions of AD 99–12–05 must be accomplished prior to incorporating Elevator Butt Rib Refinement Kit, Piper Part Number 766–642. (B) No credit toward this AD is given for accomplishing the actions of Piper SB 864.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(3) Alternative methods of compliance that were approved in accordance with any of the following airworthiness directives (all superseded by this action) are not considered approved for this AD:

(i) AD 70–26–06, Amendment 39–1132;

(ii) AD 76–03–01, Amendment 39–2505; and

(iii) AD 80–02–15, Amendment 39–3676.

Note: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097; e-mail: william.o.herderich@faa.gov.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You may examine this service information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes the following AD actions:

(1) AD 70–26–06, Amendment 39–1132;

(2) AD 76–03–01, Amendment 39–2505; and

(3) AD 80–02–15, Amendment 39–3676.

Issued in Kansas City, Missouri, on July 17, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18524 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–69–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to The New Piper Aircraft, Inc. (Piper) PA–31 series airplanes. The earlier NPRM would have superseded AD 80–26–05, which requires you to repetitively inspect the main landing gear (MLG) inboard door hinges and attachment angles for cracks on the affected airplanes, and requires you to replace any cracked MLG inboard door hinge or attachment angle. The earlier NPRM proposed to require you to inspect the original design MLG inboard door hinge assemblies for cracks; and replace the original design MLG inboard door hinge assemblies with parts of improved design either immediately (cracks) or at a certain time period (no cracks). This supplemental NPRM results from reports of cracks in the improved design MLG inboard door hinge assemblies on the affected airplanes. We are revising the NPRM to propose inspections on the improved design parts as well as the original design parts. The actions specified by the proposed AD are intended to detect and correct cracked MLG inboard door hinge assemblies. These cracked door hinge assemblies could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

DATES: The Federal Aviation Administration (FAA) must receive comments on or before September 8, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–69–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in the proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You may examine this information at FAA.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097; e-mail: william.o.herderich@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket

No. 96–CE–69–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action to this point? On December 1, 1995, FAA issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper PA–31 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 7, 1995 (60 FR 62774), and proposed to supersede AD 80–26–05, Amendment 39–3994. The NPRM proposed to:

—Retain the requirement of repetitively inspecting the MLG inboard door hinge assemblies for cracks, and replacing any cracked MLG inboard door hinge assembly; and

—Require incorporating a MLG inboard door hinge assembly of improved design (part number (P/N) 47529–32) or FAA-approved equivalent part number, as terminating action for the repetitive inspection requirement.

Accomplishment of the proposed inspections would have been required in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of this amendment. Due consideration was given to the one comment received.

What issue did this comment address? The comment received on the NPRM contained information that the improved design MLG inboard door hinge assemblies, P/N 47529–32, are also susceptible to fatigue cracking, and that installing this assembly should not eliminate the need for the repetitive inspections currently required by AD 80–26–05. The commenter stated that its airplane fleet has experienced three failures and three incidents related to fatigue cracking of the P/N 47529–32 hinge assemblies.

What action did FAA take? We conducted a review of the manufacturer's service history and service difficulty reports in FAA's database associated with the P/N 47529–32 MLG inboard door hinge assembly. Based on a review of this information, including the information received from the commenter, we determined that more information and analysis were needed before mandating MLG inboard door hinge assembly replacements through an AD.

We then issued an advance notice of proposed rulemaking (ANPRM) on February 11, 1997. The ANPRM was published in the **Federal Register** on February 19, 1997 (62 FR 7375). The purpose of the ANPRM was to encourage interested persons to provide information that describes what they consider the best action (if any) for FAA to take regarding the P/N 47529–32 MLG inboard door hinge assembly issue. The FAA also withdrew the NPRM. We received no information or comments regarding the ANPRM.

We then re-evaluated the information in our service difficulty database. The database, at that time, contained 10 reports of failure or cracks found in the MLG inboard door hinge assembly on the affected airplanes. The commenter to the original NPRM had submitted six of these reports. Three of these six incident reports were specifically attributed to the original MLG inboard door hinge assemblies and three to the improved design MLG inboard door hinge assemblies. The four reports that others submitted do not specifically identify whether the original MLG inboard door hinge assemblies were installed or the improved design assemblies were installed. Since the incidents occurred on high service time airplanes and since there is no AD action mandating the installation of the improved-design MLG inboard door hinge assemblies, we presumed that the original hinge assemblies were installed.

The FAA then reviewed the three incident reports on the improved design MLG inboard door hinge assemblies and, along with the National Transportation Safety Board (NTSB), performed extensive testing and analysis of the improved design MLG inboard door hinge assemblies. Based on this review, testing, and analysis, we determined that:

—The incidents were isolated and that mandating repetitive inspections was not needed when the P/N 47529–32 MLG inboard door hinge assemblies are installed; and

—AD action should be taken to eliminate the repetitive short-interval inspections that AD 80–26–05 requires and to prevent separation of a MLG door from the airplane caused by a cracked inboard door hinge assembly.

On October 14, 1997, FAA issued an NPRM to address these issues. The NPRM was published in the **Federal Register** on October 21, 1997 (62 FR 54595).

What has happened to justify this AD action? Since issuance of the NPRM, we have received additional reports of cracks in the MLG inboard door hinge assemblies. The reports reference incidents on both the original design assemblies and the improved design hinges. As of the issue date of this document, we have reports of the following:

—27 reports of cracked improved design MLG inboard door hinge assemblies; and

—41 reports of cracked original design MLG inboard door hinge assemblies.

The FAA's Determination

What has FAA decided? After careful review of all available information related to the subject presented above, we have determined that:

—Both the improved design and original design MLG inboard door hinge assemblies on the PA–31 series airplanes are susceptible to cracking; and

—AD action should be taken to detect and correct cracked MLG inboard door hinge assemblies.

The Supplemental NPRM

How will the changes to the NPRM impact the public? Proposing inspections on airplanes with the improved design MLG inboard door hinge assemblies as well as the original design assemblies presents actions that go beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

What are the provisions of the supplemental NPRM? The supplemental NPRM would apply to all PA–31 series airplanes and would require you to accomplish the following:

—Repetitively inspect the MLG inboard door hinge assemblies (regardless of part number); and

—Immediately replace any cracked MLG inboard door hinge assembly with a new MLG inboard door hinge assembly, Piper part number (P/N) 47529–32 (or FAA-approved equivalent part number).

What document should I use to accomplish these actions? Piper Service Bulletin No. 682, dated July 24, 1980, includes all the procedures necessary to accomplish the actions proposed in this supplemental NPRM.

Cost Impact

How many airplanes does the proposed AD impact? The FAA estimates that 2,344 airplanes in the U.S. registry would be affected by the proposed AD.

What would it cost me to accomplish each proposed inspection? We estimate that it would take approximately 2 workhours per airplane to accomplish each proposed inspection, at an average

labor rate of $60 an hour. Based on these figures, FAA estimates the total cost impact of each proposed inspection on U.S. operators at $281,280, or $120 per airplane.

What would it cost me to replace a cracked assembly? We estimate 2 workhours to replace a cracked MLG inboard door hinge assembly. A replacement assembly costs approximately $270. We estimate a total cost of $390 to replace a cracked MLG inboard door hinge assembly.

Regulatory Impact

How does this AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

How does this AD involve a significant rule or regulatory action? The FAA has determined that the proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if adopted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it at the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 80–26–05, Amendment 39–3994, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 96–CE–69–AD, Supersedes AD 80–26–05, Amendment 39–3994.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers, certificated in any category:

Models	Serial numbers
PA–31	31–2 through 31–900 and 31–7300901 through 31–8312019.
PA–31–300 ..	31–2 through 31–900 and 31–7300901 through 31–8312019.
PA–31–350 ..	31–5001 through 31–5004 and 31–7305005 through 31–8553002.
PA–31–325 ..	31–7400990, 31–7512001 through 31–8312019.
PA–31P	31P–1 through 31P–109 and 31P–7300110 through 31P–7730012.
PA–31T	31T–7400002 through 31T–8120104.
PA–31T1	31T–7804001 through 31T–8104073; 31T–8104101; 31T–8304001 through 31T–8304003; and 31T–1104004 through 31T–1104017.
PA–31T2	31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008.
PA–31T3	31T–8275001 through 31T–8475001, and 31T–5575001.
PA–31P–350	31P–8414001 through 31P–8414050.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked main landing gear (MLG) inboard door hinge assemblies. This could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Inspect all hinges and hinge attachment angles in the MLG inboard door hinge assembly.	(i) For airplanes with any MLG inboard door hinge assembly that is not made of steel: At the next inspection required by AD 80–26–05 or within the next 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS. (ii) For airplanes with any MLG inboard door hinge assembly that is made of steel (*i.e.*, Piper part number 47529–32): Upon accumulating 2,000 hours TIS on the MLG inboard door hinge assembly, and thereafter at intervals not to exceed 2,000 hours TIS.	Accomplish in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980.
(2) Replace any cracked MLG inboard door hinge assembly with a Piper part number 47529–32 assembly (or FAA-approved part number).	Prior to further flight after the inspection required by this AD. The repetitive inspection requirement of this AD is still required for airplanes incorporating these replacement assemblies. Inspect upon accumulating 2,000 hours TIS on the new assembly, and thereafter at 2,000-hour TIS intervals.	Accomplish in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO, One Crown Center,

1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

(2) Alternative methods of compliance approved in accordance with AD 80–26–05 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097; e-mail: william.o.herderich@faa.gov.

(g) *What if I need to fly the airplane to another location to comply with this AD?* FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 80–26–05, Amendment 39–3994.

Issued in Kansas City, Missouri, on July 17, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18525 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–031]

RIN 2115–AE46

Special Local Regulations for Marine Events; Sharptown Outboard Regatta, Nanticoke River, Sharptown, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the Sharptown Outboard Regatta, to be held on the waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Nanticoke River during the event.

DATES: Comments and related material must reach the Coast Guard on or before August 21, 2000.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of this docket and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–031), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this regulation is 30 (thirty) days. This time period is adequate since the event is well publicized in the local maritime community. If you would like to know that your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The North-South Racing Association will sponsor the Sharptown Outboard Regatta on September 23 and September 24, 2000. The event will consist of 60 hydroplanes and runabouts conducting a high speed competitive race on the waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). A fleet of spectator vessels is anticipated for the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard will establish temporary special local regulations on specified waters of the Nanticoke River. The regulated area will include waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). The temporary special local regulations will be effective from 10 a. m. to 7 p.m. on September 23 and September 24, 2000, and will restrict general navigation in the regulated area during the event. Except for participants in the Sharptown Outboard Regatta and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under

section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Although this proposed regulation will prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule will not impose an unfunded mandate.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under ADDRESSES.

List of Subjects

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. Add temporary § 100.35–T05–031 to read as follows:

§ 100.35–T05–031 Special Local Regulations for Marine Events; Sharptown Outboard Regatta, Nanticoke River, Sharptown, Maryland

(a) *Definitions*—(1) *Regulated Area.* All waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′47″ N, longitude 075°43′15″ W, to latitude 38°32′42″ N, longitude 75°43′09″ W, thence northeasterly to latitude 38°33′07″ N, longitude 075°42′27″ W, thence northwesterly to latitude 38°33′10″ N, longitude 75°42′46″ W, thence southwesterly to latitude 38°32′47″ N, longitude 75°43′15″ W. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participating Vessels.* Participating vessels include all vessels participating in the Sharptown Outboard Regatta under the auspices of the Maine Event

Application submitted by the North-South Racing Association Inc., and approved by the Commander, Fifth Coast Guard District.

(b) *Special Local Regulations*—(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates.* The regulated area is effective from 10 a.m. on September 23, 2000, until 7 p.m. September 24, 2000.

Dated: July 14, 2000.

T. C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–18559 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11–00–007]

RIN 2115–AE84

Regulated Navigation Area; San Pedro Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the regulated navigation area for San Pedro Bay, California. Due to the port expansion projects underway in the Ports of Los Angeles and Long Beach, the Coast Guard conducted a Port Access Route Study (PARS). The PARS notice of study results, published in the **Federal Register** on May 19, 2000, recommended, among other things, changes to the San Pedro Bay regulated navigation area (RNA). In general, the Coast Guard is proposing to expand the RNA to the south approximately 2.2 nm. The proposed changes to the RNA boundaries would coincide with the boundaries of the Precautionary Area, essentially making the two boundaries the same. The Coast Guard is also proposing minor changes to some vessel operational procedures and requirements to reflect the necessary modifications with respect to traffic management due to the port construction and expansion projects.

DATES: Comments must be received on or before September 5, 2000.

ADDRESSES: Comments should be mailed to Commander (Pmc-3), USCG PACAREA/D11, Bldg 50–6, Coast Guard Island, Alameda, CA 94501–5100. The comments and other materials referenced in this proposed rule will be available for inspection and copying at the Marine Safety Office. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Patricia Springer, Chief Vessel Traffic Management Section, 11th Coast Guard District, telephone (510) 437–2951.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or concerns to the office listed under **ADDRESSES** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for the regulations (CGD11–00–007), the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, however, one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rule making process.

Definitions

The following definitions should help you review this document:

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Traffic lane means an area within defined limits in which one-way traffic is established.

Traffic Separation Scheme or TSS means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

In 1999, the Coast Guard conducted a Port Access Route Study (PARS), which we announced in a document published in the **Federal Register** on March 11, 1999 (63 FR 12140). A PARS was needed to evaluate the effects of port improvement projects for the ports of Los Angeles and Long Beach on navigational safety and vessel traffic management efficiency, and to recommend any necessary changes to existing routing measures. The Coast Guard completed the study in July 1999 and announced the results of this study in a Notice published in the **Federal Register** on May 19, 2000 (65 FR 31856). Among other things, this study recommended modifications to the precautionary areas, existing TSS's, and aids to navigation.

Major port improvement projects for the Ports of Los Angeles and Long Beach have taken place. These projects include the following:

Lengthening of the Los Angeles Approach Channel to extend approximately 3.5 nautical miles beyond the Los Angeles breakwater;

Deepening of the Los Angeles Approach Channel to a project depth of 81 feet;

Shift of the Long Beach Approach to a 355 degrees True inbound course; and

Deepening of the Long Beach Approach Channel to a project depth of 69 feet.

Fill and construction activities within the Los Angeles/Long Beach Harbors and development of a shallow water habitat have constricted the amount of room available for small commercial and recreational traffic to maneuver within the Outer Harbor, Middle, and Long Beach breakwaters. This has the effect of concentrating traffic flows and placing small marine traffic more directly in competition with deep draft traffic for use of the Precautionary Area.

During the PARS, the Coast Guard consulted with Federal and State agencies and solicited the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups and other interested parties. The Coast Guard also considered previous studies and experience in the areas of vessel traffic management, navigation, ship handling, and the effects of weather, and review prior analyses of the traffic density. In particular, the Coast Guard reviewed the results of a 1982 LA/LB Port Access Route Study (47 FR 27430, June 24, 1982) and a 1995 Port Access

Route Study (61 FR 55248, October 25, 1996) which focused on vessel traffic management measures along the California coast from San Francisco to Los Angeles.

Three comment letters were received and indicated strong overall support for the PARS recommendations. To enhance navigational safety and vessel traffic management efficiency, the study recommended three changes to the existing vessel routing and traffic management measures.

1. Expand the Existing LA/LB Precautionary Area

The study found that the existing Precautionary Area should be expanded to provide enhanced navigational safety in light of the pending and planned improvements to the port facilities and navigational channels previously discussed. The port improvements discussed above will allow even larger vessels to call on Los Angeles and Long Beach. These larger, less maneuverable ships will be constrained to the channels. The study also noted that the current practice of freighters, tankers, tugs and barges, fishing boats and pleasure craft converging in the Precautionary Area would continue to present hazards for all mariners.

Expansion of the existing Precautionary Area should result in several positive impacts for safe navigation. First, the expanded Precautionary Area should give vessels of all types, sizes, and drafts more time and room to maneuver in their approach to or departure from the ports. Second, by this rulemaking, the Commander, Eleventh Coast District, is proposing modifications to the San Pedro Bay RNA, promulgated at 33 CFR 165.1109, to geographically match the expanded Precautionary Area. When specified categories of vessels enter the RNA, they are required to slow. This allows more time for vessel traffic management, e.g. queuing of vessels arriving and departing during peak periods and coordinating passing arrangements. Finally, the expanded Precautionary Area should be well adapted to the lengthened Los Angeles entrance channel.

2. Relocate the Western and Southern TSSs

The study found that the existing western and southern TSSs do not yield safe or practical approaches to the improved Long Beach and Los Angeles entrance channels. The study recommended a shift of the western TSS to the south and a shift of the southern TSS to the west. The Eleventh Coast Guard District's Aids to Navigation Division (oan) is developing a separate rulemaking to address changes to the TSSs.

3. Modifications to Aids to Navigation

The PARS solicited specific recommendations regarding the aids to navigation design for the lengthened approach channels to Los Angeles and Long Beach, CA. Specific recommendations included adding, deleting, relocating and upgrading the existing buoys in these channels. The Commander, Eleventh Coast Guard District will review these recommendations and make final decisions concerning Los Angeles-Long Beach aids to navigation in light of the Coast Guard's waterways analysis management system (WAMS). Specific questions on WAMS should be directed to the Eleventh Coast Guard District's points of contact listed in **FOR FURTHER INFORMATION CONTACT.**

Discussion of Regulation

Modifications to the RNA. The Commander, Eleventh Coast Guard District is proposing modifications to the San Pedro Bay RNA. As previously discussed, one proposed change will make the RNA geographically the same as the precautionary area.

A Precautionary Area is an internationally recognized routing measure comprising an area within defined limits where ships must navigate with particular caution. By itself, a precautionary area does not impose specific maneuvering requirements on vessels.

A Regulated Navigation Area (RNA) is a regulatory measure that defines an area, in which the Coast Guard has imposed specific vessel operating requirements because of the existence of hazardous conditions. Due to the quantity of vessel traffic and diversity of types of vessels transiting the approach to Los Angeles and Long Beach harbors, the Coast Guard thinks that the general guidance of a Precautionary Area is insufficient to ensure safe transit of the area. Therefore, in addition to establishing the Precautionary Area, the Coast Guard is also establishing an RNA, which covers the same area of waters and includes specific vessel operating procedures.

This proposed rulemaking will also address vessel operating requirements; vessel size, speeds, draft limitations; operating conditions; and pilot boarding areas.

Below is a summary of the specific changes to the RNA:

- The southern boundary of the RNA will be moved to the south approximately 2.2 nautical miles (nm) to align with the new western traffic separation scheme. The southeastern corner of the RNA will be shifted to the west approximately 1.8 nm on a bearing on 220 degrees T from the easterly most point of the existing Precautionary Area, to align with the new southern traffic separation scheme (The changes to the traffic separation schemes are the subject of a separate rulemaking to be published in the future).
- The Los Angeles Pilot Area will be expanded approximately 0.4 nm to the south-southeast.
- The Long Beach Pilot Area will be expanded approximately 1.7 nm to the south.
- A Deep Water Traffic lane approximately 3.27 nm long will be established in the Los Angeles approach channel.
- A Deep Water Traffic Lane approximately 1.9. nm long will be established in the Long Beach approach channel.
- A Deep Water Pilot Area will be established just south of the Los Angeles Deep Water Traffic Lane. It will be centered on position 33°39′00″ N, 118°13′11.6″W, approximately 0.5 nm south of the southern terminus of the Los Angeles Channel and will be 1.0 nm in diameter.

The proposed amendment to the RNA would expand the size of the RNA and change certain operating procedures for vessels transiting the RNA. The Ports of Los Angeles and Long Beach are conducting significant alterations to their port complex and waterway layout. These changes include lengthening and deepening of both approach channels to the Federal Breakwater. The lengthened approach channels will extend beyond the western traffic lane that joins the existing Precautionary Area. Without changes to the traffic lanes, the precautionary area and the RNA, these lengthened channels would create vessel traffic management problems and increase the risk of collision to vessels operating in the area. The Los Angeles-Long Beach Harbor Safety Committee provided a detailed recommendation to the PARS recommending expansion of the size of the Precautionary Area and concurrently expanding the RNA to cover the entire Precautionary Area.

The existing RNA only extends out to approximately 3 (nm) offshore and covers roughly half of the existing Precautionary Area. Navigable waters, for the purposes of the Ports and Waterways Safety Act (33 U.S.C. 1222), were extended from 3nm to 12nm by section 301 of the Coast Guard Authorization Act of 1998 and Presidential Proclamation 5928,

allowing the Coast Guard to establish RNAs in areas outside of 3nm.

The location, size and shape of the Pilot Areas for the harbors are also being changed due to the lengthening and deepening of the harbor entrance channels. Pilot Areas are designated waters where ships maneuver to embark or disembark a pilot. Pilot Area regulations are in place to allow this transfer to occur safely and without interference from other vessel traffic. The Long Beach Pilot Area will be expanded to the south approximately 1.6 nm to encompass the entire length of the newly deepened channel. Enlarging this pilot area will allow the pilots to board inbound vessels further offshore in order to guide the ships through the channel. The Los Angeles Pilot Area will also be extended to the south-southeast by approximately 0.4nm. The expanded Los Angeles Pilot Area will not cover the entire length of the newly deepened channel as it is expected that only those vessels with a draft greater than 50 feet will need to use the entire length of the channel. Lesser draft vessels may enter and depart the channel closer to the Los Angeles Harbor entrance and will embark and disembark their pilot there.

The newly lengthened and deepened Los Angeles and Long Beach approach channels will be designated Deep Water Traffic Lanes. When a vessel drawing more than 50 feet is using the Deep Water Traffic Lane, other vessels will not be allowed to enter the traffic lane. A Deep Water Pilot Area will be established at the southern end of the Los Angeles Deep Water Traffic Lane to afford pilots an area to board vessels with drafts greater than 50 feet. A deep water pilot area is not considered necessary for the Long Beach entrance.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rule making process. If your small business or organization is affected by this proposed rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Patricia Springer at the address indicated under **ADDRESSES**.

Collection of Information

This proposed regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed regulation under the principles and criteria contained in Executive Order 13132 and has determined that this proposed regulation does not have federalism implications under that Order.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposed regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Coast Guard must consider whether this proposed rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this proposed rule, so this proposed rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under this Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Vessels, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Revise § 165.1109 to read as follows:

§ 165.1109 San Pedro Bay, California—Regulated navigation area.

(a) *Applicability.* This section applies to all vessels unless otherwise specified.

(b) *Deviations.* The Captain of the Port of Los Angeles-Long Beach or his or her

designated representative may authorize a deviation from the requirements of this regulation when it is deemed necessary in the interests of safety.

(c) *Location.* (1) The following is a regulated navigation area: The waters of San Pedro Bay encompassed by the following geographic coordinates:

From Point Fermin Light (33°42′18″ N, 118°17′36″ W) thence allow the shoreline to the San Pedro Breakwater, thence along the San Pedro Breakwater and the Middle Breakwater (following the COLREGS Demarcation Lines) to the Long Beach Channel Entrance Light 2 (33°43′24″ N, 118°10′48″ W), thence southeast to (33°37′42″ N, 118°06′36″ W), thence southwesterly to (33°35′30″ N, 118°08′48″ W), thence west to (33°35′30″ N, 118°17′36″ W), thence north to the point of origin. [All datum: NAD 1983]

(2) The San Pedro Bay RNA consists of the following defined sub-areas:

(i) *The Los Angeles Pilot Area.* This area is enclosed by a line beginning at the Los Angeles Light (33°42′30″ N, 118°15′06″ W), thence east to Los Angeles Main Light Channel Entrance Light 2 (33°42′42″ N, 118°14′12″ W), thence southeasterly to (33°41′17″ N, 118°13′30″ W), thence southwesterly to (33°40′51″ N, 118°14′53″ W), thence north to the point of origin.

(ii) *The Long Beach Pilot Area.* This area is enclosed by a line beginning at Long Beach Light (33°43′24″ N, 118°11′12″ W), thence east to Long Beach Channel Entrance Light 2 (33°43′24″ N, 118°10′48″ W), thence south-southeasterly to (33°41′30″ N, 118°10′13″ W), thence south to (33°40′31″ N, 118°10′13″ W), thence west to (33°40′31″ N, 118°11′49″ W), thence north to (33°41′30″ N, 118°11′49″ W), thence north-northeasterly to the point of origin.

(iii) *The Los Angeles Deep Water Traffic Lane.* This area is bounded by a line beginning at (33°42′28″ N, 118°14′56.9″ W) thence easterly to (33°42′33.4″ N, 118°14′45″ W), thence southeasterly to (33°39′29″ N, 118°13′19.4″ W), thence westerly to (33°39′25.1″ N, 118°13′33″ W), thence northerly to the point of origin.

(iv) *The Long Beach Deep Water Traffic Lane.* This area is bounded by a line beginning at (33°43′25.5″ N, 118°11′09″ W) thence east to (33°43′23.3″ N, 118°10′54.1″ W), thence south to (33°41′30.8″ N, 118°10′42.6″ W), thence west to (33°41′30″ N, 118°10′57″ W), thence north to the point of origin.

(v) *The Los Angeles Deep Water Pilot Area.* A circular area of 1.0 nm diameter centered on (33°39′00″ N, 118(13′11.6″ W).

(d) *General regulations.* The following regulations contained in paragraphs (d)(1) through (d)(3) of this section apply to power driven vessels of 1600 or more gross tons, a towing vessel of 8 meters (approximately 26 feet) or over in length engaged in towing, or vessels of 100 gross tons and upward carrying one or more passengers for hire:

(1) A vessel shall not exceed a speed of 12 knots through the water within the RNA.

(2) A vessel navigating within the RNA, shall have its engine(s) ready for immediate maneuver and shall operate its engine(s) in a control mode and on fuel that will allow for an immediate response to any engine order, ahead or astern, including stopping its engine(s) for an extended period of time.

(3) A vessel navigating within the RNA shall maintain a minimum separation from other vessels of at least 0.25 nm.

(e) *Specific regulations.* [All Datum: NAD 1983]

(1) *Los Angeles Pilot Area.* (i) No vessel may enter the Los Angeles Pilot Area unless it is entering or departing Los Angeles Harbor entrance (Angels Gate).

(ii) Vessels entering the Los Angeles Pilot Area shall pass directly through without stopping or loitering except as necessary to embark or disembark a pilot.

(2) *Long Beach Pilot Area.* (i) No vessel may enter the Long Beach Pilot Area unless it is entering or departing Long Beach Harbor entrance (Queens Gate).

(ii) Vessels entering the Long Beach Pilot Area shall pass directly through without stopping or loitering except as necessary to embark or disembark a pilot.

(iii) Every vessel shall leave Long Beach Approach Lighted Whistle Buoy "LB" to port when entering and departing Long Beach Channel and departing vessels shall pass across the southern boundary of the Long Beach Pilot Area.

(3) *Los Angeles and Long Beach Deep Water Traffic Lanes.* When a vessel of 50 foot draft or greater is using the Los Angeles or Long Beach Deep Water Traffic Lane no other vessel shall enter the deep water traffic lane if it will result in a meeting, crossing or overtaking situation.

(4) *Los Angeles Deep Water Pilot Area.* When a vessel of 50 foot draft or greater is embarking or disembarking a pilot in the Los Angeles Deep Water Pilot Area no other vessel shall enter the Deep Water Pilot Area.

(5) *Commercial Anchorage G Area.* No vessel may enter the waters between Commercial Anchorage G and the Middle Breakwater as defined by an area enclosed by the by a line beginning at Los Angeles Main Channel Entrance Light 2 (33°42′42″ N, 118°14′42″ W), thence east along the Middle Breakwater to Long Beach Light (33°43′24″ N, 118°11′12″ W), thence south to (33° 43′05.3″ N, 118°11′15.3″ W), thence westerly to (33°43′05.3″ N, 118°12′15.7″ W), thence southwesterly parallel to the breakwater to (33°42′25.9″ N, 118°14′18.0″ W, thence to the point or origin, unless such vessel is:

(i) In an emergency;

(ii) Proceeding to anchor in or departing Commercial Anchorage G;

(iii) Standing by with confirmed pilot boarding arrangements; or,

(iv) Engaged in towing vessels to or from Commercial Anchorage G, or to or from the waters between Commercial Anchorage G and the Middle Breakwater.

Dated: July 6, 2000.

C.D. Wurster,

Acting Captain, U.S. Coast Guard, Commander, Coast Guard Pacific Area, Acting.

[FR Doc. 00–18313 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–15–U

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 98–5]

RIN 3014–AA16

Americans With Disabilities Act Accessibility Guidelines; Recreation Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Availability of draft final guidelines summary and informational meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed in the docket for public review and comment a summary of recommendations made by an ad hoc committee of the Access Board for final accessibility guidelines on recreation facilities. The summary placed in the docket reflects the ad hoc committee's consideration of comments on a proposed rule and information gathered at meetings sponsored by the committee. Comments will be accepted on the summary and the Access Board will consider those comments before it votes on a final rule. The Access Board will hold informational meetings to

discuss the summary on the dates and at the locations noted below.

DATES: Comments on the summary must be received by September 19, 2000. The Access Board will hold informational meetings on the summary on August 21–22, 2000 from 8:30 a.m. to 5:30 p.m. and on September 6–7, 2000 from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Please identify comments as pertaining to this notice of availability. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days. The informational meeting on August 21–22, 2000 will be held at the Hilton Garden Inn, 815 14th Street, NW in Washington, DC. The informational meeting on September 6–7, 2000 will be held at the Holiday Inn Golden Gateway, 1500 Van Ness Avenue in San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Bill Botten, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 136 (Voice); (202) 272–5449 (TTY). These are not toll-free numbers. Electronic mail address: botten@access-board.gov.

SUPPLEMENTARY INFORMATION: In 1993, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee of 27 members to make recommendations on guidelines for recreation facilities. The Recreation Access Advisory Committee met from July 1993 to May 1994 and submitted a report to the Board, "Recommendations for Accessibility Guidelines: Recreational Facilities and Outdoor Developed Areas". The Board has made this report widely available as a source of guidance until final guidelines are developed. After receiving the committee's report, the Board published it as an advance notice of proposed rulemaking (59 FR 48542, September 21, 1994). Over 600 comments were received on the report and questions asked in the advance notice. The Board also sponsored research on access to swimming pools in 1995; and held informational meetings and site visits on access to miniature golf facilities in September 1996, and amusement rides in December 1999 and March and April 2000 to obtain additional information for this rulemaking.

A notice of proposed rulemaking on accessibility guidelines for recreation facilities was published in the Federal Register on July 9, 1999. 64 FR 37326 (July 9, 1999). The comment period was originally scheduled to close on November 8, 1999, but was extended until December 8, 1999 to allow more time for public comments to be submitted. Comments were submitted electronically, written, or as oral testimony received during two public hearings. Public hearings were held in Dallas, TX (August 26, 1999) and Boston, MA (November 17, 1999). Over 200 people attended the hearings and approximately 54 people provided testimony. Approximately 300 comments were received during the public comment period.

The proposed rule covered various recreation facilities, including amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf, sports facilities, and swimming pools and spas. The proposed rule provided scoping requirements, which specify what has to be accessible, and technical requirements, which spell out how access is to be achieved. When finalized, these guidelines will supplement the Americans with Disabilities Act Accessibility Guidelines (ADAAG), which address a wide range of facilities but does not currently cover these types of recreation facilities in any particular detail.

The Access Board has created an ad hoc committee of Board members to review the comments received on the proposed rule. The ad hoc committee has discussed significant issues associated with the comments and has made recommendations to the full Board for the final rule. The Board has placed a summary of the ad hoc committee's recommendations in the rulemaking docket (Docket No. 98–5) for public review. The summary is also available on the Access Board's Internet site (http://www.access-board.gov/recreation/summary.htm).

The summary is being made available for informational purposes and for purposes of receiving additional comments from interested parties prior to final action. Following a review of any additional comments on the summary, the Board will vote on the final rule. In addition to welcoming written comments, the Board will be conducting two informational meetings to provide the public with an additional opportunity to discuss the summary. The informational meetings will be informal and interested parties are encouraged to join in discussions with Board members and the public on the summary. Preliminary agendas for the meetings are as follows:

Washington, DC, Hilton Garden Inn, 815 14th Street, NW

August 21, 2000

8:30 a.m.–12 noon—amusement rides

1:30 p.m.–3 p.m.—amusement rides (continued)

3 p.m.–5:30 p.m.—golf, sports facilities, fishing piers and platforms

August 22, 2000

8:30 a.m.–12:00 noon—boating facilities

1:30 p.m.–5:30 p.m.—miniature golf, swimming pools and spas

San Francisco, CA, Holiday Inn Golden Gateway, 1500 Van Ness Avenue

September 6, 2000

8:30 a.m.–12 noon—boating facilities

1:30 p.m.–3 p.m.—boating facilities (continued)

3 p.m.–5:30 p.m.—golf, sports facilities, fishing piers and platforms

September 7, 2000

8:30 a.m.–12 noon—amusement rides

1:30 p.m.–5:30 p.m.—miniature golf, swimming pools and spas

Interested members of the public are encouraged to contact the Access Board at (202) 272–5434 extension 136 or (202) 272–5449 (TTY) to preregister to attend the informational meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–18515 Filed 7–20–00; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 39

RIN 2900–AJ77

Prohibition of Interment or Memorialization in National Cemeteries and Certain State Cemeteries Due to Commission of Capital Crimes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Department of Veterans Affairs (VA) regulations governing eligibility for interment or memorialization in national cemeteries and in State cemeteries receiving State cemetery grants from VA. The proposed rule concerns statutory provisions designed to ensure that the remains of certain persons who committed Federal or State capital crimes are not interred in such cemeteries and that the memory of such persons is not memorialized in such cemeteries. We propose to restate a portion of these statutory provisions and to establish interpretations, delegations

of authority, and procedures which we believe to be appropriate for us to carry out the statutory provisions.

DATES: Comments must be received on or before September 19, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900-AJ77." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Kenneth Greenberg, Staff Assistant, Office Deputy Under Secretary for Management (402) or Deanna Wilson, Program Analyst, Communications Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–5179 or (202) 273–5154 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 2408(d) and 2411 enacted on November 21, 1997, prohibit, under specified circumstances, interment or memorialization in VA national cemeteries of certain persons who are convicted of, or are found to have committed, Federal or State capital crimes and condition VA State cemetery grants on the prohibition of interment or memorialization of such persons in State cemeteries receiving such grants. This document proposes to establish regulations relating to these statutory provisions.

Proposed 38 CFR 1.600 contains definitions for proposed §§ 1.617 and 1.618.

Proposed 38 CFR 1.617 restates statutory prohibitions against interment or memorialization in a VA national cemetery of persons who have been convicted of Federal capital crimes for which they have been sentenced to death or life imprisonment or State capital crimes for which they have been sentenced to death or life imprisonment without parole, as well as persons who have been found to have committed Federal or State capital crimes and not to have been convicted as a result of unavailability for trial due to death or flight to avoid prosecution. This section would also establish procedures for decisions on requests for interment of the remains of or memorialization of persons who may have been convicted of Federal or State capital crimes.

Proposed 38 CFR 1.618 sets forth procedures for handling eligibility determinations concerning interment or memorialization in a VA national cemetery when VA becomes aware of information suggesting that an individual has committed a capital crime for which the individual would have been convicted, in either a Federal or State court, but has not been convicted due to unavailability for trial due to death or flight to avoid prosecution. These procedures are intended to implement the provisions of 38 U.S.C. 2411. Under paragraphs (b), (c), and (d) of that statute, the prohibitions against interment and memorialization apply in these cases only if there is a finding by VA that the person committed a Federal capital crime or a State capital crime but has not been convicted of such crime because such person was not available for trial due to death or flight to avoid prosecution. However, paragraph (a)(2) of that statute states that the prohibitions in these cases apply only if written notice of this finding is provided to VA by the Attorney General or an appropriate State official. We believe that this notice provision reflects a legislative error, since there would be no need for the Attorney General or a State official to notify VA of a finding made by VA. Accordingly, we have included a provision in § 1.617 to clarify that if an appropriate finding is made by VA the prohibitions will apply without any notice from the Attorney General or a State official.

We propose to amend 38 CFR 39.2 and 39.3 to reflect provisions of 38 U.S.C. 2408(d) making future grants for the establishment, expansion, or improvement of State veterans cemeteries contingent on the prohibition of interment in such cemeteries of the remains of certain persons who have committed Federal or State capital crimes.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would not have more than a minuscule effect on any small entity. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for this proposed rule are 64.201, 64.202, and 64.203.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Crimes, Criminal offenses.

38 CFR Part 39

Cemeteries, Grant programs-veterans, Veterans.

Approved: July 5, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 1 and 39 are proposed to be amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.600 is added to read as follows:

§ 1.600 Definitions.

(a) [Reserved]

(b) *Definitions.* For purposes of §§ 1.617 and 1.618:

Appropriate State official means a State attorney general or other official with state-wide responsibility for law enforcement or penal functions.

Clear and convincing evidence means that degree of proof which produces in the mind of the fact-finder a firm belief regarding the question at issue.

Convicted means a finding of guilt by a judgment or verdict or based on a plea of guilty, by a Federal or State criminal court.

Federal capital crime means a crime under Federal law for which the death penalty or life imprisonment may be imposed.

Interment means the burial of casketed remains or the placement or scattering of cremated remains.

Life imprisonment means a sentence of a Federal or State criminal court directing confinement in a penal institution for life.

Memorialization means the erection of a memorial or marker to honor the memory of a deceased individual.

Personal representative means a family member or other individual who has identified himself or herself to the National Cemetery Administration cemetery director as the person responsible for making decisions concerning the interment of the remains of or memorialization of a deceased individual.

State capital crime means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which the death penalty or life imprisonment without parole may be imposed.

(Authority: 38 U.S.C. 2408, 2411)

3. Section 1.617 is added to read as follows:

§ 1.617 Prohibition of interment or memorialization of persons who have committed Federal or State capital crimes.

(a) *Prohibition.* The interment in a national cemetery under the control of the National Cemetery Administration of the remains, or the memorialization in such a cemetery, of any of the following persons is prohibited:

(1) Any person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital crime and sentenced to death or life imprisonment as a result of such crime.

(2) Any person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime and sentenced to death or life imprisonment without parole as a result of such crime.

(3) Any person found under procedures specified in § 1.618 to have committed a Federal or State capital crime but to have avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(b) *Notice.* The prohibition referred to in paragraph (a)(3) of this section is not contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) *Receipt of notification.* The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification of conviction of capital crimes referred to in paragraphs (a)(1) and (2) of this section.

(d) *Decision where notification previously received.* Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) *Inquiry.* (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, but the cemetery director has reason to believe that the deceased may have been convicted of a Federal or State capital crime, the cemetery director will initiate an inquiry to either:

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of whether the deceased has been convicted of a Federal capital crime for which the deceased was sentenced to death or life imprisonment; or

(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime for which the deceased was sentenced to death or life imprisonment without parole.

(2) The cemetery director will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) *Decision after inquiry.* Where an inquiry has been initiated under paragraph (e) of this section, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested under that paragraph, unless the cemetery director initiates an inquiry pursuant to section 1.618(a).

(g) *Notice of decision.* Written notice of a decision under paragraph (d) or (f) of this section will be provided by the cemetery director to the personal representative of the deceased, along with written notice of appellate rights in accordance with § 19.25 of this title. This notice will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

Note to § 1.617: A decision under this section will not affect eligibility for any benefit under title 38, United States Code, other than interment or memorialization.

(Authority: 38 U.S.C. 512, 2411, 7105)

4. § Section 1.618 is added to read as follows:

§ 1.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Inquiry.* With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information. After completion of this inquiry and any further measures required under paragraphs (c), (d), (e), and (f) of this section, the cemetery director will make a decision on the request for interment or memorialization in accordance with paragraph (b), (e), or (g) of this section.

(b) *Decision approving request without a proceeding.* If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there is no clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving the interment or memorialization.

(c) *Initiation of a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there appears to be clear and convincing evidence that the deceased has committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director will provide the personal representative of the deceased with a written summary of the evidence of record and a written notice of procedural options.

(2) The notice of procedural options will inform the personal representative that the personal representative may, within the earlier of ten days of mailing of the notice or ten days of hand delivery of the notice:

(i) Request a hearing on the matter;

(ii) Submit a written statement, with or without supporting documentation, for inclusion in the record; or

(iii) Waive a hearing and submission of a written statement and have the matter forwarded immediately to the

Under Secretary for Memorial Affairs for a finding.

(3) The notice of procedural options will also inform the personal representative that, if the personal representative does not exercise one or more of the stated options within the prescribed period, the matter will be forwarded to the Under Secretary for Memorial Affairs for a finding based on the existing record.

(d) *Hearing.* If a hearing is requested, the hearing will be conducted by the cemetery director or his or her designee. The purpose of the hearing is to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime which would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing will be presented under oath, and the personal representative will have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing will have the authority to administer oaths. The hearing will be conducted in an informal manner and court rules of evidence will not apply. The hearing will be recorded on audiotape and, unless transcription is waived by the personal representative, a transcript of the hearing will be produced and included in the record.

(e) *Decision of approval or referral for a finding after a proceeding.* Following a hearing or the timely submission of a written statement, or in the event a hearing is waived or no hearing is requested and no written statement is submitted within the time specified:

(1) If the cemetery director determines that it has not been established by clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving interment or memorialization, or

(2) If the cemetery director believes that there is clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, the cemetery director will forward a request for a finding on that issue, together with the cemetery director's recommendation and a copy of the record, to the Under Secretary for Memorial Affairs.

(f) *Finding by the Under Secretary for Memorial Affairs.* Upon receipt of a request from the cemetery director under paragraph (e) of this section, the Under Secretary for Memorial Affairs will make a finding concerning whether the deceased committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution. The finding will be based on consideration of the cemetery director's recommendation and the record supplied by the cemetery director.

(1) A finding that the deceased committed a crime referred to in paragraph (f) of this section must be based on clear and convincing evidence.

(2) The cemetery director and the personal representative of the deceased will be provided with written notification of the finding of the Under Secretary for Memorial Affairs.

(g) *Decision after finding.* Upon receipt of notification of the finding of the Under Secretary for Memorial Affairs, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411. In making that decision, the cemetery director will be bound by the finding of the Under Secretary for Memorial Affairs.

(h) *Notice of decision.* The cemetery director will provide written notice of a decision under paragraph (b), (e)(1), or (g) of this section and notice of appellate rights to the personal representative of the deceased, in accordance with § 19.25 of this title. This notice will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director and the finding of the Under Secretary for Memorial Affairs. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411)

PART 39—STATE CEMETERY GRANTS

5. The authority citation for part 39 continues to read as follows:

Authority: 38 U.S.C. 2408.

6. In § 39.2, a new paragraph (d) is added to read as follows:

§ 39.2 Scope of the State cemetery grants program.

* * * * *

(d) Any grant under this part made on or after November 21, 1997, is made on the condition that after the date of receipt of the grant the State receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is furnished the interment of the remains of or the memorialization of any person:

(1) Who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment;

(2) Who has been convicted of a State capital crime for which the person was sentenced to death or life without parole; or

(3) Who has been found by an appropriate State official, under procedures to be established by the State, to have committed a Federal or State capital crime but to have not been convicted of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(Authority: 38 U.S.C. 2408, 2411)

7. In § 39.3, paragraph (b)(1) is revised and an authority citation is added at the end of paragraph (b) to read as follows:

§ 39.3. Applications with respect to projects.

* * * * *

(b) * * *

(1) Any cemetery established, expanded, or improved through assistance of this program shall be used exclusively for the interment or memorialization of eligible persons, as set forth in §§ 39.1(h) and 39.2(a), whose interment or memorialization is not contrary to the conditions of the grant (see § 39.2(d) and 38 U.S.C. 2408 and 2411).

* * * * *

(Authority: 38 U.S.C. 2408, 2411)

* * * * *

[FR Doc. 00–18325 Filed 7–20–00; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0245b; FRL–6734–6]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District's (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from degreasers. We are proposing to approve local rules to regulate these emission

sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments must arrive by August 21, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: VCAPCD Rules 74.6.1, 74.6.2, and 74.6.3. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 28, 2000.

Nora L. McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–18432 Filed 7–20–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG29

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplementary information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose the designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Mexican spotted owl (*Strix occidentalis lucida*) (owl). The owl inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. We propose to designate approximately 5.5 million hectares (ha) (13.5 million acres (ac)) of critical habitat in Arizona, Colorado, New Mexico, and Utah, mostly on federal lands.

If this proposed rule is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the "destruction or adverse modification" of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We request data and comments from the public and all interested parties on all aspects of this proposal, including data on economic and other impacts of the designation. A draft analysis of the economic and other relevant impacts of this proposal that will be available for review and comments on during the public comment period for this proposal. We will announce the availability of this analysis in a future **Federal Register** notice and local newspapers. We also have prepared a draft environmental assessment for this proposal and are accepting public comments on the draft document.

DATES: We will consider all comments on the proposed rule, the draft economic analysis, and draft Environmental Assessment received from interested parties by September 19, 2000. We will hold six public hearings (see Public Hearings in the **SUPPLEMENTARY INFORMATION** section of this rule for dates).

ADDRESSES: 1. Send your comments on this proposed rule, draft economic analysis, and draft environmental assessment to the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

2. The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. The draft environmental assessment is available by writing to the above address. We will specify the availability of the draft economic analysis in local newspapers and through a notice in the **Federal Register** once it has been completed.

3. For locations of the public hearings, see Public Hearings in the **SUPPLEMENTARY INFORMATION** section of this rule.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office, at the above address; telephone 505/346–2525, facsimile 505/346–2542.

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl (*Strix occidentalis lucida*) is one of three subspecies of spotted owl occurring in the United States; the other two are the northern spotted owl (*S. o. caurina*) and the California spotted owl (*S. o. occidentalis*). The Mexican spotted owl is distinguished from the California and northern subspecies chiefly by geographic distribution and plumage. The Mexican spotted owl is mottled in appearance with irregular white and brown spots on its abdomen, back, and head. The spots of the Mexican spotted owl are larger and more numerous than in the other two subspecies, giving it a lighter appearance.

The Mexican spotted owl has the largest geographic range of the three subspecies. The range extends north from Aguascalientes, Mexico, through the mountains of Arizona, New Mexico, and western Texas, to the canyons of southern Utah and southwestern Colorado, and the Front Range of central Colorado. Much remains unknown about the species' distribution in Mexico, where much of the owl's range has not been surveyed. The owl occupies a fragmented distribution throughout its United States range, corresponding to the availability of forested mountains and canyons, and in some cases, rocky canyonlands. Although there are no estimates of the owl's historical population size, its

historical range and present distribution are thought to be similar.

According to the Recovery Plan for the Mexican Spotted Owl (USDI 1995) (Recovery Plan), 91 percent of owls known to exist in the United States between 1990 and 1993 occurred on land administered by the U.S. Forest Service (FS); therefore, the primary administrator of lands supporting owls in the United States is the FS. Most owls have been found within Region 3 of the FS, which includes 11 National Forests in New Mexico and Arizona. FS Regions 2 and 4, including two National Forests in Colorado and three in Utah, support fewer owls. The range of the owl is divided into 11 Recovery Units (RU), 5 in Mexico and 6 in the United States, as identified in the Recovery Plan. The Recovery Plan also identifies recovery criteria and provides distribution, abundance, and density estimates by RU. Of the RUs in the United States, the Upper Gila Mountain RU, located in the central portion of the species' U.S. range in central Arizona and west-central New Mexico, has the greatest known concentration of owl sites (55.9 percent of U.S. population). Owls here use a wide variety of habitat types, but are most commonly found inhabiting mature mixed-conifer and ponderosa pine-Gambel oak forests. The Basin and Range-East RU, with 16.0 percent of the U.S. population, encompassing central and southern New Mexico, and includes numerous parallel mountain ranges separated by alluvial valleys and broad, flat basins. Most breeding spotted owls occur in mature mixed-conifer forest. The Basin and Range-West RU contains mountain ranges separated by non-forested habitat. These "sky island" mountains of southern Arizona and far-western New Mexico contain mid-elevation mixed-conifer forest and lower elevation Madrean pine-oak woodlands that supports 13.6 percent of the spotted owls. Colorado Plateau RU contains 8.2 percent of the U.S. population of Mexican spotted owls. This large unit includes northern Arizona, southern Utah, southwestern Colorado, and northwestern New Mexico, with owls generally confined to deeply incised canyon systems and wooded areas of isolated mountain ranges. Southern Rocky Mountains-New Mexico RU, with 4.5 percent of the population, consists of the mountain ranges of northern New Mexico. Owls in this unit typically inhabit mature mixed-conifer forest in steep canyons. The smallest percentage of spotted owls (1.8 percent) occurs in the Southern Rocky Mountains-Colorado RU. This unit includes the southern Rocky Mountains in Colorado, where spotted owls are largely confined to steep canyons, generally with significant rock faces and various amounts of mature coniferous forest. The critical habitat units identified in this proposal are all within these RUs.

A reliable estimate of the numbers of owls throughout its entire range is not currently available. Using information gathered by Region 3 of the FS, Fletcher (1990) calculated that 2,074 owls existed in Arizona and New Mexico in 1990. Based on more up-to-date information, we subsequently modified Fletcher's calculations and estimated a total of 2,160 owls throughout the United States (USDI 1991). However, these numbers are not considered reliable estimates of current population size for a variety of statistical reasons. While the number of owls throughout the range is currently not available, the Recovery Plan reports an estimate of owl sites based on 1990–1993 data. Surveys from 1990 through 1993 indicate one or more owls have been observed at a minimum of 758 sites in the United States and 19 sites in Mexico. In addition, these surveys indicate that the species persists in most locations reported prior to 1989, with the exception of riparian habitats in the lowlands of Arizona and New Mexico, and all previously occupied areas in the southern States of Mexico. Owl surveys since 1993 have provided new location data, increasing the knowledge of owl distribution and abundance. However, information summarized within the Recovery Plan was the last comprehensive effort to estimate the total number of owls.

Mexican spotted owls nest, roost, forage, and disperse in a diverse array of biotic communities. Nesting habitat is typically in areas with complex forest structure or rocky canyons, and contains uneven-aged, multi-storied mature or old-growth stands that have high canopy closure (Ganey and Balda 1989, USDI 1991). In the northern portion of the range (southern Utah and Colorado), most nests are in caves or on cliff ledges in steep-walled canyons. Elsewhere, the majority of nests appear to be in Douglas fir (*Pseudotsuga menziesii*) trees (Fletcher and Hollis 1994, Seamans and Gutierrez 1995). A wide variety of tree species is used for roosting; however, Douglas fir is the most commonly used species (Ganey 1988, Fletcher and Hollis 1994, Young *et al.* 1998). Owls generally use a wider variety of forest conditions for foraging than they use for nesting/roosting.

Seasonal movement patterns of Mexican spotted owls are variable. Some individuals are year-round residents within an area, some remain in the same general area but show shifts in habitat use patterns, and some migrate considerable distances (20–50 kilometers (km)) (12–31 miles (mi)) during the winter, generally migrating to more open habitat at lower elevations (Ganey and Balda 1989b, Willey 1993, Ganey *et al.* 1998). The home-range size of Mexican spotted owls appears to vary considerably among habitats and/or geographic areas (USDI 1995), ranging in size from 261–1,487 ha (647–3,688 ac) for individuals birds, and 381–1,551 ha (945–3,846 ac) for pairs (Ganey and Balda 1989b, Ganey *et al.* 1999). Little is known about habitat use by juveniles dispersing soon after fledging. Ganey *et al.* (1998) found dispersing juveniles in a variety of habitats ranging from high-elevation forests to piñon-juniper woodlands and riparian areas surrounded by desert grasslands.

Mexican spotted owls do not nest every year. The owl's reproductive pattern varies somewhat across its range. In Arizona, courtship usually begins in March with pairs roosting together during the day and calling to each other at dusk (Ganey 1988). Eggs are typically laid in late March or early April. Incubation begins shortly after the first egg is laid, and is performed entirely by the female (Ganey 1988). The incubation period is about 30 days (Ganey 1988). During incubation and the first half of the brooding period, the female leaves the nest only to defecate, regurgitate pellets, or receive prey from the male, who does all or most of the hunting (Forsman *et al.* 1984, Ganey 1988). Eggs usually hatch in early May, with nestling owls fledging 4 to 5 weeks later, and then dispersing in mid-September to early October (Ganey 1988).

Little is known about the reproductive output for the spotted owl. It varies both spatially and temporally (White *et al.* 1995), but the subspecies demonstrates an average annual rate of about one young per pair. Based on short-term population and radio tracking studies, and longer-term monitoring studies, the probability of an adult owl surviving from 1 year to the next is 80 to 90 percent. Average annual juvenile survival is considerably lower, at 6 to 29 percent, although it is believed these estimates may be artificially low due to the high likelihood of permanent dispersal from the study area, and the lag of several years before marked juveniles reappear as territory holders and are detected as survivors through recapture efforts (*White et al.* 1995). Little research has been conducted on the causes of mortality, but predation by great horned owls (*Bubo virginianus*), northern goshawks (*Accipter gentilis*),

red-tailed hawks (*Buteo jamaicensis*), and golden eagles (*Aquila chrysaetos*), as well as starvation, and collisions (*e.g.*, with cars, powerlines), may all be contributing factors.

Mexican spotted owls consume a variety of prey throughout their range, but commonly eat small- and medium-sized rodents such as woodrats (*Neotoma* spp.), peromyscid mice (*Peromyscus* spp.), and microtine voles (*Microtus* spp.). Owls also may consume bats, birds, reptiles, and arthropods (Ward and Block 1995). Each prey species uses a unique habitat, so that the differences in the owl's diet across its range likely reflect geographic variation in population densities and habitats of both the prey and the owl (Ward and Block 1995). Deer mice (*P. maniculatus*) are widespread in distribution in comparison to brush mice (*P. boylei*), which are restricted to drier, rockier substrates, with sparse tree cover. Mexican woodrats (*N. mexicana*) are typically found in areas with considerable shrub or understory tree cover and high log volumes or rocky outcrops. Mexican voles (*M. mexicanus*) are associated with high herbaceous cover, primarily grasses, whereas long-tailed voles (*M. longicaudus*) are found in dense herbaceous cover, primarily forbs, with many shrubs and limited tree cover.

Two primary reasons were cited for listing the owl as threatened in 1993: (1) Historical alteration of its habitat as the result of timber management practices, specifically the use of even-aged silviculture, and the threat of these practices continuing; and (2) the danger of catastrophic wildfire. The Recovery Plan for the owl outlines management actions that land management agencies and Indian tribes should undertake to remove recognized threats and recover the spotted owl. This critical habitat designation is based on recovery needs identified in the Recovery Plan.

Previous Federal Actions

The entire spotted owl species (*Strix occidentalis*) was classified in the January 6, 1989, Animal Notice of Review (54 FR 554) as a category 2 candidate species. A category 2 candidate species was one for which listing may have been appropriate, but for which additional biological information was needed to support a proposed rule.

On December 22, 1989, we received a petition submitted by Dr. Robin D. Silver requesting the listing of the Mexican spotted owl as an endangered or threatened species. On February 27, 1990, we found that the petition presented substantial information indicating that listing may be warranted and initiated a status review. In conducting our review, we published a notice in the **Federal Register** (55 FR 11413) on March 28, 1990, requesting public comments and biological data on the status of the Mexican spotted owl. On February 20, 1991, we made a finding, based on the contents of the status review, that listing the Mexican spotted owl under section 4(b)(3)(B)(I) of the Act was warranted. Notice of this finding was published in the **Federal Register** on April 11, 1991 (56 FR 14678). We published a proposed rule to list the Mexican spotted owl as threatened without critical habitat in the **Federal Register** on November 4, 1991 (56 FR 56344).

We published a final rule listing the Mexican spotted owl as a threatened species on March 16, 1993 (58 FR 14248). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. The Act's implementing regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time of listing, we found that, although considerable knowledge of owl habitat needs had been gathered in recent years, habitat maps in sufficient detail to accurately delineate these areas were not available. After the listing, we began gathering the data necessary to develop a proposed rule to designate critical habitat.

On June 23, 1993, and again on August 16, 1993, we received petitions to remove the Mexican spotted owl from the List of Endangered and Threatened Wildlife. In subsequent petition findings published in the **Federal Register** (58 FR 49467, 59 FR 15361), we addressed the issues raised in the petitions and determined that the delisting petitions did not present substantial information indicating that delisting the Mexican spotted owl was warranted. The petitioners challenged this decision in Federal District Court in New Mexico in *Coalition of Arizona/New Mexico Counties for Stable Economic Growth* v. *United States Fish and Wildlife Service, et al.*, CIV 94–1058–MV. The district court held that the Coalition failed to show that the Service violated any procedural rules that amounted to more than harmless error and failed to demonstrate that the Service acted arbitrarily or capriciously in listing or refusing to delist the Mexican spotted owl. A judgment was issued by the district court denying the plaintiff's petition to delist the owl.

On February 14, 1994, a lawsuit was filed in Federal District Court in Arizona against the Department of the Interior for failure to designate critical habitat for the owl (*Dr. Robin Silver, et al.* v. *Bruce Babbitt, et al.*, CIV–94–0337–PHX–CAM). On October 6, 1994, the Court ordered us to "* * * publish a proposed designation of critical habitat, including economic exclusion pursuant to 16 U.S.C. Sec. 1533(b)(2), no later than December 1, 1994, [and] publish its final designation of critical habitat, following the procedure required by statute and Federal regulations for notice and comment," by submitting the final rule to the **Federal Register** no later than May 27, 1995. Under an extension granted by the court, we issued the proposed rule to designate critical habitat on December 7, 1994 (59 FR 63162).

We prepared a draft economic analysis, and notice of its availability was published in the **Federal Register** on March 8, 1995 (60 FR 12728; 60 FR 12730). The publication also proposed several revisions to the original proposal, solicited additional information and comments, opened an additional 60-day comment period extending to May 8, 1995, and announced the schedule and location of public hearings. We published a final rule designating critical habitat for the Mexican spotted owl on June 6, 1995 (60 FR 29914).

After the listing of the Mexican spotted owl, a Recovery Team was appointed by our Southwestern Regional Director to develop a Recovery Plan in March 1993. The Team assembled all available data on Mexican spotted owl biology, the threats faced across the subspecies' range, current protection afforded the subspecies, and other pertinent information. Using that information, the Team developed the Recovery Plan, which was finalized in the fall of 1995. In 1996, the Southwest Region of the Forest Service incorporated elements of the Mexican Spotted Owl Recovery Plan within their Forest Plan Amendments.

In 1996, the Tenth Circuit Court of Appeals in *Catron County Board of Commissioners* v. *United States Fish and Wildlife Service*, 75 F.3d 1429, 1439 (10th Cir. 1996), ruled that the Service had to comply with the National Environmental Policy Act (NEPA) before designating critical habitat for two desert fish, the spikedace and loach minnow. In addition, a federal district court in New Mexico later set aside the

final rule designating critical habitat for the owl and forbid the Service from enforcing critical habitat for the owl (*Coalition of Arizona-New Mexico Counties for Stable Economic Growth* v. *U.S. Fish and Wildlife Service*, No. 95–1285–M Civil). As a result of these court rulings, we removed the critical habitat designation for the owl from the Code of Federal Regulations on March 25, 1998 (63 FR 14378).

On March 13, 2000, the United States District Court for the District of New Mexico, (*Southwest Center for Biological Diversity and Silver* v. *Babbitt and Clark*, CIV 99–519 LFG/LCS–ACE), ordered us to propose critical habitat within 4 months of the court order, and to complete and publish a final designation of critical habitat for the Mexican spotted owl by January 15, 2001.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) Essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term "conservation," as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (*i.e.*, the species is recovered and removed from the list of endangered and threatened species).

Section 4(b)(2) of the Act requires that we base critical habitat designation on the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat helps focus conservation activities by identifying areas that are essential to the conservation of the species, regardless of whether they are currently occupied by the listed species, thus alerting the public and land managing agencies to the importance of an area to conservation. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of the entire critical habitat designation for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation and management plans, and through section 7 consultations and section 10 permits.

Primary Constituent Elements

In accordance with section 3(5)(A)(I) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat designation on the best scientific and commercial data available and to consider those physical and biological features (primary constitute elements) that are essential to conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements essential to the conservation of the Mexican spotted owl include those physical and biological features that support nesting, roosting, and foraging. These elements were determined from studies of Mexican spotted owl behavior and habitat use throughout the range of the owl. Although the vegetative communities and structural attributes used by the owl vary across the range of the subspecies, they consist primarily of warm-temperate and cold-temperate forests, and, to a lesser extent, woodlands and riparian deciduous forests. The mixed-conifer community appears to be most frequently used community throughout most portions of the subspecies' range (Skaggs and Raitt 1988; Ganey and Balda 1989, 1994; USDI 1995). Although the structural characteristics of Mexican spotted owl habitat varies depending on uses of the habitat (e.g., nesting, roosting, foraging) and variations in the plant communities over the range of the subspecies, some general attributes are common to the subspecies' life-history requirements throughout its range.

We determined the primary constituent elements for Mexican spotted owl from studies of their habitat requirements and the information provided in the Recovery Plan (USDI 1995 and references therein). Since owl habitat can include both canyon and forested areas, we identified primary constituent elements in both areas. The primary constituent elements that occur in mixed conifer, pine-oak, and riparian forest types, as described in the Recovery Plan, have the following attributes:

—High basal area of large diameter trees;
—Moderate to high canopy closure;
—Wide range of tree sizes suggestive of uneven-age stands;
—Multi-layered canopy with large overstory trees of various species;
—High snag basal area;
—High volumes of fallen trees and other woody debris;
—High plant species richness, including hardwoods;
—Adequate levels of residual plant cover to maintain fruits, seeds, and regeneration to provide for the needs of Mexican spotted owl prey species.

For canyon habitat, the primary constituent elements include the following attributes:

—Cooler and often more humid conditions than the surrounding area;
—Clumps or stringers of trees and/or canyon wall containing crevices, ledges, or caves;
—High percent of ground litter and woody debris;
—Riparian or woody vegetation (although not at all sites).

The forest habitat attributes listed above usually develop with increasing forest age, but their occurrence may vary by location, past forest management practices or natural disturbance events, forest type, and productivity. These characteristics may also develop in younger stands, especially when the stands contain remnant large trees or patches of large trees from earlier stands. Certain forest management practices may also enhance tree growth and mature stand characteristics where the older, larger trees are allowed to persist.

Canyon habitats used for nesting and roosting are typically characterized by cooler conditions found in steep, narrow canyons, often containing crevices, ledges, and/or caves. These canyons frequently contain small clumps or stringers of ponderosa pine, Douglas fir, white fir, and/or piñon-juniper. Deciduous riparian and upland tree species may also be present. Adjacent uplands are usually vegetated by a variety of plant associations including piñon-juniper woodland, desert scrub vegetation, ponderosa pine-Gambel oak, ponderosa pine, or mixed conifer. Owl habitat may also exhibit a combination of attributes between the forested and canyon types.

Criteria for Identifying Critical Habitat Units

The primary objective in designating critical habitat is to identify existing and potential Mexican spotted owl habitat considered essential for the conservation of the subspecies, and to highlight specific areas where management considerations should be given highest priority. In proposing critical habitat for the owl, we reviewed the overall approach to the conservation of the species undertaken by local, State, tribal, and Federal agencies and private individuals and organizations since the species' listing in 1993. We also considered the features identified as necessary for recovery, as outlined in the species' Recovery Plan. We reviewed the previous proposed (59 FR 63162) and final critical habitat rules (60 FR 29914), new location data, habitat requirements and definitions described in the Recovery Plan, and habitat information provided by FS biologists as well as utilized our own expertise.

The previous critical habitat designation included extensive use and evaluation of owl habitat and territory maps, vegetation maps, aerial photography, and field verification to identify areas for designation as critical habitat. Several qualitative criteria (currently suitable habitat, large contiguous blocks of habitat, occupied habitat, rangewide distribution, the need for special management or protection, adequacy of existing regulatory mechanisms) were considered when identifying critical habitat areas. The previous designation was done prior to the completion of the Recovery Plan for the Mexican Spotted Owl. For this proposal, we examined the previously designated critical habitat units, but relied primarily on the recovery plan to provide guidance. We expanded or combined previous units to comply with the Recovery Plan. In doing so we included wilderness areas and other areas where additional owls have been located. In addition, we included areas where owls could occur based on the presence of the appropriate topography, elevation, and habitat types (protected and restricted habitat areas as defined in the Recovery Plan).

Proposed Critical Habitat Designation

The proposed critical habitat constitutes our best assessment of areas needed for the conservation of the owl and is based on the best scientific and commercial information available. The proposed areas are essential to the conservation of the species because they either currently support populations of the owl, or because they currently support the necessary habitat requirements for nesting, roosting, and foraging (see description of primary constituent elements). Thus, the proposed critical habitat is limited to areas within the identified RUs that meet the definition of protected and restricted habitat, as described in the Recovery Plan. Although a recovery plan is not a regulatory document, its management recommendations were considered in developing this proposed critical habitat rule. Excluded from the designation are those areas in restricted habitat that do not contain the primary constituent elements.

The Mexican Spotted Owl Recovery Plan provides for three levels of habitat management: Protected areas, restricted areas, and other forest and woodland types. Protected habitat includes all known owl sites, all areas within mixed conifer or pine-oak types with slopes greater than 40 percent where timber harvest has not occurred in the past 20 years, and all reserved (designated Wilderness areas) lands. The Recovery Plan recommends that protected areas, or Protected Activity Centers (PACs), be designated around known owl sites. A PAC would include an area of at least 243 ha (600 ac) that includes the best nesting and roosting habitat in the area. Based on available data, the recommended size for a PAC includes, on average, 75 percent of the foraging area of an owl.

Restricted habitat includes mixed conifer forest, pine-oak forest, and riparian areas outside of protected areas described above (*i.e.*, areas that do not currently contain owls). These areas are essential to the conservation of the species because the Recovery Plan identifies these areas as providing additional owl habitat for future occupancy. In restricted habitat, only areas that contain the primary constituent elements are designated as critical habitat. These areas, however, are important to owl conservation and should continue to be managed to attain the primary constituent elements.

Other forest and woodland types (ponderosa pine, spruce-fir, piñon-juniper, and aspen) are not expected to provide nesting or roosting habitat for the Mexican spotted owl (except when associated with rock canyons). Thus, these other forest and woodland types are not considered to be critical habitat unless specifically delineated within PACs. Although the Recovery Plan does not provide owl-specific guidelines to managing these areas, these and other habitat types may provide important foraging and dispersal habitat for the owl, particularly if adjacent to protected or restricted areas. Therefore, these areas should be managed for landscape diversity, mimicking natural disturbance patterns, incorporating natural variation in stands, and retaining special features such as snags and large trees (USDI 1995). We anticipate that species concerns in these areas can be adequately addressed under the Act through section 7 consultation, the section 9 prohibition against taking listed species, the section 10 habitat conservation planning process, and through other appropriate State and Federal statutes and regulations.

Critical habitat units are being proposed in portions of Bernalillo, Catron, Cibola, Colfax, Grant, Hidalgo, Lincoln, Los Alamos, McKinley, Mora, Otero, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia Counties in

New Mexico; Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai Counties in Arizona; Carbon, Emery, Garfield, Grand, Iron, Kane, San Juan, Washington, Wayne Counties in Utah; and Custer, Douglas, El Paso, Fremont, Huerfano, Jefferson, Pueblo, and Teller Counties in Colorado, on the maps. Precise legal descriptions of each critical habitat unit are on file at the New Mexico Ecological Services Field Office.

With the exception of some tribal lands (See discussion under American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act, below) and low-density areas, this proposed designation includes all habitat on Federal and tribal lands used by currently known populations of Mexican spotted owls. The inclusion of both occupied and currently unoccupied areas in this critical habitat proposal is in accordance with section 3(5)(A)(I) of the Act, which provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon a determination that they are essential for the conservation of the species. We find that the inclusion of currently unoccupied areas identified in this rule as having one or more constituent elements is essential for conservation of the owl.

We did not designate some areas that are known to have widely scattered owl sites, low population densities, and/or marginal habitat quality, which are not considered to be essential to this species' survival or recovery. These areas include Dinosaur National Park in northwest Colorado; Mesa Verde National Park, Ute Mountain Ute Reservation, Southern Ute Reservation, other Forest Service and Bureau of Land Management land in southwest Colorado; and the Guadalupe and Davis Mountains in southwest Texas. Isolated mountains on the Arizona Strip, such as Mount Trumbull, were also not included due to their small size, isolation, and lack of information about owls in the area.

State and private lands are not included in this proposed designation. The overwhelming majority of Mexican spotted owl records are from Federal and Tribal lands, indicating that those lands are essential to the species' recovery. Some of the State (79,030 ha (195,288 ac)) and private (257,872 ha (637,216 ac)) parcels within the critical habitat boundaries likely support mid- and higher-elevation forests that are capable of providing nesting and roosting habitat. However, given that the majority of the owl's range occurs on Federal and tribal lands, we do not feel that State and private lands are essential to the recovery of the subspecies and should not be designated as critical habitat.

Given the above, we believe that Mexican spotted owl conservation can best be achieved by management of Federal and Tribal lands, and that State and private lands are not essential to the species' recovery. Where feasible, proposed critical habitat boundaries were drawn so as to exclude State and private lands. However, the short amount of time allowed by the court to complete this proposed designation did not allow us to conduct the fine-scale mapping necessary to physically exclude the smaller and widely scattered State and private parcels that remain within the proposed boundaries. Those areas under State or private ownership are therefore excluded from the proposed designation by definition.

The approximate gross area of proposed critical habitat by State and land ownership is shown in Table 1. Actual proposed critical habitat is limited to areas within the proposed boundaries that meet the definition of protected and restricted habitat in the Recovery Plan. Therefore, the area actually proposed as critical habitat is considerably less than the gross acreage indicated in Table 1.

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TABLE 1.—CRITICAL HABITAT BY LAND OWNERSHIP AND STATE IN HECTARES (ACRES)

	Arizona	New Mexico	Colorado	Utah	Total
Forest Service	1,330,339 (3,287,339)	1,688,295 (4,171,869)	152,096 (375,837)	111,133 (274,616)	3,281,863 (8,109,661)
Bureau of Land Management	4,903 (12,115)	5,879 (14,528)	60,255 (148,894)	666,270 (1,646,388)	737,307 (1,821,925)
National Park Service	322,069 (795,850)	12,618 (31,179)	0	260,346 (643,328)	595,033 (1,470,357)
Department of Defense	9,728 (24,038)	1,682 (4,157)	17,966 (44,394)	0	29,376 (72,589)
Bureau of Reclamation	0	0	0	109,610 (270,853)	109,610 (270,853)
Unknown Federal[a]	0	0	0	156,207 (385,995)	156,207 (385,995)
Tribal	342,503 (846,344)	165,333 (408,548)	0	40,983 (101,272)	548,819 (1,356,164)
Total	2,009,542 (4,630,281)	1,873,807 (4,630,281)	230,317 (569,125)	1,344,549 (3,322,452)	5,458,215 (13,487,544)
Total critical habitat units	37[b]	31[b]	2	5	72

[a] Includes land identified in the current Utah land ownership file as National Recreation Area or National Recreation Area/Power Withdrawal; Federal land ownership is unclear (may be NPS, BOR, or other).

[b] Counts three critical habitat units that overlap two states.

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Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is subsequently listed or critical habitat is designated, then section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or segments of critical habitat generally do not result in an adverse modification determination unless that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the Mexican spotted owl is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery (50 CFR 402.02). Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species (50 CFR 402.02).

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned when the habitat is occupied by the species. The purpose of designating critical habitat is to contribute to a species' conservation, which by definition equates to survival and recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of any existing recovery plan for the species concerned. As a result of the direct link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery.

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect the Mexican spotted owl and proposed critical habitat. Among these agencies are the Forest Service, Bureau of Indian Affairs, Bureau of Land Management, Department of Defense, Department of Energy, National Park Service, and Federal Highway Administration. We have reviewed and continue to review numerous activities proposed within the range of the Mexican spotted owl that are currently the subject of formal or informal section 7 consultations. Actions on Federal lands that we reviewed in past consultations on effects to the owl include land management plans; land acquisition and

disposal; road construction, maintenance, and repair; timber harvest; livestock grazing and management; fire/ecosystem management projects (including prescribed natural and management ignited fire); powerline construction and repair; campground and other recreational developments; and access easements. We expect that the same types of activities will be reviewed in section 7 consultation if critical habitat is designated.

Actions that would be expected to both jeopardize the continued existence of the Mexican spotted owl and destroy or adversely modify its critical habitat would include those that significantly and detrimentally alter the species' habitat over an area large enough that the likelihood of the Mexican spotted owls' persistence and recovery, either range-wide or locally, is significantly reduced. Thus, the likelihood of an adverse modification or jeopardy determination would depend on the baseline condition of the recovery unit and the baseline condition of the entire designated critical habitat area. Some recovery units, such as the Southern Rocky Mountains-New Mexico and Southern Rocky Mountains-Colorado RUs, support fewer owls and owl habitat than other RUs and, therefore, may be much less able to withstand habitat-altering activities than RUs with large contiguous areas of habitat supporting higher densities of spotted owls.

Actions not likely to destroy or adversely modify critical habitat include activities that are implemented in compliance with the Recovery Plan, such as thinning trees less than 9 inches in diameter in PACs; fuels reduction to abate the risk of catastrophic wildfire; "personal use" commodity collection such as fuelwood, latillas and vigas, and Christmas tree cutting; livestock grazing in upland habitats; and most recreational activities including hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, and various activities associated with nature appreciation. We do not expect any restrictions to those activities as a result of critical habitat designation. In addition, some activities may be considered to be of benefit to Mexican spotted owl habitat and, therefore, would not be expected to adversely modify critical habitat. Examples of activities that could benefit critical habitat may include some protective measures such as fire suppression, prescribed burning, brush control, snag creation, and certain silvicultural activities such as thinning.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section). If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920; facsimile 505–248–6788).

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this proposal on the best available scientific information, including the recommendations in the species' recovery plan. We will utilize the economic analysis and our analysis of other relevant impacts, and take into consideration all comments and information submitted during the public hearing and comment period, to make a final critical habitat designation. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude these areas from critical habitat when their exclusion will result in the extinction of the species. We are preparing a draft economic analysis that will be completed and available for public review and comment during the comment period for this proposal. Send your requests for copies of the economic analysis to the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, tribes should be the governmental entities to manage their lands and tribal trust resources. To this end, we support tribal measures that preclude the need for Federal conservation regulations. We provide technical assistance to Indian tribes who wish assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including the tribes. Recognizing a government-to-government relationship with tribes and our Federal trust responsibility, we will consult with the Indian tribes that might be affected by the designation of critical habitat. We have already held two meetings with the Mescalero Apache Tribe.

Due to the time constraints imposed by the court order, we will make every effort to consult with the tribes during the comment period for this proposal to gain information on—(1) possible effects if critical habitat were designated on Indian reservation lands; and (2) possible effects on tribal resources resulting from designation of critical habitat on non-tribal lands. We will meet with each potentially affected tribe to ensure that consultation on critical habitat issues occurs in a timely manner.

Designation of Critical Habitat on Tribal Lands

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species "on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection." In our previous critical habitat proposal for the owl, we identified lands of the White Mountain Apache, Jicarilla Apache, Mescalero Apache, San Carlos Apache, Southern Ute, Ute Mountain Ute, and Navajo Nation Tribes as containing habitat that may be appropriate for designation of critical habitat. However, after reevaluating the available data, we no longer feel that designating all of these areas is appropriate.

Lands of the Mescalero Apache, San Carlos Apache, and Navajo Nation have areas that meet the definition of critical habitat with respect to the Mexican spotted owl, and portions of those lands are proposed as critical habitat. As provided under section 4(b)(2) of the Act, we are soliciting information on the possible economic and other impacts of critical habitat designation, and we will continue to work with the tribes in developing voluntary measures adequate to conserve Mexican spotted owls on tribal lands. We understand the Navajo Nation is nearing completion of a Forest Management Plan and the Mescalero Apache Tribes are working on Mexican Spotted Owl Habitat

Management Plans. Critical habitat proposed on the San Carlos Apache Reservation does not include areas covered by the Tribe's Malay Gap Management Plan. We reviewed this plan in 1996 and determined it to be adequate for the management of the owl. The San Carlos Apache Tribe is developing similar management plans for other management units on their lands. If any of these tribes submit management plans, we will consider whether these plans provide adequate special management or protection for the species, or we will weigh the benefits of including versus the benefits of excluding these areas under section 4(b)(2). We will use this information in determining which, if any, tribal land should be included in the final designation as critical habitat for the owl.

Since our previous critical habitat designation, we learned that the Southern Ute Reservation has not supported spotted owls historically, and our assessment revealed that the Reservation does not support habitat essential to the species' conservation. Thus, lands of the Southern Ute Reservation do not meet part (I) of the definition of critical habitat stated above; we are, therefore, not proposing to designate those lands as critical habitat.

Lands of the Ute Mountain Ute Tribe are not being proposed either. Due to the low population density and isolation from other occupied areas in Colorado, New Mexico, and Utah, the owls in southwestern Colorado are not believed to be essential for the survival or recovery of the species. Thus, these lands do not meet part (I) of the definition of critical habitat stated above; we are, therefore, not proposing to designate those lands as critical habitat.

The White Mountain Apache and Jicarilla Apache Tribes completed Mexican Spotted Owl Habitat Management Plans prior to the previous critical habitat designation. Since those plans are still valid and in use, we believe that the lands of the White Mountain Apache and Jicarilla Apache Tribes are not in need of special management considerations and protection, and therefore do not meet part (II) of the definition of critical habitat. Thus, we are not proposing critical habitat in those areas.

In addition, other tribal lands including the Picuris, Taos, and Santa Clara Pueblos in New Mexico and the Havasupai Reservation in Arizona are adjacent to critical habitat units proposed in this rule and may have potential owl habitat. However, the available information, although limited, on the habitat quality and current or past owl occupancy in these areas does not indicate that these areas meet the definition of critical habitat. Therefore, we are not proposing to designate these lands as critical habitat.

Effects on Tribal Trust Resources From Critical Habitat Designation on Non-Tribal Lands

We do not anticipate that proposal of critical habitat on non-tribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. However, in complying with our tribal trust responsibilities, we must communicate with all tribes potentially affected by the designation. Therefore, we are soliciting information from the tribes and will arrange meetings with the tribes during the comment period on potential effects to them or their resources that may result from critical habitat designation.

Public Comments Solicited and Public Hearings

We intend to make any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas as critical habitat. Specifically we ask if there is adequate special management and protection in place on any lands to allow us not to designate these lands as critical habitat. Further, we ask whether all areas identified in the Recovery Plan should be designated as critical habitat;

(2) Specific information on the amount and distribution of Mexican spotted owl habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the Mexican spotted owl, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Given the large geographic extent covered by this proposal, the high likelihood of multiple requests, and the need to publish a final determination by December 15, 2000, we have scheduled six public hearings. We will hold the hearings in Santa Fe, New Mexico, on August 14; Las Cruces, New Mexico, on August 15; Tucson, Arizona, on August 16, Flagstaff, Arizona, on August 17; Colorado Springs, Colorado, on August 21, 2000; and Cedar City, Utah, on August 23. We will hold the hearings at the following locations:

- Santa Fe, New Mexico: Morgan Hall, New Mexico State Land Office, 310 Old Santa Fe Trail, 6:30 to 9:30 p.m.
- Las Cruces, New Mexico: Dona Ana Room, Corbett Center Student Union, New Mexico State University, 6:30 to 9:30 p.m.
- Tucson, Arizona: Louis Rich Theater, Tucson Convention Center, 260 South Church Street, 6:30 to 9:30 p.m.
- Flagstaff, Arizona: Flagstaff High School, Main Auditorium, 400 West Elm Street, 6:30 to 9:30 p.m.
- Colorado Springs, Colorado: Pikes Peak Community College, Cafeteria, 5675 South Academy Boulevard, 6:30 to 9:30 p.m.
- Cedar City, Utah: Southern Utah University, Hunter Conference Center, The Great Hall, 351 West Center Street, 6:30 to 9:30 p.m.

Announcements for the public hearings will be made in local newspapers.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget. We are preparing a draft analysis of this proposed action, which will be available during the comment period for this proposed rule, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments during the 60-day comment period for this proposed rule.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required for purposes of Executive Order 12866. The Mexican spotted owl was listed as a threatened species in 1993. Since that time, we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Mexican spotted owl.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" to the species under the Act. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

TABLE 2.—IMPACTS OF DESIGNATING CRITICAL HABITAT FOR MEXICAN SPOTTED OWL

Categories of activities	Activities potentially affected by the designation of critical habitat in areas occupied by the species (in addition to those activities affected from listing the species)	Activities potentially affected by the designation of critical habitat in unoccupied areas
Federal Activities Potentially Affected[1].	None	Activities such as those affecting protected, restricted, and canyon habitats by the Forest Service, Bureau of Indian Affairs, Bureau of Land Management, Department of Defense, Department of Energy, National Park Service, and Federal Highway Administration; vegetative management projects (including timber harvest, timber salvage, and tree density control activities such as thinning, insect and disease suppression activities, snag removal, and certain fire/ecosystem projects such as prescribed natural and management ignited fire); livestock grazing in riparian habitat; land acquisition and disposal; oil and gas development; mining and mineral exploration; military maneuvers; road development, maintenance, and repair; utility construction and repair; construction of campgrounds and other recreational developments; and access easements.
Private or other non-Federal Activities Potentially Affected[2].	None	Activities that require a Federal action (permit, authorization, or funding) and that involve such activities as removing or destroying Mexican spotted owl habitat (as defined in the primary constituent elements discussion), whether by mechanical or other means (*e.g.*, timber harvest, right-of-way access, road construction, development, etc.), including indirect effects and that appreciably decrease habitat value or quality.

[1] Activities initiated by a Federal agency.
[2] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. In the case of the owl, however, we are already consulting with Federal agencies on activities that may affect the owl within the Recovery Units. Since the proposed critical habitat units all occur within the Recovery Units, we do not anticipate any additional impact due to designating unoccupied habitat within the Recovery Units. However, we will evaluate any potential impact through our economic analysis (see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Mexican spotted owl since its listing in 1993. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in areas of proposed critical habitat. Because of the potential for impacts on other Federal agency's activities, we will continue to review this proposed action for any inconsistencies with other Federal agency's actions.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of proposed critical habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the draft economic analysis, we will determine if designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of proposed critical habitat.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

We do not anticipate that our economic analysis will show that designation of critical habitat will cause (a) an annual effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act:

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not destroy or adversely modify critical habitat. However, as discussed above in the Regulatory Planning and Review section, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of proposed critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of more than $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. However, we will evaluate whether the value of private property is altered by it being designated as critical habitat on a case-by-case basis. Critical habitat designation is applicable to Federal lands and to private lands only if a Federal nexus, through funding, permitting or licencing of activities, exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species.

Federalism

In accordance with Executive Order 13132, this proposed rule, if made final, will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. A Federalism assessment is not required. As previously stated, critical habitat is applicable only to Federal lands or to non-Federal lands only when a Federal nexus exists.

In keeping with Department of the Interior and Department of Commerce policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Arizona, New Mexico, Colorado, and Utah. In addition, Arizona and Utah have representatives on the recovery team for this species. We will continue to coordinate any future designation of critical habitat for Mexican spotted owl with the appropriate State agencies.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act (NEPA)

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), *cert. denied* 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the Mexican spotted owl, pursuant to the Tenth

Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. Send your requests for copies of the draft environmental assessment for this proposal to the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

References Cited

A complete list of all references cited in this proposed rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the New Mexico Field Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for "Owl, Mexican spotted" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
BIRDS							
*	*	*	*	*	*	*	*
Owl, Mexican spotted.	*Strix occidentalis lucida.*	U.S.A. (AZ, CO, NM, TX, UT), Mexico.	Entire	T	494	§ 17.95(b)	NA
*	*	*	*	*	*	*	*

3. Amend § 17.95(b) by adding critical habitat for the Mexican spotted owl (*Strix occidentalis lucida*) in the same alphabetical order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) Birds.

* * * * *

Mexican Spotted Owl (*Strix Occidentalis Lucida*)

Critical habitat is limited to areas within the proposed boundaries that meet the definition of protected (600 acres around known owl sites, mixed conifer or pine-oak forests with slopes greater than 40 percent where timber harvest has not occurred in the past 20 years, and all reserved (designated wilderness areas) lands) and restricted (mixed conifer forest, pine-oak forest, and riparian areas outside of protected areas) habitat as described in the Recovery Plan. Restricted habitat is designated only where primary constituent elements can be found. Private and state lands within mapped boundaries are not designated as critical habitat. Critical habitat proposed on the San Carlos Apache Reservation does not include areas covered by the Tribe's Malay Gap Management Plan. The lands of the White Mountain Apache, Jicarilla Apache, Ute Mountain Ute and Southern Ute Tribe are not being designated. Critical habitat units for the States of Arizona, Colorado, New Mexico, and Utah are depicted on the maps below. Larger maps for all four States and maps of critical habitat units in the State of New Mexico are available at the New Mexico Ecological Services Field Office, 2105 Osuna N.E., Albuquerque, New Mexico 87113, telephone (505) 346–2525. For the States of Arizona, Colorado, and Utah, maps of the critical habitat units specific to each State are available at the following U.S. Fish and Wildlife Service offices—Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021, telephone (602) 640–2720; Colorado State Sub-Office, 764 Horizon Drive South, Annex A, Grand Junction, Colorado 81506, telephone (970) 243–2778; and Utah Ecological Services Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524–5001.

1. Critical habitat units are depicted for portions of Bernalillo, Catron, Cibola, Colfax, Grant, Hidalgo, Lincoln, Los Alamos, McKinley, Mora, Otero, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Sierra, Socorro, Taos, Torrance, and Valencia Counties in New Mexico; Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, and Yavapai Counties in Arizona; Carbon, Emery, Garfield, Grand, Iron, Kane, San Juan, Washington, and Wayne Counties in Utah; and Custer, Douglas, El Paso, Fremont, Huerfano, Jefferson, Pueblo, and Teller Counties in Colorado, on the maps. Precise legal descriptions of each critical habitat unit are on file at the New Mexico Ecological Services Field Office.

2. Within these areas, the primary constituent elements for Mexican spotted owl include, but are not limited to, those habitat components providing for nesting, roosting, or foraging activities. Primary constituent elements are provided in canyons and mixed conifer, pine-oak, and riparian habitat types that typically support nesting and/or roosting. These primary constituent elements include mixed conifer, pine-oak, and riparian forest types, as described in the Recovery Plan, that have the following attributes: high basal area of large-diameter trees; moderate to high canopy closure; wide range of tree sizes suggestive of uneven-age stands; multi-layered canopy with large overstory trees of various species; high snag basal area; high volumes of fallen trees and other woody debris; high plant species richness, including hardwoods; and adequate levels of residual plant cover to maintain fruits, seeds, and regeneration to provide for the needs of Mexican spotted owl prey species. For canyon habitats, the primary constituent elements include the following attributes: cooler and often higher humidity than the surrounding area; clumps or stringers of ponderosa pine, Douglas-fir, white fir, and/or piñon-juniper trees and/or canyon wall containing crevices, ledges, or caves; high percent of ground litter and woody debris; and riparian or woody vegetation (although not at all sites).

BILLING CODE 4310–55–P

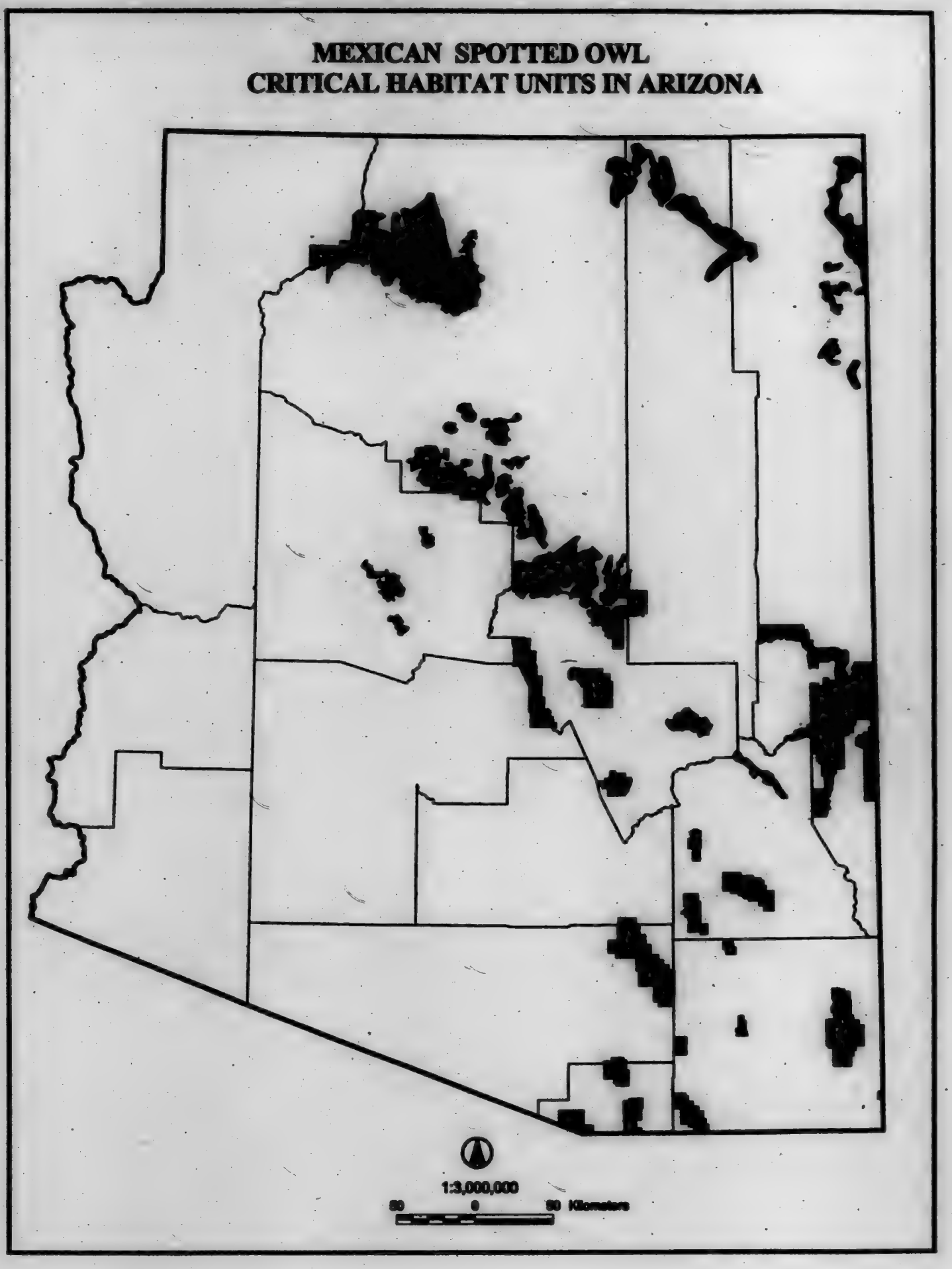
MEXICAN SPOTTED OWL
CRITICAL HABITAT UNITS IN ARIZONA
1:3,000,000
80 0 80 Kilometers

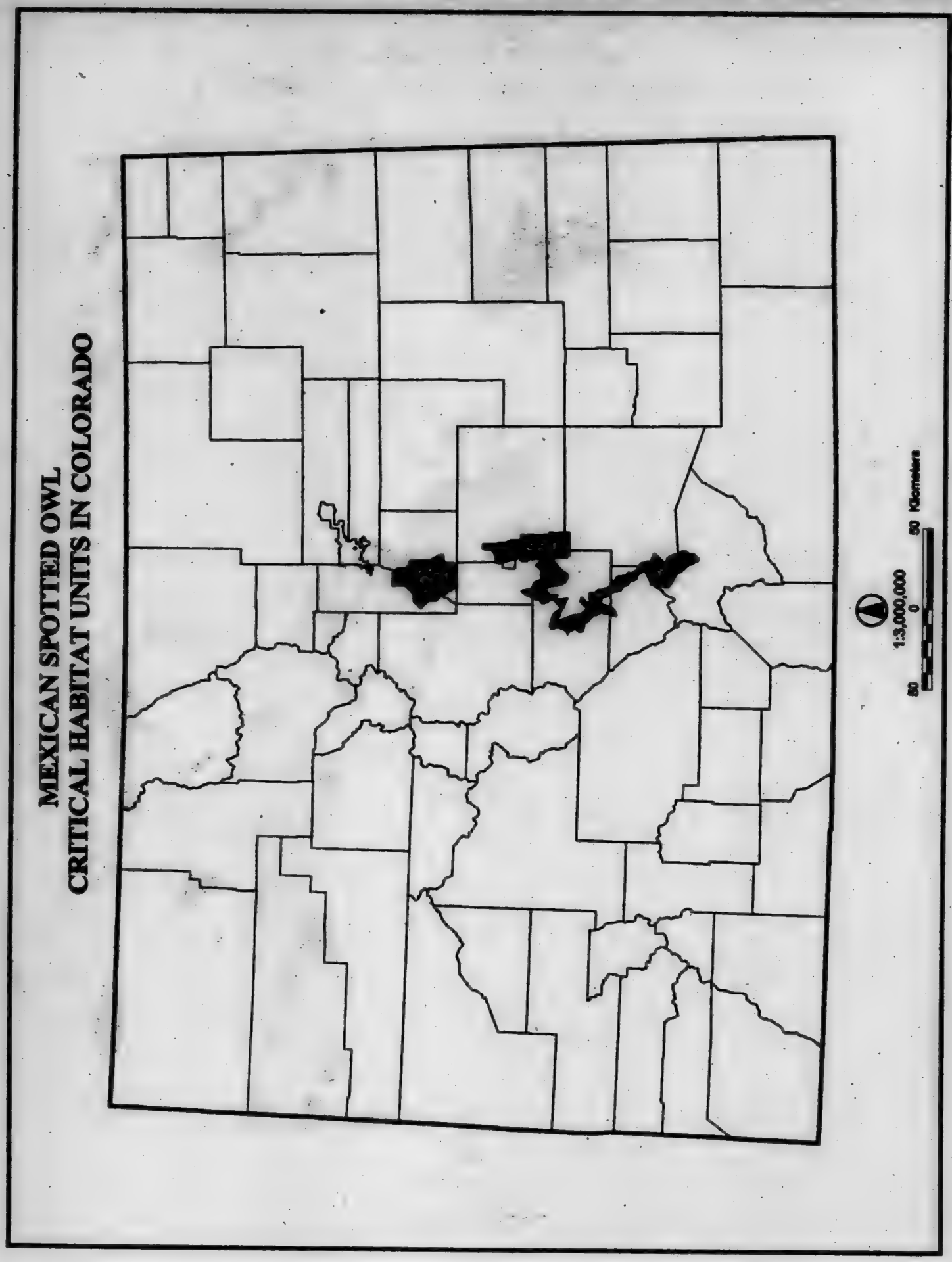

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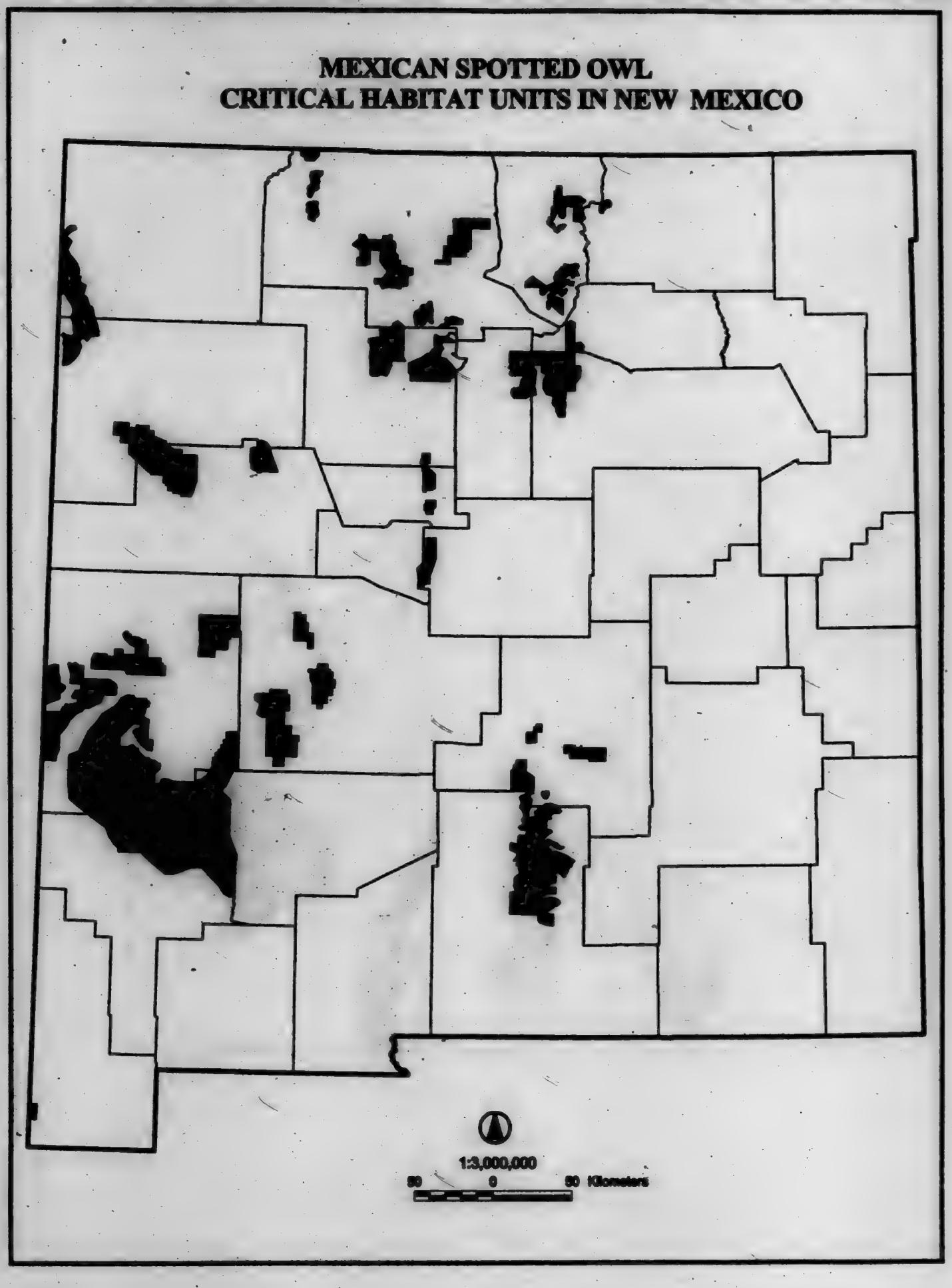
MEXICAN SPOTTED OWL
CRITICAL HABITAT UNITS IN NEW MEXICO
1:3,000,000
50 0 50 Kilometers

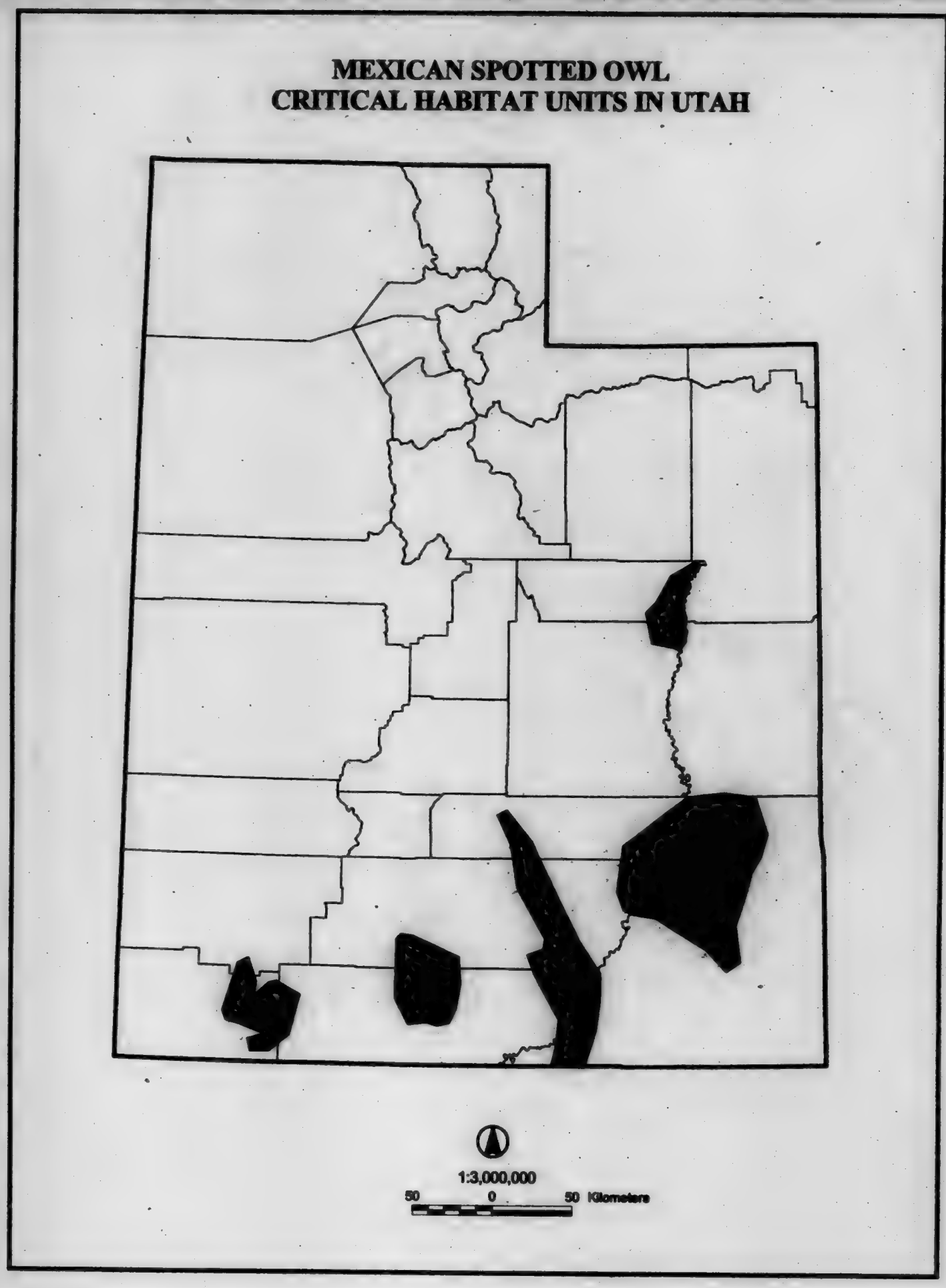

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Dated: July 14, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–18407 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 65, No. 141
Friday, July 21, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2001 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2001 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $120.00 per license.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1021 or telephone at (202) 720–9439 or e-mail at warsack@fas.usda.gov.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles which are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Licensing Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture and the U.S. Customs Service.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2001 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 2000 has been determined to be $312,830 and the estimated number of licenses expected to be issued is 2,625. Of the total cost, $150,080 represent staff and supervisory costs directly related to administering the licensing system during 2000; $50,350 represents the total computer costs to monitor and issue import licenses during 2000; and $112,400 represents other miscellaneous costs, including travel, postage, publications, forms, and an ADP system contractor.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2001 calendar year, in accordance with 7 CFR 6.33, will be $120.00 per license.

Issued at Washington, D.C. the 17th day of July, 2000.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 00–18517 Filed 7–20–00; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deadwood Ecosystem Analysis '96, Boise National Forest, Boise and Valley Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Deadwood Ecosystem Analysis '96 project NOI, which was published in the **Federal Register** on August 9, 1996 (Volume 61, Number 155; pp. 41563–41565) is hereby withdrawn.

DATES: This notice is effective July 21, 2000.

ADDRESSES: For more information, contact Randall Hayman, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709; 208–373–4517.

Dated: July 10, 2000.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 00–18452 Filed 7–20–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Small Business Timber Sale Set-Aside Program Share Recomputation

AGENCY: Forest Service, USDA.

ACTION: Notice of final policy.

SUMMARY: This final policy revises the formula used for calculating timber sale set-aside market shares. The recomputation formula has been revised to use only purchased timber sale volume data. Purchased timber sale data from the past 5-year period is to be used to determine the shares for the next 5-year period. This change is needed to make the recomputation process as fair, accurate, and simple as possible.

DATES: This policy is effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Rod Sallee, Small Business Timber Sale Set-aside Program Manager, Forest Management Staff, by telephone at (202) 205–1766 or by internet at *rsallee@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Developed in cooperation with the Small Business Administration, the Forest Service Small Business Timber Sale Set-aside Program is designed to ensure that qualifying small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale. The current Small Business Timber Sale

Set-aside Program was adopted July 26, 1990 (55 FR 30485). Direction that guides Forest Service employees in administering the Small Business Timber Sale Set-aside Program is issued in the Forest Service Manual, Chapter 2430, and in Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH 2409.18).

According to the guidelines of the set-aside program, the Forest Service recomputes the shares of timber sales to be set aside for qualifying small businesses every 5 years. The share percentage is based on the actual volume of sawtimber that has been purchased and/or harvested by small businesses. In addition to the 5-year requirement, shares must be recomputed whenever manufacturing capability changes, purchaser class size changes, or when certain purchasers discontinue operations. On May 28, 1999, the agency published in the **Federal Register** (64 FR 28969) a proposed policy to modify several provisions of the recomputation procedures.

Response to Comments Received

Twenty-six responses were received on the proposed policy. Comments were received from 22 purchasers, 3 organizations representing member companies and log processing facilities, and the Small Business Administration. A summary of the comments and the agency's response follows.

Comments Specific to the Proposed Policy

Remove the harvest volume from the recomputation formula. The proposal to remove the harvest volume would affect recomputations of shares for the upcoming and future 5-year recomputations of the small business share of timber sales as well as recalculation of shares after a structural change occurs. The volume purchased would be the measurement used in the formula for the recomputations.

Comment. Twenty-one of the respondents, including the U.S. Small Business Administration, supported dropping the harvest volume and using only the volume purchased. Most of these respondents indicated that dropping the harvest volume would serve both the forest products industry and the agencies by eliminating unnecessary record keeping and undue complexities in the calculation procedures.

One respondent also noted that the Forest Service would be able to achieve a much higher degree of accuracy in calculating normal and structural recomputations. That respondent claimed that most errors found in 5-year recomputations were made by Forest Service field officers in keeping and interpreting harvest records.

The respondents, favoring the change, also indicated that the purchase/harvest ratio was developed to respond to a situation that no longer exists, that is, to prevent purchasers from buying and holding volume to artificially drive a recomputation to a desired outcome. They noted that the Forest Service is now selling so little timber that purchasers are unable to accumulate large federal portfolios and seldom are able to hold their sale volume longer than 3 years. They concluded that it is nearly impossible for a purchaser to purchase and hold a sufficient quantity of volume long enough to affect the Small Business Timber Sale Set-aside Program share recomputations. Furthermore, they noted that the shift away from scaled sales and the inability of the recomputation process to deal with under runs further reduced the need for the purchase/harvest ratio. One respondent also supported dropping the harvest volume from the calculation because of the uncertainty of harvest scheduling, which is interrupted by consultation and litigation concerning threatened, endangered and sensitive species, making it impossible for any small business to match harvest levels to sale purchase in a given time period. Another respondent noted that the term of the timber sale contract is shorter now than in the past, which reduces the importance of accounting for harvest volume in the formula.

Three respondents, including one organization that represents large forest product companies in the West, expressed opposition to dropping the harvest data from the formula for calculating shares. One respondent commented that a period of unstable timber supply and markets is simply a poor time to make changes in a long established criteria used in calculating shares for the set-aside program. They noted that the proposed change seemed to allow small businesses to have an unfair ability to manipulate the program in their favor by carrying excess share volumes of unharvested timber into the next 5-year period. Similarly, another respondent felt that the proposed change would allow small businesses to purchase and hoard excessive amounts of unharvested volumes into the future 5-year periods.

One respondent commented that an aggressive, relatively large, small business sawmill owner would have an unfair advantage over the smallest size operator. This respondent also expressed a belief that this unfair advantage would lead to fewer operations and could hurt the economic viability of the smallest owners. This respondent stated that there would be no reason for a qualifying small sawmill to use federal timber in a timely manner without the purchase-to-harvest ratio minimum. In addition, using only the purchased timber sale data would tie up resource areas for longer time periods and lead to the displacement of the smallest "Mom and Pop" sawmills by the larger mills, even though the larger mills still qualified as small businesses.

Response. The arguments for dropping the harvest volumes from the recomputation formula are persuasive. Available data concerning timber volume under contract does not provide evidence of the hoarding of large amounts of timber under contract. The competition for federal timber, as well as increasing prices for quality timber, indicate an increased demand for timber sales from federal lands. Furthermore, since July 1991, timber sale contracts require periodic payments, which discourages the hoarding of any timber under contract and provides an incentive for prompt harvest. Including harvest data in the formula is no longer necessary, given the current size of the timber program, the length of the timber sale contracts, and new timber sale contract provisions. The agency agrees with the argument that dropping the harvest volume from the formula would serve both the forest products industry and the agencies by eliminating unnecessary recordkeeping and undue complexities in the calculation procedures.

Finally, the Small Business Administration, which administers the Small Business Set-aside Program cooperatively with the Forest Service, supports this formula change. Therefore, the formula included in the final policy reflects the removal of the harvest volume from the recomputation of shares and relies, instead, only on the amount of timber purchased. This change is reflected in the revised instructions given in Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH 2409.18).

Change the time period for a structural change recomputation from 36 months to 18 months. The proposed policy asked for comment on reducing the implementation time of a structural change from 36 months to 18 months.

Comments. Three respondents supported the proposal to shorten the timeframe for a structural change recomputation; one was a large business and the other two were small businesses. One respondent stated that since the rate of change in business, in

general, and in the timber industry, in particular, seemed to be continually accelerating, the proposed change would allow for share changes to be better-timed following business changes.

One respondent, who supported the proposal, noted that because of the drastic changes in the industry in the last 2 years, many companies were getting out of the sawmill business. The respondent stated that if a structural change was not made quickly, an imbalance in the marketplace would occur. Likewise, another respondent felt that the 18-month period would allow the Forest Service to be more responsive to the needs of small businesses in an ever-changing market situation.

Twenty-three respondents, including the Small Business Administration, opposed this proposal to shorten the time period for a structural change recomputation. These respondents included two organizations representing small businesses and one organization representing large businesses. The other 19 respondents were individual small businesses.

The Small Business Administration noted that structural changes are rapidly occurring in market areas where the number and volume of sales have decreased dramatically over the past few years. They stated that only by retaining the 36-month analysis period would there be adequate time to allow the small business set-aside share percentage to reflect the actual purchase patterns that would develop after a major purchaser has discontinued operations or changed its business size status. They suggested that it might be more effective to revise the qualified purchased volume amount that is needed to meet the definition for structural change. A respondent stated that a structural change should not be implemented until the entire small business set-aside program is analyzed in accordance with current market conditions.

One of the respondents opposed the proposed reduction in time stating that 18 months is not long enough time to yield an appropriate number of sales or amount of timber volume on which to make an accurate recomputation. This respondent provided examples where the proposal would not work; such as, when a forest went for more than 18 months without selling a qualifying timber sale or when forests offered large salvage sales with logging requirements that effectively precluded smaller companies form bidding on the sales. The respondent also noted that since current regulations on structural change recomputation allow the set-aside share to vary between the original share level and 80 percent of the original, there are too many instances where one or two large salvage sales, which have expensive logging system requirements, are the only sales sold in a market area during a recomputation period. The respondent noted that this situation is unfair to smaller purchasers because they have no legitimate opportunity to purchase the volume needed to maintain the set-aside share.

Similarly, another respondent representing small businesses, provided a chart of 18 national forests in Oregon and Washington, depicting low sale volumes and an erratic timber sale program from 1995 to 1998. The respondent suggested that under an 18-month base period, one or two sales on those example forests often constituted 50 to 75 percent of the entire sale program during that period. The respondent noted that shortening the recomputation time period created opportunities to manipulate the program and, as such, would be a substantial risk to small businesses.

One respondent commented that the joint circumstances of only a few timber sales making it through the gauntlet of litigation and the more traditional type of timber sale program changing to include the vastly different types of "sales," such as salvage, stewardship, and forest health, make the proposed change to an 18-month period a poor choice. Another respondent noted that if the 18-month proposal was adopted only six sales likely would be offered in their area in 18 months. The respondent stated that the proposed timeframe simply is not long enough to yield an appropriate number of sales or an amount of timber volume with which to make an accurate recomputation.

Another respondent, opposed to the reduced timeframe, noted that because the timber program is erratic, the reduction in time might produce some unintended results. This respondent suggested that the agency consider extending the base period from 36 months to a full 5-year period. Another a stated that the time reduction would be adverse to the interests of small businesses and suggested that the structural recomputation procedure be eliminated completely.

The remaining respondents, opposed to the reduction of the structural change time period to 18 months, identified the same reasons previously noted by the other respondents. Most indicated that the timber sale program is too erratic and that too few sales would be offered in the 18-month period for a fair recomputation of small business shares.

Response. The arguments against proceeding with the proposal to reduce the time period for recomputing the shares and the evidence presented by the as are sufficient to convince the agency that there are too many negative factors to proceed with implementation of this part of the proposed policy. The negative factors that were especially noteworthy include Small Business Administration's concern that there needs to be adequate time to provide the opportunity for the share percentage to reflect the actual purchase patterns that develop after a major purchaser has discontinued operations or changed size status and the fact that most of the respondents expressed opposition to the proposal to reduce the time period. Respondents noted that the reduced number of sales in most market areas would be an inadequate representation of the timber sale program. The agency agrees that this could be a negative factor in the structural change consideration. Also, the agency is especially concerned about the potential impact of changing the time period on small businesses and the potential for manipulation of the share computation under a 18-month base timeframe. A 18-month base time period may not give small businesses adequate opportunity to show interest in a sale. Therefore, the proposal to reduce the recomputation period from 36 months to 18 months will not be adopted.

Other structural change related proposals suggested by the respondents, such as, revising the qualified purchased volume amount needed to trigger a structural change, dropping the structural change procedure completely, or changing the period to 5 years, are not being pursued at this time. However, the agency continues to monitor the effects of structural changes and to work with the Small Business Administration to determine what future policy changes may be needed to provide fair adjustments for both small and large timber businesses.

Other Comments. A number of the respondents commented on what they thought was a part of the agency's proposal, that is, to change the small business set-aside policy to allow only the timber sales sold on a tree measurement basis to be counted in the set-aside program.

Response. While the proposal, as presented in the May 1999, **Federal Register** notice, could be interpreted to suggest that the agency was proposing to allow only timber sales sold on a tree measurement basis to be counted in the set-aside program, this was not the intention of the agency. As one of the respondents noted, a recent study,

required by Congress to assess whether scaled or tree measurement sales provided the best results concluded that a mix of these methods was the most appropriate procedure. The agency will continue to allow sales from both tree measurement and scaled sales to be included.

Summary

The formula to be used for the recomputation of the small business shares of the timber sale set-aside program has been modified to remove the harvest volume data from the recomputation of shares. The recomputation formula will now use only the amount of timber purchased. This change is reflected in the revised instructions given in Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH 2409.18). No other substantive policy changes were made to this chapter of the handbook. Copies may be obtained from the Forest Service website at Directives under the Administration pull-down menu at the worldwide web at *fs.fed.us* or by contacting the person listed under the FOR FURTHER INFORMATION CONTACT section of this notice.

Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory and Review. It has been determined that this is not a significant policy. This final policy will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final policy will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final policy is not subject to OMB review under Executive Order 12866.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. The agency received comments primarily from small businesses and complied with most of the suggestions made by those entities.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this final policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final policy on state, local, and tribal governments and the private sector. This final policy does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

This final policy does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR 1320 do not apply.

Dated: June 22, 2000.

Mike Dombeck,

Chief.

[FR Doc. 00–18482 Filed 7–20–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 21, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 5, 12 and 26 and June 2 and 9, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 F.R. 26178, 30562, 34145, 35319 and 36663) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

American Flag
M.R. 1011
Mailers, Audio Cassette
8105–01–386–2181
8105–01–386–2189
Nonfat Dry Milk
8910–00–NSH–0001

Services

Administrative Services, General Services Administration, 100 Penn Square East, Philadelphia, Pennsylvania

Administrative Services, Office of the Provost Marshal, Building 23020, Fort Hood, Texas
Administrative/General Support Services, Chaplain's Office, Great Lakes Naval Training Center, Great Lakes, Illinois
Dispatcher Services, Federal Building 222 West 7th Avenue, Anchorage, Alaska
Grounds Maintenance, U.S. Army Reserve Center, 50 East Street, Springfield, Massachusetts
Grounds Maintenance, U.S. Army Reserve Center, AMSA 68(G), 42 Albion Road, Lincoln, Rhode Island
Janitorial/Custodial, Marine Corps Reserve Training Center, 4201 Chester Avenue, Bakersfield, California
Janitorial/Custodial, Weapons Support Facility, Seal Beach, California
Janitorial/Custodial, GSA Distribution Depot, 500 Edwards Avenue, Harahan, Louisiana
Janitorial/Custodial, U.S. Army Space & Missile Defense Command, Arlington, Virginia
Operation of Central Issue Facility, Building 9640, Fort Lewis, Washington
Operation of Self Service Supply Store, U.S. Army Space & Missile Defense Command, Arlington, Virginia
Temporary Medical Record Filing for the following locations: VA Medical Center, Nashville, Tennessee; Alvin C. York VA Medical Center, Murfreesboro, Tennessee

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,
Deputy Director (Operations).
[FR Doc. 00–18540 Filed 7–20–00; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled
ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
DATES: Comments must be received on or before August 21, 2000.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.
FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.
SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Paper Shredder
75201241 (Strip Cut)
75201242 (Cross Cut)
75201419 (Strip Cut)
75201420 (Cross Cut)
NPA: L.C . Industries for the Blind, Inc.
Durham, North Carolina

Services

Grounds Maintenance
MCRD–SCE Parcels
Marine Corps Recruit Depot
San Diego, California
NPA: Association for Retarded Citizens—San Diego
San Diego, California

Janitorial/Custodial

NASA Headquarters
300 E Street, SW
Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc.
Alexandria, Virginia

Janitorial/Custodial

New Executive Office Building
Jackson Place Townhouses
Winder Building and 1724 F Street
Washington, DC
NPA: Melwood Horticultural Training Center
Upper Marlboro, Maryland

Janitorial/Custodial

U.S. Fish & Wildlife Service
Great Swamp National Wildlife Refuge
Basking Ridge, New Jersey
NPA: Occupational Training Center of Morris County
Cedar Knolls, New Jersey

Laundry Service

Linen Exchange
Building 426
March Air Force Base, California
NPA: Job Options, Inc.
San Diego, California

Mailing Services

NASA Goddard Space Flight Center
Greenbelt, Maryland
NPA: Fairfax Opportunities Unlimited, Inc.
Alexandria, Virginia

Louis R. Bartalot,
Deputy Director (Operations).
[FR Doc. 00–18541 Filed 7–20–00; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 071800LE]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Licensing of Private Land Remote-Sensing Space Systems.
Form Number(s): None.
OMB Approval Number: 0648–0174.
Type of Request: Emergency.
Burden Hours: 314.
Number of Respondents: 13.
Average Hours Per Response: 40 hours for a license application, 10 hours for a license amendment, 2 hours for a notification of a foreign agreement, 1 hour for an executive summary, 2 hours for a notification of the demise of a

system or a decision to discontinue system operations, 2 hours for a notification of any operational deviation, 5 hours for a data collection restriction plan, 3 hours for a plan for restricting collection or dissemination of Israeli territory, 3 hours for submission of a data flow diagram, 1 hour for submission of satellite sub-system drawings, 3 hours for submission of final imaging system specifications, 2 hours for a notification of intent to purge data, 2 hours for spacecraft operational information, 2 hours for a notification of disposition of a satellite or orbital debris, 3 hours for a quarterly operational report, 8 hours for a pre-operational compliance audit, and 10 hours for an operational compliance audit.

Needs and Uses: NOAA is issuing regulations that revise the agency's minimal requirements for the licensing, monitoring, and compliance review of private Earth remote-sensing space systems under Title II of the Land Remote-Sensing Policy Act of 1992 (15 U.S.C. 5601 *et. seq.*). Application information is needed to ensure that the applicant will be in compliance with the Act and with national security and international obligations. Persons receiving a license will be required to make reports (see "Average Hours Per Response" above for a listing of the reports). *Affected Public*: Business and other for-profit organizations.

Frequency: On occasion, quarterly, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–18563 Filed 7–20–00; 8:45 am]

BILLING CODE 3510–HR–F

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce seeks U.S. companies to exhibit their catalogues in the U.S. Environmental Technologies Product Literature Center at Pollutec in Lyon, France, October 17–20, 2000. Recruitment closes on September 15, 2000. For information contact: Ms. Anne Novak, U.S. Department of Commerce, telephone: 202–482–8178, fax: 202–501–7909, e-mail: Anne__Novak@ita.doc.gov

Every year Pollutec, France's premier trade show for air, water, solid and hazardous waste technologies, draws a worldwide audience of over 60,000 professional visitors. About six in ten have become customers of exhibitors they met at Pollutec, and American companies which exhibited at Pollutec last year received approximately 1,100 business leads. See their website http://www.Pollutec.com for more information on Pollutec.

The U.S. Environmental Technologies Product Literature Center will be managed by experienced specialists from Department of Commerce offices in France and Washington. The participation fee for this catalog showcase is $380.00, and companies will need to forward sets of their company literature, which will be displayed at the U.S. Pavilion at Pollutec and promoted by Department of Commerce specialists.

FOR FURTHER INFORMATION CONTACT: Reginald Beckham, U.S. Department of Commerce. Tel: 202–482–5478, Fax: 202–482–1999.

Dated: July 17, 2000.

Thomas H. Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 00–18550 Filed 7–20–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 000515143–0205–02]

RIN 0625–XX23

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT).

SUMMARY: This Notice supplements the **Federal Register** Notice of May 12, 2000 (65 FR 36117–36120) announcing the availability of funds for the SABIT American Business Internship Training Program (SABIT), for training business executives (also referred to as "interns") from the Newly Independent States of the Former Soviet Union. All information in the previous announcement remains current, except for the changes to the closing date.

DATES: This Notice extends the closing date of the referenced **Federal Register** Notice for 1 month to 5 p.m. August 31, 2000. All awards are expected to be made prior to September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

Dated: July 18, 2000.

Liesel Duhon,

Director, SABIT Program.

[FR Doc. 00–18562 Filed 7–20–00; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldridge National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, August 3, 2000. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to discuss the criteria for moving applicants to consensus/site visits; review of Stage I process, including data and selection of applicants for consensus, and comparison of Stage I decisions in 2000 with trend data from past; report on Judges Survey modifications; and review of senior training. The

applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene August 3, 2000, at 9:00 a.m. and adjourn at 4:30 p.m. on August 4, 2000. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Chemistry Building, Room A228, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 31, 2000, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or formation obtained from a person and privileged or confidential.

Dated: July 13, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–18536 Filed 7–20–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062300E]

Marine Mammals; Scientific Research Permit (978–1567–00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Paul E. Nachtigall, Ph.D., Director, Marine Mammal Research Program, Hawaii Institute of Marine Biology, University of Hawaii, P.O. Box 1106, Kailua, Hawaii 96734, has been issued a permit to conduct scientific research on three captive bottlenose dolphins (*Tursiops truncatus*) and one captive false killer whale (*Pseudorca crassidens*) for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region,501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213, (562/980–4000); and

Protected Resources Program Manager, Pacific Islands Area Office, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814–4700, (808/973–2937).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak at 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 25, 2000, notice was published in the **Federal Register** (65 FR 24186) that a request was received for a scientific research permit on three (3) captive bottlenose dolphins (*Tursiops truncatus*) and one (1) captive false killer whale (*Pseudorca crassidens*) for studies on the hearing and echolocation processes in odontocete cetaceans. The research will occur over a five year period. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 17, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–18565 Filed 7–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Application for a Department of the Army Permit; ENG Form 4345; OMB Number 0710–0003.

Type of Request: Reinstatement.

Number of Respondents: 15,500.

Responses per Respondent: 1.

Annual Responses: 15,500.

Average Burden per Response: 10 hours.

Annual Burden Hours: 155,000.

Needs and Uses: The Corps of Engineers uses the information to evaluate proposed construction of filling in U.S. waters for impacts on the environment and nearby properties as required by federal law to determine if issuance of a permit is in the public interest. Respondents are private landowners, businesses, non-profit organizations, and government agencies.

Affected Public: Individuals; Business or Other For-Profit; Not-For-Profit Institutions; Farms; Federal Government; State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for U.S. Army COE, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18448 Filed 7–20–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting cancellation.

SUMMARY: On June 21, 2000, 65 FR 38518, the Department of Defense published a notice to announce a meeting of the Defense Partnership Council to be held July 26, 2000.

This notice is to announce that the meeting is cancelled due to conflicts in members' schedules.

FOR FURTHER INFORMATION CONTACT: Mr. Ben James, Chief, Labor Relations Branch, Field Advisory Services

Division, Defense Civilian Personnel Management Service, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144, (703) 696–1450.

Dated: July 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18450 Filed 7–20–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Barry M. Goldwater Range Integrated Natural Resources Management Plan

AGENCY: Department of the Air Force, DoD.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR 1500 to 1508), the Departments of the Air Force and Navy, in partnership with the Department of the Interior and the State of Arizona (Arizona Game and Fish Department), intend to prepare an EIS to evaluate the environmental effects of the implementation of the Integrated Natural Resources Management Plan being prepared for the Barry M. Goldwater Range.

DATES: Comments must be received no later than August 28, 2000 to ensure full consideration in the EIS.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Luke Air Force Base, 56 FW/RMO, 6605 North 140th Drive, Luke AFB, AZ 85309–1934 (Attn: Mr. Bob Barry, telephone 623–856–3823, extension 242); Marine Corps Air Station Yuma at Range Management Department, Box 99160, Yuma, AZ 85369–9160 (Attn: Mr. Ron Pearce, telephone 520–341–3401); Bureau of Land Management at Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027 (Attn: Mr. Gene Dahlem, telephone 623–580–5525); or Arizona Game and Fish Department, 2221 W. Greenway Road WM–HB, Phoenix, AZ 85023–4312 (Attn: Mr. John Kennedy, telephone 602–789–3602).

SUPPLEMENTARY INFORMATION: The Barry M. Goldwater Range, located in southwestern Arizona, was rewithdrawn from the public domain for military training purposes under the Military Lands Withdrawal Act of 1999 (Public Law 106–65). In compliance with this Act, the Air Force and Marine Corps, in partnership with the Department of the Interior and the State of Arizona (Arizona Game and Fish Department), will manage the natural resources present on the Range in accordance with the Sikes Act (16 U.S.C. 670).

Accordingly, the Air Force and Marine Corps, in partnership with the Department of Interior and the State of Arizona (Arizona Game and Fish Department), are preparing and will implement an Integrated Natural Resources Management Plan for the Goldwater Range. Pursuant to the requirements of Public Law 106–65 and the Sikes Act, this Plan will provide for: (1) Management of natural and cultural resources present on the Range in support of the requirements of the military mission, (2) sustainable public use to the extent that use is compatible with military activities and natural and cultural resource compliance requirements, (3) compliance with laws protecting sensitive biological and cultural resources, including endangered species management, and (4) participation in local initiatives to advance regional biodiversity goals. The EIS, which is being prepared concurrently with the Integrated Natural Resources Management Plan, will evaluate the environmental effects of the management alternatives proposed in the Plan. Given the military purposes of the Range and the safety and security requirements associated with those purposes, the alternatives to be studied will focus on the protection, conservation, and management of resources and public use opportunities to the extent possible while not jeopardizing the military purposes of the Range.

Environmental issues to be addressed in the EIS include but are not limited to earth, biological, cultural, water, and visual resources; regional biological diversity management; wildlife management; threatened and endangered species; air quality; noise; land use compatibility; socioeconomics; recreation; environmental justice; and public health and safety.

The Air Force and Marine Corps, in partnership with the Department of the Interior and the State of Arizona (Arizona Game and Fish Department), are initiating a scoping process to determine the extent of issues to be addressed and identify the significant issues related to this action. Scoping meetings will be held in six southern Arizona communities, as indicated in the Meetings section below. Each meeting will begin with an open house at which the public may review maps and other displays. At each meeting location, the open house will be followed by a formal presentation beginning at 7:00 p.m. These meetings also will be advertised in area newspapers. A Tohono O'odham translator will be available at the meeting in Sells, AZ.

Air Force, Marine Corps, Department of the Interior, and State of Arizona representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state and local agencies, any affected Native American tribes, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. Agencies and the public are also invited and encouraged to provide written comment on issues that are important to them in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, comments should clearly describe specific issues or topics, which the commentor believes the EIS should address. Written statements and or questions regarding the Integrated Natural Resources Management Plan and associated EIS should be mailed to BMGR INRMP, P.O. Box 67132, Phoenix, AZ 85082–7132.

Meetings

Public scoping meetings will be held:

1. Monday, August 7, 2000, 5:30 to 8:30 p.m., Glendale Adult Center Palo Verde Building, 7121 North 57th Avenue, Glendale, AZ.

2. Tuesday, August 8, 2000, 5:30 to 8:30 p.m., Ajo Community Center, 290 East 5th Street, Ajo, AZ.

3. Wednesday, August 9, 2000, 5:30 to 8:30 p.m., El Rio Center, 1390 West Speedway Boulevard, Tucson, AZ.

4. Thursday, August 10, 2000, 5:30 to 8:30 p.m., Kofa High School, 3100 Avenue A, Yuma, AZ.

5. Friday, August 11, 2000, 5:30 to 8:30 p.m., Gila Bend Union High School, 308 North Martin, Gila Bend, AZ.

6. Tuesday, August 15, 2000, 5:30 to 8:30 p.m., Tribal Council Chambers, Sells, AZ.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–18561 Filed 7–20–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Proposed Change to MTMC Freight Transportation Procurement Procedures

AGENCY: Military Traffic Management Command, U.S. Army, DoD.

ACTION: Notice (Request for Comments).

SUMMARY: The Military Traffic Management Command (MTMC) proposes to revise the procedures it uses in procuring long term recurring freight transportation services from motor carriers and barge operators. MTMC often procures transportation services using contracting procedures that are not governed by the Federal Acquisition Regulation, *e.g.*, guaranteed traffic (GT) agreements. A revision of these procedures is being proposed due to change in the governing law.

DATES: Interested parties are requested to submit comments on this proposal by September 19, 2000. All comments received within 60 days of publication of this notice will considered prior to any decision on whether to adopt this proposal.

ADDRESSES: Comments should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTAQ Room 12N67, Hofffman Building II, 200 Stovall Street, Alexandria, Virginia 22331–5000.

FOR FURTHER INFORMATION CONTACT: Christina N. Dossman, (703–) 428–2052.

SUPPLEMENTARY INFORMATION: Historically, freight transportation services procured by MTMC have not been governed by the Federal Acquisition Regulation (FAR) contained in Title 48 of the Code of Federal Regulations.

The FAR states at FAR 47.000 that it does not regulate transportation procured by bills of lading and similar documents. FAR 47–104.1 states that under 49 U.S.C. 10721 (now recoded at 49 U.S.C. sections 10721 [rail], 13721 [motor, water and freight forwarder] and 15504 [pipeline], carriers can offer reduced rates for Government Bill of Lading service and that agencies can negotiate reduced rates for volume moves or for shipments on a recurring basis. Under the exception recognized in FAR 47.200 the government could acquire transportation using 49 USC 10721 rates even though the FAR normally applies to transportation acquire by sealed bid or negotiated contracts (*i.e.*, not individual GBL traffic).

Under the above rules MTMC could and did used FAR exempt procedures for traffic based upon GBLs and also for traffic based upon Section 10721 rates.

49 U.S.C. 10721 was part of the Interstate Commerce Act which regulated rates offered by common carriers. This Act has been substantially amended in recent years, most notably by the Trucking Industry Reform Act of 1994, which abolished tariff filing requirements for motor carriers of freight, and by Public Law 104–88, the ICC Termination Act of 1995, which abolished the Interstate Commerce Commission. Thus, the provisions of the former Section 10721, to the extent it still exists in revised form as sections 10721, 13712 and 15504, have no practical application to the freight service DOD acquires from carriers. (*See Munitions Carriers Conference, Inc.* v. *United States*, 147 F.3D 1027 (1998).

In view of this change in the law, MTMC proposes to procure future transportation services involving recurring shipments or long term contracts under the FAR, including use of the FAR contract format and inclusion of all required FAR provisions and clauses. This will include future procurements based upon, or similar to, the guaranteed traffic (GT) agreements that MTMC now utilizes under FAR exempt procedures. This proposal does not apply to the current household goods program which is covered by different laws, but it should be noted that some household goods transportation contracts are already being conducted under the FAR.

MTMC will continue to use a voluntary tender procedure for shipments not covered under a long term contract. Those GBL-based movements continue to be recognized as exceptions to the legal requirement to use the FAR.

Regulatory Flexibility Act

This proposed change of procurement policy is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Paperwork Reduction Act. The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* does not apply because no information collection requirements or records keeping responsibilities are imposed on offerors, contractors, or members of the general public.

Brenda R. Jackson-Sewell,

Lieutenant Colonel, U.S. Air Force, Deputy Principal Assistant Responsible for Contracting.

[FR Doc. 00–18538 Filed 7–20–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement [DEIS] for the Boeuf-Tensas Basin, Southeast Arkansas, Feasibility Report

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of Intent.

SUMMARY: The feasibility study for the Boeuf-Tensas Basin, Southeast Arkansas will be conducted to fully evaluate a range of alternatives to provide a plan for flood control, environmental protection/restoration, and agricultural water supply in Chicot, Desha, Ashley, Drew, Lincoln, and Jefferson Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Marcy (telephone (601) 631–5965), CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, Mississippi 39183–3435.

SUPPLEMENTARY INFORMATION: This study is authorized by a resolution of the Senate Committee on Environment and Public Works adopted 23 June 1988.

1. Proposed Action: Feasibility studies for the Boeuf-Tensas Basin, Southeast Arkansas study will be conducted to fully evaluate a range of alternatives to provide a multipurpose plan for flood control, agricultural water supply, and environmental protection and/or enhancement. Various alternatives will be analyzed, and assuming a feasible plan is identified, design studies will be completed to develop a baseline cost estimate and schedule for implementation.

2. Alternatives: One feasible implementable plan was identified during the Reconnaissance Study and documented in the Final Reconnaissance Report, February 1991. This plan would use water from seven different sources and/or methods, including rainfall, existing streamflows at the safe and legal rate of withdrawal, ground water at the safe yield, existing on-farm storage reservoirs, new on-farm storage reservoirs, import water from the Arkansas River, and water conservation. The primary delivery system to import water from the Arkansas River would consist of approximately 136 miles of channel excavation; one 75-cubic-foot-per-second pump station at Harding Drain in Pine Bluff, Arkansas; four gravity structures through the Arkansas River south bank levees at Linwood, Douglas Lake, Silver Lake, and Belcoe Lake; a dam across the south end of Morgan Point Cutoff; a 680-cubic-foot-

per-second pump station near Tillar, Arkansas; and 28 weirs in the main water supply channels. The secondary delivery system would consist of 75 lateral and 8 sublaterals to divert irrigation water from the main water supply channels to the beginning of an on-farm irrigation system; 4,830 relifts to supply water to the laterals and on-farm delivery systems; approximately 1,361,000 linear feet of permanent underground pipelines; and 670 on-farm reservoirs.

3. Additional alternatives that may be included are:

a. Water supply plans to meet three different design drought conditions.

b, Additional import points along the Arkansas River similar to the plan selected for detailed analysis in the Reconnaissance Study.

c. One import point on the Mississippi River to supply a portion of the unmet water needs of the Basin.

d. Utilization of on-farm storage and water conservation measures to meet all or a portion of the water needs in the Basin.

e. Upland reservoirs west of Bayou Bartholomew to supply a portion of the unmet water needs of the Basin.

f. Various levels of flood control and the impacts of the water supply alternatives on the existing level of flood protection.

g. Features to restore, protect, and/or enhance the environment. Opportunities exist to improve the productivity of streams and oxbow lake fisheries; restore, protect, and/or enhance the remaining tracts of bottomland hardwoods and forested wetlands to benefit Neotropical migratory birds; and migratory waterfowl.

h. Other alternatives may be developed through the scoping process described below.

4. The National Environmental Policy Act (40 CFR Parts 1500–1508) requires all Federal agencies involved in water resources planning to conduct a process termed "scoping." This scoping process determines the issues to be addressed and identifies the significant issues related to a proposed action. To accomplish this, two public scoping meetings will be held. One meeting is tentatively scheduled to be held at Pine Bluff, Arkansas, and one meeting at McGehee, Arkansas. These meetings are scheduled to be held in August 2000. Significant issues identified in the scoping meetings will be analyzed in depth in the DEIS. Significant issues currently identified include, but are not limited to, excessive sedimentation, excessive nutrients, trash dumping, log jams, reduced instream flow, habitat alteration, lack of diverse use, lack of public access, contaminants, and rock weirs. The Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Arkansas Department of Environmental Quality, Arkansas Game and Fish Commission, and the Arkansas Soil and Water Conservation Commission will be invited to become cooperating agencies. These agencies will be asked to review data, the feasibility report, and appendixes. A public meeting will be held once the DEIS is completed. All interested agencies, groups, tribes, and individuals will be sent copies of the DEIS and final EIS.

5. The DEIS is estimated to be completed in March 2005.

Robert Crear,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 00–18537 Filed 7–20–00; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2885–000]

Cedar Brakes I, L.L.C.; Notice of Issuance of Order

July 17, 2000.

Cedar Brakes I, L.L.C. (Cedar Brakes) submitted for filing a rate schedule under which Cedar Brakes will engage in wholesale electric power and energy transactions at market-based rates. Cedar Brakes also requested waiver of various Commission regulations. In particular, Cedar Brakes requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Cedar Brakes.

On July 12, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Cedar Brakes should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Cedar Brakes is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Cedar Brakes' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18473 Filed 7–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–109–000]

Cinergy Capital & Trading, Inc. CinCap VI, LLC Sunbury Holdings, LLC; Notice of Filing

July 17, 2000.

Take notice that on July 11, 2000, Cinergy Capital & Trading, Inc, Inc., CinCap VI, LLC and Sunbury Holdings, LLC (collectively, the Applicants), tendered for filing a supplement to Exhibit H to their joint application filed on June 27, 2000, in the above-captioned docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 25, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18479 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA00–1–000]

J. Dennis Corbin, Arlene E. Corbin, and the Estate of Mary Alice Corbin; Notice of Petition for Adjustment

July 17, 2000.

Take notice that on June 12, 2000, J. Dennis Corbin (filing on behalf of himself, Arlene E. Corbin, and the Estate of Mary Alice Corbin (collectively: Corbin) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978,[1] requesting to be relieved of its obligation to pay the interest on the Kansas ad valorem tax reimbursement refunds Corbin owes to Northern Natural Gas Company. Absent such relief, Corbin would be required to make such refunds under the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[2] The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Corbin petition is on file with the Commission and open to public inspection.

J. Dennis Corbin states that he and his wife (Arlene E. Corbin) never purchased any working interest in oil wells, or any other type of petroleum interest. Mr. Corbin further notes that, although he did inherit an interest in some Kansas oil properties from his father (F.J. Corbin), after his father and step-mother (Mary Alice Corbin) died in 1981, the wells involved were shut down approximately 10 to 11 years ago, and he believes that his father's estate was closed some time in 1983 or 1984. Accordingly, Mr. Corbin states that he does not understand how he and his wife could owe the refunds at issue, which pertain to certain Kansas wells operated by Burnett Corporation.

Mr. Corbin further acknowledges that he transferred one-half of his inherited interest in the Kansas oil properties to his wife. However, Mr. Corbin contends that, in view of the fact that his wife is presently responsible for caring for her 81-year-old blind mother, the burden imposed on his wife by the Commission's September 10 order is totally unjustified.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,
Secretary.
[FR Doc. 00–18477 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–386–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

July 18, 2000.

Take notice that on July 12, 2000 Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective August 15, 2000:

Fourth Revised Sheet No. 5
Second Revised Sheet No. 96
Second Revised Sheet No. 98
First Revised Sheet No. 99
Original Sheet No. 121A

On February 9 and May 19, 2000, the Federal Energy Regulatory Commission (Commission) issued Order Nos. 637 and 637–A, respectively, which, among other things directed pipelines to file revised tariff sheets to remove the price cap for short-term capacity releases for a 2½ year period and to modify any "Right of First Refusal" provisions to comply with the Commission's new policy determinations. Destin states that it is filing revised tariff sheets to comply with these directives.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18509 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–95–000]

Dynegy Inc., Dynegy Holdings Inc., Illinova Corporation and Midwest Generation, LLC; Notice of Filing

July 17, 2000.

Take notice that on July 11, 2000, Dynegy Inc. (Dynegy) Illinova Corporation (Illinova), Dynegy Holdings Inc. (DHI), and Dynegy Midwest Generation, Inc. (DMGI) (together, Applicants) tendered for filing a Supplement to the application filed May 22, 2000 under section 203 of the Federal Power Act, which requested that the Commission approve a series of transactions (Proposed Transfer) designed to transfer the equity ownership of DMGI from Illinova to Dynegy Catlin Member, Inc., a wholly-owned subsidiary of DHI.

The Supplement consists of the documents that comprise Exhibit H

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

under Section 33.3 of the Commission's Regulations (18 CFR 33.3).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 28, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18469 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2706–000]

Foote Creek IV, L.L.C.; Notice of Issuance of Order

July 17, 2000.

Foote Creek IV, L.L.C. (Foote Creek) submitted for filing rate schedule under which Foote Creek will engage in wholesale electric power and energy transactions at market-based rates. Foote Creek also requested waiver of various Commission regulations. In particular, Foote Creek requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Foote Creek.

On July 12, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Foote Creek should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Foote Creek is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Foote Creek's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18471 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–385–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 28, 2000.

Take notice that on July 12, 2000, Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets with a proposed effective date of August 15, 2000:

Third Revised Sheet No. 6
Second Revised Sheet No. 99
Fourth Revised Sheet No. 100
First Revised Sheet No. 103
Original Sheet No. 121C

On February 9 and May 19, 2000, the Federal Energy Regulatory Commission (Commission) issued Order Nos. 637 and 637–A, respectively, which, among other things, directed pipelines to file revised tariff sheets to remove the price cap for short-term capacity releases for a 2½ year period and to modify any "Right of First Refusal" provisions to comply with the Commission's new policy determinations. Garden Banks states that it is filing revised tariff sheets to comply with these directives.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18508 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–386–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

July 18, 2000.

Take notice that on July 13, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 Substitute Original Sheet No. 11, with an effective date of July 1, 2000.

Kern River states that the purpose of this filing is to comply with the Commission's letter order in this proceeding, which directed Kern River to file a revised Sheet No. 11 to include a page number reference for the transportation service request form.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rimbs.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18506 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2785–000]

Lakefield Junction, L.P.; Notice of Issuance of Order

July 17, 2000.

Lakefield Junction, L.P. (Lakefield Junction) submitted for filing a rate schedule under which Lakefield Junction will engage in wholesale electric power and energy transactions at market-based rates. Lakefield Junction also requested waiver of various Commission regulations. In particular, Lakefield Junction requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Lakefield Junction.

On July 12, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Lakefield Junction should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Lakefield Junction is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Lakefield Junction's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18472 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3112–000]

Madison Gas and Electric Company; Notice of Filing

July 17, 2000.

Take notice that on July 10, 2000, Madison Gas and Electric Company (MGE) tendered for filing service agreements under MGE's Market-Based Power Sales Tariff with:

- GEN–SYS Energy
- Northern States Power Company

MGE requests the agreements be effective on the date they were filed with the FERC.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 31, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18475 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2867–000]

Newark Bay Cogeneration Partnership, L.P.; Notice of Issuance of Order

July 17, 2000.

Newark Bay Cogeneration Partnership, L.P. (Newark Bay) submitted for filing a rate schedule under which Newark Bay will engage in wholesale electric power and energy transactions at market-based rates. Newark Bay also requested waiver of various Commission regulations. In particular, Newark Bay requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Newark Bay.

On July 12, 2000, pursuant to delegated authority, the Director, Division of Corporation Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Newark Bay should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Newark Bay is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Newark Bay's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 24026. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18474 Filed 7–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3119–000]

Niagara Mohawk Power Corporation; Notice of Filing

July 17, 2000.

Take notice that on July 7, 2000, NYSD Limited Partnership, Warrensburg Hydro Power Limited Partnership, Sissonville Limited Partnership and Adirondack Hydro Development Corporation (collectively, the Projects), tendered for filing on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk), Interconnection Agreements between Niagara Mohawk and the Projects.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 28, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18476 Filed 7–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2676–000]

Panda Perkiomen Power, L.P.; Notice of Issuance of Order

July 17, 2000.

Panda Perkiomen Power, L.P. (Panda Perkiomen) submitted for filing a rate schedule under which Panda Perkiomen will engage in wholesale electric power and energy transactions at market-based rates. Panda Perkiomen also requested waiver of various Commission regulations. In particular, Panda Perkiomen requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Panda Perkiomen.

On July 12, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Panda Perkiomen should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Panda Perkiomen is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Panda Perkiomen's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us./online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18470 Filed 7–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–229–030]

Panhandle Eastern Pipe Line Company; Notice of Refund Request

July 18, 2000.

Take notice that on July 13, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report pursuant to the Commission's letter order issued May 31, 2000.

Panhandle states that it refunded on June 16, 2000 to its customers their appropriate pro rata share of the amounts which Panhandle received from Trunkline Gas Company pursuant to Section 3 of Article VIII of Trunkline's Settlement in Docket No. RP87–15–033, *et al.*

Panhandle further states it is submitting herein Appendix A to the filing, which reflects the amounts refunded to each affected customer on June 16, 2000.

Panhandle states that a copy of this information is being sent to all parties to the Docket No. RP91–229–000 proceeding and respective State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before July 25, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18503 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–108–000]

Public Service Company of Colorado; Notice of Filing

July 17, 2000.

Take notice that on July 12, 2000, Public Service Company of Colorado (PSCo) filed a supplement to its application under Section 203 of the Federal Power Act for authorization to dispose of transmission facilities. The specific facilities addressed in the application are two 4/115kV generation step-up transformers interconnecting the powerhouse of PSCo's Boulder Canyon Hydroelectric Project (Boulder Project) to PSCo's transmission system. In its application, PSCo states that it is transferring these facilities to the City of Boulder, Colorado, as part of its proposed sale of the Boulder Project to that City. The supplement provides a brief explanation as to why the transaction will not have an adverse effect on competition, rates, or regulation.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before July 26, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18478 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–108–003]

Questar Pipeline Company; Notice of Tariff Filing

July 18, 2000.

Take notice that on July 13, 2000, Questar Pipeline Company tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2000:

First Revised Volume No. 1

Substitute Thirteenth Revised Sheet No. 5

Original Volume No. 3

Substitute Twenty-Fourth Revised Sheet No. 8

On May 22, 2000, Questar filed an uncontested Offer of Settlement to adjust its fuel gas reimbursement percentage (FGRP) in Docket No. RP00–108–000. On June 30, 2000, the Commission approved the uncontested Offer of Settlement, and directed Questar to file tariff sheets to decrease the FGRP from 2.4 percent to 2.1 percent, to be effective January 1, 2000.

Questar stated that a copy of this filing has been served upon all parties to the proceeding, its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18505 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory commission

[Docket No. RP96–129–012]

Trunkline Gas Company; Notice of Compliance Filing

July 18, 2000.

Take notice that on July 13, 2000, Trunkline Gas company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective August 12, 2000:

Fourth Revised Sheet No. 79

Trunkline states that the purpose of this filing is to comply with the Commission's Letter Order dated June 28, 2000 in Docket No. RP96–129–011, 91 FERC ¶ 61,300 (2000). This filing reflects Trunkline's proposal to liberalize the current directional limitations on its TABS–1 transfer service.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18504 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–307–001]

U–T Offshore System, L.L.C; Notice of Compliance Filing

July 18, 2000.

Take notice that on July 12, 2000, U–T Offshore System, L.L.C (UTOS), tendered for filing as part of its FERC Gas Tariff, Fourth Revised volume No. 1, Substitute First Revised Sheet No. 97, with an effective date of November 5, 1999.

UTOS states that it is filing this tariff sheet to comply with the Commission's June 27, 2000 Letter Order in the referenced proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 3385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18507 Filed 7–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–177–000, et al.]

Conectiv Mid-Merit, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 13, 2000.

Take notice that the following filings have been made with the Commission:

1. Conectiv Mid-Merit, Inc.

[Docket No. EG00–177–000]

Take notice that on June 16, 2000, Conectiv Mid-Merit, Inc. (CMM) filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CMM is a subsidiary of Conectiv, which is a public utility holding company under the Public Utility Holding Company Act (PUHCA). Conectiv also owns Delmarva Power & Light Company (Delmarva) and Atlantic City Electric Company (ACE), each of which is operating public utilities under PUHCA and the Federal Power Act. Conectiv also owns Conectiv Energy Supply, Inc. (CESI), which is engaged in competitive wholesale and retail sales of electricity, among other activities.

CMM intends to own and operate eighteen (18) combustion turbine generation facilities each with a capacity of about 110 MV. The facilities do not currently exist but are to be constructed pursuant to a contract with a manufacturer. CMM represents that it will be exclusively in the business of owning and operating eligible facilities and selling electric energy at wholesale. CMM represents that no State Commission determinations are necessary with respect to these facilities to be constructed.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Adirondack Hydro Development Corporation

[Docket No. EG00–221–000]

Take notice that on July 7, 2000, Adirondack Hydro Development Corporation (Adirondack) filed with the Federal Energy Regulatory Commission an application or determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Adirondack owns and operates a 0.525 MV hydroelectric facility located on the Otter Creek in the Town of Greig, in Lewis County, New York. Adirondak's business offices are located at 39 Hudson Falls Road in South Glens Falls, New York.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Sissonville Limited Partnership

[Docket No. EG00–222–000]

Take notice that on July 7, 2000, Sissonville Limited Partnership (Sissonville) filed with the Federal Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sissonville is a limited partnership formed under the laws of the State of New York for the purpose of owning and operating a 2.3 MV hydroelectric facility located on the Raquette River in the Town of Potsdam, St. Lawrence County, New York. Sissonville's business offices are located at 39 Hudson Falls Road, in South Glens Falls, New York.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. NYSD Limited Partnership

[Docket No. EG00–223–000]

Take notice that on July 7, 2000, New York State Dam Limited Partnership (NYSD) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

NYSD is a limited partnership formed under the laws of the State of New York for the purpose of owning and operating a 10.83 MW hydroelectric facility located on the Mohawk River near the Town of Waterford and City of Cohoes in Saratoga and Albany Counties. NYSD has an easement from the State of New York for purposes of construction and operation of the Facility. NYSD's business offices are located at 39 Hudson Falls Road, in South Glens Falls, New York.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Warrensburg Hydro Power Limited Partnership

[Docket No. EG00–224–000]

Take notice that on July 7, 2000, Warrensburg Hydro Power Limited Partnership (Warrensburg) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Warrensburg is a limited partnership formed under the laws of the State of New York for the purpose of owning and operating a 2.835 MW hydroelectric facility located on the Schroon River in the Town of Warrensburg, in Warren County, New York. Warrensburg has a 40-year easement from the State of New York for purposes of the construction

and operation of the Facility. Warrensburg's business offices are located at 39 Hudson Falls Road in South Glens Falls, New York.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Newington Energy, L.L.C.

[Docket No. EG00–225–000]

Take notice that on July 10, 2000, Newington Energy, L.L.C. (NEL), a Delaware limited liability company with its principal place of business at 111 Broadway, New York, NY 10006, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

NEL proposes to own and operate a nominally rated approximately 525 MW natural gas-fired, combined cycle power plant in the town of Newington, New Hampshire. The proposed power plant is expected to commence commercial operation in May, 2002. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. New Century Services, Inc.

[Docket No. ER00–3095–000]

Take notice that on July 11, 2000, New Century Services, Inc., on behalf of Public Service Company of Colorado (PSCo) tendered for filing revisions to Exhibits B to its Interconnection and Transmission Service Agreement with Tri-State Generation and Transmission Association Inc. as contained in Public Service's Rate Schedule FERC No.24.

PSCo requests an effective date of June 16, 2000 for this filing.

Copies of the filing were served upon Tri-State, Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Baconton Power LLC

[Docket No. ER00–3096–000]

Take notice that on July 10, 2000, Baconton Power LLC (Baconton) tendered for filing a long-term service agreement with Coral Power L.L.C. pursuant to Baconton Power LLC's market-based tariff, FERC Electric Tariff, Original Vol. No. 1.

Baconton is requesting an effective date of June 13, 2000 for the Tolling Agreement.

Comment date: July 31, 2000, in accordance with Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER00–3097–000]

Take notice that on July 10, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing Assignment and Assumption Agreements entered into by and among PPL Electric Utilities Corporation (Assignor), and PPL EnergyPlus, LLC (Assignee) dated April 17, 2000. Under these assignments, the Assignor assigns to the Assignee and the Assignee assumes all of the Assignor's rights and obligations pertaining to the following Service Agreements with Virginia Power:

Service Agreement for Short-Term Market Based Rate Power Sales dated May 15, 1995 and accepted by Letter Order dated July 19, 1995 in Docket No. ER95–1214–000;

Service Agreement for Non-Firm Point-to-Point Transmission Service Power Sales dated April 17, 1997 and accepted by Letter Order dated June 30, 1997 in Docket No. ER97–3058–000;

Service Agreement for Firm Point-to-Point Transmission Service dated October 7, 1997 and accepted by Letter Order January 2, 1998 in Docket No. ER98–671–000;

The Company requests an effective date of the assignments of July 1, 2000.

Copies of this filing were served upon PPL Energy/Plus, LLC the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER00–3098–000]

Take notice that on July 10, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed service agreement for firm point-to-point transmission service, an executed service agreement for non-firm point-to-point transmission service, and an executed service agreement for network integration transmission service under the PJM Open Access Transmission Tariff with Energy East Solutions, Inc. (Energy East).

Copies of this filing were served upon Energy East and the state commissions with the PJM control area.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER00–3099–000]

Take notice that on July 10, 2000, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, 16 U.S.C. 792 et seq., an Agreement dated July 7, 2000 with Oglethorpe Power Corporation (OPC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of July 7, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Oglethrope Power Corporation and to the Pennsylvania Public Utility Commission.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Hardee Power Partners Limited

[Docket No. ER00–3100–000]

Take notice that on July 10, 2000, Hardee Power Partners Limited (HPP) tendered for filing a service agreement with the City of Tallahassee, Florida (Tallahassee) under HPP's market-based sales tariff. HPP requests that the service agreement be made effective on June 11, 2000.

Copies of the filing have been served on Tallahassee and the Florida Public Service Commission.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. The Empire District Electric Company

[Docket No. ER00–3101–000]

Take notice that on July 7, 2000, The Empire District Electric Company (Empire) tendered for filing a notice that it was adopting the Transmission Loading Relief procedures accepted by the Federal Energy Regulatory Commission in *North American Electric Reliability Council*, 91 FERC ¶ 61,122 (2000), and that its open access transmission tariff (OATT) should be considered so modified.

Copies of this filing have been served on all affected state commissions and on all customers taking service under Empire's OATT.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. The New Power Company

[Docket No. ER00–3102–000]

Take notice that on July 10, 2000, The New Power Company submitted a Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Commission's regulations. The New Power Company is succeeding to the Rate Schedule FERC No. 1, Market-

Based Rate Schedule, and Supplement No. 1 to Rate Schedule FERC No. 1, Code of Conduct filed in Docket No. ER00–2535–000, effective June 22, 2000.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Horsehead Industries, Inc.

[Docket No. ER00–3103–000]

Take notice that on July 10, 2000, Horsehead Industries, Inc. (Horsehead) tendered for filing a Form of Service Agreement to its FERC Electric Tariff, Original Volume No. 1, and an unexecuted Service Agreement for service to NewEnergy, Inc. (NewEnergy) thereunder.

A copy of the filing was served upon NewEnergy.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER00–3104–000]

Take notice that on July 10, 2000, Arizona Public Service Company (APS) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Service Schedule D in the Agreement between APS and Citizens Utilities Company (Citizens) in accordance with the Commission's Rules under 18 CFR 35.15.

A copy of this filing was served on the Arizona Corporation Commission.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. NYSD Limited Partnership; Warrensburg Hydro Power Limited Partnership; Sissonville Limited Partnership; Adirondack Hydro Development Corporation

[Docket No. ER00–3109–000]

Take notice that on July 7, 2000, NYSD Limited Partnership, Warrensburg Hydro Power Limited Partnership, Sissonville Limited Partnership, and Adirondack Hydro Development Corporation (collectively, the Applicants) filed an application for acceptance of their long-term power purchase agreements with Niagara Mohawk Power Company (NIMO) to make wholesale sales of electric power at market-based rates, waiver of certain of the Commission's regulations and blanket approval to engage in certain transactions.

The Applicants state that copies of this filing are being mailed to NIMO and to the New York Public Service Commission.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–3111–000]

Take notice that on July 10, 2000, Alliant Energy Corporate Services, Inc. tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing the City of Ames as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of June 26, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. ISO New England Inc.

[Docket No. OA97–237–011]

Take notice that on June 20, 2000, ISO New England Inc. filed its "Quarterly Report for Regulators," as required by New England Power Pool Market Rules and Procedures 17, for the first two quarters. A privileged version, and a redacted public version were filed, together with a request for privileged treatment under 18 CFR 388.112.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18468 Filed 7–20–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–112–000, et al.]

Entergy Gulf States, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 17, 2000.

Take notice that the following filings have been made with the Commission:

1. Entergy Gulf States, Inc.

[Docket No. EC00–112–000]

Take notice that on July 6, 2000, Entergy Gulf States, Inc. tendered for filing five copies and an original of an Application for Transfer of Jurisdictional Assets Under Section 203 of the Federal Power Act, requesting that the Commission approve the sale of Bunch Gully Substation to Chevron Chemical Company LLC.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Indiana Gas & Electric Company; Vectren Utility Holdings, Inc.; Vectren Corporation

[Docket No. EC00–113–000]

Take notice that on July 10, 2000, Southern Indiana Gas & Electric Company (SIGECO), Vectren Corporation (Vectren) and Vectren Utility Holdings, Inc. (VUHI), filed with the Federal Energy Regulatory Commission an application for approval of corporate reorganization under Section 203 of the Federal Power Act. The proposed Reorganization involves a change in the ownership structure of SIGECO, that will be accomplished by Vectren contributing the stock of SIGECO to its newly formed, wholly-owned subsidiary, VUHI.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Calpine Power Services Company; Calpine Energy Services, L.P.

[Docket No. EC00–114–000]

Take notice that on July 11, 2000, Calpine Power Services Company (CPSC) and Calpine Energy Services, L.P. (CES) tendered for filing an application under Section 203 of the Federal Power Act for approval of an

intra-corporate reorganization under which CPSC will transfer its market-based rate tariff and associated jurisdictional facilities to its affiliate, CES.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Ameren Energy Marketing Company and Central Illinois Public Service Company

[Docket No. ER00–3025–000]

Take notice that on July 12, 2000, Ameren Energy Marketing Company (AEM) and Central Illinois Public Service Company d/b/a AmerenCIPS (AmerenCIPS), tendered for filing an executed Voluntary Curtailment Agreement in the above referenced docket.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Wisvest-Connecticut, LLC

[Docket No. ER00–3107–000]

Take notice that on July 11, 2000, Wisvest-Connecticut, LLC (Wisvest-Connecticut), tendered for filing with the Commission an umbrella agreement for short-term service with Sempra Energy Trading Corp., pursuant to the Commission's order dated February 10, 1999. Wisvest-Connecticut, LLC., 86 FERC ¶ 61,133 (1999).

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER00–3108–000]

Take notice that on July 11, 2000, Southern California Edison Company (SCE), tendered for filing a Service Agreement for Wholesale Distribution Service and an Interconnection Facilities Agreement (Agreements) between Riverside County Waste Management Department and SCE.

These Agreements specify the terms and conditions pursuant to which SCE will interconnect RCWMD's generating facility to its electrical system and provide Distribution Service for up to 2.5 MW of power produced by RCWMD's Badlands Landfill generating facility.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER00–3110–000]

Take notice that on July 12, 2000, Arizona Public Service Company (APS), tendered for filing Service Agreements to provide Long-Term Firm Point-to-Point Transmission Service to Salt River Project Agricultural and Power Improvement District under APS' Open Access Transmission Tariff.

A copy of this filing has been served Salt River Project Agricultural and Power Improvement District, and the Arizona Corporation Commission.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–3113–000]

Take notice that on July 11, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities Company (KU) (hereinafter Companies), tendered for filing an unexecuted bilateral Service Sales Agreement between the Companies and Amerada Hess Corporation under the Companies Rate Schedule MBSS.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–3114–000]

Take notice that on July 11, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed Netting Agreement between the Companies and Allegheny Energy Supply Company, LLC.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–3115–000]

Take notice that on July 11, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed unilateral Service Sales Agreement between Companies and Allegheny Energy Supply Company, LLC under the Companies' Rate Schedule MBSS.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER00–3116–000]

Take notice that on July 11, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Cargill-Alliant, LLC will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 15, 2000.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER00–3117–000]

Take notice that on July 11, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Unicom Energy, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1, 2000.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER00–3118–000]

Take notice that on July 11, 2000, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a fully executed Unit Contingent Power Sale Agreement (Agreement) between Flathead Electric Cooperative, Inc. (Flathead) and PacifiCorp.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Citizens Power Sales LLC, et al.

[Docket No. ER00–3120–000]

Take notice that on July 12, 2000, Citizens Power Sales LLC, Hartford Power Sales, L.L.C., CL Power Sales One, L.L.C., CL Power Sales Two, L.L.C., CL Power Sales Five, L.L.C., CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Nine, L.L.C., CL Power Sales Ten, L.L.C., CP Power Sales Twelve, L.L.C., CP Power Sales Thirteen, L.L.C., CP Power Sales Fourteen, L.L.C., CP Power Sales Fifteen, L.L.C., CP Power Sales Seventeen, L.L.C., CP Power Sales Eighteen, L.L.C., CP Power Sales Nineteen, L.L.C., and CP Power Sales Power Sales Twenty, L.L.C., tendered for filing an amendments to their Rate Schedule FERC No. 1 to prohibit sales to and purchases from an affiliate with

a franchised electric service territory, include a related code of conduct, reflect a name change, and incorporate the requirements of Order No. 614, 90 FERC ¶ 61,352 (2000).

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC. 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18501 Filed 7–20–00; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 18, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11841–000.

c. *Date filed:* May 8, 2000.

d. *Applicant:* Ketchikan Public Utilities.

e. *Name of Project:* Whitman Lake Project.

f. *Location:* On Whitman Lake and Whitman Creek, in Ketchikan Gateway Borough, Alaska, partially within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Karl R. Amylon, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan, Alaska 99901, 907–225–3111.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing 45-foot-high and 220-foot-long concrete arch Whitman Lake Dam ½-mile upstream from the entrance of Whitman Creek into Herring Bay; (2) Whitman Lake with a surface area of 148 acres, a proposed usable storage capacity of 6,500 acre-feet, and normal maximum water surface elevation of 380 feet above mean sea level; (3) an intake structure; (4) a 2,200-foot-long, 3-foot-diameter steel and steel-lined tunnel penstock; (6) a powerhouse containing two generating units having a total installed capacity of 4,600 kW; (7) a 34.5-kV, 1,500-foot-long transmission line; and other appurtenant facilities.

The project would have an annual generation of 19.6 GWh that would be sold to the applicant's customers.

l. A copy of the application is available for inspection and reproduction at the Commission's Pubic Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant,and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

"COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–18502 Filed 7–20–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–A65168–00 Rating EC2, Forest Service Roadless Area Conservation, Implementation, Proposal to Protect Roadless Areas.

Summary: EPA expressed environmental concerns with the proposed alternative, citing potential adverse impacts to water quality and aquatic habitat. EPA also commented that the draft EIS does not adequately justify excluding the Tongass National Forest from the proposed rulemaking.

ERP No. D–AFS–J61103–MT Rating EC2, Discovery Ski Area Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Beaverhead-Deerlodge National Forest, Pintler Ranger District, Rumsey Mountain, Granite County, MT.

Summary: EPA expressed environmental concerns regarding the lack of information to support expansion of the ski area; inadequate analysis and disclosure of indirect effects of induced development; and effects of additional snowmaking and increased wastewater pollutant loadings to area ground water. EPA requested additional information in the final document to assess and mitigate potential environmental impacts of the management actions.

ERP No. D–AFS–K65227–CA Rating EC2, 64-Acre Tract Intermodal Transit Center, Construction and Operation, Lake Tahoe Basin Management Unit, Tahoe City, Placer County, CA.

Summary: EPA expressed environmental concerns regarding water quality impacts and cumulative impacts associated with the proposal. EPA also had concerns because there is no provision for solid waste recycling nor integration of pollution prevention mechanisms in the project.

ERP No. D–NPS–K61149–CA Rating EC2, Yosemite Valley Plan, A Comprehensive Look of at Four Areas of Concern: Resource Preservation and Restoration, Visitor Enjoyment, Transportation, and Employee Housing, from Happy Isles to El Portal Road/Big Oak Flat Road, Merced River, several counties, CA.

Summary: EPA expressed concerns regarding the vehicle emission impacts from the proposed shuttle bus systems. EPA requested more information on the standards and criteria that will be used to select the fuel(s) technology used in the shuttle bus fleets.

ERP No. D–USN–K39059–HI Rating EC2, North Pacific Acoustic Laboratory Project, Reuse of Low Frequency Sound Source and Cable for Use in Acoustic Thermometry of Ocean Climate (ATOC) Research, Kauai, HI.

Summary: EPA expressed environmental concerns regarding potential direct, indirect and cumulative impacts to marine fish specie, turtles, seabirds and marine mammals. EPA recommended an implementing program lasting 24 to 36 months rather than the proposed 60 months, because of uncertainties regarding potential impacts to marine species. EPA also recommended Federal agency coordination to determine if marine mammal monitoring should be expanded to monitor populations of turtles and marine fish.

ERP No. DS–AFS–L65289–00 Rating EC2, Interior Columbia Basin Ecosystem Management Projects, Updated and New Information on three Management Alternatives, Implementation, WA, OR, ID and MT.

Summary: EPA continues to have concern that there is no discussion on how the FS and BLM will address competing objectives and the implications of implementing the preferred alternative with insufficient funding. In addition, there is no oversight process to ensure proper implementation and monitoring of the project. EPA requested that a multi-agency oversight organization be chartered.

Final EISs

ERP No. F–AFS–L65275–00 Targhee National Forest Plan Oil and Gas Leasing Analysis, Implementation, Bonneville, Butte, Clark, Fremont and Madison Counties, ID and Teton County, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J02038–WY Pinedale Anticline Oil and Gas Exploration and Development Natural Gas Wells Project, Implementation, Sublette County, WY.

Summary: ERP No. F–BLM–K67049–CA Soledad Canyon Sand and Gravel Mining Project, Proposal to Mine, Produce and Sell, "Split Estate" Private Owned and Federally Owned Lands, Transit Mixed Concrete, Los Angeles County, CA.

Summary: EPA concurred with BLM's conformity determination and is satisfied that air quality standards will be protected. EPA expressed continuing concerns that a jurisdictional analysis has not yet been conducted for waters of the U.S., and potential impacts and appropriate mitigation measures remain uncertain.

ERP No. F–IBR–K64018–CA Lower Mokelumne River Restoration Program, Implementation, Resource Management Plan, San Joaquin County, CA.

Summary: EPA has no objection to the action as proposed since EPA's comments on the Draft were adequately addressed. EPA did recommend that the Record of Decision clearly state the

specific actions to be taken in response to comments.

ERP No. F–NPS–K65325–CA Merced Wild and Scenic River Comprehensive Management Plan, Implementation, Yosemite National Park and the EL Portal Administrative Site, Tuolumne, Merced, Mono, Mariposa and Madera Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–NOA–A91065–00 Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan.

Summary: EPA concurs with the proposed time/area closures to reduce longline bycatch but recommends resolving the potential adverse effects on protected turtles prior to any issuance of the ROD and Final Rule. Further research under the auspices of NOAA/NMFS should be pursued regarding the effectiveness of the considered longline gear modifications such as use of circle hooks.

Dated; July 18, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division,, Office of Federal Activities.

[FR Doc. 00–18551 Filed 7–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed July 10, 2000 Through July 14, 2000

Pursuant to 40 CFR 1506.9.

- EIS No. 000243, Draft EIS, FHW, CO, South I–25 and US 85 Corridors Improvements, CO–470 to Castle Rock, Funding, Douglas County, CO, Due: September 05, 2000, Contact: Scott Sands P.E. (303) 969–6730.
- EIS No. 000244, Draft EIS, AFS, CA, Airport Forest Health Project, Forest Health Improvements through Reduction of Fuel Loads and Fire Hazards and Wildlife Habitat Improvements Implementation, Pacific Ranger District, El Dorado National Forest, El Dorado and Placer Counties, CA, Due: September 05, 2000, Contact: Krista Deal (530) 644–2349.
- EIS No. 000245, Draft EIS, FRA, FL, GA, MD, PA, CA, LA, NV, Programmatic—Maglev Deployment Program, Development and Construction of an Operating Public Transportation System using Magnetic Levitation, Grants Issuance, CA, FL, GA, LA, MD, NV and PA, Due: September 05, 2000, Contact: David Valenstein (202) 493–6383.
- EIS No. 000246, Draft EIS, AFS, OR, Anthony Lakes Mountain Resort Master Development Plan, Upgrading and Additional Development, Approval, Baker Ranger District, Wallowa-Whitman National Forest, Grant, Union and Baker Counties, OR, Due: September 05, 2000, Contact: Charles L. Ernst (541) 523–1901.
- EIS No. 000247, Final EIS, AFS, UT, Monroe Mountain Ecosystem Restoration Project, Implementation, Fishlake National Forest, Richfield Ranger District, Sevier and Piute Counties, UT, Due: August 21, 2000, Contact: Don Okerlund (435) 896–9233.
- EIS No. 000248, Final EIS, FAA, TX, George Bush Intercontinental Airport Houston, Construction and Operation, Runway 8L–26R and Associated Near Term Master Plan Projects, Funding and Airport Layout Plan Approval, City of Houston, Harris County, TX, Due: August 21, 2000, Contact: Ben R. Guttery (817) 222–5614.
- EIS No. 000249, Final EIS, SFW, WA, Simpson Washington Timberlands Forest Management and Timber Harvesting Project, Proposed Issuing of a Multiple Species Incidental Take Permit, Mason, Thurston and Gray Harbor Counties, WA, Due: August 21, 2000, Contact: Craig Hansen (360) 753–9440.
- EIS No. 000250, Final Supplement, IBR, NM, CO, Animas-La Plata Project (APL Project), Municipal and Industrial Water Supply, Reservoir Construction in Ridges Basin, Implementation and Water Acquisition, Additional Information concerning Project Alternatives Developed in 1996 through 1997, CO and NM, Due: August 21, 2000, Contact: Lilas Lindell (801) 524–3689.
- EIS No. 000251, Final EIS, IBR, CA, Programmatic—Calfed Bay-Delta Program, Long-Term Comprehensive Plan to Restore Ecosystem Health and Improve Water Management, Implementation, San Francisco Bay—Sacramento/San Joaquin River Bay-Delta, CA, Due: August 21, 2000, Contact: Rodney Johnson (916) 653–7286.
- EIS No. 000252, Final EIS, FHW, MI, I–96 East Howell Interchange Project, Transportation Improvements, Funding, Major Investment Study, Cities of Howell and Brighton, Livington County, MI, Due: August 21, 2000, Contact: James Kirschensteine (517) 377–1880-Ext 41).

Dated: July 18, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–18552 Filed 7–20–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–953; FRL–6593–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–953, must be received on or before August 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–953 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–953. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–953 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–953. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition

was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Novartis Crop Protection, Inc.

PP 9F5044

EPA has received a pesticide petition PP 9F5044 from Novartis Crop Protection, Inc., 410 Swing Road, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of mefenoxam or CGA329351, (R)-2-(2,6-dimethylphenyl)-methoxyacetylamino-propionic acid methyl ester in or on the raw agricultural commodity rape seed (canola) at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Novartis believes the studies supporting this mefenoxam petition well characterize metabolism in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for combined residues of mefenoxam and its metabolites which contain the 2,6-dimethylaniline (DMA) moiety.

2. *Analytical method.* Novartis has submitted a practical analytical method involving extraction, filtration, acid reflux, steam distillation, and solid phase cleanup with analysis by confirmatory gas chromatography using nitrogen/phosphorous (N/P) detection. A total residue method is used for determination of the combined residues of mefenoxam and its metabolites which contain the 2,6-dimethylaniline DMA moiety. The limit of quantitation (LOQ) for the method is 0.05 ppm.

3. *Magnitude of residues*—i. *Crops.* This petition is supported by six field residue trials that were analyzed in concordance with the OPPTS guidelines based on expected reduced residues and environmental benefits of seed applications. The six trials accounting for approximately 84% of commercial U.S. canola production (agricultural statistics, 1991), were conducted in Georgia (2%), Minnesota (16%), North Dakota (53%), South Dakota (2%), Idaho (6%), and Washington (5%). No residues <0.05 ppm of mefenoxam were detected as 2,6–DMA in canola seed at either the 1x or 3x treatment rate.

ii. *Animals.* As there were no detectable residues found with a 1x or 3x treatment regime, there is no expected impact on the dietary intake of livestock in association with this petition. Existing tolerances in 40 CFR part 180 are adequate to support the approval of this requested tolerance in the opinion of Novartis Crop Protection.

B. Toxicological Profile

1. *Acute toxicity.* The toxicological endpoints for mefenoxam are discussed in B.4. of the **Federal Register** notice of July 25, 1997, (62 FR 40084) (FRL–5726–4). The acute toxicity profile can be summarized as follows:

Rat acute oral study with a LD_{50} value of 490 milligrams/kilograms (mg/kg). Rat acute dermal study with a LD_{50} >2,000 mg/kg. Rat inhalation study with a LC_{50} >2.29 milligram/liter (mg/L) air. Primary eye irritation study in rabbit showing mefenoxam as severely irritating. Primary dermal irritation study in rabbit showing mefenoxam as slightly irritating. Skin sensitization studies in guinea pigs (Maximization and Buehler Test) showing mefenoxam is not a sensitizer.

2. *Genotoxicty.* The toxicological endpoints for mefenoxam are discussed in Unit B.4. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The genotoxicity profile can be summarized as follows:

In vitro gene mutation test: Ames test-negative. *In vitro* chromosomal aberration test: Chinese hamster ovary (CHO)-negative. *In vitro* gene mutation tests: Ames tests (3 independent studies)-negative; gene mutation in mouse lymphoma cells-negative; reverse mutation in *Saccharomyces cerevisiae*-negative. *In vitro* chromosomal aberration tests: Chinese hamster bone marrow cytogenetic test-negative. DNA repair study in rat hepatocytes-negative.

3. *Reproductive and developmental toxicity.* The toxicological endpoints for mefenoxam are discussed in B.4. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The reproductive and developmental toxicity profile can be summarized as follows:

Teratology study in rats with a maternal no observed adverse effect level (NOAEL) of 10 mg/kg based on reduced body weight (bwt) gain. The fetuses remained entirely unaffected at the highest dose tested (HDT), 250 mg/kg. Teratology study in rabbits with a maternal NOAEL of 150 mg/kg based on bwt loss. The developmental NOAEL was greater than or equal to the HDT, 300 mg/kg. Three–generation reproduction study in rats with a NOAEL of 1,250 ppm, which was the HDT. The treatment had no effect on reproduction or fertility. Dominant lethal study in mouse-negative.

4. *Subchronic toxicity.* The toxicological endpoints for mefenoxam are discussed in Unit IV.B. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The subchronic toxicity profile can be summarized as follows:

A 28–day cumulative toxicity study in rats with a NOAEL of 50 mg/kg based on liver changes. A 90–day subchronic dietary toxicity study in rats with a NOAEL of 250 ppm based on liver changes. A 90–day subchronic dietary toxicity study in dogs with a NOAEL of 250 ppm based on changes in blood biochemistry and hematology indicative of functional liver changes. A 21–day dermal toxicity study in rats with a NOAEL equal to or higher than the limit dose of 1,000 mg/kg. No local or systemic signs of toxicity were found. A 6–month dietary toxicity study in dogs with a NOAEL of 250 ppm based on changes in blood biochemistry indicative of hepatocellular damage.

5. *Chronic toxicity* The toxicological endpoints for mefenoxam are discussed in B.4. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The chronic toxicity profile can be summarized as follows:

A 24–month combined chronic toxicity/carcinogenicity study conducted in rats with a NOAEL of 250 ppm based on liver changes. No evidence of oncogenicity was seen. A 24–month oncogenicity study conducted in mice with a NOAEL of 250 ppm based on liver changes. No evidence of oncogenicity was seen.

6. *Animal metabolism.* The rat and goat rapidly metabolize and excrete via the same metabolic pathways as plants. Urinary metabolites are polar, primarily gucuronide and other conjugates. The parent compound is not retained in animal tissues nor secreted in milk.

7. *Metabolite toxicology.* Metabolites are considered to be of equal or less toxicity than the parent material.

8. *Endocrine disruption.* Mefenoxam does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Furthermore, supporting developmental toxicity studies in rats and rabbits, and a reproduction study in rats gave no indication of any effects on endocrine function related to development and reproduction. Subchronic and chronic

treatment did not induce any morphological changes in endocrine organs and tissues.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For the purposes of assessing the potential dietary exposure under the proposed tolerance, Novartis Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed (i.e., rape seed).

a. *Chronic exposure.* Under the conservative exposure assumption of residue levels being at tolerance level, less than 15% of the reference dose (RfD) will be utilized by the U.S. general population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data supporting this petition, Novartis Crop Protection believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues arising from this requested use, including anticipated dietary exposure and all other types of non-occupational exposures. From toxicity studies supporting the registration of mefenoxam, the active ingredient is classified as a Group "E" compound (evidence of noncarcinogenicty for humans). There was no evidence of carcinogenicity in a 24–month feeding trial in mice nor in a 24–month feeding study in rats at the dosage levels tested. The doses tested were adequate for identifying a cancer risk.

b. *Acute exposure.* The risk from acute dietary exposure to mefenoxam is considered to be very low. The NOAEL in a 28–day study was 50 mg/kg, which is 6–fold higher than the chronic NOAEL. Since chronic exposure assessment did not result in any unacceptable exposure for even the most impacted population subgroup, it is anticipated that also the acute exposure will be in an acceptable range. Calculations show that with the most exposed group (non-nursing infants) only 26% of the acute RfD will be utilized; the requested tolerance for rape seed (i.e., canola does not add any measurable contribution to this exposure according to our analysis).

ii. *Drinking water.* Novartis Crop Protection anticipates the potential exposure from residues of drinking water to be insignificant due to the proposed seed treatment use pattern associated with this petition.

2. *Non-dietary exposure.* Given the seed treatment use pattern proposed in this petition, there are no anticipated non-dietary exposures resulting from this requested tolerance. Mefenoxam is registered for use as a product for use on turf and ornamentals for control of soil-borne diseases. However, the product is not used residentially by homeowners and the potential exposure to the general public from turf and ornamentals is thought to be negligible.

D. Cumulative Effects

Novartis Crop Protection believes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by mefenoxam would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* The risk from acute dietary exposure to mefenoxam is considered to be very low. The NOAEL in a 28–day study was 50 mg/kg, which is 6–fold higher than the chronic NOAEL. Since chronic exposure assessment did not result in any unacceptable exposure for even the most impacted population subgroup, it is anticipated that also the acute exposure will be in an acceptable range. Again, the requested tolerance on rape seed (i.e., canola) was found not to contribute any measurable additional impact on acute exposure to mefenoxam so that for the general population less than 15% of the acute RfD is utilized.

ii. *Chronic risk.* Under the conservative exposure assumptions of residue levels being at tolerance level, less than 10% of the RfD will be utilized by the U.S. general population. Use on canola does not measurably contribute to this exposure, particularly given that no detectable residues were found even when 3x the use rate was utilized. Therefore, based on the completeness and reliability of the toxicity data supporting this petition, Novartis Crop Protection believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of mefenoxam taking into account dietary and non-occupational exposures.

2. *Infants and children.* There is no indication that mefenoxam interferes with the prenatal or neonatal development, even when experimental animals were exposed to very high doses leading to maternal toxicity. Infants and children are not expected to show any particular sensitivity to mefenoxam.

i. *Acute risk.* The risk from acute dietary exposure to mefenoxam is considered to be very low. The NOAEL in a 28–day study was 50 mg/kg, which is 6–fold higher than the chronic NOAEL. According to our analysis there is no measurable impact of the requested tolerance on the exposure to mefenoxam. The utilization of the acute RfD from the most exposed group is 26% (non-nursing infants).

ii. *Chronic risk.* Calculated on the basis of the theoretical maximum residue contribution (TMRC) for mefenoxam, utilization of RfD from dietary exposure of children is estimated as: 4.3% for nursing infants, 14% for non-nursing infants, 21% for 1 to 6 years old, and 12% for children 7 to 12 years old.

F. International Tolerances

There are no Codex maximum residue levels established for CGA329351.

[FR Doc. 00–18519 Filed 7–20–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6839–3]

Proposed CERCLA Administrative Cost Recovery Settlement for the Hertel Landfill Superfund Site, Clintondale, Town of Plattekill, Ulster County, New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative settlement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Hertel Landfill Superfund Site ("Site") located in Clintondale, Town of Plattekill, Ulster County, New York, with Mark Goodson Enterprises, Ltd. (d/b/a Kingston Daily Freeman or The Daily Freeman) and Brown & Sharpe Manufacturing Company (hereinafter collectively referred to as "Settling Parties"). The settlement requires the Settling Parties to each pay $43,798.00 to the EPA Hazardous Substance Superfund in reimbursement of EPA's past response costs incurred with respect to the Site. The Settling Parties shall each also pay $43,798.00 to the Hertel Steering Committee Escrow Account to be applied toward funding the Site remedial work that has been or is being performed by the parties that comprise the Hertel Steering Committee. The settlement includes a covenant not

to sue the Settling Parties pursuant to section 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), for all past response costs incurred at or in connection with the Site by the United States, and all response costs incurred and to be incurred by the United States and the Hertel Steering Committee at or in connection with the Site through the completion of the Site landfill cap (and operation and maintenance thereof). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Region II offices located at 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before August 21, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region II offices located at 290 Broadway, New York, New York 10007–1866. Comments should reference the Hertel Landfill Superfund Site and the index number of the settlement, CERCLA–02–99–2004. A copy of the proposed settlement may be obtained from the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carl P. Garvey, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency Region II, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3181.

Dated: June 30, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–18535 Filed 7–20–00; 8:45 am]

BILLING CODE [illegible]

COUNCIL ON ENVIRONMENTAL QUALITY

Annual Report on Endangered Species Act Exemption

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Availability of report.

SUMMARY: This notice announces the availability of the Annual Report submitted by Basin Electric Power Cooperative, as Project Manager for the Missouri Basin Power Project in the matter of an exemption granted from the requirements of the Endangered Species Act to Grayrocks Dam. The lead federal agency in the project is the Rural Electrification Administration.

DATES: The report was submitted to the Council in November, 1999.

ADDRESSES: The Annual Report is available from Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, ND 58501–0564; Telephone: (701) 223–0441.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503; Telephone (202) 395–7421.

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act, any agency granted an exemption under 16 U.S.C. § 1536(h) must submit to the Council on Environmental Quality an annual report describing its compliance methods with the mitigation and enhancement measures prescribed by 16 U.S.C. § 1536. See 16 U.S.C. § 1536(1)(2). This sub-section further requires that the Council publish availability of the report in the **Federal Register**.

On February 7, 1979, the Endangered Species Committee granted an exemption from the requirements of the Endangered Species Act to Grayrocks Dam. In granting the Exemption Order, the committee, as required by the act, established requirements for reasonable mitigation and enhancement measures. These requirements are set out in an "Agreement of Settlement and Compromise" and is part of the Annual Report announced here.

Dated: July 10, 2000.

George T. Frampton,

Acting Chair.

[FR Doc. 00–18384 Filed 7–20–00; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1582 (Auction No. 32)]

AM Auction Remedial Filing Window; Notice and Filing Requirements Regarding July 31—August 4, 2000 Remedial Filing Window for AM Auction

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an AM auction remedial filing window for corrective submissions by entities that timely filed only one of the two documents required by Commission AM auction procedures. Those entities will be permitted to supplement their prior submissions, between July 31, 2000, and August 4, 2000 ("AM Auction Remedial Window"), by filing either the previously omitted FCC Form 175 or the FCC Form 301 Section I and Tech Box of Section III–A.

DATES: The AM Auction Remedial Filing Window is between July 31, 2000, and August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660; Jean Ann McGovern, Audio Services Division, Mass Media Bureau, at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released July 14, 2000 ("*AM Auction Remedial Filing Window Public Notice*"). The complete text, including all attachments, of the *AM Auction Remedial Filing Window Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20035, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov/wtb/auctions.*

List of Attachments available at the FCC:

Attachment A—Pending FCC Form 301 Application—No Record of a Timely Filed FCC Form 175; FCC Form 175 Filed—No Record of Timely Filed Required FCC Form 301 Sections; and Required FCC Form 301 Sections Filed Between January 21, and February 1, 2000—No Record of a Timely Filed Associated FCC Form 175

Attachment B—Electronic Filing and Review of the FCC Form 175

Attachment C—Accessing the FCC Network To File FCC Form 175

I. General Information

A. Introduction

1. On July 14, 2000, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") released the *AM Auction Remedial Filing Window Public Notice*, which announces an AM auction remedial filing window for corrective submissions by entities that timely filed only one of the two documents required

under AM auction procedures. Those entities will be permitted to supplement their prior submissions, between July 31, 2000, and August 4, 2000 ("AM Auction Remedial Window"), by filing either the previously omitted FCC Form 175 or the FCC Form 301 Section I and Tech Box of Section III–A.

2. *Background.* On November 19, 1999, a public notice ("*January Filing Window Public Notice*") was released announcing an AM auction filing window for applications for new AM stations and major modifications to authorized AM facilities. The *January Filing Window Public Notice* required that entities interested in participating in the AM auction electronically file a FCC Form 175 (short-form application) during the January Filing Window and, concurrently, file a FCC Form 301 Section I and the Tech Box from Section III–A, if they had not done so previously. The Bureaus cautioned that the failure of any entity to file all required information on a timely basis would preclude that entity's participation in the AM auction proceeding. Nonetheless, the Commission received ten filings, listed in Attachment A of the *AM Auction Remedial Filing Window Public Notice*, that did not comply with the filing requirements set forth in the *January Filing Window Public Notice.*

3. *AM Auction Remedial Window.* Generally, participation in prior auctions conducted by the Bureaus required the filing of only FCC Form 175. The AM auction ("Auction No. 32") filing window is the first to employ filing procedures which require the concurrent filing of FCC Form 175 and the engineering data contained in FCC Form 301. The Bureaus recognize that potential applicants may have experienced some confusion in the Bureaus' initial use of the two-part procedure. The purpose of the AM Auction Remedial Window is to allow those entities that only filed FCC Form 175 or the required engineering data on FCC Form 301 a short period of time to correct their filings to comply with our rules. We caution that this is a unique opportunity offered by the Bureaus. We do not anticipate offering such an opportunity in future auction proceedings.

4. Only entities identified in Attachment A of the *AM Auction Remedial Filing Window Public Notice* may make corrective submissions during the AM Auction Remedial Window. In order to be eligible to participate in Auction No. 32, those entities must correct their submissions as described below:

- If an entity has a pending FCC Form 301 application (Frozen AM Application) and did not timely file a FCC Form 175 during the January Filing Window, that entity must electronically file a FCC Form 175 by 6:00 p.m. Eastern Standard Time, August 4, 2000. Information regarding the completion and electronic filing of the FCC Form 175 is contained in the *AM Auction Remedial Filing Window Public Notice.*
- If an entity timely filed a FCC Form 175 during the January Filing Window and did not file the required engineering data sections of FCC Form 301, that entity must file FCC Form 301 (May 1999 version) Section I and the Tech Box of Section III–A. These sections of FCC Form 301 must be filed in triplicate with the Secretary of the Commission, 445 12th Street, SW, Washington, DC 20554. The required engineering data sections of the FCC Form 301 are due in hard copy by 7:00 p.m. Eastern Standard Time, August 4, 2000. No filing fee is required. A courtesy copy of any FCC Form 301 submission filed during the AM Auction Remedial Window should also be sent to James R. Crutchfield, Audio Services Division, Room 2–B450, at the above street address. Such entities should specify, in the cover letter accompanying the required FCC Form 301 sections or at the top of the first page of the FCC Form 301 submission, the account number of the associated pending FCC Form 175 as indicated in Attachment A to this public notice. It is not necessary for such entities to include a printed copy of their previous, electronically filed FCC Form 175 will the FCC Form 301 submission.
- If an entity filed the required FCC Form 301 engineering data or a complete FCC Form 301 during the January Filing Window and did not file an associated FCC Form 175, that entity must electronically file a FCC Form 175 by 6:00 p.m. Eastern Standard Time, August 4, 2000. Information regarding the completion and electronic filing of the FCC Form 175 is contained in the *AM Auction Remedial Filing Window Public Notice.*

5. Failure of any entity identified in Attachment A of the *AM Auction Remedial Filing Window Public Notice* to have all required forms and information timely and properly filed by August 4, 2000 will result in the dismissal of any prior submissions relating to the January Filing Window for AM applications.

6. *Electronic Filing Procedures for FCC Form 175.* Only the entities identified in Attachment A of the *AM Auction Remedial Filing Window Public Notice* that are required to complete a FCC Form 175 will be able to make corrective filings in the AM Auction Remedial Window. Each of these entities will receive via Federal Express an assigned temporary tax identification number (TIN) and password. This assigned temporary TIN and password will be required to access the FCC Form 175 submission software.

7. After the application has been submitted, the applicant will be required to write a letter to the Commission requesting a change to their TIN. The letter should contain the company name, FCC account number, assigned temporary TIN and the company's actual TIN. This letter should contain language authorize the Commission to replace the assigned temporary TIN with the company's actual TIN. This letter requesting a TIN change should be addressed to Any Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. A separate copy of the letter should be mailed to Kenneth Burnely, Auctions and Industry Analysis Division, 4–B524, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

Federal Communications Commission.

Margaret W. Wiener,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–18491 Filed 7–20–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 7, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. *First Robinson Financial Corporation Employee Stock Ownership Plan*, Robinson, Illinois; to retain voting shares of First Robinson Financial Corporation, Robinson, Illinois, and thereby indirectly retain voting shares of First Robinson Savings Bank, National Association, Robinson, Illinois.

Board of Governors of the Federal Reserve System, July 18, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18543 Filed 7–20–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Anita Bancorporation*, Atlantic, Iowa; to acquire 100 percent of the voting shares of EWN Investments, Inc., Ute, Iowa, and thereby indirectly acquire voting shares of Ute State Bank, Ute, Iowa.

Board of Governors of the Federal Reserve System, July 18, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18542 Filed 7–20–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Wednesday, July 26, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18604 Filed 7–19–00; 10:35 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

PHS Policy for Instruction in the Responsible Conduct of Research; Availability of New Draft

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of availability.

SUMMARY: The Office of Research Integrity (ORI) in collaboration with the Agency Research Integrity Liaison Officers for each of the PHS Operating Divisions, is announcing the availability for public comment of a new draft PHS Policy for Instruction in the Responsible Conduct of Research for extramural institutions receiving PHS funds for research or research training.

On October 22, 1999, HHS Secretary Donna E. Shalala announced a number of important changes in policy to improve the Department's research integrity efforts including a statement that "through ORI, the Department will require research institutions to provide training in the responsible conduct of research to all staff engaged in research or research training with PHS funds." This decision was based on the Department's commitment to ensure that all PHS supported researchers receive basic instruction in the key elements of responsible research and are familiar with basic regulatory requirements. The decision was also supported by prior recommendations of the Commission on Research Integrity which stated, in part, that HHS

"require that each institution applying for or receiving a grant, contract, or cooperative agreement under the Public Health Service Act for research or research training add to its existing misconduct-in-science assurance a third declaration, one certifying that the institution has an educational program on the responsible conduct of research. Through this mechanism, the current NIH research integrity education requirement, now limited to recipients of institutional training grants at NIH-funded institutions, would be augmented by an assurance applied to all individuals supported by PHS research funds." Commission Report, "Integrity and Misconduct in Research," p. 18 (HHS 1995).

Institutions and individuals interested in commenting on the proposed policy may obtain it on the ORI website at <http://ori.dhhs.gov> by clicking on "What's New" or by contacting ORI. To be considered, all comments must be received by ORI at the address below or by E-mail to jegan@osophs.dhhs.gov no later than August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Chris B. Pascal, J.D., Acting Director, Office of Research Integrity, Rockwall II, Suite 700, 5515 Security Lane, Rockville, MD 20852, 301–443–3400.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 00–18495 Filed 7–20–00; 8:45 am]

BILLING CODE 4160–17–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–00–05]

Fiscal Year 2000 Program Announcement; Notice Requesting Applications

AGENCY: Administration on Aging, HHS

ACTION: Announcement of a request for applications to carry out Racial and Ethnic Approaches to Community Health 2010 (REACH 2010). An important goal of REACH 2010 is to eliminate health disparities among elderly racial and/or ethnic minority groups. Areas of concentration are: diabetes, cardiovascular diseases, and adult immunizations.

SUMMARY: Under this program announcement, the Administration on Aging (AoA) will hold a competition for grant awards of four (4) cooperative agreements to plan for implementation of community level interventions which can eliminate health disparities among elderly members of racial and ethnic minority groups. The purpose of REACH 2010 is to assist communities to organize and prepare an infrastructure for the development and conduct of community-based disease prevention and health promotion models.

The deadline date for the submission of applications is August 21, 2000. Eligibility for grant awards is limited to public and/or nonprofit agencies, organizations, and institutions with experience in health education and promotion for elderly populations. More specifically, the standard of eligibility requires that the applicant, together with the other organizations composing a community coalition, have extensive knowledge about the health concerns of the designated older minority population they plan to serve and proven records of accomplishment serving and working with the community group(s) identified.

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, S.W., Room 4268, Washington, DC 20201, or by calling (202) 619–3428.

Dated: July 14, 2000.

Jeanette C. Takamura,

Assistant Secretary for Aging

[FR Doc. 00–18494 Filed 7–20–00; 8:45 am]

BILLING CODE 4154–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER).

Time and Date: 1 p.m.–3 p.m., August 4, 2000.

Place: The conference call will originate at the National Center for Environmental Health (NCEH), CDC, in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: This committee is charged with providing advice and recommendations to the Secretary, HHS; and to the Director, CDC, and Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on establishment of a research agenda and the conduct of a research program pertaining to energy-related epidemiologic studies.

Matters to be Discussed: The conference call agenda is to reach consensus on the review and report submitted to the ACERER by its Subcommittee for Management Review of the Chernobyl Studies.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 1 p.m., Eastern Time. To participate in the conference call, please dial 1–877–475–9228 and enter conference code 195001. You will then be automatically connected to the call.

FOR FURTHER INFORMATION CONTACT: Michael J. Sage, Executive Secretary, ACERER, and Associate Director for Planning, Evaluation, and Legislation, NCEH, CDC, 4770 Buford Highway, NE, (F–29), Atlanta, Georgia 30341–3724, telephone 770/488–7020, fax 770/488–7024.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: July 17, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–18600 Filed 7–20–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1379]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending the existing reporting and recordkeeping requirements for processors and importers of fish and fishery products under the provisions of FDA's fish and fishery products regulations.

DATES: Submit written comments on the collection of information by September 19, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Procedures for the Safe Processing and Importing of Fish and Fishery Products (OMB Control Number 0910–0354)—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of Hazard Analysis and Critical Control Point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)), and became effective on December 18, 1997.

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc. as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided. HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry.

The burden estimate in Table 1 includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. For example, the current food manufacturing practices provisions in 21 CFR part 110 already require that all food processors ensure good sanitary practices and conditions, monitor the quality of incoming materials, monitor and control food temperatures to prevent bacterial growth, and perform certain corrective actions and verification procedures. Furthermore, the estimate does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently the estimates in Table 1 account only for new information collection and recording requirements attributable to part 123. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of recordkeepers	Annual frequency per recordkeeping[2]	Total annual records	Hours per recordkeeper[3]	Total hours	Total operating and maintenance costs
123.6(a), (b), and (c)	243	1	243	16	3,888	$58,320
123.6(c)(5)	4,850	4	19,400	0.30	5,820	$87,300
123.8(a)(1) and (c)	4,850	1	4,850	4	19,400	$291,000
123.12(a)(2)(ii)	1,000	80	80,000	0.20	16,000	$240,000
123.6(c)(7)	4,850	280	1,358,000	0.30	407,400	$6,111,000
123.7(d)	1,940	4	7,760	0.10	1,940	$29,100
123.8(d)	4,850	47	227,950	0.10	22,795	$341,925
123.11(c)	4,850	280	1,358,000	0.10	135,800	$2,037,000
123.12(c)	1,000	80	80,000	0.10	8,000	$120,000
123.12(a)(2)	50	1	50	4	200	$3,000
123.10	243	1	24	24	5,832	$87,480
Annual burden hours					627,075	$9,406,125

[1]There are no capital costs associated with this collection of information.
[2]Based on an estimated 280 working days per year.
[3]Estimated average time per 8-hour work day unless one time response.
The above estimates include the information collection requirements in the following sections:
§ 123.16 Smoked Fish—process controls (see § 123.6(b))
§ 123.28(a) Source Controls—molluscan shellfish (see § 123.6(b))

§ 123.28(c), (d) Records—molluscan shellfish (see § 123.6(c)(7))

Dated: July 14, 2000.
William K. Hubbard,
Senior Associate Commissioner for Policy, Planning, and Legislation.
[FR Doc. 00–18459 Filed 7–20–00; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 18 and 19, 2000, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 18 and 19, 2000, the committee will discuss two new drug applications (NDA's): NDA 18–662, Accutane® (isotretinoin) capsules, Hoffmann-LaRoche, Inc., for severe recalcitrant nodular acne; and NDA 21–177, (new formulation) isotretinoin capsules, Hoffmann-LaRoche, Inc., for severe recalcitrant nodular acne.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 11, 2000.
Linda A. Suydam,
Senior Associate Commissioner.
[FR Doc. 00–18457 Filed 7–20–00; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1394]

Medical Devices; CLIA Waiver Criteria; Public Workshop

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop to review the criteria used to determine whether specific laboratory tests are waived from certain requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). The purpose of the public workshop is to obtain additional comments on the criteria and process the agency should use to determine when a particular test is waived.

Date and Time: The public workshop will be held on August 14 and 15, 2000, from 9 a.m. to 5 p.m. each day.

Location: The public workshop will be held at the Washingtonian Center Marriott Hotel, 9751 Washingtonian Blvd., Gaithersburg, MD 20878, 301–590–0044.

Contact: Clara A. Sliva, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–827–0496, FAX 301–827–1401, e-mail: CAS@cdrh.fda.gov.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material, and requests to make oral presentations to the contact person by August 4, 2000. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20850, by September 14, 2000.

If you need special accommodations due to a disability, please contact Clara A. Sliva at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

A. Background

CLIA specifies that laboratory requirements be based on the complexity of the tests performed and establishes criteria for categorizing a test as waived. Responsibility for determining whether a particular test is waived was transferred from the Centers for Disease Control and Prevention (CDC) to FDA on January 31, 2000. In the **Federal Register** of September 13, 1995 (60 FR 47534), CDC published proposed clarifications to the statutory criteria for waiver. CDC based the proposal on guidelines CDC developed to assist the manufacturers in submitting waiver requests. The proposed regulations recommend a methodology for demonstrating that a test system proposed for waived status be so "simple" and "accurate" as to render the likelihood of erroneous results negligible. The Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law No. 105–115) modified 42 U.S.C. 263a (d)(3) of the Public Health Service Act by adding the phrase "by the user" to clarify that waived tests include those which employ methodologies that are so simple and accurate as to render the likelihood of erroneous results by the user negligible. FDAMA also clarified that waived tests include those that are cleared by FDA for home use.

Following transfer of responsibility for waiver determinations from CDC to FDA, manufacturers now submit premarket applications for products and requests for complexity categorization of these products to one agency. FDA is currently following the same policies applied by CDC to the waiver criteria prior to the transfer; FDA is performing the "same work" the "same way." Under the current process, FDA generally will waive: (1) Any test system that meets the specifications described in the guidelines published in the proposed rule of September 13, 1995, and (2) any test system that provides scientifically valid data verifying that the statutory criteria for waiver have been met.

FDA believes it needs additional information from stakeholders to effectively implement its new responsibilities with respect to waiver decisions. In particular, the agency needs to decide whether to continue to apply the current criteria, finalize the proposed rule published by CDC in 1995, or repropose other procedures and criteria for this process. FDA is inviting laboratory groups, medical professional societies, patient groups, manufacturers, manufacturing associations, and other interested parties to attend this open public workshop regarding the criteria for waiver. To the extent possible, oral and written testimony should address the following general and specific questions:

B. General Questions for Public Input

Criteria for waived tests under the Public Health Service Act were amended by FDAMA to read: Waived tests "are laboratory examinations and procedures that have been approved by Food and Drug Administration for home use or that, as determined by the Secretary, are simple laboratory examinations and procedures that have an insignificant risk of an erroneous result, including those that (A) employ methodologies that are so simple and accurate to render the likelihood of erroneous results by the user negligible, or (B) the Secretary has determined pose no unreasonable risk of harm to the patient if performed incorrectly * * *."

1. What criteria should be used to demonstrate that a waived test is a simple laboratory examination and procedure with "an insignificant risk of an erroneous result?" For example:

a. Should a waived test, when performed by untrained users, provide an accurate result with no significant clinical or statistical error when compared to a measure of truth? This requires availability of well-characterized reference methods and/or materials as part of the waived test assessment. The current threshold for waiver as established by CDC is no significant inaccuracy and no significant imprecision.

b. Should a waived test, when performed by untrained users, provide a test result that shows no user error when compared to the same test performed in a CLIA certified lab by a trained user? This requires comparison of the test in a lay-user setting with performance of the test in a CLIA certified lab by a trained user. The threshold for waiver would be no difference in performance in the two settings.

c. Should FDA apply a different model to determine the waived status of a test?

2. What criteria should FDA use to determine if a methodology is "so simple and accurate to render the likelihood of erroneous results by the user negligible?"

a. Should a waived test be so accurate when performed by untrained users that inaccurate results will not occur?

b. Should a waived test have variable accuracy if used adjunctively? Is it acceptable to waive tests that have inaccurate results but do not have any major negative clinical impact? How should FDA make this assessment?

3. What criteria should FDA use in determining that a test will "pose no unreasonable risk of harm to the patient if performed incorrectly?"

4. Should the waiver process be different for screening tests that require a second test for confirmation? Because there are no CLIA standards for performance of waived testing, except instructions to follow the manufacturer's package insert, what is the assurance that confirmatory testing will be performed? Should the need for confirmatory testing raise, lower, or have no impact on the threshold for a waiver decision?

C. Specific Questions for Public Input

5. Should accuracy be determined using comparison of the waiver test to a well-characterized reference method and/or materials, to a designated comparative method and/or materials, to a working laboratory method and/or materials, to a clinical algorithm for diagnosis, and/or to other endpoints?

6. How many samples, what types of samples (real or artificial), by how many users and how many sites are appropriate to evaluate accuracy? (Current guidelines being followed by FDA are for performance to be demonstrated by laboratory users at a minimum of one site.)

7. What should be the background of these users?

8. What performance criteria (statistical or clinical) should FDA apply to the accuracy threshold for a waived test (e.g., t- test or McNemar test at key decision points, description of performance with confidence intervals at key decision points, use of set performance standards using a receiver operator curve–80 percent, 90 percent, 95 percent, or other–at key decision points, and/or others)?

9. How should FDA define precision for purposes of waiver determination? What types of samples, how many and what types of operators/sites are appropriate? Current CDC recommendation is for 20 samples at three levels representing appropriate decision points to be tested at three sites by lay users using materials in either artificial and/or real matrices depending on availability and biohazard issues.

10. What performance thresholds should FDA use to determine whether the precision studies are appropriate for waiver status (e.g., ANOVA (analysis of variance) analysis, use of a predefined performance goal, such as Tonks' formula, or percent agreement out of total repeat runs)?

11. What interference studies are appropriate to establish performance of waived tests (e.g., effects of hemolysis, lipemia, etc.)?

12. What environmental studies or flex (stress) studies are appropriate to establish performance of waived tests (e.g., temperature or humidity stresses, short fills)?

13. What additional studies (if any) should be submitted for evaluation of qualitative tests for waiver?

14. What additional studies (if any) should be submitted for evaluation of quantitative tests for waiver?

This will be an informal meeting conducted in accordance with 21 CFR 10.65.

Dated: July 14, 2000.

Lillian J. Gill,

Acting Deputy Director for Science, Center for Devices and Radiological Health.

[FR Doc. 00–18456 Filed 7–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443-7978.

National Cross-Site Assessment of the Addiction Technology Transfer Centers Network—(New)

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to conduct an assessment of its Addiction Technology Transfer Centers (ATTCs). The goal

underlying the training and education opportunities provided through the ATTCs is to enhance the competencies of professionals in a variety of disciplines to address the clinical needs of individuals with substance abuse problems using research-based curricula and training materials through both traditional and non-traditional technologies.

The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Health Care Policy and Research, National Institute of Justice, and other sources and applied knowledge development activities from SAMHSA using innovative technologies by developing and updating state-of-the-art research-based curricula and developing faculty and trainers. Participants in ATTC training events are self-identified and participate in either academic courses or continuing education/professional development training events. Academic courses are offered at all levels. Continuing education/professional development training is designed to meet identified needs of counselors and other professionals who work with individuals with substance abuse problems.

Both a process and an outcome assessment will be conducted. The process component will describe the training and education needs of pre-service and currently practicing professionals, the types of training events that students/trainees receive through the ATTCs, and student/trainee satisfaction with services. The outcome component will focus on changes in clinical practice made by trainees as a result of knowledge received.

Analysis of this information will assist CSAT in documenting the numbers and types of participants in ATTC education/training offerings, describing the extent to which participants improve in their clinical competency, and which method is most effective in disseminating knowledge to the various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The study design for students and trainees will include a description of each course/training event, and a pre-post design that collects identical information at initiation of ATTC courses/trainings, at the completion of the course/training, and again after 3 months. This time frame is necessary to allow students/trainees the opportunity to implement changes in clinical practice. In addition, the study will collect satisfaction measures after each course/training event.

The chart below summarizes the annualized burden for this project.

Respondent type	Number of respondents	Average responses/ respondent	Average time/ response (hours)	Annual burden (hours)
Students/trainees	12,000	4	.52	6,240
Faculty/trainers	195	1	.25	49
ATTC summary reports	13	4	2.00	104
Total	12,208			6,393

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 16, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–18484 Filed 7–20–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4562–N–06]

Notice of Proposed Information Collection for Public Comment: Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Public comments on the subject proposal are being solicited.

DATES: *Comments Due Date:* September 19, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB control number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, Department of Housing and Urban Development, 451 7th Street, Washington, DC 20410; telephone (202) 708–1537 (this is not a toll-free number). Copies of the proposed forms and other available documents to be submitted to OMB may be obtained from Ms. Karadbil.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Action of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of collection of information on those who are to respond; including through the use of appropriate technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of the Proposal: Doctoral Dissertation Research Grant Program (DDRG).

Description of the need for the information and proposed use: The information is being collected to enable HUD to select grantees in this competitive grant program. The information is also being used to monitor the performance of grantees to

ensure that they meet statutory and program goals and requirements.

Members of the affected public: Ph.D. candidates preparing dissertations on HUD-related topics: 80 applicant and 15 grantees.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Information pursuant to submitting applications will be submitted once. Information pursuant to grantee monitoring requirements will be annually and at the completion of the grant.

The following chart details the respondent burden on an annual basis:

The following chart details the respondent burden on an annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	80	80	32	2,560
Annual Reports	15	15	4	60
Final Reports	15	15	2	30
Recordkeeping	15	15	4	60
				2,710

Status of proposed information collection: This is a new paperwork request.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 14, 2000.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 00–18447 Filed 7–20–00; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–45461–N–45]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Communities for Safer Guns Coalition Survey; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of The Deputy Assistant Secretary for Intergovernmental Relations.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 28, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice: Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the gun violence reduction efforts of the Communities for Safer Guns Coalition and their implementation of their preference for safer guns. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Communities for Safer Guns Coalition Survey.

OMB Control Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 125, number of respondents is 500, frequency response is annually, and the hours of response is 0.25.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 14, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–18446 Filed 7–20–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, Pulaski Bldg., Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–0515; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: July 13, 2000.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 7/21/00

Suitable/Available Properties

Buildings (by State)

Illinois

Army Reserve Center
PVT Perry F. Modrow
5020 State Street
E. St. Louis Co: St. Clair IL 62205–1398
Landholding Agency: GSA
Property Number: 54200030001
Status: Excess
Comment: 16,300 sq. ft. training center & 2656 sq. ft. garage, presence of lead paint
GSA Number: 1–D–IL–726

Kansas

Federal Bldg.
330 Shawnee
Leavenworth Co: KS 66048–
Landholding Agency: GSA
Property Number: 54200030002
Status: Excess
Comment: 22,300 sq. ft., good condition, most recent use—post office/fed. bldg.
GSA Number: 7–G–KS–0517

Minnesota

Project Office
Mississippi Hdqts Lakes
Proj.
Remer Co: Cass MN 56672–
Landholding Agency: COE
Property Number: 31200020007
Status: Unutilized
Comment: 780 sq. ft., needs rehab

Storage 1
Mississippi Hdqts Lakes
Proj.
Remer Co: Cass MN 56672–
Landholding Agency: COE
Property Number: 31200020008
Status: Unutilized
Comment: 2240 sq. ft., needs rehab

Storage 2
Mississippi Hdqts Lakes
Proj.
Remer Co: Cass MN 56672–
Landholding Agency: COE
Property Number: 31200020009
Status: Unutilized
Comment: 180 sq. ft., needs rehab

New Hampshire

Bldg. 10
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200030018
Status: Excess
Comment: 12,000 sq. ft., presence of asbestos lead paint, most recent use—shop facility, off-site use only

Bldg. 239
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200030019
Status: Excess
Comment: 897 sq. ft., presence of asbestos/lead paint, off-site use only

Land (by State)

Minnesota

Land, 2.2 acres
Mississippi Hdqts Lakes
Proj.
Remer Co: Cass MN 56672–
Landholding Agency: COE
Property Number: 31200020010
Status: Unutilized
Comment: 2.2 acres, easements

Unsuitable Properties

Buildings (by State)

California

Bldg. 23025
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200020001

Status: Unutilized
Reason: Secured Area
Bldg. 23027
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200030002
Status: Unutilized
Reason: Secured Area
Bldg. 731
Naval Air Station
Point Mugu
Oxnard Co: Ventura Ca 93043–4301
Landholding Agency: Navy
Property Number: 77200030003
Status: Excess
Reason: Extensive deterioration
Bldg. 731A
Naval Construction Battalion
Point Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030004
Status: Excess
Reason: Extensive deterioration
Bldg. 865
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030005
Status: Excess
Reason: Extensive deterioration
Bldg. 868
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030006
Status: Excess
Reason: Extensive deterioration
Bldg. 474
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030007
Status: Excess
Reason: Extensive deterioration
Bldg. 5021
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030008
Status: Excess
Reason: Extensive deterioration
Bldg. 5022
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030009
Status: Excess
Reason: Extensive deterioration
Bldg. 5025
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030010
Status: Excess
Reason: Extensive deterioration
Bldg. 5113
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030011
Status: Excess
Reason: Extensive deterioration
Bldg. 5114
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030012
Status: Excess
Reason: Extensive deterioration
Bldg. 82 & 84
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030013
Status: Excess
Reason: Extensive deterioration
Bldg. 6–1
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030014
Status: Excess
Reason: Extensive deterioration
Bldg. 479
Naval Construction Battalion
Point Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030015
Status: Excess
Reason: Extensive deterioration

Connecticut

Bldg. 308
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200030016
Status: Unutilized
Reason: Extensive deterioration

Missouri

Steam Line/Support Structure
Marine Corps Support Activity
Kansas City Co: Jackson MO 64147–
Landholding Agency: Navy
Property Number: 77200030017
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 109
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 157
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 161
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030022
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 170
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030023
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 262
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030024
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

[FR Doc. 00–18160 Filed 7–20–00; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The collection of information listed below has been submitted by the U.S. Fish and Wildlife Service (Service) to the Office of Management and Budget (OMB) for renewal under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms, and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before August 21, 2000. OMB has up to 60 days to

approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration OMB should receive public comments by August 21, 2000.

ADDRESSES: Comments and suggestions on the requirements should be sent to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the draft of the information collection request, explanatory information and related forms contact Rebecca A. Mullin at 703/358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: We submitted the following proposed information collection clearance requirement to OMB for review and approval under the Paper work Reduction Act of 1005 (Pub. L. 104–13). OMB has up to 60 days to approve or disapprove information collection. To ensure maximum consideration, OMB should receive public comments by [insert 30 days from date of publication]. We may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. We previously published a 60-day notice inviting public comment on this information collection in the **Federal Register** on May 9, 2000 (65 FR 26849). Only one public comment on the previous notice was received as of June 19, 2000. The Service's response is discussed below:

Issue: The Ornithological Society commented that the wildlife-watching section does not go into adequate detail, specifically that the data on the amount of birding activity and related economic activity were insufficient.

Service Response: Past National Surveys have focused on wildlife watching around the home (residential) and more than a mile from home (nonresidential). The Service has provided participation and trip-related expenditure estimates for nonresidential wildlife (including, but not only, birds) watching and participation estimates for residential bird watching and feeding. With all these data revolving around the recreational enjoyment of birds, there was no one estimate for the overall number of bird watchers. The Service is addressing this issue in the 2001 Survey. The Service will include questions on the nonresidential observation of birds and the residential observation of birds, which will enable the Service to provide estimates of the total number of bird watchers at both the national level and the state level. The Service has added questions on the number of species the bird watcher can identify and whether or not the bird watcher has a birding life list. As for the expenditures of bird watchers, the Service addresses the wildlife-watching expenditure section the same as the hunting and fishing expenditure sections, which means the Service gets expenditures by type of activity (residential, nonresidential, freshwater, saltwater, big game, small game, etc.), not by species sought.

This notice provides an additional 30 days in which to comment on the following information.

The Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777K), and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i) authorizes the Service to provide grants annually to the States for projects to support sport fish and wildlife management and restoration, including the acquisition and improvement of aquatic resources, fishing access, fish stocking, and the acquisition and improvement of wildlife management areas, facilities, and access. Grants also are provided for aquatic education and hunter education, maintenance of completed projects, and research into the problems affecting fish and wildlife resources. Those projects help ensure that the American people have adequate opportunities for wildlife-related recreation. To assist in carrying out its responsibilities, the Service has sponsored national surveys of fishing and hunting at about 5-year intervals sine 1955. The Bureau of the Census conducts the Survey for the Service. The survey data are needed to allow the Service to effectively administer the Sport Fish and Wildlife Restoration Grant Programs, and to help States develop project proposals and conservation programs that meet the needs of their populations. The Survey collects information on the number of people participating in wildlife-related recreation, the number of days and expenditures spent on those activities. Survey data are needed to provide comparable state level information on existing recreation demands and to provide a basis for projecting future demands to effectively meet the needs of the American people. The information is needed to evaluate the effectiveness of existing programs in meeting those needs, formulate new policies, develop programs, and support budget proposals and legislation for the benefit of sport fish and wildlife restoration. Data are needed to evaluate the status and trends of recreational uses, as well as the values and benefits, of fish and wildlife resources. The comprehensive comparable state-level data provided by the Survey are not available from other sources..

We invite your comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Title:: 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

Approved Number: 1018–0088.

Service Form Number(s): N/A.

Description and Use: The 2001 National Survey of Fishing, Hunting, and Wildlife-Related will be the 10th one conducted since 1955. It is conducted every 5 years and is requested by the States through the International Association of Fish and Wildlife Agencies. It will be conducted by the Bureau of the Census using computer-assisted telephone or in-person interviews. A sample of sportsmen and non-consumptive participants will be selected from a household screen. Sample persons will be asked about their participation and expenditures. Three detailed interviews will be conducted during the Survey year. The Survey will be similar in scope to past surveys. It will generate information identified as priority data needed by the Federal and State fish and wildlife agencies responsible for administering the Sport Fish and Wildlife Restoration grant programs. Accordingly, the 2001 Survey will be a comprehensive data base of fish and wildlife-related recreation activities and expenditures. It will include the number of persons participating in different types of activities such as freshwater, saltwater, and Great Lakes fishing; and big game, small game, migratory bird, and other animal hunting. Wildlife watching (non-consumptive activities) include wildlife observation, feeding, and photographing around the home and on trips away from home. Information is collected on days of participation, the species of animals sought, and how much money was spent on trips and for equipment. Information on the characteristics of participants will include age, income, sex, education, race, and residency. The

Survey data has State level reliability. Federal and State fish and wildlife agencies use information from the Survey as a basis to formulate management and policy decisions related to sport fish and wildlife restoration. Participation patterns and trend information assist in identifying present and future needs and demands. The information is used for planning the acquisition, development, and enhancement of fish and wildlife resources for the benefit of wildlife-related recreation. Data on expenditures, economic evaluation, and participation are used by land managing agencies to assess the value of fish and wildlife-related uses of natural resources. Expenditure information is used by states to estimate the economic impact of wildlife-related recreation expenditures on their economies and to support the dedication of tax revenues to support fish and wildlife restoration programs. The information collected on resident saltwater fishing will assist coastal States in determining the proper ratio for allocating funds between freshwater and saltwater projects as required by the Federal Aid in Sport Fish Restoration Act, as amended. The information is not readily available elsewhere because few States have saltwater licenses or conduct their own surveys. If the Survey data were not available it would impair the ability of those States to meet their obligations under the Act.

In summary, the information collection is needed to assist the Fish and Wildlife Service and the State fish and wildlife agencies in administering the Sport Fish and Wildlife Restoration grant programs. The Survey will provide up-to-date information on the uses and demands for wildlife-related recreation resources, trends in the uses of those resources, and a basis for developing and evaluating programs and projects to meet existing and future needs. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Household screen interviews and the first detailed sportsmen and non-consumptive participant interviews will be conducted April–June 2001. The second detailed interviews will be conducted September–October 2001. The third and last detailed interviews will be conducted January–March 2002.

Description of Respondents: Individuals.

Estimated Completion Time: We estimate the average completion time per respondent to be about 7 minutes for the screen and 15 minutes for the detailed interviews. A respondent will average 2 interviews during the survey period. Total estimated respondent burden hours for all respondents are 27,000 hours.

Number of Respondents: It is estimated that there will be 80,000 total respondents.

Dated: July 14, 2000.

Rebecca Mullin,

Fish and Wildlife Service Information Collection Officer.

[FR Doc. 00–18445 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Applications for Incidental Take Permits for the Assessment District 161 Habitat Conservation Plan in Western Riverside County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of applications.

SUMMARY: Three public agencies and nine private entities (the Applicants) have applied to the Fish and Wildlife Service for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Applicants are: Metropolitan Water District of Southern California; Rancho California Water District; Murrieta Valley Unified School District; Obed Properties, Incorporated; Winchester 700, Limited Liability Company; Pulte Homes Corporation; Butterfield Development Company, Incorporated; Hill Country, Limited; Buie Communities, Limited Liability Company; Crowne Meadows Limited Partnership; Parcel Five, Incorporated; and SDI Communities, Limited Liability Company. We anticipate a future application from the County of Riverside; however, we do not intend to publish a separate notice for receipt of that application because the Assessment District 161 Habitat Conservation Plan (District Plan) and our Environmental Assessment comprehensively address all applications. The Applicants request a 30-year permit that would authorize take of 21 covered species (4 listed species, and 17 unlisted species should they be listed during the term of the permit). Take would be incidental to otherwise lawful activities associated with urban development of 2,028 acres of habitat in western Riverside County, California.

We request comments from the public on the permit applications, and our Environmental Assessment, which are available for review. The permit applications include the proposed District Plan and an accompanying Implementing Agreement (legal contract). The District Plan describes the proposed project, the measures that the Applicants would undertake to minimize and mitigate take of the covered species, and the management program proposed for the conserved habitat.

We provide this notice pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: We must receive your written comments on or before September 19, 2000.

ADDRESSES: Send written comments to Mr. Ken Berg, Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008; facsimile (760) 431–5902.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Cleary-Rose, Fish and Wildlife Biologist, or Ms. Michelle Shaughnessy, Supervisory Fish and Wildlife Biologist, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office (see **ADDRESSES**). Documents also will be available for public inspection, by appointment, during normal business hours at the above address and at the following libraries: City of Murrieta Library, 39589 Los Alamos Road, Murrieta, California; and Temecula Branch Library, 41000 County Center Drive, Temecula, California.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing

incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The take prohibitions of the Act do not apply to listed plants on private land unless their destruction on private land is in violation of State law. Nevertheless, the Applicants consider plants in the District Plan and request permits for them to the extent that State law applies.

The Applicants request a 30-year permit that would authorize take of 4 listed species and 17 unlisted species should they be listed during the term of the permit: endangered California Orcutt grass (*Orcuttia californica*); endangered Riverside fairy shrimp (*Streptocephalus wootton*i); endangered Quino checkerspot butterfly (*Euphydryas editha quino*); threatened coastal California gnatcatcher (*Polioptila californicus californicus*); Palmer's grapplinghook (*Harpagonella palmeri*); long-spined spineflower (*Chorizanthe polygonoides*); western spadefoot toad (*Spea hammondii*); San Diego horned lizard (*Phrynosoma coronatum blainvillei*); orange-throated whiptail lizard (*Cnemidophorus hyperythrus*); burrowing owl (*Speotyto cunicularia*); southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*); Bell's sage sparrow (*Amphispiza belli belli*) grasshopper sparrow (*Ammodramus savannarum*); American peregrine falcon (*Falco peregrinus anatus*); Cooper's hawk (*Accipiter cooperii*); ferruginous hawk (*Buteo regalis*); golden eagle (*Aquila chrysaetos*); long-eared owl (*Asio otis*); merlin (*Falco lineatus*); sharp-shinned hawk (*Accipiter strianus*); and white-tailed kite (*Elanus leucurus*).

The District Plan area is located adjacent to the cities of Temecula and Murrieta within western Riverside County, California. Generally the District Plan area lies to the east of Interstate 15, south of Clinton Keith Road, and adjacent to Highway 79. The Southwestern Riverside Multiple Species Reserve and Lake Skinner Recreation Area are northeast of the District Plan area. Due to already existing development patterns in the County, the District and adjacent lands lie within the only possible landscape linkage between the Lake Skinner Core and the Lake Mathews multiple species reserve system. Maintaining a viable linkage between these areas is key to successful regional reserve design in western Riverside County and will contribute to the proposed Multiple Species Habitat Conservation Plan. Habitat acquisition proposed under the District Plan would contribute regionally to conservation within this viable linkage area. Land uses surrounding the project sites include residential developments, commercial centers, undeveloped land with native vegetation, and agricultural fields.

The District Plan identifies 19 covered projects that could result in take despite the avoidance and minimization measures proposed in the Plan. The covered projects are the residential developments of Crowne Hill, Roripaugh Ranch, SDI Communities, Silver Hawk Specific Plan, Costa-Pulte, Murrieta Springs, Rancho Miramosa, Parcel 5, Lincoln Ranch, Buie Communities, Los Alamos High School, San Diego/Rancho California Water District Pipeline No. 6, EM–20 Turnout and Transmission Main, San Diego Pipeline No.3 Bypass, and Nicholas Reservoir. In addition, in anticipation of an application, the County of Riverside projects have been included in the analysis: the extension of Butterfield Stage Road, widening portions of Winchester and Newport Roads, and the expansion of the French Valley Airport runway and the Southwest Justice Center.

Several of the covered projects have sought or will, in the future, seek a permit from the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the Clean Water Act for effects to Corps-jurisdictional wetlands and non-wetland waters of the U.S. The District Plan does not address impacts to Corps jurisdictional areas. Federal wetland permitting would remain subject to the Fish and Wildlife Coordination Act and could result in additional avoidance, minimization and or mitigation measures not contemplated in this Plan.

Riverside County initiated development of the District Plan in coordination with the project proponents within and around Assessment District 161. The County formed the District to fund public infrastructure. The District is encumbered with approximately $85 million of debt. The County initiated a refinancing of the District 161 bond to lower the interest rate; however, the refinancing could not proceed without assurances of development repaying the debt. Therefore, to facilitate these assurances, the affected landowners, along with the County, developed the District Plan to provide for both assurance of conservation and development within the Plan boundary.

Take of covered species would occur during construction of single and multi-family housing, commercial and light industrial facilities, schools, parks, associated infra-structure, and public projects within a 3,094-acre footprint. Collectively, the projects would permanently eliminate 2,028 acres of suitable habitat for the covered species (659 acres of coastal sage scrub, 89 acres of chaparral, 7 acres of coast live oak woodland, 7 acres of riparian habitat, 3 acres of stream bed, 554 acres of non-native grassland, 10 acres of eucalyptus woodland, and 699 acres of agricultural land).

The Applicants propose to conserve 1,450 acres of habitat within the District Plan Area: 627 acres of coastal sage scrub, 61 acres of grassland, 77 acres chaparral, 10 acres of eucalyptus woodland , 568 acres of agricultural lands, 10 acres of coast live oak woodland, 33 acres of riparian habitat, 1 acre of pond, and 4 acres of stream bed. Habitat would be conserved on nine properties in three areas: the Johnson and Roripaugh Ranch area, along Warm Springs Creek, and east of Interstate 215 near Clinton Keith Road. The largest of these areas (674 acres) is on Johnson Ranch, of which 503 acres is used for ongoing agricultural operations. The Applicants propose to continue agriculture in its current footprint as a method of weed control.

The following table shows the anticipated effects to each proposed covered species in terms of acres of habitat destroyed and conserved:

Species	Habitat destroyed	Habitat conserved
California Orcutt grass [1]	4	0
Palmer's grapplinghook	1,213	689
Long-spined spineflower	1,213	689
Riverside fairy shrimp [1]	4	0
Quino checkerspot butterfly	1,695	1,180
Western spadefoot toad	1,230	734
San Diego horned lizard	1,213	689
Orange-throated whiptail lizard	1,213	689

Species	Habitat destroyed	Habitat conserved
Coastal California gnatcatcher	748	703
Burrowing owl	554	61
Southern California rufous-crowned sparrow	660	627
Bell's sage sparrow	748	704
Grasshopper sparrow	554	61
Raptors	1,219	1,341

[1] California Orcutt grass and Riverside fairy shrimp may be adversely affected by destruction of a small portion of the Skunk Hollow vernal pool watershed. We do not anticipate direct loss of individuals.

During the construction and operational phases of the covered projects, the Applicants propose to avoid and minimize impacts to covered species. These measures include best management practices; fire prevention; fuel management; access control; restriction of project footprints; dust control; restriction of lighting; monitoring of construction activities; revegetation of temporary disturbance areas; restrictions on the timing and nature of construction activities in and around occupied habitat; preconstruction surveys; buffers around riparian habitat; restrictions on use of invasive landscape species; and patrol, maintenance, and repair requirements.

The Applicants propose to mitigate for destruction of habitat of the covered species by conserving:

1. Approximately 1,180 acres of habitat for the Quino checkerspot butterfly (1,004 acres in the Skinner-Johnson metapopulation and 176 acres in the Warm Springs metapopulation).

2. Approximately 627 acres of coastal sage scrub and 77 acres of chaparral currently occupied by at least 50 pairs of coastal California gnatcatchers and providing habitat for the San Diego horned lizard, western spadefoot toad, orange-throated whiptail lizard, southern California rufous-crowned sparrow, Bell's sage sparrow, and raptors. The conserved habitat supports known populations of all of these species.

3. Approximately 46 acres of riparian and wetland habitats occupied by western spadefoot toads.

4. Approximately 61 acres of grassland, including areas with clay soils. This would conserve habitat for Palmer's grapplinghook, long-spined spineflower, western spadefoot toad, San Diego horned lizard, orange-throated whiptail lizard, burrowing owl, grasshopper sparrow, and raptors.

In addition, the Applicant's propose a Quino checkerspot butterfly research and propagation program linked to the Vista Murrieta High School curriculum. The District Plan identifies the program goals as: (1) To study Quino checkerspot butterfly habitat and develop management/restoration techniques for application to conservation sites in Riverside County; (2) to propagate Quino checkerspot butterflies for release into conservation areas; and (3) to develop education programs in the Murrieta Valley Unified School District and at the University of California, Riverside, pertaining to Quino checkerspot butterfly biology and habitat. The effort would include a 3-year habitat restoration research program, a perpetual quino checkerspot propagation program, an on-site research facility, and a curriculum program in the Murrieta Valley Unified School District.

The Applicants propose three habitat management phases for conserved lands: Interim, ongoing, and long-term. The interim management period would begin when an Applicant signs the Implementing Agreement and would end when management responsibilities are transferred to a conservation organization. Interim management would primarily involve protection of existing biological values and would be funded and provided by the property owner. The Applicants anticipate that most of the conservation areas would not have an interim management phase.

The ongoing management period would begin when the conservation lands are transferred from individual property owners to a conservation organization and would end when or if management responsibilities are secured through completion and implementation of the Riverside County Multiple Species Habitat Conservation Plan. Ongoing management would include exotic species monitoring and control, access control, monitoring of covered species, identification and ranking of restoration and enhancement opportunities, and implementation of a fire management plan and public outreach. Management of some of the properties would be funded by individual property owners.

Long-term management would begin when or if management of the conservation lands is secured through the Riverside County Multiple Species Habitat Conservation Plan. If the County Multiple Species Plan is not adopted, then the Applicants propose to fund long-term management of the conservation areas through (1) a fee paid by the Applicants, (2) creation of a County Service Area, or (3) creation of a master Home Owners Association. In this contingency, the management effort would be the same as in the ongoing management phase.

The Applicants propose to guarantee funding for ongoing and long-term management of conservation lands by providing a bond, letter of credit, or other financial instrument acceptable to the Fish and Wildlife Service prior to the initiation of ground disturbing activities. The Applicants relied on a Property Analysis Record (a database used by the Center for Natural Lands Management) to estimate ongoing and long-term management costs.

In the Environmental Assessment for our proposed action of issuing incidental take permits to the Applicants, we consider the environmental consequences of six alternatives. These alternatives are Implementation of the District Plan as Proposed, No Action, Reduced Coverage, District 161 Projects Only, District 161 Supplemental Assessment Area-wide Biological Mitigation, and Increased Conservation on Participating Properties.

Under the No Action Alternative, the Applicants would pursue incidental take authorization separately. Under the Reduced Coverage Alternative, burrowing owl and grasshopper sparrow would not be included as covered species on the incidental take permit. Under the District 161 Projects Only Alternative, only projects that lie entirely within Assessment District 161 would be included in the Plan. The District 161 Supplemental Assessment Area-wide Biological Mitigation Alternative contemplates conserving the area identified for conservation in the Subsequent Environmental Impact Report prepared by the County of Riverside in 1992 for District 161. The Increased Conservation on Participating Properties Alternative examines

reduced impacts and a concomitant increase in conservation.

We provide this notice pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). We will evaluate the applications, associated documents, and comments submitted thereon to determine whether the applications meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. We will issue permits to the Applicants for incidental take of those species for which the permit issuance criteria are met. Our final permit decisions will be made no sooner than 60 days from the date of this notice.

Dated: July 17, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–18485 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding for Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs proposes to acknowledge that the Little Shell Tribe of Chippewa Indians of Montana, P.O. Box 1384, Great Falls, Montana 59403, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner meets the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to comment on the proposed finding may submit arguments and evidence to support or rebut the proposed finding. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner. The names and addresses of commenters on the proposed finding will be available for public review. Commenters wishing to have their name and/or address withheld must state this request prominently at the beginning of their comments. Such a request will be honored to the extent allowable by law.

ADDRESSES: Comments on the proposed finding or requests for a copy of the report which summarizes the evidence and analyses that are the basis for this proposed finding should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street NW, Mailstop 4660–MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary by 209 DM 8.

Documentation for this proposed finding was submitted by the Little Shell Tribe of Chippewa Indians of Montana (Little Shell, or petitioner) or obtained by the independent research of the Bureau of Indian Affairs (BIA), Branch of Acknowledgment and Research (BAR).

The evidence shows that a substantial portion of the petitioner's members have ancestry from either the historical Pembina Band of Chippewa Indians prior to a treaty of 1863, or from a successor, the Turtle Mountain Band. The petitioner asserts to have its origins in a Chippewa band which had been led by a succession of three hereditary chiefs, all known as Little Shell. The petitioner is a combination of historical Métis, or "mixed blood," groups. Before 1870, many of the petitioner's ancestors were part of the Métis populations along the Red River of the north at the Red River Settlement (now Winnipeg) in Canada and at Pembina and St. Joseph in North Dakota. These Métis populations of the mid-19th century were described by contemporary observers as socially and culturally distinct from both the European settlers and tribal Indians in the same area, but also as being related to and sometimes acting together with Indian tribes. In the early 1890's, some ancestors were listed on censuses of the Turtle Mountain Band.

In Montana, the petitioner's ancestors settled originally in two regions, migrating there by different routes between the 1860's and 1930's. One settlement region was north-central Montana, including both the Lewistown area and the Highline, the area along the railroad line from Wolf Point to Havre. Some ancestors of the petitioner's members began settling this region as early as the late 1860's and early 1870's. The other settlement region was the Front Range, the area along the eastern edge of the northern Rocky Mountains. Those ancestors of the petitioner who settled in this region arrived mostly after the failure of the Métis rebellion led by Louis Riel in Saskatchewan in 1885. The petitioner's ancestors settled originally in rural areas of Montana. Beginning in the 1910's and continuing into the depression of the 1930's, some of them began moving into neighborhoods on the fringes of the rural towns on the Front Range and along the Highline, or into Great Falls and Helena. Many of the petitioner's ancestors lived in segregated areas of these towns at some time before the mid-1950's or early 1960's. Those areas were not limited to the petitioner's ancestors, except on the Front Range, and other Métis and Indians also lived in these neighborhoods.

An organization was formed in 1927 in Hays, the petitioner's first formally organized predecessor in Montana. Joseph Dussome was elected in 1927 to lead the organization formed that year, and to lead organizations of different names in 1935, 1939, and 1949. The consistent leadership of Dussome and the consistent geographical region represented by his officers and area representatives demonstrate continuity from these organizations to the petitioning group. From the mid-1930's until the mid-1950's, two organizations advocated on behalf of the Montana Métis. Dussome's organization, known as the Landless Indians of Montana after 1939, largely drew support from the Highline and Lewistown area, while the Montana Landless Indians largely drew its support from urban areas and the Front Range. Since approximately 1955, the petitioner's members and ancestors have been part of the common political process of a single organization.

The Little Shell Tribe of Chippewa Indians of Montana adopted its current organizational name and its current constitution in 1977. Its membership requirements provide membership eligibility to individuals who can trace their ancestry to the Roe Cloud Roll, a list of unenrolled Indians in Montana which was prepared by the Office of Indian Affairs about 1938. The Little Shell petitioner had 3,893 members as of 1992. Its members are now geographically dispersed, mostly within Montana. The petitioner currently maintains an office in Great Falls, Montana.

The petitioner has not provided substantial evidence of unambiguous previous Federal acknowledgment. The evidence available for this finding does

not demonstrate that the petitioner meets the requirements of previous Federal acknowledgment in sections 83.1 and 83.8 of the regulations. Therefore, the petitioner was not evaluated under the provisions of section 83.8(d) which modify the mandatory criteria for Federal acknowledgment.

This proposed finding departs from practice in previous acknowledgment decisions in certain respects, principally in giving different amounts of weight to various types of evidence than had been done in prior determinations. Precedent from earlier decisions are not binding on Department conclusions, but are useful as guidance for interpreting the regulations. This finding departs from prior decisions for meeting criteria (b) and (c) which depended upon specific evidence showing the continuity of tribal existence substantially without interruption. This finding departs from prior decisions for meeting criterion (a) which required evidence of specific identification of the petitioner as an Indian entity during each decade. This finding departs from prior decisions in which all previous petitioners who met criterion (e) demonstrated that at least 80 percent of their members descended from a historical tribe.

We believe such departures from previous practice on these matters are permissible and within the scope of the existing acknowledgment regulations. Those regulations do not specifically address these questions. Public comment is invited on these various matters, including the consistency of these proposed findings with the existing regulations. The petitioner and third parties may respond by submitting additional evidence or arguments relating to these matters during the comment period on this proposed finding. Such supplementary evidence may create a different record and a more complete factual basis for the final determination, and thus eliminate or reduce the scope of these contemplated departures from precedent.

Based on a review of the technical report, the charts prepared for each criterion, and some primary documents and background materials, and after consideration of the historical situations faced by this petitioner, the Department proposes to find that, although there is no specific evidence in the documentary record in this case for every time period, the evidence as a whole indicates that the Little Shell petitioner is a tribe.

The available documentation permits a proposed finding that the petitioner meets criterion (a). There are several examples of the identification of a group led by Joseph Dussome during the late 1930's and the decade of the 1940's as an Indian entity. Since 1949, the Little Shell petitioner has been consistently identified by various external observers as an Indian entity. It is noteworthy that several nearby tribes support the recognition of the Little Shell. There is limited evidence that the petitioner's ancestors were identified between 1900 and 1935 by external observers as Indians. This proposed finding accepts as a reasonable likelihood that references to the petitioner's individual ancestors as Indians and references to portions of their ancestors as residents of Indian settlements before the 1930's are consistent with the identifications of these and other ancestors of the petitioner as Indian groups after 1935. In order to have this proposed finding affirmed in the final determination, it would be in the petitioner's interest to provide during the comment period further evidence that external observers identified it as an Indian entity at various times between 1900 and 1935.

The available documentation permits a proposed finding that the petitioner meets criterion (b). The evidence indicates that at present there are portions of the petitioner's members residing within each of the two traditional rural regions of settlement in Montana who have been demonstrated to have social cohesion among themselves, and to have their respective ties to the members residing within the two traditional urban centers of settlement in the state. There is evidence that, after their migration to Montana, the petitioner's ancestors married other ethnic Métis individuals almost exclusively, and that those early intermarriages in Montana formed kinship ties that created social cohesion among the petitioner's ancestors. The available evidence does not show clearly that immigrants to Montana from Dakota or Canada necessarily moved together as a community or in a pattern of migration that maintained old community ties. This proposed finding accepts as a reasonable likelihood that patterns of social relationships among the Métis residents of settlements in North Dakota and Canada during the mid-19th century persisted among their descendants who migrated to Montana and appeared on the Federal census records of Montana for 1910 and 1920. The petitioner is encouraged to provide during the comment period further evidence that their ancestors continuously existed as social communities between the 1860's and 1930's.

The available documentation permits a proposed finding that the petitioner meets criterion (c). The attempt of the Little Shell group in Montana to achieve IRA status during the 1930's indicates its desire to obtain recognized status when the "landless" policies of the Federal Government were prohibitive. Many of the petitioner's ancestors participated in the activities of one or the other of two political organizations of "landless Indians" between the mid-1930's and the early 1950's. Since the mid-1950's the petitioner's members and ancestors have been part of the common political process of a single organization. The political processes of the petitioner's organization at present draw interest and support from both geographical regions of traditional settlement as well as the two main cities where members reside. Area representatives communicate political information and concerns between the council and the general membership. Several recent internal political conflicts indicate that current members are aware of the actions of the council and officers, and consider those actions to be important. This proposed finding concludes that evidence of some local leadership among a minority of the petitioner's ancestors in the past demonstrates a reasonable likelihood that patterns of political influence existed among many of the petitioner's ancestors before the 1930's. The petitioner is encouraged to provide during the comment period additional evidence to demonstrate more fully its political influence or authority over its members from historical times until the 1930's.

The petitioner meets criterion (d). The petitioner has a constitution, dated September 10, 1977, and resolutions which define its membership criteria and the procedures by which it governs its affairs and its members.

The available documentation permits a proposed finding that the petitioner meets criterion (e). A minority of the petitioner's members descend from individuals who received land scrip as "mixed-blood" relatives of the Pembina Band under the provisions of the treaties of 1863 and 1864, and therefore descend from a member of the band in a generation earlier than the treaty. A minority of the petitioner's members were on the judgment roll prepared by the Government in 1994 for the distribution of an Indian Claims Commission award for the taking of Indian territory in North Dakota. The available evidence indicates that about 48 percent of the petitioner's members trace their ancestry back to the historical Pembina Band of Chippewa or to its successor the Turtle Mountain Band. An additional 14 percent of the petitioner's members descend from a member of

Rocky Boy's Band with Chippewa ancestry. If Pembina ancestry is assumed for the Chippewa element of the Rocky Boy's Band, as was done by the Indian Claims Commission and by the BIA in preparing the 1994 judgment roll, then possibly 62 percent of the petitioner's members have Pembina Chippewa descent. Genealogical information is missing for many of the petitioner's newest members, and it would be in the petitioner's interest to provide during the comment period further evidence that additional members descend from ancestors with established Pembina Chippewa descent.

The petitioner meets criterion (f). The evidence shows that less than 1 percent of the members of the petitioning group are members of a federally recognized tribe. Therefore, its membership is composed principally of persons who are not members of any acknowledged Indian tribe.

The petitioner meets criterion (g). There is no evidence that the petitioning group was the subject of congressional legislation that prohibited or terminated a relationship between it and the Federal Government.

For these reasons, the petitioner should be acknowledged to exist as an Indian tribe.

This proposed finding is based on the available evidence and does not preclude the submission of other evidence to the contrary. Such new evidence may result in a change in the conclusions reached in the proposed finding.

A report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request (83.10(h)).

During the 180-day comment period (83.10(i)), the Assistant Secretary shall provide technical advice concerning the proposed finding and shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law (83.10(j)(1)). In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

If third party comments are received during the comment period, the petitioner shall have a minimum of 60 days to respond to these comments. This period may be extended at the Assistant Secretary's discretion if warranted by the extent and nature of the comments (83.10(k)).

At the end of the comment and response periods, the Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable time frame for consideration of written arguments and evidence submitted during the comment and response periods, and notify the petitioner and interested parties of the date such consideration begins (83.10(l)). The Assistant Secretary has the discretion to request additional information from the petitioner or commenting parties, and to conduct additional research (83.10(l)(1)). After consideration of the written arguments and evidence submitted during the comment period and the petitioner's response to the comments, the Assistant Secretary shall make a final determination regarding the petitioner's status. A summary of the final determination will be published in the **Federal Register** (83.10(l)(2)).

Dated: July 14, 2000.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 00–18490 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–00–1310–00–241A; MSES 47328, MSES 47325, MSES 47320]

(Mississippi); Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97–451, petitions for reinstatement of oil and gas leases MSES 47328, MSES 47325, MSES 47320, Wayne County, DeSota N.F., Mississippi were timely filed and accompanied by all required rentals and royalties accruing from August 1, 1999, the date of termination.

No new leases have been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent. Payment of $500 in administrative fees and a $125 publication fee has been made for each of the leases.

The Bureau of Land Management is proposing to reinstate the leases effective August 1, 1999, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above. This is accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)).

FOR FURTHER INFORMATION CONTACT: Ann Dickerson at (703) 440–1512.

Dated: July 7, 2000.

Walter Rowinski,

Acting State Director.

[FR Doc. 00–18518 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ; GPO–0278]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 24 S., R. 7 W., accepted June 16, 2000
T. 3 S., R. 14 E., accepted June 19, 2000
T. 16 S., R. 5 E., accepted June 28, 2000

Washington

T. 33 N., R. 36 E., accepted June 1, 2000
T. 32 N., R. 36 E., accepted June 1, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 10, 2000.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 00–18453 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention to Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is proposing in 2001 to conduct a telephone survey of households in western Washington State where the following national parks are located: Olympic National Park and Mount Rainer National Park. In this survey, persons will be asked why they visit or do not visit either national park. This information will identify the reasons former visitors have stopped using the parks and why non-visitors do not go to the parks.

	Estimated numbers of	
	Responses	Burden hours
Western Washington Household Survey ...	1000	250

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed survey. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to determine if former visitors have been displaced and if other persons do not go to Olympic and Mount Rainer national parks because of crowding and related factors, including traffic congestion, development, and difficulty in obtaining lodging or campsites in the parks.

DATES: Public comments will be accepted on or before September 19, 2000.

SEND COMMENTS TO: James H. Gramann, Department of Recreation, Park and Tourism Sciences, Texas A&M University, 2261 TAMU, College Station, TX 77843–2261.

FOR FURTHER INFORMATION CONTACT: James H. Gramann. Voice: 979–845–4920, e-mail: jgramann@rpts.tamu.edu.

SUPPLEMENTARY INFORMATION:

Title: Development and Advancement of Carrying Capacity Management Techniques, Western Washington Household Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information from former visitors and non-visitors to advance the application of carrying capacity management techniques in the National Park System.

Automated data collection: At the present time, there is no automated way to gather this information because it includes asking residents for information about use and non-use of specific national parks.

Description of respondents: Persons residing in all counties of Washington State west of the Cascade Mountains, including the Seattle and Tacoma metropolitan areas.

Estimated average number of respondents: 1000 (county sample size proportional county population).

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 15 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 250 hours.

Dated: July 18, 2000.

Betsy Chittenden,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 00–18544 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Ocala National Forest, USDA Forest Service, Tallahassee, FL

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Ocala National Forest, USDA Forest Service, Tallahassee, FL. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by USDA Forest Service professional staff in consultation with representatives of the Miccosukee Tribe of Indians of Florida; the Seminole Nation of Oklahoma; and the Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood and Tampa Reservations.

In May 1990, human remains representing a minimum of eight individuals were found in a collapsed maintenance shed at Silver Glen Springs, part of the Ocala National Forest. No known individuals were identified. No associated funerary objects are present.

The Silver Glen Springs was acquired by the USDA Forest Service on May 11, 1990. These human remains were discovered prior to the enactment of NAGPRA, and are believed to have been collected from the surrounding area of the maintenance shed during private ownership of the land. The Silver Glen Springs site and surrounding area has been identified as a large, deeply stratified aboriginal occupation site. Based on site location and dental morphology, these individuals have been identified as Native American from the pre-contact period.

Based on the above-mentioned information, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent

the physical remains of a minimum of eight individuals of Native American ancestry. In accordance with the recommendations of the NAGPRA Review Committee following the April 2–4, 2000 meeting in Juneau, AK, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can reasonably be traced between these Native American human remains and any present-day Indian tribe or group, and the disposition of these Native American human remains will be to the Miccosukee Tribe of Indians of Florida. This notice has been sent to officials of the Miccosukee Tribe of Indians of Florida; the Seminole Nation of Oklahoma; and the Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood and Tampa Reservations. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rhonda Kimbrough, Heritage Program Manager, National Forests in Florida, 325 John Knox Road, Suite F-100, Tallahassee, FL 32303, telephone (850) 942-9373, before August 21, 2000. Repatriation of the human remains to the Miccosukee Tribe of Indians of Florida may begin after that date if no additional claimants come forward.

Dated: June 22, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18465 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Illinois State Museum, Springfield, IL

AGENCY: National Park Service, DoI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Illinois State Museum, Springfield, IL. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Illinois State Museum professional staff in written consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Prior to 1962, human remains representing two individuals were collected by an unknown individual in Orange County, CA. The circumstances surrounding the recovery of the remains are unknown. At an unknown date, the remains were donated to the Quincy Museum in Quincy, IL by an unknown individual. In 1991, Dr. John Snow assisted in the transfer of the remains to the Illinois State Museum. No known individuals were identified. No associated funerary objects are present.

The transfer inventory, completed by Dr. Snow, lists one skull (catalog number 100-440) with an associated mandible (catalog number 100-440A) and notes an attached tag. This tag presumably was attached prior to donation to the Quincy Museum. The tag read, "Shumasha culture Orange Co. Calif." The inventory, also completed by Dr. Snow, lists a second skull (catalog number 100-443) with an associated mandible (catalog number 100-443A) and notes an attached tag. This tag also presumably was attached prior to its donation to the Quincy Museum.

The tag read, "Male Skull Shumash culture Orange, Co. CA." The tags are no longer attached to the remains, although one skull has writing on it in several places which reads, "ORANGE CO. CALIF. 1930." The 1930 date may imply the date of the collection.

Based on the above-mentioned information, officials of the Illinois State Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Illinois State Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

This notice has been sent to officials of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Robert E. Warren, Associate Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL, telephone (217) 524-7903, before August 21, 2000. Repatriation of the human remains to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may begin after that date if no additional claimants come forward.

Dated: July 13, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18461 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Cass County, IN in the Possession of the Indiana State Museum and Historic Sites, Indianapolis, IN

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Cass County, IN in the possession of the Indiana State Museum and Historic Sites, Indianapolis, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and/or associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Indiana State Museum and Historic Sites professional staff in consultation with representatives of the Miami Tribe of Oklahoma.

Prior to 1932, human remains representing one individual were recovered from a burial near the town of Walton, Cass County, IN by Noah F. Surface, who donated these human remains to the Indiana State Museum. No known individual was identified. The two associated funerary objects include a pewter pan and a suede leather hair bow with silver discs.

Based on associated funerary objects and skeletal morphology, this

individual has been identified as Native American from the historic period, most likely to the first half of the 19th century. Because the hair bow is typical of the style worn by Miami women during the first half of the 19th century and skeletal morphology, this individual has been identified as an adolescent Miami woman. The burial location, five miles south of the Wabash River, is in an area intensively occupied by the Miami between A.D. 1795-1840.

Based on the above-mentioned information, officials of the Indiana State Museum and Historic Sites have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Indiana State Museum and Historic Sites have also determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Indiana State Museum and Historic Sites have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Miami Tribe of Oklahoma.

This notice has been sent to officials of the Miami Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Bill Wepler, Curator of Anthropology, Indiana State Museum and Historic Sites, 202 North Alabama Street, Indianapolis, IN 46204, telephone (317) 232-6178, before August 21, 2000. Repatriation of the human remains and associated funerary objects to the Miami Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 15, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00-18464 Filed 7-20-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Arizona State Office, Bureau of Land Management, Phoenix, AZ

AGENCY: National Park Service, DoI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Arizona State Office, Bureau of Land Management, Phoenix, AZ. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Bureau of Land Management professional staff, Museum of Northern Arizona professional staff, and Arizona State Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; the Zuni Tribe of the Zuni Reservation, New Mexico; the Navajo Nation, Arizona, New Mexico and Utah; the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Fort Mohave Indian Tribe of Arizona, California and Nevada; and the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.

In 1966, human remains representing 14 individuals were recovered during legally authorized salvage excavations of site AZ A:1:11(MNA) near Littlefield, AZ. No known individuals were identified. The 73 associated funerary objects include ceramics, projectile points, knives, scrapers, a palette, a piece of limonite, and several pieces of worked turquoise, stone, and bone.

Based on ceramics, architecture, and site organization, site AZ A:1:11(MNA) has been identified as a Puebloan habitation occupied during A.D. 1000-1200.

In 1968-1969, human remains representing one individual were recovered during legally authorized salvage excavations of site AZ A:1:12(MNA) near Littlefield, AZ. No known individual was identified. No associated funerary objects are present.

Based on its ceramics, site AZ A:1:12(MNA) has been identified as a Puebloan rock shelter occupied during A.D. 400-1150.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of sites AZ A:1:11(MNA) and AZ A:1:12(MNA) with the present-day Hopi Tribe of Arizona. Oral traditions presented by representatives of the Hopi Tribe of Arizona support affiliation with Puebloan sites in this area of northwestern Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 15 individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 73 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona.

In 1977-1978, human remains representing 15 individuals were recovered during legally authorized salvage excavations of sites AZ Q:7:105(MNA) and AZ Q:2:11(MNA) near St. Johns, AZ. No known individuals were identified. The 345 associated funerary objects consist of bone beads and 2 pottery jars.

Based on ceramics, radiocarbon dating, and architecture, these sites have been identified as Puebloan habitations occupied during A.D. 925-1175.

In 1988, human remains representing one individual were recovered during a legally authorized testing and stabilization project at site AZ Q:3:97(ASM), known as Long H Ruin, near St. Johns, AZ. No known

individuals were identified. No associated funerary objects are present.

Based on ceramics, architecture, and site organization, site AZ Q:3:97(ASM) has been identified as a Puebloan habitation dating to approximately A.D. 950-1050.

In 1984–1985, human remains representing three individuals were recovered during legally authorized salvage excavations of sites AZ Q:9:5(ASM), AZ Q:9:26(ASM) and AZ Q:9:30(ASM) near Showlow, AZ. The seven associated funerary objects, all from AZ Q:9:30(ASM), consist of ceramics and a stone axe fragment.

Based on ceramics, architecture, and site organization, these sites have been identified as Puebloan habitations occupied during A.D. 850-1150.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of sites AZ Q:7:105(MNA), AZ Q:2:11(MNA), AZ Q:3:97(ASM), AZ Q:9:5(ASM), AZ Q:9:26(ASM), and AZ Q:9:30(ASM) with the present-day Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico. Oral traditions presented by representatives of the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico support affiliation with Puebloan sites in this area of northeastern Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 19 individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 352 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico.

In 1960-1961, human remains representing two individuals were recovered during legally authorized salvage excavations of site AZ T:13:9(ASM) near Gila Bend, AZ. No known individuals were identified. No associated funerary objects are present.

Based on ceramics, architecture, and site organization, site AZ T:13:9(ASM) has been identified as Hohokam.

In 1985, human remains representing six individuals were recovered during legally authorized salvage excavations of sites AZ EE:1:154(ASM) and AZ EE:1:155(ASM) in the Santa Rita Mountains south of Tucson, AZ. No known individuals were identified. The 32 associated funerary objects consist of a pottery jar that contained the remains of one individual at AZ EE:155(ASM), and 22 complete and 9 fragmentary stone disk beads found with the individual at AZ EE:154(ASM).

Based on ceramics, archeomagnetic dating, architecture, and site organization, these sites have been identified as Hohokam habitations occupied during A.D. 700-1000.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of sites AZ T:13:9(ASM), AZ EE:1:154(ASM) and AZ EE:1:155(ASM) with present-day Piman and O'odham cultures. Oral traditions presented by representatives of the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona support affiliation with Hohokam sites in southern Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 32 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona.

In 1983 and 1985, human remains representing three individuals were recovered during legally authorized salvage excavations of site AZ U:15:109(ASM) at Florence, AZ. No known individuals were identified. The 72 associated funerary objects include ceramics, a shell pendant, animal bone fragments, a limonite crystal, and stone flakes.

Based on ceramics, site AZ U:15:109(ASM) has been identified as Hohokam. One of the burials was radiocarbon dated at A.D. 955-1135.

Between 1965–1974, human remains representing seven individuals were recovered from site AZ V:13:196(ASM) in the Dripping Spring Mountains south of Globe, AZ. No known individual was identified. No associated funerary objects are present.

Based on ceramics, site AZ V:13:196(ASM) has been recorded as Salado, dating from approximately A.D. 1200-1450.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of sites AZ U:15:109(ASM) and AZ V:13:196(ASM) with present-day Piman, O'odham and Puebloan cultures. Oral traditions presented by representatives of the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Hopi Tribe of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico support affiliation with Hohokam and Salado sites in central Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 10 individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 72 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River

Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Hopi Tribe of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

In 1987, human remains representing three individuals were recovered during legally authorized salvage excavations of site AZ EE:9:107(ASM) in Nogales, AZ. No known individuals were identified. No associated funerary object are present.

Based on ceramics and architecture, site AZ EE:9:107(ASM) was identified as a Hohokam village, dating to A.D. 700-1200.

In 1988, human remains representing two individuals were recovered during legally authorized salvage excavations of site AZ EE:4:9(BLM) along the San Pedro River near Fairbank, AZ. No known individuals were identified. No associated funerary objects are present.

Based on artifacts and site organization, site AZ EE:4:9(BLM) was identified as Sobaipuri.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of sites AZ EE:9:107(ASM) and AZ EE:4:9(BLM) with present-day Piman and O'odham cultures. Oral traditions presented by representatives of the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support affiliation with Hohokam and Sobaipuri sites in southern Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

In 1988, human remains representing one individual were recovered during legally authorized salvage excavations of site AZ M:15:5(BLM) near Smith Peak in southwestern Yavapai County, AZ. No known individuals were identified. No associated funerary objects are present.

The remains were radiocarbon dated to A.D. 930-1000. Based on age, location, and artifacts, site AZ M:15:5(BLM) was identified as Patayan.

Continuities of ethnographic materials and technology indicate affiliation of site AZ M:15:5(BLM) with present-day Yuman tribes along the Colorado River. Oral traditions presented by representatives of the Fort Mohave Indian Tribe and the Colorado River Indian Tribes support this affiliation.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Fort Mohave Indian Tribe of Arizona, California and Nevada; and the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.

This notice has been sent to officials of the Hopi Tribe of Arizona; the Zuni Tribe of the Zuni Reservation, New Mexico; the Navajo Nation, Arizona, New Mexico and Utah; the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Fort Mohave Indian Tribe of Arizona, California and Nevada; and the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Gary Stumpf, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, AZ 85004, telephone (602) 417-9509, before August 21, 2000. Repatriation of the human remains and associated funerary objects to the respective culturally affiliated Indian tribes may begin after that date if no additional claimants come forward.

Dated: June 13, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00-18460 Filed 7-20-00; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Alaska in the Control of the Alaska State Office, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby give in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Alaska State Office, Bureau of Land Management, Anchorage, AK. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Bureau of Land Management and Haffenreffer Museum of Anthropology, Brown University professional staff in consultation with representatives of the Native Village of Kotzebue.

During 1956-61, human remains representing 49 individuals were collected or excavated by Dr. J. Louis Giddings under a Federal permit from a series of burials at Cape Krusenstern, Battle Rock Site vicinity, and the Choris Peninsula. These human remains are curated at the Haffenreffer Museum of Anthropology in Bristol, RI. No known individuals were identified. The 387 associated funerary objects include projectile points, scrapers, knives, flake tools, flakes, side and end blade insets, an adze head, a split bone piercer, an ivory handle, a whale and seal head carving, antler arrowheads and arrowhead fragments, 1 potsherd, 4 wooden mask fragments, 1 walrus bone pick, animal bones and teeth, and 2 blue feathers.

Based on skeletal morphology, geographic location, and associated objects, these individuals have been identified as Native American, affiliated with Inupiat Eskimo culture and specifically with the Native Village of Kotzebue. This determination of cultural affiliation has been based upon the continuity of Native Americans in the Kotzebue area and their oral tradition that the area where the remains were found is within their traditional territory.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 49 individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 387 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Native Village of Kotzebue. This notice has been sent to officials of the Native Village of Kotzebue. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 West 7th Avenue, t13, Anchorage, AK 99513-7599, telephone (907) 271-5510, before August 21, 2000. Repatriation of the human remains and associated funerary objects to the Native Village of Kotzebue may begin after that date if no additional claimants come forward.

Dated: June 17, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18463 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Nevada State Office, Bureau of Land Management, Reno, NV

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Nevada State Office, Bureau of Land Management, Reno, NV. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Nevada State Office Bureau of Land Management professional staff in consultation with representatives of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

In 1961, human remains representing four individuals were recovered from Kramer Cave in Washoe County, NV, during a legally permitted archeological excavation by R. Shutler, Jr. and D. R. Touhy, of the Nevada State Museum. The remains and associated funerary items have been curated at the Nevada State Museum since that time. No known individuals were identified. The four associated funerary items consist of small fragments of tule cordage, grass matting warps and wefts, and basketry warps and wefts.

Historical, ethnographic, and oral records indicate that these human remains and associated funerary objects are reasonably believed to be associated with the Northern Paiute Tribes. Historical documents, ethnographic sources, and consultation with representatives of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada indicate that the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada has occupied this area since at least the early 19th century. The tribe's oral history supports this affiliation.

Based on the above-mentioned information, officials of the Bureau of Land Management, Nevada State Office have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Bureau of Land Management, Nevada State Office also have determined that, pursuant to 43 CFR 10.2 (d)(2), the cultural objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management, Nevada State Office has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

This notice has been sent to officials of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; the Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; the Walker River Paiute Tribe of the Walker River Reservation, Nevada; the Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada; and the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Cynthia Ellis, NAGPRA Coordinator, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV, 89520-0006, telephone (775) 861-6469, before August 21, 2000. Repatriation of the human remains and associated funerary objects to the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada may begin after that date if no additional claimants come forward.

Dated: June 14, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18466 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From Hawaii in the Possession of the Peabody Essex Museum, Salem, MA

AGENCY: National Park Service, DoI.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Hawaii in the possession of the Peabody Essex Museum, Salem, MA. This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal Agency who has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Essex Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs.

In 1800, human remains representing one individual in the form of a fish hook from Hawaii were donated to the Peabody Essex Museum by John Derby. No known individual was identified. No associated funerary objects are present.

In 1802, human remains representing one individual in the form of a fish hook from Hawaii were donated to the Peabody Essex Museum by Captain William Bunker. No known individual was identified. No associated funerary objects are present.

In 1916, human remains representing one individual in the form of a fish hook from Hawaii were donated to the Peabody Essex Museum by the Museum of the American Indian (Heye Foundation). No known individual was identified. No associated funerary objects are present.

In 1922, human remains representing one individual in the form of a fish hook from Hawaii were depositied with the Peabody Essex Museum by the Worcester Historical Society. In 1996, these human remains were gifted to the Peabody Essex Museum by the Worcester Historical Society. No known individual was identified. No associated funerary objects are present.

Before 1868, human remains representing one individual in the form of a fish hook were collected from Hawaii by Rev. Asa Thurston. In 1925, these human remains were donated to the Peabody Essex Museum by Stephen W. Phillips. No known individual was identified. No associated funerary objects are present.

Between 1928–1932, human remains representing three individuals in the forms of two fish hooks and a fishing net needle were collected from Hawaii by F. Walter Bergmann. In 1957, these human remains were donated to the Peabody Essex Museum by F. Walter Bergmann. No known individuals were identified. No associated funerary objects are present.

Consultation evidence presented by representatives of Hui Malama I Na Kupuna O Hawai'i Nei indicates these objects are human remains.

Based on the above mentioned information, officials of the Peabody Essex Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least eight individuals of Native American ancestry. Officials of the Peabody Essex Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Christina Hellmich, Director of Collections Management, Peabody Essex Museum, East India Square, Salem, MA 01970; telephone (978) 745–1876, facimile (978) 744–003, before August 21, 2000. Repatriation of the human remains to Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: June 13, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18462 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Washington State Historical Society, Tacoma, WA

AGENCY: National Park Service.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Washington State Historical Society, Tacoma, WA. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Washington State Historical Society professional staff in consultation with representatives of the Puyallup Tribe of the Puyallup Reservation, Washington.

At an unknown date, human remains representing four individuals came into the collection of the Washington State Historical Society through unknown circumstances. No known individuals were identified. No associated funerary objects are present.

No museum documentation exists to identify the origin of these human remains, and all identified possible donors of these human remains are now deceased. Based on skeletal morphology, these individuals have been identified as Native American.

Based on the above-mentioned information, officials of the Washington State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Washington State Historical Society have further determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between these Native American human remains and any Indian tribe. Pursuant to the NAGPRA Review Committee's recommendations at the April 2–4, 2000 meeting in Juneau, AK, officials of the Washington

State Historical Society are proceeding with the repatriation of these Native American human remains to the Puyallup Tribe of the Puyallup Reservation, Washington. This notice has been sent to officials of the Puyallup Tribe of the Puyallup Reservation, Washington. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lynette Miller, Curator, Washington State Historical Society, 315 North Stadium Way, Tacoma, WA 98403, telephone (253) 798-5925, before August 21, 2000. Repatriation of the human remains to the Puyallup Tribe of the Puyallup Reservation, Washington may begin after that date if no additional claimants come forward.

Dated: June 19, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00-18467 Filed 7-20-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on April 19, 2000. The January 21, 2000, notice should be used as a reference point to identify changes. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225-0007; telephone 303-445-2902.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2000. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BON) Basis of Negotiation
(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(NEPA) National Environmental Policy Act
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(R&B) Rehabilitation and Betterment
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act

(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5346.

Completed contract action:

13. Okanogan ID, Okanogan Project, Washington: SOD contract to repay District's share of cost of dam safety repairs to Salmon Lake Dam. Contract executed July 2000.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

38. Banta-Carbona and The West Side IDs, CVP, California: Assignment of 5,000 acre-feet of each district's water service contract to the City of Tracy. The assignment will require approval of the Districts' CVP irrigation water to M&I water.

39. Friant Water Users Authority and San Luis and Delta-Mendota Water Authority, CVP, California: Amendments to the Operation, Maintenance, and Replacement and Certain Financial and Administrative Activities' Agreements to implement certain changes to the Direct Funding provisions to comply with applicable Federal law.

40. Monterey County Water Resources Agency, SRPA, California: Proposed contract amendment to provide for deferral of installments of construction charges under a SRPA loan repayment contract.

41. Monterey Regional Water Pollution Control Agency, SRPA, California: Proposed contract amendment to provide for deferral of installments of construction charges under a SRPA loan repayment contract.

Modified contract actions:

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available Project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of Project facilities for terms up to 1 year; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually. Note. Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Public Law 100–516.

21. Horsefly, Klamath, Langell Valley, and Tulelake IDs, Klamath Project, Oregon: Repayment contract for SOD work on Clear Lake Dam.

31. Tehama-Colusa Canal Authority, CVP, California: Amendment of existing long-term O&M agreement to also include the O&M of the Red Bluff Diversion Dam and related facilities and to implement certain changes to the Direct Funding provisions of the O&M Agreement to comply with applicable Federal law.

Completed contract action:

28. Contra Costa WD, CVP, California: Amend water service contract No. I75r-3401 for the purpose of renegotiating the provisions of contract Article 12, "Water Shortage and Apportionment," to conform to current CVP M&I water shortage policy. Contract executed February 7, 2000.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

61. Gila River Farms, Arizona: Amendment of SRPA contract to restructure the repayment schedule.

62. Central Arizona Water Conservation District, CAP, Arizona: Agreement for delivery of CAP excess water to the Gila River Indian Community and the San Carlos IBD in exchange for San Carlos reservoir water.

63. Litchfield Park Service Company, CAP, Arizona: Proposed assignments of 5,580 acre-feet of CAP M&I water to the Central Arizona Groundwater Replenishment District and to the cities of Avondale, Carefree, and Goodyear.

64. Shepard Water Company, Inc., Arizona: Contract for the delivery of 50 acre-feet of domestic water.

Modified contract action:

28. Arizona State Land Department, BCP, Arizona: Colorado River water delivery contract for 1,535 acre-feet per year for domestic use.

Discontinued contract action:

50. Litchfield Park Service Company, CAP, Arizona: Assignment of 1,200 acre-feet per year of CAP M&I water to the City of Scottsdale.

Completed contract actions:

35. Bureau of Land Management, BCP, Arizona: Agreement for 4,010 acre-feet per year of Colorado River water in accordance with Secretarial Reservations.

39. McMicken ID, CAP, Arizona: Assignment of 486 acre-feet of M&I water per year to the City of Peoria.

53. Arizona State Land Department, CAP, Arizona: Assignment of 1,500 acre-feet per year of CAP water from the Arizona State Land Department to the City of Mesa.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

Discontinued contract action:

4. William Nielson, Dolores Project, Colorado: Carriage contract with William Nielson to carry up to 1.5 cfs of non-project water in project facilities under the authority of the Warren Act of 1911. Contract is not being pursued.

Completed contract action:

18. Mancos Water Conservancy District, Mancos Project, Colorado: Amendment to repayment contract with the District to increase the farm unit size (for acreage limitation purposes) from 160 to 750 acres, pursuant to the WCUA of 1939. Amendatory contract signed.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

Modified contract actions:

2. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board and the U.S. Fish and Wildlife Service for 10,825 acre-feet for endangered fishes.

9. Angostura ID, Angostura Unit, P-SMBP, South Dakota: The District had a contract for water service which expired on December 31, 1995. An interim 3-year contract provided for a continuing water supply and the District to O&M the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility. A BON is currently being developed for a long-term contract. Another interim 3-year contract was executed on June 9, 2000, to provide for a continuing water supply and allow adequate time for completion of the Environmental Impact Statement for long-term contract renewal.

11. P–SMBP, Kansas and Nebraska: Anticipate executing the long-term water supply renewal contracts with Kansas-Bostwick, Bostwick in Nebraska, Frenchman Valley, Frenchman-Cambridge, and Almena IDs by the end of July 2000. The renewed long-term water service contracts will take effect January 1, 2001. A Notice of Availability for Draft Contracts was published on May 16, 2000. A Notice of Availability for the FEIS was published on June 19, 2000.

14. P-SMBP, Kansas: Water service contracts with Kirwin and Webster IDs in the Solomon River Basin in Kansas were extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

21. Lower Marias Unit, P-SMBP, Montana: Water service contract expires in July 2000. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Received approved BON from the Commissioner. Currently performing a water availability study and consulting with the Tribes regarding the Water Rights Compact. A 1-year interim contract will be issued to continue delivery of water until the necessary actions can be completed to renew a long-term contract.

22. Lower Marias Unit, P-SMBP, Montana: Initiating 25-year water service contract for up to 750 acre-feet of storage from Tiber Reservoir to irrigate 250 acres. A 1-year temporary contract has been issued to allow additional time to complete necessary actions required for the long-term contract. Another 1-year temporary has been issued to continue delivery of water until the long-term renewal process can be completed.

23. Lower Marias Unit, P-SMBP, Montana: Water service contract expired May 2000. Initiating renewal of existing long-term contract for 25 years for up to 4,570 acre-feet of storage from Tiber Reservoir to irrigate 2,285 acres. Currently performing a water availability study and consulting with the Tribes regarding the Water Rights Compact. A 1-year interim contract has been issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract. Another 1-year temporary will be issued to continue delivery of water until the long-term renewal process can be completed.

25. Savage ID, P-SMBP, Montana: A second interim contract has been entered into with the District. The District is currently seeking Title Transfer. The contract is subject to renewal on an annual basis pending outcome of the title transfer process.

29. Fryingpan-Arkansas Project, Colorado: Pueblo Board of Water Works, long-term storage contract.

31. Canyon Limited Liability (Individual), P-SMBP, Boysen Unit, Wyoming: Contract for up to 16 acre-feet of supplemental irrigation water to service 4 acres.

34. Tom Green County and Improvement District No. 1, San Angelo Project, Texas: The irrigation district has requested a deferment of its 2000 construction payment. The deferment has been approved by the Secretary of the Interior. A public notice for this action was printed in the San Angelo Times. The 60-day comment period ends July 3, 2000.

42. Fryingpan-Arkansas Project, Colorado: Pueblo Board of Water Works, long-term conveyance contract.

4. *Completed contract action:*

13. Fort Shaw ID, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam. The proposed contract for the emergency repairs has been combined with the contract for repayment of additional SOD work as outlined in the approval memorandum dated November 17, 1999. Contract executed January 10, 2000.

Dated: July 17, 2000.

Wayne O. Deason,

Associate Director, Office of Policy.

[FR Doc. 00–18488 Filed 7–20–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–395]

In the Matter of Certain Eprom, Eeprom, Flash Memory, and Flash Microcontroller Semiconductor Devices and Products Containing Same; Notice of Commission Determination To Review-in-Part an Initial Determination on Inventorship and Two Orders; Schedule for Filing Written Submissions; Denial of Motion for Leave To File a Reply

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on May 17, 2000, and two ALJ orders in proceedings to reconsider the Commission's determination on inventorship in the above-captioned investigation, which was instituted pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. Specifically, the Commission has determined to review: (1) ALJ Order No. 50, (2) ALJ Order No. 69, (3) the determination in the ID that the Certificate of Correction of U.S. Letters Patent 4,451,903 (the '903 patent) was procured inequitably, and (4) the determination in the ID that the inventors named on the Certificate of Correction of the '903 patent are incorrect. The Commission has also determined to deny complainant Atmel Corp.'s Motion for Leave to File a Reply, dated June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based investigation on March 18, 1997, based on a complaint filed by Atmel Corp. 62 FR 13706. The complaint named five respondents: Sanyo Electric Co., Ltd. of Japan; Winbond Electronics Corp. of Taiwan and Winbond Electronics North America Corporation of San Jose, California; and Macronix International Co., Ltd. of Taiwan and Macronix America, Inc. of San Jose, California. Silicon Storage Technology, Inc. was permitted to intervene in the investigation.

In its complaint, Atmel alleged that the respondents violated section 337 by importing into the United States, selling for importation, and/or selling in the United States after importation certain electronic products and/or components that infringe one or more of claim 1 of U.S. Letters Patent 4,511,811, (the '811 patent), claim 1 of U.S. Letters Patent 4,673,829 (the '829 patent), claims 1–9 of the '903 patent, and claim 1 of U.S. Letters Patent 4,974,565 (the '565 patent). The '565 patent was later withdrawn from the investigation by Atmel.

The ALJ issued his final ID on violation on March 19, 1998, in which he found, *inter alia*, no infringement of any of the three patents at issue, and hence no violation of section 337. The Commission reviewed the entire ID, except for the finding that claims 2–8 of the '903 patent are invalid as indefinite. After review, the Commission issued its final determination on July 2, 1998, in which it determined that the '903 patent was unenforceable for failure to name one or more co-inventors. The Commission also found that the '811 and '829 patents were invalid on the basis of collateral estoppel in light of a U.S. district court decision. 69 FR 37139 (July 9, 1998). The Federal Circuit reversed the district court decision on December 28, 1999. *Atmel Corp.* v.

Information Storage Device Inc., Appeal No. 99–1062 (Fed. Cir. 1999). Therefore, the Commission will revisit its decision concerning the '811 and '829 patents in connection with the final disposition of this investigation.

On August 21, 1998, Atmel filed a petition for correction of inventorship of the '903 patent with the U.S. Patent and Trademark Office (PTO) under PTO rule 324, 37 CFR 1.324. Atmel sought to add Anil Gupta as a co-inventor. After an *ex parte* proceeding, the PTO granted Atmel's petition on August 28, 1998. A Certificate of Correction issued from the PTO on October 6, 1998, which states that "it is hereby certified that the correct inventorship of [the '903] patent is: Larry T. Jordan and Anil Gupta." On August 28, 1998, Atmel filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit from the Commission's July 2, 1998, final determination in this investigation (Appeal No. 98–1580). The appeal was remanded to the Commission on April 16, 1999, *In re Winbond Electronics Corporation and Winbond Electronics North America Corporation*, Misc. Docket No. 579, to consider a motion filed by Atmel for reconsideration of the Commission's inventorship determination in light of the Certificate of Correction of the '903 patent issued by the PTO.

On July 20, 1999, the ALJ issued Order No. 50 which ordered Atmel to produce documents, for which it had claimed privilege, concerning the subject of "proper inventorship" of the '903 patent and to provide substantive answers to interrogatories requesting the substance of oral communications between Atmel employees and Atmel's attorneys on the "proper inventorship" of the '903 patent. ALJ Order No. 69, which issued on January 13, 2000, held that Atmel bore the burden of proof by clear and convincing evidence that the inventors shown on the Certificate of Correction are the actual inventors.

The ALJ issued his final ID on the inventorship on May 17, 2000. The ID found (1) that Atmel had committed inequitable conduct in the procurement of the Certificate of Correction, (2) that the inventors listed on the Certificate of Correction were not the correct inventors, and (3) that no inequitable conduct was shown to have taken place in the prosecution of the original patent application. On May 30, 2000, Atmel petitioned for review of ALJ Orders Nos. 50 and 69 and the ALJ's refusal in the ID to find that respondents and intervenor were judicially estopped from challenging that Anil Gupta was a co-inventor. Atmel also petitioned for review of the ALJ's rulings in the ID that Atmel had committed inequitable conduct in the PTO correction proceedings and that the inventors listed on the Certificate of Correction were incorrect. Atmel also alleged that the ALJ exhibited such bias against Atmel that it was denied a fair hearing. The Commission investigative attorney (IA) petitioned on the same day for review of ALJ Order No. 69 and the ALJ's rulings in the ID concerning inequitable conduct and inventorship. On June 13, 2000, respondents and intervenor filed a joint response in opposition. The IA filed a response opposing in part Atmel's petition on the same date. Atmel filed a motion for leave to reply to the oppositions on June 22, 2000, which the Commission hereby denies.

Having examined the record in this investigation, including Orders Nos. 50 and 69 and the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review: (1) ALJ Order No. 50, (2) ALJ Order No. 69, (3) the ALJ's determination that the Certificate of Correction of the '903 patent was procured inequitably, and (4) the ALJ's determination that the inventors named on the Certificate of Correction are incorrect.

The parties are requested to brief the issues under review. The briefs should include a discussion of, but are not restricted to, the following questions:

(1) Which of the ALJ's findings concerning his determination of inequitable conduct, if any, are based on documents in the record as to which Atmel has never claimed privilege? Does any other evidence in the record, as to which Atmel has never claimed privilege, exist that would support a finding of inequitable conduct? Which of the ALJ's findings concerning inequitable conduct are supported by documents in the record as to which Atmel has claimed work product privilege? Which of the ALJ's findings concerning inequitable conduct are supported by documents in the record as to which Atmel has claimed attorney-client privilege only?

(2) Which of the ALJ's findings concerning his determination that the correct inventors are not listed on the Certificate of Correction of the '903 patent are supported by documents in the record as to which Atmel has claimed privilege (please specify whether attorney-client or work product privilege)?

(3) What evidence of record corroborates a finding that Dr. Smarandiou and Mr. Perlogos implemented Silicon Signature in the 5133 EPROM before Mr. Gupta implemented Silicon Signature in the 5213 EEPROM? What evidence of record corroborates a finding that Mr. Gupta implemented Silicon Signature in the 5213 EPROM before Dr. Smarandiou and Mr. Perlogos implemented Silicon Signature in the 5213 EEPROM?

(4) What legal authority or policy considerations support the finding that the burden of coming forward with evidence and the burden of proof by clear and convincing evidence should be applied to patent correction proceedings at the U.S. Patent and Trademark Office?

(5) Under what authority is the Commission required to accord the presumption of validity to a certificate of correction concerning inventorship issued by the U.S. Patent and Trademark Office?

(6) Is the Commission empowered to find that a regulation issued by the U.S. Patent and Trademark Office is *ultra vires*?

The Commission intends to dispose of all outstanding issue in this investigation, including the remaining issues concerning the '811 and '829 patents, at the same time. Accordingly, if the Commission finds in connection with the final disposition of this investigation that there has been a violation of section 337, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under

a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and, where applicable, thoroughly referenced to the record in this investigation. Respondents and intervenor are encouraged to file a joint submission. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the March 19, 1998, recommended determination of the ALJ. Persons who have already filed such submissions, including the parties, may simply update their previously filed submissions.

Complainant and the Commission investigative attorney are also requested to update the proposed remedial orders that they have already submitted for the Commission's consideration. The written submissions and updated proposed remedial orders must be filed no later than close of business on July 31, 2000. Reply submissions must be filed no later than the close of business on August 7, 2000. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.42–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–210.51.

Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Public documents are also available for downloading from the Commission's website, http://www.usitc.gov.

Issued: July 17, 2000.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–18511 Filed 7–20–00; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–3]

Lamb Meat: Monitoring Developments in the Domestic Industry

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 204(a) of the Trade Act of 1974 (19 U.S.C. 2254(a)) (the Act).

SUMMARY: The Commission instituted the investigation for the purpose of preparing the report to the President and the Congress required by section 204(a)(2) of the Trade Act of 1974 on the results of its monitoring of developments with respect to the domestic lamb meat industry since the President imposed a tariff-rate quota on imports of fresh, chilled, or frozen lamb meat [1] effective July 22, 1999.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and F (19 CFR part 206).

Background

Following receipt of a report from the Commission in April 1999 under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) containing an affirmative determination and remedy recommendation, the President, on July 7, 1999, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253), issued Proclamation 7208 (as amended by Proclamation 7214 of July 30, 1999), imposing import relief in the form of a tariff-rate quota on imports of fresh, chilled, or frozen lamb meat for a period of 3 years and 1 day, effective July 22, 1999. Section 204(a)(1) of the Trade Act of 1974 (19 U.S.C. 2254(a)(1)) requires that the Commission, so long as any action under section 203 of the Trade Act remains in effect, monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition. Section 204(a)(2) requires that whenever the initial period of an action under section 203 of the Trade Act exceeds 3 years, the Commission shall submit a report on the results of the monitoring under section 204(a)(1) to the President and the Congress not later than the mid-point of the initial period of the relief, or by January 22, 2001, in this case. Section 204(a)(3) requires that the Commission hold a hearing in the course of preparing each such report.

EFFECTIVE DATE: July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Sioban Maguire (202–708–4721), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov)*.

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 14 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Public hearing.—As required by statute, the Commission has scheduled a hearing in connection with this

[1] Lamb meat is classified in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the Harmonized Tariff Schedule of the United States.

investigation. The hearing will be held beginning at 9:30 a.m. on November 16, 2000 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 7, 2000. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 13, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is November 8, 2000. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is November 27, 2000. In addition, any person who has not entered an appearance as a party to the investigation may submit, on or before November 27, 2000, a written statement concerning the matters to be addressed in the Commission's report to the President. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(a) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: July 17, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18513 Filed 7–20–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–178 (Review) and 731–TA–636–638 (Review)]

Stainless Steel Wire Rod From Brazil, France, India, and Spain

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on stainless steel wire rod from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines [2] that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 1999 (64 FR 35697) and determined on October 1, 1999, that it would conduct full reviews (64 FR 55962, October 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 18, 2000 (65 FR 2644). The hearing was held in Washington, DC, on May 23, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 18, 2000. The views of the Commission are contained in USITC Publication 3321 (July 2000), entitled Stainless Steel Wire Rod from Brazil, France, India, and Spain: Investigations Nos. 701–TA–178 (Review) and 731–TA–636–638 (Review).

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Koplan and Vice Chairman Okun dissenting with respect to France; Commissioner Askey dissenting with respect to Brazil, France, and India.

Issued: July 17, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18512 Filed 7–20–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of information collection under review; Extension of a currently approved collection; Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local Government) Crime Laboratories.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on May 16, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 21, 2000. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local Government) Crime Laboratories.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: None Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Regulatory or Compliance. Other: Research. Abstract: Information is needed from state and local laboratories to provide DEA with additional analyzed drug information for the National Forensic Laboratory Information System.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 100 respondents, 1200 responses per year, × .25 hours per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW., Washington 20530.

Dated: July 17, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–18545 Filed 7–20–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

AGENCY: Notice of information collection under review; Extension of a currently approved collection; Report of Mail Order Transactions.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 16, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 21, 2000. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Deparment Clearance Officer, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 14–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

1. *Type of information collection:* Extension of a currently approved collection.

2. *Their title of the form/collection:* Report of Mail Order Transactions.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: None. Applicable component of the Department sponsoring the collection; Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Comprehensive Methamphetamine Control Act of 1996 (Public Law 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and use or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 100 respondents, 12 hour per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 1200 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530.

Dated: July 17, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–18546 Filed 7–20–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of information collection under review; Extension of a currently approved collection; Annual Reporting Requirement for Manufacturers of Listed Chemicals.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on May 16, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 21, 2000. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

3 *The agency form number, if any and the applicable component of the department sponsoring the collection:* Form No.: None. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is authorized by the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200; 21 U.S.C. 830(b)). This information is collected from businesses and other for-profit entities which manufacture listed chemicals domestically.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 100 respondents, 4 hours per response.

6. *An estimate of the total public burden in hours) associated with the collection:* 400 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW., Washington, DC 20530.

Dated: July 17, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–18547 Filed 7–20–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects or a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

IA000028—See IA000008
IA000029—See IA000008
IA000030—See IA000008
IA000034—See IA000008
IA000059—See IA000008

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ000002 (Feb. 11, 2000)
NJ000003 (Feb. 11, 2000)
NJ000007 (Feb. 11, 2000)

Volume II

Delaware
DE00001 (Feb. 11, 2000)
Pennsylvania
PA000005 (Feb. 11, 2000)
PA000006 (Feb. 11, 2000)
PA000025 (Feb. 11, 2000)
PA000026 (Feb. 11, 2000)
PA000030 (Feb. 11, 2000)
PA000031 (Feb. 11, 2000)

Volume III

Florida
FL000001 (Feb. 11, 2000)
FL000017 (Feb. 11, 2000)
FL000032 (Feb. 11, 2000)

Volume IV

Michigan
MI000060 (Feb. 11, 2000)
MI000062 (Feb. 11, 2000)
MI000063 (Feb. 11, 2000)
MI000064 (Feb. 11, 2000)
MI000066 (Feb. 11, 2000)
MI000067 (Feb. 11, 2000)
MI000068 (Feb. 11, 2000)
MI000069 (Feb. 11, 2000)
MI000070 (Feb. 11, 2000)
MI000071 (Feb. 11, 2000)
MI000072 (Feb. 11, 2000)
MI000073 (Feb. 11, 2000)
MI000074 (Feb. 11, 2000)
MI000075 (Feb. 11, 2000)
Ohio
OH000001 (Feb. 11, 2000)
OH000002 (Feb. 11, 2000)
OH000003 (Feb. 11, 2000)
OH000023 (Feb. 11, 2000)
OH000026 (Feb. 11, 2000)
OH000028 (Feb. 11, 2000)
OH000029 (Feb. 11, 2000)
Wisconsin
WI000028 (Feb. 11, 2000)

Volume V:

Iowa
IA000004 (Feb. 11, 2000)
IA000005 (Feb. 11, 2000)
IA000006 (Feb. 11, 2000)
IA000007 (Feb. 11, 2000)
IA000008 (Feb. 11, 2000)
IA000009 (Feb. 11, 2000)
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IA000020 (Feb. 11, 2000)
IA000024 (Feb. 11, 2000)
IA000038 (Feb. 11, 2000)
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IA000079 (Feb. 11, 2000)
IA000080 (Feb. 11, 2000)
IA000083 (Feb. 11, 2000)
IA000085 (Feb. 11, 2000)
IA000090 (Feb. 11, 2000)
Texas
IA000003 (Feb. 11, 2000)
IA000005 (Feb. 11, 2000)
IA000010 (Feb. 11, 2000)

Volume VI:

Alaska
AK000001 (Feb. 11, 2000)
AK000001 (Feb. 11, 2000)
AK000002 (Feb. 11, 2000)
AK000006 (Feb. 11, 2000)
Oregon
OR000017 (Feb. 11, 2000)
OR000017 (Feb. 11, 2000)
Washington
WA000001 (Feb. 11, 2000)

Volume VII:

Arizona
AZ000001 (Feb. 11, 2000)
AZ000002 (Feb. 11, 2000)
AZ000003 (Feb. 11, 2000)
AZ000004 (Feb. 11, 2000)
AZ000005 (Feb. 11, 2000)
AZ000006 (Feb. 11, 2000)
AZ000012 (Feb. 11, 2000)
AZ000013 (Feb. 11, 2000)
AZ000014 (Feb. 11, 2000)
AZ000015 (Feb. 11, 2000)
AZ000016 (Feb. 11, 2000)
AZ000017 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the David-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWord Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage

determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC. this 14th day of July 2000.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–18161 Filed 7–20–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, AccessAbility Section (Universal Design) to the National Council on the Arts will be held on August 4, 2000. The panel will meet by teleconference from 2:00 p.m. to 3:00 p.m. in Room 528 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: July 18, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–18526 Filed 7–20–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Notice of a Public Meeting on Assessing Future Regulatory Research Needs

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) will hold a meeting of nuclear experts from the government, the nuclear industry, academia, and the Public on August 16–17, 2000. The purpose of the meeting is to seek stakeholder input on the role and future direction of nuclear regulatory research. The meeting is open to the public and all interested parties may attend.

DATES: The meeting will be held from 8:00 AM to 5:00 PM on August 16 and 17, 2000 at the Marriott Residence Inn located at 7335 Wisconsin Avenue in Bethesda, Maryland 20804. The telephone number of the hotel is 301–718–0200.

FOR FURTHER INFORMATION CONTACT: Questions with respect to this meeting should be referred to James W. Johnson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission at (301) 415–6293; fax 301–415–5153; E-mail jwj@nrc.gov or Joseph J. Mate, at (301) 415–6202; fax 301–415–5153; E-mail *jjm@nrc.gov*.

SUPPLEMENTARY INFORMATION: Parking is available in the hotel for a modest cost. Additional parking in Bethesda is somewhat limited. The hotel can also be reached by Metro.

The hotel is located one block south of the Bethesda Metro stop on the Red Line and is on the opposite side of the street from the metro station. Seating for the public is limited and therefore will be on a first-come, first serve basis.

Dated at Rockville, Maryland, this 17th day of July 2000.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission.

[FR Doc. 00–18539 Filed 7–20–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27200]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

July 14, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for pubic inspection through the Commission's Branch of Pubic Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 7, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 7, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company, Inc. (70–7715)

Indiana Michigan Power Company, Inc. ("I&M"), One Summit Square, Fort Wayne, Indiana 46801, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act, to an application-declaration previously filed under the Act.

By prior Commission order dated December 21, 1990 (HCAR No. 25222) ("Prior Order"), I&M was authorized, among other things, to enter into a Nuclear Material Lease Agreement, dated as of December 1, 1990 ("Existing Lease"), with DCC Fuel Corporation ("DCC"), under which I&M leases certain nuclear material ("Nuclear Fuel") required for use at its Donald C. Cook Nuclear Plant ("Cook Plant"). Under the terms of the Existing Lease, DCC is required to provide up to $110 million of financing to pay the suppliers, processors and manufacturers of Nuclear Fuel, which is leased to I&M for use in the Cook Plant. Correspondingly, I&M is unconditionally obligated to make monthly lease payments to DCC in amounts sufficient to cover the cost of the Nuclear Fuel, operational and financing costs and other associated fees and expenses, including taxes.

Under the Existing Lease, DCC meets its financing obligations by issuing notes under a credit agreement with PruLease and note purchase agreements

with various note purchasers (together, "Creditors"). In the Prior Order, the Commission imposed limits on certain fees and rates applicable to borrowings under these agreements that were incorporated in the payments made under the Existing Lease.

On March 1, 1999, the Creditors informed DCC of their election to terminate their loan commitment obligations effective March 1, 2001 or an earlier date that is mutually acceptable to the parties. I&M now proposes to enter into a new financing arrangement with Bank of America and certain other financial institutions for the lease of Nuclear Fuel.

I&M proposes to enter into a new nuclear fuel lease with DCC ("New Lease"), which will be substantially the same as the Existing Lease. Under the terms of the New Lease, DCC would be required to provide up to $140 million of financing to pay the suppliers, processors and manufacturers of Nuclear Fuel for the Cook Plant. Correspondingly, I&M would be unconditionally obligated to make monthly lease payments to DCC in amounts sufficient to cover the cost of the Nuclear Fuel, operational and financing costs and other associated fees and expenses, including taxes. In addition to the monthly lease payments to DCC, I&M would be obligated to pay a quarterly program fee to certain financial institutions providing DCC with back-up funding, discussed below. The fee will be from .175% to .4% of the total loan commitments of those institutions depending on I&M's debt rating.

DCC will finance the acquisition of the Nuclear Fuel to be leased to I&M through borrowings under a revolving loan agreement with Hatteras Funding Corporation, a special purpose commercial paper funding entity administered by Bank of America ("Primary Purchaser"), and one or more financial institutions ("Liquidity Purchasers") ("Agreement"). Under the Agreement, notes issued by DCC to the Primary Purchaser will bear interest at the commercial paper rate quoted by the Primary Purchaser, including dealer fees. Notes issued to Liquidity Purchasers will bear interest at LIBOR, plus a margin of between .585% and 1.7% depending upon I&M's debt rating at the time of issuance.

All outstanding notes will mature no later than the termination date of the Agreement. The Agreement will have a term of five years, unless otherwise terminated or extended under the terms of the Agreement.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18492 Filed 7–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 24, 2000.

An open meeting will be held on Tuesday, July 25, 2000 at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, July 25, 2000 will be:

(1) The Commission will consider two actions regarding the options markets. First, the Commission will consider approving an intermarket linkage plan for options exchanges. Second, the Commission will consider a rule proposal regarding the quotation obligations of options exchanges and market makers, and disclosure by broker-dealers of executions of customer options orders at prices inferior to the quote. For further information contact: Heather Traeger, Attorney, at (202) 942–0763, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth St, N.W., Washington, DC 20549–1001; and

(2) Consideration will be given to a rule proposal arising from its request for comments on issues of fragmentation and internalization in the securities markets. The rule proposal would require greater disclosure of order routing and order execution practices by brokers and market centers. For further information, contact: Susie Cho, Attorney, at (202) 942–0748, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth St, N.W., Washington, DC 20549–1001.

Hearings will be held on Tuesday, July 26, 2000 at 9:00 a.m., in Room 1C30.

The Commission will hold public hearings on its proposed rule amendments concerning auditor independence. The purpose of the hearings is to give the Commission the benefit of the views of interested members of the public regarding the issues raised and questions posed in the Proposing Release (33–7870). For further information, contact: John M. Morrissey, Deputy Chief Accountant or W. Scott Bayless, Associate Chief Accountant, Office of the Chief Accountant at (202) 942–4400.

A closed meeting will be held on Thursday, July 27, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, July 27, 2000 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: July 18, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18586 Filed 7–18–00; 4:31 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43030; File No. SR–NASD–99–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Performance Fee Arrangements

July 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rule 2330(f)(2), in order to make it consistent with recent amendments by the Commission to Rule 205–3 under the Investment Advisers Act of 1940 ("Advisers Act"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rules of the Association

* * * * *

2300. Transactions With Customers

2330. Customers' Securities or Funds

(a) through (e) (No change).

(f) Sharing in Accounts; Extent Permissible.

(1)(A) and (B) (No change).

(2) Notwithstanding the prohibition of paragraph (f)(1), a member or person associated with a member may receive compensation based on a share in profits or gains in an account if [all of] the following conditions are satisfied:*

(A) The member or person associated with a member seeking such compensation obtains prior written authorization from the member carrying the account; *and*

(B) The compensation arrangement complies with the conditions set forth in any applicable rule promulgated by the Commission.

[(B) The customer has at the time the account is opened either a net worth which the member or person associated with a member reasonably believes to be not less than $1,000,000, or the minimum amount invested in the account is not less than $500,000;

(C) The member or person associated with a member reasonably believes the customer is able to understand the proposed method of compensation and its risks prior to entering into the arrangement;

(D) The compensation arrangement is set forth in a written agreement executed by the customer and the member;

(E) The member or person associated with a member reasonably believes, immediately prior to entering into the arrangement, that the agreement represents an arm's-length arrangement between the parties;

(F) The compensation formula takes into account both gains and losses realized or accrued in the account over a period of at least one year; and

(G) The member has disclosed to the customer all material information relating to the arrangement including the method of compensation and potential conflicts of interest which may result from the compensation formula.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis of, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Description of Proposed Rule Change. NASD Rule 2330(f) prohibits members and persons associated with members form sharing in customer account profits and gains except under certain conditions. Subparagraph (f)(1)(A) permits sharing in customer account profits and gains where the firm has authorized it and the sharing is proportionate to the member's or associated person's contributions to the account. Subparagraph (f)(2) permits, under certain conditions, members or registered representatives to charge a performance fee (an advisory fee based on a percentage of the capital gains or capital appreciation of an account). Currently, NASD Rule 2330(f)(2) permits the receipt of a performance fee only if: (1) The member or associated person reasonably believes that the customer account meets certain minimum net worth ($1,000,000) or amount invested ($500,000) requirements; (ii) the member or associated person obtains the prior written authorization of the arrangement from the member carrying the account; (iii) the member or associated person reasonably believes that the customer is able to understand the compensation arrangement and its risks; (iv) the compensation agreement is in writing; (v) the member or associated person reasonably believes that the agreement is an arm's length agreement; (vi) the compensation formula takes into account realized and accrued gains and losses over a period of at least one year; and (vii) the member discloses all material information relating to the agreement, including method of compensation and potential conflicts of interest.

The requirements of NASD Rule 2330(f)(2) have always closely tracked the requirements of Rule 205–3 under the Advisers Act. However, effective August 20, 1998, the Commission amended Rule 205–3 to provide greater flexibility in structuring performance fee arrangements with clients who are financially sophisticated or have the resources to obtain sophisticated financial advice regarding these arrangements.[3] The amendments to Rule 205–3 changed and eliminated many of the requirements tracked in NASD Rule 2330(f)(2). As a result of these changes, NASD Rule 2330(f)(2) is now inconsistent with Rule 205–3 under the Advisers Act. In order to restore consistency, the proposed rule change will permit members and their associated persons to share in customer account profits and gains subject to the provisions of Rule 205–3 under the Advisers Act. Thus, in the future, the proposed rule will conform to any subsequent amendments by the Commission to Rule 205–3.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will protect investors and the public interest by ensuring that performance fee arrangements are consistent with Commission rules and are structured with clients who are

* It is the position of the Division of Investment Management of the Commission that compensation received by a member or person associated with a member under t his Rule would constitute "special compensation" for purposes of th e broker/dealer exception to the definition of "investment adviser" in Section 202(a)(11)(C) of the Investment Advisers Act of 1940 (Advisers Act). Any member or person associated with a member, required to be registered under the Advisers Act, or state law, who receives compensation based on a share of profits or capital appreciation of a customer's account must comply with Section 205(1) and Rule 205–3 under the Advisers Act, or applicable state law, with respect to such compensation. (SEC Release 34–24355, 52 FR 13778, April 24, 1987).

[3] *See* Investment Advisors Act Release No. 1731 (July 15, 1998), 63 FR 38022 (July 21, 1998).

[4] 15 U.S.C. 78o–3(b)(6).

financially sophisticated or have the resources to obtain sophisticated financial advice regarding the terms of these arrangements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD Regulation consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on how a broker-dealer can best meet its fiduciary obligation to ensure that its customers fully understand the performance fee arrangement. In formulating comments on this proposal, commenters are advised to refer to Advirsors Act Release No. 1781.[8] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–42 and should be submitted by August 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18493 Filed 7–20–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 63 FR 39022 (July 21, 1998).

[9] 17 CFR 200.30–3(a)(12)

SOCIAL SECURITY ADMINISTRATION

Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting (Emergency Location Change).

DATES: July 24, 2000, 1:30 p.m.–5:00 p.m. and July 25, 2000, 9:00 a.m.–4:30 p.m.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the first meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), Public Law 106–170, establishes the Panel to advise the Commissioner of Social Security, the President, and the Congress on issues related to work incentives programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

This is the first deliberative meeting of the Panel. No public testimony will be heard at this meeting. However, interested parties are invited to attend the meeting. The Panel will meet to hear presentations on the status of TWWIIA implementation, review their charter, and discuss their organization and upcoming agenda.

Agenda: The Panel will meet commencing Monday, July 24, 2000 at, 1:30 p.m.–5:00 p.m. and Tuesday, July 25, 2000, at 9:00 a.m.–4:30 p.m. At this meeting, the Panel will use this time to hear presentations on the Status of TWWIIA implementation, review their charter, and discuss their organization and upcoming agenda. Since seating may be limited, persons interested in attending this meeting should contact the Panel staff by E-mailing Reggie Sajauskas, Designated Federal Officer, at "reggie.sajauskas@ssa.gov" or calling (410) 965–5381 by July 21, 2000.

The agenda for the meeting is posted on the Internet at the web site of SSA' Office of Employment Support Programs at "http://www.ssa.gov/work." A copy of the agenda also may be obtained in advance of the meeting by contacting the Panel staff at the mailing address, Email address, telephone or FAX number shown below. Requests for materials in alternate formats, *i.e.*, large print, Braille, computer disc, etc. may be made to the Panel staff at the addresses and numbers shown below.

Records are being kept of all Panel proceedings and will be available for public inspection at the Office of Employment Support Programs' web site at "*http://www.ssa.gov/work*" or by appointment at the office of the Ticket to Work and Work Incentives Advisory Panel staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235;
- Telephone at (410) 965–5381;
- FAX at (410) 966–8597; or
- Email to Reggie Sajauskas, Designated Federal Officer, at "reggie.sajauskas@ssa.gov."

Michael S. Greenberg,

Acting Deputy Associate Commissioner, Office of Employment Support Programs, Social Security Administration.

[FR Doc. 00–18601 Filed 7–20–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3366]

Culturally Significant Objects Imported for Exhibition Determinations: "Charlotte Salomon: Life? Or Theatre?"

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations:

Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, "Charlotte Salomon: Life? Or Theatre?," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Massachusetts from on or about August 9, 2000, to on or about October 29, 2000, and thenceforth at the Jewish Museum in New York for an undetermined period, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: July 14, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–18532 Filed 7–18–00; 4:48 pm]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3367]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting To Discuss Progress on International Harmonization of Chemical Hazard Classification and Labeling

SUMMARY: The United States government, through an interagency working group, is preparing for a series of international meetings to further develop a globally harmonized system (GHS) of chemical hazard classification and labeling. The Department of State will hold a public meeting to provide an update on recent activities and a preview of upcoming international meetings.

The public meeting will take place on Thursday, August 10, 2000, from 10:00 AM until noon in Room C5521 at the U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. Attendees should use the entrance at C and Third Streets NW. Attendees should bring picture identification with them. No advance registration is necessary. For further information, please contact Marie Ricciardone, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington, DC 20520; telephone (202) 647–9799; fax (202) 647–5947; e-mail RicciardoneMD@state.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of State is issuing this notice to help ensure that interested organizations and individuals are aware of and knowledgeable about the effort to internationally harmonize chemical hazard classification and labeling, and have an opportunity to offer comments. Agencies participating in the U.S. government interagency group include: Department of State, Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, Consumer Product Safety Commission, Food and Drug Administration, Department of Commerce, Department of Agriculture, Office of the U.S. Trade Representative, and National Institute of Environmental Health Sciences. For more complete information on the GHS process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

This meeting will provide an update on GHS activities since the previous public meeting on April 27, 2000 (see Department of State Public Notice 3276 on pages 19036–19037 of the **Federal Register** of April 10, 2000):

—Fifth Meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/International Labor Organization (ILO) Working Group of Hazard Communication, May 22–24, Geneva, Switzerland.

—Sixteenth Consultation of the IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, May 25–26, Geneva, Switzerland.

—Sixth Meeting of the Organization for Economic Cooperation and Development (OECD) Expert Group on Classification Criteria for Chemical Mixtures, May 29–31, Paris, France.

—Eighteenth Session of the UN Subcommittee on Experts on the Transport of Dangerous Goods, July 3–13, Geneva, Switzerland.

Members of the interagency working group will also provide an overview of the U.S. preparations for upcoming international meetings:

— The Seventh Meeting of the OECD Extended Expert Group on Aquatic Environmental Hazards (Paris, September 4–5) will develop guidance for applying harmonized hazard classification criteria for aquatic toxicity of chemical substances, decide on a work plan for a Dissolution Protocol, and develop harmonized hazard classification criteria for aquatic toxicity of chemical mixtures.

— The Tenth Meeting of the OECD Task Force on Harmonization of Classification and Labeling (Paris, September 6–8) will consider harmonized hazard classification criteria for chemical mixtures, examine hazard classification criteria for target organ/systemic toxicity, and review the work of the Extended Expert Group on Aquatic Environmental Hazards.

Interested organizations and individuals are invited to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical hazard classification and labeling systems, and identify issues of concern. Those organizations/individuals that cannot attend the August 10 meeting, but wish to submit a written comment, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (telephone 202–647–9266; fax 202–647–5947) with their statement and/or name, organization, address, telephone and fax numbers, and e-mail address. All written comments will be placed in the OSHA public docket (H–022H), which is open

Monday through Friday, from 10 AM until 4 PM, at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC; telephone 202–219–7894; fax: 202–219–5046. Interested organizations/individuals that wish to receive future notifications of GHS-related developments by email should contact Mary Frances Lowe of the U.S. Environmental Protection Agency at "lowe.maryfrances@epa.gov".

Dated: July 17, 2000.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, U.S. Department of State.

[FR Doc. 00–18553 Filed 7–20–00; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7642]

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Coast Guard is hosting four workshops on the implementation of new lifesaving system rules for large passenger vessels operating in domestic waters. The meetings will be informal workshops open to the public and will be held in cities near high concentrations of passenger vessels affected by the new rules. The new rules apply to large passenger vessels in lakes, bays, and sounds and to rivers service; and require them to carry lifesaving equipment for all persons on board, or to develop a safety assessment in lieu of retrofitting lifesaving equipment. The workshops will help passenger vessel operators and Coast Guard inspection offices create a consistent process for the development and approval of the safety assessment alternative. This notice announces the dates, time, and locations of the four workshops.

DATES: The workshops will be held from 9 a.m. to 5 p.m., with registration at 8:30 a.m., on the following dates, but will close early if all business is finished.

St. Louis, MO, August 29, 2000
Seattle, WA, September 8, 2000
Staten Island, NY, September 26, 2000
New Orleans, LA, December 6, 2000

ADDRESSES: The workshops will be held at the following locations:

St. Louis, MO—Room 2–308, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103.

Seattle, WA—Bear Conference Room, Building 5, 1519 Alaskan Way S., Seattle, WA 98103.

Staten Island, NY—Fr. Capodanno Memorial Chapel, Activities New York, 203 New York Avenue, Fort Wadsworth, Staten Island, NY 10305–5005.

New Orleans, LA—Basement Conference Room, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: LCDR Kevin Kiefer, Lifesaving and Fire Safety Division (G–MSE–4), U.S. Coast Guard Headquarters, telephone 202–267–1444, fax 202–267–4816, or email KKiefer@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Background

The Lifesaving Equipment Final Rule [CGD 84–069], including changes to 46 CFR part 199, Lifesaving Systems For Certain Inspected Vessels, in subchapter W, Lifesaving Appliances and Arrangements, was published on October 1, 1996 (63 FR 52892), with an effective date of November 2, 1996.

Subchapter W requires existing passenger vessels certificated under 46 CFR subchapter H in lakes, bays, and sounds service or in rivers service, to carry additional survival craft with a compliance date of October 1, 2003. As an alternative to the survival craft requirements listed in subchapter W, in 46 CFR 199.201(b), vessel operators may have a safety assessment approved by their local Officer in Charge, Marine Inspection (OCMI). New passenger vessels or recently built vessels may also consider the safety assessment alternative to possibly reduce the number of required survival craft.

The safety assessment must include:

(1) the navigation and vessel safety conditions within the vessel's planned operating area; and

(2) a comprehensive shipboard safety management and contingency plan, including an evacuation plan that is tailored to the particular vessel, is easy to use, is understood by vessel management personnel both on board and ashore, and is updated regularly.

Paragraph (f) of 46 CFR 199.630 contains additional information about the contents of the safety assessment.

The Coast Guard recognizes that this performance-based regulation, designed to allow for flexibility, will inevitably involve some inconsistencies and differences of opinion. The implementation workshops will provide opportunities for the Coast Guard and vessel operators to work together to minimize these problems. The workshop participants will create a consistent process for the development and approval of safety assessments, which include Shipboard Safety Management and Contingency Plans. The workshops will consider risk management principles such as the types of contingencies that need to be planned for, the probabilities of various types of emergencies, given the characteristics of the waterway, and to what degree ship characteristics and alternative equipment can substitute for lifesaving equipment.

The product of the workshops, which will be distributed to vessel operators and OCMIs after the completion of all four workshops, is the development of the criteria that will be used by the OCMI in the safety assessment approval process.

Format of Subchapter W Implementation Workshops

The subchapter W implementation workshops are open to the public and will consist of briefings and facilitated breakout sessions.

The morning sessions of the one-day workshops will provide background information and outline the Coast Guard view on the safety assessment approval process.

The afternoon sessions will be facilitated to tailor the safety assessment approval process and to develop criteria that will be used by the OCMI in the approval process. Members of the public attending the meetings are welcome to participate in all sessions. The workshops will begin at 9 a.m. with registration at 8:30 a.m.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact LCDR Kevin Kiefer, Lifesaving and Fire Safety Division (G–MSE–4), U.S. Coast Guard Headquarters, telephone 202–267–1444, fax 202–267–4816, or email KKiefer@comdt.uscg.mil, as soon as possible.

Dated: July 14, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Standards.

[FR Doc. 00–18554 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lincoln County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Lincoln County, Oregon. The Oregon Department of Transportation (ODOT) initially started the project development process for the proposed Pioneer Mountain-Eddyville project with the intent to use their own funds to construct the project. They published a Draft Environmental Impact Statement (DEIS) in September 1993 and held a Public Hearing in October 1993. ODOT did not complete the final EIS for the proposed project. ODOT is now proposing to request federal aid participation for the project. As a result, FHWA is reviewing the DEIS, public hearing testimony, and comments received on the DEIS to determine if all federal regulations and processing requirements have been met.

FOR FURTHER INFORMATION CONTACT: Anthony Boesen, Region 2 Liaison Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center Street NE, Salem, Oregon 97301, Telephone (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with ODOT and after evaluation of the DEIS, public hearing testimony and written comments, will prepare a Supplemental Environmental Impact Statement for the project, and hold additional public hearing as necessary.

The proposed project will realign a 10 mile, 2-lane roadway section from mile point 14.5 to 24.75 of the Corvallis-Newport Highway (US 20). Two Build Alternatives and a No-Build Alternative were considered in the DEIS. Build Alternative number one generally followed the existing roadway and the Yaquina River. Build Alternative number two is on new alignment and overall reduces the highway length by 2.5 miles. An option common to both Build Alternatives was considered for a short segment on the west end of the project; this design option was a channel change of Simpson Creek. Based on public input, agency comments and coordination, and overall environmental impacts, Build Alternative number two without the channel change of Simpson Creek is the preferred alternative determined by ODOT. Lincoln County has strongly supported Alternative 2 and has now included the proposed project in their county comprehensive land use plans.

The project is considered necessary to improve the highway to current safety standards, eliminate numerous sharp curves, reduce a higher than average accident rate that occurs on this segment of highway, and is part of an overall upgrade of this highway between the Willamette Valley and the Oregon Coast.

There have been no significant changes in development/conditions in the area since the DEIS was prepared, as the proposed route is predominately through underdeveloped large timber company holdings that have been logged within recent years. The project has been developed with consideration for the proposed listings of the salmon by the National Marine Fisheries Service (NMFS). Since then the salmon has been formally listed by NMFS. There appears to be no Section 4(f) eligible properties that would be impacted by this proposed project.

The DEIS describing the proposed action and solicitation of comments was sent to all appropriate federal, state, and local agencies by ODOT. Public meetings and a public hearing were held for the project. ODOT published a Hearing Study Report/Decision Document in March 1994 that summarized and responded to all comments received at the public hearing and on the DEIS. As a result of comments received, minor changes are being considered for inclusion in the proposed project and subsequent environmental documents. Since ODOT formally circulated the DEIS, we propose to develop a supplemental EIS and circulate it with a copy of the summary of the DEIS as part of our normal distribution. Copies of the entire DEIS will be made available upon request. Additional public meetings/public hearing will be held as needed.

To ensure that the full range of issues related to this proposed action are addressed and significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 12, 2000.

Elton Chang,

Environmental Engineer, Oregon Division.

[FR Doc. 00–18454 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–7570]

Highway Safety Programs; Model Specifications for Devices To Measure Breath Alcohol

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments that conform to the Model Specifications for Evidential Breath Testing Devices (58 FR 48705).

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Traffic Injury Control Programs, Impaired Driving Division (NTS–11), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590; Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published a conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice (49 FR 48864).

On September 17, 1993, NHTSA published a notice (58 FR 48705) to amend the Model Specifications. The notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC; added a test for the presence of acetone; and expanded the definition of alcohol to include other low molecular weight alcohols including methyl or isopropyl. On June 4, 1999, the most recent amendment to the Conforming Products List (CPL) was published (64 FR 30097), identifying those instruments found to conform with the Model Specifications.

Since the last publication of the CPL, two (2) instruments have been evaluated and found to meet the model specifications, as amended on September 17, 1993, for mobile and

non-mobile use. They are: (1) Intoxilyzer 400PA manufactured by CMI, Inc. of Owensboro, KY. This device is a hand-held breath tester with a fuel cell alcohol sensor. (2) Alco Sensor IV–XL manufactured by Intoximeters, Inc. of St. Louis, MO. This device is a hand-held breath tester with a fuel cell alcohol sensor that is microprocessor controlled. It is designed to minimize operator involvement in performing the test and processing the test data.

The CPL has been amended to add these two instruments to the list.

In accordance with the foregoing, the CPL is therefore amended, as set forth below.

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Conforming Products List of Evidential Breath Measurement Devices

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp., Mississauga, Ontario, Canada:		
Alert J3AD*	X	X
PBA3000C	X	X
BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer*	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model:		
200	X	X
200D	X	X
300	X	X
400	X	X
400PA	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/¾" ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
PAC 1200*	X	X
S–D2	X	X
Decator Electronics, Decator, IL: Alco-Tector model 500*		X
Draeger Safety, Inc., Durango, CO:		
Alcotest Model:		
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
Gall's Inc., Lexington, KY: Alcohol Detection System-A.D.S. 500	X	X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter*	X	
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000*	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor		X
Alcomonitor CC	X	
Alco-Sensor III	X	X
Alco-Sensor IV	X	X
Alco-Sensor IV–XL	XL	X
Alco-Sensor AZ	X	X
RBT–AZ	X	X
RBT III	X	X
RBT III–A	X	X
RBT IV	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
RBT IV with CEM (cell enhancement module)	X	X
Intox EC/IR	X	X
Portable Intox EC/IR	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, CO:		
PBA 3000B	X	X
PBA 3000–P*	X	X
PBA 3000C	X	X
Alcohol Data Sensor	X	X
Phoenix	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
300	X	X
400	X	X
AE–D1*	X	X
SD–2*	X	X
EBA*	X	X
Auto-Alcolmeter*	X	
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000*		X
2000*	X	
National Draeger, Inc., Durango, CO:		
Alcotest Model:		
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
National Patent Analytical Systems, Inc., Mansfield, OH:		
BAC DataMaster (with or without the Delta-1 accessory)	X	X
BAC Verifier Datamaster (with or without the Delta-1 accessory)	X	X
DataMaster cdm (with or without the Delta-1 accessory)	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
Plus 4 Engineering, Minturn, CO: 5000 Plus4*	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, MA:		
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, MI:		
AlcoData	X	X
Seres Alco Master	X	X
Seres Alcopro	X	X
Stephenson Corp.: Breathalyzer 900*	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:		
Alco-Analyzer 1000		X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, NY:		
BAC Verifier*	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (*i.e.*, instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.1)

Issued on: July 17, 2000.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 00–18455 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6157; Notice 2]

Athey Products Corporation, Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Athey Products Corporation (Athey) determined that certain Mobil model Street Sweepers it produced are not in full compliance with 49 CFR 571.105, Federal Motor Vehicle Safety Standard (FMVSS) No. 105, "Hydraulic and Electric Brake Systems," and filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Athey also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of an application was published, with a 30-day comment period, on October 21, 1999 in the **Federal Register** (64 FR 56835). NHTSA received no comments on this application during the comment period.

Paragraph S5.5 of FMVSS No. 105 requires each vehicle with a gross vehicle weight rating greater than 10,000 pounds, except for a vehicle with a speed attainable in 2 miles of not more than 33 mph, to be equipped with an antilock brake system (ABS) that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. Vehicles that do not comply with the requirements of a FMVSS are subject to the notification and remedy requirements of Chapter 301, unless exempted pursuant to 49 U.S.C. 30118(d) and 30120(h) on the basis that the noncompliance is inconsequential to motor vehicle safety. The effective date of the requirement for ABS on medium and heavy duty hydraulically-braked trucks was March 1, 1999.

Between March 1, 1999 and July 31, 1999 Athey manufactured, sold and/or distributed 21 Athey Mobil M8A model street sweepers and 56 Mobil M9D model street sweepers which were not equipped with ABS as required by FMVSS No. 105. To the best of Athey's knowledge, there were no other vehicles manufactured by the company that are noncompliant with the ABS requirements.

Athey supported its application by stating that the agency recognized that vehicle stopping distances and stability would not be substantially improved with ABS during maximum braking at speeds below 33 mph. According to Athey, the noncompliant vehicles are capable of speeds in excess of 33 mph, but spend the majority of their operating time at speeds below 33 mph. A review of information from its customers indicated that these street sweepers spend 80% to 90% of their operation time at speeds that are most effective at removal of road debris, speeds in the 3 to 7 mph range. In Athey's opinion, due to the low speed operation of these vehicles and the type of road use of street sweepers, maximum brake application does not normally cause lockup and the subsequent loss of vehicle control or jack knifing. Athey also stated that these street sweeper models are seldom operated in inclement weather thereby reducing the need for ABS.

Athey further stated that the hydraulic service brake system with which the noncompliant street sweepers are equipped is capable of providing substantially more brake torque than necessary to meet the 30 mph and 60 mph stopping performance requirements in FMVSS No. 105.

In addition to information supporting its arguments that the noncompliance with FMVSS No. 105 is inconsequential, Athey cited several other developments and circumstances that it considered relevant to its application. Athey stated that it attempted to secure the necessary ABS equipment from suppliers in order to meet the March 1, 1999 effective date for ABS installation, but experienced delays in receiving ABS equipment from suppliers due to a backlog of orders for ABS components. Further, immediately upon becoming aware of the consequences of the noncompliance, Athey halted all further sales and/or distribution of the Mobil model M8A and M9D street sweepers until compliance with the ABS requirements was achieved.

According to Athey, the importance of the service provided by street sweepers on public and private roadways should not be overlooked. The removal of waste material such as broken glass and other sharp, potentially dangerous objects from the roadway is a health and safety benefit.

Athey also noted that the agency granted a temporary exemption to the Johnson Sweeper Company (JSC) under 49 CFR part 555 from the ABS requirements of FMVSS No. 105. The agency cited the low speed operation of the JSC street sweepers and a reduction in the number of sweepers to fill the need of municipalities if JSC sweepers were not available, as important factors in its decision.

Upon its review of this petition, the agency believes that the true measure of inconsequentiality to motor vehicle safety is the effect of the noncompliance on the operation of the vehicles. Athey has described the effect of the absence of ABS on the operational characteristics, the braking capacity, and the braking stability of these specialized vehicles. The street sweepers spend the majority of their operating time at speeds in the 3 to 7 mph range for maximum debris removal effectiveness, speeds well below the vehicle speed capability for which ABS

installation is required or effective. During low speed operation, maximum braking does not generally result in wheel lockup and the subsequent potential for loss of vehicle control. These street sweepers are seldom operated in inclement weather, which further reduces the need for ABS.

Athey stated that the company has reviewed its manufacturing process, determined the cause of the noncompliance with the ABS requirements of FMVSS No. 105, and taken corrective measures to eliminate this type of noncompliance in the future.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority of 49 CFR 1.50 and 501.8)

Issued on: July 17, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–18514 Filed 7–20–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33997]

Arkansas-Oklahoma Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company

Arkansas-Oklahoma Railroad Company, a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate 35.5 miles of rail line from Union Pacific Railroad Company between milepost 446.5, near Shawnee, OK, and milepost 482.0, near Oklahoma City, OK.

The transaction was scheduled to be consummated within seven days following the July 7, 2000 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward W. Landreth, Arkansas-Oklahoma Railroad Company, P.O. Box 485, Wilburton, OK 74578.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Dated:Decided: July 13, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18429 Filed 7–20–00; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 65, No. 141
Friday, July 21, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Prime Enrollment

Correction

In rule document 00–16263 beginning on page 39804 in the issue of Wednesday, June 28, 2000, make the following correction:

§199.17 [Corrected]

On page 39805, in the third column, in the third paragraph, in §199.17 "(o)(6)" should read "(o)(7)".

[FR Doc. C0–16263 Filed 7–20–00; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL HOUSING FINANCE BOARD

[No. 2000-N-4]

Federal Home Loan Bank Members Selected for Community Support Review

Correction

In notice document 00–17134, beginning on page 43752, in the issue of Friday, July 14, 2000, make the following corrections:

1. On page 43754, in the table, the sixth line from the bottom, remove the entire entry for " Delaware National Bank".

2. On page 43756, in the table, above the fifth line from the bottom, add the heading " **Federal Home Loan Bank of Indianapolis— District 6**".

[FR Doc. C0–17134 Filed 7–20–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42906; File No. SR–NASD–00–22]

Self Regulatory Organizations: Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Limit Order Protection for OTC Bulletin Board Securities

Correction

In notice document 00–15242, beginning on page 37808, in the issue of Friday, June 16, 2000, make the following correction:

On page 37810, in the third column, under the heading " 2. Statutory Basis", in the ninth line, "protest" should read "protect".

[FR Doc. C0–15242 Filed 7–20–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-AGL-03]

Modification of Class D Airspace; Rapic City, SD; Modification of Class D Airspace; Rapid City Ellsworth AFB, SD; and Modification of Class E Airspace; Rapid City, SD

Correction

In rule document 00–12164 beginning on page 30878 in the issue of Monday, May 15, 2000, make the following corrections:

§71.1 [Corrected]

1. On page 30878, in §71.1, in the third column, under **AGL SD D Rapid City, SD [Revised]** ,in the sixth line, "5,7000" should read " 5,700".

2. On the same page, in the same column, in the same paragraph, in the 11th line, "Ellsworth AFB SC" should read "Ellsworth AFB SD".

3. On the same page, in the same column, in last italicized heading, "*Paragraph 6003*" should read "*Paragraph 6004*".

[FR Doc. C0–12164 Filed 7–20–00; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Friday,
July 21, 2000

Part II

Department of Health and Human Services

Food and Drug Administration

Annual Comprehensive List of Guidance Documents at the Food and Drug Administration; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0046]

Annual Comprehensive List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an annual comprehensive list of all guidance documents currently in use at the agency. We committed to publishing this list in our February 1997 "Good Guidance Practices" (GGP's), which set forth our policies and procedures for developing, issuing, and using guidance documents. This list is intended to inform the public of the existence and availability of all our current guidance documents.

DATES: We welcome general comments on this list and on agency guidance documents at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. We have provided information on where to obtain a single copy of any of the guidance documents listed in the specific Center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), we announced our GGP's—our policies and procedures for developing, issuing, and using guidance documents. We adopted the GGP's to ensure your involvement in the development of guidance documents and to enhance your understanding of the availability, nature, and legal effect of such guidance.

As part of our effort to ensure meaningful interaction with the public regarding guidance documents, we committed to publish an annual comprehensive list of guidance documents and quarterly updates that list all guidance documents that were issued and withdrawn during that quarter, including "Level 2" guidance documents.

A. Plain Language in Guidance Documents

On June 1, 1998, the President instructed all Federal agencies to ensure the use of "plain language" in all new documents. As part of this initiative, We use the principles of "plain language" set forth by the President when writing our guidance documents. We seek your comments on the clarity of our guidances.

B. How the List is Organized

The following comprehensive list of guidance documents represents all guidances currently in effect. This comprehensive list is maintained on the FDA Internet home page. We will update and publish this list in the **Federal Register** every year. We organized the guidance documents in this comprehensive list by the issuing Center or Office within FDA, and we further grouped them by the pertinent intended users or regulatory activities. The dates in the list refer to the date we issued the guidances or, where applicable, the last date we revised a document. We also provide document numbers when they are available.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Interpretative Guidelines of the Source Plasma (Human) Standards	October 2, 1973	FDA Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Guidelines for Reviewing Amendments to Include Plasmapheresis of Hemophiliacs	July 20, 1976	Do	Do
Package Insert: Immune Serum Globulin (Human)	March 30, 1978	Do	Do
Guidelines for Interpretation of Potency Test Results for All Forms of Adsorbed Diphtheria and Tetanus Toxoids	April 12, 1979	Do	Do
Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances	June 1, 1980	Do	Do
Collection of Human Leukocytes for Further Manufacturing (Source Leukocytes)	January 28, 1981	Do	Do
Platelet Testing Guidelines—Approval of New Procedures and Equipment	July 1, 1981	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Revised Guideline for Adding Heparin to Empty Containers for Collection of Heparinized Source Plasma (Human)	August 1, 1981	Do	Do
Requirements for Infrequent Plasmapheresis Donors	August 27, 1982	Do	Do
Recommendations to Decrease the Risk of Transmitting AIDS from Plasma Donors	March 24, 1983	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products Subject to Licensure	June 20, 1983	Do	Do
Draft PTC in the Production and Testing of Interferon Intended for Investigational Use in Humans (Interferon Test Procedures)	July 28, 1983	Do	Do
Interstate Shipment of Interferon for Investigational Use in Laboratory Research Animals or Tests in Vitro	November 21, 1983	Do	Do
Deferral of Blood Donors Who Have Received the Drug Accutane (isotretinoin/Roche); 13-cis-retinoic acid)	February 28, 1984	Do	Do
Equivalent Methods for Compatibility Testing	December 14, 1984	Do	Do
Plasma Derived from Therapeutic Plasma Exchange	December 14, 1984	Do	Do
Draft PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology	April 10, 1985	Do	Do
Guidelines for Meningococcal Polysaccharide Vaccines	July 17, 1985	Do	Do
Guideline for the Uniform Labeling of Blood and Blood Components	August 1, 1985	Do	Do
Recommended Methods for Short Ragweed Pollen Extracts	November 1, 1985	Do	Do
Reduction of the Maximum Platelet Storage Period to 5 Days in an Approved Container	June 2, 1986	Do	Do
To In Vitro Diagnostic Reagent Manufacturer: Guidance On the Labeling of Human Blood Derived In Vitro Diagnostic Devices In Regard to Labeling for HTLV–III/LAV Antibody Testing	December 8, 1986	Do	Do
Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline On General Principles of Process Validation	May 1, 1987	Do	Do
Guideline On Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	Do	Do
Deferral of Donors Who Have Received Human Pituitary-Derived Growth Hormone	November 25, 1987	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guideline On Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Recommendations for the Management of Donors and Units That Are Initialy Reactive for Hepatitis B Surface Antigen (HBsAg)	December 2, 1987	Do	Do
Extension of Dating Period for Storage of Red Blood Cells, Frozen	December 4, 1987	Do	Do
To Licensed In-Vitro Diagnostic Manufacturers: Handling of Human Blood Source Materials	December 23, 1987	Do	Do
Recommendations for Implementation of Computerization in Blood Establishments	April 6, 1988	Do	Do
Control of Unsuitable Blood and Blood Components	April 6, 1988	Do	Do
Discontinuance of Prelicensing Inspection for Immunization Using Licensed Tetanus Toxoid and Hepatitis B and Rabies Vaccines	July 7, 1988	Do	Do
Physician Substitutes	August 15, 1988	Do	Do
To Licensed Manufacturers of Blood Grouping Reagents: Criteria for Exemption of Lot Release	August 26, 1988	Do	Do
Revised Guideline for the Collection of Platelets, Pheresis	October 7, 1988	Do	Do
To Manufacturers of HTLV–I Antibody Test Kits: Antibody to Human T–Cell Lymphotropic Virus, Type I (HTLV–I) Release Panel I	October 18, 1988	Do	Do
Draft Guideline for the Design of Clinical Trials for Evaluation of Safety and Efficacy of Allerganic Products for Therapeutic Uses	November 1, 1988	Do	Do
HTLV–1 Antibody Testing	November 29, 1988	Do	Do
Use of Recombigen HIV–1 LA Test	February 1, 1989	Do	Do
Guidelines for Release of Pneumococcal Vaccine, Polyvalent	February 1, 1989	Do	Do
Guidance for Autologous Blood and Blood Components	March 15, 1989	Do	Do
HTLV–I Antibody Testing	July 6, 1989	Do	Do
Use of Recombigen HIV–1 Latex Agglutination (LA) Test	August 1, 1989	Do	Do
Draft PTC in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to Human Immunodeficiency Virus Type 1 (1989)	August 8, 1989	Do	Do
PTC in the Collection, Processing and Testing of Ex Vivo Activated Mononuclear Leukocytes for Administration to Humans	August 22, 1989	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Information Relevant to the Manufacture of Acellular Pertussis Vaccine	August 23, 1989	Do	Do
FDA Regulated Industries for Drug Master Files	September 1, 1989	Do	Do
Requirements for Computerization of Blood Establishments	September 8, 1989	Do	Do
Abbott Laboratories' HIVAG–1 Test for HIV–1 Antigen(s) Not Recommended for Requirements for Computerization of Blood Establishments	October 4, 1989	Do	Do
Guideline for Collection of Blood or Blood Products from Donors With Positive Tests for Infectious Disease Markers ("High Risk" Donors)	October 26, 1989	Do	Do
Guideline for Determination of Residual Moisture in Dried Biological Products	January 1, 1990	Do	Do
Autologous Blood Collection and Processing Procedures	February 12, 1990	Do	Do
Cytokine and Growth Factor Pre-Pivotal Trial Information Package	April 2, 1990	Do	Do
Use of Genetic Systems HIV–2 EIA	June 21, 1990	Do	Do
PTC in the Safety Evaluation of Hemoglobin-Based Oxygen Carriers	August 21, 1990	Do	Do
Guideline on the Preparation of Investigational New Drug Products (Human & Animal)	March 1, 1991	Do	Do
FDA Request for Information on Blood Storage Patterns and Red Cell Contamination by Yersinia Enterocolitica	March 15, 1991	Do	Do
Revision to October 26, 1989 Guideline for Collection of Blood or Blood Products from Donors with Positive Tests for Infectious Disease Markers (High Risk Donors)	March 17, 1991	Do	Do
Deficiencies Relating to the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
Responsibilities of Blood Establishments Related to Errors & Accidents in the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
To Biologic Product Manufacturers—Controlling Materials of Bovine or Ovine Origin	May 3, 1991	Do	Do
FDA Recommendations Concerning Testing for Antibody to Hepatitis B Core Antigen (Anti-HBc)	September 10, 1991	Do	Do
Disposition of Blood Products Intended for Autologous Use That Test Repeatedly Reactive for Anti–HCV	September 11, 1991	Do	Do
Clarification of FDA Recommendations for Donor Deferral and Product Distribution Based on the Results of Syphilis Testing	December 12, 1991	Do	Do
Recommended Methods for Blood Grouping Reagents Evaluation	March 1, 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Recommended Methods for Evaluating Potency, Specificity and Reactivity of Anti-Human Globulin	March 1, 1992	Do	Do
PTC in the Design and Implementation of Field Trials for Blood Grouping Reagents and Anti-Human Globulin	March 1, 1992	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products for Further Manufacturing into Blood Grouping Reagents and Anti-Human Globulin	March 1, 1992	Do	Do
Supplement to the PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability	April 6, 1992	Do	Do
Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products	April 23, 1992	Do	Do
Use of Fluorognost HIV–1 Immunofluorescent Assay (IFA)	April 23, 1992	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	April 23, 1992	Do	Do
Exemptions to Permit Persons with a History of Viral Hepatitis Before the Age of Eleven Years to Serve as Donors of Whole Blood and Plasma; Alternative Procedures, 21 CFR 640.120	April 23, 1992	Do	Do
Changes in Equipment for Processing Blood Donor Samples	July 21, 1992	Do	Do
Nomenclature for Monoclonal Blood Grouping Reagents	September 28, 1992	Do	Do
Volume Limits for Automated Collection of Source Plasma	November 4, 1992	Do	Do
FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics	November 25, 1992	Do	Do
Revision of October 7, 1988 Memo Concerning Red Blood Cell Immunization Programs	December 16, 1992	Do	Do
Draft PTC in the Characterization of Cell Lines Used to Produce Biologicals	July 12, 1993	Do	Do
CBER Refusal to File (RTF) Guidance for Product and Establishment License Applications	July 12, 1993	Do	Do
Alternatives to Lot Release	July 20, 1993	Do	Do
Recommendations Regarding License Amendments and Procedures for Gamma Irradiation of Blood Products	July 22, 1993	Do	Do
Deferral of Blood and Plasma Donors based on Medications	July 28, 1993	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti–HCV)	August 19, 1993	Do	Do
Changes in administrative procedures	September 9, 1993	Do	Do
To Sponsors of IND's using Retroviral Vectors	September 20, 1993	Do	Do
Draft Guideline for the Validation of Blood Establishment Computer Systems	September 28, 1993	Do	Do
Methods of the Allergenic Products Testing Laboratory	October 1, 1993	Do	Do
Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products; Notice	October 14, 1993	Do	Do
Guideline for Adverse Experience Reporting for Licensed Biological Products	October 15, 1993	Do	Do
Guidance Regarding Post Donation Information Reports	December 10, 1993	Do	Do
To Manufacturers: Bovine Derived Materials (BSE)	December 17, 1993	Do	Do
Donor Suitability Related to Laboratory Testing for Viral Hepatitis and a history of Viral Hepatitis	December 22, 1993	Do	Do
Compliance Program Guidance Manual (Drugs and Biologics)	1994	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–605–6050, (Publication No. 94–920699)
Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors	January 3, 1994	Do	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
To Blood Establishment Computer Software Manufacturers	March 31, 1994	Do	Do
To Sponsors of IND's for Human Immunoglobulin Products	May 23, 1994	Do	Do
To Manufacturers of Licensed Anti-HIV Test Kits	May 26, 1994	Do	Do
Recommendations for Deferral of Donors for Malaria Risk	July 26, 1994	Do	Do
ICH Guideline for Industry: Studies in Support of Special Populations	August 1, 1994	Do	Do
OELPS, Advertising and Promotional Labeling Staff Procedural Guidance Document (Draft)	August 1, 1994	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Use of and FDA Cleared or Approved Sterile Docking Device (STCD) in Blood Bank Practices (transmittal memo 8/12/94) (corrects 7/29/94 Memo)	August 5, 1994	Do	Do
ICH Guideline for Industry: Stability Testing of New Drug Subetances and Products	September 1, 1994	Do	Do
Guide to Inspections of Blood Banks, Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs	September 1, 1994	FDA Personnel	Do
Letter to Manufacturers of Immune Globulin Intravenous (Human)(IGIV), Aseptic Meningitis Syndrome	October 3, 1994	FDA Regulated Industry	Do
Guidance on Alternatives to Lot Release for Licensed Biological Products	October 27, 1994	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substances	November 1994	Do	Do
Recommendations to Users of Medical Devices That Test for Infectious Disease Markers by Enzyme Immunoassay (EIA) Test Systems	December 20, 1994	Do	Do
To Manufacturers of Immune Globulin Products: Testing for Hepatitis C Virus RNA Immunoglobulin	December 27, 1994	Do	Do
Timeframe for Licensing Irradiated Blood Products	February 3, 1995	Do	Do
To Blood Establishment Computer Software Manufacturers	February 10, 1995	Do	Do
Home Specimen Collection Kit Systems Intended for Human Immunodeficiency Virus (HIV–1 and/or HIV–2) Antibody Testing; Revisions to Previous Guidance	February 23, 1995	Do	Do
ICH Guideline for Industry: Clinical Safety Data Management: Definitions and Standards for Expedited Reporting	March 1, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: HCV RNA Testing by PCR	March 3, 1995	Do	Do
Revision of August 27, 1982 FDA Memo: Requirements for Infrequent Plasmapheresis Donors	March 10, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: additional information regarding HCV RNA testing by PCR	March 13, 1995	Do	Do
To Health Professionals: Implementation of Testing for HCV RNA by PCR for Immune Globulin Products for Intramuscular Administration	March 14, 1995	Do	Do
To All Establishments Performing Red Blood Cell Immunizations: Revised Recommendations for Red Blood Cell Immunization Programs for Source Plasma	March 14, 1995	Do	Do
Reviewer Guidance, Computer Software	March 28, 1995	FDA Personnel	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Recommendations for the Deferral of Current and Recent Inmates of Correctional Institutions as Donors of Whole Blood, Blood Components, Source Leukocytes and Source Plasma	June 8, 1995	FDA Regulated Industry	Do
Guideline for Quality Assurance in Blood Establishments	July 11, 1995	Do	Do
FDA Guidance Document Concerning Use of Pilot Manufacturing Facilities for the Development and Manufacture of Biological Products	July 11, 1995	Do	Do
Disposition of Products Derived from Donors Diagnosed with, or at Known HighRisk for, Creutzfeldt-Jakob Disease	August 8, 1995	Do	Do
Recommendations for Labeling and Use of Units of Whole Blood, Blood Components, Source Plasma, Recovered Plasma or Source Leukocytes Obtained from Donors with Elevated Levels of Alanine Aminotransferase (ALT)	August 8, 1995	Do	Do
Precautionary Measures to Further Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease by Blood and Blood Products	August 8, 1995	Do	Do
Recommendations for Donor Screening with a Licensed Test for HIV-1 Antigen	August 8, 1995	Do	Do
PTC in the Manufacture and Testing of Therapeutic Products for Human Use Derived from Transgenic Animals	August 22, 1995	Do	Do
Informed Consent for Plasmapheresis/Immunization	October 1, 1995	FDA Personnel	Do
Draft Reviewers' Guide: Changes in Personnel	October 1, 1995	FDA Personnel	Do
Disease Associated Antibody Collection Program	October 1, 1995	FDA Personnel	Do
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products	November 1, 1995	FDA Regulated Industry	Do
Guidance Concerning Conversion to FDA-Reviewed Software Products	November 13, 1995	Do	Do
Donor Deferral Due to Red Blood Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	December 4, 1995	Do	Do
Interim Definition and Elimination of Lot-by-Lot Release for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products	December 8, 1995	Do	Do
Dear Colleague: Regarding Reverse Transcriptase Activity in Viral Vaccines Produced in Chicken Cells	January 4, 1996	Do	Do
Requesting All Manufacturers Immediately to Revise Warning Section for Package Insert on Thrombin	January 4, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
ICH Final Guideline: Quality of Biotechnological Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products	February 23, 1996	Do	Do
ICH Final Guideline on the Need for Long-Term Rodent Carcinogenicity Study of Pharmaceuticals	March 1, 1996	Do	Do
Additional Recommendations for Donor Screening With a Licensed Test for HIV–1 Antigen	March 14, 1996	Do	Do
FDA Guidance Concerning Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-Derived Products	March 26, 1996	Do	Do
ICH Guideline on the Detection of Toxicity to Reproduction for Medicinal Products; Addendum on Toxicity to Male Fertility	April 5, 1996	Do	Do
ICH Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals	April 24, 1996	Do	Do
To Manufacturers of FDA–Regulated Drug/Biological/Device Products, Bovine Spongiform Encephalopathy (BSE)	May 9, 1996	Do	Do
Additional Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leucocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	May 16, 1996	Do	Do
Guidance for Industry—The Content and Format for Pediatric Use Supplements	May 23, 1996	Do	Do
Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair of Reconstruction	May 24, 1996	Do	Do
Recommendations and Licensure Requirements for Leukocyte-Reduced Blood Products	May 29, 1996	Do	Do
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1, 1996	FDA Personnel	Do
To Manufacturers: Implementation of testing for Hepatitis C virus RNA by Manufacturers: Implementation of testing for Hepatitis C virus RNA by polymerase chain reaction (PCR) of intramuscular immune globulin preparations	June 13, 1996	FDA Regulated Industry	Do
ICH Final Guidelines on Stability Testing of Biotechnological/Biological Products	July 10, 1996		
ICH Guideline on Structure and Content of Clinical Study Reports	July 17, 1996	Do	Do
Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T–Lymphotropic Virus Type I (HTLV–I)	July 19, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
To Manufacturers: HIV–1 Group O	July 31, 1996	Do	Do
Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA–Derived Product or a Monoclonal Antibody Product for In Vivo Use	August 15, 1996	Do	Do
ICH Revised Guidance: Single Dose Acute Toxicity Testing for Pharmaceuticals	August 26, 1996	Do	Do
Draft Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation; Notice	September 23, 1996	Do	Do
ICH Draft Guideline on Data Elements for Transmission of Individual Case Reports	October 1, 1996	Do	Do
To All Plasma Derivative Manufacturers and to ABRA: Warning Statement for Plasma Derivative Product Labeling	October 7, 1996	Do	Do
Advertising and Promotion; Guidance; Notice	October 8, 1996	Do	Do
To Biologic Product Manufacturers: Revised Procedures for Internal Labeling Review Number Assignment	December 3, 1996	Do	Do
Interim Recommendations for Deferral of Donors at Increased Risk for HIV–1 Group O Infection	December 11, 1996	Do	Do
PTC on Plasmid DNA Vaccines for Preventive Infectious Disease Indications	December 22, 1996	Do	Do
Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products	January 1997	Do	Do
Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software	January 13, 1997	FDA Personnel	Do
The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents	February 27, 1997	FDA Regulated Industry	Do
Proposed Approach to Regulation of Cellular and Tissue-Based Products	February 27, 1997	Do	Do
PTC in the Manufacture and Testing of Monoclonal Antibody Products for Human Use	February 28, 1997	Do	Do
Tables 1 and 2 from Proposed Approach to Regulation of Cellular and Tissue-Based Products	March 4, 1997	Do	Do
Prevalence of Promotional Labeling; Clarification	March 5, 1997	Do	Do
Guidance for Industry for the Evaluation of Combination Vaccines for Preventable Diseases: Production, Testing and Clinical Studies	April 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
ICH Draft Guideline on Dose Selection for Carcinogenicity Studies for Pharmaceuticals: Addendum on the Limit Dose	April 2, 1997	Do	Do
ICH Draft Guideline on the Timing of Nonclinical Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	May 2, 1997	Do	Do
ICH Draft Guideline on Impurities: Residual Solvents	May 2, 1997 (Correction May 19, 1997)	Do	Do
ICH Guideline on Stability Testing for New Dosage Forms	May 9, 1997	Do	Do
ICH Draft Guideline on Statistical Principles for Clinical Trials, Part III	May 9, 1997	Do	Do
ICH Good Clinical Practice: Consolidated Guideline, Part II	May 9, 1997	Do	Do
ICH Guideline for the Photostability Testing of New Drug Substances and Products, Part II	May 16, 1997	Do	Do
ICH Guideline on Impurities in New Drug Products, Part IV	May 19, 1997	Do	Do
ICH Guideline on Clinical Safety Data Management: Periodic Safety Update Reports for marketed Drugs, Part VI	May 19, 1997	Do	Do
ICH Guideline on the Validatioin of Analytical Procedures: Methodology, Part V	May 19, 1997	Do	Do
To Plasma Fractionators—CBER's View on Product Recalls Conducted by the Plasma Fractionation Industry	May 29, 1997	Do	Do
ICH Draft Guideline on General Considerations for Clinical Trials	May 30, 1997	Do	Do
Guide to Inspections of Source Plasma Establishments (Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs)	June 1, 1997	FDA Personnel	Do
Draft Guidance for Industry: Computerized Systems Used in Clinical Trials; Availability	June 18, 1997	FDA Regulated Industry	Do
Guidance for Industry—Changes to an Approved Application: Biological Products	July 1997	Do	Do
Guidance for Industry—Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products	July 1997	Do	Do
Guidance for Industry—Screening and Testing of Donors of Human Tissue Intended for Transplantation	July 1997	Do	Do
Guidance for Industry—Donor Screening for Antibodies to HTLV-II	August 1997	Do	Do
Draft Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts	August 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry—Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report	August 1997	Do	Do
Draft Guidance for Industry Efficacy Evaluation of Hemoglobin-and Perfluorocarbon-Based Oxygen Carriers	September 1997	Do	Do
Guidance for Industry -The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA-Regulated Products for Human Use	September 1997	Do	Do
Notification Process for Transfusion Related Fatalities and Donation Related Deaths (revised telephone number)	October 7, 1997	Do	Do
Submission Requirements for Requesting Certificates for Exporting Products to Foreign Countries	October 15, 1997	Do	Do
ICH Guidance on Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals	November 18, 1997	Do	Do
ICH Guidance on Genotoxicity: A Standard Battery for Genotoxicity Testing for Pharmaceuticals	November 21, 1997	Do	Do
ICH Guidance on Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	November 25 1997	Do	Do
ICH Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances	November 25, 1997	Do	Do
Guidance for FDA and Industry: Direct Final Rule Procedures	November 21, 1997	FDA Personnel and Regulated Industry	Do
Draft Guidance for Industry: Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMS)	December 1997	FDA Regulated Industry	Do
Guidance for Industry: Industry-Supported Scientific and Educational Activities	December 3, 1997	Do	Do
ICH Guidance on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes	December 4, 1997	Do	Do
To Biologic Product Manufacturers—Withdrawal of Human Blood-Derived Materials Because Donors Diagnosed With, or At Increased Risk For, CJD	December 11, 1997	Do	Do
To Allergenic Extract Manufacturers—Standardized Grass Pollen Extracts	December 23, 1997	Do	Do
ICH Guidance on Data Elements for Transmission of Individual Case Safety Reports	January 15, 1998		

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: Year 2000 Date Change for Computer Systems and Software Applications Used in the Manufacture of Blood Products	January 1998	Do	Do
Draft Guidance for Industry: Container and Closure Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products	January 1998	Do	Do
ICH Guidance on Testing for Carcinogenicity of Pharmaceuticals	February 28, 1998		
Draft Guidance for Industry: Manufacturing, Processing or Holding Active Pharmaceutical Ingredients	March 1998	Do	Do
Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy	March 1998	Do	Do
Draft Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Draft Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products	May 1998	Do	Do
Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds	May 1998	Do	Do
Guidance for Industry: Classifying Resubmissions in Response to Action Letters	May 1998	Do	Do
Guidance for Industry: Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis and Impact on Dosing and Labeling	May 1998	Do	Do
Guidance for Industry: Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 1998	Do	Do
Guidance for Industry: Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Stability Testing of Drug Substances and Drug Products	June 1998	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug and Cosmetic Act	June 1998	Do	Do
Guidance for Industry: Errors and Accidents Regarding Saline Dilution of Samples Used for Viral Marker Testing	June 1998	Do	Do
ICH Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	June 9, 1998	Do	Do
ICH Guidance on Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Draft Guidance for Industry: Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996	June 12, 1998	Do	Do
Guidance for Industry: Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements	July 1998	Do	Do
Guidance for Industry: Environmental Assessment of Human Drug and Biologics Applications	July 1998	Do	Do
Draft Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods	July 1998	Do	Do
Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV	September 1998	Do	Do
Draft Guidance for Industry: Submitting Debarment Certification Statements	September 1998	Do	Do
Guidance for Industry: How to Complete the Vaccine Adverse Reporting System Form (VAERS–1)	September 1998	Do	Do
Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review	September 1998	Do	Do
ICH Guidance on Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
ICH Guidance on Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
ICH Guidance on Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin	September 24, 1998	Do	Do
Draft Guidance for Industry: Developing Medical Imaging Drugs and Biologics	October 1998	Do	Do
Guidance for Industry: on Advisory Committees: Implementing Section 120 of the Food and Drug Administration Act of 1997	October 1998	Do	Do
Draft Document: United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128	December 1997 (Released November 1998)	Do	Do
Draft Guidance for Industry: General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 1998	Do	Do
To Viral Vaccine IND Sponsors—Use of PCR-based Reverse Transcriptase Assay	December 18, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	December 1998	Do	Do
Draft Guidance for Industry: Content and Format of Geriatric Labeling	December 1998	Do	Do
Draft Guidance for Industry: Product Name Placement, Size and Prominence in Advertising and Promotional Labeling	January 1999	Do	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product	January 1999	Do	Do
Guidance on Amended Procedures for Advisory Panel Meetings	January 1999	Do	Do
Guidance for Industry: Providing Regulatory Submissions in Electronic Format—General Considerations	January 1999	Do	Do
Guidance for Industry: Population Pharmacokinetics	February 1999	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products	February 1999	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products	February 1999	Do	Do
Draft Guidance for Industry: INDs for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products, Chemistry Manufacturing and Controls Content and Format	February 1999	Do	Do
Draft Guidance for Industry: Accelerated Approval Products—Submission of Promotional Materials	March 1999	Do	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product	March 1999	Do	Do
Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans	April 1999	Do	Do
Guidance for Industry On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	April 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h "Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use"	May 1999	Do	Do
Guidance for Industry For Platelet Testing and Evaluation of Platelet Substitute Products	May 1999	Do	Do
Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use	May 1999	Do	Do
Draft Guidance for Industry: Monoclonal Antibodies Used as Reagents in Drug Manufacturing	May 1999	Do	Do
Guidance for Industry: Container Closure Systems for Packaging Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Documentation	May 1999	Do	Do
Draft Guidance for Industry: Establishing Pregnancy Registries	June 1999	Do	Do
Draft Reviewer Guidance: Evaluation of Human Pregnancy Outcome Data	June 1999	FDA Personnel	Do
Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of donor Test Results for Antibody to HCV (Anti-HCV)	June 1999	FDA Regulated Industry	Do
ICH Guidance on the Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1999	Do	Do
Draft Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	July 1999	Do	Do
Draft Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations	July 1999	Do	Do
Draft Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics	August 1999	Do	Do
Guidance for Industry: Consumer-Directed Broadcast Advertisements	August 1999	Do	Do
Draft Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 1999	Do	Do
Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products	August 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	August 1999	Do	Do
ICH Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	Do	Do
Draft Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors	September 1999	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug and Cosmetic Act	September 1999	Do	Do
International Conference on Harmonisation Draft Guidance; Choice of Control Group in Clinical Trials	September 24, 1999	Do	Do
Draft Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors	November 1999	Do	Do
Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format—Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/Establishment License Application (ELA) and New Drug Application (NDA)]—Revised	November 1999	Do	Do
Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products	November 1999	Do	Do
Guidance for Industry: In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis and Recommendations for Dosing and Labeling	November 1999	Do	Do
Draft Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma	November 1999	Do	Do
Draft Guidance for Industry: Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis and Impact on Dosing and Labeling	November 1999	Do	Do
International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use M4: Common Technical Document	November 8, 1999	Do	Do
Guidance for Industry: In the Manufacture and Clinical Evaluation of *In Vitro* Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2	December 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Contacts	December 1999	Do	Do
Draft Guidance for Industry: Special Protocol Assessment	December 1999	Do	Do
Draft Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture	January 2000	Do	Do
Draft Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol	February 2000	FDA Personnel	Do
Draft Guidance for Industry: IND Meetings for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information	February 2000	FDA Regulated Industry	Do
Guidance for Industry: Formal Meetings With Sponsors and Applicants for PDUFA Products	February 2000	Do	Do
Guidance for Industry: Formal Dispute Resolution: Appeals Above the Division Level	February 2000	Do	Do
Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing	February 2000	Do	Do
Draft Guidance for Industry: Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank	March 2000	Do	Do
International Conference on Harmonisation; E11: Clinical Investigation of Medicinal Products in the Pediatric Population	April 12, 2000	Do	Do
International Conference on Harmonisation; Draft Revised Guidance on Q1A(R) Stability Testing of New Drug Subetances and Products	April 21, 2000	Do	Do

III. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Accelerated Approval Products—Submission of Promotional Materials	March 26, 1999	Advertising Draft	http://www.fda.gov/cder/guidance/index.htm
Product Name, Placement, Size, and Prominence in Advertising and Promotional Labeling	March 12, 1999	Do	Do
Promoting Medical Products in a Changing Healthcare Environment; Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs)	January 5, 1998	Do	Do
Aerosol Steroid Product Safety Information in Prescription Drug Advertising and Promotional Labeling	January 12, 1998	Advertising	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Consumer-Directed Broadcast Advertisements	August 9, 1999	Do	Do
Antifungal (topical)	February 24, 1999	Biopharmaceutic Draft	Do
Antifungal (vaginal)	February 24, 1999	Do	Do
Average, Population, and Individual Approaches to Establishing Bioequivalence	August 27, 1999	Do	Do
Bioanalytical Methods Validations for Human Studies	January 5, 1999	Do	Do
Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action	June 2, 1999	Do	Do
Bioavailability and Bioequivalence Studies for Orally Administered Drug Products	August 27, 1999	Do	Do
Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence	March 9, 2000	Do	Do
Food-Effect Bioavailability and Bioequivalence Studies	December 20, 1997	Do	Do
Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies	June 18, 1998	Do	Do
Waiver of In Vivo Bioavailability and Bioequivalence Studies for Immediate Release Solid Oral Dosage Forms Containing Certain Active Moieties/Active Ingredients	February 17, 1999	Do	Do
Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 15, 1998	Biopharmaceutic	Do
Cholestyramine Powder In Vitro Bioequivalence	July 15, 1993	Do	Do
Cimetidine Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Clozapine (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 15, 1996	Do	Do
Corticosteroids, Dermatologic (topical) In Vivo	June 2, 1995	Do	Do
Diclofenac Sodium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1994	Do	Do
Dissolution Testing of Immediate Release Solid Oral Dosage Forms	August 25, 1997	Do	Do
Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations	September 26, 1997	Do	Do
Glipizide (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Glyburide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Metaproterenol Sulfate and Albuterol Metered Dose Inhalers In Vitro	June 27, 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Oral Extended (Controlled) Release Dosage Forms In Vivo Bioequivalence and In Vitro Dissolution Testing	September 9, 1993	Do	Do
Phenytoin/Phenytion Sodium (capsules, tablets, suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 4, 1994	Do	Do
Potassium Chloride (slow-release tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 6, 1994	Do	Do
Statistical Procedure for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design	July 1, 1992	Do	Do
BACPAC I: Intermediates in Drug Substance Synthesis (Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation)	November 30, 1998	Chemistry Draft	Do
IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information	February 4, 2000	Do	Do
IND's for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products; Chemistry, Manufacturing, and Controls Content and Format	April 20, 1999	Do	Do
Metered Dose Inhalers (MDI) and Dry Powder Inhalers (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation	November 19, 1998	Do	Do
Monoclonal Antibodies Used as Reagents in Drug Manufacturing	June 24, 1999	Do	Do
Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products	June 2, 1999	Do	Do
Stability Testing of Drug Substances and Drug Products	June 8, 1998	Do	Do
Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications	November 1, 1991	Do	Do
SUPAC–SS: Nonsterile Semisolid Dosage Forms Manufacturing Equipment Addendum	January 5, 1999	Do	Do
Tracking of NDA and ANDA Reformulations for Solid, Oral, Immediate Release Drug Products		Do	Do
Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products	July 24, 1997	Chemistry	Do
Changes to an Approved NDA or ANDA	November 23, 1999	Do	Do
Container Closure Systems for Packaging Human Drugs and Biologics	July 7, 1999	Do	Do
Drug Master Files	September 1, 1989	Do	Do
Drug Master Files for Bulk Antibiotic Drug Substances	November 29, 1999	Do	Do
Environmental Assessment of Human Drugs and Biologics Applications	July 27, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
FDA's Policy Statement for the Development of New Stereoisomeric Drugs	May 1, 1992	Do	Do
Format and Content for the CMC Section of an Annual Report	September 1, 1994	Do	Do
Format and Content of the Chemistry, Manufacturing and Controls Section of an Application	February 1, 1987	Do	Do
Format and Content of the Microbiology Section of an Application	February 1, 1987	Do	Do
NDAs: Impurities in Drug Substances	February 25, 2000	Do	Do
PAC–ALTS: Postapproval Changes—Analytical Testing Laboratory Sites	April 28, 1998	Do	Do
Reviewer Guidance: Validation of Chromatographic Methods	November 1, 1994	Do	Do
Submission of Chemistry, Manufacturing and Controls Information for Synthetic Peptide Substances	November 1, 1994	Do	Do
Submission of Documentation for Sterilization Process Validation Applications for Human and Veterinary Drug Products	November 1, 1994	Do	Do
Submitting Documentation for the Manufacturing of and Controls for Drug Products	February 1, 1987	Do	Do
Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Submitting Samples and Analytical Data for Methods Validation	February 1, 1987	Do	Do
Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances	February 1, 1987	Do	Do
Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances	February 1, 1987	Do	Do
SUPAC IR- Immediate-Release Solid Oral Dosage Forms: Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing	November 30, 1995	Do	Do
SUPAC IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms, Manufacturing Equipment Addendum	February 28, 1998	Do	Do
SUPAC–IR Questions and Answers	February 18, 1997	Do	Do
SUPAC–MR: Modified Release Solid Oral Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation	October 6, 1997	Do	Do
SUPAC–SS—Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation	June 13, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Acute Bacterial Exacerbation of Chronic Bronchitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Clinical Antimicrobial Draft	Do
Acute Bacterial Meningitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute Bacterial Sinusitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute Otitis Media; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Bacterial Vaginosis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Catheter-Related Bloodstream Infections—Developing Antimicrobial Drugs for Treatment	October 18, 1999	Do	Do
Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements	September 1, 1999	Do	Do
Community Acquired Pneumonia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Complicated Urinary Tract Infections and Pyelonephritis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Developing Antimicrobial Drugs-General Considerations for Clinical Trials	July 22, 1998	Do	Do
Empiric Therapy of Febrile Neutropenia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products	February 17, 1997	Do	Do
Lyme Disease; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Nosocomial Pneumonia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Secondary Bacterial Infections of Acute Bronchitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Streptococcal Pharyngitis and Tonsillitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Uncomplicated and Complicated Skin and Skin Structure Infections; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Uncomplicated Gonorrhea—Cervical, Urethral, Rectal, and/or Pharyngeal; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Uncomplicated Urinary Tract Infections; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Vulvovaginal Candidiasis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Clinical Development and Labeling of Anti-Infective Drug Products	October 26, 1992	Clinical Antimicrobial	Do
Clinical Evaluation of Anti-Infective Drugs (Systemic)	September 1, 1977	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Preclinical Development of Antiviral Drugs	November 1, 1990	Do	Do
Abuse Liability Assessment	July 1, 1990	Clinical Medical Draft	Do
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	July 15, 1999	Do	Do
Clinical Evaluation of Anti-Anginal Drugs	January 1, 1989	Do	Do
Clinical Evaluation of Anti-Arrhythmic Drugs	July 1, 1985	Do	Do
Clinical Evaluation of Antihypertensive Drugs	May 1, 1988	Do	Do
Clinical Evaluation of Drugs for the Treatment of Congestive Heart Failure	December 1, 1987	Do	Do
Clinical Evaluation of Drugs for Ulcerative Colitis (3rd draft)		Do	Do
Clinical Evaluation of Lipid-Altering Agents in Adults and Children	September 1, 1990	Do	Do
Clinical Evaluation of Motility-Modifying Drugs		Do	Do
Clinical Evaluation of Weight-Control Drugs	September 24, 1996	Do	Do
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review	November 22, 1996	Do	Do
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review	October 13, 1998	Do	Do
Development and Evaluation of Drugs for the Treatment of Psychoactive Substance Use Disorders	February 12, 1992	Do	Do
Development of Parathyroid Hormone for the Prevention and Treatment of Osteoporosis	June 14, 2000	Do	Do
Establishing Pregnancy Registries	June 4, 1999	Do	Do
Evaluation of Human Pregnancy Outcome Data	June 4, 1999	Do	Do
Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment	May 19, 2000	Do	Do
In Vivo Pharmacokinetics and Bioavailability Studies and In Vitro Dissolution Testing for Levothyroxine Sodium Tablets	June 10, 1999	Do	Do
Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research	March 30, 2000	Do	Do
Levothyroxine Sodium	August 18, 1999	Do	Do
OTC Treatment of Herpes Labialis with Antiviral Agents	March 8, 2000	Do	Do
Preclinical and Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis	April 1, 1994	Do	Do
Preparation of IND Applications for New Drugs Intended for the Treatment of HIV–Infected Individuals	September 1, 1991	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
System Inflammatory Response Syndrome (SIRS) 1st Draft		Do	Do
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	February 17, 1999	Clinical Medical	Do
Clinical Development Programs for MDI and DPI Drug Products	September 19, 1994	Do	Do
Clinical Evaluation of Analgesic Drugs	December 1, 1992	Do	Do
Clinical Evaluation of Antacid Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (adults and children)	April 1, 1988	Do	Do
Clinical Evaluation of Antianxiety Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antidepressant Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antidiarrheal Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antiepileptic Drugs (adults and children)	January 1, 1981	Do	Do
Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy of Postmenopausal Women	March 20, 1995	Do	Do
Clinical Evaluation of Gastric Secretory Depressant (GSD) Drugs	September 1, 1977	Do	Do
Clinical Evaluation of General Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Hypnotic Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Laxative Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Local Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Psychoactive Drugs in Infants and Children	July 1, 1979	Do	Do
Clinical Evaluation of Radiopharmaceutical Drugs	October 1, 1981	Do	Do
Content and Format for Pediatric Use Supplements	May 24, 1998	Do	Do
Content and Format of Investigational New Drug Applications (IND's) for Phase Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	November 20, 1995	Do	Do
Development of Vaginal Contraceptive Drugs (NDA)	April 19, 1995	Do	Do
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	February 2, 1999	Do	Do
FDA Requirements for Approval of Drugs to Treat Non-Small Cell Lung Cancer	January 21, 1991	Do	Do
FDA Requirements for Approval of Drugs to Treat Superficial Bladder Cancer	June 20, 1989	Do	Do
Format and Content of the Clinical and Statistical Sections of an Application	July 1, 1988	Do	Do
Format and Content of the Summary for New Drug and Antibiotic Applications	February 1, 1987	Do	Do

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Formatting, Assembling and Submitting New Drug and Antibiotic Applications	February 1, 1987	Do	Do
General Considerations for the Clinical Evaluation of Drugs	February 1, 1978	Do	Do
General Considerations for the Clinical Evaluation of Drugs in Infants and Children	September 1, 1977	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Ovarian Cancer	April 13, 1988	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Colon and Rectal Cancer	April 19, 1988	Do	Do
OTC Treatment of Hypercholesterolemia	October 27, 1997	Do	Do
Postmarketing Adverse Experience Reporting for Human Drugs and Licensed Biological Products; Clarification of What to Report	August 27, 1997	Do	Do
Postmarketing Reporting of Adverse Drug Experiences	March 1, 1992	Do	Do
Preclinical Development of Immunomodulatory Drugs for the Treatment of HIV Infection and Associated Disorders	September 4, 1992	Do	Do
Preparation of Investigational New Drug Products (Human and Animal)	November 1, 1992	Do	Do
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	May 15, 1998	Do	Do
Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs	July 22, 1993	Do	Do
Study of Drugs Likely to be Used in the Elderly	November 1, 1989	Do	Do
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	September 13, 1999	Do	Do
General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 30, 1998	Clinical Pharmacology Draft	Do
Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro	April 7, 1997	Clinical Pharmacology	Do
Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application	February 1, 1987	Do	Do
In Vivo Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling	November 24, 1999	Do	Do
Pharmacokinetics and Pharmacodynamics in Patients with Impaired Renal Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	May 15, 1998	Do	Do
Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	December 7, 1999	Do	Do
Population Pharmacokinetics	February 10, 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Investigating Out of Specification (OOS) Test Results for Pharmaceutical Production	November 30, 1998	Compliance Draft	Do
Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	April 17, 1998	Do	Do
Repackaging of Solid Oral Dosage Form Drug Products	February 1, 1992	Do	Do
A Review of FDA's Implementation of the Drug Export Amendments of 1986		Compliance	Do
Compressed Medical Gases	February 1, 1989	Do	Do
Computerized Systems Used in Clinical Trials	May 10, 1999	Do	Do
Expiration Dating and Stability Testing of Solid Oral Dosage Form Drugs Containing Iron	June 27, 1997	Do	Do
General Principles of Process Validation	May 1, 1987	Do	Do
Good Laboratory Practice Regulations Questions and Answers		Do	Do
Monitoring of Clinical Investigations	January 1, 1988	Do	Do
Nuclear Pharmacy Guideline Criteria for Determining When to Register as a Drug Establishment	May 1, 1984	Do	Do
Possible Dioxin/PCB Contamination of Drug and Biological Products	August 23, 1999	Do	Do
Sterile Drug Products Produced by Aseptic Processing	May 1, 1987	Do	Do
Validation of Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Regulatory Submissions in Electronic Format; General Considerations	January 28, 1999	Electronic Submissions	Do
Regulatory Submissions in Electronic Format; New Drug Applications	January 28, 1999	Do	Do
ANDA's: Blend Uniformity Analysis	August 26, 1999	Generic Drug Draft	Do
ANDA's: Impurities in Drug Products	January 5, 1999	Do	Do
Abbreviated New Drug Application (ANDA)—Positron Emission Tomography (PET) Drug Products—With specific information for ANDA's for Fludeoxyglucose F18 Injection	April 18, 1997	Do	Do
ANDA's: Impurities in Drug Substances	December 3, 1999	Generic Drug	Do
Letter announcing that the OGD will now accept the ICH long-term storage conditions as well as the stability studies conducted in the past	August 18, 1995	Do	Do
Letter describing efforts by the CDER & the ORA to clarify the responsibilities of CDER chemistry review scientists and ORA field investigators in the new & abbreviated drug approval process in order to reduce duplication or redundancy in the process	October 14, 1994	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Letter on Incomplete Abbreviated Applications, Convictions Under GDEA, Multiple Supplements, Annual Reports for Bulk Antibiotics, Batch Size for Transdermal Drugs, Bioequivalence Protocols, Research, Deviations from OGD Policy	April 8, 1994	Do	Do
Letter on the provision of new information pertaining to new bioequivalence guidelines and refuse-to-file letters	July 1, 1992	Do	Do
Letter on the provision of new procedures and policies affecting the generic drug review process	March 15, 1989	Do	Do
Letter on the request for cooperation of regulated industry to improve the efficiency and effectiveness of the generic drug review process, by assuring the completeness and accuracy of required information and data submissions	November 8, 1991	Do	Do
Letter on the response to December 20, 1984 letter from the Pharmaceutical Manufacturers Association about the Drug Price Competition and Patent Term Restoration Act	March 26, 1985	Do	Do
Letter to all ANDA and AADA applicants about the Generic Drug Enforcement Act of 1992 (GDEA), and the Office of Generic Drugs intention to refuse to file incomplete submissions as required by the new law	January 15, 1993	Do	Do
Letter to regulated industry notifying interested parties about important detailed information regarding labeling, scale-up, packaging, minor/major amendment criteria, and bioequivalence requirements	August 4, 1993	Do	Do
Major, Minor, Facsimile, and Telephone Amendments to Original Abbreviated New Drug Applications (Revised)	May 1, 2000	Do	Do
Organization of an ANDA	March 2, 1999	Do	Do
Revising ANDA Labeling Following Revision of the RLD Labeling	April 25, 2000	Do	Do
Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products	February 3, 2000	Do	Do
Variations in Drug Products that May Be Included in a Single ANDA	January 27, 1999	Do	Do
E10—Choice of Control Group in Clinical Trials	September 24, 1999	ICH Draft—Efficacy	Do
E11 Clinical Investigation of Medicinal Products in the Pediatric Population	April 12, 2000	Do	Do
M4 Common Technical Document: Request for comments on Initial Components	February 11, 2000	ICH Draft—Joint Safety/Efficacy	Do
Q1A(R) Stability Testing of New Drug Substances and Products	April 21, 2000	ICH Draft—Quality	Do
Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances	November 25, 1997	Do	Do

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E1A The Extent of Population Exposure to Assess Clinical Safety: for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions	March 1, 1995	ICH—Efficacy	Do
E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting	March 1, 1995	Do	Do
E2B Data Elements for Transmission of Individual Case Safety Reports	January 15, 1998	Do	Do
E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs	May 19, 1997	Do	Do
E3 Structure and Content of Clinical Study Reports	July 17, 1996	Do	Do
E4 Dose-Response Information to Support Drug Registration	November 9, 1994	Do	Do
E5 Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	Do	Do
E6 Good Clinical Practice: Consolidated Guideline	May 9, 1997	Do	Do
E7 Studies in Support of Special Populations: Geriatrics	August 2, 1994	Do	Do
E8 General Considerations for Clinical Trials	December 24, 1997	Do	Do
E9 Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
M3 Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	November 25, 1997	ICH—Joint Safety/Efficacy	Do
Q1A Stability Testing of New Drug Substances and Products	September 22, 1994	ICH—Quality	Do
Q1B Photostability Testing of New Drug Substances and Products	May 16, 1997	Do	Do
Q1C Stability Testing for New Dosage Forms	May 9, 1997	Do	Do
Q2A Text on Validation of Analytical Procedures	May 1, 1995	Do	Do
Q2B Validation of Analytical Procedures: Methodology	May 19, 1997	Do	Do
Q3A Impurities in New Drug Substances	January 4, 1996	Do	Do
Q3B Impurities in New Drug Products	May 19, 1997	Do	Do
Q3C Impurities: Residual Solvents	December 24, 1997	Do	Do
Q5A Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin	September 24, 1998	Do	Do
Q5B Quality of Biotechnology Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products	February 23, 1996	Do	Do
Q5C Quality of Biotechnological Products: Stability Testing of Biotechnology/Biological Products	July 10, 1996	Do	Do

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Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
Q6B—Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	Do	Do
S1A The Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals	March 1, 1996	ICH—Safety	Do
S1B Testing for Carcinogenicity in Pharmaceuticals	February 23, 1998	Do	Do
S1C Dose Selection for Carcinogenicity Studies of Pharmaceuticals	March 1, 1995	Do	Do
S1C(R) Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes	December 4, 1997	Do	DO
S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals	December 4, 1997	Do	Do
S2B Genotoxicity: Standard Battery Testing	November 21, 1997	Do	Do
S3A Toxicokinetics: The Assessment of systemic Exposure in Toxicity Studies	March 1, 1995	Do	Do
S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies	March 1, 1995	Do	Do
S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1998	Do	Do
S5A Detection of Toxicity to Reproduction for Medicinal Products	September 22, 1994	Do	Do
S5B Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility	April 5, 1996	Do	Do
S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals	November 18, 1997	Do	Do
A Revision in Sample Collection Under the Compliance Program Pertaining to Pre-Approval Inspections	July 15, 1996	Industry Letters	o
Certification Requirements for Debarred Individuals in Drug Applications	July 27, 1992	Do	Do
Continuation of a series of letters communicating interim and informal generic drug policy and guidance. Availability of Policy and Procedure Guides, and further operational changes to the generic drug review program	June 1, 1990	Do	Do
Fifth of a series of letters providing informal notice about the Act, discussing the statutory mechanism by which ANDA applicants may make modifications in approved drugs where clinical data is required	April 10, 1997	Do	Do
Fourth of a series of letters providing informal notice to all affected parties about policy developments and interpretations regarding the Act. Three year exclusivity provisions of Title I	October 31, 1996	Do	Do

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Implementation of the Drug Price Competition and Patent Term Restoration Act. Preliminary Guidance	October 11, 1984	Do	Do
Implementation Plan USP injection nomenclature	October 2, 1995	Do	Do
Instructions for Filing Supplements Under the Provisions of SUPAC-IR	April 11, 1996	Do	Do
Seventh of a series of letters about the Act providing guidance on the "180-day exclusivity" provision of section 505(j)(4)(B)(iv) of the FD&C	July 29, 1988	Do	Do
Sixth of a series of informal notice letters about the Act discussing 3- and 5-year exclusivity provisions of sections 505(c)(3)(D) and 505(j)(4)(D) of the FD&C Act	April 22, 1988	Do	Do
Streamlining Initiatives	December 24, 1996	Do	Do
Supplement to 10/11/84 letter about policies, procedures and implementation of the Act (Q & A format)	November 16, 1984	Do	Do
Third of a series of letters regarding the implementation of the Act	May 1, 1985	Do	Do
Content and Format for Geriatric Labeling	January 21, 1999	Labeling Draft	Do
Non-Contraceptive Estrogen Drug Products—Physician and Patient Labeling	January 8, 1999	Do	Do
Noncontraceptive Estrogen Class Labeling	September 27, 1999	Do	Do
OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis)	July 16, 1998	Do	Do
Therapeutic Equivalence Code Placement on Prescription Drug Labels and Labeling	January 28, 1999	Do	Do
Acetaminophen and Codeine Phosphate Oral Solution/Suspension	December 1, 1993	Labeling	Do
Acetaminophen and Codeine Phosphate Tablets/Capsules	December 1, 1993	Do	Do
Acetaminophen, Aspirin and Codeine Phosphate Tablets/Capsules	December 1, 1993	Do	Do
Alprazolam Tablets USP	August 1, 1996	Do	Do
Amiloride Hydrochloride and Hydrochlorothiazide Tablets USP	September 1, 1997	Do	Do
Amlodipine Besylate Tablets	September 1, 1997	Do	Do
Astemizole Tablets	September 1, 1997	Do	Do
Atenolol Tablets USP	August 1, 1997	Do	Do
Barbiturate, Single Entity-Class Labeling	March 1, 1981	Do	Do
Butalbital, Acetaminophen and Caffeine Capsules/Tablets USP	September 1, 1997	Do	Do
Butalbital, Acetaminophen, Caffeine and Hydrocodone Bitartrate Tablets	September 21, 1997	Do	Do
Butorphanol Tartrate Injection USP	October 1, 1992	Do	Do

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Captopril and Hydrochlorothiazide Tablets USP	April 1, 1995	Do	Do
Captopril Tablets	February 1, 1995	Do	Do
Carbidopa and Levodopa Tablets USP	February 1, 1992	Do	Do
Chlordiazepoxide Hydrochloride Capsules	January 1, 1988	Do	Do
Cimetidine Hydrochloride Injection	September 1, 1995	Do	Do
Cimetidine Tablets	September 1, 1995	Do	Do
Cisapride Oral Suspension	September 1, 1997	Do	Do
Cisapride Tablets	September 1, 1997	Do	Do
Clindamycin Phosphate Injection USP	September 1, 1998	Do	Do
Clorazepate Dipotassium Capsules/Tablets	March 1, 1993	Do	Do
Combination Oral Contraceptives—Physician and Patient Labeling	January 1, 1994	Do	Do
Cyproheptadine Hydrochloride Tablets/Syrup	December 1, 1986	Do	Do
Diclofenac Sodium Delayed-Release Tablets	January 1, 1997	Do	Do
Diltiazem Hydrochloride Extended-Release Capsules	September 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution USP	April 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Tablets USP	April 1, 1995	Do	Do
Dipivefrin Hydrochloride Ophthalmic Solution, 0.1%	November 2, 1998	Do	Do
Ergoloid Mesylates Tablets	January 1, 1988	Do	Do
Fludeoxyglucose F18 Injection	January 1, 1997	Do	Do
Flurbiprofen Tablets USP	January 1, 1994	Do	Do
Fluvoxamine Maleate Tablets	September 1, 1997	Do	Do
Gentamicin Sulfate Ophthalmic Ointment and Solution USP	April 1, 1992	Do	Do
Heparin Sodium Injection USP	March 1, 1991	Do	Do
Hydrocodone Bitartrate and Acetaminophen Tablets USP	April 1, 1994	Do	Do
Hydroxyzine Hydrochloride Injection	December 1, 1989	Do	Do
Hypoglycemic Oral Agents—Federal Register	April 1, 1984	Do	Do
Indomethacin Capsules USP	September 1, 1995	Do	Do
Informal Labeling Guidance Texts for Estrogen Drug Products—Patient Labeling	August 1, 1992	Do	Do
Informal Labeling Guidance Texts for Estrogen Drug Products—Professional Labeling	August 1, 1992	Do	Do
Isoetharine Inhalation Solution	March 1, 1989	Do	Do
Itraconazole Capsules, USP	September 1, 1998	Do	Do
Leucovorin Calcium for Injection	July 1, 1996	Do	Do

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Leucovorin Calcium Tablets, USP	July 1, 1996	Do	Do
Local Anesthetics—Class Labeling	September 1, 1982	Do	Do
Meclofenamate Sodium Capsules	July 1, 1992	Do	Do
Medroxyprogesterone Acetate Tablets, USP	September 1, 1998	Do	Do
Metaproterenol Sulfate Inhalation Solution USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Syrup USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Tablets	May 1, 1992	Do	Do
Metoclopramide Tablets USP/Oral Solution	February 1, 1995	Do	Do
Naphazoline Hydrochloride Ophthalmic Solution	March 1, 1989	Do	Do
Naproxen Sodium Tablets, USP	September 1, 1997	Do	Do
Naproxen Tablets, USP	September 1, 1997	Do	Do
Niacin Tablets	July 1, 1992	Do	Do
Paclitaxel Injection	February 1, 1991	Do	Do
Phendimetrazine Tartrate Capsules/Tablets, and Extended-Release Capsules	February 1, 1991	Do	Do
Phentermine Hydrochloride Capsules/Tablets	August 1, 1988	Do	Do
Promethazine Hydrochloride Tablets	March 1, 1990	Do	Do
Propantheline Bromide Tablets	August 1, 1988	Do	Do
Pyridoxine Hydrochloride Injection	June 1, 1984	Do	Do
Quinidine Sulfate Tablets/Capsules USP	October 1, 1995	Do	Do
Ranitidine Tablets USP	November 1, 1993	Do	Do
Risperidone Oral Solution	September 1, 1997	Do	Do
Risperidone Tablets	September 1, 1997	Do	Do
Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension and Ointment	January 1, 1995	Do	Do
Sulfacetamide Sodium Ophthalmic Solution/ Ointment	August 1, 1992	Do	Do
Sulfamethoxazole and Phenazopyridine Hydrochloride Tablets	February 1, 1992	Do	Do
Sulfamethoxazole and Trimethoprim Tablets and Oral Suspension	August 1, 1993	Do	Do
Theophylline Immediate-Release Dosage Forms	February 1, 1995	Do	Do
Theophylline Intravenous Dosage Forms	September 1, 1995	Do	Do
Thiamine Hydrochloride Injection	February 1, 1988	Do	Do
Tobramycin Sulfate Injection USP	May 1, 1993	Do	Do
Venlafaxine Hydrochloride Tablets	October 1, 1997	Do	Do
Verapamil Hydrochloride Tablets	October 1, 1991	Do	Do
Vitamin A Capsules	February 1, 1992	Do	Do

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Zolpidem Tartrate Tablets	September 1, 1997	Do	Do
Labeling OTC Human Drug Products Using a Column Format	December 1, 1997	OTC Draft	Do
OTC Actual Use Studies	July 22, 1994	Do	Do
OTC Nicotine Substitutes	March 1, 1994 *	Do	Do
Enforcement Policy on Marketing OTC Combination Products (CPG 7132b.16)			
General Guidelines for OTC Combination Products		Do	Do
Upgrading Category III Antiperspirants to Category I (43 FR 46726–46731)		Do	Do
Photosafety Testing	January 10, 2000	Pharmacology/Toxicology Draft	Do
Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application	February 1, 1987	Pharmacology/Toxicology	Do
Nonclinical Pharmacology/Toxicology Development of Topical Drugs Intended to Prevent the Transmission of Sexually Transmitted Diseases (STD) and/or for the Development of Drugs Intended to Act as Vaginal Contraceptives		Do	Do
Reference Guide for the Nonclinical Toxicity Studies of Antiviral Drugs Indicated for the Treatment of N/A Non-Life Threatening Disease: Evaluation of Drug Toxicity Prior to Phase I Clinical Studies	February 1, 1989	Do	Do
Single Dose Acute Toxicity Testing Toxicity Testing for Pharmaceuticals	August 26, 1996	Do	Do
Applications Covered by Section 505(b)(2)	December 8, 1999	Procedural Draft	Do
Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products	March 10, 2000	Do	Do
Disclosing Information Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by CDER, Beginning January 1, 2000	December 22, 1999	Do	Do
Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank	March 29, 2000	Do	Do
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 17, 1999	Do	Do
Special Protocol Assessment	February 9, 2000	Do	Do
Submitting Debarment Certification Statements	October 2, 1998	Do	Do
180-Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	July 14, 1998	Procedural	Do
Advisory Committees: Implementing Section 120 of the Food and Drug Modernization Act of 1997	November 2, 1998	Do	Do

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Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	March 30, 2000	Do	Do
Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000	November 30, 1999	Do	Do
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act	November 23, 1998	Do	Do
Fast Track Drug Development Programs: Designation, Development, and Application Review	November 18, 1998	Do	Do
Formal Dispute Resolution: Appeals Above the Division Level	March 7, 2000	Do	Do
Formal Meetings With Sponsors and Applicants For PDUFA Products	March 7, 2000	Do	Do
Implementation of Section 126 of the FDA Modernization Act of 1997—Elimination of Certain Labeling Requirements	July 21, 1998	Do	Do
National Uniformity for Nonprescription Drugs Ingredient Labeling for OTC Drugs	April 9, 1998	Do	Do
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act—Revised	October 1, 1999	Do	Do
Refusal to File	July 12, 1993	Do	Do
Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act	June 15, 1998	Do	Do
Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 15, 1998	Do	Do
Street Drug Alternatives	April 3, 2000	Do	Do
Women and Minorities Guidance Requirements	July 28, 1998	Do	Do
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 17, 1999	User Fee Draft	Do
Classifying Resubmissions in Response to Action Letters	May 14, 1998	User Fee	Do
Submitting and Reviewing Complete Responses to Clinical Holds	May 14, 1998	Do	Do

IV. Guidance Documents Issued by the Center for Devices and Radiological Health (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Program Guidance Manual: Inspection of Medical Devices; Draft	August 12, 1999	Office of Compliance (OC)	Division of Small Manufacturers Assistance; 1–800–638–2041 or 301–827–0111 or (FAX) Facts-on-Demand at 1–800–899–0381 or Internet at http://www.fda.gov/cdrh/ggpmain.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Procedures for Laboratory Compliance Testing of Television Receivers-part of TV Packet	May 1, 1986	Do	Do
A Pocket Guide to Device GMP Inspections-Inspections of Medical Device Manufacturers and GMP Regulation Requirements	November 1, 1991	Do	Do
General Principles of Software Validation; Draft Guidance	June 9, 1997	Do	Do
Global Harmonization Task Force Study Group 3-Process Validation Guidance; Final Draft	February 1, 1999	Do	Do
Civil Money Penalty Policy; Guidance for FDA Staff	June 8, 1999	Do	Do
Guidance on Medical Device Tracking; Guidance for Industry and FDA Staff [FDAMA]	January 24, 2000	Do	Do
Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals, Draft Guidance-Not for Implementation; Guidance for Industry and for FDA Staff	February 8, 2000	Do	Do
Cover Letter/Guidance Document on the Performance Standard for Electrode Lead Wires and Patient Cable	March 9, 1998	Do	Do
Commercial Distribution/Exhibit Letter	April 10, 1992	Do	Do
Working Draft of the Current Good Manufacturing Practice (CGMP) Final Rule	July 1, 1995	Do	Do
Regulating In Vitro Diagnostic Device (IVD) Studies; Guidance; Guidance for FDA Staff	December 17, 1999	Office of Compliance (OC)/ Division of Bioresearch Monitoring (DBM)	Do
Preparing Notices of Availability of Investigational Medical Devices and for Recruiting Study Subjects	March 19, 1999	Do	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Cephalometric X-Ray Devices: Defined as Dental Units with an Attachment for Mandible Work that Holds a Cassette and Beam Limiting Device	March 1, 1996	Office of Compliance (OC)/ Division of Enforcement I (DOEI)	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Image Receptor Support Devices for Mammographic X-Ray Systems	March 1, 1996	Do	Do
A Guide for the Submission of an Abbreviated Radiation Safety Report on X-Ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use	March 1, 1996	Do	Do
Clarification of Radiation Control Regulations for Diagnostic X-Ray Equipment (FDA 89-8221)	March 1, 1989	Do	Do
CPG 7133.19: Retention of Microwave Oven Test Record/Cover Letter: August 24, 1981 Retention of Records Required by 21 CFR 1002	August 24, 1981	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Exemption from Reporting and Record-keeping Requirements for Certain Sunlamp Product Manufacturers	September 16, 1981	Do	Do
Compliance Program Guidance Manual; Field Compliance Testing of Diagnostic (Medical) X-ray Equipment; Guidance for FDA Staff	March 15, 2000	Do	Do
Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems; Guidance for Industry	October 18, 1999	Do	Do
Guidance on Electrosurgical Devices and the Application of the Performance Standard for Electrode Lead Wires and Patient Cables	November 15, 1999	Do	Do
Guide for the Submission of Initial Reports on Diagnostic X–Ray Systems and their Major Components	January 1, 1982	Do	Do
Guideline for the Manufacture of In Vitro Diagnostic Products	January 10, 1994	Do	Do
Letter to Medical Device Industry on Endoscopy and Laparoscopy Accessories (Gaidi)	May 17, 1993	Do	Do
Manufacturers/Assemblers of Diagnostic X-ray Systems: Enforcement Policy for Positive-Beam Limitation (PBL) Requirements in 21 CFR 1020.31(g)	October 13, 1993	Do	Do
Abbreviated Reports on Radiation Safety for Microwave Products (Other Than Microwave Ovens)- E.G. Microwave Heating, Microwave Diathermy, RF Sealers, Induction, Dielectric Heaters, Security Systems	August 1, 1995	Office of Compliance (OC)/ Division of Enforcement I & III (DOEI & III)	Do
Abbreviated Reports on Radiation Safety of Non-Medical Ultrasonic Products	August 1, 1995	Do	Do
Guide for Filing Annual Reports for X-Ray Components and Systems	July 1, 1980	Do	Do
Guide for Preparing Abbreviated Reports of Microwave and RF Emitting Electronic Products Intended for Medical Use	September 1, 1986	Do	Do
Guide for Preparing Product Reports for Medical Ultrasound Products	September 1, 1996	Do	Do
Guide for Preparing Reports on Radiation Safety of Microwave Ovens	March 1, 1985	Do	Do
Guide for Submission of Information on Accelerators Intended to Emit X–Radiation Required Pursuant to 21 CFR 1002.10	April 1, 1971	Do	Do
Letter to Manufacturers and Importers of Microwave Ovens: Information Requirements for Cookbooks and User and Service Manuals	October 31, 1986	Do	Do
Reporting and Compliance Guide for Television Products including Product Report, Supplemental Report, Radiation Safety Abbreviated Report, Annual Report, Information and Guidance	October 1, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Reporting Guide for Laser Light Shows and Displays (21 CFR 1002) (FDA 88–8140)	September 1, 1995	Do	Do
Revised Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products (replaces FDA 82–8127)	September 1, 1995	Do	Do
All U.S. Condom Manufacturers, Importers and Repackagers	April 7, 1987	Office of Compliance (OC)/ Division of Enforcement II (DOEII)	Do
Compliance Guide for Laser Products (FDA 86–8260)	September 1, 1985	Do	Do
Condoms: Inspection and Sampling at Domestic Manufacturers and of all Repackers; Sampling from all Importers (Damaska Memo to Field on April 8, 1987)	April 8, 1987	Do	Do
Dental Handpiece Sterilization (Dear Doctor Letter)	September 28, 1992	Do	Do
Ethylene Oxide; Ethylene Chlorohydrin; and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure	June 23, 1978	Do	Do
Guidance on Quality System Regulation Information for Various Premarket Submissions; Guidance for Industry; Draft	August 3, 1999	Do	Do
Guidance on Quality System Regulation Information for Various Premarket Submissions; Guidance for Industry; Draft	August 3, 1999	Do	Do
Guide for Preparing Product Reports for Lasers and Products Containing Lasers	September 1, 1995	Do	Do
Hazards of Volume Ventilators and Heated Humidifiers	September 15, 1993	Do	Do
Latex Labeling Letter (Johnson)	March 18, 1993	Do	Do
Letter—Condom Manufacturers and Distributors	April 5, 1994	Do	Do
Letter—Manufacturers, Distributors and Importers of Condom Products	February 23, 1994	Do	Do
Letter—Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention (Holt)	February 13, 1989	Do	Do
Letter to All Foreign Manufacturers and Importers of Electronic Products for Which Applicable FDA Performance Standards Exist	May 28, 1981	Do	Do
Letter to Industry, Powered Wheelchair Manufacturers from RMJohnson	May 10, 1993	Do	Do
Letter to Manufacturers/Repackers Using Cotton	April 22, 1994	Do	Do
Letter to: Manufacturers and Users of Lasers for Refractive Surgery [excimer]	October 10, 1996	Do	Do
Manufacturers and Initial Distributors of Hemodialyzers	May 23, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Manufacturers and Initial Distributors of Sharps Containers and Destroyers Used by Health Care Professionals	February 3, 1994	Do	Do
Pesticide Regulation Notice 94–4: Interim Measures for the Registration of Antimicrobial Products/Liquid Chemical Germicides with Medical Device Use Claims Under the Memorandum of Understanding Between EPA and FDA	June 30, 1994	Do	Do
Application for a Variance from 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device [form FDA 3147]	July 1, 1998	Office of Compliance (OC)/ Division of Enforcement III (DOEIII)	Do
Computerized Devices/Processes Guidance—Application of the Medical Device GMP to Computerized Devices and Manufacturing Processes	May 1, 1992	Do	Do
Design Control Guidance for Medical Device Manufacturers	March 11, 1997	Do	Do
Final Design Control Report and Guidance	June 1, 1998	Do	Do
Guidance for the Submission of Cabinet X–Ray System Reports Pursuant to 21 CFR 1020.40	February 1, 1975	Do	Do
Guide for Preparing Annual Reports for Ultrasonic Therapy Products	September 1, 1998	Do	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products (replaces FDA 82–8127)	September 1, 1995	Do	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps (replaces FDA 82–8127)	September 1, 1995	Do	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Electronic Products (General)	October 1, 1987	Do	Do
Guide for Preparing Product Reports for Ultrasonic Therapy Products (physical therapy only)	August 1, 1998	Do	Do
Guide for Preparing Product Reports on Sunlamps and Sunlamp Products (21 CFR 1002)	September 1, 1995	Do	Do
Guide for Submission of Information on Analytical X–Ray Equipment Required Pursuant to 21 CFR 1002.10	April 30, 1974	Do	Do
Guide for Submission of Information on Industrial Radiofrequency Dielectric Heater and Sealer Equipment Pursuant to 21 CFR 1002.10 and 1002.12 (FDA 81–8137)	September 1, 1980	Do	Do
Guide for Submission of Information on Industrial X–Ray Equipment Required Pursuant to 21 CFR 1002.10	March 1, 1973	Do	Do
Guide for the Submission of Initial Reports on Computed Tomography X–Ray Systems	September 1, 1984	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Impact Resistant Lenses: Questions and Answers (FDA 87–4002)	September 1, 1987	Do	Do
Keeping Medical Devices Safe from Electromagnetic Interference	July 1, 1995	Do	Do
Keeping Up With the Microwave Revolution (FDA Pub No. 91–4160)	March 1, 1990	Do	Do
Laser Light Show Safety—Who's Responsibility (FDA 86–8262)	May 1, 1986	Do	Do
Letter to Manufacturers and Importers of Microwave Ovens—Open Door Operation of Microwave Ovens as a Result of Oven Miswiring	March 28, 1980	Do	Do
Letter to Trade Association: ReUse of Single-use or Disposable Medical Devices	December 27, 1995	Do	Do
Letter: Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products	August 21, 1986	Do	Do
Medical Device Electromagnetic Interference Issues, Problem Reports, Standards, and Recommendations		Do	Do
Medical Devices and EMI: The FDA Perspective	January 1, 1995	Do	Do
Policy on Lamp Compatability (sunlamps)	September 2, 1986	Do	Do
Policy on Warning Label Required on Sunlamp Products	June 25, 1985	Do	Do
Quality Assurance Guidelines for Hemodialysis Devices	February 1, 1991	Do	Do
Quality Control Guide for Sunlamp Products (FDA 88–8234)	March 1, 1988	Do	Do
Quality Control Practices for Compliance with the Federal Mercury Vapor Lamp Performance Standard	May 1, 1980	Do	Do
Reporting Guide for Product Reports on High Intensity Mercury Vapor Discharge Lamps (21 CFR 1002)	September 1, 1995	Do	Do
Reporting of New Model Numbers to Existing Model Families	June 14, 1983	Do	Do
Safety of Electrically Powered Products: Letter To Medical Device and Electronic Product Manufacturers From Lillian Gill & BHB correction memo	September 18, 1996	Do	Do
Shielded Trocars and Needles used for Abdominal Access during Laparoscopy	August 23, 1996	Do	Do
Suggested State Regulations for Control of Radiation—Volume II Nonionizing Radiation—Lasers (FDA Pub No. 83–8220)	January 1, 1982	Do	Do
Unsafe Patient Lead Wires and Cables	September 3, 1993	Do	Do
Imports: Radiation-Producing Electronic Products (FDA 89–8008)	November 1, 1988	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval	August 5, 1999	Office of Compliance (OC)/ Division of Program Operations (DOP)	Do
Letter to Medical Device Manufacturer on Pentium Processors	February 14, 1995	Office of Compliance (OC)/ Office of the Center Director (OCD)	Do
Sec. 300.600 Commercial Distribution with Regard to Premarket Notification [510(k)] [CPG 7124.19]	September 24, 1987	Do	Do
Letter to Industry, Powered Wheelchair/ Scooter or Accessory/ Component Manufacturer from Susan Alpert, Ph.D.,M.D.	May 26, 1994	Office of the Center Director (OCD)/Office of Device Evaluation (ODE)	Do
General/Specific Intended Use; Guidance for Industry; Final	November 4, 1998	Do	Do
ODE Executive Secretary Guidance Manual	August 7, 1987	Do	Do
Preamendments Class III Strategy; SXAlpert	April 19, 1994	Do	Do
Early Collaboration Meetings Under the FDA Modernization Act (FDAMA), Guidance for Industry and CDRH Staff [FDAMA]	February 19, 1998	Do	Do
"Real-Time" Review Program for Premarket Approval Application (PMA) Supplements	April 22, 1997	Office of Device Evaluation (ODE)	Do
30-Day Notices and 135-Day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH [FDAMA]; Final	February 19, 1998	Do	Do
510(k) Quality Review Program (Blue Book Memo)	March 29, 1996	Do	Do
Convenience Kits Interim Regulatory Guidance (include 874)	May 20, 1997	Do	Do
Determination of Intended Use for 510(k) Devices Guidance for Industry and CDRH Staff [FDAMA]; Final	January 30, 1998	Do	Do
Distribution and Public Availability of Premarket Approval Application Summary of Safety and Effectiveness Data Packages [Blue Book Memo #P98–1]; Final	October 10, 1997	Do	Do
Document Review by the Office of the Chief Counsel (Blue Book Memo G96–1))	June 6, 1996	Do	Do
Modifications to Devices Subject to Premarket Approval—The PMA Supplement Decision Making Process; Guidance for Industry, Draft	August 6, 1998	Do	Do
Contents of Product Development Protocol; Guidance for Industry, Draft	July 27, 1998	Do	Do
Frequently Asked Questions on The New 510(k) Paradigm; Guidance for Industry; Final	October 22, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Evidence Models for the Least Burdensome Means to Market; Guidance for Industry and FDA Reviewers; Draft	September 1, 1999	Do	Do
Supplements to Approved Applications for Class III Medical Devices: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review [FDAMA]; Guidance for Industry; Final	May 20, 1998	Do	Do
New Model Medical Device Development Process; Guidance for Industry; Final	July 21, 1998	Do	Do
Guidance for Off-the-Shelf Software Use in Medical Devices; Final	September 9, 1999	Do	Do
Guidance for Submitting Reclassification Petition	June 1, 1999	Do	Do
Guidance on Amended Procedures for Advisory Panel Meetings [FDAMA]; Final	January 26, 1999	Do	Do
Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies—For Use by CDRH & Industry [FDAMA]; Final	February 19, 1998	Do	Do
Guidance on the Use of Standards in Substantial Equivalence Determinations; Final	March 12, 2000	Do	Do
PMA Shell Development and Modular Review; Guidances for the Medical Device Industry; Final	November 6, 1998	Do	Do
New Section 513(f)(2)—Evaluation of Automatic Class III Designation, Guidance for Industry and CDRH Staff [FDAMA]; Final	February 19, 1998	Do	Do
Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff [FDAMA]; Final	February 19, 1998	Do	Do
SMDA Changes-Premarket Notification; Regulatory Requirements for Medical Devices [510(k)] Manual Insert	April 17, 1992	Do	Do
The New 510(k) Paradigm-Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications; Final	March 20, 1998	Do	Do
4-of-A-Kind PMA's	October 1, 1991	Do	Do
Application of the Device Good Manufacturing Practice (GMP) Regulation to the Manufacture of Sterile Devices	December 1, 1993	Do	Do
CDRH Submissions Coversheet [PMA/PDP/510k/IDE]	May 8, 1998	Do	Do
CDRH's 510(k)/IDE/PMA Refuse to Accept/Accept/File Policies	June 30, 1993	Do	Do
Classified Convenience Kits	April 30, 1993	Do	Do
Color Additive Petitions (p. II–19 of PMA Manual)	June 1, 1987	Do	Do
Color Additive Status List (Inspection Operations Manual)	February 1, 1989	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Color Additives for Medical Devices (Sneeko)	November 15, 1985	Do	Do
Deciding When to Submit a 510(k) for a Change to an Existing Device	January 10, 1997	Do	Do
Device Specific Guidance Documents (List)	May 11, 1993	Do	Do
FDA Guide for Validation of Biological Indicator Incubation Time	January 1, 1986	Do	Do
FDA Policy For The Regulation Of Computer Products (DRAFT)	November 13, 1989	Do	Do
Format for IDE Progress Reports	June 1996	Do	Do
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices; Guidance for FDA and Reviewers and Industry; Final	May 29, 1998	Do	Do
Guidance for Preparation of PMA Manufacturing Information	August 1, 1992	Do	Do
Guide for Establishing and Maintaining a Calibration Constancy Intercomparison System for Microwave Oven Compliance Survey Instruments (FDA 88–8264)	March 1, 1988	Do	Do
Guideline for the Monitoring of Clinical Investigations	January 1, 1988	Do	Do
Guideline on General Principles of Process Validation	May 1, 1987	Do	Do
Guideline on Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	Do	Do
Guideline on Validation of the Limulus Amebocyte Lysate (LAL) Test as an End-Product Endotoxin Test	December 1, 1987	Do	Do
Indications for Use Statement	January 2, 1996	Do	Do
Industry Representatives on Scientific Panels	March 27, 1987	Do	Do
Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance	April 1, 1996	Do	Do
Limulus Amebocyte Lysate; Reduction of Samples for Testing	October 23, 1987	Do	Do
Master Files Part III; Guidance on Scientific and Technical Information	June 1, 1987	Do	Do
Electromagnetic Compatibility for Medical Devices: Issues and Solutions; Memorandum	June 13, 1995	Do	Do
Methods for Conducting Recall Effectiveness Checks	June 16, 1978	Do	Do
Necessary Information for Diagnostic Ultrasound 510(k) (Draft)	November 24, 1987	Do	Do
PMA Review Schedule [P87–1]	March 31, 1988	Do	Do
Points to Consider in the Characterization of Cell Lines Used to Produce Biological Products (from John C. Petricciani, M.D.)	June 1, 1984	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Preamendment Class III Devices	March 11, 1992	Do	Do
Premarket Notification [510(k)] Status Request Form, revised	March 14, 1997	Do	Do
Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers (FDA 90–4236)	September 1, 1989	Do	Do
Proposal for Establishing Mechanisms for Setting Review Priorities Using Risk Assessment and Allocating Review Resources and T93–28 dated June 25, 1993 Device "Fast Track" Plan Announcement (Include with 926 930)	June 30, 1993	Do	Do
Questions and Answers for the FDA Reviewer Guidance: Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities	September 3, 1996	Do	Do
Shelf Life of Medical Devices	March 1, 1991	Do	Do
Substantial Equivalence (SE) Decision Making Documentation ATTACHED: "SE" Decision Making Process (Detailed), i.e., the decision making tree	January 1, 1990	Do	Do
Suggested Content for Original IDE Application Cover Letter—Version 4	February 27, 1996	Do	Do
Suggestions for Submitting a Premarket Approval (PMA) Application	April 1, 1993	Do	Do
Threshold Assessment of the Impact of Requirements for Submission of PMA's for 31 Medical Devices Marketed Prior to May 28, 1976	January 1, 1990	Do	Do
Interagency Agreement between FDA & HCFA; #D95–2, Attachment A	September 15, 1995	Office of Device Evaluation (ODE)/BlueBook	Do
Criteria for Categorization of Investigational Devices (HCFA); #D95–2, Attachment B	September 15, 1995	Do	Do
Deciding When to Submit a 510(k) for a Change to an Existing Device; Blue Book Memo #K97–1	January 10, 1997	Do	Do
510(k) Additional Information Procedures #K93–1 (Blue Book Memo)	July 23, 1993	Do	Do
510(k) Refuse to Accept Procedures #K94–1 (Blue Book Memo)	May 20, 1994	Do	Do
510(k) Sign-Off Procedures #K94–2 (Blue Book Memo)	June 3, 1994	Do	Do
510(k) Sterility Review Guidance and Revision of November18/1994 #K90–1 (Blue Book Memo)	February 12, 1990	Do	Do
Announcement: Implementation of the FDA/HCFA Interagency Agreement Regarding Reimbursement Categorization of Investigational Devices, Att. A Interagency Agreement, Att. B Criteria for Categorization of Investigational Devices #D95–2 (Blue Book Memo)	September 15, 1995	Do	Do
Assignment of Review Documents #190–2 (Blue Book Memo)	August 24, 1990	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Center for Devices and Radiological Health's Investigational Device Exemption (IDE) Refuse to Accept Policy	June 30, 1993	Do	Do
Center for Devices and Radiological Health's Premarket Notification [510(k)] Refuse to Accept Policy—(updated Checklist March 14, 1995)	June 30, 1993	Do	Do
Clinical Utility and Premarket Approval #P91–1 (Blue Book Memo)	May 3, 1991	Do	Do
Consolidated Review of Submissions for Diagnostic Ultrasound Equipment, Accessories and Related Measurement Devices #G90–2 (Blue Book Memo)	October 19, 1990	Do	Do
Consolidated Review of Submissions for Lasers and Accessories #G90–1 (Blue Book Memo)	October 19, 1990	Do	Do
Continued Access to Investigational Devices During PMA Preparation and Review (Blue Book Memo)	July 15, 1996	Do	Do
Cover Letter: 510(k) Requirements During Firm-Initiated Recalls; Attachment A: Guidance on Recall and Premarket Notification Review Procedures During Firm-Initiated Recalls of Legally Marketed Devices (Blue Book Memo #K95–1)	November 21, 1995	Do	Do
Criteria for Panel Review of PMA Supplements #P86–3 (Blue Book Memo)	January 30, 1986	Do	Do
Delegation of IDE Actions #D88–1 (Blue Book Memo)	April 28, 1988	Do	Do
Device Labeling Guidance #G91–1 (Blue Book Memo)	March 8, 1991	Do	Do
Document Review Processing #91–1 (Blue Book Memo)	February 12, 1992	Do	Do
Documentation and Resolution of Differences of Opinion on Product Evaluations #G93–1 (Blue Book Memo)	December 23, 1993	Do	Do
Executive Secretaries Guidance Manual #G87–3	August 7, 1987	Do	Do
Goals and Initiatives for the IDE Program #D95–1 (Blue Book Memo)	July 12, 1995	Do	Do
Guidance on the Center for Devices and Radiological Health's Premarket Notification Review Program #K86–3 (Blue Book Memo)	June 30, 1986	Do	Do
HCFA Reimbursement Categorization Determinations for FDA-approved IDEs	October 31, 1995	Do	Do
IDE Refuse to Accept Procedures #D94–1 (Blue Book Memo)	May 20, 1994	Do	Do
Integrity of Data and Information Submitted to ODE #91–2 (Blue Book Memo)	May 29, 1991	Do	Do
Meetings with the Regulated Industry #189–3 (Blue Book Memo)	November 20, 1989	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Memorandum of Understanding Regarding Patient Labeling Review (Blue Book Memo #G96–3))	August 9, 1996	Do	Do
Nondisclosure of Financially Sensitive Information #I92–1 (Blue Book Memo)	March 5, 1992	Do	Do
ODE Regulatory Information for the Office of Compliance—Information Sharing Procedures #G87–2 (Blue Book Memo)	May 15, 1987	Do	Do
Overdue IDE Annual Progress Report Procedures #D93–1 (Blue Book Memo)	July 23, 1993	Do	Do
Panel Report and Recommendations on PMA Approvals #P86–5 (Blue Book Memo)	April 18, 1986	Do	Do
Panel Review of "Me-Too" Devices #P86–6 (Blue Book Memo)	July 1, 1986	Do	Do
Panel Review of Premarket Approval Applications #P91–2 (Blue Book Memo)	May 3, 1991	Do	Do
PMA Compliance Program #P91–3 (Blue Book Memo)	May 3, 1991	Do	Do
PMA Filing Decisions #P90–2 (Blue Book Memo)	May 18, 1990	Do	Do
PMA Refuse to File Procedures #P94–1 (Blue Book Memo)	May 20, 1994	Do	Do
PMA Supplements: ODE letter to manufacturers; identifies situations which may require the submission of a PMA supplement (When PMA Supplements are Required) #P90–1 (Blue Book Memo)	April 24, 1990	Do	Do
PMA/510(k) Triage Review Procedures #G94–1 (Blue Book Memo)	May 20, 1994	Do	Do
PMA's—Early Review and Preparation of Summaries of Safety and Effectiveness #P86–1 (Blue Book Memo)	January 27, 1986	Do	Do
Policy Development and Review Procedures #I90–1 (Blue Book Memo)	February 15, 1990	Do	Do
Premarket Approval Application (PMA) Closure #P94–1 (Blue Book Memo)	July 8, 1994	Do	Do
Premarket Notification—Consistency of Reviews #K89–1 (Blue Book Memo)	February 28, 1989	Do	Do
Review and Approval of PMA's of Licensees #P86–4 (Blue Book Memo)	October 22, 1990	Do	Do
Review of 510(k)s for Computer Controlled Medical Devices #K91–1 (Blue Book Memo)	August 29, 1991	Do	Do
Review of Final Draft Medical Device Labeling #P91–4 (Blue Book Memo)	August 29, 1991	Do	Do
Review of IDEs for Feasibility Studies #D89–1 (Blue Book Memo)	May 17, 1989	Do	Do
Review of Laser Submissions #G88–1 (Blue Book Memo)	April 15, 1988	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Telephone Communications Between ODE Staff and Manufacturers #93–1 (Blue Book Memo)	January 29, 1993	Do	Do
Toxicology Risk Assessment Committee #G89–1 (Blue Book Memo)	August 9, 1989	Do	Do
Use of International Standard ISO–10993, "Biological Evaluation of Medical Devices Part 1: Evaluation and Testing" (Replaces #G87–1 #8294) (Blue Book Memo)	May 1, 1995	Do	Do
Points to Consider for Portable Blood Glucose Monitoring Devices Intended for Bedside Use in the Neonate Nursery	February 20, 1996	Office of Device Evaluation (ODE)/Division of Clinical Laboratory Devices (DCLD)	Do
Letter to IVD Manufacturers on Streamlined PMA; Final	December 22, 1997		
Assessing the Safety/Effectiveness of Home-use In Vitro Diagnostic Devices (IVD's): Points to Consider Regarding Labeling and Premarket Submissions; Draft	October 1, 1988	Do	Do
Data for Commercialization of Original Equipment Manufacturer, Secondary and Generic Reagents for Automated Analyzers	June 10, 1996	Do	Do
Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies; Draft	August 31, 1995	Do	Do
Guidance Document for 510(k) Submission of Fecal Occult Blood Tests; Draft	July 29, 1992	Do	Do
Guidance Document for 510(k) Submission of Glycohemoglobin (Glycated or Glycosylated) Hemoglobin for IVDs; Draft	September 30, 1991	Do	Do
Guidance Document for 510(k) Submission of Immunoglobuline A, G, M, D and E Immunoglobulin System In Vitro Devices; Draft	September 1, 1992	Do	Do
Guidance for 510(k) Submission of Lymphocyte Immunophenotyping IVDs using Monoclonal Antibodies; Draft	September 26, 1991	Do	Do
Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) that are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease; Draft	October 8, 1999	Do	Do
Review Criteria for Nucleic Acid Amplification Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms; Draft	June 14, 1993	Do	Do
Premarketing Approval Review Criteria for Premarket Approval of Estrogen (ER) or Progesterone (PGR) Receptors In Vitro Diagnostic Devices Using Steroid Hormone Binding (SBA) with Dextran-Coated Charcoal (DCC) Separation, Histochemical Receptor Bl; Draft	September 10, 1992	Do	Do
Guidance Criteria for Cycloeporine PMA's	January 24, 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance Document for the Submission of Tumor Associated Antigen Premarket Notification [510(k)] to FDA	September 19, 1996	Do	Do
Guidance for 510(k)s on Cholesterol Tests for Clinical Laboratory, Physicians' Office Laboratory, and Home Use	July 14, 1995	Do	Do
Guidance for Industry—Abbreviated 510(k) Submissions for In Vitro Diagnostic Calibrators; Final	February 22, 1999	Do	Do
Document for Special Controls for Erythropoietin Assay Premarket Notifications [510(k)s] Guidance for Industry; Final	April 28, 1999	Do	Do
Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to Be Used By The Consumer; Guidance for Industry; Draft	December 30, 1998	Do	Do
Guidance on Labeling for Laboratory Tests; Guidance for Industry; Draft	June 24, 1999	Do	Do
In Vitro Diagnostic Bicarbonate/Carbon Dioxide Test System; Guidance for Industry; Final	July 6, 1998	Do	Do
In Vitro Diagnostic Chloride Test System; Guidance for Industry; Final	July 6, 1998	Do	Do
In Vitro Diagnostic C–Reactive Protein Immunological Test System; Guidance for Industry; Final	July 20, 1998	Do	Do
In Vitro Diagnostic Creatinine Test System; Guidance for Industry; Final	July 2, 1998	Do	Do
In Vitro Diagnostic Glucose Test System; Guidance for Industry ; Final	July 6, 1998	Do	Do
Guidance for Industry—In Vitro Diagnostic Potassium Test System; Final	July 6, 1998	Do	Do
In Vitro Diagnostic Sodium Test System; Guidance for Industry; Final	July 6, 1998	Do	Do
In Vitro Diagnostic Urea Nitrogen Test System; Guidance for Industry; Final	July 6, 1998	Do	Do
Points to Consider Guidance Document on Assayed and Unassayed Quality Control Material; Guidance for Industry;	February 3, 1999	Do	Do
In Vitro Diagnostic Fibrin Monomer Paracoagulation Test; Guidance for Industry and FDA Reviewers/Staff; Final	April 27, 1999	Do	Do
Guidance for Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing; Draft	December 21, 1999	Do	Do
Guidance for Submission of Immunohistochemistry Applications to the FDA	June 3, 1998	Do	Do
Points to Consider for Cervical Cytology Devices	July 25, 1994	Do	Do
Points to Consider for Collection of Data in Support of In-Vitro Device Submissions for 510(k) Clearance	September 26, 1994	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Points to Consider for Hematology Quality Control Materials	September 30, 1997	Do	Do
Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Devices/Cover Letter dated March 14/1996	February 1, 1996	Do	Do
Review Criteria for Assessment of Alpha-Fetoprotein (AFP) in vitro Diagnostic Devices for Fetal Open Neural Tube Defects Using Immunological Test Methodologies	July 15, 1994	Do	Do
Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices; Draft	March 8, 2000	Do	Do
Review Criteria for Assessment of Antimicrobial Sueceptibility Test Discs	October 30, 1996	Do	Do
Review Criteria for Assessment of Cytogenetic Analysis Using Automated and Semi-Automated Chromosome Analyzers	July 15, 1991	Do	Do
Review Criteria for Assessment of Human Chorionic Gonadotropin (hCG) in Vitro Diagnostic Devices (IVDs)	September 27, 1995	Do	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium Spp. Tuberculosis [(TB)]	July 6, 1993	Do	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Chlamydiae in Clinical Specimens	January 1, 1992	Do	Do
Review Criteria for Assessment of Laboratory Tests for the Detection of Antibodies to Helicobacter pylori	September 17, 1992	Do	Do
Review Criteria for Assessment of Portable Blood Glucose In Vitro Diagnostic Devices Using Glucose Oxidase, Dehydrogenase, or Hexokinase Methodology	February 14, 1996	Do	Do
Review Criteria for Assessment of Rheumatoid Factor(RF) In Vitro Diagnostic Devices Using Enzyme-Linked Immunoassay (EIA), Enzyme Linked Immunosorbent Assay (ELISA), Particle Agglutination Tests, and Laser and Rate Nephelometry	February 21, 1997	Do	Do
Review Criteria for Blood Culture Systems	August 12, 1991	Do	Do
Review Criteria for Devices Assisting in the Diagnosis of C. Difficile Associated Diseases	May 31, 1990	Do	Do
Review Criteria for Devices Intended for the Detection of Hepatitis B "e" Antigen and Antibody to Hbe	December 30, 1991	Do	Do
Review Criteria for In Vitro Diagnostic Devices for Detection of IGM Antibodies to Viral Agents	August 1, 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Review Criteria for In Vitro Diagnostic Devices for the Assessment of Thyroid Autoantibodies using Indirect Immunofluorescence Assay (IFA), Indirect Hemagglutination Assay (IHA), Radioimmunoassay (RIA), and Enzyme Linked Immunosorbent Assay (ELISA).	February 1, 1994	Do	Do
Review Criteria for In Vitro Diagnostic Devices that Utilize Cytogenetic In Situ Hybridization Technology for the Detection of Human Genetic Mutations (Germ Line and Somatic)	February 15, 1996	Do	Do
Review Criteria For Premarket Approval of In Vitro Diagnostic Devices for Detection of Antibodies to Parvovirus B19	May 15, 1992	Do	Do
Review Criteria for the Assessment of Allergen-Specific Immunoglobulin E (IGE) In-Vitro Diagnostic Devices Using Immunological Test Methodologies	March 2, 1993	Do	Do
Review Criteria for the Assessment of Antinuclear Antibodies (ANA) In-Vitro Diagnostic Devices Using Indirect Immunofluorescence Assay (IFA), Immunodiffusion (IMD) and Enzyme Linked Immunosorbent Assay (ELISA).	September 1, 1992	Do	Do
Guidance for Industry and FDA; Guidance for Indwelling Blood Gas Analyzer 510(k) Submissions	February 21, 2000	Office of Device Evaluation (ODE)/Division of Cardiovascular, Respiratory & Neurological Devices (DCRND)	Do
Balloon Valvuloplasty Guidance For The Submission Of an IDE Application and a PMA Application	January 1, 1989	Do	Do
Battery Guidance	July 12, 1993	Do	Do
Carotid Stent—Suggestions for Content of Submissions to the Food and Drug Administration in Support of Investigational Devices Exemption (IDE) Applications	October 26, 1996	Do	Do
Coronary and Cerebrovascular Guidewire Guidance	January 1, 1995	Do	Do
510(K) Submission Requirements for Peak Flow Meters; Draft	January 13, 1994	Do	Do
Emergency Resuscitator Guidance; Draft	April 14, 1993	Do	Do
Guidance for Implantable Cardioverter-Defibrillators; Draft	June 24, 1996	Do	Do
Guidance for the Preparation of Research and Marketing Applications for Vascular Graft Prostheses; Draft	August 1, 1993	Do	Do
Guidance for the Submission of Research and Marketing Applications for Interventional Cardiology Devices: PTCA Catheters, Atherectomy Catheters, Lasers, Intravascular Stents; Draft	May 1, 1995	Do	Do
Guidance: Human Heart Valve Allografts; Draft	June 21, 1991	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Intravascular Brachytherapy—Guidance for Data to be Submitted to the Food and Drug Administration in Support of Investigational Device Exemption (IDE) Applications; Draft	May 24, 1996	Do	Do
Percutaneous Transluminal Coronary Angioplasty Package Insert Template; Draft	February 7, 1995	Do	Do
Replacement Heart Valve Guidance; Draft	October 14, 1994	Do	Do
Reviewer Guidance for Ventilators; Draft	July 1, 1995	Do	Do
Reviewer Guidance on Face Masks and Shield for CPR; Draft	March 16, 1994	Do	Do
Cardiac Ablation Preliminary Guidance (Data to be Submitted to the FDA in Support Investigation Device Exemption Application; Draft	March 1, 1995	Do	Do
Electrode Recording Catheter Preliminary Guidance (Data to be Submitted to the FDA in Support of Premarket Notifications [510(k)s]) ; Draft	March 1, 1995	Do	Do
Excerpts Related to EMI from November 1993 Anesthesiology and Respiratory Devices Branch/EMC Standard for Medical Devices (to be used with EMI Standard)	November 1, 1993	Do	Do
General Guidance Document: Non-Invasive Pulse Oximeter	September 7, 1992	Do	Do
Guidance Document: Electrocardiograph (ECG) Surface Electrode Tester—Version 1.0	February 11, 1997	Do	Do
Guidance Document for Premarket Notification Submission for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer and Nitrogen Dioxide Analyzer; Final	January 24, 2000	Do	Do
Guidance Document for Vascular Prostheses 510(k) Submission; Final	November 26, 1999	Do	Do
Guidance for Annuloplasty Rings 510(k) Submissions; Final	November 26, 1999	Do	Do
Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions; Final	February 21, 2000	Do	Do
Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions; Final	January 17, 2000	Do	Do
Guidance for Cardiovascular Intravascular Filter 510(k) Submission; Final	November 26, 1999	Do	Do
Guidance for Extracorporeal Blood Circuit Defoamer 510(k) Submissions; Final	February 16, 2000	Do	Do
Cardiac Monitor Guidance (including Cardiotachometer and Rate Alarm); Guidance for Industry; Final	November 5, 1998	Do	Do
Diagnostic ECG Guidance (including Non-Alarming ST Segment Measurement); Guidance for Industry; Final	November 5, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Recommended Clinical Study Design for Ventricular Tachycardia Ablation; Guidance for Industry and for FDA Reviewers	May 7, 1999	Do	Do
Guidance for Oxygen Conserving Device 510(k) Review 73 BZD 868.5905 Noncontinuous Ventilator Class II	February 1, 1999	Do	Do
Guidance for Peak Flow Meters for Over-the-Counter Sale	June 23, 1992	Do	Do
Guidance for the Preparation of the Annual Report to the PMA Approved Heart Valve Prostheses	April 1, 1990	Do	Do
Guidance for the Submission of 510(k) Premarket Notifications for Electrocardiograph (ECG) Electrode Version 1.0	February 11, 1997	Do	Do
Guidance for the Submission of 510(k) Premarket Notifications for Electrocardiograph (ECG) Lead Switching Adapter Version 1.0	February 11, 1997	Do	Do
Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions; Final	January 14, 2000	Do	Do
Heated Humidifier Review Guidance	August 30, 1991	Do	Do
Implantable Pacemaker Testing Guidance	January 12, 1990	Do	Do
Vascular Graft Manufacturer, Developer, or Representative; Letter/Guidance	May 11, 1990	Do	Do
Medical Device Labeling—Suggested Format and Content; Draft Document	April 25, 1997	Do	Do
Non-Invasive Blood Pressure (NIBP) Monitor Guidance	March 10, 1997	Do	Do
Policy for Expiration Dating (DCRND RB92–G)	October 30, 1992	Do	Do
Review Guidelines for Oxygen Generators and Oxygen Equipment; Draft Document	April 14, 1993	Do	Do
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	October 1, 1993	Do	Do
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	November 9, 1990	Do	Do
Reviewer's Guidance for Oxygen Concentrator	August 30, 1991	Do	Do
Guidance for Conducting Stability Testing to Support an Expiration Date Labeling Claim for Medical Gloves; Draft	November 16, 1998	Office of Device Evaluation (ODE)/Division of Dental, Infection Control and General Hospital Devices (DDIGD)	Do
Devices for the Treatment and/or Diagnosis of Temporomandibular Joint Dysfunction and/or Orofacial Pain; Final	June 10, 1998	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submission of Washers and Washer-Disinfectors; Draft	November 5, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance Document for Washers and Washer-Disinfectors Intended for Processing Reusable Medical Devices	June 2, 1998	Do	Do
Overview of Information Necessary for Premarket Notification Submissions for Endoseous Implants; Final	April 21, 1999	Do	Do
Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme; Draft	February 8, 2000	Do	Do
Guidance on Premarket Notification [510(k)] Submissions for Sterilizers Intended for Use in Health Care Facilities; Addendum	September 19, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)'S] for Dental Alloys; Draft	March 3, 1997	Do	Do
Supplementary Guidance on the Content of Premarket Notification [510(k)] Submiesions for Medical Devices with Sharps Injury Prevention Features (Antistick); Draft	March 1, 1995	Do	Do
Guidance and Format of Premarket Notification [510(k)] Submiesions for Liquid Chemical Sterilants/High Level Disinfectants; Final	January 3, 2000	Do	Do
Guidance Document on Dental Handpieces	July 1, 1995	Do	Do
Premarket Notification [510(k)] Submissions for Testing for Skin Sensitization to Chemicals in Natural Latex Products; Guidance for Industry and FDA Reviewers/Staff; Final	January 13, 1999	Do	Do
Testing for Sensitizing Chemicals in Natural Rubber Latex Medical Devices; (Addendum to Premarket Notification [510(k) Submissions for Testing for Skin Sensitization to Chemicals in Natural Latex Products; Guidance for Industry and FDA Reviewers/Staff; Final)	July 27, 1997		
Neonatal and Neonatal Transport Incubators-Premarket Notifications; Guidance for Industry and FDA Reviewers; Final	September 18, 1996	Do	Do
Dental Cements Premarket Notification; Final	August 18, 1996	Do	Do
Guidance For The Arrangement and Content of a Premarket Approval (PMA) Application For An Endoseseous Implant For Prosthetic Attachment	May 16, 1989	Do	Do
Guidance for the Preparation of a Premarket Notification [510(k)] for Direct Filling Dental Composites	November 27, 1996	Do	Do
Guidance for the Preparation of Premarket Notification [510(k)] for Resorbable Periodontal Barriers	April 1991	Do	Do
Guidance on 510(k) Submissions for Implanted Infusion Ports	October 1, 1990	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities	August 1, 1993	Do	Do
Guidance on Premarket Notification [510(K)] Submissions for Short-Term and Long-Term Intravascular Catheters	March 16, 1995	Do	Do
Guidance on Premarket Notification [510(k)] Submissions for Sterilizers Intended for Use in Health Care Facilities	March 1, 1993	Do	Do
Guidance on Premarket Notification [510(k)] Submissions for Surgical Gowns and Surgical Drapes	August 1, 1993	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] for Testing for Skin Sensitization to Chemicals in Latex Products [Draize Testing]	February 13, 1998	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Sharps Containers	October 1, 1993	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants (Includes Addendum of March 9, 1994)	October 1, 1993	Do	Do
Guidance on the Content and Format of Premarket Notification 510(k) Submissions for Liquid Chemical Germicides	December 6, 1996	Do	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Protective Restraints	December 1, 1995	Do	Do
Guidance on the Content of Premarket Notification [510(K)] Submissions for Hypodermic Single Lumen Needles	April 1, 1993	Do	Do
Guidance on the Content of Premarket Notification [510(K)] Submissions for Piston Syringes	April 1, 1993	Do	Do
Guidance on the Content of Premarket Notification [510(K)] Submissions for Clinical Electronic Thermometers	March 1, 1993	Do	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for External Infusion Pumps	March 1, 1993	Do	Do
Dental Impression Materials Premarket Notification; Final	August 17, 1998	Do	Do
OTC Denture Cushions, Pads, Reliners, Repair Kits and Partially Fabricated Denture Kits; Final	August 18, 1998	Do	Do
Information Necessary for Premarket Notification Submissions For Screw-Type Endoseseous Implants	December 9, 1996	Do	Do
510(k) Information Needed for Hydroxyapatite Coated Orthopedic Implants	February 20, 1997	Office of Device Evaluation (ODE)/Division of General & Restorative Devices (DGRD)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Alternate Suture Labeling Resulting From the January 11, 1993 Meeting with HIMA (Reformatted December 17, 1997)	January 11, 1993	Do	Do
Calcium Phosphate (Ca-P) Coating Draft Guidance for Preparation of FDA Submissions for Orthopedic and Dental Endosseous Implants	February 21, 1997	Do	Do
Copy of October 9, 1992 Letter and Original Suture Labeling Guidance (Reformatted December 17, 1997)	October 9, 1992	Do	Do
510(k) Guideline for General Surgical Electrosurgical Devices; Draft	May 10, 1995	Do	Do
Data Requirements for Ultrahigh Molecular Weight Polyethylene (Uhmupe) Used in Orthopedic Devices; Draft	March 28, 1995	Do	Do
Guidance Document for Femoral Stem Prostheses; Draft	August 1, 1995	Do	Do
Guidance Document for Testing Acetabular Cup Prostheses; Draft	May 1, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Orthopedic Devices-The Basic Elements; Draft	July 16, 1997	Do	Do
Guidance for Arthroscopes and Accessory 510(k)s; Draft	May 1, 1994	Do	Do
Guidance for Testing MR Interaction with Aneurysm Clips; Draft	May 22, 1996	Do	Do
Guidance for the Preparation of a Premarket Notification for a Non-Interactive Wound and Burn Dressing [510(k)] ; Draft	May 31, 1995	Do	Do
Guidance for the Preparation of a Premarket Notification for Extended Laparoscopy Devices (ELD); Draft	August 30, 1994	Do	Do
Guidance for the Preparation of an IDE Submission for a Interactive Wound and Burn Dressing; Draft	April 4, 1995	Do	Do
Guidance for the Preparation of Premarket Notifications [510(k)] s for Cemented, Semi-Constrained Total Knee Prostheses; Draft	April 1, 1993	Do	Do
Outline for a Guidance Document for Testing Orthopedic Bone Cement, request for comments by December 10, 1993; Draft	November 1, 1993	Do	Do
Premarket Notification Review Guidance for Evoked Response Somatosensory Stimulators; Draft	June 1, 1994	Do	Do
Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part-3 Implant Model; Draft	September 12, 1994	Do	Do
Biofeedback Devices—Guidance for 510(k) Content; Draft	August 1, 1994	Do	Do
Cranial Perforator Guidance; Draft	July 13, 1994	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Clinical Data to be Submitted for Premarket Approval Application for Cranial Electrotherapy Stimulators; Draft	August 20, 1992	Do	Do
Guide for Cortical Electrode 510(k) Content; Draft	August 10, 1992	Do	Do
Neuro Endoscope Guidance; Draft	July 7, 1994	Do	Do
Electroencephalograph Devices Guidance for 510(k) Content; Draft	November 3, 1997	Do	Do
Galvanic Skin Response Measurement Devices-Draft Guidance for 510(k) Content	August 1, 1994	Do	Do
Guidance Document for the Preparation of IDEs for Spinal Systems; Final	January 13, 2000	Do	Do
Preparation of Investigational Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices; Guidance Document for Industry and CDRH Staff; Draft	March 18, 1998	Do	Do
Guidance Document for Surgical Lamp 510Ks; Final	July 13, 1998	Do	Do
Guidance Document for Testing Biodegradable Polymer Implant Devices; Draft	April 20, 1996	Do	Do
Guidance Document for Testing Bone Anchor Devices; Draft	April 20, 1996	Do	Do
Guidance Document for Testing Non-Articulating, "Mechanically Locked", Modular Implant Components; Draft	May 1, 1995	Do	Do
Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement (replaces 8623 and 8083)	April 26, 1994	Do	Do
Guidance Document for the Preparation of IDE and PMA Applications for Intra-Articular Prosthetic Knee Ligament Devices	February 18, 1993	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Submerged (Underwater) Exercise Equipment	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Electromyograph Needle Electrodes	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Exercise Equipment	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510k)] Applications for Mechanical and Powered Wheelchairs, and Motorized Three-Wheeled Vehicles	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Beds	July 26, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Immersion Hydrobaths	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Tables and Multifunctional Physical Therapy Tables	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Communications Systems (Powered and Non-Powered) and Powered Environmental Control Systems	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Therapeutic Massagers and Vibrators	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Heating and Cooling Devices	July 26, 1995	Do	Do
Guidance Document For The Preparation of Premarket Notification For Ceramic Ball Hip Systems	January 10, 1995	Do	Do
Guidance Document for Dura Substitute Devices; Final	August 13, 1999	Do	Do
Guidance Document for Neurological Embolization Devices; Guidance for Industry; Final	August 13, 1999	Do	Do
Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater; Guidance for Industry; Final	August 30, 1999	Do	Do
Guidance for Dermabrasion Devices; Final	March 2, 1999	Do	Do
Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses; Guidance for Industry; Draft	October 5, 1999	Do	Do
Guidance for Spinal System 510(k)s; Final	May 7, 1999	Do	Do
Guidance Document for Powered Suction Pump 510(k)s; Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance; Final	October 30, 1998	Do	Do
Guidance Document for Powered Muscle Stimulator 510(k)s; Guidance for Industry, FDA Reviewers/Staff and Compliance; Final	June 9, 1999	Do	Do
Guidance for the Content of Premarket Notifications for Esophageal and Tracheal Prostheses; Guidance for Industry; Final	April 28, 1998	Do	Do
Guidance for Studies for Pain Therapy Device—General Considerations in the Design of Clinical Studies for Pain-Alleviating Devices	May 12, 1998	Do	Do
Guidance for the Preparation of a Premarket Notification Application for a Surgical Mesh; Final	March 2, 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on the Content and Organization of a Premarket Notification for a Medical Laser	June 1, 1995	Do	Do
Guide for TENS 510(k) Content; Draft	August 1, 1994	Do	Do
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators	February 1997	Do	Do
Core Study for Silicone Breast Implants; Letter	January 11, 1996	Do	Do
ORDB 510(k) Sterility Review Guidance	July 3, 1997	Do	Do
Protocol for Dermal Toxicity Testing for Devices in Contact with Skin; Draft	January 1985	Do	Do
Reviewers Guidance Checklist for Intramedullary Rods	February 21, 1997	Do	Do
Reviewers Guidance Checklist for Orthopedic External Fixation Devices	February 21, 1997	Do	Do
Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses; Amendment 1; Draft	June 28, 1994	Office of Device Evaluation (ODE)/Division of Ophthalmic Devices (DOD)	Do
Guidance for Premarket Submission of Orthokeratology Rigid Gas Permeable Contact Lenses; Final	April 10, 2000	Do	Do
An FDA Survey of U.S. Contact Lens Wearers (Carol L. Herman) Reprinted from Contact Lens Spectrum	July 1, 1987	Do	Do
Announcement by Dr. Alpert at July 26, 1996 Ophthalmic Panel Meeting concerning Manufacturers & Users of Lasers for Refractive Surgery [Excimer]	August 26, 1996	Do	Do
Announcement: Information for Manufacturers & Users of Lasers for Refractive Surgery [Excimer]	September 22, 1997	Do	Do
Checklist of Information Usually Submitted in an Investigational Device Exemptions (IDE) Application for Refractive Surgery Lasers [Excimer]	October 10, 1996	Do	Do
Contact Lenses: The Better the Care the Safer the Wear; Publication No. FDA 91–4220	April 1, 1991	Do	Do
Discussion Points for Expansion of the "Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers"; Draft	September 5, 1997	Do	Do
Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses and June 28, 1994 corrections to pages 18 & 20; Draft	May 12, 1994	Do	Do
Premarket Notification 510(k) Guidance for Contact Lens Care Products; Draft	May 1, 1997	Do	Do
Facts for Consumers from the Federal Trade Commission-Eyeglasses	April 1, 1986	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
FDA Guidelines for Multifocal Intraocular Lens IDE Studies and PMA's	May 29, 1997	Do	Do
Ophthalmoscope Guidance (Direct and Indirect); Guidance for Industry	July 8, 1998	Do	Do
Guidance Document for Nonprescription Sunglasses; Final	October 9, 1998	Do	Do
Retinoscope Guidance; Final	July 8, 1998	Do	Do
Slit Lamp Guidance; Final	July 13, 1998	Do	Do
Revised Procedures for Adding Lens Finishing Laboratories to Approved Premarket Approval (PMA) Applications for Class III Rigid Gas Permeable Contact Lenses for Extended Wear; Guidance for Industry and FDA Staff; Final	August 11, 1998	Do	Do
Accountability Analysis for Clinical Studies for Ophthalmic Devices; Draft	August 4, 1999	Do	Do
Aqueous Shunts—510(k) Submissions; Final	November 16, 1998	Do	Do
Guidance on 510(k) Submissions for Keratoprostheses; Final	March 3, 1999	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Surgical Mask; Draft	January 16, 1998	Do	Do
Important Information About Rophae Intraocular Lenses	August 20, 1992	Do	Do
Intraocular Lens (IOL) Guidance Document; Draft	October 14, 1999	Do	Do
New FDA Recommendations & Results of Contact Lens Study (7 Day Letter)	May 30, 1989	Do	Do
Owners Certification of Lasers as PMA Approved Devices Excimer]	September 26, 1996	Do	Do
Third Party Review Guidance for Vitreous Aspiration and Cutting Device Premarket Notification [510(k)]	January 31, 1997	Do	Do
Update on Excimer Lasers for Nearsightedness	May 20, 1996	Do	Do
Guidance for Manufacturers Seeking Marketing Clearance of Ear, Nose, and Throat Endoscope Sheaths Used as Protective Barriers; Final	March 12, 2000	Do	Do
510(k) Checklist for Sterile Lubricating Jelly Used With Transurethral Surgical Instruments	September 19, 1994	Office of Device Evaluation (ODE)/Division of Reproductive, Abdominal, ENT & Radiological Devices (DRAERD)	Do
Guidance for Hemodialyzer Reuse Labeling; Draft	November 6, 1995	Do	Do
Content of Premarket Notification for Hemodialysis Delivery Systems; Guidance for Industry and CDRH Reviewers; Final	August 7, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi	February 8, 1999	Do	
CDRH Interim Regulatory Policy for External Penile Rigidity Devices	September 10, 1997	Do	Do
Checklist for Mechanical Lithotripters and Stone Dislodgers used in Gastroenterology and Urology	November 1, 1994	Do	Do
510(k) Checklist for Conditioned Response Enuresis Alarms; Draft	November 23, 1994	Do	Do
510(k) Checklist for Condom Catheters; Draft	February 23, 1995	Do	Do
510(k) Checklist for Endoscopic Electrosurgical Unit (ESU) and Accessories Used in Gastroenterology and Urology; Draft	August 16, 1995	Do	Do
510(k) Checklist for Endoscopic Light Sources Used in Gastroenterology and Urology; Draft	June 22, 1995	Do	Do
510(k) Checklist for Non-Implanted Electrical Stimulators Used for the Treatment of Urinary Incontinence; Draft	June 6, 1995	Do	Do
510(k) Checklist for Urological Irrigation System and Tubing Set; Draft	August 1, 1995	Do	Do
Guidance for Clinical Investigations of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH); Draft	November 11, 1994	Do	Do
Guidance for Information on Clinical Safety and Effectiveness Data for Extracorporeal Shock Wave Lithotripsy of Upper Urinary Tract (Renal Pelvis, Renal Calyx and Upper Ureteral) Calculi; Draft	February 5, 1992	Do	Do
Guidance for Preclinical and Clinical Investigations of Urethral Bulking Agents Used in the Treatment of Urinary Incontinence; Draft	November 29, 1995	Do	Do
Guidance for Preparation of PMA Applications for Penile Inflatable Implants; Draft	March 16, 1993	Do	Do
Guidance for Preparation of PMA Applications for Testicular Prostheses; Draft	March 16, 1993	Do	Do
Guidance for Preparation of PMA Applications for the Implanted Mechanical/Hydraulic Urinary Continence Device (Artificial Urinary Sphincter); Draft	May 1, 1995	Do	Do
Guidance for Review of Bone Densitometer 510(k) Submissions; Draft	November 9, 1992	Do	Do
Guidance for the Clinical Investigation of Urethral Stents; Draft	November 2, 1995	Do	Do
Guidance for the Content of Premarket Notifications for Endoscopes used in Gastroenterology and Urology; Draft	March 17, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for the Content of Premarket Notifications for Loop and Rollerball Electrodes for GYN Electrosurgical Excisions; Draft	July 29, 1991	Do	Do
Guidance for the Content of Premarket Notifications for Menstrual Tampons; Draft	May 25, 1995	Do	Do
Guidance for the Content of Premarket Notifications for Urological Balloon Dilatation Catheters; Draft	January 24, 1992	Do	Do
Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis; Draft	May 30, 1997	Do	Do
Guidance Outline-Points to Consider for Clinical Studies for Vasovasostomy Devices; Draft	November 30, 1993	Do	Do
Guidance to Firms on Biliary Lithotripsy Studies; Draft	August 2, 1990	Do	Do
Suggested Information for Reporting Extracorporeal Shock Wave Lithotripsy Device Shock Wave Measurements; Draft	January 18, 1991	Do	Do
Thermal Endometrial Ablation Devices (Submission Guidance for an IDE); Draft	March 14, 1996	Do	Do
Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k); Draft Availability	September 10, 1998	Do	Do
Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters; Guidance for Industry; Final	November 30, 1998	Do	Do
Guidance ("Guidelines") for Evaluation of Fetal Clip Electrode	March 8, 1977	Do	Do
Guidance ("Guidelines") for Evaluation of Hysteroscopic Sterilization Devices	May 10, 1978	Do	Do
Guidance ("Guidelines") for Evaluation of Laparoscopic Bipolar and Thermal Coagulators (and Accessories)	May 1978	Do	Do
Guidance ("Guidelines") for Evaluation of Tubal Occlusion Devices	November 22, 1977	Do	Do
Guidance for the Submission of Premarket Notifications for Emission Computed Tomography Devices and Accessories (SPECT and PET) and Nuclear Tomography Systems; Guidance for Industry; Final	December 3, 1998	Do	Do
Guidance for the Submission of Premarket Notifications for Radionuclide Dose Calibrators; Guidance for Industry; Final	November 20, 1998	Do	Do
Guidance for the Submission of Premarket Notifications for Magnetic Resonance Diagnostic Devices; Guidance for Industry; Final	November 14, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Harmonic Imaging With/Without Contrast Premarket Notification; Guidance for Industry; Final	November 16, 1998	Do	Do
Non-Automated Sphygmomanometer (Blood Pressure Cuff) Guidance; Version 1; Guidance for Industry; Final	November 19, 1998	Do	Do
Uniform Contraceptive Labeling; Guidance for Industry; Final	July 23, 1998	Do	Do
Guidance for the Content of Premarket Notifications for Penile Rigidity Implants; Final	January 16, 2000	Do	Do
Electro-optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA; Guidance for Industry; Draft	August 25, 1999	Do	Do
Noise Claims in Hearing Aid Labeling; Final	October 21, 1998	Do	Do
Guidance for Magnetic Resonance Diagnostic Devices—Criteria for Significant Risk Investigations	September 29, 1997	Do	Do
Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery; Draft	December 16, 1999	Do	Do
Guidance for the Arrangement and Content of a Premarket Approval (PMA) Application for a Cochlear Implant in Children Ages 2 through 17 Years	May 1, 1990	Do	Do
Guidance for the Comment and Review of 510(k) Notifications for Picture Archiving and Communications Systems (PACS) and Related Devices	August 1, 1993	Do	Do
Guidance for the Content of Premarket Notifications for Biopsy Devices Used in Gastroenterology and Urology	February 10, 1993	Do	Do
Guidance for the Content of Premarket Notifications for Conventional and Antimicrobial Foley Catheters	September 12, 1994	Do	Do
Guidance for the Content of Premarket Notifications for Metal Expendable Biliary Stents; Final	February 5, 1998	Do	Do
Guidance for the Content of Premarket Notifications for Urethral Stents	February 10, 1993	Do	Do
Guidance for the Content of Premarket Notifications for Urine Drainage Bags	June 7, 1994	Do	Do
Guidance for the Content of Premarket Notifications for Urodynamic/Uroflowmetry Systems	July 29, 1994	Do	Do
Guidance for the Submission of 510(k)'s for Solid State X-ray Imaging Devices; Final	August 6, 1999	Do	Do
Guidance for the Technical Content of a Premarket Approval (PMA) Application for an Endolymphatic Shunt Tube with Valve	April 1, 1990	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for the Content of Premarket Notifications for Conventional and Permeability Hemodialyzers; Guidance to Industry and CDRH Reviewers; Final	August 7, 1998	Do	Do
Guideline for the Arrangement and Content of a Premarket Approval (PMA) Application for a Cochlear Implant in Adults at Least 18 Years of Age	May 1, 1990	Do	Do
Guidelines for Evaluation of Non-Drug IUD's	September 28, 1976	Do	Do
Home Uterine Activity Monitors: Guidance for the Submission of 510(k) Premarket Notifications; Draft	July 30, 1999	Do	Do
Hysteroscopes and Gynecology Laparoscopes—Submission Guidance for a 510(k) includes 00192	March 27, 1998	Do	Do
Hysteroscopic and Laparoscopic Insufflators: Submission Guidance for a 510(k)	August 1, 1995	Do	Do
Information for a Latex Condom 510(k) Submission for Obstetrics-Gynecology Devices Branch; Draft	July 1, 1997	Do	Do
Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers; Draft	September 30, 1997	Do	Do
Intrapartum Continuous Monitors for Fetal Oxygen Saturation and Fetal pH; Submission Guidance for a PMA; Draft	June 14, 1997	Do	Do
Latex Condoms for Men-Information for 510(k) Premarket Notifications: Use of Consensus Standards for Abbreviated Submissions	July 23, 1998	Do	Do
Notice to Manufacturers of Bone Mineral Densitometers; Letter	September 25, 1997	Do	Do
Premarket Testing Guidelines for Fallopescopes	November 20, 1992	Do	Do
Premarket Testing Guidelines for Female Barrier Contraceptive Devices Also Intended to Prevent Sexually Transmitted Diseases	April 4, 1990	Do	Do
Reviewer Guidance for Automatic X-Ray Film Processor 510(k)	February 1, 1990	Do	Do
Simplified 510(k) Procedures For Certain Radiology Devices (December 21, 1993 letter from L Yin, ODE/DRAERD, to NEMA)	December 21, 1993	Do	Do
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems; Status Update	June 19, 1998	Do	Do
Testing Guidance for Male Condoms Made from New Material (Non-Latex)	June 29, 1995	Do	Do
Tympanostomy Tubes Submission Guidance for a 510(k) Premarket Notification; Final	January 14, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on Amended Procedures for Advisory Panel Meetings [FDAMA] Final	March 20, 1998	ODE/Program Operations Staff (POS)	Do
PMA/510(k) Expedited Review-Guidance for Industry and CDRH Staff [FDAMA] Final	March 20, 1998	Do	Do
PMA/510(k) Expedited Review #G98–4 (Blue Book Memo)	March 20, 1998	Do	Do
Guidance on IDE Policies and Procedures [FDAMA]; Final	January 20, 1998	Do	Do
FDA Modernization Act of 1997 Guidance for the Device Industry on Implementation of Highest Priority Provisions [FDAMA]; Final	February 6, 1998	Office of Health and Industry Programs (OHIP)	Do
Overview of FDA Modernization Act of 1997 Medical Device Provisions [FDAMA]; Final	June 5, 1998	Do	Do
Guidance: The Mammography Quality Standards Act Final Regulations Document #1; Final	March 4, 1999	Office of Health and Industry Programs (OHIP)/Division of Mammography Quality and Radiation Programs (DMQRP)	Do
Guidance: The Mammography Quality Standards Act Final Regulations Document #2; Final	February 25, 2000	Do	Do
Guidance: The Mammography Quality Standards Act Final Regulations Document #3; Draft	December 8, 1999	Do	Do
Guidance The Mammography Quality Standards Act Final Regulations—Mammography Facility Survey and Medical Physicist Qualification Requirements Under MQSA; Final	May 5, 1999	Do	Do
Guidance The Mammography Quality Standards Act Final Regulations—Preparing for MQSA Inspections; Final	May 5, 1999	Do	Do
Guidance for Request and Issuance of Interim Notice Letters for Mammography Facilities Under the Mammography Quality Standards Act, 42 U.S.C. Section 263(b); Final	May 4, 1999	Do	Do
Guidance for Review of Cases of Possible Suspension or Revocation of Mammography Facility Certificates Under the Mammography Quality Standards Act, 42 U.S.C. 263(b); Final	March 26, 1998	Do	Do
Guidance for Review of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act, 42 U.S. C. 263(b); Final	March 26, 1998	Do	Do
Guidance for Submission of Request for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Acts, 42 U.S.C. 263(b); Final	March 26, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies; Final	August 13, 1998	Do	Do
Guidance for Policy and Standard Operating Procedures When Mammography Facilities in States that Have Accreditation Bodies Intend to Change Accreditation Bodies; Final	April 15, 1998	Do	Do
Guidance: The Mammography Quality Standards Act Final Regulations Preparing for MQSA Inspections; Final	May 5, 1999	Do	Do
Guidance: The Mammography Quality Standards Act Final Regulations Motion of Tube-Image Receptor Assembly; Final	March 23, 1999	Do	Do
Guidance: The Mammography Quality Standards Act Final Regulations: Quality Assurance Documentation; Final	December 7, 1999	Do	Do
Premarket Notification: 510(k)-Regulatory Requirements for Medical Devices (FDA 95–4158) [available on disk]	August 1, 1995	Office of Health and Industry Programs (OHIP)/Division of Small Manufacturers Assistance (DSMA)	Do
Labeling-Regulatory Requirements for Medical Devices (FDA 89–4203)	September 1, 1989	Do	Do
Classification Names for Medical Devices and In Vitro Diagnostic Products (FDA Pub No. 95–4246)	March 1,.1995	Do	Do
An Introduction to Medical Device Regulations (FDA 92–4222)	January 1, 1992	Do	Do
Comparison Chart: 1996 Quality System Reg vs. 1978 Good Manufacturing Practices Reg vs. ANSI/ISO/ASQC Q9001 and ISO/DI 13485:1996	November 11, 1996	Do	Do
Medical Glove Guidance Manual; FDA 99–4257; Draft	August 30, 1999	Do	Do
In Vitro Diagnostic Devices: Guidance for the Preparation of 510(k) Submissions (FDA 97–4224) [available on disk]	January 1, 1997	Do	Do
Instructions for Completion of Medical Device Registration and Listing Forms FDA 2891, 2891a and 2892	July 1, 1997	Do	Do
Investigational Device Exemptions [IDE] Manual (FDA 98–4159) [available on disk]	June 1, 1998	Do	Do
Medical Device Appeals and Complaints: A Guidance on Dispute Resolution; Final	February 19, 1998	Do	Do
Medical Device Reporting for Manufacturers [available on disk]	March 1, 1997	Do	Do
Premarket Approval (PMA) Manual; Final	January 1, 1998	Do	Do
Regulatory Requirements for Devices for the Handicapped (FDA 87–4221)	August 1, 1987	Do	Do
Small Business Guide to FDA (FDA 96–1092)	January 1, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including "Instructions for Requests for Certificate to Foreign Governments"; Final	February 7, 2000	Do	Do
U.S.-FDA-Regulation of Medical Devices; Background Information for International Officials (entire document available on disk); Final	April 14, 1999	Do	Do
510(k) Manual-Premarket Notification: 510(k)-Regulatory Requirements for Medical Devices	August 1, 1995	Do	Do
Export—Foreign Liaison (part of "Exporting Medical Devices," February 25, 1999)	December 2, 1998	Do	Do
Exporting Medical Devices; Final	February 25, 1999	Do	Do
Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA); Guidance for Staff, Industry, and Third Parties; Final	January 6, 1999	Do	Do
Implementation of Third Party Programs Under the FDA Modernization Act of 1997; Guidance for Staff, Industry, and Third Parties; Final	October 30, 1998	Do	Do
Medical Device Quality Systems Manual: A Small Entity Compliance Guide	December 1, 1996	Do	Do
Do It By Design—An Introduction to Human Factors in Medical Devices	December 1, 1996	Office of Health and Industry Programs (OHIP)/Division of Device User Programs and Systems Analysis (DUPSA)	Do
Guidance on Medical Device Patient Labeling; Guidance for Industry; Draft	March 3, 2000	Do DUPSA	Do
Device Use Safety: Incorporating Human Factors in Risk Management; Guidance For Industry and FDA Premarket and Postmarket Review Staff; Draft	August 3, 1999	Do DUPSA	Do
Human Factors Points to Consider for IDE Devices; Draft	January 17, 1997	Do DUPSA	Do
Human Factors Principles for Medical Device Labeling	September 1, 1993	Do DUPSA	Do
Medical Device Reporting for User Facilities	April 1, 1996	Do DUPSA	Do
Write it Right; Recommendations for Developing User Instruction Manuals for medical Devices Used in Home Health Care	August 1, 1993	Do	Do
Perspectives on Clinical Studies for Medical Device Submissions (Statistical)	Unknown Pre-1997	Office of Surveillance and Biometrics (OSB)/	Do
PMA Review Statistical Checklist	Unknown Pre-1997	Do	Do
Statistical Aspects of Submissions to FDA: A Medical Device Perspective (also includes an Appendix the article "Observed Uses and Abuses of Statistical Procedures in Medical Device Submissions"	June 1, 1984	Office of Surveillance and Biometrics (OSB)/Division of Biostatistics (DB)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Amendment to Guidance on Discretionary Postmarket Surveillance on Pacemaker Leads; Final	March 30, 1994	Office of Surveillance and Biometrics (OSB)/Issues Management Staff (IMS)	Do
Guidance on Procedures for Review of Postmarket Surveillance Submissions [FDAMA]; Final	February 19, 1998	Do	Do
Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies [FDAMA]; Final	February 19, 1998	Do	Do
SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols [FDAMA]; Guidance for Industry and FDA Staff; Final	November 2, 1998	Do	Do
Guidance to Sponsors on the Development of a Discretionary Postmarket Surveillance Study for Permanent Implantable Cardiac Pacemaker Electrodes (Leads); Final	June 9, 1993	Do	Do
Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements; Guidance for Industry; Final	February 2, 2000	Office of Surveillance and Biometrics (OSB)/Division of Postmarket Surveillance (DPS)	Do
Common Problems: Baseline Reports and Medwatch Form 3500A	January 1997	Office of Surveillance and Biometrics (OSB)/Division of Surveillance Systems (DSS)	Do
Instructions for Completing FDA Form 3500A with Coding Manual for Form 3500A (MEDWATCH) (MDR)	December 15, 1995	Do	Do
MDR Documents Access Information for National Technical Information Service (NTIS)	May 10, 1996	Do	Do
MDR Internet List Server (listserv) Instruction sheet	August 29, 1996	Do	Do
MEDWATCH FDA Form 3500A For Use By User Facilities, Distributors and Manufacturers for Mandatory Reporting (MDR)	June 1, 1993	Do	Do
MDR Reporting Guidance For Breast Implants—E1996002	August 7, 1996	Do	Do
Addendum to the Instructions for Completing FDA Form 3500A with Coding Manual (MEDWATCH) (MDR)	June 9, 1999	Do	Do
Instructions for Completing Form 3417: Medical Device Reporting Baseline Report MDR]	March 31, 1997	Do	Do
Summary Reporting Approval for Adverse Events; Letter to Manufacturers; Final	July 31, 1997	Do	Do
MDR Guidance Document No. 1—IOL—E1996004	August 7, 1996	Do	Do
MDR Guidance Document No. 3-Needlestick & Blood Exposure—E1996003	August 9, 1996	Do	Do
MDR Guidance Document: Remedial Action Exemption—E1996001	July 30, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
MDR Reporting Guidance for Date-Related Problems Including Y2K	April 16, 1999	Do	Do
Medical Device Reporting: An Overview; Final	April 1, 1996	Do	Do
Variance from Manufacturer Report Number Format [MDR letter]; Final	July 16, 1996	Do	Do
A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems; Draft	February 7, 1997	Office of Science and Technology (OST)	Do
Frequently Asked Questions on Recognition of Consensus Standards [FDAMA]; Final	December 21, 1998	Do	Do
Viable Bacteriophage in CO2 Laser Plume: Aerodynamic Size Distribution	Unknown pre-1997	Do	Do
Guidance on the Recognition and Use of Consensus Standards/Appendix A [FDAMA]; Final	February 19, 1998	Do	Do
CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standard for Recognition; Final	August 6, 1999	Do	Do
Medical Devices Containing Materials Derived from Animal Sources (Except for In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry; Final	November 18, 1998	Do	Do
Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problems; Final	May 15, 1998	Do	Do
Guidance on Immunotoxicity Testing; Final	May 6, 1999	Office of Science and Technology (OST)/Division of Life Sciences (DLS)	Do

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E-Mail or Internet)
Compliance Policy Guides Manual	1998	FDA Regulated Industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, PB98–920500
Compliance Programs Guidance Manual	1995	FDA Regulated Industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, PB95–915499
FDA Recall Policy	1995	FDA Regulated Industries	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204
Investigators' Operations Manual	May 1996	FDA Regulated Industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, PB–95–913399

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E–Mail or Internet)
Regulatory Procedures Manual	August 1995	FDA Regulated Industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, PB95–265534
Requirements of Laws and Regulations Enforced by the U.S. Food and Drug Administration "Blue Book"	1997	FDA Regulated Industries	Superintendent of Documents, Government Printing Office, Washington, DC 20402
Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed	1995	Food and Animal Feed Industries	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, PB96–920500
Pesticides Analytical Manual	1994	Food Industry	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, PB94–911699
FDA Advisory for Deoxynivanol (DON) in Finished Wheat Products Intended for Human Consumption and in Grain and Grain By-Products for Animal Feed	September 16, 1993	Food and Animal Feed Industries	Office of Plant & Dairy Foods & Beverages, Food and Drug Administration (HFS–306), 200 C St. SW., Washington, DC 20204, 202–205–4681
FDA's Cosmetic Labeling Manual	October 1991	Cosmetic Industry	Food and Drug Administration, Office of Colors and Cosmetics (HFS–105), 200 C St. SW., Washington, DC 20204, 202–205–4493
Statement of Policy: Foods Derived from New Plant Varieties: Notice	May 29, 1992 (57 FR 22984)	Developers of New Plant Food Varieties	Office of Premarket Approval, Food and Drug Administration (HFS–200), 200 C St. SW., Washington, DC 20204, 202–418–3100
A Food Labeling Guide	May 1997	Food Industry	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–5251
Appendix I—Model Small Business Food Labeling Exemption Notice	June 1996	Food Industry	Do
Food Labeling: Questions and Answers	August 1994	Food Industry	Do
Food Labeling: Questions and Answers: Volume II	February 1996	Food Industry	Superintendent of Documents, Government Printing Office, Washington, DC 20420, 202–512–1800
Fair Packaging and Labeling Act Manual	June 1978	Food Industry	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650, PB–83–222117
Bacteriological Analytical Manual 7th Edition	1992	FDA Regulated Industries	AOAC International, 481 N. Frederick Ave., Suite 500, Gaithersburg, MD, 20877–2417, 301–924–7077
FDA Food Importer's Guide for Low-Acid Canned and Acidified Foods	1985	Food Industry	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–5251

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E-Mail or Internet)
Fabrication of Single Service Containers and Closures for Milk and Milk Products	1995	States	Milk Safety Branch (HFS–626), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20202, 202–205–9175
Evaluation of Milk Laboratories	1995	States	Do
Methods of Making Sanitation Ratings Of Milk Supplies	1995	States	Do
Dry Milk Ordinance	1995	States	Do
Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers	1995	Dairy Industry	Do
Frozen Dessert Processing Guidelines	1989	Dairy Industry	Office of Plant and Dairy Foods and Beverages (HFS–302), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202–205–9175
Pasteurized Milk Ordinance	1995	States	Milk Safety Branch (HFS–626), Center for Food Safety and Applied Nutrition 200 C St. SW., Washington, DC 20204, 202–205–9175
FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases	1993	Food Industry	Office of Nutritional Products, Labeling, and Dietary Supplements, Food and Drug Administration (HFS–800), 200 C St. SW., Washington, DC 20204, 202–205–4561
Guidelines for Determining Metric Equivalents of Household Measures	October 1, 1993	Food Industry	Do
List of Food Defect Action Levels (DALS)	1995	Food and Animal Feed Industries	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–5251
Action Levels for Poisonous or Deleterious Substances in Human Food and Feed (Also Found in CPG's)	1995	Food and Animal	Do
1997 FDA Food Code	1997	States	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650
Seafood List	1993	Seafood Industry	Superintendent of Documents, Government Printing Office, Washington, DC 20402, 202–512–1800
Manual of Operations National Shellfish Sanitation	1992	States	Office of Seafood, Office of Seafood (HFS–407), Shellfish Sanitation Branch, 200 C St. SW., Washington, DC 20204, 202–418–3150
Fish and Fisheries Products Hazards and Controls Guide	1996	Seafood Industry	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E-Mail or Internet)
Guidance for Submitting Requests under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Articles	1996	Food Packaging Industry,	Office of Premarket Approval, Food and Drug Administration (HFS-200), 200 C St. SW., Washington, DC 20204, 202-418-3100
Guidelines for the Preparation of Petition Submissions	1996	Food Ingredient or Packaging Industry	Do
Guidelines for Approval of Color Additives in Contact Lenses Intended as Colors	1996	Color or Contact Lens Industry	Do
FDA Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs or Cosmetics Use	February 1993	Color Additives Industry	Do
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	December 1992	Food Packaging Industry	Do
Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions	May 1993	Food Packaging Industry	Do
Recommendations for Chemistry Data for Indirect Food Additive Petitions	June 1995	Food Packaging Industry	Do
Enzyme Preparations: Chemistry Recommendations for Food Additive and GRAS Affirmation Petitions	January 1993	Food Enzyme Industry	Do
Estimating Exposure to Direct Food Additive and Chemical Contaminants in the Diet	September 1995	Food and Food Ingredient Industry	Do
Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I)	1982	Petitioners for Food or Color Additives	Do
Environmental Assessment Technical Handbook	March 1987	Petitioners for Food or Color Additives	National Technical Inion Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, Pub. No. PB87175345-AS, Ab-01
Color Additive Petitions Information and Guidance	1996	Petitioners for Color Additives	Office of Premarket Approval, Food and Drug Administration (HFS-200), 200 C St. SW., Washington, DC 20204, 202-418-3100
Toxicological Testing of Food Additives	1983	Petitioners for Food or Color Additives	Office of Premarket Approval, Food and Drug Administration (HFS-200), 200 C St. SW., Washington, DC 20204, 202-418-3100
List of Products for Each Product Category	October 8, 1992	Food Industry	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS-800), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561
Label Declaration of Allergenic Substances in Foods; Notice to Manufacturers	June 10, 1996	Food Industry	Do
Guidance on Labeling of Foods that Need Refrigeration by Consumers	February 24, 1997 (62 FR 8248)	Food Industry	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E–Mail or Internet)
Guidelines Concerning Notification and Testing of Infant Formula	1985	Infant Formula Manufacturers	Do
Clinical Testing of Infant Formulas with Respect to Nutritional Suitability for Term Infants	1988	Infant Formula Manufacturers	Do
Guidelines for the Evaluation of the Safety and Suitability of New Infant Formulas for Feeding Infants with Allergic Diseases	1988	Infant Formula Manufacturers	Do
Guidelines for the Evaluation of the Safety and Suitability of Infant Formulas for Feeding Infants with Allergic Diseases	1990	Infant Formula Manufacturers	Do
Guidelines for the Clinical Evaluation of New Products Used in the Dietary Management of Infants, Children and Pregnant Women with Metabolic Disorders	1987	Infant Formula Manufacturers	Do
Guidance Document for Arsenic (Trace Elements in Seafood)	January 1993	States	Office of Seafood, Food and Drug Administration (HFS–400), 200 C St. SW., Washington, DC 20204, 202–418–3150, Internet: FDA Home Page Http://vm.cfsan.fda.gov/list.html
Guidance Document for Cadmium (Trace Elements in Seafood)	January 1993	States	Do
Guidance Document for Chromium (Trace Elements in Seafood)	January 1993	States	Do
Guidance Document for Lead (Trace Elements in Seafood)	August 1993	States	Do
Guidance Document for Nickel (Trace Elements in Seafood)	January 1993	States	Do
FDA's Policy for Foods Developed by Biotechnology	1995	Food Industry	Do
Bovine Spongiform Encephalopathy (BSE) in Products for Human Use	1997	Food Industry	Office of Plant and Dairy Foods and Beverages (HFS–302), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202–205–9175, Internet: FDA Home Page Http://www.fda.gov/opacom/morechoicee/industry/guidance/gelguide.htm
Interim Guidance on the Voluntary Labeling of Milk and Milk Products that have not been treated with Recombinant Bovine Somatropin	February 1994	Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–800), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168
Shellfish Sanitation Model Ordinance	1995	States	Shellfish Program Implementation Branch, Division of Cooperative Programs Office of Field Programs (HFS–628), 200 C St. SW., Washington, DC 20204, 202–205–8137
Guide to Minimize Microbial Hazards for Fresh Fruits and Vegetables	1998	Farmers and Food Packers	Lou Carson, Food Safety Initiative (HFS–3), FDA–CFSAN, 200 C St. SW., Washington, DC 20204 or jsaltaman@bangate.fda.gov

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E–Mail or Internet)
Iron-Containing Supplements and Drugs: Label Warning and Unit Dose Packaging; Small Entity Compliance Guide	1997	Dietary Supplement Manufacturers: Small Entities	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–450), FDA–CFSAN, 200 C. St. SW., Washington, DC 20204
Partial List of Enzyme Preparations That are Used in Foods	1998	FDA Regulated Industry	Do
Partial List of Microorganisms and Microbial-Derived Ingredients That Are Used in Food	1998	FDA Regulated Industry	Office of Premarket Approval (HFS–200), FDA–CFSAN, 200 C St. SW., Washington, DC 20204
Fish and Fishery Products Hazards and Controls Guide, 2nd Edition	January 1998	FDA Regulated Industry	Office of Seafood (HFS–400), FDA–CFSAN, 200 C St. SW., Washington DC 20204
HACCP Regulations for Fish and Fishery Products: Questions and Answers	1998	FDA Regulated Industry	Do
Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body	1998	FDA Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–150), 200 C St. SW., Washington, DC 20204
Small Business Juice Labeling: Questions and Answers	1998	Small Business	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–150), 200 C St. SW., Washington, DC 20204, Geraldine June, 202–205–5099
FDA Nutrition Labeling Manual, A Guide for Developing and Using Data Bases	March 1998	FDA Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–150), 200 C St. SW., Washington, DC 20204
HACCP Regulation for Fish and Fishery Products: Questions and Answers, Issue Three, Revised January 1999	January 1999	Seafood Processors	Office of Seafood, CFSAN/FDA (HFS–400), 200 C St. SW., Washington, DC 20204, Ellen Nesheim, 202–418–3150
Foods—Adulteration Involving Hard or Sharp Foreign Objects (CPG)	February 1999	FDA Field Offices	Office of Plant and Dairy Foods and Beverages (HFS–300), 200 C. St. SW., Washington, DC 20204
Food Additive Petition Expedited Review	January 1999	Guidance for Industry and Center for Food Safety and Applied Nutrition Staff	Robert L. Martin (HFS–215), OPA/CFSAN/FDA, 200 C St. SW., Washington, DC 20204, 202–418–3074, premarkt@cfsan.fda.gov OR http://vm.cfsan.fda.gov/~dms/ope-expe.html
Use of Antibiotic Resistance Marker Genes in Transgenic Plants	September 1998	Guidance for Industry	Nega Beru (HFS–206), OPA/CFSAN/FDA, 200 C. St. SW., Washington, DC 20204, 202–418–3097, premarkt@cfsan.fda.gov OR http://vm.cfsan.fda.gov//dms/ope-amg.html
Draft Guidance: Channels of Trade Policy for Commodities with Methyl Parathion Residues	June 2000	Regulated Industry	Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition (HFS–300), FDA, 200 C St. SW., Washington, DC 20204, http://vm.cfsan.fda.gov/dms

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E-Mail or Internet)
Draft Guidance: Fumonisin Levels in Human Foods and Animal Feeds	June 2000	Regulated Industry	Do
Statement of Identity, Nutrition Labeling, and Ingredient Labeling of Dietary Supplements Small Entity Compliance Guide	January 1999	Small Business Entities	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–5251
Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements (December 1999)	December 1999	Regulated Industry,	Office of Nutritional Products, Labeling, and Dietary Supplements, Center For Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4561
Antimicrobial Food Additives	July 1999	Regulated Industry	Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–418–3100
Preparation of Premarket Notifications for Food Contact Substances: Chemistry Recommendations	November 1999	Regulated Industry	Do
Preparation of Premarket Notifications for Food Contact Substances: Toxicology Recommendations	November 1999	Regulated Industry	Do
Guidance for Small Businesses: Submission of Comments for CFSAN Rulemaking	October 1999	Small Business Entities	Division of Market Studies (HFS–726), Center for Food Safety and Applied Nutrition, Food and Drug Administration, Washington, DC 20204, 202–401–4590
Warning and Notice Statement: Labeling of Juice Products Small Entity Compliance Guide	September 1998	Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements, Center For Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4561
Reducing Microbial Food Safety Hazards for Sprouted Seeds	October 1999	Regulated Industry	Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4064
Seafood HACCP Transition Policy	December 1999	Regulated Industry	Office of Seafood (HFS–400), 200 C St. SW., Washington DC 20204, 202–205–3150

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 3—General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals	July 1994	Animal Drug Industry	Internet via: http://www.fda.gov/cvm or Communications Staff (HFV–12), FDA/CVM, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, FAX 301–594–1831
Guideline 4—Guidelines for Efficacy Studies for Systemic Sustained Release Sulfonamide Boluses for Cattle		Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 5—Stability Guidelines	December 1990	Do	Do
Guideline 6—Guidelines for Submitting NADA's for Generic Drugs Reviewed by NAS/NRC		Do	Do
Guideline 9—Preclearance Guidelines for Production Drugs	October 1975	Do	Do
Guideline 10—Amendment of Section II (G)(1)(b)(4) of the Preclearance Guidelines	October 1975	Do	Do
Guideline 13—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds	January 1985	Do	Do
Guideline 14—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in FOOD Producing Animals		Do	Do
Guideline 15—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in Non-Food Producing Animals	February 1977	Do	Do
Guideline 16—FOI Summary Guideline	May 1985	Do	Do
Guideline 18—Antibacterial Drugs in Animal Feeds: Human Health Safety Criteria		Do	Do
Guideline 19—Antibacterial Drugs in Animal Feeds: Animal Health Safety Criteria		Do	Do
Guideline 20—Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria		Do	Do
Guideline 22—Guideline Labeling of Arecoline Base Drugs Intended for Animal Use		Do	Do
Guideline 23—Medicated Free Choice Feeds—Manufacturing Control	July 1985	Do	Do
Guideline 24—Guidelines for Drug Combinations for Use in Animals	October 1983	Do	Do
Guideline 25—Guidelines for the Efficacy Evaluation of Equine Anthelmintics	January 1979	Do	Do
Guideline 29—Guidelines for the Effectiveness Evaluation of Swine Anthelmintics	September 1980	Do	Do
Guideline 31— Guidelines for the Evaluation of Bovine Anthelmintics	July 1981	Do	Do
Guideline 33—Target Animal Safety Guidelines for New Animal Drugs	June 1989	Do	Do
Guideline 35—Bioequivalence Guideline—Final	1996	Do	Do
Guideline 36—Guidelines for Efficacy Evaluation of Canine/Feline Anthelmintics	July 1985	Do	Do
Guideline 37—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Poultry Feed for Pigmentation	March 1984	Do	Do
Guideline 38—Guideline for Effectiveness Evaluation of Topical/Otic Animal Drugs	August 1984	Do	Do
Guideline 40—Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry	April 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 41—Draft Guideline: Formatting, Assembling, and Submitting New Animal Drug Applications	June 1992	Do	Do
Guideline 42—Animal Drug Manufacturing Guidelines, 1994	1994	Do	Do
Guideline 43—Guidance on Generic Animal Drug Products Containing Fermentation-Derived Drug Substances	October 1995	Do	Do
Guideline 45—Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle	August 1993	Do	Do
Guideline 48—Guidance for Industry for the Submission of Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products	November 1994	Do	Do
Guideline 49—Guidance Document for Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products	April 1996	Do	Do
Guideline 50—Draft Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Teat Antiseptic Products	February 1993	Do	Do
Guideline 52—Guidance—Microbiological Testing of Antimicrobial Drug Residues in Food	January 1996	Do	Do
Guideline 53—Guideline for the Evaluation of the Utility of Food Additives in Diets Fed to Aquatic Animals	May 1994	Do	Do
Guideline 54—Draft Guideline for Utility Studies for Anti-Salmonella Chemical Food Additives in Animal Feeds	June 1994	Do	Do
Guideline 55—Supportive Data for Cat Food Labels Bearing "Reduces Urinary pH Claims: Guideline in Protocol Development"	June 1994	Do	Do
Guideline 56—Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials	November 1994	Do	Do
Guideline 57—Master Files—Guidance for Industry for the Preparation and Submission of Veterinary Master Files	July 1995	Do	Do
Guideline 58—Guidance for Industry for Good Target Animal Study Practices: Clinical Investigators and Monitors	May 1997	Do	Do
Guideline 59—Guidance for Industry: Submitting a Notice of Claimed Investigational Exemption in Electronic Format to CVM via E-Mail	January 1999	Do	Do
Guidance 61—Guidance for Industry—FDA Approval of Animal Drugs for Minor Uses and for Minor Species	January 1999	Do	Do
Guideline 62—Guidance for Industry—Consumer-Directed Broadcast Advertisements	August 1997	Do	Do
Guideline 63—Guidance for Industry—Validation of Analytical Procedures: Definition and Terminology—Draft Guidance	December 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 64—Guidance for Industry—Validation of Analytical Procedures: Methodology—Draft Guidance	December 1997	Do	Do
Guideline 65—Guidance for Industry—Industry-Supported Scientific and Educational Activities	November 1997	Do	Do
Guideline 66—Guidance for Industry— Professional Flexible Labeling of Antimicrobial Druge—Draft Guidance	January 1998	Do	Do
Guideline 67—Guidance for Industry—Small Entities Compliance Guide for Renderers	February 1998	Do	Do
Guideline 68—Guidance for Industry—Small Entities Compliance Guide for Protein Blenders, Feed Manufacturers, and Distributors	February 1998	Do	Do
Guideline 69—Guidance for Industry—Small Entities Compliance Guide for Feeders of Ruminant Animals With On-Farm Feed Mixing Operations	February 1998	Do	Do
Guideline 70—Guidance for Industry—Small Entities Compliance Guide for Feeders of Ruminant Animals Without On-Farm Feed Mixing Operations	February 1998	Do	Do
Guideline 71—Guidance for Industry—Use of Human Chorionic Gonadotropic (HCG) as a Spawning Aid for Fish	April 1998	Do	Do
Guideline 72—Guidance for Industry—GMP's for Medicated Feed Manufacturers Not Required to Register and Be Licensed With FDA	May 1998	Do	Do
Guideline 73—Draft Guidance for Industry—Stability Testing of New Animal Drug Substances and Products	July 1998	Do	Do
Guideline 74—Draft Guidance for Industry—Stability Testing for New Dosage Forms of New Animal Drugs	July 1998	Do	Do
Guideline 75—Guidance for Industry—Stability Testing: Photostability Testing of New Animal Drug Substances and Products: Draft Guidance	July 1998	Do	Do
Guideline 76—Guidance for Industry—Questions and Answers—BSE Feed Regulation	September 1998	Do	Do
Guideline 77—Guidance for Industry—Interpretation of On-Farm Feed Manufacturing and Mixing Operations—Draft Guidance	September 1998	Do	Do
Guideline 78—Guidance for Industry—Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals	December 1999	Do	Do
Guidance for Industry: Chemistry, Manufacturing and Controls Changes to an Approved NADA or ANADA: Draft Guidance	June 1999	Do	Do
Draft Guidance for Industry: Good Clinical Practices	July 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Efficacy of Anthelmintics: General Recommendations: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Stability Testing for Medicated Premixes Draft Guidance	July 1999	Do	Do
Guidance for Industry: Impurities in New Veterinary Drug Substances Draft Guidance	July 1999	Do	Do
Guidance for Industry: Impurities in New Veterinary Medical Products Draft Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Bovines: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Ovines: Draft Guidance	July 1999	Do	Do
Guidance for Industry—Validation of Analytical Procedures: Definition and Terminology	July 1999	Do	Do
Guidance for Industry—Validation of Analytical Procedures: Methodology: Final Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Caprines: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Manufacture and Distribution of Unapproved Piperazine Products	August 1999	Do	Do
Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products	August 1999	Do	Do
Guidance for Industry—Consumer-Directed Broadcast Advertisements: Final Guidance	August 1999	Do	Do
Guidance for Industry: Stability Testing of New Veterinary Dosage Forms VICH GL4: Final Guidance	September 1999	Do	Do
Guidance for Industry: Stability Testing of New Veterinary Drug Substances and Medicinal Products VICH GL3: Final Guidance	September 1999	Do	Do
Guidance for Industry: Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)—Phase I: Draft Guidance	September 1999	Do	Do
Guidance for Industry: Quality of Biotechnological Products in the Veterinary Field: Stability Testing of Biotechnological/Biological Products VICH GL 17: Draft Guidance	September 1999	Do	Do
Guidance for Industry: Impurities: Residual Solvents VICH GL 18: Draft Guidance	September 1999	Do	Do
Guidance for Industry—Content and Format of Effectiveness and Target Animal Safety Technical Sections and Final Study Reports for Submission to the Division of Therapeutic Drugs for Non-Food Animals	September 1999	Do	Do
Guidance for Industry: Stability Testing: Photostability Testing of New Veterinary Drug Substances and Medicinal Products: Final Guidance	September 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Computerized Systems Used in Clinical Trials	October 1999	Do	Do
Dioxin in Anti-Caking Agents Used in Animal Feed and Feed Ingredients	October 1999	Do	Do
Guidance for Industry—Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals	December 1999	Do	Do
Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs—Draft Guidance	January 2000	Do	Do
Guidance for Industry: Stability Testing for Medicated Premixes Guidance	March 2000	Do	Do
Guidance for Industry: The Use of Published Literature in Support of New Animal Drug Approval—Draft Guidance	April 11, 2000	Do	Do
Guidance for Industry: Dioxin in Anti-Caking Agents Used in Animal Feed And Feed Ingredients	Revised April 12, 2000	Do	Do
Guidance for Industry: Fumonisin Levels in Human Foods and Animal Feeds—Draft Guidance	June 6, 2000	Do	Do

VII. Guidance Documents Issued by the Office of Policy (OP)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
FDA's Development, Issuance, and Use of Guidance Documents	February 27, 1997	FDA Personnel and Regulated Industry	Internet via www.fda.gov/opacom/morechoices/moreindu.html or Office of Policy (301–827–3360)
Draft Guidance for Industry; Exports and Imports under the FDA Export Reform and Enhancement Act of 1996	June 12, 1998	Regulated Industry	Internet via www.fda.gov/opacom/fedregister/frexport.html
Direct Final Rule Guidance	November 21, 1997	FDA Personnel	Internet via www.fda.gov/opacom/morechoices/industry/guidedc.htm or Carol Kimbrough (301–827–3480)
Industry Supported Scientific and Educational Activities	December 3, 1997	Regulated Industry	Internet via www.fda.gov/oder/guidance/index.htm or Office of Policy (301–827–3360)
Draft Guidance of Broadcast Advertisements	February 1997	Do	Do
Small Entities Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)	February 1997	Do	Internet via www.fda.gov/opacom/campaigns/tobacco/tobret.htm or 1–888–FDA–4KIDS
Children & Tobacco—Frequently Asked Questions about the new regulations (DRAFT)	July 1997	Do	Do
Children & Tobacco—A Retailer's Guide to the New Federal Regulations	October 1997	Do	Do
Children & Tobacco—A Guide to the New Federal Regulations	October 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
FDA's Standards Policy	October 1995	FDA Personnel and Regulated Industry	60 FR 53078, October 11, 1995 or Office of Policy (301–827–3360)

VIII. Guidance Documents Issued by the Office of Regulatory Affairs (ORA)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E–mail, or Internet)
Compliance Policy Guides Manual	August 1996	FDA Staff Personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB96–915499) or via Internet www.fda.gov/ora/compliance_ref/cpg/cpgtc.html
Compliance Policy Guide-DRAFT Commercialization of In Vitro Diagnostic Devices (IVD's) Labeled for Research Use Only or Investigational Use Only	January 5, 1996	Do	Do—Internet at www.fda.gov/cdrh/comp/ivddrlg.html
Compliance Policy Guide 675.400 (CPG 7126.24) REVISION Rendered Animal Feed Ingredients	November 13, 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/cpg/cpgvet/cpg675.400.html
Compliance Policy Guide DRAFT Distributor Medical Device Reporting	August 28, 1997	FDA Staff Personnel and Regulated Industry	Do—Internet at www.fda.gov/ora/compliance_ref/cpg_mdr3.txt
Compliance Policy Guide, Chapter 5, Sec. 555.425, NEW: Foods Adulteration Involving Hard or Sharp Foreign Objects	March 23, 1999	FDA Staff Personnel	Do—Internet at http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg555–425.htm
Compliance Policy Guide, Chapter 1, Sec.160.800, NEW:Year 2000 (Y2K) Computer Compliance	April 26, 1999	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/cpg/cpggeni/cpt160.800.html
Compliance Policy Guide, Chapter 1, Sec. 140.100, REVISION/DRAFT: Regulatory Policy on the Disposition of Publications That Constitute Labeling (CPG 7153.13)	April 26, 1999	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/draftrev-cpg715313.htm
Compliance Policy Guide, Chapter 1, Sec. 160.850: NEW, Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures (CPG 7153.17)	May 13, 1999	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/cpg/cpggeni/cpg160–160.htm
Compliance Policy Guide, Chapter 2, Sec. 230.140, NEW, Evaluation and Processing of Post Donation Information Reports	July 9, 1999	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/default.htm
Compliance Policy Guide, Chapter 2, Sec. 252.110, NEW: Volume Limits for Automated Collection of Source Plasma	March 6, 2000	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/cpgbio/cpg252.110.htm
Compliance Policy Guide, Chapter 2, Sec. 257.100, REVISED: Deferral of Source Plasma Donors Due to Red Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	March 22, 2000	Do	Do—Internet at http://www.fda.gov/ora/cmpliance_ref/cpg/cpgbio/cpg257.100.htm
Compliance Policy Guide, Chapter 1, Sec. 110.100: REVISED: Certificates for Export	April 14, 2000	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/cpg/cpggeni/cpg110–100.html
Medical Device Warning Letter Pilot	March 8, 1999	FDA Staff Personnel and Regulated Industry	Do—Internet at http://www.fda.gov/ohrms/Dockets/98fr/030899e.pdf

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E–mail, or Internet)
Draft Guidance Policy Statement: Draft Civil Money Penalty Reduction Policy for Small Entities	May 18, 1999	Do	Do—Internet at http://www.fda.gov/ohrms/Dockets/98fr/051899.txt
Glossary of Computerized System and Software Development Terminology	August 1995	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB96–127352) or via Internet www.fda.gov/ora/inspect_ref/iga/iglist.html
Guidelines for Entry Review of Radiation-Emitting Electronic Devices	March 12, 1999	FDA Staff Personnel	Division of Import Operations and Policy (HFC–170), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1218
Import Alerts	Continuous	Do	FDA/Freedom of Information Staff (HFI–35), 5600 Fishers Lane, Rockville, MD 20857 or via Internetwww.fda.gov/ora/fiars/ora_import_alerts.html
Investigations Operations Manual	March 2000	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301–443–3276 2000 Edition is not yet available on Internet. 1999 Edition is available on Internet at http:// www.fda.gov/ora/inspect_ref/iom/iomtc.html
Investigations Operations Manual, REVISION: Chapter 4, Sampling	July 1998	Do	Do
Investigations Operations Manual, REVISION: Chapter 5, Establishment Inspections	July 1998	Do	Do
Memorandum: ORA Investigational Strategy on Gamma-Butyrolactone (GBL) and Related Products	May 15, 2000	Do	Do—Not available on Internet
Laboratory Procedures Manual	June 1994	Do	Division of Field Science (HFC–141), Food and Drug Administration, 5600 Fishers Lane, rm. 12–41, Rockville, MD 20857, ATTN: Donna Porter or via Internet www.fda.gov/ora/science_ref/lpm/lpmtc.html
Laboratory Procedures Manual, Chapter X, NEW: Method Validation Samples	May 1999	Do	Do—Not available on Internet
Regulatory Procedures Manual	August 1997	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB97–196182) or via Internet www.fda.gov/ora/compliance_ref/rpm/rpmtc.html
Regulatory Procedures Manual: UPDATE/ New Subchapter/Application Integrity Policy	March 1998	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet www.fda.gov/ora/compliance_ref/rpm/rpmtc.html
Regulatory Procedures Manual: UPDATE Subchapter/Warning Letters	March 1998	Do	Do
Regulatory Procedures Manual: UPDATE/ REVISION Subchapter/Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual; UPDATE/ REVISION Subchapter/Priority Enforcement Strategy for Problem Importers	April 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Regulatory Procedures Manual: UPDATE/ REVISION Subchapter/Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/ REVISION Subchapter/Notice of Sampling	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/ NEW Subchapter/Granting and Denying Transportation and Exportation (T&E) Entries	May 1998	Do	Do
Regulatory Procedures Manual: UPDATE/ REVISION Subchapter/Seizure	June 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/rpm_new2/ch6.html
Regulatory Procedures Manual: UPDATE/ REVISION Subchapter/Supervisory Charges	June 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/rpm_new2/ch9chgs.html
Regulatory Procedures Manual: NEW Subchapter/Civil Penalties—Electronic Product Radiation Control	July 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/ch8civpen.html
Regulatory Procedures Manual, UPDATE/ REVISION: Chapter 4, Subchapter/Warning Letters	March 21, 2000	Do	Do Internet at http://www.fda.gov/ora/compliance_ref/rpm_new2/ch4.html
Guide to Inspections of Bulk Pharmaceutical Chemicals	May 1994	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB96–127154) or via Internet www.fda.gov/ora/inspect_ref/igs/iglist.html
Guide to Inspections of Pharmaceutical Quality Control Laboratories	July 1993	Do	Do—(NTIS Order No. PB96–127279)
Guide to Inspections of Microbiological Pharmaceutical Quality Control Laboratories	July 1993	Do	Do—(NTIS Order No. PB96–127287)
Guide to Inspections of Validation of Cleaning Processes	July 1993	Do	Do—(NTIS Order No. PB96–127246)
Guide to Inspections of Lyophilization of Parenterals	July 1993	Do	Do—(NTIS Order No. PB96–127253)
Guide to Inspections of High Purity Water Systems	July 1993	Do	Do—(NTIS Order No. PB96–127261)
Guide to Inspections of Dosage Form Drug Manufacturers-CGMPs	October 1993	Do	Do—(NTIS Order No. PB96–127212)
Guide to Inspections of Oral Solid Dosage Forms Pre/Post Approval Issues for Development and Validation	January 1994	Do	Do—(NTIS Order No. PB96–127345)
Guide to Inspections of Topical Drug Products	July 1994	Do	Do—(NTIS Order No. PB96–127394)
Guide to Inspections of Sterile Drug Substance Manufacturers	July 1994	Do	Do—(NTIS Order No. PB96–127295)
Guide to Inspections of Oral Solutions and Suspensions	August 1994	Do	Do—(NTIS Order No. PB96–127147)
Guide to Inspections of Nutritional Labeling and Education Act (NLEA) Requirements	February 1995	Do	Do—(NTIS Order No. PB96–127378)
Guide to Inspections of Interstate Carriers and Support Facilities	April 1995	Do	Do—(NTIS Order No. PB96–127386)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E–mail, or Internet)
Guide to Inspections of Dairy Product Manufacturers	April 1995	Do	Do—(NTIS Order No. PB96–127329)
Guide to Inspections of Miscellaneous Foods Vol. I	May 1995	Do	Do—(NTIS Order No. PB96–127220)
Guide to Inspections of Miscellaneous Foods Vol. II	September 1996	Do	Do—(NTIS Order No. PB97–196133)
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 1-Administrative Procedures/Scheduled Processes	November 1996	Do	Do—(NTIS Order No. PB97–196141)
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 2– Processes/Procedures	April 1997	Do	Do—(NTIS Order No. PB97–196158)
Guide to Inspections of Cosmetic Product Manufacturers	February 1995	Do	Do—(NTIS Order No. PB96–127238)
Guide to Inspections of Blood Banks	September 1994	Do	Do—(NTIS Order No. PB96–127303)
Guide to Inspections of Source Plasma Establishments	December 1994	Do	Do—(NTIS Order No. PB96–127360)
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1996	Do	Do—(NTIS Order No. PB96–199476)
Biotechnology Inspections Guide	November 1991	Do	Do—(NTIS Order No. PB96–127402)
Guide to Inspections of Computerized Systems in Drug Processing	February 1983	Do	Do—(NTIS Order No. PB96–127337)
Guide to Inspections of Foreign Medical Device Manufacturers	September 1995	Do	Do—(NTIS Order No. PB96–127311)
Guide to Inspections of Foreign Pharmaceutical Manufacturers	May 1996	Do	Do—(NTIS Order No. PB96–199468)
Mammography Quality Standards Act (MQSA) Auditors Guide	January 1998	Do	Do—(NTIS Order No. PB98–127178)
Guide to Inspections of Electromagnetic Compatibility Aspects of Medical Device Quality Systems	December 1997	Do	Do—(NTIS Order No. PB98–127152)
Guide to Inspections of Grain Product Manufacturers	March 1998	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301–443–3276
Guide to Bioresearch Monitoring Inspections of In Vitro Devices	February 1998	Do	Do
Guide to Inspections of Viral Clearance Processes for Plasma Derivatives	March 1998	Do	Do
Guide to Traceback of Fresh Fruits and Vegetables Implicated in Epidemiological Investigations	August 1998	Do	Do
Guide to Inspections of Computerized Systems in the Food Processing Industry	August 1998	Do	Do—Internet at www.fda.gov/ora/inspect_ref/igl/iglist.html
Guide to International Inspections and Travel, REVISION (Formerly: FDA/ORA International Inspection Manual and Travel Guide)	July 1999	Do	Do Revision not available on Internet
Guide to Inspections of Quality Systems	August 1999	Do	Do—Internet at http://www.fda.gov/ora/inspect_ref/iga/qsit/QSITGUIDE.PDF

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E–mail, or Internet)
Guideline for the Monitoring of Clinical Investigators	January 1988	FDA Regulated Industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420
Computerized Systems Used in Clinical Trials	April 1999	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/bimo/finalcct.htm
Draft Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research	March 30, 2000	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/bimo_err-guide.htm
Compliance Program 7348.808: Bioresearch Monitoring; Good Laboratory Practices (Nonclinical)	Revised August 17, 1998	FDA Staff Personnel	Do—Internet http://www.fda.gov/ora/compliance_ref/bimo/default.html
Compliance Program 7348.810: Sponsors, Contract Research Organizations and Monitors	Revised October 30, 1998	Do	Do
Compliance Program 7348.811: Bioresearch Monitoring; Clinical Investigations	Revised September 2, 1998	Do	Do
Food Laboratory Practice Program (Nonclinical Laboratories) 7348.808A; EPA Data Audit Inspections	October 1, 1991	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420
Compliance Program 7348.809; Bioresearch Monitoring; Institutional Review Board	August 18, 1994	Do	Do
Good Laboratory Practice Regulations Management Briefings	August 1979	Do	Do—Internet at www.fda.gov/ora/compliance_ref/bimo/default.html

Dated: July 14, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

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H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

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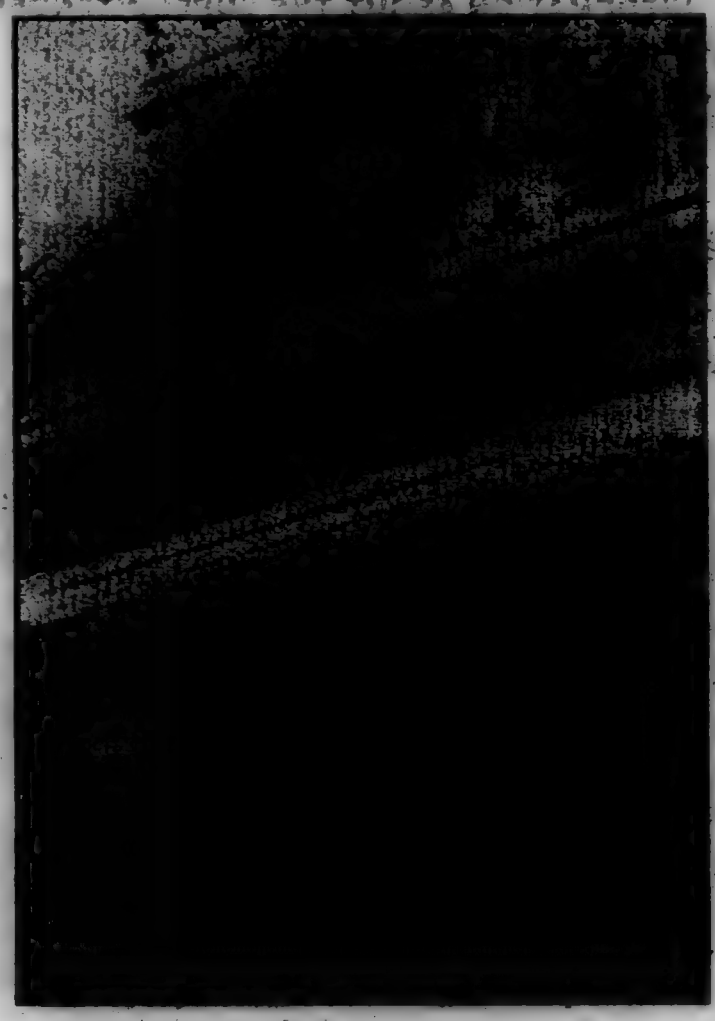

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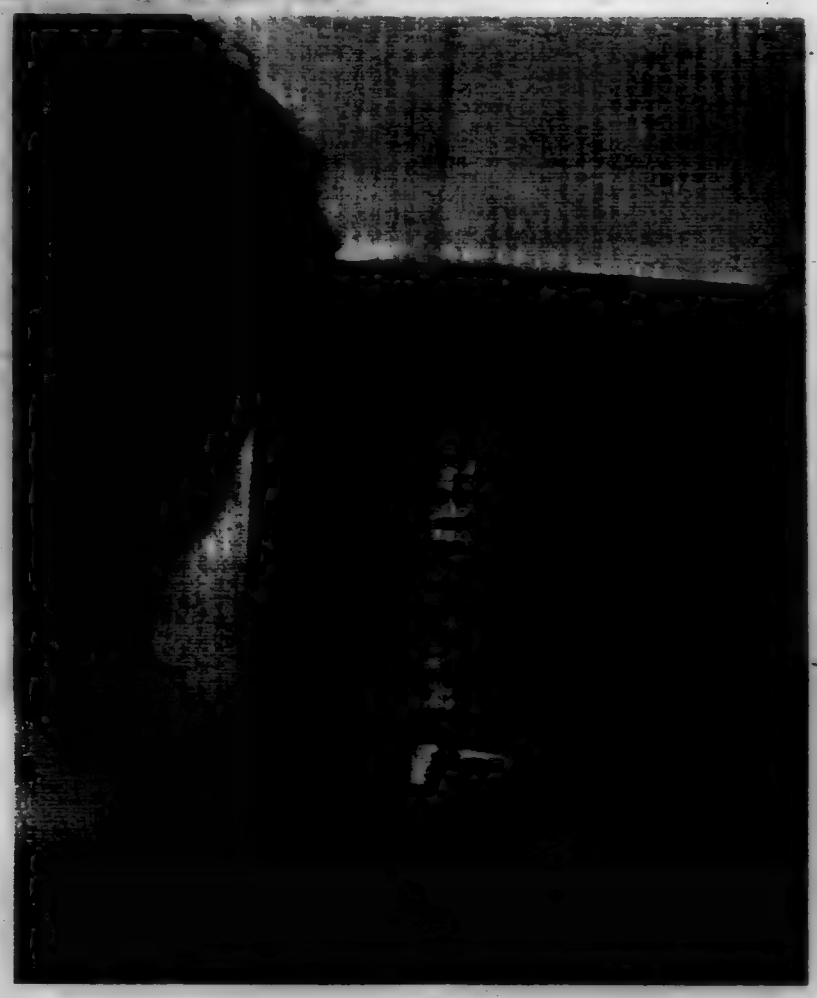

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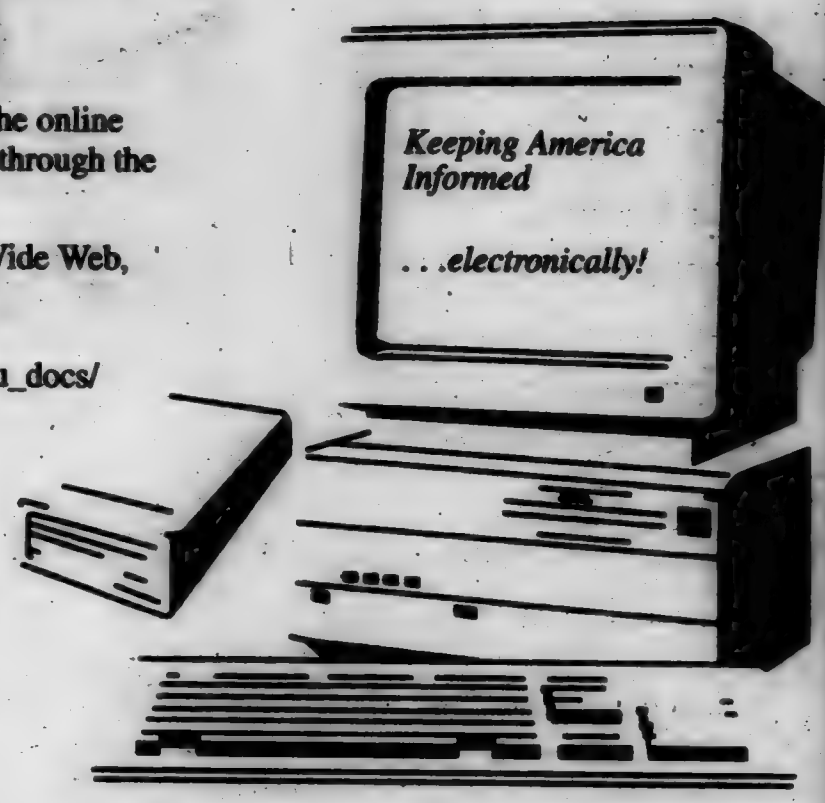

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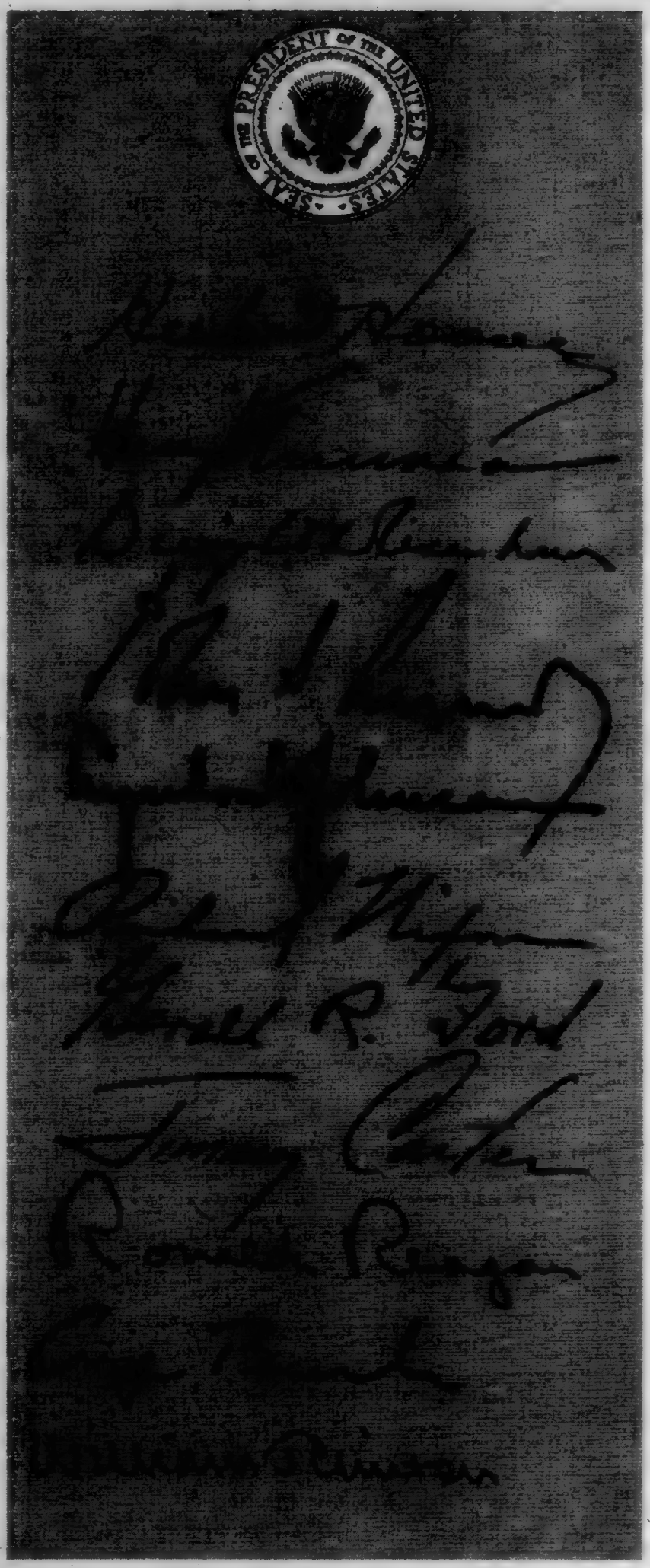

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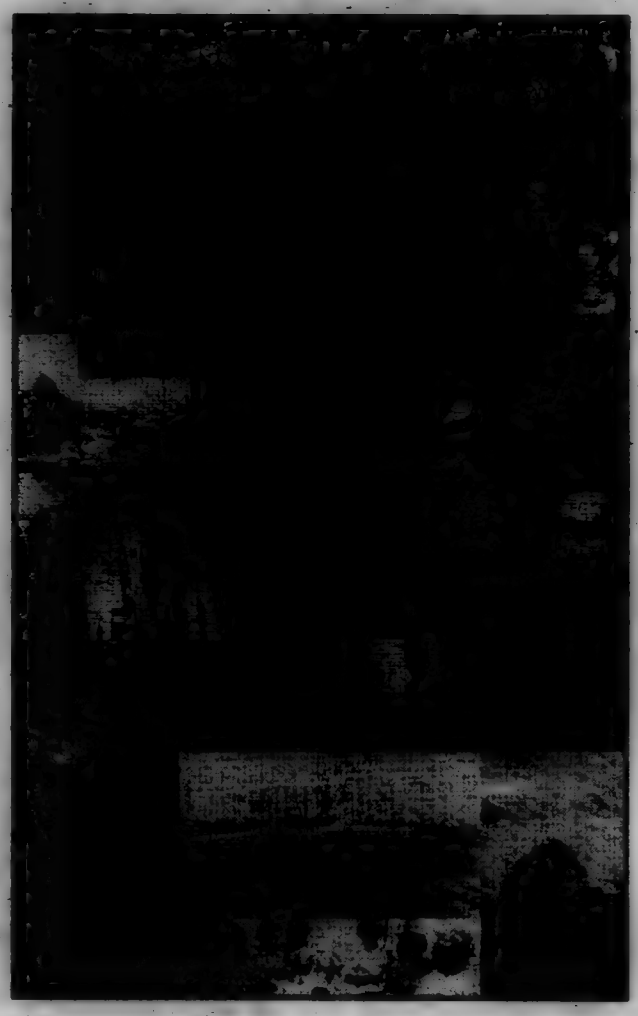

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Title 3—

The President

Memorandum of July 17, 2000

Delegation of Authority for Submission of Report Under Section 606 of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of Defense the responsibility of the President, under section 606 of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001 (Public Law 106–113), to submit the required report to the Congress.

You are hereby authorized and directed to publish this delegation in the Federal Register.

William J. Clinton

THE WHITE HOUSE,
Washington, July 17, 2000.

[FR Doc. 00–18814
Filed 7–21–00; 8:45 am]
Billing code 5001–10–M

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Monday, July 24, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–55–AD; Amendment 39–11825; AD 2000–14–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent ignition sources and consequent fire/explosion in the fuel tank.

DATES: Effective August 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the Federal Register on March 16, 2000 (65 FR 14218). That action proposed to require modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter supports the content of the proposed AD.

Requests To Extend Compliance Time

Two commenters, both operators, request that the compliance time for the proposed actions be 5 years, rather than 3 years as proposed, for the following reasons:

1. While supporting the proposed AD in principle, one of the commenters states that the economic impact of a 3–year compliance time would significantly affect its maintenance and operating schedules because of additional labor hours, additional out-of-service time for its airplanes, and the setup costs necessary to accommodate the simultaneous modification of two airplanes.

2. The commenters note that the French airworthiness directive mandates a compliance time of 5 years, and that the service bulletin referenced in the proposed AD also recommends a compliance time of 5 years (or the next 4C check).

3. The commenters consider that a 3–year compliance time does not account for the elapsed time for accomplishing the modification outside of a heavy or major maintenance check. One commenter states that a 5–year compliance time would allow the proposed actions to be accomplished during a scheduled heavy maintenance visit. The other commenter reports that a 3-year compliance time would require modification of 34 of its airplanes outside of a heavy or major maintenance check, resulting in extended downtimes.

The FAA does not concur with the request to extend the compliance time. In the preamble of the proposed AD, the FAA explained its reasons for reducing the compliance time from 5 years (as recommended by the DGAC and the service bulletin) to 3 years. The commenters provide no data indicating that such an extended compliance time would ensure an acceptable level of safety. As stated in the proposed AD, the FAA considered many factors associated with continued operational safety and weighed those factors against any resulting disruption of affected airlines' operations. The FAA maintains that a 3–year compliance time represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change to the final rule is warranted in this regard.

Request To Require Additional Actions

One commenter, an operator, suggests that the proposed AD be revised to add a requirement to inspect the condition and proper installation of existing fuel tank bonding straps, as specified by Airbus Service Bulletin A320–28–1075, Revision 01, dated February 1, 2000. The operator notes that a higher level of fuel tank safety would be achieved by encouraging operators to accomplish the inspection of the fuel tank bonding straps in accordance with Airbus Service Bulletin A320–28–1075. The operator adds that Airbus Service Bulletin A320–28–1077 (cited in the proposed AD as the appropriate source of service information for accomplishing the modification and installation) "strongly" recommends concurrent accomplishment of Airbus Service Bulletin A320–28–1075.

The FAA does not concur with the request to add a requirement to perform the referenced inspection. Although accomplishment of the actions specified by Airbus Service Bulletin A320–28–1075 could provide an improved level of safety, the FAA has not yet made a determination that those actions should be mandated via the AD rulemaking process. However, the FAA notes that the design review proposed in a Special

Federal Aviation Regulation (SFAR) (Notice 99–18, 64 FR 58644, October 29, 1999, "Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements") would result in the FAA's approval of required maintenance and inspection instructions for fuel tank systems on the Airbus airplanes affected by this AD, as well as other existing large transport category airplanes. The inspections in Airbus Service Bulletin A320–28–1075 would be considered under the scope of the SFAR review, and could be mandated together with any other necessary inspections. No change to the final rule is necessary.

Request To Revise Cost Estimates

One commenter, an operator, requests a revision of the cost estimates in the proposed AD for the following reasons: (1) The estimated costs do not reflect the additional labor hours necessary to accommodate two airplanes simultaneously for the fuel tank rework; (2) the cost analysis in the proposed AD is based on work hours for airplanes in a heavy check status and does not include the work hours necessary for access and close; (3) the proposed cost estimate does not account for the concurrent accomplishment of the actions specified by Airbus Service Bulletin A320–28–1075; and (4) maintenance and operating schedules would be significantly affected due to the additional out-of-service time necessary for the airplanes.

The FAA does not concur with the request to revise the cost estimate. The cost impact information, below, describes only the per-airplane "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close or time for various administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Further, as discussed earlier, the actions specified by Airbus Service Bulletin A320–28–1075 are not required by this AD, so those work hours are not included in the cost estimate. No change to the cost estimate of the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry will be affected by this AD. It will take between 20 and 100 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $272,400 and $1,362,000; or between $1,200 and $6,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–15 Airbus Industrie: Amendment 39–11825. Docket 2000–NM–55–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; excluding those on which Modifications 27150 and 27955 have been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition sources and consequent fire/explosion in the fuel tank, accomplish the following:

Modification and Installation

(a) Within 36 months after the effective date of this AD, modify the fuel pipe couplings and install bonding leads in the specified locations of the fuel tank, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, dated July 9, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A320–28–1077, dated July 9, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–006–144(B), dated January 12, 2000.

(e) This amendment becomes effective on August 28, 2000.

Issued in Renton, Washington, on July 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18282 Filed 7–21–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–21–AD; Amendment 39–11819; AD 2000–09–15 R1]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment clarifies information contained in Airworthiness Directive (AD) 2000–09–15, which currently requires you to incorporate modifications to the airplane operating systems on all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. The Federal Aviation Administration (FAA) inadvertently omitted service information from the AD that is needed to accomplish these modifications on some of the affected airplanes. This document retains the requirements of AD 2000–09–15, and adds the service information to the AD. The actions specified in this AD are intended to continue to assist in preventing departure from controlled flight while operating in icing conditions.

DATES: The effective date of this AD is July 24, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications as of July 24, 2000.

ADDRESSES: You may get the service information referenced in this AD from Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, suite 685, LB–77, Addison, Texas 75001–4692; telephone: (972) 980–5001, facsimile: (972) 980–5091. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact one of the following for questions or more information related to this subject: Scott Sedgwick, Aerospace Engineer, Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106, telephone: (816) 329–4132; facsimile: (816) 329–4090; Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5222; facsimile: (562) 627–5228; or Alma Ramirez-Hodge, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5147; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Several icing-related incidents and accidents of MU–2B series airplanes and FAA's investigation of both the airplane design and pilot's ability to operate in icing conditions caused FAA to issue AD 2000–09–15, Amendment 39–11724 (65 FR 30865, May 15, 2000). This AD requires you to incorporate the following airplane operating systems:

—a deice monitoring system;
—an automatic autopilot disconnect system; and
—a trim-in-motion alert system.

What Has Happened Since AD 2000–09–15 To Initiate This Action?

The FAA inadvertently omitted service information from the AD that is needed to accomplish these modifications on some of the affected airplanes.

Consequently, we see a need to clarify AD 2000–09–15 to assure that the modifications can be fully carried out.

Correction of Publication

This document clarifies the intent of the airplane operating system modifications by incorporating additional service information that is needed to accomplish the actions of AD 2000–09–15 on Mitsubishi MU–2B series airplanes. This document also adds the amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

Since this action only clarifies the intent of the Mitsubishi MU–2B series airplane operating system modifications, it has no adverse economic impact and imposes no additional burden on any person than would have been necessary to accomplish the AD as currently written. Therefore, FAA has determined that prior notice and opportunity for public comment are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 2000–09–15, Amendment 39–11724 (65 FR 30865, May 15, 2000), and by adding a new AD to read as follows:

2000–09–15 R1 Mitsubishi Heavy Industries, Ltd.: Amendment 39–11819; Docket No. 97–CE–21–AD; Revises AD 2000–09–15, Amendment 39–11724.

(a) *What airplanes are affected by this AD?* This AD applies to all serial numbers of the following Mitsubishi airplane models, certificated in any category: MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, MU–2B–60

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to assist in preventing

departure from controlled flight while operating in icing conditions.

(d) *What actions must I accomplish to address this problem?* Within 12 calendar months after July 24, 2000 (the effective date of this AD), you must incorporate the following modifications:

(1) Install a pneumatic deice monitoring system. You must use the procedures contained in Test Instrumentation, Inc. Document No. MU2–5001, Rev. E., dated May 21, 1997, and attachment; and Mitsubishi Heavy Industries, Ltd., MU–2 Service Bulletin (SB) No. 232, dated July 2, 1997.

(2) Install a trim-in-motion alerting system and automatic autopilot disconnect system. Use the procedures contained in the following:

(i) Test Instrumentation, Inc. Document No. MU2–1001, Rev. C, dated June 15, 1997, and attachment, or Test Instrumentation, Inc. Document No. MU2–1001, Rev. D, dated December 17, 1997, and attachment; and

(ii) Test Instrumentation, Inc. Document No. MU2–4001, Rev. C, dated June 30, 1997, and attachment, or Test Instrumentation, Inc. Document No. MU2–4001, Rev. F, dated July 14, 1998, and attachment; and

(iii) Mitsubishi MU–2 SB No. 231, dated July 2, 1997.

(3) Install an auto-ignition (re-light) system. Use the procedures contained in the following:

(i) Mitsubishi Heavy Industries, Ltd., MU–2 SB No. 226, which incorporates the following pages:

Pages	Revision level	Date
2 through 11, 13 through 23, 27 through 57, 59, and 61 through 93	A	January 13, 1997.
1, 12, 24, 25, 26, 58, and 60	B	October 27, 1997.

(ii) Mitsubishi Heavy Industries, Ltd., MU–2 SB No. 086/74–002, dated November 15, 1995.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager of one of the following approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager:

(i) Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106;

(ii) Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; or

(iii) Fort Worth Airplane Certification Office, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

Note: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact one of the following:

(1) Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4132, facsimile: (816) 329–4090;

(2) Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5222; facsimile: (562) 627–5228; or

(3) Fort Worth Airplane Certification Office, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5147; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) You must accomplish the actions required by this AD in accordance with the service bulletins specified below:

(i) Mitsubishi Heavy Industries, Ltd., MU–2 SB No. 231, dated July 2, 1997;

(ii) Mitsubishi Heavy Industries, Ltd., MU–2 SB No. 232, dated July 2, 1997;

(iii) Test Instrumentation, Inc. Document No. MU2–1001, Rev. C, dated June 15, 1997, and attachment;

(iv) Test Instrumentation, Inc. Document No: MU2–4001, Rev. C, dated June 30, 1997, and attachment;

(v) Test Instrumentation, Inc. Document No. MU2–5001, Rev. E, dated May 21, 1997, and attachment; and

(vi) Mitsubishi Heavy Industries, Ltd., MU–2 SB No. 226, which incorporates the following pages:

Pages	Revision Level	Date
2 through 11, 13 through 23, 27 through 57, 59, and 61 through 93	A	January 13, 1997.
1, 12, 24, 25, 26, 58, and 60	B	October 27, 1997.

(vii) Test Instrumentation, Inc. Document No. MU2–1001, Rev. D, dated December 17, 1997, and attachment;

(viii) Test Instrumentation, Inc. Document No. MU2–4001, Rev. F, dated July 14, 1998, and attachment; and

(ix) Mitsubishi Heavy Industries, Ltd., MU–2 SB No. 086/74–002, dated November 15, 1995.

(2) The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51.

(3) You can get copies from Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, suite 685, LB–77, Addison, Texas 75001–4692. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on July 24, 2000.

Issued in Kansas City, Missouri, on July 7, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17908 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–260–AD; Amendment 39–11828; AD 2000–14–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched. This amendment adds a new revision to the AFM and revises the applicability of the existing AD. This amendment also requires modification of the air data reference systems. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent uncommanded changes in certain instrument settings on the pilot's and co-pilot's instrument displays, which could result in confusion among the flight crew about the correct position and flight configuration of the airplane.

DATES: Effective August 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–21–02, amendment 39–9778 (61 FR 52688, October 8, 1996), which is applicable to certain Bombardier Model CL–600–2B19 series airplanes, was published in the **Federal Register** on August 6, 1999 (64 FR 42866). The action proposed to supersede AD 96–21–02 to continue to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched. The action also proposed to add a new temporary revision to the Emergency, Normal, and Abnormal Procedures Sections and Supplements 4 and 8 of the FAA-approved AFM to provide information for the flight crew concerning intermittent failures of the air data system resulting in uncommanded changes to the pilot's or co-pilot's flight instruments, and to provide procedures for the flight crew to check and reset certain instrument settings. In addition, the action proposed to limit the applicability of the existing AD to exclude certain airplanes on which the modification was accomplished during manufacture. The action also proposed to require modification of the air data reference systems, which, when accomplished, would terminate the requirement for revising the AFM.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Reference Latest Service Bulletin Revision

One commenter requests that the FAA reference the latest revision to the service bulletin referenced in the proposal as an acceptable means of compliance. The FAA concurs with the commenter's request. Since the issuance of the proposal, the manufacturer has issued Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'E,' dated October 12, 1999. The technical content of the service bulletin is similar to Revision 'B,' which is cited in this final rule as the appropriate source of service information for accomplishment of the actions required by this AD. Revision 'E' was issued to provide alternative wiring changes. In addition, the FAA also has determined that accomplishment of the modification in accordance with Revision 'C,' dated September 17, 1998, or Revision 'D,' dated March 12, 1999, is acceptable for compliance.

The FAA has added a note to this final rule to specify that accomplishment of the modification in accordance with Revision 'C,' 'D,' or 'E' of the service bulletin is acceptable for compliance.

Request to Delete References to "Series 100" Airplanes

One commenter, the manufacturer, requests that the FAA delete its reference in the proposal to "Series 100" airplanes. The commenter indicates that the reference causes confusion, as a "Series 200" airplane also exists as a marketing designation. [While the "Series 100" is listed on the Type Certificate Data Sheet (TCDS), the "Series 200" is not.] The FAA concurs with this request, and has removed all such references from this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 86 airplanes of U.S. registry that will be affected by this AD.

The AFM revision that is currently required by AD 96–21–02, and is retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM on U.S. operators is estimated to be $5,160, or $60 per airplane.

The new AFM revision that is required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these

figures, the cost impact of the new AFM revision required by this AD on U.S. operators is estimated to be $5,160, or $60 per airplane.

The new modification that is required by this AD will take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no charge to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $56,760, or $660 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9778 (61 FR 52688, October 8, 1996), and by adding a new airworthiness directive (AD), amendment 39–11828, to read as follows:

2000–14–17—Bombardier, Inc. (Formerly Canadair): Amendment 39–11828. Docket 98–NM–260–AD. Supersedes AD 96–21–02, Amendment 39–9778.

Applicability: Model CL–600–2B19 series airplanes having serial numbers 7003 through 7207 inclusive, certificated in any category; except those airplanes on which Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded changes in the settings on the pilot's and co-pilot's instrument displays, which could result in confusion among the flight crew about the correct position and flight configuration of the airplane, accomplish the following:

Restatement of the Requirements of AD 96–21–02, Amendment 39–9778

(a) Within 3 days after October 15, 1996 (the effective date of AD 96–21–02, amendment 39–9778), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Prior to each takeoff and after any event during which generators are switched, check the settings of the barometric altimeter, altitude pre-selector, V-speed, and speed bug. If any discrepancy is detected, reset, as necessary."

New Requirements of This Ad

AFM Temporary Revision

(b) Within 2 days after the effective date of this AD, revise the Emergency, Normal, and Abnormal Procedures Sections, and Supplements 4 and 8 of the FAA-approved AFM by inserting Canadair Regional Jet Temporary Revision RJ/50–2, dated June 1, 1997, into the applicable section of the AFM.

Note 2: The AFM revisions required by paragraph (b) of this AD are accomplished by inserting a copy of the Temporary Revisions into the applicable section of the AFM. When these Temporary Revisions have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the Temporary Revisions.

Replacement

(c) Within 18 months after the effective date of this AD, modify the air data reference systems in accordance with Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997. After accomplishment of the modification, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM.

Note 3: Accomplishment of the modification in accordance with Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision "C," dated September 17, 1998; Revision "D," dated March 12, 1999; or Revision "E," dated October 12, 1999; is acceptable for compliance with the requirements of paragraph (c) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Canadair Regional Jet Temporary Revision RJ/50–2, dated June 1, 1997; and Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 8: The subject of this AD is addressed in Canadian airworthiness directive CF–96–16R1, dated June 24, 1998.

(g) This amendment becomes effective on August 28, 2000.

Issued in Renton, Washington, on July 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18391 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–03]

Revision of Class D and Class E airspace, Great Falls International Airport, MT; Removal of Class D and Class E Airspace, Great Falls Malmstrom AFB, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Great Falls International Airport Class D and E4 airspace areas and removes the Great Falls Malmstrom AFB Class D and E4 airspace areas. The reconfiguration of airspace is necessary due to the closure of the Malmstrom AFB. The realigned airspace will better serve the Great Falls International Airport, Great Falls, MT.

EFFECTIVE DATE: 0901 UTC, August 10, 2000

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–03, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On February 29, 2000, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class D and E4 airspace at Great Falls International Airport, Great Falls, MT and removing Class D and E4 airspace at Malmstrom AFB, Great Falls, MT in order to reconfigure airspace due to the closure of Malmstrom AFB (65 FR 10730). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises Class D and E4 airspace at Great Falls International Airport, Great Falls, MT and removes Class D and E4 airspace at Malmstrom AFB, Great Falls, MT in order to reconfigure airspace due to the closure of Malmstrom AFB. This amendment provides revised airspace at Great Falls, MT to better meet current airspace standards associated with established procedures at Great Falls International Airport. The FAA establishes airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This amendment provides for the safe and efficient use of the navigable airspace. This amendment promotes safe flight operations under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) at the Great Falls International Airport, Great Falls, MT and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace areas and Class E airspace areas designated as an extension to a Class D surface airspace, are published in Paragraph 5000 and Paragraph 6004, respectively, of FAA Order 7400.9G dated September 1, 1999 and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 General.

* * * * *

ANM MT D Great Falls International Airport, MT [Revised]

Great Falls International Airport, MT
(Lat. 47°28′55″N, long. 111°22′14″W)

That airspace extending upward from the surface to and including 6,200 feet MSL within a 5.5-mile radius of the Great Falls International Airport.

* * * * *

ANM MT D Great Falls Malmstrom AFB, MT [Remove]

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.

ANM MT E4 Great Falls International Airport, MT [Revised]

Great Falls International Airport, MT
(Lat. 47°28′55″N, long. 111°22′14″W)
Great Falls VORTAC
(Lat. 47°27′00″N, long. 111°24′44″W)

That airspace extending upward from the surface within 3.1 miles each side of the Great Falls VORTAC 225° radial extending from the 5.5-mile radius of Great Falls International Airport to 8.7 miles southwest of the VORTAC, and within 3.1 miles each side of the Great Falls VORTAC 045° radial extending from the 5.5-mile radius of the airport to 16.6 miles northeast of the VORTAC and that airspace upward from the surface within 4 miles each side of the 164 degree bearing from the Great Falls International Airport extending from the 5.5-mile radius to 13.4 miles south of the airport.

* * * * *

ANM MT E4 Great Falls Malmstrom AFB, MT [Remove]

* * * * *

Issued in Seattle, Washington, on July 6, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–18578 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–10]

Establishment of Class E Airspace; Lamoni, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace area at Lamoni, IA. Area Navigation (RNAV) Runway (RWY) 17 and RNAV RWY 35 Standard Instrument Approach Procedures (SIAPs) have been developed to serve Lamoni Municipal Airport, Lamoni, IA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate aircraft executing these SIAPs. This action establishes controlled airspace at Lamoni, IA, for aircraft executing the SIAPs at the Lamoni Municipal Airport.

In addition, an error was noted in the latitude of the Airport Reference Point (ARP) for the Lamoni Municipal Airport, Lamoni, IA, as it appeared in the proposed rule.

EFFECTIVE DATE: 0901 UTC November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On May 22, 2000, the FAA proposed to amend part 71 of Title 14 of the Federal Regulations (14 CFR part 71) by establishing Class E airspace area at Lamoni, IA (65 FR 32047). The proposed action was to provide controlled airspace to accommodate aircraft executing the RNAV RWY 17 and RNAV RWY 35 SIAPs. In addition, this action corrects an error in the latitude of ARP for the Lamoni Municipal Airport as it appeared in the proposed rule.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that which was proposed. This action corrects the error in the latitude of the Lamoni Municipal Airport ARP.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Title 14 of the Federal Regulations (14 CFR part 71) establishes Class E airspace area at Lamoni, IA, by providing controlled airspace for aircraft executing the RNAV RWY 17 and RNAV RWY 35 SIAPs. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Lamoni, IA [New]

Lamoni Municipal Airport, IA
(Lat. 40°38'00"N., long. 93°54'08"W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Lamoni Municipal Airport.

* * * * *

Issued in Kansas City, MO on July 11, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–18576 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–21]

Establishment of Class E Airspace; Columbia, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Columbia, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Westlake Regional Hospital, Columbia, KY. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Effective 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On June 2, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Columbia, KY, (65 FR 35301). This action provides adequate Class E airspace for IFR operations at Westlake Regional Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Columbia, KY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Columbia, KY [New]

Westlake Regional Hospital
Point in Space Coordinates
Lat. 37°05′30″ N, long. 85°17′01″ W

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (Lat. 37°05′30″ N, long. 85°17′01″ W) serving Westlake Regional Hospital.

* * * * *

Issued in College Park, Georgia, August 7, 2000.

John Thompson,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–18579 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–20]

Establishment of Class E Airspace; Albany, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Albany, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Clinton County Hospital, Albany, KY. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Effective 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On June 2, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Albany, KY, (65 FR 35302). This action provides adequate Class E airspace for IFR operations at Clinton County Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposed to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Albany, KY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO KY E5 Albany, KY [New]

Clinton County Hospital
Point In Space Coordinates
Lat. 36°41′55″N, long. 85°07′57″W

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°41′55″N, long. 85°07′57″W) serving Clinton County Hospital.

* * * * *

Issued in College Park, Georgia, August 7, 2000.

John Thompson,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–18580 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 00F–0756]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of May 31, 2000 (65 FR 34587). The document amended the food additive regulations to provide for the safe use of chlorine dioxide produced by treating an aqueous solution of sodium chlorate with hydrogen peroxide in the presence of sulfuric acid. The document was published with an error. This document corrects that error.

DATES: This rule is effective May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–13477, appearing on page 34587 in the Federal Register of Wednesday, May 31, 2000, the following corrections are made:

1. On page 34587, in the first column, under the **SUMMARY** section, in the sixth line, the word "chlorite" is corrected to read "chlorate".

2. On page 34587, in the first column, under the **SUPPLEMENTARY INFORMATION** section, in the 14th line, "chlorite" is corrected to read "chlorate".

Dated: July 13, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–18582 Filed 7–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for using approved, single-ingredient salinomycin and roxarsone Type A medicated articles to make two-way combination Type C medicated feeds used for prevention of coccidiosis, increased rate of weight gain, improved feed efficiency, and improved pigmentation in roaster and replacement breeder and layer) chickens.

DATES: This rule is effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–135 that provides for use of approved Bio-Cox® (30 or 60 grams per pound (g/lb) of salinomycin activity) and 3-Nitro® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make combination Type C medicated feeds for use in roaster and replacement (breeder and layer) chickens. The combination Type C medicated feeds contain 40 to 60 g per ton (g/ton) salinomycin and 22.7 to 45.4 g/ton roxarsone, and they are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of May 26, 2000, and the regulation in 21 CFR 558.550 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.550 is amended by adding paragraph (d)(3)(iv) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(d) * * *

(3) * * *

(iv) *Amount per ton.* Salinomycin, 40 to 60 grams; and roxarsone, 22.7 to 45.4 grams.

(*a*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*,*E. necatrix*,*E. acervulina*,*E. brunetti*,*E. mivati*, and*E. maxima*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(*b*) *Limitations.* Feed continuously as sole ration. Discontinue use prior to sexual maturity. Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by No. 063238 and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: July 7, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–18583 Filed 7–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[T.D. ATF–422b]

RIN 1512–AC07

Implementation of Public Law 105–33, Section 9302, Requiring the Qualification of Tobacco Product Importers (96R–316P) and Miscellaneous Technical Amendments: Correction

ACTION: Temporary rule; correction.

SUMMARY: This document contains a correcting amendment to the temporary regulations, which were published in the **Federal Register** on December 22, 1999 (64 FR 71947) and on March 21, 2000 (65 FR 15058). The temporary regulations relate to implementing certain provisions of the Balanced Budget Act of 1997 that set forth requirements that, beginning January 1, 2000, importers of tobacco products must qualify for a permit to conduct that activity.

DATES: This rule is effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction implemented some of the provisions of the Balanced Budget Act of 1997 (Public Law 105–33) and made clarifying changes to part 275. The temporary regulations were published in the **Federal Register** on December 22, 1999 (T.D. ATF–422, 64 FR 71947) and corrected on March 21, 2000 (T.D. ATF–422a, 65 FR 15058). These provisions amended the Internal Revenue Code of 1986 to require that, beginning January 1, 2000, importers of tobacco products must qualify for a permit to conduct that activity.

Need for Correction

As published, the temporary regulations contain an error that may be confusing and needs to be clarified. T.D. ATF–422 contained an instruction to remove and reserve a section of regulations (27 CFR 275.117) (see 64 FR 71951). Later, T.D. ATF–422a removed this instruction (65 FR 15059), but it should not have been removed. This document corrects this error.

List of Subjects in 27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Electronic funds transfers, Claims, Customs duties and inspections, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and record keeping requirements, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

Accordingly, 27 CFR Part 275 is corrected by making the following correcting amendments:

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

1. The authority citation for part 275 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.117 [Removed and reserved]

2. Section 275.117 is removed and reserved.

Signed: July 11, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–18057 Filed 7–21–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 07–00–066]

RIN 2115–AE47

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, Mile 739.2, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: Commander, Seventh Coast Guard District is temporarily amending the regulations governing Sisters Creek (SR 105) Drawbridge at Sisters Creek, mile 739.2 across the Atlantic Intracoastal Waterway at Jacksonville, Florida. This temporary rule allows a single leaf opening, with a four-hour advance notification to the bridge tender to provide a double leaf opening, from July 12, 2000 to October 31, 2000. This action is necessary to facilitate rehabilitation of the drawbridge.

DATES: This temporary rule is effective from July 12, 2000 to October 31, 2000. Comments must be received by August 31, 2000.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 406, Miami, FL 33131. Seventh Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at

Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 406, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barry Dragon, Project Officer, Seventh Coast Guard District, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–00–066], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger that 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES**, explaining why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is impracticable because we received notice of this rehabilitation recently, not leaving time for a full notice and comment period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We received notice of this rehabilitation recently, not leaving time for a delayed effective date.

Background and Purpose

The Sisters Creek (SR 105) Drawbridge at Sisters Creek, mile 739.2, across the Atlantic Intracoastal Waterway, has a vertical clearance of 28 feet at mean high water and a horizontal clearance of 90 feet between fenders. The existing operating regulations in 33 CFR 117.5 require the bridge to be open promptly and fully for the passage of vessels when a request to open is given.

M&J Construction Company of Pinellas County, Inc. requested from the Coast Guard, that the Sisters Creek (SR 105) Drawbridge operations be temporarily changed to allow for rehabilitation of the drawbridge. This temporary rule change to the drawbridge operating regulations will allow the drawbridge owner or operator to open a single leaf, with a four hour advance notification to the bridge tender to provide a double leaf opening, starting July 12, 2000 through October 31, 2000.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be minimal because a single leaf opening will be available and a double leaf opening can be provided with a four-(4) hour notice to the bridge tender.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule will affect the following entities, some of which may be small entities: owners and operators of vessels intending to transit the Intracoastal Waterway at mile 739.2. Although this temporary rule will be in effect for four months, vessel traffic can still pass through the drawbridge either with a single leaf opening or with advance notice for a double leaf opening.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize

litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From July 12, 2000 through October 31, 2000, in § 117.261, a new paragraph (tt) is temporarily added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St.Marys River to Key Largo

* * * * *

(tt) Sister's Creek (SR 105) Drawbridge, mile 739.2 at Sisters Creek. The drawbridge may have a single leaf opening on demand, with a four-hour advance notification to the bridge tender to provide a double leaf opening, from July 12, 2000 to October 31, 2000.

Dated: July 12, 2000.

Thad. W. Allen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–18558 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–142]

RIN 2115–AA97

Safety Zone: Groton Long Point Yacht Club Fireworks Display, Main Beach, Groton Long Point, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Groton Long Point Yacht Club Fireworks Display to be held in Long Island Sound, Groton Long Point, CT on July 22, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display.

DATES: This rule is effective from 9 p.m. on July 22, 2000, until 10:15 p.m. on July 23, 2000.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Chris Stubblefield, Command Center, Group/Marine Safety Office Long Island Sound, New Haven, CT (203) 468–4428.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 the Coast Guard finds that good cause exists for not publishing a NPRM and making this temporary final rule effective less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Groton Long Point Yacht Club of Groton Long Point, CT is sponsoring a fireworks display off the main beach in Groton Long Point, CT. The fireworks display will occur from 9:00 p.m. until 10:15 p.m. on July 22, 2000. The safety zone covers all waters of the Long Island Sound within a 600 foot radius of the fireworks launching barge which will be located off of the main beach in Groton Long Point, CT in approximate position: 41°–18.'05"N, 072°–02.'08"W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Long Island Sound and entry into this zone will be restricted for only 75 minutes on July 22, 2000. Although this regulation prevents traffic from transiting this section of Long Island Sound, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in

a portion of Long Island Sound from 9 p.m. until 10:15 p.m. on July 22, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub.L. 105–383

2. Add temporary § 165.T01–142 to read as follows:

§165.T01–142 Groton Long Point Yacht Club Display, Main Beach, Groton Long Point, CT.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 600 foot radius of the launch site located on the Long Island Sound 600 feet south of Main Beach, Groton Long Point, CT in approximate position: 41°–18'.05"N, 072°–02'.08"W.

(b) *Effective date.* This section is effective from 9 p.m., on July 22, 2000 until 10:15 p.m., on July 23, 2000.

(c) (1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U. S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 25, 2000.

David P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 00–18560 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6735–1]

RIN 2060–AI61

Additional Flexibility Amendments to Vehicle Inspection Maintenance Program Requirements; Amendment to the Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action revises the Motor Vehicle Inspection/Maintenance (I/M) program requirements to provide additional flexibility to state I/M programs, both in response to the I/M provisions of the National Highway System Designation Act of 1995 (NHSDA), and in compliance with the Clean Air Act requirement that EPA's guidance for such programs be "from time to time revised." Today's action: Modifies the current enhanced I/M performance standard modeling requirements to reflect delays caused by the NHSDA, and to provide states greater flexibility in how they meet the performance standard; removes the I/M rule provision establishing the decentralized, test-and-repair credit discount; revises certain test procedure, standard, and equipment requirements to better accommodate alternative test types and program designs; streamlines the data collection, analysis, and reporting requirements to make them consistent with various alternative test and program types; makes minor revisions to the inspector training requirements also to accommodate various alternative test and program types; revises the requirements for consumer protection and improving repair effectiveness to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such

information, reliably and practically; and expands the options for complying with the on-road testing requirement to accommodate more recent variations, such as clean screening and non-tailpipe based, roadside tests.

DATES: This rule will take effect August 23, 2000.

ADDRESSES: Materials relevant to this rulemaking are contained in the Public Docket No. A–99–19. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: David Sosnowski, Office of Transportation and Air Quality, Transportation and Regional Programs Division, 2000 Traverwood, Ann Arbor, Michigan, 48105; Telephone (734) 214–4823.

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  I. Congressional Review Act

I. Summary of Rule

Under the Clean Air Act as amended in 1990 (CAA), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992, (40 CFR part 51, subpart S) a rule related to state air quality implementation plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). EPA is today amending this rule to provide greater flexibility to states to tailor their I/M programs to better meet local needs. Specifically, today's action: (1) Amends the enhanced I/M performance standard requirements at 40 CFR 51.351 to change the performance standard modeling requirement from demonstrating that the performance standard is met on 2000 and each subsequent milestone (through to and including the attainment deadline) to a requirement that the performance standard be met (within +/− 0.02 grams-per-mile) on 2002, and that the same or better level of emission reduction be demonstrated for the attainment deadline, rounded to the nearest year; (2) deletes 40 CFR 51.353(b) which previously established the decentralized, test-and-repair credit discount, and revises the definition of test-only at 40 CFR 51.353(a) to allow test-only stations to sell self-serve gasoline, pre-packaged oil, and any other items that are not directly related to automotive parts sales and/or service; (3) to better accommodate alternative test types and program designs: (a) Revises the test procedures and standards requirements at 40 CFR 51.357 to clarify that tailpipe exhaust testing is not a universal requirement for all I/M programs, that alternatives to the IM240 drive cycle are allowed under the requirements for transient testing, and that the standard for an acceptable alternative test to the IM240 is comparability in terms of emission reduction potential, not necessarily equivalence, (b) revises the test equipment requirements at 40 CFR 51.358 to make the definition of "computerized test system" less prescriptive and to relax the requirement for a real-time data link for those areas required to do I/M, but which do not need to claim I/M emission reductions to meet their other, non-I/M CAA requirements, and (c) revises the data collection, analysis, and reporting requirements at 40 CFR 51.365 and 40 CFR 51.366 to clarify that the specific elements to be collected and reported are only required where applicable to the test type employed, and to make the requirements less prescriptive with regard to the test types assumed; (4) revises the requirements for consumer protection at 40 CFR 51.368 and improving repair effectiveness at 40 CFR 51.369 to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically, and; (5) expands the options for complying with the on-road testing requirement at 40 CFR 51.371 by: (a) Removing language suggesting that such testing must be tailpipe-based, and (b) inserting language making the out-of-cycle repair requirement optional where on-road testing is used as a clean-screen approach.

The goal of today's action is to bring the rule up-to-date with current policy decisions, technological changes, and statutory requirements, while also providing states the additional flexibility they need to tailor their I/M programs now to better meet their future needs. Among these future needs are: (1) The need to maximize program efficiency and customer convenience by capitalizing on alternative vehicle testing options; (2) the need to accommodate an in-use fleet turning over to newer, cleaner, and more durable vehicle technologies over time; and (3) the need to assess the role I/M should play in areas once they have attained the National Ambient Air Quality Standards (NAAQS). The detailed basis for each amendment was explained in the August 20, 1999 proposal and will not be repeated here except as appropriate in response to comments.

II. Authority

Authority for the today's action is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*) and by section 348 of the National Highway System Designation Act of 1995 (23 U.S.C. 101).

III. Public Participation

Written comments on the August 20, 1999 proposal were received from four sources prior to the close of the public comment period on September 20, 1999. In response to a request for an extension, on November 16, 1999, the public comment period was re-opened for seven days, and closed again on November 23, 1999. Between September 20, 1999 and November 23, 1999, comments from one additional source were received, while one of the original commenters provided additional comments. The commenters were: Missouri Department of Natural Resources (MDNR), Texas Natural Resource Conservation Commission (TNRCC), the Association of International Automobile Manufacturers (AIAM), the National Automobile Dealers Association (NADA), and Environmental Systems Products, Inc. (ESP), which transmitted comments through the law firm of Hunton and Williams. Of the comments received, only ESP requested that some of the proposed amendments be withdrawn. The main issues raised by the commenters are summarized and addressed below:

A. Increased Flexibility

All commenters—including ESP—indicated their general support for changing the I/M rule to provide states with greater flexibility to tailor I/M programs to meet their local needs. Only ESP suggested that in proposing its flexibility amendments, EPA had exceeded its authority and requested certain aspects of the proposal be withdrawn. The specific objections raised by ESP are addressed under the relevant headings below.

B. Performance Standard Amendments

1. Summary of Proposal

The current I/M rule requires that enhanced I/M programs show through modeling that they can meet the relevant performance standard beginning with a 2000 evaluation date (which was considered the closest modeling equivalent to the Clean Air Act's November 15, 1999 milestone date for Reasonable Further Progress plans) and for each CAA milestone thereafter (also rounded to the nearest evaluation year) through to and including the relevant attainment date. Passage of the National Highway System Designation Act (NHSDA) in 1995—and EPA's own I/M flexibility amendments in 1995 and 1996—contributed to delays by many states required to implement enhanced I/M programs. EPA therefore proposed to change this requirement by delaying the first milestone to 2002 and limiting the number of milestones modeled to a maximum of two: 2002 and, for those areas with post-2002 attainment deadlines, the relevant CAA attainment deadline, rounded up to the nearest year.

2. Summary of Comments

Although all the commenters that chose to address this element of the proposal favored the change, EPA believes there may be some confusion with regard to which of the rule's dates is being changed. At least one commenter seems to suggest that the proposal changes the deadline by which biennial program evaluations are due under 40 CFR 51.353(c) of the I/M rule. This is not the case.

3. Response to Comments

EPA wants to take this opportunity to clarify that we are not proposing to change the deadline by which biennial program evaluations are due under 40 CFR 51.353(c) of the I/M rule and that we are not proposing to change that section of the rule in any way at this time. The first CAA-required biennial program evaluation continues to be due two years after the initial start date of mandatory testing; subsequent reports continue to be due every two years, thereafter. EPA has only proposed to change the performance standard modeling milestones under 40 CFR 51.351 of the I/M rule. Therefore, in this final action EPA is changing the performance standard modeling milestones as proposed and as supported by all commenters that chose to address this element of the proposal.

C. Network Requirement Amendments

1. Summary of Proposal

The current I/M rule provides for the automatic application of an emission reduction discount on programs that allow the same entity to both test and repair I/M subject vehicles. In 1995, the National Highway System Designation Act (NHSDA) prohibited the automatic discounting of such programs. Nevertheless, the NHSDA still allows EPA to adjust the credit it approves for such programs on a case-by-case basis, based upon program data. EPA therefore proposed to delete 40 CFR 51.353(b) which first established the automatic credit discount for decentralized, test-and-repair I/M programs. Language was also included to clarify that a decentralized, test-and-repair I/M program submitted after the NHSDA's March 27, 1996 deadline for qualifying for an 18-month interim approval can still be granted a 12-month conditional approval on a case-by-case basis.

2. Summary of Comments

MDNR indicated that while it did not agree with the proposed changes based upon its belief that decentralized, test-and-repair programs are prone to inaccuracy and fraud, it nevertheless acknowledged the need for the change to comply with the NHSDA. NADA indicated that it has been pushing for this change since before passage of the original, 1992 I/M rule and therefore welcomed the proposed amendment. TNRCC suggested that EPA change the following statement concerning conditional approvals from the proposed amendment—"* * * the State must demonstrate that the program is achieving the level of effectiveness claimed in the plan within 12 months of the plan's approval"—to "* * * the State must demonstrate that the program is achieving the level of effectiveness claimed in the plan within 12 months of the plan's *final* approval" (emphasis added).

3. Response to Comments

EPA is taking final action to delete the automatic discount as proposed. In addition, although EPA agrees with TNRCC that the text cited could be clarified, we believe the proposed revision actually increases confusion, and may lead states to believe that the required demonstration is not a condition for final approval, but rather something submitted after final approval is granted. Therefore, EPA will amend the cited language concerning conditional approvals to read as follows: "* * * the State must demonstrate that the program is achieving the level of effectiveness claimed in the plan within 12 months of the plan's final conditional approval before EPA can convert that approval to a final full approval."

D. Test Procedure and Related Amendments

1. Summary of Proposal

Although EPA has approved a variety of alternative tests for use in I/M programs—such as the gas cap test and the Acceleration Simulation Mode (ASM) test—the language in the current I/M rule with regard to test procedures and related requirements remains heavily biased toward the IM240. Also, the I/M rule as currently written frequently equates emission testing with "tailpipe testing," thus barring by implication alternative designs that have been proposed to EPA that do not rely upon tailpipe testing to meet the applicable performance standard. For example, the State of Louisiana has proposed to meet the low enhanced I/M performance standard with a program that does not include a tailpipe test, employing, instead, a comprehensive visual inspection and evaporative system pressure testing on a wide range of vehicles, up to and including heavy-duty vehicles. EPA therefore proposed to amend the rule to delete language that suggests that non-tailpipe and non-IM240 alternatives are barred from consideration. For the most part, these amendments are limited to deleting the words "tailpipe" and "IM240," and inserting the caveat "where applicable," as needed. EPA also proposed replacing the requirement that alternative tests be equivalent to the tests they replace to a requirement that they be comparable in combination with other program parameters. Similar amendments were proposed elsewhere in the regulatory text, to the extent that the existing text creates the impression that IM240 or tailpipe testing are absolute requirements, or that alternative test methods are otherwise barred. Lastly, EPA proposed to revise the test equipment requirements at 40 CFR 51.358 to make the regulatory definition of "computerized test system" less

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prescriptive to allow alternatives like evaporative emission testing devices to qualify as "computerized test systems."

2. Summary of Comments

MDNR did not favor changing "equivalent" to "comparable," but acknowledged the need for the change. TNRCC suggested changing the proposed amendment language from a requirement that computerized analyzers "shall be automated" to a requirement that computerized test systems "shall make automatic pass/fail decisions." AIAM and NADA supported the deletion of references to "tailpipe" and "IM240," and expanding the definition of "computerized test systems." ESP pointed out that the CAA did not require "computerized test systems," but "computerized *emission* analyzers" (emphasis added). ESP also suggested the proposal to change the criteria for accepting alternative tests from "equivalent" to "comparable" was in conflict with the CAA's requirement that I/M programs be centralized unless decentralized programs can be proven to be "*equally* effective" (emphasis added). Lastly, ESP suggested that EPA's proposed amendment of 40 CFR 51.357(a)(13) to remove a reference to correlation to the Federal Test Procedure (FTP) violates section 207(b) of the CAA, which requires that I/M tests be "reasonably capable of being correlated" to the FTP.

3. Response to Comments

EPA agrees with the editorial change suggested by TNRCC and will also add the word "emission" to change "computerized test systems" to "computerized emission test systems" in response to ESP's comment. However, EPA does not agree that changing the criteria for accepting alternative tests from equivalence to comparability is in conflict with the CAA's equivalency demonstration for decentralized programs. Specifically, the proposal is to change a requirement for test type, *not* network design. The CAA's equivalency requirement applies only to the latter, and is silent on the former. The rule provisions on network design retain the requirement for equivalency. Lastly, EPA agrees with ESP that reasonable correlation to the FTP is a CAA-mandated requirement for alternative I/M tests and will restore the rule's reference to the FTP that was proposed to be deleted in the proposal.

E. Onboard Diagnostics (OBD) versus Emissions Tests

1. Summary of Proposal

EPA has indicated its belief that OBD testing may one day replace tailpipe testing on OBD-equipped vehicles in several forums, including initially the preamble to the original 1992 I/M rule. Because many of the amendments necessary to allow evaporative system testing in lieu of tailpipe testing [1] are similar to the regulatory changes which will be necessary prior to approving the replacement of tailpipe testing with OBD, in the preamble to the proposal, EPA again reiterated its belief that future I/M programs will rely increasingly on OBD-based testing. Also, because all state I/M programs are required to include OBD testing on vehicles so equipped beginning on January 1, 2001, EPA revised some of its generic I/M test requirements to reflect the fact that OBD is either included or exempted from a given requirement, based upon the nature of the OBD system. It was not, however, EPA's intention to make an affirmative determination that OBD alone can replace all other tests on OBD-equipped vehicles at this time. Nor do we intend to make a finding today that it would be technologically justified to do so. Those determinations will be addressed in a separate rulemaking that EPA intends to propose in the near future.

2. Summary of Comments

Both AIAM and ESP seemed to interpret EPA's proposal as granting approval of OBD checks as a replacement for other I/M tests, effective at the same time as all the other changes proposed. NADA, on the other hand, seemed to read the proposal more as EPA intended—as an indication of the likely shape that future I/M programs will take. Both NADA and AIAM supported the idea of relying upon OBD checks for I/M purposes for vehicles so equipped, although AIAM also indicated that additional regulatory changes would be necessary for states to implement OBD-based I/M testing effectively.

ESP vigorously opposed the idea of replacing traditional I/M tests with OBD-only checks and requested that EPA retract any portion of the proposal that would either allow this or create the impression that this was being allowed. In support of their opposition, they suggested the following: (1) OBD monitors individual components but does not directly measure emissions and therefore does not qualify as an emission test; (2) the CAA lists "[c]omputerized emission analyzers" and "[i]nspection of emission control diagnostic systems" separately, suggesting that the two approaches are different; and (3) the CAA's requirement that all enhanced I/M programs use "[c]omputerized emission analyzers" effectively prohibits the substitution of traditional I/M tests with checks of the OBD system. ESP also pointed out that the proposal's docket lacked data supporting the conclusion that OBD checks can replace other tests, and suggested that the public was not afforded an adequate opportunity to review the basis for EPA's proposal. Lastly, ESP maintained that EPA and the states do not have unlimited flexibility in designing I/M programs, specifically stating that "[i]n the case of enhanced I/M programs, for example, tailpipe emission testing has long been considered an essential element of I/M programs, even under the Agency's low-enhanced I/M performance standard."

3. Response to Comments

As indicated in the "Summary of Proposal" above, EPA is not today making an affirmative determination that states can use OBD checks as a replacement for other I/M inspections on vehicles equipped with OBD. Such a determination would require a separate docket including technical support documentation assessing how much emission reduction credit OBD-only I/M testing of OBD-equipped vehicles warrants. Until that time, any area that seeks to rely upon OBD-only I/M testing of model year 1996+ OBD-equipped vehicles may find it difficult to meet the applicable I/M performance standard or other CAA state implementation planning (SIP) goals for which I/M-related emission reduction credits are needed. The reason for this is because OBD-only I/M testing is not currently credited in the MOBILE emission factor model used for SIP development and evaluation. As a result, performing OBD-only I/M testing on 1996+ OBD-equipped vehicles would be the SIP equivalent of completely exempting those vehicles from the program.

ESP is correct in its observation that the docket does not contain the data necessary to support such an affirmative determination. Efforts to gather and analyze that data are ongoing and although the preliminary results look promising, EPA is not in this rulemaking making a conclusion that OBD checks alone are an adequate replacement for other I/M tests for OBD-

[1] States opting to rely upon evaporative system testing in lieu of tailpipe testing must still demonstrate that they meet the applicable I/M performance standard prior to EPA approving such a plan.

equipped vehicles. EPA will in the near future publish a document addressing the results of our data analysis. This notice of proposed rulemaking would be subject to public comment, and would include a docket containing the data and analyses EPA considered in reaching its conclusion. Given the implementation deadline of January 1, 2001 for I/M programs to begin OBD-based I/M testing, EPA expects to publish a notice of proposed rulemaking addressing OBD implementation in I/M programs very soon.

This said, EPA agrees that at least one instance of proposed amendment language was premature with regard to OBD. EPA is therefore deleting the following, proposed caveat from 40 CFR 51.358(a): "With the exception of test procedures relying upon a vehicle's onboard diagnostic (OBD) system (which is certified as part of the overall vehicle certification process) . . ." This language was included in a section indicating the performance features of computerized emission test systems and is premature because EPA has not yet concluded that any such system can rely exclusively upon OBD checks. EPA is taking final action now on the other proposed flexibilities because they are necessary to allow states to adopt evaporative emission testing as their primary emission test in lieu of tailpipe emission testing.

Concerning ESP's comments regarding the limits on EPA's flexibility with regard to I/M programs, EPA agrees that its authority is constrained by the requirements of the Clean Air Act. Regarding ESP's claims concerning the essential nature of tailpipe testing to such programs, however, we disagree. The CAA requires emission testing but does not specify tailpipe emission testing versus evaporative emission testing.

Lastly, regarding ESP's implication that EPA and the states are similarly constrained by the CAA with regard to the flexibility it afforded each in the selection of I/M program elements, we offer the following clarification. While the CAA did impose certain minimum model year coverage requirements upon EPA in its development of the I/M performance standards, it did not specify such coverage requirements for the state programs designed to meet those performance standards. As a practical matter, states have more flexibility than EPA when it comes to determining which vehicles to cover by what test(s) in their I/M programs—provided they can still meet the relevant performance standard which EPA developed considering all subject vehicles. In fact, states routinely exempt the newest and/or oldest model year vehicles from testing, or otherwise exempt vehicles through a variety of clean-screening strategies. EPA believes that it is erroneous to suggest that states do not have this flexibility available to them, or that exempting certain classes of vehicles from specific state I/M program elements is somehow in violation of the CAA.

F. On-Road Testing Amendments

1. Summary of Proposal

The CAA requires that enhanced I/M programs include "on-road testing devices." In its 1992 I/M rule, EPA indicated that this requirement could be met by either using remote sensing devices (RSD) or by conducting road-side pull-over, tailpipe testing. In either case, however, vehicles which failed the test were required to get out-of-cycle repairs, the presumption being that the purpose of such testing was to identify dirty vehicles in need of such repairs. EPA proposed to expand the range of options for meeting the on-road testing requirement to include non-tailpipe tests like evaporative system testing and also to include options like clean-screening which use RSD readings as one basis for exempting clean vehicles from the regular inspection (and do not, therefore, support the notion of out-of-cycle repairs).

2. Summary of Comments

MDNR, TNRCC, and NADA all supported the proposed changes for on-road testing requirements, citing the additional flexibility it allows states. TNRCC further suggested changing 40 CFR 51.371(b)(3) which states that "emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program." TNRCC suggested replacing the word "significant" with "measurable."

3. Response to Comments

EPA is taking final action as proposed and supported by the commenters. EPA agrees with TNRCC's suggestion and will incorporate that word change.

IV. Economic Costs and Benefits

Today's action provides states additional flexibility that lessens rather than increases the potential economic burden on states. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's action.

V. Administrative Requirements

A. Administrative Designation

It has been determined that today's amendments to the I/M rule do not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to OMB review. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950) as amended. Nor does this action create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

B. Reporting and Recordkeeping Requirement

There are no additional information requirements in today's action which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. This certification is based on the fact that the I/M areas impacted by today's action do not meet the definition of a small government jurisdiction, that is, "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The basic and enhanced I/M requirements only apply to urbanized areas with population in excess of either 100,000 or 200,000 depending on location. Furthermore, the impact created by today's action does not increase the preexisting burden of the existing rules which this action amends.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule

where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that today's action would impose any mandate at all as defined in section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this action is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens from those resulting from the currently existing I/M rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. On the contrary, the intent of today's final rule is to provide states greater flexibility with regard to pre-existing regulatory and statutory requirements for vehicle inspection and maintenance (I/M) programs. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate on tribal governments or create any additional burden or requirements for tribal government. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866 and because it is based on technology performance and not on health or safety risks.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not set new technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804 (2).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Transportation.

Dated: July 5, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 51 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 is revised to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Section 51.350 is amended by revising paragraph (c) to read as follows:

§ 51.350 Applicability.

* * * * *

(c) Requirements after attainment. All I/M programs shall provide that the program will remain effective, even if the area is redesignated to attainment status or the standard is otherwise rendered no longer applicable, until the State submits and EPA approves a SIP revision which convincingly demonstrates that the area can maintain the relevant standard(s) without benefit of the emission reductions attributable to the I/M program. The State shall commit to fully implement and enforce the program until such a demonstration can be made and approved by EPA. At a minimum, for the purposes of SIP approval, legislation authorizing the program shall not sunset prior to the attainment deadline for the applicable National Ambient Air Quality Standards (NAAQS).

* * * * *

3. Section 51.351 is amended by removing and reserving paragraph (a) and by revising paragraphs (b), (f) introductory text, (f)(13), (g)(13) and (h)(11) to read as follows:

§ 51.351 Enhanced I/M performance standard.

(a) [Reserved]

(b) *On-road testing.* The performance standard shall include on-road testing (including out-of-cycle repairs in the case of confirmed failures) of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraphs (f), (g), and (h) of this section. Specific requirements are listed in § 51.371 of this subpart.

* * * * *

(f) *High Enhanced Performance Standard.* Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The emission levels achieved by the State's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M and subject areas in the Ozone Transport Region, the performance standard must be met for both oxides of nitrogen (NOx) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section. Except as provided in paragraphs (g) and (h) of this section, the model program elements for the enhanced I/M performance standard shall be as follows:

* * * * *

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(g) * * *

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph (g) shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(h) * * *

(11) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower VOC and NOx emission levels as the model program described in this paragraph (h) by January 1, 2002 to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s). Equality of substituted emission reductions to the benefits of the low enhanced performance standard must be demonstrated for the same evaluation date.

4. Section 51.353 is amended by revising the introductory text and paragraph (a) and by removing and reserving paragraph (b) to read as follows:

§ 51.353 Network type and program evaluation.

Basic and enhanced I/M programs can be centralized, decentralized, or a hybrid of the two at the State's discretion, but shall be demonstrated to achieve the same (or better) level of emission reduction as the applicable performance standard described in either § 51.351 or 51.352 of this subpart. For decentralized programs other than those meeting the design characteristics described in paragraph (a) of this section, the State must demonstrate that the program is achieving the level of effectiveness claimed in the plan within 12 months of the plan's final conditional approval before EPA can convert that approval to a final full approval. The adequacy of these demonstrations will be judged by the Administrator on a case-by-case basis through notice-and-comment rulemaking.

(a) Presumptive equivalency. A decentralized network consisting of stations that only perform official I/M testing (which may include safety-related inspections) and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services (except as provided in § 51.369(b)(1) of this subpart) shall be considered presumptively equivalent to a centralized, test-only system including comparable test elements. States may allow such stations to engage in the full range of sales not covered by the above prohibition, including self-serve gasoline, pre-packaged oil, or other, non-automotive, convenience store items. At the State's discretion, such

stations may also fulfill other functions typically carried out by the State such as renewal of vehicle registration and driver's licenses, or tax and fee collections.

(b) [Reserved]

* * * * *

5. Section 51.357 is amended by revising paragraphs (a)(3), (a)(4), (a)(6), (a)(11), and (a)(13) as follows:

§ 51.357 Test procedures and standards.

* * * * *

(a) * * *

(3) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition, unsafe conditions, fast pass/fail algorithms, or, in the case of the on-board diagnostic (OBD) system check, unset readiness codes.

(4) Tests involving measurement shall be performed with program-approved equipment that has been calibrated according to the quality procedures contained in appendix A to this subpart.

* * * * *

(6) Vehicles shall be retested after repair for any portion of the inspection that is failed on the previous test to determine if repairs were effective. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest (in programs which conduct an exhaust emission test as part of the initial inspection).

* * * * *

(11) Transient emission test. The transient emission test shall consist of mass emission measurement using a constant volume sampler (or an Administrator-approved alternative methodology for accounting for exhaust volume) while the vehicle is driven through a computer-monitored driving cycle on a dynamometer. The driving cycle shall include acceleration, deceleration, and idle operating modes as specified in appendix E to this subpart (or an approved alternative). The driving cycle may be ended earlier using approved fast pass or fast fail algorithms and multiple pass/fail algorithms may be used during the test cycle to eliminate false failures. The transient test procedure, including algorithms and other procedural details, shall be approved by the Administrator prior to use in an I/M program.

* * * * *

(13) Approval of alternative tests. Alternative test procedures may be approved if the Administrator finds that such procedures show a reasonable correlation with the Federal Test Procedure and are capable of identifying comparable emission reductions from the I/M program as a whole, in combination with other program elements, as would be identified by the test(s) which they are intended to replace.

* * * * *

6. Section 51.358 is amended by revising the introductory text, paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(iv), (a)(3) introductory text, (a)(3)(iv), (a)(3)(vi), (a)(3)(ix), (b) introductory text, (b)(2) and (c) and by removing and reserving (b)(1) and (3) to read as follows:

§ 51.358 Test equipment.

Computerized emission test systems are required for performing an official emissions test on subject vehicles.

(a) Performance features of computerized emission test systems. The emission test equipment shall be certified by the program, and newly acquired emission test systems shall be subjected to acceptance test procedures to ensure compliance with program specifications.

* * * * *

(2) * * *

(i) Shall make automatic pass/fail decisions;

(ii) Shall be secured from tampering and/or abuse;

* * * * *

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles in the case of tailpipe-based emission test equipment.

(3) The vehicle owner or driver shall be provided with a record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record (as applicable). The test report shall include:

* * * * *

(iv) The type(s) of test(s) performed;

* * * * *

(vi) The test results, by test, and, where applicable, by pollutant;

* * * * *

(ix) For vehicles that fail the emission test, information on the possible cause(s) of the failure.

(b) Functional characteristics of computerized emission test systems. The test system is composed of motor vehicle test equipment controlled by a computerized processor and shall make automatic pass/fail decisions.

(1) [Reserved]

(2) Test systems in enhanced I/M programs shall include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy. For areas which have demonstrated the ability to meet their other, non-I/M Clean Air Act requirements without relying on emission reductions from the I/M program (and which have also elected to employ stand-alone test equipment as part of the I/M program), such areas may adopt alternative methods for preventing multiple initial tests, subject to approval by the Administrator.

(3) [Reserved]

* * * * *

(c) SIP requirements. The SIP shall include written technical specifications for all test equipment used in the program and shall address each of the above requirements (as applicable). The specifications shall describe the testing process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

7. Section 51.359 is amended by revising the introductory text, paragraphs (a)(1), (c) and (d) and removing and reserving paragraph (a)(3) to read as follows:

§ 51.359 Quality control.

Quality control measures shall insure that emission testing equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained (where applicable).

(a) General requirements. (1) The practices described in this section and in appendix A to this subpart shall be followed for those tests (or portions of tests) which fall into the testing categories identified. Alternatives or exceptions to these procedures or frequencies may be approved by the Administrator based on a demonstration of comparable performance.

* * * * *

(3) [Reserved]

* * * * *

(c) *Requirements for transient exhaust emission test equipment.* Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

(d) Requirements for evaporative system functional test equipment. Equipment shall be maintained according to demonstrated good

engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

* * * * *

8. Section 51.362 is amended by revising paragraphs (a)(2) and (b)(4) to read as follows:

§ 51.362 Motorist compliance enforcement program oversight.

* * * * *

(a) * * *

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry (where applicable);

* * * * *

(b) * * *

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party review;

* * * * *

9. Section 51.363 is amended by revising paragraphs (a)(4)(vii), (b)(1), (c)(10), (d)(1)(i) to read as follows:

§ 51.363 Quality assurance.

* * * * *

(a) * * *

(4) * * *

(vii) Where applicable, access to on-line inspection databases by State personnel to permit the creation and maintenance of covert vehicle records.

(b) * * *

(1) Automated record analysis to identify statistical inconsistencies, unusual patterns, and other discrepancies;

* * * * *

(c) * * *

(10) A check of the pressure monitoring devices used to perform the evaporative canister pressure test(s); and

* * * * *

(d) * * *

(1) * * *

(i) The use of test equipment and/or procedures;

* * * * *

10. Section 51.365 is amended by revising the introductory text and paragraphs (a)(3), (a)(23), (a)(24), (a)(25), and (b) to read as follows:

§ 51.365 Data collection.

Accurate data collection is essential to the management, evaluation, and enforcement of an I/M program. The program shall gather test data on individual vehicles, as well as quality control data on test equipment (with the exception of test procedures for which either no testing equipment is required or those test procedures relying upon a vehicle's OBD system).

(a) * * *

(3) Test system number (where applicable);

* * * * *

(23) Results of the evaporative system pressure test(s) expressed as a pass or fail;

(24) Results of the evaporative system purge test expressed as a pass or fail along with the total purge flow in liters achieved during the test (where applicable); and

(25) Results of the on-board diagnostic check expressed as a pass or fail along with the diagnostic trouble codes revealed (where applicable).

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under § 51.359 of this subpart, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks (where applicable).

11. Section 51.366 is amended by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), and (b)(3), and by removing and reserving (a)(2)(vii), (a)(2)(viii), (a)(2)(ix), (a)(2)(x), (b)(3)(v), (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii) to read as follows:

§ 51.366 Data analysis and reporting.

* * * * *

(a) * * *

(2) * * *

(i) Failing initially, per test type;

(ii) Failing the first retest per test type;

(iii) Passing the first retest per test type;

(iv) Initially failed vehicles passing the second or subsequent retest per test type;

(v) Initially failed vehicles receiving a waiver; and

(vi) Vehicles with no known final outcome (regardless of reason).

(vii) [Reserved]

(viii) [Reserved]

(ix) [Reserved]

(x) [Reserved]

* * * * *

(b) * * *

(3) The number of covert audits:

(i) Conducted with the vehicle set to fail per test type;

(ii) Conducted with the vehicle set to fail any combination of two or more test types;

(iii) Resulting in a false pass per test type;

(iv) Resulting in a false pass for any combination of two or more test types;

* * * * *

12. Section 51.367 is amended by revising paragraphs (a)(1)(vi) and (a)(3) to read as follows:

§ 51.367 Inspector training and licensing or certification.

* * * * *

(a) * * *

(1) * * *

(vi) Test equipment operation, calibration, and maintenance (with the exception of test procedures which either do not require the use of special equipment or which rely upon a vehicle's OBD system);

* * * * *

(3) In order to complete the training requirement, a trainee shall pass (*i.e.*, a minimum of 80% of correct responses or lower if an occupational analysis justifies it) a written test covering all aspects of the training. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection and to follow other required procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The program shall take appropriate steps to insure the security and integrity of the testing process.

* * * * *

13. Section 51.368 is amended by revising paragraph (a) as follows:

§ 51.368 Public information and consumer protection.

(a) Public awareness. The SIP shall include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and State law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Motorists that fail the I/M test in enhanced I/M areas shall be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in § 51.369(b)(1) of this subpart. Motorists that fail the I/M test shall also be provided with information concerning the possible

cause(s) for failing the particular portions of the test that were failed.

* * * * *

14. Section 51.369 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 51.369 Improving repair effectiveness.

* * * * *

(c) * * *

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the transient emission test and the evaporative system functional checks (where applicable);

(3) Utilization of diagnostic information on systematic or repeated failures observed in the transient emission test and the evaporative system functional checks (where applicable); and

* * * * *

15. Section 51.371 is amended by revising the introductory text, paragraphs (a)(2), (a)(3), (b)(2) and (b)(3) to read as follows:

§ 51.371 On-road testing.

On-road testing is defined as testing of vehicles for conditions impacting the emission of HC, CO, NO_x and/or CO2 emissions on any road or roadside in the nonattainment area or the I/M program area. On-road testing is required in enhanced I/M areas and is an option for basic I/M areas.

(a) * * *

(1) * * *

(2) On-road testing is not required in every season or on every vehicle but shall evaluate the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, per inspection cycle.

(3) The on-road testing program shall provide information about the performance of in-use vehicles, by measuring on-road emissions through the use of remote sensing devices or by assessing vehicle emission performance through roadside pullovers including tailpipe or evaporative emission testing or a check of the onboard diagnostic (OBD) system for vehicles so equipped. The program shall collect, analyze and report on-road testing data.

* * * * *

(b) * * *

(1) * * *

(2) The SIP shall include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements (where applicable).

(3) Emission reduction credit for on-road testing programs shall be granted for a program designed to obtain measurable emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. Emission reduction credit will only be granted to those programs which require out-of-cycle repairs for confirmed high-emitting vehicles identified under the on-road testing program. The SIP shall include technical support for the claimed additional emission reductions.

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPPTS–82055; FRL–6597–3]

RIN 2070–AB08

Preliminary Assessment Information Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule addresses the recommendations of the 42nd TSCA Interagency Testing Committee (ITC) Report by adding 3-amino-5-mercapto-1,2,4-triazole, methylal, glycoluril, and ethyl silicate to the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. The ITC recommendations are given priority consideration by EPA in promulgating TSCA section 4 test rules. This PAIR rule will require manufacturers (including importers) of the four substances identified in this document to report certain production, importation, use, and exposure-related information to EPA.

DATES: This rule is effective on August 23, 2000. Any person who believes that section 8(a) reporting required by this rule is not warranted, should submit to EPA on or before August 7, 2000, detailed reasons for that belief. Any person reporting under this document must meet the reporting requirements no later than October 23, 2000, as specified in Unit V.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul Campanella, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8130; fax number: (202) 401–3672; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in § 712.30(d) of the regulatory text portion of this document. Entities potentially affected by this action may include, but are not limited to:

Category	SIC codes	NAICS codes	Examples of potentially affected entities
Chemical manufacturers (including importers)	28, 2911	325, 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and other documents from the EPA Internet EPA Home Page at http://www.epa.gov/. On the Home Page select "Law and

Regulations" and then look up the entry for this document under "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. In person. The Agency has established an official record for this action under docket control number OPPTS–82055. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–82055 in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Document Control Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., East Tower, Rm. G–099, Washington, DC. The telephone number for the OPPT Document Control Office is (202) 260–7093.

3. *Electronically.* Submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or you may mail or deliver your computer disk to the addresses identified in Units I.C.1. or 2. Do not submit any information electronically that you consider to be CBI. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8 or ASCII file format. All copies of electronic comments must be identified by docket control number OPPTS–82055. Electronic comments may be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

II. What Action is EPA Taking?

In this document, EPA is issuing a final TSCA section 8(a) PAIR rule for 3-amino-5-mercapto-1,2,4-triazole, methylal, glycoluril, and ethyl silicate recommended for testing in the 42nd ITC Report to the EPA Administrator published in the Federal Register of August 7, 1998 (63 FR 42554) (FRL–5797–8).

III. What is the Preliminary Assessment Information Reporting (PAIR) Rule?

EPA promulgated the PAIR rule in 40 CFR part 712 under section 8(a) of TSCA (15 U.S.C. 2607(a)). This model section 8(a) rule establishes standard reporting requirements for manufacturers (including importers) of the chemicals listed in the rule at 40 CFR 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on chemicals.

This model rule provides for the automatic addition of ITC *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC Report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective August 23, 2000.

IV. What Chemicals are to be Added ?

In its 42nd Report to the EPA Administrator, the ITC recommended 3-amino-5-mercapto-1,2,4-triazole, methylal, glycoluril, and ethyl silicate. These chemicals can be automatically added to the TSCA section 8(a) PAIR rule.

The regulatory text (§ 712.30(d)) of this document adds 3-amino-5-mercapto-1,2,4-triazole, methylal, glycoluril, and ethyl silicate to the PAIR rule as a result of this document.

V. Who Must Report under this PAIR Rule?

All persons who manufactured (defined by statute to include import) 3-amino-5-mercapto-1,2,4-triazole, methylal, glycoluril, and ethyl silicate identified in the regulatory text (§ 712.30(d)) of this rule during their latest complete corporate fiscal year must submit a EPA Form No. 7710–35 for each site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency as specified in 40 CFR 712.28 no later than October 23, 2000. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT. Copies of the PAIR form are also available electronically from the Chemical Testing and Information Gathering Home Page on the Internet at http://www.epa.gov/opptintr/chemtest/.

VI. Removal of Chemical Substances from the PAIR Rule

Any person who believes that section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before August 7, 2000, detailed reasons for that belief. EPA, in its discretion, may remove the substance

from this rule (see 40 CFR 712.30(c)). When withdrawing a chemical from the rule, EPA will publish a rule amendment in the **Federal Register**.

VII. Public Record

The following documents constitute the public record for this rule under docket control number OPPTS–82055.

1. This final rule.
2. The Economic Analysis for this rule (February 10, 2000).
3. The 42nd ITC Report (63 FR 42554, August 7, 1998) (FRL–5797–8).

VIII. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary. As discussed in Unit III., whenever EPA announces the receipt of an ITC report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. EPA finds, therefore, that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these amendments without prior notice and comment.

IX. Economic Analysis

The economic analysis for the addition of 3-amino-5-mercapto-1,2,4-triazole, methylal, glycoluril, and ethyl silicate to the TSCA section 8(a) PAIR rule is entitled "*Economic Analysis for the Addition of 4 Chemicals Recommended for Testing in the 42nd Report of the TSCA Interagency Testing Committee to EPA's Preliminary Assessment Information Reporting (PAIR) Rule*" (February 10, 2000) (Economic Analysis).

EPA's 1998 Chemical Update System (CUS) was searched to identify manufacturers (including importers) of 3-amino-5-mercapto-1,2,4-triazole, methylal, glycoluril, and ethyl silicate recommended in the 42nd ITC Report. Only three of the four chemicals were located in CUS. The Economic Analysis estimates governmental and industry burden and costs associated with this final rule based upon the data regarding the three chemical substances found in CUS. Nine firms were identified as manufacturers of the chemical at nine sites. The costs and burden associated with this rule are estimated in the Economic Analysis to be the following:

Reporting Costs (dollars)

Nine reports estimated at $2,034.82 per report = $18,313.40

Total Cost = $18,313.40

Mean cost per site/firm = $18,313.40/9 sites = $2,034.82/site

Reporting Burden (hours)

Rule familiarization: 7 hours/site × 9 sites = 63 hours

Reporting: 21.6 hours/report × 9 reports = 194 hours

Total burden hours = 257 hours

Average burden per site/firm = 257 hours/9 sites = 28.6 hours/site

EPA Costs (dollars)

The annual costs to the Federal Government will be approximately 0.0227 FTEs (or 47.25 hours annually). At an estimated $75,306 per FTE, the total 0.0227 FTEs ($1,709.45), plus $1,834.92 for data processing, will cost EPA $3,544.37.

X. Regulatory Assessment Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Executive Order 12898

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

C. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this final rule, because it is not "economically significant" as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the reporting of production, importation, use, and exposure-related information to EPA by manufacturers (including importers) of certain chemicals recommended in the 42nd ITC Report.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity analysis prepared as a part of the Economic Analysis for this rule, and is briefly summarized here. Three of the nine firms identified as manufacturers of chemicals affected by this rule met the Small Business Administration definition of a small business (i.e., having less than 1,000 employees when combined with any corporate parents). Based on the Agency's analysis, the maximum potential impact of this action on an individual firm is estimated to be less than $2,034.82, regardless of the firm's size. To determine the potential significance of the estimated impact of this action on the small firms, the Agency compared the estimated maximum potential cost with the estimated annual sales revenue for these firms. Based on currently available financial information for these firms, EPA has determined that this action will not result in a significant impact on any of these firms. Information relating to this EPA determination is included in the docket for this rulemaking (OPPTS–82055). Any comments regarding the economic impacts that this action imposes on small entities should be submitted to the Agency at the address listed under **FOR FURTHER INFORMATION CONTACT.**

E. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to this action have already been approved by OMB, under OMB control number 2070–0054 (EPA ICR No. 586) for PAIR reporting. This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to be 257 hours. Of that total, an estimated 63 hours are spent in an initial review of the rule, and the remaining 194 hours are associated with actual reporting activities (Economic Analysis). Because this rule does not contain any new information collection activities, additional review and approval of these activities by OMB under the PRA is not necessary.

F. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

Based on EPA's experience with past TSCA section 8(a) rulemakings, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As a result, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

G. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on the Agency's determination that this regulatory action does not require the consideration of voluntary consensus standards.

H. Executive Order 12988

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

I. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the *Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings* issued under the Executive Order.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of August 23, 2000. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit VIII. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: July 12, 2000.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. In § 712.30, the table in paragraph (d) is amended by adding in numerical order by CAS number the following entries:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(d) * * *

CAS No.	Substance	Effective date	Reporting date
78–10–4	Ethyl silicate	August 23, 2000.	October 23, 2000.
* * * * * * *			
109–87–5	Methylal	August 23, 2000.	October 23, 2000
* * * * * * *			
496–46–8	Glycoluril	August 23, 2000.	October 23, 2000
* * * * * * *			
16691–43–3	3-Amino-5-mercapto-1,2,4-triazole	August 23, 2000.	October 23, 2000
* * * * * * *			

* * * * *

[FR Doc. 00–18644 Filed 7–21–00; 8:45 am]
BILLING CODE 6820–80–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–49 and 102–42

[FPMR Amendment H–206]

RIN 3090–AH09

Utilization, Donation, and Disposal of Foreign Gifts and Decorations

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on the utilization, donation, and disposal of foreign gifts and decorations into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3846.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this final rule is to update, streamline, and clarify part 101–49 and move the part into the Federal Management Regulation (FMR). The rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency must follow the language contained in both the question and its answer.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment, therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–49 and 102–42

Conflict of interests, Decorations, medals, awards, Foreign relations, Government property, Government property management.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. Part 101–49 is revised to read as follows:

PART 101–49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

§ 101–49.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on utilization, donation, and disposal of foreign gifts and decorations previously contained in this part, see FMR part 42 (41 CFR part 102–42).

CHAPTER 102—[AMENDED]

2. Part 102–42 is added to subchapter B of chapter 102 to read as follows:

PART 102–42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Subpart A—General Provisions

Sec.

102–42.5 What does this part cover?

Definitions

102–42.10 What definitions apply to this part?

Care, Handling and Disposition

102–42.15 Under what circumstances may an employee retain a foreign gift or decoration?
102–42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain?
102–42.25 Who retains custody of gifts and decorations pending disposal?
102–42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?
102–42.35 Can the employing agency be reimbursed for transfers of gifts and decorations?

Appraisals

102–42.40 When is a commercial appraisal necessary?
102–42.45 Who obtains a commercial appraisal?
102–42.50 Is there a special format for a commercial appraisal?
102–42.55 What does the employing agency do with the appraisal?

Special Disposals

102–42.60 Who is responsible for gifts and decorations received by Senators and Senate employees?
102–42.65 What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?
102–42.70 Who handles gifts and decorations received by the President or a member of the President's family?
102–42.75 How are gifts containing hazardous materials handled?

Subpart B—Utilization of Foreign Gifts and Decorations

102–42.80 To whom do "we", "you", and their variants refer?
102–42.85 What gifts or decorations must we report to GSA?
102–42.90 What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?
102–42.95 How do we report gifts and decorations as excess personal property?
102–42.100 How can we obtain an excess gift or decoration from another agency?
102–42.105 What special information must be included on the transfer request (SF 122)?
102–42.110 How must we justify a transfer request?
102–42.115 What must we do when the transferred gifts and decorations are no longer required for official use?

Subpart C—Donation of Foreign Gifts and Decorations

102–42.120 When may gifts or decorations be donated to State agencies?
102–42.125 How is donation of gifts or decorations accomplished?
102–42.130 Are there special requirements for the donation of gifts and decorations?

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

102–42.135 Whose approval must be obtained before a foreign gift or decoration is offered for public sale?
102–42.140 How is a sale of a foreign gift or decoration to an employee conducted?
102–42.145 When is public sale of a foreign gift or decoration authorized?
102–42.150 What happens to proceeds from sales?
102–42.155 Can foreign gifts or decorations be destroyed?

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

Subpart A—General Provisions

§ 102–42.5 What does this part cover?

This part covers the acceptance, utilization, donation, and disposal of gifts and decorations from foreign governments under 5 U.S.C. 7342. If you receive gifts other than from a foreign government you should refer to § 102–36.405.

Definitions

§ 102–42.10 What definitions apply to this part?

The following definitions apply to this part:

Decoration means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

Employee means:

(1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(2) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section, any individual involved in the performance of such services;

(3) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;

(4) A member of a uniformed service as specified in 10 U.S.C 101;

(5) The President and the Vice President;

(6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(7) The spouse of an individual described in paragraphs (1) through (6) of this definition of *employee* (unless this individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of this individual, other than a spouse or dependent who is an employee under paragraphs (1) through (6) of this definition of *employee*.

Employing agency means:

(1) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees;

(2) The Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) must be carried out by the Clerk of the House;

(3) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) must be carried out by the Secretary of the Senate; and

(4) The Administrative Offices of the United States Courts, for judges and judicial branch employees.

Foreign government means:

(1) Any unit of foreign government, including any national, State, local, and municipal government and their foreign equivalents;

(2) Any international or multinational organization whose membership is composed of any unit of a foreign government; and

(3) Any agent or representative of any such foreign government unit or organization while acting as such.

Gift means a monetary or non-monetary present (other than a decoration) offered by or received from a foreign government. A monetary gift includes anything that may commonly be used in a financial transaction, such as cash or currency, checks, money orders, bonds, shares of stock, and other securities and negotiable financial instruments.

Minimal value means a retail value in the United States at the time of acceptance of $260 or less, except that:

(1) GSA will adjust the definition of *minimal value* in regulations prescribed by the Administrator of General Services every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(2) Regulations of an employing agency may define *minimal value* for its employees to be less, but not more than, the value provided under this definition.

Care, Handling and Disposition

§ 102–42.15 Under what circumstances may an employee retain a foreign gift or decoration?

Employees, with the approval of their employing agencies, may accept and retain:

(a) Gifts of minimal value received as souvenirs or marks of courtesy. When a gift of more than minimal value is accepted, the gift becomes the property of the U.S. Government, not the employee, and must be reported.

(b) Decorations that have been offered or awarded for outstanding or unusually meritorious performance. If the employing agency disapproves retention of the decoration by the employee, the decoration becomes the property of the U.S. Government.

§ 102–42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain?

(a) *Non-monetary gifts or decorations.* When an employee receives a non-monetary gift above the minimal value or a decoration that he/she is not authorized to retain:

(1) The employee must report the gift or decoration to his/her employing agency within 60 days after accepting it.

(2) The employing agency determines if it will keep the gift or decoration for official use.

(3) If it does not return the gift or decoration to the donor or keep it for official use, the employing agency reports it as excess personal property to GSA for Federal utilization screening under § 102–42.95.

(4) If GSA does not transfer the gift or decoration during

Federal utilization screening, the employee may purchase the gift or decoration (see § 102–42.140).

(5) If the employee declines to purchase the gift or decoration, and there is no Federal requirement for either, GSA may offer it for donation through State Agencies for Surplus Property (SASP) under part 101–44 of this title.

(6) If no SASP requests the gift or decoration for donation, GSA may offer it for public sale, with the approval of the Secretary of State, or will authorize the destruction of the gift or decoration under part 101–45 of this title.

(b) *Monetary gifts.* When an employee receives a monetary gift above the minimal value:

(1) The employee must report the gift to his/her employing agency within 60 days after accepting it.

(2) The employing agency must:

(i) Report a monetary gift with possible historic or numismatic (i.e., collectible) value to GSA; or

(ii) Deposit a monetary gift that has no historic or numismatic value with the Department of the Treasury.

§ 102–42.25 Who retains custody of gifts and decorations pending disposal?

(a) The employing agency retains custody of gifts and decorations that employees have expressed an interest in purchasing.

(b) GSA will accept physical custody of gifts above the minimal value, which

employees decline to purchase, or decorations that are not retained for official use or returned to donors.

Note to § 102–42.25(b): GSA will not accept physical custody of foreign gifts of firearms. Firearms reported by the agency as excess must be disposed of in accordance with part 101–42 of this title.

§ 102–42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?

The employing agency is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions.

§ 102–42.35 Can the employing agency be reimbursed for transfers of gifts and decorations?

No, all transfers of gifts and decorations to Federal agencies or donation through SASPs will be without reimbursement. However, the employing agency may require the receiving agency to pay all or part of the direct costs incurred by the employing agency in packing, preparation for shipment, loading, and transportation.

Appraisals

§ 102–42.40 When is a commercial appraisal necessary?

(a) A commercial appraisal is necessary when an employee indicates an interest in purchasing a gift or decoration and must be obtained before the gift or decoration is reported to GSA for screening.

(b) GSA may also require the employing agency to obtain a commercial appraisal of a gift or decoration that the agency no longer needs before accepting the agency's report of the item as excess personal property.

§ 102–42.45 Who obtains a commercial appraisal?

The employing agency obtains a commercial appraisal.

§ 102–42.50 Is there a special format for a commercial appraisal?

There is no special format for a commercial appraisal, but it must be:

(a) On official company letterhead;

(b) Prepared in the United States;

(c) Dated; and

(d) Expressed in U.S. dollars.

§ 102–42.55 What does the employing agency do with the appraisal?

The employing agency must attach the commercial appraisal to a Standard Form (SF) 120, Report of Excess Personal Property.

Special Disposals

§ 102–42.60 Who is responsible for gifts and decorations received by Senators and Senate employees?

Gifts and decorations received by Senators and Senate employees are deposited with the Secretary of the Senate for disposal by the Commission on Art and Antiquities of the United States Senate under 5 U.S.C. 7342(e)(2). GSA is responsible for disposing of gifts or decorations received by Members and employees of the House of Representatives.

§ 102–42.65 What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?

If the Commission on Art and Antiquities does not dispose of a gift or decoration, then it must be reported to GSA for disposal. If GSA does not dispose of a gift or decoration within one year of the Commission's reporting, the Commission may:

(a) Request that GSA return the gift or decoration and dispose of it itself; or

(b) Continue to allow GSA to dispose of the gift or decoration in accordance with this part.

§ 102–42.70 Who handles gifts and decorations received by the President or a member of the President's family?

The National Archives and Records Administration normally handles gifts and decorations received by the President or a member of the President's family.

§ 102–42.75 How are gifts containing hazardous materials handled?

Gifts containing hazardous materials are handled in accordance with the requirements and provisions of this part and part 101–42 of this title.

Subpart B—Utilization of Foreign Gifts and Decorations

§ 102–42.80 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the employing agency.

§ 102–42.85 What gifts or decorations must we report to GSA?

You must report to GSA gifts of more than minimal value, except for monetary gifts that have no historic or numismatic value (see § 102–42.20), or decorations the employee is not authorized to retain that are:

(a) Not being retained for official use or have not been returned to the donor; or

(b) Received by a Senator or a Senate employee and not disposed of by the Commission on Art and Antiquities of the United States Senate.

§ 102–42.90 What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?

Non-monetary gifts or decorations that were retained for official use must be reported to GSA as excess property within 30 days after termination of the official use.

§ 102–42.95 How do we report gifts and decorations as excess personal property?

You must complete a Standard Form (SF) 120, Report of Excess Personal Property, and send it to the General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 120, "FOREIGN GIFTS AND/OR DECORATIONS", and include the following information:

Entry	Description
(a) Identity of Employee	Give the name and position of the employee.
(b) Description of Item	Give a full description of the gift or decoration, including the title of the decoration.
(c) Identity of Foreign Government.	Give the identity of the foreign government (if known) and the name and position of the individual who presented the gift or decoration.
(d) Date of Acceptance	Give the date the gift or decoration was accepted by the employee.

Entry	Description
(e) Appraised Value	Give the appraised value in United States dollars of the gift or decoration, including the cost of the appraisal. (The employing agency must obtain a commercial appraisal before the gift is offered for sale to the employee.)
(f) Current Location of Item	Give the current location of the gift or decoration.
(g) Employing Agency Contact Person.	Give the name, address, and telephone number of the accountable official in the employing agency.
(h) Purchase Interest or Donation Recommendation.	Indicate whether the employee wants to buy the gift, or whether the employee wants the gift or decoration donated to an eligible donee through GSA's surplus donation program. Document this interest in a letter outlining any special significance of the gift or decoration to the proposed donee. Also provide the mailing address and telephone number of both the employee and the proposed donee.
(i) Administration	Give the Administration in which the gift or decoration was received (for example, Clinton Administration).
(j) Multiple Items	Identify each gift or decoration as a separate line item. Report multiple gift items that make up a set (for example, a tea set, a necklace and matching earrings) as a single line item.

§ 102–42.100 How can we obtain an excess gift or decoration from another agency?

To obtain an excess gift or decoration from another agency, you would complete a Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, for the desired item(s) and submit the form to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

§ 102–42.105 What special information must be included on the SF 122?

Conspicuously mark the SF 122, "FOREIGN GIFTS AND/OR DECORATIONS", and include all information furnished by the employing agency as specified in § 102–42.95. Also, include on the form the following statement: "At such time as these items are no longer required, they will be reported to the General Services Administration, Property Management Division (FBP), Washington, DC 20406, and will be identified as foreign gift items and cross-referenced to this transfer order number."

§ 102–42.110 How must we justify a transfer request?

You may only request excess gifts and decorations for public display or other bona fide agency use and not for the personal benefit of any individual. GSA may require that transfer orders be supported by justifications for the intended display or official use of requested gifts and decorations. Jewelry and watches that are transferred for official display must be displayed with adequate provisions for security.

§ 102–42.115 What must we do when the transferred gifts and decorations are no longer required for official use?

When transferred gifts and decorations are no longer required for official use, report these gifts and decorations to the GSA as excess property on a SF 120, including the original transfer order number or a copy of the original transfer order.

Subpart C—Donation of Foreign Gifts and Decorations

§ 102–42.120 When may gifts or decorations be donated to State agencies?

If there is no Federal requirement for the gifts or decorations, and if gifts were not sold to the employee, GSA may make the gifts or decorations available for donation to State agencies under this subpart and part 101–44 of this title.

§ 102–42.125 How is donation of gifts or decorations accomplished?

The State Agencies for Surplus Property (SASP) must initiate the process on behalf of a prospective donee (e.g., units of State or local governments and eligible non-profit organizations) by:

(a) Completing a Standard Form (SF) 123, Transfer Order Surplus Personal Property, and submitting it to General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 123 with the words, "FOREIGN GIFTS AND/OR DECORATIONS."

(b) Attaching an original and two copies of a letter of intent to each SF 123 submitted to GSA. An authorized representative of the proposed donee must sign and date the letter, setting forth a detailed plan for use of the property. The letter of intent must provide the following information:

(1) Identifying the donee applicant, including its legal name and complete address, its status as a public agency or as an eligible nonprofit tax-exempt activity, and the name, title, and telephone number of its authorized representative;

(2) A description of the gift or decoration requested, including the gift's commercially appraised value or estimated fair market value if no commercial appraisal was performed; and

(3) Details on the planned use of the gift or decoration, including where and how it will be used and how it will be safeguarded.

§ 102–42.130 Are there special requirements for the donation of gifts and decorations?

Yes, GSA imposes special handling and use limitations on the donation of gifts and decorations. The SASP distribution document must contain or incorporate by reference the following:

(a) The donee must display or use the gift or decoration in accordance with its GSA-approved letter of intent.

(b) There must be a period of restriction which will expire after the gift or decoration has been used for the purpose stated in the letter of intent for a period of 10 years, except that GSA may restrict the use of the gift or decoration for such other period when the inherent character of the property justifies such action.

(c) The donee must allow the right of access to the donee's premises at

reasonable times for inspection of the gift or decoration by duly authorized representatives of the SASP or the U.S. Government.

(d) During the period of restriction, the donee must not:

(1) Sell, trade, lease, lend, bail, encumber, cannibalize or dismantle for parts, or otherwise dispose of the property;

(2) Remove it permanently for use outside the State;

(3) Transfer title to the gift or decoration directly or indirectly; or

(4) Do or allow anything to be done that would contribute to the gift or decoration being seized, attached, lost, stolen, damaged, or destroyed.

(e) If the gift or decoration is no longer suitable, usable, or needed by the donee for the stated purpose of donation during the period of restriction, the donee must promptly notify the General Services Administration, Property Management Division (FBP), Washington, DC 20406, through the SASP, and upon demand by GSA, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must comply with transfer or disposition instructions furnished by GSA through the SASP, and pay the costs of transportation, handling, and reasonable insurance during transportation.

(f) The donee must comply with all additional conditions covering the handling and use of any gift or decoration imposed by GSA.

(g) If the donee fails to comply with the conditions or limitations during the period of restriction, the SASP may demand return of the gift or decoration and, upon such demand, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must return the gift or decoration in accordance with instructions furnished by the SASP, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by the SASP.

(h) If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee must pay to the U.S. Government the fair market value of the gift or decoration at the time of its loss, theft, or at the time that it became unrecoverable as determined by GSA. If the gift or decoration is damaged or destroyed, the SASP may require the donee to:

(1) Return the item and pay the difference between its former fair market value and its current fair market value; or

(2) Pay the fair market value, as determined by GSA, of the item had it not been damaged or destroyed.

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

§ 102–42.135 Whose approval must be obtained before a foreign gift or decoration is offered for public sale?

The Secretary of State or the Secretary's designee must approve any sale of foreign gifts or decorations (except sale of foreign gifts to the employee, that is approved in this part).

§ 102–42.140 How is a sale of a foreign gift or decoration to an employee conducted?

Foreign gifts and decorations must be offered first through negotiated sales to the employee who has indicated an interest in purchasing the item. The sale price must be the commercially appraised value of the gift plus the cost of the appraisal. Sales must be conducted and documented in accordance with part 101–45 of this title.

§ 102–42.145 When is public sale of a foreign gift or decoration authorized?

A public sale is authorized if a foreign gift or decoration:

(a) Survives Federal utilization screening;

(b) Is not purchased by the employee;

(c) Survives donation screening; and

(d) Is approved by the Secretary of State or designee.

§ 102–42.150 What happens to proceeds from sales?

The proceeds from the sale of foreign gifts or decorations must be deposited in the Treasury as miscellaneous receipts, unless otherwise authorized.

§ 102–42.155 Can foreign gifts or decorations be destroyed?

Yes, foreign gifts or decorations that are not sold under this part may be destroyed and disposed of as scrap or for their material content under part 101–45 of this title.

Dated: July 13, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–18328 Filed 7–21–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 071800B]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 3 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest for Quarter 3 period.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 3 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in the northeast region for the remainder of the 2000 Quarter 3 quota period (through September 30, 2000). Regulations governing the black sea bass fishery require publication of this notice to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N. lat.

DATES: Effective July 25, 2000, 0001 hrs, local time, through September 30, 2000, 2400 hrs, local time.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods based upon percentages of the annual quota. The Quarter 3 commercial quota (July through September) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The initial total commercial quota for black sea bass for the 2000 calendar year was set equal to 3,024,742 lb (1,372,000 kg) (65 FR 33486, May 24, 2000). The Quarter 3 period quota, which is equal to 12.33 percent of the annual commercial quota, was set at 372,951 lb (169,168 kg). The quota allocation was adjusted downward to compensate for

1999 Quarter 3 landings in excess of the 1999 Quarter 3 quota. The adjusted quota was 273,155 lb (123,901 kg).

Section 648.141 requires the Regional Administrator Northeast Region, NMFS (Regional Administrator) to monitor the commercial black sea bass quota for each quota period and, based upon dealer reports, state data and other available information, to determine when the commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 3 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2000 Quarter 3 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the Quarter 3 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, July 25, 2000, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat. by vessels holding commercial Federal fisheries permits are prohibited through September 30, 2000, 2400 hrs local time. The Quarter 4 period for commercial black sea bass harvest will open on October 1, 2000. Effective July 25, 2000, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders that land in coastal states from Maine through North Carolina for the remainder of the Quarter 3 period (through September 30, 2000).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region snapper-grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see Table at § 600.502) and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18630 Filed 7–19–00; 4:47 pm]

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VOL 65 ISS 142 JL 24 2000 UMI

Proposed Rules

Federal Register
Vol. 65, No. 142
Monday, July 24, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391 and 590

[Docket No.00–025P]

RIN 0583–AC74

Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2001

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to increase the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These proposed increases in fees reflect the national and locality pay raise for Federal employees (proposed 3.7 percent effective January 2001) and inflation. The Agency is proposing to make the increases in fees effective October 8, 2000. At this time, FSIS is not proposing to amend the fee for the Accredited Laboratory Program.

DATES: The Agency must receive comments by August 23, 2000.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #00–025P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130–S, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 720–3552.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of meat and poultry slaughter and processing at official establishments and of egg products at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

In addition, under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the Agricultural Marketing Act of 1946, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency's analysis of projected costs for October 8, 2000 to September 30, 2001, the Agency has identified increases in the costs of these nonmandatory inspection services. The proposed increases in fees are attributable to cost escalation, specifically the national and locality pay raise for Federal employees (proposed 3.7 percent effective January 2001) and inflation.

FSIS calculated the proposed fees by adding salaries and inflation for FY 2000 and FY 2001 to the actual cost of the services in FY 1999. The Agency calculated inflation to be 1.55% for FY 2000 and 1.90% for FY 2001. The Agency considered the costs that it will incur because of the pay raise in January 2001 and averaged its pay costs out over the entire FY 2001.

FSIS did not use the fees currently charged as a base for calculating the proposed fees for FY 2001 because the current fees are based on estimates of costs to the Agency for FY 1999 and FY 2000. The Agency now knows the actual cost of inspection services for FY 1999 and used the actual costs in calculating the proposed fees.

FSIS is exploring the possibility of proposing a three to five year plan of fee rate adjustments based on estimates of cost escalation.

FSIS is proposing to amend 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $37.88 per hour per employee to $38.44 per hour per program employee. FSIS is also proposing to amend §§ 391.3, 590.126, and 590.128(a) to increase the rate for providing meat, poultry, and egg products overtime and holiday inspection services from $39.76 per hour per employee to $41.00 per hour per employee. In addition, FSIS is proposing to amend § 391.4 to increase the rate for laboratory services from $58.52 per hour per employee to $60.04 per hour per employee. The current and proposed fees are listed by type of service in Table 1.

TABLE 1.—CURRENT AND PROPOSED FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE

Service	Current rate	Proposed rate
Base time	$37.88	$38.44
Overtime & holiday	39.76	41.00
Laboratory	58.52	60.04

The differing fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors including different salary levels of the program employees who perform the services. See Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES

Base time	
Actual FY 1999 cost	$35.52
Inflation and salary increases	2.91
Adjustment for divisibility by quarter hours	.01
Total	$38.44
Overtime and holiday inspection services:	
Actual FY 1999 cost	$37.88
Inflation and salary increases	3.10
Adjustment for divisibility by quarter hours	.02
Total	$41.00
Laboratory Services	
Actual FY 1999 cost	$55.50
Inflation and salary increases	4.54
Total	$60.04

New fees for egg products overtime and holiday inspection services will become effective on July 30, 2000. However, FSIS is proposing a new fee because the Agency has moved to a FY basis for reviewing fees and is charging the same fee for meat, poultry, and egg products overtime and holiday inspection services. FSIS calculated the proposed fees based on the presumption that they would become effective at the start of FY 2001, October 8, 2000.

To expeditiously move this rulemaking to recover the increase in costs, and because the Agency has previously announced (64 FR 61223) (65 FR 11486) that it would be reviewing these fees on a FY basis, the Administrator has determined that 30 days for public comment is sufficient.

Executive Order 12866 and Regulatory Flexibility Act

Because this proposed rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this proposed rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of entities.

Small establishments and plants should not be affected adversely by the proposed increases in fees because the proposed fee increases provided for reflect only a small increase in the costs currently borne by those entities that choose to use certain inspection services. These inspection services are generally sought by larger establishments and plants because of larger production volume, greater complexity and diversity in the products they produce, and the need for on-time delivery of large volumes of product by their clients—generally large commercial or institutional establishments.

Moreover, smaller establishments and plants are unlikely to use a significant amount of overtime and holiday inspection services. Establishments and plants that seek FSIS services are likely to have calculated that the incremental costs of overtime and holiday inspection services would be less than the incremental expected benefits of additional revenues they would realize from additional production.

Economic Effects

Under the proposed fees, the Agency expects to collect an estimated $106.2 million in revenues for FY 2001, compared to $103 million under the current fee structure.

The costs that industry would experience by the proposed raise in fees are similar to other increases the industry faces due to inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 1998 was about 81 billion pounds. The total volume of U.S. egg product production in 1998 was about 3.2 billion pounds. The increase in cost per pound of product associated with these proposed fees increases is $.00004. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the fee increase to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., *A Complete System of U.S. Demand for Food.* USDA/ERS Technical Bulletin No. 1821, 1993, p.24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share to response to an increase in inspection fees.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to

the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

Accordingly, FSIS proposes to amend 9 CFR chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et. seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 of this chapter is $38.44 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 of this chapter is $41.00 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 of this chapter is $60.44 per hour per program employee.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

3. The authority citation for Part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

4. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $41.00.

5. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $41.00.

* * * * *

Done at Washington, DC, on July 18, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–18567 Filed 7–21–00; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1075]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Public hearings; notice of additional site.

SUMMARY: On July 12, 2000, the Board published a notice of three public hearings on predatory lending practices in the home-equity lending market, and invited consumers, consumer advocacy organizations, lenders, and other interested parties to attend and to provide written comments on relevant issues. The Board will hold a fourth hearing in Chicago, and is republishing the earlier notice with information about the additional site.

DATES: *Hearings.* The hearings are scheduled as follows:

1. Charlotte, North Carolina, July 27, 2000, 9 a.m. to 4:30 p.m.
2. Boston, Massachusetts, August 4, 2000, 9 a.m. to 4:30 p.m.
3. Chicago, Illinois, August 16, 2000, 9 a.m. to 4:30 p.m.
4. San Francisco, California, September 7, 2000, 9 a.m. to 4:30 p.m.

Comments. Comments from persons unable to attend the hearings or wishing to submit written views on the issues raised in this notice must be received by Friday, September 1, 2000.

ADDRESSES: *Hearings.* Hearings will be held at the following locations:

1. Charlotte, North Carolina,—Federal Reserve Bank of Richmond, Charlotte Branch, 530 East Trade Street.
2. Boston, Massachusetts—Federal Reserve Bank of Boston, 600 Atlantic Street.
3. Chicago, Illinois—Federal Reserve Bank of Chicago, 230 South LaSalle Street.
4. San Francisco, California—Federal Reserve Bank of San Francisco, 101 Market Street.

Comments. Comments on the questions listed in this document should refer to Docket No. R–1075, and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, contact Janice Simms, Telecommunication Device for the Deaf, (202) 872–4984.

For directions and other matters relating to the meeting facilities in Charlotte, contact Mary Chick, (704) 358–2495; in Boston, Cynthia Reardon, (617) 973–3512; in Chicago, Nisreen Darwish, (312) 322–4780 or Barbara Shoulders (312) 322–8232; in San Francisco, Lena Robinson, (415) 974–2422.

SUPPLEMENTARY INFORMATION:

I. Background

In 1994, the Congress enacted the Home Ownership and Equity Protection Act of 1994 (HOEPA) as an amendment to the Truth in Lending Act (TILA). HOEPA was a response to anecdotal reports of abusive lending practices whereby unscrupulous lenders made unaffordable home-secured loans to "house-rich but cash-poor borrowers." These cases frequently involved elderly and sometimes unsophisticated homeowners who were targeted for loans with high rates and fees and repayment terms that were difficult or

impossible for the homeowners to meet. Oftentimes the transactions involved fraud or unlawful misrepresentations by lenders or brokers.

HOEPA does not prohibit creditors from making any type of home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, the act identifies a class of high-cost mortgage loans through rate and fee triggers. For transactions covered by HOEPA, creditors must provide abbreviated disclosures to consumers at least three days before the loan is closed, in addition to the disclosures generally required by TILA. When combined with TILA's three-day right of rescission after the loan closing, the HOEPA disclosures afford consumers a minimum of six days to consider key loan terms before finally deciding to enter into a transaction. Transactions covered by HOEPA are also subject to substantive limitations that prohibit certain terms from being included in the loan agreement.

HOEPA directs the Board, in consultation with its Consumer Advisory Council, to conduct public hearings periodically to examine home-equity loans in the marketplace and consider the adequacy of federal laws (including HOEPA) in protecting consumers—particularly low-income consumers. In June 1997, within two years after HOEPA became effective, the Board held hearings on home-equity lending and HOEPA. The results of those hearings were summarized and submitted to the Congress by the Board and Department of Housing and Urban Development (HUD) in July 1998, in a joint report concerning reform of TILA and the Real Estate Settlement Procedures Act.

Predatory lending practices in home-secured loans continue to receive attention from the Congress and regulatory agencies. The available information concerning predatory lending is essentially anecdotal; there is no ready method for measuring the amount of predatory lending or determining how prevalent a problem it represents. There are enough anecdotal reports, however, to suggest that predatory lending continues to be a problem. Abusive practices may involve, among other things, excessive fees and interest rates, unnecessary insurance, and fraud. Borrowers saddled with unaffordable payments can lose their homes. Excessive up-front fees combined with frequent refinancings (often referred to as "loan flipping") may also strip the equity from consumers' homes.

Given the wide range of practices that predatory lending may involve, a multifaceted approach to dealing with the problem, including both regulatory and nonregulatory strategies, is likely to be the most effective. This includes strengthening enforcement of current laws, voluntary industry action, community outreach efforts, and consumer education and counseling. Several bills taking different approaches to addressing predatory lending have been introduced in the Congress. Several states have enacted or are considering legislation. The Board has convened a nine-agency working group, including the five federal agencies that supervise depository institutions, HUD, the Office of Federal Housing Enterprises Oversight, the Department of Justice, and the Federal Trade Commission. The aims of the group are to tighten enforcement of existing statutes and to establish a coordinated approach to addressing predatory practices.

On May 24, the Board presented testimony at a hearing held by the House Committee on Banking and Financial Services on predatory lending and possible remedial actions. HUD and the Department of the Treasury have convened a National Task Force on Predatory Lending. The primary mission of the Task Force has been to collect information about predatory lending, provide data on the impact of predatory practices, and comment on existing legislative proposals for reform in order to provide a basis for HUD and Treasury to make recommendations for legislation to the Congress. To solicit information about local and national aspects of the predatory lending problem, HUD and Treasury held five public forums in Los Angeles, Chicago, New York, Atlanta, and Baltimore. On June 20, HUD and Treasury issued a report on their findings, that discusses possible ways to curb predatory lending and contains recommendations to the Congress regarding possible legislative action and to the Board regarding the exercise of the Board's regulatory authority under HOEPA.

The Board's home-equity hearings under HOEPA will be primarily focused on the Board's regulatory authority under that act, and specific ways that the Board might consider exercising that authority. As described below, the Board is authorized to make some adjustments to HOEPA's high-cost triggers that could affect the scope of the act's coverage. The Board is also directed by HOEPA to prohibit certain acts and practices in connection with mortgage loans if the Board makes the finding required by the statute. Based on information gathered during recent public hearings, the interagency discussions, and meetings with industry and consumer representatives, the Board has developed a series of questions for discussion at the HOEPA hearings and for public comment. These questions are intended to solicit views on the ways that the Board might exercise its authority, and will be used to focus the discussion at the HOEPA hearings on possible regulatory approaches to deter predatory lending.

The Truth in Lending Act and HOEPA

The Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is intended to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the "finance charge") and as an annual percentage rate (the "APR"). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

The Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, amends TILA to impose disclosure requirements and substantive limitations on certain home-secured loans (closed-end installment loans) with rates and fees above a specified amount.

A loan is covered by HOEPA if (1) the APR exceeds the rate for treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400 (adjusted annually based on the consumer price index). HOEPA is implemented by section 32 of the Board's Regulation Z (12 CFR 226.32), effective in October 1995. 60 FR 15463, March 24, 1995.

HOEPA does not prohibit creditors from making any home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, HOEPA layers disclosure and timing requirements onto the requirements already imposed for consumer credit transactions. Creditors offering HOEPA-covered loans must provide abbreviated disclosures to consumers three days before the loan is closed. The disclosures provide that consumers are not obligated to complete the closing, remind borrowers that they could lose

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their home if they fail to make payments, and state a few key cost disclosures, including the APR, the regular payment, and, if the loan has a variable rate, a "worst case payment" if rates increase as high and quickly as possible under the loan agreement.

In addition, creditors making HOEPA-covered loans are prohibited from including in their loan agreements, among other provisions: (1) Balloon payments in loans with maturities of less than five years, (2) payment schedules that result in negative amortization, (3) higher default interest rates, and (4) prepayment penalties in most instances. Consumers entering into a HOEPA-covered loan may rescind the transaction for up to three years after closing if creditors fail to provide the early disclosures or if they include a prohibited term in the loan agreement.

Home-purchase loans are not covered by HOEPA. Although reverse mortgages are exempt from the HOEPA requirements imposed for traditional mortgages, reverse mortgages are subject to an alternative detailed disclosure scheme under HOEPA (implemented by section 33 of Regulation Z). Home-equity lines of credit (open-end credit) are also exempt from HOEPA, as congressional hearings preceding enactment did not reveal evidence of abusive practices connected with open-end home-equity lending.

In June 1997, the Board held hearings on home-equity lending and HOEPA in Los Angeles, Atlanta, and Washington, D.C. Participants were asked to address several topics, including the effect of HOEPA on homeowners seeking home-equity credit and on credit opportunities in the communities targeted by the legislation (for example, whether there had been changes to the volume or cost of home-equity installment loans); the effectiveness of the disclosures and suggestions for improvements; and whether any exemptions or prohibitions would be appropriate for the Board to consider under its HOEPA rulemaking authority. 62 FR 23189, April 29, 1997.

Those testifying at the hearings generally concurred that it was too soon after HOEPA's enactment to determine the effectiveness of the new law. However, consumer representatives reported continuing abusive practices by home-equity lenders of all degrees of sophistication. The hearings formed the basis for a detailed analysis of the problem of abusive lending practices in mortgage lending contained in a July 1998 report to the Congress by the Board and HUD on possible reforms to TILA and the Real Estate Settlement Procedures Act regarding mortgage-related disclosures. (The 1998 joint report is available at the Board's website address: *www.federalreserve.gov/boarddocs/press/general/1998.*) Chapter 6 of the report suggested a multifaceted approach to curbing predatory lending practices, including some legislative action, stronger enforcement of current laws, and nonregulatory strategies such as community outreach efforts and consumer education and counseling. (See also Chapter 2 at page 17, Chapter 7 at page 76, and Appendix D.)

II. Public Hearings

Since HOEPA's enactment, the volume of home-equity lending has increased significantly. This overall growth in home-equity lending has been accompanied by a sharp boost in the subprime mortgage market. HUD reports that the number of subprime home-equity loans has increased from 80,000 in 1993 to 790,000 in 1998.

The growth in subprime lending brought a substantial increase in the availability of credit to borrowers having less-than-perfect credit histories and to other consumers who do not meet the underwriting standards of prime lenders. Because consumers who obtain subprime mortgage loans have, or perceive they have, fewer credit options than other borrowers, they may be more vulnerable to unscrupulous lenders or brokers. With the increase in the number of subprime loans, consumer advocates have been concerned for some time about the potential for a corresponding increase in the number of predatory loans. Some industry representatives have noted, however, that the trend toward securitizing subprime mortgages has served to standardize creditor practices and to limit the opportunity for widespread abuse.

To address concerns about predatory lending and consider approaches the Board might take in exercising its regulatory authority under HOEPA, the Board has scheduled four one-day hearings in Charlotte (Thursday, July 27), Boston (Friday, August 4), Chicago (Wednesday, August 16), and San Francisco (Thursday, September 7). (Notice of the Charlotte, Boston, and San Francisco hearings were published at 65 FR 42889, July 12, 2000.) The hearings will seek statements from the public about home-equity lending in general, but will focus specifically on collecting testimony on the ways that the Board might use its rulewriting authority under HOEPA to address predatory lending practices in the home-equity market. To focus the discussion at the hearings, interested parties wishing to present oral statements at the hearings (and persons submitting written comments to the Board) are asked to address the issues set forth below, as applicable:

A. Adjusting the HOEPA Triggers

HOEPA covers mortgage loans that meet one of the act's two "high-cost" triggers. A loan is covered if (1) the APR exceeds the rate for treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. The Board is required to adjust the $400 threshold annually, based on the consumer price index; for 2000 the amount is $451.

1. *APR Trigger*—HOEPA authorizes the Board to adjust the HOEPA trigger by 2 percentage points from the current standard of 10 percentage points above the U.S. Treasury securities with comparable maturities. Some consumer advocates and others have suggested that, based on the current APR trigger, only a small percentage of subprime mortgage loans are covered by HOEPA. They contend that lowering the APR trigger would allow HOEPA's protections to be extended to a broader class of transactions.

- Would lowering the APR trigger to 8 percentage points be effective in furthering the purposes of HOEPA, and if so, how?
- If the APR trigger were lowered, would such action have any significant impact on the availability or cost of subprime mortgage loans?

The Board also solicits comment on any available data regarding the percentage of subprime mortgage loans covered under the existing APR trigger, and the percentage of transactions that would be affected by lowering the trigger by 2 percentage points.

2. *Points and Fees Trigger*—A loan is covered by HOEPA if the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. For this purpose, "points and fees" include all items included in the finance charge and APR except interest, and all compensation paid to mortgage brokers. The act specifically excludes reasonable closing costs that are paid to unaffiliated third parties. HOEPA also authorizes the Board to add "such other charges" to the points and fees test as the Board deems appropriate. Accordingly, comment is solicited on what fees, if any, should be added to the calculation. In particular, comment is requested on the following:

a. *Credit Insurance:* Premiums paid for credit insurance that a borrower is required to purchase are finance charges that are currently included in both the

APR and the points and fees test under HOEPA. But premiums paid for optional credit life insurance currently are not included in the points and fees test. Some consumer advocates assert that because these premiums are excluded, predatory lenders may avoid HOEPA coverage by "packing" loans with high-priced credit insurance that represents a significant source of fee income, in lieu of charging fees that would be included under the current HOEPA trigger.

• What would be the effect of including lump-sum premiums collected at closing for optional credit insurance in HOEPA's points and fees test? Should such premiums be included only if they are paid to the creditor or an affiliate of the creditor, or only to the extent that the creditor receives compensation in connection with the sale of the insurance?

b. *Prepayment Penalties:* In some cases, prepayment penalties may provide fee income that is an additional incentive for creditors to encourage frequent refinancings that are not in a consumer's interest. If the consumer must pay a prepayment penalty to the same creditor that is refinancing the loan, the prepayment fee could be viewed as a cost of the new transaction.

• What would be the effect of including a prepayment penalty (assessed on the original loan) in HOEPA's points and fees test for the new loan when the loan is refinanced with the same creditor (or an affiliate)?

c. *Points:* Consumers who refinance their loans generally pay points on the entire refinanced amount.

• What would be the effect of adding any points paid by the consumer for the existing loan to the points and fees test when the same creditor (or an affiliate) refinances the loan within a specified time period?

The current points and fees test under HOEPA is complex. The statute allows many closing costs to be excluded from the calculation if they are reasonable and paid to third parties. The Board solicits comments on whether a better approach would be to recommend a statutory amendment that would include all closing costs in the points and fees test.

B. Restricting Certain Acts or Practices under HOEPA

The hearings will explore how the Board's regulatory authority under HOEPA to prohibit specific practices can be used to curb predatory lending. Under HOEPA, the Board is authorized to prohibit acts and practices:

• *In connection with mortgage loans*—if the Board finds the practice to be unfair, deceptive, or designed to evade HOEPA; and

• *In connection with refinancings of mortgage loans*—if the Board finds that the practice is associated with abusive lending practices or otherwise not in the interest of the borrower.

Comment is invited on the following specific approaches to dealing with predatory lending practices, and whether any new requirements or prohibitions should apply to all mortgage transactions, only to refinancings, or only to HOEPA-covered refinancings. Both regulatory and legislative proposals should be discussed.

1. *Credit insurance.* Premiums for credit insurance are often collected from the borrower at closing and added to the loan amount, increasing the total finance charges paid by the consumer. Consumer advocates express concern about high-pressure sales tactics, which may mislead consumers about whether the insurance is required. The Board previously recommended that the Congress consider prohibiting the advance collection of premiums for credit insurance policies in connection with HOEPA loans. If no statutory prohibition is adopted, should the Board regulate the conditions under which such policies are sold or financed? For example:

• What would be the effect of the Board's requiring the sale of single-premium policies to be accompanied by a disclosure that the coverage may also be available with periodic premiums? What other disclosures might be helpful?

• To address concerns about "insurance packing," what would be the effect of the Board's requiring that the sale of single-premium policies include a disclosure at the time of purchase of how unearned premiums will be rebated if the policy is cancelled or the loan is paid in full early?

• What would be the effect of requiring notification to borrowers, after the loan closing, of their right to cancel the policy and obtain a refund?

• What would be the effect of regulations prohibiting creditors from selling single-premium insurance products until after loan closing?

2. *Unaffordable loans.* Under HOEPA a creditor may not engage in a pattern or practice of extending credit based on the collateral if (given the consumer's current and expected income, current obligations, and employment status) the consumer will be unable to make the scheduled loan payments.

• Would additional interpretative guidance on the "pattern or practice" requirement be useful, or are case-by-case determinations more appropriate? If additional guidance would be useful, what elements of the requirement should the guidance address?

• What regulatory standards could the Board adopt for determining whether a creditor has considered the consumer's ability to repay the loan in order to satisfy this requirement?

3. *Refinancing lower-rate loans.* When a consumer seeks a second mortgage to consolidate debts or to finance home improvements, some creditors also require the existing first mortgage to be paid off as a condition of providing the new funds. This ensures that the creditor will be the senior lien-holder, but may increase significantly the points and fees paid for the new loan. Is regulatory action appropriate to protect consumers from abuses and, if so, what type of action could be taken without restricting credit in legitimate transactions?

4. *Balloon Payments.* Depending on the circumstances, mortgages with a balloon payment feature may be attractive to some borrowers, but may harm other consumers. HOEPA currently prohibits balloon payments for high-cost loans that have terms of less than 5 years. Lenders that price their loans just below HOEPA's triggers, however, might include balloon payments that force consumers to refinance the loan and pay additional points and fees.

• For loans *not* covered by HOEPA's restriction on balloon payments, are any restrictions or additional disclosures needed in connection with balloon payments in order to prevent abusive practices?

• To avoid evasions of HOEPA's restrictions on balloon payments, what would be the effect of the Board's prohibiting "payable on demand" clauses for HOEPA loans unless such a clause is exercised in connection with a consumer's default? (A similar limitation already exists for home-equity lines of credit.)

5. *Prepayment penalties.* Prepayment penalties allow creditors to recover their transaction costs if loans are prepaid earlier than expected. That rationale may not be relevant in cases where high rates and up-front fees are charged. In such cases, the penalty might be used to deter the consumer from refinancing the loan on more favorable terms.

• Is it feasible to limit the use of prepayment penalties to transactions where consumers receive, in return, a benefit in the form of lower up-front costs or lower interest rates? How might the existence of such benefits be measured?

6. *Foreclosures.* Consumers who have been victims of abusive practices must be afforded adequate opportunity to assert their rights in order to avoid unwarranted foreclosures. State law and local practice generally govern the procedures followed for foreclosures. Some states require actual notice to the consumer, but in other states notice by publication is sufficient. Even when consumers do receive notice, they may not get adequate information about their legal options.

• What would be the effect of setting minimum federal standards for foreclosures involving a consumer's primary dwelling? For example, a creditor might be required to provide the consumer with actual notice of (1) the applicable foreclosure procedures; (2) any legal rights the consumer may have to avoid the foreclosure; and (3) the specific amount that, if paid in accordance with the notice, will terminate the foreclosure.

7. *Misrepresentations regarding borrower's qualifications.* There is some concern that many borrowers who obtain high-cost loans may actually qualify for lower cost credit. Some brokers or creditors may provide consumers with false or materially misleading information that the consumer does not qualify for a lower cost loan based on the creditor's underwriting criteria. Such a practice generally would be illegal under state laws that protect against fraud and deception. What benefit to consumers might be achieved if the Board issued a rule that prohibited such misrepresentations as unfair and deceptive under HOEPA?

8. *Reporting borrowers' payment history.* Some creditors do not report to consumer reporting agencies subprime borrowers' good payment history in order to avoid having the borrowers solicited by competitors for a refinancing on more attractive terms. What would be the effect of requiring creditors that choose not to report borrowers' positive payment history to disclose that fact?

9. *Referral to credit counseling services.* What regulatory action would better enable consumers in general, or HOEPA borrowers in particular, to take advantage of any available credit counseling services?

10. *HOEPA disclosures.* In their 1998 report to the Congress, the Board and HUD recommended amendments to the required disclosures, including adding reference to the availability of credit counseling, using more "user-friendly" text in the narrative reminders about the potential consequences for not making payments, and requiring the consumer's monthly income to be disclosed in close proximity to the consumer's monthly payment. Comment is requested on those recommendations. Comment also is solicited on whether additional information in the current HOEPA disclosures would benefit consumers. For example:

• The consumer must receive HOEPA disclosures three days before loan closing, specifying the APR and monthly payment amount. Due to the marketing practices of some lenders, consumers may not be aware of high up-front costs that will be financed. What would be the effect of the Board's requiring that the disclosure also include additional information, such as the total loan amount on which the disclosed monthly payment is based?

• For HOEPA loans, what would be the effect of requiring that consumers receive a complete Truth in Lending disclosure statement three days before closing?

11. *Open-end home equity lines.* HOEPA does not cover home-equity lines of credit. Is there evidence that lenders are using open-end credit lines to evade HOEPA? If so, what benefit might be derived from prohibiting the practice of structuring a home-secured loan as open-end credit in order to evade the provisions of HOEPA? How could such practices be identified and what limitations on these practices would be appropriate to effect the purposes of HOEPA?

Community Outreach and Consumer Education

In addition to issues concerning the Board's regulatory authority under HOPEA, views will also be elicited at the hearings about nonregulatory approaches to curbing predatory lending, such as community outreach and consumer education. Accordingly, the Board seeks comment on the following:

What community outreach activities and consumer education efforts are being pursued currently? Which types of products, programs, and delivery systems have been most effective? What other strategies might be implemented to reach the targeted populations? How might outreach and education efforts be tailored to address some lenders' and brokers' aggressive marketing practices? What role can government agencies play in increasing the effectiveness of these programs?

Additional Data

The Board seeks information about any studies or data pertaining to subprime lending or HOEPA loans that would be useful in determining how the Board might use its regulatory authority under HOEPA. For example, are there data regarding the percentage of HOEPA loans that result in foreclosures? Are there data regarding the effect of HOEPA disclosures showing the percentage of transactions cancelled by borrowers based on disclosures provided before closing?

III. Form of Statements and Comments

These hearings are open to the public to attend. Invited speakers will participate in panel discussions. In addition, about two hours is reserved for brief statements by other interested parties, starting at approximately 2:30 p.m. To allow as many persons as possible to offer their views during this period, oral statements should be brief (five minutes or less); written statements of any length may be submitted for the record. Interested parties who wish to participate during this "open-mike" period are asked to contact the Board in advance of the hearing date, to facilitate planning for this portion of the hearings. The order of speakers generally will be based on their registration at the hearing site on the day of the hearing.

Comment letters should refer to Docket No. R–1075, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

By order of the Board of Governors of the Federal Reserve System, July 19, 2000.

Jennifer J. Johnson,

Secretary to the Board.

[FR Doc. 00–18659 Filed 7–21–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Dockets Nos. OST–97–2881, OST–97–3014, and OST–98–4775]

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Supplemental advance notice of proposed rulemaking.

VOL 65 ISS 142 JL 24 2000 UMI

SUMMARY: The Department is inviting interested persons to submit supplemental comments in this proceeding where the Department is reexamining its rules on computer reservations systems. The Department is issuing this supplemental advance notice for two reasons: to invite parties to update the comments submitted earlier in this proceeding and to address the impact of industry developments that have occurred since the comments were filed, and to invite them to comment on whether the Department should consider adopting rules governing the use of the Internet for airline distribution.

DATES: Comments must be submitted on or before September 22, 2000. Reply comments must be submitted on or before October 23, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket numbers OST–97–2881, OST–97–3014, and OST–98–4775) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov. Comments must be filed in Dockets OST–97–2881, OST–97–3014, and OST–98–4775, U.S. Department of Transportation, 400 7th St. S.W., Washington, D.C. 20590. Late filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. S.W., Washington, DC 20590, (202) 366–4731.

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/index.html*.

SUPPLEMENTARY INFORMATION:

Eight years ago the Department readopted the regulations governing CRSs, 14 CFR Part 255, because each of the systems was then controlled by one or more airlines and airline affiliates and because, if CRS firms were unregulated, their owners could use the systems to injure airline competition and deny consumers and travel agents access to accurate and complete information on airline services. Those rules called for a Department reexamination of whether the rules were necessary and effective. We began a proceeding to reexamine our regulations to see whether they are still necessary and, if so, whether they should be changed, by publishing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997).

The comment period set by our advance notice closed two years ago. We recognize the importance of reexamining our rules to see whether they remain necessary and effective in light of the changes in the computer reservations system business and airline distribution. We now wish to move forward on the rulemaking. Doing so requires us to ask the parties to submit updated comments due to the significant changes that have occurred in airline distribution and the computer reservations system business in the last two years.

In addition, we wish to obtain comments on whether we should adopt any rules covering the distribution of airline services through the Internet. The use of the Internet for airline distribution raises issues that are similar to those traditionally considered in our CRS rulemakings. On-line travel agencies, for example, use the systems as their booking engines.

We therefore ask all interested persons to submit comments in response to this supplemental advance notice of proposed rulemaking. Commenters should discuss the specific issues set forth in this notice and, to the extent necessary to address changes in the CRS business and airline distribution practices, the issues listed in the advance notice, 62 FR at 47609–47610.

The advance notice described the CRS business and summarized our findings in earlier proceedings on the need for CRS rules. In this notice we will describe the history of CRS regulation and our past findings insofar as necessary to explain our requests that the supplemental comments address certain specific issues.

The CRS Business

A CRS provides information on the travel services sold through the system and enables users to book those services. Traditionally the most important users of the systems have been travel agents, but corporate travel departments and consumers also use the systems. Travel agents and corporate travel departments usually access a system through computer terminals linked with the system's database, while consumers access systems through on-line services, such as Expedia and Travelocity. Airline transportation is the most important service sold through a system, but the systems also provide information and make bookings on rental cars, hotels, and other travel services. A CRS enables users to find out what airline seats and fares are available, to book a seat, and to purchase transportation on each airline that "participates" in the system, that is, that makes its services saleable through the CRS.

The four CRSs operating in the United States—Sabre, Galileo, Amadeus, and Worldspan—were each developed by one or more airlines. When we last reexamined our rules, each of the systems was owned and controlled by one or more airlines and airline affiliates. 57 FR 43780, 43782–43783 (September 22, 1992). Since then, however, the systems' ownership has changed—public shareholders now own all of Sabre's stock, and two of the other three systems have some public shareholders.

History of the Department's Regulation of CRSs

The Civil Aeronautics Board ("the Board") concluded that CRS rules were essential to protect airline competition and prevent consumer deception due to the systems' role in airline distribution. 49 FR 32540 (August 15, 1984). Airlines relied on travel agencies for distribution, travel agencies relied on the systems to obtain information on airline flights and fares and make bookings, and each system's owner airline had the ability and incentive to use the system to prejudice airline competition and give consumers misleading or incomplete information in order to obtain more airline bookings. The Board adopted its rules primarily under its authority under section 411 of the Federal Aviation Act, later recodified as 49 U.S.C. 41712, to

prevent unfair methods of competition and unfair and deceptive practices in air transportation and the sale of airline transportation (we will refer to the statute by its traditional and still commonly-used name, section 411). On review the Seventh Circuit upheld the Board's rules. *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985).

We assumed the Board's responsibility to enforce section 411 and its regulation of the systems upon the Board's sunset on December 31, 1984. After reexamining the rules, as they required us to do, we readopted them with changes designed to strengthen them. 57 FR 43780 (September 22, 1992). We did not expand the coverage of the rules, which govern systems operated by airlines or airline affiliates insofar as they provide services to travel agencies. 57 FR at 43794–43795. We concluded that CRS rules remained necessary to promote airline competition and to help ensure that consumers did not receive inaccurate or misleading information on airline services. Like the Board, we found that CRSs remained essential for the marketing of the services of virtually all airlines. 57 FR at 43783–43784.

We based our decision to continue regulating the systems on their control by airlines and airline affiliates. One or more airlines or airline affiliates then owned and controlled each of the systems, and the systems' owners could still use their control of the systems to prejudice airline competition if there were no rules. 57 FR at 43783–43787, 43794.

Our rules included a sunset date, December 31, 1997, to ensure that we would reinvestigate the need for the rules and their effectiveness. 14 CFR 255.12; 57 FR at 43829–43830 (September 22, 1992).

Advance Notice

To begin the formal reexamination of our rules, we issued an advance notice of proposed rulemaking that asked interested persons to comment on whether our CRS rules are still necessary and, if so, whether they should be changed. 62 FR 47606 (September 10, 1997). We intended to focus "on rule proposals that will increase competitive market forces in the CRS industry rather than on proposals for detailed regulation of CRS practices." 62 FR at 47609. To help us resolve the issues, we listed a series of questions that we asked the parties to address in their comments, 62 FR at 47609–47610.

We received comments from over sixty parties, virtually all of whom stated that we should maintain CRS rules.

In addition to those comments, we have received petitions for rulemaking from America West Airlines on booking fee issues, Docket OST–97–3014, and by the Association of Retail Travel Agents on certain travel agency contract issues, Docket OST–98–4775. We will consider the issues raised by those petitions in this proceeding.

Amadeus Global Travel Distribution filed a petition asking that we interpret the existing rules as prohibiting the tying of a travel agency's access to an airline's corporate discount fares with the travel agency's choice of the CRS affiliated with that airline, Docket OST–99–5888. We are reviewing that petition to determine how best to proceed with the issue that it raises.

We have maintained the current rules in place while we conduct our reexamination of the need for the rules and the rules' effectiveness. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999); 65 FR 16808 (March 30, 2000).

Factual Background

Our rules currently require each system to allow all airlines to participate on non-discriminatory terms, to offer at least one unbiased display, and to make available to each airline participant any marketing and booking data from bookings for domestic travel that it chooses to generate from its system. The rules also prohibit certain contract terms that restrict the travel agencies' ability to choose between systems. They give travel agencies the right to use third-party hardware and software, subject to certain compatibility conditions, and to access any system or database with airline information from the agency's terminals, unless the terminals are owned by a system. The rules cover systems controlled by an airline or airline affiliate insofar as the systems provide information and booking services to travel agencies.

Our rules are designed to prevent practices by systems and airlines related to CRS operations that are either anti-competitive or likely to cause consumers to be misled. We have not otherwise tried to prescribe how airlines must distribute their services, with the exception of the requirement that airlines with a significant ownership interest in a system must participate in competing systems, section 255.7. As a result, airlines with no significant system ownership interest are free to decide whether to participate in any system and to choose their level of participation. Southwest, for example, has been unwilling to pay for participation in any system but Sabre. And we adopted a rule barring system from unreasonably restricting the ability of participating airlines to choose a different level of service in each system. 62 FR 59784 (November 5, 1997).

Airlines have chosen to use a wide variety of channels for distributing their services, and they do not treat all firms within each channel the same. Airlines, for example, commonly give favored travel agencies access to discount fares and marketing benefits not made available to other agencies and enable favored agencies to waive some restrictions on discount fares and to book customers on oversold flights. General Accounting Office, "Effects of Changes in How Airline Tickets Are Sold" (July 1999), at 15; Secretary's Task Force on Competition in the U.S. Domestic Airline Industry, "Airline Marketing Practices" (February 1990), at 25, 26. Travel suppliers have also used consolidators to sell seats at low fares not made directly available from travel agencies and airline reservations agents. Bear, Stearns, "Point, Click, Trip: An Introduction to the On-Line Travel Industry" (April 2000) at 58.

Our CRS rules with few exceptions regulate neither the manner in which travel agencies operate nor their use of the information and transaction capabilities provided by a system. Those regulations do not prescribe the kind of advice that travel agencies must give customers seeking information on airline services and do not prohibit travel agencies from reshaping the information provided by a system into displays biased in favor of the agency's preferred suppliers. 57 FR at 43809. *See also* Midwest Express Comments at 26 (one major travel agency allegedly biases its displays in favor of its preferred suppliers). We have, however, adopted rules applicable to both traditional and on-line travel agencies that state that certain practices will be considered unfair and deceptive. *See, e.g.*, 14 CFR Part 257 and section 399.80.

Travel agencies, of course, have different operating strategies—some primarily handle corporate travel while others primarily handle leisure travel. Some hold themselves out as generalists while others specialize, for example, on travel to a particular destination. In doing business over the Internet, on-line travel agencies must cope with an environment different from that within which traditional travel agencies operate. On-line agencies must use new methods of attracting customers, such as creating links with web portals like Yahoo! On-line agencies have also begun to buy blocks of airline seats and

hotel rooms at negotiated prices substantially below the supplier's published rates. Bear, Stearns, "Point, Click, Trip," at 48, 49. While giving consumers an opportunity to bid on a ticket price, Priceline only sells seats according to negotiated deals with airlines and other suppliers. *Id.* at 53–55.

Legal Background

When we readopted the rules in 1992, we primarily relied on our authority under section 411 to prohibit unfair and deceptive practices and unfair methods of competition in air transportation and the sale of air transportation. We also relied to some extent on our obligation to act consistently with the United States' international obligations when we adopted our current rules. 57 FR at 43791–43792.

Section 411 reads, "[T]he Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation." Section 411 authorizes us to regulate the practices of U.S. and foreign airlines and "ticket agents." The statute, 49 U.S.C. 40102(a)(40), defines a ticket agent as a person "that as principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation."

An unfair method of competition is a practice that violates the antitrust laws or antitrust principles. *United Air Lines* v. *CAB, supra.* We concluded in our last rulemaking that the practices barred by the rules were unfair methods of competition, since those practices—display bias and discriminatory booking fees, for example—violated antitrust principles. Those practices were analogous to conduct prohibited by the antitrust laws: a firm's refusal to allow competitors to obtain access to an essential facility on reasonable terms and monopoly leveraging (the use of market power in one line of business to obtain unfair competitive advantages in a second line of business). These antitrust analogies were applicable because each of the systems was controlled by airlines that competed with other airlines whose ability to successfully market their services depended on their ability to participate in the systems on reasonable terms. 57 FR at 43789–43791.

Congress modeled section 411 on the Federal Trade Commission's authority under section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to prohibit unfair methods of competition and unfair and deceptive practices in most U.S. industries. *See, e.g., United Air Lines,* 766 F.2d at 1111–1112. As a result, the judicial decisions on the scope of the FTC's authority are relevant to the analysis of our own authority under section 411. The courts have held that the FTC may not prohibit practices as unfair methods of competition in order to improve competitive conditions in an industry unless the FTC finds that the practices violate antitrust laws or antitrust principles. *E.I. DuPont de Nemours & Co.* v. *FTC,* 729 F.2d 128 (2nd Cir. 1984). The Second Circuit has held that the FTC may not regulate the conduct of a firm with monopoly power in one industry in order to promote competition in a second industry unless the firm competes in the second industry as well. *Official Airline Guides, Inc.* v. *FTC,* 630 F.2d 920 (2nd Cir. 1980). *But see LaPeyre* v. *FTC,* 366 F.2d 117 (5th Cir. 1966).

Moreover, section 411 does not gives us the authority to determine how airline services should best be distributed. Since airline deregulation began twenty years ago, the airlines have been generally free to determine how to distribute and sell their services, including sales through travel agencies. This result is consistent with the antitrust laws, which generally allow individual firms to choose how to distribute their products and services. *See, e.g., Paschall* v. *Kansas City Star Co.,* 727 F.2d 692 (8th Cir. 1984) (en banc); *Auburn News Co.* v. *Providence Journal Co.,* 659 F.2d 273, 278 (1st Cir. 1981).

As noted above, we also relied on our section 411 authority to prohibit unfair and deceptive practices when we readopted the rules. 57 FR at 43791. Section 411 gives us broad authority to prohibit unfair and deceptive practices by airlines and ticket agents. *See United Air Lines.*

We also held that our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements supported our continuation of the CRS regulations. Many of those bilateral agreements assure the airlines of each party a fair and equal opportunity to compete. We have held that the fair and equal opportunity to compete includes, among other things, a right to have an airline's services fairly displayed in CRSs. Our rules against display bias and discriminatory treatment help to provide foreign airlines with a fair and equal opportunity to compete in the United States. 57 FR at 43791–43792. Foreign governments—the European Union, Canada, and Australia, for example—have similarly adopted rules giving airlines fair and non-discriminatory access to CRS services.

Congress, moreover, recently reaffirmed the importance of preventing anticompetitive and discriminatory practices by systems and affiliated airlines that would distort international competition. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181 (April 5, 2000) ("AIR 21"), includes a provision, section 741, that expands our authority under 49 U.S.C. 41310 to take countermeasures against an activity that involves airline service of a foreign system or foreign airline owning a system that constitutes an unjustifiably discriminatory or anticompetitive practice against a U.S. CRS or represents the imposition of unjustifiable restrictions on access by a U.S. system to a foreign market.

Industry Developments

We are interested in obtaining supplemental comments for two reasons: our decision to consider Internet issues in this proceeding and our wish to consider the changes that have occurred in the CRS business and airline marketing practices since we issued our advance notice of proposed rulemaking.

One of these changes is the airlines' diminishing control of the systems. Since we published our advance notice, airlines affiliated with the systems have substantially divested their CRS ownership interests. As a result, Sabre is now entirely owned by the public, and only one-fourth of Galileo's stock is owned by airlines and airline affiliates. October 7, 1999, United Supplemental Comments at 4. While Amadeus is still controlled by three foreign airlines, Lufthansa, Air France, and Iberia, Continental has sold all of its stock, and the public now holds a significant portion of Amadeus' stock. Only Worldspan is still owned entirely by airlines and airline affiliates. However, every system still has ties with one or more airlines. American and Southwest market Sabre, and United provides some marketing support for Galileo.

A second major change is the increasing use of the Internet for airline distribution. The Internet gives airlines, like other travel suppliers, new ways to sell their services and inform consumers as well as opportunities to significantly cut distribution costs. The Internet similarly makes it easier for many travellers to obtain information and make bookings. General Accounting Office, "Effects of Changes in How

Airline Tickets Are Sold" (July 1999) at 13.

Many airlines have websites, and a number of airlines offer special discount fares and other benefits to travellers who book seats through their own websites instead of another distribution channel. Southwest now obtains one fourth of its bookings on-line, and several other airlines—Alaska and America West, for example—obtain at least one-tenth of their bookings on-line. February 28, 2000, Southwest Airlines Press Release. In addition, five major airlines are creating a website in which dozens of airlines and other travel suppliers will participate. Several major on-line travel agencies now exist, including Travelocity, affiliated with Sabre; Expedia, developed by Microsoft; and Priceline, a firm that allows consumers to bid for tickets at fares they choose.

Using the Internet for bookings appears to be much less costly for airlines than the traditional methods of selling airline tickets. According to a 1999 study, for example, each booking made through traditional travel agencies cost America West $23, a booking made through an electronic travel agency cost $20, a booking made through the airline's reservations agents cost $13, and a booking made through the airline's website cost $6. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 17. The Internet also benefits the marketing efforts of travel suppliers, especially smaller suppliers. A tourism official for the Maldive Islands thus stated, "Marketing is quite expensive and we are working on a very small budget. Because of the Internet we are able to do a lot of marketing with less expense." "Travel industry suffers Internet growing pains," March 15, 2000, Reuters story published on Yahoo (we are placing in the docket a copy of this article and other less widely-available material cited in this notice).

Distribution through the Internet, however, seems unlikely to end the airlines' dependence on CRS participation. The on-line travel agencies so far have not provided airlines a way of bypassing the systems, because on-line agencies use one of the systems as a booking engine. Expedia, for example, uses Worldspan, and Travelocity uses Sabre. Even the website being established by five major airlines—United, Delta, Northwest, Continental, and American—will use Worldspan as its booking engine. Thus airlines continue to need CRS access and remain obligated to pay CRS fees, although future developments may in time lessen their reliance on the systems.

While the growing use of the Internet and other changes in distribution practices will likely make it harder for some travel agencies to remain in business, these changes should not cause travel agencies to disappear. A Sabre official has predicted, for example, that travel agencies will account for 65 percent of all airline bookings in 2005 (45 percent by traditional travel agencies and 20 percent by travel agency websites). "Sabre: Agents could retain 65% of air sales by 2005," TRAVEL WEEKLY (April 3, 2000) at 10. An independent research firm specializing in on-line travel issues recently stated that consumers prefer using a travel agency website since they believe that they are likely to get a better price from a travel agency website than from an airline website. April 17, 2000, PhoCusWright Press Release. Travel agents provide services that benefit many travellers. The GAO found, for example, that consumers are more likely to obtain the lowest available fare from a travel agent than from other sources of airline information. General Accounting Office, "Effects of Changes in How Airline Tickets Are Sold" (July 1999) at 13.

The Department's Plans To Study Distribution and CRS Developments

We have been monitoring the airlines' increasing use of the Internet and other changes in airline distribution practices as part of our obligation to keep informed of developments in the airline industry. Our staff has been studying the CRS business and airline marketing practices. See Order 94–9–35 (September 26, 1994). The staff has reviewed relevant documents obtained from the systems pursuant to Order 94–9–35 and has interviewed officials from the systems, airlines, travel agencies and travel agency groups, as well as other industry experts. The staff has learned a great deal from this work, which will help us consider the issues in this proceeding. We plan to incorporate the staff's findings into the notice of proposed rulemaking rather than publish a separate report as originally intended. Proceeding in this manner should expedite this rulemaking.

In addition, we have begun to study airline distribution issues in other contexts. The cited staff study of the CRS business has not focused on the Internet's role in airline distribution. Due to concerns raised by travel agency groups and others about the airlines' use of the Internet, our staff will be informally studying the airlines' use of the Internet for marketing their services. The staff's findings will, if practicable, be included in the notice of proposed rulemaking and be used in other contexts where we will be addressing airline distribution and Internet issues. A related staff study is reviewing Orbitz, the joint website being created by five major airlines.

Other agencies have also investigated airline distribution issues. The Department's Inspector General conducted a study of travel agency override commissions. Office of the Inspector General, U.S. Dept. of Transportation, "Report on Travel Agent Commission Overrides" (March 2, 1999). While the report largely dealt with issues outside the scope of this proceeding, the report noted that airlines use the marketing and booking data sold by the systems to implement their override commission programs. *Id.* at 8.

The General Accounting Office ("GAO") issued a report on several issues: whether consumers have been affected by changes in the airlines' methods of selling tickets, whether airlines require travel agencies to follow different rules on selling tickets than are followed by airline reservations agents, what the airlines' policies are for making discount fares available to consumers and travel agencies, and how the airlines use data on travel agency sales. General Accounting Office, "Effects of Changes in How Airline Tickets Are Sold" (July 1999). The GAO's findings thus touch on some of the matters that we intend to consider in this proceeding.

In 1998 Congress requested the Transportation Research Board ("TRB") of the National Research Council to update its 1991 report on airline competition, "Winds of Change: Domestic Air Transport since Deregulation." The TRB did so by publishing a report, "Entry and Competition in the U.S. Airline Industry: Issues and Opportunities" (1999), which addresses among other competition issues the impact of changes in airline distribution. TRB Report at 124–129.

In addition, Congress has required three studies of issues related to airline distribution. The Department of Transportation and Related Agencies Appropriations Act, 2000, Public Law 106–69, 113 Stat. 985 (1999), requires the Department's Inspector General to submit a report "on the extent to which actual or potential barriers exist to consumer access to comparative price and service information from independent sources on the purchase of passenger air transportation." 113 Stat. at 1014.

Section 207 of AIR 21 requires the Secretary to review airline marketing

practices that may keep small and medium-sized communities from receiving quality, affordable airline services. Section 226 of AIR 21 will create the National Commission to Ensure Consumer Information and Choice in the Airline Industry. The commission will study (i) whether the financial condition of travel agencies is declining and, if so, the effect on consumers; and (ii) whether there are impediments to information on airline services and the effect of any such impediments on travel agencies, Internet-based distributors, and consumers. The Commission shall make recommendations it considers necessary to improve the condition of travel agents, especially smaller travel agents, and to improve consumer access to travel information.

To the extent that the findings and recommendations of these studies are relevant, we will take them into account in developing our notice of proposed rulemaking in this proceeding, if practicable. If not, we will consider them in other proceedings.

Finally, two travel agency trade associations have filed formal complaints involving airline distribution practices related to the issues in this proceeding. The American Society of Travel Agents filed a complaint against several airline practices that assertedly constitute unfair methods of competition because they will allegedly eliminate travel agencies as a source of unbiased information for consumers (Docket OST–99–6410). The Association of Retail Travel Agents has filed a complaint against the airlines that plan to create a joint website for the sale of airline tickets and other travel services (Docket OST–99–6691). It alleges that any joint airline site will threaten competition and therefore be an unfair method of competition. Despite whatever action is taken by the Enforcement Office on these complaints, we also intend to analyze some of these issues in this proceeding, and the staff will be examining some in their informal study of the airlines' use of the Internet and other distribution practices.

Request for Supplemental Comments

While the studies being undertaken by our staff and by other agencies will assist us in analyzing the issues in this rulemaking, we cannot wisely resolve those issues without the parties' comments. We therefore invite the parties to file supplemental comments in response to our advance notice of proposed rulemaking and this notice. Since we will decide the issues on the basis of all of the comments, both those filed so far and the supplemental comments requested by this notice, the parties need not repeat the factual and legal arguments contained in their original comments. The supplemental comments should focus on discussing the issues in this proceeding in light of the changes in the CRS business and airline distribution that have occurred since the end of the original comment period.

In addition, as we have stated, parties are free to make any rule proposal related to the questions being considered in this proceeding and to present any relevant factual, policy, and legal arguments. 62 FR at 47610. We also asked the parties, however, to comment on the specific questions set forth in our advance notice. 62 FR at 47609–47610. We are now asking the parties to address two additional issues, the effect of the reduced ties between the systems and the airlines that have controlled them, and the advisability of regulating airline distribution practices involving the Internet.

The discussion of the issues set forth in this notice is, of course, tentative. We have made no decision on the questions at issue in this proceeding.

We wish to ensure that travellers will continue to benefit from a competitive airline industry and have access to accurate and comprehensive information on airline services. However, as explained above, under section 411 to adopt a rule we must consider whether the practice at issue harms consumers by significantly reducing competition or potentially causing deception and whether market forces (or alternative less intrusive rules) may correct the perceived problem. Furthermore, in examining rule proposals we must analyze whether they would produce benefits outweighing their costs. We will be hesitant to adopt rules when compliance or enforcement is likely to be impracticable.

The Legal Basis for the Department's Rules. The changes in the systems' ownership and our wish to consider whether any rules are needed with respect to Internet practices require us to reexamine the legal predicates for our regulation of system operations.

The systems' growing independence from airline control raises two questions about our authority—(i) whether section 411 authorizes us to regulate the conduct of a system that is not owned, controlled, or marketed by an airline or airline affiliate, and (ii) whether our determinations that the system practices prohibited by our rules are unfair methods of competition are still valid, when those determinations relied on the systems' control by airlines that competed with airlines dependent on the systems for distribution.

Factual and policy considerations led to our determination in 1992 and the Board's determination in 1984 to limit the scope of the rules to systems owned or marketed by airlines. 57 FR 43794; 49 FR 32549. As a result, neither we nor the Board have ruled on whether we may regulate a system that has no links to airlines except insofar as airlines participate in the system. The changes in the systems' ownership now appear to require us to consider this issue.

The Reduced Ties between the Systems and Airline Owners. As discussed above, we readopted CRS rules because the airlines controlling the systems could use them to distort airline competition and provide misleading information, as shown by the systems' use of discriminatory fees and display bias. The airlines controlling the systems had an incentive to take such action, since they competed with the airlines whose services are sold through the systems.

The ties between the systems and their former airline owners have since diminished greatly, at least with respect to Sabre and Galileo, as discussed above. United accordingly has suggested that Galileo is no longer covered by the rules, since no airline or airline affiliate allegedly controls it, despite United's ownership of seventeen percent of Galileo's stock (Galileo, however, has not endorsed this suggestion). October 7, 1999, United Supp. Comments at 5, n. 5. Amadeus already has public owners and may sell additional shares to the public. Finally, the willingness of many airlines, including Continental and US Airways, to divest their system interests suggests that airlines may no longer believe that control of the systems is essential for protecting their ability to market their services.

Given these developments, we ask the parties to comment on whether CRS rules remain necessary and, if so, the basis for our maintenance of such rules as to systems that would have few, if any, affiliations with airlines. The parties should present their factual and legal arguments on whether the reduction in airline control of the systems has reduced or eliminated the need to maintain rules governing system operations. If commenters believe that the rules remain necessary for other reasons, they should explain why and further show that readopting rules would be consistent with our authority under section 411.

Parties should additionally discuss whether the rules, if any, should be the same for each system regardless of the

degree of its ties with one or more airlines. That issue involves the question of whether subjecting some systems but not others to regulation would impose an unreasonable competitive handicap on the systems subject to more regulation. As on all other issues, parties seeking to convince us that a regulated system will suffer competitive disadvantages (or that a regulated system will not suffer such disadvantages) should provide a persuasive factual basis for their assertions.

If we may not regulate non-airline systems directly, our authority to regulate airline practices under section 411 may allow us to prevent potential abuses. For example, with respect to the regulation of Internet sites, potential problems could perhaps be alleviated by barring airlines from seeking or obtaining preferential displays or discriminatory fees. If justified by the record, we could impose a similar ban on airlines with respect to system services provided travel agencies. We ask whether such a regulation would adequately resolve any potential problems that might arise from the operation of systems that have no airlines or airline affiliates as owners or marketers. Conceivably certain types of contract clauses in agreements between travel agencies and a system could also be prohibited as agreements analogous to contracts that unreasonably restrain trade in violation of section 1 of the Sherman Act.

Internet Issues. The Internet—an increasingly important channel for airline distribution—provides efficiency benefits for consumers and travel suppliers. We will consider whether there is a significant risk that some practices associated with the use of the Internet are likely to reduce competition in the airline industry or result in consumers obtaining incomplete or misleading information. The relevant questions may include the following: whether airlines are able to participate in on-line services on reasonable terms, whether consumers have a reasonable opportunity to obtain non-deceptive information on airline services and to make bookings, and whether the Internet's use presents questions about the competitiveness of the airline and distribution industries.

The proposals for Internet regulation generally fall into two categories—proposals for regulating websites, including those operated by on-line travel agencies, and proposals for regulating the airlines' use of the Internet, both with respect to airline websites and third-party websites. No one has yet suggested, however, that we adopt rules governing websites operated by individual airlines, although some contend that we should bar airlines from offering fares available only through their own websites.

Various parties have alleged in their comments that the operation of websites by travel agencies and the systems creates a potential for abuse, since the site operator may be induced to bias its displays of airline information. Our CRS rules currently apply to system services provided to websites operated by travel agencies, 14 CFR 255.1 and 255.2, but, as noted above, do not govern the use made by travel agencies of the information and displays made available by a system. Commenters should also state whether any travel agency websites are currently biased or provide deceptive information and, if so, provide supporting evidence.

Parties contending that additional rules are necessary for Internet services should explain why on-line agencies should be treated differently than traditional agencies. As we explained in our advance notice, consumers use CRSs differently than they do Internet services. 62 FR at 47610. Consumers relying on travel agencies for information and advice do not see the displays used by the travel agent, but consumers using a website do see displays created from the information provided by a system. In our past rulemakings we found CRS regulation necessary because, among other things, most travel agencies used only one system, travel agencies could not easily switch systems or use more than one system, and the time pressures on travel agents tend to cause them to book one of the first flights shown on a display, even if flights displayed later may better suit the traveller's needs. 57 FR at 43783, 43785–43786. These factors seem unlikely to be as true for consumer use of Internet booking sites. Some studies nonetheless have shown a substantial variance between the fares quoted by different websites. *See* "Frictions in cyberspace," ECONOMIST (November 20, 1999).

In addition to the proposals for regulating websites and the airlines' use of the Internet, Delta has asked us to forbid systems from tying participation in the system services provided on-line travel agencies and other websites with participation in the system services provided traditional travel agencies. Our advance notice asked parties to comment on that proposal, 62 FR 47610, and a number of parties discussed the proposal in their comments. We will consider it along with the parties' other proposals.

Regulatory Process Matters

Regulatory Assessment

Our CRS rules were a significant regulatory action under section 3(f) of Executive Order 12866 and were reviewed by the Office of Management and Budget under that order. As required by section 6(a)(3) of that Executive Order, we prepared an assessment of the rules' costs and benefits. The rules were also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

As we stated in our advance notice, we do not know now whether we will propose new rules that would have a substantial impact and would thus be considered significant under the Executive Order. OMB has waived review of this supplemental advance notice of proposed rulemaking.

The comments submitted in response to this notice should address the potential effects any changes would have on the economy, costs or prices for consumers and the government, and adverse effects on competition.

We do not expect that this rulemaking will impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Regulatory Flexibility Analysis

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to keep small entities from being unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies.

Any rules adopted by us regulating CRS operations are likely to affect the operations of many small entities, primarily travel agencies, even though they would not be regulated directly if we readopted the existing rules. When we publish a notice of proposed rulemaking in this proceeding, we will include an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act.

That act also requires each agency to periodically review rules which have a significant economic impact upon a substantial number of small entities. 5 U.S.C. 610. This rulemaking will constitute the required review of our CRS rules.

Paperwork Reduction Act

The current rules contain no collection-of-information requirements subject to the Paperwork Reduction Act, P.L. No. 96–511, 44 U.S.C. Chapter 35. *See* 57 FR at 43834.

Federalism Implications

This request for comments will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, we have determined that it does not present sufficient federalism implications to warrant consultations with State and local governments.

Issued in Washington, D.C. on July 17, 2000.

A. Bradley Mims,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–18573 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–62–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 580

RIN 3141–AA04

Environment, Public Health and Safety

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (Commission) proposes regulations that provide for adequate protection of the environment, public health and safety under the Indian Gaming Regulatory Act (Act). These regulations would implement the provisions of the Act which require that tribal gaming facilities be constructed, maintained and operated in a manner which protects the environment, public health and safety. The primary effect of this action is to have gaming tribes regulated by the Act develop and implement environment, public health and safety standards at their gaming operations. This regulation will establish a process through which the Commission and tribal government(s) exercise concurrent regulatory authority in enforcing these standards.

DATES: Comments may be submitted on or before November 30, 2000. A public hearing will be held on October 25, 2000 at 10:00 am.

ADDRESSES: Comments may be mailed to: Environment, Public Health and Safety Comments, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday. The public hearing will be held in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christine Nagle at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating gaming activities on Indian lands. The Act expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement provisions of this (Act)." 25 U.S.C. 2706(b)(10).

The regulations proposed today would implement the Commission's authority to issue environment, public health and safety regulations. This criteria is set forth in 25 U.S.C. 2710 (b)(2)(E) and provides that tribal ordinances or resolutions submitted for the Chairman's approval ensure that "the construction and maintenance of the gaming facility, and the operation of that gaming (facility) (sic) is conducted in a manner which adequately protects the environment and the public health and safety."

On April 27, 1999, the Commission issued an Advance Notice of Proposed Rulemaking regarding the establishment of environment, public health and safety procedures. After reviewing the information solicited through this notice, the Commission decided to move forward with proposed regulations. In November 1999, a Tribal-Commission Advisory Committee was formed to consult on the project. The Commission attempted to assemble a diverse advisory committee that represented the interests of a broad range of gaming tribes. During the period from November 1999 through May 2000, the Commission and the Tribal Advisory Committee met four times to develop a regulatory proposal. Ultimately, the Commission and the Committee selected an approach that strikes a balance between the inherent authority of tribal governments and the statutory authority of the Commission. This approach enables the Commission to meet its regulatory responsibilities without creating a set of substantive standards that may be inconsistent with existing provisions of tribal law or tribal-state gaming compacts.

The Commission's decision to propose this regulation is based primarily on three considerations: (1) The need to ensure that adequate environment, public health and safety programs are in place at all Indian gaming operations; (2) the need to set forth applicable standards for these programs so that the tribes and the Commission will have notice of compliance requirements; and (3) the impediment to effective enforcement that exists in the absence of a clear statement of applicable standards.

In proposing this regulation, the Commission is aware that many tribes have taken steps to ensure that their gaming facilities are constructed, maintained, and operated in a manner, which protects the environment, and public health and safety. The Commission notes, however, that there is no existing regulatory mechanism to ensure that adequate protections are in place at all Indian gaming facilities. In the view of the Commission, the most effective means of ensuring that adequate programs are implemented on an industry wide basis is to promulgate a rule which would be applicable to all gaming tribes. In addition, in the last several years the Commission has encountered a number of potential threats to the environment, public health, and safety at Indian gaming facilities. In assessing these matters it is apparent that, absent a rulemaking which sets forth applicable standards, neither tribal governments nor the Commission have a viable means of determining whether tribes are in compliance with requirements of the Act. Moreover, the absence of a clear statement of applicable standards creates an impediment to effective enforcement for both tribes and the Commission.

The proposed rule applies whenever an Indian tribe undertakes the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Act. Under this regulation, tribal government(s) are encouraged to assume the full responsibility for the development, and implementation of environment, public health and safety laws, codes, ordinances and resolutions applicable to their gaming operation(s). To comply with this rule, a gaming tribe must prepare and submit to the Commission an environment, public health and safety plan (Plan) which sets forth the

tribe's policies for ensuring that its gaming operations do not pose a threat to the environment, public health and safety. Under this regulation, the Plan is to contain the tribe's policies for the development, implementation, and enforcement of environmental, public health and safety standards for its gaming operation(s); describe the tribe's standards, regulatory structure(s), and enforcement program(s) in place or to be implemented to ensure that the environment, public health and safety of its gaming operation(s) are adequately protected; and meet the requirements of § 580.20 of the regulation. Section 580.20 includes requirements for emergency preparedness, construction, maintenance and operation, drinking water and food, use, storage and disposal of hazardous materials, and sanitation and waste disposal.

The Commission will review the Plans to ensure that they comply with requirements in this rule. A preliminary review will be conducted at the time of submission to ensure completeness and to notify the tribe of any apparent deficiencies. Tribes will be notified at the time the Commission undertakes a formal review of their Plan. The Commission's role in enforcing compliance with this regulation focuses on the tribe's compliance with its Plan. The Commission's oversight of such Plans will provide a comprehensive mechanism for ensuring that all tribal gaming facilities are constructed, maintained and operated in the manner required under the Act.

Therefore, pursuant to 25 U.S.C. 2710(b)(2)(E), these regulations are being proposed to establish the adequate protection of the environment, public health and safety at Indian gaming operations regulated by the Act.

Regulatory Flexibility Act

The Commission certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not: (1) Result in an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; and (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act

The Commission has determined that this proposed rule does not impose an unfunded mandate on State, local or tribal governments or on the private sector of more than $100 million per year. The Commission has determined that this proposed rule may have a unique effect on tribal governments, as this rule applies exclusively to tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Indian Gaming Regulatory Act. Thus, in accordance with section 203 of the Unfunded Mandates Reform Act, the Commission has developed a small government agency plan which provides tribal governments with adequate notice, opportunity for "meaningful" consultation, and information, advice and education on compliance.

The Commission's small government agency plan includes: formation of a tribal advisory committee; discussions with Tribal leaders and tribal associations; preparation of guidance material and model documents; and technical assistance. During the period from November 1999 through May 2000, the Commission and the Tribal Advisory Committee met four times to develop a regulatory proposal. In selecting committee members, consideration was placed on the current level of environmental, public health and safety regulation exercised by the tribe represented, the applicant's experience in this area, as well as the size of the tribe the nominee represented, geographic location of the gaming operation and the size and type of gaming conducted. The Commission attempted to assemble a committee that incorporates diversity and is representative of Indian gaming interests. Since beginning formulation of this proposed rule, the Commission spoke at three tribal association meetings and held three field consultations with tribes. The Commission is in the process of developing guidance materials that will include a model Environment, Public Health and Safety Plan. The Commission will meet with the Tribal Advisory Committee to discuss the public comments that are received as a result of publication of this proposed rule. Lastly, prior to the implementation deadline of this proposed rule, the Commission will hold numerous regional technical assistance workshops.

Paperwork Reduction Act

The Commission is in the process of obtaining clearance from the Office of Management and Budget (OMB) for the information collection requirements contained in this proposed rule, as required by 44 U.S.C. 3501 *et seq.* The information required to be submitted is identified in §§ 580.20–580.30, and will be used to determine compliance with this part.

The public reporting burden for this collection of information is estimated to average 150 hours, to initially prepare an Environmental, Public Health and Safety Plan, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission estimates that information needed to maintain the Plan will require an annual burden of 190 hours. It is estimated that an additional 21 hours will be required to prepare, and gather the data needed, and to complete the collection of information necessary to prepare for plan renewal. Plans need to be renewed every five years.

Public reporting burden for this collection of information is estimated to average 361 hours per year including the time for initial Plan preparation, monitoring, recordkeeping and Plan renewal preparation. The Commission estimates that approximately 198 tribes will need to file an Environmental, Public Health and Safety Plan for an annual burden of 71,478 hours.

Send comments regarding this collection of information, including suggestions for reducing the burden to both, Environment, Public Health and Safety Comments, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, DC 20005; and to the Office of Information and Regulatory Affair, Office of Management and Budget, Washington, DC 20503. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

The Commission solicits public comment as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Commission, and whether the information will have practical utility;

b. The accuracy of the Commission's estimate of the burden of the collection

of information, including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

An agency may not conduct, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*).

Takings (Executive Order 12630)

The Commission has determined that this proposed rule does not have significant "takings" implications. Thus, a takings implications assessment is not required.

Federalism (Executive Order 12612)

The Commission has determined that this proposed rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of States.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Commission has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Montie R. Deer,

Chairman.

List of Subjects in 25 CFR Part 580

Environment, Gambling, Health and safety, Indians-lands, Indians-Tribal government.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR by adding a new part 580 as follows:

PART 580—PROTECTING THE ENVIRONMENT, PUBLIC HEALTH, AND SAFETY

Subpart A—Requirement for an Environment, Public Health, and Safety Plan

Sec.

580.2 What is the purpose of this part?
580.3 When does this part apply?
580.4 What is the scope of this part?
580.5 How does a tribe comply with this part?
580.6 What is the Environment, Public Health, and Safety Plan?
580.7 What is the effect of a tribe's Compliance with this Part?

Subpart B—Contents of an Environment, Public Health and Safety Plan

580.20 What must the tribe include in its Plan?
580.22 What emergency preparedness information must the tribe include?
580.24 What construction, maintenance and operation information must the tribe include?
580.26 What information must the tribe include on drinking water and food?
580.28 What information must the tribe include on use, storage, and disposal of hazardous materials?
580.30 What information must the tribe include on sanitation and waste disposal?
580.32 What legal/regulatory standards and enforcement programs does the tribe have in place to carry out its Plan?
580.34 What if the tribe does not have legal/regulatory standards and/or enforcement programs in place?
580.36 Can the tribe assign its Plan compliance functions to another entity?
580.38 When must the tribe submit its Plan?
580.40 What is a Certificate of Assurance?
580.42 Where does the tribe send its Plan?

Subpart C—Plan Review Process

580.50 Who will review a tribe's Plan?
580.52 What happens when a tribe submits its Plan?
580.54 What are the steps of the review process?
580.56 What factors will be considered in the review of the tribe's Plan?
580.58 How is a Notice of Intent to Disapprove issued?

Subpart D—Appeals

580.60 What actions can the tribe take if it receives a Notice of Intent to Disapprove?
580.62 What happens if the tribe fails to correct deficiencies identified by the Commission or file an appeal within the specified timeframes?
580.64 If the Reviewing Commissioner issues a Notice of Disapproval, may the tribe appeal?
580.66 How will the Commission handle the tribe's appeal under § 580.64?

Subpart E—Inspections, Enforcement, and Recordkeeping

580.70 When must a tribe revise its Plan?
580.72 What must a tribe do in order to revise its Plan?
580.74 Does a change of management at a gaming operation require a tribe to revise its Plan?
580.76 Does the tribe have to renew its Plan?
580.78 What must a tribe do to renew its Plan?
580.80 How will the Commission review the new Plan?
580.88 When can the Commission conduct an on-site inspection?
580.90 What procedures will the Commission follow in an enforcement action taken pursuant to this part?
580.92 What are some examples of violations that may result in an enforcement action?
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580.100 How long must the tribe maintain the types of records outlined in § 580.98?

Authority: 25 U.S.C. 2710.

Subpart A—Requirement for an Environment, Public Health, and Safety Plan

§ 580.2 What is the purpose of this part?

The purpose of this part is to:

(a) Ensure that tribal gaming facilities are constructed, maintained and operated in a manner that adequately protects the environment, public health and safety as required by the Indian Gaming Regulatory Act (Act);

(b) Establish a process through which the National Indian Gaming Commission (Commission) and tribal government(s) coordinate the exercise of concurrent regulatory jurisdiction over gaming operations on Indian lands in relation to the environment and public health and safety; and

(c) Encourage tribal government(s) to assume the fullest responsibility for the administration and enforcement of tribal environmental, public health and safety laws, codes, ordinances and other tribal enactments applicable to gaming operations on Indian lands.

§ 580.3 When does this part apply?

This part applies when an Indian tribe undertakes the ownership, operation, regulation, or licensing of gaming facilities on Indian lands over which it has jurisdiction, under the provisions of the Act.

§ 580. 4 What is the scope of this part?

This part pertains to the development, regulation, and enforcement of environment, public health and safety standards applicable to a tribe's gaming operation(s), and covers the area(s) where gaming activities are conducted; parking areas used primarily for gaming patrons; and any other area(s) over which the tribe's gaming regulatory body has jurisdiction under the tribe's approved gaming ordinance.

§ 580.5 How does a tribe comply with this part?

In order to comply with this part, a tribe must:

(a) Prepare an Environmental, Public Health and Safety Plan (Plan) in accordance with § 580.20 of this part;

(b) Submit the Plan to the Commission in accordance with provisions of § 580.38 of this part;

(c) Meet all the requirements contained in this part; and

(d) Comply with the provisions contained in its Plan.

§ 580.6 What is the Environment, Public Health, and Safety Plan?

The Plan is the document that a tribe must prepare and submit to the Commission for approval in order to comply with this part. The Plan must:

(a) Contain the tribe's strategy for the development, implementation, and enforcement of its environmental, public health and safety standards for gaming operation(s) on its Indian lands;

(b) Describe the tribe's standards, regulatory structure(s), and enforcement program(s) in place or to be implemented to ensure that the environment, public health and safety of its gaming operation(s) are adequately protected; and

(c) Meet the requirements of § 580.20.

§ 580.7 What is the effect of a tribe's compliance with this part?

Tribal compliance with this Part provides the mechanism through which the Commission will recognize the tribal government's primary regulatory and enforcement authority in the area of environment, public health and safety. The Commission will focus its regulatory activities on: Reviewing and processing Plan submissions; monitoring tribal compliance with its Plan; and responding to emergencies. Routine oversight and enforcement will be considered the primary responsibility of the appropriate tribal governmental agency and/or other governmental entity delineated in the Plan.

Subpart B—Contents of an Environment, Public Health and Safety Plan

§ 580.20 What must the tribe include in its plan?

The Plan must contain all of the information shown in the following table.

The Plan must contain—	Which must include—
(a) Complete identifying information	(1) The tribe's name and the name(s) of the gaming operation(s); (2) The owner, operator, licensing body and/or management contractor of the gaming operation(s); (3) The contact person; and (4) A description of the gaming operation(s) including: location(s), size in square feet, days and hours of operation, and maximum occupancy load.
(b) An emergency preparedness section	A description of the tribe's policies, procedures, standards, compliance monitoring, enforcement program(s), and qualified personnel in place to handle emergencies. See § 580.22 for further guidance on how to comply with this requirement.
(c) A construction, maintenance and operation section.	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for construction, maintenance and operation. Certification that any mitigation measures required by the Commission pursuant to the National Environmental Policy Act (NEPA) have been completed. See § 580.24 for further guidance on how to comply with this requirement.
(d) A drinking water and food section	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for drinking water and food preparation and handling. See § 580.26 for further guidance on how to comply with this requirement.
(e) A use, storage and disposal of hazardous materials section.	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for use, storage and disposal of hazardous materials. The tribe must describe how it will use, store and dispose of hazardous materials, including but not limited to: paints, solvents, pesticides, cleaning agents, and fuels if they are used as part of the construction, operation or maintenance of the gaming operation. See § 580.28 for further guidance on how to comply with this requirement.
(f) A sanitation and waste disposal section	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for sanitation and waste disposal. See § 580.30 for further guidance on how to comply with this requirement.
(g) Documentation showing that the tribe has an adequate program(s) to carry out the Plan.	(1) Identification of the legal standards the tribe will use to carry out the provisions of its Plan, including either citations to or copies of the applicable tribal ordinances, resolutions, regulations or other governing instruments; (2) Identification of each tribal governing body responsible for administering the Plan, or part thereof; (3) A description or copy of the procedures the tribe will use to enforce compliance with the Plan; (4) A description or copy of the procedures the tribe will use to monitor compliance with the Plan, including permitting processes, and inspection, license, reporting, monitoring and record keeping requirements; (5) Certification that individuals responsible for oversight, planning, and implementation of the Plan have the minimum qualifications necessary to discharge their responsibilities; (6) A description of the record keeping system containing employee/contractor training, education, certifications, licenses, work experience, and continuing education requirements for each section of the Plan; (7) Certification that the tribe will devote sufficient resources to carry out the tribe's Plan; (8) Certification that the tribe's standards meet all of the requirements contained in § 580.32.
(h) Documentation showing that the tribe's standards are at least as stringent as federal or other standards commonly used in surrounding jurisdictions.	Certification that the standards identified in the Plan are at least as stringent as federal or other standards commonly used in surrounding jurisdictions.
(i) Complete identifying information for each entity responsible for compliance with standards identified in the Plan.	(1) The official title and responsibilities of each tribal entity; and/or (2) A description or copy of all pertinent agreements with any non-tribal entity.

§ 580.22 What emergency preparedness information must the tribe include?

To meet the requirements of § 580.20(b), the tribe must include the following information in the emergency preparedness section of its Plan:

For—	The tribe must include a description of—
(a) Accidents, injuries, and medical emergencies.	(1) The steps taken to prevent, prepare for, and respond to accidents, injuries, and medical emergencies; and (2) The trained emergency medical personnel, ambulance service, medical transport, and medical facilities serving the tribe's gaming operation.
(b) Natural and Other Disasters	(1) Identification of the range of natural disasters associated with the tribe's geographic area, or other disasters that might create a serious threat to the environment, public heath and safety; (2) The steps taken to prepare for and respond to the identified disasters; (3) Evacuation procedures; and (4) The incident response system, which may also include, back-up communications, mock drills, equipment testing, back-up power and water systems, and hazardous materials response.
(c) Fire	(1) The steps taken to prevent, prepare for and respond to fire emergencies; (2) Evacuation procedures; (3) The alarm systems in place; and (4) The availability of fire fighting services, trained personnel, and fire suppression systems.
(d) Security threats	(1) The steps taken to prepare for and respond to security threats, including bomb threats, unlawful intrusions, criminal acts and other foreseeable security risks; (2) Evacuation procedures; and (3) The availability of law enforcement services.

§ 580.24 What construction, maintenance and operation information must the tribe include?

Section 580.20(c) requires that the tribe include in its Plan a description of the policies, operating procedures, standards, compliance monitoring system, enforcement program and qualified personnel in place for construction, maintenance and operation, and certification that any mitigation measures required by the Commission pursuant to the National Environmental Policy Act (NEPA) have been met. The following table shows examples of the documents that the tribe can describe or include to help satisfy this requirement.

For—	Some examples of information that will meet this requirement include—
(a) Construction standards	(1) The building code that the tribe follows; (2) The criteria that the tribe uses for plumbing, electrical and mechanical systems; and (3) The practices that the tribe follows for managing sediment and stormwater.
(b) Preventative Maintenance and Repair	(1) Maintenance and inspection schedules for heating and air conditioning systems, elevators, parking areas, and stormwater management facilities; and (2) Procedures and schedules in place for ensuring the safe operation of energy sources used to supply the gaming operation(s) and records systems for inspections, maintenance, and repair.

§ 580.26 What information must the tribe include on drinking water and food?

Section 580.20(d) requires that the tribe include in its Plan a description of its policies, operating procedures, standards, compliance monitoring systems, enforcement programs and qualified personnel in place for drinking water and food preparation and handling. The following table shows examples of the documents that the tribe can describe or include to help satisfy this requirement.

For—	Some examples of information that will meet this requirement include—
(a) Drinking water	(1) The water system that supplies the gaming operation; (2) The amount of storage maintained and/or whether a back-up source is available; (3) The inspection and testing program, including the responsible entity; and (4) An emergency plan to respond to contamination.
(b) Food Preparation and Handling	(1) The inspection and testing program, including the responsible entity; (2) Measures used to ensure proper temperature control of food; (3) Methods used to educate employees on proper hygienic practices; and (4) Control measures used to prevent food contamination.

§ 580.28 What information must the tribe include on use, storage, and disposal of hazardous materials?

Section 580.20(e) requires that the tribe include in its Plan a description of the tribe's policies, operating procedures, standards, compliance monitoring systems, enforcement programs and qualified personnel in place for use, storage and disposal of hazardous materials. The tribe must describe how it will use, store and dispose hazardous material including but not limited to: Paints, solvents, pesticides, cleaning agents, and fuels if they are used as part of the construction, operation or maintenance of the gaming operation.

For—	Some examples of information that will meet this requirement include—
(a) Use and handling	(1) Certification, licensing, or other methods used to make sure persons using or handling hazardous materials have been trained appropriately; and (2) A copy of the tribe's written procedures for use and handling hazardous materials.

For—	Some examples of information that will meet this requirement include—
(b) Storage	(1) The methods used to control access to hazardous materials; (2) The spill-prevention and response plan; and (3) Methods used to ensure hazardous materials are placed in proper containers and that containers are labeled properly.
(c) Disposal	(1) The guidelines that have been adopted for the proper disposal of hazardous materials; and (2) Any agreements in place with local governments or private contractors.

§ 580.30 What information must the tribe include on sanitation and waste disposal?

Section 580.20(f) requires that the tribe include in its Plan a description of its policies, operating procedures, standards, compliance monitoring systems, enforcement programs and qualified personnel in place for sanitation and waste disposal. The following table shows examples of the documents that the tribe can describe or include to help satisfy this requirement.

For—	Some examples of information that will meet this requirement include—
(a) Solid waste	(1) The methods used to dispose of solid waste; (2) Recycling or pollution prevention plans in place; and (3) Any agreements in place with local governments or private contractors.
(b) Wastewater and Sewage Disposal	(1) The treatment and/or disposal system being used; (2) Any agreements in place with local government or private contractors; (3) If wastewater is treated or disposed of on-site, the maintenance program and qualification criteria for plant operators.
(c) Bio-hazard disposal	(1) The disposal program in place. (2) Any agreements in place with local governments or private contractors.

§ 580.32 What regulatory standards and enforcement programs does the tribe have in place to carry out its Plan?

To comply with the requirements of § 580.20(g), the Plan must show that the tribe has in place regulatory standards and enforcement programs to do all of the following:

(a) Require gaming operations under the tribe's jurisdiction to be constructed, operated and maintained in a manner that adequately protects the environment, public health and safety;

(b) Adopt and implement tribal standards for the following areas: Emergency Preparedness; Construction, Maintenance and Operation; Drinking Water and Food; Use, Storage and Disposal of Hazardous Materials; and Sanitation and Waste Disposal;

(c) Monitor compliance with the Plan, through a program that includes inspections, monitoring, reporting, record keeping requirements, and permitting and licensing;

(d) Enforce applicable laws, regulations, and standards;

(e) Ensure that individuals responsible for oversight, planning, and implementing the Plan have the appropriate qualifications; and

(f) Ensure that the tribe will allocate adequate resources to carry out the Plan.

§ 580.34 What if the tribe does not have legal / regulatory standards and/or enforcement programs in place?

The tribe shall adopt such standards and/or such program(s) or the Plan should specify if the tribe has an intergovernmental agreement or the government entity, which will meet the requirements of § 580.20.

§ 580.36 Can the tribe assign its Plan compliance functions to another entity?

A tribe may enter into an agreement with a federal, state, or local government or contract with a private entity to provide services or functions necessary to carry out its Plan or any portion thereof, however, this does not relieve the tribe of its responsibility to comply with the Plan, or any portion thereof.

§ 580.38 When must the tribe submit its Plan?

The tribe must submit its Plan to the Commission as shown in the following table.

If the tribe's gaming operation is—	then the tribe must—	and—
(a) Already in existence on the effective date of this part.	Submit the tribe's Plan within twelve (12) months of the effective date of this part.	
(b) Under construction on the effective date of this part.	Submit a Certificate of Assurance within ninety (90) days of the effective date of this part.	Submit the tribe's Plan within twelve (12) months of the effective date of this part or at least sixty (60) days before the tribe opens the gaming operation whichever is later.
(c) Not in existence, or under construction, on the effective date of this part.	Submit a Certificate of Assurance before engaging in any construction activity.	Submit the tribe's Plan at least sixty (60) days before the tribe opens the gaming operation.

§ 580.40 What is a Certificate of Assurance?

A Certificate of Assurance is a written pledge from the tribal government stating that the tribe's construction standards meet or exceed federal, or other standards commonly used in jurisdictions surrounding the gaming operation and that systems are in place to monitor compliance and enforcement of such standards. At a minimum, the construction standards must include:

(a) The building code followed;

(b) The criteria the tribe will use for plumbing, mechanical and electrical system; and

(c) The practices the tribe will follow for managing sediment and stormwater.

§ 580.42 Where does the tribe send its Plan?

The tribe sends the Plan by certified mail return receipt requested to: The National Indian Gaming Commission Environment, Public Health, and Safety 1441 L Street, NW, Suite 9100 Washington, DC 20005.

Subpart C—Plan Review Process

§ 580.50 Who will review a tribe's Plan?

The Chairman shall appoint one Commissioner to oversee the Plan approval process and make the initial determination on whether the tribe's Plan meets the approval criteria.

§ 580.52 What happens when a tribe submits its Plan?

A tribal Plan becomes effective on the date it is mailed to the address listed in § 580.42 and remains in effect through completion of the review process.

§ 580.54 What are the steps of the review process?

There are two steps in the Plan review process:

(a) Preliminary Review. (1) The preliminary review process is the first step. During this stage, the Reviewing Commissioner will:

(i) Review a tribe's Plan for completeness in accordance with §§ 580.20 and 580.56; and

(ii) Request any additional information needed to initiate the formal review process.

(2) The Reviewing Commissioner may also:

(i) Notify the tribe of any apparent deficiencies in its compliance with §§ 580.20 and 580.56; or

(ii) Contact the tribal entities or federal, state, or local entities identified in the Plan to clarify information contained therein.

(b) Formal Review. (1) The formal review process is the final stage of the review process, which commences when the Reviewing Commissioner notifies the tribe that the formal review of the tribe's Plan is underway. The formal review process will be concluded within ninety (90) days from the date the tribe is sent notice that the formal review process is underway. During the formal review process, the Reviewing Commissioner will:

(i) Notify the tribe by certified mail that the review process has been initiated. The notice will sent to the contact person identified by the tribe in its Plan;

(ii) Review the Plan;

(iii) Determine whether the Plan meets the criteria specified in §§ 580.20, 580.32 and 580.56; and

(iv) Send written Notice of Approval to the contact person listed in the tribe's Plan; or

(v) Send the tribe a Notice of Intent to Disapprove in accordance with § 580.58.

(2) As part of the formal review process:

(i) On-site inspections may be conducted;

(ii) Consultation with the tribal entities or federal, state, or local entities identified in the Plan may take place; or

(iii) Documentation or any other information deemed pertinent to the Reviewing Commissioner's formal review of the Plan may be requested.

§ 580.56 What factors will be considered in the review of the tribe's Plan?

Review of the tribe's Plan will look for adherence to the criteria in §§ 580.20 and 580.32, and will consider whether:

(a) The standards in the tribe's Plan are at least as stringent as the federal standards or standards commonly used in surrounding jurisdictions;

(b) The tribe will exercise authority under the Plan through appropriate means;

(c) The tribe has established compliance monitoring procedures to carry out the Plan;

(d) The tribe has allocated sufficient resources to carry out its Plan;

(e) The tribe has procedures ensuring that the individuals responsible for oversight, planning, and implementation of the areas of coverage have the appropriate qualifications to discharge their responsibilities; and

(f) The tribe's Plan adequately addresses all of the criteria in §§ 580.20 and 580.32.

§ 580.58 How is a Notice of Intent to Disapprove issued?

A Notice of Intent to Disapprove will be sent by certified mail to the contact person listed in the Plan. The Notice will contain:

(a) A description of the deficiencies that have been identified;

(b) The steps the tribe must take to cure the deficiencies;

(c) The legal authority under which the notice is being issued; and

(d) A deadline by which the tribe must correct the deficiencies identified under paragraph (a) of this section.

Subpart D—Appeals

§ 580.60 What actions can the tribe take if it receives a Notice of Intent to Disapprove?

(a) The tribe may submit a revised Plan curing the deficiencies identified in the Notice of Intent to Disapprove within the timeframe specified in the notice; or

(b) The tribe can request that the Reviewing Commissioner hold a hearing by following the procedures contained in this section. To request a hearing under this part the tribe must:

(1) Submit a request for a hearing in writing within thirty (30) days of receiving a Notice of Intent to Disapprove. The tribe's request must specify:

(i) The tribe's objections to the Reviewing Commissioner's preliminary determination and submit all evidence and other documentation supporting the tribe's objections;

(ii) Any oral or written testimony that the tribe wants to present.

(2) Within fifteen (15) days of receiving the tribe's request, the tribe will be notified of the:

(i) Date and place of the hearing;

(ii) Schedule for conducting the hearing, including the order of presentation;

(iii) Issues to be addressed;

(iv) Witnesses that can be called; and

(v) Time allotted for testimony and oral argument.

(3) The Reviewing Commissioner will issue a decision within sixty (60) days after the hearing.

§ 580.62 What happens if the tribe fails to correct deficiencies identified or file an appeal within the specified timeframes?

If the tribe fails to cure the deficiencies or file an appeal of the Notice of Intent to Disapprove within the specified timeframe, a Notice of Disapproval will be issued and an enforcement action under 25 CFR part 573 may be initiated.

§ 580.64 If the Reviewing Commissioner issues a Notice of Disapproval, may the tribe appeal?

Yes. A tribe may appeal the Reviewing Commissioner's disapproval of its Plan to the full Commission. Such an appeal shall be filed within thirty (30) days after the tribe receives a Notice of Disapproval. Such an appeal shall state why the tribe believes the

Reviewing Commissioner's determination to be erroneous, and shall include supporting documentation, if any. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

§ 580.68 How will the Commission handle the tribe's appeal under § 580.64?

(a) Such appeal must be received by the Commission within thirty (30) days of the service of the decision and shall include a supplemental statement that states with particularity the relief desired and the grounds therefore. The Commission shall decide the appeal based only on a review of the record before it. The decision on appeal shall require a majority vote of the Commissioners.

(b) The decision of the Commission to approve or disapprove a tribe's Plan shall be a final agency action. A Commission denial shall be appealable under 25 U.S.C. 2714.

Subpart E—Inspections, Enforcement, and Recordkeeping

§ 580.70 When must a tribe revise its Plan?

A tribe must revise its Plan whenever there is a material change that affects the tribe's ability to carry out its Plan. Some examples of changes that are likely to require a Plan revision include, but are not limited to:

(a) Substantial changes in tribal codes, ordinances, regulations, or compact provisions;

(b) Substantial changes to or termination of intergovernmental agreements;

(c) Structural expansions, renovations, or modifications of the gaming operation(s);

(d) Construction of a new gaming operation;

(e) Changes in the tribal regulatory structure or enforcement programs identified in the Plan; or

(f) Managerial changes that substantially affect or alter the practices, procedures, or systems contained in the Plan.

§ 580.72 What must a tribe do in order to revise its Plan?

The tribe must send its revision(s) to the Commission no later than 120 days after the occurrence of the material change prompting the revision(s). Revisions will become effective upon submission to the Commission, but will not become part of the approved Plan until the revision is reviewed and approved in accordance with §§ 580.50 through 580.58.

§ 580.74 Does a change of management at a gaming operation require a tribe to revise its Plan?

A change in the management at a gaming operation does not in itself require the tribe to revise its Plan provided that the new management continues to follow the provisions in the tribe's Plan.

§ 580.76 Does the tribe have to renew its Plan?

Yes. A tribe's Plan expires five years from the date of its approval and must be renewed.

§ 580.78 What must a tribe do to renew its Plan?

Within 60 days prior to expiration of its Plan, a tribe must submit a new Plan for approval even if the provisions of the new Plan are not substantially different from those in the expired Plan. The new Plan must:

(a) Contain all the sections required under § 580.20;

(b) Meet the criteria required under §§ 580.20, 580.32 and 580.56;

(c) Include all revisions that the tribe submitted to the Commission during the previous approval period if the revisions remain in effect; and

(d) Include any other changes that the tribe has made for which a revision was not required.

§ 580.80 How will the Commission review the new Plan?

The Commission will follow the Plan review provisions contained in §§ 580.50–580.64.

§ 580.82 When can the Commission conduct an on-site inspection?

In addition to the authority set forth in 25 CFR 571.5, the Commission may conduct an on-site inspection:

(a) At any time to ensure compliance with the Plan;

(b) If the Commission conducts a routine investigation not related to environmental, public health and safety issues, and discovers a condition that needs investigation;

(c) If the tribe's Plan raises concerns that an area of environmental, public health or safety is not being adequately addressed;

(d) To ensure that the tribe has implemented all mitigations, if any, required by the Commission pursuant to NEPA; or

(e) When an emergency situation exists at a gaming operation.

§ 580.90 What procedures will the Commission follow in an enforcement action taken pursuant to this part?

The Commission will follow the enforcement procedures set forth in 25 CFR part 573.

§ 580.92 What are some examples of violations that may result in an enforcement action?

(a) Failure to submit a Plan;

(b) Failure to revise the Plan;

(c) Failure to comply with the Plan;

(d) Failure to cure deficiencies that result in disapproval;

(e) Operating with a disapproved Plan;

(f) Failure to correct deficiencies discovered during a compliance review by the Commission; or

(g) Misrepresentations of any fact or assertion made in the Plan under §§ 580.20, 580.32 and 580.56 upon which the Commission relied in granting approval of a Plan or revisions of the Plan.

§ 580.94 If the tribe has signed a Tribal-State compact, will the tribe have to comply with two sets of standards?

No. The tribe can use provisions in Tribal-State compacts to satisfy the requirements of this part if the compact provisions are as stringent as the requirements specified in this part.

§ 580.96 Does this part affect the regulatory authority of any other governmental entity or alter tribal-state gaming compacts?

No. Nothing in this part is intended to:

(a) Reduce, diminish, or otherwise alter the regulatory authority of any other Federal, State, or tribal governmental entity; or

(b) Amend or require amendment(s) to any tribal-state gaming compact(s).

§ 580.98 What records must the tribe keep?

The tribe must keep sufficient records to demonstrate compliance with each area of its Plan including any records the tribe has identified in its Plan under § 580.20 (g), or otherwise required by federal law, to carry out provisions of this part.

For—	Such records include, for example—
Emergency Preparedness; Drinking Water and Food; Use, Storage & Disposal of Hazardous Materials; Sanitation and Waste Disposal; and Maintenance and Operations.	(1) Copies of policies, procedures and standards described or identified in the tribe's Plan. (2) Employee, training, education, certifications, licenses, and work experience. (3) Monitoring and test results such as: (i) Emergency equipment inspection; (ii) Drills; (iii) Fire suppression systems; (iv) Water quality testing; (v) Alarm systems. (4) Inspection Reports such as: (i) Health; (ii) Fire; (iii) Sanitation; (iv) Chemical handling; (v) Insurance; (vi) Safety; (vii) Wastewater; (viii) Maintenance. (5) Enforcement records such as: (i) Notices of violations; (ii) Corrective action records; (iii) Sanctions; (iv) Personnel actions; (v) Final dispositions of enforcement actions. (6) Such environmental records relating to disposal of hazardous materials and waste, protection of the environment.
Construction	(1) Requirements for record retention for construction may be satisfied by: certificates of occupancy, certificates from independent qualified inspectors, or individual construction records; (2) Such environmental records relating to disposal of hazardous materials and waste, protection of the environment, or otherwise required by federal law to carry out provisions of this part.

§ 580.100 How long must the tribe maintain the types of records outlined in § 580.98?

The tribe must retain the types of records identified in § 580.98 for a period of five years, following the year to which they relate unless a longer period of time is specified by some other provision of law.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–063–0028; FRL–6839–6]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from stationary storage tanks, dock loading and leakages from pumps and compressors. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must arrive by August 23, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, (P.O. Box 987), Florence, AZ 85232.

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1183.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by PCAQCD and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD	5–18–740	Storage of Volatile Organic Compounds—Organic Compound Emissions	02/22/95	11/27/95
PCAQCD	5–19–800	General	02/22/95	11/27/95
PCAQCD	5–24–1055	Pumps and Compressors—Organic Compound Emissions	02/22/95	11/27/95

On February 2, 1996, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are previous versions of Rules 5–18–740, 5–19–800, and 5–24–1055 in the SIP. We approved a version of the above rules into the SIP on November 15, 1978. The PCAQCD adopted revisions to the SIP-approved version on February 2, 1995 and ADEQ submitted them to us on November 27, 1995.

C. What Is the Purpose of the Submitted Rule Revisions?

The only purpose of the submitted rule revisions was the renumbering of the SIP approved version. Rule 7–3–2.1 was renumbered as 5–18–740, Rule 7–3–3.2 was renumbered as 5–19–800, and Rule 7–3–3.3 was renumbered as 5–24–1055. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The PCAQCD regulates an ozone attainment area (see 40 CFR part 81). So RACT requirements do not apply.

Guidance and policy documents that we used to define specific enforceability include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register** (This applies to all the above rules).

2. *Control Technique Guideline Document (CTG) entitled "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks,"* EPA–450/2–77–036, U.S.EPA, December 1977 (applies to Rule 5–18–740).

3. *Control Technique Guideline Document (CTG) entitled "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,"* EPA–450/2–78–047, December, 1977 (applies to Rule 5–18–740).

4. *Control Technique Guideline Document (CTG) entitled "Control of Volatile Organic Emissions from Bulk Gasoline Plants,"* EPA–450/2–77–035, December 1977 (applies to Rule 5–19–800).

5. *Control Technique Guideline Document (CTG) entitled "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,"* EPA–450/2–77–026, October 1977 (applies to Rule 5–19–800).

6. *Control Technique Guideline Document (CTG) entitled "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment,"* EPA–450/3–83–006 (applies to Rule 5–24–1055).

B. Do the Rules Meet the Evaluation Criteria?

These rules are essentially inconsistent with the relevant policy and guidance regarding enforceability. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

We have identified the following deficiencies:

1. None of the above rules adequately specify or reference applicability, exemptions, definitions, test methods, recordkeeping and monitoring requirements to make each rule federally enforceable.

2. SIP version of Rule 3–1–160 (Test Method and Procedures) which may be applicable to the above rules has a "Director Discretion" which needs to be deleted/corrected. If PCAQCD wishes to retain this part in the rule, the phrase should be worded to include EPA's approval.

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient and will supercede Rules 7–3–3.1, 7–3–3.2, and 7–3–3.3 from the SIP. This approval is limited because of the preceding deficiencies. Note that the submitted rules have been adopted by the PCAQCD, and EPA's final limited approval would not prevent the local agency from enforcing them. Because this is an attainment area, EPA is not simultaneously proposing a limited disapproval of the rules. As a result, no sanction clocks under section 179 or FIP clocks under section 110(c) are associated with this action.

We will accept comments from the public on the proposed limited approval for the next 30 days.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed limited approval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this limited approval. Federal limited approval of the state submittal does not affect state enforceability. Moreover, EPA's limited approval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so

would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 13, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–18643 Filed 7–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–OW–6839–7]

RIN 2040–ZA00

Extension of Comment Period and Change to Public Hearing Schedule for the Proposed Rule on Water Quality Standards for Kansas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period and change to public hearing schedule.

SUMMARY: EPA is extending the comment period and rescheduling the public hearing for its July 3, 2000, proposed rule to promulgate water quality standards for the State of Kansas. If promulgated as final standards, they would supersede aspects of Kansas's water quality standards that EPA disapproved in 1998. In furtherance of EPA's 1998 disapproval action, EPA is proposing: that all discharges to stream segments for which continuous flow is sustained primarily through the discharge of treated effluent shall protect the States' designated uses; that 7Q10, 4B3, or other scientifically defensible design flows approved by EPA shall be used to implement the State's chronic aquatic life criteria; that 1Q10, 1B3, or other scientifically defensible design flows approved by EPA shall be used to implement the State's acute aquatic life criteria; implementation procedures for use when applying the States' antidegradation policy to determine whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water; and, an aquatic life use for one stream segment and a primary contact recreation use for 1,292 stream segments and 164 lakes. In addition, under its discretionary authority to address State standards that the Administrator determines are inconsistent with the Clean Water Act, EPA is proposing: that water quality standards in Kansas apply to all privately owned surface waters in Kansas that are waters of the U.S.; and numeric human health criteria for alpha- and beta-endosulfan.

EPA originally established a deadline of September 1, 2000, for the submission of public comments on this proposed rule. In response to concerns raised by stakeholders, EPA is extending the comment period until October 16, 2000 and is rescheduling the public hearings. It is EPA's intent to provide the public and all stakeholders an adequate period of time to fully analyze the issues, to prepare comprehensive comments and to assemble any available data. Therefore, we are extending the comment period an additional 46 days for a total comment period of 105 days. Furthermore, EPA is rescheduling the public hearings from July 27, 2000 to September 13 and 14, 2000 to provide additional time for interested parties to prepare for the hearings.

DATES: EPA will accept public comments on this proposed rule until October 16, 2000. Comments postmarked after this date may not be considered. On September 13 and 14, 2000, EPA is holding public hearings on proposed water quality standards for Kansas.

ADDRESSES: Persons wishing to submit comments should send an original plus 2 copies, (and, if possible, an electronic version of comments either in WordPerfect or ASCII format), to Ann Jacobs at jacobs.ann@epa.gov or at U.S. EPA Region VII, Water Resources Protection Branch, 901 North 5th Street, Kansas City, Kansas 66101. There will be two public hearings. The first public hearing will be held on Wednesday, September 13, 2000, from 6:30 p.m. to 9:00 p.m. (CDT) in the Museum Classroom of the Kansas Center for Historical Research at 6425 S.W. 6th Avenue in Topeka, Kansas. The telephone number for the Kansas Center for Historical Research is 785–272–8681. The second public hearing will be held on Thursday, September 14, from 6:30 p.m. to 9:00 p.m. (CDT) in the Convention Center of the Best Western Silver Spur at 1510 West Wyatt Earp Boulevard in Dodge City, Kansas. The telephone number of the Best Western Silver Spur is 316–227–2125. The administrative record for today's proposed rule is available for public inspection at EPA Region VII, Regional Records Center, 901 North 5th Street, Kansas City, Kansas 66101, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ann Jacobs at jacobs.ann@epa.gov or at U.S. EPA Region VII, Water Resources Protection Branch, 901 North 5th Street, Kansas City, Kansas 66101 (Telephone: 913–551–7930).

Dated: July 17, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–18642 Filed 7–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–30115B; FRL–6584–2]

RIN 2070–AD23

Pesticides; Tolerance Processing Fees for Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; partial reopening of comment period.

SUMMARY: The Agency is providing an opportunity for the public and affected parties to submit comments on additional data and information pertaining to tolerance fees as they relate to inert ingredients. In the proposed tolerance fee rule, published on June 9, 1999, EPA outlined its approach to revise its tolerance fee system to fully recover the costs incurred in processing pesticide tolerance actions. Since the proposal, EPA has accumulated better costing data with respect to resource needs and number of actions and is making this improved costing data available. The Agency has also reestimated the fees that would be imposed on tolerance actions for inert ingredients and has reconsidered several key provisions in its proposal that may affect the inerts industry. EPA is seeking comment on this new information and revised processes.

DATES: Written comments, identified by the docket number OPP–30115B, must be received on or before August 23, 2000. This date will not be extended.

ADDRESSES: Comments may be submitted by mail, electronically, or in

person. Please follow the detailed instructions for each method as provided in Unit I of the SUPPLEMENTARY INFORMATION section. To ensure proper receipt by EPA, it is essential that you identify docket control number OPP–30115B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Carol Peterson, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6598; e-mail address: peterson.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This proposed rule may directly affect any person or company who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or any person or company who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include pesticide manufacturers or formulators, companies that manufacture inert ingredients, importers of food, grower groups, or any person who seeks a tolerance. Federal, State, local, territorial, or tribal government agencies that petition for, or hold, emergency exemption tolerances are exempt from this rule. The vast majority of potentially affected categories and entities may include, but are not limited to:

Category	NAICS	SIC	Examples of Potentially Affected Entities
Chemical industry	325320	0286	pesticide chemical manufacturers, formulators
	115112	0287	chemical manufacturers of inert ingredients

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above also could potentially be affected by this notice. If available, the four-digit Standard Industrial Classification (SIC) codes or the six-digit North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice applies to certain entities. To determine whether you or your business is regulated by this action, you should carefully examine the applicability provisions in this document (see Unit IV). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register, Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr.

2. *In person.* If you have any questions or need additional information about this action, you may contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number OPP–30115B (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket number (i.e., "OPP–30115B") in your correspondence.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epamail.epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–30115B]. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle Confidential Business Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the information presented, new approaches to be considered, the potential impacts of the information (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket number assigned to the notice, along with the name, date, and **Federal Register** citation.

II. Terminology

Pesticide products contain both "active" and "inert" ingredients. These two terms are defined in Federal law as part of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). An inert ingredient is defined as any ingredient in a pesticide product that is not intended to affect the target pest. Because of the potential to mislead the public into assuming that all inert ingredients are non-toxic or harmless, EPA has asked formulators to use the term "other ingredients" instead of "inert ingredient" on their label ingredient statements. As a result both terms are now used to identify ingredients used in pesticide products in addition to active ingredients. To avoid any regulatory confusion, however, throughout this document and all subsequent documents relating to tolerance processing fees, EPA will to use the term "inert ingredients" to describe these non-active chemicals.

III. Background

Legislative changes included in the Food Quality Protection Act of 1996 (FQPA) put a greater emphasis on inert ingredients and clarified that these chemicals are covered by the definition of a pesticide chemical under the Food, Drug, and Cosmetic Act. Subsequently, on June 9, 1999 EPA issued a proposed rule to revise its existing tolerance fee regulations to account for new provisions affecting tolerance reviews for all pesticide chemicals, including inerts. At the same time, the Agency updated the fee amounts to reflect the increase in processing costs since the last time tolerance fees were amended 15 years ago. In its proposed rule, EPA outlined a regulatory scheme to make, to the extent possible, the tolerance processing system self-supporting as directed by statute. While the Agency historically has not charged a fee for tolerance actions for inert ingredients, the increased costs of reviews coupled with the statutory mandate to fully cover the cost of processing tolerances via fees has resulted in EPA proposing tolerance fees for them.

IV. Data/Information Available for Comments

A. Why is EPA Seeking Comment on this Additional Data and Information?

In response to its proposed rule, EPA received 27 comments from industry stakeholders—24 of them were from the inerts industry. These commentors expressed their view that the tolerance fee rule, as proposed, would result in severe consequences to both their industry and the pesticide industry as a whole. Many commentors pointed out that inert ingredients are low profit products and that companies that manufacture these products derived limited profits from their sales in pesticide formulations. A number of comments also were received on the mechanism for collecting fees for the reassessment of inert ingredient tolerances or exemptions. Commentors expressed concern that unlike registrants of active ingredients, the identities of the parties that may be subject to an inert tolerance reassessment fee are not public information. Not knowing who else holds responsibility for the required fee would impede attempts to enter into arrangements to share in the costs of fees. In response to these concerns, EPA has revisited this issue and has refined its analysis and proposed process. The approach outlined in this document is an effort to ease the regulatory and economic impact to this sector of the pesticide industry. The Agency is seeking comment on whether these measures are appropriate.

Since the close of the comment period for the proposed rule, EPA has carefully considered the concerns raised. First, the Agency has revised its resource estimates for inert tolerance actions which has resulted in lower fees. Second, EPA divided the inerts tolerance exemption category into those chemicals that require a full review from those that need only a minimal scientific review. The resulting fees for inerts tolerance actions are substantially reduced and more accurately reflect actual costs than the fees that were initially proposed. Third, for inert tolerances requiring reassessment, EPA is clarifying the notification process. The Agency could put into place a comprehensive process aimed at expanding cost sharing opportunities and reducing the economic impact.

Finally, EPA is introducing changes designed to address a company's size and ability to pay. For example, the Agency is revising its definition of a small business for the purpose of determining eligibility of fee waivers. A business will be considered small, and therefore eligible for a fee waiver, if it has 500 or fewer employees and an average annual gross revenue from global pesticide sales of less than $60 million over the most recent 3 year-period. Further, for a business entity with one or more affiliates, the gross revenue limit shall apply to the total global pesticide sales for the entity and all of its affiliates, including the parent and subsidiaries. EPA also intends to decrease the proposed fee for requesting a fee waiver because the majority of companies that qualify for a fee waiver are likely to be companies that can least afford the waiver request fee. These two allowances to small businesses should reduce the number of unsupported tolerances and exemptions, and minimize the loss of chemicals available to pesticide formulators and growers.

B. What Additional Data and Information is EPA Making Available?

The Agency is seeking comment on reestimates of the cost incurred in processing several types of tolerance actions of inert ingredients, as well as an overall approach to the collection of tolerance fees for them.

1. *Fee estimates.* In its recalculations, EPA brought its 1997 cost estimates up to date with the latest data and labor rate figures. The 1999 rate of $89,000 per Full-time Equivalent (FTE) was incorporated into the calculations, and the adjustment factor, which accounts for the activities EPA has proposed to waive, has also changed slightly from 1.48 to 1.24 for petitioned actions and from 1.23 to 1.29 for reassessment actions. Total annual costs for the Agency to process all inert tolerance actions are now estimated to be $11,393,254 based on actual data from fiscal years 1997, 1998, and 1999.

The inerts tolerance fee category also was further subdivided to create a more accurate fee structure. The tolerance exemption actions requiring a minimal science review would be those petitions that are not accompanied by supporting health and safety studies, such as petitions for the establishment of tolerance exemptions for polymers that

are based on conformance with the Office of Pollution Prevention and Toxics' polymer exemption rule criteria.

The proposed fees for inert ingredients are as follows. The complete revised cost estimates and fee derivations are contained in Unit V of this document.

	Proposed Fee	
	Original	Revised
Tolerance Petition Action.		
Tolerance for an Inert Ingredient	$62,300	$70,900
Tolerance Exemption for an Inert Ingredient	59,300	
Tolerance Exemption for an Inert Ingredient requiring science review		25,500
Tolerance Exemption for an Inert Ingredient minimal science review required		$2,800
Tolerance Reassessment Action.		
Inert Ingredient Tolerance	$201,400	$182,500
Inert Ingredient Tolerance Exemption	79,300	
Inert Ingredient Tolerance Exemption with science review		$62,100
Inert Ingredient Tolerance Exemption minimal science review required		$3,600

2. *Sharing the costs of reassessment.* Because many of EPA's records on inerts are old and a number of chemicals were "grandfathered" in when EPA first became responsible for regulating pesticides, a procedure for identifying the original petitioner for the purposes of levying tolerance reassessment fees is not possible. Presently, there are no mechanisms in place to identify all responsible parties on a company-by-company, tolerance-by-tolerance basis. Additionally, it may be extremely difficult to ascertain all of the parties that may utilize the inert tolerance and therefore would be expected to pay (or share in the cost of paying) the fee since these parties may not be exclusively registrants.

To address this problem, EPA could issue a public notice in the **Federal Register** for any person or company who may have an economic interest in the maintenance of the inert tolerance or tolerance exemption. The notice would be published 6 months in advance of initiating the reassessments of the inert tolerances or exemptions and will consist of a list of those inert chemicals that are scheduled for tolerance reassessment in the subsequent 6 month period. At the same time, a separate letter would be sent to all registrants that have one or more of the scheduled inert ingredients in their products, and all known inert producers who are not registrants. The notice and letters would announce the pending tolerance reassessments and issue a call for the required fee to support each inert ingredient. In these letters, EPA will suggest that it may be incumbent upon each registrant to contact and coordinate with their supplier(s), even if the identity of their inert ingredients are not known to them. If a company wishes to protect the identity of its inert product, it may opt to designate a third party to act on its behalf for the purposes of arranging payment. The Agency also believes that the industry trade associations could assist in this effort to the extent allowed by law.

EPA recognizes that not all current manufacturers of inerts may wish to support the reassessment of the tolerance or tolerance exemption. Based on the notification process outlined above, EPA anticipates that those with an economic stake in the tolerance will pay all or a portion of the appropriate fee. As more companies participate in the cost sharing, the less the fee will be to each individual company. If the revenues received exceed the required amount, EPA will refund an equitable amount to all parties who paid in proportion to the percentage of the total fee and the amount each company submitted. If receipts do not cover the required fee, EPA will contact those parties who have paid to request additional monies. EPA strongly believes that it is clearly within a company's best interest to cost share.

3. *Transition.* Petitioned inerts tolerance actions that are on EPA's published Work Plan for year 2000 and for succeeding years would be subject to new tolerance fees. Tolerance actions for inert chemicals that are currently pending review and not scheduled on the published Work Plan at the time of promulgation of the rule would be subject to the new fees, but not until the Agency has actively scheduled them for review. EPA would not issue notices for fees for all pending inerts tolerance actions at the same time. Instead, it would notify each petitioner in advance of the pending review of the upcoming review and request remittance of the required fee. EPA's Work Plan can be found on the Internet at http://www.epa.gov/opprd001/workplan.

For inerts tolerance reassessment actions, the transition provision presented in the proposal still applies. That is, a chemical will not be considered officially reassessed until the appropriate tolerance fee is paid. Thus, those inert chemical tolerances or exemptions that are reassessed prior to promulgation of the final rule will be subject to the new fee. However, since the majority of existing inert chemicals are not scheduled for tolerance reassessment until 2003 or later, they are virtually unaffected.

4. *Allowances for small companies.* Many parties that commented on the proposed rule felt that small businesses should receive some form of concession based on their ability to pay. Commentors were not in agreement, however, as to the appropriate definition of a small business. Currently, FIFRA defines a small business as one with fewer than 150 employees and 3-year average annual sales of less than $40 million. This definition, however, may no longer reflect the pesticide industry. Therefore, EPA could consider a business small for the purposes of imposing a tolerance fee, if it has 500 or fewer employees and an average gross revenue from global pesticide sales of less than $60 million over the most recent 3-year period. For a business entity with one or more affiliates, the gross revenue limit shall apply to the total global pesticide sales for the entity and all of its affiliates including the parent and subsidiaries. While this definition encompasses an increased number of companies, each company would still need to apply for a fee waiver. The Agency will issue a Pesticide Registration (PR) notice in the near future that will outline how a company may apply for a fee waiver, what types of information should be submitted, and other criteria for the Agency to make a determination. The PR notice will be available for public comment before being implemented.

While some companies commented that a fee to request a waiver is useful in deterring frivolous requests and tying up Agency resources, many commentors

cited the increased waiver fee amount itself as serving as a deterrent to deserving companies from requesting a waiver for fear that they would lose this money if the request was not granted. EPA agrees and intends to retain the existing fee waiver request fee of $1,700 per request and will refund it if the waiver is granted. In addition, if the fee waiver request is denied, EPA will credit this amount toward the appropriate tolerance fee.

V. Tolerance Action Cost Estimates for Inert Ingredients—Derivation of Costs—Notes to Tables 1 and 2

1. *Resource estimates for each division (Columns A, B, C, D and M, N, O, P).* Included in any application for a pesticide registration for a pesticide to be used in or on a food item, a petition to establish or exempt from the requirement of a tolerance must also be submitted. Programmatic estimates were derived from resource needs to process only tolerance petitions and not other aspects of the registration application. The Registration Division (RD), Health Effects Division (HED), Environmental Fate and Effects Division (EFED), and Special Review and Reregistration Division (SRRD) provided individual estimates for the resources necessary to process each type of inert tolerance petitioned actions. These estimates are based on current Agency policy for regulating inert ingredients as outlined in its Policy Statement of April, 1997. It is important to note that the estimates do not reflect costs to the Agency with respect to the possible revisions of the data requirements for these other pesticide ingredients.

Estimates were given in Full-Time Equivalents (FTEs) per Unit. One FTE, which is defined as the number of hours a full time employee works in 1 year, is equal to 2080 hours. Each division within the program provided a best-estimate of burden hours based on its own method of accounting. A "Unit" was defined in the proposed rule as a petition in the case of a new tolerance actions and a chemical for tolerances that need to be reassessed. For a vast majority of cases involving inert tolerances (new or existing), the number of tolerances per petition or tolerances per chemical is one. Hence in the tables presented in this document, one unit equals one tolerance.

The Biopesticides and Pollution Prevention Division provided resource estimates for the small number of biological inert ingredients. Total costs were estimated in a like manner to conventional inert chemicals. The cost to process a tolerance exemption for a biological other ingredient is estimated at $45,746 per year. Since the Agency has chosen to waive all tolerance costs associated with biopesticides, this cost is not included in the table, yet is incorporated in the derivation of the adjustment factor (column K).

Other divisions not listed are not directly involved in processing or evaluating tolerance petitions, but may have a supporting role in which the associated costs are contained in the Agency's overhead rate (column G and S).

2. *Programmatic resource estimates (Columns E and Q).* Columns E and Q contain the total resource estimates for the Office of Pesticide Programs. By summing the resource needs for each division within the program (columns A, B, C, D, and M, N, O, P, respectively), the total resources estimated in FTEs per tolerance action are calculated.

For petitioned actions: E=A+B+C+D.
For reassessment actions: Q=M+N+O+P.

3. *Annual salary for a full-time equivalent (Columns F and R).* Columns F and R contain figures for the average annual salary (including benefits) of an Agency employee during fiscal year 1999. The $89,000 includes the two cost of living increases in the government GS pay scale that occurred since the proposed rule. In 1997 the average annual Agency salary and the figure used in the fee calculations was $78,000 per FTE.

4. *Overhead rate (Columns G and S).* Overhead rates for both new tolerance processing activities and existing tolerance reassessments (columns G and S, respectively) were calculated as a percentage of overall Agency activities that directly and indirectly support EPA's mandate to set and maintain pesticide residue tolerances on food. The overhead rate used in this document is the same as was used in the proposed rule. The methodology used to derive each rate is explained in section 2.1.1 of the Economic Analysis to the Proposed Rule. Further explanation was also provided during the comment period of the proposal as part of supplementary materials. Both of these documents are in the official docket for this rulemaking (OPP-30115).

5. *Total cost per tolerance (Columns H and T).* The figures provided in columns H and T reflect the Agency's estimation of how much it costs to process a single new or old tolerance. The total cost per tolerance is derived by summing the direct FTE costs with indirect FTE costs and converting this into dollars. This is illustrated by the following equations:

Direct costs = Total FTEs per Tolerance *e.g.*, (columns E and Q)

Indirect costs = Total FTEs per Tolerance * Overhead rate (columns G and S) *e.g.*, indirect costs = (E*G) and (Q*S)

Total FTE costs per Tolerance = Direct costs + Indirect costs *e.g.*, total FTE costs = [E + (E*G)] and [Q + (Q*S)] Total dollar costs per Tolerance = Total FTE costs * Annual salary of an FTE (columns F and R) *e.g.*, H= [E + (E*G)]*F and T= [Q + (Q*S)]*R

6. *Number of tolerances per year and the total annual cost (Columns I, J and U, V).* Columns I and J, and U and V, are included in the tables for illustrative purposes only and do not enter into the final fee calculations. However, the total annual costs of processing tolerances for all chemicals is used to calculate the overall adjustment factors which appears in columns K and W of the tables in this document.

7. *Recovering costs of waived actions (Columns K and W).* Columns K and W contain the adjustment factor which is applied to the total cost per tolerance action to recover the costs of tolerance actions for which the Agency chose to waive the fee. It is not specific to other ingredients (inerts). It is derived from the estimated cost for tolerances for all pesticide chemicals. For all petitioned tolerance actions, waived actions total $2,450,224. Out of a total annual costs of $13,641,457, $892,047 is theoretically paid through registration fees leaving a balance of $12,749,410 to be collected via new tolerance fees. The adjustment factor, or amount which fees must be raised to recover these costs is 1.24. For tolerance reassessment actions, waived actions total $6,291,789, and total costs to be collected via tolerances fees is $27,751,995. Hence the adjustment factor for tolerance reassessment fees is 1.29. The following equations are applicable to both new and reassessed tolerance actions:

Total cost—Portion of the cost paid through other fees = Balance (cost to be recovered from tolerance fees)

Waived cost/(Balance of total cost—Waived costs) * 100 = Percent increase or Adjustment factor

8. *Derivation of tolerance fee (Columns L and X).* The calculated tolerance fee is derived by multiplying the total cost per tolerance by the adjustment factor, i.e., (H*K) and (T*W). The actual fee that will be imposed per tolerance type is the calculated fee rounded off to the nearest hundred dollars.

9. The complete revised cost estimates and fee derivations are shown in the following tables 1 and 2.

TABLE 1.—COST ESTIMATES FOR INERT INGREDIENTS TOLERANCE PETITIONED ACTIONS

	A	B	C	D	E	F	G	H	I	J	K	L
	FTEs/Tol./ Division RD	FTEs/Tol./ Division HED	FTEs/Tol./ Division EFED	FTEs/Tol./ Division SRRD	OPP Total FTEs/Tol.	$/FTE	Overhead rate	Total Cost/Tol.	Tols. per year	Total Annual Cost	Adjm't factor	Calculated Fee
Inert Tolerance	0.08	0.13	0.04	0.00	0.25	89,000	1.57	$57,182.00	1	$57,182.00	1.24	$70,905.68
Inert Exemption w/ Science rev.	0.04	0.04	0.01	0.00	0.09	89,000	1.57	$20,585.70	2	$41,171.40	1.24	$25,526.27
Inert Exemption w/min. Science rev.	0.01	0.00	0.00	0.00	0.01	89,000	1.57	$2,287.30	6	$13,723.80	1.24	$2,836.25
TOTAL									9	$112,077.20		

TABLE 2.—COSTS ESTIMATES FOR INERT INGREDIENT TOLERANCE REASSESSMENT ACTIONS

	M	N	O	P	Q	R	S	T	U	V	W	X
	FTEs/Tol./ Division RD	FTEs/Tol./ Division HED	FTEs/Tol./ Division EFED	FTEs/Tol./ Division SRRD	OPP Total FTEs/Tol.	$/FTE	Overhead rate	Total Cost/Tol.	Tols. per year[1]	Total Annual Cost	Adjm't factor	Calculated Fee
Inert Tolerance	0.06	0.12	0.02	0.30	0.50	89,000	2.18	$141,510.00	1	$141,510.00	1.29	$182,547.90
Inert Exemption w/ Science rev.	0.04	0.04	0.01	0.08	0.17	89,000	2.18	$46,113.40	230	$11,066,082.00	1.29	$82,066.29
Inert Exemption w/min. Science rev.	0.01	0.00	0.00	0.00	0.01	89,000	2.18	$2,830.20	26	73,585.20	1.29	$3,650.95
TOTAL									257	$11,281,177.20		

[1] Projected estimates for the years 2003 through 2006.

VI. Do Any Regulatory Assessment Requirements Apply to this Action?

Yes. This action discusses and requests comments on additional data and/or information related to a proposed rule that was previously published in the **Federal Register** on June 9, 1999 (64 FR 31039) (FRL–6028–2). For information about the applicability of the regulatory assessment requirements to the proposed rule and this supplemental proposal, please refer to the discussion in Unit VII of that document.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2000.

Susan H. Wayland,

Acting Assistant Administrator Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–18646 Filed 7–21–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 2000–D018]

Defense Federal Acquisition Regulation Supplement; Changes to Profit Policy

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to make changes to DoD profit policy that would reduce and eventually eliminate emphasis on facilities investment, increase emphasis on performance risk, and encourage contractor cost efficiency.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 22, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D018 in all correspondence related to this proposed rule. E-mail correspondense should cite DFARS Case 2000–D018 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to the profit policy in DFARS Subpart 215.4. The existing structure of DoD profit policy was established as a result of the report published in 1985 on the Defense Financial and Investment Review (DFAIR). Since 1985, the defense industry has downsized and consolidated due to substantial reductions in the defense budget. While a key DFAIR objective was to encourage defense contractors to invest in productivity-enhancing facilities, the defense industry now has excess capacity and under-utilized facilities. In this environment, rewarding contractors for investing is counter-productive and acts as a disincentive to the further rationalization of the defense industry.

The primary purpose of this rule is to reduce and, over time, eliminate facilities investment as a factor in establishing profit objectives on sole-source, negotiated contracts. The changes in the rule include—

- Adding general and administrative expense to the cost base used to establish profit objectives.
- Reducing the values assigned to facilties capital investment by 50 percent.
- Offsetting these changes by increasing the values for performance risk by 1 percentage point and decreasing the values for contract type risk by 0.5 percentage point.

• Adding a special factor for cost efficiency to encourage cost reduction efforts.

Two years after the date this rule becomes effective, DoD will eliminate buildings as a factor used to establish profit objectves and will reduce the value of equipment by 50 percnet. This will be offset by an increase to performance risk values of 1 percentage point.

Four years after the date this rule becomes effective, DoD will eliminate facilities capital employed as a factor used to establish profit objectives and will offset this elimination with another 1 percentage point increase to performance risk values.

Excluding the addition of the special cost efficiency factor, these changes have been developed with the objective of reorienting profit incentives from facilities investment to contract performance risk factors without causing a significant impact to overall profit levels on DoD contracts. However, contracting officers will be able to use the special cost efficiency factor to reward companies that undertake meaningful efforts to reduce contract costs with additional profit not available under the current profit guidelines.

In addition to these changes, the rule proposes a number of other clarifying and editorial amendments and includes changes proposed under DFARS Case 2000–D300, Profit Incentives to Produce Innovative New Technologies, published at 65 FR 32066 on May 22, 2000.

This rule was not subject to Office of Management and Budget review under Executive order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are below $500,000, are based on adequate price competition, or are for commercial items, and do not require submission of cost or pricing data. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information coleIction requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 215 as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

215.404–4 [Amended]

2. Section 215.404–4 is amended by removing paragraph (c)(2)(C)*(1)(i)* and redesignating paragraphs (c)(2)(C)*(1)(ii)* through *(iv)* as paragraphs (c)(2)(C)*(1)(i)* through *(iii)*, respectively.

3. Sections 215.404–71–1 and 215.404–71–2 are revised to read as follows:

215.404–71–1 General.

(a) The weighted guidelines method focuses on the following profit factors:

(1) Performance risk;

(2) Contract type risk;

(3) Facilities capital employed (through September 30, 2004); and

(4) Cost efficiency.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Except for the cost efficiency special factor, each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value. The cost efficiency special factor has no normal value. The contracting officer must exercise sound business judgment in selecting a value when this special factor is used (see 215.404–71–5).

215.404–71–2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical—the technical uncertainties of performance.

(2) Mangement/cost control—the degree of management effort necessary to—

(i) Ensure that contract requirements are met; and

(ii) Reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item and contractor risk factors	Assigned weighting	Assigned value	Base (item 20)	Profit objective
21. Technical	(1)	(2)	N/A	N/A
22. Management/Cost Control	(1)	(2)	N/A	N/A
23. Reserved.				
24. Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
Technical	60	5.0	3.0
Management/Cost Control	40	4.0	1.6
Composite Value	100		4.6

(4) Insert the amount from Block 20 of the DD Form 1547. Block 20 is total contract costs, excluding facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

	Normal value (percent)	Designated range (percent)
Through September 30, 2002:		
Standard	5	3 to 7.
Alternate	6	4 to 8.
Technology Incentive	9	7 to 11.
October 1, 2002—September 30, 2004:		
Standard	6	4 to 8.
Technology Incentive	10	8 to 12.
After September 30, 2004:		
Standard	7	5 to 9.
Technology Incentive	11	9 to 13.

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Alternate.* Through September 30, 2002, contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404–71–4(c)(3)).

(3) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development or production of innovative new technologies.

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) Items are being manufactured using specifications with stringent tolerance limits;

(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(D) The contractor's independent development and investment has reduced the Government's risk or cost;

(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value:

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low.

Indicators are—

(A) Requirements are relatively simple;

(B) Technology is not complex;

(C) Efforts do not require highly skilled personnel;

(D) Efforts are routine;

(E) Programs are mature; or

(F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of—

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.*

(1) The contracting officer should evaluate—

(i) The contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The adequacy of the contractor's management approach to controlling cost and schedule; and

(vii) Any other factors that affect the contractor's ability to meet the cost targets (*e.g.*, foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value when there is a high degree of management effort. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a good record of past performance;

(D) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(E) The contractor provides fully documented and reliable cost estimates;

(F) The contractor makes appropriate make-or-buy decisions; or

(G) The contractor has a proven record of cost tracking and control.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (*e.g.*, offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate;

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control; or

(K) The contractor has a poor record of past performance.

(ii) The following may justify a value significantly below normal:

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

4. Section 215.404–71–3 is amended as follows:

a. In paragraph (b), in the table, by removing the heading "Base (Item 18)" and adding in its place "Base (Item 20)";

b. By revising paragraph (b)(2);

c. In paragraph (c) by revising the table; and

d. By revising paragraph (e)(2) introductory text to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

(b) * * *

(2) Insert the amount from Block 20, *i.e.*, the total allowable costs excluding facilities capital cost of money.

* * * * *

(c) * * *

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	4.5	3.5 to 5.5.
Firm-fixed-price, with performance-based payments	(6)	3.5	2 to 5.
Firm-fixed-price, with progress payments	(2)	2.5	1.5 to 3.5.
Fixed-price incentive, no financing	(1)	2.5	1.5 to 3.5.
Fixed-price incentive, with performance-based payments	(6)	1.5	0 to 3.
Fixed-price with redetermination provision	(3)		
Fixed-price incentive, with progress payments	(2)	.5	0 to 1.5.
Cost-plus-incentive-fee	(4)	.5	0 to 1.5.
Cost-plus-fixed-fee	(4)	0	0 to .5.
Time-and-materials (including overhaul contracts priced on time-and-materials basis)	(5)	0	0 to .5.
Labor-hour	(5)	0	0 to .5.
Firm-fixed-price, level-of-effort	(5)	0	0 to .5.

* * * * *

(e) * * *

(2) Total costs equal Block 20 (*i.e.*, all allowable costs excluding facilities capital cost of money), reduced as appropriate when—

* * * * *

5. Section 215.404–71–4 is amended as follows:

a. In paragraph (b)(2)(ii), in the first and last sentences, by removing "Block 18" and adding in its place "Block 20"; and

b. By revising paragraphs (c) and (d) to read as follows:

215.404–71–4 Facilities capital employed.

* * * * *

(c) *Values: Normal and designated ranges.*

Notes	Asset type	Normal value (percent)	Designated range (percent)
(1)	Land	0	N/A.
(1)	Buildings	5	0 to 10.

Notes	Asset type	Normal value (percent)	Designated range (percent)
(1)	Equipment	20	15 to 25.
(2)	Land	0	N/A.
(2)	Buildings	0	N/A.
(2)	Equipment	10	7.5 to 12.5.
(3)	Land	0	N/A.
(3)	Buildings	0	0.
(3)	Equipment	0	0.

(1) These are the normal values and ranges through September 30, 2002. They apply to all situations except as noted in paragraph (c)(3)(i) of this subsection.

(2) These are the normal values and ranges from October 1, 2002, through September 30, 2004.

(3) Do not allow profit on facilities capital employed—

(i) Through September 30, 2002, when using a value from the alternate designated range for the performance risk factor (see 215.404–71–2(c)(2)); or

(ii) After September 30, 2004.

(d) *Evaluation criteria.*

(1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) the economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compare with the portion of the contractor's total business that is derived from DoD; and

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology that reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries; or

(B) Inyestments in new equipment or research and development applications.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisitions costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines:

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, excessive, and labor-intensive capital equipment.

6. Section 215.404–71–5 is added to read as follows:

215.404–71–5 Cost efficiency factor.

(a) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD 1547) to recognize these efforts.

(b) To determine if using this factor is appropriate, the contracting officer must consider criteria, such as the following, to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract:

(1) The contractor's participation in Single Process Initiative improvements;

(2) Actual cost reductions achieved on prior contracts;

(3) Reduction or elimination of excess or idle facilities;

(4) The contractor's cost reduction initiatives (*e.g.*, competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing reform, value engineering, the use of metrics to drive down key costs);

(5) The contractor's adoption of process improvements to reduce costs;

(6) Subcontractor cost reduction efforts; or

(7) The contractor's effective incorporation of commercial items and processes.

(c) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract. However, the contracting officer must consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.

7. Section 215.404–72 is amended as follows:

a. In the first sentence of paragraph (b)(1)(i) and the first sentence of paragraph (b)(1)(ii) by removing "Block 18" and adding in its place "Block 20"; and

b. By adding paragraph (b)(1)(iii) to read as follows:

215.404–72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

* * * * *

(b) * * *

(1) * * *

(iii) Do not assign a value from the technology incentive designated range.

* * * * *

8. Section 215.404–73 is amended by revising paragraphs (b)(1) and (b)(2)(i) to read as follows:

215.404–73 Alternate structured approaches.

* * * * *

(b) * * *

(1) Consideration of the basic components of profit—performance risk, contract type risk (including working capital), facilities capital employed (through September 30, 2004), and cost efficiency. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) * * *

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

* * * * *

9. Section 215.404–74 is amended by revising paragraph (c) to read as follows:

215.404–74 Fee requirements for cost-plus-award-fee contracts.

* * * * *

(c) Apply the offset policy in 215.404–73 (b) (2) for facilities capital cost of money, *i.e.*, reduce the base fee by the amount of facilities capital cost of money; and

* * * * *

[FR Doc. 00–18510 Filed 7–21–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000714206–0206–01; I.D. 061400A]

RIN 0648–AM53

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to reduce observer coverage and experience requirements for some catcher vessels and shoreside processors participating in the Western Alaska Community Development Quota (CDQ) fisheries. This action is necessary to reduce costs associated with the observer coverage requirements in the CDQ fisheries. It is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments must be received by August 23, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand or courier delivered comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet. A copy of the Regulatory Impact Review (RIR) prepared for this action can be obtained from the same address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

Through the CDQ program, NMFS allocates a portion of the BSAI groundfish, prohibited species, halibut, and crab total allowable catch (TAC) to 65 eligible Western Alaska communities. These communities must use the proceeds from the CDQ allocations to start or support commercial fishery activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ program began in 1992 with the allocation of 7.5 percent of the BSAI pollock TAC. The fixed gear halibut and sablefish CDQ allocations began in 1995, as part of the halibut and sablefish Individual Fishing Quota Program. In 1998, allocations of 7.5 percent of the remaining groundfish TACs, 7.5 percent of the prohibited species catch limits, and 7.5 percent of the crab guidelines harvest levels were added to the CDQ program. In 1999, the amount of pollock allocated to the CDQ program was increased to 10 percent of the BSAI pollock TAC as a result of the American Fisheries Act.

On June 4, 1998, NMFS published a final rule imposing catch monitoring and observer coverage requirements for all vessels and processors participating in the multispecies CDQ fisheries (63 FR 30381). On April 26, 1999, NMFS extended these requirements to vessels equal to or greater than 60 ft (18.3 m) length overall (LOA) that participate in the halibut CDQ fishery. These regulations were issued because, in the CDQ fisheries, all groundfish and prohibited species catch by vessels fishing for CDQ groups accrue against the individual allocations for each CDQ group (64 FR 20210). Because individual vessels, processors, and CDQ groups are accountable for the catch of groundfish and prohibited species, the catch monitoring standards must be more stringent than in many other fisheries. These final rules also impose experience and training requirements for observers that, in most cases, exceed the requirements in the non-CDQ fisheries.

Following completion of the first year of fishing under these regulations, NMFS reviewed the observer coverage and experience requirements and has determined that observers without gear-specific experience were able to perform their duties as well as observers with gear-specific experience on catcher vessels choosing to retain all catch and in shoreplants. Further, NMFS has determined that the data collected by the shoreplant observer were not necessary for effective program management when a CDQ observer from the vessel making a delivery was available to collect shoreside data. Thus, the observer coverage requirements can be reduced without affecting the ability of NMFS to collect the data necessary to monitor and manage the CDQ fishery.

Current CDQ Observer Requirements

The current CDQ catch monitoring and observer coverage requirements were imposed to provide accurate and verifiable catch estimates for all CDQ and prohibited species quota (PSQ) species. This led NMFS to issue catch accounting regulations that rely primarily on NMFS-certified CDQ observers to collect data necessary to estimate the catch of all CDQ and PSQ species, or to ensure that all catch was being retained and accounted for at a shoreside processor.

Table 1 summarizes the current observer coverage requirements for the CDQ fisheries. Table 2 summarizes the experience requirements necessary for a CDQ observer and a lead CDQ observer.

TABLE 1. CURRENT OBSERVER COVERAGE REQUIREMENTS FOR THE CDQ FISHERIES.

Category	CDQ Observer Requirements
Catcher vessel, < 60 ft	none.
Catcher vessel, ≥ 60 ft	1 lead CDQ observer (obs.).
Mothership or catcher/processor using trawl or hook-and-line gear	2 total (1 lead CDQ obs., 1 CDQ obs.).
Catcher/processor using pot gear	1 lead CDQ obs.
Shoreside processor	1 lead CDQ obs. for each CDQ delivery, except deliveries from catcher vessels < 60' LOA fishing halibut CDQ.

TABLE 2. REQUIREMENTS FOR CDQ OBSERVER AND "LEAD" CDQ OBSERVER IN 50 CFR 679.50

CDQ Observer Classification	Experience Requirements
All CDQ observers	Prior experience as an observer with 60 days observer data collection,. - minimum evaluation rating of 1 or 2,. - successfully complete CDQ observer training course.
ADDITIONAL REQUIREMENTS FOR "LEAD" CDQ OBSERVERS	
Lead observer on a factory trawler or a mothership	At least 2 cruises (contracts) and sampled at least 100 hauls on a factory trawler or a mothership.
Lead on catcher vessel using trawl gear	At least 2 cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.
Lead on vessel using nontrawl gear	At least 2 cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.
Lead in shoreside plant	Observed at least 30 days in a shoreside processing plant.

The current regulations require lead CDQ observers on all vessels and shoreside processing plants for which observer coverage is required because NMFS believed that the CDQ observers needed prior experience specific to the vessel or processor type in order to collect the data needed to manage the CDQ fisheries. However, after reviewing the first year of the multispecies CDQ fisheries, NMFS has concluded that a lead CDQ observer is not necessary on some catcher vessels while CDQ fishing or in shoreside processing plants taking CDQ deliveries.

NMFS proposes the following reductions in observer coverage and experience requirements:

1. Eliminate the requirement for a lead CDQ observer on all catcher vessels greater than or equal to 60 ft (18.3 m) LOA using trawl gear. A CDQ observer would still be required. This reduction is justified because the vessel must retain all groundfish CDQ and salmon PSQ and deliver it to a shoreside processor, where it is sorted by species, weighed, and reported to NMFS. The lead CDQ observer on the vessel estimates the at-sea discards of halibut PSQ and crab PSQ and monitors compliance with retention requirements. NMFS believes that these duties can be performed adequately by a CDQ observer who has prior experience as an observer, but not necessarily vessel-specific experience.

2. Eliminate the requirement for a lead CDQ observer on a catcher vessel greater than or equal to 60 ft (18.3 m) LOA using nontrawl gear that chooses to retain all groundfish CDQ species (option 1 defined at 50 CFR 679.32(c)(2)(ii)(A)). A CDQ observer would still be required. Under current regulations, catcher vessels greater than or equal to 60 ft (18.3 m) LOA using nontrawl gear must select one of two options as the basis for CDQ catch accounting. Option 1 requires the vessel operator to retain all groundfish CDQ and salmon PSQ and deliver them to a processor to be sorted by species, weighed, and reported to NMFS. Under this option, CDQ catch accounting is based on the processor's reports for groundfish CDQ and salmon PSQ and on the observer data for halibut PSQ. NMFS believes the gear-specific experience of a lead CDQ observer is unnecessary for vessels choosing catch accounting option 1. NMFS would continue to require a lead CDQ observer on catcher vessels using nontrawl gear that select option 2, which is to use observer data as the basis for all CDQ catch accounting. Option 2, which is set forth at 50 CFR 679.32(c)(2)(ii)(B), allows the vessel operator to discard groundfish CDQ species at sea and to use data collected by the observer to estimate the catch of all groundfish CDQ species and halibut PSQ.

3. Eliminate the requirement that a shoreside processing plant provide a CDQ observer to monitor deliveries from catcher vessels that use nontrawl gear and select option 2. Under option 2, only data collected by the observer on the catcher vessel is used for CDQ catch accounting. Therefore, neither a lead

CDQ observer nor a CDQ observer would be necessary at the plant. To date, no catcher vessel has selected option 2 for CDQ catch accounting, so this reduction would not have affected any shoreside processors that participated in the 1999 CDQ fisheries.

4. Eliminate the requirement that shoreside processors required to provide CDQ observers provide a lead CDQ observer when taking CDQ deliveries. A CDQ observer would still be required. NMFS has determined that experience in a shoreside plant would not be necessary for the observer to adequately monitor the sorting and weighing of CDQ deliveries.

5. Reduce the observer coverage requirements for shoreside processors taking CDQ deliveries from catcher vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear and using option 1 (full retention) for CDQ catch accounting to allow the vessel observer to monitor the CDQ delivery in the processing plant. A separate CDQ observer for the shoreside processor is not necessary if the vessel observer can monitor the sorting and weighing of catch at the shoreside processor without exceeding the regulatory working hour limits. Under this revision, the shoreside processor could still choose to provide an additional observer at the processing plant if the shoreside processor did not want its activities to be limited by the working hour limits for the vessel observer.

This proposed rule would also make a minor revision to the introductory paragraph of 50 CFR 679.50(c)(4). The current paragraph requires the owner or operator of a vessel engaged in CDQ fishing to comply with CDQ observer coverage requirements for each day the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. NMFS proposes to remove the requirement that CDQ observers be onboard catcher/processors or motherships when they are being used only to transport CDQ catch. The regulations would continue to require an observer on a catcher vessel while CDQ species are being transported. In some cases, catcher/processors continue to process CDQ catch onboard long after catching and processing of the CDQ catch has been completed. There is no need for a CDQ observer to be onboard solely to monitor the transport of processed product.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities as follows:

This proposed rule would apply to the 21 catcher vessels greater than or equal to 60 ft (18.3 m) LOA and 10 shoreplants that participate in the CDQ fishery. The proposed rule would remove the gear-specific experience requirements for CDQ observers deployed in shoreplants and on some types of vessels, which would increase the number of observers qualified to be deployed in the CDQ fisheries. This increased flexibility in observer deployment would reduce the possibility that a qualified observer would not be available when a vessel or processor wants to participate in a CDQ fishery. This proposed action would also allow shoreside plants taking CDQ deliveries from some non-trawl catcher vessels to provide a regular, rather than a CDQ observer, and would reduce observer coverage levels in certain circumstances.

Based on the analysis presented in the Regulatory Impact Review prepared for this rule, NMFS estimates that this action will have a positive impact on the vessels and processors that will be directly impacted by the action and will have no negative impact on observer contractors.

Because of the absence of negative impacts, and because positive impacts are not deemed to have a "significant" impact on small entities, an Interim Regulatory Flexibility Analysis was not prepared.

A copy of the RIR can be obtained from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 17, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraph (h)(1)(i)(E)(4) is removed, the first sentence of the introductory text in paragraph (c)(4) is revised, paragraph (c)(4)(v) is added, and paragraphs, (c)(4)(iv), and (d)(4) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

* * * * *

(c) * * *

(4) *Groundfish and halibut CDQ fisheries.* The owner or operator of a vessel groundfish CDQ fishing or halibut CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to transport (catcher vessels only), harvest, process, deliver or take delivery of CDQ or PSQ species. * * *

* * * * *

(iv) *Catcher vessel using trawl gear.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section aboard the vessel.

(v) *Catcher vessel using nontrawl gear.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear must meet the following observer coverage requirements:

(A) *Option 1.* If the vessel operator selected Option 1 (as described at § 679.32(c)(2)(ii)(A)) for CDQ catch accounting, then at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section must be aboard the vessel.

(B) *Option 2.* If the vessel operator selected Option 2 (as described at § 679.32(c)(2)(ii)(B)) for CDQ catch accounting, then at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section must be aboard the vessel.

* * * * *

(d) * * *

(4) *Groundfish and halibut CDQ fisheries.*—(i) *CDQ deliveries requiring observer coverage.* Subject to paragraph (d)(4)(ii) of this section, each shoreside processor taking deliveries of groundfish or halibut CDQ must have at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section present at all times while CDQ is being received or processed.

(ii) *CDQ deliveries not requiring observer coverage.* A shoreside processor is not required to provide a CDQ observer for CDQ deliveries from the following vessels:

(A) Vessels less than 60 ft (18.3 m) LOA that are halibut CDQ fishing;

(B) Vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear

that have selected Option 1 (as described at § 679.32(c)(2)(ii)(A)) for CDQ catch accounting, so long as the CDQ observer on the catcher vessel monitors the entire delivery without exceeding the working hour limitations described in paragraph (d)(4)(iii) of this section; and

(C) Vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear that have selected Option 2 (as described at § 679.32(c)(2)(ii)(B)) for CDQ catch accounting.

(iii) *Observer working hours.* The time required for the CDQ observer to complete sampling, data recording, and data communication duties may not exceed 12 hours in each 24–hour period, and the CDQ observer is required to sample no more than 9 hours in each 24–hour period.

* * * * *

[FR Doc. 00–18650 Filed 7–21–00; 8:45 am]
BILLING CODE 3510–22–F

VOL 65 ISS 142 JL 24 2000 UMI

Notices

Federal Register
Vol. 65, No. 142
Monday, July 24, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:30 p.m. on Monday, August 14, 2000, at the Holiday Inn By The Bay, 88 Spring Street, Portland, Maine 04101. The Committee will make plans to hold a press conference to release its report, Limited English Proficient Students in Maine: An Examination of Equal Educational Opportunities, in September 2000. The Committee will also be briefed by local community advocates of current civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gerald Talbot, 207–722–6098, or Fernando Serpa, Civil Rights Analyst, of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 2000.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–18628 Filed 7–21–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 5:00 p.m. on Thursday, August 17, 2000, at the Philadelphia Convention Center Conference Room B, 12th and Arch Streets, Philadelphia, Pennsylvania 19107. The purpose of the meeting is to review the draft report, "Barriers to Minority and Women Owned Businesses in Pennsylvania", develop preliminary conclusions and recommendations, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino, Civil Rights Analyst, of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 2000.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–18629 Filed 7–21–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071800C]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and Bluefish Monitoring Committee will hold public meetings.

DATES: The meeting will be held on Tuesday, August 8, 2000, the Scup Monitoring Committee will begin meeting at 9:00 a.m. followed by the Summer Flounder Monitoring Committee, the Black Sea Bass Monitoring Committee and the Bluefish Monitoring Committee.

ADDRESSES: These meetings will be held at the Sheraton International Airport, 7032 Elm Road, BWI Airport, Baltimore, MD 21240, telephone: 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, MAFMC, telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 2001 commercial management measures, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass. The Bluefish Monitoring Committee will meet to recommend commercial management measures, recreational management measures, and a commercial quota for bluefish for 2001.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council at least 5 days prior to the meeting date.

Dated: July 18, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18651 Filed 7–21–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071800D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Groundfish Strategic Plan Development Committee (Committee) will hold a work session which is open to the public.

DATES: The work session will be held Thursday, August 24 at 10 a.m. and may go into the evening until business for the day is completed. The work session will reconvene at 8 a.m. on Friday, August 25 and continue throughout the day until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific States Marine Fisheries Commission, Large Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027; (503) 650–5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; (503) 326–6352.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Glock, (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the working session is to review public comments received at a series of public hearings conducted by the states of Washington, Oregon, and California and develop recommendations for presentation to the Council at its September 11–15 meeting.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 18, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18649 Filed 7–21–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

July 17, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 62657, published on November 17, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 8, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on July 21, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
300/301	4,239,418 kilograms.
645/646	378,916 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–18568 Filed 7–21–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

July 18, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S.

Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to the Memorandum of Understanding dated June 13, 2000 between the Governments of the United States and the Kingdom of Nepal extending the current bilateral textile agreement, the current limits for certain categories are being adjusted for special swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54871, published on October 8, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 21, 2000, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal, as extended by the Memorandum of Understanding dated July 13, 2000 between the Governments of the United States and the Kingdom of Nepal:

Category	Adjusted twelve-month limit [1]
347/348	936,093 dozen.
641	152,880 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–18570 Filed 7–21–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Republic of Turkey

July 18, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 62659, published on November 17, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 21, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Limits not in a group	
361	3,032,394 numbers.
369–S [2]	2,215,493 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–18569 Filed 7–21–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

July 18, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Item Eyes,

Inc. has violated the requirements for participation in the Special Access Program, and has suspended Item Eyes, Inc. from participation in the Program for the period August 1, 2000 through July 31, 2001.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Item Eyes, Inc. during the period August 1, 2000 through July 31, 2001, and to prohibit entry by or on behalf of Item Eyes, Inc. under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Item Eyes, Inc. from participation in the Special Access Program for the period August 1, 2000 through July 31, 2001. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Item Eyes, Inc. during the period August 1, 2000 through July 31, 2001. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Item Eyes, Inc. manufactured from fabric exported from the United States during the period August 1, 2000 through July 31, 2001.

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–18571 Filed 7–21–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education

ACTION: Notice of partially closed and closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: August 3–5, 2000.

TIME: August 3—Subject Area Committee #1, 2–5 p.m. (closed); Achievement Levels Committee, 3–5 p.m.; Executive Committee, 5:30–6:15 p.m. (open), 6:15–7 p.m., (closed). August 4—Full Board 8:30–10:30 a.m., (open); Subject Area Committee #2, 10:30 a.m.–12 p.m. (open), 12–12:30 p.m., (closed); Reporting and Dissemination Committee, 10:30 a.m.–12:30 p.m. (open); Design and Methodology Committee, 10:30 a.m.–12:30 p.m., (open); Full Board 12:30–1:30 p.m., (closed), and 1:30–4 p.m., (open). August 5—full Board, 8:30 a.m.–adjournment, approximately, 12 noon, (open).

LOCATION: Ritz Carlton Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the national Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contact number RJ9753001.

On Thursday, August 3, there will be meetings of three committees of the Governing Board. From 2–5 p.m., Subject Area Committees #1 will meet in closed session to review secure test items for the National Assessment of Educational Progress (NAEP) in the following subject areas: reading, writing, and geography. This meeting must be closed to the public because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Achievement Levels committee will meet in open session on Thursday, August 3, from 3 to 5 p.m., to receive an update on the voluntary national test, to review the work on the achievement levels study, and to review sections of the achievement levels report on student performance standards.

Also, on August 3, the Executive Committee will meet in partially closed session. In the open session from 5:30–6:15 p.m. the Committee will hear an update on the Voluntary National Tests contract, the NAEP participation issues, and NAEP reauthorization; the Committee also will discuss possible changes to the Governing Board meeting schedule and committee structure.

From 6:15–7 p.m., the Executive Committee will meet in closed session. There are two agenda items for the closed session. First, the Committee will hear an update on the development of cost estimates for NAEP and future contract initiatives. Public disclosure of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9) (B) of Section 552b(c) of Title 5 U.S.C.

Second, the Executive Committee will discuss the qualifications of current Board members to serve as Vice-Chairman of NAGB. Based upon these discussions, the Board will elect a Vice-Chairman. This portion of the meeting will relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and, as such, is protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

On August 4, the full Board, will convene in open session beginning at 8:30 a.m. In addition to the approval of the agenda, a report from the Executive Director, and an update on the NAEP project, the Board will hear a report on College Board Initiatives and receive a report from the Ad Hoc Committee on NAEP Participation and discuss the findings.

Subject Area Committee #2 will meet in partially closed session. From 10:30 a.m.–12:00 p.m., the Committee will meet in open session to discuss issues related to the upcoming NAEP 2004 mathematics framework update project. In closed session, from 12:00–12:30 p.m., the Committee will review secure

test items for the proposed Voluntary National Test (VNT) in 8th grade mathematics. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

There will be open meetings of the Reporting and Dissemination Committee and the Design and Methodology Committee from 10:30 a.m.–12:30 p.m.

Agenda items for the Reporting and Dissemination Committee include the schedule for the release of future NAEP reports; reporting NAEP 2000 mathematics assessment, samples with and without accommodations; private school reporting plans for NAEP 2002 assessments in reading and writing; and an update on reporting NAEP long-term trend data in writing, internet and printed reports.

The Design and Methodology committee will meet in open session to receive an update on the voluntary national test, and to review a progress report on the market basket study.

The full Board will reconvene in closed session from 12:30–1:30 p.m. to hear the 1999 NAEP Long-Term Trend Report. During this meeting, Dr. Peggy Carr, Associate Commissioner of NCES, will make a presentation to the full Board. The session may discuss specific items from the 1999 Long Term Trend Assessment in Math, Science and Reading. If the meeting was held in open session, the disclosure of such information might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 1:30–4:00 p.m. the board will meet in open session. Agenda items for this portion of the meeting include a panel discussion on mathematics assessment issues, receiving conclusions and recommendations on Achievement Levels and the Follow-up Report to Congress and hear an update on a study regarding the impact of incentives and rewards on NAEP.

On Saturday, August 5, the Board will hear an update on NAEP/NAGB Reauthorization and conclude with the presentation of committee reports and Board actions.

A summary of the activities of the closed, partially closed sessions, and other related matters which are informative to the public and consistent with the policy of the section 5 U.S.C. 552b(c), will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 00–18663 Filed 7–21–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–405–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 19, 2000.

Take notice that on July 17, 2000, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed a request with the Commission in Docket No. CP00–405–000, pursuant to Section 157.205, 157.211 and/or 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to replace 10.1 miles of 20-inch pipeline in three segments of its Line KA located in Mingo County, West Virginia authorized in blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202/208–2222 for assistance).

Columbia proposes to replace 10.1 miles of its 20-inch pipeline due to the age and condition of the pipe. The pipeline would be replaced with an approximate like amount and a like size pipeline. Columbia states, that approximately 3.7 miles of the pipeline would be replaced on existing right-of-way and would involve a typical lift and lay procedure. The remaining 6.4 miles would be replaced using a new right-of-way. Columbia states the new right-of-way is required to move the pipeline from its existing location along a creek bank to the ridge top. The pipeline being replaced through the lift and lay procedure would be abandoned by removal, and the remainder of the pipe would be abandoned in place.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 00–18620 Filed 7–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–007]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

July 19, 2000.

Take notice that on July 14, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 68854 between Columbia Gulf Transmission Company and Virginia Power Energy Marketing, Inc., dated June 30, 2000

Columbia Gulf states that transportation service is scheduled to commence November 1, 2000.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18618 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–380–000]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

July 19, 2000.

Take notice that on July 14, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed to be effective June 14, 2000.

Cove Point state that the purpose of the instant filing is to replace Cove Point's existing tariff due to changes made necessary by the purchase of the Cove Point limited partnership by two subsidiaries of The Williams Companies on June 14, 2000. Williams Cove Point LNG Company, L.L.C. purchased the 99% limited partnership interest in Cove Point LNG Limited Partnership from Columbia LNG Corporation and Columbia Atlantic Trading Corporation, and Williams Gas Project Company, L.L.C. purchased the 1% general partnership interest in Cove Point LNG Limited Partnership from CLNG Corporation.

Specifically, Second Revised Volume No. 1 of Cove Point's tariff is being filed to (1) correct the title page to include corrected information regarding the person to whom communication concerning the tariff should be sent, (2) change the tariff sheets to reflect the name of the new issuing officer, (3) modify the section related to marketing affiliates to reflect the change of ownership and (4) correct certain typographical errors.

Cove Point states that it is serving copies of the instant filing to the affected customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18612 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–402–000]

Equitrans, L.P.; Notice of Application

July 18, 2000.

Take notice that on July 11, 2000, Equitrans, L.P. (Equitrans), 100 Allegheny Center Mall, Pittsburgh, Pennsylvania 15212, filed in Docket No. CP00–402–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Noumenon Corporation (Noumenon), certain natural gas gathering pipeline and appurtenant facilities comprising its Daybrook gathering system which is located in Monongalia County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http//www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Equitrans states that the facilities proposed for abandonment consists of approximately 53,273 feet of pipeline of various lengths and diameters, miscellaneous appurtenant facilities including valves, taps, regulators, meters and applicable rights-of-way and property interests related thereto.

The abandonment, it is said, would reduce the overall costs of Equitrans' gathering operations, minimize the amount of stranded costs required to maintain unbundled gathering rates, and permit Equitrans to provide a more economical operation of its authorized services by reducing its rate base and eliminating operation and maintenance costs.

Equitrans indicates that the facilities, after the sale, would continue to be distribution facilities exempt from the Commission's jurisdiction under Section 1(b) of the NGA.

Any person desiring to be heard or any person desiring to make any protests with reference to said application should on or before August 8, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is time filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitrans to appear or be represented at the hearing.

David P. Boergers,
Secretary.
[FR Doc. 00–18587 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–346–027]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 19, 2000.

Take notice that on July 14, 2000, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective August 1, 2000.

Third Revised Sheet No. 5
Fourth Revised Sheet No. 6
Second Revised Sheet No. 9
Second Revised Sheet No. 10
Third Revised Sheet No. 11

Equitrans states that the purpose of this filing is to place into effect new base rates and retainage levels for the period of August 1, 2000 until the termination of the settlement in compliance with the Commission's April 29, 1999 Letter Order approving the uncontested January 22, 1999 Stipulation and Agreement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18616 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–262–002]

Florida Gas Transmission Company; Notice of Compliance Filing

July 19, 2000.

Take notice that on July 13, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective March 27, 2000, the following tariff sheet:

Second Substitute Fourth Revised Sheet No. 164

FGT states that on May 1, 2000, FGT filed in Docket No. RP00–262–000 (May 1 Filing) to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions and the prospective limitations on the availability of the Right-of-First Refusal ("ROFR"). Subsequently, on May 31, 2000, the Commission issued an order in the referenced docket accepting FGT's May 1 Filing subject to conditions and requiring FGT to file tariff revisions within 15 days. On June 15, 2000, FGT filed tariff revisions to comply with the Commission's May 31 Order. In the instant filing, FGT is making a tariff revision which should have been included in the June 15 filing. Specifically on Second Substitute Fourth Revised Sheet No. 164, FGT is changing a reference from Section 284.243 to Section 284.8. Additionally, FGT is requesting that the Commission make Substitute Fourth Revised Sheet No. 165, Third Revised Sheet No. 165A, Fourth Revised Sheet No. 166 and Substitute Second Revised Sheet No. 168A effective March 27, 2000. FGT mistakenly requested that these tariff sheets be made effective March 26, 2000 in FGT's June 15 filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18614 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–388–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 19, 2000.

Take notice that on July 14, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective August 14, 2000:

Thirteenth Revised Sheet No. 23
Fifth Revised Sheet No. 103
Second Revised Sheet No. 104
First Revised Sheet No.105
Third Revised Sheet No. 809
First Revised Sheet No. 810
Original Sheet No. 811
Third Revised Sheet No. 1407
Fifth Revised Sheet No. 3700

Koch proposes to establish a new summer-only firm transportation option that will meet the needs of the developing electric power generation market and will allow customers to subscribe for summer-only firm service either for a single summer or for multiple summer seasons.

Koch states that copies of this filing have been served upon Koch's customers, state commissioners and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18613 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–006]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 19, 2000.

Take notice that on July 14, 2000 Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 110B, with an effective date of November 1, 2000.

Midwestern states that the purpose of the filing is to comply with the Commission's June 30, 2000 Letter Order in the referenced proceeding. Midwestern requests that the attached tariff sheet be deemed effective November 1, 2000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18617 Filed 7–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1969–000; EL00–57–000; EL00–60–000; EL00–63–000; EL00–64–000 (not consolidated)]

New York Independent System Operator, Inc., Niagara Mohawk Power Corp. v. New York Independent System Operator, Inc.; Orion Power New York GP, Inc. v. New York Independent System Operator; Inc.; New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.; Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.; Notice of Filing

July 18, 2000.

Take notice that on June 30, 2000, New York Independent System Operator, Inc. (NYISO) filed its preliminary compliance filing describing its plans for implementing a permanent solution to the problems in its 10-minute reserve markets. The May 31 order requires the NYISO to file its proposed permanent solution no later than September 1, 2000, to be effective November 1, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 1, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18588 Filed 7–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–496–007]

Southern Natural Gas Company; Notice of Tariff Filing

July 19, 2000.

Take notice that on July 14, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet with the proposed effective date of August 1, 2000:

Sub Seventy-Third Revised Sheet No. 15

Southern states that the purpose of this filing is to include the firm transportation rates for the South Georgia Incremental Service, which were filed in Southern's March 10, 2000, Settlement Filing in Docket No. RP99–496, *et al.*, and approved by the Commission's Order (Order) dated May 31, 2000 in that docket. On June 30, 2000, Southern filed tariff sheets to implement the settlement provisions approved by the Order. The rates for the South Georgia Incremental Service were inadvertently omitted in the June 30th filing. Southern is filing herewith rates for the South Georgia Incremental Service.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18615 Filed 7–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–312–030]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

July 19, 2000.

Take notice that on July 14, 2000 Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Ninth Revised Sheet No. 413, with an effective date of November 1, 2000.

Tennessee states that the purpose of the filing is to comply with the Commission's June 29, 2000 Letter Order in the referenced proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18619 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–134–004]

Vector Pipeline L.P.; Notice of Application

July 19, 2000.

Take notice that on June 27, 2000, Vector Pipeline L.P. (Vector), filed in Docket No. CP98–134–004 an application pursuant to Section 7(c) of the Natural Gas Act and the Commission's Regulations, 18 CFR part 157, subpart E, to amend its certificate to change its initial recourse rates.

Vector requests that the Commission amend its Certificate to revise the level of the recourse rate, set in the Preliminary Determination (PD) for the first year at $0.267 per Dth, downward to $0.248 per Dth, to reflect: (A) the following changes to the initial ratemaking methodology and Cost-of-service components: (1) Adjusting Vector's rate base to update the 1997 capital cost estimate to reflect actual costs already incurred or under contract and more accurate estimates, with a corresponding revision of AFUDC; (2) updating Vector's projected cost of debt, to reflect Vector's present contractual base and credit position, as projected by Vector's financial advisor; and (3) changing the depreciation method from straight-line to that already used in Vector's levelized negotiated rate, specifically the reverse sum-of-the-years digit method; and (B) adjusting the form of its initial rate structure by instituting (1) cast allocation to IT and other services and (2) zone rates as follows:

Zone 1 (to MP43) $0.346 per Dth
Zone 2 (to MP333) $0.2556 per Dth

Any questions regarding the application should be directed to Juri Otsason, President, at (416) 753–7303, Vector Pipeline L.P., 500 Consumers Rd. Toronto, Ontario M2J1P8.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 26, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Vector to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 00–18621 Filed 7–21–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–226–000, et al.]

Empresa Electrica Puyehue S.A., et al.; Electric Rate and Corporate Regulation Filings

July 18, 2000.

Take notice that the following fi ings have been made with the Commission:

1. Empresa Electrica Puyehue S.A.

[Docket No. EG00–226–000]

Take notice that on July 12, 2000, Empresa Electrica Puyehue S.A., a corporation (sociedad anónima) organized under the laws of the Republic of Chile (Applicant), with its principal place of business at Las Bellotas No. 199, Oficina No. 104, Providencia, Santiago, Chile, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 39 megawatt hydroelectric power production facility located near Osorno, in southern Chile.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Wrightsville Power Facility, L.L.C.

[Docket No. EG00–228–000]

Take notice that on July 17, 2000, Wrightsville Power Facility, L.L.C. (Wrightsville Power Facility), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338–4780, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Wrightsville Power Facility is a Delaware limited liability company that intends to construct, own, and operate a 555 MW generation facility at a site in Wrightsville, Arkansas. Wrightsville Power Facility is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Puget Sound Energy, Inc.

[Docket No. ER00–3121–000]

Take notice that on July 12, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Cargill-Alliant, LLC (Cargill), as Transmission Customer. A copy of the filing was served upon Cargill.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Central Maine Power Company

[Docket No. ER00–3122–000]

Take notice that on July 12, 2000, Central Maine Power Company (CMP) tendered for filing notice that CMP submits for filing notice that Central Maine Power Company Open Access Transmission Tariff—FERC Electric Tariff, Fourth Revised Volume No. 3, should be considered modified to adopted the Transmission Loading Relief (TLR) procedures proposed by the North American Electric Reliability Council and accepted by the Commission, in *North American Electric Reliability Council*, 91 FERC ¶ 61,122 (2000).

Copies of this filing have been served upon all parties to this proceeding.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER00–3123–000]

Take notice that on July 12, 2000, Arizona Public Service Company (APS) tendered for filing umbrella Service Agreements to provide Short-Term Firm Point-to-Point Transmission Service to The Cincinnati Gas & Electric Company, an Ohio corporation, PSI Energy, Inc., an Indiana corporation, (collectively Cinergy Operating Companies) and Cinergy Services, Inc., a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies, and Short-Term Firm and Non-Firm Point-to-Point Transmission Service to San Diego Gas & Electric Company under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Cinergy Services, San Diego Gas & Electric Company, and the Arizona Corporation Commission.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company

[Docket No. ER00–3124–000]

Take notice that on July 12, 2000, Consumers Energy Company (Consumers) tendered for filing executed transmission service agreements with Public Service Company of Colorado (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of June 29, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket Nos. ER00–912–000 ER00–2801–000]

Take notice that on July 13, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing Second Revised Service Agreement No. 10 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. The Service Agreement portion of Second Revised Service Agreement No. 10 will maintain the effective date of December 2, 1999, in accordance with the Commission's Order at Docket No. ER00–912–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. The Montana Power Company

[Docket No. ER98–2382–004]

Take notice that on July 13, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's order issued May 19, 2000 in these proceedings compliance reports showing amounts refunded by Montana, including interest, collected in excess of the settlement rates in the above-referenced dockets.

A copy of the filing was served upon the state commissions within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER00–2295–001]

Take notice that on July 13, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing a revised MR Tariff in compliance with the Commission's order issued June 14, 2000 in Wisconsin Public Service Corporation, 91 FERC ¶ 61,254. This compliance MR Tariff conforms with the Commission's Order No. 614. WPSC requests a June 1, 2000 effective date.

Copies of the filing were served upon the parties on the official service list, all of WPSC's MR Tariff customers, the state commissions of Wisconsin and Michigan, and other concerned parties.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER00–3125–000]

Take notice that on July 13, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated July 12, 2000 with The Legacy Energy Group, LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds The Legacy Energy Group, LLC as a customer under the Tariff.

DLC requests an effective date of July 12, 2000 for the Service Agreement.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER00–3126–000]

Take notice that, Duquesne Light Company (DLC), tendered filing a

Service Agreement dated July 12, 2000 with The Legacy Energy Group, LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds The Legacy Energy Group, LLC as a customer under the Tariff.

DLC requests an effective date of July 12, 2000, for the Service Agreement.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER00–3127–000]

Take notice that on July 13, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated July 12, 2000 SmartEnergy.com, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds SmartEnergy.com, Inc. as a customer under the Tariff.

DLC requests an effective date of July 12, 2000, for the Service Agreement.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER00–3128–000]

Take notice that on July 13, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated July 12, 2000 with PEPCO Energy Services under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PEPCO Energy Services as a customer under the Tariff.

DLC requests an effective date of July 12, 2000, for the Service Agreement.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER00–3129–000]

Take notice that July 13, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated July 12, 2000 with PEPCO Energy Services under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PEPCO Energy Services as a customer under the Tariff.

DLC requests an effective date of July 12, 2000, for the Service Agreement.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER00–3130–000]

Take notice that on July 13, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing eight (8) Service Agreements for Long Term Firm Point-to-Point Transmission Service with Virginia Power's merchant function, The Wholesale Power Group. These Agreements will be designated as Service Agreement Nos. 284–291 under Company's FERC Electric Tariff, First Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide long term firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of July 13, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon The Wholesale Power Group, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cleco Utility Group Inc.

[Docket No. ER00–3131–000]

Take notice that on July 13, 2000, Cleco Utility Group, Inc., tendered for filing Non-Firm and Short term firm point-to-point transmission service agreements under its Open Access Transmission Tariff with Lafayette Utilities System.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER00–3132–000]

Take notice that on July 13, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Wind Utility Consulting providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER00–3133–000]

Take notice that on July 13, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Wind Utility Consulting providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective on June 29, 2000.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Cleco Utility Group Inc.

[Docket No. ER00–3134–000]

Take notice that on July 13, 2000, Cleco Utility Group, Inc., tendered for filing Non-Firm and Short term firm point-to-point transmission service agreements under its Open Access Transmission Tariff with NRG Power Marketing Inc.

CLECO requests that the Commission accept the Service Agreement with an effective date of July 17, 2000.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3135–000]

Take notice that on July 13, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a Notice of Cancellation of Service Agreement No. 69 with Sonat Power Marketing, L.P., a customer under Allegheny Power's Open Access Transmission Service Tariff.

Allegheny Power has requested a waiver of notice to allow the cancellation to be effective June 26, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3136–000]

Take notice that on July 13, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a Notice of Cancellation of Service Agreement Nos. 49 and 158 with PP&L, Inc., a customer under Allegheny Power's Open Access Transmission Service Tariff.

Allegheny Power has requested a waiver of notice to allow the cancellations to be effective July 1, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Indeck-Rockford, L.L.C.

[Docket No. ER00–3137–000]

Take notice that on July 13, 2000, Indeck-Rockford, L.L.C., tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, its long-term Sales Agreement with Commonwealth Edison Company.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Central Maine Power Company

[Docket No. ER00–3138–000]

Take notice that on July 13, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) Regulations, 18 CFR 35.12 an executed Interconnection Agreement, dated as of June 13, 2000 (the Agreement) between CMP and Bucksport Energy LLC (Bucksport or Customer) (for itself and as agent for Champion International Corporation, co-owner of the generating facility).

The Agreement provides for interconnection service to the Customer's facility at the rates, terms, charges, and conditions set forth therein. CMP is requesting that the Agreement become effective June 13, 2000.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and the Customer.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Southern Company Services, Inc.

[Docket No. ER00–3139–000]

Take notice that on July 13, 2000, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), tendered for filing an Interconnection Agreement (Agreement) between Mobile Energy Services Company, L.L.C. and APC. The Agreement allows Mobile Energy to interconnect its facility in Mobile, Alabama to and operate in parallel with APC's electric system. The Agreement was executed on June 16, 2000 and terminates in one (1) year.

An effective date of June 20, 2000 has been requested.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket No. ER00–3150–000]

Take notice that on July 13, 2000, Pacific Gas and Electric Company (PGandE Company), tendered for filing the Emergency Service Agreement Between Pacific Gas and Electric Company and Northern California Power Agency (NCPA). This Agreement is intended to facilitate NCPA's supplying of excess and reserve energy to the California Independent System Operator (CAISO) to support reliability of the electric grid in California this summer. Under this Emergency Service Agreement, when the CAISO requests dispatch of excess energy from NCPA and pays PGandE Company as NCPA's Scheduling Coordinator for that energy at the Hourly Ex-Post Price, PGandE Company will transfer such payments to NCPA subject to and based upon payments from CAISO. PGandE Company has requested certain waivers.

Copies of this filing have been served upon NCPA, the CAISO, the California Electricity Oversight Board, the CPUC and the Service List for FERC Docket No. EL00–75–000.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Cleco Utility Group Inc.

[Docket No. ER00–3140–000]

Take notice that on July 13, 2000, Cleco Utility Group, Inc. (CLECO), tendered for filing Non-Firm and Short term firm point-to-point transmission service agreements under its Open Access Transmission Tariff with The Legacy Energy Group, LLC.

CLECO requests that the Commission accept the Service Agreement with an effective date of July 17, 2000.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Puget Sound Energy, Inc.

[Docket No. ER00–3141–000]

Take notice that on July 13, 2000, Puget Sound Energy, Inc., tendered for filing a Netting Agreement with Duke Energy Trading and Marketing, L.L.C., (DETM).

A copy of the filing was served upon DETM.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Southern Company Services, Inc.

[Docket No. ER00–3142–000]

Take notice that on July 13, 2000, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered for filing Amendment No. 1 to the Agreement for Network Integration Transmission Service for Alabama Electric Cooperative, Inc., under Southern Companies Open Access Transmission Tariff to Add Delivery Points. The Amendment No. 1 provides that transmission service under the referenced service agreement (Service Agreement No. 225 under Southern Companies Open Access Transmission Tariff (FERC Electric Tariff Original Volume No. 5) is to be provided at five (5) new delivery points and specifies the direct assignment facility charges.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Puget Sound Energy, Inc.

[Docket No. ER00–3143–000]

Take notice that on July 13, 2000, Puget Sound Energy, Inc., tendered for filing a Netting Agreement with Citizens Power Sales LLC (Citizens).

A copy of the filing was served upon Citizens.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Puget Sound Energy, Inc.

[Docket No. ER00–3144–000]

Take notice that on July 13, 2000, Puget Sound Energy, Inc., tendered for

filing a Netting Agreement with Williams Energy Marketing & Trading Company (Williams).

A copy of the filing was served upon Williams.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Southwest Power Pool, Inc.

[Docket No. ER00–3145–000]

Take notice that on July 13, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with Public Service Company of New Mexico (Transmission Customer).

SPP seeks an effective date of July 5, 2000, for each of the service agreements.

Copies of this filing were served on the Transmission Customer.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. PJM Interconnection, L.L.C.

[Docket No. ER00–3146–000]

Take notice that on July 13, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice of cancellation for PG&E Energy Services Corporation (PG&E) to terminate its membership in PJM, to cancel certain service agreements between PJM and PG&E, and to remove it as a signatory to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA). PJM also is filing a revised Schedule 17 to the RAA removing PG&E from the list of signatories to the RAA.

PJM states that it served a copy of its filing on all of the members of PJM and the signatories to the RAA, including PG&E, and each of the state electric regulatory commissions within the PJM control area.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Lowell Cogeneration Company, L.P.

[Docket No. ER00–3147–000]

Take notice that on July 13, 2000, Lowell Cogeneration Company, L.P. (Lowell Cogen), tendered for filing a service agreement establishing Southern Company Energy Marketing L.P. (Southern) as a customer under Lowell Cogen's Rate Schedule No. 1.

Lowell Cogen requests waiver of the Commission's prior notice requirement and requests an effective date of May 1, 2000.

Lowell Cogen states that a copy of the filing was served on Southern.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Entergy Services, Inc.

[Docket No. ER00–3148–000]

Take notice that on July 13, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi Inc., tendered for filing an Interconnection and Operating Agreement with Southaven Power LLC (Southaven), and a Generator Imbalance Agreement with Southaven.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Delmarva Power & Light Company, and Conectiv Delmarva Generation, Inc.

[Docket No. ER00–3168–000]

Take notice that on July 11, 2000, Conectiv Delmarva Generation, Inc. (CDG), tendered for filing notice that on July 11, 2000, hereby adopts, ratifies, and makes its own, in every respect Delmarva Power & Light Company's (Delmarva) interest in the "Interconnection Agreement by and Among the Keystone Owners and Pennsylvania Energy Company d/b/a GPU Energy," Pennsylvania Electric Company, Rate Schedule FERC No. 115, and "Interconnection Agreement by and Among the Conemaugh Station Owner and the Conemaugh Switch Station Owners," Delmarva Power & Light Company, Rate Schedule FERC No. 58, heretofore filed with the Federal Energy Regulatory Commission.

This Notice of Succession in Ownership shall be effective on July 1, 2000, the date of transfer of the interests in the Keystone and Conemaugh generating facilities from Delmarva to CDG.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18611 Filed 7–21–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing, and a Deadline for Submission of Final Amendments

July 18, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–2103–002.

c. *Date Filed:* June 29, 2000.

d. *Applicant:* Cominco American Incorporated.

e. *Name of Project:* Cedar Creek Project.

f. *Location:* On Cedar Creek, a minor tributary stream to the Pend Oreille River, near the city of Northport, within Stevens County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bruce DiLuzio, Cominco American Incorporated, 15918 E. Euclid Avenue, Spokane, WA 98216, (509) 747-6111 and/or Nan A. Nalder—Relicensing Manager, Acres International for Cominco American Incorporated, 150 Nickerson—Suite 310, Seattle, WA 98109, (206) 352–5730, (206) 352–5734 fax, *acresnan@serve.net.*

i. *FERC Contact:* Brandi Bradford, (202) 219–2789, brandi.bradford@ferc.fed.us.

j. *Deadline for filing additional study requests:* August 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an

issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The existing Cedar Creek Project consists of 2.4 acres of land periodically inundated by operation of the Waneta Project located in British Columbia, Canada. The Cedar Creek Project area is located in the United States. All Waneta Project facilities, including the dam and power generation facilities, are located in Canada and are outside FERC jurisdiction. Cedar Creek Project lands are owned by the Bureau of Land Management (2.058 acres), the International Boundary Reserve (0.298 acres), and private owners (0.044 acres). Within the confines of the Cedar Creek Project, the maximum pool is EL 1517.8 (Canadian Geodetic Survey of Canada Datum) and minimum pool is EL 1502. Cominco American Incorporated currently has flowage rights to lands in the Cedar Creek Project boundary up to EL 1521.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are inviting consultation with the *WASHINGTON STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice that application has been accepted for filing.

Notice of NEPA Scoping.

Notice that application is ready for environmental analysis.*

Notice of the availability of the draft NEPA document.

Notice of the availability of the final NEPA document.

Order issuing the Commission's decision on the application.

*Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

David P. Boergers,

Secretary.

[FR Doc. 00–18589 Filed 7–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

July 19, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 26, 2000. 10 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference And Information Center.

748th—Meeting July 26, 2000, Regular Meeting (10:00 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
Omitted

CAE–2.
Docket# EL00–83, 000, Nstar Services Company
Other#s ER00–2052, 000, ISO New England Inc.

CAE–3.
Docket# ER00–536, 000, Southwestern Public Service Company
Other#s ER00–536, 001, Southwestern Public Service Company
ER00–536, 001, Southwestern Public Service Company
ER00–536, 002, Southwestern Public Service Company

CAE–4.
Docket# ER00–982, 000, Central Maine Power Company
Other#s ER97–1326, 000, Central Maine Power Company
ER99–236, 000, Central Maine Power Company
ER99–604, 000, Central Maine Power Company
ER99–4534, 000, Central Maine Power Company
ER00–26, 000, Central Maine Power Company
EL00–44, 000, Central Maine Power Company
ER00–1638, 000, Central Maine Power Company
ER00–1638, 001, Central Maine Power Company
ER00–2062, 002, Central Maine Power Company

CAE–5.
Omitted

CAE–6.
Docket# ER00–2669, 000, Central Main Power Company

CAE–7.
Docket# ER00–2644, 000, Southwest Power Pool, Inc.

CAE–8.
Docket# ER00–2699, 000, PPL Electric Utilities Corperation

CAE–9.
Docket# ER00–2726, 000, Southern Energy Delta, L.L.C.
Other#s ER00–2727, 000, Southern Energy Potrero, L.L.C.

CAE–10.
Docket# ER00–2632, 000, California Power Exchange Corporation

CAE–11.
Docket# ER00–2713, 000, Southwest Power Pool, Inc.

CAE–12.
Docket# ER00–2813, 000, New York Independent System Operator, Inc. and PJM Interconnection, L.L.C.

CAE–13.
Omitted

CAE–14.
Omitted

CAE–15.
Docket# ER99–4470, 000, Commonwealth Edison Company
Other#s ER99–4470, 001, Commonwealth Edison Company
EL00–21, 000, Commonwealth Edison Company
EL00–21, 001, Commonwealth Edison Company

CAE–16.
Docket# ER00–2868, 000, Metropolitan Edison Company and Pennsylvania Electric Company

CAE–17.
Docket# ER00–2736, 000, California Power Exchange Corporation
Other#s ER00–2737, 000, California Power Exchange Corporation

CAE–18.
Docket# ER00–3090, 000, PJM Interconnection, L.L.C.

CAE–19.
Docket# ER00–298 003 PJM Interconnection, L.L.C.
Other#s EL00–41, 001, PJM Interconnection, L.L.C.
ER00–298, 000, PJM Interconnection, L.L.C.
ER00–298, 001, PJM Interconnection, L.L.C.
ER00–298, 002, PJM Interconnection, L.L.C.
EL00–41, 000, PJM Interconnection, L.L.C.
EL00–41, 001, PJM Interconnection, L.L.C.

CAE–20.
Docket#s ER00–213, 001, Cincinnati Gas & Electric Company

Other#s EL00–22, 000, Cincinnati Gas & Electric Company
EL00–22, 001, Cincinnati Gas & Electric Company
ER00–213, 000, Cincinnati Gas & Electric Company
CAE–21.
Docket# ER96–496, 006, San Diego Gas & Electric Company
Other#s ER96–2160, 007, San Diego Gas & Electric Company
ER96–496, 009, San Diego Gas & Electric Company
ER96–2160, 004, San Diego Gas & Electric Company
CAE–22.
Docket# ER99–2649, 001, Mid-Continent Area Power Pool
Other#s ER00–2317, 000, Mid-Continent Area Power Pool
ER99–2649, 002, Mid-Continent Area Power Pool
CAE–23.
Docket# ER96–441, 019, Southern California Edison Company
Other#s ER96–441, 000, Southern California Edison Company
CAE–24.
Docket# ER97–1523, 000, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other# OA97–470, 000, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
OA97–470, 042, Central Hudson Gas & Electric CorpConsolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–1523, 044, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234, 000, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234, 010, Central Hudson Gas & Elec Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
CAE–25.
Docket# ER99–1659, 000, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
Other#s ER99–1659, 005, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
ER99–1660, 000, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
ER99–1660, 005, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
ER99–1659, 002, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
ER99–1660, 002, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
CAE–26.
Docket# ER97–2355, 000, Southern California Edison Company
Other#s ER98–1261, 000, Southern California Edison Company
ER98–1685, 000, Southern California Edison Company
CAE–27.
Docket# ER97–1523, 023, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other#s OA97–470, 021, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234, 019, Central Hudson Gas & Electric Corporation Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
CAE–28.
Docket# OA96–194, 000, Niagara Mohawk Power Corporation
CAE–29.
Docket# ER97–1523, 034, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other # ER00–556, 003, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
OA97–470, 032, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234, 030, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
CAE–30.
Docket# ER97–1523, 035, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other#s ER00–556, 004, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
OA97–470, 033, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234, 031, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York

State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool

CAE–31.
Docket# ER97–1523, 036, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation W York Power Pool
Other#s ER97–4234, 032, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
OA97–470, 034, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool

CAE–32.
Docket# ER97–1523, 033, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation New York Power Pool
Other#s OA97–470, 031, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation New York Power Pool
ER97–4234, 029, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation New York Power Pool

CAE–33.
Docket# ER97–913, 001, Connecticut Yankee Atomic Power Company

CAE–34.
Docket# ER98–496, 008, San Diego Gas & Electric Company
Other#s ER98–2160, 000, San Diego GAS & Electric Company
ER98–496, 000, San Diego Gas & Electric Company
ER98–2160, 006, San Diego Gas & Electric Company

CAE–35.
Docket# ER98–441, 013, Southern California Edison Company

CAE–36.
Docket# ER00–671, 000, Puget Sound Energy, Inc.
Other#s ER00–671, 001, Puget Sound Energy, Inc.
ER00–672, 000, Puget Sound Energy, Inc.
ER00–672, 001, Puget Sound Energy, Inc.
ER00–673, 000, Puget Sound Energy, Inc.
ER00–673, 001, Puget Sound Energy, Inc.
ER00–674, 000, Puget Sound Energy, Inc.
ER00–674, 001, Puget Sound Energy, Inc.
ER00–674, 002, Puget Sound Energy, Inc.
ER00–676, 000, Puget Sound Energy, Inc.
ER00–676, 001, Puget Sound Energy, Inc.
ER00–677, 000, Puget Sound Energy, Inc.
ER00–677, 001, Puget Sound Energy, Inc.
ER00–678, 000, Puget Sound Energy, Inc.
ER00–678, 001, Puget Sound Energy, Inc.

CAE–37.
Omitted

CAE–38.
Docket# ER99–2339, 003, Sierra Pacific Power Company

CAE–39.
Docket# EC00–27, 000, Utilicorp United Inc. and St. Joseph Light & Power Company
Other#s EC00–27, 001, Utilicorp United Inc. and St. Joseph Light & Power Company
EC00–28, 000, Utilicorp United Inc. and Empire District Electric Company
EC00–28, 001, Utilicorp United Inc. and Empire District Electric Company

CAE–40.
Docket# EC00–75, 000, Nisource, Inc. and Columbia Energy Group

CAE–41.
Docket# EC00–63, 000, Sierra Pacific Power Company, Nevada Power Company and Portland General Electric Company
Other#s ER00–1801, 000, Nevada Power Company

CAE–42.
Docket# EC00–73, 000, El Paso Energy Corporation and the Coastal Corporation

CAE–43.
Docket# ER94–1377, 001, Delmarva Power & Light Company
Other#s EL93–53, 000, Southwestern Public Service Company
EL94–16, 000, Wisconsin Electric Power Company
EL96–37, 000, Pacific Gas & Electric Company
EL96–41, 000, Tule Hub Service Company
EL96–45, 000, Modesto Irrigation District
EL96–50, 000, Peco Energy Company
ER96–3157, 001, Niagara Mohawk Power Corporation
EL97–47, 000, Wisconsin Electric Power Company
EL97–52, 000, Niagara Mohawk Power Corporation
OA97–237, 006, New England Power Pool
OA97–608, 004, New England Power Pool
ER97–1079, 005, New England Power Pool
ER97–3574, 004, New England Power Pool
ER97–4421, 004, New England Power Pool
EL98–74, 001, South Mississippi Electric Power Association v. Entergy Services, Inc.
ER98–499, 003, New England Power Pool
ER98–2910, 001, Energy Services, Inc.
ER98–3568, 001, New England Power Pool
ER99–387, 001, New England Power Pool
ER99–2335, 001, New England Power Pool
ER99–4002, 001, ISO New England, Inc.
TX96–1, 000, Chicago Housing Authority
OA97–470, 001, New York Power Pool
ER97–966, 001, New York Power Pool

CAE–44.
Docket# ER97–2353, 002, New York State Electric & Gas Corporation

CAE–45.
Docket# EL96–36, 001, Aquila Power Corporation v. Entergy Services, Inc., as Agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Gulf States, Inc.
ER91–569, 010, Entergy Services, Inc.

CAE–46.
Docket# ER00–1933, 001, Entergy Services, Inc.

CAE–47.
Omitted

CAE–48.
Docket# ER00–1969, 002, New York Independent System Operator, Inc.,
Other# EL00–64, 000, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.

CAE–49.
Docket# EL99–6, 000, Sam Rayburn G&T Electric Cooperative, Inc., V. Entergy Gulf States, Inc. and Entergy Services, Inc.
Other#s ER99–231, 000, Sam Rayburn G&T Electric Cooperative, Inc., Entergy Gulf States, Inc. and Entergy Services, Inc.
ER99–232, 000, Sam Rayburn G&T Electric Cooperative, Inc., Entergy Gulf States, Inc. and Entergy Services, Inc.
ER99–487, 000, Sam Rayburn G&T Electric Cooperative, Inc., Entergy Gulf States, Inc. and Entergy Services, Inc.

CAE–50.
Docket# RM99–7, 000, Depreciation Accounting

CAE–51.
Omitted

CAE–52.
Docket# EL00–78, 000, Baconton Power LLC

CAE–53.
Docket# EL00–72, 000, Praxair, Inc.
Other#s QF86–1079, 001, Praxair, Inc.

CAE–54.
Docket# EL00–81, 000, Southaven Power, LLC

CAE–55.
Docket#EL00–84,000,Prairieland Energy, Inc.

CAE–56.
Omitted

CAE–57.
Docket# EL00–1, 002, AES NY, L.L.C. v. Niagara Mohawk Power Corporation

CAE–58.
Docket# EL00–9, 000, Cherokee County Cogeneration Partners L.P. v. Duke Energy Corporation
Other#s ER99–2331, 002, Duke Energy Corporation

CAE–59.
Docket# EL00–77, 000, Skygen Energy LLC v. Southern Company Services, Inc.

CAE–60.
Docket# EL00–82, 000, Niagara Mohawk Energy Marketing, Inc. v. New York Independent Sysem Operator, Inc.

CAE–61.
Docket# EL00–80, 000, Indeck Maine Energy, L.L.C. v. ISO New England Inc.
CAE–62.
Docket# RM95–9, 013, Open Access Same-Time Information System and Standards of Conduct
CAE–63.
Docket# RM95–9, 014, Open Access Same-Time Information System and Standards of Conduct
CAE–64.
Docket# ER95–1042, 000, System Energy Resources, Inc.
CAE–65.
Docket# EL00–70, 000, New York State Electric and Gas Corporation v. New York Independent System Operator, Inc.
Other# EL00–70, 001, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
ER00–3038, 000, New York Independent System Operator, Inc.
CAE–66.
Investigation of Electric Bulk Power Markets

Consent Agenda—Miscellaneous

CAM–1.
Docket# RM99–10, 000, Revisions to and Electronic Filing of the Ferc Form No. 6 and Related Uniform Systems of Accounts
CAM–2.
Docket# RM99–8, 000, Preservations of Records of Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Docket# PR00–14, 000, Aim Pipeline Company
CAG–4.
Docket# RP00–366, 000, Southwest Gas Storage Company
CAG–5.
Docket# RP00–358, 000, Natural Gas Pipeline Company of America
CAG–6.
Docket# RP96–383, 007, Dominion Transmission, Inc.
CAG–7.
Docket# RP00–369, 000, Trunkline Gas Company
Other#s RP00–376, 000, Trunkline LNG Company
CAG–8.
Docket# RP00–363, 000, Natural Gas Pipeline Company of America
CAG–9.
Omitted
CAG–10.
Omitted
CAG–11.
Docket# RP00–359, 000, Koch Gateway Pipeline Comapny
CAG–12.
Omitted
CAG–13.
Docket# RP00–370, 000, Northern Natural Gas Company
CAG–14.
Omitted
CAG–15.
Omitted
CAG–16.
Omitted
CAG–17.
Docket# RP00–354, 000, Columbia Gas Transmission Corporation
CAG–18.
Docket# RP00–17, 002, Transcontinental Gas Pipe Line Corporation
CAG–19.
Omitted
CAG–20.
Docket# RP00–316, 000, Kinder Morgan Interstate Gas Transmission LLC
Other#s RP00–343, 000, Kinder Morgan Interstate Gas Transmission LLC
CAG–21.
Omitted
CAG–22.
Docket# PR00–12, 000, Louisiana Intrastate Gas Company L.L.C.
CAG–23.
Docket# RP96–383, 005, Dominion Transmission, Inc.
CAG–24.
Docket# RP00–237, 001, Columbia Gas Transmission Corporation
CAG–25.
Docket# RP00–238, 001, Columbia Gulf Transmission Company
CAG–26.
Docket# RP00–364, 000, Clear Creek Storage Company, L.L.C.
CAG–27.
Docket# RP00–356, 000, El Paso Natural Gas Company
CAG–28.
Docket# RP00–298, 000, Kern River Gas Transmission Company
Other#s RP00–298, 001, Kern River Gas Transmission Company
RP00–298, 002, Kern River Gas Transmission Company
CAG–29.
Docket# RP00–375, 000, Panhandle Eastern Pipe Line Company
CAG–30.
Omitted
CAG–31.
Docket# RP00–371, 000, Northern Border Pipeline Company
CAG–32.
Omitted
CAG–33.
Docket# RP99–291, 002, Transcontinental Gas Pipe Line Corporation
CAG–34.
Docket# PR00–11, 000, Humble Gas Pipeline Company
CAG–35.
Docket# OR99–5, 000, Colonial Pipeline Company
CAG–36.
Docket# OR99–6, 000, TE Products Pipeline Company, L.P.
CAG–37.
Omitted
CAG–38.
Docket# RP00–199, 001, Reliant Energy Gas Transmission Company
CAG–39.
Docket# RM98–10, 005, Regulation of Short-Term Natural Gas Transportation Services
Other#s
RM98–12,005,Regulation of Interstate Natural Gas Transportation Services
CAG–40.
Omitted
CAG–41.
Docket# PR00–15, 000, Overland Trail Transmission Company
CAG–42.
Docket# MG00–8, 000, Egan Hub Partners, L.P.
CAG–43.
Docket# RM00–11, 000, Five-Year Review of Oil Pipeline Pricing Index
CAG–44.
Docket# RP00–275, 000, Chesapeake Panhandle Limited Partnership v. Natural Gas Pipeline Company of America, Midcom Gas Products Corporation, Midcom Gas Services Corporation, KN Energy, Inc. and Kinder Morgan, Inc.
CAG–45.
Docket# RP92–137, 050, Transcontinental Gas Pipe Line Corporation
CAG–46.
Docket# OR00–6, 000, Chevron Pipe Line Company
CAG–47.
Omitted

Consent Agenda—Energy Projects—Hydro

CAH–1.
Docket# P–2389, 032, State of Maine
Other#s P–2322, 027, FPL Energy Maine Hydro LLC
P–2325,030,FPL Energy Maine Hydro LLC
P–2552,034,FPL Energy Maine Hydro LLC
P–2574,026,Merimil Limited Partnership
P–2611,035,UAH-Hydro Kennebec Limited Partnership
P–5073,056,Benton Falls Associates
CAH–2.
Docket# HB69–93–7, 007, Wisconsin Electric Power Company, Repap, Inc. and City Kaukauna, Wisconsin

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP96–178, 013, Maritimes & Northeast Pipeline, L.L.C.
Other#s CP96–809, 011, Maritimes & Northeast Pipeline, L.L.C.
CP96–810, 005, Maritimes & Northeast Pipeline, L.L.C.
CP97–238, 011, Maritimes & Northeast Pipeline, L.L.C.
CP98–724, 002, Maritimes & Northeast Pipeline, L.L.C.
CP98–797, 002, Maritimes & Northeast Pipeline, L.L.C.
CAC–2.
Docket# PL99–3, 002, Certification of New Interstate Natural Gas Pipeline Facilities
CAC–3.
Docket# CP99–163, 000, Questar Southern Trails Pipeline Company
Other#s CP99–163, 001, Questar Southern Trails Pipeline Company
CP99–165,000,Questar Southern Trails Pipeline Company
CP99–166,000,Questar Southern Trails Pipeline Company
CAC–4.
Docket# CP98–702, 002, Natural Gas Pipeline Company of America

CAC–5.
Docket# CP00–34, 000, Algonquin Gas Transmission Company
CAC–6.
Docket# CP00–392, 000, Stanfield Hub Services, LLC
CAC–7.
Docket# CP00–47, 000, Trans-Union InterState Pipeline, L.P.
CAC–8.
Docket# CP00–46, 000, Tennessee Gas Pipeline Company
Other#s CP00–46, 001, Tennessee Gas Pipeline Company
CAC–9.
Omitted
CAC–10.
Docket# CP00–82, 000, Williams Gas Pipelines Central, Inc.
CAC–11.
Docket# CP00–384, 000, Norteno Pipeline Company and Southern Transmission Company
CAC–12.
Docket# CP99–541, 001, Cotton Valley Compression, L.L.C.
Other#s CP99–542, 001, Cotton Valley Compression, L.L.C.
CP99–543,001,Cotton Valley Compression, L.L.C.
CAC–13.
Docket# RM99–5, 001, Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf
CAC–14.
Docket# CP95–168, 003, SEA Robin Pipeline Company

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Reserved

Markets, Tariffs and Rates—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,
Secretary.

[FR Doc. 00–18701 Filed 7–20–00; 10:39 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6839–5]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at 260–2740, or email at Farmer.sandy@epa.gov, and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1803.03; Drinking Water State Revolving Fund Programs; was approved 06/07/2000; OMB No. 2040–0185; expires 06–30–2003.

EPA ICR No. 1648.02; Control Technology Determination for Equivalent Emissions Limitations by Permit; in 40 CFR part 63, subpart B; was approved 02/03/2000; OMB No. 2060–0266; expires 11/30/2000.

EPA ICR No. 1060.10; NSPS for Steel Plants: Electric Arc Furances an Argon-Oxygen Decarburization Vessels; in 40 CFR part 60, subpart AA and AAa; was approved 06/15/2000; OMB No. 2060–0038; expires 06/30/2003.

EPA ICR No. 1061.06; NSPS for Phosphate Fertilizer Industry; in 40 CFR part 60, subpart T, U, V, W, and X; was approved 06/15/2000; OMB No. 2060–0037; expires 06/30/2003.

EPA ICR No. 1084.06; NSPS for Nonmetallic Mineral Processing; in 40 CFR part 60, subpart 000; was approved 06/15/2000; OMB No. 2060–0050; expires 06/30/2003.

EPA ICR No. 1157.06; NSPS for Flexible Vinyl and Urethane Coating and Printing; in 40 CFR part 60, subpart FFF; was approved 06/14/2000; OMB No. 2060–0073; expires 06/30/2003.

EPA ICR No. 1764.02; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products; in 40 CFR part 59, subpart C; was approved 06/14/2000; OMB No. 2060–0348; expires 06/30/2003.

EPA ICR No. 1696.03; Registration of Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturres; in 40 CFR part 79, subpart F; was approved 05/25/2000; OMB No. 2060–0297; expires 05/31/2003.

EPA ICR No. 1072.06; NSPS for Lead-Acid Battery Manufacturing; in 40 CFR part 60, subpart KK; was approved 06/14/2000; OMB No. 2060–0081; expires 06/30/2003.

EPA ICR No. 0113.07; National Emission Standards for Mercury-NESHAP; in 40 CFR part 61; subpart E; was approved 06/14/2000; OMB No. 2060–0097; expires 06/30/2003.

EPA ICR No. 1178.05; Standards of Performance of Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI), Reactor Processes; in 40 CFR part 60.700, subpart RRR; was approved 06/14/2000; OMB No. 2060–0269; expires 06/30/2003.

EPA ICR No. 1128.06; NSPS for Secondary Lead Smelters; in 40 CFR part 60, subpart L; was approved 06/14/2000; OMB No. 2060–0080; expires 06/30/2003.

Action Withdrawn

EPA ICR No. 0276.09; Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only; in 40 CFR part 172; OMB No. 2070–0040; this ICR was withdrawn from OMB 06/19/2000 by EPA.

Extensions of Expiration Dates

EPA ICR No. 1001.06; Polychlorinated Biphenyls (PCBs) Exclusions, Exemptions, and Use Authorizations; in 40 CFR part 761; OMB No. 2070–0008; on 02/29/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1665.02; Confidentiality Claims; in 40 CFR part 2, subpart B; OMB No. 2020–0003; on 05/15/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1550.02; Conflict of Interest; in 40 CFR part 268.6; OMB No. 2030–0023; on 05/10/2000 OMB extended the expiration date through 11/30/2000.

EPA ICR No. 1353.05; Land Disposal Restrictions "No-Migration" Variances; in 40 CFR part 268.6; OMB No. 2050–0062; on 05/18/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1064.08; NSPS for Automobile and Light Duty Truck Surface Coating Operations; in 40 CFR part 60, subpart MM; OMB No. 2060–0034; on 06/16/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 0309.09; Registration of Fuels and Fuel Additives: Requirements for Manufacturers; in 40 CFR part 79; OMB No. 2060–0150; on 06/15/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1414.03; NESHAP for Hazardous Organic (HON); in 40 CFR part 63.3 through 63.192; OMB No.

2060–0282; on 05/23/2000 OMB extended the expiration date through 11/30/2000.

EPA ICR No. 1132.05; NSPS for Volatile Organic Liquid Storage Vessels; in 40 CFR part 60, subpart Kb; OMB No. 2060–0074; on 05/24/2000 OMB extended the expiration date through 11/30/2000.

EPA ICR No. 1713.03; Federal Operations Permit Program of the Clean Air Act; in 40 CFR part 71, Title V; OMB No. 2060–0336; on 05/11/2000 OMB extended the expiration date through 10/31/2000.

EPA ICR No. 1093.05; NSPS for the Surface Coating of Plastic Parts for Business Machines; in 40 CFR part 60, subpart TTT; OMB No. 2060–0162; on 05/11/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1655.03; Gasoline Detergent Certification Program (Final Rule); OMB No. 2060–0275; on 04/26/2000 OMB extended the expiration date through 9/30/2000.

EPA ICR No. 1783.01; National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production; in 40 CFR part 63, subpart III; OMB No. 2060–0357; on 04/26/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1012.06; Polychlorinated Biphenyls (PCBs) Disposal Permitting Regulation; in 40 CFR parts 761.60, .70 and .75; OMB No. 2070–0011; on 06/08/2000 OMB extended the expiration date through 12/31/2000.

EPA ICR No. 1139.05; TSCA Section 4 Test Rules, Consent Orders and Test Rule Exemptions; in 40 CFR part 790; OMB No. 2070–0033; on 05/30/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 0616.06; Compliance Requirement for the Child-Resistant Packaging Act; in 40 CFR part 157; OMB No. 2070–0050; on 05/30/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1710.02; Residential Lead-Based Paint Hazard Disclosure Requirements; in 40 CFR part 745; OMB No. 2070–0151; on 05/30/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1715.02; TSCA Section 402 and Section 404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities; in 40 CFR part 745; OMB No. 2070–0155; on 05/30/2000 OMB extended the expiration date through 8/31/2000.

EPA ICR No. 0857.07; Polchlorinated Biphenyls (PCBs): Manufacturing, Processing, and Distribution in Commerce Exemptions; in 40 CFR part 750; OMB No. 2070–0021; on 05/24/2000 OMB extended the expiration date through 11/30/2000.

EPA ICR No. 1672.02; Request for Information for Bioremediation Field Initiative; OMB No. 2080–0048; on 05/18/2000 OMB extended the expiration date through 08/31/2000.

Dated: July 11, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–18637 Filed 7–21–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6839–4]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the Project XL Draft Final Project Agreement for the Metropolitan Water Reclamation District of Greater Chicago.

SUMMARY: EPA is requesting comments on a Draft Project XL Final Project Agreement (FPA) for the Metropolitan Water Reclamation District of Greater Chicago (hereafter "The District"). The FPA is a voluntary agreement developed collaboratively by the District, the Illinois EPA, USEPA and interested stakeholders. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects undertaken in full partnership with the states.

In the draft FPA, the District's proposed project consists of four interrelated components.

The first is a request to EPA and IEPA for regulatory flexibility with regard to its obligation under the General Pretreatment Regulations to provide regulatory oversight to small Categorical Industrial Users (CIUs) into the District's WRPs. This flexibility will allow the District to reallocate currently committed resources to other activities with greater potential for environmental benefit.

Second, the District proposes that its Pretreatment Program Annual Report be revised to include detailed information regarding environmental performance that is not currently required in the Annual Report. To offset the District's commitment to include this additional information in its Annual Report, detailed oversight information regarding SIUs will be limited to only the population of SIUs that were found in significant noncompliance at any time during the report year.

Third, to further promote the objectives of the Strategic Goals Program (SGP), the District will create Strategic Performance Partnerships (Partnerships) with metal finishing facilities that fully achieve the individual facility goals outlined in the SGP. Under these Partnerships, the District will work cooperatively with demonstrated sector leaders to develop, test, and implement alternative measurement systems for demonstrating environmental performance.

Fourth, the District proposes to address non-regulated priority pollutants that may be of concern on a local scale by developing Toxic Reduction Action Plans (TRAPs). Under TRAPs, an interagency task force (District, EPA and Illinois EPA) will use existing environmental data (*i.e.*, District emissions data and multi-agency ambient environmental monitoring data) to identify priority pollutants which are documented to be present in quantities or concentrations that may be a risk to the District's facilities or the ambient environment but not currently subject to regulation, and rank these pollutants in order of importance. As resources become available through the regulatory flexibility described above, the District will attempt to reduce discharges and emissions of these pollutants through a variety of non-traditional strategies such as pollution prevention outreach and consumer education programs. The site specific rulemaking setting forth the specific regulatory flexibility to be implemented will be developed and will ensure that the project will fully comply with applicable federal requirements under the Clean Water Act.

DATES: The period for submission of comments ends on August 7, 2000.

ADDRESSES: All comments on the proposed Final Project Agreement should be sent to:

Matthew Gluckman, USEPA, 77 West Jackson Boulevard, Chicago, IL 60604, or Chad Carbone, U.S. EPA, Room 1027WT (1802), 1200 Pennsylvania Ave., NW, Washington, DC 20460. Comments may also be faxed to Mr. Gluckman (312) 886–7804, or Mr. Carbone (202) 260–1812. Comments may also be received via electronic mail sent to: gluckman.matthew@epa.gov or carbone.chad@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed Final Project Agreement or Fact Sheet, contact: Matthew Gluckman, USEPA, 77 West Jackson Boulevard, Chicago, IL 60604 or Chad Carbone, Room 1027WT (1802) U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: http://www.epa.gov/ProjectXL. Questions to EPA regarding the documents can be directed to Matthew Gluckman at (312) 886–6069 or Chad Carbone at (202) 260–4296. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy, Economics and Innovation, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Room 1029WT (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at *http://www.epa.gov/ProjectXL.*

Dated: July 18, 2000.

Christopher Knopes,

Acting Deputy Associate Administrator, Office of Policy, Economics and Innovation.

[FR Doc. 00–18638 Filed 7–21–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Thursday, July 27, 2000, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Proposed Amendment to Part 308, Rules of Practice and Procedure, to implement the requirements of the Program Fraud Civil Remedies Act.

Memorandum and resolution re: Final Amendment to Part 360, Resolution and Receivership Rules, Regarding the Treatment of Securitizations and Participations in Conservatorships and Receiverships.

DISCUSSION AGENDA: Memorandum re: Decision and Order Regarding Inconsistencies Between Iowa Law and National Depositor Preference Statute.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 20, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–18746 Filed 7–20–00; 2:12 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 8, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. George Vibbert, Jr., Tullahoma, Tennessee; Elwanda Vibbert, Tullahoma, Tennessee; Faye Sawyer Stynchula, Isle of Palms, South Carolina; Sam Sawyer, Tullahoma, Tennessee; Marvin Norman Sawyer, Scottsboro, Alabama; and Dr. Tulio Figarola, Huntsville, Alabama; all to retain voting shares of American City Bancorp, Inc., Tullahoma, Tennessee, and thereby indirectly retain voting shares of American City Bank, Tullahoma, Tennessee.

Board of Governors of the Federal Reserve System, July 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18634 Filed 7–21–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice

President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. The Exchange Bankshares, Inc., Estill, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Exchange Bank, Estill, South Carolina.

2. Friedman, Billings, Ramsey Group, Inc., and its subsidiaries, FBR Bancorp, Inc.; Money Management Associates, Inc.; and Money Management Associates (LP), Inc.; of Arlington, Virginia; to become bank holding companies by acquiring 100 percent of the voting shares of Rushmore National Bank, Bethesda, Maryland (successor by conversion of Rushmore Trust and Savings, FSB, Bethesda, Maryland, to a national bank).

In connection with this application, Friedman, Billings, Ramsey Group, Inc., Arlington, Virginia, also has applied to retain 6.34 percent of the voting shares of Pocahontas Bancorp, Inc., Pocahontas, Arkansas, and its sole thrift subsidiary, Pocahontas Federal Savings and Loan Association, Pocahontas, Arkansas, and thereby engage in owning shares in a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Firstrust Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Metro Bank, Kenner, Louisiana.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Advantage Bancorp, Inc., Woodbury, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Advantage Bank, Loveland, Colorado, a de novo bank in organization.

2. Commerce Financial Corporation Employee Stock Ownership Plan, Topeka, Kansas; to become a bank holding company by acquiring at least 25.65 percent of the voting shares of Commerce Financial Corporation, Topeka, Kansas, and thereby indirectly acquire Commerce Bank and Trust, Topeka, Kansas.

In connection with this application, Applicant and Commerce Financial Corporation, Topeka, Kansas, also has applied to retain an additional 19.63 percent, for a total of 29.03 percent, of the voting shares of Financial Institution Technologies (also known as Suntell, Topeka, Kansas), and thereby engage in data processing activities, pursuant to § 225.28(b)(14)(i)(A) of Regulation Y.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Buffalo National Bancshares, Inc., Buffalo, Minnesota, and thereby indirectly acquire voting shares of The Buffalo National Bank, Buffalo, Minnesota.

Board of Governors of the Federal Reserve System, July 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18632 Filed 7–21–00; 8:45 am]

BILLING CODE 6210–01–U

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 2000.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. USABancShares.com, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, Bondsonline Group, Inc., Mercer Island, Washington, in brokerage activities, investment banking, and information services, pursuant to §§ 225.28(b)(7) and (b)(8) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18633 Filed 7–21–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–41]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Key Informant Interviews to Identify the Barriers to the Implementation of the New Targeted Testing and Treatment of Latent TB Infection Recommendations—NEW—In April 2000, the Centers for Disease Control and Prevention (CDC) and the American Thoracic Society (ATS) issued new recommendations for targeted tuberculin testing and treatment regimens for persons with latent tuberculosis infection (LTBI.) The

CDC's National Center for HIV, STD, and TB Prevention (NCHSTP), Division of Tuberculosis Elimination (DTBE) proposes to collect data to identify potential barriers to the acceptance, implementation, and adherence to targeted testing and treatment of LTBI guidelines.

The specific purpose of this research is:

A. Identify barriers to acceptance, implementation, and adherence to the new targeted testing and treatment of LTBI recommendations.

B. Identify possible education and communication messages, materials, and behavior change strategies to overcome those barriers.

C. Identify acceptable dissemination and media channels.

Approximately, one hundred key-informant telephone interviews with physicians who evaluate tuberculin skin test results and make treatment decisions for individuals with LTBI will be conducted. The target group will include physicians who work in the private sector and public sector in urban and rural areas from throughout the United States.

The total cost to the Federal government is estimated at $50,000, which includes contract staff and respondent incentives. Key informant respondents will receive an incentive of approximately $100 to participate in the telephone interview. Using an estimated cost of $100 per hour, approximately 100 physicians will participate as interview respondents; it is estimated their burden will be one hour and their cost burden will be $100 (per respondent.) The total estimated cost to all respondents is $10,000. The total burden hours are estimated to be 100.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Physicians (interviewed)	100	1	1	100
Total				100

Dated: July 18, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–18660 Filed 7–21–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Centers for Disease Control and Prevention

[Program Announcement 00136]

HIV/AIDS Prevention Program Development and Technical Assistance Collaboration for Public Health Laboratory Science With Countries Targeted by the Leadership and Investment in Fighting the Epidemic (LIFE) Initiative; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for HIV/AIDS Prevention Program Development and Technical Assistance Collaboration with Countries Targeted by the LIFE (Leadership and Investment in Fighting an Epidemic) Initiative.

In July 1999, the United States (U.S.) Government announced the LIFE Initiative to address the global AIDS pandemic. The LIFE initiative, an effort to expand and intensify the global response to the growing AIDS pandemic and its serious impact, is part of the U.S. Government's participation in the International Partnership Against HIV/AIDS in Africa (IPAA). A central feature of the LIFE Initiative is a $100 million increase in US support for sub-Saharan African countries and India, which are working to prevent the further spread of HIV and to care for those affected by this devastating disease. This additional funding is a critical step by the U.S. Government in recognizing the impact that AIDS continues to have on individuals, families, communities and nations responding to the imperative to do more. The Department of Health and Human Services (HHS), through its agency the Centers for Disease Control and Prevention (CDC) is administering $35 million of the $100 million allocated to the LIFE Initiative by Congress in November 1999.

The purpose of the program is to support HIV/AIDS prevention program development and technical assistance for countries designated as LIFE countries by the United States Congress. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India. The countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active.

The goals of this program are to address and support three program elements of the LIFE initiative: Primary Prevention, Capacity and Infrastructure Development, and Community and Home-Based Care and Treatment. This program announcement calls for the delivery of HIV/AIDS prevention program development and technical assistance to the LIFE countries through a variety of recipient activities. The result will be enhancement of the skills of officials from LIFE country national AIDS control programs in strategic planning, implementation, evaluation, and communication relating to HIV/AIDS prevention and care programs.

B. Eligible Applicants

Assistance will be provided only to the Association of Public Health Laboratories (APHL) for this project. No other applications are solicited or will be accepted. APHL is the appropriate and only qualified agency to provide the services specified under this cooperative agreement because:

1. APHL is the only officially established organization that represents public health laboratory science practitioners. As such, APHL represents officials from throughout the U.S. who have responsibility for all aspects of public health laboratory science practice, education and management to ensure excellent, accessible cost-effective laboratory services for the consumers of health care.

2. This places APHL in a unique position to act as a liaison between state and territorial public health laboratorians and LIFE country public health officials. In addition, the same set of knowledge, skills, and abilities APHL represents (through its members' expertise) are of critical importance in improving the capacity of public health

laboratories in African countries and India.

3. Health threats such as HIV are not confined by geographic boundaries. APHL was formed to promote coordination of HIV/AIDS public health laboratory efforts among the States and territories. The organization is uniquely positioned to collaborate not only with national organizations, including Federal agencies, but also with national AIDS control program officials in the LIFE countries, on policy and program issues from a U.S.-government model, multi-state perspective. In this collaboration APHL is positioned to monitor, assess, and improve HIV/AIDS-related laboratory design, implementation, and evaluation in the LIFE countries.

4. APHL is uniquely qualified to assure the provision of technical assistance to public health laboratories domestically; therefore, APHL is uniquely positioned to provide CDC technical assistance by serving as a liaison between State and territorial public health laboratory officials and officials of national AIDS control programs in the LIFE countries. In the U.S., APHL coordinates the efforts of HIV/AIDS public health laboratory directors, who work together with CDC to monitor the public health laboratories across States and territories, share successes and challenges, monitor issues and obstacles to implementation of effective interventions, provide technical assistance and consult with CDC, one another, and other governmental and non-governmental prevention partners on these issues. Therefore APHL possesses unique knowledge and insight that can be applied to the LIFE initiative through the provision of technical assistance aimed at strengthening the ability of national AIDS control programs to design, develop, implement, and maintain HIV/AIDS public health laboratories based on the best practices of U.S. state and territory programs.

5. It is critical that APHL conducts these services since it represents the HIV/AIDS public health laboratory directors who oversee and deliver HIV testing analysis. Since APHL represents the HIV/AIDS public health laboratory directors who have responsibility for HIV testing analysis within their jurisdictions, it is the only organization that can work collaboratively with individual AIDS Directors to provide multi-jurisdiction perspectives and translate knowledge, skills, and abilities to national AIDS control program officials in the LIFE countries.

6. APHL has already established mechanisms for communicating HIV/AIDS laboratory practice information to the States and the political subdivisions of the States that carry out the Nation's HIV/AIDS public health laboratory programs. They can use these mechanisms to exchange information between the States and public health officials in the LIFE countries to identify and develop effective public health laboratory information networks and dissemination systems. Because of their experience and established communications mechanisms, APHL is in a unique position to assist national AIDS control program officials with the dissemination of HIV/AIDS laboratory practice information within their respective country settings.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to support this award. It is expected that the award will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements. However, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.) Peer-to-peer training, technical assistance, and other activities (including but not limited to those described below under Program Requirements—Recipient Activities) conducted outside the U.S. by persons under this award are limited to forty-five (45) days per person per year.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Scroll down the page, then click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, MailStop E–15, Atlanta, GA 30341–4146; Telephone (770) 488–2736; E-mail address: dpr7@cdc.gov.

Programmatic technical information may be obtained from: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E–07, Atlanta, GA30333; Telephone number (404) 639–8906; E-mail address: lfw0@cdc.gov.

Dated: July 18, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–18595 Filed 7–21–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Translation Advisory Committee for Diabetes Prevention and Control Programs.

Times and Dates: 9 a.m.–6 p.m., August 29, 2000. 9 a.m.–1 p.m., August 30, 2000.

Place: Sheraton Buckhead Hotel, 3405 Lenox Road, Atlanta, Georgia 30326; telephone: 404–261–9250.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and

organization of resources, maintains liaison and coordination of programs within the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

Matters To Be Discussed: Primary Prevention of Type 2 Diabetes—A Public Health Perspective.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Norma Loner, Committee Management Specialist, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–10, Atlanta, Georgia 30341–3717, telephone 770/488–5376.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–18596 Filed 7–21–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1:30 p.m.–5 p.m., August 15, 2000. 8:30 a.m.–3:30 p.m., August 16, 2000.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Closed: 2:45 p.m.–5 p.m., August 15, 2000, and 8:30 a.m.–9 a.m., August 16, 2000; Open: 1:30 p.m.–2:45 p.m., August 15, 2000, and 9 a.m.–3:30 p.m., August 16, 2000.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters To Be Discussed: The meeting will convene in closed session from 2:45 p.m. to 5 p.m. on August 15, 2000. The purpose of this closed session is for the Science and Program Review Work Group (SPRWG) to consider injury control research grant applications recommended for further consideration and the results of several site visit reports. On August 16, 2000, from 8:30 a.m. to 9 a.m., the ACIPC voting members will convene in closed session to vote on a funding recommendation and results of the site visit reports. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463. Prior to the SPRWG closed session, there will be a program oversight session which will include announcements, updates, and an overview of National Center for Injury Prevention and Control (NCIPC) Division of Violence Prevention Activities and priorities for intimate partner violence and youth violence. The Committee will also discuss (1) an update from the Acting Director, NCIPC; (2) current and future child occupant protection activities; and (3) reports from the August 15 meetings of the Subcommittee on Family and Intimate Violence Prevention and SPRWG.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2000.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–18599 Filed 7–21–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4601–N–02]

Notice of Extension of Application Period for the Opportunity to Serve on the U.S.-Israel Bi-National Commission on Housing and Community Development

AGENCY: Office of International Affairs under the Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: On June 26, 2000, HUD published a notice that announced the opportunity for individuals to apply to serve on the U.S.-Israel Bi-National Commission on Housing and Community Development. The application period was scheduled to end on July 26, 2000. This notice extends the deadline to apply for this U.S.-Israel Bi-National Commission until August 28, 2000. The June 26, 2000 notice provides the selection and eligibility requirements for serving on the commission.

DATES: August 28, 2000. In order to receive full consideration, requests must be received by HUD no later than August 28, 2000.

ADDRESSES: Please send your requests for consideration to U.S.-Israel Bi-National Commission, U.S. Department of Housing and Urban Development, Office of International Affairs, Room 8116, 451 Seventh Street, SW, Washington, DC 20410. You may fax your request to (202) 708–5536 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: John Geraghty, U.S. Department of Housing and Urban Development, Office of International Affairs, Room 8116, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–0770 (telephone), (202) 708–5536 (fax) (these are not toll-free numbers). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 26, 2000 (65 FR 39419), HUD published a notice that provided the opportunity for individuals to apply to serve on the U.S.-Israel Bi-National Commission on Housing and Community Development and announced the selection and eligibility requirements. The Commission will consist of U.S. and Israeli representatives from the housing, real estate, community development, finance, and construction sectors.

The application period for this U.S.-Israel Bi-National Commission was scheduled to end on July 26, 2000. In order to give more people the opportunity to apply, the Department has decided to extend the deadline of the application period to August 28, 2000.

Dated: July 19, 2000.

Susan Wachter,

Assistant Secretary for Policy, Development and Research.

[FR Doc. 00–18727 Filed 7–20–00; 11:48 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Base Membership Roll of the Catawba Indian Nation (Formerly Known as the Catawba Tribe of South Carolina)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On December 22, 1999, the Bureau of Indian Affairs published in the **Federal Register** (64 FR 71816) a notice of the proposed final base membership roll and membership appeal procedures of the Catawba Indian Nation of South Carolina (formerly known as the Catawba Tribe of South Carolina). This notice announces the final base membership roll of the Catawba Indian Nation of South Carolina.

FOR FURTHER INFORMATION CONTACT: LeAnn Bennett, Bureau of Indian Affairs, Tribal Relations Branch, Eastern Region, Mailstop 260–VA SQ, 3701 North Fairfax Drive, Arlington, VA 22203. Telephone number: (703) 235–3006.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 7 of the Act of October 27, 1993 (Pub. L. 103–116; 107 Stat. 1124) and in exercise of the authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Section 7 of the Act of October 27, 1993 (Act), Pub. L. 103–116, 107 Stat. 1124, directs the Secretary of the Department of the Interior (Secretary) to compile a final base membership roll of members of the Catawba Indian Nation and to publish it in the **Federal Register** and in three newspapers of general circulation in the Catawba Indian Nation's service area. The purpose of the final base membership roll is to identify individuals eligible for participation in the distribution of funds from the Per Capita Trust Fund established under Section 11(h) of the Act. To be eligible for inclusion on the final base membership roll, individuals must have been living on October 27, 1993, must be listed on or be lineal descendants of persons listed on the membership roll published by the Secretary in the **Federal Register** on February 25, 1961, or the Catawba Executive Committee must have determined that a particular individual, or his or her lineal ancestors, should have been listed on the 1961 membership roll, but was not.

The following is the final base membership roll of the Catawba Indian Nation of South Carolina and is final for purposes of the distribution of funds from the Per Capita Trust Fund established under Section 11(h) of the Act of October 27, 1993 (Pub. L. 103–116; 107 Stat. 1124).

Dated: July 14, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

Final Base Membership Roll of the Catawba Indian Nation of South Carolina

1. Adams, Aaron
2. Adams, Amanda Brooke
3. Adams, Andre Darris
4. Adams, Christina Elizabeth
5. Adams, Clarence Roddey
6. Adams, Dewey Lee
7. Adams, Franklin Douglas Jr.
8. Adams, Franklin Douglas Sr.
9. Adams, Glenda Naomi
10. Adams, Jaimie She
11. Adams, James Robert
12. Adams, Kimberly Denise
13. Adams, Laura Elizabeth
14. Adams, Mammie Blue
15. Adams, Nelson Judson (Judd)
16. Adams, Thomas Chadwick Jr.
17. Adams, Tyler Lee
18. Adams, Vicky Michelle
19. Adkins, Judy Gail
20. Adkins, Robert Alvin Jr.
21. Adkins, Sharon Gwen
22. Albertson, Brandon Lee
23. Aldridge, Charles Anthony
24. Aldridge, Christopher Lee
25. Alexander, Nona Medlin
26. Allen, Brittany
27. Allen, Devin Michael
28. Allen, Henry Lester Jr.
29. Allen, Kristin
30. Allen, Pheobia Lucinda
31. Anderson, Betty Jo
32. Aos, Angela Marie
33. Armenta, Ana Sopia
34. Armenta, Holly Diana
35. Armenta, Jose Javier
36. Atkinson, Aletta Michele
37. Austin, Hollie Leigh
38. Austin, Jason Eugene
39. Auten, Amy Carrie
40. Auten, Shirley Mae
41. Ayers, Alan Don
42. Ayers, Amy Lynn
43. Ayers, April Leigh
44. Ayers, Ashley Elizabeth
45. Ayers, Avery Stuart
46. Ayers, Claude Kenneth (J.C.)
47. Ayers, Dennis Ervin
48. Ayers, Ernest Wade Jr.
49. Ayers, Foxx E.
50. Ayers, Jacob Mitchell
51. Ayers, Jessica Lynne
52. Ayers, John
53. Ayers, Johnnie Nelson Jr.
54. Ayers, Johnnie Nelson Sr.
55. Ayers, Ralph Lewis
56. Ayers, Robert Heber
57. Ayers, Roger Dale
58. Ayers, Sara H.
59. Ayers, William Frell Jr.
60. Bagley, Doniece
61. Bagley, Jacqueline Diane
62. Bagley, John Wayne
63. Bailey, Amanda Marie
64. Bailey, Dain Adrain
65. Bailey, Fanchon Alicia
66. Bailey, Jan
67. Bailey, Jason Wade
68. Bailey, Karen Angela
69. Bailey, Michael LeRoy Jr.
70. Bailey, Robert Wayne
71. Bailey, Tamara Shannon Nicole
72. Baird, April Marie
73. Baird, Kimberly Denise
74. Baird, McRandall Laurance Jr.
75. Baker, Ashley Mechele
76. Baker, Cindy Renee
77. Baker, Jonathan Wayne
78. Baker, Kathy Evonne
79. Baker, Matthew Bradley
80. Baker, Robert Dale
81. Baker, Sally Elaine
82. Barber, David Kyle
83. Barber, Trina Kaye
84. Barker, Barbara Jean
85. Barker, Brandon Luke
86. Barnes, Cory Neil
87. Barnes, Justin Mark
88. Barnes, Sharon Jean
89. Barnes, Tiffany Michelle
90. Basha, Shelby Nicole
91. Bauer, JoAnn Carol Jean
92. Bauer, Lawrence Peter III
93. Baumgardner, Amanda Nicole
94. Baumgardner, Ashlie Kay
95. Baumgardner, Cheryl Ann
96. Baumgardner, Harlie Kristina
97. Baumgardner, Robert Dale
98. Baumgardner, Teresa Marie
99. Baumgardner, William Arthur Jr.
100. Beck, Calvin Trevor
101. Beck, Daniel Tyler
102. Beck, Donald Jeffery
103. Beck, Duane Early
104. Beck, Fletcher B.
105. Beck, Fletcher Calvin
106. Beck, Gerald Sr.
107. Beck, Gerald Leon III

108. Beck, Gerald Leon Jr.
109. Beck, Jason Roderick
110. Beck, Jennifer Ann
111. Beck, Jeremy Ryan
112. Beck, John C.
113. Beck, John Clarence Jr.
114. Beck, John Henry
115. Beck, Karen Beth
116. Beck, Kellon Taylor
117. Beck, Kimberly Lynn
118. Beck, Lula S.
119. Beck, Major H.
120. Beck, Margaret Helen
121. Beck, Matthew Kyle
122. Beck, Michael Trey
123. Beck, Mindy Sue
124. Beck, Randall Scott
125. Beck, Roderick Neil
126. Beck, Ronald Lee Jr.
127. Beck, Ronald Lee Sr.
128. Beck, Ronnie Lee
129. Beck, Samuel John
130. Beck, Samuel Michael
131. Beck, Samuel Mitchell
132. Beck, Steven Ryan
133. Beck, Tammy Rae
134. Beck, Tara Michele
135. Beck, Tiffanie Denise
136. Beck, Tony Leon
137. Bell, Amber Delora
138. Bell, Colette Williams
139. Bennett, Timothy Wade
140. Bibb, Garrett Spenser
141. Bibb, Patricia Dawn
142. Bibb, Sean Andrew
143. Bibb, Wanda Sue
144. Bickett, Mary Leigh Ann
145. Biggers, Lewis Steven
146. Biggerstaff, Alicia Beth
147. Bishop, Lillie
148. Bjorklund, Cheryl June
149. Black, Christopher Steven
150. Black, Dicy Anna
151. Black, Dustin Shane
152. Black, Jerry Kieth Jr.
153. Blackmon, Baer Brian
154. Blackmon, Donna Lynn
155. Blackmon, Marissa Ann
156. Blackwell, Brandon Dean
157. Blackwell, James Harold
158. Blackwell, Tammy Anise
159. Blackwell, Tammy Lynn
160. Blackwood, Elizabeth Cabaniss
161. Blue, Andrew Gene
162. Blue, Arnold Lee Jr.
163. Blue, Betty
164. Blue, Bobby Everette
165. Blue, Bobby Reid
166. Blue, Carson Taylor
167. Blue, Charles Patrick
168. Blue, Christopher Larson
169. Blue, Christy Shanon
170. Blue, Danna Lynn
171. Blue, Douglas Keith
172. Blue, Gilbert B.
173. Blue, Glenn Taylor
174. Blue, Gracia Kathleen
175. Blue, Harry Reid
176. Blue, Heather Ashley
177. Blue, Henry Leroy
178. Blue, Herbert Roosevelt
179. Blue, Jeffrey Travis
180. Blue, Jessica Leann
181. Blue, Jonathan Aaron
182. Blue, Kalah Danielle
183. Blue, Karen Denise
184. Blue, Kelly Labrian
185. Blue, Mildred Louise
186. Blue, Nathan Taylor
187. Blue, Nathan Timothy
188. Blue, Randall Lavon Jr.
189. Blue, Randall Lavon Sr.
190. Blue, Rebecca Dyann
191. Blue, Samuel Andrew Wheelock
192. Blue, Steven Shawn
193. Blue, Timothy Everett
194. Boatwright, Tanya Marie
195. Bodiford, Bruce Marvin
196. Bodiford, Donald Bruce
197. Bodiford, Hazel Dewey
198. Bodiford, Ted Dewey
199. Bodiford, Terriol James (Terry)
200. Bolick, Beronica Lynn
201. Bolick, Kimberly Michelle
202. Bolick, Robert Eugene III
203. Boone, Brandy LeShae
204. Boone, Cynthia Dawn
205. Boone, Jimmy David
206. Boone, Joshua Wayne
207. Bouler, Thomas Dean
208. Bouler, Tony Alan Jr.
209. Bowers, Melinda Lou
210. Boyd, Debora Darlene
211. Boyd, Shannon Nicole
212. Brackett, Tehra Jansen
213. Brackett, Tyson Wade
214. Brackett, Vicky Jane
215. Bradburn, Edwin Scott
216. Bradburn, Jamie Gayle
217. Braddy, Bryan Reid
218. Braddy, Shayne Michelle
219. Bradley, Clifford Dean Jr.
220. Bradley, Crystal Renee
221. Bradley, Desmon Ryan
222. Bradley, Louise Michele
223. Bradley, Robert Dwayne
224. Bradley, Susan D.
225. Brady, Michael Scott
226. Branham, Anna Maria
227. Branham, Charlotte Ann
228. Branham, Kristopher Lee
229. Branham, Oliver Lee
230. Branham, Rodney Holden
231. Branham, William Lamont
232. Brazell, Della Melissa
233. Brazell, Edward Howard Jr.
234. Brazell, Patsy Denise
235. Brazell, Patty Darnell
236. Breakfield, Laura Kay
237. Brezeale, Christy Lee
238. Bridges, Ellen
239. Brindle, Carl
240. Brindle, Frank Wayne
241. Brindle, Jason Carl
242. Brindle, Jennifer Lynn
243. Brindle, Lorinda Ann
244. Brindle, Melvin Lester
245. Brindle, Missouri Elizabeth
246. Brindle, Patrica Lucille
247. Brindle, Walter Andrew Jr.
248. Brindle, Walter Andrew Sr.
249. Brooks, Arthur Dale
250. Brooks, Christopher Thomas
251. Brooks, Janice Amelia
252. Brooks, Joseph Lee
253. Brown, Arnold Dean
254. Brown, Bobby Norman
255. Brown, Brandon Tyler
256. Brown, Chelsee Ann
257. Brown, Christopher Ethan
258. Brown, David Lee
259. Brown, David Warren
260. Brown, Donald Lester Jr.
261. Brown, Donald Lester Sr.
262. Brown, Donald Richard
263. Brown, Drequanna Marie
264. Brown, Eric Lee
265. Brown, Gary Wayne
266. Brown, Gary William
267. Brown, Harold Dean
268. Brown, Hazel Edward Jr.
269. Brown, Hazel Edward Sr.
270. Brown, James Vernon
271. Brown, Janet
272. Brown, Jessica Elizabeth
273. Brown, Jessica Wenonah
274. Brown, Jessie Thomas
275. Brown, Joel Lee
276. Brown, John Edward
277. Brown, John Jeffrey
278. Brown, John Samuel Jr.
279. Brown, Jonathan Richard
280. Brown, Joshua Wayne
281. Brown, Karen Diane
282. Brown, Kathleen Rogers
283. Brown, Kayla Michelle
284. Brown, Kelly Marie
285. Brown, Leola George
286. Brown, Lewis Herman II
287. Brown, Lewis Herman Sr.
288. Brown, Mandy Marie
289. Brown, Mary Lynn
290. Brown, Melissa Michelle
291. Brown, Michael Edward Jr.
292. Brown, Michael Edward Sr.
293. Brown, Michael Wayne
294. Brown, Mildred Leona
295. Brown, Morgan Ramsey
296. Brown, Myra Edith
297. Brown, Nancy Mae
298. Brown, Otis Roddey
299. Brown, Otis Wayne
300. Brown, Owen Keith
301. Brown, Patrick Neal
302. Brown, Paula Delores
303. Brown, Robbie Lee
304. Brown, Robert Stephen
305. Brown, Roddey Alan
306. Brown, Sally Edith
307. Brown, Sandy Michelle
308. Brown, Scotty Eugene
309. Brown, Stephanie Nicole
310. Brown, Tammy Ann
311. Brown, Teresa Diane
312. Brown, Tommy Clyde
313. Brown, Troy Dean
314. Brown, Troy Gene

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315. Brown, Whitney Marie
316. Brown, William
317. Brown, William Clifford
318. Brown, William Larry
319. Brown-Gunderson, Sue
320. Bruce, Donna Jo
321. Bryson, Ina Mahovie
322. Bryson, Kevin Ray
323. Bryson, Myrtle Blanche
324. Bryson, Sanford Anzle Jr.
325. Bryson, Stanley Anzle
326. Bryson, Tasha Lynn
327. Bryson, Trisha Anzle
328. Bucca, Connie Patricia
329. Buckaloo, Eula Kay
330. Buckaloo, Mark Anthony Jr.
331. Buckaloo, Nicholas Cody
332. Buckley, Micheal Loraine
333. Bullin, Jai Anne
334. Burciago, Carol O.
335. Burgess, Angela Renee
336. Burgess, Tondia Carol
337. Burnett, Patricia Ann
338. Burnett, Teresa Mae
339. Burns, Andrew Scott
340. Burns, Christopher
341. Burns, Janie Rose
342. Burns, Kenneth Allen Jr.
343. Burns, Lizzie Jane
344. Burns, Scott Dennis
345. Burris, Brittany Susan
346. Burris, Kimberly Susan
347. Burris, Matthew Douglas
348. Burrows, Stephen Courtney Jr.
349. Burton, Angela Deniece
350. Burton, Jacqueline Louise
351. Burton, Matthew David
352. Byers, Daniel William
353. Byers, Roger James
354. Byrd, Marsha
355. Byrd, Timothy James
356. Cabaniss, Amanda Jo
357. Cabaniss, Courtney Paige
358. Cabaniss, Daniel Hargrove
359. Cabaniss, Jennifer Dawn
360. Cabaniss, Marcille
361. Cabaniss, Mary Cathryn
362. Cabaniss, Nicole Beth
363. Cabaniss Thomas
364. Cabaniss, William Forrest Jr.
365. Cabaniss, William Heath
366. Cabaniss, Zoe Marie
367. Cagle, Angela Delphine
368. Cameron, Jessica Ann
369. Cameron, Sandra K.
370. Cameron, Walter Joseph
371. Campbell, Damien Allen
372. Campbell, Edwin
373. Campbell, Edwin Alan
374. Campbell, Ella Ricky
375. Campbell, Nola
376. Campbell, Paul Edward
377. Campbell, Phillip Christopher
378. Campbell, Rita Fay
379. Campbell, Susan Juanita
380. Campbell, Zachery Lee
381. Canfield, Steven Terrivo
382. Canty, Alonzo George Jr.
383. Canty, Alva B.
384. Canty, Alvin Huey
385. Canty, Amelia Brooke
386. Canty, Angel Marie
387. Canty, Anthony Scott
388. Canty, April Denise
389. Canty, Billy Huey
390. Canty, Billy Jack
391. Canty, Bobby Dean
392. Canty, Carolyn Denise
393. Canty, Catherine
394. Canty, Cecil
395. Canty, Charles Ray
396. Canty, Cheyenne
397. Canty, Christopher Chad
398. Canty, Christopher Lance
399. Canty, Christopher Lee
400. Canty, Clifford Troy
401. Canty, Colond Lee George
402. Canty, Curtis Ray Jr.
403. Canty, Curtis Ray Sr.
404. Canty, Diane Renee
405. Canty, Eddie Henderson
406. Canty, Edwin Bruce
407. Canty, Emily Louise
408. Canty, Eric Jerome
409. Canty, Erica Rose
410. Canty, Erin Melissa
411. Canty, Heyward Jackson Jr.
412. Canty, Huey Columbus
413. Canty, James Eugene
414. Canty, James Henry
415. Canty, Jamie Dawn
416. Canty, Jared Scott
417. Canty, Jarom Dean
418. Canty, Jeffrey Neal
419. Canty, Jessica Lynn
420. Canty, Jessica Mishelle
421. Canty, Jessica Suzan
422. Canty, Johnathon Kyle
423. Canty, Jonathan Jered
424. Canty, Kathryn Ryan
425. Canty, Kathy Elizabeth
426. Canty, Lawrence Laverne Jr.
427. Canty, Lawrence Laverne Sr.
428. Canty, Leonard James
429. Canty, Leonard Taylor
430. Canty, Lisa Marie
431. Canty, Marcus LaCurt
432. Canty, Marion Thomas
433. Canty, Martha Nicole
434. Canty, Natalie Shawnte
435. Canty, Quinlan Russell Schutte
436. Canty, Rebecca Ann
437. Canty, Rhonda Renee
438. Canty, Robert Kirk
439. Canty, Roger B.
440. Canty, Ronald Vance
441. Canty, Scott Dell
442. Canty, Shaun Travis
443. Canty, Stephanie Britt
444. Canty, Steven Ray
445. Canty, Suzanne Marie
446. Canty, Teresa Diane
447. Canty, Timothy Dean
448. Canty, Timothy Joseph
449. Canty, Wallace Lee Jr.
450. Canty, Wallace Lee Sr.
451. Caponis, Jennifer Anne
452. Caponis, John Alvin
453. Caponis, Reina
454. Carlton, Johni Rae
455. Carnwath, Danielle Nicole
456. Carpenter, Christopher Sylvanus Jr.
457. Carpenter, Jane Dilling
458. Carpenter, Paul Michael
459. Carpenter, Timothy Joseph
460. Carroll, Amber Nichole
461. Carroll, Ernest Haskel III
462. Carroll, Karen Elaine
463. Carter, Janice Dorenda
464. Cartwright, Jeremy Shawn
465. Carver, Hailey Nicole
466. Carver, Jack Monroe Jr.
467. Carver, Jacqueline Delores
468. Carver, Kenneth Wayne
469. Carver, Kristen Danielle
470. Carver, Mary Delores
471. Carver, Tracy Lynn
472. Casler, Crystal
473. Castagna, Loren Naomi
474. Castagna, Matthew Joseph
475. Castagna, Rachel Loren
476. Castagna, Samuel Beck
477. Castagna, Zachary Michael
478. Catoe, Christopher Joseph
479. Catoe, Cierra LeAnn
480. Catoe, Donald Lloyd Jr.
481. Catoe, Herbert Pascal
482. Catoe, Leslee June
483. Catoe, Richard David Jr.
484. Catoe, Thomas Lee
485. Catoe, William Brad
486. Caudle, April Leann
487. Caudle, Cammie Lynn
488. Caudle, Daniel Lee
489. Caudle, Edward Chris
490. Caudle, Jason Christopher D.
491. Caudle, Jennifer Rebecca
492. Caudle, Kenneth Darrell
493. Caudle, Mickem James
494. Caudle, Suzanne Nicole
495. Caudle, Sylvia
496. Cauthen, Angela Michele
497. Cauthen, Buster Ray
498. Cauthen, Kandis Brooke
499. Charles, Lyda
500. Cherry, Alice Elaine
501. Cherry, Donald Ray
502. Cherry, Eula May
503. Cherry, Heather Rene
504. Cherry, James Columbus Jr.
505. Cherry, Jennifer Elaine
506. Cherry, Jimmy Dean
507. Cherry, Scotty Ray
508. Childers, Stacy Paige
509. Childers, Teressa Annette
510. Cinqmars, Beverly Francine
511. Cinqmars, Brian Matthew
512. Cinqmars, Ryan Daniel
513. Clark, Nathan Lee Jr.
514. Cline, Damaris Ruth
515. Cline, James Patrick Jr.
516. Cline, Michael Paul
517. Cline, Shirley Lynn
518. Colley, Andrew Steven
519. Colley, Jose Sandoval III
520. Colley, Kristine Elizabeth
521. Colley, Mary Elizabeth

522. Collins, Daniel Howard
523. Collins, James David
524. Colter, Jessica Rey
525. Cookson, Christene Lee
526. Cookson, Christian Darryl
527. Cookson, Corey A
528. Cookson, Jeremy R.
529. Cookson, Jewell Shirley
530. Cookson, Ricardo Harris
531. Cooper, David Lee
532. Cooper, Erica Shawta
533. Cooper, Lisa Maureen
534. Coppersmith, Amy Nadine
535. Corbridge, Nicole Leigh
536. Corbridge, Sandra Marlene
537. Corder, Audrianna Christine
538. Corder, Cecil Idus
539. Corder, Christopher W.
540. Corder, James Ralph Jr.
541. Corder, Joyce I.
542. Corder, Joyce M.
543. Cornwell, Hollis Jordan
544. Cornwell, Tonya Nichol
545. Crawford, Julia May
546. Crawford, Justin Bryant
547. Crawford, Tammy Renee
548. Creel, Mary-Jo Anne
549. Crisco, Deborah Mae
550. Croft, James Franklin
551. Croft, John Pearley
552. Crytser, James Oliver
553. Crytser, Melissa Dawn
554. Crytser, Randy Wayne
555. Crytser, Wayne Alexander
556. Culbertson, Jason Eric
557. Culbertson, Mark Warren Jr.
558. Curtis, Carl Nathan
559. Curtis, Derrick John
560. Curtis, Donna Beck
561. Curtis, Michael Shannon
562. Curtis, Naomi Christine
563. Dabney, Aaron John
564. Dabney, Alan Dwayne
565. Dabney, Jessica Danielle
566. Dabney, Meredith Lindsay
567. Davis, Andrew Wayne
568. Davis, Barry Joseph
569. Davis, Carlene Renee
570. Davis, Christina Renee
571. Davis, Danelle Hazel
572. Davis, Desiree Melinda
573. Davis, Frances L.
574. Davis, Freddie D. Horne
575. Davis, Jayson Lee
576. Davis, Kimberly Denise
577. Davis, Laura Mae
578. Davis, Lilly Ann
579. Davis, Ronald Lee Jacob
580. Davis, Shane Christopher
581. Davis, Sharon Melinda
582. Davis, Tiffany Nicole
583. Deal, Daylon Gene
584. Deal, Stephen Brian
585. Deal, Susan
586. Deal, Waylon Dean
587. Dietrich, Shana Nicole
588. Dietrich, Wanda Jean
589. Dixon, Olivia Grace
590. Dodrill, Tamara Lynn
591. Dorman, Valerie Francine
592. Dorsey-Beck, Eric Mitchell
593. Doster, Teresa Louise
594. Doster, Wanda Renee
595. Dresser, Seth Martin
596. Dresser, Victoria Yvonne
597. Driggers, Angela Marie
598. Driggers, Betty
599. Driggers, Judy Patricia
600. Driggers, Marvin Henry Jr.
601. Dunnells, Amanda Michelle
602. Dunnells, Jeffery Allan
603. Dunnells, Kenneth Wesley
604. Eagan, Tonya Marie Ensley
605. Edgar, Sandra
606. Edington, Patricia Lynn
607. Edwards, Amanda Lynne
608. Edwards, Cara Michelle
609. Edwards, Cindy Lee
610. Edwards, Robert Daniel
611. Edwards, Robert Tyler
612. Ehman, Dean Michael
613. Elkins, Mary Jane
614. Ellison, Elizabeth Leigh-Ann
615. Ellison, Richard William II
616. Esplin, Alice Kris
617. Esplin, Colton Harris
618. Esplin, Kelsey Caroline
619. Evans, David Dewayne Jr.
620. Evans, Holley Amanda
621. Evans, Kelly Wayne
622. Faile, Brittany Ann
623. Farmer, Clyde Eric
624. Farmer, Kathryn
625. Ferrell, Alberta Lavinia
626. Ferrell, Jerri Lee
627. Ferrell, Saleshia Zandora
628. Fincher, Annette Marie
629. Fincher, Sharon Dale
630. Fincher, Stephen Anthony Jr.
631. Fleming, Dana Meshelle
632. Ford, Branden Ray
633. Ford, Katura Ann
634. Fowler, Bobby Lee
635. Fowler, Candy Cleo
636. Fowler, Kathy Marie
637. Fowler, Nettie Jane
638. Fowler, Patrick Thorne
639. Fowler, Ricky Dean
640. Fowler, Robbie Colel
641. Fowler, Stacey Michelle
642. Fowler, Teressa Diane
643. Foxx, Antonio Basil III
644. Foxx, Antonio Basil Jr.
645. Foxx, Brittany Dawn
646. Foxx, Charles Winifred II
647. Foxx, Charles Winifred
648. Foxx, Danny Ray Jr.
649. Foxx, Danny Ray Sr.
650. Foxx, Ernest B.
651. Foxx, Ernest Ryan
652. Foxx, Jimmy Coy
653. Foxx, Joey Edward
654. Foxx, Kari Anne
655. Foxx, Kristen Michelle
656. Foxx, Leshea Breeon
657. Foxx, Lewis Angelo Basil
658. Foxx, Louis Russell
659. Foxx, Michael Wayne
660. Foxx, Nicole Cherise
661. Foxx, Steven Lewis
662. Foxx, Terrill Dwayne Jr.
663. Foxx, Terrill Dwayne Sr.
664. Foxx, Tiffany Jo
665. Foxx, William C Basil
666. Foxx, William Coon Basil Jr.
667. Foxx, William Edward Basil
668. Foxx, Willie Ray
669. Frances Hurn, Brian Jay Robert
670. Francisco, Shirley Ann
671. Franks, Tolani Rochelle
672. Frary, Christopher Paul
673. Frary, Dot Mirian
674. Funderburk, Melissa Shrake
675. Gable, Allen Wayne Jr.
676. Gaddy, Carol Ann
677. Gaillard, Angela Faye
678. Gaillard, Nancy Marie
679. Gantt, Alina Elvina
680. Gantt, Bobby Brian Jr.
681. Gantt, Jessica LeeAnn
682. Gantt, Stacy Renee
683. Garcia, Ben Jr.
684. Garcia, Betty Juanita
685. Garcia, Bonnie
686. Garcia, Edward Guy
687. Garcia, Irene Minerva
688. Garland, Steven E.
689. Garland, Vivian A.
690. Garris, Joan S.
691. Garris, Jonathan Hazel
692. Garris, Shana Louise
693. Gassert, Rita Faye
694. Gaston, Devon Michael
695. Geist, Betty Jean
696. Geist, Brian Keith
697. Geist, Nicole Lynn
698. George, Amanda Leigh
699. George, Amber Leslie
700. George, April Leigh
701. George, Audrey Dale
702. George, Brently Clark
703. George, Brooklyn Nicole
704. George, Bryan Wayne
705. George, Charles Edward
706. George, Charles Lewis
707. George, Christopher Evans
708. George, Claude Leonard
709. George, Courtney Elizabeth
710. George, Crystal Lee
711. George, Curtis Edward
712. George, Cynthia Amanda
713. George, Cynthia Annette
714. George, Eddie Mac
715. George, Elsie Blue
716. George, Emily Wycie
717. George, Evans M. (Buck) Jr.
718. George, Evelyn B.
719. George, Flonnie Evelyn
720. George, Fred Calvin
721. George, Gregory Tige
722. George, Hayley Danyale
723. George, Jennifer Annette
724. George, John Albert
725. George, John Christopher
726. George, John Earl
727. George, John Early
728. George, John Marvin

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729. George, Jonathan Nikita
730. George, Joshua Edward
731. George, Kevin Wade Jr.
732. George, Kevin Wade Sr.
733. George, Kristen Nicole
734. George, Landrum L.
735. George, Laverne Randolph Jr.
736. George, Laverne Randolph
737. George, Lawrence Howard
738. George, Leonard Chadwick
739. George, Lewis Brently
740. George, Linda Faye
741. George, Lisa Michelle
742. George, Lynda DeAnn
743. George, Marion Phillip
744. George, Marvin Kelly
745. George, Matthew Asher
746. George, Megan Nicole
747. George, Michael Allen
748. George, Moroni Taylor
749. George, Nathan Charles
750. George, Nyeoka Iona
751. George, Phillip Anthony
752. George, Phillip Dekota Two Bears
753. George, Phillip Keith
754. George, Rachel Lee
755. George, Robert Neil
756. George, Roger Wayne
757. George, Sara Louise
758. George, Shannon Leigh
759. George, Summer Lyne
760. George, Susan M.
761. George, Susan Marie
762. George, Thomas Clark
763. George, Thomas Howard
764. George, Tina Ann
765. George, Tracy Alan
766. George, William Joseph Corrichee
767. George Warren, DeLeeslin Evans
768. George Warren, K. C.
769. George Warren, Wanda
770. Gibson, Annette Maurice
771. Gibson, Fannie Lavina
772. Gibson, Frances Virginia
773. Gibson, Jason Matthew
774. Gibson, Joshua Dakota
775. Gibson, Mary
776. Gibson, Robert Reid
777. Giles, Catherine Renee
778. Giles, Christopher Ray
779. Giles, Shannon Leigh
780. Gillilan, John Strickland Jr.
781. Gillilan, Jon Allen
782. Gillilan, Matthew Ryan
783. Gillis, Dwana Menjon
784. Glenn, Tina Michelle
785. Gonzales, Donna Leola
786. Gonzales, Katrina Larae
787. Gonzales, Kimberly Dawn
788. Goodwin Frances Inez
789. Gordon, Carson Matthew
790. Gordon, Sheryl
791. Gordon, Wesley Olin
792. Graham, Jason Gregory
793. Graham, Jillian Gayle
794. Graham, Jonathon Yates
795. Graham, Joseph Gartman
796. Graham, Joshua Garrison
797. Graham, Karen Rebecca
798. Graham, Karl Ray
799. Graham, Kevin Ross
800. Graham, Kimberly Rebecca
801. Graham, Kurtis Randall
802. Green, Aaryn Rae
803. Green, Caitlin Elizabeth
804. Green, Edwin Brian
805. Green, Emma Karie
806. Green, Frederick Dane.
807. Green, Hal Ephraim
808. Green, Joyce M.
809. Green, Justin Adam
810. Green, Kelli Katherine
811. Green, Lindsay Joyce
812. Green, Norah Nicole
813. Gregory, Beverly Nicole
814. Gregory, Karen Yvonne
815. Greiner, Hazel Faye
816. Grice, Melissa Dawn
817. Grice, Robert Caelum
818. Griggs, Bonita Sue
819. Griggs, Brandon Charles
820. Griggs, Brandy Michelle
821. Griggs, Christopher Charles
822. Griggs, Miranda Christian
823. Grobusky, Charles Christopher
824. Grobusky, Joseph Stanley
825. Guinn, James Dylan
826. Gunn, Andrew Paul
827. Gunn, Angela Denine
828. Gunn, David Howard III
829. Gunn, David Howard Jr.
830. Gunn, Floyd Lee Jr.
831. Gunn, Floyd Lee Sr.
832. Gunn, Lou Ella
833. Gunn, Mary Faye
834. Gunn, Nancy Jane
835. Gunn, Nellie Faye
836. Gunn, Patricia Lucille
837. Gunn, Richard A. Jr.
838. Gunn, Richard A.
839. Gunn, Susan
840. Gunn, Wanda Diane
841. Gunton, Fannie Ellen
842. Gunton, Geneva Geraldine
843. Hafner, Christian David
844. Hafner, Myra June
845. Haire, Chrystal Louisa
846. Haire, Wenonah Caitlin
847. Haire, Wenonah George
848. Hall, Victoria Shelle
849. Hamacher, Anna Marie
850. Hamacher, Heather Elizabeth
851. Hamacher, Jerry Wayne II
852. Hamm, Raymond Edward
853. Hamm, Robert Leroy
854. Hamm, Tabatha Avery
855. Hamm, Tad Allen Jr.
856. Hammond, Bobby Ray
857. Hammond, Christopher Ian
858. Hammond, David Kenneth
859. Hammond, Gerald James III
860. Hammond, Gerald James Jr.
861. Hammond, Nora Lee
862. Hanebrink, Adam Michael
863. Hanebrink, Erika Lynn
864. Hanebrink, Robyn Jolene
865. Hansen, Billie Jo
866. Harrell, Joseph Ryan
867. Harris, Adam Kenneth
868. Harris, Alfred Kenneth
869. Harris, Alfred Neal
870. Harris, Alice Loretta
871. Harris, Amanda Renee
872. Harris, Amanda Reola
873. Harris, April Lynn
874. Harris, Arzada Marie Itu'se
875. Harris, Barry Dean
876. Harris, Barry Dean James
877. Harris, Barry Phillip Jr.
878. Harris, Barry Phillip Sr.
879. Harris, Bertha
880. Harris, Bethany Michelle
881. Harris, Beulah
882. Harris, Billy Ray
883. Harris, Bradley Scott
884. Harris, Brandi Michelle
885. Harris, Brandon Beaumont
886. Harris, Brian Adam
887. Harris, Calvin Wayne
888. Harris, Carl Bazil
889. Harris, Carl Elbert Jr.
890. Harris, Charles Roger
891. Harris, Christopher Loran
892. Harris, Cleadous O'Neal
893. Harris, Cody Darryl
894. Harris, Curtis Douglas
895. Harris, Dale Wallace
896. Harris, Darryl Kent
897. Harris, David Adam
898. Harris, David Loran
899. Harris, David Steve
900. Harris, Dewey Wallace
901. Harris, Donald Brian
902. Harris, Donald Wilford
903. Harris, Donnie Ray
904. Harris, Donnie Ray Edward
905. Harris, Dwaine Gilbert
906. Harris, Dwaine Gregory
907. Harris, Dwayne Phillip
908. Harris, Elizabeth Lauren
909. Harris, Ellen Deloria
910. Harris, Emily Joann
911. Harris, Eric Loran
912. Harris, Ethan Lloyd William
913. Harris, Floyd William Jr.
914. Harris, Floyd William
915. Harris, Franklin Carlisle
916. Harris, Furman George
917. Harris, Garfield C.
918. Harris, Garland Wesley Jr.
919. Harris, Garland Wesley Sr.
920. Harris, Georgia H.
921. Harris, Glenda Diane
922. Harris, Grady Crawford
923. Harris, Heather Lynn
924. Harris, Heather Nicole
925. Harris, Holly Dawn
926. Harris, Homer Vernon
927. Harris, Jacob Kent
928. Harris, James Anthony
929. Harris, James Loren Jr.
930. Harris, James Michael
931. Harris, James Wade Jr.
932. Harris, James Wade Sr.
933. Harris, James Wesley
934. Harris, James William
935. Harris, Jason Matthew

936. Harris, Jason Maurice
937. Harris, Jefferson W. C.
938. Harris, Jeffrey Charles
939. Harris, Jessica Hope
940. Harris, Jodi Kay
941. Harris, John Rella Jr.
942. Harris, John Rella Sr.
943. Harris, Jonathon David
944. Harris, Joseph Dakota
945. Harris, Joseph Franklin
946. Harris, Joseph W.
947. Harris, Joshua Paul
948. Harris, Justin Bryant
949. Harris, Kalum Douglas Reed
950. Harris, Karen Ann
951. Harris, Kelly Aaron
952. Harris, Kelly Neal
953. Harris, Kevin Leonard
954. Harris, Kimberly Ann
955. Harris, Lester Nathaniel
956. Harris, Lester Neal
957. Harris, Linda Sue
958. Harris, Lorna F.
959. Harris, Luther Morgan
960. Harris, Lynda Annette
961. Harris, Martin Raymond
962. Harris, Melvin Howard
963. Harris, Michael Dwayne
964. Harris, Michael Shane
965. Harris, Michael Wayne Jr.
966. Harris, Michael Wayne Sr.
967. Harris, Michael William
968. Harris, Mitchell Oliver
969. Harris, Paul Christopher
970. Harris, Paul Kenneth Jr.
971. Harris, Paul Kenneth Sr.
972. Harris, Peggy Elizabeth
973. Harris, Philip Lee
974. Harris, Randolph Gerard
975. Harris, Reece O'Neil
976. Harris, Robert Curtis
977. Harris, Roger Bazil
978. Harris, Roger Curtis
979. Harris, Roger Gerard (Jerry)
980. Harris, Ronald Floyd
981. Harris, Shaun Mychal
982. Harris, Stanley Spencer
983. Harris, Tara Marie
984. Harris, Theresa Lee
985. Harris, Thomas Edward
986. Harris, Timmy Loran
987. Harris, Timothy Dale
988. Harris, Timothy Neal
989. Harris, Tina Oveda
990. Harris, Tracy Irene
991. Harris, Tracy Marie
992. Harris, Travis William
993. Harris, Victor Lee
994. Harris, Vonda Darlene
995. Harris, Walter Lloyd Jr.
996. Harris, Walter Lloyd Sr.
997. Harris, Wendell Loran II
998. Harris, Wendell Loran
999. Harris, Wilburn
1000. Harris, Wilford Phillip
1001. Harris, Willard Leon Jr.
1002. Harris, Willard Leon Sr.
1003. Harris, William Bryan
1004. Harris, Woodrow
1005. Harris-Adams, Teresa
1006. Harrison, Daniel Hutchinson
1007. Harrison, Marilyn Ann
1008. Harsey, Frances
1009. Harsey, Lacey Jaye
1010. Harsey, Samantha Renee
1011. Hawkins, Pamela Jean
1012. Haywood, Ryan Cheyene
1013. Hedgepath, Ashley Nicole
1014. Hedgepath, Cody Lee
1015. Hedgepath, Cora Paulette
1016. Hedgepath, Robert Daniel
1017. Hedgepath, Ronald Wayne Jr.
1018. Hedgepath, Ronald Wayne
1019. Hedgepath, Sherman Dale Jr.
1020. Hellewell, Shauna
1021. Hellewell, Tamara Nicole
1022. Helms, Jason Keith
1023. Helms, Rhonda Denine
1024. Hemby, Aaron Wade
1025. Henderson, Amy Michelle
1026. Henderson, Nicholas Shane
1027. Hendrix, Justin Derrick
1028. Hendrix, Robert Floyd Jr.
1029. Hendrix, Thelma Canty
1030. Henson, Cynthia Lynn
1031. Henson, Emily Suzanne
1032. Herring, Andria Kristi
1033. Herring, Angel Rebecca
1034. Herring, Anthoney David
1035. Herring, Belinda Faye
1036. Herring, Cathy Paulette
1037. Herring, Jamie Faye
1038. Herring, Katherine Suzanne
1039. Herring, Lenny Dwayne
1040. Herring, Victoria Kaye
1041. Hines, Autumn Lamareal
1042. Hines, Clayton Thomas
1043. Hines, Kevin Taylor Scott
1044. Hinson, Anita Canty
1045. Hinson, Carrie Lynn
1046. Hodge, Hazel Elizabeth
1047. Hodge, Jeffrey Allen
1048. Hodge, Joshua David
1049. Hodge, Lisa Anne
1050. Hodge, Matthew Steven
1051. Hodge, Nicholas Blair
1052. Honaker, April Renee
1053. Honaker, Barbara Allen
1054. Honaker, Nicole Danielle
1055. Honeycutt, Ashley Brooke
1056. Honeycutt, Earl Henry III
1057. Honeycutt, Jacqueline Marie
1058. Honeycutt, John Timothy
1059. Honeycutt, Robert Wayne II
1060. Honeycutt, Roberta
1061. Honeycutt, Sandy Kay
1062. Honeycutt, Trisha Suzanne
1063. Honeycutt, Troy T
1064. Honeycutt, Troy Thomas Jr.
1065. Hooks, Constance V.
1066. Hooks, Wendy Leigh
1067. Hooper, Karen Tennille
1068. Horne, Melissa
1069. Hosmer, Allison Leigh
1070. Hosmer, Anthony Ryan
1071. Hosmer, Brian Phillip
1072. Hosmer, Ila Gail
1073. Housekeeper, Jay Dee
1074. Hovis, Kimberly Nicole
1075. Howard, Billy Joe
1076. Howard, Cassie Lynn
1077. Howard, Charles James
1078. Howard, David Wayne
1079. Howard, Debbie Ann
1080. Howard, James Moore Jr.
1081. Howard, James Travis Sr.
1082. Howard, Jessica Ann
1083. Howard, John Leslie Jr.
1084. Howard, Tom Williams
1085. Howard, Victoria Elizabeth
1086. Howard, William Paul
1087. Howe, Steven Wayne III
1088. Howington, Angela Talley
1089. Hubbard, Amanda Michelle
1090. Hubbard, Barbara Annette
1091. Hubbard, Brandon Edward
1092. Hubbard, Michael Tracy
1093. Hubbard, Richard Dustin
1094. Huddleston, Lori Anne
1095. Hudson, Jeffrey William Jr.
1096. Hudson, Mallory Paige
1097. Hudson, Rebecca Carleen
1098. Hueitt, Mark William II
1099. Hueitt, Richard Daniel
1100. Huffstetler, Kayce Douglas
1101. Huffstetler, Whitney Ayers
1102. Humphries, Corey Michael
1103. Humphries, Jennifer Alane
1104. Humphries, Rosa H.
1105. Hungate, Caitlyn Jayne
1106. Hungate, Caryn Louise
1107. Hungate, Lauren Ashley
1108. Hungate, Mederith Trimnal
1109. Hunter, Elizabeth Ashley
1110. Hunter, Jenna Camille
1111. Hunter, Josephine
1112. Hunter, Jude Alan
1113. Hunter, Julius Calvin
1114. Hunter, Lillie Viola
1115. Hunter, Marsha Rene
1116. Hunter, Matthew Calvin
1117. Hunter, Paige
1118. Hunter, Raegan
1119. Hunter, Shelly Jeannine
1120. Hurn, Joseph Emery Darrell
1121. Hutchinson, Sandra Delores
1122. Hyatt, Cheryl Ann
1123. Hyatt, David Wayne
1124. Hyatt, John Curtis
1125. Hyatt, Tiffany Marie
1126. Hyman, Aaron DuPree
1127. Hyman, Angela Paulette
1128. Hyman, Joshua Kenneth
1129. Jackson, Teresa Lynn
1130. James, Anthony Eugene
1131. James, Pamela Sue
1132. Johnson, Amber Courtney
1133. Johnson, Amber Shavon
1134. Johnson, Amy Ray
1135. Johnson, Courtney Amanda
1136. Johnson, Crystal Renee
1137. Johnson, Destiny Marie
1138. Johnson, Gary Brent
1139. Johnson, Hadden Delano
1140. Johnson, James Durrand
1141. Johnson, Jane A.
1142. Johnson, Jeccica Brooke

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1144. Johnson, Joseph Hadden
1145. Johnson, Kimberly Gay
1146. Johnson, Lanie India
1147. Johnson, Marty Adam
1148. Johnson, Pamela Sue
1149. Johnson, Priscilla Blue
1150. Johnson, Robert Lee
1151. Johnson, Ruthie Mae
1152. Johnson, Santana Danielle
1153. Johnson, Scott Leroy
1154. Johnson, Spencer Glenn
1155. Johnson, Trey Michael
1156. Joiner, Beverly Allyn
1157. Joiner, Jared Nathaniel
1158. Joiner, Jason Matthew
1159. Joiner, Justin Allen
1160. Jones, Angela Marie
1161. Jones, Angelica Sheree
1162. Jones, Daniel Jacob
1163. Jones, James Anthony (Tony)
1164. Jones, Kerri Elizabeth
1165. Jones, Stacy Marie
1166. Jordan, Debra Kay
1167. Jordan, Jody Shawn
1168. Jordan, Kevin James
1169. Jordan, Melanie Rose
1170. Jose, Andrew Reid
1171. Kaidbey, Naomi
1172. Keasler, Sabrina Dawn
1173. Keener, James Vester
1174. Keener, Marsha Diane
1175. Keesee, Amber Nicole
1176. Keesee, Charles Edward
1177. Keesee, Jennepher Michelle
1178. Keesee, Robert Lewis
1179. Keim, Shannon Marie
1180. Kekoolani, Henry Paakik Naumanuh III
1181. Kekoolani, Jenne Rene,
1182. Kekoolani, Rene Noelani,
1183. Kellam, Sonja N
1184. Kennedy, Anita Michele
1185. Kennington, Amanda Nicolle
1186. Kennington, Donald Wayne
1187. Kersey, Meagan Nicholle
1188. Kertzel, Carol Cryteer
1189. Kertzel, Gordon Frederick IV
1190. Kertzel, Gregory Vernon
1191. Killian, Jessica Blaine
1192. Kimble, Bryan Kenneth
1193. Kimble, Michelle Veronica
1194. Kimbrell, Brandy Michelle
1195. Kimbrell, Cynthia Ann
1196. Kimbrell, Daniel Ray
1197. Kimbrell, Nettie Lou
1198. Kimbrell, Ronnie Lee
1199. Kimbrell, Shannon Nicole
1200. Kimbrell, Susan Darlene
1201. Kirk, Christopher Jacob
1202. Kirk, Clarence Grover III
1203. Kirk, Evelyn A.C.
1204. Kitchen, Elizabeth Ann
1205. Kitchen, Gary Eugene
1206. Kitchen, Wanda Kay
1207. Knight, Anthony Dakota
1208. Knight, Anthony Glenn
1209. Knight, Chasity Christine
1210. Knight, Dana Ivan
1211. Knight, Everett Dupree
1212. Knight, Leah Michele
1213. Knight, Melanie Denise
1214. Knight, Rodney Bill Logan
1215. Knight, Tammy Renee,
1216. Knight, Thomas Wayne,
1217. Knight, Tommy Seth
1218. Konsul, Pamela Antoinette
1219. Korver, Jonathan Tyler
1220. Korver, Ryan Tomas
1221. Korver, Tanya Michele
1222. Kuck, Alaina Justine
1223. Kuck, Amanda Mae
1224. Kuck, Jennifer Leigh
1225. Kuck, Lisa Kristine
1226. Lail, Jeremy Allen
1227. Lail, Tanda Michelle
1228. Lail, Zachery James
1229. Lambiasi, Amanda Fern
1230. Lambiasi, Anthony Daniel Jr.
1231. Lambiasi, Elizabeth Joann
1232. Lambiasi, Olene Fern
1233. Largo, Jason Jermie
1234. Largo, Jeanette Guynell
1235. Largo, Lisa Jane
1236. Largo, Mark Anthony
1237. Lawson, Christopher Peyton
1238. Lawson, Kimberly Dawn
1239. Lawther, Tiffany Ayers
1240. Leach, Brandon Gene
1241. Leach, Maranda Kimberly
1242. Leach, Patricia Ann
1243. Lear, Margaret Faye
1244. Lewis, Laurie Ann
1245. Lloyd, Cynthia Wade
1246. Long, Cora Lee
1247. Long, Kimberly Dawn
1248. Love, Christopher Ray Carr
1249. Love, Darryl Lynn
1250. Love, Harley Desiree
1251. Love, Jonathan Todd
1252. Love, Joseph Nicholas Brady
1253. Love, Joshua Lewis Carr
1254. Love, Jutanna C
1255. Love, Jutanna Suzette
1256. Love, Kevin Ray
1257. Love, Melissa Faye
1258. Love, Sylvia Elizabeth
1259. Lovingood, Steven Tyler
1260. Lowder, Vivian
1261. Lowery, Jeremy William
1262. Lowery, Sharon Rose
1263. Lyda, Sandra Diahnne
1264. Lyell, Richard
1265. Lyell, Sylvia Margaret
1266. Lynch, Teresa Deloria
1267. Mackey, Christopher Lee
1268. Mackey, David Windell Jr.
1269. Mackey, Joshua
1270. Mackey, Windell David Sr.
1271. Mancill, Kenneth Earl
1272. Mancill, Mary Frances
1273. Maness, Buddy Ray
1274. Maness, Rebecca
1275. Maness, Robert Allen
1276. Maness, Roger Benton Jr.
1277. Maness, Winona Lee
1278. Manuma, Matthew L.
1279. Margiotta, Brittaney Dianne
1280. Marnach, Elizabeth Marie
1281. Marshall, Melissa Nicole
1282. Martin, Bryan Keith
1283. Martin, Cassondra Felice
1284. Martin, Daniel Earl
1285. Martin, Derrick Nicholas
1286. Martin, Heather Celeste
1287. Martin, Jackie Wesley
1288. Martin, Kimberlee Eula
1289. Martin, Louise Renee Honeycutt
1290. Martin, Malcome
1291. Martin, Melissa Kay
1292. Mason, Janet Renee
1293. Mason, Kristy Louise Odell
1294. Mason, Wanda Denise
1295. Mayfield, Ashley Michelle
1296. Mayfield, Kandice Alicia
1297. Mayfield, Kelly Cheri
1298. Mayne, Alyssa Nicole
1299. Mayne, Dawn Michelle
1300. Maynor, Briana Michelle
1301. Maynor, Rebecca Lynn
1302. Maynor, Rose Marie
1303. McAteer, Felicia Dawn
1304. McAteer, Jessica Lynn
1305. McCall, Jessica Leigh
1306. McCall, Kailen Paige
1307. McCall, Patricia Renee
1308. McCraw, Deborah Kay
1309. McCraw, Magan Elizabeth
1310. McCraw, Matthew David
1311. McDaniel, Daphene Delois
1312. McDaniel, Jannie Canty
1313. McDaniel, Jeremy Dean
1314. McDaniel, Rachel Celeste
1315. McGinnis, Elizabeth Jane
1316. McGinnis, Tammy Louise
1317. McGinnis, Tracy Ann
1318. McGraw, Amanda Kay
1319. McGraw, Daryl Owens Jr.
1320. McHugh, Kimberly Sue
1321. McHugh, Stephanie Lynn
1322. McKellar, Billie Anne
1323. McKellar, Jessica Lauren
1324. McKellar, Steve Eugene Jr.
1325. McKinney, Bryan Patrick
1326. McKinney, Evan Joel
1327. McKinney, Joyce Pamela
1328. McKinney, Justin Everett
1329. McKinney, Lauren Celeste
1330. McKinney, Seth Williamson
1331. McManus, Bryan Douglas Jr.
1332. McManus, Deborah Mae
1333. McManus, Edward Dron
1334. McManus, Eryn Celeste
1335. McManus, James Cory
1336. McManus, Karrie Celeste
1337. McManus, Timothy Daniel
1338. Medlin, Charles Robert
1339. Medlin, Jason Charles
1340. Medlin, Tonda Marjean
1341. Medlin, William Lamont
1342. Medlock, Alisa Kay
1343. Medlock, Doris Kay
1344. Medlock, Jared Ray
1345. Melech, Patricia Charlene
1346. Melton, Ashley
1347. Melton, Cynthia Denise
1348. Melton, Justin Kyle

1349. Melton, Kristina Janette
1350. Melton, Steven Andrew
1351. Mercer, Bryan Anthony
1352. Mercer, Leesa Louise
1353. Mercer, Mark Allen Jr.
1354. Merritt, Adrienne Marie
1355. Merritt, James Matthew
1356. Merritt, Patricia
1357. Miller, Ester
1358. Miller, Larry Timothy
1359. Miller, Shelly Renee
1360. Mills, Dorenda Michelle
1361. Mills, Howard Adam
1362. Mitchell, Heather Cecelia
1363. Mitchell, John
1364. Mitchell, Katherine Marie
1365. Mitchell, Misti Lynn
1366. Mixon, Shannon Janice
1367. Mock, Dustin Kyle
1368. Mock, Vickie Renee
1369. Molony, Audrey Leigh
1370. Molony, Melissa Lauren
1371. Molony, Tammy Kay
1372. Moore, Ashley
1373. Moore, Atuake Ann
1374. Moore, Joann
1375. Moore, Kristy Denise
1376. Moore, Roger Dale Jr.
1377. Morgan, Jefferson Scott Jr.
1378. Morgan, Jennette
1379. Morgan, Laurie Lynette
1380. Morgan, Michelle Lu Raye
1381. Morgan, Timothy Scott
1382. Morris, Ann Garnet
1383. Morris, Ashley Brooke
1384. Morris, Bonnie Leverne Jr.
1385. Morris, Dalton Andrew
1386. Morris, Donald Jr.
1387. Morris, Donald D'Angelo
1388. Morris, Robert Lee
1389. Moser, Jennifer Michele
1390. Moss, Billy Odell Jr.
1391. Moss, Billy Odell
1392. Moss, Helen
1393. Moss, Matthew Dell
1394. Moss, Travis Steele
1395. Mullis, Nancy Elizabeth
1396. Mundy, Sandra Faye
1397. Murray, Toy
1398. Nash, Denise Rena
1399. Neely, Lisa Adell
1400. Neely, Steven Wayne
1401. Neely, Wesley Ryan
1402. Nichols, Anthony Wayne
1403. Nichols, Brooklyn Michele Lavinia
1404. Nichols, Haley Denise Michele
1405. Nichols, Karen Denise
1406. Norris, David LaFayette III
1407. Oates, Dorothy Elizabeth
1408. Oates, Nicholas Campbell
1409. Oglesbee, Natlie Nicole
1410. Oglesby, Candis Reagan
1411. Oglesby, Cassandra Leah
1412. Oglesby, Kari Morgan
1413. Oglesby, Rhonda Delores
1414. Oliver, Amanda Renee
1415. Oliver, Jessica Anne Alyssa
1416. Oliver, Justin Emory
1417. Oliver, Margaret Ann
1418. Oliver, Randy Lester
1419. Oliver, Sidney Jerome
1420. Osborn, Alex Todd
1421. Osborn, Clinton Berlin
1422. Osborn, David Todd
1423. Osborn, Dawn Renee
1424. Osborn, Jason Wade
1425. Osborn, Milton Gregg
1426. Osborn, Ruth Danielle
1427. Osborn, Sherry Geraldine
1428. Osborne, Sheila
1429. Osborne, Susan Marlene
1430. Osment, Glenn Ryan
1431. Oswald, Anthony Lee
1432. Oswald, Brittney April Leigh
1433. Oswald, Charles Michael
1434. Outen, Robert Edward Jr.
1435. Owens, Lula Annette
1436. Owens, Randall Chadwick
1437. Owens, Robin Rene
1438. Owens, Samuel Herbert III
1439. Oxendine, Aaron Blake
1440. Oxendine, Della Eleanor
1441. Oxendine, Phillip Drew
1442. Oxendine, Ralph Guy Jr.
1443. Oxendine, Stephen Daniel
1444. Oxendine, Waylon Keith
1445. Page, Kimberly Ann
1446. Parker, Ann
1447. Parker, Heather Nicole
1448. Parker, Jessica Rebecca
1449. Parker, Kelly Michelle
1450. Parker, Toni Kay
1451. Parks, Cody Great Bear
1452. Parks, Jack Big Bear
1453. Parks, Kris Littlebear
1454. Parks, Lauren Alyssa
1455. Parks, Paula Leigh
1456. Parnell, Rhonda Kimberly
1457. Patterson, Christine Leola
1458. Patterson, Salena Marie
1459. Payne, Evonne
1460. Perdue, Benjamin McClure
1461. Perdue, Billy James Jr.
1462. Perdue, Elizabeth Blair
1463. Perdue, Mary Frances
1464. Petrini, Caroline Dianne
1465. Petty, Buddy
1466. Petty, Christine
1467. Petty, Cory D'Wayne
1468. Petty, George Samuel
1469. Petty, Jackie Alton Jr.
1470. Petty, Jackie Alton
1471. Petty, Jackie Lynn
1472. Petty, John Wayne
1473. Petty, Johnnie William
1474. Petty, Le-Anne Nicole
1475. Petty, Patricia Ann
1476. Petty, Ronald Vance
1477. Petty, Ronald William
1478. Petty, Wanda Kay
1479. Phillips, Andrea Marie
1480. Phillips, Ashley Nicole
1481. Phillips, Catherine Denise
1482. Phillips, Crystal Nichole
1483. Phillips, Jonathan Corey
1484. Phillips, Robert Dean II
1485. Phillips, Ryan Heath
1486. Phillips, Wanda Kaye
1487. Pittman, Tommy Shane
1488. Pittman, Velma Marlene
1489. Plyler, Arthur Terrance Jr.
1490. Plyler, Arthur Terrance
1491. Plyler, Bruce Allen
1492. Plyler, Charles Martin
1493. Plyler, Donald Olin
1494. Plyler, Gerald Hubert Jr.
1495. Plyler, Gerald Hubert Sr.
1496. Plyler, Jennifer Jean
1497. Plyler, Jordan Violet
1498. Plyler, Joshua
1499. Plyler, Joshua Olin
1500. Plyler, Justin Allen
1501. Plyler, Kassidy Maeghan
1502. Plyler, Leonard
1503. Plyler, Linda Rebecca
1504. Plyler, Mark Jeffery
1505. Plyler, Matthew Joseph
1506. Plyler, Michael Dakota
1507. Plyler, Michael Wayne
1508. Plyler, Norman Lynn
1509. Plyler, Olin Flow Jr.
1510. Plyler, Phillip Keith
1511. Plyler, Sallie Elizabeth
1512. Porter, Frank Delano III
1513. Porter, Jennifer Lauren
1514. Porter, Joshua Wade
1515. Porter, Joy Maudine
1516. Porter, Kevin Christopher
1517. Porter, Lindsay Kimber
1518. Porter, Robin
1519. Poteet, Charlotte Yvonne
1520. Pottenger, Ashley May
1521. Pottenger, Kressent Monique
1522. Pottenger, Shelley Maxine
1523. Potts, Alisha Rae
1524. Potts, Alton Amos
1525. Potts, Alton Dwayne
1526. Potts, Bryant Neal
1527. Potts, Calvin Lee
1528. Potts, Christian Tess
1529. Potts, Johnny Ray
1530. Potts, Krista Leann
1531. Potts, Michael Aaron
1532. Potts, Noah Steven
1533. Potts, Renda
1534. Powell, Jennifer Ellis
1535. Preslar, Jarhett Wade
1536. Price, Cheryl Ann
1537. Price, Jessie Elaine
1538. Price, Jessie Lynn
1539. Price, John Gregory
1540. Price, Kristi Sierra
1541. Price, Kyle Chadwick
1542. Price, Linda Diane
1543. Price, Michael Kalib
1544. Price, Sandra
1545. Price, Timothy John
1546. Price, Valerie Lynn
1547. Privette, Jason Lee
1548. Privette, Jeremy James
1549. Pruitt, Jonathan Lee
1550. Pruitt, Lottie Juanita Vernell
1551. Pryor, Alan Mark
1552. Pryor, Wanda Sue
1553. Pryor, William Eric
1554. Puckett, Ashley Denise

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1555. Puckett, Carrie Nicole
1556. Puckett, Constantine
1557. Puckett, James Albert II
1558. Rabon, Emily Elizabeth
1559. Railey, Ka-Laney Dee
1560. Ramey, Robin Crystal
1561. Ramey, Tiffany Dawn
1562. Ramsey, Amanda Lynn
1563. Ramsey, Brandon Lee
1564. Ramsey, Brenda Jean
1565. Ramsey, Christopher Thomas
1566. Ranucci, Susanne
1567. Ratterree, Audrey Bernice
1568. Ratterree, Audrey Reola
1569. Ratterree, Christy Gayle
1570. Ratterree, Kristie Caudle
1571. Ratterree, Tonya Michelle
1572. Ravan, Betty Ruth
1573. Ray, Audrie Christine
1574. Ray, Stacy Simmers
1575. Rayfield, Chanse Robert
1576. Rayfield, Lillian Ann
1577. Rayfield, Robert Dow
1578. Raymond, Zan Marie
1579. Reid, Katherine LeeAnne
1580. Reynders, John David
1581. Reynders, Pieter Benjamin Jr.
1582. Reynders, Ryan Scott
1583. Reynders, Spencer
1584. Reynders, Victoria Yvonne
1585. Rider, Anthoney Micheal
1586. Ridley, Melina Sharee
1587. Ridley, Nina Marae
1588. Riley, Amanda Diana
1589. Riley, Jessica Michelle
1590. Riley, Jill Renee
1591. Riley, Kimberly Christina
1592. Riley, Tammy Renee
1593. Robbins, Barney C.
1594. Robbins, Bradley Earl
1595. Robbins, Bradley M.
1596. Robbins, Earl
1597. Robbins, Flint
1598. Robbins, Frank E.
1599. Robbins, Viola
1600. Roberts, Rosemary
1601. Robertson, Donna Marie
1602. Robertson, Wesley Adam
1603. Robinson, Russell Ramon
1604. Rochester, Cynthia Dianne
1605. Rochester, Jacob Lee
1606. Rochester, James Nicholas
1607. Rochester, Jessica Laine
1608. Rochester, Joseph Tyler
1609. Rodgers, Benjamin Joe
1610. Rodgers, Donald Wayne
1611. Rodgers, Freddie Grace
1612. Rodgers, John Alvin Jr.
1613. Rodgers, John Alvin Sr.
1614. Rodgers, Kim Lee
1615. Rodgers, Marcie Lynn
1616. Rodgers, Timothy Lee
1617. Rogers, Amy Nicole
1618. Rogers, Autumn Nicole
1619. Rogers, Beau Dallas
1620. Rogers, Brooke Elizabeth
1621. Rogers, Dakota Preston
1622. Rogers, Daniel Wayne
1623. Rogers, Ernest D. III
1624. Rogers, Fred Kelly
1625. Rogers, Hannah Danielle
1626. Rogers, James Kelly
1627. Rogers, Jason Daniel
1628. Rogers, Jerry Daniel
1629. Rogers, Jimmie
1630. Rogers, Kaitlyn Miranda
1631. Rogers, Keith Preston
1632. Rogers, Kelly Elizabeth
1633. Rogers, Larry Dwayne II
1634. Rogers, Larry Dwayne
1635. Rogers, Mary Katherine
1636. Rogers, Ronnie
1637. Rogers, Sharon Marie
1638. Rogers, Steven Jarrett
1639. Rogers, Steven Otho
1640. Rogers, Tod Loren
1641. Rogers, William Bradford
1642. Rollins, Amy Michelle
1643. Rollins, Eric Dwayne
1644. Rowe, Adam Thomas
1645. Rowe, Merri
1646. Rowe, Wyatt Dale
1647. Rowley, James Michael II
1648. Rowley, Lisa Ann
1649. Rutland, Kristen Nicole
1650. Sanders, Ada
1651. Sanders, Adrienne Lucretia
1652. Sanders, Albert H. Sr.
1653. Sanders, Albert Henderson III
1654. Sanders, Albert Henderson Jr.
1655. Sanders, Alexis Irene
1656. Sanders, Amanda Brooke
1657. Sanders, Andrew Clark Jr.
1658. Sanders, Andrew Clark Sr.
1659. Sanders, Angela Lea
1660. Sanders, Brenda Cornelia
1661. Sanders, Brooke Lyn
1662. Sanders, Calvin Ray
1663. Sanders, Cecil Glenn
1664. Sanders, Charles Richard
1665. Sanders, Cheryl Darlene
1666. Sanders, Christopher Louis
1667. Sanders, Christy Lee
1668. Sanders, Curtis Allen
1669. Sanders, David Neal
1670. Sanders, Deborah Jean
1671. Sanders, Delta Dawn
1672. Sanders, Donald Wayne
1673. Sanders, Early Fred
1674. Sanders, Elizabeth Denise
1675. Sanders, Franklin Thomas
1676. Sanders, Fred Eugene
1677. Sanders, Jackie Scott
1678. Sanders, John Jack Jr.
1679. Sanders, John Patrick
1680. Sanders, Johnny Shaleko
1681. Sanders, Joshua Derek
1682. Sanders, Justin Charles
1683. Sanders, Kelly Renee
1684. Sanders, Kriston Elaine
1685. Sanders, Lacey Rhea
1686. Sanders, Marcus Emory Jr.
1687. Sanders, Marcus Emory
1688. Sanders, Marilyn
1689. Sanders, Mary Carolsen
1690. Sanders, Michael Glenn
1691. Sanders, Misty Dawn
1692. Sanders, Nikkita Danielle
1693. Sanders, Rachel Nichole
1694. Sanders, Randall Dean
1695. Sanders, Randolph Edward II
1696. Sanders, Randolph Edward Sr.
1697. Sanders, Rikki D.
1698. Sanders, Rodney Wayne
1699. Sanders, Ronald William
1700. Sanders, Scotty Dewayne
1701. Sanders, Shannon Wayne
1702. Sanders, Thomas Burton
1703. Sanders, Thomas Cornelius
1704. Sanders, Thomas Lester
1705. Sanders, Thomas McCloud
1706. Sanders, Tracy Michelle
1707. Sanders, Verdie
1708. Sanders, Warren Brian
1709. Sanders, William Ashley
1710. Sanders, William Louie
1711. Sanders, William Max
1712. Sanders, William Scott
1713. Sanders, Willie Mack
1714. Santillon, Melanie Louise
1715. Schutte, Dawn Wahilani
1716. Schutte, Garth Kaleikini
1717. Scott, Colleen
1718. Scruggs, Jonathan Bradley
1719. Scruggs, Tammy Renee
1720. Shankle, Patricia Ann
1721. Sharpe, Angela
1722. Sharpe, Christopher Wayne
1723. Sharpe, Melissa Renee
1724. Shealy, Barbara Lynn
1725. Shealy, Britanie Margaret
1726. Shealy, Kailyn Marie
1727. Shehan, Lynette
1728. Shehan, Shawn Wesley
1729. Shingler, Anna Danielle
1730. Shingler, Dustin Ashley
1731. Shingler, Sheila
1732. Shirah, Christopher Lee
1733. Shirah, Jamie Allen
1734. Shirah, Reba Louise
1735. Shrake, Freida Marilyn
1736. Shugart, Bethany Rhiannon
1737. Shugart, Helen Louise
1738. Shugart, Jeffery Adams
1739. Shugart, Jennifer Michelle
1740. Shugart, Kenneth Eugene Jr.
1741. Shugart, Rita Shown
1742. Shugart, Steven
1743. Shugart, William Dean II
1744. Shuler, Daniel Scott
1745. Shuler, Joel Christopher
1746. Sigmon, Reba Maxine
1747. Simmers, Brittany Nashea
1748. Simmers, Daniel Ray
1749. Simmers, Daniel Taylor
1750. Simmers, Erika Nicole
1751. Simmers, Garrett Jason
1752. Simmers, James Leon
1753. Simmers, Jason Edward
1754. Simmers, Lisa Louise Marie
1755. Simmers, Rocky Vernon
1756. Simmers, Shelly Jeanette
1757. Sims, Linda Gail
1758. Skar, Eric Tyler
1759. Skar, Letha
1760. Sloat, Patsy Blue
1761. Smeltzer, Katrina Carol

1762. Smith, Anthony Glenn
1763. Smith, Brandon Chaz
1764. Smith, Brandy Michelle
1765. Smith, Candace Natasha
1766. Smith, Cheryl Melissa
1767. Smith, Cinda Darnell
1768. Smith, Dana Marlene
1769. Smith, Deborah Ann
1770. Smith, Doris Jean
1771. Smith, Jonathan Blade
1772. Smith, Joshua Shane
1773. Smith, Kristen Nicole
1774. Smith, Margaret Rebecca
1775. Smith, Robert Earl Jr.
1776. Smith, Robert Earl Sr.
1777. Smith, Sandra Darnell
1778. Smith, Shari Wilson
1779. Smith, Sherri Lynn
1780. Smith, Thomas Franklin Jr.
1781. Smith, Tiffany Lynn
1782. Sotolongo, Amber Mechelle
1783. Sotolongo, Miranda Lynn
1784. Sox, Paul Samuel
1785. Sox, Robert Wesley
1786. Spell, Mary Beth
1787. Spinks, Christopher Allen
1788. Spinks, Debra Lee
1789. Spinks, Thomas Dale Jr.
1790. Spivey, Alisha Danielle
1791. Spivey, Juanita Marie
1792. Spivey, Samantha Victoria
1793. Spivey, Timothy Joe
1794. Stargel, Brittany Michele
1795. Stargel, Shannon Terriol
1796. Starnes, Cynthia
1797. Steiniger, Shirley
1798. Stephenson, Lacey Michelle
1799. Stevens, Barbara Ann
1800. Stevens, Dawn Michelle
1801. Stevens, Melinda Lynn
1802. Stewart, Mary Evelyn
1803. Stewart, Randall Matthew
1804. Stewart, Steven Andrew
1805. Stokes, Barry Dean
1806. Stokes, Billy Joe Jr.
1807. Stokes, Billy Joe
1808. Stokes, Curtis Wayne
1809. Stokes, Daniel Leroy
1810. Stokes, Glenn Edward Jr.
1811. Stokes, Glenn Edward Sr.
1812. Stokes, James Allen
1813. Stokes, Jonathon Coland
1814. Stokes, Joseph Coland Jr.
1815. Stokes, Kenneth R
1816. Stokes, Lisa Nicole
1817. Stokes, Michael Shane
1818. Stokes, Robert Lee Sr.
1819. Stokes, Stella B.
1820. Stokes, Stella Marie
1821. Stokes, Windy Faye
1822. Strickland, Pearlie
1823. Stroud, Brittany Amanda
1824. Stroud, Christopher Dale Jr.
1825. Stroud, Kimberly H.
1826. Sutphin, Iris Lucinda
1827. Sutton, Teresa Diane
1828. Sutton, William Curtis Ayers
1829. Swett, Malinda Darlene
1830. Tadlock, Michael Jason
1831. Talley, Amber Renea
1832. Talley, Barbara Annette
1833. Talley, Curtis Brent Sr.
1834. Talley, Dessa Darlene
1835. Talley, James Heyward II
1836. Talley, Michael Warren
1837. Talley, Mylsah Breanne
1838. Talley, Tabitha Darlene
1839. Talley, Warren Edward
1840. Tanner, Brooke Michele
1841. Tanner, Kacey Danielle
1842. Tanner, William Travis
1843. Taylor, Amber Nichole
1844. Teaster, Carrie Christine
1845. Teaster, Etta D.
1846. Teaster, Jimmy Eugene Jr.
1847. Teaster, Jimmy Eugene Sr.
1848. Teaster, Justin Ransom
1849. Teaster, Ransom
1850. Teaster, William Glenn
1851. Teaster, William Harry
1852. Terry, Michelle Lynn
1853. Tessner, Ruth Robbins
1854. Thatcher, Harold Lloyd
1855. Thatcher, Jason Lloyd
1856. Thatcher, Matthew Tyler
1857. Thatcher, Megan Elaine
1858. Thatcher, Rebecca Leigh Ann
1859. Thatcher, Stephen Keith
1860. Therrell, Joyce Ann
1861. Thomas, Amber Lennette
1862. Thomas, Angela Marie
1863. Thomas, Anica Nicole
1864. Thomas, Ashley Nicole
1865. Thomas, Brian Andrew
1866. Thomas, Chrissy Alene
1867. Thomas, Christopher Dwayne
1868. Thomas, Emory Randolph
1869. Thomas, Ericka Leigh
1870. Thomas, Jeffery McDonald
1871. Thomas, Jeremy David
1872. Thomas, Jessica Elaine
1873. Thomas, Kaitlyn Victoria
1874. Thomas, Kristine Elizabeth
1875. Thomas, Larry Allen
1876. Thomas, Louis Scott
1877. Thomas, Marvin Donald III
1878. Thomas, Michael Shannon
1879. Thomas, Michael Steven
1880. Thomas, Ollie Mae
1881. Thomas, Pamela Michelle
1882. Thomas, Peggy
1883. Thomas, Taylor Renee
1884. Thomas, Tiffany Marie
1885. Thomas, Timothy Dale Jr.
1886. Thomas, Timothy Randolph
1887. Thomas, William Byron
1888. Thomas, William Michael
1889. Thompson, Adam Quintin
1890. Thompson, Anna Leigh
1891. Thompson, Clyde Samuel
1892. Thompson, Jessica Lynn
1893. Thompson, Latasha Ann
1894. Thompson, Lois Elvina
1895. Thompson, Rose Maria
1896. Thompson, Scotty Alexander Jr.
1897. Thompson, Scotty Alexander Sr.
1898. Thompson, Stephanie Michelle
1899. Thompson, Virginia Claudette
1900. Thrash, Rita Shawn
1901. Threatt, Josephine Branham
1902. Thurman, Kimberly Dawn
1903. Tinker, Geraldine
1904. Tinker, Matthew David
1905. Tinker, Rebecca Kathryn
1906. Tinker, Stuart Jason
1907. Totherow, Ernest Randall
1908. Totherow, Richard C
1909. Totherow, Shannon Leslie
1910. Townsend, Casey Daniel
1911. Trimnal, Ashley Carol
1912. Trimnal, Becky Christine
1913. Trimnal, Bob Kenneth
1914. Trimnal, Heather Elizabeth
1915. Trimnal, Kathrin Gloria
1916. Trimnal, Samuel Taylor
1917. Trimnal, Thomas Woodrow
1918. Troublefield, Christopher Lee
1919. Troublefield, Joseph Martin
1920. Troublefield, Vanessa Lee
1921. Troxel, David Trent
1922. Troxel, Samuel Neil
1923. Troxel, Shasta Ilene
1924. Troxel, Suzette Michele
1925. Tucker, Margaret Robbins
1926. Tucker, Matthew Earl
1927. Tucker, William Shane
1928. Turney, Carol Lynn
1929. Usher, Jerry Dell
1930. Usher, Norma Jean
1931. Valkenburgh, Rachel Eleanora
1932. Varnadore, Brandon Trent
1933. Varnadore, Brandy Leigh
1934. Varnadore, Christopher Lee
1935. Varnadore, Cory West
1936. Varnadore, Edward Glenn
1937. Varnadore, James Dustin
1938. Varnadore, James Ronald
1939. Varnadore, Jennifer Renea
1940. Varnadore, Kenneth Charles
1941. Varnadore, Laura Merrill
1942. Varnadore, Mathew Chantz
1943. Vincent, Ruby Ayers
1944. Vinson, Elic Wheeler
1945. Wade, Audrea Lynn
1946. Wade, Baxter Bruce
1947. Wade, Beauford
1948. Wade, Brandon Paul
1949. Wade, Christopher Steve
1950. Wade, Cleave Harrison
1951. Wade, Connie Steve Jr.
1952. Wade, Connie Steve Sr.
1953. Wade, Daniel Benjamin
1954. Wade, Dara Danielle
1955. Wade, Edith Frances
1956. Wade, Florence R.
1957. Wade, Glenn Hampton
1958. Wade, Heather Suzanne
1959. Wade, Horace Gary Jr.
1960. Wade, Horace Gary Sr.
1961. Wade, Jason Blair
1962. Wade, Justin Heath
1963. Wade, Krissi Maree
1964. Wade, Michael Gregg
1965. Wade, Michael Lee
1966. Wade, Natalie Renee
1967. Wade, Regina Suzanne
1968. Wade, William Christopher

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1969. Wade, William Eric
1970. Wade, William Perry Jr.
1971. Wade, William Perry Sr.
1972. Walker, Darien Matthew
1973. Walker, Lora Anne
1974. Wall, Corey Allen
1975. Wall, Stephanie Nicole
1976. Wall, Winona Lyne
1977. Walsh, Bessie Valoy
1978. Ward, Katelyn Paige
1979. Ward, Kathryn Evonne
1980. Ward, Lisa Michelle
1981. Warner, Brian Dale
1982. Warner, Cora Ethel
1983. Warner, Jason Lee
1984. Warner, Oliver Dale
1985. Watts, Brent William
1986. Watts, Caitlyn Eve
1987. Watts, Clifford O'Dell Jr.
1988. Watts, Clifford O'Dell Sr.
1989. Watts, Davin Blue
1990. Watts, Edwin Larsen
1991. Watts, Jenelle Sunshine
1992. Watts, Matthew Todacheeni
1993. Watts, Milton Everett
1994. Watts, Nellie Leone
1995. Watts, Paul Bradley
1996. Watts, Rodney Allan
1997. Watts, Sarita Janine
1998. Watts, Tristan Wade
1999. Watts, William D. Jr.
2000. Weathers, Mendy Jo
2001. Weaver, Sheryl Lynn
2002. Webb, Elizabeth Ashley
2003. Webb, Sharon Marlene
2004. Webster, Krista Marie
2005. Webster, Morgan Alyshia
2006. Wells, Kenneth Chad Varnadore
2007. Wells, Lou Gene
2008. Wheeler, Ashlin Nicole
2009. Wheeler, Bobbie Jean
2010. Wheeler, Chase Russell
2011. Wheeler, Tyson Robert
2012. White, Angela Dionne
2013. White, Deena Ann
2014. White, Eber Walter II
2015. White, Eber Walter
2016. White, Gail Blue
2017. White, Rocky Anthony II
2018. White, Rocky Anthony
2019. White, Sarah Elizabeth
2020. Whitesides, Keith Bernard
2021: Whitesides, Robert Charles
2022. Whitesides, Velma
2023. Whitlock, Sadie
2024. Wilburn, Amber Suzanne
2025. Wilburn, Brittany Paige
2026. Wilburn, Cecil Jr.
2027. Wilburn, Christopher Douglas
2028. Wilburn, David Adam Jr.
2029. Wilburn, David Adam Sr.
2030. Wilburn, Herman Franklin Jr.
2031. Wilburn, Jacqueline Nicole
2032. Wilburn, Ryan Anthony
2033. Wilburn, Stephanie Lauren
2034. Wilkinson, Benjamin Bruce
2035. Wilkinson, Kristin Lynn
2036. Wilkinson, Neil Gordon
2037. Wilkinson, Tarah Jean
2038. Wilkinson, Theresa J.
2039. Williams, Amy Carol
2040. Williams, Brent Lee
2041. Williams, Keith Eloit
2042. Williams, Mae Carol
2043. Williams, Phyllis DeLora
2044. Williams, Randy Alan
2045. Williams, Russell Shane
2046. Williford, Cecily Nicole
2047. Williford, David Cecil Jr.
2048. Williford, John Timothy
2049. Willis, Alice Grace
2050. Wilson, Billy Oliver
2051. Wilson, Brandy Jenny Rebecca
2052. Wilson, Brittany Morena
2053. Wilson, Christin Nicole
2054. Wilson, Claire
2055. Wilson, David Wayne
2056. Wilson, Donald Wayne Jr.
2057. Wilson, Donald Wayne Sr.
2058. Wilson, Edwin Keith
2059. Wilson, Heather Ann
2060. Wilson, Jeffrey Randall
2061. Wilson, Joseph Matthew
2062. Wilson, Joshua Michael
2063. Wilson, Kim Lyle
2064. Wilson, Kristy Nicole
2065. Wilson, Matthew David
2066. Wilson, Roy O'Dell Jr.
2067. Wilson, Roy O'Dell III
2068. Wilson, Stephanie Nicole
2069. Wilson, Steve Randall
2070. Wilson, Tanaja Carol
2071. Wilson, Todd L.
2072. Wilson, Travis Ronald
2073. Wilson, Violet
2074. Windham, Edd Leilon III
2075. Windham-Forbis, Shana Marie
2076. Woodell, Jennifer Kaitlyn
2077. Woolsey, Amber Jewell
2078. Wright, Carolyn Marie
2079. Wright, Christopher Allen
2080. Wright, Lewis Allen Jr.
2081. Wright, Nancy Deandrea
2082. Wright, Rose Mary
2083. Wright, Stephanie Brooke
2084. Wurdemann, Aaron Cole
2085. Wurdemann, Heyward Stone
2086. Wurdemann, John David Jr.
2087. Wurdemann, John David Sr.
2088. Wurdemann, Kenneth Wayne Jr.
2089. Wurdemann, Linda Ann
2090. Wurdemann, Lynn Canty
2091. Wurdemann, Natalie Ann
2092. Yates, Christopher Michael
2093. Yates, Courtney Michelle
2094. Yates, Rachel Beck
2095. Yonce, Michael Brandon
2096. Yonce, Patricia Groff
2097. Young, Amanda Elizabeth
2098. Young, Benjamin Michael
2099. Young, Jacob Yates
2100. Young, Jesse Alexander
2101. Young, Jonothan Howard
2102. Young, Kathryn Rachel
2103. Young, Kathryn Valerie
2104. Young, Laurie Michele
2105. Young, Pamela Jean
2106. Young, Peter William
2107. Young, Susan Gayle

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1610–DH; N–66363]

Notice of Availability and Public Meeting for the Proposed Southern Washoe County Urban Interface Plan Amendment and Environmental Assessment, Proposed Designation of Three Areas of Critical Environmental Concern, and Proposed Withdrawal of Public Land; Washoe County, Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability and public meeting for a proposed resource management plan amendment, proposed designation of three Areas of Critical Environmental Concern (ACECs), and proposed withdrawal of public land.

SUMMARY: The Bureau of Land Management (BLM) Carson City, Nevada Field Office and Washoe County have jointly prepared the Proposed Southern Washoe County Urban Interface Plan Amendment to address future management of public lands in the open and mountainous terrain of southern Washoe County's urban, suburban, and rural residential areas. The document is available for public and agency review and a public open house is scheduled in accordance with 43 CFR 1610.2 and 2310.3–1. to discuss the proposed plan amendment, proposed ACEC's, and proposed withdrawal of 160,620 acres of Federal lands and 15,800 acres of federally reserved minerals. BLM and Washoe County staff will be available to answer questions and take comments at the following public open house: August 24, 2000, 5:30 p.m.–7:30 p.m., Bureau of Land Management (Conference Rooms A and B), 1340 Financial Boulevard, Reno, Nevada.

DATES: Comments will be accepted until September 22, 2000.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, Attn: Terri Knutson, Project Manager. Comments may also be sent via electronic mail to the following address: *tknutson@nv.blm.gov* or via fax: (775) 885–6147.

Comments, including names and addresses of respondents, will be available for public review at the above

address during regular business hours (7:30 a.m.–5:00 p.m.), Monday through Friday, except holidays, and may be published as part of the document. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Carson City BLM, at (775) 885–6156 or Bill Whitney, Washoe County at (775) 328–3617.

After the review period ends for the proposed plan amendment, proposed ACECs, and proposed withdrawal, comments will be analyzed and considered jointly by the BLM and Washoe County in preparing the final plan amendment and withdrawal.

Dated: July 18, 2000.

John Singlaub,

Manager, Carson City Field Office.

[FR Doc. 00–18598 Filed 7–21–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–62806]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Pahrump, Nye County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Nye County School District proposes to use the land for a multi-school (K–12)/auxiliary bus yard site. The proposed site is located on the south side of Kellog Road, east side of Sandy Lane, and the west side of Hafen Ranch Road, and is legally described as follows:

Mount Diablo Meridian, Nevada

T. 21 S., R. 54 E.,
Section 21, N½NE¼.

Containing 80.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 20.00 feet in width along all boundaries in favor of the Nevada Bell for a telephone line.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108. Contact Frederick Marcell at 702/647–5164.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a multi-school (K–12)/auxiliary bus yard site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a multi-school (K–12)/auxiliary bus yard site.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 23, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–18647 Filed 7–21–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request regarding noncoal reclamation, found at 30 CFR Part 875, has been forwarded to the Office of Management and Budget (OMB) for renewal authority. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 23, 2000, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically at jtrelease@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB)

regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for noncoal reclamation, found at 30 CFR Part 875. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 875, which is 1029–0103.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on April 17, 2000 (65 FR 20486). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Noncoal reclamation, 30 CFR Part 875.

OMB Control Number: 1029–0103.

Summary: This part establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation using abandoned mine land funding. The information is needed to assure compliance with the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian Tribes.

Total Annual Responses: 7.

Total Annual Burden Hours: 340.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: July 18, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–18662 Filed 7–21–00; 8:45 am]

BILLING CODE 4510–65–M

DEPARTMENT OF LABOR

Office of Job Corps

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Job Corps is soliciting comments concerning the proposed reinstatement collection of the Job Corps Enrollee Allotment Determination Form.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before August 31, 2000.

ADDRESSES: Steven K. Puterbaugh, Room N-4510, U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue, NW, Washington, DC 20210. Inquiries can be made of Steven Puterbaugh on telephone number 202–219–6568, FAX# 202–501–5469 or e-mail address Sputerbaugh@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The collection of this information is made necessary to provide a vehicle to make allotments available to students who both want one and have a qualifying dependent.

The main purpose of the form is to obtain information from the enrollee as to the allotee designation and to obtain documentary evidence to support the enrollee's claim for qualification for the allotment. It is completed by either the Job Corps screener or the Center Director's staff. It is done by personal interview. This is a basic operating document, required by the Department of Labor to initiate an allotment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

There is a continuing need to collect this information from respondents in order to make allotments available to new students and to make changes to existing allotments that current students have in place.

The Department of Labor handles all student payments. If this information was not collected, ETA could not comply with the regulations and the students could not receive an allotment. This is a basic source document initiating the allotment eligibility and payment process. The information obtained and displayed on this document is not readily obtainable elsewhere.

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: Job Corps Enrollee Allotment Determination.

OMB Number: 1205–0030.

Agency Number: ETA 658.

Affected Public: Individuals or households; Federal agencies or employees.

Total Respondents: 7,500.

Frequency: On occasion.

Total Responses: 7,500.

Average Time per Response: 12 minutes.

Estimated Total Burden Hours: 1,500.
Total Burden Cost (operating/maintaining): $10,000.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 17, 2000.

Richard C. Trigg,

National Director, Job Corps.

[FR Doc. 00–18606 Filed 7–21–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June and July, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,557; Touch of Lace, Union City, NJ
TA–W–37,754; Texworks, Inc., Milwaukee, WI
TA–W–37,787; Shorewood Packaging Corp. of Alabama, Andalusia, AL
TA–W–37,737; Union Special Corp., Huntley, IL

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,665; Chetta B. Evening Limited, New York City, NY
TA–W–37,663; Fruit of The Loom, Sales Office, New York, NY
TA–W–37,686; Calgon Corp., Pittsburgh, PA
TA–W–37,815; Tetra Applied Technology, Inc., Tetra Pipe Sales, Midland, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,643; Advance Transformer Co., Wartburg, TN
TA–W–37,334; Calgon Corp., Pasadena, Tx
TA–W–37,484; Calgon Corp., Ellwood City, PA
TA–W–37,589; New America Wood Products, Winlock, WA
TA–W–37,634; Marathon Oil Co., Gulf Coast Region, Lafayette, LA
TA–W–37,629; Raychem Corp., Fuquay-Varina, NC
TA–W–37,769; The Rosebud Mining Co LLC, 58 Miles West of Miles West of Winnemucca, NV
TA–W–37,545; Midwest Micro Manufacturing Co., Formerly Known as Vision Technologies LLC, Iron Ridge, WI
TA–W–37,735; International Business Machines Corp. (IBM), Storage Technoligy Div., Desk Sustrate Manufacturing, Rochester, MN
TA–W–37,633; The Homes Group, Rival Div., Warrensburg, MO

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,598; Hatch, Inc., El Paso, TX: April 5, 1999.
TA–W–37,460; Mr. Louis Manufacturing, Inc., Hialeah, FL: March 3, 1999.
TA–W–37,544; Fall River Weaving, Inc., Fall River, MA: March 23, 1999.
TA–W–37,799; Swann Embroidery, Florence, AL: May 31, 1999.
TA–W–37,779; Elco Controls, Wytheville, VA: May 26, 1999.
TA–W–37,564; American Camper, A Div. of Brunswick Outdoor Recreation Group, St. George, UT: March 26, 1999.
TA–W–37,475; Finlay Industries, Process Bonding Div., Johnstown, OH: March 7, 1999.
TA–W–37,622; Milano Fashions, Passaic, NJ: April 6, 1999.
TA–W–37,723; The Glove Corp., Calico Rock, AR: May 15, 1999.
TA–W–37,721; Oshkosh B'Gosh, Jamestown, TN: May 18, 1999.
TA–W–37,720; The Doe Run Resources Co., The Southeast Missouri Mining and Milling Div., Viburnum, MO: May 17, 1999.
TA–W–37,688; Ripley Industries, Lewiston, ME: May 12, 1999.
TA–W–37,690; PCC Olofseon, West Branch, MI: May 3, 1999.
TA–W–37,447; Powerex, Inc., Youngwood, PA: February 15, 1999.
TA–W–37,715; Murray, Inc., Lawrenceburg, TN: May 11, 1999.
TA–W–37,693; PCS Nitrogen, Camanche, IA: May 22, 1999.
TA–W–37,650; Long Handle Shirts, Inc., Monroe, NC: April 17, 1999.
TA–W–37,727; Seton Co., El Paso Cutting Plant, El Paso, TX: May 18, 1999.
TA–W–37,781; The Raleigh Col, Raleigh, MS: May 22, 1999.
TA–W–37,766; Condor D.C. Power Supplies, Inc., The Todd Products Group, McAllen, TX: May 25, 1999.
TA–W–37,725; Cadillac Curtain Corp., Dyer, TN: May 17, 1999.
TA–W–37,765; Cuba Specialty Mfg. Co., Inc., Fillmore, NY: May 26, 1999.
TA–W–37,683; Lefever Plastics, Inc., Huntsville, OH: May 5, 1999.
TA–W–37,784; The Thermos Co., Batesville, MS: June 1, 1999.
TA–W–37,776; American Case Co., Ann Arbor, MI: May 30, 1999.
TA–W–37,682 & A; Cape Cod Cricket Lane, A Div. of Kellwood Co., Bridgewater, MA and Hialeah, FL: April 27, 1999.
TA–W–37,674; Marquip, Inc., Madison, WI: May 5, 1999.
TA–W–37,692; Valley Recreation Products, Inc., Sycamore, IL: May 10, 1999.
TA–W–37,624; PMC Specialties Group, Fords, NJ: March 28, 1999.
TA–W–37,648; Olympia Limited, Inc., Hoboken, NJ: April 4, 1999.
TA–W–37,700; Cove Shoe Co., Martinsburg, PA: May 15, 1999.
TA–W–37,749; Cast Alloys, Inc., Northridge, CA: May 23, 1999.
TA–W–37,389; Langenberg Hat Co., Inc., New Haven, MO: February 11, 1999.
TA–W–37,730; Artesyn Technologies, Broomfield, CO: May 16, 1999.
TA–W–37,782; eMag Solutions, LLC, Graham, TX: May 30, 1999.

TA–W–37,657 & A; Ambar Chemical, Inc., Manistee Plant, Manistee, MI and Corporate Office, Houston, TX: April 25, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June and July, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03913; Mr. Louis Manufacturing, Inc., Hialeah, FL

NAFTA–TAA–03831; Midwest Micro Manufacturing Co., Formerly Known as Vision Technologies, LLC, Iron Ridge, WI

NAFTA–TAA–03944; The Holmes Group, Rival Div., Warrensburg, MO

NAFTA–TAA–03951; Rexworks, Inc., Milwaukee, WI

NAFTA–TAA–03842; International Business Machines Corp (IBM), Storage Technology Div., Disk Substrate Manufacturing, Rochester, MN

NAFTA–TAA–03975; Shorewood Packaging Corp. of Alabama, Andalusia, AL

NAFTA–TAA–03926; The Glove Corp., Calico Rock, AR

TAFTA–TAA–03883; Stroehmann Bakeries, Previously Known as Maier's Bakery, Easton, PA

NAFTA–TAA–04001; Flowserve Corp., Temecula, CA

NAFTA–TAA–03937; Cutler-Hammer, Crane Transportation and Resistors, Milwaukee, WI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03924; Howden Buffalo, Inc., Buffalo, NY

NAFTA–TAA–03960; Hearst Entertainment, King Telpro Productions, Los Angeles, CA

NAFTA–TAA–03958; Destination Film Distribution Co., Inc., Wheelman Productions, Santa Monica, CA

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03718; Oneida Limited Silversmiths, Sherrill, NY: February 4, 1999.

NAFTA–TAA–03872; Advanced Transformer Co., Wartburg, TN: April 21, 1999.

NAFTA–TAA–03961; Cast Alloys, Inc., Northridge, CA: May 23, 1999.

NAFTA–TAA–03858; Raychem Corp., Fuquay-Varina, NC: April 17, 1999.

NAFTA–TAA–03966; O'Neill, Inc., San Francisco, CA: June 30, 2000.

NAFTA–TAA–03929; Oshkowh B'Gosh, Jamestown, TN: May 18, 1999.

NAFTA–TAA–03896 & A; Ambar Chemical, Inc., Manistee Plant, Manistee, MI & Corporate Office, Houston, TX: April 25, 1999.

NAFTA–TAA–03955; A & B; Dallco Industries, Inc., York, PA, Delta, PA and Spring Run, PA: May 31, 1999.

NAFTA–TAA–03987; K and R Sportswear, Spring Hope, NC: June 21, 1999.

NAFTA–TAA–03905; Four Seasons Apparel Co., Murfreesboro, NC and Sanford, NC: May 5, 1999.

NAFTA–TAA–03922; Ithaca Industries, Inc., Corporate Headquarters, Wilkesboro, NC: May 16, 1999.

NAFTA–TAA–03979; VDO North America, LCC, Cheshire, CT: May 16, 1999.

NAFTA–TAA–03903; Dana—Epic Technical Group, Fluid Systems Group, Kendallville, IN: May 5, 1999.

NAFTA–TAA–03888; Lear Corp., Mold and Die Shop, El Paso, TX: April 21, 1999.

NAFTA–TAA–03964; Seton Co., Leather Div., Saxton, PA: June 5, 1999.

NAFTA–TAA–03959; Celestica Corp., Campton, KY: May 6, 1999.

NAFTA–TAA–03954; Honeywell, Inc., Allied Signal TBS, Bendix Commercial Vehicle Systems, Frankfort, KY: June 5, 1999.

I hereby certify that the aforementioned determinations were issued during the month of June and July, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 14, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18607 Filed 7–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications Of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may

request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 3, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 3, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 7/3/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,832	Nestaway Corp. (UAW)	Cleveland, OH	06/22/2000	Wire Products.
37,833	PED Oil Corp (Co.)	Midland, TX	06/20/2000	Oil and Gas Leasing.
37,834	Dynegy Midstream Services (Co.)	Eunice, NM	06/10/2000	Process Natural Gas.
37,835	Whitehall Leather (Co.)	Whitehall, MI	06/20/2000	Semi-Finished Leather.
37,836	Shenandoah Rag Co., Inc (Wkrs)	Shenandoah, PA	06/14/2000	Grade Second Hand Clothing.
37,837	American General Assurance (Wkrs)	Reading, PA	06/08/2000	Customer Service—Medical Claims.
37,838	Colorado Biomedical (Wkrs)	Evergreen, CO	06/14/2000	Tungsten Electrodes for Medical Industry.
37,839	Congoleum Corp. (USWA)	Trainer, PA	06/15/2000	Vinyl Flooring.
37,840	La Crosse Footwear (Co.)	Clintonville, WI	06/20/2000	Leather Footwear.
37,841	Braunstein, Inc. (Co.)	New York City, NY	06/17/2000	Gold Jewelry.
37,842	Siemens (IUE)	Norwood, OH	06/14/2000	Electrical Industrial Motors.
37,843	Shoal Creek Mine-Drummond (UMWA)	Adger, AL	06/20/2000	Coal Mining.
37,844	J and L Steel (USWA)	Detroit, MI	03/13/2000	Stainless Products.
37,845	Sims Deltec (Co.)	St. Paul, MN	05/01/2000	Gripper Needles, Medication Cassettes.
37,846	Collins Products (Co)	Klamath Falls, OR	06/23/2000	Plywood.
37,847	Reckitt Benckiser (PACE)	Rockwood, MI	06/21/2000	Household Products.
37,848	Genicom Corp. (Wkrs)	Temple, TX	06/16/2000	Impact Printer.
37,849	Seagate Technology, Inc (Wkrs)	Oklahoma, OK	06/26/2000	Computer Hard Drives.
37,850	Motorola—Energy Systems (Wkrs)	Harvard, IL	06/10/2000	Batteries for Cellular Phones.
37,851	J. Angela Dress (UNITE)	Brooklyn, NY	06/19/2000	Day and Evening Dresses.
37,852	Southwest Cupid Corp. (Wkrs)	Hominy, OK	06/15/2000	Ladies' Undergarments.

[FR Doc. 00–18609 Filed 7–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

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The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 3, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 3, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 2000 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, DC this 10th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 7/10/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,853	VF Workwear/Horace Small (Comp)	Bassfield, MS	06/22/2000	Men's Work Clothing.
37,854	P.H. Glatfelter (Wrks)	Pisgah Forest, NC	06/20/2000	Cigarette Paper.
37,855	Graphic Vinyl Products (Wrks)	Newark, NJ	06/20/2000	Letter Size Folders.
37,856	Seagate Technology, (Comp)	Anaheim, CA	06/06/2000	Substrates—Components of Disc Drives.
37,857	Optimum Air Corp., (Wrks)	Malta, NY	06/25/2000	Dehumidification Systems.
37,858	Shape Global Technology (Comp)	Kennebunk, ME	06/28/00	Video, Audio and Computer Products.

APPENDIX—Continued
[Petitions instituted on 7/10/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,859	Hurwitz Co. (UERM)	Buffalo, NY	06/15/2000	Baled Iron and Steel.
37,860	Weatherford Global (Comp)	Midland, TX	06/21/2000	Packages and Rents Oilfield Equipment.
37,861	Thermadyne (Wrks)	Gallman, MS	06/21/2000	Welding and Cutting Tip.
37,862	K and R Sportswear (Comp)	Spring Hope, NC	06/21/2000	Children's Swimwear.
37,863	Morton Forest Products (Comp)	Morton, WA	06/19/2000	Lumber.
37,864	Weinmann, Inc. (Comp)	Olney, IL	06/22/2000	Aluminum Wheel Rims—Bicycles.
37,865	ITT Industries, FHS (Comp)	Tawas City, MI	06/24/2000	Vacuum Harnesses—Automotive Parts.
37,866	Assembly Services, Inc (Wrks)	El Paso, TX	06/26/2000	Brooms and Mops.
37,867	WP Industries (Wrks)	South Gate, CA	06/20/2000	Pottery.
37,868	American Meter Co (IUE)	Erie, PA	06/26/2000	Radial Flow Valves.
37,869	Johnson Controls, Inc. (IBEW)	Goshen, IN	06/29/2000	Machining Equip—Air Conditioning, Heat.
37,870	Standard Ceramics, Inc (Wrks)	Niagara Falls, NY	06/28/0000	Silicon Carbide.
37,871	Robinson Fiddler's Green (IUE)	Springville, NY	06/28/2000	Household Cutlery Utensils.
37,872	Chipman-Union, Inc (Comp)	Belmont, NC	06/28/2000	Socks.
37,873	Springs Industries, Inc (Comp)	Griffin, GA	06/24/2000	Baby Apparel.
37,874	Frink America, Inc. (IAMAW)	Clayton, NY	06/15/2000	Snow Plows and Components.
37,875	Personal Products Co (Comp)	Wilmington, IL	06/28/2000	Feminine Hygiene & Incontinence Prod.
37,876	ITT Industries (Co.)	Oscoda, MI	06/24/2000	Automotive Fuel Systems.

[FR Doc. 00–18608 Filed 7–21–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03732]

Custom Emblems, Inc., Including Leased Workers of Total Employment Company, Tampa, Florida; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 12, 2000, applicable to workers of Custom Emblems, Inc., Tampa, Florida. The notice was published in the **Federal Register** on May 31, 2000 (65 FR 34734).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that some workers of Custom Emblems, Inc. were leased from Total Employment Company to produce embroidered name tags and emblems at the Tampa, Florida facility. Information also shows that workers separated from employment at Custom Emblem, Inc. had their wages reported under a separate unemployment insurance (UI) tax account for Total Employment Company.

Based on these findings, the Department is amending the certification to include workers of Total Employment Company, Tampa, Florida leased to Custom Emblems, Inc., Tampa, Florida.

The intent of the Department's certification is to include all workers of Custom Emblems, Inc. adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03732 is hereby issued as follows:

All workers of Custom Emblems, Inc., Tampa, Florida and leased workers of Total Employment Company, Tampa, Florida engaged in employment related to the production of embroidered name tags and emblems for Custom Emblems, Inc., Tampa, Florida who became totally or partially separated from employment on or after February 21, 1999 through May 12, 2002 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Dated: Signed at Washington, DC this 14th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–18610 Filed 7–21–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0103(2000)]

Ionizing Radiation; Proposed Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements; Comment Request

AGENCY: Occupational Safety and Health Administration, (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information-collection requirements contained in the Ionizing radiation Standard for general industry. (29 CFR 1910.1096).

REQUEST FOR COMMENT: The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before September 22, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0103(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health

Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements in the Ionizing radiation Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the Ionizing radiation Standard, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the Ionizing radiation Standard protect employees from the adverse health effects that may result from their exposure to ionizing radiation. The information-collection requirements of the Ionizing radiation Standard include employers phoning OSHA when radiation exposure incidents expose employees over radiation limits stated in the Standard; sending written reports of radiation over exposure to OSHA; maintaining employee exposure records; and furnishing exposure records to employees upon request.

II. Proposed Actions

OSHA proposes to extend OMB's approval of the collection of information (paperwork) requirements contained in the Ionizing radiation Standard. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the Ionizing radiation Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: Ionizing Radiation (29 CFR 1910.1096).

OMB Number: 1218–0103.

Affected Public: Business or other for-profit; Federal government; State, Local or Tribal government.

Number of Respondents: 15,859.

Frequency: On occasion.

Total Responses: 258,745.

Average Time per Response: Varies from 5 minutes to maintain radiation-exposure records to 15 minutes for employers to prepare a written report of employee overexposure for submission to OSHA.

Estimated Total Burden Hours: 42,491.

Estimated Cost (Operation and Maintenance): $2,093,388.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 6–96 (62 FR 111).

Signed at Washington, D.C., on July 18, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–18627 Filed 7–21–00; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before September 7, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Treasury, United States Secret Service (N9–87–00–1, 69 items, 69 temporary items). Electronic copies of records created using word processing that relate to such matters as special investigations, protective operations, emergency preparedness and planning, facilities security, White House security, polygraph examinations, protective operations associated with presidential campaigns and inaugurals, litigation cases, incident reports, and the organization and functions of agency components. This schedule follows Model 1 as described in **SUPPLEMENTARY INFORMATON** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–87–76–1, NC1–87–76–3, NC1–87–78–2, N1–87–83–2, NC1–87–84–1, NC1–87–84–2, NC1–87–85–1, N1–87–86–1, N1–87–86–2, N1–87–88–1, N1–87–88–2, N1–87–89–1, N1–87–89–2, N1–87–90–3, N1–87–91–1, N1–87–91–2, N1–87–92–2, N1–87–92–3, N1–87–93–1, N1–87–93–2, N1–87–96–1, N1–87–96–2, and N1–87–98–1.

2. Federal Communications Commission, Office of Public Affairs (N9–173–00–7, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that are accumulated by the Office of Public Affairs. Records relate to interactions between the agency and the public, including such matters as consumer mailings, publications, the translation of selected documents into Spanish, consumer inquiries, informational and press releases, and industry-wide civil rights. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–173–81–4 and N1–173–88–1.

3. Federal Communications Commission, Office of General Counsel (N9–173–00–8, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that are accumulated by the Office of General Counsel. Records relate to legal actions and issues, including such matters as rulemaking, equal employment opportunity, equipment authorizations, and contracting. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–173–79–2, N1–173–84–5, and N1–173–91–1.

4. Federal Communications Commission, Office of Legislative and Intergovernmental Affairs (N9–173–00–9, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that are accumulated by the Office of

Legislative and Intergovernmental Affairs. Records relate to Commission relations with Congress, the Vice President, and the President, including such matters as the development of communications legislation, Congressional hearings, legislative proposals, and Congressional correspondence. This schedule follows Model 2 as described in the SUPPLEMENTARY INFORMATION section of this notice. Recordkeeping copies of these files are included in Disposition Jobs N1–173–92–2 and N1–173–96–1.

5. Federal Communications Commission, Office of Plans and Policy (N9–173–00–10, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that are accumulated by the Office of Plans and Policy. Records relate to the development and analysis of long-range Commission policies and the funding and management of Commission research, including such matters as Commission dockets, cases and projects, contract administration, Notices of Inquiry, Notices of Proposed Rulemaking, and personnel. This schedule follows Model 2 as described in the SUPPLEMENTARY INFORMATION section of this notice. Recordkeeping copies of these files are included in Disposition Job NC1–173–80–4.

6. Federal Communications Commission, Office of Administrative Law Judges (N9–173–00–11, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that are accumulated by the Office of Administrative Law Judges. Records relate to hearings, initial decisions, and workload statistics. This schedule follows Model 2 as described in the SUPPLEMENTARY INFORMATION section of this notice. Recordkeeping copies of these files are included in Disposition Job Number NC1–173–80–1.

Dated: July 18, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–18623 Filed 7–21–00; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL COUNCIL ON DISABILITY

Sunshine Act: Meeting

TYPE: Community briefings.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule of the forthcoming community briefings of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

BACKGROUND: In May and June 2000, NCD conducted a think tank and civil rights retreat in Washington, DC, June 27–29, 2000. From those meetings a disability civil rights agenda was developed that includes a strategic action plan for disability civil rights enforcement for the next decade. The purpose of these 13 community briefings is to share and solicit input on the plan from grassroots stakeholders in every region of the country.

COMMUNITY BRIEFING DATES AND LOCATIONS:

August 14, 2000, New York, NY
August 17, 2000, Atlanta, GA
August 30, 2000, Houston, TX
September 6, 2000, Denver, CO
September 7, 2000, Anchorage, AK
September 8, 2000, Philadelphia, PA
September 13, 2000, Los Angeles, CA
September 15, 2000, Miami, FL
September 19, 2000, Boston, MA
September 21, 2000, Portland, OR
September 27, 2000, Rapid City, SD
September 28, 2000, Chicago, IL
September 29, 2000, Kansas City, MO

FOR SPECIFIC LOCATION AND INFORMATION, CONTACT: Carla Nelson, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), or *smadison@ncd.gov* (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: These community briefings of the National Council on Disability will be open to the public.

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 19, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–18666 Filed 7–19–00; 4:21 pm]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

In the Matter of United Illuminating Company (Seabrook Station, Unit 1); Order Approving Application Regarding Restructuring of United Illuminating Company

I

United Illuminating Company (UI) holds 17.5-percent ownership interest in Seabrook Station, Unit 1. Ten other investor-owned and municipal entities unaffiliated with UI are co-owners of Seabrook Station, Unit 1.

In connection with its ownership interest, UI is a co-holder of Facility Operating License No. NPF–86 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 50 on March 15, 1990, for Seabrook Station, Unit 1. Under this license, North Atlantic Energy Service Corporation, an affiliate of Northeast Utilities, has the exclusive authority to operate Seabrook Station, Unit 1. Seabrook Station is located in Rockingham County, New Hampshire.

II

Pursuant to 10 CFR 50.80, UI filed an application dated February 17, 2000, which was supplemented by letters dated March 1, April 24, April 28, and May 10, 2000 (collectively herein referred to as the application). In the application, UI informed the Commission that it was in the process of implementing a corporate restructuring under which UIL Holdings Corporation (Holdings) would become the parent corporation to, and sole owner of UI. In addition, unregulated subsidiaries of UI would become direct or indirect subsidiaries of Holdings. UI would continue to hold its respective ownership percentage of and possession only license for Seabrook Station, Unit 1. UI would remain an "electric utility" as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale. No physical

changes to the facility or operational changes are being proposed in the application, and none of the other co-owners of Seabrook Station, Unit 1, are involved in the proposed restructuring of UI. UI requested the Commission's approval of the indirect transfer of the license as held by UI to Holdings, to the extent effected by the proposed corporate restructuring, pursuant to 10 CFR 50.80. Notice of this request for approval was published in the **Federal Register** on May 8, 2000 (65 FR 26640). No hearing requests were received.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring will not affect the qualifications of UI as a holder of the license, and that the indirect transfer of the license, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated July 18, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954 (the Act), as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the proposed corporate restructuring of UI and the indirect transfer of the license held by UI is approved, subject to the following conditions:

(1) UI shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from UI to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of UI's consolidated net utility plant, as recorded on UI's books of account, and (2) should the corporate restructuring of UI not be completed by June 30, 2001, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated February 17, 2000, and supplements thereto dated March 1, April 24, April 28, and May 10, 2000, and the Safety Evaluation dated July 18, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.NRC.gov*).

Dated at Rockville, Maryland this 8th day of July, 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18654 Filed 7–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

In the Matter of United Illuminating Company (Millstone Nuclear Power Station, Unit 3); Order Approving Application Regarding Restructuring of United Illuminating Company

I

United Illuminating Company (UI) holds 3.6850-percent ownership interest in Millstone Nuclear Power Station, Unit 3 (Millstone). Thirteen other investor-owned and municipal entities unaffiliated with UI are co-owners of Millstone, Unit 3.

In connection with its ownership interest, UI is a co-holder of Facility Operating License No. NPF–49 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 50 on January 31, 1986, for Millstone, Unit 3. Under this license, Northeast Nuclear Energy Company, an affiliate of Northeast Utilities, has the exclusive authority to operate Millstone, Unit 3. Millstone is located in New London County, Connecticut.

II

Pursuant to 10 CFR 50.80, UI filed an application dated February 17, 2000, which was supplemented by letters dated March 1, April 24, April 28, and May 10, 2000 (collectively herein referred to as the application). In the application, UI informed the Commission that it was in the process of implementing a corporate restructuring under which UIL Holdings Corporation (Holdings) would become the parent corporation to, and sole owner of, UI. In addition, unregulated subsidiaries of UI would become direct or indirect subsidiaries of Holdings. UI would continue to hold its respective ownership percentage of and possession only license for Millstone, Unit 3. UI would remain an "electric utility" as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale. No physical changes to the facility or operational changes are being proposed in the application, and none of the other co-owners of Millstone, Unit 3, are involved in the proposed restructuring of UI. UI requested the Commission's approval of the indirect transfer of the license as held by UI to Holdings, to the extent effected by the proposed corporate restructuring, pursuant to 10 CFR 50.80. Notice of this request for approval was published in the **Federal Register** on May 8, 2000 (65 FR 26641). No hearing requests were received.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring will not affect the qualifications of UI as a holder of the license, and that the indirect transfer of the license, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated July 18, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954 (the Act), as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the proposed corporate restructuring of UI and the indirect transfer of the license held by UI is approved, subject to the following conditions:

(1) UI shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from UI to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of UI's consolidated net utility plant, as recorded on UI's books of account, and (2) should the corporate restructuring of UI not be completed by

June 30, 2001, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated February 17, 2000, and supplements thereto dated March 1, April 24, April 28, and May 10, 2000, and the Safety Evaluation dated July 18, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 18th day of July, 2000.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18655 Filed 7–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

U.S. Nuclear Regulatory Commission Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for resumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking two qualified candidates for appointment to its Advisory Committee on Reactor Safeguards (ACRS).

ADDRESSES: Submit resumés to: Ms. Robin Avent, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For Application Materials, Call: 1–800–952–9678. Please refer to Announcement Number 60000001.

SUPPLEMENTARY INFORMATION: Congress established the ACRS to provide the NRC with independent expert advice on matters related to licensing and the safety of existing and proposed nuclear power plants. The Committee's work currently emphasizes safety issues associated with the operation of 103 commercial nuclear power plants in the United States; the pursuit of a risk-informed, and performance-based regulatory approach; review of license renewal applications; digital instrumentation and control systems; and technical issues related to standard plant designs.

The ACRS membership includes individuals from national laboratories, academia, and industry who possess specific technical expertise along with a broad perspective in addressing safety concerns. Committee members are selected from a variety of engineering and scientific disciplines, such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, and instrumentation and process control systems. At this time, candidates are specifically being sought who have 15–20 years of experience, including graduate level education, in the areas of structural mechanics/materials engineering and metallurgy applicable to nuclear power systems, and the application of risk methods related to nuclear regulatory safety issues.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear reactor matters, and the ability to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse viewpoints so that the membership on the Committee will be fairly balanced.

Because conflict-of-interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be weighed. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities issued by nuclear industry entities, or discontinuance of industry-funded research contracts or grants.

Copies of a resumé describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address and telephone number should be provided. All qualified candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 60–100 days per year to Committee business. Applications will be accepted until September 29, 2000.

Dated: July 18, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–18653 Filed 7–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–400]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.60(a) for Facility Operating License No. NPF–63, issued to Carolina Power & Light Company (CP&L, the licensee) for operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP), located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of the Proposed Action

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak testing conditions. Specifically, 10 CFR Part 50, Appendix G, states that, "[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of amendments to the technical specifications (TS) P–T limits and low temperature overpressure protection (LTOP) system setpoints, the licensee requested in its submittal dated April 12, 2000, as supplemented on June 2, 2000, that the staff exempt HNP from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits and LTOP setpoints. Since the K_{IC} fracture toughness curve shown in

ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits and LTOP setpoints would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the proposed P–T limits and LTOP setpoints (excluding Code Cases N–640) are based on the 1989 edition of the ASME Code.

The proposed action is in accordance with the licensee's application for exemption dated April 12, 2000, as supplemented on June 2, 2000.

The Need for the Proposed Action

Use of the K_{Ic} curve, Code Case N–640, in determining the lower bound fracture toughness in the development of P–T operating limit curves and LTOP setpoints is more technically correct than use of the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the conservatism of the K_{Ia} curve since 1974, when the curve was adopted by the ASME Code. This conservatism was initially necessary due to the limited knowledge of the fracture toughness of RPV materials at that time. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve greatly exceeds the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves and LTOP setpoints based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window, with the greatest safety benefit in the region of low temperature operations.

Since an unnecessarily reduced P–T operating window can reduce operator flexibility without just basis, implementation of the proposed P–T curves and LTOP setpoints as allowed by ASME Code Case N-640 may result in enhanced safety during critical plant operational periods, specifically heatup and cooldown conditions. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of 10 CFR 50.60 and Appendix G to 10 CFR Part 50 will continue to be served.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the HNP reactor pressure vessel.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for HNP.

Agencies and Persons Consulted

In accordance with its stated policy, on July 11, 2000, the staff consulted with the North Carolina State official, Mr. Johnny James of the North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 12, 2000, as supplemented on June 2, 2000, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of July 2000.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 00–18656 Filed 7–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC To Hold Public Meetings on Spent Fuel Shipping Cask Accident Studies

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meetings on spent nuclear fuel transportation studies.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is approaching the end of the scoping phase of a study on spent nuclear fuel cask responses to severe transportation accidents (*i.e.*, the Package Performance Study (PPS)). The scoping phase will determine which issues and approaches are to be used for succeeding phases (including planning, conducting, and documenting any analyses or tests). In addition, in March 2000, NRC published the technical report for a related study, NUREG/CR–6672, "Reexamination of Spent Fuel Shipment Risk Estimates," and a discussion summary paper is available to complement that technical report. To facilitate discussion on these activities, NRC is convening an August public workshop and two public meetings in Nevada, and a September workshop in Rockville, Maryland.

A World Wide Web site has been established for dissemination of information to interested members of the public. Electronic copies of documents related to these studies, and

additional information on the public meetings, can be obtained at *http://ttd.sandia.gov/nrc/modal.htm*. Francis X. Cameron, Special Counsel for Public Liaison, in the Commission's Office of the General Counsel, will be the convener and facilitator for the meetings.

DATES AND ADDRESSES: The meetings are planned as follows:

- Public workshop: August 15, 2000, 9:30 a.m.–4:30 p.m., in the Hawaiian room at the Tropicana Hotel, 3801 Las Vegas Boulevard, Las Vegas, NV;
- Public meeting: August 15, 2000, 7–9 p.m., in the Hawaiian room at the Tropicana Hotel, 3801 Las Vegas Boulevard, Las Vegas, NV;
- Public meeting: August 16, 2000, 7:00–9:00 p.m., at the Mountain View Casino & Bowl, 1750 Pahrump Valley Blvd., Pahrump, NV; and
- Public workshop: September 13, 2000, 9:30 a.m.–3 p.m., in the NRC's Two-White Flint North Auditorium, 11545 Rockville Pike, Rockville, MD.

INFORMATION: Contact Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Telephone: (301) 415–1642 about any questions on the meetings. Copies of materials related to these meetings can be obtained on-line at *http://ttd.sandia.gov/nrc/modal.htm*, or from Robert Lewis, NRC, Telephone: (301) 415–8527.

SUPPLEMENTARY INFORMATION: The risk of transporting highly radioactive spent nuclear fuel from nuclear power plants to a centralized storage facility or to an underground repository is an issue that has recently received increased NRC and public attention because of the increase in the number of shipments that will occur if and when such facilities begin operating. Risk to the public from transportation accidents depends on accident rates, number of shipments, and the likely consequences and severity of the accidents. About 1300 shipments of spent nuclear fuel have been made in NRC-certified packages, with an exceptional safety record of no releases from accidents. Despite the previous studies and safety record, several groups have criticized NRC's cask standards and previous studies as being insufficient to adequately demonstrate safety during severe transportation accidents.

NRC previously studied transportation accident risks in the 1980s (*e.g.*, see NUREG/CR–4829, "Shipping Container Response to Severe Highway and Railway Accident Conditions," and NUREG/BR–0111, "Transporting Spent Fuel, Protection Provided Against Severe Highway and Railroad Accidents," often called the 'modal study'). The modal study looked at possible rail and highway accidents and concluded that spent nuclear fuel cask designs would survive nearly all transportation accidents without releasing radioactive material to the environment. Over the next few years NRC will revisit, in the Package Performance Study, the conclusions of the 1987 modal study, to evaluate their continued validity in light of newer cask technologies and approaches. Risk insights obtained using modern analysis techniques, physical testing, and through interaction with stakeholders and the public, will support NRC's ongoing efforts to assure that its regulatory actions maintain safety and are risk-informed and effective. Ongoing public interactions throughout this project will help ensure that public concerns are effectively identified and understood, and that the study design considers these issues. A related study, NUREG/CR–6672, "Reexamination of Spent Fuel Shipment Risk Estimates," was published in March 2000, and looked at both accident and incident-free risks from a large spent fuel transportation campaign. A discussion summary paper is available to complement the technical report for that study.

NRC is holding two public workshops and two public meetings to focus on these activities, and specifically to discuss stakeholder views and comments on two documents: (1) The Package Performance Study issues and resolution options report, and (2) a discussion summary paper regarding NUREG/CR–6672.

During the morning and afternoon of August 15 in Las Vegas, and on September 13 in Rockville, MD, representatives of the interests affected by the study will discuss their views on the issues in a "workshop" format. The Commission, through the facilitator for the meeting, will attempt to ensure participation by the broad spectrum of interests at the meetings, including citizen and environmental groups, nuclear and transportation industry interests, state, tribal, and local governments, experts from academia, or other agencies. Other members of the public are welcome to attend, and the public will have the opportunity to comment on each of the agenda items slated for discussion. Questions about participation may be directed to the facilitator, Francis X. Cameron.

On the evenings of August 15 in Las Vegas and on August 16 in Pahrump, public meetings will be conducted. At these meetings, the NRC staff will briefly present the NRC's role in ensuring transportation safety and its views regarding the two studies. A moderated discussion will then be held to discuss the study's proposed content or approach. The NRC staff will be available to further discuss issues or public concerns regarding the studies or transportation safety.

The first part of each meeting will be about NUREG/CR–6672 and the discussion paper; the remainder will be to discuss the PPS issues report. NRC is sharing these documents with the public before the public meetings, to obtain timely feedback on their content and to continue the constructive interactions on transportation risk issues that began at workshops and public meetings in 1999. Copies of the documents can be obtained on-line at *http://ttd.sandia.gov/nrc/modal.htm*, or through the NRC contacts listed above. NRC is particularly interested in views on the discussion paper's usefulness, both as a summary of NUREG/CR–6672 and as a communication about transportation risks. Regarding the PPS issues and resolution options, NRC desires to ensure that comments made at the 1999 public workshops, made in letters, or made through the Web site, have been included and appropriately characterized in this report. NRC will use the discussions on the PPS issues report, to help decide which issues and resolution options will be examined by the next phases of the PPS.

The public workshop and public meetings will have a scope and agenda. However, the agenda format will be sufficiently flexible to allow for the introduction of additional related issues that the participants may wish to raise. The purpose of the meetings is to hear the views of the participants on the issues and options to resolve the issues for the forthcoming study. The agenda for the meetings is set forth below.

Public Workshop Agenda—Spent Nuclear Fuel Transportation Studies

August 15, 2000 (Las Vegas, NV) and September 13, 2000 (Rockville, MD)

9:00 a.m.—Open House
9:30 a.m.–10:00 a.m.—Call to Order; Introductions and Ground Rules (Francis X. Cameron, NRC, Facilitator, Susan F. Shankman, Spent Fuel Project Office, NRC)
10:00 a.m.–11:30 a.m.—"Reexamination of Spent Fuel Shipment Risk Estimates," (NUREG/CR–6672) and the associated "Discussion Paper" Participant Discussion
11:30 a.m.–12:45 p.m.—Break for Lunch
12:45 p.m.–1:15 p.m.—Participant Discussion (continued)

1:15 p.m.–2:30 p.m.—Package Performance Study Issues Report
Project Overview and Public Interactions (Robert Lewis, NRC)
Presentation of Issues Report and Options for Study
Participant Discussion
2:30 p.m.–2:45 p.m.—Break
2:45 p.m.–3:45 p.m.—Package Performance Study Issues Report
Participant Discussion (continued)
3:45 p.m.–4:15 p.m.—Breakout Discussions with NRC Staff
4:15 p.m.–4:30 p.m.—Wrap-up
4:30 p.m.—Adjourn

Public Meeting Agenda—Spent Nuclear Fuel Transportation Studies

August 15, 2000 (Las Vegas, NV) and August 16, 2000 (Pahrump, NV)
Seminar, 7:00 P.M.–9:00 P.M.

7:00 p.m.–7:30 p.m.—Welcome and Overview (Francis X. Cameron, NRC, facilitator)
NRC Role and Regulatory Framework for Transportation
NRC Spent Fuel Transportation Studies
7:30 p.m.–8:15 p.m.—Facilitated Discussion on "Reexamination of Spent Fuel Shipment Risk Estimates," (NUREG/CR–6672) and the associated "Discussion Paper" (Francis X. Cameron, NRC, facilitator)
An opportunity for the public to discuss this project with the NRC staff.
8:15 p.m.–9:00 p.m.—Facilitated Discussion on "Package Performance Study Issues Report" (Francis X. Cameron, NRC, facilitator)
An opportunity for the public to discuss this project with the NRC staff.
9:00 p.m.—Wrap-up and Adjourn

Dated at Rockville, Maryland, this 17th day of July 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–18657 Filed 7–21–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions: Rule 6c–7, SEC File No. 270–269, OMB Control No. 3235–0276, and Rule 11a–2, SEC File No. 270–267, OMB Control No. 3235–0272.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 6c–7 [17 CFR 270.6c–7] under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act") provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 82 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, regarding obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes per response for each of 2,649 purchasers annually, for a total annual burden of 132.45 hours.

Rule 11a–2 [17 CFR 270.11a–2] permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the 1933 Act, of any administrative fee or sales load imposed in connection with an exchange offer. There are approximately 649 restraints governed by Rule 11a–2, with an estimated compliance time of 15 minutes per registrant.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 6c–7, the Commission does not include in the estimate of average burden hours the time preparing registration statement and sales literature disclosure regarding the restrictions or redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N–3 [17 CFR 274.11b] and Form N–4 [17 CFR 274.11c]). With regard to Rule 11a–2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N–3 and Form N–4).

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comment to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: July 14, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18592 Filed 7–21–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 8–A, OMB Control No. 3235–0056, SEC File No. 270–54, and Form 18–K, OMB Control No. 3235–0120, SEC File No. 270–108.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously

approved collections of information discussed below.

Form 8–A (OMB Control No. 3235–0056; SEC File No. 270–54) is a registration statement for certain classes of securities pursuant to Section 12(b) and 12(g) of the Securities Exchange Act of 1934. The information required on Form 8–A provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be companies. The information must be filed with the Commission on occasion. Form 8–A is a public document. The Commission uses very little of the collected information itself except on an occasional basis in the enforcement of the securities laws. Form 8–A takes 3 hours to prepare and is filed by 1,540 respondents for a total of 4,620 burden hours.

Form 18–K (OMB Control No. 3235–0120; SEC File No. 270–108) is used as an annual report for foreign governments and political subdivisions with securities listed on a United States exchange. Form 18–K permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The information collected on Form 18–K must be filed with the Commission annually. The Commission uses very little of the collected information itself except on an occasional basis in the enforcement of the securities laws. Form 18–K is a public document. Form 18–K takes approximately 8 hours to prepare and is filed by 20 respondents for a total of 160 burden hours.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 17, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18593 Filed 7–21–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24558, 812–11882]

PIMCO Funds: Multi-Manager Series and PIMCO Advisors L.P.; Notice of Application

July 17, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants, PIMCO Funds: Multi Manager Series ("Trust") and PIMCO Advisors L.P. ("Adviser"), request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and grant relief from certain disclosure requirements.

FILING DATES: The application was filed on December 20, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally, or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 11, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, D.C. 20549–0609. Applicants, 800 Newport Center Drive, Suite 600, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Anu Dubey, Senior Counsel, at (202) 942–0687, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust is currently comprised of twenty six series (each a "PIMCO Fund" and collectively the "PIMCO Funds").[1] Each Fund has its own investment objectives, policies and restrictions. The Adviser, registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser to the Funds pursuant to an investment advisory agreement with the Trust ("Advisory Agreement"), which was approved by the board of trustees of the Trust ("Board"), including a majority of the trustees who are not "interested persons", as defind in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of each Fund.

2. Under the terms of the Advisory Agreement, the Adviser manages the investment of assets of each Fund and may, subject to oversight by the Board, hire one or more subadvisers ("Subadvisers") to provide portfolio management services to each of the Funds pursuant to separate investment advisory agreements ("Subadvisory Agreements"). Each Subadviser is, or will be, an investment adviser that is either registered under the Advisers Act or exempt from registration under the Advisers Act. Subadvisers are recommended to the Board by the Adviser and selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser's fees are, and will be, paid by the Adviser out of the management fees received by the Adviser from the respective Fund.

3. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation, and reallocation, of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in

[1] Applicants also request relief with respect to future series of the Trust, and any other registered open-end management investment companies or series thereof (a) that are advised by the Adviser and (b) which operate in substantially the same manner as the PIMCO Funds (together with the PIMCO Funds, the "Funds"). Any Fund, that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The Trust is the only existing investment company that currently intends to rely on the order.

managing assets pursuant to particular investment objectives.

4. Applicants request relief to permit the Adviser, subject to Board oversight but without obtaining shareholder approval, to (a) terminate a Subadviser who is not an affiliated person of the Adviser or the Funds, within the meaning of section 2(a)(3) of the Act, except by virtue of serving as a subadviser to a Fund ("Non-Affiliated Subadviser") and enter into a subadvisory Agreement with another Non-affiliated Subadviser; (b) terminate a Subadviser that is a wholly owned subsidiary, as defined in section 2(a)(43) of the Act, of the Adviser ("Wholly Owned Subadviser") and enter into a Subadvisory Agreement with another Wholly Owned Subadviser; (c) terminate a Wholly Owned Subadviser and enter into a Subadvisory Agreement with a Non-Affiliated Subadviser; or (d) materially amend an existing Subadvisory Agreement with a Non-Affiliated Subadviser or a Wholly Owned Subadviser. Shareholder approval will continue to be required for any other Subadviser changes (not already permitted by Commission rule or other Commission or staff action), material amendments to an existing Subadvisory Agreement with any Subadviser other than a Non-Affiliated Subadviser or a Wholly Owned Subadviser, and material amendments to the Advisory Agreement (all such changes referred to as "Ineligible Subadviser Changes").

5. Applicants also request an exemption from the various disclosure provisions described below that may require each Fund to disclose fees paid by the Adviser to the Subadviser. The Trust will disclose for each Fund (both as a dollar amount and as a percentage of a Fund's net assets): (a) aggregate fees paid to the Adviser and Wholly Owned Subadvisers; (b) aggregate fees paid to Non-Affiliated Subadvisers; and (c) the fee paid to each Subadviser that is not a Wholly Owned Subadviser or a Non-Affiliated Subadviser ("Aggregate Fee Disclosure").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established, or an exiting fee increased, to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholders reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that shareholders are relying on the Adviser to select and monitor the activities of Non-Affiliated Subadvisers and Wholly Owned Subadvisers that are best suited for the respective Funds. Applicants assert that, from the perspective of the investor, the role of the Non-Affiliated Subadvisers and the Wholly Owned Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements may impose unnecessary costs and delays on the Funds, and may preclude the Adviser from Acting promptly and efficiently according to the judgment of the Board and the Adviser.

8. Applicants also assert that no impermissible conflict of interest or opportunity for self-dealing would arise when a Subadviser change (other than an Ineligible Subadviser Change) is made. Applicants state that the Adviser does not have any economic incentive to replace one Wholly Owned Subadviser with another Wholly Owned Subadviser since its overall compensation does not increase by virtue of its ownership interest in both entities.[2] Applicants further state that the Adviser does not derive any economic benefit when it replaces a Wholly Owned Subadviser with a Non-Affilated Subadviser or when it makes material changes to a Subadvisory Agreement with a Wholly Owned Subadviser. Applicants note that the Ineligible Subadviser Changes will remain fully subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act.

9. Applicants assert that some Non-Affiliated Subadvisers use a "posted" rate schedule to set their fees. Applicants state that the Adviser may not be able to negotiate below "posted" fee rates with Non-Affilated Subadvisers if each Non-Affiliated Subadviser's fees are required to be disclosed. With respect to Wholly Owned Subadvisers, applicants state that the Funds' shareholders would expect an aggregate fee to be presented because the adviser and the Wholly Owned Subadviser are essentially part of the same economic

[2] Applicants assert that they may not be able to rely on the safe harbor afforded by rule 2a–6 under the Act for making Wholly Owned Subadviser changes without shareholder approval. Applicants state that their view is based principally on the Adviser's management arrangement with each of its Wholly Owned Subadvisers, pursuant to which the managing general partner of each Wholly Owned Subadviser generally runs the day-to-day Affairs of the Wholly Owned Subadviser and each Wholly Owned Subadviser has its own investment personnel. Accordingly, applicants state that it may be asserted that changes in Wholly Owned Subadvisers for the Funds could be regarded as changes in "management" and, thus, an "assignment" with the meaning of sections 2(a)(4) and 15(a)(4) of the Act, so as to preclude reliance on rule 2a–6. Applicants also state that the guidance offered by the Commission staff in no-action letters may not apply to the adviser's management structure with respect to Wholly Owned Subadvisers.

enterprise. Applicants thus submit that aggregate Fee Disclosure is in the best interest of the Funds and their shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested herein, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a new Fund, whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a Wholly Owned Subadviser or Non-Affiliated Subadviser, the Adviser will furnish shareholders all information about the Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. To meet this obligation, the Adviser will provide shareholders, within 90 days of the hiring of a Subadviser, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. Any Ineligible Subadviser Change will be required to be approved by the shareholders of the applicable Fund.

5. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

6. When a Subadviser change is proposed for a Fund with a Subadviser that is an affiliated person of the Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the affiliated Subadviser derives an inappropriate advantage.

7. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will (a) set each Fund's overall investment strategies, (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets, (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Subadvisers, (d) monitor and evaluate the performance of Subadvisers, and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Funds nor director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity, except a Wholly Owned Subadviser, that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or controls, is controlled by or is under common control with a Subadviser.

12. Each Fund will include in its registration statement the Aggregate Fee Disclosure.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18594 Filed 7–21–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27201]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 18, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 11, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 11, 2000, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Enterprises (70–9805)

Eastern Enterprises ("Eastern"), 9 Riverside Road, Weston, Massachusetts 02139, a gas utility holding company claiming exemption from registration by rule 2 under the Act, has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act. Eastern proposes to acquire all of the issued and outstanding common stock of EnergyNorth, Inc. ("ENI", also a gas utility holding company claiming exemption under the Act by rule 2. In addition, Eastern requests that the

Commission issue an order under section 3(a)(1) of the Act confirming that Eastern and its subsidiary companies, as such, as well as ENI in its capacity as a holding company, will continue to qualify for an exemption under section 3(a)(1) following the proposed transaction.

To accomplish the acquisition (referred to here as the "Merger"), Eastern and ENI have entered into an Agreement and Plan of Reorganization ("Merger Agreement"), dated as of July 14, 1999, as amended by Amendment No. 1, dated as of November 4, 1999 ("Amended Merger Agreement"). The Merger Agreement provides, among other things, that a special purpose subsidiary of Eastern ("Merger Sub") will be formed to effect the Merger. Following the Merger, Eastern will own all the outstanding common stock of ENI and ENGI will remain a wholly owned subsidiary of ENI.

Under another Agreement and Plan of Merger, dated November 4, 1999, by and among KeySpan Corporation ("KeySpan"), ACJ Acquisition LLC, a wholly owned subsidiary of KeySpan, and Eastern, KeySpan has agreed to acquire all of the issued and outstanding common stock of Eastern in an all-cash transaction (the "KeySpan Merger"). KeySpan has filed a separate application under the Act for approval of the KeySpan Merger and has stated that, following its acquisition of Eastern, it intends to register as a holding company under section 5 of the Act.[1]

The obligation of Eastern under the amended Merger Agreement to acquire ENI is not conditioned on KeySpan's acquisition of Eastern, although the Amended Merger Agreement contemplates that the Merger will close contemporaneously with the KeySpan Merger. If the closing on the KeySpan merger is delayed beyond March 31, 2001, ENI would have the option to terminate the Merger Agreement or to extend the closing date to coincide with the closing of the KeySpan Merger.

I. Description of the Parties

A. Eastern

Eastern currently owns all of the issued and outstanding common stock of three gas utility companies: Boston Gas Company ("Boston Gas"); Essex Gas Company ("Essex Gas"); and Colonial Gas Company ("Colonial Gas").[2] Each of these companies is organized under the laws of the Commonwealth of Massachusetts and operates as a gas utility comapny exclusively within Massachusetts. Boston Gas, Essex Gas, and Colonial Gas are subject to regulation by the Massachusetts Department of Telecommunications and Energy ("MDTE") as to retail rates, transportation rates, affiliate transactions, securities issuances, and other matters.

For the year ended December 31, 1999, Eastern reported combined total assets of $2,019,757,000, combined gross revenues of $978,702,000, of which $690,809,000 were derived from regulated sales of gas and gas transportation, and combined net income of $55,093,000. As of April 27, 2000, Eastern had issued and outstandidng 27,146,676 shares of common stock, par value $1.00 per share. Eastern's common stock is listed for trading on the New York, Boston and Pacific Stock Exchanges.

Boston Gas serves approximately 541,000 gas retail customers, all in Massachusetts. For the year ended December 31, 1999, Boston Gas had total assets of approximately $902.9 million, operating revenues of approximately $592.7 million, and approximate net income of $37.9 million.

Essex Gas serves approximately 43,000 retail gas customers in Massachusetts. For the year ended December 31, 1999, Essex Gas had total assets of approximately $97.2 million, operating revenues of approximately $44.1 million, and approximate net income of 5.9 million.

Colonial Gas serves approximately 158,000 retail gas customers in Massachusetts. For the year ended December 31, 1999, Colonial Gas had total assets of approximately $584 million, operating revenues of approximately $176.7 million, and approximate net income of $7.2 million.

The service territories of Boston Gas, Essex Gas and Colonial Gas are contiguous and together include approximately 10,000 miles of mains and 598,000 service connections, all in Massachusetts, and liquefied natural gas ("LNG") storage facilities located in Massachusetts. In 1999, the three companies delivered a total of 154 billion cubic feet of gas, including gas delivered on a "bundled" basis to retail customers and gas delivered to transportation-only customers.

Eastern has four principal, wholly owned nonutility subsidiary companies: Midland Enterprises, Inc. ("Midland"); Transgas Inc. ("Transgas"),[3] AMR Data Corporation ("AMR"); and ServicEdge Partners, Inc. ("ServicEdge"). Eastern's principal nonutility businesses are as follows: water barging activities, including the hauling of fuel and other cargo; transporting LNG and propane by truck; providing meters and meter reading services to municipal utilities; and providing heating, ventiliation, and air conditioning ("HVAC") services.

Midland is primarily engaged, through wholly owned subsidiary companies, in the operation of a fleet of towboats, tugboats and barges transporting dry bulk commodities, a major portion of which is coal. Through other subsidiary companies, Midland also performs repair work on marine equipment, operates a rail-to-barge coal dumping terminal, a phosphate chemical fertilizer terminal, and cargo transfer facilities.

Transgas, a direct subsidiary of Colonial Gas, is an unregulated energy trucking company that provides over-the-road transportation of LNG, propane, and other commodities. Transgas is the nation's largest over-the-road transporter of LNG. ServicEdge provides HVAC services, primarily to residential customers in eastern Massachusetts. AMR provides customized metering equipment and automated meter reading services, primarily to municipal utilities in New England.

In addition to these four subsidiaries, Eastern also owns thirty-five other nonutility subsidiary companies. These include twenty nonutility companies owned by Eastern either directly or through one of Eastern's utility subsidiaries: Boston Gas Services, Inc.; CGI Transport Ltd.; Colonial Energy,[4] EE-AEM Canopany, Inc.; EE Acquisition Company, Inc.; EEG Acquisition Company, Inc.; Eastern Associated Capital Corp.; Eastern Associated Securities Corp.; Eastern Energy Systems Corp.; Eastern Enterprises Foundation; Eastern Rivermoor Company, Inc.; Eastern Urban Services, Inc.; LNG Storage, Inc.; Massachusetts LNG Incorporated;[5] Mystic Steamship Corporation; PCC Land Company, Inc.; Philadelphia Coke Co., Inc.; Water Products Group Incorporated; Western Associated Energy Corp.; and Northern Energy Company, Inc.[6] Midland holds the remaining fifteen nonutility

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[1] KeySpan filed its application-declaration under the Act seeking approval of the KeySpan Merger on March 8, 2000 (*see* S.E.C. File No. 70-9641). The Commission's notice of the KeySpan Merger filing is set forth elsewhere in this Release.

[2] Eastern completed its acquisition of Colonial Gas on August 31, 1999. *See Eastern Enterprises*, HCAR No. 27080 (Aug. 12, 1999).

[3] Transgas is a subsidiary of Colonial Gas.

[4] CGI Transport Ltd. And Colonial Energy are direct subsidiaries of Transgas, which is a subsidiary of Colonial Gas.

[5] Massachusetts LNG Incorporated is a subsidiary of Boston Gas.

[6] LNG Storage, Inc. and Northern Energy Company, Inc. are subsidiaries of Essex Gas.

subsidiaries either directly or indirectly: Capital Marine Supply, Inc.; Chotin Transportation, Inc.; Eastern Associated Terminals Company; Federal Barge Lines, Inc.; River Fleets, Inc.; Hartley Marine Corp.; Minnesota Harbor Service, Inc.; The Ohio River Company; The Ohio River Company Traffic Division, Inc.; The Ohio River Terminals Company; Orgulf Transport Co.; Orsouth Transport Co.; Port Allen Marine Service, Inc.; Red Circle Transport Co.; and West Virginia Terminals, Inc.

B. ENI

ENI is a New Hampshire corporation that presently owns all of the issued and outstanding common stock of one gas utility company operating exclusively in New Hampshire: EnergyNorth Natural Gas, Inc. ("ENGI"). For the fiscal year ended September 30, 1999, ENI reported consolidated assets of $168,325,000, including net utility plant of $113,730,000; consolidated operating revenues of $119,172,000, of which $76,617,000 (or 64%) represented regulated gas sales and transportation; and total net income of $4,537,000. As of April 27, 2000, ENI had issued and outstanding 3,322,903 shares of common stock, par value $1.00 per share, which are listed and traded on the New York Stock Exchange.

ENGI distributes natural gas to approximately 73,000 customers in southern, central and northern New Hampshire. ENGI is subject to the regulatory supervision of the NHPUC as to gas sales, transportation rates, securities issuance and other matters. For the fiscal year ended September 30, 1999, ENGI reported total assets of $150,757,000, consolidated operating revenues of $76,617,000, and consolidated net income of $3,631,000.

ENI's direct and indirect material nonutility subsidiary companies are as follows: EnergyNorth Propane, Inc. ("ENPI"); ENI Mechanicals, Inc. ("ENM"); Northern Peabody, Inc. ("NPI"); Granite State Plumbing and Heating, Inc. ("GSPH"); Broken Bridge Corp.; EnergyNorth Realty, Inc.; and ENI Resources, Inc.

ENPI sells propane to more than 15,300 customers in and around Concord, New Hampshire.[7] ENPI owns a 49% interest in VGS Propane, LLC ("VGSP"), a joint venture with Northern New England Gas Corporation, which owns the other 51%. VGSP is a Vermont limited liability company that provides propane service to approximately 10,000 customers in Vermont.[8]

ENM owns all of the outstanding stock of NPI and GSPH, which are mechanical contractors engaged in the design, construction and service of plumbing, HVAC, and process piping systems. They serve commercial, industrial and institutional customers in northern and central New England.

EnergyNorth Realty, Inc. is engaged primarily in owning and leasing land and a building in Manchester, New Hampshire, where ENI maintains corporate offices. Broken Bridge Corp. owns undeveloped land located in Concord, New Hampshire. ENI Resources, Inc. is engaged in an energy services joint venture.

II. Description of the Merger

The Amended Merger Agreement provides two alternative means for effecting the Merger, depending on whether the KeySpan Merger Agreement is terminated prior to the Effective Time of the Merger.[9]

1. If the Merger and the KeySpan Merger close at the same time, then Merger Sub will be merged with and into ENI, with ENI as the surviving corporation. In this case, each share of common stock of ENI issued and outstanding immediately prior to the Effective Time (other than treasury shares) will be canceled and extinguished and automatically converted into the right to receive cash in the amount of $61.13, without interest, as this amount may be adjusted. Based on the number of shares of ENI common stock outstanding on March 20, 2000, the total consideration paid in the Merger (assuming no increase) would be approximately $203.1 million.

2. If, on the other hand, the KeySpan Merger agreement is terminated before the Effective Time, ENI will be merged with and into Merger Sub, with Merger Sub as the surviving corporation. Merger Sub will change its name to "EnergyNorth, Inc." and remain a wholly owned subsidiary of Eastern. ENGI will remain a wholly owned subsidiary of "new" ENI. Under this alternative, holders of ENI common stock will receive cash and common stock of Eastern having an expected aggregate value of approximately $182.7 million. A total of 49.9% of the outstanding shares of ENI common stock will be exchanged for cash and the remainder will be exchanged for shares of Eastern common stock. Each share of ENI common stock exchanged for cash will entitle the holder to receive $47.00. Each share which is not exchanged for cash will entitle the holder to receive that number of shares of Eastern common stock having a value of $47.00 based on the average of the daily per share weighted averages of the trading prices of the Eastern common stock for a specified ten-day period preceding the effective date of the Merger. The value of the Eastern common stock is subject to adjustment if the weighted average per share price falls lower than $36.00 or rises higher than $44.00.[10]

Eastern will account for the Merger under the "purchase method" of accounting, and estimates that $124 million of goodwill will be created in the transaction. Eastern states that the goodwill will be amortized over a 40-year period.

On April 27, 2000, the Merger was approved by ENI's shareholders. On May 8, 2000, the New Hampshire Public Utilities Commission issued an order approving the Merger and further approving the indirect acquisition of ENI by KeySpan through the KeySpan Merger.

KeySpan Corporation, et al. (70–9641)

KeySpan Corporation ("KeySpan"), a combination gas and electric utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, and its wholly owned subsidiary company ACJ Acquisition LLC ("ACJ"), both located at One Metrotech Center, Brooklyn, New York 11201, have filed an application-declaration under sections 3(a)(1), 4, 5, 8, 9(a)(2), 10, and 11(b) of the Act and rule 54 under the Act.

KeySpan proposes to acquire all of the issued and outstanding shares of common stock of Eastern Enterprises ("Eastern"), a gas utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, located at 9 Riverside Road, Weston, Massachusetts 02139. KeySpan also seeks Commission approval for the retention of: (1) KeySpan's electric utility operations; and (2) the nonutility subsidiary companies of KeySpan and Eastern. KeySpan further requests a finding by the Commission that Eastern and KeySpan's subsidiary utility holding companies will continue to be exempt holding companies under section 3(a)(1) of the Act following the proposed

[7] Propane distribution does not require a regulatory franchise in New Hampshire.

[8] In August 1999, ENGI exercised an option to offer to sell its interest in VGSP to Northern New England Gas Corporation. This transaction is expected to close in late summer of 2000.

[9] The Effective Time is the date on which the Merger is consummated by filing articles of merger with the Secretary of the State of New Hampshire following closing of the transaction.

[10] Based on the average of the daily weighted average price per share of Eastern common stock for the ten trading day period ended on January 24, 2000 and the number of shares of ENI common stock outstanding on March 20, 2000, Eastern would issue approximately 1,778,000 shares of its common stock in the Merger, and the cash portion of the consideration would equal approximately $78 million. ENI's shareholders would hold approximately 6.1% of Eastern's outstanding common stock following the transaction.

acquisition of Eastern ("Merger").[11] After the Merger, KeySpan will register with the Commission under section 5 of the Act.

Under the terms of an Agreement and Plan of Merger dated as of November 4, 1999, as modified by Amendment No. 1 dated January 26, 2000 ("Merger Agreement"), ACJ will be merged with and into Eastern, with Eastern as the surviving entity. Eastern will become a direct wholly owned subsidiary of KeySpan. KeySpan anticipates that it will pay approximately $1.7 billion to acquire Eastern's common stock in an all-cash transaction.

Under another Agreement and Plan of Reorganization dated as of July 14, 1999, as amended by Amendment No. 1 dated as of November 4, 1999 ("ENI Merger Agreement"), Eastern has agreed to acquire all of the issued and outstanding common stock of EnergyNorth, Inc. ("ENI"), a New Hampshire gas utility holding company claiming exemption under section 3(a)(1) of the Act by rule 2 ("Eastern/ENI Merger"). This proposed transaction is subject to approval by the New Hampshire Public Utilities Commission ("NHPUC") and to Commission approval under the Act.[12] If the Eastern/ENI Merger is approved by the Commission and is consummated, ENI will become a direct subsidiary of Eastern and, therefore, an indirect subsidiary of KeySpan following consummation of the Merger.[13] For purposes of this application-declaration, KeySpan has assumed that the Eastern/ENI Merger will be approved concurrently with the Merger. However, KeySpan and ACJ's request for approval of the Merger is not contingent on Commission approval of the Eastern/ENI Merger.

I. Description of the Parties

A. KeySpan

KeySpan directly or indirectly owns all of the issued and outstanding common stock of three public utility companies: (1) The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan New York);[14] (2) KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island ("KeySpan Long Island"); and (3) KeySpan Generation LLC ("KeySpan Generation") (collectively, the "New York Utilities").[15]

For the year ended December 31, 1999, KeySpan reported operating revenues of $3 billion of which $1.8 billion (or approximately 59%) were derived from regulated sales of gas and gas transportation, and $861.6 million (or approximately 29%) were derived from electric operations. At December 31, 1999, KeySpan had consolidated assets of $6.7 billion, including net property and equipment of $4.2 billion, operating income of $482.2 million, and net income of $258.6 million. As of the same date, KeySpan had issued and outstanding 133.9 million shares of common stock, par value $0.01 per share, which is publicly traded on the New York Stock Exchange and the Pacific Exchange.

KeySpan New York distributes natural gas at retail to approximately 1.1 million customers in the New York City area. For the year ended December 31, 1999, KeySpan New York had total assets of $2,196,055,000, operating revenues of $1,116,041,000, and net income of $189,648,000.

KeySpan Long Island distributes natural gas at retail to approximately 500,000 customers located on Long Island and the Rockaway Peninsula in New York State. For the year ended December 31, 1999, KeySpan Long Island had assets of $2,092,853,000, operating revenues of $640,705,000, and net income of $41,588,000. Both KeySpan New York and KeySpan Long Island are subject to regulation by the New York Public Service Commission ("NYPSC") as to rates, affiliate transactions, and certain other matters.[16]

KeySpan Generation is a New York limited liability company that owns and operates approximately 4,032 megawatts of electric generation capacity located on Long Island ("KeySpan Generation Facilities"). All of the capacity of the KeySpan Generation Facilities is sold at wholesale to the Long Island Power Authority ("LIPA"), which provides retail electric service to 1.1 million customers. KeySpan Generation does not own any electric transmission or distribution facilities other than limited facilities necessary to interconnect its generating facilities with LIPA's transmission and distribution system. For the year ended December 31, 1999, KeySpan Generation had assets of $1,111,436,000, operating revenues of $318,864,000, and net income of $20,854,000. KeySpan Generation is subject to regulation by the Federal Energy Regulatory Commission and by the NYPSC.[17]

In addition to ACJ, KeySpan has seventeen direct, wholly owned nonutility subsidiary companies: KEC;[18] KeySpan Operating Services LLC ("KOS");[19] KeySpan Exploration and Production, LLC ("KeySpan Exploration"); KeySpan Corporate Services LLC ("KCS";); KeySpan Utility

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[11] After consummation of the Merger, KeySpan expects to have three subsidiary utility holding companies: Eastern; KeySpan Energy Corporation; and EnergyNorth, Inc. However, KeySpan intends to eliminate EnergyNorth, Inc. as an intermediary holding company as soon as practicable after consummation of the Merger. Eastern and the other two subsidiary holding companies are described in more detail now. These holding companies would remain subject to the Act with respect to their status as subsidiaries of a registered holding company.

[12] Eastern filed a separate application-declaration under the Act seeking approval of the Eastern/ENI Merger on January 5, 2000 (*see* Commission File No. 70-9805). The Eastern/ENI Merger filing is being noticed contemporaneously with this notice.

[13] As stated in note 1 above, KeySpan intends to eliminate ENI as an intermediate holding company as soon as reasonably practicable after closing the Merger.

[14] KeySpan New York is indirectly owned by KeySpan through KeySpan's wholly owned direct subsidiary holding company KeySpan Energy Corporation ("KEC"). KEC owns 100% of the outstanding voting stock of KeySpan New York and, like KeySpan, is a public utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2.

[15] KeySpan Long Island and KeySpan Generation own, respectively, the gas distribution operations and the non-nuclear electric generating facilities formerly held by Long Island Lighting Company ("LILCO"). In *BL Holding Corp.*, HCAR No. 26875 (May 15, 1998), the Commission approved the transactions by which KeySpan acquired (i) LILCO's interests in these facilities and in common plant associated with these facilities; and (ii) KEC, the parent company of KeySpan New York. KeySpan Long Island and KeySpan Generation are direct, wholly owned subsidiaries of KeySpan.

[16] The Applicants state that the NYPSC has expressed no concern about the Merger or its effect on rates, regulation or competition in New York. Applicants further state that the NYPSC does not have statutory jurisdiction over the Merger.

[17] The NYPSC regulates KeySpan Generation with respect to affiliate transactions and other financial, corporate, reliability, and safety matters.

[18] KEC is a holding company for KeySpan New York and for five direct, nonutility subsidiary companies: KeySpan North East Ventures, Inc.; KeySpan Energy Development Corporation ("KEDC"); THEC Holdings Corp. ("THEC"); KeySpan Natural Fuels, LLC; and GEI Development Corp. Through KeySpan New York and these nonutility subsidiary companies, KEC owns 50% or more of the following indirect nonutility subsidiary companies: North East Transmission Co., Inc.; Northeast Gas Markets, LLC; The Houston Exploration Company ("Houston Exploration"); Seneca-Upshur Petroleum, Inc.; GTM Energy, LLC; KeySpan International Corporation; GEI Timna, Inc.; KeySpan Cross Bay, LLC; KeySpan Midstream, LLC ("KeySpan Midstream"); Solex Production Limited; KeySpan CI Limited; KeySpan CI II Limited Premier Transco Limited; Grupo Keyspan S. de R.IL. de C.V.; FINSA Energeticos, S. de R.L. de C.V.; GMS Facilities Limited; Gulf Midstream Services Limited ("Gulf MidStream Services"); Gulf Midstream Services Partnership; KeySpan Energy Canada, Ltd. ("KeySpan Canada";); KeySpan CI Midstream Ltd.; KeySpan Luxembourg S.A.R.L.; Nicodasa Beheer V.B.V.; KeySpan Energy Development Co. (Nova Scotia); and KS Midstream Finance Co.

[19] KOS is an inactive company that holds no assets. In June 2000, KOS sold its only assets, a 51% interest in KeySpan Energy Construction LLC, to an unaffiliated entity. KeySpan intends to dissolve KOS as soon as practicable.

Services LLC ("KUS");[20] KeySpan Electric Services LLC ("KES");[21] KeySpan Energy Trading Services LLC ("KeySpan Trading"); Marquez Development Corporation; Island Energy Services Company, Inc.; LILCO Energy System Inc.;[22] KeySpan-Ravenswood Inc. ("KeySpan-Ravenswood"); KeySpan-Ravenswood Services Corp. ("KRS");[23] KeySpan Energy Supply, LLC ("KeySpan Supply"); KeySpan Services Inc. ("KSI");[24] Honeoye Storage Corporation ("Honeoye");[25] KeySpan Technologies Inc.; and KeySpan MHK, Inc. ("KMHK").[26] As of December 31, 1999, KeySpan's combined nonutility subsidiary companies and investments together constituted approximately 34% of the consolidated assets of KeySpan and its subsidiaries, 33% of its consolidated income, and 30% of its consolidated net revenues.

KeySpan's principal nonutility businesses are as follows: (1) Development, ownership and operation of natural gas pipelines and storage facilities;[27] (2) investment in companies that develop, own, and/or operate gas pipelines, nonutility generation plants, gas processing facilities, and oil fields;[28] (3) exploration, development and acquisition of natural gas and oil properties;[29] (4) brokering and marketing of natural gas and electricity;[30] (5) provision of operation, maintenance, construction, management, and corporate administrative services to affiliate companies;[31] (6) procurement, development, and marketing of new energy related technologies;[32] (7) generation and marketing of electric energy at wholesale;[33] (8) the ownership of telecommunications equipment;[34] (9) the design and development of energy plants for large industrial and institutional customers;[35] (10) the installation and maintenance of heating, ventilation and air conditioning ("HVAC") systems; and (11) provision of a wide range of plumbing, engineering and appliances services to commercial, industrial, residential and small business customers.[36]

B. Eastern

Eastern is a Massachusetts voluntary association that currently owns all of the outstanding common stock of three gas utility companies operating exclusively within Massachusetts: Boston Gas Company ("Boston Gas"); Colonial Gas Company ("Colonial Gas"); and Essex Gas Company ("Essex Gas") (collectively, the "Massachusetts Utilities"). At April 27, 2000, Eastern had issued and outstanding 27,146,678 shares of common stock, par value $1.00 per share. Eastern's common stock is listed for trading on the New York, Boston and Pacific Stock Exchanges.[37] For the year ended December 31, 1999, Eastern reported consolidated assets of $2,019,757,000, gross revenues of $978,702,000, of which $690,809,000 were derived from regulated sales of gas and gas transportation, and earnings before extraordinary items of $55,093,000.

The Massachusetts Utilities are organized under the laws of the Commonwealth of Massachusetts and are subject to the regulation of the Massachusetts Department of Telecommunications and Energy as to retail rates, transportation rates, affiliate transactions, securities issuances, and other matters. Together, the Massachusetts Utilities provide retail gas service to approximately 735,000 customers within Massachusetts.

Boston Gas distributes natural gas to approximately 541,000 customers

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[20] KeySpan Corporate Services LLC and KeySpan Utility Services LLC are service companies providing, respectively, corporate administrative services and utility transmission and distribution services to the New York Utilities and to KeySpan's nonutility subsidiary companies. In a separate application, KeySpan will seek Commission approval under section 13(b) of the Act of both KCS and KUS as service companies for the registered holding company system.

[21] KES provides operation, maintenance, and construction management services to LIPA for LIPA's transmission and distribution facilities located on Long Island, New York, subject to LIPA's overall direction and control. KES also provides management and administrative services to LIPA for its interests in the Nine Mile Point Unit 2 nuclear facility, also located on Long Island.

[22] LILCO Energy Systems Inc. holds a 1% interest in Iroquois Gas Transmission Systems L.P. ("Iroquois"), a natural gas pipeline regulated by FERC. KeySpan indirectly owns another 18.4% interest in Iroquois through North East Transmission Co., Inc., a nonutility subsidiary company of KEC.

[23] KeySpan-Ravenswood is an exempt wholesaler generator ("EWG") under section 32 of the Act. KRS is primarily engaged in providing operation and maintenance services to KeySpan-Ravenswood for its electric generating facility located in Queens, New York, subject to KeySpan-Ravenswood overall direction and control.

[24] Directly or indirectly, KSI wholly owns the following 14 nonutility subsidiary companies: KeySpan Communications Corp. ("KCC"); KeySpan Energy Management, Inc. ("KEMI"); KeySpan Energy Services, Inc.; KeySpan Energy Solutions, LLC; KeySpan Plumbing Solutions, Inc.; Fritze KeySpan, LLC; Delta KeySpan, Inc.; Active Conditioning Corp.; Fourth Avenue Enterprise Piping Corp.; Paulus, Sokolowski & Sartor, Inc. ("PS&S"); WDF, Inc.; Roy Kay, Inc.; Roy Kay Electrical Company; and Roy Kay Mechanical, Inc.

[25] KeySpan directly holds a 23.33% interest in Honeoye, and KES indirectly holds an additional 28.8% of the outstanding common stock of Honeoye.

[26] KMHK is a Delaware corporation that currently owns an approximate 18.2% equity interest in MyHomeKey.com ("MHK"). MHK, also a Delaware corporation, was created to establish and maintain an Internet-based website that will serve as (1) a national platform for local websites offering energy and home-related goods and services; and (2) a contractor for energy and home-related services from national providers.

[27] These activities are primarily conducted by KEDC, an indirect subsidiary of KeySpan, through KEDC's eight direct subsidiary companies.

[28] These investment activities are conducted by KEDC directly and through direct and indirect subsidiary companies of KEDC and of Key Span New York. KEDC, both directly and through its subsidiary companies, also invests in foreign utility companies, as defined in section 33 of the Act.

[29] KEC engages in these activities through its subsidiary, THEC, which currently holds a 70% interest in Houston Exploration. Houston Exploration is engaged in the exploration, development and acquisition of domestic natural gas and oil properties, and also owns Seneca-Upshur Petroleum, Inc., which owns oil and gas properties in West Virginia. Another wholly owned subsidiary of KeySpan, KeySpan Exploration, is part of a joint venture with Houston Exploration to conduct offshore gas and oil exploration and development in the Gulf of Mexico.

[30] Subsidiary companies providing these services include KeySpan Trading and KeySpan Supply. A direct subsidiary of KEDC, KeySpan Midstream, also indirectly holds interests in four Canadian companies through a chain of wholly owned subsidiary companies incorporated, respectively, in the Cayman Islands, Luxembourg, the Netherlands, and Nova Scotia. Two of these Canadian companies own interests in several natural gas processing plants located in Canada; a third, Gulf Midstream Services, act as the agent for these two companies. The fourth company, KeySpan Canada, owns a 19% interest in a natural gas liquids and extraction facility located in western Canada.

[31] Subsidiary companies providing these services include KES, KOS, KCS, KUS, and KRS. These service subsidiary companies are described above at footnotes 9, 10, 11, and 13.

[32] KeySpan engages in these activities through its direct, wholly owned subsidiary company, KeySpan Technologies Inc.

[33] In addition to KeySpan Generation, which is regulated as an electric utility, KeySpan generates and markets electric energy at wholesale through an EWG, KeySpan-Ranveswood. *See* footnote 13 above.

[34] KCC, a direct, wholly owned subsidiary of KSI, owns an approximately 400-mile fiber optic network on Long Island and in new York City. KCC also constructs and operates fiber optic networks and transportation facilities.

[35] KeySpan engages in these activities indirectly through KEMI, a wholly owned subsidiary company of KSI. KEMI is the holding company of two wholly owned subsidiary companies that design and operate energy systems for large-scale residential and commercial facilities and provide energy related services such as the installation and construction of power supply and heating, ventilation and air conditioning systems, boilers and burners. PS&S, another wholly owned subsidiary of KSI, is an engineering and consulting firm that engages in design, permitting, licensing and environmental compliance work on a wide range of systems for a variety of large commercial and industrial customers, including utilities, corporate offices, hotels, laboratories, warehouses, pharmaceutical companies, hospitals, universities, and power plants.

[36] KeySpan provides services relating to HVAC systems, plumbing, engineering and appliances through thirteen subsidiary companies owned indirectly through KSI.

[37] Eastern's shares will be delisted and cease to be publicly traded after consummation of the Merger.

located in Boston and in other areas throughout eastern and central Massachusetts. As of December 31, 1999, Boston Gas had total assets of $902,892,000, operating revenues of $592,719,000, and net income of $37,912,000.

Essex Gas distributes natural gas to approximately 43,000 customers in eastern Massachusetts. For the year ended December 31, 1999, Essex Gas had total assets of $97,196,000, operating revenues of $44,096,000, and net income of $5,936,000.

Colonial Gas serves approximately 158,000 retail gas customers in northeastern Massachusetts.[38] For the year ended December 31, 1999, Colonial Gas had total assets of $584,047,000, operating revenues of $176,724,000, and net income of $7,233,000.

Eastern has four principal, wholly owned nonutility subsidiary companies: Midland Enterprises, Inc. ("Midland"); Transgas Inc. ("Transgas"); AMR Data Corporation ("AMR"); and ServicEdge Partners, Inc. ("ServicEdge"). Together, at December 31, 1999, Eastern's nonutility subsidiary companies and investments constituted approximately 23% of the consolidated total assets of Eastern and its subsidiary companies, 11% of consolidated operating income and 29% of consolidated revenues. Eastern's principal nonutility businesses are as follows: water barging activities, including the hauling of fuel and other cargo;[39] transporting by truck liquefied natural gas ("LNG") and propane; providing meters and meter reading services to municipal utilities; and providing HVAC services.

Midland is primarily engaged, through wholly owned subsidiary companies, in the operation of a fleet of towboats, tugboats and barges transporting dry bulk commodities, a major portion of which is coal. Through other subsidiary companies, Midland also performs repair work on marine equipment, operates a rail-to-barge coal dumping terminal, a phosphate chemical fertilizer terminal, and cargo transfer facilities.[40]

Transgas, a direct subsidiary of Colonial Gas, is an unregulated energy trucking company that provides over-the-road transportation of LNG, propane, and other commodities. Transgas is the nation's largest over-the-road transporter of LNG. ServiceEdge provides HVAC services, primarily to residential customers in eastern Massachusetts. AMR provides customized metering equipment and performs automated meter reading services to municipal utilities.

Not including Midland's subsidiaries, Eastern owns directly or indirectly twenty other nonutility subsidiary companies: EE–AEM Marketing Company, Inc.; EE Acquisition Corp.; EEG Acquisition Corp.; Boston Gas Services, Inc.; Colonial Energy Company, Inc.; Eastern Associated Capital Corp.; Eastern Associated Securities Corp.; Eastern Energy Systems Corp.; Eastern Enterprises Foundation; Eastern Rivermoor Company, Inc.; Eastern Urban Services, Inc.; CGI Transport Ltd.; Mystic Steamship Corporation; PCC Land Company, Inc.; Philadelphia Coke Co., Inc.; Water Products Group Incorporated; Western Associated Energy Corp.; Massachusetts LNG Incorporated[41]; LNG Storage, Inc.; and Northern Energy Company, Inc.[42]

Eastern's subsidiary, Midland, also owns the following direct and indirect subsidiary companies: Capital Marine Supply, Inc.; Chotin Transportation, Inc.; Eastern Associated Terminals Company; Federal Barge Lines, Inc.; River Fleets, Inc.; Hartley Marine Corp.; Marine Corp.; Minnesota Harbor Service, Inc.; The Ohio River Company; The Ohio River company Traffic Division, Inc.; The Ohio River Terminals Company; Orgulf Transport Co.; Orsouth Transport Co.; Port Allen Marine Service, Inc.; Red Circle Transport Co.; and West Virginia Terminals, Inc.

C. ENI

ENI is a New Hampshire corporation that presently owns all of the issued and outstanding common stock of one gas utility company operating exclusively in New Hampshire: EnergyNorth Natural Gas, Inc. ("ENGI").[43] For the fiscal year ended September 30, 1999, ENI reported consolidated assets of $168,325,000, consolidated operating revenues of $119,172,000, and total net income of $4,537,000. As of April 27, 2000, ENI has issued and outstanding 3,322,903 shares of common stock, par value $1.00 per share, which are listed and traded on the New York Stock Exchange. Upon the consummation of the Eastern/ENI Merger, ENI's shares will be delisted and cease to be publicly traded.

ENGI distributes natural gas to approximately 73,000 customers in southern, central and northern New Hampshire. ENGI is subject to the regulatory supervision of the NHPUC as to gas sales, transportation rates, securities issuance and other matters. For the fiscal year ended September 30, 1999, NEGI reported total assets of $150,757,000, operating revenues of $76,617,000, and net income of $3,831,000.

ENI's direct and indirect material nonutility subsidiary companies are as follows: EnergyNorth Propane, Inc. ("ENPI"); ENI Mechanicals, Inc. ("ENM"); Northern Peabody, Inc. ("NPI"); Granite State Plumbing and Heating, Inc. ("GSPH"); Broken Bridge Corp.; EnergyNorth Realty, Inc.; and ENI Resources, Inc. As of September 30, 1999, ENI's nonutility subsidiary companies and investments constituted approximately 4.8% of the consolidated assets of ENI and 35% of its consolidated gross revenues.

ENPI sells propane to approximately 15,800 customers in and around Concord, New Hampshire.[44] ENPI owns a 49% interest in VGS Propane LLC ("VGSP"), a joint venture with Northern New England Gas Corporation, which owns the other 51%. VGSP is a Vermont limited liability company that provides propane service to approximately 10,00 customers in Vermont.[45]

ENM owns all of the outstanding stock of NPI and GSPH, which are mechanical contractors engaged in the design, construction and service of plumbing, HVAC, and process piping systems. They serve commercial, industrial and institutional customers in northern and central New England.

EnergyNorth Realty, Inc. is engaged primarily in owning and leasing land and a building in Manchester, New Hampshire, where ENI maintains corporate offices. Broken Bridge Corp. owns undeveloped land located in Concord, New Hampshire. ENI Resources, Inc. is engaged in an energy services joint venture.

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[38] Eastern completed its acquisition of Colonial Gas on August 31, 1999. *See Eastern Enterprises*, HCAR No. 27059 (Aug. 12, 1999).

[39] KeySpan states in its Application that these activities may not meet the retention standards of the Act. *See* note 40 below.

[40] KeySpan recognizes that Midland's business activities may not satisfy the standards for retention by a registered gas utility holding company under the Act. Consequently, the Applicants request that any order of the Commission that approves the Merger but requires KeySpan to divest Midland permit KeySpan to take the appropriate actions to effect the sale of all of its interests in Midland within three years after the Merger is consummated.

[41] Massachusetts LNG Incorporated is a direct subsidiary of Boston Gas.

[42] LNG Storage, Inc. and Northern Energy Company, Inc. are direct subsidiary companies of Essex Gas.

[43] If the Eastern/ENI Merger is consummated, ENI will become a direct, wholly owned subsidiary of Eastern.

[44] Propane distribution does not require a regulatory franchise in New Hampshire.

[45] In August 1999, ENGI exercised an option to offer to sell its interest in PGSP to Northern New England Gas Corporation. This transaction is expected to close in the late summer of 2000.

II. Description of the Merger

As stated above, the Merger Agreement provides for Eastern to be merged with and into ACJ with Eastern being the surviving entity. Eastern will then become a wholly owned direct subsidiary of KeySpan and KeySpan will register as a holding company under the Act. On April 26, 2000, Eastern's Shareholders approved the Merger.

Under the Merger Agreement, the common shareholders of Eastern will have the right to receive $64.00 in cash, without interest, for each share of Eastern common stock, other than shares with respect to which dissenters' appraisal rights have been perfected. Eastern shareholders will receive an additional $0.006 per share ("Additional Amount") for each day the Merger has not closed after the later of (a) August 4, 2000; or (b) ninety days after the NHPUC gives final regulatory approval to the Eastern/ENI Merger.[40] However, the aggregate Additional Amount will be reduced by the aggregate amount of any per share increase in any dividend actually paid that is attributable to any period in which the Additional Amount accrues.

KeySpan expects to finance the acquisition price initially through the issuance of commercial paper under an expanded KeySpan commercial paper program backed by a combination of short-term and long-term credit facilities. After closing on the Merger, KeySpan anticipates replacing a significant portion of the commercial paper program, as well as some or all of the initial short-term acquisition financing, with proceeds from the issuance of debt and/or convertible securities. KeySpan will account for the Merger under the "purchase method" of accounting, and estimates that the acquisition premium will be $1,080,359,760, which will be amortized over a 40-year period.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–M

[40] The NHPUC issued an order on May 8, 2000 approving the Eastern/ENI Merger. Therefore, the alternate date on which payment of the Additional Amount is to begin will be August 6, 2000.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Save The World Air, Inc.; Order of Suspension of Trading

July 20, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Save The World Air, Inc. ("STW Air") because of questions regarding the accuracy of statements made by STW Air to the public in press releases and on its internet website concerning, among other things, the results of demonstration tests of STW Air's "Zero Emission Fuel Saver" device and STW Air's purported relationship with the Ford Motor Company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. (EDT), on Thursday, July 20, 2000 through 11:59 p.m. (EDT), on Wednesday, August 2, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18726 Filed 7–20–00; 11:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43042; File No. SR–CSE–00–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Incorporated to Provide for the Listing and Trading of Certain Trust Issued Receipts

July 17, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2000, the Cincinnati Stock Exchange, Incorporated ("CSE"or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its rules to adopt listing standards for trust issued receipts. Upon approval of the listing standards, the Exchange intends to trade two series of trust issued receipts—Internet Holding Company Depository Receipts ("Internet HOLDRs") and Biotechnology Holding Company Depository Receipts ("Biotech HOLDRs")—pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at the principal office of the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE proposes, in a new Rule 11.9, to adopt listing standards that would allow the Exchange to trade, whether by listing or pursuant to UTP, trust issued receipts based on one or more securities.

i. *Trust Issued Receipts:* Trust issued receipts are negotiable receipts that are issued by a trust in which securities of issuers are deposited and held on behalf of the holders of the trust issued receipts. Trust issued receipts are designed to allow investors to hold interests in a variety of companies in a particular industry through a single, exchange-listed and -traded instrument that represents beneficial ownership in the deposited securities. Holders may cancel their trust issued receipts at any time to receive their *pro rata* share of the underlying securities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Beneficial owners of the receipts have the same rights, privileges, and obligations as they would if they beneficially owned the underlying securities outside the trust issued receipt program. Holders of the receipts have the right to instruct the trustee to vote their *pro rata* share of the underlying securities evidenced by the receipts. They will receive reports, proxy solicitations, and other information distributed by the issuers of the deposited securities to their security holders, and will receive their *pro rata* share of the dividends and other distributions declared and paid by the issuers to the trustee.

Trust issued receipts will be issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities in the trust. An investor in the trust issued receipts will be permitted to withdraw the underlying securities upon delivery to the trustee of one or more round lots of 100 trust issued receipts. Conversely, an investor may deposit the necessary securities and receive trust issued receipts in return.

ii. *Criteria for Initial and Continued Listing:* If trust issued receipts are to be listed on the Exchange, the CSE will establish a minimum number of receipts that must be outstanding at the time trading commences on the Exchange. In connection with continued listing, the CSE will consider the suspension of trading in, or removal from listing of, a series of trust issued receipts when any of the following circumstances arise: (1) The issuing trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1 million; or (4) such other event occurs or conditions exists which, in the opinion of the CSE, makes further dealings on the Exchange inadvisable. These flexible criteria will allow the CSE to avoid delisting trust issued receipts (and possibly terminating the trust) due to relatively brief fluctuations in market conditions that may cause the number of holders to vary. However, these delisting criteria will not be applied for the initial 12-month period following formation of a trust and commencement of trading on the Exchange.

In addition, if the number of companies represented by the deposited securities drops to fewer than nine, and each time the number of companies is reduced thereafter, the Exchange will consult with the staff of the Division of Market Regulation to confirm the appropriateness of the continued listing of the trust issued receipts.

The Exchange believes that the proposed criteria are similar to the trust issued receipt listing criteria currently used by the American Stock Exchange ("Amex"), Chicago Stock Exchange ("CHX"), and Boston Stock Exchange ("BSE").[3]

iii. *Exchange Rules Applicable to the Trading of Trust Issued Receipts:* Trust issued receipts are considered "securities" under the Exchange's Rules and are subject to all applicable trading rules, including the provisions of CSE Rule 14.9 (ITS Trade-Through and Locked Markets) which prohibits Exchange members from initiating trade-throughs for ITS securities. The trust issued receipts are also subject to margin rules; rules governing priority, parity, and precedence of orders; operational and regulatory trading halt provisions; and responsibilities of Designated Dealers.[4]

Trust issued receipts are currently traded on the Amex, CHX, and BSE at minimum variations of one-sixteenth of $1.00 for trust issued receipts trading at or above $0.25, and one-thirty-second of $1.00 for those trading below $0.25. the Exchange is proposing the same minimum fractional increments for the trading in trust issued receipts until decimalization is inaugurated.

The CSE's surveillance procedure for trust issued receipts will be similar to the procedures used for portfolio depositary receipts and will incorporate and rely upon existing Exchange surveillance systems.

Prior to commencement of trading in trust issued receipts, the CSE will issue a circular to members highlighting the characteristics of trust issued receipts, including that trust issued receipts are not individually redeemable. In addition, the circular will inform members about trading halts in such securities issued pursuant to CSE Rule 12.11, which grants authority to the Chairman of the Board of Trustees or the President of the Exchange to suspend trading any and all securities whenever, in their determination, it is in the public interest to do so. In addition, the circular will advise that, along with other factors that may be relevant, the CSE may consider the extent to which trading is not occurring in one or more of the underlying securities and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

iv. *Disclosure to Customers:* The CSE will require its member to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipts.

v. *Creation of Internet and Biotech HOLDRs:* The Internet HOLDRs ("HHH") are issued by the Internet HOLDRs trust which was created pursuant to a depositary trust agreement dated September 2, 1999, among the Bank of New York, as trustee; Merrill Lynch, Pierce, Fenner & Smith Incorporated; other depositors; and the owners of the Internet HOLDRs. The Internet HOLDRs trust will hold shares of common stock issued by 20 specified companies in Internet-related industries. The 20 companies represented by the securities in the portfolio underlying the Internet HOLDRs trust[5] met the following minimum criteria when they were selected on August 312, 1999: (1) The market capitalization for each company was equal to or greater than $1 billion; (2) the average daily trading volume for each security was a least 1.2 million shares over the 60 trading days prior to August 31, 1999; (3) the average daily dollar volume of the shares traded for each company during the 60-day trading period prior to August 31, 1999, was at least $60 million; and (4) each company was traded on a national securities exchange or Nasdaq for at least 60 days prior to August 31, 1999.

The Biotech HOLDRs trust was formed under a depositary trust agreement, dated November 8, 1999, among the Bank of New York, as trustee; Merrill Lynch, Pierce, Fenner & Smith Incorporated; other depositors; and the owners of the trust issued receipts. The Biotech HOLDRs trust will hold shares of common stock issued by 20 specified

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[3] *See infra* note 14.

[4] However, the Exchange's rules relating to odd lot executions will not apply, because the trust issued receipts will be traded only in round lots or round lot multiples. Additionally, the Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a–1 under the Act (17 CFR 240.10a–1), for transactions in securities issued under the HOLDRs program. The CSE will issue a notice to its members detailing the terms of the exemption.

[5] As of September 22, 1999, the deposited securities underlying Internet HOLDRs were: American Online, Inc. (AOL); Yahoo! Inc. (YHOO); Amazon.com, Inc. (AMZN); eBay Inc. (EBAY); At Home Corporation (ATHM); priceline.com Incorporated (PCLN); CMGI Inc. (CMGI); Inktomi Corporation (INKT); RealNetworks, Inc. (RNWK); Exodus Communications, Inc. (EXDS); E*TRADE Group Inc. (EGRP); DoubleClick Inc. (DCLK); Ameritrade Holding Corporation (AMTD); Lycos, Inc. (LCOS); CNET, Inc. (CNET); PSINet Inc. (PSIX); Networks Associates, Inc. (NETA); Earthlink, Inc. (ELNK); MindSpring Enterprises, Inc. (MSPG); and Go2Net, Inc. (GNET).

companies that are generally considered to be representative of the biotechnology industry.

Each of the companies represented by the securities in the portfolio underlying the Biotech HOLDRs trust [6] met the following minimum criteria: (1) The market capitalization for each company was equal to or greater than $840 million; (2) the average daily trading volume for each security was at least 200,000 shares over the 60 trading days prior to and including October 27, 1999; (3) the average daily dollar value of the shares traded for each company during the 60-day trading period prior to and including October 27, 1999, was at least $7.5 million; (4) each company was traded on a national securities exchange or Nasdaq for at least 90 days prior to October 27, 1999.

The companies represented by the securities in the portfolio underlying the two HOLDRs trusts were required to meet the following minimum criteria when they were selected: (1) Each company's common stock was registered under section 12 of the Act, [7] (2) the minimum public float of each company included in the portfolio was at least $150 million; (3) each security was either listed on a national securities exchange or on Nasdaq and was a reported national market system security; (4) the average daily trading volume for each security was at least 100,000 shares during the preceding 60–day trading period; and (5) the average daily dollar value of the shares traded during the preceding 60–day trading period was at least $1 million. The initial weighting of each security in the portfolio was based on its market capitalization; however, if a security represented more than 20 percent of the overall value of the receipt on the date such weighting was determined, then the amount of such security was to be reduced to no more than 20 percent of the receipt value.

vi. *Trading Issues:* A round lot of any of the above trust issued receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of deposited securities for each round lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Trust issued receipts may be acquired, held, or transferred only in round lots of 100 receipts or in round lot multiples. Orders for less than a round lot will be rejected, while orders for greater than a round lot, but not a round lot multiple, will be executed to the extent of the largest round lot multiple, rejecting the remaining odd lots. [8]

The CSE believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust, because the arbitrage process should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of the trust issued receipt deviates enough from the value of the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity would be created allowing the arbitrageur either (1) to buy the trust issued receipts at a discount, exchanging them for shares of the underlying securities, and selling those shares at a profit; or (2) to sell the trust issued receipts short at a premium, buying the securities underlying the trust issued receipts, depositing them in exchange for the trust issued receipts, and delivering against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

vii. *Maintenance of the HOLDRs Portfolios:* Except when a reconstitution event occurs, as described below, the securities represented by a trust issued receipt will not change. According to the prospectuses of the HOLDRs products, under no circumstances will a new company be added to the group of issues of the underlying securities, and weightings of component securities will not be adjusted after they are initially set. [9]

viii. *Reconstitution Events:* As described in the prospectuses, the securities underlying the trust issued receipts will be automatically distributed to the beneficial owners of the receipts in four circumstances:

1. If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act, [10] then its securities will no longer be an underlying security and the trustee will distribute the securities of that company to the owners of the trust issued receipts;

2. If the Commission finds that an issuer of underlying securities should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the trust issued receipts;

3. If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation, or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the trust issued receipts, unless the acquiring company's securities are already included in the trust issued receipt as deposited securities, in which case such additional securities will be deposited into the trust; or

4. If an issuer's underlying securities are delisted from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or Nasdaq within five business days of the date the securities are delisted.

Also as described in the prospectuses, if a reconstitution event occurs, the trustee will deliver the underlying security to the investor as promptly as practicable after the date the trustee has knowledge of the occurrence of a reconstitution event.

ix. *Issuance and Cancellation of HOLDRs:* The trust will issue and cancel—and an investor may obtain, hold, trade, or surrender—HOLDRs only in round lots of 100 or in round lot multiples. While investors will be able to acquire, hold, transfer, and surrender only round lots, the bid and asked prices will be quoted on a per-receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts either by purchasing them on an exchange or by delivering to the trustee the underlying securities equivalent to a round lot. The trustee will charge an issuance and a cancellation fee of up to $10.00 per 100 trust issued receipts. Lower charges may be assigned for bulk issuance and cancellations. An investor may cancel trust issued receipts and withdraw the deposited securities by delivering a round lot or round lot multiple of the trust issued receipts to the trustee during normal business hours. According to the prospectuses, the trustee expects that, in most cases, it

[6] The deposited securities underlying the Biotech HOLDRs are: Amgen Inc. (AMGN); Genentech, Inc. (DNA); Biogen, Inc. (BGEN); Immunex Corporation (IMNX); PE Corp.—PE Biosystems Group (PEB); MedImmune, Inc. (MEDI); Chiron Corporation (CHIR); Genzyme Corporation (GENZ); Gilead Sciences Inc. (GILD); Sepracor Inc. (SEPR); IDEC Pharmaceuticals Corporation (IDPH); QLT Photo Therapeutics Inc. (QLTI); Millennium Pharmaceuticals, Inc. (MLNM); Biochem Pharma Inc. (BCHE); Affymetrix, Inc. (AFFX); Human Genome Sciences, Inc. (HGSI); ICOS Corporation (ICOS); Enzon, Inc. (ENZN); Celera Genomics (CRA); and Alkermes, Inc. (ALKS).

[7] 15 U.S.C. 78*l*.

[8] For example, an order for 50 trust issued receipts would be rejected, while an order for 1050 trust issued receipts would be executed in part (1000 receipts) and rejected in part (50 receipts).

[9] However, the number of shares of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities, and the relative weightings among the deposited securities may change based on the current market price of the deposited securities.

[10] 15 U.S.C. 78*l*.

will deliver the deposited securities within one business day of the withdrawal request.

x. *Termination of the Trusts:* The trusts shall terminate upon the earliest of: (1) The removal of the receipts from Amex listing if they are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the receipts are delisted; (2) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (3) 75 percent of the beneficial owners of outstanding trust issued receipts (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Sections 6(b)(5) [12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–00–03 and should be submitted by August 14, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act [13] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in previous orders approving the listing and trading of trust issued receipts generally, and Internet HOLDRs and Biotech HOLDRs specifically, that the CSE's proposal to list and trade Biotech and Internet HOLDRs will provide investors with a convenient and less expensive way of participating in the securities markets.[14] The proposal should advance the public interest by allowing investors to purchase and sell throughout the business day a single security replicating the performance of a broad portfolio of biotechnology or Internet stocks, thus providing investors with increased flexibility in satisfying their investment needs. Accordingly, the Commission finds that the proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Moreover, the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[15]

Although trust issued receipts are not leveraged instruments and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[16] Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues.

B. Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the CSE's proposal to trade Biotech and Internet HOLDRs meets all of the specific criteria and listing standards that the Commission approved in earlier orders.[17] Biotech and Internet HOLDRs are equity securities that will be subject to the full panoply of rules governing the trading of equity securities on the CSE, including, among others, rules governing margin; the priority, parity, and precedence of orders; operational and regulatory trading halts; and the responsibilities of Designated Dealers.[18]

Moreover, in approving this proposal, the Commission notes the CSE's representation that Biotech and Internet HOLDRs will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The CSE represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the composite value of the deposited securities.

Finally, the CSE has developed surveillance procedures for trust issued receipts that incorporate and rely upon

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 42348 (January 10, 2000), 65 FR 5006 (February 2, 2000) (approving listing and trading of Biotech HOLDRs on CHX pursuant to UTP); Securities Exchange Act Release No. 42347 (January 18, 2000), 65 FR 4451 (January 27, 2000) (approving listing and trading of Internet HOLDRs on BSE pursuant to UTP); Securities Exchange Act Release No. 42159 (November 19, 1999), 64 FR 66947 (November 30, 1999) (approving listing and trading of Biotech HOLDRs on Amex); Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on CHX pursuant to UTP); and Securities Exchange Act Release No. 41802 (September 21, 1999), 64 FR 52559 (September 29, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on Amex).

[15] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] The Commission has concerns about continued trading of the trust issued receipts—whether listed or pursuant to UTP—if the number of component securities falls below nine, because the receipts may no longer adequately reflect a cross section of the selected industry. Accordingly, the CSE has agreed to consult the Commission concerning continued trading once the trust has fewer than nine component securities, and for each loss of a security thereafter.

[17] *See supra* note 14.

[18] *But see supra* note 4.

existing CSE surveillance procedures governing equities. The Commission believes that these surveillance procedures will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the CSE's proposal will ensure that investors have sufficient information to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The CSE will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipt. The Commission also notes that, upon the initial listing of any trust issued receipts, the CSE will issue a circular to its members highlighting the characteristics of trust issued receipts, including that trust issued receipts are not individually redeemable.

D. Accelerated Approval

The CSE has requested that the Commission grant the proposed rule change accelerated effectiveness. As noted above, the Commission has approved the listing and trading of Biotech and Internet HOLDRs on other exchanges, under rules that are substantially similar to the CSE's rules. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[19] The Commission believes that the trading of Biotech and Internet HOLDRs on the CSE raises no new regulatory issues, and that the Biotech and Internet HOLDRs to be traded on the CSE are structurally the same as the HOLDRs previously approved by the Commission for listing and trading on the other exchanges. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof in the **Federal Register**.[20]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CSE–00–03), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18625 Filed 7–21–00; 8:45 am]

BILLING CODE 8010–01–M

[19] *See supra* note 15.

[20] However, the Commission notes that, notwithstanding approval of the listing standards for Biotech and Internet HOLDRs, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. In addition, the CSE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43047; File No. SR–Phlx 00–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc., to Allow an Exemption From the Series 7 Exam for Certain Off-Floor Traders

July 18, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On July 10, 2000, the Phlx amended the proposal.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend to the text of Phlx Rule 604 by adding paragraph (e)(iii) to reflect an exemption to the Rule's requirement that current off-floor traders as well as future off-floor traders successfully complete the Uniform Registered Representative Examination Series 7 ("Series 7 Exam"). Currently, paragraph (e)(ii) of Phlx Rule 604 states that the requirement to successfully complete the Series 7 Exam applies to current off-floor traders as well as future off-floor traders who affiliate with members at a later date. The Exchange is proposing to exempt off-floor traders who are currently members in good standing of a national securities exchange or who have ever been a member in good standing of a national securities exchange for not less than 12 consecutive years. The text of the proposed rule is below. Proposed new language is in italics.

* * * * *

Rule 604. Registration and Termination of Registered Persons

(a)–(d) No change.

(e)

(i) No change.

(ii) No change.

(iii) Any off-floor trader who is currently a member in good standing of a national securities exchange or has ever been a member in good standing of a national securities exchange for not less than 12 consecutive years, shall be exempt from the examination requirements set forth in section (i) and (ii) hereof.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis of its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to create an exemption to the Series 7 Exam requirement to those off-floor traders who are currently members in good standing of a national securities exchange or who have ever been a member in good standing of a national securities exchange for not less than 12 consecutive years. The Phlx believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment ("Amendment No. 1") made minor, technical changes to the original proposal. The filing date of the proposal, for purposes of calculating the 60-day abrogation period, is July 10, 2000, the date the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Phlx provided written notice to the Commission on June 5, 2000, that it intended to file this proposal. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). *See also* footnote 3, *supra.*

such membership or experience is an appropriate substitute for the Series 7 Exam requirement.

Phlx Rule 604 was amended on August 20, 1999, to require successful completion of the Series 7 Exam by persons associated with members or participant organizations for which the Exchange is the Designated Examining Authority and who trade off the floor of the Exchange.[7] The purpose of that amendment was to insure that all off-floor traders, by successfully completing the Series 7 Exam, demonstrated that they had satisfied prescribed standards of training, experience and competence as a condition of becoming off-floor traders.

The Phlx has proposed an exemption to the Series 7 Exam requirement in response to a significant number of requests for exemptions received by the Exchange's Examinations Department. The majority of such requests for exemption were from Exchange members who cited their experience as a member of a national securities exchange as a valid reason for exemption.

Pursuant to the Act, self-regulatory organizations("SROs") are charged with assuring that associated persons of their members satisfy prescribed standards of training, experience and competence as a condition to membership. The Exchange believes that the criteria as stated in the proposed amendment should do so. The individuals qualifying for the proposed exemption have either successfully completed the Series 7 Exam in becoming a member in good standing of a national securities exchange, or, through their years of experience as on-floor or off-floor traders, have developed an expertise, proficiency and knowledge in the areas that are tested in the Series 7 Exam.[8]

The criteria for the exemption were established by the Exchange's Admissions Committee ("Committee"). The Committee will review those applications of individuals applying for the exemption. If, during that review, it is evident that an applicant has been a member in good standing of a national securities exchange for not less than 12 consecutive years, or is currently a member in good standing of a national securities exchange, then that individual shall be exempt from the examination requirements as set forth in Phlx Rule 604. This proposal does not affect the applicability of the Series 7 Exam requirement to any other persons that Phlx Rule 604 dictates must meet the requirement.

2. Statutory Basis

The Phlx believes that the proposal is consistent with section 6 of the Act,[9] in general, and furthers the objectives of sections 6(c)(3)(A) and (B) of the Act[10] in particular, in that it is designed to insure that the appropriate standards of training, experience and competence for brokers and dealers and persons associated with Exchange members are met to protect investors and the public. The Exchange believes that the proposed rule change also is consistent with section 6(b)(5) of the Act,[11] in that it is designed to perfect the mechanisms of a free and open market system, and to protect investors and the public interest by requiring that those off-floor traders seeking an exemption are properly qualified, as evidenced by prior or current membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will result in any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(a) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–00–46 and should be submitted August 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18626 Filed 7–21–00; 8:45 am]

BILLING CODE 8010–01–M

[7] See Securities Exchange Act Release No. 41776 (August 20, 1999), 64 FR 47214 (August 30, 1999) (SR–Phlx–99–07).

[8] Areas tested in the Series 7 Exam include compliance with federal and state laws and industry regulations, characteristics of different investment products, investment risks, and principal factors affecting securities markets and prices for individual securities.

[9] 15 U.S.C. 78f

[10] 15 U.S.C. 78f(c)(3)(A) and (B)

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23–XX–28, Airframe Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) AC 23–XX–28 and request for comments.

SUMMARY: This notice announces the availability of and requests comments to proposed Advisory Circular (AC) 23–XX–28, Airframe Guide for Certification of Part 23 Airplanes. This AC provides information and guidance concerning an acceptable means, but not the only means, of complying with Title 14 of the Code of Federal Regulations (14 CFR) Part 23 Subpart C and portions of Subpart D. It consolidates the substance of existing Civil Aeronautics

Administration (CAA) and Federal Aviation Administration (FAA) letters into a single reference. It also presents information from certain presently existing AC's that cover general topics and specific airworthiness standards.

DATES: Comments must be received on or before August 31, 2000.

ADDRESSES: Send a hard copy and, if possible, an electronic copy of all comments on the proposed AC to the Federal Aviation Administration, Attention: Pat Nininger (pat.nininger@faa.gov), Regulations and Policy Branch, ACE–111, Small Airplane Directorate, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106, telephone number (816) 329–4129, or facsimile (816) 329–4090.

FOR FURTHER INFORMATION CONTACT: Ken Payauys, Aerospace Engineer, Regulations and Policy Branch, ACE–111, Small Airplane Directorate, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106, telephone number (816) 329–4130.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of the proposed AC by contacting the person named above under **ADDRESSES** or the AC should be available within a few days on the internet at http://www.faa.gov/avr/air/airhome.htm. We invite interested persons to comment on the proposed AC by submitting comments to the address specified above. The FAA will consider all comments received on or before the closing date before issuing the AC. Comments may be examined at the Small Airplane Directorate, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106, between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

The AC format is current with the airworthiness standards that appear in Part 23 through Amendment 23–51, effective March 11, 1996. Information contained in the AC spans approximately 30 years of both FAA and CAA guidance. It includes some historical guidance that dates back to the Civil Air Regulations (CAR) 3 and the earlier CAR 04.

Issued in Kansas City, Missouri, on July 10, 2000.

Marvin Nuss,

Acting Manager Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18581 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this 30-day notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on February 4, 2000 (65 FR 5721).

DATES: Comments must be submitted on or before August 23, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On February 4, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 5721. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Rail-Equipment Accident/Incident Cost Analysis Study.

OMB Control Number: 2130-New.

Type of Request: New collection.

Affected Public: Businesses.

Form(s): FRA F 6180.105.

Abstract: The collection of information proposes a new method to calculate dollar damages in the event of a railroad accident/incident. The current method of calculating damages yields accurate but widely varying results for accidents of approximately equal severity. The information collected will be used for a one-time six month study. Participation on the part of railroads is completely voluntary. If the statistical analysis from this study provides valid results, then FRA will produce an Notice of Proposed Rulemaking (NPRM) to modify the current reporting system.

Annual Estimated Burden Hours: 1,150.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503. Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it

within 30 days of publication of this notice in the Federal Register.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–18622 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Draft Programmatic Environmental Impact Statement for the Maglev Deployment Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Availability.

SUMMARY: Pursuant to the Council of Environmental Quality's regulations and FRA's Procedures for Considering Environmental Impacts, the FRA announces the availability of the Draft Programmatic Environmental Impact Statement (DPEIS) for the Magnetic Levitation Transportation Technology Deployment Program (Maglev Deployment Program). This DPEIS has been prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). Magnetic levitation (Maglev) is an advanced transportation technology in which magnetic forces lift, propel, and guide a vehicle over a specially designed guideway. The Maglev Deployment Program was established in the Transportation Equity Act for the 21st Century (TEA–21) with the purpose of demonstrating the feasibility of maglev technology. Through a nation-wide competition, FRA selected seven states or state designated authorities, from a pool of eleven, to receive grants for pre-construction planning. The projects proposed by those seven participants are considered the action alternatives in this DPEIS. This document has been prepared to afford the public an opportunity to comment on the potential for environmental impact associated with each of the seven action-alternatives as well as for the no-action alternative.

DATES: A 45-day public review period on the DPEIS will begin on July 21, 2000 and conclude on September 5, 2000. A public information meeting is being scheduled at each of the seven project locations as described in the SUPPLEMENTARY INFORMATION section. A public hearing will be held in Washington, DC on August, 24, 2000, at 9 AM in FRA's Offices, 1120 Vermont Avenue, NW, Seventh Floor, Washington, DC.

ADDRESSES: Written comments on the DPEIS should include docket number "FRA–2000–7472" at the top of the first page and be addressed to the Docket Clerk, DOT Central Docket Management Facility, 400 Seventh Street, SW, Plaza-401, Washington, D.C. 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein at the FRA, 1120 Vermont Avenue, NW, Mailstop-20, Washington, DC 20590, telephone (202) 493–6368. Please note comments on the DPEIS should be sent to the Docket Clerk. Copies of the DPEIS have been distributed to federal, state and local agencies, interested individuals, and to libraries in the vicinity of the seven Maglev projects. The document is also available on the internet at: *http://www.fra.dot.gov/s/env/MagPEIS.htm.* Requests for a copy of the DPEIS may be addressed to Mr. Valenstein at the address above.

SUPPLEMENTARY INFORMATION:

Background

As directed by the enabling legislation, the FRA has initiated a competition to select a project for the purpose of demonstrating the use of Maglev technology to the American public. After receiving and evaluating eleven initial applications, the Secretary of Transportation on May 24, 1999 announced financial assistance grants to seven states and authorities (California, Florida, Georgia, Louisiana, Maryland, Nevada, and Pennsylvania) for pre-construction planning for Maglev high-speed ground transportation. FRA entered into cooperative agreements with each of the selected states. These agreements required each participating state or authority to prepare and submit to the FRA a technical review of environmental considerations affecting their proposed project. The participants incorporated the results of these technical reviews into individual documents referred to as Environmental Assessments. The purpose of these technical documents was to provide the baseline environmental data to be used by FRA in the preparation of this DPEIS. FRA has analyzed and synthesized these documents in this DPEIS. After completing this environmental review, FRA will administer a selection process to pick a project for authorized construction funding. The participants are continuing to engage in planning, design, engineering, and further environmental studies. FRA will prepare a project-specific environmental impact statement for any Maglev system proposed for construction.

Participants

The action-alternatives are the seven projects proposed by the seven applicants, as follows:

- California—The initial corridor study area extends from Los Angeles International Airport through to Union Station in downtown Los Angeles and further east to Ontario International Airport and on to March Air Reserve Base, a distance of approximately 137 km (85 mi). The California Business, Transportation, and Housing Agency is the project sponsor.
- Florida—The initial study corridor includes a 32 km (20 mi) project linking Port Canaveral to the Kennedy Space Center and the Space Coast Regional Airport. The Florida Department of Transportation is the project sponsor.
- Georgia—The initial study area is a 51 km (32 mi) corridor extending from Hartsfield-Atlanta International Airport to a multi-modal station north of Atlanta. The project sponsor is the Atlanta Regional Commission. Additional information is available at: [http://www.acmaglev.com/]
- Louisiana—The initial study corridor extends from downtown New Orleans through to the New Orleans International Airport, across Lake Pontchartrain, and ends on the northern side of the lake, a distance of approximately 77 km (48 mi). The Greater New Orleans Expressway Commission is the project sponsor. Additional information is available at: [http://www.gulfcoastmaglev.com/]
- Maryland—The initial study corridor is approximately 64 km (40 mi) in length, and extends from Baltimore, MD, south to the Baltimore-Washington International Airport and then to Union Station in Washington, D.C. Additional information is available at: [http://www.bwmaglev.com/]
- Nevada—The 68 km (42 mi) initial study corridor links Primm, located on the Nevada-California state border, with downtown Las Vegas. The California-Nevada Super Speed Train Commission is the project sponsor.
- Pennsylvania—The initial study area extends from Pittsburgh International Airport to the City of Greensburg, passing through downtown Pittsburgh and Monroeville, a distance of about 72 km (45 mi). The Port Authority of Allegheny County is the project sponsor. Additional information is available at: [http://www.maglevinc.com/]

Public Information Meetings

FRA will conduct a public information meeting with each of the seven participants during August 2000. The public information meetings will include information on the Maglev Deployment Program, the DPEIS, and on the local action-alternative. The location and time of the first two meetings have been set and are provided below. The location and time of other meetings will be announced by the participant and advertised locally. FRA will post the time and location of all of the meetings on FRA's web site at *http://www.fra.dot.gov/s/env/MagPEIS.htm*. The public information meetings are scheduled as follows:

- Maryland, August 1, 2000, from 4:30 PM to 7:00 PM, Baltimore City Hall, Curran Room,100 North Holliday Street, Baltimore, MD 21202.
- Georgia, August 8, 2000, from 6:30 PM to 8:30 PM, Loudermilk Center, 40 Courtland Street, Atlanta, GA 30303.
- Louisiana, August 9, 2000.
- Florida, August 10, 2000.
- Pennsylvania, August 16, 2000.
- California, August 21, 2000.
- Nevada, August 22, 2000.

Public Hearing

The FRA will hold a public hearing on the DPEIS on August 24, 2000, at 9:00 AM in the FRA's offices: 1120 Vermont Avenue, N.W., Seventh Floor, Washington, D.C. The public hearing will include a presentation on the program and the DPEIS, and an opportunity for public comment.

The FRA invites interested individuals, organizations, and federal, state and local agencies to comment on the evaluated alternatives and associated social, economic, and environmental impacts related to the alternatives.

Issued in Washington, D.C. on: July 17, 2000.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. 00–18603 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33898]

Watco Company, Inc., South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc., Southeast Kansas Railroad Company, and Blue Mountain Railroad, Inc.—Corporate Family Transaction Exemption

Watco Company, Inc. (Watco), South Kansas and Oklahoma Railroad Company (SKO), Palouse River & Coulee City Railroad, Inc. (PRCC), Southeast Kansas Railroad Company (SEK), and Blue Mountain Railroad, Inc. (BMR) have filed a verified notice of exemption.[1] The exempt transaction involves the merger of SEK into SKO, with SKO as the surviving corporation, and the merger of BMR into PRCC, with PRCC as the surviving corporation.

The transaction was expected to be consummated on or shortly after July 7, 2000.

The transaction is intended to simplify Watco's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions. In addition, the transaction will enhance the operating economies of, and improve service on, the two surviving carriers.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33898, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 13, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18430 Filed 7–21–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Watco, a noncarrier, directly controls SKO and PRCC. SKO, in turn, owns all of the outstanding stock of SEK, and PRCC, in turn, owns all of the outstanding stock of BMR.

Federal Register

Monday,
July 24, 2000

Part II

Department of Labor

Occupational Safety and Health Administration

Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions; Notice

VOL 65 ISS 142 JL 24 2000 UMI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of revisions to the program.

SUMMARY: The Occupational Safety and Health Administration, wishing to revise its Voluntary Protection Programs (VPP), published draft revisions and requested comments from stakeholders and the general public (**Federal Register** Notice 64 FR 55390, October 12, 1999). The Agency now publishes a discussion of those comments and its final VPP revisions. The revisions include several new criteria intended to make the VPP more challenging and to raise the level of safety and health achievement expected of participants. New eligibility categories allow previously ineligible worksites to apply. The criteria also have been rewritten to make them more easily understood and to bring the VPP's basic program elements into conformity with OSHA's Safety and Health Program Management Guidelines.

EFFECTIVE DATE: The revisions are effective January 1, 2001, except that III.F.4.a.(2) and III.G.4. are effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** Notice 47 FR 29025, July 2, 1982, have established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and expand worker protection. VPP participation requirements center on comprehensive management systems with active employee involvement to prevent or control the safety and health hazards at the worksite. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

OSHA's experience with VPP and other programs led it to publish its voluntary "Safety and Health Program Management Guidelines" (the Guidelines) in the **Federal Register** on January 26, 1989, 54 FR 3904. The Guidelines present effective criteria for organizing a managed safety and health program. To maintain consistency in OSHA's approach to safety and health program management, the Agency has decided to reorganize the VPP criteria to conform more closely to the Guidelines.

This reorganization has been accomplished by merging the six elements of the VPP into the four elements of the Guidelines. Specifically, Management Commitment and Planning has become Management Leadership and Employee Involvement; Hazard Assessment has become Worksite Analysis; Hazard Correction and Control has become Hazard Prevention and Control; Safety and Health Program Evaluation has become part of Management Leadership and Employee Involvement; and Safety and Health Training continues as one of four basic program elements.

The VPP criteria also have been rewritten to make them more easily understood, in keeping with the President's "Plain Language in Government Writing" Memorandum of June 1, 1998. This has involved changes in both language and organization. However, except for a variety of minor clarifications, the substance of the criteria has changed little. The three most notable changes are an expansion of eligibility to certain classes of worksites previously not covered by the program, increased expectations concerning the management of the safety and health of contractors' employees working at VPP sites, and a new illness reporting requirement. This last means OSHA will consider a worksite's illness experience together with its injury performance when assessing the site's level of achievement.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (hereinafter referred to as the Act or the OSH Act), was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. * * *"

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions which establish the legislative mandate for the Voluntary Protection Programs:

* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

* * * (5) * * * by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

II. Discussion of the Comments

This section includes a review of the public comments submitted to OSHA in response to its October 12, 1999 Notice, and the Agency's decisions to either change or let stand certain provisions in that Notice. OSHA received comments from 15 respondents. These included 8 VPP participating companies, 2 professional associations, 2 trade associations, 2 private consultants, and the Voluntary Protection Programs Participants' Association. The comments are addressed in the order in which the topics are found in the draft Notice.

A. Eligibility

1. Resident Contractors. VPP accepts applications from resident contractors at participating VPP sites for the contractors' operations at those VPP sites. One respondent held that contractors at VPP sites should not have to make separate application and undergo separate onsite review. The respondent suggested that OSHA include in the VPP application every organization with workers at the site for 500 hours or more in a quarter (the draft revision's definition of applicable contractor) and award VPP approval to them all. OSHA does not consider this in the best interest of the VPP or individual applicants. Not all contractors meet the VPP's rigorous standards. While OSHA is not prepared to take the respondent's suggestion, it is willing to assess contractors desiring VPP participation at the same time as it assesses the site applicant when it considers such an action appropriate and conserving of resources.

2. Unionized Sites. A basic tenet of VPP is that, at the worksites with the best safety and health protection—those worthy of VPP recognition—management and employees work cooperatively to ensure a safe and healthful worksite. Therefore, at unionized sites, the authorized collective bargaining representative(s) must support VPP participation. One respondent was concerned that union

support for VPP could become a leveraging tool during collective bargaining and requested language to discourage this practice. While OSHA certainly hopes that support for VPP by either the union or management does not become an issue in matters unrelated to workplace safety and health, the Agency's role does not extend to advising the parties on appropriate collective bargaining methods.

B. Assurances

1. The draft revisions provided that applicants assure they "will correct in a timely manner all hazards addressed by OSHA's safety and health standards and regulations and by Section 5(a)(1) of the Act." Two respondents voiced concern about guaranteeing in writing that all Section 5(a)(1) "general duty" hazards will be identified and corrected, suggesting that the practical difficulty of fulfilling this assurance may discourage applications to the program. Full compliance with the OSH Act has always been a basic assumption of the VPP, and OSHA did not intend to suggest that any change in policy or procedure was being proposed. Upon consideration, the Agency sees no reason to single out the Act's Section 5(a)(1). Therefore, to the 1988 Notice's requirement that applicants assure that "All hazards discovered through self-inspections, accident investigations or employee notification will be corrected in a timely manner," this Notice's Assurances section will now add the explicit requirement that VPP applicants assure compliance with the Act and, for Federal agencies, with 29 CFR 1960.

2. The draft revisions provided that applicants assure that "site employees support the VPP application." One respondent asked for guidance on how non-union applicants demonstrate employee support. How employees show their support varies from site to site. At unionized sites, employee support is evidenced by the collective bargaining representative either signing the application or submitting a signed statement of support for VPP participation (required at III.D.2.). At non-union sites, it has been OSHA's experience that employee attitudes about VPP will become evident to management during the process of improving the site's safety and health program and putting together the VPP application. No specific demonstration of employee support is needed before management can assure OSHA that site workers support the application. When OSHA's review team visits the site for its pre-approval review (and on subsequent visits), team members will verify during employee interviews that the employees are supportive of VPP participation.

3. Applicants must assure that, each year by February 15, they will send certain performance data to the designated OSHA VPP Manager. An important change contained in the draft revisions was the addition of illnesses to the data. Previously, only information about injuries had to be reported. No respondent objected to the addition of a site's illness experience to VPP requirements. Seven respondents addressed this issue, however, and most recommended postponing implementation of the illness rate reporting requirements until proposed revisions to OSHA's general recordkeeping standard go into effect. Respondents were anxious that VPP reporting requirements be consistent with any new OSHA recordkeeping requirements.

OSHA agrees with the need for consistency, and the VPP staff has had extensive discussions with OSHA's Directorate of Safety Standards Programs (which has been working on the new recordkeeping standard) since receiving the comments. The Agency has decided not to postpone its new VPP reporting requirements pending final publication of a revised recordkeeping standard. However, the requirement to begin reporting data on both injuries and illnesses will be effective January 1, 2001, the new effective date of most provisions in this final **Federal Register** Notice, rather than immediately upon publication of this Notice. Therefore, beginning in 2001, OSHA will require applicants and existing sites to submit the total recordable case incidence rate (combining injuries and illnesses) and the incidence rate for days away from work and restricted work activity (combining injuries and illnesses). For sites already participating in VPP, the first reporting to OSHA of this data will occur by February 15, 2001, and will reflect the calendar year 2000 experience. Days away from work and restricted work activity will continue to be combined; these previously were termed "lost workdays." These categories of performance data also will apply to the required reporting of applicable contractor safety and health experience.

For the first year only of the new reporting requirements, OSHA will need additional data in order to recalculate 3-year incidence rates that reflect illnesses as well as injuries. Therefore, when participating sites submit their information to OSHA by February 15, 2001, they will be expected to report the total recordable case incidence rate, the incidence rate for total cases involving days away from work and restricted work activity, the total number of cases reflected in these rates, average annual employment, and the total hours worked for calendar years 1998 and 1999 as well as calendar year 2000. OSHA does not need and is not asking participating sites to submit contractor data for calendar years 1998 and 1999, unless the contractor is directly supervised by site management and is normally included in the site's employee injury/illness data reporting.

OSHA wishes to reassure its VPP sites that the newly required data can be obtained from both the OSHA Form 200 (the "OSHA Log") and its expected successor OSHA Form 300.

The proposed revision of OSHA's recordkeeping standard is expected to make certain changes in the definitions of injury and illness. VPP applicants and participating sites will continue to employ the existing definitions until a revised standard becomes effective.

4. Under the draft revisions, the annual data submission included data on applicable contractors' employees. An applicable contractor was defined as one whose employees worked a total of 500 or more hours (the equivalent of one full-time employee) in at least one calendar quarter at the site. Three respondents recommended changing the definition of applicable contractor in ways that would have the effect of reducing the number of contractors whose safety and health data VPP sites must report to OSHA. One respondent recommended basing contractor applicability on contractor hours relative to total site hours, for example, contractors whose average hours per quarter are equal to or greater than 1% of the site's average hours. OSHA is concerned that, at large sites, one consequence of such a change would be to exclude from applicability contractors who have relatively few employees at the site but who, in actuality, may have substantial numbers of employees performing highly hazardous work. For example, at a site with 2,000 employees, a contractor would have to employ the equivalent of at least 20 full-time employees to be considered applicable under the 1% definition. The Agency believes this would be an unwise reduction in contract worker protection.

Another respondent suggested increasing the threshold from 500 hours per quarter to 5,000 hours per quarter, the equivalent of 10 full-time employees. Still another respondent suggested 1,500 hours (the equivalent of

3 full-time employees) instead of 500. OSHA concedes that 500 hours, i.e., one full-time contractor employee, may pose unduly burdensome reporting requirements at some VPP sites. However, the Agency is reluctant to raise the number dramatically, because it could weaken the VPP requirements concerning contractor safety and health. The purpose of this revision is to strengthen the program. Therefore, the Agency has decided on a modest change in the definition of applicable contractor, from 500 hours in a calendar quarter to 1,000 hours.

5. Two respondents objected to the requirement to collect and report site performance data for applicable contractors, characterizing this requirement as burdensome, expensive, and unachievable. Given the reality of contractor presence in today's workplace, OSHA is convinced that contractor data are essential to assess the safety and health performance of a VPP applicant or participant site. The collection and reporting of contractor rates also will help a site identify areas of needed improvement in its contractor management and oversight system. Therefore, OSHA will expect sites to assure they will submit annual performance data on applicable contractors. The data to be submitted are for performance at the site only.

6. Under the draft revisions, applicants were expected to submit each year to the VPP Manager a description of worksite outreach activities. Some readers of the Notice interpreted this as a requirement to conduct outreach. OSHA wants to encourage mentoring, community involvement, and other forms of outreach by VPP worksites. Further, the information sites share with the Agency concerning their outreach activities is useful in documenting the value of VPP. However, at this time OSHA believes that VPP eligibility should be based on an applicant's onsite safety and health performance. Therefore, while the Agency intends to continue encouraging voluntary outreach, it is removing from the Notice references to reporting of outreach activities.

C. Status of Participants Whose Rates Are Impacted by Addition of Illnesses

A Star participant voiced concern that the addition of illness data in the calculation of a site's performance rates could push the rates above the national average and jeopardize the site's Star status. OSHA realizes that the addition of illnesses may indeed cause rates to increase above the national average at some VPP sites. Further, there will be a period of time when a site's rates under the proposed new OSHA recordkeeping standard, if finalized, are being compared with rates developed under the prior recordkeeping standard. While the basic categories of information will not change, some definitions will, *e.g.*, what injuries and illnesses are recordable. This may result in some temporary rate fluctuations not truly indicative of substantive changes in the site's safety and health performance. The Agency is prepared to assist current Star participants on a case by case basis and believes the VPP already contains the appropriate means. At III.N.2.c., the VPP gives the Regional Administrator discretion to provide a grace period in the form of a 2-year rate reduction plan whenever a Star participant's 3-year rates exceed the latest national average published by BLS.

D. Small Worksite Alternative Method of Calculating Rates

The proposed alternative calculation is intended to help primarily small sites to qualify for VPP even when they have experienced 1 year of abnormally high rates. One respondent believes that small companies in its industry will not benefit from this provision and recommends a different means to help small companies: extending eligibility to small employers with 19 or fewer employees who exceed their industry average in any 1 year by 1.5 to 2 times.

OSHA's VPP staff availed itself of extensive assistance from OSHA's Office of Statistics when developing the alternative rate calculation proposed in the Notice. The Agency is confident that the proposed alternative method will effectively enable the small employer with an excellent safety and health management system to qualify for VPP even when a small number of injuries/illnesses in 1 year disproportionately affects the site's rates.

E. Safety and Health Program Requirements

1. One respondent requested clarification of the requirement that the safety and health program be written. Worksites that already have a comprehensive written safety and health program that includes the VPP elements need not create a new, separate document for VPP eligibility. The VPP application guidelines specify that, where existing written policies, guidelines, forms, etc. describe an applicant's programs, OSHA encourages the site to submit these documents rather than write new material for the VPP application.

2. OSHA received several comments on the meaning of Management Leadership. The Agency believes the subelements provided in the Notice offer an adequate framework within which each VPP site may establish systems appropriate to its company culture and site needs. "Reasonable employee access to top site management" (III.F.5.a.(5)(c)) refers to onsite managerial personnel and not to managers located elsewhere, *e.g.*, a corporation's chief executive officer.

3. One required aspect of Management Leadership is the provision of adequate resources to those who have safety and health responsibility and authority. The draft Notice went on to give examples of such resources, including "appropriate use of certified industrial hygienists (CIH) and certified safety professionals (CSP) as needed * * *." One respondent suggested this language be expanded to recognize other occupational health care professionals who participate in the management of workplace safety and health issues. OSHA recognizes that many professionals other than CIHs and CSPs provide important services to VPP worksites. Therefore, in both the Management Leadership section and later in the discussion of the occupational health care program, the use of these other professionals has been acknowledged.

4. OSHA received several comments on the meaning of Employee Involvement. The Agency agrees that the effectiveness of employee participation in the site's safety and health program is paramount. At VPP sites, meaningful and active employee involvement helps ensure that, every day, the site's protective systems operate successfully and employees understand their essential roles within these systems. OSHA's evaluation of the effectiveness of a site's employee involvement is accomplished by examining documents, interviewing employees, and conducting the site walkthrough during the VPP onsite review.

5. The requirement for increased participant responsibility for contractor safety and health drew several comments. OSHA is not convinced by the argument that VPP sites should not be expected to ensure high-quality protection of contract workers. The Agency believes that a more performance-based requirement would be reasonable, however, thus giving the sites greater latitude to design site-appropriate contractor oversight and management programs. Changing to a less prescriptive contractor oversight requirement also may resolve a potentially serious problem raised by a federal agency participant, *i.e.*, that the change proposed in the draft Notice

conflicted with the Federal Agency Regulation (FAR) governing federal sites and could prevent federal sites from qualifying for VPP. Therefore, OSHA has substantially rewritten the requirements relating to contractor safety and health. The requirement in the Assurances to report contractor information remains (although, as noted above, the definition of applicable contractor has changed), but the entire section III.F.4.a.(2) from the draft Notice is deleted, including the requirement that applicable contractors' rates be below the national averages. Section III.F.5.a.(7) has been substantially rewritten and now reflects OSHA's expectation that VPP sites will develop and implement contractor oversight and management systems that effectively protect contractor employees and the site employees whose safety and health are affected by the presence of contract workers.

6. The identification and analysis of worksite hazards are essential components of an effective safety and health program. One respondent asked about the extent to which OSHA is requiring the involvement of occupational health care professionals in site hazard analysis. The need to involve occupational health care professionals, and the type of professionals involved, will depend on the hazards of the site and the extent of in-house expertise. Whether the analysis is performed by regular onsite staff or by outside staff contracted for this purpose is irrelevant; in either case, OSHA expects the professionals to be familiar with the operations and hazards of the site (an initial walkthrough may be appropriate to ensure familiarity). A variety of qualified occupational health care professionals (occupational health nurses, occupational physicians, industrial hygienists, ergonomists, etc.) may be used to manage the site's hazards depending on the nature of those hazards.

F. Multi-Site Merit Eligibility

The draft Notice stated that if a company has many sites applying to VPP, and if OSHA determines that the company has the resources to develop Star quality sites, the Agency has the discretionary authority to limit the number of Merit sites approved from that company. This provision was intended to help OSHA effectively manage its limited VPP resources in situations where a large company wishes to bring numerous sites into VPP. Four responders were concerned about this program change. They argued that limiting the number of Merit sites will undercut the efforts of hardworking employees and may undermine the momentum to improve safety and health. One responder pointed out that the impetus to apply for VPP often originates at the site level, with minimal corporate level involvement, and that limiting such a site's opportunity to participate in VPP would be unfair. One large multi-site company suggested that there are other ways to address the resource issue. It pointed out that while it hopes to bring many sites into VPP, it also intends to sponsor dozens of new VPP Volunteers, an innovative aspect of the VPP which allows qualified employees of VPP sites to assist OSHA personnel as members of onsite review teams.

OSHA considers the above arguments compelling. Further, the stronger requirements for Merit eligibility, and the stated expectation that in order to qualify for Merit, a site must demonstrate the commitment and possess the resources to achieve Star within 3 years, should effectively limit the growth of Merit participation to sites worthy of VPP recognition. Therefore, OSHA has removed the provision on limiting the number of Merit sites.

G. Examination of Corporate Audits

Four respondents were concerned about OSHA's onsite examination of corporate audits during the pre-approval onsite review. One respondent held that existing requirements of facility-based audits and other supporting documentation should be sufficient at a VPP-quality site. In similar vein, another initially suggested (but in later discussion changed its position) that, if a site does not maintain all required documentation, OSHA should cease its review rather than expect the site to provide access to corporate-level documents. Still another responder stated that expecting companies to turn over voluntary self-audit information seemed inconsistent with OSHA's proposed enforcement policy on use of self-audit records.

OSHA believes the VPP policy does not conflict with the Agency's proposed enforcement policy on self-audits, although OSHA procedures during an enforcement visit are not especially relevant in the context of a voluntary VPP onsite visit. The Agency does believe that the VPP onsite review team needs the discretionary authority to ask about additional documents when site documents are insufficient to establish VPP qualification. Many sites rely on corporate-level safety and health personnel to conduct certain aspects of the site's ongoing hazard analysis, and the findings would typically be contained in corporate documents. To the extent these documents are needed to determine VPP eligibility, OSHA may ask to examine them, and the site may voluntarily choose to provide them. If such documentation is not provided and is necessary to demonstrate VPP criteria are being met, OSHA may find itself unable to approve the site for participation.

H. Right To Appeal a Notice of Termination

Under most circumstances, OSHA will provide a participant and its bargaining unit representatives 30 days' notice of intent to terminate the site's participation in VPP. One respondent thought that 30 days was not enough time for an employer to properly file an appeal and suggested 60 days' notice. OSHA believes that 30 days is sufficient. In practice, the participant almost always will know well in advance of the official notice that OSHA believes there is a serious problem warranting termination.

The final revised program follows.

III. The Voluntary Protection Programs

A. Purpose of the Voluntary Protection Programs

OSHA has long recognized that a multifaceted approach is the best way to accomplish all the goals of the OSH Act. Compliance with occupational safety and health standards, OSHA regulations, 29 CFR 1960 for Federal agencies, and the general duty clause—all the requirements of the Act—is essential. Rulemaking and enforcement alone, however, cannot replace the understanding of work processes, materials, and hazards that comes with employers' and employees' daily on-the-job experience and commitment to workplace safety and health. This knowledge, combined with an ability to evaluate and address hazards rapidly, enables employers and employees to take responsibility for their own safety and health in ways not available to OSHA. Further, OSHA's substantial experience with site-based safety and health programs has shown the value of a comprehensive, systematic approach to worker protection. It is OSHA's policy, therefore, to promote safety and health programs tailored to the needs of particular worksites.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, employee-participative, and generally site-specific occupational safety and health programs. These programs are comprised of management systems for

preventing or controlling occupational hazards. Sites employing these systems not only are working to remain compliant with OSHA's rules, but also are striving to excel by using flexible and creative strategies that go beyond the requirements to provide the best feasible protection for their workers. In the process, these worksites serve as models for effective safety and health programs in their industries while reducing employee injuries and illnesses well below industry averages. Moreover, the demonstrated workers' compensation cost reductions, reduced employee turnover, quality improvements, and other benefits to which VPP worksites testify are helping to convince skeptics that productivity, quality, profitability, and safety and health are complementary goals.

VPP participants enter into a new relationship with OSHA. In this innovative public/private partnership, cooperation and trust nourish improvements in safety and health, not just at VPP sites, but also beyond the worksite boundaries. VPP companies have frequent opportunity to provide the Agency with input on safety and health matters. At the same time, the recognition and status gained by their participation in VPP, and their commitment to improving their industries and communities, enable them to accomplish a broad range of safety and health objectives. VPP participants mentor other worksites interested in improving their safety and health programs; conduct safety and health training and outreach seminars; and hold safety and health conferences that focus on leading-edge safety and health issues. VPP participants also participate with OSHA on VPP onsite reviews. This unique program, the OSHA VPP Volunteers, gives private and public sector safety and health professionals the opportunity to exchange ideas, gain new perspectives, and grow professionally.

Worksites in the VPP are removed from programmed inspection lists for the duration of their participation, unless they choose to remain on the lists. This helps OSHA to focus its inspection resources on establishments that are less likely to meet the requirements of the OSH Act. However, OSHA continues to investigate valid employee safety and health complaints, fatalities and catastrophes, and other significant events at VPP sites according to established Agency procedures.

Participation in any of the programs does not diminish existing employer and employee responsibilities and rights under the Act and, for Federal agencies, under 29 CFR 1960. In particular, OSHA does not intend to increase the liability of any party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health program do not assume the employer's statutory or common law responsibilities for providing safe and healthful workplaces; nor are employees or their representatives expected to guarantee a safe and healthful work environment.

The programs included in the VPP are voluntary in the sense that no employer is required to participate. Compliance with OSHA's requirements and applicable laws remains mandatory. Initial achievement and then continuing maintenance of the VPP requirements are conditions of participation.

The Assistant Secretary for Occupational Safety and Health determines approval for initial participation in the VPP, advancement to the Star Program, all participation in Demonstration Programs, and termination from the VPP. The OSHA Regional Administrator who has jurisdiction over a participant determines approval for continuation in the Star (including 1-year Conditional Star participation) and Merit Programs.

B. Purpose of This Notice

This notice describes the criteria for admission to the Voluntary Protection Programs (VPP); the conditions of participation, termination, or withdrawal; and the means of reinstatement.

C. Program Description

1. General

The VPP emphasize the importance of comprehensive worksite safety and health programs—safety and health management systems—in meeting the goal of the Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *." This emphasis is demonstrated through assistance to employers in their efforts to reach the VPP level of excellence; through cooperation among government, labor, and management to resolve safety and health problems; and through official recognition of excellent safety and health programs. VPP sites are expected to effectively protect their workers from the hazards of the workplace through their safety and health programs. They do this by meeting established, rigorous safety and health program management criteria.

The VPP consist of three programs: Star, Demonstration, and Merit. The Star Program recognizes worksites that are self-sufficient in their ability to control hazards at the worksite. The Demonstration Program recognizes worksites that have Star quality safety and health programs but require demonstration and/or testing of experimental approaches that differ from current Star requirements. The Merit Program recognizes worksites that have good safety and health programs but must take additional steps to reach Star quality.

2. Recognition

When OSHA approves an applicant for participation in the VPP, the Agency recognizes that the applicant is providing, at a minimum, the basic elements of ongoing, systematic protection of workers at the site in accordance with rigorous VPP criteria. This protection makes general schedule inspections unnecessary. Therefore, the site is removed from OSHA's programmed inspection lists (unless the participant chooses not to be removed). The VPP symbols of recognition are certificates and plaques of approval and flags identifying the program in which the site participates. The participant also may choose to use program logos on such items as letterhead, shirts, and mugs.

3. Cooperative Relationship

VPP participants work cooperatively with the Agency, both in the resolution of safety and health problems and in the promotion of effective safety and health programs. This cooperation takes such forms as presentations before meetings of labor, industry, and government groups; input in OSHA rulemaking; and participation in activities including OSHA Volunteers, mentoring, outreach, and training. OSHA designates a contact person, usually the Regional VPP Manager, who coordinates each approved site's contact with the Agency.

D. Eligibility

1. General

The VPP accepts applications from private sector general industry, maritime, and construction worksites, and from federal agency worksites subject to 29 CFR 1960 that have implemented a safety and health program meeting the requirements of § 1960. VPP accepts applications from owners and site managers (such as a construction site's general contractor or construction manager) who control site operations and have ultimate responsibility for assuring safe and healthful working conditions at the site. VPP also accepts applications from

resident contractors at participating VPP sites for the contractors' operations at those VPP sites. Any application received by OSHA must reflect the support of site employees and, where applicable, their collective bargaining representatives.

2. Unionized Sites

At sites with employees organized into one or more collective bargaining units, the authorized representative for each collective bargaining unit must either sign the application or submit a signed statement indicating that the collective bargaining agent(s) support VPP participation. Without such concurrence from all such authorized agents, OSHA will not accept the application.

3. OSHA History

If an applicant has been inspected by OSHA within the 36-month period preceding application, the inspection, abatement, and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health. An applicant's history must include no open investigations and no pending or open contested citations or notices under appeal at the time of application, and no affirmed willful violations during those prior 36 months.

E. Assurances

Applications for the Star, Demonstration, and Merit Programs must be accompanied by certain assurances describing what the applicant agrees to do if the application is approved. The applicant must assure that:

1. The applicant will comply with the Act and, in the case of Federal agencies, 29 CFR 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

2. Site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review will be corrected within 90 days.

3. Site employees support the VPP application.

4. VPP elements are in place, and the requirements of the elements will be met and maintained.

5. Employees, including newly hired employees and contract employees when they reach the site, will have the VPP explained to them, including employee rights under the program and under the Act or 29 CFR part 1960.

6. Employees given safety and health duties as part of the applicant's safety and health program will be protected from discriminatory actions resulting from their carrying out such duties, just as Section 11(c) of the Act and 29 CFR 1960.46(a) protect employees who exercise their rights.

7. Employees will have access to the results of self-inspections, accident investigations, and other safety and health program data upon request. At unionized construction sites, this requirement may be met through employee representative access to these results.

8. The information listed below will be maintained and available for OSHA review to determine initial and continued approval to the VPP:

a. Written safety and health program;

b. All documentation enumerated under Section III.J.4. of this notice; and

c. Any agreements between management and the collective bargaining agent(s) concerning safety and health.

9. Any data necessary to evaluate the achievement of individual Merit or One-Year Conditional goals not listed above will be made available to OSHA for evaluation purposes.

10. Each year by February 15, each participating site will send to its designated OSHA VPP Manager (described in Section III.N.1.):

a. The site's total recordable case incidence rate for injuries and illnesses combined for the previous calendar year and

b. the site's incidence rate for cases involving days away from work and restricted work activity.

Each site will also submit the total number of cases for each of the above two rates; hours worked; estimated average employment for the past full calendar year; a copy of the most recent annual evaluation of the site's safety and health program; and a description of any worksite success stories, *e.g.*, reductions in workers' compensation rates, increases in employee involvement in the program, etc.

c. In the year 2001 only, when participating sites submit their information to OSHA by February 15, 2001, they will be expected to report the total recordable case incidence rate, the incidence rate for days away from work and restricted work activity, the total number of cases reflected in these rates, total hours worked, and estimated average employment for calendar years 1998 and 1999 as well as calendar year 2000.

11. At the same time, each participating general industry, maritime, or federal agency site will send to the designated OSHA VPP Manager site data on each applicable contractor's employees.

a. Applicable contractors are those employers who have contracted with the site to perform certain jobs and whose employees worked a total of 1,000 or more hours in at least 1 calendar quarter at the worksite.

b. The data will consist of the site's total recordable case incidence rate and the incidence rate for cases involving days away from work and restricted work activity for each applicable contractor's employees; total number of cases from which these two rates were derived; hours worked; and estimated average employment for the past full calendar year.

12. Whenever significant organizational or ownership changes occur, the site will provide OSHA within 60 days a new Statement of Commitment signed by both management and any authorized collective bargaining agents.

13. Whenever a change occurs in the authorized collective bargaining agent, the site will provide OSHA within 60 days a new signed statement indicating that the new representative supports VPP participation.

F. The Star Program

1. Purpose

The Star Program recognizes leaders in occupational safety and health who are successfully protecting workers from death, injury, and illness by implementing comprehensive and effective safety and health programs. Star participants willingly share their experience and expertise, and they encourage others to work toward comparable success.

2. Term of Participation

The term for participation in an approved Star Program is open-ended so long as the participating site:

a. Continues to maintain its excellent safety and health program as evidenced by favorable evaluation by OSHA every 30 to 60 months; and

b. Submits the annual information required, *e.g.*, annual rates data and program evaluation (see III.E.10.–11.).

Note: In the construction industry, Star and Merit participation ends with the completion of construction work at the site.

3. Experience

All safety and health program elements needed for program success, as delineated in III.F.5. below, must be

operating for a period of not less than 12 months before Star approval.

4. Injury/Illness Performance

a. The general industry or maritime applicant at the time of approval must meet the following criteria:

(1) For site employees—Two rates reflecting the experience of the most recent 3 calendar years must be below the most recent specific industry national averages for nonfatal injuries and illnesses (at the most precise level available, either three or four digits) published by the Bureau of Labor Statistics (BLS). These rates are:

(a) The 3-year total recordable case incidence rate (a single rate that reflects 3 years of total recordable injuries and illnesses), and

(b) The 3–year incidence rate for cases involving days away from work and restricted work activity (previously referred to as the lost workday case incidence rate).

(2) Some applicants, usually smaller worksites with limited numbers of employees and/or hours worked, may use an alternative method for calculating incidence rates. The alternative method allows the employer to use the best 3 out of the most recent 4 years' injury/illness experience.

(a) To determine whether the employer qualifies for the alternative calculation method, do the following:

• Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate for the employer assuming that the employer had two cases during the year;

• Compare that hypothetical rate to the most recently published BLS combined injury/illness total recordable case incidence rate for the industry; and

• If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry, the employer qualifies for the alternative calculation method.

(b) If the employer qualifies for the alternative calculation method, the best 3 of the last 4 calendar years may be used to calculate both 3-year rates (specified in (1)(a) and (1)(b) above) for the employer.

b. The construction applicant, at the time of approval, must meet the following criteria:

(1) The site for which VPP application is being made must have been in operation for at least 12 months.

(2) The applicant's total recordable case incidence rate and its incidence rate for cases involving days away from work and restricted work activity, from site inception until time of application, must include all workers of all subcontractors and must be below the national average for the type of construction at the site according to the most appropriate and representative SIC code. The site's SIC code is determined by the type of construction project, not individual trades.

c. Federal agency applicants must follow the same requirements as general industry and maritime (see a. above), except that 3–year rates may be calculated by fiscal year instead of calendar year.

d. When BLS changes from the SIC classification system to the North American Industry Classification System (NAICS) and begins publishing data under the new system, VPP applicant/participant site rates will be compared with the rates generated under NAICS.

5. Safety and Health Program Qualifications for the Star Program.

a. Management Leadership and Employee Involvement. Each applicant must be able to demonstrate top-level management leadership in the site's safety and health program. Management systems for comprehensive planning must address protection of worker safety and health. Employees must be meaningfully involved in the safety and health program.

(1) Commitment to Safety and Health Protection. Authority and responsibility for employee safety and health must be integrated with the overall management system of the organization and must involve employees. This commitment includes:

(a) Policy. Clearly established policies for worker safety and health protection that have been communicated to and understood by employees; and

(b) Goal and Objectives. Established and communicated goal(s) for the safety and health program and results-oriented objectives for meeting the goal(s), so that all members of the organization understand the results desired and the measures planned for achieving them, especially those factors that directly apply to them.

(2) Commitment to VPP Participation. Management must clearly demonstrate commitment to meeting and maintaining the requirements of the VPP.

(3) Planning. Planning for safety and health must be a part of the overall management planning process. In construction, this includes pre-job planning and preparation for different phases of construction as the project progresses.

(4) Written Safety and Health Program. All critical elements of a basic systems management safety and health program must be part of the written program. These critical elements are management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training. Federal agency safety and health programs must also meet the requirements of 29 CFR part 1960, and construction site safety and health programs must also meet the requirements of 29 CFR 1926.20. All aspects of the safety and health program must be appropriate to the size of the worksite and the type of industry. For small businesses, OSHA may waive some formal requirements, such as certain written procedures or documentation, where the effectiveness of the systems has been evaluated and verified. Waivers will be decided on a case-by-case basis.

(5) Management Leadership. Managers must provide visible leadership in implementing the program. This must include:

(a) Establishing clear lines of communication with employees;

(b) Setting an example of safe and healthful behavior;

(c) Creating an environment that allows for reasonable employee access to top site management;

(d) Ensuring that all workers at the site, including contract workers, are provided equally high quality safety and health protection;

(e) Clearly defining responsibility in writing, with no unassigned areas. Each employee, at any level, must be able to describe his/her responsibility for safety and health;

(f) Assigning commensurate authority to those who have responsibility;

(g) Affording adequate resources to those who have responsibility and authority. This includes such resources as time, training, personnel, equipment, budget, and access to information and experts, including appropriate use of certified safety professionals (CSP), certified industrial hygienists (CIH), other licensed health care professionals, and other experts as needed, based on the risks at the site; and

(h) Holding managers, supervisors, and non-supervisory employees accountable for meeting their safety and health responsibilities. In addition to clearly defining and implementing authority and responsibility for safety and health protection, management leadership entails evaluating managers and supervisors annually, and operating a documented system for correcting deficient performance.

(6) Employee Involvement. The site culture must enable and encourage effective employee involvement in the planning and operation of the safety and health program and in decisions that

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affect employees' safety and health. The requirement for employee participation may be met in a variety of ways, as long as employees have at least three active and meaningful ways to participate in safety and health problem identification and resolution. This involvement must be in addition to the individual right to notify appropriate managers of hazardous conditions and practices and to have issues addressed. Examples of acceptable employee involvement include but are not limited to the following:

(a) Participating in ad hoc safety and health problem-solving groups,

(b) Participating in audits and/or worksite inspections,

(c) Participating in accident and incident investigations,

(d) Developing and/or participating in employee improvement suggestion programs,

(e) Training other employees in safety and health,

(f) Analyzing job/process hazards,

(g) Acting as safety observers,

(h) Serving on safety and health committees constituted in conformance to the National Labor Relations Act.

(7) Contract Worker Coverage. All contractors and subcontractors, whether in general industry, construction, maritime, or federal agency sites, must follow worksite safety and health rules and procedures applicable to their activities while at the site.

(a) In addition to ensuring that contractors follow site safety and health rules, VPP participants are expected to encourage their contractors to develop and operate effective safety and health program management systems.

(b) To this end, participants must have in place a documented oversight and management system for applicable contractors (see definition at III.E.11.a.) that ensures the contractors' site employees are provided effective protection and that drives improvement in contractor safety and health. Such a system should ensure that safety and health considerations are addressed during the contractor selection process and when contractors are onsite.

(8) Safety and Health Program Evaluation. The applicant must have a system for annually evaluating the operation of the safety and health program. This system will judge success in meeting the program's goal and objectives, and will assist those responsible to determine and implement changes for continually improving worker safety and health protection.

(a) The system must provide for an annual written narrative report with recommendations for timely improvements, assignment of responsibility for those improvements, and documentation of timely follow-up action or the reason no action was taken.

(b) The evaluation must assess the effectiveness of all elements described at III.F.5. and any other elements of the site's safety and health program.

(c) The evaluation may be conducted by competent site, corporate, or other private sector persons who are trained and/or experienced in performing such evaluations. The evaluation should follow any format recommended by OSHA.

(d) In construction, the evaluation must be conducted annually and immediately prior to completion of construction. The final evaluation is to determine what has been learned about safety and health activities that can be used to improve the contractor's safety and health program at other sites. If a construction company does not provide this final evaluation, OSHA will not consider subsequent VPP applications for other sites operated by that company.

b. Worksite Analysis. Management of safety and health programs must begin with a thorough understanding of all hazardous situations to which employees may be exposed and the ability to recognize and correct all hazards as they arise. This requires:

(1) Procedures to ensure analysis of all newly acquired or altered facilities, processes, materials, equipment, and/or phases before use begins, to identify hazards and the means for their prevention or control.

(2) Comprehensive safety and health surveys, at intervals appropriate for the nature of workplace operations, which include:

(a) Identification of safety hazards accomplished by an initial comprehensive baseline survey and then subsequent surveys as needed;

(b) Identification of health hazards and employee exposure levels accomplished through an industrial hygiene sampling rationale and strategy. Sampling rationale should be based on data including reviews of work processes, material safety data sheets, employee complaints, exposure incidents, medical records, and previous monitoring results. The sampling strategy should include baseline and subsequent surveys that assess employees' exposure through screening and full shift sampling when necessary; and

(c) The use of nationally recognized procedures for all sampling, testing, and analysis with written records of results.

(3) Routine examination and analysis of safety and health hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This may include job hazard analysis and/or process hazard review. In construction, the emphasis must be on special safety and health hazards of each craft and each phase of work.

(4) A system for conducting, as appropriate, routine self-inspections that follows written procedures or guidance and that results in written reports of findings and tracking of hazard elimination or control to completion.

(a) In general industry and maritime, these inspections must occur no less frequently than monthly and must cover the whole worksite at least quarterly;

(b) In construction, these inspections must cover the entire worksite at least weekly.

(5) A reliable system for employees, without fear of reprisal, to notify appropriate management personnel in writing about conditions that appear hazardous and to receive timely and appropriate responses. The system must include tracking of responses and tracking of hazard elimination or control to completion.

(6) An accident/incident investigation system that includes written procedures or guidance, with written reports of findings and hazard elimination or control tracking to completion. Investigations are expected to seek out root causes of the accident or event and to cover "near miss" incidents.

(7) A system to analyze trends through a review of injury/illness experience and hazards identified through inspections, employee reports, accident investigations, and/or other means, so that patterns with common causes can be identified and the causes eliminated or controlled.

c. Hazard Prevention and Control. Site hazards identified during the hazard analysis process must be eliminated or controlled by developing and implementing the systems discussed at (2) below and by using the hierarchy provided at (3) below.

(1) The hazard controls a site chooses to use must be:

(a) Understood and followed by all affected parties;

(b) Appropriate to the hazards of the site;

(c) Equitably enforced through a clearly communicated written disciplinary system that includes procedures for disciplinary action or reorientation of managers, supervisors, and non-supervisory employees who break or disregard safety rules, safe work practices, proper materials handling, or emergency procedures;

(d) Written, implemented, and updated by management as needed, and must be used by employees; and

(e) Incorporated in training, positive reinforcement, and correction programs;

(2) The required systems of hazard prevention and control are:

(a) A system for initiating and tracking hazard elimination or control in a timely manner;

(b) A written system for, and ongoing documentation of, the monitoring and maintenance of workplace equipment such as preventive and predictive maintenance, to prevent equipment from becoming hazardous;

(c) An occupational health care program that uses licensed health care professionals to assess employee health status for prevention of and early recognition and treatment of illness and injury; and that provides, at a minimum, access to certified first aid and cardiopulmonary resuscitation (CPR) providers, physician care, and emergency medical care for all shifts within a reasonable time and distance. Occupational health care professionals should be used as appropriate to accomplish these functions; and

(d) Procedures for response to emergencies on all shifts. These procedures must be written and communicated to all employees, must list requirements for personal protective equipment, first aid, medical care, and emergency egress, and must include provisions for emergency telephone numbers, exit routes, and training drills including, at a minimum, annual evacuation drills.

(3) The following hierarchy should govern actions to eliminate or control hazards, with (a) being the most desirable:

(a) Engineering controls are the most reliable and effective type of controls. These are design changes that directly eliminate (ideally) or limit the severity and/or likelihood of the hazard, e.g. reduction in pressure/amount of hazardous material, substitution of less hazardous material, reduction of noise produced, fail-safe design, leak before burst, fault tolerance/redundancy, ergonomics, etc. Although not as reliable as true engineering controls, this category also includes protective safety devices such as guards, barriers, interlocks, grounding and bonding systems, pressure relief valves to keep pressure within a safe limit, etc. These items typically seek to reduce indirectly the likelihood of the hazard. These controls are often linked with caution and warning devices like detectors and alarms that are either automatic (do not require a human response) or manual (require a human response);

(b) Administrative controls that significantly limit daily exposure to hazard by control or manipulation of the work schedule or manner in which work is performed, e.g., job rotation;

(c) Work Practice controls, a type of administrative control that includes workplace rules, safe and healthful work practices, and procedures for specific operations. Work Practice controls modify the manner in which an employee performs assigned work. This modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

(d) Personal protective equipment.

d. Safety and Health Training. Training is necessary to reinforce and complement management's commitment to prevent exposure to hazards. All employees must understand the hazards to which they may be exposed and how to prevent harm to themselves and others from such hazard exposure. Effective training enables employees to accept and follow established safety and health procedures. Training for safety and health must ensure that:

(1) Managers and supervisors understand their safety and health responsibilities (see III.F.5.a.) and are able to carry them out effectively;

(2) Managers, supervisors, and non-supervisory employees (including contract employees) are made aware of hazards, and are taught how to recognize hazardous conditions and the signs and symptoms of workplace-related illnesses;

(3) Managers, supervisors, and non-supervisory employees (including contractor employees) learn the safe work procedures to follow in order to protect themselves from hazards, through training provided at the same time they are taught to do a job and through reinforcement;

(4) Managers, supervisors, non-supervisory employees (including contractor employees), and visitors on the site understand what to do in emergency situations; and

(5) Where personal protective equipment is required, employees understand that it is required, why it is required, its limitations, how to use it, and how to maintain it; and employees use it properly.

6. Compliance With OSHA Requirements

All Star sites are expected to comply with OSHA requirements. Any deficiencies related to compliance that are uncovered through an OSHA onsite review, an internal inspection, an employee report, or other means must be corrected promptly.

G. Demonstration Programs

1. Program Purpose and Approval

a. Demonstration Programs provide the opportunity for companies and/or worksites to demonstrate the effectiveness of alternative methods of achieving safety and health program excellence that could be substituted for current Star requirements. OSHA may approve a Demonstration Program for such purposes as:

(1) Exploring the application of VPP in industries where OSHA lacks substantial experience;

(2) Testing alternative application and approval protocols that may enable sites currently ineligible for VPP to qualify for participation; and

(3) Demonstrating the feasibility of joint federal agency oversight, including joint audits, in the area of workplace safety and health.

b. A Demonstration Program also may be used to demonstrate the potential for a new VPP program.

c. The basic parameters of a Demonstration Program will be developed at the National Office or Regional level and will include a clear outline of specific requirements.

d. The decision to implement a Demonstration Program must be approved by the Assistant Secretary before any worksite is considered for participation.

2. Qualifications for Demonstration Programs

a. Safety and Health Program Requirements. Demonstration Program applicants must have a site safety and health program that, at a minimum, addresses the basic elements (management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training) described for Star at III.F.5. above, including 29 CFR 1960 requirements for Federal agencies and 29 CFR 1926.20 requirements for construction sites. How the applicant implements these elements may be the subject of demonstration so long as Star quality protection is afforded to all employees and contractors. Where an alternative is being tested, the applicant may not be required to meet each of the specific sub-elements that comprise each basic element.

b. Injury/Illness Performance Requirements. These are identical to Star Program rate requirements. See III.F.4.

c. Applicants must demonstrate to the Assistant Secretary's satisfaction that

the alternative approach shows reasonable promise of being successful and of leading to changes in the Star Program requirements.

3. Term of Participation

Worksites may be approved to a Demonstration Program for the period of time agreed upon in advance of approval, but not to exceed 5 years and subject to regular evaluation every 12 to 18 months.

4. Approval of Demonstration Program Worksite to Star

a. Approval to Star is contingent upon:

(1) Successful demonstration of the alternative aspects of the safety and health program; and

(2) A decision by the Assistant Secretary that changing the requirements of the Star Program to allow inclusion of these alternative provisions is desirable and will result in a continuing high level of worker protection.

b. Once a decision has been made by the Assistant Secretary to change Star requirements, those changes will be effective on the date they are announced to the public.

c. When the change becomes effective, the Demonstration site(s) may be approved to Star without submitting a new application or undergoing further onsite review, provided that the approval occurs no later than 18 months following the last evaluation under the Demonstration Program. If more than 18 months has elapsed, an evaluation must be conducted prior to recommending the worksite for approval to the Star Program.

5. Demonstration Termination

a. OSHA will terminate a Demonstration Program for the following reasons:

(1) The Demonstration is likely to endanger workers at the approved site(s);

(2) It is unlikely that the Demonstration will result in participating sites' approval to the Star Program or creation of a new Program; or

(3) The Demonstration period has expired.

b. When a Demonstration Program ends, any participating sites not approved to Star will be terminated from the VPP.

H. The Merit Program

1. Purpose

The Merit Program is aimed at employers in any industry who do not yet meet the qualifications for the Star Program but who have implemented a safety and health program and who want to work toward Star Program participation. If OSHA determines that an employer has demonstrated the commitment and possesses the resources to achieve Star requirements within 3 years, Merit is used to set goals that, when achieved, will qualify the site for Star participation.

2. Qualifications for Merit

a. Safety and Health Program Requirements. An eligible applicant to the Merit Program must have a written safety and health program that covers the essential elements described at III.F.5. for Star.

(1) The basic elements (management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training) must all be operational or, at a minimum, in place and ready for implementation by the date of approval. For the construction industry, each site must have in place before approval an active program that provides for safety and health inspections involving trained employees.

(2) The eligible applicant may not have met each of the specific Star requirements comprising each basic element. Participation in Merit is an opportunity for employers and their employees to work with OSHA to improve the quality of their safety and health programs and, if necessary, reduce their injury and illness rates to meet the requirements for Star. The site's safety and health program must be at Star quality within 3 years.

b. Combined Injury and Illness Rates

(1) For general industry, maritime, and federal agencies, if the applicant's 3-year total recordable case incidence rate reflecting all recordable injuries and illnesses and/or the applicant's 3-year incidence rate for cases involving days away from work and restricted work activity, for the last 3 calendar years prior to approval, does not meet the Star rate requirements (III.F.4.a.), the applicant must have a plan to achieve Star rate requirements within 2 years. It must be statistically possible to achieve this goal.

(2) For construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below the most recently published BLS national average for the industry (at the three-digit level). The total recordable case incidence rate and the incidence rate for cases involving days away from work and restricted work activity must each be calculated over the last 3 complete calendar years. The rates must include all the applicant's employees who are actually employed at construction sites in that SIC. The applicant may use nationwide employment or may designate, with OSHA approval, an appropriate geographical area that includes the site for which application is made.

c. Goals/Annual Evaluation. In consultation with the applicant, OSHA will set goals to bring Merit sites up to Star level. Site deficiencies related to compliance with OSHA rules will be listed as 90-day items and will not be included in longer-term Merit goals. How a site is working toward or has achieved its Merit goals must be discussed in the site's annual evaluation of its safety and health program (III.F.5.a.(8)).

3. Term of Participation

Worksites will be approved to the Merit Program for a period of time agreed upon in advance of approval but not to exceed 3 years. The term will depend upon how long it is expected to take the applicant to accomplish the goals for Star participation. Participation is canceled at the end of the term unless approval for a second term is recommended and is approved by the Assistant Secretary. Approval for a second term will be recommended only when unanticipated unique circumstances slow the participant's progress toward accomplishing the goals.

I. Application for VPP

1. Instructions

OSHA will prepare, keep current, and make available to all interested parties application guidelines that explain the information to be submitted for OSHA review.

2. Content

a. Eligible applicants must provide all information described in the most current version of the relevant application instructions.

b. OSHA will request amendments to submitted applications when the application information is insufficient to determine eligibility for onsite review.

c. Materials needed to document the safety and health program that may involve trade secrets or employee privacy interests must not be included in the application. Instead, such materials must be described in the application and provided only for viewing at the site during an application assistance visit and/or during the Pre-Approval Onsite Review.

3. Submission

The number of application copies requested by OSHA must be submitted to the appropriate OSHA Regional Office or, in the case of some Demonstration Program applications, to OSHA's Directorate of Federal-State Operations in Washington, DC. OSHA normally will require at least two copies, but the number requested may vary depending upon circumstances particular to the program and/or the applicant.

4. Acceptance of Application

a. OSHA conducts an initial review of each application to determine whether it meets VPP criteria that can be substantiated by the site's written safety and health program and supporting documentation. The applicant will be given the opportunity to improve its application by submitting amended or additional materials.

b. If the application is incomplete, and if after notification the applicant has not responded within 90 days to OSHA's request for more information, the Agency will consider the application unacceptable and will return it to the site. The site may resubmit the application when it is complete.

5. Withdrawal of Application

a. Any applicant may withdraw a submitted application at any time. When the applicant notifies OSHA of its desire to withdraw, the original application(s) will be returned to the applicant.

b. OSHA may keep the assigned VPP Manager's marked working copy of the application for a year before discarding it, in order to respond knowledgeably should the applicant raise questions concerning the handling of the application. Once an application has been withdrawn, a new submission of an application is required to be considered for VPP approval.

6. Public Access

The following documents will be maintained by OSHA for public access beginning on the day the site attains VPP approval and continuing for so long as the site remains in VPP:

a. In the National Office—Site information and the general description of the site's safety and health program from the application; pre-approval report and subsequent evaluation reports prepared by OSHA; the Regional Administrator's letter of recommendation; transmittal memoranda to Assistant Secretary; and the Assistant Secretary's and Regional Administrator's approval letters.

b. In the Regional Office—Complete VPP application and amendments; pre-approval report and subsequent evaluation reports; the Regional Administrator's letter of recommendation; Regional Administrator transmittal memoranda to Assistant Secretary via the Director of Federal-State Operations; the Assistant Secretary's approval letters; the memorandum to the appropriate Area Director removing the approved site from the general inspection list; and related correspondence.

J. Pre-Approval Onsite Review

1. Purpose

The pre-approval review, which OSHA conducts in a non-enforcement capacity, is a review of the site's safety and health program. It is conducted to:

a. Verify the information supplied in the application concerning qualification for the VPP;

b. Identify the strengths and weaknesses of the site's safety and health program;

c. Determine the adequacy of the site's safety and health program to address the hazards of the site and to ensure compliance with all OSHA requirements; and

d. Obtain information to assist the Assistant Secretary in making the VPP approval decision.

2. Preparation

The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader; a back-up team leader (whenever possible); and health, safety, and other specialists as required by the size of the site and the complexity of its operations.

3. Duration

The time required for the pre-approval onsite review will depend upon the size of the site and the complexity of its operations. Pre-approval reviews usually average 4 days onsite, but may be shorter or longer based on the decision of the Regional Administrator or Regional VPP Manager.

4. Scope

All pre-approval onsite reviews follow a three-pronged strategy that assesses a site's safety and health program by means of document review, site walkthrough, and employee interviews.

The onsite review will include a review of injury, illness, and fatality records; recalculation and verification of the total recordable injury and illness case incidence rate and the incidence rate for cases involving days away from work and restricted work activity (the two rates submitted with the application); a general assessment of safety and health conditions to determine if the safety and health program adequately protects workers from the hazards at the site; verification of compliance with OSHA and VPP requirements; and verification that the safety and health program described in the application has been implemented effectively.

The review will include random formal and informal interviews with relevant individuals such as members of any safety and health committees, management personnel, randomly selected non-supervisory employees, union representatives, and contract workers.

Onsite document review will entail examination of the following records (or samples) if they exist and are relevant to the application or to the safety and health program (trade secret concerns will be accommodated to the extent feasible):

a. Written safety and health program;

b. Management statement of commitment to safety and health;

c. The OSHA Form 200 log (or a successor OSHA form) for the site and for all site contractor employees who are required to report;

d. Safety and health manual(s);

e. Safety rules, emergency procedures, and examples of safe work procedures;

f. The system for enforcing safety rules;

g. Reports from employees of safety and health problems and documentation of management's response;

h. Self-inspection procedures, reports, and correction tracking;

i. Accident investigation reports and analyses;

j. Safety and health committee minutes;

k. Employee orientation and safety training programs and attendance records;

l. Baseline safety and industrial hygiene exposure assessments and updates;

m. Industrial hygiene monitoring records, results, exposure calculations, analyses and summary reports;

n. Annual safety and health program evaluations, site audits, and, when needed to demonstrate that VPP criteria are being met, corporate audits that a site voluntarily chooses to provide in support of its application. The review of evaluative documents needed to establish that the site is meeting VPP requirements will cover at least the last 3 years and will include records of follow-up activities stemming from program evaluation recommendations;

o. Preventive maintenance program and records;

p. Accountability and responsibility documentation, *e.g.*, performance standards and appraisals;

q. Contractor safety and health program(s);

r. Occupational health care programs and records;

s. Available resources devoted to safety and health;

t. Hazard and process analyses;

u. Process Safety Management (PSM) documentation, if applicable;

v. Employee involvement activities; and

w. Other records that provide relevant documentation of VPP qualifications.

K. Recommendation for Program Approval

1. Deferred Approval

If the pre-approval review determines that the applicant needs to take steps to meet one or more program requirements or to come into compliance with OSHA rules, the applicant will be given reasonable time (up to 90 days) before a recommendation for VPP approval is made to the Assistant Secretary. When necessary, an onsite visit will be made to verify the actions taken after the pre-approval onsite review visit.

2. Approval

If, in the opinion of the OSHA pre-approval onsite review team, the applicant has met the qualifications for participation in a VPP, the team's recommendation will be made to the Regional Administrator, who, on concurrence, will recommend approval to the Director of Federal-State Operations (FSO). The Director of Federal-State Operations will review the pre-approval report for compliance with the program criteria and consistent application of the qualifications requirements and, on concurrence, will forward the recommendation to the Assistant Secretary to approve participation. Approval will occur on the day that the Assistant Secretary signs a letter informing the applicant of approval.

L. Recommendation for Program Denial

1. If OSHA determines that the applicant does not meet the requirements for participation in one of the VPP, the Agency will allow reasonable time (not to exceed 30 calendar days) for the applicant to withdraw its application before the Regional Administrator makes a denial recommendation to the Assistant Secretary.

2. If the Assistant Secretary accepts the recommendation to deny approval, the denial will occur as of the date the Assistant Secretary signs a letter informing the applicant of the decision.

3. An applicant may appeal to the Assistant Secretary a finding by the OSHA pre-approval team that requirements have not been met. The Director of Federal-State Operations will forward the appeal to the Assistant Secretary, along with the team's recommendation of denial and the FSO Director's own recommendation.

4. Should the Assistant Secretary for any reason reject the recommendation to approve made by the Director of FSO and/or the Regional Administrator, a letter from the Assistant Secretary denying approval and explaining the rejection will be sent to the applicant. The denial will occur as of the date of the letter.

M. Inspection/Investigation Provisions

1. Programmed Inspections

Participating worksites, unless they choose otherwise, will be removed from OSHA's programmed inspection lists, including any lists of targeted sites, for the duration of approved participation in the VPP. The applicant worksite will be removed from the programmed inspection lists no more than 75 calendar days prior to the commencement of its scheduled pre-approval onsite review. The site will remain off those lists until official denial of the application, applicant withdrawal of its application, or, if the applicant is approved to the VPP, subsequent cessation of active participation in the VPP.

2. Unprogrammed Inspections

a. Workplace complaints to OSHA, all fatalities and catastrophes, and other significant events will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

b. The history of the VPP demonstrates that safety and health problems discovered during any contact with worksites normally are resolved cooperatively. Nevertheless, OSHA must reserve the right, where employees' safety and health are seriously endangered and site management refuses to correct the situation, to refer the situation to the Assistant Secretary for review and enforcement action. The employer will be informed that a referral will be made to the Assistant Secretary and that enforcement action may result.

3. Additional VPP Investigations

a. Following significant events, *e.g.*, fatalities, chemical spills or leaks, or other accidents, OSHA may choose to use VPP personnel to conduct an onsite review to determine a participating site's continued eligibility for VPP.

b. OSHA also may choose to investigate other significant accidents or events that come to its attention and that are not required to be handled with normal OSHA enforcement procedures, whether or not injury/illness is involved. OSHA will use VPP personnel to determine whether the accident or incident reflects a serious deficiency in the site's safety and health program that warrants reevaluation of the site's VPP qualification.

N. Post-Approval Contact/Assistance

1. OSHA Contact Person

The Contact Person for each VPP worksite will be the appropriate Regional VPP Manager or his/her designee. This person will be available to assist the participant, as needed.

2. Assistance

a. In some cases, such as in a Demonstration Program, at construction sites, or when needed for the Merit Program, an onsite assistance visit may be scheduled, *e.g.*, to respond to employer technical inquiries or to ensure the efficacy of a Demonstration.

b. Whenever significant changes in ownership or organizational structure occur, or the authorized collective bargaining agent changes, OSHA may make an onsite assistance visit if needed to determine the impact of the changes on VPP participation. In the event of such changes, the appropriate Regional Administrator must be notified of the change within 60 days, and a new signed Statement of Commitment will be required. The Statement must be signed by management and appropriate bargaining representatives.

c. Whenever a 3-year rate (either the total recordable case incidence rate or the incidence rate for cases involving days away from work and restricted work activity) of a Star Program participant exceeds the latest national average published by BLS, at the discretion of the Regional Administrator, the participant may be required to develop an agreed upon 2-year rate reduction plan. If appropriate, OSHA may make an onsite assistance visit to help the site develop the plan.

O. Periodic Onsite Evaluation of Approved Worksites

1. The Star Program

a. Purpose. Onsite evaluations of Star participants are intended to:

(1) Determine continued qualification for the Star Program;

(2) Document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the site's safety and health program; and

(3) Identify any problems that have the potential to adversely affect continued Star Program qualification and determine appropriate follow-up actions.

b. Frequency. The first post-approval evaluation will be within 30 to 42 months of the initial Star approval or, in the case of a Demonstration Program site that has been approved to Star, within 30 to 42 months of the last Demonstration evaluation. Subsequently, all Star participants will be evaluated at no greater than 60-month intervals. (The identification of potentially serious safety and health risks may create the need for more frequent evaluations.)

c. Scope. OSHA's evaluation of Star Program participants will consist mainly of an onsite visit similar in duration and scope to the pre-approval program review described in III.J.3–4. OSHA will review the documentation of program implementation since pre-approval review or since the previous evaluation. The evaluation will include a review of incidence rates and supporting data (specified in III.E.10.–11.) for the site and for its applicable contractor employees for the latest 3 complete calendar years. The review of applicable contractor data will be part of OSHA's evaluation of the effectiveness of the site's contractor oversight and management system. The review of applicable contractor rates will be phased in as follows:

(1) In 2001, contractor data for calendar year 2000;

(2) In 2002, contractor data for calendar years 2000 and 2001;

(3) Thereafter, data for the most recent 3 calendar years.

d. Measures of Effectiveness. OSHA will use the following factors in the evaluation of Star Program participants:

(1) Continued compliance with the program requirements and continuous improvement in the safety and health program;

(2) Satisfaction and continuing demonstrated commitment of employees and management;

(3) Nature and validity of any complaints received by OSHA;

(4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and

(5) The effectiveness of employee participation programs.

e. Evaluation Decisions and Recommendations. The Regional Administrator will make one of the following decisions/recommendations following a Star evaluation visit:

(1) Decision to continue participation in the Star Program;

(2) Decision to allow a 1-year conditional participation in the Star Program. The VPP onsite review team may recommend this alternative if it finds that the site has allowed one or more program elements to slip below Star quality. The site must return its safety and health program to Star quality within 90 calendar days of the evaluation visit and must demonstrate a commitment to maintain that level of quality. A VPP onsite review team will return in 1 year to determine if the site's safety and health program remains at Star quality. If Star quality has been maintained, the team will recommend the site be re-approved to the Star Program; or

(3) Termination. After considering the recommendation of the VPP onsite review team, the Regional Administrator may recommend to the Assistant Secretary that a site be terminated if the site has been found to have significantly failed to maintain its safety and health program at Star quality.

2. The Demonstration Program

a. Purpose of Evaluation. Onsite Demonstration evaluations are intended to:

(1) Determine continued qualification for the Demonstration Program;

(2) Document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the site's safety and health program;

(3) Ensure that the demonstration aspects of the program continue to be effective and to protect employees; and

(4) Identify any problems that have the potential to adversely affect continued Demonstration Program qualification and determine appropriate follow-up actions.

b. Frequency. Demonstration Program participants will be evaluated every 12 to 18 months.

c. Scope. Identical to Star Program evaluations; see III.O.1.c. above.

d. Measures of Effectiveness. A Demonstration Program evaluation will assess the effectiveness of the alternate criteria being demonstrated. It also will consider all factors used to measure the effectiveness of Star Program participants. See III.O.1.d. above.

e. Evaluation Recommendations and Decisions. The Regional Administrator may make one of the following recommendations to the Assistant Secretary following a Demonstration evaluation visit. The Assistant Secretary will then decide:

(1) Continued participation in the Demonstration Program;

(2) Changes in the Star requirements to include the aspects being demonstrated because they provide effective Star quality safety and health protection; or

(3) Termination because either the Demonstration aspects do not provide Star quality protection or the site has significantly failed to maintain the remainder of its safety and health program at Star quality.

3. The Merit Program

a. Purpose of Evaluation. Onsite Merit evaluations are intended to:

(1) Determine continued qualification for the Merit Program, or determine whether the applicant may be approved for the Star Program;

(2) Determine whether adequate progress has been made toward the agreed-upon Merit goals;

(3) Identify any problems in the safety and health program or its implementation that need resolution in order to continue qualification or meet agreed-upon goals;

(4) Document program improvements and/or improved results; and

(5) Provide advice and suggestions for needed improvements.

b. Frequency. The first evaluation of a Merit participant will be conducted within 24 months (18 months is recommended) of approval. The site may request an earlier evaluation if it believes it has met Star Program qualifications.

c. Scope. OSHA's evaluation of Merit Program participants will consist mainly of an onsite visit similar in duration and scope to the pre-approval program review described at III.J.3.–4. OSHA will review documentation of program implementation since the pre-approval review or the previous evaluation. The evaluation will include a review of total recordable case incidence rates and incidence rates for cases involving days away from work and restricted work activity, for both the site and its applicable contractor employees as described at III.E.10.–11.

d. Measures of Effectiveness. The following factors will be measured in the evaluation of Merit Programs:

(1) Continued adequacy of the safety and health program to address the potential hazards of the workplace;

(2) Comparison of employer and contractor rates to the industry average;

(3) Satisfaction and continuing demonstrated commitment of employees and management;

(4) Nature and validity of any complaints received by OSHA;

(5) Resolution of problems that have come to OSHA's attention;

(6) Effectiveness of the employee participation program; and

(7) Progress made toward goals specified in the pre-approval or previous evaluation report.

e. Evaluation Decisions and Recommendations. The Regional Administrator may make one of the following decisions/recommendations following a Merit evaluation visit:

(1) Decision for continued Merit participation;

(2) Recommendation for advancement to the Star Program; or

(3) Recommendation for termination.

P. Termination or Withdrawal

1. Reasons for Termination

A site will be terminated from the VPP when:

a. Participating site management, or the duly authorized collective bargaining agent, where applicable, withdraws support for VPP participation.

b. A site fails to maintain its safety and health program in accordance with the program requirements.

c. No significant progress has been made toward achieving the established Merit goals or 1-year Star Conditional goals.

d. The Merit term of approval has expired, and no recommendation has been made for a second term.

e. Construction work at a construction industry site has been completed.

f. The sale of a VPP site to another company or a management change has significantly weakened the safety and health program.

g. Resident contractor participation is no longer possible because the host site no longer participates in VPP.

h. OSHA terminates a Demonstration Program for just cause.

i. The Regional Administrator presents written evidence to the Assistant Secretary that the essential trust and cooperation among labor, management, and OSHA no longer exist, and therefore recommends termination, and the Assistant Secretary concurs.

2. Termination Notification and Appeal or Withdrawal

Under most circumstances, OSHA will provide the participant and bargaining unit representatives 30 days' notice of intent to terminate a site's participation in the VPP. During the 30-day period, the participant is entitled to appeal in writing to the Assistant Secretary and to provide reasons why it believes the site should not be removed from the VPP.

OSHA will not provide 30 days' notice when:

a. Other terms for termination were agreed upon before approval;

b. A set period for approval is expiring; or

c. Construction has been completed at a participating construction site.

3. Withdrawal of a Participating Site.

Upon receipt of an OSHA notice of intent to terminate, or for any reason, a participant may withdraw from the VPP by submitting written notification to the appropriate Regional Administrator.

4. Reapplication Following Termination.

OSHA will not consider the reapplication of a terminated site for a period of 3 years from the date of termination.

Q. Reinstatement

Reinstatement requires reapplication.

Signed at Washington, DC, this 18th day of July 2000.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

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International Trade Administration

Issuance of Safe Harbor Principles and Transmission to European Commission; Notice

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DEPARTMENT OF COMMERCE

International Trade Administration

Issuance of Safe Harbor Principles and Transmission to European Commission

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of publication.

SUMMARY: The U.S. Department of Commerce, under its authority to foster, promote, and develop international commerce, is formally issuing the Safe Harbor Privacy Principles and transmitting them to the European Commission. Upon receipt of the Principles, the Commission is expected to issue an "adequacy determination" for the safe harbor arrangement. In addition to being published in the **Federal Register**, these documents can be found on the International Trade Administration's website (*www.ita.doc.gov/ecom*).

Background

The Principles, which include a set of Frequently Asked Questions (FAQs) that supplement the Safe Harbor Privacy Principles, are intended to serve as authoritative guidance to U.S. companies and other organizations receiving personal data from the European Union. Upon receipt of the Principles, the Commission is expected to issue an "adequacy determination" for the safe harbor arrangement. Organizations receiving personal data transfers from the EU and complying with the Principles will be considered to meet the "adequacy" requirements of the European Union's Directive on Data Protection.

FURTHER INFORMATION: Further information will be provided about the effective dates of operation of the safe harbor, after the European Commission has provided its "adequacy determination."

Dated: July 19, 2000.

Rebecca J. Richards,

International Trade Specialist, International Trade Administration/Trade Development.

July 17, 2000.

Mr. John Mogg, Director DG Internal Market, European Commission, Office C 107–6/72, Rue de la Loi, 200, 1049 Brussels, BELGIUM

Dear Mr. Mogg:

I am pleased to provide you with several documents: 1) the "Safe Harbor Privacy Principles," issued by the U.S. Department of Commerce on July 21, 2000; 2) Frequently Asked Questions (FAQs) that supplement the Safe Harbor Principles; 3) an overview on how organizations' safe harbor commitments will be enforced in the United States; 4) a memorandum on damages available to individuals; 5) the July 14, 2000 letter from the Federal Trade Commission; and 6) the July 14, 2000 letter from the U.S. Department of Transportation.

The Department is providing these documents under its authority to foster, promote, and develop international commerce. Both the Safe Harbor Principles and the FAQs ("the Principles") are intended to serve as authoritative guidance to U.S. companies and other organizations receiving personal data from the European Union and wishing to establish a predictable basis for the continuation of such transfers. The enforcement overview and other supporting documents are intended to explain how U.S. enforcement mechanisms, based either on law and regulation or self-regulation, will satisfy the requirements of the Enforcement Principle and ensure that an organization's commitment to adhere to the Principles will be effectively enforced. The safe harbor documents of course need to be read against the U.S. legal system and its well known features, such as class actions and contingency fees, which allow consumers even with novel claims relatively ready and inexpensive access to the courts and damages where justified.

Organizations can be assured of the benefits of the safe harbor by self-certifying that they adhere to the Principles. The Department of Commerce will arrange for a list to be maintained of all organizations that self-certify their adherence to the Principles. Both the list and the notifications submitted by organizations containing information with regard to their implementation of the Principles will be made publicly available as will any proper and final adverse determination made by a U.S. enforcement body and notified to the Department of Commerce (or its designee) that a safe harbor organization has persistently failed to comply with the Principles. Where in complying with the Principles, an organization relies in whole or in part on self-regulation, its failure to comply with such self-regulation must also be actionable under Section 5 of the Federal Trade Commission Act prohibiting unfair and deceptive acts or another law or regulation prohibiting such acts.

On the basis of these documents, our expectation is that the European Commission will determine that this safe harbor framework provides adequate protection for the purposes of Article 25.1 of the Data Protection Directive and data transfers from the European Union would continue to organizations that participate in the safe harbor. As a result, adherence to the Principles on these terms will reduce the uncertainty about the impact of the "adequacy" standard on personal data transfers to such organizations from EU Member States.

On the basis of our dialogue, we understand that the Commission and Member States will use the flexibility of Article 26 and any discretion regarding enforcement to avoid disrupting data flows to U.S. organizations during the implementation phase of the safe harbor and that the situation will be reviewed in mid 2001. This will give U.S. organizations an opportunity to decide whether to enter the safe harbor and (if necessary) to update their information practices. We will encourage U.S. organizations to enter the safe harbor as soon as possible to enhance privacy protection and because participation in the safe harbor provides greater certainty that data flows will continue without interruption.

During the dialogue, you sought assurances that where the United States enacted privacy legislation providing greater privacy protection than the safe harbor, such protection should be applied to safe harbor data too, in cases where the law applied with respect to U.S. citizens only, but was silent on its applicability with respect to non-U.S. citizens. You noted that the EU Directive on Data Protection applies to all personal information processed in Europe, regardless of the individuals' citizenship or residency. I would like to confirm that we agree that privacy legislation should not apply differently on the basis of nationality, as provided for in paragraph 19(e) of the OECD guidelines and paragraph 70 of the explanatory memorandum and to assure you that if such legislation were proposed in Congress, we would work within the legislative process to avoid any such effects. We will also continue our efforts, in line with our general commitment to regulatory co-operation in the context of the Transatlantic Economic Partnership, to keep you informed of legislative and other developments in the United States in the field of privacy protection of which we are aware, with particular attention to any such developments that may create allowable exceptions to the Principles. Of course, you can raise any concerns about these issues under the review arrangements provided for.

Similarly, on a number of occasions I raised with you the concerns of U.S. industry about the possible effects of the safe harbor as regards jurisdiction and applicable law. I would like to confirm that it is the U.S. intention that participation in the safe harbor does not change the status quo ante for any organization with respect to jurisdiction, applicable law and liability in the European Union. Moreover, our discussions with respect to the safe harbor have not resolved nor prejudged the questions of jurisdiction or applicable law with respect to websites. All existing rules, principles, conventions and treaties relating to international conflicts of law continue to apply and are not prejudiced in any way by the safe harbor arrangement.

Finally, the Department of Commerce will notify the Commission in advance of any proposed FAQs or revisions to existing ones.

Sincerely,

Robert S. LaRussa, Acting

Safe Harbor Privacy Principles Issued by the U.S. Department of Commerce on July 21, 2000

The European Union's comprehensive privacy legislation, the Directive on Data Protection (the Directive), became effective on October 25, 1998. It requires that transfers of personal data take place

only to non-EU countries that provide an "adequate" level of privacy protection. While the United States and the European Union share the goal of enhancing privacy protection for their citizens, the United States takes a different approach to privacy from that taken by the European Union. The United States uses a sectoral approach that relies on a mix of legislation, regulation, and self regulation. Given those differences, many U.S. organizations have expressed uncertainty about the impact of the EU-required "adequacy standard" on personal data transfers from the European Union to the United States.

To diminish this uncertainty and provide a more predictable framework for such data transfers, the Department of Commerce is issuing this document and Frequently Asked Questions ("the Principles") under its statutory authority to foster, promote, and develop international commerce. The Principles were developed in consultation with industry and the general public to facilitate trade and commerce between the United States and European Union. They are intended for use solely by U.S. organizations receiving personal data from the European Union for the purpose of qualifying for the safe harbor and the presumption of "adequacy" it creates. Because the Principles were solely designed to serve this specific purpose, their adoption for other purposes may be inappropriate. The Principles cannot be used as a substitute for national provisions implementing the Directive that apply to the processing of personal data in the Member States.

Decisions by organizations to qualify for the safe harbor are entirely voluntary, and organizations may qualify for the safe harbor in different ways. Organizations that decide to adhere to the Principles must comply with the Principles in order to obtain and retain the benefits of the safe harbor and publicly declare that they do so. For example, if an organization joins a self-regulatory privacy program that adheres to the Principles, it qualifies for the safe harbor. Organizations may also qualify by developing their own self-regulatory privacy policies provided that they conform with the Principles. Where in complying with the Principles, an organization relies in whole or in part on self-regulation, its failure to comply with such self-regulation must also be actionable under Section 5 of the Federal Trade Commission Act prohibiting unfair and deceptive acts or another law or regulation prohibiting such acts. (See the annex for the list of U.S. statutory bodies recognized by the EU.) In addition, organizations subject to a statutory, regulatory, administrative or other body of law (or of rules) that effectively protects personal privacy may also qualify for safe harbor benefits. In all instances, safe harbor benefits are assured from the date on which each organization wishing to qualify for the safe harbor self-certifies to the Department of Commerce (or its designee) its adherence to the Principles in accordance with the guidance set forth in the Frequently Asked Question on Self-Certification.

Adherence to these Principles may be limited: (a) To the extent necessary to meet national security, public interest, or law enforcement requirements; (b) by statute, government regulation, or case law that create conflicting obligations or explicit authorizations, provided that, in exercising any such authorization, an organization can demonstrate that its non-compliance with the Principles is limited to the extent necessary to meet the overriding legitimate interests furthered by such authorization; or (c) if the effect of the Directive or Member State law is to allow exceptions or derogations, provided such exceptions or derogations are applied in comparable contexts. Consistent with the goal of enhancing privacy protection, organizations should strive to implement these Principles fully and transparently, including indicating in their privacy policies where exceptions to the Principles permitted by (b) above will apply on a regular basis. For the same reason, where the option is allowable under the Principles and/or U.S. law, organizations are expected to opt for the higher protection law where possible.

Organizations may wish for practical or other reasons to apply the Principles to all their data processing operations, but they are only obligated to apply them to data transferred after they enter the safe harbor. To qualify for the safe harbor, organizations are not obligated to apply these Principles to personal information in manually processed filing systems. Organizations wishing to benefit from the safe harbor for receiving information in manually processed filing systems from the EU must apply the Principles to any such information transferred after they enter the safe harbor. An organization that wishes to extend safe harbor benefits to human resources personal information transferred from the EU for use in the context of an employment relationship must indicate this when it self-certifies to the Department of Commerce (or its designee) and conform to the requirements set forth in the Frequently Asked Question on Self-Certification.

Organizations will also be able to provide the safeguards necessary under Article 26 of the Directive if they include the Principles in written agreements with parties transferring data from the EU for the substantive privacy provisions, once the other provisions for such model contracts are authorized by the Commission and the Member States.

U.S. law will apply to questions of interpretation and compliance with the Safe Harbor Principles (including the Frequently Asked Questions) and relevant privacy policies by safe harbor organizations, except where organizations have committed to cooperate with European Data Protection Authorities. Unless otherwise stated, all provisions of the Safe Harbor Principles and Frequently Asked Questions apply where they are relevant.

Personal data" and "personal information" are data about an identified or identifiable individual that are within the scope of the Directive, received by a U.S. organization from the European Union, and recorded in any form.

Notice: An organization must inform individuals about the purposes for which it collects and uses information about them, how to contact the organization with any inquiries or complaints, the types of third parties to which it discloses the information, and the choices and means the organization offers individuals for limiting its use and disclosure. This notice must be provided in clear and conspicuous language when individuals are first asked to provide personal information to the organization or as soon thereafter as is practicable, but in any event before the organization uses such information for a purpose other than that for which it was originally collected or processed by the transferring organization or discloses it for the first time to a third party.[1]

Choice: An organization must offer individuals the opportunity to choose (opt out) whether their personal information is (a) to be disclosed to a third party[1] or (b) to be used for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual. Individuals must be provided with clear and conspicuous, readily available, and affordable mechanisms to exercise choice.

[1] It is not necessary to provide notice or choice when disclosure is made to a third party that is acting as an agent to perform task(s) on behalf of and under the instructions of the organization. The Onward Transfer Principle, on the other hand, does apply to such disclosures.

For sensitive information (*i.e.* personal information specifying medical or health conditions, racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or information specifying the sex life of the individual), they must be given affirmative or explicit (opt in) choice if the information is to be disclosed to a third party or used for a purpose other than those for which it was originally collected or subsequently authorized by the individual through the exercise of opt in choice. In any case, an organization should treat as sensitive any information received from a third party where the third party treats and identifies it as sensitive.

Onward Transfer: To disclose information to a third party, organizations must apply the Notice and Choice Principles. Where an organization wishes to transfer information to a third party that is acting as an agent, as described in the endnote, it may do so if it first either ascertains that the third party subscribes to the Principles or is subject to the Directive or another adequacy finding or enters into a written agreement with such third party requiring that the third party provide at least the same level of privacy protection as is required by the relevant Principles. If the organization complies with these requirements, it shall not be held responsible (unless the organization agrees otherwise) when a third party to which it transfers such information processes it in a way contrary to any restrictions or representations, unless the organization knew or should have known the third party would process it in such a contrary way and the organization has not taken reasonable steps to prevent or stop such processing.

Security: Organizations creating, maintaining, using or disseminating personal information must take reasonable precautions to protect it from loss, misuse and unauthorized access, disclosure, alteration and destruction.

Data Integrity: Consistent with the Principles, personal information must be relevant for the purposes for which it is to be used. An organization may not process personal information in a way that is incompatible with the purposes for which it has been collected or subsequently authorized by the individual. To the extent necessary for those purposes, an organization should take reasonable steps to ensure that data is reliable for its intended use, accurate, complete, and current.

Access: Individuals must have access to personal information about them that an organization holds and be able to correct, amend, or delete that information where it is inaccurate, except where the burden or expense of providing access would be disproportionate to the risks to the individual's privacy in the case in question, or where the rights of persons other than the individual would be violated.

Enforcement: Effective privacy protection must include mechanisms for assuring compliance with the Principles, recourse for individuals to whom the data relate affected by non-compliance with the Principles, and consequences for the organization when the Principles are not followed. At a minimum, such mechanisms must include (a) readily available and affordable independent recourse mechanisms by which each individual's complaints and disputes are investigated and resolved by reference to the Principles and damages awarded where the applicable law or private sector initiatives so provide; (b) follow up procedures for verifying that the attestations and assertions businesses make about their privacy practices are true and that privacy practices have been implemented as presented; and (c) obligations to remedy problems arising out of failure to comply with the Principles by organizations announcing their adherence to them and consequences for such organizations. Sanctions must be sufficiently rigorous to ensure compliance by organizations.

Annex

List of U.S. Statutory Bodies Recognized by the European Union

The European Union recognizes the following U.S. government bodies as being empowered to investigate complaints and to obtain relief against unfair or deceptive practices as well as rederess for individuals in case of non-compliance with the Principles implemented in accordance with the FAQs:

—The Federal Trade Commission on the basis of its authority under Section 5 of the Federal Trade Commission Act

—The Department of Transportation on the basis of its authority under Title 49 U.S.C. 41712.

Frequently Asked Questions (FAQs)

FAQ 1—Sensitive Data

Q: Must an organization always provide explicit (opt in) choice with respect to sensitive data?

A: No, such choice is not required where the processing is: (1) In the vital interests of the data subject or another person; (2) necessary for the establishment of legal claims or defenses; (3) required to provide medical care or diagnosis; (4) carried out in the course of legitimate activities by a foundation, association or any other non-profit body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to the persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects; (5) necessary to carry out the organization's obligations in the field of employment law; or (6) related to data that are manifestly made public by the individual.

FAQ 2—Journalistic Exceptions

Q: Given U.S. constitutional protections for freedom of the press and the Directive's exemption for journalistic material, do the Safe Harbor Principles apply to personal information gathered, maintained, or disseminated for journalistic purposes?

A: Where the rights of a free press embodied in the First Amendment of the U.S. Constitution intersect with privacy protection interests, the First Amendment must govern the balancing of these interests with regard to the activities of U.S. persons or organizations. Personal information that is gathered for publication, broadcast, or other forms of public communication of journalistic material, whether used or not, as well as information found in previously published material disseminated from media archives, is not subject to the requirements of the Safe Harbor Principles.

FAQ 3—Secondary Liability

Q: Are Internet service providers (ISPs), telecommunications carriers, or other organizations liable under the Safe Harbor Principles when on behalf of another organization they merely transmit, route, switch or cache information that may violate their terms?

A: No. As is the case with the Directive itself, the safe harbor does not create secondary liability. To the extent that an organization is acting as a mere conduit for data transmitted by third parties and does not determine the purposes and means of processing those personal data, it would not be liable.

FAQ 4—Investment Banking and Audits

Q: The activities of auditors and investment bankers may involve processing personal data without the consent or knowledge of the individual. Under what circumstances is this permitted by the Notice, Choice, and Access Principles?

A: Investment bankers or auditors may process information without knowledge of the individual only to the extent and for the period necessary to meet statutory or public interest requirements and in other circumstances in which the application of these Principles would prejudice the legitimate interests of the organization. These legitimate interests include the monitoring of companies' compliance with their legal obligations and legitimate accounting activities, and the need for confidentiality connected with possible acquisitions, mergers, joint ventures, or other similar transactions carried out by investment bankers or auditors.

FAQ 5—The Role of the Data Protection Authorities

Q: How will companies that commit to cooperate with European Union Data Protection Authorities (DPAs) make those commitments and how will they be implemented?

A: Under the safe harbor, U.S. organizations receiving personal data from the EU must commit to employ effective mechanisms for assuring compliance with the Safe Harbor Principles. More specifically as set out in the Enforcement Principle, they must provide (a) recourse for individuals to whom the data relate, (b) follow up procedures for verifying that the attestations and assertions they have made about their privacy practices are true, and (c) obligations to remedy problems arising out of failure to comply with the Principles and consequences for such organizations. An organization may satisfy points (a) and (c) of the Enforcement Principle if it adheres to the requirements of this FAQ for cooperating with the DPAs.

An organization may commit to cooperate with the DPAs by declaring in its safe harbor certification to the Department of Commerce (see FAQ 6 on self-certification) that the organization:

1. Elects to satisfy the requirement in points (a) and (c) of the Safe Harbor Enforcement Principle by committing to cooperate with the DPAs;

2. Will cooperate with the DPAs in the investigation and resolution of complaints brought under the safe harbor; and

3. Will comply with any advice given by the DPAs where the DPAs take the view that the organization needs to take specific action to comply with the Safe Harbor Principles, including remedial or compensatory measures for the benefit of individuals affected by any non-compliance with the Principles, and will provide the DPAs with written confirmation that such action has been taken.

The cooperation of the DPAs will be provided in the form of information and advice in the following way:

—The advice of the DPAs will be delivered through an informal panel of DPAs established at the European Union level, which will *inter alia* help ensure a harmonised and coherent approach.

—The panel will provide advice to the U.S. organizations concerned on unresolved complaints from individuals about the handling of personal information that has been transferred from the EU under the safe harbor. This advice will be designed to ensure that the Safe Harbor Principles are being correctly applied and will include any remedies for the individual(s) concerned that the DPAs consider appropriate.

—The panel will provide such advice in response to referrals from the organizations concerned and/or to complaints received directly from individuals against organizations which have committed to cooperate with DPAs for safe harbor purposes, while encouraging and if necessary helping such individuals in the first instance to use the in-house complaint handling arrangements that the organization may offer.

—Advice will be issued only after both sides in a dispute have had a reasonable opportunity to comment and to provide any evidence they wish. The panel will seek to deliver advice as quickly as this requirement for due process allows. As a general rule, the panel will aim to provide advice within 60 days after receiving a complaint or referral and more quickly where possible.

—The panel will make public the results of its consideration of complaints submitted to it, if it sees fit.

—The delivery of advice through the panel will not give rise to any liability for the panel or for individual DPAs.

As noted above, organizations choosing this option for dispute resolution must undertake to comply with the advice of the DPAs. If an organization fails to comply within 25 days of the delivery of the advice and has offered no satisfactory explanation for the delay, the panel will give notice of its intention either to submit the matter to the Federal Trade Commission or other U.S. federal or state body with statutory powers to take enforcement action in cases of deception or misrepresentation, or to conclude that the agreement to cooperate has been seriously breached and must therefore be considered null and void. In the latter case, the panel will inform the Department of Commerce (or its designee) so that the list of safe harbor participants can be duly amended. Any failure to fulfill the undertaking to cooperate with the DPAs, as well as failures to comply with the Safe Harbor Principles, will be actionable as a deceptive practice under section 5 of the FTC Act or other similar statute.

Organizations choosing this option will be required to pay an annual fee which will be designed to cover the operating costs of the panel, and they may additionally be asked to meet any necessary translation expenses arising out of the panel's consideration of referrals or complaints against them. The annual fee will not exceed $500 and will be less for smaller companies.

The option of co-operating with the DPAs will be available to organizations joining the safe harbor during a three-year period. The DPAs will reconsider this arrangement before the end of that period if the number of U.S. organizations choosing this option proves to be excessive.

FAQ 6—Self-Certification

Q: How does an organization self-certify that it adheres to the Safe Harbor Principles?

A: Safe harbor benefits are assured from the date on which an organization self-certifies to the Department of Commerce (or its designee) its adherence to the Principles in accordance with the guidance set forth below.

To self-certify for the safe harbor, organizations can provide to the Department of Commerce (or its designee) a letter, signed by a corporate officer on behalf of the organization that is joining the safe harbor, that contains at least the following information:

1. Name of organization, mailing address, email address, telephone and fax numbers;

2. Description of the activities of the organization with respect to personal information received from the EU; and

3. Description of the organization's privacy policy for such personal information, including:

a. Where the privacy policy is available for viewing by the public,

b. Its effective date of implementation,

c. A contact office for the handling of complaints, access requests, and any other issues arising under the safe harbor,

d. The specific statutory body that has jurisdiction to hear any claims against the organization regarding possible unfair or deceptive practices and

violations of laws or regulations governing privacy (and that is listed in the annex to the Principles),

e. Name of any privacy programs in which the organization is a member,

f. Method of verification (*e.g.* in-house, third party) *, and

g. The independent recourse mechanism that is available to investigate unresolved complaints.

Where the organization wishes its safe harbor benefits to cover human resources information transferred from the EU for use in the context of the employment relationship, it may do so where there is a statutory body with jurisdiction to hear claims against the organization arising out of human resources information that is listed in the annex to the Principles. In addition the organization must indicate this in its letter and declare its commitment to cooperate with the EU authority or authorities concerned in conformity with FAQ 9 and FAQ 5 as applicable and that it will comply with the advice given by such authorities.

The Department (or its designee) will maintain a list of all organizations that file such letters, thereby assuring the availability of safe harbor benefits, and will update such list on the basis of annual letters and notifications received pursuant to FAQ 11. Such self-certification letters should be provided not less than annually. Otherwise the organization will be removed from the list and safe harbor benefits will no longer be assured. Both the list and the self-certification letters submitted by the organizations will be made publicly available. All organizations that self-certify for the safe harbor must also state in their relevant published privacy policy statements that they adhere to the Safe Harbor Principles.

The undertaking to adhere to the Safe Harbor Principles is not time-limited in respect of data received during the period in which the organization enjoys the benefits of the safe harbor. Its undertaking means that it will continue to apply the Principles to such data for as long as the organization stores, uses or discloses them, even if it subsequently leaves the safe harbor for any reason.

An organization that will cease to exist as a separate legal entity as a result of a merger or a takeover must notify the Department of Commerce (or its designee) of this in advance. The notification should also indicate whether the acquiring entity or the entity resulting from the merger will (1) continue to be bound by the Safe Harbor Principles by the operation of law governing the takeover or merger or (2) elect to self-certify its adherence to the Safe Harbor Principles or put in place other safeguards, such as a written agreement that will ensure adherence to the Safe Harbor Principles. Where neither (1) nor (2) applies, any data that has been acquired under the safe harbor must be promptly deleted.

An organization does not need to subject all personal information to the Safe Harbor Principles, but it must subject to the Safe Harbor Principles all personal data received from the EU after it joins the safe harbor.

Any misrepresentation to the general public concerning an organization's adherence to the Safe Harbor Principles may be actionable by the Federal Trade Commission or other relevant government body. Misrepresentations to the Department of Commerce (or its designee) may be actionable under the False Statements Act (18 U.S.C. 1001).

FAQ 7—Verification

Q: How do organizations provide follow up procedures for verifying that the attestations and assertions they make about their safe harbor privacy practices are true and those privacy practices have been implemented as represented and in accordance with the Safe Harbor Principles?

A: To meet the verification requirements of the Enforcement Principle, an organization may verify such attestations and assertions either through self-assessment or outside compliance reviews.

Under the self-assessment approach, such verification would have to indicate that an organization's published privacy policy regarding personal information received from the EU is accurate, comprehensive, prominently displayed, completely implemented and accessible. It would also need to indicate that its privacy policy conforms to the Safe Harbor Principles; that individuals are informed of any in-house arrangements for handling complaints and of the independent mechanisms through which they may pursue complaints; that it has in place procedures for training employees in its implementation, and disciplining them for failure to follow it; and that it has in place internal procedures for periodically conducting objective reviews of compliance with the above. A statement verifying the self-assessment should be signed by a corporate officer or other authorized representative of the organization at least once a year and made available upon request by individuals or in the context of an investigation or a complaint about non-compliance.

Organizations should retain their records on the implementation of their safe harbor privacy practices and make them available upon request in the context of an investigation or a complaint about non-compliance to the independent body responsible for investigating complaints or to the agency with unfair and deceptive practices jurisdiction.

Where the organization has chosen outside compliance review, such a review needs to demonstrate that its privacy policy regarding personal information received from the EU conforms to the Safe Harbor Principles, that it is being complied with and that individuals are informed of the mechanisms through which they may pursue complaints. The methods of review may include without limitation auditing, random reviews, use of "decoys," or use of technology tools as appropriate. A statement verifying that an outside compliance review has been successfully completed should be signed either by the reviewer or by the corporate officer or other authorized representative of the organization at least once a year and made available upon request by individuals or in the context of an investigation or a complaint about compliance.

FAQ 8: Access

Access Principle

Individuals must have access to personal information about them that an organization holds and be able to correct, amend or delete that information where it is inaccurate, except where the burden or expense of providing access would be disproportionate to the risks to the individual's privacy in the case in question, or where the legitimate rights of persons other than the individual would be violated.

1. Q: Is the right of access absolute?

1. A: No. Under the Safe Harbor Principles, the right of access is fundamental to privacy protection. In particular, it allows individuals to verify the accuracy of information held about them. Nonetheless, the obligation of an organization to provide access to the personal information it holds about an individual is subject to the principle of proportionality or reasonableness and has to be tempered in certain instances. Indeed, the Explanatory Memorandum to the 1980 OECD Privacy Guidelines makes clear that an organization's access obligation is not absolute. It does not require the exceedingly thorough search mandated, for example, by a subpoena, nor does it require access to all the different forms in which the

* See FAQ 7 on verification.

information may be maintained by the organization.

Rather, experience has shown that in responding to individuals' access requests, organizations should first be guided by the concern(s) that led to the requests in the first place. For example, if an access request is vague or broad in scope, an organization may engage the individual in a dialogue so as to better understand the motivation for the request and to locate responsive information. The organization might inquire about which part(s) of the organization the individual interacted with and/or about the nature of the information (or its use) that is the subject of the access request. Individuals do not, however, have to justify requests for access to their own data.

Expense and burden are important factors and should be taken into account but they are not controlling in determining whether providing access is reasonable. For example, if the information is used for decisions that will significantly affect the individual (*e.g.*, the denial or grant of important benefits, such as insurance, a mortgage, or a job), then consistent with the other provisions of these FAQs, the organization would have to disclose that information even if it is relatively difficult or expensive to provide.

If the information requested is not sensitive or not used for decisions that will significantly affect the individual (*e.g.*, non-sensitive marketing data that is used to determine whether or not to send the individual a catalog), but is readily available and inexpensive to provide, an organization would have to provide access to factual information that the organization stores about the individual. The information concerned could include facts obtained from the individual, facts gathered in the course of a transaction, or facts obtained from others that pertain to the individual.

Consistent with the fundamental nature of access, organizations should always make good faith efforts to provide access. For example, where certain information needs to be protected and can be readily separated from other information subject to an access request, the organization should redact the protected information and make available the other information. If an organization determines that access should be denied in any particular instance, it should provide the individual requesting access with an explanation of why it has made that determination and a contact point for any further inquiries.

2. Q: What is confidential commercial information and may organizations deny access in order to safeguard it?

2. A: Confidential commercial information (as that term is used in the Federal Rules of Civil Procedure on discovery) is information which an organization has taken steps to protect from disclosure, where disclosure would help a competitor in the market. The particular computer program an organization uses, such as a modeling program, or the details of that program may be confidential commercial information. Where confidential commercial information can be readily separated from other information subject to an access request, the organization should redact the confidential commercial information and make available the non-confidential information. Organizations may deny or limit access to the extent that granting it would reveal its own confidential commercial information as defined above, such as marketing inferences or classifications generated by the organization, or the confidential commercial information of another where such information is subject to a contractual obligation of confidentiality in circumstances where such an obligation of confidentiality would normally be undertaken or imposed.

3. Q: In providing access, may an organization disclose to individuals personal information about them derived from its data bases or is access to the data base itself required?

3. A: Access can be provided in the form of disclosure by an organization to the individual and does not require access by the individual to an organization's data base.

4. Q: Does an organization have to restructure its data bases to be able to provide access?

4. A: Access needs to be provided only to the extent that an organization stores the information. The access principle does not itself create any obligation to retain, maintain, reorganize, or restructure personal information files.

5. Q: These replies make clear that access may be denied in certain circumstances. In what other circumstances may an organization deny individuals access to their personal information?

5. A: Such circumstances are limited, and any reasons for denying access must be specific. An organization can refuse to provide access to information to the extent that disclosure is likely to interfere with the safeguarding of important countervailing public interests, such as national security; defense; or public security. In addition, where personal information is processed solely for research or statistical purposes, access may be denied. Other reasons for denying or limiting access are:

a. Interference with execution or enforcement of the law, including the prevention, investigation or detection of offenses or the right to a fair trial;

b. Interference with private causes of action, including the prevention, investigation or detection of legal claims or the right to a fair trial;

c. Disclosure of personal information pertaining to other individual(s) where such references cannot be redacted;

d. Breaching a legal or other professional privilege or obligation;

e. Breaching the necessary confidentiality of future or ongoing negotiations, such as those involving the acquisition of publicly quoted companies;

f. Prejudicing employee security investigations or grievance proceedings;

g. Prejudicing the confidentiality that may be necessary for limited periods in connection with employee succession planning and corporate re-organizations; or

h. Prejudicing the confidentiality that may be necessary in connection with monitoring, inspection or regulatory functions connected with sound economic or financial management; or

i. Other circumstances in which the burden or cost of providing access would be disproportionate or the legitimate rights or interests of others would be violated.

An organization which claims an exception has the burden of demonstrating its applicability (as is normally the case). As noted above, the reasons for denying or limiting access and a contact point for further inquires should be given to individuals.

6. Q: Can an organization charge a fee to cover the cost of providing access?

6. A: Yes. The OECD Guidelines recognize that organizations may charge a fee, provided that it is not excessive. Thus organizations may charge a reasonable fee for access. Charging a fee may be useful in discouraging repetitive and vexatious requests.

Organizations that are in the business of selling publicly available information may thus charge the organization's customary fee in responding to requests for access. Individuals may alternatively seek access to their information from the organization that originally compiled the data.

Access may not be refused on cost grounds if the individual offers to pay the costs.

7. Q: Is an organization required to provide access to personal information derived from public records?

7. A: To clarify first, public records are those records kept by government agencies or entities at any level that are open to consultation by the public in general. It is not necessary to apply the Access Principle to such information as long as it is not combined with other personal information, apart from when small amounts of non-public record information are used for indexing or organizing public record information. However, any conditions for consultation established by the relevant jurisdiction are to be respected. Where public record information is combined with other non-public record information (other than as specifically noted above), however, an organization must provide access to all such information, assuming it is not subject to other permitted exceptions.

8. Q: Does the Access Principle have to be applied to publicly available personal information?

8. A: As with public record information (see Q7), it is not necessary to provide access to information that is already publicly available to the public at large, as long as it is not combined with non-publicly available information.

9. Q: How can an organization protect itself against repetitious or vexatious requests for access?

9. A: An organization does not have to respond to such requests for access. For these reasons, organizations may charge a reasonable fee and may set reasonable limits on the number of times within a given period that access requests from a particular individual will be met. In setting such limitations, an organization should consider such factors as the frequency with which information is updated, the purpose for which the data are used, and the nature of the information.

10. Q: How can an organization protect itself against fraudulent requests for access?

10. A: An organization is not required to provide access unless it is supplied with sufficient information to allow it to confirm the identity of the person making the request.

11. Q: Is there a time within which responses must be provided to access requests?

11. A: Yes, organizations should respond without excessive delay and within a reasonable time period. This requirement may be satisfied in different ways as the explanatory memorandum to the 1980 OECD Privacy Guidelines states. For example, a data controller who provides information to data subjects at regular intervals may be exempted from obligations to respond at once to individual requests.

FAQ 9—Human Resources

1. Q. Is the transfer from the EU to the United States of personal information collected in the context of the employment relationship covered by the safe harbor?

1. A: Yes, where a company in the EU transfers personal information about its employees (past or present) collected in the context of the employment relationship, to a parent, affiliate, or unaffiliated service provider in the United States participating in the safe harbor, the transfer enjoys the benefits of the safe harbor. In such cases, the collection of the information and its processing prior to transfer will have been subject to the national laws of the EU country where it was collected, and any conditions for or restrictions on its transfer according to those laws will have to be respected.

The Safe Harbor Principles are relevant only when individually identified records are transferred or accessed. Statistical reporting relying on aggregate employment data and/or the use of anonymized or pseudonymized data does not raise privacy concerns.

2. Q: How do the Notice and Choice Principles apply to such information?

2. A: A U.S. organization that has received employee information from the EU under the safe harbor may disclose it to third parties and/or use it for different purposes only in accordance with the Notice and Choice Principles. For example, where an organization intends to use personal information collected through the employment relationship for non-employment-related purposes, such as marketing communications, the U.S. organization must provide the affected individuals with choice before doing so, unless they have already authorized the use of the information for such purposes. Moreover, such choices must not be used to restrict employment opportunities or take any punitive action against such employees.

It should be noted that certain generally applicable conditions for transfer from some Member States may preclude other uses of such information even after transfer outside the EU and such conditions will have to be respected.

In addition, employers should make reasonable efforts to accommodate employee privacy preferences. This could include, for example, restricting access to the data, anonymizing certain data, or assigning codes or pseudonyms when the actual names are not required for the management purpose at hand.

To the extent and for the period necessary to avoid prejudicing the legitimate interests of the organization in making promotions, appointments, or other similar employment decisions, an organization does not need to offer notice and choice.

3. Q: How does the Access Principle apply?

3. A: The FAQs on access provide guidance on reasons which may justify denying or limiting access on request in the human resources context. Of course, employers in the European Union must comply with local regulations and ensure that European Union employees have access to such information as is required by law in their home countries, regardless of the location of data processing and storage. The safe harbor requires that an organization processing such data in the United States will cooperate in providing such access either directly or through the EU employer.

4. Q: How will enforcement be handled for employee data under the Safe Harbor Principles?

4. A: In so far as information is used only in the context of the employment relationship, primary responsibility for the data vis-à-vis the employee remains with the company in the EU. It follows that, where European employees make complaints about violations of their data protection rights and are not satisfied with the results of internal review, complaint, and appeal procedures (or any applicable grievance procedures under a contract with a trade union), they should be directed to the state or national data protection or labor authority in the jurisdiction where the employee works. This also includes cases where the alleged mishandling of their personal information has taken place in the United States, is the responsibility of the U.S. organization that has received the information from the employer and not of the employer and thus involves an alleged breach of the Safe Harbor Principles, rather than of national laws implementing the Directive. This will be the most efficient way to address the often overlapping rights and obligations imposed by local labor law and labor agreements as well as data protection law.

A U.S. organization participating in the safe harbor that uses EU human resources data transferred from the Europe Union in the context of the employment relationship and that wishes such transfers to be covered by the safe harbor must therefore commit to cooperate in investigations by and to comply with the advice of competent

EU authorities in such cases. The DPAs that have agreed to cooperate in this way will notify the European Commission and the Department of Commerce. If a U.S. organization participating in the safe harbor wishes to transfer human resources data from a Member State where the DPA has not so agreed, the provisions of FAQ 5 will apply.

FAQ 10—Article 17 Contracts

Q: When data is transferred from the EU to the United States only for processing purposes, will a contract be required, regardless of participation by the processor in the safe harbor?

A: Yes. Data controllers in the European Union are always required to enter into a contract when a transfer for mere processing is made, whether the processing operation is carried out inside or outside the EU. The purpose of the contract is to protect the interests of the data controller, *i.e.* the person or body who determines the purposes and means of processing, who retains full responsibility for the data vis-à-vis the individual(s) concerned. The contract thus specifies the processing to be carried out and any measures necessary to ensure that the data are kept secure.

A U.S. organization participating in the safe harbor and receiving personal information from the EU merely for processing thus does not have to apply the Principles to this information, because the controller in the EU remains responsible for it vis-à-vis the individual in accordance with the relevant EU provisions (which may be more stringent than the equivalent Safe Harbor Principles).

Because adequate protection is provided by safe harbor participants, contracts with safe harbor participants for mere processing do not require prior authorization (or such authorization will be granted automatically by the Member States) as would be required for contracts with recipients not participating in the safe harbor or otherwise not providing adequate protection.

FAQ No 11: Dispute Resolution and Enforcement

Q: How should the dispute resolution requirements of the Enforcement Principle be implemented, and how will an organization's persistent failure to comply with the Principles be handled?

A: The Enforcement Principle sets out the requirements for safe harbor enforcement. How to meet the requirements of point (b) of the Principle is set out in the FAQ on verification (FAQ 7). This FAQ 11 addresses points (a) and (c), both of which require independent recourse mechanisms. These mechanisms may take different forms, but they must meet the Enforcement Principle's requirements. Organizations may satisfy the requirements through the following: (1) Compliance with private sector developed privacy programs that incorporate the Safe Harbor Principles into their rules and that include effective enforcement mechanisms of the type described in the Enforcement Principle; (2) compliance with legal or regulatory supervisory authorities that provide for handling of individual complaints and dispute resolution; or (3) commitment to cooperate with data protection authorities located in the European Union or their authorized representatives. This list is intended to be illustrative and not limiting. The private sector may design other mechanisms to provide enforcement, so long as they meet the requirements of the Enforcement Principle and the FAQs. Please note that the Enforcement Principle's requirements are additional to the requirement set forth in paragraph 3 of the introduction to the Principles that self-regulatory efforts must be enforceable under Article 5 of the Federal Trade Commission Act or similar statute.

Recourse Mechanisms. Consumers should be encouraged to raise any complaints they may have with the relevant organization before proceeding to independent recourse mechanisms. Whether a recourse mechanism is independent is a factual question that can be demonstrated in a number of ways, for example, by transparent composition and financing or a proven track record. As required by the enforcement principle, the recourse available to individuals must be readily available and affordable. Dispute resolution bodies should look into each complaint received from individuals unless they are obviously unfounded or frivolous. This does not preclude the establishment of eligibility requirements by the organization operating the recourse mechanism, but such requirements should be transparent and justified (for example to exclude complaints that fall outside the scope of the program or are for consideration in another forum), and should not have the effect of undermining the commitment to look into legitimate complaints. In addition, recourse mechanisms should provide individuals with full and readily available information about how the dispute resolution procedure works when they file a complaint. Such information should include notice about the mechanism's privacy practices, in conformity with the Safe Harbor Principles.[1] They should also co-operate in the development of tools such as standard complaint forms to facilitate the complaint resolution process.

Remedies and Sanctions. The result of any remedies provided by the dispute resolution body should be that the effects of noncompliance are reversed or corrected by the organization, in so far as feasible, and that future processing by the organization will be in conformity with the Principles and, where appropriate, that processing of the personal data of the individual who has brought the complaint will cease. Sanctions need to be rigorous enough to ensure compliance by the organization with the Principles. A range of sanctions of varying degrees of severity will allow dispute resolution bodies to respond appropriately to varying degrees of non-compliance. Sanctions should include both publicity for findings of non-compliance and the requirement to delete data in certain circumstances.[2] Other sanctions could include suspension and removal of a seal, compensation for individuals for losses incurred as a result of non-compliance and injunctive orders. Private sector dispute resolution bodies and self-regulatory bodies must notify failures of safe harbor organizations to comply with their rulings to the governmental body with applicable jurisdiction or to the courts, as appropriate, and to notify the Department of Commerce (or its designee).

FTC Action. The FTC has committed to reviewing on a priority basis referrals received from privacy self-regulatory organizations, such as BBBOnline and TRUSTe, and EU Member States alleging non-compliance with the Safe Harbor Principles to determine whether Section 5 of the FTC Act prohibiting unfair or deceptive acts or practices in commerce has been violated. If the FTC concludes that it has reason[s] to believe Section 5 has been violated, it may resolve the matter by seeking an administrative cease and desist order prohibiting the challenged practices or by filing a complaint in a federal district court, which if successful could result

[1] Dispute resolution bodies are not required to conform with the enforcement principle. They may also derogate from the Principles where they encounter conflicting obligations or explicit authorizations in the performance of their specific tasks.

[2] Dispute resolutions bodies have discretion about the circumstances in which they use these sanctions. The sensitivity of the data concerned is one factor to be taken into consideration in deciding whether deletion of data should be required, as is whether an organization has collected, used or disclosed information in blatant contravention of the Principles.

in a federal court order to same effect. The FTC may obtain civil penalties for violations of an administrative cease and desist order and may pursue civil or criminal contempt for violation of a federal court order. The FTC will notify the Department of Commerce of any such actions it takes. The Department of Commerce encourages other government bodies to notify it of the final disposition of any such referrals or other rulings determining adherence to the Safe Harbor Principles.

Persistent Failure to Comply. If an organization persistently fails to comply with the Principles, it is no longer entitled to benefit from the safe harbor. Persistent failure to comply arises where an organization that has self-certified to the Department of Commerce (or its designee) refuses to comply with a final determination by any self-regulatory or government body or where such a body determines that an organization frequently fails to comply with the Principles to the point where its claim to comply is no longer credible. In these cases, the organization must promptly notify the Department of Commerce (or its designee) of such facts. Failure to do so may be actionable under the False Statements Act (18 U.S.C. 1001).

The Department (or its designee) will indicate on the public list it maintains of organizations self-certifying adherence to the Safe Harbor Principles any notification it receives of persistent failure to comply, whether it is received from the organization itself, from a self-regulatory body, or from a government body, but only after first providing thirty (30) days' notice and an opportunity to respond to the organization that has failed to comply. Accordingly, the public list maintained by the Department of Commerce (or its designee) will make clear which organizations are assured and which organizations are no longer assured of safe harbor benefits.

An organization applying to participate in a self-regulatory body for the purposes of re-qualifying for the safe harbor must provide that body with full information about its prior participation in the safe harbor.

FAQ 12—Choice—Timing of Opt Out

Q: Does the Choice Principle permit an individual to exercise choice only at the beginning of a relationship or at any time?

A: Generally, the purpose of the Choice Principle is to ensure that personal information is used and disclosed in ways that are consistent with the individual's expectations and choices. Accordingly, an individual should be able to exercise "opt out" (or choice) of having personal information used for direct marketing at any time subject to reasonable limits established by the organization, such as giving the organization time to make the opt out effective. An organization may also require sufficient information to confirm the identity of the individual requesting the "opt out." In the United States, individuals may be able to exercise this option through the use of a central "opt out" program such as the Direct Marketing Association's Mail Preference Service. Organizations that participate in the Direct Marketing Association's Mail Preference Service should promote its availability to consumers who do not wish to receive commercial information. In any event, an individual should be given a readily available and affordable mechanism to exercise this option.

Similarly, an organization may use information for certain direct marketing purposes when it is impracticable to provide the individual with an opportunity to opt out before using the information, if the organization promptly gives the individual such opportunity at the same time (and upon request at any time) to decline (at no cost to the individual) to receive any further direct marketing communications and the organization complies with the individual's wishes.

FAQ 13—Travel Information

Q: When can airline passenger reservation and other travel information, such as frequent flyer or hotel reservation information and special handling needs, such as meals to meet religious requirements or physical assistance, be transferred to organizations located outside the EU?

A: Such information may be transferred in several different circumstances. Under Article 26 of the Directive, personal data may be transferred "to a third country which does not ensure an adequate level of protection within the meaning of Article 25(2)" on the condition that it (1) is necessary to provide the services requested by the consumer or to fulfill the terms of an agreement, such as a "frequent flyer" agreement; or (2) has been unambiguously consented to by the consumer. U.S. organizations subscribing to the safe harbor provide adequate protection for personal data and may therefore receive data transfers from the EU without meeting those conditions or other conditions set out in Article 26 of the Directive. Since the safe harbor includes specific rules for sensitive information, such information (which may need to be collected, for example, in connection with customers' needs for physical assistance) may be included in transfers to safe harbor participants. In all cases, however, the organization transferring the information has to respect the law in the EU Member State in which it is operating, which may *inter alia* impose special conditions for the handling of sensitive data.

FAQ 14—Pharmaceutical and Medical Products

1. Q: If personal data are collected in the EU and transferred to the United States for pharmaceutical research and/or other purposes, do Member State laws or the Safe Harbor Principles apply?

1. A: Member State law applies to the collection of the personal data and to any processing that takes place prior to the transfer to the United States. The Safe Harbor Principles apply to the data once they have been transferred to the United States. Data used for pharmaceutical research and other purposes should be anonymized when appropriate.

2. Q: Personal data developed in specific medical or pharmaceutical research studies often play a valuable role in future scientific research. Where personal data collected for one research study are transferred to a U.S. organization in the safe harbor, may the organization use the data for a new scientific research activity?

2. A: Yes, if appropriate notice and choice have been provided in the first instance. Such a notice should provide information about any future specific uses of the data, such as periodic follow-up, related studies, or marketing. It is understood that not all future uses of the data can be specified, since a new research use could arise from new insights on the original data, new medical discoveries and advances, and public health and regulatory developments. Where appropriate, the notice should therefore include an explanation that personal data may be used in future medical and pharmaceutical research activities that are unanticipated. If the use is not consistent with the general research purpose(s) for which the data were originally collected, or to which the individual has consented subsequently, new consent must be obtained.

3. Q: What happens to an individual's data if a participant decides voluntarily or at the request of the sponsor to withdraw from the clinical trial?

3. A: Participants may decide or be asked to withdraw from a clinical trial at any time. Any data collected previous to withdrawal may still be processed along with other data collected as part of the clinical trial, however, if this was

made clear to the participant in the notice at the time he or she agreed to participate.

4. Q: Pharmaceutical and medical device companies are allowed to provide personal data from clinical trials conducted in the EU to regulators in the United States for regulatory and supervision purposes. Are similar transfers allowed to parties other than regulators, such as company locations and other researchers?

4. A: Yes, consistent with the Principles of Notice and Choice.

5. Q: To ensure objectivity in many clinical trials, participants, and often investigators, as well, cannot be given access to information about which treatment each participant may be receiving. Doing so would jeopardize the validity of the research study and results. Will participants in such clinical trials (referred to as "blinded" studies) have access to the data on their treatment during the trial?

5. A: No, such access does not have to be provided to a participant if this restriction has been explained when the participant entered the trial and the disclosure of such information would jeopardize the integrity of the research effort. Agreement to participate in the trial under these conditions is a reasonable forgoing of the right of access. Following the conclusion of the trial and analysis of the results, participants should have access to their data if they request it. They should seek it primarily from the physician or other health care provider from whom they received treatment within the clinical trial, or secondarily from the sponsoring company.

6. Q: Does a pharmaceutical or medical device firm have to apply the Safe Harbor Principles with respect to notice, choice, onward transfer, and access in its product safety and efficacy monitoring activities, including the reporting of adverse events and the tracking of patients/subjects using certain medicines or medical devices (*e.g.* a pacemaker)?

6. A: No, to the extent that adherence to the Principles interferes with compliance with regulatory requirements. This is true both with respect to reports by, for example, health care providers, to pharmaceutical and medical device companies, and with respect to reports by pharmaceutical and medical device companies to government agencies like the Food and Drug Administration.

7. Q: Invariably, research data are uniquely key-coded at their origin by the principal investigator so as not to reveal the identity of individual data subjects. Pharmaceutical companies sponsoring such research do not receive the key. The unique key code is held only by the researcher, so that he/she can identify the research subject under special circumstances (*e.g.* if follow-up medical attention is required). Does a transfer from the EU to the United States of data coded in this way constitute a transfer of personal data that is subject to the Safe Harbor Principles?

7. A: No. This would not constitute a transfer of personal data that would be subject to the Principles.

FAQ 15—Public Record and Publicly Available Information

Q: Is it necessary to apply the Notice, Choice and Onward Transfer Principles to public record information or publicly available information?

A. It is not necessary to apply the Notice, Choice or Onward Transfer Principles to public record information, as long as it is not combined with non-public record information and as long as any conditions for consultation established by the relevant jurisdiction are respected.

Also, it is generally not necessary to apply the Notice, Choice or Onward Transfer Principles to publicly available information unless the European transferor indicates that such information is subject to restrictions that require application of those Principles by the organization for the uses it intends. Organizations will have no liability for how such information is used by those obtaining such information from published materials.

Where an organization is found to have intentionally made personal information public in contravention of the Principles so that it or others may benefit from these exceptions, it will cease to qualify for the benefits of the safe harbor.

Safe Harbor Enforcement Overview

Federal and State "Unfair and Deceptive Practices" Authority and Privacy

July 19, 2000.

This memorandum outlines the authority of the Federal Trade Commission (FTC) under Section 5 of the Federal Trade Commission Act (15 U.S.C. 41–58, as amended) to take action against those who fail to protect the privacy of personal information in accordance with their representations and/or commitments to do so. It also addresses the exceptions to that authority and the ability of other federal and state agencies to take action where the FTC does not have authority.[3]

FTC Authority Over Unfair or Deceptive Practices

Section 5 of the Federal Trade Commission Act declares "unfair or deceptive acts or practices in or affecting commerce" to be illegal. 15 U.S.C. 45(a)(1). Section 5 confers on the FTC the plenary power to prevent such acts and practices. 15 U.S.C. 45(a)(2). Accordingly, the FTC may, upon conducting a formal hearing, issue a "cease and desist" order to stop the offending conduct. 15 U.S.C. 45(b). If it would be in the public interest to do so, the FTC can also seek a temporary restraining order or temporary or permanent injunction in U.S. district court. 15 U.S.C. 53(b). In cases where there is a widespread pattern of unfair or deceptive acts or practices, or where it has already issued cease and desist orders on the matter, the FTC may promulgate an administrative rule prescribing the acts or practices involved. 15 U.S.C. 57a.

Anyone who does not comply with an FTC order is subject to a civil penalty of up to $11,000, with each day of a continuing violation constituting a separate violation.[4] 15 U.S.C. 45(l). Likewise, anyone who knowingly violates an FTC rule is liable for $11,000 for each violation. 15 U.S.C. 45(m). Enforcement actions can be brought by either the Department of Justice, or if it declines by the FTC. 15 U.S.C. 56.

FTC Authority and Privacy

In exercising its section 5 authority, the FTC takes the position that misrepresenting why information is being collected from consumers or how the information will be used constitutes a deceptive practice.[5] For example, in 1998, the FTC filed a complaint against

[3] We do not discuss here all the various Federal statutes that address privacy in specific contexts or state statutes and common law that might apply. Statutes at the federal level that regulate the commercial collection and use of personal information include the Cable Communications Policy Act (47 U.S.C. 551), the Driver's Privacy Protection Act (18 U.S.C. 2721), the Electronic Communications Privacy Act (18 U.S.C. 2701 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693, 1693m), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), the Telephone Consumer Protection Act (47 U.S.C. 227), and the Video Privacy Protection Act (18 U.S.C. 2710), among others. Many states have analogous legislation in these areas. *See, e.g.*, Mass. Gen. Laws ch. 167B, 16 (prohibiting financial institutions from disclosing customer's financial records to a third party without either the customer's consent or legal process), N.Y. Pub. Health Law § 17 (limiting use and disclosure of medical or mental health records and giving patients the right of access thereto).

[4] In such an action, the United States district court can also order injunctive and equitable relief appropriate to enforcing the FTC order. 15 U.S.C. 45(l).

[5] "Deceptive practice" is defined as a representation, omission or practice that is likely to mislead reasonable consumers in a material fashion.

GeoCities for disclosing information it had collected on its Web site to third parties for purposes of solicitation, and without prior permission, despite its representations to the contrary.[6] The FTC staff has also asserted that the collection of personal information from children, and sale and disclosure of that information, without the parents' consent is likely to be an unfair practice.[7]

In a letter to Director General John Mogg of the European Commission, FTC Chairman Pitofsky noted the limitations on the FTC's authority to protect privacy where there has not been a misrepresentation (or no representation at all) as to how the information collected will be used. FTC Chairman Pitofsky letter to John Mogg (September 23, 1998). However, companies that want to avail themselves of the proposed "safe harbor" will have to certify that they will protect the information they collect in accordance with prescribed guidelines. Consequently, where a company certifies that it will safeguard the privacy of information and then fails to do so, such action would be a misrepresentation and a "deceptive practice" within the meaning of section 5.

As the FTC's jurisdiction extends to unfair or deceptive acts or practices "in or affecting commerce," the FTC will not have jurisdiction over the collection and use of personal information for noncommercial purposes, charitable fund-raising for example. See Pitofsky letter, p. 3. However, the use of personal information in any commercial transaction will satisfy this jurisdictional predicate. Thus, for example, the sale by an employer of personal information on its employees to a direct marketer would bring the transaction within the purview of Section 5.

Section 5 Exceptions

Section 5 establishes exceptions to the FTC's authority over unfair or deceptive acts or practices with respect to:

- Financial institutions, including banks, savings and loans, and credit unions;
- Telecommunications and interstate transportation common carriers;
- Air carriers; and
- Packers and stockyard operators.

See 15 U.S.C. 45(a)(2). We discuss each exception, and the regulatory authority that takes its place, below.

Financial Institutions[8]

The first exception applies to "banks, savings and loan institutions described in section 18(f)(3) [15 U.S.C. 57a(f)(3)]" and "Federal credit unions described in section 18(f)(4) [15 U.S.C. 57a(f)(4)]."[9] These financial institutions are instead subject to regulations issued by the Federal Reserve Board, the Office of Thrift Supervision,[10] and the National Credit Union Administration Board, respectively. *See* 15 U.S.C. 57a(f). These regulatory agencies are directed to prescribe the regulations necessary to prevent unfair and deceptive practices by these financial institutions[11] and to establish a separate division to handle consumer complaints. 15 U.S.C. 57a(f)(1). Finally, authority for enforcement derives from section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), for banks and savings and loans, and sections 120 and 206 of the Federal Credit Union Act, for Federal credit unions. 15 U.S.C. 57a(f)(2)–(4).

Although the insurance industry is not specifically included in the list of exceptions in Section 5, the McCarran-Ferguson Act (15 U.S.C. 1011 *et seq.*) generally leaves the regulation of the business of insurance to the individual states.[12] Furthermore, pursuant to section 2(b) of the McCarran-Ferguson Act, no federal law will invalidate, impair, or supersede state regulation "unless such Act specifically relates to the business of insurance." 15 U.S.C. 1012(b). However, the provisions of the FTC Act apply to the insurance industry "to the extent that such business is not regulated by State law." *Id.* It should also be noted that McCarran-Ferguson defers to the states only with respect to "the business of insurance." Therefore, the FTC retains residual authority over unfair or deceptive practices by insurance companies when they are not engaged in the business of insurance. This could include, for example, when insurers sell personal information about their policy holders to direct marketers of non-insurance products.[13]

Common Carriers

The second section 5 exception extends to those common carriers that are "subject to the Acts to regulate commerce." 15 U.S.C. 45(a)(2). In this case, the "Acts to regulate commerce" refer to subtitle IV of Title 49 of the United States Code and to the Communications Act of 1934 (47 U.S.C. 151 *et seq.*) (the Communications Act). *See* 15 U.S.C. 44.

49 U.S.C. subtitle IV (Interstate Transportation) covers rail carriers, motor carriers, water carriers, brokers, freight forwarders, and pipeline carriers. 49 U.S.C. 10101 *et seq.* These various common carriers are subject to regulation by the Surface Transportation Board, an independent agency within the Department of Transportation. 49 U.S.C. 10501, 13501, and 15301. In each instance, the carrier is prohibited from disclosing information about the nature, destination, and other aspects of its cargo that might be used to the shipper's detriment. *See* 49 U.S.C. 11904, 14908,

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[6] See *www.ftc.gov/opa/1998/9808/geocitie.htm.*

[7] See staff letter to Center for Media Education, *www.ftc.gov/os/1997/9707/conmed.htm.* In addition, the Children's Online Privacy Protection Act of 1998 confers on the FTC specific legal authority to regulate the collection of personal information from children by website and online service operators. *See* 15 U.S.C. 6501–6506. In particular, the act requires online operators to give notice and to obtain verifiable parental consent before collecting, using, or disclosing personal information from children. *Id.*, § 6502(b). The act also gives parents a right of access and to refuse permission for the continued use of the information. *Id.*

[8] On November 12, 1999, President Clinton signed the Gramm-Leach-Bliley Act (Pub. L. 106–102, codified at 15 U.S.C. 6801 *et seq.*) into law. The Act limits the disclosure by financial institutions of personal information about their customers. The Act requires financial institutions to, *inter alia*, notify all customers of their privacy policies and practices with respect to the sharing of personal information with affiliates and non-affiliates. The Act authorizes the FTC, the Federal banking authorities and other authorities to promulgate regulations to implement the privacy protections required by the statute. The agencies have issued proposed regulations for this purpose.

[9] By its terms, this exception does not apply to the securities sector. Therefore, brokers, dealers and others in the securities industry are subject to the concurrent jurisdiction of the Securities and Exchange Commission and the FTC with respect to unfair or deceptive acts and practices.

[10] The exception in section 5 originally referred to the Federal Home Loan Bank Board which was abolished in August 1989 by the Financial Institutions Reform, Recovery and Enforcement Act of 1989. Its functions were transferred to the Office of Thrift Supervision and to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, and the Housing Finance Board.

[11] While removing financial institutions from the FTC's jurisdiction, Section 5 also stipulates that whenever the FTC issues a rule on unfair or deceptive acts and practices, the financial regulatory Boards *should* adopt parallel regulations within 60 days. *See* 15 U.S.C. 57a(f)(1).

[12] "The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." 15 U.S.C. 1012(a).

[13] The FTC has exercised jurisdiction over insurance companies in different contexts. In one case, the FTC took action against a firm for deceptive advertising in a state in which it was not licensed to do business. The FTC's jurisdiction was upheld on the basis that there was no effective state regulation because the firm was effectively beyond the reach of the state. See *FTC* v. *Travelers Health Association*, 362 U.S. 293 (1960).

As for the states, seventeen have adopted the model "Insurance Information and Privacy Protection Act" prepared by the National Association of Insurance Commissioners (NAIC). The Act includes provisions for notice, use and disclosure, and access. Also, almost all states have adopted the NAIC's model "Unfair Insurance Practices Act," which specifically targets unfair trade practices in the insurance industry.

and 16103. We note that these provisions refer to information regarding the shipper's cargo and thus do not appear to extend to personal information about the shipper that is unrelated to the shipment in question.

As for the Communications Act, it provides for the regulation of "interstate and foreign commerce in communication by wire and radio" by the Federal Communications Commission (FCC). *See* 47 U.S.C. 151 and 152. In addition to common carrier telecommunications companies, the Communications Act also applies to companies such as television and radio broadcasters and cable service providers which are not common carriers. As such, these latter companies do not qualify for the exception under section 5 of the FTC Act. Thus, the FTC has jurisdiction to investigate these companies for unfair and deceptive practices, while the FCC has concurrent jurisdiction to enforce its independent authority in this area as described below.

Under the Communications Act, "every telecommunications carrier," including local exchange carriers, has a duty to protect the privacy of customer proprietary information.[14] 47 U.S.C. 222(a). In addition to this general privacy-protection authority, the Communications Act was amended by the Cable Communications Policy Act of 1984 (the Cable Act), 47 U.S.C. 521 *et seq.*, to mandate specifically that cable operators protect the privacy of "personally identifiable information" on cable subscribers. 47 U.S.C. 551.[15] The Cable Act restricts the collection of personal information by cable operators and requires the cable operator to notify the subscriber of the nature of the information collected and how that information will be used. The Cable Act gives subscribers the right of access to the information about them and requires cable operators to destroy that information when it's no longer needed.

The Communications Act empowers the FCC to enforce these two privacy provisions, either at its own initiation or in response to an outside complaint.[16] 47 U.S.C. 205, 403; *id.* 208. If the FCC determines that a telecommunications carrier (including a cable operator) has violated the privacy provisions of section 222 or section 551, there are three basic actions it may take. First, after a hearing and determination of violation, the Commission may order the carrier to pay monetary damages.[17] 47 U.S.C. 209. Alternatively, the FCC may order the carrier to cease and desist from the offending practice or omission. 47 U.S.C. 205(a). Finally, the Commission may also order an offending carrier to "conform to and observe [any] regulation or practice" that the FCC may prescribe. *Id.*

Private persons who believe a telecommunications carrier or cable operator has violated the relevant provisions of the Communications Act or the Cable Act may either file a complaint with the FCC or take their claims to a federal district court. 47 U.S.C. 207. A complainant who prevails in a federal court action against a telecommunications carrier for failure to protect customer proprietary information under the broader section 222 of the Communications Act may be awarded actual damages and attorneys' fees. 47 U.S.C. 206. A complainant who files suit claiming a privacy violation under the cable-specific section 551 of the Cable Act may, in addition to actual damages and attorneys' fees, also be awarded punitive damages and reasonable litigation costs. 47 U.S.C. 551(f).

The FCC has adopted detailed rules to implement section 222. *See* 47 CFR 64.2001–2009. The rules set out specific safeguards to protect against unauthorized access to customer proprietary network information. The regulations require telecommunications carriers to:

- Develop and implement software systems that "flag" a customer's notice/approval status when the customer's service record first comes on-screen;
- Maintain an electronic "audit trail" to track access to a customer's account, including when a customer's record is opened, by whom, and for what purpose;
- Train their personnel on the authorized use of customer proprietary network information, with appropriate disciplinary processes in place;
- Establish a supervisory review process to ensure compliance when conducting outbound marketing; and
- Certify to the FCC, on an annual basis, how they are complying with these regulations.

Air Carriers

U.S. and foreign air carriers that are subject to Federal Aviation Act of 1958 are also exempt from section 5 of the FTC Act. *See* 15 U.S.C. 45(a)(2). This includes anyone who provides interstate or foreign transportation of goods or passengers, or who transports mail, by aircraft. *See* 49 U.S.C. 40102. Air carriers are subject to the authority of the Department of Transportation. In this regard, the Secretary of Transportation is authorized to take action "preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation." 49 U.S.C. 40101(a)(9). The Secretary of Transportation can investigate whether a U.S. or foreign air carrier, or a ticket agent, has engaged in an unfair or deceptive practice if it is in the public interest. 49 U.S.C. 41712. After a hearing, the Secretary of Transportation can issue an order to stop the illegal practice. *Id.* To our knowledge, the Secretary of Transportation has not exercised this authority to address the issue of protecting the privacy of personal information about airline customers.[18]

There are two provisions protecting the privacy of personal information that apply to air carriers in specific contexts. First, the Federal Aviation Act protects the privacy of pilot applicants. *See* 49 U.S.C. 44936(f). While allowing air carriers to obtain an applicant's employment records, the Act gives the applicant the right to notice that the records have been requested, to give consent to the request, to correct inaccuracies, and to have the records divulged only to those involved in the hiring decision. Second, DOT regulations require passenger manifest information collected for government use in the event of an aviation disaster to "be kept confidential and released only to the U.S. Department of State, the National Transportation Board (upon the NTSB's request), and the U.S. Department of Transportation." 14 CFR part 243, 243.9(c) (as added by 63 FR 8258).

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[14] The term "customer proprietary network information" means information that relates to "the quantity, technical configuration, type, destination, and amount of use of a telecommunications service" by a customer and telephone billing information. 47 U.S.C. 222(f)(1). However, the term does not include subscriber list information. *Id.*

[15] The legislation does not expressly define "personally identifiable information."

[16] This authority encompasses the right to redress for privacy violations under both section 222 of the Communications Act or, with respect to cable subscribers, under section 551 of the Cable Act amendment to the Act. *See also* 47 U.S.C. 551(f)(3) (civil action in federal district court is a nonexclusive remedy, offered "in addition to any other lawful remedy available to a cable subscriber.")

[17] However, the absence of direct damage to a complainant is not grounds to dismiss a complaint. 47 U.S.C. 208(a).

[18] We understand there are efforts underway within the industry to address the privacy issue. Industry representatives have discussed the proposed safe harbor principles and their possible application to air carriers. The discussion has included a proposal to adopt an industry privacy policy with participating firms expressly subjecting themselves to DOT authority.

Packers and Stockyards

With regard to the Packers and Stockyards Act of 1921 (7 U.S.C. 181 *et seq.*), the Act makes it unlawful for "any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device." 7 U.S.C. 192(a); *see also* 7 U.S.C. 213(a) (prohibiting "any unfair, unjustly discriminatory, or deceptive practice or device" in connection with livestock). The Secretary of Agriculture has the primary responsibility to enforce these provisions, while the FTC retains jurisdiction over retail transactions and those involving the poultry industry. 7 U.S.C. 227(b)(2).

It is not clear whether the Secretary of Agriculture will interpret the failure by a packer or stockyard operator to protect personal privacy in accordance with stated policy to be a "deceptive" practice under the Packers and Stockyards Act. However, the Section 5 exception applies to persons, partnerships, or corporations only "insofar as they are subject to the Packers and Stockyards Act," Therefore, if personal privacy is not an issue within the purview of the Packers and Stockyards Act, then the exception in Section 5 may very well not apply and packers and stockyard operators would be subject to the authority of the FTC in that regard.

State "Unfair and Deceptive Practices" Authority

According to an analysis prepared by FTC staff, "All fifty states plus the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have enacted laws more or less like the Federal Trade Commission Act ("FTCA") to prevent unfair or deceptive trade practices." FTC fact sheet, reprinted in Comment, Consumer Protection: The Practical Effectiveness of State Deceptive Trade Practices Legislation, *59 Tul. L. Rev. 427 (1984).* In all cases, an enforcement agency has the authority "to conduct investigations through the use of subpoenas or civil investigative demands, obtain assurances of voluntary compliance, to issue cease and desist orders or obtain court injunctions preventing the use of unfair, unconscionable or deceptive trade practices." *Id.* In 46 jurisdictions, the law allows private actions for actual, double, treble, or punitive damages and, in some cases, recovery of costs and attorney's fees. *Id.*

Florida's Deceptive and Unfair Trade Practices Act, for example, authorizes the attorney general to investigate and file civil actions against "unfair methods of competition, unfair, unconscionable or deceptive trade practices," including false or misleading advertising, misleading franchise or business opportunities, fraudulent telemarketing, and pyramid schemes. *See also* N.Y. General Business Law 349 (prohibiting unfair acts and deceptive practices carried out in the course of business).

A survey conducted this year by the National Association of Attorneys General (NAAG) confirms these findings. Of forty-three states that responded, all have "mini-FTC" statutes or other statutes that provide comparable protection. Also according to the NAAG survey, 39 states indicated they would have the authority to hear complaints by non-residents. With respect to consumer privacy, in particular, 37 out of forty-one states that responded indicated that they would respond to complaints alleging that a company within their jurisdiction was not adhering to its self-declared privacy policy.

Damages for Breaches of Privacy, Legal Authorizations and Mergers and Takeovers in U.S. Law

July 19, 2000.

This responds to the request by the European Commission for clarification of U.S. law with respect to (a) claims for damages for breaches of privacy, (b) "explicit authorizations" in U.S. law for the use of personal information in a manner inconsistent with the safe harbor principles, and (c) the effect of mergers and takeovers on obligations undertaken pursuant to the safe harbor principles.

A. Damages for Breaches of Privacy

Failure to comply with the safe harbor principles could give rise to a number of private claims depending on the relevant circumstances. In particular, safe harbor organizations could be held liable for misrepresentation for failing to adhere to their stated privacy policies. Private causes of action for damages for breaches of privacy are also available under common law. Many federal and state statutes on privacy also provide for the recovery of damages by private individuals for violations.

The Right To Recover Damages for Invasion of Personal Privacy is Well Established Under U.S. Common Law

Use of personal information in a manner inconsistent with the safe harbor principles can give rise to legal liability under a number of different legal theories. For example, both the transferring data controller and the individuals affected could sue the safe harbor organization which fails to honor its safe harbor commitments for misrepresentation. According to the Restatement of the Law, Second, Torts [19]:

> One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.

Restatement, § 525. A misrepresentation is "fraudulent" if it is made with the knowledge or in the belief that it is false. *Id.*, § 526. As a general rule, the maker of a fraudulent misrepresentation is potentially liable to everyone who he intends or expects to rely on that misrepresentation for any pecuniary loss they might suffer as a result. *Id.*, § 531. Furthermore, a party who makes a fraudulent misrepresentation to another could be liable to a third-party if the tortfeasor intends or expects that his misrepresentation would be repeated to and acted upon by the third-party. *Id.*, § 533.

In the context of the safe harbor, the relevant representation is the organization's public declaration that it will adhere to the safe harbor principles. Having made such a commitment, a conscious failure to abide by the principles could be grounds for a cause of action for misrepresentation by those who relied on the misrepresentation. Because the commitment to adhere to the principles is made to the public at large, the individuals who are the subjects of that information as well as the data controller in Europe that transfers personal information to the U.S. organization could all have causes of action against the U.S. organization for misrepresentation.[20] Moreover, the U.S. organization remains liable to them for the "continuing misrepresentation" for as long as they rely on the misrepresentation to their detriment. Restatement, § 535.

Those who rely on a fraudulent misrepresentation have a right to recover damages. According to the Restatement:

[19] Second Restatement of the Law—Torts; American Law Institute (1997).

[20] This might be the case, for example, where the individuals relied on the U.S. organization's safe harbor commitments in giving their consent to the data controller to transfer their personal information to the United States.

The recipient of a fraudulent misrepresentation is entitled to recover as damages in an action of deceit against the maker the pecuniary loss to him of which the misrepresentation is a legal cause.

Restatement, § 549. Allowable damages include actual out-of-pocket loss as well as the lost "benefit of the bargain" in a commercial transaction. *Id.; see, e.g., Boling* v. *Tennessee State Bank*, 890 S.W.2d 32 (1994) (bank liable to borrowers for $14,825 in compensatory damages for disclosing borrowers' personal information and business plans to bank president who had a conflicting interest).

Whereas fraudulent misrepresentation requires either actual knowledge or at least the belief that the representation is false, liability can also attach for negligent misrepresentation. According to the Restatement, whoever makes a false statement in the course of his business, profession, or employment, or in any pecuniary transaction can be held liable "if he fails to exercise reasonable care or competence in obtaining or communicating the information." Restatement, § 552(1). In contrast with fraudulent misrepresentations, damages for negligent misrepresentation are limited to out-of-pocket loss. *Id.*, § 552B(1).

In a recent case, for example, the Superior Court of Connecticut held that a failure by an electric utility to disclose its reporting of customer payment information to national credit agencies sustained a cause of action for misrepresentation. *See Brouillard* v. *United Illuminating Co.*, 1999 Conn. Super. LEXIS 1754. In that case, the plaintiff was denied credit because the defendant reported payments not received within thirty days of the billing date as "late". The plaintiff alleged that he had not been informed of this policy when he opened a residential electric service account with the defendant. The court specifically held that "a claim for negligent misrepresentation may be based on the defendant's failure to speak when he has a duty to do so." This case also shows that "scienter" or fraudulent intent is not a necessary element in a cause of action for negligent misrepresentation. Thus, a U.S. organization which negligently fails to fully disclose how it will use personal information received under the safe harbor could be held liable for misrepresentation.

Insofar as a violation of the safe harbor principles entailed a misuse of personal information, it could also support a claim by the data subject for the common law tort of invasion of privacy. American law has long recognized causes of action relating to invasions of privacy. In a 1905 case,[21] the Georgia Supreme Court found a right to privacy rooted in natural law and common law precepts in holding for a private citizen whose photograph had been used by a life insurance company, without his consent or knowledge, to illustrate a commercial advertisement. Articulating now-familiar themes in American privacy jurisprudence, the court found that the usage of the photograph was "malicious," "false," and tended to "bring plaintiff into ridicule before the world."[22] The foundations of the Pavesich decision have prevailed with minor variations to become the bedrock of American law on this topic. State courts have consistently upheld causes of action in the realm of invasion of privacy, and at least 48 states now judicially recognize some such cause of action.[23] Moreover, at least twelve states have constitutional provisions safeguarding their citizens' right to be free from intrusive actions,[24] which in some cases could extend to protect against intrusion by non-governmental entities. *See, e.g., Hill* v. *NCAA*, 865 P.2d 633 (Ca. 1994); *see also* S. Ginder, *Lost and Found in Cyberspace: Informational Privacy in the Age of the Internet*, 34 S.D. L. Rev. 1153 (1997) ("Some state constitutions include privacy protections which surpass privacy protections in the U.S. Constitution. Alaska, Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, South Carolina, and Washington have broader privacy protection.")

The Second Restatement of Torts provides an authoritative overview of the law in this area. Reflecting common judicial practice, the Restatement explains that the "right to privacy" encompasses four distinct causes of action in tort under that umbrella. *See* Restatement, § 652A. First, a cause of action for "intrusion upon seclusion" may lie against a defendant who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns.[25] Second, an "appropriation" case may exist when one takes the name or likeness of another for his own use or benefit.[26] Third, the "publication of private facts" is actionable when the matter publicized is of a kind that would be highly offensive to a reasonable person and is not of legitimate concern to the public.[27] Lastly, an action for "false light publicity" is appropriate when the defendant knowingly or recklessly places another before the public in a false light that would be highly offensive to a reasonable person.[28]

In the context of the safe harbor framework, "intrusion upon seclusion" could encompass the unauthorized collection of personal information whereas the unauthorized use of personal information for commercial purposes could give rise to a claim of appropriation. Similarly, the disclosure of personal information that is inaccurate would give rise to a tort of "false light publicity" if the information meets the standard of being highly offensive to a reasonable person. Finally, the invasion of privacy that results from the publication or disclosure of sensitive personal information could give rise to a cause of action for "publication of private facts." (See examples of illustrative cases below.)

On the issue of damages, invasions of privacy give the injured party the right to recover damages for:

(a) The harm to his interest in privacy resulting from the invasion;

(b) His mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and

(c) Special damage of which the invasion is a legal cause.

Restatement, § 652H. Given the general applicability of tort law and the multiplicity of causes of action covering different aspects of privacy interests, monetary damages are likely to be available to those who suffer invasion of their privacy interests as a result of a failure to adhere to the safe harbor principles.

Indeed, state courts are replete with cases alleging invasion of privacy in analogous situations. *Ex Parte AmSouth Bancorporation et al.*, 717 So. 2d 357, for example, involved a class action that alleged the defendant "exploited the trust depositors placed in the Bank, by sharing confidential information regarding Bank depositors and their accounts' to enable a bank affiliate to sell mutual funds and other

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[21] *Pavesich* v. *New England Life Ins. Co.*, 50 S.E. 68 (Ga. 1905)

[22] *Id.*, at 69.

[23] An electronic search of the Westlaw database found 2703 reported cases of civil actions in state courts that pertained to "privacy" since 1995. We have previously provided the results of this search to the Commission.

[24] *See, e.g.*, Alaska Constitution, Art. 1 Sec. 22; Arizona, Art. 2, Sec. 8; California, Art. 1, Sec. 1; Florida, Art. 1, Sec. 23; Hawaii, Art. 1, Sec. 5; Illinois, Art. 1, Sec. 6; Louisiana, Art. 1, Sec. 5; Montana, Art. 2, Sec. 10; New York, Art. 1, Sec. 12; Pennsylvania, Art. 1, Sec. 1; South Carolina, Art. 1, Sec. 10; and Washington, Art. 1, Sec 7.

[25] *Id.*, at Chapter 28, Section 652B.

[26] *Id.*, at Chapter 28, Section 652C.

[27] *Id.*, at Chapter 28, Section 652D.

[28] *Id.*, at Chapter 28, Section 652E.

investments. Damages are often awarded in such cases. In *Vassiliades* v. *Garfinckel's, Brooks Bros.*, 492 A.2d 580 (D.C.App. 1985), an appellate court reversed a lower court judgement to hold that the use of photographs of the plaintiff "before" and "after" plastic surgery in a presentation in a department store constituted an invasion of privacy through the publication of private facts. In *Candebat* v. *Flanagan*, 487 So.2d 207 (Miss. 1986), the defendant insurance company used an accident in which plaintiff's wife was seriously injured in an advertising campaign. Plaintiff sued for invasion of privacy. The court held that plaintiff could recover damages for emotional distress and appropriation of identity. Actions for misappropriation can be maintained even if the plaintiff is not personally famous. See, *e.g.*, *Staruski* v. *Continental Telephone Co.*, 154 Vt. 568 (1990) (defendant derived commercial benefit in using employee's name and photograph in newspaper advertisement). In *Pulla* v. *Amoco Oil Co.*, 882 F.Supp. 836 (S.D Iowa 1995), an employer intruded on plaintiff employee's seclusion by having another employee investigate his credit card records in order to verify his sick day absences. The court upheld a jury award of $2 in actual damages and $500,000 in punitive damages. Another employer was held liable for publishing a story in the company newspaper about an employee who was terminated for allegedly falsifying his employment records. See *Zinda* v. *Louisiana-Pacific Corp.*, 140 Wis.2d 277 (Wis.App. 1987). The story invaded the plaintiff's privacy by publication of a private matter because the newspaper circulated in the community. Finally, a college which tested students for HIV after telling them the blood test was for rubella only was held liable for intrusion upon seclusion. See *Doe* v. *High-Tech Institute, Inc.*, 972 P.2d 1060 (Colo.App. 1998). (For other reported cases, see Restatement, § 652H, Appendix.)

The United States is often criticized for being overly litigious, but this also means that individuals actually can, and do, pursue legal recourse when they believe they have been wronged. Many aspects of the U.S. judicial system make it easy for plaintiffs to bring suit, either individually or as a class. The legal bar, comparatively larger than in most other countries, makes professional representation readily available. Plaintiffs' counsel representing individuals in private claims will typically work on a contingency fee basis, allowing even poor or indigent plaintiffs to seek redress. This brings up an important factor—in the United States, each side typically bears its own lawyers' fees and other costs. This contrasts with the prevailing rule in Europe wherein the losing party has to reimburse the other side for costs. Without debating the relative merits of the two systems, the U.S. rule is less likely to deter legitimate claims by individuals who would not be able to pay the costs on both sides if they should lose.

Individuals can sue for redress even if their claims are relatively small. Most, if not all U.S. jurisdictions, have small claims courts which provide simplified and less costly procedures for disputes below the statutory limits.[29] The potential for punitive damages also offers a financial reward for individuals who might have suffered little direct injury to bring suit against reprehensible misconduct. Finally, individuals who have been injured in the same way can marshal their resources as well as their claims to bring a class-action lawsuit.

A good example of the ability of individuals to bring suit to obtain redress is the pending litigation against Amazon.com for invasion of privacy. Amazon.com, the large online retailer, is the target of a class action, in which the plaintiffs allege that they were not told about, and did not consent to, the collection of personal information about them when they used a software program owned by Amazon called "Alexa." In that case, plaintiffs have alleged violations of the Computer Fraud and Abuse Act in unlawful access to their stored communications and of the Electronic Communications Privacy Act for unlawful interception of their electronic and wire communications. They also claim an invasion of privacy under common law. This stems from a complaint filed by an Internet security expert in December. The suit seeks damages of $1,000 per class member, plus attorneys' fees and profits earned as a result of violations of laws. Given that the number of class members could be in the millions, damages could total billions of dollars. The FTC is also investigating the charges.

Federal and State Privacy Legislation Often Provides Private Causes of Action for Money Damages

In addition to giving rise to civil liability under tort law, noncompliance with the safe harbor principles could also violate one or another of the hundreds of federal and state privacy laws. Many of these laws, which address both government and private-sector handling of personal information, allow individuals to sue for damages when violations occur. For example:

Electronic Communications Privacy Act of 1986. The ECPA prohibits the unauthorized interception of cellular telephone calls and computer-to-computer transmissions. Violations can result in civil liability of not less than $100 for each day of violation. The protection of the ECPA also extends to unauthorized access or disclosure of stored electronic communications. Violators are liable for damages suffered or forfeiture of profits generated by a violation.

Telecommunications Act of 1996. Under section 702, customer proprietary network information (CPNI) may not be used for any purpose other than to provide telecommunications services. Service subscribers can either submit a complaint to the Federal Communications Commission or file suit in federal district court to recover damages and attorneys' fees.

Consumer Credit Reporting Reform Act of 1996. The 1996 Act amended the Fair Credit Reporting Act of 1970 (FCRA) to require improved notice and right of access for credit reporting subjects. The Reform Act also imposed new restrictions on resellers of consumer credit reports. Consumers can recover damages and attorneys' fees for violations.

State laws also protect personal privacy in a broad range of situations. Areas where the states have taken action include bank records, cable television subscriptions, credit reports, employment records, government records, genetic information and medical records, insurance records, school records, electronic communications, and video rentals.[30]

B. Explicit Legal Authorizations

The safe harbor principles contain an exception where statute, regulation or case law create "conflicting obligations or explicit authorizations, provided that, in exercising any such authorization, an organization can demonstrate that its non-compliance with the principles is limited to the extent necessary to meet the overriding legitimate interests further by such authorization." Clearly, where U.S. law imposes a conflicting obligation, U.S. organizations whether in the safe harbor or not must comply with the law. As for explicit authorizations, while the safe harbor principles are intended to bridge the differences between the U.S. and European regimes for privacy protection, we owe deference to the legislative prerogatives of our elected

[29] We had previously provided the Commission with information on small-claims actions.

[30] A recent electronic search of the Westlaw database yielded 994 reported states cases that related to damages and invasion of privacy.

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lawmakers. The limited exception from strict adherence to the safe harbor principles seeks to strike a balance to accommodate the legitimate interests on each side.

The exception is limited to cases where there is an *explicit* authorization. Therefore, as a threshold matter, the relevant statute, regulation or court decision must affirmatively authorize the particular conduct by safe harbor organizations.[21] In other words, the exception would not apply where the law is silent. In addition, the exception would apply only if the explicit authorization *conflicts* with adherence to the safe harbor principles. Even then, the exception "is limited to the extent necessary to meet the overriding legitimate interests furthered by such authorization." By way of illustration, where the law simply authorizes a company to provide personal information to government authorities, the exception would not apply. Conversely, where the law specifically authorizes the company to provide personal information to government agencies without the individual's consent, this would constitute an "explicit authorization" to act in a manner that conflicts with the safe harbor principles. Alternatively, specific exceptions from affirmative requirements to provide notice and consent would fall within the exception (since it would be the equivalent of a specific authorization to disclose the information without notice and consent). For example, a statute which authorizes doctors to provide their patients' medical records to health officials without the patients' prior consent might permit an exception from the notice and choice principles. This authorization would not permit a doctor to provide the same medical records to health maintenance organizations or commercial pharmaceutical research laboratories, which would be beyond the scope of the purposes authorized by the law and therefore beyond the scope of the exception.[22] The legal authority in question can be a "stand alone" authorization to do specific things with personal information, but, as the examples below illustrate, it is likely to be an exception to a broader law which proscribes the collection, use, or disclosure of personal information.

Telecommunications Act of 1996

In most cases, the authorized uses are either consistent with the requirements of the Directive and the principles, or would be permitted by one of the other allowed exceptions. For example, section 702 of the Telecommunications Act (codified at 47 U.S.C. § 222) imposes a duty on telecommunications carriers to maintain the confidentiality of personal information that they obtain in the course of providing their services to their customers. This provision specifically allows telecommunications carriers to:

—Use customer information to provide telecommunications service, including the publication of subscriber directories;
—Provide customer information to others at the written request of the customer; and
—Provide customer information in aggregate form.

See 47 U.S.C. § 222(c)(1)–(3). The Act also allows telecommunications carriers an exception to use customer information:

—To initiate, render, bill, and collect for their services;
—To protect against fraudulent, abusive or illegal conduct; and
—To provide telemarketing, referral or administrative services during a call initiated by the customer.[23]

Id., § 222(d)(1)–(3). Finally, telecommunications carriers are required to provide subscriber list information, which can only include the names, addresses, telephone numbers and line of business for commercial customers to publishers of telephone directories. *Id.*, § 222(e).

The exception for "explicit authorizations" might come into play when telecommunications carriers use CPNI to prevent fraud or other unlawful conduct. Even here, such actions could qualify as being in the "public interest" and allowed by the principles for that reason.

Department of Health and Human Services Proposed Rules

The Department of Health and Human Services (HHS) has proposed rules regarding standards for the privacy of individually identifiable health information. *See* 64 FR 59,918 (Nov. 3, 1999) (to be codified at 45 CFR parts 160–164). The rules would implement the privacy requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191. The proposed rules generally would prohibit covered entities (*i.e.* health plans, health care clearinghouses, and health providers that transmit health information in electronic format) from using or disclosing protected health information without individual authorization. *See* proposed 45 CFR § 164.506. The proposed rules would require disclosure of protected health information for only two purposes: (1) To permit individuals to inspect and copy health information about themselves, *see id.* at § 164.514; and (2) to enforce the rules, *see id.* at § 164.522.

The proposed rules would permit use or disclosure of protected health information, without specific authorization by the individual, in limited circumstances. These include for example oversight of the health care system, law enforcement, and emergencies. *See id.* at § 164.510. The proposed rules set out in detail the limits on these uses and disclosures. Moreover, permitted uses and disclosures of protected health information would be limited to the minimum amount of information necessary. *See id.* at § 164.506.

The permissive uses explicitly authorized by the proposed regulations are generally consistent with the safe harbor principles or are otherwise allowed by another exception. For example, law enforcement and judicial administration are permitted, as is medical research. Other uses, such as oversight of the health care system, public health function, and government health data systems, serve the public interest. Disclosures to process health care payments and premiums are necessary to the provision of health care. Uses in emergencies, to consult with next-of-kin regarding treatment where the patient's consent "cannot practicably or reasonably be obtained," or to determine the identity or cause of death of the deceased protect the vital interests of the data subject and others. Uses for the management of active duty military and other special classes of individuals aid the proper execution of the military mission or similar exigent situations; and in any event, such uses will have little if any application to consumers in general.

This leaves only the use of personal information by health care facilities to produce patient directories. While such use might not rise to the level of a

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[21] As a point of clarification, the relevant legal authority will *not* have to specifically reference the safe harbor principles.

[22] Similarly, the doctor in this example could not rely on the statutory authority to override the individual's exercise of the opt-out from direct marketing provided by FAQ 12. The scope of any exception for "explicit authorizations" is necessarily limited to the scope of the authorization under relevant law.

[23] The scope of this exception is very limited. By its terms, the telecommunications carrier can use CPNI only during a call initiated by the customer. Furthermore, we have been advised by the FCC that the telecommunications carrier may not use CPNI to market services beyond the scope of the customer's inquiry. Finally, since the customer must approve the use of CPNI for this purpose, this provision is not really an "exception" at all.

"vital" interest, the directories do benefit patients and their friends and relations. Also, the scope of this authorized use is inherently limited. Therefore, reliance on the exception in the principles for uses "explicitly authorized" by law for this purpose presents minimal risk to the privacy of patients.

Fair Credit Reporting Act

The European Commission has expressed the concern that the "explicit authorizations" exception would "effectively create an adequacy finding" for the Fair Credit Reporting Act (FCRA). This would not be the case. In the absence of a specific adequacy finding for the FCRA, those U.S. organizations that would otherwise rely on such a finding, would have to promise to adhere to the safe harbor principles in all respects. This means that where FCRA requirements exceed the level of protection embodied in the principles, the U.S. organizations need only to obey the FCRA. Conversely, where the FCRA might fall short, then those organizations would need to bring their information practices into conformity with the principles. The exception would not alter this basic assessment. By its terms, the exception applies only where the relevant law explicitly authorizes conduct that would be inconsistent with the safe harbor principles. The exception would not extend to where FCRA requirements merely do not meet the safe harbor principles.[34]

In other words, we do not intend the exception to mean that whatever is not required is therefore "explicitly authorized." Furthermore, the exception applies only when what is explicitly authorized by U.S. law *conflicts* with the requirements of the safe harbor principles. The relevant law must meet both of these elements before non-adherence with the principles would be permitted.

Section 604 of the FCRA, for example, explicitly authorizes consumer reporting agencies to issue consumer reports in various enumerated situations. *See* FCRA, § 604. If in so doing, section 604 authorizes credit reporting agencies to act in conflict with the safe harbor principles, then the credit reporting agencies would need to rely on the exception (unless, of course, some other exception applied). Credit reporting agencies must obey court orders and grand jury subpoenas, and use of credit reports by government licensing, social and child support enforcement agencies serves a public purpose. *Id.*, § 604(a)(1), (3)(D), and (4). Consequently, the credit reporting agency would not need to rely on the "explicit authorization" exception for these purposes. Where it acts in accordance with written instructions by the consumer, the consumer reporting agency would be fully in compliance with the safe harbor principles. *Id.*, § 604(a)(2). Likewise, consumer reports can be procured for employment purposes only with the consumer's written authorization (*id.*, §§ 604(a)(3)(B) and (b)(2)(A)(ii)) and for credit or insurance transactions that are not initiated by the consumer only if the consumer had not opted out from such solicitations (*id.*, § 604(c)(1)(B)). Also, FCRA prohibits credit reporting agencies from providing medical information for employment purposes without the consent of the consumer. *Id.*, § 604(g). Such uses comport with the notice and choice principles. Other purposes authorized by section 604 entail transactions involving the consumer and would be permitted by the principles for that reason. *See id.*, § 604(a)(3)(A) and (F).

The remaining use "authorized" by section 604 relates to secondary credit markets. *Id.*, § 604(a)(3)(E). There is no conflict between use of consumer reports for this purpose and the safe harbor principles *per se*. It is true that the FCRA does not require credit reporting agencies, for example, to give notice and consent to consumers when they issue reports for this purpose. However, we reiterate the point that the absence of a requirement does not connote an "explicit authorization" to act in a manner other than as required. Similarly, section 608 allows credit reporting agencies to provide some personal information to government agencies. This "authorization" would not justify a credit reporting agency ignoring its commitments to adhere to the safe harbor principles. This contrasts with our other examples where exceptions from affirmative notice and choice requirements operate to explicitly authorize uses of personal information without notice and choice.

Conclusion

A distinct pattern emerges even from our limited review of these statutes:

- The "explicit authorization" in the law generally permits the use or disclosure of personal information without the individual's prior consent; thus, the exception would be limited to the notice and choice principles.
- In most cases, the exceptions authorized by the law are narrowly drawn to apply in specific situations for specific purposes. In all cases, the law otherwise prohibits the unauthorized use or disclosure of personal information that does not fall within these limits.
- In most cases, reflecting their legislative character, the authorized use or disclosure serves a public interest.
- In almost all cases, the authorized uses are either fully consistent with the safe harbor principles or fall into one of the other allowed exceptions.

In conclusion, the exception for "explicit authorizations" in the law will, by its nature, likely be rather limited in scope.

C. Mergers and Takeovers

The Article 29 Working Party expressed concern over situations where an organization within the safe harbor is taken over by, or merged with, a firm which has not made a commitment to follow the safe harbor principles. The Working Party, however, appears to have assumed that the surviving firm would not be bound to apply the safe harbor principles to personal information held by the firm that is taken over, but that is not necessarily the case under U.S. law. The general rule in the United States as to mergers and takeovers is that a company which acquires the outstanding stock of another corporation generally assumes the obligations and liabilities of the acquired firm. *See* 15 *Fletcher Cyclopedia of the Law of Private Corporations* § 7117 (1990); *see also* Model Bus. Corp. Act § 11.06(3) (1979) ("the surviving corporation has all liabilities of each corporation party to the merger"). In other words, the surviving firm in a merger or takeover of a safe harbor organization by this method would be bound by the latter's safe harbor commitments.

Moreover, even if the merger or takeover were effectuated through the acquisition of assets, the liabilities of the acquired enterprise could nevertheless bind the acquiring firm in certain circumstances. 15 *Fletcher*, § 7122. Even where liabilities did not survive the merger, however, it is worth noting that they also would not survive a merger where the data were transferred from Europe pursuant to a contract—the only viable alternative to the safe harbor for data transfers to the United States. In addition, the safe harbor documents as revised now require any safe harbor organization to notify the Department of Commerce of any takeover and permit data to continue to be transferred to the

[34] Our discussion here should not be taken as an admission that the FCRA does not provide "adequate" protection. Any assessment of the FCRA must consider the protection provided by the statute in its entirety and not focus only on the exceptions as we do here.

successor organization only if the successor organization joins the safe harbor. *See* FAQ 6. Indeed, the United States has now revised the safe harbor framework to require U.S. organizations in this situation to delete information they have received under the safe harbor framework if their safe harbor commitments will not continue or other suitable safeguards are not put in place.

July 14, 2000.

John Mogg, Director, DG XV, European Commission, Office C 107–6/72, Rue de la Loi, 200, 1049 Brussels, BELGIUM

Dear Mr. Mogg:

I understand a number of questions have arisen with regard to my letter to you of March 29, 2000. To clarify our authority on those areas where questions have arisen, I am sending this letter, which, for future ease of reference, adds to and recapitulates some of the text of previous correspondence.

In your visits to our offices and in your correspondence, you have raised several questions about the United States Federal Trade Commission's authority in the online privacy area. I thought it would be useful to summarize my prior responses and to provide additional information about the agency's jurisdiction over consumer privacy issues raised in your most recent letter. Specifically, you ask whether: (1) The FTC has jurisdiction over transfers of employment-related data if done in violation of the U.S. safe harbor principles; (2) the FTC has jurisdiction over non-profit privacy "seal" programs; (3) the FTC Act applies equally to the offline as well as online world; and (4) what happens when the FTC's jurisdiction overlaps with other law enforcement agencies.

FTC Act Application to Privacy

The Federal Trade Commission's legal authority in this area is found in Section 5 of the Federal Trade Commission Act ("FTC Act"), which prohibits "unfair or deceptive acts or practices" in or affecting commerce.[26] A deceptive practice is defined as a representation, omission or practice that is likely to mislead reasonable consumers in a material fashion. A practice is unfair if it causes, or is likely to cause, substantial injury to consumers which is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or competition.[28]

Certain information collection practices are likely to violate the FTC Act. For example, if a web site falsely claims to comply with a stated privacy policy or a set of self-regulatory guidelines, Section 5 of the FTC Act provides a legal basis for challenging such a misrepresentation as deceptive. Indeed, we have successfully enforced the law to establish this principle.[27] In addition, the Commission has taken the position it may challenge particularly egregious privacy practices as unfair under Section 5 if such practices involve children, or the use of highly sensitive information, such as financial records[30] and medical records. The Federal Trade Commission has and will continue to pursue such law enforcement actions through our active monitoring and investigative efforts, and through referrals we receive from self-regulatory organizations and others, including European Union member states.

Backstop Self-Regulation

The FTC will give priority to referrals of non-compliance with self-regulatory guidelines received from organizations such as BBBOnline and TRUSTe.[29] This approach would be consistent with our longstanding relationship with the National Advertising Review Board (NARB) of the Better Business Bureau, which refers advertising complaints to the FTC. The National Advertising Division (NAD) of NARB resolves complaints, through an adjudicative process, concerning national advertising. When a party refuses to comply with an NAD decision, a referral is made to the FTC. FTC staff reviews the challenged advertising on a priority basis to determine if it violates the FTC Act, and often is successful in stopping the challenged conduct or convincing the party to return to the NARB process.

Similarly, the FTC will give priority to referrals of non-compliance with safe harbor principles from EU member states. As with referrals from U.S. self-regulatory organizations, our staff will consider any information bearing upon whether the conduct complained of violates Section 5 of the FTC Act. This commitment can also be found in the safe harbor principles under the Frequently Asked Question (FAQ 11) on enforcement.

GeoCities: The FTC's First Online Privacy Case

The Federal Trade Commission's first Internet privacy case, *GeoCities*, was based on the Commission's authority under Section 5.[40] In that case, the FTC alleged that GeoCities misrepresented, both to adults and children, how their personal information would be used. The Federal Trade Commission's complaint alleged that GeoCities represented that certain personal identifying information it collected on its Web site was to be used only for internal purposes or to provide consumers with the specific advertising offers and products or services they requested, and that certain additional "optional" information would not be released to anyone without the consumer's permission. In fact, this information was disclosed to third parties who used it to target members for solicitations beyond those agreed to by the member. The complaint also charged that GeoCities engaged in deceptive practices relating to its collection of information from children. According to the FTC's complaint, GeoCities represented that it operated a children's area on its Web site and that the information collected there was maintained by GeoCities. In fact, those areas on the Web site were run by third-parties who collected and maintained the information.

The settlement prohibits GeoCities from misrepresenting the purpose for which it collects or uses personal identifying information from or about consumers, including children. The order requires the company to post on its Web site a clear and prominent Privacy Notice, telling consumers what information is being collected and for what purpose, to whom it will be disclosed, and how consumers can access and remove the information. To ensure parental control, the settlement also requires GeoCities to obtain parental consent before collecting personal identifying information from children 12 and under. Under the order, GeoCities is required to notify its members and provide them with an opportunity to have their information deleted from GeoCities' and any third parties' databases. The settlement specifically requires GeoCities to notify the parents of children 12 and under and to delete their information, unless a parent affirmatively consents to its retention and use. Finally, GeoCities also is required to contact third parties to whom it previously disclosed the information and request that those parties delete that information as well.[41]

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[26] 15 U.S.C. 45. The Fair Credit Reporting Act would also apply to Internet data collection and sales that meet the statutory definitions of "consumer report" and "consumer reporting agency."

[28] 15 U.S.C. 45(n).

[27] See *GeoCities*, Docket No. C–3849 (Final Order Feb. 12, 1999) (available at *www.ftc.gov/os/1999/9902/9823015d%26o.htm*); *Liberty Financial Cos.*, Docket No. C–3891 (Final Order Aug. 12, 1999) (available at *www.ftc.gov/opa/1999/9905/younginvestor.htm*). See also Children's Online Privacy Protection Act Rule (COPPA), 16 C.F.R. Part 312 (available at *www.ftc.gov/opa/1999/9910/childfinal.htm*). The COPPA Rule, which became effective last month, requires operators of Web sites directed to children under 13, or who knowingly collect personal information from children under 13, to implement the fair information practice standards enunciated in the Rule.

[30] See *FTC* v. *Touch Tone, Inc.*, Civil Action No. 99-WM–783 (D.Co.) (filed April 21, 1999) at <*www.ftc.gov/opa/1999/9904/touchtone.htm*>. Staff Opinion Letter, July 17, 1997, issued in response to a petition filed by the Center for Media Education, at <*www.ftc.gov/os/1997/9707/commed.htm*>.

[29] Indeed, the FTC recently filed a complaint in federal district court against a TRUSTe seallholder, Toysmart.com, seeking injunctive and declaratory relief to prevent the sale of confidential, personal customer information collected on the company Web site in violation of its own privacy policy. The FTC learned of this possible law violation directly from TRUSTe. *FTC* v. *Toysmart.com, LLC*, Civil Action No. 00–11341–RGS (D.Ma.) (filed July 11, 2000) (available at www.ftc.gov/opa/2000/07/toysmart.htm).

[40] *GeoCities*, Docket No. C–3849 (Final Order Feb. 12, 1999) (available at *www.ftc.gov/os/1999/9902/9823015d%26o.htm*).

[41] The Commission subsequently settled another matter involving the collection of personal information from children online. Liberty Financial Companies, Inc., operated the Young Investor website which was directed to children and teens, and focused on issues relating to money and investing. The Commission alleged that the site falsely represented that personal information collected from children in a survey would be maintained anonymously, and that participants would be sent an e-mail newsletter as well as prizes. In fact, the personal information about the child and the family's finances was maintained in an identifiable manner, and no newsletter or prizes were sent. The consent agreement prohibits such misrepresentations in the future and requires Liberty Financial to post a privacy notice on its

Continued

ReverseAuction.com

In January 2000, the Commission approved a complaint against, and consent agreement with, ReverseAuction.com, an online auction site that allegedly obtained consumers' personally identifying information from a competitor site (eBay.com) and then sent deceptive, unsolicited e-mail messages to those consumers seeking their business.[42] Our complaint alleged that ReverseAuction violated Section 5 of the FTC Act in obtaining the personally identifiable information, which included eBay users' e-mail addresses and personalized user identification names ("user IDs"), and in sending out the deceptive e-mail messages.

As described in the complaint, before obtaining the information, ReverseAuction registered as an eBay user and agreed to comply with eBay's User Agreement and Privacy Policy. The agreement and policy protect consumers' privacy by prohibiting eBay users from gathering and using personal identifying information for unauthorized purposes, such as sending unsolicited commercial e-mail messages. Thus, our complaint first alleged that ReverseAuction misrepresented that it would comply with eBay's User Agreement and Privacy Policy, a deceptive practice under Section 5. In the alternative, the complaint alleged that ReverseAuction's use of the information to send the unsolicited commercial e-mail, in violation of the User Agreement and Privacy Policy, was an unfair trade practice under Section 5.

Second, the complaint alleged that the e-mail messages to consumers contained a deceptive subject line informing each of them that his or her eBay user ID "will expire soon." Finally, the complaint alleged that the e-mail messages falsely represented that eBay directly or indirectly provided ReverseAuction with eBay users' personally identifiable information, or otherwise participated in dissemination of the unsolicited e-mail.

The settlement obtained by the FTC bars ReverseAuction from committing these violations in the future. It also requires ReverseAuction to provide notice to consumers who, as a result of receiving ReverseAuction's e-mail, registered or will register with ReverseAuction. The notice informs these consumers that their eBay users IDs were not about to expire on eBay, and that eBay did not know of, or authorize, ReverseAuction's dissemination of the unsolicited e-mail. The notice also provides these consumers with the opportunity to cancel registration with ReverseAuction and have their personal identifying information deleted from ReverseAuction's database. In addition, the order requires ReverseAuction to delete, and refrain from using or disclosing, the personal identifying information of eBay members who received ReverseAuction's e-mail but who have not registered with ReverseAuction. Finally, consistent with prior privacy orders obtained by this agency, the settlement requires ReverseAuction to disclose its own privacy policy on its Internet site, and contains comprehensive record keeping provisions to allow the FTC to monitor compliance.

The *ReverseAuction* case demonstrates that the FTC is committed to using enforcement to buttress industry self-regulatory efforts in the area of online consumer privacy. Indeed, this case directly challenged conduct that undermined a Privacy Policy and User Agreement protecting consumers' privacy, and that could erode consumer confidence in privacy measures undertaken by online companies. Because this case involved the misappropriation by one company of consumer information protected by another company's privacy policy, it also may have particular relevance to the privacy concerns raised by the transfer of data between companies in different countries.

Notwithstanding the Federal Trade Commission's law enforcement actions in *GeoCities*, *Liberty Financial Cos.*, and *ReverseAuction*, the agency's authority in some areas of online privacy is more limited. As noted above, to be reachable under the FTC Act, the collection and use of personal information without consent must constitute either a deceptive or unfair trade practice. Thus, the FTC Act likely would not address the practices of a Web site that collected personally identifiable information from consumers, but neither misrepresented the purpose for which the information was collected, nor used or released the information in a way that was likely to cause substantial injury to consumers. Also, it currently may not be within the FTC's power to broadly require that entities collecting information on the Internet adhere to a privacy policy or to any particular privacy policy.[43] As stated above, however, a company's failure to abide by a stated privacy policy is likely to be a deceptive practice.

Furthermore, the FTC's jurisdiction in this area covers unfair or deceptive acts or practices only if they are "in or affecting commerce." Information collection by commercial entities that are promoting products or services, including collecting and using information for commercial purposes, would presumably meet the "commerce" requirement. On the other hand, many individuals or entities may be collecting information online without any commercial purpose, and thereby may fall outside the Federal Trade Commission's jurisdiction. An example of this limitation involves "chat rooms" if operated by noncommercial entities, *e.g.*, a charitable organization.

Finally, there are a number of full or partial statutory exclusions from the FTC's basic jurisdiction over commercial practices that limit the FTC's ability to provide a comprehensive response to Internet privacy concerns. These include exemptions for many information intensive consumer businesses such as banks, insurance companies and airlines. As you are aware, other federal or state agencies would have jurisdiction over those entities, such as the federal banking agencies or the Department of Transportation.

In cases where it does have jurisdiction, the FTC accepts and, resources permitting, acts on consumer complaints received by mail and telephone in its Consumer Response Center ("CRC") and, more recently, on its Web site.[44] The CRC accepts complaints from all consumers, including those residing in European Union member states. The FTC Act provides the Federal Trade Commission equitable power to obtain injunctive relief against future violations of the FTC Act, as well as redress for injured consumers. We would, however, look to see whether the company has engaged in a pattern of improper conduct, as we do not resolve individual consumer disputes. In the past, the Federal Trade Commission has provided redress for citizens of both the United States and other countries.[45] The FTC will continue to assert its authority, in appropriate cases, to provide redress to citizens of other countries who have been injured by deceptive practices under its jurisdiction.

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children's sites and obtain verifiable parental consent before collecting personal identifying information from children. *Liberty Financial Cos.*, Docket No. C–3891 (Final Order Aug. 12, 1999) (available at *www.ftc.gov/opa/1999/9905/younginvestor.htm*).

[42] See *ReverseAuction.com, Inc.*, Civil Action No. 000032 (D.D.C.) (filed January 6, 2000) (press release and pleadings at www.ftc.gov/opa/2000/01/reverse4.htm).

[43] For this reason, the Federal Trade Commission stated in Congressional testimony that additional legislation probably would be required to mandate that all U.S. commercial Web sites directed toward consumers abide by specified fair information practices. "Consumer Privacy on the World Wide Web," Before the Subcommittee on Telecommunications, Trade and Consumer Protection of the House Committee on Commerce United States House of Representatives, July 21, 1998 (the testimony can be found at *www.ftc.gov/os/9807/privac98.htm*). The FTC deferred calling for such legislation in order to give self-regulatory efforts the opportunity to demonstrate widespread adoption of fair information practices on Web sites. In the Federal Trade Commission's report to Congress on online privacy, "Privacy Online: A Report to Congress," June 1998 (the report can be found at *www.ftc.gov/reports/privacy3/toc.htm*), the FTC recommended legislation to require that commercial Web sites obtain parental consent before collecting personally identifiable information from children under 13 years old. See footnote 3 *supra*. Last year, the FTC's report, "Self-Regulation and Privacy Online: A Federal Trade Commission Report to Congress," July 1999 (the report can be found at *www.ftc.gov/os/1999/9907/index.htm#13*,) found sufficient progress in self-regulation and, accordingly, chose not to recommend legislation at that time.

In May 2000, the Commission issued a third report to Congress, "Privacy Online: Fair Information Practices in the Electronic Marketplace," (the report can be found at www.ftc.gov/os/2000/05/index.htm#22) which discusses the FTC's recent survey of commercial Web sites and their compliance with fair information practices. The report also recommended (by a majority of the Commission) that Congress enact legislation that would set forth a basic level of privacy protection for consumer-oriented commercial Web sites.

[44] See *https://www.ftc.gov/ftc/complaint.htm* for the Federal Trade Commission's online complaint form.

[45] For example, in a recent case involving an Internet pyramid scheme, the Commission obtained refunds for 15,622 consumers totaling approximately $5.5 million. The consumers resided in the United States and 70 foreign countries. *See* www.ftc.gov/opa/9807/fortuner.htm; www.ftc.gov/opa/9807/ftcrefund01.htm.

Employment Data

Your most recent letter sought additional clarification concerning the FTC's jurisdiction in the area of employment data. First, you pose the question whether the FTC could take action under Section 5 against a company that represents it complies with U.S. safe harbor principles but transfers or uses employment-related data in a manner that violates these principles. We want to assure you that we have carefully reviewed the FTC authorizing legislation, related documents, and relevant case law and have concluded that the FTC has the same jurisdiction in the employment-related data situation as it would generally under Section 5 of the FTC Act.[46] That is to say, assuming a case met our existing criteria (unfairness or deception) for a privacy-related enforcement action, we could take action in the employment-related data situation.

We also would like to dispel any view that the FTC's ability to take privacy-related enforcement action is limited to situations where a company has deceived individual consumers. In fact, as the Commission's recent action in the *ReverseAuction*[47] matter makes clear, the FTC will bring privacy-related enforcement actions in situations involving data transfers between companies, where one company allegedly has acted unlawfully vis a vis another company, leading to possible injury to both consumers and companies. We expect this situation is the one in which the employment issue is most likely to arise, as employment data about Europeans is transferred from European companies to American companies that have pledged to abide by the safe harbor principles.

We do wish to note one circumstance in which FTC action would be circumscribed, however. This would occur in situations in which the matter is already being addressed in a traditional labor law dispute resolution context, most likely a grievance/arbitration claim or an unfair labor practice complaint at the National Labor Relations Board. This would occur, for example, if an employer had made a commitment in a collective bargaining agreement regarding the use of personal data and an employee or union claimed that the employer had breached that agreement. The Commission would likely defer to that proceeding.[48]

Jurisdiction Over "Seal" Programs

Second, you ask whether the FTC would have jurisdiction over "seal" programs administering dispute resolution mechanisms in the United States that misrepresented their role in enforcing the "safe harbor" principles and handling individual complaints, even if such entities were technically "not for profit." In determining whether we have jurisdiction over an entity that holds itself out as a non-profit, the Commission closely analyzes whether the entity, while not seeking a profit for itself, furthers the profit of its members. The Commission has successfully asserted jurisdiction over such entities and as recently as May 24, 1999, the United States Supreme Court, in *California Dental Association* v. *Federal Trade Commission*, unanimously affirmed the Commission's jurisdiction over a voluntary nonprofit association of local dental societies in an antitrust matter. The Court held:

> The FTC Act is at pains to include not only an entity "organized to carry on business for its own profit," 15 U. S. C. § 44, but also one that carries on business for the profit "of its members." * * *. It could, indeed, hardly be supposed that Congress intended such a restricted notion of covered supporting organizations, with the opportunity this would bring with it for avoiding jurisdiction where the purposes of the FTC Act would obviously call for asserting it.

In sum, determining whether to assert jurisdiction over a particular "non-profit" entity administering a seal program would require a factual review of the extent to which the entity provided economic benefit to its for-profit members. If such an entity operated its seal program in a manner that provided an economic benefit to its members, the FTC likely would assert its jurisdiction. As a separate point, the FTC likely would have jurisdiction over a fraudulent seal program that misrepresents its status as a non-profit entity.

Privacy in the Offline World

Third, you note that our prior correspondence has focused on privacy in the online world. While online privacy has been a major concern of the FTC as a critical component to the development of electronic commerce, the FTC Act dates back to 1914 and applies equally in the offline world. Thus, we can pursue offline firms that engage in unfair or deceptive trade practices with regard to consumers' privacy.[49] In fact, in a case brought by the Commission last year, *FTC* v. *TouchTone Information, Inc.*,[50] an "information broker" was charged with illegally obtaining and selling consumers' private financial information. The Commission alleged that Touch Tone obtained consumers' information by "pretexting," a term of art coined by the private investigation industry to describe the practice of getting personal information about others under false pretenses, typically on the telephone. The case, filed April 21, 1999, in federal court in Colorado, seeks an injunction and all illegally gained profits.

This law enforcement experience, as well as recent concerns about the merging of offline and online databases, the blurring of distinctions between online and offline merchants, and the fact that a vast amount of personal identifying information is collected and used offline, make clear that significant attention to offline privacy issues is warranted.

Overlapping Jurisdiction

Finally, you pose the question of the interplay of the FTC's jurisdiction with that of other law enforcement agencies, particularly in cases where there is potentially overlapping jurisdiction. We have developed strong working relationships with numerous other law enforcement agencies, including the federal banking agencies and the state attorneys general. We very often coordinate investigations to maximize our resources in instances of overlapping jurisdiction. We also often refer matters to the appropriate federal or state agency for investigation.

I hope this review is helpful. Please let me know if you need any further information.

Sincerely,

Robert Pitofsky

July 14, 2000.

John Mogg, Director, DG XV, European Commission, Office C 107–6/72, Rue de la Loi, 200, 1049 Brussels, BELGIUM

Dear Director General Mogg:

I am providing you this letter at the request of the U.S. Department of Commerce to explain the role of the Department of Transportation in protecting the privacy of consumers with respect to information provided by them to airlines.

The Department of Transportation encourages self-regulation as the least intrusive and most efficient means of ensuring the privacy of information provided by consumers to airlines and accordingly supports the establishment of a "safe harbor" regime that would enable airlines to comply with the requirements of the European Union's privacy directive as regards transfers outside the EU. The Department recognizes, however, that for self-regulatory efforts to work, it is essential that the airlines that commit to the privacy principles set forth in the "safe harbor" regime in fact abide by them. In this regard, self-regulation should be backed by law enforcement. Therefore, using its existing consumer protection statutory authority, the Department will ensure airline compliance with privacy commitments made to the public, and pursue referrals of alleged non-compliance that we receive from self-regulatory organizations and others, including European Union member states.

The Department's authority to take enforcement action in this area is found in 49 U.S.C. 41712 which prohibits a carrier

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[46] Except as specifically excluded by the FTC's authorizing statute, the FTC's jurisdiction under the FTC Act over practices "in or affecting commerce" is coextensive with the constitutional power of Congress under the Commerce Clause, *United States* v. *American Building Maintenance Industries*, 422 U.S. 271, 277 n. 6 (1975). The FTC's jurisdiction would thus encompass employment-related practices in firms and industries in international commerce.

[47] *See* "Online Auction Site Settles FTC Privacy Charges," FTC News Release (Jan. 6, 2000), available at http://www.ftc.gov/opa/2000/01/reverse4.htm.

[48] The determination whether conduct is an "unfair labor practice" or a violation of a collective bargaining agreement is a technical one that is ordinarily reserved to the expert labor tribunals who will hear the complaints, such as arbitrators and the NRLB.

[49] As you know from earlier discussions, the Fair Credit Reporting Act also gives the FTC the authority to protect consumers' financial privacy within the purview of the Act and the Commission recently issued a decision pertaining to this issue. See *In the Matter of Trans Union*, Docket No. 9255 (March 1, 2000) (press release and opinion available at www.ftc.gov/os/2000/03/index.htm#1).

[50] Civil Action 00–WM–783 (D.Colo.) (available at *http://www.ftc.gov/opa/1999/9904/touchtone.htm*) (tentative consent decree pending).

from engaging in "an unfair or deceptive practice or an unfair method of competition" in the sale of air transportation that results or is likely to result in consumer harm. Section 41712 is patterned after Section 5 of the Federal Trade Commission Act (15 U.S.C. 45). However, air carriers are exempt from Section 5 regulation by the Federal Trade Commission under 15 U.S.C. 45(a)(2).

My office investigates and prosecutes cases under 49 U.S.C. 41712. (See, *e.g.*, DOT Orders 99–11–5, November 9, 1999; 99–8–23, August 26, 1999; 99–6–1, June 1, 1999; 98–6–24, June 22, 1998; 98–6–21, June 19, 1998; 98–5–31, May 22, 1998; and 97–12–23, December 18, 1997.) We institute such cases based on our own investigations, as well as on formal and informal complaints we receive from individuals, travel agents, airlines, and U.S. and foreign government agencies.

I would point out that the failure by a carrier to maintain the privacy of information obtained from passengers would not be a per se violation of section 41712. However, once a carrier formally and publicly commits to the "safe harbor" principles of providing privacy to the consumer information it obtains, then the Department would be empowered to use the statutory powers of section 41712 to ensure compliance with those principles. Therefore, once a passenger provides information to a carrier that has committed to honoring the "safe harbor" principles, any failure to do so would likely cause consumer harm and be a violation of section 41712. My office would give the investigation of any such alleged activity and the prosecution of any case evidencing such activity a high priority. We will also advise the Department of Commerce of the outcome of any such case.

Violations of section 41712 can result in the issuance of cease and desist orders and the imposition of civil penalties for violations of those orders. Although we do not have the authority to award damages or provide pecuniary relief to individual complainants, we do have the authority to approve settlements resulting from investigations and cases brought by the Department that provide items of value to consumers either in mitigation or as an offset to monetary penalties otherwise payable. We have done so in the past, and we can and will do so in the context of the safe harbor principles when circumstances warrant. Repeated violations of section 41712 by any U.S. airline would also raise questions regarding the airline's compliance disposition which could, in egregious situations, result in an airline being found to be no longer fit to operate and, therefore, losing its economic operating authority. (See, DOT Orders 93–6–34, June 23, 1993, and 93–6–11, June 9, 1993. Although this proceeding did not involve section 41712, it did result in the revocation of the operating authority of a carrier for a complete disregard for the provisions of the Federal Aviation Act, a bilateral agreement, and the Department's rules and regulations.)

I hope that this information proves helpful. If you have any questions or need further information, please feel free to contact me.

Sincerely,

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceeding.

[FR Doc. 00–18489 Filed 7–21–00; 8:45 am]

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Part IV

Department of Housing and Urban Development

Notice of Funding Availability; Family Unification Program, Fiscal Year 2000; Notice

VOL 65 ISS 142 JL 24 2000 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4595–N–01]

Notice of Funding Availability Family Unification Program, Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of the Program.* The purpose of the Family Unification Program is to promote family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families.

Available Funds. The approximately $10 million in one-year budget authority available under this NOFA will support approximately 1,800 Section 8 Housing Choice vouchers. The possibility exists of additional funding being made available for this program; perhaps as much as an additional $50 million. Applicants should bear this in mind when considering the number of vouchers to apply for under Section II(C)(1) of this NOFA.

Eligible Applicants. Public Housing Agencies (PHAs). Indian Housing Authorities, Indian tribes and their tribally designated housing entities are not eligible. The Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Deadline. August 23, 2000.

Match. None.

Additional Information

If you are interested in applying for funding under the Family Unification Program, please read the balance of this NOFA which will provide you with detailed information regarding the submission of an application, Section 8 Housing Choice program requirements, the application selection process to be used in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the Family Unification Program.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application (an original and two copies is due on or before August 23, 2000, at the address shown below.

Address for Submitting Applications. Submit your original application and one copy to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW., Suite 800, Washington, D.C. 20024.

Submit the second copy of your application to the local HUD Field Office Hub, Attention: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA. For ease of reference, the term "local HUD Field Office" will be used throughout this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Delivered Applications. If you are hand delivering your application, your application is due on or before 5 p.m., Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, D.C. A copy is also to be submitted by the applicant to the local HUD Field Office.

This application deadline is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked before midnight on the application due date and received within ten (10) days of that date.

Applications Sent By Overnight Delivery. Applications sent by overnight delivery will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. This NOFA contains all of the information necessary for the submission of an application for voucher funding in connection with this NOFA.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1872, ext. 4064. Subsequent to application submission, you may determine the status of your application by contacting the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll free number).

II. Authority, Purpose, Amount Allocated, Voucher Funding, and Eligibility

(A) Authority

The Family Unification Program is authorized by section 8(x) of the United States Housing Act of 1937 (42 U.S.C. 1437f(x)). The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Pub. L. 106–74, approved October 20, 1999), referred to in this NOFA as the FY 2000 HUD Appropriations Act) provides funding for the Family Unification Program.

(B) Purpose

The Family Unification Program is a program under which Section 8 Housing Choice vouchers are provided to families for whom the lack of adequate housing is a primary factor which would result in:

(1) The imminent placement of the family's child, or children, in out-of-home care; or

(2) The delay in the discharge of the child, or children, to the family from out-of-home care.

Vouchers awarded under the Family Unification Program are administered by PHAs under HUD's regulations for the Section 8 Housing Choice Voucher Program (24 CFR part 982).

(C) Amount Allocated

(1) *Available Funds/Maximum Voucher Request and Lottery.* This NOFA announces the availability of approximately $10 million for the Family Unification Program which will provide assistance for about 1,800

families. (The possibility exists of additional funding being made available for this program; perhaps as much as an additional $50 million. Applicants should bear this in mind when considering the number of vouchers to apply for under Section II(C)(1) of this NOFA.) PHAs with a current Section 8 voucher and certificate program of more than 500 units under an Annual Contributions Contract may apply for funding for a maximum of 100 units. PHAs with a current Section 8 voucher or certificate program of 500 units or less under an Annual Contributions Contract may apply for a maximum of 50 units. PHAs not currently administering either a Section 8 voucher or certificate program may apply for a maximum of 50 units.

A national lottery will be conducted to select approvable applications for funding if approvable applications are submitted by PHAs in FY 2000 for more than the approximately $10 million available under this NOFA.

The Family Unification Program is exempt from the fair share allocation requirements of section 213(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(d)) and the implementing regulations at 24 CFR part 791, subpart D.

(2) *Underfunding Corrections.* If prior to the award of FY 2000 FUP funding, HUD determines that any awardees under the FY 1999 Family Unification Program NOFA have been underfunded, HUD will increase funding to the amount the awardee should have received. Funding of any such FY 1999 awardees will be dependent upon the availability of FY 2000 funds for the Family Unification Program.

(3) *Unfunded Approvable Applications.* PHAs with approvable applications that are not funded, in whole or in part, due to insufficient funds available under this FUP NOFA, shall be funded first in FY 2001 provided HUD receives additional appropriations for FUP for FY 2001.

(D) Voucher Funding

(1) *Determination of Funding Amount for the PHA's Requested Number of Vouchers.* HUD will determine the amount of funding that a PHA will be awarded under this NOFA based upon an actual annual per unit cost using the following three step process:

(a) HUD will extract the total expenditures for all the PHA's Section 8 tenant-based assistance programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's Section 8 tenant-based assistance programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

(c) HUD will multiply the annual per unit cost derived under paragraph (b) above by the Section 8 Housing Assistance Payments Program Contract Rent Annual Adjustment Factor (with the highest cost utility included) to generate an adjusted annual per unit cost. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(E) Eligible Applicants

Any PHA established pursuant to State law, including regional (multicounty) or State PHAs, may apply for funding under this NOFA. Indian Housing Authorities, Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 annual contributions contracts (ACC) with IHAs after September 30, 1997.

Some PHAs currently administering the Section 8 voucher and certificate programs have, at the time of publication of this NOFA, major program management findings from Inspector General audits, HUD management reviews, or Independent Public Accountant (IPA) audits that are open and unresolved or other significant program compliance problems. HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application deadline date, the findings are either not closed, or sufficient progress toward closing the findings has not been made to HUD's satisfaction. The PHA must also, to HUD's satisfaction, be making satisfactory progress in addressing any program compliance problems. If any of these PHAs want to apply for the Family Unification Program, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor that is acceptable to HUD. The PHA application must include an agreement by the other housing agency or contractor to administer the program for the new funding increment on behalf of the PHA and a statement that outlines the steps the PHA is taking to resolve the program findings and program compliance problems. Immediately after the publication of this NOFA, the Office of Public Housing in the local HUD Office will notify, in writing, those PHAs that are not eligible to apply because of outstanding management or compliance problems. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the GMC. The PHA may appeal the decision if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error (*i.e.*, documentation showing that the finding has been cleared) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the GMC with a copy of its written response to the appeal, along with a copy of the PHA's written appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable regulatory and statutory requirements.

III. General Requirements and Requirements Specific To The Family Unification Program

(A) General Requirements

(1) *Compliance with Fair Housing and Civil Rights Laws.* All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) *Additional Nondiscrimination Requirements.* In addition to

compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Affirmatively Furthering Fair Housing.* Applicants have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(a) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice.

(4) *Certifications and Assurances.* Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(B) Requirements Specific to the Family Unification Program

(1) *Eligibility.* (a) *Family Unification eligible families.* Each PHA must modify its selection preference system to permit the selection of Family Unification eligible families for the program with available funding provided by HUD for this purpose. The term "Family Unification eligible family" means a family that:

(i) The public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care; and

(ii) The PHA has determined is eligible for a Section 8 voucher.

(b) *Lack of Adequate Housing.* The lack of adequate housing means:

(i) A family is living in substandard or dilapidated housing; or

(ii) A family is homeless; or

(iii) A family is displaced by domestic violence; or

(iv) A family is living in an overcrowded unit.

(c) *Substandard Housing.* A family is living in substandard housing if the unit where the family lives:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(d) *Dilapidated Housing.* A family is living in a housing unit that is dilapidated if the unit where the family lives does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or the unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may result from original construction, from continued neglect or lack of repair or from serious damage to the structure.

(e) *Homeless.* A homeless family includes any person or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

—A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

—An institution that provides a temporary residence for persons intended to be institutionalized; or

—A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(f) *Displaced by Domestic Violence.* A family is displaced by domestic violence if:

(i) The applicant has vacated a housing unit because of domestic violence; or

(ii) The applicant lives in a housing unit with a person who engages in domestic violence.

(iii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(g) *Involuntarily Displaced.* For a family to qualify as involuntarily displaced because of domestic violence:

(i) The PHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(ii) The applicant must certify that the person who engaged in such violence will not reside with the family unless the HA has given advance written approval. If the family is admitted, the PHA may terminate assistance to the family for breach of this certification.

(h) *Living in Overcrowded Housing.* A family is considered to be living in an overcrowded unit if:

(i) The family is separated from its child (or children) and the parent(s) are living in an otherwise standard housing unit, but, after the family is re-united, the parents' housing unit would be overcrowded for the entire family and would be considered substandard; or

(ii) The family is living with its child (or children) in a unit that is overcrowded for the entire family and this overcrowded condition may result in the imminent placement of its child (or children) in out-of-home care.

For purpose of this paragraph (h), the PHA may determine whether the unit is "overcrowded" in accordance with PHA subsidy standards.

(i) *Detained Family Member.* A Family Unification eligible family may not include any person imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(j) *Public child welfare agency (PCWA).* PCWA means the public agency that is responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(2) *PHA Responsibilities.* PHAs must:

(a) Accept families certified by the PCWA as eligible for the Family Unification Program. The PHA, upon receipt of the PCWA list of families currently in the PCWA caseload, must compare the names with those of families already on the PHA's Section 8 waiting list. Any family on the PHA's Section 8 waiting list that matches with the PCWA's list must be assisted in order of their position on the waiting list in accordance with PHA admission policies. Any family certified by the PCWA as eligible and not on the Section 8 waiting list must be placed on the waiting list. If the PHA has a closed Section 8 waiting list, it must reopen the waiting list to accept a Family Unification Program applicant family who is not currently on the PHA's Section 8 waiting list;

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(b) Determine if any families with children on its waiting list are living in temporary shelters or on the street and may qualify for the Family Unification Program, and refer such applicants to the PCWA;

(c) Determine if families referred by the PCWA are eligible for Section 8 assistance and place eligible families on the Section 8 waiting list;

(d) Amend the administrative plan in accordance with applicable program regulations and requirements;

(e) Administer the vouchers in accordance with applicable program regulations and requirements;

(f) Assure the quality of the evaluation that HUD intends to conduct on the Family Unification Program and cooperate with and provide requested data to the HUD office or HUD-approved contractor responsible for program evaluation; and

(g) Comply with the actions to be taken by the PHA as specified in the memorandum of understanding (MOU) executed by the PHA and the PCWA. (See paragraph IV (B)(3) regarding the MOU.

(3) *Public Child Welfare Agency (PCWA) Responsibilities.* A public child welfare agency that has agreed to participate in the Family Unification Program must:

(a) Establish and implement a system to identify Family Unification eligible families within the agency's caseload and to review referrals from the PHA;

(b) Provide written certification to the PHA that a family qualifies as a Family Unification eligible family based upon the criteria established in section 8(x) of the United States Housing Act of 1937, and this notice;

(c) Commit sufficient staff resources to ensure that Family Unification eligible families are identified and determined eligible in a timely manner and to provide follow-up supportive services after the families lease units;

(d) Cooperate with the evaluation that HUD intends to conduct on the Family Unification Program, and submit a certification with the PHA's application for Family Unification funding that the PCWA will agree to cooperate with and provide requested data to the HUD office or HUD-approved contractor having responsibility for program evaluation; and

(e) Comply with the actions to be taken by the PCWA as specified in the memorandum of understanding (MOU) executed between the PCWA and the PHA. (See paragraph IV (B)(3) regarding the MOU.)

(4) *Section 8 Voucher Assistance.* The Family Unification Program provides funding for rental assistance under the Section 8 Housing Choice Voucher Program.

PHAs must administer this program in accordance with HUD's regulations governing the Section 8 Housing Choice Voucher Program. If a Section 8 voucher for a family under this program is terminated, the voucher must be reissued to another Family Unification eligible family for 5 years from the initial date of execution of the Annual Contributions Contract subject to the availability of renewal funding.

IV. Application Selection Process For Funding

(A) Rating and Ranking

HUD's Grants Management Center is responsible for rating the applications under the selection criteria in this NOFA, and is responsible for the selection of FY 2000 applications that will receive consideration for assistance under the Family Unification Program. The Grants Management Center will initially screen all applications and determine any technical deficiencies based on the application submission requirements.

Each application submitted in response to the NOFA, in order to be eligible for funding, must receive at least 10 points for Threshold Criterion 2, Efforts of PHA to Provide Area-Wide Housing Opportunities for Families. Each application must also meet the requirements for Threshold Criterion 1, Unmet Housing Needs; Threshold Criterion 3, Coordination between HA and Public Child Welfare Agency to Identify and Assist Eligible Families; and Threshold Criterion 4, Public Child Welfare Agency Statement of Need for Family Unification Program.

(B) Threshold Criteria

(1) Threshold Criterion 1: Unmet Housing Needs

This criterion requires the PHA to demonstrate the need for an equal or greater number of Section 8 vouchers than it is requesting under this NOFA. The PHA must assess and document the unmet housing need for its geographic jurisdiction of families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care, or in a delay of discharge of a child or children to the family from out-of-home care. The results of the assessment must include a comparison of the estimated unmet housing needs of such families to the Consolidated Plan covering the PHA's jurisdiction.

(2) Threshold Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (50 Points)

(a) *Description:* Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 Housing Choice Voucher Program. PHAs in metropolitan and non-metropolitan areas are eligible for points under this criterion. The Grants Management Center will assign points to PHAs that have established cooperative agreements with other PHAs or created a consortium of PHAs in order to facilitate the transfer of families and their rental assistance between PHA jurisdictions. In addition, the Grants Management Center will assign points to PHAs that have established relationships with nonprofit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(b) *Rating and Assessment:* The Grants Management Center will assign 10 points for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 40 points) to determine the total points for this Selection Criterion:

(i) 10 Points—Assign 10 points if the PHA documents that it participates in an area-wide exchange program where all PHAs absorb portable Section 8 families.

(ii) 10 Points—Assign 10 points if the PHA documents that PHA staff will provide housing counseling for families that want to move to low-poverty or non-minority areas, or if the PHA has established a contractual relationship with a nonprofit agency or a local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 1993 Moving to Opportunity (MTO) for Fair Housing Demonstration and any other PHAs that receive counseling funds from HUD (e.g., in settlement of litigation involving desegregation or demolition of public housing, regional opportunity counseling, or mixed population projects) may qualify for points under this assessment, but these PHAs must identify all activities undertaken, other than those funded by HUD, to expand housing opportunities.

(iii) 10 Points—Assign 10 points if the PHA documents that it participates with

other PHAs in using a metropolitan wide or combined waiting list for selecting participants in the program.

(iv) 10 Points—Assign 10 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

(3) Threshold Criterion 3: Coordination Between PHA and Public Child Welfare Agency to Identify and Assist Eligible Families

The application must include a memorandum of understanding (MOU), executed by the chief executive officer of the PHA and the PCWA, identifying the actions that the PHA and the PCWA will take to identify and assist Family Unification Program eligible families and the resources that each organization will commit to the FUP. The MOU must clearly address, at a minimum, the following:

(a) PHA responsibilities as outlined in paragraph III.(B)(2) of this NOFA.

(b) PCWA responsibilities as outlined in paragraph III.(B)(3) of this NOFA.

(c) The assistance the PCWA will provide to families in locating housing units.

(d) The PCWA's past experience in administering a similar program.

(e) Past PCWA and PHA cooperation in administering a similar program. The MOU shall be considered by HUD and the signatories (the PCWA and the PHA) as a binding agreement. As such, the document should be very specific. For instance, the PCWA should clearly indicate in connection with paragraph (b) immediately above the length of time that its follow-up services will be available to FUP-eligible families after they have rented a unit using the voucher issued by the PHA; the amount of time and staff resources the PCWA will commit on a continuing basis to identify FUP-eligible families and provide follow-up support services, etc.

(4) Threshold Criterion 4: Public Child Welfare Agency Statement of Need for Family Unification Program

The application must include a statement by the PCWA describing the need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency. The PCWA must adequately demonstrate that there is a need in the PHA's jurisdiction for the Family Unification program that is not being met through existing programs. The narrative must include specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families lacking adequate housing.

(C) *Funding FY 2000 Applications.* After the Grants Management Center has screened PHA applications and disapproved any applications unacceptable for further processing (see Section VI(B) of this NOFA, below), the Grants Management Center will review and rate all approvable applications, utilizing the Threshold Criteria and the point assignments listed in this NOFA.

The Grants Management Center will select eligible PHAs to be funded based on a lottery in the event approvable applications submitted in FY 2000 are received for more funding than the approximately $10 million available under this NOFA. All FY 2000 PHA applications identified by the Grants Management Center as meeting the Threshold Criteria identified in this NOFA will be eligible for the lottery selection process. If the cost of funding these applications exceeds available funds, HUD will limit the number of FY 2000 applications selected for any State to no more than 10 percent of the budget authority made available under this NOFA in order to achieve geographic diversity. If establishing this geographic limit results in unspent budget authority, however, HUD may modify this limit to assure that all available funds are used.

Applications will be funded in full for the number of vouchers requested by the PHA in accordance with the NOFA. If the remaining voucher funds are insufficient to fund the last PHA application in full, however, the Grants Management Center may recommend funding that application to the extent of the funding available and the applicant's willingness to accept a reduced number of vouchers. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. The Grants Management Center will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

V. Application Submission Requirements

(A) *Form HUD–52515.* Funding Application, form HUD–52515, must be completed and submitted for the Section 8 Housing Choice Voucher Program. This form includes all the necessary certifications for Fair Housing, Drug-Free Workplace and Lobbying Activities. Section C of the form should be left blank. PHAs may obtain a copy of form HUD–52515 from the local HUD Field Office or may download it from the HUD Home page on the internet's world wide web (http://www.hud.gov). On the HUD website click on "forms," then click on "HUD–5" and then click on "HUD–52515." The form must be completed in its entirety, with the exception of Section C, signed and dated.

(B) *Letter of Intent and Narrative.* All the items in this section must be included with the application submitted to the local HUD Field Office. Funding is limited, and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The PHA must state in its cover letter to the application whether it will accept a smaller number of vouchers and the minimum number of vouchers it will accept. The cover letter must also include a statement by the PHA certifying that the PHA has consulted with the agency or agencies in the State responsible for the administration of welfare reform to provide for the successful implementation of the State's welfare reform for families receiving rental assistance under the family unification program. The application must include an explanation of how the application meets, or will meet, Threshold Criteria 1 through 4 in Section IV(B) of this NOFA.

The application must also include an MOU as described in paragraph IV.(B)(3) of this NOFA.

The PCWA serving the jurisdiction of the PHA is responsible for providing the information for Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to the PHA for submission with the PHA application. This should include a discussion of the case-load of the PCWA and information about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care as a result of inadequate housing, and the PCWA's experience in obtaining housing through HUD assisted housing programs and other sources for families lacking adequate housing. A State-wide Public

Child Welfare Agency must provide information on Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to all PHAs that request such information; otherwise, HUD will not consider applications from any PHAs with the State-wide PCWA as a participant in its program.

(C) *Evaluation Certifications.* The PHA and the PCWA, in separate certifications, must state that the PHA and Public Child Welfare Agency agree to cooperate with HUD and provide requested data to the HUD office or HUD-approved contractor delegated the responsibility for the program evaluation. No specific language for this certification is prescribed by HUD.

(D) *Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing.* The areas to be addressed in the PHA's statement should include, but not necessarily be limited to: (a) Elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (b) remedy discrimination in housing; or (c) promote fair housing rights and fair housing choice.

(E) *Program Summary.* Provide a separate, one paragraph statement describing how the vouchers being applied for will address the local housing needs of eligible families in renting decent, safe, and affordable housing. Describe, where applicable, how the vouchers will be used to expand existing housing choices, and whether the PHA intends to use the vouchers to establish or expand upon its partnerships with local government, nonprofit agencies, or private industry groups. Also address any related notable local program activities, best practices, or accomplishments.

VI. Corrections To Deficient Family Unification Applications

(A) Acceptable Applications

An acceptable application is one which meets all of the application submission requirements in Section V of this NOFA and does not fall into any of the categories listed in Section VI (B) of this NOFA. The Grants Management Center will initially screen all applications and notify PHAs of technical deficiencies by letter.

With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the Grants Management Center will notify the applicant in writing by describing the clarification or technical deficiency. The applicant must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the Grants Management Center within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

(B) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the Grants Management Center will disapprove PHA applications that it determines are not acceptable for processing. The Grants Management Center's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications from PHAs that do not meet the requirements of Section III(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has *major* Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings for its voucher or certificate programs that are not closed or on which satisfactory progress in resolving the findings is not being made; program compliance problems for its voucher or certificate programs on which satisfactory progress is not being made. The only exception to this category is if the PHA has been identified under the policy established in Section II(E) of this NOFA and the PHA makes application with another agency or contractor that will administer the family unification assistance on behalf of the PHA. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achieve a lease-up rate of 90 percent for its combined certificate and voucher units under contract for its fiscal year ending in 1998. Category (c) may be passed, however, if the PHA achieved a combined certificate and voucher budget authority utilization rate of 90 percent or greater for its fiscal year ending in 1998. In the event the PHA is unable to meet either of these percentage requirements, it may still pass category (c) if it submits information to the Grants Management Center, as part of its application, demonstrating that it was able to either increase its combined certificate and voucher lease-up rate to 90 percent or greater for its fiscal year ending in 1999, or was able to increase combined certificate and voucher budget authority utilization to 90 percent or more for its fiscal year ending in 1999. PHAs that have been determined by HUD to have passed either the 90 percent lease-up, or 90 percent budget authority utilization requirement for their fiscal year ending in 1998 will be listed on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). A PHA not listed must either submit information in its application supportive of its 90 percent lease-up or 90 percent budget authority utilization performance for its fiscal year ending in 1999, or submit information as part of its application supportive of its contention that it should have been included among those PHAs HUD listed on the HUD Home Page as having achieved either a 90 percent lease-up rate or 90 percent funding utilization rate for fiscal years ending in 1998. Attachment 1 of this NOFA indicates the methodology and data sources used by HUD to calculate the lease-up and budget authority utilization percentage rates for PHAs with fiscal years ending in 1998. Any PHA wishing to submit information to the GMC in connection with its 1998 fiscal year or 1999 fiscal year for the purposes described immediately above (so as to be eligible under category (c) to submit an application) will be required to use the same methodology and data sources indicated in Attachment 1.

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the rental vouchers.

(e) A PHA's application that does not comply with the requirements of 24 CFR

982.102 and this NOFA after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(f) The PHA's application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Official Place of Application Receipt" at the beginning of this NOFA.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

VII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

In accordance with 24 CFR 50.19(b)(11) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. This NOFA provides funding for these activities under 24 CFR Part 982, which does not contain environmental review provisions because of the categorical exclusion of these activities from environmental review. Accordingly, under 24 CFR 50.19(c)(5), issuance of this NOFA is also categorically excluded from environmental review under NEPA.

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.857.

(D) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) Disclosures

HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19,

1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: July 18, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Attachment 1—Methodology for Determining Lease-up and Budget Authority Utilization Percentage Rates

Using data from the HUDCAPS system, HUD determined which PHAs met the 90% budget authority utilization or 90% lease-up criteria. The data used in the determination was based on PHA fiscal years ending in 1998. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA 1998 year combining the certificate and voucher programs.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD–52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA 1998 year for each funding increment which had an active contract term during all or a portion of the PHA year.

Example:

PHA ABC

[Fiscal year 10/1/97 through 9/30/98]

HUD 52681 Approved Data:	
HAP	$2,500,000
Administrative Fee	250,000
Hard to House Fee	1,000
Audit	2,000
Total	2,753,000
Interest earned on administrative fee	(2,500)
Total contributions required	2,750,500

Calculation of Annual Budget Authority

Increments	Contract term	Total BA	ABA
001	11/01/97–10/31/98	$1,300,000	$1,191,667
002	01/01/98–12/31/98	1,200,000	900,000
003	04/01/98–03/31/99	950,000	475,000
004	07/01/98–06/30/99	1,500,000	375,000
Totals		4,950,000	2,941,667

Budget Authority Utilization

Total contributions required ...	$2,750,000
divided by	
Annual budget authority	2,941,667
equals	
Budget Authority Utilization ..	93.5%

Lease-up Rate

The lease-up rate was determined by comparing the contract units (funding increments active as of the end of the PHA 1998 year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for 1998.

Active funding increments awarded by HUD for special purposes such as litigation, relocation/replacement, housing conversions, etc. were excluded from the contract units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

Example:

Increments	Contract term	Units
001	11/01/97–10/31/98	242
002	01/01/98–12/31/98	224
003	04/01/98–03/31/99	178
004	07/01/98–06/30/99	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units		746

Unit months leased reported	
by PHA	8,726
divided by 12	727
Units Leased	727
Lease-up Rate	
Units leased	727
divided by adjusted contract units equals	746
Lease-up Rate	97.4%

[FR Doc. 00–18658 Filed 7–21–00; 8:45 am]

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Part V

Department of Education

Office of Postsecondary Education Upward Bound Participant Expansion Initiative and Inviting Applications for Supplemental Awards for Fiscal Year (FY) 2000; Notices

VOL 65 ISS 142 JL 24 2000 UMI

DEPARTMENT OF EDUCATION

Upward Bound Program Participant Expansion Initiative

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of Final Priority.

SUMMARY: The Secretary of Education announces an absolute priority to provide supplemental funds of up to $85,600 in fiscal year (FY) 2000 to currently funded Upward Bound projects that serve at least one target high school in which at least 50 percent of the students were eligible for a free lunch under the National School Lunch Act (Free Lunch program) during the 1998–1999 school year.

The purpose of this priority is to increase the number of the neediest eligible students who are served by the Upward Bound program. The neediest students are generally those from the lowest income levels. The Secretary believes that limiting supplemental funds to projects that serve the above-described target high schools is a good way to measure whether projects serve the lowest income students because the Free Lunch program is limited to students from families with the lowest family income.

Under this priority, supplemental funds of up to $85,600 will be made to currently funded Upward Bound program projects. An estimated 157–177 current Upward Bound projects could each receive supplemental funds to serve up to 20 additional students.

Projects that receive supplemental funds under this priority are strongly encouraged to select eligible participants who have the greatest need for Upward Bound services.

EFFECTIVE DATE: August 23, 2000.

FURTHER INFORMATION CONTACT: Peggy Whitehead, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600. The email address for The Office of Federal TRIO Programs is: Trio@ed.gov.

The email addresses for Ms. Whitehead, Ms. Wilson and Ms. Watts are: Peggy_Whitehead@ed.gov, Sheryl_Wilson@ed.gov, Gaby_Watts@ed.gov.

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SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice of proposed priority in the **Federal Register** on June 1, 2000 (65 FR 35238–35239).

In FY 2000, the Congress provided more funds than the Administration requested for the Federal TRIO Programs. In examining the options available to the Secretary for allocating these additional funds, the Secretary determined that a portion of the funds should be used to increase support to the Upward Bound program. The Upward Bound program, authorized under section 402C of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. 1070a-13, serves low-income, potential first-generation, college students by helping them generate the skills and motivation necessary for success in education beyond secondary school.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, nine parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Target School Eligibility and Date of Eligibility

Comments: One commenter recommended that free lunch eligibility be determined for the school district rather than the target high schools. One commenter recommended the use of 1998–1999 school year data rather than 1999–2000 school year data, since the 1999–2000 data will not be available until October 2000. Two commenters recommended use of the eligibility rate for the county or specified service area for free lunch or public benefits such as AFDC.

Discussion: Upward Bound projects serve target high schools that are not necessarily within the same school district since the target areas do not have to be contiguous. Upward Bound projects also serve target high schools in different counties and States. Therefore, it is easier for most Upward Bound projects to collect data from the specific target high school and certify that the target high school meets the free lunch criterion, which requires eligibility for the Free Lunch program, not participation in the Free Lunch program. AFDC benefits are individual records and collection of AFDC information for a target high school would be difficult. The Secretary accepts the suggestion that the data should be collected for school year 1998–1999. In many areas, the data for school year 1999–2000 may not be readily available.

Changes: The Free Lunch program data will be collected for the 1998–1999 school year.

Low-Income First-Generation Criteria

Comments: One commenter suggested the Secretary use the low-income first-generation criteria rather than 50 percent Free Lunch program eligibility for the priority.

Discussion: All participants who receive services under the priority must meet the eligibility requirements for Upward Bound, which already require that participants be low-income or potential first-generation college students.

Changes: None.

Free Lunch Criterion

Comments: One commenter supported the use of the free lunch statistics as an indicator of high need of students for the Upward Bound program. The commenter also questioned if other possible indicators might be used. Another commenter recommended the use of actual income of the families of students enrolled in the target high schools as the measure of need for expanded services. The commenter did not recommend an income threshold to make that determination.

Discussion: The Secretary believes that the use of the Free Lunch criterion coupled with the requirement that Upward Bound participants are generally from low-income families is sufficient to target these supplemental grant funds to the right grantees.

With regard to the use of family income, schools do not know the family income of their students so the commenter's suggestion is not practical.

Changes: None.

Comments: Another commenter recommended that the concept of free or reduced lunch be used as the eligibility criterion for the initiative.

Discussion: The priority is designed to increase the number of the neediest eligible students who are served by the Upward Bound program. The neediest students are generally those from the lowest income levels. The low-income eligibility requirement for students to participate in Upward Bound is a family income that does not exceed 150 percent of the poverty level established by the Bureau of the Census. In contrast, the Reduced Lunch program and Free Lunch program eligibility requirements are set at 185 percent and 130 percent

of the poverty level, respectively. Therefore, the Reduced Lunch program has a higher income threshold than the Upward Bound program and would not be useful for targeting the lowest income students. The Secretary believes that limiting supplemental funds to projects that serve target high schools with 50 percent or higher of the students in the Free Lunch program is a good way to measure whether projects serve the lowest income students. The Free Lunch program is limited to students from families with the lowest family income.

Rationale for the Priority

Comments: One commenter questioned the need for the priority. The commenter recommended allocating the funds to all existing Upward Bound projects to support student stipends, work study components, increase staff, and support technology skills.

Discussion: The priority is designed to increase the number of the neediest students participating in the Upward Bound program.

Changes: None.

Cost Per Participant

Comments: One commenter questioned if additional students would be funded at the current per student participant rate, since costs vary among projects.

Discussion: The priority is designed to serve up to 20 additional students at a cost of up to $85,600. Since the priority is geared to serving the neediest students, costs may be higher than the current per student participant rate. This would be determined by the types of additional services and activities to be provided.

Changes: None.

Participation of Target High Schools

Comments: One commenter questioned whether students enrolled in target high schools, that were included in a grantee's initial application but that are not currently being served, can receive services under this supplemental initiative.

Discussion: Yes, a student enrolled in any target high school included in the grantee's Upward Bound application, that was submitted on or before October 30, 1998 would be eligible to participate.

Changes: None.

Page Limitations

Comments: One commenter questioned the existence of a page limit for the narrative that accompanies the revised budget.

Discussion: The priority provides for supplemental funding to expand the current projects. Therefore, only a brief narrative is needed to describe the activities to be provided with the additional funding.

Changes: None.

Support for the Priority

Comments: Three commenters expressed support of the priority.

Discussion: No changes were recommended.

Changes: None.

Priority

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary gives absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

A project funded under this priority must serve a target high school in which at least 50 percent of the students were eligible for the Free Lunch program during the 1998–1999 school year.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive preference over other applications.

The Secretary strongly encourages projects that receive supplemental funds to enhance their recruitment strategies and services to target high schools to select and serve students who are at greatest risk of not graduating from high school or pursuing postsecondary education.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and action for the program.

Applicable Program Regulations

34 CFR part 645

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(Catalog of Federal Domestic Assistance Number: 84.047A)

Program Authority: 20 U.S.C. 1070.

Dated: July 17, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–18590 Filed 7–21–00; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No: 84.047A]

Office of Postsecondary Education, Upward Bound Program Participant Expansion Initiative Notice Inviting Applications for Supplemental Awards for Fiscal Year (FY) 2000

Purpose of Program: The Upward Bound Program Participant Expansion Initiative is designed to increase the number of the neediest eligible students in the Upward Bound program.

Eligible Applicants: All currently funded Upward Bound projects. Veteran Upward Bound projects and Upward Bound Math/Science projects are not eligible to participate.

Deadline for Transmittal of Applications: August 28, 2000.

Deadline for Intergovernmental Review: September 12, 2000.

Applications Available: July 26, 2000.

Available Funds: $13,500,000.

Estimated Range of Awards: Up to $85,600.

Estimated Average Size of Awards: $76,270.

Estimated Number of Awards: 157–177.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months for current 4-year grantees; up to 48 months for current 5-year grantees.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and (b) the regulations for this program in 34 CFR part 645.

SUPPLEMENTARY INFORMATION: Only proposals that meet the absolute priority will be funded. If more applications that meet the absolute priority are received than can be funded under the Upward Bound Program Participant Expansion Initiative, the Secretary will fund those applicants that received the highest average peer review scores during the FY 1999 Upward Bound competition. For the purposes of this initiative, the Secretary will not consider prior experience points.

Applicants for supplemental awards must submit an application that contains:

- A certification by the Upward Bound project director that at least one target high school meets the absolute priority;
- The number of additional students, not to exceed 20, that the project plans to serve;
- A revised budget; and
- A brief narrative describing how the supplemental funds will be used.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority, which is published elsewhere in this issue of the **Federal Register**. The Secretary funds only applications that meet this absolute priority:

A project funded under this priority must serve a target high school in which at least 50 percent of the students were eligible for the Free Lunch Program during the 1998–99 school year.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive preference over other applications.

The Secretary strongly encourages projects that receive supplemental funds to enhance their recruitment strategies and services to target high schools to select and serve students who are at greatest risk of not graduating from high school or pursuing postsecondary education.

FOR APPLICATIONS OR INFORMATION CONTACT: Peggy Whitehead, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW, Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600. The email address for The Office of Federal TRIO Programs is: Trio@ed.gov.

The email addresses for Ms. Whitehead, Ms. Wilson and Ms. Watts are:

Peggy_Whitehead@ed.gov
Sheryl_Wilson@ed.gov
Gaby_Watts@ed.gov

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Program Authority: 20 U.S.C. 1070.

Dated: July 17, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

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  - Large municipal waste combustors constructed on or before September 20, 1994; Federal plan requirements; published 5-24-00

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Radio stations; table of assignments:
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  - Upper airway obstruction relief devices; classification; published 6-23-00

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- Single hull tank vessels; phase-out date requirements; clarification; published 6-23-00

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- Boeing; published 6-19-00
- Mitsubishi; published 5-15-00
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National Highway Traffic Safety Administration

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- Uniform tire quality grading standards; published 5-24-00

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol, tobacco, and other excise taxes:
- Tobacco products—
  - Cigarette papers and tubes; tax increase; correction; published 7-24-00

TREASURY DEPARTMENT

Customs Service

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- Tariff Act violations; imposition and mitigation of penalties; guidelines; published 6-23-00

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Agricultural Marketing Service

Cherries (tart) grown in—
- Michigan et al.; comments due by 8-1-00; published 6-2-00

Peanut promotion, research, and information order:
- National Peanut Board; membership; comments due by 8-1-00; published 6-2-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Plum pox disease; interstate movement of articles from Adams County, PA restricted; comments due by 8-1-00; published 6-2-00

COMMERCE DEPARTMENT

Census Bureau

Decennial population information:
- State and local tabulations reports pursuant to 13 U.S.C. 141(c); comments due by 8-4-00; published 6-20-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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- Alaska; fisheries of Exclusive Economic Zone—
  - Western Alaska Community Development Quota Program; comments due by 7-31-00; published 5-30-00

Caribbean, Gulf of Mexico, and South Atlantic fisheries
- South Atlantic snapper-grouper; comments due by 8-2-00; published 7-3-00

Caribbean, Gulf, and South Atlantic fisheries—
- Caribbean Fishery Management Council; meetings; comments due by 7-31-00; published 6-30-00

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- Pacific Coast groundfish; comments due by 8-3-00; published 7-5-00

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  - Florida Keys National Marine Sanctuary; boundary expansion; comments due by 7-31-00; published 5-18-00
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- National Institutes of Health-sponsored clinical trials; coverage methodology; comments due by 7-31-00; published 5-31-00
- TRICARE program—
  - Professional services in low-access locations; payments; comments due by 7-31-00; published 5-30-00

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- Commercial heating, air conditioning, and water heating equipment; workshop; comments due by 7-31-00; published 5-15-00

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- Florida; comments due by 8-4-00; published 6-20-00
- Indiana; comments due by 8-4-00; published 7-5-00
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- Oregon; comments due by 8-4-00; published 7-5-00

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National oil and hazardous substances contingency plan-

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Water pollution; effluent guidelines for point source categories:

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Federal Motor Carrier Safety Administration

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the Federal Register but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

Last List July 12, 2000

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-038-00001-3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869-042-00002-1)	22.00	[1] Jan. 1, 2000
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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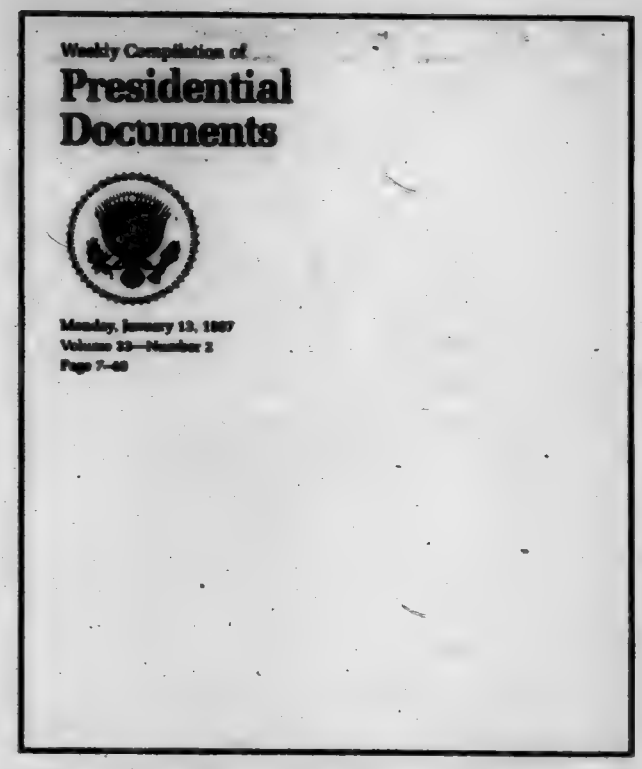

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Federal Register
Vol. 65, No. 143
Tuesday, July 25, 2000

Presidential Documents

Title 3—

The President

Proclamation 7331 of July 21, 2000

Parents' Day, 2000

By the President of the United States of America

A Proclamation

Parents play a crucial role in shaping our lives and the life of our Nation. They nurture us as infants when we are unable to help ourselves, protect us as toddlers when we wander into trouble, encourage us as adolescents when we dream about the future, and guide us as adults as we face the challenges and opportunities of our own families and careers. It is through their care that we learn the invaluable lessons of love, family, and community; and it is through their selflessness that we come to understand the joy of making a difference in the life of another.

Throughout our Administration, Vice President Gore and I have strived to provide parents with the tools they need to meet their responsibilities. The Family and Medical Leave Act, which I signed in 1993, has allowed more than 20 million Americans to take up to 12 weeks of unpaid leave to care for a newborn or an ailing relative without fear of losing their job. We have also worked to make child care safer, better, and more affordable for millions of families, and we have expanded preschool and after-school programs to give parents more flexibility in balancing the demands of job and family. And we have worked hard for parents to make the dream of a college education for their sons and daughters a reality—with new HOPE scholarships, more work-study opportunities, higher Pell grants, and more affordable student loans.

Parenting is a lifetime commitment and a lifetime challenge—it involves balancing the demands of family, friends, career, and community. Yet parenting is also one of life's greatest gifts. To hold one's sleeping baby, watch one's children take their first tottering steps and hear them say their first words, boast with pride about their first home run or first music recital, and witness firsthand their journey into adulthood—these are some of the most precious rewards of parenthood.

Only when we pass from childhood to adulthood can we appreciate the value of our parents and the extent of their sacrifices. For these, we owe our parents—whether biological or adoptive, stepparents or foster parents—a profound debt of gratitude. On Parents' Day and throughout the year, let us pay tribute to America's parents, whose unconditional love and constant devotion have helped create a bright future for the next generation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States and consistent with Public Law 103–362, do hereby proclaim Sunday, July 23, 2000, as Parents' Day. I call upon all Americans to join together in observing this day with appropriate ceremonies and activities to honor our Nation's parents.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of July, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J Clinton

[FR Doc. 00–18914
Filed 7–24–00; 8:45 am]
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RIN 2120–

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AGENCY: F
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ACTION: F

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Rules and Regulations

Federal Register
Vol. 65, No. 143
Tuesday, July 25, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–10–AD; Amendment 39–11827; AD 2000–14–16]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. That AD requires installing a tail rotor pitch-limiting left-pedal stop (pedal stop), installing an airspeed limitation placard, marking a never-exceed velocity (Vne) placard on all airspeed indicators, and revising the Limitations section of the Rotorcraft Flight Manual (RFM). This AD requires installing a redesigned tail rotor system and modifying the vertical fin and horizontal stabilizer to allow restoring the Vne to 140 knots indicated airspeed (IAS). This AD is prompted by design changes to the tail rotor system and modification of the pedal stop for airspeed actuation to eliminate a tail rotor strike to the tailboom. The actions specified by this AD are intended to prevent the tail rotor blades from striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter.

DATES: Effective August 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 29, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–06–15, Amendment 39–11111 (64 FR 16801, April 7, 1999), which applies to BHTC Model 407 helicopters, was published in the **Federal Register** on May 17, 2000 (65 FR 31291). That action proposed to require installing a redesigned tail rotor system, modifying the vertical fin and horizontal stabilizer, and restoring the Vne to 140 knots IAS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for removing unnecessary wording from the introductory unsafe condition paragraph and removing the superseded AD number from Figure 1.

The FAA estimates that 200 helicopters of U.S. registry will be affected by this AD. It will take approximately 80 work hours per helicopter to perform the modifications and installations and the average labor rate is $60 per work hour. Required parts will cost approximately $24,161 per helicopter; however, the manufacturer has stated they will provide these parts at no cost. Additionally, the manufacturer has stated they will reimburse the cost of labor up to $4,400. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,792,200 or $28,961 per helicopter, assuming no costs are reimbursed.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11111 (64 FR 16801), and by adding a new airworthiness directive (AD), Amendment 39–11827, to read as follows:

2000–14–16 Bell Helicopter Textron Canada: Amendment 39–11827. Docket No. 2000–SW–10–AD. Supersedes AD 99–06–15, Amendment 39–11111, Docket No. 99–SW–16–AD.

Applicability: Model 407 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the tail rotor blades from striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Install a stop that limits the maximum distance that the left pedal can travel in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Canada Technical Bulletin 407–98–13, dated December 12, 1998 (TB).

(2) Adjust the rigging of the directional controls in accordance with Part II of the Accomplishment Instructions in the TB.

(3) Install the airspeed limitation placard shown in Figure 1 of this AD so that it completely covers and obscures the airspeed limitation placard, P/N 407–070–201–103. Ensure that the replacement placard is at least 2 1/16-inches tall and 3 9/16-inches long.

FIGURE 1.—407 AIRSPEED LIMITATIONS—KNOTS—IAS

OAT	Pressure altitude FT X 1000										
C°	0	2	4	6	8	10	12	14	16	18	20
52	98	93	88	.....	.....	.....	.....	.....	.....	.....	.....
40	100	95	91	86	81	76	.....	.....	.....	.....	.....
20	100	100	95	90	85	80	76	71	66	61	.....
0	100	100	100	95	90	85	80	75	70	65	60
−20	100	100	100	100	95	90	85	80	75	70	65
−40	97	93	88	83	79	74	70	65	61	.....	.....

Maximum Autorotation VNE 100 KIAS

(4) Install a redline at a Vne of 100 KIAS on all airspeed indicators. Remove or obscure any previously installed lines or arcs above 100 KIAS. If the redline is installed on the instrument glass, also install a slippage mark on the glass and on the instrument case.

(5) Add the following statement to the Limitations section of the Rotorcraft Flight Manual (RFM):

When operating at an airspeed of 60 to 100 KIAS, maintain yaw trim within one ball diameter of the centered position of the turn and bank (slip) indicator, and avoid sudden or large directional control inputs in flight.

(6) Mark the airspeed limitations placard in Figure 1–3 in the RFM to indicate that it has been superseded by this AD, and insert a copy of this AD into the RFM. Also, mark the airspeed indicator in Figure 1–5 of the RFM to indicate a Vne of 100 KIAS.

(7) This AD revises the limitations section of BHTC Model 407 RFM by replacing sheet 1 of Figure 1–3 in the RFM with Figure 1 of this AD, revising sheet 3 of Figure 1–5 of the RFM, and adding an operational limitation for allowable yaw trim and directional control input.

(8) Report any uncommanded right yaw, uncommanded movement of the pedals during flight, or tail rotor blade contact with the tailboom within 24 hours of the occurrence to the Manager, Regulations Group, telephone (817) 222–5111. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(b) Before further flight after January 31, 2001:

(1) Remove and replace the existing tail rotor with tail rotor installation, P/N 407–012–100–109, in accordance with Part II of Bell Helicopter Textron Technical Bulletin 407–99–17, dated April 15, 1999.

(2) Modify the vertical fin and horizontal stabilizer in accordance with Bell Helicopter Textron Technical Bulletin No. 407–96–2, Revision A, dated March 11, 1997.

(3) Install the tail rotor airspeed-actuated pedal stop kit, install the new airspeed limitation decals, and remove the temporary instrument markings and RFM changes in accordance with the Accomplishment Instructions in Parts I, II, and III of Bell Helicopter Textron Alert Service Bulletin 407–99–33, Revision A, dated March 10, 2000.

(c) Accomplishing the requirements of paragraph (b) of this AD is terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The modifications shall be done in accordance with Parts I and II of the Accomplishment Instructions in Bell Helicopter Textron Canada Technical Bulletin 407–98–13, dated December 12, 1998; Part II of Bell Helicopter Textron Technical Bulletin 407–99–17, dated April 15, 1999; Bell Helicopter Textron Technical Bulletin No. 407–96–2, Revision A, dated March 11, 1997; and Parts I, II, and III of Bell Helicopter Textron Alert Service Bulletin 407–99–33, Revision A, dated March 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 29, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–36R7, dated February 1, 2000.

Issued in Fort Worth, Texas, on July 12, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–18521 Filed 7–24–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–151–AD; Amendment 39–11831; AD 2000–15–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This action requires a one-time inspection to determine if certain wire bundles are routed incorrectly and to detect damage, and corrective actions, if necessary. This action is necessary to prevent damage of certain wire bundles routed to the fuel tank transfer pumps in the horizontal stabilizer, which could result in electrical arcing and a possible fire adjacent to the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective August 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 25, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–151–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that, during a flight test in production, the flight crew reported the advisory message "FUEL PMP STAB R" and the caution message "FUEL STAB XFR" were displayed on the engine indicating and crew alerting system. Inspection revealed that a certain wire bundle routed to the fuel tank transfer pumps in the horizontal stabilizer was "pinched" between the head of a clamp fastener and adjacent structure. Evidence of arcing was also detected. Investigation revealed that the wire bundle was routed incorrectly through a clamp near the transfer pump. This condition, if not corrected, could result in electrical arcing and a possible fire adjacent to the fuel tank.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–28A2232, Revision 1, dated June 22, 2000, which describes procedures for a one-time visual inspection of wire bundles routed to the fuel tank transfer pumps in the horizontal stabilizer to determine if wire bundles W4601 and W4602 are routed correctly and to detect damage, and corrective action, if necessary. Corrective action includes rerouting any wire bundle that is routed incorrectly and repairing any damaged wiring. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent damage of certain wire bundles routed to the fuel tank transfer pumps in the horizontal stabilizer, which could result in electrical arcing and a possible fire adjacent to the fuel tank. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between This AD and Alert Service Bulletin

Operators should note that this AD requires accomplishment of the inspection within 60 days after the effective date of this AD. The alert service bulletin recommends that operators accomplish the actions in the bulletin "at their earliest opportunity when manpower and facilities are available." In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than one hour). In light of all of these factors, the FAA finds a 60-day compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a

request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–151–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–15–02 Boeing: Amendment 39–11831. Docket 2000–NM–151–AD.

Applicability: Model 747–400 series airplanes having line numbers (L/N) 1162 through 1223, except L/N 1174; equipped with horizontal stabilizer fuel tanks; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage of certain wire bundles routed to the fuel tank transfer pumps in the horizontal stabilizer, which could result in electrical arcing and a possible fire adjacent to the fuel tank, accomplish the following:

One-Time Inspection and Corrective Actions

(a) Within 60 days after the effective date of this AD, perform a one-time detailed visual inspection of wire bundles routed to the fuel tank transfer pumps in the horizontal stabilizer to determine if wire bundles W4601 and W4602 are routed correctly and to detect damage, in accordance with Boeing Alert Service Bulletin 747–28A2232, Revision 1, dated June 22, 2000.

(1) If the wire bundles are routed correctly and no damage is detected, no further action is required by this AD.

(2) If either wire bundle is determined to be incorrectly routed, but no damage is detected, prior to further flight, reroute the affected wire bundle in accordance with the alert service bulletin.

(3) If any damage is detected (whether the wire bundles are routed properly or not), prior to further flight, repair the affected wire bundle and route the wire bundle correctly, as applicable, in accordance with the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–28A2232, dated March 2, 2000, are considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2232, Revision 1, dated June 22, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 9, 2000.

Issued in Renton, Washington, on July 17, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18522 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–22]

Amendment to Class E Airspace; Elkhart, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Elkhart-Morton County Airport, Elkhart, KS. A review of the Class E airspace area for Elkhart-Morton County Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 18, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–22, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Elkhart, KS. A review of the Class E airspace for Elkhart-Morton County Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Elkhart-Morton County Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–22." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Elkhart, KS [Revised]

Elkhart-Morton County Airport, KS
(Lat. 37°00′07″ N., long. 101°52′56″ W.)
Elkhart NDB
(Lat. 37°00′04″ N., long. 101°53′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elkhart-Morton County Airport and within 2.6 miles each side of the 164° bearing from the Elkhart NDB extending from the 6.5-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on July 11, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–18575 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–12]

Revision of Class E airspace, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the North Bend, OR, Class E airspace to accommodate the development of a revised Standard Instrument Approach Procedure (SIAP) at the North Bend Municipal Airport, North Bend, OR. This amendment provides for the safe and efficient use of the navigable airspace.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 99–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On April 4, 2000, the FAA proposes to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at North Bend, OR, in order to accommodate a revised SIAP to the North Bend Municipal Airport, North Bend, OR (65 FR 17616). This amendment will provide additional airspace at North Bend, OR, to meet current criteria standards associated with SIAP holding patterns. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises Class E airspace at North Bend Airport, North Bend, OR. This amendment provides revised airspace at North Bend, OR, to better meet current airspace standards associated with established procedures at North Bend Airport. The FAA establishes airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This amendment provides for the safe and efficient use of the navigable airspace. This amendment promotes safe flight operations under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) and the North Bend Airport, North Bend, OR, and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM or ES North Bend, OR [Revised]

North Bend VORTAC
(Lat. 43°24'56" N, long. 124°10'06" W)

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the North Bend VORTAC from the 142° radial clockwise to the 352° radial, and within a 14-mile radius of the VORTEC from the 352° radial clockwise to the 142° radial, and within 2.7 miles north of the VORTAC 268° radial extending from the 8 mile radius to 11 miles west of the VORTAC, and within 1.8 miles south and 5.7 miles north of the VORTAC 241° radial extending from the 8 mile radius to 14.8 miles southwest; that airspace extending upward from 1,200 feet about the surface within a 22 mile radius of the VORTAC extending clockwise from the west edge of V–27 south of the VORTAC, to the west edge of V–287 north of the VORTAC, and within 2.2 miles southeast and 10.1 miles northwest of the VORTAC 241° radial, extending from the VORTAC to 22.2 miles southwest.

* * * * *

Issued in Seattle, Washington, on July 6, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–18577 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038–AB59

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending Rule 143.8, which governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties assessable for violations of the Commodity Exchange Act (Act) and Commission rules and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: October 23, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Julie R. Windhorn, Law Clerk, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone Number: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),[1] requires the head of each Federal agency to adjust by regulation, at least once every four years, the maximum amount of civil monetary penalties (CMPs) provided by law within the jurisdiction of that agency by the cost-of-living adjustment defined in the FCPIAA, as amended.[2] Because the purposes for the inflation adjustments include maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission monitors the impact of inflation on its CMP maximums and adjusts them as needed to implement the requirements and purposes of the FCPIAA.[3]

II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

any penalty, fine or other sanction that—
(A) (i) is for a specific monetary amount as provided by Federal law; or
(ii) has a maximum amount provided for by Federal law; and
(B) is assessed or enforced by an agency pursuant to Federal law; and
(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. 28 U.S.C. 2461 note.

The Act provides for CMPs that meet the above definition, and are therefore subject to the inflation adjustment, in three sections: section 6(c) of the Act, section 6b of the Act, and section 6c of the Act.[4]

Penalties may be assessed pursuant to Section 6(c) of the Act, 7 U.S.C. 9, against "any person" found by the Commission to have—

(1) engaged in the manipulation of the price of any commodity or futures contract;
(2) made willfully a false or misleading statement or omitted a material fact in an application or report filed with the Commission; or
(3) violated any provision of the Act or of the rules, regulations or orders thereunder.

Penalties may be assessed pursuant to Section 6b of the Act, 7 U.S.C. 13a, against: (1) Any contract market that the Commission finds is not enforcing or has not enforced its rules; or (2) any contract market, or any director, officer, agent, or employee of any contract market, that is violating or has violated any of the provisions of the Act or any of the rules, regulations, or orders thereunder.

Penalties may be assessed by "the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States" pursuant to section 6c of the Act, 7 U.S.C. 13a–1, against "any person found * * * to have committed any violation [of any provision of the Act or any rule, regulation or order thereunder]."

III. Relevant Cost-of-Living Adjustment

The cost-of-living adjustment is defined by the FCPIAA, as amended by the DCIA, as the amount by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.[5] The

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[1] The FCPIAA is codified in a note at 28 U.S.C. 2461 note. The relevant amendments to the FCPIAA contained in the Debt Collection Improvement Act of 1996, Pub. L. 104–134 (1996), are also codified at 28 U.S.C. 2461 note. In addition, the Federal Reports Elimination Act of 1998, Pub. L. 105–362 (1998), is also codified at 28 U.S.C. 2461 note. This statute, among other things, eliminated section 6 of the FCPIAA, which previously required the President to report annually to Congress. This amendment is not relevant to the adjustment of CMPs for inflation.

[2] Excluded from this requirement is "any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970 or the Social Security Act." 28 U.S.C. 2461 note, as amended by Pub. L. 104–134.

DCIA also requires that the range of minimum and maximum CMPs be adjusted, if applicable. This is not applicable to the Commission because, for the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules and orders thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

[3] Specifically, the FCPIAA states:

The purpose of [the FCPIAA] is to establish a mechanism that shall—

(1)allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

[4] 7 U.S.C. 9, 13a and 13a–1.

[5] The Consumer Price Index means the Consumer Price Index for all-urban consumers (CPI–U) published by the Department of Labor. Interested parties may find the relevant Consumer Price Index over the Internet. To access this information, go to the Consumer Price Index Home Page at http://stats.bls.gov/datahome.htm; first select, Most Requested Series; then select Overall BLS Most Requested Series; and finally, under Price Indexes, select CPI for All Urban Consumers (CPI–U) 1967=100 (Unadjusted)—CUUR0000AA0.

adjusted CMP maximums are to be rounded based upon the size of the penalty and a specified formula.

The Commission's initial inflation adjustment, reflected in the current Rule 143.8, was published in the **Federal Register** on October 28, 1996, with an effective date of November 27, 1996.[6] Therefore, the cost-of-living adjustment for the CMP maximums that can be assessed and enforced by the Commission would be the amount by which the Consumer Price Index for all-urban consumers published by the Department of Labor for June 1999 (*i.e.*, June of the year preceding this year) exceeds that index for June 1996.[7] After rounding according to the applicable formula,[8] the maximum, inflation-adjusted CMP for each violation of the Act or Commission rules or orders thereunder assessed against any person pursuant to sections 6(c) and 6c of the Act will be $120,000 or triple the monetary gain to such person for each such violation, and $575,000 for each such violation when assessed pursuant to section 6b of the Act. The FCPIAA provides that "any increase under [FCPIAA] in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect." Thus, the new CMP maximum may be applied only to violations of the Act that occur after the effective date of this amendment, October 23, 2000.[9]

IV. Related Matters

A. Effective Date

This amendment to Rule 143.8 will implement a statutory change regarding agency procedure or practice within the meaning of 5 U.S.C. 553(b)(3)(A) and therefore does not require notice.[10] The Commission also believes that opportunity for public comment is also unnecessary under 5 U.S.C. 553(b)(3)(B). This amendment does not affect any substantive change in Commission regulations, nor alter any obligation that a party has under Commission rules, regulations or orders. No party must change its manner of doing business, either with the public or the Commission, to comply with the rule amendments. These changes are undertaken pursuant to a statutory requirement that all agencies make such adjustments and are intended to prevent inflation from eroding the practical, deterrent effect of CMPs.

While higher maximum CMPs may expose persons to potentially higher financial liability, in nominal terms, for violations of the Act or Commission rules or orders thereunder, the rule amendments do not require that the maximum penalty be imposed on any party, nor do they alter any substantive due process rights that a party has in an administrative proceeding or a court of law that protect against imposition of excessive penalties. Further, the rule amendments only apply to violations of the Act, Commission rules or Commission orders that occur after the effective date of these amendments.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The amended rule will potentially affect those persons who are found by the Commission or the Federal courts to have violated the Act or Commission rules or orders. Some of these affected parties could be small businesses. Nevertheless, the Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

While the Commission recognizes that certain persons assessed a CMP for violating the Act or Commission rules or orders may be small businesses, the rule does not mandate the imposition of the maximum fixed CMP set forth in the rule on any party. As is currently the case, the imposition of the maximum fixed CMP will occur only where the administrative law judge, the Commission or a Federal court finds that the gravity of the offense warrants a CMP in that amount.[11]

The rule should not increase in real terms the economic burden of the fixed maximum CMPs set forth in the Act. Instead, the rule implements a statutory requirement that agencies adjust for inflation existing CMPs so that the real economic value of such penalties, and therefore the Congressionally-intended deterrent effect of such CMPs, is not reduced over time by inflation. Nor does the rule impose any new, affirmative duty on any party or change any existing requirements and thus no party who is currently complying with the Act and Commission regulations will incur any expense in order to comply with the new rule. Therefore, the Commission believes that this final rule will not have a significant economic impact on a substantial number of small entities.[12]

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507(d), which imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission

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[6] 61 FR 55564.

[7] The Consumer Price Index for all-urban consumers published by the Department of Labor for June 1999 was 497.9, and for June 1996 was 469.5. Therefore, the relevant cost of living adjustment factor would equal 497.9 divided by 469.5.

[8] The FCPIAA, as amended by DCIA, provides in relevant part for the rounding of any inflation adjustment "to the nearest—

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000."

Calculations of the Commission's inflation-adjusted CMP maximums are the following:

(497.9/469.5)×$110,000=$116,653.89

(497.9/469.5)×$550,000=$583,269.44

When rounded according to the statutory requirements, the inflation-adjusted CMP maximums would be $120,000 and $575,000.

[9] *See also Landgraf* v. *USI Film Products*, 511 U.S. 244 (1994) (holding that there is a presumption against retroactivity in changes to damage remedies or civil penalties in the absence of clear statutory language to the contrary).

[10] 5 U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the **Federal Register**. That provision states, however, that except when notice or hearing is required by statute, notice is not required for:

(A) * * * interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

[11] Section 6(e) of the Act, 7 U.S.C. 9a(1), directs the Commission to "consider the appropriateness of [a] penalty to the gravity of the violation" when assessing a CMP pursuant to section 6(c) of the Act, 7 U.S.C. 9. In addition, the Commission's penalty guidelines state that the Commission, when assessing any CMP, will consider the gravity of the offense in question. In assessing the gravity of an offense, the Commission may consider such factors as whether the violations resulted in harm to the victims, whether the violations involved core provisions of the Act and whether the violator acted intentionally or willfully, as well as other factors. *See* CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Money Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions; Penalty Guidelines, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,265 (November 1994).

[12] Any agency that regulates the activities of small entities must establish a policy or program to reduce and, when appropriate, to waive civil penalties for violations of statutory or regulatory requirements by small entities. An agency is not required to reduce or to waive civil penalties, however, if: (1) An entity has been the subject of multiple enforcement actions; (2) an entity's violations involve willful or criminal conduct; or (3) the violations involve serious health, safety or environmental threats. *See* Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104–121, § 223, 110 Stat. 862 (March 29, 1996). The Commission takes these provisions of SBREFA into account when it considers whether to seek or to impose a civil monetary penalty in a particular case involving a small entity.

believes this rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

In consideration of the foregoing and pursuant to authority contained in sections 6(c), 6b and 6c of the Act, 7 U.S.C. 9, 13a, and 13a–1(d), and 28 U.S.C. 2461 note as amended by Pub. L. No. 104–134, the Commission hereby amends part 143 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority of citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a–1(d) and 13(a); 31 U.S.C. 3701–3719; 28 U.S.C. 2461 note.

2. Section 143.8 is amended by revising paragraphs (a) and (c) to read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules or orders promulgated thereunder that may be assessed or enforced by the Commission under the Commodity Exchange Act pursuant to an administrative proceeding or a civil action in Federal court will be:

(1) For each violation for which a civil monetary penalty is assessed against any person (other than a contract market) pursuant to section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation; and

(ii) For violations committed on or after October 23, 2000, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation;

(2) For each violation for which a civil monetary penalty is assessed against any contract market or other person pursuant to section 6c of the Commodity Exchange Act, 7 U.S.C. 13a–1:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation; and

(ii) For violations committed on or after October 23, 2000, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation; and

(3) For each violation for which a civil monetary penalty is assessed against any contract market or any director, officer, agent, or employee of any contract market pursuant to section 6b of the Commodity Exchange Act, 7 U.S.C. 13a:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than $550,000 for each such violation; and

(ii) For violations committed on or after October 23, 2000, not more than $575,000 for each such violation.

* * * * *

(c) Unless otherwise amended by an act of Congress, the penalties set forth in this section or any penalty adjusted for inflation in the future pursuant to paragraph (b) of this section shall be applicable only to violations of the Commodity Exchange Act, Commission rules, or Commission orders which occur after the date on which such future inflation adjustments become effective.

Issued in Washington, DC on July 19, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–18728 Filed 7–24–00; 8:45 am]

BILLING CODE 6351–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Halofuginone and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient halofuginone hydrobromide and roxarsone Type A medicated articles to make two-way combination Type C medicated feeds used for prevention of coccidiosis, increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler and replacement chickens.

DATES: This rule is effective July 25, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–157 that provides for use of STENOROL® (2.72 grams per pound (g/lb) of halofuginone hydrobromide) and 3–NITRO® (45.4, 90, 227, or 360 g/lb of roxarsone) Type A medicated articles to make combination Type C medicated feeds for broiler chickens, replacement broiler breeder chickens, and replacement caged laying chickens prior to sexual maturity. The combination Type C medicated feeds contain 2.72 grams per ton (g/ton) halofuginone hydrobromide and 22.7 to 45.4 g/ton roxarsone and are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of July 3, 2000, and the regulations are amended in 21 CFR 558.265 and § 558.530 (21 CFR 558.530) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, § 558.530 is editorially amended in paragraphs (a) and (d)(5) to simplify the regulation.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.265 is amended by adding paragraphs (c)(1)(viii) and (c)(3)(ii) to read as follows:

§ 558.265 Halofuginone hydrobromide.

* * * * *

(c) * * *

(1) * * *

(viii) *Amount per ton.* Halofuginone hydrobromide, 2.72 grams plus roxarsone, 22.7 to 45.4 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(B) *Limitations.* Feed continuously as sole ration to replacement cage laying chickens until 20 weeks of age. Feed continuously as sole ration to replacement broiler breeder chickens until 16 weeks of age. Use as the sole source of organic arsenic; drug overdose or lack of water intake may result in leg weakness or paralysis. Do not feed to laying chickens or waterfowl. Withdraw 5 days before slaughter.

* * * * *

(3) * * *

(ii) *Amount per ton.* Halofuginone hydrobromide, 2.72 grams plus roxarsone, 22.7 to 45.4 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(B) *Limitations.* Feed continuously as sole ration to replacement cage laying chickens until 20 weeks of age. Feed continuously as sole ration to replacement broiler breeder chickens until 16 weeks of age. Use as the sole source of organic arsenic; drug overdose or lack of water intake may result in leg weakness or paralysis. Do not feed to laying chickens or waterfowl. Withdraw 5 days before slaughter.

3. Section 558.530 is amended by revising paragraphs (a) and (d)(5) and by removing paragraph (d)(6) to read as follows:

§ 558.530 Roxarsone.

(a) *Approvals.* Type A medicated articles: 10, 20, 50, and 80 percent to 046573 in § 510.600(c) of this chapter for use as in paragraphs (d)(1) through (d)(4) of this section.

* * * * *

(d) * * *

(5) *Permitted combinations.* It may be used in accordance with this section in combination with:

(i) Aklomide as in § 558.35.

(ii) Amprolium as in § 558.55.

(iii) Amprolium and ethopabate as in § 558.58.

(iv) Bacitracin methylene disalicylate as in § 558.76.

(v) Bacitracin zinc as in § 558.78.

(vi) Bambermycins and bambermycins plus certain anticoccidials as in § 558.95.

(vii) Chlortetracycline as in § 558.128.

(viii) Clopidol as in § 558.175.

(ix) Decoquinate alone or in combination as in § 558.195.

(x) [Reserved]

(xi) Halofuginone alone or in combination as in § 558.265.

(xii) Lasalocid alone or in combination as in § 558.311.

(xiii) Monensin alone or in combination as in § 558.355.

(xiv) Narasin alone or in combination as in § 558.363.

(xv) Nequinate as in § 558.365.

(xvi) Nicarbazin alone or in combination as in § 558.366.

(xvii) Nitromide and sulfanitran as in § 558.376.

(xviii) Penicillin and zoalene as in § 558.680.

(xix) Robenidine hydrochloride as in § 558.515.

(xx) Salinomycin alone or in combination as in § 558.550.

(xxi) Semduramicin alone or in combination as in § 558.555.

(xxii) Sulfadimethoxine, ormetoprim as in § 558.575.

(xxiii) Zoalene alone or in combination as in § 558.680.

Dated: July 17, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–18744 Filed 7–24–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

[DEA–190I]

RIN 1117–AA54

Facsimile Transmission of Prescriptions for Patients Enrolled in Hospice Programs

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim rule.

SUMMARY: DEA is amending Title 21, Code of Federal Regulations (CFR) 1306.11(g) to clearly include articulate that prescriptions for Schedule II narcotic substances for patients enrolled in hospice care certified by Medicare under Title XVIII or licensed by the state may be transmitted by facsimile. The regulation as it is currently worded grants this allowance for Schedule II prescriptions for patients "residing in a hospice * * *". This phrase has been perceived by the regulated industry as requiring that the patient reside in a hospice facility to the exclusion of other care settings; such as home hospice care. It was never DEA's intent to omit the significant number of patients receiving hospice care who reside at home. This interim rule clarifies DEA regulations in response to industry questions.

DATES: *Effective Date:* July 25, 2000.

Comments: Written comments must be submitted on or before September 25, 2000.

ADDRESSES: Comments should be submitted in triplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

What Do DEA Regulations Currently Provide?

DEA regulations permit a pharmacy to dispense a Schedule II narcotic substance pursuant to a prescription transmitted to the pharmacy via facsimile for a patient residing in a hospice certified by Medicare under Title XVIII or licensed by the state (21 CFR 1306.11(g)). The faxed prescription

serves as the original prescription for recordkeeping purposes. However, the use of the language "residing in a hospice certified by Medicare under Title XVIII or licensed by the state" has been perceived by the regulated industry as requiring that the patient reside in a hospice facility to the exclusion of other care settings, such as home hospice care. DEA has received letters from home hospice care providers inquiring about the requirements for facsimile transmission of Schedule II prescriptions for their patients. It was never DEA's intent to create an exclusion for these patients. DEA regulations were meant to cover all patients enrolled in hospice programs certified by Medicare under Title XVIII or licensed by the state, regardless of where the patient resides. Consistent with DEA's interpretation of its regulations, DEA has responded to the inquiries it has received with letters stating that its regulations allow for facsimile transmission of prescriptions to such patients.

What Change Does This Rulemaking Make?

The inquiries DEA has received indicate that the use of the term "residing" did not fully convey DEA's intended result. Therefore, DEA is modifying the language of 21 CFR 1306.11(g) to clarify that the permission for facsimile transmission of Schedule II narcotic prescriptions covers all patients enrolled in hospice programs certified by Medicare under Title XVIII or licensed by the state.

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

This rule is minor and technical in nature, merely clarifying existing DEA regulations and requirements, the intent of which was clearly indicated in the original notices. Further, to the extent that regulated parties were following a more restrictive interpretation of existing regulations, the clarification this rule makes lessens a perceived regulatory restriction to the benefit of Medicare-certified or state licensed hospice program patients needing Schedule II narcotic substances. The original rulemakings (proposed rule 61 FR 8503, DEA–139P, RIN 1117–AA33; final rule 62 FR 13938, DEA–139F, RIN 1117–AA33) clearly indicate that DEA's intent was to permit the facsimile transmission of Schedule II prescriptions for all patients enrolled in hospice programs, regardless of where the patient resides. This interim rule does not change DEA practice or policy. Rather, the regulations are being amended to more accurately reflect DEA's intention in the rule promulgated at 62 FR 13938 and to alleviate public confusion. Accordingly, DEA finds good cause to exempt this rule from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not have a significant economic impact on a substantial number of small business entities. This rulemaking clarifies the regulations regarding the facsimile transmission of prescriptions for Schedule II narcotic substances for patients enrolled in hospice programs.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, Section 1(b). DEA has determined that this is not a significant rulemaking action. This rulemaking clarifies the regulations regarding the facsimile transmission of prescriptions for Schedule II narcotic substances for patients enrolled in hospice programs. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

List of Subjects in 21 CFR Part 1306

Drug traffic control, Prescription drugs.

For the reasons set out above, 21 CFR part 1306 is amended to read as follows:

PART 1306—[AMENDED]

1. The authority citation for Part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b).

2. Section 1306.11 is amended by revising paragraph (g) to read as follows:

§ 1306.11 Requirement of prescription.

* * * * *

(g) A prescription prepared in accordance with § 1306.05 written for a Schedule II narcotic substance for a patient enrolled in a hospice care program certified and/or paid for by Medicare under Title XVIII or a hospice program which is licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this paragraph (g) and it shall be maintained in accordance with § 1304.04(h).

Dated: July 14, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 00–18572 Filed 7–24–00; 8:45 am]

BILLING CODE 4410–09–M

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Parts 1325 and 1327

[Docket No. NHTSA–00–7551]

RIN 2127–AG68

Procedures for Transition to New National Driver Register

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces that changes proposed in a notice of proposed rulemaking (NPRM) to NHTSA's National Driver Register (NDR) regulations will be adopted. These proposed changes are being adopted without change. Since all States now are participating in the new Problem Driver Pointer System (PDPS), and the transition from the old NDR to the new PDPS has been completed, the transition procedures outlined in the NPRM are no longer needed and are now removed.

DATES: This final rule becomes effective on August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William Holden, Chief, National Driver Register (NTS–24), 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–4800 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law (NCC–30), 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The National Driver Register (NDR) functions as a central, computerized index of State reports on drivers whose driving privileges have been denied, cancelled, suspended or revoked, for cause, or who have been convicted of certain serious traffic violations. It was designed to address the problem that arises when traffic law violators, after losing their license in one State, attempt to obtain a license in another State.

States participate by sending to the NDR records regarding individuals who have been subject to covered licensing actions and convictions, and by querying the NDR before they issue licenses to applicants. In this way, States can avoid issuing licenses to persons whose driving records contain violations or licensing actions that should keep them off the road. Originally established by law in 1960 (Pub. L. 86–660), the NDR was made a part of the Highway Safety Act of 1966 (Pub. L. 89–564) and has been operated since that time by the National Highway Traffic Safety Administration (NHTSA).

The NDR Act of 1982 (Pub. L. 97–364) called for the establishment of an improved NDR. The new NDR system (the Problem Driver Pointer System, or PDPS) differs from the old NDR system in that it no longer maintains full substantive records on adverse actions taken against problem drivers. Instead, it maintains only identification data on problem drivers and "points" to the State of record where the substantive adverse action data can be obtained. In addition, the new PDPS is fully automated and enables State driver licensing officials to determine virtually instantly whether another State has taken an adverse action or convicted a driver license applicant of a serious traffic offense.

Part 1325—Transition Procedures

On July 11, 1985 (50 FR 28191), NHTSA established a regulation on the Procedures for the Transition from the Old to the New PDPS NDR System (23 CFR part 1325). The regulation established procedures for the orderly transition from the NDR system established in Pub. L. 86–660 as amended, to the NDR system established in Pub. L. 97–364. The regulation provided that its purpose was to ensure that participating States understood their rights and obligations during the transition period, which was to last until such time as all States that are participating in the NDR are doing so under the PDPS.

Part 1327—Procedures for Participating

On August 20, 1991 (56 FR 41394), NHTSA established a regulation on the Procedures for Participating in and Receiving Data from the NDR PDPS (23 CFR part 1327). The regulation established procedures for States to participate in the NDR PDPS, and for other authorized parties to receive information from the NDR. It also established procedures for States to notify NHTSA of their intention to be bound by the requirements of the PDPS NDR system and for States to notify NHTSA in the event it becomes necessary to withdraw from participation.

The procedures provided that only States that have been certified as "participating States" may participate in the NDR after the transition period ends (no later than April 30, 1995). They provided, however, that States that were not certified as "participating States" by April 30, 1995, that wished to continue participating in the NDR, could request an extension of time.

Notice of Proposed Rulemaking

On April, 17, 1996, NHTSA published a notice of proposed rulemaking (NPRM) in the Federal Register, 61 FR 16729, proposing to remove the agency's regulation on procedures for transition to the new PDPS NDR. At the time the NPRM was published, all 50 States and the District of Columbia had notified NHTSA of their intention to be bound by the requirements of the PDPS NDR system. In addition, 38 States had completed their transition to the PDPS, and the remaining States had requested or been granted extensions of time. In the NPRM, the agency indicated that Part 1325 of 23 CFR would no longer be necessary and that section 1327.4 of 23 CFR would require modification once the transition from the old NDR system to the new system had been completed, and the agency proposed to make those changes. The NPRM provided a 45-day comment period for interested parties to present data, views, and arguments on the proposed action. No comments were received.

Current Status on Notification and NDR Participation

At this time, all 50 States and the District of Columbia now are participating in the NDR under the PDPS, in accordance with Part 1327. Accordingly, the transition to PDPS has been completed, and the transition regulations no longer are needed. Part 1325 of 23 CFR is hereby rescinded and the amendment to 23 CFR 1327.4 is made final.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule is not considered a significant regulatory action under section 3(f) of the Executive Order 12866. Consequently, this rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action also is not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Because the economic impacts of this rule are so minimal, no further regulatory evaluation is necessary.

Executive Order 13132

We have analyzed this rule in accordance with Executive Order 13132 ("Federalism"). We have determined that this rule does not have sufficient Federalism impacts to warrant the preparation of a federalism consultation.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It also does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this rule will have any retroactive effect. This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this proposal will not have a significant economic impact on a substantial number of small entities. The rule does not impose or rescind any requirements for anyone. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

National Environmental Policy Act

We have analyzed this action for the purpose of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not propose any new information collection requirements.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. Further, it will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects

23 CFR Part 1325

Highway safety, Intergovernmental relations.

23 CFR Part 1327

Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

Under the authority of 49 CFR part 1.50, the Deputy Administrator of the National Highway Traffic Safety Administration amends title 23 of the Code of Federal Regulations, Chapter III, as follows:

PART 1325—[REMOVED]

Part 1325 is removed.

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PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for part 1327 continues to read as follows:

Authority: Pub.L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301, *et seq.*); delegation of authority at 49 CFR 1.50.

2. Section 1327.4 is revised to read as follows:

§ 1327.4 Certification, termination and reinstatement procedures.

(a) *Certification requirement.* Only States that have been certified by NHTSA as participating States under PDPS may participate in the NDR. NHTSA will remove all records on file and will not accept any inquiries or reports from a State that has not been certified as a participating State.

(b) *Termination or cancellation.* (1) If a State finds it necessary to discontinue participation, the chief driver licensing official of the participating State shall notify NHTSA in writing, providing the reason for terminating its participation.

(2) The effective date of termination will be no less than 30 days after notification of termination.

(3) NHTSA will notify any participating State that changes its operations such that it no longer meets statutory and regulatory requirements, that its certification to participate in the NDR will be withdrawn if it does not come back into compliance within 30 days from the date of notification.

(4) If a participating State does not come back into compliance with statutory and regulatory requirements within the 30-day period, NHTSA will send a letter to the chief driver licensing official cancelling its certification to participate in the NDR.

(5) NHTSA will remove all records on file and will not accept any inquiries or reports from a State whose participation in the NDR has been terminated or cancelled.

(6) To be reinstated as a participating State after being terminated or cancelled, the chief driver licensing official shall follow the notification procedures in paragraphs (c)(1) and (3) of this section and must be re-certified by NHTSA as a participating State under PDPS, upon a determination by NHTSA that the State complies with the statutory and regulatory requirements for participation, in accordance with paragraphs (c)(2) and (4) of this section.

(c) *Reinstatement.* (1) The chief driver licensing official of a State that wishes to be reinstated as a participating State in the NDR under the PDPS, shall send a letter to NHTSA certifying that the State wishes to be reinstated as a participating State and that it intends to be bound by the requirements of section 205 of the NDR Act of 1982 and § 1327.5 of this part. It shall also describe the changes necessary to meet the statutory and regulatory requirements of PDPS.

(2) Within 20 days after receipt of the State's notification, NHTSA will acknowledge receipt of the State's certification to be reinstated.

(3) The chief driver licensing official of a State that has notified NHTSA of its intention to be reinstated as a participating State will, at such time as it has completed all changes necessary to meet the statutory and regulatory requirements of PDPS, certify this fact to the agency.

(4) Upon receipt, review and approval of certification from the State, NHTSA will recertify the State as a participating State under PDPS.

Issued on: July 18, 2000.

Rosalyn G. Millman,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 00–18574 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–070]

RIN 2115–AE47

Drawbridge Operation Regulations: Westchester Creek, Bronx River, and Hutchinson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating rules for three New York City bridges; the Bruckner Boulevard/Unionport Bridge, at mile 1.7, across Westchester Creek at the Bronx, the Bruckner Boulevard/Eastern Boulevard Bridge, mile 1.1, across the Bronx River at the Bronx, and the Hutchinson River Parkway Bridge, mile 0.9, across the Hutchinson River, at the Bronx, all in New York. The bridge owner asked the Coast Guard to change the regulations to require a two-hour advance notice for openings. This action is expected to relieve the owner of the bridge from the requirement to crew each bridge at all times by using a roving crew of drawtenders and still meet the reasonable needs of navigation.

DATES: This rule is effective August 24, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–99–029) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 25, 2000, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Westchester Creek, Bronx River and Hutchinson River, New York, in the **Federal Register** (65 FR 24162). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

Bruckner Boulevard/Eastern Boulevard Bridge

The Bruckner Boulevard/Eastern Boulevard Bridge, mile 1.1, across the Bronx River at the Bronx, has a vertical clearance of 27 feet at mean high water and 34 feet at mean low water. The existing operating regulations for the Bruckner Boulevard/Eastern Boulevard Bridge in 33 CFR 117.771(a) require the bridge to open on signal if at least a four-hour advance notice is given to the NYCDOT Radio Hotline, or NYCDOT Bridge Operations Office. From 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the bridge need not open for vessel traffic.

Hutchinson River Parkway Bridge

The Hutchinson River Parkway Bridge, mile 0.9, across the Hutchinson River at the Bronx, has a vertical clearance of 30 feet at mean high water and 38 feet at mean low water. The existing operating regulations for the Hutchinson River Parkway Bridge in 33 CFR 117.793(b) require the bridge to open on signal if at least a six-hour advance notice is given.

Bruckner Boulevard/Unionport Bridge

The Bruckner Boulevard/Unionport Bridge, at mile 1.7, across Westchester Creek at the Bronx, has a vertical clearance of 14 feet at mean high water and 21 feet at mean low water. The existing operating regulations for the Bruckner Boulevard Bridge in 33 CFR 117.815 require the bridge to open on

signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the draw need not open for vessel traffic.

The owner of the bridges, the New York City Department of Transportation (NYCDOT), submitted bridge opening log data to the Coast Guard for review. The bridge owner plans to operate all three bridges with multiple crews of drawtenders after a two-hour advance notice is given. The two-hour advance notice for all three bridges will make the advance notice requirement consistent for each bridge allowing sufficient time for the roving crews of drawtenders to operate all three bridges. The closed periods 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, for Bruckner Boulevard/Unionport Bridge and Bruckner Boulevard/Eastern Boulevard Bridge will not be changed by this rule. The number of bridge openings at the three bridges are as follows:

	1998	1999
Bruckner/Unionport	429	516
Bruckner/Eastern	0	0
Hutchinson Parkway	75	129

The Coast Guard believes that the owner's plan to use multiple crews of roving drawtenders to operate these bridges will meet the needs of navigation. The bridge owner will provide additional crews of drawtenders in the event the number of bridge opening requests increases.

The Coast Guard believes that the two-hour advance notice is reasonable because the bridges will still open on signal, except during the closed periods at Bruckner Boulevard/Unionport Bridge and Bruckner Boulevard/Eastern Boulevard Bridge, provided the two-hour notice is given. The commercial vessel transits on the Bronx River, Hutchinson River, Eastchester Creek and Westchester Creek are scheduled in advance. Providing a two-hour notice for bridge openings should not prevent vessels from transiting the waterway in a timely manner.

The advance notice time will be reduced at the Bruckner Boulevard/Eastern Boulevard and the Hutchinson River Parkway bridges from four-hour and six-hour advance notice, respectively to two-hours advance notice for both bridges.

Discussion of Proposal

The Coast Guard is revising the operating regulations for the Bronx River, Hutchinson River (Eastchester Creek) and Westchester Creek as follows:

Bruckner Boulevard/Eastern Boulevard Bridge

Revise the operating regulations at 33 CFR 117.771(a) for the Bruckner Boulevard/Eastern Boulevard Bridge, mile 1.1, across the Bronx River, to require that the draw shall open on signal if at least a two-hour advance notice is given. The requirement that the draw need not open for vessel traffic, 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, will remain unchanged by this action.

Hutchinson River Parkway Bridge

Revise the operating regulations at 33 CFR 117.793(b) for the Hutchinson Parkway Bridge, mile 0.9, across the Hutchinson River, to require that the draw shall open on signal if at least a two-hour advance notice is given.

Bruckner Boulevard/Unionport Bridge

Revise the operating regulations at 33 CFR 117.815 for the Bruckner Boulevard/Unionport Bridge, mile 1.7, across Westchester Creek, to add the requirement that the draw open on signal if at least a two-hour advance notice be given. The requirement that the draw need not open for vessel traffic, 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, will remain unchanged by this action.

Requests for bridge openings may be given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

This consistent two-hour advance notice requirement will allow the bridge owner to utilize multiple crews of drawtenders to open the bridges and still meet the reasonable needs of navigation.

The Coast Guard believes this roving crew concept will be successful because commercial vessel transits are scheduled in advance. Providing a two-hour notice for bridge openings should not prevent vessels from transiting the waterway in a timely manner.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridges will still open for marine traffic provided a two-hour notice is given. Commercial transits are scheduled in advance. Providing a two-hour advance notice should not prevent vessels from transiting in a timely manner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridges will still open for all vessel traffic after a two-hour advance notice is given. Commercial vessel transits are scheduled in advance. Providing a two-hour notice for bridge openings should not prevent vessels from transiting the waterway in a timely manner.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.771(a) is revised to read as follows:

§ 117.771 Bronx River.

(a) The draw of the Bruckner Boulevard Bridge, mile 1.1, at the Bronx, New York, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline, or the NYCDOT Bridge Operations Office. From 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the bridge need not be opened for the passage of vessels.

* * * * *

3. Section 117.793(b) is revised to read as follows:

§ 117.793 Hutchinson River (Eastchester Creek).

* * * * *

(b) The draw of the Hutchinson River Parkway Bridge, mile 0.9, at the Bronx, New York shall open on signal if at least a two-hour notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline, or the NYCDOT Bridge Operations Office.

* * * * *

4. Section 117.815 is revised to read as follows:

§ 117.815 Westchester Creek.

The draw of the Bruckner Boulevard/Unionport Bridge, mile 1.7, at the Bronx, New York, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) radio hotline, or the NYCDOT Bridge Operations Office. The draw need not be opened for vessel traffic from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday. The owner of the bridge shall provide clearance gauges according to the provisions of § 118.160 of this chapter.

Dated: July 17, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–18683 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD042–3051; FRL–6838–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of Revisions to COMAR 26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Maryland regulations regarding batch type hot-dip galvanizing installations. The revisions effect the fluxing process at these facilities and the changes allow more flexibility in controlling particulate matter emissions while maintaining the same opacity limit on this process. These revisions were submitted by the State of Maryland, Department of the Environment (MDE) as a revision to its State Implementation Plan (SIP) on July 17, 1995.

DATES: This rule is effective on September 25, 2000 without further notice, unless EPA receives adverse written comment by August 24, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us" or "our" are used we mean EPA.

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I. What Is the EPA Approving?

We are approving, as a SIP revision, changes made to the regulations that are related to batch type hot-dip galvanizing installations. These facilities perform finishing techniques on metals. In order to protect metals, such as steel, from corrosion, chemical coatings are applied. There are usually three steps in the hot dip process: surface preparation, fluxing, and galvanizing. The changes being made to the regulation effect the fluxing portion of the process. The revisions allow particulate emissions from fluxing to be controlled using a pollution control device. The revisions were submitted as a SIP revision to EPA on July 17, 1995. The changes allow these facilities to meet the current opacity limit by installing control equipment instead of imposing limits on materials used during fluxing.

II. What Facilities/Operations Does This Action Apply To?

We are approving revisions to a portion of the regulations that only apply to batch type hot-dip galvanizing operations. These facilities perform finishing techniques on metals and apply coatings to help protect the metal products from corrosion. Only these types of facilities are effected by the revisions. There are no new requirements for these facilities.

III. What Are the Provisions of the Revised Regulations?

The revised regulations allow more flexibility for these facilities to meet the 20% opacity limit contained in COMAR 26.11.12.04. The revisions allow a facility to install pollution control equipment to meet the applicable opacity limit instead of maintaining limits on the fluxing process. The revision provides that MDE must approve the use of the control device. If MDE approves the selection of a federally approved control device, no further action is required between MDE and us. However, if MDE approves the use of a non-federally approved control device then MDE must submit a source specific SIP revision to us so that use of the device can be federally approved. This additional step is required since there is no documented process provided in the regulation indicating how MDE will determine when a control device may be used in these situations. We view this revision as potentially allowing the selection of an alternative method of pollution control which has not been federally delegated to MDE.

IV. What Are the Current Limits on These Sources?

All batch type hot-dip galvanizing operations are prohibited from using ammonium chloride in prefluxes and top fluxes except where it is contained in a prepackaged flux compound of which the ammonium chloride content does not exceed 69 percent. The facilities are also prohibited from applying a flux to a galvanized end product.

V. What Supporting Material Did Maryland Provide?

Maryland provided information pertaining to the current regulation and the possible use of a control device. Visible emission limits are usually met by restrictions on the flux process which is generally uncontrolled. MDE indicates that use of a baghouse for control of particulate pollution may be a possible alternative to existing process limitations. This change provides an opportunity for operational flexibility but does not mandate require any changes at existing facilities.

VI. What Are the Environmental Effects of This Action?

Visible emission limitations are not being revised. Therefore, this action should not have an adverse impact on air quality. This action provides industry with additional flexibility to meet existing air pollution limits.

VII. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to Maryland's batch type hot-dip galvanizing regulations. The revisions pertain to the manner in which a source may comply with the current opacity limits. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 25, 2000 without further notice unless we receive adverse comment by August 24, 2000. Should we receive such comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

VIII. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This action effect batch type hot-dip galvanizing installations in Maryland only.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 25, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) This action only effects batch type hot-dip galvanizing installations in Maryland.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart 52.1070—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(149) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(149) Revisions to the Maryland Regulations related to use of pollution control devices in COMAR 26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations submitted on July 17, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 17, 1995 from the Maryland Department of the Environment to Mr. Stanley Laskowski of EPA transmitting revisions to COMAR 26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations related to use of control equipment to meet visible emission limitations.

(B) Revision to COMAR 26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations related to use of control equipment to meet visible emission limitations. Revisions were effective on May 8, 1995.

(ii) Additional Material.—Remainder of July 17, 1995, submittal related to COMAR 26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations and the use of pollution control equipment to meet visible emission limitations.

[FR Doc. 00–18528 Filed 7–24–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1501, MM Docket No. 99–319; RM–9756]

Digital Television Broadcast Services; Albany, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Waitt License Company of Georgia, L.L.C., licensee of station WFXL(TV), NTSC Channel 31, substitutes DTV Channel 12 for DTV Channel 30 at Albany, Georgia. *See* 64 FR 60150, November 4, 1999. DTV Channel 12 can be allotted to Albany at coordinates (31–19–52 N. and 83–51–43 W.) with a power of 60, HAAT of 287 meters, and with a DTV service population of 631 thousand. With this action, this proceeding is terminated.

DATES: Effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–319, adopted July 19, 2000, and released July 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel 30 and adding DTV Channel 12 at Albany.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–18765 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1577; MM Docket No. 99–86; RM–9284, RM–9671]

Radio Broadcasting Services; Wamsutter and Bairoil, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channel 261C to Wamsutter, Wyoming as the community's first local aural service; and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 266A to Wamsutter as a second local aural service, and Channel 265A at Bairoil, Wyoming as the community's first local aural service. *See* 63 FR 34621 (June 25, 1998).

Channel 261C can be allotted to Wamsutter in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 23.4 kilometers (14.6 miles) at coordinates 41–44–00 and 108–14–27. Channel 266A can be allotted at Wamsutter without the imposition of a site restriction, at coordinates 41–40–18 and 107–58–18; and Channel 265A can be allotted at Bairoil without the imposition of a site

restriction, at coordinates 42–14–42 and 107–33–24. Filing windows for Channels 261C and 266A at Wamsutter and 265A at Bairoil will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

DATES: Effective August 28, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–86, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Wamsutter, Channels 261C and 266A and Bairoil, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18754 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1571; MM Docket No. 98–204; RM–9676 and RM–9815]

Radio Broadcasting Services; Martin, Tiptonville, and Trenton, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration of a *Report and Order Order*, 63 FR 49684 (September 17, 1998), that denied a petition for rule making and the alternative allotment plan filed by Thunderbolt Broadcasting Company ("Thunderbolt") proposing the substitution of Channel 267C3 for Channel 269A at Martin, Tennessee. To accommodate its proposal to upgrade Station WCMT(FM)'s Channel 269A to Channel 267C3 at Martin, Thunderbolt also proposed to substitute Channel 247A for Channel 267C3 at Tiptonville, Tennessee and to substitute Channel 249C3 for Channel 248C3 at Trenton, Tennessee. These alternate proposals were rejected because engineering studies determined that retaining Channel 267C3 at Tiptonville would result in service to many more people than allotting Channel 267C3 to Martin.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 98–204, adopted on July 5, 2000, and released on July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18752 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1560; MM Docket No. 00–5; RM–9752]

Radio Broadcasting Services; Las Vegas and Pecos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of BK Radio, substitutes Channel 268C3 for Channel 268A at Las Vegas, NM, reallots Channel 268C3 from Las Vegas to Pecos, NM, as the community's first local aural service, and modifies its construction permit (BPH–19960829MH) accordingly. *See* 65 FR 4798, February 1, 2000. Channel 268C3 can be allotted to Pecos in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.7 miles) east, at coordinates 35–32–54 NL; 105–35–18 WL. This action also editorially amends the Table of FM Allotments to reflect the substitution of Channel 275C2 for Channel 275A at Las Vegas, NM, pursuant to Station KTRL's one-step upgrade application (BMPH–19991220ACQ) granted on March 30, 2000.

DATES: Effective August 28, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–5, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channels 268A and 275A and adding Channel 275C2 at Las Vegas and by adding Pecos, Channel 268C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18764 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1561; MM Docket No. 00–7; RM–9799]

Radio Broadcasting Services; Alva, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wing-&-a-Prayer Broadcasting Company ("petitioner"), allots Channel 296C3 to Alva, OK, as the community's fourth local FM service. *See* 65 FR 4400, January 27, 2000. A filing window for Channel 296C3 at Alva will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 28, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–7, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 296C3 at Alva.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18763 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1520; MM Docket No. 99–215; RM–9337, RM–9992]

Radio Broadcasting Services; Mason, Menard and Fredericksburg, TX.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of BK Radio, Jayson and Janice Fritz, Foxcom, Inc., and Kent S. Foster, this document allots Channel 239C2, Channel 273C2, and Channel 289C2 to Mason, Texas. BK Radio may amend its pending application for Channel 281C2 at Mason, Texas, to specify operation on Channel 239C2 without loss of cut-off protection. Jayson and Janice Fritz may amend their pending application for Channel 281C2 at Mason, Texas, to specify operation on Channel 289C2 without loss of cut-off protection. Foxcom, Inc. may amend its pending application for Channel 281C2 at Mason, Texas, to specify operation on Channel 273C2 without loss of cut-off protection. This document also allots Channel 265C2 to Menard, Texas. See 64 FR 33237, published June 22, 1999. The reference coordinates for the Channel 265C2 allotment at Menard, Texas, are 30–44–00 and 99–44–00. The reference coordinates for the Channel 239C2 allotment at Mason, Texas, are 30–33–24 and 99–25–34. The reference coordinates for the Channel 289C2 allotment at Mason, Texas, are 30–31–40 and 99–07–51. The reference coordinates for the Channel 273C2 allotment at Mason, Texas, are 30–38–21 and 99–20–36. The reference coordinates for the Channel 281C2 allotment at Mason, Texas, are now 30–44–55 and 99–13–49. The counterproposal filed by Munbilla Broadcasting to allot Channel 249C2 to Fredricksburg, Texas will not be considered in this proceeding because it required each applicant to amend their respective application to specify operation on Channel 273C2 at Mason. This proposal would not comply with the separation requirements set forth in Section 73.207(b) of the Rules.

DATES: Effective September 5, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 99–215, adopted June 28, 2000, and released July 7, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 239C2 at Mason.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 289C2 at Mason.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 273C2 at Mason.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Menard, Channel 265C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18762 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1573; MM Docket No. 99–222; RM–9602 and RM–9780]

Radio Broadcasting Services; Fountain Green and Levan, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A at Fountain Green, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 34750, June 29, 1999. The coordinates for Channel 260A at Fountain Green are 39–37–42 and 111–38–24. In response to a counterproposal filed by Micro Communications, Inc. we will substitute Channel 244C1 for Channel 256A at Levan, Utah, and modify the construction permit for Station KBLN to specify operation on Channel 244C1. The coordinates for Channel 244C1 at Levan are 39–33–32 and 111–46–55. A filing window for Channel 260A at Fountain Green will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 28, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–222, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Fountain Green, Channel 260A and by removing Channel 256A and adding Channel 244C1 at Levan.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18759 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1572; MM Docket No. 99–343; RM–9758, BPED–19990630MB]

Radio Broadcasting Services; Elberton, Lavonia and Pendergrass, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio Elberton, Inc., reallots Channel 221A from Elberton, GA, to Lavonia, GA, as the community's first local aural service, and modifies Station WWRK–FM's license accordingly. Channel 221A can be allotted to Lavonia in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.8 miles) west, at coordinates 34–27–26 NL; 83–14–27 WL, to accommodate petitioner's desired transmitter site. This action found that the public interest was better served by the provision of a first local aural service for the more populous community of Lavonia than by the mutually exclusive proposal of Waves of Mercy Productions, Inc., to provide a first local aural service on noncommercial educational FM Channel 220A at Pendergrass, GA (BPED–19990630MB). *See* 64 FR 70672, December 17, 1999.

DATES: Effective August 28, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–343, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 221A at Elberton and by adding Lavonia, Channel 221A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18758 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 072000A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

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BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Western Aleutian District was established as 5,245 metric tons (mt) by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,445 mt, and is setting aside the remaining 800 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Western Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 2000.

Rebecca Lent,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18747 Filed 7–20–00; 1:46 pm]

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DEPART

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7 CFR Pa

RIN 0584–

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AGENCY: F
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ACTION: P

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Proposed Rules

Federal Register
Vol. 65, No. 143
Tuesday, July 25, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 215, 225, 226, and 245

RIN 0584–AC21

Special Milk Program for Children, Summer Food Service Program, Child and Adult Care Food Program, and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Disclosure of Children's Eligibility Information

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for the Special Milk Program for Children, Summer Food Service Program, Child and Adult Care Food Program and the Determination of Eligibility for Free and Reduced Price Meals and Free Milk in Schools to establish new requirements. These requirements relate to the confidentiality of information about individuals who receive free and reduced price meals and free milk. The rule would protect the confidentiality of personal data, but would allow the limited disclosure and use of a participant's program eligibility information or eligibility status. That information could be used by certain education, health, and means-tested nutrition programs. The rule reflects the confidentiality provisions of the Healthy Meals for Healthy Americans Act of 1994.

DATES: To be assured of consideration, comments must be postmarked on or before November 22, 2000.

ADDRESSES: Address all comments concerning this proposed rule to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. You also may submit comments electronically at cndproposal@fns.usda.gov. All written submissions received will be available for public inspection in Room 1007 at the address listed above, during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Semper or Mary Jane Whitney at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Background

The Food and Nutrition Service (FNS) has had a longstanding policy that the information obtained from children's free and reduced price meal or free milk applications is confidential. Under this policy, the determining agency could only use the information on the application for program purposes. (For the purpose of this preamble, a determining agency means the State agency, school food authority, school (including a private or charter school), child care institution or Summer Food Service Program sponsor that makes the free and reduced price meal or free milk eligibility determination.) FNS applied this policy to all the Child Nutrition Programs, which include the National School Lunch Program (NSLP), Special Milk Program for Children (SMP), Summer Food Service Program (SFSP), and the Child and Adult Care Food Program (CACFP). FNS based the policy on sections 9(b)(4) and (5), 11(e), and 17(g)(2) of the National School Lunch Act (NSLA) (42 U.S.C. 1758(b)(4) and (5), 1759a(e), and 1766(g)(2)). These sections of the NSLA prohibit the overt identification of individuals who are eligible for free and reduced price meals or free milk. FNS incorporated the overt identification provision into the regulations at 7 CFR 215.13a(a) and (d)(3) for the SMP in child-care institutions; 225.6(c)(3)(ii)(C) and (F) for the SFSP; 226.23(b) and (c)(3) and (5) for the CACFP; and 245.1(b), 245.8(b), and 245.10(a)(4) for the NSLP, SBP, and SMP in schools. The policy permitted the determining agency to disclose only aggregate information, such as the number of children eligible for free and reduced price meals in an individual school. However, the determining agency could only disclose other information with the consent of children's parents or guardians.

Other programs have had increased interest in access to information about individuals who are eligible for free and reduced price meals or free milk. In fact, several Federal agencies, such as the Department of Labor and the Department of Education, cite free and reduced price meal eligibility as an eligibility criterion for some programs that they administer. Additionally, some Federal, State, and local education programs have requested free and reduced price meal eligibility status to use for statistical and research purposes.

FNS recognized that sharing information may benefit program participants and their households. FNS issued guidance to determining agencies in June 1992 and again in August 1998 concerning multi-use applications in the NSLP, SBP or SMP. The 1998 guidance also stated that the CACFP could also use a multi-use application. Using the multi-use application approach, households can indicate interest in programs in addition to applying for free and reduced price school meals or free milk. Determining agencies that choose to use a multi-use application must include a consent statement on the free and reduced price meal and free milk application. The consent statement lists the programs or uses to which the household may indicate interest, permits children's parents or guardians to limit consent to specified uses or programs and advises households that agreeing to the disclosure of their free and reduced price eligibility is not a requirement for participation in the child nutrition programs. The parent/guardian must sign the consent indicating that they understand that the determining agency may share eligibility information with these programs. The determining agency may also use a consent form separate from the free and reduced price application.

I. What Is a Disclosure and What Is the Disclosure Statute?

Any time information is revealed or used for a purpose other than for the purpose for which the information was obtained is a disclosure. This is true even when the same agency that obtained the information is the one wishing to use it for another purpose. The term "disclosure," refers to access, release, or transfer of personal data about participants by means of print, tape, microfilm, microfiche, and electronic communication or other means. In this rule, the data would be individual children's free and reduced

price eligibility status or other information obtained through the free and reduced price meal or free milk eligibility process. In the CACFP, this could also include a participating adult's eligibility information.

As discussed above, determining agencies were previously prohibited from disclosing personal data unless they first obtained consent. Section 106 of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, amended Section 9(b)(2)(C) of the NSLA to allow, without consent, limited disclosure of eligibility information about free and reduced price meal eligibility. The statute authorizes the disclosure of participants' free and reduced price information obtained from a free and reduced price meal application or obtained through direct certification. Direct certification is the process by which program operators determine program eligibility by directly communicating with the appropriate State or local agency to obtain documentation that an individual is a member of a food stamp household or a family receiving assistance under certain State programs for the Temporary Assistance for Needy Families (TANF). The statute authorizes disclosure to:

(1) Persons directly connected with the administration or enforcement of the NSLA or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) (CNA) or a regulation enacted under either of those Acts;

(2) Persons directly connected with the administration or enforcement of a Federal education program;

(3) Persons directly connected with the administration or enforcement of a State health or education program (other than Medicaid) administered by the State or local education agency;

(4) Persons directly connected with the administration or enforcement of a Federal, State or local means-tested nutrition program with eligibility standards comparable to the NSLP;

(5) The Comptroller General of the United States for audit and examination; and

(6) Law enforcement officials involved in investigating alleged violations of any of these programs.

The statute specifies that certain of the persons and programs listed above may have access to participants' names and eligibility status only, while other persons or programs may have access to all eligibility information. Any disclosures not authorized by the statute require the prior consent of parents or guardians. The statute also specifies a fine of not more than $1,000 or imprisonment of not more than 1 year, or both, for unauthorized disclosures of free and reduced price eligibility information.

Please note that although the statute allows limited disclosure, determining agencies are not required by the statute or by this proposed rulemaking to disclose eligibility information. This is a State and local decision.

II. What Programs Do the Disclosure Provisions Apply To?

The new disclosure provisions appear in the part of the NSLA that pertains to the free and reduced price meal application process for the NSLP. However, based on FNS practices and policies dealing with issues in the past and need for consistency among the Child Nutrition Programs, we are proposing to apply the confidentiality provision to information obtained in all the Child Nutrition Programs including the SBP, SMP, CACFP, and camps and enrolled sites in the SFSP. Therefore, this rule would also amend the regulations for each of these programs. The various sections to be amended are listed following the discussion of each issue addressed by this rule. The minor wording differences necessary to accommodate the terminology for the specific programs are not addressed in the preamble. School food authorities, SMP child-care institutions, CACFP institutions, and SFSP sponsors are collectively referred to as "program operators" in the preamble.

III. Does the Statute Limit the Disclosure to Eligibility Information That Program Operators Obtain From the Free and Reduced Price Meal or Free Milk Application or May Program Operators Disclose Information That They Obtain From Other Sources?

The statute refers only to the use and disclosure of information obtained from an application for free and reduced price meals or through direct certification. The statute does not refer to other information concerning program eligibility, such as information obtained through verification efforts. State agencies and school food authorities are required to verify the information on selected free and reduced price meal applications for the NSLP and the CACFP. These requirements are in sections 245.6a for the NSLP and the SBP and 226.23(h) for the CACFP. Verification may include obtaining documentation of eligibility from the applicant households and collateral contacts with third parties to confirm information provided by the household. This proposal would expand the statutory provision and treat all program eligibility information, including verification information not originating with the free and reduced price meal application, the same as information obtained from the free and reduced price meal application. All the disclosure provisions would apply.

IV. Why Is There Need for a Proposed Rule?

The statute is clear regarding disclosure of information to specific persons and programs for some uses, but not others. For example, there may be some question as to what constitutes an education program or who are persons directly connected with the administration or enforcement of programs under the NSLA or CNA. Also, student privacy and the potential for misuse of confidential information are issues of concern. Therefore, FNS is issuing this proposal to invite comment on which persons and programs should have access within the structure provided by the statutory provisions.

On December 7, 1998, FNS issued to all State agencies guidance on the disclosure of program eligibility information under the amendments made by Public Law 103–448 to section 9(b)(2)(C) of the NSLA. This proposed rule generally reflects the content of the guidance. However, once a final rule is published it will supersede the guidance.

V. What Information May Be Disclosed Without Consent?

A. Disclosure of Aggregate Information

This proposed rule would continue to permit program operators to disclose school level aggregate information (*e.g.*, numbers of participants eligible for free meals) that does not individually identify participants to any person or program. Program operators are not required to obtain parental consent for this type of disclosure. The authority for disclosure of aggregate information would be added to sections 215.13a(g)(2), 225.15(g)(2), 226.23(i)(2), and 245.6(f)(2) by this proposed rule.

B. Disclosure of Names and Eligibility Status, As Specified in the Statute

Section 9(b)(2)(C)(iii)(II) of the NSLA specifies that information obtained from the free and reduced price application and through direct certification may be disclosed to "persons directly connected" with the administration or enforcement of certain programs. The statute only explicitly mentions eligibility information and does not specifically mention participant's names. However, while the law does not mention the disclosure of participants' names, the eligibility status would be no

different than aggregate information without the names. Thus, this proposed rule would add sections 215.13a(g)(3), 225.15(g)(3), 226.23(i)(3), and 245.6(f)(3) to permit the disclosure of only the participants' names and eligibility status to persons directly connected with the administration or enforcement of the following programs:

(1) *Federal education programs.* In section 9(b)(2)(C)(iii)(II)(aa) of the NSLA, Congress specified that eligibility status may be disclosed to "persons directly connected" with the administration or enforcement of a Federal education program. The law intends that persons directly connected with a Federal program which provides academic or vocational educational benefits to children may have access to a student's eligibility status for Child Nutrition Programs. This would include persons directly responsible for administering or enforcing program regulations under the Department of Education. The Department of Education's programs are too numerous to list, but would include such programs as Title I; TRIO Programs; migrant education; educational research projects, such as the National Assessment of Educational Progress; vocational programs under the Carl D. Perkins Vocational and Applied Technology Education Act; and enforcement activities, such as program compliance and civil rights reviews.

The statute allows the disclosure of eligibility status to educational programs under the jurisdiction of any Federal agency, not just the Department of Education. Therefore, the disclosure of eligibility status to persons directly connected to the administration or enforcement of vocational training programs under the Department of Labor, such as educational/job training programs under the Workforce Investment Act (previously the Job Training Partnership Act), and any compliance reviews under those programs would fall within the category of "Federal education programs." FNS encourages commenters to provide specific information about other Federal programs that they believe may qualify in this regard.

(2) *State health or education programs (other than Medicaid).* In section 9(b)(2)(C)(iii)(II)(bb) of the NSLA, Congress specified that eligibility status may be disclosed to "persons directly connected" with the administration or enforcement of a State health or education program administered by either a State agency or local educational agency. FNS emphasizes that the statute specifies that these must be State health or education programs.

To assist with health insurance outreach for children from low-income households, FNS included in its prototype application for free and reduced price meals, issued August 1998, a provision under which parents may consent to the sharing of information with Medicaid and the State Children's Health Insurance Program (SCHIP). Subsequently, FNS developed and distributed to State agencies several additional prototype forms to facilitate the disclosure of children's free and reduced price meal eligibility information, with parental/guardian consent, to identify and enroll children in Medicaid and SCHIP. However, the Agricultural Risk Protection Act of 2000, (Public Law 106–224), enacted on June 20, 2000, amended Section 9(b)(2)(C) of the NSLP (42 U.S.C. 1751(b)(2)(C)) to permit limited disclosure of children's free and reduced price meal eligibility information to "a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa *et seq.*)." The provision is effective October 1, 2000. Additionally, Section 263 of Public Law 106–224 requires that the Secretary promulgate regulations to implement its provisions. FNS will issue a rule to implement the authority to disclose children's free and reduced price meal eligibility information for State Medicaid and SCHIP purposes as a separate implementing rule. In the interim, FNS continues to partner with the Departments of Education and Health and Human Services to facilitate the enrollment of children in State Medicaid and SCHIP.

Currently, there is increased emphasis on developing comprehensive school health programs in recognition of the contribution proper health and well-being make in maximizing educational opportunities. State health programs administered by a State agency or local education agency that may have access to participants' eligibility status, without consent, could include alcohol and drug abuse education programs, dental, immunization and vision services, and mental health services under the sponsorship of the school.

Additionally, Congress included only State education programs and Federal education programs, as previously discussed. Therefore, no program eligibility information (including names and eligibility status) may be disclosed for local education programs without consent. Representatives of State or local education agencies evaluating the results and compliance with student assessment programs would be covered only to the extent that the assessment programs were established at the State, not local level.

(3) *Federal, State or local means-tested nutrition programs.* Section 9(b)(2)(C)(iii)(II)(cc) of the NSLA permits the disclosure and use of eligibility status for some other Federal, State and local means-tested nutrition programs. These are programs with eligibility standards comparable to the NSLP (*i.e.*, a maximum eligibility limit of 185 percent of the Federal poverty level ($30,895 annually for a household of four for School Year 1999–2000)). This would include the Food Stamp Program and some State and local means-tested nutrition programs as eligible recipients of eligibility status.

C. Disclosure of All Eligibility Information, As Specified in the Statute

In addition to names and eligibility status, determining agencies may disclose, without consent, any or all information concerning participation, including the information obtained from the application for free and reduced price meals or free milk, through direct certification, or through verification, to the following:

(1) *Persons directly connected with the administration or enforcement of National School Lunch Act or Child Nutrition Act programs.* Section 9(b)(2)(C)(iii)(I) permits persons directly connected with the administration or enforcement of the NSLA or CNA to have access to all information obtained from the free and reduced price meal application or direct certification. As discussed above, FNS is proposing to treat all program eligibility information the same as information obtained from the application or direct certification. Therefore, this rule would permit the disclosure of all program eligibility information to persons directly connected with the administration or enforcement of the NSLA or CNA. This means that program eligibility information may now be shared, without consent, between Child Nutrition Programs and other programs authorized under those Acts. Although, accordingly, eligibility information may now be shared with the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), this rule in no way affects the sharing of information about WIC participants. Information about WIC participants may be shared only in accordance with 7 CFR part 247. This means that program eligibility information may be shared

with another Child Nutrition Program, even if the programs are sponsored by different entities. For example, a public school may disclose information from children's free and reduced price school meal application, without consent, to a person directly connected with an organization, such as Parks and Recreation, administering a Summer Food Service Program. This provision is in sections 215.13a(g)(4)(i), 225.15(g)(4)(i), 226.23(i)(4)(i), and 245.6(f)(4)(i) of this proposed rule.

(2) *Certain law enforcement officials.* Section 9(b)(2)(C)(iii)(III)(bb) of the NSLA allows disclosure of all information obtained from the free and reduced price meal application or direct certification to Federal, State, and local law enforcement officials who are investigating alleged violations of any of the programs under the NSLA or CNA or any of the programs permitted to receive names and eligibility status. As discussed above, FNS is proposing to treat all program eligibility information the same as information obtained from the application or direct certification. Therefore, this rule would permit the disclosure of all program eligibility information, including information obtained through any verification procedures, to these law enforcement officials. This provision is in section 215.13a(g)(4)(iii), 225.15(g)(4)(iii), 226.23(i)(4)(iii), and 245.6(f)(4)(iii) of this proposed rule.

Thus, this proposal would allow disclosure of any or all program eligibility information to law enforcement officials investigating alleged violations of the Child Nutrition Programs and WIC. Also, the proposal would permit disclosure of this information to law enforcement officials who are investigating an alleged violation of a program authorized access to eligibility status under the NSLA. This could be a Federal education program, a State health or education program (other than Medicaid) administered by the State or local education agency, or other Federal, State or local means-tested nutrition programs (such as the Food Stamp Program). The statute does not authorize disclosure of any program eligibility information (other than aggregate information) to law enforcement officials investigating alleged violations of other programs or laws. For example, law enforcement officials involved in child custody cases are not authorized access under this provision. However, FNS continues to advise that if the request for information is in the form of a subpoena issued by a court or other government body possessed of subpoena power, program operators should seek guidance from their legal counsel and the State agency.

(3) *The Comptroller General of the United States.* Section 9(b)(2)(C)(iii)(III)(aa) of the NSLA specifically authorizes the Comptroller General of the United States to have access to information obtained from the free and reduced price meal application or direct certification for audit and examination. As discussed above, FNS is proposing to treat all program eligibility information the same as information obtained from the application or direct certification. Therefore, this rule would permit the disclosure of all program eligibility information to the Comptroller General. This provision would be added to sections 215.13a(g)(4)(ii), 225.15(g)(4)(ii), 226.23(i)(4)(ii), and 245.6(f)(4)(ii) by this proposed rule.

VI. Who Are "Directly Connected Persons?"

The confidentiality provision in the NSLA permits disclosure and use of certain program eligibility information specifically to "persons directly connected with the administration or enforcement" of various statutes and programs. This rule would define "persons directly connected with the administration or enforcement" as Federal, State, and local program operators responsible for the ongoing operation of the programs or activities listed in section 9(b)(2)(C) of the NSLA and compliance officials responsible for monitoring, reviewing, auditing, or investigating a program, who are thereby authorized access to children's free and reduced price eligibility information as a specified function of those activities. It may also include contractors or grantees, who act on their behalf. Grantees and contractors, like others involved in the administration and enforcement of a program, may only use the information for program purposes.

The statute does not imply that Congress intended that programs or individuals have unlimited access to free and reduced price eligibility information. Rather, there must be a legitimate need to know in order to provide a service or carry out an activity authorized under the disclosure provision of section 9(b)(2)(C) of the NSLA. For example, persons having legitimate access may include the school principal, who has overall responsibility for specific programs within the school, which are entitled to eligibility information. Additionally, the school food service director, cafeteria manager and cafeteria staff, who are responsible for determining free and reduced price school meal eligibility and/or verifying the information, issuing the medium of exchange for free and reduced price meals, or for counting meals served by type are persons having legitimate access to free and reduced price eligibility information. Federal, State and local reviewers responsible for reviewing or auditing compliance with the Program regulations may have access to program eligibility information for monitoring purposes. Reviews may include civil rights reviews to ensure that there is no discrimination in the food service, as well as administrative reviews or audits, such as those conducted under the Coordinated Review Effort. Release of free and reduced price eligibility information to teachers, cafeteria staff or other persons who are not involved in any program function which would necessitate knowledge about eligibility would not be entitled to that information. Additionally, parent organizations could not have access either, since they would not be involved in the administration or enforcement of the program. The intent is to limit disclosure of program eligibility information to those who have a "need to know" program eligibility information for proper administration or enforcement of the particular program. A description of "persons directly connected" is included in proposed sections 215.13a(g)(5), 225.15(g)(6), 226.23(i)(6), and 245.6(f)(5).

VII. For What Purposes May Program Eligibility Information Be Used?

The State agency and program operator may use program eligibility information for administering or enforcing the program for which the information was obtained. In addition, any other Federal, State or local agency charged with administering or enforcing the program may use the information for that purpose. This provision would be added to §§ 215.13a(g)(6), 225.15(g)(5), 226.23(i)(5), and 245.6(f)(6).

VIII. Who Decides Whether To Disclose Program Eligibility Information?

The agency that makes the free and reduced price meal or free milk determination is the only agency that can decide to disclose program eligibility information. In most cases, this is the school food authority or school, Summer Food Service Program sponsor, or Child and Adult Care Food Program sponsor, but sometimes the State agency performs this function. This provision is at proposed §§ 215.13a(g)(1), 225.15(g)(1), 226.23(i)(1), 245.6(f)(1).

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IX. What If Student Records and Other Systems Are Computerized?

Many schools are now computerized, and individual student information is often part of a Statewide electronic data base under the responsibility of the State's Department of Education. The information may also be part of a local school district data base. Typically, these databases contain "directory information," such as student's name, address, phone number, and "education records," such as achievement test scores, grades, special education plans, and evaluations. The Department of Education has regulations restricting access to "education records," including those on computerized systems. These regulations are found at 34 CFR part 99.

Program operators should take note that "education records" do not include Child Nutrition Program eligibility information. Therefore, the Department of Education regulations do not extend to program eligibility information for the Child Nutrition Programs. Nor is compliance with the Department of Education confidentiality regulations sufficient to meet the confidentiality protections in the NSLA. Therefore, program operators must ensure that to the extent that Child Nutrition Program eligibility information is kept together with other school records, the program operators, who may also be database managers, establish controls to ensure that the program eligibility information is used only for the authorized purposes and is available only to persons directly connected with the program.

Access to eligibility information for authorized purposes and to persons directly connected with the program is of particular concern in computerized databases. FNS is not proposing any specific methods to ensure compliance with the NSLA confidentiality provisions in these situations. However, FNS remains concerned about the extent of access to the databases, and ways to protect program eligibility information from disclosure and use beyond what is authorized by Congress. Since FNS experience in this area is limited, commenters are encouraged to provide their experiences with student databases in which access restrictions vary according to the sensitivity of the different data items in the database. An example would be a school district database where access to students' academic records is more restricted than is access to students' class schedules, addresses, and other common information. Comments on this subject will aid FNS in determining whether special controls are necessary in situations in which program eligibility information reside in the same database where other student information is maintained. While this rule would not forbid such arrangement, FNS wishes to emphasize that to comply with this rule, database managers, who may also be program operators, must restrict access to program eligibility information to only those individuals and uses authorized by statute and regulation.

X. Who Needs To Be Notified or May Give Consent for the Disclosure of Program Eligibility Information to Other Persons or Programs?

In general, when eligibility status or other information from the program eligibility information is shared with the persons and/or programs as authorized by the NSLA confidentiality provisions, the statute does not require that program operators first obtain consent. However, FNS believes that households should be informed of any potential disclosure of program eligibility information at the time of program application. This notice could be in the notice/letter to households that accompanies the application. It could also be on the application itself, or, for participants directly certified for free meals or milk, on the document informing the household of the participant's eligibility through direct certification. While FNS recommends that notice be given, FNS is not proposing to amend the regulations to require the notice. Different requirements apply with respect to disclosure of social security numbers as discussed later in this preamble.

XI. Consent

Determining agencies that want to disclose more information than that specifically permitted by the NSLA or for programs not specified in the NSLA provisions *must* obtain consent prior to the disclosure. For children, the consent must be given by the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal or free milk application. For an adult participant in the CACFP, the consent must be given by the adult participant, unless a guardian has been appointed to act for the adult. The consent may be accomplished as part of the free and reduced price application, such as on a multi-use application, or at a later time. This approach is already authorized by the multi-use application guidance discussed earlier in the preamble. Also, the State agency or program operator may rely on a consent form initiated by the program or agency that wants to use the free and reduced price information. For example, the agency administering a local eye care program, which provides free or low cost eye examinations to low income children may request written permission from parents/guardians to get their children's free or reduced price meal eligibility information from their children's schools. The eye care program, in this case, would be securing from the household the consent for the determining agency to release the information to the administering agency.

In the case of direct certification, school officials or the agency administering the food stamp, FDPIR, or TANF, as appropriate, may add a consent statement to the notice of eligibility for free meals or milk that is provided to the household. A household interested in obtaining the specified services or benefits would sign and return the consent to the school.

FNS wishes to emphasize that under this proposed rule, only a parent or guardian who is part of the household or family for program application purposes may provide consent to disclose. In the Child Nutrition Programs, generally the household or family is the group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. For adults in the CACFP, it is the adult and the adult's spouse and dependent(s) residing with the adult. (See the definitions of "family" or "household" in 7 CFR 215.2(k) for the SMP in child-care institutions, 225.2 for the SFSP, 226.2 for the CACFP, and 245.2 for the SMP in schools and the SBP and NSLP). Thus, in most cases of divorce or separation, this means the custodial parent or guardian. However, if custody is shared, the parents or guardians must decide who has primary custody for purposes of making application for the program. The parent or guardian having such custody would be the only person who could provide consent to disclosure of program eligibility information.

FNS is concerned about the personal financial data at stake. This information is unlike other student records that directly concern the education of the child, and in which both parents have a direct interest. The program eligibility information in these circumstances is associated with one parent or guardian, and FNS believes that only that parent or guardian should be able to give consent to its disclosure. FNS recognizes that this is a difficult issue and is particularly interested in comments on this point.

Regardless of the document used to secure the consent, officials must

provide the household with adequate information for them to determine whether or not to give consent to the proposed disclosure. This rule would amend §§ 215.13a(g)(9), 225.15(g)(9), 226.23(i)(9), and 245.6(f)(9) to set the minimum standards for that notice. To be valid, the consent must be in writing. It must identify the information that will be shared, how the information will be used, and be signed and dated by the participant's parent or guardian (or adult applicant or participant in the CACFP). It must also state that failing to sign the consent will not affect the participant's eligibility for the program for which application is being made and that the information will not be shared by the receiving program for other than program related reasons.

Parents/guardians/adult applicants and participants must also be permitted to limit the consent to only those programs with which they wish to share information. For example, the consent could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for benefits from a particular program. Finally, the consent must be signed and dated by a parent or guardian (or adult applicant or participant in the CACFP). Readers should note that although any adult household member may sign the free and reduced priced meal or free milk application, the consent must be signed by the parent or guardian for the child, or by the adult applicant or participant in the CACFP or that person's guardian. Only those persons have the authority to consent to these disclosures. Information may not be disclosed to individuals or programs under any circumstances beyond that authorized by law or the implementing regulation without consent.

XII. What Is Required When Social Security Numbers Are Disclosed?

There is no statutory requirement that applicants or participants must be notified of the potential use of program eligibility information. However, the Privacy Act requires that notice be given of the intended uses of social security numbers. Thus, if a State agency or program operator intends to release social security numbers, either through the disclosures authorized in the NSLA or with specific parental consent, then section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note) requires that notice of the planned uses of the social security number be given. The easiest method is to include the planned uses in the Privacy Act statement currently required by §§ 225.15(f)(4), 226.23(e)(1)(ii)(F), and 245.6(a)(1). The only uses currently listed in the regulations and the prototype application are for the determination and verification of eligibility for program meals. Any State agency or program operator that plans to release the social security number for other purposes must amend the Privacy Act statement to reflect this. State agencies and program operators are responsible for ensuring the adequacy of their Privacy Act statement, and FNS encourages them to consult with their legal counsel. This requirement would be added to sections 215.13a(g)(7), 225.15(g)(7), 226.23(i)(7), and 245.6(f)(7) by this proposed rule.

This rule would also propose to revise the current Privacy Act notice required in Parts 225, 226, and 245 and would propose a new Privacy Act notice requirement for the SMP in child-care institutions to ensure Privacy Act compliance in that program. The Privacy Act statements required to be given at the time of application would each be revised to replace the three sentences giving detailed descriptions of the potential use of the social security number for verification with a more general statement that the number will be used in the administration and enforcement of the program. An additional Privacy Act notice is required to be given before verification (for those programs subject to verification). That notice would continue to provide the more detailed description on the potential uses of social security numbers in verification. The sections that would be revised are §§ 225.15(f)(2)(vi), 226.23(e)(1)(ii)(F), and 245.6(a)(1). The Privacy Act requirement for the SMP in child-care institutions would be added at section 215.13a(f).

XIII. Are Agreements Required Before Disclosing Program Eligibility Information?

Persons and programs to which program eligibility information is disclosed under the statute (see Section I of the preamble), may only use the information in the administration or enforcement of the programs for which the information was released. The receiving agency cannot transfer or otherwise disclose eligibility information to a third party. This rule recommends that the determining agency enter into agreements with the persons or programs receiving the information before any disclosures are made, including disclosures made with consent. This is to ensure proper use of the information.

FNS wishes to ensure that parties receiving program eligibility information (including participants' names and eligibility status) fully understand the limitations on the use of the information and the penalties for misusing the information. The agreement should identify the programs and persons receiving the information and describe the information to be disclosed and how it will be used. It should also describe how the information will be protected from unauthorized uses and disclosures and describe the penalties for unauthorized disclosure. This provision would be added to §§ 215.13a(g)(10), 225.15(g)(10), 226.23(i)(10), and 245.6(f)(10).

XIV. Are There Any Penalties for Unauthorized Disclosure or Misuse of Information?

As mandated in the statute, the proposal includes criminal penalties for any person who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by Federal law, information disclosed under these provisions. The penalties may include a fine of up to $1,000 or imprisonment of up to 1 year or both. These penalties would be described in §§ 215.13a(g)(11), 225.15(g)(11), 226.23(i)(11), and 245.6(f)(11) of the proposed rule.

XV. Summary

FNS is proposing to amend the Child Nutrition Program regulations to permit the release of program eligibility information that is consistent with the revised provisions of the NSLA. FNS' goal is to facilitate the release of free and reduced price information to specified programs or individuals, without sacrificing the confidentiality of the individuals or their parents/guardians.

Readers should note that the law does not require State agencies and program operators to share information but provides authority for State agencies and program operators to do so. Also, program operators must continue to prevent the overt identification of children receiving free and reduced price meals or free milk. This includes following such practices as not publishing, posting or announcing the names of children eligible for free or reduced price meals or free milk. Program operators are also prohibited from making children eligible for free and reduced price meals or free milk use special serving lines or special tokens or tickets that are not made available to all students.

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Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes a requirement for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have "Federal mandates" which may result in expenditures of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates of $100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. By permitting access to certain eligibility information, this rule could reduce duplicate paperwork by certain agencies which serve low-income children and adults. The rule could streamline operations of those programs. The provisions of this rule also may enhance access to these programs by needy children. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact resulting from implementation of this rulemaking. Although there may be some burdens associated with this rule, the burdens would not be significant and would be outweighed by the benefits of sharing of information.

Executive Order 12372

The Special Milk Program, the Summer Food Service Program, and the Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.556, 10.559, and 10.558 respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice at 48 FR 29115, June 24, 1983).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble of the final rule. Before any judicial challenge to the provisions of this rule or the application of its provisions, all administrative procedures that apply must be followed. The only administrative appeal procedures relevant to this proposed rule are the hearings that FNS must provide for decisions relating to eligibility for free and reduced price meals and free milk (section 245.7 for the NSLP, SBP, and SMP in schools; section 226.23(e)(5) for the CACFP).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on proposed information collection.

Written comments must be received on or before September 25, 2000.

Comments concerning the information collection aspects of this proposed rule should be sent to Brenda Aguilar, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 215, Special Milk Program; 7 CFR Part 225 Summer Food Service Program; 7 CFR Part 226, Child and Adult Care Food Program; 7 CFR Part 245 Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584–0005, 0584–0280, 0584–0055 and 0584–0026, respectively.

Expiration Date: 8/31/02, 2/28/03, 5/31/01, and 9/30/01, respectively.

Type of Request: Revision of currently approved collection.

Abstract: Under this proposal, determining agencies may disclose applicants' names and eligibility, without consent, to persons directly connected with the administration or enforcement of the following programs: Federal education programs; State health and State education programs administered by the State or local education agency; Federal, State, or local means-tested nutrition programs with eligibility standards comparable to the Child Nutrition Programs (*i.e.*, food assistance to households with income at or below 185 percent of the Federal poverty level). Additionally, State agencies and program operators may disclose all other eligibility information obtained through the free and reduced price meal or free milk eligibility process (including all information on

the application or obtained through direct certification or verification), without consent, to the following: Persons directly connected with the administration or enforcement of the programs authorized under the NSLA and CNA; the Comptroller General of the United States for audit and examination; and Federal, State or local law enforcement officials investigating alleged violations of the programs under the NSLA and CNA or investigating violations of any of the programs authorized access to names and free and reduced price meal or free milk eligibility information. Disclosing any free and reduced price meal or free milk eligibility information to individuals and programs not authorized under the statute requires written consent. The proposed rule makes several recommendations to State agency, school food authority, SMP child-care institution, SFSP sponsor, or CACFP institutions that intend to disclose participants eligibility information. The rule recommends (1) that these entities inform potential participants that their eligibility information may be shared with other entities; and (2) that there is an agreement between the State agency, school food authority, SMP child-care institution, SFSP sponsor, or CACFP institution and the entity that is requesting the program eligibility information.

ESTIMATED ANNUAL RECORDKEEPING AND REPORTING BURDEN ➡

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agency or child care institution should enter into a written agreement with the party requesting the information:					
Total Existing State agencies	7 CFR 215.13a(g)(10)	0	0	0	0
Total Proposed State agencies	7 CFR 215.13a(g)(10)	57	1	.50	29
Total Existing Child Care Institutions	7 CFR 215.13a(g)(10)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 215.13a(g)(10)	207	1	.25	52
State agency and child care institution must give notice of any additional uses of the social security number:					
Total Existing State agencies	7 CFR 215.13a(g)(7)	0	0	0	0
Total Proposed State agencies	7 CFR 215.13a(g)(7)	57	1	.32	18
Total Existing Child Care Institutions	7 CFR 215.13a(g)(7)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 215.13a(g)(7)	207	1	.16	33
Child care institutions that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing Child Care Institutions	7 CFR 215.13a(g)(9)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 215.13a(g)(9)	207	1	.07	14
Total Existing Household	7 CFR 215.13a(g)(9)	0	0	0	0
Total Proposed Household	7 CFR 215.13a(g)(9)	14,006	1	.07	980
Total Existing:	0.				
Total Proposed:	+1,126.				
Change:	+1,126.				
State agency or sponsor should enter into a written agreement with the party requesting the information:					
Total Existing State Agency	7 CFR 225.15(g)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 225.15(g)(10)	49	1	.25	12
Total Existing Sponsor	7 CFR 225.15(g)(10)	0	0	0	0
Total Proposed Sponsor	7 CFR 225.15(g)(10)	3,309	1	.25	827
State agency or sponsors must give notice of any additional uses of the social security number:					
Total Existing State Agencies	7 CFR 225.13(g)(7)	0	0	0	0
Total Proposed State Agencies	7 CFR 225.13(g)(7)	49	1	.16	8
Total Existing Sponsors	7 CFR 225.13(g)(7)	0	0	0	0
Total Proposed Sponsors	7 CFR 225.13(g)(7)	3,309	1	.16	529
State agencies and sponsors that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing State Agency	7 CFR 225.15(g)(9)	0	0	0	0
Total Proposed State Agency	7 CFR 225.15(g)(9)	49	1	.25	12
Total Existing Sponsors	7 CFR 225.15(g)(9)	0	0	0	0
Total Proposed Sponsors	7 CFR 225.15(g)(9)	3,309	1	.25	827
Total Existing Household	7 CFR 225.15(g)(9)	0	0	0	0
Total Proposed Household	7 CFR 225.15(g)(9)	72,864	1	.083	6,047
Total Existing:	0.				
Total Proposed:	+8,262.				
Change:	+8,262.				
State agency or child care institution should enter into a written agreement with the party requesting the information:					
Total Existing State Agency	7 CFR 226.23(i)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 226.23(i)(10)	54	1	.25	13

ESTIMATED ANNUAL RECORDKEEPING AND REPORTING BURDEN—Continued

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Total Existing Child and Adult Day Care Institutions.	7 CFR 226.23(i)(10)	0	0	0	0
Total Proposed Child and Adult Day Care Institutions.	7 CFR 226.23(i)(10)	10,144	1	.25	2,536
State agencies and child care institution must give notice of any additional uses of the social security number:					
Total Existing State Agency	7 CFR 226.23(i)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 226.23(i)(10)	54	1	.25	13
Total Existing Child Care Institutions	7 CFR 226.13(g)(7)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 226.13(g)(7)	10,144	1	.16	1,623
State agencies and child care institutions that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing State Agency	7 CFR 226.23(i)(9)	0	0	0	0
Total Proposed State Agency	7 CFR 226.23(i)(9)	54	1	.25	13
Total Existing Child and Adult Day Care Institution.	7 CFR 226.23(i)(9)	0	0	0	0
Total Proposed Child and Adult Day Care Institution.	7 CFR 226.23(i)(9)	10,144	1	.25	2,536
Total Existing Household	7 CFR 226.23(i)(9)	0	0	0	0
Total Proposed Household	7 CFR 226.23(i)(9)	687,562	1	.083	57,067
Total Existing:	0.				
Total Proposed:	+63,801.				
Change:	+63,801.				
State agency, SFA, or school should enter into a written agreement with the party requesting the information:					
Total Existing State Agency	7 CFR 245.6(f)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 245.6(f)(10)	58	1	.25	14
Total Existing School Food Authorities	7 CFR 245.6(f)(10)	0	0	0	0
Total Proposed School Food Authorities	7 CFR 245.6(f)(10)	16,342	3	.25	12,256
Total Existing Schools	7 CFR 245.6(f)(10)	0	0	0	0
Total Proposed Schools	7 CFR 245.6(f)(10)	101,000	3	.25	75,750
State agencies, SFA, or school must give notice of any additional uses of the social security number:					
Total Existing State Agencies	7 CFR 245.6(f)(7)	0	0	0	0
Total Proposed State Agencies	7 CFR 245.6(f)(7)	58	1	.16	9
Total Existing School Food Authorities	7 CFR 245.6(f)(7)	0	0	0	0
Total Proposed School Food Authorities	7 CFR 245.6(f)(7)	16,342	3	.25	12,256
Total Existing Schools	7 CFR 245.6(f)(7)	0	0	0	0
Total Proposed Schools	7 CFR 245.6(f)(7)	101,000	3	.25	75,750
State agencies, SFAs, and schools that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing State Agency	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed State Agency	7 CFR 245.6(f)(9)	58	1	.25	14
Total Existing School Food Authority	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed School Food Authority	7 CFR 245.6(f)(9)	16,342	3	.25	12,256
Total Existing School	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed School	7 CFR 245.6(f)(9)	101,000	3	.25	75,750
Total Existing Household	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed Household	7 CFR 245.6(f)(9)	4,138,810	1	.07	289,716
Total Existing:	0.				
Total Proposed:	+553,771.				
Change:	+553,771.				

List of Subjects

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and

recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 215, 225, 226, and 245 are proposed to be amended as follows:

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for part 215 is revised to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

2. In § 215.13a, new paragraphs (f) and (g) are added to read as follows:

§ 215.13a Determining eligibility for free milk in child-care institutions.

* * * * *

(f) *Is a Privacy Act notice required on the free milk application?* Each free milk application must include substantially the following statement: "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program."

(g) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free milk may be disclosed to the individuals and programs described in this section. Additionally, program eligibility information may be disclosed to other people and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The State agency or child care institution that determines free milk eligibility is responsible for deciding whether to disclose program eligibility information.

(2) *To whom may the State agency or child care institution disclose aggregate information?* The State agency or child care institution, as appropriate, may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the State agency or child care institution may disclose aggregate information, that is the number of children eligible for free milk, but not children's names.

(3) *To whom may the State agency or child care institution disclose participants' names and eligibility status, without consent?* The State agency or child care institution, as appropriate, may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free milk) to persons directly connected with the administration or enforcement of the following programs:

(i) A Federal education program;

(ii) A State health program (other than Medicaid) or State education program administered by the State or local education agency; or

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (*i.e.*, food assistance programs for households with incomes at or below 185 percent of the Federal poverty level).

(4) *To whom may the State agency or child care institution disclose all eligibility information, without consent?* In addition to children's names and eligibility status, the State agency or child care institution, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free milk eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

(i) Persons directly connected with the administration or enforcement of programs authorized under the National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch or School Breakfast Programs (parts 210 and 220, respectively, of this chapter), Child and Adult Care Food Program (part 226 of this chapter), Summer Food Service Program (part 225 of this chapter) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (part 246 of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(3) and (g)(4) of this section.

(5) *For what purposes may program eligibility information be used?* State agencies and child-care institutions may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(6) *Who are "directly connected" persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration or enforcement. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(7) *May social security numbers be disclosed?* The State agency or child care institution, as appropriate, may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (g)(4) of this section or when consent is obtained. However State agencies and child care institutions that plan to disclose social security numbers must give notice of the planned use of the social security number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (g)(4) of this section: "The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of

investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (f) of this section. State agencies and child care institutions are responsible for drafting the appropriate notice for disclosures of social security numbers under the consent provisions of paragraph (g)(10) of this section.

(8) *When is parental consent required?* State agencies and child care institutions that plan to use or disclose information about children eligible for free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who is a member of the child's household for purposes of the free milk application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free milk application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free milk and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only these programs with which they wish to share information.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or child care institution, as appropriate, and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any information, the State agency or child care institution should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

(i) Identify the programs or persons receiving the information;

(ii) Describe the information to be disclosed and how the information will be used;

(iii) Describe how the information will be protected from unauthorized uses and disclosures and include the penalties for using the information for unauthorized purposes; and

(iv) Be signed by both the determining agency and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (g) will be fined up to $1,000 or imprisoned for up to 1 year, or both.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13, and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. In § 225.15, redesignate paragraphs (g) and (h) as paragraphs (h) and (i) and add a new paragraph (g).

The addition reads as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(g) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free meals may be disclosed to the individuals and programs described in this section. Additionally, program eligibility information may be disclosed to other individuals and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The State agency or sponsor that determines free meal eligibility is responsible for deciding whether to disclose program eligibility information.

(2) *To whom may the State agency or sponsor disclose aggregate information?* The State agency or sponsor, as appropriate, may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the State agency or sponsor may disclose aggregate information, that is the number of children eligible for free and reduced price meals, but not children's names.

(3) *To whom may the State agency or sponsor disclose participants' names and eligibility status?* The State agency or sponsor may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free meals) to persons directly connected with the administration or enforcement of the following programs:

(i) A Federal education program;

(ii) A State health program (other than Medicaid) or State education program administered by the State or local education agency; or

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (*i.e.*, food assistance programs for households with incomes at or below 185 percent of the Federal poverty level).

(4) *To whom may the State agency or sponsor disclose all eligibility information, without parental consent?* In addition to children's names and eligibility status, the State agency or sponsor may disclose, without parental consent, all eligibility information obtained through the free meal eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

(i) Persons directly connected with the administration or enforcement of programs authorized under the National School Lunch Act (NSLA) or the Child Nutrition Act of 1966 (CNA). This means that all eligibility information obtained for the Summer Food Service Program may be disclosed to persons directly connected with administering or enforcing regulations under the Special Milk Program (part 215 of this chapter), the National School Lunch or School Breakfast Programs (parts 210 and 220, respectively, of this chapter), Child and Adult Care Food Program (part 226 of this chapter), and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (part 246 of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(3) and (g)(4) of this section.

(5) *For what purposes may program eligibility information be used?* State agencies and sponsors may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the

administration or enforcement of the receiving program. No further disclosure of the information may be made.

(6) *Who are "directly connected" persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(7) *May social security numbers be disclosed?* The State agency or sponsor may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (g)(4) of this section or when consent is obtained. However State agencies or sponsors that plan to disclose social security numbers must give notice of the planned use of the social security number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (g)(4) of this section: "The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (f) of this section. Determining agencies are responsible for drafting the appropriate notice for disclosures of social security numbers under the consent provisions of paragraph (g)(10) of this section.

(8) *When is parental consent required?* State agencies and sponsors that plan to use or disclose information about children eligible for free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who is a member of the child's household for purposes of the free meal application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free meals and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only those programs with which they wish to share information.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or sponsor and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any information, the State agency or sponsor should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

(i) Identify the programs or persons receiving the information;

(ii) Describe the information to be disclosed and how the information will be used;

(iii) Describe how the information will be protected from unauthorized uses and disclosures and include the penalties for using the information for unauthorized purposes; and

(iv) Be signed by both the determining agency and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (g) will be fined up to $1,000 or imprisoned for up to 1 year, or both.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16 and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.23,

a. Paragraph (e)(1)(ii)(F) is revised; and

b. A new paragraph (i) is added.

The revision and addition read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(e)(1) * * *

(ii) * * *

(F) A statement that includes substantially the following information: "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program." State agencies and institutions must ensure that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note); and

* * * * *

(i) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free and reduced price meals may be disclosed to the individuals and programs described in this section. Additionally, program eligibility information may be disclosed to other people and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The State agency or institution that makes the free and reduced price meal determination is responsible for deciding whether to disclose program eligibility information.

(2) *To whom may the State agency or institution disclose aggregate information?* The State agency or institution may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the

State agency or institution may disclose aggregate information, that is the number of children eligible for free and reduced price meals, but not children's names.

(3) *To whom may the State agency or institution disclose participants' names and eligibility status?* The State agency or institution may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free or reduced price meals) to persons directly connected with the administration or enforcement of the following programs:

(i) A Federal education program;

(ii) A State health program (other than Medicaid) or State education program administered by the State or local education agency; or

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (*i.e.*, food assistance programs for households with incomes at or below 185 percent of the Federal poverty level).

(4) *To whom may the State agency or institution disclose all eligibility information, without parental consent?* In addition to children's names and eligibility status, the State agency or institution may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

(i) Persons directly connected with the administration or enforcement of programs authorized under the National School Lunch Act (NSLA) or the Child Nutrition Act of 1966 (CNA). This means that all eligibility information obtained for the Child and Adult Care Food Program may be disclosed to persons directly connected with administering or enforcing regulations under the Special Milk Program (part 215 of this chapter), the National School Lunch or School Breakfast Programs (parts 210 and 220, respectively, of this chapter), Summer Food Service Program (part 225 of this chapter), and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (part 246 of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (i)(3) and (i)(4) of this section.

(5) *For what purposes may program eligibility information be used?* State agencies and institutions may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(6) *Who are "directly connected" persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(7) *May social security numbers be disclosed?* The State agency or institution may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (i)(4) of this section or when consent is obtained. However, State agencies or institutions that plan to disclose social security numbers must give notice of the planned use of the social security number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (i)(4) of this section: "The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (e) of this section. State agencies and child care institutions are responsible to drafting the appropriate notice for disclosures of social security numbers under the consent provisions of paragraph (i)(10) of this section.

(8) *When is parental consent required?* State agencies and child care institutions that plan to use or disclose information about children or adults eligible for free and reduced price meals in ways not specified in this section must obtain written consent from the child's parent or guardian or the adult participant or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who is a member of the child's household for purposes of the free or reduced price meal application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free and reduced price meals and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only those programs with which they wish to share information. For an adult applicant or participant in the CACFP, the consent must be given and signed by the adult applicant or participant, unless a guardian has been appointed to act for the adult.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or child care institution and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any information, the State agency or child care institution should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

(i) Identify the programs or persons receiving the information;

(ii) Describe the information to be disclosed and how the information will be used;

(iii) Describe how the information will be protected from unauthorized uses and disclosures and include the

penalties for using the information for unauthorized purposes; and

(iv) Be signed by both the State agency or child care institution and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (i) will be fined up to $1,000 or imprisoned for up to 1 year, or both.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 is revised to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

2. In § 245.6, paragraph (a)(1) is revised and a new paragraph (f) is added.

The revision and addition read as follows:

§ 245.6 Certification of children for free and reduced price meals and free milk.

(a) * * *

(1) "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program." State agencies and school food authorities must ensure that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note); and

* * * * *

(f) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free meals may be disclosed to the individuals and programs described in this section. Additionally, program eligibility information may be disclosed to other people and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The agency that makes the free and reduced price meal or free milk eligibility determination (*i.e.*, the determining agency) is the only agency that can decide to disclose program eligibility information. In most cases, this is the school food authority, but sometimes the State agency performs this function.

(2) *To whom may the determining agency disclose aggregate information?* The State agency or school food authority may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the State agency or school food authority may disclose aggregate information, that is the number of children eligible for free and reduced price meals or free milk, but not children's names.

(3) *To whom may the determining agency disclose participants' names and eligibility status, without consent?* The State agency or school food authority may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free and reduced price meals or free milk) to persons directly connected with the administration or enforcement of the following programs:

(i) A Federal education program;

(ii) A State health program (other than Medicaid) or State education program administered by the State or local education agency; or

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (*i.e.*, food assistance programs for households with incomes at or below 185 percent of the Federal poverty level).

(4) *To whom may the determining agency disclose all eligibility information, without consent?* In addition to children's names and eligibility status, the State agency or child-care institution may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal or free milk eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

(i) Persons directly connected with the administration or enforcement of programs authorized under the National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch or School Breakfast Programs (parts 210 and 220, respectively, of this chapter), Child and Adult Care Food Program (part 226 of this chapter), Summer Food Service Program (part 225 of this chapter) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (part 246 of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (f)(3) and (f)(4) of this section.

(5) *Who are "directly connected" persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration or enforcement. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(6) *For what purposes may program eligibility information be used?* State agencies and school food authorities may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(7) *May social security numbers be disclosed?* The determining agency may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (f)(4) of this section or when consent is obtained. However State agencies and school food authorities that plan to disclose social security numbers under this paragraph (f)(7) must give notice of the planned use of the social security

number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (f)(4)of this section: "The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (a) of this section. State agencies and school food authorities are responsible for drafting the appropriate notice for disclosures of social security numbers under the consent provisions of paragraph (f)(9) of this section.

(8) *When is parental consent required?* State agencies and school food authorities that plan to use or disclose information about children eligible for free and reduced price meals or free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who is a member of the child's household for purposes of the free and reduced price meal or free milk application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal or free milk application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free and reduced price meals or free milk and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only those programs with which they wish to share information.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or school food authority (determining agency) and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any information, the determining agency should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

(i) Identify the programs or persons receiving the information;

(ii) Describe the information to be disclosed and how the information will be used;

(iii) Describe how the information will be protected from unauthorized uses and disclosures and include the penalties for using the information for unauthorized purposes; and

(iv) Be signed by both the determining agency and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (f) will be fined up to $1,000 or imprisoned for up to 1 year, or both.

Dated: July 11, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00–18631 Filed 7–24–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 900]

RIN 1512–AA07

Fair Play Viticultural Area (2000R–170P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area to be known as "Fair Play," located in southern El Dorado County, California, entirely within the existing "El Dorado" and "Sierra Foothills" viticultural areas. This proposal is the result of a petition filed by Brian Fitzpatrick, President of Fair Play Winery Association. Mr. Fitzpatrick believes that "Fair Play" is a widely known name for the petitioned area, that the area is well defined, and that the area is distinguished from other areas by its soil, elevation, climate, terrain, and topography.

DATES: Written comments must be received by September 25, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, (Attention: Notice No. 900). See "Public Participation" section of this notice if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–9347).

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What is ATF's Authority to Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What is Required to Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil,

elevation, physical features, *etc.*) which distinguish the viticultural features of the proposed area from surrounding areas;

• A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

• A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Fair Play Petition

ATF has received a petition from Brian Fitzpatrick, President of Fair Play Winery Association, proposing to establish a viticultural area in southern El Dorado County, California, known as "Fair Play." The proposed viticultural area is located entirely within the existing "El Dorado" and "Sierra Foothills" viticultural areas described in 27 CFR 9.61 and 9.120.

The proposed area encompasses approximately 33 square miles. The total acreage of vineyards is approximately 350 acres, of which 250 acres are currently in production. The proposed viticultural area now boasts ten bonded wineries and a number of vineyards ranging in size from less than five acres to over seventy acres.

What Name Evidence Has Been Provided?

According to the petitioner, the proposed "Fair Play" viticultural area takes its name from an old gold mining camp during the California gold rush. Although Fair Play was at first only a mining camp, the town later became a trading center and post office for drift and hydraulic mines in the area. The *Alta Californian* newspaper dated December 21, 1853, mentions Fair Play as a prosperous little mining town with several stores and hotels.

Today, the name "Fair Play" is used to designate a former school, an existing crossroads store, and a farm road located within the proposed boundaries. In 1998, residents of Fair Play petitioned the United States Postal Service to acknowledge Fair Play as a postal address. The petition was granted and Fair Play now shares the Zip Code 95684 with Somerset.

According to the petitioner, the first commercial vineyard and winery in "Fair Play" was established in 1887 by a Civil War veteran, Horace Bigelow. Bigelow planted 4,000 grape vines and by 1898 was producing between 600 and 1,000 gallons of wine each year. Today, "Fair Play" is gaining recognition as a wine growing area and is featured in the media, on some wine labels, and in the petitioner's promotional materials. The petitioner has provided the following other references as name evidence:

• The Aukum, California 1952 (photorevised 1973) U.S.G.S. map used to show the boundaries of the proposed area, show the town of Fair Play and Fair Play School located within the proposed "Fair Play" viticultural area. The map shows no conflicting designation for the remainder of the proposed area;

• Correspondence from Jim McBroom, Manager of Operations Programs Support with the United States Postal Service, indicating that Fair Play, California 95684 is an authorized last line mailing address;

• An article about the history of the Fair Play area written in 1998 by Doug Noble, Democrat correspondent, for the Mountain Democrat;

• Fair Play Winery Association's 16th annual brochure advertising the "Fair Play Wine Festival;"

• Fair Play Winery Association's 17th annual brochure advertising the "Fair Play Wine Festival;"

• The Articles of Incorporation of the Fair Play Winery Association; and

• An excerpt from a book in progress by historian Erick Costa called Gold and Wine, A History of Winemaking in El Dorado County, California.

What Boundary Evidence Has Been Provided?

The petitioner contends that the name "Fair Play" is used to designate the entire area bisected by Fair Play Road. The general boundaries are the canyon of the Middle Fork of the Cosumnes River to the north; rugged terrain and higher elevation to the east; a change in soils to the southeast and south; Cedar Creek running through a deep canyon to the southwest; Cedar Creek flowing into a short section of Scott Creek and into a mile long section of the South Fork of the Cosumnes River (near River Pines) thence northerly cross country to the Middle Fork of the Cosumnes River. In support of this approach, the petitioner provided a copy of U.S.G.S. map (Aukum, California) on which the boundaries of the proposed "Fair Play" viticultural area and town of Fair Play is prominently labeled. The petitioner has also provided other maps that show that Fair Play Road runs through the proposed viticultural area, beginning at Grays Corner (shown as Melsons Corner on the U.S.G.S. map) and running generally southeast, east and south to Omo Ranch Road. The proposed "Fair Play" viticultural area primarily consists of those farms and ranches served by Fair Play Road and its "tributaries."

What Evidence Relating to Geographical Features Has Been Provided?

• Soil:

According to the petitioner, the proposed "Fair Play" viticultural area is characterized by deep, moderately to well drained, granitic soils of the Holland, Shaver, and Musick series. These soils consist of sandy loams and coarse sandy loams, with an effective average rooting depth between 40 and 60 inches. The soil maps taken from the USDA Soil Survey show the specific areas where each of these soils predominate; the proposed boundaries were specifically designed to include these three soil series, and to exclude other soils which are either not granitic, or shallow, or poorly drained. The areas to the north and east of the proposed boundaries are predominately shallow granitic soils of the Chawanakee and Chaix series. The proposed northern and eastern boundaries are drawn primarily based on terrain and ease of description, but with the intent to generally exclude these soils. The southeastern and southern boundaries of "Fair Play," the waterways of Cedar Creek into Scott Creek into the South Fork of the Cosumnes River, lay out a clear geological demarcation where the granitic soils predominate and the volcanic soils begin. Thus, the petitioner argues that "Fair Play" has a soil association that sets it apart from the rest of the Sierra Foothills and El Dorado viticultural areas.

• Terrain and Topography:

The petitioner asserts that the arable terrain within the proposed area is generally composed of rolling hillsides and rounding ridge tops. At these elevations (2,000–3,000) each vineyard's topographic location in relationship to the immediate surroundings is of utmost importance to minimize the negative effects of late spring frosts. Most of the existing vineyards are situated on the ridge tops or hillsides so there is lower ground for the cold air to drain.

To the east and southeast, the proposed boundaries include terrain too rugged for commercial viticulture. This is also true of Coyote Ridge to the south. The petitioner states that although little vineyard activity is anticipated in these steep canyon lands, the use of the Middle Fork of the Cosumnes River, Cedar Creek, Scott Creek, and South Fork of the Cosumnes River make easily understood and prominent boundaries.

• Elevation:

The petitioner asserts that the lowest elevations in the proposed area, about 2,000 feet, occur along Perry Creek and

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the North and South Forks of Spanish Creeks where they flow west out of the proposed viticultural area. The lowest existing vineyards sit at about 2,000 feet near Mt. Aukum. The elevation rises to the north, east and south to a maximum of about 2,800 feet above Slug Gulch Road and Walker Ridge.

To the north, the steep sides of the canyon of the Middle Fork of the Cosumnes River are not suitable for viticulture. The bottom land along the river, ranging from 1,700 to 1,800 feet elevation, is at least two hundred feet lower in elevation than the lowest points included within the proposed boundaries.

The rugged terrain east of the proposed boundaries, and the volcanic "caps" to the southeast and south quickly rise above 2,800 feet.

Elevation is significant because of its effect on growing conditions in the Sierra Nevada Foothills.

• Growing Season and Rainfall:

According to the petitioner, the U.S.D.A. Soil Survey shows that in this part of Sierra Foothills, rainfall generally increases along with the elevation. The isobars generally run from the northwest to southeast, similar to the general run of the elevation contour lines. The proposed "Fair Play" area receives between 35 to 40 inches of rain in an average year, while the lower areas to the west and southwest of "Fair Play" receive 35 inches or less.

The U.S.D.A. chart for the length of growing season follows the reverse pattern; as elevation increases, the growing season decreases. "Fair Play" enjoys an average growing season of between about 230 and 250 days; the areas to the west and southwest show over 250 days.

Thus, the petitioner asserts that the proposed "Fair Play" viticultural area enjoys more rainfall, but with a shorter growing season, than the areas to the west and southwest.

• Climate:

According to the petitioner, based on the standard University of California at Davis (UCD) temperature summation definition of climatic regions or zones, the proposed "Fair Play" viticultural area would appear to fall into high Region 3 (less than 3,500 degree days). The areas to the west and southwest fall into low Region 4 (over 3,500 degree days).

3. Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

The proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

4. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

Can I Review Comments Received?

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of the Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, N.W., Washington, D.C. 20226. For information on filing a Freedom of Information Act request for a copy of the comments, please refer to the internet address: http://www.atf.treas.gov/about/foia/foia.htm.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

How do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½" × 11" in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages, 8½" × 11" in size.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at http://www.atf.treas.gov.

Drafting Information: The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.168 to read as follows:

* * * * *

§ 9.168 Fair Play.

(a) *Name.* The name of the viticultural area described in this section is "Fair Play."

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Fair Play viticultural area are three United States Geological Survey (U.S.G.S.) topographic maps (7.5 minute series; quadrangles). They are titled:

(1) "Omo Ranch, California," 1952 (photorevised 1973).

(2) "Aukum, California," 1952 (photorevised 1973).

(3) "Camino, California," 1952 (photorevised 1973).

(c) *Boundaries.* The Fair Play viticultural area is located in El Dorado County, California and is located entirely within the existing Sierra Foothills and El Dorado viticultural areas. The boundary for Fair Play is as follows:

(1) The beginning point of the boundary is the intersection of the Middle Fork of the Cosumnes River and the U.S.G.S. map section line between Sections 26 and 27, T. 9 N., R. 11 E. ("Aukum" Quadrangle);

(2) From the beginning point, the boundary follows northeast along the Middle Fork of the Cosumnes River until it meets an unnamed medium-duty road (Mt. Aukum Road or El Dorado County Road E–16) just as it crosses onto the "Camino" Quadrangle map;

(3) The boundary continues then northeast along Mt. Aukum Road to its intersection with Grizzly Flat Road at the town of Somerset ("Camino" Quadrangle);

(4) The boundary continues east and then southeast along Grizzly Flat Road to its intersection with the U.S.G.S. map section line between Sections 15 and 16, T. 9 N., R. 12 E. ("Camino" Quadrangle);

(5) The boundary then proceeds south along the U.S.G.S. map section line between Sections 15 and 16, T. 9 N., R. 12 E., to its intersection with the Middle Fork of the Cosumnes River ("Aukum" Quadrangle);

(6) The boundary then follows along the Middle Fork of the Cosumnes River in a southeasterly direction onto the "Omo" Quadrangle map and continues until it meets the range line between R. 12 E. and R. 13 E. ("Aukum" Quadrangle and "Omo Ranch" Quadrangle);

(7) The boundary then follows south along the range line between R. 12 E. and R. 13 E. to its intersection with an unnamed medium-duty road in T. 8 N. (Omo Ranch Road) ("Omo Ranch" Quadrangle);

(8) The boundary then continues west in a straight line approximately 0.3 miles to the point where Cedar Creek intersects with the 3200-foot contour line, within Section 1, T. 8 N.,R. 12 E. ("Omo Ranch" Quadrangle);

(9) The boundary follows along Cedar Creek west and then southwest until it empties into Scott Creek ("Aukum" Quadrangle);

(10) The boundary then proceeds west along Scott Creek until it empties into the South Fork of the Cosumnes River ("Aukum" Quadrangle);

(11) The boundary continues west along the South Fork of the Cosumnes River to its intersection with the U.S.G.S. map section line between Sections 14 and 15, T. 8 N., R. 11 E. ("Aukum" Quadrangle); and

(12) Finally, the boundary follows north along the section line back to its intersection with the Middle Fork of the Cosumnes River, the point of the beginning. ("Aukum" Quadrangle).

Approved: July 18, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–18732 Filed 7–24–00; 8:45 am]

BILLING CODE 4510–31–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust; Correction

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; correction.

SUMMARY: This document lists typographical errors which appeared in the preamble to a proposed rule regarding verification of underground coal mine operators' dust control plans and compliance sampling for respirable dust published in the **Federal Register** on July 7, 2000. Information in this document is provided to correct these errors.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

Corrections

As published, the proposed rule preamble contains typographical errors. This document provides information so that a reader may correct those errors. No corrections are being made to the regulatory text. Please note: if you received a copy of the proposed rule from MSHA in the mail, some of the corrections have already been made. These are marked with an *.

In the proposed rule addressing verification of underground coal mine operators' dust control plans and compliance sampling for respirable dust, published in the **Federal Register** on July 7, 2000 (65 FR 42122), make the following corrections:

1. On page 42123 , column one, line 9 insert "provide" between "third," and "additional".

2. On page 42140, column two, in the formula, change "m^3" to read "m^3/min".

3. On page 42143, column three, line 45, section heading, insert "with" between "comply" and "this".

4.* On page 42144, column three, line 67, within footnote 9, change "1–P (X>=n)" to "1–P(X>n)".

5. On page 42159, column two, line 18, remove "and NIOSH".

6. On page 42159, column two, lines 19 and 20, remove "and NIOSH are" and replace with "is".

7. On page 42160, column two, line 46, replace "Secretaries invite" with "Secretary invites".

8. On page 42161, footnote 14, line 3, replace "production of" with "proportion of".

9. On page 42164, column three, line 51, change "January 2000" to read "June 2000".

10. On page 42170, Table IX–3, line two, column one (of text), change "≤500 employees" to read "≤ 500 employees".

Dated: July 20, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 00–18812 Filed 7–21–00; 12:45 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust; Correction

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects typographical errors which appeared in the preamble to the joint proposed rule that announced that the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) would find in accordance with sections 101 (30 U.S.C. 811) and 202(f)(2) (30 U.S.C. 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. No corrections are being made to the regulatory text.

The joint proposal published in the **Federal Register** on July 7, 2000, would rescind a previous 1972 finding by the Secretaries on the validity of such single-shift sampling.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

Corrections

The proposed rule as published by the **Federal Register** contains typographical errors. This document provides information so that a reader may correct those errors. Please note: if you received a copy of the proposed rule from MSHA in the mail, some of the corrections have already been made. These are marked with an *.

In the proposed rule addressing determination of concentration of respirable coal mine dust, published in the **Federal Register** on July 7, 2000 (65 FR 42068), make the following corrections:

1. On page 42068, column one, line 42, change "1997" to read "1998".
2. On page 42069, column three, line 53, change "1999" to read "proposed".
3. On page 42079, column two, line 31, change "1n" to read "ln".
4. On page 42094, column two, line 13 change "μ" to read "μg".
5. On page 42094, column two, line 59, change "μg" to read "1,400 μg".
6. On page 42094, column three, line 17, change "μ" to read "μm".
7. On page 42096, column one, line 14, change "Appendix B" to read "Appendix C".
8. On page 42097, column three, line 51, change "Appendix C" to read "Appendix D".
9. On page 42098, column one, lines 11, 20 and 27, change "Appendix B" to read " Appendix C".
10. On page 42101, column three, line 40, change "December 1999" to read "June 2000."
11. * On page 42112, column one, line 44, replace "Q_e" with "σ_e".
12. * On page 42113, column 2, line 3, replace, "will is" with "is".
13. On page 42113, column three, line 19, and Table C–1, column one, line 23, replace "Tyvek," with "Tyvek®".
14. * On page 42118, column one, line 21, replace "of $_e$" with "of σ_e".
15. * On page 42119, column one, line 73, replace "equal to "2)" with "equal to $\sqrt{2}$)".

Dated: July 20, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 00–18813 Filed 7–21–00; 12:45 pm]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD042–3051b; FRL–6838–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of Revisions to COMAR 26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing operational flexibility to meet visible emission limits for batch type hot-dip galvanizing installations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 24, 2000.

ADDRESSES: Written comments should be addressed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, regarding the revisions to Maryland's regulation on batch type hot-dip galvanizing installations, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–18529 Filed 7–24–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1500, MM Docket No. 00–127, RM–9894]

Digital Television Broadcast Service; Jamestown, North Dakota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Red River Broadcast Company, licensee of

station KJRR(TV), NTSC Channel 7, Jamestown, North Dakota, requesting the substitution of DTV Channel 30 for station KRJJ(TV)'s assigned DTV Channel 14. DTV Channel 14 can be allotted to Jamestown, North Dakota, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (46–55–30 N. and 98–46–21 W.). However, since the community of Jamestown is located 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel 30 to Jamestown with a power of 1000 and a height above average terrain (HAAT) of 135 meters.

DATES: Comments must be filed on or before September 11, 2000, and reply comments on or before September 26, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John T. Scott III, Crowell & Moring LLP, 1001 Pennsylvania Avenue NW, Washington, DC 20004 (counsel for Red River Broadcast Company).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–127, adopted July 19, 2000, and released July 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–18786 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1556; MM Docket No. 99–136; RM–9570]

Radio Broadcasting Services; Babb, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by the Battani Corporation requesting the allotment of Channel 233C3 at Babb, Montana. *See* 64 FR 24997, May 10, 1999. Based on the information submitted by Battani Corporation, we believe it has failed to establish that Babb qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel to Babb.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–136, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18757 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1570, MM Docket No. 00–128, RM–9912]

Radio Broadcasting Services; Pilot Rock, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Aaron Bruton to allot Channel 221C3 to Pilot Rock, OR, as the community's first local aural service. Channel 221C3 can be allotted to Pilot Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.5 kilometers (9 miles) west, at coordinates 45–30–00 NL; 119–00–56 WL, to avoid a short-spacing to Station KWVR, Channel 221A, Enterprise, Oregon.

DATES: Comments must be filed on or before September 5, 2000, and reply comments on or before September 20, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Aaron Bruton, 1832 Fern, Walla Walla, WA 99362 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–128, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18755 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1555; MM Docket No. 00–129, RM–9909]

Radio Broadcasting Services; Moberly, Malta Bend & Chillicothe, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Best Broadcasting, Inc., requesting the substitution of Channel 247C2 for Channel 247C3 at Moberly and modification of the license for Station KCSX to specify operation on Channel 247C2. The coordinates for Channel 247C2 at Moberly are 39–27–41 and 92–21–03. To accommodate the substitution at Moberly, Best Broadcasting has also requested the substitution of Channel 280C3 for Channel 248C3 at Malta Bend, MO and modification of the license for Station KRLI and substitution of Channel 273A for Channel 280C3 at Chillicothe, MO and modification of the license for Station KCHI accordingly. The coordinates for Channel 280C3 at Malta Bend are 39–21–59 and 93–24–12. The coordinates for Channel 273A at Chillicothe are 39–45–56 and 93–33–14. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest for Channel 247C2 at Moberly.

DATES: Comments must be filed on or before August 28, 2000, and reply comments on or before September 12, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John R. Wilner, Bryan Cave LLP, 700 13th Street, N.W., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–129, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18753 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1519; MM Docket No. 99–221; RM–9839]

Radio Broadcasting Services; Fortine, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by the Battani Corporation requesting the allotment of Channel 232C3 at Fortine, Montana. *See* 64 FR 34752, June 29, 1999. Based on the information submitted by the Battani Corporation, we believe it has failed to establish that Fortine qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel to Fortine.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–221, adopted June 28, 2000, and released July 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18761 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1521; MM Docket No. 00–57; RM–9825]

Radio Broadcasting Services; Gadsden and Springville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed on behalf of Capstar Royalty II Corporation (now Capstar TX Limited Partnership), licensee of Station WQEN(FM), Channel 279C1, Gadsden, Alabama, proposing the substitution of Channel 279C for Channel 279C1 at Gadsden, the reallotment of Channel 279C to Springville, Alabama, and modification of its license accordingly. Petitioner withdrew its interest in pursuing the proposal. *See* 65 FR 20791, April 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 00–57, adopted June 28, 2000 , and released

July 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18760 Filed 7–24–00; 8:45 am]
BILLING CODE 6712–01–P

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Notices

Federal Register
Vol. 65, No. 143
Tuesday, July 25, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 19, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: 7 CFR Part 54–Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

OMB Control Number: 0581–0124.

Summary of Collection: The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide consumers with voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. This is accomplished by providing meat and meat products that are uniform in quality. The Meat Grading and Certification (MGC) Branch provides these services under the authority of 7 CFR Part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards). The Agricultural Marketing Service (AMS) will collect information using forms LS–313, "Application for Service," and LS–315, "Application for Commitment Grading or Certification Service."

Need and Use of the Information: AMS will collect information to identify the responsible authorities in establishments requesting services and to initiate billing and collection accounts. A signed and approved application (Form LS–313 or LS–315) constitutes authorization for any employee of AMS to enter the establishment for the purpose of performing official functions under the regulations. Without a properly signed and approved Form LS–313 or LS–315, AMS officials would not have the authority to enter the premises to provide grading and/or certification services nor would users of the services be legally obligated to abide by the regulations or to remit payment for services rendered.

Description of Respondents: Business or other for-profit.

Number of Respondents: 888.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 406.

Agricultural Marketing Service

Title: Olives Grown in California.

OMB Control Number: 0581–0142.

Summary of Collection: Marketing Order 932 (7 CFR Part 932), covering the handling of olives grown in California, emanates from enabling legislation (The Agricultural Marketing Agreement Act of 1937, Sections 1–19, 48 Stats. 31, as amended; 7 USC 601–674). The order authorizes the issuance of grade and size standards, and incoming and outgoing inspection requirements. The order also has authority for research and development projects, including paid advertising. The Agricultural Marketing Service (AMS) will collect information using several forms.

Need and Use of the Information: AMS will collect information to determine olive inventories, acquisition of olives, shipments, and disposition. Only authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized employees of the committee would use the information collected.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 691.

Frequency of Responses: Recordkeeping; reporting: On occasion; Other (2–6 years)

Total Burden Hours: 2,947.

Food and Nutrition Service

Title: Interoperability Funding Agreement.

OMB Control Number: 0584–NEW.

Summary of Collection: Under Section 7(k) of Pub. L. 106–71, the Electronic Benefit Transfer (EBT) Interoperability and Portability Act of 2000, the Secretary is required to ensure that electronic benefit transfer (EBT) systems used for the issuance and redemption of food stamp program (FSP) benefits are interoperable and that food stamp benefits are portable among all States by October 1, 2002, except where exemptions apply or a temporary waiver is granted.

Need and Use of the Information: The Interoperability Funding Agreement will inform State agencies of the administrative procedures for requesting enhanced funding for interoperability costs, including prescribed formats for submitting requests for payment and submission deadlines. State agencies that request funding will be required to submit the signed agreement concurrent with the State agency's first request for payment for each fiscal year, indicating that it agrees to comply with the procedures established by the Department. If the agreement is not submitted it would prevent the Food and Nutrition Service from obligating enhanced funding each fiscal year for

interoperability costs incurred by State agencies.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 51.

Frequency of Responses: Recordkeeping; reporting: Annually.

Total Burden Hours: 38.

Agency is requesting an emergency approval by 7/31/00.

Nancy B. Sternberg,
Departmental Clearance Officer.
[FR Doc. 00–18695 Filed 7–24–00; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the soybean varieties designated "N6210," "N7101," N7102," and "N7103" are available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service intends to grant to North Carolina State University of Raleigh, North Carolina, an exclusive license to these varieties.

DATES: Comments must be received on or before October 23, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.
[FR Doc. 00–18768 Filed 7–24–00; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–054–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of additional information collections, Feedlot '99 and Ongoing Monitoring, in support of the National Animal Health Monitoring System. These collection activities will include conducting a national study on feedlot cattle, increasing the number of participants in the sentinel feedlot monitoring study as part of our ongoing monitoring, and collecting antimicrobial susceptibility testing results from veterinary diagnostic laboratories as a new component to ongoing monitoring.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 25, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–054–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238
Please state that your comment refers to Docket No. 00–054–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on the national feedlot study and ongoing monitoring data collection activities, contact Ms. Marj Swanson, Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 555 S. Howes, Fort Collins, CO 80521; (970) 490–7978. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION: *Title:* National Animal Health Monitoring System (Feedlot '99 and Ongoing Monitoring).

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture is responsible for protecting the health of our nation's livestock and poultry populations by preventing the importation and interstate spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible. In connection with this mission, the Animal and Plant Health Inspection Service operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. Information from these studies is disseminated and used by livestock and poultry producers, consumers, animal health officials, private veterinary practitioners, animal industry groups, policymakers, public health officials, the media, educational institutions, and others to improve agriculture's productivity and competitiveness.

NAHMS' national studies have evolved into a collaborative industry and government initiative to help improve product quality and to determine the most effective means of producing animal and poultry products. We are the only agency responsible for collecting national data on animal and poultry health. Participation in any NAHMS study is voluntary, and all data are confidential.

Feedlot '99: The Feedlot '99 study is NAHMS' second national study of the beef feedlot industry. The NAHMS' 1994 Cattle on Feed Evaluation results provided producer-requested baseline information that will be used with Feedlot '99 information to identify

trends in animal health and management practices over the past 5 years. NAHMS is requesting approval to collect data from feedlot operators in the United States. The data collected through the national study will be used to: (1) Describe the changes in management practices and animal health in feedlots from 1994 to 1999; (2) describe management practices that might affect product quality; (3) identify factors associated with shedding of specific pathogens by feedlot cattle; (4) describe antimicrobial usage in feedlots; (5) describe animal health management practices in feedlots and the relationship to cattle health; and (6) identify priority areas for prearrival processing of cattle and calves.

Sentinel Feedlot Monitoring: Sentinel feedlot monitoring is a low-cost, high-impact method of continually monitoring the multibillion dollar cattle feeding industry for death and disease trends. NAHMS collects limited data from private veterinary practitioners and uses it to assess the industry and monitor for emerging issues. This ongoing monitoring activity originally started with data being reported on 15 percent of the cattle on feed in the United States. NAHMS is requesting that the number of cattle monitored be increased to 20 percent.

Antimicrobial Susceptibility Testing Study: The ability of bacteria to resist the effects of antimicrobials has become a global issue affecting both animal and human health. Despite a growing concern that antimicrobial resistance is affecting health, there is a lack of data to monitor trends and make timely decisions about antimicrobial selection and use. An extensive amount of antimicrobial resistance testing is carried out in veterinary diagnostic laboratories across the country but, to date, has not been collected and analyzed. NAHMS is requesting approval to collect, aggregate, and summarize data from the veterinary diagnostic laboratories. The objectives of this study are to: (1) Survey diagnostic laboratories to determine how they conduct antimicrobial resistance testing, store data, and if they would be willing to contribute data to a central clearinghouse; and (2) initiate collection of data from a geographically diverse sample of laboratories to test the feasibility and usefulness of such a system.

We are asking the Office of Management and Budget (OMB) to approve these information collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our Agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.0364 hours per response.

Respondents: Industry personnel, private veterinary practitioners, company and independent producers, academicians, State veterinary medical officers, State Public Health Officials as well as other interested parties involved with animal health and management practices in the United States.

Estimated annual number of respondents: 4466.

Estimated annual number of responses per respondent: 1.2651.

Estimated annual number of responses: 5,650.

Estimated total annual burden on respondents: 5,856. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–18691 Filed 7–24–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–014E]

Announcement of and Request for Comment Regarding Industry Petition on Hazard Analysis and Critical Control Point (HACCP) Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period on a notice published in the **Federal Register** on May 15, 2000, announcing and requesting comment on a petition received by several trade associations requesting FSIS to amend sections of its Hazard Analysis and Critical Control Point (HACCP) regulations. The comment period will be reopened for 60 days. This action is in response to a request received from the National Advisory Committee on Meat and Poultry Inspection (NACMPI).

DATES: Comments must be received on or before September 12, 2000.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Room, Docket #00–014E, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. FSIS is making available side-by-side comparison documents on the FSIS homepage at *www.fsis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Director, Regulations Development and Analysis Division, Food Safety and Inspection Service, Washington, DC 20250–3700, Telephone (202) 720–5627, FAX (202) 690–0486.

SUPPLEMENTARY INFORMATION: On May 15, 2000, FSIS published a notice in the **Federal Register** announcing the availability of and requesting comment on a petition received from a group of trade associations (65 FR 30952). The petition asked FSIS to amend sections of the Hazard Analysis and Critical Control Point (HACCP) regulations (9 CFR Part 417). The petitioners argued that the changes would increase the effectiveness of establishments' HACCP systems and would make the regulations more consistent with the HACCP principles published in 1997 by the

National Advisory Committee on Microbiological Criteria for Food (NACMCF). However, the petition was submitted with no data or examples to support the requests being made. The notice provided a 60-day comment period, which ended on July 14, 2000.

FSIS received a request from the National Advisory Committee on Meat and Poultry Inspection (NACMPI) to extend the comment period to allow the petitioners more time to provide specific examples and data to support the recommendations they posed in their petition. The NACMPI also requested that FSIS make available a set of side-by-side documents discussing definitions, principles, procedures, and prerequisites of FSIS, the Food and Drug Administration, the NACMCF, and the Codex Alimentarius Commission's HACCP procedures.

In response to the requests, FSIS is reopening the comment period for 60 days, making comments due September 12, 2000. Also, FSIS has prepared a set of side-by-side documents which are now available on the FSIS homepage at *www.fsis.usda.gov* and also in the FSIS Docket Room (see **ADDRESSES**).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: July 20, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–18769 Filed 7–24–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Motorized Trail Analysis and Parking Area Development, Medicine Bow-Routt National Forests, Jackson County, Colorado

AGENCY: USDA, Forest Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare and Environmental Impact Statement (EIS) to assess and disclose the environmental effects of determining the future status of Forest Development Trail (FDT) 1135 (Arapaho Ridge Trail) and creating trailhead parking areas at both ends of the trail. FDT 1135 is located on the Routt National Forest in Jackson County, Colorado. Trailhead parking areas would be rough surfaced, approximately 2 acres in size, and would be built to accommodate horse trailers and other recreational parking. Informational signing, Interpretive Education bulletin boards, and other area improvements may also be installed in the future. Installation of these amenities would be based on public need and the Forest Service budget.

The purpose and need for the proposal is to determine whether or not motorized use is appropriate on FDT 1135. Currently, the area around and including FDT 1135 is in a non-motorized Forest Plan Management Area prescription. The analysis will determine the appropriate use of the trail, if user-conflicts or resource impacts are occurring as a result of existing motorized use of the trail, and the types of amenities and parking areas needed at each trailhead.

The Forest Service is giving notice that it is beginning a full environmental analysis and decision-making process for this proposal so that potentially interested or affected individuals, agencies, or organizations can participate in the process and contribute to the final decision. All comments and suggestions on the scope of the analysis and decision-making process are welcome.

DATES: Public scoping to determine the future status of FDT 1135 and to create trailhead parking areas at both ends of the trail was initiated on January 4, 2000. Over 500 comment letters were received. All comments received from the January 4, 2000 scoping effort will be combined with comments received as a result of this Notice of Intent. Comments from both scoping efforts will be reviewed to identify potential issues for this analysis. Since the previously received comments will be incorporated into this analysis, individuals who responded to the January 4, 2000 scoping request need to provide comments at this time only if they wish to provide additional information to what they previously submitted. Written comments and suggestions should be postmarked by August 21, 2000 to receive consideration. The estimated time for filing the draft EIS is October 2000 followed by the final decision in February 2001.

ADDRESSES: Send written comments to Charles T. Oliver, District Ranger, Parks Ranger District, P.O. Box 158, Walden, Colorado, 80480.

FOR FURTHER INFORMATION CONTACT: Melissa Martin, Project Coordinator, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, Wyoming, 82070. Telephone: (307) 745–2371.

SUPPLEMENTARY INFORMATION: Prior to revision of the 1997 Routt National Forest Plan, FDT 1135 was located entirely within a Forest Plan Management Area that allowed motorized travel on designated routes. Consequently, the trail was managed to accommodate motorcycle use, as well as other non-motorized uses. Following revision of the Forest Plan, however, most of the area through which FDT 1135 runs was changed to a non-motorized Management Area prescription. As a result of this change, the middle portion (roughly 9 miles) of the trail is now located in Forest Plan Management Area 1.32, Backcountry Recreation, Non-motorized with Limited Motorized Use in Winter, whereas both trailheads and roughly 3 miles of the trail are located in Management Area 5.13, Forest Products. Allowing motorized travel to continue on portions of the trail currently falling within the non-motorized prescription conflicts with the 1997 Routt National Forest Plan.

Proposed Action: The Forest Service is proposing to close FDT 1135 to motorized use; all other forms of non-motorized recreation activities would continue to be allowed. The Forest Service would also create trailhead parking areas at both ends of the trail. The parking areas would be rough surfaced, approximately 2 acres in size, and would be built to accommodate

horse trailers and other recreational parking. Informational signing, Interpretive Education bulletin boards, and other area improvements may also be installed in the future. Installation of these amenities would be based on public need and the Forest Service budget.

Preliminary Issues: The following preliminary issues were identified as a result of the January 4, 2000 scoping effort:

- Implement the Revised Routt Forest Plan by closing FDT 1135 to motorized use.
- Amend the Revised Routt Forest Plan to allow continued motorized use.
- Reduce the size of the proposed parking areas.
- Construct physical barriers to prevent motorized use of the trail.
- User conflicts due to use of motorized vehicles in back country settings.
- User conflicts due to potentially reduced motorized trail opportunities.
- Resource impacts from motorized use of FDT 1135.
- Impacts to roadless areas from motorized use of FDT 1135.

Preliminary Alternatives: The following preliminary alternatives were developed in response to the issues identified above:

(1) No Action: The Forest Service would allow continued motorized use of the trail and would not amend the Routt National Forest Plan. Trailhead parking areas would not be created, and informational signing and interpretive Education bulletin boards would not be installed.

(2) Proposed Action: Please refer to the description above.

(3) Amend the Routt National Forest Plan to allow continued motorized use of FDT 1135: The Forest Service would amend the Routt National Forest Plan to create a motorized Management Area corridor around FDT 1135. This action would change a linear portion of the currently non-motorized prescription to one that accommodates motorized uses in back country settings for roughly 100 feet on either side of FDT 1135. The Management Area change would affect roughly 9 miles of the trail. All other activities associated with this alternative would be identical to the proposed action.

Selection of this alternative would likely result in a significant amendment to the Routt National Forest Plan.

Decisions to be Made: The Responsible Official must decide which alternative of those analyzed in the draft EIS to select for implementation. Based on the decision that is made, he will also decide what mitigation measures and monitoring requirements will be required.

Reviewer Obligations: The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The comment period is expected to end August 21, 2000.

Release of Names: Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27 (d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOLA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOLA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Responsible Official: Charles T. Oliver, District Ranger; Parks Ranger District; Medicine Bow-Routt National Forests; PO Box 158; Walden, CO 80480.

As the Responsible Official, I will decide which, if any of the alternatives to be described in the draft Environmental Impact Statement will be implemented. I will document the decision and reasons for my decision in a Record of Decision.

Dated: June 26, 2000.

Charles T. Oliver,

District Ranger.

[FR Doc. 00–18127 Filed 7–24–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on August 3, 2000, at the Embassy Suites Portland Downtown, 319 SW Pine Street, Portland, Oregon 97204–2726. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be discussed include, but are not limited to: briefings and discussion on Monitoring efforts, the Survey and Manage Draft Supplemental Environmental Impact Statement, and progress reports on ongoing implementation issues. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Curt Loop, Acting Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 502–808–2180).

Dated: July 19, 2000.

Curtis A. Loop,

Acting Designated Federal Official.

[FR Doc. 00–18699 Filed 7–24–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meetings

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, August 3, 2000.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Status of PBO planning.
3. Retirement of class A stock in FY 2000.
4. Annual class C stock dividend rate.
5. Board of Directors, election.
6. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Friday August 4, 2000.

PLACE: Room 104–A, The Williamsburg Room, Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the May 12, 2000, board meeting.
3. Report on loans approved in the third quarter of FY 2000.
4. Report on third quarter financial activity for FY 2000.
5. Privatization Committee report.
6. Consideration of resolution to retire class A stock in FY 2000.
7. Consideration of resolution to set annual class C stock dividend rate.
8. Final dates for receipt and tabulation of nominations.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: July 20, 2000.

Roberta D. Purcell,

Acting Governor, Rural Telephone Bank.

[FR Doc. 00–18849 Filed 7–20–00; 5:02 pm]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 37–2000]

Foreign-Trade Zone 34—Niagara County, New York Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Niagara, New York, grantee of FTZ 34, requesting authority to expand its general-purpose zone site to include an additional parcel in Wheatfield, New York. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 17, 2000.

FTZ 34 was approved on November 29, 1977 (Board Order 125, 42 FR 61489, 12/5/77), relocated on January 27, 1983 (Board Order 203, 48 FR 5771, 2/8/83), and expanded on October 28, 1993 (Board Order 662, 58 FR 59236, 11/8/93). The zone project currently consists of 183 acres at the Niagara Falls International Airport in Niagara County (Town of Wheatfield), New York.

The applicant is now requesting authority to expand the existing zone site to include the Vantage International Pointe Industrial Park (158 acres) located at 6300 Lockport Road, Wheatfield, adjacent to the airport site. The park is owned by the Niagara County Industrial Development Agency. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 25, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 9, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center 111 West Huron Street, Room 1304, Buffalo, NY 14202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 18, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–18807 Filed 7–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Continuation of Antidumping Duty Order: Glycine from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty orders: Glycine from the People's Republic of China

SUMMARY: On June 8, 2000 the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on glycine from the People's Republic of China ("PRC") would be likely to lead to continuation or recurrence of dumping (65 FR 36405). On July 12, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on Glycine from PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 43037). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of antidumping duty order on Glycine from the PRC.

EFFECTIVE DATE: July 25, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2000, the Department initiated, and the Commission instituted, sunset reviews (65 FR 5308 and 65 FR 5371, respectively) of the antidumping duty order on glycine from the PRC, pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would be likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked.[1]

On July 12, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on glycine from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (see, Glycine From China, 65 FR 43037 (July 12, 2000) and USITC Publication 3315, Investigation No. 731–TA–718 (Review) (June 2000)).

Scope

The product covered by this order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, re-absorbable amino acid, chemical

[1] See Glycine From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order, 65 FR 36405 (June 8, 2000).

intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff schedule of the United States ("HTSUS"). The scope of this order includes glycine of all purity levels. In a separate scope ruling, the Department determined that D(-)PhenylglycineEthyl Dane Salt is outside the scope of the order.[2]

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on glycine from the PRC. The Department will instruct the U.S. Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than June 2005.

Dated: July 19, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–18808 Filed 7–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of administrative review: natural bristle paint brushes and brush heads from the People's Republic of China.

SUMMARY: On March 15, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China (PRC). This administrative review covers the period February 1, 1998 through January 31, 1999.

Based on our analysis of the comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: July 25, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4106 or (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (1998).

Background

On March 15, 2000, the Department published the preliminary results of review of the antidumping duty order on natural bristle paint brushes and brush heads from the PRC (65 FR 13944). We received surrogate value comments from respondent Hebei Founder Import & Export Company (Founder) and the Paint Applicator Division of the American Brush Manufacturers Association (petitioner) on April 3 and 4, 2000 respectively. On April 14, 2000 we received rebuttal comments regarding surrogate values from respondent Hunan Provincial Native Produce & Animal By-Products Import and Export Corp. (Hunan). On April 24, 2000, we received comments regarding our preliminary calculations on behalf of the petitioner and Founder. On May 2, 2000, we received rebuttal comments from petitioner and respondents Hunan and Founder. The Department has now completed this review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. Excluded from the review are paint brushes and brush heads with a blend of 40% natural bristles and 60% synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 14, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building (B–099). In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations for Hunan and Founder. Any alleged programming or clerical errors are discussed in the relevant sections of the Decision Memo, accessible in room B–099 and on the Web at *http://ia.ita.doc.gov*.

Final Results of Review

We determine that the following weighted-average margins exist for the period February 1, 1998 through January 31, 1999:

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[2] See Notice of Scope Rulings, 62 FR 62288 (November 21, 1997). We note that scope ruling are made on an order-wide basis.

Manufacturer/exporter	Margin (percent)
Hunan Provincial Native Produce & Animal By-Products Import & Export Corp. ...	0.00
Hebei Founder Import & Export Company	30.02

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of natural bristle paint brushes and brush heads from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 351.92 percent; and (4) for all other non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751 and 777(i) of the Act.

Dated: July 13, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues

1. Factor Valuation and Usage Rates
   A. Surrogate Values of Material Inputs
   B. Material Input Weights
   C. Wooden Core
   D. Inflation of Surrogate Values
2. Non *Bona Fide* Sale
3. Scope
4. Clerical Errors

[FR Doc. 00–18810 Filed 7–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–806, A–822–804, A–570–860, A–560–811, A–588–856, A–580–844, A–449–804, A–841–804, A–455–803, A–821–812, A–823–809, A–307–819]

Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars From Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: July 25, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Tom Futtner at (202) 482–0650 and (202) 482–3814, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petitions

On June 28, 2000, the Department of Commerce (the Department) received petitions filed in proper form by the Rebar Trade Action Coalition (RTAC), as well as its individual members [1] (hereinafter collectively, the petitioner). RTAC is an ad hoc trade association, the members of which are producers of the domestic like product in the alleged region. The Department received from RTAC information supplementing the petitions throughout the 20-day initiation period.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of steel concrete reinforcing bars (rebar) from Austria, Belarus, Indonesia, Japan, the Republic of Korea (Korea), Latvia, Moldova, the People's Republic of China (the PRC), Poland, the Russian Federation (Russia), Ukraine, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate (*see* the following section below).

Determination of Industry Support for the Petitions

The petitioner alleges that there is a regional industry for the domestic like product and included data for both factors required by section 771(4)(C) of the Act: (1) The producers within such market sell all or almost all of their production of the like product in question in the regional market; and (2) the demand in the regional market is not supplied, to any substantial degree, by producers located elsewhere in the United States.[2] Moreover, the petitioner included data supporting its allegation that there is a concentration of dumped

[1] AmeriSteel; Auburn Steel Co., Inc.; Birmingham Steel Corp.; Border Steel, Inc.; Marion Steel Company; Riverview Steel; Nucor Steel and CMC Steel Group. Auburn Steel Co. is not a petitioner in the investigations involving rebar from Japan and Indonesia.

[2] The region identified by the petitioner consists of Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

imports from the subject countries in the region, pursuant to section 771(4)(C) of the Act.[3] We have examined the accuracy and adequacy of the information supporting the regional industry claim to determine whether the petitioner provided evidence, reasonably available to it, sufficient to justify initiation based on a regional industry analysis. We determined the accuracy and adequacy of the petitioner's data by comparing the petition information with publicly available data. On this basis, we have determined that the petitioner satisfied the statutory requirements for initiation purposes. *See Initiation Checklist*, dated July 18, 2000 (*Initiation Checklist*), which is on file in Import Administration's Central Records Unit.

If the petitioner alleges that the industry is a regional industry, the Department, on the basis of production in the region, shall determine whether the petition has been filed on behalf of the domestic industry by applying the requirements enunciated in section 732(c)(4)(A) of the Act. This section of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant regional industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product in the region; and (2) more than 50 percent of the production of the domestic like product in the region produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry.

While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authorities. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[4]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions is the single domestic like product defined in the "Scope of Investigations" section, below. No party has commented on the petitions' definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions contain adequate evidence of industry support; therefore, polling is unnecessary (*see Initiation Checklist*). For each petition filed, the petitioner established industry support representing over 50 percent of total production of the domestic like product in the region. Accordingly, the Department determines that these petitions are filed on behalf of the regional domestic industry within the meaning of section 732(b)(1) of the Act.[5]

Scope of Investigations

For purposes of these investigations, the product covered is all steel concrete reinforcing bars (rebar) sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by August 18, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, and factors of production (FOP) are detailed in the *Initiation Checklist*. Where the petitioner obtained data from foreign market research, we spoke to the researcher to establish that person's credentials and to confirm the validity of the information being provided. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding the investigations involving non-market economies (NME), the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for

[3] To date, the International Trade Commission has not considered the issue of whether to cumulatively assess the volume and effect of imports under section 771(7)(G)(i) of the Act in a regional industry case, where the petition alleges dumping of imports from more than one country. As a result, this case presents a novel question of whether to reach the cumulation issue before determining whether the subject imports were sufficiently concentrated within the alleged region, or whether to consider the concentration issue for each individual country, pursuant to section 771(4)(C) of the Act. Either method is a plausible interpretation of the statute. For purposes of these initiations, in our analysis of whether subject imports were sufficiently concentrated under section 771(4)(C) of the Act, we will accept the petitioner's allegation of injury based on the cumulative assessment of the volume and value of imports under section 771(7)(G)(i) of the Act.

[4] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

[5] We note that, even if the petitions did not allege a regional market for the subject merchandise, industry support for these petitions represents more than 50 percent of national production of the domestic like product.

all NME exporters in the given country. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

Austria

Export Price

The petitioner based export price (EP) on the March 2000 unit value reported in the Bureau of the Census IM–145 data and calculated a net U.S. price by deducting from this value international freight, U.S. port charges, and customs duties paid.

Normal Value

The petitioner based normal value (NV) on two methodologies. First, the petitioner provided an Austrian domestic price of high yield rebar obtained from an industry publication. However, because of the lack of specificity of the terms of sale associated with this price, we have not considered this value as a basis for NV. The petitioner also based NV on constructed value (CV), consisting of cost of manufacturing (COM), selling, general and administrative expenses (SG&A), profit, interest expense, depreciation, and packing. COM was calculated based on the average consumption rates of two U.S. rebar producers. The petitioner adjusted COM for known cost differences of the producers in the United States and Austria. To calculate SG&A and interest expense, the petitioner relied upon its own data because the Austrian producer's financial statements did not disclose these expenses. The petitioner derived profit based upon an Austrian rebar producer's 1998 financial statements.

Based upon the comparison of CV to EP, the petitioner calculated an estimated dumping margin of 104.05 percent.

Belarus

Export Price

The petitioner based EP on price quotes from Byelorussian Steel Works (BSW) to an unaffiliated U.S. purchaser for different sizes of rebar of the same grade and calculated a net U.S. price by deducting international freight and U.S. port charges.

Normal Value

The petitioner alleges that Belarus is an NME country, and calculated NV based on the FOP methodology pursuant to section 773(c) of the Act. In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This status covers the geographic area of the former U.S.S.R., each part of which retains the NME status of the former U.S.S.R. Therefore, Belarus will be treated as an NME unless and until its NME status is revoked (*see Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan*, 57 FR 23380 (June 3, 1992)).

For NV, the petitioner based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of two U.S. rebar producers. The petitioner asserts that information regarding BSW's consumption rates is not available, and that the consumption rates of the two U.S. producers are typical of the global steel industry. Based on the information provided by the petitioner, we believe that the petitioner's FOP methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

The petitioner asserts that Thailand is the most appropriate surrogate country for Belarus, claiming that Thailand is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to Belarus in terms of per capita GNP. Based on the information provided by the petitioner, we believe that the petitioner's use of Thailand as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued FOP, where possible, on reasonably available, public surrogate country data from Thailand. Values for scrap steel and the scrap offset were based on Thai import prices listed in *TradStat Import/Exports Report* for the period October 1999 through March 2000. The value for electricity was obtained from the International Energy Agency's *Energy Prices & Taxes*, Fourth Quarter 1999. The natural gas value was taken from *Coal and Natural Gas Competition in APEC Economies*, August 1999. Labor was valued using the Department's regression-based wage rate for Belarus, in accordance with 19 CFR 351.408(c)(3).

The petitioner valued other production costs, for which no Thai surrogate values were available, with values from the two U.S. producers. All surrogate values that fell outside the anticipated period of investigation (POI), which in the NME cases was October 1, 1999 through March 31, 2000, were adjusted for inflation. For electricity, we recalculated the inflator using the wholesale price index. To determine depreciation, SG&A, interest expenses, and profit, the petitioner relied on the data from a 1999 annual report of Sahaviriya Steel Industries Public Company Limited, a Thai steel producer. Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiating this investigation.

Based on comparisons of EP to NV, the petitioner calculated estimated dumping margins ranging from 49.06 to 56.48 percent.

Indonesia

Export Price

The petitioner based EP on price quotes from PT Jakarta Kyoei Steel Works Ltd. (Jakarta Kyoei) to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and calculated a net U.S. price by deducting foreign inland frieght, international freight, and Indonesian and U.S. port charges.

Normal Value

With respect to NV, the petitioner provided a home market price that was obtained from foreign market research for a grade and size of rebar that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioner states that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioner provided a margin based on a price-to-price comparison, it also provided information demonstrating reasonable grounds to believe or suspect that sales of rebar in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, and packing. The petitioner calculated COM based on the consumption rates of a U.S. rebar producer. The petitioner adjusted COM for known differences in the production process used by producers in the United States and Indonesia. To calculate depreciation and SG&A, the petitioner relied upon amounts reported in Jakarta Kyoei's 1998 financial statements. For interest

expense, the petitioner used Jakarta Kyoei's 1997 financial statements, explaining that the 1998 interest expenses were unreasonably high as a result of the financial crisis.

Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in Indonesia on CV. The petitioner calculated CV using the same COM, depreciation, SG&A, and interest expense figures used to compute Indonesian home market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. However, the profit amounted to zero because Jakarta Kyoei reported a loss on its 1998 financial statements. *See, e.g., Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela*, 64 FR 34194, 34202 (June 25, 1999) (Petitioners added to CV no amount for profit, because the Thai steel producer reported a loss in its 1998 financial statements).

Based upon the comparison of CV to EP, the petitioner has calculated an estimated dumping margin of 71.01 percent.

Japan

Export Price

The petitioner based EP on a price quote from Kyoei Steel Ltd. (Kyoei), to an unaffiliated U.S. purchaser for two grades and sizes of rebar, and calculated a net U.S. price by deducting foreign inland freight, international freight, U.S. port charges, and customs duties paid.

Normal Value

With respect to NV, the petitioner provided a home market price that was obtained from foreign market research for grades and sizes of rebar that are comparable to the products exported to the United States which serve as the basis for EP. The petitioner calculated an ex-factory NV by deducting from the quoted home market price foreign inland freight and home market credit expense.

Although the petitioner provided a margin based on a price-to-price comparison, it also provided information demonstrating reasonable grounds to believe or suspect that sales of rebar in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, interest expenses, and packing. The petitioner calculated COM based on the consumption rates of a U.S. rebar producer. The petitioner adjusted COM for known differences in the production process used by producers in the United States and Japan. To calculate depreciation, SG&A, and interest expenses, the petitioner relied upon the 1999 financial statements of Tokyo Steel Manufacturing Company (Tokyo Steel) because it was unable to locate public financial statements for Kyoei. Based upon the comparison of the price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in Japan on CV. The petitioner calculated CV using the same COM, depreciation, SG&A, and interest expense figures used to compute Japanese home market costs. Pursuant to section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. However, the profit amounted to zero because Tokyo Steel reported a loss on its 1998 financial statement.

Based upon the comparison of CV to EP, the petitioner has calculated an estimated dumping margin of 188.79 percent.

Latvia

Export Price

The petitioner based EP on a price quote from Liepaja Metalurgs (Liepaja) to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and calculated a net U.S. price by deducting international freight and Latvian and U.S. port charges.

Normal Value

The petitioner alleges that Latvia is an NME country, and calculated NV based on the FOP methodology pursuant to section 773(c) of the Act. For the reasons described above for Belarus, Latvia will be treated as an NME unless and until its NME status is revoked.

Given that information regarding Liepaja's consumption rates is not available, NV was calculated using the same methodology described above for Belarus. Further, Thailand was used as the surrogate country. We believe that Thailand is an appropriate surrogate for purposes of initiating this case with respect to Latvia for the same reasons as discussed above with respect to Belarus.

Based on comparisons of EP to NV, the petitioner calculated estimated dumping margins ranging from 45.52 to 58.40 percent.

Moldova

Export Price

The petitioner based EP on a price quote from Moldova Steel Works (MSW) to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and calculated a net U.S. price by deducting foreign inland freight, international freight, and U.S. port charges.

Normal Value

The petitioner alleges that Moldova is an NME country, and constructed NV based on the FOP methodology pursuant to section 773(c) of the Act. For the reasons described above for Belarus, Moldova will be treated as an NME unless and until its NME status is revoked.

Given that information regarding MSW's consumption rates is not available, NV was calculated using the same methodology described above for Belarus, except that Indonesia, rather than Thailand, was used as the surrogate country for valuing the FOP. The petitioners assert that Indonesia is the most appropriate surrogate country for Moldova because Indonesia is: (1) A market economy country; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to Moldova in terms of per capita GNP. Based on the information provided by the petitioner, we believe that the petitioner's use of Indonesia as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued FOP, where possible, on reasonably available, public surrogate country data from Indonesia. Values for scrap steel and the scrap offset were based on Indonesian

import prices listed in *TradStat Import/Exports Report* for the period October 1999 through March 2000. The values for electricity and gas were obtained from the International Energy Agency's *Energy Prices & Taxes*, Fourth Quarter 1999. Labor was valued using the Department's regression-based wage rate for Moldova, in accordance with 19 CFR 351.408(c)(3).

The petitioner valued other production costs, for which no Indonesian surrogate values were available, using values from the two U.S. producers. All surrogate values which fall outside the POI were adjusted for inflation. To determine depreciation and SG&A, the petitioner applied rates derived from the 1998 financial statements of Jakarta Kyoei, an Indonesian producer of the subject merchandise. For interest expense, the petitioner used Jakarta Kyoei's 1997 financial statements, explaining that the 1998 interest expenses were unreasonably high as a result of the financial crisis. The amount for profit was reported as zero because Jakarta Kyoei reported a loss on its 1998 financial statements. Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiating this investigation.

Based on comparisons of EP to NV, the petitioner calculated an estimated dumping margin of 49.07 percent.

The People's Republic of China

Export Price

The petitioner based EP on a price quote from Laiwu Steel Group Limited (Laiwu) to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and calculated a net U.S. price by deducting international freight, U.S. port charges, and customs duties paid.

Normal Value

The petitioner asserts that the PRC is an NME country, and that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China*, 65 FR 13944, 13946 (March 15, 2000) (preliminary determination). The PRC will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioner determined the dumping margin using an NME analysis.

Given that information regarding Laiwu's consumption rates is not available, NV was calculated using the same methodology described above for Moldova. Further, Indonesia was used as the surrogate country. We believe that Indonesia is an appropriate surrogate for purposes of initiating this case with respect to the PRC for the same reasons as discussed above with respect to Moldova.

Based on comparisons of EP to NV, the petitioner calculated an estimated dumping margin of 59.98 percent.

Poland

Export Price

The petitioner based EP on a price quote from Huta Ostrowiec to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and calculated a net U.S. price by deducting foreign inland freight, international freight, and U.S. port charges.

Normal Value

With respect to NV, the petitioner provided a home market price that was obtained from foreign market research for a grade and size of rebar that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioner states that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioner provided a margin based on a price-to-price comparison, it also provided information demonstrating reasonable grounds to believe or suspect that sales of rebar in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, interest expenses, and packing. The petitioner calculated COM based on the average consumption rates of two U.S. rebar producers. The petitioner adjusted COM for known differences in the production process used by producers in the United States and Poland. To calculate depreciation, SG&A, and interest expenses, the petitioner also relied upon its own data because it was unable to locate public financial statements for Huta Ostrowiec. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in Poland on CV. The petitioner calculated CV using the same COM, depreciation, SG&A and interest expense figures used to compute Polish home market costs. Consistent with section 773(e)(2) of the Act, the petitioner also added to CV an amount for profit. Petitioner derived profit based upon its own data.

Based upon the comparison of CV to EP, the petitioner calculated an estimated dumping margin of 53.54 percent.

Republic of Korea

Export Price

The petitioner determined EP based on price quotes from Hanbo Iron and Steel Co. Ltd. (Hanbo) and the former Kangwon Industries Ltd. (Kangwon), which has recently been acquired by Inchon Iron & Steel Co. Ltd. (Inchon), to unaffiliated U.S. purchasers for different grades and sizes of rebar. The petitioner calculated a net U.S. price by deducting foreign inland freight, international freight charges, Korean and U.S. port charges, and customs duties paid.

Normal Value

With respect to NV, the petitioner provided home market prices that were obtained from foreign market research for grades and sizes of rebar that are comparable to the products exported to the United States which serve as the basis for EP. The petitioner calculated an ex-factory NV by deducting from the quoted home market prices foreign inland freight.

Although the petitioner provided a margin based on a price-to-price comparison, it also provided information demonstrating reasonable grounds to believe or suspect that sales of rebar in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, interest expenses, and packing. The petitioner calculated COM based on the average consumption rates of two U.S. rebar producers. The petitioner adjusted COM for known differences in the production process used by producers in the United States and Korea. To calculate depreciation, SG&A, and

interest expenses the petitioner relied upon the 1998 unconsolidated annual report for Kangwon. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in Korea on CV. The petitioner calculated CV using the same COM, depreciation, SG&A and interest expense figures used to compute Korean home market costs. Consistent with section 773(e)(2) of the Act, the petitioner also added to CV an amount for profit, using data from Inchon's 1998 financial statements because Kangwon had no profit in 1998.

Based upon the comparison of CV to EP, the petitioner calculated estimated dumping margins of 86.69 percent and 102.28 percent.

The Russian Federation

Export Price

The petitioner based EP on a price quote from Kuznetskiy Met Kombinat (KMK) to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and given that the terms of this price quote were FOB mill, no deductions to the price quotation were made.

Normal Value

The petitioner asserts that the Russia is an NME country, and that in all previous investigations the Department has determined that Russia is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 42669, 42670–71 (July 11, 2000) (final determination). Russia will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Russia's status as an NME remains in effect, the petitioner determined the dumping margin using an NME analysis.

Given that information regarding KMK's consumption rates is not available, NV was calculated using the same methodology described above for Belarus. Further, Thailand was used as the surrogate country. We believe that Thailand is an appropriate surrogate for purposes of initiating this case with respect to Russia for the same reasons as discussed above with respect to Belarus.

Based on comparisons of EP to NV, the petitioner calculated an estimated dumping margin of 68.87 percent.

Ukraine

Export Price

The petitioner based EP on a price quote from Krivoi Rog State Mining & Metal Works (Krivoi Rog) to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and calculated a net U.S. price by deducting foreign inland freight, international freight, U.S. port costs, and customs duties paid.

Normal Value

The petitioner alleges that Ukraine is an NME country, and in all previous investigations, the Department has determined that Ukraine is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997)). Ukraine will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Ukraine's status as an NME remains in effect, the petitioner determined the dumping margin using an NME analysis.

Given that information regarding Krivoi Rog's consumption rates is not available, NV was calculated using the same methodology described above for Moldova. Further, Indonesia was used as the surrogate country. We believe that Indonesia is an appropriate surrogate for purposes of initiating this case with respect to Ukraine for the same reasons discussed above with respect to Moldova.

Based on comparisons of EP to NV, the petitioner calculated an estimated dumping margin of 41.69 percent.

Venezuela

Export Price

The petitioner based EP on a price quote from Siderurgica del Turbio SA (Sidetur) to an unaffiliated U.S. purchaser for different grades and sizes of rebar, and calculated a net U.S. price by deducting foreign inland freight, international freight, and Venezuelan and U.S. port charges.

Normal Value

With respect to NV, the petitioner provided a home market price obtained from foreign market research for grades and sizes of rebar comparable to the products exported to the United States which serve as the basis for EP. The petitioner calculated an ex-factory NV by deducting from the quoted home market price movement related charges associated with delivering the merchandise to the Venezuelan customers.

Based upon the comparison of NV to EP, the petitioner calculated an estimated dumping margin of 125.49 percent.

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Indonesia, Japan, Korea, and Poland were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316 at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in markets of Indonesia, Japan, Korea, and Poland were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Critical Circumstances

The petitioner has alleged that the Department should make an expedited

finding that critical circumstances exist with regard to imports of rebar from the PRC, Korea, Latvia, and Poland, and has supported its allegations with the following information.

First, the petitioner claims that the importers knew, or should have known, that the rebar was being sold at less than NV. Specifically, the petitioner alleges that the margins calculated in the petition for each of the four countries exceed the 25 percent threshold used by the Department to impute importer knowledge of dumping. Moreover, with regard to Korea and Latvia, the petitioner notes that exports of rebar from these countries have been subject to recent antidumping duties imposed by countries other than the United States.

The petitioner also has alleged that imports from these four countries have been massive over a relatively short period. Alleging that there was sufficient pre-filing notice of these antidumping petitions, the petitioner contends that for purposes of this determination, the Department should compare imports during September to December 1999 to imports during January to April 2000.[6] As explained in section 351.206(i) of our regulations, "the Secretary normally will consider a "relatively short period" as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time."

The petitioner supported its claim that an earlier comparison period should be used with citations from a December 7, 1999, news article discussing the formation of a U.S. industry coalition and the likelihood of filing of antidumping petitions against producers of rebar. Additionally, in a petition amendment/supplement filed July 13, 2000, the petitioner provided several additional articles published prior to the petition filing that specifically referenced the volume of rebar exports from these four countries.

In the past, the Department concluded that a high level of press coverage provided foreign producers of rebar with prior knowledge of pending antidumping investigations. *See e.g., Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela*, 63 FR 34194, 34203 (June 25, 1999). Therefore, the Department considered import statistics contained in the petition for the periods September–December 1999 and January–April 2000 for Korea, Latvia and Poland, and the periods of August–December 1999 and January–May 2000 for the PRC. Based on this comparison, imports of rebar from the PRC increased by 130 percent, imports from Korea increased by 17 percent, imports from Latvia increased by 42.4 percent, and imports from Poland increased from zero imports to over forty thousand metric tons, an unquantifiable percentage.[7]

The Department also considers the extent of the increase in the volume of imports of the subject merchandise as one indicator of whether a reasonable basis exists to impute knowledge that material injury was likely. In the cases involving the PRC, Korea, Latvia and Poland, the increases in imports were in excess of fifteen percent, the amount considered "massive" by the Department. Taking into consideration the foregoing, we find that the petitioner has supported its claim of critical circumstances with information reasonably available for purposes of initiating a critical circumstances inquiry. For these reasons, we will investigate this matter further and will make a preliminary determination at the appropriate time, in accordance with section 735(e)(1) of the Act and the Department's practice (see Policy Bulletin 98/4 (63 FR 55364, October 15, 1998)).

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of rebar from Austria, Belarus, Indonesia, Japan, Korea, Latvia, Moldova, the PRC, Poland, Russia, Ukraine, and Venezuela are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist* at Attachment Re: Material Injury).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on rebar, and the petitioner's responses to our supplemental questionnaire clarifying the petitions, as well as our conversations with foreign market researchers and other experts who provided information concerning various aspects of the petitions, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of rebar from Austria, Belarus, Indonesia, Japan, Korea, Latvia, Moldova, the PRC, Poland, Russia, Ukraine, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Austria, Belarus, Indonesia, Japan, Korea, Latvia, Moldova, the PRC, Poland, Russia, Ukraine, and Venezuela. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than August 14, 2000, whether there is a reasonable indication that imports of certain rebar products from Austria, Belarus, Indonesia, Japan, Korea, Latvia, Moldova, the PRC, Poland, Russia,

[6] For the PRC, the petitioner compared imports from the five-month period of August to December 1999, and January to May 2000, in order to include a significant May shipment of rebar in its analysis.

[7] In the period of September to December 1999, there were no imports of rebar from Poland.

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Ukraine, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 18, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–18809 Filed 7–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 84–11A12."

Northwest Fruit Exporters' ("NFE") original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); and October 20, 1999 (64 FR 57438, October 25, 1999). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, Washington 98901.

Contact: James R. Archer, Manager, Telephone: (509) 576–8004.

Application No.: 84–11A12.

Date Deemed Submitted: July 18, 2000.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Apple Country, Inc., Wapato, Washington; Cashmere Fruit Exchange, Cashmere, Washington; Dole Northwest, Wenatchee, Washington; IM EX Trading Company, Yakima, Washington; Inland—Joseph Fruit Company, Wapato, Washington; (controlling entity: Inland Fruit & Produce Co., Inc.); PAC Marketing International, LLC, Yakima, Washington; Sage Marketing LLC, Yakima, Washington (controlling entities: Olympic Fruit, Columbia Reach and Valley Fruit); Voelker Fruit & Cold Storage, Inc., Yakima, Washington; and Washington Export, LLC, Yakima, Washington;

2. Delete the following companies as "Members" of the Certificate: Crandell Fruit Company, Wenatchee, Washington; George F. Joseph Orchard, Yakima, Washington; Gwin, White & Prince, Inc., Wenatchee, Washington; H & H Orchards Packing, Inc., Malaga, Washington; Inland Fruit & Produce Co., Wapato, Washington; Johnny Appleseed of WA/CRO Fruit Co., Wenatchee, Washington, Majestic Valley Produce, Wenatchee, Washington; and Valicoff Fruit Company, Inc., Wapato, Washington; and

3. Change the listing of the company name for the current Member "Blue Bird, Inc." to the new listing "Washington Cherry Growers".

Dated: July 19, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–18737 Filed 7–24–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Workshop on Modes of Operation for Symmetric Key Block Cipher Algorithms

AGENCY: National Institute of Standards and Technology, Doc.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a workshop to discuss modes of operation for the protection of data using a symmetric key block cipher algorithm. The results of this workshop will be used by NIST in development a draft modes of operation standard for symmetric key block cipher algorithms. Comments and papers are encouraged prior to the workshop to propose, define, and justify any modes that are appropriate for NIST to include in such a standard. These comments and papers should be addressed to EncryptionModes@nist.gov.

DATES: The Modes of Operation workshop will be held on Friday, October 20, 2000, from 9 a.m. to 5 p.m.

To provide for sufficient time to prepare the agenda for the modes to be discussed at the workshop, comments are due by October 1, 2000.

ADDRESSES: The workshop will be held at the Baltimore Convention Center in Baltimore, Maryland. Details regarding workshop registration can be found at: http://www.nist.gov/modes.

Comments regarding proposed modes of operation may be sent to: EncryptionModes@nist.gov or to Elaine Barker, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, USA.

FOR FURTHER INFORMATION CONTACT: The Symmetric Key Block Cipher Modes of Operation home page (http://www.nist.gov/modes) may be used to access information regarding the modes of operation workshop, registration and lodging information.

Questions may also be addressed to: 1) Elaine Barker at (301) 975–2911 (Email: ebarker@nist.gov) or Bill Burr at (301) 975–2914 (Email: william.burr@nist.gov).

SUPPLEMENTARY INFORMATION: In 1997, NIST began the development of the Advanced Encryption Standard (AES) to specify a symmetric key block cipher algorithm that would provide confidentiality for sensitive (unclassified) data. As the AES development process nears its conclusion, the specific modes of operation for its use need to be addressed. In 1980, Federal Information Processing Standard (FIPS) 81, *DES Modes of Operation*, defined four encryption modes for the Data Encryption Standard (DES). The four modes are the Electronic Codebook (ECB) mode, the Cipher Block Chaining (CBC) mode, the Cipher Feedback (CFB) mode, and the Output Feedback (OFB) mode. Each mode of FIPS 81 specifies a different way to use the DES block encryption algorithm to encrypt and decrypt data, with somewhat different security and operational characteristics, and each is best suited to different applications. Cryptographic system designers or security application designers need to select one or more of the modes when using the DES symmetric key block cipher algorithm in a cryptographic system or security application. However, FIPS 81 was written to be specific to DES and its key and block size. A new standard is needed that will address other symmetric key block cipher algorithms (*e.g.*, AES). The workshop will provide NIST with useful input as the standard is drafted.

It is NIST's intention that the planned standard be independent of specific key or block sizes of particular encryption algorithms and that the standard include the four modes specified in FIPS 81, plus other modes needed for current applications and technology. During the development of the AES, NIST received comments suggesting that additional modes should be included in a Modes of Operation standard, and that the development of a new modes standard should be carefully considered by the cryptographic community. To this end, the workshop will discuss appropriate secure modes that participants believe NIST should consider for the standard. Comments are requested prior to the workshop on any recommended modes so as to facilitate discussion of specific proposals at the workshop. Following the workshop, NIST intends to prepare a draft standard that will be made available for public review and comment.

Advance registration and a workshop fee is required for workshop attendance. Details of the workshop may be obtained at http://www.nist.gov/modes. Note that this workshop follows the National Information Systems Security Conference (NISSC) held in Baltimore, Maryland from October 16–19, 2000.

NIST solicits comments from interested parties, including industry, academia, voluntary standards organizations, the public, Federal agencies, and State and local governments concerning the Modes of Operation Standard issues and techniques for discussion at the workshop.

Authority: NIST's activities to develop computer security standards to protect Federal sensitive (unclassified) systems are undertaken pursuant to specific responsibilities assigned to NIST in Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), the Computer Security of 1987 (Pub. L. 100–235), and Appendix III to Office of Management and Budget Circular A–130.

Dated: July 18, 2000.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 00–18811 Filed 7–24–00; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

July 19, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Top Kid's, Inc. has violated the requirements for participation in the Special Access Program, and has suspended Top Kid's, Inc. from participation in the Program for the period August 1, 2000 through January 31, 2002.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Top Kid's, Inc. during the period August 1, 2000 through January 31, 2002, and to prohibit entry by or on behalf of Top Kid's, Inc. under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Top Kid's, Inc. from participation in the Special Access Program for the period August 1, 2000 through January 31, 2002. You are therefore directed

to prohibit entry of products under the Special Access Program by or on behalf of Top Kid's, Inc. during the period August 1, 2000 through January 31, 2002. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Top Kid's, Inc. manufactured from fabric exported from the United States during the period August 1, 2000 through January 31, 2002.

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–18682 Filed 7–24–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 24, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 19, 2000.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Annual Performance Report for the Preparing Tomorrow's Teachers to use Technology Grant Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 225—Burden Hours: 2,250.

Abstract: This submission requests approval for a web-based performance report needed by the U.S. Department of Education (ED) to obtain baseline data and information on the progress and effectiveness of the Preparing Tomorrow's Teachers to use Technology (PT3) grantees. The PT3 grant program was established to assist consortia of public and private entities in developing and implementing teacher training programs that prepare prospective teachers to use technology for improved instructional practices and student learning opportunities in the classroom. The performance reports will be completed by all 225 grantees and data gathered from the reports will be used by ED to determine which activities are most successful at training preservice teachers to integrate technology and to determine the overall effectiveness of the PT3 grant program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–18690 Filed 7–24–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Soliciting Motions To Intervene, Protests, Comments, Recommendations, Terms and Conditions, and Prescriptions

July 19, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of Exemption.

b. Project No.: 7662–015.

c. Date filed: June 12, 2000.

d. Applicant: Reading Area Water Authority.

e. Name of Project: Ontelaunee.

f. Location: At Lake Ontelaunee in Berks County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: Gary D. Bachman, Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, N.W., Washington, D.C. 20007, (202) 298–1800.

i. FERC Contact: Hector Perez, hector.perez@ferc.fed.us, 202–219–2843.

j. Deadline for filing motions to intervene, protest, comments, recommendations, terms and conditions, and prescriptions: 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The existing project consists of two units at the facility's gatehouse, 375-kW and 530-kW, respectively, and a 37-kW unit at a nearby filter plant. The

applicant proposes to decommission the two units at the gatehouse by removing the units and disconnecting the transmission line that connects them to the grid.

The applicant also proposes to amend the conservation minimum flows. Presently, the applicant is required to maintain a minimum flow of 51 cubic feet per second (cfs) or the inflow to the reservoir, whichever is less. The applicant proposes to: (1) maintain a constant conservation flow of 51 cfs if the level of the reservoir is 302 feet; (2) maintain a constant conservation flow of 36 cfs if the reservoir level is between 300 and 302 feet; and (3) maintain a constant conservation flow of 27 cfs if the level of the reservoir is under 300 feet.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding.

n. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects at the address shown in item j and to the applicant's contact specified in item h above. The filing must include proof of service of the filing on all persons listed in the service list in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,
Secretary.

[FR Doc. 00–18698 Filed 7–24–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

July 20, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Application to amend the license.

b. Project No.: P–6641–037.

c. Date Filed: April 7, 2000.

d. Applicant: City of Marion, Kentucky and Smithland Hydroelectric Partners.

e. Name of Project: Smithland Hydroelectric Project.

f. Location: The Project would be located at the existing U.S. Army Corps of Engineers' Smithland Lock and Dam on the Ohio River in Livingston County, Kentucky. The project utilizes a government dam.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Smithland Hydroelectric Partners, Ltd., 120 Calumet Court, Aiken, S.C. 29803. Tel: (803) 642–2749.

i. FERC Contact: Any questions on this notice should be addressed to Ms. Allyson Lichtenfels at (202) 219–3274 or by e-mail at Allyson.lichtenfels@ferc.fed.us.

j. Deadline for filing comments and/or motions: August 28, 2000.

Please include the project number (P–6641–037) on any comments or motions filed.

k. Description of Filing: Smithland Hydroelectric Partners, Ltd., (Smithland) proposes to change (a) the number of units authorized from 216 turbines and 108 generators to 170 turbines and 170 generators, (b) total authorized capacity from 80 MW to 83 MW, (c) the project's hydraulic capacity from 58,000 cfs to 63,500 cfs, (d) the net head from 20.2 ft. to 21 ft., and (e) extend the deadline for project completion.

l. Location of the Application. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Secretary.

[FR Doc. 00–18739 Filed 7–24–00; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6840–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standard (NSPS), for Automobile and Light Duty Truck Surface Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS, Subpart MM, for Automobile and Light Duty Truck Surface Coating. OMB Control Number: 2060–0034, expiration date: 9/30/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 24, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1064.09. For technical questions about the ICR contact Anthony Raia in the Office of Compliance at 202–564–6045.

SUPPLEMENTARY INFORMATION:

Title: NSPS, Subpart MM, for Automobile and Light Duty Truck Surface Coating (OMB Control Number 2060–0034; EPA ICR Number 1064.09; expiring 9/30/2000). This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for automobile and light duty truck surface coating operations were proposed on October 5, 1979 and promulgated on December 24, 1980 (45 FR 85415). These standards apply to the following automobile and light duty truck assembly plant lines: each prime coat operation, guide coat operation, and top coat operation commencing construction, modification or reconstruction after October 5, 1979. Volatile organic compounds (VOC) are the pollutants regulated under the standards.

Owners or operators of the affected facilities described must make the following one time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test (not required under section 60.393(a)); and the results of the initial performance test.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 21, 2000 (65 FR 3443). Comments were received from industry representatives. The representatives believed the EPA substantially underestimated the number of burden hours associated with this regulation.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 228 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Automobile and light duty truck surface coating plants.

Estimated Number of Respondents: 45.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 39,039.

Estimated Total Annualized Capital O&M Cost Burden: $6,750.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1064.09 and OMB Control No. 2060–0034 in any correspondence.

Ms. Sandy Farmer,
U.S. Environmental Protection Agency,
Office of Environmental Information,
Collection Strategies Division (2822),
1200 Pennsylvania Ave NW,
Washington, DC 20460;

and

Office of Information and Regulatory Affairs,
Office of Management and Budget,
Attention: Desk Officer for EPA,
725 17th Street, NW, Washington, DC 20503.

Dated: July 15, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–18792 Filed 7–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6838–7]

FY01 Wetland Program Development Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Wetland Program Development Grants (WPDGs), initiated in FY90, provide states, tribes and local governments (S/T/LGs) an opportunity to develop projects which build and refine comprehensive wetland programs. While WPDGs can continue to be used by S/T/LGs to build and refine all elements of a comprehensive wetland program, the wetland program identified two program priorities for FY01: monitoring and assessing the status and condition of wetlands; and improving the effectiveness of compensatory mitigation. Some priority will be given to funding projects which address these two priority areas. This document will serve as operating guidance for S/T/LGs interested in applying for FY01 WPDGs.

FOR FURTHER INFORMATION CONTACT: Shanna Draheim, Office of Wetlands, Oceans, and Watersheds, Wetlands Division (MC 4502F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460, Telephone: (202) 260–6218, Fax:

(202) 260–8000, email: draheim.shanna@epa.gov.

Robert H. Wayland III,
Director, Office of Wetlands, Oceans and Watersheds.

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I. Introduction

The goals of the Environmental Protection Agency's wetland program and the Clean Water Action Plan are to increase the quantity and quality of wetlands in the U.S. by conserving and increasing wetland acreage, and improving wetland health. In pursuing these goals, EPA seeks to build the capacity of all levels of government to develop and implement effective, comprehensive programs for wetland protection and management.

The Wetland Program Development Grants were initiated in FY90 to provide an opportunity for states, tribes and local governments (S/T/LGs) to develop projects which build and refine comprehensive wetland programs. S/T/LG interest in the grant program has continued to grow over the years, and since 1995 Congress has appropriated $15 million annually to support the grant program. EPA encourages S/T/LGs to build effective, comprehensive wetland programs in five areas: monitoring and assessment, regulation, restoration, water quality, and public-private partnerships.

The type of projects which S/T/LGs can undertake to build their comprehensive wetland programs are very diverse. In the past, S/T/LGs have pursued a wide range of activities, such as developing plans and management tools for wetland resources, advancing scientific and technical tools for protecting wetland health, improving public access to information about wetlands, and training/educating wetland managers and the public about wetland and watershed values. A list of other example project topics is included in Appendix B.

The statutory authority for Wetland Program Development Grants is section 104(b)(3) of the Clean Water Act (CWA). Wetland Program Development Grants (WPDG) are limited to developing new or refining existing comprehensive wetland programs. Section 104(b)(3) of the CWA restricts the use of these grants to developing wetland management programs. These grants may not be used for the operational support of wetland programs. All projects funded through this program must contribute to the overall development and improvement of S/T/LG wetland programs. Applicants must demonstrate that their proposed project integrates with their S/T/LG wetland programs. At this time, Wetland Program Development Grants cannot be used for ongoing operational support of S/T/LG wetland programs.

The award and administration of Wetland Program Development Grants are governed by the regulations at 40 CFR Part 31 ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). EPA has proposed additional regulations to govern state and tribal environmental program grants, including Wetland Program Development Grants and Performance Partnership Grants, to be codified at 40 CFR Part 35, Subparts A and B (see 64 FR 40064 and 64 FR 40084 (July 23, 1999)). EPA will provide further guidance regarding these proposed regulations when they are promulgated as final rules.

II. FY 2001 Program Priorities

EPA has begun to assess the status of programs that will move us toward our wetland goals. The wetland program has identified two areas as program priorities for improving our ability to protect and restore wetlands in the U.S.—monitoring and assessing the status and condition of wetlands, and improving the effectiveness of compensatory mitigation. S/T/LG are encouraged to develop WPDGs which build their programs in these areas.

Monitoring and assessing the status and condition of wetlands: Projects which advance the science, technical, and management tools for evaluating, protecting and restoring wetland health. Projects should be directed toward developing and ultimately implementing multi-scale, comprehensive S/T/LG wetland monitoring programs. For example, WPDGs can be used for projects which build S/T/LG capacity to analyze data, assess biological health of wetlands, estimate wetland losses and gains, assess wetland function, and coordinate activities and information among levels of government. Grant funds can also be used to provide training in monitoring and assessment techniques. While wetland inventory is an important component of monitoring, inventory alone does not constitute program development.

Improving the effectiveness of compensatory mitigation: Projects which improve S/T/LG capacity to ensure ecologically effective compensatory mitigation for unavoidable impacts. For example, WPDGs can be used to build technical expertise in wetland restoration and creation, develop tracking systems for compliance and enforcement of mitigation activities, and develop methods for monitoring the effectiveness of mitigation. Grants can only be used for improvement or development of mitigation programs. They cannot be used for specific mitigation activities (e.g. projects for mitigation banks or in lieu fee mitigation programs).

While WPDGs can still be used by S/T/LGs to build and refine all elements of a comprehensive wetland program (see examples in Appendix B), in this and upcoming years, some priority will be given to funding projects which address these two priority areas.

III. Funding Eligibility

State, tribal, and local governmental agencies, interstate, intertribal, and local government associations are eligible to receive grant funds. Typical wetland or wetland related agencies include, but are not limited to wetland regulatory agencies, water quality agencies (Section 401 water quality certification), planning offices, wild and scenic rivers agencies, departments of transportation, fish and wildlife or natural resources agencies, agriculture departments, forestry agencies, coastal zone management agencies, park and recreation agencies, non-point source or storm water agencies, city or county and other S/T/LG wetland-related agencies.

In order to be eligible for Wetland Program Development Grant funds, tribes must be federally recognized, although "Treatment as a State" status is not a requirement. Interstate and intertribal entities and associations are eligible for direct funding. Inter-state/tribal/local entity projects must be broad in scope and encompass more than one state, tribe or local government.

Grant funds are typically awarded through a competitive process at a Regional level. While funds are allocated to EPA Regional offices based

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on the number of states within the Region, EPA is not required to provide grant funds to any or all S/T/LGs. Funding decisions will be made by EPA Regional offices, and are based on the quality of the proposals received and adherence to the selection criteria. Regions typically receive requests for funding far in excess of available funds.

EPA Headquarters (HQ) uses some of the Wetland Program Development Grant funds to support entities other than S/T/LG agencies for projects and tasks that advance state, tribal and/or local wetland programs on a national basis. These projects are not selected through the Regional grant selection process.

IV. Selection Criteria

For FY2001, some priority in the selection process will be given to projects which build S/T/LG's monitoring and assessment programs or seek methods for improving the effectiveness of compensatory mitigation. All proposals (regardless of topic area) will be evaluated using the following general criteria:

- Clarity of Proposal's Work Plan—clearly written and described projects
- Potential Environmental Results—a high likelihood for positive environmental results in the short and long term
- Transferability of Results and/or Methods to Other S/T/LG
- Success of Previous Projects—for any applicants who have received prior EPA funding
- Involvement/Commitment of the S/T/LG applicant—significant financial and personnel contribution, involvement of partners, incorporation of project into broad agency goals.

Some EPA Regions have additional criteria for evaluating grant applications. Please contact your Regional Grant Coordinator for further guidance (see Appendix C).

V. Application Procedures

Wetland Program Development Grants are applied for through EPA Regional offices. Regional offices review all their applications and select the most competitive projects for funding. We emphasize that the quality of the applications will play a significant role in the Region's selection of grants for funding.

a. *Application Package:* Interested applicants must submit an application including completed EPA grant forms and a work plan. At a minimum, work plans must include a project description, time-line, budget, and deliverables. Some Regional offices may ask S/T/LGs to submit pre-application proposals of grant projects for competitive review. Contact your Regional EPA Grant Coordinator (Appendix C) for more specific regional requirements and formats.

b. *Deadlines:* Full applications and/or pre-application proposals must be submitted to the appropriate EPA Regional office. Regional deadlines are generally in the fall. Please contact your Regional Grants Coordinator (see Appendix C) for further information about application processes and to confirm deadlines.

Regions may request the applicant to submit revised work plans to adjust funding levels to fit within the Region's funding availability or to revise a proposal to develop a project that better fits within the grant criteria.

c. *Match Requirements:* Recipients must provide a minimum of 25% of each award's total project costs in accordance with the regulation governing cost sharing (40 CFR 31.24 "Matching or Cost Sharing"). We encourage states, tribes and local governments to provide additional matching funds whenever possible (i.e., funds in excess of the required 25% of total project costs).

Matching funds can be provided by entities other than the S/T/LG agency. Other federal money cannot be used as the match for this grant program. However, Indian tribes can use funds provided under the Indian Self-Determination and Education Act (*i.e.*, 638 funds) to provide the required matching funds to the extent authorized by that Act and implementing regulations.

Matching funds are considered grant funds. They may be used for the reasonable and necessary expenses of carrying out the work plan. Any restrictions on the use of grant funds (i.e. acquisition of land) also apply to the use of matching funds.

d. *Quality Assurance/Quality Control (QA/QC):* QA/QC and peer review are sometimes applicable to these grants. Each application should be evaluated to determine if QA/QC is needed in order to comply with the quality system requirements under EPA Order 5360.1. These requirements apply to the collection of environmental data. Environmental data is any measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as data bases or literature. Applicants should allow sufficient time and resources for this process. EPA Regional offices can provide specific guidance on QA/QC requirements.

VI. Additional Program Information

a. *Performance Partnership Grants:* A Performance Partnership Grant (PPG) is a multi-program grant made to a state, interstate agency, tribe, or intertribal consortium from funds allocated and otherwise available for environmental program grants. PPGs are voluntary and provide recipients the option to combine funds from two or more categorical grants into one or more PPG. PPGs can provide administrative and/or programmatic flexibility. Local governments are not eligible for PPGs.

The Wetland Program Development Grants remain a competitive grant program. The state or tribal project must first be selected under the competitive grant process and must identify specific wetland-related output or outcome measures in the grant proposal as a condition for adding funds to the PPG. A state or tribe may include these grant output measures in its Environmental Performance Agreement/Tribal Environmental Agreement and use these agreements to support their application for these grant funds. If the state or tribe chooses to add wetland grant funds to an existing PPG, EPA will add these funds to the PPG by a grant amendment and the recipient must amend its work plan to identify the specific wetland-related output or outcome measures that will be accomplished.

For further information, see 63 FR 53764, "Performance Partnership Grants for State and Tribal Environmental Programs: Revised Interim Guidance" (Oct. 6, 1998) and the proposed rules for State and Tribal environmental program grants at 64 FR 40064 and 40064 (July 23, 1999).

b. *Core Elements of a State or Tribal Comprehensive Wetland Program:* The EPA Wetland Program Development Grants have assisted states and tribes in developing or refining their wetland programs since 1990. Under the Wetland Program Development Grants, funds can only support development or enhancement of wetland programs; funds cannot support operation or implementation of wetland programs. EPA's Wetlands Division recognizes that not being able to fund the operation of state and tribal programs has been problematic to states and tribes.

To address this problem, EPA's Wetlands Division will provide a limited exception to the normal competitive process for wetland grants. States or tribes who demonstrate that they meet a set of core elements for a

Comprehensive Wetland Program can apply to EPA for funding to partially support operation of their wetland program, but only if these funds will be included in the state or tribe's PPG (see above guidelines and restrictions). For states, the recipient may only use funds for implementation if the state's PPG includes other grant funds from at least one other environmental program which authorizes wetland program work as an eligible activity (e.g. CWA Section 106 or Section 319 grants).

A description of the Core Elements of a Comprehensive Wetland Program and information on program approval is available on EPA's web page at: www.epa.gov/owow/wetlands/ or by calling EPA Helpline at 1–800–832–7828.

c. *Local and Tribal Funding Targets:* Each Regional Office shall support the local government initiative and tribal efforts by targeting at least 15% of their Regional allocation to local government and tribal applications.

d. *Reporting:* EPA uses information on progress and completion of wetland grants and/or cooperative wetland management efforts between EPA and S/T/LGs to disseminate information on effective wetland management approaches to the general public and other S/T/LG. Information on the grant projects is also used to provide information about the progress and usefulness of the grant program to Congress, the Office of Management and Budget, other federal agencies, and within EPA. Such information helps EPA improve our partnerships with S/T/LGs and to set priorities for improving wetland protection.

S/T/LG Wetland Program Development Grants are currently covered under EPA's general grant regulations, 40 CFR Part 31. These regulations specify basic grant reporting requirements, including performance and financial reports. In negotiating these grants, the Regions will work closely with their S/T/LGs to incorporate appropriate reporting requirements into each grant agreement consistent with 40 CFR 31.40 and 31.41. These regulations provide sufficient flexibility to allow the Agency, in consultation with the S/T/LGs, to determine the appropriate reporting requirements, within certain boundaries, and to specify their content and frequency.

Regional offices will set the time frames and required content of all periodic performance reports. However, at a minimum, the reports should include:

- Project description—short narrative of the original project
- Information on status of funding (total federal funds awarded, federal funds expended, federal funds remaining),
- Accomplishments in the last reporting period/progress to date (short narrative assessment of accomplishments and program highlights for that reporting period),
- Deficiencies and/or corrective actions (short narrative of any program deficiencies or corrective actions during that reporting period and proposed corrective actions or project modifications), and
- Planned activities for the next reporting period (short narrative describing upcoming activities.)

e. *Public Participation:* EPA regulations (40 CFR Part 25) require public participation in various Clean Water Act programs including grants. Each applicant for EPA financial assistance (40 CFR 25.11) shall include tasks for public participation in their project's work plan submitted in the grant application. The project work plan should reflect how public participation will be provided for, assisted, and accomplished.

f. *Annual Wetlands Meeting/Training:* EPA encourages S/T/LGs to include travel costs in the grant application for wetland personnel to attend at least one national wetland meeting or training each year (e.g. Association of State Wetland Managers Annual Meeting). EPA's Wetlands Division does not anticipate providing travel for state, tribal or local government staff to attend meetings other than through this grant program.

Appendix A—Grant Restrictions

Based on experience gained from previous years and policy and regulation, we offer the following comments/restrictions on funding eligibility.

- Universities (except those chartered as a part of state government), schools, non-governmental agencies and nonprofit organizations are not eligible for direct funding under this grant program. However, they can be prime or subcontractor on grants awarded to S/T/LG agencies as long as that recipient actively participates and has a significant role in the project. The state, tribe or local agency should not simply pass through funding to an organization that is not eligible to receive funding directly.
- Universities that are legally chartered as part of state government are eligible to receive grant funds as they fall under the "state agency" category. The university must provide documentation that supports the premise that they function as a state agency and EPA must agree with the premise before grant funds are awarded. Land grant schools do not automatically qualify for direct funding because of their status as a land grant school.
- This grant program cannot fund land acquisition or purchase of easements. However, this program can support planning efforts to identify areas for acquisition.
- This grant program cannot fund payment of taxes for landowners who have wetlands on their property.
- While contractual efforts can be a part of these grants, each grant must have a significant involvement by the state/tribal/local agency receiving the grant. EPA recommends that recipients use no more than 50% of the grant funds for contractual efforts. However, if the S/T/LG feels that it needs to exceed this limit, it should submit a written justification for greater contractual efforts with its grant application. EPA's Regional Office will evaluate the need for greater contractual efforts and may approve the request if they agree that there is adequate justification to exceed the 50% limit. Work done by other S/T/LG agencies is not considered contractual efforts. The grant application should clearly indicate if the "contractual" work is being done by another S/T/LG agency.
- Inventory or mapping for the sole purpose of locating wetlands in a S/T/LG is not eligible for funding under this grant program. A description of how mapping or inventory projects will directly develop or improve S/T/LG's wetland protection programs must be included in the grant application for these types of projects to be considered for funding under this grant program.
- Each grant must be completed with the initial award of funds. S/T/LGs should not anticipate additional funding beyond the initial award of funds for a specific project. S/T/LGs should request the entire amount of money needed to complete the project in the original application. Each grant should produce a final, discrete product. Funding and project periods can be for more than one year so long-term projects can continue over more than one year.
- Grant funds cannot be used to fund an honorarium.
- Any field work or research-type activities are limited to activities that have a direct, demonstrated link to program development or refinement included in the application.
- Purchase/lease of vehicles (including boats, motor homes) and office furniture is not eligible for funding.
- Grant funds cannot be used to pay for travel by federal agency staff. However, grant funds can be used to pay state, tribal or local government travel costs related to the grant project.

Appendix B—Example WPDG Project Topics

EPA has developed a database of all projects supported through the Wetland Program Development Grants funding. This searchable database will be available on EPA's web page in July, 2000 at: *www.epa.gov/owow/wetlands.*

The following is a sample list of past projects that have been funded through Wetland Program Development Grants. This is not an exhaustive list, and S/T/LGs may submit any eligible proposal for wetland

program development which addresses the goals of EPA's wetland program outlined in this document:

- Comprehensive planning of wetland resources, or integration of wetland management into broad watershed protection approaches.
- Development of S/T/LG Wetland Conservation Plans (WCP).
- Development of a framework for assuming CWA Section 404 program or Programmatic General Permits program.
- Development of widely applicable model wetland training programs for S/T/LGs.
- Incorporation of wetlands into water quality standards, or refining criteria to appropriately reflect water quality conditions in wetlands.
- Creation, piloting and refining of wetland and riparian restoration programs.
- Development, piloting and refining of wetland bioassessment programs to evaluate wetland health and performance of protection and restoration activities.
- Facilitation of public-private partnerships to develop wetland restoration, protection or education programs.
- Creation of and/or participation in training that builds watershed and wetland partnership and technical skills (e.g. the Watershed Academy).
- Conducting outreach and education efforts aimed at improving public understanding of wetland protection and regulatory efforts.
- Development of outreach programs to inform owners of potential wetland restoration sites of government assistance programs.
- Creating public education programs which promote wetland information for American Wetlands month.

Appendix C—Grant Coordinators

Region 1: Bob Goetzel, 617/565–3602, *goetzel.robert@epa.gov*
Region 2: John Cantilli, 212/637–3810, *cantilli.john@epa.gov*
Region 3: Alva Brunner, 215/814–2715, *brunner.alva@epa.gov*
Region 4: Sharon Ward, 404/562–9369, *ward.sharon@epa.gov*
Region 5: Cathy Garra, 312/886–0241, *garra.catherine@epa.gov*
Region 6: Sondra McDonald, 214/665–7187, *mcdonald.sondra@epa.gov*
Region 7: Raju Kakarlapudi, 913/551–7320, *kakarlapudi.raju@epa.gov*
Region 8: Ed Stearns, 303/312–6946, *stearns.edward@epa.gov*
Region 9: Cheryl McGovern, 415/744–2013, *mcgovern.cheryl@epa.gov*
Region 10: Anne Robinson, 206/553–6219, *robinson.anne@epa.gov*
Headquarters: Shanna Draheim, 202/260–6218, *draheim.shanna@epa.gov*

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ENVIRONMENTAL PROTECTION AGENCY

[PF–957; FRL–6596–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–957, must be received on or before August 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–957 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–957. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–957 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs

(OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–957. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Monsanto Company

0F6130

EPA has received a pesticide petition 0F6130 from Monsanto Company, 600 13th St., NW., Suite 660, Washington, DC 20005 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of glyphosate (*N*-phosphonomethyl)glycine from the application of glyphosate, the isopropylamine salt of glyphoste, the ethanolamine salt of glyphosate, and the ammonium salt of glyphosate in or on the raw agricultural commodity grass forage, fodder, and hay group at 300 parts per million (ppm). These tolerances would replace the existing tolerances for Bahia grass, Bermuda grass, bluegrass, bromegrass, fescue, orchard grass, rye grass, timothy, and wheat grass at 200 ppm, and forage, grasses at 0.2 ppm, grasses forage, at 0.2 ppm, and grasses forage, at 0.1 ppm. The Agency has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood. Studies with a variety of plants including corn, cotton, soybeans, and wheat indicate that the uptake of glyphosate or its metabolite, aminomethylphosphonic acid (AMPA), from soil is limited. The material which is taken up is readily translocated. Foliarly applied glyphosate is readily absorbed and translocated throughout the trees or vines to the fruit of apples, coffee, dwarf citrus (calamondin), pears, and grapes. Metabolism via *N*-methylation yields *N*-methylated glycines and phosphonic acids. For the most part, the ratio of glyphosate to AMPA is 9 to 1 but can approach 1 to 1 in a few cases (e.g., soybeans and carrots). Much of the residue data for crops reflects a detectable residue of parent (0.05–0.15 ppm) along with residues below the level of detection (<0.05 ppm) of AMPA. The terminal residue to be regulated in plants is glyphosate per se.

2. *Analytical method.* Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant commodities. These methods include GLC (Method I in Pesticides

Analytical Manual (PAM) II; the limit of detection is 0.05 ppm) and high performance liquid chromatography (HPLC) with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A gas chromatography mass spectrometry (GC/MS) method for glyphosate in crops has also been validated by EPA's analytical chemistry laboratory (ACL).

Adequate analytical methods are available for residue data collection and enforcement of the proposed tolerances of glyphosate in or on grass forage, fodder, and hay group.

3. *Magnitude of residues.* The available crop field trial residue data support the establishment of tolerances in grass forage, fodder, and hay at 300 ppm. This new tolerance will be sufficient to replace the existing tolerances for specific grass species at 200 ppm. Any secondary residues occurring in the liver or kidney of cattle, goats, horses, sheep, liver, and kidney of poultry will be covered by existing tolerances, and the available data indicate that residues of glyphosate are not anticipated to occur in any other livestock commodities as a result of this action.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies placing technical-grade glyphosate in toxicity category III and toxicity category IV. Technical glyphosate is not a dermal sensitizer.

2. *Genotoxicty.* Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in chinese hamster ovary (CHO) cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenetic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S.typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 milligrams/kilograms/day (mg/kg/day) with a developmental no observed adverse effect level (NOAEL) of 175 mg/kg/day (insufficient litters were available at 350 mg/kg/day to assess developmental toxicity); a maternal NOAEL of 175 mg/kg/day based on clinical signs of toxicity and mortality at 350 mg/kg/day highest dose tested (HDT).

A multi-generation reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with the parental and reproductive (pup) NOAELs at 30 mg/kg/day HDT based on no adverse effects related to dosing at any level tested.

In a 2-generation reproduction study, rats were fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a systemic NOAEL of 500 mg/kg/day based on soft stools in Fo and F1 males and females at 1,500 mg/kg/day HDT and a reproductive NOAEL 1,500 mg/kg/day HDT.

4. *Subchronic toxicity.* In a 2-day dermal toxicity study, rabbits were exposed to glyphosate at levels of 0, 10, 1,000, or 5,000 mg/kg/day. The systemic NOAEL was 1,000 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 5,000 mg/kg/day based on decreased food consumption in males. Although serum lactate dehydrogenase was decreased in both sexes at the high dose, this finding was not considered to be toxicologically significant.

5. *Chronic toxicity.* A 1-year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOAEL of 500 mg/kg/day. A 2-year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested HDT of 4,500 mg/kg/day.

A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day HDT (males) and 34 mg/kg/day HDT (females) and a systemic NOAEL of 31 mg/kg/day HDT (males) and 34 mg/kg/day HDT (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

A second chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 1, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) HDT and a systemic NOAEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) HDT and 457 mg/kg/day (females) based on decreased (bwt) body weight gain 1,183 mg/kg/day (females) HDT. There was no carcinogenic response at any dose level.

6. *Animal metabolism.* The qualitative nature of the residue in animals is adequately understood. Studies with lactating goats and laying hens fed a mixture of glyphosate and AMPA indicate that the primary route of elimination was by excretion (urine and feces). These results are consistent with metabolism studies in rats, rabbits, and cows. The terminal residues in eggs, milk, and animal tissues are glyphosate and its metabolite AMPA; there was no evidence of further metabolism. The terminal residue to be regulated in livestock is glyphosate per se.

7. *Metabolite toxicology.* The metabolite AMPA has been determined to not be of toxicological significance.

8. *Endocrine disruption.* The toxicity studies required by EPA for the registration of pesticides measure numerous endpoints with sufficient sensitivity to detect potential endocrine-modulating activity. No effects have been identified in subchronic, chronic or developmental toxicity studies to indicate any endocrine-modulating activity by glyphosate. In addition, negative results were obtained when glyphosate was tested in a dominant-lethal mutation assay. While this assay was designed as a genetic toxicity test, agents that can affect male reproduction function will also cause effects in this assay. More importantly, the multi-generation reproduction study in rodents is a complex study design which measures a broad range of endpoints in the reproductive system and in developing offspring that are sensitive to alterations by chemical agents. Glyphosate has been tested in two separate multi-generation studies and each time the results demonstrated that glyphosate is not a reproductive toxin.

C. Aggregate Exposure

1. *Dietary exposure—From food and feed uses.* Tolerances have been established (40 CFR 180.364) for the residues of (*N*-(phosphonomethyl)glycine resulting from the application of the isopropylamine salt of glyphosate, and/or the ammonium salt of glyphosate, in or on a variety of raw agricultural commodities. Tolerances are established on the kidney of cattle, goats, hogs, horses, and sheep at 4.0 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.5 ppm; and liver, and kidney of poultry at 0.5 ppm based on animal feeding studies and worst-case livestock diets. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate as follows.

i. *Food—a. Acute exposure and risk.* Acute dietary risk assessments are

performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An acute dietary risk assessment was not performed because no endpoints attributable to single dose were identified in the oral studies including rat and rabbit developmental studies. There are no data requirements for acute and subchronic neurotoxicity studies and no evidence of neurotoxicity in any of the toxicity studies at very high doses. The Agency has concluded with reasonable certainty that glyphosate dose not elicit an acute toxicological response, and that an acute dietary risk assessment is not needed.

b. *Chronic exposure and risk.* The chronic dietary exposure analysis was conduced using the reference dose (RfD) of 2.0 mg/kg/day based on the maternal NOAEL of 175 mg/kg/day from a developmental study and an uncertainty factor of 100 (applicable to all population groups) the Dietary Exposure Evaluation Model (DEEM) analysis assumed tolerance levels residues and 100% of the crop treated. These assumptions resulted in the following theoretical maximum residue contributions and percent RfDs for certain population subgroups. The theoretical maximum residue contribution (TMRC) for the U.S. population (48 contiguous states) was 0.029960 or 1.5% of the RfD; 0.026051 or 1.3% of the RfD for nursing infants (less than on 1-year old); 0.065430 or 3.3% of the RfD for non-nursing infants less than 1–year old; 0.064388 or 3.2% of the RfD for children (1-6 years old); 0.043017 or 2.2% of the RfD for children (7–12 years old); 0.030928 or 1.5% of the RfD for females (13+/nursing); 0.030241 or 1.5% of the RfD for non-hispanic whites; and 0.030206 or 1.5% of the RfD for non-hispanic blacks. These exposure levels are unaffected by the proposed tolerances on grass forage, fodder, and hay group. These commodities are only consumed by livestock, and the existing tolerances in liver and kidney fractions of cattle, goats, horses, sheep, and poultry are considered sufficient to account for any additional dietary burden these animals may encounter.

c. *Chronic risk-carcinogenic.* Glyphosate has been classified as a group E chemical no evidence of carcinogenicity in two acceptable animal species.

ii. *Drinking water.* Generic Expected Environmental Concentration (GENEEC) and Screening Concentration and Groundwater (SCI-GROW) models were run by EPA to produce maximum estimates of glyphosate concentrations in surface and ground water, respectively. The drinking water exposure for glyphosate from the ground water screening model, SCI-GROW, yields a peak and chronic estimated environmental concentration (EEC) of 0.0011 parts per billion (ppb) in ground water. The GENEEC values represent upper-bound estimates of the concentrations that might be found in surface water due to glyphosate use. Thus, the GENEEC model predicts that glyphosate surface water concentrations range from a peak of 1.64 ppb to a 56-day average of 0.19 ppb. The model estimates are compared directly to drinking water levels of comparison (DWLOC) (chronic). The DWLOC (chronic) is the theoretical concentration of glyphosate in drinking water so that the aggregate chronic exposure (food + water + residential) will occupy no more than 100% of the RfD. This assessment does not take into account expected reductions in any glyphosate concentrations in water arising from water treatment of surface water prior to releasing it for drinking purposes. The Agency's default body weights (bwts) and consumption values used to calculate DWLOCs are as follows: 70 kg/2 liter (L) (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

a. *Acute exposure and risk.* An acute dietary endpoint and dose was not identified in the toxicology data base. Adequate rat and rabbit developmental studies did not provide a dose or endpoint that could be used for acute dietary risk purposes. Additionally, there were no data requirements for acute or subchronic rat neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

b. *Chronic exposure and risk.* The DWLOC (chronic, non-cancer) risk is calculated by multiplying the allowed chronic water exposure (mg/kg/day) x bwt/kg divided by the consumption (L) x 10^3 µg/mg. The DWLOCs are 69,000 µg/L for the U.S. population in 48 contiguous states, males (13+), non-hispanic whites, and non-hispanic blacks; and 19,000 for non-nursing infants (less than 1–year old) and children (1-6 years). Although the GENEEC and SCI–GROW models are known to produce worst-case estimates, the resulting average concentrations of glyphosate in the surface and ground water are more than 10,000–fold less than the DWLOC (chronic). Therefore, taking into account present uses and uses proposed in this action, Monsanto concludes with reasonable certainty that no harm will result from chronic aggregate exposure to glyphosate.

2. *Non-dietary exposure.* Glyphosate is currently registered for use on the following residential non-food sites: Around ornamentals, shade trees, shrubs, walks, driveways, flower beds, and home lawns. Based on the registered uses of glyphosate, the potential for residential exposures exists. However, based on the low acute toxicity and lack of other toxicological concerns, glyphosate does not meet the Agency's criteria for residential data requirements and a residential exposure assessment is not required since there are no toxicological endpoints selected for either dermal or inhalation exposure. Exposures from residential uses are not expected to pose undue risks or harm to public health.

i. *Acute exposure and risk.* There are no acute toxicological concerns for glyphosate. Glyphosate has been the subject of numerous incident reports, primarily for eye and skin irritation injuries, in California. Some glyphosate end-use products are in toxicity categories I and II for eye and dermal irritation. The reregistration eligibility decision document for glyphosate (SEP–1993) indicated that the Agency is not adding additional personal protective equipment (PPE) requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in toxicity categories I and II.

ii. *Chronic exposure and risk.* Although there are registered residential uses for glyphosate, glyphosate does not meet the Agency's criteria for residential data requirements, due to the lack of toxicological concerns. Incidental acute and/or chronic dietary exposures from residential uses of glyphosate are not expected to pose undue risks to the general population, including infants and children.

iii. *Short- and intermediate-term exposure and risk.* EPA identified no toxicological concerns for short-, intermediate-, and long-term dermal or inhalation routes of exposures for glyphosate. The Agency has concluded that exposures from residential uses of glyphosate are not expected to pose undue risks.

D. Cumulative Effects

Cumulative exposure to substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide residue and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glyphosate does not produce a toxic metabolite that is also produced by other substances. For the purposes of this tolerance action, therefore, EPA should assumed that glyphosate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* There was no acute dietary endpoint identified, therefore there are no acute toxicological concerns for glyphosate.

ii. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food will utilize 1.5% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (less than 1-year) and children (1–6) as discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to glyphosate in drinking water and from non-dietary, non-occupational exposure, the aggregate exposure will not exceed 100% of the RfD. EPA has previously concluded that there is a reasonable certainty that no harm will result from aggregate exposure to glyphosate residues at this level.

iii. *Short- and intermediate-term risk.* Short- and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

iv. *Aggregate cancer risk for U.S. population.* Glyphosate has been classified as a group E chemical, with no evidence of carcinogenicity for humans in two acceptable animal studies.

v. *Determination of safety.* Based on these risk assessments, Monsanto concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glyphosate residues.

2. *Infants and children*—i. *Safety factor for infants and children.* In general, when assessing the potential for additional sensitivity of infants and children to residues of glyphosate, EPA considers data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional ten-fold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Prenatal and postnatal sensitivity.* The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to glyphosate.

iii. *Conclusion.* There is a complete toxicity data base for glyphosate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on these data, there is no indication that the developing fetus or neonate is more sensitive than adult animals. No developmental neurotoxicity studies have been required at this time. A developmental neurotoxicity data requirement is an upper tier study and is required only if effects observed in the acute and 90-day neurotoxicity studies indicate concerns for frank neuropathy or alterations seen in fetal nervous system in the developmental or reproductive toxicology studies. The Agency has concluded that reliable data support the use of the standard 100–fold uncertainty factor for glyphosate, and that a ten-fold (10x) uncertainty factor is not needed to protect the safety of infants and children.

iv. *Acute risk.* There are no acute toxicological endpoints for glyphosate. The Agency has concluded that establishment of the proposed tolerances would not pose an unacceptable aggregate risk.

v. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food utilizing present tolerances will utilize 3.0% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below wl ich daily aggregate dietary exposure o er a lifetime will not pose appreciable risks to human health. These dietary exposure levels are unaffected by the proposed tolerances on grass forage, fodder, and hay group, because these commodities are only consumed by livestock, and the existing tolerances in liver and kidney fractions of cattle, goats, horses, sheep, and poultry are considered sufficient to account for any additional dietary burden these animals may encounter. Although there is a low likelihood, potential exposure to glyphosate in drinking water and from non-dietary, non-occupational exposure, EPA has previously concluded that the aggregate exposure is not expected to exceed 100% of the RfD.

vi. *Short- or intermediate-term risk.* Short-term and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios.

vii. *Determination of safety.* Based on these risk assessments, EPA has previously concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to glyphosate residues at these levels.

F. International Tolerances

A Codex Maximum Residue Level exists for "hay or fodder (dry) of grasses" at 50 ppm.

[FR Doc. 00–18794 Filed 7–24–00; 8:45 am]
BILLING CODE 6560–50–F

VOL 65 ISS 143 JL 25 2000 UMI

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6840–4]

Proposed CERCLA Administrative Cost Recovery Settlement for the Bioclinical Laboratories Superfund Site, Bohemia, Suffolk County, New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative settlement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Bioclinical Laboratories Superfund Site ("Site") located at 1585 Smithtown Avenue in Bohemia, Suffolk County, New York, with Harold Carpentier and Carpentier Construction Company, Inc. ("Settling Parties"). The settlement requires the settling parties to pay the principal sum of $100,000.00 in three payments plus interest at the prevailing Superfund interest rate (5.30%), to the EPA Hazardous Substance Superfund in reimbursement of past response costs incurred with respect to the Site. The Settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for all costs incurred at or in connection with the Site by the United States prior to December 31, 1999. For thirty (30) days following the date of publication of this notice, the U.S. Environmental Protection Agency ("EPA" or "Agency") will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before August 24, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, 290 Broadway, New York, New York 10007–1866. Comments should reference the Bioclinical Laboratories Superfund Site located in Bohemia, New York, Docket No. CERCLA–02–2000–2015. A copy of the proposed settlement may be obtained from the individual listed below.

FOR FURTHER INFORMATION CONTACT: Henry A. Guzman, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3166.

Dated: July 13, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–18791 Filed 7–24–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6839–8]

Underground Injection Control (UIC) Program; Proposed Coal Bed Methane (CBM) Study Design

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting to receive comment on a study design for collecting information to assess environmental risks associated with the hydraulic fracturing of coal beds for methane gas recovery.

SUMMARY: The purpose of this notice is to announce that EPA intends to conduct a study of the environmental risks associated with hydraulic fracturing; EPA has drafted a design for the study and invites comment from the public on the study design; and, EPA will hold a public meeting to solicit input on the study design.

Prior to 1997, EPA had not considered regulating hydraulic fracturing because the Agency believed that this well production stimulation process did not fall under the UIC program's purview, nor was it under the jurisdiction of the Safe Drinking Water Act (SDWA). In 1994, the Legal Environmental Assistance Foundation (LEAF) challenged that interpretation by petitioning EPA to withdraw Alabama's EPA-approved Section 1425 (SDWA) UIC program because LEAF believed the State should regulate hydraulic fracturing for coal bed methane development as underground injection. EPA rejected LEAF's petition, but LEAF litigated and in 1997, the 11th Circuit Court of Appeals ruled that hydraulic fracturing of coal beds in Alabama should be regulated under the SDWA as underground injection (*LEAF* v. *EPA*, 118 F. 3d 1467). The State was required to modify its UIC program, and in December 1999, EPA approved this revision. Since the 11th Circuit Court's decision, EPA has received verbal and written reports from several environmental interest groups that practices associated with methane gas production from coal beds has resulted in contamination of their underground drinking water sources.

Because of such reports, and because the frequency of coal bed methane development is rapidly escalating, EPA will conduct a study to evaluate the environmental risks to underground sources of drinking water, potential and actual, associated with hydraulic fracturing. The study will initially evaluate hydraulic fracturing of coal beds, however, EPA will also consider experiences with hydraulic fracturing associated with other types of production. EPA may later study a wider universe of hydraulic fracturing if information collected during this study indicates further investigation is warranted.

The current study will estimate contamination incidents associated with hydraulic fracturing through interviews with State and local agencies responsible for drinking water protection, citizens, and industries performing hydraulic fracturing. The study will also include a literature review to provide information on the potential risks posed by hydraulic fracturing of coal beds in areas likely to be developed for methane gas production.

EPA is requesting comments on the proposed study design from stakeholders interested in coal bed methane production. EPA believes receiving stakeholder input in the initial study design will assist it in conducting a comprehensive investigation in the most efficient and expeditious way possible.

DATES: A public meeting is scheduled for August 24, 2000, from 9:30 a.m. to 4 p.m. EPA requests parties who plan to attend provide notice including name, title, organization, address, telephone, fax, and/or email by August 15, 2000, so that sufficient facilities can be made available. The meeting will be made available to remote locations through teleconferencing. Any person may also provide comment on the proposed study design in writing to EPA by August 25, 2000.

ADDRESSES: The proposed study can be viewed on EPA's Internet site at *http://www.epa.gov/safewater/uic.html*. Copies of the proposed study may be

obtained from EPA's Water Resource Center by phone at (202) 260–7786, or by e-mail to *center.water-resource@epa.gov* or by conventional mail to EPA Water Resource Center, RC–4100, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Notices to attend the public meeting and comments may be submitted to E. Barros, Horsley & Witten, Inc., 90 Route 6A, Sandwich, MA 02563, Fax: (508) 833–9140, E-mail: *ebarros@horsleywitten.com*. The August 24, 2000, public meeting will be held at the Omni Shoreham, 2500 Calvert Street, NW., Washington, DC, PH: (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: L. Cronkhite, Ground Water Protection Division, Environmental Protection Agency, Mail Code 4606, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, PH: (202) 260–0713.

Dated: July 19, 2000.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–18793 Filed 7–24–00; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0773.

Title: Marketing of RF Devices Prior to Equipment Authorization, 47 CFR Section 2.830.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 6,000.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 3,000 hours.

Total Annual Costs: N.A.

Needs and Uses: FCC rules permit the display and advertising of radio frequency (RF) devices prior to equipment authorization or a determination of compliance, providing that the advertising or display contains a conspicuous notice as specified at 47 CFR Section 2.803(c). A notice must also accompany RF prototype equipment devices offered for sale, as stated in 47 CFR Section 2.803(c)(2), prior to equipment authorization or a showing of compliance, that the equipment must comply with FCC rules prior to delivery. This information informs third parties of the FCC's requirement for the responsible party to comply with its rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18730 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1596]

New Commission Registration System (CORES)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the New Commission Registration System (CORES). Starting July 19, 2000, the Commission will begin implementing (CORES). CORES is a registration system for entities filing applications or making payments with the Commission. CORES will assign a unique 10-digit FCC Registration Number (FRN) which can be obtained both on-line and manually. Over time, the FRN will be used by all Commission systems that handle financial, authorization of service, and enforcement activities. The use of the registration number is voluntary, although the Commission will consider making it mandatory in the future. FCC customers can access the on-line filing system or get further information on CORES by visiting the FCC's web site at *www.fcc.gov* and clicking on the CORES registration link. You may also file manually by completing and filing a FCC Form 160 (CORES Registration). Mailing instructions are found on Form 160. Wireless Telecommunications Bureau's Universal Licensing System registrants will receive a CORES registration number automatically by mail if they were registered prior to June 22, 2000.

DATES: The Commission Registration System (CORES) will be operational on July 19, 2000. The Commission will hold a public forum on July 31, 10 to 12 p.m.

ADDRESSES: The public forum will be held in the Commission Meeting Room at 445 12th Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: To attend the public forum contact Tammy Watson at *twatson@fcc.gov*, or by calling (202) 418–0565. Individuals with disabilities who need accommodations for the July 31 public forum are asked to contact Brian Millin at *access@fcc.gov*, or by calling (202) 418–7426 voice, (202) 418–7365 TTY.

Andrew S. Fishel,

Managing Director.

[FR Doc. 00–18731 Filed 7–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, July 31, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18946 Filed 7–24–00; 3:43 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00101]

Announcement of a Cooperative Agreement with the American Indian Higher Education Consortium (AIHEC) To Enhance Research, Infrastructure, and Capacity Building Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2000 funds for a cooperative agreement program with the American Indian Higher Education Consortium (AIHEC). The purpose of the program is to assist the AIHEC in developing the commitment and capacity of their member institutions to promote education, development, research, leadership and community partnerships that enhance the participation of American Indians/Alaska Natives in the health professions; and to enhance the health status of American Indians/Alaska Natives in the United States.

The CDC and ATSDR are committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the "Healthy People 2010" objectives which specify improving the health of groups of people bearing a disproportionate burden of poor health as compared to the total population. The framework of "Heathy People 2010" consists of two broad goals which are to:

1. Increase quality and years of healthy life; and
2. Eliminate health disparities.

Healthy People" is the national prevention initiative that identifies opportunities to improve the health of all Americans. For the conference copy of "Healthy People 2010" visit the internet site: <http://www.health.gov/healthypeople>

The life expectancy of Americans has steadily increased. In 1979, when the first "Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention" was published, average life expectancy was 73.7 years. Based on current mortality experience, babies born in 1995 are expected to live 75.8 years. However, people have become increasingly interested in other health goals, such as preventing disability, improving functioning, and relieving pain and the distress caused by physical and emotional symptoms.

The proportion of the population who assess their current health status positively has not changed substantially during the past decade. In 1987, the percentage was 90.4 percent. During the same period, the percentage of the population reporting that they were limited in major activity due to chronic conditions actually increased from 18.9 percent in 1988, to 21.4 percent in 1995.

Eliminating disparities by the year 2010 will require new knowledge about the determinants of disease and effective interventions for prevention and treatment. It will also require improved access for all to the resources that influence health. Reaching this goal will necessitate improved collection and use of standardized data to correctly identify all high-risk populations and monitor the effectiveness of health interventions targeting these groups. Research dedicated to a better understanding of the relationships between health status and income, education, race and ethnicity, cultural influences, environment, and access to quality medical services will help us acquire new insights into eliminating the disparities and developing new ways to apply our existing knowledge toward this goal. Improving access to quality health care and the delivery of preventive and treatment services will require working more closely with communities to identify culturally sensitive implementation strategies.

Although health statistics on race, ethnicity, socioeconomic status and disabilities are sparse, the data we do have demonstrates the volume of work needed to eliminate health disparities. The greatest opportunities for improvement and the greatest threats to the future health status of the Nation reside in the population groups that have historically been disadvantaged economically, educationally and politically.

B. Eligible Applicants

Assistance will be provided only to the American Indian Higher Education Consortium (AIHEC). No other applications are solicited.

The American Indian Higher Education Consortium (AIHEC), a non-profit 501(c)(3) tax exempt organization under the Internal Revenue Code, was formed in October, 1972, by six Indian community colleges with a view toward mobilizing a concerted effort to deal with developmental problems common to them all. AIHEC was established for the purpose of providing or facilitating technical assistance and training programs to assist in the development of its member schools.

AIHEC was established as an exercise in tribal sovereignty with which to meet the expressed needs of each institution's tribal population. AIHEC believes these institutions to be the only ones that comprehensively address the technical development needs of their constituent tribes while promoting and enhancing their tribal cultures and representing the tribes within the broader academic community.

AIHEC is responsible for providing training and assistance based on individual needs and organizational resources. The AIHEC colleges and universities are the most appropriate and qualified institutions to provide services specified under this cooperative agreement because:

1. AIHEC is sponsored in part by 30 member Tribal Colleges and Universities (TCUs) located throughout the United States. The consortium began

with six Tribal colleges in 1972 and has expanded to 30 institutions, which exist today. AIHEC strives to serve the common needs of its member institutions by providing the infrastructure for educational advancement.

2. The consortium of Tribal Colleges and Universities (TCUs) individually serve the diverse needs of Tribal Nations and Native American people in 12 States within the United States.

3. Each institution has unique methods in serving their respective population. AIHEC is the only national Native American organization that is comprised of and specifically charged with representing the TCUs.

4. The AIHEC is uniquely positioned to consult with TCUs because their main purpose is to be the primary advocate and liaison when collaborating with the Federal government, State government, World Health Organization, universities, colleges, and other organizations.

5. The majority of graduates from TCUs work with the Federal government and Tribal government.

6. AIHEC is currently promoting public health initiatives among tribal members to improve the health status of the Indian Nations. Each institution is unique in two ways: (1) they attempt to organize and deliver services to the Indian people; and (2) they administer health care to Indian people within their respective area.

7. AIHEC promotes public health activities and the Healthy People 2010 Objectives in pursuit of improving the health status of American Indians/Alaska Natives.

8. AIHEC strives to assist the Indian Nations in the development and implementation of the highest standards of education that are consistent with the inherent rights of tribal sovereignty and self-determination.

9. AIHEC has provided a critical framework for TCUs in serving their tribal communities as a resource to comprehensively address the technical and economic development needs of their constituents. TCUs serve their communities as resources for research, human resource development, and community organization.

10. The overall goal for AIHEC and the TCUs is to provide educational programs that respond to the community and student needs.

11. The Tribal college's vision in organizing the AIHEC is to unify and strengthen the tribal colleges' curriculum within the Federal and State governments, focusing on health and prevention. The organization has well established linkages with American Indians/Alaska Natives, National Indian organizations and Federal agencies.

12. AIHEC has experience in managing activities and resources through cooperative agreements with Federal, State and local governments.

C. Availability of Funds

Approximately $200,000 is available in FY 2000 to fund this cooperative agreement. AIHEC will solicit applications for special projects and fund subawards within the scope of this program announcement. Subawards will be funded through CDC and ATSDR. A cumulative award of approximately $2,000,000 to the AIHEC is expected during FY 2000. It is expected that the awards will begin on September 30, 2000.

Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

D. Where to obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from: Sharon Robertson, Senior Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC) 2920 Brandywine Road, Room 3000, M.S. E–15, Koger Center, Colgate Building, Atlanta, Georgia 30341–3724. Telephone 770–488–2720. E-mail address sqr2@cdc.gov.

Program technical assistance may be obtained from: Karen E. Harris, Senior Advisor for Research Projects, Office of the Associate Director for Minority Health, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, Northeast, Mailstop D–39, Atlanta, Georgia 30333. Telephone (404) 639–4313, e-mail address keh2@cdc.gov.

Dated: July 19, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–18702 Filed 7–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00125]

Improve State and Local Health Information and Data Systems; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to improve state and local health information and data systems to monitor and improve the health of U.S. populations and their communities.

The CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area—Data and Information Systems, Chapter 23, "Public Health Infrastructure" of "Healthy People 2010". Healthy People 2010 is available online at http://www.health.gov/healthypeople/publications/ or the ODPHP Communication Support Center, P.O. Box 37366, Washington, DC 20013–7366, (301) 468–5960.

The purpose is to develop programs which will enable state and local health departments to regularly and systematically collect, assemble, analyze, and make available information on the health of their populations and communities. Further background may be found in 1988 the Institute of Medicine published The Future of Public Health, which described the three core functions of public health: assessment, policy development, and assurance. For assessment, every public health agency should regularly and systematically collect, assemble, analyze, and make available information on the health of the community, including statistics on health status, community health needs, and epidemiologic and other studies of health problems.

B. Eligible Applicants

Funding will be provided only to national non-profit organizations, whose primary mission is to support State and local health agencies in the collection, management, analysis and dissemination of population-based, health-related data. These data include data on mortality, morbidity, natality, and healthcare (*e.g.*, ambulatory or

hospital-based), that are derived from surveys, vital registrations, disease notifications, disease registries, or health-related administrative systems (*e.g.*, Medicaid claims and encounters).

Eligible national organizations must have affiliate offices and local, state, or regional membership constituencies in a minimum of 10 states and territories. Affiliate offices and local, state, or regional membership constituencies may not apply in lieu of, or on behalf of, their national office. Colleges and universities and for-profit organizations are not eligible to apply.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 2000 to fund approximately 2 awards. It is expected that the average award will be $100,000, ranging from $50,000 to $150,000. It is expected that the awards will begin on or about September 29, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. The funding estimate may vary and is subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under "Recipient Activities," and CDC will be responsible for the activities listed under "CDC Activities."

1. Recipient Activities

a. Establish and maintain activities which support health information and data system for state and local health departments.

b. Assess state and local medicaid, education, and social service programs to achieve the purposes of this program.

c. Implement projects and activities with specific, measurable, and feasible goals, objectives, and timelines. Evaluate the effectiveness of the activities related to this program including possible indicators of success.

d. Participate in the Division of Public Health Surveillance and Informatics (DPHSI) annual Assessment State Meeting each budget year of the project for the purpose of sharing best practices learned from the planned activities.

e. Disseminate project-related information and findings through a variety of methods.

f. Implement an operational plan for one or more of the following activities:

1. Internet-based Systems: Identify best practices among state and local health agencies and/or programs that collect, manage, and disseminate health-related information by way of the Internet; develop a plan for the use of the Internet as a means for the exchange of data and information among and between state and local health departments and their partners.

2. Strategic Plan for Use of Data Standards Develop and implement a strategic plan to facilitate the use of national specifications and standards in health information systems by state and local health agencies. These specifications and standards should take advantage of existing national and international data and information standards, and work already done in the public and private sectors.

3. Model Data Sharing Agreements: Identify and evaluate current efforts by state and local health agencies to share information, develop and field test model agreements, disseminate the models to state and local health departments, and provide training on their use.

4. Technical Assistance: Develop a plan to address the technical needs of state and local health departments such areas as methods of linking or matching data, methods of managing and storing data, methods of analyzing data, methods of querying or otherwise accessing data, methods of displaying information, and methods of ensuring the integrity and security of data and the confidentiality of data about individual persons. Identify the most common requests for information that state and local health agencies receive; assess information and service needs; and provide direct technical assistance to requesting agencies.

5. National Health Information Systems Training: In conjunction with various partners develop a national plan to address the changing training needs of state and local health departments in the area of health information systems include public and private sector training courses; develop new training, as appropriate, to address emerging topics; and identify other opportunities for state and local health agency staff.

2. CDC Activities

a. Coordinate with national, state, and local health information and data agencies, as well as other relevant organizations, in developing programs which will enable state and local health departments to regularly and systematically collect, assemble, analyze, and make available information on the health of their populations and communities.

b. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; use of indicators; and dissemination of successful strategies, experiences, and evaluation reports.

c. Plan and conduct the annual Assessment meeting to address issues and program activities related to this cooperative agreement.

d. Assist in the evaluation of program activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 25 double-spaced pages printed on one side, with one-inch margins, and unreduced font. Pages must be numbered clearly, and a complete table of contents of the application and its appendixes must be included. Begin each separate section on a new page.

Provide a concise, one page Executive Summary that clearly states the activities being addressed and describes your organization's eligibility, including: (a) its status as a national organization, (b) number and membership of affiliate offices, and (c) experience and capacity of the organization to work with state and local health departments. The summary should also include the major proposed goals, objectives, and activities for implementation of the project.

Divide the body of the application into the following sections:

1. Background and Need (not more than 2 pages)

a. The needs associated with the activities under proposed activities.

b. Your organization's background and experience in addressing the needs related to health information and data systems.

c. The need for the specific activities proposed in your plan.

2. Capacity (not more than 2 pages):

a. Describe your organization's constituents and affiliates as follows:

Type of constituency.

Number of constituents and affiliates.

Location of constituents and affiliates.

How the constituency can influence and work with health information

and data systems.

b. Describe your organization's experience in supporting the activities for which you are applying, including such factors as:

Current and previous experience related to the proposed program activities.

Current and previous coordination with other national organizations and partners. Activities related to building alliances, networks, or coalitions.

c. Describe your organization's structure and how it supports health information and data systems. Attach a copy of your organizational chart.

3. Operational Plan (not more than 10 pages):

a. Goals—List goals that specifically relate to program requirements that indicate where the program will be at the end of the projected 3 year project period.

b. Objectives—List objectives that are specific, measurable, and feasible to be accomplished during the first 12-month budget period. The objectives should relate directly to the project goals and recipient activities.

c. Describe in narrative form and display on a timetable, specific activities that are related to each first-year objective. Indicate when each activity will occur as well as when preparations for activities will occur. Indicate who will be responsible for each activity.

d. List major milestones that will be accomplished during years two and three.

4. Project Management and Staffing Plan (not more than 4 pages):

a. Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions.

b. Attach curriculum vitae (limited to 2 pages per person—in attachments) for each professional staff member named in the proposal.

c. Submit job descriptions (in attachments) illustrating the level of organizational responsibility for professional staff who will be assigned to the project.

d. If a state(s) has been identified where the proposed activities will occur, provide the name of this state(s) and the name(s) of the contact person who will coordinate the activity.

5. Sharing experiences (not more than 1 page):

Describe how project materials and accomplishments will be shared with others. Identify appropriate audiences for this information.

6. Collaboration (not more than 1 pages):

Describe the purposes of proposed collaboration and the agencies and organizations with which collaboration will be conducted. If other organizations will participate in proposed activities, provide the name(s) of the organization(s), and state who in your organization will coordinate the activity. For each organization listed, provide a letter from them that acknowledges their specific role and describes their capacity to fulfill it. Do not include letters of support from organizations that will not have specific roles in the project.

7. Evaluation (not more than 4 pages):

Describe a plan to evaluate the project's effectiveness in meeting its objectives and goals. Describe the type of evaluation that will be used (process, outcome, or both). Specify the evaluation question(s) to be answered, data to be obtained, the type of analyses that will be performed, to whom it will be reported, and how data will be used to improve the program. The plan should indicate major steps in the evaluation, who will be responsible.

8. Budget and Accompanying Justification:

Provide a detailed budget narrative and line-item justification of all operating expenses. The budget should be consistent with the stated objectives and planned activities of the project. Budget requests should include the cost for two people for a 2 day trip to Atlanta, Georgia for a planning meeting and a 4 day trip to Atlanta, Georgia for the annual Assessment Conference. Applicants are also requested to present an estimate (percentage) of their total request budgeted for each identified activity area and its associated activities.

F. Submission and Deadline

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/...Forms, or in the application kit.

On or before August 25, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Deadline: Applications will be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.) Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Organizational Capability (20 Points)

The extent to which the applicant documents:

(a) An organizational mission of assisting state or local agencies in collecting, assembling, analyzing and making available health-related information.

(b) Recent experience assisting state or local agencies in collecting, assembling, analyzing and making available health-related information.

(c) Recent experience administering or coordinating health-related, public health, or community-based data or information programs in conjunction with other national associations or federal health agencies.

(d) Ability to access and influence state and local health agencies through a network of affiliates, constituents, or members, and

(e) Capacity (or planned capacity) to provide either coordination and oversight, or technical assistance and training to state and local health agencies in improving information and information systems. This capacity should include skilled and experienced staff, physical facilities, and information technology resources (e.g.,Internet access).

2. Understanding of the Problem (10 Points)

The extent to which the applicant demonstrates and documents an understanding of population-based health information systems, the unmet needs of state and local health agencies with respect to these systems, and the opportunities and barriers that exist to meet these needs.

3. Program Objectives (15 Points)

The extent to which the proposed objectives are specific, measurable, time-phased, and consistent with the purpose of the program announcement.

4. Quality of Plan (25 Points)

The strength of the applicant's plan for conducting program activities and the likelihood that the proposed plan will adequately address the purpose of

the program. The plan should address each of the activities under the program area for which the applicant organization is applying and provide a timeline for conducting program activities.

5. Organizational Experience (15 Points)

The extent to which the applicant can demonstrate existing support for partnership activities and collaboration with CDC, other associations and organizations, and official health agencies.

6. Evaluation Plan (15 Points)

The extent to which the applicant presents an evaluation plan to measure the achievement of program objectives and monitor the implementation of proposed activities, or the commitment to implement a collaboratively developed evaluation plan.

7. Budget Justification (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

H. Other Requirements

1. Technical Reporting Requirements Provide CDC with original plus two copies of

a. semiannual progress reports;

b. financial status report, no more than 90 days after the end of the budget period; and

c. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

2. The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a), as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements." To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Juanita D. Crowder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3720, 2920 Brandywine Road Atlanta, GA 30341–4146, Telephone Number: (770) 488–2734, Email address: jdd2@cdc.gov.

For program technical assistance, contact: R. Gibson Parrish, M.D., CDC Project Officer, 2877 Brandywine Road, Mailstop K74, Atlanta, Georgia 30341–3724, Telephone number: (770) 488–8357, Email address: rgp1@cdc.gov.

Dated: July 19, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–18700 Filed 7–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

National Institutes of Health (NIH); National Institute on Drug Abuse (NIDA)

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Novel Methods and Compositions for Diagnosing, Treating and Monitoring Psychiatric Disease

AGENCY: NIDA, NIH, DHHS.

ACTION: Notice.

SUMMARY: The National Institute on Drug Abuse (NIDA), Cellular Neurobiology Research Branch, is seeking Licensee(s) and/or proposals from potential collaborators for a Cooperative Research and Development Agreement (CRADA) to participate in the exploration of the clinical significance of recent studies in which NIDA has identified variations in the isoforms of neural cell adhesion molecule (N–CAM) associated with neuropsychiatric disorders. Elevations in certain isoforms are associated with specific neuropsychiatric disorders. These specific variations in the levels of N–CAM suggest that diagnostic techniques or therapeutic interventions could be based on the observed alterations in cell adhesion molecules. A provisional patent application relating to the N–CAM isoforms associated with neuropsychiatric disorders has been filed. Any successful CRADA collaborator may need to negotiate a license to the provisional patent application in order to commercialize developments under the CRADA. Contact information to apply for a license to the provisional patent application appears below.

DATES: Interested CRADA applicants should submit written notice of intent to apply within 45 days of the date of this notice. NIDA will consider all written proposals received within 60 days of the date of publication of this notice. CRADA proposals submitted thereafter may be considered if a suitable CRADA collaborator has not been found. There is no specific deadline for licensing applications.

ADDRESSES: Scientific questions about this notice may be addressed to Dr. Marquis Vawter, National Institute on Drug Abuse, 5500 Nathan Shock Drive, Baltimore, Maryland 21224, Tel. 410–550–1405; questions concerning the CRADA opportunity may be addressed to Dr. Malka Scher, Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Boulevard, Suite 450, Rockville, Maryland 20852, Tel: 301–496–0477, Fax: 301–402–2117, e-mail: scherm@mail.nih.gov; and questions concerning the patent application should be addressed to Dr. Norbert Pontzer, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804, Tel: 301–496–7057 (ext. 284), Fax: 301–402–0220, e-mail: np59n@nih.gov.

SUPPLEMENTARY INFORMATION: Respondees interested in licensing the invention will be required to submit an Application for License to Public Health Service Inventions. Inventions described in the patent application are available for either exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404. Information about Patent Application(s) and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement.

A "Cooperative Research and Development Agreement" or "CRADA" is the anticipated joint agreement to be entered into by NIDA and a collaborator pursuant to the Federal Technology

Transfer Act of 1986 as amended by the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113 (Mar. 7, 1996)) and by the Executive Order 12591 of October 10, 1987. The CRADA would pertain to inventions conceived or reduced to practice after the effective date of the CRADA. CRADA applicants should be aware that a license to the above mentioned patent rights may be necessary in order to commercialize products arising from a CRADA.

A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. The NIDA is prohibited from transferring funds to a CRADA collaborator. Under a CRADA, NIDA can contribute facilities, staff, materials, and expertise to the effort. The collaborator may contribute facilities, staff, materials, expertise, and funding to the collaboration. The CRADA collaborator receives an exclusive option to negotiate an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA in a pre-determined field of use and may qualify as a co-inventor of new technology developed under the CRADA.

NIDA's principal objectives under a License and/or CRADA would be the development and timely commercialization of new diagnostics and/or therapeutics for specific neuropsychiatric disorders and rapid publication of results related to these research projects.

Scientists at NIDA have discovered that distinct isoforms of N–CAM are elevated in the cerebrospinal fluid (CSF) and brains of patients diagnosed with specific neuropsychiatric disorders including schizophrenia, bipolar disorder and depression. A distinct isoform with molecular weight 105–115 kDa is present in elevated levels in both the CSF and brain tissues of patients with schizophrenia. The secreted (SEC) N–CAM isoform was elevated in brain tissue from bipolar disorder patients. Elevation of at least one isoform, the variable alternative spliced exon, or VASE isoform, is correlated significantly with behavioral ratings in patients with schizophrenia but not affective disorders. Thus, patients with neuropsychiatric disorders exhibit variations in N–CAM isoforms which are specific for their particular disorder. The specific association of these variations in N–CAM isoforms with particular neuropsychiatric disorders suggests the potential for development of therapeutic interventions, clinical trials for monitoring treatment response, and diagnostic methods of schizophrenia, bipolar disorder, depression and related diseases.

Present treatment of schizophrenia, bipolar disorder, depression and related diseases is inadequate. Existing treatments may have serious side effects and do not prevent the progression of schizophrenia. Development of an effective treatment requires a greater understanding of the biological mechanisms underlying the disease conditions. Through NIDA's discovery of an association between clinical abnormalities and alterations in the level of N–CAM, a greater understanding of the disease process is now possible, and this discovery suggests possible therapies.

In addition to inadequate existing treatments, there is presently no definitive diagnostic test for schizophrenia. Determination of the presence of the various criteria characteristic of schizophrenia is made by a trained clinician and is somewhat subjective. NIDA's discovery suggests that altered levels of N–CAM isoforms in the CSF may be the basis of an objective diagnostic test.

N–CAM is a cell recognition molecule with four major isoforms present in the brain. N–CAM isoforms are membrane-associated glycoproteins, either transmembrane glycoproteins or glycosylphosphatidyl inositol-anchored glycoproteins. There is also a secretory isoform. Membrane-associated N–CAM has several roles in cellular organization and development of the central nervous system. An important aspect of N–CAM activity is the regulation of adhesion of brain cells. Adhesion of neural to glial cells is mediated by N–CAM binding. N–CAM is also involved in memory processes, intracellular signal cascades, and neurite outgrowth. N–CAM is thought to be a neuronal protein and is known to be associated with synaptosomes, vesicles recovered from neuronal preparations. Thus, alterations in N–CAM influence brain structure, learning, and psychiatric systems, as shown in the recent research that NIDA is seeking to develop with a collaborator.

The proposed collaboration would include *in vivo* investigations of production of N–CAM isoforms and release of N–CAM isoforms into CSF. Measurements on N–CAM production and release would be correlated with the clinical status of patients. The possibility of using these correlations to develop a diagnostic method will be investigated. Potential therapeutic compounds would be tested for effects on the biochemical parameters and the clinical status of patients. The collaboration would also involve *in vitro* investigation of N–CAM fragment production and release from brain tissue.

The proposed duration of the CRADA is two (2) years. However, the duration could be as long as five (5) years depending on the nature of the research plan developed by the parties.

The role of NIDA under the proposed CRADA may include the following, and other relevant scientifically appropriate collaborative research projects will be considered:

(1) Provide further characterization of association between N–CAM variations with neuropsychiatric disorders.

(2) Perform *in vitro* determinations of N–CAM fragment production and release from brain tissue.

(3) Provide in vitro assessment of possible therapeutic compounds.

(4) Monitor the efficacy of therapeutic compounds through biochemical methodology.

(5) Jointly publish results.

(6) Provide project coordination for the overall development and testing.

The role of the Collaborator under the proposed CRADA may include the following, and other relevant and scientifically appropriate collaborative research projects will be considered:

(1) Provide significant intellectual, scientific, and technical expertise in developing appropriate methods for a diagnostic assay based on the level of N–CAM isoforms in cerebrospinal fluid.

(2) Determine whether the variation in level of N–CAM isoforms in cerebrospinal fluid can be used diagnostically.

(3) Provide compounds which may have therapeutic potential.

(4) Provide significant intellectual, scientific, and technical expertise in developing a therapeutic protocol based on regulating the level of N–CAM isoforms.

(5) Perform clinical studies including assessments of patients and collection of samples.

(6) Monitor the efficacy of therapeutic compounds using clinical determinations of efficacy.

(7) Jointly publish results.

(8) Jointly provide project coordination for the overall development and testing.

The following factors will be evaluated in selecting a CRADA collaborator:

(1) Corporate expertise in the field of development of diagnostic tools.

(2) Competency in developing and assessing efficacy of therapeutic interventions.

(3) Number and character of possible therapeutic compounds that collaborator may be able to provide.

(4) Ability to provide for staff to perform in vitro studies.

(5) Key staff expertise, qualifications and relevant experience.

(6) Ability to effectively commercialize new technologies.

Dated: July 6, 2000.

Kathleen Sybert,

Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

Dated: July 14, 2000.

Jack Spiegel,

Director, Division of Technology Transfer and Development, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–18724 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel ZHG1 HGR P 03.

Date: August 10, 2000.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Conference Room B2B32/BLDG 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 14, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18721 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Effects on Menopause and Hormone Replacement on Visceral Fat and Insulin Sensitivity.

Date: August 7, 2000.

Time: 11 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington-National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892; (301) 496–9666..

(Catalogue of Federal Domestic Assistance Program Nos. 93866, Aging Research, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18711 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 O1.

Date: August 3–4, 2000.

Time: 8:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lakshmanan Sankaran, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1, GRB–2(02)S.

Date: August 7–8, 2000.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 643, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–3(02).

Date: August 9–10, 2000.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michele L. Barnard, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 657, 6707 Democracy

Boulevard, Bethesda, MD 20892, 301/594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: August 21–22, 2000.

Time: 7 pm to 5:30 pm

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 649, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18712 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: July 21, 2000.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Room 1AS19, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca H. Hackett, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771, hackettr@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18713 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 7, 2000.

Time: 10 am to 11 am

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18714 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 17, 2000.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18715 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 23, 2000.

Time: 11 am to 12 pm

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18716 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 7–8, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Fred Altman, Scientific Review Administrator, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–8962.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18717 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 11, 2000.

Time: 11:30 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Asikiya Walcourt, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 18, 2000.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18718 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: August 21, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole H. Latker, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical

Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 13, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18720 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel

Date: July 25, 2000.

Time: 11 am to 12 pm

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharee Pepper, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 200817.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 13, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18719 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: July 19–21, 2000.

Time: July 19, 2000, 7:30 pm to 10:00 pm.

Agenda: To review and evaluate grant applications.

Place: Newark Airport Marriott Hotel Newark, NJ 07114.

Time: July 20, 2000, 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: University of Medicine & Dentistry of New Jersey, Newark, NJ 01703–2754.

Time: July 21, 2000, 8:00 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Newark Airport Marriott Hotel Newark, NJ 07114.

Contact Person: Sharee Pepper, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 14, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18722 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 24, 2000.

Time: 3:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 25, 2000.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2000.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 2000.
Time: 11:00 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gillian Einstein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, 301–435–4433, einsteig@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 2000.
Time: 11:00 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Rita Anand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, 301–435–1151.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle,.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 2000.
Time: 2:00 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David J. Remondini, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, 301–435–1038, remondid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 2000.
Time: 4:00 pm to 7:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bruce Maurer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 28, 2000.
Time: 1:00 pm to 1:45 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 31, 2000.
Time: 10:30 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 31, 2000.
Time: 2:30 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18710 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 20, 2000.
Time: 10:00 am to 12 pm.
Agenda: To review and evaluate grant applicatons.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 17, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18723 Filed 7–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of

information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services (0930–0093, Revision)—The Annual Census, which is conducted by SAMHSA's Center for Mental Health Services (CMHS), is a complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources.

The Census is the primary means within CMHS for assessing de-institutionalization practices of State and county mental hospitals. Effective with the 2000 Census, two tables are being added to obtain patient race/ethnicity by diagnostic grouping for additions and resident patients. The annual burden estimate is shown in the table below.

	Number of respondents	Responses/ respondent	Burden/ response (hours)	Annual burden (hours)
State Statisticians and Superintendents of State Mental Hospitals	52	1	2	104

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 19, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–18703 Filed 7–24–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Proposed Information Collection: Comment Request; Lender Qualifications for Multifamily Accelerated Processing (MAP)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 25, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Michael L. McCullough, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Lender Qualifications for Multifamily Accelerated Processing (MAP).

OMB Control Number, if applicable: 2502–0541.

Description of the need for the information and proposed use: Multifamily Accelerated Processing (MAP) is a new way for approved lenders to apply for Federal Housing Administration (FHA) multifamily mortgage insurance. MAP will replace existing "fast-track" procedures with a single national process for all multifamily offices of the U.S. Department of Housing and Urban Development (HUD).

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents are 130, the frequency of responses is 1, the hours per response is 10 hours, and the total estimated annual burden hours is 1,300.

Status of the proposed information collection: Reinstatement.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 19, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–18696 Filed 7–24–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4661–N–46]

Notice of Submission of Proposed Information Collection to OMB Survey of New Manufactured (Mobile) Home Placements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 24, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0029) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20502.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB maybe obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Survey of New Manufactured (Mobil) Home Placements.

OMB Approval Number: 2528–0029.

Form Numbers: C–HM–9A.

Description of The Need For The Information And Its Proposed Use: This survey is used to collect data on the placement of new manufactured (mobile) homes. The data are collected from manufactured home dealers. The principal user, HUD, used the statistics to monitor trends in this type of low-cost housing, to formulate policy, draft legislation, and evaluate programs.

Respondents: Business or other for-profit.

Frequency of Submission: Monthly.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting Burden	12,960	1		0.5		6,480	

Total Estimated Burden Hours: 6,480.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 19, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–18697 Filed 7–24–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–04]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the third review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are: (1) Those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender; and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied.

To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office.

The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street SW, Room B133–P3214, Washington, DC 20410, or by courier to 490 L'Enfant Plaza, East, S.W., Suite 3214, Washington, DC 20024.

Action

The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Allied Mortgage Capital Corp.	513 East Center Street, Kingsport, TN 37660	Memphis, TN	06/02/2000	Atlanta.
Challenge Mortgage Corp	15 Spinning Wheel Road, STE 426, Hinsdale, IL 60521.	Chicago, IL	06/05/2000	Atlanta.
First Guaranty Mortgage Corp.	8180 Greensboro Dr., STE 1175, McLean, VA 22102.	Richmond, VA	06/02/2000	Philadelphia.
First Republic Mortgage Corp.	6230 Fairview RD #200, Charlotte, NC 28210	Greensboro, NC	03/20/2000	Atlanta.
General Mortgage Corp	23660 Woodward Avenue, Pleasant Ridge, MI 48069.	Detroit, MI	06/02/2000	Philadelphia.
Wells Fargo Home Mortgage Inc.	14402 John Humphrey Drive, Orland Park, IL 60462.	Chicago, IL	06/02/2000	Atlanta.

Dated: July 17, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–18745 Filed 7–24–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Assessment of Take of Nestling American Peregrine Falcons for Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice is to announce the availability of a Draft Environmental Assessment of falconry take of nestling American peregrine falcons in the contiguous United States and Alaska. In it, we seek to provide protection for the nationwide population of American peregrine falcons while allowing a limited take of nestlings for falconry. We do so by evaluating the effects of take of nestlings on American peregrine population growth in the United States. We seek public comment on the draft assessment.

DATES: Comments on the Draft Environmental Assessment are due by September 25, 2000.

ADDRESSES: The Draft Environmental Assessment is available from, and written comments about it should be submitted to, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. You can request a copy of the Environmental Assessment by calling 703–358–1714. The fax number for a request or for comments is 703–358–2272. The Assessment also is available on the Office of Migratory Bird Management web pages at http://migratorybirds.fws.gov.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703–358–1714 or the address above.

SUPPLEMENTARY INFORMATION: The American peregrine falcon (*Falco peregrinus anatum*) occurs throughout much of North America from the subarctic boreal forests of Alaska and Canada south to Mexico. The American peregrine falcon declined precipitously in North America following World War II, a decline attributed largely to organochlorine pesticides applied in the United States and Canada. Because of the decline, the American peregrine was listed as endangered in 1970 (35 FR 16047).

Recovery goals for American peregrine falcons in the United States were substantially exceeded in some areas, and on August 25, 1999, we removed the American peregrine falcon from the List of Endangered and Threatened Wildlife and Plants (64 FR 46542). However, monitoring of the status of the species is required, and it is still protected under the Migratory Bird Treaty Act.

Anticipating delisting, in June 1999 a number of state fish and wildlife agencies, through the International Association of Fish and Wildlife Agencies, proposed allowing take of nestling American peregrines for falconry. In response, in an October 4, 1999, **Federal Register** notice (64 FR 53686), we stated that we would prepare two management plans and associated environmental assessments for take of wild peregrine falcons. We further stated that we would consider a conservative take of nestling peregrines from healthy populations of American peregrine falcons in the western United States and Alaska, where recovery was most marked and where approximately 82% of the nesting pairs in the United States were found in 1998.

The States proposed allowing take of 5% of the annual production of nestlings in States west of 100° (Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming). In preparing the Draft Environmental Assessment, we considered the request from the States, as well as the effects of allowing no take, and take of 10%, 15%, and 20% of annual production in those States. A sixth alternative we evaluated was lifting the current restriction on take by falconry permittees. This option would make no distinctions regarding where nestling peregrines could be taken.

Because population changes also are greatly influenced by survival of adults, we also assessed the effects of different take levels with different values for adult mortality. We concluded that 20% post-first-year mortality is a conservative and reasonable value to use. However, we also modeled population growth using 10%, 15%, and 25% annual mortality of adults.

The proposed action in the Draft Environmental Assessment is to allow take of up to 5% of the nestlings produced in western States; take of any lesser amount could be allowed by a State. The 5% level of take should still allow population growth of 3% per year if post-first-year mortality is 20% and population density does not affect reproduction or survival.

Dated: July 18, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–18693 Filed 7–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Science Advisory Board; Notice of Reestablishment

AGENCY: Bureau of Land Management, Interior.

ACTION: Science Advisory Board—Notice of Reestablishment.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has reestablished the Science Advisory Board.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Board is to advise and assist the Director of the Bureau of Land Management on issues pertaining to science and the application of scientific information in the management of public lands and their resources. The Advisory Board is comprised of up to nine members from among the following categories: natural resource management, energy and minerals, conservation biology, and ecology and genetics.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, P.O. Box 25047, Denver, Colorado 80225–0047, (303) 236–6454.

Certification

I hereby certify that the reestablishment of the Science Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources and facilities administered by the Bureau of Land Management.

Dated: July 14, 2000.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 00–18751 Filed 7–24–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–76305]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–76305 for lands in Grand County, Utah, was timely filed and required rentals accruing from January 1, 2000, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–76305, effective January 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Branch of Minerals Adjudication.

[FR Doc. 00–18706 Filed 7–24–00; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–5101–ER–B124; CACA–41418]

Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent for plan amendment to California desert conservation area plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has proposed a plan amendment to the California Desert Conservation Area Plan (CDCA) to partially exempt a proposed fiber optic cable right-of-way from a designated Energy Production and Utility Corridor for a portion of the proposed alignment.

DATES: Written scoping comments must be received no later than August 24, 2000.

ADDRESSES: Written scoping comments should be addressed to: Becki Gonzales, Attn: Plan Amendment, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.

FOR FURTHER INFORMATION CONTACT: Becki Gonzales (760) 252–6029.

SUPPLEMENTARY INFORMATION: An approximate 235.8 mile fiber optic cable is proposed by Level 3 Communications, L.L.C., from Las Vegas, Nevada to San Bernardino, California. A major portion of the proposed route will utilize Energy

Production and Utility Corridor "D" as shown in the California Desert Conservation Area Plan 1980 (CDCA), as amended. The proposed right-of-way as it nears the City of Victorville, deviates from the corridor at Stoddard Wells Road following existing fiber optic lines to Black Mountain Quarry Road, returning to the corridor. The approximate 12 miles segment where the proposed route leaves Corridor D is not formally designated as a utility corridor by the CDCA Plan. The proposed plan amendment/exemption is being evaluated in the environmental documentation for the proposed fiber optic facility.

Individual respondents may request confidentiality. If you wish to withold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organization or business, will be made available for public inspection in their entirety.

Dated: July 18, 2000.

James L. Williams,

Acting District Manager.

[FR Doc. 00–18652 Filed 7–24–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB control number 1010–0067).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations." We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by August 24, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0067), 725 17th Street, N.W., Washington, D.C. 20503. Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations

OMB Control Number: 1010–0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to the Minerals Management Service (MMS).

The MMS district supervisors analyze and evaluate the information and data collected under subpart E to ensure that planned well-completion operations will protect personnel safety and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

We protect proprietary information that is submitted according to the Freedom of Information Act (5 U.S.C. 552), and its implementing regulations (43 CFR 2), and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

We published a **Federal Register** notice with the required 60-day comment period on April 17, 2000 (65 FR 20485). We received no comments in response to that notice.

Frequency: The frequency of reporting varies according to requirement (see following burden chart).

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 5,672 hours (see following burden chart).

Estimated Annual Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens associated with this collection of information.

BURDEN BREAKDOWN

Citation 30 CFR 250 Subpart E	Reporting & recordkeeping requirement (frequency)	Number	Burden (hours)	Annual burden hours
502	Request approval not to shut in well during equipment movement (on occasion).	13 requests	131	13
502 (MMS condition of approval).	Notify MMS of well-completion rig movement on or off platform or from well to well on same platform (on occasion).	560 notices	.1	56
505; 513; 515(a); 516(g), (j)	Submit forms MMS–123, MMS–124, MMS–125 for various approvals.	Burden included in 1010–0044, 1010–0045, 1010–0046.		0
512	Request field well-completion rules be established and canceled (on occasion; however, there have been no requests in many years).	2 requests	1	2
515(a)	Submit well-control procedures (on occasion)	15 submissions	1	15
517(b)	Pressure-test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	20 reports	4	80
517(c)	Notify MMS if sustained casing pressure is observed on a well (on occasion).	1,355 notices	.25	339 (rounded)
Reporting subtotal		1,965 Responses		505
506	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews x 2 weeks per completion = 4).	570 completions x 4 = 2,280.	.16	365 (rounded)
511	Perform operational check of traveling-block safety device; document results (weekly x 2 weeks per completion = 2).	575 completions x 2 = 1,150.	.1	115
516 tests; 516(i)	Perform BOP pressure tests, actuations & inspections; record results; retain records 2 years following completion of well (when installed; minimum every 14 days; as stated for component).	575 completions	6	3,450
516(d)(5) test; 516(i)	Function test annulars and rams; document results (every 7 days between BOP tests—biweekly; note: part of BOP test when conducted).	575 completions	.16	92
516(e)	Record reason for postponing BOP system tests (on occasion).	45 postponed tests	.1	5 (rounded)
516(f)	Perform crew drills; record results (weekly for 2 crews x 2 weeks per completion = 4).	570 completions x 4 = 2,280.	.5	1,140
Recordkeeping subtotal		130 Recordkeepers (RKs)		5,167
Total hour burden		2,095 Responses/RKs		5,672

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . ." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the ADDRESSES section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 24, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744).

Dated: July 5, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–18803 Filed 7–24–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010–0049).

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR 250, Subpart B-Exploration and Development and Production Plans." We are also soliciting comments from the public on this ICR.

DATE: Submit written comments by August 24, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0049), 725 17th Street, N.W., Washington, D.C. 20503. Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR 250, Subpart B, Exploration and Development and Production Plans

OMB Control Number: 1010–0049.

Bureau Form Numbers: MMS–137, MMS–138, MMS–139, and MMS–141.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition.

Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas and sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) for approval prior to commencing these activities. The implementing regulations and associated information collection requirements are contained in 30 CFR 250, subpart B, Exploration and Development and Production Plans (subpart B). In addition, MMS has issued Notices to Lessees and Operators (NTLs) that provide supplementary guidance and procedures as applicable to each Region or nationally. These NTLs address the various surveys, reports, plans (including deep water operations plans and conservation information), etc., that are necessary for MMS to approve the exploration or development and production activities.

The MMS engineers, geologists, geophysicists, and environmental scientists use the information collected under subpart B, and related NTLs, to analyze and evaluate the planned operations to ensure that they will not adversely affect the marine, coastal, or human environment and that they conserve the resources of the OCS. It would be impossible for the Regional Supervisor to make an informed decision on whether to approve the proposed plans, or whether modifications are necessary, without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management plans.

We are resubmitting this collection of information to OMB to obtain official approval of several aspects of the plan submissions that have developed over time. In addition to the currently approved requirements, we are seeking OMB approval of the number of copies respondents submit; a new "OCS Plan Information Form" (form MMS–137) for use in the GOM Region; and two air emissions spreadsheets (forms MMS–138 and MMS–139) currently used in the GOM Region. Except for form MMS–137, these are not new requirements. We consider the burdens for these as part of the burden currently approved for developing and submitting EPs or DPPs (development operations coordination documents (DOCDs) in the western GOM).

In addition, we are seeking OMB approval for a new form MMS–141, "ROV Survey Report." Sections 250.203(o) and 250.204(s) of our regulations provide the authority to require monitoring surveys and submit the results. MMS has not required such monitoring surveys be conducted for some time. Because many of the current exploration areas in the GOM Region are now characterized as "relatively untested or remote," it will be necessary to obtain the information from these surveys. We have developed a suggested form on which respondents may record the information from the survey.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency of reporting is on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 249,370 hours—refer to the following chart for a breakdown of this estimate.

Citation 30 CFR 250 Subpart B and related NTLs	Reporting and recordkeeping requirement	Annual number	Average burden (hours)	Annual burden hours
201	Notify MMS and others of preliminary activities and submit follow-up information.	22 notices/information	10	220
202	Submit conservation information documents	30 documents	300	900
203	Submit initial exploration plan, including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–39, etc., including notification requirements.	260 plans	580 hours	150,800
203(i), (j), (k), (l), (n), (q)	Submit revised/modified exploration plan, including surveys, reports, studies, departures, etc.	180 revisions	80	14,400
203(o); 204(s)	Conduct surveys or monitoring programs and submit results; GOM Region form MMS–141.	3 each for 30 wells = 90	2	180

Citation 30 CFR 250 Subpart B and related NTLs	Reporting and recordkeeping requirement	Annual number	Average burden (hours)	Annual burden hours
203(p); 204(t)	Submit Application for Permit to Drill	Burden covered under 1010–0044.		0
204	Submit initial development and production plan (or DOCD) used in western GOM, including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, etc., including notification requirements.	95 plans	580	55,100
204	Submit deepwater operations plans for projects in GOM water depths greater than 1,000 feet and projects utilizing subsea production technology.	17 plans	580	9,860
204(k)	Submit preliminary plans for tracts in vicinity of a DPP that requires NEPA procedures.	10 plans	2	20
204 (l), (m), (n), (o), (q), (u)	Submit revised/modified development and production plan (or DOCD), including surveys, reports, studies, departures, etc.	215 revisions	82	17,630
Reporting—Subtotal		886 Responses		249,110
Supplemental NTLs	Retain original copies of surveys, studies, reports, etc. (Note: Respondents would retain these as part of usual and customary business activities. The burden is to make them available to MMS if needed.).	130	2	260
Recordkeeping—Subtotal		130 Recordkeepers		260
Total burden		1,016 Responses/Recordkeepers		249,370

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens for this collection.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on February 23, 2000 (65 FR 8984). We received no comments in response to that notice. If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 24, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 15, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–18804 Filed 7–24–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB control number 1010–0053).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR 250, Subpart D, Oil and Gas Drilling Operations." We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by August 24, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0053), 725 17th Street, NW, Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy

of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart D, Oil and Gas Drilling Operations

OMB Control Number: 1010–0053.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to the Minerals Management Service (MMS).

The MMS uses the information to determine the condition of a drilling site to prevent hazards inherent in drilling operations. Among other things, MMS specifically uses the information to ensure: (a) The drilling unit is fit for the intended purpose; (b) the lessee will not encounter geologic conditions that present a hazard to operations; (c) equipment is maintained in a state of readiness and meets safety standards; (d) each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; (e) compliance with safety standards; and (f) the proposed field drilling rules will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to determine whether drilling operations have encountered hydrocarbons or H_2S and to ensure that H_2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H_2S and zones where the presence of H_2S is unknown.

We protect proprietary information that is submitted according to the Freedom of Information Act (5 U.S.C. 552), and its implementing regulations (43 CFR 2), and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

We published a **Federal Register** notice with the required 60-day comment period on April 17, 2000 (65 FR 20484). We received no comments in response to that notice.

Frequency: The frequency of reporting varies according to requirement (see following burden chart).

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 113,827 hours (see following burden chart).

Estimated Annual Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens associated with this collection of information.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart D	Reporting and recordkeeping requirement (frequency)	Number	Burden (hours)	Annual burden hours
401(a)(3), (c), (d)	Submit new fitness of drilling reports (on occasion)	30 reports	1 hour	30
401(a)(3), (f)	Apply for installation of fixed drilling platforms or structures; provide 3rd party review of drilling unit		Burden included in 1010–0058 (30 CFR 250, subpart I)	0
401(e)(1)	Submit plans for well testing; notify MMS before testing (on occasion).	25 plans	2 hours	50
401(e)(5)	Provide copy of directional survey to affected leaseholder upon request (on occasion).	13 occasions	1 hour	13
401(g)	Request approval not to shut-in well during equipment movement (on occasion).	15 requests	1 hour	15
401(g) (MMS condition of approval).	Notify MMS of drilling rig movement on or off drilling location (on occasion).	1,210 notices	.1 hour	121
404(a), (b), (c); 405(a), (b), (c).	Submit revised casing & cementing program (on occasion).	20% of 1,105 drilling operations = 221.	2 hours	442
405(c)	Pressure test or evaluate casing; submit results (every 30 days during prolonged drilling).	20% of 1,108 wells = 221.6	5 hours	1,108
408(a)(2)	Prepare & post well control drill plan for crew members (on occasion).	33 plans	3 hours	99
412	Request to amend or cancel field drilling rules (on occasion).	8 requests	2.7 hours	[1]22
414 incl. various refs in 402, 404, 405, 406, 407, 409, 410, 411.	Apply for permit to drill & supplemental required information, including various other approvals required in subpart D.	Burden covered under 1010–0044 &/or 1010–0132 (forms MMS–123 and MMS–123S)		0
415; 416(b), (e)	Submit forms MMS–124, Sundry Notices & Reports on Wells, & MMS–125, Well Summary Report.	Burden included in 1010–0045 or 1010–0046)		0
416	Submit well records & other data as requested (daily; on occasion; note in GOMR, daily drilling reports submitted weekly on form MMS–133, burden under 1010–0132).	20% of 13 wells = 2.6 (Pacific Region only).	3 hours	[1]8
417(c)(1), (c)(2), (c)(3)	Request classification for presence of H_2S	Submitted with APD; burden included in 1010–0044		0

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart D	Reporting and recordkeeping requirement (frequency)	Number	Burden (hours)	Annual burden hours
417(c)(4), (d)	Submit request for reclassification of H_2S zone; notify MMS if conditions change (on occasion).	33 responses	1.7 hours	[1]56
417(f), (j)(12)	Submit contingency plans for operations in H_2S areas; propose alternatives to minimize or eliminate SO_2 hazards (on occasion).	47 plans (21 drill, 13 workover, 13 production.).	10 hours	470
417(i)	Display warning signs	Not applicable; facilities would display warning signs & use other visual & audible systems		0
417(j)(13)(vi)	Label breathing air bottles	Not applicable; supplier normally labels bottles; facilities would routinely label if not		0
417(l)	Notify (phone) MMS of unplanned H_2S releases (on occasion).	65 facilities × 2 = 130	.2 hour	26
417(o)(5)	Request approval to use drill pipe for well testing (on occasion).	4 requests	2 hours	8
417(q)(1)	Seal & mark for the presence of H_2S cores to be transported.	Not applicable: facilities would mark transported cores		0
417(q)(9)	Request approval to use gas containing H_2S for instrument gas (on occasion).	4 requests	2 hours	8
417(q)(12)	Analyze produced water disposed of for H_2S content & submit results to MMS (on occasion, apprx. weekly).	8 production platforms × 52 = 416.	2.8 hour	[1]1,165 (rounded)
Reporting Subtotal		2,413 Responses		3,641
401(b)(1)	Check drilling unit safety device; record results (weekly).	138 drilling rigs × 52 = 7,176.	.1 hour	[1]718
404(a)(5), (6)	Perform pressure-integrity & pore-pressure tests; record results of tests & hole-behavior observations (on occasion).	485 tests	4 hours	1,455
405(a), (b)	Perform casing pressure & production liner lap tests; record results (on occasion).	138 drilling rigs × apprx. 50 per rig = 6,900.	2 hours	13,800
407 tests; 407(h)	Perform BOP tests, actuations & inspections; record results; retain records 2 years following completion (when installed; at a minimum every 14 days; as stated for components of drilling activity).	138 drilling rigs × apprx. 35 per rig = 4,830.	6 hours	28,980
407(d)(5) test; 407(h)	Function test annulars and rams; document results (every 7 days between BOP tests-biweekly; note: part of BOP test when conducted).	139 drilling rigs × apprx. 20 per rig = 2,780.	.16 hour	[1]445
407(e)	Record reason for postponing BOP test (on occasion)	139 drilling rigs × 2 = 278 ..	.1 hour	[1]28
408(a)(3), (a)(4)	Perform well-control drills; record operations (weekly for 2 crews=104).	138 drilling rigs × 104 = 14,352.	1 hour	14,352
409(f)	Test diverter sealing element, valves & control system when installed & subsequent actuation; record results (on occasion; daily/weekly during drilling; average 2 per drilling operation).	1,104 drilling operations × 2 = 2,208.	2 hours	4,416
410(b), (c), (d)	Perform mud tests & calculations; post information; record test data (on occasion, daily, weekly, quarterly).	135 drilling rigs × 52 = ...	1.5 hours	10,530
		7,020 3 drilling rigs × 365 = 1,095.	1.5 hours	[1]1,643
413	Maintain training records for lessee & drilling contractor personnel.	Burden included in 1010–0078, 30 CFR 250, subpart O		0
416(a), (g)	Maintain drilling & well records (annual recordkeeping)	1,138 wells	1.5 hours	1,707
417(g)(2), (g)(5)	Conduct training; post safety instructions; document training (on occasion; annual refresher).	62 facilities × 2 = 124	2 hours	248
417(h)(2)	Conduct drills & safety meetings; document attendance (weekly).	62 facilities × 52 = 3,224 ...	1 hour	3,224
417(j)(8)	Test H_2S detection & monitoring sensors during drilling; record testing & calibrations (apprx. 12 sensors per rig; on occasion, daily during drilling).	33 drilling rigs × 365 days = 12,045.	2 hours	24,090
417(j)(8)	Test H_2S detection & monitoring sensors during production; record testing & calibrations (apprx. 30 sensors on 5 platforms + apprx. 42 sensors on 23 platforms; every 14 days).	50 production platforms × 26 weeks = 1,300.	3.5 hours	4,550
Recordkeeping Subtotal		139 Recordkeepers		110,166
TOTAL HOUR BURDEN.		2,543 Responses/Recordkeepers.		113,827

[1] Rounded.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult

with members of the public and affected agencies concerning each proposed collection of information * * *"

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the ADDRESSES section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 24, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744).

Dated: July 5, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–18805 Filed 7–24–00; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

RIN 1010–AB57

Major Portion Prices and Due Dates for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated with an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values and due dates for January and February 2000 production months.

EFFECTIVE DATES: January 1, 2000.

ADDRESSES: See FOR FURTHER INFORMATION CONTACT section below.

FOR FURTHER INFORMATION CONTACT: John Barder, Royalty Valuation Division, MMS; telephone, (303) 275–7234; FAX, (303) 275–7227; E-mail, John.Barder@mms.gov; mailing address, Minerals Management Service, Royalty Management Program, Royalty Valuation Division, P.O. Box 25165, MS 3152, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule, titled "Amendments to Gas Valuation Regulations for Indian Leases," with an effective date of January 1, 2000 (64 FR 43506). The gas regulations apply to all gas produced from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation).

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000 along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii) (64 FR 43520, August 10, 1999). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest under 30 CFR 218.54 (1999) will accrue from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an index zone and the due date for payment of additional royalties.

GAS MAJOR PORTION PRICES FOR JANUARY AND FEBRUARY 2000 AND DUE DATES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS-Designated Areas	January 2000	February 2000	Due Date
Blackfeet Reservation	$1.73/MMBtu	$1.68/MMBtu	09/31/2000
Fort Belknap	3.72/MMBtu	3.81/MMBtu	09/31/2000
Fort Berthold	0.87/MMBtu	1.00/MMBtu	09/31/2000
Fort Peck Reservation	1.47/MMBtu	1.67/MMBtu	09/31/2000
Navajo Allotted Leases in the Navajo Reservation	2.20/MMBtu	2.45/MMBtu	09/31/2000
Rocky Boys Reservation	1.64/MMBtu	1.84/MMBtu	09/31/2000
Turtle Mountain Reservation	1.27/MMBtu	1.27/MMBtu	09/31/2000
Ute Allotted Leases in the Uintah and Ouray Reservation	2.18/MMBtu	2.38/MMBtu	09/31/2000
Ute Tribal Leases in the Uintah and Ouray Reservation	2.18/MMBtu	2.38/MMBtu	09/31/2000

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999.

Dated: July 19, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–18694 Filed 7–24–00; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 15, 2000. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 9, 2000.

Patrick W. Andrus,

Acting Keeper of the National Register.

ARKANSAS

Pulaski County

Park Hill Historic District, Roughly bounded by Plainview Circle, Crestview Blvd., Ridge St. and H Ave., Pulaski, 00000935

COLORADO

Larimer County

First National Bank Building, 3728 Cleveland Ave., Wellington, 00000937

Prowers County

Petticrew Stage Stop, Address Restricted, Lamar, 00000936

CONNECTICUT

Fairfield County

Norwalk Lock Company Factory, 18 Marshall St., Norwalk, 00000939

Litchfield County

Rye House, 122–132 Old Mount Tom Rd., Litchfield, 00000940

Tolland County

Eldredge Mills Archeological District, Address Restricted, Willington, 00000938

FLORIDA

St. Lucie County

St. Anastasia Catholic School, Old, 910 Orange Ave., Fort Pierce, 00000941

ILLINOIS

Cook County

American State Bank, 6801 Cermak Rd., Berwyn, 00000951
Buckingham Building, 59–67 E. Van Buren St., Chicago, 00000942
Noble-Seymour-Crippen House, 5622–5624 N. Newark Ave., Chicago, 00000950

Lake County

Leonard, Clifford Milton, Farm, 550, 561, 565, 570, 575, 579 Hathaway Circle, Lake Forest, 00000944
Morse, Robert Hosmer, House, 1301 Knollwood Circle, Lake Forest, 00000947

Morgan County

Jacksonville Public Library, (Illinois Carnegie Libraries MPS) 201 W. College Ave., Jacksonville, 00000953

Perry County

Perry County Jail, 108 W. Jackson St., Pickneyville, 00000943

Sangamon County

Bretz, John F., House and Warehouse, 113 N. Fifth St., Springfield, 00000945

Shelby County

Clarksburg Schoolhouse, Clarksburg Rd. 1 mi. E of Cty Rd. 800 N/2025 E, Clarksburg, 00000952

Stephenson County

Ritzman, William, House, 10715 IL 26 N, Orangeville, 00000949

Winnebago County

Brown, William, Building, 226–228 S. Main St., Rockford, 00000946
Illinois National Guard Armory, 605 N. Main St., Rockford, 00000948

IOWA

Adams County

Odell, Noah, House, 1245 240th St., Nodaway, 00000917

Allamakee County

Turner Hall, 119 E. Greene St., Postville, 00000921

Cedar County

Kreinbring Phillips 66 Gas Station, 200 Main St., Lowden, 00000933

Clinton County

Helvig—Olson Farm Historic District, (Norwegian Related Resources of Olive Township, Clinton County, Iowa MPS) 2008 260th St., Grand Mound, 00000924
Johnson, George, House, (Norwegian Related Resources of Olive Township, Clinton County, Iowa MPS) 2566 190th Ave., Calamus, 00000923
Kvindherred Lutheran Church, School and Cemetery, (Norwegian Related Resources of Olive Township, Clinton County, Iowa MPS) 2589 190th Ave., Calamus, 00000922

Johnson County

Bethel AME Church, 411 S. Governor St., Iowa City, 00000925

Linn County

Second and Third Avenue Historic District, (Cedar Rapids, Iowa MPS) 1400 to 1800 blks of Second Ave. SE and Third Ave. SE, Cedar Rapids, 00000926

Polk County

Goddard Bungalow Court Historic District, (Bungalow, The, and Square House—Des Moines Residential Growth and Development MPS) 1410–21 Goddard Court, 1232 14th St., Des Moines, 00000930
Ingersoll Place Plat Historic District, (Bungalow, The, and Square House—Des Moines Residential Growth and Development MPS) 28th St., Linden and High Sts., Des Moines, 00000931
Kingman Place Historic District, (Bungalow, The, and Square House—Des Moines Residential Growth and Development MPS) 27th to 31st Sts., Kingman Blvd., Rutland St. and Cottage Ave., Des Moines, 00000928
Middlesex Plat Historic District, (Bungalow, The, and Square House—Des Moines Residential Growth and Development MPS) Center St. to Woodland Ave., 31st to 35th Sts., Des Moines, 00000932
Veneman's Bungalow Court Historic District, (Bungalow, The, and Square House—Des Moines Residential Growth and Development MPS) 1101–115 Droukas Court, 1228, 1232 E. 12th St., Des Moines, 00000929
Woodland Place Historic District, (Bungalow, The, and Square House—Des Moines Residential Growth and Development MPS) 25th to 27th St. to Woodland Ave., De Moines, 00000927

Tama County

Conant's Cabin and Park, IA 96, 3 mi. W of Gladbrook, Gladbrook, 00000920

Wapello County

Dahlonega School #1, Cty. Rd. H25, 2 mi. NE of Ottumwa, Ottumwa, 00000934

Woodbury County

Bruguier, Theophile, Cabin, Riverside Park, Sioux City, 00000918
New Orpheum Theatre, 520–28 Pierce St., Sioux City, 00000919

KENTUCKY

Boone County

Blankenbecker—Riley Farm, (Boone County, Kentucky MPS) 2788 Hathaway Rd., Union, 00000907
Chamber, Robert, House, (Boone County, Kentucky MPS) 118 Chambers Rd., Walton, 00000906
Chambers, C. Scott, House and Funeral Parlor, (Boone County, Kentucky MPS) 111 N. Main St., Walton, 00000911
Clore, Jonas, Log House, (Boone County, Kentucky MPS) 9293 E. Bend Rd., Burlington, 00000910
George—Vest House, (Boone County, Kentucky MPS) 13815 Walton-Verona Rd., Verona, 00000913
Glore, William Milburn, House, (Boone County, Kentucky MPS) 11682 Big Bone-Union Rd., Union, 00000904
Goodridge, Virginia Corey, House, (Boone County, Kentucky MPS) 259 Main St., Florence, 00000902
Gregory, Peter, House, (Boone County, Kentucky MPS) 5063 Beaver Rd., Union, 00000905
Huey, Thomas, Farm, (Boone County, Kentucky MPS) 10492 Big Bone Rd., Union, 00000900
Jenkins—Berkshire House, (Boone County, Kentucky MPS) 6529 Mill St., Petersburg, 00000908
Rogers, Boone Fowler, Barn, (Boone County, Kentucky MPS) 5394 Belleview Rd., Petersburg, 00000901
Stevenson, Dr. John E., House, (Boone County, Kentucky MPS) 3422 Beaver Rd., Union, 00000912

Verona High School, (Boone County, Kentucky MPS) 14923 Walton—Verona Rd., Verona, 00000909
Williams, Caroline, Log House, (Boone County, Kentucky MPS) 3650 Burlington Pike, Burlington, 00000903

Jessamine County

Avon Stock Farm, 6289 Haroodsburg Rd., Nicholasville, 00000954

MASSACHUSETTS

Barnstable County

West Dennis Graded School, 67 School St., Dennis, 00000957

Bristol County

Buttonwood Park Historic District, Kempton St., Rockdale Ave., Hawthorne St. and Brownell Ave., New Bedford, 00000915

Essex County

Rollins, John R., School, 451 Howard St., Lawrence, 00000956

Middlesex County

Wilson, Henry, Shoe Shop, 181 W. Central St., Natick, 00000955

NEW JERSEY

Morris County

Tempe Wick Road—Washington Corners Historic District, Corey Ln., Cemetery Rd., Tempe Wick, Kennaday, Leddell, and Jockey Hollow Rds., Harding, 00000959

Somerset County

Higginsville Road Bridges, (Metal Truss Bridges in Somerset County MPS) Higginsville Rd., at the South Branch of the Raritan River, Hillsborough, 00000916
Maplewood, Burnt Hill Rd., at Rock Brook, Mongomery, 00000960

NEW YORK

Rensselaer County

Blink Bonnie, 1368 Sunset Rd., Schodack, 00000958

OHIO

Columbiana County

Teegarden—Centennial Covered Bridge, Eagleton Rd. T–761, 0.1 mi E of C–411, Salem, 00000961

Cuyahoga County

Olmsted Falls Depot, 25802 Garfield Rd., Olmsted Falls, 00000963

Summit County

Northfield Town Hall, 9546 Brandywine Rd., Northfield, 00000962

PENNSYLVANIA

Erie County

Erie Trust Company Building, 1001 State St., Erie, 00000967

Fulton County

Cold Spring Farm, 323 Lions Park Dr., McConnellsburg, Todd, 00000966

Greene County

Gordon, George W., Farm, 333 Mary Hoge Rd., 0.3 mi. SW of Gordon Hill, Franklin, 00000965

Mercer County

Greenville Commercial Historic District, Centered on Main, Canal and Clinton Sts., Greenville, 00000964

WASHINGTON

Ferry County

Fairweather—Trevitt House, 645 Kaufman, Republic, 00000975

King County

Colvos Store, 123rd Ave. SW and Cove Rd., Vashon, 00000970
Pirate (R-Class Sloop), 1010 Valley St., Seattle, 00000968
Skykomish Historic Commercial District, Railroad Ave., from 3rd St. to W of N 6th St., and part of Old Cascade Hwy., Skykomish, 00000974
Steen, Helmer and Selma, House, 10924 SW Cove Rd., Vashon, 00000976
Trommald Building, 1523–1525 Cole St., Enumclaw, 00000972
Vashon Hardware Store, 17601 99th Ave. SW, Vashon, 00000971

Pierce County

Wilkeson Arch, WA 165, Church St. and Brierhill Blvd., Wilkeson, 00000973

Spokane County

Bump Block—Bellevue House—Hawthorne Hotel, (Single Room Occupancy Hotel's in the Central Business District of Spokane MPS) S 206 Post St., Spokane, 00000977
Roosevelt Apartments, 524 W. Seventh Ave., Spokane, 00000969

WISCONSIN

Dane County

West Main Street Historic District, Roughly bounded by S. Fairchild St., W. Main St., S. Carroll St., and W. Doty St., Madison, 00000914

Ozaukee County

Jahn, William F., Farmstead, 12112–12116 N. Wauwatosa Rd., Mequon, 00000978

[FR Doc. 00–18689 Filed 7–24–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Coachella Canal Lining Project, Coachella and Imperial Counties, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to update and revise the 1993 Draft Environmental Impact Statement (DEIS)/Draft Environmental Impact Report (DEIR) and to prepare the Final Environmental Impact Statement (FEIS)/Final Environmental Impact Report (FEIR) for the lining of the Coachella Canal, Riverside and Imperial Counties, California.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the California Environmental Quality Act (CEQA), the Bureau of Reclamation and the Coachella Valley Water District in conjunction with the State of California and the Metropolitan Water District of Southern California will update and revise the 1993 DEIS/DEIR and prepare a FEIS/FEIR to evaluate the environmental aspects associated with the proposed project to line 33.4 miles of the Coachella Canal (canal) between siphons 7 and 14 and siphons 15 and 32. Reduction of the seepage loss from the canal would conserve approximately 26,000 acre feet of water/year, which would be made available to the San Luis Rey Indian Tribe and Metropolitan Water District of Southern California and would help maintain the amount of Colorado River water available to California in accordance with the furtherance of implementing and achieving the goals of the "California Colorado River Water Use Plan." The allocation of the water conserved from the canal lining will be consistent with federal law, and shall be determined by an agreement among the Metropolitan Water District of Southern California, the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District, and the San Luis Rey settlement parties, reached after consultation with the United States Secretary of the Interior and the Director of the California Department of Water Resources.

DATES: It is anticipated that the Revised DEIS/DEIR will be completed during August–September, 2000. A Notice of Availability for this document will be published, and copies of the Revised DEIS/DEIR will be circulated for a 60-day review and comment period by the public and other agencies.

FOR FURTHER INFORMATION CONTACT: Mr. Don Young, Assistant Area Manager, Yuma Area Office, Bureau of Reclamation, 7301 Calle Agua Salida, P.O. Box D, Yuma, Arizona 85366.

SUPPLEMENTARY INFORMATION: On November 17, 1988, Public Law 100–675 authorized the Secretary of the Interior to line the Coachella Canal or to recover seepage from the canal using construction funds from California water agencies entitled to the use of Colorado River water. A DEIS/DEIR was prepared for this project after public scoping meetings were held in 1988, 1989 and 1992 to identify issues, develop alternatives and provide information to the public on the project plan. In addition, Reclamation chaired various interagency work groups to evaluate project effects, develop alternatives and identify mitigation measures. Based upon this public/agency input, four alternatives were developed for this project: (1) Conventional lining, (2) underwater lining, (3) construction of a parallel canal, and (4) the no action alternative. The DEIS/DEIR for the project was completed and circulated to other government agencies, interested parties, and the public for review and comment from January 11 to March 15, 1994. However, following the public involvement process, the DEIS/DEIR was not revised to produce a FEIS/FEIR because funding was not available for the project.

California has now provided appropriated funds to finance the lining of the remaining unlined portions of the Coachella Branch of the All American Canal. The environmental analysis for this project will be updated to evaluate the status of resources since the original DEIS/DEIR was prepared. Since the alternatives have not changed for this project, further scoping is not required. Substantive comments received during the first public review of the document will be evaluated and incorporated into the revised DEIS/DEIR. The revised DEIS/DEIR will be distributed to the public and interested agencies/cooperators for a 60-day review and comment period. A Notice of Availability will be published when the revised DEIS/DEIR is available for public review and comment, and a public hearing has been scheduled.

The Coachella Canal delivers an average of 300,000 acre-feet of Colorado River water each year to the Coachella Valley Water District (CVWD), situated on the north end of the Salton Sea. The canal begins at a turnout on the All American Canal near the international boundary with Mexico and runs through the desert, east of the Salton Sea, before it enters the irrigated area of the CVWD. The canal was excavated through desert soils in the 1940's and was placed in operation as a partially lined and unlined canal in 1948.

The first 49-mile section of the canal, which runs through the sandy soil of the East Mesa, had especially high leakage; consequently it was lined in 1980 to conserve water pursuant to Title I of the Colorado River Basin Salinity Control Act (Public Law 93–320). The canal was "lined" by constructing a new canal parallel to the existing canal and connecting the new canal to existing concrete structures. The last 37 miles of the canal were lined when the canal was originally constructed.

The intervening section of canal was constructed in a mixture of gravel and clay soils. The rate of seepage from this section was not as high as in the first 49 miles, so lining was deferred. This section contains 33.4 miles of unlined canal (between siphons 7 and 14 and siphons 15 and 32) that are proposed for lining by this project. Between siphons 14 and 15, the canal was lined experimentally in 1991. The length of unlined canal does not include the lengths of the pipe siphons (wash crossings and rail road crossings), which are not proposed for replacement.

Anyone interested in more information concerning the Coachella Canal Lining Project should contact Mr. Young as provided above.

Dated: July 18, 2000.

Robert W. Johnson,

Regional Director.

[FR Doc. 00–18707 Filed 7–24–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–885–887 (Preliminary)]

Desktop Note Counters and Scanners From China, Korea, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of a preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigations Nos. 731–TA–885–887 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Korea, and the United Kingdom of desktop note counters and scanners, provided for in subheading 8472.90.9520 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 31, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by September 8, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on July 17, 2000, by Cummins-Allison Corp., Mt. Prospect, IL.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations

have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 7, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jozlyn Kalchthaler (202–205–3457) not later than August 3, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 10, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 19, 2000.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–18733 Filed 7–24–00; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–624–625 (Review)]

Helical Spring Lock Washers From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on helical spring lock washers from China and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on helical spring lock washers from China and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On February 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (65 FR 7890, February 16, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on November 8, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on November 30, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 21, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 27, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is November 20, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 11, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before December 11, 2000. On January 3, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 5, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 19, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18734 Filed 7–24–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–428]

Certain Integrated Circuit Chipsets, Components Thereof and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Terminate the Investigation as to Fifteen Claims of One Patent

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting complainant's motion for termination of the investigation as to 15 claims of one patent at issue.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3096. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on February 4, 2000, based on a complaint filed by Intel Corp. of Santa Clara, California ("Intel"). 65 FR 7059 (2000). The complaint named five respondents: VIA Technologies, Inc., of Taipei, Taiwan; VIA Technologies, Inc., of Fremont, California; First International Computer, Inc., of Taipei, Taiwan; First International Computer of America, Inc., of Fremont, California; and Everex Systems, Inc., of Fremont, California. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain integrated circuit chipsets and products containing same by reason of infringement of claims 1–3 and 15–16 of U.S. Letters Patent 5,333,276; claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, and 49 of U.S. Letters Patent 5,740,385; claims 1–12 and 28–48 of U.S. Letters Patent 5,581,782; and claims 1–31 of U.S. Letters Patent 5,548,733 ("the '733 patent").

On June 5, 2000, complainant Intel moved to amend the complaint and notice of investigation by deleting claims 2–4, 7, 15–20, 22, 27–29, and 31 of the '733 patent. Motion Docket No. 428–14. There were no responses to the motion.

On June 27, 2000, the ALJ issued an ID (Order No. 14) granting Intel's motion to the extent that he permitted Intel to withdraw claims 2–4, 7, 15–20, 22, 27–29, and 31 of the '733 patent from the investigation. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: July 19, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18735 Filed 7–24–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–428]

Certain Integrated Circuit Chipsets, Components Thereof and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Terminate the Investigation as to One Patent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting complainant's motion for termination of the investigation as to one of four patents at issue.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3096. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on February 4, 2000, based on a complaint filed by Intel Corp. of Santa Clara, California ("Intel"). 65 FR 7059 (2000). The complaint named five respondents: VIA Technologies, Inc., of Taipei, Taiwan; VIA Technologies, Inc., of Fremont, California (collectively, "VIA"); First International Computer, Inc., of Taipei, Taiwan; First International Computer of America, Inc., of Fremont California; and Everex Systems, Inc., of Fremont, California (collectively, "FIC"). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain integrated circuit chipsets and products containing same by reason of infringement of claims 1–3 and 15–16 of U.S. Letters Patent 5,333,276; claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, and 49 of U.S. Letters Patent 5,740,385 ("the "385 patent"); claims 1–12 and 28–48 of U.S. Letters Patent 5,581,782; and claims 1–31 of U.S. Letters Patent 5,548,733.

On June 5, 2000, complainant Intel moved to amend the complaint and notice of investigation by deleting the "385 patent. Motion Docket No. 428–12. The VIA and FIX respondents responded separately to Intel's motion. Both sets of respondents supported the motion, provided certain documents currently in the confidential record of the investigation were made public. The Commission investigative attorney supported the motion unconditionally.

On June 20, 2000, the ALJ issued an ID (Order No. 12) granting Intel's motion to the extent that he permitted Intel to withdraw the "385 patent from the investigation. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) In the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone 202–205–2000.

Issued: July 19, 2000.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–18736 Filed 7–24–00; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting; Federal Committee on Registered Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. APP. 1), notice is hereby given of a meeting of the Federal Committee on Registered Apprenticeship (FCRA).

Time and Date: The meeting will begin at 9:00 a.m. Thursday, August 17, 2000, and will continue until approximately 5 p.m. The meeting will reconvene at 9:00 a.m. on Friday, August 18, 2000, and will continue until approximately 12 noon.

Place: The Hilton Milwaukee Center, 509 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 693–2806, x–149 (this is not a toll-free number).

Matters to be Considered: The agenda will focus on the following topics:

(1) Reports on the Federal Committee on Registered Apprenticeship Work Groups

Marketing

Quality

Diversity

Resources/Data

Legislative

(2) Progress Report on Apprenticeship Training, Employer and Labor Services/ Bureau of Apprenticeship and Training activities

(3) Progress Report on National Association State and Territorial Apprenticeship Directors

(4) Progress Report on National Association of Government Labor Officials

(5) Progress Report on National Skill Standards Board

(6) Next Meeting Dates and Location

(7) Public Comment

Status: Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion Winters at (202) 219–5921 no later than August 8, 2000, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending it to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW, Washington, D.C. 20210. Such submissions should be sent by August 8, 2000, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of the time needed by furnishing a written statement to the Designated Federal Official by August 8, 2000. The chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such request.

Dated: Signed at Washington, D.C., this 19th day of July 2000.

Raymond L. Bramucci,

Assistant Secretary of Employment and Training.

[FR Doc. 00–18774 Filed 7–24–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Presidential Libraries

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Presidential Libraries. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Presidential Libraries in NARA's ceiling of discretionary advisory committees. The Committee Management Secretariat, General Services Administration, also concurred with the renewal of the Advisory Committee on Presidential Libraries in correspondence dated July 10, 2000.

NARA has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on issues affecting the functioning of existing Presidential libraries and library programs and the development of future Presidential libraries. NARA will use the Committee's recommendations in its implementation of strategies for the efficient operation of the Presidential libraries. NARA's Committee Management Officer is Mary Ann Hadyka. She can be reached at 301–713–7360 x222.

Dated: July 19, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–18738 Filed 7–24–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 1, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Political Science, International Affairs, and Jurisprudence, submitted to the Division of Research Programs at the May 1, 2000 deadline.

2. *Date:* August 2, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American and Latin American Literature, submitted to the Division of Research Programs at the May 1, 2000 deadline.

3. *Date:* August 3, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Romance Languages and Literatures, submitted to the Division of Research Programs at the May 1, 2000 deadline.

4. *Date:* August 4, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Film and Theater, submitted to the Division of Research Programs at the May 1, 2000 deadline.

5. *Date:* August 7, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in anthropology and Archaeology II, submitted to the Division of Research Programs at the May 1, 2000 deadline.

6. *Date:* August 8, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in History of Art and Architecture, submitted to the Division of Research Programs at the May 1, 2000 deadline.

7. *Date:* August 9, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Classical and Medieval Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

8. *Date:* August 10, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in African, Near Eastern, and Asian Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

9. *Date:* August 10, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in Sociology, Psychology, and Education, submitted to the Division of Research Programs at the May 1, 2000 deadline.

10. *Date:* August 11, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: The meeting will review applications for Fellowships in American Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

11. *Date:* August 14, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Germanic and Slavic Languages and Literatures, Comparative Literature, Literary Criticism and Linguistics, submitted to the Division of Research Programs at the May 1, 2000 deadline.

12. *Date:* August 15, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American Studies, Rhetoric, Communication and Media, submitted to the Division of Research Programs at the May 1, 2000 deadline.

13. *Date:* August 16, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.

Program: This meeting will review applications for Fellowships in European History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

14. *Date:* August 17, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in History of Art and Architecture, submitted to the Division of Research Programs at the May 1, 2000 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 00–18681 Filed 7–24–00; 8:45 am]
BILLING CODE 7536–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.
ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.
DATES: The meeting will begin at 10:30 a.m. on Wednesday, August 2, 2000.
ADDRESSES: The meeting will be held at The Centennial Inn, Concord, New Hampshire, I–93 S, Exit 14.
FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: July 19, 2000.
Kenneth M. Becker,
Executive Director.
[FR Doc. 00–18708 Filed 7–24–00; 8:45 am]
BILLING CODE 1650–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Extension:
Rule 11a–3, SEC File No. 270–321, OMB Control No. 3235–0358

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 11a–3 Under the Investment Company Act of 1940; Offers of Exchange by Open-End Investment Companies Other Than Separate Accounts

Rule 11a–3 under the Investment Company Act of 1940 [17 CFR 270.11a–3] is an exemptive rule that permits open-end investment companies ("funds"), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things: (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction; (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years; and (iii) to give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, to provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and to enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

It is estimated that approximately 2,900 funds may choose to rely on the rule, and each fund may spend one hour annually complying with the recordkeeping requirement and another one hour annually complying with the notice requirement. The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds. The total annual burden associated with the rule therefore, is limited to the recordkeeping and notice requirements under the rule, which is estimated to be 5,800 hours. This estimate represents an increase of 800 hours over the prior estimate of 5,000 hours. This increase in burden hours is attributable to an increase in the estimated number of funds from 2,500 to 2,900. The estimate of average burden hours is made solely for the purposes of the PRA, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of rule 11a–3 is mandatory. Responses subject to the disclosure requirement of rule 11a–3 will not be kept confidential. Information subject to the recordkeeping requirement and notice requirement of rule 11a–3 is not submitted to the Commission and, therefore, confidentiality is not an issue.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 18, 2000.
Jonathan G. Katz,
Secretary.
[FR Doc. 00–18740 Filed 7–24–00; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4052; File No. SR–CBOE–00–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Increase in Narrow-Based Index Option Position and Exercise Limits

July 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to increase the position and exercise limits for narrow-based index options. The CBOE amended its proposal on June 13, 2000.[3] The proposed rule change, as amended, is described in Items I and II below, which have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 24.4A, "Position Limits for Industry Index Options," to increase the position and exercise limits for narrow-based (industry) index options to the levels currently in place for industry index options listed on the Philadelphia Stock Exchange, Inc. ("Phlx") and on the American Stock Exchange, Inc. ("Amex"). The text of the proposed rule change is available at the CBOE and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to amend CBOE Rule 24.4A to increase the position and exercise limits for narrow-based (industry) index options, which are subject to a three-tier position and exercise limit determination.[4] The CBOE's proposal, as amended, will make the CBOE's position and exercise limits for narrow-based index options consistent with a recently approved increase in position and exercise limits for narrow-based index options listed on the Phlx and Amex.[5] Specifically, the CBOE proposes to increase the position and exercise levels for narrow-based index options from 9,000, 12,000 and 15,000 contracts to 18,000, 24,000 and 31,500 contracts. The CBOE requests that the Commission approve the proposal on an accelerated basis to allow for uniformity among the options exchanges with regard to position and exercise limits for narrow-based index options, which in turn should promote fair competition among the exchanges. The CBOE believes that the possibility of investor confusion will be eliminated in a trading environment with uniform position and exercise limits for industry index options.

The CBOE notes that exercise limits for narrow-based index options will continue to correspond to position limits, so that investors may exercise the number of contracts set forth as the position limit during any five consecutive business day period.

As of April 3, 2000, the CBOE listed the following industry index options, with limits as shown:

(1) S&P Banking Index—15,000 contracts;

(2) S&P Chemical Index—9,000 contracts;

(3) S&P Health Care Index—12,000 contracts;

(4) S&P Insurance Index—9,000 contracts;

(5) S&P Retail Index—12,000 contracts;

(6) S&P Transportation Index—12,000 contracts;

(7) CBOE Automotive Index—12,000 contracts;

(8) CBOE Computer Software Index—12,000 contracts;

(9) CBOE Gaming Index—12,000 contracts;

(10) CBOE Gold Index—15,000 contracts;

(11) CBOE Internet Index—15,000 contracts;

(12) CBOE Latin 15 Index—15,000 contracts;

(13) CBOE Mexico Index—12,000 contracts;

(14) CBOE Oil Index—15,000 contracts;

(15) CBOE Technology Index—15,000 contracts;

(16) GSTI Hardware Index—12,000 contracts;

(17) GSTI Internet Index—12,000 contracts;

(18) GSTI Multimedia Networking Index—12,000 contracts;

(19) GSTI Services Index—12,000 contracts;

(20) GSTI Software Index—12,000 contracts;

(21) DJUA Index—15,000 contracts;

(22) DJTA Index—15,000 contracts;

(23) Dow Jones Internet Commerce Index—15,000 contracts;

(24) Dow 10 Index—12,000 contracts; and,

(25) GSTI Semiconductor Index—12,000 contracts.

In addition to providing regulatory equality, the CBOE believes that an increase in position and exercise limits for narrow-based index options is appropriate for several reasons. First, the CBOE believes that increased position and exercise limits for narrow-based index options may bring additional depth and liquidity, in terms of both volume and open interest, to these index options classes without significantly increasing concerns regarding inter-market manipulations or disruptions of the index options or the underlying component securities.

Second, the CBOE notes that the Commission recently approved rule changes increasing the position and exercise limits for standardized equity option contracts.[6] The Commission also approved the elimination of position

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary L. Bender, Senior Vice President and Chief Regulatory Officer, Division of Regulatory Services, CBOE, to Joseph Corcoran, Division of Market Regulation ("Division"), Commission, dated June 12, 2000 ("Amendment No. 1"). In Amendment No. 1, the CBOE revised CBOE Rule 24.4A(a)(i) to provide that the position limits for options on a narrow-based index will be: (1) 18,000 contracts if the CBOE determines, during the semi-annual review conducted pursuant to CBOE Rule 24.4A(a)(ii), that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; (2) 24,000 contracts if the CBOE determines, during its semiannual review, that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or (3) 31,500 contracts if the CBOE determines that the conditions specified in (1) or (2) which would require the establishment of a lower limit have not occurred.

[4] CBOE Rule 24.5, "Exercise Limits," provides that the exercise limits for index options will be equivalent to the position limits prescribed for options with the nearest expiration date in CBOE Rule 24.4 or 24.4A.

[5] *See* Securities Exchange Act Release No. 42132 (November 12, 1999), 64 FR 63837 (November 22, 1999) (order approving File Nos. SR-Amex 98–39 and SR-Phlx–98–39) ("Narrow-Based Index Option Order").

[6] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (order approving File Nos. SR–CBOE–98–25, SR–Amex–98–32, SR–PCX–98–33, and SR–Phlx–98–36).

and exercise limits for certain broad-based index option contracts for a two-year pilot program.[7] Given these recent changes to various options exchanges' position and exercise limit rules, the CBOE believes that it is reasonable to allow for corresponding changes to the position and exercise limits for narrow-based index options.

Third, the CBOE notes that the proposal, while increasing the position limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, under the proposal, as amended, the lowest proposed limit, 18,000 contracts, will apply to narrow-based index options in which a single underlying stock accounted on average for 30% or more of the index value during the 30–day period immediately preceding the Exchange's semi-annual review of industry index option position limits. A position limit of 24,000 contracts will apply if: (i) Any single underlying stock accounted, on average, for 20% or more of the index value, or (ii) any five underlying stocks together accounted, on average, for more than 50% of the index value, but no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 31,500-contract limit will apply only if the Exchange determines that the above-specified conditions requiring either the 18,000-contract limit or the 24,000-contract limit have not occurred.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[8] of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–16 and should be submitted by August 15, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposal is consistent with the requirements of the Act.[9] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[10] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission believes that the CBOE's proposal to increase its position and exercise limits for narrow-based index options is appropriate for several reasons. First, the Commission notes that the proposal will increase the CBOE's position and exercise limits for narrow-based index options to the levels adopted by the Phlx and the Amex, which the Commission previously approved.[11] Accordingly, the Commission finds that the proposal will help to assure fair competition among exchange markets, consistent with the Congressional findings in Section 11A(a)(1)(C)(iii) of the Act.[12]

Second, the Commission believes that increasing position and exercise limits for narrow-based index options may bring additional depth and liquidity, in terms of both volume and open interest, to these index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the index options or the underlying component securities.

Third, increasing position and exercise limits for narrow-based index options should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy.

Fourth, the Commission notes that the proposal, while increasing the position limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, under the proposal, as amended, the lowest proposed limit, 18,000 contracts, will apply to narrow-based index options in which a single underlying stock accounted for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. A position and exercise limit of 24,000 contracts will apply if any single underlying stock accounted, on average, for 20% or more of the index value or any five underlying stocks accounted, on average, for more than 50% of the index value, but no single stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 31,500-contract limit will apply only if the Exchange determines that the conditions requiring either the 18,000-contract limit or the 24,000-contract limit have not occurred.[13]

Fifth, the Commission believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a CBOE member or its customers may try to maintain a large unhedged position in a narrow-based index option. In this regard, the Commission notes that

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[7] *See* Securities Exchange Act Release Nos. 40960 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving File No. SR–CBOE–98–23); and 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (order approving File No. SR–Amex–98–38).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Narrow-Based Index Option Order, *supra* note 5.

[12] *See* 15 U.S.C. 78k–1(a)(1)(C)(iii).

[13] *See* Amendment No. 1, *supra* note 3.

current margin and risk-based haircut methodologies serve to limit the size of positions that a CBOE member or its customer may maintain.[14] The CBOE also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines that a higher requirement is warranted.[15] Monitoring accounts maintaining large positions should provide the Exchange with information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The Commission also notes that the Options Clearing Corporation will serve as the counter-party guarantor in every exchange-traded transaction.

Sixth, the Commission notes that the index options and other types of index-based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that increasing position and exercise limits for narrow-based index options will better allow the Exchange to compete with the OTC market.

Finally, the absence of any discernible manipulative problems for narrow-based index options at existing levels leads the Commission to conclude that the proposed increases are reasonable and that they can be safely implemented.[16] The Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits, as well as to detect and deter attempted manipulation and other trading abuses through the use of such illegal positions by market participants.[17]

The Commission finds good cause to approve the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposed rule change, as amended, is identical to proposals by the Phlx and Amex that the Commission previously approved.[18] The Commission notes that no comments were received on either the Phlx's or Amex's proposal. In addition, the Commission is not aware of any problems arising from the position and exercise limits approved in the Phlx and Amex proposals. Amendment No. 1 conforms CBOE's position and exercise limits for narrow-based index options to the levels adopted by the Phlx and Amex. Accordingly, the Commission finds that, consistent with Sections 6(b) and 19(b)(2) of the Act, there is good cause to approve the proposal and Amendment No. 1 to the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–00–16), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18743 Filed 7–24–00; 8:45 am]

BILLING CODE 8010–01–M

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[14] In particular, Exchange Act Rule 15c3–1 requires a capital change equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(−) 10% market move. In addition, the adoption of risk-based haircuts in 1997 resulted in significant increases in capital charges for unhedged options positions. *See* Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (adopting risk-based haircuts). With regard to margin requirements, CBOE Rule 12.3 provides a customer margin requirement for an unhedged position in a listed narrow-based index option equal to the option premium plus 20% of the product of the current index group value and the applicable index multiplier, reduced by any out-of-the-money account, with a minimum margin requirement equal to the option premium plus 10% of the product of the current index group value and the applicable index multiplier.

[15] *See* CBOE Rule 12.10.

[16] Telephone Conversation between Mary L. Bender, Senior Vice President and Chief Regulatory Officer, Division of Regulatory Services, CBOE, and Joseph Corcoran, Division, Commission, on June 27, 2000.

[17] The Commission emphasizes that the Exchange must closely monitor compliance with position and exercise limits and impose appropriate sanctions for failures to comply with the Exchange's position and exercise limit rules.

[18] *See* Narrow-Based Index Option Order, *supra* note 5.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43044; International Series Release No. 1228; File No. SR–NYSE–00–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Shares of Celanese AG

July 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2000, the New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt two interpretations under its rules to accommodate the trading of Celanese AG ("Celanese"). Celanese listed on the NYSE on October 25, 1999.

Celanese is a stock corporation incorporated under the laws of the Federal Republic of Germany with a single class of common stock—ordinary shares, no par value ("Ordinary Shares")—that trade on both the NYSE and the Frankfurt Stock Exchange, as well as on other exchanges around the world. The register for the Ordinary Shares is administered by Deutsche Bank AG, Celanese's transfer agent and registrar in Germany, and ChaseMellon Shareholder Services, Celanese's transfer agent and registrar in the United States. Transactions in the Ordinary Shares are cleared through the central clearing systems of both countries, The Depository Trust and Clearing Corporation ("DTCC") in the United States and Deutsche Börse Clearing in Germany.

Although the Celanese Ordinary Shares are issued by a German company, they have many characteristics that are similar to shares of common stock issued by U.S. companies. For example, while most German stocks are in bearer form, Celanese shares are in registered form, the same as U.S. shares. However, the form of the stock certificate will have certain characteristics more similar to certificated shares of common stock of a German company than of a U.S. company. In addition, Celanese will pay dividends and call stockholder meetings and conduct voting at such meetings generally in accordance with German practices. For these reasons, the Exchange proposes to adopt two interpretations of its rules to accommodate the listing and trading of Celanese, similar to interpretations that the Commission approved in 1998 to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

accommodate the listing and trading of DaimlerChrysler [3].

Certificates: The Frankfurt Stock Exchange rules governing stock certificates are somewhat different than the Exchange's rules. This rule change interprets Paragraph 502 of the Exchange's Listed Company Manual (the "Manual") to accept the Celanese certificates.

Proxies: Celanese will solicit proxies in a manner that combines characteristics of both the German and U.S. markets. This rule change interprets Paragraphs 401.03 and 402 of the Manual to accept Celanese's proposed proxy procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide two interpretations under the Exchange's rules to accommodate the listing and trading of Celanese. These interpretations pertain to Celanese's share certificates and voting procedures. As noted above, they are similar to interpretations that the Commission approved in 1998 with respect to the listing of the ordinary shares of DaimlerChrysler.[4]

Certificates

The Celanese share certificates conform in most respects to the requirements in Paragraph 502 of the Manual. The only exceptions are that the vignettes (pictures) are not fully steel engraved and the form of endorsement provides for German registry. Otherwise, the printing and engraving requirements are met. The Exchange believes that these are relatively minor inconsistencies with current requirements.

Voting

Under German law, only stockholders who hold shares on the date of the stockholders meeting are entitled to vote. Accordingly, the record date for voting at a stockholder meeting is the meeting date. In contrast, Exchange rules require 10 days' notice of a record date and 30 days between record and meeting date. Celanese will modify its current practice to accommodate the notice period in the United States. In Germany, there already are procedures to distribute preliminary agendas and other information to shareholders approximately one month before the meeting. Celanese has agreed to prepare and mail stockholder meeting materials approximately 45 days prior to its meeting, permitting the solicitation of proxies in the United States in the currently accepted time frame. The company also has agreed to give the Exchange 10 days' notice of the record date.

The coincidence of the record and meeting date also raises the possibility that a selling shareholder could give a proxy and then sell the shares, with the buyer also getting a proxy. This could lead to double voting. In order to address this, both ChaseMellon Shareholder Services as transfer agent (the "Transfer Agent") and Automatic Data Processing ("ADP"), the proxy agent for most member organizations, will institute procedures to monitor changes in the shareholder list between the date the proxy material is originally mailed out and the date of the meeting. These procedures will be designed (i) To cancel the votes of persons who submit proxies but sell their shares prior to the meeting date, and (ii) to facilitate voting by persons who purchase shares after the time the proxy material is mailed out, but before the meeting date. A purpose of the proposed rule change is to accept these procedures as being in compliance with NYSE procedures.

Both the Transfer Agent and ADP will produce shareholder lists on the day designated for mailing the proxy material (approximately 30–45 days prior to the meeting). The Transfer Agent's list will reflect the names of registered holders and ADP's list will reflect the names of beneficial owners. Prior to the meeting date, the Transfer Agent and ADP will each produce a current shareholder list. If holders no longer appear on the list, then votes attributed to proxies submitted by them will be cancelled. If new holders appear, proxy materials will be mailed to them by the Transfer Agent, in the case of registered owners, and by ADP, in the case of beneficial owners.

The shareholder lists can be updated periodically up until the date of the meeting. If practicable, proxy materials will be mailed to any new holders. This will be done on a best efforts basis. Such best efforts may include electronic notification and expedited delivery service. The proxy materials will describe voting procedures in detail. Notices will be included advising of the automatic revocation of the proxy if the holder sells stocks prior to the meeting. Finally, as a check and balance, the total vote cast in nominee name will not be permitted to exceed the total position so held.

In addition, Celanese shareholders can vote in person at a shareholders' meeting. Under German law, a shareholder must give the company notice of his or her intent to vote in person no later than three business days prior to the meeting, and the person must be a record holder on the meeting date.[5]

2. Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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[3] See Securities Exchange Act Release No. 40567 (October 23, 1998), 63 FR 58435 (October 30, 1998).

[4] The Exchange anticipates developing and filing with the Commission such generally applicable rules as are necessary to cover matters relating to the trading of ordinary shares of non-U.S. companies, thus making company specific rule filings such as this one unnecessary. Since Celanese listed before the development work could be finalized, the Exchange is requesting this company-specific approval, following the DaimlerChrysler model.

[5] With respect to dividends, Celanese's record date also will be the date of the company's annual meeting (like most German companies, Celanese pays dividends annually). This will make it impossible to trade the stock "ex-dividend" on the Exchange in the normal course. Accordingly, the Exchange will use its existing flexibility under Exchange Rules 235 and 257 and Paragraph 703.02 of the Manual to trade Celanese stock with "due bills" for the period that the stock normally would trade ex-dividend. This is a process pursuant to which the seller will receive the dividend, but is obligated to pay the dividend to the buyer of the shares. This process will be transparent to investors since due bills net out in the clearing process. To avoid any potential confusion as to the "ex-dividend date", the Exchange will endeavor to transmit notices to member organizations well in advance of the dividend declaration date.

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and coping at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–25 and should be submitted by [insert date 21 days from the date of this publication].

IV. Commissions's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to interpret the Manual to accommodate the listing and trading of Celanese shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of Celanese (rather than American depositary receipts) while maintaining trading standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to accept the Celanese proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, Celanese will give shareholders the same type of advance notification provided for in the Manual. Moreover, the Celanese proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding Celanese appear to be substantially equivalent to the NYSE's existing standards, by permitting the votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting. Indeed, the Commission, approved a similar interpretation in 1998 to permit the NYSE to trade ordinary shares of DaimlerChrysler,[8] and the Commission approved a similar interpretation earlier this year to permit the NYSE to trade ordinary shares of UBS.[9]

The Commission notes that the Exchange states that it anticipates developing and filing generally applicable rules related to the trading of ordinary shares of non-U.S. companies, making this type of company-specific rule filing unnecessary. The Commission supports that goal, and concurs that general rules are preferable to a series of company-specific exemptions.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**. The Exchange notes that these interpretations are the same as those made in connection with the trading of ordinary shares of DaimlerChrysler, and the Exchange states that DaimlerChrysler shares have traded without difficulty on the Exchange since their first listing. The Exchange adds that in light of the significant trading interest in Celanese, these interpretations will help eliminate uncertainty on the part of market participants.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. These interpretations are substantially similar to the interpretations that permitted the trading of DaimlerChrysler, and the Commission finds that granting accelerated approval to these changes will eliminate uncertainty about the status of Celanese shares.[10]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[11] that the proposed rule change (SR–NYSE–00–25) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18741 Filed 7–24–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43046; File No. SR–PCX–00–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Automatic Execution System

July 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 27, 2000, PCX submitted Amendment No. 1 to the proposed rule change.[3] The

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[7] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] *See* note 3, *supra.*

[9] *See* Securities Exchange Act Release No. 42785 (May 15, 2000), 65 FR 33396 (May 23, 2000).

[10] The Commission notes, however, that the Exchange has been trading ordinary shares of Celanese since October 1999, but did not file this proposed rule change until June 2000. The Commission's approval of this proposed rule change is not retroactive.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to Gordon Fuller, Special Counsel, Division of Market Regulation, Commission, dated June 26, 2000 ("Amendment No. 1"). In Amendment No. 1, PCX revised some of the text of the proposed rule and submitted this revised text.

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to allow broker-dealer orders to be eligible for automatic execution through the Exchange's Automatic Execution System ("Auto-Ex") on an issue-by-issue basis. The Exchange also proposes to adopt new rules and procedures to establish means of assuring better compliance with rules pertaining to the use of Auto-Ex. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

¶5231 Automatic Execution System

Rule 6.87

(a). *Definitions. For purposes of Rule 6.87:*

(1) The term "Auto-Ex" means the automated execution system feature of POETS that is owned and operated by the Exchange and that provides automated order execution and reporting services for options.

(2) The term "User" means any person or firm that obtains electronic access to Auto-Ex through an Order Entry Firm.

(3) The term "Order Entry Firm" means a member organization of the Exchange that is registered as an Order Entry Firm for purposes of sending orders to the Exchange for execution by Auto-Ex.

(b) Eligible Orders.

(1) [(a)] [Only] *Except as provided in Subsection (A) below, only* non-broker/dealer customer orders are eligible for execution on the Exchange's *Auto-Ex system* [Automatic Execution System ("Auto-Ex")].

(A) The Options Floor Trading Committee ("OFTC") may determine, on an issue-by-issue basis, to allow orders for the accounts of broker-dealers to be executed on Auto-Ex, except for orders for Market Makers or Specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934. For purposes of this Rule, the term "broker/dealer" includes foreign broker/dealers.

(2) [(b)] The Options Floor Trading Committee shall determine the size of orders that are eligible to be executed on Auto-Ex. Although the order size parameter may be changed on an issue-by-issue basis by the Options Floor Trading Committee, the maximum order size for execution through Auto-Ex is fifty contracts.

(3) [(c)] The Options Floor Trading Committee may increase the size of Auto-Ex eligible orders in one or more classes of multiply traded equity options to the extent that other exchanges permit such larger-size orders in multiply traded equity options of the same class or classes to be entered into their own automated execution systems. If the Options Floor Trading Committee intends to increase the Auto-Ex order size eligibility pursuant to this Rule, the Exchange will notify the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Exchange Act.

(c) Order Entry Firm Registration. Participation in Auto-Ex as an Order Entry Firm requires registration with the Exchange. Continued registration depends upon the Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an Auto-Ex Order Entry Firm Application Agreement with the Exchange;

(2) compliance with all applicable PCX options trading rules and procedures;

(3) written notice must be provided to all Users regarding the proper use of Auto-Ex; and

(4) maintenance of adequate procedures and controls that will permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users. Order Entry Firms must monitor and supervise the entry of orders by Users to prevent the prohibited practices set forth in subsection (d).

(d) Prohibited Practices. Prohibited practices include, but are not limited to, the following:

(1) Entering an order for an account that is ineligible for execution on Auto-Ex pursuant to subsection (b), above;

(2) Dividing an order involving a single investment decision into multiple smaller lots for the purpose of meeting the order size requirements for Auto-Ex eligibility. Multiple orders to trade the same series, multiple orders in the same call class, or multiple orders in the same put class entered within any 15-second period for the account of the same beneficial owner will be presumed to be based on a single investment decision. If multiple orders involving a single investment decision have been entered for automatic execution, only the first of such orders that equals or add up to less than the firm Auto-Ex size requirement will be entitled to an execution.

(3) Entering orders via Auto-Ex to perform a market making function. No member or person associated with a member may use Auto-Ex on a regular and continuous basis to simultaneously execute orders to buy and sell series for the account of the same beneficial holder. In making the determination of whether a member or person associated with a member is using the Auto-Ex system to perform a market making function, the Exchange will consider the following factors: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same option; and the entry of multiple limit orders at different prices in the same option series.

(4) Effecting transactions that constitute manipulation as provided in PCX Rule 4.6(a) and SEC Rule 10b–5.

[(d) Firms entering orders for execution on Auto Ex may not divide them up in order to make their parts eligible for entry into Auto-Ex.]

(e)–(k)—[(d)–(j)]—No change.

* * * * *

¶5151 Contract Made on Acceptance of Bid or Offer

Rule 6.77

All bids or offers made and accepted in accordance with the Rules shall constitute binding contracts, subject to applicable requirements of the Constitution and Rules of the Exchange and the Rules of the Options Clearing Corporation.

Commentary:

.01 Two Options Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following:

(a) Rule 6.73 (Manner of Bidding and Offering);

(b) Rule 6.75 (Priority of Bids and Offers);

(c) Rule 6.56 (Transactions Outside Order Book Official's Last Quoted Range);

(d) Rule 6.76 (Priority on Split Price Transactions);

(e) Rule 6.86 (Trading Crowd Firm Disseminated Market Quotes);

(f) Rule 6.66(c) (Order Identification: Broker-Dealer Orders: Failure to identify a broker-dealer order, provided that the transaction may be nullified or its terms may be adjusted only if the transaction is for 20 contracts or less);

(g) Rule 6.87 (Automatic Execution System).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed

rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved the Exchange's Pacific Options Exchange Trading System ("POETS") on a pilot program basis in 1990 and on a permanent basis in 1993.[4] POETS is comprised of an options order routing system ("ORS"), an automatic and semi-automatic execution system ("Auto-Ex"), an on-line book system ("Auto-Book"), and an automatic market quote update system ("Auto-Quote"). Currently, PCX Rule 6.87 allows only non-broker-dealer customer orders to be executed through the Exchange Auto-Ex system. The Exchange now proposes to permit broker-dealer orders to be eligible for automatic execution through Auto-Ex on an issue-by-issue basis and to establish means of assuring better compliance with rules pertaining to the use of Auto-Ex.

a. *Definitions.* The Exchange proposes several definitional changes to PCX Rule 6.87 pertaining to Auto-Ex. Specifically, the Exchange proposes to add new rule 6.87(a) to codify the terms "Auto-Ex," "User," and "Order Entry Firm." First, the Exchange proposes to define the term "Auto-Ex" to mean the automated execution system feature of POETS that is owned and operated by the Exchange and that provides automated order execution and reporting services for options. Second, the Exchange proposes to define the term "User" to mean any person or firm that obtains electronic access to Auto-Ex through an Order Entry Firm. Third, the Exchange proposes to define the term "Order Entry Firm" to mean a member organization of the Exchange that is registered as an Order Entry Firm for purposes of sending orders to the Exchange for execution by Auto-Ex. The Exchange proposes to codify these terms in order to provide users of Auto-Ex with clear and precise definitions for terms used in Rule 6.87.

b. *Eligible Orders.* The Exchange proposes to change its rules to allow broker-dealer orders to be executed, on an issue-by-issue basis, on the Exchange's Auto-Ex system, subject to the approval of the Options Floor Trading Committee. The Exchange also proposes to allow market and marketable limit orders for the accounts of certain broker-dealers to be executed via Auto-Ex, except for those orders for Marker Makers or Specialists on an exchange that are exempt from the provisions of Regulation T[5] pursuant to Section 7(c)(2) of the Act.[6] The Exchange proposes this rule change to remain competitive, and to improve the efficiency by which orders for broker-dealers are currently executed. Further, the Exchange proposes this change to reduce the burden on Floor Brokers for executing small market and marketable limit orders. In addition, the Exchange proposes to renumber Rule 6.87(a) as Rule 6.87(b)(1) and Rules 6.87(b) and (c) as rules 6.87(b)(2) and (3).

c. *Order Entry Firm Registration.* The Exchange proposes to add new Rule 6.87(c) to require Order Entry Firms, as defined in proposed Rule 6.87(a), to register with the Exchange as a condition of having access to Auto-Ex. Such registration will require that an Order Entry Firm execute an Order Entry Firm Application Agreement with the Exchange; comply with all applicable PCX options trading rules and procedures; provide written notice to all Users regarding proper use of Auto-Ex; and maintain adequate procedures and controls that will permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users. The Exchange proposes these rule changes to safeguard the use of Auto-Ex and to obligate Order Entry Firms to inform and supervise Users to ensure compliance with PCX Rules and procedures. The Exchange also proposes these changes to protect investors and the public from changes in options prices or markets caused by uses of Auto-Ex that the Exchange believes are prohibited.

d. *Prohibited Practices.* In addition, the Exchange proposes to add new Rule 6.87(d) to codify practices it believes are prohibited on Auto-Ex. Specifically, the Exchange proposes to codify the most common prohibited practices and abuses of Auto-Ex.[7] Proposed Rule 6.87(d) lists four prohibited uses of Auto-Ex: entering an order for an account that is ineligible for execution on Auto-Ex; dividing an order involving a single investment decision into multiple smaller lots for the purposes of meeting the order size requirements for Auto-Ex eligibility, which includes entering multiple orders in the same call class or put class for the account of the same beneficial owner within the same 15-second period; entering orders via Auto-Ex to perform a market making function; and effecting transactions that constitute manipulation as provided in PCX Rule 4.6(a)[8] and Rule 10b–5[9] under the Act. A detailed explanation of each prohibited practice follows.

First, with regard to the type of orders eligible for execution on Auto-Ex, the Exchange proposes that all orders not eligible under subsection (b) or proposed Rule 6.87 be deemed ineligible orders. The Exchange proposes this rule change to clarify what orders are eligible for execution on Auto-Ex.

Second, the Exchange proposes to replace PCX Rule 6.87(d) with proposed Rule 6.87(d)(2). Specifically, the Exchange proposes to delete language that currently states that "firms entering orders for execution on Auto-Ex may not divide them up in order to make their parts eligible for entry into Auto-Ex." The Exchange proposes to replace Rule 6.87(d) with new Rule 6.87(d)(2), which prohibits dividing an order involving a single investment decision into multiple smaller lots for the purposes of meeting the order size requirements of Auto-Ex eligibility. The Exchange also proposes that multiple orders to trade the same series entered within any fifteen-second period for the account of the same beneficial owner will be presumed to be based on a single investment decision. The Exchange proposes this change to clarify its rules on unbundling.

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[4] *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (approving POETS on a pilot basis); Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993) (approving POETS on a permanent basis). The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Automatic executions through Auto-Ex are currently available for public customer orders of twenty contracts or less (or in certain issues, for fifty contracts or less) in all series of options traded on the Options Floor of the Exchange.

[5] 12 CFR 200 *et seq.*

[6] 15 U.S.C. 78g(c)(2).

[7] The codification of these prohibited practices is not meant to be all-inclusive.

[8] PCX Rule 4.6 states that "[n]o member, member firm or any participant therein shall effect or induce the purchase or sale or otherwise effect transactions in any security for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security."

[9] 17 CFR 240.10b–5.

Third, with regard to entering multiple orders in the same call class or put class for the account of the same beneficial owner within the same 15-second period, the Exchange proposes that only the first of such orders that equals or adds up to less than the firm Auto-Ex size requirement will be entitled to execution. The Exchange proposes this change in order to specifically prohibit conduct that is in conflict with the purpose of Auto-Ex and would otherwise circumvent the prohibitions against unbundling.

Fourth, the Exchange proposes to codify language to prohibit Users from using Auto-Ex to perform Market Maker functions. PCX Rule 6.32 defines a Market Maker as an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist on the Floor of the Exchange. With regard to entering orders via Auto-Ex to perform a market making function, the Exchange proposes that no member or associated person of a member may use Auto-Ex on a regular and continuous basis to simultaneously execute orders to buy and sell series for the account of the same beneficial holder. In making the determination of whether a member or person is using the Auto-Ex system to perform a market making function, the Exchange will consider the following factors: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same option; and the entry of multiple limit orders at different prices in the same option series. The Exchange proposes this change to prohibit Users from acting as Market Makers through the use of Auto-Ex.[10]

Fifth, the Exchange proposes to codify, as a prohibited practice, effecting transactions that constitute manipulation as provided in Rule 4.6(a) and Rule 10b-5 under the Act. The Exchange proposes this change to prevent members or Users from using Auto-Ex to violate PCX and SEC rules and to protect investors and the public. Finally, the Exchange proposes to renumber rules 6.87(d) through (j) as Rules 6.87(e) through (k).

e. *Nullification of Orders.* The Exchange proposes to add subsection (g) to Rule 6.77, Commentary .01. Currently, Rule 6.77, Commentary .01 allows two Options Floor Officials to nullify a transaction or adjust its terms if they determine the transaction to have been in violation of certain PCX rules.[11] The Exchange proposes that if a transaction is in violation of Rule 6.87 regarding Automatic Execution, then two Floor Officials may nullify or adjust such transaction. The Exchange proposes this change to remain consistent in its applicaiton of PCX Rules and procedures.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b)[12] of the Act, in general, and furthers the objectives of Section 6(b)(5),[13] in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–05 and should be submitted by August 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

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[10] *See* PCX Rules 6.86 (b) and 6.86(d)(3). PCX Rule 6.86(b) states that "[n]o Floor Broker may knowingly use a Floor Broker Hand-Held Terminal, on a regular and continuous basis, to simultaneously represent orders to buy and sell option contracts in the same series for the account of the same beneficial holder. If the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent through the Exchange's member Firm Interface for such period of time as the Exchange deems appropriate."

PCX Rule 6.86(d)(3) states that "[t]erminals may be used to receive brokerage orders only. Terminals may not be used to perform a market making function. No Member may knowingly use a Terminal on a regular and continuous basis to simultaneously represent orders to buy and sell option contracts in the same series for the account of the same beneficial holder. If the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent through the Exchange's Member Firm Interface for such period of time as the Exchange deems appropriate. Any system used by a Member to operate a Terminal must be separate and distinct from any system that may be used by a Member or any person associated with a Member in connection with market making functions."

[11] PCX Rule 6.77, Commentary .01 states that "[t]wo Options Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following: (a) Rule 6.73 (Manner of Bidding and Offering); (b) Rule 6.75 (Priority of Bids and Offers); (c) Rule 6.56 (Transactions Outside Order Book Official's Last Quoted Range); (d) Rule 6.76 (Priority on Split Price Transactions); (e) Rule 6.86 (Trading Crowd Firm Disseminated Market Quotes); (f) Rule 6.66(c) (Order Identification: Broker-Dealer Orders: Failure to identify a broker-dealer order, provided that the transaction may be nullified or its terms may be adjusted only if the transaction is for 20 contracts or less)."

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Notice of Renewal of Charter

This notice is published in accordance with the provisions of the Federal Advisory Committee Act § 14(a), 5 U.S.C. App. 2 (1998) and advises of the renewal of the U.S. Small Business Administration National Small Business Development Center Advisory Board charter.

The Board will provide advice, counsel and confer with the Associate Administrator, Office of Small Business Development Centers in carrying out her/his programmatic duties. The scope of the Board covers the entire SBDC program.

For further information, please write or call Ellen Thrasher, U. S. Small Business Administration, 409 Third Street, SW., Fourth Floor, Washington, DC 20416. Telephone number (202) 205–6817.

Dated:

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 00–18796 Filed 7–24–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3378]

Culturally Significant Objects Imported for Exhibition Determinations: "Painting Revolution: Kandinsky, Malevich and the Russian Avant-Garde"

AGENCY: United States Department of State.

ACTION: Amendment.

SUMMARY: On January 12, 2000, Notice was published on page 1940 of the Federal Register (Volume 65, Number 8) by the Department of State pursuant to Pub. L 89–259 relating to the exhibit "Painting Revolution: Kandinsky, Malevich and the Russian Avant-Garde." The referenced Notice is amended as follows. After "March 31, 2001," insert the following additional venue: "and at the Bass Museum in Miami Beach, Florida from on or about July 9, 2001, is in the national interest."

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, DC 20547–0001.

Dated: July 18, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–18783 Filed 7–24–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3380]

Culturally Significant Objects Imported for Exhibition Determinations: "Silver in Ancient Peru"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Silver in Ancient Peru," imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art in New York from on or about November 3, 2000 to on or about April 22, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, DC 20547-0001.

Dated: July 18, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–18782 Filed 7–24–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3346]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Notice of Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on Monday, August 28, 2000, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This meeting will discuss the upcoming 43rd Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on September 11–15, 2000, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Review of results from 42nd Session of the SLF,
b. Harmonization of damage stability provisions in the IMO instruments,
c. Revision of technical regulations of the 1966 International Load Line Convention,
d. Development of the damage consequence diagrams for inclusion in damage control plan guidelines, and
e. Revisions to the Fishing Vessel Safety Code and Voluntary Guidelines.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1306, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: July 12, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 00–18781 Filed 7–24–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2000–7–23, Docket OST–00–7182]

Determination of Farwest Airlines, LLC

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Farwest Airlines, LLC, is fit, willing, and able to provide scheduled passenger operations as a commuter air carrier.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Department of Transportation Dockets, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Galvin Coímbre, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5347.

Dated: July 19, 2000.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–18777 Filed 7–24–00; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Electronic Drug Testing Information Roundtable

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Department of Transportation (DOT), Department of Health and Human Services (HHS), and Office of Management and Budget (OMB) are holding a public meeting on August 4, 2000, to foster further discussion of the application of electronic transmission, storage, and signature of material concerned with the DOT and HHS drug testing programs.

FOR FURTHER INFORMATION CONTACT: Ron Matzner, Office of Information and Regulatory Affairs, New Executive Office Building, 750 17th Street, NW., Washington, DC, 20503; 202–395–4856; Rmatzner@omb.eop.gov : Don Shatinsky, Drug and Alcohol Policy Advisor, Office of Drug and Alcohol Policy and Compliance, DOT, 400 7th Street, SW., Room 10403, Washington, DC, 20590; 202–366–3784; don.shatinsky@ost.dot.gov : or Dr. Walter Vogl, Drug Testing Section, Division of Workplace Programs, HHS, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, MD 20857; 301–443–6014; *wvogl@samhsa.gov.*

SUPPLEMENTARY INFORMATION: On June 15, 2000, the OMB's Office of Information and Regulatory Affairs (OIRA) held a public meeting, attended by Federal agency and laboratory representatives and other interested persons, to discuss how best to apply electronic technology to the information collection, transmission, and storage of data connected with Federally-mandated drug testing programs. The meeting was titled "The Paperless Laboratory," though the subject matter was not limited to laboratory matters, as such. OMB, DOT, and HHS are very interested in moving forward in this area, and for this purpose we are convening a second public meeting.

The meeting will take place in the Truman Room of the White House Conference Center on August 4, 2000, from 9 a.m. to approximately 5 p.m. The White House Conference Center is located at 726 Jackson Place, NW., Washington, DC 20503. Lunch will be on your own.

The following is the tentative agenda for this meeting:

I. Overview and summary of the June 15 meeting
II. Objectives of the August 4 meeting
III. Procedure
  a. Scope
  b. Discussion of the Federal Advisory Committee Act (FACA) and its application to this subject matter
  c. Discussion of organization of working groups
  d. Development of work plan and time line
IV. Legal issues (presentation by Department of Justice)
  a. Current status and future of laws related to electronic records
  b. Transmission of electronic records
  c. Admissibility in court
  d. Use in forensic programs
V. Policy issues
  a. What process changes should be made?
  b. What information should be collected?
  c. Who should collect the information (*e.g.*, should employer/collector initiate an electronic custody and control form?)
  d. To whom and in what form should reports be made?
VI. Technical issues
  a. Interoperable interfaces
  b. Portal technology
  c. Standards
VII. Security technical issues: encryption, PKI, firewalls, biometrics, token technologies, etc.
VIII. Next steps

One of the ideas the Federal agencies involved are considering is forming a formal advisory committee, under the Federal Advisory Committee Act (see item III(b) in agenda). This committee would consist of representatives of interested parties who would meet periodically with the Federal agencies concerned with drug testing and attempt to formulate consensus recommendations on electronic technology as it relates to the DOT and HHS drug testing procedures. One of the purposes of the meeting is to determine the interest of non-government parties in participating in such a committee.

The primary focus of this initiative has been drug testing. However, DOT also has a parallel alcohol testing program. Many of the issues we are discussing also have relevance to the alcohol testing program. DOT is interested in using this meeting as a forum to discuss electronic alcohol testing information matters as well.

If you are interested in attending, please fax or e-mail the following information to Lisa Jones, OIRA, at 202–395–7245 or Ljones@omb.eop.gov by August 1, 2000. If you have any questions concerning registration for the meeting, you may call 202–395–5898.

Full Name, Title, Organization, Telephone and fax numbers, E-mail address, Special needs.

Issued this 21st day of July, 2000, at Washington, DC.

Mary Bernstein,

Director, Office of Drug and Alcohol Policy and Compliance.

[FR Doc. 00–18905 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice permits employers regulated by the Department of Transportation (DOT) to begin using a new Federal Drug Testing Custody and Control Form (CCF) as of August 1, 2000, provided they follow the procedures specified in this notice. Employers may also continue to use the current seven-part CCF. The Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS) has revised the current CCF which has a July 31, 2000, expiration date. The Office of Management and Budget has approved the use of the new Federal CCF until July 31, 2003. Federal agencies are permitted to begin using the new Federal CCF on August 1, 2000, for their workplace drug testing programs.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Don Shatinsky, Drug and Alcohol Policy Advisor, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, DOT, 400 7th Street, SW., Room 10403, Washington, DC 20590, telephone number (202) 366–3784.

SUPPLEMENTARY INFORMATION:

Background

All urine specimens collected under the DOT drug and alcohol testing rule (49 CFR Part 40) must be collected using chain of custody procedures to document the integrity and security of the specimen from the time of collection until receipt by the laboratory. To ensure uniformity of procedures among all Federal agencies and DOT regulated employers, the use of the Federal CCF is required. Based on the experiences of using the current Federal CCF for the past several years, DOT and HHS initiated a joint effort to develop a new Federal CCF that was easier to use and more accurately reflected both the collection process and how results were reported by the drug testing laboratories. This effort included scheduling two public meetings attended by over 35 industry representatives who recommended most of the changes to the current Federal CCF. As a result of these meetings, HHS published a proposed revised Federal CCF in the **Federal Register** (64 FR 61916) on November 15, 1999. Comments from the public were incorporated in a revised final form which was published in the **Federal Register** (65 FR 39155) on June 23, 2000, with an effective date of August 1, 2000.

Major changes included eliminating two copies of the form so that the new Federal CCF now has five instead of seven copies. The new form moves the specimen bottle seals from the right side of the form to the bottom, simplifies the chain of custody step by requiring the collector to sign the form only once, provides a wider choice of terms that a laboratory can use to report results, allows the use of Copy 1 to report results of the split specimen testing, and places the Medical Review Officer (MRO) steps for both the primary and split specimens on the MRO copy of the form.

To avoid inconsistencies with procedures established by HHS for the new CCF, the Department will parallel HHS guidance for the use of the new form. Issues dealing with transmission of alcohol information (DOT Breath Alcohol Testing Form) will be addressed in the final DOT drug and alcohol rule.

Implementation Guidance

DOT-regulated employers may start to use the new Federal CCF starting August 1, 2000. There are changes associated with the use of the new CCF (*e.g.*, Step 2, check box for Split, Single, or None Provided; check box for Observed) that must be followed even though they are not currently procedures required in 49 CFR Part 40. DOT-regulated employers who chose to use the new CCF must ensure that the form is filled out completely. However, the procedures used in the urine specimen collection process, other than the use of the form, must still conform to the current requirements as directed in 49 CFR Part 40. HHS published on their web site (www.health.org/workpl.htm) a new Urine Specimen Collection Handbook for Federal Workplace Drug Testing Programs and a new Medical Review Officer Manual for Federal Workplace Drug Testing Programs for use with the new CCF. This guidance and the MRO manual are only for Federal agency testing programs, not for DOT-regulated transportation industry programs.

The following are differences between the new HHS guidance and Part 40. DOT-regulated parties must continue to use the Part 40 requirements except where otherwise noted:

(1) The new HHS guidance directs the donor to empty his/her pockets. Current DOT guidelines permit the collector to make this request only if there is reason to believe that the donor has something in his/her pockets that may be used to adulterate a specimen (*e.g.*, a bulging pocket).

(2) The new HHS guidance tells the collector to initiate an immediate direct observation collection when a donor's conduct clearly indicates an attempt to substitute or adulterate a specimen. DOT rules require, in advance, the review and concurrence of a collection site supervisor or designated employer representative that the condition for a direct observation collection exists.

(3) The new HHS guidance tells the collector to immediately begin a direct observation collection if the temperature is outside the acceptable range. DOT rules direct the collector to first offer to take the donor's body temperature. Direct observation collection is triggered only if the donor declines to provide a measurement of his/her body temperature or the temperature varies by more than 1.8° F from the temperature of the specimen.

(4) The new HHS guidance permits Federal employees subject to drug testing to waive the split specimen requirement in a shy bladder situation. Under DOT rules, those individuals who are required to provide split specimens under modal administration rules, may not waive this requirement, but must provide a split specimen.

(5) The new HHS guidance permits the collector to initiate a Arefusal to test@ procedure if the donor refuses to drink fluids as directed. Under current DOT rules, this is not considered a refusal.

(6) Unlike the procedures in the new HHS guidance, DOT required collections conducted under direct observation are limited to current Part 40 requirements and to the September 28, 1998 MRO Guidance for Interpreting Specimen Validity Test Results memorandum signed by Mary Bernstein, Director, Office of Drug and Alcohol Policy and Compliance.

(7) The new five-part CCF does not contain a shipping container seal, as does the current seven-part form. Collection sites may use separate collection container seals with the new CCF or may use the current process described in 49 CFR Part 40.25(h), which states, in part, "* * * (shipping) containers shall be securely sealed to eliminate the possibility of undetected tampering with the specimen and/or the form. On the tape sealing the shipping container, the collection site person shall sign and enter the date specimens were sealed in the shipping container for shipment." Collection sites may utilize any appropriate adhesive material or packing tape provided the collection site person's signature and date may be affixed to the material used. Users of current seven-part CCF should continue to use the shipping container seals provided with these forms.

Under the new HHS guidance, the laboratory may transmit all results (negative and non-negative) to the MRO by either faxing the completed Copy 1 of the CCF or transmitting a scanned image of the form via computer. Each method must be designed to ensure the confidentiality of the information, the security of the data transmission, and limit access to any data transmission, storage, and retrieval system. A laboratory may also continue to use the current method of sending a hard copy of the form. For all non-negative results, the laboratory must also send to the MRO a hard copy of the original Copy 1 of the CCF. Regulated parties in the DOT program may begin to follow this practice, though they are not required to do so. This practice is consistent with the Department's proposal in the Part 40 notice of proposed rulemaking, which most commenters favored.

The Department will permit employers and laboratories to also use

the same process of transmitting the current seven-part CCF from the laboratory to the MRO:

(1) A laboratory may send negative results by electronic (*e.g.*, facsimile, imaging) transmission of Copy 1 of the seven part CCF to the MRO. For negative results, a hard copy (Copy 2) does not have to be sent to the MRO.

(2) A laboratory may send non-negative results by electronic (*e.g.*, facsimile, imaging) transmission of Copy 1 or Copy 2 of the seven part CCF to the MRO. A hard copy of the CCF must subsequently be sent to the MRO.

Employers and service agents who provide DOT related drug and alcohol services must ensure that all current regulatory procedures related to drug testing, collection, record keeping, etc., are followed even if the option to use the new Federal CCF is initiated. Additionally, implementation of the new CCF and transmission of laboratory results of the new CCF or the current seven part CCF must have the concurrence of the employer and the employer's MRO. The Department is projecting the publication of a final drug and alcohol rule by the end of 2000 or the first part of 2001. At that time, the Department will address in more detail the various changes and options that will be implemented as a result of public input to the current NPRM.

Issued this 21st day of July, 2000, at Washington, DC.

Mary Bernstein,

Director, Office of Drug and Alcohol Policy and Compliance, Department of Transportation.

[FR Doc. 00–18904 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on August 8, 2000, 2:00 p.m. EST.

ADDRESSES: The meeting will be held at Helicopter Association International, 1635 Prince St, Alexandria VA, 22314, telephone (703) 682–4646.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

Presentation of work plans for the following:

a. Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure.

b. Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure.

Presentation and vote on the NPRM from the Performance and Handling Qualities working group.

Attendance is open to the public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 18, 2000.

Anthony F. Fazio,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–18686 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of petitions and intent to grant applications for exemption; request for comments.

SUMMARY: This notice announces the FMCSA's preliminary determination to grant the applications of 70 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before August 24, 2000.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Seventy individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA (and

previously the FHWA] may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA has evaluated each of the 70 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 70 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

Qualifications of Applicants

1. Henry Wayne Adams

Mr. Henry Wayne Adams, 54, has been blind in his left eye since 1988 due to an accident. The best corrected visual acuity in his right eye is 20/20. He was examined in 1999 by an optometrist who stated, "In summation, his condition is stable and he should have sufficient vision to perform the necessary driving tasks required to operate a commercial vehicle."

Mr. Adams has driven straight trucks for 6 years, accumulating 360,000 miles and tractor-trailer combination vehicles for 3 years, accumulating 135,000 miles. He holds an Alabama Class D license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

2. Willie F. Adams

Mr. Willie F. Adams, 43, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/400 in the right eye. He was examined in 1999 by an optometrist who stated, "In my opinion, Fred Adams is capable of operating a commercial vehicle."

Mr. Adams has driven straight trucks for 20 years, accumulating 1.6 million miles and tractor-trailer combination vehicles for 2 years, accumulating 130,000 miles. He holds an Alabama Class DM license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

3. Fernando Aguilera

Mr. Fernando Aguilera, 38, has amblyopia in his left eye. His best corrected visual acuity is 20/20+2 in the right eye and 20/200 in the left eye. He was examined in 2000 by an optometrist who stated, "It is my opinion that Mr. Aguilera has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle."

Mr. Aguilera has driven straight trucks for 11 years, accumulating 990,000 miles and tractor-trailer combination vehicles for 1 year, accumulating 90,000 miles. He holds a California Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

4. Louis Edward Aldridge

Mr. Aldridge, 57, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/200 in the right eye. He was examined in 1999 by an optometrist who stated, "There is no visual reason to keep Mr. Aldridge from safely driving a commercial vehicle."

Mr. Aldridge has driven straight trucks for 20 years, accumulating 500,000 miles. He holds a Maryland Class CM license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

5. Larry Neal Arrington

Mr. Larry Neal Arrington, 54, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. He was examined in 1999 by an optometrist who stated, "Vision of OD [right] is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Arrington has driven straight trucks for 26.5 years, accumulating 795,000 miles. He holds a North Carolina Class B CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

6. David W. Ball

Mr. David W. Ball, 47, has had decreased vision in his right eye since an injury in 1966. His best corrected visual acuity is 20/20 in the left eye and 20/60 in the right eye. He was examined in 1999 by an ophthalmologist who stated, "Your examination is essentially unchanged from approximately one year ago and I see no reason that you cannot continue to perform your driving tasks as a commercial driver."

Mr. Ball has driven straight trucks for 29 years, accumulating over 2.1 million miles. He holds a Missouri Class E commercial license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

7. Delbert Ronnie Bays

Mr. Delbert Ronnie Bays, 43, wears a prosthesis in his right eye as the result of an injury in 1971. The visual acuity in his left eye is 20/20, uncorrected. He was examined in 1999 by an ophthalmologist who stated, "In summary, the vision in his left eye is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Bays has driven both straight trucks and tractor-trailer combination vehicles for 22 years, accumulating a total of 682,000 miles. He holds a Kentucky Class DMA CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

8. Rosa C. Beaumont

Ms. Rosa C. Beaumont, 53, has amblyopia in her right eye. Her best corrected visual acuity is 20/20 in the left eye and 20/400 in the right eye. She was examined in 1999 by an ophthalmologist who stated, "It is the examiner's opinion that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Ms. Beaumont has driven buses for 8 years, accumulating 800,000 miles. She holds a Washington Class B CDL. Her official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

9. Jerry A. Bechtold

Mr. Jerry A. Bechtold, 47, is blind in his right eye due to trauma and wears a prosthesis. His best corrected visual acuity is 20/20 in the left eye. He was examined in 1999 by an optometrist who stated, "Because of his successful history he should be able to perform the driving tasks required to operate a commercial vehicle."

Mr. Bechtold has driven straight trucks for 25 years, accumulating over 1.2 million miles. He holds an Illinois Class B CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

10. Robert F. Berry

Mr. Robert F. Berry, 55, has amblyopia in his right eye. His best corrected visual acuity is 20/15 in the left eye and 20/200 in the right eye. He was examined in 1999 by an optometrist who stated, "It is my medical opinion that Robert F. Berry has sufficient vision to perform the tasks needed to operate a commercial vehicle."

Mr. Berry has driven straight trucks for 23 years, accumulating over 620,000 miles. He holds a Maine Class B CDL. His official driving record shows one accident and no convictions of moving violations in a CMV. No citations were issued in the accident. Mr. Berry

swerved to avoid a head-on collision with an oncoming vehicle in his lane.

11. James A. Bright

Mr. James A. Bright, 51, has amblyopia in his left eye. His best corrected visual acuity is 20/25− in the right eye and 20/60 in the left eye. He was examined in 2000 by an ophthalmologist who stated, "Due to the results of his exam, I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Bright has driven straight trucks for 4 years, accumulating 20,000 miles and tractor-trailer combination vehicles for 27 years, accumulating over 890,000 miles. He holds a Texas Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

12. Robert R. Buis

Mr. Robert R. Buis, 59, has had no functional vision in his left eye since childhood. His best corrected visual acuity is 20/25− in the right eye and no light perception in the left eye. He was examined in 1999 by an ophthalmologist who stated, "He has sufficient vision to perform driving tasks required to operate a commercial vehicle."

Mr. Buis has driven straight trucks for 3 years, accumulating 3,000 miles. He has driven tractor-trailer combination vehicles for 40 years, accumulating over 2 million miles. He holds a Kentucky Class DA Operator/CDL license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

13. David Dominick Bungori

Mr. David Dominick Bungori, 45, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/200 in his left eye. He was examined in 1999 by an optometrist who stated, "Medically Mr. Bungori may perform all driving tasks required for commercial vehicle operation."

Mr. Bungori has driven tractor-trailer combination vehicles for 24 years, accumulating 792,000 miles. He holds a Maryland Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

14. Ronzie L. Carroll

Mr. Ronzie L. Carroll, 57, has a macular scar in his left eye. His visual acuity is 20/20 in the right eye and 20/100 in the left eye. He was examined in 1999 by an optometrist who stated, "I believe the patient has adequate vision to operate a commercial vehicle."

Mr. Carroll has driven tractor-trailer combination vehicles for 28 years, accumulating over 2 million miles. He holds a Georgia Class AM CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

15. Richard S. Carter

Mr. Richard S. Carter, 55, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/100 in the left eye. He was examined in 1999 by an optometrist who stated, "It is my opinion that Mr. Carter has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Carter has driven both straight trucks and tractor-trailer combination vehicles for 30 years, accumulating a total of more than 2.7 million miles. He holds a Florida Class A CDL. His official driving record for the past 3 years shows no accidents and one conviction for "Load dropping/shifting/escaping" in a CMV.

16. Lynn A. Childress

Mr. Lynn A. Childress, 52, has a retinal scar in his right eye as the result of a childhood injury. His best corrected visual acuity is 20/15–2 in the right eye and light perception in the left eye. He was examined in 1999 by an optometrist who stated, "Mr. Childress is certainly well adapted to his visual situation by now, and has been driving commercial vehicles safely within the Commonwealth of Virginia. With this in mind, I feel his vision is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Childress has driven straight trucks for 20 years, accumulating over 1.4 million miles and tractor-trailer combination vehicles for 4 years, accumulating 400,000 miles. He holds a Virginia Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

17. Kevin L. Cole

Mr. Kevin L. Cole, 48, is blind in his right eye as the result of trauma. The visual acuity is 20/15+2 in his left eye. He was examined in 1999 by an ophthalmologist who stated, "In my medical opinion I do not see any medical indications that would prohibit him from continuing to drive a commercial vehicle in the future."

Mr. Cole has driven straight trucks for 30 years, accumulating 600,000 miles and tractor-trailer combination vehicles for 26 years, accumulating 390,000 miles. He holds a Missouri Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

18. David R. Cox

Mr. David R. Cox, 42, has visual acuity of hand motion in his right eye due to ocular trauma. The visual acuity in his left eye is correctable to 20/20. He was examined in 1998 by an ophthalmologist who stated, "I certify that in my opinion he is capable of performing the driving tasks required to operate a commercial motor vehicle."

Mr. Cox has driven tractor-trailer combination vehicles for 20 years, accumulating 2 million miles. He holds an Oregon Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

19. Gerald Wade Cox

Mr. Gerald Wade Cox, 42, lost his left eye due to trauma when he was 12 years old. The best corrected visual acuity in his right eye is 20/15. He was examined in 1999 by an opthalmologist who stated, "Mr. Cox's vision is sufficient to perform commercial driving."

Mr. Cox has driven straight trucks for 22 years, accumulating 77,000 miles and tractor-trailer combination vehicles for 11 years, accumulating 825,000 miles. He holds an Alabama Class AM license. His official driving record shows no accidents and one moving conviction for "Failure to obey traffic signal/light" in a CMV, for the last 3 years.

20. Dempsey Leroy Crawhorn, Jr.

Mr. Dempsey Leroy Crawhorn, Jr., 48, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/50–2 in the left eye. He was examined in 2000 by an optometrist who stated, "In my opinion Mr. Crawhorn does have sufficient vision to operate a commercial vehicle."

Mr. Crawhorn has driven tractor-trailer combination vehicles for 5 years, accumulating over 490,000 miles. He holds an Indiana operator's license. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

21. Thomas P. Cummings

Mr. Thomas P. Cummings, 56, has been blind in his right eye due to trauma for at least 8 years. The best corrected visual acuity is 20/20 in his left eye. He was examined in 1999 by an optometrist who stated, "I feel he has sufficient vision for a commercial vehicle."

Mr. Cummings has driven tractor-trailer combination vehicles for 21 years, accumulating more than 1.8 million miles. He holds a Wisconsin

Class ABCD CDL. His official driving record shows no accidents and one citation for operating while disqualified.

22. Cedric E. Foster

Mr. Cedric E. Foster, 50, has only light perception in his right eye due to injury. His best corrected visual acuity in the left eye is 20/20. He was examined in 1999 by an optometrist who stated, "In my medical opinion, Mr. Foster has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Foster has driven straight trucks for 5 years, accumulating 100,000 miles and buses for 14 years, accumulating 224,000 miles. He holds an Illinois Class B CDL. His official driving history shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

23. Rosalie A. Gifford

Ms. Rosalie A. Gifford, 62, has had central vision loss in her left eye since at least 1964. The cause is unknown. Her best corrected visual acuity is 20/20 in the right eye and 20/50 in the left eye. She was examined in 1999 by an optometrist who stated, "It is my opinion that this small central defect in Rosalie's left eye in no way affects her ability to operate a commercial vehicle."

Ms. Gifford has driven buses for 13 years, accumulating 234,000 miles. She holds an Arizona Class B license. Her official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

24. Eugene Anthony Gitzen

Mr. Eugene Anthony Gitzen, 37, is blind in his right eye as the result of an injury over 18 years ago. The best corrected visual acuity in his left eye is 20/20. He was examined in 1999 by an optometrist who stated, "In my professional medical opinion, Mr. Gitzen has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle."

Mr. Gitzen has driven both straight trucks and tractor-trailer combination vehicles for 17 years, accumulating a total of more than 850,000 miles. He holds a Minnesota Class A CDL. His official driving record shows no accidents and no convictions for moving violations in a CMV for the past 3 years.

25. Donald Grogan

Mr. Donald Grogan, 58, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. Mr. Grogan was examined in 1999 by an ophthalmologist who stated, "Donald Grogan's vision is sufficient for driving a commercial vehicle."

Mr. Grogan has driven tractor-trailer combination vehicles for 32 years, accumulating over 3.5 million miles. He holds an Alabama Class D license. His official driving record shows one accident and no convictions of moving violations in a CMV for the past 3 years. According to the accident report, the other vehicle involved failed to yield the right of way, causing Mr. Grogan to collide with it. Neither driver was charged in the accident.

26. Elmer Harper

Mr. Elmer Harper, 49, has been blind in his left eye since childhood due to injury. His visual acuity is 20/20 in the right eye. He was examined in 1999 by an ophthalmologist who stated, "It is my opinion that as far as Mr. Harper's vision goes, he should be able to operate a commercial vehicle."

Mr. Harper has driven straight trucks for 30 years, accumulating 780,000 miles. He holds a Tennessee Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

27. Peter L. Haubruck

Mr. Peter L. Haubruck, 53, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/50 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "It is my opinion that his vision is sufficient to operate a commercial vehicle."

Mr. Haubruck has driven straight trucks for 28 years, accumulating more than 420,000 miles and tractor-trailer combination vehicles for 15 years, accumulating more than 75,000 miles. He holds a New Jersey Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

28. Joe Marvin Hill

Mr. Joe Marvin Hill, 52, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/200 in the right eye. He was examined in 1999 by an optometrist who stated, "It is my opinion that Mr. Hill has adequate central and peripheral vision to operate a commercial vehicle."

Mr. Hill has driven tractor-trailer combination vehicles for 32 years, accumulating 3.8 million miles. He holds a Texas Class A CDL. His official driving record shows no accidents and one conviction for a serious speeding violation in a CMV for the past 3 years.

29. Brian L. Houle

Mr. Brian L. Houle, 27, has a macular hole in his left eye due to trauma. His best corrected visual acuity is 20/10 in the right eye and 20/200 in the left eye. He was examined in 1999 by an optometrist who stated, "Brian Houle has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Houle has driven straight trucks for over 5 years, accumulating over 125,000 miles. He holds a New York Class A CDL. His official driving record for the past 3 years shows no accidents and one conviction for "Unauthorized towing" in a CMV.

30. Christopher L. Humphries

Mr. Christopher L. Humphries, 38, suffered an injury in his left eye as a child, causing a traumatic cataract. He underwent cataract extraction and lens implantation six years ago. Mr. Humphries' best corrected visual acuity is 20/20 in the right eye and 20/60 in the left eye. He was examined in 1999 by an optometrist who stated, "Although his left monocular vision is reduced to below standard, his binocular vision should be deemed safe for commercial drivers licensure."

Mr. Humphries has driven straight trucks for 4.5 years, accumulating 162,000 miles. He holds a Texas Class B CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

31. Craig C. Irish

Mr. Craig C. Irish, 42, has reduced visual acuity in his left eye as the result of trauma. His best corrected visual acuity is 20/20 in the right eye and 20/60 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "I believe his current visual acuity and function is sufficient to safely operate commercially."

Mr. Irish has driven straight trucks for 9 years, accumulating over 315,000 miles and tractor-trailer combination vehicles for 12 years, accumulating over 420,000 miles. He holds a Maine Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

32. Donald R. Jackson

Mr. Donald R. Jackson, 50, has amblyopia in his right eye secondary to congenital corneal scarring. His best corrected visual acuity is 20/20 in his left eye and 20/400 in his right eye. He was examined by an optometrist in 1999 who stated, "It is my understanding that Mr. Jackson has maintained a commercial license for the last fifteen

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years without an accident. This would certainly imply to my professional judgment that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Jackson has driven tractor-trailer combination vehicles for 15 years, accumulating over 1.4 million miles. He holds an Ohio Class A CDL. His official driving history shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

33. Nelson V. Jaramillo

Mr. Nelson V. Jaramillo, 31, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in left eye. He was examined in 1999 by an ophthalmologist who stated, "In my opinion this patient is able to perform driving tasks required to operate commercial vehicles."

Mr. Jaramillo has driven straight trucks for 9 years, accumulating 58,500 miles. He holds a Massachusetts Class D license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

34. Daryl A. Jester

Mr. Daryl A. Jester, 42, has been blind in his left eye since childhood and wears a prosthesis. His best corrected visual acuity is 20/20 in the right eye. He was examined in 2000 by an optometrist who stated, "I certify that patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Jester has driven straight trucks for 22 years, accumulating 330,000 miles. He holds a Utah Class B CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

35. Joseph Vernon Johns

Mr. Joseph Vernon Johns, 37, has been blind in his right eye since 1992 as the result of an automobile accident. His visual acuity is 20/20 in the left eye, uncorrected. He was examined in 1999 by an optometrist who stated, "Based on my examination and the visual field performed on Mr. Johns, I certify that his vision is stable and my medical opinion is that he has sufficient vision to operate a commercial vehicle under normal conditions as per your requirements."

Mr. Johns has driven straight trucks for 3 years, accumulating 45,000 miles and tractor-trailer combination vehicles for 11 years, accumulating 1.2 million miles. He holds a Louisiana Class A CDL. His official driving record shows one accident and no convictions for moving violations in a CMV for the past 3 years. Mr. Johns was not cited for the accident. He was struck from behind by the other vehicle involved. That driver was cited for following too closely.

36. Jimmie W. Judkins

Mr. Jimmie W. Judkins, 53, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/60+ in the left eye. He was examined in 1999 by an ophthalmologist who stated, "He should have sufficient vision to perform the driving test required to operate a commercial vehicle."

Mr. Judkins has driven straight trucks for 27 years, accumulating more than 1.3 million miles. He holds an Alabama Class AMV CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years. 9

37. Kurth A. Kapke

Mr. Kurth A. Kapke, 41, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/100 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "It is my opinion that Mr. Kapke's visual acuity should not change from his present level and that he is able to operate a commercial vehicle with his spectacles."

Mr. Kapke has driven straight trucks for 6 years, accumulating 312,000 miles. He holds a Wisconsin Class BCD CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

38. Johnny M. Kruprzak

Mr. Johnny M. Kruprzak, 34, has decreased vision in his right eye due to injury. His best corrected visual acuity is 20/20 in the left eye and light perception in the right eye. He was examined in 2000 by an optometrist who stated, "In our opinion he is capable of driving a commercial vehicle without problems."

Mr. Kruprzak has driven both straight trucks and tractor-trailer combination vehicles for 16 years, accumulating a total of more than 1.1 million miles. He holds an Ohio Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

39. Charles R. Kuderer

Mr. Charles R. Kuderer, 50, has visual acuity of light perception in his right eye as the result of a childhood accident. His visual acuity is 20/20 in the left eye. He was examined in 1999 by an optometrist who stated, "With additional head movement to compensate for decreased right eye central vision Mr. Kuderer has sufficient vision to safely operate a commercial vehicle."

Mr. Kuderer has driven straight trucks for 30 years, accumulating over 3.7 millions miles and tractor-trailer combination vehicles for 7 years, accumulating 350,000 miles. He holds a Wisconsin Class ABCD CDL. His official driving record shows one accident and no convictions for moving violations in a CMV for the past 3 years. There were no injuries and no citations given as a result of the accident. Mr. Kuderer was stopped in the left center lane waiting to make a left turn. The other vehicle involved stopped to the back left of Mr. Kuderer, assuming he was proceeding straight. The other vehicle hit Mr. Kuderer when he turned left.

40. Thomas D. Laws

Mr. Thomas D. Laws, 42, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/50 in the right eye. He was examined in 1999 and his optometrist stated, "The patient is perfectly normal and capable of operating a commercial vehicle as far as the eyes are concerned."

Thomas Laws has driven straight trucks for 11 years, accumulating over 220,000 miles and tractor-trailer combination vehicles for 15 years, accumulating more than 22,500 miles. He holds an Indiana Class A–XT CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

41. Demetrio Lozano

Mr. Demetrio Lozano, 52, is blind in his right eye due to trauma. His visual acuity is 20/20 in the left eye. He was examined in 1999 by an optometrist who stated, "In my medical opinion Mr. Lozano has sufficient vision to perform the driving tasks required of him to operate a commercial vehicle."

Mr. Lozano has driven straight trucks for 34 years, accumulating 1.7 millions miles and tractor-trailer combination vehicles for 24 years, accumulating 600,000 miles. He holds a Texas Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

42. Wayne Mantela

Mr. Wayne Mantela, 31, has been blind in his left eye since birth due to a congenital cataract. His visual acuity in his right eye is 20/20 uncorrected. He was examined in 1999 by an ophthalmologist who stated, "Mr.

Mantela should have no trouble operating a commercial vehicle."

Mr. Mantela has driven straight trucks for 3.5 years, accumulating over 157,000 miles. He holds a Kentucky Class D license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

43. Kenneth D. May

Mr. Kenneth D. May, 51, has reduced central acuity in his left eye which has resulted from scarring in the center of the left eye as the result of a hemorrhage. His visual acuity is 20/20 in the right eye and 20/200 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "He continues to have sufficient vision to perform the driving tasks required to operate commercial vehicles and he has been doing this safely and successfully since 1994."

Mr. May has driven tractor-trailer combination vehicles for 31 years, accumulating over 3 million miles. He holds an Alabama Class AM CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

44. Jimmy R. Millage

Mr. Jimmy R. Millage, 55, has had a central vision defect in his left eye since childhood due to trauma. His visual acuity is 20/20 in the right eye and 20/100 in the left eye. He was examined in 2000 by an ophthalmologist who stated, "In my medical opinion and based upon the fact that the patient has had the same vision for almost 50 years and an excellent driving record since he began in 1988, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Millage has driven tractor-trailer combination vehicles for 11 years, accumulating 924,000 miles. He holds a Texas Class A CDL. His official driving record shows no accidents and no convictions for moving violations in a CMV for the past 3 years.

45. Harold J. Mitchell

Mr. Harold J. Mitchell, 50, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/100 in the left eye. He was examined in 1999 by an optometrist who stated, "It is my opinion that Mr. Harold Mitchell has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Mitchell has driven straight trucks for 30 years, accumulating 1,500,000 miles and tractor-trailer combination vehicles for 24 years, accumulating 1,440,000 miles. He holds a Nevada Class AM license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

46. Gordon L. Nathan

Mr. Gordon L. Nathan, 56, has amblyopia in his left eye. His best corrected visual acuity is 20/15 in the right eye and 20/100 in the left eye. He was examined by an optometrist in 1999 who stated, "Mr. Nathan has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Nathan has driven straight trucks for 42 years, accumulating 630,000 miles and tractor-trailer combination vehicles for 3.75 years, accumulating 37,500 miles. He holds a California Class AM1 CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

47. Jerry L. New

Mr. Jerry L. New, 52, has a corneal scar in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/200 in his right eye. He was examined in 2000 by an optometrist who stated, "It is my opinion that Mr. Jerry New has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. New has driven tractor-trailer combination vehicles for 5 years, accumulating 300,000 miles. He holds a Mississippi Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

48. Bernice Ray Parnell

Mr. Bernice Ray Parnell, 65, has choroidal melanoma in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined by an optometrist in 1999 who stated, "In my opinion, Mr. Parnell has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Parnell has driven tractor-trailer combination vehicles for 42 years, accumulating over 5 million miles. He holds a North Carolina Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

49. Aaron Pennington

Mr. Aaron Pennington, 73, is blind in his left eye and wears a prosthesis. His best corrected visual acuity is 20/25 in the right eye. He was examined in 1999 by an ophthalmologist who stated, "In my medical opinion, Mr. Pennington does have sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Pennington has driven straight trucks for 59 years, accumulating 885,000 miles and tractor-trailer combination vehicles for over 25 years, accumulating over 2.4 million miles. He holds a California Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

50. Clifford C. Priesmeyer

Mr. Clifford C. Priesmeyer, 51, suffered trauma to his left eye in 1964 leaving visual acuity in that eye of 20/400. His best corrected visual acuity in the right eye is 20/20–1. He was examined in 1999 by an optometrist who stated, "Although Mr. Priesmeyer's central vision is decreased in his left eye, his 20/20 vision in his right eye and unobstructed field of vision in both eyes, should allow him to operate a commercial vehicle without any difficulties."

Mr. Priesmeyer has driven straight trucks for 5 years, accumulating 50,000 miles and tractor-trailer combination vehicles for 34 years, accumulating 1.7 million miles. He holds a Texas Class AM CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

51. George S. Rayson

Mr. George S. Rayson, 36, has macular degeneration in the left eye with retinal scarring. His visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "This young man has been a driver for this company for which he works for a number of years and has proven to be a competent, careful driver with no history of any prior accidents. He is a valuable employee of this company and needs to continue in the capacity of a driver and it is my opinion that he has adequate vision for driving safely."

Mr. Rayson has driven straight trucks for 20 years, accumulating 104,000 miles and tractor-trailer combination vehicles for 18 years, accumulating 630,000 miles. He holds an Ohio Class A CDL. His official driving record shows no accidents and 1 conviction of a violation in a CMV for the past 3 years. The conviction was for "Expiration/no drivers license."

52. Kevin D. Reece

Mr. Kevin D. Reece, 29, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/100 in the right eye. He was examined in 1999 by an optometrist

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who stated, "Due to Mr. Reece's long standing amblyopia; I feel that he would have no trouble driving a commercial vehicle or any other vehicle for that matter since this is the only vision he has ever known and he should get along quite nicely."

Mr. Reece has driven straight trucks for 8 years, accumulating over 140,000 miles and tractor-trailer combination vehicles for 6 months, accumulating 500 miles. He holds a Tennessee Class B CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

53. Franklin Reed

Mr. Franklin Reed, 58, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/80 in the right eye. He was examined in 1999 by an ophthalmologist who stated, "It is my medical opinion that Mr. Reed has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Reed has driven straight trucks for 2.5 years, accumulating 125,000 miles and tractor-trailer combination vehicles for 35 years, accumulating 350,000 miles. He holds a North Carolina Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

54. Arthur A. Sappington

Mr. Arthur A. Sappington, 57, has amblyopia in his left eye. The best corrected visual acuity is 20/20 in his right eye and 20/800 in his left eye. He was examined by an optometrist in 1999 who stated, "It is my opinion that Mr. Sappington can operate a commercial vehicle safely, as he has safely done for the past 30 years."

Mr. Sappington has driven straight trucks for 39 years, accumulating over 1.1 million miles. He holds an Indiana Class B CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

55. James L. Schneider

Mr. James L. Schneider, 58, has a history of extremely poor vision in the right eye from neovascular glaucoma from Sturge-Weber syndrome. His best corrected visual acuity is 20/20 in the left eye and light perception in the right eye. He was examined in 1999 by an ophthalmologist who stated, "Based on the patient's history of having driven a commercial vehicle for many years with, reportedly, no accidents all while having essentially no vision in the right eye, it appears evident, in my medical opinion, that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Schneider has driven tractor-trailer combination vehicles for 12 years, accumulating 1.2 million miles. He holds a New Mexico Class A CDL. His official driving record shows no accidents and one non-serious speeding violation in a CMV for the past 3 years.

56. Patrick W. Shea

Mr. Patrick W. Shea, 47, is blind in his left eye due to a childhood injury. His visual acuity is 20/20 in the right eye. He was examined in 1999 by an ophthalmologist who stated, "It is my medical opinion that Mr. Shea has sufficient vision to perform the driving tasks required to operate a commercial vehicle and currently has no medical conditions related to the eyes."

Mr. Shea has driven straight trucks for 20 years, accumulating 600,000 miles. He holds a Massachusetts Class D license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

57. Carl B. Simonye

Mr. Carl B. Simonye, 48, has amblyopia in his left eye, as well as an old injury which caused scar tissue to form in the macular area. His best corrected visual acuity is 20/20 in the right eye and count fingers at 3 feet in the left eye. He was examined by an ophthalmologist in 1999 who stated, "In my medical opinion, patient has sufficient vision to operate a commercial vehicle."

Mr. Simonye has driven both straight trucks and tractor-trailer combination vehicles for 30 years, accumulating a total of 105,000 miles. He holds a New Jersey Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

58. Ernie Sims

Mr. Ernie Sims, 46, has been blind in his right eye since birth. His best corrected visual acuity is 20/20 in the left eye and light perception in the right eye. He was examined in 1999 by an optometrist who stated, "This patient has sufficient vision to drive a commercial vehicle."

Mr. Sims has driven both straight trucks and tractor-trailer combination vehicles for 10 years, accumulating a total of 50,000 miles. He holds a South Carolina Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

59. William H. Smith

Mr. William H. Smith, 42, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined by an ophthalmologist in 1999 who stated, "It is my medical opinion that Mr. Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Smith has driven straight trucks for 3 years, accumulating more than 75,000 miles. He holds an Alabama Class DM license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

60. Paul D. Spalding

Mr. Paul D. Spalding, 49, has amblyopia in the left eye due to trauma at age 3. His best corrected visual acuity is 20/20 in the right eye and light perception only in the left eye. He was examined in 1999 by an optometrist who stated, "As he has operated a commercial vehicle safely for his entire working life I feel he has sufficient vision to operate a commercial vehicle."

Mr. Spalding has driven tractor-trailer combination vehicles for 27 years, accumulating over 2.3 million miles. He holds a Texas Class A CDL. His official driving record for the last 3 years shows no accidents and one conviction for a non-serious speeding violation in a CMV.

61. Richard Allen Strange

Mr. Richard Allen Strange, 47, has amblyopia in his right eye. His best corrected visual acuity is 20/15 in the left eye and 20/50–1 in the right eye. He was examined in 1999 by an ophthalmologist who stated, "It is my opinion that Richard Strange is capable of operating a commercial vehicle."

Mr. Strange has operated straight trucks for 1 year, accumulating 10,000 miles and tractor-trailer combination vehicles for 8 years, accumulating 400,000 miles. He holds a Texas Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

62. Steven Carter Thomas

Mr. Steven Carter Thomas, 39, has a chorioretinal scar in his right eye due to an accident in 1991. While his vision is affected in one area, his best corrected visual acuity is 20/20 in the left eye and 20/25 in the right eye. He was examined by an ophthalmologist in 1998 who stated, "He has no disability that should prevent him from operating any type of vehicle."

Mr. Thomas has driven tractor-trailer combination vehicles for over 13 years, accumulating more than 1.5 million miles. He holds an Arkansas Class A CDL. His official driving record shows no accidents and the conviction of one speeding violation in a CMV for the past 3 years.

63. George Walter Thornhill

Mr. George Walter Thornhill, 48, has a congenital coloboma of the retina in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/70 in the left eye. He was examined by an optometrist in 1999 who stated, "In my professional opinion, I feel Mr. Thornhill has sufficient vision to perform the driving tasks required to operate a commercial vehicle including tractor trailers."

Mr. Thornhill has driven straight trucks for 31 years, accumulating more than 1.5 million miles. He holds an Alabama Class BM CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

64. Rick N. Ulrich

Mr. Rick N. Ulrich, 45, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/400 in the right eye. He was examined in 1999 by an optometrist who stated, "I believe he has sufficient vision to perform the tasks required to operate a commercial vehicle."

Mr. Ulrich has driven both straight trucks and tractor-trailer combination vehicles for 4.5 years, accumulating a total of 90,000 miles. He holds a Kentucky Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

65. Roy F. Varnado

Mr. Roy F. Varnado, 43, has a macular scar in his left eye. His visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "Patient has small central field defect (–3°) affects central vision only, left eye; is stable; has sufficient vision to perform driving tasks for a commercial vehicle."

Mr. Varnado has been driving both straight trucks and tractor-trailer combination vehicles for 25 years, accumulating a total of more than 625,000 miles. He holds a Louisiana Class D Chauffeur's License. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

66. Henry Lee Walker

Mr. Henry Lee Walker, 48, has glaucoma in both eyes that is controlled by medication. His visual acuity is 20/25 in his right eye and counting fingers in the left eye. He was examined in 1999 by an ophthalmologist who stated, "I certify that in my medical opinion Mr. Walker has sufficient vision to perform the driving tasks required to operate a commercial vehicle as required by law."

Mr. Walker has driven straight trucks for 9 years, accumulating over 540,000 miles and tractor-trailer combination vehicles for 14 years, accumulating over 840,000 miles. He currently holds a Louisiana personal driver's license. His official driving record shows no accidents and one speeding conviction in a CMV for the past 3 years. The speeding conviction was a non-serious violation.

67. Larry D. Wedekind

Mr. Larry D. Wedekind, 55, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. He was examined by an optometrist in 1999 who stated, "Patient has sufficient vision to perform driving tasks to operate commercial vehicle."

Mr. Wedekind has driven straight trucks for 2 years, accumulating 100,000 miles and tractor-trailer combination vehicles for 22 years, accumulating over 1.9 million miles. He holds a Texas Class A CDL. His official driving record shows no accidents and one conviction of a violation (Speed Less than Minimum) in a CMV for the last 3 years.

68. Daniel Wilson

Mr. Daniel Wilson, 39, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/400 in the right eye. He was examined by an ophthalmologist in 1999 who stated, "He has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Wilson has driven straight trucks for 15 years, accumulating 735,000 miles. He holds an Illinois Class B CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV in the last 3 years.

69. Emmett E. Windhorst

Mr. Emmett E. Windhorst, 54, has amblyopia in his left eye. His best corrected visual acuity is 20/20–1 in the right eye and 20/400 in the left eye. He was examined in 1999 by an optometrist who stated, "Because the vision in his other eye is so good, and because his job for the past few years has consisted of mostly driving, I believe that Mr. Windhorst has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Windhorst has driven straight trucks for 6 years, accumulating 240,000 miles. He holds a Missouri Class E license. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

70. Wonda Lue Wooten

Ms. Wonda Lue Wooten, 57, has open angle glaucoma in her left eye. Her best corrected visual acuity is 20/20 in the right eye and no light perception in the left eye. She was examined in 1999 by an ophthalmologist who stated, "Her vision is stable and she has sufficient vision in her right eye to perform the driving tasks required to operate a commercial vehicle."

Ms. Wooten has driven tractor-trailer combination vehicles for 8 years, accumulating 800,000 miles. She holds a Texas Class A CDL. Her official driving record shows no accidents and one conviction in a CMV for "Failure to yield right of way to an emergency vehicle" for the past 3 years.

Basis for Preliminary Determination To Grant Exemptions

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 70 applicants have qualifications similar to those possessed by drivers in the waiver program. Their experience and safe driving record operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. Since past driving records are reliable precursors of the future, there is no reason to expect these individuals to drive less safely after receiving their exemptions. Indeed, there is every reason to expect at least the same level of safety, if not a greater level, because the applicants can have

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their exemptions revoked if they compile an unsafe driving record.

For these reasons, the FMCSA believes exempting the individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the FMCSA proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may issue exemptions from the vision requirement to the 70 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; 49 CFR 1.73.

Issued on: July 17, 2000.

Julie Anna Cirillo,

Acting Assistant Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–18775 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than September 25, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–New. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 C.F.R. Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 C.F.R. 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 C.F.R. 1320.8(d)(1)(i)-(iv). FRA believes that

soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Regional Inspection Point Listing Forms.

OMB Control Number: 2130–New.

Abstract: Through a direct comparison of inspection data with accident/incident data, the collection of information proposes to develop a profile county-by-county of what there is to inspect, and how much inspection activity was done by Federal and State railroad inspectors each year nationwide. The information collected will produce "snapshots" which will allow FRA to determine where the gaps are in inspection territories so that it can focus inspection resources where they will do the most good. As a result of the proposed information collection, FRA will be better able to equalize inspector workloads, and will be better able to make informed hiring decisions regarding the most effective placement of new inspectors. More targeted inspections will permit FRA to maximize its limited resources, and will serve to enhance overall safety on the nation's rail system.

Form Number(s): FRA F 6180.106(a)-(e).

Affected Public: Businesses.

Respondent Universe: 430 Federal and State Railroad Inspectors.

Frequency of Submission: On occasion.

Estimated Annual Burden: 3,960 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 C.F.R. 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–18780 Filed 7–24–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 9, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 19, 2000.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials; Exemptions and Approvals.

Application number	Docket number	Applicant	Modification of exemption
3187–M	RSPA–1999–5903	PPG Industries, Inc., Pittsburgh, PA (See Footnote 1)	3187
11506–M		OEA Inc., Denver, CO (See Footnote 2)	11506
12301–M		Steptoe & Johnson LLP, Washington, DC (See Footnote 3)	12301

(1) To authorize alternative packaging and the use of common carriers in exclusive use for the transportation of Division 5.2 materials.

(2) To modify the exemption to authorize a design change using a welded flange and laser etching on the exterior of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems.

(3) To modify the exemption to waive the marking requirements so that shipping papers and cylinders do not have to bear the DOT exemption number.

[FR Doc. 00–18778 Filed 7–24–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 24, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 19, 2000.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12481–N	RSPA–00–7594	Trac Regulator Co., Inc., Mt. Vernon, NY.	49 CFR 173.306	To authorize the transportation in commerce of a specially designed device consisting of non-specification outer packaging for use in transporting various hazardous materials. (modes 1, 2)
12491–N	RSPA–00–7595	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 171.12(b)(5), SP T17.	To authorize the transportation in commerce of dichlorophenyl isocyanate, Division 6.1 in IM 101 portable tanks. (modes 1, 3)
12492–N	RSPA–00–7593	Honeywell International Inc., Morristown, NJ.	49 CFR 173.304	To authorize the transportation in commerce of liquefied gas, n.o.s., Division 2.2 in DOT–3AL 1800 cylinders. (modes 1, 2, 3)
12493–N	RSPA–00–7579	Caroline Power & Light Co, Southport, NC.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain attached to unloading devices during intermittent unloading of chlorine, Division 2.3 without the physical presence of an unloader. (mode 2)
12495–N	RSPA–00–7603	South Carolina Electric & Gas Co., Jenkinsville, SC.	49 CFR 171, 172, 173	To authorize the transportation in commerce of radioactive material packages, Class 7, from one facility to another using state road that would be transported as essentially unregulated. (mode 1)
12497–N	RSPA–00–7604	Henderson International Technologies, Inc., Richardson, TX.	49 CFR 173.302(a)(1), 173.314(c).	To authorize the frame mounting and manifolding to a motor vehicle of seamless steel tank cars tanks made in conformance with DOT Specification 107A for the transportation in commerce of certain Division 2.2 gases. (mode 1)

[FR Doc. 00–18779 Filed 7–24–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33904]

Thomas Z. Mars—Continuance in Control Exemption—Sunflour Railroad, Inc.

Thomas Z. Mars (Mars), an individual, has filed a notice of exemption to continue in control of the Sunflour Railroad, Inc. (SFR), upon SFR's becoming a Class III railroad.

The transaction is scheduled to be consummated on July 31, 2000.

This transaction is related to STB Finance Docket No. 33903, *Sunflour Railroad, Inc.—Acquisition and Operation Exemption—Soo Line Railroad Company*, wherein SFR seeks to acquire from Soo Line Railroad Company and operate an approximately 26.3-mile rail line extending from Rosholt to Veblen, SD.

Mars currently controls one existing Class III railroad: Denver Rock Island Railroad (DRI), operating in the State of Colorado.

Mars states that: (i) The rail lines to be operated by SFR and DRI do not connect; (ii) the transaction is not part of a series of anticipated transactions that would result in such a connection; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory

obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33904, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, Esq., Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18798 Filed 7–24–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33903]

Sunflour Railroad, Inc.—Acquisition and Operation Exemption—Soo Line Railroad Company

Sunflour Railroad, Inc. (SFR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Soo Line Railroad Company (Soo) and operate approximately 26.3 miles of rail line extending from a connection with Soo at milepost 210.0, near Rosholt, to the end of track at milepost 236.3, in Veblen, in Marshall and Roberts Counties, SD (Rosholt-Veblen line).[1]

The transaction is scheduled to be consummated on July 31, 2000.

This transaction is related to STB Finance Docket No. 33904, *Thomas Z. Mars—Continuance in Control Exemption—Sunflour Railroad, Inc.*, wherein Thomas Z. Mars has concurrently filed a verified notice to continue in control of SFR upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33903, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, Esq., Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18797 Filed 7–24–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409, that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Crowne Plaza Hotel, 1001 14th Street, NW, Washington, DC on August 1, 2000 through August 2, 2000.

The sessions on August 1 and August 2, 2000, are scheduled to begin at 8:30 a.m. and end at 6:30 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the August 1 session from 8:30 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On August 1 from 9 a.m. through August 2, 2000, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway, which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Section 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open sessions should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (Phone: 202–408–3684) at least five days before the meeting.

Dated: July 17, 2000.

By direction of the Secretary.

Marvin R. Esses,

Committee Management Officer.

[FR Doc. 00–18687 Filed 7–24–00; 8:45 am]

BILLING CODE 8320–01–M

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[1] According to the verified notice of exemption, Soo will withdraw its abandonment application for the eastern portion of the Rosholt-Veblen line, from Rosholt to west of Claire City, SD, now pending before the Board in STB Docket No. AB–57 (Sub-No. 51), *Soo Line Railroad Company—Abandonment—in Roberts County, SD*. The abandonment of the western portion of the Rosholt-Veblen line from Claire City to Veblen was previously exempted by the Board in *Soo Line Railroad Company—Abandonment Exemption—in Marshall and Roberts Counties, SD*, STB Docket No. AB–57 (Sub-No. 50X) (STB served Jan. 11, 2000). The verified notice of exemption further indicates that Soo has not consummated that abandonment. Thus, Soo is now proposing to sell the Rosholt-Veblen line instead of abandoning it.

Corrections

Federal Register
Vol. 65, No. 143
Tuesday, July 25, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-6733-3]

RIN 2060-ZA06

Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas

Correction

In rule document 00–17472 beginning on page 45182 in the issue of Thursday, July 20, 2000, make the following correction:

§81.329 [Corrected]

On page 45244, in §81.329, in footnote 2 "January 16, 2000" should read "January 16, 2001".

[FR Doc. C0–17472 Filed 7–24–00; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1307

[DEA-143F]

RIN 1117-AA26

Establishment of Freight Forwarding Facilities for DEA Distributing Registrants

Correction

In rule document 00–18147 beginning on page 44674 in the issue of Wednesday, July 19, 2000, make the following corrections:

§1301.12 [Corrected]

1. On page 44678, in the third column, in §1301.12(b)(4), thirteen lines from the bottom, "with thirty" should read "within thirty".

§1301.77 [Corrected]

2. On page 44679, in the first column, in §1301.77, in paragraph (c), in the first line "substance" should read "substances".

3. On the same page, in the same column, in the same section, in the same paragraph, in the third line "must packed" should read "must be packed".

§1307.12 [Corrected]

4. On page 44679, in the second column, in §1307.12(a), "957(b)(1)" should read "957(b)(1))".

[FR Doc. C0–18147 Filed 7–24–00; 8:45 am]
BILLING CODE 1505-01-D

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H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

Last List July 12, 2000

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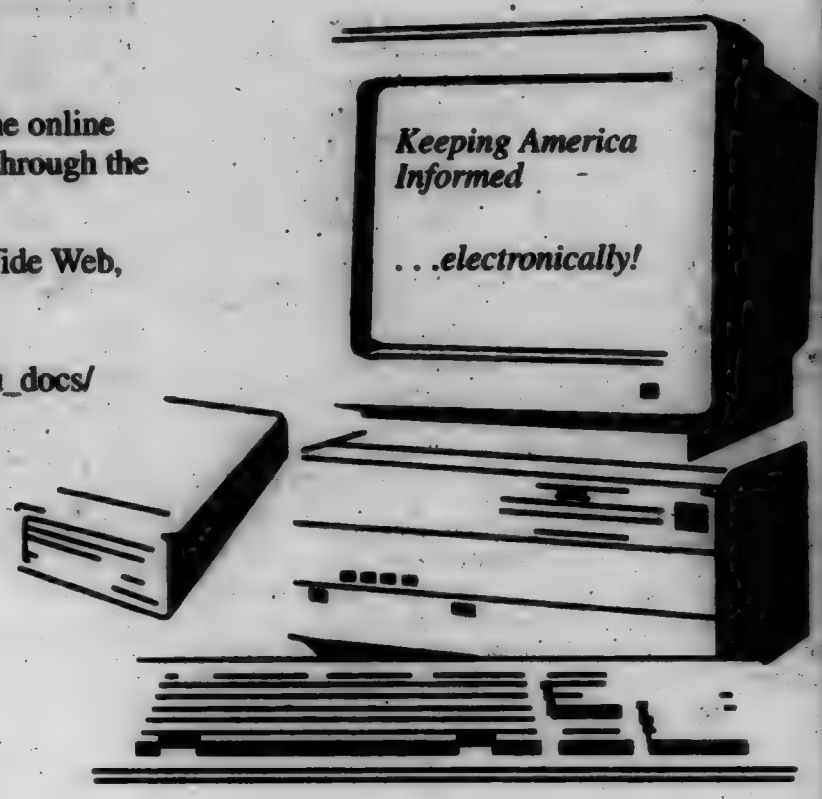

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Government Contracting Programs

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is finalizing its regulations to address contract bundling due to changes set forth in the Small Business Reauthorization Act of 1997. This rule implements the statutory amendments that recognize that the consolidation of contract requirements may be necessary and justified, in some cases. It also implements the statutory requirement that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation as prime contractors as well as to eliminate obstacles to small business participation as prime contractors. In addition, this rule restates SBA's current authority to appeal to the head of a procuring agency decisions made by the agency that SBA believes to adversely affect small businesses.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Anthony Robinson, Office of Government Contracting, (202) 205–6465.

SUPPLEMENTARY INFORMATION: Section 15(a) of the Small Business Act, 15 U.S.C. 644(a), authorizes SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believes adversely affects small businesses, including proposed procurements that include "goods or services currently being performed by a small business" and which are in a "quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely." Section 413(b)(1) of Public Law 105–135 added an appeal right to section 15(a) of the Small Business Act for "an unnecessary or unjustified bundling of contract requirements." It left intact, however, SBA's current appeal rights. In this regard, the Joint Explanatory Statement of the bundling provisions contained in Public Law 105–135 as set forth in the Congressional Record specifically provided that "[n]othing in [the bundling amendments] is intended to amend or change in any way the existing obligations imposed on a procuring activity or the authority granted to the Small Business Administration under section 15(a) of the Small Business Act." 143 Cong. Rec. S11522, S11526 (daily ed. Oct. 31, 1997).

On October 25, 1999, SBA published an interim rule with request for comments in the **Federal Register** requesting public comments on implementation of Sections 411–417 of the Small Business Reauthorization Act of 1997 (Public Law 105–135, 111 Stat. 2617). *See* 64 FR 57366, October 25, 1999. The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified, in some cases. The rule requires that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation as prime contractors. The rule also requires each agency to eliminate obstacles to small business participation as prime contractors.

The comment period for the interim rule (64 FR 57366) closed on December 27, 1999. Consistent with the statutory amendments, the interim rule defined "bundling," identified the circumstances under which such "bundling" may be necessary and justified, and permitted SBA to appeal bundling actions that it believes to be unnecessary and unjustified to the head of the procuring agency. The rule also restated SBA's current authority to appeal to the head of an agency other procurement decisions made by procuring activities that SBA believes will adversely affect small business. SBA received 19 comments in response to the interim rule. The comments are comprised of three from Government agencies, four from trade associations, ten from small businesses, and two from members of Congress.

Most of the comments, particularly those from small business, did not offer specific changes to the rule, but rather strongly endorsed the government taking action against contract bundling. Since these comments offered no specific changes, SBA responds by noting the strong opposition to contract bundling by the small business community.

The four comments from trade associations focused on the impact of bundling requirements on the architect and engineering industry. Specifically, these comments were concerned with the consolidation of architect and engineering services with requirements from other industries. The bundling statute and SBA's rule permit various contract requirements to be consolidated provided that the consolidation results in substantial benefits. The statute does not limit the scope and diversity of consolidated contracts. As long as there are measurably substantial benefits, a procuring agency is authorized to consolidate or bundle contract requirements. Thus, this rule also does not limit the scope and diversity of consolidated contracts.

When a procuring activity intends to proceed with a "bundled" requirement, it must document that the bundling is necessary and justified. If it cannot do so, the procuring activity cannot go forward with the intended consolidation. In order for bundling to be necessary and justified, the consolidation must achieve "measurably substantial benefits." In finalizing this rule, SBA again examined the interim rule's two-tier approach to determining what constitutes measurably substantial benefits. SBA continues to believe that the two-tier approach represents a reasonable application of determining what "measurably substantial benefits" means. Pursuant to the statutory language, benefits must be "substantial," SBA believes that benefits equivalent to 10% of the contract value (including options) is a substantial benefit relative to the amount of the contract where the contract value is $75 million or less. Similarly, SBA believes that benefits equivalent to at least $7.5

million or 5% of the contract value (including options) is a substantial benefit in absolute dollars where the contract value exceeds $75 million. SBA notes that most bundled requirements that SBA has reviewed over the past four years have had a contract value (including options) that was less than $75 million. Thus, most bundled contracts will be subject to a 10% savings test. The remainder of the contracts will be subject to a minimum absolute savings of $7.5 million.

This final rule clarifies the two-tier approach to achieve this result of a minimum savings for contracts having a value (including options) between $75 million and $150 million. The interim rule required agencies to achieve a benefit equivalent to at least 5% of the contract value (including options) for any contract having a value exceeding $75 million, but without specifying a minimum savings of $7.5 million. Under the interim rule, for contracts having a value between $75 million and $150 million, the required benefits could have ranged from $3.25 million to $7.5 million. Thus, contracts having a value between $75 million and $150 million required less of a benefit than contracts having a value between $32.5 million and $75 million. For example, an agency needed to demonstrate a $6 million benefit for a contract having a $60 million value, while it had to show only a $4 million benefit for a contract having a value of $80 million. SBA believes that this result would have been illogical. As such, SBA has amended this provision to require that an agency must show a benefit of 5% or $7.5 million, whichever is greater, for any bundled contract having a value that exceeds $75 million. Contracts awarded in reliance on the interim rule which met the 5% benefits test but would not satisfy this minimum savings test will be unaffected by this final rule.

One commenter suggested that the "critical to the agency's mission success" exemption (125.2(d)(3)(iii)(B)) could be subject to abuse. SBA does not agree. SBA believes that because these exemptions are made at the agency's highest procurement levels, abuses of this authority are unlikely.

The interim final rule included a provision addressing the application of the regulation to procurements that are awarded in accordance with a cost comparison conducted under OMB Circular A–76 ("Performance of Commercial Functions"). We did not receive any comments on this provision. The final rule retains the provision, with clarifying revisions.

Circular A–76 establishes a cost-comparison process for evaluating whether a commercial activity that is conducted by a Federal agency should be performed in-house or by contract. This process compares the estimated cost of in-house performance by the "Most Efficient Organization" (MEO) with the cost of contract performance as determined by offers that are submitted in response to an A–76 solicitation. Under the Circular, the simple fact that contract performance is found to be *less costly* than in-house performance by the MEO is not sufficient to justify a conversion from in-house to contract performance. Instead, an activity will not be converted to contract performance (i.e., it will be retained in-house) unless the savings will exceed 10 percent or $10 million over the performance period, whichever is less.

Under the A–76 cost-comparison process, the required MEO (which is also required by statute at 10 U.S.C. 2461 for the Department of Defense) may include a mix of Federal employees and contract support. In other words, the scope of an A–76 cost comparison, the solicitation, and the in-house MEO may consist of a workload performed by Federal employees and one or more existing contractors. Thus, it is possible under an A–76 cost comparison process that activities that have been performed by Federal employees (along with activities performed under two or more small business contracts) will be converted to performance under one contract awarded to a large business. In such cases, the methodology of the A–76 process will have ensured that the Federal Government will derive "measurably substantial benefits" from the conversion. This occurs in two ways. First, through the agency's development of a management plan and the in-house MEO (which concludes in the MEO's written "certification"), significant and measurable savings and performance enhancements can be achieved even before competing with any private offeror. Second, through the cost comparison itself, measurable savings and performance enhancements are quantified, and a decision to convert requires substantial savings (10 percent or $10 million over the performance period, whichever is less).

SBA has added clarifying language to the rule so that it is clear that a bundling analysis is not required when an agency conducts a similar analysis under an A–76 study.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

The Office of Management and Budget reviewed this rule as a "significant" regulatory action under Executive Order 12866.

SBA has determined that this final rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. SS 601–612. The rule can potentially apply to all small businesses that are performing or may want to perform on the prime contract opportunities of the Federal Government. While there is no precise estimate of the number of small entities or the extent of the economic impact, SBA believes that a significant number of small businesses would be affected. SBA has submitted a complete Final Regulatory Flexibility Analysis of this final rule to the Chief Counsel for Advocacy of the Small Business Administration. For a copy of this analysis, please contact Anthony Robinson at (202) 205–6465.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements.

For purposes of Executive Order 13132, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12978, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

For the reasons stated in the preamble, SBA adopts the interim rule amending 13 CFR parts 121 and 125 which was published at 64 FR 57366 on October 25, 1999, as final with the following changes:

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PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In 121.103 currently in effect, revise paragraph (f)(3)(i).

§ 121.103 What is affiliation?

* * * * *

(f) * * *

(3) * * * (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under this paragraph (f) so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) The procurement qualifies as a "bundled" requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a "bundled" requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(*1*) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(*2*) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds $10 million.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

2. In § 125.2, revise paragraphs (a), (b) and (d) to read as follows:

§ 125.2 Prime contracting assistance.

(a) *General.* Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property is made to small business concerns.

(b) *PCR and procuring activity responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate.

(2) A procuring activity must provide a copy of a proposed acquisition strategy (e.g., Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

(i) Includes in its description goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely;

(ii) Seeks to package or consolidate discrete construction projects; or

(iii) Meets the definition of a bundled requirement as defined in paragraph (d)(1)(i) of this section.

(3) Whenever any of the circumstances identified in paragraph (b)(2) of this section exist, the procuring activity must also submit to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) a written statement explaining why:

(i) If the proposed acquisition strategy involves a bundled requirement, the procuring activity believes that the bundled requirement is necessary and justified under the analysis required by paragraph (d)(3)(iii) of this section; or

(ii) If the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects:

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured as separate discrete projects.

(4) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs will identify small businesses that are capable of performing particular requirements, including teams of small business concerns for larger or bundled requirements (see § 121.103(f)(3) of this chapter).

(5)(i) If a PCR believes that a proposed procurement will render small business prime contract participation unlikely, or if a PCR does not believe a bundled requirement to be necessary and justified, the PCR shall recommend to the procurement activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate; and

(C) Reserving one or more awards for small companies when issuing multiple awards under task order contracts.

(ii) Where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business prime contract participation to the maximum extent practicable.

(iii) The PCR will also work to ensure that small business participation is maximized through subcontracting opportunities. This may include:

(A) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals which are expected of the contractor awardee; and

(B) Recommending that the small business subcontracting goals be based on total contract dollars instead of subcontract dollars.

(6) In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, whether or not the acquisition is a bundled or substantially bundled requirement within the meaning of paragraph (d) of this section, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the secretary of the department or head of the agency. The

time limits for such appeals are set forth in 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(7) PCRs will work with a procuring activity's Small Business Specialist (SBS) to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SBS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) *Contract bundling*—(1) *Definitions*—(i) *Bundled requirement or bundling.* The term *bundled requirement or bundling* refers to the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to:

(A) The diversity, size, or specialized nature of the elements of the performance specified;

(B) The aggregate dollar value of the anticipated award;

(C) The geographical dispersion of the contract performance sites; or

(D) Any combination of the factors described in paragraphs (d)(1)(i) (A), (B), and (C) of this section.

(ii) *Separate smaller contract.* A separate smaller contract is a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(iii) *Substantial bundling.* Substantial bundling is any contract consolidation, which results in an award whose average annual value is $10 million or more.

(2) *Requirement to foster small business participation.* The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in the contracting opportunities of the Government. To comply with this requirement, agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a) and women-owned business concerns; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

(3) *Requirement for market research.* In addition to the requirements of paragraph (b)(2) of this section and before proceeding with an acquisition strategy that could lead to a contract containing bundled or substantially bundled requirements, an agency must conduct market research to determine whether bundling of the requirements is necessary and justified. During the market research phase, the acquisition team should consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(4) *Requirement to notify current small business contractors of intent to bundle.* The procuring activity must notify each small business which is performing a contract that it intends to bundle that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(5) *Determining requirements to be necessary and justified.* When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(i) The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be measurably substantial. The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to:

(A) Benefits equivalent to 10 percent of the contract value (including options) where the contract value is $75 million or less; or

(B) Benefits equivalent to 5 percent of the contract value (including options) or $7.5 million, whichever is greater, where the contract value exceeds $75 million.

(ii) Notwithstanding paragraph (d)(5)(i) of this section, the Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense and the Deputy Secretary or equivalent in civilian agencies may, on a non-delegable basis determine that a consolidated requirement is necessary and justified when:

(A) There are benefits that do not meet the thresholds set forth in paragraph (d)(5)(i) of this section but, in the aggregate, are critical to the agency's mission success; and

(B) Procurement strategy provides for maximum practicable participation by small business.

(iii) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be consolidated (including options). To be substantial, such cost savings must be at least 10 percent of the contract value (including options).

(iv) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(6) *OMB Circular A–76 Cost Comparison Analysis.* The substantial benefit analysis set forth in paragraph (d)(5)(i) of this section is not required where a requirement is subject to a Cost Comparison Analysis under OMB Circular A–76 (See 5 CFR 1310.3 for availability).

(7) *Substantial bundling.* Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

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(i) The analysis for bundled requirements set forth in paragraph (d)(5)(i) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement; and

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(8) *Significant subcontracting opportunity.* (i) Where a bundled or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a bundled contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified in paragraph (d)(5)(i) of this section.

5. In § 125.6, revise paragraph (g) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(g) Where an offeror is exempt from affiliation under § 121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

Dated: June 20, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–18795 Filed 7–25–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–25–AD; Amendment 39–11832; AD 2000–15–03]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10–V and S10–VT Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Stemme GmbH & Co. KG (Stemme) Models S10–V and S10–VT sailplanes. This AD supersedes AD 98–15–24, which currently requires replacing the propeller blade suspension forks with parts of improved design on Stemme S10–V sailplanes. This AD requires you to remove the propeller blade suspension forks, exchange them with the manufacturer for improved design forks, and install the improved design propeller blade suspension forks. This AD is the result of analysis that shows that the existing propeller blade suspension forks are currently cracking more rapidly than originally projected. The actions specified by this AD are intended to prevent certain propeller blade suspension forks from cracking, which could result in the loss of a propeller blade during flight with possible lateral imbalance and loss of thrust.

DATES: This AD becomes effective on August 4, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 4, 2000.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 25, 2000.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–25–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73.

You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–25–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

Has FAA taken any action to this point? An incident where the propeller blade suspension fork failed during flight on a Stemme Model S10–V sailplane caused FAA to issue AD 98–15–24, Amendment 39–10674. This AD was published in the **Federal Register** on July 23, 1998 (63 FR 39484), and required replacing the propeller blade suspension fork, distance ring, and nut with parts of improved design on Stemme Model S10–V sailplanes.

After issuing AD 98–15–24, the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA that the improved design propeller blade suspension fork (part number (P/N) A09–10AP–V08) on one of the affected sailplanes failed during flight. Analysis of this propeller blade revealed a fracture located at the end of the threaded fastening pin. This caused FAA to issue a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Stemme Models S10–V and S10–VT sailplanes that incorporate a certain propeller blade suspension fork. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 21, 1999 (64 FR 39100).

The NPRM proposed to supersede AD 98–15–24 with a new AD that would require you to repetitively exchange (through the manufacturer) the P/N A09–10AP–V08 (or FAA-approved equivalent part number) propeller blade suspension fork for a fork that has passed X-ray crack testing requirements.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of the amendment. We received no comments on the proposed rule or the cost impact upon the public. However, the LBA has informed us that the existing propeller blade suspension forks are currently cracking more rapidly than originally projected.

Is there a propeller blade suspension fork design that is better than the current design? Stemme has worked

with the LBA in designing an improved propeller blade suspension fork (P/N 10AP–V88) along with a modification to the propeller gearbox suspension.

Has the manufacturer issued service information? Stemme issued Service Bulletin No. A31–10–051, Amendment-Index 05.a, dated December 6, 1999. This service bulletin specifies procedures for accomplishing the propeller blade suspension fork replacement and propeller gearbox suspension modification, which were described previously.

The FAA's Determination and Followup Action

What have we decided? After careful review of all available information related to the subject presented above, including the above-referenced comments, FAA has determined that:

—the propeller blade suspension fork replacement and propeller gearbox suspension modification should be accomplished on all Stemme Models S10–V and S10–VT sailplanes; and

—AD action should be taken to prevent certain propeller blade suspension forks from cracking, which could result in the loss of a propeller blade during flight with possible lateral imbalance and loss of thrust.

What is our next action? Since the improved design propeller blade suspension fork replacement and propeller gearbox suspension modification requirements increase the burden on the owners/operators of the affected sailplanes over what was proposed in the NPRM, we are required to allow the public additional time to comment on the AD.

Because of the low hours TIS on the sailplanes where the cracked propeller blade suspension forks were found, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

What does this AD require? This AD requires you to:

—remove the propeller blade suspension forks;

—exchange them with the manufacturer for improved design forks; and

—install the improved design propeller blade suspension forks.

Accomplishment procedures are specified in Stemme Service Bulletin No. A31–10–051, Amendment-Index 05.a, dated December 6, 1999.

Comments Invited

Can I comment on this AD? This action is in the form of a final rule and the FAA did not precede it with notice and opportunity for public comment. FAA is issuing this final rule without prior notice because an urgent situation concerning safety of flight exists. However, FAA is still inviting comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received.

How can we communicate more clearly with you? The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.faa.gov/language/*.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure the FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–25–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

How does this AD impact relations between Federal and State governments? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. The FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

How does this action involve an emergency situation? The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. We have determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation. You may obtain a copy of the evaluation (if required) from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends section 39.13 by removing Airworthiness Directive (AD) 98–15–24, Amendment 39–10674 (39484, July 23, 1998), and by adding a new AD to read as follows:

2000–15–03 Stemme GmbH & Co. KG: Amendment 39–11832; Docket No. 99–CE–25–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to Models S10–V and S10–VT sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions of this AD are intended to prevent certain propeller blade suspension forks from cracking, which could result in the loss of a propeller blade during flight with possible lateral imbalance and loss of thrust.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	When	Procedures
(1) Removal, exchange, and reinstallation: (i) Remove from the sailplane any propeller blade suspension fork that is not part number (P/N) 10AP–V86. (ii) Exchange (through the manufacturer) this propeller blade suspension fork for a propeller blade suspension fork that is P/N 10AP–V86.. (iii) Install the improved design propeller blade suspension fork (P/N 10AP–V86) on the sailplane..	All actions within 10 hours time-in-service as (TIS) after August 4, 2000 (the effective date of this AD).	(1) Accomplish, each action accordingly, as follows: (i) Removal: In accordance with the instructions in the maintenance manual. (ii) Exchange: In accordance with the instructions in Stemme Service Bulletin No. A31–10–051, Amendment-Index: 05.a, dated December 6, 1999. (iii) Installation: In accordance with the instructions in the maintenance manual.
(2) Modify the propeller gearbox suspension.	Within 10 hours TIS after August 4, 2000 (the effective date of this AD)..	In accordance with the instructions in Stemme Service Bulletin No. A31–10–051; Amendment-Index: 05.a, dated December 6, 1999.
(3) Dynamically balance the propeller.	Prior to further flight after the installation and modification required in paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), and (d)(2) of this AD..	In accordance with the instructions in Stemme Procedural Instruction A17–10AP–V/2–E "Dynamic balancing of the Stemme S10 powered glider propeller in the S10–V and S10–VT models."
(4) Do not install a propeller blade suspension fork that is not P/N 10AP–V86 on any affected sailplane.	As of August 4, 2000 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance that were approved in accordance with AD 96–15–24 are not considered approved in accordance with this AD.

Note: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done as follows:

(i) Modification: In accordance with Stemme Service Bulletin No. A31–10–051, Amendment–Index: 05.a, dated December 6, 1999; and

(ii) Balancing: In accordance with Stemme Procedural Instruction A17–10AP–V/2–E "Dynamic balancing of the Stemme S10 powered glider propeller in the S10–V and S10–VT models", August 24, 1999.

(2) The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51.

(3) You can get copies from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73.

(4) You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on August 4, 2000.

Issued in Kansas City, Missouri, on July 17, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18597 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–11]

Modification of Class E Airspace; Shelbyville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Shelbyville, IN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, Amendment (Amdt) 1, and an RNAV SIAP to Rwy 19, Amdt 1, have been developed for Shelbyville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action realigns the existing Class E airspace to the northwest by 0.3 nautical miles (NM) for Shelbyville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 25, 2000, the FAA proposed to amend 14 CFR part 71 to

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modify Class E airspace at Shelbyville, IN (65 FR 24138). The proposal was to modify controlled airspace extending upward from the 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during poritons of the terminal operation and while transiting between the route and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Shelbyville, IN, to accommodate aircraft executing instrucment flight procedures into and out of Shelbyville Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and route amendments are necessary to keep them operationally current. Therefore this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Shelbyville, IN [Revised]

Shelbyville Municipal Airport, IN (Lat. 39°34'59" N., Long. 85°48'17" W.)
Shelbyville VORTAC (Lat. 39°37'57" N., Long. 85°49'28" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Shelbyville Municipal Airport, and within 1.8 miles each side of the Shelbyville VORTAC 340° radial, extending from the 6.7-mile radius to 9.6 miles northwest of the VORTAC, excluding that airspace within the Mount Confort, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on July 10, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–18892 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–13]

Modification of Class E Airspace; Ionia, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Ionia, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 27 has been developed for Ionia County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action increases the radius of the existing controlled airspace for Ionia County Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 25, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Ionia, MI (65 FR 24140). The proposal was to modify controlled airspace extending upward from the 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Ionia, MI, to accommodate aircraft executing instrument flight procedures into and out of Ionia County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Ionia, MI [Revised]

Ionia County Airport, MI
(Lat. 42°56′16″ N., long. 85°03′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Ionia County Airport.

* * * * *

Issued in Des Plaines, Illinois on July 10, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–18891 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–12]

Establishment of Class E Airspace; Greenwood/Wonder Lake, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Greenwood/Wonder Lake, IL. An Area Navigation–A (RNAV–A) Standard Instrument Approach Procedure (SIAP) has been developed for Galt Field Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action creates controlled airspace with an 8.8-mile radius for Galt Field Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 25, 2000, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Greenwood/Wonder Lake, IL (65 FR 24139). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Greenwood/Wonder Lake, IL, to accommodate aircraft executing the proposed RNAV–A SIAP at Galt Field Airport by creating controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1,1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL IL E5 Greenwood/Wonder Lake, IL [New]

Greenwood/Wonder Lake, Galt Field Airport, IL
(Lat. 42° 24′ 10″N., long. 88° 22′ 33″W.)

That airspace extending upward from 700 feet above the surface within a 8.8-mile radius of the Galt Field Airport, excluding that airspace within the Chicago, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on July 10, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–18890 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–15]

Modification of Class D Airspace; Chicago, Aurora Municipal Airport, IL; and Modification of Class E Airspace; Chicago, Aurora Municipal Airport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Chicago, Aurora Municipal Airport, IL, and modifies Class E airspace at Chicago, Aurora Municipal Airport, IL. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 15, and a VOR SIAP to Rwy 33, have been developed for Aurora Municipal Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D and Class E airspace for Aurora Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Chicago, Aurora Municipal Airport, IL (65 FR 25456). The proposal was to modify controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas designated as extensions to a Class D airspace area are published in paragraph 6004, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace at Chicago, Aurora Municipal Airport, IL, to accommodate aircraft executing instrument flight procedures into and out of Aurora Municipal Airport, IL. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL IL D Chicago, Aurora Municipal Airport, IL [Revised]

Chicago, Aurora Municipal Airport, IL
(Lat. 41°46'19" N., long. 88°28'32" W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within an 4.2-mile radius of the Aurora Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.

* * * * *

AGL IL E4 Chicago, Aurora Municipal Airport, IL [Revised]

Chicago, Aurora Municipal Airport, IL
(Lat. 41°46'19" N., long. 88°28'32" W.)

DuPage VOR/DME
(Lat. 41°53'25" N., long. 88°21'01" W.)

That airspace extending upward from the surface within 1.3 miles each side of the DuPage VOR/DME 217° radial extending from the 4.2-mile radius of the Aurora Municipal Airport to 6.6 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on July 10, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–18389 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–16]

Modification of Class D Airspace; Gary, IN; and modification of Class E Airspace; Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Gary, IN, and modifies Class E airspace at Gary, IN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 20, and a helicopter Instrument Landing System (Copter ILS) SIAP to Rwy 30, have been developed for Gary Regional Airport. Controlled airspace extending upward from the surface of

the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D and Class E airspace for Gary Regional Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Gary, IN, (65 FR 25457). The proposal was to modify controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace at Gary, IN, to accommodate aircraft executing instrument flight procedures into and out of Gary Regional Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation on a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL IN D Gary, IN [Revised]

Gary Regional Airport, IN
(Lat. 41° 36′ 59″ N., long. 87° 24′ 46″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within an 4.2-mile radius of the Gary Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Gary, IN [Revised]

Gary Regional Airport, IN
(Lat. 41° 36′ 59″ N., long. 87° 24′ 46″ W.)

That airspace extending upward from 700 feet above the surface within 6.7-mile radius of the Gary Regional Airport, excluding the airspace within the Chicago Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on July 10, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–18888 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 00–AGL–10]

Establishment of Class E Airspace; Minneapolis, Crystal Airport, MN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the legal description of a final rule that was published in the **Federal Register** on Wednesday, June 28, 2000 (65 FR 39792), Airspace Docket No. 00–AGL–10. The final rule established Class E Airspace at Minneapolis, Crystal Airport, MN.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 00–16335, Airspace Docket No. 00–AGL–10, published on June 28, 2000 (65 FR 39792), established Class E Airspace at Minneapolis, Crystal Airport, MN. An error in the legal description for the Class E airspace for Minneapolis, Crystal Airport, MN, was published. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace, Minneapolis, Crystal Airport, MN, as published in the **Federal Register** June 28, 2000 (65 FR 39792), (FR Doc. 00–16335), is corrected as follows:

PART 71—[CORRECTED]

§71.1 [Corrected]

On page 39792, Column 3, line 25, change (lat. 43°03′43″ N., long. 93°21′14″ W.) to (lat. 45°03′43″ N., long. 93°21′14″ W.).

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Issued in Des Plaines, Illinois on July 12, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–18887 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–02]

Modification of Class E Airspace; Marquette, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Marquette, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 19 has been developed for Sawyer International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action increases that portion of the existing Class E airspace which extends upward from 1,200 feet above the surface of the earth for Sawyer International Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, May 5, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Marquette, MI (65 FR 26158). The proposal was to modify controlled airspace extending upward from the 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on he proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Marquette, MI, to accommodate aircraft executing instrument flight procedures into and out of Sawyer International Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Marquette, MI [Revised]

Marquette, Sawyer International Airport, MI
(Lat. 46°21'13" N., Long. 87°23'45" W.)

That airspace extending upward from 700 feet above the surface within an 7.1-miles radius of the Sawyer International Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by latitude 47°05'00" N., on the east by longitude 86°23'30" W., on the south by latitude 45°45'00" N., and on the east by V9; excluding all Federal Airways, Hancock, MI, Escanaba, MI, and Iron Mountain, MI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on July 10, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–18893 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 981019261–0207–03]

RIN 0694–AB73

Export Administration Regulations Entity List: Revisions to the Entity List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On November 19, 1998, the Bureau of Export Administration (BXA) published a rule in the **Federal Register** (63 FR 64322) that added certain Indian and Pakistani entities to the Entity List in the Export Administration Regulations (EAR). Further revisions were made to the list of Indian entities on March 17, 2000 (65 FR 14444). This rule removes two Indian entities: the Nuclear Science Centre located in New Delhi and the Uranium Recovery Plant located in Cochin; and adds one Indian entity: Indian Space Research Organization (ISRO), Telemetry, Tracking and Command Network (ISTRAC) to the Entity List.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Director, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13, 1998, with regard to India and May 30, 1998, with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed in the determination reported to the Congress that the relevant agencies and instrumentalities of the United States take the necessary actions to implement the sanctions described in section 102(b)(2) of that Act. Consistent with the President's directive, the Bureau of Export Administration (BXA) implemented certain sanctions, as well as certain supplementary measures to enhance the sanctions on November 19, 1998 (63 FR 64322).

Based on a consensus decision by the Administration to more tightly focus the sanctions on those Indian entities which make direct and material contributions to weapons of mass destruction and missile programs and items that can contribute to such programs, BXA issued revisions to the list of Indian entities on March 17, 2000 (65 FR 14444). This rule makes additional revisions to the list by removing the Nuclear Science Centre located in New Delhi from the Entity List table in Supplement No. 4 to part 744. In addition, this rule removes the Uranium Recovery Plant located in Cochin from the subordinates listed under the Indian organization Department of Atomic Energy (DAE) in Appendix A to the Entity List, "Listed Subordinates of Listed Indian Organizations." Lastly, this rule adds the Indian Space Research Organization (ISRO), Telemetry, Tracking and Command Network (ISTRAC) to subordinates listed under the Indian organization Department of Space (DOS) in Appendix A to the Entity List.

The license review policy for ISTRAC will be one of denial for items controlled for NP or MT reasons, except items intended for the preservation of safety of civil aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other items subject to the EAR to ISTRAC will be reviewed with a presumption of denial, with the exception of items classified as EAR99, which will be reviewed with a presumption of approval.

The removal of entities from the Entity List does not relieve exporters or reexporters of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BXA's 'Know Your Customer' Guidance and Red Flags" when exporting or reexporting to India and Pakistan.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. This rule contains and involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P; and 0694–0111, "India Pakistan Sanctions," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p.302.

PART 744—[AMENDED]

2. Supplement No. 4 to part 744 is amended by:

a. Removing the entity "Nuclear Science Centre (NSC), New Delhi" from "India" in the table;

b. Removing "Uranium Recovery Plant, Cochin" from the subordinates listed under the Indian organization "Department of Atomic Energy (DAE)" in Appendix A, Listed Subordinates of Listed Indian Organizations; and

c. Adding in alphabetical order the entity "Indian Space Research Organization (ISRO), Telemetry, Tracking and Command Network (ISTRAC)" to the subordinates listed under the Indian organization "Department of Space (DOS)" in Appendix A to Supplement No. 4 to part 744 A, Listed Subordinates of Listed Indian Organizations.

Dated: July 18, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–18820 Filed 7–25–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 990713190–0155–02; I.D. 041599B]

RIN 0648–AH63

Fisheries of the Northeastern United States; Amendment 1 to the Fishery Management Plan for the Atlantic Bluefish Fishery; Spiny Dogfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to implement approved measures contained in Amendment 1 (Amendment 1) to the Fishery Management Plan for the Atlantic Bluefish Fishery (FMP). Amendment 1 contains a number of measures requiring regulatory implementation to control fishing mortality on Atlantic bluefish (bluefish). This rule implements permit and reporting requirements for commercial vessels, dealers, and party/charter boats; implements permit requirements for bluefish vessel operators; establishes a Bluefish Monitoring Committee (Committee) charged with annually recommending to the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) the total allowable landings (TAL) and other restrictions necessary to achieve the target fishing mortality rates (F) specified in the FMP; establishes a framework adjustment process; establishes a 9-year stock rebuilding schedule; establishes a commercial quota with state allocations; and establishes a recreational harvest limit. The purpose of this rule is to control fishing mortality of bluefish and rebuild the stock. Also, this rule makes technical amendments to the regulations implementing the Spiny Dogfish Fishery Management Plan. In addition, this rule makes technical amendments to crossreferencing regulations managing the American lobster fishery. Furthermore, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections.

DATES: This rule is effective August 25, 2000.

ADDRESSES: Copies of Amendment 1, its Regulatory Impact Review, the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION: This final rule implements the measures to control fishing mortality of bluefish contained in Amendment 1, which were approved by NMFS on behalf of the Secretary of Commerce (Secretary) on July 29, 1999. Amendment 1 also addresses the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act. Two primary examples of these requirements are establishing a rebuilding plan to rebuild the bluefish stock from an overfished condition and describing and identifying essential fish habitat (EFH) for bluefish. As part of the rebuilding plan, Amendment 1 contains a new overfishing definition for the bluefish stock and a 9-year rebuilding schedule. The rebuilding plan was also approved by NMFS. The overfishing definition is not being codified in regulations. NMFS did not approve all of Amendment 1. NMFS disapproved the *de minimus* provision related to state allocations of the commercial quota, the portion of the essential fish habitat (EFH) section assessing the effects of fishing gear on bluefish EFH, and the description and analysis of fishing communities. All of the other measures contained in Amendment 1, as originally submitted, were approved. A proposed rule to implement these measures was published on August 23, 1999 (64 FR 45938).

The *de minimus* provision, which would have exempted states receiving less than 0.1 percent of the overall allocation from participating in the state allocation system, was disapproved because it is inconsistent with National Standard 1 of the Magnuson-Stevens Act, which requires that management measures prevent overfishing. This provision lacks any clear obligation on the part of the *de minimus* state to close its commercial bluefish fishery once its quota is harvested. This could result in a state's *de minimus* quota being rapidly exceeded and could result in overfishing of the bluefish stock.

A portion of the EFH provisions were disapproved because Amendment 1 failed to list and to consider adequately the potential adverse impacts of all fishing gear used in the waters described as EFH, particularly those waters under state jurisdiction. A significant portion of bluefish EFH occurs within state waters and the Council has indicated that there is some linkage between juvenile bluefish and submerged aquatic vegetation (SAV). Amendment 1 indicates that there are impacts to SAV from certain estuarine fishing gear. However, these gear are not listed in Section 2.2.3.6 (Fishing Gear Used Within the Bluefish Range), their potential impacts to bluefish EFH are not assessed in Section 2.2.3.7 (Fishing Impacts to Bluefish EFH), nor are the measures for managing potential adverse impacts considered in Section 2.2.4 (Options for Managing Adverse Effects from Fishing). These three sections of the EFH designation in the amendment were, therefore, disapproved.

The description and analysis of fishing communities was disapproved because the communities involved in the present day fishery are not sufficiently identified and the amendment does not describe or consider impacts on recreational fishing communities, such as Ocean City, Maryland, Virginia Beach, Virginia, or Oregon Inlet, North Carolina. The fishing communities section of Amendment 1 is based on the 1993 surveys of the Mid-Atlantic commercial fishing communities by McCay et al. Dependence of communities on the fishery is not assessed or considered, and the requirements of section 303(a)(9) and national standard 8 are not satisfied.

Details concerning the justification for and development of Amendment 1 and the implementing regulations were provided in the notice of availability (NOA) of Amendment 1 (64 FR 23260, April 30, 1999) and in the preamble to the proposed rule (64 FR 45938, August 23, 1999) and are not repeated here.

Approved Measures

Overfishing Definition and Rebuilding Schedule

Amendment 1 revises the definitions of overfishing and overfished in the FMP to include an F and biomass (B) component, respectively. Overfishing is defined as occurring when F is greater than the maximum F threshold, specified as F_{msy} = 0.4; and the bluefish stock is considered overfished when biomass is less than the minimum biomass threshold, specified as $1/2B_{msy}$ = 118.5 million (mil) lb (53,750 mt). The long-term F target is 90 percent of F_{msy} and the long-term B target is B_{msy}. The overfishing definition contained in Amendment 1 is not codified in regulations.

In accordance with § 648.160(a), the rebuilding plan provides for the bluefish stock to be rebuilt to B_{msy} over a 9-year period. In the first (1999) and second (2000) years of rebuilding, F remained/remains at the 1998 level, F=0.51; in years 3 through 5 (2001, 2002, and 2003), F will be reduced to F=0.41; and in years 6 through 9 (2004, 2005, 2006, and 2007), F will be reduced to F=0.31. Once rebuilding is achieved, F will be set at F=0.36, and continue to be that value as long as the stock is not overfished.

The Council's analysis of the impacts of the rebuilding program was based on the 9-year period for fishing years 1999 through 2007. Although the rebuilding plan was approved on July 29, 1999, NMFS did not implement the plan in 1999 in Federal waters because of delays in publishing this final rule. However, the states participating in the bluefish fishery took action for 1999 in accordance with the rebuilding schedule of Amendment 1 through the ASMFC and their own existing administrative programs for managing quotas in the commercial fishery for bluefish. Therefore, fishing year 2000 will be the second year of the rebuilding plan.

Annual Adjustment Process and Bluefish Monitoring Committee

This final rule establishes a Bluefish Monitoring Committee that is a joint committee of the Council and the Commission made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, NMFS Northeast Regional Office, NMFS Northeast Fisheries Science Center, and the Commission. The Committee will review annually the best available data and recommend commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits, and seasonal closures) measures designed to ensure that the F for bluefish for that given year is not exceeded.

EFH for Bluefish

Specific description and identification of EFH for bluefish that is contained in Section 2.2.2.2 of Amendment 1 was approved. The Council did not identify any habitat areas of particular concern for bluefish.

Recreational Harvest Limit and Commercial Quotas

This final rule establishes a procedure to specify an annual coastwide harvest level that is to be divided into two separate TAL values, one each for the recreational and commercial sectors. The relative shares of the annual coastwide harvest level for the recreational and commercial sectors are 83 and 17 percent, respectively. These values are based on the average catch composition of the two sectors during the 1981 through 1989 fisheries. The commercial TAL is further allocated to the states from Maine through Florida based on their percentage share of commercial landings for the period 1981 through 1989. However, this rule provides for an exception to the split of the annual coastwide harvest level between 83 percent of the recreational sector and 17 percent for the commercial sector. If 17 percent of the annual coastwide harvest level for a given year is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial TAL may be allocated up to 10.5 million lb (4.8 million kg) (the average commercial landings for the period 1991 through 1996) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. This strategy was adopted to ensure that commercial landings would not be unduly constrained under a low annual coastwide harvest level and a proportionally low recreational landing. The annual coastwide harvest limit will be set annually, based on the F values specified in the rebuilding schedule, and a target F=0.36, once rebuilding is achieved.

Allocations for the Commercial Fishery

For fishing year 1999, the states implemented a TAL of 36.84 million lb (16.71 million kg), consistent with the first year of the rebuilding plan approved under Amendment 1 (see § 648.160(a)). The commercial fishery was allocated 9.583 million lb (2.69 million kg). State-by-state allocation of the commercial TAL was based on the percentages listed in § 648.160(e)(1).

Framework Adjustment Process

In addition to the annual review and modifications to management measures associated with the Monitoring Committee process, Amendment 1 and the final rule set forth procedures allowing the Council to add or modify management measures through a streamlined public review process called a framework adjustment process. As such, management measures that have been identified in Amendment 1 could be implemented or adjusted at any time during the year following consideration of the measures and associated analyses during at least two Council meetings. The recommended management measures may then be implemented through a final rule without first publishing a proposed rule. The measure identified in Amendment 1 add gear restrictions, minimum and maximum fish size, permitting restrictions; changes in the recreational possession limit, recreational and commercial seasons, closed areas to address overfishing if it is deemed necessary in the future, description and identification of EFH and fishing gear management measures that impact EFH, and description and identification of habitat areas of particular concern.

Permit and Reporting Requirements

This final rule adds permit and reporting requirements that mirror similar requirements for other Northeast fisheries. These measures include new permitting requirements for Federal commercial vessels, charter and party boats, dealers, and vessel operators, and new reporting requirements for commercial and charter/party boat vessels and dealers. In addition to logbook reporting, dealers will be required to participate in the Northeast Interactive Voice Reporting (IVR) system to assure timely reports for purposes of quota monitoring.

Implementation of a commercial vessel permitting system represents a modification of the present system where individuals, and not vessels, are issued a permit to sell bluefish. Under bluefish regulations prior to Amendment 1, any person selling a

bluefish harvested from the exclusive economic zone is identified as a commercial fisherman and must have had a commercial fishing permit issued by a state or by NMFS that allows the sale of bluefish (i.e., the individual is licensed). The new management measure allows the sale of bluefish harvested in Federal waters only from vessels issued a Federal permit. The Council believes that the bulk of the bluefish that enters the market is harvested by commercial vessels. However, at Council and committee meetings, it has been noted that certain individuals, such as those who fished from a vessel they did not own or operate and then sold their catch, would be affected by the changeover to a vessel permit. These individuals would be subject to the recreational possession limit and would no longer be able to sell bluefish.

This rule also makes technical amendments to the regulations implementing the Spiny Dogfish FMP published on January 11, 2000, at 65 FR 1557 and whose effectiveness was delayed, first, to March 15, 2000 (65 FR 7461, February 15, 2000), second, to March 27, 2000 (65 FR 15110, March 21, 2000), and third, to April 3, 2000 (65 FR 16844, March 30, 2000). The final rule implementing the Spiny Dogfish FMP inadvertently removed the requirement contained in § 648.5 for surf clam and ocean quahog operators to obtain an operator permit. This final rule corrects the regulations in § 648.5(a) by adding surf clam and ocean quahog to the list of species identified.

In addition, the final rule published on December 6, 1999 (64 FR 68228), implemented measures to manage the American lobster fishery in the EEZ from Maine through North Carolina. The final regulations removed part 649 of 50 CFR Chapter VI. However, a crossreference to part 649 contained in § 648.5 was not removed at the time of implementation of the final rule. This final rule removes the crossreference to part 649.

Comments and Responses

Ten written comments on Amendment 1 were received by NMFS during the comment period established by the NOA for Amendment 1, which ended June 29, 1999. These comments were considered by NMFS before it partially approved Amendment 1 on July 29, 1999. Those comments received during the comment period on Amendment 1 are addressed here.

NMFS received one additional comment on the proposed rule during the comment period ending on October 7, 1999. Because the comment period was distinct from, and followed the comment period for the amendment, the comment received during the proposed rule period was not considered in NMFS' determination to partially approve Amendment 1. This comment is addressed here.

Comment 1: Two commenters considered the EFH portion of the Amendment to be overly broad and to exceed the intent of Congress. The commenters specifically cited the breadth of EFH designations, noting that EFH appeared to be designated in an arbitrary manner, over the range of the species, and included coastal state and estuarine waters. One commenter notes that NMFS and the Council should clarify and elaborate on its views as to how the Amendment relates to the EFH consultation and recommendation requirements.

Response: The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH regulations explain that this definition should be interpreted to include associated physical, chemical and biological properties that make the habitat appropriate for use by the species and may include aquatic areas historically used by fish where appropriate. The geographic extent of EFH for a species should be based on the habitat necessary to support a sustainable fishery and the managed species contribution to a healthy ecosystem, and can include state and Federal waters. The Council's EFH description and identification are consistent with these requirements. The information that the Council used for EFH designation was primarily species distributions and relative abundance data, which would be classified as "Level 2" information under the EFH regulations (50 CFR 600.815). The use of this data in determining EFH is fully explained within the text of the amendment. Upon approval of the EFH designations, Federal agencies must consult with NMFS regarding any action that may adversely affect EFH, and NMFS must provide conservation recommendations regarding any Federal or state agency action that would adversely affect EFH, pursuant to section 305(b) of the Magnuson-Stevens Act.

Comment 2: A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the Amendment are not based on the best available science, nor sufficiently supported. Two commenters contended that the recommended measures do not take into consideration current practices, are likely to be in conflict with measures being pursued under other regulatory programs, and may cause severe over-regulation. One commenter also stated that the Magnuson-Stevens Act did not empower the Fishery Management Councils to address non-fishing activities.

Response: NMFS disagrees that the conservation and enhancement recommendations for non-fishing impacts to EFH are not based on the best available science. The information presented in this section of the Amendment is well researched and substantiated. Discussions of actions with the potential to adversely affect EFH and accompanying conservation and enhancement recommendations were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to "identify other actions to encourage the conservation and enhancement of EFH." This information is exemplary and provided to assist non-fishing industries in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these or similar recommendations are needed or implemented.

Comment 3: Two commenters stated that the Amendment contains no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenters suggested that the consultation and conservation recommendation provisions of the Act will be burdensome and unworkable. One commenter contended that the consultation procedures will be redundant with the National Environmental Policy Act (NEPA), costly, and time consuming.

Response: The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. "Adverse effects," as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that may have a reasonably foreseeable adverse effect require consultation. The EFH regulations provide for streamlined consultation procedures in which the level of

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consultation for any action is commensurate with the degree of potential impact to EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

Comment 4: One commenter expressed concern regarding the inclusion of two frameworkable measures: (1) "Description and identification of EFH," and (2) "Description and identification of habitat areas of particular concern." The commenter is concerned that the framework process would allow changes to these measures to be published as a final rule without first publishing them as a proposed rule. The commenter states that non-fishing interests lack representation at Council meetings and, therefore, will not have an opportunity to comment on actions regarding EFH. The commenter asserts that the framework adjustment process for these two measures will foster inconsistencies in treatment among the different NMFS Regions and the Councils, thereby complicating the EFH consultation process. The commenter requests that the inclusion of these measures be delayed until revision of NMFS EFH interim final regulations and guidelines.

Response: The framework adjustment process requires the Councils, when making specifically allowed adjustments to the FMP, to develop and to analyze the actions over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings through publication of the meeting agenda in the **Federal Register**, the proposals and the analysis, and provide an opportunity to comment on the proposals prior to, and at, the second Council meeting. Commenters may also submit written comments to the Council before or during the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Administrator, Northeast Region, NMFS (Regional Administrator), that the measures be published as a final rule, if certain conditions are met. NMFS may either publish the measures as a final rule, or as a proposed rule if NMFS or the Council determines that additional public comment is needed. Within the guidelines, modifications to EFH and Habitat Areas of Particular Concern can be implemented in a expedited manner while providing ample notice and opportunity for comment by all stakeholders.

Comment 5: A commenter stated that the Amendment generally failed to address the potential for significant adverse impacts of the Amendment on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act.

Response: The description and identification of aquatic areas or substrate as EFH for a species or life stage does not carry with it any regulation or restriction of any activity. Following designation of EFH, NMFS, on behalf of the Secretary, is required to minimize, to the extent practicable, adverse impacts to EFH from fishing, and Federal action agencies are required to consult with NMFS on any action it authorizes, funds, or undertakes that may adversely affect EFH. NMFS' regulations of fishing in the EEZ or another action agency's regulation of non-fishing activities must comply with all applicable laws, such as the National Environmental Policy Act (NEPA) and the Regulatory Flexibility Act (RFA).

Comment 6: One commenter asserts that the Amendment is inconsistent with the Magnuson-Stevens Act national standards 1, 2, and 7.

Response: In regard to national standard 1, the Amendment utilizes a NMFS-certified overfishing definition developed by scientists from the Universities of Rhode Island and Connecticut. The overfishing definition was also adopted by the Bluefish Technical Monitoring Committee and approved by the Science and Statistical Committee of the Council. The rebuilding schedule will allow the stock of Atlantic bluefish to rebuild to a level of maximum sustainable yield in 9 years. The overfishing definition and rebuilding strategy are consistent with national standard 1. Because the overfishing definition for bluefish contains a $B_{threshold} = 1/2B_{msy}$ and $B_{target} = B_{msy}$, and the F_{target} is less than F_{msy}, the definition complies with national standard 1 guidelines. Also, the rebuilding schedule for bluefish is in compliance with national standard 1 because it is less than 10 years, but also takes into account the needs of fishing communities (especially in years 1 and 2 by not having a lower F value). The Amendment is consistent with national standard 2 since it relies on the best scientific information available.

The commenter does not elaborate upon the assertion that the Amendment violates national standard 7, so NMFS assumes, for the purpose of responding to their comment, that the commenter is alleging that the EFH consultation process is duplicative of other federally required consultation procedures. NMFS has determined that the Amendment is consistent with the Magnuson-Stevens Act, including national standard 7. Interagency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act. As explained earlier, EFH consultations will be incorporated whenever practicable into existing review processes and be accomplished within existing process time frames. NMFS is committed to a consultation process that will be effective, efficient, and non-duplicative. The EFH regulations at 50 CFR 600.920 suggest that NMFS be consulted as early as possible in project planning so that appropriate conservation measures can minimize the potential for adverse effects to the EFH. The Amendment contains conservation recommendations that are appropriate for many Federal actions, and that can also serve as guidelines during project planning.

Comment 7: One commenter believed the Council should have adopted a 5-year rebuilding strategy in lieu of a 9-year strategy explaining that a 5-year plan would end overfishing and begin recovery as soon as possible. In addition, the 5-year rebuilding schedules evaluated by the Council show that the recovery alternatives generate similar and sometimes greater cumulative commercial revenues and cumulative recreational harvest limits compared to the preferred alternative.

Response: The Council believes and NMFS agrees that the 9-year strategy could mitigate short-term potential negative economic impacts to the recreational and, under certain scenarios, to the commercial sector. The Amendment will allow a transfer of up to 10.5 million lb (4.8 million kg) to the commercial sector if the recreational sector is not projected to take their share of the quota. In the years that this entire amount can be transferred, there is no difference in revenues to the commercial sector, because under any rebuilding strategy this sector would be able to fish the 10.5 million lb (4.8 million kg) cap. However, in years when the transfers cannot take place the commercial quotas would be substantially less under the 5-year plan as opposed to the 9-year plan. Recreational revenues are usually less for the first five years under the 5-year rebuilding plans, but much greater thereafter. NMFS recognizes that overfishing may occur in 1999 and 2000 although given recent landings information this seems highly unlikely. Recreational landings have been decreasing and were roughly half of the

present quota in 1997. However, NMFS believes that the Council, in adopting the 9-year strategy, is attempting to end overfishing as soon as possible while maintaining an optimum yield that will not unduly harm participants in the fishery.

Comment 8: Two commenters were concerned about the potential economic and social impacts of a minimum recreational size limit and effects of the size limit on communities.

Response: This is a moot issue since the Amendment does not implement a size limit, only a mechanism for doing so through the framework or the annual adjustment process. The required analysis would be completed at that time. Shore based fisheries are regulated by state actions that may complement Amendment 1, but are not directly regulated by the FMP.

Comment 9: One commenter raised concern with transferring the projected recreational surplus of up to 10.5 million pounds to the commercial quota. The commenter believes that this will increase the length of time required for the stock to rebuild.

Response: The Council adopted this strategy to ensure that commercial landings would not be unduly constrained under low allowable harvest levels and proportionally low recreational landings. Commercial and recreational bluefish industry representatives who attended Council and committee meetings on Amendment 1 support this compromise. The recreational and commercial quotas would be set annually based on the fishing mortality rates specified in the rebuilding schedule. This matter is discussed in length in the Initial Regulatory Flexibility Analysis (IRFA) summary contained in the classification section of the proposed rule.

Comment 10: One commenter had concerns regarding National Standard 8, which requires management measures to consider affects on communities, and section 303(a)(9), which requires a fishery impact statement.

Response: The description and analysis of fishing communities was disapproved because the communities involved in the present day fishery are not sufficiently identified and Amendment 1 does not describe or consider impacts on recreational fishing communities, such as Ocean City, Maryland, Virginia Beach, Virginia, or Oregon Inlet, North Carolina. The fishing communities section of Amendment 1 is based on the 1993 surveys of the Mid-Atlantic commercial fishing communities by McCay et al. Dependence of communities on the fishery is not assessed or considered, and the requirements of Section 303(a)(9) and National Standard 8 have not been satisfied. However, NMFS informed the Council of these deficiencies of the Amendment and expects the Council to provide this type of analysis in the future.

Comment 11: One commenter believed that charter/party vessels should not be subject to the monthly vessel trip report (VTR) requirements due to the existing Marine Recreational Fisheries Statistics Survey and the apparent lack of rationale for requiring monthly logbooks. In addition, the commenter states that hull identification numbers should be included as a required element of permits and reporting logbooks, and that Amendment 1 should not be inconsistent with the Atlantic Coastal Cooperative Statistics Program (ACCSP) system.

Response: The VTRs for charter/party vessels are currently necessary to ensure appropriate quota monitoring in fisheries. The VTR is an established system of mandatory reporting familiar to and used by the Council for quota and total allowable catch monitoring purposes. This reporting requirement will help satisfy the required provision of the Magnuson-Stevens Act to describe and to quantify trends in landings of the commercial, recreational and charter fishing sectors. Hull identification numbers, either U.S. Coast Guard (USCG) documentation number or state registration number, are required information on VTRs, and this will be clarified in the regulatory text. While the ACCSP may establish preferable monitoring systems, the program is not operational in the region. Until such time as the ACCSP establishes an appropriate monitoring system, the VTRs are necessary. The data collection aspects of Amendment 1 are subject to the framework adjustment process to allow for conversion to the ACCSP program in the future.

Changes From the Proposed Rule

In § 648.4(a)(8)(ii), the phrase "to fish for bluefish" was expanded to read "to fish for, possess, or land Atlantic bluefish in or from the EEZ."

In § 648.7, paragraph (b) was revised to add spiny dogfish to the list of species for which permit conditions apply. The final rule implementing the Spiny Dogfish FMP became effective on April 3, 2000, after the proposed rule for Amendment 1 to the Bluefish FMP was published.

Several paragraphs in § 648.7 were modified to make it easier for the public to understand which dealers are affected by the reporting requirements specified in that part. The current mandatory dealer reporting system was incorporated into each fishery management plan through plan amendments that occurred over a period of years. As amendments were implemented this section listed by species the dealers subject to this requirement. Now that the requirement has been incorporated into all of the Northeast Region fishery management plans, it is not necessary to list dealer permits by species. Therefore, § 648.7(a)(1)(i) has been modified to show it applies to "All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit;" § 648.7(a)(3)(i) has been modified to show that it applies to "All dealers issued a dealer permit under this part."

For the same reason, a similar modification was made to § 648.7(b)(1)(i) to clarify that the vessel reporting requirement applies to "The owner or operator of any vessel issued a permit under this part."

In § 648.14(w)(2), the phrase "Atlantic bluefish taken from a fishing vessel" was expanded to read "Atlantic bluefish taken from a fishing vessel that were harvested in or from the EEZ." In § 648.14(w)(3), the phrase "dealer or transferee has a dealer permit issued under § 648.6(a)" was replaced by "vessel has a valid bluefish permit issued under § 648.4(a)(8)(i)." The prohibition at § 648.14(w)(7) was removed and replaced by "To purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested." A new paragraph was added at § 648.14(w)(8) that prohibits dealers from purchasing bluefish from federally-permitted vessels after publication of a notification stating that the commercial quota has been harvested.

Section 648.160(d) is revised to indicate that NMFS will only issue one proposed rule and final rule annually in the Federal Register to include both the commercial and recreational measures. The proposed rule for Amendment 1 indicated that a separate proposed and final rule would be issued annually for recreational fishing measures.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number

0648–0202 for §§ 648.91 through 648.94, and § 648.96.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

NMFS determined on July 29, 1999, that Amendment 1 that this rule implements is consistent with the Magnuson-Stevens Act and other applicable laws, with the exception of the de minimus provision, the fishing communities section, and the portion of the EFH section dealing with the effect of fishing gear on bluefish EFH.

This rule has been determined to be significant for the purposes of Executive Order 12866.

The Council prepared an FEIS for this Amendment; an NOA for the FEIS was published in the **Federal Register** on June 25, 1999. NMFS determined upon review of Amendment 1 and its accompanying FEIS and public comments that approval and implementation of Amendment 1 is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to halt overfishing and to rebuild the Atlantic bluefish stock; protect marine mammals and endangered species; provide economic and social benefits to the fishing industry in the long term; and contribute to better balance in the ecosystem in terms of the Atlantic bluefish resource.

In compliance with the RFA, the Council prepared and NMFS adopted an IRFA contained in Amendment 1 that describes the economic impacts of the proposed rule, if adopted, on small entities. The final regulatory flexibility analysis (FRFA) consists of the IRFA, public comments and responses thereto, the analysis of impacts and alternatives in Amendment 1 to the Atlantic Bluefish FMP, a description of the need for, and objectives of the rule found in the preamble of the proposed rule, and a summary of the impacts on small entities as published in the classification section of the proposed rule, all of which are not repeated here. A summary of the FRFA is as follows:

Need for and Objectives of the Rule

NMFS is issuing this final rule to implement approved management measures contained in Amendment 1 to the Bluefish FMP. The purpose of this rule is to control fishing mortality of bluefish and begin rebuilding the stock.

Public Comments

There were several public comments submitted during the public comment period for the proposed rule that related to impacts on small entities, including comments 5 and 6. The public comments and responses thereto are contained in the preamble to this rule. No changes were made to the proposed rule.

Number of Small Entities

In the full permit year of 1998, there were 1,126 Federal bluefish permits issued to individuals. All of these individuals readily fall within the definition of a small business. NMFS estimated that 190 Federal permits held by individuals are associated with commercial vessel ownership. The number of recreational vessels that sell their catch and could apply for a vessel permit is unknown.

Projected Reporting and Recordkeeping Requirements

This rule would add bluefish permit and reporting requirements that mirror similar requirements for other Northeast fisheries. These measures include new permitting requirements for Federal commercial bluefish vessels, bluefish charter and party boats, bluefish dealers, and bluefish vessel operators, and new reporting requirements for bluefish dealers and owners or operators of commercial bluefish vessels and bluefish charter and party boats. In addition to logbook reporting, dealers would be required to participate in the IVR system to assure timely reports for purposes of quota monitoring.

Cost of Compliance

The alternatives concerning vessel and dealer permitting and reporting have no effect on revenues and represent a minute portion of the cost of doing business. The Council estimated that 249 new vessel permit applicants, 500 new charter/partyboat vessel permit applicants, and 97 dealers would each spend $7.50 to apply for a permit and $20.00 per year for reporting requirements. In addition, no special knowledge is required to fill out the permit application. No additional costs of compliance would result from the implementation of the preferred or other alternative.

Steps Taken to Minimize Economic Impacts

This final rule minimizes economic impacts on small entities by implementing a 9-year rebuilding plan. Rebuilding may occur faster if fishing for bluefish in Federal waters were prohibited altogether. However, the Council recommended and NMFS implements through this rule a 9-year rebuilding program that takes into account the economic needs of fishery participants to continue some level of fishing for bluefish while also meeting the statutory requirement to rebuild the fishery in as short a time frame as possible but within 10 years.

Reason for Selecting Alternatives in the Rule and Reasons for Rejecting Other Alternatives

The alternative rebuilding schedules were rejected, because they would not have provided the same stability in projected yields, and would have resulted in greater short-term economic losses for the commercial sector, compared to the alternative implemented by this rule.

The quota allocation between the commercial and recreational fisheries implemented by this rule was chosen because it was based on time period (1981–1989) that reflects the composition of the fishery when bluefish stock abundance was fairly high and stable. The recreational harvest limit of 10 fish was chosen in order to keep recreational harvest within its allocation over the course of the fishing year. The quota allocation periods other than 1981–1989 that were evaluated for the basis of any split between the commercial and recreational sectors were either too short (e.g., 1985–1989) or were based partly on catches attained during periods of relatively low stock abundance (e.g., 1981–1993) ; therefore they were rejected.

The commercial vessel, charter/party boat and dealer permitting and reporting requirements implemented by this rule were chosen over the status quo (individual permits) so that NMFS will be better able to monitor the quota, to close the commercial fishery when the quota is reached, and evaluate harvest capacity. The Council also considered the status quo alternative of continuing the issuance of permits to individuals. Although this would mitigate the economic impacts of the proposed vessel permitting scheme, the Council notes that under individual permitting, the monitoring of the quota system would likely be undermined, because it would be very difficult to contact individuals with timely notifications or obtain information required for quota reports. Implementation and enforcement of commercial closures and commercial minimum fish sizes that are essential to managing the fishery would be compromised by the continued permitting of individuals. Furthermore, harvesting capacity or fishing power could not be evaluated under a regime

of individual permits. The ability to monitor and to enforce commercial fishing quotas is essential to meeting the agency's fishery conservation and management responsibilities under the Magnuson-Stevens Act.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains 8 new collection-of-information requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been approved by the OMB, and the OMB control numbers and public reporting burden are listed as follows:

Bluefish vessel permits, OMB control number 0648–0202 (30 minutes/response).

Bluefish dealer permits, OMB control number 0648–0202 (12 minutes/response).

Bluefish vessel identification, OMB control number 0648–0202 (45 minutes/response).

Employment section of the Processed Products Report, OMB control number 0648–0202 (2 minutes/response).

State quota transfer applications, OMB control number 0648–0202 (60 minutes/response). Vessel trip reports, OMB control number 0648–0212 (5 minutes/response).

Dealer reports through IVR system, OMB control number 0648–0229 (4 minutes/response).

Dealer reports for NOAA Form 30–80, OMB control number 0648–0229 (2 minutes/response).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 17, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the entry for § 648.7 and adding a new entry for § 648.160 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.7	–0018, –0202, –0212, and –0229
* * * * *	
648.160	–0202
* * * *	

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Bluefish Committee" is removed and a new definition for "Bluefish Monitoring Committee" is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Bluefish Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Mid-Atlantic Fishery Management Council's Executive Director or a designee chairs the committee.

* * * * *

3. In § 648.4, paragraphs (a)(8), (b) and (c)(2)(i) are revised, and paragraph (c)(3) is removed as follows:

§ 648.4 Vessel permits.

(a) * *ensp;*

(8) *Atlantic bluefish vessels.* (i) *Commercial.* Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels.* Any party or charter boat must have been issued and carry on board a valid party or charter boat permit to fish for, possess, or land Atlantic bluefish in or from the EEZ if it is carrying passengers for hire. Persons on board such vessel must observe the possession limits established pursuant to § 648.164, and the prohibitions on sale specified in § 648.14(w).

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, black sea bass moratorium or bluefish commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the

respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, spiny dogfish, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3' N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3' N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

(c) * * *

(2) * * *

(i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable), home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category, if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

* * * * *

4. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, spiny dogfish, or bluefish, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit. An operator's permit issued pursuant to part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

5. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, spiny dogfish, or bluefish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species.

* * * * *

6. In § 648.7, in paragraphs (a)(1)(i) and (a)(3)(i) the first sentence is revised and in paragraph (b)(1)(i) the heading is removed and (b)(1)(i) is revised as follows:

§ 648.7 Record keeping and reporting requirements.

(a) * * *

(1) * * *

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, which ever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(3) * * *

(i) All dealers issued a dealer permit under this part, with the exception of those processing only surf clams or ocean quahogs, must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a permit under this part must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surf clam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name, USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species (or count,

if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

7. In § 648.11 the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterfish, or scup, or black sea bass, or bluefish, or spiny dogfish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, or a bluefish permit, or a spiny dogfish permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or spiny dogfish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or spiny dogfish, or other specimens taken by the vessel.

* * * * *

8. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (bluefish), K (spiny dogfish), of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfish, the summer flounder, the scup, the black sea bass, the spiny dogfish, and the bluefish fisheries:

* * * * *

9. In § 648.14, paragraphs (w)(1) through (5) are revised and paragraphs (w)(6), (w)(7), (w)(8), and (x)(9) are added to read as follows:

* * * * *

§ 648.14 Prohibitions.

(w) * * *

(1) Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except solely for transport on land, Atlantic bluefish taken from a fishing vessel that were harvested in or from the EEZ unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under § 648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under § 648.4(a)(8)(i).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the **Federal Register** , pursuant to § 648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to an Atlantic bluefish permit issued under § 648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the **Federal Register** pursuant to § 648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) To purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the **Federal Register** stating that the commercial quota has been harvested.

(8) To purchase or otherwise receive for a commercial purpose bluefish harvested by a federally permitted vessel after the effective date of the notification published in the **Federal Register** stating that the commercial quota has been harvested.

(x) * * *

(9) All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.

10. Subpart J is revised to read as follows:

Subpart J—Management Measures for the Atlantic Bluefish Fishery

Sec.

648.160 Catch quotas and other restrictions.
648.161 Closures.
648.162 Minimum fish sizes.
648.163 Gear restrictions.
648.164 Possession restrictions.
648.165 Framework specifications.

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) *Annual review.* The Bluefish Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve a target fishing mortality rate (F) of 0.51 in 1999 and 2000; a target F of 0.41 in 2001, 2002, and 2003; a target F of 0.31 in 2004, 2005, 2006, and 2007; and a target F of 0.36 thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) *Recommended measures.* Based on the annual review, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) A TAL set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 20 bluefish to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls and gill nets.

(c) *Allocation of the TAL*—(1) *Recreational harvest limit.* A total of 83 percent of the TAL will be allocated to the recreational fishery as a harvest limit.

(2) *Commercial quota.* A total of 17 percent of the TAL will be allocated to the commercial fishery as a quota. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the

recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL.

(d) *Annual fishing measures.* The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to assure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to assure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the **Federal Register** on or about October 15, to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial and recreational fisheries to assure that the applicable specified F will not be exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

(e) *Distribution of annual commercial quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

STATE	PERCENTAGE
ME	0.6685
NH	0.4145
MA	6.7167
RI	6.8081
CT	1.2663
NY	10.3851
NJ	14.8162
DE	1.8782
MD	3.0018
VA	11.8795
NC	32.0608
SC	0.0352
GA	0.0095
FL	10.0597
TOTAL	100.0000

Note: The "Total" does not actually add up to 100.0000 because of rounding error.

(2) All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notification of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the **Federal Register**.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981-89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the hanges in allocation.

§ 648.161 Closures.

(a) *EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if the Regional Administrator determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has

been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

§ 648.162 Minimum fish sizes.

If the Council determines through its annual review or framework adjustment process that minimum fish sizes are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objective, such measures will be enacted through the procedure specified in § 648.160(d) or 648.165.

§ 648.163 Gear restrictions.

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in §§ 648.160(d) or 648.165.

§ 648.164 Possession restrictions.

(a) No person shall possess more than 10 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

§ 648.165 Framework specifications.

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 00–18648 Filed 7–25–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–2–000]

Regional Transmission Organizations

Issued July 20, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of guidance for processing Order No. 2000 Filings.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is establishing and clarifying procedures regarding the filings related to the formation of Regional Transmission Organizations, as required by 18 CFR 35.34(c) and 35.34(h). These regulations were adopted in the Commission's Order No. 2000. (65 FR 809).

FOR FURTHER INFORMATION CONTACT: Brian R. Gish, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0996.

SUPPLEMENTARY INFORMATION:

Notice of Guidance for Processing Order No. 2000 Filings

In Order No. 2000,[1] the Commission issued regulations requiring all transmission-owning public utilities to make certain filings.[2] This notice establishes and clarifies procedures related to those filings.

Timing of Filings

The regulations establish two deadlines for the required filings. Section 35.34(c) sets forth the general rule that filings are due by October 15, 2000, and section 35.34(h) establishes January 15, 2001 as the deadline for public utilities already participating in approved transmission entities.[3] Attached as an Appendix to this Notice is a list of the public utilities that the Commission deems to be within section 35.34(h) with a January 15, 2001 filing deadline. All other transmission-owning public utilities are subject to the October 15, 2000 deadline. Of course, any public utility may file before its deadline. In addition, transmission-owning non-public utilities who wish to voluntarily establish RTOs or join other RTO proposals along with public utilities may also voluntarily make filings on or before these deadlines.

Docketing of Filings

Each filing made in compliance with Order No. 2000, whether it is a proposal to participate in an RTO or an alternative filing, will receive a new docket number designation. The Commission has established the new "RT" prefix for docket numbers that will be assigned to any filing made in compliance with Order No. 2000.

Filing Requirements

Unless specified differently in this paragraph, the Commission's Rules of Practice and Procedure at 18 C.F.R. Part 385 are applicable. An original and fourteen copies of each compliance filing must be filed with the Commission. For each public utility making a compliance filing, the filing must contain the identity of the utility and a designation of person to receive service (*see* 18 C.F.R. § 385.203(b)), and be signed by an appropriate person representing the utility (*see* 18 C.F.R. § 385.2005(a)). The filing must be served on the State commission or commissions that have jurisdiction over the utility filer, and any other State commission in a state that might be affected by the filing. In addition, service should be made on any person or entity likely to be significantly affected by the filing (*e.g.*, current transmission customers of the utilities comprising the proposed RTO). A certificate of service listing those served must be included (*see* 18 C.F.R. 385.2010).

In addition to filing paper copies, the Commission encourages the filing of RTO compliance filings electronically, either on computer diskette or via Internet E-Mail. Such filings may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Order No. 2000 compliance filing; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, filings should be submitted to *rto@ferc.fed.us* in the following format. On the subject line, specify Order No. 2000 compliance filing. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the filing to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address *brooks.carter@ferc.fed.us*.

Filers should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

Commenting on Filings

A public notice will be issued for all compliance filings. The notice will establish a comment period of approximately 30 days for all interested persons to comment on each filing.

Joint Filings

The Commission reminds public utilities that the regulations allow for compliance filings to be made individually or jointly with other entities. Thus, where two or more public utilities are proposing to participate in the same RTO, the Commission encourages one joint filing. In the case of joint filings, it should be made clear which entities are participating in that filing. There must be separate representatives designated and separate authorizing signatures for any public utility for which a joint filing represents its required compliance filing. For approved transmission institutions, the transmission institution (*e.g.*, an approved ISO) may make the filing on behalf of the member transmission owners, but each public utility transmission owning member must provide separate authorizing signatures.

Filings Containing Milestones For Finalization

In Order No. 2000, the Commission recognized that some elements of an RTO proposal may be more difficult to fully implement than others. For example, with respect to function 7 (planning and expansion) and function 8 (interregional coordination), the regulations permit an extension beyond initial operation for full implementation of these functions. In these types of instances, where the Commission has adopted a period of implementation beyond the date of initial operation, we remind filers that they must provide an explanation of their plans for compliance, including dates of anticipated implementation.

Format For Filing

To make reviewing filings more efficient, we request that filings proposing an RTO contain an executive summary limited to no more than five pages. We also request that the filings address each of the required characteristics and functions in the order set forth in the regulations, followed by the support for any additional Federal Power Act sections 203 and 205 filings required to implement the RTO proposal. We recognize that there may be overlap in the discussions of the characteristics and functions, since proposals may have to support various elements in relation to how those elements allow the RTO to carry out others, *e.g.*, one measure of appropriate scope and configuration is how well the RTO can perform congestion management. Thus, to the extent it is necessary to discuss more than one characteristic or function together, we request that an identifying cross-reference be used so that the reader can easily find the discussion of a particular characteristic or function of interest.

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[1] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. and Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12,088 (March 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

[2] 18 C.F.R. 35.34.

[3] Because October 15, 2000 falls on a Sunday, and January 15, 2001 falls on a holiday, the filings are due by close of business on October 16, 2000, and January 16, 2001, respectively. *See* 18 C.F.R. § 385.2007(a)(2).

Filings by Small Entities

The Commission reminds public utilities that have limited transmission facilities and that have previously been granted waiver of some or all of the requirements of Order Nos. 888 or 889, that an abbreviated filing is acceptable.[4] The Commission does not wish to burden these small entities with extensive filings, but will find it useful to know the status of all transmission-owning public utilities with respect to regional participation.

By direction of the Commission.

David P. Boergers,

Secretary.

Appendix—Public Utilities Required to File on or before January 15, 2001

California Independent System Operator (ISO)

Pacific Gas and Electric Company
San Diego Gas & Electric Company
Southern California Edison Company

ISO New England, Inc.

Bangor Hydro-Electric Company
Boston Edison Company
Cambridge Electric Light Company
Central Maine Power Company
Central Vermont Public Service Corporation
Commonwealth Electric Company
Fitchburg Gas & Electric Light Company
Green Mountain Power Corporation
Montaup Electric Company
New England Power Company
Connecticut Light & Power Company
Western Massachusetts Electric Company
Holyoke Water Power Company
Holyoke Power and Electric Company
Public Service Company of New Hampshire
North Atlantic Energy Corporation
United Illuminating Company
Vermont Electric Power Company

Midwest ISO

Central Illinois Public Service Company
Cincinnati Gas & Electric Company
Commonwealth Edison Company
Commonwealth Edison Company of Indiana
Illinois Power Company
Kentucky Utilities Company
Louisville Gas & Electric Company
PSI Energy, Inc.
Union Electric Company
Wisconsin Electric Power Company

New York ISO

Central Hudson Gas & Electric Corporation
Consolidated Edison Company of New York, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Orange & Rockland Utilities, Inc.
Rochester Gas & Electric Corporation

PJM Interconnection, LLC

Atlantic City Electric Company
Baltimore Gas and Electric Company
Delmarva Power & Light Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Potomac Electric Power Company
Public Service Electric & Gas Company

Alliance Companies

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kanawha Valley Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company
Consumers Energy Company
Detroit Edison Company
Cleveland Electric Illuminating Company
Ohio Edison Company
Pennsylvania Power Company
Toledo Edison Company
Virginia Electric and Power Company

[FR Doc. 00–18874 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–P

[4] *See* Order No. 2000–A, FERC Stats. & Regs. at 31,392–93.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM00–5–000; Order No. 615]

Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act

Issued July 14, 2000.

AGENCY: The Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: On September 15, 1999, the Commission issued a policy statement to provide the industry with guidance with respect to how the Commission will evaluate new proposals for pipeline construction projects to take account of changes in the natural gas industry in recent years (Policy Statement). In view of the new framework for analyzing pipeline certificate applications announced in the the Policy Statement, the Commission is removing the optional certificate regulations because it believes that a uniform regulatory scheme applicable to all certificate applications will best accomplish the Commission's goals, as set out in the Policy Statement, of assuring that all relevant interests and circumstances are considered and balanced in assessing the public convenience and necessity.

DATES: This rule is effective September 25, 2000.

FOR FURTHER INFORMATION CONTACT: William L. Zoller, Office of Energy Projects, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1203.

Joseph B. O'Malley, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, (202) 208–0088.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is amending its regulations to remove its optional certificate regulations in Subpart E of Part 157 of the Commission's regulations.[1] The policies embedded in these regulations have been overtaken by subsequent policy developments, most particularly the Commission's September 15, 1999 statement of policy on certificating new pipeline construction (Policy Statement).[2] The optional certificate regulations, promulgated in 1985, established procedures whereby an eligible applicant may obtain, for purposes of providing new service, a certificate authorizing: the transportation of natural gas; sales of natural gas; the construction and operation of natural gas facilities; the acquisition and operation of natural gas facilities; and conditional pre-granted abandonment of such activities and facilities. The Commission's September 15, 1999 Policy Statement provides the industry guidance with respect to how the Commission will evaluate new proposals for pipeline construction projects to take account of changes in the natural gas industry in recent years. The Policy Statement provides that pipelines may not rely on existing customers to subsidize new projects that will not benefit them and that construction projects will be approved only where the public benefits outweigh any adverse effects. The optional regulations do not provide for consideration and weighing of public interest factors, and are thus inconsistent with current Commission policy.

II. Background

Before a pipeline may construct any natural gas facilities subject to the Commission's Natural Gas Act (NGA) jurisdiction, it must obtain a certificate of public convenience and necessity authorizing such construction under section 7 of the NGA. In conjunction with the open access transportation

[1] 18 CFR 157.100 *et seq.*

[2] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999) (Policy Statement), *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000).

program that the Commission established in 1985 in Order No. 436, the Commission adopted the optional certificate regulations as an alternative to the conventional certificate process.[3] A key goal of the optional certificate program was to provide the full benefits of competition to consumers by facilitating easier pipeline entry and exit from markets.[4] The optional certificate regulations establish a rebuttable presumption that, subject to review under the National Environmental Policy Act, a project is required by the public convenience and necessity if the applicant is willing to assume all the economic risk of a new service.[5] To assure that the applicant shoulders the project risk, the optional regulations prohibit shifting costs originally allocated to the new service or facility to any other service. The optional regulations also prohibit any reduction in the certificated level of billing determinants used to design the initial rates for a project or service.

In view of continuing changes in the natural gas industry, the Commission revisited its NGA section 7 certificate policy, and on September 15, 1999, the Commission issued its Policy Statement to provide the industry with guidance regarding the process and criteria the Commission will employ in evaluating future proposals for certificating new pipeline construction. Rather than adopting new rules for filing applications, the Policy Statement provides an analytical framework for determining when a particular pipeline project is required by the public convenience and necessity. The threshold requirement of the new policy is that the pipeline must be prepared to develop the project without relying on subsidies from its existing customers.[6] The Policy Statement also encourages pipelines seeking a certificate to resolve potential issues very early in the process by submitting applications designed to avoid or minimize adverse effects on such groups as existing customers of the applicant, existing pipelines serving the market and their captive customers, and affected landowners and other community interests. After the applicant makes efforts to minimize adverse effects, the Commission will authorize construction projects that have residual unresolved issues only where it finds that the public benefits of the projects outweigh the adverse effects. The Policy Statement provides that an applicant may submit evidence of the public benefits to be achieved by the proposed project, such as contracts, precedent agreements, studies of projected demand in the market to be served, or other evidence of public benefit of the project.

On February 9, 2000, the Commission issued a Notice of Proposed Rulemaking (NOPR)[7] proposing in the instant docket to amend the Commission's regulations by removing the optional certificate regulations. The Commission stated that a uniform regulatory scheme applicable to all certificate applications will best accomplish the Commission's goals, as set out in the Policy Statement, of assuring that all relevant interests and circumstances are considered and balanced in assessing the public convenience and necessity.

The Commission explained in the NOPR that its September 1999 Policy Statement established a core set of principles and considerations for evaluating new pipeline construction projects. By precluding subsidization of new projects, both the Policy Statement and the optional certificate program place the risk of a new project on the pipeline and the customers for the new project and protect existing customers from assuming the financial risk of a project that was not designed for their benefit. The Commission noted, however, that in other respects, current policy is inconsistent with the optional certificate program. The Commission explained that because the optional certificate program operates under a rebuttable presumption that proposals under which the pipeline applicant will assume the financial risks associated with the project are in the public interest, the Commission does not weigh the public benefits against the adverse effects in considering such applications. The Commission stated that it believes that it will be better to consider all certificate applications under the broader balancing criteria articulated in the Policy Statement.

In its order clarifying the Policy Statement,[8] issued contemporaneously with the NOPR, the Commission determined that, on an interim basis until issuance of a final rule in this rulemaking proceeding, the presumption in favor of an application filed under the optional certificate regulations will continue, but that the presumption will be considered rebutted if the adverse affects of the proposed project are found to outweigh its benefits.

III. Discussion

The Commission received only four comments in response to its NOPR, none of which disagreed with the proposal to eliminate the optional procedures. One commentor, El Paso Energy Corporation, believes that a uniform regulatory scheme employing the same standards and procedures for all certificate applications will improve the integrity and fairness of the regulatory process, and it supports the Commission's proposal to remove the optional certificate procedures. The other commentors, Sempra Energy Companies (Sempra), The Williams Companies, Inc. (Williams), and the Coastal Pipelines (ANR Pipeline Company, Colorado Interstate Gas Company, and Wyoming Interstate Company, Ltd.), express differing opinions regarding when removal of the optional certificate procedures should take effect. Williams also comments on the weight to be accorded an applicant's taking on the financial risk of a project.

Sempra supports the Commission's proposal to remove the optional certificate rules, and it urges that all new and pending applications filed under the optional procedures be converted to conventional NGA 7(c) applications and considered under the analytical framework set out in the Commission's Policy Statement. Sempra avers that, inasmuch as the Commission has determined that the optional procedures are inconsistent with the Policy Statement, the optional procedures should be eliminated as soon as possible. What it calls "the accident of an early filing date" should not result in applications filed under the optional procedures avoiding review under the interest balancing standards of the Policy Statement.

Williams and the Coastal Pipelines, on the other hand, while stating that they have no objection to the Commission's elimination of the optional certificate procedures, argue that elimination of the regulations should be prospective only. That is, they aver that the Commission should apply the optional certificate rules to applications filed under those procedures prior to the issuance of the NOPR. Williams urges, moreover, that, after the optional procedures are removed, the Commission should consider an applicant's willingness to assume the financial risk of a project as a major factor in assessing the public convenience and necessity under the Policy Statement's balancing test. It

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[3] *See* Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (Oct. 18, 1985), 50 FR 45907 (Nov. 5, 1985); FERC Stats. & Regs. ¶ 30,665 (1985).

[4] *Id.* at p. 31,570.

[5] *Id.* at p. 31,584.

[6] Policy Statement, 88 FERC, at p. 61,750.

[7] Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act, 65 FR 7803 (Feb. 16, 2000), FERC Stats. & Regs. ¶ 32,551.

[8] 90 FERC ¶ 61,128 (2000), at p. 61,391.

remains true today, asserts Williams, just as the Commission found when it adopted the optional certificate procedures, that an applicant's willingness to bear all the risk of a project's failure is strong evidence that there is a public need for a project inasmuch as a reasonable company would not invest in a project unless it believes that it will be able to attract sufficient business to recoup its investment.

Commission Response

We find that all comparable pipeline projects should be evaluated under the same criteria, and we adopt our proposal set forth in the NOPR to remove the optional certificate regulations. As the Commission stated in the NOPR, a regulatory approach that determines the public convenience and necessity on a uniform basis for all project applicants will best assist the Commission in meeting its goal, as set forth in the Policy Statement, that all interests and circumstances that are relevant to a particular pipeline project will be accorded appropriate consideration and weight.

The Commission agrees with Williams that an applicant's willingness to assume the financial risk of a project without subsidies from existing customers should be an important factor in determining the public convenience and necessity. We in fact explained in the Policy Statement that this is the threshold issue in that determination. However, analysis of the public convenience and necessity under the Policy Statement does not end with a determination that the project can proceed without subsidy from existing customers. The Policy Statement explained that the requirement that a project be able to stand on its own without subsidies "will be the predicate for the rest of the evaluation of a new project by an existing pipeline." [9] Thus, the Commission stated, "if an applicant can show that the project is financially viable without subsidies, then it will have established the first indicator of public benefit." [10] Once the applicant satisfies the threshold test, the Commission will proceed pursuant to the Policy Statement to evaluate and balance the public benefit from a proposed project against any residual adverse effects on existing customers, other pipelines and their captive customers, and landowners and communities affected by the route proposed for the pipeline. Because the optional certificate regulations undertake this interest balancing only if the presumption in favor of the application is challenged, they conflict with a significant goal under the Policy Statement, and we will remove them as an alternative means of certificating a project.

As noted above, in its order clarifying the Policy Statement, the Commission addressed the matter of the appropriate standard to be applied to applications filed under the optional certificate procedures pending a final determination in this rulemaking proceeding. The Commission announced that it would continue to apply the presumption in favor of financially viable proposals that did not rely on contributions from existing customers, but that it would consider the presumption successfully rebutted, pursuant to a Policy Statement analysis, if the adverse effects from the project outweigh the public benefits. We continue to believe that this is the appropriate approach to optional certificate applications filed prior to the effective date of this final rule, which will be 60 days after its date of issuance.

The optional procedures' regulatory presumption has always been one that is subject to rebuttal. The Commission has now explained that the presumption favoring an optional certificate proposal may be addressed by applying a Policy Statement analysis. While procedurally this places the burden on those parties that find themselves adversely affected by a proposal, the Commission believes that, as a practical matter, the end result will be the same. We explained in the NOPR that this is an interim solution only until the optional certificate procedures are eliminated and all proposals are evaluated directly under the Policy Statement considerations.

IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[11] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[12] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[13]

This Final Rule merely eliminates optional procedures for the filing and processing of pipeline certificate applications; the Rule makes no substantive change to, or has any substantive effect on, the environmental requirements and conditions with respect to any pipeline project. Applicants for pipeline construction authority have had to satisfy the same environmental requirements under the optional or traditional procedures, as well as under the Policy Statement. Thus, issuance of this Final Rule does not represent a major federal action having a significant effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act, and no environmental assessment or environmental impact statement is necessary for the action taken here.

V. Regulatory Flexibility Impact Statement

The Regulatory Flexibility Act of 1980 (RFA) [14] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if a rule would not have such an effect.[15]

Removal of the optional certificate rules will not have such an impact on small entities. The proposed removal of regulations would have impact only on interstate pipelines, which generally do not fall within the RFA's definition of small entity.[16] Accordingly, pursuant to section 605(a) of the RFA, the Commission certifies that the removal of regulations proposed here will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[17] Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule shall not be penalized for failure to respond to this collection of information

[9] Policy Statement, 88 FERC, at p. 61,746.

[10] *Id.* at p. 61,747.

[11] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), *codified* at 18 CFR Part 380.

[12] 18 CFR 380.4(a)(2)(ii).

[13] 18 CFR 380.4.

[14] 5 U.S.C. 601–612.

[15] 5 U.S.C. 605(b).

[16] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operations.

[17] 5 CFR 1320.11.

unless the collection of information displays a valid OMB control number. The collection of information related to this Final Rule falls under FERC–537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment (OMB Control No. 1902–0060).[18]

The Commission is not establishing a new information burden. Rather, under this Final Rule, the Commission is merely removing a heretofore little used alternative to the conventional NGA section 7(c) application process. All pipeline project applicants will file the same information that the overwhelming majority of applicants for construction authority already file. As a practical matter, our action should not have any appreciable effect on the collection of data from the pipeline industry.

None of the comments received in response to the NOPR specifically addressed the reporting burden or cost estimates. As required under OMB's regulations, the Commission submitted the NOPR to OMB for review. OMB took no action on the NOPR.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208–1415, fax: (202)208–2425, e-mail: mike.miller@ferc.fed.us] or the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395–3087, fax: (202)395–7285]

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room. User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date

This Final Rule will take effect September 25, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[19] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[20]

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

In consideration of the foregoing, the Commission is amending Part 157 of Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717W, 3301–3432; 42 U.S.C. 7101–7352.

§§ 157.100–157.106 Subpart E—[Removed and Reserved]

2. Remove and reserve subpart E, consisting of §§ 157.100 through 157.106.

[FR Doc. 00–18499 Filed 7–25–00; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 375 and 381

[Docket No. RM00–6–000; Order No. 616]

Well Category Determinations

Issued July 14, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to reinstate provisions for well category determinations for certain categories of high-cost gas under NGPA section 107. An NGPA determination will enable such gas to be eligible for a tax credit under Section 29 of the Internal Revenue Code (Section 29 tax credit). The final Rule extends the provisions to all wells, and tight formation areas that could qualify for the Section 29 tax credit.

EFFECTIVE DATE: This rule is effective September 25, 2000.

FOR FURTHER INFORMATION CONTACT:
Marilyn Rand (Technical Information), Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426, (202) 208–0444.
Jacob Silverman (Advisory Attorney), Office of the General Counsel, 888 First Street, NE., Washington, D.C. 20426, (202) 208–2078.

SUPPLEMENTARY INFORMATION:
Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

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[18] The current burden estimate for FERC–537 is 138,264 hours. This number is based on an average of 50 respondents (companies making filings), 11.2 responses (filings per respondent), and 246.9 hours of preparation time per response.

[19] 5 U.S.C. 804(2).

[20] 5 U.S.C. 801(a)(1)(A).

Order No. 616, Final Rule, issued July 14, 2000.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to reinstate provisions for making well category determinations under section 503 of the Natural Gas Policy Act of 1978 (NGPA). In a Notice of Proposed Rulemaking (NOPR) issued on January 27, 2000,[1] the Commission proposed to reinstate well determination procedures for certain categories of high-cost gas under NGPA section 107. An NGPA determination will enable such gas to be eligible for a tax credit under Section 29 of the Internal Revenue Code (Section 29 tax credit). The NOPR specifically proposed to limit the availability of the reinstated procedures to determinations on post-January 1, 1993 recompletions in wells drilled after December 31, 1979, but before January 1, 1993. The Commission also did not propose any regulations that would allow a jurisdictional agency to designate new tight formations. The Final Rule extends the provisions to all wells spudded before January 1, 1993, and recompletions both before and after that date that could qualify for the Section 29 tax credit, and provides for the designation of new tight formations.

II. Background

Section 29 of the Internal Revenue Code, as amended by the Revenue Reconciliation Act of 1990, allows taxpayers to claim a tax credit for certain qualified fuels which (1) are produced from wells drilled after December 31, 1979, and before January 1, 1993,[2] and (2) are sold before January 1, 2003. The qualified fuels include high cost gas as defined in NGPA section 107 (c)(2)–(4) (gas produced from geopressured brine, coal seams and Devonian shale), as well as some gas the Commission defined as tight formation gas pursuant to NGPA section 107(c)(5).

Section 29(c)(2)(A) of the Internal Revenue Code also provides that the determination whether gas falls into a category qualifying for the tax credit "shall be made in accordance with section 503 of the (NGPA)." NGPA section 503 set forth the procedures used for determining whether gas qualified for the various categories of gas entitled to the higher ceiling prices established by the NGPA as incentives for increased production. These included section 107(c) "high-cost natural gas." Under NGPA section 503, the agency having regulatory jurisdiction with respect to the production of the natural gas in question (the jurisdictional agency)[3] made the initial determination, and submitted it to the Commission. The Commission could either affirm, reverse, remand, make a preliminary finding on, or simply take no action, regarding the agency's determination. If the Commission took no action within 45 days after receipt of the agency's determination, that determination became final. Judicial review was available under section 503 only if the Commission remanded or reversed the determination.

The Wellhead Decontrol Act of 1989 (Decontrol Act)[4] decontrolled all wellhead sales of natural gas by January 1, 1993, and repealed NGPA section 503 as of that date. After decontrol, the Commission's policy was not to accept determinations for any post-January 1, 1993 drilling activity. The Commission, however, continued to process well category determinations it received from jurisdictional agencies through April 30, 1994, for wells spudded before January 1, 1993, and pre-January 1, 1993 recompletions. The Commission explained that the reason for continuing to review those agency determinations for a transition period, was that, while NGPA section 107 well category determinations no longer had any price consequence, they were necessary to obtain the Section 29 tax credit.

As discussed above, section 29 of the Code provides that, in order to qualify for the tax credit, gas must be produced from a well drilled before January 1, 1993, the same date the last remaining NGPA ceiling prices were eliminated and NGPA section 503 was repealed. When the Commission decided not to process well determination requests for wells recompleted after December 31, 1992, it was assumed that the tax credit would not be available with respect to any drilling activity after that date, and therefore there was no need to continue the well category determination procedures to enable producers to qualify for the tax credit for such drilling activity. However, on August 16, 1993, the Internal Revenue Service (IRS), which administers the Section 29 tax credit, issued Revenue Ruling 93–54,[5] clarifying the provision of section 29 that states that gas must be produced from a well drilled before January 1, 1993. The IRS held that, while the initial drilling of a well had to have been performed before January 1, 1993, tax credits are available for non-conventional fuels produced through a post-January 1, 1993 recompletion in the well, as long as the recompletion does not involve additional drilling to deepen or extend the well.

After the IRS Revenue Ruling 93–54, the Commission received jurisdictional agency determinations for recompletions commenced after January 1, 1993. However, the Commission refused to process them since it appeared that the IRS would permit the Section 29 credit for such recompletions without any Commission action. On July 29, 1994, the Commission issued Order No. 567,[6] which deleted regulations that were no longer required due to the decontrol of wellhead sales of natural gas, including regulations which set forth eligibility requirements, filing requirements, and the procedures for making well determinations under section 503 of the NGPA.

Thus matters stood from 1994 until the *True Oil* decision changed the legal landscape. In 1999 the United States Court of Appeals for the Tenth Circuit held in *True Oil Co.* v. *Commissioner of Internal Revenue*[7] (*True Oil*) that, in order to obtain the section 29 tax credit, there must be a formal determination under the procedures provided by NGPA section 503 that the gas is high cost gas.

A. The NOPR

In the NOPR the Commission proposed to accept jurisdictional agency determinations for those post-January 1, 1993 recompletions which satisfy the IRS' definition under Revenue Ruling 93–54, including that the recompletion does not involve additional drilling to deepen or extend the well. For this purpose, the Commission proposed to reinstate regulations necessary to (1) Define the categories of high cost gas eligible for the tax credit and (2) provide procedures for jurisdictional agencies to file their determinations and the Commission to review those determinations.

The Commission proposed not to accept determinations from jurisdictional agencies with respect to either initial completions in wells

[1] 65 FR 6048 (Feb. 8, 2000), FERC Stats.& Regs., Proposed Regulations ¶ 32,549 (Jan. 27, 2000).

[2] For purposes of the tax credit, the initial drilling had to be started after January 1, 1980, and this date was never changed. Thus, this starting date is assumed throughout.

[3] That agency may be either a State or Federal agency.

[4] Pub. L. 101–60; 103 Stat. 157 (1989).

[5] 1993–2 CB.3 (1993).

[6] Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, 59 FR 40240, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,999 (1994), Order on Rehearing, 69 FERC ¶¶ 61,055 and 61,042 (1994). A petition to review the deletion of other provisions in these regulations was denied by the Court of Appeals in *Hadson Gas System, Inc.* v. *FERC*, 75 F.3d 680 (D.C. Cir. 1996).

[7] 170 F.3d 1294 (10th Cir. 1999).

spudded before January 1, 1993, or any pre-1993 recompletions. Thus, the well category determination procedures the Commission proposed to reinstate in § 270.201 would be limited to recompletions commenced after January 1, 1993, in wells initially drilled after December 31, 1979, but before January 1, 1993. This reflected the Commission's decision to limit the determination process to correct the situation caused by the *True Oil* decision, but parties were invited to comment on this matter. The Commission proposed to accept determinations for recompletions in tight formations, coal seams, and Devonian Shale.[8] The Commission also proposed only to accept jurisdictional agency determinations for qualifying recompletions in already designated tight formations, and would not allow a jurisdictional agency to designate additional tight formations. The NOPR stated that the Commission must rely upon the jurisdictional agencies to develop the full record in these proceedings, and the Commission would limit its role to reviewing initial determinations made by the jurisdictional agencies. Accordingly, the Commission requested comments from the jurisdictional agencies whether they will make initial determinations under NGPA section 503, if the proposed rule is adopted.

In summary, the Commission proposed to reinstate those portions of its prior regulations, with appropriate modifications, that are necessary to allow producers to obtain well category determinations solely for tax credit purposes. In general, the proposed regulations retain the definitions, the filing and notice requirements, and the review procedures that the Commission promulgated prior to the termination of the regulations due to the Decontrol Act.[9]

B. The Comments

The Commission received comments from over 40 parties, as set forth in the Appendix, including comments by the United States Department of Energy (DOE), fourteen state jurisdictional agencies,[10] and the United States Department of the Interior, Bureau of Land Management (BLM). All commentors, without exception, support the reinstatement of the NGPA procedures. Most of the commentors, including DOE and the jurisdictional agencies, urge the Commission to extend the determination procedures to all wells spudded before January 1, 1993, and pre-1993 recompletions so that all gas eligible for a tax credit may receive a determination. In addition, several commentors, assert that the Commission should allow jurisdictional agencies to designate new tight formation areas.

In response to the NOPR's question, the jurisdictional agencies filing comments stated they would make the initial determinations.[11] Several jurisdictional agencies that previously made NGPA section 107 determinations did not file comments.[12] In its comments, BLM stated that it does not have the staffing and budgetary resources to assume the additional workload that would result if the Commission extends the procedures to all eligible wells and permits jurisdictional agencies to designate new tight formations. Some commentors urged the Commission to adopt revised procedures to ease the burden of implementing the reinstated review process.

III. Discussion

In this final rule, the Commission is reinstating its well determination review procedures in order to allow producers to obtain the Section 29 tax credit. This is consistent with Congress' desire to encourage, enhance, and expand the United States' natural gas supply base by allowing legitimately qualified producers to receive a tax credit associated with developing and producing gas from formations and wells that otherwise might not have been available to supply consumers. In the NOPR, the Commission explained the legal authority for reinstating the well determination review procedures to allow producers to obtain the Section 29 tax credit despite the repeal of NGPA section 503 by the Wellhead Decontrol Act. This authority has not been questioned by any commentor, and all commentors support reinstatement of the well determination review procedures. However, the extent of the review process was subject to extensive comment, which the Commission will now address.

1. Should the review process be limited to post-January 1, 1993 recompletions?

In the NOPR the Commission proposed not to accept determinations with respect to either initial completions in wells spudded before January 1, 1993, or any pre-1993 recompletions. The Commission stated that in Order No. 539, the Commission established deadlines for filing applications involving wells that were spudded and/or recompleted prior to January 1, 1993, and the time has long passed when those applications should have been filed. Also, the NOPR stated that in a petition filed by a number of producers requesting the Commission to reinstate the NGPA section 503 well category procedures, the producers had not requested that the Commission accept determinations with regard to wells spudded or recompleted before January 1, 1993.

In their comments, parties have urged that the proposal not be so limited. The commentors maintain that the reasons stated in the NOPR do not present a valid basis for limiting the review process to post-January 1, 1993 recompletions. They assert that the fact that the deadline set by the Commission for submitting determinations for pre-January 1, 1993 drilling activity has passed should not bar producers from seeking to obtain the tax credit. Moreover, they argue that there are many reasons why the Commission's April 1994 deadline for jurisdictional agencies to file determinations with respect to pre-January 1, 1993 drilling activity may not have been met.

Commentors state that the Order No. 539 deadlines were imposed because the Commission assumed that the Section 29 tax credit would not be available for wells originally drilled before January 1, 1993, that were recompleted after that date.[13] Thus, the Commission had concluded that it needed to go out of the business of making well determinations by a time certain. Moreover, it was assumed that the fact that the Commission would not process well determinations did not mean that the Section 29 tax credit could not be obtained by the producer. Commentors assert that those reasons for the April 30, 1994 deadline are no longer valid because the IRS in Revenue Ruling 93–54 allowed certain

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[8] The NOPR stated that it did not include a definition for gas produced from geopressured brine since past experience has shown that there is no gas likely to qualify for this category given the Commission's definition of geopressured brine and the current state of technology. The NOPR requested comments on this matter, but none was filed.

[9] The substantive rulings that the Commission made previously concerning well determinations and the qualification under these NGPA section 107 category would also continue to govern.

[10] The jurisdictional agencies were from the following states: Alabama, Colorado, Kansas, Kentucky, Louisiana, Michigan, New Mexico, New York, Ohio, Oklahoma, Texas, Virginia, West Virginia, and Wyoming.

[11] Michigan simply stated it is willing to make the necessary determinations on post-January 1, 1993 recompletions.

[12] Those not filing comments were Arkansas, California, Illinois, Indiana, Mississippi, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Tennessee, and Utah.

[13] FERC Stats & Regs., Regulations Preamble 1991–1996 ¶ 30, 940 n.41 at 30, 498.

recompletions performed after January 1, 1993, to qualify for the tax credit, and *True Oil* requires the NGPA section 503 procedures to be followed to obtain the tax credit.

Commentors also assert that there were a number of reasons producers did not meet the April 30, 1994 deadline established in the Order No. 539 series. They contend that there was some question at the time as to what the consequences were of not meeting the Commission's deadline. This was especially true after the IRS issued Revenue Ruling 93–54, which permitted the tax credit for post-January 1, 1993 recompletions. In addition, as DOE explained, there was a large amount of drilling activity which occurred prior to the close of the drilling window on December 31, 1992. This inevitably led to some oversights on the part of producers, or it simply made the deadline impossible to meet. In addition, subsequent purchasers of pre-1993 wells may not have been aware of the filing deadlines imposed by the Commission in Order No. 539.

We explained in the NOPR, and no one has contested, that the Commission has continuing authority to process NGPA section 503 determinations to allow producers to qualify for the Section 29 tax credit. In light of this authority, the Commission finds merit in commentors' request that the Commission reinstate the NGPA section 503 well category determination procedure for most pre-January 1, 1993 drilling activity, as well as post-January 1, 1993 recompletions, where necessary to allow a producer to qualify for the Section 29 tax credit. We will not reinstate the NGPA section 503 well category determination procedure for pre-January 1, 1980 completions because the gas produced from such completions is not eligible for the Section 29 tax credit.

The Commission did not impose any deadline on filing requests for determinations, nor a deadline for submitting the determinations by the jurisdictional agency, until the decontrol of wellhead sales. The Commission then set deadlines only as a means of implementing the complete termination of the well category determination program. Now that the Commission is reinstating that program so that producers can obtain the Section 29 tax credit, there is no basis to decline to process well category determination for pre-January 1, 1993 drilling activity while processing determinations for post-January 1, 1993 recompletion drilling activity. Section 29 allows a credit if the producer obtains the section 503 determination. The Commission has the authority to make the section 503 determination. Therefore, the Commission concludes it should process determinations for any well that could qualify for a Section 29 tax credit, regardless of when the drilling activity occurred, as long as it meets the requirements of section 29 of the Code. We will not reinstate the NGPA section 503 well category determination procedure for pre-January 1, 1980 completions because the gas produced from such completions is not eligible for the Section 29 tax credit.

Accordingly, except for gas produced from a pre-January 1, 1980 completion, the Commission will modify the proposed rule, and will apply the section 503 review process to wells drilled and spudded, and recompletions commenced prior to December 31, 1992, as well as to post-January 1, 1993 recompletions.[14]

2. Should The Designation of New Tight Formation Areas be Permitted?

Before a specific well can obtain a tight formation determination, a portion of the formation into which the well is, or will be completed, must be designated as a tight formation by a jurisdictional agency, which determination is also subject to Commission review. After a field is designated as a tight formation, applications with respect to completions in specific wells in the designated tight formation can be filed.[15]

In the NOPR, the Commission stated that the Commission was not proposing any regulations that would allow a jurisdictional agency to designate additional tight formations. The Commission explained that to permit the designation of additional tight formations would require the Commission to review extensive geologic data, which could place an undue burden on the Commission.[16] In addition, the Commission noted that it appeared likely that most producing formations that qualify as tight formations have already been designated as such.

A number of commentors, including two jurisdictional agencies, urge that the Commission should permit the designation of additional tight formation areas. They assert that the reasons stated in the NOPR for not doing so, do not justify denying the tax credit that producers would be entitled to from production in these areas.

Commentors argue that, contrary to the contention that most tight formation areas have already been designated, there are numerous additional tight formation areas that could qualify for the tax credit. Specifically, Texas makes reference to proceedings in the State of Texas that resulted in 357 additional tight formation designations covering thousands of acres.

Commentors also assert that the concern about placing an undue burden on the Commission does not justify denying producers the ability to obtain the tax credit that Congress provided for. Moreover, new and revised procedures could be adopted by the Commission to lessen the expected workload from the new filings.

For the same reasons we have concluded to allow the review process for wells drilled and spudded, and recompletions commenced prior to December 31, 1992, as well as to the post-January 1, 1993 recompletions, we will also permit the designation of new tight formations. As explained above, the Commission has been authorized to carry out the NGPA section 503 well category determination procedure so producers can obtain the section 29 tax credit for qualifying gas. Permitting the designation of new tight formations is consistent with, and furthers Congress' purpose in establishing the Section 29 tax credit to encourage domestic natural gas production.

On balance, the Commission concludes that it should permit the designation of new tight formations. Therefore, the regulations are being amended to include procedures for designating new tight formations and the information required to support such designation. In its comments, BLM stated that permitting the designation of new tight formations would result in "a substantial administrative burden" to it.

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[14] We note that a new determination will not be required for some recompletions involving Devonian shale gas if there is a prior determination covering the entire gross Devonian age stratigraphic interval penetrated by the wellbore. The Commission will view all natural gas produced from a well to have been previously qualified as Devonian shale production if: (1) The well previously received an affirmative Devonian shale determination that was not reversed or remanded by the Commission; and (2) that determination was based on a gamma ray index test for non-shale footage that spans the entire gross Devonian age stratigraphic interval. In such cases, the Commission sees no reason to re-affirm what has already been established, i.e., that any gas produced from the gross Devonian age stratigraphic interval penetrated by such well qualifies as natural gas produced from Devonian shale within the meaning of section 107(c)(4) of the NGPA.

[15] The Commission originally designated tight formation areas by rule making and listed approved tight formations in § 271.703 of the Commission's regulations, but after the decision in *Williston Basin Interstate Pipeline Co.* v. *FERC*, 816 F.2d 816 (D.C. Cir. 1987), the Commission followed the procedures under NGPA section 503.

[16] FERC Stats. & Regs. Proposed Regulations ¶ 32,549 at 33,897.

The Commission will address this, and other procedural matters in the next section.

3. Procedural Matters

Commission staff, by letter, notified all jurisdictional agencies that previously made determinations for gas that qualified for Section 29 tax credits of the NOPR, and requested them to advise the Commission as to whether they would be willing to make determinations again. The fourteen jurisdictional agencies that filed comments, responded that they would make the determinations. Several other jurisdictional agencies that previously made Section 107 determinations did not respond to staff's letter. However, this will not preclude them from submitting determinations when this rule becomes effective.

In addition, BLM indicated it would not have appropriate staff resources to make determinations if the determination procedures were expanded to include all wells and new tight formation areas. BLM suggests that the Commission could provide resources since the Commission proposes to collect a fee, or the industry could fund a position in BLM's office. BLM, also has proposed that the section 503 procedures "be radically streamlined to minimize the technical review process and jurisdictional agency involvement," and seems to suggest that the Commission use BLM's Automated Fluid Minerals Support System to make the determinations.

The NOPR stated that NGPA section 503 requires the jurisdictional agencies to make an initial well category determination, unless, as permitted by section 503(c)(2), the Commission enters into an agreement with a State or Federal agency under which the Commission would make the determinations that would otherwise be made by that agency. The NOPR stated that the Commission intended not to exercise its discretion to enter into any such agreement [17] because the Commission's role in the producing area has virtually been eliminated, and consequently the Commission's resources in this area have been substantially reduced.

In its comments, Equitable Production Company (Equitable) asserts that the Commission does not have the discretion to determine that it will not make determinations if the jurisdictional agencies decline to do so. The Commission disagrees, because NGPA section 503(c)(2) permits waiver of the jurisdictional agency's authority to make the initial determination only if the Commission agrees to enter into a written agreement with the jurisdictional agency wherein the Commission agrees to make the initial determination.[18] Since the NGPA makes Commission performance of initial determinations contingent on the Commission's agreement to do so, the Commission clearly has the discretion to refuse to agree. Given its limited resources in this area, the Commission cannot undertake to perform the initial review of producer applications of well category determinations, and must rely on the jurisdictional agencies to perform this function. Accordingly, the Commission concludes that it will not accept applications for determinations from producers if the applicable jurisdictional agency has not agreed to make determinations.[19] As to the BLM's concerns, BLM may wish to consider entering into an agreement with the applicable state jurisdictional agencies that would provide that the state jurisdictional agency will be responsible for determinations involving Federal lands in that state. The previous regulations provided for this, and the NOPR proposed to reinstate this provision. Further, the filing fee under the Commission's regulations does not preclude BLM from collecting a separate fee to recover its costs of processing the well determination applications.

The Commission has reviewed the coal seam, Devonian shale, and tight formation gas well certification requirements of the State of Texas Severance Tax Incentive for High Cost Gas program, as set forth under §§ 3.101(e)(3), (4), and (5) of Railroad Commission Statewide Rule 101. We find those filing requirements provide virtually the same documentation and evidentiary support for those certifications that we are requiring for a coal seam gas, Devonian shale, or tight formation gas determination under the NGPA. Accordingly, Texas may utilize the documents and information filed pursuant to Railroad Commission Rule 101 to satisfy the corresponding filing requirements for a well category determination under the NGPA. However, all applicants whose applications for determinations rely upon such documents and information must provide Texas with appropriate oath statements and Form 121 required under the NGPA regulations. Texas, in turn, must include this material with the notice of determination that Texas files with the Commission.

Texas and the Producer Coalition propose significant procedural changes in the review of new tight formations. Texas notes that it has approved 357 tight formation designations since 1993 under its "State of Texas Severance Tax Incentive for High Cost Gas program" (under RRC Statewide Rule 101). In contrast, 172 tight formation designations in Texas were approved before 1993 under the NGPA procedures. Texas asserts the Commission should accept these area designations because the requirements under RRC Statewide Rule 101 are equivalent to the Commission's requirements for tight formations. Texas also asserts the Commission should accept any determinations it makes in the future under its Rule 101. The Producer Coalition urges the Commission to allow jurisdictional agencies to designate additional tight formations without Commission review.

In order to qualify as a tight formation, a formation must meet guidelines for permeability and stabilized flow ratio. The Commission clarified these guidelines in Order No. 539.[20] The Commission understands that in designating tight formations, Texas uses the geometric mean or median values to satisfy the 0.1 millidarcy (md) in-situ permeability and maximum allowable pre-stimulation stabilized flow rate requirements under Texas' program. This conflicts with the Commission's use of the arithmetic mean to determine if formations meet the Order No. 539 guidelines for permeability and stabilized flow rates . The Commission found that using median or geometric mean averaging hides "sweet spots" which allows areas that do not meet the qualifications to be designated as tight formations. Accordingly, the Commission rejects Texas' proposal that the Commission accept Texas' designation of new tight formations under RRC Statewide Rule 101.

The Commission also rejects the Producer Coalition's suggestion that the Commission accept all tight formation designations by jurisdictional agencies without any Commission review. Therefore, the previously existing review process will be reinstated.

Vastar Resources, Inc. (Vastar) a large independent oil and natural gas company, like most commentors,

[17] FERC Statutes & Regulations, Proposed Regulations ¶ 32,549 at 33,897.

[18] The Joint Explanatory Statement of the Committee on Conference explained that waiver under section 503 (c)(2) will take place only "if the Commission agrees" to make the determination. I FERC Stats. & Regs. ¶ 3101 at 3142.

[19] The Commission did not enter into any such waiver agreement when the prior regulations were in effect.

[20] FERC Stats.& Regs., Regulations Preambles 1991–1996 ¶ 30,940 (1992).

requests the Commission to broaden the scope of the reinstated well determination process to include any and all wells that otherwise qualify for the section 29 tax credit, regardless of circumstances. However, its request goes beyond what other commentors have requested.

First, it requests that a post-1992 replacement well should be included within the scope of the reinstated determination process. By replacement well, Vastar refers to the situation where a qualified section 29 well stops producing for mechanical reasons and cannot be economically sidetracked, and the producer may be able to drill a replacement well. On its face, the request is contrary to the statutory requirement that the well must be drilled or spudded before December 31, 1992. The Commission is unaware of any I.R.S. ruling that such a "replacement" well could receive the Section 29 tax credit. Thus, the "replacement" well does not present the same situation as a post-December 31, 1992 recompletion since the IRS has ruled on recompletions in Revenue Ruling 93–54. Vastar also requests the Commission to include wells drilled prior to 1993 where production did not begin prior to January 1, 1993. However, since the final rule expands the eligible class to all wells that could qualify for the Section 29 tax credit there is no need to make a special provision for this type of well.

Finally, as we stated in the NOPR, since the Section 29 tax credit is now scheduled to end on December 31, 2002, the reinstatement of the well determination review procedures will remain effective until the later of June 30, 2003, or six months after the tax credit is no longer available for production from any well should Congress further extend the tax credit.

IV. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement. Since the final rule reinstates regulations that were previously in effect, and does not substantially change the effect of the underlying legislation or the regulations being revised, it falls under the exclusion in ¶ 380.4 (a)(2)(ii) of the Commission's regulations.[21] In the NOPR, the Commission expressed this view, and none of the comments questioned this position. Accordingly, no environmental consideration is necessary.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

The collections of information related to the subject of this final rule fall under FERC Form No. 121, Applications for Maximum Lawful Price under the Natural Gas Policy Act of 1978 (OMB Control No. 1902–0038) and FERC–568 Well Category Determinations (OMB Control No. 1902–0112). Under this Final Rule, the overall burden of filing will be increased as the Commission is expanding the number of wells that will be eligible for the Section 29 tax credit. Therefore, the Commission is revising its initial burden estimates as stated in the NOPR on the number of applications it anticipates it will receive from 1800 to 2400. The Section 29 tax credit is scheduled to expire on December 31, 2002.

The burden estimates for complying with this final rule are as follows:

Data collection	No. of respondents	No. of responses	Hours per response	Total annual hours
FERC Form 121	2400	1	.25	600
FERC–568	2400	1	6.01	14,424

The total annual hours for collection (including recordkeeping) is estimated to be: 15,024 hours.
The average annualized cost for all respondents is projected to be the following:

Data collection	Annualized capital/start-up costs	Annualized costs (operations & maintenance)	Total annualized costs
FERC Form 121	$32,176	$0.00	$32,176
FERC–568	773,522	0.00	773,522

The total annualized costs for collection is estimated to be: $805,698. Cost per respondent = (Form 121, $13.41), (FERC–568, $ 322.00).

The Commission received forty four comments on the proposed rule, but none on its reporting burden or cost estimates. The Commission's responses to the comments are being addressed elsewhere in this rule. Further, we note that, as required under OMB's regulations, the Commission submitted the NOPR for OMB review. OMB took no action on the NOPR. However, in response, OMB stated that the Commission should resubmit its information collection request when it takes final action.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, CI–1, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail *mike.miller@ferc.fed.us*] or send comments to the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission]. The Desk Officer can be reached at (202) 395–3087, fax: 395–7285.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have

[21] 18 CFR 380.4(a)(2)(ii).

a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

The final rule reinstates regulations that were previously in effect, and would enable entities to obtain Internal Revenue Code Section 29 tax credits. The Commission certifies that this proposed rule will not have a significant adverse economic impact upon a substantial number of small entities.

VII. Effective Date

These regulations become effective September 25, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is a "major rule" as defined in Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[22] The Commission will submit the rule to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register**.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us)* or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us).*

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects

18 CFR. Part 270

Natural gas, Price controls, Record and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, of the Code of Federal Regulations, as follows:

1. The heading of Subchapter H is revised and part 270 is added to read as follows:

Subchapter H—Procedures Governing Determinations for Tax Credit Purposes

PART 270—DETERMINATION PROCEDURES

Subpart A—General Definitions

Sec.
270.101 General definitions

Subpart B—Determinations by Jurisdictional Agencies

270.201 Applicability
270.202 Definition of determination
270.203 Determinations by jurisdictional agencies
270.204 Notice to the Commission

Subpart C—Requirements for Filing with Jurisdictional Agencies

270.301 General requirements
270.302 Occluded natural gas produced from coal seams
270.303 Natural gas produced from Devonian shale
270.304 Tight formation gas
270.305 Determination of tight formation areas
270.306 Devonian shale wells in Michigan

Subpart D—Identification of State and Federal Jurisdictional Agencies

270.401 Jurisdictional agency

Subpart E—Commission Review of Jurisdictional Agency Determinations

270.501 Publication of notice from jurisdictional agency
270.502 Commission review of final determinations
270.503 Protests to the Commission
270.504 Contents of protests to the Commission
270.505 Procedure for reopening determinations
270.506 Confidentiality

Authority: 15 U.S.C. 717–717w, 3301 *et. seq.;* 42 U.S.C. 7101 *et seq.;* EO 12009, 3 CFR 1978 Comp., p. 142.

Subpart A—General Definitions

§ 270.101 General definitions.

(a) *NGPA definitions.* Terms defined in the Natural Gas Policy Act of 1978 (NGPA) will have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) *Subchapter H definitions.* For purposes of this part:

(1) *NGPA* means the Natural Gas Policy Act of 1978.

(2) *Surface location* means the point on the Earth's surface from which drilling of a well is commenced except that in the case of a well drilled in permanent surface waters, "the Earth's surface" means the mean elevation of the surface of the water.

(3) *Jurisdictional agency* means the state or federal agency identified in § 270.401.

(4) *Tight formation gas* means natural gas that a jurisdictional agency has determined to be produced from a designated tight formation.

(5) *Designated tight formation* means the portion of a natural gas bearing formation that was:

(i) Designated as a tight formation by the Commission, pursuant to section 501 of the NGPA, or

(ii) Determined to be a tight formation pursuant to section 503 of the NGPA.

(6) *Occluded natural gas produced from coal seams* means naturally occurring natural gas released from entrapment from the fractures, pores and bedding planes of coal seams.

[22] 5 U.S.C. 804(2).

(7) *Natural gas produced from Devonian shale* means natural gas produced from fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period.

(8) *Shales deposited during the Paleozoic Devonian Period* can be defined as either:

(i) The gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater; or

(ii) One continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater (but if the interval selected is more than 200 feet thick, the bottom and top 100 foot portions must meet the five percent test independently).

(9) *Gamma ray index* means when measuring the Devonian age stratigraphic interval, the gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

(10) *Mcf* means one thousand cubic feet of natural gas at 60 degrees Fahrenheit under a pressure equivalent to that of 30.00 inches of mercury at 32 degrees Fahrenheit, under standard gravitational force (980.665 centimeters per second squared).

(11) *Data well* means a well for which permeability and/or pre-stimulation production rate data are available for a pay section in the formation for which a tight formation designation is being sought.

Subpart B—Determinations by Jurisdictional Agencies

§ 270.201 Applicability.

(a) This part applies to determinations of jurisdictional agencies for tight formation gas, occluded natural gas produced from coal seams, and natural gas produced from Devonian shale that is produced through:

(1) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(2) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(3) A recompletion commenced after December 31, 1979, but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980.

(b) This part also applies to determinations of jurisdictional agencies that designate a formation, or portion thereof, as a tight formation.

§ 270.202 Definition of determination.

For purposes of this subpart, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

§ 270.203 Determinations by jurisdictional agencies.

A jurisdictional agency must make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

§ 270.204 Notice to the Commission.

Within 15 days after making a determination under this part, the jurisdictional agency must give written notice of the determination to the Commission. The notice must include the following:

(a) A list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(b) A statement indicating whether the matter was opposed before the jurisdictional agency;

(c) A copy of the application together with a copy or description of all other materials upon which the jurisdictional agency relied in the course of making the determination, together with any information which may be inconsistent with the determination.

(d) An explanatory statement, including appropriate factual findings and references, which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

Subpart C—Requirements for Filings With Jurisdictional Agencies

§ 270.301 General requirements.

(a) An application for determination may be filed with the jurisdictional agency and signed by any person the jurisdictional agency designates as eligible to make filings with respect to the well for which the application is made.

(b) The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(c) Each applicant must pay the fee prescribed in § 381.401 of this chapter. The applicant will be billed annually by the Commission for each jurisdictional agency determination received by the Commission. The applicant must submit the fee, or petition for waiver pursuant to § 381.106 of this chapter, within 30 days following the billing date.

§ 270.302 Occluded natural gas produced from coal seams.

A person seeking a determination that natural gas is occluded natural gas produced from coal seams must file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports.

(c) A radioactivity, electric or other log which will define the coal seams.

(d) Evidence to establish that the natural gas was produced from a coal seam;

(e) A statement by the applicant, under oath, that gas is produced from a coal seam through:

(1)(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and

(2) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.303 Natural gas produced from Devonian shale.

A person seeking a determination that natural gas is produced from Devonian shale shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to § 270.101(b)(8);

(d) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(e) A sworn statement:

(1) Calculating the percentage of footage of the producing interval which

is not Devonian shale as indicated by a Gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the stratigraphic section selected is equal to or less than 5 percent of the Devonian stratigraphic age interval designated pursuant to § 270.101(b)(7);

(3) Attesting that the natural gas is being produced from Devonian shale through:

(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and

(4) Attesting that the applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.304 Tight formation gas.

A person seeking a determination that natural gas is tight formation gas must file with the jurisdictional agency an application which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A map that identifies the surface location of the well and the completion location in the well in the designated tight formation, along with the geographic boundaries of the designated tight formation, or a location plat identifying the surface location of the well and the completion location in the designated tight formation, along with a list of the tract (or tracts) of land that comprise the designated tight formation;

(d) A complete copy of the well log, including the log heading identifying the designated tight formation stratigraphically; and

(e) A statement by the applicant, under oath, that:

(1) The natural gas is being produced from a designated tight formation through:

(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) Through a recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980; and

(2) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.305 Determination of tight formation areas.

(a) *General requirement.* A jurisdictional agency determination designating a portion of a formation as a tight formation must be made in the form and manner prescribed in this subpart.

(b) *Guidelines for designating tight formations.* A jurisdictional agency determination designating a portion of a formation as a tight formation must be made in accordance with the following guidelines:

(1) Within the geographic boundaries of the portion of the formation being recommended for tight formation designation, the estimated in situ gas permeability, throughout the pay section, is expected to be 0.1 millidarcy (md) or less. The expected in situ permeability is to be determined through an arithmetic mean averaging of the known permeabilities obtained from the wells that penetrate, and have a pay section in, such portion of such formation.

(2) Within the geographic boundaries of the portion of the formation being recommended for tight formation designation, the stabilized production rate of natural gas, against atmospheric pressure, of wells completed for production in such portion of such formation, without stimulation, is not expected to exceed the production rate determined in accordance with the table in this paragraph (b)(2). Such expected stabilized, pre-stimulation production rate is to be determined through an arithmetic mean averaging of the known stabilized, pre-stimulation production rates obtained from the wells that penetrate, and have a pay section in, such portion of such formation.

If the average depth to the top of the formation (in feet)		The maximum allowable production rate of natural gas (in Mcf per day)
exceeds—	but does not exceed—	may not exceed—
0	1,000	44
1,000	1,500	51
1,500	2,000	59
2,000	2,500	68
2,500	3,000	79
3,000	3,500	91
3,500	4,000	105
4,000	4,500	122
4,500	5,000	141
5,000	5,500	163
5,500	6,000	188
6,000	6,500	217
6,500	7,000	251
7,000	7,500	290
7,500	8,000	336
8,000	8,500	388
8,500	9,000	449
9,000	9,500	519
9,500	10,000	600
10,000	10,500	693
10,500	11,000	802
11,000	11,500	927
11,500	12,000	1,071
12,000	12,500	1,238

If the average depth to the top of the formation (in feet) exceeds—	but does not exceed—	The maximum allowable production rate of natural gas (in Mcf per day) may not exceed—
12,500	13,000	1,432
13,000	13,500	1,655
13,500	14,000	1,913
14,000	14,500	2,212
14,500	15,000	2,557

(c) *Notice to the Commission.* Any jurisdictional agency making a determination that a formation, or portion thereof, qualifies as a tight formation will provide timely notice, in writing, of such determination, to the Commission. Such notice shall include the following to substantiate the jurisdictional agency's findings:

(1) Geological and geographical descriptions of the formation, or portion thereof, which is determined to qualify as a tight formation; and (2)

Geological and engineering data to support the determination, including (but not limited to):

(i) A map of the area for which a tight formation determination is being sought that clearly locates and identifies all data wells and all dry holes that penetrate the subject formation and all wells that are currently producing from the subject formation.

(ii) A well-by-well table of each in situ permeability value (in millidarcies), pre-stimulation stabilized production rate (in Mcf per day), and depth to the top of the formation (in feet) for each well, and the arithmetic mean of each set of data.

(iii) For any data that the jurisdictional agency excludes from the above calculations, a statement explaining why the data was excluded.

(iv) The underlying well test, well logs, cross-sections, or other data sources, and all calculations performed to derive the formation tops, permeability values, and pre-stimulation stabilized production rates shown in the well-by-well table.

(v) Any other information that the jurisdictional agency deems relevant and/or that the jurisdictional agency relied upon in making its determination.

§ 270.306 Devonian shale wells in Michigan.

A person seeking a determination that natural gas is being produced from the Devonian Age Antrim shale in Michigan shall file an application that contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log from the closest available well bore (producing or dry hole) that is within a one mile radius of the well for which a determination is sought, with superimposed indications of:

(1) The shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section penetrated by the well bore; and

(2) The boundary between the Antrim shale and the overlying formation (Berea Sandstone, Ellsworth, Bedford, or Sunbury shales, or their equivalents);

(d) A location plat showing the well for which the determination is sought and the well for which a gamma ray log has been filed;

(e) A mud log from the well for which the determination is sought, with a detailed description of samples taken from 10-foot, or less, intervals throughout the Devonian age stratigraphic section penetrated by the well bore;

(f) A driller's log, or similar report, from the well for which the determination is sought, indicating the general characteristics of the strata penetrated and the corresponding depths at which they are encountered throughout the Devonian age stratigraphic section penetrated by the well bore;

(g) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(h) A sworn statement:

(1) Calculating the percentage of footage of the producing interval (or the Antrim Shale in the event the well is a dry hole) in the well for which a gamma ray log was submitted which is not Devonian shall as indicated by a gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the Devonian age stratigraphic section penetrated by the well bore for which the submitted gamma ray log is equal to or less than 5 percent;

(3) Attesting that the natural gas is being produced from the Devonian Age Antrim shale through:

(i) A well the surface drilling of which began after December 31, 1979, but before January 1, 1993;

(ii) A recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, but before January 1, 1993; or

(iii) A recompletion that was commenced after December 31, 1979 but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980 and

(4) Attesting the applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

Subpart D—Identification of State and Federal Jurisdictional Agencies

§ 270.401 Jurisdictional agency.

(a) *Definition.* With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), "jurisdictional agency" means the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas.

(b) The jurisdictional agency for wells located on Federal lands in each state are:

(1) Alabama—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(2)(i) Alaska, Anchorage Field Office—Assistant District Manager for Mineral Resources, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, AK 99507.

(ii) Alaska, Northern Field Office—Assistant District Manager for Mineral Resources, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709.

(3)(i) Arizona, except for the Navaho and Hopi Indian Reservations—Deputy State Director for Mineral Resources, Bureau of Land Management, PO Box 555, Phoenix, AZ 85000–0555.

(ii) Arizona, Navaho and Hopi Indian Reservations—District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(4) Arkansas—Chief, Branch of Resources, Planning & Protection,

Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(5) California, except Naval Petroleum Reserve No. 1 (Elk Hills) and No. 2 (Buena Vista)—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources (C–920), 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825.

(6) Colorado—Deputy State Director for Resource Services, Bureau of Land Management, Colorado State Office (CO–930), 2850 Youngfield Street, Lakewood, CO 80215.

(7) Florida and Georgia—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(8) Idaho—Deputy State Director Resources and Science, Bureau of Land Management, Idaho State Office (931), 1387 Vinnell Way, Boise, ID 83709.

(9) Illinois, Indiana, and Iowa—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(10) Kansas—Deputy State Director for Resource Services, Bureau of Land Management, Colorado State Office (CO–931), 2850 Youngfield Street, Lakewood, CO 80215.

(11) Kentucky, Louisiana, Maryland, Michigan, Mississippi, and Missouri—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(12) Montana—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources, PO Box 36800, Billings, MT 59107.

(13) Nebraska—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(14) Nevada—State Director, Bureau of Land Management, Nevada State Office (NV–92000), PO Box 12000, Reno, NV 89520.

(15)(i) New Mexico, Northern New Mexico—Field Office Manager, Bureau of Land Management, Albuquerque Field Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(ii) New Mexico, Southern New Mexico—Field Office Manager, Bureau of Land Management, Roswell Field Office (NGPA), 2909 West Second Street, Roswell, NM 88201.

(16) New York and North Carolina—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(17) North Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, PO Box 36800, Billings, MT 59107.

(18) Ohio—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(19)(i) Oklahoma, except the Osage Reservation—Field Office Manager, Bureau of Land Management, Tulsa Field Office (NGPA), 7906 East 33rd Street, Suite 101, Tulsa, OK 74145.

(ii) Oklahoma, the Osage Reservation only—Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U. S. Department of the Interior, Pawhuska, OK 74056.

(20) Oregon—Deputy State Director, Planning, Use, and Protection, Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, OR 97208.

(21) Pennsylvania and South Carolina—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(22) South Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, PO Box 36800 Billings, MT 59107.

(23) Tennessee—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(24) (i) Texas, east of the 100th Meridian—Field Office Manager, Bureau of Land Management, Tulsa Field Office (NGPA), 7906 East 33rd Street, Suite 101, Tulsa, OK 74145.

(ii) Texas, west of the 100th Meridian—Field Office Manager, Bureau of Land Management, Roswell Field Office (NGPA), 2909 West Second Street, Roswell, NM 88201.

(25) (i) Utah, except for the Navajo and Hopi Indian Reservations—Deputy State Director for Natural Resources, Bureau of Land Management, Utah State Office (U–930), 324 South State Street, Suite 301, Salt Lake City, UT 84111.

(ii) Utah, the Navajo and Hopi Indian Reservations only—Field Office Manager, Bureau of Land Management, Albuquerque Field Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(26) Virginia—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(27) Washington—Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, OR 97208.

(28) West Virginia—Chief, Branch of Resources, Planning & Protection, Bureau of Land Management, Eastern States Office (931), 7450 Boston Boulevard, Springfield, VA 22153.

(29) (i) Wyoming, excluding Naval Petroleum Reserve No. 3 (Teapot Dome) Casper Field Office—Field Office Manager, Bureau of Land Management, 1701 East E Street, Casper, WY 82601.

(ii) Rawlins Field Office—Field Office Manager, Bureau of Land Management, PO Box 2407, Rawlins, WY 82301.

(iii) Rock Springs Field Office—Field Office Manager, Bureau of Land Management, 280 Highway 191 North, Rock Springs, WY 82901.

(iv) Worland Field Office—Field Office Manager, Bureau of Land Management, PO Box 119, Worland, WY 82401.

(c) The jurisdictional agency for wells located on Other lands in each state are:

(1) Alabama—State Oil and Gas Board, 420 Hackberry Lane, P O Box 869999, Tuscaloosa, AL 35486–9780.

(2) Alaska—Department of Natural Resources, Oil & Gas Division, 550 West 7th Avenue, Anchorage, AK 99501.

(3) Arizona—Oil and Gas Conservation Commission, 416 West Congress Street, Suite 100, Tucson, AZ 85701

(4) Arkansas—Oil & Gas Commission, PO Box 1472, El Dorado, AR 71730-1472.

(5) California—Department of Conservation, Division of Oil & Gas, 801 K Street, MS24–01, Sacramento, CA 95814.

(6) Colorado—Oil & Gas Conservation Commission, 1120 Lincoln, Suite 801, Denver, CO 80203.

(7) Florida—Administrator Oil and Gas, Bureau of Geology, Department of Natural Resources, 903 West Tennessee Street, Tallahassee, FL 32304.

(8) Georgia—Department of Natural Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW, Atlanta, GA 30334.

(9) Idaho—Idaho Public Utilities Commission, Statehouse Mail, Boise, ID 83720.

(10) Illinois—Department of Natural Resources, Oil & Gas Division, 524 South 2nd Street, Springfield, IL 62701.

(11) Indiana—Department of Natural Resources, Oil & Gas Division, 402 West Washington Street, Room 256 Indianapolis, IN 46204.

(12) Kansas—Kansas Corporation Commission, Finney State Office

Building, 130 South Market, Room 2078, Wichita, KS 67202–3802.

(13) Kentucky—Public Service Commission, 211 Sower Blvd., PO Box 6615, Frankfort, KY 40602–0615.

(14) Louisiana—Department of Natural Resources, Office of Conservation, PO Box 94275, Baton Rouge, LA 70804.

(15) Maryland—Department of Natural Resources, Tawes State Office Building., Annapolis, MD 21404.

(16) Michigan—Department of Environmental Quality, Geological Survey Division, Hollister Building, PO Box 30473, Lansing MI 48909.

(17) Mississippi—State Oil & Gas Board, 500 Graymont Avenue, Suite E, Jackson, MS 39202.

(18) Missouri—Department of Natural Resources Geology and Survey Division, PO Box 250, 111 Fairgrounds Road, Rolla, MO 65402.

(19) Montana—Department of Natural Resources and Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, MT 59102.

(20) Nebraska—Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.

(21) Nevada—Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.

(22) New Mexico—Department of Energy and Minerals and Natural Resources, Oil Conservation Division, 2040 S. Pacheco Street, Sante Fe, NM 87505.

(23) New York—New York State Department of Environmental Conservation, Division of Mineral Resources, Bureau of Oil and Gas Regulation, 50 Wolf Road, Albany, NY 12233–6500.

(24) North Carolina—Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, NC 27611.

(25) North Dakota—Industrial Commission, State Capitol, 600 East Boulevard Avenue, Department 405, Bismarck, ND 58505.

(26) Ohio—Department of Natural Resources, Division of Oil and Gas 4383 Fountain Square Drive, Columbus, OH 43224–1362.

(27) Oklahoma—Corporation Commission, 300 Jim Thorpe Building, PO Box 52000–2000, Oklahoma City, OK 73152–2000.

(28) Oregon—Department of Geology & Mineral Industries, 800 N.E. Oregon Street, #28 Portland, OR 972332.

(29) Pennsylvania " Department of Conservation and Natural Resources, PO Box 8767, Harrisburg, PA 17105–8767.

(30) South Carolina—South Carolina Public Service Commission, PO Drawer 11649, Columbia, SC 29211.

(31) South Dakota—Oil and Gas Supervisor, Department of Environment and Natural Resources, 2050 West Main, Suite 1, Rapid City, SD 57702.

(32) Tennessee—Office of Conservation, Division of Geology, 401 Church Street, Nashville, TN 37243.

(33) Texas—Railroad Commission Oil and Gas Division, 1701 North Congress Avenue, PO Box 12967, Austin, TX 78711–2967.

(34) Utah—Department of Natural Resources, Division of Oil, Gas and Mining, PO Box 145801 West North Temple, Suite 1210, Salt Lake City, UT 84114–5801.

(35) Virginia—Department of Mines, Minerals & Energy, Division of Gas and Oil, PO Box 1416, Abingdon, VA 24210.

(36) Washington—Department of Natural Resources, Geology and Earth Resources Division, PO Box 47001, Olympia, WA 98504.

(37) West Virginia—Division of Environmental Protection, Office of Oil and Gas, #10 McJunkin Road, Nitro, WV 25143–2506.

(d) *Federal lands.* For purposes of this section, *Federal lands* means:

(1) All lands leased under:

(i) The Mineral Lands Leasing Act, as amended, 30 U.S.C. 181 *et seq.*; and

(ii) The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351 *et seq.*; and

(2) All Indian lands which are under the supervision of the United States Geological Survey or any successor federal agency (30 CFR part 221); and

(3) All Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(e) *Divided-interest leases.* Unless an agreement under this paragraph provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

(1) The Federal jurisdictional agency will make the determination where the majority lease interest is Federal (or Indian);

(2) The State jurisdictional agency will make the determination where the majority lease interest is private (or State); and

(3) The State jurisdictional agency will make the determination where the lease is divided equally.

(f) *Drilling units.* Unless an agreement under paragraph (e) of this section provides otherwise, where a drilling unit is drained by two or more wells, the Federal jurisdictional agency will make the determination if the completion location of the well in question is located on a Federal (or Indian) lease, and the State jurisdictional agency will make the determination if the completion location of the well in question is located on a private (or State) lease.

(g) *Agreements.* If a jurisdictional agency that has jurisdiction over Federal lands enters into an agreement with a jurisdictional agency that has jurisdiction over State lands that either authorizes the State jurisdictional agency to make determinations for wells located on Federal lands or the Federal agency to make determinations for wells located on State lands, such agreement shall be filed with the Commission. Upon the filing of such an agreement, the agency so authorized will be considered to be the jurisdictional agency for wells on the lands subject to the agreement.

Subpart E—Commission Review of Jurisdictional Agency Determinations

§ 270.501 Publication of notice from jurisdictional agency.

(a) Upon receipt of a notice of determination by a jurisdictional agency under § 270.204, the Commission will send an acknowledgment to the applicant and will post acknowledgment in the Commission's Public Reference Room and on the Commission's web site. Another source of the information is the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

(b) The acknowledgment will contain the following:

(1) The date on which the jurisdictional agency notice was received;

(2) Certain information contained in FERC Form No. 121;

(3) A statement that the application and a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent the material is treated as confidential under § 270.506, at the offices of the Commission; and

(4) A statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to this section.

§ 270.502 Commission review of final determinations.

(a) *Review by Commission.* Except as provided in paragraphs (b), (c) and (d)

of this section, a determination submitted to the Commission by a jurisdictional agency will become final 45 days after the date on which the Commission received notice of the determination, unless within the 45 day period, the Commission:

(1) Makes a preliminary finding that:

(i) The determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) The determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) Issues written notice of such preliminary finding, including the reasons therefor. Copies of the written notice will be sent to the jurisdictional agency that made the determination, to the persons identified in the notice under § 270.204 of such determination, and to any persons who have filed a protest.

(b) *Incomplete notice.* Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination will not begin if:

(1) The notice forwarded to the Commission pursuant to § 270.204 does not contain all the material specified therein; and

(2) The Commission notifies the jurisdictional agency, within 45 days after the date on which the Commission receives notice of the determination, that the notice is incomplete.

(c) *Withdrawal of notice.* (1) The jurisdictional agency may withdraw a notice of determination by giving notice as specified in paragraph (c)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraph (a) or (g)(4) of this section. Such notice must include the jurisdictional agency's reasons for the withdrawal.

(2) Withdrawal of a notice of determination will take effect at such time as the jurisdictional agency has notified the Commission, and the parties to the proceeding before the agency, of such withdrawal.

(3) Withdrawal of a notice of determination shall nullify such notice of determination.

(d) *Withdrawal of application.* (1) An applicant may withdraw an application for a determination which is before the Commission by giving notice as specified in paragraph (d)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraph (a) or (g)(4) of this section.

(2) Withdrawal of an application will take effect at such time as the applicant has notified the Commission and the jurisdictional agency.

(3) Withdrawal of an application will nullify such application and the notice of determination on such application.

(e) *Public notice.* The Commission will publish notice of the preliminary finding in the **Federal Register** and will post the notice in its Public Reference Room. The notice will set forth the reasons for the preliminary finding.

(f) *Procedures following notice of preliminary finding.* Any state or federal agency or any person may submit, within 30 days after issuance of the preliminary finding, written comments, and request an informal conference with the Commission staff. Any jurisdictional agency, any state agency and any person receiving notice under paragraph (a)(2) of this section may request an informal conference with the Commission staff. All timely requests for conferences will be granted. Notice of, and permission to attend, such conferences will be given to persons identified in paragraph (a)(2) of this section and to state or federal agencies or persons who submitted comments under this paragraph.

(g) *Final orders.* (1) In any case in which a protest was filed with the Commission and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the preliminary finding.

(2) In any case in which no protest was filed with the Commission and a preliminary finding was issued, the Commission may issue a final order within 120 days after issuance of the preliminary finding.

(3) A final order issued under paragraph (g)(1) or (g)(2) of this section will either affirm, reverse, or remand the determination of the jurisdictional agency. Such order will state the specific basis for the Commission's action. Notice of the issuance of such order will be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency, and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 270.503.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

§ 270.503 Protests to the Commission.

(a) *Who may file.* Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to § 270.204.

(b) *Grounds.* Protests may be based only on the grounds the final determination is:

(1) Not supported by substantial evidence;

(2) Not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the determination was made;

(3) Not consistent with information submitted with the protests for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) Not based on an application which complied with the filing requirements set forth in this part.

§ 270.504 Contents of protests to the Commission.

Each protest must include:

(a) An identification of the determination protested;

(b) The name and address of the person filing the protest;

(c) A statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for the nonparticipation;

(d) A statement of the effect the determination will have on the protestor;

(e) A statement of the precise grounds under § 270.503(f) for the protest, and all supporting documents or references to any information relied on which is in the record on which the determination is based or is in or to be inserted in the public files of the Commission; and

(f) A statement that the protestor has served, in accordance with § 385.2010 of this chapter, a copy of the protest together with all supporting documents on the jurisdictional agency and all persons listed in the notice of determination filed pursuant to § 270.204.

§ 270.505 Procedure for reopening determinations.

(a) *Grounds.* At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) In making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) There was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) *Contents of petition.* A petition to reopen the determination proceedings must contain the following information, under oath:

(1) The name and address of the person filing the petition;

(2) The interest of the petitioner in the outcome of the determination proceeding;

(3) The statement of material fact that is alleged to be untrue or omitted;

(4) A statement explaining why the outcome of the determination proceeding would have been different had the statement or omission not occurred; and

(5) Copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the Commission.

(c) *Procedures after reopening.* In the event the Commission reopens a determination pursuant to this section it will:

(1) Give notice to the jurisdictional agency and all persons who participated before both that agency and the Commission in the proceedings resulting in the determination in question;

(2) Permit the jurisdictional agency and other persons receiving notice pursuant to paragraph (c)(1) of this section to submit whatever documentary evidence such agency or persons deem relevant; and

(3) Take such other action or hold or cause to be held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) *Final order of Commission.* Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it will vacate the determination.

§ 270.506 Confidentiality.

(a) Except as provided in paragraph (b) of this section, the Commission will accord confidential protection to, and not disclose to the public, any information submitted by a jurisdictional agency under § 270.204, if:

(1) The jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) The agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a) of this section, the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt. 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines the information is exempt, the Commission will not make it public unless determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission will provide at least 5 days notice to the person who submitted the information.

PART 375—THE COMMISSION

2. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

3. In § 375.307, paragraph (p) is added to read as follows:

§ 375.307 Delegation to the Director of the Office of Markets, Tariffs, and Rates

* * * * *

(p) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to § 270.502(b) of this chapter that the notice is incomplete under § 270.204 of this chapter.

(2) Issue preliminary findings under § 270.502(a)(1) of this chapter.

PART 381—FEES

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

4. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C.791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

5. Section 381.401 is added to read as follows:

§ 381.401 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is $115. The fee must be submitted in accordance with subpart A of this part and § 270.301(c) of this chapter.

Note: The form and appendix that follow will not appear in the code of federal regulations.

Federal Energy Regulatory Commission

Washington D.C.

FERC Form–121

(1/2000)

Form Approved

OMB No. 1902–0038

(Expires)

Application for determination

General Instructions

1. *Purpose:* This form is to be used to provide basic data on each application for a well category determination that is filed with a Jurisdictional Agency to qualify the natural gas produced from such well as (a) occluded natural gas produced from coal seams, under section 107(c)(3) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3301] (NGPA), (b) natural gas produced from Devonian shale, under section 107(c)(4) of the NGPA, or (c) natural gas produced from a designated tight formation, under section 107(c)(5) of the NGPA, in order to substantiate the eligibility of such natural gas for a tax credit under Section 29 of the Internal Revenue Code. The Commission will use this data, together with the other information contained in the Jurisdictional Agency's notice of determination, to evaluate whether substantial evidence exists to support the determination.

2. *Who must submit:* Anyone who files an application with a Jurisdictional Agency identified under Section 270.401 of the Commission's Regulations for a well category determination.

3. *What and where to submit:* The original of this form, and all of the information required by Section 270.302, 270.303, 270.304, or 270.306 of the Commission's Regulations must be filed with the Jurisdictional Agency. The Jurisdictional Agency making a determination must file the original of this form, with all of the other information required under the applicable Commission Regulations, with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. Applicants should retain one copy of each completed form for their files for 4 years.

4. These are mandatory filing requirements.

5. The data on this form are not considered confidential and will not be treated as such.

6. *Where to send comments on the public reporting burden:* The public reporting burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering

and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 (Attention: Mr. Michael Miller, CI–1) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). Persons subject to providing this information will not be penalized for failing to respond to these collections of information unless the collection of information displays a valid OMB control number.

A. THE NGPA WELL CATEGORY DETERMINATION IS BEING SOUGHT FOR A WELL PRODUCING:

A1 __ occluded natural gas from coal seams.
A2 __ natural gas from Devonian shale.
A3 __ natural gas from a designated tight formation.

B. FOR ALL APPLICATIONS FOR DETERMINATION PROVIDE THE FOLLOWING:

1. Well Name and No.* _____
2. Completed in (Name of Reservoir)* _____
3. Field* _____
4. County* _____
5. State* _____
6. API Well No. (14 digits maximum. If not assigned, leave blank.)
9. Measured Depth of the Completed Interval (in feet)
   TOP
   BASE

C. APPLICANT'S MAILING ADDRESS AND THE IDENTITY OF THE PERSON WHO IS RESPONSIBLE FOR APPLICATION:

1. Applicant's Name* _____
2. Street* _____
3. City* _____
4. State* _____
5. Zip Code _____
6. Name of Person Responsible* _____
7. Title of Such Person* _____
8. Signature _____
   and Phone No. ( ) –

*Signifies that line entry may contain up to 35 letters and/or numbers.

Appendix—List of Commentors

Alabama State Oil & Gas Board
The American Gas Association
American Petroleum Institute
Burlington Resources Inc.
Calumet Oil
Coalbed Methane Association of Alabama
Colorado Oil and Gas Conservation Commission
Colorado Oil & Gas Association
Columbia Natural Resources
Cross Timbers Oil Company
United States Department of Energy
United States Department of Interior, Bureau of Land Management
Domestic Petroleum Council
Dominion Resources Inc.
Equitable Production Company
HS Resources, Inc.
Independent Oil and Gas Association
Independent Oil & Gas Association of New York
Independent Oil & Gas Association of Pennsylvania
Independent Oil & Gas Association of West Virginia
Independent Petroleum Association of America and Natural Gas Supply Association
Interstate Oil & Gas Compact Commission
Kansas Corporation Commission
Kentucky Public Service Commission
Louisiana Department of Natural Resources Office of Conservation
Marathon Oil Company
State of Michigan Department of Environmental Quality
New Mexico Oil & Gas Association
Non-Conventional Energy Inc.
New York State Department of Environmental Conservation
Northwest Fuel Development Inc
Ohio Department of Natural Resource
Oklahoma Corporation Commission
Producer Coalition
Railroad Commission of Texas
Texas Independent Producers & Royalty Owners
Union Pacific Resources
Vastar Resources, Inc
Virginia Department of Mines, Minerals & Energy
Virginia Oil & Gas Association
West Virginia Division of Environmental Protection
Williams Production Co.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 00–62]

RIN 1515–AC36

Forced or Indentured Child Labor

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations with the particular intent to stop illegal shipments of products of forced or indentured child labor and to punish violators. The document amends the Customs Regulations to provide for the seizure and forfeiture of merchandise that is found to be a prohibited importation under 19 U.S.C. 1307, concerning products of convict labor, forced labor, or indentured labor under penal sanctions, including forced or indentured child labor under penal sanctions. The amendment makes clear that nothing in the Customs Regulations precludes Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law dealing with prison-labor goods. The amendments form part of a vigorous law enforcement initiative undertaken by Customs to prohibit the importation of merchandise produced by forced or indentured child labor.

EFFECTIVE DATE: August 25, 2000.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Office of Regulations and Rulings, 202–927–2320.

SUPPLEMENTARY INFORMATION:

Background

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) generally prohibits the importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions. Such prohibitions are enforced by Customs under §§ 12.42–12.44 of the Customs Regulations (19 CFR 12.42–12.44).

If Customs finds, on the basis of information presented and investigated under the procedures described in § 12.42(a)–(e), that a class of merchandise is subject to the prohibition under section 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to this effect in the weekly issue of the Customs Bulletin and in the **Federal Register**, as prescribed in § 12.42(f).

Under § 12.43, an importer is afforded the opportunity to furnish proof within 3 months after importation in order to establish the admissibility of particular imported merchandise detained by Customs under § 12.42(e) or covered by a finding under § 12.42(f), that the particular merchandise being imported is not itself produced with the use of a type of labor specified in section 307.

Section 12.44 deals with the disposition of merchandise determined to be inadmissible under section 307. Currently, § 12.44 provides in pertinent part that such merchandise may be exported at any time within the 3–month period after importation. If not so exported and if no proof of admissibility has been provided, the importer is advised in writing that the merchandise is excluded from entry and, 60 days thereafter, the merchandise is deemed abandoned and will be destroyed unless it has been exported or a protest has been filed under 19 U.S.C. 1514.

Forced or Indentured Child Labor

A general provision in the Fiscal Year (FY) 1998 Treasury Appropriations Act

made clear what is implicit in the law: that merchandise manufactured with the use of forced or indentured child labor under penal sanctions falls within the prohibition of section 1307. This Act prohibits Customs from using any of the appropriation to permit the importation into the United States of such merchandise. In addition, in the last three State of the Union addresses, President Clinton has pledged to fight abusive child labor.

Following the enactment of the FY 1998 appropriations amendment regarding forced or indentured child labor under penal sanctions, both the Treasury Department and the National Economic Council chaired in-depth interagency discussions aimed at strengthening the capability of the Executive Branch to enforce the prohibition on imports that were produced by forced or indentured child labor under penal sanctions.

To this end, the Treasury Department, by a document published in the **Federal Register** (63 FR 30813) on June 5, 1998, established a Treasury Advisory Committee on International Child Labor Enforcement, whose ultimate purpose was to support a vigorous law enforcement initiative to stop illegal shipments of products of forced or indentured child labor under penal sanctions and to punish violators. By a document published in the **Federal Register** (65 FR 11831) on March 6, 2000, the Treasury Department determined that it was in the public interest to renew this Advisory Committee for an additional two-year term beyond its original expiration date (June 22, 2000).

Proposed Amendment

As part of the foregoing initiative, by a document published in the **Federal Register** (64 FR 62618) on November 17, 1999, Customs proposed to amend § 12.42(a) to make expressly clear that merchandise manufactured with the use of forced or indentured child labor under penal sanctions falls within the prohibition of 19 U.S.C. 1307.

Also, Customs proposed to amend § 12.44 regarding the disposition to be accorded merchandise that is a prohibited importation under section 307. Under this proposed amendment, in the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advised the port director that the proof furnished under § 12.43 did not establish the admissibility of a particular importation of such merchandise, or if no proof was timely furnished in this regard, the merchandise would then be seized and be subject to the commencement of forfeiture proceedings under subpart E of part 162 of the Customs Regulations (19 CFR part 162, subpart E). Currently, such merchandise is permitted to be exported at any time before it is deemed to have been abandoned.

In addition, Customs proposed to amend § 12.44 to state explicitly that nothing in the Customs Regulations (19 CFR Chapter I) precluded Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law (18 U.S.C. 1761–1762) dealing with prison-labor goods.

Discussion of Comment

Counsel on behalf of a domestic trade association submitted the only comment in response to the notice of proposed rulemaking. The trade association supported the proposed amendments. However, the association asked that § 12.42 also be amended to impose a one-year time limit within which Customs would need to complete, and take appropriate action in connection with, an investigation undertaken pursuant to 19 U.S.C. 1307. In this regard, the association wanted § 12.42 further revised to require that persons presenting information of an alleged violation of section 1307 be kept informed, along with any interested domestic producers, and any other interested parties, regarding the continuing progress of an investigation. Finally, the association requested that § 12.42(e) be amended to require that the Commissioner withhold release of any merchandise undergoing investigation for a possible violation of 19 U.S.C. 1307 if there were reasonable grounds to believe that the merchandise was indeed a prohibited importation under section 1307.

Customs Response

Customs believes that it would be inappropriate and counterproductive to impose an inflexible time limit in § 12.42 for any investigation initiated under 19 U.S.C. 1307. The quality of the information received regarding suspected violations of section 1307 varies substantially in each case. Extensive and lengthy investigation is required in some cases, and significant barriers (*e.g.*, cultural, political, geographic) must be overcome, in order to obtain the evidence needed to support lawful Customs action under the statute. Also, the disclosure of information regarding ongoing Customs investigations is generally contrary to agency policy.

Lastly, § 12.42(e) already provides that if the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 1307 is being, or is likely to be, imported, the Commissioner will notify all port directors accordingly. The port directors are then to withhold the release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation. Customs believes that this is sufficient and that no amendment of § 12.42(e) is needed under the circumstances.

Conclusion

In view of the foregoing, and following careful consideration of the issues raised by the commenter and further review of the matter, Customs has concluded that the proposed amendments should be adopted.

Additional Changes

In addition, Customs has determined that the phrase, "including forced or indentured child labor", appearing in proposed § 12.42(a), should be revised to read, "including forced or indentured child labor under penal sanctions", in order to conform precisely with the plain language and requirements of 19 U.S.C. 1307. Also, proposed § 12.44 is revised essentially to retain the provision contained in the current regulation (19 CFR 12.44 (1999)) regarding the disposition to be accorded merchandise that has been detained under § 12.42(e) but that is not subject to a finding under § 12.42(f).

Regulatory Flexibility Act and Executive Order 12866

Because the importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by forced labor is prohibited, Customs anticipates that there will not be a substantial number of small entities that would become involved in a prohibited importation. The rule applies to products subject to a "finding" that the class of merchandise was produced with forced or indentured child labor under penal sanctions, a more formal Customs action with a higher burden of proof than simple Customs detention of merchandise based on reasonable suspicion. Also the range of countries and products which are likely to be implicated in findings of forced or indentured child labor under penal sanctions is likely to be fairly narrow. Accordingly, it is certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. Nor does the

document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Seizure and forfeiture.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read as follows, and the relevant specific sectional authority is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.42 through 12.44 also issued under 19 U.S.C. 1307 and Pub. L. 105–61 (111 Stat. 1272);

* * * * *

2. Section 12.42 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 12.42 Findings of Commissioner of Customs.

(a) If any port director or other principal Customs officer has reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions, including forced child labor or indentured child labor under penal sanctions, so as to come within the purview of section 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of Customs. * * *

* * * * *

3. Section 12.44 is revised to read as follows:

§ 12.44 Disposition.

(a) *Export and abandonment.* Merchandise detained pursuant to § 12.42(e) may be exported at any time prior to seizure pursuant to paragraph (b) of this section, or before it is deemed to have been abandoned as provided in this section, whichever occurs first. Provided no finding has been issued by the Commissioner of Customs under § 12.42(f) and the merchandise has not been exported within 3 months after the date of importation, the port director will ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been timely submitted, or if the Commissioner of Customs advises the port director that the proof furnished does not establish the admissibility of the merchandise, the port director will promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the port director, the merchandise will be deemed to have been abandoned and will be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

(b) *Seizure and summary forfeiture.* In the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advises the port director that the proof furnished under § 12.43 does not establish the admissibility of the merchandise, or if no proof has been timely furnished, the port director shall seize the merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to part 162, subpart E, of this chapter.

(c) *Prison-labor goods.* Nothing in this chapter precludes Customs from seizing for forfeiture merchandise imported in violation of 18 U.S.C. 1761 and 1762 concerning prison-labor goods.

Raymond W. Kelly,
Commissioner of Customs.

Approved: June 19, 2000.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–18819 Filed 7–25–00; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration, HHS

21 CFR Part 510

New Animal Drugs; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Wellmark International.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Norman Turner, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0214.

SUPPLEMENTARY INFORMATION: Wellmark International, 1000 Tower Rd., suite 245, Bensenville, IL 60106, has informed FDA of a change of sponsor address to 1100 East Woodfield Rd., suite 500, Schaumburg, IL 60173. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A), because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Wellmark International" and in the table in paragraph (c)(2) by revising the entry for "011536" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Wellmark International, 1100 East Woodfield Rd., suite 500, Schaumburg, IL 60173	011536

(2) * * *

Drug labeler code	Firm name and address
011536	Wellmark International, 1100 East Woodfield Rd., suite 500, Schaumburg, IL 60173

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18824 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Sustained-Release Bolus

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for changes to labeling of ivermectin sustained-release bolus for cattle.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, filed a supplement to NADA 140–988 that provides for use of Ivomec® (ivermectin) SR bolus for cattle. The supplement provides for reducing the predicted duration of effectiveness in labeling from approximately 135 days to approximately 130 days, based on bolus stability data. The supplement is approved as of June 21, 2000, and the regulations in 21 CFR 520.1197 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1197 [Amended]

2. Section 520.1197 *Ivermectin sustained-release bolus* is amended in paragraph (d)(2) by removing the parenthetical phrase "(approximately 135 days)" and by adding in its place "(approximately 130 days)".

Dated: July 18, 2000.

Claire M. Lathers,

Director, New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18827 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 12 approved new animal drug applications (NADA's) from Merial Ltd. to Phoenix Scientific, Inc.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to Phoenix Scientific, Inc., 3915 South 48th St. Terrace, PO Box 6457, St. Joseph, MO 64506–0457:

NADA No.	Product Name
033–157	SPECTAM® (spectinomycin) Scour Halt
040–040	SPECTAM® (spectinomycin) Injection
045–416	BUTATRON™ (phenylbutazone) Injection
048–287	Oxytetracycline-50 (oxytetracycline) Injection
055–002	TEVOCIN (chloramphenicol) Injection
093–483	SPECTAM® (spectinomycin) Injectable
119–142	PVL Iron Dextran Injectable
123–815	Dexamethasone Sodium Phosphate Injection
124–241	PVL Oxytocin Injection
128–089	ZONOMETH (dexamethasone) Sterile Solution
200–147	GENTA–JECT® (gentamicin sulfate) Injection
200–153	NEO 200 (neomycin sulfate) Oral Solution

Accordingly, the agency is amending the regulations in parts 520 and 522 (21 CFR parts 520 and 522) in §§ 520.1485, 520.2122, 522.390, 522.540, 522.1044, 522.1183, 522.1662a, 522.1680, and 522.2120 to reflect the transfer of ownership. An entry for Phoenix Scientific, Inc., already exists in § 522.1720 *Phenylbutazone Injection* following the approval of a supplemental ANADA 200–126 (61 FR 54332, October 18, 1996).

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1485 [Amended]

2. Section 520.1485 *Neomycin sulfate oral solution* is amended in paragraph (b) by removing "050604".

§ 520.2122 [Amended]

3. Section 520.2122 *Spectinomycin dihydrochloride oral solution* is amended in paragraph (b)(1) by removing "050604" and adding in its place "059130".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

4. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.390 [Amended]

5. Section 522.390 *Chloramphenicol injection* is amended in paragraph (b) by removing "050604" and adding in its place "059130".

§ 522.540 [Amended]

6. Section 522.540 *Dexamethasone injection* is amended in paragraphs (d)(2)(i) and (e)(2) by removing "050604" and adding in its place "059130".

§ 522.1044 [Amended]

7. Section 522.1044 *Gentamicin sulfate injection* is amended in paragraph (b)(4) by removing "050604" and adding in its place "059130".

§ 522.1183 [Amended]

8. Section 522.1183 *Iron hydrogenated dextran injection* is amended in paragraph (e)(1) by removing "050604" and adding in its place "059130".

§ 522.1662a [Amended]

9. Section 522.1662a *Oxytetracycline hydrochloride injection* is amended in paragraph (i)(2) by removing "050604" and adding in its place "059130".

§ 522.1680 [Amended]

10. Section 522.1680 *Oxytocin injection* is amended in paragraph (b) by removing "050604" and adding in its place "059130".

§ 522.2120 [Amended]

11. Section 522.2120 *Spectinomycin dihydrochloride injection* is amended in paragraph (b) by removing "050604" and adding in its place "059130".

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18628 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ketamine Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Abbott Laboratories. The ANADA provides for intramuscular use of ketamine hydrochloride injection in cats for restraint or as the sole anesthetic agent for diagnostic or minor, brief, surgical procedures that do not require skeletal muscle relaxation, and in nonhuman primates for restraint. The drug is for veterinary prescription use only.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Rd., North Chicago, IL 60064–6316, filed ANADA 200–279 that provides for intramuscular use of Ketaflo™ (ketamine hydrochloride injection, USP) containing the equivalent of 100 milligrams of ketamine base per milliliter (mg/mL) of sterile solution. The product is for veterinary prescription use, in cats for restraint or as the sole anesthetic agent for diagnostic or minor, brief, surgical procedures that do not require skeletal muscle relaxation, and in nonhuman primates for restraint.

Approval of Abbott Laboratories' ANADA 200–279 for Ketaflo™ (ketamine hydrochloride injection, USP) is as a generic copy of Fort Dodge Laboratories' NADA 45–290 for Vetalar® (ketamine hydrochloride injection equivalent to 100 mg/mL ketamine). The ANADA is approved as of June 13, 2000, and the regulations are amended in 21 CFR 522.1222a(c) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1222a [Amended]

2. Section 522.1222a *Ketamine hydrochloride injection* is amended in paragraph (c) by adding the number "000074," after the number "000010,".

Dated: July 17, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–18871 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Heska Corp. to Pharmacia & Upjohn Co.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525, has informed FDA that it has transferred to Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199 ownership of, and all rights and interests in NADA 141–082. Accordingly, the agency is amending the regulations in 21 CFR 522.778 to reflect the transfer of ownership.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.778 [Amended]

2. Section 522.778 *Doxycycline hyclate* is amended in paragraph (b) by removing "063604" and adding in its place "000009".

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18825 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone and Estradiol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Hoechst Roussel Vet. The supplemental NADA's provide for use of two additional trenbolone acetate and estradiol ear implants, one for heifers fed in confinement for slaughter for increased rate of weight gain, and the other for steers fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, Parryville Corporate Park III, PO Box 4010, Clinton, NJ 08809–4010, filed supplemental NADA 140–897 that provides for Revalor®-IS ear implants containing 80 milligrams (mg) trenbolone acetate (TBA) and 16 mg estradiol for steers fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency. Hoechst Roussel Vet also filed supplemental NADA 140–892 that provides for Revalor®-IH ear implants containing 80 mg TBA and 8 mg estradiol for heifers fed in confinement for slaughter for increased rate of weight gain.

The supplemental NADA's are approved as of June 19, 2000, and the regulations are amended in 21 CFR 522.2477 to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals for food-producing animals qualify for 3 years of marketing exclusivity beginning June 19, 2000, because the applications contain substantial evidence of the effectiveness of the drugs involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the applications and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the implants approved in these supplemental NADA's.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.2477 is amended by revising the first sentence in paragraph (b), by adding paragraph (d)(1)(i)(D), and by revising paragraphs (d)(2)(i) and (d)(2)(ii) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

* * * * *

(b) See 012799 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i)(A), (d)(1)(i)(C), (d)(1)(i)(D), (d)(1)(ii), (d)(1)(iii), (d)(2)(i)(A), (d)(2)(i)(B), (d)(2)(ii), (d)(2)(iii), and (d)(3) of this section. * * *

* * * * *

(d) * * *

(1) * * *

(i) * * *

(D) 80 mg trenbolone acetate and 16 mg estradiol (one implant consisting of 4 pellets), or 120 mg trenbolone acetate and 24 mg estradiol (one implant consisting of 6 pellets, each pellet containing 20 mg trenbolone acetate and 4 mg estradiol) per implant dose.

(2) * * *

(i) *Amount.* (A) 140 mg trenbolone acetate and 14 mg estradiol (one implant consisting of 7 pellets, each pellet containing 20 mg trenbolone acetate and 2 mg estradiol) per implant dose for use as in paragraphs (d)(2)(ii)(A) and (d)(2)(ii)(B) of this section.

(B) 80 mg trenbolone acetate and 8 mg estradiol (one implant consisting of 4 pellets, each pellet containing 20 mg trenbolone acetate and 2 mg estradiol) per implant dose for use as in paragraph (d)(2)(ii)(B) of this section.

(ii) *Indications for use.* (A) For increased rate of weight gain and improved feed efficiency.

(B) For increased rate of weight gain.

* * * * *

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18822 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for use of monensin Type A medicated article to make Type C medicated feed formulated as mineral granules for free-choice feeding for the prevention and control of coccidiosis, and increased rate of weight gain in pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers). A technical correction is also being made.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 95–735 that provides for use of RUMENSIN® 80 (80 grams per pound (g/lb) of monensin as monensin sodium) Type A medicated article to make Type C medicated feed formulated as mineral granules for free-choice feeding to pasture cattle. The free-choice medicated mineral granules contain 1,620 g/ton monensin and are used for prevention and control of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, and for increased rate of weight gain in pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers). The supplemental NADA is approved as of July 7, 2000, and the regulations are amended in § 558.355(f)(3)(x) (21 CFR 558.355(f)(3)(x)) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 558.355(d)(6) is revised to reflect current precautionary statements regarding the ingestion of monensin-containing formulations by unapproved species.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.355 is amended by revising paragraphs (d)(6), (f)(3)(x)(*a*), and (f)(3)(x)(*c*) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(6) The labeling of all formulations containing monensin shall bear the following caution statement: Do not allow horses, other equines, mature turkeys, or guinea fowl access to feed containing monensin. Ingestion of monensin by horses and guinea fowl has been fatal.

* * * * *

(f) * * *

(3) * * *

(x) * * *

(*a*) *Indications for use.* For increased rate of weight gain; and for prevention and control of coccidiosis caused by *Eimeria bovis* and *E. zuernii* in pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers).

* * * * *

(*c*) *Limitations.* For free-choice feeding to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) at a rate of 50 to 200 milligrams per head per day. During the first 5 days of feeding, cattle should receive no more than 100 milligrams per day. Do not feed additional salt or minerals. Do not mix with grain or other feeds. Monensin is toxic to cattle when consumed at higher than approved levels. Stressed and/or feed- and/or water-deprived cattle should be adapted to the pasture and to unmedicated mineral supplement before using the monensin mineral supplement. Do not feed to lactating dairy cattle. The product's effectiveness in cull cows and bulls has not been established. Consumption by unapproved species may result in toxic reactions. A feed manufacturing facility must possess a medicated feed mill license issued under § 515.20 of this chapter in order to manufacture this free-choice Type C feed.

* * * * *

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18821 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Penicillin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations to correctly reflect a previously approved 227 grams per pound (g/lb) strength of penicillin G Type A medicated article for use in the feed of several domestic species which was omitted from the regulation in the 1998 notice of approval.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, is sponsor of NADA 046–668 that provides for use of Penicillin 100 (100 g/lb penicillin G procaine) and Penicillin 50 (227 g/lb penicillin G procaine) Type A medicated articles to make Type C medicated feeds used for increased rate of weight gain and improved feed efficiency in poultry and swine. In its approval letter of April 10, 1998, to Pfizer, Inc., the Center for Veterinary Medicine approved the use of these products to make Type C medicated feeds, but did not codify the approval of the 227 g/lb strength of Type A medicated article for this sponsor (63 FR 36179, July 2, 1998). At this time, 21 CFR 558.460(b) is amended by adding the 227 g/lb strength of Type A medicated article to reflect the 1998 approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.460 [Amended]

2. Section 558.460 *Penicillin* is amended in the first sentence in paragraph (b) by adding "and 227" after "To 000069, 100".

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18872 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Neomycin Sulfate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provides for the use of neomycin sulfate Type A medicated articles to make Type B and Type C medicated feeds for cattle, swine, sheep, and goats in a broader range of concentrations.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, has filed a supplemental application to NADA 140–976 that provides for use of Neomix® (neomycin sulfate) Type A medicated articles to make Type B and Type C medicated feeds for cattle, swine, sheep, and goats used for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin. The supplemental NADA requested that the approved range of concentrations for neomycin Type C medicated feeds of 400 to 1,600 grams per ton (g/ton) be broadened to 250 to 2,250 g/ton. The approved daily dose of 10 milligrams per pound of body weight remains unchanged. The supplemental NADA is approved as of June 28, 2000, and the regulations are amended in 21 CFR 558.364 to reflect the approval.

Approval of this supplemental NADA does not require additional safety and effectiveness data. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A), because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.364 [Amended]

2. Section 558.364 *Neomycin sulfate* is amended in the table in paragraph (d) in entry "(1)" under "Neomycin sulfate" by removing "400 to 1,600" and by adding in its place "250 to 2,250".

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18826 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The supplemental NADA provides for use of approved chlortetracycline (CTC) Type A medicated articles to make Type C medicated feeds used for control of porcine proliferative enteropathies (ileitis) in swine.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Diane D. Jeang, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7574.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., PO Box 1399, Fort Lee, NJ 07024, filed a supplement to approved NADA 046–699 that provides for use of CHLORMAX™ (50, 65, or 70 grams per pound (g/lb) chlortetracycline as chlortetracycline hydrochloride) Type A medicated articles to make Type C medicated feeds for use in growing and finishing swine. The Type C medicated feeds contain approximately 400 g per ton CTC (to provide 10 milligrams/lb body weight) and are used for the control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis* susceptible to chlortetracycline. The supplemental NADA is approved as of July 7, 2000, and the regulations are amended in 21 CFR 558.128 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning on July 7, 2000, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the new claim for which the supplemental application was approved.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.128 is amended in the table in paragraph (d)(1)(xii) by adding an entry "4." to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(d) * * *

(1) * * *

Chlortetracycline amount	Combination	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xii) 10 mg/lb of body weight		* * *		
		4. Swine; for control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis* susceptible to chlortetracycline.	Feed for not more than 14 d.	046573
*	*	*	*	*

* * * * *

Dated: July 18, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–18823 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

RIN 2125–AE76

Temporary Matching Fund Waiver

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; rescission of regulation.

SUMMARY: This document rescinds the regulation that prescribes procedures for administering section 1054 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) providing for a temporary waiver of State matching fund requirements. Since the period of this special provision has expired, and all money has been repaid, the regulation is obsolete.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Max Inman, Federal-aid Financial Management Division, (202) 366–2583 or Mr. Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street, SW., Room 4310, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

Under the provisions of section 1054 of the ISTEA, Public Law 102–240, 105 Stat. 1914, at 2001 (23 U.S. Code. 120 note), a State could request an increased Federal share up to 100 percent for any qualifying title 23, U.S. Code, project beginning October 1, 1991, and ending September 30, 1993. The total amount of any such increase had to be repaid to the United States on or before March 30, 1994. If a State did not make the required repayment by March 30, 1994, the Secretary of Transportation could make deductions from funds apportioned to the States for fiscal years 1995 and 1996. Since the period of this special provision has expired, and all money has been repaid, it is no longer necessary to have this particular regulation.

Rulemaking Analyses and Notices

This final rule makes only minor technical corrections to our existing regulation. The rule replaces outdated statutory language due to the expiration of a special provision under ISTEA granting States temporary matching fund waiver and requiring repayment by March 30, 1994. Because the Congress did not enact a similar matching fund waiver in the Transportation Equity Act for the 21st Century (TEA–21), (Pub. L. 105–178, 112 Stat. 107 (1998) or any other statute, there is no need for the provision in the current regulations. Therefore, the FHWA finds good cause to rescind the rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)]. The DOT's regulatory policies and procedures also authorize rescission of the rule without prior notice because it is anticipated that such action would not result in the receipt of useful information. The FHWA is making the rule effective upon publication in the Federal Register because it imposes no new burdens and merely rescinds an existing regulation that has become obsolete.

Executive Order 12866 (regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has considered the impact of this action and has determined that it is not a significant regulatory action within the meaning of Executive Order 12866 or a significant within the meaning of the Department of Transportation regulatory policies and procedures. Since this rulemaking action merely removes an obsolete regulation, it is anticipated that its economic impact is minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. Based on the evaluation, and since this rulemaking action merely removes an outdated regulation, the FHWA hereby certifies that this action will not have a significant economic impact on a

substantial number of small entities. In any event, States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. Therefore, this action will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This action does not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the sector, of $100 million or more in any year. (2 U.S.C. 1531 *et seq.*)

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not create a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 140

Accounting, Grant programs—transportation, Highways and roads.

Issued on: July 17, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 140, as set forth below:

PART 140—REIMBURSEMENT

1. The authority citation for part 140 continues to read as follows:

Authority: 23 U.S.C. 101(e), 106, 109(e), 114(a), 120(g), 121, 122, 130, and 315; and 49 CFR 1.48(b).

Subpart C—[Removed and Reserved]

2. Remove and reserve subpart C of part 140.

[FR Doc. 00–18685 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

RIN 2125–AE74

Payroll and Related Expenses of Public Employees; General Administration and Other Overhead; and Cost Accumulation Centers and Distribution Methods

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; rescission of regulation.

SUMMARY: This document rescinds the regulation for payroll and related expenses of public employees; general administration and other overhead; and cost accumulation centers and distribution methods. This rescission stems from a provision in the Transportation Equity Act for the 21st Century (TEA–21) that allows for eligibility of administrative costs of a State department of transportation (State DOT). The provision permits State transportation departments to request Federal reimbursement for various indirect costs, such as administrative overhead. Previously, Federal reimbursement was only available for direct costs, such as project construction and engineering expenses. States may claim indirect costs in accordance with the provisions of Office of Management and Budget (OMB) Circular A–87.

DATES: This rule is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Max Inman, Federal-aid Financial Management Division, (202) 366–2853 or Mr. Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street SW., Room 4310, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:45 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

Section 1212(a) of the TEA–21, Public Law 105–178, 112 Stat. 107, at 193 (1998), amended 23 U.S. Code 302. Section 302 has long been interpreted to mean that a State could not claim Federal-aid highway funds for its costs associated with administering its highway department even though a State agency's indirect costs are generally allowable in accordance with directives issued by the OMB. This new provision in the TEA–21 clarifies that 23 U.S.C. 302 does not limit reimbursement of eligible indirect costs and thereby makes the Federal-aid highway program consistent with other federal programs under OMB Circular A–87, as revised May 4, 1995, and further amended on August 29, 1997. The change reduces the administrative burden caused by requiring States to develop separate accounting systems.

The OMB Circular A–87 provides principles for determining the allowable costs of programs administered by State and local governments under grants from, and contracts with, the Federal government. These principles are designed to provide the basis for a uniform determination of costs and generally to provide that federally assisted programs bear their fare share of costs.

Those States desiring to claim administrative overhead costs for the Federal-aid highway program may do so by developing an indirect cost rate proposal in accordance with the criteria provided in OMB Circular A–87, whereby the costs may be distributed to the various departments and programs in an equitable and consistent manner.

Rulemaking Analyses and Notices

This final rule makes technical changes to existing regulations mandated by law to provide greater uniformity of treatment of indirect costs as applied to the Federal-aid highway program and reduces the burden on State and local governments. This action eliminates outdated language by rescinding the regulation for payroll and related expenses of public employees, general administration and other overhead, and cost accumulation centers and distribution methods. Rescission of the regulation is more consistent with current statutory authority under the TEA–21 that allows for eligibility of various indirect costs, such as, administrative overhead costs of a State DOT. Therefore, the FHWA finds good cause to take this action without prior notice or opportunity for public comment [5 U.S.C. 553(b)]. The DOT's regulatory policies and procedures also authorize promulgation of the rule without prior notice because it is anticipated that such action would not result in the receipt of useful information. The FHWA is making the rule effective upon publication in the **Federal Register** because it imposes no new burdens and merely corrects or clarifies exiting regulations [5 U.S.C. 553(d)].

Executive Order 12866 (Regulatory Planning And Review) and DOT Regulatory Policies And Procedures

The FHWA has determined this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This rulemaking action makes only technical corrections to the current regulations by rescinding a rule to eliminate outdated language due to current statutory authority under the TEA–21. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act [5 U.S.C. 601–612], the FHWA has evaluated the effects of this action on small entities. Based on the evaluation and since this rulemaking action merely removes an outdated regulation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, States are not included in the definition of "small entity" as provided in 5 U.S.C. 601.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This action does not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the sector, of $100 million or more in any year. (2 U.S.C. 1531 *et seq.*)

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule, involved here is not economically significant and does not concern an environmental risk to health of safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 140

Accounting, Grants programs—transportation, Highways and roads.

Issued on: July 18, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 140, as set forth below:

PART 140—[AMENDED]

1. Revise the authority citation for part 140 to read as follows:

Authority: 23 U.S.C. 101(e), 106, 109(e), 114(a), 120(g), 121, 122, 130, and 315; and 49 CFR 1.48(b).

Subpart G—[Removed and Reserved]

2. Remove and reserve subpart G of part 140.

[FR Doc. 00–18776 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is issuing final rules for parole-eligible D.C. Code prisoners and parolees pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997. The final rules incorporate the interim rules for D.C. Code prisoners that took effect on August 5, 1998, as well as new provisions pertaining to D.C. Code parolees. This will carry out the transfer to the U.S. Parole Commission of the authority currently exercised by the D.C. Board of Parole over the parole supervision and revocation process, which the Revitalization Act requires to take place by August 5, 2000. These final rules will constitute, in amended and supplemented form, the complete parole regulations of the District of Columbia.

DATES: These rules are effective August 5, 2000.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959, for information concerning these rules. For inquiries about individual cases and all other matters, please contact (301) 492–5821.

SUPPLEMENTARY INFORMATION: Under section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the U.S. Parole Commission assumed the paroling jurisdiction of the D.C. Board of Parole on August 5, 1998. Interim rules, with a request for public comment, were published at 63 FR 39172 (July 21, 1998), and were amended at 63 FR 57060 (October 26, 1998) and 64 FR 5611 (February 4, 1999). They were republished in their entirety at 65 FR 19996 (April 13, 2000) with a continued request for public comment. The Commission has determined that it is now appropriate to publish these rules as final rules.

The Revitalization Act also requires that the remaining powers and duties of the D.C. Board of Parole (concerning the supervision and revocation of parolees) be transferred to the U.S. Parole Commission by August 5, 2000. In anticipation of this transfer of authority, the Commission published proposed rules, at 65 FR 20006 (April 13, 2000) to govern the Commission's exercise of that additional authority. After careful consideration of the public comment received, the Commission has determined that these proposed rules are also ready for publication as final rules effective August 5, 2000.

Accordingly, the Commission is republishing, as a final rule, the complete Subpart C that sets forth the parole release, supervision, and revocation policies and procedures of the U.S. Parole Commission with regard to District of Columbia Code prisoners and parolees. Pursuant to D.C. Code 24–1231(a)(1), these amended and supplemented rules will replace the rules of the D.C. Board of Parole originally published at 28 D.C.M.R. section 100 *et. seq.*, and will constitute the parole regulations of the District of Columbia as described in D.C. Code 24–1231(c).

Summary of the Public Comment

The Commission received public comment on both the interim and proposed rules that were published on April 13, 2000, at a public hearing held by the Commission on June 19, 2000, and through the submission of written statements and letters. The public comment is summarized below, together with the Commission's views on certain of the issues raised.

Law Student Representation

Much of the comment from law professors and law students concerned the proposed rule at § 2.103(e) that only licensed attorneys be permitted to engage in legal advocacy at parole revocation hearings. This comment made a strong case for the Commission permitting representation by law students in a clinical practice program. Such a provision therefore appears in the final rules.

Initial Parole Hearings

Other comment focused on the problem of delays in initial hearings and in processing grants of parole (which have frequently occurred for prisoners housed in District prisons). Complaints were made about delays to obtain more information and about delays in receiving notices of action. Although the Commission was commended for its rule at 28 CFR 2.71 requiring that initial hearings be held 180 days prior to parole eligibility, the point was made that this deadline is not being met in practice. The complaint was also made that Department of Corrections case managers are not always providing parole application forms, and that all eligible prisoners should be placed on the docket for a hearing, whether or not there has been a waiver of parole. (This proposal appears to reflect a high level of distrust of prison staff.) The Commission was advised by the D.C. Public Defender Service to assume "full responsibility" for docketing eligible prisoners wherever confined. However, the USPC staff does not have the ability to monitor the current location and parole eligibility status of all inmates throughout the D.C. system (including contract facilities), and it therefore does not have the ability to organize parole dockets at the D.C. institutions it visits. In all likelihood, most of these problems will be resolved as more and more D.C. inmates are transferred to federal facilities prior to the December 31, 2001, deadline set by the Revitalization Act. However, some delays are made necessary by the need for the Commission to acquire the basic information that is often missing from inmates' files (*e.g.*, presentence reports). Such delays are ordered only where a responsible release decision cannot be made on the basis of the file materials furnished to the Commission by District officials.

Another complaint was that no account is taken by the Commission of the "dead time" caused by a delayed initial parole hearing when a set-off is ordered. The Commission, however, has expressly provided for situations

involving a "substantial delay in holding the initial hearing" at § 2.75(b), so that such "dead time" is in fact compensated for by the Commission.

Much comment was made concerning the prohibition on representatives at parole hearings in D.C. institutions, and concern was expressed that this would extend to private prisons. Our experience thus far, however, is that federal contract facilities are following BOP rules in permitting all types of representatives at parole hearings. (In 1998, the Department of Corrections requested the Commission to keep in place the D.C. Board of Parole's prohibition on representatives at parole hearings held in District facilities.) Moreover, if the Public Defender Service has had to acquire additional attorneys just to cover revocation hearings, it is difficult to understand how legal counsel could be provided to prisoners at ordinary parole hearings on anything like a fair basis.

Rehearings

Other complaints concerned cases in which the D.C. Board of Parole had ordered a rehearing with specific program recommendations, and the USPC subsequently denied parole and ordered a further continuance notwithstanding the inmate's program achievements. However, when such cases have arisen, the prisoners involved are typically serious risk cases whose favorable prison records do not justify grants of parole at the set-off date ordered by the Board. Some commenters appear to believe that the D.C. Board of Parole granted parole more frequently than the Commission does, but no evidence of this was adduced.

Telephone Calls and FOIA Requests

One complaint was made that telephone calls to Commission analysts are not being given satisfactory responses, and that Freedom of Information Act (FOIA) requests are not being answered on time. The volume of public telephone calls received by the Commission (as to both parole-related and non-parole matters) has been extraordinary. The Commission is currently seeking an appropriate solution for this problem. As to the FOIA, there appears to be a misperception that the FOIA can be used as a mechanism to guarantee prehearing disclosure. The Commission's rules provide that the reason a particular prisoner is making a FOIA request does not give that prisoner priority over other FOIA requesters. 28 CFR 2.56(g). FOIA requests will therefore continue to be processed on a "first come first served" basis by the Commission's FOI unit.

Lack of Programs

Several complaints concerned the perceived unfairness of a guideline system that requires program participation, when D.C. inmates frequently do not have programs. However, at least one commenter understood that 28 CFR 2.80(d) already allows for this by permitting points to be deducted in the Commission's discretion even where "* * * prison programs and work assignments are limited or unavailable." Under this rule, the Commission will deduct a point or points based on any reasonable indicant of the prisoner's cooperativeness and good behavior.

Appeal Rights

Unfairness was alleged in the absence of any right to appeal a parole decision, as appears in the rules for U.S. Code prisoners. It was alleged that the D.C. Board of Parole (at least in practice) permitted appeals. This is a doubtful proposition. The rules of the D.C. Board of Parole make no mention of appeals, and the Board's occasional practice with regard to reopening cases based upon post-decisional complaints can hardly be viewed as an institutionalized appeal system. At any rate, the USPC does not have the staff resources at the present time to process a full caseload of appeals from D.C. Code inmates along the same lines as appeals from federal inmates under 18 U.S.C. 4215. In compensation, the Commission will continue to require a concurrence of at least two Commissioners for all decisions to grant and deny parole. (Appeals in the federal parole system are normally from parole decisions made by a single Commissioner.)

Prehearing Disclosure

Inevitably, comment was directed to the lack of prehearing disclosure at D.C. facilities. However, prehearing disclosure requires the participation of case managers who are fully trained in federal procedures, which the Bureau of Prisons has but the Department of Corrections does not have. Hence, the Commission is not in a position to institute federal prehearing disclosure procedures in District facilities.

Medical and Geriatric Parole

The Commission was commended for its rules on medical and geriatric parole, as well as for its rule on minimum term reduction applications under D.C. Code § 24–201c.

Victim Participation

One complaint was that it is unfair to prisoners to allow the crime victim to appear at the parole hearing and give information, without the prisoner being able to confront the victim. The Public Defender Service also thinks that there is "disparity" in the rights given to victims to appear and oppose parole as compared with the rights given to friends and supporters of the prisoner. One commenter believes that victims should have told everything at the trial (which does not account for convictions resulting from plea bargains), and considers it unfair to let victims say anything at all. Nonetheless, District of Columbia law gives victims the right to participate in parole hearings, and the Commission has an obligation to follow D.C. law in this matter. If anything, the current opportunities for victim participation have redressed a situation in which crime victims were for too long ignored by the criminal justice system.

Five-Year Continuances

The same commenter also decried the possibility of a maximum five-year continuance (reserved for the most serious cases involving guideline departures). However, the D.C. Board of Parole occasionally ordered continuances even longer then five-years. In the Commission's practice, five-year continuances are limited to a small number of prisoners (under five percent) who have committed exceptionally cruel and violent crimes. Most continuances are for 36 months or less.

Alleged Discrimination

Other comments were received concerning the perceived discrimination of the federal system against D.C. inmates in general, with one commenter alleging that it looks like the "truth in sentencing" eighty-five percent rule is already in effect. Another commenter alleged that there is institutionalized discrimination in the federal system against D.C. Code inmates. With a current parole rate of 35 percent at initial hearings (reflecting the percentage of eligible prisoners with low grid point scores), discrimination is clearly not taking place. The Public Defender Service also complains that hearing examiners are required to withhold giving their recommended decisions to D.C. prisoners while giving them to U.S. prisoners. In the light of recent security issues at the Lorton Complex, the Commission has not considered it prudent to require the examiners to announce their decisions

in District facilities (which the D.C. Board of Parole did not do).

Warrants

As to warrants, one comment preferred a "probable cause" standard to the "satisfactory evidence" standard that appears in federal law and rules, and called for the adoption of specific criteria to govern the issuance of warrants. However, there is no legal or practical difference between the two standards. The "satisfactory evidence" standard requires that the Commission be presented with evidence (not just an allegation) which, if sustained, would make revocation of parole appropriate.

Moreover, the Commission has never thought it useful to adopt specific criteria for the issuance of warrants. As stated by the Supreme Court in *Morrissey* v. *Brewer*, 408 U.S. 471 (1972), a warrant may be withheld for a time despite violations, but may be issued when it becomes clear that the parolee "can no longer be counted on to refrain from anti-social behavior." This is a sufficient standard for the exercise of the Commission's discretion. Objection was also made to the rule permitting execution of a warrant to be voided in favor of local prosecutions. Because that traditional practice often benefits the parolee by allowing him to deal with his criminal case first, the Commission cannot agree with this comment.

The Revocation Process

Finally, with respect to the Commission's revocation hearing procedures, strong opposition was made to the Commission's dual system of local versus institutional revocation hearings. (See 18 U.S.C. 4214.) Although this dual system was recognized as valid for federal parolees, it was perceived as unfair to D.C. Code parolees, who have traditionally had all revocation hearings held locally. In particular, the requirement that the parolee must request (and qualify for) a local revocation hearing was perceived as an unfair presumption against a local revocation hearing. The Public Defender Service also believes that the criteria for receiving a local revocation hearing are "more stringent" for D.C. Parolees. (They are, in fact, exactly the same as for federal parolees.)

These comments may also reflect some misunderstanding as to the Commission's ability to ensure that all arrested parolees can be jailed locally while awaiting their revocation hearings. Moreover, a parolee who has been convicted of the charged violations (or who has admitted the charged violations) is in a very different legal position from a parolee who is able to contest the charges against him, and thus has a real need for witnesses, cross-examination, and a hearing held locally. Only in the latter case does *Morrissey* v. *Brewer, supra*, require a "local" revocation hearing. For other cases, there is no prejudice in receiving an institutional revocation hearing because the fact that parole was violated is already established by the new conviction or admission.

The Public Defender Service also complained that the Commission's time deadlines are insufficient; preliminary interviews should be held within 5 days of arrest and final revocation hearings 60 days from the interview (as opposed to "promptly" and "60 days from the probable cause determination"). The Commission's time deadlines are, however, the same as in federal law (18 U.S.C. 4214). Nonetheless, this comment had a good point that the proposed rules failed to set a deadline for the Commission's decision following the revocation hearing. That omission has been rectified.

The final revocation hearing rules have also been modified to permit parolees to have voluntary witnesses appear at institutional hearings. The rule, however, makes it clear that such parolees cannot expect the Commission to compel the appearance of desired witnesses if an institutional revocation hearing cannot be held locally. It is our expectation that, for the foreseeable future, both "local revocation hearings" (*i.e.*, fully contested *Morrissey* type hearings) and "institutional revocation hearings (*i.e.*, where the parolee has admitted or been convicted of the charges) will be held locally in D.C. Department of Corrections facilities. Again, however, the Commission has no control over jail housing policies, and institutional revocation hearings may be held in facilities outside the District of Columbia without violating any fundamental right of the parolee.

Implementation

The regulations set forth below will be made effective as final rules on August 5, 2000, and will apply to all prisoners and parolees (including mandatory releasees) who are serving sentences under the District of Columbia Code for felony crimes committed prior to August 5, 2000. The Commission will continue to evaluate these rules (in particular, the rules establishing procedures for the parole revocation process), and will remain open to any suggestions for improvement from judges, practitioners, other agency personnel, and the public at large.

Good Cause Finding

The Commission is making these final rules effective less than 30 days from the date of this publication for good cause pursuant to 5 U.S.C. 553(d)(3). August 5, 2000 is the deadline established by the Revitalization Act for the Commission to assume full responsibility for all D.C. Code felony offenders under parole supervision. On that date, the D.C. Board of Parole will be abolished, so the Commission will have to take immediate responsibility for all pending matters, including parole revocation proceedings and requests from supervision officers for warrants and modifications of the conditions of parole. The Commission was not able to have final rules published earlier than today's date because of the many legal and operational issues that have required resolution during the transition process. Although the Court Services and Offender Supervision Agency (CSOSA), which will assume its duties as a new federal agency on August 5, 2000, has joined with the Commission in an intensive planning and training process, the problems presented by the District's current criminal justice system cannot be overstated. Finally, these final rules are published on the assumption that certification pursuant to D.C. Code 24–1232(h) will have occurred prior to August 5, 2000.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these final rules do not constitute a significant rule within the meaning of Executive Order 12866. The final rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and are deemed by the Commission to be rules of agency practice that do not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rules

Accordingly the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Subpart C is revised to read as follows:

Subpart C—District of Columbia Code Prisoners and Parolees

Sec.

2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.
2.71 Application for parole.
2.72 Hearing procedure.
2.73 Parole suitability criteria.
2.74 Decision of the Commission.
2.75 Reconsideration proceedings.
2.76 Reduction in minimum sentence.
2.77 Medical parole.
2.78 Geriatric parole.
2.79 Good time forfeiture.
2.80 Guidelines for D.C. Code offenders.
2.81 Reparole decisions.
2.82 Effective date of parole.
2.83 Release planning.
2.84 Release to other jurisdictions.
2.85 Conditions of release.
2.86 Release on parole; rescission for misconduct.
2.87 Mandatory release.
2.88 Confidentiality of parole records.
2.89 Miscellaneous provisions.
2.90 Prior orders of the Board of Parole.
2.91 Supervision responsibility.
2.92 Jurisdiction of the Commission.
2.93 Travel approval.
2.94 Supervision reports to Commission.
2.95 Release from active supervision.
2.96 Order of release.
2.97 Withdrawal of order of release.
2.98 Summons to appear or warrant for retaking of parolee.
2.99 Execution of warrant and service of summons.
2.100 Warrant placed as detainer and dispositional review.
2.101 Revocation; preliminary interview.
2.102 Place of revocation hearing.
2.103 Revocation hearing procedure.
2.104 Issuance of subpoena for appearance of witnesses or production of documents.
2.105 Revocation decisions.
2.106 Youth Rehabilitation Act.
2.107 Interstate Compact.

Subpart C—District of Columbia Code: Prisoners and Parolees

§ 2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.

(a) The U.S. Parole Commission shall exercise authority over District of Columbia Code offenders pursuant to section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, 111 Stat. 712, and D.C. Code 24–209. The rules in this subpart shall govern the operation of the U.S. Parole Commission with respect to D.C. Code offenders and shall constitute the parole rules of the District of Columbia, as amended and supplemented pursuant to section 11231(a)(1) of the Act.

(b) The Commission shall have sole authority to grant parole, and to establish the conditions of release, for all District of Columbia Code prisoners who are serving sentences for felony offenses, and who are eligible for parole by statute, including offenders who have been returned to prison upon the revocation of parole or mandatory release. (D.C. Code 24–208). The above authority shall include youth offenders who are committed to prison for treatment and rehabilitation based on felony convictions under the D.C. Code. (D.C. Code 24–804(a).)

(c) The Commission shall have authority to recommend to the Superior Court of the District of Columbia a reduction in the minimum sentence of a District of Columbia Code prisoner, if the Commission deems such recommendation to be appropriate. (D.C. Code 24–201(c).)

(d) The Commission shall have authority to grant parole to a prisoner who is found to be geriatric, permanently incapacitated, or terminally ill, notwithstanding the minimum term imposed by the sentencing court. (D.C. Code 24–263 through 267.)

(e) The Commission shall have authority over all District of Columbia Code felony offenders who have been released to parole or mandatory release supervision, including the authority to return such offenders to prison upon an order of revocation. (D.C. Code 24–206.)

§ 2.71 Application for parole.

(a) A prisoner (including a committed youth offender) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each institution and shall be provided to a prisoner who is eligible for parole consideration. The Commission may then conduct an initial hearing or grant an effective date of parole on the record. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) To the extent practicable, the initial hearing for an eligible adult prisoner who has applied for parole shall be held at least 180 days prior to such prisoner's date of eligibility for parole. The initial hearing for a committed youth offender shall be scheduled during the first 120 days after admission to the institution that is responsible for developing his rehabilitative program.

(c) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. A prisoner who declines either to apply for or waive parole consideration shall be deemed to have waived parole consideration.

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

§ 2.72 Hearing procedure.

(a) Each eligible prisoner for whom an initial hearing has been scheduled shall appear in person before an examiner of the Commission. The examiner shall review with the prisoner the guidelines at § 2.80, and shall discuss with the prisoner such information as the examiner deems relevant, including the prisoner's offense behavior, criminal history, institutional record, health status, release plans, and community support. If the examiner determines that the available file material is not adequate for this purpose the examiner may order the hearing to be postponed to the next docket so that the missing information can be requested.

(b) Parole hearings may be held in District of Columbia facilities (including District of Columbia contract facilities) and federal facilities (including federal contract facilities).

(c) A prisoner appearing for a parole hearing in a federal facility (including federal contract facilities) may have a representative pursuant to § 2.13(b). A prisoner appearing for a parole hearing in any other facility shall not be accompanied by counsel or any other person (except a staff member of the facility), except in such facilities as the Commission may designate as suitable for the appearance of representatives.

(d) Prehearing disclosure of file material pursuant to § 2.55 will be available to prisoners and their representatives only in the case of prisoners confined in federal facilities (including federal contract facilities).

(e) A victim of a crime, or a representative of the immediate family of a victim if the victim has died, shall have the right:

(1) To be present at the parole hearings of each offender who committed the crime, and

(2) To testify and/or offer a written or recorded statement as to whether or not parole should be granted, including information and reasons in support of such statement. A written statement may be submitted at the hearing or provided separately. The prisoner may be excluded from the hearing room during the appearance of a victim or

representative who gives testimony. In lieu of appearing at a parole hearing, a victim or representative may request permission to appear before an examiner (or other staff member), who shall record and summarize the victim's or representative's testimony. Whenever new and significant information is provided under this rule, the hearing examiner will summarize the information at the parole hearing and will give the prisoner an opportunity to respond. Such summary shall be consistent with a reasonable request for confidentiality by the victim or representative.

(f) Attorneys, family members, relatives, friends of the prisoner, or other interested persons desiring to submit information pertinent to any prisoner, may do so at any time, but such information must be received by the Commission at least 30 days prior to a scheduled hearing in order to be considered at that hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing. An office visit at a time other than set forth in this paragraph may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22.

(g) A full and complete recording of every parole hearing shall be retained by the Commission. Upon a request pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

(h) Because parole decisions must be reached through a record-based hearing and voting process, no contacts shall be permitted between any person attempting to influence the Commission's decision-making process, and the examiners and Commissioners of the Commission, except as expressly provided in this subpart.

§ 2.73 Parole suitability criteria.

(a) In accordance with D.C. Code 24–204(a), the Commission shall be authorized to release a prisoner on parole in its discretion after the prisoner has served the minimum term of the sentence imposed, if the following criteria are met:

(1) The prisoner has substantially observed the rules of the institution;

(2) There is a reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court presumptively satisfies the need for punishment for the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Table at § 2.80. However, there may be exceptional cases in which the gravity of the offense is sufficient to warrant an upward departure from § 2.80 and denial of parole.

§ 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a notice of action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(b) Whenever a decision is rendered within the applicable guideline established in this subpart, it will be deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c). All final parole decisions (granting, denying, or revoking parole) shall be based on the concurrence of two Commissioner votes, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. A final decision releasing a parolee from active supervision shall also be based on the concurrence of two Commissioner votes. All other decisions may be based on a single Commissioner vote, except as expressly provided in these rules.

§ 2.75 Reconsideration proceedings.

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. The prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if no docket of hearings is scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time ("continue to expiration").

(b) The first reconsideration date shall be calculated from the prisoner's eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent reconsideration date shall be calculated from the date of the last hearing. In the case of a waiver or substantial delay in holding the initial hearing, the Commission may conduct a combined initial hearing and such rehearings *nunc pro tunc* as would otherwise have been held during the delay.

(c) Notwithstanding the provisions of paragraph (a) of this section, the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release. The scheduling of a reconsideration date does not imply that parole will be granted at such hearing.

(d) Prior to the parole reconsideration date, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without conducting the scheduled in-person hearing.

(e) Notwithstanding a previously established reconsideration date, the Commission may also reopen any case for a special reconsideration hearing, as provided in § 2.28, upon the receipt of new and significant information concerning the prisoner.

§ 2.76 Reduction in minimum sentence.

(a) A prisoner who has served three or more years of the minimum term of his or her sentence may request the Commission to file an application with the sentencing court for a reduction in the minimum term pursuant to D.C. Code 24–201c. The prisoner's request to

the Commission shall be in writing and shall state the reasons that the prisoner believes such request should be granted. The Commission shall require the submission of a special progress report before approving such a request.

(b) Approval of a prisoner's request under this section shall require the concurrence of a majority of the Commissioners holding office.

(c) Pursuant to D.C. Code 24–201c, the Commission may file an application to the sentencing court for a reduction of a prisoner's minimum term if the Commission finds that:

(1) The prisoner has completed three years of the minimum term imposed by the court;

(2) The prisoner has shown, by report of the responsible prison authorities, an outstanding response to the rehabilitative program(s) of the institution;

(3) The prisoner has fully observed the rules of each institution in which the prisoner has been confined;

(4) The prisoner appears to be an acceptable risk for parole based on both the prisoner's pre- and post-incarceration record; and

(5) Service of the minimum term imposed by the court does not appear necessary to achieve appropriate punishment and deterrence.

(d) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If, after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney shall file the application with the sentencing court.

(e) If a prisoner's request under this section is denied by the Commission, there shall be a waiting period of two years before the Commission will again consider the prisoner's request, absent exceptional circumstances.

§ 2.77 Medical parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined that the prisoner is terminally ill, or is permanently and irreversibly incapacitated by a physical or medical condition that is not terminal, the Commission shall determine whether or not to release the prisoner on medical parole. Release on medical parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for medical parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a medical parole on the basis of terminal illness if:

(1) The institution's medical staff has provided the Commission with a reasonable medical judgment that the prisoner is within six months of death due to an incurable illness or disease; and

(2) The Commission finds that:

(i) The prisoner will not be a danger to himself or others; and

(ii) Release on parole will not be incompatible with the welfare of society.

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

(1) The prisoner will not be a danger to himself or others because his condition renders him incapable of continued criminal activity; and

(2) Release on parole will not be incompatible with the welfare of society.

(d) The seriousness of the prisoner's crime shall be considered in determining whether or not a medical parole should be granted prior to completion of the prisoner's minimum sentence.

(e) A prisoner, or the prisoner's representative, may apply for a medical parole by submitting an application to the institution case management staff, who shall forward the application, accompanied by a medical report and any recommendations, within 15 days. The Commission shall render a decision within 15 days of receiving the application and report.

(f) A prisoner, the prisoner's representative, or the institution may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section :

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for medical parole (D.C. Code 24–267); and

(2) A prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

§ 2.78 Geriatric parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined that a prisoner who is at least 65 years of age has a chronic infirmity, illness, or disease related to aging, the Commission shall determine whether or not to release the prisoner on geriatric parole. Release on geriatric parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for geriatric parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a geriatric parole if the Commission finds that:

(1) There is a low risk that the prisoner will commit new crimes; and

(2) The prisoner's release would not be incompatible with the welfare of society.

(c) The seriousness of the prisoner's crime, and the age at which it was committed, shall be considered in determining whether or not a geriatric parole should be granted prior to completion of the prisoner's minimum sentence.

(d) A prisoner, or a prisoner's representative, may apply for a geriatric parole by submitting an application to the institution case management staff, who shall forward the application, accompanied by a medical report and any recommendations, within 30 days. The Commission shall render a decision within 30 days of receiving the application and report.

(e) In determining whether or not to grant a geriatric parole, the Commission shall consider the following factors (D.C. Code 24–265(c)(1)–(7)):

(1) Age of the prisoner;

(2) Severity of illness, disease, or infirmities;

(3) Comprehensive health evaluation;

(4) Institutional behavior;

(5) Level of risk for violence;

(6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings.

(f) A prisoner, the prisoner's representative, or the institution, may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section:

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for geriatric parole (D.C. Code 24–267); and (2) A prisoner

shall not be eligible for geriatric parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

§ 2.79 Good time forfeiture.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code 24–204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s). The Commission must be satisfied that the prisoner has served a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

§ 2.80 Guidelines for D.C. Code offenders.

(a) Introduction. In determining whether an eligible prisoner should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to the pre- and post-incarceration factors described in the Point Assignment Table set forth in paragraph (f) of this section. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (m) of this section.

(b) Salient factor score and criminal record. The prisoner's Salient Factor Score shall be determined by reference to the Salient Factor Scoring Manual in § 2.20. The Salient Factor Score is used to assist the Commission in assessing the probability that an offender will live and remain at liberty without violating the law. The prisoner's record of criminal conduct (including the nature and circumstances of the current offense) shall be used to assist the Commission in determining the probable seriousness of the recidivism that is predicted by the Salient Factor Score.

(c) Disciplinary infractions. The Commission shall assess whether the prisoner has been found guilty of committing disciplinary infractions while under confinement for the current offense. The Commission shall refer to the offense classification tables of the D.C. Department of Corrections or the Bureau of Prisons, as applicable, in determining whether the prisoner's disciplinary record should be counted on the point score. A single Class I or Code 100 offense, or two or more Class II or Code 200 offenses, shall be counted as negative institutional behavior at an initial hearing or any rehearing. A persistent record of lesser offenses may also be counted as negative institutional behavior at an initial hearing or a rehearing. At initial hearings, an infraction free period of at least three years preceding the date of the hearing may be considered by the Commission as sufficient to exclude from consideration a previous record of Class I (or Code 100) or Class II (or Code 200) offenses, provided that such offenses would result in not more than one point added to the prisoner's score.

(d) Program achievement. The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Where prison programs and work assignments are limited or unavailable, the Commission may exercise discretion based on the prisoner's record of behavior. Points may be deducted for program achievement regardless of whether points have been added for negative institutional behavior during the same period.

(e) Implementation. These guidelines shall be applied to all prisoners who are given initial parole hearings on or after August 5, 1998. For prisoners whose initial hearings were held prior to August 5, 1998, the Commission shall render its decisions by reference to the guidelines applied by the D.C. Board of Parole. However, when a decision outside such guidelines has been made by the Board, or is ordered by the Commission, the Commission may determine the appropriateness and extent of the departure by comparison with the guidelines in this section. The Commission may also correct any error in the calculation of the D.C. Board's guidelines.

(f) Point Assignment Table. Add the applicable points from Categories I–III to determine the base point score. Then add or subtract the points from Categories IV and V to determine the total point score.

POINT ASSIGNMENT TABLE

	Salient factor score
Category I: Risk of Recidivism	
10–8 (Very Good Risk)	+0
7–6 (Good Risk)	+1
5–4 (Fair Risk)	+2
3–0 (Poor Risk)	+3
Category II: Current or Prior Violence (Type of Risk)	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score=0.	
A. Violence in current offense, and any felony violence in two or more prior offenses	+4
B. Violence in current offense, and any felony violence in one prior offense	+3
C. Violence in current offense	+2
D. No violence in current offense and any felony violence in two or more prior offenses	+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence	+2
F. No violence in current offense and any felony violence in one prior offense	+1
Category III: Death of Victim or High Level Violence	
Note: Use highest applicable subcategory. If no subcategory is applicable, score=0.	
A current offense that involved high level violence must be scored under both Category II (A, B, or C) and under Category III.	
A. Current offense was high level or other violence with death of victim resulting	+3
B. Current offense involved attempted murder, conspiracy to murder, solicitation to murder, or any willful violence in which the victim survived despite death having been the most probable result at the time the offense was committed	+2

POINT ASSIGNMENT TABLE—Continued

	Salient factor score
C. Current offense involved high level violence (other than the behaviors described above)	+1
Base Point Score (Total of Categories I–III).	
Category IV: Negative Institutional Behavior	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score=0.	
A. Aggravated negative institutional behavior involving:	
(1) Assault upon a correctional staff member, with bodily harm inflicted or threatened,	
(2) Possession of a deadly weapon,	
(3) Setting a fire so as to risk human life,	
(4) Introduction of drugs for purposes of distribution, or	
(5) Participating in a violent demonstration or riot	+2
B. Ordinary negative institutional behavior	+1
Category V: Program Achievement	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score=0.	
A. No program achievement	0
B. Ordinary program achievement	−1
C. Superior program achievement	−2
Total Point Score (Total of Categories I–V).	

(g) *Definitions and instructions for application of point assignment table.*

(1) Salient factor score means the salient factor score set forth at § 2.20.

(2) High level violence in Category III means any of the following offenses

(i) Murder;

(ii) Voluntary manslaughter;

(iii) Arson of a building in which a person other than the offender was present or likely to be present at the time of the offense;

(iv) Forcible rape or forcible sodomy (first degree sexual abuse);

(v) Kidnapping, hostage taking, or any armed abduction of a victim during a carjacking or other offense;

(vi) Burglary of a residence while armed with any weapon if a victim was in the residence during the offense;

(vii) Obstruction of justice through violence or threats of violence;

(viii) Any offense involving sexual abuse of a person less than sixteen years of age;

(ix) Mayhem, malicious disfigurement, or any offense defined as other violence in paragraph (g)(4) of this section that results in serious bodily injury as defined in paragraph (g)(3) of this section;

(x) Any offense defined as other violence in paragraph (g)(4) of this section which the offender intentionally discharged a firearm;

(3) Serious bodily injury means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) Other violence means any of the following felony offenses that does not qualify as high level violence—

(i) Robbery;

(ii) Residential burglary;

(iii) Felony assault;

(iv) Felony offenses involving a threat, or risk, of bodily harm;

(v) Felony offenses involving sexual abuse or sexual contact;

(vi) Involuntary manslaughter (excluding negligent homicide).

(5) Attempts, conspiracies, and solicitations shall be scored by reference to the substantive offense that was the object of the attempt, conspiracy, or solicitation; except that Category IIIA shall apply only if death actually resulted.

(6) Current offense means any criminal behavior that is either:

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (*i.e.*, part of the same course of conduct as the offense of conviction). In probation violation cases, the current offense includes both the original offense and the violation offense, except that the original offense shall be scored as a prior conviction (with a prior commitment) rather than as part of the current offense, if the prisoner served more than six months in prison for the original offense before his probation commenced.

(7) Category IIE applies whenever a firearm is possessed by the offender during, or is used by the offender to commit, any offense that is not scored under Category II(A–D). Category IIE also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense. Possession for purposes of Category IIE includes constructive possession.

(8) Category IIIA applies if the death of a victim is:

(i) Caused by the offender, or

(ii) Caused by an accomplice and the killing was planned or approved by the offender in furtherance of a joint criminal venture.

(9) In some cases, negative institutional behavior that involves violence will result in a higher score if scored as an additional current offense under Categories II and/or III, than if scored under Category IVA. In such cases, the prisoner's point score is recalculated to reflect the conduct as an additional current offense under Categories II and/or III, rather than as a disciplinary infraction under Category IVA. For example, the attempted murder of another inmate will result in a higher score when treated as an additional current offense under Categories II and III, if the offense of conviction was scored under Category IIC only as violence in current offense. If negative institutional behavior is treated as an additional current offense, points may nonetheless be assessed under Category IVA or B for other disciplinary infractions.

(10) Superior Program Achievement means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish.

(h) Guidelines for Decisions at Initial Hearing—Adult Offenders. In considering whether to parole an adult offender at an initial hearing, the

Commission shall determine the offender's total point score and then consult the following guidelines for the appropriate action:

Total Points Guideline Recommendation

(1) IF POINTS =0: Parole at initial hearing with low level of supervision indicated.

(2) IF POINTS =1: Parole at initial hearing with high level of supervision indicated.

(3) IF POINTS =2: Parole at initial hearing with highest level of supervision indicated.

(4) IF POINTS =3+: Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(i) Guidelines for Decisions at Initial Hearing—Youth Offenders. In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) If Points=0	Parole at initial hearing with low level of supervision indicated.
(2) If Points=1	Parole at initial hearing with high level of supervision indicated.
(3) If Points=2	Parole at initial hearing with highest level of supervision indicated.
(4) If Points=3+	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(i) Guidelines for Decisions at Initial Hearing—Youth Offenders. In considering whether to parole a youth offender at an intial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the approprate action.

Total points	Guideline recommendation
(1) If Points=0	Parole at initial hearing with conditions established to address treatment needs.
(2) If Points=1+	Deny parole at initial hearing and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(j) Guidelines for Time to Rehearing—Adult Offenders. (1) If parole is denied or rescinded, the time to the subsequent hearing for an adult offender shall be determined by the following guidelines:

Base point score (categories I through III)	Months to rehearing
0–4	12–18
5	18–24
6	18–24
7	18–24
8	18–24
9	22–28
10	26–32

(2) The time to a rehearing shall be determined by the prisoner's base point score, and not by the total point score at the current hearing, which indicates only whether parole should be granted or denied.

Exception: In the case of institutional misconduct deemed insufficiently serious to warrant the addition of one or more points for negative institutional behavior, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36.

(3) At any initial hearing or rehearing, if the prisoner's total point score is 4 or less, the Commission may order both a rehearing date and a presumptive parole date that is not more than 9 months from the rehearing date. Such presumptive date may be converted to a parole effective date following the rehearing, or the case may be reopened based on new favorable information and a parole effective date granted on the record.

(k) *Guidelines for Decisions at Subsequent Hearing*—Adult Offenders. In determining whether to parole an adult offender at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If Points = 0–3	Parole with highest level of supervision indicated.
If Points = 4+	Deny parole at rehearing and schedule a further rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(l) *Guidelines for Decisions at Subsequent Hearing—Youth Offenders.* (1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If Points = 0–3	Parole with highest level of supervision indicated.
If Points = 4+	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(2) Prison officials may in any case recommend an earlier rehearing date than ordered by the Commission if the Commission's program objectives have been met.

(m) Decisions Outside the Guidelines—All Offenders. (1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a prisoner notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (j) of this section. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the notice of action the specific factors that it relied on in departing from the applicable guideline or guideline range.

(2) If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. If possible, the factors justifying such a departure shall be fully accounted for in the initial continuance, so that the guidelines can be followed at subsequent hearings. In some cases, however, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

(3) Factors that may warrant a decision above the guidelines include, but are not limited to, the following:

(i) *Poorer Parole Risk Than Indicated By Salient Factor Score.* The offender is a poorer parole risk than indicated by the salient factor score because of—

(A) Unusually persistent failure under supervision (pretrial release, probation, or parole);

(B) Unusually persistent history of criminally related substance (drug or alcohol) abuse and resistance to treatment efforts; or

(C) Unusually extensive prior record (sufficient to make the offender a poorer risk than the "poor" prognosis category).

(ii) *More Serious Parole Risk.* The offender is a more serious parole risk than indicated by the total point score because of—

(A) Prior record of violence more extensive or serious than that taken into account in the guidelines;

(B) Current offense demonstrates extraordinary criminal sophistication, criminal professionalism in the employment of violence or threats of violence, or leadership role in instigating others to commit a serious offense;

(C) Unusual cruelty to the victim (beyond that accounted for by scoring the offense as high level violence), or predation upon extremely vulnerable victim;

(D) Unusual propensity to inflict unprovoked and potentially homicidal violence, as demonstrated by the circumstances of the current offense; or

(E) Additional serious offense(s) committed after (or while on bond or fugitive status from) current offense that show unusual capacity for sustained, repeated violent criminal activity.

(4) Factors that may warrant a decision below the guidelines include, but are not limited to, the following:

(i) *Better Parole Risk Than Indicated by Salient Factor Score.* The offender is a better parole risk than indicated by the salient factor score because of (applicable only to offenders who are not already in the very good risk category)—

(A) A prior criminal record resulting exclusively from minor offenses;

(B) A substantial crime-free period in the community for which credit is not already given on the Salient Factor Score;

(C) A change in the availability of community resources leading to a better parole prognosis;

(ii) *Other Factors:*

(A) Unusually lengthy period of incarceration on the minimum sentence (in relation to the seriousness of the offense and prior record) that warrants an initial parole determination as if the offender were being considered at a rehearing;

(B) Substantial period in custody on other sentence(s) sufficient to warrant a finding in paragraph (m)(4) of this section; or

(C) Clearly exceptional program achievement.

§ 2.81 Reparole decisions.

(a) If the prisoner is not serving a new, parolable D.C. Code sentence, the Commission's decision to grant or deny reparole on the parole violation term shall be made by reference to the reparole guidelines at § 2.21. The Commission shall establish a presumptive or effective release date pursuant to § 2.12(b), and conduct interim hearings pursuant to § 2.14.

(b) If the prisoner is eligible for parole on a new D.C. Code felony sentence that has been aggregated with the prisoner's parole violation term, the Commission shall make a decision to grant or deny parole on the basis of the aggregate sentence, and in accordance with the guidelines at § 2.80.

(c) If the prisoner is eligible for parole on a new D.C. Code felony sentence but the prisoner's parole violation term has not commenced (*i.e.*, the warrant has not been executed), the Commission shall make a single parole/reparole decision by applying the guidelines at § 2.80. The Commission shall establish an appropriate date for the execution of the outstanding warrant in order for the guidelines at § 2.80 to be satisfied. In cases where the execution of the warrant will not result in the aggregation of the new sentence and the parole violation term, the Commission shall make parole and reparole decisions that are consistent with the guidelines at § 2.80.

(d) All reparole hearings shall be conducted according to the procedures set forth in § 2.72, and may be combined with the holding of a revocation hearing if the prisoner's parole has not previously been revoked.

§ 2.82 Effective date of parole.

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit the prisoner's placement in a halfway house or to allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become

effective until the prisoner becomes eligible for release on parole.

§ 2.83 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A parole certificate shall not be issued until a release plan has been approved by the Commission. In the case of mandatory release, the Commission shall review each prisoner's release plan to determine whether the imposition of any special conditions should be ordered to promote the prisoner's rehabilitation and protect the public safety.

(b) If a parole date has been granted, but the prisoner has not submitted a proposed release plan, the appropriate correctional or supervision staff shall assist the prisoner in formulating a release plan for investigation.

(c) After investigation by a Supervision Officer, the proposed release plan shall be submitted to the Commission 30 days prior to the prisoner's parole or mandatory release date.

(d) A Commissioner may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate an acceptable release plan prove futile by the expiration of such period, or if the Offender Supervision staff reports that there are insufficient resources to provide effective supervision for the individual in question, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be paroled, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan:

(1) Evidence that the parolee will have an acceptable residence;

(2) Evidence that the parolee will be legitimately employed as soon as released; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission;

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.

§ 2.84 Release to other jurisdictions.

The Commission, in its discretion, may parole any prisoner to live and remain in a jurisdiction other than the District of Columbia.

§ 2.85 Conditions of release.

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificate issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his release, he shall report to the Supervision Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his supervision office, he shall communicate with the U.S. Parole Commission, Chevy Chase, Maryland 20815–7286.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the Supervision Officer to whom he is assigned within three days, he shall report instead to the nearest U.S. Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from his Supervision Officer.

(4) The parolee shall notify his Supervision Officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his Supervision Officer between the first and third day of each month. He shall also report to his Supervision Officer at other times as the officer directs, providing complete and truthful information.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall report within two days to his Supervision Officer (or supervision office) if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency without authorization from the Commission.

(8) The parolee shall work regularly unless excused by his Supervision Officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his Supervision Officer any changes in employment or employment status.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer controlled substances (marijuana or narcotic or other habit-forming drugs) unless prescribed or advised for the parolee by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record without the permission of his Supervision Officer.

(11) The parole shall not possess a firearm or other dangerous weapon.

(12) The parolee shall permit visits by his Supervision Officer to his residence and to his place of business or occupation. He shall permit confiscation by his Supervision Officer of any materials which the officer believes may constitute contraband in the parolee's possession and which he observes in plain view in the parolee's residence, place of business or occupation, vehicle(s), or on his person. The Commission may also, when a reasonable basis for so doing is presented, modify the conditions of parole to require the parolee to permit the Supervision Officer to conduct searches and seizures of concealed contraband on the parolee's person, and in any building, vehicle, or other area under the parolee's control, at such times as the officer shall decide.

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested by his Supervision Officer that is relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee shall cooperate with his Supervision Officer in establishing an installment payment schedule.

(14) The parolee shall submit to a drug test whenever ordered by his Supervision Officer.

(15) If released to the District of Columbia, the parolee shall submit to the sanctions imposed by his

Supervision Officer (within the limits established by the approved Schedule of Accountability Through Graduated Sanctions), if the Supervision Officer finds that the parolee has tested positive for illegal drugs or that he has committed any non-criminal violation of the conditions of his parole. Graduated sanctions may include community service, curfew with electronic monitoring, and/or a period of time in a community treatment center. The parolee's failure to cooperate with a graduated sanction imposed by his Supervision Officer will subject the parolee to the issuance of a summons or warrant by the Commission, and a revocation hearing at which the parolee will be afforded the opportunity to contest the violation charge(s) upon which the sanction was based. If the Commission finds that the parolee has violated parole as alleged, the parolee will also be found to have violated this condition. In addition, the Commission may override the imposition of a graduated sanction at any time and issue a warrant or summons if it finds that the parolee is a risk to the public safety or that he is not complying with this condition in good faith.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release. The ten-day notice requirement shall not apply to a modification of the conditions of parole in the following circumstances:

(1) Following a revocation hearing;

(2) Upon a finding that immediate modification of the conditions of parole is required to prevent harm to the parolee or to the public; or

(3) In response to a request by the parolee for a modification of the conditions of parole.

(c) The Commission may, as a condition of parole, require a parolee to reside in a community corrections center, or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require that a parolee remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices. A condition under this paragraph may be imposed only as an alternative to incarceration.

(e) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of his refusal to sign. To be considered for parole again, the prisoner must reapply for parole.

(f) With respect to prisoners who are required to be released to supervision through good time reductions (mandatory release), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the prisoner to sign his certificate.

(g) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of a warrant issued by the Commission, whether before or after the original expiration date, may be charged as a basis for revocation. In such a case, the warrant may be supplemented at any time.

(h) The Commission may require a parolee, when there is evidence of prior or current alcohol dependence or abuse, to participate in an alcohol aftercare treatment program. In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.

(i) The Commission may require a parolee, where there is evidence of prior or current drug dependence or abuse, to participate in a drug treatment program, which shall include at least two periodic tests to determine whether parolee has reverted to the use of drugs (including alcohol). In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment. In the event such condition is imposed prior to an eligible prisoner's release from prison, any grant of parole or reparole shall be contingent upon the prisoner passing all pre-release drug tests administered by prison officials.

(j) Parolees are expected by the Commission to understand the conditions of parole according to their plain meaning, and to seek the guidance of their Supervision Officers before engaging in any conduct that may constitute a violation thereof. Supervision Officers may issue instructions to parolees to refrain from particular conduct that would violate parole, or to take specific steps to avoid or correct a violation of parole, as well as such other directives as may be authorized by the conditions imposed by the Commission.

§ 2.86 Release on parole; rescission for misconduct.

(a) When a parole effective date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good conduct record in the institution or prerelease program to which the prisoner has been assigned.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or retard a parole effective date or rescind a parole date previously granted based upon the receipt of any new and significant information concerning the prisoner, including disciplinary infractions. The Commission may retard a parole date for disciplinary infractions (*e.g.*, to permit the use of graduated sanctions) for up to 120 days without a hearing, in addition to any retardation ordered under 2.83(d). If a parole effective date is rescinded for disciplinary infractions, an appropriate sanction shall be determined either by adding the appropriate points for negative institutional behavior to the prisoner's total point score, or by reference to § 2.36 if the misconduct is not sufficiently serious to warrant a continuance under § 2.80(j). A total point score of 0–2 shall be adjusted to a total point score of 3 prior to adding points for negative institutional behavior pursuant to the Point Assignment Table at § 2.80(f).

(c) After a prisoner has been granted a parole effective date, the institution shall notify the Commission of any serious disciplinary infractions committed by the prisoner prior to the date of actual release. In such case, the prisoner shall not be released until the institution has been advised that no change has been made in the Commission's order granting parole.

(d) A grant of parole becomes operative upon the authorized delivery of a certificate of parole to the prisoner, and the signing of that certificate by the prisoner, who thereafter becomes a parolee.

§ 2.87 Mandatory release.

(a) When a prisoner has been denied parole at the initial hearing and all subsequent considerations, or parole consideration is expressly precluded by statute, the prisoner shall be released at

the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by statute.

(b) Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, except that if the offense of conviction was committed before April 11, 1987, such expiration date shall be less one hundred eighty (180) days. Every provision of these rules relating to an individual on parole shall be deemed to include individuals on mandatory release.

§ 2.89 Confidentiality of parole records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552(b)), the contents of parole records shall be confidential and shall not be disclosed outside the Commission except as provided in paragraphs (b) and (c) of this section.

(b) Information that is subject to release to the general public without the consent of the prisoner shall be limited to the information specified in § 2.37.

(c) Information other than as described in § 2.37 may be disclosed without the consent of the prisoner only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552(b)) and § 2.56.

§ 2.90 Miscellaneous provisions.

Except to the extent otherwise provided by law, the following sections in Subpart A of this part are also applicable to District of Columbia Code offenders:

2.5 (Sentence aggregation)
2.7 (Committed fines and restitution orders)
2.8 (Mental competency procedures)
2.10 (Date service of sentence commences)
2.16 (Parole of prisoner in State, local, or territorial institution)
2.19 (Information considered)
2.23 (Delegation to hearing examiners)
2.30 (False information or new criminal conduct; Discovery after release)
2.32 (Parole to local or immigration detainers)
2.56 (Disclosure of Parole Commission file)
2.62 (Rewarding assistance in the prosecution of other offenders: criteria and guidelines)
2.65 (Paroling policy for prisoners serving aggregated U.S. and D.C. Code sentences)

§ 2.90 Prior orders of the Board of Parole.

Any order entered by the Board of Parole of the District of Columbia shall be accorded the status of an order of the Parole Commission unless duly reconsidered and changed by the Commission at a regularly scheduled hearing. It shall not constitute grounds for reopening a case that the prisoner is subject to an order of the Board of Parole that fails to conform to a provision of this part.

§ 2.91 Supervision responsibility.

(a) Pursuant to D.C. Code 24–1233(c) and 4203(b)(4), the District of Columbia Court Services and Offender Supervision Agency (CSOSA) shall provide supervision, through qualified Supervision Officers, for all D.C. Code parolees and mandatory releasees under the jurisdiction of the Commission who are released to the District of Columbia. Individuals under the jurisdiction of the Commission who are released to districts outside the D.C. metropolitan area, or who are serving mixed U.S. and D.C. Code sentences, shall be supervised by a U.S. Probation Officer pursuant to 18 U.S.C. 3655.

(b) A parolee or mandatory releasee may be transferred to a new district of supervision with the permission of the supervision offices of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

§ 2.92 Jurisdiction of the Commission.

(a) Pursuant to D.C. Code 24–431(a), the jurisdiction of the Commission over a parolee shall expire on the date of expiration of the maximum term or terms for which he was sentenced, subject to the provisions of this subpart relating to warrant issuance, time in absconder status, and the forfeiture of credit for time on parole in the case of revocation.

(b) The parole of any parolee shall run concurrently with the period of parole, probation, or supervised release under any other Federal, State, or local sentence.

(c) Upon the expiration of the parolee's maximum term as specified in the release certificate, the parolee's Supervision Officer shall issue a certificate of discharge to such parolee and to such other agencies as may be appropriate.

(d) A termination of parole pursuant to an order of revocation shall not affect the Commission's jurisdiction to grant and enforce any further periods of parole, up to the expiration of the offender's maximum term.

§ 2.93 Travel approval.

(a) A parolee's Supervision Officer may approve travel outside the district of supervision without approval of the Commission in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district, and vacation travel outside the district of supervision exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Commission prohibiting certain travel shall apply instead of any general rules relating to travel as set forth in paragraph (a) of this section.

(d) The district of supervision for a parolee under the supervision of the D.C. Community Supervision Office of CSOSA shall be the District of Columbia, except that for the purpose of travel permission under this section the district of supervision will include the D.C. metropolitan area as defined in the certificate of parole.

§ 2.94 Supervision reports to Commission.

An initial supervision report to confirm the satisfactory initial progress of the parolee shall be submitted to the Commission 90 days after the parolee's release from prison, by the officer responsible for the parolee's supervision. A regular supervision report shall be submitted to the Commission by the officer responsible for the supervision of the parolee after the completion of 12 months of continuous community supervision and annually thereafter. The Supervision Officer shall submit such additional reports and information concerning both the parolee, and the enforcement of the conditions of the parolee's supervision, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

§ 2.95 Release from active supervision.

(a) The Commission, in its discretion, may release a parolee or mandatory releasee from further supervision prior to the expiration of the maximum term or terms for which he or she was sentenced.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A

review shall also be conducted whenever release from supervision is specially recommended by the parolee's Supervision Officer.

(c) In determining whether to grant release from supervision, the Commission shall apply the following guidelines, provided that case-specific factors do not indicate a need for continued supervision:

(1) For a parolee originally classified in the very good risk category and whose current offense did not involve violence, release from supervision may be ordered after two continuous years of incident-free parole in the community;

(2) For a parolee originally classified in the very good risk category and whose current offense involved violence other than high level violence, release from supervision may be ordered after three continuous years of incident-free parole in the community;

(3) For a parolee originally classified in the very good risk category and whose current offense involved high level violence (without death of victim resulting), release from supervision may be ordered after four continuous years of incident-free parole in the community;

(4) For a parolee originally classified in other than the very good risk category, whose current offense did not involve violence, and whose prior record includes not more than one episode of felony violence, release from supervision may be ordered after three continuous years of incident-free parole in the community;

(5) For a parolee originally classified in other than the very good risk category, and whose current offense involved violence other than high level violence, or whose prior record includes two or more episodes of felony violence, release from supervision may be ordered after four continuous years of incident-free parole in the community;

(6) For a parolee who was originally classified in other than the very good risk category and whose current offense involved high level violence (without death of victim resulting), release from supervision may be ordered after five continuous years of incident-free parole in the community;

(7) For any parolee whose current offense involved high level violence with death of victim resulting, release from supervision may be ordered only upon a case-specific finding that, by reason of age, infirmity, or other compelling factors, the parolee is unlikely to be a threat to the public safety.

(d) Decisions to release from supervision prior to completion of the periods specified in this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score (if originally classified in other than the very good risk category), or a less serious risk than indicated by a violent current offense or prior record (if any). However, release from supervision prior to the completion of two years of incident-free supervision will not be granted in any case unless case-specific factors clearly indicate that continued supervision would be counterproductive to the parolee's rehabilitation.

(e) Except as provided in § 2.99(c), cases with pending criminal charge(s) shall not be released from supervision until the disposition of such charge(s) is known. The term "incident-free" parole shall include both any reported violations, and any arrest or law enforcement investigation that raises a reasonable doubt as to whether the parolee has been able to refrain from law violations while on parole.

§ 2.96 Order of release.

(a) When the Commission approves a recommendation for release from active supervision, a written order of release from supervision shall be issued and a copy thereof shall be delivered to the releasee.

(b) Each order of release shall state that the conditions of the releasee's parole are waived, except that it shall remain a condition that the releasee shall not violate any law or engage in any conduct that might bring discredit to the parole system, under penalty of possible withdrawal of the order of release or revocation of parole.

(c) An order of release from supervision shall not release the parolee from the custody of the Attorney General or from the jurisdiction of the Commission before the expiration of the term or terms being served.

§ 2.97 Withdrawal of order of release.

If, after an order of release from supervision has been issued by the Commission, and prior to the expiration date of the sentence(s) being served, the parolee commits any new criminal offense or engages in any conduct that might bring discredit to the parole system, the Commission may, in its discretion, do any of the following:

(a) Issue a summons or warrant to commence the revocation process;

(b) Withdraw the order of release from supervision and return the parolee to active supervision; or

(c) Impose any special conditions to the order of release from supervision.

§ 2.98 Summons to appear or warrant for retaking of parolee.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing; or

(2) Issue a warrant for the apprehension and return of the offender to custody.

(b) A summons or warrant under paragraph (a)(1) of this section may be issued or withdrawn only by the Commission, or a member thereof.

(c) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of the violations, in the opinion of the Commission, requires such issuance. In the case of any parolee who is charged with a criminal offense and who is awaiting disposition of such charge, issuance of a summons or warrant may be:

(1) Temporarily withheld;

(2) Issued by the Commission and held in abeyance;

(3) Issued by the Commission and a detainer lodged with the custodial authority; or

(4) Issued for the retaking of the parolee.

(d) A summons or warrant may be issued only within the prisoner's maximum term or terms, except that in the case of a prisoner who has been mandatorily released from a sentence imposed for an offense committed before April 11, 1987, such summons or warrant may be issued only within the maximum term or terms less one hundred eighty days. A summons or warrant shall be considered issued when signed and either:

(1) Placed in the mail; or

(2) Sent by electronic transmission to the appropriate law enforcement authority.

(e) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to the revocation of parole and the forfeiture of time pursuant to D.C. Code 24–206(a).

(f) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission. A summons shall

specify the time and place the parolee shall appear. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

(g) Every warrant issued by the Board of Parole of the District of Columbia prior to August 5, 2000, shall be deemed to be a valid warrant of the U.S. Parole Commission unless withdrawn by the Commission. Such warrant shall be executed as provided in § 2.99, and every offender retaken upon such warrant shall be treated for all purposes as if retaken upon a warrant issued by the Commission.

§ 2.99 Execution of warrant and service of summons.

(a) Any officer of any Federal or District of Columbia correctional institution, any Federal Officer authorized to serve criminal process, or any officer or designated civilian employee of the Metropolitan Police Department of the District of Columbia, to whom a warrant is delivered, shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to him a copy of the warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the Supervision Officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) If any other warrant for the arrest of the parolee has been executed or is outstanding at the time the Commission's warrant is executed, the arresting officer may, within 72 hours of executing the Commission's warrant, release the parolee to such other warrant and lodge the Commission's warrant as a detainer, voiding the execution thereof, if such action is consistent with the instructions of the Commission. In other cases, a parolee may be released from an executed warrant whenever the Commission finds such action necessary to serve the ends of justice.

(e) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons and the application therefor. Service shall be made by any Federal or District of Columbia officer authorized to serve criminal process and certification of such service shall be returned to the Commission.

(f) Official notification of the issuance of a Commission warrant shall authorize any law enforcement officer within the United States to hold the parolee in custody until the warrant can be executed in accordance with paragraph (a) of this section.

§ 2.100 Warrant placed as detainer and dispositional review.

(a) When a parolee is in the custody of other law enforcement authorities, or is serving a new sentence of imprisonment imposed for a crime committed while on parole or for a violation of some other form of community supervision, a parole violation warrant may be lodged against him as a detainer.

(b) If the parolee is serving a new sentence of imprisonment, and is eligible and has applied for parole under the Commission's jurisdiction, a dispositional revocation hearing shall be scheduled simultaneously with the initial hearing on the new sentence. In such cases, the warrant shall not be executed except upon final order of the Commission following such hearing, as provided in § 2.81(c). In any other cases, the detainer shall be reviewed on the record pursuant to paragraph (c) of this section.

(c) If the parolee is serving a new sentence of imprisonment that does not include eligibility for parole under the Commission's jurisdiction, the Commission shall review the detainer upon the request of the parolee. Following such review, the Commission may:

(1) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(2) Order a dispositional revocation hearing to be conducted by a hearing examiner or an official designated by the Commission at the institution in which the parolee is confined. In such case, the warrant shall not be executed except upon final order of the Commission following such hearing.

(3) Let the detainer stand until the new sentence is completed. Following the release of the parolee, and the execution of the Commission's warrant, an institutional revocation hearing shall be conducted after the parolee is returned to federal custody.

(d) Dispositional revocation hearings pursuant to this section shall be conducted in accordance with the provisions at § 2.103 governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Commission. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in § 2.105.

(1) The date the violation term commences is the date the Commission's warrant is executed. It shall be the policy of the Commission that the parolee's violation term (i.e., the unexpired term that remained to be served at the time the parolee was last released on parole) shall start to run only upon his release from the confinement portion of the sentence for the new offense, or the date of reparole granted pursuant to this subpart, whichever comes first.

(2) A parole violator whose parole is revoked shall be given credit for all time in confinement resulting from any new offense or violation that is considered by the Commission as a basis for revocation, but solely for the limited purpose of satisfying the time ranges in the reparole guidelines at § 2.81. The computation of the prisoner's sentence, and forfeiture of time on parole pursuant to D.C. Code 24–206(a), is not affected by such guideline credit.

§ 2.101 Revocation; Preliminary interview.

(a) Interviewing officer. A parolee who is retaken on a warrant issued by the Commission shall promptly be offered a preliminary interview by a Supervision Officer (or other official designated by the Commission). The purpose of the preliminary interview is to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a local or institutional revocation hearing should be conducted. Any Supervision Officer or U.S. Probation Officer in the district where the prisoner is confined may conduct the preliminary interview, provided he or she is not the officer who recommended that the warrant be issued.

(b) Notice and opportunity to postpone interview. At the beginning of the preliminary interview, the interviewing officer shall ascertain that the warrant application has been given to the parolee as required by § 2.99(b). The interviewing officer shall advise the parolee that he may have the preliminary interview postponed in order to obtain an attorney (and/or witnesses and evidence on his behalf), and that he may apply for counsel to be

assigned by the D.C. Public Defender Service or otherwise obtained. In addition, the parolee may request the Commission to obtain the presence of adverse witnesses (*i.e.*, persons who have given information upon which revocation may be based). Such adverse witnesses may be requested to attend the postponed preliminary interview if the parolee meets the requirements at § 2.102(a) for a local revocation hearing. The parolee shall be given advance notice of the time and place of a postponed preliminary interview.

(c) Review of the charges. At the preliminary interview, the interviewing officer shall review the violation charges with the parolee and shall apprise the parolee of the evidence that has been presented to the Commission. The interviewing officer shall ascertain whether the parolee admits or denies each charge listed on the warrant application, as well as the parolee's explanation of the facts giving rise to each charge. The officer shall also receive the statements of any witnesses and documentary evidence on behalf of the parolee. At a postponed preliminary interview, the hearing officer shall also permit the cross-examination of any adverse witnesses in attendance. However, in such cases, the Commission will ordinarily have ordered a combined preliminary interview and local revocation hearing as provided in paragraph (f) of this section.

(d) Probable cause determination. At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of release, and shall submit to the Commission a digest of the interview together with a recommended decision.

(1) If the interviewing officer's recommended decision is that there is no probable cause to believe that the parolee has violated the conditions of release, a Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that there is probable cause to believe that the parolee has violated a condition (or conditions) of his release, the Commissioner shall notify the parolee of the final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Release notwithstanding probable cause. If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceedings may be ordered in the Commission's discretion if it determines that:

(i) Continuation of revocation proceedings is not warranted despite the violations found; or

(ii) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and the parolee is neither likely to fail to appear for further proceedings, nor constitutes a danger to himself or others.

(e) Conviction as probable cause. Conviction of any Federal, District of Columbia, State, or local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no preliminary interview shall be conducted unless ordered by a Commissioner to consider additional violation charges (including, but not limited to, unadjudicated criminal offenses) that may be determinative of the Commission's decision regarding revocation and/or reparole.

(f) Local revocation hearing. A postponed preliminary interview may be conducted as a local revocation hearing by an examiner or other officer designated by a Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing. It shall be the Commission's policy to conduct a combined preliminary interview and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(g) Late received charges. If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental preliminary interview if the new charge may be contested by the parolee and possibly result in the appearance of witness(es) at the revocation hearing;

(2) Notify the prisoner that the additional charge will be considered at the revocation hearing without conducting a supplemental interview; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

§ 2.102 Place of revocation hearing.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with the opportunity to contest the charges against him, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies all charges against him.

(b) The parolee shall also be given a local revocation hearing if he admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or reparole, and requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witness at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(c) If there are two or more contested charges, a local revocation hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(d) A parolee who voluntarily waives his right to a local revocation hearing, or who admits one or more charged violations without contesting any unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or reparole, or who is retaken following release from a sentence of imprisonment for a new crime, shall be given an institutional revocation hearing upon his return or recommitment to an institution. An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the parolee is being held. (However, a Commissioner may, on his own motion, designate any such case for a local revocation hearing instead.) The difference in procedures between a "local revocation hearing" and an "institutional revocation hearing" is set forth in § 2.103.

(e) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his parole, unless otherwise ordered by the Commission under § 2.101(e)(3). A parolee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has provided otherwise.

(f) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall

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be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement, or consents to a postponement, or by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by an examiner, hearing examiner panel, or other official designated by the Commission.

§ 2.103 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) At a local revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence in his behalf. The alleged violator may also seek the compulsory attendance of any adverse witnesses for cross-examination, and any relevant favorable witnesses who have not volunteered to attend. At an institutional revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence in his behalf, but may not request the Commission to secure the attendance of any adverse or favorable witness. At any hearing, the presiding hearing officer or examiner may limit or exclude any irrelevant or repetitious statement or documentary evidence, and may prohibit the parolee from contesting matters already adjudicated against him in other forums.

(c) At a local revocation hearing, the Commission shall, on the request of the alleged violator, require the attendance of any adverse witnesses who have given statements upon which revocation may be based. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. The Commission may also require the attendance of adverse witnesses on its own motion, and may excuse any requested adverse witness from appearing at the hearing (or from appearing in the presence of the alleged violator) if it finds good cause for so doing. A finding of good cause for the non-appearance of a requested adverse witness may be based, for example, on a significant possibility of harm to the witness, the witness not being reasonably available, and/or the availability of documentary evidence that is an adequate substitute for live testimony.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at or before the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) An alleged violator may be represented by an attorney at either a local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for parolees, except in the case of law students appearing before the Commission as part of a court-approved clinical practice program, with the consent of the alleged violator, and under the personal direction of a lawyer or law professor who is physically present at the hearing.

§ 2.104 Issuance of subpoena for appearance of witnesses or production of documents.

(a)(1) If any adverse witness (*i.e.*, a person who has given information upon which revocation may be based) refuses, upon request by the Commission, to appear at a preliminary interview or local revocation hearing, a Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of a Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, a Commissioner may, upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Such subpoenas may also be issued at the discretion of a Commissioner if deemed necessary for the orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district on which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt. 18 U.S.C. 4214 (1976).

§ 2.105 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the parolee has violated one or more conditions of parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision, including where appropriate:

(i) Reprimand the parolee;

(ii) Modify the parolee's conditions of release; or

(iii) Refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine whether immediate reparole is warranted or whether parole should be terminated pursuant to D.C. Code 24–206(a). Termination of parole shall return the parolee to prison. If the parolee is returned to prison, the Commission shall also determine a presumptive release date pursuant to § 2.81.

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes. The Commission's decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(d) Pursuant to D.C. Code 24–206(a), a parolee whose parole is revoked by the Commission shall receive no credit toward his sentence for time spent on

parole, including any time the parolee may have spent in confinement on other sentences (or in a halfway house as a condition of parole) prior to the execution of the Commission's warrant.

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). This exception from D.C. Code 24–206(a) does not apply to prisoners serving sentences under the D.C. Youth Rehabilitation Act, to which D.C. Code 24–206(a) is fully applicable.

(f) In determining whether to revoke parole for non-compliance with a condition requiring payment of a fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

§ 2.106 Youth Rehabilitation Act.

(a) Regulations governing YRA offenders and D.C. Code FYCA offenders. The provisions of this section shall apply to offenders sentenced pursuant to the Youth Rehabilitation Act of 1985 (D.C. Code 24–801 *et seq.*) (YRA), and to D.C. Code offenders sentenced under the former Federal Youth Corrections Act (former 18 U.S.C. 5005 *et seq.*) (FYCA).

(b) Application of this subpart to YRA offenders. All provisions of this subpart that apply to adult offenders also apply to YRA offenders unless a specific exception is made for YRA (or youth) offenders. The specific exceptions for YRA offenders, apart from this section, are found in § 2.71(b) (timing of initial parole hearings), § 2.75(b) (timing of reconsideration hearings), § 2.80(i) (guidelines for decisions at initial hearings), and § 2.80(l) (guidelines for decisions at subsequent hearings).

(c) No further benefit finding. If there is a finding that a YRA offender will derive no further benefit from treatment, such prisoner shall be considered for parole, and for any other action, exclusively under the provisions of this subpart that are applicable to adult offenders. Such a finding may be made pursuant to D.C. Code 24–805 by the Department of Corrections or by the Bureau of Prisons, and shall be promptly forwarded to the Commission. However, if the finding is appealed to the sentencing judge, the prisoner will continue to be treated under the provisions pertaining to YRA offenders until the judge makes a final decision denying the appeal.

(d) Program plans. At a YRA prisoner's initial parole hearing, a program plan for the prisoner's treatment shall be submitted by institutional staff and reviewed by the hearing examiner. Any proposed modifications to the plan shall be discussed at the hearing, although further relevant information may be presented and considered after the hearing. The plan shall adequately account for the risk implications of the prisoner's current offense and criminal history and shall address the prisoner's need for rehabilitational training. The program plan shall also include an estimated date of completion. The criteria at § 2.64(d) for successful response to treatment programs shall be considered by the Commission in determining whether the proposed program plan would effectively reduce the risk to the public welfare.

(e) Parole violators. A YRA parolee who has had his parole revoked shall be scheduled for a rehearing within six months of the revocation hearing to review the new program plan prepared by institutional staff, unless a parole effective date is granted after the revocation hearing. Such program plan shall reflect a thorough reassessment of the prisoner's rehabilitational needs in light of the prisoner's failure on parole. Decisions on reparole shall be made using the guidelines at § 2.80. If a YRA parolee is sentenced to a new prison term of one year or more for a crime committed while on parole, the case shall be referred to correctional authorities for consideration of a "no further benefit" finding.

(f) Unconditional Discharge From Supervision. (1) A YRA parolee may be unconditionally discharged from supervision after service of one year on parole supervision if the Commission finds that supervision is no longer needed to protect the public safety. A review of the parolee's file shall be conducted after the conclusion of each year of supervision upon receipt of an annual progress report, and upon receipt of a final report to be submitted by the supervision officer six months prior to the sentence expiration date.

(2) In making a decision concerning unconditional discharge, the Commission shall consider the facts and circumstances of each case, focusing on the risk the parolee poses to the public and the benefit he may obtain from further supervision. The decision shall be made after an analysis of case-specific factors, including, but not limited to, the parolee's prior criminal history, the offense behavior that led to his conviction, record of drug or alcohol dependence, employment history, stability of residence and family relationships, and the number and nature of any incidents while under supervision (including new arrests, alleged parole violations, and criminal investigations).

(3) An order of unconditional discharge from supervision terminates the YRA offender's sentence. Whenever a YRA offender is unconditionally discharged from supervision, the Commission shall issue a certificate setting aside the offender's conviction. If the YRA offender is not unconditionally discharged from supervision prior to the expiration of his sentence, a certificate setting aside the conviction may be issued nunc pro tunc if the Commission finds that the failure to issue the decision on time was due to administrative delay or error, or that the Supervision Officer failed to present the Commission with a progress report before the end of the supervision term, and the offender's own actions did not contribute to the absence of the final report. However, the offender must have deserved to be unconditionally discharged from supervision before the end of his supervision term for a nunc pro tunc certificate to issue.

§ 2.107 Interstate Compact.

(a) Pursuant to D.C. Code 24–1233(b)(2)(G), the Director of the Court Services and Offender Supervision Agency (CSOSA), or his designee, shall be the Compact Administrator with regard to the following individuals on parole supervision pursuant to the Interstate Parole and Probation Compact authorized by D.C. Code 24–251:

(1) All D.C. Code parolees who are under the supervision of agencies in jurisdictions outside the District of Columbia; and

(2) All parolees from other jurisdictions who are under the supervision of CSOSA within the District of Columbia.

(b) Transfers of supervision pursuant to the Interstate Compact, where appropriate, may be arranged by the Compact Administrator, or his designee, and carried out with the approval of the Parole Commission. A D.C. Code parolee who is under the Parole Commission's jurisdiction will ordinarily be released or transferred to the supervision of a U.S. Probation Office outside the District of Columbia.

(c) Upon receipt of a report that a D.C. Code parolee, who is under supervision pursuant to the Interstate Compact in a

jurisdiction outside the District of Columbia, has violated his or her parole, the Commission may issue a warrant pursuant to the procedures of § 2.98. The warrant may be executed as provided as in § 2.99. A parolee who is arrested on such a warrant shall be considered to be a prisoner in federal custody, and may be returned to the District of Columbia or designated to a facility of the Bureau of Prisons at the request of the Commission.

(d) If a parolee from another jurisdiction, who is under the supervision of CSOSA pursuant to the Interstate Compact, is alleged to have violated his or her parole, the Compact Administrator or his designee may issue a temporary warrant to secure the arrest of the parolee pending issuance of a warrant by the original paroling agency. If so requested, the Commission will conduct a courtesy revocation hearing on behalf of the original paroling agency whenever a revocation hearing within the District of Columbia is required.

(e) The term "D.C. Code parolee" shall include any felony offender who is serving a period of parole or mandatory release supervision pursuant to a sentence of imprisonment imposed under the District of Columbia Code.

Dated: July 18, 2000.

Michael J. Gaines,

Chairman, Parole Commission.

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

RIN 1215–AB26

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: Pursuant to Section 4(b) of the McNamara-O'Hara Service Contract Act (SCA), the Department of Labor (DOL or the Department) is issuing a temporary exemption from coverage for certain subcontracts for commercial services. On this same date, the Department of Labor is separately proposing a similar exemption for both prime contracts and subcontracts. This exemption mirrors the subcontract portion of the proposed rule and will remain in effect for the period of one year or until final action is taken on the DOL proposed exemption for both prime and subcontracts, whichever occurs first. The exemption for subcontracts was determined to be necessary and proper in the public interest to avoid the serious impairment of government business, and is in accord with the remedial purpose of the SCA to protect prevailing labor standards.

EFFECTIVE DATE: August 25, 2000.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 693–0062. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The existing information collection requirements contained in Regulations, 29 CFR Part 4 were previously approved by the Office of Management and Budget under OMB control number 1215–0150.

II. Background

On October 1, 1995, the Federal Acquisition Regulations were amended to implement provisions of the Federal Acquisition Streamlining Act (FASA). One provision of the final regulation, 48 CFR 12.504(a)(10)), provided that the requirements of the McNamara-O'Hara Service Contract Act (SCA) are not applicable to subcontracts at any tier for the acquisition of commercial items or services.

After a subsequent review of the issue by the FAR Council, the Administrator for Federal Procurement Policy wrote to the Secretary of Labor and requested that the Department propose an exemption for a more limited group of commercial service contracts (both prime contracts and subcontracts). The Administrator stated that the FAR Council had concluded that a blanket exemption of all subcontracts for commercial items may not adequately serve the Administration's policy of supporting exemptions of the SCA only where they do not undermine the purposes for which the SCA was enacted. Therefore the FAR Council agreed that any exemption from the coverage of SCA for subcontracts for the acquisition of commercial items or components should be accomplished under the Secretary of Labor's authority in the SCA, and stated that it would withdraw the FAR provision.

The FAR Council indicated that the adoption of their recommendations will further the commitment of the Administration to be more commercial-like, encourage broader participation in government procurement by companies doing business in the commercial sector, and reinforce their commitment to reduce government-unique terms and conditions from their contracts. Furthermore, the FAR Council represented that the limited exemptions that they proposed would be in accord with the remedial purpose of the SCA to protect prevailing labor standards.

The Department of Labor on this date has issued a Notice of Proposed Rulemaking (NPRM) to amend the SCA Regulations to implement the exemptions requested by the FAR Council. The FAR Council is contemporaneously withdrawing its current rule that exempts commercial subcontracts from the application of SCA (48 CFR 12.504(a)(10)). As a result of the FAR Council's actions, a small group of commercial subcontracts that were previously exempted under the FAR rule and that also meet the requirements of DOL's proposed rule could change from exempt to nonexempt and back to exempt if the DOL proposal becomes final as it is currently proposed. The Department, pursuant to its authority under section 4(b) of the SCA, finds that a temporary, limited exemption from the SCA is necessary and proper in the public interest to avoid the serious impairment of government business. This exemption is necessary to prevent the disruption that could be caused by such changes, including the possible disruption of services if the current subcontractor does not agree to continue the subcontract services under the requirements of SCA. Furthermore, the Department finds that as a result of the criteria applied to the exempt services, this temporary, limited exemption is in accord with the remedial purpose of the Act to protect prevailing labor standards.

This exemption does not apply to all commercial subcontracts that may have been exempt under the now withdrawn FAR rule nor does it apply to any prime contracts. The exemption is limited solely to those subcontracts that (1) were or would have been exempt under the now withdrawn FAR rule and (2) would be exempt under the DOL proposed rule if that rule becomes final in its current form. The exemption will be in effect for one year or until final action is taken on the NPRM issued this date, whichever occurs first. The Department notes that it intends to proceed expeditiously with this

rulemaking and anticipates that a final rule, after review of all of the comments, will be issued within six months.

The Department also finds that there is good cause to issue this temporary final rule without prior notice and comment. Prior notice and comment would be contrary to the public interest because of the disruption to contractors and to the provision of services to the Government caused by such changes from SCA-exempt, to SCA-covered, to SCA-exempt over the period of less than one year.

III. Summary of the Exemptions

This rule addresses two separate but somewhat related issues. First, the current exemption for the maintenance and repair of Automated Data Processing (ADP) equipment, 29 CFR 4.123(e)(1), is modified to apply the exemption to subcontracts, and with respect to subcontracts, reflects terminology changes in law that have occurred, and applies the exemption to installation services. Second, a new exemption, similar to the current ADP exemption, is added to 4.123(e) to exempt subcontracts for a specified subset of commercial services that also meet certain criteria.

Revision of the current ADP exemption

This final rule retains the current language of the ADP exemption for application to prime contracts and adds a new subparagraph (2) to § 4.123(e) for application to subcontracts. The new subparagraph first reflects changes in terminology stemming from the passage of the Clinger-Cohen Act of 1996, 40 U.S.C. 1401 *et seq.*, which set forth a new framework for the management and acquisition of information technology and replaced the "ADP" terminology originally in the Brooks Automatic Data Processing Act, 40 U.S.C. 759, with "information technology" to reflect the convergence of ADP and telecommunications equipment and technology.

As defined at 40 U.S.C. 1401(3) and incorporated in the FAR, 48 CFR 2.101, the term "information technology," with respect to an executive agency, means "any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information." Under this definition, equipment is considered to be used by an executive agency if the agency uses the equipment directly or if the equipment is used by a contractor under a contract which requires the use of such equipment, or requires the use of such equipment to a significant extent in the performance of a service or the furnishing of a product. The term "information technology" does not include any equipment that is acquired by a contractor incidental to a contract; or any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, is not information technology.

In addition, the final rule applies to installation services (where those services are not subject to the requirements of the Davis-Bacon Act).

New exemption for Certain Commercial Service Subcontracts

In certain situations, an employee's work on a government contract represents a small portion of his or her time and the balance of the time is spent on commercial work. In such cases, the FAR Council represents that the Government loses the full benefits of competition for its service contracts because some contractors decline to compete for Government work due to specific government requirements. Consistent with the recommendation of the FAR Council, this exemption is limited to those subcontracts where the services being procured are such that it would be more efficient and practical for the subcontractor to perform the services with a workforce that is not primarily assigned to the performance of government work. In addition, in order that the exemption comport with the statutory requirement that it be in accord with the remedial purposes of the Act to protect prevailing labor standards, a number of criteria must be satisfied. First, the proposed exemption would apply only when the subcontract award is not determined primarily upon the factor of cost. Therefore, the subcontractor providing the best service at a somewhat higher or lower cost would not be at a competitive disadvantage. Second, the criteria would limit the application of the exemption to circumstances where the nature of the procurement dictates that the most efficient and practical performance of the workload can be accomplished with a workforce that is not dedicated to working primarily on the Government contract. Thus, the competitive pressures upon employee wages that might exist if the services were performed by a workforce dedicated to the Government contract would not come into play on the subcontracts within the scope of the exemption. Furthermore, even if a subcontractor might be inclined to reduce wages to secure the subcontract, the criteria would forbid that practice.

Under this rule, the following criteria for exemption are applied to a short list of services. The exemption applies only if the services under the subcontract meet all of the following criteria.

(1) *The services under the subcontract are commercial—i.e., they are offered and sold regularly to non-Governmental customers, and are provided by the subcontractor to the general public in substantial quantities in the course of normal business operations.*

The basic underlying purpose of the exemption is to permit a prospective subcontractor to utilize its commercial compensation practices for both Government and private commercial work. If the prospective subcontractor does not currently perform the solicited services, then conforming to the SCA requirements would not cause the subcontractor to alter its commercial compensation practices.

(2) *The subcontract will be awarded on a sole source basis or the subcontractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the subcontractor.*

One of the basic purposes of the Service Contract Act is to counteract the negative impact that competition based on price alone may have upon wages. If a subcontract is awarded on a sole source basis, there is no competition and price is clearly not the basis for awarding the subcontract.

For the majority of other subcontracts that are competitively awarded, this criterion would attempt to largely remove wages from consideration by making quality of service and other non-cost factors equal to or more important than the bottom line price. If one assumes that the best employees (contractors) are paid (pay) higher wages, then this criterion would allow these employees (contractors) to compete on the basis of the employees' increased productivity and higher quality service. These employees/contractors should not be disadvantaged even though the employee wages and possibly the resulting subcontract price are somewhat higher than the lowest offer.

(3) *The subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the subcontractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or subcontractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market.*

This criterion ensures that the subcontractor will provide the services to the Government on the same basis that the subcontractor services commercial accounts. Combined with the other criteria, this requirement should ensure that subcontractors do not decrease employee compensation as a part of the competitive contracting process.

(4) *All of the service employees who will perform the services under the subcontract spend only a small portion of their time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government subcontract.*

If the employees spend only a small portion of their available work hours on the Government contract, the subcontractor would not likely be willing to alter its compensation practices simply to obtain the subcontract. (Note: Criterion 5 would also specifically preclude any such change in compensation practices.) Furthermore, the criteria for exemption will not be satisfied by rotating the workforce and having different employees work on the contract each day of the week. In the Department's experience it would be extraordinary for a contractor to staff a contract in this manner. Therefore in such a case, although each individual employee would spend less than 20% of his/her work hours on the Government contract, a prime contractor could not certify—as required by Criterion 6—that all or nearly all offerors would staff the contract with service employees who spend only a small portion of their time on the project.

(5) *The subcontractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the subcontract as the subcontractor uses for these employees and for equivalent employees servicing commercial customers.*

This criterion ensures that the employees servicing the government contract will be compensated exactly as they would be if they were servicing a commercial account. Thus, the prevailing labor standards for private work would not be impacted in any way by the award of the subcontract. Furthermore, because subcontract award is not determined primarily on the basis of cost (Criterion 2), the subcontractor paying the lowest wages will not have a competitive advantage over other employers who pay average or above average wages. These subcontractors will compete for the subcontract work on the same basis that they compete for private work: quality of service and overall value.

(6) *The prime contractor determines in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under a contract or subcontract, the prime contractor shall consider the practices of the existing contractor or subcontractor in making a determination regarding the above requirements.*

This requirement is designed to ensure that all subcontractors compete on an equal basis, and eliminate the possibility that a subcontractor subject to SCA would be forced to compete against a subcontractor that would be exempt from SCA. Furthermore, as noted in the discussion of Criterion 4, this requirement, which takes into consideration not only the practices of likely offerors but also the nature of the subcontract requirements, is a necessary safeguard to prevent individual offerors from juggling staffing patterns simply in an effort to avoid SCA coverage. This criterion also serves to protect those employees (either contractor or Federal employees) who might currently be engaged in performing the solicited services on a full-time basis.

(7) The exempted subcontractor certifies in the subcontract to the provisions in paragraphs (1), and (3) through (5). The prime contractor shall review available information concerning the subcontractor and the manner in which the subcontract will be performed. If the prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the subcontract.

This criterion provides a mechanism for addressing and correcting situations where the exemption may have been misapplied. (It is not anticipated that the prime contractor will do a complete investigation into the application of the exemption to the subcontractor, but rather will do a review based on known information regarding the subcontractor, including information submitted in the solicitation process.) Furthermore, if the Department of Labor, in its enforcement, determines that the subcontract is not in fact exempt, it shall require that SCA stipulations be included in the subcontract. The prime contractor, who in almost all cases will have SCA stipulations included in its contract, will be ultimately responsible for compliance with the requirements of the Act. The Department may therefore require that the SCA requirements be effective as of the date of contract award. The Department notes that an exempt subcontractor is not required to keep any particular records to meet its burden of showing that the criteria are satisfied.

These criteria will be applied only to the following small group of commercial services. In order for the exemption to apply, the subcontract must meet all of the required criteria and must be for one of the specified services listed below. Subcontracts for services that are not within the scope of the services specifically listed, will not be exempt from coverage of SCA even though the subcontract meets all of the required criteria. Furthermore, subcontracts subject to section 4(c) of the SCA are not exempt.

For each of the services included on the list of services to which the exemption would apply, the type of services covered is explained. The difficulties which the FAR Council stated have been encountered in procuring the services are discussed in the NPRM.

Automatic Data Processing and Telecommunications Services

For several years the Department of Labor regulations implementing the Service Contract Act have contained an exemption for contracts principally for the maintenance, calibration and/or repair of 1) automated data processing and office information/word processing systems; 2) scientific equipment and medical apparatus or equipment of microelectronic circuitry or other technology of at least similar sophistication; and 3) office/business machines not otherwise exempt where services are performed by the

manufacturer or supplier of the equipment. In short, the current exemption applies exclusively to hardware maintenance when certain criteria are met. In addition to the expansion of the current ADP exemption to subcontracts for installation services as well as hardware maintenance, an exemption for subcontracts for software and other ADP support services is added in conjunction with the criteria listed above.

Provided the specified criteria are met, the exemption covers a broader range of automatic data processing and telecommunications services including: ADP facility operation and maintenance services provided at the contractor's facility, ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services, information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (e.g., buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. This exemption does not apply to ADP data entry services or ADP optical scanning services.

Automobile or other vehicle (e.g., aircraft) maintenance services (other than contracts to operate a Government motor pool or similar facility).

Contractors operating automobiles or other vehicles have a need for services such as normal maintenance (e.g., changing oil and filters, rotating tires, etc.), mechanical repairs, paint and body work, glass replacement, and other repairs needed to maintain the automobile or other vehicle. Unless the contractor has its own repair shop for such work, it is subcontracted to commercial firms.

Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

Although these services are not typically required by most service contracts and therefore any subcontracts for these services would not typically be covered by the wage determination requirements of the prime contract, any subcontract for such financial services would be exempt if all the required criteria are met.

Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the contract for the conference.

Prime contractors may contract with hotels/motels for meeting rooms for conferences of limited duration (e.g., one to five days). These subcontracts may be for conferences where attendance is limited to Government employees or may involve attendance by other organizations and/or the public. These subcontracts may also involve furnishing lodging and meals to those participating in the conference.

In other cases, the prime contractor establishes contractual arrangements with hotels/motels to obtain special rates for lodging when the contractor has a large number of employees that frequently travel to a particular location. The hotel/motel agrees to special reduced rates in exchange for being designated a preferred provider for the agency travelers to that city/location.

Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc.

Prime contractors that operate and maintain Government owned buildings often subcontract for services related to specialized equipment. Subcontracts for these services would be exempt if all of the required criteria are met.

Installation, maintenance, calibration or repair services for all types of equipment where services are obtained from the equipment manufacturer or supplier of the equipment.

Sometimes prime contractors are required to provide equipment and the prime contractors may have a need to acquire services to install, maintain, calibrate, service or repair the equipment from the manufacturer or original supplier in order to avoid compromising a warranty or because proprietary information needed to perform the work is only available from the manufacturer, an authorized representative of the manufacturer or the supplier of the equipment. These subcontracts may involve sophisticated equipment that requires access to proprietary information or requires employees involved in performing the work to have extensive training that is often only available through the manufacturer or equipment supplier. Examples of the type of equipment include automated building control systems, HVAC equipment, building security systems, and elevators or escalators.

Transportation of persons by air, motor vehicle, rail, or marine on regularly scheduled routes or via standard commercial services (not including charter services).

The General Services Administration (GSA) enters into contracts with airlines called "City Pairs" so that Federal employees and contract employees traveling on Government business can get discount airfares. Where contract employees travel on official business at reduced government fares, it is not considered an SCA-covered subcontract for transportation services.

Real estate services, including real property appraisal services, related to housing federal agencies or disposing of real property owned by the Federal Government.

To the extent that these services may be required, a subcontract for real estate services, including lease acquisition, real property appraisal, broker, space planning, lease re-negotiation, tax abatement, and real property disposal services, would be exempt if the required criteria are met.

Relocation services, including services of real estate brokers and appraisers, to assist federal employees or military personnel in buying and selling homes.

Subcontracts are not generally awarded for employee relocation services. To the extent that relocation services may be required, subcontracts for these services would be exempt if the required criteria are met.

IV. Executive Order 12866 and 13132; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

This final rule is being treated as a "significant regulatory action" within the meaning of Executive Order 12866 because of the significant impact of this rule on other agencies. Therefore, the Office of Management and Budget has reviewed the final rule. However, the Department has determined that this rule is not "economically significant" as defined in section 3(f)(1) of E.O. 12866, and therefore it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order. Under this rule, subcontracts would not be exempt unless price is equal to or less important than the combination of other non-price or cost factors in selecting the subcontractor. Therefore it is not anticipated that the changes proposed by this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities.

The Department has similarly concluded that this rule is not a "major rule" requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in excess of $100 million in expenditures by state, local and tribal governments in the aggregate, or by the private sector. Furthermore, the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the rule does not include a "Federal mandate." The term "Federal mandate" is defined to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do not include an enforceable duty which is "a duty arising from participation in a voluntary program." 2 U.S.C. 658(7)(A). A decision by a subcontractor to bid on Federal service contracts is purely voluntary in nature, and the subcontractor's duty to meet Service Contract Act requirements arises "from participation in a voluntary Federal program."

The Department has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

V. Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, wages.

Accordingly, for the reasons set out in the preamble, 29 CFR Part 4 is amended as set forth below:

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. The authority citation for Part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; 5 U.S.C. 301; and 108 Stat. 4101(c).

2. New paragraphs (e)(2) and (3) are added to § 4.123(e), to read as follows:

§ 4.123 Administrative limitations, and exemptions.

* * * * *

(e) * * *

(2) The following exemptions shall expire no later than July 26, 2001:

(i) Subcontracts principally for the maintenance, calibration, repair, and/or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) of information technology. The term information technology means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology does not include equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, are not information technology.

(ii) The exemptions set forth in this paragraph (e)(2) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the subcontractor in substantial quantities to the general public in the course of normal business operations;

(B) The subcontract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, repair, and/or installation of such commercial items. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor; and

(C) The subcontractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the subcontractor uses for these employees and equivalent employees servicing the same equipment of commercial customers;

(D) The subcontractor certifies in the subcontract to the provisions in this paragraph (e)(2)(ii).

(iii) Determinations of the applicability of this exemption to subcontracts shall be made by the prime contractor prior to subcontract award. In making a judgment that the exemption applies, the prime contractor shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(3) The following exemptions shall expire no later than July 26, 2001:

(i) Subcontracts for the following services where the services under the subcontract meet all of the criteria set forth in paragraph (e)(3)(ii) and are not excluded by paragraph (e)(3)(iii):

(A) Automated data processing and telecommunications services, including ADP facility operation and maintenance services provided at the subcontractor's facility, ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services,

information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (e.g., buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. This category does not include ADP data entry services or ADP optical scanning services;

(B) Automobile or other vehicle (e.g., aircraft) maintenance services (other than subcontracts to operate a Government motor pool or similar facility);

(C) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services);

(D) Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the subcontract for the conference;

(E) Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc;

(F) Maintenance, calibration, repair, or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment;

(G) Transportation of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services);

(H) Real estate services, including real property appraisal services, related to housing federal agencies or disposing of real property owned by the Federal Government; and

(I) Relocation services, including services of real estate brokers and appraisers to assist federal employees or military personnel in buying and selling homes.

(ii) The exemption set forth in this paragraph (e)(3) shall apply to the services listed in paragraphs (e)(3)(i) of this seciton only when all of the following criteria are met:

(A) The services under the subcontract are commercial—i.e., they are offered and sold regularly to non-Governmental customers, and are provided by the subcontractor to the general public in substantial quantities in the course of normal business operations;

(B) The subcontract will be awarded on a sole source basis or the subcontractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the subcontractor.

(C) The subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the subcontractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or subcontractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market;

(D) All of the service employees who will perform the services under the subcontract spend only a small portion of their time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the government subcontract;

(E) The subcontractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the subcontract as the subcontractor uses for these employees and for equivalent employees servicing commercial customers;

(F) The prime contractor determines in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under a contract or subcontract, the prime contractor shall consider the practices of the existing contractor or subcontractor in making a determination regarding the above requirements; and

(G) The exempted subcontractor certifies in the subcontract to the provisions in paragraphs (e)(3)(ii)(A) and (C) through (E) of this section. The prime contractor shall review available information concerning the subcontractor and the manner in which the subcontract will be performed. If the prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the subcontract.

(iii) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(iv) The exemption set forth in this paragraph (e)(3) does not apply to solicitations and subcontracts subject to Section 4(c) of the Service Contract Act.

Signed at Washington, D.C., on this 19th day of July, 2000.

T. Michael Kerr,

Administrator, Wage and Hour Division.

[FR Doc. 00–18635 Filed 7–25–00; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 00–065]

RIN 2115–AA97

Safety Zone Regulation for San Juan Harbor, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within a 1500 foot radius surrounding the drill boat Apache while it is engaged in drilling or blasting operations. The drill boat will operate at the entrance to San Juan Harbor, Puerto Rico. The safety zone is necessary to protect vessels and personnel in the vicinity of the drilling and blasting operations. Entry into this zone is prohibited, unless authorized by the Captain of the Port.

DATES: This rule is effective from 7 a.m., Atlantic Standard Time, on July 11, 2000, to 11:59 p.m., Atlantic Standard Time, October 31, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, Chief of Port Operations, Coast Guard Marine Safety Office San Juan, telephone (787) 706–2440.

ADDRESSES: Documents indicated in this preamble are available in the docket, are part of docket COTP San Juan 00–065, and are available for inspection or copying at the USCG Marine Safety Office, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, between the hours of 7:30 a.m. to 3:30 p.m., Monday through Friday, excluding federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It was impracticable to attempt to publish a NPRM for this situation due to the inherent difficulties in scheduling marine dredging operations, and the temporary nature of this regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the operational schedule for the drilling and blasting was not finalized until a June 21, 2000 meeting between the U.S. Coast Guard, Army Corps of Engineers and Contract Drilling and Blasting.

Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters from hazards associated with drilling and blasting operations that will occur at the entrance to San Juan Harbor, Puerto Rico.

The drilling and blasting operations will be conducted to the west of the San Juan Harbor bar entrance channel, between buoys number 1 and number 4, in the approximate position of 18°28.3691′ N, 066°07.6889′ W. The drilling and blasting operations will occur outside of the navigation channel.

To further ensure the safety of life, the contractor conducting the drilling and blasting operations will, 15 minutes prior to any detonation, send two small boats outside the safety zone to advise mariners of the operation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary as the operation will not significantly impede navigation and commercial activity due to the low frequency of occurrence and extremely short duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in a portion of San Juan Harbor from July 11, 2000 to October 31, 2000. This special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will be in effect sporadically, and vessel traffic can pass safely around the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning is provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulation. that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is

categorically excluded from further environmental documentation because it is establishing a temporary safety zone.

List of Subjects In 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Safety measures, Waterways.

For the reasons discussed in the Preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED AREAS AND LIMITED NAVIGATION AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Temporary § 165.T00–065 is added to read as follows:

§ 165.T07–065 Safety Zone; San Juan Harbor, Puerto Rico

(a) *Regulated Area.* A temporary safety zone is established within a 1500-foot radius surrounding the drill boat Apache, operating at the entrance to San Juan Harbor in the approximate position of 18°28.3691′ N, 066°07.6869′ W, when the vessel is conducting drilling or blasting.

(b) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port.

(2) Notifications of blasting or drilling operations will be broadcast via VHF–FM radio Channel 16 beginning 2 hours prior to operations.

(c) *Dates.* These regulations become effective at 7 a.m., (ast), on July 9, 2000, and expires at 11:59 p.m., (ast), October 31, 2000.

Dated: July 6, 2000.

J. Servidio,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.

[FR Doc. 00–18937 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–185]

RIN 2115–AA97

Safety Zone: IB 909 Barge Conducting Outfall Pipe Construction in Massachusetts Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Cashman/Interberton IB 909 barge conducting outfall pipe construction in Massachusetts Bay. The safety zone temporarily closes all waters in Massachusetts Bay within a five hundred (500) yard radius of the IB 909 barge located at position 42°23′19.57″N, 070°46′50.12″W.

DATES: This rule is in effect from Friday, July 7, 2000 until Saturday, October 21, 2000.

ADDRESSES: Comments and Material received from the public, as well as documents as indicated in this preamble are part of docket CG D01–00–185 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109 between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) David Sherry, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 14, 2000, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this construction project.

Background and Purpose

This regulation establishes a safety zone on the waters of Massachusetts Bay in a five hundred (500) yard radius around the IB 909 construction barge located at position 42°23′19.57″N, 070°46′50.12″W. The safety zone is in effect from Friday, July 7, 2000 until Saturday, October 21, 2000. This safety zone prohibits entry into or movement within this portion of Massachusetts Bay and is needed to protect the maritime public from the dangers posed by this construction project.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the limited size of the safety zone, the fact that the safety zone will not restrict navigational channels, and the advance maritime advisories that will be made, the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Massachusetts Bay in the vicinity of 42°23′19.57″N, 070°46′50.12″W from July 7, 2000 until October 21, 2000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: mariners may freely navigate around the safety zone

and the Coast Guard will issue marine radio advisories before the effective period widely available to users of the Bay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.

2. Add temporary § 165.T01–185 to read as follows:

§ 165.T01–185 Safety Zone: IB 909 Barge Outfall Pipe Construction, Massachusetts Bay, Massachusetts

(a) *Location.* The following area is a safety zone: All waters of Massachusetts Bay within a five hundred (500) yard radius of the construction barge located at position 42°23′19.57″ N, 070°46′50.12″ W.

(b) *Effective Date.* This section is effective from Friday, July 7, 2000 until Saturday, October 21, 2000.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 5, 2000.

J. R. Whitehead,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–18938 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–00–013]

Safety Zone: Navy Pier, Lake Michigan, Chicago Harbor, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone. The safety zone encompasses a portion of the Chicago Harbor. The safety zone is needed to protect vessels and spectators during fireworks shows scheduled for various dates during the summer of the year 2000.

DATES: This temporary final rule is effective at 9:15 p.m., May 28, 2000 until 10:30 p.m., August 23, 2000.

ADDRESSES: You may direct comments to the Captain of the Port, Chicago Illinois, CGD09–00–013, 215 W. 83rd Street, Chicago, Illinois 60521 or deliver them to the Coast Guard Marine Safety Office, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois. The telephone number is (630) 986–2155. The Marine Safety Office, Chicago, Illinois maintains the public docket. Comments and documents as indicated in this preamble will be available for inspection or copying between 9:30 a.m. and 2 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diane J. Hauser, U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Burr Ridge, Illinois 60521. The telephone number is (630) 986–2155.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate

and the Coast Guard will issue marine radio advisories before the effective period widely available to users of the Bay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.

2. Add temporary § 165.T01–185 to read as follows:

§ 165.T01–185 Safety Zone: IB 909 Barge Outfall Pipe Construction, Massachusetts Bay, Massachusetts

(a) *Location.* The following area is a safety zone: All waters of Massachusetts Bay within a five hundred (500) yard radius of the construction barge located at position 42°23′19.57″ N, 070°46′50.12″ W.

(b) *Effective Date.* This section is effective from Friday, July 7, 2000 until Saturday, October 21, 2000.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 5, 2000.

J. R. Whitehead,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–18938 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–00–013]

Safety Zone: Navy Pier, Lake Michigan, Chicago Harbor, IL.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone. The safety zone encompasses a portion of the Chicago Harbor. The safety zone is needed to protect vessels and spectators during fireworks shows scheduled for various dates during the summer of the year 2000.

DATES: This temporary final rule is effective at 9:15 p.m., May 28, 2000 until 10:30 p.m., August 23, 2000.

ADDRESSES: You may direct comments to the Captain of the Port, Chicago Illinois, CGD09–00–013, 215 W. 83rd Street, Chicago, Illinois 60521 or deliver them to the Coast Guard Marine Safety Office, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois. The telephone number is (630) 986–2155. The Marine Safety Office, Chicago, Illinois maintains the public docket. Comments and documents as indicated in this preamble will be available for inspection or copying between 9:30 a.m. and 2 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diane J. Hauser, U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Burr Ridge, Illinois 60521. The telephone number is (630) 986–2155.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate

action is necessary to prevent possible loss of life, injury, or damage to property or the environment.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting comments to the office listed in **ADDRESSES** in the preamble. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD09–00–013), the specific sections of this document to which each comment applies, and give the reason for each comment. The Coast Guard will consider all comments received.

Background and Purpose

A temporary safety zone is required to ensure safety of vessels and spectators from hazards associated with fireworks. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000. For the same reasons set fourth in the above regulatory evaluations, the Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C.601 et seq.) that this temporary final rule will not have a significant economic

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action is necessary to prevent possible loss of life, injury, or damage to property or the environment.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting comments to the office listed in **ADDRESSES** in the preamble. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD09–00–013), the specific sections of this document to which each comment applies, and give the reason for each comment. The Coast Guard will consider all comments received.

Background and Purpose

A temporary safety zone is required to ensure safety of vessels and spectators from hazards associated with fireworks. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000. For the same reasons set fourth in the above regulatory evaluations, the Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C.601 et seq.) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have federalism implications under that order.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. A new temporary § 165.T09–013 is added to read as follows:

§ 165.T09–013 Safety Zone: Chicago Harbor, Chicago, Illinois.

(a) *Location.* The following area is a temporary safety zone: The waters of Lake Michigan 700 feet in diameter from Longitude 41–53′18″ N and Latitude 087–36′08″ W. An alternate position that may be used is Longitude 41–53′24″ N and Latitude 087–35′44W. When alternate position is used the water within a 700 ft diameter is also affected. Position will be determined by the Patrol Commander.

(b) *Applicable date.* This temporary final rule is applicable from 9:15 p.m. to 9:45 p.m., on May 28, 2000 and on every Wednesday from 9:15 to 9:45 and every Saturday from 10:00 to 10:30 through August 23, 2000.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

(d) *Effective Date.* This rule is effective from May 28, 2000 until August 23, 2000.

Dated: July 6, 2000.

A. M. Heggers,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 00–18939 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 013–0139; FRL–6729–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on April 12, 1999. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate particulate matter (PM) emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules regulate PM–10 emissions from open burning. Thus, EPA is finalizing simultaneous limited approvals and limited disapprovals under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these

revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of these limited disapprovals EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of these disapprovals. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of these disapprovals.

EFFECTIVE DATE: This action is effective on August 25, 2000.

ADDRESSES: Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following sites:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4103, Open Burning (adopted on December 16, 1993), and South Coast Air Quality Management District (SCAQMD) Rule 444, Open Fires (adopted on October 2, 1987). These rules were submitted by the California Air Resources Board (CARB) to EPA on May 24, 1994 and March 23, 1988, respectively.

II. Background

On April 12, 1999 in 64 FR 17589, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: SJVUAPCD Rule 4103, Open Burning, and SCAQMD Rule 444, Open Fires. SJVUAPCD Rule 4103 was amended on December 16, 1993, and submitted by the CARB to EPA on May 24, 1994. SCAQMD Rule 444, was amended on October 2, 1987, and submitted by the CARB to EPA on March 23, 1988. These PM–10 rules were submitted by the State of California in response to section 110(a) and Part D of the CAA for incorporation into the California SIP. A detailed discussion of the background for the above rules and the nonattainment areas are provided in the proposed rule cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and EPA's interpretation of these requirements as expressed in various EPA policy guidance documents referenced in the proposed rule. EPA is finalizing the limited approval of SJVUAPCD Rule 4103 and SCAQMD Rule 444 in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies.

Submitted SJVUAPCD Rule 4103 replaces twenty-five rules in the Applicable SIP for the eight counties that now comprise the SJVUAPCD. SJVUAPCD Rule 4103 regulates open burning and reduces PM–10 emissions. Although SJVUAPCD Rule 4103 strengthens the SIP by combining and unifying the rules of eight counties and by eliminating the exemption for one- and two-family dwellings to burn residential rubbish, EPA has determined that SJVUAPCD Rule 4103 does not meet the requirements of RACM and BACM by allowing exemptions for eight burning activities that could be limited to Permissive-Burn Days. Rule 4103 also does not meet the requirements of BACM for Prescribed Burning (including Agricultural Burning, Forest Management Burning, Range Improvement Burning, and Wildland Vegetation Management Burning) to require burner training, to require emission reduction techniques, to require a smoke management plan, and to require the second level of smoke dispersion evaluation during the day (the first level is the initial evaluation at the beginning of the day).

Submitted SCAQMD Rule 444 regulates open burning and reduces PM–10 emissions. On July 6, 1982, EPA approved into the SIP a version SCAQMD Rule 444, Open Fires, that had been adopted by the District on October 2, 1981. Although the submitted SCAQMD Rule 444 will strengthen the SIP by requiring an approved implementation plan for Wildland Vegetation Management Burning, EPA has determined that SCAQMD Rule 444 does not meet the requirements of RACM for Prescribed Burning, because the rule does not base approval of a burn on an evaluation of an airshed's capacity to disperse PM–10 emissions from all types of Open Burning, including Prescribed Burning, and other PM–10 sources, to encourage burner training by offering incentives, and to encourage the use of emission reduction techniques by offering incentives.

A detailed list of rules to be replaced and a discussion of rule provisions and deficiencies can be found in the Technical Support Documents for SJVUAPCD Rule 4103 and SCAQMD Rules 444 and 208, which are available from the U.S. EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 17589. EPA received one comment letter on the proposed rule from David L. Jones, SJVUAPCD. The comment has been evaluated by EPA and a summary of the comment and EPA's response is set forth below.

Comment: Mr. Jones commented that the California Air Resources Board (CARB) is planning to take action to revise the *Agricultural Burning Guidelines*, California Code of Regulations, Title 17, in late 1999. Changes currently being proposed to Title 17 would require that SJVUAPCD Rule 4103 be amended, which would also eliminate many of the deficiencies cited by EPA. The SJVUAPCD requests that EPA delay final rulemaking on Rule 4103 until after the CARB takes action on the proposed changes to Title 17. This would allow the SJVUAPCD time to complete the amendment of Rule 4103 in an orderly and cost saving manner.

Response: EPA delayed final rulemaking until after the California Air Resources board adopted the *Smoke Management Guidelines for Agricultural and Prescribed Burning* (SMGAPB) on March 23, 2000. EPA notes that the exemption for agricultural burning on a No-burn day, " if denial would threaten imminent and substantial economic loss," is retained in the revised SMGAPB. The exemption in the revised

SMGAPB is now mitigated by limiting the amount to be burned and by allowing burning only when not likely to cause or contribute to exceedences of the NAAQS or smoke impact to smoke sensitive areas. However, EPA has determined that this exemption as now written is implemented by Director's discretion and is not enforceable nor approvable by EPA. A District planning to submit a rule containing this exemption should define clearly "an imminent and substantial economic loss" and should state clearly the guidelines for determining the amount of material to be burned, geographical location, and meteorological conditions that would allow such an exemption.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of SJVUAPCD Rule 4103 and SCAQMD Rule 444. The limited approval of these rules is being finalized under section 110(k)(3) of the CAA in light of EPA's authority pursuant to section 301(a) of the CAA to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the requirements of section 110(a)(2)(A) of the CAA because of the rule deficiencies which were discussed in the proposed rule. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves SJVUAPCD Rule 4103, Open Burning, and SCAQMD Rule 444, Open Fires, into the SIP as federally enforceable rules.

At the same time, EPA is finalizing a limited disapproval of SJVUAPCD Rule 4103 and SCAQMD Rule 444, because they contain deficiencies that have not been corrected by section 110(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. As stated in the proposed rule, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin per sections 179(a) and 110(c) of the CAA. If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this final rule have been adopted by SJVUAPCD and SCAQMD and are currently in effect in SJVUAPCD and SCAQMD, respectively. EPA's limited disapproval action will not prevent SJVUAPCD, SCAQMD, or EPA from enforcing these rules.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 25, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 14, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(176)(i)(E) and (197)(i)(C)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(176) * * *

(i) * * *

(E) South Coast Air Quality Management District.

(*1*) Rule 444, adopted on October 2, 1987.

* * * * *

(197) * * *

(i) * * *

(C) * * *

(*4*) Rule 4103, adopted on December 16, 1993.

* * * * *

[FR Doc. 00–18435 Filed 7–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–125–1–7463a; FRL–6840–3]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Emergency Episode Plan Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving revisions to the Texas Natural Resource Conservation Commission (TNRCC) emergency episode plan regulations in the Texas State Implementation Plan (SIP). These revisions update statutory citations,

update references to the commission, and change various wording to improve readability. The EPA is approving these revisions to the Texas SIP as requested by the Governor of Texas.

DATES: This rule is effective on September 25, 2000 without further notice, unless EPA receives adverse comment by August 25, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we" is used, we mean EPA. This document makes a reference to 40 CFR 52.2270(c)(71). 40 CFR 52.2270(c)(71) was moved to 40 CFR 52.2299(c)(71) in a **Federal Register** action published July 7, 1999 (64 FR 36586).

I. What Is EPA Approving in This Action?

We are approving Title 30, Chapter 118, of the Texas Administrative Code (30 TAC Chapter 118), Control of Air Pollution Episodes, adopted by TNRCC on February 9, 2000, effective March 5, 2000, as a revision to the Texas SIP.

Chapter 118 in the current Texas SIP was adopted by the former Texas Air Control Board (TACB) on July 17, 1987, and April 14, 1989, and approved by EPA on September 6, 1990 (55 FR 36632) at § 52.2270(c)(71). It is available for public inspection by selecting "Texas" and then selecting "TX Chap 118 (Reg 8)—Control of Air Pollution Episodes" at the following web site: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm (Must be all lower case.)

On February 27, 2000, the Governor of Texas submitted to EPA an amended Chapter 118 adopted by TNRCC on February 9, 2000. These amendments change references to sections 3.14 and 3.14(a) of the Texas Clean Air Act to section 5.514 of the Texas Water Code to reflect current codification of the same statutory content, replace references to the former TACB with "commission" to indicate that the commission is responsible for administering and enforcing the rules, and make acceptable editorial changes to the regulation to improve readability.

II. Final Action

The EPA is approving 30 TAC Chapter 118, Control of Air Pollution Episodes, adopted by TNRCC on February 9, 2000, effective March 5, 2000, and submitted by the Governor on February 27, 2000. Chapter 118 replaces Chapter 118 approved by EPA September 6, 1990 (55 FR 36632) in the Texas SIP.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on September 25, 2000 without further notice unless we receive adverse comment by August 25, 2000. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Federal Clean Air Act (the Act). Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on

health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective September 25, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 25, 2000.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 14, 2000.

Julie Jensen,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270(c), the first table is amended by revising the entry for "Chapter 118 (Reg 8)—Control of Air Pollution Episodes" to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval submittal date	EPA approval date	Explanation
•	•	•	•	•
Chapter 118 (Reg 8)—control of air pollution episodes				
Section 118.1	Generalized Air Pollution Episodes.	03/05/2000	July 26, 2000	
Section 118.2	Provisions Governing Generalized Episode Control.	03/05/2000	July 26, 2000	
Section 118.3	Localized Air Pollution Episodes.	03/05/2000	July 26, 2000	
Section 118.4	Hearings.	03/05/2000	July 26, 2000	
Section 118.5	Emission Reduction Plan.	03/05/2000	July 26, 2000	
Section 118.6	Texas Air Pollution Episode Contingency Plan and Emergency Management Center.	03/05/2000	July 26, 2000	
•	•	•	•	•

[FR Doc. 00–18787 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA158–4163a; FRL–6735–7]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Revisions to Volatile Organic Compounds Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The revisions remove the alternate emission reduction limitations for the Minnesota Mining and Manufacturing Company (3M) located in Bristol, Pennsylvania, and make corrections to certain Pennsylvania VOC regulations to make them consistent with federal requirements. EPA is approving these revisions to the Commonwealth of Pennsylvania's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on September 25, 2000 without further notice, unless EPA receives adverse written comment by August 25, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker (215) 814–2177, or by e-mail at bunker.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 2000 the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP submittal consisted of revisions to certain VOC, particulate, and sulfur dioxide (SO_2) regulations. The revisions to certain VOC regulations are the subject of this rulemaking action. The particulate and (SO_2) regulation revisions will be addressed in a separate rulemaking action.

II. Summary of SIP Revision

As part of the Commonwealth's Regulatory Basics Initiative (RBI), the Pennsylvania Department of Environmental Protection (PADEP) was tasked to review the Commonwealth's existing regulations and identify those that were more stringent than Federal requirements, were obsolete, redundant or no longer necessary. As a result of this initiative, several VOC regulations were found to be obsolete or needed to be revised to conform to Federal requirements. These SIP revisions address revisions resulting from the RBI.

These revisions remove 25 PA Code section 128.14, pertaining to the Minnesota Mining and Manufacturing Company, Bristol, Pennsylvania; add the term "less water" to 25 PA Code section 129.67(b)(2), Graphic Arts Systems; and add amendments to 25 PA Code section 129.56, Storage Tanks Greater than 40,000 Gallons Capacity Containing VOCs, providing a time frame for repairing or emptying of defective organic liquid storage tanks.

25 PA Code section 128.14, Minnesota Mining and Manufacturing Company (3M), Bristol, Pennsylvania, is being removed. This provision implemented alternative emission reduction limitations, also known as a "bubble," for ten surface coating processes at the 3M facility. Eight (8) of the ten (10) coating processes under the bubble were decommissioned and removed in 1990; therefore, the alternative emission reduction limitations are no longer valid or necessary. The remaining two coating processes are subject to 25 PA Code section 129.52 Table I(5).

Regulations for graphic arts systems are being revised to add the term "less water" to 25 PA Code section 129.67(b)(2). This revision will clarify that water is not to be considered when determining the solids content of the ink. This revision complies with the EPA Control Technique Guidelines (CTG) reference document entitled, "A Guideline for Graphic Arts Calculations," PEI Associates Inc., U.S. EPA Contract No. 68–02–3963, 1988.

Procedures for repairing defective floating roof seals on volatile organic storage tanks are being added to 25 PA Code section 129.56. The revisions allow the owners and operators of

volatile organic liquid storage tanks to empty the tanks and repair the defective seals within 45 days. A 30-day extension may be requested from the Commonwealth if the failure cannot be repaired within 45 days and if the tank cannot be emptied in 45 days. These revisions comply with the federal requirements found in 40 CFR 60.113b(b)(4)(iii) relating to testing and procedures for volatile organic liquid storage vessels.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 25, 2000 without further notice unless EPA receives adverse comment by August 25, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Final Action

EPA is approving, as revisions to the Pennsylvania SIP, the removal of 25 PA Code section 128.14, pertaining to Minnesota Mining and Manufacturing Company, Bristol, Pennsylvania; the addition of the term "less water" to 25 PA Code section 129.67(b)(2), Graphic Arts Systems; and the addition of amendments to 25 PA Code section 129.56, Storage Tanks Greater than 40,000 Gallons Capacity Containing VOCs, which provide a time frame for the repairing or emptying of defective organic liquid storage tanks.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 25, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This approval of revisions to Pennsylvania volatile organic compounds regulations may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(147) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(147) Revisions to the Pennsylvania Regulations pertaining to certain VOC regulations submitted on March 6, 2000 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of March 6, 2000 from the Pennsylvania Department of Environmental Protection transmitting the revisions to VOC regulations.

(B) Addition of the term "less water" to 25 PA Code Chapter 129, Standard for Sources, at section 129.67(b)(2) Graphic Arts Systems; addition of paragraph (h) to 25 PA Code Chapter 129, Standard for Sources, at section 129.56, Storage Tanks Less than 40,000 Gallons Capacity Containing VOCs; and revisions to 25 PA Code Chapter 128 to remove section 128.14, pertaining to the Minnesota Mining and Manufacturing Company, Bristol, Pennsylvania. These revisions became effective on September 5, 1998.

(ii) Additional Material.—Remainder of March 6, 2000 submittal.

[FR Doc. 00–18785 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301021; FRL–6586–6]

RIN 2070–AB

Fenbuconazole; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends the time-limited tolerances for the combined residues of the fungicide fenbuconazole and its metabolites RH-9129 and RH–9130 in or on grapefruit, whole fruit at 0.5 part per million (ppm), dried grapefruit pulp at 4.0 ppm, grapefruit oil at 35 ppm, and meat and meat by-products of cattle, goats, hogs, horses, and sheep at 0.01 ppm, for an additional 1½ year period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on grapefruit. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective July 26, 2000. Objections and requests for hearings, identified by docket control number OPP–301021, must be received by EPA on or before September 25, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301021 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301021. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of January 29, 1999 (64 FR 4577) (FRL–6054–3), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the combined residues of fenbuconazole and its metabolites in or on grapefruit at 0.5 ppm, dried grapefruit pulp at 4.0 ppm, grapefruit oil at 35 ppm, and meat and meat by-products of cattle, goats, hogs, horses, and sheep at 0.01 ppm, with an expiration date of June 30, 2000. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide

chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of fenbuconazole on grapefruit for this year's growing season due to the situation remaining an emergency. The pathogen which causes greasy spot has developed resistance to one of the registered alternatives, and other alternatives can cause damage to the fruit, or are less efficacious. Of the citrus crops, grapefruit is particularly susceptible to this disease. Additionally, grapefruit is grown primarily for the fresh market, which has a much lower tolerance for blemished fruits. Significant economic losses are expected without this use. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of fenbuconazole on grapefruit for control of greasy spot disease in grapefruit in Florida.

EPA assessed the potential risks presented by residues of fenbuconazole in or on grapefruit. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of January 29, 1999 (64 FR 4577) (FRL–6054–3). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1½ year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on grapefruit and livestock commodities after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301000 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301021, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not

include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.480 [Amended]

2. In § 180.480, by amending the table in paragraph (b), by revising the date under the heading "Expiration/revocation date", "6/30/00" wherever it appears to read "12/31/01".

[FR Doc. 00–18907 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301023; FRL–6597–1]

RIN 2070–AB78

Imidacloprid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for residues of the insecticide imidacloprid and its metabolites in or on citrus fruits (crop group 10) at 1.0 parts per million (ppm), dried citrus pulp at 5.0 ppm, legume vegetables (crop group 6) at 1.0 ppm, and strawberries at 0.1 ppm for an additional 2-year period. These tolerances will expire and are revoked on June 30, 2002. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on citrus, succulent beans (part of the legume vegetables crop group), and strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective July 26, 2000. Objections and requests for

hearings, identified by docket control number OPP–301023, must be received by EPA on or before September 25, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301023 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301023. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of July 9, 1997 (62 FR 36691) (FRL–5729–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of imidacloprid and its metabolites in or on the citrus fruits crop group at 1.0 part per million (ppm) and dried citrus pulp at 5.0 ppm, with an expiration date of December 31, 1998. These tolerances were extended on December 2, 1998 (63 FR 66438) (FRL–6037–2), for an additional 18-month period to June 30, 2000.

EPA issued a final rule, published in the **Federal Register** of January 20, 1999 (64 FR 3037) (FRL–6051–6), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of imidacloprid and its metabolites in or on legume vegetables (crop group 6) at 1.0 ppm and strawberries at 0.1 ppm, with an expiration date of June 30, 2000.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on citrus for this year's growing season due to an emergency concerning the spread of Pierce's Disease to wine grapes in California. By controlling the glassy-winged sharpshooter, the vector of Pierce's Disease in citrus, the state hopes to prevent the spread of the disease to grapes.

EPA received a request to extend the use of imidacloprid on succulent beans (part of the legume vegetable crop group) for this year's growing season due to an emergency with silverleaf whitefly on succulent beans in Georgia.

EPA received a request to extend the use of imidacloprid on strawberries for this year's growing season due to the continuing emergency in California. California requested a specific exemption for use of imidacloprid on strawberries to control the silverleaf whitefly. The situation in the state of California remains an emergency as there have been no adequate alternatives made available since the initial request for this use. An emergency situation is present due to this recently introduced pest, its devastating effects on many fruit and vegetable crops, and its resistance to registered alternatives.

After having reviewed the submissions, EPA concurs that emergency conditions exist for the situations in these states. EPA has authorized under FIFRA section 18 the use of imidacloprid on citrus for control of the glassy-winged sharpshooter in California, the use of imidacloprid on succulent beans for control of silverleaf whiteflies in Georgia, and the use of imidacloprid on strawberries for control of silverleaf whiteflies in California.

EPA assessed the potential risks presented by residues of imidacloprid in or on citrus, citrus pulp, legume vegetables, and strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and

other relevant material have been evaluated and discussed in the final rules of July 9, 1997 (62 FR 36691) and January 20, 1999 (64 FR 3037). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 2-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on June 30, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on citrus, dried citrus pulp, legume vegetables, or strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301023 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301023, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 12, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.472 [Amended]

2. In § 180.472, amend the table in paragraph (b), by revising the expiration/revocation date for the following commodities: "Citrus fruits crop group," "Dried citrus pulp," "Legume vegetables" and "Strawberry" from "6/30/00" to read "6/30/02".

[FR Doc. 00–18908 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6840–7]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Indiana has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Indiana's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on October 24, 2000 unless EPA receives adverse written comment by August 25, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments referring to Docket Number Indiana ARA 17, to Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450. We must receive your comments by August 25, 2000.

You can view and copy Indiana's application from 9 am to 4 pm at the following addresses: EPA Region 5: contact Gary Westefer at the above address; and Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana 46206; Contact: Lynn West, (317) 232–3593.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604; (312) 886–7450.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program

changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Indiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Indiana has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Indiana is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the state program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives appropriate comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Indiana Previously Been Authorized for?

Indiana initially received Final authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); and September 1, 1999, effective November 30, 1999 (64 FR 47692).

G. What Changes Are We Authorizing With Today's Action?

On February 24, 2000, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Indiana Final authorization for the following program changes:

Description of Federal requirement (include checklist #, if relevant)	*Federal Register* date and page (and/or RCRA statutory authority)	Analogous State authority
Sharing of Information with the Agency for Toxic Substances and Disease Registry—Checklist SI.	November 8, 1984 SWDA 3019(b)	IC 5–14–3 Effective April 15, 1987.
HSWA Codification Rule; Delisting—Checklist 17 B ... as amended—Checklist 17B.1	July 15, 1985, 50 FR 28702 ..... June 27, 1989, 54 FR 27114	329 IAC 3.1–5–3, Effective April 18, 1996.
Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards Checklist 112.	September 10, 1992, 57 FR 41566.	329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–6–1; 3.1–6–2(4); 3.1–11–1; 13–1–1; 13–1–2; 13–2; 13–3–1; 13–3–2; 13–3–3; 13–4–1; 13–4–2; 13–4–3; 13–4–4; 13–4–5; 13–5–1; 13–5–2; 13–5–3; 13–6–1; 13–6–2; 13–6–3; 13–6–4; 13–6–5; 13–6–6; 13–6–7; 13–6–8; 13–7–1; 13–7–2; 13–7–3; 13–7–4; 13–7–5; 13–7–6; 13–7–7; 13–7–8; 13–7–9; 13–7–10; 13–8–1; 13–8–2; 13–8–3; 13–8–4; 13–8–5; 13–8–6; 13–8–7; 13–8–8; 13–9–1; 13–9–2; 13–9–3; 13–9–4; 13–9–5; 13–9–6; 13–10–1; 13–10–2; 13–10–3, Effective March 5, 1997.

Description of Federal requirement (include checklist #, if relevant)	*Federal Register* date and page (and/or RCRA statutory authority)	Analogous State authority
Recycled Used Oil Management Standards; Technical Amendments and Corrections I—Checklist 122.	May 3, 1993, 58 FR 26420	329 IAC 3.1–6–1; 3.1–9–1; 3.1–9–2(1), (2); 3.1–10–1; 3.1–10–2 (1), (2), (3), (4); 13–1–1; 13–1–2; 13–2; 13–3–1; 13–3–2; 13–3–3; 13–4–2; 13–4–3; 13–4–4; 13–6–1; 13–6–3; 13–6–4; 13–6–6; 13–7–2; 13–7–3; 13–7–5; 13–8–1; 13–8–3; 13–8–5; 13–9–1; 13–9–3; 13–9–4, Effective March 5, 1997.
as amended Checklist 122.1	June 17, 1993, 58 FR 33341	
Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (Technical Amendments and Corrections II) Checklist 130.	March 4, 1994, 59 FR 10550	329 IAC 13–1–1; 13–1–2; 13–2; 13–3–1; 13–4–1; 13–6–2; 13–6–5; 13–6–7; 13–7–4; 13–8–4, Effective March 5, 1997.
RCRA Expanded Public Participation—Checklist 148	December 11, 1995, 60 FR 63417	329 IAC 3.1–13–1; 3.1–13–2(8), (9); 3.1–13–16; 3.1–13–19; 3.1–13–20, Effective February 8, 1997.
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Final Rule—Checklist 151.	April 8, 1996, 61 FR 15566	329 IAC 3.1–12–1; 3.1–12–2 (1 through 9), Effective February 8, 1997.
as amended—Checklist 151.1	April 8, 1996, 61 FR 15660	Effective February 8, 1997.
as amended—Checklist 151.2	April 30, 1996, 61 FR 19117	Effective April 18, 1998.
as amended—Checklist 151.3	June 28, 1996, 61 FR 33680	Effective November 30, 1997.
as amended—Checklist 151.4	July 10, 1996, 61 FR 36419	Effective November 30, 1997.
as amended—Checklist 151.5	August 26, 1996, 61 FR 43924	Effective April 18, 1998.
as amended—Checklist 151.6	February 19, 1997, 62 FR 7502	Effective April 18, 1998.
Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emissions Standards for Tanks, Surface Impoundments, and Containers; Final Rule—Checklist 154.	November 25, 1996, 61 FR 59931	329 IAC 3.1–1–7; 3.1–6–1; 3.1–6–2(4); 3.1–7–1; 3.1–9–1; 3.1–10–1; 3.1–10–2 (1 through 4); 3.1–13–1; 3.1–13–2(8), (9), Effective April 18, 1998.
as amended—Checklist 154.1	December 6, 1994, 59 FR 62896	
as amended—Checklist 154.2	May 19, 1995, 60 FR 26828	
as amended—Checklist 154.3	September 29, 1995, 60 FR 50426.	
as amended—Checklist 154.4	November 13, 1995, 60 FR 56952	
as amended—Checklist 154.5	February 9, 1996, 61 FR 4903	
as amended—Checklist 154.6	June 5, 1996, 61 FR 28506	
Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transportation of Hazardous Waste on Rights-of-Way on Contiguous Properties—Checklist 156.	February 12, 1997, 62 FR 6622	329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–6–1; 3.1–6–2(1), (2); 3.1–7–1; 3.1–7–2(1); 3.1–7–3; 3.1–8–1; 3.1–8–2(1); 3.1–9–1; 3.1–9–2(1), (2); 3.1–10–1; 3.1–10–2(1), (2), (3), (4); 3.1–11–1; 3.1–13–1; 3.1–13–2(1), (2), (3), (4); 3.1–13–3 through 3.1–13–17, Effective April 18, 1998.
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions—Checklist 157.	May 12, 1997, 62 FR 25998	329 IAC 3.1–6–1; 3.1–6–2(1), (2), (13), (14); 3.1–12–1; 3.1–12–2 (1 through 5), (8), (10), Effective April 18, 1998.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be either more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

J. What Is Codification and Is EPA Codifying Indiana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. The authorized Indiana RCRA program was incorporated by reference into 40 CFR part 272 on August 23, 1989, effective October 23, 1989 (54 FR 34988).

We reserve the amendment of 40 CFR part 272, subpart P for this authorization of Indiana's program changes until a later date.

K. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate,

or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Indiana program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866 (Regulatory Planning and Review).

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Indiana's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in Indiana in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject

to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a State program.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Indiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA may implement in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 23, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–18789 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–170; FCC 00–111]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On July 13, 2000 (65 FR 43251), the Commission published a document summarizing its order on reconsideration in the Truth-in Billing and Billing Format proceeding. In the order, the Commission granted, in part, petitions for reconsideration of the requirements that telephone bills highlight new service providers and prominently display inquiry contact numbers, denied all other petitions seeking reconsideration, and provided clarification of certain other issues. This document corrects paragraph 14 of the supplementary information contained in that summary.

DATES: Effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Michele Walters, Associate Division Chief, Accounting Policy Division, Common Carrier Bureau (202) 418–7400.

SUPPLEMENTARY INFORMATION: A summary of this order was published in the **Federal Register**, FR Doc. 00–17719, 65 FR 43251, July 13, 2000. This document corrects the supplementary information contained in that summary by revising paragraph 14. In the supplementary information, page 43253, in the third column, "paragraph 14" is corrected to read:

"The majority of our existing truth-in-billing rules took effect on November 12, 1999. Certain carriers who met specific conditions were allowed to delay compliance with some of these requirements until April 1, 2000. In addition, certain other existing truth-in-billing rules are scheduled to take effect on April 1, 2000. Thus, absent action on our part, carriers would be bound by the existing rules as of April 1, despite the fact that today we amend certain aspects of those rules to become effective upon OMB approval. In view of these circumstances, we stay the portions of the existing § 64.2401 detailed below for which compliance was required as of April 1, 2000 until such time as today's amendments of § 64.2401 become effective. The portions of the existing § 64.2401 that are subject to this stay are: (1) That portion of § 64.2401(a)(2) that requires that each carrier's "telephone bill must provide clear and

conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service," (2) § 64.2401(a)(2)(ii) and (3) § 64.2401(d). The existing provisions of §§ 64.2401(a)(1), (a)(2)(i) and the portion of (a)(2) requiring "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider," will continue to take effect on April 1, 2000. Nothing in this order modifies the effective dates of existing §§ 64.2401(b) and (c). Upon their effective date, the rules, as amended, will supercede the existing rules. We take this action because we find that requiring carriers to comply with the existing rules for a short time prior to the effective date of today's amendments would be unduly burdensome and that it could result in the very sort of consumer confusion that today's amendments seek to avoid."

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18883 Filed 7–25–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0182–03; I.D. 121099C, 011100D]

RIN 0648–AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rules To Implement the American Fisheries Act; Extension of Expiration Dates; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension and revision of emergency interim rules; revision to 2000 final harvest specifications; correction.

SUMMARY: This document contains a correction to the emergency interim rules implementing the American Fisheries Act (AFA) for the 2000 fishing year that was published in the **Federal Register** on June 23, 2000.

DATES: This correction is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published an extension and revision of emergency interim rules in the **Federal Register** on June 23, 2000 (65 FR 39107). Emergency interim rules, published on January 5, 2000, and January 28, 2000, were extended through December 24, 2000, and January 16, 2001, respectively. These actions included collection-of-information requirements subject to the Paperwork Reduction Act (PRA); however, PRA statements were inadvertently omitted.

Correction

In the final rule Emergency Interim Rules to Implement the American Fisheries Act; Extension of Expiration Dates published in 65 FR 39107, June 23, 2000, FR Doc. 00–15857, on page 39110, add to the Classification section in column 2 following the paragraph beginning "Because prior notice and opportunity for public comment * * *" the following two paragraphs to read as follows:

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule extends collection-of-information requirements subject to the PRA. These requirements have been approved by OMB under control number 0648–0393. Public reporting burden for these collections of information is estimated to average 2 hours per permit application for a mothership, inshore processor, inshore cooperative, or catcher vessel permit; and 30 minutes for a replacement vessel permit application. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attention: NOAA Desk Officer).

Dated: July 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18772 Filed 7–25–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 144
Wednesday, July 26, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052–AB93

Loan Policies and Operations; Definitions; Loan Purchases and Sales

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: We propose revisions to our regulations on loan participations to allow Farm Credit System (System or FCS) institutions greater flexibility to buy loan participations from non-System lenders under certain conditions. We propose to remove the existing 10-percent retention requirement when loan servicing remains with a non-System seller. We also propose removing two restrictive definitions of "loan participation" in order to enable System institutions to use their full statutory authority for loan participations. Also, we are proposing technical and clarifying changes related to System institutions' participation authorities.

DATES: You may send us comments by September 25, 2000.

ADDRESSES: Send us your comments by electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our Web site at *"www.fca.gov."* You may also send written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this proposed rule is to increase the availability and efficiency of providing agricultural credit by providing greater flexibility for System institutions to engage in loan participations with other System institutions and non-System lenders. We expect that the proposed rule will promote more cooperative alliances and business ventures with commercial banks and other lenders.

This proposed rule is part of our efforts to carry out the Board's Philosophy Statement of July 14, 1998. Added regulatory flexibility should increase the efficient flow of funds to agriculture and rural America while helping ensure the continued availability of adequate and competitive agricultural credit. The proposed changes should also contribute to diversification of the portfolios of individual System institutions and non-System lenders, enabling them to better withstand stress conditions in agriculture.

II. Summary

The proposed rule would enable FCS institutions to use existing statutory authorities to support rural America through loan participation agreements with System and non-System lenders. The Farm Credit Act of 1971, as amended (Act) does not define the terms "participate" or "participation," other than in a special definition contained in section 3.1(11)(B)(iv) of the Act. We have broad authority to define terms used in the Act, and used our authority to provide a general regulatory definition of the term "loan participation" in present §§ 614.4325(a)(4) and 619.9195. However, the two regulatory definitions contained in §§ 614.4325(a)(4) and 619.9195 are more restrictive than the Act requires. The proposed rule would remove these restrictive definitions and enable System institutions to use their full statutory authority for loan participations with System and non-System lenders.

Other Federal bank regulators have, over the past several years, effectively defined loan participations to include 100-percent interests in loans. In addition, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision adopted an interagency statement providing guidance for 100-percent participations.[1] We propose removing our restrictive definitions to ensure that System institutions have the flexibility to interpret their loan participation authorities in the context of current banking practices. Therefore, we propose removing the existing regulatory definitions of "loan participation" contained in parts 614 and 619. We do not propose any change in the regulatory definition of "participate" and "participation" in § 613.3300(a), which reflects the definition contained in section 3.1(11)(B)(iv) of the Act, pertaining to the "similar entity" participation authorities.

In addition, we propose removing a 10-percent retention requirement that applies to System institutions buying participations from non-FCS institutions when the seller keeps the servicing rights of the loans. Finally, we propose clarifying the authorities for participation agreements between the Federal Agricultural Mortgage Corporation (Farmer Mac) and other FCS institutions or other lenders.

III. Revised Definitions of Participations

The Act does not provide a specific definition of a loan participation other than that contained in section 3.1(11)(B)(iv), concerning "similar entity" participations. Nevertheless, we previously provided more narrow regulatory definitions than required by the statute.

Our prior view was that a loan participation had to be a "fractional" undivided interest, something less than 100 percent.[2] On review of the statutory provisions on participations, we have concluded that the Act does not require this result. Section 1.5 of the Act

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[1] "Interagency Statement on Sales of 10% Loan Participations" (April 10, 1997).

[2] We expressed this position in the preamble of the proposed Lending Authorities regulations of January 1991 (56 FR 2452, Jan. 23, 1991).

provides that Farm Credit Banks, "subject to regulation by the Farm Credit Administration, shall have power to . . . make, participate in, and discount loans" and may "participate with" other financial institutions in loans authorized under the Act. There are no limitations on the percentage of a loan in which a bank may participate. Similarly, sections 2.2 and 3.1 of the Act provide, respectively, that a production credit association "may make and participate in loans" and a bank for cooperatives may "participate in loans," subject to regulation by the FCA. Nowhere does the Act provide that a participation interest must be less than 100 percent.

Therefore, we are proposing to remove the regulatory definitions of loan participation in §§ 614.4325(a)(4) and 619.9195 to provide more flexibility to System institutions to make better use of existing statutory participation authorities. With this proposed rule we recognize the banking industry's understanding of loan participations as including all or some portion of a loan.

In 1984 the OCC issued a banking circular [3] that provides that loan participations can include 100 percent of a loan. The OCC issued its banking circular to address safety and soundness concerns associated with loan purchases and participations. In the circular, the OCC described a loan participation as an arrangement in which a bank makes a loan to a borrower and then sells all or a portion of that loan to a purchasing bank. The circular distinguished a participation from a multi-bank loan transaction (syndicated loan).

The other Federal banking regulators issued an interagency statement on sales of 100-percent participations on April 10, 1997. The interagency statement discussed the features of 100-percent loan participations in light of a 1992 court decision [4] that concluded that such participations did not involve the sale of securities under federal securities laws. The interagency statement also identified and discussed related safety and soundness concerns such as heightened legal, reputation, and compliance risks.

The OCC's banking circular contained loan participation guidelines addressing safety and soundness concerns. We have adopted similar guidelines, including the requirement that a buying participant exercise an independent credit judgment as part of our general regulatory guidance for loan purchases and participations.

IV. Proposal Removes 10-Percent Retention Requirement

Section 614.4330(b) generally requires that any non-System lender that sells a loan participation to a System institution but continues to service the loan must retain at least 10 percent of the principal amount of the loan, or the seller's legal lending limit, whichever is less. We imposed this regulatory requirement to ensure the non-System seller and servicer would maintain appropriate controls for loans sold to System participants.

Because of changes in the financial markets, the System's growing experience with loan participations, and to enable FCS institutions to effectively use their existing statutory participation authorities, we now propose removing this retention requirement. This change will facilitate the use of 100-percent participations and allow the participation agreement to provide for loan servicing. However, compensating management controls will be needed to mitigate possible increased risk the added flexibility offers.

V. Characteristics of Typical Participations and Loan Purchases

A. Participations and Loan Purchases

Participations are commonly used when a lender makes a loan and then wishes to sell all of or a portion of the loan. In a participation, the originating lender typically sets up the lending relationship with the borrower and obtains the promissory note, loan agreement and supporting security documents in its name. The participating lender receives an interest in the loan and its collateral through a loan participation agreement and participation certificate.

In contrast, in a typical loan purchase, the buyer, through the purchase agreement, is assigned all rights included in the legal documents, security instruments, and rights to collateral. The buyer assumes the legal lender relationship with the borrower and arranges loan repayment, servicing, and as necessary collection, either directly with the borrower or contractually through an agent.

In typical loan participations all documentation for the loan is between the borrower and the originating lender, and the originating lender has the sole contact with the borrower. The borrower and participant have no direct relationship and there is no contract between the two parties. Therefore, the participant normally must rely on the seller to enforce the terms of the documents between the originating lender and the borrower.

B. Advantages of Participations

Some of the principal advantages of participations are:

- Lending limit relief for the seller,
- Increased liquidity for the seller,
- Reduced concentration risk for both the buyer and seller through greater portfolio diversification,
- Increased fee income opportunities,
- Access to external credit expertise and new and diverse markets,
- Improved capital adequacy management for both the buyer and seller, and
- Better use of the buyer's excess funds.

C. Controlling Risk of Participations

There are risk control issues that can arise with loan participations. Some of these are typical of any credit arrangement. However, expanding the definition of a loan participation to include 100-percent participations can increase certain types of risks if not controlled and managed appropriately.

Therefore, we believe that System institutions should take extra care in developing the policies and procedures for their participation programs if they intend to buy 100-percent participations. An institution's policies and procedures and participation agreements should, at a minimum, address the following risks:

1. *Credit risk*—The participant depends on the originating lender to obtain, develop, and evaluate the relevant information about the borrower and the structure of the credit.

2. *Legal risk*—The originating lender typically prepares the documentation for the loan and perfects any security interests. The participant generally has a share of the rights of the originating lender. If deficiencies exist, the participant's rights may be limited.

3. *Administrative risk*—Typically, the participant must rely on the originating lender to (a) service, monitor, and control the credit relationship with the borrower, (b) provide information about the borrower, and (c) remit payments received from the borrower. However, all of the aforementioned administrative actions must be addressed in the participation agreement as well as the parties' duties and responsibilities.

A participant's administrative risk increases when the originating lender has no direct financial interest in the loan. The proposed removal of the 10-percent retention requirement increases this risk. The participation agreement should specifically address whether the

[3] OCC–BC–181 "Purchases of Loans in Whole or in Part Participations" (August 2, 1984).

[4] *Banco Espanol De Credito v. Security Pacific National Bank*, 973 F.2d 51 (2nd Cir. 1992).

seller has the ability, and under what circumstances, to transfer or sell the note or agreement to a third party without concurrence by the participant.

D. Managing Portfolio Risk

Our current regulations require each System institution involved in loan participation activities to develop and implement policies and procedures for such programs, including establishing appropriate portfolio limits to control portfolio risk.

While participations offer a number of advantages to an institution's portfolio (especially as risk diversification tools) they also carry additional risks not common to a normal borrower/lender relationship. We believe policy direction from a System institution's board of directors becomes even more important with these proposed changes. Portfolio limitations should be reviewed by the institution's board to ensure loan participations are appropriately integrated into the institution's overall business plan and risk management strategies.

VI. Farmer Mac Related Participation Authorities

In response to a question raised by Farmer Mac,[5] we propose a change in the authorities contained in part 614, subpart A, of the regulations. The Act provides that banks and associations can enter into participation arrangements with other System institutions, which by definition includes Farmer Mac. However, our present regulations do not reflect this fact. Farmer Mac was given authority to buy, sell, hold, or assign loans after the present regulations were written. Therefore, we propose to revise the authority regulations in part 614, subpart A, to clarify the loan participation authorities of System banks and associations and Farmer Mac.

VII. Technical and Conforming Changes

We are also proposing certain technical and conforming changes to the regulations.

List of Subjects

12 CFR Part 614

Agriculture, Banks, Banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 619

Agriculture, Banks, Banking, Rural areas.

[5] Farmer Mac, in a letter dated October 26, 1999, requested that we modify our regulations to recognize Farmer Mac authority to sell loan participations to System institutions.

For the reasons stated in the preamble, we propose to amend parts 614 and 619 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

2. Amend § 614.4000 as follows:

a. Remove the word "and" at the end of paragraph (d)(1);

b. Remove the "." and add "; and" at the end of paragraph (d)(2); and

c. Add paragraph (d)(3) to read as follows:

§ 614.4000 Farm Credit Banks.

* * * * *

(d)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

3. Amend § 614.4010 as follows:

a. Remove the word "and" at the end of paragraph (e)(1);

b. Remove the "." and add "; and" at the end of paragraph (e)(2); and

c. Add paragraph (e)(3) to read as follows:

§ 614.4010 Agricultural credit banks.

* * * * *

(e)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

4. Amend § 614.4020 as follows:

a. Remove the "." and add "; and" at the end of paragraph (b)(2); and

b. Add paragraph (b)(3) to read as follows:

§ 614.4020 Banks for cooperatives.

* * * * *

(b)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

5. Amend § 614.4030 as follows:

a. Remove the word "and" at the end of paragraph (b)(1);

b. Remove the "." and add "; and" at the end of paragraph (b)(2); and

c. Add paragraph (b)(3) to read as follows:

§ 614.4030 Federal land credit associations.

* * * * *

(b)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

6. Amend § 614.4040 as follows:

a. Remove the word "and" at the end of paragraph (b)(1);

b. Remove the "." and add "; and" at the end of paragraph (b)(2); and

c. Add paragraph (b)(3) to read as follows:

§ 614.4040 Production credit associations.

* * * * *

(b)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

7. Amend § 614.4050 as follows:

a. Remove the word "and" at the end of paragraph (c)(1);

b. Remove the "." and add "; and" at the end of paragraph (c)(2); and

c. Add paragraph (c)(3) to read as follows:

§ 614.4050 Agricultural credit associations.

* * * * *

(c)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

8. Add a new § 614.4055 to read as follows:

§ 614.4055 Federal Agricultural Mortgage Corporation loan participations.

Subject to the requirements of subpart H of this part 614:

(a) Any Farm Credit System bank or direct lender association may buy from, and sell to, the Federal Agricultural Mortgage Corporation, participation interests in "qualified loans."

(b) The Federal Agricultural Mortgage Corporation may buy from, and sell to, any Farm Credit System bank or direct lender association, or lender that is not a Farm Credit System institution, participation interests in "qualified loans."

(c) For purposes of this section, "qualified loans" means qualified loans as defined in section 8.0(9) of the Act.

Subpart H—Loan Purchases and Sales

9. Amend § 614.4325 by:

a. Removing paragraph (a)(4);

b. Redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(4), (a)(5), and (a)(6), respectively; and revising newly designated paragraph (a)(4) to read as follows:

§ 614.4325 Purchase and sale of interests in loans.

* * * * *

(a)(4) *Participating institution* means an institution that purchases a participation interest in a loan originated by another lender.

* * * * *

§ 614.4330 [Amended]

10. Amend § 614.4330 as follows:

a. Remove the words "an undivided" and add in their place the words "a participation" in paragraph (a)(9); and

b. Remove paragraph (b) and redesignate existing paragraph (c) as paragraph (b).

Subpart J—Lending and Leasing Limits

§ 614.4358 [Amended]

11. Amend § 614.4358 as follows:

a. Remove paragraph (b)(4)(i); and

b. Redesignate paragraphs (b)(4)(ii) and (b)(4)(iii) as paragraphs (b)(4)(i) and (b)(4)(ii), respectively.

PART 619—DEFINITIONS

12. The authority citation for part 619 continues to read as follows:

Authority: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2).

§ 619.9195 [Removed and Reserved]

13. Remove and reserve § 619.9195.

Dated: July 20, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–18873 Filed 7–25–00; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require a one-time inspection to detect wear of the hydraulic pump hoses, and corrective action, if necessary. This proposal would also require relocation of the clip that secures the left forward hold-open rod of both nacelles. This action is necessary to prevent chafing and consequent rupture of the hydraulic line and loss of hydraulic pressure, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 25, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000-NM–133-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000-NM–133-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM–133-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000-NM–133-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received a report of one case of rupture of an engine-driven pump hydraulic hose, possibly due to its friction against the clip that secures the

left-hand forward cowling hold-open rod of both nacelles. The rupture led to the loss of the hydraulic fluid of the relevant system. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–29–0047, Change 01, dated October 22, 1996, which consists of two parts. Part I describes procedures for a visual inspection of all hydraulic hoses installed in both nacelles to detect wearout, chafing, or scores. Follow-on and corrective actions include ensuring a certain distance between the cowl rod clip and the hydraulic hoses, repairing discrepant hoses, relocating the clip that secures the left hold-open rod of both nacelles to prevent further chafing, and replacing the hydraulic hoses with those having the same part number. Part II describes procedures for relocating the clip. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 96–12–01, dated December 13, 1996, in order to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DCA has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to inspect the hydraulic hoses, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $12,000, or $60 per airplane.

It would take approximately 1 work hour per airplane to relocate the clip, at an average labor rate of $60 per work hour. Required parts would cost approximately $15 per airplane. Based on these figures, the cost impact of the proposed clip relocation on U.S. operators is estimated to be $15,000, or $75 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2000–NM–133–AD.

Applicability: Model EMB–120 series airplanes, certificated in any category, having serial numbers listed in EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the hydraulic line and loss of hydraulic pressure due to chafing, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 75 flight hours after the effective date of this AD, perform a general visual inspection to detect discrepancies (wear, chafing, or scores) of all hydraulic pump hoses installed in both nacelles, in accordance with Part I of EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996. Prior to further flight, perform all applicable corrective actions in accordance with the service bulletin.

Note 2: Accomplishment, prior to the effective date of this AD, of the inspection in accordance with Part I of EMBRAER Service Bulletin 120–29–0047, dated August 22, 1996, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) Within 75 flight hours after the effective date of this AD, relocate the clip that secures the left forward hold-open rod of both nacelles in accordance with Part II of

EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directive 96–12–01, dated December 13, 1996.

Issued in Renton, Washington, on July 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18915 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–17–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0100 series airplanes. This proposal would require replacement of the anti-skid control boxes with improved units. This action is necessary to prevent electromagnetic interference with the anti-skid control system, which could result in reduced brake pressure during low-speed taxiing, and consequent reduced controllability and performance of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 25, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–17–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0100 series airplanes. The RLD advises that it has previously required accomplishment of certain modifications to improve the design safety features that provide adequate electromagnetic interference (EMI) protection of the wheelspeed signal wiring. Analysis has shown that accomplishment of these modifications should be sufficient to withstand the currently known EMI sources. However, unknown sources of EMI could still exist that would adversely affect the anti-skid control system and result in reduced brake pressure during low speed taxiing. This condition, if not corrected, could result in reduced controllability and performance of the airplane.

Explanation of Related Rulemaking

The FAA has previously issued AD 99–20–07, amendment 39–11337 (64 FR 52219, September 28, 1999) which requires modification of the ground wiring to the shielding of the wheelspeed sensor wiring of the main landing gear (MLG); and installation of new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG. These modifications provide additional grounds to the shielding of the wheelspeed sensor wiring and to the power supplies of the anti-skid control box. These additional grounds reduce

the effects of EMI generated by electrical wiring that runs parallel to the wheelspeed sensor wiring.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–32–117, dated September 27, 1999, which describes procedures for replacement of the anti-skid control box with an improved unit that is less susceptible to EMI. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1999–127, dated October 29, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 129 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,950 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $517,290, or $4,010 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2000–NM–17–AD.

Applicability: All Model F.28 Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electromagnetic interference with the anti-skid control system, which could result in reduced brake pressure during low-speed taxiing, and consequent reduced controllability and performance of the airplane, accomplish the following:

(a) Within 36 months after the effective date of this AD, replace any anti-skid control box having part number (P/N) 6004272–3, –4, or –5 with an improved anti-skid control box having P/N 6004272–6, in accordance with Fokker Service Bulletin SBF100–32–117, dated September 27, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1999–127, dated October 29, 1999.

Issued in Renton, Washington, on July 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18913 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM00–10–000]

Open Access Same-Time Information System Phase II

Issued July 14, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Advance notice of proposed rulemaking (ANOPR).

SUMMARY: The Federal Energy Regulatory Commission (Commission) requests the submission of detailed proposals, by February 15, 2001, that will enable the Commission to adopt by regulation certain communications protocols and standards for business practices to implement Open Access Same-Time Information System (OASIS) Phase II. OASIS Phase II will be more functional than the current OASIS Phase IA, will incorporate electronic scheduling and will apply to the communications and related business practices between customers and Transmission Providers, including Regional Transmission Organizations (RTOs).

DATES: Proposals are due on February 15, 2001.

ADDRESSES: Proposals should be filed with the Office of the Secretary and should refer to Docket No. RM00–10–000. Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426, (202) 208–1283

Paul Robb (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2702

Gary Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0321

SUPPLEMENTARY INFORMATION:

Advance Notice of Proposed Rulemaking

The Federal Energy Regulatory Commission (Commission) requests the submission of detailed proposals, by February 15, 2001, that will enable the Commission to adopt by regulation certain communications protocols and standards for business practices to implement Open Access Same-Time Information System (OASIS) Phase II. OASIS Phase II will be more functional than the current OASIS Phase IA, will incorporate electronic scheduling and will apply to the communications and related business practices between customers and Transmission Providers.[1]

I. Background

In Order No. 889,[2] the Commission began the process of standardizing electronic communication in the electric industry by requiring public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to create or participate in an Internet-based information system called OASIS. The rules established in Order No. 889 were for a basic (Phase I) OASIS. OASIS Phase I became operational on January 3, 1997. Order No. 889 also contemplated that an enhanced (Phase II) OASIS would be later established.[3] In March 1997, the Commission issued Order No. 889–A that required on-line negotiations for discounts as well as the posting of discounts on the OASIS. In June 1998[4] and September 1998[5] we adopted comprehensive updates of the OASIS and Standards and Communications Protocols Document (Phase IA SC&P) that implemented on-line negotiations as well as other improvements suggested by the industry for OASIS. The Phase IA rules became operational on March 1, 1999 and improved the operations of the basic Phase I OASIS as an interim step toward the development of the enhanced OASIS Phase II.[6]

In Order No. 889 the Commission requested the industry to file a consensus report proposing standards for OASIS Phase II.[7] On November 3, 1997, the Commercial Practices Working Group (CPWG)[8] and the OASIS How Group (How Group) filed a report entitled "Industry Report to the Federal Energy Regulatory Commission on the Future of OASIS" (Industry Report). The Industry Report did not propose standards for Phase II but instead presented lessons learned from OASIS Phase I and posed several broad policy issues relating to the future scope and development of OASIS. In particular, the report raised the question of whether the standards to be developed should be regional or national in scope.

On June 19, 1998, the CPWG and the How Group filed a report entitled "Industry Report to the Federal Energy Regulatory Commission on OASIS Phase IA Business Practices" (June 19 Report) offering a set of uniform business practice standards and guidelines for adoption by the Commission. The June 19 Report argued that, because many OASIS-related business practice implementation details were left for transmission providers to determine for themselves, significant variation arose among business practices across OASIS nodes. To reduce this variation and to promote greater consistency in the implementation of the Commission's open access policy and OASIS policy, the CPWG/How Group proposed that the Commission adopt its recommended "Phase IA Business Practice Standards and Guides" (Business Practices). On February 25, 2000, in Order No. 638, the Commission adopted the proposed Business Practices.[9] On December 20, 1999, the Commission issued a Final Rule (Order No. 2000) to advance the formation of Regional Transmission Organizations (RTOs).[10] Order No. 2000, among other things, established

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[1] For ease in reference, we use the term Transmission Provider as a shorthand for all public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce. This definition also encompasses Independent System Operators and Regional Transmission Organizations.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,583 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[3] We explained that the inclusion of scheduling as part of the OASIS requirements would be addressed in OASIS Phase II.

[4] Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,452 (1998) (June 18 Order).

[5] Open Access Same-Time Information System and Standards of Conduct, 84 FERC ¶ 61,329 (1998).

[6] OASIS "Phase IA" is a label devised by the industry to refer to revisions to the OASIS Phase I requirements that implemented the on-line negotiation of discounts. *See* Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,452 (1998).

[7] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,627 (1998).

[8] The CPWG is no longer functioning. Its activities have been taken over by a successor industry group, the Market Interface Committee (MIC).

[9] Open Access Same-Time Information System and Standards of Conduct, Order No. 638, 90 FERC ¶ 61,202 (2000).

[10] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), *order on reh'g*, Order No. 2000–A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *petitions for review pending sub nom.*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00–1174, *et al.*

minimum characteristics and functions that an RTO must satisfy.

In Order No. 2000, we stated:

> How Group and other commenters address issues relating to the standardization of transmission transactions. Standardization of transactions involves two separate concerns: (1) Many transactions will cross RTO boundaries; and (2) numerous customers will do business with multiple RTOs. Without standardized communications protocols and business practices, the costs of doing business will be increased as market participants will be required to install additional software and add personnel to transact with different RTOs and regions. Therefore, to promote interregional trade, standardized methods of moving power into, out of, and across RTO territories will be needed.
>
> We believe that standards for communications between customers and RTOs must be developed to permit customers to acquire expeditiously common services among RTOs. For example, we envision the creation of standardized communications protocols to schedule power movements and to acquire auction rights. These protocols would not standardize what the rights are, or the nature of the auctions. Instead, the focus of the communications protocols would be on how customers communicate their intentions to an RTO and how customers receive an RTO's responses.
>
> We agree with How Group and others that certain business and communication standards are necessary, and we believe that these standards will facilitate the development of efficient markets. We believe, however, that these issues need further examination based on a complete record.[11]

II. Discussion

In Orders Nos. 888 and 889, the Commission established OASIS for two purposes: (1) To help mitigate transmission market power by providing non-discriminatory access to transmission information and services; and (2) to promote the development of competitive markets for power by setting national standards for the reservation of transmission capacity. Our objective of promoting the development of uniform standards to support competitive markets for power still remains. In the four years since Order Nos. 888 and 889 were issued, the Commission has found that transmission market power could be mitigated more effectively by RTOs. We also found that RTOs would promote more efficient grid management and reliability needed for competitive electricity markets. Thus, OASIS changes may be needed to promote and complement the development of RTOs.

Any revised standards, like the current OASIS standards, will apply to each public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce, including RTOs. We also stated in Order No. 2000 that "an RTO must be the single OASIS site administrator for all transmission facilities under its control."[12] The RTO's function as a single OASIS site administrator will help to ensure standardization within each RTO; however, customers will also obtain transmission service across multiple RTOs and compatibility among RTOs with respect to transmission information and transaction requirements is essential. Efficient wholesale power markets require that communication protocols not raise barriers to the ability of parties to make trades in a timely manner. Such impediments should be eliminated, or, at a minimum, reduced to the maximum extent possible. Order No. 2000 recognized this, not only by establishing OASIS as a separate function of an RTO, but also by establishing interregional coordination as one of the functions for an RTO.

We also intend to facilitate communication between customers and Transmission Providers for services and critical market information, *e.g.*, auctions for transmission rights, the posting of available transmission capacity (ATC), total transmission capacity (TTC) and capacity benefit margin (CBM), prices for transmission and ancillary services, information on curtailments and interruptions and transmission facility status.

The Commission is soliciting proposals, to be filed by February 15, 2001, containing detailed, standard communication protocols and associated business practices that all Transmission Providers and customers would use in reserving and scheduling power, and to reserve and schedule transmission to accommodate power flows into, out of, and across RTOs. The Commission intends to review the proposals received in response to the ANOPR and issue a Notice of Proposed Rulemaking (NOPR) or take other appropriate action.

We continue to believe that the communications standards and protocols of OASIS Phase II, like the current OASIS Phase IA, shall make use of: (1) The Internet for communications; (2) interactive displays using World Wide Web browsers;[13] (3) file uploads and downloads for computer-to-computer communication; and (4) templates defining the file uploads and downloads. In addition, submitted proposals should address what modifications to the existing OASIS Standards and Communications Protocols and related business practices[14] are necessary to implement OASIS Phase II.

In various OASIS-related orders, we postponed adding certain functionality to OASIS until Phase II. The most pressing of these is electronic scheduling.[15] In addition, other functionality was incorporated as OASIS developed (such as a modified form of dynamic notification[16] and formats for electronic submission of tariffs[17]) and other functionality was no longer needed because OASIS, the market or technology developed in a different direction (*e.g.*, breaking large files into 100,000 byte segments[18]). The proposals should discuss whether the additional functionality of complete dynamic notification should be integrated in OASIS Phase II, and, furthermore, the industry should consider whether generator-run status information should be incorporated into OASIS Phase II.

Also, our experience with OASIS Phase I has taught us that business practices standards, in addition to communication standards and protocols are needed for the development of efficient markets and for the efficient use of the transmission grid. Accordingly, submitted proposals should identify any business practices that need to be standardized.

The Commission's experience with Order No. 889 and Order No. 636 has taught us that industry standards, when needed, should be established as early as possible. Our goal is to identify standardization issues before entities

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[11] Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,145 (2000) (footnote omitted).

[12] Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,144 (2000). Furthermore, we concluded in Order No. 2000 that an RTO has the flexibility to contract out OASIS responsibilities to another independent entity or participate in a "super-OASIS" jointly with other RTOs. *See id.* at 31,145.

[13] In the past we have not required standardization of WWW displays. However, in developing proposals, the industry should consider any need for a "common look and feel" for displays.

[14] Order No. 638, FERC Stats. & Regs. ¶ 31,093 at 31,402 (2000).

[15] *See* Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,594 and 31,628 (1996); June 18 Order at 62,451; Open Access Same-time Information System and Standards of Conduct, 84 FERC ¶ 61,324 at 62,455 (1998).

[16] *See* June 18 Order at 62,463–64. Dynamic notification occurs when an OASIS node automatically (without a re-query by a customer) notifies a customer of information changes such as the current ATC for a given path or the status of a pending service request.

[17] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,575 (1997).

[18] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,625 (1996).

invest extensive capital in a system. We intend, therefore, to have OASIS Phase II operational by December 15, 2001 (the RTO startup date). In this way, we hope to avoid unnecessary expenditures by the industry.

Timetable and Other Information

The Commission expects the proposals to be sufficiently detailed so they may be included in a NOPR. The comments and proposals submitted on February 15, 2001, should also propose an implementation schedule or plan to transition from OASIS Phase IA to OASIS Phase II, including time for testing, to allow the standards to be fully implemented by December 15, 2001.

The Commission urges representatives of the various segments of the industry to work together to achieve a consensus on these proposals. The Commission's earlier efforts in this area benefitted greatly from the input of a number of industry working groups. The Commission continues to believe that the industry should take the lead in developing and implementing standards that will be both practical and workable for the variety of business transactions that will take place. Commission staff intends to consult and participate in this process. The Commission will give proposals developed through a collaborative industry process considerable weight. However, collaborative input can only be considered if it is provided to us in a timely manner so that we may adhere to the timetables set forth here.

III. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

• CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994. CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

• RIMS contains images of documents submitted to and issues by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (e-mail to WebMaster@ferc.fed.us) of the Public Reference Room at (202) 208–1371 (e-mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

By direction of the Commission. Commissioner Hébert concurred with a separate statement attached.

Linwood A. Watson, Jr.,
Acting Secretary.

HéBERT, Commissioner *concurring:*

The Commission today issues an Advance Notice of Proposed Rulemaking on standards for electronic communications among participants in the transmission market. The document solicits detailed proposals by February 2001, with the goal for the system to operate by December 15 of that year. Some may consider this a major step forward in the development of competitive markets. If I viewed this rulemaking in isolation from Order No. 2000 and the collaborative process that we and the industry have undertaken to form Regional Transmission Organizations (RTO's), I would agree. Looking at the big picture, however, I consider our action today unnecessary, at best, and, at worst, a potential distraction from the more important job of reaching the goal we all endorse: competition through a viable stand-alone transmission business.

I consider a rulemaking at this juncture a waste of time because Order No. 2000 already covered this ground . In particular, Section 35.34(k)(5) makes the RTO the OASIS administrator within the organizations's boundaries. In addition, section 35.34(k)(8) describes interregional coordination as "ensur[ing] the integration of reliability practices within an interconnection and market practices among regions." (Emphasis added). The section in the Preamble on interregional coordination explains, "The integration of market interface practices involves developing some level of standardization of inter-regional market standards, including the co-ordination of * * * transmission reservation practices, * * * as well as other market coordination requirements covered elsewhere in the Final Rule." Order No. 2000, mimeo at 497.

Since all regulated transmission owners are participating in the process of forming RTO's, the industry is already engaged in the process we seek to start today. Transco's especially need to ensure proper communications, for reservations and scheduling, or they cannot establish a viable transmission business. In addition, entrepreneurs are engaged now in trying to improve, or supplant, OASIS, a system that all admit uses obsolete technology. I fail to see why we need to do anything drastic, such as issuing a new rule on one aspect of what we covered in Order No. 2000. In that regard, I point out that the order states that we may take "other appropriate action," not necessarily issuing a Notice of Proposed Rulemaking. Mimeo at 7.

I consider a rulemaking a potential distraction because of the timetables the Commission imposes. Order No. 2000 recognized that electronic communication with organizations that may not exist presents a problem. Therefore, we stated that, instead of an implementation schedule, the RTO filings should "provide a schedule for * * * follow-up details on how [the RTO] is meeting the coordination requirements.* * *" Order No. 2000, Mimeo at 494–95. In contrast, we solicit "detailed" proposals (mimeo at 7) by February 15, 2001, and hope to have the system operate concurrently with the commencement of RTO's. With tight timetables, parties may divert their attention from the more important issues of scope and pricing, to the subsidiary one of information technology.

The timetables have another, opposite drawback: stifling innovation. If the industry thinks that we might impose new requirements by December 15, 2001, inventors who may have innovations ready sooner will stop dead in their tracks. The market, the transmission owners and their customers, will loath to spend money if, in the end, FERC will not approve of the results. At least in the Order No. 2000, we allowed the parties to adopt whatever works. Rather than making OASIS an end in itself, as we seem to today, we make it a means toward the

goal of an efficient transmission business.

I would keep my eye on the destination. I urge the comments on this advance notice to discuss these issues, lest we lose the forest for some trees.

I concur.

Curt L. Hébert, Jr.,
Commissioner.

[FR Doc. 00–18500 Filed 7–25–00; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 1

[FHWA Docket No. FHWA–2000–7116]

RIN 2125–AE73

Engineering Services

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend the regulation for engineering services by removing a sentence that defined expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in the regulation, as ineligible for Federal participation. This proposed amendment to the regulation stems from a provision in the Transportation Equity Act for the 21st Century (TEA–21) that changed statutory requirements to allow for eligibility of administrative costs for State transportation departments.

DATES: Comments must be received on or before September 25, 2000.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Inman, Federal-aid Financial Management Division, (202) 366–2853 or Mr. Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:45 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

Prior to the TEA–21 (Pub. L. 105–178, 112 Stat. 107 (1998)), expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in paragraph (b) of 23 CFR 1.11, were not eligible for Federal participation. However, section 1212(a) of the TEA–21 revised subsection (b) of 23 U.S.C. 302 stating that compliance with subsection 302(a) had long been interpreted as restricting the Federal eligibility of State overhead costs. Subsection 302(b) now clarifies that cost eligibility is not restricted.

Section 302 of title 23, U.S.Code, requires a State to have a functioning transportation department as a condition for receiving Federal-aid highway funds. The FHWA has interpreted this provision, in accordance with legislative intent, to mean that the costs of operating the State transportation department were not eligible for Federal highway funds. This policy was inconsistent with general government policy issued by the Office of Management and Budget which allows Federal participation in a State's indirect or overhead costs. The purpose for this statutory change was to provide for a consistent policy, especially among Federal transportation agencies.

Therefore, the FHWA is proposing to amend the regulation for engineering services. In 23 CFR 1.11(a), the first paragraph would be amended by removing the last sentence of the paragraph, "Expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in paragraph (b) of this section shall not be eligible for Federal participation."

Rulemaking Analyses and Notices

All comments received before close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review)and DOT Regulatory Policies and Procedures

We have determined that this proposed action is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of this Department. It is anticipated that the economic impact of this proposed rule will be minimal; therefore, a full regulatory evaluation is not required. Nevertheless, the FHWA solicits comments, information, and data on this issue.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act [5 U.S.C. 601–612], we have evaluated the effects of this proposed action on small entities. Based on the evaluation and since this rulemaking action makes only minor amendments to the current regulations, the FHWA does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. In any event, States are not included in the definition of "small entity" as set forth in 5 U.S.C. 601. Therefore, this proposed action would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in

Executive Order 13132 dated August 4, 1999. The FHWA anticipates that this proposed action would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act of 1995

This proposed action does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. (2 U.S.C. 1531 *et seq.*)

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed action here is not economically significant and does not concern an environmental risk to health of safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 1

Administration, Conflicts of interest, Engineering services, Grant programs-transportation, Highways and roads, Rights-of-way.

Issued on: July 17, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part 1, as set forth below.

PART 1—GENERAL

1. The authority citation for part 1 continues to read as follows:

Authority: 23 U.S.C. 315; and 49 CFR 1.48 (b).

2. Revise § 1.11 (a) to read as follows:

§ 1.11 Engineering services.

(a) *Federal participation.* Costs of engineering services performed by the State highway department of any instrumentality or entity referred to in paragraph (b) of this section may be eligible for Federal participation only to the extent that such costs are directly attributable and properly allocable to specific projects.

* * * * *

[FR Doc. 00–18684 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 Parts 655 and 940

[FHWA Docket No. FHWA–99–5899]

RIN 2125–AE95

Intelligent Transportation System Architecture and Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document extends this rulemaking's comment period until September 23, 2000. This is in response to numerous letters received from State departments of transportation, transit operators, and metropolitan planning organizations requesting an extension of the comment period from the closing date. These groups based their request on the time required to assess the impact of this rule on the nation's highway and transit systems and provide meaningful comments.

DATES: Comments to the NPRM should be received no later than September 23, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: Signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Freitas, Intelligent Transportation Systems Joint Program Office (HOIT–1), (202) 366–9292; Mr. Robert Rupert, Office of Travel Management (HOTM–1), (202) 366–2194; or Mr. Wilbert Baccus, Office of the Chief Counsel (HCC–32), (202) 366–1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the

universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

The document may also be viewed at the DOT's intelligent transportation systems (ITS) home page at http://www.its.dot.gov.

Background

On May 25, 2000 (65 FR 33994), the FHWA published an NPRM proposing the establishment of regulations to implement a portion of section 5206(e) of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107) which requires ITS projects funded from the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols.

The DOT has received requests from the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, and several State departments of transportation to extend the comment period. These groups voiced concerns that the proposed rule was extremely complex and that 90 days was insufficient time to assess the impact of the proposed rules and provide meaningful comments. We agree that more time for an in-depth analysis of the NPRM would be beneficial to the FHWA in this rulemaking. For these reasons the FHWA finds good cause to extend this NPRM comment period closing date by 30 days.

Authority: 23 U.S.C. 101, 109, 315, and 508; sec. 5206(e), Pub. L. 105–178; 112 Stat. 457 (23 U.S.C. 502 note); and 49 CFR 1.48.

Issued on: July 17, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 00–18916 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

RIN 1215–AB26

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: Pursuant to Section 4(b) of the McNamara-O'Hara Service Contract Act (SCA), the Department of Labor (DOL or the Department) is proposing exemptions from coverage for certain contracts for commercial services. The proposed exemptions were requested by the Administrator for Federal Procurement Policy, Office of Federal Procurement Policy (OFPP), in a May 12, 1999, letter to the Secretary of Labor representing that the requested exemptions were both necessary and proper in the public interest, and in accord with the remedial purpose of the SCA to protect prevailing labor standards.

DATES: Comments are due on or before August 25, 2000.

ADDRESSES: Submit written comments to John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 693–1432 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 693–0062. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The existing information collection requirements contained in Regulations, 29 CFR Part 4 were previously approved by the Office of Management and Budget under OMB control number 1215–0150.

II. Background

On October 1, 1995, the Federal Acquisition Regulations were amended to implement provisions of the Federal Acquisition Streamlining Act (FASA). One provision of the final regulation, 48 CFR 12.504(a)(10), provided that the requirements of the McNamara-O'Hara Service Contract Act (SCA) are not applicable to subcontracts at any tier for the acquisition of commercial items or services.

After a subsequent review of the issue by the FAR Council the Administrator for Federal Procurement Policy wrote to the Secretary of Labor and requested that the Department propose an exemption for a more limited group of commercial service contracts (both prime contracts and subcontracts). The Administrator stated that the FAR Council had concluded that a blanket exemption of all subcontracts for commercial items may not adequately serve the Administration's policy of supporting exemptions of the SCA only where they do not undermine the purposes for which the SCA was enacted. Therefore the FAR Council agreed that any exemption from the coverage of SCA for subcontracts for the acquisition of commercial items or components should be accomplished under the Secretary of Labor's authority in the SCA, and stated that it would withdraw the FAR provision.

The FAR Council indicated that the adoption of their recommendations will further the commitment of the Administration to be more commercial-like, encourage broader participation in government procurement by companies doing business in the commercial sector, and reinforce their commitment to reduce government-unique terms and conditions from their contracts. Furthermore, the FAR Council represented that the limited exemptions that it proposed could be accomplished without compromising the remedial purpose of the SCA to protect prevailing labor standards.

The Department of Labor has reviewed the requested exemptions and the representations of the FAR Council and has concluded that a sufficient showing has been made to propose to

implement the exemptions requested by the FAR Council. Based on the representations, the Department has preliminarily determined that the exemption would meet the requirements of Section 4(b) of the Act that exemptions be necessary and proper in the public interest or to avoid serious impairment of Government business, and in accord with the remedial purpose of the SCA to protect prevailing labor standards. Comments are requested on this determination.

Contemporaneously with publication of this NPRM in the **Federal Register**, the FAR Council is publishing a final rule removing the SCA from the list of laws inapplicable to subcontracts for commercial items, currently in the FAR at 48 CFR 12.504(a)(10). As a result, a small group of commercial subcontracts that were previously exempted under the FAR rule and that also meet the requirements of DOL's proposed rule could change from exempt to nonexempt and back to exempt if the DOL proposal becomes final as it is currently proposed. To prevent the disruption that could be caused by such changes, including the possible disruption of services if the current subcontractor does not agree to continue the subcontract services under the requirements of SCA, the Department has published a final rule in today's **Federal Register**, temporarily exempting from the SCA those commercial subcontracts which meet the criteria of this NPRM. This final rule will remain in effect for one year from today's date or until the Department completes its rulemaking on this NPRM, whichever occurs first. The Department notes that it intends to proceed expeditiously with this rulemaking and anticipates that a final rule, after review of all of the comments, will be issued within six months.

III. Summary of the Proposed Exemptions

This proposal, as requested by the FAR Council, addresses two separate but somewhat related issues. First, the current exemption for the maintenance and repair of Automated Data Processing (ADP) equipment, 29 CFR 4.123(e)(1), is proposed to be modified to reflect terminology changes in law that have occurred since the exemption was originally established; broaden the exemption to cover information technology as currently defined; apply the exemption to installation services; and apply the exemption to subcontracts as well as prime contracts. Second, a new exemption is proposed, similar to the current ADP exemption, to exempt both prime contractors and subcontractors for a specified subset of commercial services that meet certain criteria.

Proposed Revision of the Current ADP Exemption

The Clinger-Cohen Act of 1996, Divisions D and E of Pub. L. 104–106, repealed the Brooks Automatic Data Processing Act, 40 U.S.C. 759, and set forth a new framework for the management and acquisition of information technology, replaced the "ADP" terminology originally in the Brooks ADP Act with "information technology" to reflect the convergence of ADP and telecommunications equipment and technology. See 40 U.S.C. 1401 *et seq.* This proposal would reflect this change in the regulations.

Further, as recommended by the FAR Council, the exemption would be updated to reflect the current statutory definition of "information technology" and be consistent with other regulations. As defined at 40 U.S.C. 1401(3) and incorporated in the FAR, 48 CFR 2.101, the term "information technology," with respect to an executive agency, means "any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information." Under this definition, equipment is considered to be used by an executive agency if the agency uses the equipment directly or if the equipment is used by a contractor under a contract which requires the use of such equipment, or requires the use of such equipment to a significant extent in the performance of a service or the furnishing of a product. The term "information technology" does not include any equipment that is acquired by a contractor incidental to a contract; or any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, is not information technology.

This proposal would also add installation services to the current regulatory exemption where those services are not subject to the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* See 29 CFR 4.116(c)(2). Service contracts often involve installation of information technology (IT) equipment, for example installing and maintaining a local area network, or installing and maintaining new telephones or a telephone system. The same employees are performing installation as are performing maintenance and repair services. Thus, the same conditions that support the exemption for the maintenance services also support an exemption for installation services, and the addition of installation services will simply reflect what is happening in the market place.

Finally, the current exemption would indicate that the exemption applies to subcontracts meeting the regulatory criteria as well as prime contracts. The Department requests comments on whether there is any reason that the exemption at the prime contract level should not apply equally to subcontracts which meet the criteria, as well as on the other proposed modifications to § 4.123(e)(1). Because the prime contractor is responsible for compliance with all of the contract requirements, including the SCA, if the Department determines that the exemption has been incorrectly applied to a subcontract, the proposed regulation provides that it may require that SCA stipulations be included in the subcontract effective as of the date of contract award.

New Exemption for Certain Commercial Service Contracts

In certain situations, an employee's work on a government contract represents a small portion of his or her time and the balance of the time is spent on commercial work. In such cases, the FAR Council represents that the Government loses the full benefits of competition for its service contracts because some contractors decline to compete for Government work due to specific government requirements. To remedy this situation, the FAR Council has recommended an exemption framework that it believes will protect prevailing labor standards and avoid the undercutting of such standards by contractors. The factual basis for the FAR Council's view that the proposed exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business is set forth below. In addition, in order that the exemption comport with the statutory requirement that it be in accord with the remedial purposes of the Act to protect prevailing labor standards, the proposed regulation provides a number of criteria which must be satisfied. The rationale for these

criteria is also explained below. Comments are requested for each listed service as to whether the proposed exemption, given its criteria and limitations, is necessary and proper in the public interest or to avoid the serious impairment of Government business, and in accord with the remedial purpose of the SCA to protect prevailing labor standards.

As recommended by the FAR Council, this proposal would exempt from SCA a short list of services, when the procurement for those services meets the criteria below. The recommended criteria are intended to limit the exemption to those procurements where the services being procured are such that it would be more efficient and practical for an offeror to perform the services with a workforce that is not primarily assigned to the performance of government work. Thus, contracts for base support services where the work is performed by an on-site dedicated workforce would not meet the exemption criteria, and contracts where the services have been performed by a dedicated group of federal employees (A–76 procurements) would be unlikely to meet the exemption criteria since the nature of the services would not meet the requirement that the workers perform only a small part of their time on the contract; however, it is possible that some subcontracts for a portion of those services might meet the criteria for exemption.

The criteria are designed to ensure that the remedial purpose of the Act to protect prevailing labor standards is preserved. This would be accomplished in two ways. First, the proposed exemption would apply only when the contract award is not determined primarily upon the factor of cost. Therefore, the contractor providing the best service at a somewhat higher or lower cost would not be at a competitive disadvantage. Second, the criteria would limit the application of the exemption to circumstances where the nature of the procurement dictates that the most efficient and practical performance of the workload can be accomplished with a workforce that is not dedicated to working primarily on the Government contract. Thus, the competitive pressures upon employee wages that might exist if the services were performed by a workforce dedicated to the Government contract would not come into play on the contracts within the scope of the recommended exemption. Furthermore, even if a contractor might be inclined to reduce wages to secure the Government contract, the criteria would forbid that practice.

Under this proposal, the following criteria for the new exemption would be applied to a short list of services. The exemption would apply only if the services under the contract or subcontract meet all of the criteria. The Department seeks comments regarding whether these criteria are appropriate to protect prevailing labor standards.

(1) The services under the contract are commercial—*i.e.*, they are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

The basic underlying purpose of the proposed exemption is to permit a prospective contractor to utilize its commercial compensation practices for both Government and private commercial work. If the prospective contractor does not currently perform the solicited services, then conforming to the SCA requirements would not cause the contractor to alter its commercial compensation practices.

(2) The prime contract or subcontract will be awarded on a sole source basis or the contractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the contractor.

One of the basic purposes of the Service Contract Act is to counteract the negative impact that competition based on price alone may have upon wages. If a contract is awarded on a sole source basis, there is no competition and price is clearly not the basis for awarding the contract.

For the majority of other contracts that are competitively awarded, this criterion would attempt to largely remove wages from consideration by making quality of service and other non-cost factors equal to or more important than the bottom line price. If one assumes that the best employees (contractors) are paid (pay) higher wages, then this criterion would allow these employees (contractors) to compete on the basis of the employees' increased productivity and higher quality service. These employees/contractors should not be disadvantaged even though the employee wages and possibly the resulting contract price are somewhat higher than the lowest offer.

(3) The prime contract or subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market.

This criterion ensures that the contractor will provide the services to the Government on the same basis that the contractor services commercial accounts. Combined with the other criteria, this requirement should ensure that contractors do not decrease employee compensation as a part of the competitive contracting process.

(4) All of the service employees who will perform the services under the Government contract or subcontract spend only a small portion of their time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

If the employees spend only a small portion of their available work hours on the Government contract, the contractor would not likely be willing to alter its compensation practices simply to obtain the Government contract. (Note: Criterion 5 would also specifically preclude any such change in compensation practices.) Furthermore, the criteria for exemption will not be satisfied by rotating the workforce and having different employees work on the contract each day of the week. In the Department's experience it would be extraordinary for a contractor to staff a contract in this manner. Therefore in such a case, although each individual employee would spend less than 20% of his/her work hours on the Government contract, a contracting officer or prime contractor (in the case of a subcontract) could not certify—as required by Criterion 6—that all or nearly all offerors would staff the contract with service employees who spend only a small portion of their time on the project.

(5) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract or subcontract as the contractor uses for these employees and for equivalent

employees servicing commercial customers.

This criterion ensures that the employees servicing the government contract will be compensated exactly as they would be if they were servicing a commercial account. Thus, the prevailing labor standards for private work would not be impacted in any way by the award of the Government contract. Furthermore, because contract award is not determined primarily on the basis of cost (Criterion 2), the contractor paying the lowest wages will not have a competitive advantage over other employers who pay average or above average wages. These contractors will compete for the Government work on the same basis that they compete for private work: quality of service and overall value.

(6) The contracting officer (or prime contractor with respect to a subcontract) determines in advance, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under contract, the contracting officer or prime contractor shall consider the practices of the existing contractor in making a determination regarding the above requirements.

This requirement is designed to ensure that all contractors compete on an equal basis, and eliminate the possibility that a contractor subject to SCA would be forced to compete against a contractor that would be exempt from SCA. Furthermore, as noted in the discussion of Criterion 4, this requirement, which takes into consideration not only the practices of likely offerors but also the nature of the contract requirements, is a necessary safeguard to prevent individual offerors from juggling staffing patterns simply in an effort to avoid SCA coverage. This criterion also serves to protect those employees (either contractor or Federal employees) who might currently be engaged in performing the solicited services on a full-time basis.

(7) The exempted contractor or subcontractor certifies in the contract to the provisions in paragraphs (1), and (3) through (5). The contracting officer or prime contractor, as appropriate, shall review available information concerning the contractor or subcontractor and the manner in which the contract will be performed. If the contracting officer or prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the contract or subcontract.

This criterion provides a mechanism for addressing and correcting situations where the exemption may have been misapplied. (It is not anticipated that the contracting officer or prime contractor will do a complete investigation into the application of the exemption to the contractor, but rather will do a review based on known information regarding the contractor or subcontractor, including information submitted in the solicitation process.) Furthermore, if the Department of Labor, in its enforcement, determines that the contract is not in fact exempt, it shall require that SCA stipulations be included in the contract. In the case of a subcontract, the prime contractor, who in almost all cases will have SCA stipulations included in its contract, will be ultimately responsible for compliance with the requirements of the Act. The Department may therefore require that the SCA requirements be effective as of the date of contract award. The Department notes that an exempt contractor or subcontractor is not required to keep any particular records to meet its burden of showing that the criteria are satisfied.

The FAR Council has recommended that these criteria be applied only to a small group of commercial services which it believes would constitute the overwhelming majority of cases meeting the above criteria for the proposed exemption. The FAR Council and the Department of Labor agree that it is appropriate to consider comments not only regarding the services for which the exemption is being proposed, but also for any additional services that commenters believe should be added to the list. If sufficient justification is received for adding any additional services to the list, the Department of Labor will issue a proposal to add the new service. If the proposed rule is adopted in whole or in part, the final rule will not apply to any service for which the opportunity for public comment was not provided.

As recommended by the FAR Council, the proposed exemption would not be applied to any contract entered into under the Javits-Wagner-O'Day Act, or to any contract subject to the provisions of Section 4(c) of SCA. Furthermore, contracts for operation of a Government facility or a portion thereof would not meet the required criteria, and are also excluded from the proposed exemption; however, it is possible that some subcontracts under such procurements would be for the listed services, and would fall within the scope of the proposed exemption, provided all the criteria are met.

In selecting the services to which it believed the new exemption should apply, the FAR Council focused on services which the Government is having difficulty acquiring or for which the Government is getting limited competition, or where the Government is unable to acquire the quality of services needed because commercial sources are reluctant to do business with the Government, thereby causing impairment to Government business. The FAR Council stated that it avoided selecting services where the Government may be in a position to motivate the payment of less than prevailing wages by contractors striving to win Government contracts. The Department agrees that it is appropriate to propose to exempt such a limited group of services.

For each of the services included on the list of services to which the new exception would apply, the type of services covered is explained and the difficulties which the FAR Council stated have been encountered in procuring the services are cited.

Automatic data processing and telecommunications services.

For several years the Department of Labor regulations implementing the Service Contract Act have contained an exemption for contracts principally for the maintenance, calibration and/or repair of (1) automated data processing and office information/word processing systems; (2) scientific equipment and medical apparatus or equipment of microelectronic circuitry or other technology of at least similar sophistication; and (3) office/business machines not otherwise exempt where services are performed by the manufacturer or supplier of the equipment. In short, the current exemption applies exclusively to hardware maintenance when certain criteria are met. In addition to the recommendation that the current ADP exemption be expanded to include installation services as well as hardware maintenance, the FAR Council has recommended that an exemption for software and other ADP support services be considered in conjunction with the criteria listed above.

Provided the specified criteria are met, the proposed new exemption would cover a broader range of automatic data processing and telecommunications services including: ADP facility operation and maintenance services provided at the contractor's facility, ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services, information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided

design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (*e.g.*, buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. As recommended by the FAR Council, however, the new exemption would not apply to ADP data entry services or ADP optical scanning services.

The FAR Council explains that in this information age, the Federal Government is contracting for more and more information technology (IT) services. This is driven by the need to maximize the use of technology to improve the efficiency and effectiveness of agency performance. However, increasingly the Government is less of a player in the IT marketplace in terms of market share (less than 3%). IT providers have an abundance of work in an industry with a tight labor market. IT providers are often reluctant or unwilling to deal with Government unique requirements such as the Service Contract Act when they have an abundance of work available and are experiencing difficulty keeping pace with their commercial work.

The FAR Council states that unless the Federal Government can more closely align the Government's contracting practices and requirements with commercial practice, it will not be able to generate enough interest to permit the Federal Government to take full advantage of the opportunities to use information technology and to obtain the requisite quality of services needed to satisfy critical agency mission needs.

Automobile or other vehicle (*e.g.*, aircraft) maintenance services (other than contracts to operate a Government motor pool or similar facility).

Federal agencies that maintain a fleet of automobiles have a need for services such as normal maintenance (*e.g.*, changing oil and filters, rotating tires, etc.), mechanical repairs, paint and body work, glass replacement, and other repairs needed to maintain the automobile or other vehicle. Unless the agency has a dedicated Government facility for such work, it is contracted out to commercial firms.

The FAR Council states that the General Services Administration (GSA), which is responsible for providing Interagency Fleet Management Services, has been unsuccessful in contracting for these services because of the unwillingness of commercial sources to deal with Government unique requirements such as the Service Contract Act for the small amount of Government work involved. As a result, GSA and other agencies often acquire these services on an as needed basis using micro-purchase procedures and the Government Purchase Card.

The FAR Council states that unless GSA and other agencies can more closely align the Government's contracting practices and requirements with commercial practice, it will not be able to generate enough interest or business to permit the Federal Government to take advantage of the quality improvements and lower prices that will likely result from establishing contractual relationships with commercial service centers. While the individual transactions are small (typically under $2,500), the aggregate volume and dollar value of transactions across the nation is substantial. The real benefit for the Federal Government of a contractual relationship is the lower prices it can negotiate for parts and supplies used to service vehicles if it is able to contract for services rather than treat each transaction individually. Additionally, the Federal Government can expect to receive better service because it will be viewed as a "corporate" customer who gives its business to a particular contractor(s) in a certain location. The FAR Council states that an exemption is necessary to permit the Government to enhance the quality of service while reducing its cost through leveraging the Federal Government's collective buying power.

For example, the Department of Interior's Office of Aircraft Services in Boise, ID, contracts for maintenance of about 100 of its own aircraft and also provides contract support for other agencies such as the U.S. Forest Service. The Office of Aircraft Services reports that it has about a dozen contracts at various locations around the country. These are commercial services procured from commercial sources where the maintenance of Government aircraft is performed alongside regular non-government aircraft. Contractors' work is predominantly non-government. Some commercial contractors have refused to do work for the Government because of concerns with the SCA requirements. The result has been limited competition for such contracts.

Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

Increasingly, the Government is contracting for and using the services of financial institutions that provide credit, debit, or purchase cards. These cards are used by Federal employees while traveling or to make small purchases for commercial items to meet the day-to-day needs of their organizations. The providers of these services use the financial networks of firms like VISA, MASTERCARD, and American Express to provide the services. While the Federal Government's use of these services is significant, it represents a small fraction of the transactions that flow through the financial infrastructure. Transactions flowing through the networks are processed in the same fashion and by the same workforce regardless of the ultimate user of the cards. As a result, the FAR Council states that it is very difficult to get competition for these services when the Federal Government imposes unique requirements on the contractors. They state that contractors will not change their way of doing business to accommodate a customer that represents a small portion of their business; it is impossible for them to segregate what is done for the Federal Government from commercial activity.

Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the contract for the conference.

Agencies of the Federal Government often contract with hotels/motels for meeting rooms for conferences of limited duration (*e.g.*, one to five days). These contracts may be for conferences where attendance is limited to Government employees or may involve attendance by other organizations and/or the public. These contracts may also involve furnishing lodging and meals to those participating in the conference.

In other cases, agencies establish contractual arrangements with hotels/motels to obtain special rates for lodging when the agency has a large number of employees that frequently travel to a particular location. The hotel/motel agrees to special reduced rates in exchange for being designated a preferred provider for the agency travelers to that city/location.

In both of these cases, the FAR Council states that hotels/motels are unwilling to agree to contract with the Government when it would mean they would have to pay different rates to employees as a result of a Service Contract Act wage determination or would have to keep special/different payroll or other records. Typically these contracts are for relatively small dollar amounts (less than $25,000). The FAR Council states that this severely limits the Governments ability to contract for these services when needed.

Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc.

Agencies that operate and maintain Government owned and/or operated buildings often contract for operation and maintenance of the building or facility and the prime contractor will then typically subcontract for services related to specialized equipment. In other cases, the Government will contract directly for the maintenance and servicing of such equipment. In either case, the FAR Council reports that it is very difficult to acquire the quality of service needed from contractors who are not authorized representatives of the manufacturer and therefore do not have access to parts needed for repairs and training that is essentially only available from the original equipment manufacturer. While there may be other contractors who indicate they have the capability to provide the service, experience often shows that the quality of service obtained from such sources is not satisfactory.

The FAR Council states that the Government, as a result of the reluctance of some of the best contractors to accept Government unique requirements such as those related to the Service Contract Act, is deprived of the opportunity to improve the quality of service for the maintenance and servicing of critical building equipment and systems.

Installation, maintenance, calibration or repair services for all types of equipment where services are obtained from the equipment manufacturer or supplier of the equipment.

Agencies acquire a wide range of equipment and often have a need to acquire services to install, maintain, calibrate, service or repair the equipment from the manufacturer or original supplier in order to avoid compromising a warranty or because proprietary information needed to perform the work is only available from the manufacturer, an authorized representative of the manufacturer or the supplier of the equipment. Typically, these contracts involve sophisticated equipment that requires access to proprietary information or requires employees involved in performing the work to have extensive training that is often only available through the manufacturer or equipment supplier. In such cases, the Government's need to contract with a particular source or a limited number of sources must be properly justified and approved, if applicable, under the statutory competition requirements outlined in 48 CFR Part 6 of the Federal Acquisition Regulation. Examples of the type of equipment include automated building control systems, HVAC equipment, building security systems, and elevators or escalators.

The FAR Council reports that in many of these cases, the Government has limited leverage to negotiate with the contractor to accept Government unique requirements such as those related to the Service Contract Act and has had great difficulty obtaining services from commercial sources who are unwilling to accommodate such requirements.

Transportation of persons by air, motor vehicle, rail, or marine on regularly scheduled routes or via standard commercial services (not including charter services).

The General Services Administration (GSA) enters into contracts with airlines called "City Pairs" so that Federal employees traveling on Government business can get discount air fares. Under these contracts, Federal employees typically obtain tickets through travel management contracts awarded by GSA or other agencies and the Federal employee travels on regularly scheduled routes of commercial airlines but receive tickets at a substantial discount. While the Federal Government's use of these services is significant, it represents a small fraction of the transactions that flow through the airlines. Tickets that are issued to Federal travelers flow through the same networks and are processed in the same fashion as other travelers. As a result, the FAR Council reports that it is very difficult to get competition for these services if the Federal Government imposes unique requirements like those in the Service Contract Act on the contractors. The airlines will not change their way of doing business to accommodate a customer that represents a small portion of their business. It is impossible for them to segregate what is done for the Federal Government from commercial activity. The Federal Government also enters into similar contracts for the carriage of passengers by other modes of transportation.

Real estate services, including real property appraisal services, related to housing federal agencies or disposing of real property owned by the Federal Government.

Federal agencies involved in acquiring and disposing of real property often contract for real estate services, including lease acquisition, real property appraisal, broker, space planning, lease re-negotiation, tax abatement, and real property disposal services. The primary classes of workers that are involved in performing the work are appraisers, leasing specialists, brokers, space planners, interior designers, fire safety engineers, and project managers. In many cases, the employees are required by contracts with the Government to be licensed. In many cases, the Department of Labor has not established wage determinations that apply to these classes of workers.

The individual requirements are typically relatively low dollar value (under $25,000) and require that services be performed in a variety of different geographic locations. Knowledge of the local real estate market is required to effectively perform the services. Therefore, individual employees, particularly in rural areas, spend only a small fraction of their time working on Government contracts.

While the Federal Government's use of these services is significant, it represents a small fraction of the transactions that flow through the industry/commercial sources. As a result, the FAR Council reports that it is very difficult to get competition for these services where the Federal Government imposes unique requirements like those in the Service Contract Act on the contractors. The contractors will not change their way of doing business to accommodate a customer that represents a small portion of their business. The FAR Council states that as the Government continues to downsize, it must rely more and more on commercial sources for these services and it is critical that the Federal Government has access to well-qualified sources of supply for these types of services.

Relocation services, including services of real estate brokers and appraisers, to assist federal employees or military personnel in buying and selling homes.

Employee relocation services are available for Federal employees or military personnel and their families being transferred to new duty stations anywhere within the continental United States and Puerto Rico. These contracts offer a multitude of flexible services to customize a solution that best meets the employee's needs. The contracts save time and money and reduce stress by offering Federal employees and military these services: home marketing assistance, home sales services, destination area services, management reporting services, mortgage counseling, property management services, and other related services.

The individual requirements are typically relatively low dollar value (under $25,000) and require that

services be performed in a variety of different geographic locations. Knowledge of the local real estate market is required to effectively perform the services. Therefore, individual employees, particularly in rural areas, spend a fraction of their time working on Government contracts.

While the Federal Government's use of these services is significant, the FAR Council states that it represents a small fraction of the transactions that flow through the industry/commercial sources. As a result, it is very difficult to get competition for these services if the Federal Government imposes unique requirements like those in the Service Contract Act on the contractors. The contractors will not change their way of doing business to accommodate a customer that represents a small portion of their business. The FAR Council states that it is in the Government's interest to maximize the availability of these services to its personnel; accordingly it is detrimental to the Government's interests when it is unable to attract commercial sources as providers of these services

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 et. seq.), Federal Agencies are required to prepare and make available for public comment and initial regulatory flexibility analysis that describes the anticipated impact of proposed rules on small entities. The Department has prepared the following Regulatory Flexibility Analysis regarding this rule.

(1) Reasons Why Action Is Being Considered

The current proposal is made at the request of the Administrator for Federal Procurement Policy, OFPP, in her letter of May 12, 1999. The Administrator, on behalf of the FAR Council, stated that the proposed exemption "will further the commitment of the Administration to be more commercial-like, encourage broader participation in government procurement by companies doing business in the commercial sector, and reinforce our commitment to reduce government-unique terms and conditions from our contracts. We believe that all of this can be accomplished without compromising the purpose of the SCA to protect prevailing labor standards." The FAR Council has developed a short list of services to which it believes an exemption should apply in the best interest of the Government and to avoid impairment to Government business. Based on the representations of the FAR Council, the Department has made a preliminary determination that such an exemption is appropriate, and therefore is issuing this proposed rule.

(2) Objectives of and Legal Basis for Rule

Pursuant to Section (4)(b) of SCA, the Secretary of Labor may grant reasonable exemptions to the provisions of the Act, but only in special circumstances where the "exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards."

After a review of the representations of the FAR Council, the Department of Labor has made a preliminary determination that the exemption would be "necessary and proper in the public interest" and would also be "in accord with the remedial purpose of th[e] Act to protect prevailing labor standards." Therefore the Department has determined that it is appropriate to seek comment on the proposed criteria and services which are proposed to be exempted from the Act.

(3) Number of Small Entities Covered Under the Rule

The definition of "small business" varies considerably depending upon the policy issues and circumstances under review, the industry being studied, and the measures used. The Small Business Administration's Office of Advocacy generally uses employment data as a basis for size comparisons, with firms having fewer than 100 employees or fewer than 500 employees defined as small. The types of services covered by the proposed exemptions span a variety of industries. Based upon analyses done by the U.S. Small Business Administration, Office of Advocacy, some of the industries affected by the proposed exemptions are characterized as "large-business-dominated industries" (*e.g.*, air transportation and business credit institutions) and others are characterized as "small-business-dominated industries" (*e.g.*, automotive repair and real estate).[1] Thus, at least some of the services covered by the proposed exemption would be performed primarily by small businesses. In fact, with the exception of those contracts for financial services involving the issuance and servicing of cards, the contracts for the transportation of persons, and contracts with equipment manufacturers, it would appear that a majority of the contracts affected by the proposed exemption likely would be performed by small businesses.

It is also difficult to determine with precision the value of Federal contracts that would be affected by the proposed exemption. Federal Procurement Data System (FPDS) compiles and reports information on approximately 500,000 annual transactions exceeding $25,000; however, as discussed above, many of the contracts covered by the proposed exemption (*e.g.*, food and lodging contracts for conferences) are currently or would likely be less that $25,000. Also, the criteria that must be met for the specified services to be within the scope of the proposed exemption will limit the application of the proposed exemptions to a relatively small subset of contracts within a specific SIC code. Thus, FPDS data does not provide an accurate estimate of the contracts potentially covered by the proposed exemption. Nevertheless, in view of the limiting criteria that have been proposed for the listed services, the total value of the exempt contracts should be relatively small, and it is believed that the SCA would no longer apply to only a relatively small number of contracts that currently contain SCA wage determination provisions.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The proposed exemption does not contain any new reporting, recordkeeping, or other compliance requirements applicable to small business. Rather, the proposed exemption would relieve small businesses and other contractors from the requirements of the SCA on certain contracts where the contractor certifies that the requirements of the exemption have been met. Furthermore, any contractor performing on a contract within the scope of the proposed exemption may elect to perform the contract under the requirements of SCA rather than make the necessary certifications. Because application of the exemption will have been determined in advance by the contracting officer, the Department anticipates that questions regarding proper application of the exemption will be rare. Contractors will not be required to maintain any records to support the exemption, although they may be required to furnish payroll and other existing records to the Department in the event of an investigation.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

The Federal Acquisition Regulation provision regarding the application of

[1] The State of Small Business: A Report of the President, 1998 (1997).

SCA to subcontracts for commercial services has been withdrawn, and there are no Federal rules duplicating, overlapping or conflicting with the proposed exemption.

(6) Differing Compliance or Reporting Requirements for Small Entities

The proposed exemptions do not contain any differing compliance or reporting requirements for small entities.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

The proposed exemption does not impose any new reporting or recordkeeping requirements. Although offerors are required to certify that the criteria for exemption are met, offerors are not required to maintain records to support the certification. The certification, which can be submitted as part of the bid package, is an important element to satisfy the statutory requirement that exemptions be "in accordance with the remedial purpose of the Act to protect prevailing labor standards." Contractors and subcontractors to whom the exemption applies will not be required to comply with the wage and reporting requirements of the SCA.

(8) Use of Other Standards

The Service Contract Act requires that any exemption be in accordance with the remedial purpose of the act to protect prevailing labor standards. The proposed exemptions are structured to satisfy this requirement; however, the exemption is not mandatory and any contractor may choose to perform the services in accordance with the SCA requirements.

(9) Exemption From Coverage for Small Entities

The proposed rule is an exemption from coverage under the Service Contract Act. The proposed exemption would apply equally to both small and large entities. In addition to protecting prevailing labor standards, a key element of SCA is to ensure that all bidders are on an equal footing, and the proposed exemption is consistent with that purpose.

V. Executive Order 12866 and 13132; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

This proposed rule is being treated as a "significant regulatory action" within the meaning of Executive Order 12866 because of the significant impact of this rule on other agencies. Therefore, the Office of Management and Budget has reviewed the proposed rule. However, the Department has determined that this proposed rule is not "economically significant" as defined in section 3(f)(1) of E.O. 12866, and therefore it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order. Under the new exemption proposed by this rule, contracts would not be exempt unless price is equal to or less important than the combination of other non-price or cost factors in selecting the contractor. Therefore it is not anticipated that the changes proposed by this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The Department has similarly concluded that this proposed rule is not a "major rule" requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in excess of $100 million in expenditures by state, local and tribal governments in the aggregate, or by the private sector. Furthermore, the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the proposed rule does not include a "Federal mandate." The term "Federal mandate" is defined to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do not include an enforceable duty which is "a duty arising from participation in a voluntary program." 2 U.S.C. 658(7)(A). A decision by a contractor to bid on Federal service contracts is purely voluntary in nature, and the contractor's duty to meet Service Contract Act requirements arises "from participation in a voluntary Federal program."

The Department has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

VI. Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, wages.

Accordingly, for the reasons set out in the preamble, 29 CFR part 4 is proposed to be amended as set forth below:

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. The authority citation for Part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; 5 U.S.C. 301; and 108 Stat. 4101(c).

2. Section 4.123(e) is proposed to be amended by revising paragraph (e)(1)(i) introductory text and paragraphs (e)(1)(i)(A), (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and (e)(2) to read as follows:

§ 4.123 Administrative limitations, variances, tolerances, and exemptions.

* * * * *

(e) * * *

(1)(i) Prime contracts or subcontracts principally for the maintenance, calibration, repair, and/or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) of:

(A) Information technology—The term "information technology" means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology does not include equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management,

movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, are not information technology.

* * * * *

(ii) The exemptions set forth in this paragraph (e)(1) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(B) The prime contract or subcontract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, repair, and/or installation of such commercial items. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor; and

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing the same equipment of commercial customers;

(D) The contractor certifies in the contract or subcontract, as applicable, to the provisions in this paragraph (e)(1)(ii).

(iii)(A) Determinations of the applicability of this exemption to prime contracts shall be made in the first instance by the contracting officer prior to contract award. In making a judgment that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(B) Determinations of the applicability of this exemption to subcontracts shall be made by the prime contractor prior to subcontract award. In making a judgment that the exemption applies, the prime contractor shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv)(A) If the Department of Labor determines after award of the prime contract that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. In such case, the corrective procedures in section 4.5(c)(2) of this part shall be followed.

(B) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(2)(i) Prime contracts or subcontracts for the following services where the services under the contract or subcontract meet all of the criteria set forth in paragraph (e)(2)(ii) and are not excluded by paragraph (e)(2)(iii):

(A) Automated data processing and telecommunications services, including ADP facility operation and maintenance services provided at the contractor's facility; ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services, information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (e.g., buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. This category does not include ADP data entry services or ADP optical scanning services;

(B) Automobile or other vehicle (e.g., aircraft) maintenance services (other than contracts to operate a Government motor pool or similar facility);

(C) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services);

(D) Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the contract for the conference;

(E) Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc;

(F) Maintenance, calibration, repair or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment;

(G) Transportation of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services);

(H) Real estate services, including real property appraisal services, related to housing federal agencies or disposing of real property owned by the Federal Government; and

(I) Relocation services, including services of real estate brokers and appraisers to assist federal employees or military personnel in buying and selling homes.

(ii) The exemption set forth in this paragraph (e)(2) shall apply to the services listed in paragraph (e)(2)(i) of this section only when all of the following criteria are met:

(A) The services under the prime contract or subcontract are commercial—*i.e.*, they are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(B) The prime contract or subcontract will be awarded on a sole source basis or the contractor or subcontractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the contractor.

(C) The prime contract or subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor or

subcontractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market;

(D) All of the service employees who will perform the services under the Government contract or subcontract spend only a small portion of their time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the government contract or subcontract;

(E) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract or subcontract as the contractor uses for those employees and for equivalent employees servicing commercial customers;

(F) The contracting officer (or prime contractor with respect to a subcontract) determines in advance, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under contract, the contracting officer or prime contractor shall consider the practices of the existing contractor in making a determination regarding the above requirements; and

(G) The exempted contractor certifies in the prime contract or subcontract to the provisions in paragraphs (e)(2)(ii)(A) and (C) through (E) of this section. The contracting officer or prime contractor, as appropriate, shall review available information concerning the contractor or subcontractor and the manner in which the contract will be performed. If the contracting officer or prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the contract or subcontract.

(iii)(A) If the Department of Labor determines after award of the prime contract that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. In such case, the corrective procedures in § 4.5(c)(2) of this part shall be followed.

(B) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(iv) The exemption set forth in this paragraph (e)(2) does not apply to solicitations and contracts:

(A) Entered into under the Javits-Wagner-O'Day Act, 41 U.S.C. 47;

(B) For the operation of a Government facility or portion thereof (but may be applicable to subcontracts for services set forth in paragraph (3)(2)(ii) that meet all of he criteria of paragraph (e)(2)(ii)); or

(C) Subject to Section 4(c) of the Service Contract Act.

Signed at Washington, D.C., on this 19th day of July, 2000.

T. Michael Kerr,

Administrator, Wage and Hour Division.

[FR Doc. 00–18636 Filed 7–25–00; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK07

Signature by Mark

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) regulation that explains how a claimant can use a mark or a thumbprint in place of a signature. The intended effect of this amendment is to present the existing regulation in "plain language" and to remove an obsolete manual provision from VA's Adjudication Procedure Manual, M21–1.

DATES: Comments must be received on or before September 25, 2000.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK07." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Candice Weaver, Consultant, Advisory and Court of Appeals for Veterans Claims Staff, Compensation and Pension Service, or Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone 202/273–7235 and 202/273–7228 respectively.

SUPPLEMENTARY INFORMATION: VA proposes to rewrite 38 CFR 3.113 in plain language. This regulation explains VA's requirements for the use of a mark or thumbprint in place of a signature. It is currently located under subpart A of part 3. We propose to create new § 3.2130 to restate the current regulation, incorporating its provisions with no substantive changes. The proposed section would be located in new Subpart D, Universal Adjudication Rules. We are also proposing new § 3.2100, which will specify the scope of applicability of the provisions in subpart D.

The Adjudication Procedure Manual, at M21–1, part IV, ch. 29, paragraph b(2), instructs that Eligibility Verification Reports (EVR) signed by mark or thumbprint must be accompanied by a separate sheet of paper that includes a certification that the information contained on the form is true and correct. In the past, income questionnaire forms included a statement certifying the accuracy of the information provided. When the forms were changed to small cards, a separate sheet of paper was needed for the signatures and addresses of the witnesses to the claimants' marks or thumbprints, and the certification statement. Current EVR forms are larger and they do not include certification statements. Rather, they include a caution regarding the willful submission of false information. VA believes the requirement for a separate sheet of paper containing a certification statement is now obsolete and proposes to formally withdraw paragraph b(2) from the Adjudication Procedure Manual.

Proposed section 3.2130, paragraph (c) eliminates reference to the VA Form 4505 series as giving authority to VA employees to certify signatures by mark or thumbprint and substitutes a reference to 38 CFR 2.3. It is regulations, not forms, that give certain VA employees the authority to take affidavits, administer oaths, and certify documents. The regulations are also more readily available to the general public than VA Forms are. We believe this change more clearly identifies the VA employees authorized to certify signatures by mark or thumbprint.

This rulemaking is partly a response to the Presidential Memorandum on Plain Language, dated June 1, 1998 (63 FR 31885–86), and addressed to the heads of executive departments and agencies. The memorandum stated the President's goal to make government more responsive, accessible, and comprehensible in its communications with the public. As an integral part of his program, the President urged departments and agencies to consider rewriting existing regulations in plain language when they have the opportunity and resources to do so.

This rulemaking also addresses commentary from the judicial branch. In *Zang* v. *Brown*, 8 Vet. App. 246, 255 (1995) (Steinberg, J., separate views), the Court of Appeals for Veterans Claims (the Court) pointed to a "'confusing tapestry' of VA regulations which should be the subject of review and reevaluation by the Secretary [of Veterans Affairs] with a view toward providing clear guidance for the adjudication of VA benefits claims."

In response to the President's memorandum and the Court's commentary, VA has undertaken a long-term, comprehensive project to revise its adjudication regulations. The Plain Language Regulations Project is charged with reorganizing and rewriting in plain language the adjudication regulations in part 3 of title 38, Code of Federal Regulations. The project team will use Reader-Focused Writing techniques to the extent possible while remaining faithful to the policies and mandates expressed in current statutes, regulations, and case law.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule will have no consequential effect on state, local, or tribal governments.

Regulatory Flexibility Act

The Secretary certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The catalog of Federal Domestic Assistance program numbers for this proposal includes 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, and 64.127.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: July 13, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.113 [Removed]

2. Section 3.113 is removed.

Subpart C—[Reserved]

3. Subpart C is added and reserved.

4. A new Subpart D is added to read as follows:

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

General

Sec.

3.2100 Scope of Applicability
3.2130 Will VA accept a signature by mark or thumbprint?

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

Authority: 38 U.S.C. 501(a), unless otherwise noted.

General

§ 3.2100 Scope of Applicability.

Unless otherwise specified, the provisions of this subpart apply only to claims governed by part 3 of this title.

(Authority: 38 U.S.C. 501(a))

§ 3.2130 Will VA accept a signature by mark or thumbprint?

VA will accept signatures by mark or thumbprint if:

(a) They are witnessed by two people who sign their names and give their addresses, or

(b) They are certified by a notary public or any other person having the authority to administer oaths for general purposes, or

(c) They are certified by a VA employee who has been delegated authority by the Secretary under 38 CFR 2.3.

(Authority: 38 U.S.C. 5101)

[FR Doc. 00–18688 Filed 7–25–00; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 52 and 81

[FRL–6841–1]

RIN 2060–AJ05

Rescinding the Finding That the Pre-existing PM–10 Standards are No Longer Applicable in Northern Ada County/Boise, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of comment period.

SUMMARY: Today, EPA is hereby extending the closing date of the public comment period regarding EPA's notice of proposed rulemaking "Rescinding the Finding that the Pre-existing PM–10 Standards are No Longer Applicable in Northern Ada County/Boise, Idaho," published June 26, 2000 at 65 FR 39321. The original comment period was to close on July 26, 2000. The new closing date will be August 31, 2000. The EPA is soliciting comments on this proposal and one of the comments we've received asks for an extension of the public comment period. Due to the complexity of the issues surrounding the action

EPA is proposing to take, we find it appropriate that we provide additional time for interested and affected parties to submit comments. All comments received by EPA on or prior to August 31, 2000 will be considered in the development of a final rule.

DATES: All comments regarding EPA's notice of proposed rulemaking issued on June 26, 2000 must be received by EPA on or before close of business August 31, 2000 instead of July 26, 2000.

ADDRESSES: Comments should be submitted to:

On paper. Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–13, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, telephone (202) 260–7548.

Electronically. Send electronic comments to EPA at: A-and-R-Docket@epa.gov. Avoid sending confidential business information (CBI). We accept comments as e-mail attachments or on disk. Either way, they must be in WordPerfect version 5.1, 6.1 or Corel 8 file format. Avoid the use of special characters and any form of encryption. You may file your comments on this proposed rule online at many Federal Depository Libraries. Be sure to identify all comments and data by docket number A–2000–13.

Public inspection. You may read the proposed rule (including paper copies of comments and data submitted electronically, minus anything claimed as CBI) at the Office of Air and Radiation Docket and Information Center located 3 at 401 M Street, SW, Washington, DC 20460. They are available for public inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal should be addressed to Gary Blais, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Integrated Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–3223 or e-mail to blais.gary@epa.gov. To ask about policy matters specifically regarding Northern Ada County/Boise, call Bonnie Thie, EPA Region 10, Office of Air Quality (OAQ–107), EPA, Seattle, Washington,(206) 553–1189.

Dated: July 19, 2000.

Henry C. Thomas, Jr.,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–18884 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–125–1–7463b; FRL–6840–2]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Emergency Episode Plan Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas Natural Resource Conservation Commission emergency episode plan regulations in the Texas State Implementation Plan (SIP). These revisions update statutory citations, update references to the commission, and change various wordings to improve readability.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by August 25, 2000.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253 at the address above.

SUPPLEMENTARY INFORMATION: This document concerns revisions to the emergency episode plan regulations in the Texas SIP. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 14, 2000.

Julie Jensen,

Acting Regional Administrator, Region 6.

[FR Doc. 00–18788 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA159–4163b; FRL–6735–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Revisions to Volatile Organic Compounds Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The revisions remove the alternate emission reduction limitations for the Minnesota Mining and Manufacturing Company (3M) located in Bristol, Pennsylvania, and make corrections to certain VOC regulations to make them consistent with federal requirements. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule

based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 25, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker, (215) 814–2177, at the EPA Region III address above, or by e-mail at *bunker.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–18786 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6849–6]

INDIANA: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Indiana. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before August 25, 2000.

ADDRESSES: Mail written comments to Gary Westefer, Indiana Regulatory Specialist, United States Environmental Protection Agency Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7450. You can examine copies of the materials submitted by Indiana during normal business hours at the following locations: EPA Region 5 , contact Gary Westefer at the above address and telephone number; or Lynn West, Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, 46206, telephone: (317) 232–3593.

FOR FURTHER INFORMATION CONTACT: Gary Westefer at (312) 886–7450.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 23, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–18790 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[USCG 1999–6097]

Federal Pilotage for Foreign-Trade Vessels in Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: The Coast Guard undertook this rulemaking to ensure that vessels under way on the navigable waterways within the State of Maryland are navigated by competent, qualified persons, knowledgeable in the local area and accountable to either the State or the Coast Guard. The rulemaking might have required that vessels engaged in foreign trade be under the direction and control of federally-licensed pilots when not under the direction and control of State-licensed pilots. The passage of Senate Bill (SB) 237 entitled "State Board of Docking Masters" by the General Assembly of Maryland, and the signing into law of the Bill, by the Governor of the State, have rendered a federal rule unnecessary.

DATES: On July 26, 2000, the Coast Guard terminates further rulemaking under docket number USCG 1999–6097.

FOR FURTHER INFORMATION CONTACT: LT Alan Blume, Project Manager, Waterways Management Division (G–MWP), (202) 267–0550.

SUPPLEMENTARY INFORMATION: Under 46 U.S.C. 8503(a), the Secretary of Transportation may require a federally-licensed pilot to be aboard a self-propelled vessel engaged in foreign trade and operating on the navigable waters of the United States when State law does not require a pilot. This requirement terminates under 46 U.S.C. 8503(b) when a State having jurisdiction establishes a superseding requirement for a State pilot and notifies the Secretary (in practice, the Coast Guard) of that fact. According to 46 CFR part 15, federal pilots must be aboard vessels engaged in foreign trade while operating on certain navigable waters within California, Hawaii, Massachusetts, and New York and New Jersey. The Coast Guard had determined that a similar rule was necessary for the waters of Maryland, particularly the Port of Baltimore. On October 21, 1999, it published the NPRM "Federal Pilotage for Foreign-Trade Vessels in Maryland" [64 FR 57620]. It also held a public meeting on March 1, 2000 [65 FR 6350] to gather comments. It purposely delayed action on this NPRM, allowing the State time to consider its own law on the issue of pilotage.

Commercial vessels transit the navigable waters of Maryland carrying various types of freight, oil, and hazardous substances and materials, as well as large quantities of bunkers. The previous law of Maryland [General Statutes of Maryland, § 11–501] required every foreign vessel and every domestic vessel sailing on register to use a State-licensed pilot, except when the vessel was under the control of a docking master while maneuvering during berthing or unberthing or was shifting within a port with tug assistance. The new Maryland law entitled "State Board of Docking Masters", removes the exemption and requires that all movements of foreign vessels and domestic vessels sailing on register

within waters of the State be under the direction of State-licensed pilots, accountable to the State.

Dated: July 19 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–18935 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF20

Endangered and Threatened Wildlife and Plants; Notice of Public Informational Meetings and Public Hearings for the Proposal To Reclassify and Remove the Gray Wolf from the List of Endangered and Threatened Species and To Establish Three Special Regulations for Threatened Gray Wolves

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public informational meetings and public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the locations and times of public informational meetings that have been scheduled to provide information on the proposal to reclassify and delist the gray wolf and establish special regulations for threatened gray wolves. We are also announcing the locations and times of public hearings scheduled to receive verbal public comments on the proposal.

DATES: See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information to us by using the Gray Wolf Phone Line: 612–713–7337, facsimile: 612–713–5292, electronic mail: GRAYWOLFMAIL@FWS.GOV; the World Wide Web: HTTP://MIDWEST.FSW.GOV/WOLF; or write to: Gray Wolf Questions, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

SUPPLEMENTARY INFORMATION: We will hold public informational meetings at the following locations in the Midwest. All meetings will use an open house format, including a slide presentation beginning every half hour.

St. Paul, Minnesota, on August 7, 2000, from 4:00 to 9:00 p.m. in the Upper Lobby of the Earl Brown Center, 1890 Buford Avenue, on the University of Minnesota St. Paul Campus.

Grand Rapids, Minnesota, on August 8, 2000, from 4:00 to 9:00 p.m. at the Sawmill Inn, 2301 S. Pokegama (State Route 169).

Black River Falls, Wisconsin, on August 15, 2000, from 4:30 to 9:30 p.m. at the Lunda Theater in the Black River Falls Middle School (behind Black River Falls High School), 1202 Pierce Street.

Madison, Wisconsin, on August 16, 2000, from 4:30 to 9:30 p.m. at Mitby auditorium in the Madison Area Technical College (near Madison Airport), 3550 Anderson Street.

Ashland, Wisconsin, on August 17, 2000, from 4:30 to 9:30 p.m. at the Northern Great Lakes Center, 29270 County Highway G (three miles west of Ashland).

Watersmeet, Michigan, on August 28, 2000, from 2 to 4 p.m. and 6 to 9 p.m. at the Ottawa National Forest Visitor Center, U.S. 2 and Highway 45.

Escanaba, Michigan, on August 29, 2000, from 2 to 4 p.m. and 6 to 9 p.m. at Bay de Noc Community College, Learning Resources Center, 2001 N. Lincoln Road.

Sault Ste. Marie, Michigan, on August 30, 2000, from 2 to 4 p.m. and 6 to 9 p.m. at the Cisler Student and Conference Center, Lake Superior State University, 650 W. Easterday Avenue.

East Lansing, Michigan, on August 31, 2000, from 2 to 4 p.m. and 6 to 9 p.m. at the Jack Breslin Student Events Center, Michigan State University, 1 Birch Road.

We will hold public informational meetings at the following locations in the Western states. All meetings will be held from 1:00 to 3:00 p.m. and from 6:00 to 8:00 p.m.

Spokane, Washington, on August 15, 2000, at the West Coast Grand Hotel (formerly Cavanaughs Inn at the Park), 303 West North River Drive.

Everett, Washington, on August 17, 2000, at the Holiday Inn and Conference Center, 101 128th Street SE.

Idaho Falls, Idaho, on August 22, 2000, at the West Coast Idaho Falls Hotel (formerly Cavanaughs on the Falls), 475 River Parkway.

Boise, Idaho, on August 24, 2000, at the Grove Hotel, 245 South Capitol Blvd.

Portland, Oregon, on August 29, 2000, at the Shilo Inn Portland Airport, 11707 NE Airport Way.

LaGrande, Oregon, on August 31, 2000, at the Blue Mountain Conference Center, 404 12th Street.

We will hold public hearings at the following locations in the Midwest.

Madison, Wisconsin, on October 10, 2000, from 6:00 to 9:00 p.m. at Mitby Auditorium in the Madison Area Technical College (near Madison Airport), 3550 Anderson Street.

Duluth, Minnesota, on October 18, 2000, from 6:00 pm to 9:00 pm in room 175 of the Life Sciences Building, Oakland Avenue, on the University of Minnesota Duluth Campus.

East Lansing, Michigan, on October 16, 2000, from 6 to 9 p.m. at the Communication Arts and Sciences Building, Room 147, (on the corner of) Red Cedar Road and Wilson Road, Michigan State University.

Marquette, Michigan, on October 17, 2000, from 6 to 9 p.m. at the Holiday Inn, 1951 U.S. 41 West.

We will hold public hearings at the following locations in the Western states. All hearings will be held from 1:00 to 3:00 p.m. and from 6:00 to 8:00 p.m.

Spokane, Washington, on October 17, 2000, at the West Coast Grand Hotel (formerly Cavanaughs Inn at the Park), 303 West North River Drive.

Everett, Washington, on October 19, 2000, at the Holiday Inn and Conference Center, 101 128th Street SE.

Portland, Oregon, on October 24, 2000, at the Shilo Inn Portland Airport, 11707 NE Airport Way.

LaGrande, Oregon, on October 26, 2000, the Blue Mountain Conference Center, 404 12th Street.

Boise, Idaho, on October 31, 2000, at the Grove Hotel, 245 South Capitol Blvd.

Idaho Falls, Idaho, on November 2, 2000, at the West Coast Idaho Falls Hotel (formerly Cavanaughs on the Falls), 475 River Parkway.

We will hold a combined public informational meeting and public hearing at the following location in the New England states. The public informational meeting will be held from 6:30 to 7:30 p.m. and the public hearing will be held from 7:30 to 9:30 p.m.

Orono, Maine, on October 12, 2000, at the Best Western Black Bear Inn and Conference Center, 4 Godfrey Boulevard.

Background

On July 13, 2000, we published a proposed regulation (65 FR 43450) to reclassify and remove the gray wolf from the list of Endangered and Threatened Wildlife and Plants. The proposal also includes three special regulations for those distinct population segments of gray wolves that would become threatened. This proposal would affect all of the conterminous 48 states except Minnesota. Due to the complexity and wide geographic scope

of the proposal, we are scheduling public informational meetings and public hearings at a number of locations. If we schedule additional public informational meetings or public hearings, we will publicize their times and locations in subsequent notices.

The purpose of the public informational meetings is to provide additional opportunities for the public to gain information and ask questions about the proposal. These informational sessions should assist interested parties in preparing substantive comments on the proposal.

The public hearings will be the only method for comments and data to be presented verbally for entry into the public record of this rulemaking and for our consideration during our final decision. Comments and data can also be submitted in writing or electronically, as described in the July 13, 2000, proposal, and at http://midwest.fws.gov/wolf.

Author

The author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

Authority: The authority for this notice is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2000.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–18912 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AG22

Migratory Bird Hunting; Approval of Tungsten-Matrix Shot as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to grant final approval of tungsten-matrix shot as nontoxic for hunting waterfowl and coots. Acute toxicity studies reveal no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with tungsten-matrix shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tungsten-matrix administered to adult mallards did not adversely affect them or the offspring they produced. We also propose to remove 50 CFR Subpart M (Part 20—Migratory Bird Hunting)—Criteria and Schedule for Implementing Nontoxic Shot Zones for the 1987–88 and Subsequent Waterfowl Hunting Season because implementation of nontoxic shot zones in the United States was completed in 1991.

DATES: You should submit comments on the proposed rule no later than August 25, 2000.

ADDRESSES: You should send comments to the Chief, Division of Migratory Bird Management (DMBM), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634–ARLSQ, Washington, DC 20240. You may inspect comments during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

The purpose of this proposed rule is to allow the hunting public to use tungsten-matrix shot for hunting migratory birds. Accordingly, we propose to amend 50 CFR 20.21, which describes illegal hunting methods for migratory birds. Paragraph (j) of § 20.21 pertains to prohibited types of shot. In accordance with § 20.21(j)(2), tungsten-matrix shot (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1999–2000 hunting season only. We propose to amend § 20.21(j) to allow permanent use of tungsten-matrix shot in the formulation described above.

Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel, bismuth-tin, tungsten-iron, and tungsten-polymer shot are approved as nontoxic. We previously granted temporary approval for tungsten-matrix shot during the 1998–99 (December 8, 1998; 63 FR 67619) and 1999–2000 (August 19, 1999; 64 FR 45400) migratory bird hunting seasons. Compliance with the use of nontoxic shot has increased over the last few years. We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

Kent Cartridge Company has requested that we permanently approve tungsten-matrix shot as nontoxic for hunting waterfowl and coots. Kent's candidate shot is fabricated from what is described in their application as a mixture of powdered metals in a plastic polymer matrix whose density is comparable to that of lead. All component metals are present in their elemental form, not as compounds. The shot material being considered has a density of 10.8 grams/cm^3 and is composed of approximately 95.9 percent tungsten and 4.1 percent plastic polymers.

Kent's application for tungsten-matrix includes a description of the shot, a toxicological report (Thomas 1997), results of a 30-day toxicity study (Wildlife International, Ltd. 1998), and results of a 150-day reproductive/chronic toxicity study (Gallagher *et al.* 2000). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians, and reptiles) and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration).

Toxicity Information

The toxicity of the plastic polymers in tungsten-matrix is negligible due to their insolubility. There is considerable difference between the toxicity of soluble and insoluble compounds of tungsten. Elemental tungsten, as found in tungsten-matrix shot, is virtually insoluble and is expected to be relatively nontoxic. Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten, there appears to be no basis for concern of toxicity to wildlife for tungsten-matrix shot via ingestion by fish or mammals (Bursian *et al.* 1996a, Bursian *et al.* 1996b; Bursian *et al.* 1999; Gigiena 1983; Karantassis 1924; Patty 1962; Industrial Medicine 1946).

Environmental Fate and Transport

Elemental tungsten is insoluble in water and, therefore, does not weather and degrade in the environment. Tungsten is very stable with acids and

does not easily form compounds with other substances. Preferential uptake by plants in acidic soil suggests uptake of tungsten when it has formed compounds with other substances rather than when it is in its elemental form (Kabata-Pendias and Pendias 1984).

Environmental Concentration

The estimated environmental concentration (EEC) for a terrestrial ecosystem was calculated based on 69,000 shot per hectare (Pain 1990), assuming complete erosion of shot material in 5 centimeters of soil. The EECs for tungsten and the two polymers found in tungsten-matrix are 25.7 milligram/kilogram (mg/kg), 4.2 mg/kg, and 0.14 mg/kg, respectively. The EEC for an aquatic ecosystem was calculated assuming complete erosion of the shot in 1 foot of standing water. The EECs in water for tungsten and the two plastic polymers found in tungsten-matrix shot are 4.2 milligram/liter (mg/L), 0.2 mg/L, and 0.02 mg/L, respectively.

Effects on Birds

An extensive literature review contained in the application provided information on the toxicity of elemental tungsten to waterfowl and other birds. Ringelman *et al.* (1993) orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03 g average weight) tungsten-bismuth-tin pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial and gross lesions were not observed during the postmortem examinations. Examination of tissues did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that tungsten-bismuth-tin shot presented virtually no potential for acute toxicity in mallards.

Kraabel *et al.* (1996) assessed the effects of embedded tungsten-bismuth-tin shot on mallards and concluded that tungsten-bismuth-tin was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to tungsten-bismuth-tin shot were localized and had no detectable systemic effects on mallard health.

Ringelman *et al.* (1992) conducted a 32-day acute toxicity study that involved dosing game-farm mallards with a shot alloy of tungsten-bismuth-tin (39 percent tungsten, 44.5 bismuth, and 16.5 tin). No dosed birds died during the trial, and behavior was normal. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. This study concluded that "* * * tungsten-bismuth-tin shot presents virtually no potential for acute intoxication in mallards under the conditions of this study."

Nell (1981) fed laying chickens (*Gallus domesticus*) 0.4 or 1.0 grams/kg tungsten (contained in an unspecified salt compound) in a commercial mash for 5 months to assess reproductive performance. Weekly egg production was normal, and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten (Nell 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. Death due to tungsten occurred when tissue concentrations increased to 25 milligram/gram of liver. Due to the insoluble nature of elemental tungsten contained in tungsten-matrix shot, it is not expected that such high levels of tungsten could be attained through ingestion of tungsten-matrix shot.

The two plastic polymers used in tungsten-matrix shot act as a physical matrix in which the tungsten is distributed as ionically bound fine particles. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson 1977). A literature review did not reveal studies in which either of the two polymers were evaluated for toxicity in birds.

New Acute Toxicity Studies

Kent contracted with Wildlife International Ltd. to conduct an acute toxicity study of tungsten-matrix. The acute toxicity test is a short-term (30-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood chemistry (hematocrit), bone (femur), and organ analysis are recorded.

Kent's 30-day dosing study (Wildlife International Ltd. 1998) included four treatment and one control group of game-farm mallards. Treatment groups were exposed to one of three different types of shot: eight No. 4 steel, eight No. 4 lead, or eight No. 4 tungsten-matrix; whereas the control group received no shot. The two tungsten-matrix treatment groups (1 group with a deficient diet, 1 group with a balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tungsten-matrix-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tungsten-matrix treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given eight No.4 size tungsten-matrix shot and monitored over a 30-day period. Tungsten was found to be below the limit of detection in all samples of femur, gonad, liver, and kidney from treatment groups.

New Reproductive/Chronic Toxicity Study

Kent contracted with Wildlife International Ltd. to conduct a reproductive/chronic toxicity study of tungsten-matrix. The reproductive/chronic toxicity study is a long-term (150-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood hematocrit, bone (femur), organ analysis, and reproductive performance are recorded.

The chronic toxicity/reproductive study revealed no adverse effects when mallards were dosed with eight No. 4 size tungsten-matrix shot and monitored over a 150-day period (Gallagher *et al.* 2000). At initiation of the test (day 0), and on days 31, 60, and 90, 21 male and 21 female adult mallards were orally dosed with 8 No. 4 tungsten-matrix shot. On the same days, 22 male and 22 female adult mallards were dosed with eight No. 4 steel shot (negative control group). An additional four male and four female mallards were dosed with a single No. 4 lead shot (positive control group). Two lead-dosed birds (one female, one male) died from lead toxicosis on days 10 and 17, respectively, during the study; whereas no mortalities occurred in the other test groups. Hematological and biochemical results from blood samples collected during tests revealed no biologically meaningful differences between the tungsten-matrix group and the steel shot control group. Low, but measurable, levels of tungsten were found in the livers of males from the tungsten-matrix group and in the femurs of females from all treatment groups. For all treatment groups, levels of tungsten were below the limit of detection in egg yolks and whites, and all tissues collected from offspring. Liver and kidney tissues collected for histopathological examination revealed no treatment-related abnormalities.

No significant differences occurred in egg production, fertility, or hatchability of eggs from birds dosed with tungsten-matrix when compared to steel-dosed ducks. No differences occurred in survival and body weight of ducklings from birds dosed with tungsten-matrix

when compared to ducklings from steel-dosed ducks. Blood measurements of ducklings from tungsten-matrix-dosed ducks were similar to measurements from ducklings from steel-dosed ducks. Overall, results of the 150-day study indicated that tungsten-matrix shot repeatedly administered to adult mallards did not adversely affect them, or the offspring they produced.

Nontoxic Shot Approval

The nontoxic shot approval process contains a tiered review system and outlines three conditions for approval of shot types. The first condition for nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests discussed above, we conclude that tungsten-matrix shot does not pose a significant danger to migratory birds or other wildlife.

The second condition for approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and we have incorporated this requirement in the new approval process. Kent has documented that tungsten-matrix meets this requirement.

The third condition for approval involves law enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated our position that a noninvasive field detection device to distinguish lead from other shot types was an important component of the nontoxic shot approval process. At that time, we stated that final approval of bismuth-tin shot would be contingent upon the development and availability of a noninvasive field detection device (60 FR 43315). We incorporated a requirement for a noninvasive field detection device in the revised nontoxic shot approval process published on December 1, 1997 (62 FR 63608). The most common electronic field testing device used by wildlife law enforcement officers can distinguish shells containing tungsten-matrix from shells containing lead. Therefore, the tungsten-matrix application meets the final condition for approval.

As stated previously, this proposed rule would amend 50 CFR 20.21(j) by approving tungsten-matrix shot as nontoxic for hunting waterfowl and coots. It is based on the toxicological report, acute toxicity study, and the reproductive/chronic toxicity study submitted by Kent. Results of these studies indicate the absence of any deleterious effects of tungsten-matrix shot when ingested by captive-reared mallards. This proposed rule would also amend § 20.21(j) by removing paragraph (3), which pertains to the legal use of tin shot during the 1999–2000 hunting season. Because the 1999–2000 hunting season is over, this regulation is no longer in effect.

This proposed rule would further amend 50 CFR part 20, by removing and reserving subpart M-Criteria and Schedule for Implementing Nontoxic Shot Zones for the 1987–1988 and Subsequent Waterfowl Hunting Season. A need for this Subpart no longer exists, as implementation of nontoxic shot zones in the United States was completed in 1991. Nontoxic shot zones are defined in § 20.108 for the purpose of hunting waterfowl, coots, and certain other species as being the contiguous 48 United States, and the States of Alaska and Hawaii, the Territories of Puerto Rico and the Virgin Islands, and the territorial waters of the United States.

References

Bursian, S. J., M. E. Kelly, R. J. Aulerich, D. C. Powell, and S. Fitzgerald. 1996a. Thirty-day dosing test to assess the toxicity of tungsten-iron shot in game-farm mallards. Report to Federal Cartridge Co. 77 pp.

Bursian, S. J., M. E. Kelly, R. J. Aulerich, D. C. Powell, and S. Fitzgerald. 1996b. Thirty-day dosing test to assess the toxicity of tungsten-polymer shot in game-farm mallards. Report to Federal Cartridge Co. 71 pp.

Bursian, S. J., R. M. Mitchell, R. J. Tempelman, R. J. Aulerich, and S. D. Fitzgerald. 1999. Chronic dosing study to assess the health and reproductive effects of tungsten-iron and tungsten-polymer shot on game-farm mallards. Report to Federal Cartridge Co. 115 pp.

Gallagher, S.P., J.B. Beavers, R. Van Hoven, M. Jaber. 2000. Tungsten-matrix shot: A chronic exposure study with the mallard including reproductive parameters. Wildlife International, Ltd. Project No. 475–102. Easton, Maryland. 324pp.

Gigiena I. Sanitariya. 1983. Mezhdunarodnaya Kniga. Moscow, USSR. 48(7):71.

Industrial Medicine. 1946. 15:482.

Kabata-Pendias, A. and H. Pendias. 1984. Trace elements in soil and plants. CRC Press, Inc. Boca Raton, FL.

Karantassis, T. 1924. On the toxicity of compounds of tungsten and molybdenum. Ann. Med. 28:1541–1543.

Kraabel, F. W., M. W. Miller, D. M. Getzy, and J. K. Ringleman. 1996. Effects of embedded tungsten-bismuth-tin shot and steel shot on mallards. J. Wildl. Dis. 38(1):1–8.

Nell, J. A., E. F. Annison, and D. Balnave. 1981. The influence of tungsten on the molybdenum status of poultry. Br. Poult. Sci. 21:193–202.

Pain, D. J. 1990. Lead shot ingestion by waterbirds in the Carmarque, France: an investigation of levels and interspecific difference. Environ. Pollut. 66:273–285.

Patty's Industrial Hygiene and Toxicology. 1982. Wiley Interscience. Wiley & Sons, Inc. NY, NY. Third Ed.

Peterson, J. E. 1977. Industrial Health. Prentice-Hall, Englewood Cliffs, NJ.

Ringelman, J. K., M. W. Miller, and W. F. Andelt. 1992. Effects of ingested tungsten-bismuth-tin shot on mallards. CO Div. Wildl., Fort Collins, 24 pp.

Ringelman, J. K., M. W. Miller, and W. F. Andelt. 1993. Effects of ingested tungsten-bismuth-tin shot on captive mallards. J. Wildl. Manage. 57:725–732.

Thomas, V.G. 1997. Application for approval of tungsten-matrix shot as non-toxic for the hunting of migratory birds. 39 pp.

Wildlife International, Ltd. 1998. Tungsten-matrix shot: An oral toxicity study with the mallard. Project No. 475–101. 162 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared a draft Environmental Assessment (EA) for approval of tungsten-matrix shot in May 2000. The EA is available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" We are completing a Section 7 consultation under the ESA for this proposed rule. The results of our Section 7 consultation will be available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule proposes to approve an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this proposed rule would provide one shot type in addition to the existing four that are approved. We have determined, however, that this proposed rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

Executive Order 12866

This proposed rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. OMB makes the final determination under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018–0067; expires 08/30/2000) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this proposed rule, have determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed rule allows hunters to exercise privileges that would be otherwise unavailable and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This proposed rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these proposed regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a-j.

2. Section 20.21 is amended by revising paragraph (j) in its entirety to read as follows:

20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that this restriction applies only to the taking of Anatidae (ducks, geese, [including brant] and swans), coots (Fulica americana) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones.

Subpart M—[Removed and Reserved]

3. Remove and reserve subpart M, consisting of §§ 20.140 through 20.143.

Dated: July 14, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–18806 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 144
Wednesday, July 26, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Request for nominations of people to serve on the California Coast Provincial Advisory Committee.

SUMMARY: The federal government interagency group responsible for implementing the Northwest Forest Plan (NFP) in the California Coast Province is seeking nominations for persons to fill two vacant positions on the California Coast Provincial Advisory Committee (CCPAC)—one to represent the large forest products industry, and one to represent tourism interests to help achieve the implementation of the NFP.

SUPPLEMENTARY INFORMATION: The CCPAC works with federal agencies to implement the NFP on federal lands in the California Coast Province. The advisory committee provides advice to the Province Interagency Executive Committee (PIEC) regarding implementation of a comprehensive ecosystem management strategy for federal lands within the province. While the boundary of the province includes whole river drainages for broad ecosystem planning, the purpose of the PAC is to assist in implementing the NFP, which is limited to federal lands within the range of the northern spotted owl. Advisory committee recommendations are not legally binding and will not supersede the legally established decision authority granted to the federal agencies involved. All advisory committee meetings are open to the public. Interested citizens may request time on the agenda to address the committee. All papers and documents used by the committee, including meeting minutes, are available to the public.

Applicants must be United States citizens, at least 18 years old, and will be recommended for appointment based on their personal knowledge of local and regional resource issues, and understanding of public land uses and activities; willingness to work toward mutually beneficial solutions to complex issues; respect and credibility in local communities; and commitment to attending advisory committee meetings held for the province.

Advisory committee members must be willing to travel to meetings held throughout the province. Members will serve without pay, but reimbursement of travel and per diem is allowed for attendance at meetings called by the Chairperson of the advisory committee.

DATES: The due date for receipt of the nominations is August 15, 2000.

FOR FURTHER INFORMATION CONTACT: Individuals with questions about the process or wishing to submit nominations for one of the positions should contact one of the following for a nomination packet: James Fenwood, Forest Supervisor, or Phebe Brown, Province Coordinator; USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988; (530) 934–3316, TTY (530) 934–7724; FAX (530) 934–7384.

Dated: July 17, 2000.

James D. Fenwood,

Forest Supervisor.

[FR Doc. 00–18918 Filed 7–25–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on August 16 and 17, 2000, at the Mateel Community Center in Redway, California. The meeting will be held from 10 a.m. until 5 p.m. on Wednesday, August 16, and from 8 a.m. to 12:30 p.m. on Thursday, August 17. The Mateel Community Center is located at 59 Rusk Lane in Redway. Agenda items to be covered include: (1) Follow up and federal agencies' panel on the Watershed Analyses issue; (2) Status of the issue on residual fish stocks and their habitat; (3) Follow up and federal agencies' presentation on the PAC roads resolution; (4) Regional Ecosystem Office (REO) update to include the Aquatic/Riparian Effectiveness Monitoring program, Survey and Manage Draft Environmental Impact Statement status, and tribal effectiveness monitoring; (5) Update of information from the State representative; (6) Presentation on Northwest Forest Plan monitoring; (7) Field trip to the King Range; and (8) Open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to James Fenwood, Forest Supervisor, or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316.

Dated: July 17, 2000.

James D. Fenwood,

Forest Supervisor.

[FR Doc. 00–18917 Filed 7–25–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Cotton Ginning Survey.

DATES: Comments on this notice must be received by September 29, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Cotton Ginning Survey.

OMB Control Number: 0535–0220.

Expiration Date of Approval: January 31, 2001.

Type of Request: To Extend a Currently Approved Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Cotton Ginning Survey provides statistics concerning cotton ginning for specific dates and geographic regions and aids in forecasting cotton production, which is required under 7 U.S.C. Section 475.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 minutes per response.

Respondents: Cotton Ginners.

Estimated Number of Respondents: 14,092.

Estimated Total Annual Burden on Respondents: 1,410 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 5336 South Building, Washington, D.C. 20250–2009. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., July 14, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–18900 Filed 7–25–00; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agency to request an extension for a currently approved information collection in support of the Community Facilities Grant Program.

DATES: Comments on this notice must be received by September 25, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Joseph Ben-Israel, Senior Loan Specialist, Community Programs, RHS, USDA, 1400 Independence Ave. SW, Mail Stop 0787, Washington, DC 20250–0787. Telephone (202)720–1490, E-mail *jbenisra@rdmail.rural.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 3570, subpart B, Community Facilities Grant Program.

OMB Number: 0575–0173.

Expiration Date of Approval: September 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community Facilities grants (CFG) are processed in accordance with this currently approved docket (0575–0173).

Community Programs, a division of the Rural Housing Service (RHS), is part of the United States Department of Agriculture's Rural Development mission area. The Agency is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926), as amended, to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, child care, hospitals, clinics, assisted-living facilities, fire and rescue stations, police stations, community centers, public buildings, and transportation. Through its Community Programs, the Department of Agriculture is striving to ensure that such facilities are readily available to all rural communities.

Information will be collected by the field offices from applicants, consultants, lenders, and public entities. The collection of information is considered the minimum necessary to effectively evaluate the overall scope of the project.

Failure to collect information could have an adverse impact on effectively carrying out the mission, administration, processing, and program requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .8 hours per response.

Respondents: Public bodies, nonprofit corporations, and associations, and federally recognized Indian tribes.

Estimated Number of Respondents: 294.

Estimated Number of Responses per Respondent: 3.67.

Estimated Total Annual Burden on Respondents: 859 hours.

Copies of this information collection can be obtained from Brenda Frost, Regulations and Paperwork Management Branch, at (202) 692–0037.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brenda Frost, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 18, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–18850 Filed 7–25–00; 8:45 am]

BILLING CODE 3410–XV–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 8 a.m. and adjourn at 4 p.m. on Thursday, August 31, 2000, at the Radisson Woodlands Hotel Flagstaff, Kaibab Room, 1175 West Route 66, Flagstaff, Arizona 86001. The purpose of the factfinding, one day open meeting is to discuss civil rights issues in law enforcement and education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 11, 2000.

Edward A. Hailes, Jr.

Acting General Counsel.

[FR Doc. 00–18834 Filed 7–25–00; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Commerce.

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 6/22/00–7/19/00

Firm name	Address	Date petition accepted	Product
BBFV Manufacturing Co., Inc	557 Noland Avenue Grand Junction, CO 81501.	22-Jun-2000	Saddlery & harnesses for animals.
Hanover Lantern, Inc	350 Kindig Lane, Hanover, PA 17331.	26-Jun-2000	Electric lamps and lighting fittings.
Thirteen Mile Lamb & Wool Co	13000 Springhill Road, Belgrade, MT 59714.	26-Jun-2000	Lambs/sheep for wool and frozen meat cuts.
M & B Headwear Co., Inc	2323 East Main Street, Richmond, VA 23223.	28-Jun-2000	Baseball caps.
Pokorny Sales & Mfg., Inc	20 Tierney Road, Lake Hopatcong, NJ 07849.	29-Jun-2000	Automotive electrical relays.
Termix Manufacturing, Inc	8633 Schumacher Lane, Houston, TX 77063.	05-Jul-2000	Hair brushes.
Flexon & Systems, Inc	153 South Long Street, Lafayette, LA 70506.	05-Jul-2000	Bulk polypropolyne bags.
Buckingham Mfg Co., Inc	1–11 Travis Avenue, Binghamton, NY 13902.	11-Jul-2000	Nylon and polyester harnesses, body belts, saddles, straps and metal connecting hardware for fall protection and rescue equipment.
Acme Engraving Co., Inc	19–37 Delaware Avenue, Passaic, NJ 07005.	19-Jul-2000	Rotary screen and metal cylinders for the apparel and wall covering industry.
Wexco Corporation	1015 Dillard Drive, Lynchburg, VA 24502.	19-Jul-2000	Bimetallic cylinders for injection molding machines.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 19, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–18856 Filed 7–25–00; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072000B]

Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Raised Footrope Trawl Exemption Fishery

Form Number(s): None

OMB Approval Number: None
Type of Request: Emergency submission
Burden Hours: 230
Number of Respondents: 288
Average Hours Per Response: 2 minutes
Needs and Uses: Framework 35 to the Northeast Multispecies Fishery Management Plan is intended to modify existing multispecies regulations to allow for a seasonal whiting raised footrope trawl exempted fishery. Persons holding multispecies Federal Fisheries Permits and wanting to participate in the exempted fishery must: (1) request a certificate to fish in the fishery, and (2) provide notification when they withdraw from the fishery. The information is needed for management of the fishery and enforcement.
Affected Public: Business and other for-profit
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–18901 Filed 7–25–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds for Outreach to Individuals With a Disability To Increase Their Participation in National Service

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation) announces the availability of approximately five million dollars to support outreach activities to increase the participation of persons with disabilities in national service. We will use these funds to make grants to public or private nonprofit organizations to pay the Federal share of: (1) providing information about national service programs to individuals with disabilities who desire to perform service, (2) assisting in the recruitment of such individuals in national service, and (3) assisting national service programs in adapting their programs to encourage greater participation by individuals with disabilities. We expect to award approximately 20 grants in amounts ranging from $100,000 to $1,000,000 for a period of up to two years.

We published a notice of funding availability in the **Federal Register** on Monday, June 26, 2000 (65 FR 39370) specifically to support service days or events that include persons with disabilities. This current notice of funding availability also allows for that activity but enables potential applicants to propose a much broader range of activities.

DATES: All proposals must arrive at the Corporation no later than 5:00 p.m., Eastern Daylight Time, on October 4, 2000.

ADDRESSES: Submit proposals to the Corporation at the following address: Corporation for National and Community Service, Attn: Nancy Talbot, 1201 New York Avenue NW., Washington, DC 20525. This notice may be requested in an alternative format.

FOR FURTHER INFORMATION CONTACT: For further information and an application, visit our website at http://www.nationalservice.org. If you wish to obtain a printed application or to speak with someone, contact Thea Kachoris at (202) 606–5000, ext. 562, or email her at tkachoris@cns.gov. The TDD number is (202) 565–2799.

SUPPLEMENTARY INFORMATION:

A. Background

The Corporation was established in 1993 to engage Americans of all ages and backgrounds in service to their communities. The Corporation's national service programs provide opportunities for participants to serve full-time and part-time, with or without stipend, as individuals or as part of a team. AmeriCorps*State, National, VISTA, and National Civilian Community Corps programs engage thousands of Americans on a full, or part-time basis, at over 1,000 locations to help communities meet their toughest challenges. Learn and Serve America integrates service into the academic life or experiences of over one million youth from kindergarten through higher education in all 50 states. The National Senior Service Corps utilizes the skills, talents and experience of over 500,000 older Americans to help make communities stronger, safer, healthier, and smarter.

AmeriCorps*State and AmeriCorps*National programs, that involve over 40,000 Americans each year in result-driven community service, are grant programs managed by: (1) State commissions on national and community service that select and oversee programs operated by local organizations; (2) national non-profit organizations that act as "parent organizations" for program operating sites across the country; (3) Indian tribes; or (4) U.S. Territories. The Corporation also supports AmeriCorps*VISTA (Volunteers in Service to America) and AmeriCorps*NCCC (National Civilian Community Corps) programs. More than 6,000 AmeriCorps*VISTA members develop grassroots programs, mobilize resources and build capacity for service across the nation. AmeriCorps*NCCC provides the opportunity for approximately 1,000 individuals between the ages of 18 and 24 to participate each year in ten-month residential programs located mainly on inactive military bases. Learn and Serve America grants provide service-learning opportunities for youth through grants to state education agencies, community-based organizations, and higher education institutions and organizations, and Indian Tribes and Territories. The National Senior Service Corps operates through grants to nearly 1,300 local organizations for the Retired and Senior Volunteer (RSVP), Foster Grandparent (FGP) and Senior Companion (SCP) programs to provide service to their communities. For additional information on the national service programs supported by the Corporation, go to http://www.nationalservice.org.

B. Eligible Applicants

Eligible applicants for this funding are (1) Corporation-approved state commissions on national and community service, (2) state education agencies, (3) nonprofit organizations with expertise in disability issues proposing activities in at least three states, (4) tribal or territorial governments, and (5) regional, state-wide, or local consortia consisting of public or private nonprofit organizations (including state commissions, state education agencies or a consortium of projects working together within a region, state or locality). Consortia must identify a lead

agency that will serve as the legal applicant. Examples of state-wide, regional or local consortia include but are not limited to:

- Local service agencies, AmeriCorps programs, Learn and Serve America projects, and local disability associations that collaborate to develop an outreach and recruitment strategy;
- Senior Corps projects within a region, state, or locality that propose to fill volunteer vacancies with persons with disabilities;
- Collaborations between Corporation-approved state commissions;
- Community colleges, colleges, or universities within a region, state, or locality.

The Corporation encourages, and will give priority to, proposals that reflect collaborations that include organizations with a demonstrated expertise in disability issues (*e.g.*, a group of AmeriCorps programs form a partnership with their local Center for Independent Living to conduct outreach to the disabled community).

An organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities, is not eligible to be a grantee or subgrantee.

C. Statutory Authority

Section 129(d)(5)(C) of the National and Community Service Act authorizes the Corporation to make grants to pay for the Federal share of (1) providing information about national service activities to persons with disabilities and (2) enabling such persons to participate.

D. Purpose of Grants

The National and Community Service Act of 1990, as amended, encourages citizens, regardless of age, income, or disability, to engage in full-time or part-time national service. Section 129(d)(5)(C) of the Act sets aside funds to ensure that people with disabilities are made aware of national service opportunities and are able to serve. We are committed to increasing the participation of persons with disabilities in all areas of national service. Many national service programs need assistance in understanding how to focus their outreach and recruitment efforts to ensure increased participation by people with disabilities. We recently sponsored a national conference that brought together disability organizations and national service programs to better understand opportunities and avenues for collaboration. We wish to continue and expand the efforts begun at this conference by making grants available to support outreach to persons with disabilities to increase their participation in national service.

E. Matching Funds Requirement

The Federal share of the cost of carrying out activities under these grants may not exceed 75 percent. A grantee may comply with this requirement through cash or in-kind resources. Cash match may be in the form of State funds, local funds, or Federal funds (other than funds made available under national service laws.)

F. Scope of Activities To Be Supported by Outreach Grants

This is a nationwide effort to encourage individuals with a disability to participate in national service programs (programs that are assisted under national service laws or otherwise act in conjunction with programs assisted under the national service laws). Our goal is to increase the number of persons with disabilities who participate in service. We will use these funds to make grants to eligible applicants to pay the Federal share of: (1) Providing information about national service programs to individuals with disabilities who desire to perform service, (2) assisting in the recruitment of such individuals in national service, and (3) assisting national service programs in adapting their programs to encourage greater participation by individuals with disabilities.

The following are sample activities aimed at increasing the number of persons with disabilities in national service:

- Develop and conduct activities geared toward national service program directors to increase their awareness of disability issues and their ability to undertake successful outreach and recruitment of people with disabilities.
- Develop and conduct targeted mailings and outreach sessions to engage students with disabilities in service-learning, including Federal Work Study students, in service projects.
- Organize and conduct information sessions for disability organizations to learn more about national service or to add service to the community as part of their organizations' mission.
- Sponsor part-time recruitment coordinators with the specific goal of meeting recruitment goals established for individuals with disabilities to participate in service projects.
- Train teachers in methods to include persons with disabilities as service providers in school-based service projects.
- Develop and fund local radio and television public service announcements that include images of persons of all ages with disabilities in service to others.
- Conduct targeted advertising and recruitment, *e.g.*, attending job fairs for persons with disabilities, outreach to schools for students with disabilities.
- Develop marketing materials that target persons with disabilities and are shared with the larger national service network.

The above are examples only. Proposals should reflect strategies applicable to local programs, or state-wide or regional efforts. State commissions and state education agencies may develop strategies that are state-wide or target particular localities in year one and expand to new localities in year two. National non-profit organizations must plan to provide outreach activities in at least three states across the country or within a particular region of the country. You may consider subgranting to local affiliates in collaboration with local national service programs or develop state-wide or regional activities.

Federal law (the Rehabilitation Act of 1973) requires recipients of federal financial assistance to fulfill a level of basic accessibility prior to receiving financial assistance. While the national service legislation provides separately for funds to pay for reasonable accommodations or auxiliary aids to assist specific categories of national service programs in placing individuals with a disability in national service positions, these outreach funds are not available for reasonable accommodations or auxiliary aids related to placement. However, outreach funds are not restricted to a particular category of national service program and may be used to make outreach events and materials accessible to individuals with a disability.

We are currently seeking Office of Management and Budget (OMB) approval for the narrative portion of the application requirements. You may use the description of these requirements (below) to plan your activities. We expect the OMB-approved application requirements to be available on our website no later than September 8, 2000.

G. Duration of Grant

The duration of each grant is up to two years, with the entire amount awarded at one time. Applications must include a proposed budget and proposed activities for the entire award period.

H. Application Requirements

All applicants must complete the Application for Federal Assistance (SF 424), Budget Information—Non-Construction Programs (SF 424A), and Assurances—Non-Construction Programs (SF 424B). Copies of these forms can be obtained at the Corporation's website: http://www.nationalservice.org. For a printed copy of any of these materials, please contact Thea Kachoris at (202) 606–5000, ext.562 or send an email to tkachoris@cns.gov. (Note: There must be one legal applicant for each proposal, including a consortium or joint proposal.) Applicants must submit one unbound, original proposal and two copies. We will not accept any proposals submitted by facsimile. All applicants are encouraged to submit voluntarily an additional four copies of the application to expedite the review process.

Attached to the SF 424, please include the following:

1. *Outreach and Recruitment Plan:* The plan should be specific and cover each of the categories listed below. The plan may be no more than 20 double-spaced, single-sided, typed pages in no smaller than 12-point font. It may include single-spaced bulleted sections.

- Proposed Strategy—Your proposed strategy and rationale for providing outreach to persons with disabilities and to increase participation of individuals with disabilities in national service programs.
- Description of Activities—A detailed description of your proposed activities to increase the number of individuals with disabilities as participants in national service programs and projected outcomes.
- Work Plan—A detailed work plan and timeline for conducting outreach and recruitment.
- Evaluation Plan—A plan for regularly evaluating and assessing your strategy to increase participation of persons with disabilities as participants in national service programs and the outcomes.

2. *Description of Organizational/ Consortium Capacity.*

- A description of the organizational capacity of the entity proposing the grant including experience your organization has with outreach and recruitment, experience in or ability to administer a federal grant, and key staff position(s) who will be responsible for the project. If more than one organization will be involved in carrying out the activities, describe the capacity of the legal applicant to provide a coordinating role in the collaboration and the capacity of the other partners to fulfill their roles and responsibilities.
- Organizational Chart—If more than one organization will be involved in conducting the outreach activities, provide an organizational chart showing the lines of authority and areas of responsibility of each organization.

3. *Budget/Budget Narrative:* All applicants must complete Standard Form 424A (Budget Information—Non-Construction Programs) for the length of the project. Copies of this form can be obtained at the Corporation's website: *http://www.nationalservice.org.* If applying for a two year grant, indicate projected second year budget on page two of the form. The funds that the Corporation provides may not exceed 75% of the cost of carrying out activities under the grant. You may provide for the remaining share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services. You may use State sources, local sources, or Federal sources (if allowed by the granting agency) other than funds made available under the national service laws. Complete a budget narrative using the guidelines in the application instructions.

4. *Letters of Commitment:* If more than one organization will be involved in carrying out the outreach activities, the application should include letters of commitment from all partners.

I. Selection Criteria

In awarding these grants, we will consider program design, organizational capacity, and budget and cost effectiveness. Applicants must propose clearly-defined and specific activities to increase the number of persons with disabilities in national service. We will give priority consideration to applicants that demonstrate a collaboration with disability organizations with expertise in disability issues and to applicants who are themselves disability organizations that have expertise in a range of disability areas.

After evaluating the overall quality of proposals and their responsiveness to the criteria noted above, we will seek to ensure that applications we select represent a portfolio that is: (1) Geographically diverse, including projects throughout the five geographical clusters as designated by the Corporation; (2) representative of the range of disabilities; and (3) representative of a range of models and approaches to involving individuals with disabilities in national service. The Corporation will make all final decisions concerning awards and may require revisions to the original grant proposal in order to achieve the objectives under this Notice.

J. Notice of Intent To Submit

If you intend to submit an application, please send us a notice of intent to submit by August 31st addressed to Nancy Talbot, Corporation for National Service, 1201 New York Avenue, NW., Washington, DC 20525 or email your intent to *ntalbot@cns.gov.* The notice should include the name of your organization, address, contact person and phone number and should state that you plan to submit an application for outreach to individuals with a disability for the October 4th deadline.

If you do not send a notice of intent to submit, you may still submit an application. Conversely, if you send a notice of intent to submit, you are not obligated to submit an application. The notice of intent to submit simply helps us to plan more efficiently for our review.

K. Technical Assistance Calls

The Corporation is scheduling technical assistance calls on:

July 31, 2000 4–5 p.m. Eastern Daylight Time

August 9, 2000 3–4 p.m. Eastern Daylight Time

August 15, 2000 3:30–4:30 p.m. Eastern Daylight Time

If you wish to register for the call, please contact Theresa Dean at 202–606–5000 ext. 207. We expect to make selections by November 15, 2000, and award grants by the end of December. Grantees should plan to begin their activities in January or February 2001. Funding for these activities is contingent upon the availability of appropriations. The Corporation is not bound by any of the estimates in this Notice.

(CFDA #94.007)

Dated: July 21, 2000.

Gary Kowalczyk,

Coordinator, National Service Programs, Corporation for National and Community Service.

[FR Doc. 00–18911 Filed 7–25–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Superintendent, Postgraduate School

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. App. 2), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California will meet at the Naval Postgraduate School, Monterey, California. All sessions will be open to the public.

The purpose of the meeting is to elicit the advice of the board on the Naval Service's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

DATES: The meeting will be held 21–22 August 2000 from 8:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, California, 93943–5000, telephone (831) 656–2514.

Dated: April 14, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–18885 Filed 7–25–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 25, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 20, 2000.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Application for Vocational and Technical Education Direct Grants.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 569

Burden Hours: 73,970

Abstract: This form will be used to apply for funding authorized by the Carl D. Perkins Vocational and Technical Education Act of 1998, administered by the Office of Vocational and Adult Education. The information will be used to award discretionary grants and cooperative agreements.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–18854 Filed 7–25–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.042]

Office of Postsecondary Education, U.S. Department of Education; Notice Inviting Applications for Student Support Services Program New Awards for Fiscal Year (FY) 2001

Purpose of Program: The Student Support Services Program provides grants to institutions of higher education for projects offering support services to low-income, first generation, or disabled college students. These support services should increase their retention and graduation rates, facilitate their transfer from two-year to four-year colleges, and foster an institutional climate supportive of the success of low-income and first generation college students and students with disabilities. The Student Support Services Program increases the number of disadvantaged students in the United States who successfully complete a program of study at the postsecondary level of education.

Eligible Applicants: Institutions of higher education and combinations of institutions of higher education.

Applications Available: August 1, 2000.

Deadline for Transmittal of Applications: September 15, 2000.

Deadline for Intergovernmental Review: November 14, 2000.

Available Funds: $218.4 million. The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $180,000–$310,000.

Estimated Number of Awards: 954.

Note: The Department is not bound by any of the estimates in this notice.

Project Period: Up to 60 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A "page" is 8.5" x 11" on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98 and 99; and the regulations for this program in 34 CFR part 646.

FOR FURTHER INFORMATION CONTACT: Deborah I. Walsh, Office of Federal TRIO Programs, U.S. Department of Education, 1990 K Street, NW, Suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600. The E-mail address for Ms. Walsh is: TRIO@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. Individuals who use telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs at its Web Site: http://www.ed.gov/pubs/edpubs.html or at its E-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.042.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U. S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–14.

Dated: July 20, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–18863 Filed 7–25–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–403–000]

Distrigas of Massachusetts Corporation; Notice of Application for a Blanket Certificate of Public Convenience and Necessity

July 20, 2000.

Take notice that on July 10, 2000, Distrigas of Massachusetts Corporation ("DOMAC") filed an abbreviated application for a blanket certificate of public convenience and necessity to install and operate certain temporary air injection equipment as needed at its liquefied natural gas ("LNG") terminal in Everett, Massachusetts.

DOMAC states that it may require additional air injection capability on a temporary basis in the future in order to air stabilize higher-BTU cargoes of LNG or during periods of maintenance or repair to the permanent air injection equipment. DOMAC states that its current permanently-installed air injection equipment may not in all cases permit DOMAC to air stabilize sufficient quantities of higher-Btu LNG to meet all customer needs and to send out regasified LNG at a rate sufficient to allow receipt of incoming LNG cargoes. Because lower-Btu LNG is generally available, DOMAC does not foresee a requirement for additional permanent air injection facilities. Accordingly, DOMAC is filing for blanket certificate authority to install such equipment as needed in the future.

Any question regarding this application should be directed to Robert A. Nailling, Senior Counsel, Distrigas of Massachusetts Corporation, 75 State Street, 12th Floor, Boston, Massachusetts 02109, (617) 526–8300.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 10, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit

copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–18853 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM98–10–000 et al.]

Regulation of Short-Term Natural Gas Transportation Services, et al.

July 21, 2000.

In the matter of: RM98–12–000, RP00–393–000, RP00–387–000, RP00–406–000, RP00–405–000, RP00–390–000, RP00–407–000, RP00–411–000, RP00–394–000, RP00–397–000, RP00–398–000, RP00–401–000, RP00–400–000, RP00–391–000, RP00–410–000, RP00–409–000, RP00–399–000, RP00–392–000, RP00–403–000, RP00–404–000, RP00–412–000, RP00–396–000, RP00–408–000, RP00–402–000, RP00–395–000, RP00–413–000, RP00–414–000, and RM98–10–000; Regulation of Interstate Natural Gas Transportation Services, Eastern Shore Natural Gas Company, Florida Gas Transmission Company, Gas Transport, Inc., Gulf States Transmission Corporation, Granite State Gas Transmission, Inc., High Island Offshore System, L.L.C., Iroquois Gas Transmission System, L.P., K O Transmission Company, Questar Pipeline Company, Michigan Gas Storage Company, Midcoast Interstate Transmission, Inc., Mid Louisiana Gas Company, Mississippi Canyon Gas Pipeline, LLC, Mississippi River Transmission Corporation, Natural Gas Pipeline Company of America, National Fuel Gas Supply Corporation, Nautilus Pipeline Company, L.L.C., Northern Border Pipeline Company, Northern Natural Gas Company, Northwest Pipeline Corporation, Overthrust Pipeline Company, Ozark Gas Transmission, L.L.C., Paiute Pipeline Company, Panhandle Eastern Pipe Line Company, Pine Needle LNG Company, LLC, PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

Take notice that on July 17, 2000, the above-referenced pipelines tendered for filing their *pro forma* tariff sheets respectively, in compliance with Order Nos. 637 and 637–A.

On February 9 and May 19, 2000, the Commission issued Order Nos. 637 and 637–A, respectively, which prescribed new regulations, implemented new policies and revised certain existing regulations respecting natural gas transportation in interstate commerce. The Commission directed pipelines to file *pro forma* tariff sheets to comply with the new regulatory requirements regarding scheduling procedures, capacity segmentation, imbalance management services and penalty credits, or in the alternative, to explain why no changes to existing tariff provisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18880 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–001]

Mississippi River Transmission Corporation; Notice of Compliance Filing

July 21, 2000.

Take notice that on July 17, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Substitute Original Sheet No. 226A and First Substitute Original Sheet No. 226B to become effective July 1, 2000.

MRT states that the purpose of this filing is to comply with the Commission's June 30, 2000 order in which the Commission accepted MRT's negotiated rates proposal, subject to MRT filing revised tariff sheets addressing certain issues. MRT states that the revised tariff sheets address all outstanding issues.

MRT states that a copy of this filing is being mailed to each of MRT's customers, all parties to the proceeding and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18876 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–295–001]

Northwest Alaskan Pipeline Company; Notice of Compliance Filing

July 21, 2000.

Take notice that on July 17, 2000 Northwest Alaska Pipeline Company (Northwest Alaskan) tendered for filing information regarding certain state tax litigation expenses that it has included in its demand charge adjustment filing in this proceeding and in prior adjustments. Northwest Alaska asserts that the purpose of this filing is to comply with the Commission's order issued June 30, 2000, in the above referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18877 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–239–000]

Southern Natural Gas Company; Notice of Site Visit

July 20, 2000.

On July 31 through August 3, 2000, the staff of the Office of Energy Projects will conduct a precertification site visit with corporate officials of the Southern Natural Gas Company (Southern). The purpose of the site visit is to tour the project area of Southern's proposed South System Expansion Project in Clarke and Lauderdale Counties, Mississippi; Sumter, Dallas, Autagua, Macon, Lee, Tallapoosa, and Macon Counties, Alabama; and Jefferson County, Georgia.

All parties may attend the site visit. Those planning to attend must provide their own transportation. For further information on attending the site visit, please call Mr. Paul McKee of the Commission's External Affairs Office at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–18851 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–404–000

Texas Eastern Transmission Corporation; Notice of Application

July 20, 2000.

Take notice that on July 13, 2000, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application in Docket No. CP00–404–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) seeking a certificate of public convenience and necessity (i) to uprate the maximum allowable operating pressure (MAOP) of its existing Line No. 1–A in the Philadelphia area, and to construct, own, operate, and maintain certain facilities to render a firm lateral transportation service for up to 84,000 Dekatherms per day (Dth/d) of natural gas for PG&E Energy Trading—Power; L.P. (PGET), and Liberty Electric Power, LLC (LEP), and (ii) to establish a Section 7(c) initial recourse rate for the incremental facilities proposed herein, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Eastern states that the name address, and telephone number of the person to whom correspondence and communication concerning this application should be addressed is: Steven E. Tillman, Director of Regulatory Affairs, Texas Eastern Transmission Corporation, P.O. Box 1642, Houston, Texas 77251–1642, (713) 627–5113, (713) 627–5947 (FAX).

In addition, Texas Eastern requests, pursuant to Section 4 of the NGA and Section 29 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, approval of the negotiated rates for the services described more fully herein.

Texas Eastern states that it intends to provide firm transportation for PGET and LEP at the Liberty electric generating plant (Columbia Liberty Plant), which is a 567.7 megawatt gas-fired electric power plant being developed by, and to be owned by, LEP in the Borough of Eddystone, Delaware County, Pennsylvania. In order to provide this service, Texas Eastern proposes to expand its existing Philadelphia Lateral system to make available 84,000 dth/d of firm transportation capacity required to fuel the Columbia Liberty Plant. Texas Eastern proposes to install one 4,000 horsepower (hp) electric compressor at its existing Eagle Compressor Station site (Eagle Station), replacing, in situ, various segments of the existing 20-inch Line No. 1–A pipeline, uprating the operating pressure of the 20–inch Line No. 1–A, and constructing approximately 0.6 miles of 12-inch pipeline and associated metering facilities, to establish the connection with the Columbia Liberty Plant.

According to Texas Eastern, the 0.6 mile lateral pipe will extend from milepost (MP) 3.2 on Texas Eastern's 16-inch Line No. 1–A to a proposed tie-in point within the Columbia Liberty Plant (Liberty Lateral). Texas Eastern also proposes to construct a meter station at the interconnection between the proposed Liberty Lateral and the Columbia Liberty Plant. In addition, at the interconnection of the proposed Liberty Lateral and Texas Eastern's 16-inch Line No. 1–A, Texas Eastern proposes to construct new aboveground valve and piping facilities to be located within the existing rights-of-way (ROW). The new facilities will also include a 4,000 hp electric driven compression unit at Texas Eastern's existing Eagle

Station and associated piping, valves, and instrumentation facilities which will provide the compression necessary for the proposed service.

Texas Eastern states that prior to developing the scope of work for the expansion proposed herein, Texas Eastern conducted an in-line inspection of its existing 20-inch Line No. 1–A. Based on the evaluation of that inspection, Texas Eastern proposes to replace certain pipeline anomaly segments identified on its existing 20-inch Line No. 1–A. Texas Eastern states that all of these replacements will be in-situ. Subsequent to the replacements, Texas Eastern states that it will perform a hydrostatic test of approximately 22.7 miles of the 20-inch Line No. 1–A between Eagle Station located at MP 0.0 in Chester County, Pennsylvania, and Chester Junction located at MP 22.7 in Delaware County, Pennsylvania. According to Texas Eastern, this hydrostatic test will allow for an increase in the MAOP of the 20-inch Line No. 1–A from 400 psig to 656 psig. It is stated that this increase in MAOP, together with installation of the other proposed facilities, is required to accommodate deliveries to the Columbia Liberty Plant at LEP's required delivery pressure of 500 psig.

Texas Eastern states that the cost of the proposed facilities is estimated to be approximately $21.5 million. Texas Eastern further states that the facilities proposed herein will be constructed in compliance with the Natural Gas Pipeline Safety Act of 1968, and operated in accordance with federal safety codes applicable to gas transmission pipelines.

According to Texas Eastern, LEP will own and operate the Columbia Liberty Plant. To market the plant's electric output, LEP has entered into a Tolling Agreement with PGET, pursuant to which LEP will sell its energy output to PGET for a term of approximately 14.5 years subject to extension and early termination under certain circumstances. Texas Eastern states that under the Tolling Agreement, PGET has the right to purchase and market 100% of the electricity generated by the Columbia Liberty Plant except under certain limited circumstances. It is stated that for the term of the Tolling Agreement, PGET will also be the fuel manager for the Columbia Liberty Plant. Texas Eastern contends that following the expiration or other termination of the Tolling Agreement, LEP intends to procure its own gas supply for delivery to the Columbia Liberty plant under the Lateral Service Agreement to support its operation of the Columbia Liberty Plant as a "merchant" generating facility.

Texas Eastern states that LEP is obligated under the Tolling Agreement to commence delivery of power to PGET by April 1, 2002.

Texas Eastern states that the Lateral Service Agreement provides for the firm lateral transportation service of up to a maximum daily quantity ("MDQ") of 84,000 Dth/d for a primary term of 25 years. It is stated that the proposed service will fully utilize the capacity that will result from the construction of facilities proposed herein. The primary receipt point under the Lateral Service Agreement will be at Texas Eastern's existing Eagle Station, and the primary delivery point will be at the downstream terminus of the proposed Columbia Liberty Lateral at the interconnection with the Columbia Liberty Plant. Texas Eastern states that the Lateral Service Agreement is a lateral-only service; PGET and LEP will have no rights under this FT–1 service agreement to receive service on any portion of Texas Eastern's system other than the Philadelphia Lateral facilities. Texas Eastern further states that service under the Lateral Service Agreement will be provided at a negotiated rate. According to Texas Eastern, the executed precedent agreement and Lateral Service Agreement demonstrate that the Columbia Liberty Project is being built for a specific new market and will not rely on subsidies from existing customers. Texas Eastern states that these agreements are submitted as evidence of the benefits of this project pursuant to the Commission's Statement of Policy on Certificating New Interstate Pipeline Facilities [1] ("Policy Statement").

Texas Eastern states that in conjunction with the Lateral Service Agreement, PGET, LEP and Texas Eastern have entered into, as an essential component of this transaction, the Mainline Service Agreement, which is a Rate Schedule FT–1 service agreement for mainline service in Market Zone M3 on a secondary basis. This mainline Zone M3 service allows for secondary firm transportation rights in Texas Eastern's Zone M3 at a negotiated rate. It is stated that this service was required by PGET and LEP and is intended for utilization only during those periods and to the extent that the Columbia Liberty Plant is not operating at full load. According to Texas Eastern, this service will allow LEP and PGET to have secondary access to other Zone M3 markets in order to have the opportunity to sell gas that is not needed at the Columbia Liberty Plant. It is stated that this service applies to gas that already is being transported on the mainline and would be subsequently transported down the lateral under the Lateral Service Agreement, absent the Columbia Liberty Plant not operating at full load. Since the Mainline Service Agreement provides secondary only transportation rights, Texas Eastern states that there is no firm capacity reserved for the Mainline Service Agreement. Because no firm capacity is reserved for this service agreement, Texas Eastern contends that it did not award this contract under its net present value allocation mechanism included in Section 3.12 of the GT&C of Texas Eastern's FERC Gas Tariff. Although Texas Eastern does not believe it is required, to the extent the Commission deems necessary, Texas Eastern requests a waiver of Section 3.12 of the GT&C of Texas Eastern's FERC Gas Tariff for the award of the Mainline Service Agreement.

Texas Eastern states that a separate negotiated rate agreement was executed for the Mainline Service Agreement, and is designed to reflect the purpose for which the parties entered into the agreement which is solely to mitigate demand charge costs at times when the Columbia Liberty Plant is not operating at full load. Specifically, the negotiated rate for the Mainline Service Agreement is limited to a total aggregate quantity of 84,000 Dth/d being delivered under the Mainline Service Agreement and the Lateral Service Agreement. According to Texas Eastern, this is designed to ensure that on any given day not more than 84,000 Dth/d (the MDQ of the Lateral Service Agreement) is transported at the negotiated rates for the lateral service and/or the secondary mainline service. These secondary rights will allow PGET and LEP to utilize secondary transportation rights only in Zone M3 after existing customers' primary firm transportation entitlements have been scheduled and will not have an adverse impact on Texas Eastern's ability to meet its primary firm service obligations.

Texas Eastern states that PGET and LEP will obtain its own gas supply. Through the Texas Eastern system, PGET and LEP will have access to gas supplies attached to the North American pipeline grid. Texas Eastern states that natural gas will be delivered to the Columbia Liberty Project facilities at the upstream terminus of the Philadelphia Lateral facilities, by acquisition of capacity through capacity release, by utilizing interruptible capacity or by

[1] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) and, *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000).

third-party deliveries under other service agreements.

Texas Eastern proposes to establish an NGA Section 7(c) initial recourse rate, which is a cost based and separately stated incremental reservation rate equal to $4.461 per Dth per month under Texas Eastern's Rate Schedule FT–1 for the lateral only service to PGET and LEP. Texas Eastern contends that this rate has been designed using Texas Eastern's incremental cost-of-service for this project and is shown on the Pro Forma Rate Schedule FT–1 tariff sheets. Texas Eastern states that it will maintain a separate record of capital costs for this project in its book of accounts.

Notwithstanding the foregoing, PGET, LEP and Texas Eastern have agreed to negotiated rates for both of the services described herein, in accordance with and pursuant to the negotiated rate authority contained in Section 29 of the GT&C of Texas Eastern's FERC Gas Tariff. Texas Eastern states that included in Exhibit P to its application are tariff sheets which identify the negotiated rate agreements. In addition, Texas Eastern states that it included a copy of each negotiated rate agreement in Exhibit I to its application. Texas Eastern requests that the proposed tariff sheets detailing the negotiated rate transactions with PGET and LEP be approved as part of the certificate issued in this proceeding. Texas Eastern requests waiver of Section 154.207 of the Commission's regulations to allow for this effective date. Texas Eastern submits that good cause exists for granting this waiver, as the negotiated rate agreements are integral components of this proposal. According to Texas Eastern, the tariff sheets filed herewith affirm that the actual negotiated rate agreements do not deviate in any material respect from the form of service agreement. Finally, Texas Eastern states that the accounting treatment for negotiated rates will be consistent with Section 29 of the GT&C of Texas Eastern's FERC Gas Tariff.

Since the costs of the proposed facilities will be recovered through the proposed incremental rate, Texas Eastern states that the project will have no adverse impact on existing customers. Texas Eastern states that the project is financially viable without subsidies from Texas Eastern's existing customers, thus meeting the threshold requirements established in the Commission's Policy Statement.

Texas Eastern states that the Columbia Liberty Plant is currently being constructed and is scheduled to take initial test gas commencing September 1, 2001. Texas Eastern requests that the Commission issue a Preliminary Determination on the non-environmental aspects of its proposal by January 1, 2001 and that a final certificate be issued on before March 1, 2001. Texas Eastern stated that LEP has informed it that since the Columbia Liberty Plant is currently under construction, significant capital commitments for long lead-time construction items have been made and that receipt of a final certificate by March 1, 2001 is critical. According to Texas Eastern, issuance of a Preliminary Determination and the authorizations requested herein by January 1, 2001 and March 1, 2001, respectively, will provide LEP with assurance regarding connection to the gas grid, which is necessary to fuel the Columbia Liberty Plant and enable LEP to continue to pursue construction and related activities required to meet the September 1, 2001 schedule for test gas for the Columbia Liberty Plant.

Any person desiring to be heard or to make protest with reference to said application should on or before August 10, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18. CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

David P. Boergar,

Secretary.

[FR Doc. 00–18852 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–029, et al.]

PPL Electric Utilities Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 19, 2000.

Take notice that the following filings have been made with the Commission:

1. PPL Electric Utilities Corporation

[Docket No. ER97–3189–029]

Take notice that on July 13, 2000, PPL Electric Utilities Corporation (PPL Utilities), formerly known as PP&L, Inc.,

tendered a compliance filing pursuant to the Commission's order in Allegheny Power Service Company, 90 FERC ¶ 61,224 (2000).

PPL Utilities has served a copy of this filing on the parties on the Commission's official service list for this docket.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER00–2208–002]

Take notice that on July 14, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a change to the ISO Tariff to comply with the Commission's order in California Independent System Operator Corporation, 91 FERC ¶ 61,256 (2000). This change corrects a typographical error contained on a tariff sheet filed in the above-referenced docket. The ISO states that this filing has been served upon all parties in this proceeding.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. TXU Electric Company

[Docket No. ER00–2256–001]

Take notice that on July 14, 2000, TXU Electric Company (TXU Electric), tendered for filing revised tariff sheets for its revised Tariff for Transmission Service To, From and Over Certain HVDC Interconnections to modify a tariff provision included in TXU Electric's April 20, 2000 filing in Docket No. ER00–2256–000, in compliance with the Commission's June 14, 2000 order in that Docket.

Copies of the filing were served on the persons designated on the official service list compiled by the Secretary in this proceeding.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Pinnacle West Capitol Corporation; Arizona Public Service Company; APS Energy Services Corporation, Inc.

[Docket No. ER00–2268–001]

Take notice that on July 14, 2000, the Pinnacle West Capitol Corporation, Arizona Public Service Company and APS Energy Services Corporation, Inc. (Pinnacle West Companies), tendered for filing proposed revisions to Arizona Public Service Company's fuel adjustment clause in compliance with FERC's Order issued June 20, 2000.

A copy of this filing has been served to all parties on the official service list.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Nuclear FitzPatrick, LLC

[Docket No. ER00–2738–001]

Take notice that on July 14, 2000, Entergy Nuclear FitzPatrick, LLC, tendered for filing an amendment to its application for authorization to sell wholesale power at market-based rates pursuant to Section 205 of the Federal Power Act.

Copies of this filing have been served upon all parties listed on the official service list maintained by the Secretary of the Commission for these proceedings.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Nuclear Indian Point 3, LLC

[Docket No. ER00–2740–001]

Take notice that on July 14, 2000, Entergy Nuclear Indian Point 3, LLC tendered for filing an amendment to its application for authorization to sell wholesale power at market-based rates pursuant to Section 205 of the Federal Power Act.

Copies of this filing have been served upon all parties listed on the official service list maintained by the Secretary of the Commission for these proceedings.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2754–001]

Take notice that on July 13, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing First Revised Service Agreement No. 74 under the Market Rate Tariff to incorporate a Netting Agreement with Louisville Gas and Electric Company/Kentucky Utilities Company into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Netting Agreement effective as of July 3, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Mexico

[Docket No. ER00–3149–000]

Take notice that on July 14, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement with Dynegy Marketing & Trade, dated July 12, 2000, for firm point-to-point transmission service under PNM's Open Access Transmission Service Tariff. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Dynegy Marketing & Trade and to the New Mexico Public Regulation Commission.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Potomac Electric and Power Company

[Docket No. ER00–3151–000]

Take notice that on July 14, 2000, Potomac Electric Power Company (PEPCO), tendered for filing an executed netting agreement between PEPCO and NewEnergy, Inc. (the Counterparty).

A copy of the filing was served upon the Counterparty.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. CMS Marketing Services and Trading Company

[Docket No. ER00–3152–000]

Take notice that on July 14, 2000, CMS Marketing Services and Trading Company (CMS MST), tendered for filing pursuant to its market-based sales tariff, a Service Agreement establishing its public utility affiliate, Consumers Energy Company (CECo), as a customer and requesting cancellation of the Code of Conduct between CMS MST and CECo. CMS MST states that CECo's commitment to exclude all purchases from CMS MST from any rate calculations for its ten wholesale requirements customers and twelve special contracts customers, the retail rate freeze that is in effect until at least December 31, 2003, and the phase in of full retail choice by January 1, 2002 will insulate all of CECo's captive customers from the impact of any purchases from CMS MST.

CMS MST also seeks waiver of any regulations of the Federal Energy Regulatory Commission necessary to permit an effective date of August 1, 2000.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER00–3153–000]

Take notice that on July 14, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an unexecuted electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2).

Wisconsin Electric respectfully requests an effective date July 14, 2000.

Copies of the filing have been served on Edison Mission Marketing & Trading, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Potomac Electric Power Company

[Docket No. ER00–3154–000]

Take notice that on July 14, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and El Paso Merchant Energy, L.P.

An effective date of June 1, 2000, for this service agreement with waiver of notice is requested.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company

[Docket No. ER00–3155–000]

Take notice that on July 14, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Sempra Energy Trading Corp. (Sempra). This umbrella service agreement provides for Southwestern's sale and Sempra's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Southwestern requests that this service agreement become effective on June 14, 2000.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. The Montana Power Company

[Docket No. ER00–3156–000]

Take notice that on July 14, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 executed Firm and Non-Firm Point-To-Point Transmission Service Agreements with the Public Service Company of Colorado under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon the Public Service Company of Colorado.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER00–3157–000]

Take notice that on July 14, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreement with Cinergy Services, Inc., (CPMT) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of June 15, 2000, for the Agreement with CPMT, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Indiana Gas and Electric Company

[Docket No. ER00–3158–000]

Take notice that on July 14, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing service agreements for firm and non-firm transmission service under Part II of its Transmission Services Tariff with Cargill-Alliant, LLC, The Legacy Energy Group, LLC, and Amerada Hess Corporation, respectively.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Indianapolis Power & Light Company

[Docket No. ER00–3159–000]

Take notice that on July 14, 2000, Indianapolis Power & Light Company (IPL), tendered for filing service agreements executed under IPL's Open Access Transmission Tariff and an index of customers.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. NRG Energy Center Dover LLC, NEO Toledo-Gen LLC, NEO Freehold-Gen LLC and NEO Chester-Gen LLC

[Docket No. ER00–3160–000]

Take notice that on July 14, 2000, NRG Energy Center Dover LLC, NEO Toledo-Gen LLC, NEO Freehold-Gen LLC, and NEO Chester-Gen LLC (Sellers), limited liability companies organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Sellers' proposed FERC Electric Tariffs (Market-Based Rate Tariffs), (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the Regulations, (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates, and (4) granting waiver of the 60-day notice period. NRG Energy Center Dover LLC also requested acceptance of two long-term power sales agreements. Sellers are indirect subsidiaries of Northern States Power Company.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. TXU Electric Company and TXU SESCO Company

[Docket No. ER00–2257–001]

Take notice that on July 14, 2000, TXU Electric Company and TXU SESCO Company (collectively TXU), tendered for filing revised tariff sheets for their revised Tariff for Transmission Service for Tex-La Electric Cooperative of Texas, Inc., to modify a tariff provision included in TXU's April 20, 2000 filing in Docket No. ER00–2257–000, in compliance with the Commission's June 14, 2000 order in that Docket.

Copies of the filing were served on the persons designated on the official service list compiled by the Secretary in this proceeding.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Orion Power MidWest, L.P.

[Docket No. ER00–2585–001]

Take notice that on July 13, 2000, Orion Power MidWest, L.P. (Orion Power MidWest), tendered for filing with the Federal Energy Regulatory Commission a revised long-term Energy Agency and Marketing Agreement with Duquesne Light Company, designated as Original Service Agreement No. 4 for the sale of energy under Orion Power MidWest's market-based rate tariff, FERC Electric Rate Tariff, Volume No. 1.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Alcoa Power Generating Inc.

[Docket No. ER00–2396–001]

Take notice that on July 14, 2000, Alcoa Power Generating Inc. (APGI), tendered for filing APGI's Procedure for Implementation of Standards of Conduct, APGI's Standards of Conduct, and an organizational chart depicting APGI's separation of transmission function employees from wholesale merchant function employees. APGI requested that the Commission accept its proposed Standards of Conduct for filing. APGI also informed the Commission that its Standards of Conduct were currently implemented and that its Open Access Same-Time Information System would become functional on March 15, 2000.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Avista Corporation

[Docket No. ER00–3019–000]

Take notice that on July 14, 2000, Puget Sound Energy, Inc. (Puget Sound) tendered for filing a Certificate of Concurrence to the Mutual Netting Agreement between Puget Sound and Avista Corporation (Avista) filed by Avista on June 30, 2000.

Puget Sound states that a copy of the filing was served upon Avista.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18875 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–060]

El Dorado Irrigation District; Notice of Availability of Final Environmental Assessment

July 20, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared a final environmental assessment (FEA). The FEA was prepared in support of Commission action on a proposed license amendment for the El Dorado Project. The proposed amendment would allow the reconstruction of the project's diversion dam and construction of a two-mile-long tunnel to bypass a section of the project's canal that is damaged and/or situated on unstable slopes. The FEA finds that approval of the proposed amendment, with staff's recommended mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment. The El Dorado Project is located on the South Fork of the American River, in El Dorado, Amador, and Alpine counties, California.

On March 24, 2000 the Commission staff issued a draft environmental assessment (DEA) for the project, and requested that comments be filed with the Commission within 45 days. Comments were filed by six entities and are addressed in the FEA for the project.

The FEA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Copies of the DEA and FEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426, or by calling 202–208–1371. The document can be viewed on the web at http://rimsweb1.ferc.fed.us/rims (call 202–208–2222 for assistance). Copies also can be obtained by calling the project manager, John Mudre, at (202) 219–1208.

David P. Boergers,

Secretary.

[FR Doc. 00–18876 Filed 7–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment To License and Soliciting Comments, Motions to Intervene, and Protests

July 21, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 2100–109.

c. *Date Filed:* February 16, 2000.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Hydroelectric Project.

f. *Location:* On the Feather River in Butte County, California. The project utilizes federal lands including the Plumas National Forest, Lassen National Forest, and the tribal lands of the Enterprise Band of the Maidu Indians.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Raymond D. Hart, Deputy Director, California Department of Water Resources, 1416 Ninth Street, P.O. Box 942836, Sacramento, CA 94236–0001, (916) 653–5791.

i. *FERC Contact:* Any questions on this notice should be addressed to Timothy Welch at (202) 219–2666, or e-mail address: Timothy.Welch@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 1, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (2100–109) on any comments or motions filed.

k. *Description of Proposal:* Since 1993, at Lake Oroville, the applicant has been implementing fish habitat enhancement projects, gathering biological/fishery data, and assisting the California Department of Fish and Game with fish rearing, stocking, and development management protocols as required by Commission order issued September 22, 1994. By Commission order issued May 10, 1999, the applicant is currently required to stock no more than 250,000 yearling chinook salmon as an interim and annual stocking rate. Based on its studies, the applicant proposes a final annual stocking rate of 170,000 yearling chinook salmon for the remainder of the license term.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC. 20426, or by calling (202) 208–1371. This filing may be viewed on http:www.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included in the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing's must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC., 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Secretary.

[FR Doc. 00–18879 Filed 7–25–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

2005 Resource Pool

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final power allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration of DOE, published its 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (Sierra Nevada Region) in the **Federal Register**. The Marketing Plan specifies terms and conditions under which Western will market power from the Central Valley Project (CVP) and the Washoe Project beginning January 1, 2005. The Marketing Plan sets aside a portion of the Sierra Nevada Region's marketable power resources to establish a 2005 Resource Pool for new power allocations. Western published a Call for 2005 Resource Pool Applications, a Notice of Extension to file applications, and Proposed 2005 Resource Pool Allocations in the **Federal Register**. The formal comment period on the proposed power allocations from the 2005 Resource Pool ended on July 5, 2000. A discussion of comments received is included in this notice. After considering all comments, Western has decided to finalize the proposed power allocations. This notice sets forth Western's final allocations of power from the 2005 Resource Pool.

DATES: The final 2005 Resource Pool allocations will become effective on August 25, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Hirahara, Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421, hirahara@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

Pursuant to its authorities under the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved, Western established the Marketing Plan for sale of power by the Sierra Nevada Region after 2004. On June 25, 1999, Western published the Marketing Plan in the **Federal Register** (64 FR 34417), describing how the Sierra Nevada Region will market its power resources beginning January 1, 2005, through December 31, 2024. Pursuant to Western's authorities under the above acts and applying the rules developed in the Marketing Plan, Western publishes its final allocations of power from the 2005 Resource Pool in this notice.

Regulatory Procedural Requirements

Western addressed the regulatory procedure requirements in its rulemaking for the Marketing Plan (64 FR 34417). The proposed allocation of power in this notice is an application of the Marketing Plan and is not a separate rulemaking.

Background

On October 19, 1999, Western published the Call for 2005 Resource Pool Applications in the **Federal Register** (64 FR 56343). On December 9, 1999, Western published a Notice of Extension in the **Federal Register** (64 FR 69018). The Call for 2005 Resource Pool Applications required that applications be submitted by December 20, 1999, and the Notice of Extension extended the filing date by 30 days to January 19, 2000. On June 5, 2000, Western published the Proposed 2005 Resource Pool Applications in the **Federal Register** (65 FR 35630).

CVP power facilities are operated by the United States Department of the Interior, Bureau of Reclamation (Reclamation), and include 11 powerplants with a maximum operating capability of about 2,044 megawatts (MW), and an estimated average annual generation of 4.6 million megawatthours (MWh). Western markets and transmits power available from the CVP.

The Washoe Project's Stampede Powerplant is also operated by Reclamation and has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. The Sierra Pacific Power Company owns and operates the only transmission system available for access to the Stampede Powerplant.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and 44 circuit miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project. Many of Western's existing customers have no direct access to Western's transmission lines and receive service over

transmission lines owned by other utilities.

Responses to Comments Received on the Notice of Proposed 2005 Resource Pool Allocations (65 FR 35630, June 5, 2000)

During the comment period, Western received one letter commenting on the proposed allocations from the 2005 Resource Pool. Western reviewed and considered all comments made in this letter.

Comment: The commentor said that it was unclear in the notice what method Western used in determining how much allocation each eligible applicant received. Also, the commentor requested that an existing customer receive a greater allocation based on "the ratio of an existing customer's load not served by its current CRD allocation."

Response: Under the Marketing Plan, Western used its discretion to allocate power to applicants that meet the eligibility and allocation criteria set forth in the Marketing Plan. The amount of power each eligible existing customer currently receives from Western was a consideration.

Comment: The commentor stated that new customers should not have a larger percentage of their load served by CVP than an existing customer.

Response: Artificially constraining allocations to new customers would defeat the purpose of the Power Marketing Initiative under the Energy Planning and Management Program (60 FR 54151, October 20, 1995), which led to establishing the Resource Pool. One of the primary reasons for establishing a Resource Pool was to promote the widespread use of Federal hydroelectric power among preference entities.

Final 2005 Resource Pool Allocations

Allocations are expressed as a percentage of the marketable resource. For illustrative purposes only, megawatt amounts are given assuming variable amounts of Base Resource. Allottees to receive power from the 2005 Resource Pool, allocations expressed as percentages of the Base Resource, and the megawatt amount of each allocation assuming a Base Resource of 500 MW, 1000 MW, and 1500 MW are listed here:

Allottees	Percent	Base resource		
		500 MW (MW)	1000 MW (MW)	1500 MW (MW)
Bay Area Rapid Transit District	0.147	0.735	1.470	2.205
California State Universities (11 campuses)	0.221	1.105	2.210	3.315
California State University, Sacramento	0.092	0.460	0.920	1.380
Cawelo Water District	0.029	0.145	0.290	0.435
Coyote Valley Tribe of Pomo Indians	0.055	0.275	0.550	0.825
East Bay Municipal Utility District	0.054	0.270	0.540	0.810
Fallon, City of	0.221	1.105	2.210	3.315
Healdsburg, City of	0.087	0.435	0.870	1.305
Lassen Municipal Utility District	0.105	0.525	1.050	1.575
Lodi, City of	0.147	0.735	1.470	2.205
Lompoc, City of	0.120	0.600	1.200	1.800
Modesto Irrigation District	0.147	0.735	1.470	2.205
Placer County Water Agency	0.039	0.195	0.390	0.585
Reclamation District No. 108	0.043	0.215	0.430	0.645
Redding Rancheria	0.037	0.185	0.370	0.555
San Francisco, City and County of	0.147	0.735	1.470	2.205
Sonoma County Water Agency	0.028	0.140	0.280	0.420
Southern San Joaquin Municipal Utility District	0.037	0.185	0.370	0.555
Susanville Indian Rancheria	0.103	0.515	1.030	1.545
Table Mountain Rancheria	0.147	0.735	1.470	2.205
Truckee Donner Public Utility District	0.220	1.100	2.200	3.300
Turlock Irrigation District	0.128	0.640	1.280	1.920
University of California, Berkeley	0.221	1.105	2.210	3.315
University of California, San Francisco	0.175	0.875	1.750	2.625
Total	2.750	13.750	27.500	41.250

Contracting Process

After the effective date of this notice, Western will begin the contracting process with allottees who are not currently customers. Existing customers who received power allocations from the 2005 Resource Pool will receive a revised Exhibit A to their electric service Base Resource contracts, increasing their percentage of the Base Resource. Allottees must execute an electric service contract to purchase the Base Resource no later than December 31, 2000, unless otherwise agreed to in writing by Western. If requested, Western will work with customers to develop a custom product to meet their needs. Custom products are described in the Marketing Plan. Allottees must execute a contract to purchase the custom product, if desired, no later than December 31, 2002, unless otherwise agreed to in writing by Western. The date of initial service under these contracts is January 1, 2005. Contracts will remain in effect until midnight of December 31, 2024. Western will also establish a 2015 Resource Pool for new allocations under a separate public process.

Dated: July 17, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–18870 Filed 7–25–00; 8:45 am]

BILLING CODE 6450–01–P

VOL 65 ISS 144 JL 26 2000 UMI

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6841–4]

Land Disposal Restrictions: Notice of Intent To Grant a Site-Specific Treatment Variance to Safety-Kleen (Deer Park), Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant petition.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today announcing our intent to grant a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for approximately 2850 cubic yards of hazardous waste that Safety-Kleen (Deer Park), Inc. is currently storing at its Deer Park, Texas facility. Safety-Kleen requests this one-time variance because the waste cannot be treated to the interim K088 total arsenic standard of 26.1 mg/kg. Furthermore, a portion of the waste cannot meet the 28 mg/kg total dithiocarbemates treatment standard for the waste codes K161, P196, and P205. If we grant this one-time petition, Safety-Kleen may dispose of this waste in its on-site RCRA Subtitle C landfill provided the waste complies with the specified alternative treatment standards described in this notice and all other applicable LDR treatment standards.

DATES: This one-time variance is effective on August 25, 2000, unless we receive relevant adverse comment by August 16, 2000. If we receive such comment(s), we will publish a timely notice in the **Federal Register** informing the public that this one-time variance will not be automatically granted and indicating the further steps that will be taken.

ADDRESSES: If you wish to comment on this notice, you must send an original and two copies of the comments referencing Docket Number F–2000–SKVP–FFFFF to: (1) if using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epa.gov. You should identify comments in electronic format with the docket number F–2000–SKVP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. (The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this notice of intent, contact Josh Lewis at 703–308–7877, lewis.josh@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION: The index and selected supporting materials are available on the Internet. You can find these materials at: http://www.epa.gov/epaoswer/osw/hazwaste.htm#ldr.

The official record for this action will be kept in the paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC listed in the **ADDRESSES** section at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this notice. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

A. Authority

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA has interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the court in Hazardous Waste Treatment Council vs. EPA, 886 F. 2d 355 (D.C. Cir. 1989). The Agency has recognized that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA established a treatment variance (40 CFR 268.44) that, if granted, becomes the treatment standard for the waste at issue.

II. Basis for Determination

Under 40 CFR 268.44 (h), EPA allows facilities to apply for a site-specific variance in cases where a waste that is generated under conditions specific to a site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method. Note that there are other grounds for obtaining treatment variances, but this is the only provision relevant to the present petition.

Safety-Kleen (Deer Park), Inc. ("Safety-Kleen") formally submitted its request for a treatment variance from the interim K088 total arsenic treatment

standard in March 1999. The request was for approximately 2850 cubic yards of hazardous waste. In a subsequent submittal of information, Safety-Kleen requested a variance from the total dithiocarbamate treatment standard for a portion of this fixed quantity of waste. All of the information and data used in the development of this notice can be found in the RCRA docket.

A. Establishment of Treatment Standards for K088

K088, the EPA waste code for spent potliners from primary aluminum reduction (see 40 CFR 261.32), is generated by the aluminum manufacturing industry. Aluminum production occurs in four distinct steps: (1) Mining of bauxite ores; (2) refining of bauxite to produce alumina; (3) reduction of alumina to aluminum metal; and (4) casting of the molten aluminum. Bauxite is refined by dissolving alumina (aluminum oxide) in a molten cryolite bath. Next, alumina is reduced to aluminum metal. This reduction process requires high purity aluminum oxide, carbon, electrical power, and an electrolytic cell. An electric current reduces the alumina to aluminum metal in electrolytic cells, called pots. These pots consist of a steel shell lined with brick with an inner lining of carbon. During the pot's service, the liner is physically and chemically degraded. Upon failure of a liner in a pot, the cell is emptied, cooled, and the lining is removed.

The Phase III LDR rule (61 FR 15566, April 8, 1996) established treatment standards, expressed as numerical concentration limits, for various hazardous constituents in spent potliner waste. There were 25 in all, with standards for both wastewaters and nonwastewaters. These constituents include arsenic, cyanide, fluoride, toxic metals, and a group of organic compounds called polycyclic aromatic hydrocarbons (PAHs). The standards were based on treatment performance data from Reynolds Metal Company, which uses a high-temperature thermal process to treat the degraded potliners that are broken up into various size pieces prior to treatment.

After EPA published its final treatment standards, Columbia Falls Aluminum Company and other aluminum producers from the Pacific Northwest brought a judicial challenge to the standards. The petitioners argued, among other things, that the use of the toxicity characteristic leaching procedure (TCLP) did not accurately predict the leaching of K088 waste constituents, particularly arsenic and fluoride, to the environment and that it was therefore arbitrary to measure compliance with the treatment standard using this test.

On April 3, 1998, the United States Court of Appeals for the District of Columbia Circuit decided that EPA's use of the TCLP as a basis for setting treatment standards for K088 was arbitrary and capricious for those constituents for which the TCLP demonstratively and significantly underpredicted the amount of the constituent that would leach. See 139 F.3d 914; see also 63 FR 28571, May 26, 1998 (EPA's interpretation of court's opinion). The court vacated all of the treatment standards and the prohibition on land disposal. *Id.* at 923–24. After an interim stay, on September 24, 1998, EPA promulgated an interim final rule that revised the K088 treatment standard for arsenic from a TCLP standard of 5.0 mg/l to a total arsenic standard of 26.1 mg/kg. See 63 FR 51253. It is this interim adjustment of the arsenic K088 treatment standard from which Safety-Kleen seeks relief by way of this treatment variance.

B. Chemical Properties and Treatability Information on Safety-Kleen's Waste

The waste at issue consists of about 2850 cubic yards of incineration residues (ash or wastewater treatment plant scrubber sludge filter cake) that are in storage at the Safety-Kleen Deer Park facility. The waste carries many EPA hazardous waste codes, one of which is K088. Safety-Kleen's K088 waste, however, is significantly different, both physically and chemically, from the waste used to set the K088 treatment standard. The waste that is initially incinerated by Safety-Kleen consists of various non-potliner materials (*e.g.*, tank wash water, bin liners, laboratory waste) that have been in contact with K088 waste prior to incineration but carry the K088 waste code solely because of the "mixture" and "derived-from" rules. Neither the incoming wastes nor the treatment residues bear any resemblance to the degraded potliners that are the original K088 waste form. Of course, as described below, we have examined the constituents of concern that could have been transferred from the K088 waste itself to these wash waters, bin liners, and lab wastes and to the residues from the treatment of these wastes.

Safety-Kleen sampled and analyzed ten grab samples of 25 cubic yard bins containing the waste treatment residues. The TCLP values for all of the K088 regulated hazardous constituents (save one) in the analyzed samples are below the detection limit. However, because of arsenic contamination from wastes other than K088 (*e.g.*, the characteristic arsenic waste code D004), nine of the ten Safety-Kleen samples do not meet the interim K088 total arsenic standard of 26.1 mg/kg. The total arsenic concentrations (in mg/kg) of the ten samples are: non-detect, 7.7 (duplicate), 88, 210, 41, 47, 57, 92 (duplicate), 100, 130, 110, and 88.

A second issue concerning dithiocarbamates arises with respect to 500 of the 2850 cubic yards of the Safety-Kleen waste treatment residues. This portion of the waste residuals carries the waste codes K161, P196, and P205.[1] These three waste codes all have total dithiocarbamates as one of the constituents that requires treatment.

The 500 cubic yards cannot meet the current total dithiocarbamates treatment standard of 28 mg/kg because Safety-Kleen uses Betz 5636, a liquid anionic polymer that contains about 18–20% total dithiocarbamates, to precipitate metals out of the scrubber water that is generated from Safety-Kleen's incineration process. Because the Betz 5636 is added in the post-combustion scrubber water, the scrubber sludge filter cake has a base load of total dithiocarbamates as high as 132 mg/kg, which is above the total dithiocarbamates treatment standard of 28 mg/kg. Because LDR compliance testing is performed on treatment residuals after all the treatment steps are performed, there is no practical way to discriminate between the regulated dithiocarbamate coming from any K161, P196, and P205 waste versus the unregulated dithiocarbamate coming from the use of the Betz 5636 product.[2]

III. Alternative Treatment Standards for Safety-Kleen's Waste

A. Alternative Standard for Arsenic

As discussed in the previous section, Safety-Kleen's waste is not K088 itself and is also significantly different, both physically and chemically, from the K088 waste used in developing the K088 treatment standards. Specifically,

[1] K161 is the waste code for purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts, P196 for manganese dimethyldithiocarbamate, and P205 for zinram.

[2] In the Emergency Revision of the LDR Treatment Standards for Listed Hazardous Wastes from Carbamate Production; Final Rule (63 FR 47409, September 4, 1998), we note that the EPA analytical method for total dithiocarbamates, Method 630, determines total dithiocarbamates after conversion of the dithiocarbamates to carbon disulfide and measurement of the carbon disulfide. We further state that the method does not distinguish individual dithiocarbamate compounds. Therefore, use of the method on Safety-Kleen's scrubber water filter cake measures both regulated and unregulated dithiocarbamates.

Safety-Kleen's waste contains other waste codes (*e.g.*, D004) that contribute to the total arsenic concentration of the waste. Therefore, it is not physically possible for Safety-Kleen to treat the waste to the K088 treatment standard of 26.1 mg/kg total arsenic. Instead, we are proposing that the 2850 cubic yards of waste comply with an alternative treatment standard for arsenic of 5.0 mg/L. This is, of course, the current universal treatment standard (UTS) for arsenic that would otherwise apply to this waste were it not for the K088 waste code carry through. After treatment, the waste is to be disposed in Safety-Kleen's North landfill, which is a RCRA permitted hazardous waste landfill.

B. Alternative Standard for Total Dithiocarbamates

For the 500 cubic yards of the waste that cannot meet the total dithiocarbamate treatment standard of 28 mg/kg developed for K161, P196, and P205, we are proposing to allow Safety-Kleen to dispose of the 500 cubic yards without further treatment for several reasons. First, any K161, P196, and P205 waste being handled by Safety-Kleen at Deer Park has already been incinerated. This satisfies the applicable regulatory requirements regarding this waste, and incineration is the best, demonstrated, and available treatment technology for these wastes and the types of regulated dithiocarbamates in them.

Second, the only reason why dithiocarbamates is an issue for these wastes is that the testing for compliance with the K161, P196, and P205 treatment standards occurs on treatment residuals sampled downstream of the scrubber water precipitation process. Non-regulated dithiocarbamate product added at that point presumably is the vast majority of any detectable dithiocarbamate, since at least 99.99% of any dithiocarbamate residing in the K161, P196, and P205 waste would be expected to have been destroyed in the combustion chamber.

Third, the dithiocarbamate issue only arises for this 500 cubic yards of waste because of an independent change in EPA regulations. Prior to March 4, 1999, the treatment standard for total dithiocarbamates in nonwastewaters was a specified method of treatment: CMBST, or combustion. [3] On March 4, 1999, we revised the treatment standards for seven carbamate waste constituents so that they are now expressed as both numerical limits as well as specified technologies; removed all treatment standards for one additional waste constituent; and reinstated numerical treatment standards for 32 other carbamate waste constituents. (See 63 FR 47409).

Safety-Kleen was aware of the potential treatment problems that this reinstatement of the numerical treatment standards for total dithiocarbamates would cause, namely that the downstream residual testing of its incinerator treatment residuals would pick up non-regulated dithiocarbamates in addition to any trace amounts of regulated dithiocarbamates. On its part, Safety-Kleen instituted timely measures to avoid these problems. Starting on August 12, 1998, Safety-Kleen stopped accepting waste carrying EPA codes K161, P196, and P205. The facility's plan was to incinerate all of the dithiocarbamates waste in its inventory and landfill the residues prior to the effective date of our institution of numerical, concentration standards for total dithiocarbamates, *i.e.*, March 4, 1999. However, this solution was compromised when EPA changed the TCLP-based arsenic K088 treatment standard to 26.1 mg/kg total arsenic on September 21, 1998. The 500 cubic yards of waste with the dithiocarbamate problem also carry the K088 waste code, fail the total arsenic standard for reasons addressed earlier, and therefore could not be landfilled prior to the March 4, 1999 target date for Safety-Kleen. EPA was not fully aware, at that time, about this linkage and the unforeseen consequence of changing the arsenic treatment standard for K088 on August 12, 1998, some seven months earlier than the revised dithiocarbamate standards went into effect—a date on which Safety-Kleen's disposal plans hinged.

We are therefore proposing to better harmonize the impacts of the two independent treatment standard changes that impact the 500 yards of Safety-Kleen's waste now being stored. Our avenue for relief is to propose to allow the 500 cubic yards of dithiocarbamate contaminated waste to be disposed without further treatment for the reasons discussed above. Our treatment objectives have already been achieved for K161, P196, and P205. Safety-Kleen has treated these wastes by the specified method of combustion and the regulated dithiocarbamates have been addressed in a manner that protects human health and the environment. Also, in light of Safety-Kleen's good faith effort to effectively treat and legally dispose of these wastes prior to March 4, 1999, we deem it appropriate to grant relief from the unintended consequences of our independent action to revise the K088 arsenic standard.

C. Conditions of the Proposed Variance

In summary, if we grant this one-time treatment variance, the approximately 2850 cubic yards of incinerator residues currently stored at Safety-Kleen's Deer Park facility would be subject to an alternative arsenic treatment standard of 5.0 mg/L. Furthermore, the 500 cubic yards of the waste that do not currently meet the total dithiocarbamates treatment standard of 28 mg/kg can be disposed at their current concentrations (which can be as high as 132 mg/kg) without further treatment. Finally, the waste would have to be disposed in Safety-Kleen's on-site Subtitle C landfill assuming it meets all other applicable federal, state, and local requirements.

Dated: July 20, 2000.

Timothy Fields, Jr.,

Assistant Adminstrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–18906 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–P

[3] After promulgation of the Phase III rule on April 8, 1996 (but before the effective date of July 8, 1996) several companies reported that laboratory standards were not available for some of the carbamate waste constituents. After confirming this assertion, we promulgated an emergency final rule on August 26, 1996 (61 FR 43924) in which we established temporary alternative treatment standards for 40 carbamate waste constituents for a one-year period. These alternative standards provided waste handlers a choice of meeting the original Phase III numerical concentration limits or of using a specified treatment technology (combustion for nonwastewaters; combustion, biodegradation, chemical oxidation, or carbon adsorption for wastewaters). The laboratory standards were still unavailable at the end of the one year, so we extended the alternative treatment standards for one additional year until August 26, 1998 (62 FR 45568, August 28, 1998). A September 4, 1998 final rule resolved the issue by revising the treatment standards for seven carbamate waste constituents so that they are now expressed as both numerical limits as well as specified technologies; removing all treatment standards for one additional waste constituent; and reinstating numerical treatment standards for 32 other carbamate waste constituents (see 63 FR 47409; effective on March 4, 1999).

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30497; FRL–6595–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30497, must be received on or before August 25, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30497 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Suku Oonnithan, Regulatory Action Leader, Registration Division (7505C), Office of Pesticide Programs Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone: 703–605–0368; e-mail address: oonnithan.suku@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30497. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30497 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30497. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the application.

Product Containing the Active Ingredient (Phosphine) Involving a Changed Use Pattern

EPA Reg. No. 68387–7. Applicant: CYTEC Industries, Inc., West Patterson, NJ 07424. Product name: ECO2FUME Fumigant Gas. Insecticide. Active Ingredients: Phosphine at 2% and carbon dioxide at 98%. Classification: Restricted use. Proposed change: To include in its presently registered non-food use; new uses: as a fumigant against insect pests of raw agricultural commodities, packaged processed food, and feed commodities.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 12, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–18929 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34216A; FRL–6737–3]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, phosalone. In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34216A, must be received by EPA on or before September 25, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34216A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on phosalone, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control number OPP–34216A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34216A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: opp-

docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34216A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, phosalone. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA—USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the phosalone preliminary risk assessments, which where released to the public January 12, 2000 (65 FR 1867) (FRL–6486–9), through a notice in the Federal Register.

In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for phosalone. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific phosalone use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre–harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non–target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before September 25, 2000 at the addresses given under the ADDRESSES section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 20, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–18930 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30458A; FRL–6591–4]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide products Prohexadione Calcium Manufacturing Use Product, Apogee Plant Growth Regulator, and Baseline Plant Regulator containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30458A, must be received on or before August 25, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the SUPPLEMENTARY INFORMATION. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30458A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30458A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30458A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30458A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and**Federal Register** citation.

II. Did EPA Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where

certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of prohexadione calcium, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of prohexadione calcium during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Approved Application

1. *Applications approved and published.* EPA published a notice in the **Federal Register** of August 6, 1998 (63 FR 42030) (FRL–6020–5), announcing that K-I Chemical U.S.A., Inc. 11 Martine Ave., 9th Floor, White Plains, NY 10606, had submitted applications to register the pesticide products Prohexadione Calcium Manufacturing Use Product (EPA File Symbol 63588–RN) and Baseline Plant Regulator (EPA File Symbol 63588–O) containing the active ingredient prohexadione calcium [cyclohexanecarboxylic acid 3,5-dioxo-4-(1-oxopropyl)-, ion (1-) calcium salt] at 91% and 75%, respectively.

2. *Applications approved but not published.* K-I Chemical U.S.A., Inc. submitted an application to EPA to register the pesticide product Apogee Plant Growth Regulator (EPA File Symbol 63588–RR) containing the same chemical at 27.5%. However, since the notice of receipt of the application to register the product as required by section 3(c)(4) of FIFRA, as amended, did not publish in the **Federal Register**, interested parties may submit comments on or before August 25, 2000 for this product only.

The applications were conditionally approved on April 26, 2000, for two end-use products and a technical listed below:

1. Prohexadione Calcium Manufacturing Use Product (EPA registration number 63588–10) for formulating use only.

2. Apogee Plant Growth Regulator (EPA registration number 63588–11) for reduction of vegetative growth on apples and pears.

3. Baseline Plant Regulator (EPA registration number 63588–9) for reduction of vegetative growth on peanuts.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–18645 Filed 7–25–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 009548–054.

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference.

Parties: Farrell Lines, Inc., Waterman Steamship Corporation, Turkon Container Transport & Shipping Inc.

Synopsis: The proposed amendment deletes provisions which restrict the prerogative of a member, or a member's subsidiary, to set its own rates, preclude an agent from representing non-conference carriers operating in the Agreement trade, and restrict a member's ability to charter space aboard vessels it operates in the trade.

Agreement No.: 011284–036.

Title: Ocean Carrier Equipment Management Association.

Parties: A.P. Moller-Maersk Sealand, APL Co. PTE Ltd, Hapag-Lloyd Container Linie Gmbh, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line (UK) Ltd, Orient Overseas Container line, Inc., P&O Nedlloyd B.V., P&O Nedlloyd Limited.

Synopsis: The modification makes clear that the parties to the agreement are not authorized to negotiate, agree upon, or jointly contract for rates or compensation paid to motor carriers or port truck drivers.

Agreement No.: 011346–010.

Title: Israel Trade Conference Agreement.

Parties: Farrell Lines, Inc., Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment deletes provisions which restrict the prerogative of a member, or a member's subsidiary, to set its own rates and which preclude an agent from representing non-conference carriers operating in the Agreement trade.

Agreement No.: 011632–002.

Title: Turkey/United States Rate Agreement.

Parties: Farrell Lines, Inc., Turkon Container Transport & Shipping Inc.

Synopsis: The proposed amendment deletes a provision which requires a member to quote and collect payment for the carriage of freight strictly in accordance with Agreement tariffs and services contracts.

Agreement No.: 011657–004.

Title: Zim/Italia Space Charter Agreement.

Parties: Zim Israel Navigation Co., Ltd. Italia di Navigazione, S.p.A.

Synopsis: The parties are amending their agreement to reflect an increase in service frequency and to adjust space allocations.

Agreement No.: 011671–002.

Title: Italia/Contship Space Charter and Sailing Agreement.

Parties: Italia di Navigazione, S.p.A., Contship Containerlines Limited.

Synopsis: The parties are amending their agreement to increase the number of vessels that they will use under the agreement.

Agreement No.: 011717.

Title: Maersk Sealand/Cagema Space Charter Agreement.

Parties: Cagema Limited, A.P. Moller-Maersk Sealand.

Synopsis: The proposed agreement authorizes the parties to contribute one vessel each and to charter or exchange space on each other's vessel operating in the trade between ports in Florida and the Caribbean.

Dated: July 21, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–18933 Filed 7–25–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Combitrans Consolidators, Inc., 1900 North Loop West, Suite 290, Houston, TX 77018, Officer: Luis A. Acosta, Executive Director, (Qualifying Individual)

SCL (CHI) Inc. d/b/a Sunice Cargo Logistics, 818 Foster Avenue, Bensenville, IL 60106, Officer: Yuk Lin Cheng Wolfe, President, (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Billings Freight Systems, Inc. d/b/a BFS Global, 1414 Blairs Bridge Road, Lithia Springs, GA 30057, Officers: Michael L. Smith, Vice President, (Qualifying Individual), Irvin W. Albert, Chairman

OCC Maritime, Inc., 7950 N.W. 77th Street, Suite 3A, Miami, FL 33166, Officers: Rosa Maria Ferradaz, President, (Qualifying Individual), Carlos Vidal, Secretary

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

FAB Logistics Incorporated, 437 Rozzi Place, Suite #108, South San Francisco, CA 94080, Officers: Thomas H. Moon, President, (Qualifying Individual), Mouhamet Dia, Vice President

Dated: July 21, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–18932 Filed 7–25–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Ardmore Merger Corporation, Ardmore, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Corporation of Ardmore, Inc., Ardmore, Oklahoma, and thereby indirectly acquire First National Bank and Trust Company of Ardmore, Ardmore, Oklahoma.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. North Valley Bancorp, Redding, California; to acquire 100 percent of the voting shares of Six Rivers National Bank, Eureka, California.

Board of Governors of the Federal Reserve System, July 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18926 Filed 7–25–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–18323) published on pages 45081 and 45082 of the issue for Thursday, July 20, 2000.

Under the Federal Reserve Bank of New York heading, the entry for Caixa Geral De Depositos, S.A., Lisbon, Portugal, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Caixa Geral De Depositos, S.A., Lisbon, Portugal; to retain approximately 8.8 percent of the outstanding voting shares of Banco Commercial Portugues, S.A., Oporto, Portugal and thereby indirectly acquire shares of BPABank, National Association, Newark, New Jersey.

Under the Federal Reserve Bank of San Francisco heading, the entry for Wells Fargo & Company, San Francisco, California, is revised to read as follows:

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of First Security Corporation, Salt Lake City, Utah, and thereby indirectly acquire voting shares of First Security Bank, N.A., Ogden, Utah; First Security Bank of New Mexico, N.A, Albuquerque, New Mexico; First Security Bank of Nevada, Las Vegas, Nevada; and First Security Bank of California, N.A., West Covina, California.

In connection with this application, Wells Fargo proposes to acquire the nonbanking subsidiaries of First Security Corporation, including First Security Mortgage Company, Salt Lake City, Utah, and thereby engage in lending activities pursuant to § 225.28(b)(1) of Regulation Y; First Security Leasing Company and Bankers

Equipment Alliance, Inc., both of Salt Lake City, Utah, and thereby engage in leasing activities pursuant to § 225.28(b)(3) of Regulation Y; First Security Investment Services, Inc., and First Security Investment Management Inc., both of Salt Lake City, Utah, and thereby engage in investment and financial advisory activities pursuant to § 225.28(b)(6) of Regulation Y; First Security Specialized Services, Inc., Salt Lake City, Utah, and thereby engage in providing financial advisory and management consulting services pursuant to §§ 225.28(b)(6) and (9) of Regulation Y; First Security Life Insurance Company of Arizona, Phoenix, Arizona, and thereby engage in reinsuring credit-related insurance pursuant to § 225.28(b)(11)(i) of Regulation Y; and First Security Processing Services, Inc., Salt Lake City, Utah, and thereby engage in providing bankcard and ATM transaction services for other financial institutions pursuant to § 225.28(b)(14) of Regulation Y.

Comments on both these applications must be received by August 14, 2000.

Board of Governors of the Federal Reserve System, July 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18927 Filed 7–25–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Westdeutsche Landesbank Girozentrale, Dusseldorf, Germany; and WestLB Asset Management (USA) LLC, Chicago, Illinois, to acquire Phillips Capital Management LLC, Chicago, Illinois, and thereby engage in investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, July 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18928 Filed 7–25–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1385]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medicated Feed Mill Licenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information for medicated feed mill licensing requirements.

DATES: Submit written comments on the collection of information by September 25, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medicated Feed Mill Licenses 21 CFR Part 515—(OMB Control Number 0910–0337)—Extension

In the **Federal Register** of November 19, 1999 (64 FR 63195), FDA published a final rule implementing the feed mill licensing provisions of the Animal Drug Availability Act of 1996 (Public Law 104–250). The rule added part 515 (21 CFR part 515) to provide the requirements for medicated feed mill licensing.

The rule set forth the information to be included in a medicated feed mill license application and subsequent supplemental applications. Also, it set forth criteria for the approval and nonapproval of a medicated feed mill license application and the criteria for the revocation and/or suspension of a license. More specifically, § 515.10(b) specifies requirements for submitting a completed medicated feed mill license application, using Form FDA 3448. Section 515.11(b) specifies requirements for supplemental medicated feed applications for a change in ownership and/or change in mailing address for the facility cite, using Form FDA 3448. Section 515.23 sets forth written requirements for voluntary revocation of a medicated feed mill license by a sponsor on the grounds that the facility no longer manufacture any animal feed. Section 515.30(c) details requirements for filing a request for a hearing by a sponsor to give reasons why a medicated feed mill license application should not be refused or revoked and § 510.305(b) (21 CFR 510.305(b)) requires maintenance of approved labeling for each Type B and/or Type C feed being manufactured on the premises of the manufacturing establishment or the facility where the feed labels are generated.

Respondents to this collection of information are individuals or firms that manufacture medicated animal feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
515.10(b)	100	1	100	0.25	25
515.11(b)	25	1	25	0.25	6.25
515.23	50	1	50	0.25	12.25
515.30(c)	0.15	1	0.15	24	3.6
Total					47.10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
510.305(b)	100	1	100	.25	25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate for the number of respondents is derived from agency data, i.e. the number of medicated feed manufacturers entering the market each year, change in ownership or address, requests for voluntary revocation of a medicated feed mill license, revocation and/or suspension of a license. The estimate of the time required for the reporting and recordkeeping requirements is based on the agency communication with industry.

Dated: July 21, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–18943 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0393]

Agency Information Collection Activities; Proposed Collection; Comment Request; MedWatch: FDA's Medical Product Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the "MedWatch: The FDA Medical Products Reporting Program" forms (Form FDA 3500 (voluntary version) and Form FDA 3500A (mandatory version). These forms will be used to report to the agency about adverse events and product problems that occur with FDA-regulated products.

DATES: Submit written comments on the collection of information by September 25, 2000.

ADDRESSES: Submit written requests for single copies of the revised MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory), to: MedWatch: The FDA Medical Products Reporting Program (HF–2), Food and Drug Administration, 5600 Fishers Lane, rm. 17–65, Rockville, MD 20857, 301–827–7240. Send one self-addressed adhesive label to assist that office in processing your request. Copies of the forms may also be obtained via the Internet at http://www.fda.gov/medwatch under "How to Report."

Submit written comments on the MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory), to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document. Copies of

the MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory) are available for public examination via the Internet at http://www.fda.gov/ohrms/dockets/dockets/dockets.htm or in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MedWatch: The FDA Medical Products Reporting Program (Forms FDA 3500 and FDA 3500A) (OMB Control Number 0910–0291)—Extension

Under sections 505, 512, 513, 515, and 903 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355, 360b, 360c, 360e, and 393); and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(1) of the act, it is misbranded if it fails to bear adequate warnings, and under section 502(j), it is misbranded if it is dangerous to health when used as directed in its labeling.

Under section 4 of the Dietary Supplement Health and Education Act of 1994 (the DSHEA) (21 U.S.C. 301), section 402 (21 U.S.C. 342) is amended so that FDA must bear the burden of proof to show a dietary supplement is unsafe.

To carry out its responsibilities, the agency needs to be informed whenever an adverse event or product problem occurs. Only if FDA is provided with such information, will the agency be able to evaluate the risk, if any, associated with the product, and take whatever action is necessary to reduce or eliminate the public's exposure to the risk through regulatory action ranging from labeling changes to the rare product withdrawal. To ensure the marketing of safe and effective products, certain adverse events must be reported. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 600, and 803 (21 CFR parts 310, 314, 600, and 803), specifically §§ 310.305, 314.80, 314.98, 600.80, 803.30, 803.50, 803.53, and 803.56.

To implement these provisions for reporting of adverse events and product problems with all medications, devices, and biologics, as well as any other products that are regulated by FDA, two very similar forms are used. Form FDA 3500 is used for voluntary (i.e., not mandated by law or regulation) reporting of adverse events and product problems by health professionals and the public. Form FDA 3500A is used for mandatory reporting (i.e., required by law or regulation).

Respondents to this collection of information are health professionals, hospitals and other user-facilities (e.g., nursing homes, etc.), consumers, manufacturers of biologics, drugs and medical devices, distributors, and importers.

II. Use of the Voluntary Version (Form FDA 3500)

Individual health professionals are not required by law or regulation to submit adverse event or product problem reports to the agency or the manufacturer. There is one exception. The National Childhood Vaccine Injury Act of 1986 mandates that certain adverse reactions following immunization be reported by physicians to the joint FDA/Centers for Disease Control and Prevention Vaccine Adverse Event Reporting System.

Hospitals are not required by Federal law or regulation to submit adverse event reports on medications. However, hospitals and other medical facilities are required by Federal law to report medical device-related deaths and serious injuries.

Manufacturers of dietary supplements do not have to prove safety or efficacy of their products prior to marketing, nor do they have mandatory requirements for reporting adverse reactions to FDA. However, the DSHEA puts the onus on FDA to prove that a particular product is unsafe. Consequently, the agency is totally dependent on voluntary reporting by health professionals and consumers about problems with the use of dietary supplements.

The voluntary version of the form is used to submit all adverse event and product problem reports not mandated by Federal law or regulation.

III. Use of the Mandatory version (Form FDA 3500A)

A. Drug and Biologic Products

In sections 505(j) and 704 of the act (21 U.S.C. 374), Congress has required that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. These statutory requirements regarding mandatory reporting have been codified by FDA under parts 310 and 314 (drugs) and 600 (biologics). Parts 310, 314, and 600 mandate the use of the Form FDA 3500A for reporting to FDA on adverse events that occur with drug and biologics.

B. Medical Device Products

Section 519 of the act (21 U.S.C. 360i) requires manufacturers, importers, or distributors of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services may by regulation reasonably require to ensure that such devices are not adulterated or misbranded and to otherwise ensure its safety and effectiveness. Furthermore, the Safe Medical Device Act of 1990, signed into law on November 28, 1990, amends section 519 of the act. The

amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under part 803. Part 803 mandates the use of Form FDA 3500A for reporting to FDA on medical devices.

C. Other Products Used in Medical Therapy

There are no mandatory requirements for the reporting of adverse events or product problems with products such as dietary supplements. However, the DSHEA puts the onus on FDA to prove that a particular product is unsafe. Consequently, the agency is dependent totally on voluntary reporting by health professionals and consumers about problems with the use of dietary supplements. (Note: Most pharmaceutical manufacturers already use a one-page modified version of the Form FDA 3500A where section G from the back of the form is substituted for section D on the front of the form.)

D. Medical Device Baseline Information

The Medical Device Reporting—Baseline form (Form FDA 3417) relates specifically to the individual device and must be submitted with the first adverse event on that device reported via Form FDA 3500A. The information collected includes the basis for marketing (510(k), PMA, etc.), product code for the device, common name, location where manufactured, and other identifying information. The Health Industry Manufacturers Association (HIMA) first commented in 1992 on the redundancy of information required for the Baseline form stating that the information is also collected by the agency through the device listing process (Form FDA 2892) and through Form FDA 3500A. In 1998, HIMA commented again and, at the request of OMB, FDA explored revising Form FDA 3500A to include the information required by the Baseline form that is not collected through the listing process.

In discussions with OMB it was decided that FDA would not attempt to revise Form FDA 3500A at this time, but would proceed with collecting the information required by the Baseline form as a separate part of the device listing process especially because some of the information required by the current Baseline form will be collected in that listing as a change in the listing regulations. Because the collection of registration and listing information will be through electronic means, the agency envisions a menu option on the Internet site to facilitate the collection of Baseline information.

FDA will be holding stakeholder meetings to discuss the new device registration and listing system and will discuss using the new device registration and listing system electronic process as the vehicle for the Baseline information collection at those meetings.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

FDA Center(s) [1] (21 CFR Section)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
CBER/CDER					
Form 3500 [2]	16,198	1	16,198	0.5	8,099
Form 3500A [3] (310.305, 314.80, 314.98, and 600.80)	600	455.2	273,109	1.0	273,109
CDRH					
Form 3500 [2]	2,650	1	2,650	0.5	1,325
Form 3500A [3] (part 803)	2,046	24	49,305	1.0	49,305
CFSAN					
Form 3500 [2]	550	1	550	0.5	275
Form 3500A [3] (No mandatory requirements)	0	0	0	1.0	0
Total Hours					
Form 3500 [2]					332,113
Form 3500A [3]					9,699
					332,414

[1] CBER (Center for Biologics Evaluation and Research), CDER (Center for Drug Evaluation and Research), CDRH (Center for Devices and Radiological Health), CFSAN (Center for Food Safety and Applied Nutrition).
[2] FDA Form 3500 is for voluntary reporting,
[3] FDA Form 3500A is for mandatory reporting.
Note.—The figures shown in table 1 of this document are based on actual calendar year 1999 reports and respondents for each Center and type of report.

As more medical products are approved by FDA and marketed, and as knowledge increases regarding the importance of notifying FDA when adverse events and product problems are observed, it is expected that more reports will be submitted.

Dated: July 21, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–18944 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1373]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements for Mammography Facilities; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 17, 2000 (65 FR 44061). The document announced an opportunity for public comment on information collection requirements for mammography facilities, standards, and lay summaries for patients. The document was published with an inadvertent error. This document corrects that error.

DATES: July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–17944 appearing on page 44061 in the **Federal Register** of July 17, 2000, the following correction is made:

On page 44061, in the first column, under the **ADDRESSES** caption, after the second sentence, "Persons with access to the Internet may submit electronic comments on the collection of information at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm." is added.

Dated: July 21, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–18942 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0930]

Request for Nominations for Working Groups Under the Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for qualified persons to serve on two fact-finding working groups being formed to support the Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science. The working groups will identify and report on scientific issues that may benefit from focused nonclinical research and collaboration.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees, and therefore, encourages nominations of qualified candidates from these groups. Final selections from among qualified candidates for each working group will be based on the expertise demonstrated for the specific focus areas and previous experience working in these areas.

DATES: All nominations should be received by September 29, 2000.

ADDRESSES: Please submit nominations to Docket No. 00N–0930, Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David C. Morley, Center for Drug Evaluation and Research (HFD–358), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5684, FAX 301–594–2503, e-mail: MORLEYD@CDER.FDA.GOV.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for qualified persons to serve on two fact-finding working groups being formed to support the Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science. The working groups will identify and report on scientific issues that may benefit from focused nonclinical research and collaboration.

FDA is forming the following two working groups:

- A multidisciplinary working group to identify promising areas of nonclinical scientific research to develop biomarkers and/or other evolving molecular technologies to identify or predict drug-induced cardiac tissue injury, and
- A multidisciplinary working group to identify promising areas of nonclinical scientific research to develop biomarkers and/or other evolving molecular technologies to identify or predict drug-induced vasculitis.

Criteria

Persons nominated for the working groups shall have exceptional accomplishments and expertise in the scientific fields appropriate to the working group. In particular, expertise in genomic and proteomic technologies is desired.

Nomination Procedures

Any interested person or organization may nominate one or more qualified persons for one or more of the working groups. Self-nominations are also accepted. Nominations should include appropriate biographical material, a brief (one-half page maximum) endorsement, a list of scientific publications relevant to the working group, and a statement that the nominee is aware of the nomination and is willing to serve on the working group if selected.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–18829 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1384]

Medical Devices; Draft Guidance for Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves." Many foreign manufacturers and shippers of surgeons' and/or patient examination gloves have consistently failed to provide surgeons' and/or patient examination gloves of adequate quality for distribution in the United States, which presents a potential serious hazard to health for users and patients. The draft guidance is intended to help industry understand our policy to monitor continuously recidivist firms under our import program. This policy is neither final nor is it in effect at this time.

DATES: Submit written comments concerning this draft guidance by October 24, 2000.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Draft Guidance for Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch, (HFA–305), Food

and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in the brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Keenan, Center for Devices and Radiological Health (HFZ–333), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4618.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance is intended to provide guidance to FDA staff and industry about a recidivist policy for firms that repeatedly attempt to import surgeons' and patient exam gloves that violate quality requirements. FDA's experience with sampling, examination, and testing of surgeons' and/or patient examination gloves raises concerns about the barrier properties of some gloves exported to the United States. Our analyses of surgeons' and patient examination gloves exported to the United States show a significant variation in the quality of the gloves exported by various manufacturers/shippers. We repeatedly place the same manufacturers/shippers on import detention due to leaks and defects in their gloves. These firms then need to provide us with private laboratory analyses for a number of shipments in order to demonstrate that the quality of the gloves and the firm's manufacturing operations comply with FDA standards. Once the firms provide such evidence, we remove them from import alert. However, many of these same manufacturers/shippers have repeated violative analyses and return to import alert status. This cyclical problem of violations requires continuous auditing and monitoring of recidivist firms to prevent the entry of defective gloves into the United States.

In an attempt to ensure that surgeons' and/or patient examination gloves exported to the United States are in compliance with FDA's standards, we revised Import Alert #80–04, "Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves," referred to as the "recidivist policy." This initiative was a joint effort between the agency's Center for Devices and Radiological Health's Office of Compliance, ORA's Division of Import Operations and Policy, and the Office of Chief Counsel.

The recidivist policy defines three increasingly stringent compliance levels for firms who have shipped violative surgeons' and patient examination gloves to the United States. Levels 1 and 2 allow voluntary compliance opportunities, while Level 3 provides a mechanism to issue a warning letter for apparent violations of the Federal Food, Drug, and Cosmetic Act, including noncompliance with the quality systems regulation for good manufacturing practices. A finding of Level 3 noncompliance will automatically place any future shipments of surgeons' or patient examination gloves from the manufacturer/shipper on detention, without the need for FDA to perform an actual inspection at the manufacturer, due to the continued failure of the surgeons' and/or patient examination gloves to pass minimum FDA standards upon import.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a draft Level 1 guidance consistent with GGP's. This guidance document represents the agency's current thinking on the surveillance and detention without physical examination of surgeons' and/or patient examination gloves. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive the draft guidance on "Guidance for Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 1141 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes various Level 1 guidance documents for comment, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance for Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves" will be available at http://www.fda.gov/cdrh/oc/glove1.pdf.

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by October 24, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–18830 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–437, 437A, 437B]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to

be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Psychiatric Unit Criteria Worksheet, Rehabilitation Unit Criteria Worksheet, and Rehabilitation Hospital Criteria Worksheet, and Supporting Regulations at 42 CFR 412.20–412.32; *Form No.:* HCFA–437, 437A, and 437B (OMB# 0938–0358); *Use:* The rehabilitation hospital/unit and psychiatric unit criteria worksheets are necessary to verify and reverify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system; *Frequency:* Annually; *Affected Public:* Business or other-for-profit, Not-for-profit institutions, State, local, or tribal government.; *Number of Respondents:* 2,580; *Total Annual Responses:* 2,580; *Total Annual Hours:* 645.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 11, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–18835 Filed 7–25–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program In-School Worksheets (New)

The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographical and specialty maldistribution of physicians and other health practitioners in the United States. Under this program, health professional students are offered scholarships in return for services in a federally-designated Health Professional Shortage Area (HPSA). If awarded an NHSC Scholarship, the Program will require the schools and the awardees to review and complete relative data collection worksheets for each year that the student is NHSC Scholar.

The Data Sheet Form requests that the NHSC Scholar review the form for accuracy of pertinent information such as, social security number, contact information, current curriculum, and date of graduation information. If the scholar finds the printed information to be accurate, they must sign the form and return it to the NHSC Scholarship Program in the envelope provided. If the NHSC Scholar finds the information inaccurate in regards to their name or contact information, they are to make the necessary changes directly on the form. If the inaccurate information pertains to their curriculum or date of graduation, the scholar will make changes directly on the form and include written notification from their school.

The Verification Sheet Form is sent to the school along with a list of the NHSC scholars who are enrolled at their school for the current academic year. The schools are asked to verify and/or correct the enrollment status of each of the scholars on the list. Once the verification is complete the school must sign and date the form and return it to the NHSC Scholarship Program in the envelope provided.

The Contact Sheet Form is sent to the schools and it requests the contact information of pertinent school officials. This information is used by the NHSC Scholarship Program for future contacts with the schools.

The estimated burden is as follows:

Form name	Number of respondents	Responses per respondent	Hours per response (min)	Total burden hours
Data Sheet	800	1	10	137
Verification Sheet	800	1	10	137
Contact Sheet	800	1	10	137
Total	800	.....	.....	411

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 19, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–18832 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60) FR 56605 as amended November 6, 1995, as last amended at 65 FR 38565–68 dated June 21,2000).

This notice reflects the organizational and functional changes in the Bureau of Health Professions (RP). Make the following changes:

1. Delete the opening functional statement for the Bureau of Health Professions in its entirety and replace with the following:

Bureau of Health Professions (RP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Assess the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization assumptions; (2) collects and analyzes data and disseminates information on the characteristics and capacities of the Nation's health personnel production systems; (3) proposes new or modifications of existing Departmental legislation, policies, and programs related to health personnel development and utilization; (4) develops, tests and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for targeted health personnel development and utilization; (7) provides leadership for promoting equity and diversity in access to health services and health careers for under-represented minority groups; (8) provides technical assistance, consultation, and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides linkage between Bureau headquarters and HRSA Field Office activities related to health professions education and utilization by providing training, technical assistance, and consultation to Field Office staff; (10) coordinates with the programs of other agencies within the Department, and in other Federal Departments and agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; (12) in coordination with the Office of the Administrator, Health Resources and Services Administration, serves as a focus for technical assistance activities in the international aspects of health personnel development, including the conduct of special international projects relevant to domestic health personnel problems; (13) administers the National Vaccine Injury Compensation Program; (14) administers the National Practitioner Data Bank Program; (15) administers the Healthcare Integrity and Protection Data Bank Program; (16) administers the Ricky Ray Hemophilia Relief Fund Program; and (17) administers the Children's Hospitals Graduate Medical Education (CHGME) Payment Program.

2. Delete the opening functional statement for the Office of Program Support in its entirety and replace with the following:

Office of Program Support (RP1)

Plans, directs, coordinates and evaluates Bureau-wide administrative management activities, including grants management and financial management activities. Maintains close liaison with officials of the Bureau, Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on management and support activities. Specifically: (1) Serves as the Bureau Director's principal source for management and administrative advice and assistance; (2) provides advice, guidance, and coordinates personnel activities for the Bureau with the Division of Personnel, HRSA: (3) directs and coordinates the allocation of personnel resources; (4) provides organization and management analysis, develops policies and procedures for internal operation, and interprets and implements the Bureau's management policies, procedures and systems; (5) develops and coordinates program and administrative delegations of authority activities; (6) responsible for planning and directing Bureau financial management activities, including budget formulation, presentation, and execution functions; (7) conducts all business management aspects of the review, negotiation, award and administration of Bureau grants management activities; (8) provides Bureau-wide support services such as supply management, equipment utilization, printing, property management, space management, records management and management reports; (9) serves as the Bureau's focal point for correspondence control; (10) manages the Bureau's performance management systems; (11) coordinates and provides guidance on the Freedom of Information Act and Privacy Act activities; (12) coordinates the development of the Bureau's annual procurement plans and schedule for Bureau grants, contracts, and cooperative agreements; and (13) develops general guidance and criteria related to the Bureau's grant programs.

3. Establish the Office of Extramural Program Review.

Office of Extramural Program Review (RPG)

(1) Serves as the Bureau's focal point for the administration and management of the grants and cooperative agreement review process, and its peer review functions; (2) develops, implements and maintains policies and procedures necessary to carry out primary functions in keeping with all Agency (3) maintains close liaison between Divisions/Offices to obtain information regarding potential peer reviewer panelists; (4) provide technical assistance to Peer Reviewers ensuring that reviewers are aware of and comply with the appropriate administrative policies and regulations, *e.g.*, conflict of interest, confidentiality, and Privacy Act; (5) provide technical advice and guidance to the Director regarding the Bureau's peer review processes; (6) coordinate and assure the development of program policies and rules relating to the Bureau's extramural activities; (7) administer the Bureau's peer review function under the Federal Advisory Committee Act; and provide Divisions with final disposition, *e.g.*, approval/disapproval for all applications peer reviewed.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: July 18, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–18831 Filed 7–25–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2001 National Household Survey on Drug Abuse—(0930–0110, Revision)—SAMHSA's National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States 12 years of age and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2001 NHSDA, additional questions in the following substantive areas are planned: serious mental illness for adults; one question regarding state Children's Health Insurance Program (CHIP) coverage for respondents (12 to 19 years old); revised questions on tobacco dependence; questions on marketplace issues and knowledge of state laws regarding marijuana use; questions on smoking "bidis" (flavored cigarettes); and two questions that use the "item count" methodology to estimate use of specific hard-core drugs. The remaining modular components of the NHSDA questionnaire will remain essentially unchanged except for minor modifications to wording and selective elimination of sufficient questions to allow for the additional burden of the questions listed above.

As in 1999 and 2000, the sample size of the survey for 2001 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is 88,563 hours as shown below:

	No. of respondents	Responses/respondent	Average burden/response (hrs.)	Total burden hours
Household Screener	210,000	1	0.083	17,430
NHSDA Interview	70,000	1	1.000	70,000
Screening Verification	6,405	1	0.067	429
Interview Verification	10,500	1	0.067	704
Total	.....	.....	.....	88,563

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 19, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–18857 Filed 7–25–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication, AA–9086–03; Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance (DIC) to Chugach Alaska Corporation, notices of which were published in the **Federal Register** on May 4, 1999, and June 24, 1999, are modified to replace the easements to be reserved, and add a right-of-way interest in Federal Aid Secondary Route No. 851 (FAS 851) as to T. 8 S., R. 3 E., Copper River Meridian, Alaska.

A notice of the modified decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the modified decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, shall have until August 25, 2000 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Except as modified, the decisions, notices of which were given May 4, 1999 and June 24, 1999, are final.

Jerri Sansone,

Land Law Examiner, Branch of 962 Adjudication.

[FR Doc. 00–18859 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9087–A;]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims

Settlement Act of December 18, 1971, 1613(a), will be issued to Old Harbor Native Corporation for the village of Old Harbor. The lands involved are in the vicinity of Old Harbor, Alaska.

Seward Meridian, Alaska, U.S. Survey No. 10920, Alaska

Containing 119.99 acres as shown on the plat of survey officially filed on November 25, 1992.

T. 33. S., R. 23 W.,
Sec. 5, lot 2;
Sec. 6, lot 2;
Sec. 8, lot 2;
Sec. 9, lots 1 and 2;
Sec. 10, lot 1.

Containing 1,305.04 acres as shown on the plat of survey officially filed on April 16, 1999.

T. 33 S., R. 24 W.,
Sec. 12, lots 2, 3, and 4.

Containing 172.36 acres as shown on the plat of survey officially filed on December 3, 1999.

Aggregating 1,597.39 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Kodiak Daily Mirror* newspaper. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until (August 25, 2000) to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Dennis R. Benson,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–18860 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–13000–1210–PA]

Wilderness Study Area Management; Year Round Closure of Pollock Bench Trail to Mountain Biking

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to close Pollock Bench Trail to mountain bike use in the Black Ridge Canyons Wilderness Study Area.

SUMMARY: This order, issued under the authority of section 303 of the Federal Land Policy and Management Act of 1976 and 43 CFR 8364.1, prohibits use of the Pollock Bench Trail by mountain bikes in the Black Ridge Canyons Wilderness Study Area. The identified public lands are in Colorado, Mesa County, under the management jurisdiction of the Bureau of Land Management, Grand Junction Field Office. The area is located in T.1 N., R.3 W., Sections 14, 15, 22, and 27.

EFFECTIVE DATES: The closure shall be in effect year round beginning July 31, 2000 and shall remain in effect permanently.

SUPPLEMENTARY INFORMATION: BLM administers approximately 75,000 acres in the Black Ridge Canyons Wilderness Study Area (WSA). Contained within this WSA is the Pollock Bench Trail which has been open to mountain biking since the area became a WSA in the early 1980's. At that time, all types of use, including mountain bike use of the trail was very light. In recent years, the trail has become increasingly popular for mountain biking due to its close proximity to the cities of Fruita and Grand Junction. As a result of the large numbers of bikers now using the area, the trail is becoming wider in many places and off-trail tracks are very numerous. Riders are leaving the existing track along the majority of the trail. Numerous tracks can be seen passing through or around vegetation, leaving the trail for no apparent reason, or to access overlook spots. This use has created impairment of the areas wilderness values as defined in the BLM's Interim Management Policy and Guidelines for Lands Under Wilderness Review. Additionally, the cumulative impact of a higher and higher percentage of bikers using the trail is negatively affecting the recreation experience and safety of other trail users. This closure is necessary to protect the area's wilderness characteristics.

Notice of this closure will be posted at the BLM's Grand Junction Field Office as well as on-the-ground at the Pollock Bench Trailhead and at the Wilderness Study Area boundary.

Penalties: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Field Manager, Grand Junction Field Office, 2815 H Road Grand Junction, Colorado 81506; (970) 244–3010.

Catherine Robertson,

Grand Junction Field Manager.

[FR Doc. 00–18861 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–1430–ET; CACA 42078]

Public Land Order No. 7459; Partial Revocation of California Desert Protection Act of 1994; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes the California Desert Protection Act of 1994 insofar as it affects 42.3 acres within the boundaries of the China Lake Naval Weapons Center withdrawn for the Department of the Navy for military purposes. The land is no longer needed for the purpose for which it was withdrawn. This action returns the land to Bureau of Land Management administration and opens it to surface entry and mineral leasing. The land will remain withdrawn from mining due to an overlapping withdrawal.

EFFECTIVE DATE: August 25, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886, 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 808 of the California Desert Protection Act of 1994, 108 Stat. 4506, it is ordered as follows:

1. The withdrawal created by Section 803(a) of the California Desert Protection Act of 1994, for military purposes, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 27 S., R. 41 E.,

Sec. 5, that portion more particularly described in Record of Survey 98–0045 on file in the Official Records of the County of San Bernardino Recorder's Office, in Book 110 at Pages 95 and 96 of the Record of Survey.

The area described contains 42.3 acres, more or less, in San Bernardino County.

2. At 10 a.m. on August 25, 2000, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 25, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of the filing.

3. At 10 a.m. on August 25, 2000, the land will be opened to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: July 7, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–18886 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1220–PA]

Restriction Order for BLM Lands in Gamlin Lake Area, Bonner County, Idaho No. ID–080–24

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Idaho Department of the Interior.

ACTION: Notice of restriction order for BLM Lands in Gamlin Lake area, Bonner County, Idaho, Order No. ID–080–24.

SUMMARY: By order, the following restrictions apply to the Gamlin Lake Special Management Area, described as all public land administered by the Bureau of Land Management (BLM) located in Section 7, T.56N., R.1E., Boise Meridian. Maps depicting the restricted area are available for public inspection at the BLM, Coeur d'Alene Field Office, 1808 North Third St., Coeur d'Alene, Idaho 83814.

1. Overnight camping by any person or group of persons is prohibited.

2. Grazing and equestrian activities (to include recreational or personal uses) with horses and similar animals such as mules, burrows, and llamas are prohibited.

The authority for establishing these restrictions is Title 43, Code of Federal Regulations, 8364.1.

3. Use of motorized vehicles on other than existing county roads is prohibited. The authority for establishing this restriction is Title 43, Code of Federal Regulations, 8341.2. These restrictions become effective immediately and shall remain in effect until revoked. These restrictions do not apply to:

(1) Any federal, state, or local official or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

(3) Any person or group expressly authorized by an Authorized Officer to use or occupy the subject public land through the issuance of a special recreational use permit or other use authorization.

These restrictions are necessary because the area does not have facilities which can accommodate overnight camping and the activities associated with long-term occupancy; trails aren't constructed to accommodate equestrian activities; and to protect the public land from soil erosion and habitat degradation due to off-road vehicle use.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Eric Thomson, Field Manager, Bureau of Land Management Coeur d'Alene Field Office, 1808 N. Third Street, Coeur d'Alene, Idaho 83814.

Dated: July 13, 2000.

Ted Graf,

Acting District Manager.

[FR Doc. 00–18836 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–14000–00–1220–00]

Camping Closure in Horseshoe Bend Area of Glenwood Springs Field Office; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Order of camping restriction.

SUMMARY: This order closes to camping and overnight use, public lands in the Horseshoe Bend area, east of Glenwood Springs, Colorado. The affected public land is generally located south of Interstate 70, along the Glenwood Canyon bicycle path, east of Glenwood Springs, Colorado. The camping closure includes public lands in T. 6 S., R. 89 W., Section 3 SE¼ 6th Principal Meridian; Garfield County.

This action is in accordance with the Glenwood Springs Resource Management Plan, Record of Decision (BLM, 1984). This order, issued under the authority of 43 CFR 8364.1, is established to protect persons, property, public lands and resources. Any camping or overnight use within the closed area, year-round, is prohibited. This order does not affect day time use.

EFFECTIVE DATES: The restriction shall be effective upon publication until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: The area affected by this order has been damaged by long term camping, trash and improper disposal of human waste. It is along a popular bicycle route along the Colorado River to Glenwood Springs, used extensively for day-time use. The existence of large camps along the trail conflicts with this use, local residences and is a negative visual impact for heavy river use.

The area and routes affected by this order will be posted with appropriate regulatory signs in such a manner and location as is reasonable to bring prohibitions to the attention of visitors. Information, including maps of the restricted area, is available in the Glenwood Springs Field Office at the addresses shown below.

Persons who are exempt from the restrictions include: (1) Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized by permit to camp in the closed area.

PENALTIES: Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7.

ADDRESSES: Field Office Manager, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Dorothy Morgan (970) 947–2806.

Anne Huebner,

Glenwood Springs Field Office Manager.

[FR Doc. 00–18837 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Legislative Environmental Impact Statement, Timbisha Shoshone Homeland in and Around Death Valley National Park; Notice of Second Extension of Public Comment Period

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Legislative Environmental Impact Statement (LEIS) assessing potential impacts of Congress establishing a proposed Timbisha Shoshone Tribal Homeland in and around Death Valley National Park, California. The Draft LEIS identifies parcels of land suitable for the Timbisha Shoshone Indian Tribe to establish a permanent homeland. In deference to public interest expressed to date from local governmental agencies, organizations, and other interested parties, the original 60-day public comment period has been extended for a total of 30 calendar days from the original July 22, 2000 deadline.

SUPPLEMENTARY INFORMATION: Interested individuals, organizations, and agencies are encouraged to provide written comments—to be considered any response must now be postmarked no later than August 21, 2000.

All responses should be addressed to the Superintendent, Death Valley National Park, P.O. Box 579, Death Valley, California 92328. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

To obtain a copy of the LEIS please contact Bettie Blake at (760) 786–3243. All other questions can be directed to Joan DeGraff at (760) 255–8830.

Dated: July 18, 2000.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–18841 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Correction to Notice of Proposed Year-Round Closure at Fort Funston and Request for Comments

CORRECTION: Public comments on this notice must be received by September 18, 2000.

Dated: July 17, 2000.

Donald Mannal,

Acting Superintendent, GGNRA.

[FR Doc. 00–18842 Filed 7–25–00; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–457 A–D (Review)]

Heavy Forged Handtools From China

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on heavy forged handtools from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 1999 (64 FR 35682) and determined on October 1, 1999 that it would conduct full reviews (64 FR 55958, October 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 10, 2000 (65 FR 6626). The hearing was held in Washington, DC, on May 16, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 19, 2000. The views of the Commission are contained in USITC Publication 3322 (July 2000), entitled Heavy Forged Handtools from China: Investigations Nos. 731–TA–457 (A–D) (Review).

By order of the Commission.

Dated: July 21, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18925 Filed 7–25–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation 332–419]

Pricing of Prescription Drugs

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: July 19, 2000.

SUMMARY: Following receipt of a request on June 29, 2000, from the Committee on Ways and Means (the Committee) of the United States House of Representatives, the Commission instituted investigation No. 332–419, Pricing of Prescription Drugs, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Nesbitt, Project Leader (202–205–3355) or Raymond L. Cantrell, Deputy Project Leader (202–205–3362), Office of Industries, or Michael Barry, Deputy Project Leader (202–205–3246), Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

BACKGROUND: The Committee requested that the Commission's report include the following information for Canada, France, Germany, Italy, Japan, Mexico, Russia, and the United Kingdom:

- The process by which prescription drug prices are established;
- The role of compulsory licensing in setting prices;
- A description of the costs associated with the development of prescription drugs, and a comparison of the authorized prices in the specified countries; and
- Whether and to what extent price control systems utilized by such countries impact pricing for comparable drugs in the United States.

The Commission plans to submit its report to the Committee by September 29, 2000.

Written Submissions: A hearing will not be held. Instead, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. In addition to general information regarding prices and pricing practices prevalent in each of the countries under consideration, the Commission is particularly interested in comments regarding the question raised by the Committee in their request regarding the extent to which price control systems utilized by the countries under consideration impact pricing for comparable drugs in the United States. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions must conform with the provisions of § 201.8 of the Commission's Rules. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 4, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects: Prescription drugs, Price controls, Compulsory licensing.

Dated: July 21, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18924 Filed 7–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–426]

Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint

In the matter of certain spiral grill products including ducted fans and components thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) of the presiding administrative law judge (ALJ) terminating the above-captioned investigation on the basis of complainant's withdrawal of its complaint.

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–0663.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 26, 2000, based on a complaint filed by Vornado Air Circulation Systems, Inc. of Andover, Kansas ("Vornado"). 65 FR 4260.

On June 1, 2000, Vornado filed a motion to terminate the investigation without prejudice based on withdrawal of its complaint. On June 12, 2000, respondents, The Holmes Group, Inc., of Milford, Massachusetts, Holmes Products (Far East) Ltd. (Hong Kong), and Holmes Products (Far East) Ltd. (Taiwan), (collectively "Holmes"), and the Commission investigative attorney filed separate submissions in support of complainant's motion to terminate the investigation. On June 16, 2000, the presiding ALJ issued an ID granting complainant's motion.

No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42(h), 19 CFR 210.42(h).

Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

By order of the Commission.

Dated: July 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18923 Filed 7–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: August 2, 2000 at 2 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–860 (Final)(Tin-and Chromium-Coated Steel Sheet from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 9, 2000.)
5. Inv. No. 731–TA–856 (Final) (Certain Ammonium Nitrate from Russia)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 14, 2000.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 21, 2000.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19036 Filed 7–24–00; 3:35 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 205, Preliminary Estimates of Average Employer Contribution Rates; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on a proposed continuance for a collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 205, Preliminary Estimates of Average Employer Contribution Rates. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 30, 2000.

ADDRESSES: Tom Stengle, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone number (202) 219–7196 ext. 377; fax: (202) 219–8506 (these are not toll-free numbers) or email tstengle@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 205 reports preliminary information on the taxation efforts in States relative to taxable and total wages and allows for comparison among States. The information is used for projecting unemployment insurance tax revenues for the Federal budget process as well as for actuarial analyses of the Unemployment Trust Fund. The data is published in several forms and is often requested by data users. In addition, this report helps to fulfill two statutory requirements. Section 3302(d)(7) of the Federal Unemployment Tax Act (FUTA) requires the Secretary of Labor to notify "the Secretary of the Treasury before June 1 of each year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year" of the difference between the average tax rate in a State and the 2.7 percent (*i.e.* section 3302(c)(2)(B) or (C)). These differences are used to calculate the loss of FUTA offset credit for borrowing States. Also, the tax schedules are used to assure that States are in compliance with provisions of the Tax Equity and Fiscal Responsibility Act (P.L. 97–248), section 281.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Preliminary Estimates of Average Employer Contribution Rates.
OMB Number: 1205–0228.
Agency Number: ETA.
Affected Public: State Governments.
Cite/Reference/Form/etc: ETA 205.
Total Respondents: 53.
Frequency: Annual.
Total Responses: 53.
Average Time per Response: 15 minutes.
Estimated Total Burden Hours: 14.
Total Burden Cost (capital/startup): $0.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 17, 2000.

Grace A. Kilbane,
Director, Office of Workforce Security.

[FR Doc. 00–18864 Filed 7–25–00; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 41–98, Change 1

UIPL 41–98, Change 1, provides further information and guidance concerning the requirements of the prevailing conditions of work provisions of Section 3304(a)(5)(B) of the Federal Unemployment Tax Act. It also provides answers to questions raised by State Employment Security Agencies and other interested parties.

Dated: July 20, 2000.

Raymond Bramucci,
Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Classification: UI
Correspondence Symbol: TEUL
Date: July 19, 2000

Directive: Unemployment Insurance Program Letter No. 41–98 Change 1.
To: All State Employment Security Agencies.
From: Grace A. Kilbane, Administrator, Office of Workforce Security.
Subject: Application of the Prevailing Conditions of Work Requirement—Questions and Answers.

1. *Purpose.* To provide further information and guidance concerning the requirements of the prevailing conditions of work provisions of the Federal Unemployment Tax Act (FUTA) and to provide answers to questions raised by State Employment Security Agencies (SESAs) and other interested parties.

2. *References.* Section 3304(a)(5)(B), FUTA; Unemployment Compensation Program Letter (UCPL) No. 130; Unemployment Insurance Program Letter (UIPL) No. 984; UIPL No. 41–98;

Sections 6010–6015, Part V, of the *Employment Security Manual.*

3. *Background.* Section 3304(a)(5)(B), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that the State shall not deny unemployment compensation (UC) to any otherwise eligible individual for refusing to accept new work:

if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

On August 17, 1998, the Department of Labor issued UIPL No. 41–98 to remind States of the requirements of the prevailing conditions of work provision of Section 3304(a)(5)(B), FUTA, and to provide additional guidance to States when adjudicating prevailing conditions issues. UIPL No. 41–98 reiterated the guidance previously issued in UCPL No. 130 and UIPL No. 984 and addressed a change in the labor market (since the issuance of those two program letters)—the increase in temporary work—and its relation to the prevailing conditions requirement. It also expanded on the guidance found in UIPL No. 984 that a change in the duties, terms, or conditions of the work is, in effect, an offer of "new work."

The Department has received several comments and questions requesting further information and guidance concerning the prevailing conditions of work requirement. Therefore, this Change 1, incorporating answers to common questions regarding this requirement, is issued to assist States in applying the provision.

4. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

Attachment—Questions and Answers.

Questions and Answers

I. New Work

Q1. What constitutes new work?

A. New work is defined in both UIPL No. 41–98 and UIPL No. 984. On page 4, Section 4.b., of UIPL No. 41–98, new work is defined to include:

(1) An offer of work to an individual by an employer with whom the worker has never had a contract of employment,

(2) An offer of reemployment to an individual by a previous employer with whom the individual does not have a contract of employment at the time the offer is made, and

(3) An offer by an individual's present employer of:

(a) Different duties from those the individual has agreed to perform in the existing contract of employment; *or*

(b) Different terms or conditions of employment from those in the existing contract. [Emphasis in original.]

This restates the definition of new work contained on page 3 of UIPL No. 984.

Q2. How does the definition of new work apply to changes in the employment conditions for an individual by the current employer? Is any change in conditions an offer of new work?

A. States are not required to treat any minor change in a job situation as an offer of new work. For a change in job situation to be considered new work, the change must be material. For example, if an individual is reassigned from one general secretarial position to another general secretarial position, and the only change is a different supervisor, an offer of new work does not exist under the prevailing conditions requirements. On the other hand, if the new assignment is as an accounting clerk, when the previous assignment was as a secretary, the change is material and the prevailing conditions requirements apply. (Note that the actual duties, and not simply job titles, must be examined. See Q & A #10.) This test for new work with a current employer applies to new assignments from either permanent employers or temporary help firms. In applying this test to either situation, States must determine on a case-by-case basis whether a change is material.[1]

Q3. When an individual works for a temporary help firm, and an assignment ends, is the offer of another assignment new work?

A. Not always. For the new assignment to be new work, the change between the assignments must be material. For example, if the first assignment was as a secretary at a rate of pay of $10 per hour at ABC Company, and the second assignment is as a secretary at a rate of pay of $10 per hour for XYZ Company (and there are no other changes), the second assignment is not an offer of new work, because the change in conditions is not material. On the other hand, if the second assignment is as an accounting clerk, even at the same rate of pay, the change is material, because the duties are substantially different; therefore, the offer is an offer of new work. (As discussed in Q and A #10, the actual duties, and not simply job titles, must be examined.) Alternatively, if the second assignment is as a secretary, but at a rate of pay of $8 an hour, a material change in conditions exists.

Q4. Does a new assignment from a temporary help firm constitute new work when there is no break in employment between assignments? For example, if the individual's first assignment ends on Tuesday and the new assignment starts on Wednesday, there is no break in employment.

A. Provided the new assignment meets all other criteria for new work, the new assignment is new work. Whether there is a break in the employment relationship is not relevant. As stated in UIPL 41–98, new work includes an offer by an individual's "present employer."

II. Determining Prevailing Conditions

Q5. May temporary work be compared only with temporary work for purposes of determining what constitutes similar work?

A. No. UIPL No. 41–98 states (on page 10) that new temporary work must be compared not just with similar temporary work, but with "all work, temporary and permanent, in a similar occupational category." This statement continued the Department's precedent established in UCPL No. 130, dating from 1947, that the work offered is compared with similar work in the occupation. UCPL No. 130 also states on page 5 of its attachment that—

Neither should the question of what is similar work be determined on the basis of other factors [such as] * * * the permanency of the work. * * * These other factors must be considered, but only after the question of what is similar work is decided. If they were considered in determining what is similar work, such considerations would beg the very question at issue: what *conditions* generally prevail for similar work? [Emphasis in original.]

The Department believes that the use of occupation is the proper starting point for determining what is and is not similar work. However, as discussed in Question and Answer 9 below, it is not sufficient in itself. If the basic type of work offered (for example, secretarial) for temporary employment is the same basic type of work offered for permanent employment, then the difference is in one of the conditions of the employment—permanent or temporary. Since the prevailing conditions requirement applies to "wages, hours or other conditions of work," the temporary nature of the work must be taken into account in applying the prevailing conditions of work requirement and in determining

[1] Some changes in working conditions, such as a change in the physical location of the work, while not raising an issue under the Federal prevailing conditions requirements, may create an inquiry as to whether the work meets the suitability requirements of State law.

whether the work offered is substantially less favorable to the individual.

Q6. Must fringe benefits be considered in every case involving a prevailing conditions issue?

A. No. When a prevailing conditions issue is raised, the State need only examine those prevailing conditions such as hours, wages, physical conditions of the work, or fringe benefits that the State has reason to believe may be less than prevailing. However, if the individual raises a prevailing conditions of work issue concerning fringe benefits, the fringe benefits must be examined.

Q7. May wage and fringe benefit packages be combined when determining what is prevailing? May they be combined even if one element is not prevailing? For example, a building trades job offers higher than prevailing wages but no health insurance or retirement plan where those benefits are a prevailing condition in the locality. Must a value be placed on the fringe benefits to make a comparison?

A. FUTA is silent on this matter. Therefore, States may either consider fringe benefits as part of wages or treat them separately for purposes of the prevailing conditions requirement. If a State combines fringe benefits with wages, fringe benefits must be given a cash value and included in the calculation of wages.

Q8. May the State presume that a negotiated union wage and benefit package is not substantially less favorable than the conditions prevailing in the locality?

A. No. Determinations must not be made based on presumptions. States always must obtain as much information as necessary in each individual case to support a decision that conditions of a job offer meet the prevailing conditions requirement.

Q9. May the existence of a contract, collectively bargained or otherwise, that grants the employer the right to change employment conditions obviate the requirement to analyze whether a change in employment is new work? For example, a contract may provide for bumping rights as a result of a reduction-in-force or give management the right to transfer the worker to a new job.

A. No. As stated in Section 4.b. of UIPL No. 41–98, a finding that a change in employment is new work may not be limited by an employment contract which grants the employer the right to change employment conditions. This applies even if the employer is forced to change the employment conditions as a result of a collective bargaining agreement.

Q10. May the inquiry of what constitutes "similar work" be limited to occupation?

A. No. Occupation by itself is not sufficient. As stated on page 4 of the attachment to UCPL No. 130, "job titles are sometimes misleading." This UCPL also states that:

Different occupation and grade designations are often used in different establishments for the same work. Conversely, the same titles are sometimes used for different kinds of work. *The actual comparison of jobs must therefore be made on the basis of the similarity of the work done without regard to title:* that is, the similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved. *[Emphasis in original.]*

In sum, the State must consider the knowledge, skills, abilities, and duties involved in the work.

Q11. Must States determine a separate prevailing criterion for entry level versus all other steps within a given occupation?

A. Yes. If the issue is skill grade within an occupation, the State must break down the given occupation accordingly. States also must distinguish other steps within the occupation from each other, when important differences exist between those steps. See also the answer to the previous question. In addition, as stated on pages 4 and 5 of the attachment to UCPL No. 130:

The nature of the services rendered may also be differentiated within an occupational category by the degree of skill and knowledge required. The work of a head bookkeeper in a large concern who sets up the bookkeeping system and assumes responsibility for it, is clearly different from that of a bookkeeper in charge of "accounts payable" or a posting clerk in the department.

The UCPL goes on to state:

[T]he fact that "similar" makes allowance for some difference though it implies a marked resemblance must also be given weight. Too fine a distinction is likely to result in a comparison of identical rather than similar work. Generally, distinctions should be made within an occupation only when important differences in the performance of the job outweigh the essential similarity of the work.

Q12. Is asking the parties the only feasible way of obtaining labor market information as to prevailing fringe benefits?

A. Not necessarily. However, alternatives are sometimes not available. States should, however, first use whatever resources are available to determine prevailing fringe benefits. Some sources are unions, Job Service records, or the Bureau of Labor Statistics.

III. Substantially Less Favorable to the Individual

Q13. Are assignments offered by a temporary help agency always substantially less favorable to the individual than permanent employment?

A. No. There are several considerations that must be addressed to determine if the offer is substantially less favorable to the individual.

States must first determine whether the temporary nature of the work offered is prevailing in the locality. As noted on page 10 of UIPL No. 41–98, if "the norm for a particular occupation in a locality is temporary work, then temporary work is the prevailing condition of such work." There then exists no issue whether the temporary nature of new work is substantially less favorable to the individual. (However, fringe benefits, wages, hours, and other conditions also may be relevant in determining if the offer is substantially less favorable to the individual.)

Another consideration is whether the temporary employer demonstrates that the "temporary" worker will continue to be employed at the end of each individual assignment, but merely on different assignments with the same duties and pay. If this occurs, then the duration of the work is indefinite.

Another consideration is whether a particular condition (such as the temporary nature of the work refused) is actually *less* favorable *to the individual* than that prevailing for similar work in the locality. The next question and answer addresses this issue.

As is the case for all determinations, determinations regarding whether the work is substantially less favorable to the individual must be made by the State in accordance with the requirements of the Standard for Claims Determination, Sections 6010–6015, Part V, of the Employment Security Manual.

Q14. May the language "to the individual" be applied so as to interpret a short-term offer from a temporary help agency as being *not* substantially less favorable to an individual who has sought out and desires work in the temporary (as opposed to the permanent) market because of personal circumstances, such as a need to be flexibly in and out of the labor market?

A. Yes. If the temporary nature of the work is a voluntary or favorable condition of work for the individual, then UC may be denied if work is refused. As stated in the last full paragraph on page 10 of UIPL No. 41–98, "the short-term duration of temporary work may be a voluntary or favorable condition for some individuals. If the State establishes through fact finding that this is the case for an individual, then the work offered is 'not less favorable to the individual' than the work prevailing in the locality."

Q15. May a State deny UC if an individual refuses an offer of work on a non-prevailing shift? Does the answer change if the individual has a preference for the non-prevailing shift?

A. A State may not deny UC in this instance unless the individual has a preference for the non-prevailing shift. Shifts are addressed on page 22 of UCPL No. 130: "* * * second or third shift work would generally be substantially less favorable if most of the workers in the occupation were employed on the first shift. It is because the second and third shifts are recognized as less convenient by both employers and employees that differentials are frequently paid for such work."

The State must, however, determine whether working on a certain shift actually is a non-prevailing condition. For example, suppose that the prevailing condition for a particular type of work in a given locality is that almost all employers operate three shifts a day. Therefore, the State could determine that any of the three shifts meets the prevailing conditions requirement. Conversely, if the prevailing condition in the locality is to operate only two shifts, a day shift and an evening shift, an offer of work on a third shift, the night shift, would fail to meet the prevailing conditions test. However, if the individual has a preference for the non-prevailing shift, then that shift is not a condition of work that is less favorable to the individual and UC may be denied. (Also see the footnote to Question 2 above.)

[FR Doc. 00–18867 Filed 7–25–00; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the Contingent Work Supplement to the Current Population Survey (CPS). A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before September 25, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** Section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for over 50 years. Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 through 9. Since the mid-1980s, there has been a growing belief among labor market researchers that employers require greater flexibility in their use of labor. As a result, many workers find themselves in "contingent jobs" that are structured to last for only limited duration or in alternative employment arrangements such as independent contracting, on-call work, working through a contract company or through a temporary help firm. It is feared that workers with such employment may have little job security, low pay, and no employee benefits. This CPS supplement will provide objective information about "contingent work."

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The Contingent Work Supplement to the CPS provides information on the number and characteristics of workers in contingent jobs, that is, jobs that are structured to last only a limited period of time. The survey also provides information about workers in several alternative employment arrangements, including those working as independent contractors and on-call workers, as well as through temporary help agencies or contract companies.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Contingent Work Supplement to the Current Population Survey.

OMB Number: 1220–0153.

Affected Public: Households.

Total Respondents: 48,000.

Frequency: Monthly.

Total Responses: 48,000.

Average Time Per Response: 9 minutes.

Estimated total Burden Hours: 7,200 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the

information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 20th day of July 2000.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–18868 Filed 7–25–00; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

DATE AND TIME: August 2, 2000: 12:30 p.m.—1 p.m.—Closed Session.

August 3, 2000: 11:30 a.m.—12 Noon—Closed Session.

August 3, 2000: 12:30 p.m.—4:30 p.m.—Open Session.

August 3, 2000: 4:30 p.m.—6 p.m.—Closed Session.

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, August 2

Closed Session (12:30 p.m.—1 p.m.)

—Closed Session Minutes, May 2000
—NSB Executive Committee Elections
—NSB Member Proposals

Thursday, August 3

Closed Session (11:30 a.m.—12 Noon)

—Awards and Agreements

Open Session (12:30 p.m.—4:30 p.m.)

—Swearing-in, NSB Nominees
—Open Session Minutes, May 2000
—Closed Session Items for October 2000
—Chairman's Report
—Director's Report
—NSF Planning Issues
Priority Setting: Diversity
—National S&E Infrastructure
—EHR Program Approvals
Federal Cyber Service
Centers for Learning and Teaching
—NSB Report—Communicating Science in the National Interest
—Committee Reports
—Presentation: NSF Office of the Inspector General
—Other Business

Closed Session (4:30 p.m.—6 p.m.)

—FY 2000 budget

Martha Cehelsky,

Executive Officer.

[FR Doc. 00–18972 Filed 7–24–00; 10:10 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Final rule entitled "Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites," 10 CFR 50 and 10 CFR 72.

3. The form number if applicable: NRC Forms 366, 366A, and 366B, "Licensee Event Report (LER)" and continuation pages.

4. How often the collection is required: Events involving reactors are reportable on occurrence.

5. Who will be required or asked to report: Holders of operating licenses for commercial nuclear power plants.

6. An estimate of the number of responses: 1220 telephone reports per year under 10 CFR 50.72(b) and 10 CFR 50.73(a) [a reduction of 180] and 1130 written reports per year under 10 CFR 50.73(a) [a reduction of 270] for a total reduction of 450 reports per year.

7. The estimated number of annual respondents: 104.

8. An estimate of the total number of hours needed annually to complete the requirement or request:

—A reduction of 270 hours for 180 fewer telephone notifications.
—A reduction of 13,500 hours for 270 fewer written LERs.
—In addition, there is a one-time implementation burden of about 20,800 hours (or 6,933 hours per year over three years) to revise reporting procedures and conduct training.
—The total burden reduction is 13,770 hours (not including the one-time implementation burden).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The NRC is amending the event reporting requirements for nuclear power reactors in 10 CFR 50.72 and 50.73 to reduce or eliminate the unnecessary reporting burden associated with events of little or no safety significance. This final rule continues to provide the Commission with reporting of significant events where Commission action may be needed to maintain or improve reactor safety or to respond to heightened public concern. It also better aligns event reporting requirements with the type of information NRC needs to carry out its safety mission, including revising reporting requirements based on importance to risk and extending the required reporting times consistent with the time that the information is needed for prompt NRC action. NRC Form 366 is being modified to reflect the revised reporting sections contained in 10 CFR 50.73. Also, NUREG–1022, Revision 2, "Event Reporting Guidelines, 10 CFR 50.72 and 50.73," is being made available concurrently with the final rule.

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance packages are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by August 25, 2000. Erik Godwin, Office of Information and Regulatory Affairs (3150–0011 and –0104), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of July 2000.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–18920 Filed 7–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 24, 31, August 7, 14, 21, and 28, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 24

Tuesday, July 25

3:25 p.m.
Affirmation Session (Public Meeting)
a. Final Rule to Amend 10 CFR Part 70, Domestic Licensing of Special Nuclear Material
b. Final Rule: 10 CFR Part 72—Clarification and Addition of Flexibility

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

Tuesday, August 15

9:25 a.m.
Affirmation Session (Public Meeting) (If necessary)
9:30 a.m.
Briefing on NRC International Activities (Public Meeting) (Contact: Ron Hauber, 301–415–2344)
This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of August 21—Tentative

Monday, August 21

1:55 p.m.
Affirmation Session (Public Meeting) If necessary)

Week of August 28—Tentative

There are no meetings scheduled for the Week of August 28.

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on March 31, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues" (Closed Ex. 9) be held on March 31, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 21, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–19002 Filed 7–24–00; 12:44 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 1, 2000, through July 14, 2000. The last biweekly notice was published on July 12, 2000 (65 FR 43040).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 25, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically

from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: June 19, 2000 (U–603367).

Description of amendment request: The proposed amendment would allow some emergency diesel generator (EDG) Technical Specification surveillance requirements to be performed during plant operation instead of during plant shutdown as now required. These EDG surveillance tests include load rejection tests and the EDG 24-hour run test.

Basis for proposed no significant hazards consideration determination: The NRC staff has performed an analysis of the issue of no significant hazards consideration which is presented below:

1. No changes will be made to the design or operation of the emergency diesel generators (EDGs) and the plant electrical distribution system will normally be aligned to minimize perturbations from the EDG tests during power operation. Additionally, while some portions of some surveillance tests will result in a decrease in EDG availability during power operation, EDG availability is not significantly decreased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. No physical changes will be made to the plant. Electrical protective isolation devices will continue to act as before and Technical Specification system operability requirements are not being changed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. No changes will be made to the design or operation of the emergency diesel generators (EDGs) and the plant electrical distribution system will normally be aligned to minimize perturbations from the EDG tests during power operation. Additionally, while some portions of some surveillance tests will result in a decrease in EDG availability during power operation, EDG availability is not significantly decreased. Therefore, the proposed change does not significantly reduce a margin of safety.

Based on its initial review, the NRC staff finds that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036.

NRC Section Chief: Anthony J. Mendiola.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 27, 2000.

Description of amendment request: The proposed amendment would revise Section 3.5.1, "Safety Injection Tanks (SITs)," of the Palisades Plant Improved Technical Specifications (ITS) as issued by the NRC on November 30, 1999 (Amendment No. 189), for implementation on or before October 31, 2000. Specifically, Condition A, which currently applies to "One SIT inoperable due to boron concentration not within limits," would be expanded to include "OR One SIT inoperable due to the inability to verify level or pressure." Required Action A.1, which currently states "Restore boron concentration to within limits," would be changed to state "Restore SIT to OPERABLE status." The specified Completion Time for the revised Required Action A.1 would remain as 72 hours. Condition B, which applies to "One SIT inoperable for reasons other than Condition A," would be changed to specify a Completion Time of 24 hours (rather than the current 1 hour) to restore the SIT to OPERABLE status. The licensee also forwarded revised pages to the Palisades ITS Bases for these proposed changes. Additional changes proposed in the licensee's application dated June 27, 2000, (which address the Low-Pressure Safety Injection System) are outside the scope of this **Federal Register** (FR) notice and are addressed in a separate FR notice.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Operation in Accordance with the Proposed Amendment] Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The Safety Injection Tanks (SITs) are passive components in the Emergency Core Cooling System. The SITs are not an accident initiator in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

SITs were designed to mitigate the consequences of Loss of Coolant Accidents (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change. In addition, in order to fully evaluate the effect of the SIT Allowable Outage Time (AOT) [a.k.a. "Completion Time"] extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency or large early release frequency. As a result, from a PSA standpoint, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD–994, Combustion Engineering Owners Group "Joint Applications Report for Safety Injection Tank AOT/STI [surveillance time interval] Extension."

The changes pertaining to SIT inoperability based solely on instrumentation malfunction do not involve a significant increase in the consequences of an accident as evaluated and endorsed by the Nuclear Regulatory Commission (NRC) in NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements." This evaluation is applicable to the Palisades Plant.

Therefore, these changes do not involve an increase in the probability or consequences of any accident previously evaluated.

[Operation in Accordance with the Proposed Amendment] Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not change the design, configuration, or method of operation of the plant. The proposed configuration (one SIT out of service) is already allowed. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

[Operation in Accordance with the Proposed Amendment] Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. The proposed configuration (one SIT out of service) is already allowed. PSA evaluations were used to evaluate these changes. The results of these analyses show no significant increase in the core damage frequency or large early release frequency. These evaluations are detailed in CE NPSD–994. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Claudia M. Craig.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 27, 2000.

Description of amendment request: The proposed amendment would revise Section 3.5.2, "ECCS [Emergency Core Cooling System]—Operating," of the Palisades Plant Improved Technical Specifications (ITS) as issued by the NRC on November 30, 1999 (Amendment No. 189), for implementation on or before October 31, 2000. Specifically, the change would extend the Completion Time (a.k.a., allowed outage time or AOT) for a single low-pressure safety injection (LPSI) subsystem from 72 hours to 7 days. The change would apply for operating Modes 1, 2, and 3 with the primary coolant system temperature at or above 325 degrees F. The licensee also forwarded revised pages to the Palisades ITS Bases for the proposed change.

Additional changes proposed in the licensee's application dated June 27, 2000, (which address the safety injection tanks) are outside the scope of this **Federal Register** (FR) notice and are addressed in a separate FR notice.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Operation in Accordance with the Proposed Amendment] Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The Low Pressure Safety Injection system (LPSI) is part of the Emergency Core Cooling System. LPSI components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change. In addition, in order to fully evaluate the effect of the LPSI AOT extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, from a PSA standpoint, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD–995, Combustion Engineering Owners Group "Joint Applications Report for Low Pressure Safety Injection System AOT Extension."

Therefore, these changes do not involve an increase in the probability or consequences of any accident previously evaluated.

[Operation in Accordance with the Proposed Amendment] Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not change the design, configuration, or method of operation of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed changes do not alter assumptions made in the safety analysis and licensing basis. Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

[Operation in Accordance with the Proposed Amendment] Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD–995. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed changes. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Claudia M. Craig.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 21, 2000.

Description of amendment request: The proposed amendments would modify the Emergency Feedwater System (EFW) section of the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

No. The EFW System is utilized to mitigate the consequences of an accident. Failure of the EFW System is not a precursor to any accident evaluated in the UFSAR [Updated Final Safety Analysis Report].

The UFSAR change proposes additional exceptions to the ability of the EFW system to mitigate specific events coupled with a single failure. These exceptions are appropriate, because diverse systems (*i.e.*, the SSF [standby shutdown facility] ASW [auxiliary service water] System or EFW System from another unit) are available to mitigate the defined transient/accident and the probability of the defined transient/accident occurring is small.

The proposed UFSAR changes do not involve any adverse impact on containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve setpoints, or radwaste systems. In addition, it does not create any new radiological release pathways.

Therefore, it is concluded that the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

No. The EFW System is utilized to mitigate the consequences of an accident. Failure of the EFW System is not a precursor to any accident evaluated in the UFSAR. The proposed UFSAR changes do not physically affect the plant, nor do they increase the risk of a unit trip or reactivity excursion. This proposed change does not introduce any new accident precursors. Therefore, these proposed changes do not create the possibility of any new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

No. A Probabilistic Risk Assessment (PRA) evaluation of the single failures identified in a failure modes and effects analysis performed for the EFW System concluded that there are no single active failures that contribute significantly to core damage frequency.

The UFSAR change proposes additional exceptions to the ability of the EFW system to mitigate specific events coupled with a single failure. These exceptions are appropriate, because the probability of the defined transient/accident occurring is small, and diverse systems (i.e., the SSF ASW System or EFW System from another unit) are available to mitigate the defined transient/accident.

The proposed UFSAR changes do not involve: (1) a physical alteration of the plant; (2) the installation of new or different equipment; or (3) any impact on the fission product barriers or safety limits.

Therefore, it is concluded that the proposed UFSAR changes will not result in a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2 (ANO–2), Pope County, Arkansas

Date of amendment request: June 29, 2000.

Description of amendment request: The current Arkansas Nuclear One, Unit 2 (ANO–2) Technical Specification (TS) 3.6.2.3 states: "Two independent containment cooling groups shall be OPERABLE with at least one operational cooling unit in each group." The proposed change will modify this wording as follows: "Two independent containment cooling groups shall be OPERABLE with two operational cooling units in each group." In addition, the proposed amendment would change the surveillance requirements contained in TS 4.6.2.3.a. At the present time, TS 4.6.2.3.a. would allow a containment cooler group with a minimum service water flow rate of 1250 gpm to be declared operable if one of the two cooling units and associated fan is operable. As a result of this proposed change, the surveillance requirements will be modified to require both cooling units per group to be operable for the containment cooler group to be operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The containment cooling units do not have the ability to cause an accident, however, they do serve to mitigate containment accident conditions. The new MSLB [Main Steam Line Break] and LOCA [Loss of Coolant Accident] analyses contain the same assumptions relating to containment heat removal as the original analyses, i.e., at least one containment building cooling unit in conjunction with one train of CSS [containment spray system] is adequate for containment heat removal. During 2R14 [Unit 2, 14th refueling outage] the containment

coolers will be modified by adjusting the fan pitch, which will reduce fan flow as well as the post DBA [Design Basis Accident] motor horsepower. To offset this lower containment cooler fan airflow rate, two cooling units per group will be required. The resulting heat removal capacity with two containment cooling units in service at the new blade pitch position is greater than the required heat removal assumed in the LOCA and MSLB analyses.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Assuming the single failure of a loss of one group of components, the remaining group with two cooling units will continue to be available. The modification to the fan blade pitch will result in a lower air flow rate through each containment cooler. However, the requirement for two units per group to be operable provides adequate heat removal capacity for containment uprate conditions. Therefore, the heat removal capacity assumed in the Containment Uprate analysis remain valid. The previous ability to credit either cooler unit provided additional design margin whereby the required redundancy is still provided by this change.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The Containment Cooling System ensures that (1) the containment air temperature will be maintained within limits during normal operation, and (2) adequate heat removal capacity is available when operated in conjunction with the containment spray systems during post-LOCA conditions. The modification planned during 2R14 will result in a lower air flow rate through each cooling unit and a corresponding reduction in heat transfer capability of each cooling unit. However, the safety margin is still maintained by requiring both cooler units to be operable and thus providing adequate heat removal capacity to remain below the containment design pressure.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 9, 2000.

Description of amendment request: The proposed amendment would reduce the bypass valve (BV) cycling frequency of SR 3.7.7.1 from 31 days to 92 days. This will make the test frequency for the BVs consistent with the testing frequency for the other Main Turbine Valves (e.g. Main Turbine Control, Stop, and Combined Intermediate Valves). The 92-day frequency is also consistent with the typical testing frequency for stroking safety-related valves under TS 5.5.6, In-Service Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current TS SR 3.7.7.1 requires that the BVs be cycled once every 31 days to demonstrate that the BVs are mechanically OPERABLE (free to move). DAEC in-house operating experience has shown that the BVs have reliable equipment performance in that they consistently pass the valve cycling test at both the 31-day and 92-day frequency. A test frequency of 92 days is sufficient to ensure the reliability of the BVs. The DAEC is analyzed for certain transient events with the assumption that the MTBS is out-of-service (*e.g.* turbine trips, generator load rejects, feedwater flow controller failure at maximum demand). Continued plant operation is allowed in cases of inoperable MTBS provided the more restrictive MCPR limit is applied (LCO 3.7.7). Margin to the MCPR Safety Limit is bounded by the analyzed failure of the MTBS. Should the BV fail a cycling test, the TS required actions would be taken accordingly. Therefore, this proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no modifications made to the MTBS (including BVs) or system operations in this proposed TS amendment. The only change is the BV's cycling frequency from 31 days to 92 days. The proposed TS amendment does not alter the OPERABILITY requirements or performance characteristics of the MTBS. The reduced BV cycling frequency reduces the need for reactivity changes and pressure perturbations on the reactor. This proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The only change by this proposed TS amendment is the frequency of the BV's cycling test from 31 days to 92 days. The OPERABILITY requirement and functional characteristics of the MTBS remain unchanged. DAEC in-house operating experience has demonstrated that a 92-day test frequency provides reasonable assurance that the BVs remain OPERABLE. The BV's response times are used in determining the effect on the MCPR. The surveillance tests that ensure the MTBS meets the system's automatic actuation requirements (SR 3.7.7.2) and response time limits (SR 3.7.7.3) are not affected by this proposed TS amendment and will continue to be performed at the current TS frequency. Therefore, this proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 14, 2000.

Description of amendment request: Alliant Energy Corporation (AEC) plans to merge and consolidate another utility it owns, Interstate Power Company (IPC), with IES Utilities Inc., effective January 1, 2001. The name of the surviving corporation, IES, would be changed to Interstate Power and Light Company (IP&L).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No physical or operational changes to the DAEC will result from changing the corporate name. The DAEC will continue to be operated in the same manner with the same organization. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different

kind of accident from any accident previously evaluated.

No physical or operational changes to the DAEC will result from changing the corporate name. The DAEC will continue to be operated in the same manner with the same organization. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

No physical or operational changes to the DAEC will result from changing the corporate name. The DAEC will continue to be operated in the same manner with the same organization. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: June 6, 2000.

Description of amendment request: The proposed amendment would revise the Millstone Nuclear Power Station, Unit No. 1 license to modify or remove license conditions and confirmatory orders to reflect the permanently defueled condition of the unit. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed changes is to revise the Millstone Unit No. 1 Operating License to only address conditions and requirements that are germane to the permanently shutdown and defueled condition. Since Millstone Unit No. 1 has permanently ceased operation and will be maintained in a defueled condition, many provisions of the license related to the operation of the plant are no longer appropriate. Elimination of the unnecessary requirements and statements allows the plant staff to focus on those requirements which continue to be appropriate to the existing plant conditions. The proposed changes do not affect storage of spent fuel. Therefore, the proposed changes do not increase the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The purpose of the proposed changes is to revise the Millstone Unit No. 1 Operating License to only address conditions and requirements that are germane to the permanently shutdown and defueled condition. Since Millstone Unit No. 1 has permanently ceased operation and will be maintained in a defueled condition, many provisions of the license related to the operation of the plant are no longer appropriate. Elimination of the unnecessary requirements and statements allows the plant staff to focus on those requirements which continue to be appropriate to the existing plant conditions. The proposed changes do not affect storage of spent fuel. Therefore, the proposed changes do not create a different kind of accident from those previously analyzed.

3. Involve a significant reduction in a margin of safety.

The purpose of the proposed changes is to revise the Millstone Unit No. 1 Operating License to only address conditions and requirements that are germane to the permanently shutdown and defueled condition. Since Millstone Unit No. 1 has permanently ceased operation and will be maintained in a defueled condition, many provisions of the license related to the operation of the plant are no longer appropriate. Elimination of the unnecessary requirements and statements allows the plant staff to focus on those requirements which continue to be appropriate to the existing plant conditions. The proposed changes do not affect storage of spent fuel. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: Michael T. Masnik

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: June 28, 2000.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) are associated with Section 3/4.7.6, "Control Room Emergency Ventilation System." Specifically, TS 3.7.6.1 will be revised to add a footnote that the Control Room boundary can be opened intermittently under administrative control, and add a new Modes 1 through 4 action requirement that will allow 24 hours to restore the Control Room boundary. In addition, various editorial changes associated with action requirement format and letter designations are proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The action requirements for the Control Room Emergency Ventilation System have been changed to address the impact a loss of boundary integrity has on the associated system. The proposed changes to the action requirements will not cause an accident. Allowing the Control Room boundary to be opened intermittently under administrative controls will have no adverse impact on the consequences of the design basis accidents since the administrative controls will be able to rapidly restore boundary integrity when required. Allowing 24 hours to restore the Control Room boundary in Modes 1 through 4 could result in an increase in the consequences of a design basis accident to the Control Room personnel. However, considering the low probability of a design basis accident occurring during this time, the proposed allowed outage time is reasonable to allow the boundary integrity to be restored before requiring a plant shutdown.

These changes are consistent with Technical Specification 3.6.5.2, "Containment Systems—Enclosure Building," which allows normal entry and egress through associated access openings (Surveillance Requirement 4.6.5.2.1) and 24 hours to restore Enclosure Building integrity, and with generic industry guidance (NUREG–1432, Technical Specification 3.7.11, TSTF–287, Rev. 5).

The proposed changes to address format issues will not result in any technical changes to the current requirements.

The proposed Technical Specification changes will have no adverse effect on plant operation or the operation of accident mitigation equipment, and will not significantly impact the availability of accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the equipment covered by this specification is not an accident initiator and can not cause an accident. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes do not impact any system or

component which could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following an accident will not be significantly different as a result of these changes. In addition, the accident mitigation equipment affected by the proposed changes is not an accident initiator. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes to Technical Specification 3.7.6.1 are consistent with Technical Specification 3.6.5.2 which allows normal entry and egress through associated access openings (SR 4.6.5.2.1) and 24 hours to restore Enclosure Building integrity, and with generic industry guidance (NUREG–1432, Technical Specification 3.7.11, TSTF–287, Rev. 5). If the Control Room boundary is not operable, the proposed action requirements will require timely restoration of the boundary or the plant will be placed in a configuration where there is no adverse impact associated with the loss of Control Room boundary integrity. The proposed allowed outage time provides a reasonable time for repairs before requiring a plant shutdown, and reflects the low probability of an event occurring while the boundary is inoperable. The proposed shutdown times, which are consistent with times already contained in the Millstone Unit No. 2 Technical Specifications and with generic industry guidance (NUREG–1432), will allow an orderly shutdown to be performed.

The proposed changes to address format issues will not result in any technical changes to the current requirements. These proposed changes will not adversely impact any of the design basis accidents or the associated accident mitigation equipment.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analyses. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: June 26, 2000.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) are associated with the Reactivity Control Systems section. Specifically, the surveillance requirements associated with the frequency for determining the operability of each rod not fully inserted in the core will be revised from once every 31 days to once every 92 days for Units 2 and 3. In addition, the surveillance requirement associated with the frequency of testing the Control Element Assembly Deviation Circuit will be revised from once every 31 days to once every 92 days for Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Millstone Unit Nos. 2 and 3 Specification 4.1.3.1.2 will revise the frequency for determining the operability of each rod that is not fully inserted in the core from once every 31 days to once every 92 days. The proposed change in the frequency does not change any of the assumptions used in the safety analyses. On the other hand, the decrease in surveillance frequency will reduce the potential for reactor trips and the unnecessary challenges to the safety systems associated with the performance of the surveillance. Additionally, NNECO [Northeast Nuclear Energy Company] performed Millstone Unit Nos. 2 and 3 specific evaluations of the effect of changing the frequency of rod movement test from 31 days to 92 days on Core Damage Frequency (CDF). These evaluations concluded that the change in test frequency from 31 days to 92 days has no adverse impact on CDF (the estimated potential risk associated with tripping the reactor as a result of this high risk surveillance is about 1.31E–6/yr for Millstone Unit No. 2 and 4.28E–6/yr for Millstone Unit No. 3) and is therefore acceptable. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change in the frequency of testing the CEA Deviation Circuit in Millstone Unit No. 2 Specification 4.1.3.1.3 from once every 31 days to once every 92 days does not change any of the assumptions used in the safety analysis. On the other hand, the decrease in surveillance frequency will reduce the reactor trips and the unnecessary challenges to the safety systems associated with the performance of the surveillance. Additionally, the Deviation Circuit has excellent testing history and increasing the surveillance interval from 31 days to 92 days will have no adverse effect on its overall reliability. The Nuclear Regulatory Commission approved this increase in surveillance interval as part of TSTF [Technical Specifications Task Force] -127.[ ] Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter [the] configuration of the plants (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plants are operated. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes in the surveillance frequency do not change any of the assumptions used in the safety analyses. Additionally, NNECO performed Millstone Unit Nos. 2 and 3 specific evaluations of the effect of changing the frequency of rod movement test from 31 days to 92 days on CDF. These evaluations concluded that the change in test frequency from 31 days to 92 days has no adverse impact on CDF and is therefore acceptable. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

As described above, this License Amendment Request does not involve a significant increase in the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC [Significant Hazards Consideration].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: June 14, 2000.

Description of amendment request: The licensee requests that the Peach Bottom Atomic Power Station (PBAPS), Unit 2, Technical Specifications (TS) contained in Appendix A to the Operating License be amended to: (1) Revise TS 2.1.1.2 to reflect changes in the Safety Limit Minimum Critical Power Ratios (SLMCPRs) due to the cycle-specific analysis performed by Global Nuclear Fuel (formerly General Electric Nuclear Energy (GENE)) for PBAPS, Unit 2, Cycle 14, which includes the use of the GE–14 product line, (2) delete the cycle-specific footnote for the SLMCPRs contained in TS 2.1.1.2 ("Reactor Core SLs"), and (3) update a reference contained in TS 5.6.5.b.2 ("Core Operating Limits Report") which documents an analytical method used to determine the core operating limits. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle specific SLMCPRs for incorporation into the TS, and its use to determine cycle specific thermal limits, has been performed using the methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13, and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996, and Amendment 25. Amendment 25 was approved by the NRC in a March 11, 1999 safety evaluation report.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling. The GE–14 fuel is in compliance with Amendment 22 to "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13, and U. S. Supplement, NEDE–24011–P–A–13–US, August, 1996 (GESTAR–II), which provides the fuel licensing acceptance criteria. The probability of fuel damage will not be increased as a result of these changes. Additionally, as a result of the use of the GE–14 product line, no dose calculations are being adversely impacted. Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

In addition to the change to the SLMCPRs, the footnote to TS 2.1.1.2 is being deleted. The footnote associated with TS 2.1.1.2 was originally included to ensure that the SLMCPR value was only applicable for the identified cycle. Since that time, Amendment 25 has been approved. Therefore, this footnote is no longer necessary. The footnote was for information only, and has no impact on the design or operation of the plant. A similar change was previously approved for PBAPS, Unit 3, as discussed in the NRC safety evaluation (Amendment No. 233), dated October 5, 1999. The deletion of the footnote associated with TS 2.1.1.2 is an administrative change that does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reference to the Revision 1 ARTS/MELLLA analysis contained in TS 5.6.5.b.2 is being updated to a Revision 2 analysis, to reflect changes that were previously approved by the NRC as documented in the safety evaluation report dated August 10, 1994 (Amendment No. 192 for PBAPS, Unit 2). This is an administrative change which will ensure that the references contained in the PBAPS, Unit 2 Technical Specifications are accurate and consistent with other licensing documents. No technical changes are occurring which have not been previously approved by the NRC. A similar change was previously approved for PBAPS, Unit 3, as discussed in the NRC safety evaluation (Amendment No. 233), dated October 5, 1999. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, calculated to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core if the limit is not violated. The new SLMCPRs are calculated using NRC approved methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996, and Amendment 25. Additionally, the GE–14 fuel is in compliance with Amendment 22 to "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13, and U.S. Supplement, NEDE–24011–P–A–13–US, August, 1996 (GESTAR–II), which provides the fuel licensing acceptance criteria. The SLMCPR is not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Additionally, this proposed change will delete footnotes contained in TS 2.1.1.2 as the result of the NRC approval of analysis associated with Amendment 25. The proposed change also updates the ARTS/MELLLA analysis reference contained in TS 5.6.5.b.2. This revision contains information which was previously approved by the NRC. Similar changes were previously approved for PBAPS, Unit 3, as discussed in the NRC safety evaluation (Amendment No. 233), dated October 5, 1999. Therefore, the deletion of the footnote associated with TS 2.1.1.2, and the updating of the reference contained in TS 5.6.5.b.2 are administrative changes that do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of: (1) The proposed changes to the SLMCPRs, which includes the use of GE–14 fuel, (2) the proposed change that will delete the footnote to TS 2.1.1.2, and (3) updating the ARTS/MELLLA analysis reference contained in TS 5.6.5.b.2. The new SLMCPRs are calculated using methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996, and Amendment 25. The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes will not involve a significant reduction in the margin of safety previously approved by the NRC.

Additionally, the proposed changes that delete the footnote to TS 2.1.1.2, and update the revision to the ARTS/MELLLA analysis reference contained in TS 5.6.5.b.2, are administrative changes that will not significantly reduce the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101

NRC Section Chief: James W. Clifford

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 4, 2000.

Description of amendment request: The proposed amendment to the Indian Point 3 Technical Specifications (TSs) proposes to revise the main steam line break (MSLB) analysis to correct the assumption for non-isolable feedwater and also to revise assumptions regarding boron in the safety injection piping and assumptions regarding shutdown margin.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Indian Point 3 in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes include revised assumptions in the TS to correct non-conservative TS and revised TS with respect to the peak calculated containment pressure for a postulated MSLB. The changes take credit for existing boron in the SI [Safety Injection] system and existing shutdown margin, perform surveillance to verify the boron concentration, and revise the containment testing program to reflect a minimum test pressure that must bound the peak calculated pressure. These changes cannot increase the probability of an accident previously evaluated since they do not change plant operations and are not related to accident initiators. These changes will not increase the consequences of an accident previously evaluated since they do not change system operation to mitigate any accident and the use of a minimum containment test pressure ensures the TS required testing bounds the calculated peak calculated [sic] pressure.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes include revised assumptions in the TS to correct non-conservative TS and revised TS with respect to the peak calculated pressure. The changes take credit for existing boron in the SI system and existing shutdown margin, perform surveillance to verify the boron, and revise the containment testing program to reflect a minimum test pressure that must bound the peak calculated pressure. These changes do not physically alter the plant since they take credit for existing plant conditions and the physical act of sampling meets system design and Technical Specification requirements. Therefore, these changes do not create the possibility of a new or different type of accident from those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes include revised assumptions in the TS to correct non-conservative TS and revised TS with respect to the peak calculated pressure. The changes take credit for existing boron in the SI system and existing shutdown margin, perform surveillance to verify the boron, and revise the containment testing program to reflect a minimum test pressure that must bound the peak calculated pressure. These changes do not involve a significant reduction in the margin of safety since the credited boron is part of the existing system design that has not been credited since the BIT [Boron Injection Tank] tank retirement. The credited shutdown margin is typical of the excess shutdown margin resulting from cycle specific core design.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards considerations. Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Units Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 13, 2000.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 3.3–6, "Radiation Monitoring Instrumentation," to change the Containment Gaseous Activity Monitor (R12A) alarm/trip setpoint for the Containment Purge and Pressure Relief system isolation for Mode 6 (Refueling) operation. Specifically, the existing setpoint of less than or equal to two times background would be changed to "Set at less than or equal to 50% of the 10 CFR [Part] 20 concentration limits for gaseous effluents released to unrestricted areas." The proposed amendment will also specify an upper setpoint limit that is not presently required by the existing TS requirement. In addition, the associated TS Bases section would be revised to address the proposed change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

During Mode 6 operation, the Containment Gaseous Activity Monitor R12A serves to monitor the gaseous activity concentration in the containment atmosphere, and provides an alarm and isolation of the Containment Purge and Pressure Relief system in response to high gaseous activity that would result from a Fuel Handling Accident inside containment. As such, the Containment Gaseous Activity Monitor is not considered as an initiator of any accident previously evaluated. Therefore, the proposed change would not affect the probability of an accident previously evaluated.

The proposed setpoint would allow an alarm/trip setpoint to be higher than the current TS requirements. As a result, it would be expected that the consequences of an accident previously evaluated could possibly increase. However, the proposed setpoint value would isolate the Containment Purge and Pressure Relief system prior to reaching the 10 CFR Part 20 concentration limits for gaseous effluents released to unrestricted areas. The 10 CFR Part 20 limits are equivalent to the radio-nuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce at total effective dose equivalent of 0.05 rem (50 millirem or 0.5 millisieverts). These restrictions are intended to minimize and limit the amount of dose received by individual members of the public during normal operations, and are considerably more restrictive than the 10 CFR Part 100 limits. The proposed change would not be considered a significant increase in the consequences of an accident previously evaluated because the revised setpoint would isolate the appropriate release path and maintain doses well below 10 CFR Part 100 limits. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Containment Gaseous Activity Monitor alarm/trip setpoint will not create any new accident causal mechanisms. Plant operation will not be affected by the proposed amendments and no new failure modes will be created. Thus, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

An evaluation of a fuel handling accident inside containment has been performed by the licensee that demonstrates that the limits of 10 CFR Part 100 would not be exceeded even though no containment isolation was assumed. The analysis assumed that all airborne activity reaching the containment atmosphere would exhaust to the environment within two hours (no containment isolation) and concluded that the exclusion area boundary doses were well within the limits of 10 CFR Part 100. The analysis

also demonstrated that the control room doses following the fuel handling accident inside containment would be within General Design Criterion 19 limits. Therefore, the changes proposed by the licensee will not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Units Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 31, 2000.

Description of amendment request: The proposed amendment would establish new charcoal filter testing requirements for the Auxiliary Building Ventilation (ABV) System, the Control Room Envelope Air Conditioning System (CREACS), and the Fuel Handling Ventilation (FHV) System consistent with the requirements delineated in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999. Specifically, the surveillance requirements associated with Limiting Conditions for Operation (LCOs) 3.7.6.1, 3.7.7.1, and 3.9.12 would specify American Society for Testing and Materials (ASTM) D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon," as the testing methodology.

The May 31, 2000, amendment request would replace Public Service Electric and Gas (PSE&G) Company's original November 24, 1999, application to change Salem Units 1 and 2 Technical Specifications (TS) surveillance requirements associated with the laboratory testing of charcoal samples for the ABV, CREACS, and FHV systems. Additional information associated with the November 24, 1999, submittal was provided on February 10, 2000. However, PSE&G has requested that the November 24, 1999, application be withdrawn.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The FHV, CREACS and ABV systems will continue to function as designed. The FHV, CREACS and ABV systems are designed to mitigate the consequences of an accident, and therefore, cannot contribute to the initiation of any accident. The proposed TS surveillance requirement changes implement testing methods that more appropriately demonstrate charcoal filter capability and establish acceptance criteria, which ensure that Salem's design basis assumptions are appropriately met. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner in which the FHV, CREACS and ABV systems are operated is not affected by these proposed changes. The proposed surveillance requirement acceptance criteria ensure that the FHV, CREACS and ABV safety functions will be accomplished. Therefore, the proposed TS changes would not result in a significant increase of the consequences of an accident previously evaluated, nor do they involve an increase in the probability of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the FHV, CREACS and ABV systems are not changed from that currently described in Salem's licensing basis. The FHV, CREACS and ABV systems will continue to function as designed to mitigate the consequences of an accident. Implementing the proposed charcoal filter testing methods and acceptance criteria does not result in plant operation in a configuration that would create a different type of malfunction to the FHV, CREACS and ABV systems than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in Salem's licensing basis regarding the safety related functions of these systems.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal implement TS requirements that: (1) Are consistent with the requirements delineated in Generic Letter 99–02; (2) implement testing methods that adequately demonstrate charcoal filter capability; and (3) establish appropriately conservative acceptance criteria. The charcoal filter efficiencies specified in the proposed surveillance requirements apply a safety factor of 2 to the efficiencies used in the design basis dose analysis. There are no increases to the currently approved offsite dose releases or the control room operator doses as a result of these surveillance requirement changes. Therefore, the proposed TS change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Units Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 14, 2000.

Description of amendment request: The proposed license amendment would allow the use of the Best Estimate Analyzer For Core Operations—Nuclear (BEACON) system at Salem to perform core power distribution measurements. BEACON is a core power distribution monitoring and support system based on a three dimensional nodal code. The system is used to provide data reduction for incore neutron flux maps, core parameter analysis and follow, and core prediction. The licensee has stated that BEACON will be used at Salem to augment the functionality of the flux mapping system when thermal power is greater than 25% of rated thermal power for the purpose of performing power distribution surveillance testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes provide a different method for measuring the core power distribution parameters and relocate[s] manufacturing and measurement uncertainty values from the TS [Technical Specifications] to the core operating limits report (COLR). The [TS] power distribution limits themselves are not changed and will continue to be measured and verified to be within limits as required by the current TS surveillances. The cycle-specific core operating limits, although not in TS, will be followed in the operation of the Salem Generating Station. The proposed amendment continues to require the same actions to be taken when or if limits are exceeded as are required by current TS.

Each accident analysis addressed in the Salem Updated Final Safety Analysis Report (UFSAR) will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC [Nuclear Regulatory Commission]-approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per requirements of 10 CFR 50.59, ensures that future reloads will not involve an increase in the probability or consequences of an accident previously evaluated.

The method of measuring core power distribution parameters and the location of manufacturing and measurement uncertainty values are not initiators of any previously evaluated accidents and has no influence or impact on the consequences those accidents. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No safety-related equipment, safety function, or plant operation will be altered as a result of the proposed changes. The cycle specific variables are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The TS will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded. The change will not introduce any new accident initiators. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes provide a different method for measuring the core power distribution parameters and relocates manufacturing and measurement uncertainty values from the TS to the COLR. The proposed method for measuring the core power distribution parameters has been verified by Westinghouse and reviewed and approved by the NRC. Appropriate measures exist to control the values of the manufacturing and measurement uncertainties. The proposed amendment continues to require operation within the core limits, as obtained from NRC-approved reload design methodologies. Appropriate actions that [are] required to be taken when or if limits are violated remain unchanged. Future changes to measurement and manufacturing uncertainties located in the current TS will be evaluated in accordance with the requirements of 10 CFR 50.59. Since the 10 CFR 50.59 process does not allow any reduction in the margin of safety, prior NRC approval is required prior to a reduction in the margin of safety. Additionally, the Salem TS require revisions of the plant COLR be submitted to the NRC upon issuance. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: June 12, 2000.

Description of amendment request: This amendment would revise the Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS) to incorporate new temperature and level limits for the ultimate heat sink (UHS) during plant operation in Modes 1–4. These limits are contained in TS Section 3/4.7.5. The minimum required service water pond (SWP) level would be increased from the 415′ elevation to 416.5′ and the maximum allowed temperature at the discharge of the service water pumps would be decreased from 95°F to 90.5°F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Implementation of the new temperature and level limits for the service water pond do not contribute to the initiation of any accident evaluated in the FSAR [Final Safety Analysis Report]. Supporting factors are as follows:

- The new limits maintain the Service Water System (SWS) design temperature of 95°F during a normal shutdown and post accident and have been developed in accordance with the general requirements of Regulatory Guide 1.27, Revision 2.
- Overall plant performance and operation is not altered by the proposed changes.
- Fluid and auxiliary systems, which are important to safety, are not adversely impacted and will continue to perform their design function.

Therefore, since the reactor coolant pressure boundary integrity and system functions are not impacted, the probability of occurrence of an accident evaluated in the VCSNS FSAR will be no greater than the original design basis of the plant.

The SWP level and temperature limits relate to the plant's ability to reject heat to the ultimate heat sink during normal operation, a normal plant shutdown and hypothetical accident conditions. The new limits preserve the SWS design temperature of 95°F, even during worst case post accident conditions, thus assuring that equipment within the SWS and its interfacing systems remain qualified and that the heat transport capability of the SWS and its interfacing systems [remain] within design values. Since the SWS and its interfacing systems will continue to perform their design functions, it is concluded that the consequences of an accident previously evaluated in the FSAR are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes revise the UHS temperature and level limits within TS 3/4.7.5 to incorporate the results of a new thermal analysis performed in accordance with the requirements of Regulatory Guide 1.27, Revision 2. The new limits ensure that SW temperature, as measured at the discharge of the SW pump, [remains] less than the design value of 95°F. No new accident initiator mechanisms are introduced as:

- Structural integrity of the RCS [reactor coolant system] is not challenged.
- No new failure modes or limiting single failures are created.
- Design requirements on all affected systems are met.

Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

3. Does this change involve a significant reduction in margin of safety?

The proposed changes revise the UHS temperature and level limits [within] TS 3/4.7.5 to incorporate the results of a new thermal analysis performed in accordance with the requirements of Regulatory Guide 1.27, Revision 2. The new limits ensure that SW temperature, as measured at the discharge of the SW pump, [remains] less than the design value of 95°F under both normal and post-accident conditions using the worst case combination of meteorology and operational parameters. Design margins associated with systems, structures and components that are cooled by the SWS are not affected. Since the SWS design temperature is maintained during both normal and worst case accident conditions, the results and conclusions for all design basis accidents remain applicable.

The proposed changes impose more restrictive operating limitations, and their use provides increased assurance that the SWS design temperature will not be exceeded. Since the UHS will continue to provide a 30 day cooling water supply to safety related equipment without exceeding their design basis temperature, it is concluded that the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: L. Raghavan, Acting.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: October 13, 1999, as supplemented by letter dated June 1, 2000.

Description of amendment request: The proposed amendments would revise Vogtle's Technical Specification to permit relaxation of allowed bypass test time and completion times for Limiting Conditions for Operations (LCO) 3.3.1, Reactor Trip System Instrumentation and LCO 3.3.2, Engineered Safety Feature Actuation System Instrumentations. These changes specifically revise the completions times from 6 hours to 72 hours for inoperable analog instruments, increase bypass times from 4 hours to 12 hours for surveillance testing of analog channels, and increase completion times from 6 hours to 24 hours for an inoperable logic cabinet or master and slave relays.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor trip and engineered safety features functions are not initiators of any design basis accident or event, and therefore the proposed changes do not increase the probability of any accident previously evaluated. The proposed changes to the allowed Completion Times and bypass test times do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the reactor trip system and engineered safety feature actuation system (RTS and ESFAS) signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by core damage frequency (CDF) is less than 1.0E–06 per year and the impact on large early release frequency (LERF) is less than 1.0E–07 per year. In addition, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–08. These increases/values meet the acceptance criteria in Regulatory Guide 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability as originally assumed, and the increase in risk as measured by CDF, LERF, ICCDP, ICLERP is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RTS and ESFAS provide plant protection. The RTS and ESFAS will continue to have the same setpoints after the proposed changes are implemented. There are no design changes associated with the license amendment. The changes to Completion Times or increased bypass test times do not change any existing accident scenarios nor create any new or different accident scenarios. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. Safety analysis acceptance criteria are not impacted. Redundant RTS and ESFAS trains are maintained, and diversity with regard to signals to provide reactor trip and engineered safety features actuation will be maintained. All signals credited as primary or secondary, and all operator action credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria in Regulatory Guide 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased Completion Times and bypass test times, it is expected that there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing. Therefore, the proposed license amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

Acting Section Chief: L. Raghavan, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 28, 1998, as revised on April 22, 1999, and April 27, 2000. This application was originally noticed on November 18, 1998 (63 FR 64122).

Description of amendment request: The proposed amendments would modify the requirements associated with the control room and fuel handling building heating, ventilation, and air conditioning systems by adding an allowed outage time of 12 hours for a condition where multiple trains of the control room and fuel handling building heating, ventilation, and air conditioning systems are inoperable. The proposed amendments also include changes to make the required action for the affected ventilation actuation instrumentation consistent with the action for inoperable ventilation trains. In addition, the proposed amendments include minor administrative changes to remove an expired dated action and to provide consistency of terminology used in the Technical Specifications (TSs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve an [significant] increase in the probability or consequences of an accident previously evaluated. The proposed changes consist of:

(a) Assuring that the Specifications define consistent allowed outage times when the same safety function is addressed in multiple Specifications,

(b) Allowing a system to remain inoperable when appropriately restrictive administrative controls are placed on operations that could result in a challenge to the safety function of the system,

(c) Providing an appropriately short Allowed Outage Time for inoperability needed to permit required maintenance and testing that affects all trains of a system,

(d) Redefining system operability and associated actions in a manner consistent with the system design and function,

(e) Aligning a system to the actuated condition on the loss of an actuation channel,

(f) Using consistent terminology throughout the Specifications.

The proposed changes do not represent significant increases in the probability or consequences of an accident because:

(a) The alignment of the action times between actuating system and actuated system operability requirements do not affect probability or consequences since inoperability of the actuated system has the same effect as inoperability of the actuating system. Since the changes proposed to the actuating system action times will reflect those of the actuated system action times, no change to the allowed outage time applicable to the safety function addressed and fulfilled by both, will occur.

(b) Administrative controls to prevent the conduct of operations that could lead to a challenge to the safety function of the system when the actuation system is inoperable, assures that the design bases functions of the system will not be challenged. Therefore, the probability or consequences of an event previously identified have not been significantly changed.

(c) Allowing up to 12 hours to recover from the inoperability of all 3 trains of Control Room Envelope HVAC [heating, ventilation, and air conditioning] or 2 or more trains of Fuel Handling Building HVAC does not represent a significant change to the probability of an accident. The inoperability of the Fuel Handling Building HVAC systems is not identified as a precursor to a design basis event. The inoperability of the Control Room Envelope HVAC is not a percursor to any event previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. With respect to the PRA [probabilistic risk assessment] analysis for Control Room Envelope HVAC, the allowed outage time provides sufficient time to restore Control Room Envelope HVAC to the rooms serving the Reactor Protection System before any detrimental effects would occur or to place the plant in MODE 3 if Control Room Envelope HVAC could not be restored. The low likelihood of a design basis accident during the limited period of allowed inoperability of these systems does not involve a significant increase in the consequences of an accident. The proposed required actions to suspend all operations involving movement of spent fuel, and crane operations with loads over the spent fuel pool reduce the potential for accident initiation during the allowed outage time.

(d) The redefinition of plant operability requirements into functional trains rather than individual components does not affect the required system functional operability. Therefore, this change does not involve an increase in the probability or consequences of an accident previously identified.

(e) The alignment of the Control Room Envelope HVAC System to the same configuration it would be placed in from an actuation of the inoperable radiation monitoring channel places the system in the design condition. This alignment would result in maintaining the control room envelope pressurized and increases the protection afforded to the operators.

(f) The change in terminology does not change any requirements or actions in the Specification. Therefore this change does not represent an increase in the probability or consequences of any accident previously evaluated.

(g) Revising the applicability of Technical Specification ACTION b. in MODES 5 and 6 will add clarity to the specification and make it better reflect STP's three train design. The clarification provides some additional assurance that the system will perform as assumed in the analyses.

Based on the above discussion, the individual changes do not represent an [significant] increase in the probability or consequences of any accident previously evaluated.

In addition to the changes proposed to controls over Control Room Envelope HVAC, Fuel Handling Building HVAC, and associated actuation logic, an administrative change is proposed to remove the footnotes at the bottom of pages 3/4 3–28, 3/4 7–19, and 3/4 7–20. Since the footnotes no longer have meaning or relevance to the operation of the facility, their removal does not increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes make the existing Specifications internally consistent, manually align a system to the actuated position, provide an alternative measure that assures [that] a safety function which is unavailable is not required to [be] perform[ed], provide an extended period of allowance for all trains of a system to be inoperable, and redefines system operability to reflect its functional design. The proposed changes do not introduce any new equipment into the plant or significantly alter the manner in which existing equipment will be operated. The limited allowed outage time of three inoperable Control Room Envelope HVAC systems has no detrimental effect on the operation of the Reactor Protection System. The systems affected by the proposed changes are not identified as contributing causal factors in design basis accidents; their function is to assist in mitigation of accidents postulated to occur. Since the proposed changes do not allow activities that are significantly different from those presently allowed, no possibility exists for a new or different kind of accident from those previously evaluated.

In addition to the changes proposed to controls over Control Room Envelope HVAC, Fuel Handling Building HVAC, and associated actuation logic, an administrative change is proposed to remove the footnotes at the bottom of pages 3/4 3–28, 3/4 7–19, and 3/4 7–20. Since the footnotes no longer have meaning or relevance to the operation of the facility, their removal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety because the ability of the Fuel Handling Building HVAC and Control Room Envelope HVAC Systems to perform their function will be maintained. The margin of safety is defined by the ability of the systems to limit the release of radioactive materials and limit exposures to operators following a postulated design basis accident. The only aspect of the proposed change that can be postulated to have any effect on a margin of safety is the proposed allowance for all trains of Control Room Envelope HVAC or Fuel Handling Building HVAC to be inoperable for a limited period. The low probability of a design basis event that would require the system to perform its safety function during the limited period allowed by the proposed action assures that the change does not involve a significant change in a margin of safety. Therefore, the proposed changes do not significantly affect these operating restrictions and the margin of safety which support the ability to make and maintain the reactor in a safe shutdown and limit the release of radioactive material is not affected.

Sufficient time is allowed to restore Control Room Envelope HVAC to the rooms serving the Reactor Protection System before any detrimental effects would occur or to place the plant in MODE 3 if Control Room Envelope HVAC could not be restored.

Revising the applicability of Technical Specification 3.7.7 ACTION b. in MODES 5 and 6 will add clarity to the specification, make it better reflect STP's three train design and provide greater assurance that desired margins are maintained.

Suspending fuel movement and crane operations with loads over the spent fuel pool when all Fuel Handling Building or Control Room Envelope HVAC systems are inoperable prevents a Fuel Handling Accident from occurring, which maintains the margin of safety for this design event.

In addition to the changes described above, an administrative change is proposed to remove the footnotes at the bottom of pages 3/4 3–28, 3/4 7–19, and 3/4 7–20. Since these footnotes are no longer applicable to the facility, their removal cannot result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. The staff also reviewed the proposed change to provide consistency of terminology in the TSs for no significant hazards consideration. This proposed administrative change does not affect the design or operation of the facility and satisfies the three standards of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: June 22, 2000.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to remove the applicability of core alteration requirements from those TS that are designed to mitigate the consequences of a fuel handling accident. The applicable TS bases would also be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision eliminates requirements associated with core alterations for specifications that are intended to mitigate the consequences of a fuel handling accident (FHA). These functions will not impact accident generation because their function is to support mitigation of accidents and they are not considered to be the source of a postulated accident. The removal of these actions and surveillance requirements affects functions that are not necessary during core alterations because postulated events during these activities do not have the potential to result in major fuel cladding damage like that assumed for an FHA. Therefore, there is no adverse impact to nuclear safety by eliminating core alteration requirements for specifications that provide for the mitigation of an FHA.

The proposed revision also clarifies the use of equivalent methods for isolation of containment penetrations. Equivalent isolation methods will maintain acceptable isolation capability for postulated conditions that could occur during the movement of irradiated fuel. This change does not alter the current intent or expectations for containment closure requirements during the movement of irradiated fuel and only serves to delineate other methods that provide an acceptable level of isolation. The status of penetration isolation methods during fuel movement does not impact the generation of an accident. This is based on these functions only providing a radiation barrier in the event of an FHA and not as a potential initiator for postulated accidents.

Based on the previous discussions, the proposed revision does not alter any plant equipment or operating practices; therefore, the probability of an accident is not significantly increased. In addition, the consequences of an accident is not significantly increased by eliminating core alteration requirements for specifications that only support the mitigation of FHAs or by using equivalent isolation methods for containment penetrations. This is based on sufficient safety function capabilities being available for the mitigation of an FHA or other potential events that could occur during core alteration activities.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed allowance to eliminate core alteration requirements for FHA related specifications and utilize equivalent isolation methods for containment penetrations will not alter plant functions or equipment operating practices. The proposed elimination of core alteration requirements will not impact accident generation because these functions provide for FHA mitigation and are not postulated to be an initiator of postulated accidents. Containment penetration isolation methods are not considered to be the source of a postulated accident. Therefore, since plant functions and equipment are not altered and the availability of FHA mitigation functions and isolation of containment penetrations do not contribute to the initiation of postulated accidents, the proposed revision will not create a new or different kind of accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The elimination of core alteration requirements for specifications that provide mitigation functions for FHAs will not affect the ability of these functions to perform as necessary. This is based on postulated events during core alteration not having the potential to result in fuel cladding damage that is assumed for the FHA and therefore, not requiring functions necessary to mitigate the FHA event. The proposed revision will continue to provide acceptable provisions for activities that could result in an FHA or events postulated during core alterations to maintain the necessary margin of safety.

The equivalent methods for containment penetration isolation provide the same level of isolation for conditions that may occur during fuel movement. Therefore, the equivalent isolation methods provide an acceptable barrier to the release of radiation as do the other listed methods and maintains the required margin of safety.

Therefore, the margin of safety provided by the containment building penetration requirements and other specifications for the mitigation of FHAs is not significantly reduced by the proposed allowance to eliminate affected core alteration requirements or to use equivalent methods for containment penetration isolation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H Knoxville, Tennessee 37902 .

NRC Section Chief: Richard P. Correia.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 22, 2000.

Description of amendment request: The proposed changes will modify the Technical Specifications in Sections 3.1.2.7, 3.1.2.8, 3.5.1, 3.5.5, 3.6.2.2, 3.9.1, and associated Bases Sections to allow for an increase of boron in the refueling water storage tank (RWST), casing cooling tank (CCT), spent fuel pool, and safety injection accumulators (SIAs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.

Increased boron concentration limits for the RWST, CCT, SIAs, and Spent Fuel Pool (SFP) will not increase the consequences of an accident previously evaluated. The increased boron concentration limits reduce the time to switchover from cold to hot leg recirculation, which will prevent boron precipitation in the reactor vessel following a loss of coolant accident (LOCA). The post-LOCA sump boron concentration limit is revised to ensure adequate post-LOCA shutdown margin. The post-LOCA containment sump and quench spray (QS) pH remain within the limits specified in the Standard Review Plan. All other transients either were not impacted or were made less severe as a result of the increased boron concentrations.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed increase in boron concentration does not add new or different equipment to the facility, nor does this change the manner that plant equipment is being operated. Although the increased boron concentration requires procedure changes to ensure that cold to hot leg (reactor coolant loops) recirculating after an accident occurs earlier in the event, there are no changes to the methods utilized to respond to plant transients. The proposed Technical Specification changes do not alter instrumentation setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced. Therefore, the possibility for an accident of a different type than was previously evaluated in the Safety Analysis Report is not created.

3. Does the change involve a significant reduction in a margin of safety.

The LOCA considerations, including the recirculation switchover time, the post-LOCA sump boron concentration limit, and the quench spray and post-LOCA sump pH have been evaluated and found to be acceptable. The acceptance criteria of all non-LOCA transients continue to be met. Therefore, there is no significant reduction in the margin of safety in the accident analyses

impacted by boron concentration increases in the RWST, CCT, SIAs, and SFP.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: L. Raghavan, Acting.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 22, 2000.

Description of amendment request: The proposed changes modify the limiting conditions for operation, surveillance requirements, and the Bases for the North Anna Power Station (NAPS) Units 1 and 2 Technical Specifications 3.4.1.4, 3.4.1.6, 4.4.1.4, 4.4.1.6.1, and add 4.4.1.6.4 to extend the drained reactor coolant loop verification time from 2 hours to 4 hours prior to backfilling when returning the drained loop to service. This amendment request supersedes the August 4, 1999, request in its entirety (64 FR 48868, September 8, 1999).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed changes for the North Anna Units 1 and 2 and determined that a significant hazards consideration is not involved. The proposed [revision to the] Technical Specification[s] establishes limiting conditions for operation and surveillance requirements for isolated loops backfill. Specifically, Technical Specifications requirements are being established to control the source of borated water for seal injection to the reactor coolant pumps (RCP) and to address reactivity control of an isolated and filled loop. The proposed controls ensure that the boron concentration of any source of water used for reactor coolant pump seal injection is greater than or equal to the boron concentration corresponding to the shutdown margin requirements for the applicable Mode. The proposed changes will establish consistent reactivity controls for isolated Reactor Coolant Systems (RCS) loops. The Bases [have] been revised to further discuss the additional controls for the loop backfill evolution. Adequate Technical Specifications controls have been established to ensure that an uncontrolled positive reactivity addition does not occur during a loop backfill evolution. The proposed changes will ensure that an inadvertent/undetected positive reactivity addition does not occur. The following is provided to support this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification limiting conditions for operation and surveillance requirements ensure that the initiation of seal injection in order to allow a partial vacuum to be established in an isolated and drained loop will not create the potential for an inadvertent/undetected introduction of under-borated water into an isolated loop prior to returning the isolated loop to service. The proposed Technical Specification controls prevent any additions of makeup or seal injection that would violate the existing shutdown margin requirements for the active portion of the RCS. Thus, adequate Technical Specification controls are established to preclude an inadvertent/undetected boron dilution event. Therefore, there is no increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no modifications to the plant as a result of the changes. The proposed Technical Specification Limiting Conditions for Operation and Surveillance Requirements ensure that the initiation of seal injection will not create an undetected positive reactivity addition. No new accident or event initiators are created by the initiation of seal injection for the RCP in the isolated loop in order to establish a partial vacuum in that isolated and drained loop. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type previously evaluated.

3. Involve a significant reduction in the margin of safety as defined in the bases on any Technical Specifications.

The proposed changes have no effect on safety analyses assumptions. Rather, the proposed changes acknowledge the establishment of seal injection for the RCP in the isolated and drained loop as a prerequisite for the vacuum-assisted backfill technique. The proposed Technical Specification Limiting Conditions for Operation and Surveillance Requirements ensure that the initiation of seal injection in order to allow a partial vacuum to be established in an isolated and drained loop will not create the potential for an inadvertent/undetected introduction of under-borated water into an isolated loop prior to returning the isolated loop to service. Adequate Technical Specifications controls are established to preclude an inadvertent/undetected boron dilution event. In addition, the proposed controls prevent any additions of makeup or seal injection that would violate the existing shutdown margin requirements for the active portion of the Reactor Coolant System. Therefore, the proposed changes do not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: L. Raghavan, Acting.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 27, 2000 (WM 00–0026).

Description of amendment request: The proposed amendment would revise Appendix C, "Antitrust Conditions for Kansas Gas and Electric Company [KGE]," for the Wolf Creek Generating Station (WCGS) operating license. The revisions would (1) state that the specific conditions applicable to Kansas Electric Power Cooperative, Inc. (KEPCo) do not restrict its rights, or the duties of KGE, under other license conditions, (2) define "KGE members in licensee's service area" in the appendix to include all KEPCo members with facilities in Western Resources' and KGE's combined service area, (3) delete license conditions restricting KEPCo's use of the power from WCGS, (4) remove out-of-date conditions, and (5) update conditions to be consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission (FERC) open access transmission tariff. Western Resources is the parent company of KGE.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change merely revises the KGE Antitrust Conditions in the Wolf Creek Generating Station Facility Operating License. The proposed change is considered an administrative change and does not modify, add, delete, or relocate any technical requirements of the Technical Specifications. As such, the administrative changes do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not

involve a significant increase in the probability or consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new [requirements] or eliminate any old requirements. Thus, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because there is no effect on any safety analyses assumptions. The changes are administrative in nature. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of application for amendment: June 7, 2000.

Brief description of amendment: The proposed amendment would revise Section 3.10.8, "SHUTDOWN MARGIN (SDM) Test—Refueling," of the Technical Specifications (TS), correcting an administrative error introduced when Amendment No. 91 (converting the TS to the Improved TS format) was processed.

Date of publication of individual notice in Federal Register: June 16, 2000 (65 FR 37807).

Expiration date of individual notice: July 17, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 26, 1999, as supplemented March 31, 2000.

Brief description of amendments: The amendments revise Technical Specification 3.3.1, "Reactor Protective System (RPS) Instrumentation—Operating," to change the allowable values for two of the trip setpoints. The change will reduce spurious reactor trip hazards associated with these setpoints while maintaining plant protection.

Date of issuance: July 6, 2000.

Effective date: July 6, 2000, to be implemented within 60 days. For surveillance requirements associated with the revised allowable values for functions 12 and 13 in Technical Specification Table 3.3.1–1, the first performance is due at the end of the first surveillance interval that began on the date the surveillance was last performed prior to the date of implementation of these amendments.

Amendment Nos.: Unit 1–126, Unit 2–126, Unit 3–126.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 2000 (65 FR 31355).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 6, 2000.

No significant hazards consideration comments received: No.

Baltimore Gas and Electric Company, Docket Nos. 50–317, 50–318, and 72–8, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and Independent Spent Fuel Storage Installation, Calvert County, Maryland

Date of application for amendment: February 29, 2000, as supplemented April 7, April 27, May 2, May 19, and June 20, 2000.

Brief description of amendment: These amendments conform the licenses to reflect the transfer of Operating Licenses Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and Materials License No. SNM–2505 for the Calvert Cliffs Independent Spent Fuel Storage Installation held by Baltimore Gas and Electric Company to Calvert Cliffs Nuclear Power Plant, Inc.

Date of Issuance: June 30, 2000.

Effective date: As of the date of issuance to be implemented within 45 days.

Amendment No.: 237 and 211.

Facility Operating License No. DPR–53, DPR–69: Amendments revised the Operating Licenses, and Materials License No. SNM–2505 and the Materials License Technical Specifications.

Date of initial notice in Federal Register: May 4, 2000 (65 FR 25963)

The April 7, April 27, May 2, May 19, and June 20, 2000, supplements did not expand the scope of the initial application as originally noticed.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated June 30, 2000.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of application for amendment: July 29, 1999.

Brief description of amendment: The amendment revises items 1.a, 2.a, 4.a, and 5.a of Technical Specification Table 3.3.5.1–1, "Emergency Core Cooling System Instrumentation," to change the reactor vessel water level—level 1 allowable value.

Date of issuance: July 13, 2000.

Effective date: July 13, 2000, to be implemented within 30 days from the date of issuance.

Amendment No.: 166.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 25, 1999 (64 FR 46431) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 20, 1999.

Brief description of amendment: Incorporates 16 improvements (identified by Technical Specifications Task Force (TSTF) numbers) to the Improved Standard Technical Specifications, NUREG–1434 (for General Electric model Boiling Water Reactor/6 (BWR/6) plants such as Grand Gulf Nuclear Station (GGNS)), that was part of the basis for the current improved Technical Specifications for GGNS that were issued in Amendment 120 dated February 21, 1995. The 17 improvements are the following TSFTs: 2, 5, 17, 18, 32, 33, 38, 45, 60, 104, 118, 153, 163, 166, 278, and 279. The licensee withdrew its request to incorporate TSTF–9 into the TSs.

Date of issuance: June 30, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 142.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in *Federal Register:* December 29, 1999 (64 FR 73089).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 18, 1999, as supplemented by letters dated May 16, 2000, and June 1, 2000.

Brief description of amendment: The amendment modifies Technical Specification (TS) 3.6.2.2 Limiting Condition for Operation to allow Waterford Steam Electric Station, Unit 3 to operate with two independent trains of containment cooling, consisting of one cooler per train, operable during modes 1, 2, 3, and 4. Associated changes to the TS Bases have been incorporated.

Date of issuance: July 6, 2000.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 165.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 9, 2000 (65 FR 6407). The May 16, 2000, and June 1, 2000, supplements did not expand the scope of the application as noticed or change the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 6, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: July 15, 1999.

Brief description of amendments: The amendments change the Technical Specifications (TSs) surveillance frequency for the quench and recirculation spray system nozzle air flow test. The amendments also change terminology in the TS action statement for the TS axial flux difference, and make other miscellaneous editorial and format changes.

Date of issuance: July 11, 2000.

Effective date: As of the date of its issuance and shall be implemented within 60 days.

Amendment Nos.: 231 and 111.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 17, 1999 (64 FR 62708) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 27, 2000, as supplemented May 30, 2000.

Brief description of amendment: The amendment will modify the action statement for Technical Specification (TS) 3/4.7.11, "Ultimate Heat Sink," to permit Unit 2 to remain in operation with the ultimate heat sink water temperature greater than 75° F and less than 77° F, for a period of up to 12 hours provided the water temperature is verified below 77° F at least once per hour. This is a one-time change during the summer period and will expire after October 15, 2000, and revert back to the original TS action statement.

Date of issuance: July 10, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 247.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 22, 2000 (65 FR 15382) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: March 19, 1999.

Brief description of amendments: The amendments revise paragraph 2.C.(4) of the Operating Licenses related to the fire

protection program at Prairie Island, Units 1 and 2. Specifically, the proposed amendments would (1) remove reference to two NRC safety evaluation reports (SEs) that are no longer applicable to the fire protection program at Prairie Island and (2) correct the date of one SE.

Date of issuance: July 11, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 150 and 141.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 28, 2000 (65 FR 25001).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: April 12, 1999, as supplemented July 7, 2000.

Brief description of amendments: The amendments revise several Technical Specification (TS) sections in order to relocate shutdown margin requirements to the Core Operating Limits Report and to ensure that the TS requirements are consistent with the dilution analysis in the Updated Safety Analysis Report.

Date of issuance: July 11, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 151 and 142.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 28, 2000 (65 FR 24999). The July 7, 2000, supplemental letter provided clarifying information that was within the scope of the original application and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 17, 1999, as supplemented April 6, 2000.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.1.A.1, "Reactor Coolant Loops and Coolant Circulation," to (1) establish required actions and a 72 hour time limit for operation with the reactor coolant system (RCS) average temperature above 350 °F and no reactor coolant pumps (RCPs) running, (2) extend from 6 hours to 12 hours the time within which the RCS average temperature must be reduced to below 350 °F if 72 hours are exceeded and no RCPs are restored to operability and operation, and (3) extend the time limit for operations with no RCPs running from 1 hour to 12 hours for situations where the RCPs are stopped as a result of preplanned work activities.

Date of issuance: July 14, 2000

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 152 and 143

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 29, 1999 (64 FR 66670).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14, 2000.

No significant hazards consideration comments received: No.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 15, 1999, as supplemented February 7, March 24, April 28, May 4, and May 30, 2000.

Brief description of amendments: The amendments conform the operating licenses for each of the units to reflect the transfer of the operating licenses, to the extent held by PP&L, Inc., to PPL Susquehanna, LLC.

Date of issuance: July 1, 2000

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: 188 and 162.

Facility Operating License Nos. NPF–14 and NPF–22. The amendments revised the license.

Date of initial notice in Federal Register: March 3, 2000 (65 FR 11611). The March 24, April 28, May 4, and May 30, 2000, letters provided clarifying information. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 2000.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 14, 1999, as supplemented on March 2, 2000.

Brief description of amendments: The license amendment revises Technical Specification (TS) Section 3/4.9.12, "Fuel Handling Area Ventilation System," and provides greater consistency between the two Salem units, removes inappropriate and invalid surveillance requirements (SR), and clarifies the Bases. The revised TS Section 3/4.9.12 will require that the high efficiency particulate air (HEPA) and charcoal filters to be in service prior to moving irradiated fuel in the Fuel Handling Building. This will be accomplished by the addition of a new SR 4.9.12.b. The new SR allows the licensee to eliminate an automatic actuation feature from the Fuel Handling Area Ventilation system control circuit, as well as the requirement to test that feature. The new surveillance will also require verification of system line up every 24 hours during fuel movement or crane operation to ensure system flow through the HEPA-charcoal filter train.

Date of issuance: June 14, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 231 & 211.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 2, 1999 (64 FR 29715). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 14, 2000.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 17, 1999.

Brief description of amendment: The proposed changes would revise the required minimum contained volume of the condensate storage tank from 172,700 gallons of water to 179,850 gallons of water.

Date of issuance: July 7, 2000.

Effective date: July 7, 2000.

Amendment No.: 145.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: June 16, 1999 (64 FR 32290).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 2, 1999, as supplemented May 16 and June 16, 2000 (PCN–506).

Brief description of amendments: These amendments approve changes to Technical Specifications, Section 5.0, "Administrative Controls," and the Environmental Protection Plan.

Date of issuance: July 7, 2000.

Effective date: July 7, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2–168; Unit 3–159.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications and the Environmental Protection Plan.

Date of initial notice in Federal Register: December 29, 1999 (64 FR 73096). The May 16 and June 16, 2000, letters provided additional information and clarifications that were within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 18, 1999, as supplemented May 11, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to require a revised activated charcoal testing methodology in accordance with the guidance provided by Generic Letter 99–02, "Laboratory Testing of Nuclear Grade Activated Charcoal."

Date of Issuance: July 11, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 189.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 17, 1999 (64 FR 62716).

The May 11, 2000, supplement did not expand the scope of the application as initially noticed, or change the proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 11, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of July 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18771 Filed 7–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1620]

Review of A Reclamation Plan For Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act; Final Standard Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has published the Final Standard Review Plan for Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act (NUREG–1620). An NRC source and byproduct material license is required under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, in conjunction with uranium or thorium milling, or with byproduct material at sites formerly associated with such milling. An applicant for a new reclamation plan, or for the renewal or amendment of an existing license, is required to provide detailed information on the facilities, and procedures to be used, and if appropriate, an environmental report that discusses the effect of proposed operations on public health and safety and on the environment. This information is used by Nuclear Regulatory Commission staff to determine whether the proposed activities will be protective of public health and safety and the environment. The standard review plan provides guidance to NRC staff for the review of reclamation plans while ensuring consistency and uniformity among the staff reviews. Each section in the review plan provides detailed review guidance on subject matter required in a standard reclamation plan. The review plan is intended to improve the understanding of the staff review process by interested members of the public and the uranium recovery industry. The final version includes updates based on public comment on the draft Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act.

Availability: Copies of NUREG–1620 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, PO Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Paper and electronic copies are available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. Washington, DC. An electronic copy can be accessed for reading, searching, or copying under "Technical Reports in the NUREG Series" of the "NRC Reference Library" at the NRC Web site, (http://www.nrc.gov/NRC/NUREGS).

Dated at Rockville, Maryland, this 3rd day of July, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–18919 Filed 7–25–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 2000.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of July 1, 2000, of three rescission proposals and two deferrals contained in one special message for FY 2000. The message was transmitted to Congress on February 9, 2000.

Rescissions (Attachments A and C)

As of July 1, 2000, three rescission proposals totaling $128 million have been transmitted to the Congress. Attachment C shows the status of the FY 2000 rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 2000, $485 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 2000.

Information From Special Message

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below: 65 FR 9017, Wednesday, February 23, 2000.

Jacob J. Lew,
Director.

Attachment A

STATUS OF FY 2000 RESCISSIONS
[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	128.0
Rejected by the Congress	
Pending before the Congress for more than 45 days (available for obligation)	−128.0
Currently before the Congress for less than 45 days	

Attachment B

STATUS OF FY 2000 DEFERRALS
[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,622.0
Routine Executive releases through July 1, 2000.	−1,137.2
(OMB/Agency releases of $1,153.3 million, partially offset by a cumulative postive adjustment of $16.1 million)	
Overturned by the Congress	
Currently before the Congress	484.8

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ATTACHMENT C
Status of FY 2000 Rescission Proposals - As of July 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Defense Environmental Restoration and Waste Management..	R00-1		13,000	2-9-00	*			
Energy Programs								
SPR Petroleum Account	R00-2		12,000	2-9-00	*			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing								
Housing Certificate Fund	R00-3		103,000	2-9-00	*			
TOTAL, RESCISSIONS			128,000					

* No funds were withheld.

Budgetary resources
1,622.0
−1,137.2
484.8

ERRALS

ATTACHMENT D
Status of FY 2000 Deferrals - As of July 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 7-1-00
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D00-1	172,858		2-9-00	27,548				145,310
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund	D00-2	1,449,159		2-9-00	1,125,790			16,133	339,502
TOTAL, DEFERRALS		1,622,017			1,153,338			16,133	484,812

[FR Doc. 00–18855 Filed 7–25–00; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43055; File No. SR–Phlx–99–43)]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change Amending Its Procedures Regarding Stop Order Bans and Requiring the Use of Account Identifiers for PACE Users

July 19, 2000.

1. Introduction

On November 18, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its procedures regarding stop order and stop limit order bans and require the use of account identifiers for PACE users. On December 9, 1998, February 2, 1999, and July 14, 1999, respectively, the Exchange filed Amendments 1, 2, and 3 to the proposal with the Commission.[3]

The proposed rule change, including Amendments 1, 2, and 3, was published for comment in the **Federal Register** on September 1, 1999.[4] On July 17, 2000, the Exchange filed Amendment No. 4 to the proposal with the Commission.[5] No comments were received on the proposal. This notice and order approves the proposed rule change, as amended, and seeks comment from interested persons on Amendment No. 4.

II. Description of the Proposal

The Exchange has previously adopted circuit breaker rules, paralleling the rules of other exchanges.[6] At this time, the Exchange proposes, like other exchanges, to prohibit the entry of stop and stop limit orders during times of market stress.[7]

Proposed Rule 134 will establish a procedure prohibiting the entry of stop orders and stop limit orders whenever the primary market for a stock admitted to dealings on the Exchange institutes a stop and stop limit order ban. When the primary market institutes a stop and stop limit order ban, the Exchange will also ban such orders in the stock (or stocks) until such time as the ban in the primary market is lifted.

The Exchange will use the following procedures to implement a stop order ban. Following notice from the Consolidated Tape, the Exchange will announce to the floor and to PACE users that a stop order ban is in effect in a particular issue (or issues). the entry of stop and stop limit orders on the Phlx would be prohibited until the ban in the primary market is lifted and that information is disseminated on the Consolidated Tape. Any stop or stop limit orders residing on the specialist's book when a ban goes into effect for a stock that is subject to the ban may[8] be canceled by the Exchange with the approval of two Floor Officials and a market regulation officer.[9]

The Exchange believes that it is appropriate to ban stop orders and stop limit orders when the primary market institutes a ban because, in a violatile market, stop orders can accumulate at various prices and, if triggered, the stop orders may increase price fluctuations. Because other exchanges have adopted stop order ban procedures, Phlx is concerned that a migration of stop and stop limit orders to the Phlx could occur, thus causing a burden on Phlx specialists.

The Exchange also proposes requiring PACE[10] users to attach account identifiers on orders submitted through PACE. Among other things, this will allow the system to distinguish orders for the account of an individual investor from other orders. Specifically, Rule 229, Commentary .20 will require that all orders sent through PACE shall include the appropriate account designator. The following are acceptable account types: "P"—principal order;[11] "A"—agency; "I"—individual investor; "D"—program trade, non-index arbitrage for member/member organization; "J"—program trade, index arbitrage for individual customers; "K"—program trade, non-index arbitrage for individual customer; "U"—program trade, index arbitrage for other agency; and "Y"—program trade, non-index arbitrage for other agency. Orders for less than 2,099 shares with the account identifier of "I" would still be able to be entered during the duration of the ban. Other orders will be automatically rejected by the PACE System.

The Exchange believes that the proposed account identifiers will enhance efficiency and accuracy of audit trail information and will facilitate surveillance investigations by readily identifying a member's proprietary trades. More accurate audit trail information should also increase the effectiveness of the Exchange's surveillance procedures.[12] Member firms will be given notice following the approval of the proposal to enable them to comply with new order identification requirements.

The purpose of the proposed rule is to reduce selling pressure by preventing market professionals from entering stop and stop limit orders during a market sell-off as well as enhance market coordination of the circuit breaker rules. In turn, the Phlx believes that the proposal should help reduce market volatility. In addition, proposed Phlx Rule 134 should prevent the migration to stop orders from the primary markets to the Phlx in the case of extraordinary

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19B–4.

[3] *See* letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated December 8, 1998 ("Amendment No. 1"); letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated February 1, 1999 ("Amendment No. 2"); and letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Associate Director, Division, Commission, dated July 13, 1999 ("Amendment No. 3").

[4] Securities Exchange Act Release No. 41788 (August 25, 1999), 64 FR 47885.

[5] *See* Letter from Nandita Yagnick, Counsel, Phlx, to David Steradzki, Special Counsel, Commission, dated July 14, 2000 ("Amendment No. 4"). The Commission has approved a proposed rule change (SR–NYSE–98–45) to eliminate the stop and stop limit order banunder Rule 80A. *See* Securities Exchange Act Release No. 41041 (Feb. 11, 1999), 64 FR 8424 (Feb. 19, 1999). As a result, in amendment No. 4, the Exchange eliminates references to stop and stop limit order bans occurring pursuant to NYSE Rule 80A.

[6] *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Order approving SR–PHLX–98–15).

[7] *See* Boston Stock Exchange Rules Chapter II, Section 35(b); and Chicago Stock Exchange Chapter IX, Rule 10B, .01(ii).

[8] *See* Amendment No. 2, *supra* note 3. The Commission notes that, pursuant to Boston Stock Exchange Rules Chapter II, Section 35 (b), any stop or stop limit orders residing on the specialist's book when a ban goes into effect for an individual stock will be canceled by the Exchange.

[9] *See* Amendment No. 2, *supra* note 3. In Amendment No. 3, the Exchange amended Rule 134(c)(iii) to codify factors to be considered in determining whether stop and stop limit orders on the book would be cancelled in the event that the Exchange institutes a stop order ban in an individual stock. These factors include: (1) If the primary market cancels stop orders residing on their book; on (2) other unusual conditions or circumstances. *See* Amendment No. 3, *supra*, note 3.

[10] PACE is an electronic order entry, delivery, and execution system which operates on the equity floor pursuant to Phlx Rule 229.

[11] *See* Amendment No. 1, *supra* note 3.

[12] Telephone conversation between Nandita Yagnik, Counsel, Phlx, and David Sieradzki, Special Counsel, Division, Commission, on July 21, 1999.

market volatility, which should prevent the transfer of market volatility to the Phlx. Thus, the Exchange believes that the proposal represents a reasonable effort and coordinated means to address potential strain on the market that may develop should the Exchange become inundated with such orders.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[13] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[15]

The Exchange represents that proposed Rule 134 should prevent the migration of stop orders from the primary markets to the Exchange in the case of extraordinary market volatility, which should prevent the transfer of market volatility to the Phlx. The Commission believes that, by preventing the entry of stop and stop limit orders on the Phlx when such orders are prohibited on the primary market, the proposal may help to alleviate market volatility during times of market stress. As a result, the Commission finds that it is reasonable for the Exchange to ban the entry of stop and stop limit orders when the primary Exchange has issued a ban on such orders. In determining to approve the proposal, the Commission notes that, as amended, the proposed rule is substantially similar to the rules of the Boston Stock Exchange regarding stop and stop limit order bans.[16]

Regarding the use of account identifiers for PACE users, the Commission finds that the proposed identification codes may help to prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information. Specifically, the Commission believes that the use of identifier codes should facilitate surveillance investigations by clearly identifying a members's own proprietary trading. In addition, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity. Accordingly, the Commission finds that the proposed mandatory use of audit trail identifiers for orders sent through PACE is reasonable and consistent with the Act.

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 4 simply eliminates references to stop and stop limit order bans pursuant to NYSE Rule 80A. As noted above, NYSE Rule 80A has been amended and no longer requires stop and stop limit order bans. As a result, the amendment does not raise any significant regulatory issues. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)[17] and 19(b)(2)[18] of the Act, to approve Amendment No. 4 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–98–43 and should be submitted by August 16, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Phlx–98–43) as amended, is approved and Amendment No. 4 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18882 Filed 7–25–00; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See supra* note 8.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3271]

State of Minnesota; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency, dated July 12, 2000, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on May 17, 2000 and continuing through July 12, 2000.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 29, 2000 and for economic injury the deadline is March 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 2000.

Allan I. Heberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18838 Filed 7–25–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Public Meeting

The Midwestern States, Regulatory Fairness Board will hold a public hearing on September 11, 2000, 10:00 a.m., at Rock Valley College, Performing Art Center, located at 3301 North Mulford Road, Rockford, Illinois to receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance actions taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman. For further information, call Elestine Harvey (312) 353–1744.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–18840 Filed 7–25–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region X Advisory Council Meeting; Public Meeting

The Northwestern States, Regulatory Fairness Board will hold a public hearing on September 26, 2000, 12:00 p.m., at Z. J. Loussac Library, AC Assembly Chamber, located at 3600 Denali Street, Anchorage, Alaska to receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance actions taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman. For further information, call Elestine Harvey (312) 353–1744.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–18839 Filed 7–25–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3372]

Bureau of Educational and Cultural Affairs Request for Proposals: NIS College and University Partnerships Program (NISCUPP)

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501c may apply to pursue institutional or departmental objectives in partnership with foreign counterpart institutions from the New Independent States with support from the NIS College and University Partnerships Program. These objectives should support the overall goals of the program: to support the transition of the New Independent States to democratic systems based on market economies, and to strengthen mutual understanding and cooperation between the United States and the New Independent States. The means for achieving these objectives may include teaching, scholarship, and professional outreach to professionals and other members of the communities served by the participating institutions.

Program Overview

Underlying the specific institutional objectives of projects funded by this program should be the goals of encouraging the growth of freedom and democracy through a deepened mutual understanding of fundamental issues and practical applications in the encouragement of civil society, economic stability and prosperity, or the free flow of information. Innovative strategies to address these underlying concerns in the pursuit of clearly defined institutional objectives are encouraged. Outreach from academic institutions to larger communities of citizens and practitioners to extend understanding about these issues is also encouraged.

The Bureau supports institutional linkages in higher education with partners from the New Independent States of the former Soviet Union through the NIS College and University Partnerships Program, for which this Request for Proposals invites applications for funding in FY2001. The Bureau also anticipates issuing a separate and additional Request for Proposals for a partnership program for community colleges interested in cooperating with institutions in some or all of the New Independent States. Eligible community colleges may apply for grants under either or both of the above competitions, but the Bureau will not give multiple awards for duplicate partnerships under these competitions.

The Bureau also supports institutional linkages in higher education with partners worldwide through the College and University Affiliations Program; the College and University Affiliations Program Request for Proposals was announced separately and has a deadline of November 13, 2000. Applicants interested in the Bureau's College and University Affiliations Program should contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202) 619-5289.

Applicant Objectives

While the benefits of the project to each of the participating institutions may differ significantly in nature and scope, proposals should outline well-reasoned strategies leading to specific, demonstrable changes at the department or institution in the NIS.

For example, proposals may describe the parameters and possible content of new courses, new research or teaching capacities or methodologies, new or revised curricula or programs, or other changes anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives.

Proposals must focus on curriculum, faculty, and staff development, as well as administrative reform, at the NIS partner institution(s) in one or more of these eligible disciplines. Projects should involve the development of new academic programs or the restructuring of existing programs, and should promote higher education's role in the transition to market economies and open democratic systems. Whenever feasible, participants should make their training and personnel resources and research results available to government, NGOs, and businesses.

Partner institutions may pursue their institutional objectives through exchanges of teachers, researchers, administrators or, in limited circumstances, students for any appropriate combination of teaching, consultation, research, and outreach, for periods ranging from one week to an academic year. The strategy for achieving project objectives may include exchange visits in either or both directions, but no single formula is anticipated for the duration, sequence, or number of these visits. Visits of one semester or more for participants from each of the institutional partners are strongly encouraged. To provide adequate time to meet institutional project objectives, the Program awards grants for periods of approximately three years.

Although strong budgetary and programmatic emphasis may be given to visits in one direction over another, the benefits of all these visits to the sending as well as the receiving sides should be clearly explained. Exchange visits for the purpose of attending conferences are not encouraged except in combination with other grant activities and in support of specific educational objectives at one or more of the participating institutions.

Proposals that realistically assess institutional capacities will be better able to justify the request for support.

Effective proposals will demonstrate that the proposed partnership institutions understand one another and are committed to support and cooperate with another in project implementation. Accordingly, proposals should reflect substantial awareness of the foreign as well as the U.S. partner(s).

If the proposed partnership would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects

should be described in the proposal, and the results of the evaluation of previous cooperation efforts should be summarized.

Proposals should outline and budget for a methodology for project evaluation. The evaluation plan should include an updated assessment of the current status of each participating department's and institution's needs at the time of program inception; ongoing formative evaluation to allow for prompt corrective action; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's influence within the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements, both with and without the Bureau's support. Evaluative observations by external consultants with appropriate subject or regional expertise are especially encouraged.

Costs

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by other applicants, all participating institutions are expected to identify substantial costs to contribute. These costs may include the estimated costs of in-kind contributions for which funds are not exchanged. Consistent with the "Review Criteria" for this competition listed elsewhere in this document and with specific reference to "Cost-Sharing" and "Institutional Commitment to Cooperation," proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and of the institution's potential to benefit from it.

Proposals must be submitted by the U.S. institutional partner and must include a letter of commitment from the foreign partner(s). The letters should be signed by persons authorized to commit institutional resources to the project. U.S. and foreign partner institutions are encouraged to consult about the proposed project with program office staff in Washington, DC.

The Bureau's support may be used to defray the costs of the exchange visits as well as the costs (up to a maximum of 20 percent of the total grant) of their administration at any partner institution, including administrative salaries and direct administrative costs but excluding indirect costs. Although grants will be issued to eligible U.S. colleges and universities, adequate provision for the administrative costs of the project at all partner institutions, including the foreign partner(s), is encouraged.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail communication facilities as well as through interactive technology or non-technology-based distance-learning programs. However, projects focusing primarily on technology or physical infrastructure development are not encouraged. Proposals that include Internet, electronic mail, and other interactive technologies should discuss how the foreign partner institution will support the costs of such technologies after the project ends. Applicants may propose other project activities not specifically anticipated in this solicitation if the activities reinforce exchange activities and their impact.

The maximum award in the FY2001 competition will be $300,000. Requests for smaller amounts are eligible. Budgets and budget notes should carefully justify the amounts requested. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Grants are subject to the availability of funds for Fiscal Year 2001. The amount of funding available for proposals to the NIS College and University Partnerships Program in FY 2001 has not yet been determined. In FY 2000, 56 proposals were received under this competition. Of this number, approximately 20 proposals are anticipated to be funded.

Eligible Fields

The NIS College and University Partnership Program is limited to the following academic fields:

(1) law;
(2) business/accounting/trade;
(3) education/continuing education/educational administration;
(4) public administration/public policy analysis;
(5) journalism/communications; and
(6) social, political, or economic sciences

U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from community colleges, minority-serving institutions, undergraduate liberal arts colleges, research universities, and combinations of these types of institutions are eligible. Applications from consortia or other combinations of U.S. colleges and universities are eligible. Secondary U.S. partners may include non-governmental organizations as well as non-profit service and professional organizations. The lead U.S. organization in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

With the exception of outside consultants reporting on the degree to which project objectives have been achieved, participants representing the U.S. institution who are traveling under the Bureau's grant funds must be faculty or staff from the participating institution(s). Participants representing the U.S. institution must be U.S. citizens.

Foreign Institution and Participant Eligibility

In other countries, participation is open to recognized institutions of post-secondary education. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations.

With the exception of outside consultants reporting on the degree to which project objectives have been achieved, participants representing the foreign institutions must be faculty or staff of the foreign institution. Foreign participants must be citizens, nationals, or permanent residents of the country of the foreign partner and must be qualified to hold a valid passport and a U.S. J–1 visa.

Foreign Country and Location Eligibility

Foreign partners from the following countries are eligible:

Armenia;
Azerbaijan;
Belarus—foreign partners must be independent institutions (state universities are not eligible);
Georgia;
Kazakhstan;
Kyrgyzstan;
Moldova;
Russia—preference will be given to proposals which designate partner institutions outside Moscow and St. Petersburg; proposals for partnerships with institutions located in Moscow or St. Petersburg should clearly indicate

how those partnerships will have impact on other regions. Proposals which designate a partner institution in the Tomsk Region are encouraged.

Tajikistan—in consideration of the State Department Warning advising U.S. citizens to defer travel to Tajikistan, proposals should not include travel by U.S. participants to Tajikistan;

Turkmenistan;

Ukraine—preference will be given to proposals which designate partner institutions outside Kiev; proposals for partnerships with institutions located in Kiev should clearly indicate how those partnerships will have impact on other regions;

Uzbekistan.

Partnerships including a secondary foreign partner from a non-NIS country are eligible; however, with the exception noted below, the Bureau will not cover overseas non-NIS partner institution costs.

Central European Partners

The Bureau encourages proposals which build upon established collaboration between U.S. institutions and partners in Central and Eastern Europe in order to support faculty and curriculum development in the NIS and to promote regional cooperation. Within the context of this partnership agreement and under the guidance of the U.S. partner institution, funds may be budgeted for the exchange of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (applicants planning to submit proposals for trilateral partnerships with a partner from Central and Eastern Europe are encouraged to contact the program office).

Ineligibility

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The foreign country or geographic location is ineligible;

(6) The amount requested from the Bureau exceeds $300,000.

Grant-Making Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act).

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFP, which can be obtained by following the instructions given in the section below entitled "For Further Information." The "Project Objectives, Goals, and Implementation" (hereafter, POGI) and the "Project Specific Instructions" (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Announcement Title and Number

All communications with the Bureau concerning this announcement should refer to the NIS College and University Partnerships Program and reference number ECA/A/S/U–01–06.

Deadline for Proposals

All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, January 19, 2001. Faxed documents will not be accepted, nor will documents postmarked on Friday, January 19, 2001 but received on a later date.

Approximate program dates: Grant activities should begin on or about August 15, 2001.

Program Duration: Approximately August 15, 2001–August 14, 2004.

FOR FURTHER INFORMATION: Contact the Humphrey Fellowships and Institutional Linkages Branch (College and University Affiliations Program); Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA–44, 301 Fourth Street, SW.; Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. Applicants may also send a message to affiliation@pd.state.gov to request a Solicitation Package.

The Solicitation Package includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify Bureau Program Officer Michelle Johnson (telephone: 202–619–4097, e-mail: johnsonmi@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Russia; please indicate Bureau Program Officer Jonathan Cebra (telephone: 202–619–4126, e-mail: jcebra@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Ukraine, Belarus, and Moldova; please indicate Bureau Program Officer Alanna Bailey (telephone: 202–619–6492, e-mail: abailey@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in any other eligible country (in the Central Asia or Caucasus regions).

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Please specify "NIS Colleges and Universities Partnerships Program Officer" on all inquiries and correspondence. Prospective applicants should read the complete **Federal Register** announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, Department staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Department of State, SA–44; Ref: ECA/A/S/U–01–06, Program Management, ECA/EX/PM, Room 336, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Washington, DC 20547.

All copies should include the documents specified under Tabs A through E in the "Project Objectives, Goals, and Implementation" (POGI) section of the Solicitation Package. The documents under Tab F of the POGI should be submitted with the original application and with one of the ten copies.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Sections at U.S. Embassies for review, with the goal of reducing the time needed to make the comments of overseas posts available in the Bureau's grant review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be evaluated by independent external reviewers.

The independent external reviewers, who will be professional, scholarly, or educational experts with appropriate regional and thematic knowledge, will provide recommendations and assessments for consideration by the Bureau. The Bureau will consider for funding only those proposals which are recommended for further consideration by the independent external reviewers.

Proposals will also be reviewed by Department staff as well as by the officers of the Office of the Coordinator of United States Assistance to the New Independent States and the public diplomacy sections of U.S. Embassies. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. Funding decisions will be made at the discretion of the Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with a contracts officer with competency for Bureau programs.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be reviewed competitively according to these criteria, which are not rank-ordered or weighted.

(1) Broad Significance of Institutional Objectives: Project objectives should have significant but realistically anticipated ongoing consequences for the participating institutions that will also contribute to the transition of the New Independent States to market economies and democratic societies.

(2) Clarity and Relevance of Project Objectives to Institutional Needs: Proposed projects should outline clearly formulated objectives that relate specifically to the needs of the participating institutions.

(3) Creativity and Feasibility of Project Implementation: Plan to achieve project objectives should demonstrate the feasibility of doing so during a three-year period by utilizing and reinforcing exchange activities realistically and with creativity.

(4) Institutional Commitment to Cooperation: Proposals should demonstrate significant understanding at each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(5) Project Evaluation: Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

(6) Cost-effectiveness: Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities and as a reflection of their commitment to cooperate with one another in pursuing project objectives. Although indirect costs are eligible for inclusion among costs to be contributed by the applicant, contributions should not be limited to indirect costs.

(7) Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives for all institutional partners and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any State Department representative. Explanatory information provided by the Department of State that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: July 16, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–18931 Filed 7–25–00; 8:45 am]

BILLING CODE 4710–11–P

STATE JUSTICE INSTITUTE

Notice of Public Meeting

State Justice Institute

DATE: Saturday, July 29, 2000; 9 a.m.–5 p.m.

PLACE: Holiday Inn Rushmore Plaza, Rapid City, SD.

MATTERS TO BE CONSIDERED: Consideration of proposals submitted for Institute funding and internal Institute business.

Portions open to the public: All matters.

Portions closed to the public: None.

CONTACT PERSON: David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 00–19003 Filed 7–24–00; 12:44 pm]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7222]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 2115–0017, 2115–0611, 2115–0573, and 2115–0630

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded four Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 25, 2000.

ADDRESSES: Please send comments to both (1) The Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2000–7222 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street S.W., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [65 FR 19952 (April 13, 2000)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2000–7222. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Regattas and Marine Parades.

OMB Control Number: 2115–0017.

Type of Request: Extension of currently approved collection.

Affected Public: Sponsors of marine events .

Form(s): N/A.

Abstract: The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and determine which measures are necessary to ensure the safety of life during the events. Sponsors must notify the Coast Guard of the event and provide additional information, as required. This is an efficient means for the Coast Guard to learn of the events and to address environmental impacts.

Annual Estimated Burden Hours: The estimated burden is 1,540 hours a year.

2. *Title:* Boat Owner's Report, Possible Safety Defect.

OMB Control Number: 2115–0611.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners of recreational boats.

Forms: CG–5578.

Abstract: Owners of recreational boats or engines who believe their product contains a defect or fails to comply with safety standards can call the Coast Guard Infoline, which will send them a copy of the "Boat Owner's Report", or they can file the report on-line at the website for the Office of Boating Safety.

Annual Estimated Burden Hours: The estimated burden is 80 hours a year.

Frequency: One time.

3. *Title:* Labeling Requirements in 33 CFR Parts 181 and 183.

OMB Control Number: 2115–0573.

Type of Request: Extension of currently approved collection.

Affected Public: Manufacturers and importers of recreational boats.

Form(s): N/A.

Abstract: The collection of information requires manufacturers or importers of recreational boats to apply for serial numbers from the Coast Guard and to display various labels on these boats.

Annual Estimated Burden Hours: The estimated burden is 382,798 hours a year.

4. *Title:* International Safety Management Code Audit Reports.

OMB Control Number: 2115–0630.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.

Form(s): N/A.

Abstract: The Coast Guard uses this information collection to determine the compliance status of U.S. vessels, subject to SOLAS 74, engaged in international trade. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety-management systems.

Annual Estimated Burden Hours: The estimated burden is 3,650 hours a year.

Dated: July 19, 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00–18898 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD09–00–015]

Availability of Final Great Lakes Icebreaking Environmental Impact Statement

AGENCY: Coast Guard, DOT.

ACTION: Notice of Availability of Great Lakes Icebreaking Final Environmental Impact Statement (EIS).

SUMMARY: The Coast Guard announces the completion and availability of a final environmental impact statement analyzing icebreaking on the Great Lakes.

DATES: The Coast Guard expects to make a decision regarding icebreaking operations on the Great Lakes after the EIS has been available to the public for 30 days. The Coast Guard will publish a document announcing the decision in the **Federal Register**.

ADDRESSES: The Coast Guard's point of contact for the EIS is Mr. Frank Blaha at the U.S. Coast Guard Civil Engineering Unit, 1240 East Ninth Street Room 2179, Cleveland, Ohio 44199–2060, Telephone (216) 902–6258. A copy of the EIS will be sent to those individuals who submitted substantive comments on the draft EIS. Any other interested party may request a copy of the EIS by writing or calling the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161, (800) 553–6847 and asking for document number PB 2000–105–877.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Coast Guard proposes to continue its icebreaking operations on the Great Lakes.

Discussion of Announcement

On December 21, 1936, the President ordered the Coast Guard to keep "open to navigation by means of icebreaking * * * channels and harbors in accordance with the reasonable demands of commerce." Executive Order 9,521 (1936) reprinted in 14 U.S.C. 81. Icebreaking is now one of the Coast Guard's primary duties. In the Great Lakes, most icebreaking has been performed in the same way, and by the same ship, since the Coast Guard Cutter MACKINAW was commissioned in 1944.

The National Environmental Policy Act (NEPA) was enacted in 1970. The law requires an EIS to be prepared when a proposed major federal action has a significant environmental impact. 42 U.S.C. 4332(2)(C). A "proposal" exists under NEPA's regulations "at that stage in the development of an action when an agency * * * has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal." 40 CFR 1508.23. Environmental analyses of ongoing activities need only be discussed in an EIS when an operation undergoes a change which itself is a major federal action.

There is no proposal to make a major change in the Coast Guard's long-standing domestic icebreaking program on the Great Lakes. Instead, concerns were raised in 1993 by the U.S. Fish and Wildlife Service and the Michigan Department of Natural Resources that ship transits made possible by icebreaking could have an adverse environmental impact on wetlands, fish populations, and fish egg development. The Coast Guard met with representatives of these organizations and agreed to look into the matter. A resultant memorandum of understanding required the Coast Guard to "update its EIS as required by NEPA concerning its icebreaking activities in the Great Lakes and in the St. Marys River." We also agreed to conduct 3–5 years of monitoring studies on fish spawning and emergent wetlands. The studies have been completed and they clearly demonstrate that icebreaking does not have the adverse environmental consequences suspected in 1993.

The EIS being made public today relies on those studies and finds that icebreaking has no significant impact on the Great Lakes environment. Publishing this final EIS satisfies the Coast Guard's 1993 commitment to update its EIS concerning Great Lakes icebreaking. We expect to make a decision regarding icebreaking operations on the Great Lakes after the EIS has been available to the public for 30 days.

Dated: July 17, 2000.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District

[FR Doc. 00–18936 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7672]

Establishment of Pilot Program to Exempt Certain Vessels From Inspection as Seagoing Motor Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of pilot program.

SUMMARY: The Coast Guard establishes a pilot program to exempt certain seagoing motor vessels from the requirement that they be inspected. The program will give the Coast Guard an opportunity to assess whether current requirements for inspection are beneficial (and, if they are not, reduce or eliminate them), without jeopardizing safety. This notice announces implementation of the program, and establishes procedures for participation in the program.

DATES: Written requests for participation in the pilot program must arrive no later than November 13, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this Notice, contact LT Dean Firing, Domestic Vessel Compliance Division (G–MOC–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–0514, fax 202–267–4394, e-mail: DFiring@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Subsection 412(b) of the Coast Guard Authorization Act of 1998 [Public Law 105–383] granted the Secretary of Transportation discretionary authority to establish a pilot program exempting certain seagoing motor vessels from the inspection requirements under 46 U.S.C. 3301(7). Under certain conditions, seagoing motor vessels of 300 gross tons or more, as measured under 46 U.S.C. chapter 143 or 145, may participate in the program as long as they do not (a) carry any cargo or passengers for hire; (b) engage in commercial service, commercial fisheries, or oceanographic research; or (c) engage in other than "good-samaritan" towing.

Although no treaties require recreational vessels in general to be inspected or certified, 46 U.S.C. 3301(7) requires seagoing motor vessels of 300 gross tons or more to be inspected and certificated by the Coast Guard, regardless of their functions, flags, or uses. Owners and operators of commercial, research, and recreational seagoing motor vessels face the same

requirements. Subsection 3301(7) has discouraged potential owners of these large recreational vessels from building, and actual owners from registering, such vessels in the United States. We expect the prospect of exemption provided by the pilot program to encourage the building and registering of such vessels here by reducing or eliminating the burden of inspection, without compromising safety. Participating vessels must follow all other applicable Federal, State, and local requirements such as those on loadlines, manning, and pollution prevention.

Owners and operators of vessels who would like to participate in the pilot program must submit requests in writing to the Coast Guard. We will evaluate requests case by case, considering the unique characteristics of each vessel. We will continue to inspect vessels that do not participate in the program. Instead of Certificates of Inspection, participating vessels will receive exemption letters from Commandant (G–MOC).

Owners or operators of four vessels have submitted requests in writing to participate in the pilot program. We are considering their requests and will consider all others submitted to us on or before November 13, 2000.

Which Vessels May Qualify to Participate in the Pilot Program?

Seagoing motor vessels of 300 gross tons or more, as measured under 46 U.S.C. chapter 143 or 145, may qualify to participate in the program, as long as they do not (a) carry any cargo or passengers for hire; (b) engage in commercial service, commercial fisheries, or oceanographic research; or (c) engage in other than "good-samaritan" towing.

How Do I Get an Exemption?

Written requests for vessels to participate in the pilot program must arrive on or before November 13, 2000. Send them to: Commandant, U.S. Coast Guard (G–MOC), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

The Commandant (G–MOC) will determine case by case whether vessels may participate. You should furnish enough information in your request to let the Commandant determine this. We may ask for more information; but you should furnish at least this much:

(a) A detailed description of the vessel, including its identification number, owner, and flag.

(b) A statement describing the intended use of the vessel. You do not have to include this statement if the vessel's Certificate of Documentation is endorsed only for recreation.

(c) A statement indicating that the vessel meets the qualifying conditions: does not carry any cargo or passengers for hire; engage in commercial service, commercial fisheries, or oceanographic research; or engage in other than "good-samaritan" towing.

(d) A statement indicating that the vessel meets requirements under 46 U.S.C. chapter 43 for recreational vessels, and related regulatory requirements for recreational boating. The vessel must also meet all other applicable statutes and rules such as those on loadlines, manning, and pollution.

How Do I Know Whether I Have Got an Exemption?

The Commandant (G–MOC) will notify you by letter if he approves your request. You will have to carry this letter onboard the vessel. An exemption will remain in effect as long as the vessel remains qualified. If the vessel's operating conditions do change, you must notify the Commandant (G–MOC) in writing within 30 days of their changing. The Commandant (G–MOC) will review them and determine whether the exemption is still valid.

When Will the Pilot Program Expire

Our authority to grant exemptions under this program expires November 13, 2000: Written requests to participate in the program must arrive on or before then. Any exemption granted will remain in effect as long as the vessel remains qualified. No vessel will remain qualified if it (a) carries any cargo or passengers for hire; (b) engages in commercial service, commercial fisheries, or oceanographic research; or (c) engages in other than "good-samaritan" towing.

Dated: July 19, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–18934 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–24]

Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 16, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 21, 2000.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28574
Petitioner: Federal Express Corporation
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii)
Description of Relief Sought/ Disposition: To permit FedEx to substitute a qualified and authorized check airman in place of an FAA

inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitation.

Grant, 06/29/00, Exemption No. 6473B

Docket No.: 29025
Petitioner: Northwest Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii)
Description of Relief Sought/ Disposition: To permit NWA to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations.

Grant, 06/29/00, Exemption No. 6782A

Docket No.: 26669
Petitioner: Evergreen International Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.583(a)(8)
Description of Relief Sought/ Disposition: To permit up to three dependents of Evergreen employees, who are accompanied by an employee sponsor traveling on official business only and are trained and qualified in the operation of emergency equipment on Evergreen's Boeing 747 cargo aircraft, to be added to the list of persons specified in § 121.583(a)(8) that Evergreen is authorized to transport without complying with certain passenger-carrying airplane requirements of part 121.

Grant, 06/29/00, Exemption No. 6442B

Docket No.: 23753
Petitioner: Saudi Arabian Airlines Corporation
Section of the FAR Affected: 14 CFR 61.2, 63.2, and 67.12
Description of Relief Sought/ Disposition: To permit Saudia pilots to be examined for and issued U.S. certificates and ratings required to operate its fleet as if it were a certificated U.S. air carrier.

Grant, 06/29/00, Exemption No. 39131

Docket No.: 29861
Petitioner: Confederate Air Force, Inc.
Section of the FAR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a)
Description of Relief Sought/ Disposition: To permit CAF to operate its fleet of former military airplanes that hold either a limited airworthiness certificate or an experimental airworthiness certificate for the carriage of passengers on local educational flights for compensation or hire.

Grant, 06/27/00, Exemption No. 6802A

Docket No.: 22822
Petitioner: T.B.M., Inc. and Butler Aircraft Co.
Section of the FAR Affected: 14 CFR § 91.611
Description of Relief Sought/ Disposition: To permit TMB and BAC to conduct ferry flights with one engine inoperative on their McDonnell Douglas DC–6 and DC–7 airplanes without obtaining special flight permit for each flight.

Grant, 06/26/00, Exemption No. 5204E

Docket No.: 28573
Petitioner: FAA, Office of Aviation System Standards (AVN), Flight Inspection Program
Section of the FAR Affected: 14 CFR 135.251 and 135.255(a)
Description of Relief Sought/ Disposition: To permit AVN to use the drug and alcohol testing program mandated by Department of Transportation (DOT) Order 3910.1C, "The Drug and Alcohol-Free Departmental Workplace," for its Flight Inspection Program management, pilot, and maintenance personnel in lieu of the drug and alcohol testing programs mandated by the Federal Aviation Regulations.

Grant, 06/26/00, Exemption No. 6484B

Docket No.: 29561
Petitioner: Loriar, Ltd.
Section of the FAR Affected: 14 CFR 121.139(a)
Description of Relief Sought/ Disposition: To permit Lorair to operate its Boeing 737–200 (B–737) airplane without carrying the appropriate parts of the maintenance manual aboard the airplane when it is away from its principal base of operations.

Denial, 06/28/00, Exemption No. 7256.

Docket No.: 29657
Petitioner: Constellation Historical Society and Global Aeronautical Foundation
Section of the FAR Affected: 14 CFR 91.529(b)
Description of Relief Sought/ Disposition: To permit CHS and GAF FEs to maintain currency in Constellation airplanes using and EBC program.

Grant, 06/28/00, Exemption No. 7255

Docket No.: 29870
Petitioner: American Eagle Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii)
Description of Relief Sought/ Disposition: To permit American Eagle to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in §121.424 during at least on flight leg that includes a takeoff and a landing.

Grant, 06/14/00, Exemption No. 7252

Docket No.: 28582
Petitioner: Atlas Air, Inc.
Section of the FAR Affected: 14 CFR 121.583(a)(8)
Description of Relief Sought/ Disposition: To permit Atlas Air, Inc., to (1) operate B–747–400 series cargo airplanes under the terms of this exemption, (2) revising condition No. 7 to include B–747–400 series cargo airplanes, and and (3) extending its July, 31, 2000, termination date to July 31, 2002, unless sooner superseded or rescinded.

Grant, 06/14/00, Exemption No. 6487B

Docket No.: 28206
Petitioner: Silver Moon Aviation
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit SMA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/30/00, Exemption No. 6122B

Docket No.: 29955
Petitioner: Mr. Jonathan D. Ross
Section of the FAR Affected: 14 CFR 45.21(a), 45.25, and 45.29(a) and (b)
Description of Relief Sought/ Disposition: To permit Mr. Jonathan D. Ross to operate his RV–8 aircraft (Registration Nol. 207RV; Serial No. 80094) displaying 3-inch-high nationality and registration markings on the vertical tail surface and 18-inch-high markings on the top of the right wing and the bottom of the left wing instead of the 12-inch-high markings required by the regulation.

Denial, 5/23/00, Exemption No. 7230.

[FR Doc. 00–18895 Filed 7–25–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–25]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 16, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 21, 2000.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 27672
Petitioner: Skydrive Chicago, Inc.
Section of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To permit SCI to allow nonstudent foreign nationals to participate in SCI-sponsored parachute jumping events held at SCI's facilities without complying with the parachute equipment and packing requirements of § 105.43(a).
Grant, 07/10/00, Exemption No. 7275

Docket No.: 30030
Petitioner: Midcoast Aviation, Inc.
Section of the FAR Affected: 14 CFR 145.45(f)
Description of Relief Sought/ Disposition: To permit Midcoast to place and maintain its IPM in a number of fixed locations within its facilities in lieu of giving a copy of its IPM to each of its supervisory and inspection personnel.
Grant, 06/29/00, Exemption No. 7258

Docket No.: 28445
Petitioner: Aircraft Braking Systems Corporation
Section of the FAR Affected: 14 CFR 43.9(a)(4) and 43.11(a)(3), appendix B to part 43, and § 145.57(a)
Description of Relief Sought/ Disposition: To permit ABSC to use computer-generated electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements.
Grant, 06/14/00, Exemption No. 6542B

Docket No.: 29819
Petitioner: Bombardier Aerospace
Section of the FAR Affected: 14 CFR 25.813(e)
Description of Relief Sought/ Disposition: To permit installation of interior doors between passenger compartments, on the BD–700–1A10 airplane.
Grant, 06/29/00, Exemption No. 7259

Docket No.: 29875
Petitioner: Airbus Industrie
Section of the FAR Affected: 14 CFR 25.857(e), §§ 25.785(d), 25.791, 25.807(c)(1), & (d)(1), 25.809(f)(1), 25.811(a), 25.812(g), 25.813(b), 25.857(e), and 25.1447(c)
Description of Relief Sought/ Disposition: To permit type certification of the Airbus Model A300F4–600R airplane, with provisions for the carriage of supernumeraries when the airplane is equipped with one floor level exit with escape slide within the occupied area.
Grant, 06/30/00, Exemption No. 7260

Docket No.: 28092
Petitioner: B2W Corporation
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit B2W to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 05/23/00, Exemption No. 6083B

Docket No.: 30014
Petitioner: Mission Aviation Fellowship
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit MAF to conduct local sightseeing flights at Santa Monica Municipal Airport, Santa Monica, California, for a one-day community fundraising event on May 31, 2000, or alternately on June 1, 2000, for compensation of hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 05/23/00, Exemption No. 7225

Docket No.: 30047
Petitioner: Brookings Flying Club, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353 and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Brookings to conduct local sightseeing flights at Brookings, Oregon airport for a one-day Airport Day Scholarship Fundraising event in May 2000, for compensation of hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 05/23/00, Exemption No. 7223

Docket No.: 30013
Petitioner: Mr. Guy Forshey
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Mr. Forshey to conduct local sightseeing flights at Altoona-Blair County Airport, Martinsburg, PA, for a charitable cause on June 11, 2000, for compensation of hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 05/23/00, Exemption No. 7226

Docket No.: 29575
Petitioner: Air Wisconsin Airlines
Section of the FAR Affected: 14 CFR 121.344(b)(3)
Description of Relief Sought/ Disposition: To permit Air Wisconsin to operate 13 BAe–146 airplanes without installing the required, approved digital flight data recorder (DFDR) until the first heavy maintenance check after April 30, 2000.
Grant, 05/05/00, Exemption No. 6939B

Docket No.: 29930
Petitioner: Gulfshore Helicopters
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Gulfshore to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 03.24/00, Exemption No. 7155

Docket No.: 29989

Petitioner: Experimental Aircraft Association Chapter 1047
Section of the FAR Affected: 14 CFR 135.1(a)(5)
Description of Relief Sought Disposition: To permit EAA Chapter 1047 and the Tar River CAP to conduct local sightseeing flights at the Rocky Mount/Wilson Airport in Rocky Mount, NC, for their annual open house on May 6, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 05/05/00, Exemption No. 7198

Docket No.: 29722.
Petitioner: Flight Express.
Section of the FAR Affected: 14 CFR 135.243(c)(2).
Description of Relief Sought/ Disposition: To permit Flight Express to allow each of its pilots to act as pilot in command under instrument flight rules with a minimum of 800 hours of total flight time, including 330 hours of cross-country flight time, 70 hours of night flight time, and 50 hours of actual or simulated instrument flight time of which 30 hours were in actual flight, in lieu of the flight-time requirements.
Denial, 05/05/00, Exemption No. 7199

Docket No.: 29661
Petitioner: Experimental Aircraft Association, Small Aircraft Manufacturers Association and National Association of Flight Instructors.
Section of the FAR Affected: 14 CFR 91.319(a)(2).
Description of Relief Sought/ Disposition: To permit EEA, SAMA, and NAFI members who own aircraft with an experimental certificate to be compensated for the use of the aircraft in transition training conducted by authorized flight instructors.
Grant, 04/06/00, Exemption No. 7162

Docket No.: 25177.
Petitioner: United States Coast Guard.
Section of the FAR Affected: 14 CFR 91.117(b) and (c), 91.119(c), 91.159(a) and 91.209(a).
Description of Relief Sought/ Disposition: To permit USCG to conduct air operations in support of drug law enforcement and drug traffic interdiction without meeting part 91 provisions governing: (1) Aircraft speed, (2) minimum safe altitudes, (3) cruising operations for flights conducted under visual flight rules (VFR), and (4) use of aircraft lights.
Grant, 05/19/00, Exemption No. 5231E

[FR Doc. 00–18896 Filed 7–25–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 16, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 21, 2000.

Gary A. Michel,
Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29674
Petitioner: Alaska Flying Network Flying Club
Section of the FAR Affected: 14 CFR 135.251, 135.255, 121.353, and appendixes I and J of part 121
Description of Relief Sought/ Disposition: To permit AFN Flying Club to conduct local sightseeing flights at an airport in the vicinity of Kenai, AK, to raise funds for local charities, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 7/11/00, Exemption No. 7274

Docket No.: 29257
Petitioner: Priority Air, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Priority Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 07/07/00, Exemption No. 6801A

Docket No.: 30037
Petitioner: Canton Airport Board
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J of part 121
Description of Relief Sought/ Disposition: To permit CAB to conduct local sightseeing flights at Ellingson Field, Canton, South Dakota, for the annual Canton Car Show on July 24, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 07/07/00, Exemption No. 7273

Docket No.: 30102
Petitioner: Corvallis Chapter of the Oregon Pilots Association
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit CCOPA to conduct local sightseeing flights at Corvallis Municipal Airport for a two-day air fair in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 07/06/00, Exemption No. 7270

Docket No.: 30095
Petitioner: Experimental Aircraft Association Chapter 597

Section of the FAR Affected: 14 CFR 91.315, 91.319(a), 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/Disposition To permit EAA Chapter 597 to conduct local sightseeing flights at Howard Nixon Memorial Airport, Chesaning, Michigan, for three one-day charitable events, one each in July 2000, September 2000, and October 2000, supporting the Chesaning Sportplane Association and the Young Eagles program, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 07/06/00, Exemption No. 7679

Docket No.: 30032
Petitioner: Corvallis Aviation Inc. dba Metro Helicopters Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit MHI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 07/05/00, Exemption No. 7266

Docket No.: 30045
Petitioner: Master Track Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit MTI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 07/05/00, Exemption No. 7268

Docket No.: 30033
Petitioner: Alpine Air Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit AAI to operate aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 07/05/00, Exemption No. 7267

Docket No.: 30090
Petitioner: Lance Air Flight Training Center
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Lance Air to conduct local sightseeing flights at four airshow events in 2000,for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 07/03/00, Exemption No. 7262

Docket No.: 30087
Petitioner: Belford Flying Service
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Belford to conduct local sightseeing flights at Fairfield County Airport, Lancaster, Ohio, for a three-day charitable event in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 07/03/00, Exemption No. 7265

Docket No.: 30067
Petitioner: Alaska Air Transit
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit AAT to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 07/03/00, Exemption No. 7261

Docket No.: 30099
Petitioner: Hastings Flying Association
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Hastings to conduct local sightseeing flights at Hastings-Barry County Airport, Hastings, MI, for a one-day fundraising event in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 07/03/00, Exemption No. 7263

Docket No.: 30040
Petitioner: Adams, Jerry L *et al.*
Section of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit those individual to act as pilots in operations conducted under part 121 after reaching their 60th birthdays.
Denial, 07/03/00, Exemption No. 7264

Docket No.: 29651
Petitioner: Experimental Aircraft Association, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit EAA members to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 06/29/00, Exemption No. 7111A

Docket No.: 26103
Petitioner: Northwest Seaplanes, Inc.
Section of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought/ Disposition: To permit Northwest Seaplanes to conduct part 135 operations outside of controlled airspace, over water, at an altitude below 500 feet above the surface.
Grant, 06/29/00, Exemption No. 6461C

[FR Doc. 00–18897 Filed 7–25–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33893]

The Blacklands Railroad Company—Operation Exemption—Northeast Texas Rural Rail Transportation District

The Blacklands Railroad Company, a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Northeast Texas Rural Rail Transportation District (NETEX) the rights to operate over approximately 45 miles of rail line in the State of Texas as follows: (1) Approximately 34.59 miles of rail line owned by NETEX beginning at milepost 524.0, located approximately 6.2 miles west of Sulphur Springs, and proceeding east to milepost 489.41, at the eastern county line of Franklin County; and (2) approximately 10.41 miles of rail line owned by the Union Pacific Railroad Company (UP) from milepost 489.41 to milepost 479.0 pursuant to trackage rights acquired by NETEX for the purpose of interchanging with UP.[1]

The transaction was scheduled to be consummated on or after July 17, 2000.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33893, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jo A.

[1] This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 33892, *Northeast Texas Rural Rail Transportation District—Acquisition Exemption—Lines of the Union Pacific Railroad Company*, wherein NETEX will acquire UP's line between milepost 524.0 and 489.41, and incidental trackage rights over UP's line between 489.41 and 479.0.

DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1300 19th Street, NW, Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18799 Filed 7–25–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33892]

Northeast Texas Rural Rail Transportation District—Acquisition Exemption—Lines of the Union Pacific Railroad Company

The Northeast Texas Rural Rail Transportation District (NETEX), a political subdivision of the State of Texas, Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire pursuant to an agreement entered into with the Union Pacific Railroad Company (UP), as indicated in its notice, approximately 34.6 miles of UP's rail line from milepost 524.0 west of Sulphur Springs, TX, proceeding easterly to milepost 489.41 at the eastern county line of Franklin County, TX, and NETEX further indicates that, pursuant to a trackage rights agreement with UP, it will also acquire incidental trackage rights over approximately 10.41 miles of UP's line between milepost 489.41 and milepost 479.0 for the purpose of interchanging traffic with UP. NETEX certifies that its projected revenues will not result in the creation of a Class II or Class I rail carrier.[1]

NETEX currently owns a connecting rail line of approximately 31 miles from milepost 555.0 near Greenville, TX, to milepost 524.0, just west of Sulphur Springs, and possesses trackage rights over UP's line between milepost 524.0 and milepost 517.0. Until now, the trackage rights over this 7-mile segment appear to have been limited to interchanging and switching traffic at Sulphur Springs.[2] NETEX currently contracts with BLRR for operations over these lines.[3]

The transaction was scheduled to be consummated on or after July 17, 2000.

This transaction is related to STB Finance Docket No. 33893, *The Blacklands Railroad Company—Operation Exemption—Lines of Northeast Texas Rural Rail Transportation Company*, wherein BLRR seeks to conduct common carrier freight operations over the line being acquired by NETEX.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33892, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Harold Curtis, Jr., 2708 Washington Street, Greenville, TX 75401.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18800 Filed 7–25–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub-No. 4)]

Railroad Revenue Adequacy—1999 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On July 26, 2000, the Board served a decision announcing the 1999 revenue adequacy determinations for the Nation's Class I railroads. One carrier (Grand Trunk Western Railroad Inc.) is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 1999, determined to be 10.8% in *Railroad Cost of Capital—1999*, STB Ex Parte No. 558 (Sub-No. 3) (STB served June 12, 2000). In this proceeding, the Board applied the revenue adequacy standards to each Class I railroad, and it found one carrier, Grand Trunk Western Railroad Inc., to be revenue adequate.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20423. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] The decision is also available on the Board's internet site, www.stb.dot.gov.

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: July 19, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18881 Filed 7–25–00; 8:45 am]

BILLING CODE 4915–00–P

[1] NETEX states that the Blacklands Railroad Company (BLRR) is also a party to the trackage rights agreement.

[2] *See East Texas Central Railroad, Inc.—Operation Exemption—Northeast Texas Rural Rail Transportation District*, STB Finance Docket No. 32841 (Sub-No. 1) (STB served Sept. 27, 1996).

[3] *See The Blacklands Railroad Company—Operation Exemption—Lines of Northeast Texas Rural Rail Transportation District*, STB Finance Docket No. 33708 (STB served Feb. 16, 1999).

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: Currently, the Office of the Under Secretary for Domestic Finance of the Department of the Treasury is soliciting comments concerning requests for its determination that certain activities are financial in nature pursuant to the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338 (GLBA). The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections for such determinations, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 25, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to New Financial Activities Request, Office of Financial Institutions Policy, 1500 Pennsylvania Ave., N.W., Room SC37, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Joan Affleck-Smith, Director; Office of Financial Institutions Policy, (202) 622–0191, or Gary Sutton, Senior Banking Counsel, (202) 622–1976.

SUPPLEMENTARY INFORMATION:

Title: Requests for Determination of Activities Financial in Nature.

OMB Number: 1505–0174.

CFR Cite: 12 CFR 1501.1.

Abstract: Section 121 of the GLBA authorizes the Secretary of the Treasury (Secretary), in consultation with the Board of Governors of the Federal Reserve System, to determine whether activities are financial in nature or incidental to a financial activity, and therefore permissible for a financial subsidiary of a national bank. National banks and other interested parties may submit requests that the Secretary determine that an activity is financial in nature, including in such request information to enable the Secretary to make such a determination.

Current Actions: The Secretary may notify those requesting such a determination that an activity is or is not financial in nature.

Type of Review: Extension.

Affected Public: National banks; other interested parties.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 400 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 20, 2000.

Joan Affleck-Smith,

Director, Office of Financial Institutions Policy.

[FR Doc. 00–18910 Filed 7–25–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; Comment Request

July 19, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 25, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0018.

Form Number: ATF F 6, Part II (5330.3B).

Type of Review: Extension.

Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.

Description: This information collected is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. This information is used to secure authorization to import such articles. Forms are used by persons who are members of the United States Armed Forces.

Respondents: Individuals or households, Business of other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1512–0215.

Recordkeeping Requirement ID Number: ATF REC 5110/10.

Form Number: ATF F 5110.75.

Type of Review: Extension.

Title: Alcohol Fuel Plants (AFP) Records, Reports and Notices.

Description: Data is necessary (1) To determine that persons are qualified to produce alcohol for fuel purposes and to identify such persons, (2) to account for distilled spirits produced and verify its proper disposition and (3) to keep registrations current and evaluate permissible variations from prescribed procedures.

Respondents: Business of other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 871.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 871 hours.

OMB Number: 1512–0352.

Recordkeeping Requirement ID Number: ATF REC 170/1.

Type of Review: Extension.

Title: Importer's Records and Reports.

Description: Importers are required to maintain usual and customary business records and file letter applications or notices related to specific regulatory activities.

Respondents: Federal Government.

Estimated Number of Recordkeepers: 500.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 251 hours.

OMB Number: 1512–0367.
Recordkeeping Requirement ID Number: ATF REC 5220/1.
Type of Review: Extension.
Title: Tobacco Export Warehouse-Record of Operations.
Description: Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. Record is used to maintain accountability over these products. Allows ATF to verify that all products have been exported or tax liabilities satisfied. Protects tax revenues.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 221.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0378.
Recordkeeping Requirement ID Number: ATF REC 5530/1.
Type of Review: Extension.
Title: Applications and Notices—Manufacturers of Nonbeverage Products.
Description: Reports (Letterhead Applications and Notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use. Protects the revenue.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 640.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 640 hours.

OMB Number: 1512–0392.
Recordkeeping Requirement ID Number: ATF REC 5190/1.
Type of Review: Extension.
Title: Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.
Description: These records and occasional letter reports are used to show compliance with the provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers, and prohibits industry members from conducting certain types of sponsorships, advertising, promotions, etc.
Respondents: Business of other for-profit, Individuals or households.
Estimated Number of Recordkeepers: 12,665.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 51 hours.

OMB Number: 1512–0506.
Form Number: ATF F 5600.38.
Type of Review: Extension.
Title: Application For Extension of Time For Payment of Tax.
Description: ATF uses the information on the form to determine if a taxpayer is qualified to extend payment based on circumstances beyond the taxpayers control.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 12.
Estimated Burden Hours Per Respondent: 15 minutes..
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3 hours.

OMB Number: 1512–0514.
Form Number: ATF F 5154.2.
Type of Review: Extension.
Title: Supporting Data for Nonbeverage Drawback Claims.
Description: Data required to be submitted by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability, allows office (initial) verification of claims.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 590 .
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 3540 hours.

OMB Number: 1512–0541.
Form Number: ATF F 3312.1 and ATF F 3312.2.
Type of Review: Extension.
Title: National Tracing Center Trace Request and NTC Obliterated Serial Number Trace Request.
Description: These forms are used by the Federal, State, local, and international law enforcement community to request that ATF trace firearms used or suspected to have been used in crimes.
Respondents: Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 99,255.
Estimated Burden Hours Per Respondent: 6 minutes per form.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 198,015 hours.
Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–18845 Filed 7–25–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 25, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0217.
Form Number: IRS Form 5735 and Schedule P.
Type of Review: Revision.
Title: Possessions Corporation Tax Credit (Under Sections 936 and 30A); and Allocation of Income and Expenses Under Section 936(h)(5) (Schedule P).
Description: Form 5735 is used to compute the possessions tax credit under sections 936 and 30A. Schedule P is used by corporations that elect to share the income or expenses with their affiliates. Each form provides the IRS with information to determine if the corporations have correctly computed the tax credit and the cost-sharing or profit-split method.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,371.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 5735	Schedule P
Recordkeeping	20 hr., 5 min	9 hr., 48 min.
Learning about the law or the form	4 hr., 48 min	1 hr., 27 min.
Preparing the form	7 hr., 12 min	2 hr., 36 min.
Copying, assembling, and sending the form to the IRS	32 min	16 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 33,656 hours.
OMB Number: 1545–0314.
Form Number: IRS Forms 6466 and 6467.
Type of Review: Revision.
Title: Transmittal of Forms W–4 Reported Magnetically/Electronically (6466); and Transmittal of Forms W–4 Reported Magnetically/Electronically (Continuation) (6467).
Description: Under Regulation Section 31.3402(f)(2)–1(g), employers are required to submit certain withholding certificates (Form W–4) to the IRS. Transmittal Form 6466 and the continuation sheet Form 6467 are submitted by an employer, or authorized agent of the employer, who will be reporting submissions of Form W–4 on magnetic/electronic media.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:

Preparing Form 6466	18 min.
Preparing Form 6467	20 min.

Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 133 hours
OMB Number: 1545–0140.
Notice Number: Notice 1027.
Type of Review: Extension.
Title: How to Prepare Media Label for Form W–4.
Description: 26 U.S.C. 3402 requires all employers making payment of wages to deduct (withhold) tax upon such payments. Employers are further required under regulation section 31.3402(f)(2)–1(g) to submit certain withholding certificates (Form W–4) to IRS. Notice 1027 is sent to employers who prefer to file this information on magnetic tape.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 33 hours.
OMB Number: 1545–0644.
Form Number: IRS Form 6781.
Type of Review: Extension.
Title: Gains and Losses From Section 1256 Contracts and Straddles.
Description: Form 6781 is used by taxpayers in computing their gains and losses from Section 1256 contracts and straddles and their special treatment. The data is used to verify that the tax reported accurately reflects any such gains and losses.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 100,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	11 hr., 28 min.
Learning about the law or the form.	2 hr., 9 min.
Preparing the form	3 hr., 22 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,727,000 hours.
OMB Number: 1545–1190.
Form Number: IRS Form 8824.
Type of Review: Extension.
Title: Like-Kind Exchanges.
Description: Form 8824 is used by individuals, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under section 1031. It is also used to report the deferral of gain under section 1043 by members of the executive branch of the Federal Government.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	27 min.
Learning about the law or the form.	27 min.
Preparing the form	1 hr., 2 min.
Copying, assembling, and sending the form to the IRS.	34 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 499,865 hours.
OMB Number: 1545–1326.
Form Number: IRS Form 2555–EZ.
Type of Review: Extension.
Title: Foreign Earned Income Exclusion.
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion. This information is used by the Service to determine if a taxpayer qualifies for the exclusion. Form 2555–EZ is a less burdensome form that will be used where foreign earned income is $76,000 or less.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 43,478.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	26 min.
Learning about the law or the form.	17 min.
Preparing the form	42 min.
Copying, assembling, and sending the form to the IRS.	31 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 84,782 hours.
OMB Number: 1545–1543.
Revenue Procedure Number: Revenue Procedure 97–29.
Type of Review: Extension.
Title: Model Amendments and Prototype Program for SIMPLE IRAs.
Description: The revenue procedure provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters, and provides permissive amendments to sponsors of nonSIMPLE IRAs.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 3,205.
Estimated Burden Hours Per Respondent: 8 hours, 4 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25,870 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–18846 Filed 7–25–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 25, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0675.
Form Number: IRS Form 1040EZ.
Type of Review: Revision.
Title: Income Tax Return for Single and Joint Filers With No Dependents.
Description: Form 1040EZ is used by certain individuals to report their income subject to income tax and to figure their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 15,159,869.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	4 min.
Learning about the law or the form.	1 hr., 38 min.
Preparing the form	1 hr., 50 min.
Copying, assembling, and sending the form to the IRS.	22 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 44,008,325 hours.

OMB Number: 1545–0998.
Form Number: IRS Form 8615.
Type of Review: Extension.
Title: Tax for Children Under Age 14 Who Have Investment Income of More Than $1,400.
Description: Under section 1(g), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 331,128.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	26 min.
Learning about the law or the form.	11 min.
Preparing the form	42 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 552,984 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–18847 Filed 7–25–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

DATES: Written comments should be received on or before August 25, 2000 to be assured of consideration.

U.S. Secret Service (USSS)

OMB Number: New.
Form Number: SSF 3237.
Type of Review: New collection.
Title: Contractor Personnel Access Application.
Description: Respondents are all Secret Service Contractor personnel requiring access to Secret Service facilities in performance of their contractual duties. These contractors, if approved for access, will required escorted, unescorted, and staff-like access to Secret Service Facilities. Responses to questions on the SSF 3237 yields information necessary for the adjudication of eligibility for facility access.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,250 hours.
Clearance Officer: Sandy Bigley (202) 406–6890, U.S. Secret Service 7th Floor 950 H. Street, NW., Washington, DC 20001–4518.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–18848 Filed 7–25–00; 8:45 am]
BILLING CODE 4810–42–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the "Management of Federal Agency Disbursements."

DATES: Written comments should be received on or before September 25, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Cynthia L.

Johnson, Director, Cash Management Policy and Planning Division, Room 420, 401–14th Street, SW., Washington, DC 20227 (202) 874–6908.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(a), the Financial Management Service solicits comments on the collection of information described below.

Title: Management of Federal Agency Disbursements.

OMB Number: 1510–0066.

Form Number: N/A.

Abstract: Recipients of Federal disbursements must furnish to FMS their bank account number and the name and routing number of their financial institution to receive payment electronically.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit institutions, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 1,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 325.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 20, 2000.

Betsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 00–18843 Filed 7–25–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Direct Deposit Sign-Up Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning Form 1199A "Direct Deposit Sign-Up Form".

DATES: Written comments should be received on or before September 25, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Susan Alvarez, Room 304–D, 401–14 Street, SW., Washington, DC 20227, (202) 874–6908.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Direct Deposit Sign-Up Form.

OMB Number: 1510–0007.

Form Number: 1199A.

Abstract: This form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information on the form routes the Direct Deposit payment to the correct account at the financial institution.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households, Business or other for-profit, Federal Government.

Estimated Number of Respondents: 2,197,960.

Estimated time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 373,653.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 20, 2000.

Betsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 00–18844 Filed 7–25–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8872

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8872, Political Organization Report of Contributions and Expenditures.

DATES: Written comments should be received on or before September 25, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Political Organization Report of Contributions and Expenditures.

OMB Number: 1545–1696.

Form Number: 8872.

Abstract: Internal Revenue Code section 527(j) requires certain political organizations to report contributions received and expenditures made after July 1, 2000. Every section 527 political organization that accepts a contribution or makes an expenditure for an exempt function during the calendar year must file Form 8872 except for: A political organization that is not required to file Form 8871, or a state or local committee of a political party or political committee of a state or local candidate.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Responses: 40,000.

Estimated Time Per Response: 20 hours, 3 minutes.

Estimated Total Annual Burden Hours: 802,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 19, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–18817 Filed 7–25–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Polyether Polyols); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include nine polyether polyol substances.

EFFECTIVE DATE: This modification is effective October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determinations

On July 14, 2000, the Secretary determined that nine polyether polyol substances should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1992.

The rate of tax prescribed for poly(propylene)glycol, under section 4671(b)(3), is $7.74 per ton. This is based upon a conversion factor for propylene of 0.781, a conversion factor for chlorine of 1.31, and a conversion factor for sodium hydroxide of 1.43.

The rate of tax prescribed for poly(propylene/ethylene)glycol, under section 4671(b)(3), is $7.16 per ton. This is based upon a conversion factor for propylene of 0.663, a conversion factor for chlorine of 1.11, a conversion factor for sodium hydroxide of 1.21, and a conversion factor for ethylene of 0.123.

The rate of tax prescribed for poly(propyleneoxy)glycerol, under section 4671(b)(3), is $6.38 per ton. This is based upon a conversion factor for propylene of 0.645, a conversion factor for chlorine of 1.08, and a conversion factor for sodium hydroxide of 1.18.

The rate of tax prescribed for poly(ethyleneoxy)glycerol, under section 4671(b)(3), is $3.31 per ton. This is based upon a conversion factor for ethylene of 0.681.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)glycerol, under section 4671(b)(3), is $7.20 per ton. This is based upon a conversion factor for propylene of 0.71, a conversion factor for chlorine of 1.05, a conversion factor for sodium hydroxide of 1.05, and a conversion factor for ethylene of 0.126.

The rate of tax prescribed for poly(propyleneoxy)sucrose, under section 4671(b)(3), is $4.18 per ton. This is based upon a conversion factor for propylene of 0.423, a conversion factor for chlorine of 0.707, and a conversion factor for sodium hydroxide of 0.773.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)sucrose, under section 4671(b)(3), is $6.11 per ton. This is based upon a conversion factor for propylene of 0.549, a conversion factor for chlorine of 0.918, a conversion factor for sodium hydroxide of 1.0, and a conversion factor for ethylene of 0.14.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)diamine, under section 4671(b)(3), is $4.92 per ton. This is based upon a conversion factor for propylene of 0.498, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.91.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)benzenediamine, under section 4671(b)(3), is $5.25 per ton. This is based upon a conversion factor for propylene of 0.491, a conversion factor for chlorine of 0.821, a conversion factor for sodium hydroxide of 0.897, and a conversion factor for ethylene of 0.081.

The petitioner is Dow Chemical Company, a manufacturer and exporter of these substances. No material comments were received on this petition. The following information is the basis for the determinations.

The nine polyether polyol substances are liquids. They are produced predominantly by the base-catalyzed reaction of cyclic ethers, usually ethylene oxide and propylene oxide, with active hydrogen-containing compounds (initiators) such as water, glycols, polyols, and amines. The reaction is carried out by a discontinuous batch process at elevated temperatures and pressures and under an inert atmosphere. The particular substance produced depends upon the oxides, initiators, reaction conditions, and catalysts used. The stoichiometric amounts of oxide reacted on the initiator determine the chain lengths and thus the molecular weights. The HTS number for these substances is 3907.20.00.

Poly(propylene)glycol

CAS number: 025322–69–4

Poly(propylene)glycol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: n+1(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + H_2O (water) → $C_3H_8O_2(C_3H_6O)_n$ (poly(propylene)glycol) + n+1(2 NaCl (sodium chloride) + H_2O (water)).

Poly(propylene)glycol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 90 percent by weight of the materials used in its production.

Poly(propylene/ethylene)glycol

CAS number: 053637–25–5

Poly(propylene/ethylene)glycol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is: n+1(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + H_2O (water) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) → $C_3H_8O_2$ $C_3H_6O)_n(C_2H_4O)_m$ (poly(propylene/ethylene)glycol) + n+1(2 NaCl (sodium chloride) + H_2O (water))

Poly(propylene/ethylene)glycol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 90 percent by weight of the materials used in its production.

Poly(propyleneoxy)glycerol

CAS number: 025791–96–2

Poly(propyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: $C_3H_8O_3$ (glycerine) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) → $C_3H_8O_3(C_3H_6O)_n$ (poly(propyleneoxy)glycerol) + n(2 NaCl (sodium chloride) + H_2O (water))

Poly(propyleneoxy)glycerol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 85 percent by weight of the materials used in its production.

Poly(ethyleneoxy)glycerol

CAS number: 031694–55–0

Poly(ethyleneoxy)glycerol is derived from the taxable chemical ethylene.

The stoichiometric material consumption formula for this substance is: $C_3H_8O_3$ (glycerine) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) → $C_3H_8O_3(C_2H_4O)_m$ (poly(ethyleneoxy)glycerol)

Poly(ethyleneoxy)glycerol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute more than 50 percent by weight of the materials used in its production.

Poly(propyleneoxy/ethyleneoxy)glycerol

CAS number: 009082–00–2

Poly(propyleneoxy/ethyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is $C_3H_8O_3$ (glycerine) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) → $C_3H_8O_3(C_3H_6O)_n(C_2H_4O)_m$ (poly(propyleneoxy/ethyleneoxy)glycerol) + n(2 NaCl (sodium chloride) + H_2O (water))

Poly(propyleneoxy/ethyleneoxy)glycerol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 85 percent by weight of the materials used in its production.

Poly(propyleneoxy)sucrose

CAS number: 009049–71–2

Poly(propyleneoxy)sucrose is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: $C_{12}H_{22}O_{11}$(sucrose) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) → $C_{12}H_{22}O_{11}(C_3H_6O)_n$ (poly(propyleneoxy)sucrose) + n(2 NaCl (sodium chloride) + H_2O (water))

Poly(propyleneoxy)sucrose has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 65 percent by weight of the materials used in its production.

Poly(propyleneoxy/ethyleneoxy)sucrose

CAS number: 026301–10–0

Poly(propyleneoxy/ethyleneoxy)sucrose is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is: $C_{12}H_{22}O_{11}$ (sucrose) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide))+ m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) → $C_{12}H_{22}O_{11}(C_3H_6O)_n(C_2H_4O)_m$ (poly(propyleneoxy/ethyleneoxy)sucrose) + n(2 NaCl (sodium chloride) + H_2O (water))

Poly(propyleneoxy/ethyleneoxy)sucrose has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 75 percent by weight of the materials used in its production.

Poly(propyleneoxy/ethyleneoxy)diamine

CAS number: 031568–06–6

Poly(propyleneoxy/ethyleneoxy)diamine is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: $C_4H_{12}N_2O$ (aminoethylethanolamine) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) → $C_4H_{12}N_2O(C_3H_6O)_n$ (poly(propyleneoxy/ethyleneoxy)diamine) + n(2 NaCl (sodium chloride) + H_2O (water))

Poly(propyleneoxy/ethyleneoxy)diamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals

constitute at least 60 percent by weight of the materials used in its production.

Poly(propyleneoxy/ethyleneoxy)benzenediamine

CAS number: 067800–94–6

The stoichiometric material consumption formula for this substance is: $C_7H_{10}N_2$ (ortho-toluenediamine) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) → $C_7H_{10}N_2(C_3H_6O)_n(C_2H_4O)_m$ (poly(propyleneoxy/ethyleneoxy)benzenediamine) + n(2 NaCl (sodium chloride) + H_2O (water))

Poly(propyleneoxy/ethyleneoxy)benzenediamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 60 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 00–18818 Filed 7–25–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 65, No. 144
Wednesday, July 26, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 950

[No. 2000-33]

RIN 3069-AA98

Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances

Correction

In rule document 00–17663 beginning on page 43969 in the issue of Monday, July 17, 2000, make the following correction:

§950.25 [Corrected]

On page 43981, in the third column, **"§950.18 Advances to out-of-district members and housing associates."** should read **"§950.25 Advances to out-of-district members and housing associates."**

[FR Doc. C0–17663 Filed 7–25–00; 8:45 am]
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Federal Register

Wednesday,
July 26, 2000

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1
Federal Acquisition Regulations (FAR); Final and Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–19; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97–19. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–19 and specific FAR case numbers. Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Contract Bundling	1997–306 (97–306)	De Stefano.
II	North American Industry Classification System (NAICS) (Interim)	2000–604	Moss.
III	Liquidated Damages	1999–003	Moss.
IV	Service Contract Act, Commercial Item Subcontracts	1998–605	Klein.
V	Small Business Competitiveness Demonstration Program	1999–012	Moss.
VI	Construction Industry Payment Protection Act of 1999	1999–302	De Stefano.
VII	Deferred Research and Development (R&D) Costs	1999–013	Nelson.
VIII	Time-and-Materials or Labor Hours	1999–606	Klein.
IX	Repeal of Reporting Requirements under Public Law 85–804	2000–006	Klein.
X	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–19 amends the FAR as specified below:

Item I—Contract Bundling (FAR Case 1997–306 (97–306))

This final rule converts the interim rule published as Item III of FAC 97–15 to a final rule with minor changes. The rule amends the FAR to implement Sections 411–417 of the Small Business Reauthorization Act of 1997. Sections 411–417 amend Title 15 of the United States Code to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

This rule affects all contracting officers that may combine requirements that were previously awarded to a small business or requirements for which a small business could have competed. In accordance with the statute and Small Business Administration regulations, agencies must establish procedures for processing bundled requirements to ensure maximum small business participation in bundled acquisitions. Specifically, agencies and contracting officers must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the Small Business Administration (SBA) procurement center representatives for review; and
- Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors' proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

Item II—North American Industry Classification System (NAICS) (FAR Case 2000–604)

This interim rule revises the FAR to convert size standards and other programs in the FAR that are currently based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC because it more accurately identifies industries. Beginning October 1, 2000, NAICS will be used to establish the size standards for acquisitions. In addition, the interim rule converts the designated industry groups in FAR 19.1005 to NAICS and requires agencies to report contract actions using the NAICS code rather than the SIC code.

Item III—Liquidated Damages (FAR Case 1999–003)

This final rule clarifies coverage on liquidated damages. This rule will make it easier for contracting officers to understand the policy for administering liquidated damages. The only substantive change is at FAR 11.501(d). The authority to approve reductions in or waivers to liquidated damages was changed from the Comptroller General to the Commissioner, Financial Management Service.

Item IV—Service Contract Act, Commercial Item Subcontracts (FAR Case 1998–605)

This final rule deletes the Service Contract Act of 1965 from the list of laws inapplicable to subcontracts for commercial items. FAR 12.504(a) contains this list.

Item V—Small Business Competitiveness Demonstration Program (FAR Case 1999–012)

This final rule converts the interim rule published as Item I of FAC 97–16 to a final rule without change.

The rule amends FAR Part 19 to clarify language pertaining to the Competitiveness Demonstration Program, consistent with revisions to the Program that were required by the OFPP and SBA joint final policy directive dated May 25, 1999. The rule revises FAR Subpart 19.10 to—

1. Advise the contracting officer to consider the 8(a) Program and HUBZone Program when there is not a reasonable expectation that offers will be received from two or more emerging small businesses; and

2. Add a new section 19.1006, Exclusions, to reflect the exclusions of orders under the Federal Supply Schedule Program and contract awards to educational and nonprofit institutions or governmental entities.

Item VI—Construction Industry Payment Protection Act of 1999 (FAR Case 1999–302)

This final rule amends FAR 28.102–2 and the clauses at 52.228–13, 52.228–15, and 52.228–16 to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act. The contracting officer must determine the appropriate amount of payment protection in each construction contract that exceeds $25,000, and in any other contract that requires a performance bond in accordance with FAR 28.103–2.

Item VII—Deferred Research and Development (R&D) Costs (FAR Case 1999–013)

This final rule amends the FAR by clarifying and simplifying the "deferred research and development costs" cost principle at FAR 31.205–48. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contractor costs.

Item VIII—Time-and-Materials or Labor Hours (FAR Case 1999–606)

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243–3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243–1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

Item IX—Repeal of Reporting Requirements under Public Law 85–804 (FAR Case 2000–008)

This final rule amends the FAR to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105–362). Paragraph 901(r)(1) repealed section 4 of Public Law 85–804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of $50,000 issued under the authority of this law. The rule revises FAR 50.000 to update the reference to Public Law 85–804 and eliminates the reporting requirements at FAR Part 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85–804.

Item X—Technical Amendments

These amendments update references and make editorial changes at sections 3.104–5, 4.803 and 22.400.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–19 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–19 are effective [insert date 60 days after publication in the Federal Register], except for the following items:

Items I, V, VI, and X are effective [insert date of publication in the Federal Register].

Item IV is effective [insert date 30 days after publication in the Federal Register].

Item II is effective October 1, 2000.

Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: July 19, 2000.

Deidre A. Lee,

Director, Defense Procurement.

Federal Acquisition Circular

Dated: July 19, 2000.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Federal Acquisition Circular

Dated: July 18, 2000.

R. Scott Thompson,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 00–18667 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 10, 15, and 19

[FAC 97–19; FAR Case 1997–306 (97–306); Item I]

RIN 9000–AI55

Federal Acquisition Regulation; Contract Bundling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Sections 411–417 of the Small Business Reauthorization Act of 1997. Sections 411–417 amend Title 15 of the United States Code to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

DATES: *Effective Date:* July 26, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–19, FAR case 1997–306.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 64 FR 72441, December 27, 1999. The interim rule is converted to a final rule, with changes, and amends FAR Parts 2, 4, 5, 7, 10, 15, and 19 to implement Sections 411–417 of the Small Business Reauthorization Act of 1997, Pub. L. 105–135, and the Small Business Administration (SBA) interim rule published in the Federal Register at 64 FR 57366, October 25, 1999.

We received comments from six respondents in response to the interim rule and considered them in drafting the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA). The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The FRFA is summarized as follows:

This rule amends FAR Parts 2, 4, 5, 7, 10, 15, and 19 to implement Sections 411–417 of the Small Business Reauthorization Act of 1997, Pub. L. 105–135. Sections 411–417 amend Title 15 of the United States Code to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

The objective of the rule is to establish agency procedures for processing bundled requirements and to ensure maximum small business participation in bundled acquisitions. Agencies must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the Small Business Administration (SBA) procurement center representatives for review; and
- Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors' proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

These objectives are stated in Sections 411–417 of Pub. L. 105–135 and in SBA's implementing regulations, published in the Federal Register at 64 FR 57366, October 25, 1999. We published an interim rule in the Federal Register at 64 FR 72441, December 27, 1999. Six respondents provided public comments. There are no practical alternatives that will accomplish the objective of this rule (*i.e.*, to ensure maximum participation of small businesses in Federal contracting as agencies combine requirements in the face of downsizing and other cost-saving measures). No viable alternatives were proposed during the public comment period.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 2, 5, 7, 10, 15, and 19

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 4, 5, 7, 10, 15, and 19 which was published in the Federal Register at 64 FR 72441, December 27, 1999, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 2, 5, 7, 10, 15, and 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definition "Bundled contract" to read as follows:

2.101 Definitions.

* * * * *

Bundled contract means a contract where the requirements have been consolidated by bundling. (See the definition of *bundling*.)

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

3. In section 5.206, revise the introductory text of paragraph (a) to read as follows:

5.206 Notices of subcontracting opportunities.

(a) The following entities may use a CBD notice to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, and small women-owned business concerns, and to meet established subcontracting plan goals:

* * * * *

PART 7—ACQUISITION PLANNING

4. Amend section 7.107 by revising the section heading and paragraphs (b)(2) and (h) to read as follows:

7.107 Additional requirements for acquisitions involving bundling.

* * * * *

(b) * * *

(2) Five percent of the estimated contract value (including options) or $7.5 million, whichever is greater, if the value exceeds $75 million.

* * * * *

(h) The requirements of this section, except for paragraph (e), do not apply if a cost comparison analysis will be performed in accordance with OMB Circular A–76.

PART 10—MARKET RESEARCH

5. In section 10.001, revise paragraph (c) to read as follows:

10.001 Policy.

* * * * *

(c) If an agency contemplates awarding a bundled contract, the agency—

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR) or, if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located; and

(2) At least 30 days before release of the solicitation—

(i) Must notify any affected incumbent small business concerns of the Government's intention to bundle the requirement; and

(ii) Should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative.

PART 15—CONTRACTING BY NEGOTIATION

6. Amend section 15.305 by revising paragraph (a)(5) to read as follows:

15.305 Proposal evaluation.

(a) * * *

(5) *Small business subcontracting evaluation.* Solicitations must be structured to give offers from small

business concerns the highest rating for the evaluation factors in 15.304(c)(3)(iii) and (c)(5).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

7. Amend section 19.101 by adding paragraph (g)(5) to read as follows:

19.101 Explanation of terms.

* * * * *

(g) * * *

(5) *Size determination for teaming arrangements.* For size determination purposes, apply the size standard tests in (g)(1)(i) and (ii) of this section when a teaming arrangement of two or more business concerns submits an offer, as appropriate.

* * * * *

8. Amend section 19.202–1 by revising paragraph (e)(1)(iii) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e) * * *

(1) * * *

(iii) The proposed acquisition is for a bundled requirement. (See 10.001(c)(2)(i) for mandatory 30-day notice requirement to incumbent small business concerns.)

* * * * *

[FR Doc. 00–18668 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 19, 23, 52, and 53

[FAC 97–19; FAR Case 2000–604; Item II]

RIN 9000–AI75

Federal Acquisition Regulation; North American Industry Classification System (NAICS)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to convert size standards and other programs in the FAR based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS).

DATES: *Effective Date:* October 1, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before September 25, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000–604@gsa.gov

Please submit comments only and cite FAC 97–19, FAR case 2000–604 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–19, FAR case 2000–604.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to convert size standards and other programs in the FAR that are based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS).

The Small Business Administration (SBA) amended its regulations to convert small business size standards from the Standard Industrial Classification (SIC) System to the North American Industry Classification System (NAICS). These new size standards were published in the **Federal Register** at 65 FR 30836, May 15, 2000, and are effective on October 1, 2000. NAICS is a new system that classifies business concerns according to how they conduct their economic activity. SBA has determined that NAICS is a better description of industries in the U.S. economy than the SIC system for purposes of establishing size standards. This interim rule adopts the NAICS-based size standards effective October 1, 2000.

This rule conforms the FAR to the final SBA size standards and converts other programs in the FAR currently based on SIC codes to NAICS codes. These programs include the Small Business Competitiveness Demonstration Program at Subpart 19.10, the Price Evaluation Adjustment for Small Disadvantaged Business Concerns at Subpart 19.11, the Small Disadvantaged Business Participation Program at Subpart 19.12, and the Historically Underutilized Business Zone (HUBZone) Program at Subpart 19.13.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the coding changes are primarily internal to the Government. External uses of the codes under the small business subcontracting program and small disadvantaged business participation programs are primarily limited to large businesses. This rule includes implementation of SBA's final rule, and SBA has certified that the impact of the SIC to NAICS change on each business will not be substantial. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–19, FAR case 2000–604), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies; however, this interim rule does not impose new reporting and recordkeeping requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* This rule will require restructuring of contractors' record systems to collect data on small disadvantaged businesses under small business subcontracting plans and small disadvantaged business participation plans by NAICS rather than SIC. Because this merely involves use of a different industry classification system, this interim rule does not affect existing OMB clearances (9000–0006, 9000–0007, and 9000–0150).

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense

(DoD), the Administrator of General Services (GSA), and the Administrator for the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Small Business Administration (SBA) issued a final rule on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. Changes to the FAR are needed to establish policy for use of the new size standards in Government acquisitions. The required implementation date of October 1, 2000, does not permit time to issue a proposed FAR rule and evaluate public comments. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 5, 12, 19, 23, 52, and 53

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 12, 19, 23, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 5, 12, 19, 23, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Amend section 5.205 by revising paragraph (f)(2) to read as follows:

5.205 Special situations.

* * * * *

(f) * * *

(2) Specifying the North American Industry Classification System (NAICS) code;

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.603 [Amended]

3. Amend section 12.603 in the first sentence of paragraph (c)(2)(iv) by removing "standard industrial classification" and adding, in its place, "NAICS".

PART 19—SMALL BUSINESS PROGRAMS

4. Amend section 19.001 by revising the definition "Industry" to read as follows:

19.001 Definitions.

* * * * *

Industry, as used in this part, means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification system (NAICS) manual (available via the Internet at http://www.census.gov/epcd/www/naics.html).

* * * * *

5. Amend section 19.102 by revising paragraphs (b)(1) and (h) to read as follows:

19.102 Size standards.

* * * * *

(b) * * *

(1) Classifying the product or service being acquired in the industry whose definition, as found in the North American Industry Classification System (NAICS) Manual (available via the Internet at http://www.census.gov/epcd/www/naics.html), best describes the principal nature of the product or service being acquired;

* * * * *

(h) the industry size standards are published by the Small Business Administration and are available via the Internet at http://www.sba.gov/size/NAICS-cover-page.htm.

19.201 [Amended]

6. Amend section 19.201—

a. In the first sentence of paragraph (b) by removing "Major Groups as contained in the Standard Industrial Classification (SIC) manual" and adding, in its place, "North American Industry Classification System (NAICS) Industry Subsector";

b. In the sixth sentence of paragraph (b) by removing "SIC MAJOR Group" and adding, in its place, "NAICS Industry Subsector";

c. In the first sentence of the introductory text of paragraph (f)(1) by removing "major industry groups" and adding, in its place, "Industry subsectors"; and

d. In paragraphs (f)(1)(ii) and (f)(1)(iii) by removing "SIC Major Group" and adding, in their place, "Industry subsector".

19.303 Determining North American Industry Classification System (NAICS) codes and size standards.

7. Amend section 19.303 by revising the section heading to read as set forth above; and in paragraph (a) by removing "standard industrial classification" and adding "NAICS" in its place.

19.501 [Amended]

8. Amend section 19.501 in paragraph (g) by removing "product classification" and adding "NAICS code" in its place.

19.805–1 [Amended]

9. Amend section 19.805–1 in paragraph (a)(2) by removing "standard industrial classification (SIC)" and adding "North American Industry Classification System (NAICS)" in its place.

19.1002 [Amended]

10. Amend section 19.1002 in the definition "Emerging small business" by removing "standard industrial classification" and adding "North American Industry Classification System (NAICS)" in its place.

11. Amend section 19.1005 by revising paragraph (a) to read as follows:

19.1005 Applicability.

(a) *Designated industry groups.*

NAICS code	NAICS description
	Construction
	Subsector 233—Building, Developing, and General Contracting
23311	Land Subdivision and Land Development.
23321	Single Family Housing Construction.
23322	Multifamily Housing Construction.
23331	Manufacturing and Industrial Building Construction.
23332	Commercial and Institutional Building Construction.

NAICS code	NAICS description
	Subsector 234—Heavy Construction
23411	Highway and Street Construction.
23412	Bridge and Tunnel Construction.
23491	Water, Sewer, and Pipeline Construction.
23492	Power and Communication Transmission Line Construction.
23493	Industrial Nonbuilding Structure Construction.
23499	All Other Heavy Construction.
	Subsector 235—Special Trade Contractors
23511	Plumbing, Heating, and Air-Conditioning Contractors.
23521	Painting and Wall Covering Contractors.
23531	Electrical Contractors.
23541	Masonry and Stone Contractors.
23542	Drywall, Plastering, Acoustical, and Insulation Contractors.
23543	Tile, Marble, Terrazzo, and Mosaic Contractors.
23551	Carpentry Contractors.
23552	Floor Laying and Other Floor Contractors.
23561	Roofing, Siding, and Sheet Metal Contractors.
23571	Concrete Contractors.
23581	Water Well Drilling Contractors.
23591	Structural Steel Erection Contractors.
23592	Glass and Glazing Contractors.
23593	Excavation Contractors.
23594	Wrecking and Demolition Contractors.
23595	Building Equipment and Other Machinery Installation Contractors.
23599	All Other Special Trade Contractors.
	Nonnuclear Ship Repair
336611	Ship Building and Repairing
	Architectural and Engineering Services (including surveying and mapping)
54131	Architectural Services.
54133	Engineering Services.
54136	Geophysical Surveying and Mapping Services.
54137	Surveying and Mapping (except Geophysical) Services.
	Refuse Systems and Related Services
562111	Solid Waste Collection.
562119	Other Waste Collection.
562219	Other Nonhazardous Waste Treatment and Disposal.

* * * * *

12. Revise the introductory text of section 19.1201 to read as follows:

19.1201 General.

This subpart addresses the evaluation of the extent of participation of small disadvantaged business (SDB) concerns in performance of contracts in the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce (see 19.201(b)), and to the extent authorized by law. Two mechanisms are addressed in this subpart—

* * * * *

13. Amend section 19.1306 by revising paragraph (a)(2)(i) to read as follows:

19.1306 HUBZone sole source awards.

(a) * * *

(2) * * *

(i) $5,000,000 for a requirement within the North American Industry Classification System (NAICS) codes for manufacturing; or

* * * * *

19.303, 19.803, 19.804–2, 19.804–3, 19.804–5, 19.804–6, 19.810, 19.1007, 19.1102, 19.1202–1, 19.1202–2, 19.1202–4, 19.1203, and 19.1306 [Amended]

14. In addition to the amendments set forth above, in the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears in the section, and add the text indicated in the right column:

Section	Remove	Add
19.303(c)(1) (twice); 19.303(c)(2)(ii)(B); 19.303(c)(3)(ii); 19.303(c)(4) (twice); 19.803(b)(4)(i)(B); 19.803(b)(4)(ii); 19.804–2(a)(3); 19.804–3(d) introductory text; 19.804–3(d)(1) (twice); 19.804–3(d)(2) (twice); 19.804–5(c); 19.804–6(c); 19.810(a)(3); 19.1007(a)(1).	SIC	NAICS.
19.1102(a); 19.1202–1; 19.1202–2(a) and introductory text of paragraph (b); 19.1202–4(a); 19.1203.	SIC Major Groups	NAICS Industry Subsector.
19.1306(a)(2)(ii)	SIC	NAICS.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

15. Amend section 23.906 by revising paragraph (a)(2)(iv) to read as follows:

23.906 Requirements.

(a) * * *

(2) * * *

(iv) Do not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Amend section 52.212–1 by revising the date and paragraph (a) of the provision to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Oct. 2000)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

* * * * *

52.212–3 [Amended]

17. Amend section 52.212–3 by revising the date of the clause to read "(Oct 2000)"; and in paragraph (a) of the clause, in the definition "Emerging small business," by removing "standard industrial classification" and adding, in its place, "NAICS".

18. Amend section 52.219–1 by revising the date and paragraph (a)(1) of the provision to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Oct. 2000)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is—[insert NAICS code].

* * * * *

19. Amend section 52.219–9 by revising the date and paragraph (j)(2) of the clause to read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (Oct. 2000)

* * * * *

(j) * * *

(2) *Standard Form 295, Summary Subcontract Report.* This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

* * * * *

52.219–19 [Amended]

20. Amend section 52.219–19 by revising the date of the provision to read "(Oct. 2000)" and in paragraph (a) by removing "standard industrial classification" and adding, in its place, "North American Industry Classification System (NAICS)".

52.219–24 [Amended]

21. Amend section 52.219–24 by—

a. Revising the date of the provision to read "(Oct. 2000)"; and

b. In paragraph (b) of the provision by removing "Standard Industrial Classification (SIC) Major Groups" and adding, in its place, "North American Industry Classification System (NAICS) Industry Subsectors".

52.219–26 [Amended]

22. Amend section 52.219–26 by—

a. Revising the date of the clause to read "(Oct. 2000);"

b. In paragraph (a) of the clause by removing "Standard Industrial Classification (SIC) Major Groups" and adding, in its place, "North American Industry Classification System (NAICS) Industry Subsectors"; and

c. In paragraph (b) of the clause by removing "SIC Major Groups" and adding, in its place, "NAICS Industry Subsectors."

23. Amend section 52.223–13 by revising the date of the provision and paragraph (b)(2)(iv) to read as follows:

52.223–13 Certification of Toxic Chemical Release Reporting.

* * * * *

Certification of Toxic Chemical Release Reporting (Oct. 2000)

* * * * *

(b) * * *

(2) * * *

☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

* * * * *

24. Amend section 52.223–14 by revising the date of the clause and paragraph (b)(4) to read as follows:

52.223–14 Toxic Chemical Release Reporting.

* * * * *

Toxic Chemical Release Reporting (Oct. 2000)

(b) * * *

(b) * * *

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

* * * * *

PART 53—FORMS

53.204–2 [Amended]

25. Amend section 53.204–2—

a. In paragraph (a) by removing "(*Rev. 10/97*)" and adding in its place "(*Rev 10/00*)"; and

b. In paragraph (b) by removing "(*Rev. 5/96*)" and adding in its place "(*Rev 10/00*)".

53.219 [Amended]

26. Amend section 53.219 in paragraph (c) by removing "(*1/99*)" and adding in its place "(*10/00*)".

27. Revise section 53.301–279 to read as follows:

BILLING CODE 6820–EP–P

53.301–279 Federal Procurement Data System (FPDS) Individual Contract Action Report.

FEDERAL PROCUREMENT DATA SYSTEM (FPDS) INDIVIDUAL CONTRACT ACTION REPORT (ICAR)

INTERAGENCY REPORT CONTROL NUMBER 0295-GSA-GN

1. REPORTING AGENCY CODE (FIPS 95)(4 Pos.)	2. CONTRACT NUMBER (Left justified with no spaces/ characters) (15 Pos.)	3. MODIFICATION NUMBER (Left justified; cannot exceed 4 characters) (4 Pos.)	4. CONTRACTING OFFICE ORDER NUMBER (Left justified; cannot exceed 15 characters) (15 Pos.)

5. CONTRACTING OFFICE CODE (6 alpha-numeric character code) (6 Pos.)	6. ACTION DATE (4 digit calendar year and 2 digit month, e.g., 200012) (6 Pos.)	7. TYPE OF DATA ENTRY (1 Pos.)	8. REPORT PERIOD (4 digit fiscal year and 1 digit quarter, e.g., 20001) (5 Pos.)
		A. Original B. Deleting C. Correcting	

9. KIND OF CONTRACT ACTION (1 Pos.)

A. Initial Letter Contract
B. Definitive Contract Superseding Letter Contract
C. New Definitive Contract
D. Purchase Orders/BPA Calls Using Simplified Acquisition Procedures
E. Order Under Single Award Indefinite Delivery Contract
F. Order Under BOA
G. Order/Modification Under Federal Schedule Contract
M. Modification
J. Termination for Default
K. Termination for Convenience
L. Order Under Multiple Award Contract
Z. Initial Load of Federal Schedule Contract

10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION (Right justified; round to nearest $1000; numeric; use fixed point, e.g., 648,490 is reported as 000000649) (9 Pos.)

11. TYPE OF OBLIGATION (1 Pos.)	12. PRINCIPAL PRODUCT OR SERVICE CODE (FPDS Product Service Code Manual) (4 Pos.)	13. PRINCIPAL NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE (6 Pos.)	14. COMMERCIAL ITEM ACQUISITION PROCEDURES (1 Pos.)
A. Obligated B. Deobligated			Y - Yes N - No

15. CONTRACTOR NAME (30 Pos.)

16. CONTRACTOR IDENTIFICATION NUMBER (DUNS) (9 Pos.)	17a. PRINCIPAL PLACE OF PERFORMANCE (State and City Code FIPS 55) STATE (2 Pos.)	CITY (5 Pos.)	17b. FOREIGN COUNTRY (FIPS 10) (2 Pos.)	18. CONTRACT FOR FOREIGN GOVT. OR INTERNATIONAL ORGANIZATION (1 Pos.)
				Y - Yes N - No

19. TARIFF OR REGULATED (Pre-CICA) (1 Pos.)	20. PERFORMANCE-BASED SERVICE CONTRACTING (PBSC) (1 Pos.)	21. BUNDLING OF CONTRACT REQUIREMENTS (1 Pos.)	22. COUNTRY OF MANUFACTURE (FIPS 10) (2 Pos.)
Y - Yes N - No	Y - Yes N - No	Y - Yes N - No	

23. SYNOPSIS OF THIS PROCUREMENT PRIOR TO AWARD (1 Pos.)

A. Synopsized Prior to Award
B. Not Synopsized Due to Urgency
C. Not Synopsized for Other Reasons

24. TYPE OF CONTRACT OR MODIFICATION (1 Pos.)

A. Fixed-Price Redetermination
J. Fixed-Price
K. Fixed-Price with Economic Price Adjustment
L. Fixed-Price Incentive
R. Cost-Plus-Award-Fee
S. Cost - No Fee
T. Cost Sharing
U. Cost-Plus-Fixed-Fee
V. Cost-Plus-Incentive
Y. Time and Materials
Z. Labor Hour

25. CICA APPLICABILITY (1 Pos.)

A. CICA Applicable
B. Purchase Orders/BPA Calls Using Simplified Acquisition Procedures
C. Subject to Statute Other Than CICA
D. Pre-CICA
E. Commercial Item Acquisition Procedures Under Test Program

26. SOLICITATION PROCEDURES (Complete only if item 25 = A) (1 Pos.)

A. Full and Open Competition - Sealed Bid
B. Full and Open Competition - Competitive Proposal
C. Full and Open Competition - Combination
D. Architect - Engineer Procedures
E. Basic Research
F. Multiple Award Schedule
G. Alternative Sources
H. Reserved
J. Reserved
K. Set-Aside
L. Other Than Full and Open Competition

27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION (Complete only if item 26 = L) (1 Pos.)

A. Unique Source
B. Follow-on Contract
C. Unsolicited Research Proposal
D. Patent/Data Rights
E. Utilities
F. Standardization
G. Only One Source - Other
H. Urgency
J. Mobilization, Essential R&D Capability or Expert Services
K. Reserved
L. International Agreement
M. Authorized by Statute
N. Authorized for Resale
P. National Security
Q. Public Interest

28. NUMBER OF OFFERS RECEIVED (Complete only if item 26 = A or B) (1 Pos.)

A. 1
B. 2-5
C. 6-10
D. 11-15
E. 16-20
F. 21-50
G. Over 50

29. EXTENT COMPETED (1 Pos.)

A. Competed Action
B. Not Available for Competition
C. Follow-on to Competed Action
D. Not Competed

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Prescribed by GSA-FAR (48 CFR) 53.204-2(a)

30. TYPE OF CONTRACTOR (1 Pos.)			31. WOMEN-OWNED BUSINESS (1 Pos.)	32. HUBZONE SMALL BUSINESS CONCERN (1 Pos.)
A. Small Disadvantaged Business B. Other Small Business C. Large Business D. JWOD Nonprofit Agency E. Educational Institution F. Hospital G. Nonprofit Organization H. Reserved	J. Reserved K. State/Local Government L. Foreign Contractor M. Domestic Contractor Performing Outside US U. Historically Black College/University or Minority Institution (HBCU/MI)		Y - Yes N - No	Y - Yes N - No

33A. HUBZONE PROGRAM (1 Pos.)	33B. SMALL DISADVANTAGED BUSINESS PROGRAMS (1 Pos.)	33C. OTHER PREFERENCE PROGRAMS (1 Pos.)
A. HUBZone Sole Source B. HUBZone Set-Aside C. HUBZone Price Evaluation Preference D. Combined HUBZone Preference/Small Disadvantaged Business Price Adjustment E. Not Applicable	A. Sbd Contract Award B. Sbd with HUBZone Priority C. SDB Set-Aside D. SDB Price Evaluation Adjustment E. SDB Participation Program F. Not Applicable	A. Directed to JWOD Nonprofit Agency B. Small Business Set-Aside C. Buy Indian/8(a) Determination D. No Preference/Not Listed E. Very Small Business Set-Aside

33D. HUBZONE PRICE EVALUATION PREFERENCE PERCENT DIFFERENCE (2 Pos.)	33E. SDB PRICE EVALUATION ADJUSTMENT PERCENT DIFFERENCE (2 Pos.)	34. SUBCONTRACTING PLAN (Small, Small Disadvantaged, and Women-Owned Small Business) (1 Pos.)
		A. Required B. Not Required

35. SUBJECT TO LABOR STATUTES (1 Pos.)		36. ESTIMATED CONTRACT COMPLETION DATE (4-digit year and 2-digit month, e.g., 200012) (6 Pos.)	37. CONTRACTOR'S TIN (9 Pos.)
A. Walsh-Healey Act B. Reserved C. Service Contract Act D. Davis-Bacon Act	E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon Acts		

38. COMMON PARENT'S NAME (30 Pos.)	39. COMMON PARENT'S TIN (9 Pos.)

40. VETERAN-OWNED SMALL BUSINESS (VOSB) (1 Pos.)	41. MULTIPLE AWARD CONTRACT FAIR OPPORTUNITY (1 Pos.)	
A. Service Disabled Veteran Owned Small Business B. Other Veteran Owned Small Business C. Not Veteran Owned Small Business	A. Fair Opportunity Process B. Urgency C. One/Unique Source	D. Follow on Contract E. Minimum Guarantee F. Not Applicable

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM
(Applicable to AGR, DOD, DOE, DOI, DOT, EPA, GSA, HHS, NASA, and VA)

42. DEMONSTRATION PROGRAM (1 Pos.)	43. EMERGING SMALL BUSINESS (1 Pos.)	44. EMERGING SMALL BUSINESS RESERVE AWARD (1 Pos.)
Y - Yes N - No	Y - Yes N - No	Y - Yes N - No

45. SIZE OF SMALL BUSINESS (1 Pos.)

NUMBER OF EMPLOYEES	OR	AVERAGE ANNUAL GROSS REVENUE
A. 50 or less B. 51 - 100 C. 101 - 250 D. 251 - 500 E. 501-750 F. 751 - 1,000 G. Over 1,000		M. $1,000,000 or less N. $1,000,001 - $2,000,000 P. $2,000,001 - $3,500,000 R. $3,500,001 - $5,000,000 S. $5,000,001 - $10,000,000 T. $10,000,001 - $17,000,000 Z. Over $17,000,000

46. RESERVED FOR FPDS (10 Pos.)

47. OPTIONAL REPORTED DATA ELEMENTS (100 Pos.)	48. FOR AGENCY INTERNAL USE

49. CONTRACTING OFFICER OR REPRESENTATIVE

a. TYPED NAME	b. SIGNATURE	c. TELEPHONE		d. DATE SUBMITTED
		AREA CODE	NUMBER	

STANDARD FORM 279 (10-2000) BACK

28. Revise section 53.301–281 to read as follows:

53.301–281 Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less).

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
SUMMARY CONTRACT ACTION REPORT ($25,000 OR LESS)
(Dollars in thousands, rounded to the nearest thousand)

INTERAGENCY REPORT CONTROL NUMBER: 0208-GSA-OU

CIVILIAN AGENCIES	DEPARTMENT OF DEFENSE
Net dollars and number of actions where anticipated value of instrument is $25,000 or less.	Net dollars and number of actions where amount obligated on action is $25,000 or less.

a. REPORT PERIOD: FY ____ QTR ____ | b. REPORT TYPE (X one): ☐ ORIGINAL ☐ REVISION | c. REPORTING AGENCY CODE (FIPS 95)

d. REPORTING AGENCY NAME | e. CONTRACTING OFFICE CODE | f. CONTRACTING OFFICE NAME

PART I - PRIME CONTRACT ACTIONS OF $25,000 OR LESS

	PROCUREMENT METHOD	Number of Actions (a)	NET DOLLAR AMOUNTS *(in thousands)* Small Business Concerns (b)	Large Business Concerns (c)	Domestic Outside US/ Foreign (d)	Other Entities (e)	Total Dollars (f)
NEW AWARDS AND MODIFICATIONS	1. Tariff or Regulated Acquisitions						
	2. Contract for Foreign Government or International Organization						
	3. Purchases Using Simplified Acquisition Procedures						
	4. Orders - GSA Federal Schedules						
	5. Orders - Other Federal Schedules						
	6. All Other Orders						
	7. Other Procurement Methods						
	8. TOTAL NEW AWARDS AND MODIFICATIONS						
COMPETITION	9. Competed						
	10. Not Competed						
	11. Not Available for Competition						
MODIFICATIONS	12. TOTAL MODIFICATIONS *(Excluding Line 3)*						

PART II - SELECTED SOCIOECONOMIC STATISTICS ***(Includes both new awards and modifications)***

CATEGORY	Number of Actions (a)	Total Net Dollars (b)	CATEGORY	Number of Actions (a)	Total Net Dollars (b)
13. Small Business Set-Aside			20. HUBZone Small Business Concerns		
14. Small Business Concerns					
15. 8(a) Contract Awards			21. Women-Owned Small Business Concerns		
16. Small Disadvantaged Business Set-Aside			22. JWOD Nonprofit Agency		
17. Small Disadvantaged Business Concerns			23. Service Disabled Veteran Owned Small Business		
18. HBCU/MI			24. Veteran Owned Small Business (VOSB)		
19. HUBZone Program					

g. PERSON SUBMITTING REPORT

NAME	SIGNATURE	TELEPHONE: AREA CODE	TELEPHONE: NUMBER	DATE SUBMITTED

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STANDARD FORM 281 (REV. 10-2000)
Prescribed by GSA-FAR (48 CFR) 53.204-2(b)

29. Revise section 53.302–312 to read as follows:

53.302–312 Small Disadvantaged Business (SDB) Participation Report.

SMALL DISADVANTAGED BUSINESS (SDB) PARTICIPATION REPORT

OMB No.: 9000-0150
Expires:

PAGE ___ OF ___ PAGES

Public reporting burden for this collection of information is estimated to average 8.66 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1A. CONTRACTOR'S NAME	2. CONTRACT NUMBER
1B. CONTRACTOR'S ADDRESS	3. TOTAL PARTICIPATION OF SDBs IN THE CONTRACT (%)

4. SDB PARTICIPATION AT PRIME CONTRACT LEVEL

A. NAICS INDUSTRY SUBSECTOR	B. DOLLAR AMOUNT	C. PERCENTAGE

5. BREAKDOWN OF SDB PARTICIPATION AT SUBCONTRACT LEVEL BY NAICS INDUSTRY SUBSECTOR

A. NAICS INDUSTRY SUBSECTOR	B. DOLLARS	C. PERCENT	A. NAICS INDUSTRY SUBSECTOR	B. DOLLARS	C. PERCENT

6. PREPARED BY

A. NAME OF INDIVIDUAL	B. DATE PREPARED

C. TELEPHONE NUMBER			D. E-MAIL ADDRESS
AREA CODE	NUMBER	EXTENSION	

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OPTIONAL FORM 312 (REV. 10-2000)
Prescribed by GSA/FAR (48 CFR) 53.219(c)

GENERAL INFORMATION INSTRUCTIONS

1. This form collects data on the participation of small disadvantaged business concerns in contracts that contain the clause at FAR 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting.

2. Submit this report to the contracting officer. If your organization is required to report subcontracting data under an individual subcontracting plan, you may attach this report to the final SF 294, Subcontracting Report for Individual Contracts, submitted under the contract.

3. Report in whole dollars.

SPECIFIC INSTRUCTIONS

Block 3. Report the total dollar amount of participation of small disadvantaged business concerns under the contract cited in Block 2. Participation may be through subcontracting, teaming arrangement, joint ventures, or as the prime contractor (provided the prime contractor waived its right to a price evaluation adjustment).

Block 4. Report the participation, if any, by small disadvantaged business concerns in this contract at the prime contract level. All prime contract dollars must be reported under the North American Industrial Classification System (NAICS) assigned to the prime contract. Report the dollar amount and percentage of the total contract value.

Block 5. Report, by NAICS Industry Subsector, as determined by the Department of Commerce, the participation by small disadvantaged business concerns in this contract at the subcontract level. Report the dollar amount and percentage of the total contract value.

Block 6. Provide the name, telephone number, and e-mail address of the individual who can answer questions related to this report.

OPTIONAL FORM 312 (REV. 10-2000) BACK

[FR Doc. 00-18669 Filed 7-25-00; 8:45 am]
BILLING CODE 6820-EP-C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 22, 36, 49, and 52

[FAC 97–19; FAR Case 1999–003; Item III]

RIN 9000–AI63

Federal Acquisition Regulation; Liquidated Damages

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to rewrite guidance on liquidated damages in plain language.

DATES: Effective Date: September 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–19, FAR case 1999–003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule clarifies coverage on liquidated damages. This rule will make it easier for contracting officers to understand the policy for administering liquidated damages. The only substantive change is at FAR 11.501(d). The authority to approve reductions in or waivers to liquidated damages was changed from the Comptroller General to the Commissioner, Financial Management Service.

Four respondents submitted public comments to the proposed rule. The Councils considered all comments in drafting the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not change existing practices. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the Federal Register at 65 FR 2272, January 13, 2000.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11, 22, 36, 49, and 52

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 11, 22, 36, 49, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 11, 22, 36, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Revise Subpart 11.5 to read as follows:

Subpart 11.5—Liquidated Damages

Sec.
11.500 Scope.
11.501 Policy.
11.502 Procedures.
11.503 Contract clauses.

11.500 Scope.

This subpart prescribes policies and procedures for using liquidated damages clauses in solicitations and contracts for supplies, services, research and development, and construction. This subpart does not apply to liquidated damages for subcontracting plans (see 19.705–7) or liquidated damages related to the Contract Work Hours and Safety Standards Act (see subpart 22.3).

11.501 Policy.

(a) The contracting officer must consider the potential impact on pricing, competition, and contract administration before using a liquidated damages clause. Use liquidated damages clauses only when—

(1) The time of delivery or timely performance is so important that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent; and

(2) The extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

(b) Liquidated damages are not punitive and are not negative performance incentives (see 16.402–2). Liquidated damages are used to compensate the Government for probable damages. Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract. Use a maximum amount or a maximum period for assessing liquidated damages if these limits reflect the maximum probable damage to the Government. Also, the contracting officer may use more than one liquidated damages rate when the contracting officer expects the probable damage to the Government to change over the contract period of performance.

(c) The contracting officer must take all reasonable steps to mitigate liquidated damages. If the contract contains a liquidated damages clause and the contracting officer is considering terminating the contract for default, the contracting officer should seek expeditiously to obtain performance by the contractor or terminate the contract and repurchase (see subpart 49.4). Prompt contracting officer action will prevent excessive loss to defaulting contractors and protect the interests of the Government.

(d) The head of the agency may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves (see Treasury Order 145–10).

11.502 Procedures.

(a) Include the applicable liquidated damages clause and liquidated damages rates in solicitations when the contract will contain liquidated damages provisions.

(b) Construction contracts with liquidated damages provisions must describe the rate(s) of liquidated damages assessed per day of delay. The rate(s) should include the estimated daily cost of Government inspection and superintendence. The rate(s) should also include an amount for other expected expenses associated with delayed completion such as—

(1) Renting substitute property; or
(2) Paying additional allowance for living quarters.

11.503 Contract clauses.

(a) Use the clause at 52.211–11, Liquidated Damages—Supplies, Services, or Research and Development, in fixed-price solicitations and contracts for supplies, services, or research and development when the contracting officer determines that liquidated damages are appropriate (see 11.501(a)).

(b) Use the clause at 52.211–12, Liquidated Damages—Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see 11.501(a)). If the contract specifies more than one completion date for separate parts or stages of the work, revise paragraph (a) of the clause to state the amount of liquidated damages for delay of each separate part or stage of the work.

(c) Use the clause at 52.211–13, Time Extensions, in solicitations and contracts for construction that use the clause at 52.211–12, Liquidated Damages—Construction, when that clause has been revised as provided in paragraph (b) of this section.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Revise 22.302 to read as follows:

22.302 Liquidated damages and overtime pay.

(a) When an overtime computation discloses underpayments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government. The contracting officer must assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Act.

(b) If the contractor or subcontractor fails or refuses to comply with overtime pay requirements of the Act and the funds withheld by Federal agencies for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(c) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the Act despite the exercise of due care, the agency head may—

(1) Reduce the amount of liquidated damages assessed for liquidated damages of $500 or less;

(2) Release the contractor or subcontractor from the liability for liquidated damages of $500 or less; or

(3) Recommend that the Secretary of Labor reduce or waive liquidated damages over $500.

(d) After the contracting officer determines the liquidated damages and the contractor makes appropriate payments, disburse any remaining assessments in accordance with agency procedures.

4. Sections 22.406–8 and 22.406–9 are revised to read as follows:

22.406–8 Investigations.

Conduct labor standards investigations when available information indicates such action is warranted. In addition, the Department of Labor may conduct an investigation on its own initiative or may request a contracting agency to do so.

(a) *Contracting agency responsibilities.* Conduct an investigation when a compliance check indicates that substantial or willful violations may have occurred or violations have not been corrected.

(1) The investigation must—

(i) Include all aspects of the contractor's compliance with contract labor standards requirements;

(ii) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(iii) Use personnel familiar with labor laws and their application to contracts.

(2) Do not disclose contractor employees' oral or written statements taken during an investigation or the employee's identity to anyone other than an authorized Government official without that employee's prior signed consent.

(3) Send a written request to the Administrator, Wage and Hour Division, to obtain—

(i) Investigation and enforcement instructions; or

(ii) Available pertinent Department of Labor files.

(4) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department files, other than computations of back wages and liquidated damages and summaries of back wages due, to anyone other than Government contract administrators.

(b) *Investigation report.* The contracting officer must review the investigation report on receipt and make preliminary findings. The contracting officer normally must not base adverse findings solely on employee statements that the employee does not wish to have disclosed. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself may support a finding of noncompliance.

(c) *Contractor notification.* After completing the review, the contracting officer must—

(1) Provide the contractor any written preliminary findings and proposed corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(2) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the contracting officer permit the contractor to examine the investigation report. Also, the contracting officer must not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)(i) The contractor may rebut the findings in writing within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(ii) If the contracting officer does not receive a timely rebuttal, the contracting officer must consider the preliminary findings final.

(4) If appropriate, request the contractor to make restitution for underpaid wages and assess liquidated damages. If the request includes liquidated damages, the request must state that the contractor has 60 days to request relief from such assessment.

(d) *Contracting officer's report.* After taking the actions prescribed in paragraphs (b) and (c) of this subsection—

(1) The contracting officer must prepare and forward a report of any violations, including findings and supporting evidence, to the agency head. Standard Form 1446, Labor Standards Investigation Summary Sheet, is the first page of the report; and

(2) The agency head must process the report as follows:

(i) The contracting officer must send a detailed enforcement report to the Administrator, Wage and Hour Division, within 60 days after completion of the investigation, if—

(A) A contractor or subcontractor underpaid by $1,000 or more;

(B) The contracting officer believes that the violations are aggravated or willful (or there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act);

(C) The contractor or subcontractor has not made restitution; or

(D) Future compliance has not been assured.

(ii) If the Department of Labor expressly requested the investigation and none of the conditions in paragraph (d)(2)(i) of this subsection exist, submit a summary report to the Administrator, Wage and Hour Division. The report must include—

(A) A summary of any violations;

(B) The amount of restitution paid;

(C) The number of workers who received restitution;

(D) The amount of liquidated damages assessed under the Contract Work Hours and Safety Standards Act;

(E) Corrective measures taken; and

(F) Any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(iii) If none of the conditions in paragraphs (d)(2)(i) or (ii) of this subsection are present, close the case and retain the report in the appropriate contract file.

(iv) If substantial evidence is found that violations are willful and in violation of a criminal statute, (generally 18 U.S.C. 874 or 1001), forward the report (supplemented if necessary) to the Attorney General of the United States for prosecution if the facts warrant. Notify the Administrator, Wage and Hour Division, when the report is forwarded for the Attorney General's consideration.

(e) *Department of Labor investigations.* The Department of Labor will furnish the contracting officer an enforcement report detailing violations found and any corrective action taken by the contractor, in investigations that disclose—

(1) Underpayments totaling $1,000 or more;

(2) Aggravated or willful violations (or, when the contracting officer believes that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act); or

(3) Potential assessment of liquidated damages under the Contract Work Hours and Safety Standards Act.

(f) *Other investigations.* The Department of Labor will provide a letter summarizing the findings of the investigation to the contracting officer for all investigations that are not described in paragraph (e) of this subsection.

22.406–9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* If the contracting officer believes a violation exists (see 22.406–8), or upon request of the Department of Labor, the contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards Act. (See 22.302.)

(1) If the contracting officer believes a violation exists or upon request of the Department of Labor, the contracting officer must withhold funds from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either Davis-Bacon Act or Contract Work Hours and Safety Standards Act requirements.

(2) If a subsequent investigation confirms violations, the contracting officer must adjust the withholding as necessary. However, if the Department of Labor requested the withholding, the contracting officer must not reduce or release the withholding without written approval of the Department of Labor.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(b) *Suspension of contract payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, must suspend any further payment, advance, or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back wages, and to cover any liquidated damages due.

(c) *Disposition of contract payments withheld or suspended.* (1) *Forwarding wage underpayments to the Secretary of the Treasury.* Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must forward to the appropriate disbursing office Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act (40 U.S.C. 276(a)) and/or Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333). Attach to the SF 1093 a list of the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims if feasible; and a brief rationale for restitution. Also, the contracting officer must indicate if restitution was not made because the employee could not be located. The Government may assist underpaid employees in preparation of their claims. The disbursing office must submit the SF 1093 with attached additional data and the funds withheld (by check) to the Secretary of the Treasury.

(2) *Returning of withheld funds to contractor.* When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) *Limitation on forwarding or returning funds.* If the Department of Labor requested the withholding or if the findings are disputed (see 22.406–10(e)), the contracting officer must not forward the funds to the Secretary of the Treasury, or return them to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, the contracting officer must dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.206 [Amended]

5. Amend section 36.206 by removing "shall" and adding "must" in is place.

PART 49—TERMINATION OF CONTRACTS

6. In section 49.402–7, revise paragraph (a); and amend paragraph (b) by removing "shall" and inserting "must" in its place. The revised text reads as follows:

49.402–7 Other damages.

(a) If the contracting officer terminates a contract for default or follows a course of action instead of termination for default (see 49.402–4), the contracting officer promptly must assess and demand any liquidated damages to which the Government is entitled under the contract. Under the contract clause at 52.211–11, these damages are in addition to any excess repurchase costs.

* * * * *

7. Revise section 49.404 to read as follows:

49.404 Surety-takeover agreements.

(a) The procedures in this section apply primarily, but not solely, to fixed-price construction contracts terminated for default.

(b) Since the surety is liable for damages resulting from the contractor's default, the surety has certain rights and interests in the completion of the contract work and application of any undisbursed funds. Therefore, the contracting officer must consider carefully the surety's proposals for completing the contract. The contracting officer must take action on the basis of the Government's interest, including the possible effect upon the Government's rights against the surety.

(c) The contracting officer should permit surety offers to complete the contract, unless the contracting officer believes that the persons or firms proposed by the surety to complete the work are not competent and qualified or the proposal is not in the best interest of the Government.

(d) There may be conflicting demands for the defaulting contractor's assets, including unpaid prior earnings (retained percentages and unpaid progress estimates). Therefore, the surety may include a "takeover" agreement in its proposal, fixing the surety's rights to payment from those funds. The contracting officer may (but not before the effective date of termination) enter into a written agreement with the surety. The contracting officer should consider using a tripartite agreement among the Government, the surety, and the defaulting contractor to resolve the defaulting contractor's residual rights, including assertions to unpaid prior earnings.

(e) Any takeover agreement must require the surety to complete the contract and the Government to pay the surety's costs and expenses up to the balance of the contract price unpaid at the time of default, subject to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before termination, must be subject to debts due the Government by the contractor, except to the extent that the unpaid earnings may be used to pay the completing surety its actual costs and expenses incurred in the completion of the work, but not including its payments and obligations under the payment bond given in connection with the contract.

(2) The surety is bound by contract terms governing liquidated damages for delays in completion of the work, unless the delays are excusable under the contract.

(3) If the contract proceeds have been assigned to a financing institution, the surety must not be paid from unpaid earnings, unless the assignee provides written consent.

(4) The contracting officer must not pay the surety more than the amount it expended completing the work and discharging its liabilities under the defaulting contractor's payment bond. Payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor must be only on authority of—

(i) Mutual agreement among the Government, the defaulting contractor, and the surety;

(ii) Determination of the Comptroller General as to payee and amount; or

(iii) Order of a court of competent jurisdiction.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Revise sections 52.211–11 through 52.211–13 to read as follows:

52.211–11 Liquidated Damages—Supplies, Services, or Research and Development.

As prescribed in 11.503(a), insert the following clause in solicitations and contracts:

Liquidated Damages—Supplies, Services, or Research and Development (Sept. 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of $____ per calendar day of delay [*Contracting Officer insert amount*].

(b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

52.211–12 Liquidated Damages—Construction.

As prescribed in 11.503(b), insert the following clause in solicitations and contracts:

Liquidated Damages—Construction (Sept 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of ____ [*Contracting Officer insert amount*] for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.211–13 Time Extensions.

As prescribed in 11.503(c), insert the following clause:

Time Extensions (Sept 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

9. Revise section 52.222–4 to read as follows:

52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed in 22.305, insert the following clause:

Contract Work Hours and Safety Standards Act—Overtime Compensation (Sept 2000)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy

any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding $100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

[FR Doc. 00–18670 Filed 7–25–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 97–19; FAR Case 1998–605; Item IV]

RIN 9000–AI36

Federal Acquisition Regulation; Service Contract Act, Commercial Item Subcontracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Streamlining Act of 1994 (FASA) required the Federal Acquisition Regulatory Council (FAR Council) to include a list of laws that are inapplicable to subcontracts for the procurement of commercial items in the Federal Acquisition Regulation (FAR). The list was implemented and included the Service Contract Act (SCA). The FAR Council has reconsidered this issue and is removing the SCA from the list of laws inapplicable to subcontracts for commercial items.

EFFECTIVE DATE: August 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein at (202) 501–3775. Please cite FAC 97–19, FAR case 1998–605.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8003(b) of FASA required the FAR Council to include in the FAR a list of existing provisions of law that are inapplicable to subcontracts for commercial items. FASA defined those laws to be any provision of law, as determined by the FAR Council, that sets forth policies, provisions, requirements, or restrictions for the procurement of property or services, except those that provided for criminal or civil penalties or were specifically by law made applicable to contracts for the procurement of commercial items. In implementing this section of FASA, the FAR Council included the SCA on the list of laws inapplicable to commercial subcontracts in the final FAR rule (60 FR 48231, September 18, 1995).

In the period since publication of the FAR rule, the FAR Council, in consultation with the Department of Labor (DoL), has concluded that it is not in the best interest of the Government to retain the SCA on the list of laws that are inapplicable to all subcontracts for commercial items. The FAR Council agrees that any exemption from the coverage of the SCA for subcontracts for the acquisition of commercial items or components should be accomplished under the Secretary of Labor's authority in the SCA.

The FAR Council has forwarded recommendations to the Secretary of Labor for consideration in formulating a proposed rule regarding exemptions from coverage under the SCA for commercial items. When the proposal is finalized, DoL will publish the proposed rule, to be issued under the Secretary's authority, in the **Federal Register** for public comment. Following the completion of that rulemaking, the FAR will be amended accordingly.

With respect to other labor laws, the Walsh-Healey Act and the certification and contract clause requirements of the Contract Work Hours and Safety Standards Act were made inapplicable to commercial item contracts by the September 18, 1995, FAR final rule referenced above. However, the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act provide statutory exemptions for purchases in the open market. The listing of these statutes in the FAR with respect to their inapplicability to commercial item contracts was designed to reflect the existing statutory open market exemptions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 12 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–19, FAR case 1998–605), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 12 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.504 [Amended]

2. Amend section 12.504 by removing paragraph (a)(7) and redesignating paragraphs (a)(8) through (a)(12) as (a)(7) through (a)(11), respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.212–5 by revising the clause date to read "(AUG 2000)"; in paragraph (e)(3) by removing "and"; in paragraph (e)(4) by removing the period at the end and adding "; and"; and by adding paragraph (e)(5) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

(e) * * *

(5) 52.222–41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

* * * * *

[FR Doc. 00–18671 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97–19; FAR Case 1999–012; Item V]

RIN 9000–AI64

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) final policy directive to provide updated guidance on the Small Business Competitiveness Demonstration Program.

DATES: *Effective Date:* July 26, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–19, FAR case 1999–012.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 19 to provide updated guidance regarding the Small Business Competitiveness Demonstration Program (Program). The Program was originally established in 1988 by Title VII of Public Law 100–656, as amended, and subsequently implemented in the FAR. As statutory amendments were made to the Program, OFPP issued conforming modifications to its policy directive. With the enactment of Public Law 105–135, the Small Business Reauthorization Act of 1997, the Program was made permanent. The OFPP and SBA published a joint final policy directive on the Program in the Federal Register at 64 FR 29693, June 2, 1999. DoD, GSA, and NASA published a FAR interim rule in the Federal Register at 65 FR 16274, March 27, 2000. The Councils considered all comments in the development of the final rule. The Councils have agreed to convert the interim rule to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely makes ministerial changes to the existing language and does not change existing policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 19, which was published in the Federal Register at 65 FR 16274, March 27, 2000, as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 00–18672 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAC 97–19; FAR Case 1999–302; Item VI]

RIN 9000–AI60

Federal Acquisition Regulation; Construction Industry Payment Protection Act of 1999

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act.

DATES: *Effective Date:* July 26, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst,

at (202) 501–1758. Please cite FAC 97–19, FAR case 1999–302.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 28.102 and the clauses at 52.228–13, 52.228–15, and 52.228–16 to implement the CIPP Act (Pub. L. 106–49) and to enhance payment protection for Government contracts not subject to the Miller Act.

The Miller Act (40 U.S.C. 270a, *et seq.*) requires contractors performing Government construction contracts that exceed $100,000 to furnish performance and payment bonds. Previously, the required payment bond did not exceed 50 percent of the contract price, and was capped at a ceiling of $2.5 million.

The CIPP Act substitutes a requirement that the payment bond generally must equal the contract price. In addition, the CIPP Act makes two procedural changes to the Miller Act, adding a requirement regarding subcontractor waiver of the right to sue on the payment bond, and modernizing the requirements for the delivery of notice by subcontractors having right of action on the payment bond.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 72828, December 28, 1999. Ten respondents submitted comments on the proposed rule. The Councils have considered all of these comments in formulation of the final rule.

The final rule makes minor editorial changes to the clause prescriptions at FAR 28.102–3, and includes additional information in the clause at FAR 52.228–15, Performance and Payment Bonds—Construction, providing notice of limitations on subcontractor waiver of protection (40 U.S.C. 270b(c)).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FRFA is summarized as follows:

The primary objective of this rule is to enhance payment protection for subcontractors that furnish labor or materials on Government construction contracts. There were no issues raised by the public in response to the Initial Regulatory Flexibility Analysis. The rule will require all contractors to which the Government awards construction contracts exceeding $25,000 to obtain a payment bond equal to the contract price, unless the contracting officer determines that to be impractical or unnecessary. The rule is expected to benefit subcontractors seeking payment, without resulting in substantial price increases for the prime contractor obtaining the increased payment protection. We estimate that the Executive branch of the Government annually awards 54,000 construction contracts exceeding $25,000, of which half (27,000 contracts) are awarded to approximately 7,500 small business firms. We estimate that approximately 60,000 small business subcontractors could benefit from increased payment protection.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 28 and 52 as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

28.101–2 [Amended]

2. Amend section 28.101–2 in the first sentence of paragraph (b) by removing "(see 28.102–2(c))" and adding in its place "(see 28.102–2(a))".

3. Revise section 28.102–2 to read as follows:

28.102–2 Amount required.

(a) *Definition.* As used in this subsection—

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Contracts exceeding $100,000 (Miller Act).

(1) *Performance bonds.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of performance bonds must equal—

(i) 100 percent of the original contract price; and

(ii) If the contract price increases, an additional amount equal to 100 percent of the increase.

(2) *Payment bonds.* (i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Contracts exceeding $25,000 but not exceeding $100,000.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of the payment bond or the amount of alternative payment protection must equal—

(1) 100 percent of the original contract price; and

(2) If the contract price increases, an additional amount equal to 100 percent of the increase.

(d) *Securing additional payment protection.* If the contract price increases, the Government must secure any needed additional protection by directing the contractor to—

(1) Increase the penal sum of the existing bond;

(2) Obtain an additional bond; or

(3) Furnish additional alternative payment protection.

(e) *Reducing amounts.* The contracting officer may reduce the amount of security to support a bond, subject to the conditions of 28.203–5(c) or 28.204(b).

4. In section 28.102–3, revise the section heading and paragraph (a); and add a sentence to the end of paragraph (b) to read as follows:

28.102–3 Contract clauses.

(a) Insert a clause substantially the same as the clause at 52.228–15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and

payment bonds if the resultant contract is expected to exceed $100,000. The contracting officer may revise paragraphs (b)(1) and/or (b)(2) of the clause to establish a lower percentage in accordance with 28.102–2(b). If the provision at 52.228–1 is not included in the solicitation, the contracting officer must set a period of time for return of executed bonds.

(b) * * * The contracting officer may revise paragraph (b) of the clause to establish a lower percentage in accordance with 28.102–2(c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.228–13 [Amended]

5. Amend section 52.228–13 by revising the date of the clause to read "(July 2000)"; and in paragraph (b) of the clause by removing "50" and adding "100" in its place.

6. Revise section 52.228–15 to read as follows:

52.228–15 Performance and Payment Bonds—Construction.

As prescribed in 28.102–3(a), insert a clause substantially as follows:

Performance and Payment Bonds—Construction (July 2000)

(a) *Definitions.* As used in this clause—

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is $100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25–A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the **Federal Register** or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(c).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

7. In section 52.228–16, revise the date of the clause and paragraph (a); in paragraph (b) add "original" before the word "contract", twice; and revise paragraph (d) and Alternate I to read as follows:

52.228–16 Performance and Payment Bonds—Other Than Construction.

* * * * *

Performance and Payment—Bonds Other Than Construction (July 2000)

(a) *Definitions.* As used in this clause—

Original contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

* * * * *

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

* * * * *

(End of clause)

Alternate I (July 2000). As prescribed in 28.103–4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection to the Government in an amount equal to ____ percent of the original contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

[FR Doc. 00–18673 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–19; FAR Case 1999–013; Item VII]

RIN 9000–AI62

Federal Acquisition Regulation; Deferred Research and Development (R&D) Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify and simplify the "Deferred research and development costs" cost principle.

DATES: *Effective Date:* September 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–19, FAR case 1999–013.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 4328, January 26, 2000. The proposed rule clarified and simplified the cost principle at FAR 31.205–48, Deferred research and development costs, by—

- Deleting the second sentence addressing precontract costs, as these types of costs are adequately addressed at FAR 31.205–32, Precontract costs;
- Revising the last sentence to more clearly indicate that incurred costs in excess of the contract price or grant amount for research and development (R&D) effort are unallowable and

accordingly, not reimbursable by the Government; and

• Making several editorial changes.

Three respondents submitted public comments to the proposed rule. The Councils considered all comments before agreeing to convert the proposed rule to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.205–48 to read as follows:

31.205–48 Deferred research and development costs.

Research and development, as used in this section, means the type of technical effort described in 31.205–18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

[FR Doc. 00–18674 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 43 and 52

[FAC 97–19; FAR Case 1999–606; Item VIII]

RIN 9000–AI65

Federal Acquisition Regulation; Time-and-Materials or Labor-Hours

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the requirements regarding changes to time-and-materials and labor-hour contracts.

DATES: *Effective Date:* September 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–19, FAR case 1999–606.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243–3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243–1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 3762, January 24, 2000. One respondent submitted comments on the proposed rule. The comments were considered in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contractors are entitled to an equitable adjustment to contract terms and conditions if a change order is issued under the Changes clause of the contract.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 43 and 52

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 43 and 52 as set forth below:

1. The authority citation for 48 CFR parts 43 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 43—CONTRACT MODIFICATIONS

2. Amend section 43.205 by revising paragraph (c) to read as follows:

43.205 Contract clauses.

* * * * *

(c) Insert the clause at 52.243–3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. The contracting officer may vary the 30-day period in paragraph (c) of the clause according to agency procedures.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 52.243–3 to read as follows:

52.243–3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause:

Changes—Time-and-Materials or Labor-Hours (Sept 2000)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(7) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

(1) Ceiling price.

(2) Hourly rates.

(3) Delivery schedule.

(4) Other affected terms.

(c) The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

(End of clause)

[FR Doc. 00–18675 Filed 7–25–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 50

[FAC 97–19; FAR Case 2000–006; Item IX]

RIN 9000–AI85

Federal Acquisition Regulation; Repeal of Reporting Requirements under Public Law 85–804

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105–362), that repealed section 4 of Public Law 85–804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of $50,000 issued under the authority of this law.

DATES: *Effective Date:* September 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–19, FAR case 2000–006.

SUPPLEMENTARY INFORMATION:

A. Background

The final rule revises FAR 50.000 to update the reference to Public Law 85–604 and eliminates the reporting requirements at FAR 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85–604.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 50 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–19, FAR case 2000–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 50

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 50 as set forth below:

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

1. The authority citation for 48 CFR part 50 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 50.000 to read as follows:

50.000 Scope of part.

This part prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85–804 (50 U.S.C. 1431–1434), referred to in this part as the "Act", and Executive Order 10789, dated November 14, 1958, referred to in this part as "the Executive order", It does not cover advance payments (see subpart 32.4).

50.104 [Removed and Reserved]

3. Remove and reserve section 50.104.

[FR Doc. 00–18676 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 22

[FAC 97–19; Item X]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: July 26, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 4 and 22

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 22:

1. The authority citation for 48 CFR parts 4 and 22 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

2. Amend section 4.803 in paragraph (a)(35) by removing the second sentence.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Amend the parenthetical in section 22.400 by removing "Construction" and adding "Construction, alteration, or repair" in its place.

[FR Doc. 00–18677 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–19 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–19 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–19

Item	Subject	FAR case	Analyst
I	Contract Bundling*	1997–306 (97–306)	De Stefano
II	North American Industry Classification System (NAICS) (Interim)	2000–604	Moss
III	Liquidated Damages	1999–003	Moss
IV	Service Contract Act, Commercial Item Subcontracts	1998–605	Klein
V	Small Business Competitiveness Demonstration Program	1999–012	Moss
VI	Construction Industry Payment Protection Act of 1999*	1999–302	De Stefano
VII	Deferred Research and Development (R&D) Costs 1999–013 Nelson.		
VIII	Time-and-Materials or Labor Hours	1999–606	Klein
IX	Repeal of Reporting Requirements under Public Law 85–804	2000–006	Klein

Item I—Contract Bundling (FAR Case 1997–306 (97–306))

This final rule converts the interim rule published as Item III of FAC 97–15 to a final rule with minor changes. The rule amends the FAR to implement Sections 411–417 of the Small Business Reauthorization Act of 1997. Sections 411–417 amend Title 15 of the United States Code to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

This rule affects all contracting officers that may combine requirements that were previously awarded to a small business or requirements for which a small business could have competed. In accordance with the statute and Small Business Administration regulations, agencies must establish procedures for processing bundled requirements to ensure maximum small business participation in bundled acquisitions. Specifically, agencies and contracting officers must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the Small Business Administration (SBA)

procurement center representatives for review; and

• Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors' proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

Item II—North American Industry Classification System (NAICS) (FAR Case 2000–304)

This interim rule revises the FAR to convert size standards and other programs in the FAR that are currently based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC because it more accurately identifies industries. Beginning October 1, 2000, NAICS will be used to establish the size standards for acquisitions. In addition, the interim rule converts the designated industry groups in FAR 19.1005 to NAICS and requires agencies to report contract actions using the NAICS code rather than the SIC code.

Item III—Liquidated Damages (FAR Case 1999–003)

This final rule clarifies coverage on liquidated damages. This rule will make it easier for contracting officers to understand the policy for administering liquidated damages.

The only substantive change is at FAR 11.501(d). The authority to approve reductions in or waivers to liquidated damages was changed from the Comptroller General to the Commissioner, Financial Management Service.

Item IV—Service Contract Act, Commercial Item Subcontracts (FAR Case 1998–605)

This final rule deletes the Service Contract Act of 1965 from the list of laws inapplicable to subcontracts for commercial items. FAR 12.504(a) contains this list.

Item V—Small Business Competitiveness Demonstration Program (FAR Case 1999–012)

This final rule converts the interim rule published as Item I of FAC 97–16 to a final rule without change.

The rule amends FAR Part 19 to clarify language pertaining to the Competitiveness Demonstration Program, consistent with revisions to the Program that were required by the OFPP and SBA joint final policy directive dated May 25, 1999. The rule revises FAR Subpart 19.10 to—

1. Advise the contracting officer to consider the 8(a) Program and HUBZone Program when there is not a reasonable expectation that offers will be received from two or more emerging small businesses; and

2. Add a new section 19.1006, Exclusions, to reflect the exclusions of orders under the Federal Supply Schedule Program and contract awards to educational and nonprofit institutions or governmental entities.

Item VI—Construction Industry Payment Protection Act of 1999 (FAR Case 1999–302)

This final rule amends FAR 28.102–2 and the clauses at 52.228–13, 52.228–15, and 52.228–16 to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act. The contracting officer must determine the appropriate amount of payment protection in each construction contract that exceeds $25,000, and in any other contract that requires a performance bond in accordance with FAR 28.103–2.

Item VII—Deferred Research and Development (R&D) Costs (FAR Case 1999–013)

This final rule amends the FAR by clarifying and simplifying the "deferred research and development costs" cost principle at FAR 31.205–48. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contractor costs.

Item VIII—Time-and-Materials or Labor Hours (FAR Case 1999–606)

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243–3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243–1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

Item IX—Repeal of Reporting Requirements under Public Law 85–804 (FAR Case 2000–008)

This final rule amends the FAR to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105–362). Paragraph 901(r)(1) repealed section 4 of Public Law 85–804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of $50,000 issued under the authority of this law. The rule revises FAR 50.000 to update the reference to Public Law 85–804 and eliminates the reporting requirements at FAR Part 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85–804.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–18678 Filed 7–25–00; 8:45 am]

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Part III

Department of Labor

Occupational Safety and Health Administration

Southwest Research Institute, Application for Expansion of Recognition; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–90]

Southwest Research Institute, Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Southwest Research Institute (SwRI), under 29 CFR 1910.7, for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than September 25, 2000.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL–3–90, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Southwest Research Institute (SwRI) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). SwRI's expansion request covers the use of an additional test standard.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of the preliminary finding on an application.

When first recognized, OSHA identified the Department of Fire Technology as the SwRI unit to which the recognition would apply. OSHA would no longer identify solely this department for purposes of recognition since other organizational units of SwRI would participate in its NRTL-related activities.

The most recent notices published by OSHA for the SwRI recognition covered the NRTL's renewal and expansion of recognition, which the Agency announced on November 10, 1998 (63 FR 63086) and granted on March 9, 1999 (64 FR 11503).

The current address of the SwRI facility (site) that OSHA recognizes for SwRI is: Southwest Research Institute, Department of Fire Technology, 6620 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78228.

General Background on the Application

SwRI has submitted a request, dated April 5, 2000 (see Exhibit 10), to expand its recognition as an NRTL for one additional test standard. The NRTL included adequate information in support of its request. In its cover letter, SwRI stated that its Electromagnetic Compatibility (EMCR) Section and its Environmental Testing Section would participate in testing products to the requested test standard.

SwRI seeks recognition for testing and certification of products to demonstrate compliance to the following test standard: UL 1950 Technology Equipment Including Electrical Business Equipment. OSHA has determined that the standard is appropriate within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing expansion requests from any NRTL.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, the Agency's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

The above listed test standard is approved as an American National Standard by the American National Standards Institute (ANSI). However, for convenience in processing applications, we use the designation of the standard developing organization (*e.g.*, UL 1950) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1950). Under our procedures, an NRTL that is approved for a particular test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or visit the ANSI web site to find out whether or not a standard is currently ANSI approved.

Preliminary Finding on the Application

SwRI has submitted an acceptable request for expansion of its recognition as an NRTL. In processing this request, OSHA performed an on-site evaluation of SwRI's NRTL testing and certification facilities. In a memo dated June 12, 2000 (see Exhibit 11), NRTL Program assessment staff recommended the expansion of SwRI's recognition to include the additional test standard listed above.

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to SwRI the expansion of recognition to use the additional test standard. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Southwest Research Institute can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether SwRI has met the requirements of 29 CFR 1910.7 for the expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see ADDRESSES), no later than the last date for comments (see DATES above). You may obtain or review copies of the SwRI request, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–3–90, the permanent record of public information on the SwRI recognition.

The NRTL Program staff will review all timely comments and, after

resolution of issues raised by these comments, will recommend whether to grant the SwRI expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 18th day of July, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–18866 Filed 7–25–00; 8:45 am]

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Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Refiling of Applications; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–AB25

Labor Certification Process for the Permanent Employment of Aliens in the United States; Refiling of Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) proposes to amend its regulations relating to the permanent employment of aliens in the United States. The proposed amendments would permit employers to request that any labor certification application for permanent employment filed on or before July 26, 2000, and which has not been sent to the regional certifying officer, be processed as a reduction in recruitment request, provided recruitment has not been conducted pursuant to the permanent labor certification regulations. ETA anticipates that the proposed amendment would reduce the backlog of labor certification applications for permanent employment in State Employment Security Agencies (SESA). This measure to reduce backlogs would result in a variety of desirable benefits, a reduction in processing time for both new applications and those applications currently in the queue, would facilitate the development and implementation of a new, more efficient system for processing labor certification applications for permanent employment in the United States, and would reduce government resources necessary to process applications for alien employment certification.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before August 25, 2000.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210, Attention: James H. Norris, Chief, Division of Foreign Labor Certifications.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Backlogs of applications for permanent alien employment certification have been a growing problem in ETA regional and SESA offices. These increasing backlogs have resulted in an increase in the time it takes to obtain a determination on an application for permanent employment in the United States.

Recent measures to reduce backlogs in ETA's regional offices have met with considerable success. Consequently, ETA is now turning its attention to reducing the number of backlogged cases in SESA's. Instituting measures to reduce backlogs in SESA's without first reducing backlogs in regional offices would not have resulted in a reduction in mean processing time. Implementing measures to reduce backlogs in SESA's without first reducing backlogs in the regional offices, would have merely resulted in transferring the backlogged applications from the SESA's to ETA's regional offices.

B. Statutory Standard and Implementing Regulations

Before the Immigration and Naturalization Service (INS) may approve petition requests and the Department of State may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. [8 U.S.C. 1182(a)(5)(A)].

If the Secretary, through ETA, determines that there are no able, willing, qualified, and available U.S. workers and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to the INS and to the Department of State, by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA or Act.) (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of its attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers.

C. Department of Labor Regulations

The Department of Labor has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the factfinding process designed to develop information sufficient to support the granting of a permanent labor certification. These regulations describe the nationwide system of public employment service offices available to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the basis of information for the certification determination. See also 20 CFR parts 651 through 658, and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 656 also sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure that there is an adequate test of the availability of U.S. workers to perform the work, and to ensure that aliens are not employed under conditions that would adversely affect the wages and working conditions of similarly employed U.S. workers.

D. Backlogs

Since Fiscal Year (FY) 1995, backlogs of applications for permanent alien employment certification in ETA regional offices and SESA's have increased dramatically. Between October 1994 and October 1998, the total backlog in both regional and SESA offices increased from 40,000 to 104,000 applications for alien employment certification. Regional office backlogs alone increased from 10,000 to 30,000 cases over that period, while backlogs in the SESA offices increased from 30,000 to 74,000 cases. The number of backlogged cases in SESA's on March 31, 1999, stood at about 86,000 applications.

Early in calendar year 1999 ETA instituted a number of measures to reduce the backlog of applications for permanent alien employment certification that numbered over 38,000 cases in its regional offices. The most important of these measures put in place in February 1999, were:

- Implementation of a system nationally which allowed employers to transmit H–1B labor condition applications (LCA) electronically and to receive a certification decision on their applications by return fax. Implementation of this system allowed many of the regional staff that it had been necessary to assign to processing LCA's in order to ensure compliance with the statutory 7-day H–1B processing requirement, to be reassigned to processing permanent cases.
- Implementation of a special priority backlog reduction effort by providing $500,000 for overtime and hiring temporary staff. These additional funds allowed experienced analysts to concentrate on processing permanent cases.

The efforts to reduce backlogs in regional offices met with considerable success. As of late October 1999, the number of backlogged cases in ETA regional offices numbered 14,642. To accomplish this large reduction in backlogs, regional offices processed over 71,000 cases. In addition to processing backlogged applications, the regions had to keep abreast of the 47,800 new cases received from the SESA's between the beginning of February and late October 1999.

E. Reduction in Recruitment (RIR) Requests

On October 1, 1996, because of the increasing workloads, ETA issued General Administrative Letter No. 1–97, *Measures for Increasing Efficiency in the Permanent Labor Certification Process* (GAL 1–97). The GAL instituted a number of measures to increase efficiency which were achievable under current regulations. One of the measures to increase efficiency was to encourage employers to file requests for reduction in recruitment under § 656.21(i) of the permanent labor certification regulations. Requests for reduction in recruitment are given expedited processing at ETA's regional offices, if they contain no deficiencies. The reduction in recruitment provision allows certifying officers to reduce partially or completely the employer's recruitment efforts through the State Employment Security Agencies, for example, by decreasing partially or completely the number of days which the job order and/or ad must be run. The notice requirement at § 656.20(g)(1)(i) and (5) can be reduced partially, but it cannot be eliminated, since it is based on a statutory requirement. See Immigration Act of 1990, Public Law 101–649, sec. 122(b) (Nov. 29 1990).

The reduction in recruitment provision may be utilized by certifying officers when the labor market has been adequately tested within 6 months prior to the filing of the application and there is no expectation that full or partial compliance with the prescribed recruitment measures will produce qualified and willing applicants.

The emphasis on the use of the reduction in recruitment regulation by GAL 1–97 in appropriate cases has worked well and has contributed significantly to ETA being able to manage its increasing case load with limited staff resources. Backlogs in both the regional offices and SESA's would undoubtedly be substantially larger if the use of the RIR provisions in the regulations had not been encouraged by GAL 1–97.

ETA has concluded that backlogs in SESA's could be substantially reduced if employers are allowed to have applications that were not originally filed as RIR cases and which meet the appropriate criteria removed from the SESA's processing queues and processed as reduction in recruitment cases. Furthermore, reducing or eliminating the backlogs would facilitate the development and implementation of a new permanent employment certification system that ETA has been developing.

The proposed amendment to the RIR regulation at 20 CFR 656.21(i) would allow an employer to file a request to have an application filed on or before July 26, 2000, which has not been sent to the regional office, processed as a RIR request under § 656.21(i), provided that recruitment has not been conducted pursuant to §§ 656.21(f) and/or (g). Since the RIR procedure is designed to expedite processing by permitting employers to substitute recruiting conducted prior to filing the application for the recruitment required by § 656.21, it would be incongruous to entertain an RIR request from an employer who had already engaged in the mandated recruiting. Those applications should be approved or denied based on that recruitment.

The proposed regulation provides that the option to have a permanent labor certification application processed as an RIR request would apply only to cases that were filed on or before July 26, 2000. ETA's operating experience indicates that without such a limitation employers may be motivated to file large numbers of cases, many of which may be inadequately prepared, simply to obtain a filing date [1] and then convert such cases to reduction in recruitment requests. Providing sufficient lead time to employers that may file large numbers of cases that could subsequently be converted to RIR cases would undermine the purpose of the proposed rule which is to reduce backlogs of existing cases and to facilitate the orderly implementation of a new streamlined labor certification system.

Before the issuance of GAL 1–97, cited above, on October 1, 1996, the RIR provisions at § 656.21(i) were not fully utilized for a variety of reasons. The issuance of GAL 1–97 instituted a uniform policy that RIR requests were to be viewed favorably, set forth operating guidelines that were to be followed by all regional offices, and clarified ETA policy regarding the priority to be given RIR requests. Between the issuance of GAL 1–97 in October 1996, and the publication of this document in the **Federal Register** employers have had ample encouragement and opportunity to file RIR requests.

The proposed regulation also provides that for the request to have a previously filed application processed as an RIR request it must be accompanied by documentary evidence of good faith recruitment conducted within the 6 months immediately preceding the date of the request. This provision will allow expeditious processing of previously filed applications as RIR requests upon receipt of the employer's request.

[1] The filing date is important to employers because, according to INS regulations, "[t]he priority date of any petition for classification under section 203(b) of the Act which is accompanied by an individual labor certification from the Department of Labor shall be the date the request for certification was accepted for processing by any office within the employment service system." See 8 CFR 204.5(d).

The proposed regulation does not specifically address the ability of an employer to amend its application at the time the employer makes a request to have a previously filed application processed as a RIR request. The Department believes that the current administrative practices that have been developed to handle requests to amend labor certifications after filing are sufficient. Interested parties, however, are invited to submit comments on this issue and the Department will consider those and any other comments in the development of the final rule.

Executive Order 12866

The Department has determined that this proposed rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866, in that it will not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

While it is not economically significant, the Office of Management and Budget reviewed the proposed rule because of the novel legal and policy issues raised by this rulemaking.

Regulatory Flexibility Act

The proposed rule would only affect those employers seeking immigrant workers for permanent employment in the United States. The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132

This proposed rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Assessment of Federal Regulations and Policies on Families

The proposed regulation does not affect family well-being.

Paperwork Reduction Act

The proposed rule would not modify the existing collection of information requirements in 20 CFR 656.21.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at Number 17.203, "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Crewmembers, Employment, Employment and training, Enforcement, Fraud, Guam, Immigration, Labor, Longshore work, Unemployment, Wages and working conditions.

Accordingly, Part 656 of Chapter V of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A) and 1182(p); 29 U.S.C. 49 *et seq.*; sec.122, Pub. L. 101–649, 109 Stat. 4978.

§ 656.21 [Amended]

2. Section 656.21 is amended by adding a new paragraph (i)(6), to read as follows:

§ 656.21 Basic labor certification process.

* * * * *

(i) * * *

(6) Notwithstanding the provisions of paragraph (i)(1)(i) of this section an employer may file a request with the SESA to have any application filed on or before July 26, 2000, and which has not been sent to the regional certifying officer, processed as a reduction in recruitment request under this paragraph (i), provided that recruitment has not been conducted pursuant to paragraph (f) and/or (g) of this section.

Signed at Washington, DC, this 19th day of July, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 00–18365 Filed 7–25–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 148/P.L. 106–247
Neotropical Migratory Bird Conservation Act (July 20, 2000; 114 Stat. 593)
Last List July 12, 2000

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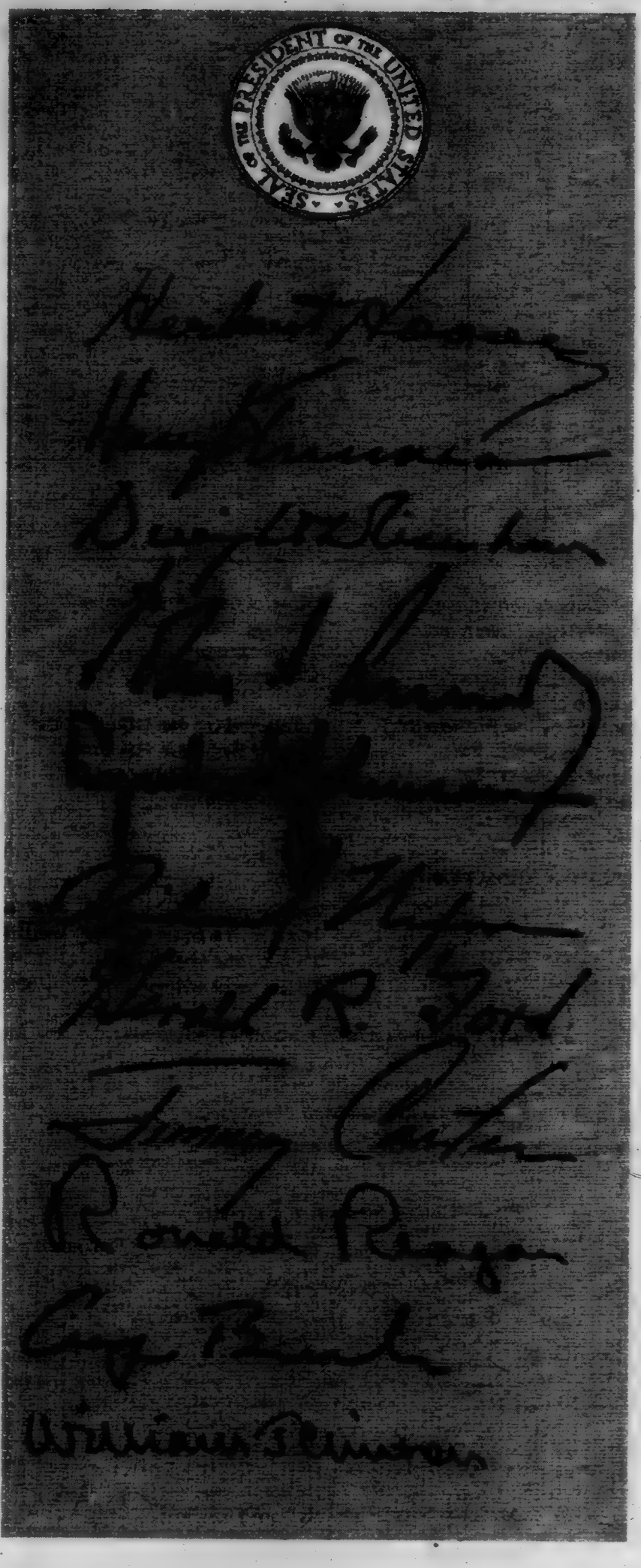

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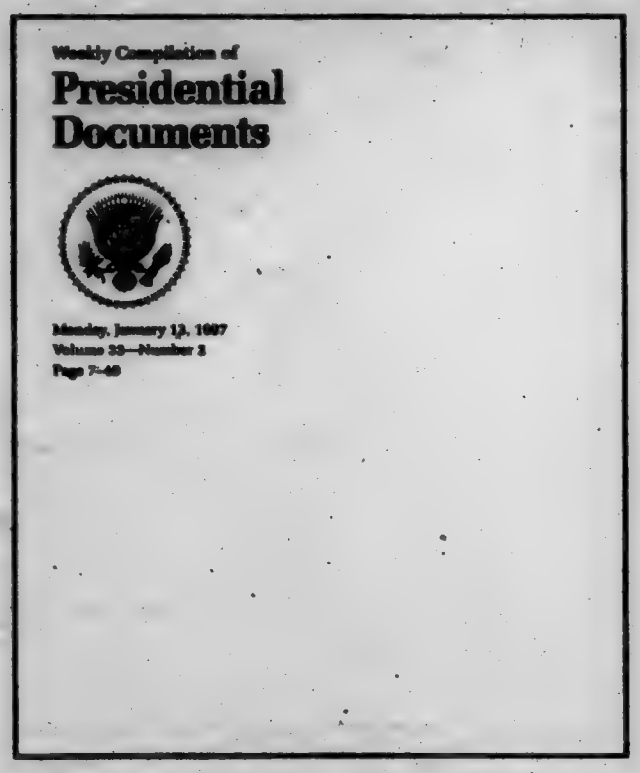

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RIN 0581

Tobacco

AGENCY:
USDA.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–00–02]

RIN 0581–AB75

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, the regulations for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision will add a new provision to the official grade standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection be graded by the exterior only. Additional bale dimensions and space requirements will be established for uniform marketing display in the warehouses, and a revision will be made in the poundage adjustment for a warehouse selling in excess of the sales schedule for designated and undesignated producer tobacco.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456. Telephone (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Department published in the **Federal Register** on March 15, 2000 (65 FR 13915) a proposed rule amending the regulations at 7 CFR part 29, subpart B, Regulations; subpart C, Standards, and subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets. The Department requested comments on the regulations. The comment period expired on May 15, 2000, and AMS received no comments on the amendments.

The final rule will add a new provision to the grade standards for baled flue-cured tobacco, establish bale dimensions and spacing requirements, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule for designated and undesignated tobacco, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat.731; 7 U.S.C. 511 *et seq.*).

On January 20, 2000, the Flue-Cured Tobacco Advisory Committee (FCTAC) met and reviewed recommendations from the tobacco industry on the flue-cured bale as an alternative packaging method. The recommendations made by the FCTAC have been included in this final rule for regulatory action. The revisions will add a new provision to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection will be graded by the exterior only, establish dimension and spacing requirements for marketing display of bales, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule. An earlier proposed rule concerning bale inspection was issued on May 12, 1999 (64 FR 25462) and was withdrawn on July 22, 1999 (64 FR 39432). The notice of the withdrawal stated that we intended to publish an advance notice of proposed rulemaking to solicit additional input. The FCTAC advised that the rule be published promptly, and we agree that the issues have already been considered within the industry. Accordingly, we published in the **Federal Register** a proposed rule on March 15, 2000.

Flue-cured tobacco has been traditionally marketed in a sheet with a maximum weight of 275 pounds. The dimensions of the sheet is 8 feet x 8 feet and is composed of burlap or other synthetic materials. The tobacco is arranged in a circular pattern on the sheet and the corners are tied diagonally for handling purposes. The lot of sheeted tobacco is approximately 4 feet in diameter.

The tobacco industry has experimented with the bale as an alternative packaging method for marketing flue-cured tobacco during the past 4 years. This alternative package is a 42-inch wide x 42-inch high x 40-inch long bale weighing approximately 750 pounds. The bale is compressed together and bound by metal wires. The FCTAC recommended bale dimensions of 42 inches x 42 inches x 40 inches. Because uniformity in the size of bales is an important aspect of the acceptability of baled tobacco, bales which are not approximately these dimensions will be ineligible for a standard grade and designated "No-G."

The current regulations under the Tobacco Inspection Act do not specifically restrict baling as a packaging method for flue-cured tobacco. However, the current regulations do require that an official grade determination be based on a thorough examination of a lot of tobacco. A minimum of three locations within a lot is required to be sampled to show the range of the entire lot. However, the buying segment of the tobacco industry has opposed opening bales citing integrity issues.

During the 1998 flue-cured marketing season, Tobacco Programs conducted a research project on marketing flue-cured tobacco in bales. The research focused on the grade and condition of flue-cured baled tobacco from the beginning to the end of the marketing process. Research data was collected at the farm level as the tobacco was compressed into a bale, at the auction warehouse before and during the day of sale, and at the processing facility as the bale was disassembled.

The purpose of the research project was to determine if significant variations existed between the exterior and interior of the flue-cured bale that would impact the official grade standards. The findings indicated there was no significant variation in grade and condition observed.

Accordingly, this rule will revise the current tobacco regulations to allow the inspection of bales of flue-cured tobacco without the bale being opened for inspection. All lots of tobacco that are subject to mandatory inspection on a designated market should be made accessible to perform grading activities. The recommendation was made that each lot of baled flue-cured tobacco

displayed for sale on auction warehouse floors be placed in rows end to end so the open side of the bales are facing the aisles. Also, a minimum space of 30 inches between the rows with the distance between lots of tobacco within the row shall be no less than 18 inches between immediately adjacent lots was recommended. These two spacing proposals will promote the orderly marketing of baled tobacco by providing a uniform marketing display in the warehouse. This will also provide accessibility for inspection of the bales.

An additional revision will increase the poundage adjustment of 2,500 pounds by doubling the poundage amount for a warehouse selling in excess of the daily sales schedule. For example, 2,500 pounds will become 5,000 pounds and 5,000 pounds will become 10,000 pounds. The same will be applicable to undesignated producer tobacco, with 500 pounds becoming 1,000 pounds and 1,000 pounds becoming 2,000 pounds. This action is being adopted because the bale weight is approximately three times as much as tobacco marketed in sheets. This will give the farmers a chance to complete selling their lots of tobacco when the daily sales schedule has been depleted. This rule should meet industry needs for marketing tobacco in bales.

This rule has been determined to be "non significant" for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small businesses. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers. The Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. A new rule will be added to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection will be graded by the exterior only. Accordingly, this change will allow grading of a closed package from the exterior only, and will assist in maintaining program integrity. Additional bale dimensions and space requirements will be established for uniform marketing display in the warehouses and will provide accessibility for inspection of the bales. A revision will be made to the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco in order to take into account the marketing of bales. These changes will apply equally to both small and large entities and they will take into account the marketing of flue-cured tobacco as it presently appears in the marketplace. Pursuant to 5 U.S.C. 553, it is determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The flue-cured tobacco marketing season will begin in July and it is essential that the requirements be uniform for the entire marketing season, and (2) a 60-day comment period was provided for the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for Part 29, Subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. A new § 29.75b is added to read as follows:

§ 29.75b Display of baled flue-cured tobacco on auction warehouse floors in designated markets.

Each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors shall have a minimum of 30 inches from side to side between rows with the open side of the bale facing the aisles. Distance between lots of baled tobacco within the row shall be no less than 18 inches between immediately adjacent lots.

Subpart C—Standards

3. The authority citation for Part 29, Subpart C continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

§ 29.1059 [Amended]

4. Section 29.1059 is amended by removing the words "and 29.)" and adding in their place there the words "29, and 30").

5. Section 29.1109 is revised to read as follows:

§ 29.1109 Rule 3.

In drawing an official sample from a hogshead or other package of tobacco, three or more breaks shall be made at such points and in such manner as the inspector or sampler may find necessary to determine the kinds of tobacco and the percentage of each kind contained in the lot. All breaks shall be made so that the tobacco contained in the center of the package is visible to the sampler, except for baled tobacco that is not opened for inspection (see Rule 30). Tobacco shall be drawn from at least three breaks from which a representative sample shall be selected. The sample shall include tobacco of each different group, quality, color, length, and kind found in the lot in proportion to the quantities of each contained in the lot.

6. Section 29.1129 is revised to read as follows:

§ 29.1129 Rule 23.

Tobacco shall be designated by the grademark "No-G," when it is offtype, semicured, fire-killed, smoked, oxidized over 10 percent, has an odor foreign to the type, or is packed in bales which are not approximately 42 inches wide x 42 inches high x 40 inches long.

7. A new § 29.1136 is added to read as follows:

§ 29.1136 Rule 30.

Any lot of baled tobacco that is not opened for inspection but which otherwise meets the specifications of a grade shall be graded by the exterior only.

Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

8. The authority citation for Part 29, Subpart G continues to read as follows:

Authority: Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. 511 *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 98–180, 97 Stat. 1149 (7 U.S.C. 1421);

49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

9. Section 29.9406 is amended by revising paragraghs (c)(1), (c)(2), (c)(3), and (d) to read as follows:

§ 29.9406 Failure of warehouse to comply with opening and selling schedule.

* * * * *

(c) * * *

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 15,000 pounds; and for the third and subsequent violations, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a scheduled day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sale at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: July 20, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–18963 Filed 7–26–00; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AC01

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This regulation contains cost-of-living adjustments for all civil money penalties (CMPs) under our jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990 requires us to adjust our CMPs at least once every 4 years for inflation to ensure that the penalties deter future violations. The new penalties are $1,170 per day for violation of an order that has become final and $580 per day for violation of the law or regulations.

EFFECTIVE DATE: The regulation will become effective on October 23, 2000.

FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to comply with Congress' mandate to adjust CMP amounts for inflation.

II. Cost-of-Living Adjustment

The Federal Civil Penalties Inflation Adjustment Act of 1990 [1] (FCPIA Act), as amended by the Debt Collection Improvement Act of 1996 (DCIA),[2] requires each agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every 4 years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. We made our last adjustment in October 1996. Section 6 of the FCPIA Act states that any increase must apply only to violations that occur after the date the increase takes effect.

This adjustment requirement affects two provisions of section 5.32(a) [3] of the Farm Credit Act of 1971, as amended (1971 Act), which allows the FCA to impose CMPs on Farm Credit System (FCS) institutions and their related parties. Section 5.32(a) specifies that any FCS institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of an FCS institution who violates the terms of an order that has become final and was issued under section 5.25 or 5.26 of the 1971 Act must pay up to $1,000 per day for each day during which such violation continues. Orders issued under section 5.25 or 5.26 include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) provides for the FCA to treat a directive issued under section 4.3(b)(2), 4.3A(e), or 4.14A(i) of the 1971 Act as a final order issued under section 5.25 for purposes of assessing a CMP. Section 5.32(a) also states that "[a]ny such institution or person who violates any provision of the [1971] Act or any regulation issued under this [1971] Act shall forfeit and pay a civil penalty of not more than $500 per day for each day during which such violation continues." Since the 1996 adjustment, our regulations have required penalty levels of $1,100 and $550, respectively.

The prescribed cost-of-living adjustment formula or inflation factor is based on the difference between the Consumer Price Index (CPI) for June of the preceding year of the adjustment (June 1999) and the CPI for June of the year the CMP was last set (June 1996).[4] We used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI numbers. In this case, the CPI value was 156.7 for June 1996 and was 166.2 for June 1999, resulting in an inflation factor of 1.06 (*i.e.*, a 6-percent increase). The prerounding adjustments are $1,166.69 from $1,100 for violations of final orders and $583.34 from $550 for violations of the 1971 Act and FCA regulations.

Section 5 of the FCPIA Act prescribes a rounding method based on the amount of the calculated increase. In our case, the applicable rounding method is to the nearest $10 for increases less than or equal to $100. Therefore, the resulting penalties are $1,170 for violations of a final order and $580 for violations of the 1971 Act and FCA regulations. The existing penalty amounts will continue to apply to violations that occurred

[1] 28 U.S.C. 2461 note.

[2] Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321–373 (April 26, 1996).

[3] 12 U.S.C. 2268(a).

[4] We note that the 1996 adjustment was based on the June 1995 CPI. In calculating the new adjustments, the FCPIA Act requires us to use the 3-year period from June 1996 to June 1999.

before the effective date of this amendment.

We are also revising the language of § 622.61(a) to clarify that the final order violations include violations of a capital directive (issued under section 4.3(b)(2) or 4.3A(e) of the Farm Credit Act) or a restructuring directive (issued under section 4.14A(i)), as well as violations of cease-and-desist orders. Penalties for violations of these directives are prescribed by section 5.32(h) of the 1971 Act.

The FCPIA Act gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation, and it also requires a reassessment on at least a 4-year cycle. Moreover, this regulation is ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in final form.

List of Subjects in 12 CFR Part 622

Administrative practice and procedures, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

1. Revise the authority citation for part 622 to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note.

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as follows:

(a) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act:

If the violation occurred—	The maximum daily amount is—
Before October 23, 2000	$1,100
On or After October 23, 2000 ..	1,170

(b) Amount of civil money penalty for violation of the Act or regulations:

If the violation occurred—	The maximum daily amount is—
Before October 23, 1996	$500
On or after October 23, 1996, but before October 23, 2000	550
On or After October 23, 2000 ..	580

Dated: July 21, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–18962 Filed 7–26–00; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30121; Amdt. No. 2002]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, additional of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure

identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 21, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

According, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
06/09/00	CA	Avalon	Avalon/Catalina	0/6201	VOR or GPS–A Amdt 4...
06/09/00	CA	Avalon	Avalon/Catalina	0/6202	VOR/DME or GPS–B Amdt 2...
06/09/00	CA	Sacramento	Sacramento Intl	0/6191	NDB Rwy 16L Amdt 1...
06/16/00	IA	Storm Lake	Storm Lake Muni	0/6523	NDB Rwy 35, Amdt 1A...
06/16/00	PA	Bradford	Bradford Regional	0/5160	VOR/DME or GPS Rwy 14 Amdt 6B...
07/05/00	KS	Iola	Allen County	0/7357	NDB Rwy 1, Amdt 1...
07/05/00	KS	Iola	Allen County	0/7359	GPS Rwy 19, Orig...
07/05/00	KS	Iola	Allen County	0/7360	GPS Rwy 1, Orig...
07/11/00	AK	Mountain Village	Mountain Village	0/7561	GPS Rwy 20, Orig-A...
07/11/00	AK	Mountain Village	Mountain Village	0/7562	GPS Rwy 2, Orig-A...
07/11/00	GA	Dawson	Dawson Muni	0/7566	GPS Rwy 31, Orig...
07/11/00	IL	Peoria	Greater Peoria Regional	0/7556	VOR/DME RNAV Rwy 4, Amdt 6...
07/11/00	MI	Charlevoix	Charlevoix Muni	0/7574	NDB or GPS Rwy 27, Amdt 10...
07/11/00	TX	Tyler	Tyler Pounds Field	0/7575	ILS Rwy 13, Amdt 20B...
07/12/00	GA	Dawson	Dawson Muni	0/7619	VOR/DME Rwy 31, Orig...
07/12/00	IL	Chicago	Chicago-O'Hare Intl	0/7638	ILS Rwy 22L, Amdt 4B...
07/12/00	IN	Evansville	Evansville Regional	0/7597	VOR or GPS Rwy 4, Amdt 5A...
07/12/00	LA	Jennings	Jennings	0/7639	GPS Rwy 8, Orig...
07/12/00	TN	Crossville	Crossville Memorial-Whitson Field	0/7681	ILS Rwy 26, Amdt 11B...
07/13/00	IN	Wabash	Wabash Muni	0/7704	NDB Rwy 27, Amdt 12...
07/13/00	IN	Wabash	Wabash Muni	0/7705	GPS Rwy 27, Orig...
07/13/00	KS	Fort Leavenworth	Sherman AAF	0/7717	VOR/DME–A, Orig...
07/13/00	LA	Jennings	Jennings	0/7719	VOR/DME Rwy 8, Orig...
07/13/00	TX	Abilene	Abilene Regional	0/7709	GPS Rwy 35R, Orig-B...
07/13/00	TX	Abilene	Abilene Regional	0/7710	NDB Rwy 35R Amdt 5C...
07/13/00	TX	Abilene	Abilene Regional	0/7711	ILS Rwy 35R, Amdt 6B...
07/13/00	VA	Norfolk	Norfolk Intl	0/7713	ILS Rwy 5 Amdt 24B...
07/14/00	LA	Houma	Houma-Terrebonne	0/7753	GPS Rwy 36, Orig...
07/14/00	TX	Abilene	Abilene Regional	0/7750	LOC BC Rwy 17L, Amdt 3A...

FDC date	State	City	Airport	FDC No.	SIAP
07/14/00	TX	Wichita Falls	Kickapoo Downtown Airpark	0/7731	VOR/DME RNAV or GPS Rwy 35, Amdt 3...
07/14/00	VA	Richmond/Ashland	Hanover County Muni	0/7754	NDB Rwy 16 Orig-B...
07/17/00	LA	Houma	Houma-Terrebonne	0/7854	GPS Rwy 12, Amdt 1...
07/17/00	NC	Concord	Concord Regional	0/7853	ILS Rwy 20, Orig-B...
07/18/00	CT	Windsor Locks	Bradley Intl	0/7898	HI-TACAN or VOR/DME Rwy 6 Orig...
07/18/00	CT	Windsor Locks	Bradley Intl	0/7900	VOR or TACAN Rwy 6 Orig...
07/18/00	CT	Windsor Locks	Bradley Intl	0/7901	VOR or TACAN Rwy 24 Orig...
07/18/00	NJ	Newark	Newark Intl	0/7897	VOR Rwy 11 Amdt 1B...
07/19/00	AL	Monroeville	Monroe County	0/7957	VOR or GPS Rwy 21, Amdt 8A...
07/19/00	DC	Washington	Ronald Reagan Washington National	0/7952	VOR/DME RNAV or GPS Rwy 3 Amdt 6A...
07/19/00	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	0/7975	ILS Rwy 22R, Amdt 9...
07/19/00	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	0/7977	LOC BC Rwy 4L, Amdt 6B...
07/19/00	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	0/7978	VOR/DME Rwy 22R, Amdt 8A...
07/19/00	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	0/7979	VOR or GPS Rwy 4L, Amdt 16A...
07/19/00	LA	Houma	Houma-Terrebonne	0/7947	VOR Rwy 12, Amdt 5...
07/19/00	NV	Elko	Elko	0/7941	VOR/DME or GPS–B Amdt 3...
07/19/00	VA	Richmond/Ashland	Hanover County Muni	0/7970	VOR Rwy 16 Orig-C...

[FR Doc. 00–18990 Filed 7–26–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30120; Amdt. No. 2001]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 21, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 10, 2000

Hays, KS, Hays Regional, ILS RWY 34, Orig
Hays, KS, Hays Regional, LOC RWY 34, Amdt 2A, CANCELLED
Frankfort, MI, Frankfort Dow Memorial Field, RNAV RWY 15, Orig
Frankfort, MI, Frankfort, Dow Memorial Field, RNAV RWY 33, Orig
Nashville, TN, Nashville Intl, NDB RWY 2L, Amdt 7
Nashville, TN, Nashville Intl, NDB RWY 20R, Amdt 8
Nashville, TN, Nashville Intl, ILS RWY 2L, Amdt 8
Nashville, TN, Nashville Intl, ILS RWY 20R, Amdt 8

. . . Effective September 7, 2000

Muscatine, IA, Muscatine Muni, VOR RWY 6, Orig
Wichita, KS, Wichita Mid-Continent, LOC BC RWY 19L, Amdt 16
Wichita, KS, Wichita Mid-Continent, ILS RWY 1L, Amdt 3
Wichita, KS, Wichita Mid-Continent, ILS RWY 1R, Amdt 17
Wichita, KS, Wichita Mid-Continent, ILS RWY 19R, Amdt 5

. . . Effective October 5, 2000

Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, GPS RWY 5, CANCELLED
Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, GPS RWY 23, CANCELLED
Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, RNAV RWY 5, Orig
Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, RNAV RWY 23, Orig
Decatur, AL, Pryor Field Regional, VOR RWY 36, Amdt 5
Decatur, AL, Pryor Field Regional, RNAV RWY 36, Orig
Adak Island, AK, Adak NAF, RNAV RWY 23, Orig
Ambler, AK, Ambler, NDB RWY 36, Amdt 2
Ambler, AK, Ambler, RNAV RWY 36, Orig
Ambler, AK, GPS RWY 36, Orig, CANCELLED
St. George, AK, St. George, LOC/DME–A, Orig
St. George, AK, St. George, NDB/DME–A, Amdt 1
Oakland, CA, Metropolitan Oakland Intl, ILS RWY 27R, Amdt 33
Greeley, CO, Greeley-Weld County, ILS RWY 9, Amdt 3A, CANCELLED
Atlanta, GA, The William B. Hartsfield Atlanta Intl, ILS RWY 26R, Amdt 3
Las Vegas, NV, McCarran Intl, VOR/DME–A, Orig
Las Vegas, NV, McCarran Intl, VOR/DME RWY 1R, Orig-A
Las Vegas, NV, McCarran Intl, VOR RWY 25L/R, Amdt 2
Middletown, NY, Randall, VOR RWY 8, Amdt 6
Middletown, NY, Randall, NDB OR GPS–A, Orig, CANCELLED
Middletown, NY, Randall, NDB RWY 26, Orig
Montgomery, NY, Orange County, VOR RWY 8, Amdt 9
Montgomery, NY, Orange County, NDB RWY 3, Amdt 4
Montgomery, NY, Orange County, ILS RWY 3, Amdt 1
New York, NY, John F. Kennedy Intl, VOR/DME OR GPS RWY 31L, Amdt 12
New York, NY, John F. Kennedy Intl, ILS RWY 13L, Amdt 15
New York, NY, John F. Kennedy Intl, ILS RWY 22R, Amdt 1
Christiansted, VI, Henry E. Rohlsen, VOR RWY 27, Amdt 19
Christiansted, VI, Henry E. Rohlsen, NDB RWY 9, Amdt 13
Christiansted, VI, Henry E. Rohlsen, ILS RWY 9, Amdt 6
Christiansted, VI, Henry E. Rohlsen, RNAV RWY 9, Orig
Christiansted, VI, Alexander Hamilton, GPS RWY 9, Orig, CANCELLED

[FR Doc. 00–18969 Filed 7–26–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 000717209–0209–01]

RIN 0694–AC26

Reexports to Serbia of Foreign Registered Aircraft Subject to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by reinstating provisions of License Exception AVS for temporary reexports to Serbia of foreign registered aircraft subject to the EAR. This limited action is taken in support of the European Union's six month suspension of its ban on flights to Serbia.

DATES: This rule is effective March 20, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–0092.

SUPPLEMENTARY INFORMATION:

Background

The European Union has instituted a six-month suspension of its flight ban to Serbia in support of Serbia's democratic forces. In support of this suspension, the United States has taken action that will allow, under License Exception AVS, the temporary reexport to Serbia of foreign registered aircraft subject to the EAR. Foreign registered aircraft meeting all the temporary sojourn requirements of License Exception AVS may fly from foreign countries to Serbia without obtaining prior written authorization from BXA. This action is limited in scope and in no way impacts comprehensive U.S. sanctions against Serbia. Note that License Exception AVS remains unavailable to U.S. registered aircraft.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rule Making Requirements

1. This final rule has been determined to be non-significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation does not involve any paperwork collections.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects 15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, Part 746 of the Export Administration Regulations (15 CFR parts 730–774) is revised to read as follows:

1. The authority citation for 15 CFR Part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p.917; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); Notice of August 10, 1999, (3 CFR, 1999 Comp. 302 (2000)).

PART 746—[AMENDED]

2. Section 746.9 is amended by revising paragraph (a)(3) to read as follows:

§ 746.9 Serbia, Kosovo, and Montenegro.

* * * * *

(a) * * *

(3) *License Exceptions.* Items consigned to and for use by personnel and agencies of the U.S. Government under License Exception GOV (see § 740.11(b)(2) of the EAR) and individual gift parcels under License Exception GFT (see § 740.12(a) of the EAR) may be exported or reexported to Serbia. Temporary exports or reexports by the news media may be made to Serbia under License Exception TMP (see § 740.9(a)(2)(viii) of the EAR). Temporary reexports of foreign registered aircraft may be made to Serbia under License Exception AVS (see § 740.15(a)(4) of the EAR). No other License Exceptions are available for Serbia.

* * * * *

Eileen Albanese,

Acting Assistant Secretary for Export Administration.

[FR Doc. 00–19026 Filed 7–26–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC56

Producer-operated Outer Continental Shelf Pipelines That Cross Directly Into State Waters

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule will clarify some unresolved regulatory issues involving the 1996 memorandum of understanding (MOU) on Outer Continental Shelf (OCS) pipelines between the Departments of the Interior (DOI) and Transportation (DOT). It addresses producer-operated pipelines that do not connect to a transporting operator's pipeline on the OCS before crossing into State waters. It is complementary to the final rule published on August 17, 1998, which addressed producer-operated oil or gas pipelines that connect to transporting operators' pipelines on the OCS. The rule also establishes procedures for producer and transportation pipeline operators to get permission to operate under either MMS or DOT regulations governing pipeline design, construction, operation, and maintenance according to their operating circumstances.

EFFECTIVE DATE: August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Carl W. Anderson, Operations Analysis Branch, at (703) 787–1608; e-mail carl.anderson@mms.gov.

SUPPLEMENTARY INFORMATION:

Background

MMS, through delegations from the Secretary of the Interior, has authority to issue and enforce rules to promote safe operations, environmental protection, and resource conservation on the OCS. (The Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) defines the OCS). Under this authority, MMS regulates pipeline transportation of

mineral production and rights-of-way for pipelines and associated facilities. MMS approves all OCS pipeline applications, regardless of whether a pipeline is built and operated under DOI or DOT regulatory requirements. MMS also has sole authority to grant rights-of-way for OCS pipelines. MMS administers the following laws as they relate to OCS pipelines:

(1) The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), for oil and gas production measurement; and

(2) The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA 90), and implemented under Executive Order (E.O.) 12777.

Nothing in this rule will affect MMS's authority under either FOGRMA or OPA 90.

The May 6, 1976, Memorandum of Understanding

Under a May 6, 1976, MOU between DOI and DOT, MMS regulated all oil and gas pipelines located upstream of the "outlet flange" of each facility where produced hydrocarbons were first separated, dehydrated, or otherwise processed. A result of this arrangement was that downstream (generally shoreward) of the first production platform where processing takes place, DOT-regulated pipelines crossed MMS-regulated facilities. Because of incompatible regulatory requirements, this arrangement was not satisfactory for either agency.

The December 1996, Memorandum of Understanding

In the summer of 1993, MMS and DOT's Research and Special Programs Administration (RSPA) began a new series of negotiations that resulted in the MOU of December 1996. MMS and RSPA published the 1996 MOU in a **Federal Register** notice on February 14, 1997 (62 FR 7037–7039).

Section I, "Purpose," of the December 10, 1996, MOU concludes: "This MOU puts, to the greatest extent practicable, OCS production pipelines under DOI responsibility and OCS transportation pipelines under DOT responsibility." Thus, MMS will have primary regulatory responsibility for producer-operated facilities and pipelines on the OCS, while RSPA will have primary regulatory responsibility for transporter-operated pipelines and associated pumping or compressor facilities. Producing operators are companies that extract and process hydrocarbons on the OCS. Transporting operators are companies that transport those hydrocarbons from the OCS. (There are about 130 designated operators of producer-operated pipelines and 75 operators of transportation pipelines on the OCS.)

The 1996 MOU redefines the DOI–DOT regulatory boundary from the OCS facility where hydrocarbons are *first* separated, dehydrated, or processed to the point at which operating responsibility for the pipeline transfers from a producing operator to a transporting operator. Although the MOU does not address the question of producer-operated pipelines that cross the Federal/State boundary without first connecting to a transportation pipeline, it states that the two departments intend to put producer-operated pipelines under DOI regulation and transporter-operated lines under DOT regulation. Moreover, the MOU includes the flexibility to cover situations that do not correspond to the general definition of the regulatory boundary as "the point at which operating responsibility transfers from a producing operator to a transporting operator." Paragraph 7 under "Joint Responsibilities" in the MOU provides: "DOI and DOT may, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to this MOU on a facility-by-facility or area-by-area basis. Operators may also petition DOI and DOT for exceptions to this MOU."

The Purpose of this Rule

The rule would amend 30 CFR part 250, Subpart J—Pipelines and Pipeline Rights-of-Way, § 250.1000, "General Requirements," and § 250.1001, "Definitions." It has three purposes:

1. To address questions about producer-operated pipelines that cross the Federal/State boundary (the "OCS/State boundary") without first connecting to a transporting operator's pipeline on the OCS;

2. To clarify the status of producer-operated pipelines that connect production facilities on the OCS; and

3. To set up a procedure that OCS operators can use to petition to have their pipelines regulated as either DOI or DOT facilities.

The background and rationale for this regulation was fully provided in the Notice of Proposed Rulemaking (NPR) published in the **Federal Register** on Friday, October 1, 1999 (64 FR 53298–53302).

Discussion and Analysis of Comments

MMS received three comments on the NPR. The commenters were the State of Florida, Chevron U.S.A. Production Company, and the Offshore Operator's Committee (OOC).

The State of Florida commented that they had no objection to the proposed rule. Chevron U.S.A. Production Company said that they "fully support the efforts of the Department of the Interior in clarifying the remaining issues related to the implementation of the Memorandum of Understanding." They also said that Chevron participated in the development of the OOC's comments and recommendations and fully supports those comments and recommendations. The OOC's comments and our responses are provided below.

OOC recommended deletion of paragraph 250.1000(c)(9) in the proposed rule because, in their view, it is "redundant to paragraph (c)(11)." OOC explained:

"* * * The regulations clearly identify those pipelines based on the MOU that are subject to MMS regulations. Proposed language in 30 CFR 250.1000(c)(11) states that all pipeline segments on the OCS not subject to DOT regulations are subject to MMS regulations. DOT regulations should more appropriately classify those pipeline segments subject to its regulations or as has been customarily, those pipeline segments exempt from 49 CFR parts 192/195."

Paragraph 250.1000(c)(9) is not entirely redundant to paragraph (c)(11); it is largely complementary to it. Paragraphs (c)(9) and (c)(11) are both necessary to eliminate confusion about jurisdictional boundaries. The purpose of paragraph (c)(9) is to recognize that there are certain producer-operated lines on the OCS that must be under DOT regulation. This is principally because of existing valve locations and the unfeasibility of isolating pipeline segments at the Federal/State boundary. Paragraph (c)(9) works in conjunction with paragraphs (c)(6) and (c)(11). Paragraph (c)(6) identifies the specific producer-operated lines covered by the new rule. Paragraph (c)(11) ensures that there are no pipeline operators on the OCS who escape regulation entirely. These three paragraphs taken together should eliminate any confusion as to which agency has regulatory responsibility in a given situation involving a producer-operated pipeline that does not connect to a transporter-operated pipeline on the OCS.

OOC recommended deletion of paragraph 250.1000(c)(10), which states that "DOT may inspect all upstream safety equipment * * * that serve to protect the integrity of DOT-regulated pipeline segments." OOC states:

"Although this may be desirable by DOT, DOT requirements should not be included in MMS regulations. Since the

described upstream safety equipment is on the MMS segment, inspection, maintenance or testing will be subject to MMS inspection requirements. Any inspection that DOT may require should be in accordance with MMS regulations and not DOT."

We do not agree with OOC. Paragraph 250.1000(c)(10) was, in fact, included in the proposed rule at DOT's request, and MMS believes that DOT was reasonable in making this request. Systems for cathodic protection, leak detection, over-pressure protection, or pigging can extend across jurisdictional boundaries. Any system set up to protect an MMS-regulated segment of a pipeline may overlap into any DOT-regulated segment that happens to connect to that line. If either DOT or MMS wishes to ensure that a system protects the line segment under its jurisdiction, there should be no question that the agency has the authority to inspect such a system. This applies regardless of whether the system conforms to DOT or MMS standards.

OOC recommends a change of wording to paragraph 250.1000(c)(13), asking that the words "design, construction" be deleted from the first sentence and a second sentence be added as follows: "Any subsequent repairs or modifications will also be subject to MMS regulations governing design and construction." OOC explains:

"Pipelines constructed and designed in accordance with DOT regulations may not meet the MMS requirements due to differences in the regulations. Only future changes should be subject to the design and construction requirements of the MMS."

We have accepted OOC's recommendation and have changed the paragraph accordingly. If a pipeline originally built under DOT design and construction requirements were to come under MMS regulation, it would be our policy not to require changes in pipeline design or construction until there was need for a repair or modification to the line. We would not immediately require changes in construction of the pipeline, because of the expense involved in making such changes and the potential hazards to employees making the changes. In due time, however, any pipeline will require a major repair or modification and, at that time, different design or construction criteria may be applied.

OOC requested that the words "currently operated" be inserted in the first paragraph defining "DOT pipelines" under § 250.1001, so that it reads as follows: "*DOT pipelines* include:

"(1) Transporter-operated pipelines currently operated under DOT requirements governing design, construction, maintenance, and operation; or" OOC explained:

"Some pipelines may have been designed and constructed to other regulations prior to becoming a 'DOT Pipeline.' This clarifies that, regardless of original design, a transporter-operated pipeline operated under DOT requirements will be called a DOT Pipeline."

We have accepted OOC's recommendation and have changed the definition accordingly. In our own review of the definition of DOT pipelines, we noticed that we neglected to include in the definition the very class of producer-operated pipelines downstream (generally shoreward) of the last valve on the last OCS production facility that the proposed rule itself identified as DOT pipelines. Therefore, we have included these pipelines in the definition.

Procedural Matters

Regulatory Planning and Review (E.O. 12866)

This is not a significant rule under E.O. 12866 and does not require review by the Office of Management and Budget (OMB). An analysis of the rule indicates that the direct costs to industry for the entire rule total approximately $167,000 for the first year, and that for succeeding years, the maximum cost of the rule to industry in any given year would not likely exceed $53,800.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

DOI has determined that this rule will not have a significant economic effect on a substantial number of small entities. While this rule will affect a substantial number of small entities, the economic effects of the rule will not be significant.

The regulated community for this proposal consists of 35 producer-pipeline operators in the Gulf of Mexico OCS and 8 producer-pipeline operators in the Pacific OCS. Of these operators, 15 are considered to be "small." Of the small operators to be affected by the rule, almost all are represented by Standard Industrial Classification code 1311 (crude petroleum and natural gas producers).

DOI's analysis of the economic impacts indicates that direct costs to industry for the entire rule total approximately $167,000 for the first year, and in succeeding years, the maximum cost of the rule to industry in any given year would not likely exceed $53,800.

These annual costs would not persist for long, because all pipelines converted to MMS regulation eventually would come into compliance with MMS safety valve requirements. There are up to 150 designated operators of leases and 75 operators of transportation pipelines on the OCS (both large and small operators), and the economic impacts on the oil and gas production and transportation companies directly affected will be minor. Not all operators affected will be small businesses, but much of their modification costs may be paid to offshore service contractors who may be classified as small businesses. Perhaps two or three operators may eventually be required to install new automatic shutdown valves as a result of transferring under MMS regulations. These few operators will sustain the greatest economic impact from this rule.

To the extent that this rule might eventually cause some of the relatively larger OCS operators to make modifications to their pipelines, it may have a minor beneficial effect of increasing demand for the services and equipment of smaller service companies and manufacturers. This rule will not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. Based on our economic analysis, this rule:

a. This rule does not have an annual effect on the economy of $100 million or more. As indicated in our cost analysis, direct costs to industry for the entire proposed rule total approximately

$167,000 for the first year. In succeeding years, the cost of the rule to industry would not likely exceed $53,800 in any given year. The proposed rule will have a minor economic effect on the offshore oil and gas and transmission pipeline industries.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the $100 million threshold for any year that was established by UMRA.

Takings (E.O. 12630)

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Federalism (E.O. 13132)

According to E.O. 13132, the rule does not have significant Federalism implications. The rule does not substantially and directly affect the relationship between the Federal and State Government. The rule merely establishes jurisdictional boundaries with DOT and will not impose costs on States or localities.

Civil Justice Reform (E.O. 12988)

DOI has certified to OMB that this regulation meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act (PRA) of 1995

As part of the NPR process, OMB approved the proposed collection of information under the PRA (44 U.S.C. 3501 *et seq.*) and assigned OMB control number (1010–0134). MMS did not receive any comments on the information collection aspects in the NPR. The final rule does not change any of the information collection requirements. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

The collection of information for this rule consists of:

(1) In paragraph 250.1000(c)(8), operators may request that MMS recognize valves landward of the last production facility but still located on the OCS as the point where MMS regulatory authority begins. We estimate one or two such request(s) at most each year with an estimated burden of ½ hour per request for a total annual burden of 1 hour.

(2) In paragraph 250.1000(c)(12), producing operators operating pipelines under DOT regulatory authority may petition MMS to continue to operate under DOT upstream of the last valve on the last production facility. In the first year, nearly all producer-pipeline operators would decide whether to automatically convert to DOI regulation or apply to remain under DOT regulation. We estimate that not more than 10 one-time requests to remain under DOT regulation, with an estimated average burden of 40 hours per request. Annualized over a 3-year period, this would result in 135 annual burden hours. We anticipate that in following years, not more than two operators a year would petition to change their regulatory status.

(3) In paragraph 250.1000(c)(13), transportation pipeline operators operating pipelines under DOT regulatory authority may also petition the Office of Pipeline Safety (OPS) and MMS to operate under MMS regulations governing pipeline design, construction, operation, and maintenance. Although we have allowed for this possibility in the final rule, we expect these would be rare. We estimate the burden would be 40 hours per request.

The total public reporting burden for this information collection requirement is estimated to be 178 annual burden hours. This includes the time for reviewing instructions, searching existing data sources, and gathering the data. The proposed rule requires no recordkeeping burdens. At $35 per hour, the annual paperwork "hour" burden would be $6,160.

The requirement to respond is mandatory in some cases and required to obtain or retain a benefit in others. MMS uses the information to determine the demarcation where pipelines are subject to MMS design, construction, operation, and maintenance requirements, as distinguished from similar OPS requirements.

Converting to DOI regulation could also result in the installation of as many as three automatic shutdown valves, either in the first year or in subsequent years. In these instances, operators would be subject to the regulatory and paperwork requirements in 30 CFR part 250, subpart J, on Pipelines and Pipeline Rights-of-Way. The information collection requirements in this subpart have already been approved by OMB under OMB control number 1010–0050.

National Environmental Policy Act

Under 516 DM 6, Appendix 10.4, "issuance and/or modification of regulations" is considered a categorically excluded action causing no significant effects on the environment and, therefore, does not require preparation of an environmental assessment or impact statement. DOI completed a Categorical Exclusion Review (CER) for this action on March 26, 1999, and concluded: "The proposed rulemaking does not represent an exception to the established criteria for categorical exclusion. Therefore, preparation of an environmental document will not be required, and further documentation of this CER is not required."

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: July 14, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.1000, paragraphs (c)(6) through (c)(13) are added as follows:

§ 250.1000 General requirements.

* * * * *

(c) * * *

(6) Any producer operating a pipeline that crosses into State waters without first connecting to a transporting operator's facility on the OCS must comply with this subpart. Compliance must extend from the point where

hydrocarbons are first produced, through and including the last valve and associated safety equipment (*e.g.*, pressure safety sensors) on the last production facility on the OCS.

(7) Any producer operating a pipeline that connects facilities on the OCS must comply with this subpart.

(8) Any operator of a pipeline that has a valve on the OCS downstream (landward) of the last production facility may ask in writing that the MMS Regional Supervisor recognize that valve as the last point MMS will exercise its regulatory authority.

(9) A pipeline segment is not subject to MMS regulations for design, construction, operation, and maintenance if:

(i) It is downstream (generally shoreward) of the last valve and associated safety equipment on the last production facility on the OCS; and

(ii) It is subject to regulation under 49 CFR parts 192 and 195.

(10) DOT may inspect all upstream safety equipment (including valves, over-pressure protection devices, cathodic protection equipment, and pigging devices, etc.) that serve to protect the integrity of DOT-regulated pipeline segments.

(11) OCS pipeline segments not subject to DOT regulation under 49 CFR parts 192 and 195 are subject to all MMS regulations.

(12) A producer may request that its pipeline operate under DOT regulations governing pipeline design, construction, operation, and maintenance.

(i) The operator's request must be in the form of a written petition to the MMS Regional Supervisor that states the justification for the pipeline to operate under DOT regulation.

(ii) The Regional Supervisor will decide, on a case-by-case basis, whether to grant the operator's request. In considering each petition, the Regional Supervisor will consult with the Office of Pipeline Safety (OPS) Regional Director.

(13) A transporter who operates a pipeline regulated by DOT may request to operate under MMS regulations governing pipeline operation and maintenance. Any subsequent repairs or modifications will also be subject to MMS regulations governing design and construction.

(i) The operator's request must be in the form of a written petition to the OPS Regional Director and the MMS Regional Supervisor.

(ii) The MMS Regional Supervisor and the OPS Regional Director will decide how to act on this petition.

* * * * *

3. In § 250.1001, the definition for the term "DOI pipelines" is revised and the definitions for the terms "DOT pipelines," and "production facility" are added in alphabetical order as follows:

§ 250.1001 Definitions.

* * * * *

DOI pipelines include:

(1) Producer-operated pipelines extending upstream (generally seaward) from each point on the OCS at which operating responsibility transfers from a producing operator to a transporting operator;

(2) Producer-operated pipelines extending upstream (generally seaward) of the last valve (including associated safety equipment) on the last production facility on the OCS that do not connect to a transporter-operated pipeline on the OCS before crossing into State waters;

(3) Producer-operated pipelines connecting production facilities on the OCS;

(4) Transporter-operated pipelines that DOI and DOT have agreed are to be regulated as DOI pipelines; and

(5) All OCS pipelines not subject to regulation under 49 CFR parts 192 and 195.

DOT pipelines include:

(1) Transporter-operated pipelines currently operated under DOT requirements governing design, construction, maintenance, and operation;

(2) Producer-operated pipelines that DOI and DOT have agreed are to be regulated under DOT requirements governing design, construction, maintenance, and operation; and

(3) Producer-operated pipelines downstream (generally shoreward) of the last valve (including associated safety equipment) on the last production facility on the OCS that do not connect to a transporter-operated pipeline on the OCS before crossing into State waters and that are regulated under 49 CFR parts 192 and 195.

* * * * *

Production facilities means OCS facilities that receive hydrocarbon production either directly from wells or from other facilities that produce hydrocarbons from wells. They may include processing equipment for treating the production or separating it into its various liquid and gaseous components before transporting it to shore.

* * * * *

[FR Doc. 00–18802 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–MR–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6841–3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 12 new sites to the NPL; 11 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be August 28, 2000.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, "Availability of Information to the Public" in the "Supplementary Information" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends

dissociation of individuals from the release.

• EPA determines that the release poses a significant threat to public health.

• EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on May 11, 2000 (65 FR 30482).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of July 10, 2000, the Agency has deleted 213 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of July 10, 2000, EPA has deleted portions of 19 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 213 sites that have been deleted from the NPL, 203 sites were deleted because they have been cleaned up (the other 10 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of July 10, 2000, there are a total of 689 sites on the CCL. This total includes the

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213 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—July 2000."

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–6699

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 12 sites to the NPL; 11 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section. Table 1 presents the 11 sites in the General Superfund Section and Table 2 presents the site in the Federal Facilities Section. Sites in the table are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
CT	Scovill Industrial Landfill	Waterbury.
FL	Southern Solvents, Inc.	Tampa.
LA	Mallard Bay Landing Bulk Plant	Grand Cheniere.
MO	Newton County Wells	Newton County.
MS	Davis Timber Company	Hattiesburg.
OK	Imperial Refining Company	Ardmore.
TX	Palmer Barge Line	Port Arthur.
TX	Star Lake Canal	Port Neches.
UT	International Smelting and Refining	Tooele.
WA	Hamilton/Labree Roads Ground Water Contamination	Chehalis.
WV	Big John Salvage—Hoult Road	Fairmont.

Number of Sites Added to the General Superfund Section: 11.

TABLE 2.—NATIONAL PRIORITIES LIST FINAL RULE, FEDERAL FACILITIES SECTION

State	Site name	City/county
VA	St. Juliens Creek Annex (U.S. Navy)	Chesapeake.

Number of Sites Added to the Federal Facilities Section: 1.

B. Status of NPL

With the 12 new sites added to the NPL in today's final rule; the NPL now contains 1,238 final sites; 1,078 in the General Superfund Section and 160 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 7 new sites to the NPL, there are now 57 sites proposed and awaiting final agency action, 51 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,295. (These numbers reflect the status of sites as of July 10, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The Newton County Wells site was proposed on January 19, 1999 (64 FR 2950). The International Smelting and Refining site was proposed on April 23, 1999 (64 FR 19968). The Star Lake Canal site was proposed on July 22, 1999 (64 FR 39886). The Big John Salvage site and the St. Juliens Creek Annex site were both proposed on February 4, 2000 (65 FR 5468). The following sites were proposed on May 11, 2000 (65 FR 30489): Scovill Industrial Landfill, Southern Solvents, Inc., Mallard Bay Landing Bulk Plant (proposed under the name Talen's Landing Bulk Plant), Davis Timber Company, Imperial Refining Company, Palmer Barge Line, and Hamilton/Labree Roads Ground Water Contamination.

For the Scovill Industrial Landfill and Imperial Refining Company sites, EPA received only comments in favor of placing the sites on the NPL. EPA received no comments on the actual scoring of these sites and the Agency has identified no other reason to change the original HRS scores for the sites. Therefore, EPA is placing both sites on the NPL at this time.

For, Southern Solvents, Inc., Davis Timber Company, and Hamilton/Labree Roads Ground Water Contamination, EPA received no comments affecting the HRS scoring of these sites and therefore, EPA is placing them on the final NPL at this time.

EPA received one comment on the Palmer Barge Line site in Port Arthur, Texas. The commenter stated that his family business occupies the North Eastern 10 acres at the Palmer Barge Line location. The commenter stated that he hoped that EPA would not interrupt his company's work. In response, CERCLA Section 105(a)(8)(A) specifies the criteria for listing sites but does not require that the Agency consider possible adverse economic impacts as a factor; accordingly the listing process does not use that as a factor in identifying sites for the NPL. Furthermore, including a site on the NPL does not cause EPA necessarily to undertake remedial action. Any Agency actions that may result in response actions are based on discretionary decisions and are made on a case-by-case basis. Remedial response actions are associated with events that generally *follow* listing a site, not with the listing itself. EPA has not made a decision on what, if any, action may be needed at the Palmer Barge Line site, but if remediation is necessary, the Agency will seek to minimize any disruption of local businesses to the extent possible. Since this comment does not affect the HRS score of this site, EPA is placing it on the final NPL at this time.

EPA received one comment on the Talen's Landing Bulk Plant site in Grand Cheniere, Louisiana. The commenter asked that EPA change the name of the Talen's Landing Bulk Plant site. In response, to more accurately identify the site, EPA is changing the name of the site to "Mallard Bay Landing Bulk Plant". The commenter requested a public statement concerning his client's interest or involvement with the site. EPA is unable to comply with this request. This comment is beyond the scope of this rulemaking and does not affect the HRS site score. The NPL serves primarily as an informational list. Placing a site on the NPL reflects EPA's judgment that a significant release or threat of release of a hazardous substance has occurred, and that the site is a priority for further investigation under CERCLA. Placing a site on the NPL is not a determination of liability, nor does listing cause EPA necessarily to undertake remedial action, or to require any action by a private party, or to assign liability for site response costs to a private party. Any Agency actions that may result in response actions are based on discretionary decisions and are made on a case-by-case basis. Remedial response actions are associated with events that generally follow listing a site, not with the listing itself. Since this comment does not affect the HRS score of this site, EPA is placing it on the final NPL at this time under the site name Mallard Bay Landing Bulk Plant.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—July 2000".

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to

adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Does the Regulatory Flexibility Act Apply to this Final Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to this Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that

imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XIII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 20, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 and Table 2 of Appendix B to Part 300 are amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes(a)
•	•	•	•
CT	Scovill Industrial Landfill	Waterbury	
•	•	•	•
FL	Southern Solvents, Inc	Tampa	
•	•	•	•
LA	Mallard Bay Landing Bulk Plant	Grand Cheniere	
•	•	•	•
MO	Newton County Wells	Newton County	
•	•	•	•
MS	Davis Timber Company	Hattiesburg	
•	•	•	•
OK	Imperial Refining Company	Ardmore	
•	•	•	•
TX	Palmer Barge Line	Port Arthur	
•	•	•	•
TX	Star Lake Canal	Port Neches	
•	•	•	•
UT	International Smelting and Refining	Tooele	
•	•	•	•
WA	Hamilton/Labree Roads Ground Water Contamination	Chehalis	
•	•	•	•
WV	Big John Salvage—Hoult Road	Fairmont	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes(a)
•	•	•	•

(a) A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (If scored, HRS score need not be ≤ 28.50).
C = Sites on construction completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes(a)
•	•	•	•
VA	St. Juliens Creek Annex (U.S. Navy)	Chesapeake	
•	•	•	•

(a) A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (If scored, HRS score need not be ≤ 28.50).
C = Sites on construction completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 00–18902 Filed 7–26–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 430

[FRL–6842–2]

Project XL Site-Specific Rule for the International Paper Androscoggin Mill Facility in Jay, Maine; Project XL Final Project Agreement to be Signed for Effluent Improvement Project at International Paper Androscoggin Mill Facility in Jay, Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice regarding signing of final project agreement.

SUMMARY: The Environmental Protection Agency (EPA) today is finalizing this rule to provide site-specific regulatory flexibility under the Clean Water Act (CWA) as part of an XL Project with International Paper's Androscoggin Mill pulp and paper manufacturing facility in Jay, Maine. The site-specific rule will exempt International Paper Androscoggin Mill from certain Best Management Practices (BMPs) required under CWA regulations. In exchange for this regulatory flexibility, International Paper Androscoggin Mill will implement a series of projects designed to improve the mill's effluent quality and will accept numeric permit limits corresponding to the expected improvements in effluent quality. The terms of the International Paper XL project are contained in the Final Project Agreement (FPA), which project participants are expected to sign on June 29, 2000.

EFFECTIVE DATE: This final rule is effective on July 27, 2000.

ADDRESSES: A docket containing the final rule, Final Project Agreement, and supporting materials is available for public inspection and copying at the U.S. Environmental Protection Agency, 401 M. St., SW., Washington, DC, Room 1027. Members of the public are encouraged to telephone in advance at 202–260–3344 to schedule an appointment.

A duplicate copy of project materials is available for inspection and copying at EPA Regional Library, U.S. EPA, Region I, Suite 1100 (LIB), One Congress Street, Boston MA, 02114–2023, as well as the Town Hall, 99 Main Street, Jay, ME 04239 during normal business hours. Persons wishing to view the materials at the Boston location are encouraged to contact Mr. Chris Rascher in advance. Persons wishing to view the materials at the Jay, Maine, location are encouraged to contact Ms. Shiloh Ring at (207) 897–6785 in advance.

Project materials on today's action are also available on the worldwide web at http://www.epa.gov/projectxl/.

FOR FURTHER INFORMATION CONTACT: Persons seeking information on the project should contact Mr. Chris Rascher in U.S. EPA/Region 1—New England or Ms. Nina Bonnelycke in U.S. EPA Headquarters. Mr. Rascher can be reached at U.S. Environmental Protection Agency, One Congress St., Suite 1100, Boston, MA 02114, or at *rascher.chris@epa.gov*. Ms. Bonnelycke can be reached at U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, or at bonnelycke.nina@epa.gov.

Further information on today's action is also available on the worldwide web at http://www.epa.gov/projectxl.

SUPPLEMENTARY INFORMATION:

Category	Examples of potentially affected parties
Industry	International Paper, Androscoggin Mill, Jay, Maine

Outline of Today's Document

This preamble presents the following information:

I. Authority
II. Overview of Project XL
III. Overview of the International Paper Effluent Improvements XL Project
A. To Which Facilities Will the Final Rule Apply?
B. From What Required Activities Will Today's Final Rule Provide an Exemption?
C. What Will the IP-Androscoggin Mill Do Differently Under The XL Project?
D. What Regulatory Changes Will Be Necessary to Implement this Project?
E. Why is EPA Supporting This Approach of Granting a Waiver from BMPs?
F. How Have Stakeholders Been Involved in this Project?
G. How Will this Project Result in Cost Savings and Paperwork Reduction?
H. What Are The Enforceable Provisions Of The Project?
I. How Long Will this Project Last and When Will It Be Completed?
IV. Additional Information

A. How Does this Final Rule Comply With Executive Order 12866?
B. Is a Regulatory Flexibility Analysis Required?
C. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?
D. Does this Project Trigger the Requirements of the Unfunded Mandates Reform Act?
E. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
F. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?
G. Does this Rule Comply with Executive Order 13132?
H. Does this Rule Comply with the National Technology Transfer and Advancement Act?
I. Does This Rule Comply With the Congressional Review Act?

I. Authority

EPA is publishing this regulation under the authority of sections 402 and 501 of the Clean Water Act, as amended, (33 U.S.C. 1342 and 1361).

II. Overview of Project XL

Project XL—excellence and Leadership"— was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL gives individual private and public regulated entities the opportunity to develop their own pilot projects wherein the Agency provides targeted regulatory flexibility in exchange for improved environmental performance. EPA intends to use Project XL and other related efforts to test innovative strategies for reducing the regulatory burden and promoting economic growth while achieving better environmental and public health protection.

To participate in XL, interested parties must develop a proposal that satisfies a number of criteria, including criteria for superior environmental performance, transferability, and stakeholder involvement. The definition of "environmental performance" under XL is broad, and EPA seeks superior performance under XL both in areas under existing EPA jurisdiction such as waste handling, air emissions, or effluent treatment, as well as through environmental innovations in fields as diverse as data monitoring and reporting or product stewardship.

The Final Project Agreement (FPA) that evolves out of the review and development of the proposal is a written agreement between the project sponsor and regulatory agencies regarding the details of the proposed project. The FPA outlines how the project will meet the XL review criteria and identifies performance goals and indicators to ensure that the project's anticipated benefits are realized. The FPA also discusses the administration of the agreement, including dispute resolution and termination. Today, EPA announces the signing of the FPA for this project, planned as of publication date for June 29, 2000. This document is available for review as indicated above under **ADDRESSES**.

For more information about the XL program, XL criteria, or about specific XL projects underway, please refer to *http://www.epa.gov/projectxl* or contact EPA as indicated above under **FOR FURTHER INFORMATION CONTACT**.

III. Overview of the International Paper Effluent Improvements XL Project

EPA today is finalizing the rule that will implement key provisions of the International Paper Effluent Improvements XL Project. At the time of publication of today's document, project participants were scheduled to sign the FPA on June 29, 2000. Today's site-specific rule is necessary for the project to proceed. The FPA outlines the intentions of EPA and other project participants on the XL project. The FPA was developed by representatives from EPA, the International Paper Androscoggin Mill in Jay, Maine (IP-Androscoggin), the Maine Department of Environmental Protection (MEDEP), the Town of Jay, and other stakeholders.

A. To Which Facilities Will the Final Rule Apply?

This rule will apply only to the International Paper Androscoggin Mill in Jay, Maine.

B. From What Required Activities Will Today's Final Rule Provide an Exemption?

The rule exempts the IP-Androscoggin Mill from existing federal regulations codified under the Clean Water Act at 40 CFR 430.03. Those regulations require pulp and paper facilities to implement specified BMPs, *e.g.*, installing and maintaining various operating procedures and infrastructure within the facility; monitoring, data gathering, and reporting; and carrying out several other activities designed to prevent leaks and spills of spent pulping liquor, soap and turpentine that would otherwise lead to increased discharges of pollutants from the final effluent.

C. What Will the IP-Androscoggin Mill Do Differently Under The XL Project?

International Paper's claim in its XL proposal was that existing practices at the Androscoggin Mill, including existing spill prevention procedures and process control technologies, are advanced enough to preclude any further improvements to the final effluent from implementation of the BMPs specified in 40 CFR 430.03. To support this claim, the IP-Androscoggin Mill detailed as part of project review discussions how, item-by-item, the mill's infrastructure, operations and procedures are equivalent to or achieve the same objectives as the BMP requirements under the CWA for pulp and paper facilities.

Under the XL project, the IP-Androscoggin Mill will maintain these practices in order to ensure that current environmental performance is sustained. In exchange for the exemption from the requirements of 40 CFR 430.03, the IP-Androscoggin Mill will in addition implement a number of projects designed to improve the mill's effluent quality for chemical oxygen demand (COD) and color beyond levels likely to be attained through implementation of the BMP requirements specified in 40 CFR 430.03. These steps all derive from the project's two most important components:

- Implementation of a series of effluent improvement projects under the guidance of a Collaborative Process Team with members from IP, EPA, MEDEP, the Town of Jay, and other stakeholders;
- Amendment or reissuance of the IP-Androscoggin Mill effluent discharge permit to include numeric limitations for color and chemical oxygen demand (COD) at levels that in Phase 1 of the project guarantee sustained environmental performance and in Phase 2 of the project capture in the permit any future performance improvements deriving from the XL project.

The Final Project Agreement, available as indicated under **ADDRESSES** above, describes in greater detail the steps associated with the XL project.

D. What Regulatory Changes Will Be Necessary to Implement this Project?

To allow this XL project to be implemented, the Agency is today finalizing a rule that exempts the IP-Androscoggin Mill from the BMP requirements specified in 40 CFR 430.03. This site-specific rule further provides that, in lieu of imposing the requirements specified in § 430.03, the permitting authority shall establish conditions for the discharge of COD and color for this mill on the basis of best professional judgment. Because both

EPA and the Maine Department of Environmental Protection will be signatories to the FPA, EPA expects that the requirements for COD and color will be based on the values and procedures specified in the FPA. That is, subsequent to issuance of this site-specific rule, the appropriate permitting authority(ies) will amend or reissue the IP-Androscoggin effluent discharge permit to remove the requirements corresponding to 40 CFR 430.03 and put in place instead numeric effluent limitations on COD and color that reflect, in the first phase, current effluent quality and, in the second phase, improved effluent quality resulting from the implementation by the IP-Androscoggin Mill of alternative effluent improvement projects called for by this project.

E. Why Is EPA Supporting This Approach of Granting a Waiver From BMPs?

The Agency expects that the exemption for the IP-Androscoggin Mill will result in environmental performance superior to that which would be attained by continued adherence to the BMPs specified in 40 CFR 430.03. As the Final Project Agreement explains in detail, the effluent improvement projects that the IP-Androscoggin Mill will put in place under the XL agreement are expected to reduce COD and color in the mill's effluent to approximately half of current levels.

Another important aspect of this project is that it offers EPA a chance to explore how to use a collaborative process to identify facility-specific process improvements that prompt companies to achieve continuous improvements to effluent quality and to memorialize those improvements in the form of evolving permit limits.

F. How Have Stakeholders Been Involved in This Project?

Representatives from several state and local offices have been involved with the development of this project including: the Commissioner of MEDEP, the MEDEP Bureau of Land and Water Quality, members of the Town of Jay Planning Board, Town of Jay Selectmen and the Town of Jay Code Enforcement Officer. The University of Maine has also participated actively in this project. The U.S. Fish and Wildlife Service has also been involved on several occasions.

Non-governmental stakeholders who were invited to participate include but are not limited to: Natural Resource Council of Maine, Environment Northeast, Appalachian Mountain Club, and Western Mountain Alliance. Industry associations who were invited to participate include the Maine Pulp and Paper Association and the National Council of Air and Stream Improvement.

Comments from all other organizations and individuals are welcomed throughout the stakeholder process. All stakeholders including the general public have been and will continue to be notified through local newspaper announcements of meetings and the availability of project documents for review, and there is a specific provision in this project to continue to involve stakeholders as the effluent improvement projects are designed and implemented.

G. How Will This Project Result in Cost Savings and Paperwork Reduction?

IP-Androscoggin proposed this XL project to EPA believing that they could achieve better environmental protection by implementing effluent improvement projects specially tailored to the mill rather than focusing on adhering to existing BMP requirements under the CWA. Since the mill has agreed to re-commit any savings from the exemption to the new projects, the mill will experience little or no net savings as a result of the XL project. Specifically, although IP estimates savings from the BMP exemption of approximately $780,000 in capital and operating costs, these savings will be offset by a corresponding increase in expenditures on the effluent improvement projects.

H. What Are The Enforceable Provisions of the Project?

The enforceable provisions of this project are numeric effluent limitations incorporated into the mill's effluent discharge permit. As noted above, the project contemplates two sets of limits. The first set of limits (known as Phase 1 limits in the FPA), reflects current effluent quality for COD and color and corresponds to effluent quality deriving from the BMPs presently in place at the mill (which EPA judged to be equivalent in terms of performance to the BMPs specified in 40 CFR 430.03). The second set of limits for COD and color (known as the Phase 2 limits in the FPA) will be established in accordance with procedures specified in the FPA once the effluent improvement projects are fully implemented to include limits for COD and color that reflect actual performance improvements.

I. How Long Will This Project Last and When Will It Be Completed?

The Project Signatories intend that this project will be concluded at the end of four (4) years: One year to identify and select the list of effluent improvement projects; two years to design and construct the projects; and one year to collect monitoring data for the purposes of calculating the Phase 2 permit limits and to perform overall project evaluation. At the end of four years, if the project is judged to be a success under the terms described in the FPA, EPA intends to allow the IP-Androscoggin Mill to continue operating under the site-specific rule promulgated after the FPA is signed. However, the Administrator may promulgate a rule to withdraw the exemption at any time in the future if the terms and objectives of the FPA are not met or if the exemption becomes inconsistent with future statutory or regulatory requirements.

EPA notes that adoption of an exemption from the BMP regulations in the context of this XL project does not signal EPA's willingness to adopt that exemption as a general matter or as part of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results obtained from this project, EPA may or may not be willing to consider adopting BMP exemptions either generally or for other specific facilities.

IV. Additional Information

A. How Does this Rule Comply With Executive Order 12866?

Because this rule will apply only to one facility, it is not a rule of general applicability and therefore is not subject to OMB review under Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is unnecessary.

B. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities

include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because it only affects the International Paper facility in Jay, Maine, which is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?

This action applies only to one facility. Therefore any information collection activities it contains are not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* For this reason, EPA is not submitting an information collection request (ICR) to OMB for review under the Paperwork Reduction Act.

D. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this final rule is applicable only to one facility in Maine. EPA has determined that the rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that the rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

F. How Does This Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule will not significantly or uniquely affect the communities of Indian tribal governments, and it will not impose substantial direct compliance costs on such communities. Although Indian tribal communities live in areas near the Androscoggin River, their governments will not be subject to any compliance costs relating to the site-specific rule since the rule is directed at the International Paper mill. Nearby Indian tribal communities are, in fact, expected to benefit directly from the anticipated improvement in water quality. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Does This Rule Comply With Executive Order 13132?

Executive Order 13132, entitled "Federalism" (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the

process of developing the proposed regulation.

This rule does not have federalism implications. It will apply only to a single facility, and it will therefore not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards developed by any voluntary consensus standards bodies. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Does This Rule Comply With the Congressional Review Act?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 430

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 21, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40 Chapter I of the Code of Federal Regulations is amended as follows:

PART 430—THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

1. The authority citation for part 430 continues to read as follows:

Authority: Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended, (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361), and section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

2. Section 430.03 is amended by adding paragraph (k) to read as follows:

§ 430.03 Best management practices (BMPs) for spent pulping liquor, soap, and turpentine management, spill prevention, and control.

* * * * *

(k) The provisions of paragraphs (c) through (j) of this section do not apply to the bleached papergrade kraft mill, commonly known as the Androscoggin Mill, that is owned by International Paper and located in Jay, Maine. In lieu of imposing the requirements specified in those paragraphs, the permitting authority shall establish conditions for the discharge of COD and color for this mill on the basis of best professional judgment.

[FR Doc. 00–19010 Filed 7–26–00; 8:45 am]
BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–182]

Computation of Time

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order adopts minor amendments to the Commission's computation of time rule. The clarifications will make it easier for the public to interpret the rules thereby providing better service to the public.

DATES: Effective July 27, 2000.

FOR FURTHER INFORMATION CONTACT: Marjorie Bertman, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

1. In this order we make minor amendments to the Commission's computation of time rule, 47 CFR 1.4, to clarify the rule. We clarify that the date of "public notice" for all rulemaking documents required by the Administrative Procedure Act (APA), 5 U.S.C. 552(a), 553, to be published in the **Federal Register**, is the date of publication in the **Federal Register**. We also clarify the date of "public notice" for Commission determinations in section 271 proceedings, 47 U.S.C. 271.

2. Section 1.4 establishes the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. Section 1.4(b) provides that unless otherwise indicated, the first day to be counted when a time period begins with an action taken by the Commission is the day after the day on which "public notice" of the action is given. Section 1.4(b)(1) defines the term "public notice" for documents in "notice and comment rulemaking proceedings" as the date of publication in the **Federal Register**, and section 1.4(b)(2) defines "public notice" for non-rulemaking documents as the release date, whether or not the document is published in the **Federal Register**.

3. The existing rules do not indicate specifically what the date of "public notice" should be for rulemaking documents required to be published in the **Federal Register**, *see* 5 U.S.C. 552(a)(C)–(E), 553(b), but that are adopted without notice and comment in accordance with the exceptions provided in the APA. Such rulemakings include rules involving a military or foreign affairs function, interpretive rules, rules of agency organization procedure or practice, general statements of policy, or rules adopted when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 553(a)(b)(A), (B). In order to make clear what the "public notice" date is for these non-notice and comment rulemaking proceedings, we are amending section 1.4(b)(1). The rule will now indicate that the date of publication in the **Federal Register** is the date of "public notice" for all notice and comment rulemakings and for all rulemaking documents required by the APA to be

published in the **Federal Register**. We note that interlocutory procedural rulings in rulemaking proceedings, such as orders granting extensions of time or other miscellaneous procedural orders that directly pertain to a rulemaking itself, are governed by amended section 1.4(b)(1), because these procedural orders in rulemaking dockets are required to be published in the **Federal Register**.

4. We also clarify that proceedings that do not fall within the class of rulemaking decisions that must be published in the **Federal Register**, such as adjudicatory matters, *e.g.* individual licensing decisions and waivers as to specific parties, do not come within the scope of section 1.4(b)(1), even if the decisions happen to be related to, or issued in, an on-going rule making docket. In so doing, we expressly depart from the interpretation of our computation of time rule that was announced in *Adams Telcom, Inc.* v. *FCC*, 997 F.2d 955 (D.C. Cir. 1993). The date of public notice for decisions in such non-rulemaking matters is the release date of the document that contains the Commission's decision, not the date of publication in the **Federal Register**.

5. Finally, we are amending section 1.4(b)(2) to make clear that "public notice" for section 271 determinations is the date of release of the Commission's decision. Section 271(d)(5) of the Communications Act, 47 U.S.C. 271(d)(5), adopted as part of the Telecommunications Act of 1996, requires the Commission, not later than 10 days after issuing a determination approving or denying an authorization request from a Bell Operating Company to provide interLATA services pursuant to section 271, to publish a brief description of its written determination in the **Federal Register**. Although the statute requires their publication in the **Federal Register**, decisions with respect to section 271 applications are adjudications, not rulemakings. The brief summaries of the Commission's section 271 determinations thus appear in the notices category of the **Federal Register**, not the rules category. Consistent with their adjudicatory status, the date of public notice for section 271 decisions is properly the date of release, and the rules are amended to state this explicitly.

6. The rule amendments adopted herein involve rules of agency organization, procedure, or practice, and the notice and comment and effective date provisions of the Administrative Procedure Act are therefore inapplicable. 5 U.S.C. 553(b)(A), (d).

7. Because members of the public relied on the prior interpretation of our rules announced in *Adams Telcom, Inc.*, the amended rule as it applies with respect to these adjudicatory decisions (and which is explained in a new note to amended section 1.4(b)(1)), applies only to Commission decisions released on or after the effective date of the amended rule. The other clarifications to the computation of time rules contained in this order are, however, applicable to all Commission decisions, whether released before or after the effective date of the new rules, as they merely codify existing interpretations and practice.

8. Pursuant to sections 4(i), 4(j), 303(r), 47 U.S.C. 4(i), 4(j), 303(r), 47 CFR Part I *is amended* as set forth below, effective July 27, 2000.

List of Subjects 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Change

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part I continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 1.4 is amended by revising the introductory text of paragraphs (b)(1) and (b)(2) and by adding a note to paragraph (b)(1) to read as follows:

§ 1.4 Computation of time.

* * * * *

(b) * * *

(1) For all documents in notice and comment and non-notice and comment rulemaking proceedings required by the Administrative Procedure Act, 5 U.S.C. 552, 553, to be published in the **Federal Register**, including summaries thereof, the date of publication in the **Federal Register**.

Note to paragraph (b)(1): Licensing and other adjudicatory decisions with respect to specific parties that may be associated with or contained in rulemaking documents are governed by the provisions of § 1.4(b)(2).

(2) For non-rulemaking documents released by the Commission or staff, including the Commission's section 271 determinations, 47 U.S.C. 271, the release date.

* * * * *

[FR Doc. 00–18899 Filed 7–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 95–157, RM–8643; FCC 00–123]

Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation; Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission clarifies certain aspects of its rules governing the relocation of microwave facilities from the 1850–1990 Megahertz (MHz) band. These rule clarifications are consistent with the Commission's goal of ensuring the efficient relocation of fixed microwave incumbents from the 1850–1990 MHz band to higher bands and the efficient rollout of broadband PCS service in the 1850–1990 MHz band.

DATES: Effective August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Joel Taubenblatt, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418–1513.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (MO&O) in WT Docket No. 95–157, adopted April 5, 2000, and released July 19, 2000. In this document, the Commission addresses petitions for reconsideration and/or clarification of, and a petition for declaratory ruling concerning, the Commission's rules governing the relocation of microwave facilities from the 1850–1990 Megahertz (MHz) band. The Commission clarifies certain aspects of these rules, as discussed below, and denied the remaining requests in the petitions.

2. In 1992, the Commission reserved 220 megahertz of spectrum, including the 1850–1990 MHz band, for reallocation from private and common carrier fixed microwave services (microwave incumbents) to services using emerging technologies. The Commission also established procedures for microwave incumbents to be

relocated to available frequencies in higher bands or to other media, including procedures governing the compensation of microwave incumbents by providers of emerging technology services. In 1994, the Commission allocated the 1850–1990 MHz band to broadband Personal Communications Services (PCS), one of the emerging technology services.

3. In the *First Report and Order* in this proceeding, 61 FR 29679 (June 12, 1996), the Commission changed and clarified certain aspects of its microwave relocation procedures and adopted a plan for sharing the costs of relocating microwave facilities operating in the broadband PCS band (the "cost-sharing plan"). Under the Commission's cost-sharing plan, PCS licensees and manufacturers of unlicensed PCS devices that incur costs for relocating an interfering microwave link (together, "PCS relocators") are eligible to receive reimbursement from later-entrant PCS licensees and later-entrant manufacturers of unlicensed PCS devices that benefit from the clearing of their spectrum (together, "later-entrant PCS entities"). The cost-sharing plan is administered by two private clearinghouses designated by the Wireless Telecommunications Bureau (WTB)—the Personal Communications Industry Association (PCIA) and the Industrial Telecommunications Associations, Inc. (ITA)—using the cost-sharing formula adopted by the Commission.

4. In the *Second Report and Order* in this proceeding, 62 FR 12752 (March 18, 1997), the Commission, among other things, modified its cost-sharing rules to permit microwave incumbents who relocate their own microwave links and pay their own relocation expenses ("self-relocating microwave incumbents") to collect reimbursement in accordance with the cost-sharing plan adopted in the *First Report and Order*, subject to certain conditions.

5. Ten parties filed petitions for reconsideration or clarification of the *First Report and Order*; one party filed a petition for declaratory ruling concerning the *First Report and Order*, and three parties filed petitions for reconsideration and clarification of the *Second Report and Order*.

6. This document denies the petitions for reconsideration and/or clarification of the *First Report and Order* because it finds that: (1) with respect to the MSS Coalition petition, the concerns raised by the petitioner regarding the applicability of the microwave relocation and cost-sharing rules to the 2 GHz non-PCS bands were raised and considered in another Commission rulemaking; (2) with respect to the other petitions, any potential benefit of the suggested changes to the Commission's cost-sharing rules is outweighed by the risk of undermining the integrity of the relocation process by altering rules relied upon by the parties involved in the process.

7. This document also declines to make a declaratory ruling that a later-entrant PCS licensee is not obligated to reimburse a PCS relocator for the cost of relocating a link that is entirely within the PCS relocator's MTA or BTA, as requested by Powertel, because it finds that § 24.247 of the Commission's rules dictates a different result.

8. In addition, with respect to the petitions for reconsideration and/or clarification of the *Second Report and Order*, this document clarifies that: (1) microwave incumbents that self-relocated links between April 5, 1995 and May 19, 1997 are not entitled to reimbursement; (2) microwave incumbents are permitted to relocate to leased facilities, as well as purchased facilities; (3) the date that the depreciation factor begins to apply to the amount reimbursable to a microwave incumbent for its self-relocated links is the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of these links, pursuant to § 101.305 of the Commission's rules; (4) the deadline for self-relocating microwave incumbents to file documentation of the relocation with the clearinghouse shall be within ten business days of the date referred to in the preceding clause; and (5) under the cost-sharing formula as applied to self-relocating microwave incumbents, the variable N equals 1 for the first PCS entity that would have interfered with the relocated link. This document denies the remaining requests in the petitions for reconsideration and/or clarification of the *First Report and Order* and *Second Report and Order* in this proceeding.

9. The complete text of this *MO&O* is available for inspection and copying during normal business hours in the Commission's Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC. The complete text is also available through the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00123.doc*. In addition, the complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.) at 1231 20th Street NW, Washington, DC 10036, (202) 857–3800.

Supplemental Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in WT Docket No. 95–157, 60 FR 55529 (November 1, 1995). The Commission sought written public comment on the proposals in the *NPRM*, including the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *First Report and Order* in WT Docket No. 95–157, 61 FR 29679 (June 12, 1996). The *First Report and Order* also included a Further Notice of Proposed Rulemaking (Further Notice), and thus incorporated an IRFA on the additional proposals in the *Further Notice*, 61 FR 29679 (June 12, 1996). The Commission sought written public comment on the additional proposals in the *Further Notice*, including the IRFA. A FRFA on the additional proposals in the *Further Notice* was incorporated in the *Second Report and Order* in WT Docket No. 95–157, 62 FR 12752 (March 18, 1997). The present Supplemental Final Regulatory Flexibility Analysis in this document supplements the FRFAs in the *First Report and Order* and *Second Report and Order*, and conforms to the RFA, as amended.

A. Need for, and Objectives of, the Rules

10. This document addresses petitions for reconsideration and/or clarification of, and a petition for declaratory ruling, concerning the Commission's plan for PCS market entrants to share the costs of relocating microwave facilities from the 1850–1990 MHz band. Under the Commission's cost-sharing plan, PCS licensees and manufacturers of unlicensed PCS devices that incur costs for relocating an interfering microwave link (together, "PCS relocators") are eligible to receive reimbursement from later-entrant PCS licensees or later-entrant manufacturers of unlicensed PCS devices that benefit from the clearing of their spectrum (together, "later-entrant PCS entities"). In addition, the cost-sharing plan permits microwave incumbents who relocate their own microwave links and pay their own relocation expenses ("self-relocating microwave incumbents") to collect reimbursement from later-entrant PCS entities that benefit from the clearing of the spectrum, subject to certain conditions. This document clarifies certain aspects of this cost-sharing plan, as discussed below, and denies the remaining requests in the petitions, including a request to eliminate the installment payment plan

for designated entity reimbursement obligations. These clarifications will facilitate the efficient relocation of fixed microwave incumbents from the 1850–1990 MHz band in order to clear the band for the provision of PCS service.

11. In particular, the document clarifies that: (1) the Proximity Threshold test set forth in § 24.247 of the Commission's rules, 47 CFR 24.247, controls when a reimbursement obligation exists for a later-entrant PCS licensee; (2) microwave incumbents that self-relocated links between April 5, 1995 and May 19, 1997 are not entitled to reimbursement; (3) microwave incumbents are permitted to relocate to leased facilities, as well as purchased facilities; (4) the date that the depreciation factor begins to apply to the amount reimbursable to a microwave incumbent for its self-relocated links is the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of these links, pursuant to § 101.305 of the Commission's rules, 47 CFR 101.305; (5) the deadline for self-relocating microwave incumbents to file documentation of the relocation with the clearinghouse shall be within ten business days of the date referred to in the preceding clause; and (6) under the cost-sharing formula as applied to self-relocating microwave incumbents, the variable N equals 1 for the first PCS entity that would have interfered with the relocated link.

B. Summary of Issues Raised in Response to the FRFAs

12. None of the petitions filed on the *First Report and Order* and *Second Report and Order*, or comments filed on these petitions, were specifically in response to the FRFAs in those orders. Several of the petitions and comments regarding the *First Report and Order*, though, raised issues that may impact small entities, and were considered by the Commission, as discussed in Section E below. In particular, Tenneco Energy argues that the Commission should eliminate the payment plan that permits PCS providers that are designated entities (a small business classification used for Commission spectrum auctions) to make reimbursement payments in installments over time, as set forth in § 24.249(b) of the Commission's rules, 24 CFR 24.249(b). Omnipoint and PCIA oppose Tenneco's argument. Moreover, Omnipoint contends that, although it does not qualify as a designated entity under the Commission's rules, it should be permitted to make reimbursement payments according to the installment plan schedule set forth in § 24.249(b).

13. Small Business in Telecommunications (SBT) argues that the Commission should refine its definitions of communications throughput and network reliability in evaluating whether a microwave incumbent's new system is comparable to the old one, and that the Commission should require PCS providers to compensate microwave incumbent's for internal resources devoted to the relocation process. Other fixed microwave incumbents, such as the Association of American Railroads, support a refinement of the definitions of throughput and reliability, whereas PCS providers such as AT&T, Omnipoint, and Pacific Bell, oppose such a refinement. In addition, AT&T opposes SBT's suggested modification to include internal resources in compensation.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *Id.* A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that will be affected by the rule clarifications adopted in this document.

15. The rule clarifications adopted in this document will affect small entities that participate in the microwave relocation process in the 1850 MHz to 1990 MHz band: providers of broadband personal communications service (PCS); providers of fixed microwave services; and manufacturers of unlicensed PCS devices.

16. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

17. *Fixed Microwave Services.* The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. 13 CFR 121.201, Standard Industrial Classification (SIC) 4812. The Commission's Office of Engineering and Technology developed a study in 1992 that provides statistical data for all microwave incumbents in 1850 to 1990 MHz band. Specifically,

the study finds that in the 1850 MHz to 1990 MHz band, local governments, including public safety entities, have 168 licenses; petroleum companies have 67 licenses; power companies have 164 licenses; railroad companies have 18 licenses; and all other microwave incumbents in this band have 143 licenses. However, the Commission does not have specific statistics that determine how many of these companies are small businesses. We therefore are unable to estimate the number of fixed microwave service providers that qualify under the SBA's definition.

18. *Manufacturers of Unlicensed PCS Devices.* The Commission has not yet developed a definition of small entities applicable to manufacturers of unlicensed PCS devices. Therefore, the applicable definition of small entity is the definition under the SBA applicable to the "Communications Services, Not Elsewhere" category—an entity with less than $11.0 million in annual receipts. 13 CFR 121.201, SIC Code 4899. The Census Bureau estimate indicate that of the 848 firms in the "Communications Services, Not Elsewhere" category, 775 are small businesses. The Commission does not have specific statistics, though, on how many of these 775 small businesses are manufacturers of unlicensed PCS devices.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

19. This document does not contain any additional reporting or recordkeeping requirements. The document does clarify several aspects of the Commission's cost-sharing plan for microwave relocation, as discussed in Section A above, but these clarifications do not create new compliance obligations.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. This document clarifies certain aspects of the Commission's plan for PCS market entrants to share the costs of relocating microwave facilities from the 1850–1990 MHz band, as discussed in Section A above. Under the Commission's cost-sharing plan, PCS relocators and self-relocating fixed microwave incumbents that pay for the relocation of microwave links are entitled to reimbursement from later-entrant PCS entities that benefit from the clearing of the spectrum. A number of the clarifications set forth in this document will affect the amount of reimbursement that a PCS relocator or self-relocating microwave incumbent is entitled to receive under the plan and, conversely, the amount of reimbursement that a later-entrant PCS entity is obligated to pay. In some cases, the clarifications will result in an increase in reimbursement, to the benefit of the PCS relocator or self-relocating microwave incumbent; in other cases, the clarifications will result in a decrease in reimbursement, to the benefit of the later-entrant PCS entity. Because some entities on both sides of the reimbursement equation are small businesses, we do not believe that, on the whole, these clarifications to the cost-sharing plan will have a significant economic impact on small businesses. We do believe that these clarifications will make it easier for the affected regulated entities to comply with our cost-sharing rules and, to some extent, reduce the staff resources needed to handle compliance, a result that is especially beneficial for small businesses.

21. This document also denies the remaining requests in the petitions (retaining the status quo), including the requests by Tenneco, Omnipoint, and SBT set forth in Section B above. We believe that the remaining requests would require changes in the cost-sharing rules that might undermine the integrity of the rules that PCS relocators, later-entrant PCS entities, and microwave incumbents have relied on since 1996 to effect the relocation from these bands. Thus, as discussed in paragraph 8 of the document, we conclude that granting these remaining requests would not significantly advance our goal of promoting an efficient and equitable relocation process as to outweigh the risks associated with such rule changes.

F. Report to Congress

22. The Commission will send a copy of this document, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this document, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this document and this Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

G. Ordering Clauses

23. Accordingly, pursuant to the authority of § 1.106 of the Commission's rules, 47 CFR 1.106, the petitions for reconsideration and/or clarification of the First Report and Order filed by the American Petroleum Institute, the Association of American Railroads, the Association of Public-Safety Communications Officials-International, Inc, AT&T Wireless Services, Inc. (jointly with GTE Mobilnet, PCS PrimeCo, L.P., Pocket Communications, Inc., Western PCS Corporation and the Cellular Telecommunications Industry Association), the MSS Coalition, Omnipoint Communications, Inc., the Personal Communications Industry Association, Small Business in Telecommunications, Tenneco Energy, and UTC/The Telecommunications Association are denied, as discussed in paragraph 6 *supra*.

24. Pursuant to the authority of § 1.2 of the Commission's rules, 47 CFR § 1.2, the petition for declaratory ruling concerning the First Report and Order filed by Powertel PCS, Inc. is denied, as discussed in paragraph 7 *supra*.

25. Pursuant to the authority of § 1.106 of the Commission's rules, 47 CFR 1.106, the petitions for reconsideration and/or clarification of the Second Report and Order filed by American Petroleum Institute, UTC/The Telecommunications Association, and the South Carolina Public Service Authority are granted in part and denied in part, as discussed in paragraph 8 *supra*.

26. Pursuant to the authority of §§ 24.243 and 24.245 of the Commission's rules, 47 CFR 24.243, 24.245, are amended as set forth in the rule changes which are to become August 28, 2000.

27. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Memorandum Opinion and Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 24

Personal communications services, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 24 as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332.

2. Section 24.243 is amended by revising paragraphs (c) and (d) to read as follows:

§ 24.243 The cost-sharing formula.

* * * * *

(c) *N* equals the number of PCS entities that would have interfered with the link. For the PCS relocator, N=1. For the next PCS entity that would have interfered with the link, N=2, and so on. In the case of a voluntarily relocating microwave incumbent, N=1 for the first PCS entity that would have interfered with the link. For the next PCS entity that would have interfered with the link, N=2, and so on.

(d) *Tm* equals the number of months that have elapsed between the month the PCS relocator or voluntarily relocating microwave incumbent obtains reimbursement rights for the link and the month that the clearinghouse notifies a later-entrant of its reimbursement obligation for the link. A PCS relocator obtains reimbursement rights for the link on the date that it signs a relocation agreement with a microwave incumbent. A voluntarily relocating microwave incumbent obtains reimbursement rights for the link on the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to § 101.305 of the Commission's rules.

3. Section 24.245 is amended by revising paragraph (a)(2) to read as follows:

§ 24.245 Reimbursement under the cost-sharing plan.

(a) * * *

(2) To obtain reimbursement, a voluntarily relocating microwave incumbent must submit documentation of the relocation of the link to the clearinghouse within ten business days of the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to § 101.305 of the Commission's rules.

* * * * *

[FR Doc. 00–18955 Filed 9–26–00; 8:45 am]
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VOL 65 ISS 145 JL 27 2000 UMI

Proposed Rules

Federal Register
Vol. 65, No. 145
Thursday, July 27, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Part 51

[Docket Number FV–99–302]

RIN 0581–AB63

Withdrawal of Proposed Rule for Fee Increase for Destination Market Inspections of Fresh Fruits, Vegetables and Other Products

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule: withdrawal.

SUMMARY: AMS is withdrawing a proposed rule published in the **Federal Register** on September 20, 1999 (64 FR 50774). The proposed rule would have revised the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 14 percent most of the fees charged for the inspection of these products at destination markets. The fees for inspecting multiple lots of the same product during inspections would have increased more significantly and the per package fees for dock-side inspections would have increased and changed from a three interval schedule, based on weight, to a two interval schedule based on different weight thresholds. These revisions were necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946 (AMA of 1946). The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under the Agricultural Act of 1949 also would have been affected.

DATES: The proposed rule is withdrawn as of July 28, 2000.

ADDRESSES: Supporting information used in developing the proposed rule, including comments received during the period for public comment on the proposed rule, are available for public inspection and copy at the Fresh Products Branch Docket File at USDA, AMS, FVP, Fresh Products Branch, Room 2049 South, USDA Stop 0240, 1400 Independence Ave., SW, Washington, DC 20250–0240. For access to the Docket materials, call (202) 720–5870 between 9 a.m. and 3:30 p.m. for an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rob Huttenlocker, USDA Stop 0240, 1400 Independence Ave., SW, Washington, DC 20250–0240, or by calling (202) 720–5870.

SUPPLEMENTARY INFORMATION: The AMA of 1946 authorizes official inspection, grading and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. The proposed rule would have amended the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

The Agricultural Marketing Service (AMS) regularly reviews its user-fee programs to determine if the fees are adequate. While the Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, continues to search for opportunities to reduce its costs, the existing fee schedule would not have generated sufficient revenues to cover program costs while maintaining an adequate reserve balance. Current revenue projections for destination market inspection work during FY 99 are $13.7 million with costs projected at $13.9 million and an end-of-year reserve of $2.2 million. However, FPB's trust fund balance for this program will be approximately $2.4 million under the approximate $4.6 million deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $14.5 million during FY 00 and to approximately $15.0 million during FY 01. These cost increases will result from inflationary increases with regard to current FPB operations and services (primarily salaries and benefits), the training and equipment required to promote improved workplace safety, and the acquisition of additional computer and related technology.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 3.54 to 4.02 percent depending on locality, effective January 1999, significantly increased program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by approximately $500,000 per year. In addition, a general and locality salary increase of 4.8 percent was effective in January 2000. This salary adjustment will increase FPB's costs by over $600,000 per year.

Additional revenues also were necessary in order for FPB to cover the costs of the additional staff, office space, and equipment needed in two federal market offices that were established during FY 99 (*e.g.*, Brooklyn, New York, and Oklahoma City, Oklahoma). Additional revenues also were needed to cover the costs of providing safety orientation training to FPB's personnel and purchasing safety shoes for FPB's inspection personnel. Finally, FPB needed additional funds to cover the costs of securing the equipment (*e.g.*, digital imaging cameras and computers and information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

Congress recently passed and, on June 20, 2000, the President signed legislation (H.R. 2559) (Public Law 106–224), authorizing appropriated funds that will make it possible for FPB to build the Terminal Market Inspection Program's reserve fund by $29 million. Congress and the President also approved an additional $11.55 million in appropriated funds that will make it possible for FPB to implement infrastructure and system improvements. These funds are appropriated for fiscal year 2001. Since Public Law 106–224 addresses the funds needed by AMS, FPB program, it is unnecessary to continue this rulemaking. Therefore, AMS withdraws the proposed rule.

Authority: 7 U.S.C. 1621–1627.

Dated: July 21, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–18964 Filed 7–26–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1424

RIN 0560–AG16

Bioenergy Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is considering a new initiative to accelerate the development and use of bio-based technologies which would stimulate the industrial use of agricultural commodities into bio-based fuels and products. Accordingly, CCC seeks comments concerning the establishment of a bioenergy program to expand agricultural markets by promoting increased production of bioenergy through ethanol and biodiesel. Using the authority of the CCC Charter Act, which states in part, that CCC is authorized to use its general powers to "increase domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets for agricultural commodities * * *", CCC proposes to make incentive cash payments to bioenergy producers who increase their purchases of eligible agricultural commodities, as compared to the corresponding period in the prior fiscal year (FY) and convert that commodity into increased bioenergy production.

DATES: Comments on this rule must be received on or before August 28, 2000 to be assured of consideration. Comments regarding the information collection requirements of the Paperwork Reduction Act must be received on or before September 25, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to Alex King, Acting Deputy Administrator, Commodity Operations, FSA, United States Department of Agriculture (USDA), STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550, telephone (202) 720–3217 or e-mail address, Alex_King@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Jim Goff, (202) 720–5396.

SUPPLEMENTARY INFORMATION:

Comments Requested

Public comments (submitted to the address above) are requested generally and specifically on the following topics in this proposed rule:

1. Producers of what forms of bioenergy should be eligible for program payments? Ethanol and biodiesel are proposed in this rule.

2. What agricultural commodities used in bioenergy production should be included in the program? This rule proposes potentially making payments on barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, flaxseed, and mustard seed used in either ethanol or biodiesel production.

3. At what facility capacity should program payment rates change to account for plant efficiency variances by eligible program commodity? This rule proposes making larger payments to plants with under 30 million gallon per year capacity than to plants with 30 million gallon or more capacity.

4. How should payment rates be established, especially for commodities without CCC announced terminal market prices? This rule only proposes making payments to commodities with established CCC announced terminal prices.

5. When payments are limited by the budget, how should payments be distributed?

(a) Capped at a certain dollar amount or percentage of total payments. For example, no more than $X or X percent of total funds available to any one firm;

(b) Prorate payments to eligible producers over the quarter or FY; or

(c) First come, first paid basis.

This proposed rule uses a combination of all of the above by having a sign-up period before the fiscal year begins to determine a payment factor as defined in § 1424.3 and then using the payment factor on a first come, first paid basis. A payment restriction is proposed in § 1424.10.

6. Should the payment factor be capped as proposed in this rule at 100 percent ? And, if so, should the cap be 100 percent?

7. How should increases in bioenergy production be established for the various commodities receiving program payments?

8. What are the expected impacts of this program on agricultural commodity prices, fossil fuel energy prices, farm income, bioenergy production and prices, and international trade in agricultural and energy products?

Executive Order 12866

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015 subpart V published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

An environmental evaluation for this action will be completed before publication of the final rule.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12612

It has been determined that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of

sections 202 and 205 of the UMRA regulations.

Background

To encourage bioenergy producers to expand agricultural markets by promoting increased bioenergy (ethanol and biodiesel) production, CCC, in accordance with Executive Order 13134, and the CCC Charter Act, proposes to make incentive cash payments to bioenergy producers who increase their purchases of agricultural commodities over previous FY purchases and convert that commodity into increased ethanol and biodiesel production over previous FY ethanol and biodiesel production. This rule proposes potentially making payments on barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, flaxseed, and mustard seed used in either ethanol or biodiesel production.

Eligible bioenergy producers will receive incentive cash payments quarterly, based on the producer's total annual bioenergy production increase for the quarter compared to the same quarter in the previous FY. Quarterly payments will be reconciled with the total increase in production for the FY at the end of the fourth quarter. If, at the end of the fourth quarter, overpayments have been made, the bioenergy producer shall repay the overpayment plus interest from the date of the overpayment through the date of repayment to CCC. Eligible bioenergy producers with less than 30 million gallons annual production capacity will receive a higher payment rate than bioenergy producers with 30 million gallons or more annual production capacity to encourage the number of bioenergy producers, increase the incentive for smaller plants, and promote expansion of bioenergy production. A higher incentive is needed for smaller plants because, compared to larger plants, they tend to produce a more limited product range during refining, are less able to capture economies of scale, and may not have access to attractive risk management strategies.

Except for FY 2000, bioenergy producers will enter into annual agreements with CCC establishing their eligibility to receive program payments before October 1. Once an agreement is entered into, eligible bioenergy producers will submit quarterly applications within 30 calendar days after the end of each quarter requesting payments for the prior quarter. For example, during January 2001, producers may request payments for the period beginning October 1, 2000 through December 31, 2000. CCC would make payments to eligible bioenergy producers within 30 calendar days of receiving a complete eligible application.

It is anticipated that CCC would make available up to $100 million in FY 2000, $150 million in FY 2001, and $150 million in FY 2002. CCC expects payment requests to exceed available program funding. Therefore, producers would be required to complete an agreement during a sign-up period to be announced by CCC for each FY of the program. Eligible agreement holders would be able to submit applications for program payments after each FY quarter. Information gathered from agreement holders would be used to establish a payment factor. The payment factor would be used when funding is less than anticipated payment requests for either or both ethanol and biodiesel production by quarter during the applicable FY to fairly distribute available funding. In contrast, when sign up results in fewer requests than funding permits, a payment factor of 100 percent would be used to allocate the applicable FY's funding. Once the payment factors are established, CCC would issue payments under the program on a first application received first paid basis. For example, if funding is limited to $100 million and $250 million in agreements are approved, 70 percent from ethanol producers and 30 percent from biodiesel producers, an individual ethanol producer with an approved agreement requests a payment of $100,000 would receive $28,000 ($100,000 times 40 percent ($100 million budget divided by $250 million agreement requests) times 70 percent (ethanol factor)). Once the payment factor is established, it would be used for the entire FY. If funds are exhausted, payments would stop. Under no circumstances would previous payments be adjusted except as specified in § 1424.8(b).

As provided for in 31 U.S.C. 3720B the proposed rule provides that persons who are delinquent on other Federal debts will be ineligible for payments under this program. Also, bioenergy producers, to be eligible for this program, may have to meet additional requirements specific to the bioenergy fuel being produced. For example, to receive program payments, ethanol producers must also be licensed by the Bureau of Alcohol, Tobacco, and Firearm (BATF) for fuel ethanol production.

Paperwork Reduction Act

Title: 7 CFR 1424, Bioenergy Program.
OMB Control Number: 0560–NEW.

Type of Request: Request for approval of a new information collection.

Abstract: USDA will collect information from bioenergy producers that request payments under the Bioenergy Program as the Secretary may require to ensure the benefits are paid only to eligible bioenergy producers for eligible commodities. Bioenergy producers seeking program payments will have to meet minimum requirements by providing information concerning the production of bioenergy. Applicants must certify that they will abide by the Bioenergy Program Agreement's provisions. Burden calculations have been rounded up to nearest quarter hour.

Estimate of Respondent Burden: Public reporting burden for the collection of information is estimated to average 2 hours per response.

Respondents: U.S. bioenergy producers who use agricultural commodities to make bioenergy are eligible to receive payments.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 5 responses per year.

Estimated Total Annual Burden Hours on Respondents: 500 hours.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; or (c) ways to enhance the quality, utility, and clarity of the information technology. Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, and to Alex King, Acting Deputy Administrator, Commodity Operations, FSA, USDA, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

Copies of the information collection package may be obtained from Alex King, at the address listed above.

List of Subjects in 7 CFR Part 1424

Administrative practice and procedure, Energy—bioenergy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Credit

Corporation proposes to add 7 CFR Part 1424.

PART 1424—BIOENERGY PROGRAM

Sec.

1424.1 Applicability.
1424.2 Administration.
1424.3 Definitions.
1424.4 General eligibility rules.
1424.5 Application process.
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1424.8 Payment amounts.
1424.9 Reports required.
1424.10 Payment restriction.
1424.11 Maintenance and inspection of records.
1424.12 Appeals.
1424.13 Misrepresentation and scheme or device.
1424.14 OMB control numbers.

Authority: Section 5(e) of the Commodity Credit Corporation Charter Act.

§ 1424.1 Applicability.

This part establishes the Bioenergy Program (Program). It sets forth the terms and conditions a bioenergy producer must meet to obtain payments from the Commodity Credit Corporation (CCC) for eligible bioenergy production. A bioenergy producer meeting these terms and conditions may obtain payments under the Program. Additional terms and conditions are set forth in Form CCC–850, Bioenergy Program, Agreement Section.

§ 1424.2 Administration.

(a) On behalf of CCC, the Farm Service Agency (FSA), will administer the provisions of this part under the general direction and supervision of the FSA, Deputy Administrator, Commodity Operations (Deputy Administrator).

(b) The Deputy Administrator or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Program.

§ 1424.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

Agreement means the Bioenergy Program Application and Agreement, Agreement Section, Form CCC–850.

Application means the Bioenergy Program Application and Agreement, Application Section, Form CCC–850.

BATF is the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

Biodiesel is a nontoxic, biodegradable replacement for or additive to petroleum diesel derived from the oils and fats of plants and animals. Chemically, biodiesel is described as a mono alkyl ester.

Biodiesel producer is a producer that produces and sells biodiesel commercially.

Bioenergy means ethanol and biodiesel produced from eligible commodities.

Conversion factor shall be:

(1) 2.5 gallons, unless otherwise determined by CCC, of ethanol produced per bushel of corn used in ethanol production

(2) 1.4 gallons, unless otherwise determined by CCC, of biodiesel per bushel of soybeans used in biodiesel production.

(3) As announced by CCC for other than above.

Eligible Commodity means barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, flaxseed, and mustard seed or any other commodity or commodity by-product as determined and announced by CCC used in ethanol and biodiesel production which is produced in the United States and its territories.

Eligible producer means a bioenergy producer who has been determined by CCC to be eligible to receive Program payments and has entered into an Agreement with CCC .

Ethanol is anhydrous ethyl alcohol manufactured in the United States and sold:

(1) For fuel use which has been rendered unfit for beverage use in a manner and at a facility approved by the BATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and refiners which is composed of 95 percent ethanol and 5 percent gasoline.

Ethanol producer is a producer that has authority from the BATF to produce ethanol.

FSA means the Farm Service Agency, USDA.

FY means fiscal year beginning each October 1 and ending September 30 of the following year.

KCCO means Kansas City Commodity Office.

Payment factor is the factor, not to exceed 100 percent, CCC establishes, based on Agreements submitted by eligible producers during the sign-up period, to reflect the percentage of funding that will go to ethanol versus biodiesel producers for the FY further adjusted for available funding. For example, if funding is limited to $100 million and $250 million in agreements are approved, 70 percent from ethanol producers and 30 percent from biodiesel producers, the payment factor for ethanol that FY will be 28 percent ($100 million budget divided by $250 million agreement submissions) times 70 percent (ethanol)). Similarly, the factor for biodiesel for the same FY will be 12 percent ($100 million budget divided by $250 million agreement submissions) times 30 percent (biodiesel factor)).

Payment rate. The payment rate CCC will use in payment calculations, based on the amount of increased eligible commodity used by eligible bioenergy producers for bioenergy production for the application quarter versus the same quarter in the previous FY, for producers that have annual bioenergy production of:

(1) Under 30 million gallons, will be 1 bushel for every 2.5 bushels of corn or soybeans used for production.

(2) 30 million gallons or more, will be 1 bushel for every 3.5 bushels of corn or soybeans used for production.

(3) Other than set forth in paragraphs (1) and (2) of this definition, as announced by CCC.

Per unit value used by CCC to determine the payment amount issued under this Agreement will be for commodities:

(1) With established terminal market prices:

(A) the applicable terminal market price announced daily by the KCCO, FSA, adjusted by the county average differential in the county in which the plant is located and the applicable quality factors. Note: The county average differential used by CCC in determining the monetary amount will be the same as that used for producers under commodity loan programs.

(B) Based on the terminal market price(s) in effect on the last day of the production quarter for which application is made.

(2) Without established terminal market prices, as announced by CCC.

Producer is a producer of bioenergy making application under this Program.

Quarter means the time periods of October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30 each FY.

USDA means the United States Department of Agriculture.

§ 1424.4 General eligibility rules.

To obtain program payments, a producer must do all of the following:

(a) Obtain an Agreement, Form CCC–850, Bioenergy Program Application and Agreement, from the KCCO, Bulk Commodities Division, P.O. Box 419205, Kansas City, Missouri 64141–6205;

(b) Submit a completed Form CCC–850, Agreement Section, to CCC no later

than August 31 each year or a later date, if announced by CCC, to the address in paragraph (a) of this section;

(c) Be assigned an Agreement number by KCCO indicating the producer is eligible for Program payments;

(d) Maintain records indicating:

(1) Commodities for which it seeks payment;

(2) The quantity of bioenergy produced from an eligible commodity by location during the quarter compared to the same quarter in the previous FY; and

(3) The quantity of eligible commodity used to produce the bioenergy stated in paragraph (d)(2) of this section during the quarter compared to the same quarter in the previous FY;

(e) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with program provisions;

(f) Once Program payments are received, continue to make Application submissions in accordance with § 1424.9;

(g) If not purchasing raw commodity input, be able to prove to CCC's satisfaction that both purchases of eligible commodities and production of bioenergy increased. Example: A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC's satisfaction that both soy oil purchases and biodiesel production increased for the applicable quarter;

(h) Certify the accuracy and truthfulness of the information provided in their Agreement on Form CCC–850; and

(i) Allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a determination of ineligibility.

§ 1424.5 Application process.

To receive payments under this program during a FY, an eligible producer must:

(a) Have an approved Agreement in accordance with § 1424.4 and an Agreement number assigned by KCCO under § 1424.4(c);

(b) Obtain an Application, Form CCC–850, Bioenergy Program Application and Agreement, Application section from the KCCO, Bulk Commodities Division, P.O. Box 419205, Kansas City, Missouri 64141–6205;

(c) Submit applications within 30 calendar days of the end of the quarter for which payment is requested. Example: Applications for the quarter January 1 through March 31, 2001, must be submitted by April 30, 2001. If the actual deadline is a non workday, the deadline will be the next business day;

(d) Submit other relevant documents as required by CCC for the specific commodity; and

(e) Certify with respect to the accuracy and truthfulness of the information provided.

§ 1424.6 Eligibility determinations.

Applicants will, after either Agreements or Applications are submitted, if:

(a) Determined eligible, receive notification of eligibility or payment, as applicable;

(b) Determined ineligible, be notified in writing of ineligibility for program participation or payment, as applicable, and reason for determination; or

(c) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

§ 1424.7 [Reserved]

§ 1424.8 Payment amounts.

(a) The monetary amount paid by CCC to eligible producers on an eligible commodity under the Program will be determined by multiplying the applicable payment rate times conversion factor times per unit value times the payment factor. Whatever the result, once a payment factor is established, it will be used for the entire FY. If funds are exhausted, payments will stop. Similarly, if payments are less than expected, remaining funds at the end of the FY will be carried over into the next FY. Under no circumstances will previous payments be adjusted except as specified in paragraph (b) of this section.

(b) Quarterly payments will be reconciled with the total increase in commodity purchases and bioenergy production for the FY at the end of the fourth quarter. If, at the end of the fourth quarter, overpayments have been made, the bioenergy producer shall repay the overpayment plus interest from the date of the overpayment through the date of repayment to CCC.

§ 1424.9 Reports required.

Once funds have been made available under this program to an eligible producer, that producer shall file Form CCC–850, Application Section, quarterly through the end of the applicable FY.

§ 1424.10 Payment restriction.

No single producer may receive more than ten percent of total FY payments for the applicable bioenergy fuel made under the program in this part for the applicable FY.

§ 1424.11 Maintenance and inspection of records.

(a) For the purpose of verifying compliance with the requirements of this part, each eligible producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity.

(b) To facilitate examination and verification of the records and reports required by this part, copies of Form CCC–850, Bioenergy Program Application and Agreement, shall be filed in an orderly manner, and must be made available for inspection by representatives of USDA for not less than 6 years from the payment date.

§ 1424.12 Appeals.

Any person who is subject to an adverse determination made under this part shall have a right to appeal the determination by filing a written request with the Deputy Administrator at the following address:

Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

§ 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

(1) Adopted any scheme or device which tends to defeat the purpose of the program in this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Interest charged under this part shall at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and or damages if CCC determines that the cause of the erroneous determination was not due to any action of the bioenergy producer.

(e) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this section and for related charges.

(f) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(g) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR Part 1403.

§ 1424.14 OMB control numbers.

[The information collection requirements for the regulations will be submitted to OMB with the final rule.]

Signed in Washington, DC, on July 19, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–18709 Filed 7–26–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Chapter XVII

Notice of Safety and Soundness Regulation

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of regulatory project.

SUMMARY: Office of Federal Housing Enterprise Oversight (OFHEO) is issuing notice of a regulatory project designed to ensure the adoption and implementation of various written policies and procedures for the supervision of Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the "enterprises"). In accordance with OFHEO's supervisory mandate, as established in Title XIII of the Housing and Community Development of Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, OFHEO will formalize ongoing supervisory policies and procedures that are reflected in the agency's various examination guidelines and other supervisory pronouncements, and update and revise its supervisory standards in light of market changes. The effect of this project is to enhance safety and soundness, to clarify interpretations of applicable laws and regulations, to provide greater transparency to and public understanding of the regulatory regime affecting the enterprises, and to provide a clear expression of the regulatory basis for OFHEO action in matters of supervisory concern.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, or David W. Roderer, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G. Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–6924 (not a toll free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Federal Housing Enterprise Oversight (OFHEO) is charged by Congress with overseeing the business conduct and financial operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in order to, among other things, ensure that they are adequately capitalized and operating safely. In furtherance of its supervisory responsibilities, the agency is empowered to adopt safety and soundness standards, to conduct examinations monitoring compliance by the enterprises with such standards, and to enforce compliance with the standards it may establish.

OFHEO has since its inception in 1993 operated under a system largely without a full complement of promulgated regulatory standards or procedures. The agency relies primarily upon the strength of its examination staff, examination guidelines and procedures, and unpublished letters. Little public recognition exists of the prudential standards under which the enterprises successfully operate. The project will produce greater transparency of OFHEO's regulatory processes and the safeguards affecting the secondary market entities. The resulting increased public awareness of the supervisory standards applicable to this critical segment of housing finance should promote enhanced market understanding of the relative strengths and viability of the enterprises.

In accordance with OFHEO's supervisory mandate under Pub. L. No. 102–550, the agency is undertaking a regulatory project designed to ensure the adoption and implementation of written policies and procedures for the enterprises that address, among other matters, (1) management responsibilities (addressing board and senior management roles and responsibilities, and minimum internal control standards for monitoring and reporting policies and procedures affecting specified subject areas); (2) risk management (formalizing quantitative and qualitative standards in appropriate areas including asset-related matters, credit risk, interest rate risk, and operational risks); (3) investments (addressing limits on types of investments and setting forth record keeping and disclosure requirements); (4) information systems security and integrity (formalizing standards and safeguards); (5) financial information disclosure (specifying applicable disclosure standards); (6) executive compensation (codifying procedures and standards for agency review of senior executive compensation and termination benefits); and, (7) enforcement policies and procedures (clarifying relevant procedures and formal and informal enforcement sanctions available to the agency).

Dated: July 20, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–18833 Filed 7–26–00; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 and certain Model Avro 146–RJ series airplanes, that currently requires a one-time inspection for "drill marks" and corrosion on the underside of the wing top skin, and corrective actions, if necessary. This action would require a one-time inspection for "drill marks" and corrosion, and corrective actions, if necessary, in accordance with new procedures. For certain airplanes, this action would add a requirement for one-

time detailed visual and borescope inspections of the fuel tank, pump, and stringers for paint debris and inadequacy of the existing protective treatment coating; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent corrosion from developing on the underside of the top skin of the center wing, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by August 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–179–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–179–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 31, 1998, the FAA issued AD 98–16–24, amendment 39–10701 (63 FR 42220, August 7, 1998), applicable to all British Aerospace Model BAe 146 and certain Model Avro 146–RJ series airplanes, to require a one-time inspection for "drill marks" and corrosion on the underside of the wing top skin, and corrective actions, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent corrosion from developing on the underside of the top skin of the center wing, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, British Aerospace has advised that paint debris has been found within the fuel tanks of some airplanes following application of protective treatment coating in accordance with Repair Instruction Leaflet (R.I.L.) HC573H9014. British Aerospace Service Bulletin SB.57–50, Revision 2, dated March 20, 1997 (which is referenced as the appropriate source of service information in AD 98–16–24), references R.I.L. HC573H9014 for application of the protective treatment coating. Additionally, British Aerospace has now introduced a new R.I.L., which provides new and improved procedures for application of the protective treatment coating.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Inspection Service Bulletin ISB.57–57, dated February 25, 2000. For airplanes that have not been inspected previously in accordance with AD 98–16–24, or for airplanes on which protective coating has not been previously applied in accordance with R.I.L. HC573H9014, the service bulletin describes procedures for repetitive intrascope inspections of the underside of the wing top skin for "drill marks" and corrosion, and corrective actions, if necessary. For airplanes on which protective coating has been previously applied in accordance with R.I.L. HC573H9014, the service bulletin describes procedures for detailed visual and borescope inspections of the fuel tank, pump, and stringers to detect discrepancies; and corrective actions, if necessary. Discrepancies include, among other things, the existence of paint debris in various areas and inadequacy of existing protective treatment coating. Corrective actions include removing paint debris, testing the paint adhesion, and applying protective treatment coating. The service bulletin references R.I.L. HC573H9032 as an additional source of service information for the application of protective treatment coating. For airplanes on which protective treatment coating is applied in accordance with British Aerospace Inspection Service Bulletin ISB.57–57, or on which the inspection for paint debris and inadequacy of the existing protective treatment coating has detected no discrepancies, the need for repetitive inspections would be eliminated.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified British Aerospace Inspection Service Bulletin ISB.57–57 as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–16–24 to require a one-time inspection to detect "drill marks" and corrosion on the underside of the wing top skin, and corrective actions, if necessary. This action would also require, for certain airplanes, one-time detailed visual and borescope inspections of the fuel tank, pump, and stringers to detect discrepancies (including paint debris and inadequacy of existing protective treatment coating); and corrective actions, if necessary. The actions would be required to be accomplished in accordance with British Aerospace Inspection Service Bulletin ISB.57–57, except as discussed below.

Differences Between the Proposed Rule and Service Bulletin

Operators should note that, for airplanes previously inspected in accordance with AD 98–16–24, on which no protective treatment coating has been applied, Inspection Service Bulletin ISB.57–57 provides for repetitive inspections with optional terminating action (the application of treatment coating). However, for those airplanes, this proposed AD would require corrective actions including the application of protective treatment coating if any discrepancy is detected during the inspection. The FAA has determined that long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, along with the understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on the corrective actions. This proposed requirement is in consonance with these conditions.

Additionally, operators should note that, although British Aerospace Inspection Service Bulletin ISB.57–57 specifies that the manufacturer be contacted for disposition of repair if any corrosion is detected, this proposal would require repair of any corrosion to be accomplished in accordance with a method approved by the FAA or the CAA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

While the service bulletin recommends that the inspection be completed by January 31, 2001 (one year after the service bulletin was issued), this AD would require the inspection within 6 months. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a 6-month compliance time for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 39 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection for "drill marks" and corrosion that is proposed in this AD action would take approximately 10 work hours per airplane (including access and close) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $600 per airplane.

The inspection for paint debris and inadequacy of the existing protective treatment coating that is proposed in this AD action would take approximately 8 work hours per airplane (including access and close) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10701 (63 FR 42220, August 7, 1998), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 2000–NM–

179–AD. Supersedes AD 98–16–24, Amendment 39–10701.

Applicability: All Model BAe 146 series airplanes; and Model Avro 146–RJ series airplanes, as listed in British Aerospace Inspection Service Bulletin SB.57–57, dated February 25, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion from developing on the underside of the top skin of the center wing, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection: "Drill Marks" and Corrosion

(a) For airplanes on which protective treatment coating has NOT been applied in accordance with British Aerospace Service Bulletin SB.57–50 [reference Repair Instruction Leaflet (R.I.L.) HC573H9014], and for airplanes on which the inspection required by AD 98–16–24, amendment 39–10701, has not been accomplished: Within 6 months after the effective date of this AD, perform a one-time intrascopic inspection for "drill marks" and corrosion on the underside of the wing top skin, in accordance with British Aerospace Inspection Service Bulletin ISB.57–57, dated February 25, 2000.

(1) If no "drill mark" or corrosion is detected, no further action is required by this AD.

(2) If any corrosion is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Directorate; or the Civil Aviation Authority (CAA) of the United Kingdom (or its delegated agent). For a repair method to be approved by the Manager, ANM–116, International Branch, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(3) If any "drill mark" is detected, or if any corrosion is detected and repaired, prior to further flight, apply protective treatment coating in accordance with British Aerospace Inspection Service Bulletin ISB.57–57, dated February 25, 2000. After this application, no further action is required by this AD.

Note 2: Accomplishment of an intrascopic inspection for "drill marks" and corrosion prior to the effective date of this AD in accordance with British Aerospace Service Bulletin SB.57–50, Revision 2, dated March 20, 1997, is acceptable for compliance with the inspection requirements of paragraph (a) of this AD.

Inspection: Paint Debris and Inadequate Protective Coating

(b) For airplanes on which protective treatment coating HAS been applied prior to the effective date of this AD in accordance with British Aerospace Service Bulletin SB.57–50 (reference R.I.L. HC573H9014): At the next scheduled maintenance inspection ("C-check") or within 6 months after the effective date of this AD, whichever occurs first, perform one-time detailed visual and borescope inspections of the fuel tank, pump, and stringers to detect discrepancies (including paint debris and inadequacy of existing protective treatment coating); in accordance with British Aerospace Inspection Service Bulletin ISB.57–57, dated February 25, 2000.

(1) If no discrepancy is found, no further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, accomplish all applicable corrective actions (including removal of paint debris and testing of paint adhesion), and apply protective treatment coating, in accordance with British Aerospace Inspection Service Bulletin ISB.57–57, dated February 25, 2000. After this application, no further action is required by this AD.

Note 3: British Aerospace Inspection Service Bulletin ISB.57–57, dated February 25, 2000, references R.I.L. HC573H9032 as an additional source of service information for accomplishing the application of protective treatment coating.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18996 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB60

Profile Documents for Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule amendments.

SUMMARY: Commodity Futures Trading Commission ("Commission") Rule 4.21(a)[1] currently requires that commodity pool operators ("CPOs") deliver a disclosure document, containing specified information, to prospective participants before soliciting or accepting any funds, securities or other property from such participants. National Futures Association's ("NFA's") Compliance Rule 2–35(d) would permit CPOs to deliver a shorter profile document containing only key information about the pool to prospective participants prior to providing them with the pool's Disclosure Document. Pursuant to section 17(j) of the Commodity Exchange Act[2] ("Act"), NFA has requested that the Commission review NFA Compliance Rule 2–35(d) and its Interpretive Notice regarding profile documents for commodity pools. NFA has also submitted a petition for rulemaking which requests that the Commission amend Rule 4.21(a) to permit use of the profile. The amendment to Commission Rule 4.21(a) proposed herein will be necessary to allow commodity pool operators ("CPOs") to use a profile document. The Commission is also proposing amendments to Commission Rule 4.26 to establish procedures for the use, amendment and filing of profile documents that are parallel to those applicable to disclosure documents.

In addition, certain technical amendments related to filings by CPOs and commodity trading advisors ("CTAs") are proposed. The primary change would decrease regulatory burden by reducing the number of copies of disclosure documents that CPOs and CTAs must file with the Commission. The Commission is also proposing to revise Rule 4.2(a), which permits that disclosure documents may be filed electronically, to expand the availability of electronic filing to profile documents. Technical amendments to Rule 4.2(a) would correct the address

[1] Commission rules referred to herein can be found at 17 CFR Ch. I (2000).

[2] 7 U.S.C. 21(j) (1994).

specified for hard copy filing and specify the address for electronic filing.

DATES: Comments must be received by August 28, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to "Profile Documents for Commodity Pools."

FOR FURTHER INFORMATION CONTACT: Eileen R. Chotiner, Futures Trading Specialist, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5467; electronic mail: "echotiner@cftc.gov."

SUPPLEMENTARY INFORMATION:

I. Rule 4.21(a)

Commission Rule 4.21(a) requires that CPOs deliver a disclosure document, containing specified information, to prospective participants before soliciting or accepting any funds, securities or other property from such participants.[3] Currently, the rule permits a CPO to provide a more summary disclosure (a "Term Sheet") prior to the delivery of a disclosure document, in the form of a notice of intended offering and a statement of the terms of such offering. A Term Sheet may only be delivered to "accredited investors,"[4] subject to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act. In 1996, the Commission approved amendments to NFA Compliance Rule 2–13 implementing provisions for the Term Sheet.[5]

By letter dated March 7, 2000,[6] NFA submitted to the Commission for its review and approval, pursuant to Section 17(j) of the Act, NFA Compliance Rule 2–35(d) and its Interpretive Notice regarding commodity pool profile documents. The use of profile documents would not be limited to accredited investors. The profile document is based on a rule adopted by the Securities and Exchange Commission ("SEC") that permits mutual funds to solicit and accept investments using a shorter "profile" document instead of a prospectus.[7] NFA also submitted a petition for rulemaking to amend Commission Rule 4.21(a) in order to allow a profile document to be delivered, in advance of the pool's disclosure document, to potential participants, whether or not they are accredited investors. CPOs who wish to use a profile document would be required to do so in accordance with the rules of a registered futures association, such as NFA Compliance Rule 2–35(d).

The purpose of the profile document is to provide prospective participants with succinct disclosure of the key aspects of a commodity pool offering in an easily accessible format. A more accessible disclosure format is more likely to be read and therefore more likely to be useful to a person considering a commodity pool investment. The Commission believes that the benefits of a profile document are no less applicable to prospective pool participants who are not accredited investors. Therefore, the Commission is proposing to expand Rule 4.21(a) to allow CPOs to provide all prospective participants with a profile document prior to delivery of a Disclosure Document, subject to compliance with rules promulgated by a registered futures association pursuant to Section 17(j) of the Commodity Exchange Act ("Act").[8]

II. Background

In September 1998, the Commission approved NFA Compliance Rules 2–35(a)–(c), which require that disclosure documents be presented in a two-part format, and that they be prepared using "plain English" principles.[9] The Commission also adopted corresponding changes to Commission Rules 4.24 and 4.25. These changes are intended to make commodity pool documents more understandable. NFA's Interpretive Notice to the two-part document rule states that "[a] Disclosure Document should provide essential information about the fundamental characteristics of a pool, and it should provide the information in a way that will assist investors in making informed decisions about whether to invest in the pool."[10]

In approving these NFA rules, the Commission noted that "* * * the adoption of a two-part document format and plain English principles will assist investors in making an informed decision prior to investing in a pool by providing clear and concise information about the possible investment."[11] The Commission believes that the profile document described in NFA Rule 2–35(d) would further enhance the ability of prospective participants to evaluate the key characteristics of commodity pools prior to making investment decisions. Because the profile document must be followed with a complete disclosure document prior to the CPO's acceptance of any funds or property from a prospective pool participant, participants will receive all required

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[3] A publicly offered commodity pool refers to a distribution of units, some or all of which are registered under the Securities Act of 1933 ("Securities Act"). Commission Rule 4.24(d)(3)(i) defines "privately offered" commodity pools as those "offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*)." Section 4(2) of the Securities Act exempts from registration transactions by an issuer not involving any public offering; Regulation D contains rules for the limited offer and sale of securities without registration under the Securities Act.

[4] The term "accredited investor" is defined in 17 CFR 230.501(a).

[5] NFA Compliance Rule 2–13(d) requires the notice of intended offering and statement of terms to include "no more than" the following information:

(1) The name of the CPO, issuer, underwriter, and selling agent;

(2) The name of the pool;

(3) The title, amount, minimum escrow, and basic terms of the equity interests the CPO proposes to offer;

(4) The date the offering begins, how long it will remain open and a brief statement of the manner of the offering;

(5) The type of pool (multi-advisor, single-advisor, principal-protected, speculative, hedge) and interests to be traded and, if a single-advisor pool, the name of the CTA;

(6) Any limitations regarding who may invest in the pool or the amount of any investment;

(7) Any statement or legend required by any applicable laws, regulations, or rules or by any state, federal or foreign regulator; and

(8) The name and address and/or telephone number to obtain a copy of the disclosure document.

[6] Prior versions of the proposal, which were submitted in letters dated September 10, 1998 and April 13, 1999, were withdrawn by NFA on October 27, 1999.

[7] 17 CFR 230.498. SEC Rule 498 permits profile documents to be used only by open-end management investment companies that register on Form N–1A (17 CFR 274.11A). The SEC noted in its adopting release that it would assess the use of profiles by mutual funds over a period of time before considering a rule to permit use of profiles by other types of investment companies.

[8] CPOs would continue to have the option to provide a notice of intended offering and term sheet to accredited investors.

[9] NFA's Interpretive Notice to Rule 2–35(a)–(c) provides guidance on what is meant by the use of "plain English principles." Such principles include: using active voice; using short sentences and paragraphs; breaking up the document into short sections; using titles and subtitles that specifically describe the contents of each section; using words that are definite, concrete, and part of everyday language; avoiding legal jargon and highly technical terms; using glossaries to define technical terms that cannot be avoided; avoiding multiple negatives; and using tables and bullet lists, where appropriate.

[10] NFA Interpretive Notice ¶9035, Compliance Rule 2–35: Guidelines for Filing Two-Part Disclosure Documents for Commodity Pools (board of Directors, April 30, 1999).

[11] 63 FR 15112, 15114 (March 30, 1998).

disclosure about the offered pool before committing their funds.

III. Description of NFA Compliance Rule 2–35(d)

Rule 2–35(d) would permit CPOs to deliver a profile document, containing key information about a commodity pool, to a prospective participant prior to delivery of the pool's disclosure document. The profile document must clearly state that an investment in the pool may not be made until after the prospective participant has received the pool's disclosure document. Further, the profile may not be accompanied by any advertising or other promotional material unless also accompanied by the pool's disclosure document.

The profile is required to include key information about the pool, such as: The risks of participating in commodity pools, and any specific risks that are material to the particular pool; a break-even analysis that reflects all fees and expenses of the pool; a discussion of the pool's trading strategy; any conflicts of interest material to the pool; a summary of any material actions against the CPO and its principals within the past five years; a brief description of the pool's redemption policies; and the performance of the offered pool. No information other than that specified in Rule 2–35(d) may be included in the profile. Rule 2–35(d) also specifies that the profile document is subject to the filing requirements of CFTC Rule 4.26 and must be submitted with the pool's disclosure document.

NFA is also proposing to issue a new Interpretive Notice to Rule 2–35(d) regarding CPO profile documents. The Interpretive Notice provides further guidance as to the types of risk factors and conflicts of interest that should be discussed in the profile document.

IV. Related Changes to Commission Rules 4.2 and 4.26

Pursuant to Rule 4.26, a CPO may use a disclosure document for nine months from its date of first use, must amend the document if it is materially inaccurate or incomplete and distribute the changes to existing and previously solicited prospective participants, and must file the disclosure document and amendments thereto with the Commission. The Commission is proposing to revise Rule 4.26 to establish the same requirements for profile documents. The Commission is also proposing to revise Rule 4.2(a) to permit profile documents to be filed electronically along with the disclosure documents to which they pertain. The proposed changes to Rules 4.2(a) and 4.26(d) would incorporate the requirement in NFA Rule 2–35(d) that the profile document be filed along with the disclosure document.

V. Technical Changes

In order to reduce regulatory burden for CPOs and CTAs, the Commission is proposing to amend Rules 4.26 and 4.36 to reduce the number of copies of the Disclosure Document that must be filed with the Commission by CPOs and CTAs. The proposed changes would require that only one copy of each disclosure document be filed with the Commission, rather than the two copies currently required by these rules. A single copy of the profile document, if one is used, would be required to be filed with the CPO's disclosure document for the applicable pool. The only proposed rule revision that is applicable to CTAs is the proposed reduction in the number of copies of disclosure documents that CTAs must file with the Commission under Rule 4.36(d).[12]

Technical changes to Rule 4.2(a) are also proposed to correct the address to which hard copy filings must be sent and to specify the e-mail address for electronic filings.

VI. Additional Request for Comment

The amendments to Rules 4.2(a), 4.21(a) and 4.26 that are related to use of a profile document are being proposed to enable the Commission to approve NFA Compliance Rule 2–35(d). Accordingly, the Commission seeks comments both on the proposed amendments to the Commission's rules for the purpose of permitting profile documents for CPOs and clarifying procedures for their use, amendment and filing, as well as comments on the disclosure format established by proposed NFA Compliance Rule 2–35(d). The Commission also seeks comments on the proposed technical amendments to reduce the number of copies of disclosure documents that CPOs and CTAs must file. The text of NFA Compliance Rule 2–35(d) and its Interpretive Notice are attached to this release as Appendix A.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[13] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[14] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[15] The portion of the rule proposal herein that affects CTAs makes no change in existing requirements other than to reduce the number of copies of the disclosure document that CTAs seeking to direct or guide client accounts must file pursuant to Rule 4.31(a). Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA"),[16] which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes the proposed rule revisions do not contain information collection requirements which require the approval of the Office of Management and Budget. The purpose of this rule is to permit the use of a summary profile document for commodity pools, and other technical changes related to filing of disclosure documents.

List of Subjects in 17 CFR Part 4

Brokers, commodity futures, commodity pool operators and commodity trading advisors.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6l, 6m, 6n, 6o, and 12(a), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

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[12] Although NFA's initial submission of Rule 2–35 included provisions for use of profile documents by CTAs, these provisions were eliminated from their recent submission because CTA documents are "not nearly as voluminous as CPO documents. * * *" Letter from Daniel J. Roth, Executive Vice President and General Counsel, NFA, to Jean A. Webb, Secretary of the Commission, dated March 7, 2000.

[13] 47 FR 18618–18621 (April 30, 1982).

[14] 47 FR 18619–18620.

[15] 47 FR 18618–18620.

[16] 44 U.S.C. 3507(d).

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.2 is proposed to be amended by revising paragraph (a) to read as follows:

§ 4.2 Requirements as to filing.

(a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, DC office (Att: Managed Funds Branch, Division of Trading and Markets, CFTC, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC, 20581; Provided, however, that Disclosure Documents, profile documents, and amendments thereto may be filed at the following electronic mail address: *ddoc-efile@cftc.gov*.

* * * * *

3. Section 4.21 is proposed to be amended by revising paragraph (a) to read as follows:

§ 4.21 Required delivery of pool Disclosure Document.

(a)(1) No commodity pool operator registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or intends to operate unless, on or before the date it engages in that activity, the commodity pool operator delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in § 4.24.

(2) Notwithstanding the requirements regarding solicitation specified in paragraph (a)(1) of this section, a commodity pool operator may provide to a prospective participant either of the following documents prior to delivery of a Disclosure Document, subject to compliance with rules promulgated by a registered futures association pursuant to section 17(j) of the Act:

(i) A profile document;

(ii) Where the prospective participant is an accredited investor, as defined in 17 CFR 230.501(a), a notice of intended offering and statement of the terms of the intended offering.

* * * * *

3. Section 4.26 is proposed to be amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

(a) (1) Subject to paragraph (c) of this section, all information contained in the Disclosure Document and, where used, profile document, must be current as of the date of the Document; *Provided, however*, that performance information may be current as of a date not more than three months prior to the date of the Document.

(2) No commodity pool operator may use a Disclosure Document or profile document dated more than nine months prior to the date of its use.

(b)(1) If the commodity pool operator knows or should know that the Disclosure Document or profile document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant.

(2) The pool operator may furnish the correction by any of the following means:

(i) An amended Disclosure Document or profile document;

(ii) With respect to a hard copy of the Disclosure Document, a sticker affixed to the Disclosure Document; or

(iii) Other similar means.

(3) The pool operator may not use the Disclosure Document or profile document until such correction has been made.

* * * * *

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission one copy of the Disclosure Document and profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the Document to a prospective participant in the pool; and

(2) The commodity pool operator must file with the Commission one copy of the subsequent amendments to the Disclosure Document and profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

4. Section 4.36 is proposed to be amended by revising paragraph (d) to read as follows:

§ 4.36 Use, amendment and filing of Disclosure Document.

* * * * *

(d)(1) The commodity trading advisor must file with the Commission one copy of the Disclosure Document for trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; and

(2) The commodity trading advisor must file with the Commission one copy of the subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

Issued in Washington, D.C. on July 20, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations:

Appendix A: Proposed NFA Compliance Rule 2–35(d) and Related Interpretive Notice

VIII. COMPLIANCE RULES

* * *

Part 2—Rules Governing the Business Conduct of Members Registered With the Commission

* * *

RULE 2–35. CPO/CTA DISCLOSURE DOCUMENTS.

* * *

(d) CPO Profile Document.

(1) A Member CPO may deliver a profile document, as defined in paragraph (2) below, to a prospective participant prior to the delivery of a Disclosure Document, provided that the profile clearly states that an investment in the pool may not be made until after the prospective participant has received the Disclosure Document. A Member CPO shall not provide any advertising or other promotional materials with the profile unless it is also accompanied by the pool's Disclosure Document.

(2) A profile document shall not present information on more than one pool. A profile document shall include the following information, and only the following information, in the order indicated:

(i) A cover page which contains the following information:

- The following legend:

This profile summarizes key information about the pool that is included in the pool's disclosure document. The disclosure document includes additional information about the pool, including a more detailed description of the risks associated with investing in the pool, that you should consider before you invest. Before accepting

any funds or other property from you for investment in this pool, the operator of this pool is required to provide you with a copy of the pool's disclosure document and obtain a signed and dated acknowledgment from you indicating that you have received the pool's disclosure document. You may obtain the disclosure document and other information about the pool at no cost by contacting _____ at _____.

• The name, main business address, main business telephone number and form of organization of the pool;

• The name, main business address, main business telephone number and form of organization of the pool operator;

• A statement identifying the document as a "profile" without using the term "disclosure document;"

• The approximate date of the profile's first use;

• A break-even analysis which includes a tabular presentation of all fees and expenses presented in a manner prescribed by NFA's Board of Directors;

(ii) The following cautionary statement:

Before investing in a commodity pool, you should carefully consider the following:

• Futures and options trading can quickly lead to large losses as well as gains.

• Trading losses can sharply reduce the net asset value of a pool and the value of your interest in the pool.

• Some pools have restrictions on redemptions that may affect your ability to withdraw your investment in the pool.

• Some pools are subject to substantial charges for management, advisory and brokerage fees. In order to cover these fees, the pool may have to experience substantial trading profits.

This profile document does not provide all the information you need to evaluate your participation in this pool. You should carefully review the pool's disclosure document which contains detailed information on the pool's principal risk factors, the expenses that will be charged to the pool and a more detailed description of the break-even analysis for this pool.

You should also be aware that neither the Commodity Futures Trading Commission nor the National Futures Association has passed upon the merits of participating in this pool nor the adequacy or accuracy of this profile.

(iii) The identity of each principal of the pool operator, the pool's trading manager and its principals, if any, each major investee pool, the operator of the pool and its principals, and each major CTA and its principals (for natural persons, this should include name and title);

(iv) A non-marketing orientated discussion of the trading strategy used to trade the pool;

(v) A discussion of any additional risk factors not highlighted in the cautionary statement which are material to this particular pool;

(vi) A discussion of any conflicts of interest which are material to the particular pool;

(vii) A summary of any material administrative or criminal actions, whether pending or concluded, within five years of the date of the profile, against the commodity pool operator or any of its principals;

(viii) A brief description of any restrictions on transfers of a participant's interest in the pool;

(ix) A brief description of how a participant may redeem his interest in the pool and a statement of redemption charge, if any;

(x) If applicable, a statement indicating the extent to which a participant may be held liable for obligations of the pool in excess of the funds contributed by the participant for the purchase of an interest in the pool;

(xi) For pools with prior operating history, the capsule performance information for the offered pool as required by Commodity Futures Trading Commission Regulation 4.25(a)(1)(i), exclusive of the requirement of Regulation 4.25(a)(2). In addition, if applicable, notice to the prospective participant that the pool operator is required to report performance information on other pools operated by the pool operator in its Disclosure Document under CFTC Regulation 4.25 and the specific section in the Disclosure Document where this information may be found; and

(xii) For pools with no operating history, a statement that the pool has no operating history and, if applicable, notice to the prospective participant that the pool operator is required to report performance information on other pools operated by the pool operator and performance information on major CTAs trading the pool in its Disclosure Document under CFTC Regulation 4.25 and the specific section in the Disclosure Document where this information may be found.

(3) The profile document is subject to the filing requirements of CFTC Regulation 4.26. A particular pool's profile document must be filed with the disclosure document required under CFTC Regulation 4.21(a).

* * *

CPO Profile Documents: Compliance Rule 2–35 Interpretive Notice

NFA Compliance Rule 2–35 permits Member CPOs to conduct initial customer solicitations with a profile document, provided that a customer is given the disclosure document prior to investing in the pool. The profile document should provide a summary of key information regarding an investment in the commodity pool being offered. Among other things, the profile requires a discussion of the risk factors material to the particular pool being offered and a discussion of any conflicts of interest material to the offered pool. The information provided under both these sections should be tailored to the pool being offered and should not include a generic discussion of risks or conflicts of interest typical of all commodity pools.

The discussion of risk factors should focus on characteristics of the pool that go beyond risks that are associated with commodity pool investments in general. This section should not contain boilerplate or generic language on the risks related to volatility and leverage which are associated with all commodity pool investments. If, however, these risk factors raise any special considerations with respect to the offered pool, the profile should contain a complete discussion of these special considerations. Other risk factors that should be discussed in this section include but are not limited to risks associated with allocating a substantial portion of a pool's assets to one CTA or a group of CTAs whose trading methods do not provide any diversification (*e.g.*, a single CTA fund which invested exclusively in agricultural products); counterparty creditworthiness issues that may arise if the pool's assets are concentrated in OTC or foreign instruments; liquidity issues that may arise if the pool itself is invested in illiquid products; and leverage issues that may exist if the pool will engage in borrowing or if assets are allocated among the pool's CTAs in such a way that the total allocations to the pool's CTAs are greater than the total assets of the pool.

The discussion on conflicts of interest should focus on arrangements or relationships among the pool's CPO, trading manager, major CTAs, CPOs of major investee pools, and any other person providing services to the pool that may compromise the pool participants' interest with respect to trading costs, fees, execution, or any other aspects of the pool's operation. For example, if the CPO provides other services to the pool for compensation, the CPO has a financial disincentive to replace itself even if it would be in the best interest of the pool. In addition, the compensation the CPO receives for providing these services will not have been set by arm's length negotiation. Other conflicts of interest that should be disclosed include, but are not limited to, situations where the CPO or CTA receives per trade compensation or where the CPO participates in soft dollar arrangements with the pool's FCM.

This interpretive notice is not intended to provide an inclusive list of the risk factors and conflicts of interest that must be disclosed in the profile.

[FR Doc. 00–18909 Filed 7–26–00; 8:45 am]

BILLING CODE 8351–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC43

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to October 19, 2000, the deadline for submitting comments on the proposed rule which restructures the requirements for oil and gas drilling operations on the Outer Continental Shelf (OCS), adds some new requirements, and converts the rule into plain language.

DATES: We will consider all comments received by October 19, 2000, and we may not fully consider comments received after October 19, 2000.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. The RPT's e-mail address is: *rules.comment@MMS.gov.*

FOR FURTHER INFORMATION CONTACT: Bill Hauser, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR part 250, Subpart D, Oil and Gas Drilling Operations, published on June 21, 2000 (65 FR 38453). The request explains that the proposed rule has a number of important changes that require careful consideration for comprehensive comments. Also, because the proposed rule was rewritten in the "plain language" style and completely restructures and reorders the current regulations in 30 CFR Part 250, subpart D, additional time was requested to sort out the proposed rule for comparison.

Public Comments Procedures

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 20, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–19025 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF EDUCATION

34 CFR Part 674

RIN 1845–AA15

Federal Perkins Loan Program

AGENCY: Office of Postsecondary Education, Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan (Perkins Loan) Program regulations. These proposed regulations are intended to improve collections in the Perkins Loan program by providing greater flexibility in the process of assigning defaulted Perkins loans to the Secretary for collection. They allow State institutions participating in the Perkins program to invoke their right to sovereign immunity in bankruptcy proceedings. In addition, these proposed regulations clarify the maximum collection costs that may be assessed a borrower who defaults on a rehabilitated defaulted loan.

DATES: We must receive your comments by September 11, 2000.

ADDRESSES: Address all comments concerning these proposed regulations to Ms. Vanessa Freeman, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: perkinsnprm@ed.gov.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Ms. Vanessa Freeman, Program Analyst, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building #3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations at the following address: U.S. Department of Education, 7th and D Sts. SW., ROB #3, Rm 3045, Washington, DC 20026–3272, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday, of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions

in Washington, DC, Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee I (committee), which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Career College Association
Coalition of Higher Education Assistance Organizations
Consumer Bankers Association
Education Finance Council
Education Loan Management Resources
Legal Services
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Loan Administrators
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc.
Student Loan Servicing Alliance
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Sections 674.13 Reimbursement to the Fund and 674.50 Assignment of defaulted loans to the United States

Current regulations: Section 674.13 of the current regulations requires an institution to reimburse its Federal Perkins Loan Fund (Institution's Fund) for the amount of defaulted loans, including administrative cost allowances previously claimed, for which the institution failed to retain required documentation (*e.g.*, the promissory note and a record of advances) or failed to undertake due diligence in collections. Section 674.50(c) of the current regulations identifies the documentation required to be submitted by an institution to assign a loan to the Secretary. Our rejection of an assignment submission for incorrect or incomplete documentation or for an evidenced lack of due diligence in collection of the loan may result in a request that the institution reimburse its Institution's Fund.

Proposed regulations: We propose to amend these sections of the regulations to encourage institutions to assign defaulted loans to us by providing the Secretary discretion to accept defaulted loans for assignment even if not all the documentation specified in 674.50(c) is available or reveals imperfect collection. We also propose to provide the Secretary with discretion to determine the circumstances under which we will require reimbursement by the institution to its Institution's Fund.

Reasons: The proposed change to these sections of the current regulations from absolute requirements to Secretarial discretion represents a compromise with the non-federal negotiators regarding assignment of certain defaulted loans by institutions.

Our initial proposal to require loan assignment reflected our concern over the approximately $350 million in defaulted Perkins loans that are held by participating institutions and have been in default for five or more years as reported by schools on their annual Fiscal Operations Report. Our proposal would have required schools whose Perkins Loan portfolio included a significant percentage of loans in default for five or more years to assign to the Secretary those aged loans with no recent payment activity.

We believe that, without additional significant efforts, this national portfolio of aging defaulted loans will continue to grow and may become less collectible over time. Left unaddressed, this situation reduces funds available for future students and may undermine public support for the Federal Perkins Loan Program. Institutions may have exhausted available collection efforts and ceased collection on an unknown number of these accounts. Because we have collection tools, such as administrative wage garnishment, federal offset, and litigation by the Department of Justice in federal court, that are not available to institutions, we want to have these aged accounts assigned to the Secretary for collection.

The non-federal negotiators representing institutions' interests strenuously rejected the contention that all loans in default for five or more years were inactive accounts and that collection efforts were not continuing on those accounts. Although they agreed that we have collection tools that are not available to institutions, they expressed the belief that we should make these tools more accessible by simplifying the existing voluntary assignment process or introducing a referral process into the regulations rather than imposing mandatory assignment. They indicated that the current voluntary assignment process was underused because it was administratively burdensome and put institutions at risk of reimbursing their Institution's Fund for all loans not accepted for assignment. During the negotiations, there was much discussion and review of a proposal submitted by the non-federal negotiators for use of a referral and voluntary assignment process.

After carefully considering the proposal for a voluntary referral process we declined to consider such an approach. Our experience with similar Perkins Loan referral plans in the past convinced us that such plans are administratively unworkable. They are difficult to manage, hard to explain to borrowers, and present fiscal and legal obstacles with regard to the return of payments received to the referring institution.

Instead we proposed changes to the current voluntary assignment regulations that would allow us to have

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the opportunity to work with interested institutions and organizations to develop a less burdensome and more flexible process before turning to a mandatory assignment approach. Thus, these proposed regulations give the Secretary discretion in the two areas (required reimbursement and documentation requirements) that were problematic to some negotiators.

We intend to develop, with the cooperation of participating Perkins institutions, a simplified voluntary assignment process for aging defaulted accounts. We will also monitor the use of this new process over the reporting cycle following implementation of the regulations. We expect institutions to actively review their portfolios and use the new process to assign aged, nonpaying accounts to us and we anticipate a significant reduction in the number and dollar value of these accounts as a result. Should the streamlined voluntary assignment process prove unsuccessful in reducing the number of these accounts, we will consider alternatives, including reintroducing our original regulatory proposal for mandatory assignment.

Section 674.39 Loan Rehabilitation

Current Regulations: Section 674.39(c) of the current regulations specifies that if collection costs are assessed on a rehabilitated defaulted Perkins loan, those collections costs may not exceed 24 percent of the unpaid principal and accrued interest on the loan as of the date following application of the twelfth payment required to rehabilitate the loan.

Proposed Regulations: We propose to amend this section of the regulations by adding a provision that clarifies that the 24 percent cap on collection costs that may be charged on a rehabilitated loan does not apply if the borrower defaults again on the rehabilitated loan.

Reasons: The cap of 24 percent on collection costs for borrowers who successfully rehabilitate a defaulted Perkins loan is a benefit to those borrowers, who in many cases were subject to a higher percentage of collection costs prior to the rehabilitation. That benefit should no longer apply on the loan, however, should the borrower once again default on its repayment.

Section 674.49 Bankruptcy of Borrower

Current Regulations: Section 674.49(b) of the regulations currently requires institutions to file a proof of claim in a bankruptcy proceeding under Chapter 7 of the Bankruptcy Code unless the borrower has no assets.

Proposed Regulations: We propose to amend this provision of the regulations to allow an institution that is determined to be an agency of a State to invoke in bankruptcy proceedings its right of sovereign immunity under the 11th amendment to the Constitution of the United States.

Reasons: We are amending the regulations to codify the recognized right of States and their agents to invoke their rights under the 11th amendment to the Constitution and eliminate any conflict in existing regulations that would suggest that a proof of claim must be filed in all cases where this right might otherwise be invoked.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

The proposed regulations would expand borrower benefits by fixing collection costs on rehabilitated loans not in default at 24 percent. The proposed regulations provide additional flexibility in the administration of the Perkins Loan Program by relaxing both the documentation requirements for defaulted loans assigned to the Secretary, and provisions regarding the institutional reimbursement to their Fund for the costs of defaulted loans. The proposed regulations also modify current regulations regarding the determination of bankruptcy to make Federal requirements consistent with the States' constitutional rights under the 11th Amendment. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 674.39 Loan Rehabilitation.)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education that participate in title IV, HEA programs. The U.S. Small Business Administration (SBA) Size Standards define institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000.

The parties affected by these proposed regulations are institutions of higher education that participate in the Perkins Loan Program, and individual Perkins Loan borrowers. Perkins Loan borrowers are not considered small entities under the Regulatory and Flexibility Act. A small percentage of the approximately 2,000 institutions participating in the Perkins Loan program would meet the SBA definition of "small entities."

These proposed regulations would expand borrower benefits and provide additional flexibility in the administration of the Perkins Loan program to both large and small institutions without requiring significant changes to institutional systems or operations. These proposed regulations would not impose a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Sections 674.13, 674.39, 674.49, and 674.50 of these regulations contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted

a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Perkins Loan Program

Section 674.13 Reimbursement to the Fund. The Department currently has these regulations approved under OMB control number 1845–0019. This provision allows institutions more flexibility in what the Department requires when reimbursing their funds for defaulted student loans and does not increase the burden hours for schools.

Section 674.39 Loan Rehabilitation. We are adding a provision to include collection costs that may be charged in excess of 24 percent to a rehabilitated loan in the event the rehabilitated loan defaults. There are no burden hours associated with this proposed regulation.

Section 674.50 Assignment of defaulted loans to the United States. This proposed regulation relaxes some of the documentation requirements for institutions that assign defaulted student loans to the Department of Education for collection. This proposed regulation does not increase the burden hours for schools.

Section 674.49 Bankruptcy of borrower. The Department currently has this section approved under OMB control number 1845–0023. This regulation allows state institutions that participate in the Federal Perkins Loans Program the authority to invoke sovereign immunity in Bankruptcy proceedings under Chapter 7 or 13 of the Bankruptcy Code. This proposed regulation resolves any ambiguity surrounding an institution's authority to invoke its rights under the 11th Amendment. This proposed regulation does not change information collection contained in this section.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. The proposed regulations in Section 674.49 may have federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: July 19, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 674 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.13 is amended by revising paragraph (a) introductory text to read as follows:

§ 674.13 Reimbursement to the Fund.

(a) The Secretary may require an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

* * * * *

3. Section 674.39 is amended by revising paragraph (c) to read as follows:

§ 674.39 Loan rehabilitation.

* * * * *

(c) Collection costs on a rehabilitated loan—

(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment;

(2) That exceed the amounts specified in paragraph (c)(1) of this section, may be charged to an institution's Fund until July 1, 2002 in accordance with § 674.47(e)(5); and

(3) Are not restricted to 24 percent in the event the rehabilitated loan defaults.

* * * * *

4. Section 674.49 is amended by revising paragraph (b) to read as follows:

§ 674.48 Bankruptcy of borrower.

* * * * *

(b) *Proof of claim.* The institution must file a proof of claim in the bankruptcy proceeding unless—

(1) In the case of a proceeding under chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets, or

(2) In the case of a bankruptcy proceeding under either Chapter 7 or Chapter 13 of the Bankruptcy Code in which the repayment plan proposes that the borrower repay less than the full amount owed on the loan, the institution has an authoritative determination by an appropriate State official that in the opinion of the state official, the institution is an agency of the State and is, on that basis, under applicable State law, immune from suit.

* * * * *

5. Section 674.50 is amended by revising paragraph (c) introductory text to read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(c) The Secretary may require an institution to submit the following documents for any loan it proposes to assign—

* * * * *

[FR Doc. 00–18952 Filed 7–26–00; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 019–FOI; FRL–6841–6]

Clean Air Act Reclassification and Finding of Failure To Implement a State Implementation Plan; California, San Joaquin Valley Nonattainment Area; Ozone; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for its proposed action to find that the San Joaquin Valley serious ozone nonattainment area, which includes eastern Kern County, did not attain the 1-hour ozone national ambient air quality standard by November 15, 1999, the Clean Air Act's (CAA) attainment deadline for serious ozone nonattainment areas. If EPA makes final this proposed finding, the San Joaquin Valley nonattainment area will be reclassified by operation of law to severe.

DATES: Comments must arrive by August 28, 2000.

ADDRESSES: Mail comments to John Ungvarsky, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or email comments to ungvarsky.john@epa.gov.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, (415) 744–1286.

SUPPLEMENTARY INFORMATION: On June 19, 2000, we proposed that the San Joaquin Valley serious ozone nonattainment area did not attain the 1-hour ozone national ambient air quality standard and that the approved serious area ozone State Implementation Plan for the San Joaquin Valley nonattainment area has not been fully implemented.

The proposal provided a 30 day public comment period that ended on July 19, 2000. In response to a request from the San Joaquin Valley Unified Air Pollution Control District and the Kern County Air Pollution Control District, we are extending the comment period for an additional 30 days.

Dated: July 19, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–19013 Filed 7–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6841–2]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 33

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 7 new sites to the NPL. All of the sites are being proposed to the General Superfund Section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before September 25, 2000.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 1200 Pennsylvania Avenue NW; Washington, DC 20460.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as an appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to

use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on May 11, 2000 (65 FR 30482).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of July 10, 2000, the Agency has deleted 213 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of July 10, 2000, EPA has deleted portions of 19 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 213 sites that have been deleted from the NPL, 203 sites were deleted because they have been cleaned up (the other 10 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of July 10, 2000, there are a total of 689 sites on the CCL. This total includes the 213 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites

in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356.

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435.

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–110, Seattle, WA 98101; 206/553–6699.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 7 new sites to the NPL; all to the General Superfund Section of the NPL. The sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 which follows this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 12 sites to the NPL; resulting in an NPL of 1,238 final sites; 1,078 in the General Superfund Section and 160 in the Federal Facilities Section. With this proposal of 7 new sites, there are now 57 sites proposed and awaiting final agency action, 51 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,295. (These numbers reflect the status of sites as of July 10, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084

requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 33, GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	Alark Hard Chrome.	Riverside
KS	Tri-County Public Airport.	Delavan
MA	Nuclear Metals, Inc..	Concord
MA	Sutton Brook Disposal Area.	Tewksbury
MO	Riverfront ...	New Haven
NJ	Diamond Head Oil Refinery Div..	Kearny
OR	Portland Harbor.	Portland

Number of Sites Proposed to General Superfund Section: 7.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 20, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–18903 Filed 7–26–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[USCG–1999–6713]

RIN 2115–AF95

Citizenship Standards for Vessel Ownership and Financing; American Fisheries Act

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending citizenship requirements for fishing vessels of less than 100 feet in length that are eligible for a fishery endorsement, by increasing the percentage of interest in a vessel required to be owned and controlled by U.S. citizens in corporations. The percentage increased will be from more than 50 percent to at least 75 percent. We propose adding provisions making fishery endorsements of documented fishing vessels chartered or leased to a person who is not a citizen or to an entity which is ineligible to own a documented fishing vessel invalid. We also propose prohibiting fishery a endorsement for a fishing vessel mortgaged to a trustee if the mortgage interest is issued, assigned, transferred, or held in trust for a person not eligible to own a documented fishing vessel, even if the trustee is eligible to own a documented fishing vessel.

DATES: Comments and related material must reach the Docket Management Facility on or before October 25, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before September 25, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–6713), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Patricia J. Williams, Coast Guard, telephone 304–271–2400. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–6713), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under ADDRESSES explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Background and Purpose

The Americanization of the U.S. fishing industry began in 1976 with the passage of the Magnuson Fishery Conservation and Management Act which established a 200 mile Exclusive Economic Zone (EEZ) around the United States coastlines and prioritized access to fishery resources within the EEZ to American citizens. It was an important step in securing American control of the vast fishery resources off our coastlines.

Eleven years later another step was taken to further Americanize U.S. fisheries. The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100–239) required U.S. citizens to own and control more than 50 percent of any U.S.-flag fishing vessel. As the last of the foreign-flag fishing vessels in U.S. fisheries were being replaced by U.S.-flag vessels in 1986, federal law did not require U.S. fishing vessels to carry U.S. crew members. Federal law also allowed U.S. fishing vessels essentially to be built in foreign shipyards under an existing regulatory definition of "rebuild."

The goals of the 1987 Anti-Reflagging Act were to (1) require U.S. control of fishing vessels that fly the U.S. flag; (2) stop the foreign rebuilding of U.S.-flag vessels under the "rebuild" loophole; and (3) require U.S.-flag fishing vessels to carry U.S. crews. Of these three goals, only the U.S. crew requirement was fully achieved. The Anti-Reflagging Act did not completely stop foreign interest from owning and controlling U.S.-flag fishing vessels because it included grandfather provisions that exempted any existing U.S.-flag fishing vessel from the new ownership standard. The Act also allowed vessels, under contract during specified time frames, to be rebuilt into fishing vessels in foreign shipyards while retaining their U.S. fishing privileges indefinitely. The two grandfather provisions allowed more foreign owned and controlled fishing vessels to remain in U.S. fisheries than had been intended.

The American Fisheries Act (AFA), along with the repeal of the "grandfather" provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, finally resolves this issue. The AFA requires a real, effective, and enforceable U.S. ownership threshold for U.S.-flag fishing vessels. Under this Act, U.S. citizens must own and control at least 75 percent of the ownership interest in any U.S.-flag fishing vessel. The Act is intended to ensure that vessels with a fishery endorsement are truly controlled by citizens of the U.S. The Act also increases the penalties for fishery endorsement violations and is intended to discourage willful noncompliance with the new requirements.

Discussion of Proposed Rule

As mandated by the 105th U.S. Congress, we propose revising the regulations outlining fishery endorsement eligibilty requirements for fishing vessels less than 100 feet in length. These revisions would remove "grandfather" provisions of the Commercial Fishing Industry Vessel Anti-reflagging Act of 1987. The rule would increase the percent of interest in a fishing vessel that must be owned and controlled by U.S. citizens in a corporation from more than 50 percent to at least 75 percent. It would also add provisions making a fishery endorsement invalid for a documented fishing vessel charted or leased to a person who is not a citizen or to an entity which is ineligible to own a documented fishing vessel. It would restrict fishery endorsements for fishing vessels mortgaged through a foreign lender or trustee and establish application procedures and requirements for fishery endorsement exemptions. It would revise the term "control" as it relates to citizenship requirements for stock or equity interest in fishing vessels. This rule would add penalties for falsifying fishery endorsement application materials. Finally this rule would establish petition procedures for an exemption from the citizenship requirements of this rule if you have a foreign vessel less than 75 percent U.S. citizen controlled fishing with a fishery endorsement before October 1, 2001.

Citizenship Requirements for U.S.-flag Fishing Vessels With a Fishery Endorsement

The American Fisheries Act (AFA) ensures U.S. control of fishery resources within the exclusive economic zone (EEZ) and closes the loophole for foreign rebuilding of U.S.-flag fishing vessels created under the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. Under the AFA, U.S. citizens must own and control at least 75 percent of the ownership interest in any U.S.-flag fishing vessel. The Act is intended to ensure that vessels with a fishery endorsement, and thus fishing within our EEZ, are truly controlled by citizens of the U.S. The Act also increases the penalties for fishery endorsement violations and is intended to discourage willful noncompliance with new requirements. To achieve the intent of the Act the following changes to 46 CFR part 67 are proposed:

(a) *Removing "grandfather" provisions of the Commercial Fishing Industry Vessel Anti-reflagging Act of 1987.* The incorporation of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100–239) was repealed from the AFA, therefore the rulemaking would remove *Section 67.45 Citizenship savings provision for fishing vessels.*

(b) *Increasing the percent of interest in a fishing vessel required to be owned and controlled by U.S. citizens in corporations, partnerships, associations, and joint ventures.* The eligibility requirements for fishery endorsements of vessels that are less than 100 feet would be revised. 46 CFR 67.35, 67.36, 67.37, 67.39 would be revised to reflect an increase in the percentage of the vessel that must be owned and controlled by a U.S. citizen from more than 50 percent to at least 75 percent. A vessel owned and controlled by a corporation, partnership (including limited liability), association, trust, joint venture, or any other entity, is not eligible for a fishery endorsement under section 12106 of 46 U.S.C. unless at least 75 percent of the vessel's interest is controlled and owned by citizens of the United States. This proposed requirement would apply to each tier of a vessel's ownership and to the vessel ownership in its aggregate.

(c) *Restricting fishing vessel charters and leases.* The proposed rule would add an eligibility restriction for non-citizen controlled fishing vessel charters and leases to § 67.21. Section 67.11 would be amended by removing paragraphs (b)(1) and (3), leaving recreational vessels as the only exemption from restrictions on charters and leases to non-U.S. citizens. These changes will prevent a vessel chartered or leased to an individual who is not a citizen of the United States, or any entity not eligible to own a vessel with a fishery endorsement, from obtaining a fishery endorsement. These revisions would also immediately invalidate fishery endorsements for vessels that do not meet the new 75 percent ownership threshold.

(d) *Restricting fishery endorsement of foreign controlled mortgages of a fishing vessel.* The proposed rule would add

section 67.21(e) reflecting that an individual or entity that is otherwise eligible to own a vessel with a fishery endorsement will become ineligible when a mortgage of the vessel to a trustee eligible to own a fishing vessel with a fishery endorsement is issued, assigned, transferred, or held in trust for a person not eligible to own a vessel with a fishery endorsement.

In order for an owner of a vessel of less than 100 feet to be eligible to obtain a fishery endorsement to the vessel's documentation, it must demonstrate that: (1) At least 75 percent of the interest in the entity that owns the vessel is owned by United States citizens; and (2) at least 75 percent of the control of the entity that owns the vessel is owned by and vested in United States citizens. Evidence of United States citizen ownership of a vessel owning entity is demonstrated through the filing of an affidavit of United States citizenship as provided for in § 356.5. The affidavit of U.S. citizenship requires the owner to provide relevant information to demonstrate that it qualifies as a citizen of the United States within the meaning of 46 App. U.S.C. 12102(c), section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and 46 CFR 356.3. The form of this affidavit is substantially the same as the one set forth at 46 CFR part 355.

(e) *Redefining "control" as it relates to citizenship requirements for stock or equity interest in fishing vessels.* The term "control" under § 67.31(b) would be redefined to include having the right to direct the business of the entity that owns the vessel. It would include having the right to limit the actions of or replace the chief executive officer, the majority of the board of directors, any general partner, or any person serving in a management capacity of the entity that owns the vessel. It also would include having the right to direct the transfer, the operation, or the manning of a vessel with a fishery endorsement.

(f) *Adding penalties for falsifying fishery endorsement application materials.* We propose adding § 67.142 establishing penalties for knowingly or unknowingly submitting fishery endorsement application materials with false information. If the vessel owner or an agent of the owner knowingly conceals a material fact or falsely represents the vessel's eligibility for endorsement when initially applying for or renewing a fishery endorsement, the proposed penalties would make the owner of the vessel liable (under 46 U.S.C. 12122(a) through (c)) to the United States Government for a civil penalty of up to $100,000 for each day in which the vessel has illegally engaged in fishing within the EEZ of the United States. If the vessel owner or an agent of the owner unknowingly commits the same offense the owner of the vessel is liable to the U.S. Government for a civil penalty of up to $10,000 for each day in which the vessel has illegally engaged in fishing within the EEZ of the United States.

(g) *Providing fishery endorsement application procedures for fishing vessels 100 feet and greater in length.* We propose to add a paragraph to § 67.141 which will direct fishing vessels 100 feet and greater in length to meet MARAD's requirements, found in 46 CFR 356, and to submit materials required by § 67.141(a) to NVDC.

(h) *Establishing application procedures and requirements for fishery endorsement exemptions.* We propose adding subpart V entitled "Exemption from Fishery Endorsement Requirements Due to Conflict with International Agreements." Establishing this proposed subpart will allow owners or mortgagees of fishing vessels, which believe that an international agreement or treaty to which the United States is a party conflicts with the regulations set out in 46 CFR part 67, to submit the proper materials as a petition for an exemption from specific or all requirements of this part to the National Vessel Documentation Center (NVDC). If you are an owner or mortgagee of a fishing vessel less than 100 feet in length and believe that there is a conflict between 46 CFR part 67 and any international treaty or agreement to which the United States is a party, you may petition the National Vessel Documentation Center (NVDC) for a ruling that all or sections of part 67 do not apply to you. You may file your petition with the NVDC before October 1, 2001, with respect to international treaties or agreements in effect at the time of your petition which are not scheduled to expire before October 1, 2001. If you are filing a petition for exemption with the NVDC for reasons stated in this paragraph your petition must include:

(1) Department of Transportation, U.S. Coast Guard, form CG–1258 entitled "Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Redocumentation" as evidence of the ownership structure of the vessel. This form should provide any subsequent changes to the ownership structure of the vessel since its initial certification.

(2) A copy of the provisions of the international agreement or treaty and a written description of how you believe those provisions conflict with the requirements of this rule.

(3) For all petitions filed after October 1, 2001, a certification that no ownership interest was transferred to a non-U.S. citizen after September 30, 2001.

(4) You must file a separate petition for each vessel requiring an exemption unless the NVDC authorizes consolidated filing. Petitions should include two copies of all required materials and should be sent to the following address: National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Water, West Virginia, 25419.

Upon receipt of a complete petition, the NVDC will review the petition to determine whether the effective international treaty or agreement and the requirements of this part are in conflict. If the NVDC determines that this part conflicts with the effective international treaty or agreement, then the NVDC will inform you of the guidelines and requirements you must meet and maintain to qualify for a fisheries endorsement.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. However, we have included a summary of the analysis documentation.

The Marine Safety Management System (MSMS) shows that about 36,000 vessels have fishery endorsements. The proposed regulation would impact documented vessels with fishery endorsements that are less than 100 feet. About 35,500 vessels with fishery endorsements are less than 100 feet. Of these, we researched a random sample of 1,010 vessels in order to achieve a 95 percent confidence level. We found that the proposed change to minimum U.S. ownership requirements from "more than 50 percent" to "at least 75 percent" would affect one of the vessels in the random sample. This means that 0.099 percent of the random sample do not meet the proposed requirement. The margin of error is plus

or minus 3.04 percent. Applying this percentage to the population, we expect that the owner of 35 vessels would not meet the proposed change in owner citizenship requirement if current ownership levels in each company remain the same (0.099 percent of 35,500 vessels).

In the random sample, there are 843 vessels (83 percent of the affected population) that are owned by individual persons and 167 vessels (17 percent of the affected population) that are owned by corporations or companies. All individual owners are already required to be U.S. citizens in order to document a vessel. Therefore these vessels and individuals are considered to meet the citizenship requirement, and have 100 percent U.S. ownership. Corporations, partnerships or limited liability companies are required to attest to the level of ownership by U.S. citizens by checking a box in the application for documentation. The "Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Redocumentation" (CG–1258 (REV.9–97)) has four choices for reporting the level of ownership by U.S. citizens in a corporation. The choices are: Less than 50 percent, at least 50 percent, more than 50 percent but less than 75 percent, and 75 percent or more. One hundred sixty six (166) corporations certified that the ownership level by U.S. citizens is 75 percent or more. One certified that its corporation's percentage of stock owned by U.S. citizens whom are eligible to document vessels was more than 50 percent but less than 75 percent.

Costs: For further analysis, we assume that the 35 adversely affected vessel owners have more than 50 but less than 75 percent of stock owned by U.S. citizens. We further assume that each vessel owner prefers to continue fishing in the Exclusive Economic Zone of the United States. Therefore, we expect each vessel owning company would make changes to its U.S. ownership level. The change of U.S. ownership level could entail the following: Adding an additional investor, selling stock to U.S. citizens, adding a partner, or removing a partner.

Once each vessel owning company has met the proposed ownership criteria, the vessel's fishery endorsement would be renewed as it would have been in any other year. Thus, the cost of this proposed rulemaking would be directly associated with the change of U.S. ownership level made by each of the 35 vessel owning companies. We assume that each company would hire a law firm to complete the articles of incorporation or any other documents needed to reflect the changes to the ownership levels, and that the law firm would charge about $600 for its services. The one time cost of changing the ownership structure for the 35 companies would be $21,000.

We do not expect the proposed restriction to leases and charters by non-U.S. citizens to impact any vessel owners. Similarly, we do not expect the restriction on foreign controlled mortgages to impact any vessels. Therefore, these proposed regulations would cause no additional cost to vessel owners, operators, or managers.

Benefits: The changes in the law necessitate this proposed rulemaking. The proposed regulation would give U.S. citizens a higher level of ownership in the vessels that harvest fish in the U.S. Exclusive Economic Zone. Consequently more of the profits from the fishery industry will accrue to U.S. citizens.

Small Entities

Under the regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The proposed rule would impact the owners of about 35,500 vessels that are documented with fishery endorsements. These vessels are less than 100 feet in length, and we considered each one to be owned by a small entity. As shown by the sample statistics, we expect 35 entities to be adversely affected by the proposed rulemaking. We do not consider the number of adversely affected entities to be a substantial number for they represent 0.099 percent of all entities that would have to comply with the proposed requirements.

The Small Business Administration has determined that the size standard for small businesses involved in the fishing industry is $3 million in annual revenues (Standard Industry Codes 0912, 0913, 0919, and 0921). The imposed burden of $600 would represent 0.02 percent for entities with $3 million in annual revenues. For entities with $60,000 and $30,000 in annual revenues, the burden would represent 1 percent and 2 percent of annual revenues, respectively. We do not consider this cost to create a significant economic impact on the affected entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

The proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The information collection requirements of the rule are addressed in the previously approved OMB collection titled "Vessel Documentation" (OMB 2115–0110).

Title: Vessel Documentation.

Summary of the Collection of Information: The proposed rulemaking would add a new collection of information burden to companies that would no longer meet the proposed threshold of at least 75 percent ownership by U.S. citizens. The proposed regulation would allow these companies to apply for an exemption from the proposed U.S. ownership level. The proposed application and related submissions would comprise a new collection of information burden.

Need for Information: The proposed subpart V (§§ 67.350 and 67.352) would specify the application procedure for an exemption from the proposed U.S. ownership level to vessel owners that would no longer meet this threshold. The information is needed to document the international treaties on which the claim for exemption is based, and to attest that vessel owners would not change their ownership structure.

Proposed Use of Information: The information requested would be used by the Coast Guard's National Vessel Documentation Center to determine the validity of the claim for exemption.

Description of Respondents: This collection of information would affect vessel owners who would no longer meet the proposed U.S. ownership level, and wish to apply for exemption.

Number of Respondents: We estimate that none of the 35 adversely affected vessel owners would apply for exemption.

Frequency of Response: The endorsements on each vessel's certificate of documentation are renewed every year. Vessel owners would have to apply for exemption every time an application for renewal of a fishery endorsement is sent into the National Vessel Documentation Center.

Burden of Response: We do not expect the proposed requirement to create any additional burden. Therefore, the additional burden of response attributed to the collection (OMB 2115–0110)) would be 0 hours. In the case that a vessel owner applies for exemption, we assume that information gathering and response burden would be two (2) hours per response.

Estimate of Total Annual Burden: The additional annual burden attributed to the collection (OMB 2115–0110) would be $0 because we do not expect any vessel owners to apply for exemption.

Public Comments on the Collection of Information: As required by 44 U.S.C. 3507(d), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 67

Citizenship; Fishery endorsements, Fishing vessels, Mortgages, Penalties, Vessel Documentation.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

2. Amend § 67.11 by revising paragraph (b) and the Note to read as follows:

§ 67.11 Restriction on transfer of an interest in documented vessels to foreign persons; foreign registry or operation.

* * * * *

(b) The restrictions in paragraph (a)(2) of this section do not apply to a vessel that has operated only as a recreational vessel.

Note: For purposes of carrying out its responsibilities under the provisions of this part only, the Coast Guard will deem a vessel documented exclusively with a recreational endorsement from the time it was first documented, or for a period of not less than one year prior to foreign transfer or registry, to qualify for the exemption granted in paragraph (b) of this section.

3. Amend § 67.21 by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 67.21 Fishery Endorsement.

* * * * *

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section loses that eligibility during any period in which it is:

(1) Owned by a partnership which does not meet the requisite citizenship requirements of § 67.35(b);

(2) Owned by a corporation which does not meet the citizenship requirements of § 67.39(b); or

(3) Chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement.

(e) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible if an instrument or evidence of indebtedness, secured by a mortgage of the vessel, to a trustee eligible to own a vessel with a fishery endorsement is issued, assigned, transferred, or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Commandant determines that

the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee:

(1) Is organized as a corporation that meets § 67.39(b) of this part, and is doing business under the laws of the United States or of a State;

(2) Is authorized under those laws to exercise corporate trust powers which meet § 67.36(b) of this part;

(3) Is subject to supervision or examination by an official of the United States Government or a State;

(4) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(5) Meets any other requirements prescribed by the Commandant.

4. Revise § 67.31(b) to read as follows:

§ 67.31 Stock or equity interest requirements.

* * * * *

(b) For the purpose of stock or equity interest requirements for citizenship under this subpart, control means having:

(1) The right to direct the business of the entity that owns the vessel;

(2) The right to limit the actions of or to replace the chief executive officer, the majority of the board of directors, any general partner, or any person serving in a management capacity of the entity that owns the vessel; or

(3) The right to direct the transfer, the operation, or the manning of a vessel with a fishery endorsement.

* * * * *

5. In § 67.35, revise the introductory text and paragraph (b) to read as follows:

§ 67.35 Partnership.

A partnership meets citizenship requirements if all its general partners are citizens, and:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, at least 75 percent of the equity interest in the partnership, at each tier of the partnership and in the aggregate, is owned by citizens.

* * * * *

6. Amend § 67.36 by revising the introductory text of paragraphs (a), (b), and (c) and by revising paragraph (b)(2) to read as follows:

§ 67.36 Trust.

(a) For the purpose of obtaining a registry or recreational endorsement, a trust arrangement meets citizenship requirements if:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a trust arrangement meets citizenship requirements if:

* * * * *

(2) At least 75 percent of the equity interest in the trust, at each tier of the trust and in the aggregate, is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lake endorsement or both, a trust arrangement meets citizenship requirements if:

* * * * *

7. Revise § 67.37 to read as follows:

§ 67.37 Association or joint venture.

(a) An association meets citizenship requirements if each of its members is a citizen.

(b) A joint venture meets citizenship requirements if each of its members is a citizen.

8. Amend § 67.39 by revising the introductory text of paragraphs (a), (b), and (c) and by revising paragraph (b)(2) to read as follows:

§ 67.39 Corporation.

(a) For the purpose of obtaining a registry or a recreational endorsement, a corporation meets citizenship requirements if:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a corporation meets citizenship requirements if:

* * * * *

(2) At least 75 percent of the stock interest in the corporation, at each tier of the corporation and in the aggregate, is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a corporation meets citizenship requirements if:

* * * * *

§ 67.45 [Removed]

9. Remove § 67.45.

10. Amend § 67.141 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 67.141 Application procedure; all cases.

* * * * *

(b) Each vessel 100 feet and greater in length applying for a fishery endorsement must meet the requirements of 46 CFR part 356 and must submit materials required in paragraph (a) of this section.

(c) Upon receipt of the Certification of Documentation and prior to operation of the vessel, ensure that the vessel is marked in accordance with the requirements set forth in subpart I of this part.

11. Add § 67.142 to read as follows:

§ 67.142 Penalties.

(a) An owner or operator of a vessel with a fishery endorsement who violates Chapter 121 of Title 46, U.S. Code or any regulation issued thereunder is liable to the United States Government for a civil penalty of not more than $10,000. Each day of a continuing violation is a separate violation.

(b) A fishing vessel and its equipment are liable to seizure and forfeiture to the United States Government—

(i) When the owner of the fishing vessel, or the representative or agent of the owner, knowingly falsifies applicable information or knowingly conceals a material fact during the application process for or application process to renew a fishery endorsement of the vessel;

(ii) When the owner of the fishing vessel, or the representative or agent of the owner, knowingly and fraudulently uses a vessel's certificate of documentation;

(iii) When the fishing vessel engages in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the Exclusive Economic Zone around the United States coastlines after its fishery endorsement has been denied or revoked;

(iv) When a vessel is employed in a trade without an appropriate trade endorsement;

(v) When a documented vessel with only a recreational endorsement operates as a fishing vessel; or

(vi) When a vessel with a fishery endorsement is commanded by a person who is not a citizen of the United States.

(c) In addition to penalties under paragraphs (a) and (b) of this section, the owner of a vessel with a fishery endorsement is liable to the United States Government for a civil penalty of up to $100,000 for each day in which the vessel has engaged in fishing within the exclusive economic zone of the United States, if the owner of the fishing vessel, or the representative or agent of the owner, knowingly falsifies applicable information or knowingly conceals a material fact during the application process for or application process to renew a fishery endorsement of the vessel.

12. Revise § 67.233(b) to read as follows:

§ 67.233 Restrictions on recording mortgages, preferred mortgages, and related instruments.

* * * * *

(b) A mortgage of a vessel 100 feet or greater in length applying for a fishery endorsement is eligible for filing and

recording as a preferred mortgage only if it meets the requirements of this part and the requirements of 46 CFR 356.19.

* * * * *

13. Add subpart V to read as follows:

Subpart V—Exemption from Fishery Endorsement Requirements Due to Conflict With International Agreements

Sec.
67.350 Conflicts with international agreements.
67.352 Applicability.

Subpart V—Exemption from Fishery Endorsement Requirements Due to Conflict With International Agreements

§ 67.350 Conflicts with international agreements.

(a) If you are an owner or mortgagee of a fishing vessel less than 100 feet in length and believe that there is a conflict between this part 67 and any international treaty or agreement to which the United States is a party on October 1, 2001, and to which the United States is currently a party, you may petition the National Vessel Documentation Center (NVDC) for a ruling that all or sections of this part 67 do not apply to you with respect to a particular vessel, provided that you had an ownership interest in the vessel or a mortgage on the vessel on October 1, 2001. You may file your petition with the NVDC before October 1, 2001, with respect to international treaties or agreements in effect at the time of your petition which are not scheduled to expire before October 1, 2001.

(b) If you are filing a petition for exemption with the NVDC for reasons stated in paragraph (a) of this section, your petition must include:

(1) Evidence of the ownership structure of the vessel petitioning for an exemption as of October 1, 2001, and any subsequent changes to the ownership structure of the vessel;

(2) A copy of the provisions of the international agreement or treaty that you believe is in conflict with this part;

(3) A detailed description of how the provisions of the international agreement or treaty conflict with this part;

(4) For all petitions filed before October 1, 2001, a certification that the owner intends to transfer no ownership interest in the vessel to a non-U.S. citizen for the following year.

(5) For all petitions filed after October 1, 2001, a certification that no ownership interest was transferred to a non-U.S. citizen after September 30, 2001.

(c) You must file a separate petition for each vessel requiring an exemption unless the NVDC authorizes consolidated filing. Petitions should include two copies of all required materials and should be sent to the following address: National Vessel Documentation Center, 792 TJ Jackson Drive, Falling Water, West Virginia, 25419.

(d) Upon receipt of a complete petition, the NVDC will review the petition to determine whether the effective international treaty or agreement and the requirements of this part are in conflict. If the NVDC determines that this part conflicts with the effective international treaty or agreement, then the NVDC will inform you of the guidelines and requirements you must meet and maintain to qualify for a fisheries endorsement.

(e) If the vessel is determined through the petition process to be exempt from all or sections of the requirements of this part, then you must annually, from the date of exemption, submit the following evidence of its ownership structure to the NVDC:

(1) The vessel's current ownership structure;

(2) The identity of all non-citizen owners and the percentages of their ownership interest in the vessel;

(3) Any changes in the ownership structure that have occurred since you last submitted evidence of the vessel's ownership structure to the NVDC; and

(4) A statement ensuring that no interest in the vessel was transferred to a non-citizen during the previous year.

§ 67.352 Applicability.

The exemption in this subpart shall not be available to:

(a) Owners and mortgagees of a fishing vessel less than 100 feet in length who acquired an interest in the vessel after October 1, 2001; or

(b) Owners of a fishing vessel less than 100 feet in length, if any ownership interest in that vessel is transferred to or otherwise acquired by a non-U.S. citizen after October 1, 2001.

Dated: July 19, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–18941 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 110 and 111

[USCG–1999–6096]

RIN 2115–AF89

Marine Shipboard Electrical Cable Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Coast Guard is reopening the period for public comment on its notice of proposed rulemaking (NPRM) on Marine Shipboard Electrical Cable Standards. Because of several requests for additional time to comment, the Coast Guard is reopening the comment period for 45 days.

DATES: Comments must reach the Coast Guard on or before September 11, 2000.

ADDRESSES: Please submit your comments and related material by any one of the following methods (but by only one, to avoid multiple listings in the public docket):

(1) By mail to the Docket Management Facility, [USCG–1999–6096], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on the substance of the rulemaking, call Dolores Mercier, Project Manager, Office of Design and Engineering Standards, (G–MSE), Coast Guard, telephone 202–267–0658. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The notice of proposed rulemaking (NPRM) on Marine Shipboard Electrical Cable Standards, published on February 8, 2000 (65 FR 6111), encouraged interested persons to participate in this rulemaking by submitting written data,

views, or arguments by May 8, 2000. On June 5, 2000, we published a notice of public meeting and reopened the comment period until July 7, 2000 (65 FR 35600). The public meeting was held on June 28, 2000. We are again reopening the comment period until September 11, 2000.

Persons submitting comments should include their names and addresses, identify this docket (USCG–1999–6098) and the specific section of the NPRM to which each comment applies, and give the reason for each comment. Please submit one copy of each comment and attachment in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this NPRM in view of them.

Dated: July 19, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Standards.

[FR Doc. 00–18940 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–15–U

VOL 65 ISS 145 JL 27 2000 UMI

Notices

Federal Register
Vol. 65, No. 145
Thursday, July 27, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–030N]

Codex Alimentarius Commission: Twentieth Session of the Codex Committee on Processed Fruits and Vegetables

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety and the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), are sponsoring a public meeting on August 10, 2000. The purpose of the meeting is to provide information and receive public comments on agenda items that will be discussed at the Twentieth Session of the Codex Committee on Processed Fruits and Vegetables (CCPFV), which will be held in Washington, DC on September 11–15, 2000. The Under Secretary and AMS recognize the importance of providing interested parties with information about the Processed Fruits and Vegetables Committee of the Codex Alimentarius Commission (Codex) and to address the items on the Agenda for the Twentieth Session of the CCPFV.

DATES: The public meeting is scheduled for Thursday, August 10, 2000, from 9 a.m. to 4:30 p.m.

ADDRESSES: The public meeting will be held in Room 0161 South Building, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC. To receive copies of the documents referenced in this notice contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex/ccpfv20/pf00—01e.htm.* Submit one original and two copies of written comments to the FSIS Docket Room (address above), Docket #00–030N and the document number. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Telephone (202) 205–7760, FAX (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Processed Fruits and Vegetables reviews world-wide standards for various processed fruits and vegetables, including certain dried products and certain canned products. This committee does not cover standards for fruit and vegetable juices. Codex has also allocated to this Committee the work of revision of standards for quick frozen fruits and vegetables. The Committee is chaired by the United States of America.

Issues To Be Discussed at the Public Meeting

Agenda items will be described and discussed at the August 10, 2000, public meeting. Attendees will have the opportunity to pose questions and offer comments.

The provisional agenda items to be discussed during the public meeting are:

1. Adoption of the Agenda,
2. Matters Referred by the Codex Alimentarius Commission and other Codex Committees,
3. Establishment of a Priority List for the Revision and Standardization of Processed Fruits and Vegetables,
4. Draft Revised Standards for Canned Fruits at Step 7 Canned Applesauce and Canned Pears,
5. Proposed Draft Guidelines for Packing Media for Canned Vegetables,
6. Proposed Draft Guidelines for Packing Media for Canned Fruits,
7. Methods of Analysis for Processed Fruits and Vegetables,
8. Consideration of Other Draft and Proposed Draft Standards for Processed Fruits and Vegetables Based on Priority List Discussions,
9. Other Business and Future Work.

Each issue listed will be fully described in documents distributed, or to be distributed, by United States' Secretariat to the Meeting. Members of the public may access or request copies of these documents (see ADDRESSES).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more

information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on July 21, 2000.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 00–18988 Filed 7–26–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Forest Service

Notice of Meetings

AGENCY: Natural Resources Conservation Service (NRCS) and Forest Service.

ACTION: Notice of meeting.

SUMMARY: Maintaining Agriculture and Forestry in Rapidly Growing Areas Listening Forums hosted by members of the USDA Policy Advisory Committee on Farmland Protection. The USDA Policy Advisory Committee on Farm and Forest Lands Protection is holding listening forums this summer to solicit policy feedback and anecdotal information on what works and what does not work from a community 's perspective in working with Federal tools designed to maintain land as farmland and forest land. The input received from these forums will be synthesized into a report that USDA will issue on this subject later this year.

Specifically, the forums will ask for public comment on the following questions:

1. What are the economic, environmental, and social benefits of farms and forested lands for communities, especially those in rapidly growing regions?

2. What are the challenges that communities and individuals face in trying to maintain farms and forested lands, especially in rapidly growing areas?

3. What sorts of opportunities exist to capitalize on market opportunities (e.g. direct marketing and agri-tourism) to encourage maintenance of farmland and forestland?

4. What role could the Federal Government play to better support farmers and forest operators in taking advantage of these opportunities?

DATES: The first two forums were held July 13, 2000, in Sycamore, Illinois and July 21, 2000 in Davis, California. The third forum will be July 31, 2000, in Seattle, Washington at Yale Street Landing, 1001 Fairview Avenue North, from 9 a.m. to 12 p.m. The fourth forum will be August 7, 2000, at the Crown Plaza Atlanta Airport Hotel, 1325 Virginia Avenue, Atlanta, Georgia form 9 a.m. to 12 p.m. The last forum will be held in Morristown, New Jersey, on August 9, 2000, from 9 a.m. to 12 p.m. It will be held at 53 East Hanover Avenue, at the Frelinghuysen Arboretum Auditorium. Three informational gathering sessions are being considered.

SUPPLEMENTARY INFORMATION: Notice of these forums is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the USDA Policy Advisory Committee, including any revised agendas for future forums that may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at http://www.usda.gov.

Draft Agenda for the Forums

A. Opening remarks.

B. Panel presentations.

C. Public participation: oral statements, questions and answer period.

D. Closing remarks.

Procedural

The forums are open to the general public. Members of the general public will have an opportunity to present their ideas and opinions during each forum. Persons wishing to make oral statements should pre-register by contacting Ms. Mary Lou Flores at (202) 720–4525. Those who wish to submit written statements can do so by submitting 25 copies of their statements two days prior to the forum. Please send them to Ms. Stacie Kornegay, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, Room 6013–S. The written form of the oral statements must not exceed five pages in 12-point pitch. At each forum, reasonable provisions will be made for oral presentations of no more than 3 minutes each in duration.

FOR FURTHER INFORMATION CONTACT: Requests for special accommodations because of disability, questions or comments should be directed to Rosann Durrah, Designated Federal Official, at (202) 720–4072; fax (202) 690–0639, email *rosann.durrah@usda.gov.*

Signed at Washington, D.C. on July 21, 2000.

Anne Keys,

Deputy Under Secretary, Natural Resources and Environment, USDA.

[FR Doc. 00–18948 Filed 7–26–00; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on August 25, 2000, at the University of Delaware, Black Studies Department, 420 Ewing Hall, Conference Room 416, Newark, Delaware 19716. The purpose of the meeting is to: (1) review the current project, "Citizens Reference Guide to Civil Rights in Delaware", (2) discuss civil rights developments, and (3) plan new projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James Newton, 302–831–8683, or Edward Darden, Civil Rights Analyst of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 21, 2000.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–18984 Filed 7–26–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000630200–0200–01; I.D. 060600F]

RIN 0648–XA55

New Bedford Harbor Trustee Council

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed restoration ideas for implementation in New Bedford Harbor; request for comments.

SUMMARY: On behalf of the New Bedford Harbor Trustee Council (Council), NMFS, serving as the Administrative Trustee, announces that the Council is proposing 17 restoration ideas for possible implementation through

funding from the AVX Natural Resource Damages Trust Account (Trust Account). Thirty-five natural resource restoration ideas were submitted for consideration by the Council. The Council now seeks comment on its proposed funding of the 17 ideas including proposed funding levels for each of those ideas. The Council had requested ideas, and proposed funding levels for those ideas, to restore natural resources that were injured by the release of hazardous substances and materials, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor Environment (Harbor Environment) and in the Federal Register published on August 16, 1999).

DATES: The Council will accept comments on the proposed restoration projects through August 28, 2000.

ADDRESSES: The Council will accept written comments at the following locations: New Bedford Harbor Trustee Council, c/o National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, Attn.: Jack Terrill, or New Bedford Harbor Trustee Council, 37 N. Second Street, New Bedford, MA 02740. Comments also may be sent via facsimile (fax) to 978–281–9301. Comments cannot be accepted if submitted via email or Internet.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 978–281–9136, fax 978–281–9301, or e-mail Jack.Terrill@NOAA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

New Bedford Harbor is located in Southeastern Massachusetts at the mouth of the Acushnet River on Buzzards Bay. The Harbor and River are contaminated with high levels of hazardous substances and materials, including PCBs, and as a consequence are on the U.S. Environmental Protection Agency's (EPA) Superfund National Priorities List. This site is also listed by the Massachusetts Department of Environmental Protection as a priority Tier 1 disposal site.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund," 42 U.S.C. 9601 *et seq.*) designates as possible natural resource trustees Federal, state, or tribal authorities who represent the public interest in natural resources. The trustees are responsible for recovering funds through litigation or settlement for damages for natural resource injuries. CERCLA requires that any recovered monies be used to "restore, replace, or acquire the equivalent of" the natural resources that have been injured by a release of a hazardous substance.

For the New Bedford Harbor Superfund Site, there are three natural resource trustees on the Council representing the public interest in the affected natural resources. They are the Department of Commerce (DOC), the Department of the Interior, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated DOC trustee responsibility to NOAA; within NOAA, NMFS has responsibility for natural resource restoration. The Secretary of the Interior has delegated trustee responsibility to the U.S. Fish and Wildlife Service. The Governor of Massachusetts has delegated trustee responsibility to the Secretary of Environmental Affairs.

The Council issued an initial "Request for Restoration Ideas" in October 1995 (60 FR 52164, October 5, 1995)(Round I). Fifty-six ideas were received from the local communities, members of the public, academia and state and federal agencies. The ideas were the basis for the alternatives listed in the Council's "Restoration Plan for the New Bedford Harbor Environment" (Restoration Plan) that was developed to guide the Council's restoration efforts. An environmental impact statement was prepared in conjunction with the Restoration Plan to fulfill requirements of the National Environmental Policy Act. A record of decision was issued on September 22, 1998, for both the Restoration Plan and the environmental impact statement. The record of decision provided for implementation of 11 preferred restoration projects through funding provided by the Trust Account.

A second request for proposed restoration ideas was issued in August 1999 (64 FR 44505, August 16, 1999) (Round II). Thirty-five restoration ideas were submitted to the Council with total requested funding of approximately $35.0 million from the Trust Account. The Council held a meeting on October 26, 1999, to provide an opportunity for oral presentations of the submitted ideas. The Council also solicited public comments on the ideas and held a hearing on November 23, 1999, to give the public further opportunity to comment on the ideas. The project ideas were reviewed by the Council's legal advisors who provided comments regarding whether or not particular ideas satisfied the legal criteria for funding. In addition the ideas were evaluated by technical advisors who developed recommendations with respect to the technical feasibility and restoration benefits of each of the ideas.

The Council carefully considered all public comment received and the comments from its technical and legal advisors and staff. The Council discussed each idea, and following this review process, the Council identified preferred project ideas for potential funding.

The Council is now seeking public review of the preferred project ideas and the proposed level of funding for each project.

At the conclusion of the comment period, the Council will consider the comments from the public and its advisors before making any final decisions as to the projects eligible for potential funding through the Trust Account.

Upon the Council's final decisions, certain projects may require a competitive solicitation in order for the Council to provide funding. If necessary, the solicitation will be a formal request following the appropriate contract or grant procedures. Construction or implementation of the projects ultimately selected could be awarded to private entities, commercial firms, educational institutions or local, state or Federal agencies. All projects will ultimately be funded through contract or grant procedures that will provide conditions to ensure that the funds are expended prudently and as proposed.

Prior to final approval for funding, all selected projects require environmental review under applicable law and the submission of detailed scopes of work for Council review and approval. In addition, implementation of the projects may be conditioned or delayed, and the funds therefore held in reserve, until more information becomes available or specific conditions are met. Funds held in reserve will continue to be held in the interest bearing Trust Account, administered by the Court Registry Investment System of the United States District Courts.

II. The Preferred Project Ideas Recommended by the Trustee Council

Following is a description of the preferred project ideas proposed by the Council for potential implementation and funding. The Trustee Council has also make available an environmental assessment which will provide further information on the preferred project ideas and a discussion on those ideas which are not considered preferred projects, including a brief discussion of some of the reasons why the project is not preferred. This information will be made available at the Council offices (see **ADDRESSES**):

1. Acushnet River Valley Conservation Project (Council suggested amount: $964,000)

This idea involves the purchase of either a fee interest in, or conservation restriction for, approximately 245 acres of land along the Acushnet River. The land is characterized by 1.5 miles (2.4 kilometers) of non-tidal riverfront containing hardwood and pine forests, open farm land, red maple and shrub swamps and freshwater meadows. Accordingly, this project acquires and protects against development, the equivalent of river lands lost or injured due to contamination along the Acushnet River estuary. In addition, the acquisition and/or conservation of this land will help to restore downstream natural resources which were injured through PCB contamination. Among the primary benefits resulting from implementation of this idea would be protection of water quality downstream and the protection of passive recreation lands and/or fish and wildlife habitats. These tracts of land appear to have high habitat value and would greatly contribute to protection of the Acushnet River watershed. The cost of the land purchase or imposition of a conservation restriction at $3,900/acre appears to provide good environmental benefits for the cost. While this site is not contiguous to the area of contamination, it is expected to provide much needed protection to the injured natural resources, particularly anadromous fish injured by the contamination.

All Council-funded land purchases require a habitat value analysis, a fair market appraisal, title exam, an environmental site assessment, property boundary surveys and a conservation restriction to be held by a grantee acceptable to the Trustee Council before the project can be implemented (collectively referred to hereinafter as the "standard pre-acquisition tasks").

2. Buzzards BayKeeper (Council suggested amount: $150,000)

The BayKeeper would be an on-the-water initiative to primarily monitor whether trustee funded projects are being properly implemented and to identify any activities that may be adversely affecting successful implementation. Accordingly, the BayKeeper will be assisting the Council's efforts to restore natural resources by monitoring the Trust Account funded projects and by providing information to assist in the effective implementation of such current and future projects. The BayKeeper is also envisioned as supporting education projects and wetland restoration activities associated with the harbor cleanup and restoration. The Council currently believes that the BayKeeper can provide additional monitoring and assistance to both existing and future Council funded projects such as eelgrass, saltmarsh and tern restoration projects as well as providing overall monitoring of activities that may adversely affect restoration projects. The funding request would support these BayKeeper activities for a 5-year period.

3. Community Rowing Boathouse (Council suggested amount: $25,000 for a study on lost recreational use, $250,000 for new boat(s) and a boathouse if the results of the study indicate a sufficient loss of access to the Harbor through recreational boating due to PCB related injury to natural resources to justify the expense of the proposed idea.)

This idea involves the purchase or construction of additional boats and the planning and construction of a boathouse to be used for an existing whaleboat rowing program for youth and adults. The boathouse facility would include space for storage, repair, maintenance, and construction of boats. If the project were funded, participation in the boating programs would be offered free of charge to all New Bedford schoolchildren.

Any funding for this idea is contingent upon obtaining the results of the study and analysis, described here, that demonstrate a loss of access to the Harbor for recreational boating due to PCB-related injury to natural resources to justify the expense of the proposal. Accordingly, if the study demonstrates a loss of access to the Harbor to recreational boating due to PCB-related injury to natural resources, the overall goal of this project is to compensate for that lost access and natural resource service by providing the equivalent of such lost access and natural resource service, by providing people with a means of direct access to the Harbor through an on-the-water activity within the Harbor. The provision of additional boats or construction of new boat(s) and/or a boathouse would address this goal by allowing an expansion of an existing harbor-oriented boating program with an emphasis on youth rowing. In addition the boathouse could possibly be used for similar programs offered by other groups. The Trustees will consider this project, and/or alternative projects to enhance boating uses, subject to further legal review.

Several of the restoration ideas received in both Round I and Round II have involved projects to restore lost recreational uses. It has become apparent that the Council requires more information on certain injuries to recreational uses of natural resources resulting from PCB contamination, before the Council can evaluate the merits of additional projects which address specific impacts to recreational use of natural resources in the Acushnet River and New Bedford Harbor. The Harbor has been closed to fishing since 1979 and swimming since 1982. The 1986 damage assessment considered lost use values associated with impacts to the commercial lobster fishery, recreational fishing, beach use and coastal property value decreases associated with public awareness of the PCB contamination. The damage assessment did not study any impacts to other recreational uses, including boating. It is not known whether these other uses were considered at the time that the prior studies were performed.

The Council recommends commissioning a study to evaluate whether there has been other lost recreational use(s) of the New Bedford Harbor Environment associated with PCB-related injuries to natural resources. The information resulting from the study would then be available to determine which access and recreation projects are legally fundable and, possibly, the level of funding the Trustees should consider relative to other recreational projects and restoration priorities.

4. Marsh Island Salt Marsh Restoration (Council suggested amount: $750,000)

The original idea (Harbor Open Space/Public Access Study) contained many aspects including the study of Marsh Island for passive recreation and environmental aspects. In reviewing this idea, the technical advisors favored the restoration of the salt marsh on Marsh Island. Of the eight sites proposed for study, the Marsh Island site appears to show the greatest potential for restoration and public access. This site could have both a salt marsh through the restoration of former tidal and/or non-tidal wetlands and re-establishment of the upland maritime plant community, and a passive recreation park. There is a bedrock outcrop at the shoreline which would make an excellent focal point for the park with the restored salt marsh and tidal gut immediately south of this outcrop.

As discussed here, this project represents the restoration of a saltmarsh, a natural resource which was injured by PCB contamination.

Some salt marshes within the New Bedford Harbor Environment are

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contaminated by PCBs. Species are exposed to PCBs each time they use the marsh resulting in harmful health effects. Restoration of marsh habitat that is in the vicinity of the Harbor but is not impacted by contaminants will help support resources dependent on marshes that have been injured within the Harbor Environment. Habitat for resident fish species could be restored, as well as intertidal habitat for avifauna and other marine biota. Public access via foot trails would allow direct access to the harbor.

More information is needed on the ownership of the property. In addition the standard pre-acquisition tasks would need to be satisfied before any purchase could occur. (See preliminary decision #1.)

New Bedford Aquarium

Several project ideas were submitted in association with the proposed New Bedford Aquarium. The Council reviewed the various ideas and has identified the following (#5—8) as among the preferred projects:

5. Artificial reef (Council suggested amount: up to $500,000)

The idea would be to construct a reef three to four times the size of an existing artificial reef off Salter's Point, Dartmouth, MA, constructed in 1998 using reef balls. Because bottom habitat has been adversely impacted by the release of PCBs which settled into the bottom sediments, this project should help to restore those natural resources injured by PCB sediments in the Harbor bottom. Living resources using or coming in contact with the bottom risk contamination from the PCBs. Properly constructed and appropriately located artificial reefs can: (1) enhance or replace injured fish habitat; (2) facilitate access to areas with fish species and utilization by recreational and commercial fishermen; and (3) increase total fish biomass within a given area.

The Council would provide funding for a preliminary identification of appropriate locations, and the materials and/or structures to be utilized at such locations. If a suitable location is found, a reef would be constructed with Trust funds. Funding would also include a monitoring component to determine if the goals of the project are being achieved, to identify any necessary modifications, and to ensure that intended benefits are being realized by the injured natural resources.

6. Educational exhibit on PCB impacts to natural resources and examples of how to change everyday behavior to have a positive impact on the Harbor Environment (Council suggested amount: $150,000)

The exhibit would contain essentially two components or goals. The first purpose of the exhibit would be to explain what PCBs are, what they were used for in industry, their disposal into the Harbor, and then examine the effects of PCB contamination on the six major taxonomic groups of organisms (fish, crustaceans, mollusks, plankton, annelids, birds) located in the New Bedford Harbor Environment. The exhibit would be expected to educate the public on the harmful effects of the PCB discharges and efforts being made to clean up the harbor and restore its natural resources. With this education should come a greater appreciation of the Harbor and a concern that further pollution should be prevented.

The second, and perhaps more significant, purpose of the exhibit is to educate people to change their routine or everyday behavior to have a positive impact on the New Bedford Harbor Environment and its natural resources that have been adversely affected by past PCB disposals and releases into the Harbor Environment. Examples might include the kinds of materials which should not be poured down the household drain, or discarded from a boat, or otherwise disposed of into the Harbor Environment. By emphasizing simple preventative measures to a large audience, such preventive measures may ultimately produce a significant cumulative benefit. Because the Aquarium exhibit should reach a large audience, including a very significant portion of the greater New Bedford area population, it is believed that this educational exhibit should have a direct and positive impact on natural resource restoration in the harbor.

7. Marine fish stock enhancement (Council suggested amount: up to $1,950,000)

The New Bedford Aquarium proposal would construct a fish hatchery co-located at the Aquarium site. This facility will raise species that have been injured by PCB contamination for two possible purposes: First, stocking of hatchery raised fish could be one of the means of replacing some fish species, natural resources that were injured by PCBs (winter flounder, scup tautog), if a methodology can be found which is protective of the wild stocks and assists in their survival. Second, hatchery raised fish may be found to provide other ecosystem services, such as supporting the food chain in an environmentally protective way. In other words, because certain fish species were injured by PCB contamination, supplying hatchery raised fish may assist restoration efforts by reducing PCB contamination in the food chain. In order to determine if such potential restoration efforts will benefit the injured marine fish species, the Trustees need to obtain information on the feasibility and efficacy of using a hatchery facility to provide for either or both of these purposes.

While the Trustees cannot ascertain, at this point, the scope and scale of the facility that will be needed to answer these questions or to supply these needs, or the breadth and duration of the studies that will be necessary, the Trustees have earmarked up to $1,950,000 with the hope of accomplishing these goals: (A)design and implementation of a feasibility study to evaluate the potential for a hatchery facility to aid the Trustees' in restoring, replacing or acquiring the equivalent of injured fish species by satisfying either or both of the objectives described here; (B)if justified by the feasibility study, design and construct an appropriate portion of the Aquarium to house a hatchery facility to facilitate accomplishment of either or both of the objectives described above. The funding would support construction and operations of the facility for over 5 years, following which the Aquarium would be expected to continue operating the facility. It would also provide a facility which promotes a collaborative approach between Federal, state, academic and private interests that would further research capabilities on aquaculture. In addition, this facility would serve as a working exhibit of the Aquarium and would provide training, research and education capabilities which should promote aquaculture within the region. The Trustees believe that this funding amount is appropriate for a project that can provide this level of information and services for future use in restoring injured natural resources in the harbor.

The Trustees will first evaluate the outcome of the feasibility study against the current needs for restoration. Assuming that the feasibility study supports this hatchery approach, then the Trustees will need to work with the Aquarium as the design of the facility moves forward. Planning for hatchery facilities must provide for the restoration needs, including a determination of what can feasibly be built into the Aquarium to satisfy either of the dual purposes, and whether or

not the studies and construction could be completed within the timeframe that would provide information to the Trustees and restoration in a timely manner.

The Aquarium proposal specified that fish produced in such a facility may also be used for human consumption. Council funding may not be used for this purpose and the proposed funding level reflects this restriction.

8. Saltmarsh creation (Council suggested amount: up to $750,000)

This idea proposes to construct a saltmarsh on the Aquarium site to be colonized with both low and high marsh plant species and animals. The saltmarsh would: (1) replace injured saltmarsh habitat, a natural resource; (2) serve as a living exhibit of the aquarium and be part of a public park; (3) remove nitrogen from the seawater effluent from the Aquarium's tanks and Harbor waters which may be used to supplement tank flows; and (4) produce marsh plants for use at the Aquarium site and throughout the Inner Harbor. Funding would be for the design, construction and planting. A boardwalk and signage would be erected to allow significant access with minimal impact to the marsh while explaining the functions of a saltmarsh to a large audience. The saltmarsh and exhibit would educate the public on the importance of preserving, restoring or creating salt marshes and, hopefully, influence a change in behavior to protect salt marshes from future development and its resultant destruction of this essential habitat.

The Council intends to reserve funding for projects 5 through 8 until after a specific funding goal for the total Aquarium has been met. The Council requests comment on this concept and suggestions regarding the amount to be raised, or other distinguishing events before release of funds should occur. Note: for certain projects it may be appropriate to release funds at an earlier time than for others. The Council is also seeking comment on its decision to have Council-funded projects available for viewing without an admission fee. Aquarium projects 6, 7, and possibly 8, would be part of the facility for which an admission fee would be charged and the Council requests suggestions on how access can be provided to these projects at no cost to the visitor.

9. Nonquitt Salt Marsh Restoration (Council suggested amount: $150,000)

This idea was originally suggested in Round I. As discussed here, this project represents the restoration of a saltmarsh, a natural resource which was injured by PCB contamination. The idea involves installing a new 100–foot (30.5–meter) culvert, remove a tidal slide gate and replace a headwall to improve tidal flushing of the 60–acre Nonquitt Marsh, Dartmouth. Some salt marshes within the New Bedford Harbor Environment are contaminated by PCBs. Species are exposed to PCBs each time they use the marsh resulting in harmful health effects. Restoration of marsh habitat that is in the vicinity of the Harbor but is not impacted by contaminants will help support resources dependent on marshes that have been injured within the Harbor Environment.

Inadequate flushing has resulted in elevated salt levels in the Nonquitt marsh. Occasionally, storms will block the culvert pipe with sediment and vegetation. This problem was compounded when a large storm in the late 1970's caused a complete blockage of the pipe which resulted in the marsh vegetation dying off due to long periods of flooding. The distressed vegetation has yet to recover and the peat within the marsh is decomposing and eroding. By improving tidal flushing of this marsh, normal salinity, vegetation and productivity of the marsh will be restored. Included in the project idea was the construction of a marsh observation platform to facilitate public access to the site.

During Round I the Council decided to postpone the final decision regarding funding of this project pending further evaluation of comments received regarding: the costs of the project and the potential for costsharing; whether other design and location alternatives are under consideration; the possible impacts to the marsh from fecal contamination and freshwater inputs; and public access to the marsh. The Council has evaluated those comments and the responses received from the applicant and determined that the project meets the criteria for funding and will provide substantial increased benefits to injured natural resources within the New Bedford Harbor Environment.

10. Popes Beach Land Purchase (North) (Council suggested amount: $55,000)

This idea proposes to purchase and place a conservation restriction on six parcels of land totaling 2.6 acres on the northwest portion of Sconticut Neck, Fairhaven. This property consists of dunes, beach, sand flats and salt marsh habitats. Just offshore are recreational shellfish beds to which the public would also be provided access. The purchase and conservation easement should contribute indirectly to the protection and restoration of that shellfish resource, a natural resource which was injured by PCB contamination. This property would add to the growing inventory of undeveloped coastal wetlands along Sconticut Neck and is contiguous to undeveloped lands in upper Priests Cove. The shoreline, tidal flats, marshes and shellfish beds within the Harbor were contaminated by the release of PCBs. The purchase of this property will acquire equivalent property to that which was impacted and will protect the habitat from future development providing a benefit to natural resources. The technical advisors believe it provides good environmental benefits at reasonable costs. The standard pre-acquisition tasks would need to be satisfied before the purchase could occur. (See preliminary decision number 1.)

11. Popes Beach Land Purchase (South) (Council suggested amount: $145,000)

This idea proposes to purchase and place a conservation restriction on approximately 3.5 acres of land on the northwest portion of Sconticut Neck, Fairhaven. The shoreline edge is characterized by a dune-like plant community. The intertidal sandflat and nearby subtidal waters provide feeding and cover habitat for estuarine finfish species. The remaining property is characterized by shrub, sapling and common reed-dominated plant community cover. The purchase and placement of a conservation restriction on this property will acquire equivalent property to that which was impacted by PCB contamination within the Harbor and will protect the habitat from future development providing a benefit to natural resources. The goal is to preserve this estuarine habitat from future development. This land is not contiguous with the other land proposed for purchase but is in the same general area. It is believed to have good habitat value which a habitat value analysis could confirm. The standard pre-acquisition tasks would need to be satisfied before the purchase could occur. (See preliminary decision #1.)

12. Regional Shellfish Grow Out Up-Well System (Council suggested amount: $500,000)

PCBs discharged into the New Bedford Harbor Environment have resulted in elevated levels of PCBs in a variety of fish and shellfish species requiring the enactment of fishing closures.

The goal of this project is to restore shellfish injured by PCB contamination through the construction of a shellfish grow out up-well system. The system is a tank-based system using recirculated

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sea water, and if selected, it would involve locating an appropriate site for the facility, and the design, construction and startup of the facility. Once constructed, the facility would be used to raise shellfish to a size that, after placement in the wild, would have a high probability of surviving to spawning and harvest size. This system would assist the Council's shellfish restoration efforts already receiving restoration funding. The system would allow shellfish seed to be purchased at a small size and then grown under controlled conditions to a size that would survive predation. Smaller seed is less expensive than larger seed, so this idea would allow more seed to be purchased. More areas will be seeded and there will be quicker returns for the effort. Although not included in the proposal, based on the technical advisors' recommendation, the Trustees will require this project to include a component to scientifically document the extent of success of this stocking effort.

13. Restoration and Management of Tern Populations (Council suggested amount: $1,232,000)

Roseate and common terns were injured while feeding on PCB contaminated fish in the New Bedford Harbor Environment. The project goal is to rebuild and restore the population of roseate terns(a federally listed endangered species) and common terns through management or enhancement of nesting locations. The management aspect of this project involves moving other species, such as gulls, off the nesting areas and the daily monitoring of the terns that locate at the three islands.

This idea would extend the work being conducted under restoration funding from Round I for an additional period of 6 years. Round I provided funding ($266,400) to implement biological management and monitoring of tern colonies at Bird Island, Marion, Massachusetts, and Ram Island, Mattapoisett, Massachusetts to restore population of common terns and roseate terns. At a third island, Penikese Island, Gosnold, Massachusetts, the project focused on reclaiming the island as a nesting site by managing gulls. Preliminary engineering work to stabilize Bird island and toxicological analyses of tern eggs were also funded.

14. Riverside Auto Wrecking Land Acquisition (Council suggested amount: $675,000)

This idea proposes to purchase and place conservation restrictions on four lots in Acushnet totaling approximately 14.3 acres of land in the upper harbor portion of the New Bedford Harbor Superfund Site. The purchase, and conservation restriction would preserve the land from redevelopment and provide protection to the wetlands or wetland fringe adjacent to the properties. The wetland fringe is one of the areas determined to be contaminated by PCBs and will be remediated by removing the contaminated portion followed by replanting. Accordingly this project will provide an acquisition of equivalent natural resources to those which were injured or lost due to PCB contamination.

One of the properties is the home of an auto wrecking yard and is located across the river from the Aerovox facility, one of the past sources of contamination of the harbor. The applicant hopes to use the parcels for scientific study, environmental education and habitat restoration. The purchase of these parcels (and cleanup through other funding sources) would enhance the function of the adjacent wetlands and the aesthetics of the upper harbor. The technical advisors recommended, and the Council agreed, that any funding provided be limited to purchase of, and placement of conservation restrictions on, the properties and identified restoration activities but not for the cleanup or staffing. The standard pre-acquisition tasks would need to be satisfied before the purchase could occur. (See preliminary decision number 1.)

15. Upper Harbor Confined Disposal Facility (CDF)Natural Resource Habitat Enhancements (Council suggested amount: $25,000)

This idea is to enhance the three CDFs north of Coggeshall Street being built to hold contaminated harbor sediments by incorporating plantings for habitat enhancement which could not otherwise be funded or implemented by EPA. The design of the CDFs would incorporate plantings conducive to use by birds and other wildlife for similar natural resource functions to those lost due to the contamination of the CDFs as a result of PCB contamination in the Harbor: such lost or injured natural resource functions include cover, foraging and/or feeding. The Council would like to first determine, through a study, the type of plantings that could be supported by these structures, including the sides of the structures. Such plantings would further benefit the injured natural resources present in the Harbor. If the plantings are determined to be likely to restore or replace PCB-injured natural resources in the area, the Council would consider a funding level necessary to support the plantings.

16. Upper Sconticut Neck Shellfish/ Sewer Installation (Council suggested amount:$150,000 for study, $550,000 in reserve)

This restoration idea seeks to eliminate a potential source of pollution which has closed shellfish beds and recreational areas in the Outer New Bedford Harbor off Sconticut Neck, Fairhaven. Shellfish beds in the Harbor were contaminated with PCBs resulting in fishery closures. This project would replace those beds by opening up beds closed by septic contamination. It is believed that at least one of the sources of pollution into this area is individual septic systems that release fecal contaminants which eventually migrate into the harbor. Although the Town of Fairhaven has made great efforts to identify individual sources and correct the problem, the contamination still continues. To further address this problem, the idea proposes to connect 450 Sconticut Neck residential dwellings to the municipal sewer system, which may reduce fecal contamination in the Outer Harbor. This idea, if feasible, will protect an existing shellfish bed from fecal bacterial contamination.

The Council is concerned that there may be several contaminant sources that are impacting these shellfish beds. Rather than commit a significant amount of funding to correct what may be only one source of contamination, the Council would like to undertake a study to determine the sources impacting these shellfish beds and the best way to correct the source of contamination. If the results conclusively determine that the Sconticut Neck septic systems are responsible, and the idea is feasible, the Council would then release additional funds to assist the design and engineering for this project.

17. Wineagansett Field Station—New Bedford Harbor Environmental Education and Coastal Resources Restoration Center (Council suggested amount: $360,000)

This idea contains many different components which the Council believes to be severable. The Council preliminarily supports the following aspects of the idea: habitat restoration and environmental education projects targeting specific human activities. In particular, the Council believes at this time that there are discrete habitat restoration projects on the property that should be identified and implemented, including: restoring salt marsh degraded

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by insufficient flow (salt marshes were injured by PCBs); restoring water quality in Winseganseett Pond by investigating and correcting pollutant inputs (salt pond habitat assists natural resources injured by PCBs); and restoring living resources through eelgrass planting (eelgrass plantings assist in the restoration of natural resources injured by PCBs). These restoration activities would provide replacement for similar lost or injured natural resources in the Harbor Environment.

The Council also believes that there are opportunities to educate people about restoration of PCB injured natural resources in the New Bedford Harbor Environment through conducting activities at this site and encouraging additional restoration efforts. For example, there are eelgrass beds, saltmarsh and a salt pond located on the site. As those areas are restored, or enhanced, it may be appropriate to provide specific training programs to educate schoolchildren, the public, and municipal officials regarding the functions of these resources, and the appropriate methodologies to restore and monitor the resources in the New Bedford Harbor Environment.

The Council also evaluated the need for a full-time staff person to be funded from the New Bedford Harbor Trust Accounts. The Council chose instead only to recommend sufficient funds to allow contracting for the specific services needed. The Council also recommends some funding for the trail and public access improvements and protective/interpretative signage.

Classification

This notice does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

Authority: 42 U.S.C. 4321 *et seq.* and 9601 *et seq.*

Dated: July 21, 2000.

Andrew J. Kemmerer,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 00–19028 Filed 7–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the President, Naval War College

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Board of Advisors to the President, Naval War College, will meet to discuss educational, doctrinal, and research policies and programs at the Naval War College. This meeting will be open to the public.

DATES: The meeting will be held on August 15, 2000, from 8:30 a.m. to 4:30 p.m., and on August 16, 2000, from 8:30 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held in Conolly Hall, Naval War College, 686 Cushing Road, Newport, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary E. Estabrooks, Assistant to the Dean of Academics, Naval War College, 686 Cushing Road, Newport, RI 02841–1207, telephone (401) 841–3589.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of the Board of Advisors meeting is to elicit advice on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College since the last meeting of the Board on 17 and 18 September 1998.

Dated: July 18, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps,, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19021 Filed 7–26–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404, announcement is made of the intent to exclusively license U.S. Navy patent number 5,520,331 entitled "Liquid Atomizing Nozzle".

The patent intended to be licensed has been assigned to the United States of America as represented by the Secretary of the Navy, Washington, DC.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, not later than September 25, 2000.

ADDRESSES: Written objections are to be filed with the Business Development Office, NAWCAD, Lakehurst, New Jersey 08733, telephone (732) 323–2948, E-mail: kohlerhk@navair.navy.mil.

FOR FURTHER INFORMATION CONTACT: Hans Kohler, Business Development Office, NAWCAD, Lakehurst, New Jersey 08733, telephone(732) 323–2948, E-mail: kohlerhk@navair.navy.mil.

SUPPLEMENTARY INFORMATION: This patent covers a convergent/divergent gas nozzle, which atomizes a liquid provided through a delivery tube, providing an extremely fine mist having a high momentum. The nozzle is particularly well suited to fire extinguishment.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Navy, as represented by the Naval Air Warfare Center, intends to exclusively license this invention to International Aero, Inc., a small business which is interested in manufacturing, using, and/or selling devices or processes involved in this invention.

Dated: July 18, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19019 Filed 7–26–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Marine Desalination Systems, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Marine Desalination Systems, LLC., revocable, nonassignable, exclusive license in the United States, to practice the Government-owned invention described in U.S. Patent No. 5,873,262 entitled "Desalination Through Methane Hydrate" issued February 23, 1999.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 25, 2000.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202)767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 18, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19022 Filed 7–26–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

ALTWEGG, D.M. MR.
AMERAULT, J.F. VADM
ANTOINE, C.S. MR.
BAILEY, W.C. MR.
BAUGH, D. E. RADM
BAUMAN, D. M. MR.
BECRAFT, C. H. HON.
BLICKSTEIN, I. N. MR.
BONWICH, S. M. MR.
BOYD, W. R. MR.
BOYER, R. R. MR.
BRANT, D. L. MR.
BROWN, P. F. MR.
BUCHANAN III, H. L. HON.
BUONACCORSI, P. P. MR.
CALI, R. T. MR.
CAMP, J. R. MR.
CARPENTER, A. W. MS.
CASSIDY JR, W. J. MR.
CATRAMBONE, G. P. MR.
CHURCH, A. T. RADM
CIESLAK, R. C. MR.
CIPRIANO, J. MR.
COCHRANE JR, E. R. MR.
COFFEY, T. DR.
COHEN, J. M. RADM
COHN, H. MR.
COLE, D. A. MR.
COMMONS, G. L. MS.
COOK, J. RADM.
CRABTREE, T. R. MR.
CUDDY, J. V. MR.
DANZIG, R. HON.
DAVIDSON, M. H. MR.
DAVIS, J. P. RADM
DEMARCO, R. DR.
DIXSON, H. L. MR.
DRAIM, R. P. MR.
DOHERTY, L. M. DR.
DOWD, T. K. MR.
DUDLEY, W. S. DR.
DURHAM, D. L. DR.
DWYER, D. RADM
EATON, W. D. MR.
EHRLER, S. M. MR.
ELLIS, W. G. MR.
ESSIG, T. W. MR.
EVANS, G. L. MS.
FEIGLEY, J. M. BGEN
FIELDS, A. MAJGEN
FILIPPI, D. M. MS.
FIOCCHI, T. C. MR.
FLORIP, T. F. MR.
FORD, F. B. MR.
FRANKEN, D. J. MR.
GERRY, D. F. MR.
GISCH, R. G. MR.
GLASCO, L. M. MR.
GOTTFRIED, J. M. MS.
GREENERT, J. W. RADM
GUARD, H. DR.
HAGEDORN, G. D. MR.
HAMMES, M. C. MR.
HAMMOND, R. E. MR.
HANNAH, B. W. DR.
HARTWIG, E. DR.
HAUENSTEIN, W. H. MR.
HAYNES, R. S. MR.
HEATH, K. S. MS.
HEFFERON, J. J. MR.
HENRY, M. G. MR.
HICKS, S. N. MR.
HIGGINS, K. L. DR.
HILDEBRANDT, A. H. MR.
HOLADAY, D. A. MR.
HOWELL, D. S. MS.
HOWIE, H. K. MR.
HUBBELL, P. C. MR.
HULTIN, J. M. HON.
JENKINS, H. G. RADM
JOHNSTON, B. RADM
JOHNSTON, K. J. DR.
JOSEPHSON, D. H. MS.
JUNKER, B. DR.
KASKIN, J. D. MR.
KEIL, J. G. MR.
KELLY, L. J. MR.
KELSEY, H. D. MR.
KEMP, C. RADM.
KLEINTOP, M. U. MS.
KLIMP, J. W. LTGEN
KNUDSEN, R. E. MR.
KOLB, R. C. DR.
KOTZEN, P. S. MS.
KRASIK, S. A. MS.
KREITZER, L. P. MR.
LACEY, M. E. MRS.
LAMADE, S. K. MS.
LAUX, T. E. MR.
LEACH, R. A. MR.
LEBOEUF, G. G. MR.
LEE, JR., P. M. MAJGEN
LEFANDE, R. DR.
LEGGIERI, S. R. MS.
LEKOUDIS, S. DR.
LEWIS, R. D. MS.
LIPPERT, K. W. RADM
LISIEWSKI, R. S. MR.
LOFTUS, J. V. MS.
LONG, L. MS.
LOOSE, M. K. RADM
LOPATA, F. A. MR.
LOWELL, P. M. MR.
LYNCH, J. G. MR.
MALTBIE JR, W. F. MR.
MARQUIS, S. L. DR.
MARTIN, R. J. MR.
MASCIARELLI, J. R. MR.
MASHBURN, JR., H. MAJGEN
MATTHEIS, W. G. MR.
MCELENY, J. F. MR.
MCKISSOCK, G. S. LTGEN
MCMANUS, C. J. MR.
MCNAIR, J. W.
MEADOWS, L. J. MS.
MELCHER, G. K. MR.
MERRITT, D. L. MR.
MERRITT, M. M. MR.
MESEROLE JR., M. MR.
MILAN, L. F. MR.
MILLER, K. E. MR.
MOHLER, M. K. MR.
MOLZAHN, W. R. MR.
MONTGOMERY JR., H. E. MR.
MOORE, S. B. MR.
MOREHOUSE, B. L. MS.
MOY, J. W. MR.
MUNSELL, E. L. MS.
MURPHY, P. M. MR.
MUTH, C. C. MS.
NEERMAN, D. W. MR.
NEHMAN, J. MR.
NEMFAKOS, C. P. MR.
NEWTON, L. A. MS.
NICKELL JR, J. R. MR.
O'DRISCOLL, M. J. MR.
OLSEN, M .A. MS.
PANEK, R. L. MR.
PAULK, R. D. MS.
PAYNE, T. MR.
PENNISI, R. A. MR.
PERSONS, B. J. MR.
PHELPS, F. A. MR.
PIRIE JR, R. B. HON.
POLZIN, J. E. MR.
PORTER, D. E. MR.
POWERS, B. F. MR.
PRESTON, S. W. HON.
PRINE, R. MR.
RAMBERG, S. DR.
RANDALL, S. R. MR.
RATH, B. DR.
RAU, D. CAPT
RHODES, J. E. LTGEN
ROARK JR., J. E. MR.
ROBUSTO, J. D. MR.
ROUTE, R. A. RADM
RIEGEL, K .W. DR.
ROBERSON, E. S. MS.

RODERICK, B. A. MR.
ROSSI, D. MR.
RYZEWIC, W. H. MR.
SAALFELD, F. DR.
SANDEL, E. A. MS.
SANDERS, R. L. MS.
SAUL, E. L. MR.
SAVITSKY, W. D. MR.
SCHAEFER, J. C. MR.
SCHAEFER JR, W. J. MR.
SCHNEIDER, P. A. MR.
SCHUBERT, D. CAPT
SCHUSTER JR., J. G. MR.
SHEA, R. M. BGEN
SHEPHARD, M. R. MS.
SHOUP, F. E. DR.
SIRMALIS, J. E. DR.
SLOCUM, W. S. MR.
SMITH JR, R. C. RADM
SOMOROFF, A. R. DR.
SPARKS JR, J. E. MR.
SPINRAD, R. DR.
STELLOH-GARNER, C. MS.
STOREY, R. C. MR.
STUSSIE, W. A. MR.
SZEMBORSKI, S. R. RADM
TAMBURRINO, P. M. MR.
TARRANT, N. J. MS.
THOMAS, J. R. BGEN
THOMAS, R. O. MR.
THROCKMORTON JR., E. L. MR.
TISONE, A. A. MR.
TOWNSEND, D. K. MS.
TRAMMELL, R. K. MR.
TURNER, R. F. MR.
TURNQUIST, C. J. MR.
UHLER, D. G. DR.
VERKOSKI, J. E. MR.
VICCIONE, D. E. DR.
WELCH, B. S. MS.
WEYMAN, A. S. MR.
WHITON, H. W. RADM
WHITTEMORE, A. MS.
WILLIAMS, G. P. MR.
WILLIAMS, M. J. LTGEN
WRIGHT, J. W. DR.
YOUNT, G. R. RADM
ZEMAN, A. R. DR.
ZIMET, E. DR.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Arrowood, Office of the Assistant Secretary, Manpower and Reserve Affairs, 1000 Navy Pentagon, Washington, DC 20350–1000, telephone (703) 696–5165.

Dated: July 20, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps,, U.S. Navy, **Federal Register** *Liaison Officer.*

[FR Doc. 00–19020 Filed 7–26–00; 8:45 am]

BILLING CODE 3810–FF–P

DENALI COMMISSION

Denali Commission Work Plan for Federal Fiscal Year 2002; Request for Comments

SUMMARY: The Denali Commission was established by The Denali Commission Act of 1998 to deliver the services of Federal Government in the most cost-effective manner practicable to communities throughout rural Alaska, many of which suffer from unemployment rates in excess of 50%. Its purposes include, but are not limited to, providing necessary rural utilities and other infrastructure that promote health, safety and economic self-sufficiency.

The Denali Commission Act requires that the Commission develop proposed work plans for future spending and that the annual work plans be published in the **Federal Register** for a 30-day period, providing an opportunity for public review and comment.

This **Federal Register** Notice serves to announce the 30-day opportunity for public comment on the Denali Commission Work Plan for Federal Fiscal Year 2002.

FOR FURTHER INFORMATION CONTACT: Jeffrey Staser, Federal Co-Chairman, Denali Commission, 510 'L' Street, Suite 410, Anchorage, Alaska 99501, Phone: (907) 271–1414, Fax: (907) 271–1415, Email: JStaser@denali.gov, http://www.denali.gov.

SUPPLEMENTARY INFORMATION: Copies of the Denali Commission Work Plan can be obtained by contacting the Denali Commission as provided in the **FOR FURTHER INFORMATION CONTACT** section above.

2002 Work Plan

October 1, 2000.

Vision

Alaska will have a healthy well-trained labor force working in a diversified and sustainable economy that is supported by a fully developed and well-maintained infrastructure.

Mission

The Denali Commission will partner with tribal, federal, state, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to develop a well-trained labor force employed in a diversified and sustainable economy, and to build and ensure the operation and maintenance of Alaska's basic infrastructure.

Values

Catalyst For Positive Change—The Commission will be an organization through which agencies of government, including tribal governments, may collaborate, guided by the people of Alaska, to aggressively do the right things in the right ways.

Respect For People and Cultures—The Commission will be guided by the people of Alaska in seeking to preserve the principles of self-determination, respect for diversity, and consideration of the rights of individuals.

Inclusiveness—Provide the opportunity for all interested parties to participate in decision-making and carefully reflect their input in the design, selection, and implementation of programs and projects.

Sustainability—The Commission will promote programs and projects that meet the current needs of communities and provide for the anticipated needs of future generations.

Accountability—The Commission will set measurable standards of effectiveness and efficiency for both internal and external activities.

Part One: Denali Commission Purposes and Approach

Purposes of Commission

The Denali Commission Act of 1998, as amended (Division C, Title III, PL 105–277) states that the purposes of the Denali Commission are:

To deliver the services of the Federal Government in the most cost-effective manner practicable by reducing administrative and overhead costs.

To provide job training and other economic development services in rural communities, particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent).

To promote rural development, provide power generation and transmission facilities, modern communication systems, bulk fuel storage tanks, water and sewer systems and other infrastructure needs.

Challenges to Development and Economic Self-Sufficiency

Geography—The State of Alaska encompasses twenty percent of the landmass of the United States, encompassing five (5) climatic zones from the arctic to moderate rain forests in the south.

Isolation—Approximately 220 Alaskan communities are accessible only by air or small boat. Some village communities are separated by hundreds of miles from the nearest regional hub community or urban center.

Unemployment—The economy of rural Alaska is a mix of government or government-funded jobs, natural resource extraction and traditional Native subsistence activities. Many rural Alaskans depend on subsistence hunting, fishing and gathering for a significant proportion of their foods, but also depend on cash income to provide the means to pursue subsistence

activities. Cash paying employment opportunities in much of rural Alaska are scarce and are highly seasonal in many areas; unemployment rates exceed 50% in 147 communities.

High Cost and Low Standard of Living—Over 180 communities suffer from inadequate sanitation or a lack of safe drinking water. Residents face high electric costs: 61 cents per kilowatt-hour for electricity in a few communities (average in rural Alaska is approximately 40 cents per kilowatt-hour) even with State subsidies for rural power.

Commission Relationship With Other Organizations

The Commission intends to act as a catalyst to encourage local, regional, and statewide comprehensive assessment, planning and ranking of needed infrastructure improvements, economic development opportunities and training needs.

The Commission, working with existing agencies or other organizations whenever feasible, intends to improve coordination and to streamline and expedite the development of needed infrastructure, economic development and training.

The Commission may build on the work of both Federal and State of Alaska agencies to identify statewide needs, to establish priorities and to develop comprehensive work plans.

The Commission will seek the support and involvement of affected local communities, governing bodies, businesses and other organizations.

The Commission will encourage partnerships between government, non-profit organizations, and businesses to expedite sustainable economic and infrastructure development.

Commission Schedule

The Commission will hold public meetings quarterly and make every reasonable effort to maximize public participation in annual work plan development. With completion of this work plan the Commission schedule will be consistent with the federal budget cycle. The work plan will be updated at least annually.

Guiding Principles

The following principles are intended to foster careful and systematic planning and coordination on a local, regional and statewide basis for infrastructure and economic development, and to strongly support local involvement in project planning and implementation.

- Projects in economically distressed communities will have top priority for Denali Commission funding.
- Projects should be compatible with local cultures and values.
- Projects that provide substantial health and safety benefit, and/or enhance traditional community values, will generally receive priority over those that provide more narrow benefits.
- Projects should be sustainable.
- Projects should have broad public involvement and support. Evidence of support might include endorsement by affected local government councils (Municipal, Tribal, IRA, etc.), participation by local governments in planning and overseeing work, and local cost sharing on an 'ability to pay' basis.
- Priority will generally be given to projects with substantial cost sharing.
- Priority will generally be given to projects with a demonstrated commitment to local hire.
- Commission funds may supplement existing funding, but will not replace existing federal, state, local government, or private funding.
- The Commission will give priority to funding needs that are most clearly a federal responsibility.

Additional Guiding Principles for Infrastructure Projects

- A project should be consistent with a comprehensive plan.
- Any organization seeking funding assistance must have a demonstrated commitment to operation and maintenance of the facility for its design life. This would normally include an institutional structure to: levy and collect user fees if necessary, account for and manage financial resources, and have trained and certified personnel necessary to operate and maintain the facility.

Additional Guiding Principles for Economic Development Projects

- Priority will be given to projects that enhance employment in high unemployment areas of the State, with emphasis on sustainable, long-term local jobs or career opportunities.
- Projects should be consistent with statewide or regional plans.
- The Commission may fund demonstration projects that are not a part of a regional or statewide economic development plan if such projects have significant potential to contribute to economic development.

Economically Distressed Communities

The following criteria is to be used in designating economically distressed communities or regions included in Section 5.3 of the Denali Commission Code:

1. Per capita market income no greater than 67% of the U.S. average; and
2. Poverty rate at 150% of the U.S. average or greater; and
3. Three-year unemployment rate at 150% of the U.S. average or greater; or
4. Twice U.S. poverty rate and either (1) or (3) above.

As required by the Denali Commission Code, distressed community and/or region designations for a given fiscal year will be based upon data available March 31st of the preceding fiscal year. In as much as the primary purpose of the Denali Commission is to provide assistance to distressed communities or regions of Alaska, a minimum of 75% of funds available to the Commission in FY02 will be allocated to communities or regions so designated.

Part Two: Work Plan for FY 2002

The Commission determined that the scope and scale of infrastructure issues facing rural Alaska are staggering. Assessment of needs and refinement of estimates will be an ongoing process. The total of known infrastructure needs is estimated to be over $12 billion. Training and economic development needs have not been quantified, but the unmet needs in these areas are also believed to be quite large. The following table summarizes identified needs for infrastructure categories.

PRELIMINARY NEEDS ASSESSMENT

Funding category	Category class	Dollars	Dollars
Infrastructure	Housing Construction/Development	1,800,000,000	
	School Construction and Major Maintenance	530,000,000	
	Power Utilities	168,000,000	
	Fuel Storage	450,000,000	
	Drinking Water Facilities.		
	Waste Water Utilities	1,058,000,000	

PRELIMINARY NEEDS ASSESSMENT—Continued

Funding category	Category class	Dollars	Dollars
	Waste Management Facilities.		
	Health Care Facilities	235,000,000	
	Airport Facilities	926,000,000	
	Road Construction	7,500,000,000	
	Port Facilities	214,000,000	
	Telecommunications	(1)	
	Community Facilities	(1)	
	Other	(1)	
	Subtotal		12,881,000,000
Economic Development	Comprehensive Planning	(1)	
	Other	(1)	
Job Training, Education, Capacity Building	Comprehensive Planning	(1)	
	Other	(1)	
	Total		12,881,000,000

See Appendix A for Background Information on this table.
[1] Unknown.

The Denali Commission will collaborate with other funding agencies and with all impacted and interested parties to address identified needs on a priority basis. Allocation of Denali Commission funds to various funding categories and classes within those categories will be based on a formula agreed to by the Commission at the beginning of each fiscal year. For FY02 the formula allocates 75% of appropriated funds to infrastructure, 10% to economic development and 10% to job training and capacity building. The Commission has a statutory limit of 5% for administrative expenses. In addition to appropriated funds, the Commission receives $7–$10 million annually in interest from the Trans Alaska Pipeline Liability (TAPL) fund, which is earmarked for bulk fuel facility upgrade and maintenance.

Of necessity, the Commission's work must be phased over a number of years based on the urgency of competing needs and availability of funding. The theme of rural energy, as one important prerequisite to all other utilities and economic development, was selected as the top priority for infrastructure funds. Primary health care facilities were identified as the second infrastructure theme for the Commission beginning in FY00. These two themes will continue to be the primary areas of focus for infrastructure funds through FY02.

For planning purposes, the Commission has budgeted $53,000,000 using the Commission's approved formula for FY02.

FY02 budget request and TAPL interest funding—combined budget	FY02 budget request		TAPL interest funds		TAPL & FY02 combined	
Funding category	Funding level	Percentage	Funding level	Percentage	Funding level	Percentage
Infrastructure:						
Bulk Fuel	$7,750,000	.....	$7,600,000	95	$15,350,000	.....
Power	10,000,000	.....	.....	.....	10,000,000	.....
Health Clinics	16,000,000	.....	.....	.....	16,000,000	.....
Subtotal	33,750,000	75	.....	.....	41,350,000	78
Economic Development:						
Subtotal	4,500,000	10	.....	.....	4,500,000	8.5
Training:						
Subtotal	4,500,000	10	.....	.....	4,500,000	8.5
Administration:						
Subtotal	2,250,000	5	400,000	5	2,650,000	5
Total	$45,000,000	100	$8,000,000	100	$53,000,000	100

Notes:
1. The percentages shown under the FY02 Budget Request column were selected by the Commissioners.
2. TAPL interest funds by statute are for bulk fuel projects only.

Development and execution of the Administrative Budget is solely the responsibility of the Federal Co-Chair. Allocation of funds within the balance of the budget will be made by the full Denali Commission, utilizing the guiding principles outlined in Part I of this document, and priority systems designed specifically for each budget category.

Project implementation will generally be accomplished through state, local or federal government entities or non-profit organizations. It shall be the responsibility of all such implementing organizations to comply with all applicable laws. Any special requirements will be articulated in the funding agreement between the Denali Commission and the funding recipient.

As indicated above, 75% of Denali Commission funds are designated for priority infrastructure themes and those funds are distributed using priority systems designed for each theme. Concurrently the Commission

encourages communities and regional entities to complete comprehensive community and economic development plans. Priority systems for themes selected for funding by the Commission give credit to communities with current comprehensive plans.

Projects resulting from funding of infrastructure themes generally are consistent with high priorities identified in community plans. The existence of community plans greatly facilitates the location, design, and completion of infrastructure projects within a community. The Denali Commission also reserves approximately 10% of its funding for economic development projects, which commonly are identified in local, or regional economic development plans.

The Commission also participates in the organization and execution of regional "economic summits." These summits, which are generally held on an annual basis throughout the State, bring key state and federal agencies together with communities and regional organizations for the purpose of matching needs identified in community and regional comprehensive plans with federal, state and other available funding.

Appendix A—Housing Construction/ Development

Need: $1.8 billion.

Annual Funding: $58–67 million.

Source: Housing and Urban Development (HUD) FY 1999 Report.

Background: According to the FY99 report published by HUD, Alaska has a need for 12,519 new units. At an average cost of $145,000 per unit, the total need for new housing is approximately $1.8 billion. This estimate does not include repairs and renovation projects. The number of units needed has increased from the 1990 census, which showed over 11,000 units needed.

At the current rate, 400 to 600 units are constructed in Alaska each year.

Projects are prioritized and funded in a variety of ways including grants to local housing authorities, regional housing authorities, low interest loans, and transfers to other agencies.

Entities providing funding for housing include, but may not be limited to, HUD, Alaska Housing Finance Corporation, and the U.S. Department of Agriculture.

School Construction and Major Maintenance

Need: $530,183,470 million.

Annual Funding: Annual funding varies from year to year.

Source: Final Agency Decision: 4/5/99, Project Priority List published by the State of Alaska Department of Education and Early Development (DEED).

Background: Based on requests from individual school districts, the State of Alaska DEED has compiled a listing of school construction and major maintenance projects. DEED has reviewed the project requests and distilled the eligible projects to a list that totals $530,183,470.

The State of Alaska recently passed a bond package for State FY01 that addresses numerous school construction and major maintenance needs from the DEED list. This program is the primary responsibility of the State of Alaska and will remain such. However, there may be opportunities for the Denali Commission to partner with the state in areas that are a federal responsibility or that are related to the efforts of the Denali Commission. Examples of this partnership are the bulk fuel storage needs of a school or the school's role in developing job training in a community.

The Denali Commission will continue to work with DEED to determine if there is an opportunity for the Commission to assist with some federally mandated component of the program.

Power Utilities

Need: $168 million.

Annual Funding: No program of annual funding.

Source: Alaska Energy Authority.

Background: According to the Alaska Energy Authority (formerly the State of Alaska Division of Energy), they have needs in the following categories for the following amounts.

$68,000,000—Power Plant Construction and Rehabilitation.

$100,000,000—Power distribution system construction, expansion and rehabilitation.

The Alaska Energy Authority (AEA) is a state agency commissioned with oversight of energy related infrastructure in rural Alaska. The agency functions predominantly in areas that are typically not covered by a utility cooperative. These power plants and distribution systems are typically in areas where the economic base is insufficient to bond or self-fund construction of the power facilities, and other sources of funding are required. At the current time, the AEA is the only source of funding for these projects, and there is no defined funding stream to take care of the above stated needs.

Another interest of the Denali Commission is to work towards conserving energy usage in rural communities. Generator efficiencies, structural insulation, waste heat recovery, transmission efficiencies, and alternative power generation are all possible topics of consideration for the Commission.

Fuel Storage

Need: $450 million.

Annual Funding: $15–18 million ($8–10 million of which is Denali Commission funds).

Source: AEA briefing report dated September 24, 1999.

Background: The AEA initiated an assessment of bulk fuel tank farms in rural Alaska communities in 1998. This assessment should be completed by Fall 2000. The project assessed the condition of the tank farms, including the total fuel capacity of each in terms of gallons.

Approximately 180 communities have been surveyed to date. Total storage capacity of the surveyed communities is 75,221,754 gallons. A more complete cost and assessment for community bulk fuel consolidation will be developed by AEA.

Water and Wastewater

Need: Current need: $850 million (Funded fiscal years 1960—2001: $1,140,800,000 billion)

Annual Funding: There are six existing primary funding sources for developing and improving water and wastewater facilities in rural Alaska. Those sources and the amounts contributed in fiscal year 2001 are shown below.

- U.S. Public Health Service—Indian Health Service $17 million
- U.S. Environmental Protection Agency Drinking Water Tribal Set-Aside $4,098,800
- U.S. Environmental Protection Agency Clean Water Tribal Set-Aside $2,295,000
- U.S. Environmental Protection Agency Infrastructure Grant $26,649,450
- U.S. Department of Agriculture-Rural Development $19,464,400
- State of Alaska, Village Safe Water $15,371,250

Total: $84,878,900.

While these amounts vary from year to year, the annual average for fiscal years 1997 through 2001 is $78 million. The trend has been towards increased funding levels. Secondary funding sources include federal transportation funds and housing funds that contribute in a less direct way to water and sewer system improvements.

Background: Assistance in developing water and wastewater facilities in rural Alaska is provided to communities through two programs. The Alaska Native Tribal Health Consortium (ANTHC) is the organization responsible for administering Indian Health Service, and EPA Indian Set-Aside sanitation construction funds in Alaska. The Alaska Department of Environmental Conservation's Village Safe Water (VSW) program is the organization responsible for administering sanitation construction funds provided by the State, EPA (non-Tribal Set-Aside), and the USDA-Rural Development.

Both ANTHC and VSW work with rural communities to plan design and construct sanitation systems. ANTHC and VSW have developed a close working relationship-despite the relative recent transfer of the sanitation program from IHS to ANTHC in October 1998. The priority funding lists of both organizations are coordinated and generally compliment each other. ANTHC predominately works in Alaska communities with Native-owned homes, whereas VSW works in all rural communities (Native and non-Native). A lead agency is designated for each community receiving assistance. Lead agencies typically have responsibility for administering all state and federal funding in the community.

Existing funding streams and programs are making progress towards satisfying the overall need for sanitation facilities in rural Alaska. An estimated remaining need of $850 million and a current funding level of $85 million combine to suggest a 10-year timeframe for meeting the need. The Governor's Council on Rural Sanitation set a target funding level of $110 million per year.

Increased federal funding is being sought through existing funding streams to reach that target.

The Denali Commission has not targeted water and wastewater improvements for infrastructure funding due to funding and effort already underway in this sector or critical infrastructure. However, the Commission is involved in improving planning and interagency coordination.

Primary Health Care Facilities

Need: $235 million
Annual Funding: Unknown
Source: Alaska Rural Primary Care Facility Needs Assessment—Interim Report dated June 26, 2000. *Background:* The Denali Commission in partnership with the Alaska Native Tribal Health Consortium, the Indian Health Service, and the Alaska Department of Health and Social Services embarked on a survey in FY00 to quantify the cost of rural primary care facility improvements. It is the intent of all parties to build on this initial survey and to identify additional health related infrastructure needs in rural Alaska (beyond primary care) including mental health, dental care, itinerant health service providers' quarters, etc.

Airport Facilities

Need: $1 billion
Annual Funding: $58–120 million
Source: 1999 Transportation Needs and Priorities in Alaska; Published by the State of Alaska Department of Transportation and Public Facilities, and the current FAA Aviation Improvement Program (AIP).
Background: The Federal Aviation Administration currently provides most of the funding for airport projects throughout the state. The state or local sponsor will contribute roughly 10% in the form of match. There are 1,112 designated airports, seaplane bases, and aircraft landing areas in the state of Alaska. The Alaska Department of Transportation & Public Facilities (ADOT&PF) owns and operates 261 public airports, the majority of Alaska's public airports. Additionally, 23 public airports are owned and operated by local governments.

Backlog of airport projects in the state amounts to approximately $1 billion.

Historically, funding that the state receives for airports from the FAA—AIP has ranged from $58 million in 1990, to $81 million in 1998. As a result of the recent passage of AIR–21 legislation, a funding increase is expected and scheduled for beginning Oct 2000 up to a potential amount of $120 million for Alaska.

Road Construction and Major Maintenance

Need: $6 billion
Annual Funding: $350 million
Source: Transportation Needs and Priorities in Alaska published by the State of Alaska Department of Transportation and Public Facilities.
Background: The State of Alaska administers most of the Federal Highway Administration (FHWA) funding allocated to Alaska with the exception of money specifically designated for the Bureau of Indian Affairs (BIA), which currently amounts to approximately $14 million per year. Although overall funding levels are up for roads, the BIA share has recently slipped from $16 million annually under ISTEA (1991–1997). The BIA funding does not go far considering it must provide for approximately 209 tribes within Alaska. BIA officials have recently announced that any given village can expect one project every 20 years, on average.

Of note, the BIA is currently conducting a rule-making process to revamp the national formula that distributes BIA funding among the states. The legislative language directing this new formula is more Alaska-friendly, but the past distribution formulas have not been favorable to Alaska and it remains to be seen if the new formula will redress this situation.

One important distinction between FHWA and BIA funding for roads is the long-term maintenance obligation. Under FHWA, the recipient is responsible for maintenance in perpetuity, with no federal support for this activity. Under the BIA funding system, such roads are then added to the IRR (or Indian Reservation Road system) and are eligible for a share of a national pot of money allocated to maintenance of IRR roads.

Overall needs for highway and road projects were estimated at $6 billion in 1999. In the current TEA–21 era, average funding levels are estimated at approximately $350 million not including possible discretionary grants the state may receive. While this is up substantially from approximately $220 million under ISTEA, the list of unmet needs has been growing even faster as villages and all communities become more aware of this potential funding source.

Most FHWA funding received by the state stays in larger auto-dependent communities, with some funding going to rural communities largely for sanitation roads and trail markings. Funding for projects off the road system goes primarily to larger hub communities.

Improved surface transportation can have many positive effects including lowering costs for goods and services, improving village to village interaction, and allowing for state and federal investments in schools, clinics, airports, harbors, and tank farms to serve more communities per project.

Port Facilities

Need: $247 million approximately
Annual Funding: Varies year by year, typically between $0–5 million
Source: Transportation Needs and Priorities in Alaska published by the State of Alaska Department of Transportation and Public Facilities.
Background: Port and harbor facilities are necessary investments to support maritime commerce, commercial fishing, subsistence, water recreation and general economic development. Wholesale, retail, transportation, and services industries supporting marine activities create jobs and other opportunities. Coastal and riverside communities with good facilities will have safer access, greater mobility, more opportunity and a better quality of life than those without. Port and harbor facilities must offer access to waterways, protection from waves, and water deep enough for navigation. Few communities have perfect harbor conditions naturally. Many communities have spurred economic growth and given vitality to their communities through making improvements by dredging channels and basins, and constructing breakwaters and docking facilities. These improvements open the transportation corridor for maritime commerce.

Port and harbor development in the State has been a close partnership between local government, the state, and the federal government. The federal government has always limited investment and interest to those navigation improvements that satisfy national economic development criteria. State assistance has ranged from complete financial support to little or no financial support. While State assistance expanded and expectations grew during the lucrative days of high oil production, the State has retreated to the basic premise that port and harbor projects require a substantial local funding commitment to be eligible for State assistance. Though not a dedicated funding source, the marine users fuel tax is the traditional foundation of small boat harbor improvements in the State. General obligation bonds have been the foundation of State assisted port development.

The threshold for federal involvement, an assessment of national benefits and costs, is very high. For most of Western Alaska, the geography, climate and low population density weigh heavy against projects as they meet this test. The federal navigation improvement program is helpful in making an existing improvement more productive but it is not useful in creating an opportunity for improvement that does not already exist.

Port and harbor projects can reduce the delivery cost of goods and services, increase the frequency of delivery, reduce damage loss during transport, reduce environmental risk, improve the value of regionally exported resources and products, and improve the productivity, safety and quality of life for people in a region. There may be opportunities for port and harbor development that are consistent with the goals and objectives of the Denali Commission.

Telecommunications

Need: Unknown
Annual Funding: Unknown
Background: Telecommunications and Internet technologies, which are revolutionizing daily life in the United States, are not reaching most Alaskan communities. The positive impact Internet connections will have on education, training, healthcare and economic development in rural communities cannot be overemphasized. The negative impact of leaving rural communities behind in technological advances will only further compound the challenges of self-sustainability for rural Alaska.

The remoteness and sparse populations that so uniquely identify rural Alaska are also the primary reason private telecommunications find it difficult to justify connections in most rural communities.

Typically, small communities have access only through the local public school or library, and tribes may have access through a program being implemented by the

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Department of Interior. However, private users are prohibited from accessing these federally subsidized services. Thus, an individual who wishes to access vital information, obtain distance education or training, open a web-site for commerce, or have an e-mail account from home, must use "1800 dial-up access." The cost of such service in rural Alaska is between $200–$400 per month for basic e-mail and minimal web browsing.

The Denali Commission is in the process of evaluating the availability of basic telecommunications, Internet technologies and other advanced telecommunications through a statewide survey that will be completed in August 2000. The Commission is interested in the availability of telecommunications infrastructure in relation to the future of economic development, education, training and healthcare in rural Alaska.

Community Facilities

Need: Unknown

Annual Funding: Unknown

Background: Communities have a need for community assembly facilities for various purposes, including planning, meetings, traditional functions, and recreation for youth. These facilities, when available, are heavily used in rural communities. No assessment mechanism is in place for determining statewide needs for community facilities.

Appendix B—Infrastructure

In the evolution of the Denali Commission and its approach to infrastructure development some principles have been established. These include the following:

- Selection of infrastructure themes for allocating funds. In FY99 rural energy was selected as the primary infrastructure theme and that priority was continued in FY00 and is expected to continue in FY01 and beyond. In FY00 rural health care facilities were selected as the second infrastructure theme.
- Selection of program/project partners to carry out infrastructure development. The Alaska Energy Authority (AEA) was selected as a Denali Commission partner for rural energy projects. AEA was selected because of its demonstrated capability to prioritize and implement rural energy projects. The overriding point in selection of a program/project partner is that the Commission wishes to utilize existing capabilities provided by state or federal agencies or other organizations. More than one partner may be identified to participate in carrying out Commission sponsored programs/projects for a particular theme.
- Project selection by the Commission and/or the program/project partner must be defendable and credible. In the case of AEA, two separate comprehensive statewide project priority lists had been developed—one for bulk fuel storage facilities, and a second for power generation/distribution projects. As in the case of AEA the Commission will utilize existing credible priority systems. Where a credible statewide priority methodology for a selected theme does not exist, the Commission in cooperation with appropriate organizations will foster the development of a system. This is illustrated by the Commission's efforts in partnership with the Alaska Department of Health and Social Services, the Indian Health Service, and the Alaska Native Tribal Health Consortium to develop a prioritization methodology for primary health care facilities.
- Theme selection is a methodical process. The Commission has stressed the importance of comprehensive investigation and exploration of infrastructure themes so that Commission resources are strategically funneled to "gaps" in state and federal funding streams. Carrying out needs assessments on various infrastructure themes is central to the development of a theme. Energy, telecommunications, and rural primary health care facilities are examples of assessments that were initiated in conjunction with interested state and federal agencies in the Commission's first year.
- Commission partners are responsible for compliance with procedural and substantive legal requirements. It is the expectation of the Denali Commission that partners will comply with all applicable local, state and federal laws in carrying out Commission funded programs/projects. For example the partner must address NEPA and OSHA regulations, federal auditing requirements, competitive procurement issues and so forth. As a result, the Commission will look to partners who have demonstrated both administrative and program/project management success.
- Adherence to the successful project management elements of time, budget and quality. Each of these factors is central to Denali Commission agreements with partners. The Commission wants to put our partners in a position of success in meeting the triple constraint of project management: deliver the project on time, on budget and completion of the full project scope. The challenge to the Commission is to allow sufficient flexibility for each partner to carry out the programs/projects within their own established methods while assuring confident project completion and meeting all requirements of applicable laws and regulations. For example, the AEA employs a project methodology that relies heavily on force account construction (locally sponsored government crews). AEA also uses construction contracting to a lesser degree. In light of the Commission's mandate to address economic development in rural Alaska, force account construction is a good fit. However, for other partners, undertaking other infrastructure themes, construction contracting may be more appropriate. In short, each agreement with a partner organization must be tailored to fit their approach to program/project management.

Rural Energy

AEA has employed a two-step approach to bulk fuel project funding that is strongly supported by the Commission. Starting at the top of the AEA priority list, projects are provided 35% design funds one or more years before being eligible for capital funding. This allows for more accurate project cost estimates, resolution of easement and land issues, development of agreements between various local parties in site selection and tank farm ownership/maintenance. This step also serves to filter projects that are not ready for construction, for one reason or another, from advancing to the second step of project funding. This two-step approach ensures that funding does not sit unused by projects that are not ready for construction. Once a project has resolved any obstacles at the 35% design stage, then they are eligible for capital funding.

It is expected that AEA will reevaluate its priority list from time to time in order to factor in new information, particularly information from the statewide energy strategy. This reevaluation may result in some modification of the list. Funding priorities will also be subject to 'readiness to proceed' considerations as described in part above.

Rural Primary Care Facilities

In past, communities have constructed clinics based upon available grant funds (typically community development block grants of $200,000 to $500,000). Consequently clinic square footage was based upon available funding and not necessarily upon health care delivery service appropriate for the population and demographics of the community.

Many clinics are therefore undersized. In FY99 the Commission allocated $300,000 to undertake a needs assessment for rural primary care facilities. This needs assessment is scheduled for completion by October 2000. The assessment will develop a database of primary health care facility needs statewide. This effort also includes development of a project prioritization methodology.

In FY00, the Commission allocated $1,000,000 for clinic completion projects. At least five communities have previously received CDBG funding for clinics and were not able to complete the facilities due to a number of reasons. This clinic funding should allow the Commission to develop technical and administrative skills in the event FY01 and FY02 Commission appropriations include health care facilities.

The Commission has yet to identify partners for carrying out the rural primary care facilities projects.

Denali Commission's Training Strategy

Background

The Commission realizes that proper and prudent investment in public infrastructure must include a component for training local residents to maintain and operate publicly funded infrastructure. The Commission further realizes that through its' investment in public infrastructure, such as bulk fuel storage facilities, it is creating numerous jobs related to the construction of these facilities and must develop a strategy to ensure local residents are properly trained to receive these jobs.

Therefore, the Denali Commission created a training subcommittee to develop a strategy that would address the job training needs of Alaskan communities. The initial training subcommittee was comprised of Commissioner Mano Frey, Commissioner Mark Hamilton, and the Alaska Human Resource Investment Council Executive Director Mike Andrews. The subcommittee

worked with industry, state, non-profit, and federal organizations developed the Denali Commission's Training Strategy.

The Denali Commission's Training Strategy creates a statewide system to increase the local employment rates in Alaskan communities through the development of skills necessary to construct, maintain, and operate public infrastructure, while also leveraging the ongoing efforts of the State of Alaska in job training for rural Alaskans.

Subsequently, the Commission approved 10% of the FY00 budget for implementation of the developed Training Strategy. Through this funding the Commission ensures local residents are employed on public facility construction projects in their communities, while also protecting the Denali Commission's investment in infrastructure by ensuring local residents are properly trained in the operations and maintenance of completed facilities.

The Denali Commission's Training Strategy involves several components that create a statewide system for job training outreach, coordination and delivery in rural Alaska. The Commission has partnered with several statewide organizations that will perform the necessary functions that make up the Denali Commission's Training Strategy. These organizations and their respective roles are as follows:

Partners

Organization: Alaska Works Partnership

Alaska Works Partnership represents a statewide coalition of Alaska's twenty jointly administered building and construction trades apprenticeship programs.

Role: Apprenticeship Outreach Initiative

A program that provides outreach to rural residents to present the opportunity to participate in the numerous Bureau of Apprenticeship and Training's approved construction apprenticeship programs.

Organization: Alaska Native Coalition on Employment and Training (ANCET)

ANCET is a statewide organization comprised of 13 Alaska native regional non-profits to act from a statewide perspective on education, employment, training, and economic development issues and concerns specific to Native people.

Role: Regional Coordination Initiative

A program that is responsible for developing a system capable of coordinating the employment and training needs of the villages and regional ANCET offices with the workforce demands of Denali Commission projects, and other state and federal public infrastructure projects.

Organization: Alaska Vocational Technical Center (AVTEC)

AVTEC provides accessible technical and related training to a statewide multi-cultural population for employment in the dynamic Alaskan community.

Role: Building Maintenance and Repairer Apprenticeship Delivery Program

A program that provides technical assistance to housing authorities and other community employers to enhance the availability of the Building Maintenance Repairer Apprenticeships (BMR) in rural Alaska. This program will provide and adapt the BMR curriculum to the needs of rural Alaskans.

Organization: Associated General contractors (AGC) of Alaska

The AGC of Alaska is a non-profit construction trade association consisting of general contractors, subcontractors and industry professionals dedicated to improving the professional standards of the construction industry.

Role: Construction Career Pathways Initiative

A program that will help increase the involvement of industry and local employers in schools, provide more school-to-work experience for students, develop direct connection with apprenticeship and post-secondary training programs and ultimately prepare a new workforce.

Organization: State of Alaska Dept. of Labor and Workforce Development

The Department of Labor and Workforce Development fosters and promotes the welfare of the wage earners of the state, improves their working conditions and advances their opportunities for profitable employment.

Role: Denali Training Fund

The Denali Training Fund Program provides financial assistance for specific training needed by local residents to become employed on Denali Commission projects and other state and federally funded infrastructure projects. The Denali Training Fund also provides financial assistance for training needed by local residents to properly operate and maintain completed Denali infrastructure and other state and federally funded infrastructure. The Department of Labor and Workforce Development administers the Denali Training Fund by receiving applications for job training needs in rural communities and leverages these funds with other state funded programs.

Summary

The Training Strategy provides the Denali Commission the flexibility for future investment in job training needs statewide. Currently the Commission's partners and the Denali Training Fund are focusing on jobs created by the construction of energy related projects, such as bulk fuel storage tanks and rural power system upgrades. In the future, the Training Strategy will focus its efforts on other areas where the Commission is investing, such as the job training needs related to the construction and operations of health clinics.

With this strategy in place, the Denali Commission is confident it will provide the necessary component of job training that is imperative to the success of infrastructure construction in Alaska.

Economic Development

In an effort to promote economic development in rural and distressed communities, a number of actions have been initiated.

The Denali Commission believes that a primary key to successful economic development in small communities is adequate public infrastructure. The larger a venture, the more basic infrastructure is necessary. Ultimately it is expected that industry will begin paying for infrastructure improvements that benefit their business. State and federal governments can contribute to development of local economies by assisting in funding local infrastructure projects.

Mini-Grant Support

This program provides grants not to exceed $30,000 for communities to use on projects such as:

- Comprehensive Community Strategy development;
- Project specific feasibility study, business plan, or engineering study;
- A project that supports economic or community development; or
- A capital project.

Communities apply directly to their regional Alaska Regional Development Organization (ARDOR). If an ARDOR does not exist in a region, applications will be submitted directly to the Department of Community and Economic Development (DCED). Projects will be funded throughout the state using a combination of Denali Commission, USDA-Forest Service, and other available funding.

The goal of this initiative is to encourage communities to develop and utilize locally based planning strategies to foster community and economic development opportunities.

Entrepreneurship Initiative

For projects that may have merit, but are private sector economic development initiatives, the Denali Commission encourages entrepreneurs to utilize the following assistance strategy.

- Prepare Business Plan and loan request.
- Submit to Alaska Regional Development Organization (ARDOR) or Economic Development Council (EDC) for your area for technical assistance.
- Projects will be reviewed with consideration of the Denali Commission published guiding principles.
- Projects that meet Denali Commission principles will be forwarded from the regional support organizations to the State of Alaska Funding Forum for review.
- Projects determined to be economically viable may be forwarded to the Denali Commission for assistance in developing a funding plan.

Development Strategy

The Denali Commission encourages communities/tribes to build a local comprehensive plan and strategy, a component of which will be economic development. A comprehensive plan may also be referred to as a Development Strategy. Communities are encouraged to work with regional organizations such as ARDOR's, Regional Non-Profit Corporations, Borough Governments and Regional for-profit organizations to develop comprehensive strategies of which, economic development will be a component. Regional strategies

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should take into consideration, existing regional planning and strategy efforts including, but not limited to the efforts of the FAA, HUD, Alaska DOT, ANTHC, Alaska VSW, State Division of Public Health, Alaska Department of Public Safety, regional non-profits and others.

The Denali Commission encourages the state to assist with technical support and funding at the local and regional level to build local and regional development strategies. The Denali Commission also encourages state and federal governments to utilize the local and regional development strategies when prioritizing projects in the state or in a region.

Alvin L. Ewing,
Chief Of Staff.

[FR Doc. 00–18973 Filed 7–26–00; 8:45 am]
BILLING CODE 3300–00–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2677–000]

American Ref-Fuel Company of Delaware Valley, L.P.; Notice of Issuance of Order

July 24, 2000.

American Ref-Fuel Company of Delaware Valley, L.P. (American Ref-Fuel) submitted for filing a rate schedule under which American Ref-Fuel will engage in wholesale electric power and energy transactions at market-based rates. American Ref-Fuel also requested waiver of various Commission regulations. In particular, American Ref-Fuel requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by American Ref-Fuel.

On July 14, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by American Ref-Fuel should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, American Ref-Fuel is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of American Ref-Fuel, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of American Ref-Fuel's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18980 Filed 7–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–82–000]

North Central Missouri Electric Cooperative, Inc.; Notice of Filing

July 19, 2000.

Take notice that on July 17, 2000, North Central Missouri Electric Cooperative, Inc. (North Central) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. North Central's filing is available for public inspection at its offices in Milan, Missouri.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–18968 Filed 7–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF94–447–004]

O.L.S. Energy-Camarillo; Notice of Amendment to Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 19, 2000.

Take notice that on July 13, 2000, O.L.S. Energy-Camarillo, c/o Delta Power Company, LLC, 89 Headquarters Plaza, North Tower, 14th Floor, Morristown, NJ 07960 filed with the Federal Energy Regulatory Commission revised pages to its application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's regulations, as well as an ownership chart.

The Facility is a topping cycle cogeneration facility consisting of one GE Model LM2500 gas turbine in combined cycle configuration. The Facility is interconnected with, sells power to and receives backup and maintenance power from Southern California Edison Company. Recertification of the Facility is being requested by Applicant to reflect recent changes in the ownership structure of the Facility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18970 Filed 7–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF94–443–004]

O.L.S. Energy-Chino; Notice of Amendment To Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 19, 2000.

Take notice that on July 13, 2000, O.L.S. Energy-Chino, c/o Delta Power Company, LLC, 89 Headquarters Plaza, North Tower, 14th Floor, Morristown, NJ 07960 filed with the Federal Energy Regulatory Commission revised pages to its application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's regulations, as well as an ownership chart.

The Facility is a topping cycle cogeneration facility consisting of one GE Model LM2500 gas turbine in combined cycle configuration. The Facility is interconnected with, sells power to and receives backup and maintenance power from Southern California Edison Company. Recertification of the Facility is being requested by Applicant to reflect recent changes in the ownership structure of the Facility.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18969 Filed 7–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–227–000]

Panda-Brandywine, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

July 19, 2000.

Take notice that on July 14, 2000, Panda-Brandywine, L.P., (Applicant), 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates a nominal 253 MW electric generating facility located near Brandywine, Maryland. The facility's electricity is sold exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 9, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–18967 Filed 7–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–163–000; CA Clearinghouse No. SCH99041103]

Federal Energy Regulatory Commission and California State Lands Commission: Questar Southern Trails Pipeline Company; Notice of Completion and Availability of the Final Environmental Impact Statement/ Environmental Impact Report for the Proposed Southern Trails Pipeline Project

July 21, 2000.

The staffs of the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (CSLC) have completed work on a joint Final Environmental Impact Statement/ Environmental Impact Report (FEIS/R) on natural gas pipeline facilities proposed by Questar Southern Trails Pipeline Company (QST) in the above-referenced docket.

The FEIS/R was prepared as required by the National Environmental Policy Act and the California Environmental Policy Act. Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures which would reduce any significant adverse impacts to the maximum extent possible and, where feasible, to a less-than-significant level. The staffs conclude that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact.

The Southern Trails Pipeline Project involves the conversion of an existing crude oil pipeline (known as the ARCO Four Corners Pipeline Line 90 System) to natural gas service, and the construction of new pipeline and seven compressor stations. The FEIS/R assesses the potential environmental effects of the conversion, construction, and operation of the following facilities in California, Arizona, Utah, and New Mexico:

- About 675 miles of existing pipeline to be converted from crude oil to natural gas service (592 miles of 16-inch, 80 miles of 12-inch, and 3 miles of 22-inch-diameter pipeline);
- Five new pipeline extensions totaling about 43.2 miles;
- Four reroutes/realignments of the existing pipeline totaling about 9.3 miles;

- 39 replacement segments of the existing pipeline totaling about 7.3 miles;
- 240 excavation sites along existing pipeline totaling 5.1 miles; and
- Seven new compressor stations (6 of which would be located on existing oil pump stations sites—3 sites in California; 2 sites in Arizona; 1 site in Utah; and 1 site in New Mexico).

The proposed project would be capable of transporting up to 80 to 90 million cubic feet per day of natural gas (MMcfd) to customers east of California and at least 120 MMcfd to customers in southern California.

The FEIS/R will be used in the regulatory decision-making process at the FERC and CSLC, and may be presented as evidentiary material in formal hearings at the FERC and CSLC. While the period for filing interventions in these cases have expired, motions to intervene out of time can be filed with the FERC in accordance with the Commission's Rules and Practice and Procedures, 18 Code of Federal Regulations (CFR) 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The CSLC will consider certification of the FEIR and approval following FERC's action. California recipients of this document will receive separate notice for the CSLC meeting.

The FEIS/R has been placed in the public files of the FERC and CSLC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371

California State Lands Commission, 100 Howe Avenue, Suite 100–South, Sacramento, CA 95825–8202, (916) 574–1889

Copies also are available for reading at the following locations:

Library	Address	City	Zip code
CALIFORNIA			
Canyon Hills Library	400 Scout Trail	Anaheim	92807
Euclid Branch Library	1340 S. Euclid St	Anaheim	92804
Banning Public Library	21 W. Nicholet St	Banning	92220
Beaumont District Library	125 E. 8th St	Beaumont	92223
Cabazon Library	50171 Ramona Ave	Cabazon	92230
Corona Library	650 South Main	Corona	91720
Cyress Library	5331 Orange Ave	Cypress	90630
Joshua Tree Branch Library	6465 Park Blvd	Joshua Tree	92252
Angelo M Iacaboni Library	4990 Clark Ave	Lakewood	90712
George Nye, Jr. Library	6600 Del Amo Blvd	Lakewood	90713
Dominguez Library	2719 E. Carson St	Long Beach	90810
Taft Library	740 E. Taft Ave	Orange	92665
Yucca Valley Branch Library	57098 29 Palms Hwy	Yucca Valley	92284
ARIZONA			
Mohave County Library	3269 N. Burbank	Kingman	86401
Kayenta Unified School #27		Kayenta	86033
UTAH			
San Juan County Library	25 West 300 South	Blanding	84511
NEW MEXICO			
Farmington Public Library	100 West Broadway	Farmington	87401
Bloomfield Public Library	333 South First	Bloomfield	87413

A limited number of copies are available from the FERC's Public Reference and Files Maintenance Branch identified above. In addition, the FEIS/R has been mailed to Federal, state, and local agencies; public interest groups; individuals who have requested the FEIS/R; libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of the FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from Daniel Gorfain at the CSLC ((916) 574–1889)); Paul McKee in the FERC's Office of External Affairs ((202) 208–1088)); or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS help line can be reached at (202) 208–2222. Access to the texts of formal documents issued by the FERC with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS help line can be reached at (202) 208–2474.

Paul D. Thayer, Executive Officer, California State Lands Commission.

David P. Boergers,

Secretary, Federal Energy Regulatory Commission.

[FR Doc. 00–18966 Filed 7–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Amend License, and Soliciting Comments, Motions To Intervene, and Protests

July 24, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Approval to replace turbines on two of the project's main generating units.

b. *Project No.:* 459–109.

c. *Date Filed:* June 08, 2000.

d. *Applicant:* Union Electric Company.

e. *Name of Project:* Osage Project.

f. *Location:* The Project is located on the Osage River in Benton, Camden, Miller, and Morgan Counties, Missouri. The project utilizes federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dan E. Jarvis, Manager, Osage Project, AmerenUE, One American Plaza, 1901 Chouteau Avenue, P.O. Box 66149, St. Louis, MO 63166–6149. Tel: (573) 365–9322.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Mohamad Fayyad at (202) 219–2665 or by e-mail at Mohamad.fayyad@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* September 1, 2000.

Please include the project number (P–459–109) on any comments or motions filed.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Filing:* Union Electric Company (Union) filed a letter proposing to replace turbines on two of the Osage Project's eight main generating units. Union states that the new turbines will be more efficient and will better utilize the resource potential of the Osage River. According to Union, it will not exceed the project's current maximum hydraulic discharge rate or downstream flows.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–18981 Filed 7–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

July 24, 2000

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to amend the license.

b. *Project No:* P–10228–014.

c. *Date Filed:* April 7, 2000.

d. *Applicant:* Cannelton Hydroelectric Project, L.P.

e. *Name of Project:* Cannelton Hydroelectric Project.

f. *Location:* The Project would be located at the existing U.S. Army Corps of Engineers' Cannelton Locks and Dam on the Ohio River in Hancock County, Kentucky. The project utilizes federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Canneton Hydroelectric Project, L.P., 120 Calumet Court, Aiken S.C. 29803. Tel: (803) 642–2749.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Mohamad Fayyad at (202) 219–2665 or by e-mail at Mohamad.fayyad@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* September 1, 2000.

Please include the project number (P–10228–014) on any comments or motions filed.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Filing:* Cannelton Hydroelectric Project, L.P., (Cannelton) proposes to change (a) the number of units authorized from 240 to 140, (b) total authorized capacity from 79.2 to 79.8 MW, and (c) extend the deadline for project completion. Cannelton states that the project's hydraulic capacity will remain at 55,200 cfs.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commissions's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–18982 Filed 7–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

July 24, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Extension of Time.

b. *Project No:* 10455–017.

c. *Date Filed:* June 7, 2000.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* River Mountain Pumped Storage Project.

f. *Location:* The project is located on the Arkansas River in Logan County, near Dardanelle, Arkansas. The project utilizes federal lands on the shoreline of Lake Dardanelle.

g. *Pursuant to:* Public Law 105–283, 112 Stat. 2100.

h. *Applicant Contact:* Donald H. Clarke, Esquire, Wilkinson, Barker, Knauer & Quinn, LLP, 2300 N Street, NW., Suite 700, Washington, DC 20037–1128, (202) 783–4141.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* September 1, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NW., Washington DC 20426.

Please include the project number (10455–017) on any comments or motions filed.

k. *Description of Request:* The licensee requests a two-year extension of time to commence and complete construction of the River Mountain Pump Storage Project. The licensee states that it needs additional time because of the additional design work and engineering necessitated by recent design modifications to the project features as authorized by the Commission's Order Amending License and Approving Exhibits issued March 16, 2000. This would be the licensee's second two-year extension of the three authorized by Public Law No. 105–283, 112 Stat. 2100.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http:www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–18983 Filed 7–26–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–3]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Engineering Committee (EEC), and its Subcommittee, of the USEPA Science Advisory Board (SAB) will hold two meetings on the dates and times noted below. All times noted are Eastern Daylight Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Natural Attenuation Research Subcommittee—August 14–15, 2000

The Natural Attenuation Research Subcommittee of the Science Advisory Board's (SAB) Environmental Engineering Committee (EEC) will meet from 8:30 am Monday, August 14, 2000 until 3:30 pm Tuesday, August 15, 2000. The meeting will be held in Conference Room AR 6530, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The Ariel Rios Building is adjacent to the escalator to the Federal Triangle Metro Station on 12th Street NW.

Purpose of the Meeting—The purpose of this meeting is to complete the Subcommittee's review of EPA's natural attenuation research. This activity began at the January 26 conference call meeting. A preliminary non-consensus draft based on the Subcommittee members individual written comments will be available at the meeting.

Availability of Review Materials: The review materials were announced in previous notices (see 65 FR 1866–1867, January 12, 2000). A limited number of paper copies of these documents can be obtained from Dr. Stephen Schmelling at e-mail: *schmelling.steve@epa.gov* or via phone at (580) 436–8540.

2. Environmental Engineering Committee Teleconference—September 20, 2000

The Science Advisory Board's Environmental Engineering Committee will meet via teleconference from 3:00 to 5:00 pm Wednesday August 20, 2000. The public is encouraged to attend telephonically. To do so, please contact Ms. Mary Winston at least a week prior to the teleconference at (202) 564–4538, or via e-mail at *winston.mary@epa.gov*.

Purpose of the Meeting: The Committee plans to review Subcommittee reports, including that of the Natural Attenuation Research Subcommittee, consider future activities, and develop and agenda for its next face-to-face meeting, tentatively planned for December 5–7, 2000.

Availability of Materials: Materials discussed on the conference call will be available in advance. For these materials, please contact Ms. Mary Winston approximately a week before the teleconference at (202) 564–4538, or via e-mail at *winston.mary@epa.gov*.

For Further Information: Any member of the public wishing further information concerning either meeting or wishing to submit brief oral comments must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *conway.katheen@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time one week prior to each meeting.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments*: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments*: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website *(http://www.epa.gov/sab)* and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Conway at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 18, 2000.

John R. Fowle,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00–19011 Filed 7–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–1]

Regulatory Reinvention (XLC) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of City of Columbus, Ohio Project XL for Communities (XLC) Draft Final Project Agreement and Safe Drinking Water Act (SDWA) Draft Variance.

SUMMARY: EPA is today requesting comments on a draft Project XLC Final Project Agreement (FPA) and draft SDWA Variance for the City of Columbus, OH. The FPA is a voluntary agreement developed by the City of Columbus and the State of Ohio Department of Health, the Ohio Environmental Protection Agency, project stakeholders, and U.S. EPA. The SDWA Variance would be the federal legal mechanism used to provide regulatory flexibility to the City of

Columbus in the event of a Lead Action Level (LAL) exceedence under the Lead and Copper Rule (LCR). The SDWA Variance would not be effective and the City of Columbus would not be considered to be operating under a SDWA Variance unless and until the City exceeded the LAL.

DATES: The period for submission of comments ends on August 28, 2000.

ADDRESSES: All comments on the draft Final Project Agreement and draft SDWA Variance should be sent to: Miguel Del Toral, Water Division, WD–15J, US EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, or Kristina Heinemann, U.S. EPA, 1200 Pennsylvania Avenue, NW., Mail Code 1802, Washington, DC 20460. Comments may also be faxed to Mr. Del Toral at (312) 886–6171 or Ms. Heinemann at (202) 260–7875. Comments will also be received via electronic mail sent to: deltoral.miguel@epa.gov or heinemann.kristina@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement or draft SDWA Variance, contact: Miguel Del Toral Water Division, WD–15J, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, or Kristina Heinemann, U.S. EPA, 1200 Pennsylvania Avenue, N.W., Mail Code 1802, Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at U.S. EPA Region 5 in Chicago, IL. Questions to EPA regarding the documents can be directed to Miguel Del Toral at (312) 886–5253 or Kristina Heinemann at (202) 260–5355. Additional information on Project XL and XLC, including documents referenced in this notice, other EPA policy documents related to Project XL and XLC, application information, and descriptions of existing XL and XLC projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL".

SUPPLEMENTARY INFORMATION: Project XLC, announced in the **Federal Register** on November 1, 1995 (60 FR 55569), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

In the past, the City of Columbus made certain changes to the method it uses to treat drinking water. Inadvertently, the treatment change caused an increase in the level of lead in the drinking water. Under the Federal and State drinking water regulations, if the lead levels rise above the limit established by U.S. EPA and OEPA, the Lead Action Level, the City must begin sampling lead service lines (LSL) immediately and replacing those lines that contribute high levels of lead. See 40 CFR 141.84 and Ohio Administrative Code Rule 3745–81–84.

If implemented, the draft FPA would carry out an XLC project in the City of Columbus to test a potentially more effective means of addressing health concerns from lead through a program run by the Columbus Departments of Health and Trade and Development, the Lead Safe Columbus Program (LSCP), in addition to closer coordination on drinking water treatment issues. Through this Agreement, the US EPA would suspend the LSL sampling and replacement provisions for up to three years beginning if and when the City exceeds the lead limit, provided this occurs within six years of making a drinking water treatment change. In exchange for this regulatory flexibility, the Columbus Division of Water proposes to contribute $300,000 a year for 15 years to the LSCP.

The LSCP provides free blood testing, public education, medical intervention for lead-poisoned children, and grants and loans for lead abatement to residents of Columbus in high-risk areas. The LSCP targets an area consisting of twenty-five high-risk census tracts within ten zip codes in older, predominantly low-income, minority neighborhoods in Columbus, where 84% of all elevated blood lead levels in the City were found.

Under the Safe Drinking Water Act, 42 U.S.C. 300f–300j–26, EPA promulgates national primary drinking water regulations (NPDWRs) which specify for certain drinking water contaminants either a maximum level or treatment technique with which public water systems must comply. EPA has promulgated a NPDWR for lead and copper that consists of a treatment technique requiring public water systems to take various steps to ensure that users of public water systems are not exposed to levels of lead and copper in drinking water that would result in adverse health effects.

The State of Ohio has primary enforcement responsibility for administering the Lead and Copper Rule (LCR) because it has adopted regulations that are at least as stringent as the federal regulation. The State regulation currently applies to the City of Columbus's public water system. The federal government however has the authority to grant a variance under section 1415(a)(3) of the SDWA, 42 U.S.C. 300g–4 and believes that a variance would be the appropriate legal mechanism for this XLC project.

U.S. EPA has determined that the Columbus XLC Project has merit, and believes that a SDWA variance would be the appropriate legal mechanism for providing the City of Columbus the regulatory flexibility the City has requested through Project XLC.

The SDWA Variance, which will become effective only if the City of Columbus actually experiences a Lead AL exceedence, will provide the City with a temporary suspension of the LSL sampling and replacement requirements while it makes water treatment modifications. EPA has tentatively determined that the City's approach of enhanced coordination under the Lead and Copper Rule will be at least as efficient in lowering the level of lead delivered to users of the public water system as the current regulation. In addition the LSCP would provide additional public health benefits by providing free blood testing, public education, medical intervention for lead poisoned children, and grants and loans for lead abatement to residents of Columbus in high risk areas.

Dated: July 21, 2000.

Christopher Knopes,

Acting Director, Office of Environmental Policy Innovation.

[FR Doc. 00–19012 Filed 7–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–6841–7]

Nutrient Criteria Development; Notice of Nutrient Criteria Technical Guidance Manual: Rivers and Streams

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of nutrient criteria technical guidance manual: rivers and streams.

SUMMARY: The Environmental Protection Agency announces the availability of a nutrient criteria technical guidance manual for Rivers and Streams. This document provides State and Tribal water quality managers and others with guidance on how to develop numeric nutrient criteria for Rivers and Streams. This document does not contain site-specific numeric nutrient criteria for any river or stream systems. This guidance was principally developed to assist States and Tribes in their efforts to establish nutrient criteria. States and Tribes are clearly in the best position to consider site-specific conditions in

developing nutrient criteria. While this guidance contains EPA's scientific recommendations regarding defensible approaches for developing regional nutrient criteria, this guidance is not regulation; thus it does not impose legally binding requirements on EPA, States, Territories, Tribes, or the public, and might not apply to a particular situation based upon the circumstances. States, Territories, and authorized Tribes retain the discretion to adopt, where appropriate, other scientifically defensible approaches for developing regional or local nutrient criteria that differ from these recommendations.

We have decided to issue technical guidance in a manner similar to that which we are using to issue new and revised criteria (see **Federal Register**, December 10, 1998, 63 FR 68354 and in the EPA document titled, National Recommended Water Quality—Correction EPA 822–Z–99–001, April 1999). Therefore, we invite the public to provide scientific views on this guidance. We will review and consider information submitted by the public on significant scientific issues that might not have otherwise been identified by the Agency during development of this guidance. This guidance has been through external peer review, and a summary of these comments is available on the Nutrient website (http://www.EPA.gov/OST/standards/nutrient.html). After review of the submitted significant scientific information, the Agency will publish a revised document, or publish a notice indicating its decision not to revise the document.

This document has been prepared for publication by the Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

DATES: All significant scientific information must be submitted by September 25, 2000. Any scientific information submitted should be adequately documented and contain enough supporting information to indicate that acceptable and scientifically defensible procedures were used and that the results are likely reliable.

ADDRESSES: This notice contains a summary of the Nutrient Criteria Technical Guidance Manual: Rivers and Streams. Copies of the complete document may be obtained from EPA's Water Resource Center by phone at 202–260–7786, or by e-mail to: center.water-resource@epa.gov, or by conventional mail to EPA Water Resource Center, RC–4100, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460. The document is also available electronically at: http://www.epa.gov/OST/standards/nutrient.html.

An original and two copies of written significant scientific information should sent to Robert Cantilli (MC–4304), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Written significant scientific information may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats to OW-General@epa.gov.

FOR FURTHER INFORMATION CONTACT: Debra Hart, USEPA, Health and Ecological Criteria Division (4304), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460; or call (202) 260–0905; fax (202) 260–1036; or e-mail hart.debra@epa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

On March 24, 1998, the President's Clean Water Action Plan was presented in the **Federal Register**. The Clean Water Action Plan specifically stated that EPA will establish recommended water quality criteria for nutrients that reflect the different types of water bodies and different ecoregions of the country and that will assist States and Tribes in adopting numeric water quality standards for nutrients. Consistent with the objectives of the Clean Water Action Plan, the U.S. Environmental Protection Agency presented a National Strategy for the Development of Regional Nutrient Criteria on June 25, 1998. The Strategy described the approach the Agency would follow in developing nutrient information and working with States and Tribes to adopt nutrient criteria as part of State/Tribal water quality standards. The major focus of the strategy is the development of waterbody-type technical guidance and recommended ecoregion-specific nutrient criteria by the year 2000. Once EPA develops waterbody-type guidance and recommended nutrient criteria, EPA intends to assist States and Tribes in adopting numeric nutrient criteria into water quality standards by the end of 2003.

Overview of the Problem

Cultural eutrophication (*i.e.*, that associated with humans) of United States surface waters is a long-standing problem; approximately half of the reported impairments in National waters are attributable to excess nutrients. Nitrogen and phosphorus are the primary cause of eutrophication, and algal blooms are often a response to enrichment. Within Rivers and Streams, chronic symptoms of overenrichment include low dissolved oxygen, fish kills, increased sediment accumulation, and species and abundance shifts of flora and fauna. The problem is National in scope, but varies in nature from one region of the country to another due to geographical variations in geology and soil types. For these reasons, EPA has decided to develop its recommend nutrient criteria on an ecoregional basis for use by States and Tribes.

Summary of Nutrient Criteria Technical Guidance Manual for Rivers and Streams

EPA initiated the National Strategy to Develop Regional Nutrient Criteria to address enrichment problems. The Nutrient Criteria Technical Guidance Manual: Rivers and Streams is the second of a series of waterbody-type specific manuals produced to assist EPA Regions, States, and Tribes in establishing ecoregionally appropriate nutrient criteria. EPA is also developing manuals for estuarine/coastal waters and wetlands. EPA expects States and Tribes to use these manuals as the basis for developing State water quality standards for nutrients, to help identify water quality impairments, and to evaluate the relative success in reducing cultural eutrophication. In addition to developing these waterbody-type specific manuals, EPA is developing nutrient criteria guidance under section 304(a) for each of the 14 ecoregions it has identified in the continental United States. EPA expects States and Tribes to use the manuals, other information, and local expertise to refine EPA's 304(a) nutrient criteria guidance so that the nutrient water quality criteria eventually adopted by States and Tribes are tailored to more localized conditions. In order to assist States and Tribes in this undertaking, as well as to verify section 304 (a) nutrient criteria guidance, and to provide national consistency wherever possible, EPA has established Regional Technical Assistance Groups (RTAGs). RTAGs are a collection of EPA, other Federal agencies, State, and Tribal representatives who are working together to use EPA's forthcoming section 304(a) nutrient criteria guidance as a starting point for developing more refined ecoregional nutrient criteria. (EPA is also using data and expertise provided by the RTAGs in the development of its section 304(a) nutrient criteria guidance for the 14

ecoregions it has identified.) Today's manual for Rivers and Streams also explains how States or Tribes can adopt nutrient water quality standards based on the ecoregional criteria values recommended by the EPA and/or RTAGs.

A directly prescriptive approach to nutrient criteria development is not appropriate due to regional differences that exist and the lack of a clear technical understanding of the relationship between nutrients, algal growth, and other factors (*e.g.*, flow, light, substrata). Therefore, the approach chosen for criteria development must be tailored to meet the specific needs of each State or Tribe. The criteria development process described in this guidance can be divided into the following iterative steps.

1. Identify water quality needs and goals with regard to managing nutrient enrichment problems.

2. Classify rivers and streams first by type, and then by trophic status.

3. Select variables for monitoring nutrients, algae, macrophytes, and their impacts.

4. Design sampling program for monitoring nutrients and algal biomass in rivers and streams.

5. Collect data and build database.

6. Analyze data.

7. Develop criteria based on reference condition and data analyses.

8. Implement nutrient control strategies.

9. Monitor effectiveness of nutrient control strategies and reassess the validity of nutrient criteria.

The components of each step are explained in detail in succeeding chapters of the document. Appended to the guidance document are case studies from various ecoregions around the country and technical discussions of analytical methods, statistical analyses, and computer modeling.

The Nutrient Criteria Technical Guidance Document: Rivers and Streams that is being announced in this Notice was developed after consideration of public comment and peer review. The draft technical guidance manual for Rivers and Streams was placed on the EPA Nutrient website (http://www.EPA.gov/OST/standards/nutrient.html) on October 8, 1999, and EPA accepted correspondences and comments until June 23, 2000. In addition, a peer review of the proposed criteria document was conducted by a panel of five external reviewers.

Dated: July 20, 2000.

Jeanette Wiltse,

Acting Director, Office of Science and Technology.

[FR Doc. 00–19014 Filed 7–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6841–6]

Proposed CERCLA Prospective Purchaser Agreement for the Copley Square Plaza Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposal of CERCLA prospective purchaser agreement for the Copley Square Plaza superfund site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99–499, notice is hereby given that a proposed prospective purchaser agreement (PPA) for the Copley Square Plaza Superfund Site (Site) located in Copley, Ohio, has been executed by Knights Runners Club Association. The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Knights Runners Club Association. The proposed PPA will reimburse the United States for just under 50% of its outstanding response costs incurred at the Site. The Site is not on the National Priorities List.

DATES: Comments on the proposed PPA must be received by August 28, 2000.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen Schnieders at (312) 353–8912, prior to visiting the Region 5 office.

Comments on the proposed PPA should be addressed to Kathleen Schnieders, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kathleen Schnieders at (312) 353–8912, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this notice.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 00–19009 Filed 7–26–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 28, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–XXXX.

Title: Interstate Telephone Service Provider Worksheet.

Form No.: FCC Form 159–W.

Type of Review: New collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 4,500.

Estimated Time Per Response: .25 hours or 15 minutes.

Frequency of Response: On occasion and annual reporting requirement.

Total Annual Burden: 1,125 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 9 authorizes the Federal Communications Commission to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking activities and its user information services. Common carrier licensees and permittees who provide interstate telephone operator services must pay those fees. These regulatory fees are based upon a percentage of the carrier's interstate revenues. The information is necessary to determine how much each carrier's interstate revenues are available to the carrier by extraction from another voluminous collection approved under OMB Control Number 3060–0855, Telecommunications Reporting Worksheet, FCC Form 499–A. The requested FCC Form 159–W is intended to provide a convenient format for documenting the extracted interstate revenue information and to complete the simple calculation of the fee amount due.

OMB Control No.: 3060–XXXX.

Title: Section 101.1327, Renewal Expectancy for EA Licensees.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 18,820.

Estimated Time Per Response: .20 hours.

Frequency of Response: Every 10 year reporting requirement.

Total Annual Burden: 284,653 hours.

Total Annual Cost: $18,820,000.

Needs and Uses: The information required in Section 101.1327 is used to determine whether a renewal applicant of a Multiple Address System has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses the information to determine whether an applicant's license will be renewed at the end of the license period.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18957 Filed 7–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Thursday, July 27, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 25, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–19095 Filed 7–25–00; 11:15 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–018316

Applicant: Smithsonian National Museum of Natural History, Washington, DC.

The applicant requests a permit to import a specimen of Cahow (*Pterodroma cahow*) found dead in the wild from natural causes, for the purpose of scientific research.

PRT–030276

Applicant: Eckerd College, St. Petersburg, FL.

The applicant requests a permit to import tissue and blood samples obtained from wild Hawksbill Sea Turtle (*Eretmochelys imbricata*) from the Cayman Islands Department of Environment, for the purpose of scientific research.

PRT–844694

Applicant: National Marine Fisheries Service, Southwest Fisheries Science Center, La Jolla, CA.

The applicant requests a permit to Re-Export samples obtained from Leatherback Sea Turtle (*Dermochelys coriacea*) and Hawksbill Sea Turtle (*Eretmochelys imbricata*) for the purpose of enhancement of scientific research.

PRT–030747

Applicant: Donald P. Wilson, Stoneham, MA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–030691

Applicant: Jerry W. Peterman, Dallas, TX.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 21, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–18974 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Environmental Impact Statement for the Establishment of the Little Darby National Wildlife Refuge in Madison and Union Counties, West Central Ohio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability for public comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Draft Environmental Impact Statement (DEIS) which is available for public review. The DEIS analyzes the potential environmental impacts that may result if a national wildlife refuge is established in the Little Darby watershed. The analysis provided in the DEIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action. The Service invites the public to comment on the DEIS. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations [40 CFR 1506.6(f)]. Our practice is to make comments available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

The DEIS evaluates the establishment of the Little Darby National Wildlife Refuge as a means of working with individuals, groups, and governmental entities to permanently preserve and restore a significant segment of the Little Darby Creek subwatershed, its aquatic resources, threatened and endangered species, migratory birds and the historic grassland, wetland and oak savanna habitats that they depend upon. Five alternatives, including a No Action alternative are being considered. The four action alternatives are aimed at permanently protecting and enhancing a major corridor segment of the Little Darby Creek, and associated grassland, wetland and riparian habitats.

The Service's preferred alternative (Alternative 2) is to permanently protect, enhance and restore riparian areas, grasslands and wetlands that were historically present within the framework of a Voluntary Purchase Area and to protect a larger part of the subwatershed identified as a Watershed Conservation Area through the use of voluntary non-development easements which will perpetuate the current land use and encourage conservation land use practices. The use of partnerships, incentives, education, and cooperative agreements will be used and considered in addition to the acquisition of easements and fee title interests. Any conservation easements, or acquisition of full title would be done by the Service and Service Partners which may include state agencies and private organizations. Service acquisition of easements and fee interest in lands would be on a voluntary basis from willing sellers.

DATES: Written comments on the DEIS must be received on or before September 28, 2000. A Final Environmental Impact Statement will then be prepared and provided to the public for review.

ADDRESSES: Individuals wishing copies of this DEIS for review should contact: William Hegge, Darby Creek Watershed Project Manager, U.S. Fish and Wildlife Service, 6950–H Americana Parkway, Reynoldsburg, Ohio 43068 or Thomas Larson, Chief of Ascertainment and Planning, National Wildlife Refuge System, BHW Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111. The DEIS is also available on the Internet at http://www.fws.gov/r3pao/planning/top.htm and at the Ohio libraries listed below:

Hilliard Branch, Columbus Metropolitan Libraries
Dublin Branch, Columbus Metropolitan Libraries
Main Branch, Columbus Metropolitan Libraries
Northwest Branch, Columbus Metropolitan Libraries
London Branch, Madison County Libraries
Plain City Branch, Madison County Libraries
West Jefferson Branch, Madison County Libraries
Marysville Branch, Union County Libraries
Richwood Branch, Union County Libraries
Urbana Branch, Champaign County Libraries
St. Paris Branch, Champaign County Libraries
Mechanicsburg Branch, Champaign County Libraries
Springfield Branch, Clark County Libraries
Hurt/Battelle Memorial Library, West Jefferson

FOR FURTHER INFORMATION CONTACT: William Hegge or Thomas Larson at the addresses listed above or by telephone at 614/ 469–6923 x17 and 800/247–1247 respectively.

Public Hearing

A public hearing will be held in Ohio during the comment period to solicit oral comments from the public. The date and location of this hearing will be announced through the local news media.

SUPPLEMENTARY INFORMATION: On June 9, 2000, a notice was published in the **Federal Register** (65 F.R. 36711) announcing that the Service intended to prepare an Environmental Impact Statement addressing the possible Federal action of establishing a refuge on the Little Darby watershed in Madison and Union counties, Ohio, and inviting comments on the scope of the Environmental Impact Statement. Comments were received and considered and are reflected in the DEIS made available for comment through this notice.

America's native grasslands are a vanishing ecosystem, and mounting evidence indicates that many species dependent upon grasslands are also declining. Few other ecosystem types have experienced as great a degree of loss and alteration. The population trend in Ohio for grassland nongame migratory birds exhibits declines much greater than the declines reported nationally. Ohio has also lost more than 90 percent of its presettlement wetlands through conversion. An estimated 50 percent of Ohio's waterways are impaired by agricultural runoff and hydro-modification. This project could preserve and restore grassland and wetland habitats and play a major role in long term preservation of the diverse Little Darby Creek aquatic system.

Through an integrated and novel ecosystem approach, the Service, with its partners, proposes to protect and restore fish and wildlife habitats, overall

biodiversity and compatible land uses in the project area through holistic management strategies using a wide variety of tools and techniques. The Service proposes to participate in public and private partnerships at many levels, complementing and expanding upon local projects such as those of the Soil and Water Conservation Districts, Ohio Department of Natural Resources, U.S. Department of Agriculture, Ohio Department of Agriculture, The Nature Conservancy, and others.

This notice is provided pursuant to Fish and Wildlife Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: July 21, 2000.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 00–18975 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Supplement to a Final Environmental Impact Statement Pertaining to the Translocation of Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent (NOI) to prepare a supplement to a final environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act, 40 CFR 1502.9(c)(1)(ii) this NOI advises the public that we, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft and final Supplemental Environmental Impact Statement (Supplement) (EIS) pertaining to the translocation of southern sea otters.

From 1984 through May of 1987, we drafted and finalized an EIS which analyzed the impacts of establishing a program to translocate southern sea otters from their then current range along the central coast of California to areas of northern California, southern Oregon, or San Nicolas Island off the coast of southern California. We implemented the translocation program and moved southern sea otters from the coast of central California to San Nicolas Island starting in August 1987 and ending in March 1990. As part of the translocation program, up until 1993, we removed or attempted to remove otters (containment) from a special management zone established under the translocation program. The special management zone is located off the coast of southern California, from Point Conception south to Mexico, and includes the channel islands, exclusive of San Nicolas Island and the surrounding translocation zone. The purpose of this containment component of the translocation program was to prevent, to the maximum extent feasible, conflict between sea otters and other fishery resources within the management zone and to facilitate the management of sea otters at San Nicolas Island. Over the past several years, significant new circumstances have arisen that bear on the translocation program and, in particular, on the containment component of the program. In addition, we have acquired significant new information relevant to environmental concerns for southern sea otters.

In response to these significant new circumstances and new information, we are reevaluating the present southern sea otter translocation program and propose to modify the program consistent with the recovery needs of the species. This NOI serves to describe several alternative modifications to the program as well as termination of the program, invites public participation in the scoping process for preparing the EIS, and identifies the Fish and Wildlife Service official to whom questions and comments concerning the proposed action may be directed. Throughout the scoping process, the public, environmental groups, industries, Federal and State agencies, local governments, and other interested parties will have the opportunity to assist us in determining the scope of the Draft Supplement, significant issues that should be addressed, and alternatives to be considered.

DATE: Written comments regarding scoping for the Draft Supplement should be received by September 29, 2000. See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Address all comments concerning this notice to U.S. Fish and Wildlife Service, Ventura Field Office, Attention Mr. Greg Sanders, 2493 Portola Road, Suite B, Ventura, California, 93003–7726, (telephone: 805/644–1766; facsimile: 805/644–3958). Submit electronic comments to *fw1ottereis@r1.fws.gov*. See **SUPPLEMENTARY INFORMATION** section for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Sanders, U.S. Fish and Wildlife Service, at the above Ventura address.

SUPPLEMENTARY INFORMATION:

Background

In 1977, we listed the southern sea otter *(Enhydra lutris nereis)* as a threatened species under the Endangered Species Act (ESA) after consideration of its small population size, greatly reduced range, and the potential risk from oil spills. We approved a recovery plan for the species in 1982. At the time the recovery plan was being developed, available information suggested the sea otter population was not growing, and there was concern the population was in decline. In response, we determined that translocating sea otters was an effective and reasonable recovery action, although there was some concern that a translocated sea otter population could impact shellfish fisheries that had developed in areas formerly occupied by sea otters. Goals cited in the recovery plan included: minimizing risk from potential oil spills; establishing at least one additional breeding colony outside the then current sea otter range; and compiling and evaluating information on historic distribution and abundance, available but unoccupied habitat, and potential fishery conflicts to help identify optimum distribution, abundance, and productivity. The idea of translocation was not new as several prior efforts to reestablish sea otter populations via translocation had been successful. We developed a southern sea otter translocation plan in 1986.

In concept, the purpose of translocation was to establish sea otters in one or more areas outside the then current range to minimize the possibility of a single natural or human-caused catastrophe, such as an oil spill, adversely affecting a significant portion of the population. Ultimately, it was anticipated that translocation would result in a larger population size and a more continuous distribution of animals throughout the southern sea otter's former historic range. Translocation was viewed as important to achieving recovery, and for identifying the optimal sustainable population (OSP) level for the southern sea otter as required under the Marine Mammal Protection Act (MMPA).

Translocation of a listed species is generally authorized under the Endangered Species Act, and under certain specific circumstances, translocation of a listed species to establish experimental populations is authorized under section 10(j) of the ESA. The sea otter, however, is protected by both the ESA and the MMPA, and prior to the amendments of 1988, there were no similar translocation provisions under the

MMPA. For sea otters, this dilemma was resolved in 1986 with the passage of Public Law (PL) 99–625 providing for the translocation of southern sea otters.

When it was signed into law in 1986, PL 99–625 specifically authorized, and established guidelines for, the translocation of southern sea otters. Special regulations implementing the law at 50 CFR 17.84(d) provide details of the translocation plan, including five criteria for determining whether the translocation program is a failure. Under the regulations, prior to declaring the translocation a failure, we must conduct a full evaluation of the program and the probable causes of failure, and consult with both the Marine Mammal Commission and the California Department of Fish and Game (CDFG). If the causes for program failure can be determined, and legal and reasonable remedial measures can be identified and implemented to eliminate the causes of failure, the regulations state that consideration will be given to continuing to maintain the translocated sea otter population. If the causes of the failure cannot be identified and remedied, we will publish the results of the failure evaluation in the **Federal Register**, amend the regulations to terminate the translocation program, and remove all otters from San Nicolas Island and the management zone.

In August 1987, the Service and CDFG agreed to a Memorandum of Understanding providing for cooperative research and management efforts to promote recovery of southern sea otters. The agreement also included provisions to minimize conflicts with existing shellfish fisheries and other marine resources through containment of sea otters. In 1997, CDFG notified us that they would no longer be able to assist with containment of sea otters in the management zone.

A primary purpose of the translocation program was to establish a colony of sea otters at a location outside the then existing parent range to enhance recovery and provide protection against the possibility of a natural or human-caused event, such as an oil spill, adversely affecting a significant portion of the sea otter population. Contrary to expectations and to the primary recovery objective of the sea otter management program, San Nicolas Island has not produced a second, independent colony of sea otters sufficiently removed from the parent population so as to be shielded from the effects of a major oil spill or other catastrophic incident. As demonstrated by the size of the 1989 Exxon Valdez oil spill, the impacts of a major oil tanker accident could encompass both the parent range of the sea otter and the translocation zone surrounding San Nicolas Island. In addition, the experimental population at San Nicolas Island has not grown into an established independent colony, as defined by the translocation program, despite the original translocation of 140 otters. The translocation program states that a minimum number of 150 otters at San Nicolas Island is necessary to be considered an established population that would be available to repopulate areas in the event of a major loss of the parent population from an oil spill or other catastrophic event. Since the translocation of otters to San Nicolas Island, the island population has never exceeded 23 otters. Given its very small size, the experimental population is not contributing significantly to recovery of the species and is not a viable source for repopulating the parent population in the event of a major oil spill or similar incident. In addition, the small size of the experimental population prevents many of the secondary research objectives of the translocation plan from being met.

Proposed Action

We propose to reevaluate the present southern sea otter translocation program as described in the Final EIS for Translocation of Southern Sea Otters, Appendix B, May 1987, and modify the program consistent with the recovery needs of the species. The purpose of this action is to assess the impacts of alternatives and reduce the southern sea otter's vulnerability to extinction.

New Information and Changed Circumstances

The Supplement will review and assess new information and changed circumstances pertaining to translocation of the southern sea otter. New information and changed circumstances include but are not limited to:

(1) The January 2000 Draft Revised Recovery Plan

The number of southern sea otters counted during spring surveys has declined over four of the past 5 years and the population continues to be vulnerable to extinction. The Recovery Team now recommends against additional translocations to accomplish the objective of increasing the range and number of southern sea otters in California. There is reason to believe that range expansion of sea otters will occur more rapidly if the existing population is allowed to passively recover than it would under a recovery program that includes translocating sea otters.

(2) Results of the Translocation Program on Sea Otters and Sea Otter Population Recovery

The translocation of sea otters to San Nicolas Island has been much less successful than expected. After nearly 13 years of experience with the sea otter translocation program, the San Nicolas Island colony population remains very small (fewer than 21 independent animals). Even if the translocation program is allowed to continue and it eventually succeeds, it will be many more years before the sea otter population at the island reaches the population target of 150 animals and will be able to serve the recovery objectives identified in the translocation plan.

(3) Mass Movement of Sea Otters

A large number of sea otters from the parent population temporarily moved into the northern end of the management zone in 1998 and reappeared in 1999 and 2000. The animals were not translocated to the area, and this movement appears to represent a natural extension of their range.

(4) Results of Containment Efforts and Sea Otter Population Recovery

Capturing southern sea otters through non-lethal means, as required by PL 99–625, has proven in most cases to be more difficult than we anticipated when developing the translocation program. From 1987 to 1993, we responded to sightings of southern sea otters in the management zone. However, we were often unable to find reported individuals. When otters were detected, efforts to capture even a few otters were time consuming and often unsuccessful. In addition, several otters died shortly after capture and release into the parent population, leading to concerns that containment may ultimately result in the death of some otters removed from the management zone. The containment program anticipated that the Fish and Wildlife Service and the CDFG would jointly manage an effort to locate and remove sea otters in the management zone. The recent mass movements of sea otters from the parent range to the management zone renders containment even more difficult because CDFG is no longer able to participate in containment efforts.

(5) Sea Otter Socialization and Interactions With Introduced Individuals

We have concluded, in a recent biological opinion evaluating the effects of sea otter containment under the translocation plan, that the movement of large numbers of southern sea otters from the management zone into the parent range would likely cause substantial disruption of the latter's social structure and increased pressure on food resources and, consequently, result in jeopardy to the listed species. Such impacts could include increased mortality and population instability, which would likely continue, if not accelerate, the recent decline in the parent population.

(6) Parent Population Decline

In 4 of the past 5 years (1996, 1997, 1998, and 1999) the total number of southern sea otters counted during spring population surveys has progressively declined. In spring 1995, the number of sea otters was the highest number recorded to date; a total of 2,377 animals was counted. In the spring of 1996, the number fell to 2,278. By the spring of 1997, it was down to 2,229, in spring 1998 a total of 2,114 animals were counted, and the 1999 spring count observed only 2,090 sea otters. This represents a decline of just under 12 percent between 1995 and 1999. The spring 2000 survey counted a total of 2,317 otters (2,053 independents plus 264 pups). This represents nearly an 11 percent increase since 1999, but is still below the highest count of 2,377 obtained in the spring 1995 survey. The most recent spring survey results are encouraging; however, year to year variation in the counts is expected. For this reason the southern sea otter recovery team has recommended the use of a 3-year running average to incorporate the existing degree of uncertainty in assessing population counts. The spring 2000 count represents an increase in both the annual counts and the 3-year running average and may indicate a reversal in the downward trend observed since 1995. However, the information from the spring 2000 is not sufficient evidence that the recent decline in the southern sea otter population is reversed. Survey data from future years will be needed to determine if the population counts continue to increase and demonstrate an upward trend.

Alternatives

The Supplement will evaluate new information and changed circumstances in order to determine the environmental impact (beneficial or adverse) which would result from a number of possible sea otter management alternatives, as compared to the current Federal Action (implementation of a translocation program). The Supplement will compare alternative scenarios against the current management program (No Action Alternative). Some of these alternatives may require new legislation.

Alternatives may include but are not limited to the following:

(1) The Action Alternative

This alternative would continue the translocation program without additional evaluation of failure or modification of the management zone. Removal of sea otters from the management zone would resume if changed circumstances or new information indicated that containment would not result in jeopardy to the listed species.

(2) Complete the Evaluation of Failure Criteria for the Translocation Program and Proceed With Actions Identified in the Translocation Plan and Implementing Regulations

According to the regulations implementing PL 99–625 at 50 CFR 17.84(d)(8), the translocation program would generally be considered to have failed if one or more of five criteria are met. We would complete our evaluation and assessment of the translocation program using these criteria. If the translocation program were determined to be a failure after the evaluation, we would remove the experimental population of sea otters from San Nicolas Island, provided that we conclude that removal of the island population and its return to the parent population could be accomplished without jeopardizing the listed species. Similarly, if circumstances changed or new information indicated that containment of sea otters in the management zone would not result in jeopardy to the listed species, we would make reasonable efforts to remove all sea otters remaining in the management zone and return them to the parent population. The management zone would then be eliminated.

(3) Complete the Evaluation of Failure Criteria for the Translocation Program But Do Not Remove Sea Otters From San Nicolas Island or the Management Zone

We would complete the evaluation and assessment of the translocation program using the failure criteria. If determined to be a failure after the evaluation, we would initiate a proposed rulemaking to change the existing regulations at 50 CFR 17.84(d)(8) to eliminate the management zone and allow sea otters to remain at San Nicolas Island and in the management zone.

(4) Modify the Boundaries of the Management Zone

We would initiate a proposed rulemaking to change the existing regulations at 50 CFR 17.84(d)(8) to re-delineate boundaries of the management zone. Containment of sea otters would resume within the new boundaries of the management zone if changed circumstances or new information indicated that containment would not result in jeopardy to the listed species.

(5) Modify Lobster, Crab, and Live Fin-Fish Trapping at San Nicolas Island To Avoid any Reasonable Possibility of Take of Sea Otters in Traps

We would pursue a change in State regulations to address gear modifications and/or fishing restrictions at San Nicolas Island. Containment of sea otters within the management zone would resume if changed circumstances or new information indicated that containment would not result in jeopardy to the listed species.

Public Comments Solicited

The environmental review of the proposed action will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations at 40 CFR 1500–1508, other appropriate Federal laws and regulations, and policies and procedures of the Fish and Wildlife Service for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act, to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the Supplement. We solicit comments and participation in this scoping process. Questions concerning the Draft Supplement and written scoping comments should be directed to U.S. Fish and Wildlife Service, Ventura Field Office, Attention Mr. Greg Sanders, 2493 Portola Road, Suite B, Ventura, California 93003–7726, (telephone: 805/644–1766; facsimile: 805/644–3958). Written comments regarding scoping for the Draft Supplement should be received by September 29, 2000, at the address above. You may also send comments by electronic mail (e-mail) to fw1ottereis@r1.fws.gov. Please submit comments in ASCII file format and

avoid the use of special characters and encryption. If you do not receive a confirmation from the system that your e-mail message has been received, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766.

Meetings

Public scoping meetings will be held on the following dates:

1. August 15, 2000, 1 p.m. to 4 p.m. and 7 p.m. to 10 p.m., Santa Barbara, CA at the Radisson Hotel.

2. August 17, 2000, 1 p.m. to 4 p.m. and 7 p.m. to 10 p.m., Monterey, CA at the Monterey Conference Center.

Registration will begin 1 hour prior to each meeting session. There will be a presentation at the beginning of the public scoping meetings that will address background on the southern sea otter translocation program and significant new circumstances and information relevant to the status of the southern sea otter and the effects of the translocation program, including containment, on the southern sea otter. Submission of written and oral comments will be accepted at the scoping meetings.

The Draft Supplement is scheduled to be available to the public in the summer of 2001.

Dated: July 19, 2000.

John Engbring,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 00–18704 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Request to Office of Management and Budget for Reinstatement of Agency Information Collection for Indian Self-Determination and Education Assistance Contracts; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Indian Affairs published a document in the **Federal Register** of June 29, 2000, concerning a submission to the Office of Management and Budget (OMB) of a request for reinstatement of OMB No. 1076–0136, "Indian Self-Determination and Education Assistance Act Programs." This correction adds the following sentences that were omitted in the notice.

FOR FURTHER INFORMATION CONTACT: James Thomas, 202–208–5727.

Correction

In the **Federal Register** of June 29, 2000, in FR Doc. 00–16429, on page 40113, in the second column, add at the end of the second paragraph the following:

A notice requesting comments was published in the **Federal Register** on May 14, 1999 (64 FR 26427) and none were received.

On page 40113, in the third column, add at the end of the second paragraph the following:

Responses to this information collection are to obtain or retain a benefit.

Dated: July 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–18961 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P]

Notice for Publication, F–14857–B; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands for conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(a), will be issued to Gwitchyaazhee Corporation for approximately 80 acres. The lands involved are within T. 19 N., R. 12 E., Fairbanks Meridian, in the vicinity of Fort Yukon, Alaska.

Notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until August 28, 2000 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

Stephanie Clusiau,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–18976 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P]

Notice for Publication, AA–6701–C; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands for conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(a), will be issued to Seldovia Native Association, Inc., for 4.99 acres. The lands involved are within T. 6 S., R. 13 W., Seward Meridian, the vicinity of Seldovia, Alaska.

Notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 28, 2000 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–18705 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–55–P

VOL 65 ISS 145 JL 27 2000 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-00-1320-EL, WYW150970]

Coal Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201(b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Black Butte Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Sweetwater County, WY:

T. 17 N., R. 101 W., 6th P.M., Wyoming
Sec. 2: Lots 3 (NENW), 4 (NWNW), S2NW, SW;
Sec. 4: Lots 1–4 (N2N2), S2N2, S2;
Sec. 8: ALL;
Sec. 10: W2;
T. 18 N., R. 101 W., 6th P.M., Wyoming
Sec. 34: ALL.
Containing 2,559.480 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Rock Springs Known Recoverable Coal Resource Area.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW150970): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the "Rocket-Miner" of Rock Springs, WY, once each week for two consecutive weeks beginning the week of July 24, 2000, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Black Butte Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Black Butte Coal Company, Attn: Pete Sall, P.O. Box 98, Point of Rocks, WY 82942, and the BLM, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: July 17, 2000.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–18487 Filed 7–26–00; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–0777XQ–241A]

Call for Nominations for Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for a vacancy on the Bureau of Land Management (BLM) Northeastern Great Basin Resource Advisory Council (RAC). The RAC provides advice and recommendations to the BLM on land use planning and management of the public lands within the geographic area, which includes southern Nevada. Public nominations will be accepted for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, the interests represented by the individuals appointed to the RAC must be balanced and representative of the various issues concerned with the management of the public lands. The current vacancy is within Category One (of three), which includes:

Representatives of energy and mineral development, holders of federal grazing permits and timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation. The vacancy which has occurred is the representative energy and mineral development.

Individuals may nominate themselves or others. Nominees must be residents of the State of Nevada, in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, the BLM Nevada State Office will issue a news release providing additional information for submitting nominations. Nominations for RAC membership should be sent to the BLM office as follows: Susan Howle, BLM Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Affairs Specialist, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520–006 or telephone (775) 861–6586.

Dated: July 14, 2000.

Robert E. Stewart,

Acting Chief, Office of Communications.

[FR Doc. 00–19024 Filed 7–26–00; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–00–1430–EU; AZA 29451]

Notice of Realty Action; Bureau Motion; Noncompetitive Sale of Public Land; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at not less than the estimated fair market value of $25,400.00. In accordance with section 7 of the Taylor Grazing Act, 43 USC 315f, and Executive Order 6910, the land described below is hereby classified for disposal by sale. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 18 S., R. 14 E.,
Sec. 19, lot 6.

The area described contains 0.1 acre.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Continental School District No. 39. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued will contain certain reservations to the United States and will be subject to an existing right-of-way. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Tucson Field Office, Bureau of Land Management, 12661 East Broadway, Tucson, Arizona, 85748.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: July 5, 2000.

Bill Auby,

Acting Field Office Manager.

[FR Doc. 00–19023 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–DC]

Wild Horse Removal; Colorado

AGENCY: White River Field Office, Bureau of Land Management, Department of the Interior.

ACTION: Rescinding decision for gather of wild horses on West Douglas Herd Area, Colorado;

SUMMARY: The Field Manager for the White River Field Office is rescinding the decision (CO–WRFO–00–133) to gather horses from the West Douglas Herd Area. Rescinding this decision is the result of a lack of funding for the operation. When funding is acquired the Gather plan/Environmental Assessment and a Record of Decision will be reissued.

FOR FURTHER INFORMATION CONTACT: Robert Fowler; White River Field Office; 73544 HWY 64, Meeker, Colorado, 81641; Telephone (970) 878–3601.

James A. Cagney,

White River Field Manager.

[FR Doc. 00–18128 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Cancellation and Notice of Change of Meeting Dates

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Tuesday, August 15, 2000 at Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California is cancelled. The Advisory Commission, however, will meet on Tuesday, August 29, 2000 at Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California.

Change of Meeting Dates

Beginning in September 2000, the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will meet every fourth Tuesday of each month rather than every third Tuesday, as previously noticed in FR Doc. 99–32837, published December 20, 1999. The Advisory Commission will meet to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco, Marin County, or San Mateo County and at Point Reyes Station, California:

Tuesday, September 26, San Francisco, CA or Marin County, CA
Saturday, October 21, Point Reyes, CA
Tuesday, October 24, San Francisco, CA or Marin County, CA
Tuesday, November 28, San Francisco, CA or Marin County, CA
Tuesday, December 26, San Francisco, CA

Should the meeting scheduled for Tuesday, December 26, 2000 be cancelled, a notice of cancellation will be published in the **Federal Register**.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Current members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Lennie Roberts
Dr. Edgar Wayburn
Mr. Michael Alexander
Mr. Gordon Bennett
Ms. Anna-Marie Booth
Ms. Yvonne Lee
Ms. Susan Giacomini Allan
Mr. Trent Orr
Mr. Redmond Kernan
Mr. Doug Nadeau
Ms. Betsey Cutler
Mr. Trent Orr
Mr. Dennis Rodoni
Mr. John J. Spring
Mr. Mel Lane

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except the Saturday, October 21 meeting, which will be held at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California.

However, some meetings may be held at other locations in Marin County or possibly at locations in San Mateo County. Information confirming the time and location of all Advisory Commission meetings or cancellations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561–4733.

These meetings will contain a Superintendent's Report, a Presidio General Manager's Report, and a Presidio Trust Director's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A verbatim transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: July 20, 2000.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 00–19016 Filed 7–26–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of Private Correctional Facilities in Florida, Georgia, and Mississippi

AGENCY: Bureau of Prisons, U.S. Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The Bureau of Prisons (BOP) will prepare a DEIS for a Contractor-Owned and Contractor-Operated private correctional facility(ies) to house sentenced criminal aliens. The BOP is facing unprecedented growth in its inmate population. As a result, low security federal correctional institutions will be especially impacted. The projected growth in the population of sentenced criminal aliens will further exacerbate these low security population demands.

The BOP will be soliciting for a Contractor-Owned and Contractor-Operated correctional facility(ies) to house approximately 1,500 low security, male, non U.S. citizen criminal aliens. Proposed facility(ies) may include construction of a new facility, expansion of an existing facility, or use of an existing facility. Fourteen sites throughout Florida, Georgia and Mississippi have been identified by contractors and offered to the BOP for consideration. The proposed sites have been submitted by the following contractors:

Alternative Programs, Inc. (1) 160 acres of partially developed land located approximately eight miles south of the city limits of Lucedale, MS. Owned by the George County School District.

Correctional Corporation of America (CCA): (1) Tallahatchie County Correctional Facility, located north of the City of Tutwiler on U.S. Highway 49, Tutwiler, MS.; (2) Stewart Correctional Facility located two miles southeast of Lumpkin, GA. On County Road 99; (3) McRae Correctional Facility, Highway 23 southeast of McRae, GA.

Cornell Corrections: (1) 85 acres of primarily undeveloped and forested land, east of John E. Lewis Drive in McComb, MS.; (2) 347 acres of land south of Bucksnort Road, 6 miles west of Interstate Highway 75, Jackson, GA.; (3) 70 acre tract of land west of State Highway 252 (Burnt Fort Road), Folkston, GA.; (4) 495 acre tract of land, south of State Road 60 west of the State Road 676 intersection near Mulberry, FL.

Wackenhut Corrections Corporation: (1) 70 acres of vacant land, eastside of Dummy Line Road, west of U.S. Highway 49, Wiggins, MS.; (2) 50 acres on the southeast portion of General Portland Lafarge Cement Plant Site, intersection of North Kendall Drive and Krome Avenue, Kendall, FL.

Correctional Services Corporation: (1) 40 acres of land five miles from I–59 and 75–80 miles north, Poplarville, MS.; (2) 250 acres, Lumberton Industrial Park, Lumberton, MS.; (3) 65 acres of undeveloped land, Land Lot #14 of the 13th District of Clayton County, Forest Park, GA.

Greene County Board of Supervisors: (1) 90 acres of land owned by Greene County, adjacent to the State correctional facility, east of State Highway 63, three miles north-northwest of the city of Leakesville, MS.

Each proposed site submitted to the BOP is in response to the Commerce Business Daily Notice issued April 3rd. The notice required potential offerors to submit a Phase I environmental Survey conducted in accordance with the American Society for Testing and Materials, Standard Practice for Environmental Site Assessment Process. Also included as a "non-scope consideration" under Chapter 12 of the Standard Practice are a delineation or identification of on-site wetlands, and an analysis of potential impacts to threatened or endangered species, or species of special status. In further evaluation of these sites, several aspects will receive detailed examination including utilities, traffic patterns, noise, cultural resources, threatened and endangered species and land uses.

The BOP intends to award a firm-fixed price contract with award-fee incentives; a potential term of ten years consisting of a three-year base and seven one-year option periods; a performance-based statement of work based generally on the American Correctional Association Standards; and a management emphasis on contractor quality control. After publication of this notice, the BOP will issue a Request for Proposals (RFPs). Proposals may be offered for any or all of the 14 sites.

Alternatives

Alternatives will include the no action alternative, and all proposals received in response to the RFPs. Each alternative will be identified and fully examined. The DEIS will not contain a preferred alternative(s).

Scoping Process

Pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA), a Scoping process will be conducted. As part of this process, public meetings will be held in Florida, Georgia, and Mississippi, to identify issues of concern for analysis during the NEPA process. Information packets containing a description of each site will be available during the meetings. Copies of the Phase I Environmental Site Assessments will be made available upon written request. During the preparation of the DEIS, there will be numerous opportunities for public involvement. The meetings, locations, dates and times will be well publicized in the local newspaper of record in the affected communities adjacent to the potential sites. Meetings will be held to allow interested persons to voice their concerns on the scope and significant issues to be examined as part of the NEPA process. The Scoping process is being held to provide for timely public comments and understanding of Federal plans and programs with possible environmental consequences as required by NEPA and the National Historic Preservation Act of 1966.

DEIS Preparation

Public notice will be given in the **Federal Register** and the local newspaper of record concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Attention: Debra J. Hood, Telephone: 202–514–6470, Telefacsimile: 202–616–6024. E-mail: *siteselection@bop.gov*

Dated: July 21, 2000.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 00–18950 Filed 7–26–00; 8:45 am]

BILLING CODE 4410–6–P

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on November 14, 2000. The groups or fields they represented are as follows: employee organizations, investment counseling, actuarial counseling, employers and the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW, Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 1, 2000. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should contain a detailed statement of the nominee's background.

Signed at Washington, D.C. this 21st day of July, 2000.

Leslie B. Kramerich,

Acting Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 00–19000 Filed 7–26–00; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request; Correction

AGENCY: Employment and Training Administration; USDOL.

ACTION: Correction.

SUMMARY: In notice document 00–18606 on page 45619 in the issue of Monday, July 24, 2000, make the following correction:

On page 45619 in the second column, under DATES: the phrase "August 31, 2000" should be changed to read "September 22, 2000".

Dated: July 24, 2000.

Richard C. Trigg,

National Director, Job Corps.

[FR Doc. 00–19001 Filed 7–26–00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Administration

Working Group on Phased Retirement; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Tuesday, August 15, 2000, of the Working Group on Phased Retirement of the Advisory Council on Employee Welfare and Pension Benefits Plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for working group members to explore legal and regulatory barriers to phased retirement.

Members of the public are encouraged go file a written statement pertaining to the topic by submitting 20 copies on or before August 7, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by August 7, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 7.

Signed at Washington, D.C. this 24th day of July 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–18997 Filed 7–26–00; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Long-Term Care, Advisory Council on Employee Welfare Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Monday, August 14, 2000, of the Advisory Council on Employee Welfare and Pension and Pension Benefit Plans Working Group studying long-term care.

The session will take place in Room N–5437 A–D, U.S. Department of Labor

Building, Second and Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m., is for working group members to receive additional information with an emphasis on the perspective from the LTC provider industry and from the Federal government.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before August 7, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by August 7, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 7.

Signed at Washington, D.C. this 21st day of July 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–18998 Filed 7–26–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Benefit Continuity After Organizational Restructuring, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group of the Advisory Council on Employee Welfare and Pension Benefit Plans studying benefit continuity after organizational restructuring will hold an open public meeting on Monday, August 14, 2000, in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to hearing testimony from the employers' perspective.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before August 7, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by August 7, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 7.

Signed at Washington, D.C. this 21st day of July, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–18999 Filed 7–26–00; 8:45 am]

BILLING CODE 4510–29–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9 a.m., August 14, 2000.

PLACE: On board MISSISSIPPI V at Wabasha Landing, Wabasha, MN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Paul District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 1:30 p.m., August 16, 2000.

PLACE: On board MISSISSIPPI V at City Landing, Burlington, IA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Rock Island District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 6 p.m., August 17, 2000.

PLACE: On board MISSISSIPPI V at City Front, St. Louis, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Louis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 21, 2000.

PLACE: On board MISSISSIPPI V at Old Ferry Landing, Tiptonville, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Memphis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 22, 2000.

PLACE: On board MISSISSIPPI V at Tom Sawyer Mississippi River RV Park, West Memphis, AR.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Memphis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 3 p.m., August 23, 2000.

PLACE: On board MISSISSIPPI V at Fulton Street/Stevens Landing, Natchez, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Vicksburg District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 25, 2000.

PLACE: On board MISSISSIPPI V at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within New Orleans District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–19130 Filed 7–25–00; 8:45 am]
BILLING CODE 3710–GX–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: August 31, 2000; 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Stefan Thynell, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY 2000 NSF/Sandia Panel of proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sushshine Act.

Dated: July 24, 2000.
Karen J. York,
Committee Management Officer.
[FR Doc. 00–19029 Filed 7–26–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Developmental Mechanism; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Developmental Mechanisms Advisory Board (1141).

Date/Time: October 25–27, 2000, 8:30 a.m.–6 p.m.

Place: National Science Foundation, Room 330, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Judith Pleaset and Dr. Susan Singer, Program Directors, Developmental Mechanism, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1417.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 26, 2000; 3 p.m. to 4 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Biology and Neuroscience with Dr. Mary Clutter, Assistant Director, Directorate for Biological Sciences.

Closed Session: October 25, 2000, 8:30 a.m. to 6 p.m.; October 26, 2000, 8:30 a.m. to 3 p.m., and 4 p.m. to 6 p.m.; October 27, 2000, 8:30 a.m. to 5 p.m. To review and evaluate the Developmental Mechanism proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 24, 2000.
Karen J. York,
Committee Management Officer.
[FR Doc. 00–19031 Filed7–26–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date/Time: September 13–15 & 20–22, 2000; 8 a.m. to 6 p.m. each day.

Place: Rooms 310, 340, 370, 380 & 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Herman B. Zimmerman, Division Director, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA. (703) 306–1550.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 24, 2000.
Karen J. York,
Committee Management Officer.
[FR Doc. 00–19033 Filed 7–26–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date/Time: July 24, 2000, 8:30 a.m.–5 p.m.

Place: Room 310 & 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Virginia Eaton, Information Technology Workforce, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230, Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Information Technology Workforce proposals submitted in response to the program announcement (NSF 00–77).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–19030 Filed 7–26–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

U.S. National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: U.S. National Assessment Synthesis Team (#5219).

Date/Time: August 24, 2000; 8 a.m.–5:30 p.m. (Note: signups for making public comments will begin at 7:45 a.m.)

Place: Historic Inns of Annapolis, Governor Calvert Conference Center, 58 State Circle, Annapolis, MD, 21401.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, National Science Foundation, 4201 Wilson Blvd., Suite 705, Arlington, VA 22230. Tel 703–306–1502 (703–292–5078 as of July 31); Fax: 703–306–0372 (703–292–9042 as of July 31); Email: tspence@nsf.gov. Interested persons should contact Ms. Susan Hansen at the above number as soon as possible to ensure space provisions are made for all participants and observers.

Meeting Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To review public comments on the draft report of the National Assessment Synthesis Team on the potential consequences of climate variability and climate change for the United States and to consider changes to the draft report in preparation for final review by the National Science and Technology Council.

Agenda: Members will review comments received during the public comment period and discuss and decide upon revisions to the draft report; parts of meeting may be subdivided into three concurrent subpanels, each of which will be open to the public. Beginning at approximately 8:30 AM, up to one hour will be provided for oral presentations by members of the public. Signups for making public comments will begin at 7:45 am.

Dated: July 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–19032 Filed 7–26–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

AmerGen Energy Company, LLC; Oyster Creek Nuclear Generating Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–16 for the Oyster Creek Nuclear Generating Station, currently held by GPU Nuclear, Inc. and Jersey Central Power & Light Company, as the owner and licensed operator.

A direct transfer of this license from GPU Nuclear, Inc. and Jersey Central Power & Light Company to AmerGen Energy Company, LLC (AmerGen) was approved by the Nuclear Regulatory Commission by an order dated June 6, 2000. The conforming amendment to the license to reflect this transfer will be issued upon completion of the purchase of the facility by AmerGen. Upon completion of this transfer, AmerGen will hold the license as the owner and licensed operator of Oyster Creek.

AmerGen submitted an application to the Commission dated February 28, 2000, which was supplemented by submittals dated May 12, June 1, and June 28, 2000, for a subsequent transfer of the license following the acquisition of Oyster Creek by AmerGen. The subsequent transfer proposed in the application dated February 28, 2000, as supplemented would result from the acquisition of PECO Energy Company's (PECO's) existing interest in AmerGen by a new generation company, Exelon Generation Company, LLC (EGC). EGC is to be a subsidiary of Exelon Ventures Company, which will be a wholly owned subsidiary of a new holding company, Exelon Corporation. Exelon Corporation will be formed from a planned merger between PECO and Unicom Corporation (Unicom). The facility is located in Lacey Township, Ocean County, New Jersey.

According to the application filed for approval by AmerGen, AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. British Energy, Inc., and PECO each own 50 percent of AmerGen. Following completion of the merger between Unicom and PECO, EGC will acquire PECO's existing 50-percent ownership interest in AmerGen. AmerGen, as owned by EGC and British Energy, Inc., will continue to be responsible, assuming the completion of the transfer of Oyster Creek to AmerGen, for the operation, maintenance, and eventual decommissioning of Oyster Creek. No physical changes to the facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 16, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2.

In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served

upon: Kevin P. Gallen, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by August 28, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 28, 2000, and the supplements dated May 12, June 1, and June 28, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland this 21st day of July 2000.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19008 Filed 7–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–69 issued to Niagara Mohawk Power Corporation (the licensee) for operation of the Nine Mile Point Nuclear Station, Unit No. 2 (NMP2) located in Scriba, Oswego County, New York.

The proposed amendment would allow a delay in implementation of the Improved Technical Specifications (ITS) from the current August 31, 2000, to December 31, 2000. The current implementation date was imposed by Amendment No. 91, dated February 15, 2000. Specifically, License Condition 2.C.(10), "Additional Condition 1," of the operating license would be revised to show the new date of December 31, 2000.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment delays implementation of the Improved Technical Specifications (ITS) from August 31, 2000 to December 31, 2000. The proposed deferral of the ITS implementation date is necessary in order to allow Operations shift crews a transition period of operating the plant using the CTS (current TS, referring to the pre-Amendment-No. 91 TS) and ITS in parallel to familiarize themselves with the differences. This transition period is considered essential to proper ITS implementation.

The proposed change is administrative in nature in that it simply defers implementation of the ITS for four months. Until the ITS are implemented, the CTS will remain in effect and the unit will continue to be operated in accordance with the NRC approved CTS requirements. Since the change is administrative, previously evaluated accident precursors or initiators are not affected and, as a result, the probability of accident initiation will remain as previously evaluated. Furthermore, the change will not affect the design, function, or operation of any structures, systems, or components, nor will it affect any maintenance, modification, or testing activities. Thus, there will be no impact on the capability of any structures, systems, or components to perform their credited safety functions to prevent an accident or mitigate the consequences of an accident previously evaluated. It is, therefore, concluded that operation in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deferral of the ITS implementation date is an administrative change. As such, the proposed change will not affect the design, function, or operation of any plant structures, systems, or components, nor will it affect any maintenance, modification, or testing activities. Since the change is administrative, there will be no impact on the process variables, characteristics, or functional performance of any structures, systems, or components in a manner that could create a new failure mode. Furthermore, the change will not introduce any new modes of plant operation or eliminate any actions required to prevent or mitigate accidents. It is, therefore, concluded that operation in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Deferral of the ITS implementation date is an administrative change. As such, the proposed change does not involve any hardware changes or physical alteration of the plant and the change will have no impact on the design or function of any structures, systems, or components. Furthermore, the change will not eliminate any requirements, impose any new requirements, or alter any physical parameters which could reduce the margin to an acceptance limit. It is, therefore, concluded that operation in accordance with the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 28, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 14, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 20th day of July 2000.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19006 Filed 7–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 70–784 and 40–7044]

Finding of No Significant Impact Related to Approval of the Remediation (Decommissioning) Plan for the Formerly Licensed Union Carbide Corporation Facility Lawrenceburg, TN, License Nos. SMB–720 and SNM–724 (Terminated)

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the remediation (decommissioning) plan (DP) for the formerly licensed Union Carbide Corporation (UCC) facility in Lawrenceburg, Tennessee, 1988. This DP was submitted by UCAR Carbon Company, Inc. (UCAR) to NRC on August 19, 1998. UCAR is obligated to remediate the UCC site to meet the release criteria established in the Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan (NRC, 1992), and CFR Part 20 Subpart E.

Environmental Assessment

Introduction

On August 26, 1963, UCC was issued Special Nuclear Materials License No. SNM–724 (SNM–724), for testing equipment and nuclear fuels development. License No. SMB–720 (SMB–720), which authorized the possession of source material, was also held by the site. SNM–724 was terminated on June 4, 1974, and the U.S. Atomic Energy Commission (AEC) released the site for unrestricted use. SMB–720 was superceded by the State of Tennessee License No. S–5002–H8 and was terminated on August 28, 1975.

SNM–724 authorized possession of up to 500 grams (g) of fully-enriched (<94 percent) uranium for testing of equipment and processes in the Lawrenceburg Fuel Development Facility located at Highway 43 South, Lawrenceburg, Tennessee. On May 22, 1964, the license was amended to authorize possession of 150 kilograms (kg) of U^{235} to make graphite-coated uranium-thorium carbide particles and graphite-matrix fuel elements. The possession limit was increased to 475 kg on June 12, 1964.

By letter dated February 4, 1974, the UCC submitted "closeout" survey information and requested that SNM–724 be terminated and the facility be released for unrestricted use. On April 5, 1974, Region II performed a closeout inspection which was documented in their Inspection Report 70–784/74–1. Region II recommended that the license be terminated, and the facility be released for unrestricted use. By AEC letter dated June 4, 1974, SNM–724 was terminated, and the UCC facility released for unrestricted use.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted by NRC to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies, since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with potential for residual contamination, based on information in the license documentation. NRC evaluated the available survey data to determine if the information was sufficient to conclude that the site meets the existing guidelines for unrestricted use.

Radiological assessments performed at the UCC facility and immediate vicinity have identified the presence of enriched and depleted uranium on building surfaces in excess of current radiological release criteria. Sampling identified contamination in three buildings on the UCC site: (1) Building 10; (2) Building 5 Annex; and (3) the Metallurgy Laboratory. Surface contamination in Building 10, Building 5 Annex, and in the Metallurgy Laboratory was primarily present as fixed contamination.

Surface contamination for α and β/γ activity above the release guidelines was identified in 11 rooms in Building 10 (Rooms 106–2, 120, 121, 122, 124, 126, 128–1, 129, 132, 133, and 134) ranging from background to 106,469 dpm/100 square centimeter direct beta/gamma. For each sample containing significant contamination, results indicated the presence of enriched uranium. This is consistent with process knowledge of the operational history. For this reason, thorium is considered an insignificant indicator for evaluating surface activity data.

Uranium was also the primary contaminant in Building 5 Annex. Surface contamination was found in four rooms in Building 5 (Rooms 106, 107, 108, 110), ranging from background to 428,698 dpm/100 square centimeters direct beta/gamma.

Contamination in the Metallurgy Laboratory consists of localized surface contamination on the tops of the cabinets. There was no indication of radioactive material above the release criteria beyond the former restricted area boundary in the ground water, settling basins, or former sanitary sewer system.

UCAR will be conducting remediation activities without a license, because its license was terminated in 1974. However, remediation will be performed in accordance with current regulations and release limits (UCAR, 1998).

Planned Decommissioning Action

Decommissioning of the UCAR facility shall comply with the SDMP Action (NRC, 1992) Plan criteria. The conduct of decommissioning and decontamination in compliance with these criteria provides adequate protection of the public health and safety and of the environment. In implementing the decommissioning plan, UCAR shall reduce residual contamination on building surfaces to be below the NRC's unrestricted release criteria (NRC, April 1992) for uranium. Building surfaces will be decontaminated with pneumatic needle-scalers, floor scabblers, vacuums and/or similar equipment. Structures that cannot be cost-effectively decontaminated (*e.g.*, counter tops, wooden drawers, duct work, and Room 134 penthouse) will be mechanically removed, reduced in volume/minimized, and packaged for disposal.

General exposure rate levels will be reduced to levels below 5 microroentgen per hour (uR/hr) above background, measured at 1 meter (m) above the surface.

UCAR is proposing to conduct a final survey to demonstrate: (1) That surface contamination levels meet the guideline levels for uranium established in "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or

Termination of Licenses for Byproduct, Source or Special Nuclear Material;" and (2) that exposure rate measurements are less than 5 uR/hr measured 1 meter above the surface. UCAR has committed to conducting the final survey in accordance with the NRC approved site survey plan, as well as any applicable regulatory requirements.

The Need for the Planned Action

The former UCAR facility is currently being used to manufacture non-radiological carbon products. The planned action is necessary to reduce residual contamination at the site to meet NRC's unrestricted release criteria.

Alternative to the Planned Action

The alternative to the proposed action is to take no action. A no-action alternative would mean the site would not be remediated now. Although there is no immediate threat to the public health and safety from this site, not undertaking remediation, at this time, does not solve the regulatory and potential long-term health and safety problems associated with having residual contamination on site. In addition, pursuing no action would delay remediation until some time in the future, when remediation costs could be much higher than they are today. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of the Planned Action

Radiological impacts that could result from the remediation of the former UCC site are direct exposure, inhalation, and ingestion hazards to workers. These hazards could occur during decontamination of building surfaces and excavation and packaging of contaminated soil.

The radioactive material of concern at this site is enriched uranium. Surface contamination in Buildings 10 and 5 Annex, and the Metallurgy Laboratory is primarily fixed. Gamma exposure rate measurements taken at locations throughout the site do not exceed background levels, with the exception of five locations near the incinerator pad. The highest radiation exposure rate detected near the incinerator pad is 26 uR/hr above background. Because the gamma exposure rate measurements are low, direct exposure to workers is not a significant radiological hazard.

Building surfaces, such as concrete floors, walls, and ceilings, will be decontaminated with equipment, such as pneumatic needle-scalers, floor scabblers, vacuums, and/or similar equipment. This equipment will be equipped with the appropriate health and safety devices, such as high-efficiency particulate air filters. If determined necessary by the Radiation Safety Officer (RSO), containment enclosures will be constructed for contamination control. UCAR will implement an occupational exposure monitoring program to ensure that internal and external exposures of workers are well below the regulatory limits. Respiratory protection will be required for workers when airborne radioactivity could result in exposures above the administrative action levels set in the health and safety plan.

Although the potential for external exposure to workers is low, UCAR will survey work areas for direct radiation whenever remediation is being performed. If dose rates exceed 5 mrem/hr, or if the RSO determines that worker exposure could exceed 10 percent of the regulatory limits found in Part 20, Subpart C "Occupational Dose Limits," worker exposure will be monitored with thermoluminescent dosimeters.

UCAR has committed to implement a contamination monitoring and control program to detect and minimize the spread of contamination. Contamination monitoring will be accomplished by: (1) Conducting routine surveys; (2) use of access controls to prevent inadvertent personnel access to contaminated areas; (3) use of radiation work permits in areas where there is potential for workers to exceed 10 percent of the regulatory limits; (4) use of personal protection equipment; and (5) employee training.

UCAR has committed to implementing a contaminant monitoring and control program to detect and minimize off-site effluent releases (UCAR, in its DP Section 3.3.4, 1998). The primary pathway for off-site release of radioactive material is airborne effluent. Inhalation and ingestion impacts will be minimized to the workers and public by controlling airborne material levels. Routine and special environmental monitoring will be conducted to detect, assess, and limit potential airborne releases. Air monitoring will be performed in work areas using Breathing Zone Air (BZA) samplers or high-volume air samplers. Administrative action levels at 10 percent of the regulatory limits for airborne effluents have been established. Investigations will be performed if administrative action levels are exceeded. No liquid wastes have been identified and none are expected.

Radioactive waste will be segregated from non-radioactive waste and stored in a controlled, fenced area. Radioactive waste will be stored inside, if possible. Otherwise, it will be stored outside and covered to protect against the weather. Radioactive waste will be packaged, labeled, manifested, and shipped in accordance with NRC and U.S. Department of Transportation requirements.

This site is being remediated to the criteria listed in the SDMP Action Plan (NRC, 1992). The exposure to the public from the remediated site is expected to be within the limits stipulated in Part 20, Subpart D.

Agencies and Individuals Consulted

This environmental assessment (EA) was prepared by NRC staff. No other sources were used beyond those referenced in this EA. NRC staff provided a draft of the EA to the Tennessee Department of Environment and Conservation, Division of Radiological Health for review. By e-mail dated May 1, 2000, the Tennessee Department of Environment and Conservation Division of Radiological Health agreed with NRC's conclusion that the proposed action will not have any significant affect on the quality of the human environment.

NRC contacted the U.S. Fish and Wildlife Service (FWS) to determine the potential impacts of the proposed action on threatened and endangered species near the UCAR facility. By letter dated September 10, 1999, the FWS informed NRC that the proposed action would have no impact on threatened and endangered species.

NRC staff provided a draft of the EA to the U.S. Environmental Protection Agency (EPA) Region IV for review. By e-mail dated June 27, 2000, EPA did not have any comments on the proposed action. However, the EPA has noted the disagreement between the EPA and the NRC about the appropriate dose criteria to be used in decommissioning.

NRC also contacted the Tennessee State Historical Preservation Office to determine if any historical properties would be impacted by the proposed action. The Tennessee State Historical Preservation Office informed the NRC, by letter dated May 2, 2000, that there is no national register of historic places listed or eligible properties affected by the project.

Conclusion

During the decommissioning operation, radiological exposure to workers and annual average concentrations of radioactive materials released off-site will be in accordance with Part 20 limits. UCAR has committed to perform remediation in accordance with an acceptable Health and Safety Plan. The Health and Safety

Plan shall provide adequate controls to keep potential doses to workers and the public from direct exposure, airborne material, and released effluents as low as is reasonably achievable.

NRC also believes that remediation of the facility according to the SDMP Action Plan criteria (NRC, 1992) adequately protects workers, members of the public, and the environment. The potential environmental impacts from the proposed action are not significant.

References

1. NRC, "Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan," 57 FR 13389, April 16, 1992.

2. NRC, "Radiological Criteria for License Termination," 10 CFR Part 20, Subpart E, 62 FR 139, July 21, 1997.

3. NRC, "Multi-Agency Radiation Survey and Site Investigation Manual, (MARSSIM)," NUREG–1575, December 1997.

4. NRC, "Draft Manual for Conducting Radiological Surveys in Support of License Termination," NUREG/CR–5849, June 1992.

5. Union Carbide Company Inc., "Remediation (Decommissioning) Plan for the Formerly Licensed Union Carbide Corporation Facility (UCC), Lawrenceburg, TN," August 19, 1998.

Finding of No Significant Impact

NRC has prepared an EA related to the approval of UCAR's Remediation (Decommissioning) Plan, Terminated License No. SNM–724 and SMB–720. On the basis of this EA, NRC has concluded that the environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The EA and the documents related to this proposed action are available for public inspection and copying at NRC's Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html.

FOR FURTHER INFORMATION CONTACT: Rebecca Tadesse, Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards. Telephone: (301) 415–6221.

Dated at Rockville, Maryland, this 20th day of July 2000.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–19005 Filed 7–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on Burnup Credit in Spent Fuel Shipping Casks

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will hold a meeting to develop a Phenomena Identification and Ranking Table (PIRT) for allowing burnup credit in spent fuel shipping casks. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About fifteen of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The PIRT activity is addressing technical issues related to burnup credit in the criticality safety analyses of PWR spent fuel in transport casks.

DATES: August 22–24, 2000, 8:30 am–5:30 pm.

ADDRESSES: Advisory Committee on Reactor Safeguards (ACRS) Room (T2B3) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. David Ebert, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, D.C. 20555–0001, telephone (301) 415–6501.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at *www.nrc.gov/RES/meetings.html* by August 14, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby, but an escort is not required.

Dated at Rockville, Maryland, this 21 day of July, 2000.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Acting Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–19007 Filed 7–26–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 11 a.m., Monday, August 7, 2000; 8:30 a.m., Tuesday, August 8, 2000.

PLACE: Reno, Nevada, at the Silver Legacy Hotel, 407 North Virginia Street, in the Silver Baron D&E rooms.

STATUS: August 7, (Closed); August 8 (Open).

MATTERS TO BE CONSIDERED:

Monday, August 7—11 a.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2000–2, Mailing Online Experiment.
2. Financial Performance.
3. Contingent Borrowing Authority.
4. Fiscal Year 2000 Economic Value Added (EVA) Variable Pay Program.
5. Establish/Deploy Process.
6. *Priority Mail Global Guaranteed* (PMGG).
7. Personnel Matters.
8. Compensation Issues.

Tuesday, August 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 10–11, 2000.
2. Remarks of the Deputy Postmaster General.
3. Briefing on the Inspector General Hotline.
4. Capital Investments.
   a. 2,403 Mixed Delivery and Collection Vehicles.
   b. Delivery Operations Information System (DOIS).
   c. Delivery Bar Code Sorter Expanded Capability (DBCS–EC).
   d. Carrier Sequence Bar Code Sorter (CSBCS) Sort Bin Expansion.
   e. Small Parcel & Bundle Sorters (SPBS) Control System Modifications.
   f. Las Vegas, Navada—Crossroads and Topaz Stations.
5. Report on the Western Area and Las Vegas District.
6. Tentative Agenda for the August 28–29, 2000, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 00–19109 Filed 7–25–00; 2:19 pm]

BILLING CODE 7710–12–M

VOL 65 ISS 145 JL 27 2000 UMI

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43060; File No. SR–MSRB–00–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

July 20, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 15, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing a proposed rule change to institute a service ("Service") to provide historical information on all transactions in municipal securities ("Comprehensive Transaction Report" or "Report"). The transaction information on the Report would come from reports made to the Board by brokers, dealers and municipal securities dealers ("dealers") pursuant to Rule G–14, which governs reports of sales or purchases. This rule currently requires dealers to report essentially all inter-dealer and customer transactions in municipal securities to the Board by midnight of trade date.

The proposed Report would be the fourth product offered by the Board to increase the amount of price transparency in the municipal securities market. The three existing products all provide information on "frequency traded" issues—issues on which at least four transaction reports were received for a given trade date. The existing products are produced and made available electronically by approximately 7 a.m. each business day and cover the previous day's trading. In contrast, the proposed Comprehensive Transaction Report would provide information on every municipal security transaction, including transactions in issues that are traded less than four times during a day. The Comprehensive Transaction Report would be made available on a delayed (historical) basis, once a month, covering the previous month's trading.

The proposed Comprehensive Transaction Report would be available by a subscription service. Each month, computer-readable compact disks, each containing information on all trades done during the previous month, would be provided to subscribers. The subscription fee would be $2,000 per year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV above. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Introduction

The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the Board has expanded the scope of the public transparency reports in several steps. Each step has provided industry participants and the public with successively more information about the market.[3]

Until now, all the Board's reports have provided information about "frequently traded" municipal securities. "Frequently traded" securities are those that are traded four or more times on a given business day. The existing reports are produced daily on a T+1 basis, *i.e.*, with information for trades effected during the preceding day.

In designing the first T+1 transparency report and subsequent enhanced versions, the Board adopted the threshold of four trades a day because of the concern that an isolated transaction may not necessarily provide a reliable indicator of "market price" and might be misleading to an observer not familiar with the market. At the same time, the Board made a commitment to review the use of these reports as experience was obtained and eventually to move to a more contemporaneous and comprehensive price transparency report.[4]

The Board believes that the next appropriate step in this process is to add, on a delayed basis, information on transactions in infrequently traded securities—those that were traded once, twice or three times on a given day. The Board therefore is proposing to release data about each trade in a Comprehensive Transaction Report that would be made available approximately 30 days after month-end. In proposing this Report, the Board is responding to informal requests from prospective subscribers to the current transparency reports. There persons have noted they could compile more complete databases of price information, which would be helpful in evaluating current trades, if historical data on infrequently traded issues were available. For example, comprehensive data might enable "matrix pricing" analysts to refine their evaluations of securities, and might help dealers to establish more accurate market prices for their current inventories. The comprehensive data also would be useful to persons studying the market from a market research or an academic perspective. Several prospective users of comprehensive data have mentioned that these data would be useful even if only available on a delayed basis rather than on T+1.

As experience is gained with reporting all transactions on a delayed basis, the Board will evaluate how best to expand price reporting in subsequent steps, for example, by including more data on infrequently traded issues on a T+1 basis, by shortening the delay for publication of the Comprehensive

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The report summarizing prices for issues that are frequently traded on the inter-dealer market began operation in 1995; in 1998, dealer-customer prices were added in a second summary report; and in January 2000, a report with details of trades in frequently traded issues was added. *See* Securities Exchange Act Release No. 42241 (December 16, 1999), 64 FR 72123 (December 23, 1999). The proposed rule change would not affect the summary and detailed public reports of frequently traded issues.

[4] *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Commission noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59610 (November 18, 1994).

Transportation Report, or by other collection and dissemination methods. As the Board previously has noted, its goal is ultimately to provide comprehensive and contemporaneous transaction reports to the market.[5]

b. Description of Proposed Report

The proposed Comprehensive Transaction Report would provide information on individual municipal securities transactions. Data about each trade on the proposed Report would be similar to that on the current Daily Transaction Report. For each trade, the proposed Report would show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and the dealer-reported yield of the transaction, if any. Each transaction would be categorized as a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade.

C. Impact of Proposed Report on Transparency

The proposed Comprehensive Transaction Report would represent a substantial increase in the number of trades on which information is made available. An average of about 29,000 transactions per day would be included, which is more than three times as many as are included in the current T+1 daily reports. The number of issues reported would increase from about 1,600 on a typical day to about 14,000.[6]

In addition to information on infrequently traded issues, the proposed Report also would provide information on two other types of trades not in the current Daily Transaction Reports: trades reported late (after trade date), and corrected trades (trades reported incorrectly on trade date that subsequently are corrected by the dealer). These would improve the accuracy of the reported information as well as make it more comprehensive.[7]

d. Description of Proposed Service

The proposed Service would make the Comprehensive Transaction Report available once a month to subscribers. The Board would send subscribers each month a compact disk containing all trades effected during the previous calendar month. The Board plans to make sample disks with a single month's data available to prospective users without charge, so that they may determine whether they wish to subscribe.

The Board is establishing a fee for an annual subscription to the Service of $2,000. The proposed fee is structured approximately to defray the Board's cost for production of 12 monthly data sets, transcription to compact disks, mailing, and subscription maintenance.

2. Statutory Basis

The Board believes the proposed rule change is consistent with the requirements of Section 15B(b)(2)(C) of the Act,[8] which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition because it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not solicit nor receive written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the MSRB consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–00–08 and should be submitted by August 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18960 Filed 7–26–00; 8:45 am]

BILLING CODE 8010–01–M

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[5] *See* Securities Exchange Act Release No. 42090 (November 2, 1999), 64 FR 60865 (November 8, 1999).

[6] These trade volume statistics are based on February 2000 market activity.

[7] To enable the Board to compile a comprehensive trades database for enforcement purposes, dealers report certain data after trade date. These data are, of course, not available to the Board in time to be included in the T+1 daily reports. The post-trade date data also include "corrections" to trades that were initially reported inaccurately with regard to price, par, etc. All together, corrected and late trades in frequently traded issues amount to about six percent of the number of trades in the current T+1 daily reports.

[8] 15 U.S.C. 78o–4(b)(2)(C).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Applicant No. 09000414]

Selby Venture Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Selby Venture Partners II, L.P., 2460 Sand Hill Road, Suite 200, Menlo Park, California 94025, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR

107.730 (2000)). Selby Venture Partners II, L.P. proposes to provide equity financing to OneChannel.net, Inc., 444 Castro Street, Suite 130, Mountain View, California 94041. The financing is contemplated for working capital, the acquisition of machinery and equipment, and marketing.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Selby Venture Partners, L.P., an Associate of Selby Venture Partners II, L.P., currently owns greater than 10 percent of OneChannel.net, Inc. and therefore OneChannel.net, Inc. is considered an Associate of Selby Venture Partners II, L.P. as defined in sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: July 19, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–18979 Filed 7–26–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3273]

State of Missouri

Greene County and the contiguous counties of Christian, Dade, Dallas, Lawrence, Polk, and Webster in the State of Missouri constitute a disaster area as a result of damages caused by heavy rain and flash flooding that occurred on July 12, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on *September 18, 2000,* and for economic injury until the close of business on *April 19, 2001* at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.375
Homeowners Without Credit Available Elsewhere	3.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.750
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster are 327306 for physical damage and 9H8700 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 19, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–18978 Filed 7–26–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3272]

State of Wisconsin (Amendment #1)

In accordance with notices from the Federal Emergency Management Agency, dated July 17 and 18, 2000, the above-numbered Declaration is hereby amended to include Racine, Richland, and Sauk Counties in the State of Wisconsin as a disaster area due to damages caused by severe storms, tornadoes, and flooding. This declaration is further amended to reopen the incident period for this disaster and establish it as beginning on May 26, 2000 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Adams, Wisconsin may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is September 9, 2000 and for economic injury the deadline is April 11, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 19, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18977 Filed 7–26–00; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (Model SSA/State Courts) Match Number 1091

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with State Courts.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will become effective as indicated above.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner, Office of Program Support, 2–Q–16 Operations, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 13, 2000.

Susan M. Daniels,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, State Courts With the Social Security Administration (SSA)

A. Participating Agencies

SSA and State Courts.

B. Purpose of the Matching Program

To identify individuals who are subject to the title II benefit nonpayment on section 202(x)(1) of the Social Security Act (the Act) affecting prisoners and certain other individuals in the programs administered by SSA and/or are subject to the title XVI supplemental security income (SSI) restrictions in section 1611(e)(1)(A) of the Act applicable to individuals in public institutions under the SSI program which provides payments to recipients with income and resources at or below levels established by law and regulations, and/or are subject to the above provisions of the Act applicable to individuals serving as representative payees on behalf of other entitled beneficiaries.

The matching program is designed to apply to prisoners covered by section 202(x)(1)(A)(i); *i.e.*, individuals confined pursuant to a conviction for an offense punishable by imprisonment for more than a year, regardless of the actual sentence imposed, and any affected individuals covered by the above reference representative payee provisions.

Also included within the terms of this agreement are any other confined individuals covered by the provisions of section 202(x)(1)(A)(ii) and individuals residing in public institutions and are covered by section 1611(e)(1)(A).

C. Authority for Conducting the Matching Program

Under the matching program, SSA will obtain data provided by State Courts under the authority of sections 202(x)(1), 202(x)(3), 1611(e)(1)(A), 1631(e)(1)(B) and 1631(f) of the Social Security Act, codified at 42 U.S.C. §§ 402(x)(1), 402(x)((3), 1382(e)(1)(A), 1383(e)(1)(B) and 1383(f).

D. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information as provided by SSA to State Courts, State Courts will provide SSA with electronic files containing prisoner data. SSA will then match the Court Agency data with title II and XVI payment information maintained in the Master Beneficiary Record SSA/OSR 60–0090, the Supplemental Security Income Record SSA/OSR 60–0103, the Master File of Social Security Number Holders and SSN Applications SSA/OSR 60–0058, and the Master Representative Payee File SSA/ORSI 60–0222 systems of records.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the Federal Register, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 00–18949 Filed 7–26–00; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF STATE

[Public Notice 3373]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Golden Deer of Eurasia: Scythian and Sarmatian Treasures from the Russian Steppes"

AGENCY: Department of State.

ACTION: Notice

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Golden Deer of Eurasia: Scythian and Sarmatian Treasures from the Russian Steppes," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on or about October 10, 2000 to on or about February 4, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: July 20, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–19015 Filed 7–27–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

Advisory Circular 34–1, Fuel Venting and Exhaust Emissions Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: This announces the availability of Advisory Circular AC 34–1, Fuel Venting and Exhaust Emissions Requirements for Turbine Engine Powered Airplanes. Copies may be requested at the address below. A Notice of Availability of the Draft AC 34–1 was issued in the Federal Register, dated September 29, 1998. Comments received on the Draft AC have been considered and revisions have been incorporated. These revisions include comments received during a workshop held with the FAA field personnel and Designated Engineering Representatives, and supportive comments, primarily of an editorial nature, from Transport Canada, the United Kingdom Civil Aviation Authority, and the French Director General of Civil Aviation.

ADDRESSES: Copies of FAA AC 34–1 may be requested from: Emissions

Division, AEE–300, Room 902W, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Edward McQueen, Emissions Division, AEE–300, Office of Environment and Energy, 800 Independence Ave., S.W., Washington, DC 20591; telephone (202) 267–3560; E-mail: edward.mcqueen@faa.gov

SUPPLEMENTARY INFORMATION: Advisory Circular (AC) 34–1, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes, has been written to provide section-by-section guidance on 14 CFR Part 34. The AC is intended to provide a better understanding of the provisions of the Part 34, and to facilitate standardized implementation of Part 34 throughout the aviation industry. The AC contains information concerning the standards and requirements for aircraft fuel venting and engine emission certification, and presents explanatory information and guidance. The information contained in the AC also sets forth acceptable means, but not the sole means, by which compliance may be shown with the requirements of Part 34.

In addition to the section-by-section explanations, the AC includes three chapters that explain specific appendices from the International Civil Aviation Organization (ICAO), Annex 16, Volume II, Aircraft Engine Emissions. Since Annex 16 is specifically referenced in Part 34, these chapters are included to make the AC a more complete reference source.

The ICAO appendices deal with detailed technical issues regarding instrumentation and measurement techniques and, as such, are relatively complex. Thus, they have been kept distinct from the rest of the AC as separate chapters. Typically, only those readers who are interested in specific equations and/or details regarding measurement techniques will need to refer to these sections.

A Notice of Availability of the Draft AC 34–1 was issued in the **Federal Register**, dated September 29, 1998, Volume 63, Number 188, Page 51990. Comments received on the Draft AC have been considered and revisions have been incorporated into AC 34–1. These revisions include comments received during a workshop held with the FAA field personnel and Designated Engineering Representatives, and supportive comments, primarily of an editorial nature, from Transport Canada, the United Kingdom Civil Aviation Authority, and the French Director General of Civil Aviation.

AC 34–1 continues to be developed by the FAA, including coordination with the European Joint Aviation Authorities (JAA) and other international authorities. The FAA expects to publish revisions periodically.

Issued in Washington, DC on July 17, 2000.

James D. Erickson,

Director of Environment and Energy.

[FR Doc. 00–19027 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Establish an Aircraft Repair and Maintenance Advisory Committee

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: This notice announces the intent of the FAA to establish an Aircraft Repair and Maintenance Advisory Committee. This notice also announces the FAA's invitation to interested and qualified persons who wish to be appointed by the Administrator as a member of the committee to submit a letter of interest.

DATES: Requests for appointment as a member of the committee must be submitted on or before September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Russell S. Unangst, Jr., Federal Aviation Administration (AFS–300), 800 Independence Avenue, SW, Washington, DC 20591; phone (202) 267–8844; fax (202) 267–5115; e-mail russell.unangst@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–81, section 734, the FAA is establishing an advisory committee to review issues related to the use and oversight of aircraft and aviation component repair and maintenance facilities located within, or outside of, the United States. This notice informs the public that the FAA will ask the proposed Aircraft Repair and Maintenance Advisory Committee to provide advice and recommendations to the Secretary of Transportation, through the FAA Administrator, on the following tasks:

(1) The amount and type of aircraft and aviation component repair work that is being performed by air carriers and aircraft repair facilities located within, and outside of, the United States

(2) The staffing needs of those facilities, and

(3) Any balance of trade or safety issues associated with that work.

The advisory committee will afford the FAA additional opportunities to obtain direct, firsthand information and insight from the represented interests meeting and exchanging ideas with respect to proposed rules and existing rules that should be revised or eliminated. The advisory committee will be making recommendations to increase safety through improved oversight of aircraft repair facilities. However, the activities of the committee will not circumvent the normal coordination process or the public rulemaking procedures.

The advisory committee may form working groups to accomplish its tasks. Working groups are expected to comply with the procedures adopted by the advisory committee. All working groups will be composed of individuals having experience in the assigned task.

The advisory committee will consist of at least twelve members, nine of whom shall be appointed by the Administrator as follows:

(a) Three representatives of labor organizations representing aviation mechanics;

(b) One representative of cargo air carriers;

(c) One representative of passenger air carriers;

(d) One representative of aircraft repair facilities;

(e) One representative of aircraft manufacturers;

(f) One representative of on-demand passenger air carriers and corporate aircraft operations; and

(g) One representative of regional passenger air carriers;

The remaining positions on the advisory committee shall consist of a representative from the Department of Commerce, designated by the Secretary of Commerce, a representative from the Department of State, designated by the Secretary of State, and one representative from the Federal Aviation Administration, designed by the Administrator.

Interested persons who wish to be appointed by the Administrator as a member of the Aircraft Repair and Maintenance Advisory Committee should submit a letter of interest to Mr. Russell S. Unangst, Jr. at the Federal Aviation Administration (AFS–310), 800 Independence Avenue, SW.,

Washington, DC 20591; phone (202) 267–8844; fax (202) 267–5115; e-mail russell.unangst@faa.gov. The letter should describe interests in the tasks and state the experience and qualification he or she would bring to the committee. Each person submitting a letter of interest will be advised whether or not his or her request can be accommodated. To the extent possible, the composition of the advisory committee and working groups will be balanced among the aviation interests selected to participate.

Requests for appointment as a member of the advisory committee should be submitted on or before September 25, 2000.

The Secretary of Transportation has determined that the formation and use of advisory committees are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the Aircraft Repair and Maintenance Advisory Committee will be open to the public. Meetings of the working groups will not be open to the public, except to the extent that individuals or organizations with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on July 24, 2000.

Angela B. Elgee,

Manager, Continuous Airworthiness Maintenance Division.

[FR Doc. 00–18993 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue from a Passenger Facility Charge (PFC) at San Angelo Regional Airport, San Angelo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Angelo Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 28, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Arboth A. Rylant, Manager of San Angelo Regional Airport at the following address: Mr. Arboth A. Rylant, Airport Director, San Angelo Regional Airport, 8618 Terminal Circle, Suite 101, San Angelo, TX 76904.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Angelo Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 11, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 2, 2000.

The following is a brief overview of the application.

Total estimated PFC revenue: $98,410.

PFC application number: 00–04–00–SJT.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Acquire Ramp/Runway Sweeper
2. Construct Replacement Aircraft Rescue and Fire Fighting Facility

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at San Angelo Regional Airport.

Issued in Fort Worth, Texas on July 11, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–18992 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Guidance for Demonstrating Compliance With Seat Dynamic Testing for Plinths and Pallets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of interim means of compliance.

SUMMARY: This notice provides clarification of acceptable interim means for demonstrating compliance with the airworthiness standards for seats mounted on adapter plates of transport category airplanes. It is necessary to give the public guidance in this area and is intended to be used as a means of compliance until the FAA publishes superseding document(s).

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Attention: Jeff Gardlin, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: The information contained in this notice was taken directly from FAA Memorandum No. 00–115–7, dated May 1, 2000.

"The purpose of this memorandum is to transmit acceptable interim means to demonstrate compliance with § 25.562 of the FAR [Federal Aviation Regulations] for seats installed on adapter plates, sometimes referred to as "plinths" or "pallets".

"The attachment addressed a specific type of installation, for which the guidance contained in Advisory Circular (AC) 25.562–1A [Dynamic Evaluation of Seat Restraint Systems & Occupant Protection on Transport Airplanes], as clarified by Memorandum No. 00–115–3, may not provide sufficient information. Recent installations of multiple single-place seats into adapter plates, with

the adapter plate installed into the airplane seat track (or other structure), have generated questions as to the proper certification procedure. In these cases, no dynamic testing incorporating the adapter plates was performed. The attached guidance addresses that issue.

"This guidance is interim, because additional data are needed to asses the interaction of seats/adapter plates/airframe. However, there are very near term projects where certification criteria are required before such data will be available. This guidance may be used until the FAA publishes a superseding document(s).

"Acceptable Interim Approach for Near Term Executive Interior Deliveries for Multiple Single Seats Mounted to an Adapter-Plate:

"Issue:

"Multiple single seats that are mounted to a single adapter-plate in the aircraft, are being tested to the 16g dynamic load conditions without the adapter-plate. The adapter-plate, which is attached to the aircraft seat tracks and, at times, to other attachment 'hard points', provides the load path to the aircraft structure. As a result of the adapter-plate not being incorporated in the test, it is unknown whether or not the seat-to-adapter-plate attachment, the adapter-plate itself, and the adapter-plate-to-aircraft-structure/seat track attachment are capable of reacting and distributing the seat loads into the aircraft structure.

"It is necessary to ensure that the seat remains attached to the aircraft floor structure under the prescribed 16g dynamic load condition. Failure in any of these load path details may result in a seat becoming detached from the aircraft floor structure. Therefore, the load path between the seat and aircraft floor structure must be shown to be capable of transferring the 16g seat dynamic loads.

"For the load path components between the seat leg attachments and the aircraft seat track or floor fittings, which were not represented/substantiated in the 16g dynamic seat test, a stress analysis of those details, using the peak loads recorded during the 16g dynamic tests, may be performed as *an acceptable interim means* of compliance to § 25.562(b) as provided below. Due to the limited amount of data available to assess the dynamic performance of this particular type of seating installation (seat/adapter-plate), this is interim action until such data are obtained to support policy addressing the subject installations. The FAA has identified that data from tests (to be performed possibly by CAMI) utilizing seats mounted on adapter-plates are needed to support long-term policy and guidance.

"Conditions necessary to use this interim approach are:

"—Each seat type (without adapter) has been dynamically tested in accordance with § 25.562, including pitch and roll.

"—The tested means of attachment is consistent with attachment of the seat to the adapter-plate.

"—Airplane floor warpage is addressed for the adapter-plate installation by providing an adequate number of distributed attachments of the adapter-plate to the airplane floor structure. The number of attachments will depend on the design of the adapter-plate and positioning of the seats on the plate. Typically the number of attachments will exceed the number of seat-to-adapter-plate attachments and shall not be less than the number of seat-to-adapter-plate attachments. The attachments of the adapter-to-aircraft structure must be structurally adequate to accommodate the dynamic loads and floor deformation.

"—Compliance with § 25.561 is achieved.

"If the actual attachment of the seat to the adapter-plate was not represented during the 16g dynamic seat test, it must be shown that the retention of the seat to the adapter-plate will not be compromised when the seat legs are subjected to the required pre-test pitch and roll conditions of § 25.562(b)(2). Testing of this condition may not be necessary if the attachment retention design and strength are shown to be capable of accommodating the dynamic loads and deformations.

"Analysis of load path components not tested:

"—*Analysis of the seat-to-adapter-plate interface.* It Must be shown that the seat/plate attachment is capable of reacting the measured peak 16g seat loads. The analysis must take into account eccentricities of load path and adapter-plate deformations that may induce prying (bending) loads at the attachment.

"—*An analysis of the adapter-plate.* It must be shown that the adapter-plate is capable of transferring the measured 16g peak loads from the seat-to-adapter-plate interface to the interface of the adapter-plate-to-aircraft floor structure (seat track lips and 'hard points').

"—*Analysis of the adapter-plate-to-floor-structure interface.* The aircraft seat track lips must be shown to be capable of reacting the measured peak 16g seat test load as distributed by the adapter-plate from the seats. The analysis must take into account eccentricities of load path and adapter-plate deformations that may induce prying (bending) loads at the attachment. In the case of hard point installations, the interface would be taken to the point at which the hard point interfaces with the aircraft floor structure (*e.g.*, floor beam).

Note: If a positive margin of safety cannot be achieved in the above analysis, either testing of the seat with the adapter-plate or redesign of the deficient interfaces will be required for compliance to § 25.562.

"If the actual seat/plate/aircraft-floor structure installation is planned to be tested, but the rigidity of the adapter-plate precludes the pre-test floor deformation condition from being performed, segments of the adapter-plate can be used for the interface between the seat and aircraft seat track section. This is in lieu of using the full plate. This will require however, that multiple attachments of the adapter-plate to the aircraft floor structure be provided. The intention of providing multiple distributed attachments is to indirectly address the potential deformation between the airplane floor structure and the plate. The number of attachments will depend on the design of the adapter-plate and positioning of the seats on the adapter-plate. The attachments of the adapter-plate-to-aircraft structure must be structurally adequate to accommodate the aircraft floor deformation.

"The FAA is also preparing a policy statement on the broader issue of compatibility of the seat installation with the airframe. This future policy statement will address this issue, and others, where they may be a question of the dynamic performance of the seat producing loads that exceed the structural capability of the airframe."

Issued in Renton, Washington on July 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–18091 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Guidance for Demonstrating Compliance With Seat Dynamic Testing for Plinths and Pallets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of additional clarification on an acceptable means of compliance.

SUMMARY: This notice provides additional clarification on an acceptable means for demonstrating compliance with the airworthiness standards for seats installed on "plinths" and "pallets" of transport category airplanes. It is necessary to give the public guidance in this area and is intended to further explain the guidance contained in AC 25.562–1A and promote greater standardization and equal treatment among applicants.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Attention: Jeff Gardlin, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton WA 98055–4056; telephone (425) 227–2136, facsimile (425 227–1320.

SUPPLEMENTARY INFORMATION: The information contained in this notice was taken directly from FAA Memorandum No. 00–115–3, dated February 22, 2000.

"The purpose of this memorandum is to provide additional clarification on acceptable means to demonstrate compliance with § 25.562, of the FAR [Federal Aviation Regulations] for seats installed on "plinths" and "pallets." Abbreviated criteria for testing plinths and pallets are given in paragraph 10.e., of Advisory Circular (AC) 25.562–1A [Dynamic Evaluation of Seat Restraint

Systems & Occupant Protection on Transport Airplanes].

"The issue of plinths versus pallets was raised in the Aviation Rulemaking Advisory Committee seat test harmonization working group that helped develop the revised AC and was considered, at the time, to be of relatively minor importance. Thus, a simple procedure was included in lieu of a detailed discussion of the underlying rationale for the criteria in the AC. However it now appears that the frequency of plinth and pallet installations is increasing, and the simple criteria in the AC are not always sufficient to address the design variations that are being presented for certification. This memorandum is intended to provide further explanation of the guidance contained in the AC and promote greater standardization and equal treatment among applicants.

"In order to clarify the appropriate certification procedures for plinths and pallets, a brief review of the regulation is needed. Section 25.562(b)(2) requires that the seat be subjected to a prescribed 16g dynamic impulse, with the points of attachment (floor rails or fitting) misaligned with respect to each other. The misalignment is intended to address local distortion between the seat and airplane floor. A lack of tolerance to local distortion has been a primary cause of seat attachment failures, and a fundamental object of the regulation is to provide for improved retention of seats. Based on accident and research data, the interface between the seat and airplane has been identified as critical and the regulation requires that interface to be tested to the prescribed 16g dynamic impulse. The basic airplane follow structure beyond the interface (beams, intercostal etc.) is not required to be dynamically tested or demonstrated to tolerate misalignment. In the case of seats that do not attach directly to the airplane seat track (or equivalent), there is a need to establish the critical interface.

"The Advisory circular characterizes a plinth as an adapter used to attach a single seat to the floor, and gives an example of a pallet as an adapter used to attach multiple rows of seats. If the seat is essentially connected to the seat track via an adapter, the adapter is functionally part of the seat, and certification testing should take this into account. In that case, the seat and its adapter would be tested dynamically, with the misalignment required by the regulation imposed at the interface of the adapter and the floor.

"On the other hand, if seats were installed into the airplane with an adapter(s) such that the adapter(s) was effectively part of the airplane floor, then the critical interface would be between that seat and the adapter. In that case, the dynamic tests would include the seat and its attachment to the adapter, with the misalignment imposed on that interface.

“In order to give a simple characterization of the two situations, the AC refers to single seats and multiple row seats. The term 'single seat,', as used in the AC, was intended to refer to a seat assembly, which could be as large as five seat places.However, the rationale behind this characterization was that a single seat adapter would be considered a plinth, by virtue of its size and purpose, and therefore a part of the seat. Conversely, a multiple row seat installation was considered sufficiently large that the adapter would have to be a pallet, and therefore part of the floor.

"Nonetheless, using the rationale discussed above, there exists the potential for large plinths and small pallets. The issue is whether the critical interface is between the seat and the adapter, or between the adapter and the airplane. Generally speaking adapters of the size that contain a single row of seats (whether they are individual seat places or a common assembly) and mount into seat tracks, should be treated as part of the seat for purposes of certification in accordance with § 25.562. Larger, or more integrally mounted, adapters should be assessed to determine whether they should be treated as part of the floor for purposes of certification in accordance with § 25.561."

Issued in Renton, Washington on July 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–18994 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–557 and AB–563 (Sub–No. 1X)]

Rutherford Railroad Development Corporation—Abandonment Exemption—in Rutherford County, NC and Southeast Shortlines, Inc., d/b/a Thermal Belt Railway—Discontinuance of Service Exemption—in Rutherford County, NC

Rutherford Railroad Development Corporation (RRDC) and Southeast Shortlines, Inc., d/b/a Thermal Belt Railway (TBRY) have filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances for RRDC to abandon and TBRY to discontinue service over a 7.87-mile line between milepost SB–180.47 in Spindale and milepost SB–188.34 near Gilkey in Rutherford County, NC.[1] The line traverses United States Postal Service Zip Codes 28160 and 28139.

RRDC and TBRY have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, the exemptions will be effective on August 26, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 7, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 16, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Fritz R. Kahn, P.C., 1920 N Street, NW., Washington, DC 20036–1601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] TBRY's lease and operation of the involved line was approved in *Southeast Shortlines, Inc., d/b/a Thermal Belt Railway—Lease, Operation and Acquisition Exemption—A Rail Line in Rutherford, NC*, Finance Docket No. 31484 (ICC served June 22, 1999).

The Bechtler Development Corporation (BDC) filed a request for a notice of interim trail use for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address BDC's trail use request and any others that may be filed in a subsequent decision.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

RRDC and TBRY have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 1, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRDC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRDC's filing of a notice of consummation by July 27, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18801 Filed 7–26–00; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 20, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 28, 2000, to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: New.
Form Number: Customs Form 6043.
Type of Review: New collection.
Title: Delivery Ticket.
Description: This information collection ensures that Customs uniform, national procedures for approving and operating warehouses receiving and controlling general order merchandise are followed.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,600 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–18958 Filed 7–26–00; 8:45 am]

BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 20, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 28, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0144.
Form Number: IRS Form 2438.
Type of Review: Extension.
Title: Undistributed Capital Gains Tax Return.
Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under Internal Revenue Code (IRC) section 852(b)3(D). IRS uses this information to determine the correct tax.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 39 min.
Learning about the law or the form—24 min.
Preparing and sending the form to the IRS—32 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 859 hours.

OMB Number: 1545–0228.
Form Number: IRS Form 6252.
Type of Review: Extension.
Title: Installment Sale Income.
Description: Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and a sale of real property by someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit is included in income on the taxpayer's return.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/Recordkeepers: 782,848.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 18 min.
Learning about the law or the form—24 min.
Preparing the form—1 hr., 0 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 2,395,515 hours.

OMB Number: 1545–0940.
Regulation Project Number: LR–185–84 Final.
Type of Review: Extension.
Title: Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements.
Description: The regulation liberalizes the procedure by which the state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and deletes the requirement to file certain supplemental capital expenditure statements.

Respondents: State, Local or Tribal Government.

Estimated Number of Recordkeepers: 10,000.

Estimated Burden Hours Per Recordkeeper: 6 minutes.

Estimated Total Recordkeeping Burden: 1,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–18959 Filed 7–26–00; 8:45 am]

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July 27, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 39
Airworthiness Directives; Rule and Proposed Rules

VOL 65 ISS 145 JL 27 2000 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–30–AD; Amendment 39–11829; AD 2000–14–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires an inspection of the powered drive unit power wires within three feet of each affected powered drive unit termination for mechanical damage; and repair, if necessary. This action also requires revising the wire harnesses; splicing any additional length wire; routing and installing parts; and replacing the floor panels with new and retained floor panels. This action is necessary to ensure that the powered roller pans are positioned properly. Improperly positioned powered roller pans could pierce a powered roller wire harness and cause sparking that could ignite adjacent insulation material, which could result in smoke and fire in the center cargo compartment of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 11, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 25, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–30–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems Safety and Integration, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which a fire occurred in the center cargo compartment during loading on a McDonnell Douglas Model MD–11 series airplane. Investigation has revealed that a powered roller pan attach screw had pierced a powered roller wire harness and caused sparking that resulted in the ignition of adjacent insulation material. The cause of such piercing was attributed to powered roller pans that were incorrectly positioned during production of the airplane, which resulted in a mismatch between the roller pan and wire harness. This condition, if not corrected, could result in smoke and fire in the center cargo compartment of the airplane.

This incident is not considered to be related to a recent accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Explanation of Relevant Service Information

Boeing has issued McDonnell Douglas Service Bulletin MD11–25A227, dated January 27, 2000, which describes procedures for a one-time general visual inspection of the powered drive unit power wires within three feet of each affected powered drive unit termination for mechanical damage; and repair, if necessary. The service bulletin also describes procedures for revising the wire harnesses; splicing any additional length wire; routing and installing parts; and replacing the floor panels with new and retained floor panels. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure that the powered roller pans are positioned properly. Improperly positioned powered roller pans could pierce a powered roller wire harness and cause sparking that could ignite adjacent insulation material, which could result in smoke and fire in the center cargo compartment of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

None of the Model MD–11 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately between 2 and 3 work hours (depending on the configuration of the airplane) to accomplish the required actions, at an average labor rate of $60 per work hour. Parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this AD would be between $120 and $180 per airplane. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–30–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–18 McDonnell Douglas: Amendment 39–11829. Docket 2000–NM–30–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11–25A227, dated January 27, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the powered roller pans are positioned properly, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with McDonnell Douglas Service Bulletin MD11–25A227, dated January 27, 2000.

Inspection

(1) Perform a general visual inspection of the powered drive unit power wires within three feet of each affected powered drive unit termination for mechanical damage. If any damaged wire is detected, prior to further flight, repair the damaged wire.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Revise Wire Harnesses, Splice Wire, and Route and Install Parts

(2) Revise the wire harnesses, splice any additional length wire, and route and install parts.

Replacement

(3) Replace the floor panels with new and retained floor panels.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD11–25A227, dated January 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 11, 2000.

Issued in Renton, Washington, on July 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18392 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

VOL 65 ISS 145 JL 27 2000 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–28–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require modification of the insulation blankets in the area surrounding the main external power ground studs. This action is necessary to prevent smoke and fire in the forward cargo compartment due to burn damage to the insulation blankets in the area surrounding the main external power ground studs. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–28–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–28–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an instance in which burn damage of insulation blankets was found in the areas surrounding the main external and the ground wire attach points of the galley power receptacle. That incident occurred on a McDonnell Douglas Model MD–11 series airplane. The cause of that burn damage has been attributed to loose ground stud attach hardware. This condition, if not corrected, could result in smoke and fire in the forward cargo compartment.

This unsafe condition is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

To address the unsafe condition of loose ground stud attach hardware, the FAA issued AD 95–25–04 on November 28, 1995 (61 FR 691, January 10, 1996). That AD requires an inspection and certain other actions to ensure that the ground stud assemblies at three locations of the airplane are installed properly and torqued to certain specifications. That AD also requires verification of the integrity of the components of the ground stud assemblies, inspection to detect heat damage in adjacent areas, and correction of any discrepancy. The actions required by that AD are intended to ensure that the ground stud assemblies are attached correctly so that arcing will not occur.

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–25A187, Revision 01, dated January 5, 2000, which describes a modification that cuts the insulation

blankets in the area surrounding the main external power ground studs in the forward cargo compartment at fuselage station Y=613.000. Such modification of the insulation blankets is intended to minimize the possibility of burn damage to the insulation blankets.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a modification that cuts the insulation blankets in the area surrounding the main external power ground studs in the forward cargo compartment at fuselage station Y=613.000. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 137 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–28–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–25A187, Revision 01, dated January 5, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and fire in the forward cargo compartment due to burn damage to the insulation blankets in the area surrounding the main external power ground studs, accomplish the following:

Modification

(a) Within one year after the effective date of this AD, modify the insulation blankets in the area surrounding the main external power ground studs in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A187, Revision 01, dated January 5, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.12000 of the Federal Aviation Regulations (14 CFR 21.197 and 21.12000) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18393 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require relocating the B7–28 bus located in the upper main circuit breaker in the rear cockpit observer's station from the lower to the upper terminals of the circuit breakers in Row P. This action is

necessary to prevent insufficient clearance and contact between the B7–28 bus and an adjacent panel, which could result in arcing damage, smoke, and/or fire in the upper main circuit breaker panel. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–29–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–29–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an instance in which the B7–28 bus connection to circuit breaker B1–1610, position P1, Row P, made contact with the adjacent panel opening jamb. When the panel door of the cockpit's upper main circuit breaker was opened and closed during a routine inspection, the circuit breaker made contact with the opening jamb. This incident occurred on a McDonnell Douglas Model MD–11 series airplane. The cause of such contact is insufficient clearance between the existing location of the B7–28 bus in the lower terminals of the circuit breakers and adjacent structure. Such insufficient clearance and contact between the B7–28 bus and an adjacent panel, if not corrected, could result in arcing damage, smoke, and/or fire in the upper main circuit breaker panel.

The incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A180, dated January 4, 2000, which describes procedures for relocating the B7–28 bus located in the upper main circuit breaker in the rear cockpit observer's station from the lower to the upper terminals of the circuit breakers in Row P. Relocation procedures include removing and retaining the B7–28 bus, power feeder wire, and circuit wires from the circuit breakers. Procedures also include installing the B7–28 bus and power feeder wire to the upper terminals of the circuit breakers, and installing circuit wires to the lower terminal of the respective circuit breakers. Relocation of the B7–28 bus from the lower to the upper terminals of the circuit breakers will increase the clearance between the B7–28 bus and an adjacent panel, and minimize the possibility of contact between those components. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

There are approximately 144 airplanes of the affected design in the

worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,720, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–29–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A180, dated January 4, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent insufficient clearance and contact between the B7–28 bus and an adjacent panel, which could result in arcing damage, smoke, and/or fire in the upper main circuit breaker panel, accomplish the following:

Relocation

(a) Within 12 months after the effective date of this AD, relocate the B7–28 bus located in the upper main circuit breaker in the rear cockpit observer's station from the lower to the upper terminals of the circuit breakers in Row P in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A180, dated January 4, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18394 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–31–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. For certain airplanes, that AD also requires installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure. For certain other airplanes, that AD requires inspection of the wire assembly support installation for evidence of chafing, and corrective actions, if necessary. For certain airplanes subject to the existing AD, as well as additional airplanes being added to the applicability of this proposed AD, this action would add a requirement for modification of a support bracket for the ramp deflector assembly. This action is necessary to prevent chafing of electrical wire assemblies above the forward passenger doors, which could result in an electrical fire in the passenger compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–

31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–31–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–31–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 10, 2000, the FAA issued AD 2000–03–10, amendment 39–11569 (65 FR 8034, February 17, 2000), applicable to certain McDonnell Douglas MD–11 series airplanes, to require a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. For certain airplanes, that AD also requires installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure. For certain other airplanes, that AD requires inspection of the wire assembly support installation for evidence of chafing, and corrective actions, if necessary. That action was prompted by a report indicating that damaged electrical wires were found above the forward passenger doors due to flapper panels moving inboard and chafing the electrical wire assemblies of this area. The requirements of that AD are intended to prevent such chafing, which could result in an electrical fire in the passenger compartment.

The incident that prompted AD 2000–03–10 is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Actions Since Issuance of Previous Rule

In the preamble to AD 2000–03–10, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Since the issuance of AD 2000–03–10, the FAA has received a report indicating that, on certain airplanes, a support bracket for the ramp deflector assembly installed in accordance with the existing AD could chafe an electrical wire bundle located above the support bracket. In order to prevent such chafing, the FAA finds that it is necessary to require modification of the subject support bracket. In addition, the FAA has determined that this modification is necessary not only for certain airplanes subject to the existing AD, but also for certain additional airplanes that were delivered without modification of the subject support bracket.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000. That alert service bulletin describes procedures for installation of a ramp deflector assembly similar to those described in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999, which was referenced as an appropriate source of service information for certain actions required by the existing AD. However, Revision 06 of the alert service bulletin describes new procedures, applicable to certain airplanes, for modifying a support bracket on the ramp deflector assembly on the right-side forward entry drop ceiling structure. In addition to airplanes listed in Revision 05 of the alert service bulletin, Revision 06 lists several additional airplanes on which this modification of the support bracket is necessary. Accomplishment of the actions specified in Revision 06 of the alert service bulletin is intended to

adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–03–10 to continue to require a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. For certain airplanes, the proposed AD would also continue to require installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure, and, for certain other airplanes, inspection of the wire assembly support installation for evidence of chafing, and corrective actions, if necessary. For certain airplanes subject to the existing AD, as well as additional airplanes being added to the applicability of this proposed AD, this proposed AD would require modification of a support bracket for the ramp deflector assembly. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Explanation of Change to "Cost Impact" Section

Since the issuance of AD 2000–03–10, the FAA has determined that fewer airplanes are affected by the requirements of that AD than was stated in the "Cost Impact" section in that AD. Therefore, though this proposed AD would add airplanes to the applicability of the existing AD, the number of affected airplanes stated in the "Cost Impact" section is lower than stated in the existing AD. The cost figures contained in the "Cost Impact" section of this AD have been revised accordingly.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD.

The inspection to detect discrepancies around the entry light connector of the slide ceiling panel above the forward passenger doors that is currently required by AD 2000–03–10 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $2,520, or $120 per airplane.

For Group 1 airplanes as specified in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06 (approximately 16 airplanes of U.S. registry), the installation of the flapper door ramp deflector that is currently required by AD 2000–03–10 takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $455 per airplane. Based on these figures, the cost impact of this currently required installation on U.S. operators of Group 1 airplanes is estimated to be $14,960, or $935 per airplane.

For Group 2 airplanes as specified in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06 (approximately 8 airplanes of U.S. registry), the installation of the flapper door ramp deflector that is currently required by AD 2000–03–10 takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $890 per airplane. Based on these figures, the cost impact of this currently required installation on U.S. operators of Group 2 airplanes is estimated to be $10,960, or $1,370 per airplane.

For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999 (approximately 21 airplanes of U.S. registry), the inspection of the wire assembly support installation that is currently required by AD 2000–03–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $1,260, or $60 per airplane.

For airplanes in Groups 1 and 3 as specified in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06 (approximately 18 airplanes of U.S. registry), the new modification that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $2,160, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11569 (65 FR 8034, February 17, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2000–NM–31–AD. Supersedes AD 2000–03–10, Amendment 39–11569.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas

Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; and MD11–24A068, Revision 01, dated March 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Restatement of the Requirements of AD 2000–03–10: Detailed Visual Inspection

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletins MD11–25A194, Revision 05, dated June 21, 1999, and MD11–24A068, Revision 01, dated March 8, 1999: Within 10 days after December 28, 1998 (the effective date of AD 98–25–11 R1, amendment 39–10988), perform a detailed visual inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) At the area of the forward drop ceiling just outboard of mod block S3–735, and forward and inboard of the light ballast for the entry light on the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5.

(2) At the area above the forward right passenger door (1R) at station location x = −30, y = 430, and z = 70 in the ramp deflector assembly part number 4223570–501.

Corrective Action

(b) If any discrepancy is detected during the visual inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated January 1, 1998, or April 1, 1998.

Inspection, Installation, and Modification

(c) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or MD11–24A068, Revision 01, dated March 8, 1999: Within 6 months after March 23, 2000 (the effective date of AD 2000–03–10, amendment 39–11569), accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, as applicable.

(1) For Group 1 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000. After the effective date of this AD, only Revision 06 of the alert service bulletin shall be used.

(2) For Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000. After the effective date of this AD, only Revision 06 of the alert service bulletin shall be used.

Note 3: Installation of a ramp deflector assembly in accordance with McDonnell Douglas Service Bulletin MD11–25–194, dated March 15, 1996; Revision 01, dated May 1, 1996; Revision 02, dated July 12, 1996; Revision 03, dated December 12, 1996; or Revision 04, dated March 8, 1999, is acceptable for compliance with the requirements of paragraph (c)(2) of this AD.

(3) For Group 3 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Modify the previously installed ramp deflector assembly bracket in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000. After the effective date of this AD, only Revision 06 of the alert service bulletin shall be used.

(4) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999: Perform a general visual inspection of the wire assembly support installation for evidence of chafing, in accordance with the service bulletin. If any chafing is detected, prior to further flight, repair or replace any discrepant part with a new part in accordance with the service bulletin.

Note 4: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being check."

New Requirements of This AD

One-Time Inspection

(d) For airplanes other than those identified in paragraph (a) of this AD: Within 10 days after the effective date of this AD, perform a detailed visual inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD. If any discrepancy is found, prior to further flight, repair in accordance with the requirements of paragraph (b) of this AD.

Note 5: Accomplishment of the inspection required by paragraph (a) of AD 98–25–11 R1, amendment 39–10988, prior to the effective date of this AD is acceptable for compliance with paragraph (d) of this AD.

Modification

(e) For airplanes listed in Group 3 of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000: Within 6 months after the effective date of this AD, modify the ramp deflector assembly support bracket on the right side forward entry door drop ceiling structure, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18395 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–32–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require resistance tests of the brake coils of the auto throttle servo (ATS) and of the elevator load feel (ELF)/flap limiter (FL) duplex actuator for low electrical resistance; and corrective actions, if necessary. This action is necessary to prevent electrical shorting of the brake coils of the ATS or ELF/FL duplex actuator, which could result in smoke in the cockpit and/or passenger cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1231. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–32–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–32–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which the auto throttle servo (ATS) shorted electrically and caused smoke in the cockpit. This incident occurred on a McDonnell Douglas Model MD–11 series airplane. Investigation revealed that one of the servo brake solenoid assemblies had internal shorting of the coil windings caused by corrosion due to chlorine contamination during production of the ATS. Electrical shorting of the brake coils of the ATS or elevator load feel/flap limiter (ELF/FL) duplex actuator, if not corrected, could result in smoke in the cockpit and/or passenger cabin.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin MD11–22–024, dated March 29, 2000, which describes procedures for resistance tests of the brake coils of the ATS and of the ELF/FL duplex actuator for low electrical resistance; and corrective actions, if necessary. The corrective actions include replacing the thrust control module with a new thrust control module or a thrust control module that has a modified and reidentified ATS, and replacing the ELF/FL duplex actuator with a modified and reidentified ELF/FL duplex actuator. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 187 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed resistance tests, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the resistance tests proposed by this AD on U.S. operators is estimated to be $7,200, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13232.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39–AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–32–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Service Bulletin MD11–22–024, dated March 29, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical shorting of the brake coils of the auto throttle servo (ATS) or elevator load feel (ELF)/flap limiter (FL) duplex actuator, which could result in smoke in the cockpit and/or passenger cabin, accomplish the following:

Resistance Tests

(a) Within 1 year after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with Boeing Service Bulletin MD11–22–024, dated March 29, 2000.

(1) Perform resistance tests of the brake coils of the ATS for low electrical resistance. If one or both resistance tests fail, prior to further flight, replace the thrust control module with a new thrust control module or a thrust control module that has a modified and reidentified auto throttle servo, in accordance with the service bulletin.

(2) Perform resistance tests of the brake coils of the FL duplex actuator for low electrical resistance. If one or both resistance tests fail, prior to further flight, replace the FL duplex actuator with a modified and reidentified FL duplex actuator in accordance with the service bulletin.

(3) Perform resistance tests of the brake coils of the ELF duplex actuator for low electrical resistance. If one or both resistance tests fail, prior to further flight, replace the ELF duplex actuator with a modified and reidentified ELF duplex actuator in accordance with the service bulletin.

Spares

(b) As of the effective date of this AD, no person shall install the following parts on any airplane.

(1) Thrust control module assembly having part number ABH7760–1, ABH7760–501, or ABH7760–503;

(2) Flap limiter duplex acutuator having part number 4059004–901; or

(3) Elevator load feel duplex actuator having part number 4059005–901.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18396 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–33–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area; and corrective actions, if necessary. This proposal also would require revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays. This action is necessary to prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the CAC. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–33–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of arcing between a power feeder cable and terminal strip support bracket on a McDonnell Douglas Model MD–11 series airplane. Investigation revealed that the possibility exists for such arcing to occur throughout the airplane where power feeder cables are improperly stacked in conjunction with low base terminal strips. This condition, if not corrected, could result in arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the center accessroy comparment (CAC).

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000, which describes the following procedures:

- Performing a one-time general visual inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment area; and corrective actions, if necessary. The corrective actions include replacing the terminal strip with a like part; sealing screw heads of replaced terminal strips; repairing damage; and replacing damaged wires with new wires.
- Revising the wire connection stack up of certain cable terminals at the electrical power center bays in the center accessory compartment.
- Replacing certain terminal strips with new strips and removing the applicable nameplate at electrical power center bays.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 151 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 6 and 8 work hours per airplane depending on the configuration of the airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately between $1,091 and $1,256 per airplane depending on the configuration of the airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $85,609 and $102,424, or between $1,451 and $1,736 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–33–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the center accessory compartment, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD, perform a one-time general visual inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment area, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 (No Chafing or Damage)

(1) If no chafing or damage is detected, no further action is required by this paragraph.

Condition 2 (Evidence of Chafing or Damage on Terminal Strips)

(2) If any chafing or damage is detected on the terminal strips, before further flight, replace the terminal strip with a like part and seal screw heads of replaced terminal strips, in accordance with the service bulletin.

Condition 3 (Chafing or Damage Within Limits)

(3) If any chafing is detected and if any damage is detected within the limits specified in the service bulletin, before further flight, repair damage in accordance with the service bulletin.

Condition 4 (Chafing or Damage Beyond Limits)

(4) If any chafing is detected and if any damage is detected beyond the limits specified in the service bulletin, before further flight, replace damaged wires with new wires in accordance with the service bulletin.

Revise Wire Connection of the Cable Terminal Strips

(b) Within 12 months after the effective date of this AD, revise the wire connection stack up of certain cable terminals at the electrical power center bays in the center accessory compartment in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000.

Replacement of Terminal Strips and Removal of Nameplate

(c) Within 12 months after the effective date of this AD, replace the terminal strips with new strips and remove the applicable nameplate at electrical power center bays in the center accessory compartment, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18397 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable. This action is necessary to prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–34–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has been informed by the airplane manufacturer of a design analysis of the grounding system of the galley external and main external ground cables on McDonnell Douglas Model MD–11 series airplanes. The results of the analysis revealed that the existing design of the subject grounding system does not adequately prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables. These conditions, if not corrected, could result in smoke and fire in the forward cargo compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

The FAA has previously issued AD 95–25–04, amendment 39–9448 (61 FR 691, January 10, 1996) that concerns that galley external power receptacle on certain Model MD–11 series airplanes. That AD requires an inspection and other specified actions to ensure that the

ground stud assemblies at three locations of the airplane are installed properly and torqued to certain specifications, to verify the integrity of the components of the ground stud assemblies, and to detect heat damage in adjacent areas; and correction of any discrepancy.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000, which describes procedures for replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 149 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 1 (for Group 1 airplanes) and 2 (for Group 2 airplanes) work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $337 (for Group 1 airplanes) or $647 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,835, or $397 per airplane (for Group 1 airplanes); or $42,185, or $767 per airplane (for Group 2 airplanes).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–34–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment, accomplish the following:

Replacement and Reroute

(a) Within 12 months after the effective date of this AD, accomplish the actions specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000.

(1) For Group 1 airplanes listed in the service bulletin: Replace the ground support brackets with new brackets and reroute the ground cables of the galley external power and main external power.

(2) For Group 2 airplanes listed in the service bulletin: Replace the ground support bracket and reroute the ground cables of the main external power.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18396 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–35–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require an inspection of the electrical wires routed above the door actuation cables for minimum .50-inch clearance with the door in the open and closed position, damage due to chafing or electrical arcing, or damaged door actuation cables; and corrective actions, if necessary. This action is necessary to prevent damaged electrical wires or damaged door actuation cables due to chafing by the cables during operation of the forward passenger door, which could result in electrical arcing and consequent smoke in the area above the forward passenger door. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–35–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of an electrical wire chafed by an actuation cable of the forward passenger door when the door was in the full open position. This incident occurred on a McDonnell Douglas Model MD–11 series airplane. Investigation revealed that the existing routing of the electrical wires of the forward passenger door could cause the electrical wires to be chafed by the door actuation cables during operation of the door. Investigation also revealed that the electrical wires were not routed properly during manufacturing of the airplane. This condition, if not corrected, could result in damaged electrical wires or damaged door actuation cables, which could result in electrical arcing and consequent smoke in the area above the forward passenger door.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A182, dated April 3, 2000, which describes procedures for a one-time general visual inspection of the electrical wires routed above the door actuation cables for minimum .50-inch clearance with the door in the open and closed position, damage due to chafing or electrical arcing, or damaged door actuation cables; and corrective

actions, if necessary. The corrective actions include loosening the wire clamps as necessary; repositioning electrical wires to provide minimum clearance; tightening wire clamps; replacing damaged electrical wires with new wires or repairing damaged wires; and replacing damaged door actuation cables with new cables. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 187 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 64 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $7,680, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–35–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A182, dated April 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damaged electrical wires or damaged door actuation cables due to chafing by the cables during operation of the forward passenger door, which could result in electrical arcing and consequent smoke in the area above the forward passenger door, accomplish the following:

Inspection

(a) Except as provided by paragarph (b) of this AD, within 6 months after the effective date of this AD, perform a one-time general visual inspection of the electrical wires routed above the door actuation cables for minimum .50-inch clearance with the door in the open and closed position, damage due to chafing or electrical arcing, or damaged door actuation cables, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A182, dated April 3, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 (Minimum Clearance and No Chafed Electrical Wiring or Damaged Door Actuation Cables)

(1) If minimum .50-inch clearance exists between the electrical wires and door actuation cables with the door in the open and closed positions, and if no chafed electrical wiring or damaged door actuation cable is detected, no further action is required by this AD.

Condition 2 (Less Than Minimum Clearance, No Chafed Electrical Wiring or Damaged Door Actuation Cables)

(2) If less than .50-inch clearance exists between the electrical wires and door actuation cables with the door in the open and closed positions, and if no chafed electrical wiring or damaged door actuation cable is detected, before further flight, loosen wire clamps as necessary, reposition electrical wires to provide minimum clearance, and tighten wire clamps, in accordance with the service bulletin.

Condition 3 (Less Than Minimum Clearance, Chafed Electrical Wiring or Damaged Door Actuation Cables)

(3) If less than .50-inch clearance exists between the electrical wires and door actuation cables with the door in the open and closed positions, and if any chafed electrical wiring or damaged door actuation cable is detected, before further flight, replace damaged electrical wires with new wires or repair damaged wires, loosen wire clamps as necessary, reposition electrical wires to provide minimum clearance, tighten wire clamps, and replace damaged door actuation cables with new cables, in accordance with the service bulletin.

Exception to Inspection Required in Paragraph (a) of This AD

(b) For Model MD–11 series airplanes, the inspection required by paragraph (a) of this AD is only applicable to functioning doors. For Model MD–11F series airplanes or Model MD–11 series airplanes converted to a freighter configuration, equipped with one or more disabled non-functioning doors that do

not have door acuating cables, the inspection is NOT required for those disabled doors.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18399 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–36–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in various areas of the airplane; and corrective actions, if necessary. This action is necessary to prevent electrical arcing and/or heat damaged wires due to improper wire installations during manufacture and/or maintenance of the airplane, and consequent fire and smoke in various areas of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–36–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of several incidents of damaged wire insulation and chafed wires in various areas on McDonnell Douglas Model MD–11 series airplanes. Investigation revealed that the cause of such damage and chafing may be attributed to improper wire installations during manufacture and/or maintenance of the airplane. This condition, if not corrected, could result in electrical arcing and/or heat damaged wires, and consequent fire and smoke in the various areas of the airplane.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all

aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

The FAA has previously issued AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000), applicable to certain McDonnell Douglas Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 series airplanes, and Model MD–11 and 11F series airplanes. That AD currently requires a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. The FAA recommends that the actions required by this proposed AD be accomplished immediately after accomplishing the replacement required by AD 2000–11–02. This proposed AD would not affect the current requirements of AD 2000–11–02.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following service bulletins:

- McDonnell Douglas Service Bulletin MD11–24–171, dated April 4, 2000;
- McDonnell Douglas Service Bulletin MD11–24–170, dated April 12, 2000;
- McDonnell Douglas Service Bulletin MD11–24–167, dated April 4, 2000;
- McDonnell Douglas Service Bulletin MD11–24–165, dated April 4, 2000;
- McDonnell Douglas Service Bulletin MD11–24–163, dated April 4, 2000;
- McDonnell Douglas Service Bulletin MD11–24–188, dated April 28, 2000;
- McDonnell Douglas Service Bulletin MD11–24–161, dated April 10, 2000; and
- McDonnell Douglas Service Bulletin MD11–24–162, dated April 10, 2000.

These service bulletins describe procedures for a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in various areas (*i.e.*, center, aft, and forward cargo compartments; aft, forward, and mid cabin passenger compartment; flight compartment; forward drop ceiling; center accessory compartment; and main avionics compartment) of the airplane; and corrective actions, if necessary. The corrective actions include: repairing cracked, split, or torn wiring insulation; installing a certain size clamp; adjusting or replacing sta-straps; repositioning certain wires or clamps; replacing or repairing certain wires or terminals; and tightening sta-straps, clamps, terminals, and wire bundles. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed AD and Relevant Service Information

Paragraphs 3.B.3.K. and 3.B.3.P of the Accomplishment Instructions of the service bulletins described previously do NOT provide instructions for accomplishing corrective actions for certain discrepancies that are detected. Therefore, the FAA finds that the following corrective actions must be accomplished, if necessary, to address the identified unsafe condition of the proposed AD:

- If any screw terminal of the flag lug bus bar is loose, before further flight, retorque to 10 to 11 inch-pounds.
- If no gap between the wire bundle and blanket can be seen when pressure is applied to the blanket, before further flight, reposition wires or clamping so that a gap can been seen when pressure is applied to the blanket.

Cost Impact

There are approximately 182 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 10 work hours per airplane to accomplish each of the six inspections specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this proposed AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these indicated inspections proposed by this AD on U.S. operators is estimated to be $216,000, or $3,600 per airplane.

It would take approximately 5 work hours per airplane to accomplish the inspection specified in paragraph (a)(7) of this proposed AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this indicated inspection proposed by this AD on U.S. operators is estimated to be $18,000, or $300 per airplane.

It would take approximately 12 work hours per airplane to accomplish the inspection specified in paragraph (a)(8) of this proposed AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this indicated inspection proposed by this AD on U.S. operators is estimated to be $43,200, or $720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–36–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, 0558 through 0633 inclusive, and 0635; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: The FAA recommends that the actions required by this proposed AD be accomplished immediately after accomplishing the replacement of metallized polyethylenetaraphthalate (MPET) insulation blankets, as required by AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000).

To prevent electrical arcing and/or heat damaged wires due to improper wire installations during manufacture and/or maintenance of the airplane, and consequent fire and smoke in various areas of the airplane, accomplish the following:

One-Time Detailed Visual Inspection

(a) Within 5 years after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) of this AD, as applicable.

(1) For all airplanes: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the center and aft cargo compartments from stations Y=1521.000 to Y=2007.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–171, dated April 4, 2000.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(2) For all airplanes: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward cargo compartment from stations Y=595.000 to Y=6–73.500, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–170, dated April 12, 2000.

(3) For all airplanes: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=5–11.000 to Y=2007.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–167, dated April 4, 2000.

(4) For all airplanes: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=756.000 to Y=1501.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–165, dated April 4, 2000.

(5) For all airplanes: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=465.000 to Y=755.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–163, dated April 4, 2000.

(6) For all airplanes: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the flight compartment and forward drop ceilings areas from stations Y=275.000 to Y=464.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–188, dated April 28, 2000.

(7) For airplanes having manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, 0558 through 0633 inclusive: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the center accessory compartment from stations Y=6–50.000 to Y=1179.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–161, dated April 10, 2000.

(8) For airplanes having manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, 0558 through 0633 inclusive: Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the main avionics compartment from stations Y=275.000 to Y=464.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–162, dated April 10, 2000.

Corrective Action

(b) If any discrepancy is detected during the inspection required by paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this AD, before further flight, accomplish the applicable corrective action(s) in accordance with the Accomplishment Instructions of the following applicable service bulletins, except as provided in paragraphs (c) and (d) of this AD, as applicable:

(1) McDonnell Douglas Service Bulletin MD11–24–171, dated April 4, 2000;

(2) McDonnell Douglas Service Bulletin MD11–24–170, dated April 12, 2000;

(3) McDonnell Douglas Service Bulletin MD11–24–167, dated April 4, 2000;

(4) McDonnell Douglas Service Bulletin MD11–24–165, dated April 4, 2000;

(5) McDonnell Douglas Service Bulletin MD11–24–163, dated April 4, 2000;

(6) McDonnell Douglas Service Bulletin MD11–24–188, dated April 28, 2000;

(7) McDonnell Douglas Service Bulletin MD11–24–161, dated April 10, 2000; or

(8) McDonnell Douglas Service Bulletin MD11–24–162, dated April 10, 2000.

Note 4: Where there are differences between the AD and the referenced service bulletins, the AD prevails.

(c) If no gap between the wire bundle and blanket can be seen when pressure is applied to the blanket, before further flight, reposition wires or clamps so that a gap can been seen when pressure is applied to the blanket.

(d) If any screw terminal of the flag lug bus bar is loose, before further flight, retorque to 10 to 11 inch-pounds.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18400 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–37–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require an inspection of the one phase remote control circuit breaker (RCCB) in the main avionics compartment and center accessory compartment to determine its part number and serial number, and replacement of the RCCB with a certain RCCB, if necessary. This action is necessary to ensure that defective braze joints of certain latch assemblies of the RCCB are not installed on the airplane. Defective braze joints could fail and prevent the RCCB from tripping during an overload condition, which could result in fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–37–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed fn light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–37–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has been informed by the airplane manufacturer that certain latch assemblies of the one phase remote control circuit breakers (RCCB) were manufactured with defective braze joints. These defective braze joints are installed on certain McDonnell Douglas Model MD–11 series airplanes. The defective braze joints that are located between the bimetal assembly and the latch are limited to two lots with specific part numbers and serial numbers. Defective braze joints, if not corrected, could fail and prevent the RCCB from tripping during an overload condition, which could result in a fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment.

This finding is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate

corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11–24A144, dated May 2, 2000. The service bulletin describes procedures for a one-time general visual inspection of the one phase RCCB in the main avionics compartment and center accessory compartment to determine its part number and serial number, and replacement of the RCCB with an RCCB having the same part number with a certain serial number, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 187 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $21,600, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–37–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–24A144, dated May 2, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time general visual inspection of the one phase remote control circuit breaker (RCCB) in the main avionics compartment and center accessory compartment to determine the part number and serial number (identified in Table 2 of the Accomplishment Instructions of the service bulletin), in accordance with Boeing Alert Service Bulletin MD11–24A144, dated May 2, 2000.

Note 2: For the purpose of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If any RCCB has a part number listed in Table 2 of the Accomplishment Instructions of the service bulletin and the corresponding serial number is NOT identified in that table, no further action is required by this AD.

(2) If any RCCB has a part number listed in Table 2 of the Accomplishment Instructions of the service bulletin and the corresponding serial number is identified in that table, before further flight, replace the RCCB with a RCCB having the same part number with a serial number that is NOT identified in Table 2, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18401 Filed 7–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–38–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires deactivation of the forward and center cargo control units (CCU). That AD was prompted by a report of failure of a CCU, which produced overheating of the electrical pins inside the CCU; the subsequent release of hot gases and flames ignited an adjacent insulation blanket. This action would require, among other actions, a general visual inspection to verify that all six external connectors of suspect CCU's have a certain part number stamped on the connector bodies on all CCU assemblies, and follow-on actions, which would constitute terminating action for the deactiviation requirements. The actions specified by the proposed AD are intended to prevent overheating of the electrical pins inside the CCU's and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment.

DATES: Comments must be received by September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–38–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–38–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 12, 2000, the FAA issued AD 2000–08–03, amendment 39–11689 (65 FR 21134, April 20, 2000), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require deactivation of the forward and center cargo control units (CCU).

That action was prompted by a report of failure of a CCU, which produced overheating of the electrical pins inside the CCU; the subsequent release of hot gases and flames ignited an adjacent insulation blanket. The requirements of that AD are intended to prevent overheating of the electrical pins inside the CCU's and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment.

Actions Since Issuance of Previous Rule

In the preamble of AD 2000–08–03, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking was being considered to require modification of the CCU assembly, which would constitute terminating action for the requirements of AD 2000–08–03. The FAA now has determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11–25A253, dated March 10, 2000. The service bulletin describes procedures for a general visual inspection to verify that all six external connectors of the CCU's have a certain part number stamped on the connector bodies on all TRW Aeronautical Systems, Lucas Aerospace, CCU assemblies; and follow-on actions. The follow-on actions include:

Returning any discrepant connector to the manufacturer; modifying the rear cover (40) of the CCU assembly [including aligning the center hole of the insulator with the center hole on the rear cover (40); ensuring that the top edge of the insulator is parallel to the top edge of the rear cover]; and reidentifying the CCU; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin MD11–25A253 references TRW Aeronautical Systems, Lucas Aerospace Alert Service Bulletin 462650–25–A01, dated March 10, 2000, as an additional source of service information to accomplish the inspection and follow-on actions described above.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–08–03 to continue to require deactivation of the forward and center CCU's, until accomplishment of the actions specified in Boeing Alert Service Bulletin MD11–25A253 described previously. The proposed AD also would require an inspection to determine the part number of the CCU's, and accomplishment of the actions specified in the Boeing service bulletin described previously, if necessary, except as discussed below.

Differences Between the Proposed AD and Relevant Service Bulletin

Although Boeing Alert Service Bulletin MD11–25A253 recommends accomplishing the general visual inspection within 15 days (from issue date of the service bulletin), the FAA has determined that an interval of 90 days would address the identified unsafe condition in a timely manner. Because operators have already accomplished the interim requirements (*i.e.*, deactivation of the discrepant CCU's) of AD 2000–08–03 (which includes the requirements of AD 2000–05–01), the FAA finds that the safety risk of the affected airplanes has been reduced. Therefore, the FAA has determined that a 90-day compliance time for initiating the required inspection to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Boeing Alert Service Bulletin MD11–25A253 (which, as described previously, references TRW Aeronautical Systems, Lucas Aerospace Alert Service Bulletin 462650–25–A01 as an additional source of service information) recommends that certain discrepant CCU's be returned to the manufacturer; however, it does not describe any further procedures to correct the discrepancy. Therefore, this proposed AD requires replacement of the discrepant CCU with a CCU that has one of the following part numbers (P/N): 462650–21, 462650–22, or 462650–23.

Since the issuance of Boeing Alert Service Bulletin MD11–25A253, Lucas has incorporated a design change to the CCU's. Lucas incorporated this design change in CCU's having P/N 462650–21, 462650–22, and 462650–23. The FAA finds that these CCU's are not subject to the identified unsafe condition of this AD. Therefore, in addition to the procedures in the referenced service bulletin, this proposed AD would require a general visual inspection to determine the part number of the CCU's. Depending on the inspection results, the proposed AD would then require a general visual inspection to verify that all six external connectors of the suspect CCU have a certain part number stamped on the connector bodies on all CCU assemblies, as described in the referenced service bulletin, and follow-on actions.

Cost Impact

There are approximately 104 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2000–08–03 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,200, or $60 per airplane.

The new inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,200, or $60 per airplane.

Should an operator be required to accomplish the new modification that is proposed in this AD action, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer of the CCU at no cost to the operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $60 per airplane.

Should an operator be required to accomplish the new replacement that is proposed in this AD action, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer of the CCU at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11689 (65 FR 21134, April 20, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2000–NM–38–AD. Supersedes AD 2000–08–03, Amendment 39–11689.

Applicability: Model MD–11 series airplanes, certificated in any category, having the serial numbers listed below.

Group 1 Airplane

48565	48566	48533	48549	48470	48406
48504	48602	48603	48571	48439	48605
48572	48471	48573	48600	48601	48633
48513	48574	48575	48542	48543	48576
48415	48631	48544	48632	48577	48545
48578	48546	48743	48744	48747	48748
48745	48746	48749	48579	48766	48768
48767	48769	48754	48623	48770	48753
48773	48774	48755	48758	48775–48779 (inclusive)	
48624	48756	48780	48532		

Group 2 Airplane

48555	48556	48581	48630	48557	48539
48558	48559	48616	48560	48617	48618
48561	48629	48562	48563	48757	48540
48564	48634	48541	48798	48781–48792 (inclusive)	
48794	48799	48801	48800	48802–48806 (inclusive)	

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical pins inside the cargo control units (CCU) and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment, accomplish the following:

Restatement of Requirements of AD 2000–05–01: Deactivation

(a) For Group 1 airplanes having serial numbers other than that identified in paragraph (c) of this AD: Within 15 days after March 20, 2000 (the effective date of AD 2000–05–01, amendment 39–11610), deactivate the forward and center CCU's in accordance with the following procedures:

(1) Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506	B1–489	B1–488	B1–487	B1–486
B1–485	B1–480	B1–481	B1–498	B1–482
B1–500	B1–495	B1–499	B1–490	

(2) Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552	B1–762	B1–761	B1–760	B1–759
B1–758	B1–518	B1–519	B1–751	B1–520
B1–753	B1–764	B1–752	B1–763	

(b) For Group 2 airplanes having serial numbers other than that identified in paragraph (c) of this AD: Within 15 days after March 20, 2000, deactivate the forward and center CCU's in accordance with the following procedures:

(1) Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506	B1–489	B1–488	B1–487	B1–486
B1–485	B1–480	B1–481	B1–498	B1–482
B1–500	B1–495	B1–499	B1–490	

(2) Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552	B1–762	B1–761	B1–760	B1–759
B1–758	B1–518	B1–519	B1–751	B1–520
B1–753	B1–764	B1–752		

Restatement of Requirements of AD 2000–08–03: Deactivation

(c) For Group 1 airplane, serial number 48769, and for Group 2 airplane, serial number 48563: Within 15 days after May 5, 2000 (the effective date of AD 2000–08–03, amendment 39–11689), accomplish the actions specified in either paragraph (a) or (b) of this AD, as applicable.

New Requirements of This AD: Inspection and Modification/Reidentification, If Necessary

(d) For Group 1 and Group 2 airplanes: Within 90 days after the effective date of this AD, perform an inspection to determine the part number of the CCU's.

(1) If both CCU's have part number (P/N) 462650–21, 462650–22, or 462650–23, the deactivation specified in paragraphs (a), (b), and (c) of this AD is no longer required, and the CCU's may be reactivated.

(2) If any CCU has a part number (P/N) other than 462650–21, 462650–22, or 462650–23, within 90 days after the effective date of this AD, perform a general visual inspection to verify that all six external connectors of the CCU have P/N M83723/71XXXXXX or P/N M83723/72XXXXXX stamped on the connector bodies on all TRW Aeronautical Systems, Lucas Aerospace, CCU assemblies, in accordance with Boeing Alert Service Bulletin MD11–25A253, dated March 10, 2000.

Note 2: McDonnell Douglas Service Bulletin MD11–25A253, dated March 10, 2000, references TRW Aeronautical Systems, Lucas Aerospace Alert Service Bulletin 462650–25–A01, dated March 10, 2000, as an additional source of service information to accomplish the inspection described above and corrective actions described below.

(i) If any connector has a P/N other than M83723/71XXXXXX or M83723/72XXXXXX, prior to further flight, replace the CCU with a spare CCU from the operator's stock that has one of the following P/N: 462650–21, 462650–22, or 462650–23. Following accomplishment of the replacement, the deactivation specified in paragraphs (a), (b), and (c) of this AD is no longer required, and the CCU's may be reactivated.

(ii) If any connector has P/N M83723/71XXXXXX or P/N M83723/72XXXXXX, prior to further flight, modify the rear cover (40) of the CCU assembly [including aligning the center hole of the insulator with the center hole on the rear cover (40), and ensuring that the top edge of the insulator is parallel to the top edge of the rear cover), and reidentify the CCU, in accordance with the service bulletin. Following accomplishment of the modification, the deactivation specified in paragraphs (a), (b), and (c) of this AD is no longer required, and the CCU's may be reactivated.

Spares

(e) As of the effective date of this AD, no person shall install on any airplane any part (identified under "Key Word"), having a "Spare Part No." listed in paragraph 2.D., "Parts Necessary to Change Spares," of Boeing Alert Service Bulletin MD11–25A253, dated March 10, 2000.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18402 Filed 7–26–00; 8:45 am]

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Part III

Department of Transportation

National Highway Traffic Safety Administration
49 CFR Part 571

Federal Motor Vehicle Safety Standards; Platform Lift Systems for Accessible Motor Vehicles and Platform Lift Installations on Motor Vehicles; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4511; Notice 1]

RIN 2127–AD50

Federal Motor Vehicle Safety Standards; Platform Lift Systems for Accessible Motor Vehicles Platform Lift Installations on Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document is a supplemental notice proposing to establish two new safety standards: an equipment standard specifying requirements for platform lifts; and a vehicle standard for all vehicles equipped with such lifts.

This SNPRM significantly differs from our original proposal in several respects. Most notably, the scope of our proposal has been expanded to platform lifts installed on all motor vehicles. Other significant changes are additional interlock requirements, improved wheelchair retention and platform slip resistance tests, and, in some instances, lesser compliance standards for lifts installed on vehicles typically used solely for private transport.

The proposed equipment standard would require platform lift manufacturers to ensure that their lifts meet minimum platform dimensions and size limits on platform protrusions and gaps between the platform and either the vehicle floor or the ground. The standard would also require handrails, a threshold warning signal, and retaining barriers for lifts. Performance tests would be specified for wheelchair retention on the platform, lift strength, and platform slip resistance. A set of interlocks is proposed to prevent accidental movement of a lift and the vehicle on which the lift is installed.

The proposed vehicle standard would require vehicle manufacturers who install lifts to use lifts meeting the equipment standard, to install them in accordance with the lift manufacturer's instructions, and to ensure that specific information is made available to lift users.

The purpose of the two standards is to prevent injuries and fatalities during lift operation and to promote the uniformity of Federal standards and guidelines for platform lifts. We have drafted both with the intent of protecting lift users aided by canes or walkers as well as lift users seated in wheelchairs.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 25, 2000.

ADDRESS: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Louis Molino, Office of Crashworthiness Standards, at 202–366–1833.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Executive Summary

We initiated this rulemaking proceeding concerning safety standards for platform lifts to provide practicable performance-based requirements and compliance procedures for the regulations promulgated by the Department of Transportation (DOT) under the Americans with Disabilities Act of 1990 [1] (ADA) and to ensure the safety of vehicles equipped with those lift systems. Under our statutory authority, [2] we establish Federal motor vehicle safety standards (FMVSS) to reduce motor vehicle crashes and the resulting deaths, injuries, and economic losses. Each standard must be practicable, meet the need for motor vehicle safety, and be stated in objective terms. [3] Our authority extends to both motor vehicles and motor vehicle equipment. Further, we are authorized to regulate non-operational vehicle safety (*i.e.*, safety while being maintained, serviced or repaired or while being entered or exited) as well as operational vehicle safety (*i.e.*, safety while being operated on public roads).

We recognize that the vast majority of the American public does not need to use platform lifts. We believe, however, that individuals who need to use lifts need to be assured that lifts are as safe as possible and need to be protected from the risk associated with using unregulated equipment. For example, we know that from 1991 to 1995, at least 299,734 wheelchair users were injured. 7,121 of these users were injured as a result of some interaction with a motor vehicle. In 1990 the Centers for Disease Control determined that 1.411 million people in the United States use wheelchairs. Thus the figure of 299,734 represents an overall injury rate among the wheelchair-using population of

[1] Pub. L. 101–336, 42 U.S.C. sections 12101, *et seq.*

[2] Formerly the National Traffic and Motor Vehicle Safety Act, currently codified as 49 USC sections 30101 *et seq.*

[3] 49 USC section 30111.

[4] [Reserved]

slightly more than 21 percent. While only 7,121 of these people were injured as a result of interaction with a motor vehicle, approximately 40% of all those injuries (2,808) occurred while the individual was entering or exiting the vehicle, and 26% (1,366) were the direct result of a lift malfunction.

We also believe that the potential for lift-associated injuries will increase with time. NHTSA anticipates that more people will use motor vehicles equipped with lifts as the ADA requirements make transportation more accessible to individuals with mobility impairments and as the proportion of older people in the general population increases. As the number of lift-equipped vehicles increases, the number of lift-related injuries is also likely to go up. Indeed, our analysis has already revealed an upward trend in the number of lift-related injuries.

Issuing motor vehicle safety standards provides the best way to ensure that only lift systems that comply with objective safety requirements are placed in service. The proposed standards would ensure a level of safety and uniformity that would instill confidence in the user population.

Additionally, our regulatory framework provides specific procedures to address quickly vehicles and motor vehicle equipment that are out of compliance or contain a safety defect, including a procedure that can be followed to remedy the situation if a problem is found.

The costs associated with this proposal are relatively low because we anticipate that most lift manufacturers are already complying with the existing voluntary and Federal standards. Accordingly, lift manufacturers generally will not need to make substantial changes to their existing lifts, although some work may be needed to fully comply with the lift standard. A chart detailing which voluntary and Federal standards correspond to each of the requirements proposed in this document can be found at the end of this section.

The proposed vehicle standard would impose no additional upgrade costs on the vehicle manufacturers, although operational testing may impose some additional costs. NHTSA anticipates that those tests would be relatively simple (*e.g.*, does the threshold warning work, is there an excessive gap between the lift and the vehicle) and, therefore, a nominal additional cost. Accordingly, for the ultimate consumer, the increase in cost of lift systems currently in use and the proposed systems would be approximately $268 for smaller vehicles and $280 for larger vehicles.

We are proposing requirements for lifts designed for installation on buses and multipurpose vehicles (MPVs) with a gross vehicle weight rating (GVWR) greater than 3,220 kg (7,100 lbs) which are, in some cases, more stringent than those for lifts designed for other vehicles. We believe that this is appropriate given that most of these vehicles are for public transit and paratransit use rather than for individual use and will generally be used by a larger and more varied population and will have much different pattern of use.

We believe the proposed platform lift standard will be of benefit to lift manufacturers, as well as consumers. The proposed standard was drafted to include or exceed all existing government (FTA, ADA) and voluntary industry (*e.g.*, SAE) standards. A lift manufacturer who certifies its lift to the proposed standard could have confidence that the lift would also meet other major U.S. standards currently in force without additional testing. The table below shows the source of each requirement in the proposed FMVSS No. 141. The reader should note that only five requirements were added by NHTSA that do not already exist in other standards. Of these five, four are based on a comment to the NPRM by a service transportation provider.

SUMMARY OF REQUIREMENTS IN PROPOSED FMVSS 141, "PLATFORM LIFTS FOR ACCESSIBLE MOTOR VEHICLES" AND THEIR ANTECEDENTS

Requirement	Based on[1]
Threshold warning signal	SAE.
Max. platform velocity	ADA, FTA.
Max. platform acceleration	FTA, ADA, SAE.
Max. noise level	FTA.
Unobstructed platform operating volume	ADA.
Platform surface protrusions	FTA, ADA.
Gaps, transitions and openings	FTA, ADA, SAE.
Platform deflection	FTA, ADA, SAE.
Edge guards	FTA, ADA, SAE.
Wheelchair retention:	
Dynamic	ADA.
Static	FTA, SAE.
Inner roll stop	FTA, ADA.
Handrails	ADA, SAE.
Platform markings	FTA.
Platform lighting	FTA, ADA.
Platform slip resistance	FTA, ADA.
Platform free fall limits	ADA.
Control systems	FTA, ADA.
Jacking prevention	FTA, SAE.
Backup operation	FTA, ADA, SAE.
Interlocks:	
Original NPRM 5	FTA, ADA.
2 new ones	Comment to NPRM by service provider.
Another 2 new ones	Logical extension of the comment.
Crushing prevention	SAE.
Owner's manual insert	New.
Installation instruction insert	SAE.
Static Load Test I:	
Working load—lift must operate normally with 600 pound load	FTA, ADA, SAE.

SUMMARY OF REQUIREMENTS IN PROPOSED FMVSS 141, "PLATFORM LIFTS FOR ACCESSIBLE MOTOR VEHICLES" AND THEIR ANTECEDENTS—Continued

Requirement	Based on[1]
Static Load Test II:	
Proof load—lift must sustain a load of 1800 lbs and operate normally after the load is removed. Safety Factor = 3.	FTA.
Static Load Test III:	
Ultimate load—lift must sustain a load of 2400 lbs without failure, but does not need to operate after removal. SF=4.	ADA, SAE.
Environmental resistance for externally mounted lifts	SAE (based on FMVSS 209).
Fatigue endurance	FTA, SAE.
Operations counter	FTA (optional).

[1] "Based on" means that the standard or regulation shown in this column incorporated a requirement for the named area of lift operation. The proposed NHTSA requirement may, or may not be, identical to the requirement in the antecedent standard.

ADA = 49 CFR part 38, Regulations promulgated by DOT to implement the transportation accessibility requirements of the Americans with Disabilities Act, pursuant to guidelines issued by the Architectural and Transportation Barriers Compliance Board.

FTA = Federal Transit Administration Guideline Specifications for Passive and Active Lifts, procurement guidelines.

SAE = Society of Automotive Engineers J2309, "Design Considerations for Wheelchair Lifts for Entry to or Exit from a Personally Licensed Vehicle," an industry consensus voluntary standard, which itself is based primarily on the Department of Veterans' Affairs procurement requirements. The DVA now uses the SAE standard as an alternative to its procurement standard.

II. Background

The ADA sweepingly endorsed the rights of persons with disabilities. The ADA created specific affirmative obligations on private entities who conduct business with the general public. Among these obligations is the requirement that transit and paratransit operators accommodate the needs of individuals with disabilities who wish to use the their services.

Title II of the ADA requires newly purchased, leased, or remanufactured vehicles purchased by public entities, like municipalities and regional transit authorities, and used in fixed route bus systems to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, canes, and walkers. Title II also requires a public entity operating a demand-responsive transportation system to obtain accessible vehicles unless the system, when viewed in its entirety, provides individuals with disabilities with a level of service equivalent to that provided for individuals without disabilities. Title II further requires public entities operating a fixed route bus system (other than a bus system which provides only commuter service) to provide complementary paratransit and other special transportation services to individuals with disabilities. Title III requires that designated public transportation, provided by private entities, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, canes, or walkers.

The ADA directed DOT to issue regulations to implement the transportation vehicle provisions in Titles II and III. Additionally, the ADA requires the Architectural and Transportation Barriers Compliance Board (ATBCB) to issue guidelines to assist DOT in establishing these regulations.[5] On September 6, 1991, ATBCB published its final guidelines which specify that to be considered accessible, a vehicle must be equipped with a lift or other level change mechanism and have sufficient clearance to permit a wheelchair to reach a wheelchair securement location once it is on the vehicle. (56 FR 45530) ATBCB stated that "NHTSA is the appropriate agency to define safety tests" for platform lifts.[6] On the same day, DOT implemented the ADA by publishing a final rule establishing accessibility regulations at 49 CFR part 38, *Transportation for Individuals with Disabilities, Subpart B—Buses, Vans and Systems*, and by incorporating and requiring compliance with the September 6, 1991 guidelines issued by the ATBCB. (56 FR 45584) This SNPRM collectively refers to the ATBCB's final accessibility guidelines and DOT's final rule as the "ADAAG."

III. Notice of Proposed Rulemaking

We published a notice of proposed rulemaking (NPRM) on February 26, 1993 proposing to create a new safety standard for buses equipped with lift systems. (58 FR 11562)

In the 1993 NPRM, we proposed minimum platform dimensions and limits on the size of protrusions on the platform surface and gaps between the platform and either the bus floor or the ground. In addition, we proposed requiring platforms to have wheelchair retaining barriers or devices, handrails, and a threshold warning signal. We also proposed performance tests for the evaluation of lift strength, the ability of the lift to retain a wheelchair on its platform, and the platform's slip resistance. We also proposed operational and interlock requirements to prevent accidental movement of the lift when someone is aboard. Finally, we addressed platform markings, free-fall velocity, jacking (*i.e.*, the continued effort of the lift motor to lower the lift after the lift has already contacted the ground, thereby potentially jacking up or raising that side of the vehicle), and platform deflection.

IV. Comments to the NPRM

We received approximately 35 comments on the NPRM. Commenters included vehicle manufacturers, lift manufacturers, State and local governments, school bus contractors, ATBCB, the American Public Transit Association (APTA), the National Truck Equipment Association (NTEA), advocacy groups representing individuals with disabilities, and individuals.

Most commenters, including lift and vehicle manufacturers, most State organizations, and advocacy groups, believed that there was a safety need for the proposed safety standard. However, some commenters, including a private bus contractor and the California Association of Coordinated Transportation, stated that we had not established such a need.

Commenters also addressed such issues as the extension of the standard

[5] 42 U.S.C. 12204.

[6] Throughout this document, we refer to lifts covered by the proposed standard as "platform lifts." The proposed standards would not apply to ramps or devices where the disabled individual is transferred to a built-in mobility device. The lifts must meet the needs of wheelchair users and other individuals who are unable, due to a disability, to negotiate a vehicle's steps, e.g., individuals who use canes or walkers rather than a wheelchair. We have designed the proposed standard with the needs of all mobility-impaired occupants in mind.

to multipurpose passenger vehicles (MPVs), harmonization with Federal and industry standards, and test procedures and requirements for slip resistance, the control system, handrail deflection, platform protrusions, platform acceleration, fatigue endurance, static load, single point failures, wheelchair retention devices, platform stow and deploy velocity, platform gaps, roll stops, and lift stowing.

Our responses to the relevant comments are discussed below.

V. Supplemental Notice of Proposed Rulemaking (SNPRM)

A. Overview

We have decided that a supplemental notice of proposed rulemaking (SNPRM) will be beneficial for several reasons. First, the comments on the 1993 NPRM are now over six years old. Second, we have decided to propose two standards, instead of one, and to assign each of them a different Federal motor vehicle safety standard number: Standard No. 141, instead of Standard No. 401, and Standard No. 142. We believe that two standards, one addressing the platform lift and another addressing the vehicle on which the lift is installed, would best protect lift occupants and bystanders. This two-prong approach is the same one we took in regulating underride guards. Under today's proposal, lift manufacturers would have to certify that their lifts meet the proposed requirements and lift installers for new vehicles would have to ensure that the lifts are installed according to the lift manufacturer's instructions. The changed standard numbers are consistent with our three existing categories: crash or incident avoidance in the 100 series, crashworthiness in the 200 series, and post-crash events in the 300 series. Third, we have expanded the proposed platform lift safety standard so that it would apply not only to buses, but to all motor vehicles sold with lifts installed. Fourth, our supplemental proposal also refines the initially proposed requirements and test procedures to reflect relevant comments and testing done since the NPRM at our Vehicle Research and Test Center (VRTC) and other test facilities. For example, we have altered the tests for wheelchair retention, inner roll stops, and slip resistance and added a fatigue test and an ultimate load test.

We have also changed the proposed platform lift standard's title to "Platform Lift Systems for Accessible Motor Vehicles" (instead of "Lift Systems for Accessible Transportation"). The modified name is intended to more accurately reflect our authority. We are only authorized to regulate motor vehicles; the term "transportation" in the title could have been interpreted to apply to other transportation modes such as light rail. For purposes of this document, the proposed Standard No. 141, "Platform Lift Systems for Accessible Motor Vehicles" will be referred to as the lift or platform lift standard; the proposed Standard No. 142, "Platform Lift Installations on Motor Vehicles", will be referred to as the vehicle standard.

B. Need for Federal Motor Vehicle Safety Standards

Analysis conducted by our National Center for Statistics and Analysis (NCSA) to support the NPRM revealed eight wheelchair fatalities between 1973 and 1991 due to motor vehicle-related events, including two deaths involving a platform lift. These data were obtained from the Consumer Product Safety Commission's Death Certificate File. Additionally, by analyzing the CPSC's National Electronic Injury Surveillance System's (NEISS) accident data for a five-year period, NCSA determined that between 1986 and 1990, 14 percent of the total number of wheelchair-related injuries resulting from motor-vehicle situations other than collisions were the result of a malfunctioning lift (521 cases out of 3,774). All 521 individuals were treated at the emergency room and released. 28.8 percent of the individuals (150 out of 521) sustained minor injuries, 44.3 percent (231 out of 521) sustained moderate injuries, and 26.9 percent (140 out of 521) sustained serious injuries.[7]

In response to the NPRM, most commenters, including many vehicle and lift manufacturers, advocacy groups, and State and local governments, supported the proposed Federal safety standard for platform lifts. A few commenters claimed that no safety need had been shown and that too few injuries had been documented.

Based on the available information, we have tentatively determined that a Federal motor vehicle safety standard for vehicles equipped with platform lifts will help prevent injuries and fatalities during lift operation. As explained above, NCSA's preliminary analysis showed 521 persons injured by lifts between 1986 and 1990: 381 in vans and 140 in buses. Two deaths were associated with the use of a lift between 1973 and 1991. Additionally, from 1991 to 1995, an estimated 7,121 wheelchair users were injured as a result of some interaction with a motor vehicle.[8] A total of 1,366 people, nineteen percent of the total, were injured by lift malfunction. No lift-related fatalities were reported during that time frame. Approximately three percent of the lift-related injuries from 1991 to 1995 were considered serious.

We believe there may be considerably more injuries due to malfunctioning lifts than the numbers suggest. Any analysis of deaths or injuries based on motor vehicle-incidents will necessarily underrepresent the scope of the problem. Since lift-related injuries frequently are not reported as a motor vehicle incident, no police report is filed. Consequently, the event is not entered in the data bases we access for injury and death information related to motor vehicles (e.g., police reported incidents from states, NASS, and FARS). Additionally, the injury count understates actual injuries, because it does not include incidents in which the injured persons were treated at small hospitals, emergency care centers, or doctor's offices. NEISS only includes injuries treated at hospital emergency centers. In addition, some cases in the NEISS were not included because there was not enough information to identify the accident as conclusively being related to platform lift safety.

We anticipate that more people will use motor vehicles equipped with lifts as the ADA requirements make transportation more accessible to individuals with mobility impairments and as the proportion of older people in the general population increases. NCSA's analysis has already revealed an upward trend in the number of lift-related injuries. As the number of lift-equipped vehicles increases, the number of lift-related injuries is also likely to go up.

In order to accurately explore the level of risk to individuals using lifts, one must first ascertain the size of the potential lift-using population. We recognize that the vast majority of the American public does not need to use platform lifts. In 1990, the Centers for Disease Control conducted a survey on assistive technology devices.[9] The authors of the survey determined that,

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[7] The Technical Note for this analysis, "Wheelchair Occupants Injured in Motor-Vehicle Related Accidents", can be found under Docket 91–19, Notice 1.

[8] For an analysis of wheelchair/motor vehicle injuries from 1991 to 1995 see Technical Note, "Wheelchair Users Injuries and Deaths Associated with Motor Vehicle Related Incidents", September, 1997, located at Docket No. NHTSA–98–4511.

[9] LaPlante MP, Hendershot GE, Moss AJ. Assistive technology devices and home accessibility features: prevalence, payment, need, and trends. Advance data from vital and health statistics; no 217. Hyattsville, Maryland: National Center for Health Statistics. 1992.

as of 1990, 8,487,000 people in the United States use some type of mobility device.[10] Additionally, NCSA has determined that there are approximately 383,000 vehicles with adaptive equipment in the United States.[11] This estimate is based on data from our National Automotive Sampling System.

(1) We request comments on the size of the potential lift-using population. This includes individuals utilizing wheelchairs, canes, or walkers due to a mobility impairment or disability.

(2) We request comments on the number of MPVs which are ramp-equipped rather than lift-equipped. Please specify whether the MPVs are personally licensed vehicles or used for public or commercial transportation.

(3) We request information regarding the number of platform lifts installed on motor vehicles since January 1, 1997. How many of those lifts were installed on motor vehicles by lift manufacturers?

(4) How many of these lifts (manufactured after January 1, 1997) were installed (a) prior to first vehicle sale and (b) after first vehicle sale? How many lifts were installed by companies other than vehicle manufacturers?

Lift accessibility affects a mobility-impaired population that will increasingly be using this equipment. We note, in this regard, that the ADA requires lifts on most transit vehicles manufactured after 1990. The lifts on these vehicles should be safe. Issuing FMVSSs provides the best way to ensure that only systems that comply with objective safety requirements are placed in service. The proposed standards would ensure a level of safety and uniformity that would instill confidence in the user population. While the ADAAG provide a good start, they establish few objective performance criteria. For example, S38.23(b)(6) states, "The platform surface shall be * * * slip resistant," but does not define slip resistance or establish how to demonstrate slip resistance.

Additionally, our regulatory framework provides specific procedures to quickly address vehicles and motor vehicle equipment that are out of compliance or contain a safety defect, including a procedure that can be followed to remedy the situation if a problem is found. In contrast, the ADAAG provide neither a procedure for establishing the safety of a lift nor one for recalling and repairing lifts of a specific model that are found to be unsafe.

Our decision to propose standards has support among commenters on the NPRM. Several commenters, including Washington State, Mobile-Tech and the Transportation Manufacturing Corporation (TMC), stated that one Federal agency should regulate all lifts. TMC stated that "the industry should be able to rely on the government to provide a single clear set of regulations to meet the ADA."

(5) We seek comments as to which of the proposed requirements will most contribute to the reduction of injuries, and why.

C. Harmonization With Governmental and Industry Standards

In developing both the NPRM and the SNPRM, NHTSA has examined existing standards and guidelines for platform lifts and sought to harmonize with them to the extent consistent with its statutory authority to establish safety standards. These existing standards and guidelines include the ADAAG; the set of advisory guidelines developed in 1986 under the sponsorship of the Federal Transit Administration (FTA); procurement standards developed by the Department of Veteran Affairs (DVA standards);[12] school bus standards of Indiana, Arizona, and the Eleventh National Conference on School Transportation; the Canadian Standards Association; the Swedish Board of Transport; the British Code of Practice; and industry-recommended practices developed by the Society of Automotive Engineers (SAE).

We have incorporated many aspects of the ADAAG in its proposed standard because many buses are required by the ADA to be accessible. School buses, which are exempt from the ADA, are required to comply with the accessibility standards of the Rehabilitation Act of 1973, which mirror those of the ADA. Together, these buses comprise the largest number of buses equipped with lifts.

We note that the National Technology Transfer and Advancement Act requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies when such technical standards are available (*see* section 12(d) of Pub. L. 104–113) and are consistent with authorizing legislation of the agencies. Consistent with this statute, we have reviewed current industry standards, particularly those prepared by the SAE.[13] In addition, we have reviewed current government standards, particularly those prepared by FTA.[14] This SNPRM incorporates the most relevant requirements of the voluntary standards and guidelines such as those from the DVA, SAE, FTA and the ATBCB, to the extent appropriate.

We have evaluated all of the incorporated standards and believe that they are practicable, objective, and meet a safety need. To the extent an existing standard does not meet these criteria, we have proposed a modified version of that standard or decided against incorporating that standard. Otherwise, we have incorporated existing standards to achieve uniformity.

D. Applicability and Effective Date

In the 1993 NPRM, we proposed a new safety standard for new buses (including school buses) equipped with a platform lift. We requested comments on the appropriateness of applying the proposed requirements to MPVs and to over-the-road buses (*i.e.*, a bus with an elevated passenger deck located over a baggage compartment).

We now propose applying the platform lift safety standard to lifts designed for installation on any vehicle, including over-the-road buses, school buses and MPVs.[15] Seventy-three percent of the injuries reported in the Technical Note supporting the NPRM occurred in MPVs rather than buses. Additionally, our analysis of motor vehicle/wheelchair-related injuries from 1991 to 1995 indicates that approximately 48 percent of all injuries involved MPVs, while only 12 percent involved buses. The majority of vehicles with lifts are MPVs. While not all MPV's are subject to the ADA (*i.e.*, those used only for personal transport), many are, because they are used for commercial transport (*e.g.*, van pools). Further, our concern for the safety of vehicle occupants extends beyond the ADA.

Comments were requested for over-the-road buses because, at the time of the NPRM, the ADA had not required lifts on such vehicles, if privately

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[10] The specific breakdown of the types of devices is as follows: crutch—671,000; cane or walking stick—4,400,000; walker—1,687,000; wheelchair—1,411,000; scooter—64,000; other—254,000.

[11] Research Note: Estimating the Number of Vehicles Adapted for Use by Persons with Disabilities (12/97).

[12] *VA Standard Design and Test Criteria for Safety and Quality of Automatic Wheelchair Lift Systems for Passenger Motor Vehicles*, (June, 1977).

[13] Two 1995 SAE Recommended Practices apply to wheelchair platform lifts: J2002—*Testing of Wheelchair Lifts* and J2003—*Design Considerations for Wheelchair Lifts*. The SAE Standard is an update of the DVA procurement standard for wheelchair lifts published in 1977 and applies to lifts installed in personally-licensed vehicles.

[14] *Guideline Specification for Passive Lifts, Active Lifts, Wheelchair Ramps and Securement Devices*, (1992).

[15] Definitions of "bus", "truck", "truck tractor", and "multi-purpose passenger vehicle" can be found at 49 CFR Part 571.3. The definition of a "school bus" can be found at 49 U.S.C. 30125. The definition of a "motor home" used in this document can be found at 49 CFR Parts 571.105 and 571.201.

owned. On September 28, 1998 the Department of Transportation published a final rule which will require over-the-road buses to have lifts, on a graduated basis, starting in 2000.[16] Of the commenters to the 1993 NPRM, only Braun specifically commented on the applicability to this type of vehicle; it favored applying the proposed requirements to over-the-road buses. We tentatively conclude that since these buses will have lifts, those lifts should be subject to this proposed standard. Excluding lifts on over-the-road buses from the proposed standard would be counter-productive to two of the proposed standard's primary purposes: enhancing the safety of both public and private vehicles and promoting the uniformity of government standards.

Most commenters, including bus manufacturers, lift manufacturers, States, and the Paralyzed Veterans of America (PVA) supported applying the requirements to lift-equipped MPVs and buses. They believed that all lift users should be afforded a similar level of safety. TMC stated that the NCSA study indicated that most wheelchair-related injuries involved vans. Thomas Built was concerned that excluding MPVs would allow a manufacturer to circumvent compliance by omitting a seat so that it seated only ten occupants rather than eleven, changing it from a bus to an MPV.

NTEA opposed applying the lift standard to MPVs, claiming that such a requirement would result in an undue burden and increased costs on small businesses. However, most of the compliance burden would be borne by the lift manufacturers, none of whom objected to applying the requirements to MPVs. Additionally, we believe that most of the proposed requirements are already being met on either a volunteer or contractual basis under existing industry and Federal guidelines and standards.

We are proposing to make the new standards, if adopted, effective one year after publication of the final rule in the **Federal Register**. We believe that lift manufacturers generally will not need to make substantial changes to their existing lifts. We recognize, however, that some work may be needed to fully comply with the lift standard. We believe that a one-year lead time should provide plenty of time to adopt any needed changes.

(6) We seek comment on whether an effective date of one year after publication of a final rule would be sufficient to allow platform lift manufacturers to meet the requirements of the proposed platform lift standard.

E. Different Requirements for Platform Lifts Designed for Installation on Vehicles Other Than Buses and Large MPVs

We believe that fewer requirements may be necessary for platform lifts installed on MPVs than for those installed on buses. The reason for this is that lifts designed for MPV's have different usage patterns than those designed for buses. In the NPRM, we proposed a single set of requirements for buses and accordingly made no distinction between vehicle types. We did, however, seek comment on the potential applicability of the proposed standard on MPVs. Most commenters did not distinguish between applying the safety standard to MPVs used in public paratransit and those licensed to individuals for personal use. However, a few commenters, including TMC, appear to have intended their comments on MPV use to apply only to public paratransit cases. Comments were mixed about the need to differentiate the requirements based on vehicle type. Lift-U and Thomas Built stated that only MPVs used for paratransit (and not individually owned MPVs) should have to comply with the lift requirements. Stewart and Stevenson (a lift manufacturer) stated that smaller vehicles should have different requirements because they would have difficulty absorbing the weight of lifts used with larger buses. Mobile-Tech stated no differentiation should be made by vehicle type.

We not only have authority under 49 U.S.C. 30111 to adopt different requirements for vehicles based on differences in vehicle characteristics, we are mandated by law to consider whether our requirements are "reasonable, practicable, and appropriate for the particular type of vehicle" to which they apply. Pursuant to this authority and mandate, we are proposing requirements for lifts designed for installation on buses and MPVs with a GVWR greater than 3,220 kg (7,100 lbs)[17] which are, in some cases, more stringent than those for lifts designed for all other vehicles.[18] We believe that this is appropriate given that most of these larger vehicles are for public transit and paratransit use, rather than individual use. Since the lifts on these vehicles will generally be subjected to more stress and cyclic load and will be used by a larger and more varied population, more requirements as to platform size, controls, handrails and lighting appear appropriate.

Under FMVSS No. 208, we differentiate between vehicles having a GVWR of less than or equal to 3,851 kg (8,500 lbs) and those having a higher GVWR. We use this breakpoint because the higher rated trucks or MPVs are typically used to carry equipment or cargo (*e.g.*, maintenance vehicles) and are not primarily used to transport people. However, we believe that a lower dividing line is appropriate for this proposal. We note that the majority of MPVs used for public paratransit have GVWR greater than 3,262 kg (7,200 lbs) (*e.g.*, Ford E250, E350 or equivalent chassis). In contrast, the majority of MPVs modified and licensed to individuals for personal use have a GVWR less than 3,171 kg (7,000 lbs) (*e.g.*, Ford E150, or equivalent chassis). Accordingly, we believe that dividing the vehicles into two groups, buses and MPVs over 3,220 kg (7,100 lbs) and all other vehicles, would adequately delineate personal and transit or paratransit vehicle use. We do note that where the ADA imposes requirements on commercial entities and those entities use a vehicle that weighs less than 3,200 kg (7,100lbs), the commercial entity would still have to meet the applicable ADA requirement.

Among the proposed requirements that would not apply to lifts designed for vehicles other than buses and heavier MPVs are those for platform operating volume, handrails, platform lighting, inner roll stops, or control label lighting. In addition, if a fatigue test were adopted, it would be less stringent for these lifts since we anticipate that the lifts on these vehicles will experience fewer operating cycles per day. Each of these specific requirements are discussed in their respective sections.

Since publishing the NPRM in 1993, we have learned that in addition to buses and vans, lifts are also installed in trucks, truck tractors (*e.g.*, semis), trailers, and motor homes. These vehicles are typically used as personal vehicles. We believe that the lifts on these vehicles are not subjected to the greater use of lifts on buses or larger MPVs. Instead, the lifts installed on these vehicles are more akin to lifts installed on lighter MPVs than on lifts installed on vehicles intended for commercial transit. Additionally, individuals purchasing these lifts are

[16] 63 FR 51669 (9/28/98).

[17] The preamble and the regulatory text references all weights and measurements under the metric system with the English equivalents set out in parentheses. If the proposed regulatory text is adopted, the English equivalents will be dropped from the preamble of the final rule and the final regulatory text.

[18] The next section discusses the differences in such requirements.

unlikely to have the resources to pay for the heavier lifts. Nevertheless, the interface between lift and vehicle on some of these vehicles could pose an unreasonable risk if the platform lifts designed for the vehicles were excluded from the stricter performance requirements contemplated for larger MPVs and buses. We believe that the only serious risk to safety that is not contemplated by the proposed requirements for lighter MPVs is the lack of a mandatory inner roll stop. Accordingly, lifts designed for truck tractors, trailers and motor homes would be subject to the same performance requirements as lighter MPVs except that the lifts would be required to have an inner roll stop. Platform lifts designed for other trucks, *e.g.*, pick-up trucks, would be subject to the same performance requirements as lifts designed for lighter MPVs.

(7) We request comments about the appropriateness of having less stringent requirements for platform lifts designed for installation on vehicles that have lower GVWRs, trucks, trailers, truck tractors and motor homes, and all motor vehicles, other than buses and heavy MPVs, that are presumably for individual use.

(8) We also request comments about whether the proposed breakpoint of a 3,220 kg GVWR (7,100 lbs) for MPVs is appropriate, and whether there is any reason not to permit any of the vehicles referenced in question number 5 to comply with less stringent requirements.

F. Proposed Platform Lift Requirements

1. Threshold Warning Signal

Today's proposal differs from the NPRM in that it contains a threshold warning signal and deletes the audible and visual deployment warnings of the NPRM. The deployment warnings were based on the 1992 FTA guidelines. Since these alarms have been dropped by the FTA in its 1997 and 1999 guidelines, we have also deleted them from the proposed FMVSS.

This notice is proposing to require one signal, which would be a threshold warning alarm. For vehicles other than buses and MPVs with a GVWR greater than 3,220 kg (7,100 lb), the alarm could be either audible or visual. Lift systems designed for installation on buses and larger MPVs would need to have both a visual and an audible alarm since these larger vehicles are generally used for commercial transport. In all vehicles, the alarm would warn lift users if the lift platform were more than one inch below the vehicle's floor reference plane and if any portion of the platform threshold area [19] were occupied by any portion of the lift occupant's body or any piece of equipment. Functionality of the warning system would be tested at the location indicated in figure 3, which is attached to the proposed regulatory text. This warning requirement is based on an SAE standard requiring a warning if the lift user is within 18 inches of the platform and the platform is more than one inch below the vehicle's floor reference plane. We consider this proposed warning requirement to be particularly important in transit and paratransit vehicles where the lift may be used sequentially by more than one individual. It is also important in any personally licensed vehicle in which the lift is fitted such that the user backs onto the lift from the floor of the vehicle (this typically occurs on lifts fitted to the rear of the vehicle). This proposed requirement would not apply to rotary lifts where loading takes place entirely over the surface of the vehicle's floor.

After reviewing the available information, we have decided to drop the audible and visual deployment warnings proposed in the NPRM and to add the threshold warning requirement based on the SAE standard.

(9) We seek comments on whether an audible or visual threshold warning should be required and whether the proposed warning would achieve the desired purpose of avoiding injury to the lift user caused by an out-of-position platform.

(10) We also seek comment on whether a minimum should be specified for the size or weight of an object that causes the threshold warning to operate and, if so, what that minimum should be.

2. Platform Lift Operational Requirements

Compliance with several of the platform lift requirements would be tested in accordance with Static Load Test I which is fully discussed later in this document. Under this test, the lift would be tested both empty and with a 272 kg mass (600 lb load). As an example, this mass requirement is approached by two separate potential weight combinations: that of a 99th percentile male, weighing 109 kg (241 lbs), with a powered wheelchair, weighing 113 kg (250 lbs), for a total weight of 222 kg (491 lbs); and that of a 99th percentile male in a manual wheelchair and an attendant (245 kg (540 lbs)). While these examples are below the 272 kg limit, in some cases people and wheelchairs will weigh more, thus justifying the limit. Additionally, industry standards and the ADA require a 272 kg lifting capacity. Testing with an empty platform would be specified to ensure that the lift operates properly when carrying smaller occupants.

a. Maximum Platform Velocity

We are proposing maximum platform operating speeds for the safety of lift users, especially standees (*e.g.*, individuals who use a cane or walker). Section S5.2.2 specifies a maximum vertical and horizontal velocity of the platform of 152 mm/s (6 in/s). This is the same maximum velocity suggested in the NPRM. We received no comments about the maximum velocity in comments to that document.

We have decided to propose the 152 mm/s (6 in/s) maximum velocity to assure the safety of those on or near the lift and to be consistent with the ADAAG (49 CFR 38.23(b)(10)) and FTA guidelines (section 2.5.11), which also allow a maximum velocity of 152 mm/s (6 in/s).

We stated in the NPRM that a maximum speed limit was necessary for the safety of persons in or near the bus when the lift was being deployed. We were also concerned for the safety of lift users.

In the NPRM, we also discussed, but did not propose, requirements for platform velocity during the stowing (folding) and deploying (unfolding) sequences. Based on our review of the ADA standard, we have decided to propose that during stowing and deploying, the lift platform would have a maximum vertical and horizontal velocity of 305 mm/s (12 in/s). The purpose of this requirement, which is consistent with the ADA standards, is to reduce the potential injuries to bystanders and lift users.

The NPRM proposed that a cycle be completed within 65 seconds. The SNPRM has dropped the maximum cycling time because it is not clearly related to safety.

(11) We request comments about whether there is a safety need for velocity limits on platform stowing and deploying. Are any incidents known to have occurred that are directly related to the excessive velocity of deploying or stowing platform lifts?

[19] The platform threshold area is defined in the proposed regulatory text as the rectangular portion of the vehicle floor defined by moving a line, which lies on the edge of the vehicle floor directly adjacent to the lift platform, through a distance of 18 inches (457 mm) in a direction perpendicular to the line including any portion of a bridging device that lies within this area.

b. Maximum Platform Acceleration

We have decided to propose an acceleration limit of 0.3 g with both no load and with 272 kg (600 lbs) on the platform. The acceleration would be measured along axes horizontal and perpendicular to the lift platform. The no load condition is intended to ensure that even very light occupants would be protected against a sudden increase in lift speed, since very small children may use lifts, especially in school buses. By requiring compliance at any load in between the extremes, we intend to ensure that acceleration remains within the desired limits. In the NPRM, we proposed (section S5.10.3) a maximum platform horizontal and vertical deceleration of 0.3 g, either with no load or with a 600 pound load applied.

Lift-U commented that the platform acceleration limit of 0.3 g should only apply when the platform is loaded with 600 pounds. The commenter also believed that the channel filter class specification (CFC) 60 from SAE J211 required the test to be performed with an instrumented test dummy.

We believe that it would be inappropriate to adopt Lift-U's recommendation to test only when the platform is loaded. The 272 kg (600 lbs) mass requirement is based on a determination that this weight would approximate the upper end of lift users who use a powered wheelchair. It is unlikely that the average lift user, even in a powered wheelchair, would have a mass of 272 kg (600 lbs). Additionally, testing only at the maximum intended load level would fail to address the safety concerns of children in wheelchairs or standees, who may be subjected to greater acceleration since the lift would be carrying lighter loads.

As for Lift-U's concern about having to use a test dummy because of the NPRM's reference to SAE J211, we note that J211 merely provides a frequency response specification for the filter to be used with the accelerometer. We do not intend to specify the use of a test dummy. Section S5.2.3 in this SNPRM clarifies this point and indicates that the accelerometer would be mounted directly to the test platform or to the 272 kg mass (600 lb load).

The 0.3 g acceleration limit was originally specified by the DVA standard. The 0.3 g limit was developed by measuring the acceleration of a test dummy placed in a wheelchair when riding on a lift. The specification was designed to avoid platform acceleration levels that were frightening, uncomfortable, or potentially dangerous to a wheelchair occupant. Since the DVA standard was published, the 0.3 g acceleration limit has been incorporated into the SAE, FTA and ADA lift requirements (J211, section 2.5.11, and 49 CFR 38.23(b)(10), respectively).

We are proposing to depart from the test procedure detailed in SAE J211 by specifying testing with a CFC 3 filter instead of a CFC 60 filter. We believe a CFC 3 filter better achieves the desired result, which is essentially to replicate a wheelchair's damping characteristics. Testing performed at VRTC [20] indicated that the CFC 60 filter does not provide sufficient damping to eliminate extraneous high frequency components of the platform acceleration measurement when the transducer is mounted directly to the platform.

c. Maximum Noise Level

We have decided to propose establishing a maximum permissible noise level of 80 dBA for platform lifts.

In the NPRM, we proposed that the maximum noise level for the lift be limited to 75 dBA. We believed that such a provision was necessary to prevent noise caused by lift operation from obscuring the 85 dBA warning signal, and to allow oral instructions from the transit operator to be heard during lift operation. This proposal was identical to section 2.1.7 of the FTA-sponsored guidelines.

TMC commented that "the task of isolating the wheelchair lift noise to 75 dba, is unreasonable. The bus engine runs while the lift is operational and the engine noise is limited by regulation to 83 dba."

We agree with TMC that a maximum noise level of 75 dBA is too low. VRTC measured sound levels at six different locations in an urban setting to measure ambient noise.[21] VRTC found that the sound levels often exceeded 75 dBA, with the loudest location having an average of 79 dBA. Since the ambient noise level in an urban setting may often be greater than 75 dBA, we believe it is reasonable to allow a lift to exceed this noise level. 80 dBA represents the maximum permissible volume of ambient noise that allows for normal communication between two people who are three feet away from each other.[22] We believe that a maximum noise level of 80 dBA should be quiet enough to allow for easy communication between a lift operator and a lift passenger without unduly restricting lift designs. We recognize TMC's concern that bus engines are allowed to run at noise levels up to 83 dBA; however, the existence of such a regulation does not mean that bus engines actually run at that level, only that they can. VRTC tested urban noise levels at bus stops and found the ambient noise at the loudest location was less than 80 dBA. Accordingly, we believe a maximum level of allowable noise is reasonable at 80 dBA.

(12) We request information about whether any injuries can be directly attributed to noise interfering with communication between the lift user and the vehicle's driver, the lift operator, aides, or bystanders.

3. Platform Requirements

a. Unobstructed Platform Operating Volume

We are proposing a minimum clear platform width of 724 mm (28.5 in), on the upper surface of the platform, a minimum clear width of 762 mm (30 in) at and between the heights of 51 mm to 762 mm (2–30 in) above the platform surface, and a minimum clear length of 1,219 mm (48 in) measured from 51 mm (2 in) above the surface of the platform. These minimum platform size requirements are based on the ADA standards. Under the proposed platform lift standard, no part of the lift or bus (except for a required barrier on a platform edge) could intrude into the area above the portion of the platform that would be occupied by a large wheelchair at any point during its operation.

The unobstructed platform operating volume proposed in this document is the same as the one proposed in the NPRM. No commenter addressed the issue of platform operating volume requirements.

Unobstructed platform operating volume requirements address the safety of passengers in several ways. These requirements ensure that:

- Parts of the lift are not introduced into the space occupied by the user while the lift is in motion;
- Users do not injure themselves trying to enter lifts that are too small for their mobility devices; and
- Mobility device users are not left waiting at the bus stop because their devices would not fit on the lift.

We have decided not to propose an unobstructed platform requirement for platform lifts designed for installation on vehicles other than buses and MPVs with a GVWR greater than 3,220 kg (7,100 lbs). We believe requiring all lifts to comply with the proposed requirement could require major vehicle

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[20] *Determination of Electronic Filtering for Post-Processing of Wheelchair Lift Acceleration Data*, (July, 1998) Docket No. NHTSA–4511.

[21] *An Evaluation of the Proposed Wheelchair Lift Safety Test Procedure*, (June, 1998).

[22] W.E. Woodson, B. Tillman, P. Tillman, *Human Factors Design Handbook, Second Edition*, McGraw, Hill, Inc. (1992).

structural modifications of some vehicles with a lower GVWR. If so, lift manufacturers can address platform dimensions and recommend appropriate vehicles and wheelchairs without referring to a uniform federal regulation. We also believe that users of personally-licensed vehicles will work with the lift installer in purchasing a lift of an appropriate size for their vehicles and wheelchairs. To assist secondary purchasers of lift-equipped vehicles, the vehicle owner's manual must specify the unobstructed platform operating volume so that lift users will know whether their wheelchair will fit on the lift.

(13) We request comments on our decision not to propose platform operating volume requirements for platform lifts designed for installation on vehicles other than buses and MPVs with a GVWR greater than 3,220 kg (7,100 lbs), but to require the manufacturer to provide an insert for the vehicle owner's manual that details the operating volume.

b. Platform Surface Protrusions

For vehicles over 3,200 kg (7,100 lbs) we propose that the upper surface of the lift platform be free from protrusions greater than 6.5 mm (0.25 in) high, and a method for measuring the height of protrusions has been added since the NPRM. The purpose of this proposed requirement is to facilitate movement on and off the platform by prohibiting protrusions that constitute obstacles to wheelchair occupants and tripping hazards to standees. After reviewing the available information, we have decided to propose the same protrusion requirements as the ADAAG for these vehicles, and retain the requirement proposed in the NPRM for all other vehicles.

ATBCB commented in response to the NPRM that the platform protrusion requirement proposed at that time was less stringent than the ADAAG.[23] PVA requested that we follow the ADAAG requiring less than 6.5 mm (0.25 in) protrusions regardless of whether they are perpendicular to the lift surface. TMC stated that its passive lift is designed with a hinge in the middle of the platform that has a 25.4 mm (1 in) protrusion above the platform surface. It claimed that the platform surface has a gradual slope that never exceeds 1:8 as it approaches the hinge. Flxible stated that our proposals differed from the ADAAG, but are acceptable and do not negate ADA and FTA guidelines. No other manufacturer stated that they would be unable to meet the proposed protrusion requirements.

In consideration of the comments of, and discussions with, the FTA and ATBCB, have changed the proposed requirement for buses and larger MPVs (those more likely to be subject to ADAAG and used by multiple people daily) to mirror the ADAAG, and we propose a method for measuring platform protrusions. We recognize that the proposed standard does not resolve TMC's concerns. However, since we received no other comments which indicated that the protrusion limits could not be met, we believe the requirements proposed today are practicable and safe. For all other vehicles (those used more often in private transportation), we continue to believe that slightly higher protrusions can be allowed for smooth rise without either compromising safety or decreasing the vehicle's accessibility as long as the transition between the platform and the protrusion is gradual. We believe that allowing protrusions to be between 6.5 mm and 13 mm (0.25–0.5 in) in these vehicles is consistent with safety for vehicles that will be used by one person with one type of mobility aid. This is also consistant with the transition requirements described in the next section.

c. Gaps, Transitions and Openings

This proposal contains several requirements dealing with gaps and openings in the lift platform and between the platform and other portions of the lift. Openings in the upper surface of the lift platform could be no greater than 19 mm (0.75 in). Since many platforms are made of open mesh, it is important that the openings be small enough that there is no risk of either wheelchair casters or the tips of a cane or walker becoming stuck in the platform surface, which can result in the lift user falling or being tipped out of his or her wheelchair. The 19 mm (0.75 in) limitation is based on the SAE standard.

In the NPRM, we proposed that vertical gaps could not exceed 15.9 mm (0.625 in) and horizontal gaps could not exceed 13 mm (0.5 in). We were concerned that gaps between the lift platform surface and the vehicle could contribute to an injury by trapping a wheelchair caster or the tip of a cane or other mobility device. We noted that our proposal was consistent with both the FTA-sponsored guidelines and ADAAG (36 CFR 1192.23(b)(7); 49 CFR 38.23(b)(7)).

PVA supported the proposed gap limits, claiming that they would prevent wheelchair casters from dropping into gaps. Lift-U and TMC believed that the proposed gap requirements needed to be clarified due to varying lift designs.

Based on the comments and other available information, we have decided to propose platform gap requirements that differ from those in the NPRM. In the NPRM, we made several assumptions in drafting the proposed gap requirements. Key among these assumptions was that the lift would always be attached to the side of the vehicle. We are now aware of some lift designs which allow for the lift to be attached to the rear of the vehicle. Other assumptions were that the outer barrier would always serve as the vehicle entrance ramp, that the outer barrier and inner roll stop would always be completely vertical when deployed, and that there would be no gaps between the barriers and the platform edge. The proposal in the SNPRM makes no such assumptions and allows for a test block to ensure that any gaps between these structures be limited. We believe that such a test block provides a simple, yet objective means of measuring gaps between the platform and its barriers. The NPRM also did not propose to require edge guards when vehicle loading took place completely within the vehicle (*e.g.*, within the step well of a bus). This position fails to adequately address the risk from gaps between the lift platform and the interior sides of the vehicle; these gaps potentially lead to a greater risk of injury than gaps between a lift platform and edge guards attached to the platform because of the relative motion.

Under the proposed requirement, no vertical surface transition could be more than 6.5 mm (0.25 in) at either the ground or vehicle level; horizontal gaps would be limited to 13 mm (0.5 in). The total allowable rise of any sloped surface, typically ramps or bridging devices, would be limited to 76 mm (3 in). The allowable slope on the portion of the rise between 6.5 mm and 13 mm (0.25–0.5 in) above the ground, platform surface or vehicle surface would be limited to a 1:2 ratio; a 1:8 ratio would be allowed for the portion of the ramp above 13 mm (0.5 in). This proposed requirement is consistent with the ADA standard for ground-level platform entrances. It matches the ground-level entrance requirements in the NPRM, except that it adds the requirement that the maximum rise cannot exceed three inches.

To facilitate entering and exiting the vehicle, the ADA, FTA and SAE standards require the height of the platform and vehicle floor to be within 15.9 mm (0.625 in) of each other and the horizontal gap between them be no

[23] The ADAAG requirement reads, "The platform surface shall be free of any protrusions over ¼ inch high * * *".

more than 13 mm (0.5 in). These requirements were originally found in the DVA standard. Many current lift designs use a bridging device between the lift and the vehicle floor. For these designs, the relative height and gap between the platform and the vehicle floor is not as important as the transitions and slopes that the users must traverse to enter and exit the vehicle. Accordingly, we believe that there is no compelling reason to have different specifications for entrance and exit of the platform at floor level than for entrance or exit of the platform at ground level. By using the ADA ground ramp specification at the vehicle floor level as well as the 13 mm (0.5 in) horizontal gap specification, we believe it would be imposing a more stringent requirement at the vehicle floor level than currently contemplated by the ADA standard. This more stringent standard should allow for an easier entrance into the vehicle because of less abrupt transitions.

Gaps between the upper surface of the lift platform and either the outer barriers or the inner roll stops [24] could be no greater than 15.9 mm (0.625 in) when fully deployed. The gaps would be tested with a test block which would require that a block with dimensions of 15.9 x 15.9 x 102 mm (0.625 x 0.625 x 4.0 in) not pass between any gaps. Since the test is a dimensional check, no force would need to be applied against the block. Gaps between the lift and edge guards permanently fixed to the ramp could not exceed 13 mm (0.5 in) throughout the range of lift operation. Edge guards which are an integral part of the vehicle may not be further than 6.5 mm (0.25 in) from the platform throughout lift operation.

d. Platform Deflection

We propose requiring that the platform angle not deviate from the vehicle floor by more than one degree when the platform is unloaded and by more than three degrees when the platform is loaded. The platform load for testing would have a mass of 272 kg (600 lbs), centrally placed on the lift. The amount of deviation would be measured throughout the lift cycle. This technique is consistent with the one used in the DVA standard that a specified deflection limit may not be exceeded both before and after loading. The three degree limit is consistent with both the FTA-sponsored guidelines (sections 2.2.5 and 3.1.3) and the ADAAG (49 CFR 38.23(b)(9)). This proposal is designed to correct an assumption we made in drafting the NPRM that lifts would only deflect in one direction (outward). Under this proposal, platform deflection could not exceed the stated limits in any direction. Testing throughout the lift cycle is consistent with the FTA requirement that lifts must meet the deflection limit during the entire lift cycle.

Under the NPRM's proposed test requirement, platform deflection would have been measured when unloaded and when the platform is loaded with a 272 kg mass (600 lbs). The difference between the two measurements was supposed to be less than three degrees, with a three degree limit allowed for the loaded platform.

Stewart and Stevenson preferred what it termed simpler, more descriptive language in establishing deflection amounts of the lift during tests. PVA supported our proposal to limit platform deflection to three degrees.

Platform deflection adversely affects the lift user's sense of security and balance. Additionally, excessive platform deflection could allow manual wheelchairs to be propelled towards the outer barrier, and possibly to gain sufficient momentum to pass over it. By limiting deflection to three degrees when loaded, the deflection angle would not require excessive arm strength for a wheelchair occupant to maneuver onto and off the platform. Additionally, by limiting the level of deflection in any direction, a safe platform angle would be maintained throughout the entire lift cycle.

In this SNPRM, we are proposing minor modifications in the platform deflection requirement. First, the NPRM measured deflection in a single vertical plane, assuming that only the lift would deflect and then only directly away from the vehicle. The NPRM did not account for any roll of the vehicle, which could increase the overall amount of deflection, or for deflection of the lift towards the vehicle or in a direction perpendicular to its mounting location. The revised requirement would not allow deflection greater than three degrees in any direction. Second, this SNPRM would require that the platform angle be compared to the vehicle floor angle in both the loaded and unloaded conditions.

(14) We request comment on whether, in addition to defining a limit on platform deflection with respect to the vehicle floor in FMVSS No. 141, that platform deflection with respect to the ground be limited by a specific requirement in FMVSS No. 142. In effect, this limit would dictate the extent to which the vehicle suspension would allow the vehicle to roll when the lift platform is loaded. Please specify an appropriate value for each vehicle type on which a lift might be installed.

e. Edge Guards

We propose that certain platform sides (*i.e.*, those which parallel the direction that a wheelchair would travel during entry or exit) be equipped with edge guards.

We have decided to propose the same edge guard requirements that were proposed in the NPRM. We continue to believe that such guards can help prevent a wheelchair from sliding off or being driven off the side of the platform.

PVA supported the proposal for edge guards of 38 mm (1.5 in). Lift-U stated that to prevent a trip hazard to ambulatory passengers the requirement should include the following: "For lifts that serve as the vehicle steps when in the stowed position, edge guards shall not extend outboard beyond the lowest step riser."

Edge guards can prevent a wheelchair from sliding off or being driven off the side of the platform. We propose requiring that the edge guard be 38 mm (1.5 in) high, a height we believe would be sufficient to deflect the motion of the wheelchair and alert the wheelchair occupant that the wheelchair is at the edge of the platform. Edge guards of this height are required by both the FTA-sponsored guidelines (section 2.2.6.1) and the ADAAG (49 CFR 38.23(b)(5)).

(15) We request comments on whether any existing lifts have edge guards that extend beyond the lowest step riser when the lift, in a stowed position, converts into vehicle steps. Do such edge guards create a tripping hazard when the lift is stowed?

f. Wheelchair Retention

This notice proposes that lifts be equipped with a wheelchair retention device that can sustain a direct force of 7,117 N (1,600 lbs) and can keep a wheelchair in an upright position throughout the range of lift operation. It is anticipated that most wheelchair retention devices would consist of an outer barrier that is permanently affixed to the lift platform.

In the NPRM, we proposed a wheelchair retention requirement that was patterned after the ADA standard. (49 CFR 38.23(b)(5)) We reasoned that there is a potential for severe injury

[24] Inner roll stops are barriers at the transition point between the lift and the vehicle. They are designed to prevent pinching or shearing of an occupant or a wheelchair between the vehicle and the lift platform when the lift moves. Outer barriers are located on the edge of the lift that is distant from the edge of the vehicle. They are designed to prevent an individual or wheelchair from falling or rolling off the lift when it is in motion or when the lift is at the vehicle's floor level.

because a wheelchair falling off a platform could drop as much as three feet. To allow manufacturers to pursue new designs, we proposed requiring "a means of retaining a wheelchair" rather than requirement that might be more design-restrictive.

In the NPRM, we specified a performance-related dynamic test procedure to evaluate wheelchair retention. Among the proposed test conditions were testing with a specific wheelchair (the Invacare Ranger II), using test loads representing 5th percentile females and 95th percentile males, using ballast, and requiring a test impact velocity of 1.8 m/s (4 mph). We proposed pass/fail criteria based on retention of the wheelchair on the platform with the wheelchair upright and resting on its wheels. We requested comments on the merits of a dynamic test versus a static test such as in the FTA-sponsored guidelines for active lifts (section 3.1.6.2, Option B). We also requested comments on how this static test could be applied to retention systems which do not make use of an outer barrier.

TMC favored a static test over the proposed dynamic wheelchair retention test. It stated that the standard proposed in the NPRM is not a design standard and would not give reproducible results. Analytical Engineering stated that the wheelchair retention specifications should be amended so that a reasonable equivalent static load can be applied through a set of standard wheelchairs or a similar load apparatus. Braun favored the dynamic outer barrier test, claiming that tests cannot be duplicated by static testing. Thomas Built, Lift-U, and the Florida Department of Education also favored dynamic testing.

We have decided to propose adding a 7117 N (1,600 pound) static overload requirement, in addition to the NPRM's dynamic impact test for wheelchair retention. This static load requirement (S5.5.7.3) is consistent with the SAE and DVA Standards. Testing at VRTC [25] has shown that the dynamic impact test alone is insufficient to measure a restraining device's structural integrity because the load it applies to the barrier begins and ends in a fraction of a second and does not achieve a 7,117 N (1,600 lbs) level. We believe that having both a dynamic impact and static test on the wheelchair retention device would be complementary since they test for different problems. (The static test only tests for structural integrity, while the dynamic test ensures that the wheelchair (especially a powered chair) cannot climb over the barrier.) We note that even though the SAE and DVA standards have only a static load requirement, they also specify that the wheelchair retention device must be an outer barrier with a minimum height of 76 mm (3 in). In order to avoid specifying a particular design, the SNPRM proposes the dynamic test to ensure the wheelchair would be kept on the lift if the wheelchair were driven into the wheelchair retention device. For outer barriers, which are the most common wheelchair retention device, these failure modes include climbing over and pushing down the barrier. By contrast, the static overload requirement provides a means of determining whether the wheelchair retention device has a sufficient design factor of safety.

Based on testing at VRTC, [26] we have decided to propose certain revisions to the test procedure for wheelchair retention (S6.4.3). We have added proposed text to clarify that the test device, representing a motorized wheelchair, must be under its own power when impacting the wheelchair retention device. We believe that this modification more accurately reflects the real world, particularly in determining if the test device could go over an outer barrier. The proposed impact speeds have also been changed to match more closely the speeds a powered wheelchair is capable of achieving. The test device would be set up so the foot rests, at their lowest point, have a height one inch below the barrier. This would allow the front of the foot rest to clear the barrier; this tends to raise the wheelchair upon impact with the barrier, causing higher barriers to be climbed. The test would be run with no load in the wheelchair and with the lift platform level with the ground. The testing at VRTC found this configuration to be the worst case scenario in relation to the height of barrier climbed. The testing also indicated that a load in the wheelchair and inclination of the lift platform contributed to the wheelchair tipping over the barrier. The modified impact test procedure is designed to avoid this failure mode which cannot be prevented by the traditional outer barrier designs.

It should be noted that the selection of this test device should in no way be interpreted as an indication that only mobility aids fitting such description may be safely carried. NHTSA recognizes that all types of mobility aids including all designs of manual and powered wheelchairs, scooters, and other devices are used as seats on motor vehicles.

A new dynamic requirement is being proposed for rotary lifts, which are loaded at the vehicle level while the lift is inside the vehicle (S.5.5.7.2). These types of lifts are typically referred to by the industry as rotary lifts because the platform rotates out of the vehicle with its plane parallel with the vehicle floor. The direction of ground level loading is parallel to the vehicle's side rather than perpendicular to it. Rotary lifts usually have outer barriers on both ends of the platform which are perpendicular to the direction of loading. The new test procedure for rotary lifts (S6.4.4) would assess the wheelchair retention device on both sides of the platform at a point in the lift operation between the ground and vehicle floor.

Instead of proposing a specific wheelchair model, we have decided to propose the critical dimensions, configuration and components necessary to define a wheelchair with sufficient specificity to ensure that any wheelchair used for testing purposes would perform equivalently in the dynamic impact of the wheelchair retention device. These parameters include the center of gravity, mass, wheel size and wheel type, axle separation, frame configuration, seat type and footrest design. The proposed parameters are consistent with several of the most popular wheelchairs currently being produced. [27] Should there be a significant change in wheelchair design, these criteria would have to be changed.

g. Inner Roll Stop

We propose requiring an inner roll stop to prevent a wheelchair from rolling off the platform's inner edge. For arc lifts, i.e., lifts which move in arcing motion from vehicle edge to a distance away from the vehicle edge during operation, this device prevents the lift occupant from falling off the inner edge. For all lifts, it prevents injuries due to pinching and shearing of the occupant's legs or feet between the platform and the vehicle. For elevator lifts, i.e., lifts which move vertically during operation, it is possible for the vehicle wall below the wheelchair lift entry door to perform the function of the inner roll stop.

In the NPRM, we proposed a static test, noting that we had no information about any incidents involving a failure of the inner roll stop to retain a wheelchair on the platform. We further

[25] Further details of this testing can be found in report, *Wheelchair Retention Device Impact Test Analysis*, (July, 1998) Docket No. NHTSA–4511.

[26] Id.

[27] Further detail on the selection of parameters for the test wheelchair can be found in report, *Determination of Center of Gravity of Cross-Bar Framed Power Wheelchairs*, (July, 1998) Docket No. NHTSA–4511.

noted that the possible scenarios appear to involve less risk of serious injury than if a wheelchair were to fall off the outer edge of the platform. The NPRM's proposed inner roll stop test was based on the FTA-sponsored guidelines (section 3.1.6.2), modified by specifying the length of time that the load is applied and the amount of permissible deflection.

The NPRM allowed the deployment of outer barriers or inner roll stops when occupied by a user or mobility aid. AATP and Alameda-Contra Costa Transit District recommended that barriers not be allowed to rise when occupied. Alameda commented that a wheelchair user had been injured when her chair flipped over due to the caster being on the outer barrier when it began to deploy. The agency has decided to propose a requirement in the section on interlocks (S5.11.2.7–8) to reduce the likelihood of this occurring.

Thomas Built believed that while an inner roll stop should be required, the requirement should depend entirely on the lift configuration. For instance, with its elevator lift, the inner roll stop is inherent to the lift design, so a separate stop is unnecessary. Stewart and Stephenson stated that a deployable inner roll stop (or inner barrier) should be a part of all lifts.

We believe that the new proposal, along with its associated test procedure (S6.5), is more comprehensive and representative of the real world than the NPRM. It both assures adequate strength for the roll stop and more clearly specifies a test to determine if the roll stop prevents pinching.

We have decided to propose a two part requirement (S5.5.8.3). First, to ensure an inner roll stop has adequate strength, the proposed regulation would require the inner roll stop to prevent the front wheels of a wheelchair from passing over the inboard edge of the platform when it is at ground level. This would be tested by impacting the roll stop with a wheelchair. Second, the roll stop would have to prevent pinching of the wheelchair between the platform and any other structure throughout the range of passenger operation. This would be tested by placing a wheelchair on the platform and attempting to move it toward the roll stop as the platform is raised.

We have decided to propose requiring the inner roll stop for all lifts designed for installation all vehicles over 3,220 kg (7,100 lbs) GVWR. The inner roll stop would not be required for lifts designed for vehicle under this GVW rating. However, if one were not supplied for those vehicles, the vehicle owner's manual and the operating instructions would be required to specify that when the lift is loaded at ground level, the wheelchair must face outward. Lack of an inner roll stop is consistent with the SAE standard and current lift designs on the market for personally-licensed vehicles. Due to the small size of many lifts in personally-licensed vehicles, the wheelchair must face away from the vehicle to fit on the platform. It is unlikely that wheelchair or scooter users in this orientation would be pinched between the vehicle and the platform. It is also unlikely that multiple mobility device users would use a lift in a personal vehicle. Consequently, we believe that there is no need to require the inner roll stop in this instance. Likewise, the rear wheels are unlikely to pass over the edge of the platform without first impacting the side of the vehicle due to their size. We are not proposing to exempt lifts designed for truck tractors, trailer, motor homes, or other larger vehicles typically used only by individuals from the inner roll stop requirement, because we are concerned that the rear wheels of a wheelchair could pass over the edge of the platform without first impacting the vehicle, given the distance of the vehicle's undercarriage from the ground.

(16) We request comments on whether there are any platform lifts designed for installation on vehicles under 3,220 kg (7,100 lbs) which, when used appropriately with compatible wheelchairs, allow the wheelchair occupant to be pinched between the vehicle and the lift.

h. Handrails

We have decided to propose that handrail displacement be limited to 25 mm (1 in) when a force of 445 N (100 lbs) is applied and to 102 mm (4 in) when a force of 1,112 N (250 lbs) is applied. We believe that it is more appropriate to test at two force levels than at a single force level of 445 N (100 lbs). The 445 N (100 lbs) force's purpose is to assure that the handrail is stable and has adequate clearance around it. The 1,112 N (250 lbs) force's purpose is to assure that the handrail is sufficiently strong to prevent catastrophic failure.

In the NPRM, we proposed requiring lifts to have movable handrails. The NPRM specified such characteristics as the handrails' length (203 mm (8 inches)) and a maximum allowable deflection of 3.2 mm (0.125 in) (i.e., ability to withstand a 100 pound force).[20]

Ricon commented that the requirement of a maximum handrail deflection of 3.2 mm (0.125 in) while under a load of 445 N (100 lbs) "is not consistent with current industry practice nor is it practical in terms of the wheelchair lift design environment." The commenter reported measuring handrail deflections of 45 to 51 mm (1.75–2.0 in) when subjected to 334 N (75 lbs) applied load. Ricon recommended a displacement limit of 32 mm (1.25 in) with a 334 N (75 lb) applied load.

We believe Ricon's recommendation is too lenient. We agree, however, that the requirement proposed in the NPRM may have been too stringent. We believe that the allowable displacements proposed in this SNPRM are achievable goals for a well designed handrail. Handrails assist passengers in moving on and off the platform, provide a sense of security to occupants during lift operation, and help prevent lateral movement of wheelchairs. ADAAG require movable handrails for all lifts (49 CFR 38.23(b)(13)).

In evaluating handrail displacement due to applied load, we assumed a U-shaped handrail with a maximum height of 965 mm (38 in) and tube diameter of 38 mm (1.5 in). We further assumed that the handrail is made of 1010 hot-rolled steel with a wall thickness of 1.6 mm (0.0625 in). A load applied perpendicular to the vertical plane of the handrail at the top would yield the maximum displacement. We also assumed that the handrail is cantilevered or rigidly attached to the lift platform at its base. The displacement of the handrail under these conditions can be represented by equation (1), which is half of the displacement of a single cantilever beam.

Equation One: $x = (PL^3)/(6EI)$

P = Applied Load

L = Distance from base to applied load = 0.946 m (37.25 in)

E = Modulus of Elasticity of handrail material = 20×10^{10} Pa (29×10^6 psi)

I = Moment of inertia of handrail cross-section

The moment of inertia of a hollow tube is given in equation (2).

Equation Two: $I = (D^4 - d^4)\pi/64$

D = Tube outer diameter = 0.0381 m (1.5 in)

d = Tube inner diameter = 0.0349 m (1.375 in)

Substitution of values into equations (1) and (2) results in a displacement of x = 10.3 mm (0.41 in) for a 445 N (100 lb) force, an amount that exceeds the

[20] Handrail displacement consists of three parts: (1) looseness in the handrail's components at the attachment point to the platform, (2) deformation of the handrail components due to applied load, and (3) deformation of the lift platform where the handrail is attached.

NPRM's proposed limit of 3.2 mm (0.125 in).

A real-world handrail design would not be as rigid as a cantilever beam because the handrail is attached to the lift platform which would deform when loaded. It is difficult to estimate the displacement caused by deformation of the platform since it is design dependent. However, any deformation at the platform attachment point would have an even greater effect at the opposite end of the handrail. Thus, the actual displacement due to applied load could be much greater than calculated from the deformation of the handrail alone.

There are several problems with estimating displacement caused by any looseness in the handrail components at the point of attachment. Such a measurement would be both design and construction dependent as well as being affected by wear in specific components. Any looseness at the point of attachment to the lift platform would be multiplied at the distal end of the handrail.

In tentatively selecting the displacement limit for the 445 N (100 lb) force, we have assumed that the components of displacement caused by the deformation of the handrail and the deformation of the lift platform each cause 10.2 mm (0.4 in) of displacement. We further assume that the component of displacement due to looseness in the handrail contributes half as much to the total displacement. Thus, the proposed displacement limit is set to a value of x = 25 mm (1.00 in).

We took a different approach to determine the displacement limit at the 1,112 N (250 lb) force level. At this force level, it is possible that the yield strength of handrail components may be exceeded. Therefore, while it is acceptable for the handrail to permanently bend, it would be impermissible for it to break. With the yield strength of the material exceeded, equation (1) is no longer valid. The requirement for displacement must be sufficient to assure that the handrail has not fractured in a catastrophic way. The displacement for the 1112 N (250 lb) force is, therefore, set at x = 102 mm (4 in).

We note that handrails would not be required for lifts designed for vehicles other than buses and MPVs with a GVWR greater than 3,220 kg (7,100 lbs). While handrails are important in public transit where there may be standees on the lift platform, lifts in personally licensed MPVs, trucks, truck tractors, or motor homes are usually occupied each time by the same wheelchair user. Additionally, a wheelchair user may be unfamiliar with the lift on a public transit vehicle, leading to a greater risk of injury if a support mechanism is not provided. However, unfamiliarity should not be a problem with the lifts installed on personally-owned vehicles. A user who desires a handrail on the lift installed in his personal vehicle has the option of purchasing a lift equipped with one.

i. Platform Markings

NHTSA tentatively concludes that it is appropriate to require lifts on buses and MPVs with a GVWR over 3,220 kg (7,100 lbs) to be equipped with platform markings. We are proposing platform markings to provide greater visibility for the edges of the lift, thus reducing the potential for injuries. Throughout the range of operation, all platform edges, the visible edge of the vehicle floor or bridging device, and any designated standing areas would be outlined with markings at least one inch wide and of a color that contrasts with the color of the rest of the platform by 60 percent. These requirements are based on the FTA-sponsored guidelines (section 2.2.9).

In the NPRM, which proposed the same requirements (for buses fitted with lifts) without specifying the degree of color contrast, NHTSA requested comments about two alternate methods of designating the amount of contrast required. Under the first alternative, the lift would be marked with a contrasting color or shade observable with the unaided eye from 3.05 meters (10 ft). Under the second alternative, the lift would be marked with a contrasting color or shade with at least 70 percent contrast, defined as follows:

Contrast = 100*((L1–L2)/L1)

where:

L1 = luminance in footlamberts of the lighter color or shade, and

L2 = luminance in footlamberts of the darker color or shade.

While Lift-U and Iowa stated that platform marking requirements were not necessary, PVA and Braun supported such requirements. Several other commenters addressed specific aspects of the marking and illumination requirements. All American Transit stated that the designated standing area should be 305 mm to 330 mm (12–13 in) wide with a solid contrasting color band running laterally across the lift. It also stated that 15 different color patterns and contrasting color shades do not comply with NHTSA's 70 percent contrast alternative. Analytical Engineering favored the 70 percent contrast alternative, but requested clarification about whether the source of illumination was natural or artificial. Flxible stated that it uses white or yellow platform markings which meet ADA contrast criteria and that the mat area is always black. Flxible suggested allowing either footprints or a boxed perimeter area to designate the lift standing zone. Braun and Lift-U favored specifying a degree of contrast with a test procedure that would involve testing the degree of contrast in platform markings with the unaided eye from ten feet. Iowa recommended specifying a single color to keep costs low. Florida stated that the degree of contrast for platform perimeter markings should be specified and that only the perimeter should be marked. TMC stated that the degree of color contrast on the standing area of the platform should be left to the judgment of the lift manufacturer and/or transit provider.

Based on our continued belief that platforms should be marked, we are proposing the same platform marking information as in the NPRM. The agency believes marking the platform surface, as well as any roll stops and retention devices contributes to the safety of lift users because they will be able to accurately gauge the lift's perimeter both during daylight and when the lift is illuminated. One minor change to the NPRM is that rather than proposing footprints, the standing area would be outlined. NHTSA is proposing alternative number two, with a color contrast of 60 percent. We have decreased the amount of color contrast proposed in the NPRM because, based on testing at VRTC, we believe significantly more contrast combinations will be able to satisfy a contrast requirement of 60 percent and that there is no diminution of safety.

j. Platform Lighting

NHTSA tentatively concludes that it is appropriate to require lifts on buses and MPVs with a GVWR over 3,220 kg (7,100 lbs) to be equipped with lighting. We are concerned that without such lighting, a lift user could be injured in poor light conditions. We believe that the lighting from the vehicle's interior would be insufficient to illuminate the lift. Under the proposed standard, based on the FTA guidelines, the vehicle would have sufficient lighting to provide at least 54 lumens per square meter (5 lm/ft²) of illuminance on all portions of the lift platform throughout the range of operation. At ground level, all portions of the lift's unloading ramp would be required to have at least one lumen per square foot of illuminance.

The proposed lighting requirements would apply to all lifts designed for installation on buses, including school

buses, and MPV over 3,220 kg (7,100 lbs).

In the NPRM, we decided not to propose a lighting requirement, even though the FTA-sponsored guidelines and ADAAG contained such requirements. We stated that even though lighting is an important safety feature at night time or during times of low ambient light, this may be one area that does not need to be covered by both the ADA standards and a safety standard. Any bus required to be accessible by the ADA will have illumination for the lift. We believed that the only lift-equipped vehicles which will not be subject to the ADA are school buses.

We requested comments about whether there should be a lighting requirement for school buses.

Thomas, Iowa, and PVA supported a lighting requirement for both lift operation and lift control illumination, because buses operate at night. Washington State stated that the lighting requirement should be uniform for all vehicles. In contrast, St. Paul Schools stated that lights should not be required because the light from the interior of the bus is sufficient to light the lift.

We have tentatively decided not to apply the lift lighting requirements to lifts designed for vehicles other than buses and MPVs with a GVWR of greater than 3,220 kg (7,100 lbs). The NPRM did not contemplate a distinction between lighter and heavier MPVs. However, the agency notes that the current industry standard for lifts in personally-licensed vehicles (SAE J2093) does not require lighting. Moreover, users of personally-licensed vehicle are typically familiar with the use of their lifts and in many cases the user is the operator. These individuals can have lighting installed if they believe it is necessary.

k. Platform Slip Resistance

A slip resistant platform surface is important to reduce the potential for injuries for both wheelchair and non-wheelchair lift users. The FTA-sponsored guidelines (section 2.2.2) and the ADAAG (49 CFR 38.23(b)(6)) specify that the platform surface should be slip resistant. NHTSA proposes that the lift platform surfaces have a static coefficient of friction of at least 0.65 when tested, while wet, in any direction. The test procedure for testing slip resistance is based on the ANSI/RESNA WC–13 test procedure.[20]

The coefficient of friction would be tested by wetting the platform surface in the manner prescribed in the standard. Testing would occur within 30 seconds of wetting the platform surface with distilled water.

The proposed test procedure differs completely from the one proposed in the NPRM. The previously proposed test called for the equivalent of a coefficient of friction of not less than 0.6. Instead of specifying the requirement in terms of coefficient of friction, we proposed a surrogate requirement whose satisfaction by a platform surface would be equivalent to its compliance with this coefficient of friction. We believed that the 30 degree value required under that test was consistent with the 0.6 coefficient of friction. The agency requested comments on the merits of both the test proposed and other methods of measuring surface friction.

Commenters stated that the test was too costly and cumbersome since it required testing with three separate wheelchairs and because no wheelchair could remain upright when positioned on a platform that was angled 30 degrees.

We believe that the commenters' concerns were valid since many wheelchairs will tip over at any angle greater than seventeen degrees. Since the originally proposed test was impractical, the SNPRM proposes, with some modification, an established voluntary industry standards test.

l. Platform Free Fall Limits

This proposal would limit the free fall velocity of a failing lift system to 305 mm/s (12 in/s) as the result of a single-point failure. Additionally, any single-point failure could not change the lift platform's angular orientation by more than two degrees in any direction. These two limitations would need to be met when the lift is under its own power. The requirements proposed today differ from the one in the NPRM only in the addition of a maximum allowance in the change of platform angle due to a single-point failure of the lift system.

Commenters on the NPRM had stated that they believed it was impossible to protect against multi-system failures of the lift system. NHTSA tentatively agrees with this assessment and has accordingly made the platform requirement on the change in angle applicable only to single-point system failures.

We believe that a free fall speed in excess of 305 mm/s (12 in/s) and excessive change in platform angle could result in serious injury to lift occupants. We believe the requirement is now consistent with the ADA standard which specifies that no single-point failure may cause an occupant to be dropped.

m. Control Systems

New requirements for the control panel are being proposed today. The new requirements would still require that the controls be clearly marked in English, but otherwise differ substantially from a panel similar to the one illustrated in the NPRM.

The new proposal differs significantly from the NPRM because the original proposal was deemed too design restrictive. The new proposal should allow for all types of controls on all types of lifts.

Concerns were raised in response to the NPRM that many lift operators may have a limited command of English. NHTSA recognizes this as a potential problem and considered using visual icons to explain appropriate lift use. Such symbols, however, may only complicate any potential problem since there is no universal system of icons which apply to the required lift functions. We believe that individuals with limited English can be properly trained on how to operate the lift and to recognize the few words required for the control panel.

Under this proposal, a vehicle with a platform lift system would be required to have a minimum set of switches. More switches could be provided at the discretion of the manufacturer, but those listed below would be the required minimum.

The system must have a switch which can activate the control system. This would be marked as the "power switch". The system would also have a switch used to move the lift from a stowed position to the vehicle floor loading position (marked either "deploy" or "unfold"), a switch to lower the lift platform (marked "down") and to raise the lift (marked "up"), and a switch to move the lift from the vehicle floor loading position to a stowed position (marked "stow" or "fold"). The characters would be at least one inch in height to allow for easy viewing and, in buses and MPVs over 3,220 kg (7,100 lbs), would be illuminated when the vehicle's headlights are on. All functions in the control system would be required to be activated in a sequential fashion so that no two functions could be performed at the same time. The controls could be activated through the use of one or more switches. To avoid confusion, we would like to point out that a switch commonly called a "rocker switch" is, in fact two switches, one at either end of the rocker. Hence a rocker switch with "up" on one end and "down" on

[20] *Evaluation of ANSI/RESNA WC/13 to Determine the Coefficient of Friction of wheelchair Lift Platforms*, (July, 1998), Docket No. NHTSA–4511.

the other would meet the requirement for a switch for each of those functions.

On lifts designed for installation in buses and on MPVs over 3,200 kg (7,100 pounds), all controls would be required to be located together in an area where the lift operator has an unobstructed view of the lift and any occupants at all times. However, additional power switches could be installed in another location to protect against inadvertent activation of the lift system. The requirement that all controls be located together is proposed to address the following concerns:

- A lift operator should be able to immediately appraise all the available controls with the assurance that there are no other controls in a different location.
- A single set of controls would prevent the inadvertent operation of the platform lift by a second person.

This requirement is not proposed for MPVs under 3,200 kg and the other vehicle types typically used as personal vehicles, because these lifts must be operated by the user and hence controls for different functions must be available in different locations. For example, "on", "fold", and "unfold" may be located at the vehicle driver's position and/or near the lift's doorway, while "up" and "down" may need to be located on the lift itself. This presents no safety hazard to someone who is both the lift operator and its passenger and who is familiar with its operation through daily use.

Simple instructions, including instructions on how to operate the lift's back-up system, would be provided near the controls and would be in English. This requirement would not preclude a manufacturer from additionally providing instructions in a language other than English.

The agency is aware that lift systems on personally-licensed vehicles are commonly equipped with remote control systems which use fewer than four switches and have no "power" switch. These systems are powered at all times. We are considering exempting lifts designed for installation on vehicles other than buses and multipurpose passenger vehicles with a GVWR greater than 3,200 kg (7,100 lbs) from the control requirements, however we have several safety concerns about the controls currently available. The agency is seeking comment on those control systems to help us address those concerns.

Any single-point failure in the control system would not prevent operation of the vehicle's interlocks.

(17) NHTSA requests comments on whether there are icons for lift operation adopted by voluntary standards groups or by the lift industry.

(18) NHTSA requests comments on whether, absent industry-accepted icons, pictographs depicting proper lift operation would be helpful or practicable.

(19) NHTSA requests comments on whether commenters have experienced, or know of instances involving, inadvertent lift deployments, or other unsafe situations, which would not have occurred had the user needed to first switch on the power system?

(20) NHTSA requests comments on whether commenters have experienced, or know of instances involving, inadvertent lift deployments, or other unsafe situations, that were the result of different switches for opening doors, unfolding lift platforms, or lowering the lift platform to the ground?

(21) NHTSA requests comments on whether application of the control requirements described above, and given in S5.7 of the proposed regulatory text, would result in undue hardship to the users of lifts in private vehicles or increase the cost to manufacture the control systems for lifts in those vehicles?

n. Jacking Prevention

Jacking, or the continued effort of the lift mechanism to lower the lift platform after it has already contacted the ground, can cause serious damage to a lift system. This continued force on the ground leads to the vehicle lifting from the ground, much like a tire jack raises a vehicle. Such damage, while not harmful to the individual using the lift at the time, can result in an unsafe condition for future lift occupants. Accordingly, NHTSA proposes that the lift's control system or design prevent the raising of any portion of the vehicle by the lift system if continued force is exerted in a downward motion on a lift that is at its ground level loading position. This requirement would not apply to lift systems that are being operated in their manual back-up mode.

This proposal is unchanged from the one in the NPRM and is adopted from the FTA guidelines (section 2.5.6)

o. Backup Operation

Under this proposal, a lift system would be required to have a manually-operated backup system that allows for full use of the lift in the event of a power failure. The backup would allow for full lift use so that any occupants in the vehicle or on the lift could be safely transported off the vehicle or lift and the lift could then be stowed so that vehicle movement is not impeded. Operating instructions would be located near the control panel and in the vehicle owner's manual. This requirement, which is essentially unchanged from the one proposed in the NPRM, is consistent with the FTA guidelines (section 2.5.7) and the ADAAG (49 CFR 38.23 (b)(3), which require "an emergency method of operation."

p. Interlocks

Interlocks are electrical or mechanical devices which prevent the operation of a device until a particular event has occurred. The use of interlocks in a lift system is designed to prevent injury due to mechanical or human error. The interlock system proposed today consists of ten separate interlocks.

Five of these interlocks were proposed, in some form, in the NPRM and are consistent with FTA guidelines (section 2.5.8) and ADAAG (49 CFR 38.23(b)(2) and 38.23(b)(5)).

The first interlock would prevent the forward and rearward motion of the vehicle when the lift is not in its stowed position (S5.11.2.1). This is to prevent injury to a lift passenger from the vehicle's beginning to move while the lift is occupied and also to prevent injuries to passengers and bystanders and property damage that could be caused by moving the vehicle with the lift deployed. The second interlock would prevent the deployment of the lift system unless the vehicle's lift access door is open and some affirmative action has been taken to prevent the vehicle from moving (S5.11.2.2). This action may be as simple as setting the parking brake.

Two separate interlocks are proposed to prevent movement of the lift, either up or down, if the lift's inner roll stop (S5.11.2.4) or its wheelchair retention device (S5.11.2.5) is not deployed. These two requirements are designed to keep lift occupants secure during lift movement.

The lift must be incapable of stowage if any portion of the lift platform is occupied by either a portion of the lift user's body or a mobility aid (S5.11.2.3). The interlock proposed in the NPRM only prevented platform stowage when the lift was occupied by an object weighing 50 pounds or more. It did not account for very small occupants who may use the lift. A new interlock is being proposed that would prevent the stowage of a wheelchair retention device unless the lift platform is within three inches of the ground (S5.11.2.6). This interlock should prevent serious injury due to the retention device prematurely releasing a wheelchair while the lift platform is a considerable distance from the ground. The agency is not proposing to add an interlock

addressing the possible stowage of an inner roll stop. Lift manufacturers would already have to satisfy an operational test in which the inner roll stop would prevent any pinching or shearing. Additionally, we are not aware of any injuries caused by a prematurely stowing inner roll stop and, therefore, an interlock may constitute an unnecessary expense.

Two additional interlocks were added to this proposal based on comments by the Alameda-Contra Costa Transit District which reported that it knew of an incident in which a wheelchair flipped over because the outer barrier began to deploy while the wheelchair was on it, as well as on comments by AATP, Inc. The new interlock requirements would not allow the deployment of an occupied outer barrier (S5.11.2.8) or inner roll stop (S5.11.2.9).

In addition to the three new interlocks designed to prevent injuries from moving retention barriers, two new interlock requirements are being proposed in this document. First, the lift would have to stop moving once it encounters resistance while moving in a downward manner (5.11.2.7). This is to prevent potential crushing injuries and jacking and is consistent with SAE standards. Second, the lift could not move either up or down when both the vehicle floor or its bridging device and the lift is occupied (S5.2.11.10). This new interlock proposal is intended to prevent any injury from the bridging device shifting before the lift occupant is safely aboard either the vehicle or the lift.

We are not proposing at this time to quantify the amount of resistance necessary to activate the interlock that is designed to prevent jacking or crush injuries, even though NHTSA has required a quantifiable level of force not be exceeded in FMVSS No. 118 on power windows and sun roofs. Likewise, we have not proposed a specific test to measure whether a lift platform, outer barrier or inner roll stop are occupied. The agency recognizes that it will need to develop some way of measuring an unacceptable level of resistance and lift occupation as part of its compliance test procedure. However, we first seek comment on how best to measure an unacceptable threshold for resistance and occupancy.

(22) The agency seeks comment on any known injuries which have occurred due to an improperly stowing inner roll stop. In addition, the agency seeks comment on whether it should add an interlock that would prevent or limit the stowage of an inner roll stop while the lift platform is moving and the form this interlock should take.

(23) NHTSA requests comment on whether it should specify a quantifiable amount of resistance that would trigger the operation of an interlock to prevent jacking and crush injuries, and if so, what that amount should be.

(24) NHTSA requests comment on whether it should specify a means of determining if a lift platform, inner roll stop, vehicle floor, bridging device, or outer barrier are occupied, and if so, what that means should be.

(25) The agency requests comment on whether there are methods that platform lift manufacturers are using or contemplate using to determine resistance and occupancy other than force or weight detection.

q. Owner's Manual Insert

Under this proposal, the lift manufacturer would be required to provide a lift installer with an insert for the vehicle owner's manual that would contain three important pieces of information:

- A maintenance schedule, since insufficient maintenance has been identified as a safety risk to users;
- Lift usage instructions, which provide redundancy in case the instructions located near the lift are lost or damaged; and,
- For lifts designed for vehicles other than buses and MPVs over 3,220 kg (7,100 lbs), the lift's platform operating volume and whether the wheelchair user must enter the lift with the rear wheels nearest the vehicle.

This last set of instructions is to protect lift users from shearing or pinching their feet between the lift and the vehicle due to the possible lack of an inner roll stop which is not required for lifts on vehicles other than buses and MPVs greater than 3,220 kg (7,100 lbs).

r. Installation Instruction Insert

Lifts may be manufactured according to all of the proposed requirements discussed above but still be unsafe due to improper installation. NHTSA believes the lift manufacturers are in the best position to know how to properly install their lifts, as well as which vehicles are suitable for their lifts. Accordingly, we assume that each lift is delivered to the installer with printed instructions for proper installation, as well as a diagram or schematic depicting proper lift installation.

We are proposing a new requirement that lift manufacturers include with each set of installation instructions a page which specifies a list of vehicle make/models for which the lift was designed or a list of vehicle characteristics necessary for lift installation consistent with the lift manufacturer's compliance certification (*e.g.*, appropriate vehicle weight, dimensions, structural integrity), and any instructions that must be placed in the vehicle owner's manual, or elsewhere in the vehicle in order to comply with the requirements of FMVSS No. 141 once the lift is installed. Lift manufacturers may choose to include simple test procedures to assure that the lift, once installed, is fully operational and continues to meet the lift requirements of the standard.

(26) The agency requests comment on whether, and to what extent, it is common for lifts to be delivered to the installer without printed installation instructions and whether installers believe the new regulation should require lift manufacturers to include installation instructions with each lift.

4. Test Conditions and Procedures

NHTSA is proposing a series of test procedures to determine whether a lift complies with the various sections of the proposed standard. Each lift would be required to be capable of meeting all of the tests specified in the proposed standard, both separately and in the sequence specified. The point in the testing at which compliance with each requirement is to be checked is also specified. Where a range of values is specified, the equipment must be able to meet the requirements at all points within the range.

Although compliance with the proposed requirements may be tested with the lift attached to a vehicle, several of the required tests can also be performed on test jigs without the loss of rigor or an alteration in test outcome. Testing via a test jig may prove substantially cheaper than performing all tests while the lift is attached to the test vehicle. Tests that may have an effect on the vehicle/lift interface (*i.e.*, the inner roll stop, static load I, fatigue endurance, and static load II), must be performed on the lift while it is attached to the vehicle. All other tests may be performed on the test jig.

The slip resistance test, environmental resistance test, wheelchair retention impact test, handrail test, wheelchair retention overload test, and static load test III could be performed on a test jig rather than on the lift when attached to the vehicle. The attachment hardware could be replaced if damaged as a result of removing the lift from or installing the lift on the vehicle or test jig. The static load test III, which tests for ultimate load, could be performed on the test jig since the intent of the test is to over-stress the lift to determine if the design

safety factor has been met rather than to over-stress the hardware attaching the lift to the vehicle.

Static load test I is an operational test in which the lift is exercised through its full cycle of movement. The lift is required to function in both loaded (272 kg (600 lb)) and unloaded conditions.

Static load test II would require testing the lift system with a load of 816 kg (1,800 lbs) (proof load). Static load test II has a safety factor of three (*i.e.*, three times the weight requirement of static load test I) and tests the durability of the lift system and its components. The 816 kg (1,800 lb) static load test requires proof of lift operation after the test and is consistent with the applicable FTA guideline.

The proposed static load test III would require testing the entire lift system with a load of 1,088 kg (2,400 lbs) (ultimate load), which is the same as the highest load under the DVA and SAE standards. Since both the DVA standard and the SAE standard require an ultimate load of 1,088 kg (2,400 lbs) for the entire lift system, we have tentatively determined that 1,088 kg (2,400 lbs) is an appropriate weight for testing the lift system with an ultimate load. The ADAAG takes a different approach by specifying a design factor of safety of six for components likely to wear (such as cables, pulleys and shafts) and a design factor of safety of three for non-working components (like the platform, frame and attachment hardware) with a working load of 600 pounds.[30]. This requires no testing on the part of the manufacturer, but a design analysis. We are confident that a lift which meets the battery of tests proposed here would meet, or exceed, the ADAAG factor of safety requirements.

We believe our proposal, using three static tests and a fatigue test is consistent with the level of safety sought by the SAE, DVA, FTA, and ADAAG.[31]

a. Test Pallet and Load

All static load tests would be conducted using a test pallet which would mimic the size of a standard powered wheelchair. The test pallet base would measure 660 mm × 686 mm (26 in × 27 in). The test pallet for the static load test I and the fatigue endurance test (if adopted) would be made of a rectangular steel plate of uniform thickness. The load which rests on the pallet would be made of rectangular steel plates of uniform thickness with dimensions between 533 mm and 686 mm (21–27 in). This proposal varies from the NPRM in that it specifies the test pallet base rather than allowing a base within a range of dimensions.

b. Static Load Test I—Working Load

Using the control panel, the test operator would deploy the stowed platform, center a test pallet on the lift platform and center a load with a total mass of 272 kg (600 lbs) on the pallet, and lower the platform to the ground level loading position, stopping once midway through the process. The pallet would be removed from the platform and the lift cycled up, stowed, and cycled back down, stopping midway in each up or down cycle. The test pallet would then be reloaded onto the platform which would be cycled up to the vehicle floor level loading position, stopping once midway through the cycle. The pallet would be removed and the lift stowed. The operator would turn off the power supply and repeat the test manually, using the lift's manual backup mode.

The test procedure for the static load test I has not changed since the NPRM, except that more aspects of lift performance would be required to be measured under this proposal. In all, 44 specific requirements of proposed FMVSS No. 141 would be assessed using the static load test I; only six of these standard requirements are new. Unlike the NPRM, this proposal clearly specifies which requirements must be checked under static load test I.

c. Static Load Test II—Proof Load

The static load test II, which tests the lift system with a load of 816 kg (1,800 lbs), is designed to ensure that the lift/vehicle system can safely sustain loads up to three times the maximum expected load of 272 kg (600 lbs) and remain operable. The test would require a loaded pallet to be placed on the lift platform while the lift is at the vehicle floor level loading position. The load would remain on the platform for two minutes, after which it would be removed. The lift and vehicle would be examined for separation, fractures or breakage, and static load test I would be repeated. Repeating static load test I will determine whether all lift components still function.

This proposed test is the same as the static load test II in the NPRM except that the repeated static load test I was referred to as static load test III in the NPRM. This proposal specifies a different test for static load test III.

d. Static Load Test III—Ultimate Load

NHTSA has incorporated static load test III into this proposal to ensure that the lift could support the heaviest wheelchair/user combination without catastrophic failure. The lift is not required to operate at this static load. It is anticipated that a load this size is likely to cause permanent deformation to the lift/vehicle system. The test would require a test pallet and load with a mass of 1,088 kg (2,400 lbs) be placed on the lift platform. The loaded pallet would be left on the platform for two minutes and then removed. The lift would then be inspected for separation, fracture, or breakage.

This test differs from Static Load Test II, the proof test, in that the lift need not remain operable after application of this load. Static Load Test I is *not* repeated after Static Load Test III as it is with Test II.

We have included questions below about the extent to which test III adds to the safety benefits and cost of test II and how our proposed test procedures compare to the requirements of ADAAG.

(27) NHTSA requests comments about the extent to which static load test III adds safety benefits to those of static load test II.

(28) NHTSA requests comments on the estimated costs of testing based on the proposed requirements, for tests performed by or for lift manufacturers, vehicle manufacturers, and, if applicable, lift installers.

(29) NHTSA requests comments from lift manufacturers currently making ADA-compliant lifts on how they test their lift systems for compliance with 49 CFR 38.23(b)(1), and whether the level of safety required by the tests proposed here meets that required by 49 CFR 38.23(b)(1).

G. Additional Platform Lift Requirements Under Consideration

This section sets forth some additional requirements being considered by the agency for inclusion in the final rule. These proposed requirements are new and were not addressed in the NPRM. We request comment on whether, based on their costs and their safety benefits, any or all the requirements should be adopted in the final rule.

[30] 49 CFR 38.23 (b)(1)Design Load. The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

[31] Fatigue testing is more appropriate for identifying problems with components that wear, than a separate, higher, safety factor for these components during a static test.

We considered proposing requirements that would require lift components to meet voluntary industry standards regarding mechanical, electrical and hydraulic components.[32] Platform lifts have a variety of designs and may utilize many different types of mechanical, hydraulic, and electrical components. The FTA guidelines and SAE standards identify relevant industry standards for such components and require compliance with those standards. We believe incorporation of relevant voluntary industry standards could be design restrictive and may provide for a level of redundancy at the component level which would not add to the overall safety of the lift system. Accordingly, NHTSA has decided against proposing these component requirements.

(30) NHTSA requests comments on whether these requirements on components have sufficient safety value to merit inclusion in FMVSS No. 141.

1. Environmental Resistance

Some lifts are designed to be stowed outside the vehicle. Many of these lifts are stowed under the vehicle's undercarriage, but they may also be stowed in another manner. Accordingly, the lifts are exposed to the weather at all times. The SAE standard requires such externally mounted lifts to comply with the salt spray tests of FMVSS No. 209. Since corrosion may accelerate wear, NHTSA is proposing to adopt the SAE requirements for externally mounted lifts. Attachment hardware, whether located outside of the vehicle or within the vehicle compartment, would likewise be subject to the hardware requirements of FMVSS No. 209, which permit compliance either by passing the salt spray test or by being electroplated. These requirements are proposed as S5.4 and S6.3 of the standard.

(31) NHTSA requests comments on whether these or other environmental resistance tests merit inclusion in FMVSS No. 141.

2. Fatigue Endurance

If adopted, fatigue cycle testing would be required for all platform lifts. The testing is intended to simulate the real world use of the lift and would identify failure modes associated with wear and the fatigue fracture of components. Static testing alone is insufficient since the ability to carry a static load, even with an added factor of safety, does not always correlate with the ability to withstand the repeated application of lower level loads. With repeated loading, small flaws in lift components may increase in size and become cracks. The cracks can spread until there is insufficient material to sustain the applied load, creating the possibility of catastrophic failure. The FTA guideline requires a fatigue test in which the lift is tested through 15,600 cycles, with the first 600 cycles using 272 kg mass (600 lb load) and the remaining 15,000 cycles using 181 kg mass (400 lb load). The SAE standard requires 4,400 cycles using 272 kg mass (600 lb load), with one-half of the cycles tested with a load and one-half of the cycles tested empty. The California Highway Patrol and U-Lift support the adoption of a test similar to the one found in the FTA guidelines.

NHTSA has decided to propose incorporating these two requirements for lifts designed to be installed on buses and MPVs over 3,220 kg (7,100 lbs). We believe the form of fatigue testing in the SAE standard more closely represents actual use. However, lifts designed for buses and larger MPVs are more appropriately subjected to a larger number of cycles than those designed for other vehicles, since the lift systems for transit and paratransit vehicles will be subjected to more use than the lift system on a personally-owned vehicle. A single load level of 600 pounds is consistent with ADAAG.

Lifts designed for installation on vehicle other than buses and larger MPVs would be required to meet the SAE test. The applied load would be 272 kg (600 lbs) during half of the 15,600 up and down cycles of the fatigue testing. Half of the 15,600 cycles would be unloaded and incorporate a fold and unfold sequence. These requirements would be included as S5.6.1 and S6.7 of the proposed standard.

(32) NHTSA requests comments on whether these fatigue endurance tests merit inclusion in FMVSS No. 141.

3. Operations Counter

NHTSA is considering whether to require lift systems to have an operations counter that would record each complete up and down cycle of the lift. The counter would enable the vehicle owner to closely follow the manufacturer's maintenance schedule. Proper maintenance has been identified as a crucial factor related to lift safety. The FTA guidelines make the use of such a counter optional. These requirements would be included as S5.11, S5.12 and S5.12.2 of the standard.

(33) NHTSA requests comments on whether an operations counter should be included in FMVSS No. 141.

H. Proposed Vehicle Requirements

NHTSA is also proposing a vehicle standard, FMVSS No. 142, which would apply to new vehicles equipped with platform lifts. We are concerned that a lift that meets the proposed platform lift standard could nevertheless be unsafe if the lift were improperly installed or if the required instructions and warnings were not placed in the vehicle by the lift installer. The proposed vehicle standard would apply to all motor vehicles. Certification that a lift complies with FMVSS No. 141 is the responsibility of the platform lift manufacturer. The proposed vehicle standard does not impose any additional certification requirements. However, vehicle manufacturers, including alterers who modify a vehicle prior to sale to the vehicle's first purchaser, should be aware that under the applicable statute,[33] they will be responsible for the recall (and all associated costs) on non-compliant platform lifts. They may seek reimbursement for the cost of a recall from the lift manufacturer. Lift manufacturers would be responsible for the recall of all non-compliant lifts installed in a vehicle after first purchase.

1. Installation Requirements

Under the proposed vehicle standard, the vehicle manufacturer would have to install a platform lift in accordance with the lift manufacturer's written instructions. Since not all platform lifts are appropriate for all types of vehicles, and the proposed lift standard is less stringent for some types of vehicles, a platform lift could only be installed on a vehicle of the type identified by the lift manufacturer as appropriate for that particular lift. Likewise, the platform lift must be installed according to the installation instructions which may include operational tests to assure that the lift is properly installed and operates safely.

(34) NHTSA requests comments on whether a vehicle standard requiring compliance with a platform lift manufacturer's installation instructions will adequately ensure that platform lifts are safely installed. If not, what additional requirements are necessary?

2. Owner's Manual Insert Requirements

The vehicle manufacturer would also be required to ensure that the vehicle owner's manual inserts required by the proposed platform lift standard are

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[32] *E.g.*, ANSI B1.5, "Acme Screw Threads, 1984"; SAE EJ429, "Mechanical & Material Requirements for Externally Threaded Fasteners", August 1982; SAE J1292, "Automobile, Truck, Truck Tractor, Trailer & Motor Coach Wiring", October 1981; and SAE J517, "Hydraulic Hose", June 1994.

[33] 49 U.S.C. 30118.

actually placed in the vehicle owner's manual. The inserts can serve their purpose only if they are placed where a vehicle user can readily find and use them. NHTSA believes that only the vehicle manufacturer can guarantee the insert's proper placement. The items that a vehicle manufacturer would have to ensure were placed in the vehicle owner's manual under this proposed standard are (a) simple instructions regarding lift operation, including back-up operation, as specified in S5.10 of the proposed FMVSS No. 141; (b) the maintenance schedule specified in S5.12 of the proposed FMVSS No. 141; and (c) for vehicles with a GVWR less than or equal to 3,220 kg (7,100 lb), the dimensions constituting the unobstructed platform operating volume and information on whether a wheelchair user must back on to the lift platform because the lift does not have an inner roll stop.

3. Control System

NHTSA believes that only the vehicle manufacturer can ensure that the control system set forth in the proposed lift standard is installed in a manner consistent with that standard. Accordingly, we have tentatively determined that for buses and MPVs over 3,220 kg (7,100 lbs) GVWR, the vehicle manufacturer should be required to ensure that all lift operating controls be located together and in a position where the control operator has a direct, unobstructed view of the lift passenger, and any wheelchair, throughout the range of lift operation. The platform lift manufacturer would be required to provide the vehicle manufacturer with instructions regarding proper placement of the control system as part of the installation instructions.

The vehicle manufacturer would also be required to place a copy of the lift operating instructions near the controls so that all potential lift operators would have ready access to those instructions.

VI. Regulatory Analyses and Notices

Executive Order 12866 and DOT

Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures because of the level of public interest in the rulemaking.

However, this action would not be economically significant. The agency estimates that between 8,288 and 10,425 buses and MPVs larger than 3,220 kg (7,100 lbs) would be subject to the proposed standards, either directly or indirectly, annually. We believe the average cost of a new lift, excluding the cost of installation, is approximately $5000. This rulemaking would add approximately $291 to the cost of each lift system of the type design for larger vehicles. The cost of upgrade per lift would be approximately $280, and the cost of certification per lift would be approximately $11.

For lifts designed for installation on MPVs under 3,220 kg (7,100 lbs), trucks, truck tractors, and motor homes, and any other motor vehicles we believe that between 8,800 and 17,000 lifts per year would be required to comply with the proposed platform lift standard. This rulemaking would add approximately $268 to the cost of each lift system. The cost of upgrade per lift would be approximately $255, and the cost of certification per lift would be approximately $13.

The figures given for upgrade costs are relatively low because we anticipate that most lift manufacturers are already complying with the existing voluntary and Federal standards. The proposed vehicle standard would impose no additional upgrade costs on the vehicle manufacturers, although operational testing may impose some additional costs. NHTSA anticipates that those tests would be relatively simple (e.g., does the threshold warning work, is there an excessive gap between the lift and the vehicle) and, therefore, a nominal additional cost.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The businesses and organizations likely to be affected by a rulemaking concerning this rulemaking are:

- Transit, paratransit, intercity, and school bus manufacturers (SB),
- Life manufacturers (SB),
- Public/private transit and paratransit bus owners and operators (e.g., municipal transit authorities) (SO/SB),
- Public/private and city/county school bus operators (SB/SO/SGJ),
- School bus manufacturers that make/sell their own lift equipment (SB), and
- Dealers and distributors of school buses (SB).

We have prepared a regulatory flexibility analysis (RFA) which is contained in the Preliminary Regulatory Evaluation (PRE). The PRE is entered in the docket. Based on this analysis, we have tentatively concluded that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132

We have analyzed this proposal in accordance with Executive Order 13132 ("Federalism"). We have determined that this proposal may have federalism implications. Many states and local transit authorities already have their own minimum lift performance

requirements for transit, paratransit, intercity and school buses in order to safely accommodate persons with disabilities. However, our initial determination is that the federalism implications are not sufficiently defined at this time to warrant preparation of a Federalism consultation. It should be noted that, regardless of that determination, the we find that the objective of the proposed rulemaking, establishing minimum performance requirements for transit, paratransit, intercity, school bus and personal transport lifts, requires action that can only be implemented effectively at the national level.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. Nor does it involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

National Environmental Policy Act

We have analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal proposes new information collection requirements in that both new regulations would require certain disclosures to third parties. These requirements and our estimates of the burden to lift and vehicle manufacturers are given below. There is no burden to the general public.

- Estimated burden to lift manufacturers to produce an insert for the vehicle owner's manual stating the lift's platform operating volume, maintenance schedule, and instructions regarding the lift operating procedures: 10 manufacturers × 24 hrs amortized over 5 yrs = 48 hrs per year.
- Estimated burden to lift manufacturers to produce an insert for the lift installation instructions identifying the vehicles on which the lift is designed to be installed: 10 manufacturers × 24 hrs amortized over 5 yrs = 48 hrs per year.
- Estimated burden to lift manufacturers to produce two labels for operating and backup lift operation: 10 manufacturers × 24 hrs amortized over 5 yrs = 48 hrs per year

Total estimated burden = 144 hrs per year

- Cost to lift manufacturers to produce:

Label for operating instructions: 27,398 lifts × $0.13 per label = $3,561.74
Label for backup operations: 27,398 lifts × $0.13 per label = $3,561.74
Owner's manual insert: 27,398 lifts × $0.04 per page × 1 page = $1,095.92
Installation instruction insert: 27,398 lifts × $0.04 per page × 1 page = $1,095.92
Total annual cost = $9,315.32

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention Desk Officer for National Highway Traffic Safety Administration.

NHTSA will consider comments by the public on this proposed collection of information in evaluating:

- Whether the proposed collection of information is necessary for the safety of lift users,
- The accuracy of the agency's estimate of the burden of the proposed collection of information,
- The quality, utility, and clarity of the information to be collected, and
- The opportunities to minimize the information collection burden.

OMB is required to make a decision concerning the collection of information contained in this proposal between 30 and 60 days after publication of this notice in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of the publication of this proposal. This does not affect the deadline for public comment to the National Highway Traffic Safety Administration on the merits of the proposed regulations.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [24] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We have considered and, to the extent consistent with our statutory obligations, proposed several voluntary standards and guidelines as part of this rulemaking. A full description of the agency's actions in this regard can be found elsewhere in this document under section V. C "Harmonization with Governmental and Industry Standards"

[24] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

as well as throughout the discussion on the specific requirements proposed today.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal does not propose to impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This proposal does not meet the definition of a Federal mandate because it would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. We anticipate that the total cost of this rule, if issued, would be between eight and ten million dollars, well below the $100 million threshold of the Unfunded Mandates Reform Act. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VII. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under ADDRESS.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESS. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under ADDRESS. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).
2. On that page, click on "search."
3. On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 delegation of authority at 49 CFR 1.50.

2. Section 571.3 would be amended by adding a definition of "motor home" to § 571.3(b) as follows:

§ 571.3 Definitions.

* * * * *

(b) *Other definitions.* As used in this chapter—

* * * * *

Motor home means a motor vehicle with motive power that is designed to

provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electrical power supply and/or an LP gas supply.

* * * * *

§ 571.105 [Amended]

3. Section 571.105 would be amended by removing the definition of "motor home" contained in § 571.105 S4., Definitions.

4. Section 571.141 would be added to read as follows:

§ 571.141 Standard No. 141; Platform lift systems for motor vehicles.

S1. *Scope.* This standard specifies requirements for platform lifts used to assist persons with limited mobility in entering or leaving a vehicle.

S2. *Purpose.* The purpose of this standard is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts installed in motor vehicles.

S3. *Application.* This standard applies to platform lifts designed to carry passengers into and out of motor vehicles.

S4. *Definitions.*

Bridging device means that portion of a platform lift which provides a transitional surface between the lift platform and vehicle floor.

Cycle means deploying a platform lift from a stowed position, lowering the lift to the ground level loading position, raising the lift to the vehicle floor level loading position, and stowing the lift. The term includes operation of any wheelchair retention device, bridging device, and inner roll stop.

Deploy means with respect to a platform lift, its movement from a stowed position to a vehicle floor level loading position. With respect to a wheelchair retention device or inner roll stop, the term means the movement of the device or stop to a fully functional position intended to prevent a passenger from disembarking the lift platform or being pinched between the platform and vehicle.

Floor reference plane means the plane nominally perpendicular to the longitudinal vehicle reference plane for platform lifts that deploy from the side of the vehicle or perpendicular to the transverse vehicle reference plane for lifts that deploy from the rear of the vehicle, and tangent to the outermost edge of the vehicle floor surface adjacent to the lift platform. (See figure 1.)

Gap means a discontinuity in a plane surface, or between two adjacent surfaces.

Lift reference plane means the nominally vertical plane that is defined by two orthogonal axes passing through the geometric center of the lift platform surface. One axis is perpendicular to the platform reference plane and the other is parallel to the direction of wheelchair travel during loading of the lift. (See figure 1.)

Loading position means, with respect to a platform lift, a position at which a passenger can either embark or disembark a lift. The two loading positions are at vehicle floor and ground level.

Longitudinal vehicle reference plane means the nominally vertical longitudinal plane that contains the longitudinal axis of the vehicle and that moves along with the vehicle body in response to the loading of the vehicle suspension. (See figure 1.)

Platform lift means a level change device, including any integration of existing vehicle components, and excluding a ramp, used to assist persons with limited mobility in entering or leaving a vehicle.

Platform reference plane means a plane tangent to the platform surface at its geometric center. (See figure 1.)

Platform surface means the passenger carrying surface of the lift platform.

Platform threshold area means the rectangular area of the vehicle floor defined by moving a line that lies on the portion of the edge of the vehicle floor directly adjacent to the lift platform, through a distance of 457 mm (18 inches) across the vehicle floor in a direction perpendicular to the edge. Any portion of a bridging device which lies on this area must be considered part of that area.

Range of passenger operation means the portion of the lift cycle during which the platform is at or between the ground and vehicle level loading positions.

Stow means with respect to a platform lift, its movement from a vehicle floor level loading position to the position maintained during normal vehicle travel; and, with respect to a wheelchair retention device, bridging device, or inner roll stop, its movement from a fully functional position to a position intended to allow a passenger to embark or disembark the lift platform.

Test pallet means a platform on which required test loads are placed for handling and moving.

Transverse vehicle reference plane means the nominally vertical transverse plane that contains the transverse axis of the vehicle and that moves along with the vehicle body in response to the loading of the vehicle suspension. (See figure 1.)

Wheelchair means a wheeled seating system for the support and conveyance of a person with physical disabilities, comprised of at least a frame, a seat, and wheels.

S5. *Requirements.* Each platform lift manufactured for installation on a motor vehicle must meet the applicable requirements in this section. Where a range of values is specified, the equipment must be able to meet the requirements at all points within the range. The test procedures in S6 will be used to determine compliance with all requirements, except S5.3, S5.7, S5.8.9 and S5.13. Compliance with those paragraphs will be determined through inspection and/or analysis.

S5.1 *Threshold warning signal.*

S5.1.1 Except when the platform lift is operated manually in backup mode as required by S5.10, the lift must meet the requirements of S5.1.2 during the lift operation specified in S6.6.

S5.1.2 Except for platform lifts where platform loading takes place wholly over the vehicle floor, a visual or audible warning must activate if the platform is more than 25 mm (1 inch) below the floor reference plane and any portion of a passenger's body or mobility aid is on the platform threshold area.

S5.1.2.1 For platform lifts designed for installation on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), the threshold warning signal must have both a visual and an audible component.

S5.1.2.2 The visual warning required by S5.1.2 must be a flashing red beacon having a minimum of 20 candela and provision must be made for the beacon to be installed such that it can be seen by a passenger backing onto the platform lift from the interior of the vehicle.

S5.1.2.3 The audible warning required by S5.1.2 must be a minimum of 85 dBA between 500 and 3000 Hz.

S5.1.2.4 The intensity of the visual or audible warnings required by S5.1.2 must be measured at the location 914 mm (3 ft) above the center of the platform threshold area. (See figure 3.)

S5.2 *Platform lift operational requirements.*

S5.2.1 The platform lift must meet the requirements of S5.2.2 through S5.2.4, during the lift operations specified in S6.6. These requirements must be satisfied both with and without a 272 kg mass (600 lb load) on the lift platform, except for S5.2.2.2. S5.2.2.2 must be satisfied without any load.

S5.2.2 *Maximum platform velocity.*

S5.2.2.1 Throughout the range of passenger operation, neither the vertical nor the horizontal velocity of the platform must be greater than 152 mm (6 inches) per second.

S5.2.2.2 During the stow and deploy operations, neither the vertical nor horizontal velocity of the platform must be greater than 305 mm (12 inches) per second.

S5.2.3 *Maximum platform acceleration.* Throughout the range of passenger operation, neither the horizontal nor vertical acceleration of the platform must exceed 0.3 g, after the accelerometer output is filtered with a channel frequency class (CFC) 3 filter. The filter must meet the requirements of SAE J211 with F_H = 3 Hz and F_N = 5 Hz. The accelerometer is to be located at the geometric center of the platform and must be mounted directly on the platform when it is unloaded and on the 272 kg mass (600 lb load) specified in S6.1 when the platform is loaded.

S5.2.4 *Maximum noise level.* Except as provided in S5.1.2 and S5.1.4, the noise level of the platform lift may not exceed 80 dB as measured at any lift operator's position designated by the platform lift manufacturer for the intended vehicle and in the area on the lift defined in S5.5.2.2 and 5.5.2.3, during the range of passenger operation.

S5.3 *Environmental resistance.*

S5.3.1 *Attachment hardware.* Attachment hardware of a platform lift, after being subjected to the conditions specified in S6.3, must be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion, as defined in FMVSS No. 209, at peripheral surface edges or edges of holes on underfloor reinforcing plates and washers. Alternatively, such hardware at or near the vehicle floor must be protected against corrosion by an electrodeposited coating of nickel, or copper and nickel with at least a service condition number of SC2, and other attachment hardware must be protected by an electrodeposited coating of nickel, or copper and nickel with a service condition number of SC1, in accordance with American Society for Testing and Materials B456–94, "Standard Specification for Electrodeposited Coatings of Copper Plus Nickel Plus Chromium and Nickel Plus Chromium," but such hardware may not be racked for electroplating in locations subjected to maximum stress.

S5.3.2 *Externally mounted platform lifts.* A platform lift or its components, which are not located in the occupant compartment of the motor vehicle when the lift is in a stowed position, after being subjected to the conditions specified in S6.3, must be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion, as defined in FMVSS No. 209, at peripheral surface edges and edges of holes and continue to function properly.

S5.4 *Platform requirements.*

S5.4.1 During the platform lift operations specified in S6.6, the vehicle must meet the requirements of S5.4.2 through S5.4.6, S5.4.7.4, S5.4.9.2 through S5.4.9.5, S5.4.10 and S5.4.11, both with and without a 272 kg mass (600 lb load) on the platform.

S5.4.2 *Unobstructed platform operating volume.*

S5.4.2.1 Except as provided in S5.4.3, no portion of the platform lift must intersect the platform operating volume as specified in S5.4.2.2 and S5.4.2.3 throughout the range of passenger operation.

S5.4.2.2 For platform lifts designed for installation on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), the platform operating volume is the sum of an upper part and a lower part. The lower part is a rectangular solid whose base is 724 mm (28.5 inches) wide by the length of the platform surface, whose height is 51 mm (2 inches), and which is resting on the platform surface with each side of the base parallel with the nearest side of the platform surface. The width is perpendicular to the lift reference plane and the length is parallel to the lift reference plane (See Figure 2). The upper part is a rectangular solid whose base is 762 mm (30 inches) by 1,219 mm (48 inches), whose height is 711 mm (28 inches), whose base is tangent to the top surface of the lower rectangular solid, and whose vertical centroidal axis coincides with that of the lower rectangular solid.

S5.4.2.3 For platform lifts designed for installation on vehicles other than buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), the platform operating volume is as specified in the vehicle owner's manual.

S5.4.3 *Platform surface protrusions.*

S5.4.3.1 For platform lifts designed for installation on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), except as required for deployment of the wheelchair retention device and inner roll stop, throughout the range of passenger operation, the platform surface may have no protrusions which rise more than 6.5 mm (0.25 inches) above the platform surface, measured perpendicular to the platform surface by a device with its base centered between 50 mm (1.97 inches) and 100mm (3.94 inches) from the protrusion. The base of the protrusion measurement device shall have a cross-section not less than 25mm (0.98 inches) and not more than 50 mm (1.97 inches).

S5.4.3.2 For platform lifts designed for installation vehicles other than buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), except as required for deployment of the wheelchair retention device and inner roll stop, throughout the range of passenger operation, the platform surface may have no protrusions which rise more than 13 mm (0.50 inches) above the platform surface, measured perpendicular to the platform surface by a device with its base centered between 50 mm (1.97 inches) and 100mm (3.94 inches) from the protrusion. All portions of the sides of a protrusion that are between 6.5 mm (0.25 inches) and 13 mm (0.50 inches) above the platform must have a slope not greater than 1:2, measured with respect to the platform surface at the location of the protrusion. The base of the protrusion measurement device shall have a cross-section not less than 25mm (0.98 inches) and not more than 50 mm (1.97 inches).

S5.4.4 *Gaps, transitions and openings.*

S5.4.4.1 When the platform lift is at the ground level loading position, any vertical surface transition measured perpendicular to the ground over which a passenger may traverse to enter or exit the platform, may be not greater than 6.5 mm (0.25 inches). When the lift is at the vehicle level loading position, any vertical surface transition measured perpendicular to the floor reference plane over which a passenger may traverse to enter or exit the platform, may be not greater than 6.5 mm (0.25 inches).

S5.4.4.2 When the platform lift is at the ground or vehicle level loading position, the slope of any surface over which a passenger must traverse to enter or exit the platform must have a rise to run not greater than 1:2 on the portion of the rise between 6.5 mm (0.25 inches) and 13 mm (0.5 inches), and 1:8 on the portion of the rise between 13 mm (0.5 inches) and 76 mm (3.0 inches). The rise of any sloped surface may not be greater than 76 mm (3.0 inches). When the lift is at the ground level loading position, measurements must be made perpendicular to the ground. When the lift is at the vehicle level loading position, measurements must be made perpendicular to the floor reference plane.

S5.4.4.3 When the inner roll stop or any outer barrier is deployed, any gap between the inner roll stop and lift

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platform and any gap between the outer barrier and lift platform must prevent passage of the clearance test block when its long axis is held perpendicular to the platform reference plane. The clearance test block is made of a rigid material and is 15.9 × 15.9 × 102 mm (0.625 × 0.625 × 4.0 inches) with all corners having a 1.6 mm (0.0625 inch) radius.

S5.4.4.4 When the lift platform is at the ground or vehicle level loading position, any horizontal gap over which a passenger must traverse to enter or exit the platform must prevent passage of a 13 mm (0.5 inch) diameter sphere.

S5.4.4.5 Throughout the range of passenger operation, any opening in the platform surface must prevent passage of a 19 mm (0.75 inch) diameter sphere.

S5.4.4.6 Throughout the range of passenger operation, any gap between the platform sides and edge guards which move with the platform must prevent passage of a 13 mm (0.5 inch) diameter sphere. Where structures fixed to the vehicle are used as edge guards, the horizontal gap between the platform side and vehicle structure must prevent passage of a 6.5 mm (0.25 inch) diameter sphere.

S5.4.5 *Platform deflection.* Throughout the range of passenger operation, the angle of the stationary lift platform relative to the vehicle, may not be more than 1 degree with no load on the platform and may not be more than 3 degrees with a 272 kg mass (600 lb load) on the platform. The angle must be measured between axes perpendicular to the floor and platform reference planes.

S5.4.6 *Edge guards.*

S5.4.6.1 The platform lift must have edge guards which extend continuously along each side of the lift platform parallel to the direction of wheelchair movement during loading and unloading.

S5.4.6.2 Edge guards which move with the platform must have vertical sides facing the platform surface and have a minimum height of 38 mm (1.5 inches), measured vertically from the platform surface.

S5.4.6.3 *Deployment.* Except whenever any part of the platform surface is below a horizontal plane 76 mm (3 in) above the ground, the edge guard must be deployed throughout the range of passenger operation.

S5.4.7 *Wheelchair retention.*

S5.4.7.1 *Impact I.* Except for platform lifts designed so that platform loading takes place wholly over the vehicle floor, the lift must have a means of retaining the test device specified in S6.4.2 upright with all of its wheels on the platform surface, vehicle floor, bridging device or on a combination of the platform surface, vehicle floor, and bridging device, throughout its range of passenger operation, except as provided in S5.4.7.4. The lift will be tested in accordance with S6.4.3 to determine compliance with this section.

S5.4.7.2 *Impact II.* For platform lifts designed so that platform loading takes place wholly over the vehicle floor, the lift must have means of retaining the test device specified in S6.4.2 upright with all of its wheels on the platform surface, throughout the range of passenger operation, except as provided in S5.4.7.4. The lift will be tested in accordance with S6.4.4 to determine compliance with this section.

S5.4.7.3 *Overload.* The deployed wheelchair retention device(s) must be capable of sustaining 7,117 N (1,600 lb force) when tested in accordance with S6.10. No separation, fracture, or breakage of the wheelchair retention device may occur as a result of conducting the test in S6.10.

S5.4.7.4 *Deployment.* Except whenever any part of the platform surface is below a horizontal plane 76 mm (3 inches) above the ground, the wheelchair retention device(s) must be deployed throughout the range of passenger operation.

S5.4.8 *Inner roll stop.*

S5.4.8.1 Platform lifts designed for installation on vehicles with a GVWR greater than 3,220 kg (7,100 lbs) must have an inner roll stop that meets the requirements of S5.4.8.3.

S5.4.8.2 Platform lifts designed for installation on vehicles with a GVWR less than or equal to 3,220 kg (7,100 lbs) must:

(a) Have an inner roll stop that meets the requirements of S5.4.8.3; or

(b) have operating instructions near the lift controls and in the vehicle owner's manual, as specified in S5.7.6 and S5.12.3, that contain a warning that wheelchairs should back onto the platform when entering from the ground.

S5.4.8.3 When tested in accordance with S6.5, platform lifts with a ground level loading direction towards the vehicle, must have an inner roll stop that provides a means that prevents:

(a) The front wheels of the test device specified in S6.4.2 from passing over the edge of the platform where the roll stop is located, when the lift is at the ground level loading position; and

(b) any portion of the test device specified in S6.4.2 from being contacted simultaneously with a portion of the lift platform and any other structure, throughout the lift's range of passenger operation.

S5.4.9 *Handrails.*

S5.4.9.1 For platform lifts designed for installation on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), throughout the range of passenger operation, there must be a handrail located on each side of the lift that meets the requirements of S5.4.9.2 through S5.4.9.8. For lifts designed for installation on vehicles other than buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs) and equipped with handrails, the handrails must meet the requirement of S5.4.9.2 through 5.4.9.8, throughout the range of passenger operation.

S5.4.9.2 The graspable portion of each handrail may be not less than 762 mm (30 inches) and not more than 965 mm (38 inches) above the platform surface, measured vertically.

S5.4.9.3 The cross section of the graspable portion of each handrail may be not less than 31.5 mm (1.25 inches) and not more than 38 mm (1.5 inches) in diameter or width, and may have not less than a 3.2 mm (0.125 inch) radii on any corner.

S5.4.9.4 The vertical projection of the graspable portion of each handrail must intersect two vertical planes that are perpendicular to the direction of travel of a wheelchair on the lift when entering or exiting the platform, and are 203 mm (8 inches) apart.

S5.4.9.5 Throughout the range of passenger operation, the handrails must move such that the position of the handrails relative to the platform surface does not change.

S5.4.9.6 When tested in accordance with S6.9.1, each handrail must withstand 445 N (100 pounds force) applied at any point and in any direction on the handrail without more than 25 mm (1.00 inches) of displacement relative to the platform surface. After removal of the load, the handrail must exhibit no permanent deformation.

S5.4.9.7 When tested in accordance with S6.9.1, there must be at least 38 mm (1.5 inches) of clearance between each handrail and any portion of the vehicle, throughout the range of passenger operation.

S5.4.9.8 When tested in accordance with S6.9.2, each handrail must withstand 1,112 N (250 pounds force) applied at any point and in any direction on the handrail without sustaining any failure, such as cracking, separation, fracture, or more than 102 mm (4 inches) of displacement of any point on the handrails relative to the platform surface.

S5.4.10 *Platform Markings.* For platform lifts designed for installation

on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), throughout the range of passenger operation, all edges of the platform surface, the visible edge of the vehicle floor or bridging device adjacent to the platform lift, and any designated standing area must be outlined. The outlines must be at least 25 mm (1 inch) wide and of a color that contrasts with its background by 60 percent, determined according to the following equation:

Contrast=100 × [(L1–L2)/L1]

where:

L1 = luminance of the lighter color or shade, and

L2 = luminance of the darker color or shade.

L1 and L2 are measured perpendicular to the platform surface with illumination provided by a diffuse light and a resulting illuminance of the platform surface of 323 lm/m² (30 lumen/sqft).

S5.4.11 *Platform lighting.* Platform lifts designed for installation on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs) must have a light or a set of lights which provides at least 54 lm/m² (5 lumen/sqft) of illuminance on all portions of the surface of the lift platform, throughout the range of passenger operation. The illuminance measured on all portions of the surface of a passenger unloading ramp at ground level must be at least 11 lm/m² (1 lumen/sqft).

S5.4.12 *Platform slip resistance.* When tested in accordance with S6.2, the coefficient of friction, in any direction, of any part of a wet platform surface may be not less than 0.65.

S5.5 *Structural integrity.*

S5.5.1 *Fatigue endurance.* Platform lifts designed for installation on buses and MPVs with a GVWR greater than 3,220 kg (7,100 lbs.) must be operated through 15,600 cycles as specified in S6.7. Lifts designed for installation on vehicles other than buses and multipurpose vehicles with a GVWR over 3,220 kg (7,100 lbs) must be operated through 4,400 cycles as specified in S6.7. No separation, fracture, or breakage of any vehicle or lift component may occur as a result of conducting the fatigue test in S6.7.

S5.5.2 *Proof load.* The platform lift must be capable of holding an 816 kg mass (1,800 lb load), as specified in S6.8, without separation, fracture, or breakage of any vehicle or lift component. After the test, the lift must pass Static Load Test I, see S6.6.

S5.5.3 *Ultimate Load.* The platform lift must be capable of holding a 1,088 kg mass (2,400 lb load), as specified in S6.11, without separation, fracture, or breakage of the platform, supporting structure, or lifting mechanism.

S5.6 *Platform Free Fall Limits.* In the event of any single-point failure of systems for raising, lowering or supporting the platform, the platform, loaded as specified in S6.6.3, may not fall vertically faster than 305 mm (12 inches) per second or change angular orientation more than 2 degrees from the orientation prior to the failure. This requirement applies whenever the lift is under primary power source operation or manual backup operation.

S5.7 Control systems.

S5.7.1 The platform lift must meet the requirements of S5.7.2 through S5.7.8 and, when operated by means of the control system specified in 5.7.2, must perform the lift operations specified in S6.6.

S5.7.2 The platform lift system must have a control system that performs at least the following functions:

(a) Activates the control system by providing power to the system. This function must be identified as "POWER" on the control.

(b) Moves the lift from a stowed position to a vehicle floor level loading position. This function must be identified as "DEPLOY" or "UNFOLD" on the control.

(c) Lowers the lift platform. This function must be identified as "DOWN" on the control.

(d) Raises the lift platform. This function must be identified as "UP" on the control.

(e) Moves the lift from a vehicle floor level loading position to a stowed position. This function must be identified as "STOW" or "FOLD" on the control.

S5.7.3 The functions specified in S5.7.2 must be activated in a momentary fashion, by one switch or by a combination of switches.

S5.7.4 The control system specified in S5.7.2 must prevent the simultaneous performance of more than one function.

S5.7.5 For platform lifts designed for installation on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), all controls, including those specified in S5.7.2, must be positioned together and in a location such that a person standing at and facing the controls has a direct, unobstructed view of the platform lift passenger and the passenger's wheelchair, if the passenger is using a wheelchair, throughout the lift's range of passenger operation. Additional power controls may be positioned in other locations.

S5.7.6 Simple instructions regarding the platform lift operating procedures, including backup operations as specified by S5.9, must be located near the controls. These instructions must be written in English.

S5.7.7 Each operating function of each platform lift control must be identified with characters which are at least 2.5 mm (0.1 inch) in height. For lifts designed for installation on buses and multipurpose passenger vehicles with a GVWR greater than 3,220 kg (7,100 lbs), the characters must be illuminated in accordance with S5.3 of Standard No. 101, when the vehicle's headlights are illuminated.

S5.7.8 The power switch must have two functions: "ON" and "OFF". The "ON" function must allow platform lift operation. When the power switch is in the "ON" position, an indicator light near the controls must be activated. The "OFF" function must prevent lift movement.

S5.7.9 Any single-point failure in the control system may not prevent the operation of any of the interlocks as specified in S5.10.

S5.8 *Jacking prevention.*

S5.8.1 Except when the platform lift is operated in backup mode as required by S5.9, during the lift operations specified in S6.6, the lift system must meet the requirements of S5.8.2, both with and without a 272 kg mass (600 lb load) on the lift.

S5.8.2 The control system or platform lift design must prevent raising of any portion of the vehicle by the lift system when lowering the lift is attempted while the lift is at the ground level loading position.

S5.9 *Backup operation.*

S5.9.1 During the lift operations specified in S6.6, the platform lift must meet the requirements of S5.9.2, both with and without a 272 kg mass (600 lb load) on the lift.

S5.9.2 The platform lift must be equipped with a manual backup operating mode that can, in the event there is a loss of the primary power source for operating the lift, lower the platform to the ground level loading position and raise the platform to the vehicle floor level loading position from any position in its cycle. During backup operation of the lift, the wheelchair retention device and inner roll stop must be manually deployable and stowable. The operating instructions near the lift controls and in the vehicle owner's manual, as specified in S5.7.6 and S5.12.3, must contain information on manual operation of the wheelchair retention device and inner roll stop during backup operation of the lift.

S5.10 *Interlocks.*

S5.10.1 Except when the platform lift is operated in backup mode as required by S5.9, during the lift

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operations specified in S6.6, the requirements of S5.10.2 must be met, both with and without a 272 kg mass (600 lb load) on the lift.

S5.10.2 The platform lift system must have interlocks that prevent:

S5.10.2.1 Forward or rearward mobility of the vehicle unless the platform lift is stowed;

S5.10.2.2 Operation of the platform lift from the stowed position until forward and rearward mobility of the vehicle is inhibited, by means of a parking brake, placing the transmission in park, or other positive device other than the vehicle's service brakes, and the lift access door is open;

S5.10.2.3 Except for platform lifts designed to be occupied while stowed, stowing of the platform lift when occupied by any portion of a passenger's body, and/or a mobility aid;

S5.10.2.4 Movement of the platform lift up or down unless any inner roll stop required to comply with S5.4.8.3 is deployed;

S5.10.2.5 Movement of the platform lift up or down when the platform surface is above the horizontal plane which is 76 mm (3 inches) above the ground level loading positions unless the wheelchair retention device required to comply with S5.4.7 is deployed;

S5.10.2.6 Stowing of the wheelchair retention device required to comply with S5.4.7 unless the platform surface is below the horizontal plane 76 mm (3 inches) above the ground level loading position.

S5.10.2.7 Further downward motion of the platform lift, when the lift contacts an object in its path while lowering;

S5.10.2.8 In the case of a platform lift that is equipped with an outer barrier, deployment of the outer barrier, when occupied by any portion of a passenger's body or mobility aid;

S5.10.2.9 Deployment of any inner roll stop required to comply with S5.4.8.3, when the inner roll stop is occupied by any portion of a passenger's body or mobility aid; and

S5.10.2.10 Movement of the platform lift down, when both the vehicle floor or any bridging device and lift platform are occupied by any portion of a passenger's body or mobility aid.

S5.11 *Operations counter.* The platform lift must have an operations or cycle counter that records each complete up and down cycle through the range of passenger operation.

Determination of compliance with this requirement will be made during the lift operations specified in S6.6.

S5.12 *Vehicle owner's manual insert.* The lift manufacturer must provide with the lift inserts for the vehicle owner's manual which provide specific information about the platform lift:

S5.12.1 For vehicles other than buses and multipurpose vehicles with a GVWR over 3,220 kg (7,100 lbs), the dimensions which constitute the unobstructed platform operating volume;

S5.12.2 Maintenance schedule based on the number of cycles on the operations counter specified in S5.11.

S5.12.3 Simple instructions regarding the platform lift operating procedures, including backup operations, as specified by S5.9.

S5.13 *Installation instructions insert.* The manufacturer of a platform lift must include with the installation instructions for each lift, a page that identifies:

(a) The vehicles on which the lift is designed to be installed. Vehicles may be identified by listing the make and model of the vehicles for which the lift is suitable, or by specifying the design elements that would make a vehicle an appropriate host for the particular lift, and for which the platform lift manufacturer has certified compliance.

(b) Any informational material that must be placed in the vehicle owner's manual or elsewhere in the vehicle in order to comply with the requirements of this standard.

S6. *Test conditions and procedures.* Each platform lift must be capable of meeting all of the tests specified in this standard, both separately, and in the sequence specified in this section. The tests specified in S6.5 through S6.8 are performed on a single lift and vehicle combination. The tests specified in S6.2 through S6.4, and S6.9 through S6.11 may be performed with the same lift installed on a test jig rather than in a vehicle. Certification tests of requirements in S5.1 through S5.11 may be performed on a single lift and vehicle combination, except for the requirements of S5.5.3. Attachment hardware may be replaced if damaged by removal and reinstallation of the lift between a test jig and vehicle.

S6.1 *Test Pallet and Load.* The surface of the test pallet that rests on the platform used for the tests specified in S6.6 through S6.8 and S6.11 has sides that measure between 660 mm (26 inches) and 686 mm (27 inches). For the tests specified in S6.6 and S6.7, the test pallet is made of a rectangular steel plate of uniform thickness and the load which rests on the test pallet is made of rectangular steel plate or plates of uniform thickness and sides that measure between 533 mm (21 inches) and 686 mm (27 inches).

S6.2 *Slip Resistance Test.*

S6.2.1 To determine compliance with S5.4.12:

S6.2.2 Clean any 450mm × 100mm (17.5 in × 3.94 in) section of the platform, with household glass cleaner (ammonia hydroxide solution). Wet the cleaned section of the platform by evenly spraying 3 ml (0.10 oz) of distilled water per 100 cm^2 (15.5 in^2)of surface area. Begin the test specified in S6.2.3 within 30 seconds of completion of the wetting process.

S6.2.3 Use the test procedure defined in ANSI/RESNA Standard WC13–1991, "Wheelchairs—Determination of Coefficient of Friction of Test Surfaces" except for clauses 5.3, Force gage and 6, Test procedure, on the wet section of platform. In lieu of clauses 5.3 and 6.1, implement the requirements of S6.2.3.1 and 6.2.3.2.

S6.2.3.1 *Force Gage.* The pulling force is measured, at a frequency of at least 10 Hz, by a force gauge that has been calibrated to an accuracy of 2 percent in the range of 25N to 100N.

S6.2.3.2 *Test procedure.* Before the test, prepare the surface of the test rubber by lightly abrading with waterproof silicon carbide paper, grade P120, weight D (120 wet and dry). Then wipe the surface clean with a dry cloth or brush. No solvents or other cleaning materials may be used. To determine the coefficient of friction for the wet platform section pull the test block, with the test rubber attached, by machine at a rate of 20 ± 2mm/s. The machine and test block must be rigidly linked by a device which exhibits a stiffness ≥ $1x10^5$ N/m. Pull the test block for a minimum of 13 seconds. Record the pulling force over the final 10 seconds of the test at a minimum frequency of 10 Hz. Repeat the test at least 5 times, on any one area of the platform surface, in a single direction. Calculate the average pulling force for each trial, F_1 through F_n, where n is the number of trials. Measure the weight of the test block with the force gauge and call it F_b. Calculate the coefficient of friction, μ_p, from the following equation:

$$\mu_p = \frac{F_1 + F_2 + F_3 + \ldots F_n}{n \times F_b}$$

S6.3 *Environmental Resistance Test.*

S6.3.1 Perform the procedures specified in S6.3.2 through S6.3.5 to determine compliance with S5.3.

S6.3.2 Attachment hardware, as specified in S5.3.1, and externally mounted platform lifts or components, as specified in S5.3.2, must be tested in accordance with American Society of Testing and Materials B117–94, "Standard Method of Salt Spray (Fog) Testing." Any surface coating or material not intended for permanent retention on the metal parts during service life must be removed prior to testing. Except as specified in S6.3.3, the period of the test is to be 50 hours, consisting of two periods of 24 hours exposure to salt spray followed by one hour drying.

S6.3.3 For attachment hardware located within the occupant compartment of the motor vehicle and not at or near the floor, the period of the test is to be 25 hours, consisting of one period of 24 hours exposure to salt spray followed by one hour drying.

S6.3.4 For performance of this test, externally mounted platform lifts or components may be installed on test jigs rather than on the vehicle. The lift must be in a stowed position. The configuration of the test setup must be such that areas of the lift which would be exposed to the outside environment during actual use are not protected from the salt spray by the test jig.

S6.3.5 At the end of the test, any surface exposed to the salt spray must be washed thoroughly with water to remove the salt. After drying for at least 24 hours under laboratory conditions the platform lift or components is to be examined for ferrous corrosion on significant surfaces, that is, all surfaces that can be contacted by a sphere 2 centimeters in diameter.

S6.4 *Wheelchair Retention Impact Test.*

S6.4.1 Determine compliance with S5.4.7.1 and S5.4.7.2 using the test device specified in S6.4.2, under the procedures specified in S6.4.3 and S6.4.4.

S6.4.2 The test device is an unloaded power wheelchair whose size is appropriate for a 95th percentile male and that has the dimensions, configuration and components described in paragraphs (a)–(j). If the dimension in paragraph (i) is measured for a particular wheelchair by determining its tipping angle, the batteries are prevented from moving from their original position—

(a) A cross-braced steel frame;

(b) A sling seat integrated in the frame;

(c) Belt drive;

(d) Detachable footrests, with the lowest point of the footrest adjustable in a range not less than 25 mm (1 inch) to 123 mm (5 inches) from the ground;

(e) Pneumatic rear wheels with a diameter not less than 495 mm (19.5 inches) and not more than 521 mm (20.5 inches);

(f) Pneumatic front wheels with a diameter not less than 190 mm (7.5 inches) and not more than 216 mm (8.5 inches);

(g) A distance between front and rear axles not less than 457 mm (18 inches) and not more than 533 mm (21 inches);

(h) A horizontal distance between rear axle and center of gravity not less than 114 mm (4.5 inches) and not more than 152 mm (6.0 inches);

(i) A vertical distance between ground and center of gravity not less than 260 mm (10.25 inches) and not more than 298 mm (11.75 inches);

(j) A mass of not less than 72.5 kg (160 lbs) and not more than 86.0 kg (190 lbs).

S6.4.3 Conduct the test in accordance with the procedures in paragraphs (a) through (e) to determine compliance with S5.4.7.1. In the case of platform lifts designed for installation on vehicles with a GVWR equal to or less than 3,220 kg (7,100 lbs), perform both (e)(1) and (2), unless the operating directions specify a required direction of wheelchair movement onto the platform. When a direction is indicated in the operating instructions, perform the procedure specified in paragraph (e)(1) or (2) with the test device oriented as required by the operating instructions.

(a) Place the lift platform at the vehicle floor level loading position.

(b) If the wheelchair retention device is an outer barrier, the footrests are adjusted such that at their lowest point they have a height 25 mm (1 inch) less than the outer barrier. If the wheelchair retention device is not an outer barrier, the footrests are adjusted such that at their lowest point they have a height 51 mm (2 inches) above the platform.

(c) Position the test device with its plane of symmetry coincident with the lift reference plane and at a distance from the platform sufficient to achieve the impact velocities required by paragraph (e) of this section.

(d) Accelerate the test device onto the platform under its own power such that the test device impacts the wheelchair retention device at each speed, direction, and load condition combination specified in paragraph (e) of this section. Maintain power to the drive motors until all wheelchair motion has ceased except rotation of the drive wheels. Note the position of the wheelchair after its motion has ceased following each impact to determine compliance with S5.4.7. If necessary, after each impact, adjust or replace the footrests to restore them to their original condition.

(e) The test device is operated at the following speeds, in the following directions—

(1) At a speed of not less than 2.0 m/s (4.4 mph) and not more than 2.1 m/s (4.7 mph), forward, with a load of 0 kg (0 lbs).

(2) At a speed of not less than 1.75 m/s (3.9 mph) and not more than 1.85 m/s (4.1 mph), rearward, with a load of 0 kg (0 lbs).

S6.4.4 For rotary platform lifts, conduct the test under the procedures in (a)–(e) to determine compliance with S5.4.7.2. In the case of lifts designed for installation on vehicles with a GVWR less than or equal to 3,220 kg (7,100 lbs), perform the test in both possible test device orientations unless a required direction of wheelchair movement onto the platform is indicated in the operating instructions. For lifts designed for installation on vehicles with a GVWR less than or equal to 3,220 kg (7,100 lbs) where a required direction of wheelchair movement onto the platform is indicated in the operating instructions, perform the test with the test device oriented as required by the operating instructions.

(a) Adjust the footrests of the test device to the shortest length. Place the test device on the platform with its plane of symmetry coincident with the lift reference plane.

(b) Position the platform surface 90 mm (3.5 in) ± 10 mm (0.4 in) above the ground level position.

(c) Slowly move the test device in the forward direction until it contacts a wheelchair retention device. Activate the controller of the test device such that, if the test device were unloaded and unrestrained on a flat, level surface, it would achieve a maximum forward velocity of not less than 2.0 m/s (4.4 mph) and not more than 2.1 m/s (4.7 mph).

(d) Realign the test device on the platform so that its plane of symmetry is coincident with the lift reference plane. Slowly move the test device in the rearward direction until it contacts a wheelchair retention device. Activate the controller of the test device such that, if the test device were unloaded and unrestrained on a flat, level surface, it would achieve a maximum rearward velocity of not less than 1.75 m/s (3.9 mph) and not more than 1.85 m/s (4.1 mph).

(e) During the impacts specified in paragraphs (c) and (d), maintain power to the drive motors until all test device motion has ceased except rotation of the drive wheels. Note the position of the test device after its motion has ceased following each impact to determine compliance with S5.4.7.2.

S6.5 *Inner Roll Stop Test.* Determine compliance with S5.4.8 using the test device specified in S6.4.2, in an unloaded condition, in accordance with the procedures specified in (a) through (f).

(a) Place the lift platform at the ground level loading position, such that the platform is level.

(b) Adjust the footrests of the test device to the shortest length. Position the test device on the ground at a distance from the platform sufficient to achieve the impact velocity required by (c) of this section. The plane of symmetry of the test device is coincident with the lift reference plane and the forward direction of travel is onto the platform.

(c) Accelerate the test device onto the platform such that the vehicle impacts the inner roll stop at a speed of not less than 1.5 m/s (3.4 mph) and not more than 1.6 m/s (3.6 mph). Determine compliance with S5.4.8.3(a).

(d) If necessary, adjust or replace the footrests to restore them to the condition they were in prior to the impact. Reposition the test device on the platform with its plane of symmetry coincident with the lift reference plane. Slowly move the test device in the forward direction until it contacts the inner roll stop.

(e) Apply a static load to the inner roll stop by activating the controller of the test device such that, if the test device were unrestrained on a flat and level surface, it would achieve a maximum forward velocity of not less than 2.0 m/s and not more than 2.1 m/s.

(f) Raise the platform to the vehicle loading position. Determine compliance with S5.4.8.3(b).

S6.6 *Static Load Test I—Working Load.*

S6.6.1 By use of the lift controls specified in S5.7.2, perform the operations specified in S6.6.2 through S6.6.8 in the order they are specified. During the lift operations specified in:

(a) S6.6.3, determine compliance of the platform lift with S5.1.2;

(b) S6.6.3 through S6.6.8, determine compliance of the platform lift with S5.7.2 through 5.7.8 and 5.10.2.1;

(c) S6.6.4 through 6.6.7, determine compliance of the platform lift with S5.2.2.1, S5.2.3, S5.2.4, S5.4.2 through S5.4.6, S5.4.7.4, S5.4.9.2 through S5.4.9.5, S5.4.10, S5.4.11, S5.10.2.4, S5.10.2.5 and S5.11;

(d) S6.6.3 and S6.6.8, determine compliance of the platfrom lift with S5.2.2.2;

(e) S6.6.9, determine compliance of the platform lift with S5.10;

(f) S6.6.2 and S6.6.3, determine compliance of the platform lift with S5.10.2.2;

(g) S6.6.7 and S6.6.8, determine compliance of the platform lift with S5.10.2.3;

(h) S6.6.5 and S6.6.7, determine compliance of the platform lift with S5.10.2.7;

(i) S6.6.4 and S6.6.6, determine compliance of the platform lift with S5.8, S5.10.2.6, S5.10.2.8 and S5.10.2.9.

S6.6.2 Put the lift platform in the stowed position.

S6.6.3 Deploy the lift platform. Center a static load on the upper surface of the test pallet such that the total mass (weight) of the static load and test pallet is 272 kg (600 lbs). Center the loaded test pallet on the platform surface.

S6.6.4 Lower the lift platform from the vehicle floor level loading position to the ground level loading position, stopping once midway between the two positions. Remove the test pallet from the lift platform.

S6.6.5 Raise the lift platform from the ground level loading position to the vehicle floor level loading position, stopping once midway between the two positions.

S6.6.6 Lower the lift platform from the vehicle floor level loading position to the ground level loading position, stopping once midway between the two positions.

S6.6.7 Center the loaded test pallet on the platform surface. Raise the lift platform from the ground level loading position to the vehicle floor level loading position, stopping once midway between the two positions.

S6.6.8 Remove the pallet from the lift platform. Stow the lift.

S6.6.9 Turn power off to the lift and repeat 6.6.3 through 6.6.8, using the backup operating mode as specified by S5.9.

S6.7 *Fatigue endurance test.*

S6.7.1 Perform the test procedure specified in S6.7.2 through S6.7.9 and determine compliance with S5.5.1.

S6.7.2 Put the unloaded lift platform at the ground level loading position. Center a static load on the upper surface of the test pallet such that the total weight (mass) of the static load and test pallet is 272 kg (600 lbs.). Center the loaded test pallet on the platform surface.

S6.7.3 For platform lifts designed for installation on buses and MPVs with GVWR greater than 3,220 kg (7,100 lbs.), by use of the lift controls specified in S5.7.2, perform the operation specified in S6.7.3.1 through S6.7.3.3 in the order they are given.

S6.7.3.1 Raise and lower the lift platform through the range of passenger operation 3,900 times.

S6.7.3.2 Remove the test pallet from the lift platform. Raise the lift platform to the vehicle floor loading position, stow the lift, deploy the lift and lower the lift platform to the ground level loading position 3,900 times.

S6.7.3.3 Perform the test sequence specified in S6.7.3.1 and S6.7.3.2 four times.

S6.7.4 For platform lifts designed for installation on vehicles other than buses and multipurpose vehicles with a GVWR over 3,220 kg (7,100 lbs), by use of the lift controls specified in S5.7.2, perform the operation specified in S6.7.4.1 through S6.7.4.3 in the order they are given.

S6.7.4.1 Raise and lower the lift platform through the range of passenger operation 1,100 times.

S6.7.4.2 Remove the test pallet from the lift platform. Raise the lift platform to the vehicle floor loading position, stow the lift, deploy the lift and lower the lift platform to the ground level loading position 1,100 times.

S6.7.4.3 Perform the test sequence specified in S6.7.3.1 and S6.7.4.2 four times.

S6.7.5 Each sequence of lift operations specified in S6.7.3.1, S6.7.3.2, S6.7.4.1 and S6.7.4.2 must be done in blocks of 10 cycles with a 1 minute maximum rest period between each cycle in any block. The minimum rest period between each block of 10 cycles is to be such that the temperature of the lift components is maintained below the values specified by the manufacturer or that degrade the lift function.

S6.7.6 During the test sequence specified in S6.7.2 through S6.7.4, perform any lift maintenance as specified in the vehicle owner's manual.

S6.8 *Static Load Test II—proof load.*

S6.8.1 Perform the test procedures specified in S6.8.2 through S6.8.5 and determine compliance with S5.5.2.

S6.8.2 Center a static load on the upper surface of the test pallet such that the total mass (weight) of the static load and test pallet is 816 kg (1,800 lbs).

S6.8.3 When the lift platform is at the vehicle floor level loading position, center the loaded test pallet on the platform surface. Fully place the pallet on the platform within 1 minute of beginning to place it.

S6.8.4 Two minutes after fully placing the loaded test pallet on the platform surface, remove the loaded test pallet and examine the platform lift and vehicle for separation, fracture or breakage.

S6.8.5 After completing the static load test specified in S6.8.2 through S6.8.4, repeat Static Load Test I specified in S6.6.

S6.9 *Handrail test.*

S6.9.1 To determine compliance with S5.4.9.6 and S5.4.9.7, apply 4.4 N (1 lb. force) through an area of 1290 mm² (2 in.²) in any direction at any point on the handrail. Use this position of the handrail relative to the lift platform as the reference point for the measurement of handrail displacement. Apply 445 N (100 lb. force) through an area of 1290 mm² (2 in.²) in a direction and location opposite to that of the 4.4 N (1 lb. force). Attain the force within 1 minute after beginning to apply it. Five seconds after attaining the force, measure the amount of displacement of the handrail relative to the reference point, and measure the distance between the outside of the handrail and the nearest portion of the vehicle. Release the 445 N (100 lb. force) and reapply the 4.4 N (1 lb. force) in the direction and location that it was first applied. Five seconds after attaining the force, measure the position of the handrail with respect to the reference point to determine if there is any permanent deformation of the handrail relative to the lift platform.

S6.9.2. To determine compliance with S5.4.9.8, apply 4.4 N (1 lb. force) through an area of 1,290 mm² (2 in²) in any direction at any point on the handrail. Use this position of the handrail relative to the lift platform as the reference point for the measurement of handrail displacement. Apply 1,112 N (250 lb. force) through an area of 1,290 mm² (2 in²) in a direction and location opposite to that of the 1 4.4 N (1 lb force). Attain the force within 1 minute after beginning to apply it. Five seconds after attaining the force, measure the amount of displacement of the handrail relative to the reference point. Maintain the force for two minute. Release the force and inspect the handrail for cracking, separations or fractures.

S6.10 *Wheelchair Retention Overload Test.*

S6.10.1 Perform the test procedures as specified in S6.10.2 through S6.10.5 to determine compliance with S5.4.7.2.

S6.10.2 Position the platform surface 89 mm (3.5 inches) above the ground level loading position. Apply 7,117 N (1,600 lb. force) to the wheelchair retention device in a direction parallel to both the platform lift and platform reference planes. Attain the force within 1 minute after beginning to apply it.

S6.10.3 For a wheelchair retention device that is in the form of an outer barrier, apply the force through a rectangular area with a height of 25 mm (1 inch) and a width spanning the entire barrier. Distribute the force evenly about an axis 64 mm (2.5 inches) above the platform reference plane. If the bottom edge of the outer barrier falls 51 mm (2 inches) or more above the platform reference plane, distribute the force about an axis 13 mm (0.5 inches) above the bottom edge of the barrier.

S6.10.4 For a wheelchair retention device other than an outer barrier, place the test device specified in S6.4.2 on the lift platform with its plane of symmetry coincident with the lift reference plane and directed such that forward motion is impeded by the wheelchair retention device. Move the test device forward until it contacts the wheelchair retention device. Remove the test device from the platform. Apply the force specified in S6.10.2 distributed evenly at all areas of the wheelchair retention device which made contact with the test device when it was moved forward. Attain the force within 1 minute after beginning to apply it.

S6.10.5 After maintaining the force for two minutes, remove it and examine the wheelchair retention device for separation, fracture or breakage.

S6.11 *Static Load Test III—ultimate load.*

S6.11.1 Perform the test procedures as specified in S6.11.2 through S6.11.5 to determine compliance with S5.5.3.

S6.11.2 Reinforce the vehicle structure where the lift is attached such that it will not deform to an extent perceptible without a measuring instrument during application of the load specified in S6.11.3 or remove the platform lift from the vehicle and install it on a test jig that will not deform to an extent perceptible without a measuring instrument during application of the load specified in S6.11.3.

S6.11.3 Place a static load on the upper surface of the test pallet such that the center of gravity of the load is over the geometric center of the pallet and the total mass (weight) of the static load and test pallet is 1,088 kg (2,400 pounds).

S6.11.4 When the lift platform is at the vehicle floor level loading position, center the loaded test pallet on the platform surface. Fully place the pallet on the platform within 1 minute of beginning to place it.

S6.11.5 Two minutes after fully placing the loaded test pallet on the platform surface, remove the loaded test pallet and examine the platform lift for separation, fracture or breakage.

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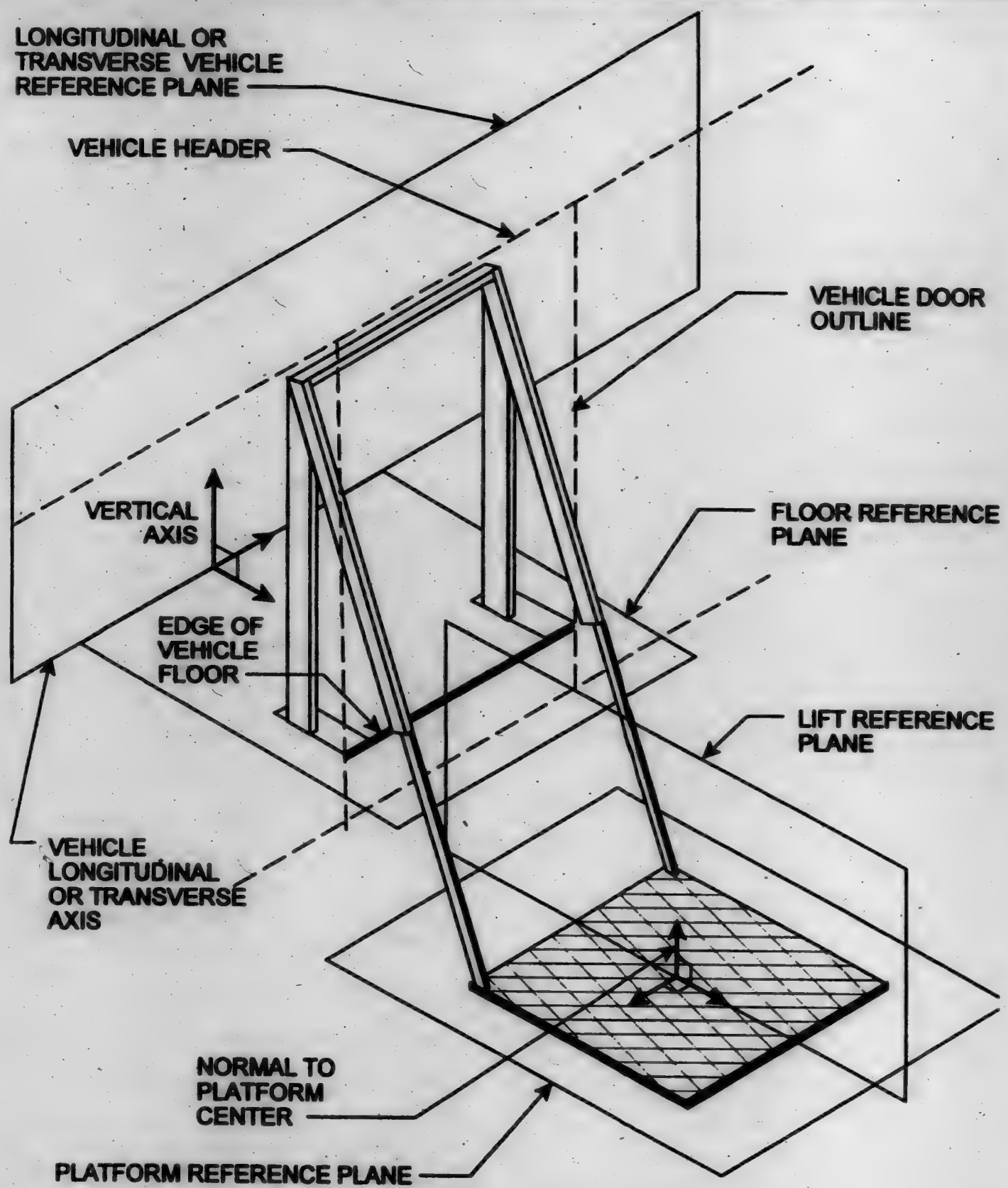

PLANES OF REFERENCE

FIGURE 1

BILLING CODE 4910-59-C

5. Section 571.142 would be added to read as follows:

§ 571.142 Standard No. 142; Platform lift installations in motor vehicles.

S1. *Scope.* This standard specifies requirements for vehicles equipped with a platform lift used to assist persons with limited mobility in entering or leaving a vehicle.

S2. *Purpose.* The purpose of this standard is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts installed in motor vehicles.

S3. *Application.* This standard applies to motor vehicles, with a platform lift to carry passengers into and out of the vehicle.

S4. *Requirements.*

S4.1 *Installation Requirements.*

S4.1.1 Each vehicle must be equipped with a platform lift certified as meeting Federal Motor Vehicle Safety Standard No. 141, Lift Systems for Motor Vehicles (§ 571.141).

S4.1.2 Platform lifts must be attached to the vehicle in accordance with the installation instructions or procedures provided pursuant to S5.13 of Standard 141. The vehicle must be of a type identified in the installation instructions as appropriate for the platform lift and as certified by the platform lift manufacturer.

S4.1.3 Once installed, the platform lift must be fully operational and capable of meeting all operational tests specified in the platform lift manufacturer's installation instructions.

S4.2 *Owner's Manual Insert Requirements.* The vehicle owner's manual must contain inserts pertaining to the platform lift which specify:

S4.2.1 For vehicles other than buses and multipurpose vehicles with a GVWR over 3,220 kg (7,100 lbs), the dimensions which constitute the unobstructed platform operating volume;

S4.2.2 For vehicles with a GVWR less than or equal to 3,220 kg (71,000 lbs), information on whether a wheelchair user must back on to the lift platform due to the absence of an inner roll stop;

S4.2.3 Maintenance schedule based on the number of cycles on the operations counter specified in S5.11 of Standard 141; and

S4.2.4 Simple instructions regarding the platform lift operating procedures, including back-up operations, as specified in S5.9 of Standard 141.

S4.3 *Control System.*

S4.3.1 For buses and MPVs with a GVWR greater than 3,220 kg (7,100 lbs), any and all controls provided for the lift by the platform lift manufacturer, including those specified in S5.7 of standard 141, must be located together and in a position such that the control operator has a direct, unobstructed view of the platform lift passenger and their wheelchair (if the passenger is using a wheelchair) throughout the lift's range of passenger operation. Additional power controls may be located in other positions.

S4.3.2 Simple instructions regarding the platform lift operating procedures, including backup operations as specified by S5.9 of Standard 141, must be located near the controls. These instructions must be written in English.

§ 571.201 [Amended]

6. Section 571.201 would be amended by removing the definition of "motor home" contained in § 571.201 S3, Definitions.

§ 571.205 [Amended]

7. Section 571.205 would be amended by removing the definition of "motor home" contained in § 571.205 S4, Definitions.

§ 571.208 [Amended]

8. Section 571.208 would be amended by removing and reserving S4.2.4.1(a).

Issued on July 20, 2000.

Stephen R. Kratzke,

Associate Administrator for Performance Safety Standards.

[FR Doc. 00–18773 Filed 7–21–00; 2:04 pm]

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Federal Register

Thursday,
July 27, 2000

Part IV

Nuclear Regulatory Commission

Revision of Management Directive for Review of 10 CFR 2.206 Petitions; Request for Comments; Notice

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NUCLEAR REGULATORY COMMISSION

Revision of Management Directive for Review of 10 CFR 2.206 Petitions; Request for Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: NRC Management Directive (MD) 8.11 describes the Nuclear Regulatory Commission's (NRC's) review process for 10 CFR 2.206 petitions. In a continuing effort to improve the review process, the NRC staff has developed process changes and a draft revision to MD 8.11. This notice invites public comment on the draft revision to MD 8.11.

DATES: The comment period ends September 1, 2000. Comments received after this date will be considered if it is practical to do so, but the staff is able to assure consideration only for those comments received on or before this date.

ADDRESSES: Mail written comments to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be sent by completing the online comment form for MD 8.11 at *http://www.nrc.gov/NRC/MD/index.html*.

In addition, comments may be delivered to Room 6D59, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of the draft revision to MD 8.11, the complete text of which follows this notice, are available for a fee at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). This notice and the draft revision to MD 8.11 are also available electronically on the Internet at *http://www.nrc.gov/NRC/MD/index.html*.

FOR FURTHER INFORMATION CONTACT: Herbert N. Berkow, Mail Stop O–8H12, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1485 and e-mail at hnb@nrc.gov.

SUPPLEMENTARY INFORMATION: The process changes to MD 8.11 were identified and developed based on the comments received from the NRC staff and members of the public. The staff requested public comments on the current revision of MD 8.11 in a **Federal Register** notice that was published on October 7, 1999 (64 FR 54654). The staff held public meetings on December 15, 1999, and February 10, 2000, to discuss potential process improvements. Based on the comments received, the staff developed three major process changes:

1. The review process, as revised in July 1999, offers petitioners an opportunity to meet with the staff's petition review board (PRB), either in person or by teleconference, before the initial PRB meeting. The purpose of this meeting is to allow the petitioner an opportunity to provide elaboration and clarification of the petition and any requests for immediate action. The staff is planning to provide an opportunity for petitioners to meet with the PRB *after* the PRB has discussed the petition, as well as before. The purpose of a meeting at this stage is to allow the petitioner to comment on the PRB's recommendations regarding whether (1) the petition meets the criteria for review under 10 CFR 2.206 and (2) any requested immediate actions will be granted. As is currently the case, the licensee would also be invited to participate.

2. The staff plans to eliminate the criteria in MD 8.11 that must be satisfied before a technical meeting can be offered during the staff's review of the petition.

3. The staff's response to a petition is a director's decision which may grant the petition, in whole or in part, or deny the petition. The staff plans to provide a copy of the proposed director's decision to the petitioner and the licensee for comments before it is issued in final form. The proposed director's decision would also be placed in the public document room. The intent of this new provision in the process is to allow the petitioner and the licensee an opportunity to review the proposed director's decision and identify any potential errors or issues that have not been addressed. The staff would then reconsider any affected portions of the proposed director's decision. Because the staff's disposition of the comments would be included in the director's decision, NRC management would have an opportunity to evaluate the staff's handling of the comments before the director's decision is formally issued.

In addition to these specific changes, the staff has completely rewritten MD 8.11 to improve the flow of the document and make it easier to use.

The Commission met with the staff and a public panel on May 25, 2000, to discuss the staff's planned process changes. As background for the meeting, the staff sent a memorandum to the Commission on May 4, 2000 (accession number ML003708647), outlining the history behind previous process changes and the basis for the new changes. In a staff requirements memorandum on June 20, 2000, the Commission stated that it supported the staff's plans to make changes to the review process for 10 CFR 2.206 petitions.

The NRC staff has developed the revision to MD 8.11, incorporating the changes described above, and requests comments on the revision. Management directives are internal NRC procedures which are not ordinarily published for public comment. However, MD 8.11 deals with a process that directly involves the public, and the NRC staff has determined that its efforts to improve the process will benefit from public participation. All comments received will be considered. The result of this effort will be reflected in a future revision of MD 8.11.

Dated at Rockville, Maryland, this 19th day of July 2000.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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ATTACHMENT TO NOTICE

Review Process for 10 CFR 2.206 Petitions

Directive 8.11

VOL 65 ISS 145 JL 27 2000 UMI

Volume 8, Licensee Oversight Programs
Review Process for 10 CFR 2.206 Petitions
Directive 8.11

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U. S. Nuclear Regulatory Commission
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Review Process for 10 CFR 2.206 Petitions Directive 8.11

Policy
(8.11–01)

Through Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), the U.S. Nuclear Regulatory Commission provides members of the public with the means to request enforcement-related (as distinguished from others such as licensing or rulemaking) action. The Commission may grant a request for action it receives, in whole or in part, take other action that satisfies the concerns raised by the requester, or deny the request. Requests that raise health and safety and other concerns without requesting enforcement-related action will be reviewed by means other than the 10 CFR 2.206 process.

Objectives
(8.11–02)

- To ensure the public health and safety through the prompt and thorough evaluation of any potential problem addressed by a petition filed under 10 CFR 2.206. (021)
- To provide for appropriate participation by the petitioners in, and observation by the public of, NRC's decisionmaking activities related to a 10 CFR 2.206 petition. (022)
- To ensure effective communication with the petitioner and other stakeholders on the status of the petition, including providing relevant documents and notification of interactions between the NRC staff and a licensee or certificate holder relevant to the petition. (023)

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Review Process for 10 CFR 2.206 Petitions
Directive 8.11

Organizational Responsibilities and Delegations of Authority
(8.11–03)

Executive Director for Operations (EDO)
(031)

Receives and assigns action for all petitions filed under 10 CFR 2.206.

Chief Information Officer (CIO)
(032)

Provides hardware, software, and communication services support of the NRC Home Page for making information publicly available on the status of the petitions.

General Counsel (GC)
(033)

- Gives legal review and advice on 10 CFR 2.206 petitions and director's decisions upon specific request from the staff in special cases or where the petition raises legal issues. (a)
- Gives legal advice to the EDO, office directors, and staff on relevant 2.206 matters. (b)

Office Directors
(034)

- Have overall responsibility for assigned petitions. (a)
- Approve or deny a petitioner's request for immediate action. (b)
- Sign acknowledgment letters, *Federal Register* notices and director's decisions. (c)
- Provide up-to-date information for the monthly status report on all assigned petitions. (d)
- Appoint a petition review board (PRB) chairperson. (e)
- Designate a petition manager for each petition. (f)

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Office Directors
(034) (continued)

- Promptly notify (1) the Office of Investigations of any allegations of suspected wrongdoing by a licensee or certificate holder, applicant for a license or certificate, their contractors, or their vendors or (2) the Office of the Inspector General of suspected wrongdoing by an NRC staff person or NRC contractor, that are contained in the petitions they may receive. (g)
- Provide drafted director's decisions to the Office of Enforcement for review. (h)
- Designate an office 2.206 petition coordinator (Office of Nuclear Materials Safety and Safeguards). (i)

Regional Administrators
(035)

- Promptly refer any 2.206 petitions they may receive to the EDO. (a)
- As needed, provide support and information for the preparation of an acknowledgment letter and/or a director's decision on a 2.206 petition. (b)
- Make the petition manager aware of information that is received or that is the subject of any correspondence relating to a pending petition. (c)
- Participate, as necessary, in meetings with the petitioner and public, in technical review of petitions and in deliberations of the PRB. (d)

2.206 PRB Chairperson
(036)

Each program office has a board chairperson, generally a Senior Executive Service manager, who will—

- Convene PRB meetings. (a)
- Ensure appropriate review of all new petitions in a timely manner. (b)
- Ensure appropriate documentation of PRB meetings. (c)
- Convene periodic PRB meetings with the petition managers to discuss the status of open petitions and to provide guidance for timely issue resolution. (d)

Division Directors
(037)

Concur, as appropriate, in each extension request from petition managers in their organization and forward the extension request to the Office of the EDO for approval.

Director, Division of Licensing Project Management, (DLPM)
Office of Nuclear Reactor Regulation (NRR)
(038)

Appoints the Agency 2.206 Petition Coordinator, normally a DLPM staff person.

Applicability
(8.11–04)

The policy and guidance in this directive and handbook apply to all NRC employees.

Handbook
(8.11–05)

Handbook 8.11 details the procedures for staff review and disposition of petitions submitted under Section 2.206.

Definitions
(8.11–06)

A 10 CFR 2.206 Petition. A written request filed by any person that the Commission modify, suspend, or revoke a license, or take any other enforcement-related action that may be proper. The request must meet the criteria for review under 10 CFR 2.206 (see Part III of Handbook 8.11).

A 10 CFR 2.206 Technical Review Meeting. A meeting open to the public and held by NRC staff to provide an opportunity to the petitioner and the licensee, certificate holder, or other affected party to supply information to assist NRC staff in the evaluation of petitions.

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References
(8.11–07)

Code of Federal Regulations—

10 CFR 2.206, "Requests for Action Under this Subpart."

10 CFR 2.790, "Public Inspections, Exemptions, Requests for Withholding."

10 CFR 2.1205, "Request for a hearing; petition for leave to intervene."

Management Directives—

—3.5, "Public Attendance at Certain Meetings Involving the NRC Staff."

— 8.8, "Management of Allegations."

— 12.6, "NRC Sensitive Unclassified Information Security Program."

Memorandum of Understanding Between the NRC and the Department of Justice, December 12, 1988.

"Nuclear Regulatory Commission Issuances," published quarterly as NUREG-0750.

Review Process for 10 CFR 2.206 Petitions

Handbook 8.11

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Part I

Introduction

Title 10 of the *Code of Federal Regulations*, Section 2.206 (10 CFR 2.206) (A)

This section of the regulations has been a part of the Commission's regulatory framework since the Commission was established in 1975. 10 CFR 2.206 permits any person to file a petition to request that the Commission take enforcement-related action., i.e., to modify, suspend, or revoke a license or to take other appropriate action. (1)

Section 2.206 requires that the petition be submitted in writing and provide the grounds for taking the proposed action. The NRC staff will not treat general opposition to nuclear power or a general assertion of a safety problem, without supporting facts, as a formal petition under 10 CFR 2.206. The staff will treat general requests as allegations or routine correspondence. Petitioners are encouraged to provide a telephone number or email address through which the staff may make contact. (2)

General Cautions (B)

Management Directive 8.8, "Management of Allegations," provides agency policy with regard to notifying the Office of Investigations (OI), and the Office of the Inspector General (OIG) of wrongdoing matters, as well as initiating, prioritizing, and terminating investigations. The petition manager should become familiar with the current version of this directive and follow the policy outlined therein when dealing with issues requiring OI or OIG investigations. (1)

Any mention outside NRC of an ongoing OI or OIG investigation, for example, as an explanation for schedule changes, requires the approval of the Director, OI or OIG, respectively. (2)

General Cautions (B) (continued)

If the petition contains information on alleged wrongdoing on the part of a licensee or certificate holder, an applicant for a license or certificate, their contractors, or their vendors, treat the petition, or the relevant part of the petition, as an allegation and promptly notify OI. If the petition contains information on alleged wrongdoing involving an NRC employee, NRC contractors, or NRC vendors, promptly notify OIG. (3)

Note that throughout the balance of this handbook, any references to a licensee shall be interpreted to include certificate holders, applicants for licenses or certificates, or other affected parties. (4)

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Part II
Initial Staff Actions

NRC's Receipt of a Petition (A)

Process Summary (1)

After NRC receives a petition, the Executive Director for Operations (EDO) assigns it to the director of the appropriate office for evaluation and response. The original incoming petition is sent to the office and a copy of the petition is sent to the Office of the General Counsel (OGC). The official response is the office director's written decision addressing the issues raised in the petition. The office director can grant, partially grant, or deny the petition. The Commission may, on its own initiative, review the director's decision, although it will not entertain a request for review of the director's decision

Assignment of Staff Action (2)

Petitions may be in the form of correspondence or requests for NRC action that may or may not cite 10 CFR 2.206 and may initially be directed to staff other than the EDO. In any of these cases, the staff member who receives the document should make an initial evaluation as to whether the document meets the criteria for review under 10 CFR 2.206 provided in Part III of this handbook. Staff members who are uncertain whether or not the document meets the criteria should consult their management or office coordinators for further guidance. If a petition meets the criteria but does not specifically cite 10 CFR 2.206, the staff will attempt to contact the petitioner by telephone to determine if the he or she wants the request processed pursuant to 10 CFR 2.206. The staff may determine that a request forwarded for staff action is not a petition for enforcement-related action but, rather, a petition for rulemaking, for example. If there is any uncertainty about whether or not a request is a petition under 10 CFR 2.206, it should be treated as one so that a petition review board (PRB) can make its recommendations, as described in Part III of this handbook. (a)

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NRC's Receipt of a Petition (A) (continued)

Assignment of Staff Action (2) (continued)

If the staff receives a request that it believes is a 10 CFR 2.206 petition, it will forward the request to the Office of the EDO (OEDO) for assignment of action. Petitions also may be forwarded to the OEDO from an Atomic Energy and Licensing Board or from a Presiding Officer in accordance with 10 CFR 2.1205(l)(2). The EDO will assign each petition to the appropriate office for action. If the document does not cite 10 CFR 2.206 and does not meet the criteria for review under that section, the staff will respond to it under some other process (e.g., routine correspondence, allegations). (b)

Petitions that cite 10 CFR 2.206 and are addressed to the EDO will be added to the Agencywide Documents Access and Management Systems (ADAMS) by OEDO. OEDO will not declare these petitions official agency records nor will it make them publicly available. Those steps will be carried out by the assigned office as described below. (c)

Office Action (B)

Upon receipt, office management will assign the petition to a petition manager. (1)

The Agency 2.206 Petition Coordinator (appointed by the Director, Division of Licensing Project Management, Office of Nuclear Regulation (NRR)), receives copies of all 2.206 petitions from OEDO and will add them to the 2.206 database. (2)

Petition Manager Action (C)

The petition manager will promptly review the petition and determine whether or not it contains allegations or sensitive information. The timing of this step is particularly important for petitions that are not addressed to the EDO. These documents have been entered into ADAMS through the Document Control Desk (DCD). The documents are initially coded as not publicly available. However, after a specified period of time the documents are released to the public. The delay allows the staff time to review the petition for allegations or other sensitive information. If the petition manager determines that such a document contains allegations or other sensitive information, he or she should immediately contact the DCD to prevent releasing the document to the public. (1)

Petition Manager Action (C) (continued)

Before the petition is released to the public, before the PRB meeting, and in any event within 1 week of receipt of the petition by the assigned office, the petition manager will inform the petitioner by telephone that the 2.206 petition process is a public process in which the petition and all the information in it will be made public. If the petitioner requests anonymity and that the petition not be made public, the petition manager will advise the petitioner that, because of its public nature, the 2.206 process cannot provide protection of the petitioner's identity. In such cases, the petition manager will obtain the agreement of the petitioner as to how the matter will be handled (i.e., as an allegation or not) and document the petitioner's agreement in writing. In cases where the staff identifies certain issues in a petition that it believes are more appropriately addressed using the allegation process, the petition manager will obtain the agreement of the petitioner as to how these issues will be handled (i.e., as an allegation or not) and document the petitioner's agreement in writing. The treatment of all or part of the petition as an allegation may be documented in the allegation acknowledgment letter (see Management Directive (MD) 8.8, "Management of Allegations"). (2)

If the request clearly does not meet the criteria for review as a 10 CFR 2.206 petition, the petition manager will also discuss this issue with the petitioner. The petitioner may be able to help the petition manager better understand the basis for the petition or the petitioner may realize that a 10 CFR 2.206 petition is not the correct forum for the issues raised in the request. Finally, the petition manager will offer the petitioner an opportunity to have one or more representatives give a presentation to the PRB and cognizant supporting staff either by telephone (or videoconference, if available) or in person. This is an opportunity for the petitioner to provide any relevant additional explanation and support for the request. This type of meeting is described in more detail in Part III of this handbook. (3)

After the initial contact with the petitioner, the petition manager will promptly advise the licensee(s) of the petition, send the appropriate licensee(s) a copy of the petition, and ensure that the petition and all subsequent related correspondence are made available to the public. (Note that if the petitioner wishes to have the request handled as an allegation, the request is no longer a 2.206 petition.) Any information related to allegations or other sensitive information that make up a part of the petition will be redacted from copies sent to the licensee or made

Petition Manager Action (C) (continued)

available to the public. For allegations, the petition manager should refer to MD 8.8. As discussed in MD 8.8, allegations must be forwarded to the associated Office Allegations Coordinator expeditiously. MD 8.8 also addresses the referral of wrongdoing issues to the Office of Investigations and the Office of the Inspector General. (4)

See Exhibit 1, Simplified Process Flow Chart and Exhibit 2, Checklist of Petition Manager Actions for further information on petition manager actions. (5)

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Part III
Petition Review Board (PRB)

General (A)

Schedule (1)

The assigned office holds a PRB meeting on the 2.206 petition to determine the appropriate schedule as well as how best to respond to the petitioner's concerns. The PRB meeting is normally held within 2 weeks of receipt of the petition. The PRB meeting may be held much sooner if staff decisions are required on short-term immediate actions (e.g., a request to shut down an operating facility or prevent restart of a facility that is ready to restart). In unusual situations, it may not be possible to hold the meeting in time to address immediate actions. In these cases, the staff will decide how the immediate actions will be addressed and obtain appropriate management concurrence as soon as possible. If the staff plans to take an action that is contrary to an immediate action requested in the petition before issuing the acknowledgment letter (such as permitting restart of a facility when the petitioner has requested that restart not be permitted), the petition manager must promptly notify the petitioner by telephone of the pending staff action. (a)

Board Composition (2)

The PRB consists of—(a)

- A PRB chairperson (generally a Senior Executive Service manager) (i)
- A petition manager (ii)
- Cognizant management and staff, as necessary (iii)
- A representative from the Office of Investigations (OI), as needed (iv)
- A representative from the Office of Enforcement (OE) and, for petitions assigned to the Office of Nuclear Regulation (NRR), the NRR Senior Enforcement Coordinator, as needed (v)

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General (A) (continued)

Board Composition (2) (continued)

In addition, a representative from the Office of the General Counsel (OGC) will normally participate. (b)

Preparation for the PRB Meeting (B)

The petition manager will provide copies of the petition to PRB and assist in scheduling the review board meeting. The petition manager also will arrange for cognizant technical staff members to attend the meeting, as necessary, and prepare a presentation for the review board. In assigning technical staff members to the petition, management will consider any potential conflict from assigning the same staff who were previously involved with the issue that gave rise to the petition. (1)

The PRB presentation should include—(2)

- A recommendation as to whether or not the petition meets the criteria for review under 10 CFR 2.206 (a)
- A discussion of the safety significance of the issues raised (b)
- Recommendations for any immediate actions (whether requested or not) (c)
- Recommendations on whether or not assistance from OI, OE, or OGC is necessary (d)
- Request confirmation concerning referral to OI or the Office of the Inspector General (OIG), as appropriate (e)
- The proposed schedule, including the review schedule for the affected technical branches (f)

The petition manager also will offer a meeting or teleconference between the petitioner and the PRB before the board reviews the petition. This meeting or teleconference, if held, is an opportunity for the petitioner to provide any relevant additional explanation and support for the request in advance of the PRB's evaluation. The staff will hold this type of meeting if the petitioner desires it. If staff decisions on any of the petitioner's immediate action requests are required before the petitioner's presentation can be scheduled, those decisions will not be delayed. (3)

Preparation for the PRB Meeting (B) (continued)

The petition manager also will invite the licensee to participate in the meeting or teleconference to ensure that it understands the concerns about its facility or activities. The PRB members may ask any questions needed to clarify the petitioner's request. The licensee may also ask questions to clarify the issues raised by the petitioner. The petitioner can choose whether or not to respond to the licensee's questions. Any member of the public may attend (or listen in by telephone for a teleconference) as an observer. Meetings between PRB and the petitioner normally will be held at NRC headquarters in Rockville, Maryland, with provisions for participation by telephone or videoconference. This public meeting or teleconference is separate from the (closed) PRB meeting during which the PRB members develop their recommendations with respect to the petition. (4)

The petition manager will ensure that staff at the meeting or teleconference are aware of the need to protect sensitive information from disclosure. Sensitive information includes safeguards or facility security information, proprietary or confidential commercial information, or information relating to an ongoing investigation of wrongdoing. (5)

If the petitioner chooses to address PRB by telephone, it is not considered a meeting and no public notice is necessary. The petition manager will establish a mutually agreeable time and date and arrange to conduct the teleconference on a recorded line through the NRC Headquarters Operations Center (301-816-5100). The tape recording from the Operations Center is converted to a printed transcript that is treated as a supplement to the petition and is sent to the petitioner and the same distribution as the original petition. The petition manager will make arrangements for transcription service by submitting an NRC Form 587 to the Atomic Safety and Licensing Board Panel or by sending an email to Court Reporter, giving the same information as requested on the Form 587. (6)

If the petitioner chooses to attend in person, the meeting will take place at NRC headquarters at a mutually agreeable time. For the meeting, the petition manager will follow the prior public notice period and other provisions of Management Directive (MD) 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff." However, time constraints associated with this type of meeting will often dictate that the 10-day public notice period described in MD 3.5 will not be

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Preparation for the PRB Meeting (B) (continued)

met. MD 3.5 allows for less than 10 days public notice, if necessary, with appropriate management concurrence. The meeting should be noticed as a meeting between the NRC staff, the petitioner, and the licensee (unless the licensee chooses not to participate). The licensee is invited to participate, as in the teleconference described above, and members of the public may attend as observers. The meeting is transcribed and the transcript is treated in the same manner as in the case of a telephone briefing. (7)

At the meeting or teleconference, the chairperson will provide a brief summary of the 2.206 process, the petition, and the purpose of the discussion that will follow. The petitioner may designate a reasonable number of associates to assist him or her in addressing PRB concerning the petition. The petitioner representative(s) will be allowed a reasonable amount of time to articulate the bases for the petition. The NRC staff and the licensee will have an opportunity to ask the petitioner questions for purposes of clarification. The petitioner can choose whether or not to respond to the licensee's questions. PRB may meet in closed session before and/or after the meeting with the petitioner to conduct its normal business. (8)

The requirements for scheduling and holding the petitioner presentation may impact the established time goals for holding the regular PRB meeting and issuing the acknowledgment letter. Any such impacts should be kept to a minimum. (9)

Criteria for Petition Evaluation (C)

The staff will use the criteria discussed in this section to determine whether or not a petition should be considered under 10 CFR 2.206 and whether or not similar petitions should be consolidated.

Criteria for Reviewing Petitions Under 10 CFR 2.206 (1)

The staff will review a petition under the requirements of 10 CFR 2.206 if the request meets all of the following criteria—(a)

- The petition contains an explicit or implicit request for enforcement-related action such as issuing an order modifying, suspending, or revoking a license, issuing a notice of violation, with or without a proposed civil penalty, etc. (i)

Criteria for Petition Evaluation (C) (continued)

Criteria for Reviewing Petitions Under 10 CFR 2.206 (1) (continued)

- The facts that constitute the bases for taking the particular action are specified. The petitioner must provide some element of support beyond the bare assertion. The supporting facts must be credible and sufficient to warrant further inquiry. (ii)

- Acceptance for review under 10 CFR 2.206 will not result in circumventing an available proceeding in which the petitioner is or could be a party. For example, if a petitioner raises an issue that he or she has raised or could raise in a licensing proceeding, the staff will deny the petitioner treatment under 10 CFR 2.206. (iii)

An exception to the first two criteria is any petition to intervene and request for hearing in a licensing proceeding that is referred to the 10 CFR 2.206 process in accordance with 10 CFR 2.1205(l)(2). These referrals may be made when the petition does not satisfy the legal requirements for a hearing or intervention and the Atomic Safety and Licensing Board Panel or the Presiding Officer determines that referral to the 10 CFR 2.206 process is appropriate. For these referrals, the substantive issues in the request for a hearing or intervention will be read as an implicit request for enforcement-related action, thus satisfying the criteria for treatment under the 10 CFR 2.206 review process. (b)

Criteria for Rejecting Petitions Under 10 CFR 2.206 (2)

The staff will not review a petition under 10 CFR 2.206, whether specifically cited or not, under the following circumstances—

- The incoming correspondence does not ask for an enforcement-related action or fails to provide sufficient facts to support the petition but simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns. The request cannot be simply a general statement of opposition to nuclear power or a general assertion without supporting facts (e.g., the quality assurance at the facility is inadequate). These assertions will be treated as routine correspondence or as allegations which will be referred for appropriate action in accordance with MD 8.8, "Management of Allegations." (a)

Criteria for Petition Evaluation (C) (continued)

Criteria for Rejecting Petitions Under 10 CFR 2.206 (2) (continued)

- The petitioner raises issues that have already been the subject of NRC staff review and evaluation either on that facility, other similar facilities, or on a generic basis, for which a resolution has been achieved, the issues have been dispositioned, and the resolution is applicable to the facility in question. This would include requests to reconsider or reopen a previous enforcement action (including a decision not to initiate an enforcement action) or a director's decision. Such requests will not be treated as a 2.206 petition unless they present significant new information. (b)
- The request is to deny a license application or amendment. This type of request should initially be addressed in the context of the relevant licensing action, not under 10 CFR 2.206. (c)
- The request addresses deficiencies within existing NRC rules. This type of request should be addressed as a petition for rulemaking. (d)

Criteria for Consolidating Petition (3)

Generally, all requests submitted by different individuals will be treated and evaluated separately. When two or more petitions request action against the same licensee, specify essentially the same bases, provide adequate supporting information, and are submitted at about the same time, PRB will consider the benefits of consolidating the petitions against the potential of diluting the importance of any petition and recommend whether or not consolidation is appropriate. The assigned office director will determine whether or not to consolidate the petitions.

PRB Meeting (D)

PRB ensures that an appropriate petition review process is followed. The purposes of the PRB process are to—(1)

- Determine whether or not the petitioner's request meets the criteria for review as a 10 CFR 2.206 petition (see Part III(C) of this handbook) (a)
- Determine whether or not the petitioner should be offered or informed of an alternative process (e.g., consideration of issues as allegations, consideration of issues in a pending license proceeding, or rulemaking). (b)

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PRB Meeting (D) (continued)

- Determine whether there is a need for any immediate actions (whether requested or not) (c)
- Establish a schedule for responding to the petitioner so that a commitment is made by management and the technical review staff to respond to the petition in a timely manner (see Part IV of this handbook for guidance regarding schedules) (d)
- Address the possibility of issuing a partial director's decision (e)
- Determine whether or not the petition should be consolidated with another petition (f)
- Determine whether or not referral to OI or OIG is appropriate (g)
- Determine whether or not there is a need for OGC to participate in the review (h)
- Determine whether or not the licensee should be requested to respond to the petition (i)
- Determine whether or not the petition is sufficiently complex that additional review board meetings should be scheduled to ensure that suitable progress is being made (j)

The PRB meeting is a closed meeting, separate from any meeting with the petitioner and the licensee, during which the PRB members develop their recommendations with respect to the petition. At the meeting, the petition manager briefs PRB on the petitioner's request(s), any background information, the need for an independent technical review, and a proposed plan for resolution, including target completion dates. The petition manager, with the assistance of the Agency 2.206 Petition Coordinator, ensures appropriate documentation of all petition recommendations in the summary of the PRB meeting. (2)

The OGC representative provides legal review and advice on 10 CFR 2.206 petitions. OGC may be assigned as the responsible office for the review, if appropriate. (3)

Informing the Petitioner of the Results (E)

After PRB meets, and before issuing the acknowledgment letter, the petition manager will ensure that appropriate levels of management in the assigned office are informed of the board's recommendations and that they concur. The petition manager will then inform the petitioner by telephone as to whether or not the petition meets the criteria for review under 10 CFR 2.206, of the disposition of any requests for immediate action, of how the review will proceed, and that an acknowledgment letter is forthcoming. If the staff plans to take an action that is contrary to an immediate action requested in the petition before issuing the acknowledgment letter, the petition manager must promptly notify the petitioner by telephone of the pending staff action. An example of a contrary action would be if NRC permitted restart of a facility when the petitioner had requested that restart not be permitted. The petitioner will not be advised of any wrongdoing investigation being conducted by OI or OIG. (1)

Meeting with the Petitioner (F)

After informing the petitioner of the pertinent PRB recommendations, the petition manager will offer the petitioner an opportunity to comment on the recommendations. This opportunity will be in the form of a meeting or teleconference between the petitioner and the PRB. If the petitioner accepts this offer, the petition manager will establish a mutually agreeable date for the meeting or teleconference with the petitioner. The petition manager also will request the licensee to participate and will coordinate the schedules and dates with the licensee. The meeting or teleconference should be scheduled so as not to adversely affect the established petition review schedule. (1)

This meeting or teleconference, if held, is an opportunity for the petitioner to provide any relevant additional explanation and support for the request in light of PRB's recommendations. The PRB members may ask any questions needed to clarify the petitioner's request. If staff decisions on any of the petitioner's immediate action requests are required before the petitioner's presentation can be scheduled, those decisions will not be delayed. The format of the meeting or teleconference, application of MD 3.5, transcription, etc., are the same as for a meeting or teleconference held prior to the PRB's review of the petition. (2)

After this discussion, PRB will consider the need to modify any of its recommendations. The final recommendations will be included in the

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Meeting with the Petitioner (F) (continued)

acknowledgment letter. The acknowledgment letter will address any comments the petitioner made concerning the initial PRB recommendations and the staff's response. The petitioner will be promptly notified of staff decisions on any immediate action requests. If the petitioner presents significant new information to the staff, PRB may determine that this new information constitutes a new petition that will be treated separately from the initial petition. (3)

The requirements for scheduling and holding the petitioner presentation may impact the established time goals for issuing the acknowledgment letter. Any such impacts should be kept to a minimum. (4)

Response to the Petitioner (G)

After PRB finalizes its recommendations, the petition manager prepares a written response to the petitioner.

Requests That Do Not Meet the Criteria (1)

- If PRB, with office-level management concurrence, determines that the petition does not meet the criteria for review as a 10 CFR 2.206 petition, the petition manager then prepares a letter that (1) explains why the request is not being reviewed under 10 CFR 2.206, responds, to the extent possible at that time, to the issues in the petitioner's request, and (3) explains what further actions, if any, the staff intends to take in response to the request (e.g., treat it as an allegation or routine correspondence). See Exhibit 3 for an example letter. (a)

The petition manager will attach the original petition and any enclosure(s) to the Reading File copy of the letter. (b)

Requests That Meet the Criteria (2)

If the PRB finds that the petition meets the criteria for review as a 10 CFR 2.206 petition, the petition manager prepares an acknowledgment letter and associated Federal Register notice (see Exhibits 4 and 5). The letter should acknowledge the petitioner's efforts in bringing issues to the staff's attention. If the petition contains a request for immediate action by the NRC, such as a request for immediate suspension of facility operation until final action is taken on

Response to the Petitioner (G) (continued)

Requests That Meet the Criteria (2) (continued)

the request, the acknowledgment letter must explain the staff's response to the immediate action requested. If the immediate action is denied, the staff must explain the basis for the denial in the acknowledgment letter. (a)

The petition manager ensures that a copy of this management directive and of the pamphlet "Public Petition Process," prepared by the Office of Public Affairs, are included with the acknowledgment letter. The acknowledgment letter also should include the name and telephone number of the petition manager, identify the technical staff organizational units that will participate in the review, and provide the planned schedule for the staff's review. A copy of the acknowledgment letter must be sent to the appropriate licensee and the docket service list(s). (b)

The petition manager will attach the original 2.206 petition and any enclosure(s) to the Reading File copy of the acknowledgment letter. (c)

In rare cases the staff may be prepared to respond to the merits of the petition immediately. In such a case, the staff can combine the functions of the acknowledgment letter and the director's decision into one document. A similar approach would be taken in combining the associated Federal Register notices. (d)

Sending Documents to the Petitioner (H)

If the PRB determines that the request is a 2.206 petition, then the petition manager will—

- Place the petitioner on distribution for all relevant NRC correspondence to the licensee to ensure that the petitioner receives copies of all NRC correspondence with the licensee pertaining to the petition. (1)
- Add the petitioner to the service list(s) for the topic or affected licensee(s) for all headquarters and regional documents on the affected dockets. (2)

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Sending Documents to the Petitioner (H) (continued)

- Request the licensee to send copies of any future correspondence related to the petition to the petitioner, with due regard for proprietary, safeguards, and other sensitive information. The licensee should continue to send these documents to the petitioner for 90 days after the director's decision is issued. (3)

- To the extent that he or she is aware of such documents, ensure that the petitioner is placed on distribution for other NRC correspondence relating to the issues raised in the petition, including relevant generic letters or bulletins that are issued during the pendency of the NRC's consideration of the petition. This does not include NRC correspondence or documentation related to an OI or OIG investigation, which will not be released outside NRC without the approval of the Director, OI or OIG, respectively. (4)

Part IV

Petition Review Activities

Reviewing the Petition (A)

Interoffice Coordination (1)

The petition manager coordinates all information required for the petition review. The petition manager also advises his or her management of the need for review and advice from the Office of the General Counsel (OGC) regarding a petition in special cases. When appropriate, an Associate Director in the Office of Nuclear Regulation, a Division Director in the Office of Nuclear Material Safety and Safeguards, or the Director of the Office of Enforcement, requests OGC involvement through the OGC special counsel assigned to 2.206 matters. (a)

All information related to a wrongdoing investigation by the Office of Investigations (OI) or the Office of the Inspector General (OIG), or even the fact that an investigation is being conducted, will receive limited distribution within NRC and will not be released outside NRC without the approval of the Director, OI or OIG, respectively (see Management Directive (MD) 8.8). Within NRC, access to this information is limited to those having a need-to-know. Regarding a 2.206 petition, the assigned office director, or his designee, maintains copies of any documents required and ensures that no copies of documents related to an OI or OIG investigation are placed in the docket file, the agencywide documents access and management systems (ADAMS), or the Public Document Room (PDR), without the approval of the Director, OI or OIG, respectively. (b)

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Reviewing the Petition (A) (continued)

Request for Licensee Input (2)

If appropriate, the petition manager will request the licensee to provide a response to the NRC on the issues specified in the petition, usually within 30 days. This staff request will usually be made in writing. The petition manager will advise the licensee that the NRC will place the licensee's response in the PDR and provide the response to the petitioner. (a)

Unless necessary for NRC's proper evaluation of the petition, the licensee should avoid using proprietary or personal privacy information that requires protection from public disclosure. If such information is necessary to properly respond to the petition, the petition manager ensures the information is protected in accordance with 10 CFR 2.790. (b)

Technical Review Meeting With the Petitioner (3)

A technical review meeting with the petitioner will be held whenever the staff believes that such a meeting (whether requested by the petitioner, the licensee, or the staff) would be beneficial to the staff's review of the petition. Meeting guidance is provided in MD 3.5. The petition manager will ensure that the meeting does not compromise the protection of sensitive information. A meeting will not be held simply because the petitioner claims to have additional information and will not present it in any other forum.

Additional Petition Review Board (PRB) Meetings (4)

Additional PRB meetings may be scheduled for complex issues. Additional meetings also may be appropriate if the petition manager finds that significant changes must be made to the original plan for the resolution of the petition.

Schedule (B)

The goal is to issue the proposed director's decision for comment within 120 days after issuing the acknowledgment letter. The proposed director's decision for uncomplicated petitions should be issued in less than 120 days. The Office of the Executive Director for Operations (OEDO) tracks the target date, and any change of the date requires approval by the EDO. The petition manager monitors the progress of any OI investigation and related enforcement actions. Enforcement

Schedule (B) (continued)

actions that are prerequisites to a director's decision should be expedited and completed in time to meet the 120-day goal. Investigations by OI and OIG associated with petitions should be expedited to the extent practicable. However, the goal of issuing the proposed director's decision for comment within 120 days after issuing the acknowledgment letter applies only to petitions whose review schedules are within the staff's control. If issues in a petition are the subject of an investigation by OI or OIG, or a referral to the Department of Justice (DOJ), or if NRC decides to await a Department of Labor decision, the clock for the 120-day goal is stopped for the portion of the petition awaiting disposition by those organizations. The clock will start again when the staff receives the results of the investigation. If the staff can respond to some portions of the petition without the results of the investigation, then a partial director's decision should be issued within the original 120 days. When the staff receives the results of the investigation, it will promptly develop and issue a final director's decision. See Part V of this handbook for a discussion of partial director's decisions. (1)

If the director's decision cannot be issued in 120 days for other reasons (e.g., very complex issues), the assigned division director determines the need for an extension of the schedule and requests the extension from the EDO. In addition, the petition manager will promptly contact the petitioner to explain the reason(s) for the delay and will maintain a record of such contact. (2)

Keeping the Petitioner Informed (C)

The petition manager ensures that the petitioner is notified at least every 60 days of the status of the petition, or more frequently if a significant action occurs. The petition manager makes the bimonthly status reports by telephone. The petition manager should speak directly to the petitioner or otherwise confirm that the petitioner has received the status report. The petition manager keeps up-to-date on the status of the petition so that reasonable detail can be provided with the status reports. However, the status report to the petitioner will not indicate—

- An ongoing OI or OIG investigation, unless approved by the Director, OI or OIG (1)
- The referral of the matter to DOJ (2)
- Enforcement action under consideration (3)

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Updates to Management and the Public (D)

On a monthly basis, the Agency 2.206 Petition Coordinator will contact all petition managers reminding them to prepare a status report regarding 2.206 petitions in their offices. The petition managers should email the status report for each open petition, with the exception of sensitive information as described below, to Petition. The Agency 2.206 Petition Coordinator combines all the status reports, including staff performance metrics for petitions processed under 10 CFR 2.206 for the current year, in a monthly report to the EDO from the Associate Director, Project Licensing and Technical Analysis, and provides a copy of the report to the Document Control Desk (PUBLIC) and the Web operator for placement on the NRC Home Page. (1)

If the status of the petition includes sensitive information that may need to be protected from disclosure, the petition manager will so indicate in the email and in the status report itself. Sensitive information includes safeguards or facility security information, proprietary or confidential commercial information, information relating to an ongoing investigation of wrongdoing or enforcement actions under development, or information about referral of matters to the DOJ, and should be handled in accordance with MD 12.6, "NRC Sensitive Unclassified Information Security Program." The Agency 2.206 Petition Coordinator will protect this information from disclosure by placing the affected status report(s) in a separate enclosure to the status report, clearly marking the status report to the EDO, and redacting the sensitive information from the version of the report that is made public. (2)

The NRC Home Page provides the up-to-date status of pending 2.206 petitions, director's decisions issued, and other related information. The NRC external home page (*http://www.nrc.gov*) is accessible via the World Wide Web, and documents related to petitions may be found on the "Public Participation & School Programs" page under "Petitions to Modify, Suspend, or Revoke a License Under 10 CFR 2.206." Director's decisions are also published in NRC Issuances (NUREG-0750). (3)

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Part V

The Director's Decision

Content and Format (A)

The petition manager prepares the director's decision on the petition and the associated *Federal Register* notice for the office director's consideration, including coordination with the appropriate staff supporting the review. See Exhibits 6 and 7 for a sample director's decision with cover letter and the associated *Federal Register* notice, respectively. The petition manager will also prepare letters to the petitioner and the licensee that will enclose the proposed director's decision and request comments on it (see Exhibit 8). These letters will be routed with the director's decision for concurrence. (1)

The director's decision will clearly describe the issues raised by the petitioner, provide a discussion of the safety significance of the issues, and clearly explain the staff's disposition for each issue. The petition manager will bear in mind the broader audience (i.e., the public) when preparing the explanation of technical issues. Refer to the NRC Plain Language Action Plan, available on the internal web page, for further guidance. In addition, the petition manager will ensure that any documents referenced in the decision are available to the public. If a partial director's decision was issued previously, the final director's decision will refer to, but does not have to repeat the content of, the partial director's decision. After management's review, the petition manager incorporates any proposed revisions in the decision. (2)

If appropriate, the decision and the transmittal letter for the director's decision or partial director's decision should acknowledge that the petitioner identified valid issues and should specify the corrective actions that have been or will be taken to address these issues, notwithstanding that some or all of the petitioner's specific requests for action have not been granted. (3)

Content and Format (A) (continued)

If the Office of Investigations (OI) has completed an investigation before either granting or denying the petition and the wrongdoing matter has been referred to the Department of Justice (DOJ), the petition manager will contact OI and the Office of Enforcement (OE) to coordinate NRC's actions. For petitions assigned to the Office of Nuclear Regulation (NRR), the petition manager also will contact the NRR Senior Enforcement Coordinator. The staff may need to withhold action on the petition in keeping with the Memorandum of Understanding with DOJ. (4)

If the results of a wrongdoing investigation by OI in relation to the petition are available, the staff will consider these results in completing the action on the petition. OI must concur in the accuracy and characterization of the OI findings and conclusions that are used in the decision. (5)

The petition manager will obtain OE's review of the director's decision for potential enforcement implications. For petitions assigned to NRR, the petition manager also will provide a copy of the director's decision to the NRR Senior Enforcement Coordinator. (6)

Final Versus Partial Director's Decisions (B)

The staff will consider preparing a partial director's decision when some of the issues associated with the 2.206 petition are resolved in advance of other issues and if significant schedule delays are anticipated before resolution of the entire petition. (1)

The format and content of a partial director's decision is the same as that of a final director's decision and an accompanying *Federal Register* notice would still be prepared (see Exhibit 7). However, the partial director's decision should clearly indicate those portions of the petition that remain open, explain the reasons for the delay to the extent practical, and provide the staff's schedule for the final director's decision. If all of the issues in the petition can be resolved together, then the final director's decision will address all of the issues. (2)

Granting the Petition (C)

Once the staff has determined that the petition will be granted, in whole or in part, the petition manager will prepare a "Director's Decision Under 10 CFR 2.206" for the office director's signature. The decision will explain the bases upon which the petition has been granted and identify the actions that NRC staff has taken or will take to grant all or that portion of the petition. The decision also should describe any

Granting the Petition (C) (continued)

actions the licensee took voluntarily that address aspects of the petition. The Commission may grant a request for enforcement-related action, in whole or in part, and also may take other action to satisfy the concerns raised by the petition. A petition is characterized as being granted in part when the NRC grants only some of the actions requested and/or takes actions other than those requested to address the underlying problem. If the petition is granted in full, the director's decision will explain the bases for granting the petition and state that the Commission's action resulting from the director's decision is outlined in the Commission's order or other appropriate communication. If the petition is granted in part, the director's decision will clearly indicate the portions of the petition that are being denied and the staff's bases for the denial.

Denying the Petition (D)

Once the staff has determined that the petition will be denied, the petition manager will prepare a "Director's Decision Under 10 CFR 2.206" for the office director's signature. The decision will explain the bases for the denial and discuss all matters raised by the petitioner in support of the request.

Issuing the Proposed Director's Decision for Comment (E)

After the assigned office director has concurred in the proposed director's decision, the petition manager will issue the letters to the petitioner and the licensee enclosing the proposed director's decision and requesting comments on it. The letters, with the enclosure, will be made available to the public through ADAMS. (1)

The intent of this step is to give the petitioner and licensee an opportunity to identify errors in the decision. The letters will request a response within a set period of time, nominally two weeks. The amount of time allowed for the response may be adjusted depending on circumstances. For example, for very complex technical issues it may be appropriate to allow more time for the petitioner and licensee to develop their comments. The letters should be transmitted to the recipients electronically or by fax, if possible. (2)

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Comment Disposition (F)

The petition manager will evaluate any comments received on the proposed decision, obtaining the assistance of the technical staff, as appropriate. Although the staff requested comments from only the petitioner and the licensee, comments from other sources (e.g., other members of the public) may be received. These additional comments must be addressed in the same manner as the comments from the petitioner and licensee. A copy of the comments received and the associated staff responses will be included in the final director's decision. An attachment to the decision will generally be used for this purpose. (1)

If no comments are received on the proposed decision, the petition manager will include in the final decision a reference to the letters that requested comments and a statement that no comments were received. (2)

If the comments from the petitioner include new information, the petition review board will be reconvened to determine whether to treat the new information as part of the current petition or as a new petition. (3)

Issuing the Director's Decision (G)

A decision under 10 CFR 2.206 consists of a letter to the petitioner, the director's decision, and the *Federal Register* notice. The petition manager will obtain a director's decision number (i.e., DD-YY-XX) from the Office of the Secretary (SECY). A director's decision number is assigned to each director's decision in numerical sequence. This number is included on the letter to the petitioner, the director's decision, and the *Federal Register* notice. Note that the director's decision itself is not published in the *Federal Register*; only the notice of its availability, containing a summary of the substance of the decision, is published (see Exhibits 6 and 7). (1)

The petition manager will prepare a letter to transmit the director's decision to the petitioner and also prepare the associated *Federal Register* notice. If the staff's response to the petition involves issuing an order, the petition manager will prepare a letter to transmit the order to the licensee. The petition manager also will include a copy of the order in the letter to the petitioner. When the director's decision has been signed, the petition manager will promptly send a copy of the decision, electronically or by fax if possible, to the petitioner. Copies of the

Issuing the Director's Decision (G) (continued)

director's decision and *Federal Register* notice that are sent to the licensee and individuals on the service list(s) are dispatched simultaneously with the petitioner's copy. Before dispatching the director's decision (or partial decision), the petition manager will inform the petitioner of the imminent issuance of the decision and the substance of the decision. (2)

The assigned office director will sign the cover letter, the director's decision, and the *Federal Register* notice. After the notice is signed, the staff forwards it to the Rules and Directives Branch, Office of Administration (ADM/DAS/RDB), for transmittal to the Office of the *Federal Register* for publication. The staff shall NOT include a copy of the director's decision in the package that is sent to RDB. RDB only forwards the *Federal Register* notice to be published. (3)

Administrative Issues (H)

The administrative staff of the assigned office will review the 10 CFR 2.206 package before it is dispatched and determine appropriate distribution. The administrative staff also will immediately (same day) hand-carry the listed material to the following offices (in the case of the petitioner, promptly dispatch the copies.)—(1)

- Rulemakings and Adjudications staff, SECY (a)
  - Five copies of the director's decision (i)
  - Two courtesy copies of the entire decision package including the distribution and service lists (ii)
  - Two copies of the incoming petition and any supplement(s) (iii)
- Petitioner (b)
  - Signed original letter (i)
  - Signed director's decision (ii)
  - A copy of the *Federal Register* notice (iii)
- Chief, Rules and Directives Branch (c)
  - Original signed *Federal Register* notice only (do not include the director's decision) (i)

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Administrative Issues (H) (continued)

- Five paper copies of the notice (ii)

The staff must fulfill these requirements promptly because the Commission has 25 calendar days from the date of the decision to determine whether or not the director's decision should be reviewed. (2)

Although 2.206 actions are controlled as green tickets, the staff should use the following guidelines when distributing copies internally and externally—(3)

- When action on a 2.206 petition is completed, the petition manager will ensure that all publicly releasable documentation is placed in the Public Document Room and the agency document control system. (a)
- The assigned office will determine the appropriate individuals and offices to include on the distribution list. (b)

The administrative staff of the assigned office will complete the following actions within 2 working days of issuance of the director's decision: (4)

- Provide one paper copy of the director's decision to the special counsel in the Office of the General Counsel assigned to 2.206 matters. (a)
- Email the final version of the director's decision to the NRC Issuances (NRCI) Project Officer, Publishing Services Branch (PSB), Office of the Chief Information Officer (OCIO). If other information (opinions, partial information (such as errata), or footnotes) is included in the email, clearly identify the director's decision number at the beginning of each file to avoid administrative delays and improve the technical production schedule for proofreading, editing, and composing the documents. In addition, send two paper copies of the signed director's decision to the NRCI Project Officer. (b)
- Email a signed, dated, and numbered copy of the director's decision to NRCWEB for posting on the NRC Home Page. (c)

Administrative Issues (H) (continued)

The petition manager will prepare headnotes, which are a summary of the petition, consisting of no more than a few paragraphs describing what the petition requested and how the director's decision resolved or closed out the petition. The petition manager will email the headnotes to the NRCI Project Officer, PSB, OCIO, for monthly publication in the NRC Issuances, NUREG-0750. The headnotes should reach PSB before the 5th day of the month following the issuance of the director's decision. (5)

Finally, the petition manager will remove the petitioner's name from distribution and/or the service list(s) 90 days after issuance of the director's decision. (6)

Commission Actions (I)

SECY will inform the Commission of the availability of the director's decision. The Commission, at its discretion, may determine to review the director's decision within 25 days of the date of the decision and may direct the staff to take some other action than that in the director's decision. If the Commission does not act on the director's decision within 25 days (unless the Commission extends the review time), the director's decision becomes the final agency action and SECY sends a letter to the petitioner informing the petitioner that the Commission has taken no further action on the petition.

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Exhibit 1

Simplified 2.206 Process Flow Chart

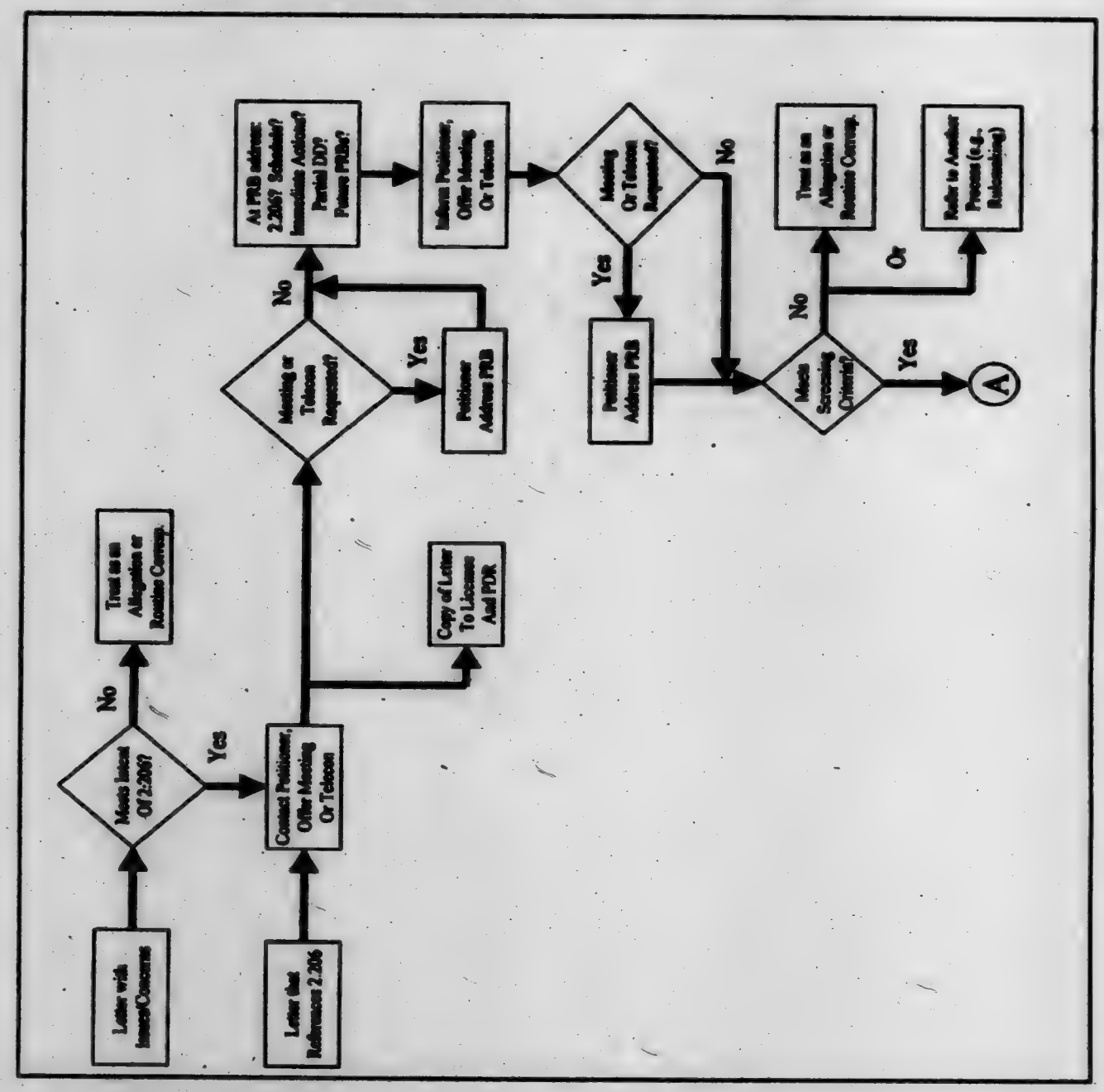

Exhibit 1

Simplified 2.206 Process Flow Chart (continued)

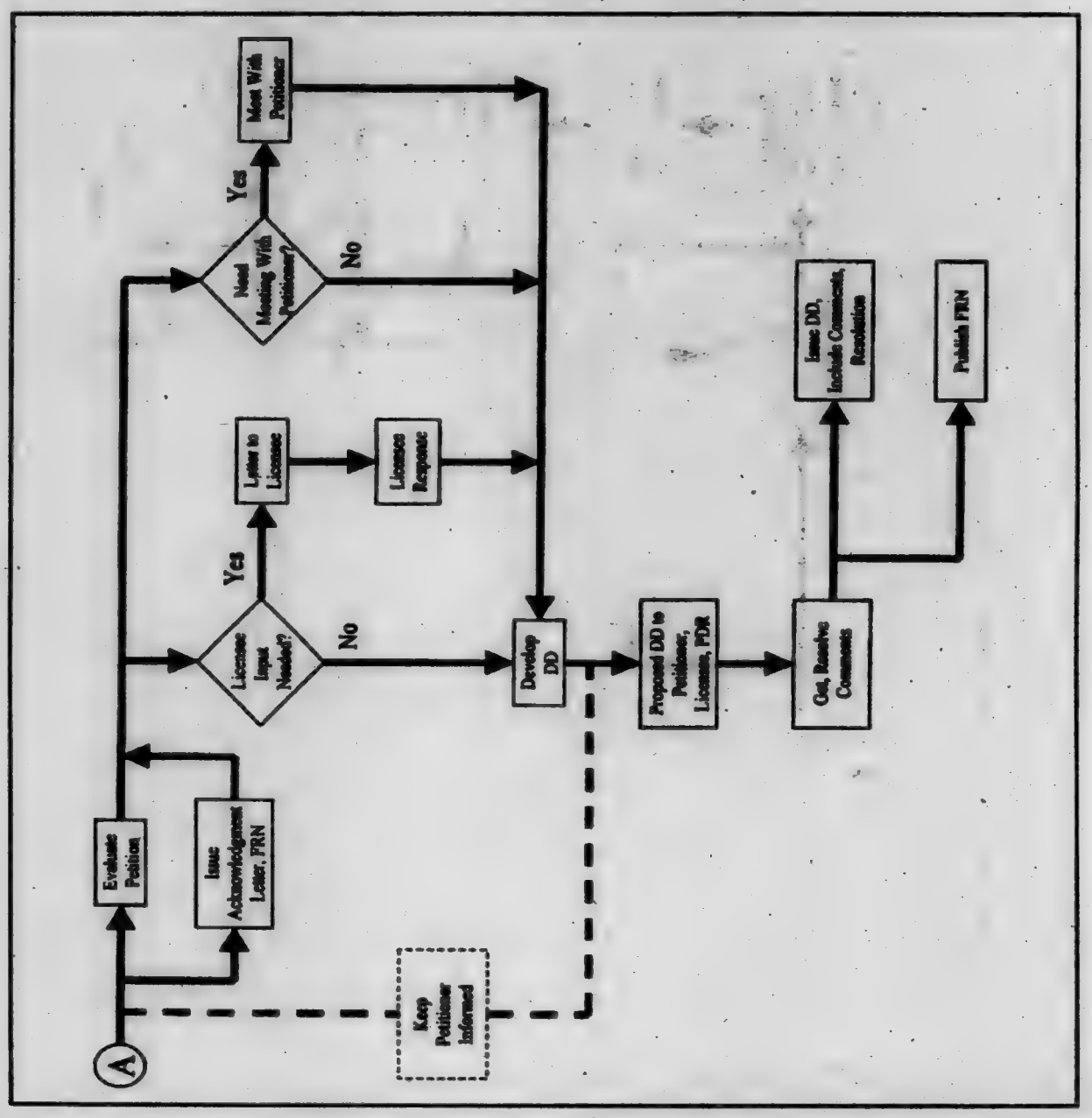

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Exhibit 2

Petition Manager Checklist

- ☐ Review the petition for allegations and sensitive material. Also determine whether or not any immediate actions requested require expedited staff response.
- ☐ Contact the petitioner and discuss the public nature of the process. Offer a pre-PRB meeting or telecon to the petitioner.
- ☐ Send a copy of the incoming petition to the licensee and Document Control Desk (Public), with redactions as appropriate.
- ☐ If a pre-PRB meeting or telecon is held, notice it (meeting only) and arrange for it to be recorded and transcribed.
- ☐ Prepare a PRB presentation. Include the following information:
  - Does the request meet the criteria for review under 2.206?
  - What are the issues and their significance?
  - Is there a need for immediate action (whether requested or not)?
  - Is there a need for OE, OI, OIG, or OGC involvement?
  - What is your recommended approach to the response?
  - What schedule is proposed?
- ☐ Prepare a PRB presentation. Include the following information:
- ☐ Arrange for the PRB meeting. Address the PRB.
- ☐ Ensure assigned office management agrees with the PRB recommendations.
- ☐ Inform the petitioner of the PRB recommendations. Offer a post-PRB meeting.
- ☐ If a post-PRB meeting or telecon is held, notice it (meeting only) and arrange for it to be recorded and transcribed.
- ☐ Arrange a follow-up PRB meeting to resolve petitioner comments
- ☐ Ensure assigned office management agrees with the PRB final recommendations.
- ☐ If the assigned office's management agrees with the PRB that the request is not a 2.206 petition, send a letter to the petitioner, treat any open issues under the appropriate process (e.g., rulemaking). Stop here.
- ☐ If the assigned office's management agrees with the PRB that the request is a 2.206 petition, continue with this checklist.

Exhibit 2 (continued)

- ☐ Add petitioner to appropriate service list(s).
- ☐ Issue acknowledgment letter and associated *Federal Register* notice.
- ☐ If licensee input is needed, send a written request.
- ☐ If further petitioner input is needed, arrange for a technical review meeting.
- ☐ Make periodic status updates to the petitioner.
- ☐ Prepare the director's decision, addressing:
  - Each of the petitioners' issues
  - The safety significance of each issue
  - The staff's evaluation of each issue and actions taken
- ☐ Ensure all referenced documents are available to the public
- ☐ Send the proposed director's decision to the petitioner and licensee for comment, with a copy to the PDR.
- ☐ Include comments received and their resolution in the final director's decision.
- ☐ Prepare the *Federal Register* notice for the director's decision.
- ☐ As soon as the director's decision is signed:
  - Inform the petitioner of the substance of the decision and that issuance is imminent.
  - Hand-carry two full copies of the package (including the incoming(s) and distribution and service lists) and five additional copies to the Rulemakings and Adjudication Staff in SECY
  - Hand-carry the original signed *Federal Register* notice (ONLY) and five copies to the Rules and Directives branch. Do NOT include the director's decision in this package.
  - Immediately dispatch the signed original letter and decision and a copy of the *Federal Register* notice to the petitioner.
- ☐ Within 2 working days of issuing the Director's decision:
  - Provide a copy of the director's decision to the OGC special counsel assigned to 2.206 matters.
  - Email and send two paper copies of the director's decision to the NRC Issuances Project Officer in OCIO.
  - Email a signed, dated, and numbered copy of the director's decision to NRCWEB.
  - Email headnotes on the petition to the NRC Issuances Project Officer in OCIO.

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Exhibit 3

Sample Closure Letter for Requests That are not 2.206 Petitions

[Petitioner's Name]
[Petitioner's Address]

Dear Mr. :

Your petition dated [insert date] and addressed to the [insert addressee] has been referred to the Office of [insert] pursuant to 10 CFR 2.206 of the Commission's regulations. You request [state petitioner's requests]. As the basis for your request, you state that [insert basis for request].

You met with our petition review board (PRB) on [insert date] to discuss your petition. The results of that discussion have been considered in the PRB's determination regarding your request for immediate action and whether or not the petition meets the criteria for consideration under 10 CFR 2.206. OR Our petition review board has reviewed your submittal. The staff has concluded that your submittal does not meet the criteria for consideration under 10 CFR 2.206 because [explain our basis, addressing all aspects of the submittal and making reference to the appropriate criteria in this MD].

[Provide the staff's response, if available, to the issues raised.] AND/OR [Explain what further actions, if any, the staff intends to take in response to the request (e.g., treat it as an allegation or routine correspondence).]

Thank you for bringing these issues to the attention of the NRC.

Sincerely,

[Insert Division Director's Name]
[Office of [insert Office Name]

Docket Nos. [ ]

cc: [Licensee (w/copy of incoming 2.206 request) & Service List]

Exhibit 4

Sample Acknowledgment Letter

[Petitioner's Name]
[Petitioner's Address]

Dear Mr. :

Your petition dated [insert date] and addressed to the [insert addressee] has been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. You request [state petitioner's requests]. As the basis for your request, you state that [insert basis for request]. I would like to express my sincere appreciation for your effort in bringing these matters to the attention of the NRC.

You met with our Petition Review Board (PRB) on [insert date] to discuss your petition. The results of that discussion have been considered in the PRB's determination regarding [your request for immediate action and in establishing] the schedule for the review of your petition. Your request to [insert request for immediate action] at [insert facility name] is [granted or denied] because [staff to provide explanation].

As provided by Section 2.206, we will take action on your request within a reasonable time. I have assigned [first and last name of petition manager] to be the petition manager for your petition. Mr. [last name of petition manager] can be reached at [301-415-extension of petition manager] Your petition is being reviewed by [organizational units] within the Office of [name of appropriate Office]. If necessary, add: I have referred to the NRC Office of the Inspector General (OIG) those allegations of NRC wrongdoing contained in your petition. I have enclosed for your information a copy of the notice that is being filed with the Office of the *Federal Register* for publication. I have also enclosed for your information a copy of Management Directive 8.11 "Review Process for 10 CFR 2.206 Petitions," and the associated brochure NUREG/BR-0200, "Public Petition Process," prepared by the NRC Office of Public Affairs.

Sincerely,

[Office Director]

Enclosures: *Federal Register* Notice
Management Directive 8.11
NUREG/BR-0200

cc: [Licensee (w/copy of incoming 2.206 request) & Service List]

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Exhibit 5

[7590–01–P]

Sample *Federal Register* Notice

U.S. NUCLEAR REGULATORY COMMISSION

Docket No(s).

License No(s).

[Name of Licensee]

RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated [insert date], [insert petitioner's name] (petitioner) has requested that the NRC take action with regard to [insert facility or licensee name]. The petitioner requests [state petitioner's requests].

As the basis for this request, the petitioner states that [state petitioner's basis for request].

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of [insert action office]. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with the [insert action office] petition review board on [insert date] to discuss the petition. The results of that discussion were considered in the board's determination regarding [the petitioner's request for immediate action and in establishing] the schedule for the review of the petition. [If necessary, add] By letter dated _____, the Director (granted or denied) petitioner's request for [insert request for immediate action] at [insert facility/licensee name]. A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

FOR THE NUCLEAR REGULATORY COMMISSION

[Office Director]

Dated at Rockville, Maryland

This _____ day of _____, 200X.

Exhibit 6

Sample Director's Decision and Cover Letter

[Insert petitioner's name & address]

Dear **[insert petitioner's name]**:

This letter responds to the petition you filed with **[EDO or other addressee of petition]** pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) on **[date of petition]** as supplemented on **[dates of any supplements]**. In your petition you requested that the NRC **[list requested actions]**.

On **[date of acknowledgment letter]** the NRC staff acknowledged receiving your petition and stated pursuant to 10 CFR 2.206 that your petition was being referred to me for action and that it would be acted upon within a reasonable time. You were also told that **[staff response to any request for immediate action]**.

You met with the petition review board on **[date(s) of the pre- and/or post-PRB meeting(s)]** to clarify the bases for your petition. The transcript(s) of this/these meeting(s) was/were treated as (a) supplement(s) to the petition and are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

By letter dated **[insert date]**, the NRC staff requested **[name of licensee]** to provide information related to the petition. **[Name of licensee]** responded on **[insert date]** and the information provided was considered by the staff in its evaluation of the petition..

In your petition you stated that **[summarize the issues raised]**. **[Briefly summarize the safety significance of the issues and the staff's response.]**

The NRC issued a Partial Director's Decision (DD-YY-XX) dated **[insert]** which **[explain what aspects of the petition were addressed]**. **[Explain which issues remained to be addressed in this director's decision and briefly explain the reason for the delay on these issues.]**

The staff sent a copy of the proposed director's decision to you and to **[licensee(s)]** for comment on **[date]**. You responded with comments on **[date]** and the licensee responded on **[date]**. The comments and the staff's response to them are included in the director's decision. OR The staff did not receive any comments on the proposed director's decision.

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Exhibit 6 (continued)

[Summarize the issues addressed in this director's decision and the staff's response.]

A copy of the Director's Decision (DD-YY-XX) will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time. **[The documents cited in the enclosed decision are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room) (cite any exceptions involving proprietary or other protected information)].**

I have also enclosed a copy of the notice of "Issuance of Final Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the *Federal Register* for publication.

[If appropriate, acknowledge the efforts of the petitioner in bringing the issues to the attention of the NRC.] Please feel free to contact **[petition manager name and number]** to discuss any questions related to this petition.

Sincerely,

[Insert Office Director's Name]

Docket Nos. [ ]

Enclosures: Director's Decision YY-XX
Federal Register Notice

Volume 8, Licensee Oversight Programs
Review Process for 10 CFR 2.206 Petitions
Handbook 8.11 Exhibits

DD-YY-XX

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF [INSERT]
[Office Director Name], Director

In the Matter of	)	Docket No(s).
[LICENSEE NAME]	)	License No(s).
([Plant or facility name(s)])	)	(10 CFR 2.206)

I. Introduction

By letter dated [insert date], as supplemented on [dates of supplements], [petitioner names and, if applicable, represented organizations] filed a Petition pursuant to Title 10 of the *Code of Federal Regulations*, Section 2.206. The petitioner(s) requested that the U.S. Nuclear Regulatory Commission (NRC) take the following actions: [list requests]. The bases for the requests were [describe].

In a letter dated [insert], the NRC informed the Petitioners that their request for [list immediate actions requested] was approved/denied and that the issues in the Petition were being referred to the Office of [insert] for appropriate action.

The Petitioner(s) met with the (assigned office abbreviation) petition review board on [date(s) of the pre- and/or post-PRB meeting(s)] to clarify the bases for the Petition. The transcript(s) of this/these meeting(s) was/were treated as (a) supplement(s) to the petition and are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

By letter dated [insert date], the NRC staff requested [name of licensee] to provide information related to the petition. [Name of licensee] responded on [insert date] and the information provided was considered by the staff in its evaluation of the petition.

The NRC issued a Partial Director's Decision (DD-YY-XX) dated [insert] which [explain what aspects of the petition were addressed]. [Explain which issues remained to be

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addressed in this director's decision and briefly explain the reason for the delay on these issues.]

The NRC sent a copy of the proposed director's decision to the Petitioner and to **[licensee(s)]** for comment on **[date]**. The Petitioner responded with comments on **[date]** and the licensee(s) responded on **[date]**. The comments and the NRC staff's response to them are included in the director's decision. OR The staff did not receive any comments on the proposed director's decision.

II. Discussion

[Discuss the issues raised, the significance of the issues (or lack thereof), and the staff's response with supporting bases. Acknowledge any validated issues, even if the staff or the licensee decided to take corrective actions other than those requested by the petitioner. Clearly explain all actions taken by the staff or the licensee to address the issues, even if these actions were under way or completed before the petition was received. This discussion must clearly present the staff response to all of the valid issues so that it is clear that they have been addressed.]

III. Conclusion

[Summarize the staff's conclusions with respect to the issues raised and how they have been, or will be, addressed.]

As provided in 10 CFR 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this **[insert date]** day of **[insert month, year]**.

[Office director's name], Director
Office of **[insert]**

Exhibit 7

[7590–01–P]

Sample *Federal Register* Notice for Director's Decision

U.S. NUCLEAR REGULATORY COMMISSION

Docket No(s).

License No(s).

[Name of Licensee]

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, **[name of office]**, has issued a director's decision with regard to a petition dated **[insert date]**, filed by **[insert petitioner's name]**, hereinafter referred to as the "petitioner." **[The petition was supplemented on [insert date, include transcripts from meeting(s) with the PRB]**. The petition concerns the operation of the **[insert facility or licensee name]**.

The petition requested that **[insert facility or licensee name]** should be **[insert request for enforcement-related action]**. **[If necessary, add]** The petitioner also requested that a public meeting be held to discuss this matter in the Washington, DC, area.

As the basis for the **[insert date]** request, the petitioner raised concerns stemming from **[insert petitioner's supporting basis for the request]**. The **[insert petitioner's name]** considers such operation to be potentially unsafe and to be in violation of Federal regulations. In the petition, a number of references to **[insert references]** were cited that the petitioner believes prohibit operation of the facility with **[insert the cause for the requested enforcement-related action]**.

The petition of **[insert date]** raises concerns originating from **[insert summary information on more bases/rationale/discussion and supporting facts used in the disposition of the petition and the development of the director's decision]**.

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Exhibit 7 (continued)

On [insert date], the petitioner [and the licensee] met with the staff's petition review board. On [insert date of public meeting], the NRC conducted a meeting regarding [insert facility or licensee name]. The(se) meeting(s) gave the petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to [licensee(s)] for comment on [date]. The Petitioner responded with comments on [date] and the licensee(s) responded on [date]. The comments and the NRC staff's response to them are included in the Director's Decision. OR The staff did not receive any comments on the proposed Director's Decision.

The Director of the Office of [name of office] has determined that the request(s), to require [insert facility or licensee name] to be [insert request for enforcement-related action], be [granted/denied]. The reasons for this decision are explained in the director's decision pursuant to 10 CFR 2.206 [Insert DD No.], the complete text of which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001, and via the NRC Home Page (*http://www.nrc.gov*) on the World Wide Web, under the "Public Participation & School Programs" icon.

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this [insert date] day of [insert month, year].

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By

[Insert Office Director's Name]
Office of [insert Office Name]

Exhibit 8

Sample Letters Requesting Comments on the Proposed Director's Decision

(Note: For clarity, separate letters will need to be sent to the petitioner and the licensee. This sample provides guidance for both letters.)

[Insert petitioner's address]

Dear [Insert petitioner's name]

Your petition dated [insert date] and addressed to the [insert addressee] has been reviewed by the NRC staff pursuant to 10 CFR 2.206 of the Commission's regulations. The staff's proposed director's decision on the petition is enclosed. I request that you provide comments to me on any portions of the decision that you believe involve errors. The staff is making a similar request of the licensee. The staff will then review any comments provided by you and the licensee and consider them before finalizing the director's decision.

Please provide your comments by [insert date, nominally 2 weeks from the date of this letter].

Sincerely,

[Signed by Division Director]

Docket Nos. []

cc w/o encl: [Service List]

[Insert licensee's address]

Dear [Insert licensee's name]

By letter dated [insert date], [insert name of petitioner] submitted a petition pursuant to 10 CFR 2.206 of the Commission's regulations with respect to [insert name(s) of affected facilities]. The petition has been reviewed by the NRC staff and the staff's proposed director's decision on the petition is enclosed. I request that you provide comments to me on any portions of the decision that you believe involve errors. The staff is making a similar request of the petitioner. The staff will then review any comments provided by you and the petitioner and consider them before finalizing the director's decision.

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Exhibit 8 (continued)

Please provide your comments by [insert date, nominally 2 weeks from the date of this letter].

Sincerely,

[Signed by Division Director]

Docket Nos. [ ]

cc w/encl: [Service List]

[FR Doc. 00–18921 Filed 7–26–00; 8:45 am]
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Federal Register

Thursday,
July 27, 2000

Part V

Department of Education

34 CFR Parts 682 and 685
Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1845–AA16

Federal Family Education Loan (FFEL) Program and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these regulations to reduce administrative burden for program participants, provide benefits to borrowers, and protect the taxpayers' interests.

DATES: We must receive your comments on or before September 11, 2000.

ADDRESSES: Address all comments about these proposed regulations to Ms. Pamela A. Moran, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: ffelnprm@ed.gov.

You must include the term "Team 1 FFEL" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Mr. George Harris, or for the Direct Loan Program, Mr. Jon Utz; U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3045, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA) requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee I (committee), which was made up of the following members:

- American Association of Collegiate Registrars and Admissions Officers
- American Association of Cosmetology Schools
- American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
- American Council on Education
- Career College Association
- Coalition of Higher Education Assistance Organizations
- Consumer Bankers Association
- Education Finance Council
- Education Loan Management Resources
- Legal Services
- National Association of College and University Business Officers
- National Association of Independent Colleges and Universities
- National Association of State Universities and Land-Grant Colleges
- National Association of Student Financial Aid Administrators
- National Association of Student Loan Administrators
- National Council of Higher Education Loan Programs
- National Direct Student Loan Coalition

- Sallie Mae, Inc.
- Student Loan Servicing Alliance
- The College Fund/United Negro College Fund
- United States Department of Education
- United States Student Association
- US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect. The proposed regulations address changes that are specific to the FFEL Program and changes that are common to both the FFEL and Direct Loan programs.

FFEL and Direct Loan Program Changes

Sections 682.210 and 685.204—Deferment

Current Regulations: In the FFEL and Direct Loan programs, the current regulations and policy provide that, except in the case of an in-school deferment, a deferment may not be granted for a period beginning more than 6 months before the date the lender (or the Department on a Direct Loan) receives the request and the documentation required for the deferment.

For a borrower who requests an unemployment deferment on the basis of providing documentation of employer contacts, current regulations require the name of the employer contacted, the employer's address and telephone number, and the name or title of the person contacted.

Proposed Regulations: Proposed § 682.210(a)(5) would remove the 6-month limitation from all deferment categories except for the unemployment deferment. No change to the Direct Loan regulations is needed because the explicit 6-month limitation is not included in the Direct Loan regulations and only applies to Direct Loans through a cross-reference to the FFEL deferment regulations.

The proposed regulations would also modify the requirement that loan holders obtain specific documentation of employment contact from borrowers who request an unemployment deferment. These requirements only apply to borrowers who request continuations of their deferments based on their attempts to get employment, and not to borrowers who apply for an initial period of unemployment deferment or to those borrowers who qualify based on their eligibility for unemployment benefits. These changes will allow loan holders to accept alternative documentation that provides sufficient information to support a borrower's claim that he or she is seeking employment as required. No change to the Direct Loan regulations is needed because the explicit unemployment deferment rules are not included in the Direct Loan regulations. Instead, unemployment deferments in the Direct Loan Program are granted using the same provisions that exist in the FFEL unemployment deferment regulations.

Reasons: On October 29, 1999 (64 FR 58622), the Department eliminated the 6-month limitation for retroactive application of a deferment for the in-school deferment only. During this year's negotiated rulemaking, the committee agreed to make the deferment rules more consistent for borrowers and for the parties that administer the FFEL Program by removing the 6-month limitation from all other deferment categories except the unemployment deferment.

The 6-month limitation on retroactively granting deferments was intended, in part, to motivate borrowers to make timely deferment requests and provide the necessary deferment documentation. However, the committee concluded that the limitation does not serve that purpose. Instead, the limitation causes confusion and complexity for borrowers. Moreover, the limitation reduces the usefulness of deferments for borrowers who are delinquent on payments and are trying to avoid default. The 6-month limitation means that the application of a deferment to which the borrower is entitled might still leave the borrower significantly delinquent. We hope the elimination of this limitation will allow loan holders to better assist borrowers to avoid default.

The committee considered removing the 6-month limitation on retroactive application of the unemployment deferment but decided not to do so. Under the current regulations, (including the rule that the deferment may not begin earlier than 6 months before the date the lender receives the borrower's deferment request) a borrower can be granted an initial period of unemployment deferment without documenting a search for full-time employment. This provision, unique to the unemployment deferment for borrowers who do not qualify based on their eligibility for unemployment benefits, is based on the understanding that borrowers may not immediately begin a job search on the date they become unemployed. However, it means that, unlike in other cases, the borrower is able to get a deferment without proving that he or she meets all the conditions for the deferment.

In light of this situation, the committee decided to retain the 6-month retroactive limit for an unemployment deferment that was granted based on an ongoing search for employment. The Secretary believes the integrity of the FFEL and Direct Loan programs would be jeopardized if there was no retroactive limit for granting this kind of unemployment deferment.

Several of the non-federal negotiators also proposed to modify the types of documentation required from a borrower to show that he or she had conducted a diligent search for employment. The committee discussed situations in which job announcements do not specify some or most of the information required under current regulations, such as the name of the employer, or the name and title of the person to be contacted. In response to these concerns, the committee agreed to propose regulations that include less prescriptive language so that borrowers could provide various forms of employment contact documentation acceptable to the loan holder.

Sections 682.210(s)(6) and 685.204(b)(3)—Economic Hardship Deferment

Statute: Section 435(o)(1) of the HEA uses the borrower's "adjusted gross income" as the income measurement to determine if a borrower would have an economic hardship in repaying a loan, but also authorizes the Department to establish additional criteria.

Current Regulations: Current regulations only refer to the borrower's total monthly gross income in identifying the income that is used when determining a borrower's eligibility for an economic hardship deferment.

Proposed Regulations: The committee agreed that the regulations should be modified to incorporate the adjusted gross income standard included in the HEA. Accordingly, in these proposed regulations, § 682.210(s)(6) would be revised so that a borrower could qualify for an economic hardship deferment based on either his or her monthly gross income from all sources, or a monthly amount calculated as one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most

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recently filed Federal income tax return. No change to the Direct Loan regulations is needed because the Direct Loan regulations implement the statutory requirements through a cross-reference to the FFEL economic hardship deferment regulations.

Reasons: The committee noted that section 435(o)(1)(B) of the HEA used "adjusted gross income" when referring to a borrower's income. It was agreed that the regulations should add the statutory standard to the regulations while retaining the existing regulatory standard to provide greater flexibility for any borrower to document his or her income. The committee believed that some borrowers found it difficult to document their total monthly income from all sources, as is required under current § 682.210(s)(6)(x). The committee believed that a borrower should be given the option of using the adjusted gross income amount from the borrower's most recent Federal income tax return as a simplified way to demonstrate that he or she qualifies for an economic hardship deferment.

Sections 682.402 and 685.214—False Certification Discharge

Current Regulations: The FFEL and Direct Loan regulations on false certification discharges have the same rules with respect to a discharge based on an improper determination of the student's ability-to-benefit (ATB). Under those rules, if a valid ATB determination was not made, the borrower can qualify for a false certification loan discharge if the student is unable to obtain employment in the occupation for which the training was intended, or if the student finds a job only after receiving training that was not provided by the school that certified the borrower's loan application. Current regulations in both programs require borrowers who want a false certification discharge to file an application for the discharge.

Proposed Regulations: With regard to a false certification discharge based upon an ATB issue, all requirements related to a student's employment after leaving school are being removed from the FFEL and Direct Loan regulations. In addition, for both programs, the proposed rules would permit an ATB false certification discharge to be granted without an application if it is determined that the borrower qualifies based on information in the possession of the Secretary or guaranty agency.

Reasons: On November 16, 1999, the U.S. Court of Appeals for the District of Columbia, in *Jordan* v. *Riley* (99–5024), ruled invalid the employment attempt provisions in the false certification discharge regulations. The Court of Appeals found that section 437(c) of the HEA does not authorize us to include criteria in the regulations that attempt to measure whether, despite any deficient ATB certification, the student nevertheless had the ability to benefit from the training offered by the school. The Court concluded that a student's post-training employment experience is irrelevant to the truth or falsity of the certification. Rather, the Court ruled that the HEA only authorizes us to determine whether the school properly tested the student and the student passed the test. We have decided to extend the Court's ruling to all borrowers, not just those covered by the Court's ruling. Thus, we will no longer consider the student's employment or employment attempts in resolving false certification discharge claims.

We (or a guaranty agency) occasionally learn of information that strongly suggests that all borrowers in a certain category would likely qualify for a false certification discharge. For example, we might determine that all students at a specific school during a certain time period had incorrect ATB determinations. In the interest of assisting those borrowers, (many of whom may be unaware of the possibility of receiving a loan discharge), the committee decided that it would be appropriate to discharge those loans without an individual discharge request from each borrower. On October 29, 1999 (64 FR 58622), we issued regulations that authorized the granting of closed school loan discharges in certain cases without individual requests from each borrower. These proposed regulations would extend that approach to false certification discharges.

During the negotiations, the committee agreed that a borrower should be able to receive a false certification discharge based on an invalid ATB determination, even if the school was not directly involved in the invalid testing or other determination of the student's ATB because the invalid testing was done by an independent test administrator. Although we believed that this was consistent with the current regulations, to avoid potential confusion, we agreed to remove the words "the school's" in the reference to invalid testing of a student's ATB in § 682.402(e)(3)(ii) and § 685.214(c)(1). The committee agreed that the regulatory language that would remain after that deletion was sufficient to apply to all invalid ATB determinations made, regardless of who made them.

FFEL Changes

Section 682.410—Fiscal, Administrative, and Enforcement Requirements

Current Regulations: In collecting on defaulted loans, a guaranty agency currently must follow the regulatory requirements contained in § 682.410(b). Those regulations state, with a great amount of specificity, precisely when certain collection activities must occur in collecting a defaulted loan. They also restrict a guaranty agency's use of litigation in collecting defaulted loans. The collection rules in current § 682.410(b) were developed when guaranty agencies used Federal money to pay for their collection activities and were designed to require certain collection activities while ensuring the proper use of Federal funds.

Proposed Regulations: We would generally no longer require a guaranty agency to perform routine collection activities (collection letters and telephone calls) within the specific time periods, prescribed in the current regulations. The guaranty agency could develop its own collection strategy, as long as, for a non-paying borrower, the guaranty agency performed at least one activity every 180 days to collect the debt, locate the borrower (if necessary), or determine if the borrower has the means to repay the debt. The proposed regulations would also eliminate the general prohibition against a guaranty agency suing borrowers who owe defaulted loans. The proposed regulations would permit a guaranty agency to file a civil suit against a borrower to compel repayment if the borrower had no garnishable wages or the guaranty agency determined that the borrower had sufficient attachable assets or non-garnishable income that could be used to repay the debt, and the use of litigation would be more effective in collection of the debt.

The proposed regulations would require a guaranty agency to undertake a small number of required activities and borrower notifications that the committee believed would protect borrowers and comply with other applicable laws. The proposed regulations would require that, within 45 days after paying a lender's default claim, the guaranty agency must send a notice advising the borrower that a default claim has been paid and that the borrower has an opportunity to enter into a repayment agreement with the guaranty agency and to request an administrative review of the status of the debt. In addition, the guaranty agency must notify the borrower that he or she may have certain legal rights in

the collection of debts, and that the borrower may wish to contact a counselor or lawyer regarding those rights. The guaranty agency must also warn the borrower that it may: (1) Report the default to credit bureaus (if it does so, the guaranty agency must notify the borrower of that action and that the borrower's credit rating may thereby have been damaged); (2) assess collection costs against the borrower; (3) administratively garnish the borrower's wages; (4) file a civil suit to compel repayment; (5) offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower; (6) assign the loan to the Secretary in accordance with § 682.409; and (7) take other lawful collection means to collect the debt, at the discretion of the guaranty agency.

Reasons: As a result of changes made to the HEA in 1998, a guaranty agency now pays for collection activities on defaulted loans with money in its "Operating Fund," which is the property of the guaranty agency. Thus, guaranty agencies now have strong financial incentives to collect defaults in a cost effective manner. A guaranty agency that is an effective collector of defaulted loans will be financially better off than one that is an ineffective collector. The committee believed that these financial incentives eliminate the need for the prescriptive collection activities found in the current regulations (other than the borrower protection provisions discussed under "proposed regulations"). The current sequence of required phone calls and letters, and the general restrictions against litigation, served a purpose when guaranty agencies funded their collection efforts with Federal Reserve Fund money. The new financing structure for guaranty agencies created by the 1998 Amendments to the HEA reduced the need for those prescriptive regulations.

Guaranty agencies have frequently expressed the view that they could do a better job in collecting defaults if they were free to develop their own collection strategies unhindered by the current default due diligence rules. The proposed regulations would give the agencies that flexibility.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs.

Current Regulations: Guaranty agencies generally are required to maintain records for 5 years after a loan has been paid in full or determined to be uncollectible.

Proposed Regulations: The length of time a guaranty agency must retain required loan records for loans paid in full by the borrower would be reduced from 5 years to 3 years from the date the loan is repaid in full by the borrower. For all other loans for which a guaranty agency receives payment in full from any other source (for example, payoff of a loan by a consolidation loan), or for those loans that are not paid in full, the 5-year retention period would continue to be in effect. In particular cases, we could require a guaranty agency to retain records beyond the 3-year or 5-year minimum periods.

Reasons: On October 29, 1999 (64 FR 58622), we issued regulations that generally reduced record retention requirements for lenders in the FFEL Program from 5 years to 3 years from the date the loan is repaid in full by the borrower. Several non-federal negotiators involved in this year's negotiated rulemaking session proposed a similar reduction in guaranty agency record retention requirements for defaulted loans paid in full by borrowers as a result of guaranty agency collection efforts. The committee generally agreed that reducing the record retention period to 3 years in these limited cases would not diminish program integrity and borrower protections, and would greatly reduce the costs of maintaining records for this portion of the guaranty agency's portfolio.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

Summary of Potential Costs and Benefits

These proposed regulations benefit borrowers and institutions by simplifying and providing additional flexibility in administering loan deferments. The proposed regulations also provide additional flexibility by permitting false certification discharges without an application for qualified borrowers on the basis of information possessed by the guaranty agency or the Secretary. Further flexibility is provided to guaranty agencies by proposed changes that simplify collection requirements by making them less prescriptive, and reduce the required retention of records from 5 years to 3 years for loans fully repaid by borrowers.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 682.210 Deferment.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect guaranty agencies and lenders that participate in the FFEL Program, as well as individual FFEL and Direct Loan borrowers. The U.S. Small Business Administration Size Standards define institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below

$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000.

The 36 guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered "small entities" for this purpose. Individual FFEL and Direct Loan borrowers also are not considered "small entities" under the Regulatory and Flexibility Act. A number of the over 4,000 lenders participating in the FFEL Program meet the definition of "small entities." The Secretary has determined that the proposed regulations will not have a significant economic impact on these lenders.

The Secretary invites comments on this determination, and welcomes proposals on any significant alternatives that would satisfy the same legal and policy objectives of these proposals while minimizing the economic impact on small entities.

Paperwork Reduction Act of 1995

Sections 682.210, 682.402, 682.414, 685.204, and 685.214 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program. Deferment documentation requirements.

These proposed regulations would affect the potential ability of borrowers to qualify for an economic hardship deferment. A borrower could qualify for an economic hardship deferment based on one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return, instead of the borrower's total monthly gross income as under current regulations. The total burden hour reduction (based on approximately 6 minutes per application) is not expected to be substantial because of the small number of borrowers who would choose this option.

Collection of Information: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program. False certification discharge of a borrower's loan obligation without an application form.

These proposed regulations would affect the potential loan discharge for borrowers if the Secretary or the guaranty agency, with the Secretary's permission, determines that a borrower qualifies for a discharge based on information in the Secretary's or guaranty agency's possession. In these cases, the borrower would not need to submit a false certification loan discharge application to receive a discharge. Included in this category would be FFEL borrowers who have received false certification discharges of their Federal Direct Loans based on the same qualifying conditions, and Direct Loan borrowers who have received the same discharges of their FFEL loans. The total burden hour reduction (based on approximately 30 minutes per application) is not expected to be substantial because of the small number of borrowers who would not be required to submit a false certification loan discharge application.

Collection of Information: Reduction in the length of time a guaranty agency must retain loan records.

These proposed regulations would affect all FFEL guaranty agencies by reducing the length of time a guaranty agency must retain required loan records for loans paid in full by the borrower from 5 years to 3 years from the date the loan is repaid in full by the borrower. For all other loans for which the guaranty agency receives payment in full from any other source (for example, payoff of a loan by a consolidation loan), or for those loans that are not paid in full, the 5-year retention period will continue to be in effect, except that in particular cases, the Secretary may require the retention of records beyond the 3-year or 5-year minimum periods. The total burden hour reduction is not expected to be substantial because most of the burden in record retention is associated with the initial assembling and transfer of records to a retention system.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The FFEL Program and the William D. Ford Federal Direct Loan Program are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities,

Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 19, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 682 and 685 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.210 is amended by:

A. Revising paragraph (a)(5).

B. Revising paragraph (h)(2)(i).

C. Removing the words "of up to one year at a time" from paragraph (s)(6) introductory text.

D. Revising paragraphs (s)(6)(iii), (iv), (v), (ix), and (x).

The revisions read as follows:

§ 682.210 Deferment.

(a) * * *

(5) An authorized deferment period begins on the date that the holder determines is the date that the condition entitling the borrower to the deferment first existed, except that an initial unemployment deferment as described in paragraph (h)(2) of this section cannot begin more than 6 months before the date the holder receives a request and documentation required for the deferment.

* * * * *

(h) * * *

(2) * * *

(i) Describing the borrower's diligent search for full-time employment during the preceding 6 months, except that a borrower requesting an initial period of unemployment deferment, which may not exceed 6 months prospectively, is not required to describe his or her search for full-time employment. To continue an unemployment deferment, the borrower's written certification must include information showing that the borrower made at least six diligent attempts to secure employment to support the period covered by the certification. This information could be the name of the employer contacted and the employer's address and telephone number, or other information acceptable to the holder showing that the borrower made six diligent attempts to obtain full-time employment;

* * * * *

(s) * * *

(6) * * *

* * * * *

(iii) Is working full-time and has a monthly income that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Services Block Grant Act.

(iv) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's monthly income, and that income, minus the borrower's Federal education debt burden, is less than 220 percent of the amount described in paragraph (s)(6)(iii) of this section.

(v) Is not working full-time and has a monthly income that—

(A) Does not exceed twice the amount described in paragraph (s)(6)(iii) of this section; and

(B) After deducting an amount equal to the borrower's Federal education debt burden, the remaining amount of the borrower's income does not exceed the amount described in paragraph (s)(6)(iii) of this section.

* * * * *

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing—

(A) The amount of the borrower's most recent monthly income or a copy of the borrower's most recently filed Federal income tax return; and

(B) For periods of deferment under paragraphs (s)(6)(iv) and (v) of this section, evidence that would enable the lender to determine the amount of the monthly payments to all other entities for Federal postsecondary education loans that would have been owed by the borrower during the deferment period.

(x) For purposes of paragraph (s)(6) of this section, a borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

* * * * *

3. Section 682.402 is amended by:

A. In paragraph (e)(3)(ii), removing the words "the school's".

B. In paragraph (e)(3)(ii)(A) adding the word "and" after the semicolon, and in paragraph (e)(3)(ii)(B), removing the word "and" after the semi-colon.

C. Removing paragraph (e)(3)(ii)(C).

D. Revising paragraph (e)(13)(ii)(A).

E. Revising paragraph (e)(13)(ii)(B) introductory text.

F. In paragraph (e)(13)(ii)(B)(*2*), removing the word "or" that appears after the semi-colon.

G. In paragraph (e)(13)(ii)(C), removing the period and adding in its place, "; or".

H. Adding a new paragraph (e)(13)(ii)(D).

I. Adding a new paragraph (e)(14).

The additions and revisions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(e) * * *

(13) * * *

(ii) * * *

(A) For periods of enrollment beginning prior to July 1, 1987, was determined by the school to have the ability to benefit from the school's training in accordance with the requirements of 34 CFR 668.6, as in existence at the time the determination was made;

(B) For periods of enrollment beginning between July 1, 1987 and June 30, 1996, achieved a passing grade on a test—

* * * * *

(D) For periods of enrollment beginning on or after July 1, 1996—

(*1*) Has a high school diploma or its recognized equivalent;

(*2*) Has obtained within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of 34 CFR part 668; or

(*3*) Is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of 34 CFR part 668.

* * * * *

(14) *Discharge without an application.* A borrower's obligation to repay all or a portion of an FFEL Program loan may be discharged without an application from the borrower if the Secretary, or the guaranty agency with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

* * * * *

4. Section 682.406 is amended by revising paragraph (a)(11) to read as follows:

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) * * *

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6).

* * * * *

5. Section 682.410 is amended by:

A. Amending paragraph (b)(5)(i) introductory text by removing the reference to paragraph "(b)(6)(iii)" and adding in its place "(b)(6)(v)".

B. Amending paragraph (b)(5)(ii) introductory text by removing the reference to paragraph "(b)(6)(ii)" and adding in its place "(b)(6)(v)".

C. Revising paragraph (b)(6).

D. Removing paragraph (b)(7).

E. Redesignating paragraphs (b)(8) through (b)(11) as paragraphs (b)(7) through (b)(10), respectively.

F. Amending redesignated paragraph (b)(7)(ii) by removing the reference to paragraph "(b)(8)(i)" and adding in its place "(b)(7)(i)".

G. Amending redesignated paragraph (b)(7)(ii)(D) by removing the reference to paragraph "(b)(6)(i)" and adding in its place "(b)(6)".

H. Amending redesignated paragraph (b)(8) by removing the reference to paragraphs "(b)(2), (5), (6), and (7)" and adding in its place "(b)(2), (5), and (6)".

I. Amending redesignated paragraph (b)(9)(i)(E) by removing the references to paragraphs "(b)(10)(i)(D)" and "(b)(10)(i)(J)" and adding in their place "(b)(9)(i)(D)" and "(b)(9)(i)(J)", respectively.

J. Amending redesignated paragraph (b)(9)(i)(F) by removing the reference to paragraph "(b)(10)(i)(H)" and adding in its place "(b)(9)(i)(H)".

K. Amending redesignated paragraph (b)(9)(i)(I) by removing the reference to paragraph "(b)(10)(i)(H)" and adding in its place "(b)(9)(i)(H)".

L. Amending redesignated paragraph (b)(9)(i)(K) by removing both references to paragraph "(b)(10)(i)(B)" and adding in their place "(b)(9)(i)(B)".

M. Amending redesignated paragraph (b)(9)(i)(L) by removing both references to paragraph "(b)(10)(i)(B)" and adding in their place "(b)(9)(i)(B)".

N. Amending redesignated paragraph (b)(10)(ii) by removing the reference to "§ 682.410(b)(11)(i)" and adding in its place "§ 682.410(b)(10)(i)".

The revisions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(6) *Collection efforts on defaulted loans.*

(i) A guaranty agency must engage in reasonable and documented collection activities on a loan on which it pays a default claim filed by a lender. For a non-paying borrower, the agency must perform at least one activity every 180 days to collect the debt, locate the borrower (if necessary), or determine if the borrower has the means to repay the debt.

(ii) A guaranty agency must attempt an annual Federal offset against all eligible borrowers. If an agency initiates proceedings to offset a borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, it may not initiate those proceedings sooner than 60 days after sending the notice described in paragraph (b)(5)(ii)(A) of this section.

(iii) A guaranty agency must initiate administrative wage garnishment proceedings against all eligible borrowers, except as provided in paragraph (b)(6)(iv) of this section, by following the procedures described in paragraph (b)(9) of this section.

(iv) A guaranty agency may file a civil suit against a borrower to compel repayment only if the borrower has no wages that can be garnished under paragraph (b)(9) of this section, or the agency determines that the borrower has sufficient attachable assets or income that is not subject to administrative wage garnishment that can be used to repay the debt, and the use of litigation would be more effective in collection of the debt.

(v) Within 45 days after paying a lender's default claim, the agency must send a notice to the borrower that contains the information described in paragraph (b)(5)(ii) of this section. During this time period, the agency also must notify the borrower, either in the notice containing the information described in paragraph (b)(5)(ii) of this section, or in a separate notice, that if he or she does not make repayment arrangements acceptable to the agency, the agency will promptly initiate procedures to collect the debt. The agency's notification to the borrower must state that the agency may administratively garnish the borrower's wages, file a civil suit to compel repayment, offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, assign the loan to the Secretary in accordance with § 682.409, and take other lawful collection means to collect the debt, at the discretion of the agency. The agency's notification must include a statement that borrowers may have certain legal rights in the collection of debts, and that borrowers may wish to contact counselors or lawyers regarding those rights.

(vi) Within a reasonable time after all of the information described in paragraph (b)(6)(v) of this section has been sent, the agency must send at least one notice informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged.

* * * * *

6. Section 682.414 is amended by revising paragraph (a)(2) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(2) A guaranty agency must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than 5 years following the date the agency receives payment in full from any other source. However, in particular cases, the Secretary may require the retention of records beyond this minimum period.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

7. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

8. Section 685.214 is amended by:

A. Removing the words "the school's" in paragraph (c)(1).

B. Adding the word "and" after the semicolon at the end of paragraph (c)(1)(i).

C. Removing "; and" at the end of paragraph (c)(1)(ii) and adding, in its place, a period.

D. Removing paragraph (c)(1)(iii).

E. Adding a new paragraph (c)(6).

The revisions read as follows:

§ 685.214 Discharge for false certification of student eligibility or unauthorized payment.

* * * * *

(c) * * *

(6) *Discharge without an application.* The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

* * * * *

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Part VI

Department of Education

34 CFR Part 682
Special Leveraging Educational Assistance Partnership Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 692

RIN 1845–AA18

Special Leveraging Educational Assistance Partnership Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations govern the new Special Leveraging Educational Assistance Partnership (SLEAP) Program. These proposed regulations would implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998, Public Law 105–481 (1998 Amendments).

DATES: We must receive your comments on or before September 11, 2000.

ADDRESSES: Address all comments about these proposed regulations to Jackie Butler, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet use the following address: sleapnprm@ed.gov.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Jackie Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–8242.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3053, ROB–3, 7th & D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations for programs under Title IV of the HEA, we obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, we must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless we reopen the negotiated rulemaking process or provide a written explanation to the participants in that process why we have decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago, and San Francisco. We held four half-day sessions on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions; one in Atlanta on September 17, one in Chicago on September 24, and one in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February, 2000. The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee II (committee), which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Association of Jesuit Colleges and Universities
Career College Association
Coalition of Publicly Traded Educational Institutions
Consumer Bankers Association
Legal Services
NAFSA: Association of International Educators
National Accrediting Commission of Cosmetology Arts and Sciences, Inc.
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
National Association for State Student Grant and Aid Programs
National Association of State Universities and Land-Grant Colleges
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Student Loan Servicing Alliance
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

University Continuing Education Association

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Proposed SLEAP Regulations

The 1998 Amendments added a new section 415E to subpart 4 of Title IV of the HEA to establish the SLEAP Program. The SLEAP Program is an additional component of the Leveraging Educational Assistance Partnership (LEAP) Program, which was formerly known as the State Student Incentive Grant (SSIG) Program. The SLEAP Program was created by Congress to provide incentive grants to States to assist them in providing financial assistance to eligible needy postsecondary students and services to eligible needy preschool, elementary school, and secondary school students.

These proposed SLEAP Program regulations were developed as a result of the new statutory provisions in the HEA that created the SLEAP Program. All of the proposed regulations support the specific SLEAP provisions in the HEA, including the requirement that every LEAP statutory provision that is not inconsistent with a specific SLEAP provision applies to the SLEAP Program. The proposed SLEAP Program regulations are presented under the reserved subpart B in title 34 of the Code of Federal Regulations (CFR) by amending part 692 (LEAP Program regulations).

Significant Proposed Regulations

We discuss issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 692.53 What Requirements Must a State Satisfy to receive SLEAP Program Funds?

Proposed § 692.53 specifies the requirements that a State must meet to receive funds under the SLEAP Program. The proposed regulations provide that the State must participate in the LEAP Program to be able to receive SLEAP Program funds for a specific fiscal year and thus, meet all the requirements under the LEAP Program. The State is required to submit a SLEAP application in accordance with proposed § 692.60 in addition to satisfying the other requirements discussed later under that section.

Further, the proposed regulations require the State to have a SLEAP Program that provides assistance only to eligible students as discussed later under proposed § 692.54. Under the proposed regulations, the SLEAP Program must be administered by the same single State agency that administers the LEAP Program. That agency would have to submit all required SLEAP Program reports. These reports include an annual performance report detailing how the Federal dollars and non-Federal dollars were expended for the SLEAP Program. The proposed regulations also require that the State's SLEAP Program not allow any student or parent to be charged a fee that is payable to any organization, other than the State, for the collection of information needed to determine financial need.

A State's SLEAP Program that gives financial assistance to postsecondary students must ensure that all public and private nonprofit institutions of higher education and all postsecondary vocational institutions in the State are eligible to participate in the SLEAP Program unless the participation of certain types of institutions is in violation of the constitution of the State or a State statute enacted prior to October 1, 1978. If the State awards funds to independent students or less-than-full-time students enrolled in an institution of higher education, the proposed regulations require that the State's SLEAP Program for postsecondary students ensure that a reasonable portion of the State's SLEAP allocation be awarded to those students.

Section 692.54 What Eligibility Requirements Must a Student Satisfy to Participate in the SLEAP Program?

Proposed § 692.54 specifies the eligibility requirements that postsecondary students must meet to receive SLEAP financial assistance and non-postsecondary students must meet to receive services under the SLEAP Program. This proposed regulation, by referencing § 692.40, requires a postsecondary student to meet the relevant eligibility requirements contained in § 668.32 to receive SLEAP financial assistance. These include, among other things, the requirements that the student:

- Be a regular student;
- Not be enrolled in either an elementary or secondary school;
- Satisfy citizenship and residency requirements;
- Maintain satisfactory progress;
- Not be in default on a title IV, HEA program loan;
- Not owe a title IV, HEA overpayment; and
- Satisfy the Selective Service registration requirements.

The proposed regulation, by referencing § 692.40, requires the postsecondary student to also demonstrate financial need according to a system the State establishes and that we approve. This would be the same requirement that exists under the LEAP Program for having an approved system for determining need. To determine financial need, the State may use one of the following systems:

- A system that uses part F of title IV of the HEA;
- The State's own need analysis system, if approved by the Secretary; or
- A combination of these systems, if approved by the Secretary.

To receive program services under the SLEAP Program, the proposed regulations require a preschool, elementary school, or secondary school student to meet the relevant citizenship and residency requirements contained in § 668.33, and demonstrate financial need as determined by the State. The State would not need to receive our approval of the system it uses to determine the financial need of these non-postsecondary students under the proposed regulations.

Section 692.60 What Must a State Do To Receive an Allotment Under the SLEAP Program?

Proposed § 692.60 specifies the procedures that a State must follow to receive a SLEAP allotment. A State is required to submit an application for each fiscal year for which it wants to participate in the SLEAP Program. The application must be submitted by the same single State agency that administers the State's LEAP Program. In the application to participate in the SLEAP Program, the State is responsible for identifying the authorized activities, included in § 692.71, that it will fund under the SLEAP Program.

Under the proposed regulations, the State must satisfy the SLEAP maintenance-of-effort (MOE) requirement and assure us of that fact on its application. To satisfy the SLEAP MOE requirement, a State receiving SLEAP funding for a fiscal year would have to expend non-Federal funds, in total or per student, in the preceding fiscal year for authorized activities that were not less than it expended in the second preceding fiscal year. Note that although the statute and regulations refer to funding in terms of a fiscal year, States receive and award LEAP and

SLEAP funds operationally on an award year (July 1 through June 30) basis. Therefore, the States' MOE and matching requirements are also measured on an award year basis.

For example, a State wants to participate in the SLEAP Program for the 2000–2001 award year. In the 1999–2000 award year the total State expenditures for authorized SLEAP activities totaled $150,000. In the 1998–1999 award year, the State spent $100,000 on the authorized activities. The State expenditures for the activities for the 1999–2000 award year exceed the expenditures for the 1998–1999 award year and thus, satisfy the SLEAP MOE requirement.

In calculating the SLEAP MOE under the proposed regulations, the State reports any non-Federal funds that it spends for any activity or program that meets the definition of any of the authorized SLEAP activities, even if the State does not use those funds in the SLEAP Program. For the purpose of the SLEAP MOE, this applies even if the non-Federal funds were used to match another Federal program.

For example, if a State participates in the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Program, the State matching dollars for GEAR UP would be included as part of the State's SLEAP MOE because GEAR UP activities meet the definition of SLEAP authorized activity seven, which includes early intervention and mentoring programs. However, those State matching dollars used for GEAR UP, while acceptable for SLEAP MOE purposes, can not be used as matching dollars for any of the SLEAP authorized activities, because those State dollars are already used to match another Federal program which would be in violation of § 80.24 of the Education Department General Administrative Regulations (EDGAR). As another example, assume that a State awards teaching scholarships to students, which corresponds with SLEAP activity five, but does not use those funds as matching dollars for the SLEAP Program. Those State dollars for teaching scholarships would still be included in the State's SLEAP MOE.

The proposed regulations also require that the Federal SLEAP Program funds be matched with non-Federal funds. For every Federal SLEAP dollar a State spends, it must spend at least two matching dollars from non-Federal funds. A State may use any non-Federal funds that are spent for any of the authorized SLEAP activities, as long as those funds are not also being used to match other Federal programs. Non-Federal funds include, but are not limited to, State-appropriated funds or privately donated funds. The proposed regulations allow the Federal SLEAP dollars to be spent by the State for one authorized SLEAP activity and the non-Federal funds to be spent for a different authorized SLEAP activity.

Section 692.70 How Does the Secretary Allot Funds to the States?

Proposed § 692.70, by referencing § 692.10, specifies the formula used to allocate SLEAP funds to the participating States. Under the proposed regulations, Federal SLEAP funds are allocated to each State in the SLEAP Program based on the same formulas used for the LEAP Program. The LEAP and SLEAP programs are funded under one appropriation. The initial $30 million of the appropriation funds the LEAP Program. Any amount in excess of the initial $30 million must be used to carry out authorized activities under the SLEAP Program.

The proposed regulations require that a State's SLEAP allocation from the first $76,452,287 appropriated for both LEAP and SLEAP be calculated by a formula that provides a statutory hold-harmless provision based on the funds allocated as SSIG funds to the State for the 1979 fiscal year. The formula would calculate the State's SLEAP portion of the total LEAP and SLEAP appropriation that does not exceed the $76,452,287 amount that was provided to States in the 1979 fiscal year as follows:

$$\frac{\text{Students Per State (1979 Enrollment Data)}}{\text{Total Number of Students for All States (1979 Enrollment Data)}} \times \text{SLEAP Portion of First \$76,452,287 Appropriated for LEAP and SLEAP} = \text{Amount for SLEAP Allocation Per State}$$

When the total LEAP and SLEAP appropriation exceeds $76,452,287, the amount of the appropriation that exceeds $76,452,287 also has to be allocated to each participating State for its SLEAP Program. The proposed regulations require that a set formula be used to calculate the additional SLEAP amount that must be added to the results of the formula shown above to derive the total SLEAP allocation for a State. To determine this portion of the SLEAP allocation, when applicable, the formula is as follows:

$$\frac{\text{Students Deemed Eligible Per State (Latest Data)}}{\text{Total Number of Students Deemed Eligible for All States (Latest Data)}} \times \text{Amount of Appropriation Above \$76,452,287} = \text{Additional Amount of SLEAP Allocation Per State}$$

Section 692.71 What Activities May be Funded Under the SLEAP Program?

Proposed § 692.71 specifies the authorized SLEAP activities for which a State may use SLEAP Program funds. The authorized activities assist States in providing assistance to eligible students who demonstrate financial need. The proposed regulations allow a State to implement one or more of the activities under the SLEAP Program. Under the proposed regulations, a State may use SLEAP funds to do one or more of the following:

(1) *LEAP Grant Supplement*—Supplement its LEAP Program by increasing LEAP grant amounts for postsecondary students who demonstrate financial need (including exceeding the $5,000 maximum LEAP grant limit), or by increasing the number of LEAP recipients. This supplement may consist of Federal SLEAP funds or SLEAP matching funds, or both, and is accounted for and reported under the SLEAP Program and not the LEAP Program.

(2) *Transition Programs*—Implement transition programs for students who demonstrate financial need and are enrolled in secondary school or who have graduated from secondary school and are accepted for enrollment in a postsecondary institution.

(3) *Aid Programs for Critical Careers*—Award financial aid to postsecondary students who demonstrate financial need and wish to enter careers in information technology, or other fields of study that the State determines are critical to the State's workforce needs.

(4) *Community Service Work-Study Jobs*—Pay wages or salaries for community service work-study jobs to postsecondary students who demonstrate financial need.

(5) *Teaching Scholarship Programs*—Establish a postsecondary scholarship program that makes awards to students who demonstrate financial need and wish to become teachers, and award financial aid from that program.

(6) *Mathematics, Computer Science, or Engineering Scholarship Programs*—Establish a postsecondary scholarship program that makes awards to students who demonstrate financial need and wish to pursue a program of study leading to a degree in mathematics, computer science, or engineering, and award financial aid from that program.

(7) *Early Intervention, Mentoring, and Career Education Programs*—Implement early intervention, mentoring, and career education programs for preschool, elementary school, or secondary school students who demonstrate financial need.

(8) *Merit and Academic Scholarships*—Award merit or academic scholarships for any field of study, including teaching, mathematics, computer science, and engineering to postsecondary students who demonstrate financial need.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998, on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

We invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 692.70 *How does the Secretary allot funds to the States?*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

We certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education that participate in title IV, HEA programs, States, and State agencies. The U.S. Small Business Administration Size Standards define institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Although States and State agencies are impacted by these regulations, they are not defined as "small entities" in the Regulatory Flexibility Act. Therefore, these proposed regulations would not have a significant economic impact on small entities.

Paperwork Reduction Act of 1995

Proposed § 692.60 contains information collection requirements. These requirements are accounted for under OMB No. 1845–0034, the information collection clearance package for the application to participate in the SLEAP Program. Proposed § 692.53 contains information collection requirements. These requirements will be accounted for in an information collection clearance package for the SLEAP Program performance report that will be submitted to OMB for review and approval. Therefore, all collection requirements found in 34 CFR part 692 will be accounted for in the previously mentioned information collection clearance packages for the reports and not the regulations.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of information: Special Leveraging Educational Assistance Partnership Program—§ 692.60—What must a State do to receive an allotment under the SLEAP Program?—Application to Participate in the Special Leveraging Educational Assistance Partnership (SLEAP) Program—OMB No. 1845–0034. Section 415C(a) of the HEA requires a State that desires to obtain a payment under this program for any fiscal year to submit an annual application containing information necessary to enable us to carry out the functions under this program. The current application is approved for use through September 30, 2000. A new form will be developed and submitted to OMB for approval.

Section 76.720 of EDGAR requires a State to submit an annual performance report, unless we allow less frequent reporting. Although a performance report has not currently been developed for the SLEAP Program, we expect to have a form approved and available for distribution to participating States before October 1, 2001, the deadline for States to report their 2000–2001 award year SLEAP Program expenditures.

The annual Application to Participate in the SLEAP Program provides data used in program management. The complete application shows State qualifications for Federal funds, including the matching requirements, MOE capability, and methods of determining student financial need. With its signed assurances, the document commits a State to administer the Federal funds and State matching funds in compliance with the statute.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receive the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The SLEAP Program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

We particularly request comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm

To use PDF you must have Adobe Acrobat Reader Program, which is available free at the first of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.069 Special Leveraging Educational Assistance Partnership Program)

List of Subjects in 34 CFR Part 692

Grant programs—education, Postsecondary education, State administered—education, Student aid—education, Reporting and recordkeeping requirements.

Dated: July 19, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 692 as follows:

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

1. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070c through c–4, unless otherwise noted.

2. Subpart B is revised to read as follows:

Subpart B—Special Leveraging Educational Assistance Partnership Program

General

Sec.

692.50 What is the Special Leveraging Educational Assistance Partnership Program?
692.51 What other regulations apply to the SLEAP Program?
692.52 What definitions apply to the SLEAP Program?
692.53 What requirements must a State satisfy to receive SLEAP Program funds?
692.54 What eligibility requirements must a student satisfy to participate in the SLEAP Program?

How Does a State Apply to Participate in the SLEAP Program?

692.60 What must a State do to receive an allotment under the SLEAP Program?

What Is the Amount of Assistance and How May It Be Used?

692.70 How does the Secretary allot funds to the States?
692.71 What activities may be funded under the SLEAP Program?

How Does a State Administer Its Community Service Work-Study Program?

692.80 How does a State administer its community service work-study program?

General

§ 692.50 What is the Special Leveraging Educational Assistance Partnership Program?

The Special Leveraging Educational Assistance Partnership (SLEAP) Program assists States in providing—

(a) Grants, scholarships, and community service work-study assistance to eligible postsecondary education students who demonstrate financial need;

(b) Assistance to fund early intervention, mentoring, and career education programs for eligible students enrolled in preschool, elementary school, or secondary school who demonstrate financial need; and

(c) Assistance to fund transition programs for eligible students enrolled in secondary school who demonstrate financial need.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.51 What other regulations apply to the SLEAP Program?

The regulations listed in § 692.3 also apply to the SLEAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.52 What definitions apply to the SLEAP Program?

The following definitions apply to the SLEAP Program:

(a) The definitions listed in § 692.4.

(b) The definitions of the following terms in 34 CFR 77.1 (EDGAR):

Elementary school.
Preschool.
Secondary school.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.53 What requirements must a State satisfy to receive SLEAP Program funds?

To receive SLEAP Program funds for any fiscal year, a State must—

(a) Participate in the LEAP Program;

(b) Meet the requirements in § 692.60; and

(c) Have a program that—

(1) Provides assistance only to students who meet the eligibility requirements in § 692.54;

(2) Satisfies the requirements in §§ 692.21(a) and (k); and

(3)(i) Satisfies the requirements in §§ 692.21(e), (f), (g), and (j), if that program provides students with postsecondary education assistance; or

(ii) Provides that no student or parent may be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need for preschool, elementary, or secondary school students.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.54 What eligibility requirements must a student satisfy to participate in the SLEAP Program?

(a) To receive postsecondary financial assistance under the SLEAP Program, a student must meet the eligibility requirements contained in § 692.40.

(b) To receive early intervention, mentoring, career education or transition program services under the SLEAP Program, a preschool, elementary, or secondary school student must—

(1) Meet the applicable citizenship and residency requirements in 34 CFR 668.33; and

(2) Demonstrate financial need as determined by the State.

(Authority: 20 U.S.C. 1070c–3a)

How Does a State Apply To Participate in the SLEAP Program?

§ 692.60 What must a State do to receive an allotment under the SLEAP Program?

To receive an allotment under the SLEAP Program, a State must—

(a) Submit an application in accordance with the provisions in § 692.20;

(b) Identify the activities in § 692.71 that it plans to carry out;

(c) Provide an assurance that for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.71 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(d) Ensure that the Federal share will not exceed one-third of the total funds expended under the SLEAP Program.

(Authority: 20 U.S.C. 1070c–3a)

What Is the Amount of Assistance and How May It Be Used?

§ 692.70 How does the Secretary allot funds to the States?

For each fiscal year, the Secretary allots to each eligible State that applies for SLEAP funds an amount in accordance with the provisions in § 692.10.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.71 What activities may be funded under the SLEAP Program?

A State may use the funds it receives under the SLEAP Program to implement one or more of the following:

(a) Increase the dollar amount of grants awarded under the LEAP Program to eligible students who demonstrate financial need as determined in § 692.41.

(b) Carry out transition programs from secondary school to postsecondary education for eligible students who demonstrate financial need as determined by the State.

(c) Carry out a financial aid program for eligible students who demonstrate financial need as determined in § 692.41 and who wish to enter careers in information technology or other fields of study determined by the State to be critical to the State's workforce needs.

(d) Make funds available for community service work-study activities for eligible students who demonstrate financial need as determined in § 692.41.

(e) Create a postsecondary scholarship program for eligible students who demonstrate financial need as determined in § 692.41 and who wish to enter teaching.

(f) Create a scholarship program for eligible students who demonstrate financial need as determined in § 692.41 and who wish to enter a program of study leading to a degree in mathematics, computer science, or engineering.

(g) Carry out early intervention programs, mentoring programs, and career education programs for eligible students who demonstrate financial need as determined by the State.

(h) Award merit or academic scholarships to eligible students who demonstrate financial need as determined in § 692.41.

(Authority: 20 U.S.C. 1070c–3a)

How Does a State Administer Its Community Service Work-Study Program?

§ 692.80 How does a State administer its community service work-study program?

When administering its community service work-study program, a State must follow the provisions in § 692.30, other than the provisions of paragraph (a)(1) of that section.

(Authority: 20 U.S.C. 1070c–3a)

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48 CFR Parts 42 and 52

Federal Acquisition Regulation; Final Contract Voucher Submission; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAR Case 1999–026]

RIN 9000–AI66

Federal Acquisition Regulation; Final Contract Voucher Submission

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract. This contracting officer decision is final and binding upon the contractor and will not be subject to the right of appeal under the Contract Disputes Act.

DATES: Interested parties should submit comments in writing on or before September 25, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–026@gsa.gov

Please submit comments only and cite FAR case 1999–026 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 1999–026.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense established the Contract Close-out Working Integrated Process Team (CCWIPT) to improve the contract closeout process and reduce associated paperwork. On April 7, 1999, the team issued a report with a number of recommendations. The report found that the leading reason for contracts to remain open after they are physically complete is the contractor's failure to submit a final voucher to the Government. Therefore, one of the CCWIPT's recommendations is to revise the FAR to indicate that if a contractor has failed to submit any final invoice or voucher for a physically completed contract within the time provided, the contractor shall not have the right to appeal under the Disputes Clause at FAR 52.233–1, Disputes, any determination made by the contracting officer regarding the amount of final payment.

The Councils have adopted the CCWIPT's recommendation in this proposed rule. The rule revises FAR 42.705, Final indirect cost rates, and FAR 52.216–7, Allowable Cost and Payment, to—

- Explicitly state that the contracting officer may issue a unilateral modification that reflects the contracting officer's determination of the amounts due to the contractor under a completed contract. The contracting officer may make this determination if the contractor fails to submit a completion invoice or voucher within the time specified (normally 120 days after settlement of the final indirect cost rates but may be longer, if approved in writing by the contracting officer); and
- Make the contracting officer's determination not subject to appeal under the Disputes Clause of the contract.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is unlikely that a contractor would appeal the contracting officer's determination. The contractor would have little left to dispute regarding the amount of final payment on the contract once the contractor has submitted a final indirect cost rate proposal, the auditor has completed a final incurred cost audit; and the contractor and the Government have negotiated and agreed to the final indirect rates. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 6 U.S.C. 601, *et seq.* (FAR case 1999–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: July 24, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Amend Section 42.705 by revising paragraph (b) and by adding paragraph (c) to read as follows:

42.705 Final indirect cost rates.

* * * * *

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates.

(c)(1) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may—

(i) Determine the amounts due to the contractor under the contract; and

(ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination is—

(i) Final and binding upon the contractor in discharge of all obligations to the contractor arising under the contract; and

(ii) Not subject to the right of appeal under the Disputes clause.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend Section 52.216–7 by revising the date of the clause; in paragraph (d) by redesignating paragraph (d)(4) as (d)(5) and paragraph (d)(5) as (d)(4), respectively; revising the newly designated (d)(5); by adding paragraph (d)(6); and by amending paragraph (h)(1) by removing "paragraph (d)(4)" and adding, in its place, "paragraph (d)(5)". The revised text reads as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (DATE)

* * * * *

(d) * * *

(5) Within 120 days (or longer period, if approved in writing by the Contracting Officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This Contracting Officer determination is—

(A) Final and binding upon the Contractor in discharge of all obligations to the Contractor arising under the contract; and

(B) Not subject to the right of appeal under the Disputes clause.

* * * * *

[FR Doc. 00–19017 Filed 7–26–00; 8:45 am]

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S. 1892/P.L. 106–248

To authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and for other purposes. (July 25, 2000; 114 Stat. 598)

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

USDA Freedom of Information Act Regulations

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is issuing a final rule revising its regulations implementing the Freedom of Information Act (FOIA). This final rule implements the Electronic Freedom of Information Act Amendments of 1996.

EFFECTIVE DATE: August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Andrea E. Fowler, FOIA Officer, Office of Communications, at (202) 720–8164.

SUPPLEMENTARY INFORMATION: On May 4, 1998 (63 FR 24467), USDA requested public comment on proposed revisions to its regulations at 7 CFR Part 1 implementing the Freedom of Information Act. This revision is necessary to implement the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231 (E–FOIA).

The proposed rule provided for the expedited processing of certain categories of requesters; proposed "multitrack" processing requirements; incorporated new processing deadlines and appeal rights; implemented the E–FOIA provisions requiring agencies to generally provide records in the form or format requested, extended agency regulations to the processing of electronic records, and provides for frequently requested records as a category of reading room records.

Analysis of Public Comments and the Final Rule

USDA received three comment letters in response to the proposed revisions to USDA's FOIA regulations, one from a trade association representing news editors and reporters; one from a trade association representing private citizens; and one from a natural resource community group involved in natural resource issues. The commenters raised several issues regarding the proposed rule, generally seeking clarification of provisions implementing E–FOIA.

Regarding section 1.4(a)(4), one of the trade associations requested that USDA reconsider the provision which allows USDA agencies to decide on a case-by-case basis whether records that have already been subject to several requests should be placed in agency reading rooms. The commenter would like USDA to change this section to cover only records that have not been subject to subsequent FOIA requests instead of records that have been subject to several requests. The regulation tracks the language of the statute. Therefore, USDA believes that this section of the regulation as proposed is appropriate.

Regarding section 1.9(b)(2), the community group and the association of news editors and reporters requested that USDA broaden the circumstances for expedited processing of FOIA requests. USDA believes, as a matter of policy, that expanding the criteria as embodied in the proposed regulation as suggested by the commenters would be counter to even-handed treatment of the public. In essence, the commenters desire that self-selected requesters be placed in line ahead of most members of the requesting public. One specific suggestion to USDA was to include the Department of Justice regulatory provision allowing expedited treatment when a request involves the loss of substantial due process rights. In this connection, USDA points out that one of the primary missions of the Department of Justice is the administration of criminal justice. USDA does not share the administration of criminal justice as one of its primary missions, and believes that the addition of loss of substantial due process rights as a ground for expedited processing is not necessary.

Regarding section 1.9(2)(c) the association of news editors and reporters requested that USDA incorporate a provision similar to that adopted by the Department of Justice and the Federal Deposit Insurance Corporation in their FOIA regulations with regard to the formality of certifications needed to obtain expedited treatment. More specifically, and consistently with E–FOIA, the USDA proposed rule provided that a requester is entitled to expedited treatment only where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. A requester seeking expedited processing must submit a certified statement describing the basis for requesting expedited treatment. The Department of Justice and Federal Deposit Insurance Corporation regulations, however, provide that the formality of certification may be waived as a matter of administrative discretion. The association of news editors and reporters requests that USDA incorporate a similar waiver provision. The certification required by USDA is straightforward and, therefore, we do not expect that it will be burdensome for eligible requesters to submit a certification with their initial requests.

The association of news editors and reporters requested that USDA incorporate language that the denial of a request for expedited processing should be appealable. This language is already included in proposed section 1.9 of the regulations.

Regarding section 1.5, the community group requested that USDA remove the requirement that all requests for records shall be deemed to have been made pursuant to FOIA by changing the word "shall" to "should"; and change the requirement that when a requester wants documents relating to pending litigation that the requester identify the court and its location. We believe that considering all requests for records under FOIA will confer more rights on the requester, and therefore we will keep the word "shall" in the language. Also, we believe that identifying the court and its location is part of the requirement to reasonably describe the documents requested.

Regarding section 1.6, the community group requested that USDA remove this section which pertains to aggregating requests, asserting that it violates the due process clause of the constitution.

We do not concur because aggregation of requests is specifically permitted by 5 U.S.C. 552(a)(6)(B)(iv).

Regarding section 1.8, the community group requested that USDA provide a better description of multitrack processing and give examples. USDA does not have a centralized FOIA process in which requests will be processed in a central multitracking process. Each agency within USDA which decides to have a multitracking processing system will provide a description of its system and how it works in its respective agency regulations and directives.

Regarding section 1.19, the community group requested that USDA better describe the term "promptly available" as it relates to making records available to any person submitting a FOIA request. The group also wants us to incorporate Attorney General Reno's October 4, 1993, memo on discretionary releases into the regulation. We believe that the term "promptly available" clearly indicates that FOIA requests should be processed as soon as reasonably possible, considering the nature of the request, and all the facts and circumstances, including the volume and location of responsive records. We also believe that this section of the USDA regulation reflects the essence of Attorney General Reno's memo to make discretionary releases under FOIA. However, we emphasize that this does not reflect a statement of policy that USDA has specifically incorporated the Attorney General's memorandum of October 4, 1993. USDA is mindful of its obligation under the memorandum, but also is aware that the memorandum, by its terms, specifically disclaims that it extends enforceable procedural rights to requesters.

The community group requested that USDA provide a process for citizens to file a complaint about officials who intentionally violate FOIA. We believe that section 1.14 of the USDA regulations already provides a process for citizens to complain if they believe officials have intentionally violated FOIA. This section allows citizens to appeal a denial of a request for records or denial of a fee waiver to a different level of the agency. Citizens also have the right to judicial review of final appeal denials.

The community group requested that USDA provide for FOIA requests via electronic mail over the Internet. USDA believes that this decision is more appropriately left to its individual program agencies and staff offices. This is so because of decentralization of FOIA processing within USDA and the varying electronic capabilities of the numerous agencies and offices that would be affected.

Finally, upon review, USDA is modifying the language of Section 1.8(c) to accommodate situations where an agency might have several processing tracks, so that the requester will have the opportunity to modify the request to qualify for a faster track rather than the "fastest" track, as in the proposed regulation. This approach is more logical than simply providing for modification to qualify for the "fastest track," where there may be several tracks to which the request might be assigned.

Executive Order 12866

Because this rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866. This rule will not have any economic impact. Under these circumstances, the Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified must be exhausted prior to any judicial challenge of the application of the provisions of this rule.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

USDA certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it will not have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

USDA certifies that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, 7 CFR, part 1, is amended as follows:

1. The authority citation for 7 CFR, part 1, continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. Part 1 is amended in subpart A by revising §§ 1.1 through 1.20 and §§ 1.22 through 1.23 and by adding §§ 1.21, 1.24 and 1.25 to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec.

1.1 Purpose and scope.
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Appendix A—Fee Schedule

Subpart A—Official Records

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 3125a; 31 U.S.C. 9701; and 7 CFR 2.28(b)(7)(viii).

§ 1.1 Purpose and scope.

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, pursuant to which any person may obtain official records. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in § 1.3, "Agency implementing regulations") for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Communications. The Office of Communications has the

primary responsibility for implementation of the FOIA in the Department of Agriculture ("USDA" or "Department"). The term "agency" or "agencies" is used throughout this subpart to include both USDA program agencies and staff offices.

§ 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA and in this subpart for responding to and processing requests and appeals for agency records, unless there are unusual circumstances within the meaning of 5 U.S.C. 552(a)(6)(B) and § 1.16(b). An agency shall notify a requester in writing whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as appendix A to this subpart, with regard to the charging of fees for providing copies of records and related services to requesters.

§ 1.3 Agency implementing regulations.

Each agency of the Department shall promulgate regulations setting forth the following:

(a) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by 5 U.S.C. 552(a)(2) and § 1.4 to be made available for public inspection and copying.

(b) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements to indexes that are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.4(c);

(c) The title and mailing address of the official or officials of the agency authorized to receive requests for records submitted in accordance with § 1.5(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(1) Extend the 20 working day administrative deadline for reply pursuant to § 1.16;

(2) Make discretionary releases pursuant to § 1.19(b);

(3) Make determinations regarding the charging of fees pursuant to appendix A to this subpart;

(d) The title and mailing address of the agency official who is authorized to receive appeals submitted in accordance with § 1.14 and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(1) Extend the 20 working day administrative deadline for reply pursuant to § 1.16 (to the extent the maximum extension authorized by § 1.16(c) was not used with regard to the initial request;

(2) Make discretionary releases pursuant to § 1.19(b);

(3) Make determinations regarding the charging of fees pursuant to appendix A to this subpart; and

(e) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

§ 1.4 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2), each agency within the Department shall make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. Agencies shall decide on a case by case basis whether records fall into this category, based on the following factors:

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) Records encompassed within paragraphs (a)(1) through (a)(5) of this section created on or after November 1, 1996, shall be made available to the public by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.

(c) Each agency of the Department shall maintain and make available for public inspection and copying current indexes providing identifying information regarding any matter issued, adopted or promulgated after July 4, 1967, and required by paragraph (a) of this section to be make available or published. Each agency shall publish and make available for distribution copies of such indexes and supplements to such indexes at least quarterly, unless it determines by notice published in the **Federal Register** that publication would be unnecessary and impracticable. After issuance of such notice, each agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

(d) Each agency is responsible for preparing reference material or a guide for requesting records or information from that agency. This guide shall also include an index of all major information systems, and a description of major information and record locator systems.

(e) Each agency shall also prepare a handbook for obtaining information from that agency. The handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. The handbook should be available on paper and through electronic means, and it should identify how a requester can access agency Freedom of Information Act annual reports. Similarly, the annual reports should refer to the handbook and how to obtain it.

(f) It is appropriate to make frequently requested records available in accordance with paragraph (a)(4) of this section in situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Agencies may remove a record from this access medium when the appropriate official determines that it is unlikely there will be substantial further requests for that document.

§ 1.5 Requests for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by that agency. The requester may ask for a fee waiver. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether the request specifically mentions the Freedom of Information Act. To facilitate processing of a request, the requester should place the phrase "FOIA REQUEST" in capital letters on the front of the envelope or on

the cover sheet of the facsimile transmittal.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, names of individuals, names of offices, and names of agencies or other organizations that may help identify the records. If the request relates to a matter in pending litigation, the requester should identify the court and its location.

(c) If an agency determines that a request does not reasonably describe the records, the agency shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records the requester is seeking. The "date of receipt" in such instances, for purposes of § 1.13, shall be the date of receipt of the amended or clarified request.

(d) If a request for records or a fee waiver made under this subpart is denied, the requester shall have the right to appeal the denial. Requesters also may appeal agency determinations of a requester's status for purposes of fee levels under sec. 5 of appendix A to this subpart. All appeals must be in writing and addressed to the official designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the requester should place the phrase "FOIA APPEAL" in capital letters on the front of the envelope or on the cover sheet of the fax transmittal.

(e) Requests that are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency, or which are sent to the wrong agency of USDA, should be forwarded to the Department's FOIA Officer in the Office of Communications, U.S. Department of Agriculture, Washington, DC 20250.

(f) The Department FOIA Officer will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency or agencies. The Department FOIA Officer will also notify the requester of the referral and of the name of each agency to which the request has been referred.

(g) A request will be properly received when it is in the possession of the component agency that has responsibility for maintaining the requested records.

(h) Each agency shall develop and maintain a record of all written requests and appeals received in that agency. The record shall include the names of the requester; a brief summary of the information requested; whether the request or appeal was granted, denied, or partially denied; the exemption from mandatory disclosure under 5 U.S.C. 552(b) upon which any denial was based; and the amount of any fees associated with the request or appeal.

§ 1.6 Aggregating requests.

When an agency reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element that may be considered in determining whether such a belief would be reasonable is the brevity of the time period during which the requests have been made.

§ 1.7 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records is submitted in accordance with § 1.5(a) shall inform the requester of its determination concerning that request within 20 working days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.16. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (*e.g.*, payment of fees) and the approximate date upon which the agency will provide the requested records. If the agency grants only a portion of the request, it shall treat the portion not granted as a denial, and make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and provide the following:

(1) The reasons for the denial;

(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, other than in the permanent custody of the National Archives and Records Administration ("NARA"), the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the records are in the permanent custody of NARA, the agency shall so inform the requester. Information about obtaining access to records at NARA may be obtained through the NARA Archival Information Locator (NAIL) Database at http://www/nara.gov/nara.nail.html, or by calling NARA at (301) 713–6800. If the agency has no knowledge of requested records or if no records exist, the agency shall notify the requester of that fact.

§ 1.8 Multitrack processing.

(a) When an agency has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) Agencies may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) Agencies may provide a requester whose request does not qualify for the fastest track an opportunity to limit the scope of the request in order to qualify for a faster track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) Agencies shall process requests in each track on a "first-in, first-out" basis, unless there are unusual circumstances as set forth in § 1.16, or the requester is entitled to expedited processing as set forth in § 1.9.

§ 1.9 Expedited processing.

(a) A requester may apply for expedited processing at the time of the initial request for records. Within ten calendar days of its receipt of a request for expedited processing, an agency shall decide whether to grant it, and shall notify the requester of the decision. Once the determination has been made to grant expedited processing, an agency shall process the request as soon as practicable. If a request for expedited processing is denied, the agency shall act expeditiously on any appeal of that decision.

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(b) A request or appeal will be taken out of order and given expedited treatment whenever the agency determines that the requester has established either of the following criteria:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged federal government activity, if made by an individual primarily engaged in disseminating information. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information; however, other requesters must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public as a whole, and not just a particular segment or group. "Urgency" contemplates that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not meet the test of urgency, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(c) A requester who seeks expedited processing must provide a written statement that the requester has certified to be true and correct to the best of the requester's knowledge, explaining in detail the basis for requesting expedited processing. The agency will not consider the request to have been received unless accompanied by a written, certified statement, and will be under no obligation to consider the request for expedited processing until it receives such a written, certified statement.

(d) the same procedures apply to requests for expedited processing of administrative appeals.

§ 1.10 Search services.

Search services are services of agency personnel—clerical or professional—used in trying to find the records, that are responsive to a request. Search services includes both manual and electronic searches and time spent examining records for the purpose of finding information that is within the scope of the request. Search services also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

§ 1.11 Review services.

(a) Review services are services of agency personnel—clerical or professional—in examining records, both paper and electronic, located in response to a request that is for a commercial use (as specified in sec. 6 of appendix A to this subpart) to determine whether any portion of any record located is exempt from mandatory disclosure.

(b) Review services include processing any records for disclosure *e.g.*, doing all that is necessary to redact exempt portions and otherwise prepare records for release.

(c) Review services do not include the time spent resolving general legal or policy issues regarding the application of exemptions.

§ 1.12 Handling information from a private business.

Each USDA agency is responsible for making the final determination with regard to the disclosure or nondisclosure of information in agency records that has been submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is privileged or confidential business information, the policy of USDA is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to any decision to disclose the information. If a request (including a subpoena duces tecum as described in § 1.215) is received in USDA for information that has been submitted by a business, the agency shall:

(a) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed or, on the other hand, that the information is not exempt by law from disclosure). Afford business information submitter reasonable time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to it competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA;

(b) Notify the requester of the need to inform the submitter of a request for submitted business information;

(c) Determine whether the requested records are exempt from disclosure or must be released;

(d) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention; and

(e) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 1.13 Date of receipt of requests or appeals.

The date of receipt of a request or appeal shall be the date it is received in the agency and office responsible for the administrative processing of FOIA requests or appeals.

§ 1.14 Appeals.

(a) Requesters seeking administrative appeal of a denial of a request for records or denial of a fee waiver must ensure that the appeal is received by the agency within 45 days of the date of the denial letter.

(b) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(c) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which an appeal of a denial is submitted shall inform the requester of its determination concerning that appeal within 20 working days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by § 1.16, of its date of receipt. If the agency determines to grant the appeal, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If the agency grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(d) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records

requested and of all correspondence relating to the request to the Assistant General Counsel, General Law Division, Office of the General Counsel ("Assistant General Counsel"). When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel

(e) The Assistant General Counsel shall promptly review the matter (including necessary coordination with the agency) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension of the administrative deadline.

§ 1.15 General provisions respecting release of records.

(a) When releasing documents, agencies shall provide the record in any form or format the requester specifies, if the record is readily reproducible in that form of format. Agencies shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, agencies shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of an agency's automated information system. Such determinations shall be made on a case-by-case basis.

(b) In the event a requested record contains some portions that are exempt from mandatory disclosure and others that are not, the official responding to the request shall ensure that all reasonably segregable nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption or exemptions which are applicable. The amount of deleted information shall be indicated on the released portion of paper records. Deletions may be marked by use of brackets or darkened areas indicating removal of information, or by any other method that would reasonable demonstrate the extent of the deletion. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the records, if technically feasible, the amount of redacted information shall be indicated at the place in the record where such deletion was made. This may be done by use of brackets, shaded areas, or some other identifiable technique which will clearly show the limits of the deleted information.

(c) If, in connection with a request or an appeal, a charge is to be made in accordance with sec. 8 of appendix A to this subpart, agencies shall inform the requester of the fee amount and of the basis for the charge. Each agency, in accordance with sec. 8 of appendix A to this subpart, may require payment of the entire fee, or a portion of the fee, before it provides the requested records. An agency shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester refuses to remit payment in advance, an agency may refuse to process the request or appeal with written notice to that effect forwarded to the requester. The "date of receipt" appeal for which advance payment has been required shall be the date that payment is received.

(d) In the event compliance with the request or appeal involves inspection of records by the requester rather than providing copies of the records, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(e) Whenever duplication fees, or search fees for unsuccessful searches (see sec. 4(f) of appendix A to this subpart), are anticipated to exceed $25.00, and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, agencies shall notify the requester of the amount of the anticipated fee. If an extensive and therefore costly successful search is anticipated, agencies also should notify requesters of the anticipated fees. The notification shall offer the requester the opportunity to confer with agency personnel to reform the request to meet the requester's needs at a lower fee. In appropriate cases, an advance deposit in accordance with sec. 8 of appendix A to this subpart may be required.

§ 1.16 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section, when additional time is needed to respond to the initial request or to an appeal, agencies shall acknowledge the request or the appeal in writing within the 20 working day time period, describe the unusual circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in the following:

(1) In instances in which the agency, with respect to a particular request, has extended the response date by 10 additional working days, if the agency finds that it cannot make a response determination within the additional 10 working day period, the agency shall notify the requester and provide the requester an opportunity to limit the scope of the request to allow the agency to process the request within the extended time limit, or an alternative time frame for processing the request or a modified request.

(2) If the requester refuses to reasonably modify the request or arrange for an alternative time frame for processing the request, the FOIA provides that such refusal shall be considered as a factor in determining whether there are exceptional circumstances that warrant granting additional time for the agency to complete its review of the records, as set forth in 5 U.S.C. 552(a)(6)(C)(iii). The term "exceptional circumstances" does not include a delay that results from a predictable agency backlog, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(b) As used in this section, "unusual circumstances" that may justify delay are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of agency having substantial subject-matter interest in the request.

Note to paragraph (b): Consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Communications, or the Department of Justice is not a basis for extension under this section.

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement should be confirmed in writing and should specify clearly the total time agreed upon.

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§ 1.17 Failure to meet administrative deadlines.

In the event an agency fails to meet the administrative deadlines set forth in §§ 1.7 or 1.14, plus any extension authorized by § 1.16, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 552(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as if it had been reached within the applicable deadline.

§ 1.18 Fee schedule.

Pursuant to § 2.28 of this title, the Chief Financial Officer is delegated authority to promulgate regulations providing for a uniform fee schedule applicable to all agencies of the Department regarding requests for records under this subpart. The regulations providing for a uniform fee schedule are found in appendix A to this subpart.

§ 1.19 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Agencies are authorized, in their sole discretion, to make discretionary releases when such release is not otherwise specifically prohibited by Executive Order, statute, or regulation.

§ 1.20 Annual report.

(a) Each agency of the Department shall compile the following Freedom of Information Act statistics on a fiscal year basis beginning October 1, 1997, and report the following information to the Office of Communications no later than November 30 following the fiscal year's close:

(1) The number of requests for records received and the number of requests which were processed;

(2) The number of determinations made not to comply with initial requests for records made to it under § 1.5(a), and the reasons for each such determinations;

(3) The number of appeals made by persons under § 1.14(b), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information.

(4) A complete list of all statutes that the agency relies upon to authorize the agency to withhold information under 5 U.S.C. 552(b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(6) The median number of days taken by the agency to process different types of requests;

(7) The total amount of fees collected by the agency for processing requests;

(8) The number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding fiscal year into a report and submit this report to the Director of Communications, Office of Communications, no later than November 30 following the fiscal year's close.

(c) The Director of Communications, Office of Communications, shall combine the reports from all the agencies within USDA into a Departmental report, and shall submit to the Attorney General on or before February 1 of each year in accordance with 5 U.S.C. 552(e).

(d) Each agency shall make the report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

§ 1.21 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency create a new record in order to fulfill a request for records. However, an agency is required to provide a record in a form or format specified by a requester, if the record is readily reproducible by the agency in the form or format requested. Creation of records may be undertaken voluntarily if the agency determines this action to be in the public interest or the interest of USDA.

§ 1.22 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of documents in the records of the Hearing Clerk and that the Director of the National Appeals Division may authenticate copies of documents in the records of the National Appeals Division.

§ 1.23 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Administrative Law Judges, U.S. Department of Agriculture, Washington, DC 20250, and shall be made available to the public.

§ 1.24 Preservation of records.

Agencies shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and appropriate records disposition authority granted by NARA. Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

§ 1.25 Implementing regulations for the Office of the Secretary and the Office of Communications.

(a) For the Office of the Secretary and for the Office of Communications, the regulations required by § 1.3 are as follows:

(1) Records available for public inspection and copying may be obtained in Room 536–A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m. by prior appointment;

(2) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b) will also be available in Room 536–A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m.;

(3) The person authorized to receive Freedom of Information Act requests and to determine whether to grant or deny such requests is the FOIA Officer, Office of Communications, USDA, Washington, DC 20250;

(4) The official authorized to receive appeals from denial of FOIA requests and to determine whether to grant or deny such appeals is the Director of Communications, Office of

Communications, USDA, Washington, DC 20250.

(b) The organization and functions of the Office of the Secretary and the Office of Communications is as follows:

(1) The Office of the Secretary provides the overall policy guidance and direction of the activities of the Department of Agriculture. Department-wide policy statements and announcements are made from this office.

(2) The Office of the Secretary consists of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other staff members.

(3) In the absence of the Secretary and the Deputy Secretary, responsibility for the operation of the Department of Agriculture is as delegated at part 2, subpart A, of this title.

(4) The Office of Communications provides policy direction, review, and coordination of public information programs of the Department of Agriculture. The Office of Communications has responsibility for maintaining the flow of information to the mass communications media, various constituency groups, and the general public.

(5) The Office of Communications is headed by the Director of Communications. In the Director's absence, the Office of Communications is headed by the Deputy Director.

Appendix A to Subpart A—Fee Schedule

* * * * *

Dated: July 18, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–18767 Filed 7–27–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 99C–1455]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 as a color additive in absorbable sutures prepared from homopolymers of glycolide for general surgery. The agency is also revising the nomenclature "polyglactin 910 (glycolic-lactic acid polyester)" to the generic nomenclature "copolymers of 90 percent glycolide and 10 percent L-lactide." This action responds to a petition filed by Genzyme Surgical Products Corp.

DATES: This rule is effective August 29, 2000; except as to any provisions that may be stayed by the filing of proper objections. Submit written objections and requests for a hearing by August 28, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of June 3, 1999 (64 FR 29871), FDA announced that a color additive petition (CAP 9C0266) had been filed by Genzyme Surgical Products Corp., 600 Airport Rd., Fall River, MA 02720. The petition proposed to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in absorbable sutures prepared from homopolymers of glycolide for general surgery. The petition also proposed that the nomenclature "polyglactin 910 (glycolic-lactic acid polyester)" be revised to the generic nomenclature "copolymers of 90 percent glycolide and 10 percent L-lactide." The petition was filed under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(d)(1)).

II. Regulatory History

The regulatory history of D&C Violet No. 2 was summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). Since the publication of the May 7, 1990, final rule, other uses of D&C Violet No. 2 have been approved by the agency. For example, in a final rule published in the **Federal Register** of June 18, 1999 (64 FR 32803), FDA amended § 74.3602 to list D&C Violet No. 2 as a color additive in absorbable meniscal tacks made from poly(L-lactic acid).

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Public Law 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (section 721(a) of the act). D&C Violet No. 2 is added to absorbable sutures prepared from homopolymers of glycolide in such a way that at least some of the color additive will come into contact with the body when the sutures are in place. In addition, the sutures are intended to be absorbed by the body, and during the absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the petitioned use of the color additive is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81–48–1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al. have demonstrated that *p*-toluidine is a carcinogen in the mouse (Ref. 1). Residual amounts of reactants, such as *p*-toluidine, and manufacturing aids are commonly found as impurities in chemical products, including color additives.

V. Determination of Safety

Under the general safety standard of the act (section 721(b)(4)) for color additives, a color additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations (21 CFR 70.3(i)) define "safe" as "reasonable certainty that no harm will result from the intended use of the color additive."

The color additives anticancer, or Delaney, clause of the color additive amendments (section 721(b)(5)(B) of the act) provides that no noningested color additive shall be deemed safe and shall be listed if, after tests that are appropriate for evaluating the safety of

the additive for such use, it is found to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

VI. Safety of The Petitioned Use of The Additive

FDA estimates that the petitioned use of the additive, D&C Violet No. 2, will result in exposure over a 70-year lifetime of 156 nanograms per person per-day (ng/p/d) (Ref. 2).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 3), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small daily exposure resulting from the proposed use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by *p*-toluidine, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *p*-toluidine has two aspects: (1) Assessment of exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. p-Toluidine

FDA has estimated the average individual lifetime exposure to *p*-toluidine from the petitioned use of D&C Violet No. 2 in absorbable sutures prepared from homopolymers of glycolide to be no more than 0.3 ng/p/d (Ref. 4). The agency used data from a long-term rodent bioassay on *p*-toluidine conducted by Weisburger et al. (Ref. 1), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The authors reported that the rodent bioassay showed that the test material caused an increased incidence of hepatomas (liver tumors).

Based on the agency's estimate that exposure to *p*-toluidine will not exceed 0.3 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 2×10^{-11} or 2 in 100 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to *p*-toluidine is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to *p*-toluidine would result from the proposed use of the additive.

B. Specifications

The agency has also considered whether specifications are necessary to control the amount of *p*-toluidine present as an impurity in D&C Violet No. 2. The additive is currently produced as a certified color additive for use in externally applied drugs and cosmetics, in sutures, in meniscal tacks, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602 (21 CFR 74.1602), the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in absorbable sutures prepared from homopolymers of glycolide.

VII. Conclusions

FDA has evaluated the data and information in the petition and other relevant material. Based on this information the agency concludes that: (1) The proposed use of D&C Violet No. 2, at a level not to exceed 0.2 percent by weight of the suture material, for coloring absorbable sutures prepared from homopolymers of glycolide for general surgery is safe; and (2) the color additive will achieve its intended coloring effect, and thus, is suitable for this use. Further, FDA has carefully considered the proposal to revise the nomenclature "polyglactin 910 (glycolic-lactic acid polyester)," which is currently listed in § 74.3602(b)(2)(i). The agency concludes that the nomenclature, which is a trade name, should be revised to the generic nomenclature "copolymers of 90 percent glycolide and 10 percent L-lactide." Finally, the agency concludes that the color additive regulations in § 74.3602 should be amended as set forth below.

VIII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IX. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 9C0266 (64 FR 29871, June 3, 1999). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

X. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by August 28, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this

document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

XII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, E. K. et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Memorandum from the Division of Product Manufacture and Use, Chemistry Review Team (FDA), to the Division of Petition Control (FDA), concerning "CAP 9C0266 (MATS M2.0 & 2.1): Genzyme Surgical Products Corp. (Submission of March 18, 1999, facsimile dated April 9, 1999, and amendment of April 29, 1999). Request for the Listing of D&C Violet No. 2 in Glycolide Homopolymer Absorbable Sutures for General Surgery," dated June 16, 1999.

3. Kokoski, C. J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

4. Memorandum from Division of Petition Control (FDA), to Executive Secretary, Quantitative Risk Assessment Committee (FDA), concerning "Estimation of the Upper-Bound Lifetime Risk From *p*-Toluidine in D&C Violet No. 2 When Used as a Color Additive for Sutures Used in General Surgery: CAP 9C0266," dated July 21, 1999.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 74.3602 is amended by revising paragraph (b)(2)(i) and by adding paragraph (b)(2)(vi) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(2) * * *

(i) At a level not to exceed 0.2 percent by weight of the suture material for coloring copolymers of 90 percent glycolide and 10 percent L-lactide synthetic absorbable sutures for use in general and ophthalmic surgery; and

* * * * *

(vi) At a level not to exceed 0.2 percent by weight of the suture material for coloring absorbable sutures prepared from homopolymers of glycolide for use in general surgery.

* * * * *

Dated: July 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19047 Filed 7–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. NHTSA–00–7476]

RIN 2127–AH42

Incentive Grants for Alcohol-Impaired Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document announces that the amendments to the regulations that were published in an interim final rule to reflect changes made to the Section 410 program by the Transportation Equity Act for the 21st Century (TEA–21) will remain in effect with minor changes. Under the final rule, States have two alternative means for qualifying for a Section 410 basic grant.

States may qualify for a "programmatic basic grant" if they submit materials demonstrating that they meet five out of seven grant criteria. Alternatively, States may qualify for a "performance basic grant" by submitting data demonstrating that the State has successively reduced the percentage of alcohol-impaired fatally injured drivers in the State over a three-year period. States that qualify under both sets of requirements may receive both programmatic and performance basic grants. In addition, States that are eligible for one or both of the basic grants may qualify also for a supplemental grant.

This final rule establishes the criteria States must meet and the procedures they must follow to qualify for Section 410 incentive grants, beginning in FY 2000. This final rule also modifies some features of the interim regulations that relate to the graduated driver's licensing system criterion and the young adult drinking and driving program criterion.

DATES: This final rule becomes effective on July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Karr, Office of State and Community Services, NSC–10, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, DC 20590 telephone (202) 366–2121; or Mr. Christopher A. Cook, Office of Chief Counsel, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366–1834.

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I. Background

The Section 410 program was created by the Drunk Driving Prevention Act of 1988 and codified in 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under the Section 410 program if they met certain criteria. To qualify for a basic grant, States had to provide for an expedited driver's license suspension or revocation system and a self-sustaining drunk driving prevention program. To qualify for a supplemental grant, States had to be eligible for a basic grant and provide for a mandatory blood alcohol testing program, an underage drinking program, an open

container and consumption program, or a suspension of registration and return of license plate program.

A number of technical corrections contained in the 1991 Appropriations Act for the Department of Transportation and Related Agencies, enacted on January 12, 1990, led to changes in the basic grant requirements, but did not add any new criteria to the program.

A number of modifications were made to the Section 410 program in 1991 by the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In addition to modifying award amounts and procedures, ISTEA changed the criteria that States were required to meet to qualify for basic and supplemental grant funds. To qualify for a basic grant under the amended program, States were required to provide for four out of the following five criteria: an expedited administrative driver's license suspension or revocation system; a *per se* law at 0.10 BAC (during the first three fiscal years in which a basic grant was received based on this criterion and a *per se* law at 0.08 BAC in each subsequent fiscal year); a statewide program for stopping motor vehicles; a self-sustaining drunk driving prevention program; and a minimum drinking age prevention program.

States eligible for basic grants could qualify also for supplemental grants if they provided for one or more of the following: a *per se* law at 0.02 BAC for persons under age 21; an open container and consumption law; a suspension of registration and return of license plate program; a mandatory blood alcohol concentration testing program; a drugged driving prevention program; a *per se* law at 0.08 BAC (during the first three fiscal years in which a basic grant was received); and a video equipment program.

In 1992, the Section 410 program was modified again. The Department of Transportation and Related Agencies Appropriations Act for FY 1993, which was signed into law on October 6, 1992, essentially repealed the modifications to Section 410 relating to award amounts and procedures that were enacted by ISTEA. The Act also added a sixth basic grant criterion, and provided that to be eligible for a basic grant, a State must meet five out of the six basic grant criteria. The new criterion required States to show that they impose certain mandatory sentences on repeat offenders.

The National Highway System Designation Act of 1995 led to further amendments to the Section 410 program. The criterion for a statewide program for stopping motor vehicles was modified to accommodate States in which roadblocks were unconstitutional. In addition, the *per se* law at 0.02 BAC for persons under age 21 requirement was eliminated as a supplemental grant criterion, and became instead a basic grant criterion (thereby increasing the total number of basic grant criteria from six to seven). With this change, States could qualify for a basic grant by meeting five out of seven criteria.

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) was enacted into law (P.L. 105–178). Section 2004 of TEA–21 contained a new set of amendments to 23 U.S.C. 410. These amendments modified both the grant amounts to be awarded and the criteria that States must meet to qualify for both basic and supplemental grant funds under the Section 410 program.

The TEA–21 amendments, which took effect in FY 1999, establish two separate basic grants, plus six supplemental grant criteria. The statute provides that the amount of each basic grant shall equal up to 25 percent of the amount apportioned to the qualifying State for fiscal year 1997 under 23 U.S.C. 402, and that up to 10 percent of the amounts available to carry out the Section 410 program shall be available for making Section 410 supplemental grants.

Under the TEA–21 amendments, a State can qualify for one of the basic grants (named a "Programmatic Basic Grant" in the interim regulation) by demonstrating that the State meets five out of the following seven criteria: An administrative driver's license suspension or revocation system; an underage drinking prevention program; a statewide traffic enforcement program; a graduated driver's licensing system; a program to target drivers with high BAC; a program to reduce drinking and driving among young adults (between the ages of 21 and 34); and a BAC testing program. A State can qualify for the other basic grant (named a "Performance Basic Grant" in the interim regulation) by demonstrating that the percentage of fatally injured drivers in the State with a blood alcohol concentration (BAC) of 0.10 or more has decreased in each of the three most recent calendar years for which statistics are available and that the percentage of fatally injured drivers with a BAC of 0.10 or more in the State has been lower than the average percentage for all States in each of the same three calendar years.

To qualify for supplemental grant funds under Section 410, as amended by TEA–21, a State must receive a Programmatic and/or a Performance Basic Grant, and must provide for one or more of the following six criteria: a video equipment program; a self-sustaining drunk driving prevention program; a program to reduce driving with a suspended driver's license; a passive alcohol sensor program; an effective DWI tracking system; or other innovative programs to reduce traffic safety problems that result from individuals who drive while under the influence of alcohol or controlled substances. A detailed discussion of the criteria described above is contained in the interim final rule.

II. Administrative Issues

A. Qualification Requirements

Under the interim final rule, the agency's Section 410 implementing regulation continues to outline, in the qualification requirements section, 23 CFR 1313.4(a), certain procedural steps that must be followed when States wish to apply for a grant under this program.

State applications must be received by the agency no later than August 1 of the fiscal year in which the States are applying for funds. The application must contain certifications stating that: (1) The State has an alcohol-impaired driving prevention program that meets the grant requirements; (2) it will use funds awarded only for the implementation and enforcement of alcohol-impaired driving prevention programs; (3) it will administer the funds in accordance with relevant regulations and OMB Circulars; and (4) the State will maintain its aggregate expenditures from all other sources for its alcohol-impaired driving prevention programs at or above the average level of such expenditures in fiscal years 1996 and 1997. The regulation provides that either State or Federal fiscal year may be used.

Consistent with current procedures being followed in other highway safety grant programs being administered by NHTSA, once a State has been informed that it is eligible for a grant, the State must include documentation in the State's Highway Safety Plan, prepared under Section 402, that indicates how it intends to use the grant funds. The documentation must include a Program Cost Summary (HS Form 217) obligating the Section 410 funds to alcohol-impaired driving prevention programs.

Upon receipt and subsequent approval of a State's application, NHTSA will award grant funds to the State and will authorize the State to incur costs after receipt of an HS Form 217. Vouchers must be submitted to the appropriate NHTSA Regional

Administrator and reimbursement will be made to States for authorized expenditures. The funding guidelines applicable to the Section 402 Highway Safety Program will be used to determine reimbursable expenditures under the Section 410 program.

B. Limitation on Grants

Under the Section 410 program, as amended by TEA–21, States are eligible to receive Section 410 grants for up to six fiscal years, beginning in FY 1998. A total of $219.5 million is authorized for the program over a six-year period. Specifically, TEA–21 authorized $34.5 million for FY 1998, $35 million for FY 1999, $36 million for FY 2000, $36 million for FY 2001, $38 million for FY 2002 and $40 million for FY 2003.

TEA–21 created two separate basic grants, which were designated in the agency's interim final rule as programmatic and performance basic grants. Beginning in FY 1999, a State that qualifies for either a programmatic or a performance basic grant shall receive grant funds in an amount equal to 25 percent of the State's Section 402 apportionment for FY 1997, subject to the availability of funds. However, States are at liberty to apply for both basic grants. A State that qualifies for both basic grants shall receive basic grant funds in an amount equal to 50 percent of the State's FY 1997 Section 402 apportionment, subject to the availability of funds.

Section 410, as amended by TEA–21, limits the funds that will be available each fiscal year for supplemental grants to 10 percent of the funding for the entire Section 410 program for that fiscal year. TEA–21 does not specify how each State's supplemental grant is to be calculated.

The interim final rule provided that supplemental grants will be calculated by multiplying the number of supplemental grant criteria a State meets by five percent of the State's Section 402 apportionment for FY 1997. This is the maximum supplemental grant funding the State may receive, subject to the ten percent cap and availability of funds. We received no comments in response to the interim rule regarding this issue. The agency continues to believe that such a calculation takes into account, in an appropriate way, the size of the State in terms of population and highway mileage (in accordance with the formula used under Section 402) and the accomplishments the State has demonstrated in its alcohol-impaired driving prevention program. This final rule makes no changes to this aspect of the interim regulation.

States continue to be required to match the grant funds they receive. Under the matching requirements, the Federal share may not exceed 75 percent of the cost of the program adopted under Section 410 in the first and second fiscal year the State receives funds, 50 percent in the third and fourth fiscal year the State receives funds and 25 percent in the fifth and sixth fiscal year. For those States that received Section 410 grants in FY 1998, that year will be considered the State's first fiscal year for matching purposes.

The agency will continue to accept a "soft" match in Section 410's administration. By this, NHTSA means the State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State could not, however, use any Federal funds, such as its Section 402 funds or Department of Justice funds, to satisfy the matching requirements. In addition, a State can use each non-Federal expenditure only once for matching purposes.

C. Award Procedures

As the agency explained in the interim final rule, the release of the full grant amounts under Section 410 shall be subject to the availability of funding for that fiscal year.

If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA stated in the interim final rule that it may release less than the full grant amounts upon initial approval of the State's application and documentation, and the remainder of the full grant amounts up to the State's proportionate share of available funds, before the end of that fiscal year.

However, based on the agency's experience administering this grant program in fiscal year 1999, as well as the other grant programs that were authorized under TEA–21, NHTSA has determined that it is not necessary to release funds in two stages. Accordingly, beginning in FY 2000, all Section 410 funds will be released at the same time. Since applications for Section 410 funds are due each fiscal year by August 1, the funds will be awarded near the end of each fiscal year (no later than September 30).

If there are insufficient funds to award the full grant amounts to all eligible States in any fiscal year, NHTSA will award each State its proportionate share of available funds. As stated in the interim final rule, project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

As explained in the interim final rule, if any funds remain available under 23 U.S.C. Sections 405, 410 and 411 at the end of a fiscal year, the Secretary may transfer these funds to the amounts made available under any other of these programs to ensure, to the maximum extent possible, that each State receives the maximum incentive funding for which it is eligible.

III. Interim Final Rule

These regulations were published in an interim final rule on December 29, 1998 (63 FR 71688). The interim regulations became effective on January 28, 1999, and grants were awarded under the provisions of the interim regulations in FY 1999. Thirty-four States submitted grant applications under the interim regulations in FY 1999. Thirty-two States received a total of $33,250,000 in both basic and supplemental Section 410 grants in FY 1999 under the interim final rule. Of the thirty-two States that received grants, a total of thirty States qualified for a grant under the programmatic basic criterion and, of these thirty States, three States qualified for both a programmatic basic grant and a performance basic grant. In addition, two States qualified for a performance basic grant only.

IV. Written Comments

In the interim final rule published on December 29, 1998, the agency requested written comments on the changes to the regulations. The agency stated that all comments submitted would be considered by the agency and that, following the close of the comment period, the agency would publish a document in the Federal Register responding to the comments and, if appropriate, would make further amendments to the provisions of Part 1313.

A. Comments Received

The agency received submissions from eight commenters in response to the interim final rule. The commenters included the National Association of Governors' Highway Safety Representatives (NAGHSR) and seven State representatives. K. Craig Allred, Director of the Utah Highway Safety Office, commented in his capacity as the Chair of the National Association of Governors' Highway Safety Representatives (NAGHSR). The State comments were submitted by Kirk Brown, Secretary of the Illinois Department of Transportation (Illinois); Ronald D. Lipps, Highway Safety Coordinator, Maryland State Highway

Administration (Maryland); Betty J. Mercer, Division Director of the Office of Highway Safety Planning, Michigan Department of State Police (Michigan); Dawn Olson, Program Manager, North Dakota Department of Transportation, Drivers License and Traffic Safety (North Dakota); Troy E. Costales, Governor's Highway Safety Representative and the Transportation Safety Division Manager of the Oregon Department of Transportation (Oregon); John M. Moffat, Governor's Highway Safety Representative and Director of the Washington Traffic Safety Commission (Washington); and Charles H. Thompson, Secretary of the Wisconsin Department of Transportation (Wisconsin).

B. General Comments

In general, the comments in response to the interim final rule were very positive. Washington recommended that the "rule be adopted as written" and complimented the agency "on a clearly written rule." NAGHSR supported the interim regulations and stated that it "believes that they are consistent with statutory intent."

Many sections of the interim rule generated no comments. For example, no comments were received regarding § 1313.1 Scope, § 1313.2 Purpose, § 1313.3 Definitions, § 1313.4 General Requirements and § 1313.8 Award Procedures. We also received no comments regarding § 1313.7, which contained the requirements for a supplemental grant. These sections of the interim rule have been adopted in this final rule without change.

One commenter (the State of Oregon) noted that "the level of detail for some of the requirements was extensive" and the interim rule included what the commenter considered "excessive detail" that was "prescriptive, leaving little flexibility for some States." We note, however, that Oregon objected to only two particular criteria, the graduated driver's licensing system and the program for drivers with high BAC. The State indicated that it considered all of the other established criteria to be acceptable.

Most comments related to the requirements that States must meet to qualify for a programmatic grant based on the administrative license suspension or revocation system, underage drinking prevention program, statewide traffic enforcement program, graduated driver licensing system, program for drivers with high BAC and young adult drinking and driving program criteria. Comments were received also regarding the requirements that States must meet to qualify for a performance grant. These comments and the agency's responses thereto are discussed in greater detail below. Also discussed below are certain changes that the agency decided to make in this final rule regarding issues that were raised while the agency reviewed State applications for Section 410 funds during FY 1999, the first year that the Section 410 program operated under the interim regulations.

C. Comments Regarding the Grant Criteria

1. Administrative License Suspension or Revocation System

TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—
>
> (i) In the case of an individual who, * * * is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—
>
> (I) Shall suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and
>
> (II) Shall suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and
>
> (ii) The suspension and revocation referred to * * * shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.

With regard to the requirement under this criterion that the driver's license of repeat offenders must be suspended or revoked for a period of not less than one year, the interim final rule requires that States must impose a "hard" one-year suspension term (*i.e.*, that *all* driving privileges of repeat offenders must be suspended or revoked for at least one year) on any offender who fails or refuses to submit to a chemical test more than once within a five-year period.

Mr. Allred of Utah, commenting for NAGHSR, strongly objected to this one-year hard suspension requirement. He asserted that "a one-year hard suspension would be very problematic, particularly for rural residents who have no other means of transportation" and he urged instead that "the regulatory language allow for a short (*e.g.* 60- or 90-day) hard suspension period followed by a period in which the driver is allowed to drive with a restricted license."

As the agency explained in the preamble to its Section 410 interim final rule, a license suspension system has been a basic grant criterion under the Section 410 program since the program's inception in 1988, and a one-year hard suspension period has always been an element of this criterion.

Prior to the enactment of TEA–21, this criterion contained a number of detailed procedural requirements, and TEA–21 streamlined this criterion by eliminating some of these requirements. Only selected elements were retained, but the one-year suspension period was one of those elements. TEA–21 continued to require that first offenders must be subject to a 90-day suspension or revocation, that repeat offenders must be subject to a one-year suspension or revocation, and that suspensions or revocations must take effect within 30 days after the offender refuses to submit to a chemical test or receives notice of having failed the test.

The agency has always interpreted this criterion to require that the one-year suspension be served as a "hard" suspension of all of the offender's driving privileges, and there is nothing in the legislative history of TEA–21 that would suggest that Congress intended that this interpretation should change. In fact, the provisions of the TEA–21 Restoration Act reinforce the agency's interpretation.

In July 1998, two months after the enactment of TEA–21, Congress passed the TEA–21 Restoration Act to restore provisions that were agreed to by the conferees to TEA–21, but inadvertently were not included in the TEA–21 conference report.

The TEA–21 Restoration Act created the Section 164 Repeat Intoxicated Driver Transfer Program, under which States are required to establish certain minimum penalties for repeat offenders. Any State that doesn't establish these minimum penalties by October 1, 2000, will be subject to a transfer of funds. Section 164 establishes four minimum penalties for repeat offenders, one of which is "the suspension of all driving privileges * * * for not less than one year."

Since Congress had established a minimum one-year hard suspension for repeat offenders as a condition for States to avoid the transfer of funds under the TEA–21 Restoration Act, the agency concluded that the Section 410 criterion, which would help a State

qualify for an incentive grant, should not require anything less.

In addition, the agency provided significant flexibility to the States in the interim final rule by allowing them to qualify under this criterion as either Law States or Data States. Law States can demonstrate compliance with this criterion by submitting copies of their conforming laws. If a State's laws do not conform with one or more elements of this criterion, the State can qualify instead as a Data State. Data States can demonstrate compliance by submitting copies of their laws, and data demonstrating compliance with the elements not specifically provided for in their laws.

Regarding Mr. Allred's suggestion that the one-year requirement will be problematic, particularly in rural areas, the agency notes that, in FY 1999, thirty States qualified for programmatic basic grants and that, of these, fifteen States complied with the administrative license suspension or revocation system criterion, including such States as Iowa, New Hampshire, Oregon, Utah and Vermont.

For the reasons discussed above, this portion of the interim regulation has been adopted without change.

2. Underage Drinking Prevention Program

TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> An effective system * * * for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such system may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older and the issuance of drivers' licenses that are tamper resistant.

As explained in the interim final rule, this criterion is almost identical to the minimum drinking age prevention program criterion contained in Section 410 prior to the enactment of TEA–21, except that TEA–21 added two elements to the criterion. Under TEA–21, the system must not only prevent drivers under the age of 21 from obtaining alcoholic beverages. It must also take steps that prevent persons of any age from making alcoholic beverages available to those who are under 21. In other words, the system must target young drinkers and also providers. In addition, the interim final rule indicated that States must demonstrate both that driver's licenses that are issued to individuals under the age of 21 are distinguishable from those issued to individuals over 21 years of age, and that they are tamper resistant.

Mr. Allred of Utah, commenting on behalf of NAGHSR, submitted the only comment regarding this criterion. He objected to the requirement that licenses must be made "tamper resistant." He stated that TEA–21 uses the "state adoption of a special tamper-resistant underage license * * * [only] as an example of an underage program," and he asserted that TEA–21 "leaves open the option that a state may satisfy this criteria in other ways."

The agency agrees that TEA–21 did not require the agency to include a requirement in its implementing regulation that States must adopt tamper resistant underage licenses. The statute requires only that States must have an "effective [underage drinking prevention] system." However, Congress clearly authorized the agency to define what it considered to be an "effective system" and suggested that such a system might include the issuance of easily distinguishable and tamper-resistant licenses.

Because the prevention of underage drinking hinges on the ability of alcohol providers to properly identify those who are underage, NHTSA believes that the issuance of easily distinguishable and tamper resistant driver's licenses is a critical element to an effective underage drinking prevention system. Easily distinguishable licenses help providers determine whether people are representing themselves to be over the age of 21, and tamper resistant features help prevent people who are under 21 from misrepresenting their age.

In addition, the interim regulations provided a tremendous amount of flexibility to the States regarding the manner in which they may meet this requirement. While the agency urged States, in the interim final rule, to consider incorporating as many of the security features as possible into their driver's licenses to prevent underage drivers from altering existing licenses or from obtaining or producing counterfeits, the interim regulations provided that States need only adopt one security feature to meet this element of the criterion, from a broad list of possible choices. The list was included as Appendix A to the interim final rule, and it included, for example, ghost images, holograms, security laminate or a State seal or signature which overlaps the individual's photograph or information.

The agency is unaware of any State in this country that does not already use at least one of the security features listed in Appendix A to the interim final rule, and we are unaware of any State that was unable to qualify for a Section 410 grant because of its inability to meet this condition.

All thirty States that received Section 410 programmatic basic grants in FY 1999 submitted driver's licenses that met this criterion. For all of these reasons, the agency has adopted this portion of the interim regulation without change.

3. Statewide Traffic Enforcement Program

TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while under the influence of alcohol; or a statewide special traffic enforcement program for impaired driving that emphasizes publicity for the program.

The interim final rule provides that a State may qualify for a grant based on this criterion by having either a Statewide program for stopping motor vehicles or a Statewide special traffic enforcement program (STEP) for impaired driving that emphasizes publicity regarding the program.

Mr. Allred of Utah, writing for NAGHSR, submitted the only comment regarding this criterion. Mr. Allred expressed concern that States would be required, under the interim regulations, to conduct "statewide programs for stopping vehicles" to qualify under this criterion. He requested that "NHTSA * * * allow states that are constitutionally prohibited from implementing sobriety checkpoints to be eligible if they implement saturation patrols or similar enforcement programs." Mr. Allred stated, "This was a successful approach in the previous 410 program, and we believe that it should be continued."

The agency wishes to clarify that States are not required to conduct sobriety checkpoint programs in order the qualify under this criterion. As we stated in the interim final rule, States may qualify by conducting *either* roadblock or checkpoint programs *or* STEP programs that meet certain conditions.

As we explained in the interim final rule, initially, under the Section 410 program, only roadblock or checkpoint programs were considered acceptable under this criterion, but the criterion was expanded later to permit, in certain cases, other intensive and highly publicized traffic enforcement techniques.

TEA–21 and the interim regulations continue to provide this flexibility and,

in addition, they provide additional flexibility regarding the elements States must meet to comply with this criterion.

The interim final rule explained that, to qualify for a grant based on this criterion, the State's program for stopping motor vehicles or its STEP must be conducted on a statewide basis; stops must be made or STEPs must be conducted not less than monthly; stops must be made or STEPs must be conducted by both State and local law enforcement agencies; and effective public information efforts must be conducted to inform the public about these enforcement efforts. Saturation patrol programs that contain all of the components of a STEP can qualify as a STEP under this criterion.

Therefore, the agency believes that no changes are needed to address Mr. Allred's concerns. Accordingly, this portion of the interim regulation has been adopted without change.

4. Graduated Driver's Licensing System

TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> A 3-stage graduated licensing system for young drivers that includes nighttime driving restrictions during the first 2 stages, requires all vehicle occupants to be properly restrained, and makes it unlawful for a person under age 21 to operate a motor vehicle with a blood alcohol concentration of 0.02 percent or greater.

The interim final rule described, in further detail, the elements that must make up this three-stage system. Specifically, the interim final rule provided that, to qualify under this criterion, States must have a three-stage program that includes a learner's permit stage (Stage I), an intermediate (or restricted) license stage (Stage II) and a final stage, under which the driver receives an unrestricted license (Stage III).

The interim regulations also established the qualifications that applicants must meet to receive a permit or license at each stage, and the conditions that permit and license holders must follow during each stage.

In particular, the interim regulations provided that an applicant must pass vision and knowledge tests, including tests about the rules of the road, signs and signals to qualify for a Stage I learner's permit; an applicant must successfully comply with the conditions of the Stage I learner's permit for not less than three months and pass a driving skills test to qualify for a Stage II intermediate driver's license; and an applicant must successfully comply with the conditions of the Stage I learner's permit and the Stage II intermediate driver's license for a combined period of not less than one year to qualify for a Stage III driver's license.

The interim regulations provided also that drivers must be subject to the following conditions during Stages I and II: drivers under the age of 21 must not operate a motor vehicle with a BAC of .02 or greater; drivers must not operate a motor vehicle while any occupant in the vehicle is not properly restrained in accordance with State or local law; drivers must remain crash and conviction free; and drivers must abide by certain driving restrictions.

In particular, Stage I learner's permit holders may not operate a motor vehicle at any time unless they are accompanied by a licensed driver who is 21 years of age or older and Stage II intermediate driver's license holders may not operate a motor vehicle during some period of time between the hours of 10 p.m. and 6 a.m., as specified by the State, unless they are accompanied by a licensed driver who is 21 years of age or older or are covered by a State-approved exception.

In addition, the interim regulations provided that the State's Stage I learner's permit, Stage II intermediate license and Stage III full driver's license all must be distinguishable from each other.

Since the graduated driver's licensing criterion was the most detailed criterion under the Section 410 basic programmatic grant, it is not surprising that it generated the most comments. Comments were received regarding this criterion from Mr. Allred of Utah for NAGHSR and from the States of Illinois, Maryland, Oregon and Wisconsin. We note that each of these five States qualified in FY 1999 for a Section 410 programmatic basic grant, and that Maryland qualified, in part, based on its GDL law. In fact, a total of eight States qualified for Section 410 programmatic basic grants in FY 1999 based, in part, on the GDL criterion.

The specific comments that were submitted and the agency's responses to these comments are discussed in detail below.

a. Successful Compliance with Earlier Stages: As stated above, the interim regulations provided that, to qualify for a Stage II license, an applicant must have "successfully complied" with the conditions of the Stage I learner's permit for not less than three months and, to qualify for a Stage III license, an applicant must have "successfully complied" with the conditions of the Stage I learner's permit and the Stage II intermediate driver's license for a combined period of one year.

The agency received comments regarding this requirement from Illinois and Maryland. Both of these comments suggest that an applicant's non-compliance during one stage should not necessarily prevent an applicant from moving to the next stage. Illinois recommended, for example, that "Minor convictions can be tolerated while penalties [should be] assigned to serious convictions."

Similarly, Maryland recommended that applicants should not be prevented from moving from one stage to the next based on their non-compliance with the State's occupant protection laws. Maryland recommended instead that "the final rule should simply and unambiguously state that novice drivers in Stages I and II of a graduated licensing program * * * must comply with the State's occupant protection laws or face the prescribed State sanctions." According to Maryland, "Any additional requirement * * * will be counterproductive to the extent it prevents States from receiving grants [to support impaired driving programs]." This issue was raised also by other States when the agency was reviewing their applications for FY 1999 Section 410 funds.

Originally, the agency interpreted the phrase "successfully complied" to mean that, if an applicant violated any of the conditions of the earlier stages (including the conditions regarding zero tolerance, proper restraints and driving restrictions), the applicant could not proceed to the next stage.

Following a detailed review of a number of State GDL laws, however, the agency came to realize that current State laws, including those that have been held out as models by advocates of GDL legislation, do not apply such harsh consequences. If the agency were to insist that GDL laws must provide that any violation of a condition in Stage I or II would prohibit an applicant from proceeding to the next stage, it is our belief that few, if any, of the GDL laws currently in effect would qualify under this criterion. We do not believe this is the outcome that Congress intended.

Accordingly, we now consider the requirement that applicants must have "successfully complied" with the conditions of the previous stages to mean instead that, if an applicant fails to meet a condition of an earlier stage, the applicant must be subject to the consequences that are established by the State or local law.

The consequences may vary. For example, the consequence for a violation of the State's zero tolerance law may be a 30-day suspension of the driver's permit or license, but it need

not result in a full revocation. The consequence for a violation of the driving restrictions could be a requirement that the driver attend an education program. The consequence for a violation of the proper restraint requirement may be a fine or points on the driver's permit or license.

Therefore, the regulations have been amended to clarify that "successfully complied" means that the applicant either has not violated any of the conditions of the previous stage(s) or, if the applicant has violated a condition of the previous stage(s), that the applicant has been subject to the consequences that are prescribed by State or local law for this violation.

b. Crash and Conviction Free Requirement: As stated above, the interim regulations provided that a driver must remain crash and conviction free during Stages I and II. The term "conviction free" was defined in the interim regulations to mean "that the individual, during the term of the permit or license, has not been charged with and subsequently convicted of any offense under State or local law relating to the use or operation of a motor vehicle." The term "crash free" was defined to mean "that the individual, during the term of the permit or license, has not been determined to be the party at fault in any police reportable motor vehicle crash."

The agency received comments regarding this element of the criterion from Illinois, Maryland and Wisconsin.

Illinois asserted in its comments that, because young drivers in Illinois "are licensed under our graduated licensing system for a time period of 60–72 months, we believe requiring them to be crash and conviction free for a period of 5–6 years is unreasonable." The agency notes that the interim regulations provided that drivers must comply with the crash and conviction free requirement only during Stages I and II. They provided also that eligible drivers could move from Stage I to Stage II after a period of only three months, and that eligible drivers could move from Stages I and II to Stage III after a combined period of only one year. Accordingly, under the interim regulations, a State could meet this requirement by providing for a minimum crash and conviction free period of only one year.

However, the agency recognizes that the interim regulations could have been interpreted to require that drivers must remain crash and conviction free during the entire length of Stages I and II if those stages lasted longer than one year. Accordingly, the regulations have been amended to clarify that drivers must comply with this condition for a period of only three months during Stage I and for a combined period of only one year during Stages I and II, even if those stages last for a longer period of time.

Illinois also expressed opposition to the requirement that drivers must remain crash free. While the interim regulations limited this requirement by defining "crash free" to mean "that the individual * * * has not been determined to be the party at fault in any police reportable motor vehicle crash," Illinois explained that, "in Illinois we do not assign blame in crashes, so we do not have a basis for determining that a driver is crash free." Similar comments were received from other States.

Maryland explained that "it is the policy/practice of some law enforcement agencies to report all parties in a collision to be at fault and to charge all parties with a traffic violation [and] leave it up to the courts to determine guilt/fault." Because this is the practice in the State, Maryland asserted that "it would be patently unfair to prohibit a novice driver from progressing from one stage to the next because the driver was involved in [a crash] even if that driver is not ultimately determined to be at fault."

Wisconsin asserted that there are "States whose crash data systems do not capture the investigating officer's 'at fault' determination." To resolve this issue, Wisconsin suggested that these States "should be allowed to use a surrogate indicator of fault," such as the issuance of a traffic citation. Maryland recommended instead that the crash free requirement be eliminated altogether in the final rule.

The agency has considered these comments carefully and has come to realize that the requirements that drivers must remain both crash and conviction free are, to a large extent, redundant. If a motor vehicle crash is "police reportable [or reported]" and the party is found to be "at fault," that party generally will be charged with a violation of some offense, which then would be considered to be a "conviction." Moreover, the agency now realizes that it would be extremely difficult, if not impossible, for States to determine independently whether an applicant had been involved in a crash and found to be at fault on any basis other than based on moving violations or other convictions.

For all of these reasons, the agency has decided to simplify this element of the GDL criterion. We have removed from the regulations the requirement that applicants must remain crash free, and we have removed the definition of the term "crash free" because it no longer applies. Accordingly, to demonstrate compliance with this element, States now need only show that their laws require that applicants remain conviction free.

In addition, to provide States with additional flexibility and to avoid the imposition of unreasonable restrictions, we have provided that it is up to each State to determine which convictions will adversely affect a driver's progression in the GDL program. Accordingly, the regulations now provide that, to qualify under this element of the GDL criterion, States must require that applicants remain free of convictions that relate to the use or operation of a motor vehicle, to the extent required by State law, for a minimum of three months during Stage I, before moving to Stage II, and for a combined minimum period of one year during Stages I and II, before moving to Stage III.

c. Driving Restrictions: As stated above, the interim regulations provided that Stage I learner's permit holders may not operate a motor vehicle at any time unless they are accompanied by a licensed driver who is 21 years of age or older and Stage II intermediate driver's license holders may not operate a motor vehicle during some period of time between the hours of 10:00 p.m. and 6:00 a.m., as specified by the State, unless they are accompanied by a licensed driver who is 21 years of age or older or are covered by a State-approved exception.

The agency received comments regarding this element of the GDL criterion from Maryland and Wisconsin.

Maryland's GDL system is unusual, because most of its features cover novice drivers of all ages, not just novice drivers who are underage. However, the nighttime driving restrictions in Maryland's GDL system apply only to novice drivers who are under the age of 18. In its comments, Maryland asserts that "it is inappropriate and largely impractical to restrict adult novice drivers in Stage II from driving alone at any hour of the night." Accordingly, Maryland recommends that the nighttime driving restrictions should apply only to minors.

As explained in the agency's interim final rule, "the interim regulation provides that the GDL must cover 'young drivers,' but it does not define this term." In the interim final rule, the agency deferred to the States to determine the age of drivers that should be covered by their GDL systems. In response to Maryland's comment, the agency would like to clarify that a State may elect to apply some features of its GDL to adult drivers, and not be

compelled then to apply all of its GDL features to such drivers.

Wisconsin objected to the requirement that the driver who must accompany Stage I permit or Stage II license holders must be 21 years of age or older and also suggested that certain exceptions should be permitted to the driving restriction requirement.

Specifically, Wisconsin recommended "that the minimum age limit for accompanying riders should be 18" because "18 is the age of majority and the age by which most drivers have completed the first two stages of the [State's GDL system] * * *" Wisconsin urged the agency to establish a minimum age of 18 also because "some teens are married and have spouses age 18–20 years old." Wisconsin also recommended that "there should be exceptions to the GDL accompaniment rule for drivers operating on Stage II probationary licenses if they are serving as volunteer drivers in community-based 'teen safe ride' programs."

The requirement that GDL drivers must be accompanied by drivers over the age of 21 at all times during Stage I and during certain night-time hours during Stage II is designed to ensure that young novice drivers receive adult supervision during critical periods of time while they are being exposed to increased levels of risk as drivers. The agency does not believe most 18-year-olds have the experience or the maturity to provide this adult supervision.

In fact, research indicates that, not only are teenage drivers more likely than other drivers to be involved in motor vehicle crashes, but their risk of exposure increases significantly when they drive at night with other teens in their vehicles. As stated in the NHTSA and National Safety Council publication "Saving Teenage Lives: The Call for Graduated Driver Licensing," two-thirds of all teenagers who die as passengers in motor vehicle crashes are, at the time of the crash, in vehicles that are driven by other teenagers.

For these reasons, NHTSA has decided not to lower the minimum age of persons who must accompany GDL drivers during Stages I and II.

With regard to Wisconsin's request that the agency permit certain exceptions to this requirement, we note that NHTSA has allowed some limited exceptions under the interim regulations. While the agency does not encourage the States to adopt these exceptions, NHTSA has permitted them under the interim regulations. These exceptions include permitting a parent, a guardian, a custodian or a driver's education instructor to accompany a GDL driver during Stage II, even if such person is not 21 years of age. We have also permitted Wisconsin's teen safe ride exception to the Stage II night-time driving restriction.

For the reasons discussed above, this portion of the interim regulation has been adopted without change.

d. Distinguishable Licenses: The interim final regulations require that "the Stage I learning permit must be distinguishable from [the] Stage II and III driver's licenses."

The agency received comments regarding this element of the GDL criterion from Oregon and NAGHSR.

Oregon commented that requiring three distinguishable permits/licenses is overly prohibitive. According to Oregon, "the fiscal impact for many states to establish and maintain such a system is considerable. Given the relatively quick turnaround time involved in the issuance of three distinct permits/licenses, the regulatory function would require additional FTE to ensure issuance and compliance, computer software upgrades to support system functions, and acquiring and maintaining the permit/ license product supplies and equipment."

Mr. Allred of Utah echoed these sentiments on NAGHSR's behalf. In particular, he urged that States should not be required "to have specially marked licenses" because it would be "both onerous and costly." Mr. Allred noted that "law enforcement officials may be able to electronically access licensing data and determine at what stage a driver is in the State's graduated licensing system regardless of markings on a driver's license."

NHTSA agrees with these comments. Since the central feature of a GDL system is the establishment of three separate driver licensing stages, with a different set of conditions under which drivers may operate a vehicle during each stage, the agency believes it is essential that, when law enforcement officers examine a driver's license (or permit), that they be able to determine the stage to which that the driver is currently assigned. However, the agency recognizes that there may be more than one way for States to demonstrate compliance with this condition, and the interim regulations did not specify the ways in which States could demonstrate their compliance with this element of the GDL criterion.

Accordingly, the regulations have been revised to clarify that States can demonstrate compliance with this element in one of three ways. If a State's law specifically provides that the State's Stage I permit and the State's Stage II and Stage III licenses must be distinguishable from each other, the State can demonstrate compliance by submitting a copy of the law.

If a State's law is not explicit in this regard, the State can demonstrate compliance instead by submitting sample permits and licenses, which contain visual features that would enable a law enforcement officer to distinguish between the three documents at a traffic stop. Alternatively, if the State's permit and licenses do not contain a visual feature that would enable a law enforcement officer to determine at a traffic stop whether the driver is in Stage I, II or III, but the State has a system in place that would enable an officer to make this determination in some other way, the State can demonstrate compliance by describing the State's system.

The agency has decided to revise the interim regulation to clarify these alternatives.

5. Program for Drivers with High BAC

TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> Programs to target individuals with high blood alcohol concentrations who operate a motor vehicle. Such programs may include implementation of a system of graduated penalties and assessment of individuals convicted of driving under the influence of alcohol.

The interim final rule provides that, to qualify for a grant based on this criterion, States must have a system for imposing enhanced penalties on those drivers who have been convicted of operating a motor vehicle while under the influence of alcohol and determined to have a high BAC. The agency explained, in the interim final rule, that the enhanced penalties must be either more severe or more numerous than those applicable to persons who have been convicted of operating a motor vehicle while under the influence of alcohol, but were not determined to have a high BAC.

Regarding what constitutes a "high BAC," the interim final rule explained that the threshold level at which high BAC sanctions must begin to apply may be at any level above the "standard" BAC level at which sanctions for non-commercial drivers begin to apply, but it must begin at or below 0.20 BAC. For example, if the standard BAC level in a State is 0.08, then the State may begin to impose enhanced sanctions on offenders determined to have a BAC of 0.09 or greater, or the State could choose to begin imposing such sanctions on offenders with a BAC of 0.12 and above. If the State does not begin to impose such sanctions, however, until offenders are determined to be at 0.21 BAC or

greater, the State system will not comply.

The agency received comments regarding this criterion from Oregon, Maryland and Wisconsin.

Oregon asserted in its comments that "research indicates that impairment begins at BAC levels below .08 BAC," and that "impairment at any level above the per se legal limit should be the focus of" the criteria for receiving a basic grant under Section 410. For these reasons, Oregon expressed its view that the high BAC criterion "negates what research has determined to be the real issue" and the State urged the agency to make this criterion a supplemental, rather than a basic, grant requirement.

While the agency agrees that impairment begins far below these "high BAC" levels, NHTSA acknowledges also that drivers with highly elevated BACs are at far greater risk than other drivers of being involved in alcohol-related crashes, which cause fatal and serious injuries. As stated in the interim final rule, according to the Fatality Analysis Reporting System (FARS), 30 percent of persons killed in motor vehicle crashes in 1997 were in crashes that involved a driver or non-occupant with a BAC of 0.10 or greater. In addition, NHTSA estimates that more than half of all drinking drivers involved in fatal crashes have a BAC that exceeds 0.15 percent.

In addition, NHTSA believes that traditional impaired driving countermeasures frequently are not effective with high BAC drivers. Accordingly, the agency believes there is value to developing remedies that target this specific group of drivers.

Finally, we note that the high BAC program was established as a basic grant criterion by Congress. Accordingly, the agency is not at liberty to change it to a supplemental grant criterion, in the absence of an amendment to the underlying legislation.

In its comments on the interim regulations, Maryland objected to the requirement that the high BAC sanctions must begin to apply at a level "above the standard BAC level." According to Maryland, "a number of States have adopted bi-level or multilevel impaired driving offenses" and Maryland asserted that "there is no rationale for the [agency] to consider [the lower offenses in those States] to be anything but the 'standard' impaired driving offense." Maryland urged the agency to revise the interim regulations "to provide that any statutory level above the lowest BAC defining an impaired driving offense be considered a high BAC * * * deemed to satisfy this criterion."

With regard to States with bi-level or multilevel impaired driving provisions, the agency considers a number of factors to determine which level is the State's "standard BAC level." These factors include the treatment of the offense, its relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses.

The agency believes that the "standard BAC level" in all States is currently either 0.08 or 0.10. NHTSA is aware that some States have established offenses for non-commercial drivers at lower BAC levels (such as 0.05), but we consider these offenses to be "less-serious" (and frequently, "lesser-included") offenses, not the standard BAC offenses in those States. The agency is aware of ten States that have high BAC programs. In these States, enhanced or additional penalties begin to apply at levels ranging from 0.15 to 0.20 BAC.

Wisconsin's comments relate to the enhanced penalties that must be imposed. Wisconsin explains, "our statutes do not specify the penalties for varying BAC levels," but they "require the chief judge of each of the state's ten judicial administrative districts to adopt sentencing guidelines for all municipal and circuit court judges to follow * * * [which] take the BAC level into account as an aggravating factor." Wisconsin asserts that this "linkage" between sentencing and BAC level "should be accepted as satisfying the graduated penalties criterion."

The interim regulations provided the States with a tremendous amount of flexibility regarding the types of enhanced penalties they must establish. According to the interim final rule, the penalties could include longer terms of license suspension, increased fines, additional or extended sentences of confinement, vehicle sanctions, or mandatory assessment and treatment. The States were provided flexibility also regarding the manner in which to establish these sanctions. For example, the sanctions could be established by statute, regulation or other means (such as binding policy directive). However, consistent with the application of other criteria under the Section 410 program, the sanctions must be mandatory. Therefore, to qualify for a grant based on this criterion, it is not sufficient for a State to establish only guidelines.

For the reasons discussed above, this portion of the interim regulation has been adopted without change.

6. Young Adult Drinking and Driving Program

TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> Programs to reduce driving while under the influence of alcohol by individuals age 21 through 34. Such programs may include awareness campaigns; traffic safety partnerships with employers, colleges, and the hospitality industry; assessments of first time offenders; and incorporation of treatment into judicial sentencing.

The interim final rule provided that, to qualify under this criterion, States must meet two requirements. First, they must demonstrate that they have in place a Statewide public information and awareness campaign aimed at persons between the ages of 21 and 34. Second, they must demonstrate that they have in place certain partnership activities that seek to promote prevention. Specifically, the interim regulations provided that States must be engaged in one of four different types of partnership activities to qualify in the first fiscal year a State receives a grant based on this criterion, and that States must be engaged in all four types of partnership activities to qualify for a grant based on this criterion in subsequent years.

The four types of partnership activities include activities involving the participation of: employers; colleges or universities; the hospitality industry; and appropriate State officials that will encourage the assessment and incorporation of treatment as appropriate in judicial sentencing for young adult drivers.

The agency received comments regarding this criterion from North Dakota and Mr. Allred of Utah for NAGHSR.

In its comments, North Dakota stated that it "agrees with the type of partnerships defined." However, North Dakota asserted that "developing and maintaining all four partnerships" by the second fiscal year, in order to qualify for funding, "is excessive." North Dakota suggested instead that States "be allowed to select and maintain two partnerships along with the public awareness campaign and report documented proven results."

Mr. Allred voiced similar objections to the interim requirement, but suggested an alternative solution. He recommended the adoption of a "gradual approach," under which States would be "required to have programs involving one group the first year and all four groups by the fourth year."

The agency has decided to accept NAGHSR's recommendation. To qualify

for a grant based on this criterion, a State must have in place a Statewide public information and awareness campaign, plus one or more of the partnership activities described in the regulations. To qualify in the first fiscal year a State receives a grant based on this criterion, the State must have at least one of the partnership activities in place; to qualify in the second fiscal year, the State must have at least two such activities in place; the State must have at least three partnership activities in place to qualify in the third year; and all four must be in place, to qualify in the fourth or in subsequent years. The regulations have been revised accordingly.

7. Testing for BAC

TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

An effective system for increasing the rate of testing of the blood alcohol concentrations of motor vehicle drivers involved in fatal accidents and, in fiscal year 2001 and each fiscal year thereafter, a rate of such testing that is equal to or greater than the national average.

The interim final rule provided that States could qualify for a grant under this criterion in FY 1999 and FY 2000 in one of three ways: based on a law; based on data or by agreeing to conduct a symposium or workshop designed to increase the percentage of BAC testing for drivers involved in fatal motor vehicle crashes. As provided in the interim final rule, States could qualify for a grant under this criterion in FY 2001 and in each fiscal year thereafter, based only on data.

To qualify in any fiscal year based on data, the interim final rule explained that the data must show that the State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is equal to or exceeds the national average, as determined under the most recently available FARS data as of the first day of the fiscal year for which grant funds are being sought. The agency received no comments regarding this criterion.

During the administration of the Section 410 program in FY 1999, however, the agency noted that "the most recently available FARS data" that were available on "the first day of [that] fiscal year" were not yet finalized and, by the end of the fiscal year, the data for many States had changed.

The agency believes that it should not use preliminary data to make funding decisions if finalized data can be used instead. We note that, as stated previously in today's final rule, beginning in FY 2000, NHTSA will no longer release Section 410 funds in two stages, and the funds will be released near the end of the fiscal year (by September 30). Since the FARS data that are available on the first day of a fiscal year generally are finalized in the spring of that fiscal year, the regulation has been changed to provide that, beginning in FY 2000, these final data will be used.

Since Section 410 applications are due by August 1 of each fiscal year, the regulation has been changed to provide that the data to be used are the "most recently available final FARS data as of August 1 of the fiscal year." However, as noted above, these final FARS data generally are available prior to August 1. To assist States in their preparation of Section 410 applications, the agency will provide States with the final data as soon as they are available.

8. Performance Grant Criterion

Under TEA–21, to qualify for a performance basic grant, a State must demonstrate each of the following:

(A) The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such percentages are available; and

(B) The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has been lower than the average percentage for all States in each of the [3 most recent] calendar years [for which statistics for determining such percentages are available].

The interim final rule adopted these two conditions and established two methods for calculating the percentages described above.

The interim rule explained that, each calendar year, NHTSA will calculate the percentage of fatally injured drivers with a BAC of 0.10 percent or greater for each State and the average percentage for all States for each of the three most recent calendar years for which the data are available as of the first day of the fiscal year for which grant funds are being sought. These calculations will be made using data contained in the Fatality Analysis Reporting System (FARS), and NHTSA's method for estimating alcohol involvement (as developed and published by Klein, 1986). The agency then will verify the actual percentages.

The interim rule explained further that, any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in the three most recent calendar years for which FARS data are available as of the first day of the fiscal year for which grant funds are being sought, as determined by the FARS data, may perform its own calculations. The State would calculate the percentage of fatally injured drivers with a BAC of 0.10 percent or greater in that State for these three calendar years, using only data for drivers with a known BAC.

The interim final rule indicated that a State would demonstrate compliance with this criterion by submitting its calculations and a statement certifying that the State meets the requirements, based on the State's calculation of the percentage of fatally injured drivers with such a BAC in the State and NHTSA's calculation of this percentage in all States. NHTSA indicated that it will verify the actual percentages submitted using FARS data.

The agency received comments regarding this portion of the interim final rule from North Dakota, Maryland, NAGHSR and Michigan.

Both North Dakota and Maryland raised objections regarding the use of FARS data and the agency's method for estimating alcohol involvement, when there are gaps in the data. Maryland asserts that "FARS data has been found to be incomplete and/or inaccurate in a number of respects, particularly in past years." North Dakota argued that it is severely penalized by NHTSA's imputation process.

As an illustration, North Dakota asserted that its "fatality rate, based on deaths per 100 million vehicle miles traveled, is consistently lower than the national rate. In 1995, North Dakota had the lowest number of fatalities since 1944 with 74 deaths. Of these 74, [North Dakota's] data identified 37 as alcohol-related." However, "the FARS imputation process added 6 to the total killed in alcohol-related crashes. This imputation increased [North Dakota's] percent of alcohol related fatalities from 50 to 57.9% and made [North Dakota] the highest in the nation."

Both of these comments question the use of the imputation process. The agency would like to emphasize, first of all, that the FARS imputation process is applied only to those fatal crashes that involve a driver or non-occupant who was not tested for alcohol, or whose test results are unknown. Since the State has not provided BAC data for these crashes, the agency uses a statistical model to estimate whether alcohol was involved.

In other words, if a State reports a crash to FARS, but reports no information regarding the BAC level of the driver(s) or non-occupant(s) involved in the crash, the agency does not assume that no alcohol was involved, but rather the statistical model

supplies an estimate, based on prior experience. The statistical model considers the characteristics of the crash and, based on data from prior years, determines the likelihood that alcohol was involved. For example, there is a high incidence of alcohol-involvement in single-vehicle night-time crashes, so additional instances of alcohol use would be imputed if a State reports a number of such crashes without reporting any BAC information.

This is what happened to North Dakota in 1995. Although the North Dakota data had identified only 37 of its 74 deaths as being alcohol-related, the State's estimate was based on reported BAC information from only 40 (out of 97) drivers involved in fatal crashes. Based on the characteristics of the crashes for which BAC information was not reported, the agency estimated that an additional 6 deaths were alcohol-related.

Maryland suggested in its comments that "the final rule should provide that a State can submit alternative data to establish compliance with the performance grant criteri[on]." This is already an option. As provided in the interim regulations, "any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in each of the three most recent calendar years * * * may calculate * * * the percentage of fatally injured drivers with a BAC of 0.10 percent or greater in that State for those calendar years, using State data."

Accordingly, States can exercise this option by increasing to 85 the percentage of drivers in fatal crashes who are tested.

Mr. Allred of Utah, commenting on behalf of NAGHSR, recognized that the "regulations allow a state with an 85% BAC testing rate for fatally injured drivers to make its own eligibility calculations." He pointed out, however, that "NHTSA will verify the percentages submitted using FARS data," and he asserted that "the FARS estimate and state data are very likely to be different, which would affect a state's eligibility and would defeat the purpose of allowing a state to use acceptable state data." Mr. Allred suggested that NHTSA instead "conduct a verification of the data using the state's own data."

When the agency stated in the interim final rule that NHTSA would verify the actual percentages submitted by States using FARS data, we wish to clarify that the agency intended this statement to mean that NHTSA would verify the percentages submitted by States in their Section 410 applications, based on the data submitted to the agency by States as part of NHTSA's FARS program (prior to the imputation process). This language appeared only in the preamble to the interim final rule, and not in the regulations themselves. Accordingly, no change is needed to the regulations as a result.

Michigan expressed concern regarding the requirement that States must demonstrate that the percentage of fatally injured drivers with 0.10 percent or greater BAC has decreased and has been lower than the average percentage for all States in each of the three most recent calendar years. Specifically, Michigan asserted that "natural variation occurs from year to year, and this variation may well be compounded by the use of statistical estimates." Michigan argues that this variation could "mask a three year trend that would otherwise have put the state in compliance with the rule" and Michigan urges that "a state should not be penalized for achieving a three year trend that was in the proper direction, but had an apparent 'blip' in [one of the three years] that may well be due to expected variation."

NHTSA appreciates Michigan's comment. However, the condition that States must meet the above-noted requirements "in each of the three most recent calendar years" was established by statute. Accordingly, the agency is not at liberty to change this element of the requirement, without an amendment to the underlying statute.

Moreover, as stated above, the Section 410 statute requires that States must demonstrate that the percentage of fatally injured drivers with 0.10 percent or greater BAC has decreased and has been lower than the average percentage for all States in each of the three most recent calendar years. Accordingly, a State will not qualify if this percentage has increased or has been higher than the national average. Similarly, a State also will not qualify if the percentage has remained the same or has equaled the national average. If it appears that a State's percentage has remained the same or has equaled the national average, based on rounded FARS figures, the agency will determine the actual value of these percentages to as many decimal places as are needed to determine whether the State percent has decreased and has been lower than the national average.

As discussed previously in today's final rule, during the administration of the Section 410 program in FY 1999, the agency noted that "the most recently available FARS data" that were available on "the first day of [that] fiscal year" were not yet finalized and, by the end of the fiscal year, the data for many States had changed.

As stated above, the agency believes that it should not use preliminary data to make funding decisions if finalized data can be used instead. Today's final rule provides that, beginning in FY 2000, NHTSA will no longer release Section 410 funds in two stages, and the funds will be released near the end of the fiscal year (by September 30). Since the FARS data that are available on the first day of a fiscal year generally are finalized in the spring of that fiscal year, this portion of the regulation also has been changed to provide that, beginning in FY 2000, these final data will be used.

Since Section 410 applications are due by August 1 of each fiscal year, the regulation has been changed to provide that the data to be used are the "most recently available final FARS data as of August 1 of the fiscal year." However, as noted above, these final FARS data generally are available prior to August 1. To assist States in their preparation of Section 410 applications, the agency will provide States with the final data as soon as they are available.

V. Rulemaking Analyses and Notices

A. Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

B. Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit.

C. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has examined the impact of this action and has determined that it is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation Regulatory Policies and Procedures.

The action will not have an annual effect on the economy of $100 million or more or adversely affect in a material way a sector of the economy, competition, jobs, the environment,

public health or safety, or State, local or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues.

In addition, the costs associated with this rule are not significant and are expected to be offset by the grant funds received and the resulting highway safety benefits. The adoption of alcohol-impaired driving prevention programs should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

D. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 410 program, and they are not considered to be small entities, under the Regulatory Flexibility Act.

E. Paperwork Reduction Act

The requirements in this final rule that provide that States retain and report information to the Federal government which demonstrates compliance with the alcohol-impaired driving prevention incentive grant criteria, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved under OMB No. 2127–0501, through April 30, 2003. This final rule reduces for the States previous information collection requirements associated with demonstrating compliance with many of the criteria.

F. National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold. In addition, this incentive grant program is completely voluntary and States that choose to apply and qualify will receive incentive grant funds.

List of Subjects in 23 CFR Part 1313

Alcohol and alcoholic beverages, Grant programs-transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of December 29, 1998, 63 FR 71688, is adopted as final, with the following changes:

PART 1313—INCENTIVE GRANT CRITERIA FOR ALCOHOL-IMPAIRED DRIVING PREVENTION PROGRAMS

1. The authority citation for Part 1313 continues to read as follows:

Authority: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

2. Section 1313.5 is amended by revising paragraphs (d)(1)(i)(D), (d)(1)(ii)(D), (d)(2), (d)(3), (f)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), (g)(3)(i)(B), (g)(3)(ii)(B), and (g)(4),to read as follows:

§ 1313.5 Requirements for a programmatic basic grant.

* * * * *

(d) *Graduated driver's licensing system.*

(1) * * *

(i) * * *

(D) Stage I learner's permit holders must remain conviction free for not less than three months; and

(ii) * * *

(D) Stage II intermediate driver's license holders must have remained conviction free during Stages I and II for a combined period of not less than one year; and

* * * * *

(2) *Definitions.*

(i) *Conviction free* means that, during the term of the permit or license, the driver has not been charged with and subsequently convicted of any offense under State or local law relating to the use or operation of a motor vehicle, to the extent required by State law.

(ii) *Successfully complied* means that the driver:

(A) did not violate any of the conditions of the previous stage(s), or

(B) has been subject to the consequences prescribed by State or local law for violating the conditions of the previous stage(s).

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion. If the State's law, regulation or binding policy directive does not provide that Stage I permits and Stage II and Stage III licenses must be distinguishable, the State shall submit either:

(A) Sample permits and licenses, which contain visual features that would enable a law enforcement officer to distinguish between the permit and the licenses; or

(B) A description of the State's system, which enables law enforcement officers in the State during traffic stops to distinguish between the permit and the licenses.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit a copy of any changes to the State's law, regulation, binding policy directive, permit or licenses, or State system or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's laws, regulations, binding policy directives, permit or licenses, or State system.

* * * * *

(f) *Young adult drinking and driving program.*

(2) * * *

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit:

(A) An updated description of its Statewide public information and awareness campaign;

(B) A description and sample materials documenting activities designed to reduce the incidence of alcohol-impaired driving by young drivers, which must involve:

(1) at least two of the four components contained in paragraph (f)(1)(ii) of this section in the second fiscal year the State receives Section 410 funds based on this criterion;

(2) at least three of the four components contained in paragraph (f)(1)(ii) of this section in the third fiscal

year the State receives Section 410 funds based on this criterion; and

(3) all four components contained in paragraph (f)(1)(ii) of this section in the fourth or subsequent fiscal year the State receives Section 410 funds based on this criterion; and

(C) an updated plan that outlines proposed efforts to involve all four components contained in paragraph (f)(1)(ii) of this section, until the State's activities involve all four components.

(g) *Testing for BAC.*

(1) * * *

(i) * * *

(B) BAC testing data. The State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

* * * * *

(ii) In FY 2001 and each subsequent fiscal year, a percentage of BAC testing among drivers involved in fatal motor vehicle crashes that is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

* * * * *

(3) * * *

(i) * * *

(B) a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought; or

* * * * *

(ii) * * *

(B) If in the first fiscal year the State demonstrated compliance under paragraph (g)(3)(i)(B), the State may submit instead a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State continues to be equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

* * * * *

(4) Demonstrating compliance beginning in FY 2001. To demonstrate compliance for a grant based on this criterion in FY 2001 or any subsequent fiscal year, the State shall submit a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

3. Section 1313.6 is amended by revising paragraphs (a)(1), (b), and (c)(2) to read as follows:

§ 1313.6 Requirements for a performance basic grant.

(a)(1) the percentage of fatally injured drivers in the State with a BAC of 0.10 percent or greater has decreased in each of the three most recent calendar years for which statistics for determining such percentages are available as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought; and

* * * * *

(b) *Calculating percentages.* (1) The percentage of fatally injured drivers with a BAC of 0.10 percent or greater in each State is calculated by NHTSA for each calendar year, using the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought and NHTSA's method for estimating alcohol involvement.

(2) The average percentage of fatally injured drivers with a BAC of 0.10 percent or greater for all States is calculated by NHTSA for each calendar year, using the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought and NHTSA's method for estimating alcohol involvement.

(3) Any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in each of the three most recent calendar years, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought, may calculate for submission to NHTSA the percentage of fatally injured drivers with a BAC of 0.10 percent or greater in that State for those calendar years, using State data.

(c) * * *

(2) Alternatively, a State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought, may demonstrate compliance with this criterion by submitting its calculations developed under paragraph (b)(3) of this section and a statement certifying that the State meets each element of this criterion, based on the percentages calculated in accordance with paragraphs (b)(2) and (b)(3) of this section.

Issued on: July 24, 2000.

Rosalyn G. Millman,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 00–18985 Filed 7–25–00; 10:41 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

RIN 1506–AA23

Amendment to the Bank Secrecy Act Regulations—Exemptions From the Requirement to Report Transactions in Currency; Interim Rule

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: Rules previously issued under the Bank Secrecy Act established new procedures for exemption of transactions of retail and other businesses from the requirement that depository institutions report transactions in currency in excess of $10,000. The interim rule (the "Interim Rule") contained in this document modifies those procedures so that they will also apply to transactions involving money market deposit accounts used for business purposes. The Interim Rule also makes certain technical changes in the exemption procedures. Modification of the exemption procedures is another step in the Department of the Treasury's continuing program to increase the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury.

DATES: *Effective Date:* July 31, 2000.

Comment Deadline: Comments must be received by September 26, 2000.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182, *Attention:* Interim Rule—MMDA. Comments also may be submitted by electronic mail to the following Internet address: "regcomments@fincen.treas.gov" with the caption "Attention: Interim Rule—MMDA." Comments may be inspected at the Department of the Treasury between 10 a.m. and 4 p.m., in the FinCEN reading room at the Franklin Court Building, 14th and L Streets, NW., Washington, DC. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Executive Assistant Director (Regulatory Policy), FinCEN, (703) 905–3930; Christine E. Carnavos, Assistant Director (Office of Compliance and Regulatory Enforcement), FinCEN, (1–800) 949–2732; Stephen R. Kroll, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Albert R. Zarate and Christine L. Schuetz, Attorney-Advisors, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting by financial institutions of transactions in currency in excess of $10,000 has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coin and currency transactions.

The provisions of 31 U.S.C. 5313(d) through (g), added to the Bank Secrecy Act in 1994,[1] concern the exemption, from the currency transaction reporting requirements, of transactions by certain customers of depository institutions.[2] 31 U.S.C. 5313(d) (sometimes called the "mandatory exemption" provision) states that the Secretary of the Treasury shall exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and four specified categories of customers, while 31 U.S.C. 5313(e) (sometimes called the "discretionary exemption" provision) authorizes the Secretary of the Treasury to exempt a depository institution from the requirement to report transactions in currency between it and a qualified business customer.[3]

A "qualified business customer," for purposes of the discretionary exemption provision, is a business that

> (A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;
>
> (B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and
>
> (C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

31 U.S.C. 5313(e)(2). The Secretary of the Treasury is required to establish, by regulation, the criteria for granting and maintaining an exemption for qualified business customers, *see* 31 U.S.C. 5313(e)(3), as well as guidelines for depository institutions to follow in selecting customers for exemption. *See* 31 U.S.C. 5313(e)(4)(A).

B. Regulatory Provisions

The reformed exemption procedures called for by 31 U.S.C. 5313(d)–(g) are now found in the Bank Secrecy Act regulations at 31 CFR 103.22(d). The procedures are the result of a four-part rulemaking[4] and are designed to permit streamlined exemption from the reporting requirements of transactions by most depository institution customers that have recurring needs for large amounts of currency to support their commercial enterprises in the United States. (Certain non-publicly-traded companies are ineligible for exemption under the procedures, as the statute contemplates.[5] *See* 31 CFR 103.22(d)(6)(viii).)

Classes of Exempt Persons.

The reformed exemption procedures apply to depository institution customers who fall within one of the classes of exempt persons described in 31 CFR 103.22(d)(2)(i)–(vii). The classes of exempt persons are:

(i) Other banks operating in the United States;

(ii) Government departments and agencies;

(iii) Certain entities that exercise governmental authority;

(iv) Entities whose equity interests are listed on one of the major national stock exchanges;

(v) Certain subsidiaries of entities whose equity interests are listed on one of the major national stock exchanges;

(vi) "Non-listed businesses," as defined and described more fully below; and

(vii) "Payroll customers," as defined and described more fully below.[6]

Non-Listed Businesses and Payroll Customers

Under the exemption rules, a "non-listed business" is any other commercial enterprise (*i.e.*, an enterprise that is neither a bank,[7] a government agency, a publicly-traded company, nor a subsidiary of a publicly-traded company

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[1] *See* section 402 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994).

[2] Section 402(b) of the Money Laundering Suppression Act states simply that in administering the new statutory exemption provisions: the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31 * * * by at least 30 percent of the number filed during the year preceding [September 23, 1994,] the date of enactment of [the Money Laundering Suppression Act]. The enactment of 31 U.S.C. 5313(d) through (g) reflects a Congressional intention to "reform * * * the procedures for exempting transactions between depository institutions and their customers." *See* H.R. Rep. 103–652, 103d Cong., 2d Sess. 186 (August 2, 1994).

[3] For additional information about the terms of 31 U.S.C. 5313(e)–(g), see 63 FR 50147, 50148 (September 21, 1998).

[4] An interim rule (with a request for comments) implementing the mandatory exemption provision (in what was called "Phase I" of exemption reform, aimed primarily at larger national and regional customers of depository institutions) was published on April 24, 1998. 61 FR 18204. A final rule based on the Phase I interim rule was published on September 8, 1997, 62 FR 47141, as 31 CFR 103.22(h), and a proposed rule implementing the discretionary exemption provision ("Phase II" of exemption reform, aimed at non-publicly-traded retail and other businesses) was published on the same day. 62 FR 47156. The comment period for the proposed rule was extended on November 28, 1997, 62 FR 63298, and a final rule based on the Phase II proposal was published on September 21, 1998. 63 FR 50147. The final rule containing the Phase II provisions completely restated the language of 31 CFR 103.22; as part of that restatement, the Phase I provisions (previously found in 31 CFR 103.22(h)) and the Phase II provisions were combined in new 31 CFR 103.22(d).

[5] 31 U.S.C. 5313(e)(4)(B) provides that the required regulatory exemption guidelines may include a description of the type of businesses for which no exemption will be granted under the discretionary exemption provision. The ineligible classes of customer are listed at note 8, *see infra*.

[6] Generally, a depository institution seeking to exempt transactions by an eligible customer from the currency transaction reporting requirement need only make a one-time designation identifying the exempting depository institution, the exempt customer, and the category of exempt person into which the customer falls. The designation is made on Treasury Form TD F 90–22.53. As explained below, the Interim Rule changes the language of 31 CFR 103.22(d)(3)(i) and (d)(5)(ii) to specify the use of Form TD F 90–22.53.

[7] As used in 31 CFR 103.22, as elsewhere in the Bank Secrecy Act regulations, the term "bank" includes all of the classes of depository institution listed at 31 CFR 103.11(c).

and that is not ineligible for exemption [8]) that

(A) Has maintained a transaction account at the bank for at least 12 months;

(B) Frequently engages in transactions in currency with the bank in excess of $10,000; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

31 CFR 103.22(d)(2)(vi). Such an enterprise is an exempt person only "[t]o the extent of its domestic operations." *Id.* The addition of non-listed businesses as a category of exempt person was intended to make eligible for the reformed exemption procedures transactions of all established depository institution customers (other than ineligible companies) not included within the scope of the mandatory exemption provision.

A "payroll customer," under the exemption rules, is any other person (*i.e.*, a person not otherwise covered under the exempt person definitions) that

(A) Has maintained a transaction account at the bank for at least 12 months;

(B) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

31 CFR 103.22(d)(2)(vii). A payroll customer is an exempt person "[w]ith respect solely to withdrawals for payroll purposes." *Id.*

The "Transaction Account" Limitation

As indicated above, a person must maintain a "transaction account" with a depository institution in order to be treated as a "non-listed business" or "payroll customer" for purposes of the reformed exemption procedures. In addition, non-listed businesses and payroll customers may be treated as exempt persons "only to the extent of [their] eligible transaction accounts" under the present language of the reformed procedures. *See* 31 CFR 103.22(d)(6)(ix).

A "transaction account" for this purpose is an account described in section 19(b)(1)(C) of the Federal Reserve Act.[9] Section 19(b)(1)(C) of the Federal Reserve Act, codified at 12 U.S.C. 461(b)(1)(C), in turn, states that a transaction account is

> a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

Money Market Deposit Accounts

Given the operative definition of a transaction account, the exemption procedures published on September 21, 1998, do not extend to transactions by non-listed businesses or payroll customers that involve so-called money market deposit accounts.[10] *See* 12 CFR 204.2(d)(2) (in implementing section 19(b)(1)(C) of the Federal Reserve Act, defining a money market deposit account as a "savings deposit") and 12 CFR 204.2(e) (defining a transaction account to exclude "savings deposits or accounts described in paragraph (d)(2) of this section even though such accounts permit third party transfers"). FinCEN noted this limitation when it proposed the new exemption procedures for non-listed businesses and payroll customers, *see* 62 FR 47156, 47162 (September 8, 1997), and again when it issued the final rule containing those procedures. *See* 63 FR 50147, 50154 (September 21, 1998). At the same time, FinCEN indicated that it would entertain requests for relief if the transaction account limitation proved to be unduly difficult to apply. *Id.*

II. The Interim Rule

Modification of the Transaction Account Limitation

A number of depository institutions have contacted FinCEN to request reconsideration of the decision to limit the reformed exemption procedures for non-listed businesses and payroll customers to transactions in currency involving transaction accounts. The transaction account limitation has been asserted to limit unnecessarily the ability of banks to make use of the procedures within their intended scope, for two reasons.

The first reason is that smaller businesses often place their receipts in money market deposit accounts to obtain some return on their funds until those funds are necessary for use in their businesses. Use of money market deposit accounts for this purpose reflects the fact that businesses are not generally permitted to hold interest-bearing checking accounts.[11] To satisfy their check-writing needs, businesses simply transfer funds from their money market deposit accounts to their transaction (that is, their checking) accounts as necessary.

The second reason flows from the first. Several banks have indicated that their computerized systems for tracking the currency transactions of their business customers do not distinguish between transaction accounts and money market accounts. Thus, an exemption system that does not extend to money market deposit accounts cannot be used at all for such customers (even for transaction accounts) without either an expensive system change or a time-intensive manual research process. The banks state that, faced with these choices, they would opt simply to file currency transaction reports and not use the exemption procedures at all for the customers in question.

The transaction account limitation was intended to help ensure that streamlined exemption procedures were available only for routine uses of currency by legitimate ongoing commercial enterprises. Deposits and withdrawals of currency from money market accounts by enterprises in the circumstances described above are within the classes of transactions for which the new exemption procedures were designed. For that reason, the

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[8] Non-listed businesses ineligible for exemption are businesses engaged primarily in one or more of the following activities: serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. 31 CFR 103.22(d)(6)(viii).

[9] *See* 31 U.S.C. 5313(e)(2)(A) (defining a qualified business customer (whose transactions the Secretary of the Treasury is authorized to exempt from currency transaction reporting by 31 U.S.C. 5313(e)(1)), as a business which, among other things, "maintains a transaction account (as defined in section 19(b)(1)(c) of the Federal Reserve Act) at the depository institution.").

[10] Money market deposit accounts were established by the Garn-St. Germain Act of 1982, as interest-bearing accounts comparable to money market mutual funds upon which a limited number of checks may be drawn or other withdrawals made.

[11] Prior to the passage of the Monetary Control Act of 1980, all interest payments on demand deposits were prohibited. The Monetary Control Act established, among other things, negotiable order of withdrawal ("NOW") accounts, to allow customers to earn interest on balances against which checks may be drawn. However, businesses are not permitted to hold NOW accounts.

Interim Rule modifies the new exemption procedures so that they will apply to the transactions of non-listed businesses and withdrawals for payroll purposes by payroll customers that involve a money market deposit account, within the meaning of section 19(b)(1)(C) of the Federal Reserve Act and that section's implementing regulations. *See* 12 CFR 204.2(d)(2).

The change made by the Interim Rule, however, as noted in more detail below, does not alter the definition of an exempt person itself. Thus, for example, a non-listed business may only be treated as an exempt person to the extent that it has maintained a transaction account at the depository institution for at least twelve months. *See* 31 CFR 103.22(d)(2)(vi). Moreover, under the new exemption procedures applicable to non-listed businesses and payroll customers, as modified by the Interim Rule, money market deposit accounts maintained other than as part of a commercial enterprise are not eligible for exemption. *See* 31 CFR 103.22(d)(2)(vi).

FinCEN is requesting comments on the expansion of the exemption procedures made by the Interim Rule. Commenters may wish to address any of the issues discussed above (for example, the fact that the changes made by the Interim Rule do not permit treatment as an exempt person of a customer whose only relationship with a bank is maintenance of a money market deposit account), or other matters related to the subject of the Interim Rule (for example, whether other savings accounts should be treated in the same manner as money market deposit accounts). The comments should include as much statistical or other information as possible about the terms and business or commercial uses of particular types of accounts that are discussed in any comments. Comments should also explain the reasons that any additional modifications to the exemption procedures sought by the comments are appropriate to accomplish the goals of the procedures and are not subject to the risk of extending the exemption procedures beyond their intended scope.

The provisions of the Interim Rule concerning money market deposit accounts become effective on July 31, 2000. Although FinCEN believes that the definition of a "transaction account" has been made clear heretofore, for reasons of administrative convenience, FinCEN will not generally require backfiling regarding any exemption granted based on the mistaken assumption that the term "transaction account" included money market deposit accounts.

Conforming Changes Based Upon Modification of Transaction Account Limitation

The Interim Rule makes several conforming changes to the exemption procedures based on the amendment to the transaction account limitation described above. First, the Interim Rule extends the exemption procedures to all exemptible accounts of a non-listed business or payroll customer, rather than just those customers' transaction accounts. Correspondingly, the term "exemptible accounts" is defined, for purposes of non-listed businesses and payroll customers, to include both transaction accounts and money market deposit accounts. (These changes are reflected in the new language of 31 CFR 103.22(d)(6)(ix).) Lastly, the Interim Rule substitutes the term "exemptible account" for the term "transaction account" for purposes of the terms of the exemption procedures concerning aggregation. Thus, when determining the qualification of a customer as a non-listed business or payroll customer, a bank may treat all exemptible accounts (rather than just transaction accounts) of the customer as a single account.

Reference to Treasury Form TD F 90–22.53

Since the reformed exemption procedures were published on September 21, 1998, 63 FR 50149, a new form, Treasury Form TD F 90–22.53, has been designated by FinCEN for use by banks when filing both the initial and biennial renewal of designation of exempt persons. Thus, the Interim Rule amends the exemption procedures to require the use of Treasury Form TD F 90–22.53 in that regard.

III. Specific Provisions

A. 103.22(d)(2)(vi)—Non-listed Businesses

The Interim Rule amends the language of 31 CFR 103.22(d)(2)(vi) to state that a non-listed business may only be treated as an exempt person to the extent of transactions conducted through its exemptible accounts. FinCEN believes that this change will help clarify the limitation on exemption for non-listed businesses.

The Interim Rule further modifies the language of 31 CFR 103.22(d)(2)(vi) to refer to the definition of a transaction account that is set forth at 31 CFR 103.22(d)(6)(ix). FinCEN believes that a cross-reference here would be helpful because of the change in the heading to paragraph (d)(6)(ix) that is described below.

B. 103.22(d)(2)(vii)—Payroll Customers

The Interim Rule amends the language of 31 CFR 103.22(d)(2)(vii) regarding withdrawals for payroll purposes to refer to withdrawals from exemptible accounts. The Interim Rule further modifies the language of 31 CFR 103.22(d)(2)(vii) to refer to the definition of a transaction account that is set forth at 31 CFR 103.22(d)(6)(ix). FinCEN believes that a cross-reference here would be helpful because of the change in the heading to paragraph (d)(6)(ix) that is described below.

C. 103.22(d)(3)(i)—Initial Designation of Exempt Persons

The Interim Rule amends the language of 31 CFR 103.22(d)(3)(i) to refer to the use of Treasury Form TD F 90–22.53 when filing the initial designation of exempt person. [12]

D. 103.22(d)(5)(ii)—Renewal of Designations for Non-listed Businesses and Payroll Customers

The Interim Rule amends the language of 31 CFR 103.22(d)(5)(ii) to refer to the use of Treasury Form TD F 90–22.53 when filing the biennial renewal of designation of exempt persons regarding customers who are non-listed businesses or payroll customers.

E. 103.22(d)(6)(v)—Aggregated Accounts

The Interim Rule modifies the language of 31 CFR 103.22(d)(6)(v) to state that a bank may aggregate all exemptible accounts (rather than simply transaction accounts) of a non-listed business or payroll customer to apply the terms of the exemption procedures to such a customer. Thus, for example, the determination whether a non-listed business "frequently engages in transactions in currency with the bank in excess of $10,000" (see 31 CFR 103.22(d)(2)(vi)(B)) is to be made by aggregating transactions in transaction and money market deposit accounts.

F. 103.22(d)(6)(ix)—Exemptible Accounts

The Interim Rule modifies the language of 31 CFR 103.22(d)(6)(ix) to state that the exemptible accounts of a non-listed business or payroll customer include both transaction accounts and money market deposit accounts. (The heading for paragraph (d)(6)(ix) correspondingly has been changed from "Transaction account" to "Exemptible

[12] A bank is not required to file a form with respect to the transfer of currency to or from any of the twelve Federal Reserve Banks.

accounts of a non-listed business or payroll customer".) The term "money market deposit account," for purposes of paragraph (d), is defined by reference to the definition of that term contained in 12 CFR 204.2(d)(2). Currently, section 204.2(d)(2) defines a money market deposit account as any interest-bearing account on which the account holder is authorized to make no more than six transfers per calendar month or similar period for the purpose of making payments or transfers to another account of the depositor at the same institution or to a third person by means of a preauthorized, automatic, or telephonic order or instruction; of those six authorized transfers, no more than three may be made by check or similar order to a third person. The term "transaction account," for purposes of paragraph (d), continues to be defined by reference to section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and that statute's implementing regulations, found at 12 CFR 204 *et seq.*

IV. Regulatory Matters

A. Executive Order 12866

The Department of the Treasury has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

B. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance the Interim Rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. Administrative Procedure Act

The Interim Rule grants significant relief from existing regulatory requirements. Thus, the Interim Rule may be made effective without the need to abide by the notice and comment procedures contained in 5 U.S.C. 553(b), and, further, may be made effective before 30 days have passed after its publication date. *See* 5 U.S.C. 553(d).

D. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 604) are not applicable to the Interim Rule contained in this document because FinCEN was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

E. Paperwork Reduction Act

The Interim Rule is being issued without prior notice and public procedure pursuant to 5 U.S.C. 553. By expanding the applicable exemptions from an information collection that has been reviewed and approved by the Office of Management and Budget (OMB) under control number 1506–0004, relating to the Currency Transaction Report, the Interim Rule contained in this document significantly reduces the existing burden of information collection under 31 CFR 103.22. Thus, the Paperwork Reduction Act does not require FinCEN to follow any particular procedures in connection with the promulgation of the Interim Rule.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.22 is amended by—

a. Revising the introductory text of paragraph (d)(2)(vi),

b. Revising paragraph (d)(2)(vi)(A),

c. Revising the introductory text of paragraph (d)(2)(vii),

d. Revising paragraph (d)(2)(vii)(A),

e. Removing the second sentence of paragraph (d)(3)(i) and adding two new sentences in its place,

f. Revising the first sentence of paragraph (d)(5)(ii),

g. Revising paragraph (d)(6)(v), and

h. Revising paragraph (d)(6)(ix).

The revisions and additions read as follows:

§ 103.22 Reports of transactions in currency.

* * * * *

(d) *Transactions of exempt persons* * * *

(2) *Exempt person.* * * *

(vi) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this paragraph (d), a "non-listed business"), other than an enterprise specified in paragraph (d)(6)(viii) of this section, that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

* * * * *

(vii) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this paragraph (d), a "payroll customer") that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

* * * * *

(3) *Initial designation of exempt persons—(i) General.* * * * Except as provided in paragraph (d)(3)(ii) of this section, designation by a bank of an exempt person shall be made by a single filing of Treasury Form TD F 90–22.53. (A bank is not required to file a Treasury Form TD F 90–22.53 with respect to the transfer of currency to or from any of the twelve Federal Reserve Banks.) * * *

* * * * *

(5) *Biennial filing with respect to certain exempt persons* * * *

(ii) *Non-listed businesses and payroll customers.* The designation of a non-listed business or a payroll customer as an exempt person must be renewed biennially, beginning on March 15 of the second calendar year following the year in which the first designation of such customer as an exempt person is made, and every other March 15 thereafter, on Treasury Form TD F 90–22.53. * * *

(6) *Operating rules* * * *

(v) *Aggregated accounts.* In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat

all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

* * * * *

(ix) *Exemptible accounts of a non-listed business or payroll customer.* The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this paragraph (d), is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this paragraph (d), is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

* * * * *

Dated: July 14, 2000.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 00–18770 Filed 7–27–00; 8:45 am]

BILLING CODE 4820–03–P

POSTAL SERVICE

39 CFR Part 111

Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth changes to the Domestic Mail Manual (DMM) for the preparation of nonautomation nonletter-size carrier route Periodicals prepared in sacks and the preparation of Periodicals packages and bundles on pallets. For Periodicals carrier route mail prepared in sacks, the changes require carrier route sacks to contain a minimum of 24 pieces and make the use of 5-digit scheme carrier routes sacks, using DMM labeling list L001, a required sortation level. All other sack sortation criteria remain unchanged. For Periodicals prepared as packages and bundles on pallets, the changes require preparation of 5-digit scheme pallets, using DMM labeling list L001.

EFFECTIVE DATE: A future date that coincides with the implementation of rates resulting from the R2000–1 rate case. A document announcing the effective date will be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 202–268–3340; jwalke13@email.usps.gov.

SUPPLEMENTARY INFORMATION: On May 16, 2000, the Postal Service published for comment in the **Federal Register** (65 FR 31118–31120) a proposed rule to change preparation requirements for nonautomation nonletter-size carrier route Periodicals prepared in sacks and for Periodicals packages and bundles prepared on pallets.

The Postal Service proposed that all direct carrier route sacks must contain a minimum of 24 pieces and proposed to require the use of 5-digit/scheme carrier routes sortation using DMM L001 for nonautomation nonletter-size Periodicals prepared in sacks. In addition, the Postal Service proposed to require preparation of both 5-digit scheme and 5-digit pallets when there are 500 pounds of Periodicals packages and bundles for a scheme under DMM L001, or for a single 5-digit ZIP Code not listed in DMM L001.

The Postal Service received a total of five comments on the proposed rule. All comments supported the rule, with two comments highly in favor. Therefore, the Postal Service will adopt, without revision, the proposed changes effective at a future date that coincides with implementation of rates resulting from the R2000–1 rate case.

On May 18, 2000, the Postal Service published for comment in the **Federal Register** (65 FR 31506) a proposed rule to require that packages of basic carrier route Periodicals be sequenced in line-of-travel or walk sequence order. As described in detail in an accompanying final rule, the Postal Service will adopt those proposed changes on the same date as the preparation changes described in this final rule.

Because some of these rules overlap (specifically, E230.2.2a), this final rule is written to include the standards that are included in the other final rule.

Summary of Comments

The Postal Service received five comments on the proposed rule. The respondents included individual publishers, publisher associations, and mailing agents. Although in favor of the proposed rule, two respondents voiced opposition to any future proposal to change the standards for low-volume packages and sacks (fewer than six pieces) or the current minimum volume sack standards for Periodicals. In addition, the two respondents voiced a concern that not all publishers will be able to incorporate L001 into their software by the proposed October 15, 2000, effective date. Therefore, the Postal Service has revised the effective date of the proposed rule. Mailers have the option to use these preparation standards now and will be required to use these standards with the date that coincides with implementation of rates resulting from the R2000–1 rate case. Mailers not currently using these standards are encouraged to begin using them as soon as possible.

One respondent offered three comments that are outside the scope of the proposed rule. The first comment expressed continued support for an option for mailers to label sacks to a carrier route rather than to "mixed carrier routes" when the sack contains mail only to a single carrier route, but less than 24 pieces. The next comment expressed support for the design and implementation of a new container (mini-pallet), and the last suggested that these rule changes be expanded to Standard Mail (A) flat-size mail.

For the reasons discussed above, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as follows:

E ELIGIBILITY

* * * * *

E200 Periodicals

* * * * *

E230 Nonautomation Rates

* * * * *

2.0 CARRIER ROUTE RATES

* * * * *

[Amend 2.2 by revising the heading and item a, redesignating item b as item c, and adding a new item b to read as follows:]

2.2 Sequencing

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M200. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The carrier route rates apply to copies in carrier route packages of six or more letter-size pieces each that are sorted to carrier routes, 5-digit carrier routes, or 3-digit carrier routes trays; and six or more flat-size pieces or irregular parcel-size pieces each that are sorted to carrier route, 5-digit, or 5-digit scheme carrier routes sacks. Preparation of 5-digit scheme carrier routes sacks is required for all 5-digit scheme destinations. The applicable sequencing requirements in M050 and in 2.2b or 2.2c also must be met.

b. Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes prescribed by the USPS (M050).

c. The high density and saturation rates apply to pieces that are eligible for carrier route rates under 2.2a, are prepared in carrier walk sequence, and meet the applicable density standards in 6.0 for the rate claimed.

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.3 Preparation Instructions

For purposes of preparing mail:

[Amend items h and i by revising the fourth sentence in each to read as follows:]

* * * * *

h. * * * The 5-digit/scheme sort is required for carrier route rate flat-size and irregular parcel Periodicals and optional for flat-size Enhanced Carrier Route rate Standard Mail (A) in sacks.

* * *

i. * * * The 5-digit/scheme sort is required for carrier route rate flat-size and irregular parcel Periodicals and optional for flat-size Standard Mail (A) prepared as packages on pallets and may not be used for other mail prepared on pallets, except for packages of Standard Mail (A) irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates. * * *

* * * * *

M030 Containers

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

* * * * *

1.8 Periodicals Flats and Irregular Parcels Origin/Entry SCF Sacks

[Amend 1.8 by revising the first sentence to read as follows:]

For flat-size and irregular parcel-size Periodicals, after all carrier route, 5-digit carrier routes, 5-digit scheme carrier routes, 5-digit, 3-digit, and required SCF sacks are prepared, an SCF sack must be prepared to contain any remaining 5-digit and 3-digit packages for the 3-digit ZIP Code area(s) served by the SCF serving the post office where the mail is verified, and may be prepared for the area served by the SCF/plant where mail is entered (if that is different from the SCF/plant serving the post office where the mail is verified; e.g., a PVDS deposit site). * * *

* * * * *

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

* * * * *

5.2 Required Preparation

These standards apply to:

[Amend item a by revising the third sentence and adding a new fourth sentence to read as follows:]

a. Periodicals, Standard Mail (A), and Parcel Post (other than BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats and irregular parcels on pallets prepared under the standards for package reallocation (M045.5), not all mail for a required 5-digit scheme destination is required to be on a 5-digit scheme pallet. For packages of Standard Mail (A) flats on pallets, not all mail for a required 5-digit destination is required to be on a 5-digit pallet or optional 5-digit/scheme pallet.* * *

* * * * *

M045 Palletized Mailings

* * * * *

4.0 PALLET PRESORT AND LABELING

4.1 Packages, Bundles, Sacks, or Trays on Pallets

Preparation sequence and Line 1 labeling:

[Revise items a and b to read as follows:]

a. 5-digit (for Periodicals sacks or trays and all Standard Mail): required for sacks; required for packages and bundles of Standard Mail, except for packages and bundles prepared under b; optional for trays; for Line 1, use 5-digit ZIP Code destination of contents.

b. 5-digit scheme: required for Periodicals packages and bundles and optional for Standard Mail (A) packages and bundles; for Line 1 for 5-digit pallets, use 5-digit ZIP Code destination of contents; for Line 1 for 5-digit scheme pallets, use L001, Column B.

* * * * *

M200 Periodicals (Nonautomation)

1.0 BASIC STANDARDS

* * * * *

1.5 Low-Volume Packages and Sacks

[Amend 1.5 by revising package and sack levels to read as follows:]

As a general exception to 2.4b through 2.4d, and 3.1a through 3.1e, nonletter-size Periodicals may be prepared in carrier route, 5-digit, and 3-digit packages containing fewer than six pieces when the publisher determines that such preparation improves service, provided those packages are placed in 5-digit carrier routes, 5-digit scheme carrier routes, 5-digit, 3-digit, and SCF sacks. These low-volume packages may be placed on 5-digit, 3-digit scheme, 3-digit, and SCF pallets under M045.

* * * * *

3.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

3.1 Sack Preparation

Sack size, preparation sequence, and Line 1 labeling:

[Amend 3.1 by removing b, redesignating c through h as b through g respectively, and revising a and new b to read as follows:]

a. Carrier route: Required for rate eligibility at 24 pieces, fewer pieces not permitted; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

b. 5-digit/scheme carrier routes (carrier route packages only): Required for rate eligibility (no minimum); for Line 1 for 5-digit carrier routes sacks, use 5-digit ZIP Code destination of packages, preceded for military mail by

the prefixes under M031; for Line 1 for 5-digit scheme carrier routes sacks, use L001, Column B.

* * * * *

This change will be published in a future issue of the Domestic Mail Manual. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19163 Filed 7–27–00; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Line-of-Travel Sequencing for Basic Carrier Route Periodicals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth changes to the Domestic Mail Manual (DMM) for the preparation of basic carrier route Periodicals in line-of-travel (LOT) order.

EFFECTIVE DATE: A future date that coincides with implementation of rates resulting from the R2000–1 rate case. A document announcing the effective date will be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Anne Emmerth, 202–268–2363; aemmerth@email.usps.gov.

SUPPLEMENTARY INFORMATION: On May 18, 2000, the Postal Service published for comment in the **Federal Register** (65 FR 31506) a proposed rule requiring that packages of basic carrier route Periodicals be sequenced in LOT or walk-sequence order. Mailers would be required to use the Postal Service LOT product to sequence their mail no more than 90 days prior to mailing. Alternately, mailers may prepare mail in walk sequence under the standards in M050.

This final rule is based on a cost analysis that indicated that implementing a line-of-travel or walk-sequence requirement for packages of basic carrier route Periodicals could produce significant savings.

The Postal Service received a total of four comments on the proposed rule; all of those comments strongly supported the proposal. Therefore, the Postal Service will adopt the proposed changes effective on the date that coincides with implementation of rates resulting from the R2000–1 rate case. Mailers will be notified of the effective date through the **Federal Register**.

The LOT product is available through the Postal Service National Customer Support Center (www.usps.com > address quality > address information systems (AIS) products or 1–800–238–3150). New postage statements will not be produced until rates are implemented for the R2000–1 rate case. Until then, mailers must annotate line 22 (for outside-county) and line 53 (for In-county) on the Forms 3541 to show the sequencing date.

On May 16, 2000, the Postal Service published for comment in the **Federal Register** (65 FR 31118) a proposed rule to require that, for carrier route Periodicals prepared in sacks, those sacks must contain a minimum of 24 pieces and must be sorted to a required 5-digit scheme carrier routes sack level using DMM labeling list L001. For Periodicals prepared as packages and bundles on pallets, mailers would be required to prepare a 5-digit scheme pallet using DMM labeling list L001. As described in detail in an accompanying final rule, the Postal Service will adopt those proposed changes on the same date as the preparation changes described in this final rule. Because some of these rules overlap (specifically, DMM E230.2.2a), this final rule is written to include the standards that are included in the other final rule.

Summary of Comments

The Postal Service received four comments in response to the proposed rule. The respondents included Periodicals publishers and one publisher association. All four respondents expressed strong support of the proposal as a way to reduce mail processing costs for Periodicals. Two respondents asked for additional changes to the Domestic Mail Manual to allow small newspaper publishers to get sequencing information through means other than the USPS LOT product. Those comments are outside the scope of this final rule and will be taken under consideration by the Postal Service for possible future action. However, mailers may obtain walk sequence information through the means described in DMM M050.

For the reasons discussed above, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulation (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as follows:

E ELIGIBILITY

* * * * *

E200 Periodicals

* * * * *

E230 Nonautomation Rates

* * * * *

2.0 CARRIER ROUTE RATES

* * * * *

[Amend 2.2 by revising the heading and item a, redesignating item b as item c, and adding a new item b to read as follows:]

2.2 Sequencing

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M200. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The carrier route rates apply to copies in carrier route packages of six or more letter-size pieces each that are sorted to carrier routes, 5-digit carrier routes, or 3-digit carrier routes trays; and six or more flat-size pieces or irregular parcel-size pieces each that are sorted to carrier route, 5-digit, or 5-digit scheme carrier routes sacks. Preparation of 5-digit scheme carrier routes sacks is required for all 5-digit scheme destinations. The applicable sequencing requirements in M050 and in 2.2b or 2.2c also must be met.

b. Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes prescribed by the USPS (M050).

c. The high density and saturation rates apply to pieces that are eligible for carrier route rates under 2.2a, are prepared in carrier walk sequence, and meet the applicable density standards in 6.0 for the rate claimed.

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

* * * * *

M013 Optional Endorsements Lines

1.0 USE

1.1 Basic Standards

[Amend 1.1 by revising the exhibit to read as follows:]

Sortation level	OEL example
[Replace the second entry in the table with the following:]	
Carrier Route-Periodicals: (basic, high density, and saturation carrier route)	CAR–RT LOT * * C–001

* * * * *

M050 Delivery Sequence

* * * * *

3.0 DELIVERY SEQUENCE INFORMATION

* * * * *

3.4 Line-of-Travel Sequence

[Amend 3.4 by revising the first sentence to read as follows:]

Unless the mail is prepared in carrier walk sequence, LOT sequence is required for mailings at Enhanced Carrier Route basic Standard Mail (A) rates and carrier route basic Periodicals rates. * * *

4.0 DOCUMENTATION

4.1 General

[Amend 4.1 by revising the fourth sentence to read as follows:]

* * * For Periodicals, the postage statement must be annotated in the "Sequencing Date" block on each of the lines where basic, high density, and saturation per piece rate postage is reported. * * *

* * * * *

M200 Periodicals (Nonautomation)

1.0 BASIC STANDARDS

* * * * *

[Amend 1.3 by revising the heading and the second sentence to read as follows:]

1.3 Basic Carrier Route and Walk Sequence

* * * Periodicals for which a carrier route discount is claimed must be prepared as a carrier route mailing under this section and either the walk sequencing standard or the line-of-travel sequencing standard in M050; pieces prepared with a simplified address must also meet the standards in A040.

* * * * *

This change will be published in a future issue of the Domestic Mail Manual. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19164 Filed 7–27–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[NC–AT–2000–01; FRL–6729–8]

New Stationary Sources; Supplemental Delegation of Authority to the State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of Authority.

SUMMARY: The State of North Carolina has requested that EPA delegate authority for implementation and enforcement of existing New Source Performance Standards (NSPS) which have been previously adopted by the State agency but has remained undelegated by EPA, and to approve the mechanism for delegation (automatic) of future NSPS. The purpose of the agency requests for approval of their delegation mechanism is to streamline the existing administrative procedures by eliminating unnecessary steps involved in taking delegation of federal NSPS regulations. With the new NSPS delegation mechanism in place, once a new or revised NSPS is promulgated by EPA, delegation of authority from EPA to the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) will become effective on the date the NSPS is promulgated. No further State requests for delegation will be necessary. Likewise, no further **Federal Register** notices will be published. The EPA's review of each of the agencies' pertinent laws, rules, and regulations indicate that adequate and effective procedures are in place for the implementation and enforcement of these Federal standards. This notice was written to inform the public of delegations that were made to the above mentioned agencies for which a **Federal Register** notice was not previously written and to inform the public of the agencies' new mechanism for delegation of future NSPS.

EFFECTIVE DATE: The effective date is July 28, 2000.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air & Radiation Technology Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303

North Carolina Department of Environment, Health, & Natural Resources, P.O. Box 29580, Raleigh, North Carolina 27626–0580

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address: North Carolina Department of Environment, Health, & Natural Resources, P.O. Box 29580, Raleigh, North Carolina 27626–0580.

FOR FURTHER INFORMATION CONTACT: Ms. Katy Forney, Air & Radiation Technology Branch, Environmental Protection Agency, Region 4, 61 Forsyth St. SW, Atlanta, Georgia 30303, 404–562–9130.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, New Source Performance Standards (NSPS).

On November 24, 1976, the EPA initially delegated the authority for implementation and enforcement of the NSPS program to the State of North Carolina. Currently, no existing NSPS regulations are awaiting delegation for

the State of North Carolina. This agency has subsequently requested a delegation of authority for implementation and enforcement of future NSPS categories codified in 40 CFR part 60.

All current NSPS categories are delegated with the exception of the following sections within those subparts that may not be delegated. Future NSPS regulations will contain a list of sections that will not be delegated for that subpart.

1. Subpart A—§ 60.8(b) (2) and (3), § 60.11(e) (7) and (8), § 60.13 (g), (i) and (j)(2)
2. Subpart B—§ 60.22, § 60.27, and § 60.29
3. Subpart Da—§ 60.45a
4. Subpart Db—§ 60.44b(f), § 60.44b(g), § 60.49b(a)(4)
5. Subpart Dc—§ 60.48c(a)(4)
6. Subpart Ec—§ 60.56(c)(i)
7. Subpart J—§ 60.105(a)(13)(iii), § 60.106(i)(12)
8. Subpart Ka—§ 60.114a
9. Subpart Kb—§ 60.111b(f)(4), § 60.114b, § 60.116b(e)(3) (iii) and (iv), § 60.116b(f)(2)(iii)
10. Subpart O—§ 60.153(e)
11. Subpart EE—§ 60.316(d)
12. Subpart GG—§ 60.334(b)(2), § 60.335(f)(1)
13. Subpart RR—§ 60.446(c)
14. Subpart SS—§ 60.456(d)
15. Subpart TT—§ 60.466(d)
16. Subpart UU—§ 60.474(g)
17. Subpart VV—§ 60.482–1(c)(2) and § 60.484
18. Subpart WW—§ 60.496(c)
19. Subpart XX—§ 60.502(e)(6)
20. Subpart AAA—§ 60.531, § 60.533, § 60.534, § 60.535, § 60.536(i)(2), § 60.537, § 60.538(e), § 60.539
21. Subpart BBB—§ 60.543(c)(2)(ii)(B)
22. Subpart DDD—§ 60.562–2(c)
23. Subpart III—§ 60.613(e)
24. Subpart NNN—§ 60.663(e)
25. Subpart RRR—§ 60.703(e)
26. Subpart SSS—§ 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), § 60.716
27. Subpart TTT—§ 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), § 60.725(b)
28. Subpart VVV—§ 60.743(a)(3)(v)(A) and (B), § 60.743(e), § 60.745(a), § 60.746
29. Subpart WWW— § 60.754(a)(5)

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for all source categories. All sources subject to the requirements of 40 CFR part 60 will now be under the jurisdiction of the appropriate above mentioned agency.

Since review of the pertinent laws, rules, and regulations for the State agency has shown them to be adequate for implementation and enforcement of existing, previously adopted, undelegated NSPS and future NSPS, EPA hereby notifies the public that it has delegated the authority for existing, previously adopted and undelegated NSPS as well as the mechanism for delegation (automatic) of future NSPS source categories upon publication of this **Federal Register** notice.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 28, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: This notice is issued under the authority of sections 101, 110, 111, 112 and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412 and 7601).

Dated: June 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–19112 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–6728–6]

New Stationary Sources; Supplemental Delegation of Authority to the States of Alabama, Florida, Georgia and Tennessee and to Nashville-Davidson County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to delegation of authority.

SUMMARY: This document corrects an error in the supplemental delegation of authority **Federal Register** notices published on September 21, 1998 and March 25, 1999 for the States of Alabama, Florida, Georgia and Tennessee and to Nashville-Davidson County, Tennessee. The previous **Federal Register** notices mistakenly held back the authority for states to approve reference methods that contain minor changes in test methodology.

EFFECTIVE DATE: The effective date is July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Katy Forney at 404–562–9130

SUPPLEMENTARY INFORMATION: This document corrects an error in the following, previously published, **Federal Register** notices given supplemental delegation of authority to the above mentioned states and local agencies: State of Tennessee & Nashville-Davidson Co. Tennessee—63 FR 50162 (September 21, 1998) State of Florida—63 FR 50163 (September 21, 1998) States of Alabama & Georgia—64 FR 14393 (March 25, 1999)

The **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notices listed above contains a list of sections that will not be delegated for that subpart.

The list currently contains the following citation:

1. Subpart A—§ 60.8(b)(1) thru (5), § 60.11(e)(7) and (8), § 60.13(g), (i), and (j)(2)

The list should be amended to contain the following citation:

1. Subpart A—§ 60.8(b)(2) and (3), § 60.11(e)(7) and (8), § 60.13(g), (i), and (j)(2)

Administrative Requirements

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Because this corrective notice is not subject to notice-and-comment

requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 28, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: This notice is issued under the authority of sections 101, 110, 111, 112 and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412 and 7601).

Dated: June 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–19113 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6842–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Chemform, Inc. Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces the deletion of the Chemform, Inc. Site (Site) in Pompano Beach, Broward County, Florida, from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that all appropriate response actions under CERCLA have been implemented and that no further response action is appropriate. Moreover, EPA and the FDEP have determined that the response actions conducted at the Site to date are protective of public health, welfare, and the environment.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Jamey Watt, Remedial Project Manager, EPA Region IV, 61 Forsyth St. SW, Atlanta, Georgia, 30303, (404) 562–8920.

Comprehensive information on this Site is available through the EPA Region IV public docket, which is available for viewing at two locations. Locations and phone numbers are: USEPA Region IV Record Center, 61 Forsyth St. SW, Atlanta, Georgia 30303, (404) 562–8862 and the Broward County Main Public Library, Government Documents, 100 South Andrews Avenue N.E., Fort Lauderdale, Florida 33301.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Chemform, Inc. Site, Pompano Beach, Broward County, Florida.

EPA published a Notice of Intent to Delete the Chemform, Inc. Site from the NPL on May 9, 2000 in the **Federal Register** (65 FR 26803). EPA did not receive any comments on the proposed deletion. Therefore, no responsiveness summary is necessary for attachment to this Notice of Deletion.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Superfund Response Trust Fund (Fund-financed) remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. 40 CFR 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 23, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site "Chemform, Inc., Pompano Beach, Florida."

[FR Doc. 00–19118 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

43 CFR Part 2

RIN 1090–AA76

Legal Process: Testimony of Employees and Production of Records

AGENCY: Department of the Interior.

ACTION: Final rule and statement of policy.

SUMMARY: This regulation amends 43 CFR Part 2, Subpart E, Compulsory Process and Testimony of Employees. It generally provides that Department employees may not appear as witnesses, concerning information acquired in the course of performing official duties or because of their official status, or to produce Department records in litigation either voluntarily or in response to a subpoena, without the consent of the Department. The intended effect of this regulation is to conserve the ability of the Department to conduct official business, preserve its employee resources, minimize involvement in matters unrelated to its mission and programs, preserve its impartially, avoid spending public time and money for private purposes, and to help avoid needless litigation. This regulation does not apply to Congressional inquiries, Federal court

civil proceedings in which the United States is a party, criminal cases, or to Freedom of Information Act and Privacy Act requests.

DATES: This regulation is effective July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Timothy S. Elliott, Deputy Associate Solicitor, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, telephone: (202) 208–4722; Randolph J. Myers, Attorney, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, telephone: (202) 208–4338.

SUPPLEMENTARY INFORMATION: Department employees are frequently requested or subpoenaed to provide testimony or produce records in litigation. Current Department regulations do not clearly specify when its employees are required to respond to subpoenas or produce Department records. This has resulted in an employee giving testimony or providing records, which diverts such employee from performing his/her duties, and has, at times, created the appearance that the Department is taking sides in private litigation. This regulation is intended to address this situation by generally prohibiting both voluntary appearances and compliance with subpoenas unless authorized by the Department.

Subpoenas to testify concerning information which employees have acquired in the course of performing official duties, or to produce records, are essentially legal actions against the United States for which there has been no waiver of sovereign immunity. The courts have recognized the authority of Federal agencies to limit compliance with such subpoenas. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). *See also United States* v. *Williams*, 170 F.3d 431 (4th Cir. 1999); *Smith* v. *Cromer*, 159 F.3d 875 (4th Cir. 1998); *Boron Oil Company* v. *Downie*, 873 F.2d 67 (4th Cir. 1989); *Davis Enterprises* v. *E.P.A.*, 877 F.2d 1181 (3rd Cir. 1989); *Moore* v. *Armour Pharmaceutical Co.*, 927 P.2d 1194 (11th Cir. 1991).

Moreover, subpoenas by State, territorial or Tribal courts, and legislative or administrative bodies, which attempt to assert jurisdiction over Federal agencies and their employees, are inconsistent with the Supremacy Clause of the U.S. Constitution. A Federal regulation, such as this one prohibiting compliance with such subpoenas, is consistent with the Supremacy Clause principle. *See McCulloch* v. *Maryland*, 7 U.S. (4 Wheat.) 316 (1819); *Houston Business Journal, Inc.* v. *Office of the Comptroller of the Currency*, 86 F.3d 1208 (D.C. Cir. 1996); *United States* v. *McLeod*, 385 F.2d 734 (5th Cir. 1967); *Giza* v. *Secretary of HEW*, 628 P.2d 748 (1st Cir. 1980). Accordingly, this regulation restricts a Department employee from complying with subpoenas from State, territorial or Tribal courts, and legislative or administrative bodies without the approval of the official in charge of the employee's bureau, division, office or agency of the Department.

In addition, this regulation describes procedures by which the Department will make its employees and records available in response to subpoenas in Federal court civil proceedings in which the United States is not a party. In the event that the Department or its Solicitor's Office fails to reach an agreement regarding the proper scope of a subpoena, the Solicitor's Office will coordinate with the Department of Justice to file appropriate motions, including motions to quash or for a protective order. In the case of the Department's Office of Inspector General, its General Counsel will attempt to reach an agreement or will coordinate with the Department of Justice to file appropriate motions. *Exxon Shipping Co.* v. *U.S. Dep't of the Interior*, 34 F.3d 774 (9th Cir. 1994) and *Comsat Corp.* v. *National Science Foundation*, 190 F.3d 269 (4th Cir. 1999).

The regulation does not apply to congressional proceedings. This regulation also does not apply to Federal court civil proceedings in which the United States is a party, because the Department of Justice is already representing the Department's interests and may file appropriate protective motions under the Federal Rules of Civil Procedure. This regulation likewise does not apply to either Freedom of Information Act or Privacy Act requests.

We also recognize that there are situations in which the Department should cooperate with Federal, State, territorial and Tribal authorities as part of the Department's responsibility for developing and enforcing land and resource standards and other policies. This regulation does not preclude these efforts, and the official in charge of the employee's bureau, division, office or agency of the Department is empowered to authorize such testimony.

Further, this regulation does not apply to criminal cases before Federal, State and Tribal courts where Department employees and records are involved. The Department has over 5,000 employees who perform law enforcement functions. These and other employees regularly testify in Federal, State or Tribal courts in thousands of criminal cases. The Department has long-standing procedures with prosecutors which adequately address the proper scope of discovery, record production requests and witness subpoenas. Once prosecutors are advised by the Department of an inappropriate witness subpoena or subpoena *duces tecum*, prosecutors traditionally file motions to quash or for a protective order to protect the interests of the Department. As such, the Department sees no need to include criminal cases in this regulation.

While this regulation applies to information which employees acquire in the course of performing official duties, to production of records in Department files and to testimony concerning such records, we recognize that there are situations where Department employees may properly serve as expert witnesses on subjects outside the scope of their official duties and on behalf of private parties. Such situations are treated as outside activities under 5 CFR Part 2635, Subpart H, and employees providing this testimony are required to comply with those regulations and to perform those activities on their own time or while in an approved leave status. Employees must also review and comply with 5 CFR 2635.805, which details a separate authorization procedure for an employee to testify as an expert witness, not on behalf of the United States, in any proceeding before a court or agency in which the United States is a party or has a direct and substantial interest. In both instances, we require employees to state for the record that they are appearing as private individuals and that their testimony does not necessarily represent the official views of the Department of the Interior.

We also recognize that employees may, on their own time or while in an approved leave status, appear as private citizens in proceedings in which Department policies and programs are not at issue. This regulation does not restrict such activities.

Finally, the Department of the Interior is sometimes asked to authenticate copies of official records for purposes of admissibility under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44, or comparable State or Tribal law. Since official actions and policies can best be proved by Department records, and since this regulation provides that it is generally inappropriate for employees to appear as witnesses to discuss the background of Department policies and action in private litigation, this

regulation provides that we will authenticate a copy of Department records on request. *See* 43 U.S.C. 1460.

Public Comment Procedures

Since this regulation establishes internal policy for Department employees, the Administrative Procedure Act does not require that it be published as a proposed regulation for notice and public comment. 5 U.S.C. 553(a)(2). This regulation revises current regulations and provides immediate clarifying guidance on how Department employee testimony and Department records may be obtained. As such, the Department finds that good cause exists for making the regulation effective less than thirty days after publication. 5 U.S.C. 553(b)(3)(B).

We welcome and encourage public comment by any one of several methods. You may mail comments to the Office of the Solicitor, Department of the Interior, 1849 C Street, NW., Room 6510, Washington, DC 20240. For the next six months, you may also comment via e-mail on the Internet addressed to: Witness_regs@ios.doi.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1090–AA76" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Office of the Solicitor, Division of Parks and Wildlife at (202) 208–4338. Finally, you may also fax comments to Office of the Solicitor at (202) 208–1790. These are not toll-free numbers.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the regulation making record, which we will honor to the extent allowed by law. There also may be circumstances in which we would withhold from the regulation making record a respondent's identity, as allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Drafting Information

The following persons participated in the writing of this regulation: Randolph J. Myers, Arthur E. Gary, Robert H. Moll, Timothy S. Elliott, Karen Sprecher Keating, and David A. Watts, Office of the Solicitor, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

This regulation is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This regulation will not have an effect of $100 million or more on the economy. This regulation regulates how and when Department employees and documents may be provided in certain situations. As such, it will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This regulation will not create a serious inconsistency or interfere with an action taken or planned by another agency.

(3) This regulation does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This regulation is consistent with well-established constitutional and statutory principles and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This regulation merely regulates how and when Department employees may testify and that documents may be provided in certain situations.

Small Business Regulatory Enforcement Fairness Act

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this regulation only regulates how and when Department employees may testify and that Department documents may be provided in certain situations, this regulation:

a. Dies not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This regulation does not have a significant or unique effect on State, local or tribal governments or the private sector because this regulation only regulates how and when Department employees may testify and Department documents my be provided in certain situations. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this regulation does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

The Department of the Interior has determined this regulation conforms to the Federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and Tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's supremacy clause and Federal statute. This regulation is, however, restricted to the minimum level necessary to achieve the objections of 5 U.S.C. 301 pursuant to which this regulation is promulgated.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this regulation does not unduly burden the judicial system, under *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), and does meet the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation contains no reporting or record keeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

National Environmental Policy Act (NEPA)

This regulation is of an administrative, legal and procedural nature and therefore is categorically excluded from NEPA, 516 DM 2 Appendix 1.10. This regulation also does not constitute a major Federal action significantly affecting the quality of the human environment under NEPA, 42 U.S.C. 4321 *et seq.* A detailed statement under the NEPA is not required.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Freedom of information, and Government employees.

In consideration of the foregoing, the Department amends 43 CFR Part 2, Subpart E as set forth below:

1. The authority citation for Subpart E is revised to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701; 43 U.S.C. 1460; and Reorganization Plan No. 3 of 1950, 15 FR 3174.

2. Sections 2.80 and 2.82 are removed and Title 43, Part 2, Subpart E of the Code of Federal Regulations is revised to read as follows:

Subpart E—Legal Process: Testimony by Employees and Production of Records

General Information

Sec.

2.80 What does this subpart cover?
2.81 What is the Department's policy on granting requests for employee testimony or Department records?

Responsibilities of Requesters

2.82 How can I obtain employee testimony or Department records?
2.83 If I serve a subpoena or subpoena *duces tecum*, must I also submit a request under *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)?
2.84 What information must I put in my *Touhy* Request?
2.85 How much will I be charged?
2.86 Can I get an authenticated copy of a Department record?

Responsibilities of the Department

2.87 How will the Department process my *Touhy* Request?
2.88 What criteria will the Department consider in responding to my *Touhy* Request?

Responsibilities of Employees

2.89 What must I, as an employee, do upon receiving a request?
2.90 Must I get approval before testifying as an expert witness on a subject outside the scope of my official duties?

General Information

§ 2.80 What does this subpart cover?

(a) This subpart describes how the Department of the Interior (including all its bureaus and offices) responds to requests or subpoenas for:

(1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employee's official status;

(2) Testimony by employees in Federal court civil proceedings in which the United States is not a party concerning information acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this subpart, "employee" means a current or former Department employee, including a contract or special government employee.

(c) This subpart does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States is a party;

(3) Federal administrative proceedings;

(4) Federal, State and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Department. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the Department. *See* 5 CFR §§ 2635.702(b), 2635.807 (b).

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by § 2.90.

(d) This subpart does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Department FOIA and Privacy Act regulations are found at 43 CFR Part 2, subparts B and D.

(e) Nothing in this subpart is intended to impede the appropriate disclosure under applicable laws of Department information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This subpart only provides guidance for the internal operations of the Department, and neither creates nor is intended to create any enforceable right or benefit against the United States.

§ 2.81 What is the Department's policy on granting requests for employee testimony or Department records?

(a) Except for proceedings covered by § 2.80(c) and (d), it is the Department's general policy not to allow its employees to testify or to produce Department records either upon request or by subpoena. However, if you request in writing, the Department will consider whether to allow testimony or production of records under this subpart. The Department's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Department employee may testify or produce records in any proceeding to which this subpart applies unless authorized by the Department under §§ 2.80 through 2.90 *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Responsibilities of Requesters

§ 2.82 How can I obtain employee testimony or Department records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "*Touhy* Request;" *see* § 2.84 and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a check for costs to the Department of the Interior, in accordance with § 2.85, if your *Touhy* Request is granted.

(b) To obtain official Department records, you must submit:

(1) A *Touhy* Request; and

(2) A Statement that you agree to pay the costs of duplication in accordance with 43 CFR Part 2, appendix A, if your *Touhy* Request is granted.

(c) You must send your *Touhy* Request to:

(1) The employee's office address;

(2) The official in charge of the employee's bureau, division, office or agency; and

(3) The appropriate unit of the Solicitor's Office.

(d) To obtain employee testimony or records of the Office of Inspector General, you must send your *Touhy* Request to the General Counsel for the Office of Inspector General.

(e) 43 CFR Part 2, Appendix B contains a list of the addresses of the

Department's bureaus and offices and the units of the Solicitor's Office. The General Counsel for the Inspector General is located at the address for the Office of the Inspector General. If you do not know the employee's address, you may obtain it from the employee's bureau or office.

§ 2.83 If I serve a subpoena duces tecum, must I also submit a Touhy request?

Yes. If you serve a subpoena for employee testimony, you also must submit a request under *United States ex rel. Touhy* v. *Regan*, 340 U.S. 462 (1951)? If you serve a subpoena *duces tecum* for records in the possession of the Department, you also must submit a *Touhy* Request.

§ 2.84 What information must I put in my Touhy Request?

Your *Touhy* Request must:

(a) Identify the employee or record;

(b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;

(c) Identify the parties to your proceeding and any known relationships they have to the Department's mission or programs;

(d) Show that the desired testimony or records are not reasonably available from any other source;

(e) Show that no record could be provided and used in lieu of employee testimony;

(f) Provide the substance of the testimony expected of the employee; and

(g) Explain why you believe your *Touhy* Request complies with § 2.88.

§ 2.85 How much will I be charged?

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production under 43 CFR Part 2, Appendix A. Costs must be paid by check or money order payable to the Department of the Interior.

§ 2.86 Can I get an authenticated copy of a Department record?

Yes. We may provide an authenticated copy of a Department record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under § 2.13 or this Subpart.

Responsibility of the Department

§ 2.87 How will the Department process my Touhy Request?

(a) The appropriate Department official will decide whether to grant or deny your *Touhy* Request. Our Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, also will coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(b) We will limit our decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this Subpart, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 2.88.

§ 2.88 What criteria will the Department consider in responding to my Touhy Request?

In deciding whether to grant your *Touhy* Request, the appropriate Department official will consider:

(a) Your ability to obtain the testimony or records from another source;

(b) The appropriateness of the employee testimony and record production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and

(c) Our ability to:

(1) Conduct our official business unimpeded;

(2) Maintain impartiality in conducting our business;

(3) Minimize the possibility that we will become involved in issues that are not related to our mission or programs;

(4) Avoid spending public employee's time for private purposes;

(5) Avoid the negative cumulative effect of granting similar requests;

(6) Ensure that privileged or protected matters remain confidential; and

(7) Avoid undue burden on us.

Responsibilities of Employees

§ 2.89 What must I, as an employee, do upon receiving a request?

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Solicitor's Office, or the General Counsel of the Office of the Inspector General, as applicable, for assistance in issuing the proper response.

(b) If you receive a *Touhy* Request, you must promptly notify your supervisor and forward the request to the head of your bureau, division or office. After consulting with the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, the official in charge will decide whether to grant the *Touhy* Request under § 2.88.

(c) All decisions granting or denying a *Touhy* Request must be in writing. The official in charge must ask the applicable unit of the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, for advice when preparing the decision.

(d) Under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44(a)(1), or comparable State or Tribal law, a request for an authenticated copy of a Department record may be granted by the person having the legal custody of the record. If you believe that you have custody of a record:

(1) Consult your delegated authority to determine if you can grant a request for authentication of records; and

(2) Consult the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, concerning the proper form of the authentication (as authentication requirements may vary by jurisdiction).

§ 2.90 Must I get approval before testifying as an expert witness on a subject outside the scope of my official duties?

(a) You must comply with 5 CFR 2635.805(c), which details the authorization procedure for an employee to testify as an expert witness, not on behalf of the United States, in any judicial or administrative proceeding in which the United States is a party or has a direct and substantial interest. This procedure means:

(1) You must obtain the written approval of your Deputy Ethics Official;

(2) You must be in an approved leave status if you testify during duty hours; and

(3) You must state for the record that you are appearing as a private individual and that your testimony does not represent the official views of the Department.

(b) If you testify as an expert witness on a matter outside the scope of yoru official duties, and which is not covered by paragraph (a) of this section, you must comply with 5 CFR 2635.802 and 5 CFR 3501.105.

Dated: July 11, 2000.

John D. Leshy,

Solicitor.

[FR Doc. 00–18480 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–RK–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1159

RIN 3135–AA16

Implementation of the Privacy Act of 1974

AGENCY: National Endowment for the Arts.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (Endowment) has amended its Privacy Act regulations to reflect administrative changes at the agency and to comply with the President's Memorandum on Plain Language in Government Writing. These regulations establish procedures by which an individual may determine whether a system of records maintained by the Endowment contains a record pertaining to him or her; gain access to such records; and request correction or amendment of such records. These regulations also establish exemptions from certain Privacy Act requirements for all or part of certain systems of records maintained by the Endowment.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, at (202) 682–5418.

SUPPLEMENTARY INFORMATION: The Endowment operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter B apply only to the Endowment. The proposed rule was published by the Endowment in the **Federal Register** on May 19, 2000. The Endowment received no comments on the proposed rule.

This final rule adds Privacy Act regulations to Subchapter B (45 CFR part 1159), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Endowment. The new regulations reflect administrative changes at the Endowment. In addition, the new regulations' question-and-answer format and increased detail as to several provisions of the Privacy Act are intended to increase understanding of the Endowment's Privacy Act policies. The Endowment is authorized to propose the new regulations under 5 U.S.C. 552a(f) of the Privacy Act.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This final rule is not classified as a significant rule under Executive Order 12866 because it will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. In addition, based on the assessments noted in this paragraph, this proposed rule is not a "major rule" as defined at 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency certifies, under 5 U.S.C. 605(b), that the regulation will not have a significant economic impact on a substantial number of small entities. The Endowment has considered the impact of this final rule under the Regulatory Flexibility Act and certifies that this final rule is not likely to have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Endowment certifies that this final rule does not require additional reporting under the criteria of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This final rule does not include a Federal mandate that may result in the expenditure by the private sector or by State, local, and tribal governments (in the aggregate) of $100 million or more in any one year. Therefore, a statement under 2 U.S.C. 1532 is not required.

List of Subjects in 45 CFR Part 1159

Privacy.

For the reasons set out in this preamble, the Endowment amends Title 45, Code of Federal Regulations, by adding Part 1159 to read as follows:

PART 1159—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

1159.1 What definitions apply to these regulations?
1159.2 What is the purpose of these regulations?
1159.3 Where should individuals send inquiries about the Endowment's systems of records or implementation of the Privacy Act?
1159.4 How will the public receive notification of the Endowment's systems of records?
1159.5 What government entities will the Endowment notify of proposed changes to its systems of records?
1159.6 What limits exist as to the contents of the Endowment's systems of records?
1159.7 Will the Endowment collect information from me for its records?
1159.8 How can I acquire access to Endowment records pertaining to me?
1159.9 What identification will I need to show when I request access to Endowment records pertaining to me?
1159.10 How can I pursue amendments to or corrections of an Endowment record?
1150.11 How can I appeal a refusal to amend or correct an Endowment record?
1159.12 Will the Endowment charge me fees to locate, review, or copy records?
1159.13 In what other situations will the Endowment disclose its records?
1159.14 Will the Endowment maintain a written account of disclosures made from its systems of records?
1159.15 Who has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems?
1159.16 Will the Endowment take steps to ensure that its employees involved with its systems of records are familiar with the requirements and implications of the Privacy Act?
1150.17 Which of the Endowment's systems of records are covered by exemptions in the Privacy Act?
1159.18 What are the penalties for obtaining an Endowment record under false pretenses?
1159.19 What restrictions exist regarding the release of mailing lists?

Authority: 5 U.S.C. 552a(f)

§ 1159.1 What definitions apply to these regulations?

The definitions of the Privacy Act apply to this part. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal government, including the Executive Office of the President or any independent regulatory agency.

(b) *Business day means a calendar day, excluding Saturdays, Sundays, and legal public holidays.*

(c) *Chairperson* means the Chairperson of the Endowment, or his or her designee;

(d) *Endowment* means the National Endowment for the Arts;

(e) *Endowment* system means a system of records maintained by the Endowment;

(f) *General Counsel* means the General Counsel of the Endowment, or his or her designee.

(g) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(h) *Maintain* means to collect, use, store, or disseminate records, as well as any combination of these recordkeeping functions. The term also includes exercise of control over and, therefore, responsibility and accountability for, systems of records;

(i) *Privacy Act* means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(j) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency and contains the individual's name or another identifying particular, such as a number or symbol assigned to the individual, or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(k) *Routine* use means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(l) *Subject individual* means the individual to whom a record pertains. Uses of the terms "I", "you", "me", and other references to the reader of the regulations in this part are meant to apply to subject individuals as defined in this paragraph (l); and

(m) *System of records* means a group of records under the control of any agency from which information is retrieved by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual.

§ 1159.2 What is the purpose of these regulations?

The regulations in this part set forth the Endowment's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Endowment. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether an Endowment system contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements, prescribe fees to be charged for copying records, and establish exemptions from certain requirements of the Act for certain Endowment systems or components thereof.

§ 1159.3 Where should individuals send inquiries about the Endowment's systems of records or implementation of the Privacy Act?

Inquiries about the Endowment's systems of records or implementation of the Privacy Act should be sent to the following address: National Endowment for the Arts; Office of the General Counsel; 1100 Pennsylvania Avenue, NW; Room 518; Washington, DC 20506.

§ 1159.4 How will the public receive notification of the Endowment's systems of records?

(a) From time to time, the Endowment shall review its systems of records in the **Federal Register**, and publish, if necessary, any amendments to those systems of records. Such publication shall not be made for those systems of records maintained by other agencies while in the temporary custody of the Endowment.

(b) At least 30 days prior to publication of information under paragraph (a) of this section, the Endowment shall publish in the **Federal Register** a notice of its intention to establish any new routine uses of any of its systems of records, thereby providing the public an opportunity to comment on such uses. This notice published by the Endowment shall contain the following:

(1) The name of the system of records for which the routine use is to be established;

(2) The authority for the system;

(3) The purpose for which the record is to be maintained;

(4) The proposed routine use(s);

(5) The purpose of the routine use(s); and

(6) The categories of recipients of such use.

(c) Any request for additions to the routine uses of Endowment systems should be sent to the Office of the General Counsel (see § 1159.3 of this part).

(d) Any individual who wishes to know whether an Endowment system contains a record pertaining to him or her should write to the Office of the General Counsel (see § 1159.3 of this part). Such individuals may also call the Office of the General Counsel at (202) 682–5418 on business days, between the hours of 9 a.m. and 5:30 p.m., to schedule an appointment to make an inquiry in person. In either case, inquiries should be presented in writing and should specifically identify the Endowment systems involved. The Endowment will attempt to respond to an inquiry as to whether a record exists within 10 business days of receiving the inquiry.

§ 1159.5 What government entities will the Endowment notify of proposed changes to its systems of records?

When the Endowment proposes to establish or significantly changes any of its systems of records, it shall provide adequate advance notice of such proposal to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals. This report will be submitted in accordance with guidelines provided by the OMB.

§ 1159.6 What limits exist as to the contents of the Endowment's systems of records?

(a) The Endowment shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. In addition, the Endowment shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Endowment shall not be required to update retired records.

(b) The Endowment shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 1159.7 Will the Endowment collect information from me for its records?

The Endowment shall collect information, to the greatest extent practicable, directly from you when the information may result in adverse determinations about your rights, benefits, or privileges under Federal

programs. In addition, the Endowment shall inform you of the following, either on the form it uses to collect the information or on a separate form that you can retain, when it asks you to supply information:

(a) The statutory or executive order authority that authorizes the solicitation of the information;

(b) Whether disclosure of such information is mandatory or voluntary;

(c) The principal purpose(s) for which the information is intended to be used;

(d) The routine uses that may be made of the information, as published pursuant to § 1159.4 of this part; and

(e) Any effects on you of not providing all or any part of the required or requested information.

§ 1159.8 How can I acquire access to Endowment records pertaining to me?

The following procedures apply to records that are contained in an Endowment system:

(a) You may request review of records pertaining to you by writing to the Office of the General Counsel (see § 1159.3 of this part). You may also call the Office of the General Counsel at (202) 682–5418 on business days, between the hours of 9 a.m. and 5:30 p.m., to schedule an appointment to make such a request in person. In either case, your request should be presented in writing and should specifically identify the Endowment systems involved.

(b) Access to the record, or to any other information pertaining to you that is contained in the system, shall be provided if the identification requirements of § 1159.9 of this part are satisfied and the record is otherwise determined to be releasable under the Privacy Act and these regulations. The Endowment shall provide you an opportunity to have a copy made of any such record about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 1159.12 of this part.

(c) The Endowment will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The Endowment will acknowledge mailed requests, or personal requests for documents that are not immediately available, within 10 business days, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your record. The Endowment may require that you furnish a written statement authorizing discussion of your record in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Endowment, access to such records might have an adverse effect upon you. When such determination has been made, the Endowment may refuse to disclose such information directly to you. The Endowment will, however, disclose this information to a licensed physician designated by you in writing.

§ 1159.9 What identification will I need to show when I request access to Endowment records pertaining to me?

The Endowment shall require reasonable identification of all individuals who request access to records in an Endowment system to ensure that they are disclosed to the proper person.

(a) The amount of personal identification required will of necessity vary with the sensitivity of the record involved. In general, if you request disclosure in person, you shall be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Endowment systems that contain particularly sensitive and/or detailed personal information, the Endowment reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a statement under oath as to your identity, acknowledging that you are aware of the penalties for improper disclosure under the provisions of the Privacy Act.

(b) If you request disclosure by mail, the Endowment will request such information as may be necessary to ensure that you are properly identified. Authorized means to achieve this goal include, but are not limited to, requiring that a mail request include certification that a duly commissioned notary public of any State or territory (or a similar official, if the request is made outside of the United States) received an acknowledgment of identity from you.

(c) If you are unable to provide suitable documentation or identification, the Endowment may require a signed, notarized statement asserting your identity and stipulating that you understand that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

§ 1159.10 How can I pursue amendments to or corrections of an Endowment record?

(a) You are entitled to request amendments to or corrections of records pertaining to you pursuant to the provisions of the Privacy Act, including 5 U.S.C. 552a(d)(2). Such a request should be made in writing and addressed to the Office of the General Counsel (see § 1159.3 of this part).

(b) Your request for amendments or corrections should specify the following:

(1) The particular record that you are seeking to amend or correct;

(2) The Endowment system from which the record was retrieved;

(3) The precise correction or amendment you desire, preferably in the form of an edited copy of the record reflecting the desired modification; and

(4) Your reasons for requesting amendment or correction of the record.

(c) The Endowment will acknowledge a request for amendment or correction of a record within 10 business days of its receipt, unless the request can be processed and the individual informed of the General Counsel's decision on the request within that 10-day period.

(d) If after receiving and investigating your request, the General Counsel agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, then the record will be corrected or amended promptly. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Endowment function for which the record was provided or is maintained. In either case, you will be informed in writing of the amendment, correction, or deletion. In addition, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If after receiving and investigating your request, the General Counsel does not agree that the record should be amended or corrected, you will be informed promptly in writing of the refusal to amend or correct the record and the reason for this decision. You will also be informed that you may appeal this refusal in accordance with § 1159.11 of this part.

(f) Requests to amend or correct a record governed by the regulations of another agency will be forwarded to such agency for processing, and you will be informed in writing of this referral.

§ 1150.11 How can I appeal a refusal to amend or correct an Endowment record?

(a) You may appeal a refusal to amend or correct a record to the Chairperson. Such appeal must be made in writing within 10 business days of your receipt of the initial refusal to amend or correct your record. Your appeal should be sent to the Office of the General Counsel (see § 1159.3 of this part), should indicate that it is an appeal, and should include the basis for the appeal.

(b) The Chairperson will review your request to amend or correct the record, the General Counsel's refusal, and any other pertinent material relating to the appeal. No hearing will be held.

(c) The Chairperson shall render his or her decision on your appeal within 30 business days of its receipt by the Endowment, unless the Chairperson, for good cause shown, extends the 30-day period. Should the Chairperson extend the appeal period, you will be informed in writing of the extension and the circumstances of the delay.

(d) If the Chairperson determines that the record that is the subject of the appeal should be amended or corrected, the record will be so modified, and you will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If your appeal is denied, you will be informed in writing of the following:

(1) The denial and the reasons for the denial;

(2) That you may submit to the Endowment a concise statement setting forth the reasons for your disagreement as to the disputed record. Under the procedures set forth in paragraph (f) of this section, your statement will be disclosed whenever the disputed record is disclosed; and

(3) That you may seek judicial review of the Chairperson's determination under 5 U.S.C. 552a(g)(1)(a).

(f) Whenever you submit a statement of disagreement to the Endowment in accordance with paragraph (e)(2) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of your statement of disagreement will be disclosed with the record. If the Endowment deems it appropriate, a concise statement of the Chairperson's reasons for denying your appeal may also be disclosed with the record. While you will have access to this statement of the Chairperson's reasons for denying your appeal, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of your statement of disagreement, as well as any statement of the Chairperson's reasons for denying your appeal.

§ 1159.12 Will the Endowment charge me fees to locate, review, or copy records?

(a) The Endowment shall charge no fees for search time or for any other time expended by the Endowment to review a record. However, the Endowment may charge fees where you request that a copy be made of a record to which you have been granted access. Where a copy of the record must be made in order to provide access to the record (*e.g.*, computer printout where no screen reading is available), the copy will be made available to you without cost.

(b) Copies of records made by photocopy or similar process will be charged to you at the rate of $0.10 per page. Where records are not susceptible to photocopying (*e.g.*, punch cards, magnetic tapes, or oversize materials), you will be charged actual cost as determined on a case-by-case basis. A copying fee totaling $3.00 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at your request, such as certification or authentication, postal insurance, and special mailing arrangement costs, will be charged to you.

(d) A copying fee shall not be charged or, alternatively, it may be reduced, when the General Counsel determines, based on a petition, that the petitioning individual is indigent and that the Endowment's resources permit a waiver of all or part of the fee.

(e) All fees shall be paid before any copying request is undertaken. Payments shall be made by check or money order payable to the "National Endowment for the Arts."

§ 1159.13 In what other situations will the Endowment disclose its records?

(a) The Endowment shall not disclose any record that is contained in a system of records to any person or to another agency, except pursuant to a written request by or with the prior written consent of the subject individual, unless disclosure of the record is:

(1) To those officers or employees of the Endowment who maintain the record and who have a need for the record in the performance of their official duties;

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request to the Endowment formulated in accordance with the National Foundation on the Arts and the Humanities regulations published at 45 CFR part 1100;

(3) For a routine use as published in the annual notice in the **Federal Register**;

(4) To the Census Bureau for purposes of planning or carrying out a census, survey, or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Endowment with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Endowment for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. The Endowment may also disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the General Accounting Office;

(11) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e); or

(12) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Endowment shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(b) Before disseminating any record about any individual to any person other than an Endowment employee, the Endowment shall make reasonable efforts to ensure that such records are, or at the time they were collected were, accurate, complete, timely, and relevant for Endowment purposes. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

§ 1159.14 Will the Endowment maintain a written account of disclosures made from its systems of records?

(a) The Office of the General Counsel shall maintain a written log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting shall also contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to Endowment employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Endowment shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Endowment shall make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 1159.8 of this part. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1159.13(a)(7) of this part.

§ 1159.15 Who has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems?

The Deputy Chairman for Management and Budget has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and outputs from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data, and must furthermore minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) Manual systems.

(1) Records contained in a system of records as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Endowment.

(2) All records, when not under the personal control of the employees authorized to use the records, must be stored in a locked metal filing cabinet. Some systems of records are not of such confidential nature that their disclosure would constitute a harm to an individual who is the subject of such record. However, records in this category shall also be maintained in locked metal filing cabinets or maintained in a secured room with a locking door.

(3) Access to and use of a system of records shall be permitted only to persons whose duties require such access within the Endowment, for routine uses as defined in § 1159.1 as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the Endowment to persons needing such records in the performance of their official duties or routine uses as defined in § 1159.1, or such other uses as provided herein, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to the General Counsel.

(5) Access to areas where a system of records is stored will be limited to those persons whose duties require work in such areas. There shall be an accounting of the removal of any records from such storage areas utilizing a written log, as directed by the Deputy Chairman for Management and Budget. The written log shall be maintained at all times.

(6) The Endowment shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within a system of records shall be in accordance with rules promulgated by the General Services Administration.

(b) Automated systems.

(1) Identifiable personal information may be processed, stored or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data, whether contained in punch cards, magnetic tapes or discs, are not under the personal control of an authorized person, such information must be stored in a locked or secured room, or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning or in the case of tapes or discs, degaussing, in accordance with any regulations now or hereafter proposed by the General Services Administration or other appropriate authority.

§ 1159.16 Will the Endowment take steps to ensure that its employees involved with its systems of records are familiar with the requirements and implications of the Privacy Act?

(a) The Chairperson shall ensure that all persons involved in the design, development, operation or maintenance of any Endowment system are informed of all requirements necessary to protect the privacy of subject individuals. The Chairperson shall also ensure that all Endowment employees having access to records receive adequate training in their protection, and that records have adequate and proper storage with sufficient security to assure the privacy of such records.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications

of the Privacy Act, and the fact that the Endowment may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and these regulations.

§ 1150.17 Which of the Endowment's systems of records are covered by exemptions in the Privacy Act?

(a) Pursuant to and limited by 5 U.S.C. 552a(j)(2), the Endowment system entitled "Office of the Inspector General Investigative Files" shall be exempted from the provisions of 5 U.S.C. 552a, except for subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i), insofar as that Endowment system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to and limited by 5 U.S.C. 552a(k)(2), the Endowment system entitled "Office of the Inspector General Investigative Files" shall be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f), insofar as that Endowment system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

(c) The Endowment system entitled "Office of the Inspector General Investigative Files" is exempt from the above-noted provisions of the Privacy Act because their application might alert investigation subjects to the existence or scope of investigations; lead to suppression, alteration, fabrication, or destruction of evidence; disclose investigative techniques or procedures; reduce the cooperativeness or safety of witnesses; or otherwise impair investigations.

§ 1150.18 What are the penalties for obtaining an Endowment record under false pretenses?

(a) Under 5 U.S.C. 552a(i)(3), any person who knowingly and willfully requests or obtains any record concerning an individual from the Endowment under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(b) A person who falsely or fraudulently attempts to obtain records under the Privacy Act may also be subject to prosecution under other statutes, including 18 U.S.C. 494, 495, and 1001.

§ 1150.19 What restrictions exist regarding the release of mailing lists?

The Endowment may not sell or rent an individual's name and address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

Dated: July 24, 2000.

Karen Elias,

Deputy General Counsel.

[FR Doc. 00–19052 Filed 7–27–00; 8:45 am]

BILLING CODE 7536–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1557; MM Docket No. 99–361; RM–9777; RM–9851]

Radio Broadcasting Services; Plainville and Larned, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making filed on behalf of Radio, Inc., licensee of Station KFIX, Plainville, Kansas, this document substitutes Channel 245C1 for Channel 244A at Plainville and modifies the license issued to Radio, Inc., as requested. (See Supplementary Information, *infra.*) Additionally, to accommodate the modification at Plainville, this document also substitutes Channel 255C3 for previously proposed Channel 255A at Larned, as counterproposed by Goodstar Broadcasting of Kansas, L.L.C. ("Goodstar"), licensee of Station KGTR, Channel 244A, Larned, Kansas, and modifies its license accordingly. *See* 65 FR 3407, January 21, 2000. Coordinates used for Channel 245C1 at Plainville, Kansas, are 39–01–15 NL and 99–28–12 WL. Coordinates used for Channel 255C3 at Larned, Kansas, are 38–09–54 NL and 99–06–05 WL.

DATES: Effective August 28, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C: 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–361, adopted July 5, 2000, and released July 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Channel 245C2 was substituted for Channel 244A at Plainville pursuant to grant of a one-step application on August 7, 1998, and the authorization for Station KFIX was modified accordingly (File No. BLH–19980509KC). However, the Table of Allotments was never amended to reflect the substitution of Channel 245C2 for Channel 244A at Plainville.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 244A and adding Channel 255C3 at Larned;

3. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 244A and adding Channel 245C1 at Plainville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–19065 Filed 7–27–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–02; I.D. 072400B]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea

with a minimum of injury. This action is necessary because the allocation of the sablefish 2000 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 24, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–526–7210.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(a)(4)(ii)(B), the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000) established the allocation of the 2000 sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA as 1,146 metric tons (mt).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19038 Filed 7–24–00; 4:51 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072400C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 24, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of northern rockfish for the Western Regulatory Area was established as 630 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for northern rockfish in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 580 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of northern rockfish for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19037 Filed 7–24–00; 4:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 146
Friday, July 28, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–38]

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a supplemental notice of proposed rulemaking (SNPRM) that proposed a new airworthiness directive (AD) applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines. That action would have required the addition of initial and repetitive on-wing eddy current inspections (ECI) of affected diffuser case assembly bosses for cracks, and replacement of cracked bosses with serviceable parts. In addition, that action would have revised the initial accomplishment time for the previously proposed actions. Finally, that action would have added further etches, fluorescent penetrant inspections (FPIs), x-ray inspections, and shotpeening to the shop requirements, and would have provided an optional terminating action in the form of a redesigned diffuser case. The actions specified by the SNPRM were intended to prevent diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the airplane. Since the issuance of the SNPRM, the FAA has reevaluated the safety risk to the fleet using the most recent fleet data , including the status of how much of the fleet has already undergone the modifications and inspections included in the proposed actions.. The drawdown period of the fleet management program that was originally proposed has been completed. All case assemblies continue to be inspected on-wing as part of normal maintenance actions. Therefore, the safety risk has been considerably reduced. As a result, the FAA has determined that an AD is no longer required, and the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7130, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new AD, applicable to PW JT9D–7R4 series turbofan engines, was published in the **Federal Register** on August 23, 1995 (60 FR 43730). That proposal would have required the removal of material from certain bosses on the diffuser case assembly, inspection of the reworked area using Flourscent Penetrant and x-ray methods, and shotpeening of the reworked area. That action was prompted by reports of cracks at the aft corners of bosses on the diffuser case assemblies.

The FAA received comment on the proposed rule, and in response to those comments and further analysis of the unsafe condition published a Supplemental Notice of Proposed Rulemaking (SNPRM) on December 8, 1997 (62 FR 64523). As supplemented the proposed rule would have required the addition of initial and repetitive on-wing eddy current inspection (ECI) of affected diffuser case assembly bosses for cracks, and replacement, if necessary, with serviceable parts. The proposed rule as supplemented also would have revised the initial accomplishment time for the previously proposed actions. Finally, the supplemented proposed rule would have added further etches, FPIs, x-ray inspections, and shotpeening to the shop requirements and would have provided an optional terminating action in the form of a redesigned diffuser case. The proposed actions were intended to prevent diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the airplane.

Since the issuance of that SNPRM, the FAA has reevaluated the safety risk to the fleet using the most recent fleet data, including the status of how much of the fleet has already undergone the modifications and inspections included in the proposed actions. The drawdown period of the fleet management program that was originally proposed, which corresponds to the actions in the service bulletins, has been completed. All case assemblies continue to be inspected on-wing as part of normal maintenance actions. Therefore, the safety risk has been considerably reduced.

Upon further consideration, the FAA has determined that the unsafe condition no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this supplemental notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a supplemental notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the supplemental notice of proposed rulemaking, Docket 95–ANE–38, published in the **Federal Register** on December 8, 1997 (62 FR 64523), is withdrawn.

Issued in Burlington, Massachusetts, on July 21, 2000.

Robert Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–19074 Filed 7–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2000–7695]

RIN 2115–AF99

Traffic Separation Scheme: In the Approaches to Los Angeles-Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending the existing Traffic Separation Scheme (TSS) in the Approaches to Los Angeles-Long Beach, California. A recent port access route study, which evaluated vessel routing and traffic management measures, validated the proposed amendments. The study was necessary because of major port improvements made to the Ports of Los Angeles and Long Beach. Once implemented, the amended TSS would route commercial vessels farther offshore, providing an extra margin of safety and environmental protection in the San Pedro Channel area and the entrances to the Ports of Los Angeles and Long Beach.

DATES: Comments and related materials must reach the Docket Management Facility on or before August 28, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2000–7695), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968, e-mail MvanHouten@d11.uscg.mil; Lieutenant Commander Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951, e-mail Btetreault@d11.uscg.mil; or George Detweiler, Coast Guard, Office of Vessel Traffic Management (G-MWV), at 202–267–0574, e-mail Gdetweiler@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2000–7695), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under the Ports and Waterways Safety Act (33 U.S.C. 1221–1232) (PWSA), the Coast Guard establishes Traffic Separation Schemes (TSS's), where necessary, to provide safe access routes for vessels proceeding to or from U.S. ports. Before implementing new TSS's or modifying existing ones, we conduct a port access route study (PARS). Through the PARS process, we consulted with affected parties to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing. If a study recommends a new or modified TSS we must initiate a rulemaking to implement the TSS. Once a TSS is established, the right of navigation is considered paramount within the TSS.

Existing Los Angeles-Long Beach TSS

The current TSS in the approaches to Los Angeles-Long Beach is a two-pronged TSS that abuts the Santa Barbara Channel TSS. It was adopted by the International Maritime Organization (IMO) in 1975. The current TSS and Precautionary Area are reflected on National Oceanic and Atmospheric Administration (NOAA) nautical chart 18746 and in "Ships Routeing," Sixth Edition 1991, International Maritime Organization. Consistent with the PWSA, we initiated a PARS of the California coast in 1979. Study results were published in the early to mid 1980's. The study evaluated potential traffic density patterns, waterways use conflicts, and the need for safe access routes in offshore areas. It did not recommend any changes to the Los Angeles-Long Beach TSS.

Recent Port Access Route Study

From 1993 through 1996, we conducted a PARS to analyze vessel routing measures in the approaches to California ports. The study considered the results and findings of several other related studies. We published the study results in the **Federal Register** on October 25, 1996 (61 FR 55248). The PARS concluded that no changes to the TSS in the approaches to Los Angeles-Long Beach were necessary at that time.

Los Angeles-Long Beach PARS

In 1995, the Ports of Los Angeles and Long Beach initiated major port improvement projects. These projects are near completion and include the following:

- Lengthening of the Los Angeles Approach Channel to extend approximately 3.5 nautical miles beyond the Los Angeles breakwater.
- Deepening of the Los Angeles Approach Channel to a project depth of 81 feet.
- A slight shift of the Long Beach Approach to a 355° True inbound course.
- Deepening of the Long Beach Approach Channel to a project depth of 69 feet.

We published a notice of study in the **Federal Register** (64 FR 12139, March 11, 1999) which announced that we would conduct a PARS for the approaches to Los Angeles and Long

Beach. A notice of study results was published in the **Federal Register** on May 19, 2000 (65 FR 31856). The PARS evaluated the potential effects of these recent port improvement projects on navigational safety and vessel traffic management efficiency. It concluded that modifications to the TSS in the approaches to Los Angeles-Long Beach and the Precautionary Area are necessary for the safety of the maritime community utilizing the Ports of Los Angeles and Long Beach.

Discussion of Proposed Rule

This rulemaking would amend the existing TSS in the approaches to Los Angeles-Long Beach. The existing TSS is delineated in "Ships Routing," Sixth Edition 1991, International Maritime Organization, but not yet codified in the Code of Federal Regulations (CFR). This proposed rulemaking would codify the amended TSS into 33 CFR part 167. The amendments are based on the recommendations of the 1999 PARS. Without changes to the traffic lanes, the Precautionary Area, and the Regulated Navigation Area (RNA), the longer and deeper channels would create vessel traffic management problems and increase the risk of collision for vessels operating in the area. We propose the following changes to the existing TSS:

- Expand the Precautionary Area approximately 2.2 nautical miles to the south.
- Shift the western traffic lane approximately 2.2 nautical miles to the south.
- Shift the southern traffic lane approximately 3 miles to the west.

Expand the Precautionary Area

The existing Precautionary Area should be amended to provide enhanced navigational safety in light of the modifications to the ports of Los Angeles and Long Beach previously discussed. The western and southern TSS's branch into two harbor entrances and crossing situations are unavoidable as traffic patterns cross in all areas of the Precautionary Area and the RNA. Port improvements will allow even larger vessels to call on Los Angeles and Long Beach. These larger, less maneuverable ships will be constrained to the channels.

The current practice of freighters, tankers, tugs and barges, fishing boats, and pleasure craft converging in the Precautionary Area will continue to present hazards for all mariners. Fill and construction activities with the Los Angeles/Long Beach Harbors and development of a shallow water habitat have constricted the amount of room available for small commercial and recreational vessels to maneuver within the Outer Harbor and in the area immediately outside the San Pedro, Middle, and Long Beach breakwaters. This has the effect of concentrating traffic flows and placing small vessels more directly in competition with deep draft vessels for use of the Precautionary Area.

Expansion of the Precautionary Area would result in several positive impacts for safe navigation. First, the larger Precautionary Area would give vessels of all types, sizes, and drafts more time and room to maneuver in their approach to or departure from the ports. Second, the Commander, Eleventh Coast District, is planning modifications to the San Pedro Bay Regulated Navigation Area (RNA), promulgated at 33 CFR 165.1109, to geographically match the RNA to the expanded Precautionary Area. When specified categories of vessels enter the RNA, they are required to slow. This allows more time for vessel traffic management, *e.g.*, queuing of vessels arriving and departing during peak periods and coordinating passing arrangements. Finally, the expanded Precautionary Area should be well adapted to the lengthened Los Angeles entrance channel.

Relocate the Western and Southern TSS's

The existing western and southern TSS's do not yield safe or practical approaches to the improved Long Beach and Los Angeles entrance channels. The lengthened entrance channels extend beyond the entrance to the existing western TSS. This proposed rule would shift the western TSS to the south and the southern TSS to the west. These changes would reduce the maneuvering difficulties for vessels approaching and departing the Los Angeles-Long Beach Port Complex. The proposed shifts would allow even the largest vessels safe transit between both ports and the western TSS.

Relocating the southern TSS westward would also have distinct advantages. First, the proposed shift would align the southern TSS with Long Beach channel and would allow a more direct approach to Los Angeles channel (proposed northbound coastwise lane at course 340° True/southbound coastwise lane at course 160° True). Second, by shifting the existing southern TSS, oil platforms located in the TSS separation zone would no longer be in the TSS, which would increase the safety of the platforms and transiting vessels. Finally, the proposed southern lane would be properly aligned with the proposed Precautionary Area.

Modifications to the RNA

The Commander, Eleventh Coast Guard District, plans to modify the existing San Pedro Bay RNA. Specifically, the geographic coordinates of the modified RNA would match those of the proposed Precautionary Area. A separate notice of proposed rulemaking (NPRM) reflecting the proposed changes to the RNA will be published in the **Federal Register**. The RNA rulemaking will also address vessel operating requirements; vessel size, speeds, draft limitations; operating conditions; pilot boarding areas; and restrictions under hazardous conditions.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The costs and benefits of this proposed rulemaking are summarized below.

Costs

The proposed amendments to the TSS's in the approaches to Los Angeles-Long Beach would result in a slight increase in transit times and operating costs for vessels using the TSS's to call on the Los Angeles-Long Beach Port complex. Most of the vessels using the TSS are large commercial vessels such as container ships and tankers. The following calculations assume vessels arriving or departing from the north or south are using the proposed western and southern TSS's, respectively. The distance for vessels arriving from the north (3600/year) will increase by approximately 2.35 nautical miles (nm). The distance for vessels departing to the north (3100/year) will increase by approximately 1.6 nm. The distance for vessels arriving from the south (2100/year) will increase by approximately 0.40 nm. The distance for vessels departing to the south (2600/year) will increase by approximately 1.2 nm. Assuming an average transit speed of 12 knots, the time per transit arriving from the north would increase by .20 hr, departing to the north by .14 hr, arriving from the south by .04 hr, and departing

to the south by .10 hr. This corresponds to 1154 additional hours per year for vessels arriving or departing to the north [(3600 transits × .20 hr/transit) + (3100 transits × .14 hr/transit)] and 344 additional hours per year for vessels arriving or departing to the south [(2100 transits × .04 hr/transit) + (2600 transits × .1 hr/transit)]. Assuming a fuel cost of approximately $600.00 per hour, the estimated increase in costs for the industry would be $898,800.00 per year [(1154 hours + 344 hours) × $600/hr].

Vessel operators would incur the minimal cost of plotting new coordinates on their existing charts or purchasing updated charts, when available.

Benefits

The proposed amendments to the TSS's in the approaches to Los Angeles-Long Beach would increase the margin of safety for all vessels utilizing the Ports of Los Angeles and Long Beach. The larger Precautionary Area and amended traffic lanes would decrease the chance of collisions and groundings, particularly for the deepest draft vessels, which require significant room to maneuver.

The larger Precautionary Area would give vessels of all types, sizes, and drafts more time and room to maneuver in their approach to or departure from the ports. The proposed expanded Precautionary Area is also well adapted to the lengthened Los Angeles entrance channel.

The existing western and southern TSS's do not yield safe or practical approaches to the improved Long Beach and Los Angeles entrance channels. The lengthened entrance channels extend beyond the entrance to the existing western traffic lane. This proposed rule shifts the western TSS to the south and the southern TSS to the west. These changes would reduce the maneuvering difficulties for vessels approaching and departing the Los Angeles-Long Beach Port Complex. The proposed shifts would allow even the largest vessels safe transit between both ports and the western lane.

Relocating the southern TSS westward would align the southern TSS with Long Beach channel and would allow a more direct approach to Los Angeles channel. In addition, the oil platforms would no longer be in the southern lane separation zone, which would increase the safety of the platforms and transiting vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule should have a minimal economic impact on vessels operated by small entities. The proposal amends existing TSS's. This action improves safety for commercial vessels using the TSS by reducing the risk of collisions, allisions, and groundings. Vessels voluntarily transiting the TSS's will have to transit an additional 1.6 to 3.95 nautical miles per trip, depending on the route traveled. The additional transit distance results in increased vessel operating costs ranging from approximately $84 to $204 per trip. Vessels that tend to use the TSS's are commercial vessels such as containerships, freighters, and tankers. These vessels by their very nature are large in size and capable of operating in an offshore environment. Because of their large size most of them would not qualify as small entities. However, even if a vessel does qualify as a small entity, the impact of the additional $84 to $204 per trip would be an insignificant increase to the overall cost of its complete voyage.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that it does not have implications for federalism under that Order.

Title I of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) (PWSA) authorizes the Secretary to promulgate regulations to designate and amend traffic separation schemes (TSS's) to protect the marine environment. In enacting PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSS in the approaches to Los Angeles—Long Beach, California, we have consulted with the LA/LB Harbor Safety Committee ("HSC"), the affected state and federal pilot's associations, vessel operators, users, and all affected stakeholders. The LA/LB HSC, which was established by the State of California, includes all the principal waterway users of the LA/LB ports and other key agencies. The HSC was an active participant in various meetings with the Coast Guard and has contributed to this rulemaking.

Presently, there are no California State laws or regulations concerning the same subjects as are contained in this proposed rule. We understand the state does not contemplate issuing any such rules. However, it should be noted, that by virtue of the PWSA authority, the TSS proposed in this rule will preempt any state rule on the same subject.

In order to be effective against foreign flag vessels on the high seas, TSS's must be submitted to, approved by, and implemented by the International Maritime Organization (IMO). Individual states are not represented at

IMO; that is the role of the federal government. The Coast Guard is the principal United States agency responsible for advancing the interests of the United States at IMO. We recognize, however, the interest of all local stakeholders as we work at IMO to advance the goals of this TSS. We will continue to work closely with such stakeholders to implement the final rule to ensure that the waters in the approaches to Los Angeles—Long Beach affected by this proposed rule are made safer and more environmentally secure.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(I) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule proposes adjusting an existing traffic separation scheme. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Add §§ 167.500 through 167.503 to read as follows:

§ 167.500 In the approaches to Los Angeles-Long Beach Traffic Separation Scheme: General.

The Traffic Separation Scheme in the approaches to Los Angeles-Long Beach consists of three parts: a Precautionary Area, a Western Approach, and a Southern Approach. The specific areas in the approaches to Los Angeles-Long Beach are described in §§ 167.501 through 167.503. The geographic coordinates in §§ 167.501 through 167.503 are defined using North American Datum 1983 (NAD 83).

§ 167.501 In the approaches to Los Angeles/Long Beach: Precautionary area.

(a) The precautionary area consists of the water area enclosed by the Los Angeles-Long Beach breakwater and a line connecting Point Fermin Light at 33°42.30′N, 118°17.60′W, with the following geographical positions:

Latitude	Longitude
33°35.50′N	118°17.60′W
33°35.50′N	118°09.00′W
33°37.70′N	118°06.50′W
33°43.40′N	118°10.80′W

(b) Pilot boarding areas are located within the precautionary area described in paragraph (a) of this section. Specific regulations pertaining to vessels operating in these areas are contained in 33 CFR 165.1109(d).

§ 167.502 In the approaches to Los Angeles-Long Beach: Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
33°37.70′N	118°17.60′W
33°36.50′N	118°17.60′W
33°36.50′N	118°23.10′W
33°43.20′N	118°36.90′W
33°44.90′N	118°35.70′W
33°37.70′N	118°20.90′W

(b) A traffic lane for northbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°38.70′N	118°17.60′W
33°38.70′N	118°20.60′W
33°45.80′N	118°35.10′W

(c) A traffic lane for southbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°35.50′N	118°17.60′W
33°35.50′N	118°23.43′W
33°42.30′N	118°37.50′W

§ 167.503 In the approaches to Los Angeles-Long Beach TSS: Southern approach.

(a) A separation zone is established bounded by a line connecting the following geographic positions:

Latitude	Longitude
33°35.50′N	118°10.30′W
33°35.50′N	118°12.75′W
33°19.70′N	118°03.50′W
33°19.00′N	118°05.60′W

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°35.50′N	118°09.00′W
33°20.00′N	118°02.30′W

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°35.50′N	118°14.00′W
33°18.70′N	118°06.75′W

Dated: July 18, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 00–19205 Filed 7–27–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6841–6]

Motor Vehicle Emissions Budgets in Attainment Demonstrations for the One-Hour National Ambient Air Quality Standard for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rule.

SUMMARY: On December 16, 1999, we (EPA) proposed to approve or conditionally approve and disapprove in the alternative attainment demonstration State implementation plans (SIPs) for ten areas in the eastern United States (64 FR 70317). In today's supplemental notice, we are clarifying and expanding on two issues relating to the motor vehicle emissions budgets in these SIPs. In addition, we are reopening the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period closed on February 14, 2000.

First, we are proposing to clarify what occurs if we finalize conditional or full approval of any of these SIPs based on a State commitment to revise the SIP's motor vehicle emissions budgets in the future. If this occurs, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets.

Second, we are proposing that States may opt to commit to revise their emissions budgets 1 year after the release of MOBILE6, as originally proposed on December 16, 1999. Or, States may commit to a new option, *i.e.*, to revise their budgets 2 years following the release of MOBILE6, provided that conformity is not determined without adequate MOBILE6 SIP budgets during the second year.

DATES: Comments must be received on or before August 28, 2000.

ADDRESSES: Written comments on this action should be addressed to the EPA regional offices responsible for the areas addressed by the SIPs we are reopening. Contact names and addresses for these regional offices are included below in SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: General questions concerning sections of this document that relate to motor vehicles emissions budgets should be directed to Kathryn Sargeant, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, Michigan 48105, *sargeant.kathryn@epa.gov*. (734) 214–4441.

Comments or questions on our proposed changes to the applicability of budgets in specific areas or on the new information received on area-specific SIPs should be addressed to the appropriate EPA Regional Office representative listed below in SUPPLEMENTARY INFORMATION.

SUPPLEMENTARY INFORMATION: Public dockets for the ten areas addressed by today's action have been established in EPA's Regional Offices. Addresses for these dockets and additional contact information are listed below:

Region I—(1) Greater Connecticut Ozone Nonattainment Area; and (2) The Connecticut Portion of the New York-Northern New Jersey-Long Island Ozone Nonattainment Area

Written comments (in duplicate if possible) on either the Greater CT or the CT portion of the NY-northern NJ ozone nonattainment areas should be sent to: David B. Conroy, EPA Region 1 (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours (9:00 A.M. to 4:00 P.M.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts 02114–2023, telephone (617) 918–1664, and at the Bureau of Air Management, Connecticut Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–5127. Please telephone in advance before visiting.

For general information contact: Jeff Butensky, (617) 918–1665.

Region I—Western Massachusetts—The Springfield (Western Massachusetts) Ozone Nonattainment Area

Written comments (in duplicate if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours (9:00 A.M. to 4:00 P.M.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts 02114–2023, telephone (617) 918–1664, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, Massachusetts 02108. Please telephone in advance before visiting.

For general information contact: Jeff Butensky (617) 918–1665.

Region II—New York-Northern New Jersey-Long Island (NY–NJ–CT); The New Jersey portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

Written comments (in duplicate if possible) should be sent to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the New Jersey submittals and EPA's technical support document are available at the following addresses for inspection during normal business hours: U.S. Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866 and at the New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

For general information contact: Paul Truchan (212) 637–4249 or Kirk Wieber (212) 637–3381.

Region III—Baltimore (MD) Ozone Nonattainment Area

Written comments (in duplicate if possible) should be sent to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

For general information contact: Cristina Fernandez, (215) 814–2178. Or by e-mail at *fernandez.cristina@epa.gov*.

Region III—Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD); The Delaware portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

Written comments (in duplicate if possible) should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19901.

For general information contact: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

Region III—Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD); The Maryland Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

Written comments (in duplicate if possible) may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

For general information contact: Cristina Fernandez, (215) 814—2178. Or by e-mail at *fernandez.cristina@epa.gov*.

Region III—Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD); The Pennsylvania Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

Written comments (in duplicate if possible) may be mailed to: David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

For general information contact: Christopher Cripps, (215) 814–2179. Or by e-mail at cripps.christopher@epa.gov.

Region III—Metropolitan Washington (DC–MD–VA) Ozone Nonattainment Area

Written comments (in duplicate if possible) may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, N.E., Washington, DC 20002; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

For general information contact: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

Region IV—Atlanta (GA) Ozone Nonattainment Area

Written comments (in duplicate if possible) should be mailed to: Scott M. Martin, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; and the Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

For general information contact: Scott Martin at (404) 562–9036.

Region V—Chicago-Gary-Lake County (IL; IN); Illinois and Indiana Portions of the Chicago-Gary-Lake County Ozone Nonattainment Area

Written comments (in duplicate if possible) on either the Illinois or Indiana portions should be mailed to: Jay Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Mark Palermo at (312) 886–6082 before visiting the Region 5 Office.)

For general information contact: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6057, e-mail address doty.edward@epamail.epa.gov.

Region V—Milwaukee-Racine (WI) Ozone Nonattainment Area

Written comments (in duplicate if possible) should be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Michael G. Leslie at (312) 353–6680 before visiting the Region 5 Office.)

For general information contact: Michael G. Leslie, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

Region VI—Houston-Galveston-Brazoria (TX) Ozone Nonattainment Area

Written comments (in duplicate if possible) should be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental

Protection Agency, telephone: (214) 665–7214.

Copies of the documents relevant to this action, including the technical support document, are available for public inspection during normal business hours at the following addresses: Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7214; and the Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 2 working days in advance.

For general information contact: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7242.

The contents of this preamble are listed in the following outline:

I. Background Information
A. What Did We Propose On December 16, 1999?
B. What Is Transportation Conformity?
C. What Are Motor Vehicle Emissions Budgets?
D. Which Motor Vehicle Emissions Budgets Usually Apply?
II. What Is EPA Proposing Today?
A. Clarification of the Applicability of Revised Budgets
B. Additional Option for Timing of Budget Revision Following MOBILE6
C. Reopening of the Comment Period
III. Administrative Requirements

I. Background Information

A. What Did We Propose on December 16, 1999?

We proposed to conditionally or fully approve, and in the alternative to disapprove, ozone attainment demonstration (SIPs) for ten areas. The ten areas are described below. Our proposals, all of which were published on December 16, 1999, contain a full explanation of the background and proposed actions for the following areas: Atlanta, 64 FR 70478; Houston-Galveston, 64 FR 70548; Metropolitan Washington, DC, 64 FR 70460; Milwaukee-Racine, 64 FR 70531; Springfield, 64 FR 70319; Greater Connecticut, 64 FR 70332; Baltimore, 64 FR 70397; Chicago-Gary-Lake County, 64 FR 70514 and 64 FR 70496; Philadelphia-Wilmington-Trenton, 64 FR 70412, 64 FR 70428, 64 FR 70444 and 64 FR 70380; and New York-Northern New Jersey-Long Island, 64 FR 70380, 64 FR 70348, 64 FR 70364. For more detail, see the December proposals as cited above.

In order to conditionally or fully approve the attainment demonstration SIPs, we proposed that several areas needed to commit to adopt additional control measures to achieve the level of emissions reductions that we identified as necessary to attain the 1-hour ozone standard. We also proposed that these areas must commit to recalculate and submit revised motor vehicle emissions budgets that include the effects of the measures that are ultimately adopted, if those measures pertain to motor vehicles. We explain the term "motor vehicle emissions budget" in item C below.

In addition, we proposed that where a SIP includes the benefits of EPA's Tier 2/Sulfur program, the State must commit to revise the SIP's motor vehicle emissions budgets within 1 year after we release the MOBILE6 model. This commitment would be necessary in order for us to approve the SIP.

Our December 16, 1999 proposals also addressed many other issues that are not directly relevant to today's supplemental proposal. We direct the reader to the December proposals for more details.

B. What Is Transportation Conformity?

Transportation conformity is a Clean Air Act (CAA) requirement for metropolitan planning organizations and the U.S. Department of Transportation to ensure that federally supported highway and transit activities are consistent with ("conform to") the SIP. Conformity to a SIP means that an action will not cause or contribute to new violations; worsen existing violations; or delay timely attainment.

The conformity requirements are established by CAA section 176(c). We issued the transportation conformity rule (40 CFR part 93) to implement this CAA requirement.

C. What Are Motor Vehicle Emissions Budgets?

As described in CAA section 176(c)(2)(A), attainment demonstrations necessarily include estimates of motor vehicle emissions to help areas reach attainment. These estimates act as a budget or ceiling for emissions from motor vehicles, and are used in conformity to determine whether transportation plans and projects conform to the attainment SIP. In order for transportation plans and projects to conform, estimated emissions from transportation plans and projects must not exceed the emission budgets contained in the attainment demonstration.

D. Which Motor Vehicle Emissions Budgets Usually Apply?

According to the transportation conformity rule, motor vehicle emissions budgets ("budgets") in a submitted SIP apply for conformity purposes even before we have approved the SIP, under certain circumstances. First, there must not be any other approved SIP budgets that have been established for the same timeframe and with respect to the same CAA requirements. For example, if there is already an approved attainment demonstration SIP that establishes budgets for the attainment date, and the State submits a revision to those budgets, the newly submitted budgets do not apply for conformity purposes until we have approved them into the SIP.

Second, submitted SIP budgets cannot be used before we have approved the SIP unless we have found that the submitted SIP budgets are adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e) and EPA's May 14, 1999 memo entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision."

For more details about the applicability of submitted and approved budgets, see 61 FR 36117 (July 9, 1996) and 62 FR 43783 (August 15, 1997).

II. What Is EPA Proposing Today?

Today, we are proposing to supplement and clarify our December 16, 1999 proposals to conditionally or fully approve (and disapprove in the alternative) the attainment demonstration SIPs for ten areas. As discussed below, our supplemental notice addresses two issues specifically pertaining to the motor vehicle emissions budgets in these SIPs.

In addition, we are reopening the comment period so the public may comment on these two issues and may consider and comment on any additional materials that have been placed in the docket for each of these proposed rules close to or after the February 14, 2000 date of the initial comment period. We are also reopening the comment period for all issues with respect to the Pennsylvania portion of the Philadelphia-Wilmington-Trenton nonattainment area based on requests received from the State of Pennsylvania and other interested parties during the initial comment period.

A. Clarification of the Applicability of Revised Budgets

1. How Are We Proposing to Clarify the Applicability of Revised Budgets?

In today's notice, we are proposing to clarify what occurs if we finalize approval or conditional approval of any of the December 16, 1999 SIPs based on a State commitment to revise the budgets in the future. If this occurs, the approved SIP budgets will apply for conformity purposes only until the revised budgets have been submitted and we have found the submitted budgets to be adequate for conformity purposes.

In other words, when the State submits revised budgets as they have committed, those revised budgets will apply for conformity purposes as soon as we have found those budgets to be adequate for conformity purposes and our adequacy finding is effective. The revised budgets would then replace the budgets in the approved (or conditionally approved) attainment demonstration SIP, provided that (as we expect) the revised budgets are submitted as a revision to part of the attainment demonstration SIP and are established for the same year as those in the approved SIP.

2. Why Are We Proposing to Clarify the Applicability of Revised Budgets?

In December 1999, we proposed that we would not approve the attainment demonstration SIPs from certain areas unless the States commit to revise the SIPs' budgets in the future. As described in section I.A. of this preamble, emissions budgets must be revised to reflect the effects of additional control measures that a State has committed to adopt. The budgets must also be revised within 1 year after we release MOBILE6, if the budget that is approved reflects the benefits of our Tier 2/Sulfur regulation.

Since we are proposing to approve budgets only because the States have committed to revise them, we want our approval of the budgets to last only until adequate revised budgets are submitted pursuant to the commitments. We believe the revised budgets should apply as soon as we find them adequate; we do not believe it is appropriate to wait until we have approved the revised attainment demonstration SIP. This is because we know now that once we have confirmed that the revised budgets are adequate, they will be more appropriate than the originally approved budgets for conformity purposes.

Specifically, once an area has adopted additional measures that affect motor vehicle emissions, an appropriate motor vehicle emissions budget must reflect those measures. Otherwise, the budget would not be the level of motor vehicle emissions that is consistent with the attainment demonstration; it would be inappropriately large.

In addition, we know now that we cannot accurately estimate the benefits of the Tier 2 program until we release the MOBILE6 model. We are proposing to approve budgets based on interim approximations of Tier 2 benefits only because the States are committing to recalculate the budgets using MOBILE6 in a timely fashion.

If we do not clarify our proposed approval of the budgets, States will revise their budgets as they have committed, but they will not be able to start using them quickly for conformity purposes. This would defeat the purpose of our original requirement for the budgets to be revised quickly. In contrast, according to today's proposal, the revised budgets could be used for conformity after we have completed our adequacy review process, which we have committed to complete within 90 days after revisions are submitted, provided they are adequate.

This supplemental notice does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the budgets.

3. How Does the 18-Month Clock Apply With Respect to These Budget Revisions?

Section 93.104(e)(2) of the conformity rule requires conformity of the transportation plan and transportation improvement program (TIP) to be redetermined within 18 months following the date of a State's initial submission of each SIP establishing a budget.

As described at 60 FR 44792 (August 29, 1995), the first submission of a given type of SIP that establishes a budget (*e.g.*, an ozone attainment demonstration) starts the 18-month clock for redetermining conformity. However, the 18-month clock is unaffected by subsequent changes to that submitted SIP.

Therefore, the revisions to the attainment demonstration SIPs to reflect additional measures or MOBILE6 will not start a new 18-month clock. Of course, whenever conformity is eventually determined in accordance with the 18-month clock, the demonstration must use whatever budgets are applicable at that time. If an initial submission starts the 18-month clock but then is changed and the revised budgets are found adequate, any subsequent conformity determination must use the new, adequate budgets.

Section 93.104(e)(3) also requires conformity of the transportation plan and TIP to be redetermined 18 months following our approval of a SIP that establishes or revises a budget. If we conditionally approve an ozone attainment demonstration, an 18-month clock will be started on the effective date of our conditional approval. A subsequent conversion of the conditional approval to full approval will not start another 18-month clock, unless the budgets we are approving have changed since the conditional approval.

B. Additional Option for Timing of Budget Revision Following MOBILE6

1. What Is the Additional Option?

In our December 16, 1999 proposal to approve and/or disapprove SIPs for ten urban areas, we stated that if a SIP relied on Tier 2 benefits to demonstrate attainment, States would need to commit to revise their motor vehicle emissions budgets within 1 year after we release MOBILE6, in order for us to approve the SIP.

We proposed that States recalculate their budgets using MOBILE6 because the emission reduction benefits of Tier 2 cannot be properly estimated until MOBILE6 is released. The estimates of Tier 2 benefits that are currently in submitted SIPs are interim approximations.

In this supplemental notice we are proposing that the affected States may have a 1-year extension of time to revise their emissions budgets, under certain circumstances. Specifically, a State may commit to revise its SIP's budgets within 2 years after MOBILE6 is released, if the State also commits that conformity will not be determined during the additional year unless there are adequate SIP budgets in place that were developed using MOBILE6 [1]. As part of this commitment, we also are proposing that States inform affected metropolitan planning organizations and their State transportation departments of this requirement.

States may opt to commit to revise their emissions budgets 1 year after the release of MOBILE6, as originally proposed on December 16, 1999. Or, States may commit to the new option, *i.e.*, to revise their budgets 2 years

[1] This concept was discussed in a letter dated March 6, 2000 from John S. Seitz, Director, Office of Air Quality Planning and Standards to Ralph Marquez, Commissioner, Texas Natural Resources Conservation Commission.

following the release of MOBILE6, provided that conformity is not determined without adequate MOBILE6 SIP budgets during the second year. Any SIPs that rely on Tier 2 benefits must be accompanied by one of these two types of commitments in order for us to find the budgets adequate for conformity purposes, and in order for us to finalize approval of the SIP. The commitment must be subject to a public hearing and fully enforceable as part of the SIP before we can finalize approval of the SIP.

2. How Is "Release of MOBILE6" Defined?

We will publish a notice of availability in the **Federal Register** that announces the formal release of MOBILE6. The date of publication of that **Federal Register** notice will constitute "release of MOBILE6" for the purposes of the commitments discussed in this supplemental proposal.

3. Why Are We Proposing This Additional Option?

We are proposing to provide States with this additional option in response to a comment on the December 16, 1999 proposal. That comment indicated that in some areas, allowing more than 1 year to revise and adopt a new motor vehicle emissions budget based on the MOBILE6 model would better suit an area's schedule for SIP revisions and updates.

We believe that allowing areas an additional year to revise their budgets using MOBILE6 will not cause any environmental harm as long as during that time there are no new conformity determinations that rely on the older MOBILE5 budgets.

C. Reopening of the Public Comment Period

The EPA is reopening the comment period for 30 days to take comment on the proposed approach, discussed above. In addition, we are reopening the comment period for all ten areas to address additional information that has been placed in the docket close to or since the initial comment period concluded on February 14, 2000. In general, these materials consist of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the States. Interested persons should contact the appropriate regional contact listed in the **SUPPLEMENTARY INFORMATION** section with any questions regarding whether new information has been placed in the docket for a specific proposed action.

In addition, based on requests received during the initial comment period, EPA is reopening the comment period for 30 days with respect to all issues concerning the Pennsylvania portion of the Philadelphia-Wilmington-Trenton area.

We are not, however, reopening the separate comment period on the adequacy of motor vehicle emissions budgets, which was started by notification on our adequacy website. Notably, comments on the adequacy of motor vehicle emissions budgets are accepted through a distinct, administrative process established by our conformity regulations, known as adequacy review. That process was not started for any area covered by today's notice until all materials relevant to the budgets had been submitted.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal/State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on a State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect State-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new requirements. Therefore, I certify that such a proposed disapproval action will not have a significant economic impact on a substantial number of small entities because it would not remove existing requirements nor would it substitute a new Federal requirement.

The EPA's alternative proposed disapproval of the State request under section 110 and subchapter I, part D of the CAA would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal does not affect State-enforceability. Moreover EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that the proposed disapproval would not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

Sections 202 and 205 do not apply to the proposed disapproval because the proposed disapproval of the SIP submittal would not, in and of itself, constitute a Federal mandate because it would not impose an enforceable duty on any entity. In addition, the CAA does not permit EPA to consider the types of analyses described in section 202 in determining whether a SIP submittal meets the CAA. Finally, section 203 does not apply to the proposed disapproval because it would affect only the State governments, which are not small governments.

G. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the National Technology Transfer and Advancement Act of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to the regulatory actions in this supplemental notice. Today's actions do not require the public to perform activities conducive to the use of VCS.

H. Paperwork Reduction Act

This supplemental notice of proposed rule does not impose any new information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 20, 2000.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 00–19122 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA74

Special Rules Applicable to Surface Coal Mining Hearings and Appeals; Petitions for Award of Costs and Expenses Under Section 525(e) of the SMCRA

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Hearings and Appeals (OHA) proposes to amend its rule governing who may receive an award of costs and expenses, including attorney fees, under section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to provide that an applicant for a permit may only receive an award from the Office of Surface Mining Reclamation and Enforcement (OSM) if OSM denies an application in bad faith and for the purpose of harassing or embarrassing the applicant.

DATES: Comments must be receive on or before September 26, 2000.

ADDRESSES: Written comments about this proposed rule may be mailed or hand-delivered to Robert L. Baum, Director, Office of Hearings and Appeals, U.S. Department of the Interior, Room 1111, 4015 Wilson Boulevard, Arlington, Virginia 22203. *See* **SUPPLEMENTARY INFORMATION** for additional information on the handling of comments.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone: 703–235–3750.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses form the rulemaking record, and we will honor such requests to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or official of organizations or businesses, available for public inspection in their entirety.

OSM has requested that OHA purpose amending 43 CFR 4.1294(b) and (c) to provide that an applicant for a permit from OSM is entitled to an award of costs and expenses from OSM only when circumstances demonstrate that OSM denied an application in bad faith and for the purpose of harassing or embarrassing the applicant. The term "applicant" is defined at 30 CFR 701.5.

In *Skyline Coal Co.* v. *OSM*, 150 IBLA 51 (1999), the Interior Board of Land Appeals (IBLA) affirmed Administrative Law Judge David Torbett's award of more than $200,000 in costs and expenses, including attorney fees, to Skyline Coal Company (Skyline). OSM had denied an application from Skyline for a permit and Skyline had filed a request for administrative review by OHA of the denial. During the course of the hearing before Judge Torbett, OSM agreed that Skyline's permit application could be approved. Judge Torbett therefore sustained Skyline's request for review.

Subsequently, Skyline filed a petition for an award of costs and expenses with Judge Torbett under section 525(e) of SMCRA, 30 U.S.C. 1275(e) (1994), and the implementing regulations in 43 CFR 4.1291. OSM opposed Skyline's petition, arguing that Skyline was a permittee under 43 CFR § 4.1294(c) and could only receive an award if it could demonstrate OSM had denied its application for a permit in bad faith. Skyline argued it was an applicant for a permit, not a permittee, and thus was entitled to an award under § 4.1294(b) as a "person" who had initiated a review proceeding and had prevailed in whole or in part, achieving at least some degree on the merits. IBLA affirmed Judge Torbett's fee award, stating:

> In his August 1, 1994, order, Judge Torbett rejected OSM's argument, noting that an applicant for a permit is not, and does not become, a "permittee" until the applicant is issued a permit. He further found that, as a mining company, Skyline was a "person" under 30 U.S.C. § 1291(19) (1994) and was therefore eligible to petition for and receive an award of costs and fees under 43 CFR § 4.1294(b). Judge Torbett noted that 43 CFR § 4.1294(c) specifically covers enforcement actions taken against permittees, that is, cases involving cessation orders (CO's), NOV's, or orders to show cause why a permit should not be suspended or revoked. That regulation, the Judge observed, makes no mention of denials of permit applications. He ruled that the governing regulation was 43 CFR § 4.1294(b) and that Skyline met the criteria therein. (August 1, 1994, Order at 3–5, 7.)

Id. at 53.

In his concurring opinion, Administrative Judge Burski suggested that if OSM were dissatisfied with the result of the case it could seek an amendment of the regulations that would accord with its interpretation of SMCRA. *Id.* at 63.

OSM has requested OHA, which is responsible for these regulations, to propose an amendment that would limit an award to an applicant for a permit to the circumstances in § 4.1294(c). OSM suggests that the legislative history of SMCRA supports its request, quoting from the Senate's report on S.7, which was the Senate's version of SMCRA:

> In many, if not most, cases in both the administrative and judicial forum, the citizen who sues to enforce the law, or participates in administrative proceedings to enforce the law, will have little or no money with which to hire a lawyer. If private citizens are to be able to assert the rights granted them by this bill, and if those who violate this bill's requirements are not to proceed with impunity, then citizens must have the opportunity to recover the attorneys' fees necessary to vindicate their rights. Attorneys' fees may be awarded to the permittee or government when the suit or participation is brought in bad faith.

S. Rep. No. 95–128, 95th Cong. 1st Sess. 59 (1977). When § 4.1294 was first proposed, some commenters suggested substituting the statutory language of section 525(e). OHA rejected the suggestion "because it did not answer any of the questions raised by the statutory language." 43 FR 34395 (Aug. 3, 1978).

The proposed amendment of §§ 4.1294(b) and (c) is designed to answer the question of when an applicant for a permit may be eligible for an award of costs and expenses, including attorney fees, and to limit an award to an applicant to the circumstances in § 4.1294(c).

Procedural Matters

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The proposed revision would have the effect of limiting the circumstances authorizing the award of costs and expenses, including attorney fees, to applicants whose applications have

been denied. The rule would not impose any new costs on the coal industry. While the number of requests for attorney fees that would be processed under the proposed revisions is not known, it is expected that only a very few applicants would potentially qualify for an award as a result of prevailing over OSM in a proceeding to review OSM's denial of a permit application.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

No other agency has a rule implementing section 525(e) of SMCRA.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

No entitlements, grants, user fees, or loan programs are authorized by section 525(e) of SMCRA or its implementing regulations.

d. This rule does not raise novel legal or policy issues.

The legal issued involved—the standard for making an award of costs and expenses to an applicant for a surface coal mining permit who prevails on administrative review of the denial of an application by OSM—has been discussed by IBLA in the *Skyline Coal Co.* case, 150 IBLA 51 (1999). The proposed amendment is in response to that discussion.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the findings that the proposed revisions will not significantly change costs to industry and will not affect state or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets for the reasons stated above.

Only a few applicants for surface coal mining permits would be expected to apply for a permit, have their applications denied by OSM, prevail on administrative review of the denial, and be able to demonstrate that OSM's denial was based on bad faith and for the purpose of harassing or embarrassing the applicant, and an even smaller number of these applicants would be small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more for the reasons stated above.

The potential reduction in the award of costs and expenses as a result of amending this rule would be, at most, in the hundreds of thousands of dollars per year, given the number of applicants for permits and the even smaller number whose applications would be denied by OSM for reasons they could demonstrate amounted to bad faith and for the purpose of harassing or embarrassing the applicant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions because the rule does not impose major new requirements on the coal mining industry or consumers.

No cost increases of any kind appear foreseeable as a result of limiting the award of costs and expenses to applicants for surface mining permits to instances in which their applications are denied by OSM for reasons of bad faith and for the purpose of harassing or embarrassing the applicant.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises for the reasons stated above.

Any eventual effects of the nature listed above from limiting the circumstances when an applicant for the award of costs and expenses could receive an award as a result of prevailing on administrative review of the denial of a permit application because OSM's denial was based on bad faith and for the purpose of harassing or embarrassing the applicant would be minimal.

Unfunded Mandates

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

A small government is not likely to apply for a surface coal mining permit. Therefore, it is improbable that there would be an effect of any kind on small governments.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rules does not have takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.

No realistic claims of a constitutional taking appear possible from defining the standard for an award of costs and expenses to an applicant for a surface mining permit whose application is denied to be OSM's bad faith and for the purpose of harassing or embarrassing the applicant in denying the application.

Executive Order 13132—Federalism

This proposed rule does not have Federalism implications. It would not have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

The only potential impact on the states from this proposed amendment is that they would wish to change their state program rules to correspond to the changed federal rule. This does not appear to qualify as a significant effect.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

The proposed amendment of the rule clearly limits the basis for an award of costs and expenses to an applicant for a surface coal mining permit whose application is denied to a demonstration of bad faith and for the purpose of harassing or embarrassing the applicant on the part of OSM in denying the application. The proposed rule has no pre-emptive or retroactive effect.

Paperwork Reduction Act

The proposed rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. § 3501 *et seq.*

The proposed amendment of the rule would not change the information a petitioner for an award of costs and expenses would provide with the petition; it would only change the standard for when an applicant for a

permit could receive an award. Therefore, no information collection is involved.

National Environmental Policy Act

OHA has reviewed this proposed rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

Clarity of this Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 4.1294). (5) Is the description of the proposed rule in the "SUPPLEMENTARY INFORMATION" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: exsec@ios.doi.gov.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Lawyers, Surface mining.

Dated: July 3, 2000.

John Berry,

Assistant Secretary, Policy, Management and Budget.

For the reasons set forth in the preamble, OHA proposes to amend 43 CFR Part 4 as follows:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority citation for part 4, Subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1271, 1275, 1293; 5 U.S.C. 301.

2. 43 CFR 4.1294(b) and (c) are revised to read as follows:

§ 4.1294 Who may receive an award.

* * * * *

(b) From OSM to any person, other than an applicant or permittee or his or her representative, who initiates or participates in any proceeding under the Act, who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues.

(c) To an applicant or permittee from OSM when the applicant or permittee demonstrates that OSM denied an application or issued an order of cessation, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the applicant or permittee; or

* * * * *

[FR Doc. 00–19063 Filed 7–27–00; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 12-Month Finding on Petition To Reclassify the Cheetah (*Acinonyx jubatus*) in the Republic of Namibia From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-month finding on petition.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the 12-month finding on a petition to reclassify the cheetah (*Acinonyx jubatus*) population of Namibia from endangered to threatened. We have determined that the petitioned action is not warranted because available information is inadequate to determine that the factors that caused the cheetah to become endangered have been reduced sufficiently. Specifically, the lack of reliable, long-term population estimates for cheetah in Namibia make it impossible to determine whether the population is of adequate size to withstand most natural catastrophes or whether the population is increasing, decreasing, or stable. Such population trend information is necessary to determine the extent to which the substantial regulatory mechanisms initiated by the Government of Namibia are reducing the killing of cheetahs by Namibian farmers. This killing has been an important mortality factor for cheetahs in Namibia over the past three decades.

DATES: The 12-month finding was made on June 28, 2000.

ADDRESSES: If you have any questions about this decision, you may send correspondence or questions to the Chief, Office of Scientific Authority; Mail Stop: Room 750, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number: 703–358–2276; E-mail address: r9osa@fws.gov). Express and messenger deliveries should be addressed to Chief, Office of Scientific Authority, Room 750; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority (Telephone number: 703–358–1708; Fax number: 703–358–2276; E-mail address: r9osa@fws.gov) or Dr. Kurt A. Johnson, Office of Scientific Authority (same telephone and fax numbers as above; E-mail address: kurt_johnson@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

On August, 11, 1995, the Service received a petition from the government of the Republic of Namibia and Safari Club International requesting that the Namibian population of the cheetah (*Acinonyx jubatus*) be reclassified from endangered to threatened under the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*). The petition gives three reasons for requesting the reclassification of the cheetah in Namibia: (1) The original listing of the Namibian cheetah population was in error; (2) the cheetah population in Namibia has recovered; and (3) the current endangered classification puts the species at greater risk because it impedes the conservation efforts of the Government of Namibia.

In the **Federal Register** of March 19, 1996 (61 FR 11181), we announced a 90-day finding that the petition presented substantial information indicating that the requested action (*i.e.*, reclassification from endangered to threatened) may be warranted. We initiated a status review of the cheetah in Namibia, with the original comment period ending on July 17, 1996. Before a decision was taken we received two new documents of importance to this issue. The first was the final report of a 1996 cheetah and lion (*Panthera leo*) workshop sponsored by the World Conservation Union/Species Survival Commission (IUCN/SSC) Conservation Breeding Specialist Group (CBSG) in

Otjiwarango, Namibia, and attended by a scientist from the Service. The report, entitled "Population and Habitat Viability Assessment for the Namibian Cheetah and Lion," included a predictive population model for the cheetahs in Namibia. The second was a draft cheetah management plan for the species entitled "Namibian Cheetah Conservation Strategy" that was prepared for the Ministry of Environment and Tourism (MET) of the Government of Namibia. In order to consider this new information and any public comments on either report, we announced in the **Federal Register** on December 9, 1997 (62 FR 64800), our decision to reopen the comment period until February 1, 1998.

Section 4(b)(3)(B) of the Act requires us, within 12 months of receipt of a petition, to make a finding on whether that petition is warranted, not warranted, or warranted but precluded by other pending proposals. We herein announce our 12-month finding on this petition.

How Do We Determine if Reclassification of the Namibian Cheetah Population Is Warranted Under the Act?

The cheetah is listed as endangered under the Act. The criteria that we must use in evaluating its potential reclassification under the Act are explicit. First, we must determine if the Namibian cheetah population qualifies as a "Distinct Population Segment" as defined in the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (DPS Policy) (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?).

Second, section 4(a)(1) of the Act requires that we determine if any one or a combination of the following five factors cause the cheetah in Namibia to be endangered or threatened, as defined by the Act:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; and

(E) other natural or man-made factors affecting its continued existence.

Endangered is defined as "in danger of extinction throughout all or a significant portion of its range" and threatened is defined as "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." It is our assessment of these five factors using the best scientific information available, including public comments received during the two public comment periods, that determines whether the cheetah should be reclassified as threatened (or even delisted).

What Are the Population Estimates and Population Trends for the Cheetah in Namibia?

The cheetah population worldwide has declined from an estimated 100,000 in 1900 to the current estimate of 12,000 (Marker-Kraus *et al.* 1996). Except for a population of fewer than 200 cheetahs in Iran, all wild cheetahs occur in Africa.

In the 1970s, the Namibian cheetah population was variously estimated to number from 1,500–3,000 (Myers 1975) to 6,252 (Joubert and Mostert 1975) individuals. This disparity in population estimates may have been caused in part by whether cubs were excluded from or included in the count.

During the 1980s, the Namibian cheetah population was estimated to have declined significantly (up to 50 percent by some estimates). Morsbach (1987) estimated the mid-1980s population to be between 2,000 and 3,000, on the basis of extrapolations from his field study of cheetah population density on a small number of Namibian farms (Nowell 1996). Population declines in the 1980s are thought to have been caused by several factors, but primarily (1) declines in natural prey populations brought about by drought and disease, and (2) increased killing of cheetahs by farmers in defense of livestock (Nowell 1996). For example, kudu (*Tragelaphus strepsiceros*) are a primary cheetah prey species, and 58 percent of the kudu population was lost by 1983 due to a rabies epidemic (Marker-Kraus *et al.* 1996). This reduction in natural prey created greater conflicts with landowners because of actual and/or perceived increases in cheetah predation on domestic livestock. From 1978 through 1995, 9,588 cheetahs were removed from the wild in Namibia according to the MET permit system (Nowell 1996). The actual number of cheetahs killed by farmers is believed to have been under-reported, potentially by as much as 50 to 70 percent (Nowell 1996). If the level of under-reporting was 50 percent, then upwards of 14,000 cheetahs may have been killed from 1978 through 1995 (Nowell 1996). Reported removals were greater in 1978 through 1985 (annual average of 827 cheetahs) than in 1986 through 1995 (annual average of 297 cheetahs) (Nowell 1996).

The current population estimate for cheetah in Namibia is between 2,000 and 3,000 adults and subadults (Nowell 1996, Seal *et al.* 1997). This estimate is based on four studies in addition to Morsbach's previously cited field study of cheetah populations: (1) A nationwide farm survey conducted in 1992 by the MET; (2) a separate farm survey conducted by the Cheetah Conservation Fund (Marker-Kraus *et al.* 1996); (3) an analysis of cheetah sightings in Etosha National Park in 1992 through 1994 (Nowell *et al.* 1994); and (4) a transect survey of cheetah spoor in eastern Bushmanland (Stander *et al.* 1996).

What Information Was Provided by Those Who Commented in 1996?

We received 19 responses to our first request for public comment on the cheetah petition. Most of those were from organizations, and in some instances, groups made more than one submission. Those organizations that sent comments favoring reclassification included the IUCN/SSC Cat Specialist Group, Africa Resources Trust, Namibia Professional Hunting Association, and the American Zoo and Aquarium Association. Those organizations that opposed reclassification included the Humane Society of the United States, the Cheetah Conservation Fund, The Fund For Animals, and the National Museums of Scotland. We also received comments from cheetah conservation projects conducted by the Smithsonian Institution and the Zoological Society of London.

A central argument advanced by many of those favoring reclassification was that, by giving the cheetah value (*i.e.*, as a trophy animal), farmers on whose lands cheetahs naturally occur would become more tolerant of the cheetahs and more selective in killing them. The Service has typically been unable to make the necessary enhancement finding to allow the import of a sport-hunted trophies for a species listed as endangered, and taken from the wild under the Act. In contrast, import permits for sport-hunted trophies of species listed as threatened

under the Act are often issued for animals taken from the wild when it can be demonstrated that the range country has established a conservation program that meets enhancement as defined in Section 10 of the Act.

The Africa Resources Trust noted that competition for habitat with agricultural uses has contributed more to the decline of cheetahs than the trade in skins or the quest for sport-hunted trophies. The Namibia Professional Hunting Association emphasized this point with Namibian government records from 1980 to 1991; these records show that 190 cheetahs were taken by trophy hunters, 958 were live-captured, and 5,670 were shot by farmers. The Director of the Centre for Wildlife Management at the University of Pretoria favored the reclassification because it would support the game ranching industry in Namibia that has created more cheetah habitat. The American Zoo and Aquarium Association stated that the cheetah population had stabilized at about 2,500 adult animals.

Many of the submissions opposing the reclassification focused on the long-term decline of the species and the lack of scientific data on the current size of the population. The American Society of Mammalogists noted that data on cheetah numbers, distribution, and current harvest are needed to set biologically meaningful quotas, and data on sex and age ratios would also be necessary to predict population responses to different harvest levels. The Curator of Mammals and Birds of the National Museums of Scotland also questioned the reliability of the current population estimate. The Humane Society of the United States evaluated the proposal in terms of each of the Act's factors, but particularly pointed out that landholders have already become increasingly tolerant of cheetah without allowing importation of trophies by the United States.

Several commenters joined the Humane Society of the United States in noting that cheetahs are lacking in genetic variation and are, therefore, more vulnerable to disease. However, Peter Jackson, Chairman of the IUCN/SSC Cat Specialist Group, included in his comments information that field biologists working on cheetah had found no impact on genetic viability. Since the estimated initial population is greater than 1,000, the Population and Habitat Viability Assessment projected no additional effects due to inbreeding depression (Seal *et al.* 1997).

Paule Gros and Tim Caro, biologists who have studied cheetahs in the wild and have compared several methods of estimating carnivore densities, concluded that there is no biological evidence that the Namibian cheetah population is stable and secure. They stated that hunting of cheetahs could only be justified if there is some reliable measure of sustainable yield based on the total cheetah population estimated in the field. Chris Stuart, Director of the African-Arabia Wildlife Research Centre, while concurring with the population estimate of 2,500 to 3,000 animals, submitted that the population is not stable but had undergone considerable decline over the last 15 years. While giving no opinion on reclassification, Stuart concluded that putting a "price-tag" on the cheetah could improve its conservation standing, as had been his experience with leopards in South Africa.

The Fund for Animals questioned why considering reclassification of the cheetah is a priority within the May 16, 1996, Listing Priority Guidance (61 FR 24722) on allocation of resources for the endangered species listing process. The evaluation of the cheetah's status under the Act was stimulated by a formal petition requesting reclassification; the Act itself mandates a specific time frame for completing a review and evaluation of a petition. The notice of the 90-day petition finding and initiation of status review was published in the **Federal Register** on March 19, 1996, almost two months prior to publication of the listing guidance. The Office of Scientific Authority subsequently complied with the Listing Priority Guidance in assigning priority to the cheetah petition in relation to the Office's other pending actions to be carried out under section 4 of the Act.

What New Information Was Contributed by the Namibian Cheetah Conservation Strategy?

In conjunction with proposed changes in policy toward cheetahs in Namibia, Kristin Nowell of the IUCN/SSC Cat Specialist Group was retained by the Government of Namibia to draft the Namibian Cheetah Conservation Strategy (Strategy). The Strategy was submitted to the MET in 1996, and has subsequently become the working policy (Dr. P. Stander, pers. comm. with Office of Scientific Authority). While the Strategy addresses many of the Act's listing criteria, one of the most important contributions is a population model that was developed to assess what impact cheetah removals (by any means) would have on the population (Nowell 1996). The model, developed at the Etosha Ecological Institute in Namibia and referred to as the Erb model, suggests that in the early 1980s removal of up to 50 percent of males and 10 percent of females each year reduced the population from 3,700 adults and sub-adults in 1970 to about 2,000 in 1985. The model concluded that lower levels of cheetah removals in the 1990s have allowed the population to rebound to an estimated 2,500 in 1996.

The Strategy assumes that, because the cheetah has a higher reproductive rate than those of other big cats, the population should be resilient in rebounding from periods of high mortality and offtake (*i.e.*, removal of individuals from the population by any means, including killing by farmers because of actual or perceived predation on domestic livestock, called "depredation offtake"). The Erb model projects that an annual offtake of 20 percent of adult males and 5 percent of adult females is biologically sustainable. The Strategy suggests that the MET, which has responsibility for management of the cheetah, establish a target for total removals at 200 per year, and consider stopping the issuance of permits if total removals approach 300 per year.

The Strategy suggests that the MET hire a Predator Coordinator to monitor total cheetah removals reported nationwide each year, as well as the sex and age of those animals. The annual removal data would be used to refine the cheetah population models that have been developed to date. Dr. Philip Stander subsequently was hired for the position of Large Carnivore Coordinator.

What New Information Was Contributed by the Population and Habitat Viability Assessment (PHVA)?

The workshop organized by the IUCN/SSC Conservation Breeding Specialist Group to provide a population and habitat viability assessment for the Namibian cheetah and lion was held in Otjiwarongo, Namibia, in 1996. We participated in that workshop. The viability of the Namibian cheetah population was modeled using the VORTEX population simulation program (Lacy 1993). The VORTEX model measures the likelihood of the cheetah population going extinct given particular population parameters and incorporating the stochastic (or random) factors that often drive small populations to extinction.

The VORTEX modeling exercise started with an approximation of current conditions, as follows. The total Namibian cheetah population was estimated to be 2,500 including cubs (this may be an underestimate of the total Namibian population; the Strategy, in contrast, uses a population estimate of 2,500 excluding cubs). The

proportion of adult females in the population was estimated at 27 percent, while the adult female mortality rate was estimated at 20 percent (10 percent natural mortality and 10 percent human-related offtake). With an initial population estimate of 2,500, the VORTEX model assumed no additional inbreeding depression that would reduce offspring viability. The model also assumed no immigration of cheetahs from Botswana. Given the aforementioned approximation of current conditions, the report concluded that the Namibian cheetah population could tolerate a human-related offtake of 60 to 70 adult females per year and maintain a stable population of around 2,500.

The modeling exercise then continued by evaluating factors that could affect population growth characteristics, specifically by varying the number, frequency, and severity of natural catastrophes (such as drought and disease outbreaks), varying adult mortality, varying the ratio of adult male-to-female mortality, varying the starting population size, and varying the carrying capacity. Factors that tended to cause the population to decline included adult female mortality greater than 30 percent per year and frequent natural catastrophes (*e.g.*, disease outbreaks, drought) resulting in over 50 percent mortality across age classes.

The Executive Summary of the VORTEX Modeling Workshop states that "if the cheetah population continues to decline at the 4 to 7 percent annual rate experienced over the past 15 years, there is a 50 to 100 percent probability of extinction in the next 100 years." This estimate of population decline over the last 15 years would suggest that the population is still being overutilized.

What Additional Public Comments Did the Cheetah Conservation Strategy and the PHVA Stimulate?

We received 122 comments during the second comment period, from December 1997 to January 1998. Fifteen of those comments came from conservation and animal protection organizations such as The International Wildlife Coalition, Beauty without Cruelty, and the Animal Protection Institute. Of the comments of private individuals, 82 were from four groups and all of those opposed reclassifying the cheetah.

Olive D. Butler and Erin Boddicker joined 19 other private individuals in stating that there are no accurate, standardized methods for determining the cheetah population in Namibia. The Animal Protection Institute was among commenters stating that cheetah are inbred and, therefore, more vulnerable to disease. Irene Ballinger and 16 other commenters wrote that the cheetah was still in decline, with the population worldwide dropping more than 60 percent in the last 30 years. Leslie Ann Adams and 22 others stated that there are at present no accurate, standardized methods for determining how many cheetahs are killed each year, whether for depredation control, hunting, or other purposes. We concur that, until there is an established census for the cheetah, conducted over several years, any contention that the population is continuing to decline or has stabilized is conjecture.

Representative George Miller of the U.S. House of Representatives (D–CA) and ranking minority member of the Committee on Resources opened his letter by stating that any decision to reclassify a species must address whether the conditions that led to the listing have been removed. He points out that, while it is useful to encourage other countries to find innovative ways to conserve predators, we must base any decision not on the promise of such programs but evidence of their success.

The American Zoo and Aquarium Association wrote again during the second comment period, reversing their earlier support for reclassification because the provisions they had stipulated in their initial comments had not been met. While acknowledging the "tremendous strides" made by the Government of Namibia, they concluded that neither the annual census nor the conservation program funded in part by trophy fees were yet in place.

Kristin Nowell, a member of the IUCN/SSC Cat Specialist Group who participated in the PHVA workshop and drafted the Namibian Cheetah Conservation Strategy, commented that the conclusion in the Executive Summary of the VORTEX Modeling Workshop report on the extinction probability did not reflect the consensus of the workshop. Most of the scenarios that were run by the VORTEX model did not result in extinction within 100 years according to Nowell. She went on to express her view that Namibia has the world's best cheetah conservation program, and there is broad support for the reclassification within the country's conservation community.

Wildlife Biologist James Teer of the Welder Wildlife Foundation emphasized the point made most frequently in support of reclassification: it is the opportunistic, indiscriminate killing of cheetahs by farmers to protect livestock that represents the greatest threat to the species. Teer called for increasing field studies of cheetahs, as well as further genetic and disease work.

John J. Jackson III of Conservation Force wrote in support of the Namibian Cheetah Conservation Strategy. He stated that there was an error in the Executive Summary of the PHVA report, specifically that the population decline in the early 1980s had been reversed and the population had been stable for the last 15 years. Mr. Jackson pointed out that the PHVA workshop used 2,500 as the total cheetah population figure and interpolated the estimate for adults to 1,300, whereas the biologists in Namibia consider 2,500 to be the estimate excluding cubs. Finally, Jackson stated that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) had approved a quota of cheetah trophies from Namibia, and the United States had not objected. Not allowing these trophies to be imported amounted to a trade sanction, according to Jackson, that would only work in the short term.

In response to Jackson's comments, we believe that there is no consensus on cheetah population trends over the past 15 years. We also believe that, in determining the status of any species, population trends must be evaluated over the long term. In the Namibian cheetah's case, long-term trends indicate a population decline. Furthermore, our decision on reclassification must be based on whether the species has recovered sufficiently so that it is no longer endangered by the five factors specified in the Act, rather than only if the species has ceased to decline within the past 15 years. We disagree that the endangered listing under the Act amounts to a trade sanction, noting that the Act constitutes a "stricter domestic measure," which is specifically authorized in CITES. Whether cheetah trophies can be imported into the United States is not a factor in our decision on whether the species has recovered sufficiently to warrant reclassification under the Act. However, the Fish and Wildlife Service is now reviewing its current practice regarding import of foreign species to determine whether any new policy should be proposed.

Can the Cheetah Population of Namibia Be Considered a Distinct Population Segment Under the Act?

The cheetah in Namibia, *A. j. jubatus*, is a subspecies that occurs in four other African countries. It is not genetically isolated from populations in other countries, particularly Botswana. Nonetheless, the cheetah population of Namibia qualifies as a distinct

population segment because it meets the criteria for discreteness and significance in the Service's DPS Policy (61 FR 4722). One criterion for discreteness under the DPS Policy is: "[The population] is delimited by international government boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist * * *" The Namibian cheetah population satisfies this criterion. The measures taken by the Government of Namibia, including the development of the Namibian Cheetah Conservation Strategy, are steps that indicate that the population will be managed differently than in the countries that border Namibia. The cheetah population of Namibia also satisfies the following criterion for significance: "Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon." Clearly, the extinction of the Namibian cheetah population would represent a significant loss to the range of the cheetah in Africa.

After Assessing the Five Factors Specified by the Act, Should the Cheetah Population of Namibia Remain as Endangered or Does It Warrant Reclassification From Endangered to Threatened?

While acknowledging the great strides that have been made by the MET and cooperating groups, we cannot conclude that the cheetah population of Namibia has recovered or that the factors that caused the cheetah to become endangered have been reduced to the extent that the species warrants reclassification from endangered to threatened. Our assessment of the five factors specified in the Act is as follows.

A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

With regard to the first factor, there is agreement that at least 90 percent of cheetah habitat in Namibia is on privately owned farmlands (Marker-Kraus *et al.* 1996). Moreover, because of competition with other carnivores, there is little likelihood of public lands becoming a significant refuge for cheetahs (Caro 1994).

Because of the abundance of prey on game ranches and farms with domestic animals, the fact that most cheetah habitat is in private ownership does not constitute an inherent threat to the species. It is a threat if farmers shoot cheetahs indiscriminately, and the effort to substantially reduce these killings on private lands is the critical component of the current management program. Those efforts are not likely to be fully tested until drought or disease again take a significant portion of the cheetah's primary natural prey, and predation on domestic livestock increases, or is perceived to have increased, as a consequence.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

With regard to the second factor, we believe there is substantial evidence to indicate that overutilization, in the form of depredation offtake, contributed substantially to a decline of the Namibian cheetah population in the past three decades (especially from the late 1970s until the late 1980s or early 1990s). However, we cannot determine if overutilization is still occurring because the lack of reliable, long-term population estimates (*i.e.*, estimates obtained through standard survey methodology repeated at regular intervals over the past 30 years) for cheetah in Namibia make it impossible to determine whether the population has been increasing, decreasing, or stable over the past 30 years (but especially the past 10–15 years).

Both the Erb and VORTEX models have been used to derive estimates of offtake that would not drive the population to the point of extinction based on estimates of initial population size and other population parameters. Combining the MET figures for trophy and reported depredation offtake in Namibia, 125 cheetahs were killed in 1997 and 175 in 1998 (P. Stander, pers. comm. with OSA) in contrast to a yearly average of 568 for 1980 through 1991. The 1997 and 1998 totals fall within the sustainable offtake limits set by both models, assuming a 2:1 ratio of males to females in all kills, and assuming a current population of 2,500. However, these results cannot be used to conclude that overutilization is not occurring, because the accuracy of the current population estimate of 2,500 is debatable and the exact level of offtake is not known. The current population estimate should be expressed with a confidence interval (*i.e.*, 2,500 ± 500), as it is derived from an estimate of 2,000 to 3,000 cheetahs made over a decade ago by Morsbach (1997). Even with such a confidence interval, the accuracy of the estimate is still unknown. Recent depredation offtake, averaging 96 animals in 1997 and 1998, is consistent with a steady decline from a high of 850 in 1982. This decline could be attributed to a change in farmer attitudes but may also be a result of increased levels of under-reporting. Nowell (1996; page 28) has stated that "* * * there are indications that under-reporting is becoming increasingly common."

The MET has made the development of indirect survey methods and establishment of a population monitoring program its top priorities. It has acknowledged that mark-and-recapture methods have not been very successful, due to the difficulty of capturing the necessary number of cheetahs. Spoor counts have shown potential in the current monitoring program (Stander 1998). We strongly support the implementation of a standardized survey methodology and population monitoring program in Namibia. To that end we have made funds available to co-sponsor a workshop to help evaluate currently used methods and to help adopt a standardized survey strategy and population monitoring program for Namibian cheetahs that has widespread professional acceptance. Data from such a population monitoring program would be needed to determine whether the cheetah population in Namibia has recovered sufficiently to warrant reclassification.

C. Disease or Predation

With regard to disease and predation, it is known that cheetahs have died from feline infectious peritonitis (Brown *et al.* 1993) and anthrax (Jager *et al.* 1990). The low level of genetic variation in cheetahs as a result of historical and recent "bottlenecks" due to small population size heightens the concern about disease susceptibility (O'Brien *et al.* 1994). Moreover, outbreaks of foot and mouth disease and rabies had a major impact on natural prey populations in the 1980s, increasing the likelihood that cheetahs would prey on domestic livestock (Marker-Kraus *et al.* 1996) and thereby make them more susceptible to depredation offtake by farmers. In this way, disease has contributed to the overutilization of cheetah in Namibia and thus has been an indirect factor in their endangerment.

Predation on cheetah cubs by lions and hyenas has reduced cheetah numbers in protected areas such as Etosha National Park and elsewhere (Laurenson 1994, Caro 1994). We do not, however, consider this to be a factor contributing to their endangered status.

D. Inadequacy of Existing Regulatory Mechanisms

The fourth factor, the inadequacy of existing regulatory mechanisms, has been the area of greatest change in the last decade. While the cheetah has been classified as "Protected Game" in Namibia's Nature Conservation

Ordinance of 1975, and protected game cannot be hunted without a permit, there is an important exception for predators. Article 27.5 allows killing of protected game in protection of livestock "whilst the life of such livestock, poultry or domestic animal is actually being threatened." It also states that anyone who kills a predator must report it in writing within 10 days to the nearest nature conservator or police office. In practice, cheetahs were killed by farmers as a precautionary measure, particularly in the 1960s when cheetahs were a major threat to livestock. Cheetah kills were seldom reported unless the skin was going to be kept. The Namibian Cheetah Conservation Strategy represents a change not in the law but in its application (Nowell 1996).

The cheetah's protected status also precludes trophy hunting, but the government decided to allow trophy hunting of cheetah and leopard due to the problems of predation on livestock, in the hope that increasing their value would reduce the overall number killed. This rationale was explained in a 1982 letter from the Namibian Secretary of the Department of Agriculture to our Office of Scientific Authority. The experiment in conservation hunting of cheetahs in Namibia has been taking place since 1983 and was supported in 1992 at the eighth meeting of the CITES Conference of the Parties (COP8). At COP8, Parties voted to retain the cheetah in Appendix I, but to allow an annual export quota for Namibia of 150 live animals and trophies as well as smaller export quotas for Zimbabwe (50) and Botswana (5).

In 1997, 49 cheetahs were exported (32 males and 17 females). In 1998, 59 cheetahs were tagged, but only 40 were exported (30 males and 10 females) (P. Stander, pers. comm. with OSA). Though significantly fewer cheetahs have been removed than allowed under the quota, we are unable, at present, to evaluate the effects of that removal as well as the depredation offtake on the population.

E. Other Natural or Man-made Factors Affecting its Continued Existence

With regard to other natural factors affecting the existence of the cheetah, drought has had a substantial impact on populations of the cheetah's natural prey. As with disease, this has increased the likelihood that cheetahs would prey on domestic livestock (Marker-Kraus *et al.* 1996), thereby making them more susceptible to depredation offtake by farmers.

The single most important man-made factor affecting the existence of the cheetah is the attitude of farmers with respect to the value of cheetahs relative to the threat they pose to domestic livestock. The Government of Namibia and non-government organizations have worked together to change public attitudes toward this predator. The decrease in the reported depredation offtake, as well as personal interviews with many of the people working in cheetah conservation in Namibia, suggest that attitudes are changing. This factor will become less of a significant issue as attitudes change sufficiently so that most cheetahs on farmlands are tolerated and only problem cheetahs are removed as trophies.

What Is Our Assessment of the Petition's Three Reasons To Reclassify the Cheetah From Threatened to Endangered?

The petition states three reasons why the petitioners believe that the cheetah population of Namibia qualifies for reclassification from endangered to threatened. We do not concur with any of these reasons, as explained in the following assessment.

A. Was the Original Listing of the Cheetah as Endangered Throughout Its Range in Error?

At the time the cheetah was originally considered for listing under the Act, we considered different levels of protection for different populations. It was ultimately decided that the species should be considered endangered throughout its range. Though some populations and subspecies, such as the Asian cheetah, were under greater immediate threat, there were substantial reasons for considering the entire species to be endangered in 1972. The worldwide decline in the last century of the cheetah from 100,000 to 12,000 and the restriction of its range from 44 to 29 countries (Marker-Kraus *et al.* 1996) support this classification. While the cheetah population in Namibia has remained larger than in almost all other African nations, there is evidence that this population has declined substantially as a result of reductions in prey populations and overutilization by people in the form of depredation offtake. We believe that such declines endanger the continued survival of cheetah in Namibia.

B. Has the Cheetah Population of Namibia Recovered to the Point It Is No Longer Endangered?

In order to reclassify the cheetah in Namibia from endangered to threatened, we must have information showing that the factors that led to its endangerment have been reduced sufficiently. That requirement must be met with data supporting the contention that the population is stable or increasing, and of sufficient size to withstand most natural catastrophes. We currently do not have such information for the cheetah population of Namibia. Such information would include reliable, long-term population estimates for the country, data on the demographics of the population, and better information on depredation offtake, and would be used with the existing data on trophy offtake and live capture.

C. Does the Endangered Status of the Cheetah Reduce Its Value to Namibian Farmers, Who Will Then Be More Likely To Kill the Animals Indiscriminately?

This reason is the core of the Namibian Government's effort to have the cheetah reclassified under the Act. Because it is estimated that 90 percent of the cheetahs in Namibia have their primary habitat on farmland, due in part to the density of other carnivores in protected areas, working out conservation measures with private landowners on farmlands is crucial to the long-term survival of the species in Namibia. We agree that cooperative conservation efforts with private landowners are vital to the recovery of the species, as we have seen with endangered and threatened predator species in the United States.

It is important to acknowledge the major effort undertaken by the Government of Namibia during the past decade in developing conservation measures to maintain a stable cheetah population. The MET has worked closely with local non-governmental organizations such as Africat and the Cheetah Conservation Fund to understand and sometimes change the attitudes of farmers toward cheetahs on their land. The MET has adopted a strategy for conserving the cheetah that foremost seeks to give the animals value and avoid having them shot as a precaution against assumed livestock or game predation. The decision in this Notice should not in any way be seen as a rejection of Namibia's conservation efforts, which we applaud. Rather, this decision is based on our evaluation of the five factors specified in the Act.

The MET has worked with the Namibia Professional Hunting Association (NAPHA), which has encouraged its members to sign compacts in which they "agree to take reasonable steps to control the indiscriminate killing of cheetahs on their properties and to educate their employees, tenants and others living in the vicinity of their properties on the importance of the conservation of the cheetah." In November 1998, more than

190 properties comprising 1.5 million hectares were in compact lands. While this does not represent a large percentage of cheetah habitat in the country, more than 70 percent of the land where NAPHA members hunt is covered by compacts.

The second important development is the formation of farm conservancies under the 1996 amendments to the Nature Conservation Ordinance. Conservancies are groups of farms that join together for the purpose of conserving and utilizing wildlife. With the encouragement and participation of the MET, the conservancy movement has greatly expanded in the last few years. Cheetahs should benefit from the formation of conservancies in several ways. Because conservancies are groups of farms that comprise the ranges of game species, they should enhance the cheetah prey base. Also, because cheetahs have such large home ranges, population monitoring as well as identifying depredating individuals is likely to be more reliable at the conservancy level. Merging of the NAPHA compact scheme and the formation of farmland conservancies would also increase the potential benefits of cheetah sport hunting to a larger number of farmers.

The models developed both in conjunction with the PHVA and the Strategy are important steps toward determining what would constitute a stable cheetah population size with a low probability of extinction in the next 100 years. While several scientists submitting comments pointed out limitations with both models, the numbers in these reports have provided a first estimate of the level of offtake that would still sustain a healthy population. The models also point to the need for a monitoring program to provide an accurate estimate of the present population and its demographic composition.

The next significant development in cheetah conservation in the country is the Namibia Carnivore Monitoring Program. While it includes monitoring of other predators as well, it represents a recognition that the success of any conservation effort can only be determined with scientific measurement of cheetah abundance as well as natural mortality and offtake. The monitoring program establishes a priority of developing reliable survey and monitoring techniques within three years. Field personnel have been hired to carry out some of the initial work, and cooperating organizations have been enlisted to work on developing these methods as well. There has been an effort to calibrate the less intensive methods and to compare estimation methods across carnivore species. A determination to reclassify the cheetah under the Act depends critically on the success of the monitoring program.

Finally, one of the most important recent developments in cheetah conservation is the initiation of the Large Carnivore Management Forum. Having met more than 15 times over the past two years, the Forum has brought together all stakeholders in cheetah management in Namibia. The permanent members include Afrileo, Africat, the Conservancy Association of Namibia (formed among farmers to deal with free-ranging wildlife), the Cheetah Conservation Fund, MET, NAPHA, Namibia Agricultural Union, Namibian Game Sanctuary Association, Namibian Carnivore Monitoring Program, Namibian Nature Foundation, OKATUMBA Wildlife Research, and six veterinary clinics. Other groups with issues to bring to the forum are invited, as is the press. The Forum has been directly involved in developing the monitoring program. It also provides a place for discussion when there are conflicts among stakeholders.

In total, the programs undertaken by the Namibian Government in conjunction with interested non-governmental organizations constitute a conservation infrastructure that can contribute to the long-term survival of the species.

Does That Mean That Reclassification of the Cheetah Population of Namibia Will Occur Eventually?

A decision on reclassification can only be made when the threats identified as endangering the species have been reduced, and there is evidence of the species' recovery. Such evidence can only come from reliable estimates of the total population and the sources of annual offtake. Those data must support the contention that the population is stable or increasing, and of sufficient size to withstand most natural catastrophes. The MET is collecting data on the sources of cheetah offtake, and has begun establishing parameters for a census and monitoring program. It is possible that, after population monitoring has taken place for several years, we would have sufficient information to conclude that reclassification is warranted. We do not have that information today. If reliable means of population estimation are established, and those estimates show that the cheetah population is of sufficient size and has remained stable or increased for at least six consecutive years (*i.e.*, the time period during which four biennial or three triennial surveys would take place), then the Service could again consider the Namibian cheetah population for reclassification under the Act.

References Cited

Brown, E.W., R.A. Olmstead, J.S. Martenson, and S.J. O'Brien. Exposure to FIV and FIPV in wild and captive cheetahs. Zoo Bio 12:135–142.

CITES. 1994 Quotas for trade in specimens of cheetah Doc. 8.22:570–582 Proceeding of the eighth meeting of the Conference of the Parties. CITES Secretariat, Geneva.

Caro, T.M. Cheetahs of the Serengeti Plains 1994. The University of Chicago Press. Chicago.

Jager, H.G., H.H. Brooker and J.B. Hubschle. 1990. Anthrax in cheetahs (Acinonyx jubatus) in Namibia. J. Wildl Dis 26:423–424.

Joubert, E. and P.K.N. Mostert. 1975 Distribution patterns and status of some mammals in Southwest Africa. Madoqua 9(1): 5–44.

Lacy, R.C. 1993. VORTEX: A computer simulation model for population viability analysis. Wildl 20:45–65.

Laurenson, M.K. 1994 High juvenile mortality in cheetahs (Acinonyx jubatus) and its consequences for maternal care. J. Zool. 234:387–408.

Marker-Kraus, L., D. Kraus, D. Barnett, and S. Hurlbut. 1996. Cheetah Survival on Namibian Farmland. Cheetah Conservation Fund. 85pp.

Marker-Kraus, L. and D. Kraus. 1997. Conservation strategies for the long-term survival of the cheetah. Int. Zoo Yb 35: 59–66.

Morsbach, D. 1985 The ecology, behaviour and movements of the cheetah on farm area of South West Africa, Namibia. Annual Reports, Department of Agriculture and Nature Conservation, Directorate of Nature Conservation and Recreational Resourts.

Morsbach, D. Cheetah in Namibia. Cat News:25–26

Myers, N. 1975 The cheetah, Acinonyx jubatus (Acinonyx jubatus) in Africa. IUCN Monograph No. 4. Morges, Switzerland, International Union for the Conservation of Nature and Natural Resources, Morges. Switzerland.

Nowell, K 1996. Namibian Cheetah Conservation Strategy Review Draft Submitted to Ministry of Environment and Tourism, Government of Namibia.

O'Brien, S.J. The cheetah's conservation controversy. Cons. Bio. 8:1153–1155.

Seal, U.S., H. Berry, O. Forge, L. Marker-Kraus and K. Nowell. 1997. Life History/ VORTEX Modeling Working Group Report. In Population & Habitat Viability Assessment for the Namibian Cheetah (Acinonyx jubatus) and Lion (Panthera leo). IUCN/SSC Conservation Breeding Specialist Group, Apple Valley MN

Stander, P.E. Spoor counts as indices of large carnivore populations: the relationship between spoor frequency, sampling effort and true density. J. Appl. Ecol. 35:378–385

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071200B]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on a Draft Fishery Management Plan for the Dolphin and Wahoo Fishery in the Atlantic, Caribbean, and Gulf of Mexico (draft Dolphin/Wahoo FMP).

DATES: The Council will accept written comments on the draft Dolphin/Wahoo FMP until final action is taken. The public hearings will be held in August. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to, and copies of the draft Dolphin/Wahoo FMP are available from, Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815; fax: 813–769–4520. See **SUPPLEMENTARY INFORMATION** for specific hearing locations.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The intent of the draft Dolphin/Wahoo FMP is to provide a comprehensive management structure for dolphin and wahoo in the Atlantic, Gulf, and Caribbean exclusive economic zone (EEZ). The draft Dolphin/Wahoo FMP will take a precautionary approach to conserve and manage these fishery resources to maintain both optimum yield in the fishery and current allocations among user groups. The draft Dolphin/Wahoo FMP's first 10 proposed management actions, with options, contain measures that are applicable to the dolphin and wahoo stocks in the jurisdictions of the South Atlantic Fishery Management Council, the Caribbean Fishery Management Council, and the Gulf of Mexico Fishery Management Council. These actions include measures to define the management units; address dealer, vessel, and operator permits; establish data reporting requirements; estimate maximum sustainable yield, optimum yield, and establish overfishing/overfished criteria; and establish a framework procedure that would allow seasonal adjustments to the management structure. Other actions, with options, are separately applicable to each council's area of jurisdiction, and include actions that may be implemented through the framework procedure, (minimum size limits, bag limits, trip limits, and allocations, among others).

Time and Location for Public Hearings

Public hearings for the Dolphin/Wahoo FMP will be held at the following locations and dates from 7 p.m. to 10 p.m.

1. July 31, 2000, Port Aransas Community Center, 408 North Allister, Port Aransas, TX 78373; telephone: 361–749–4111.

2. August 1, 2000, Texas A&M, Auditorium, 200 Seawolf Parkway, Galveston, TX 77553; telephone: 409–740–4416.

3. August 7, 2000, New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA 70062; telephone: 504–469–5000.

4. August 8, 2000, Mississippi Department of Marine Resources, 1141 Bayview Drive, Biloxi, MS 39530; telephone: 228–374–5000.

5. August 9, 2000, Orange Beach Community Center; 27235 Canal Road, Orange Beach, AL 36561; telephone: 334–981–6028.

6. August 10, 2000, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408; telephone: 850–234–6541.

7. August 14, 2000, City Hall Auditorium, 300 Municipal Drive, Madeira Beach, FL 33708; telephone: 727–391–9951.

8. August 15, 2000, Edison Community College, Corbin Auditorium, Room J–103, 8099 College Parkway, Fort Myers, FL 33919; telephone: 941–489–9412.

9. August 16, 2000, Pier House, 1 Duval Street, Key West, FL 33040; telephone: 305–296–4600.

The Council will also hear public testimony on the draft Dolphin/Wahoo FMP at the September 2000 Council meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council office (see **ADDRESSES**) by July 24, 2000.

Dated: July 24, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19165 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 146
Friday, July 28, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–99–02]

United States Standards for Grades of Dry Whole Milk

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to change the United States Standards for Grades of Dry Whole Milk. AMS is proposing changes that would: (1) Lower the maximum bacterial estimate for U.S. Extra Grade from not more than 50,000 per gram to not more than 10,000 per gram and for U.S. Standard Grade from not more than 100,000 per gram to not more than 50,000 per gram, (2) reference the Food and Drug Administration's standards of identity for dry whole milk, (3) incorporate a maximum titratable acidity requirement for U.S. Extra Grade and U.S. Standard grade, (4) delete specific provisions for Dry Whole Milk produced by roller process, (5) include protein content as an optional test, (6) relocate information concerning the optional oxygen content determination and, (7) expand the test methods section to allow product evaluation using methods included in Standard Methods for the Examination of Dairy Products, in the Official Methods of Analysis of the Association of Official Analytical Chemists, and in standards developed by the International Dairy Federation. These changes are being proposed to strengthen the quality requirements of these standards to reflect improvements that have occurred in dry whole milk quality since the Standards were last reviewed. AMS is also proposing editorial changes to provide consistency with other dry milk standards. USDA grade standards are voluntary standards. Manufacturers of dairy products are free to choose whether or not to use these voluntary grade standards. USDA grade standards have been developed to identify the degree of quality in various dairy products. Quality in general refers to usefulness, desirability, and value of the product or its marketability as a commodity.

DATES: Comments must be submitted on or before September 26, 2000.

ADDRESSES: Written comments may be submitted to: Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, Stop 0230, P.O. Box 96456, Washington, DC 20090–6456; faxed to (202) 720–2643; or, e-mailed to *Duane.Spomer@usda.gov*. Comments should reference the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above address during regular business hours. The current U.S. Standards for Grades of Dry Whole Milk, along with the proposed changes, are available either through the above address or by accessing, AMS Home Page on the Internet at *www.ams.usda.gov/dairy/stand.htm*.

FOR FURTHER INFORMATION CONTACT: Talari Jude, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Programs, Room 2746–S, P.O. Box 96456, Washington, DC 20090–6456; (202) 720–7473.

SUPPLEMENTARY INFORMATION: Section 203 (c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *". AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and will make copies of official standards available upon request. The United States Standards for Grades of Dry Whole Milk no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Dairy Programs.

When dry whole milk is officially graded, the USDA regulations (7 CFR part 58) governing the grading of manufactured or processed dairy products are used. These regulations require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics in dry whole milk.

AMS is proposing to change the United States Standards for Grades of Dry Whole Milk using the procedures that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

The current United States Standards for Grades of Dry Whole Milk have been in effect since May 13,1983. AMS initiated a review of this Standard and discussed possible changes with the dairy industry. The American Dairy Products Institute, a trade association representing the dry whole milk industry, provided specific suggestions, including a recommendation to lower the maximum bacterial estimate.

Proposed by the American Dairy Products Institute

The American Dairy Products Institute provided suggestions to:

- Lower the maximum bacterial estimate for U.S. Extra Grade from not more than 50,000 per gram to not more than 10,000 per gram;
- Lower the maximum bacterial estimate for U.S. Standard Grade from not more than 100,000 per gram to not more than 50,000 per gram; and
- Expand the definition of dry whole milk to specify optional ingredients that may be added to dry whole milk.

Proposed by Dairy Programs, Agricultural Marketing Service

AMS is proposing to:

- Lower the maximum bacterial content requirements as suggested by the American Dairy Products Institute;
- Reference the Food and Drug Administration's standards of identity for dry whole milk to provide for optional ingredients as suggested by the American Dairy Products Institute;
- Incorporate a maximum titratable acidity requirement for U.S. Extra Grade and U.S. Standard Grade;
- Delete specific provisions for dry whole milk produced by roller process;
- Include protein content as an optional test;
- Reference additional test methods that may be used to determine U.S. grade;

- Include provisions to report actual moisture which is moisture calculated on a residual or as is basis; and
- Make editorial changes that would provide consistency with other U.S. grade standards for dairy products.

This notice provides for a 60 day comment period for interested parties to comment on proposed revisions to the standards. The following is an outline of these changes.

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United States Standards for Grades of Dry Whole Milk[1]

United States Standards for Grades of Dry Whole Milk[1]

Current Standard	Proposed	Discussion
Definitions	No change.	N/A.
Dry Whole Milk	No change.	N/A.
"Dry whole milk" made by the Spray process or Roller process is the product obtained by removal of water only from pasteurized milk which may have been homogenized.	"Dry whole milk" made by the Spray process is the product obtained by removal of water only from pasteurized milk which may have been homogenized.	We propose to delete the reference to the roller process since there is very little dry whole milk produced using the roller process.
	It contains not more than 5 percent by weight of moisture on a milk solids not fat basis and not less than 26 percent but less than 40 per cent by weight of milk fat. It shall conform to the applicable provisions of 21 CFR 131 "Milk and Cream" as issued by the Food and Drug Administration.	We propose to include moisture and fat percentages included in the Food and Drug Administration regulations concerning this product and to include a reference to the applicable Code of Federal Regulations.

[1]Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

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Current Standard	Proposed	Discussion
Alternatively, dry whole milk may be obtained by blending fluid, condensed, or dried nonfat milk with liquid or dried cream or with fluid, condensed, or dried milk, as appropriate provided the resulting dry whole milk is equivalent in composition to that obtained by drying. It contains the lactose, milk proteins, milkfat, and milk minerals in the same relative proportions as the milk from which it was made. It may be optionally fortified with either Vitamins A or D or both.	No change.	N/A.
Milk	No change.	N/A.
The term "Milk", when used in this part, means milk produced by healthy cows and pasteurized at a temperature of 161^0 F. for 15 seconds or its equivalent in bacterial destruction before or during the manufacture of dry whole milk.	The term "Milk", when used in this part, means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, and pasteurized at a temperature of 161^0 F. for 15 seconds or its equivalent in bacterial destruction before or during the manufacture of dry whole milk.	We propose to update the definition using terminology found in the Food and Drug Administration definition of milk.
U.S. Grades	No change.	N/A.
Nomenclature of U.S. grades	No change.	N/A.

Current Standard	Proposed	Discussion
The nomenclature of U.S. grades is as follows:	No change.	N/A.
(a) U.S. Extra grade.	(a) U.S. Extra Grade.	We propose to use uppercase "G" in the word "Grade" to be consistent with other dry milk products standards.
(b) U.S. Standard grade.	(b) U.S. Standard Grade.	We propose to use uppercase "G" in the word "Grade" to be consistent with other dry milk products standards.
Basis for determination of U.S. grades.	No change.	N/A.
The U.S. grades of dry whole milk are determined on the basis of flavor, physical appearance, bacterial estimate, coliform estimate, direct microscopic count, milkfat content, moisture content, scorched particle content, and solubility index.	The U.S. grades of dry whole milk are determined on the basis of flavor, physical appearance, bacterial estimate, coliform count, milkfat content, moisture content, scorched particle content, solubility index and titratable acidity.	We propose to change coliform estimate to coliform count. We also propose to relocate the requirement for titratable acidity from the "Optional tests" section and include it as a required test for assignment of U.S. grade. Titratable acidity is a required test in U.S. grade standards for similar dry milk products and is useful in determining the quality of dry whole milk.

Current Standard	Proposed	Discussion
Specifications for U.S. grades.	No change.	N/A.
(a) U.S. Extra grade. U.S. Extra grade dry whole milk shall conform to the following requirements	(a) U.S. Extra Grade. U.S. Extra Grade dry whole milk shall conform to the following requirements:	We propose to use uppercase "G" in the word "Grade" to be consistent with other dry milk products standards.
(See tables I, II, III):	Delete.	We propose to delete the reference to tables I, II, and III from this section.
(1) Flavor. (applies to the reconstituted product). Shall be sweet, pleasing and desirable. It may possess a slight feed flavor; and a definite cooked flavor. It shall be free from undesirable flavors.	(1) Flavor. Reconstituted dry whole milk shall possess a sweet, pleasing and desirable flavor, free from undesirable flavors, but may possess a slight feed flavor and a definite cooked flavor. See Table I. Classification of Flavor of this section.	We propose to edit the language but not change the content of this section to provide consistency with other dry milk product standards and add a reference to Table I. Classification of Flavor.
(2) Physical Appearance. Shall be white or light cream color, free from lumps that do not break up under slight pressure, and practically free from visible dark particles. The reconstituted product shall be free from graininess.	(2) Physical Appearance. Dry whole milk shall possess a uniform white to light cream color. It shall be free from lumps, except those that readily break up with slight pressure, and be practically free from visible dark particles. The reconstituted product shall be free from graininess. See Table II. Classification of Physical Appearance of this section.	We propose to edit the language but not change the content of this section to provide consistency with other dry milk product standards and add a reference to Table II. Classification of Physical Appearance.

Current Standard Proposed Discussion

Current Standard	Proposed	Discussion
(3) Bacterial estimate. Not more than 50,000 per gram standard plate count.	(3) Not more than 10,000 per gram standard plate count. See Table III. Classification According to Laboratory Analysis of this section.	We propose to reduce the bacterial estimate from not more than 50,000 per gram to not more than 10,000 per gram to reflect improvements in the quality of dry whole milk currently produced. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(4) Coliform estimate. Not more than 10 per gram.	(4) Coliform count. Not more than 10 per gram. See Table III. Classification According to Laboratory Analysis of this section.	We propose to change the word "estimate" to "count" to be consistent with terminology in other dairy products standards. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(5) Milkfat content. Not less than 26.0%, but less than 40.0%.	(5) Milkfat content. Not less than 26.0%, but less than 40.0%. See Table III. Classification According to Laboratory Analysis of this section.	We propose to add a reference to Table III. Classification According to Laboratory Analysis.

Current Standard	Proposed	Discussion
(6) Moisture content. Not more than 4.5% (as determined by weight of moisture on a milk solids not fat basis).	(6) Moisture content. Not more than 4.5% (as determined by weight of moisture on a milk solids not fat basis). See Table III. Classification According to Laboratory Analysis of this section. The actual moisture will be calculated and the information will be included on the grading certificate.	We propose that the current requirement for moisture content as determined by the weight of moisture on a milk solids not fat basis remain unchanged but include information pertaining to actual moisture on the grading certificate. Actual moisture being that moisture calculated on a residual or as is basis without regard for milkfat content. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(7) Scorched particle content. Not more than 15.0 mg. for spray process and 22.5 mg. for roller process.	(7) Scorched particle content. Not more than 15.0 mg. See Table III. Classification According to Laboratory Analysis of this section.	We propose to maintain the requirement for spray process dry whole milk and delete the special provisions for roller process dry whole milk. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(8) Solubility Index. Not more than 1.0 ml. for spray process, and 15.0 ml. for roller process.	(8) Solubility Index. Not more than 1.0 ml. See Table III. Classification According to Laboratory Analysis of this section.	We propose to maintain the requirement for spray process dry whole milk and delete the special provisions for roller process dry whole milk. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.

Current Standard	Proposed	Discussion
	(9) Titratable acidity. Not more than 0.15% (lactic acid). See Table III. Classification According to Laboratory Analysis of this section.	We propose to include the titratable acidity test as a required test for grade assignment. This test has been used as an optional test in the U.S. grade standard in the past, however, the results of this test can be useful in determining the quality of finished product. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(b) U.S. Standard grade. U.S. Standard grade dry whole milk shall conform to the following requirements	(b) U.S. Standard Grade. U.S. Standard Grade dry whole milk shall conform to the following requirements:	We propose to use uppercase "G" in the word "Grade" to be consistent with other dry milk products standards.
(See tables I, II, and III):	Delete.	We propose to delete the reference to tables I, II, and III from this section.
(1) Flavor. (applies to the reconstituted product). Shall be sweet and should have a pleasing flavor. It may possess the following flavors to a slight degree: bitter, oxidized, scorched, stale, and storage; and to a definite degree: feed and cooked. It shall be free from undesirable flavors.	(1) Flavor. Reconstituted dry whole milk shall possess a sweet and pleasing flavor, but may possess the following flavors to a slight degree: bitter, oxidized, scorched, stale, and storage; and to a definite degree: cooked and feed. See Table I of this section.	We propose to include wording "Reconstituted dry whole milk" to describe dry whole milk in its reconstituted form and edit the language but not change the content of this section. We also propose to add a reference to Table I. Classification of Flavor.

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Current Standard	Proposed	Discussion
(2) Physical appearance. Should be white or light cream color, but may possess a slight unnatural color; and shall be free from lumps that do not break up under moderate pressure; and reasonably free from visible dark particles. The reconstituted product shall be reasonably free from graininess.	(2) Physical appearance. Dry whole milk should be white or light cream color, but may possess a slight unnatural color; and shall be free from lumps that break up readily under moderate pressure; and reasonably free from visible dark particles. The reconstituted product shall be reasonably free from graininess. See Table II of this section.	We propose to edit the language but not change the content of this section to provide consistency with other dry milk product standards and add a reference to Table II. Classification of Physical Appearance.
(3) Bacterial estimate. Not more than 100,000 per gram standard plate count.	(3) Bacterial estimate. Not more than 50,000 per gram standard plate count. See Table III. Classification According to Laboratory Analysis of this section.	We propose to reduce the bacteria estimate from not more than 100,000 per gram to not more than 50,000 per gram to reflect improvements in the quality of dry whole milk currently produced. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(4) Coliform estimate. Not more than 10 per gram.	(4) Coliform count. Not more than 10 per gram. See Table III. Classification According to Laborntory Analysis of this section.	We propose to change the word "estimate" to "count" to be consistent with termonology in other dairy product standards. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(5) Milkfat content. Not less than 26.0% but less than 40.0%.	(5) Milkfat content. Not less than 26.0% but less than 40.0%. See Table III. Classification According to Laboratory Analysis of this section.	We propose to add a reference to Table III. Classification According to Laboratory Analysis.

Current Standard	Proposed	Discussion
(6) Moisture content. Not more than 5.0% (as determined by weight of moisture on a milk solids not fat basis).	(6) Moisture content. Not more than 5.0% (as determined by weight of moisture on a milk solids not fat basis). See Table III. Classification According to Laboratory Analysis of this section. The actual moisture will be calculated and the information will be included on the grading certificate.	We propose that the current requirement for moisture content as determined by the weight of moisture on a milk solids not fat basis remain unchanged but include information pertaining to actual moisture on the grading certificate. Actual moisture being that moisture calculated on a residual or as is basis without regard for milkfat content. We propose to add a reference to Table III. Classification According to Laboratory Analysis.
(7) Scorched particle content. Not more than 22.5 mg. for spray process and 32.5 mg. for roller process	(7) Scorched particle content. Not more than 22.5 mg. See Table III. Classification According to Laboratory Analysis of this section.	We propose to maintain the requirement for spray process dry whole milk and delete the special provisions for roller process dry whole milk. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.
(8) Solubility index. Not more than 1.5 ml. for spray process, and 15.0 ml. for roller process.	(8) Solubility Index. Not more than 1.5 ml. See Table III. Classification According to Laboratory Analysis of this section.	We propose to maintain the requirement for spray process dry whole milk and delete the special provisions for roller process dry whole milk. We also propose to add a reference to Table III. Classification According to Laboratory Analysis.

Current Standard	Proposed	Discussion
	(9) Titratable acidity. Not more than 0.17% (lactic acid). See Table III. Classification According to Laboratory Analysis of this section.	We propose to include the titratable acidity test as required test for grade assignment. This test has been used as an optional test in the U.S. grade standard in the past, however, the results of this test can be useful in determining the quality of the finished product. We propose to add a reference to Table III. Classification According to Laboratory Analysis.
Basis for oxygen content determination.	Delete.	We propose to relocate oxygen content determination from this section and include it in the optional tests section.
Oxygen content (if gas packed) is not a U.S. grade requirement. Percentage of oxygen content will be made available only on a U.S. graded product and the results will be shown on the grading certificate as follows:	Delete	We propose to relocate oxygen content determination from this section, modify its content, and include it in the optional tests section.

Current Standard	Proposed	Discussion
Oxygen Content Not more than 2% Oxygen, or Not more than 3% Oxygen, or Oxygen content _____%	Delete	We propose to relocate oxygen content determination from this section and include it in the optional tests section.

Table I, Classification of Flavor

	U.S. extra grade	U.S. standard Grade
Identification of Flavor characteristics		
Cooked	Definite	Definite
Feed	Slight	Definite
Bitter	–	Slight
Oxidized	–	Slight
Scorched	–	Slight
Stale	–	Slight
Storage	–	Slight

Table I. Classification of Flavor

	U.S. Extra Grade	U.S. Standard Grade
Flavor characteristics		
Cooked	Definite	Definite
Feed	Slight	Definite
Bitter	–	Slight
Oxidized	–	Slight
Scorched	–	Slight
Stale	–	Slight
Storage	–	Slight

We propose to use uppercase "E" in the word "Extra" and uppercase "G" in the word "Grade". We also propose to edit the language but not the content of this table to provide consistency with other dry milk product standards.

Table II. Classification of Physical Appearance

	U.S. extra grade	U.S. standard grade
Identification of physical appearance characteristics		
Dry Product:		
Unnatural color	None	Slight
Lumps	Slight pressure	Moderate pressure
Visible dark particles	Practically free	Reasonably free
Reconstituted Product:		
Grainy	Free	Reasonably free

Table II. Classification of Physical Appearance

	U.S. Extra Grade	U.S. Standard Grade
Physical appearance characteristics		
Dry Product:		
Unnatural color	None	Slight
Lumps	Slight pressure	Moderate pressure
Visible dark particles	Practically free	Reasonably free
Reconstituted Product:		
Grainy	Free	Reasonably free

We propose to use uppercase "E" in the word "Extra" and uppercase "G" in the word "Grade". We also propose to edit the language but not the content of this table to provide consistency with other dry milk product standards.

Current Standard	Proposed	Discussion

Table III. Classification According to Laboratory Analysis

Laboratory tests	U.S. extra grade	U.S. standard grade
Bacterial estimate; SPC/gram (max)	50,000	100,000
Coliform count; per gram (max)	10	10
Milkfat content; percent	Not less than 26.0, but less than 40.0	Not less than 26.0, but less than 40.0
Moisture content; Percent[2] (max)	4.5	5.0
Scorched particle content; mg.		
Spray process	15.0	22.5
Roller process	22.5	32.5
Solubility index, ml.		
Spray process	1.0	1.5
Roller process	15.0	15.0

Table III. Classification According to Laboratory Analysis

Laboratory tests	U.S. Extra Grade	U.S. Standard Grade
Bacterial estimate; SPC/gram (max)	10,000	50,000
Coliform count; per gram (max)	10	10
Milkfat content; percent	Not less than 26.0, but less than 40.0	Not less than 26.0, but less than 40.0
Moisture content; Percent[2] (max)	4.5	5.0
Scorched particle content; mg. (max)	15.0	22.5
Solubility index, ml. (max)	1.0	1.5

We propose to use uppercase "E" in the word "Extra" and uppercase "G" in the word "Grade" to be consistent with other dry milk product standards. We propose to reduce the bacterial estimate for both U.S. Extra Grade and U.S. Standard Grade dry whole milk to reflect changes proposed in this document. We also propose to eliminate provisions for roller process dry whole milk to reflect changes proposed in this document.

[2]Milk solids not fat basis

Current Standard	Proposed	Discussion
Optional tests.	No change.	N/A.
There are certain optional test requirements in addition to those specified in section, §58.2705. Testing for these requirements may be done occasionally at the option of the Department and will be done whenever they are requested by an interested party. These optional requirements are as follows:	There are certain optional requirements in addition to those required for U.S. Grade assignment. Tests for these requirements may be done occasionally at the option of the Department and will be done whenever they are requested by an interested party. These optional requirements are as follows:	When U.S. Grade Standards were removed from the Code of Federal Regulations, it was no longer appropriate to reference particular sections of the Code. We propose to modify this sentence accordingly.
(a) Copper content. Not more than 1.5 p.p.m.	Delete	We propose to delete the optional test for copper.
(b) Iron content. Not more than 10 p.p.m.	Delete	We propose to delete the optional test for iron.
(c) Titratable acidity. Not more than 0.15 percent	Delete	We propose to relocate the requirement for titratable acidity from the "Optional tests"section and include it as a required test for assignment of U.S. grade. Titratable acidity is a required test for similar dry milk products and is useful in determining the quality of dry whole milk.

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Current Standard	Proposed	Discussion
(d) Vitamin addition.	(a) Vitamin addition.	We propose an editorial change to reletter Vitamin addition.
When either or both Vitamin A or D is added, they shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product shall contain: Vitamin A. Not less than 2,000 I.U. Vitamin D. 400 I.U.	No change.	N/A.
	(b) Oxygen content. Oxygen content (if gas packed) is not a U.S. grade requirement. Percentage of oxygen will be shown on the grading certificates as follows:	We propose to delete the provisions limiting the determination of oxygen content to USDA graded product only and relocate Oxygen content provisions to the optional test section.
	Oxygen Content Not more than 2% Oxygen, or Not more than 3% Oxygen, or Oxygen content _____%.	We propose to relocate Oxygen content provisions to the optional test section.

Current Standard	Proposed	Discussion
	(c) Protein content. Protein content is not a U.S. grade requirement. Percentage of protein will be shown on the grading certificates as follows:	We propose to include protein content provisions in the optional tests.
	Protein Content Protein content _____%.	We propose to include protein content provisions in the optional tests.
U.S. grades not assignable.	No change.	N/A.
Dry whole milk shall not be assigned a U.S. grade for one or more of the following reasons:	No change.	N/A.
(a) Fails to meet the requirements for U.S. Standard Grade.	(a) The dry whole milk fails to meet the requirements for U.S. Standard Grade.	We propose editorial changes to provide consistency with other dairy product standards.
(b) Has a direct microscopic clump count exceeding 100 million per gram.	(b) The dry whole milk has a direct microscopic clump count exceeding 100 million per gram.	We propose editorial changes to provide consistency with other dairy product standards.
(c) Fails to meet the requirements for any optional tests as specified in Section 58.2707, when such tests have been performed.	(c) The dry whole milk fails to meet the requirements of any optional tests when test have been made.	We propose editorial changes to provide consistency with other dairy product standards.

Current Standard	Proposed	Discussion
(d) Produced in a plant, found on inspection to be using unsatisfactory manufacturing practices, equipment, or facilities, or to be operating under unsanitary plant conditions.	(d) The dry whole milk produced in a plant found on inspection to be using unsatisfactory manufacturing practices, equipment, or facilities, or to be operating under unsanitary plant conditions.	We propose editorial changes to provide consistency with other dairy product standards.
(e) Produced in a plant which is not USDA approved.	Delete	We propose delete this item because requirement contained in 7CFR Part 58, Subpart A, sufficiently addresses this issue.
Test Methods.	No change.	N/A.
All required tests, and optional tests when specified, shall be performed in accordance with	No change.	N/A.
(a) "All required tests, and optional tests when specified, shall be performed in accordance with Methods of Laboratory Analysis", DA Instruction No. 918-103 (dry milk products series), Dairy Grading Branch, AMS, U.S. Department of Agriculture, Washington, DC 20250; and "Official Methods of Analysis of the Association of Analytical Chemists", 13th Ed. or latest revision.	(a) Scorched particle content and solubility index shall be determined by the methods contained in the latest revision of 918-RL, Laboratory Methods and Procedures, USDA/AMS/ Dairy Programs, Dairy Grading Branch, Room 2746-S, 14th and Independence Ave. S.W. Washington, DC 20250-0230.	We propose to limit the use of USDA specific test methods contained in 918-RL to the evaluation of scorched particle content and solubility index only. This is necessary because a test method for scorched particles and solubility are not provided by the Association of Official Analytical Chemists, the Standard Methods for the Examination of Dairy Products, or the International Dairy Federation.

Current Standard	Proposed	Discussion
	(b) All other tests shall be performed by the methods contained in the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists", published by the Association of Official Analytical Chemists International, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2504; by the methods provided in the latest edition of the "Standard Methods for the Examination of Dairy Products", available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005, or by methods published by the International Dairy Federation, available from the International Dairy Federation, 41 Square Vergate, B-1030 Brussels, Belgium.	We also propose to identify three sources of test methods that can be used to analyze dry whole milk for determination of U.S. grade. Reference to these sources will eliminate the need for USDA to maintain a separate document to provide this test method information.
Explanation of Terms.	No change.	N/A.
(a) With respect to flavor:	No change.	N/A.
(1) Slight. An attribute which is barely identifiable and present only to a small degree.	(1) Sight. Detectable only upon critical examination.	We propose to change the wording to provide consistency with other U.S. grade standards for dry milk products.
(2) Definite. An attribute which is readily identifiable and present to a substantial degree.	(2) Definite. Not intense but detectable.	We propose to change the wording to provide consistency with other U.S. grade standards for dry milk products.

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Current Standard	Proposed	Discussion
(3) Undesirable. Those flavors in excess of the intensity permitted or those flavors not otherwise listed.	No change.	NA
(4) Bitter. Similar to taste of quinine and produces puckery sensation.	(4) Bitter. Distasteful, similar to taste of quinine.	We propose to change the wording to provide consistency with other U.S. grade standards for dry milk products.
(5) Cooked. Similar to a custard flavor and imparts a smooth aftertaste.	No change.	N/A.
(6) Feed. Feed flavors (such as alfalfa, sweet-clover, silage, or similar feed) in milk carried through into the dry whole milk.	No change.	
(7) Oxidized. A flavor resembling cardboard and sometimes referred to as "cappy" or "tallowy".	No change.	N/A.
(8) Scorched. A more intensified flavor than "cooked" and imparts a burnt aftertaste.	No change.	N/A.
(9) Stale or Storage. Lacking in freshness and imparting a "rough" or "harsh" aftertaste.	No change.	N/A.
(10) Sweet. The lack of detectable acidity.	No change.	N/A.

Current Standard	Proposed	Discussion
(b) With respect to physical appearance:	No change.	N/A.
(1) Practically free. Is barely identifiable upon examination and present to a very small degree.	(1) Practically free. Present only upon very critical examination	We propose to change the wording to provide consistency with other U.S. Grade Standards for dry milk products.
(2) Reasonably free. Is easily identifiable upon examination and present to a small degree.	(2) Reasonably free. Present only upon critical examination.	We propose to change the wording to provide consistency with other U.S. Grade Standards for dry milk products.
(3) Slight pressure. Lumps fall apart with only light touch.	(3) Slight pressure. Only sufficient pressure to readily disintegrate the lumps.	We propose to change the wording to provide consistency with other U.S. Grade Standards for dry milk products.
(4) Moderate pressure. Only sufficient pressure to disintegrate the lumps readily.	(4) Moderate pressure. Only sufficient pressure to disintegrate the lumps easily.	We propose to change the wording to provide consistency with other U.S. Grade Standards for dry milk products.
(5) Grainy. Minute particles of undissolved powder appearing in a thin film on the surface of a glass or tumbler.	No change.	N/A.
(6) Unnatural color. A color that is more intense than light cram and/or is brownish, dull or grey-like.	(8) Unnatural color. A color that is more intense than light cream and/or is brownish, dull or grey-like.	We propose to renumber this term in order to alphabetize the listing of characteristics.
(7) Lumps. Loss of powdery consistency but not caked into hard chunks.	(6) Lumps. Loss of powdery consistency but not caked into hard chunks	We propose to renumber this term in order to alphabetize the listing of characteristics.

Current Standard	Proposed	Discussion
(8) Visible dark particles. The presence of scorched or discolored specks readily visible to the eye.	(9) Visible dark particles. The presence of scorched or discolored specks readily visible to the eye.	We propose to renumber this term in order to alphabetize the listing of characteristics.
	(7) Uniform color. Free from variations in shades or intensity of color.	We propose to include wording to define uniform color, and to provide consistency with other U.S. Grade Standards for dry milk products.

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Authority: 7 U.S.C. 1621–1627.

Dated: July 21, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–18987 Filed 7–27–00; 8:45 am]

BILLING CODE 3410–02–C

DEPARTMENT OF AGRICULTURE

Forest Service

McKean County, PA; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service, Allegheny National Forest, Bradford Ranger District will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Lewis Run Project. The Forest Service is proposing to move from the existing condition towards the Desired Future Condition, as detailed in the Allegheny National Forest Land and Resource Management Plan.

Proposed activities to meet the Desired Future Condition are: (1) Regeneration harvest consisting of shelterwood/removal cuts, removal cuts, 2-age harvest, and salvage shelterwood/removal cut; (2) Intermediate harvest consisting of thinning and salvage; (3) Reforestation treatment consisting of herbicide application, site preparation, fertilization, and cleaning and weeding (non-commercial timber stand improvement); (4) Wildlife habitat improvement consisting of conifer/mast underplanting, commercial release, opening construction/seeding, apple trees pruning, planting in openings, non-commercial release, and enhancing vernal pond; (5) Transportation activities consisting of road reconstruction, closing roads and seeding, limestone surfacing, installing gates, and pit expansion.

DATES: Comments and suggestions concerning the scope of the analysis should be submitted (postmarked) by August 28, 2000 to ensure timely consideration.

ADDRESSES: Submit written, oral, or e-mail comments by: (1) mail—Lewis Run Project, ID Team Leader, Star Route 1 Box 88, Bradford, PA 16701; (2) phone—814–362–4613; (3) e-mail—anf/r9_allegheny@fs.fed.us (**Please note:** when commenting by e-mail be sure to list Lewis Run EIS in the subject line and include a US Postal Service address so we may add you to our mailing list).

FOR FURTHER INFORMATION CONTACT: Andrea Hille or Ruth Miller, Bradford Ranger District, at 814–362–4613.

SUPPLEMENTARY INFORMATION: The Allegheny Forest Plan provides for management of forest resources. Management objectives include producing a sustainable supply of high-quality sawtimber and wood products, developing and maintaining a wide array of wildlife habitats, and providing a range of recreation settings and experiences. Specific objectives are defined for each Management Area, and the Lewis Run Project is located entirely within Management Area 3.0, which emphasizes timber harvest as a means for making desired changes to forest vegetation and satisfying the public demand for wood products.

Preliminary Issues were developed based on past projects in the area (environmental assessments), issues developed for similar projects, and Forest Service concerns and opportunities identified in the Project Area. These issues are listed below:

1. Road Management—The Forest Service will complete a Roads Analysis, which includes evaluating all roads in the Project Area for effects to the ecosystem. The proposed action requires examining the road system to determine if the existing road system is adequate (or if improvements are needed), and if any roads need to be closed for resource protection or other reasons (*e.g.*, water quality, wildlife, or recreation opportunities).

2. Even-Aged/Uneven-Aged Management—The Forest Plan provides direction regarding the primary silvicultural system to be used in each management area; for Management Area 3.0 it is even-aged management. Uneven-aged management is an option considered for inclusions such as riparian areas, wet soils, or visually sensitive areas. A court decision (10/15/97) determined that the Forest should more fully explore the use of uneven-aged management techniques.

3. Threatened and Endangered Species—The Forest Service is mandated to protect all proposed, threatened, endangered and sensitive (PETS) species. Suitable Indiana and Northern long-eared bat habitat was sampled within the project area in 1999; although no bats were detected or captured, the project area is assumed to provide occupied habitat for both species. All treatments in the proposed action would adhere to terms and conditions set forth in the 6/1/99 Biological Opinion issued by the US Fish and Wildlife Service.

Commenting: A range of alternatives will be considered after public comments are received and analyzed. One of these will consider No Action for the Project Area. The Draft EIS is expected to be filed with the Environmental Protection Agency and available for public review by January 2001. At that time the Environmental Protection Agency will publish a Notice of Availability of the document in the **Federal Register** (this will begin the 45-day comment period on the Draft EIS). After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The Final EIS is scheduled for release in June 2001.

Comments received, including names and addresses of those who comment, will be considered part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

The Forest Service believes it is important to give reviewers notice at this early stage of several court ruling related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 553 [1978]). Also, environmental objection that could be raised at the draft environmental impact statement state but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 f.2nd 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in

the statement. Reviewers may wish to refer to Council on Environmental Quality *Regulations for implementing the procedural provisions of the National Environmental Policy Act* at CFR 1503.3 in addressing these points.

This decision will be subject to appeal under 36 CFR 215. The responsible official is John R. Schultz, Bradford Ranger District, Star Route 1 Box 88, Bradford, PA 16701.

Dated: July 17, 2000.

John R. Schultz,

District Ranger.

[FR Doc. 00–18520 Filed 7–27–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sixshooter Project, Boise National Forest, Valley County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Emmett Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for project in the Six Mile subswatershed, a tributary to the Middle Fork Payette River drainage. The project area is located about 70 road miles north of Boise, Idaho.

The Forest Service is seeking information and comments from Federal, State, tribal, and local agencies, as well as individuals and organizations who may be interested and/or affected by the proposed action. The agency invites written comments and suggestions on the issues related to the proposal and the area being analyzed. The information received will be used in preparing the draft and final EIS.

Proposed Action: Three objections have been identified for the project: (1) Reduce forest susceptibility to damaging insects and/or pests and to severe wildfire; (2) reduce management induced sediment in Six Mile and West Fork Creek by up to 9 percent over current levels; and (3) provide forest products (*i.e.*, commercial timber) that support local sawmills, employment opportunities, and economies.

The proposal action would treat, with timber harvest, about 9,000 acres, through ground-based (2,300 acres), skyline/cable (4,500 acres), or helicopter (2,000 acres) yarding systems. The proposed action would employ a variety of silvicultural systems. Silvicultural prescriptions for the proposed action are clearcut with reserve (32 acres), commercial thinning (3,474 acres), and shelterwood (5,469 acres).

The existing transportation system would be improved to facilitate the harvest operation and reduce sedimentation. Changing the existing transportation system would require 16 miles of road relocation, 15 miles of new road construction, reconstruction of over 30 miles of existing road by adding drainage structures and additional hard surfacing, relocating Six Mile road (No. 670) and closing over 30 miles of existing roads. The proposed haul route would be up West Fork Creek (No. 600) road and Six Mile Creek (No. 670) road to the 662 road and then out the 417B road to Highway 55. Portions of the following roads would be closed: 600C (3.2 miles), portions of 621, (1.4 miles), and portions of 670A, (2.9 miles). Portions of the 670 road would be relocated (5.3 miles). This change in the road system targets those areas that contribute the greatest amount of sediment delivery to the watershed. The motorized access to the following roads would be maintained during the snow free season: West Fork Creek 600, Six Mile-Round Valley 670, and Middle Fork Payette Ridge 662.

Preliminary Issues: None have been identified at this time.

Possible Alternatives to the Proposed Action: The following alternative to the proposed action has been discussed thus far and will be considered in the draft environmental impact statement: a no action alternative.

Decisions to be made: The Boise National Forest Supervisor will decide the following: (1) Should roads be constructed and reconstructed and timber harvested within the Sixshooter project area at this time; and if so, where within the project area, and how many miles of road should be constructed and/or reconstructed; and (2) should other roads be relocated and/or closed to meet watershed restoration objectives.

Public Involvement and Comments: Written comments concerning the proposed project should be postmarked within 30 days from the day after publication of this announcement in the **Federal Register**.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality might be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester the comments may be resubmitted with or without name and address within 10 days.

ADDRESSES: Comments should be addressed to Morris Huffman, District Ranger, Emmett Ranger District, 1805 Highway 16, Emmett, ID 83617.

FOR FURTHER INFORMATION CONTACT: Jeffery Clark, Project Team Leader, at the address above or by telephone at 208–365–7000.

Schedule: The draft EIS is anticipated to be available for public review and comment in November 2000; the final EIS is anticipated to be available in the spring of 2001.

SUPPLEMENTARY INFORMATION: The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to giver reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions, (*Vermont Yankee Nuclear Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts, (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: David D. Rittenhouse, Forest Supervisor, Boise National Forest is the responsible official, 1249 South Vinnell Way, Suite 200, Boise, Idaho 83709.

Dated: July 21, 2000.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 00–19075 Filed 7–27–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ray's Valley Road Realignment, Uinta National Forest, Utah County, Utah

AGENCY: Forest Service, USDA.

ACTION: Revision to Notice of intent to prepare an environmental impact statement.

SUMMARY: The Uinta National Forest will prepare an environmental impact statement on a proposal to realign the existing Ray's Valley Road (Forest Development Road #051). Ray's Valley road is an arterial road on the Spanish Fork Ranger District, Uinta National Forest. This is a revision to the Notice of Intent published in the **Federal Register** (Vol. 65, No. 104, pp. 34436–34437) on May 30, 2000.

DATES: Comments should be received in writing by August 30, 2000.

ADDRESSES: Comments should be mailed to Renee Flanagan, Ray's Valley EIS Team Leader, Uinta National Forest, 88 West 100 North, PO Box 1428, Provo, Utah 84601 or sent by e-mail to rflanagan@fs.fed.us.

SUPPLEMENTARY INFORMATION: A Notice of Intent for this project was originally published in the **Federal Register** (Volume 65, Number 104, pp. 34436 to 34437) on May 30, 2000. The May 20th NOI contained an error in the scoping dates. This Revision to the NOI provides for another scoping comment period, revises the anticipated completion dates for the Draft and Final environmental impact statements, and updates the name of the project leader and contact.

The Ray's Valley Road is a heavily used travel route that connects with the Diamond Fork Road (Forest Development Road #029), and the Right Fork Hobble Creek Road (Forest Development Road #058) at Springville Crossing. These arterial travel routes provide access for the Wasatch Front to Spanish Fork Canyon, and Utah State Highway 6 via the Diamond Fork and Ray's Valley Roads. They also provide access to and from Utah State Highway 6 and the Strawberry Reservoir Recreation Complex via the Ray's Valley Road.

The surface of the Diamond Fork Road and most of the Ray's Valley Road are asphalt pavement of gravel. However, a portion of the Ray's Valley Road is narrow, winding, and native-surfaced. During inclement weather conditions, the road surface becomes extremely hazardous to travel, and/or impassable.

Some of the existing road lies directly adjacent to tributaries of Diamond Fork Creek. Approximately 1.8 miles of this route are located on soils subject to severe slumping and/or erosion. Due to the proximity of the road to the streams, eroding soil is easily transported into Diamond Fork and Sixth Water Creeks. Diamond Fork Creek provides habitat for Bonneville Cutthroat Trout, a sensitive species. Operation and maintenance costs on this section of road are high. Existing road conditions do not meet Road Management Objectives for an arterial system road. The Forest Service has long planned to realign this road to address these concerns; however, funding has never been available.

The proposed action is to construct the Ray's Valley Road on a new alignment and to obliterate the road on its existing alignment. The purpose and need of the proposed action is to reduce or eliminate these adverse watershed and fisheries impacts, and to provide safer driving conditions, while maintaining a key arterial component of the Forest's travel system.

Preliminary issues: Issues identified at this time include: health and safety; travel management; soils; fisheries; threatened, endangered, and sensitive plant and animal species; and roadless areas.

Possible Alternatives: Three possible alternatives have been identified: (1) No Action—Leave the road in its current condition: (2) Reconstruct Using the Existing Alignment—Reconstruct on the existing alignment and surface the road with crushed aggregate; and (3) Construct on a New Alignment (Proposed Action)—Reconstruct, realign, and obliterate portions of the Ray's Valley Road.

The No Action Alternative would leave the road in current condition. Maintenance would be limited to actions required for passage of high clearance vehicles. The road would remain unsafe during periods of precipitation. Arterial system road standards for capacity and safety would not be addressed by this alternative. Road induced sediment in nearby streams would remain at current levels, or increase as erosion of the roadway continues.

The Reconstruct Existing Alignment Alternative would reconstruct the road on its existing alignment and add a crushed aggregate surface. Reconstruction would provide better control of drainage from roadway runoff, provide safer and more comfortable vehicle travel during precipitation, and support a greater range of vehicle types. Road induced sediment in nearby streams would slightly decrease due to better drainage and aggregate surfacing. Road Management Objectives for an arterial system road will not be fully accomplished by this alternative due to the location.

The Proposed Action is the Construct New Alignment Alternative. Under this alternative the majority of the existing Ray's Valley Road would be constructed on a new alignment and a small portion would be reconstructed on the existing alignment. The new alignment would be located on more stable soils, and away from streams and riparian areas. The abandoned portions of the existing alignment would be closed and rehabilitated. This proposal would result in approximately 3.6 miles of a double lane road with a crushed aggregate surface. Access to Forest Development Road 715 from the new alignment would be maintained by reconstructing a portion of Forest Development Road 387. This would ensure continued access to the west portal of the Strawberry Tunnel.

Proposed Scoping Process: This Revised Notice of Intent extends the scoping process. As part of the scoping period, the Forest Services solicits public comment on the nature and scope of the environmental, social, and economic issues related to the proposed action that should be analyzed in depth in the Draft Environmental Impact Statement. Comments on this proposal should be sent to the address shown earlier in this notice.

Public participation will be solicited by notifying affected interests through personal contacts and by mail. This project has been listed in the Uinta National Forests "Schedule of Proposed Actions" (*i.e.* NEPA Quarterly). News releases will also be utilized to give the public general notice. Comments concerning the Proposed Action and EIS should address environmental issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to or bearing on the Proposed Action.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but are not raised until after completion of the final environmental impact statement, may be viewed or dismissed by the courts. City of Angoon v. Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully considered and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environment impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Tentative Project Schedule: Begin Comment Period—April, 2000; Comment Period Ends—August 30, 2000; Draft EIS—December, 2000; Final EIS and Record of Decision—April 2001.

Responsible Official: Jack A. Blackwell, USDA Forest Service Intermountain Regional Forester, 324 25th Street, Ogden, Utah 84401.

For Further Information Contact: Renee Flanagan, (801) 342–5100 or at the address listed previously.

Dated: July 17, 2000.

Peter W. Karp,

Forest Supervisor.

[FR Doc. 00–19062 Filed 7–27–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Ohio

AGENCY: Natural Resources Conservation Service (NRCS) in Ohio, Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Ohio for review and comment.

SUMMARY: It is the intention of NRCS in Ohio to issue revised conservation practice standards in Section IV of the FOTG. The proposed standard revisions are Nutrient Management (Code 590) and Waste Utilization (Code 633). These practices may be used in conservation systems that involve "Comprehensive Nutrient Management Plans".

DATES: Comments will be received on or before August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Paul DeArman, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 200 North High Street Room 522, Columbus, Ohio 43215. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *paul.dearman@oh.nrcs.usda.gov*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after the enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding the disposition of those comments and a final determination of change will be made.

Dated: July 5, 2000.

J. Kevin Brown,

State Conservationist, Columbus, Ohio.

[FR Doc. 00–19056 Filed 7–27–00; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

DATES: *Effective Date:* August 28, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 9 and 16, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 36663 and 37757) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Logo, BDU Coat and Shirt
8455–00–NSH–0001 (Coat)
8455–00–NSH–0002 (Shirt)

Service

Janitorial/Custodial for the following locations:
Veterans Center #401, 1766 Fort Street, Lincoln Park, Michigan.
Veterans Center #402, 4161 Cass, Detroit, Michigan
This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Enamel
8010–00–079–3758
8010–00–079–3760

Louis R. Bartalot,
Deputy Director (Operations).

[FR Doc. 00–19161 Filed 7–27–00; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

DATES: Comments must be received on or before August 28, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Line, Multi-Loop
1670–01–062–6304
NPA: Industrial Opportunities, Inc., Marble, North Carolina.

Services

Grounds Maintenance, Base Housing, Marine Corps Air Station, Cherry Point, North Carolina.
NPA: CETC Employment Opportunities, Inc., New Bern, North Carolina.

Hearing/Grievance Examiner Services, The Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC.
NPA: Federal Dispute Resolution Center, Alexandria, Virginia.

Parking Facility Attendant, VA Medical Center, 2215 Fuller Road, Ann Arbor, Michigan.
NPA: Washtenaw County Community Mental Health Board, Ann Arbor, Michigan.

Switchboard Operation, Harry S. Truman Memorial Veterans' Hospital, Columbia, Missouri.
NPA: Alphapointe Association for the Blind, Kansas City, Missouri.

Warehouse Operation, Department of Transportation, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, Maryland.
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Stepladder
5440–00–514–4483
5440–00–514–4485
5440–00–514–4487

Louis R. Bartalot,
Deputy Director (Operations).

[FR Doc. 00–19162 Filed 7–27–00; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Termination of Suspended Antidumping Duty Investigation on Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of five-year ("Sunset") review, termination of suspended antidumping duty investigation on honey from the People's Republic of China.

SUMMARY: On July 3, 2000, the Department of Commerce ("the Department") initiated a sunset review of the suspended antidumping duty investigation on honey from the People's Republic of China ("China"). Because no domestic party responded to the sunset review notice of initiation of the suspended antidumping duty investigation by the applicable deadline, the Department is terminating this suspended investigation.

EFFECTIVE DATE: August 16, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1995, the Department suspended the antidumping duty investigation on honey from China (60 FR 42521). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated a sunset review of this suspended investigation by publishing notice of the initiation in the **Federal Register**, July 3, 2000 (65 FR 41054). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review on this suspended investigation.

In the sunset review of the suspended antidumping investigation on honey from China, we received notice of intent to participate from the American Honey Producers Association and the American Beekeeping Federation, Inc. However, on July 21, 2000, each of these domestic interested parties withdrew their notice. Therefore, the Department has determined that no domestic interested party intends to participate in the sunset review of this suspended investigation.

Determination To Terminate

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations* (19 CFR 351.218(d)(i)(iii)(B)(3)), if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, July 18, 2000, we are terminating this suspended antidumping investigation.

Effective Date of Termination

The termination of the suspended investigation is effective as to all entries, or withdrawals from warehouse of the subject merchandise on or after August 16, 2000.

Dated: July 24, 2000.

Troy H. Cribb,
Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19156 Filed 7–27–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813 and A–560–802]

Certain Preserved Mushrooms From India and Indonesia: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 and (202) 482–4929 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999).

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On March 30, 2000, the Department published a notice of initiation of

administrative reviews of the antidumping duty orders on Certain Preserved Mushrooms from India and Indonesia, covering the period August 5, 1998, through January 31, 2000 (65 FR 16875). The preliminary results for each review are currently due no later than October 31, 2000.

Extension of Time Limit for Preliminary Results

The Department has determined that it is not practicable to complete the Indian and Indonesian reviews within the time limit mandated by section 751(a)(3)(A) of the Act. Following initiation of these administrative reviews, we received allegations of sales below cost of production for certain respondents in both the India and Indonesia reviews. We have completed our analysis of the cost allegations and are in the process of conducting the cost investigations for these respondents, and of analyzing the cost of production and/or constructed value data submitted by the remaining respondents. In addition, we are conducting concurrently an administrative review and a new shipper review of the antidumping duty order on Certain Preserved Mushrooms from the People's Republic of China. Given the number of respondents involved in all of these reviews, the potential complexity of the issues, and the administrative constraints on the Department, we are unable to complete our preliminary analyses of the India and Indonesia reviews before the current deadline. Therefore, the Department is extending the time limit for the preliminary results in these two reviews to February 28, 2001. The Department intends to issue the final results of the reviews 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: July 24, 2000.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–19157 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 000717210–0210–01]

RIN 0694–XX13

Summary of Secretarial Report Under Section 232 of the Trade Expansion Act of 1962, As Amended, on the Effect of Imports of Crude Oil on the National Security

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On March 24, 2000, President William J. Clinton reviewed and approved the Secretary of Commerce's finding that imports of crude oil threaten to impair the national security. The President determined that no action is necessary to adjust imports of petroleum under Section 232 of the Trade Expansion Act, as amended, because on balance the costs to the economy of an import adjustment outweigh the benefits and that existing policies to enhance conservation and limit the dependence on foreign oil be continued. Such policies include, *inter alia*, proposals for additional tax credits to promote renewable, more efficient energy sources and further investments in energy-saving technologies and alternative energy sources. Included herein is the Executive Summary of the Department's November 1999 report to the President.

ADDRESSES: Copies of the complete report may be requested from: Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's website (which can be reached through *http://www.bxa.doc.gov*). If requesters cannot access this, please call the number above for assistance.

FOR FURTHER INFORMATION CONTACT: Scott Hubinger, Senior Policy Analyst, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, (703) 605–4416.

SUPPLEMENTARY INFORMATION: On March 11, 1999, fifteen U.S. Senators, in a letter to the President, requested that he take immediate action to address the threat of increasing oil imports to our national security. Subsequently, on March 12, 1999, eleven U.S. Senators and a member of the House of Representatives, in two separate letters to the Secretary of Commerce, raised similar concerns and directly requested that he initiate an expedited review and investigation into the impact of low oil prices and ever increasing oil imports on the United States national security under the authority of Section 232 of the Trade Expansion Act of 1962, as amended.

On April 28, 1999, the Department of Commerce self-initiated an investigation under Section 232 of the Trade Expansion Act of 1962, as amended, to determine the effects on the national security of imports of crude oil and petroleum products. The investigation focused on two issues. One, are imports of oil and petroleum products threatening to impair the national security of the United States and two, if a positive finding can be found that imports of crude oil and petroleum products do threaten the national security, is a trade adjustment, as provided for under Section 232, the appropriate means to address the threat?

In conducting the investigation, the Department chaired an interagency working group that included the Departments of Energy, Interior, State, Treasury, and Defense, the Office of Management and Budget, and the Council of Economic Advisors. The Department and the interagency working group drew upon an extensive body of data and analyses on the current and prospective status of the domestic petroleum industry and the world oil market. The Department also utilized written comments solicited from and provided by interested parties in response to a **Federal Register** notice published on May 4, 1999. In view of the extensive amount of interagency and public comment information available to it, the Department determined that an industry survey or public hearing was not necessary.

On November 2, 1999, Secretary William Daley concluded his investigation and submitted a report to the President. While concluding that some improvements in U.S. energy security have occurred since previous investigations in 1988 and 1994, the Department found that petroleum imports continue to threaten to impair the national security. As in previous investigations, the Department did *not* recommend the adjustment of oil imports under Section 232 because the economic costs of such a move outweigh the benefits, but rather recommended continued efforts to achieve the policy goals set forth in the Department of Energy's April 1998 *Comprehensive National Energy Strategy*. The Executive Summary of the

Secretary's November 1999 report to the President entitled, the Effect on the National Security of Imports of Crude Oil and Refined Petroleum Products, is reproduced below.

Dated: July 18, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

Executive Summary

Introduction

On March 11, 1999, Senators Domenici, Hutchinson, Inhofe, Nighthorse-Campbell, Roberts, Sessions, Crapo, Nickels, Murkowski, Craig, Burns, McConnell, DeWine, Brownback, and Bunning, in a letter to the President, requested that he take immediate action to address the threat of increasing oil imports to our national security. On March 12, 1999, Senators Bingaman, Breaux, Landrieu, Conrad, Enzi, Lincoln, Lott, Dorgan, Baucus, Murkowski, and Burns, in a letter to Secretary Daley, raised similar concerns and directly requested that the Department of Commerce initiate an expedited review and investigation into the impact of low oil prices and ever increasing oil imports on the United States national security under the authority of Section 232 of the Trade Expansion Act of 1962, as amended. Representative Istook made a similar request.

In their letter to Secretary Daley, the Senators quoted from a 1999 survey by the Independent Petroleum Association of America, which alleged that, since November of 1997, 193,000 marginal oil and gas wells have been shut down with a loss in oil production of 360,000 barrels per day. The Senators stated that 24,000 domestic jobs have already been lost in the oil industry and another 17,000 job cuts are expected. Finally, the Senators addressed the concern that low priced crude oil imports could lead to the permanent loss of a significant portion of the United States domestic oil production capacity and resource base.

On April 28, 1999, the Department of Commerce self-initiated an investigation under Section 232 of the Trade Expansion Act of 1962, as amended, to determine the effects on the national security of imports of crude oil and petroleum products. The investigation focused on two issues. One, are imports of oil and petroleum products threatening to impair the national security of the United States? Two, if a positive finding is found that imports of crude oil and petroleum products do threaten the national security, is a trade adjustment, as provided for under section 232, the appropriate means to address the threat?

Under Section 232, The Department has 270 days from the date of initiation of an investigation to submit a report of findings and recommendations to the President. Based upon an initiation date of April 28, 1999, the Department has until January 29, 2000 to complete its investigation and submit its report to the President.

Methodology

The Department chaired an interagency working group that included the Departments of Energy, Interior, State, Treasury, and Defense, the Office of Management and Budget, and the Council of Economic Advisers. This report is based on a number of agreed-upon economic assumptions including, *inter alia*, crude oil price levels, U.S. crude oil reserves and production rates, economic growth rates, and inflation.

In determining whether petroleum imports threaten to impair the national security, the Department reviewed key factors from the 1994 investigation as a starting point to determine whether they improved or deteriorated. These factors include: (1) Domestic oil reserves; (2) Domestic oil production; (3) Exploration and industry employment; (4) Impact of low oil prices on the economy; (5) Current status of the domestic oil industry; (6) Oil import dependence; (7) Vulnerability to a supply disruption; (8) Foreign policy flexibility; (9) U.S. military requirements; (10) Status of OPEC; (11) Transparency of oil markets; (12); Breakup of the Soviet Union. The Department also reviewed new factors that have emerged since the 1994 investigation, including: (1) Temporary economic decline in East Asia; (2) Iraqi oil exports; and (3). Non-OPEC offshore drilling.

The Department made use of the extensive data and analyses that were already available regarding the current and prospective status of the domestic petroleum industry and the world oil market. In addition, the Department reviewed the Department of Energy's Comprehensive National Energy Strategy, which, issued in April 1998, outlines five major energy goals of the Administration. In view of this extensive body of available data, the Department determined that an industry survey was not necessary. The Department also drew upon the written comments solicited from and provided by interested parties in response to a **Federal Register** notice published on May 4, 1999.

Review of Key Factors From the 1994 Investigation

1. Domestic Oil Reserves

Since the 1994 investigation, U.S. proven crude oil reserves declined by an estimated 0.5 billion barrels from 23.0 billion barrels in 1993 to 22.5 billion barrels in 1998. The underlying physical reality is that the United States has already developed the bulk of its known and easily accessible low cost deposits and has decided against developing other geological prospects such as the Arctic National Wildlife Refuge and certain portions of the Outer Continental Shelf . The reserves base reflects the structural geological and geophysical reality, given present technology and economics.

2. Domestic Oil Production

The production outlook remains essentially the same as in the 1994 investigation. The United States is a high cost producer compared to other countries because it has already depleted its known low cost reserves. U.S. production of crude oil declined by 0.42 million barrels per day (MMB/D) between 1994 and 1998 (from 6.66 to 6.24 MMB/D) and fell below 6 MMB/D in early 1999. To offset this decline in production and increasing consumption, imports have increased dramatically since 1994, rising by 1.64 MMB/D (1998 basis).

3. Exploration and Industry Employment

The Department did find some change in U.S. drilling and in oil and gas industry employment between 1994 and early 1999. Levels of employment in the extraction industry varied from a high of 337,000 in 1994 and a low in 1995 of 320,000, but increased again to 339,000 in 1997 and 338,000 in early 1998. Industry commenters provided anecdotal information showing additional steep drops in employment and drilling activity during 1998 and early 1999 due to the oil price decline. In addition, Department of Labor statistics indicate a decrease in extraction industry employment starting in the last half of 1998 (falling from 325,000 to 308,000) and continuing into 1999 (229,000 in January and 291,000 in February). However, the total footage of exploratory drilling, the number of well completions, and the number of rotary rigs in use for oil and gas exploration increased between 1994 and 1998, albeit with significant variations from year to year.

Low oil prices are *not* the only reason for the long term historical decline in industry employment, exploratory

drilling, and well completions. U.S. companies are drilling less because they have made substantial gains in total productivity by employing new exploration and drilling technology and by focusing on the most promising geological sites based upon improved geological science and technology. In addition, the high cost of off-shore exploration and drilling, where most of the domestic exploratory activity is occurring today, strongly favors the development and use of advanced seismic mapping and analysis techniques in order to maximize drilling productivity. Companies are also continuing to realize productivity gains due to improvements in operations management.

4. Impact of Low Oil Prices on the Economy

The Department found that the economic consequences of low prices resulted in positive benefits to the U.S. economy. Because the United States is a net importer of oil, lower prices on balance helped the economy. The public benefitted from lower prices for transportation fuels and heating oil. For the economy as a whole, low oil prices contributed to a reduction in inflation, a rise in real disposable income, and an increase in the Gross Domestic Product.

5. Current Status of the Domestic Oil Industry

Low oil prices starting in November of 1997 and continuing through early 1999 exacerbated the chronic cost-price squeeze problems faced by independent producers who account for the largest share of lower 48 states oil production (40 percent). Consequences for the 7000 independents who operate in the U.S. include: assuming more debt; scaling-down exploration activities; reducing their work force of skilled labor; and shutting-in temporarily or abandoning certain oil and gas producing wells.

The impact of low oil prices is particularly hard on small producers operating stripper or marginal wells with an average production of 15 barrels per day or less. These wells, which represent over 300 million barrels of annual production, could be permanently lost during a sustained period of low oil prices and high operating costs.

The Department's efforts to analyze the impact of the 1998 price decline on the smaller producers was complicated by the commenters' failure to provide specific economic and technical information. Various commenters argued strongly for the U.S. Government to provide financial incentives to smaller producers, but no company or trade association submitted economic and financial data regarding levels of profitability and tax burden under various oil price scenarios. Nevertheless, the 1998 through early 1999 price drop, although temporary, did have a severe impact on marginal oil and gas wells and raised concerns about the ability of the United States to stabilize domestic oil production and to achieve its natural gas expansion goals. Since the November 1997 price collapse, 136,000 oil wells are believed to have been shut-in (non-producing), representing about 24 percent of all producing oil wells. In addition, 57,000 gas wells are believed to have been shut-in, about 19 percent of all gas wells. This data is based on anecdotal information provided by industry (Independent Petroleum Association of America). Note: About 20 percent of the U.S. gas supply ("associated gas") is associated with oil production and is therefore also impacted by low oil prices.

6. Oil Import Dependence

The Department found that net U.S. imports have grown from 8.1 MMB/D in 1994 to 9.7 MMB/D in 1998 and currently account for 51 percent of domestic consumption compared to 45 percent in 1994. Imports from Persian Gulf countries, which increased from 1.7 MMB/D in 1994 to 2.1 MMB/D in 1998, currently account for 22 percent of all U.S. petroleum imports. The majority of U.S. imports, over 50 percent, are sourced from reliable Western Hemispheric countries such as Canada, Mexico, and Venezuela.

The Department found that the energy provisions of the recent trade agreements between the United States and Canada have enhanced U.S. energy security. Specifically, Article 605 of the North American Free Trade Agreement (NAFTA) provides a number of reciprocal benefits that provide for energy security in the event of a supply interruption. These mutual benefits include: (1) Each country will not impose restrictions on the delivery of energy and basic petrochemical supplies during a supply interruption; (2) any shortfall in supply will be shared equally among U.S. and Canadian markets based on historical percentages; (3) each party will not impose higher export prices than those charged domestically; and (4) there will not be a disruption of the prevailing proportion of energy goods supplied, such as, for example, between crude oil and refined products and among different categories of crude oil and refined products. This unprecedented energy cooperation provides significant security benefits for both nations, and clearly demonstrates that the United States and Canada are developing an integrated and secure North American energy market.

U.S. demand for imported oil is expected to continue growing because of declining production by high cost small producers, who account for the largest share of lower 48 states oil production, and continued economic growth. The Energy Information Administration of the U.S. Department of Energy (EIA/DOE) projects that, based on current forcasts, net imports should increase to 12.2 MMB/D by 2005 and account for approximately 58 percent of domestic consumption.

To the extent that the United States and other countries import more oil in the future, EIA/DOE projects that they will turn increasingly to OPEC countries located in the Persian Gulf which have the largest amount of known low cost reserves and excess production capacity. The OPEC producers in the Persian Gulf region, representing 42 percent of world crude oil exports in 1994, will account for approximately 49 percent by 2010.

7. Vulnerability to a Supply Disruption

The Department found that unresolved socio-political and economic issues in some Persian Gulf countries increase the probability of future supply disruptions in the Persian Gulf region. However, the Persian Gulf's largest producer, Saudi Arabia, has pursued oil policies, including diversification of export routes and maintenance of considerable excess production capacity, that serve to mitigate some of these risks. Disruptions are possible in other regions, but the risks to the United States and other importing countries are comparatively less severe given the magnitude of Persian Gulf production and because oil production facilities elsewhere are not as concentrated as they are in the Persian Gulf.

The capability of the United States and the OECD countries to offset a major oil supply disruption has not improved since 1994. The U.S. is still vulnerable because: (1) Most of the spare production capacity is still in the Persian Gulf region; (2) U.S. and OECD government oil stocks today provide less protection from an interruption than was the case in 1988 or 1994; and (3) There is currently no substitute for liquid transportation fuels which account for approximately two-thirds of all oil consumption in the United States. During a major oil supply disruption, there could be substantial economic austerity as a result of the decreased availability of oil. This, in turn, could pose a hardship for the U.S. economy.

8. Foreign Policy Flexibility

In both the 1988 and 1994 investigations, the Department found that the dependence of our allies and trading partners on potentially insecure sources of oil might affect their willingness to cooperate with the United States during a major supply disruption. Some of these concerns are mitigated by the participation of the United States in the International Energy Agency (IEA), which groups together 24 members of the Organization for Economic Cooperation and Development (OECD). The principle purpose of the IEA is to fashion a collective response to energy emergencies, which may include the coordinated release of the emergency oil stocks that all IEA members are required to maintain. However, increased market share forecasted for some OPEC countries, and some Persian Gulf States, over the next 20 years, could make cooperation by some oil consumers more difficult.

9. U.S. Military Requirements

The Department of Defense advises the Department that, under current planning scenarios, the United States will be able to meet both its direct and indirect military requirements for petroleum products in the event of two nearly simultaneous major regional conflicts or a major peacetime supply disruption.

10. Status of OPEC

Low world oil prices are only partially due to the fact that OPEC members have been unable, until very recently, to coordinate production levels among themselves. The urgent financial requirements of some OPEC members has led them to compete for revenue and market share even if this has meant accepting a lower per-unit price for their oil. However, by mid-1998, declining prices set in motion renewed OPEC efforts to reduce excess oil supplies. For the remaining months of 1998, announced and realized production cuts were not clearly synchronized, and efforts to reduce production had only modest success. More recently, OPEC members have been more effective at reducing world production to increase prices. Ten members of OPEC, excluding Iraq, pledged in March 1999 to cut production by 2.1 MMB/D. The compliance of these ten OPEC members with announced production cuts was about 89 percent in July 1999. Oil prices have steadily increased since then due to these production cuts and stronger overall worldwide demand. The Department of Energy's Energy Information Administration projects that the cost for imported oil (Refiner Acquisition Cost) will be $22.50 and $23.50 per barrel, respectively, for November and December of 1999 and average $21.85 per barrel in 2000.

11. Transparency of Oil Markets

The growth of the futures market into a full-fledged commodity market has made crude oil prices more transparent and less subject to manipulation by foreign governments or OPEC. Prices are now determined by the New York Mercantile Exchange (NYMEX), the International Petroleum Exchange (IPE), the Singapore Mercantile Exchange (SIMEX), and other commodity markets. The use of computerized trading, options, and forward contracts has connected crude oil and refined product markets and suppliers more closely than was the case in 1988 or 1994. However, commodity markets, like all markets, are subject to volatility and have the potential to react in ways which can harm U.S. oil production.

12. Breakup of the Soviet Union

The end of the Cold War and the breakup of the Soviet Union has reduced tensions around the world, including the Middle East. The advancement of the Middle East Peace Process has also contributed to a reduction of tensions in the region. Both of these developments have reduced the probability of a conventional war that could have jeopardized access to Middle East oil. In addition, oil production in the former Soviet Union, primarily in the Caspian Sea area, is expected to reach 7.6 MMB/D by 2005 and 13 MMB/D by 2020. Based on projected demand, the region could become a net exporter of oil at approximately 7.9 MMB/D by 2020. These additions to the world oil supply and as well as reduced tensions in the Persian Gulf region help to assure that there will be stable supplies of oil and reasonable oil prices into the future.

Review of New Factors Since the 1994 Investigation

The Department also evaluated several new factors which have or will significantly affect worldwide petroleum supply and demand since the 1994 investigation. Foremost among these factors are the following:

1. Economic Decline in East Asia

An economic crisis in East Asia started in the summer of 1997 and continued to deepen throughout 1998. This, in combination with the already weak economy in Japan, significantly reduced worldwide demand for crude oil and petroleum products. The economic decline in turn led to sharply reduced worldwide oil prices in 1998 and early 1999 and a significant oversupply of crude. These factors contributed to the decrease in U.S. production seen during the same time period.

2. Iraqi Oil Exports

As of August 1, 1999, the United Nations Security Council, within the framework of UN-imposed sanctions on Iraq (mandated by UNSCR 661, August 1990), has established the "Oil-for-Food" program "as a temporary measure to provide for the humanitarian needs of the Iraqi people" (UNSCR 986, April 1995). Thus, the United Nations Security Council, within the framework of UN-imposed sanctions on Iraq, allows, since February 1998, Iraq to export up to $5.256 billion worth of oil in a six month period, up from $2 billion per six month period prior to that date. Increased Iraqi oil exports, in total on the order of 2.0 MMB/D, were among the supply and demand variables which led to appreciably lower oil prices for much of 1998 and early 1999. However, the U.S. supports UN efforts to meet the identified humanitarian needs of the Iraqi people and neither the U.S. nor the UN attempt to influence world oil prices or markets via sanctions regimes.

3. Non-OPEC Offshore Drilling

Offshore oil exploration and production projects off the coasts of the United States, South America, Mexico, Eastern Canada, and Western Africa, and in the Gulf of Mexico, the Caspian Sea, and the South China Sea are expected to produce significant volumes of oil and natural gas early in the next century. Because drilling platforms are reserved so far in advance, most of the worldwide projects are proceeding on schedule even at relatively low oil prices. These increased sources, while harmful to U.S. domestic production to the extent that they increase world supplies and therefore possibly lower worldwide oil prices, increase U.S. energy security by broadening the mix of possible exporters beyond the control of individual countries or coalitions.

Conclusion

Since the previous Section 232 petroleum finding in 1994, there have been some improvements in U.S. energy security. The continued erosion of external threats to the Middle East and the continued increase in non-OPEC production have enhanced U.S. energy security. Additional discoveries of both inland and offshore oil reserves outside

of the Persian Gulf region have at least slowed OPEC's market share growth.

Lower oil prices on balance benefit the U.S. economy. However, reduced oil reserves, falling domestic production, and the relatively high cost of U.S. production all point toward a contraction in the U.S. oil extraction industry and increasing dependence on foreign imports. Growing import dependence, in turn, *increases* U.S. and OECD vulnerability to a supply disruption because non-OPEC non-Persian Gulf sources lack significant excess production capacity. Furthermore, there are at present no substitutes for oil-based transportation fuels.

Finding

The Department finds that petroleum imports threaten to impair the national security.

Recommendations

The Department does *not* recommend that the President use his authority under Section 232 to adjust oil imports. Ongoing programs and activities crafted by the Administration to improve U.S. energy security based upon other statutes and executive authorities are more appropriate and cost effective than an import adjustment.

Section 232 requires the Secretary of Commerce and the President to recognize the close relationship between the economic welfare of the Nation and U.S. national security. As energy security affects the economic welfare of the United States, energy security must be considered in determining the effects on the national security of petroleum imports.

The Department concurs with the conclusions of the 1994 and 1988 studies that, on balance, the costs to the national security of an oil import adjustment outweigh the potential benefits. For example, an oil import adjustment such as a tariff could result in the loss of a significant number of jobs in many non-petroleum sectors. This, in turn, would reduce real Gross Domestic Product (GDP). An import adjustment would also diminish the competitiveness of our energy-intensive export companies and strain relations with our close trading partners who would most likely seek relief under North America Free Trade Agreement (NAFTA) or World Trade Organization (WTO) rules.

The Clinton Administration recognizes the importance of U.S. energy security. Since 1993, it has pursued the energy policy of reliance on markets to allocate resources with selective government intervention to ensure that certain highly valued societal needs—including the need for energy security, environmental quality, and energy research—are met. The policy recognizes that no cost-effective government action could eliminate U.S. dependence on foreign oil entirely, but that the following supply enhancement, energy conservation, and critical research policies help to preserve our current oil and gas productive capacity and limit that dependence. Accordingly, the Department recommends continuing the policy goals set forth in the Department of Energy's April 1998 *Comprehensive National Energy Strategy* as described below.

Goal #1—Improve the efficiency of the national energy system by making the most productive use of energy resources, enhance overall economic performance, and protect the environment: The Administration is working to achieve a more productive and efficient use of energy resources, including electricity infrastructure, fossil fuel reserves, and productive capacity for clean alternative fuels. The twin goals of comprehensive electricity reform, as detailed in the Comprehensive Electricity Competition Act (CECA) submitted to Congress on April 15, 1999, and increasing energy efficiencies in the transportation, industrial, and housing sectors and in the generation and distribution of electric power maximize the productive use of energy through market competition and technological innovation. When implemented, these measures will result in a more productive and efficient use of energy and a decreased U.S. consumption of oil.

Goal #2—Prevent the disruption or decline of world energy supplies and protect the U.S. economy from the harmful effects of a short-term supply interruption or infrastructure failure: The Administration is continuing its strong emphasis on emergency preparedness efforts and the need to stabilize domestic oil production, including: arresting the decline in domestic oil production by 2005; maintaining the readiness of the Strategic Petroleum Reserve (SPR) to respond to threats of disruption in world oil supplies; making unutilized SPR storage capacity available for the mid-to long-term storage of commercial oil; coordinating responses to supply disruptions through continued cooperation with the member countries of the International Energy Agency (IEA); diversifying sources of oil by working with industry to increase the supplies of oil available to the world market; and ensuring the integrity of the oil and natural gas supply infrastructure with respect to emergency response capabilities.

Goal #3—Promote U.S. domestic energy production and use in ways that respect national health & environmental values and improve public health and local, regional, and global environments: The Administration has pursued a balanced program to increase domestic energy production in an environmentally responsible manner by: supporting policies to allow the annual domestic natural gas supply to increase by as much as 6 trillion cubic feet (2.9 MMB/D oil equivalent) by 2010; supporting research, design, and development to promote the use of advanced technologies to recover more oil and gas from existing reservoirs without environmental degradation; supporting the suspension, by the Department of the Interior, of production requirements for stripper wells producing less than 15 barrels per day on federal onshore lands when oil prices are extremely low (this suspension temporarily expired on July 26, 1999, when West Texas Intermediate (WTI) crude stayed above $15/bbl for 90 days); supporting the Petroleum Technology Transfer Council's ten regional centers and their December 1998 Industry Crisis Action Plan to teach independent operators strategies for improving cost efficiencies and identifying best practices; and accelerating the development and market adoption of environmentally friendly technologies through a combination of increased investments in research, development, and early deployment programs.

The combination of increased natural gas utilization, the increased use of renewable electrical technologies, the accelerated development of biomass liquids fuel technology, and the recovery of more oil and gas from existing reservoirs and the preservation of those reservoirs will collectively reduce oil consumption and limit our dependence on imported oil.

Goal #4—Expand future energy choices by pursuing continued progress in science and technology to provide future generations with a portfolio of clean and reasonably priced energy sources: Advances in science and technology are essential in terms of the United States achieving its economic, environmental and energy security objectives. Technological innovation can significantly decrease the domestic finding and development costs for natural gas and oil, thereby preserving and expanding the domestic resource base and improving the economics of extraction. These programs include: accelerating the advanced oil recovery

program; increased support for the natural gas supply program, especially for the new emerging resource program in methane hydrates; conducting basic research to provide the foundation for technological breakthroughs that are beneficial to energy development and environmental protection; and continued budgetary increases over current levels for technology partnerships with the private sector.

Goal #5—Cooperate internationally on global issues and develop the means to address global economic, security, and environmental concerns: The United States should continue its active and sustained participation in multilateral and regional forums as well as bilateral contacts with key suppliers, such as our NAFTA partners Canada and Mexico, Norway, Nigeria, Venezuela, Saudi Arabia, and other major oil producers. Achievement of this objective requires: promoting the development of open, competitive international energy markets through U.S. participation in multilateral groups such as the International Energy Agency, the Summit of the America's Hemispheric Energy Initiative, and the Asian Pacific Economic Council (APEC) energy working group; working with our reliable neighbors in Canada and Mexico to establish an efficient and integrated North American natural gas and electricity system; promoting the development of worldwide crude oil and natural gas transportation networks to move South American, Caspian Basin, and Central Asian oil and natural gas, for example, to world markets to further diversify world energy supplies; and emphasize free trade and the promotion of American exports to help develop the world's free market economy and prevent over reliance on any single region of the world.

Other Issues

Regulatory Reform

The Department of Commerce's Bureau of Export Administration (BXA) is in the process of reviewing its crude oil short supply regulations and identifying reforms that would allow U.S. firms to be on equal footing with their foreign competitors. BXA is reviewing a number of changes, including: (1) Creating a license exception to allow the export of crude oil to Canada and Mexico without an individual license; and (2) establishing a license exception to allow the export of California heavy crude oil sold, as part of bunker fuel oil mixtures, to foreign ships visiting U.S. ports. The interagency group recommends that BXA proceed expeditiously with its short supply reform package.

Industry Proposals

During the review, the Department received comments from oil companies and trade associations about several possible modifications to the Federal Tax Code that the commenters believe would provide support for the domestic oil industry. The Department did not evaluate these proposals as part of its Section 232 investigation. Instead, the Department recommends that the National Economic Council evaluate the industry proposals.

[FR Doc. 00–18965 Filed 7–27–00; 8:45 am]
BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Visiting committee on Advanced Technology.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Visiting Committee on Advanced Technology (VCAT). The terms of some of the members of the VCAT will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 14, 2000.

ADDRESSES: Please submit nominations to Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004. Nominations may also be submitted via FAX to 301–948–1224.

Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.nist.gov/director/vcat/vcat.htm.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004; telephone 301–975–4720, fax 301–948–1224; or via email at brian.belanger@nist.gov.

SUPPLEMENTARY INFORMATION:

I. VCAT Information

The VCAT was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee
Shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress on or before January 31 each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy adviser of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, which could be used to assist United States enterprises and United States industrial joint research and development ventures. The Committee shall submit to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of fifteen members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in one or more fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the National Institute of Standards and Technology shall appoint the members of the committee, and they will be selected on

a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the VCAT are not paid for their service, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Meetings of the VCAT take place in the Washington, DC metropolitan area, usually at the NIST headquarters in Gaithersburg, Maryland, and once each year at the NIST headquarters in Boulder, Colorado. Meetings are one or two days in duration and are held quarterly.

3. Committee meetings are open to the public except for approximately one hour, usually at the beginning of the meeting, a closed session is held in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. All other portions of the meetings are open to the public.

II. Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environmental and international relations. The category (field of eminence) (for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation at meetings, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Dated: July 21, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–19068 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 14, 2000.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.quality.nist.gov.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX: 301–948–3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app.2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvements of the Award process as it deems necessary.

2. The Board shall provide a written annual report on the results of Award activities to the Secretary of Commerce, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST and the Secretary of Commerce.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvements operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Boards will meet twice annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: July 21, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–19089 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 14, 2000.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.quality.nist.gov.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX 301–948–3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Committee Act (5 U.S.C. app. 2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Public Law 101–107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of nine members selected on a clear, standardized basis, in accordance with applicable Department of Commerce Guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, and health care and will include members familiar with quality improvement in their area of business. No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Judges Panel will meet four times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course.

3. Committee meetings are closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, and in accordance with Section 552b(c)(4) of title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person may be privileged or confidential.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries, education, and health care as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education and health care organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on

federal advisory boards and federal employee. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be able to devote the equivalent of seventeen days between meetings to either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Dated: July 21, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–19090 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 99–018US

Title: Humidity Chamber For Scanning Stylus Atomic Force Microscope With Cantilever Tracking.

Abstract: The present invention provides a novel humidity chamber suitable for use with an atomic force microscope (AFM).The humidity chamber of the present invention employs an intricate geometrical design which can accommodate a scanned-stylus AFM with an optical lever. This geometrical design allows the invention to enclose one or more of the AFM scanner, tip assembly, optical lever detection system, sample and an optical microscope objective lens, without degrading the ability to operate the AFM or the related systems. The invention is comprised of two major pieces: a chamber within which the AFM scanning head assembly is placed, and an integrated sample platform and spring-loaded base-plate that allows samples to be loaded and unloaded without removal of the chamber from the AFM scanning head assembly. The sample platform, which extends up from the base-plate and is inserted into the chamber and the bottom portion of the sample platform to secure the sample platform and base-plate. The spring-loaded base allows the z-directional motors of the AFM to be used to position the sample just below the probe prior to scanning, while at the same time providing an essentially air-tight fit between the chamber and the AFM scanning head. An embodiment of the present invention is suitable for use with one or both of a means for sensing relative humidity and a means for controlling relative humidity.

NIST Docket Number: 99–021US

Title: A Rotating-Wheel Refreshable Braille Reader.

Abstract: This invention would produce computer-refreshable Braille text for tactile reading by the blind and visually impaired, thus improving accessibility to computer services such as electronic books, e-mail and other network access, and general computer use. Cost and mechanical reliability are the two main impediments to widespread use of refreshable Braille devices. This device utilizes a rotating-wheel and is designed to be mechanically simpler than existing refreshable Braille devices, while providing much of their functionality as well as additional features. It is believed that this design will allow for greatly lowered cost and improved reliability in comparison to existing systems. It is believed that this device can be implemented in such a way as to provide refreshable Braille text to the user at a "typical" reading rate of 125 words per minute, and also at a "high" reading rate of 250 words per minute.

NIST Docket Number: 97–038US

Title: Micron-Scale Differential Scanning Calorimeter On A Chip.

Abstract: A differential scanning microcalorimeter produced on a silicon chip enables microscopic scanning calorimetry measurements of small samples and thin films. The chip may be fabricated using standard CMOS processes. The microcalorimeter includes a reference zone and a sample zone. The reference and sample zones may be at opposite ends of a suspended platform or may reside on separate platforms. An integrated polysilicon heater provides heat to each zone. A thermopile consisting of a succession of thermocouple junctions generates a voltage representing the temperature difference between the reference and sample zones. Temperature differences between the zones provide information about the chemical reactions and phase transitions that occur in a sample placed in the sample zone.

Dated: July 21, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–19087 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Maine and Washington Coastal Management Programs.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, and regulations at 15 CFR Part 928.

The CZMA requires a continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments,

and consultations with interested Federal, State, and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Maine Coastal Zone Management Program evaluation site visit will be from September 11–15, 2000. One public meeting will be held during the week. The public meeting will be held on Wednesday, September 13, 2000, at 7 P.M., in the Council Chambers at Rockland City Hall, 270 Pleasant Street, Rockland, Maine.

The Washington Coastal Zone Management Program evaluation site visit will be from September 11–15, 2000. One public meeting will be held during the week. The public meeting will be held on Thursday, September 14, 2000, at 7 P.M., in the Department of Ecology Auditorium, 300 Desmond Drive, Lacey, Washington.

Copies of the States' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 114.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: July 26, 2000.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal zone Management.

[FR Doc. 00–19248 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program management and evaluation, national strategic investments, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Tuesday, August 8, 8:30 a.m. to 5:30 p.m.; Wednesday, August 9, 8:00 a.m. to 12:00 noon.

ADDRESSES: National Oceanic and Atmospheric Administration, Silver Spring Metro Center III, 1315 East-West Highway, Room 4527, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Tuesday, August 8, 2000

8:30 a.m.—Welcoming and Opening Formalities
8:45 a.m.—Department of Commerce Report of Priority Issues
9:15 a.m.—Executive Committee Report
10:00 a.m.—Sea Grant Review Panel Subcommittee Reports Minority Serving Institutions Science and Technology Technology Transfer New Subcommittees
11:30 a.m.—National Extension Review
12:15 p.m.—Lunch
1:00 p.m.—Sea Grant Science Presentation
1:45 p.m.—Congressional Update
2:30 p.m.—Sea Grant Association Report
3:15 p.m.—NOAA and OAR Update
4:00 p.m.—National Sea Grant Office Update
5:30 p.m.—Officer Elections
5:45 p.m.—Adjourn

Wednesday, August 9, 2000

8:30 a.m.—NOAA Science Advisory Board
9:15 a.m.—Program Evaluation
10:45 a.m.—Critical Sea Grant Issues
11:45 a.m.—Wrap-up
12:00 noon—Adjourn

This meeting will be open to the public.

Dated: July 24, 2000.

Francis M. Schuler,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 00–19086 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–KA–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

July 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Roas Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68333, published on December 7, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 31, 2000, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	560,619 dozen.
334	179,654 dozen.
335	237,365 dozen.
341	2,969,642 dozen.
342/642	585,146 dozen.
351/651	853,229 dozen.
363	30,891,732 numbers.
634	628,526 dozen.
635	400,190 dozen.
641	809,552 dozen.
645/646	428,244 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–19101 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

July 25, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70217, published on December 16, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 31, 2000, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
331/631	1,216,225 dozen pairs.
338/339	2,850,500 dozen.
340/640	969,900 dozen.
345	121,560 dozen.
347/348/647/648	3,300,600 dozen.
352/652	516,521 dozen.
438	105,067 dozen.
645/646	290,907 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–19106 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

July 21, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing guaranteed access levels.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 433 and 442 are being adjusted for swing.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Level for textile products in Categories 339/639, 347/348/647/648 and 433.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 21, 2000.

Commissioner of Customs,
Department of the Treasury, Washington; DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 31, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
433	24,007 dozen.
442	81,400 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

Also effective on July 31, 2000, you are directed to increase the Guaranteed Access Levels for the categories listed below for the period beginning on January 1, 2000 and extending through December 31, 2000.

Category	Guaranteed access level
339/639	4,150,000 dozen.
347/348/647/648	9,050,000 dozen.
433	81,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–19102 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

July 21, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for special carryover in accordance with the Memorandum of Understanding (MOU) dated June 2, 2000. This MOU was entered into in recognition of the disruption to the Former Yugoslav Republic of Macedonia's exports in 1999 as a result of the crisis in Kosovo.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 71115, published on December 20, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 21, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on July 31, 2000, you are directed to increase the current limits for the following categories, as provided for in the Memorandum of Understanding between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated June 2, 2000:

Category	Adjusted twelve-month limit [1]
433	25,875 dozen.
434	12,640 dozen.
435	39,914 dozen.
448	74,686 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–19103 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

July 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 666-P and 666-S are being increased for special carryforward as allowed under the Memorandum of Understanding dated May 25, 2000 (see **Federal Register** notice 65 FR 41961, published on July 7, 2000).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, as amended on June 30, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 31, 2000, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
666–P [2]	862,368 kilograms.
666–S [3]	5,359,592 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[3] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–19104 Filed 7–27–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

July 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used. The current limit for Category 603 is being increased for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000, except for the period for Category 603 which began on January 1, 2000 and extends through September 30, 2000.

Effective on July 31, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
363	23,180,879 numbers.
603	1,784,844 kilograms.
Sublevels in Group II	
338/339	2,110,817 dozen
638/639	2,503,066 dozen.
647/648	1,294,984 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–19105 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Development of an Air-to-Ground Training Range in the State of Montana

The Air National Guard (ANG), Air National Guard Readiness Center (ANGRC), is preparing an EIS to assess the potential environmental impacts of the proposed development of an air-to-

ground training range in the state of Montana. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 to 4345) and its implementing regulations (40 CFR 1500 to 1508). The ANG (ANGRC) will act as the lead agency for the EIS process. Cooperating agencies include the State of Montana, Federal Aviation Administration, Bureau of Land Management, and Bureau of Indian Affairs.

The purpose of the proposed range is to enhance combat readiness by improving training efficiency for the 120th Fighter Wing (120 FW) of the Montana ANG (MTANG), based at the Great Falls International Airport. Development of the range would achieve the following objectives: Significantly reduce the distance traveled to conduct required air-to-ground training, thereby resulting in cost savings; significantly increase training time versus time spent in transit, thereby enhancing training effectiveness; ensure availability of training times; and reduce scheduling conflicts with other units who train at ranges currently used by the 120 FW.

The range would provide scoring capability for air-to-ground delivery of inert training munitions. This type of training is necessary to satisfy training requirements for the general-purpose mission of the 120 FW. The target impact area (roughly 1 square mile in size) would be surrounded by a safety buffer zone in order to safely accommodate these activities; the total range size would be 3-by-5 miles, or approximately 9,600 acres. Creation of restricted airspace would occur within the existing Hays Military Operations Area (MOA) to accommodate approximately 1,000 F–16 air-to-ground sorties at the proposed training range.

The range would be comprised of several different elements. About 90 percent of the acreage would remain as open space, functioning as a safety buffer zone for the target areas. Inside the buffer zone would be several targets for training munitions delivery. A series of scoring devices would be placed in the target impact area to allow for assessment of training ordnance accuracy on each delivery. A group of support buildings would provide facilities near the target impact area for personnel involved in the daily operation, maintenance, and security of the range. The proposed action would also involve establishment of one-quarter-acre electronic emitter sites at various off-range locations. These emitter sites would serve as operating locations for mobile electronic emitters that simulate anti-aircraft defensive systems. Each site would consist of a gravel, unfenced parking area designed to support temporary use.

The ANG has initiated a process to identify feasible range siting areas (*i.e.*, alternatives) in Montana that would best support MTANG training and accommodate safe aircraft operations while minimizing impacts on the environment, local communities, and military and civilian airspace. The proposed range location must be within a 150 nautical mile radius from the Great Falls International Airport and on land underlying the Hays MOA. Two of the alternatives initially satisfying these and other important siting criteria are located in the vicinity of the Fort Belknap Reservation in north-central Montana. The MTANG and members of the Fort Belknap Indian Community have discussed the feasibility of potential range development in these areas. Consequently, the Fort Belknap Community Council has identified one alternative location immediately west of the Reservation and one alternative location on the Reservation. The ANG is continuing its effort to identify additional alternative locations for the proposed range. Government agencies and the public are encouraged to assist in this effort during the scoping process. Each feasible alternative, including the No-Action Alternative required by NEPA, will be analyzed in the EIS.

The ANG will initiate a public scoping process to identify relevant issues to be analyzed in the EIS. A series of scoping meetings will be held in five Montana communities. These meetings will provide a forum for interested parties to provide comments (written or oral) on the scope of the EIS and to help identify potential alternative locations for the proposed range. Scoping meetings will be held at the following times and locations:

1. Fort Belknap Agency, MT, August 14, 6 to 9 p.m., Fort Belknap College (Multipurpose Building).
2. Chinook, MT, August 15, 6 to 9 p.m., Blaine County Library (94 4th Street).
3. Hays, MT, August 16, 6 to 9 p.m., John Capture Center (North Mayor Drive).
4. Lodgepole, MT, August 17, 6 to 9 p.m., Medicine Bear Lodge.
5. Great Falls, MT, August 18, 6 to 9 p.m., MTANG Headquarters Building (2800 Airport Avenue B).

Information gathered at these meetings will be used in the development of the Draft EIS. Written comments, which receive the same consideration as oral comments, will also be accepted throughout the scoping period. To ensure that the ANG has sufficient time to consider public input during preparation of the Draft EIS, scoping comments should be submitted by September 11, 2000. You may call 1–800–545–8680 (select option 5, Wing Headquarters) to give oral comments or send written comments to Montana EIS, ANG/CEVP, Attention: Major Tammy Mitnik, 3500 Fetchet Avenue, Andrews Air Force Base, Maryland 20762. Names and addresses will be used to compile a mailing list for distributing future information regarding the EIS. Please be advised that by including your name and address, you are agreeing to this information being part of the environmental process. If you have any questions or require additional information, please contact Major Mitnik at (301) 836–8636 or (301) 836–8065.

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 00–19049 Filed 7–27–00; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army War College Board of visitors, Committee of the Whole.

Dates of Meeting: August 3 and 4, 2000.

Place: Root Hall, U.S. Army War College, Carlisle Barracks, Pennsylvania.

Time: 8:30 a.m.–5 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant, staff and faculty; review USAWC Master's Degree Campaign Plan; plan future membership and composition of the Board of Visitors; and provide guidance regarding accreditation and areas for improvement.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Dr. John R. Goss, III, Box 375, U.S. Army War College, Carlisle Barracks, PA 17013 or telephone (717) 245–3365.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear

before, or file statements with the Committee after receiving advance approval for participation. To request additional information please contact Dr. John R. Goss III at the above address or phone number.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–19127 Filed 7–27–00; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Target Technology for Exclusive, Partially Exclusive or Non-exclusive Licensee

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to PCT application PCT/US99/02158 filed February 1, 1999 and all national phase applications for the designate countries and any patents issuing therefrom including any and all continuations, continuations-in-part, divisions, reissues, reexaminations, renewals or extensions thereof. The intellectual property shall generally be known as "Procedure for Detecting Lesion-induced Resonances in DNA using Millimeter or Submillimeter Wave Spectroscopy." Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael Rause, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–19129 Filed 7–27–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive or Partially Exclusive License to Whithner Corporation

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Stevens Institute of Technology, a New Jersey Corporation with principal offices at Castle Point on Hudson, Hoboken, New Jersey 07030, and Technology Holdings, LLC, a limited liability company, organized and existing under the laws of the state of New Jersey, which has been granted a worldwide right to grant sublicenses of the manufacture, use and sale of all patents and copyrights held in the name of Stevens Institute of Technology, with principal offices at One Castle Point Terrace, Hoboken, New Jersey 07030 an exclusive license relative to an ARL technology. The technology to be licensed is PCT application PCT/US99/02158 filed February 1, 1999 and all national phase applications for the designated countries and any patents issuing therefrom including any and all continuations, continuations-in-part, divisions, reissues, reexamination, renewals or extensions thereof. The intellectual property licensed in this agreement shall generally be known as "Procedure for Detecting Lesion-induced Resonances in DNA using Millimeter or Submillimeter Wave Spectroscopy."

Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael Rause, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–19128 Filed 7–27–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meeting and Availability of the Draft Environmental Impact Statement for Construction and Operation of the Marine Corps Heritage Center at Marine Corps Base Quantico, Virginia

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy, United States Marine Corps, has prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (DEIS) for the construction and operation of the Marine Corps Heritage Center at Marine Corps Base (MCB) Quantico, Virginia. A public meeting will be held to receive oral and written comments on the DEIS. Federal, state and local agencies, and interested parties are invited to attend the meeting.

DATES: Comments on the DEIS may be submitted in person to the Marine Corps at the Ramada Inn, 16304 Route 1, Triangle, VA, on August 10, 2000, between 7 p.m. and 9:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Riek, Engineering Field Activity-Chesapeake, Naval Facilities Engineering Command, 1314 Harwood Street, SE., Building 212, Washington Navy Yard, DC, 20373–5018, telephone (202) 685–3064, fax (202) 685–3350, e-mail: riekhj@efaches.navfac.navy.mil.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy, United States Marine Corps has prepared and filed with the EPA a DEIS for the construction and operation of the Marine Corps Heritage Center on or near MCB Quantico, Virginia.

The proposed Marine Corps Heritage Center would be a large multi-structure museum complex, intended to consolidate operations of the Marine Corps History and Museum Division and enhance the protection and presentation of Marine Corps history and historical collections. The complex would include approximately 20 buildings dispersed over a 100-acre site. Facilities planned for development at the site would include a visitor center, library, workshops, exhibit/display facilities, administrative offices, curation facilities, conference center, theater, restaurant, gift shop, and various related structures. Outdoor areas would be used for exhibits, memorials, ceremonies and demonstrations. Five alternative sites for the Marine Corps Heritage Center are evaluated in the DEIS. All five sites are located adjacent to the Interstate 95/US Route 1 corridor, on or near MCB Quantico, Virginia.

Copies of the DEIS have been mailed to Federal, State, and local agencies, area public libraries, local representatives, and persons or groups that expressed an interest in the proposed action during the EIS scoping process. Requests for copies of, or comments on, the DEIS may be made to the point of contact listed above. Federal, State and local agencies, and

interested parties are invited to attend the scheduled meeting. Oral comments will be recorded at the public meeting, but it is recommended that written statements be submitted to assure accuracy. All comments must be received no later than September 1, 2000.

Dated: July 24, 2000.

J.L. Roth,

Lieutenant Commander, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19042 Filed 7–27–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Additional Public Scoping Meeting in Meridian, Mississippi, for the Environmental Impact Statement for Introduction of the Atlantic Fleet F/A–18 E/F Aircraft on the East Coast of the United States

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy (Navy) announced its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the introduction of the Atlantic Fleet F/A–18 E/F aircraft on the East Coast of the United States. The Notice of Intent and Public Scoping Meetings appeared in the **Federal Register** on June 26, 2000 (65 FR 39373). One additional Public Scoping Meeting has been scheduled subsequent to that notice.

DATES: One additional public scoping open house will be held to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. A public scoping open house will be held from 4:00 p.m. to 9:00 p.m. on August 15, 2000.

ADDRESSES: The open house will be held at East Mississippi Electric Power Association, 2128 Highway 39 North, Meridian, Mississippi.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cecchini (Code 2032), Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511; telephone (757) 322–4887, fax (757) 322–4984.

SUPPLEMENTARY INFORMATION: The Navy has decided to purchase F/A–18 E/F aircraft because of its improved capabilities over earlier aircraft models. It is designed to fly farther and carry a heavier payload, which will make it a more effective tool for national defense. An EIS and Record of Decision (ROD) were completed in 1998 for the introduction of F/A–18 E/F aircraft on the West Coast. In 1999, the Navy began a phase-in of the F/A–18 E/F aircraft to NAS Lemoore, California. Introduction of the F/A–18 E/F aircraft in the Atlantic fleet area of responsibility will begin in 2004 and be completed by 2008.

The EIS will address the environmental impacts associated with basing and operation of the Atlantic fleet F/A–18 E/F aircraft on the East Coast, retirement of existing F–14 aircraft and earlier F/A–18 models, and new construction and/or renovation of buildings and other support facilities. In addition, the EIS will assess impacts on each local community and economy associated with relocation of military personnel to the area to support the operation and maintenance of the E/F squadrons.

The Navy is currently evaluating East Coast installations to develop reasonable F/A–18 E/F siting alternatives. To date, four Navy and Marine Corps air stations have been identified as potential receiving sites: Marine Corps Air Station (MCAS) Beaufort, South Carolina; MCAS Cherry Point, North Carolina; Naval Air Station (NAS) Oceana, Virginia; and NAS Meridian, Mississippi. Other siting alternatives are still being considered. The Navy's preferred alternative is to site all the Atlantic Fleet F/A–18 E/F squadrons at one location; however, splitting the squadrons between two bases is not precluded.

The Navy intends to analyze the potential environmental impacts of the introduction of the Atlantic Fleet F/A–18 E/F aircraft on the environment. This includes, but is not limited to air quality, plant and animal habitats, and water resources, such as streams. It will also evaluate potential effects on the surrounding communities, including land use patterns, transportation, housing, and the regional economy. Further, the Navy will examine potential effects on existing airspace, training range use, and on aircraft noise exposure levels in and around the bases.

The Navy has initiated a scoping process to identify community concerns and local issues that will be addressed in the EIS. Federal, state, local agencies, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify environmental concerns that should be addressed in the EIS. To be most helpful, scoping comments should clearly describe the specific issues or topics that the EIS should address.

Written comments must be postmarked by September 8, 2000, and should be mailed to: Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511, Attn: Code 2032 (Mr. Dan Cecchini), telephone (757) 322–4887, fax (757) 322–4984.

Dated: July 25, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19160 Filed 7–27–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.033]

Student Financial Assistance, Federal Work-Study Programs; Notice of the Closing Date for Submission of the Campus-Based Reallocation Form (ED Form E40–4P)

SUMMARY: The Secretary gives notice that institutions of higher education participating in the Federal Work-Study (FWS) Program must submit the Campus-Based Reallocation Form by August 25, 2000 to request supplemental FWS funds for the 2000–2001 award year (July 1, 2000 through June 30, 2001). The information collected is used to determine whether an institution is eligible to receive supplemental FWS funds for the 2000–2001 award year.

DATES: *Closing Date and Method for Submitting a Campus-Based Reallocation Form.* If you participated in the FWS Program for the 1999–2000 award year and want to ensure that you will be considered for supplemental FWS funds for the 2000–2001 award year, you must submit the electronic Campus-Based Reallocation Form by August 25, 2000.

The new Fiscal Operations Report for 1999–2000 and Application to Participate for 2001–2002 (FISAP) software that you received in July 2000 also contains the Campus-Based Reallocation Form (E–40–4P). The Campus-Based Reallocation Form electronic data must be transmitted via the Department's Student Aid Internet Gateway (formerly Title IV Wide Area Network or Title IV WAN). Specific information on this electronic transmission is provided in "Dear Partner" letter CB–00–11 that was

issued in July 2000. Transmit the Reallocation Form data to us only if you are releasing 1999–2000 campus-based funds or are requesting supplemental 2000–2001 FWS funds.

Although the FISAP is not due until October 1, 2000, you must complete the Campus-Based Reallocation Form electronic data transmission prior to midnight, Eastern time, on August 25, 2000. (For purposes of this notice, this deadline means that an institution has all of August 25, 2000, to transmit electronically.)

SUPPLEMENTARY INFORMATION: The Department will reallocate unexpended FWS Federal funds from the 1999–2000 award year as supplemental allocations for the 2000–2001 award year under the FWS Program. Supplemental allocations will be issued this fall in accordance with the reallocation procedures contained in the Higher Education Act of 1965, as amended (HEA). Under section 442(d) of the HEA, unexpended FWS funds returned to the Secretary must be reallocated to eligible institutions that used at least 10 percent of the total FWS Federal funds granted to the institution to compensate students employed in community services. Because reallocated FWS funds will be distributed on the basis of fair share shortfall criteria, you must also have a fair share shortfall to receive these funds. A fair share shortfall means that you have an unmet need for FWS funds as determined by the FWS allocation formula in the HEA that uses data reported on the FISAP. You must use all the reallocated FWS Federal funds to compensate students employed in community services. To ensure consideration for supplemental FWS Federal funds for the 2000–2001 award year, you must submit the Campus-Based Reallocation Form data by August 25, 2000.

Applicable Regulations

The following regulations apply to the Federal Work-Study Program:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Work-Study Programs, 34 CFR part 675.

(4) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(5) New Restrictions on Lobbying, 34 CFR part 82.

(6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(7) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the Campus-Based Reallocation Form or other operational procedures of the campus-based programs, contact Mr. Milton Thomas, jr., Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Building, Suite 600D, Washington, DC 20202–5353. Telephone (202) 708–9756. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape or computer diskette) by contacting the Alternate Format Center at (202) 260–9895 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

Electronic Access to this Document

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To use the PDF version you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF version, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 42 U.S.C. 2752.

Dated: July 24, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–19069 Filed 7–25–00; 10:41 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Availability of the Draft Programmatic Environmental Impact Statement (PEIS) for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility [Nuclear Infrastructure Programmatic Environmental Impact Statement (NI PEIS)] (DOE/EIS–0310D) for public review and comment. This draft PEIS, prepared under the National Environmental Policy Act (NEPA), analyzes the potential environmental impacts of using various irradiation and processing facilities to meet the following projected mission needs over a period of 35 years: (1) Production of medical, research, and industrial isotopes; (2) production of plutonium-238 to support future National Aeronautics and Space Administration (NASA) space missions; and (3) support for U.S. civilian nuclear research and development activities. In addition to a No Action alternative, DOE evaluated other alternatives that include using existing facilities within the DOE complex, constructing and operating a new research reactor, constructing and operating one or two new accelerators, restarting the Fast Flux Test Facility (FFTF) that is currently in stand-by status, and procuring irradiation services at a commercial light water reactor to produce plutonium-238. As a result of comments received from the public during the scoping period, DOE evaluated a fifth alternative to deactivate FFTF permanently without pursuing any further expansion of the infrastructure to accommodate expanded mission areas. As part of the No Action alternative, DOE has also evaluated the option of purchasing plutonium-238 from Russia through an existing contract. The Department has no preferred alternative at this time, but will identify one in the Final PEIS.

DATES: The Department invites the general public, other Federal agencies, and Tribal, State and local Governments to provide comments on this draft PEIS.

The transmittal letter for the draft PEIS and the Summary stated that the comment period would end on September 11, 2000. The comment period has changed and now ends September 18, 2000. To ensure consideration in the preparation of the final PEIS, comments should be transmitted or postmarked by September 18, 2000. Comments submitted after that date will be considered to the extent practicable. The information obtained during the comment period will assist the Department in preparing the final PEIS, which is scheduled to be completed by November 2000.

During the comment period, the Department will hold public hearings to discuss the draft PEIS and to receive oral and written comments on the draft PEIS. Registration will begin at 6:00 p.m. before each meeting (2:00 p.m. in Virginia) and a brief DOE presentation on the draft PEIS will begin at 6:30 p.m. (2:30 p.m. in Virginia). The hearings will include an opportunity for informal discussions with project personnel before and after the DOE presentation. The hearings are scheduled for the following dates, times, and locations:

Tuesday, August 22, 2000
American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, TN 37830, (865) 576–3200

Friday, August 25, 2000
Westcoast Idaho Falls Hotel (formerly Cavanaughs on the Falls), 475 River Parkway, Idaho Falls, ID 83402, (208) 523–8000

Monday, August 28, 2000
Hood River Inn, 1108 E. Marina Way, Hood River, OR 97031, (541) 386–2200

Tuesday, August 29, 2000
Oregon Museum of Science and Technology, 1945 SE Water Avenue, Portland, OR 97214, (503) 797–4671

Wednesday, August 30, 2000
Washington State Convention and Trade Center, 800 Convention Place, Seattle, WA 98101, (206) 694–5111

Thursday, August 31, 2000
Best Western Tower Inn and Conference Center, 1515 George Washington Way, Richland, WA 99352, (509) 946–4121

Wednesday, September 6, 2000
Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202, (703) 271–5108

The format for the hearings will include registration, a DOE presentation on the draft PEIS, a question and answer session, and an opportunity to provide comments to DOE staff members. The purpose of registration is to provide handouts to each participant, update the project mailing list, and answer any questions participants may have about the hearings. Registration is not required and there will be no sign-up sheets for the order of speakers. A DOE staff member will give a presentation, about 20 minutes long, followed by a short question and answer period about the presentation. A facilitator will then open the floor to the public for comments. To ensure that all persons wishing to provide comments are given an opportunity, each speaker may be limited to five minutes, including representatives of groups. Elected officials will be given first priority for speaking and each official may be limited to ten minutes. Then the facilitator will select participants at random from the audience to provide their comments. Those commentors who need more time will be invited to speak after everyone has had an initial opportunity to provide their comments. Comments will be transcribed by a comment recorder. Another comment recorder will be available in a separate room to receive comments from participants who may not be able to attend the entire session, or who would like to give their comments and depart. DOE personnel will be available throughout the hearings and will stay until all participants have had a chance to comment. The Department encourages those providing oral comments at the hearings to also submit them in writing. Comment forms will be available at the hearings.

The Department will make transcripts of the draft PEIS hearings available to the public at the following public reading rooms about one month after the public hearings have been held. References for the draft PEIS are available in the public reading rooms listed below.

U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0117, Telephone: (202) 586–3142

Idaho National Engineering and Environmental Laboratory, DOE-Idaho Operations Office Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83415, Telephone: (208) 526–0271

Portland State University, Branford Price Millar Library, Government Documents Section, 951 Southwest Hall, Portland, Oregon 97207, (503) 725–3690

U.S. Department of Energy, Public Reading Room, 230 Warehouse Road, Building 1916–T–2, Suite 300, Oak Ridge, Tennessee 37831, (865) 241–4780

Richland Public Library, 955 Northgate Drive, Richland, Washington, 99352, Telephone: (509) 942–7457

U.S. Department of Energy, DOE Public Reading Room, 2770 University Drive, CIC, Room 101L, Richland, Washington 99352, Telephone: (509) 372–7443

University of Washington, Suzzallo Library, Government Publications Room, Seattle, Washington 98195, Telephone: (206) 543–1937

Gonzaga University, Foley Center Library, East 502 Boone, Spokane, Washington 99258, Telephone: (509) 323–6532

ADDRESSES: Written comments on the draft PEIS, requests for special arrangements to enable participation in the hearings (*e.g.*, an interpreter for the hearing impaired), requests to be placed on the final PEIS distribution list, and questions concerning the proposed action should be sent to: Ms. Colette Brown, PEIS Document Manager, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, NE–50, 19901 Germantown Road, Germantown, Maryland 20874–1290.

Comments, questions and special requests may also be submitted by toll-free facsimile to (877) 562–4592, or by electronic mail to Nuclear.Infrastructure-PEIS@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed action, contact Ms. Colette E. Brown as above under **ADDRESSES**, or call her toll-free at (877) 562–4592. For general information on the Department's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; or telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: Under the authority of the Atomic Energy Act of 1954, as amended, DOE is responsible for ensuring the availability of isotopes for medical, industrial and research applications, meeting the nuclear material needs of other Federal agencies, and undertaking research and development activities related to development of nuclear power for civilian use. To meet these responsibilities, DOE maintains nuclear infrastructure capabilities that support various missions in these areas. These

infrastructure capabilities include those of nuclear research and test facilities, such as reactors and accelerators, as well as shielded "hot cell" and glovebox facilities used to prepare nuclear materials for testing and/or to perform postirradiation processing of materials.

To continue to maintain sufficient irradiation facilities to meet its obligations under the Atomic Energy Act, DOE must assess the need for expanding its nuclear infrastructure in light of its commitments to ongoing programs, its commitment to other agencies for nuclear materials support, and its role in supporting civilian nuclear research and development programs.

The Nuclear Energy Research Advisory Committee (NERAC), established in 1998 by DOE to provide independent, expert advice on complex science and technical issues that arise in the planning, management, and implementation of DOE's civilian nuclear energy research programs, informed the Secretary of Energy that "(a) there is an urgent sense that the Nation must rapidly restore an adequate investment in basic and applied research in nuclear energy if it is to sustain a viable United States capability in the 21st Century, (b) the most important role for DOE in the nuclear energy area at the present time is to ensure that the education system and its facility infrastructure are in good shape, and (c) of particular need over the longer term are dependable sources of research isotopes and reactor facilities providing high volume flux irradiation for nuclear fuels and materials testing" (letter dated June 13, 2000, from J.J.Duderstadt, Chair, Nuclear Energy Research Advisory Committee to The Honorable W. Richardson, Secretary of Energy).

Under the guidance of NERAC, DOE has completed an assessment of its existing nuclear facility infrastructure capabilities (U.S. Department of Energy Nuclear Science and Technology Infrastructure Roadmap, Draft, Revision 1 Summary, March 2000). The basic finding of this assessment was that the capabilities of currently operating DOE facilities will not meet projected U.S. needs for nuclear materials production and testing, research, and development. As demand continues to increase for steady-state neutron sources needed for isotope production and nuclear research and development, DOE's nuclear infrastructure capabilities to support this demand have not improved. Over the years, DOE's nuclear facility infrastructure has diminished because of the shutdown of old facilities, including the High Flux Beam Reactor at Brookhaven National Laboratory, New York, and the Cyclotron Facility at Oak Ridge National Laboratory, Tennessee. This has hampered DOE's ability to satisfy increasing demands in various mission areas. The Department's facilities at the Savannah River Site, previously used for plutonium-238 production for the space program, are also no longer available.

Consistent with these findings, DOE recognizes that adequate nuclear research reactor, accelerator, and associated support facilities must be made available in order to implement and maintain a successful nuclear energy program. To continue meeting its responsibilities under the Atomic Energy Act and to satisfy projected increases in the future demand for isotope products and irradiation services, DOE proposes to enhance its existing nuclear facility infrastructure to: (1) Produce isotopes for medical, research, and industrial uses, (2) produce plutonium-238 for use in advanced radioisotope power systems for future NASA space exploration missions, and (3) support the Nation's nuclear research and development needs for civilian applications.

The NI PEIS evaluates a No Action Alternative and five action alternatives. The action alternatives focus on the use of irradiation facilities that are currently operating, those that could be brought online, or those that could be constructed and operated to meet DOE's nuclear facility infrastructure requirements.

No Action Alternative (maintain status quo): Ongoing operations at existing facilities would continue. DOE would not establish a domestic plutonium-238 production capability, but could, instead, purchase Russian plutonium-238 to meet the needs of future U.S. space missions. However, the existing contract, which expires in 2002, would have to be renegotiated or a new contract would have to be established. FFTF at Hanford would be maintained in standby status.

Alternative 1—Restart FFTF: FFTF at Hanford would be restarted to irradiate targets for medical and industrial isotope production, plutonium-238 production, and nuclear research and development irradiation requirements for a period of 35 years. Ongoing operations at other existing facilities would continue.

Alternative 2—Use Only Existing Operational Facilities: DOE would use existing operating DOE reactors or U.S. commercial light water reactors to produce plutonium-238 for future space missions. The production of medical and industrial isotopes and support of nuclear research and development in DOE reactors and accelerators would continue at the No Action Alternative levels. Other ongoing operations at existing facilities would continue. FFTF at Hanford would be permanently deactivated.

Alternative 3—Construct New Accelerator(s): One or two new accelerators would be constructed for target irradiation and operated for a period of 35 years. The new accelerator(s) would be constructed at an existing DOE site and would be used to irradiate all of the targets for production of plutonium-238, isotopes for medical and industrial uses, and materials testing for research and development. Other ongoing operations at existing facilities would continue. FFTF at Hanford would be permanently deactivated.

Alternative 4—Construct New Research Reactor: A new research reactor would be constructed for target irradiation and operated for a period of 35 years. The new research reactor would be constructed at an existing DOE site, and would be used to irradiate all targets for production of plutonium-238, isotopes for medical and industrial uses, and materials testing for research and development. Other ongoing operations at existing facilities would continue. FFTF at Hanford would be permanently deactivated.

Alternative 5—Permanently Deactivate FFTF (with no new missions): FFTF at Hanford would be permanently deactivated and no enhancements to DOE's nuclear facilities infrastructure would be made. Plutonium-238 would not be produced or purchased. Ongoing operations, such as medical and industrial isotope production and nuclear research and development missions, at existing facilities would continue.

The environmental impact analysis addresses the full range of natural and human resource areas pertinent to the sites considered for the nuclear infrastructure alternatives. Impacts are assessed for human health, land resources, noise, air quality, water resources, geology and soils, ecological resources, cultural and paleontological resources, socioeconomics, and waste management. A region of influence for each resource area is identified and analyzed for each candidate site.

Baseline conditions at the three DOE sites assessed in the NI PEIS, the Oak Ridge Reservation, Idaho National Engineering and Environmental Laboratory, and Hanford, as well as an existing generic commercial light water reactor, include present and reasonably foreseeable future actions at each site.

Sitewide data set forth in the No Action Alternative define the baseline conditions used in the analysis of action alternatives for each site and are the data upon which incremental impacts for action alternatives were imposed to determine overall impacts.

The Department does not have a preferred alternative at this time, but a preferred alternative will be identified in the final PEIS. The environmental analysis in the PEIS, public comments, the findings of a separate cost study and a nonproliferation report that are being prepared concurrently with the PEIS, as well as other program and policy factors, will be considered in making a decision. The Record of Decision to be published in the **Federal Register** will be issued no sooner than 30 days after the U.S. Environmental Protection Agency's notice of availability of the final PEIS has been published in the **Federal Register**.

Issued in Washington, D.C., this 24th day of July 2000.

R. Shane Johnson,

Acting Associate Director for Technology and International Cooperation, Office of Nuclear Energy, Science and Technology.

[FR Doc. 00–19092 Filed 7–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. RP00–40–000]

Panhandle Eastern Pipeline Company; Notice of Informal Settlement Conference

July 24, 2000.

On July 31, 2000, an informal settlement conference in the above-docketed proceeding respecting the Kansas *ad valorem* issues will be held at the offices of Shook, Hardy & Bacon, 1 Kansas City Place, 1200 Main Street, Kansas City, Missouri. The conference will begin at 10:45 a.m. in Conference Room 31A. All interested parties in the above docket are requested to attend the informal settlement conference. If a party has any questions respecting the conference, please call Richard Miles, the Director of the Dispute Resolution Service. His telephone number is 1 877 FERC ADR (337–2237) or 202–208–0702 and his e-mail address is *richard.miles@ferc.fed.us*.

David P. Boergers,

Secretary.

[FR Doc. 00–19060 Filed 7–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2668–000, et al.]

Duke Energy Moss Landing LLC, et al.; Electric Rate and Corporate Regulation Filings

July 20, 2000.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Moss Landing LLC and Duke Energy Oakland LLC

[Docket Nos. ER98–2668–009, ER99–1127–007, and ER98–4300–006; ER98–2669–008, ER99–1128–007, and ER98–4296–006]

Take notice that on July 13, 2000, Duke Energy Moss Landing, LLC and Duke Energy Oakland, LLC tendered for filing a revised compliance report regarding refunds as required by the Commission's Order issued January 28, 2000 approving the Final Offer of Settlement filed in the above-captioned proceeding on November 16, 1999. This revised compliance report substitutes for the compliance report noticed by the Commission on April 18, 2000 in the above-captioned proceedings.

Comment date: August 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Lowell Cogeneration Company Limited Partnership

[Docket No. ER97–2414–003]

Take notice that on July 17, 2000, Lowell Cogeneration Company Limited Partnership (Lowell), tendered for filing a three year update to its market power study in compliance with the Commission's Order in Docket No. ER97–2414–000 granting Lowell market based rate authority.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket Nos. ER99–1659–006 and ER99–1660–006]

Take notice that on July 17, 2000, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (for the purposes of this filing, the CSW Operating Companies), tendered for filing a refund report pursuant to the Commission's June 1, 2000 order in the above-captioned docket regarding refunds to Northeast Texas Electric Cooperative, Inc., and East Texas Electric Cooperative, Inc., on their network service agreements under the CSW Operating Companies' open access transmission service tariff.

A copy of this filing has been served on each person designated on the official service list compiled by the Secretary in this proceeding, each of the affected wholesale customers, and on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. PPL Electric Utilities Corporation

[Docket No. ER00–1712–001]

Take notice that on July 17, 2000, PPL Utilities Corporation (PPL Utilities), tendered for filing an updated market power analysis pursuant to Ordering Paragraph (D) of the Commission's order in Pennsylvania Power & Light Company, 80 FERC ¶ 61,053 (1997).

PPL Utilities has served a copy of this filing on the parties on the Commission's official service list for this docket.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER00–3161–000]

Take notice that July 17, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment to its electric service agreement (SA) with Badger Power Marketing Authority of Wisconsin (BPMA). The SA is under Wisconsin Electric's FERC Electric Tariff Third Revised Volume No. 1 and is Service Agreement No. 25.

Wisconsin Electric respectfully requests an effective date of July 17, 2000.

Copies of the filing have been served on BPMA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER00–3162–000]

Take notice that on July 17, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and Indianapolis Power & Light Company (IPL).

Cinergy and IPL are requesting an effective date of June 19, 2000.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER00–3163–000]

Take notice that on July 14, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and FPL Energy Power Marketing, Inc., (FPL).

Cinergy and FPL are requesting an effective date of June 19, 2000.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER00–3164–000]

Take notice that on July 17, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and FPL Energy Power Marketing, Inc., (FPL).

Cinergy and FPL are requesting an effective date of June 19, 2000.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER00–3165–000]

Take notice that on July 17, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and H.Q. Energy Services (U.S.) Inc., (HQES).

Cinergy and HQES are requesting an effective date of June 19, 2000.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER00–3166–000]

Take notice that on July 17, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and Indianapolis Power & Light Company (IPL).

Cinergy and IPL are requesting an effective date of June 19, 2000.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER00–3167–000]

Take notice that on July 17, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and H.Q. Energy Services (U.S.) Inc., (HQES).

Cinergy and HQES are requesting an effective date of June 19, 2000.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. North Central Missouri Electric Cooperative Inc.

[Docket No. ER00–3170–000]

Take notice that on July 17, 2000, North Central Missouri Electric Cooperative, Inc. (North Central), tendered for filing an Agreement Covering Purchase of Electric Power & Energy between North Central Missouri Electric Cooperative, Inc. and City of Milan, Missouri, (Milan Agreement), a Joint Use and Rental Agreement between North Central Missouri Electric Cooperative, Inc. and Grundy Electric Cooperative, Inc. (Grundy Agreement), and a Facilities Lease Agreement between North Central Missouri Electric Cooperative, Inc. and City of Unionville, Missouri (Unionville Agreement). North Central's filings were made pursuant to § 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and § 35.12 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12. North Central's filing is available for public inspection at its offices in Milan, Missouri.

North Central requests that the Commission accept the agreements with an effective date of July 18, 2000 or such later date as North Central becomes subject to the Commission's jurisdiction.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–3171–000]

Take notice that on July 17, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy), tendered for filing an executed Service Agreement for short-term firm point-to-point transmission service, establishing Cinergy Services, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of July 7, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Madison Gas and Electric Company

[Docket No. ER00–3172–000]

Take notice that on July 17, 2000, Madison Gas and Electric Company (MGE), tendered for filing service agreements under MGE's Market-Based Power Sales Tariff with:

- British Columbia Power Exchange Corporation—"Powerex".
- Wisconsin Public Service Corporation.

MGE requests the agreements be effective on the date they were filed with the FERC.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER00–3173–000]

Take notice that on July 17, 2000, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Cargill-Alliant, LLC as a firm point-to-point customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Cargill-Alliant, LLC and the South Carolina Public Service Commission.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER00–3174–000]

Take notice that on July 17, 2000, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Allegheny Energy Supply Company, LLC as a firm point-to-point customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Allegheny Energy Supply Company, LLC and the South Carolina Public Service Commission.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19057 Filed 7–27–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3175–000, et al.]

Jersey Central Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

July 21, 2000.

Take notice that the following filings have been made with the Commission:

1. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3175–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Duke/Louis Dreyfus L.L.C., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 47.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3176–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and Engage Energy US, L.P., FERC Electric Tariff, Second Revised Volume No. 1, Service Agreement No. 94.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3177–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc. and American Energy Solutions, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 85.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3178–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and CNG Retail Services Corporation (Peoples Plus), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 80.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3179–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Energy Transfer Group, L. L. C., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 57.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3180–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and CNG Power Services Corporation, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 6.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3181–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and CMEX Energy, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 25.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3182–000]

Take notice that on July 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Engelhard Power Marketing, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 14.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER00–3183–000]

Take notice that on July 18, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Quest Energy, L.L.C. (Quest).

Cinergy and Quest are requesting an effective date of June 19, 2000.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Oklahoma

[Docket No. ER00–3184–000]

Take notice that on July 18, 2000, Public Service Company of Oklahoma (PSO), tendered for filing an Interconnection Agreement between PSO and Kiowa Power Partners, LLC (Kiowa).

PSO requests an effective date for the Interconnection Agreement of sixty (60) days from the date of the filing.

PSO states that a copy of the filing was served on Kiowa and the Oklahoma Corporation Commission.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER00–3185–000]

Take notice that on July 18, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Aquila Energy Marketing Corporation (Aquila). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cargill-Alliant, LLC

[Docket No. ER00–3186–000]

Take notice that on July 18, 2000, Cargill-Alliant, LLC (CA), pursuant to Section 35.13 of the Commission's Regulations under the Federal Power Act, 18 CFR 35.13, and Section 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, tendered for filing revisions to its Rate Schedule FERC No. 1, the purpose of which is to permit CA to resell Firm Transmission Rights.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER00–3187–000]

That notice that on July 18, 2000, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit I to APS-FERC Rate Schedule No. 192 between APS and the City of Williams (Williams) for the Operating Year 2000.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the City of Williams and the Arizona Corporation Commission.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. MI Energy, LLC

[Docket No. ER00–3190–000]

Take notice that on July 17, 2000, MI Energy, LLC, tendered for filing pursuant to Rules 205 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 18 CFR 385.205 and 385.207, and Section 35.12 of the Commission's Regulations 18 CFR 35.12, an application for blanket authorization and certain waivers under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of 60 days from the date of filing or the date of a Commission order granting approval of this Rate Schedule.

MI Energy intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MI Energy purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, MI Energy will be functioning as a marketer. In MI Energy's marketing transactions, MI Energy does not take this title to the electric power and/or energy, MI Energy will be limited to the role of a broker and will charge a fee for its services. MI Energy is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: August 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER00–3206–000]

Take notice that on July 14, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Edison Mission Marketing & Trading, Inc.

Wisconsin Electric respectfully requests an effective date of July 14, 2000 to allow for economic transactions.

Copies of the filing have been served on Edison Mission Marketing & Trading, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. California Power Exchange Corporation

[Docket No. ER00–3212–000]

Take notice that on July 18, 2000, the California Power Exchange Corporation (CalPX), tendered for filing tariff sheets in compliance with the Commission's June 23, 2000 order in this proceeding. The tariff sheets filed on July 18, 2000 incorporate the changes accepted by the Commission's June 23, 2000 order into the CalPX's First Revised Volume No. 2 of its FERC Electric Tariff. First Revised Volume No. 2 was filed in Docket No. ER00–2736–000 in compliance with the Commission's Order No. 614. The tariff sheets filed on July 18, 2000 do not propose any substantive changes in the tariff sheets accepted on June 23, 2000 but only adapt those tariff sheets to the format of the First Revised Volume No. 2.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. California Power Exchange Corporation

[Docket No. ER00–3213–000]

Take notice that on July 18, 2000, the California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing revised tariff sheets in compliance with the Commission's June 23, 2000 order in this proceeding accepting Amendment No. 3. CTS has adapted Amendment No. 3 to the format and pagination of its Second Revised Rate Schedule FERC No. 1, filed in Docket No. ER00–2737–000 in compliance with the Commission's Order No. 614. The compliance filing made on July 18, 2000 in this proceeding does not make any substantive changes in Amendment No. 3 as it was accepted by the June 23, 2000 order. The compliance filing only adapts Amendment No. 3 to the format and pagination of the Second Revised Rate Schedule FERC No. 1.

Comment date: August 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Rumford Cogeneration Company Limited Partnership

[Docket No. QF86–291–003]

Take notice that on July 7, 2000 and July 19, 2000, Rumford Cogeneration Company Limited Partnership filed supplements to its May 16, 2000 Application for Commission Recertification as a Qualifying Cogeneration Facility. The supplements clarify certain information regarding the cogeneration facility and the proposed change in ownership of the facility.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Pedricktown Cogeneration Limited Partnership

[Docket No. QF87–407–005]

Take notice that on July 13, 2000 and July 19, 2000, Pedricktown Cogeneration Limited Partnership filed supplements to its May 16, 2000 Application for Commission Recertification as a Qualifying Cogeneration Facility. The supplements provide additional information regarding the cogeneration facility and the proposed change in ownership of the facility.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Gregory Power Partners, L.P.

[Docket No. QF99–32–002]

Take notice that on July 12, 2000 and July 19, 2000, Gregory Power Partners, L.P. filed supplements to its May 16, 2000 Application for Commission Recertification as a Qualifying Cogeneration Facility. The supplements provide additional information regarding the cogeneration facility and the proposed change in ownership of the facility.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19059 Filed 7–27–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2382–004, et al.]

Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 24, 2000.

Take notice that the following filings have been made with the Commission:

1. Montana Power Company

[Docket No. ER98–2382–004]

Take notice that on July 19, 2000, Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a compliance report showing Montana refunded amounts, including interest, collected in excess of the settled Energy Imbalance Schedule amounts in the above-referenced dockets.

A copy of the filing was served upon the state commissions within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER00–2067–002]

Take notice that on July 19, 2000, Boston Edison Company (BECo), tendered for filing an executed Related Facilities Agreement (Agreement) between BECo and ANP Bellingham Energy Company (ANP). The Agreement complies with the directives of the Commission in its order issued on May 30, 2000 in *Boston Edison Company*, 91 FERC ¶ 61,187, regarding an unexecuted form of the Agreement, and contains certain other changes that reflect the negotiations of the parties.

BECo requests that the Agreement be accepted for filing effective July 18, 2000, the date that ANP executed the Agreement.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket Nos. ER00–2696–000 ER00–2773–000]

Take notice that on July 19, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC tendered for filing a request for an exception to waiver of notice requirements in the above-referenced dockets.

Copies of the filing have been provided to the customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER00–3168–000]

Take notice that on July 19, 2000, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power), tendered for filing pursuant to Section 205 of the Federal Power a

revised Joint Open Access Transmission Tariff. This filing is intended to implement retail access in Nevada and to make certain other changes to reflect the current status of operations.

Sierra and Nevada Power request that the revised tariff be made effective on the date that retail access commences in the state of Nevada.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER00–3189–000]

Take notice that on July 19, 2000, Western Resources, Inc. (WR), tendered for filing a Letter Agreement and a Control Area Service Agreement between WR and Missouri Joint Municipal Electric Utility Customers (MJMEUC). WR states that the purpose of these agreements is to permit the City to take Scheduling, System Control, and Dispatch Services from WR.

These agreements are proposed to be effective June 1, 2000.

Copies of the filing were served upon the City and the Kansas Corporation Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–3191–000]

Take notice that on July 19, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 81 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of July 18, 2000 to Southern Indiana Gas and Electric Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Energy Corporation

[Docket No. ER00–3192–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Dynegy Power Marketing, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on June 6, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy Corporation

[Docket No. ER00–3193–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Dynegy Power Marketing, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on June 6, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Corporation

[Docket No. ER00–3194–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Dynegy Power Marketing, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 18, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy Corporation

[Docket No. ER00–3195–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Dynegy Power Marketing, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on June 6, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER00–3196–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Dynegy Power Marketing, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on June 6, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Corporation

[Docket No. ER00–3197–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power & Light Company, for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 15, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Corporation

[Docket No. ER00–3198–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power & Light Company, for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on June 5, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER00–3199–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power & Light Company, for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 19, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER00–3200–000]

Take notice that on July 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Reliant Energy Services, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on June 5, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Caroline Utilities Commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3201–000]

Take notice that on July 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Conergy, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 32.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3202–000]

Take notice that on July 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc. and Cleveland Electric Illuminating Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 51.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–3203–000]

Take notice that on July 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Dayton Power & Light Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 33.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER00–3204–000]

Take notice that on July 19, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Minnesota Municipal Power Agency providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER00–3205–000]

Take notice that on July 19, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Minnesota Municipal Power Agency providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER00–3208–000]

Take notice that on July 19, 2000, Commonwealth Edison Company (ComEd), tendered for filing an executed service agreement for Public Service Company of Colorado (PSC) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests and effective date of July 13, 2000 for the service agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on PSC.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. MidAmerican Energy Company

[Docket No. ER00–3209–000]

Take notice that on July 19, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing with the Commission a Notice of Cancellation pursuant to Section 35.15 of the Commission's Regulations.

MidAmerican requests that the following rate schedule be canceled effective March 31, 1998.

1. Full Requirements Power Agreement dated December 16, 1987, between Iowa Public Service Company (a predecessor company of MidAmerican) and City of Denver, Iowa. This Agreement has been designated as MidAmerican Rate Schedule Electric Tariff No. 7, Service Agreement No. 3.

MidAmerican requests a waiver of Section 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican inadvertently failed to submit the Notice of Cancellation upon expiration of the agreement. The expired agreement was supplanted by a new agreement, the "Power Sales Agreement" and has been designated as MidAmerican Rate Schedule Electric Tariff No. 5, Service Agreement No. 29 and 30.

MidAmerican has mailed a copy of this filing to City of Denver, IA, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities commission.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Columbia Falls Aluminum Company, PPL Montana LLC, Alcoa, Inc. and Kaiser Aluminum & Chemical Corporation

[Docket No. ER00–3210–000]

Take notice that on July 19, 2000, Columbia Falls Aluminum Company, PPL Montana LLC, Alcoa, Inc., and Kaiser Aluminum & Chemical Corporation, tendered for filing member signature pages of the Northeast Regional Transmission Association Agreement and also a letter stating that Northwest Power Enterprises Inc., relinquishes its membership in the Northwest Regional Transmission Association.

Comment date: August 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19058 Filed 7–27–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Floodplain Involvement for the Blythe Energy Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Floodplain Involvement.

SUMMARY: Western Area Power Administration (Western) has been approached by Wisvest Corporation, a non-regulated subsidiary of Wisconsin Energy Corporation, to interconnect the power to be generated by the Blythe Energy Project (Project) to Western's transmission system. The Project, as proposed, is a 520-megawatt (MW) natural gas-fired thermal power plant that is intended to serve competitive regional markets in southern California and Arizona. The Project is intended as a "merchant plant," which means that the Project would be independent of other generators and that the power generated would serve the open market rather than any particular utility or load.

The Project would occupy approximately 15 acres of a 76-acre parcel of private land located just east of the Blythe Airport. Water for cooling and steam generation would be obtained from groundwater wells at approximately 2,200 gallons per minute. The plant would be a "zero discharge" facility, meaning that there would be no wastewater discharge from the plant. Instead, wastewater would be handled by evaporation ponds on site. Natural gas would be fed to the plant by new pipelines that would tap existing major interstate gas pipelines in the vicinity. One option is to pipe gas from the Arizona side of the Colorado River through a new 11.5-mile pipeline. A review of the flood hazard maps for Riverside County, California, indicates that the plant site would reside outside the 100-year floodplain of the Colorado River and McCoy Wash, a nearby intermittent drainage. However, the proposed pipeline route would cross the Colorado River and the Palo Verde Valley just south of the City of Blythe. The crossing of the Colorado River would involve horizontal directional, or microbore drilling, which would place the pipeline under the River. This technique would be used for any crossings of irrigation canals and drains as the pipeline crosses the Valley.

In accordance with the U.S. Department of Energy (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain. The floodplain assessment will be included in the Environmental Assessment/Staff Assessment being prepared jointly by Western and the California Energy Commission on the project, in accordance with the provisions of the DOE National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

DATES: Comments on the proposed floodplain action are due to the address below no later than August 25, 2000.

ADDRESSES: Comments should be addressed to Mr. Nick Chevance, Environmental Project Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO, 80228–8213, FAX: 720–962–2630, email chevance@wapa.gov; or Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, FAX: 602–352–2630, email holt@wapa.gov.

FOR FURTHER INFORMATION CONTACT: For Project information contact: Mr. Nick Chevance, telephone 720–962–7254, or Mr. John Holt, telephone 602–352–2592, at the addresses and faxes listed above. For further information on DOE Floodplain/Wetlands Environmental Review Requirement contact: Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–4600 or 800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed Blythe Energy Project would involve construction activities within the floodplain of the Colorado River, including the construction of the natural gas pipeline and the microbore drilling. The floodplain assessment would examine the impacts of this construction on the Colorado River floodplain. The Blythe Energy Project would involve the floodplain in both Riverside County, California, Townships 6 and 7 South, Ranges 22 and 23 East, and La Paz County, Arizona, Township 3 North, Range 22 West. Maps and further information are available from the contacts above.

Dated: July 19, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–19091 Filed 7–27–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6841–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Confidentiality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Confidentiality Rules, EPA ICR No. 1665.03, OMB Control No. 2020–0003, expiration date August 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 28, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sandy Farmer at EPA by phone at (202) 260–2740 or by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1665.03. For technical questions about the ICR, contact Rebecca Moser in EPA's Office of Information Collection by phone at (202) 260–6780, by fax at (202) 260–8550, or by email at *Moser.Rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Confidentiality Rules (OMB Control No. 2020–0003; EPA ICR No. 1665.03), expiring August 31, 2000. This is a request for extension of a currently approved collection.

Abstract: EPA administers a number of environmental protection statutes which require it to collect data from thousands of facilities. Businesses often claim the data they submit as confidential business information (CBI). EPA developed the regulations at 40 CFR part 2, subpart B to protect CBI, as well as the rights of the public under the Freedom of Information Act (FOIA). When EPA must determine whether information is entitled to confidential treatment, it provides the affected business with an opportunity to submit comments (a substantiation). EPA then considers the business's comments in determining whether the previously submitted information should be protected as CBI. This ICR relates to the collection of information that will assist EPA in making confidentiality determinations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 12, 2000 (65 FR 19750); comments were received from one organization.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 1330.

Estimated Number of Responses: 1101.

Frequency of Response: on occasion.

Estimated Total Annual Hour Burden: 6432 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1665.03 and OMB Control No. 2020–0003 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 19, 2000.

Joseph Retzer,

Director, Collection Services Division.

[FR Doc. 00–19121 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–6]

Inadequacy Status of the Portneuf Valley, Pocatello, ID; Submitted Particulate Matter (PM10) Air Quality Improvement Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budget for PM10 in the Portneuf Valley, Pocatello, Idaho submitted PM10 Air Quality Improvement Plan is inadequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Portneuf Valley cannot use the motor vehicle emissions budget from the submitted PM–10 Air Quality Improvement Plan for future conformity determinations.

DATES: This finding is effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Wayne Elson, U.S. EPA, Region 10 (OAQ–107), 1200 Sixth Ave, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Today's document is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to Idaho Division of Environmental Quality on June 8, 2000 stating that the motor vehicle emissions budget in the Portneuf Valley submitted Particulate Matter (PM-10) Air Quality Improvement Plan is inadequate. This finding is based on the exceedences of the PM10 National Ambient Air Quality Standards recorded in December 1999, and the need to re-visit the planning effort for the Portneuf Valley PM10 nonattainment area. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act.

EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671 q.

Dated: July 18, 2000.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–19120 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6559–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7157 or www.epa.gov/oeca/ofa

Weekly Receipt of Environmental Impact Statements
Filed July 17, 2000
Through July 21, 2000
Pursuant to 40 CFR 1506.9

EIS No. 000253, Draft EIS, AFS, MN, Little East Creek Fuel Reduction Project, Plan to Grant Access Across Federal Land to Non-Federal Landowners, Implementation, LaCroix Ranger District, Superior National Forest, Saint Louis County, MN, Due: September 11, 2000, Contact: Jim Thompson (218) 666–0020.

EIS No. 000254, Draft EIS, AFS, ID, South Fourth of July Ecosystem Restoration Project, Implementation, Salmon-Cobalt Ranger District, Salmon-Challis National Forest, Lemhi County, ID, Due: September 11, 2000, Contact: Doug Weaver (208) 756–5219.

EIS No. 000255, Final EIS, FRC, CA, UT, AZ, NM, Southern Trails Pipeline Project (CP99–163–000), Conversion of an Existing Crude Oil Pipeline (known as the ARCO Four Corners Pipeline Line 90 System), Construction and Operation, CA, AZ, UT and NM, Due: August 28, 2000, Contact: Paul McKee (202) 208–1066.

EIS No. 000256, Draft EIS, COE, NJ, Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS for Issuance of a USCOE Section 404 Permit, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ, Due: September 11, 2000, Contact: Steven Schumach (212) 264–0183.

EIS No. 000257, Draft EIS, USN, CA, Point Mugu Sea Range Naval Air Warfare Center Weapons Division (NAWCWPWS), Proposes To Accommodate TMD Testing and Training, Additional Training Exercises, Ventura, Los Angeles, Santa Barbara, San Diego and San Luis Obispo Counties, CA, Due: September 11, 2000, Contact: Cora Fields (888) 217–9045.

EIS No. 000258, Draft EIS, DOE, TN, WA, ID, Programmatic—Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test, ID, TN, WA, Due: September 18, 2000, Contact: Colette E. Brown (877) 562–4593.

EIS No. 000259, Draft EIS, SFW, CA, Bolsa Chica Lowlands Restoration Project, Creation of Wetland Habitat Areas, Approval and Issuance of USCOE Section 404 and USCGD Bridge Permits, Orange County, CA, Due: September 11, 2000, Contact: Jack Fancher (760) 431–9440. USFWS and USCOE are Joint Lead Agencies for the above EIS.

Dated: July 25, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–19155 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6560–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–FHW–D40307–VA Rating EC2, Coalfields Expressway Location Study, Improvements from Route 23 near Pound, VA to the WV State Line east of Slate, VA, Funding and COE Section 404 Permit, Wise, Dickerson and Buchanan, VA.

Summary: EPA expressed concerns about the direct impact to forests, streams and wetlands. EPA recommends that VDOT and FHWA consider flexibility in the design standards of this road to allow for contact sensitive design and that the right-of-way limits and clearing be kept to a minimum.

ERP No. D–RUS–E39053–KY Rating EC2, Jackson County Lake Project, Implementation, To Provide Adequate Water Supplies for the Projected Residential, Commercial and Industrial Needs, Funding and Possible COE Section 10 and 404 Permits, Jackson County, KY.

Summary: EPA expressed environmental concerns due to long-term water quality implications of the proposal and request additional information regarding project purposed/need.

ERP No. DS–FTA–C40046–NY Rating LO, Buffalo Inner Harbor Development Project, Waterfront Redevelopment, Funding and COE Section 10 and 404 Permit Issuance, New Information in Response to a Court Order concerning Historic Preservation, Eric County, NY.

Summary: EPA has no objection to implementation of the proposed project.

FINAL EISs

ERP No. F–BLM–K67049–CA Soledad Canyon Sand and Gravel Mining Project, Proposal to Mine, Produce and Sell, "Split Estate" Private Owned and Federally Owned Lands, Transit Mixed Concrete, Los Angeles County, CA.

Summary: EPA concurred with BLM's conformity determination and is satisfied that air quality standards will be protected. EPA expressed continuing concerns that a jurisdictional analysis has not yet been conducted for waters of the U. S., and potential impacts and appropriate mitigation measures remain uncertain.

ERP No. F–DOE–A08031–00 Transmission System Vegetation Management Program, Implementation, Managing Vegetation, Site Specific, Right-of-Way Grant, CA, ID, MT, OR, UT, WA and WY.

Summary: EPA expressed lack of objections with the proposed action.

ERP No. F–DOE–E09806–TN Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Construct, Operate, and Decontaminate/Decommission of Waste Treatment Facility, Oak Ridge, TN.

Summary: EPA continues to have environmental concerns about potential process releases and project impacts, due to the magnitude and scope of the project.

ERP No. F–FHW–C40147–NY Stewart Airport Access Transportation Improvement Project, A New Interchange on I–84 at Drury Lane, Reconstruction of Drury Lane and a new East-West Connector Road from Drury Lane to Stewart International Airport, Funding, Towns of Montgomery, Newburgh and New Windsor, Orange County, NY.

Summary: While EPA has no objection to the proposed action, EPA would like to review the wetlands avoidance and minimization measures prior to the release of the ROD. EPA also requested that the information, and the wetland mitigation/monitoring plan be included in the Department of Army Section 404 permits.

ERP No. F–FHW–E40781–FL FL–423 (John Young Parking), Improvements from FL–50 to FL–434, City of Orlando, Orange County, FL.

Summary: EPA continues to be concerned regarding the need to monitor storm water and that the entire project should have a delineated bike lane.

ERP No. F–FHW–F40386–OH Meigs–124–21.16 Transportation Corridor, Relocating existing OH–124 and US 33, Meigs County, OH.

Summary: EPA has no objection to the proposed action, since the selected alternative avoids impacts to threatened and endangered species, historic sites, Section 4(f) areas and other important resources in the area, while also minimizing adverse impacts on the area's wetlands.

ERP No. F–FHW–K40220–CA CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Funding and COE Section 404 Permit, San Diego County, CA.

Summary: EPA believes the FEIS remains inadequate for purposes of public disclosure under the National Environmental Policy Act. Pursuant to CEQ's NEPA implementing Regulations, EPA strongly recommended that FHWA prepare a Supplemental EIS to address several actions related to, and/or connected to, State Route 125 which would not proceed without construction of the roadway.

ERP No. F–FHW–L40201–WA US 101 Highway Aberdeen-Hoquiam Corridor Project, Improvements, US Coast Guard and COE Section 404 Permit, Grays Harbor County, WA.

Summary: No formal comment letter was sent to the lead agency.

ERP No. F–IBR–H39007–00 Republican River Basin Long-Term Water Supply Contract Renewals for Five Irrigation Districts, Frenchman-Cambridge, Frenchman Valley and Bostwick Irrigation District in Nebraska and Bostwick No.2 and Almena Irrigation Districts on Kansas, NE and KS.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–FHW–H40136–KS South Lawrence Trafficway Construction, Kansas Turnpike, I–70 to KS–10/Noria Road, New Information concerning KS–10 on the East and US 59 on the West, Funding, COE Section 404 Permit and Right-of-Way Acquisition, Douglas County, KS.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 25, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–19199 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–4]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Project XL Proposed Final Project Agreement: Buncombe County Leachate Recirculation/Gas Recovery (Bioreactor) Project.

SUMMARY: EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for Buncombe County. The FPA is a voluntary agreement developed collaboratively by Buncombe County, the North Carolina Department of Environment and Natural Resources (NCDENR), and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects undertaken in full partnership with the states.

In the draft Final Project Agreement, Buncombe County proposes to use certain bioreactor techniques (*e.g.*, leachate recirculation) at its municipal solid waste landfill (MSWLF), to accelerate the biodegradation of landfill waste and decrease the time it takes for the waste to stabilize in the landfill. The principal objectives of this bioreactor XL project are to evaluate performance of an alternative landfill liner and to assess waste decomposition when recirculated leachate is added to the landfill. To achieve the objectives of the project, Buncombe County proposes to recirculate leachate in MSWLF cells to be constructed with a liner that differs in certain respects from the liner design specified in the Subtitle D regulations. In order to carry out this project, Buncombe County would need relief from current Resource Conservation and Recovery Act (RCRA) Subtitle D regulations (40 CFR part 258), which set forth design and operating criteria. This criteria currently precludes the recirculation of leachate in Subtitle D landfill cells not constructed with the standard Subtitle D composite liner system. Buncombe County desires to construct the remainder of its landfill cells with an approved alternative liner while implementing this leachate recirculation/gas recovery project. Buncombe County is also seeking regulatory flexibility from the prohibition in 40 CFR 258.28, Liquid Restrictions, which currently precludes the addition of useful bulk or non-containerized liquid amendments. During periods of low leachate generation, Buncombe County desires to supplement the leachate flow with water from the adjoining French Broad River to maintain moisture levels in the landfill.

Some of the superior environmental benefits that Buncombe County expects to achieve with this project include: improved leachate quality; reduction in

the potential for uncontrolled releases of leachate to contaminate the groundwater, or gas to contaminate the air during the post-closure phase (should a containment system failure occur); increased gas yield and capture; rapid waste biodegradation and stabilization; increased lifespan of the landfill resulting in less need for construction of additional landfills; reduced post-closure costs; and faster reclamation of land for future use.

The Buncombe County proposal is one of several bioreactor XL project proposals currently being considered by EPA. This proposed project to allow recirculation of leachate using an alternative landfill liner design will apply only to the Buncombe County Landfill in Asheville, North Carolina and the specific landfill cells at that landfill which are being considered under this proposal.

The terms and conditions pertaining to this XL pilot project are contained in the draft Final Project Agreement (FPA), on which EPA is requesting comment today. The draft FPA sets forth the intentions of EPA, Buncombe County, and the State of North Carolina with regard to the implementation of the project and the expected benefits. After review of the comments received during the public comment period and revision of the FPA, as appropriate, the FPA will be signed by representatives from the EPA, the State of North Carolina, and Buncombe County.

The legal implementing mechanism for this project will be a site-specific rule. The draft rule is scheduled for publication in the **Federal Register** for public review and comment in late August 2000. The proposed rule would be "conditional" and would depend on implementation of the alternative design proposed today. Upon completion of the rulemaking, this design would be enforceable in the same way that current RCRA standards for landfills are enforceable to ensure that management of nonhazardous solid waste is performed in a manner that is protective of human health and the environment. The Final Project Agreement and the site-specific rule will not in any way affect the provisions or applicability of any other existing or future regulations.

DATES: The period for submission of comments ends on August 28, 2000.

ADDRESSES: All comments on the proposed Final Project Agreement should be sent to: Ms. Michelle Cook, US EPA, Region 4, 61 Forsyth Street, Atlanta, GA 30303, or Ms. Sherri Walker, US EPA, Ariel Rios Building, Mail Code 1802, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Comments may also be faxed to Michelle Cook (404) 562–8063 or Sherri Walker (202) 260–3125. Comments may also be received via electronic mail sent to: *cook.michelle@epa.gov* or *walker.sherri@epa.gov*.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the Project Fact Sheet or the proposed Final Project Agreement, contact: Michelle Cook, US EPA, Region 4, 61 Forsyth Street, Atlanta, GA 30303, or Sherri Walker, US EPA, Mail Code 1802, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL*. In addition, the proposed FPA is available at the Buncombe County General Services Department, 30 Valley Street, Asheville, NC. Questions to EPA regarding the documents can be directed to Michelle Cook at (404) 562–8674 or Sherri Walker at (202) 260–4295. To be included on the Buncombe County Project XL mailing list about future public meetings, XL progress reports and other mailings from Buncombe County on the XL project, contact Bob Hunter, Director, Buncombe County General Services Department, (828) 250–5466. For information on all other aspects of the XL Program, contact Christopher Knopes at the following address: Office of Policy and Environmental Innovation, US EPA, Mail Code 1802, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at http://www.epa.gov/Projectxl.

Dated: July 24, 2000.

Christopher A. Knopes,

Acting Director, Office of Environmental Policy Innovation.

[FR Doc. 00–19119 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–7]

Whole Effluent Toxicity Test Methods Guidance; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Today, EPA is announcing the availability of a document titled, "Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing (40 CFR Part 136)." This guidance document updates recommendations and suggestions (with additional technical clarification) regarding WET test methods published by EPA and incorporated by reference into regulations. The document includes specific technical guidance on nominal error rate adjustments, confidence intervals, concentration-response relationships, dilutions series selection, and dilution water.

DATES: This notice will become effective July 28, 2000.

ADDRESSES: A copy of the guidance document and supporting materials are available for review at the EPA Water Docket at EPA Headquarters at Waterside Mall, Room EB57, 401 M Street, S.W., Washington, DC 20460. For access to the Water Docket, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Standard Time for an appointment.

FOR FURTHER INFORMATION CONTACT: Marion Kelly at the U.S. Environmental Protection Agency, Office of Water, Engineering and Analysis Division (4303), 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460, call (202) 260–7117, or E-mail kelly.marion@epamail.gov; or John Fox at the U.S. Environmental Protection Agency, Office of Water, Engineering and Analysis Division (4303), 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460, call (202) 260–9889, or E-mail fox.john@epamail.gov.

SUPPLEMENTARY INFORMATION: In 1995, EPA amended the "Guidelines Establishing Test Procedures for the Analysis of Pollutants," at 40 CFR part 136, to add WET test methods to the list of Agency approved methods in Tables IA and II, for CWA data gathering and compliance monitoring programs (60 FR 53529, October 16, 1995). Known as the "WET Methods rule," the 1995 action amended 40 CFR 136.3 by standardizing analytical methods that employ freshwater, marine, and estuarine vertebrates, invertebrates, and plants to directly measure the acute and short-term chronic toxicity of effluents and receiving waters. The WET Methods rule incorporated the following three technical documents by reference: *Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms;* Fourth Edition, August 1993 (EPA/600/4–90/027F); *Short-Term*

Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Third Edition, July 1994 (EPA/600/4–91/002); and *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Marine and Estuarine Organisms*, Second Edition, July 1994 (EPA/600/4–91/003). In 1999, EPA promulgated technical corrections that incorporated an errata document into the WET Methods rule. EPA intended that the errata document correct minor errors and omissions, provide clarification, and establish consistency among the WET rule and test manuals (64 FR 4975, February 2, 1999).

Today's notice announces the availability of an additional document, "Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing (40 CFR Part 136)," EPA/821/B–00/004. This guidance document provides clarification and recommendations to EPA Regional, State, Tribal and local regulatory authorities; regulated entities; and environmental laboratories regarding specific recommended and/or suggested technical elements of the WET test methods. The document provides specific guidance on nominal error rate assumption adjustments, confidence intervals, concentration-response relationships, dilution series selection, and dilution water. EPA prepared the document as part of a settlement agreement to resolve litigation challenging the rulemaking that standardized the testing procedures. The complete text of this **Federal Register** notice and the subject guidance document may be viewed or downloaded on the Internet at http://www.epa.gov/OST/WET/.

Dated: July 24, 2000.

Linda B. Wilbur,

Acting Director, Office of Science and Technology.

[FR Doc. 00–19116 Filed 7–27–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 21, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 26, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0937.

Title: Establishment of a Class A Television Service, MM Docket No. 00–10.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,000.

Estimated time per response: 0.017 hours–52 hours (depending on requirements, this time is split between respondent, and legal and engineering consultants).

Total annual burden: 396,251.

Total annual costs: $2,284,000.

Needs and Uses: The Report and Order in MM Docket No. 00–10 adopted rules for Class A LPTV broadcasters. Class A LPTV broadcasters are subject to the Commission's operating rules for full-service television stations. The Report and Order modified all pertinent Part 73 rules to indicate their applicability to Class A LPTV licensees. The information collections contained within this Report and Order ensure that the integrity of the TV spectrum is not compromised. It will also ensure that unacceptable interference will not be caused to existing radio services and that statutory requirements are met. These rules will ensure that the stations are operated in the public interest.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19043 Filed 7–27–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 21, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 28, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at (202) 418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 240,320.

Estimate Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 210,280 hours.

Total Annual Cost: $48,364,000.

Needs and Uses: The FCC Form 601 is used as a general application (long form) for market based licensing and site-by-site licensing in the Wireless Telecommunications Radio Service. The purpose of this revision is to make the necessary changes to collect licensing information for the 700 MHz auction winners, to make the necessary adjustments to the form and instructions for implementation of Land Mobile Radio Services to ULS, and to further clarify various instructions for the applicants. As use of the FCC Form 601 progresses after implementation of each service, we are discovering ways to ease the burden of filing on our respondents by making further changes to the form (*i.e.*, "fine tuning"). These changes do not affect the total estimated number of respondents or the total estimated average annual burden. The information will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed. Without such information, the Commission could not determine whether to issue the licenses to the applicants that provides telecommunications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. It will also be used to update the database and provide for proper use of the frequency spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19044 Filed 7–27–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 20 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 28, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0783.

Title: 47 CFR Section 90.176, Coordination Notification Requirements on Frequencies Below 512 MHz

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 15.

Estimate Time Per Response: 0.25 hours (multiple responses/annum).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 975 hours.

Total Annual Costs: None.

Needs and Uses: The reporting requirement in 47 CFR Section 90.176 is a result of comments sought in the Report and Order and Further Notice of Proposed Rule Making in PR Docket No. 92–235 and requires each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and, if requested, an engineering analysis. This requirement is necessary to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

OMB Control Number: 3060–0806.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form Numbers: FCC 470 and 471.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; Business or other for-profit entities; and State, local, or Tribal Government.

Number of Respondents: 60,000.

Estimate Time Per Response: 7.3 hours (avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 440,000 hours.

Total Annual Costs: None.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, Internet access, and internal connections.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–19045 Filed 7–27–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Burl Dawin Hobson, Sr., Crockett, Texas; Burl Dawin Hobson, Jr., Crockett, Texas; and Rae-Patrice Dean, Crockett, Texas (as trustees of the Citizens National Bank Employee Stock Ownership Plan, Crockett, Texas, and individually); to acquire additional voting shares of Citizens Bancorp, Inc., Crockett, Texas, and thereby indirectly acquire additional voting shares of Citizens National Bank, Crockett, Texas.

Board of Governors of the Federal Reserve System, July 24, 2000.
Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 00–19079 Filed 7–28–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Community Bancshares Spring Green and Plain, Inc., Spring Green, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank Spring Green and Plain, Spring Green, Wisconsin.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. ENB Bankshares, Inc., Dallas, Texas, and ENB Delaware Bankshares, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Eagle National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, July 24, 2000.
Jennifer J. Johnson,
Secretary of the Board.
[FR Doc: 00–19078 Filed 7–28–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.
TIME AND DATE: 10 a.m., Wednesday, August 2, 2000.
PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.
CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.
SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 26, 2000.
Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 00–19225 Filed 7–26–00; 11:58 am]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Office of the Secretary

Request for Nominations for Members of the Chronic Fatigue Syndrome Coordinating Committee

The Office of Public Health and Science (OPHS), Department of Health and Human Services (DHHS), requests nominations for representatives to serve on the Chronic Fatigue Syndrome Coordinating Committee (CFSCC). Nominations are solicited for one biomedical research scientist with demonstrated achievements in biomedical research relating to chronic fatigue syndrome (CFS); and, one individual who is a representative of a voluntary organization concerned with the problems of individuals with CFS.

DHHS has a strong interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the Committee and, therefore, encourages nominations of qualified candidates from these groups. DHHS also encourages geographic diversity in the composition of the Committee.

Information Required: A nominations package must include the following information for each nominee.

A. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.*, what specific attributes recommend him/her for service in this capacity), and the nominee's area of expertise;

B. A biographical sketch of the nominee and a copy of his or her curriculum vitae; and

C. The name, return address, and daytime telephone number at which the nominator can be contacted. Organizational nominators must identify a principal contact person in addition to contact information. Optimally, a nomination package would also include a statement by the nominee that he/she is willing to accept an appointment to Committee membership.

All nomination information for a nominee must be provided in a complete single package within 45 days of the publication of this notice. Incomplete nominations cannot be considered. The nomination letter must bear an original signature; facsimile transmissions or copies are not acceptable.

DATES: All nominations must be received at the address below no later than 4 p.m. EDT on or before September 11, 2000.

ADDRESSES: All nomination packages shall be submitted to Janice C. Ramsden, Executive Secretary, CFSCC, Office of the Acting Director, NIH, Building 1, Room 235, 1 Center Drive, MSC 0159, Bethesda, Maryland 20892–0159.

FOR FURTHER INFORMATION CONTACT: Janice C. Ramsden at the above address or at 301–496–0959, or e-mail at jr52h@nih.gov.

Dated: July 20, 2000.

Janice C. Ramsden,

Executive Secretary, CFSCC, Office of the Director, NIH.

[FR Doc. 00–19131 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Citizens Advisory Committee on Public Health Services Activities and Research at Department of Energy Sites: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Citizens Advisory Committee on Public Health Services Activities and Research at Department of Energy Sites of the Department of Health and Human Services, has been renewed for a 2-year period beginning July 7, 2000, through July 7, 2002.

For further information, contact Ron Valdiserri, M.D., Executive Secretary, Citizens Advisory Committee on Public Health Services Activities and Research at Department of Energy Sites, 1600 Clifton Road, NE, m/s E–07, Atlanta, Georgia 30333. Telephone 404/639–8002, or fax 404/639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 2000.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–19071 Filed 7–27–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing

AGENCY: Centers for Disease Control and Prevention, Technology Transfer Office, Department of Health and Human Services

ACTION: Notice of availability.

ADDRESSES: Send all inquiries concerning this notice in writing to Beverly Ashton, Centers for Disease Control and Prevention, National Immunization Program, 1600 Clifton Road, Mailstop E62, Atlanta, Georgia 30333.

SUMMARY: The National Immunization Program (NIP), Centers for Disease Control and Prevention (CDC), has developed a software component that can examine an individual's immunization history and determine which specific immunizations the individual needs as of any specified date, according to the recommendations of the Advisory Committee on Immunization Practices. The component is written in the C++ programming language and is exposed as an ActiveX object.

The NIP would like to make this component available to developers of immunization registry software and other applications that have immunization management functions. NIP would like to establish a mechanism which would allow a software vendor or vendors to provide technical maintenance and support for the component. One possibility would be for NIP to post a list of interested vendors (including their addresses and telephone numbers) on the NIP/Registry website *(www.CDC.gov/NIP/Registry)*. Developers who want to implement the component in their systems would then contract with the vendor of their choice, independently, to obtain technical support.

Vendor support would consist of:

Assistance with the installation of the component.
Assistance with day-to-day operational problems.
Correction of software bugs.
Update of parameterized rules to implement new ACIP recommendations.
Enhancements of the component's functionality.

NIP will make the component available to the vendor free of charge, and the vendor will marshal the resources necessary to provide the support to developers, under contracts negotiated between the vendor and the individual developer. CDC will not be a party to these contracts.

Vendors should describe their experience and available resources in providing this kind of software support. Vendors interested in this opportunity with NIP should write to: Centers for Disease Control and Prevention, Attn: Beverly Ashton, National Immunization Program, Mail Stop E–62, 1600 Clifton Road, Atlanta, GA 30333.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 00–19073 Filed 7–27–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC): Family and Intimate Violence Prevention Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Times and Dates: 10 a.m.–4:30 p.m., August 15, 2000.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence and sexual assault. The Subcommittee will make recommendations regarding policies, strategies, objectives and priorities.

Matters To Be Discussed: The Subcommittee will review, and discuss, the clarification of roles (*e.g.*, cross-cutting) among CDC's funded research and resource center projects, and Changing Social Norms. The Subcommittee will be provided an update on CDC's future surveillance activities for collecting national and state data on violence against women (VAW) for fiscal year 2001–2002. The Subcommittee will also be provided an update on the Division of Violence Prevention's (DVP) reorganization and how DVP will maintain visibility of family and intimate violence prevention programs.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ileana Arias, Ph.D., Team Leader, Family and Intimate Violence Prevention Team, DVP, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 2000.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–19072 Filed 7–27–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Head Start Family and Child Experiences Survey (FACES).

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151).

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to extend the Head Start Family and Child Experiences Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Ellsworth Associates and the CDM Group as their subcontractors) (#105–96–1912) to collect information on Head Start performances measures. This revision is intended to extend the current design to a national probability sample of 43 additional Head Start programs in order to ascertain what progress has been made since 1997 in meeting Head Start program performance goals.

FACES currently involves seven phases of data collection. The first phase was a Spring 1997 Field test in which approximately 2400 parents and children were studied in a nationally stratified random samples of 40 Head Start programs. The second and third phases occurred in Fall 1997 (Wave 1) and Spring 1998 (Wave 2) when data were collected on a sample of 3200 children and families in the same 40 programs. Spring 1998 data collection included assessments of both Head Start children completing kindergarten (kindergarten field test) as well as interviews with their parents and ratings by their kindergarten teachers. In the fourth and fifth phases, follow-up continued for a second program year, plus a kindergarten follow-up. The sixth and seventh waves of data collection involve data collection in spring of the first-grade year for both cohorts of children, those completing kindergarten in spring 1999, and those completing kindergarten in spring 2000. The current plan is to extend data collection to a new cohort of 2825 children and families in a new sample of 43 Head Start programs.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Annual Burden Estimates

Estimated Response Burden for Respondents to the Head Start Family and Child Experiences Survey (FACES 2000)—Fall 2000, Spring 2001, Spring 2002, Spring 2003

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2000):				
Head Start Parents	2825	1	1.00	2825
Head Start Children	2825	1	0.66	1865
Head Start Teachers (Child ratings)	195	14	0.25	706
Center Directors	172	1	1.00	172
Education Coordinators	172	1	0.75	129
Classroom Teachers	195	1	1.00	195
Year 2 (2001):				
Head Start Parents	2400	1	0.75	1800
Head Start Children	2400	1	0.66	1584
Head Start Teachers (child ratings)	195	12	0.25	600
Family Services Coordinators	172	1	0.75	129

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 3 (2002):				
Head Start Parents	800	1	0.75	600
Head Start Children	800	1	0.66	528
Head Start Teachers (child ratings)	65	12	0.25	200
Kindergarten Parents	1600	1	0.75	1200
Kindergarten Children	1600	1	0.75	1200
Kindergarten Teachers	1600	1	0.50	800
Year 4 (2003):				
Kindergarten Parents	800	1	0.75	600
Kindergarten Children	800	1	0.75	600
Kindergarten Teachers	800	1	0.50	400

Annualized Totals:

Year 1; 5892
Year 2, 4113
Year 3, 4528
Year 4, 1600

Estimated Total Annual Burden Hours: 4033

Note: The 4033 Total Annual Burden Hours is based on an average of 2000, 2001, 2002, and 2003 estimated burden hours:

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures from emergency processing by September 15, 2000. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Bob Sargis at (202) 690–7275. In addition, a request may be made by sending an e-mail request to: *rsargis@acf.dhhs.gov*.

Comments and questions about the information collection described above should be directed to the following address by September 15, 2000: Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: OMB Desk Officer for ACF.

Dated: July 25, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–19097 Filed 7–27–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members of Public Advisory Committee; Food Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Food Advisory Committee (the Committee) in FDA's Center for Food Safety and Applied Nutrition. Nominations will be accepted for current vacancies and vacancies that will or may occur on the Committee during the next 12 months.

FDA has special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations of appropriately qualified female, minority, or physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: August 28, 2000.

ADDRESSES: All nominations for membership should be sent to Catherine M. DeRoever (address below).

FOR FURTHER INFORMATION CONTACT: Regarding all nominations for membership: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the advisory committee listed below. Individuals should have expertise in the activity of the Committee. Vacancies will occur June 30, 2000.

Food Advisory Committee

The Committee provides advice primarily to the Director, Center for Food Safety and Applied Nutrition (CFSAN), and as needed, to the Commissioner of Food and Drugs, and other appropriate officials, on emerging food safety, food science, and nutrition, and other food-related issues that FDA considers of primary importance for its food and cosmetics program. The Committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to: (1) Broad scientific and technical food or cosmetic related issues; (2) the safety of new foods and food ingredients; (3) labeling of foods and cosmetics; (4) nutrient needs and nutritional adequacy; and (5) safe exposure limits for food contaminants. The Committee may also be asked to provides advice and makes recommendations on ways of communicating to the public the potential risks associated with these issues and recommends on approaches to that might be considered in for addressing them the issues.

The Committee has been restructured to consist of a "parent" Committee and four standing Subcommittees. The Subcommittees are as follows: (1) Additives and Ingredients; (2) Contaminants and Natural Toxicants; (3) Dietary Supplements; and (4) Food Biotechnology. The new Food Advisory Committee "parent"/Subcommittees structure was adopted because of the breadth of scientific disciplines needed to consider emerging food safety and nutrition related matters. Further, the new structure provides an expanded knowledge base from which to draw essential expertise in emerging and reemerging scientific areas. While the former structure of a single standing Committee was considered responsive to the needs of CFSAN and FDA when originally chartered in 1991, the increasing breadth of the scientific questions that must be addressed by CFSAN prompted the design of for the new structure.

The purpose of the Subcommittees is to provide highly specialized expertise in the review and analysis of assigned topics. As was the case of former ad hoc Subcommittees, meetings of the Subcommittees are expected to shall be open to the public in accordance with

rules and regulations for advisory committee proceedings except as otherwise determined by the Commissioner or designee. Similarly, interactions between and among the "parent" Committee and the four Subcommittees, will be in accordance with rules and regulations for advisory committee proceedings established requirements. The Subcommittee's findings, conclusions, and recommendations will be reported to the "parent" Committee. As a general matter, included in this report will be a recommendation from the Subcommittee on final disposition of the assigned topic. Generally, matters that cut across the agency program areas would fall under the purview of the "parent" Committee. As a general rule, issues relating to the microbiological safety of food will be addressed by the National Advisory Committee on Microbiological Criteria for Foods.

Criteria for Members

Persons nominated for membership on the Committee shall be knowledgeable in the fields of physical sciences, biological and life sciences, food science, risk assessment and other relevant scientific and technical disciplines. The agency is particularly interested in considering candidates with a comprehensive background in food technology, molecular biology, genetics, biotechnology, and a variety of medical specialties, as many issues brought before the Committee involve medical or epidemiologic impact on nutrients, additives, contaminants, or other constituents of the diet, such as dietary supplements. The term of office is up to 4 years.

The Committee includes technically qualified members who are identified with consumer interests and representatives of industry interests.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the Committee. Nominations shall state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude Committee membership. Additionally, the nominee's mailing address, telephone number, and curriculum vitae must accompany the nomination. The agency cannot guarantee further consideration of nominations that do not include this requested information. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, employment, consultancies, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Industry Representatives

Regarding nominations for members representing industry interests, a letter will be sent to each person or organization that has made a nomination and to other organizations that have expressed an interest in participating in the selection process together with a complete list of all such organizations and the nominees. The letter will state that it is the responsibility of each nominator or organization that has expressed an interest in participating in the selection process to consult with the others to provide a consensus slate of possible members representing industry interests within 60 days. In the event that a slate of nominees has not been provided within 60 days, the agency will select an industry representative for each such vacancy from the entire list of industry nominees to avoid delay or disruption of the work of the Committee. The agency is particularly interested in nominees that possess the essential scientific credentials needed to participate fully and knowledgeably in the Committee's deliberations. In addition to this expertise, the agency believes that it would be an advantage to the Committee's work if the individual(s) had special insight and direct experience into specific industrywide issues, practices, and concerns that might not otherwise be available to others not similarly situated.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 21, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–19096 Filed 7–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0066]

Establishment of Resistance and Monitoring Thresholds in Food-Producing Animals; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: Public Meeting Regarding the Establishment of Resistance and Monitoring Thresholds in Food-Producing Animals. The topic to be discussed is the Center for Veterinary Medicine's (CVM's) current thinking on concepts for the establishment of resistance and monitoring thresholds in food-producing animals. CVM will seek scientific input from experts at this meeting on these concepts as well as suggestions for alternative approaches.

Date and Time: The meeting will be held on October 10 and 11, 2000, 8:30 a.m. to 5 p.m. Written comments may be submitted until December 11, 2000.

Addresses: The meeting will be held at The DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

For general inquiries about the meeting and registration contact: Lynda W. Cowatch, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5281, FAX: 301–594–2298.

For technical inquiries contact: Aleta Sindelar, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0148.

Registration: Registration is required. There is no registration fee for the meeting. Limited space is available, and early registration is encouraged. Logistics for the meeting and the registration form are available on the Internet at http://www.fda.gov/cvm/fda/mappgs/registration.html. Please send the registration form to Lynda Cowatch (address above). Additional information about the meeting and the agenda will be available on the Internet (Internet site above) before the meeting.

If you need special accommodations due to a disability, please contact the DoubleTree Hotel at least 7 days in advance, 800–222–8733.

Transcripts: Transcripts of the meeting will be available on the Internet at http://www.fda.gov/cvm.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1999 (64 FR 887), FDA announced the availability of a discussion paper entitled "A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (the Framework Document). FDA made the Framework Document

available to the public to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying concepts to be used to develop microbial safety policies protective of the public health. This document discussed several risk management approaches to the regulatory management of antimicrobial drug resistance associated with food-producing animal use of antimicrobials. These strategies covered both preapproval and postapproval approaches and included: (1) Revision of the preapproval safety assessment for antimicrobial resistance for new animal drug applications to assess all uses for microbial safety, (2) categorization of antimicrobials based upon the importance of the drug for human medicine and upon which pre- and postapproval requirements would be based, (3) postapproval monitoring of the development of antimicrobial drug resistance and, (4) elaboration of resistance and monitoring thresholds.

The Framework Document discussed the concept of two thresholds, the resistance threshold and the monitoring threshold, that would be established prior to the approval of an antimicrobial new animal drug for use in food-producing animals to ensure that food products derived from treated animals are safe for consumers. The resistance threshold would be established in humans to represent the upper limit of resistant bacteria that can be transferred from animals to consumers. The Framework Document discussed the possibility of establishing resistance thresholds based on human data, animal data, or both.

Monitoring thresholds would also be established to guide the postapproval monitoring of resistance development in animals. According to the Framework Document, a monitoring threshold would need to be determined for each antimicrobial prior to approval, and the threshold may vary depending on the human or animal pathogen of concern. Monitoring thresholds would be established in animals so that they would serve as an early warning system, signaling when loss of susceptibility or resistance prevalence is approaching the resistance threshold.

If a monitoring threshold were reached, the drug sponsor would implement mitigation actions to address the loss of susceptibility or increasing resistance trend. If mitigation were not successful, and resistance continued to increase and reach the resistance threshold, withdrawal of the approval of the drug for the use(s) of concern would be warranted.

II. Submission of Comments

Interested persons may submit written comments regarding this meeting until December 11, 2000. Written comments should be submitted to the Dockets Management Branch (address above), or by fax to 301–827–6870. Comments should be identified with the docket number found in the brackets in the heading of this document.

III. Related Information

Transcripts of the three previous CVM public meetings on antimicrobial resistance, related public comments, the "Draft Risk Assessment on the Human Health Impact of Fluoroquinolone Resistant Campylobacter Associated with the Consumption of Chicken (Revised as of February 9, 2000)," and "A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for use in Food-Producing Animals" can be found on the Internet at http://www.fda.gov/cvm/fda/mappgs/antitoc.html.

Dated: July 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19048 Filed 7–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0405]

Prescription Drug User Fee Act (PDUFA) II Five-Year Plan—FY 2000 Update; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an internal planning document entitled "PDUFA II Five-Year Plan: FY 2000 Update." The updated plan to achieve PDUFA II goals for the drug review process takes into account changes in revenue projections and workload based on actual revenue and application receipts in fiscal year (FY) 1998 and FY 1999 and updated projections for FY 2000 through FY 2002.

DATES: Submit written comments on the plan at any time. Comments will be considered as the agency makes annual adjustments to the plan in the second quarter of each FY.

ADDRESSES: Copies of this document are available on the Internet at www.fda.gov/oc/pdufa2/5yrplan.html. For those without Internet access, single copies of this plan may be obtained from the Office of Management and Systems (HF–20), Attention: Frank P. Claunts (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please send a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the plan to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Frank P. Claunts, Office of Management Systems (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of an internal planning document entitled "PDUFA II Five-Year Plan—FY 2000 Update." PDUFA was amended and extended through the year 2002 by the Food and Drug Administration Modernization Act of 1997. The amended and extended PDUFA is referred to as PDUFA II. PDUFA II authorizes appropriations and fees that will provide FDA with resources to sustain the drug review staff developed through FY 1997 and to achieve the even more stringent new goals.

The FY 2000 updated plan begins with a statement of purpose, provides background information on PDUFA and a summary of the new goals, and updates the 10 major assumptions on which the plan is based. This is the second update of the plan since it was initially published in July 1998. The updated plan summarizes individual plans of agency components with major PDUFA responsibilities, and it also provides a consolidated agency summary. The updated plan to achieve PDUFA II goals for the drug review process takes into account changes in revenue projections and workload based on actual revenue and application receipts in FY 1998 and FY 1999 and updated projections for FY 2000 through FY 2002. Attachments include: The Federal Register notice of December 28, 1999 (64 FR 72669) establishing prescription drug user fee rates for FY 2000, updated 5-year estimates of PDUFA fees and revenues, and the revised PDUFA II Information Management Five-Year Plan.

We are making this plan available to all who have an interest. We welcome comments and will consider them in the future as annual adjustments are made to the plan.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the plan. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 21, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19046 Filed 7–27–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1115–N]

RIN 0938–AI28

Medicare Program; Solicitation for Proposals for the Medicare Coordinated Care Demonstration

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice informs interested parties of an opportunity to apply for a cooperative agreement for the Medicare Coordinated Care Demonstration. This demonstration uses existing models of coordinated care interventions to improve the quality of services furnished to specific beneficiaries and manage expenditures under Parts A and B of the Medicare program. We are interested in testing models aimed at beneficiaries who have one or more chronic conditions that represent high costs to the Medicare program.

Section 4016 of the Balanced Budget Act of 1997 requires a review of best practices and that the Medicare Coordinated Care Demonstration design be based on the findings of this assessment. We intend to select at least eight proposed projects for this demonstration through this competitive application process.

Eligible Organizations

Potentially qualified applicants are existing providers of coordinated care services applicable to the Medicare population. See section II.C.1. of this notice for additional details.

FOR FURTHER INFORMATION CONTACT: For information concerning this demonstration, contact Catherine Jansto, HCFA Project Officer, at (410) 786–7762, or cjansto@hcfa.gov.

For information regarding cooperative agreement procedures, fiscal matters, or guidance in completing the application forms, contact Nettie Faulkner, Grants Management Specialist, at (410) 786–6639, or nfaulkner@hcfa.gov.

General information regarding this project is available on HCFA's website (www.hcfa.gov/ord/coorcare.htm).

DATES: Applications will be considered "on time" if we receive them on or before October 11, 2000.

ADDRESSES: Mail applications to: Department of Health and Human Services, Health Care Financing Administration, Office of Internal Customer Support, Acquisition and Grants Group, Attn: Ms. Nettie Faulkner, Grants Management Specialist, Mail Stop: C2–21–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the executive summary, resumes, forms, and documentation supporting the cost proposal. Please refer to the file code HCFA–1115–N on the application.

Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time for panel review, will be considered late applications.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Requirements

Section 4016 of the Balanced Budget Act of 1997 (Pub. L. 105–33) requires the Secretary of Health and Human Services (the Secretary) to evaluate best practices in the private sector for methods of coordinated care. The statute also directs the Secretary to design a demonstration project for the original Medicare fee-for-service population based on this evaluation. The purpose of the demonstration is to evaluate models of coordinated care that improve the quality of services provided to specific beneficiaries with a chronic illness and manage expenditures under Parts A and B of the Medicare program so that, under the demonstration, Medicare expenditures do not exceed what they would have been in the absence of the demonstration.

Section 4016(b)(3) authorizes the continuation of demonstration projects that are cost-effective. That is, the evaluation of the demonstration projects conducted by HCFA establishes that these projects reduce Medicare expenditures or do not increase Medicare expenditures while increasing the quality of services furnished and beneficiary and provider satisfaction. This section also authorizes us to expand the number of demonstration sites if the models tested are shown to be cost-effective. In addition, we may issue regulations to implement, on a permanent basis, the components of the demonstration projects that are proven to be cost-effective for the Medicare program.

In July 1998, we competitively awarded a task order for conducting a review of best practices in coordinating care and for providing a recommendation of demonstration design options to Mathematica Policy Research, Inc. (MPR). We have evaluated the findings from the review of best practices and selected the following demonstration design.

B. Problem

Historically, a small proportion of Medicare beneficiaries has accounted for a major proportion of Medicare expenditures. For example, in 1996, 12.1 percent of all Medicare enrollees accounted for 75.5 percent ($126.1 billion) of all Medicare fee-for-service program payments. Many of these high-cost beneficiaries are chronically ill with certain common diagnoses, and most of the Medicare expenditures for their care are for repeated hospitalizations. During the next 30 years, as the population ages, the number of these individuals is expected to grow dramatically.

Health care for individuals with chronic illness is often fragmented and poorly coordinated across multiple health care providers and multiple sites of care. Oftentimes, evidence-based practice guidelines are not followed, nor are patients taught how best to care for themselves. These shortcomings are particularly true for patients served under reimbursement systems in which providers lack incentives for controlling the frequency, mix, and intensity of services, and have limited accountability for the outcomes of care.

A number of health care organizations, including health maintenance organizations, private insurers, commercial firms, and academic medical centers, have developed programs to support adherence (by both provider and patient) to evidence-based medical practices, to better coordinate care across providers and between face-to-face encounters with chronically ill patients, and to reduce costs. At best, the literature on the effectiveness of

these models is mixed. There is little hard evidence that these programs are effective. Hence, the applicability and cost-effectiveness of these programs, in general, for the original Medicare fee-for-service program and specifically to its beneficiaries who suffer from complex co-morbid conditions is uncertain.

C. Findings From the Review of Best Practices

On March 23, 1999, we published a notice in the **Federal Register** (64 FR 13998) announcing the opportunity to submit information on examples of best practices of coordinated care as well as to comment on potential aspects of the overall Medicare Coordinated Care Demonstration. Through a review of submitted information, electronic literature searches, and expert referrals, MPR identified programs self-reporting success in coordinating care for chronically ill patients. A multi-tiered approach focusing on structure, process, and outcomes was used to identify favorable characteristics of potentially successful programs and to develop a general framework that describes these coordinated care delivery models. The review emphasized the strength of the evidence supporting claims of success, the degree of impact on costs (hospitalizations and total costs), and the degree of impact on patient outcomes. A detailed discussion of the methodology, findings, and limitations of the best practices assessment is available in MPR's final report that can be accessed via our website (www.hcfa.gov/ord/coorcare.htm). A brief summary of the report's findings and limitations is presented below.

1. Findings

MPR identified two main types of coordinated care programs and a three-step conceptual framework applicable to these coordinated care delivery models. The two main types of programs differ in the patients they serve and the tactics they adopt to accomplish the three steps of the conceptual framework for coordinating care. Because of limitations in the submitted data, the cost-effectiveness of the reviewed programs could not be determined with certainty. There were 37 programs reporting credible evidence of impacts on hospitalizations or total costs. Twenty-five of these programs were interviewed in greater depth to obtain greater insight into the reasons for their success. These programs are referred to as "identified potentially cost-effective programs" in this notice.

a. *Models of Coordinated Care:* The identified potentially cost-effective programs tended to operate as one of the following two program types.

• Case Management (CM) Programs

These programs serve a select group of frail, disabled patients who suffer from severe illness, often multiple chronic health problems, and a high risk of recurrent, costly, adverse medical events. Each patient has a unique set of diseases, functional deficits, and social conditions. These programs follow a holistic approach to care and rely on case manager judgment and highly individualized approaches. Creative, innovative interventions are used to address individual care needs. Partnership with the patient, primary care physician (PCP), other providers, caregivers, and the social support system is integral to the interventions.

• Disease Management (DM) Programs

These programs target persons whose primary health problem is a specific disease, although certain comorbid conditions are usually addressed as well. Patients with a similar level of severity of the disease face similar problems. The care coordination interventions tend to be highly structured and emphasize the use of standard protocols and clinical guidelines. The PCP may not play an active role in the implementation of the interventions; however, successful collaboration with PCPs generally influences program outcomes.

Under both main types of coordinated care programs, the interventions provided go beyond those services for which payment under the original Medicare fee-for-service program is typically made. These interventions may include comprehensive geriatric assessment, intensive patient education, social services, telephone monitoring, medications, or transportation, among others.

Overall, there was variation among the identified potentially cost-effective programs within and between the two main types of programs. The scope, mix, and intensity of care coordination interventions varied as did the duration of the interventions, targeted disease(s), organizational structures, system and staff capabilities, outcomes, and other features. Notwithstanding this variation, there were many examples of programs that claim to have successfully combined particular practices to positively impact patient and cost outcomes.

b. *Goals of Successful Coordinated Care Programs:* In general, the identified potentially cost-effective coordinated care programs use a variety of interventions to accomplish the following goals:

• Ensure optimal medical management.

• Enhance and support patient self-management.

• Eliminate barriers to efficient and effective utilization of health care services.

To achieve these goals, the identified potentially cost-effective coordinated care programs of both types generally follow a three-step process that is described in the following conceptual framework.

c. *Conceptual Framework:* Care coordination programs identify the patients they serve through a range of methods. After defining the target population (and any exclusionary criteria), programs may identify potentially eligible clients through provider or self-referrals, claims data, special screening tools, or a combination of methods. Eligible and willing cases then receive the intervention.

Many care coordination programs "risk-stratify" their patients, attempting to identify from those meeting the basic eligibility criteria the subset that would benefit most from the intervention. Some programs use risk stratification to restrict the set of patients admitted to the program, while others use it to tailor the intervention to the estimated level of risk of adverse outcomes faced by the patient. However, the degree of structure imposed in stratifying patients may vary. Thus, the three-step process discussed below focuses on what programs do once targeted patients are identified, rather than how they are selected.

Step One: Assess and Plan: Accurately assess patients' barriers to improved health and devise a feasible plan to overcome those barriers. This step encompasses activities such as initial patient assessment, care plan development, establishing patient-specific goals, assessing patient education needs, and involving PCPs and other providers. The component tasks of Step One are as follows:

• *Uncover all important problems.* These are the problems that can keep the patient from better health and lead to unplanned hospitalizations. These problems vary for each patient.

• *Address all important problems and goals.* Every important problem and goal should have a plan and an intervention or interventions to address the problem.

• *Draw from a comprehensive arsenal of proven interventions.* A care coordinator must have a broad array of appropriate, proven interventions

available from which to choose the best ones to meet a patient's needs.

• *Produce a clear, practical plan of care with specific goals.* The first step concludes with a written, individualized plan of care. It is important that all concerned—patient, care coordinator, primary care physician—have a common, agreed-upon set of goals for the patient, and when and how the patient is going to achieve them.

Step Two: Implement and Deliver: Implement the plan and deliver the interventions. This step encompasses activities such as patient education, service arrangement and provision, and coordination with providers. The component tasks of Step Two are as follows:

• *Build ongoing relationships with the primary care physician (PCP) and with other providers.* This task enables care coordinators to coordinate care and facilitate communication among providers. Also, programs that fail to engage the physician may be limited in the degree to which they can address the medical aspects of care coordination.

• *Build ongoing relationships with patients and families.* The foundation for this relationship is often laid during the initial assessment in the first step.

• *Provide excellent patient education.* This intervention must be part of every plan of care. Programs must teach patients crucial self-care skills, such as proper diet for their condition, medical compliance, self-monitoring, emergency action plans, and skills to cope with the stresses of chronic illnesses.

• *Make certain that planned interventions are conducted.* This task involves monitoring to make sure each intervention is conducted.

Step Three: Reassess and Adjust: Determine whether the interventions are working as intended. If not, adjust the plan by going back to Step One. This step entails regular evaluation and monitoring of whether the plan of care developed in Step One and its implementation in Step Two are achieving the intended goals. The component tasks of Step Three are as follows:

• *Perform periodic reassessments.* The care coordinator must contact patients on a regular basis to make sure they continue to progress and have not encountered new problems.

• *Be accessible.* Patients must have an easy way to reach a care coordinator at all times.

• *Nurture the relationship with PCPs and providers.*

• *Nurture the relationship with patient and family.* This relationship and the relationship with the PCPs and providers must be maintained.

• *Make prompt adjustments to the plan of care as needed.* If the reassessment reveals a lack of progress, the plan of care may need to be changed. Several interventions may have to be tried and discarded before a successful solution is discovered. Changes in the plan of care also need to be made promptly, sometimes even urgently. Patients' level of risk for complications may change, necessitating a change in follow-up frequency.

Overlaying these three steps, at the program level, programs employ system-wide processes for assessing and improving the coordinated care delivery model as a whole. These continuous quality improvement processes ensure that lessons learned about failures and successes are disseminated to other care coordinators and program staff.

d. *Similarities Between Program Types:* The two main types of coordinated care programs are similar in several respects. First, the identified potentially cost-effective programs of both types accomplish the same three basic steps and address the same basic components under each of these steps, as described above. Both disease and case management programs have case managers who act as advocates for their patients to help them get the care and attention they need. Strong programs of both types stress the critical importance of having personable, knowledgeable case managers who are effective communicators. Programs of both types also provide thorough patient education focused on self-care and overcoming personal barriers to improved health. In addition, the potentially cost-effective programs of both types are proactive rather than reactive, developing written care plans based on evidence-based, disease-specific guidelines at the outset, and monitoring patients between office visits.

e. *Differences Between Program Types:* Despite these similarities, the two main types of coordinated care programs differ in the types of patients they serve and the tactics they adopt to accomplish the three steps and their component tasks. The major differences between disease management (DM) and case management (CM) programs seem to stem from the somewhat more limited set of problems that DM programs typically deal with. Patients in DM programs generally do not have as high a prevalence of difficult geriatric syndromes, such as incontinence, falling, cognitive impairments, delirium, or such social problems as inadequate family support, housing, or transportation. Instead, the vast majority of DM patients' problems center around a single disease or condition and fall into fundamental problems with either their own behavior or the disease-specific care they receive. Patient behavior problems contributing to their problems include poor medication compliance, lack of self-care skills, and lack of adherence to recommended lifestyle changes. Provider-based problems include failure to prescribe the most effective medications, poor coordination of care across providers and settings, lack of adherence to disease-specific guidelines based on evidence or expert panels, and inadequate follow-up and monitoring. Case management programs tend to serve patients with a more complex mix of problems and comorbidities. While they also face problems of poor self-care and compliance and inadequate prescribing and follow-up by their physicians, the patients are often frail and more prone to face adverse interactions from multiple prescription drugs that they may be taking for different conditions, or from conflicting advice about diet and exercise from different providers treating their multiple conditions.

As a result of the differences in characteristics of the patients served, disease management and case management programs differ in the emphases they place on different component tasks, and on how they accomplish these tasks. They also differ on the degree to which patient education and treatment is standardized. Case management programs tend to rely more heavily on the judgment of the case manager and less on protocols. Case management programs also take a broader perspective, involving family and other caregivers and arranging for services more often than the typical disease management programs. (See MPR's final report for more comprehensive lists of key features of potentially cost-effective disease management and case management programs.)

f. *Rural Programs:* A few of the identified potentially cost-effective programs served rural areas. Each of these programs was of the case management type and looked similar to nonrural case management type programs. However, having strong ties to the community helped rural case managers gain patients' trust and find ways of getting things done. Travel distance placed important constraints on case managers by limiting their caseloads, forcing them to spend much energy on transportation arrangements, and making it difficult for them to forge

collaborative relations with outlying physicians.

2. Public Comments

In response to the March 23, 1999 notice, we received 25 timely public comments on potential aspects of the overall demonstration. All but six of the comments were from providers that furnish coordinated care services. The commenters included for-profit vendors, tertiary hospitals, academic medical centers, health plans, and nonprofit groups. The comments related to the types of organizations that are appropriate providers of care coordination services, the care manager's role, desired features of care coordination programs, and reimbursement of care coordination services.

Commenters suggested a variety of organizational structures in which to provide care management including for-profit and nonprofit entities, integrated delivery systems, and stand-alone care management providers.

The majority of commenters believed that the care manager should be part of an interdisciplinary team and most believed that the care manager should be intimately involved in the provision of actual care to enrollees. One commenter stressed the need to define the care manager's role in relation to other providers of care coordination (such as discharge planners) in the current Medicare system. Commenters also suggested that programs need to integrate patients' physicians into the care coordination process.

Several providers credited their success to the use of patient risk stratification, evidence-based medicine, information systems, or Internet and telecommunications technologies. The latter two were mentioned by several commenters as being useful for rural populations.

There were many comments on the difficulties of providing care management services under the current Medicare fee-for-service payment system. Almost all respondents suggested some sort of risk bearing system in which providers would be paid a fixed fee per enrollee and would share in any savings to the Medicare system. Some also suggested that reimbursement be linked to patient outcomes.

3. Limitations

Through the study design, a number of exemplary or highly regarded coordinated care programs may have been excluded from the review of best practices. Only those programs that volunteered to submit information and that provided self-reported evidence of favorable impacts on costs or hospital admissions were considered in the review. However, a review of excluded programs would not likely alter our basic conclusions about the three basic activities that successful programs must accomplish and the component tasks that they must address. Nor would have examination of additional programs been likely to permit more definitive statements about minimum requirements for a successful care management intervention. Evidence from additional programs would have likely provided further proof that there are multiple ways to achieve the goal of coordinating care.

An additional limitation of the review is that the data were self-reported and it was not possible to validate the reported impacts on outcomes. Nonetheless, the quality of the evidence reported was evaluated, and this ranking was used in the identification of potentially cost-effective practices. Thus, absent fraudulent representation of the data or concealment of questionable evaluation practices, programs that reported large impacts are likely to have had sizeable positive effects, even if the effects are somewhat overstated. This conclusion is reinforced by the focus of the study on programs that also tended to have features that case management experts believe to be strongly associated with good care coordination. Another data-related limitation is that the cost-effectiveness of most programs could not be assessed due to the complete absence or poor quality of data on the costs of the interventions.

In the analysis phase of the assessment, some of the less successful programs (those that reported comparatively smaller impacts) were reviewed in an effort to better understand potential differences between these programs and programs with similar structure and process features that reported large impacts. While this effort yielded limited insight (due largely to the wide variability in the quality of the evidence and large confidence intervals), examination of three unsuccessful programs reinforced the findings described above. These ineffective programs failed to identify all important problems, and failed to set specific goals in creating care plans. They also had shortcomings in implementing and delivering the care. Two of the programs cited difficulties building relations with primary care providers. One program relied solely on pamphlets for patient education. They also failed to reassess patients adequately, lacked procedures for patients to reach case managers between scheduled contacts, and relied on staff with backgrounds in acute care rather than community nursing.

D. Discussion

The findings of the best practice assessment suggest two general conclusions. First, there are several, if not many, potentially effective ways of coordinating care, and second, the two delivery models identified (DM and CM) may have the potential to improve care for chronically ill Medicare beneficiaries. In general, these conclusions are sufficiently informative for the purposes of developing a demonstration design. A conceptual framework applicable to the identified coordinated care delivery models is provided, and it appears that implementation of each of these delivery models in the Medicare fee-for-service program under a demonstration is feasible.

In addition to the conceptual framework and favorable characteristics of potentially cost-effective programs found through the review of best practices, there are several key design details that must be specified in order to ensure the likelihood of a successful demonstration within the time frame required by the Balanced Budget Act. These design issues include: Eligibility requirements, organizational capabilities for providing coordinated care services and for participating in the research and evaluation aspects of the demonstration, experimental design, technical operational design features, and the payment methodology to be tested. In specifying these requirements, we rely on our past experience with successful and unsuccessful demonstrations.

II. Provisions of This Notice

A. Purpose

This notice solicits applications for demonstration projects that will use existing models of coordinated care to improve the quality of services furnished to specific beneficiaries and manage expenditures under Parts A and B of the Medicare program. These savings are to result from more efficient provision and utilization of Medicare-covered services and the prevention of avoidable, costly medical complications. The intention of this demonstration is not to expand the set of services that Medicare covers with the exception of coordinated care services for targeted beneficiaries. Applicants may propose to expend a portion of the payments received for coordinated care services on services

that are typically not covered by the Medicare program. These services are not to be considered Medicare-covered services to which demonstration participants are entitled under the demonstration. Examples of these services include (but are not limited to): Coordination with community-based services, transportation, medications, noncovered home visits, and equipment. Beneficiaries will not be financially liable for these services.

We are interested in testing a variety of delivery and payment models aimed at diseases that represent high costs to the original Medicare fee-for-service program. The number and type of models to be tested will be determined by the quality of the proposals received. Through this solicitation, we intend to award at least eight proposed projects. Five of the selected projects will be conducted in urban areas; three in rural areas. We intend to operate the demonstration projects for 4 years from implementation during which time a formal evaluation will be conducted. We will assign a project officer, to each selected project, who will serve as the point of contact with the demonstration project staff. Our project officer will provide technical consultation regarding cooperative agreement procedures, monitor demonstration site activities, and forward feedback to the demonstration project's staff.

B. Funding

Under the demonstration, using a monthly all-inclusive rate, we will pay for the proposed coordinated care services. As required in the Balanced Budget Act of 1997, aggregate Medicare payments for the costs of the demonstration must be budget neutral for the Medicare program. This requirement means that, over the course of the projects, the aggregate Medicare payment for the coordinated care services (and any start up funding and incentive payments, if made) may be no greater than the total expected Medicare program savings from the coordinated care services. In addition to the monthly payment amounts, applicants may propose and we are willing to consider testing well-constructed performance incentives for the coordinated care entity.

Applicants may request minimal financial assistance for initial implementation costs (one-time payment of up to $150,000 per demonstration project, subject to availability). If made, this funding will be considered as part of the project's budget neutrality estimate. We are willing to consider requests for assistance with the following kinds of initial implementation costs: Modification of existing protocols, services, outreach, and educational materials to address a Medicare fee-for-service population. Applicants' proposed project budget must show the applicant's share of start-up costs as well as the proposed HCFA share.

C. Requirements for Submissions

We are seeking innovative proposals from a variety of qualified organizations that test whether models of coordinated care improve clinical outcomes, satisfaction, quality of life, and appropriate use of Medicare-covered services for targeted Medicare fee-for-service beneficiaries, while managing Medicare expenditures under Parts A and B so that budget neutrality of the project is achieved. Preference will be given to proposals aimed at beneficiaries who have one or more chronic conditions that represent high costs to the Medicare program, such as congestive heart failure, other heart disease (heart attack, ischemic heart disease, angina, arrhythmia), diabetes, liver disease, chronic obstructive pulmonary disease or other chronic lung disease, stroke or cerebrovascular or other vascular disease, psychotic disorders, major depressive disorders, drug/alcohol dependence, Alzheimer's or other dementia, cancer, or HIV/AIDS. Applicants proposing to target beneficiaries with chronic conditions not listed above must provide evidence justifying their selection.

Applicants must describe, in detail, their experience with providing coordinated care services and the populations served. Enrollment and drop-out rates must be described. Applicants must submit evidence for the following required organizational capabilities: appropriately experienced clinical and management staff; accurate understanding of the original Medicare fee-for-service program coverage and payment policies; adequate data and information systems; capacity to capture and analyze relevant patient-specific data elements; willingness to submit data to our designated evaluation contractor; effective management oversight; and effective quality improvement processes.

We are interested in models that are specifically targeted to the Medicare population and that take into account the beneficiaries' relative health and functional status, age, mental functioning, and other relevant factors. We are interested in and will give preference to proposals that focus on beneficiaries most likely to benefit from coordinated care interventions and that take patient comorbidities into account in the services provided.

Many of the design elements of the proposed demonstration project will depend on the coordinated care delivery model and interventions offered by the applicant, as well as the proposed payment methodology. When appropriate, applicants must demonstrate capabilities consistent with the coordinated care conceptual framework described in section I.C. of this notice.

Applicants must explain how their proposed program addresses each of the following aspects of the demonstration:

1. Coordinated Care Services

We seek to test existing models of coordinated care that have at a minimum been pilot tested by the applicant, thus eliminating the need for a lengthy developmental time frame. The applicant must therefore be an existing provider of coordinated care services applicable to the Medicare population. For purposes of this notice, "existing provider" is defined as an entity that has provided coordination services similar to or identical to the coordinated care services proposed for the demonstration for at least 1 year prior to the date of this notice.

Applicants must serve a chronically ill Medicare population, define their target population precisely, and have a defined scope of coordinated care services to be provided over a defined service period. The proposed coordinated care services must be appropriate for the targeted population, and must be likely to improve the quality of care for these individuals. The proposed bundle of coordinated care services may not include services for which separate Medicare payment is typically allowed (for example, physician office visits, inpatient hospital stays, durable medical equipment, and other Medicare-covered services).

Proposals for models that rely on medication management regimens or services (to be furnished by a provider other than the coordinated care entity) that are not typically covered by the Medicare program must address issues related to the cost of the medications or services, beneficiaries' ability to afford the medications or services, implications for the applicant's protocols, and other pertinent details.

Detailed processes must be proposed for beneficiary participant identification, recruitment, selection, enrollment, and discharge from the program. Applicants must indicate how they plan to assess whether an individual has one of the targeted

diseases and what additional restrictions will be placed on eligibility (for example, qualifying conditions, excluded conditions, and mandated referral from a physician). Additional processes must include: Ensuring optimal medical management; enhancing and supporting patient self-management and patient and caregiver education; ensuring efficient and effective utilization of Medicare services; and ensuring adequate flow of patient information from setting to setting.

Preference will be given to proposals in which the intervention protocols are not proprietary in nature.

2. Evidence of Prior Success

Applicants must provide clear evidence that their program has achieved reductions in the use of medical services for the target population previously served. Applicants must provide estimates showing that Medicare savings from proportionately similar effects for the target Medicare population would be sufficient to cover the costs of the demonstration to the Medicare program (proposed aggregate payment for coordinated care services and any start up funding). For their claims of prior success, applicants must define the outcomes measures used, the length of time over which they were measured, and how the measures were calculated. Preference will be given to proposals that report strong, credible evidence of savings and improved patient outcomes calculated from actual data collected during past implementation of the proposed care coordination interventions by the applicant. Preference will also be given to proposals that will test protocols that have been shown to be cost-effective specifically with a Medicare population.

3. Experimental Design

The proposed demonstration project must provide for voluntary participation for targeted Medicare beneficiaries. Preference will be given to proposals that make use of a randomized experimental design (for example, concurrent treatment group (receives coordinated care services) and control group (receives usual care) with patient assignment occurring after agreement to participate in the demonstration is established). For a randomized design, applicants must submit evidence of their ability to recruit and serve a study population of at least 618 Medicare beneficiaries per year (309 in the treatment group and 309 in the control group). When characteristics of the proposed intervention or the population under study renders a randomized design infeasible, applicants must provide a justification for this conclusion, and must fully describe how the proposed treatment and comparison groups would be identified such that the selection bias usually avoided by randomization would be minimized. For a comparison group design, applicants must submit evidence of their ability to recruit and serve a large enough population to allow us to differentiate statistically between the two groups.

Details of the applicant's proposed experimental design must be specified in its proposal, including the expected number of eligible Medicare beneficiaries in the geographic area the program intends to serve and the proportion expected to volunteer for the demonstration. Applicants must either (1) allow us (or our contractor) to assign beneficiaries to the experimental or control/comparison groups, or (2) have their proposed procedures for assignment approved and monitored by HCFA. At the time enrollment begins, beneficiaries who are then being served by the applicant's program may not be recruited for participation in the demonstration.

Note: Beneficiaries participating in the demonstration must be enrolled in Medicare Parts A and B and Medicare must be the primary payor.

4. Payment and Budget Neutrality

Applicants must propose an overall payment methodology and project budget that are appropriate for their proposed coordinated care delivery model and budget neutral for the Medicare program. Applicants must submit evidence demonstrating the accuracy of the financial assumptions used in their proposed payment methodology and project budget. Applicants' accuracy in estimating the expected net Medicare savings, the expected total yearly Medicare expenditures for the treatment and control (or comparison) groups, and the strength of the evidence supporting these estimates will be considered in evaluating the proposals. Further, applicants selected for award will be required to submit to us data supporting their financial assumptions prior to finalization of the award. In addition, we may revisit the budget neutrality calculations periodically during demonstration implementation to assess if the projects are budget neutral to the Medicare program.

• All-Inclusive Rate

The applicant's payment methodology must propose an all-inclusive rate per enrolled beneficiary served per calendar month for the proposed bundle of coordinated care services. Under the demonstration, the coordinated care entity may bill for and be paid for each calendar month for which the beneficiary was enrolled in the coordinated care program and received coordinated care service furnished by that coordinated care entity. Enrollment begins the first day of the month following consent for participation from the beneficiary. Applicants may propose an alternative enrollment process with justification. For example, an applicant may propose an enrollment process that would allow for enrollment during the month in which the beneficiary consents to participate and for subsequent partial monthly payment.

This demonstration aims to give the care coordination entity increased flexibility in providing services and make participation in the care coordination program attractive to patients and providers. The monthly all-inclusive rate for coordinated care services furnished to participating beneficiaries will be considered an administrative fee; no beneficiary coinsurance amount or deductible liability will be applied. Further, the selected demonstration sites must submit bills for the coordinated care services furnished on an assignment basis (no balance billing will be permitted). Providing coordinated care services to beneficiaries without cost eliminates a potential financial barrier to willingness to participate, offers a modest incentive for beneficiaries to participate (without applicable supplemental insurance) and avoids a layer of complexity in the billing requirements both for us and the demonstration projects. In addition, applicants may propose to expend a portion of the payment for coordinated care services on other services to beneficiaries.

Applicants may also propose to expend a portion of the monthly administrative fee for coordinated care services on appropriate payments to providers whose services are essential to the success of their programs. For example, an applicant may propose to pay physicians for services furnished to demonstration participants for which separate Medicare payment is not allowed. The payment might be structured as a monthly payment for care oversight or payment for participation in a scheduled multidisciplinary team conference. Payments to physicians must be tied to services furnished to an enrolled beneficiary and cannot be based upon referrals to the program. These

payments, if any, will be included in the budget-neutrality calculations and in determining any Medicare savings.

The proposed payment amount must be reasonable given the scope of coordinated care services proposed and must be supported by prior evidence of cost savings. The derivation of the monthly all-inclusive rate from the component costs must be specified in the applicant's proposal. No separate payment will be made for recruitment, travel, capital investments, labor, administrative, implementation, operating, data collection, research, evaluation, or any other costs incurred by the demonstration selectees in the provision of the proposed coordinated care services. However, applicants may request minimal financial assistance for initial implementation costs (a one time payment of up to $150,000 per demonstration project, subject to availability). Applicants must submit a detailed project budget with documentation of how the requested start-up funds, if any, would be used.

• Case Mix

In proposing the monthly all-inclusive rate per beneficiary, applicants may propose a payment schedule (of up to six rates) that reflects the intensity of services provided to beneficiaries with varying severity of disease or functioning, or length of time enrolled in the coordinated care program. Under this type of payment methodology, applicants must specify the mix of cases anticipated in the treatment group and develop an average rate. This average rate will determine the maximum monthly payment amount permitted (average monthly rate per beneficiary multiplied by the number of beneficiaries enrolled during the month cannot exceed the aggregate case mix adjusted rate for that month).

• Formal Evaluation

The demonstration projects will be required to cooperate in an independent formal evaluation of the demonstration, including submission of cost and other program data and two site visits, conducted by HCFA or its contractor. No additional funding will be provided for these activities.

• Performance Incentives

The primary focus of the demonstration program is an all-inclusive rate payment methodology. For the first year, all demonstration sites will be paid in this manner. For the second year and beyond, an applicant may propose testing alternative models such as a financial incentives program for the coordinated care entity beyond the monthly all-inclusive rate. Proposed performance-based financial incentive fee payments may be in the form of a fixed fee (capped by a percentage of net Medicare savings), or a percentage of net Medicare savings (as calculated by HCFA or its contractor). Development of appropriate outcomes-based incentives can be a significant challenge. Thus, applicants must define precisely the target measures to be used to determine if the performance-based financial incentive fee will be paid and how these measures will be calculated. Final decisions on these alternatives will depend on: (1) The applicant's ability to demonstrate the effectiveness of the proposed incentives, and (2) the applicant's ability to measure savings attributable to the intervention. Applicants should be aware that our primary interest is in testing the effectiveness of an all-inclusive rate payment and that this will be the primary basis for evaluating proposals.

5. Ability To Carry Out the Demonstration

Applicants must demonstrate that they have the basic infrastructure to carry out the demonstration. At a minimum, the applicant must have adequate physical assets, trained staff, clinical protocols to guide care delivery and management, linkages to providers and services necessary to deliver care, and appropriate information and financial systems. Accordingly, applicants must have substantial experience in coordinating care.

Proposals must include a detailed implementation plan describing tasks, time lines, and costs associated with implementing the demonstration program. Since applicants must demonstrate prior experience in operating successful care management programs, the implementation plan should focus on tasks and a time line for modifying the existing system to fit the demonstration program features listed above. Applicants may need to modify case management models, including protocols, services, outreach, and education to address a Medicare fee-for-service population.

The implementation plan must also demonstrate how the organization will modify its existing data and claims systems in order to submit electronic claims for payment to the appropriate Medicare contractor(s), using standard claims formats, and to meet all data requirements for the project. The preimplementation start-up phase should not exceed 6 months. Within 12 months from the implementation date, at least 309 treatment patients must be served (for a randomized design.)

D. Submission of Applications

Applications (original and 10 copies) must be received by HCFA as indicated in the **DATES** and **ADDRESSES** sections of this notice. Only proposals that are considered "on time" will be reviewed and considered by the technical review panel. Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the cover letter, executive summary, resumes, forms, and documentation supporting the cost proposal. That is, sections IV, V, VI, VII, and VIII below must be presented in 40 double-spaced typewritten pages. These sections make up the body of the proposal and must fully describe the proposed project.

Application Contents Outline

To facilitate the review process, the application should include the following contents in the following order:

I. *Cover Letter*—Must include a brief description of the proposed project and indicate the model to be tested (that is, DM or CM, target population, and urban site or rural site), and identify any and all HCFA provider numbers assigned to the applicant, a contact person, and contact information.

II. "Application for Federal Assistance" Standard Form 424 (including SF–424a "Budget Information" and SF–424b "Assurances", available on our website (www.hcfa.gov/ord/ordhp1.htm)).

III. *Executive Summary*—Must include a summary of the project, care coordination experience, existence of adequate information systems, and willingness to share protocols for care coordination.

IV. Statement of the Problem

V. Demonstration Design

VI. Organizational Capabilities

VII. Project Budget and Cost-Effectiveness Evidence

VIII. Implementation Plan

IX. Related Supplemental Materials

E. Evaluation Process and Criteria

A review of responsive proposals will be conducted by a panel of experts. This technical review panel will convene in the months following the due date for submission of proposals. The panelists' recommendations will contain numerical ratings based on the evaluation criteria, the ranking of all responsive proposals, and a written assessment of each applicant. In addition, we will conduct a financial analysis of the recommended proposals and evaluate the budget neutrality of these proposed projects.

Evaluation Criteria and Weights

• Soundness of the Demonstration Design (20 points)

A. The proposal provides clear and convincing evidence and supporting materials that proposed care coordination services are appropriate for the targeted population, likely to achieve reductions in the use of medical services, and likely to improve the quality of care for these individuals.

B. The proposed research design provides for voluntary participation of a sufficient number of Medicare beneficiaries. The research design provides for the enrollment of comparable treatment and comparison groups in order to allow for validity of the evaluation result. Preference will be given to applications that make use of an appropriate randomized design.

• Organizational Capabilities (30 points)

A. The proposal provides evidence of the availability and adequacy of facilities, equipment, personnel, and data systems to successfully conduct the proposed project.

B. The proposal provides evidence of the organizational capacity to ensure adequate service delivery and the provision of high quality of care.

C. Specific information is provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

• Ability To Implement the Demonstration (35 Points)

A. The proposed project implementation strategy and plan are detailed and appropriate.

B. There are adequate mechanisms for ensuring the medical necessity and reasonableness of the coordinated care services furnished under the demonstration.

C. There are adequate mechanisms for ensuring that beneficiaries' physicians are integrated with the project.

D. The strategy and plan for recruiting the required number of patients in the control and experimental groups appear reasonable and achievable.

E. The data to be collected, data sources, and data analyses planned are specified in detail and are sufficient to ensure optimal medical management and efficient use of health care services.

F. The implementation plan supports an independent evaluation of the project.

G. The proposal provides evidence that effective continuous quality improvement processes are being employed and can be transferred to the demonstration.

• Strength of the Cost-Effectiveness Evidence (15 points)

A. The proposal provides justification and explanation for the proposed payment amount(s).

B. The proposed payment amount for the bundle of coordinated care services is reasonable considering the scope and nature of services included.

C. The proposal provides clear, convincing evidence that, over the 4 years of the demonstration, the aggregate Medicare expenditures under Parts A and B (including incentives and start-up funding, if made) will be no greater than expected Medicare expenditures in the absence of the demonstration.

Final Selection

From among the most highly qualified applicants, the final selection of projects for the demonstration will be made by the HCFA Administrator and will take in to consideration operational feasibility, geographic location, and program priorities (such as testing a variety of approaches for delivering services, targeting beneficiaries, and payment). We reserve the right to conduct (a) site visit(s) prior to making awards. We expect to make the awards in early 2001.

III. Collection of Information Requirements

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520) and assigned OMB control number 1938–0800. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 4016 of the Balanced Budget Act of 1997 (Pub. L. 105–33).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstrations and Evaluations)

Dated: July 23, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–19159 Filed 7–27–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1144–N]

Medicare Program; Announcement of a Series of Regional Training Sessions To Provide Training to Medicare+Choice Organization Physicians, Medicare+Choice Organization Non-Physician Practitioners, and Medicare+Choice Organization Medicare Directors, As Well As Physician Organizations and Billing Associations Involved in the Timely and Accurate Submission of Physician Encounter Data To Support a Comprehensive Risk Adjustment Model

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of training sessions.

SUMMARY: This notice announces a series of regional training sessions to provide an opportunity for Medicare+Choice Organization (M+CO) physicians, M+CO non-physician practitioners, and M+CO medical directors, as well as physician organizations, billing associations, and other interested parties, to obtain information on the requirements placed on M+COs for submission of physician encounter data collection. HCFA and the Restuccio Healthcare Group will provide the physician encounter data training.

Regional Training Dates & Cities

The regional training sessions will be held as follows:

PHYSICIAN ENCOUNTER DATA TRAINING SCHEDULE 2000

Date	Location
August 23, 2000, Palo Alto, CA	Hyatt Rickeys, 4219 El Camino Real, Palo Alto, CA 94306–4493, (650) 493–8000.
August 29, 2000, Philadelphia, PA	Park Hyatt Philadelphia at the Bellevue, Broad and Walnuts Streets, Philadelphia, PA 19102, (215) 893–1234.

PHYSICIAN ENCOUNTER DATA TRAINING SCHEDULE 2000—Continued

Date	Location
September 7, 2000, Chicago, IL	Hyatt Regency Woodfield, 1800 East Golf Road, Schaumburg, IL 60173, (847) 605–1234.
September 13, 2000, Tampa, FL	Hyatt Regency Westshore on Tampa Bay, 6200 Courtney Campbell Causeway, Tampa, FL 33607, (813) 874–1234.
September 20, 2000, San Diego, CA	San Diego Marriott Hotel and Marina, 333 West Harbor Drive, San Diego, CA 32101–7700, (619) 234–1500.

FOR FURTHER INFORMATION CONTACT: Marcy Perkins, Restuccio Healthcare Group, Encounter Data Representative, (901) 385–0123 (telephone); (901) 385–1821 (fax); or e-mail us with your questions at encounterdata@ritecode.com. Information is also available on our homepage at http://www.hcfa.gov/events.

SUPPLEMENTARY INFORMATION:

Background

The Balanced Budget Act of 1997 (BBA) (Public Law 105–33) established the Medicare+Choice (M+C) program. Under the BBA, we must implement a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors for payment to M+C organizations (M+COs). Risk adjustment implementation began January 1, 2000.

The BBA gives us the authority to collect inpatient hospital data for discharges on or after July 1, 1997, and additional data for services occurring on or after July 1, 1998. Pending OMB approval, M+COs must submit physician encounter data beginning October 1, 2000.

The agenda for the half-day training sessions will include the following topics:

•; Overview of comprehensive risk adjustment models and implementation timeline.

• Review of M+C National Standard Format (M+C NSF).

• Coding tips and resources for obtaining additional coding information.

• Data requirements for physician encounter data.

• Question-and-answer period.

Registration

Registration for these training sessions is required and will be on a first-come, first-served basis, limited to two attendees per organization. A waiting list will be available for additional requests. Registration can be accomplished via the Internet at http://www.hcfa.gov/events or by completing a paper form available at the aforementioned Internet address. A confirmation notice will be sent to attendees upon finalization of registration.

Attendees will be provided with training materials at the time of the training session. There will be two training sessions per day. The morning session will be from 8:30 a.m. to 11:30 a.m.; the afternoon session will be from 1:30 p.m. to 4:30 p.m. Individuals can attend only one session (either morning or afternoon).

Authority: Sections 1851 through 1859 of the Social Security Act (42 U.S.C. 1395w-21 through 1395w-28).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 25, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–19158 Filed 7–27–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Susan S. Rucker, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 245; fax: 301/402–0220; e-mail: ruckers@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Establishment of Cellular Manipulations Which Enhance Oligo-Mediated Gene Targeting

MM Seidman and A Majumdar (both of NIA)

Serial No. 60/191,996 filed 24 Mar 2000

This application relates to gene targeting, illustrated by the use of triplex-forming oligonucleotides (TFO's). In particular, the application describes and claims methods for improving the efficiency of the modification of gene sequence (including mutation and/or recombination) through the use of cells which have been cultured so as to synchronize their cell cycles. According to the method described and claimed in the application gene targeting reagents, as demonstrated by, but not limited to, triple helix forming oligonucleotides, are introduced into cultured, synchronized cells. Gene targeting applications are useful in research applications for the generation of transgenic animals and plants, including animals used as model systems, such as knockout mice, and animals or plants used for production of the product of the transgene of interest. In addition, efficient methods of gene targeting may also be useful in improving or carrying out gene therapy applications.

AAV5 Vector for Transducing Brain Cells and Lung Cells

JA Chiorini (NHLBI/NIDCR), RM Kotin (NHLBI)

Serial No. 09/533,427 filed 22 Mar 2000

The invention described and claimed in this patent application is related to the delivery of heterologous nucleic acids or genes to particular target cells. In particular, the application relates to methods of delivering a heterologous nucleic acid or gene of interest to particular target cells using an Adeno-

Associated Virus of serotype 5 (AAV5). The particular target cells identified include the alveolar cells of the lung and cerebellar and ependymal cells of the brain. The methods described herein may be useful in carrying out gene therapy related to diseases of the brain or central nervous system and the respiratory tract.

This work has been published, in part, at Davidson BL, *et al.* PNAS, USA 97(7):3428–32 (March 28, 2000) and Zabner J, *et al.* J Virol. 74(8):3852–8 (April 2000).

In addition to this patent application, PHS owns additional intellectual property related to this technology. The patent application has been published as WO 99/61601 on December 2, 1999 and the research corresponding thereto has been published at Chiorini JA, *et al.* J. Virol. 73(5): 4293–98 (May 1999) and Chiorini JA, *et al.* J. Virol. 73(2): 1309–19 (Feb. 1999).

AAV4 Vector and Uses Thereof

JA Chiorini (NHLBI/NIDCR), RM Kotin, B Safer (both of NHLBI)
Serial No. 09/532,594 filed 22 Mar 2000

The invention described and claimed in this patent application relates to the delivery of heterologous nucleic acids or genes to particular target cells. In particular, the application relates to methods of delivering a heterologous nucleic acid or gene of interest to particular target cells using Adeno-Associated Virus of serotype 4 (AAV4). The particular target cells identified are the ependymal cells of the brain. The methods described herein may be useful in carrying out gene therapy for diseases of the brain or central nervous system.

This work has been published in part at Davidson, BL, *et al.* "Recombinant adeno-associated virus type 2, 4, and 5 vectors: transduction of variant cell types and regions in the mammalian central nervous system" PNAS USA 97(7):3428–32 (March 28, 2000).

In addition, PHS owns additional intellectual property related to this technology describing an AAV4-based vector system. The material contained in the patent application has been published as WO 98/11244 (March 19, 1998) and the research corresponding thereto has been published in J. Virology 71(9): 6823–33 (Sept 1997).

A Novel Pro-Apoptotic Protein, ARTS

S Larisch-Bloch, SJ Kim, RJ Lechleider, AB Roberts and Y Yi (all of NCI)
Serial No. 60/178,866 filed 29 Jan 2000

This application relates to the field of apoptosis, in particular the application relates to a novel gene product which is associated with induction of apoptosis by Transforming Growth Factor Beta (TGF–β). Apoptosis is a critical event in developmental processes and homeostasis; its dysregulation is often central to pathogenic mechanisms. Apoptotic aberrations contribute to the development of the transformed phenotype; both metastatic potential and tumor aggressiveness are associated with increased resistance to apoptosis. Certain chemotherapeutic agents act by increasing the sensitivity of cells to apoptosis and patients with mutations in genes regulating apoptosis are known to have a poor prognosis.

The application describes the cloning of a gene which encodes a splice variant of the known gene designated H5/PNUTL2/CDCrel–2a/2b and the isolation and characterization of its protein product. The newly identified protein, designated ARTS (*A*poptosis *R*elated *T*rotein in the *TGF–β S*ignaling Pathway), is a member of the septin family of proteins. It is localized to mitochondria and translocates to the nucleus where ARTS induces apoptosis in response to TGF–β. ARTS is the first septin shown to be essential for mediating TGF–β dependent apoptosis. Antisense ARTS nucleic acids are also contemplated. Because of its role in regulating the sensitivity of cells to TGF–β induced apoptosis ARTS derived products may provide a means for treating conditions where increased TGF–β induced apoptosis is desired (*e.g.*, cancer) and where decreased TGF–β induced apoptosis is desired (*e.g.*, neurodegenerative diseases).

This work has been published in part at Larisch-Bloch S *et al.* "Selective loss of the transforming growth factor-beta apoptotic signaling pathway in mutant NRP–154 rat prostatic epithelial cells" Cell Growth Differ 11(1):1–10 (Jan 2000).

Replication Deficient Retroviral Vector System and Methods of Using

WJ Ramsey (NHGRI)

Serial No. 60/101,425 filed 22 Sep 1998; PCT/US99/21393

The technology described and claimed in this application relates to the field of gene therapy. More particularly, the technology described and claimed in the application relates to a method for producing replication deficient, but infectious, retroviral vectors. This method of producing replication deficient retroviral vectors for gene therapy yields virus in high titer and is readily adaptable to large scale production. In the methods described herein a producer cell is transformed with an integrating proviral sequence which includes a pair of retroviral LTRs, a retroviral packaging signal and the gene of interest. A second viral vector, containing trans complementing functions, such as the gag, pol, and env genes, is then used to infect/transform the cells containing the integrated proviral sequence enabling the generation of a replication deficient vector. This second viral vector may be chimeric, *e.g.*, have an adenoviral backbone and retroviral trans complementing functions. Producer cells, which now contain the trans complementing vector and the integrated proviral vector are then cultured to obtain the replication deficient viral vector from the medium.

The PCT application has been published as WO 00/17736 (March 30, 2000). Related technology describing chimeric vectors for gene therapy is also available for licensing. It is described in USSN 09/058,686 filed 10 Apr 1998 (published as WO 98/46778 (Oct. 22, 1998).

Dated: July 19, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–19150 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

V1 Knockout Mice for Screening New Vaccines Against Streptococcus Pneumoniae

Qing-Sheng Mi, James J. Kenny, Dan L. Longo (NIA)

DHHS Reference No. E–140–00/0

Licensing Contact: Uri Reichman; 301/496–7056 ext. 240; e-mail: reichmau@od.nih.gov

Streptococcus pneumonia (SP) is a bacterial agent found in both mild mucosa and severe systemic infection; it is also often responsible for pneumonia, a disease that takes over one million lives a year. Recent SP strains prove resistant to Penicillin and other antibiotics, making the development of a Pneumococcal vaccine crucial. The existing vaccine is only about eighty percent effective at preventing SP infection in adults, but is much less effective in infants, aged, or immune deficient patients. Antibodies to phosphocholine (PC), an immunodominant epitope in the cell wall of Streptococcus pneumoniae, protect mice from lethal pneumococcal infection. The heavy chain of the PC protecting antibody is encoded by the V1 segment of the S107 V_H gene family. The V1 knockout mice which are available for licensing, cannot produce protective antibodies against the PC epitope of Streptococcus pneumonia. They are however, capable of producing normal antibodies to other cell wall proteins following bacteria immunization and get partial protection against lethal pneumococcal infection. Thus, the V1 knockout mice can facilitate the screening of protective antigens other than PC. This may result in new vaccine candidates against Streptococcus pneumonia. Screening for new vaccine candidates can be done as follows: The V1 knockout mice can be immunized with avirulent SP bacteria. The immune serum will be utilized to detect and isolate the antigenic cell wall proteins, using standard affinity binding procedures. The antigenic proteins will then be cloned, sequenced and purified. Normal mice will be immunized with these proteins and then challenged with virulent SP bacteria to determine whether these proteins have protective function.

Methods and Compositions for Co-Stimulation of Immunological Responses to Peptide Antigens

Samir Khleif, Jay Berzofsky (NCI)

DHHS Reference No. E–128–00/0 filed 15 Mar 2000

Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: soukasp@od.nih.gov

This invention relates to peptide vaccines comprising administering a peptide comprising at least one T cell epitope coordinately with a non-viral vector comprising a polynucleotide encoding a T cell co-stimulatory molecule useful for eliciting cellular immune responses. The inventors have found that intradermal vaccination of mice with a DNA vector carrying the mouse co-stimulatory immunoglobulin B7.1 (CD80) in combination with a Human Papilloma Virus (HPV) E7 peptide significantly enhances the E7 specific cytotoxic lymphocyte response. Delivery of the B7.1 molecule as non-replicating DNA with antigenic peptides overcomes the problems of low antigenicity associated with some viral vectors as well as the instability, exogenous presentation and conformational maintenance problems associated with the delivery of full-length protein delivery. Furthermore, polynucleotides encoding the B7.1 construct can potentially be used along with any other form of antigen vaccine delivery systems, including peptides, full proteins and naked DNA antigens and are inexpensive to produce.

Full-Length Infectious cDNA Clones of Tick Borne Flavivirus

Alexander Pletnev, Robert M. Chanock (NIAID)

DHHS Reference No. E–281–98/0 filed 10 Feb 2000

Licensing Specialist: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov

The tick-borne encephalitis virus complex of flavivirus family includes tick-borne encephalitis (TBEV), Kyasanur forest disease, Langat, Louping ill, Negishi, Omsk hemorrhagic fever and Povassan viruses. These viruses are endemic throughout most of the Northern Hemisphere and except for Langat, cause human disease of varying severity that can have mortality as high as 20 to 30%. Tick-borne encephalitis remains a pressing public health problem in Eastern Europe and Russia, where 9,000 to 12,000 patients are diagnosed annually and there is a need for a vaccine which can prevent this disease. This invention relates to an infectious full length Langat virus cDNA which has been successfully constructed and can be used to further attenuate this naturally attenuated tick-borne flavivirus. This full length Langat virus can be used as a live attenuated virus vaccine for the prevention of severe, often fatal disease caused by its more virulent tick-borne flavivirus relatives such as tick-borne encephalitis virus.

Polypeptides That Bind HIV gp120 and Related Nucleic Acids, Antibodies, Compositions, and Methods of Use

Carl Saxinger (NCI)

DHHS Reference No. E–245–99/0 filed 27 Aug 1999

Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

The presence of chemokines has been observed to have an inhibitory effect on HIV–1 attachment to, and infection of, susceptible cells. The interaction between gp120 and CD4, or at least one chemokine receptor is obligatory for HIV–1 infection. Reagents which interfere with the binding of gp120 to chemokine receptors and to CD4 are used in the biological and medical arts; however, there remains a need for additional reagents that can compete with one or more proteins of the gp120-CD4-chemokine-receptor complex to assist in the development of HIV therapeutics.

The present invention relates to such polypeptides with homology to domains of the human chemokine receptors CCR5, CXCR4, and STRL33, as well as domains of CD4 that bind with human immunodeficiency virus (HIV), in particular the HIV–1 glycoprotein 120 (gp120) envelope protein. These receptor polypeptides were identified through the application of a recent technological advance in the design and synthesis of synthetic peptide arrays (see Saxinger, WC: An automated peptide design and synthesis; U.S. Patent 6,031,074 issued 29 Feb 2000). The binding of gp120 to receptor peptide arrays was highly linearly correlated with structure/activity relationships between biological receptors and HIV infectivity in vitro ($r=>95\%$, $p<=0.03$). The binding of gp120 by active receptor polypeptides was unrestricted by viral or receptor strain or subtype suggesting that the polypeptides participated in an early stage of infection common to multiple virus strains, thus potentially addressing problems of virus variation and multiple virus strains. The invention further provides for nucleic acids encoding such polypeptides, antibodies, compositions comprising such polypeptides, nucleic acids or antibodies, and methods of use thereof, such as in therapeutics and vaccine design.

System and Method for Simulating a Two-Dimensional Radiation Intensity Distribution of Photon or Electron Beams

J van de Geijn, H Xie (NCI)

Serial No. 08/368,589 filed 06 Jan 1995; U.S. Patent No. 5,526,395 issued 11 Jun 1996

Licensing Contact: NIHOTT@od.nih.gov

The present invention provides a method for computer-assisted, interactive 3-dimensional radiation treatment planning and optimization. The computerized system is capable of processing and analyzing data obtained from x-ray, CT, MRI, PET, SPECT, and gammacamera devices. Hence, the system can be used as a training device, alleviating the need for training centers to purchase each of these devices. The computerized system comprises a fast, versatile, and user-friendly software package and computer components which are commercially available and which can be used without significant modification. Because the hardware costs of this system are much lower than the cost of systems of comparable ability, this invention ought to be particularly attractive to smaller radiation oncology facilities which seek a powerful treatment planning system. The low cost of the system is also particularly advantageous for medical training facilities, including medical schools. The invention also has potential use as a monitor for clinical quality assurance.

Combination Therapies for Viral Infection

Lori *et al.* (NCI); Malley & Vila

Serial Nos. 08/065,814 filed 21 May 1993; 08/245,259 filed 17 May 1994; 08/169,253 filed 20 Dec 1993; 08/378,219 filed 25 Jan 1995; 08/401,488 filed 08 Mar 1995; 08/577,322 filed 22 Dec 1995; 08/617,421 filed 18 Mar 1996; 09/497,700 filed 03 Feb 2000

Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

The subject inventions provide for formulations and methods for inhibiting replication of reverse transcription dependent viruses in animals cells comprising administering a compound that depletes the intracellular pool of deoxyribonucleoside phosphate, and further comprising administering a compound that serves to inhibit replication of the virus by terminating DNA chain elongation.

Dated: July 19, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–19151 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

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Vessel Delineation in Magnetic Resonance Angiographic Images

Peter Yim (CC)

Serial No. 60/181,990 filed 11 Feb 2000

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov

This invention relates to advances in magnetic resonance angiography (MRA) or the imaging of blood vessels in the body for the evaluation of vascular pathology. Presented are new methods for processing magnetic resonance angiographic images, or angiograms, to delineate certain vessels in an angiogram. These methods find particular utility in highly vascular regions of the body such as the cerebrum, heart, abdomen and extremities where there is extensive overlapping and variation in the size of the vessels. Current MRA methods are unable to generate high-resolution images of complex vessel geometries in these dynamic environments. The patent application for this invention covers algorithms and computer-implemented methods for tracking the paths of vessels in magnetic resonance angiography. Also covered are similar methods for digital image processing in alternative imaging technologies such as tomography and X-ray angiography.

Methods for Predicting the Biological, Chemical, and Physical Properties of Molecules From Their Spectral Properties

Dwight W. Miller *et al.* (FDA)

Serial No. 09/496,314 filed 01 Feb 2000

Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: soukasp@od.nih.gov

The number of known chemical compounds is enormous, and the number is constantly increasing. While there are a vast number of chemical compounds, only a relative few of those compounds may exhibit a particular desirable property, such as pharmaceutical activity. Random testing of known compounds to identify those compounds which show pharmaceutical activity is very expensive and time-consuming. Similarly, there is also a need to screen compounds for toxicity, so that rational decisions can be made regarding the use and regulation of compounds that have toxic potential. At present, only a fraction of known compounds have been thoroughly tested for their toxicological and potential therapeutic properties.

Scientists have developed methods which attempt to predict which compounds are likely to exhibit a particular property. The present invention provides a method for establishing a quantitative relationship between spectral properties of molecules and a biological, chemical, or physical endpoint of the molecules. The present invention further provides methods for rapidly screening isolated compounds or mixtures of compounds based upon their spectral data.

Molecules That Influence Pathogen Resistance

Gregory A. Taylor and George F. Vande Woude (NCI)

DHHS Reference No. E–068–00/0 filed 03 Jan 2000

Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

Interferon-gamma (IFN-γ) is an important cytokine for control of infectious agents and regulation of the immune system. IFN-γ is thought to exert its effects largely by activation of IFNγ-responsive genes. One recently identified IFNγ-regulated gene is IGTP. It has been found that the IGTP-family proteins mediate the immune response of mammals to various infectious pathogens. In particular, it has been noted that IGTP functions as a downstream mediator of IFN-γ and

appears particularly important to host response in parasitic infection.

The present invention provides for the prevention and treatment of infectious diseases through modification of immune response(s), in particular, to the involvement of GTPase molecule(s) in such immune responses to infectious disease (such as parasitic (*e.g.*, protozoan) disease).

Method of Treating a Viral Infection Using Antagonists or Macrophage Colony Stimulating Factor (M–CSF)

Clouse-Strebel *et al.* (FDA)
DHHS Reference No. E–255–99/0 filed 08 Nov 1999
Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

Colony stimulating factors (CSF's) are a class of proteins that stimulate growth and development of bone marrow progenitor cells into mature cells, such as granulocytes, macrophages, megakaryocytes, erythrocytes, lymphocytes, and mast cells. One of these factors is macrophage colony stimulating factor (M-CSF), a homodimeric glycoprotein with subunits linked by disulfide bonds. M-CSF is also known as CSF–1, CSF–69, LSF, MGF, and CSF-HU.

The present invention provides for a method for treating a viral infection, such as HIV–1 and HIV–2, using an amount of an antagonist of M-CSF sufficient to inhibit replication of the virus, either administered alone or in combination with another anti-viral agent.

S-Nitrosoglutathione as a Protease Inhibitor for the Treatment of AIDS and Neurodegenerative Disorders

Chuang C. Chiueh (NIMH), Sang Y. Lee (NIMH), David A. Davis (NCI), Robert Yarchoan (NCI)
DHHS Reference No. E–008–00/0 filed 01 Nov 1999
Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

The human immunodeficiency virus (HIV) is the causative agent of acquired immunodeficiency syndrome (AIDS). Over the years, drug-resistance has been a critical factor contributing to the gradual loss of clinical benefit to treatments for HIV infection. There has been great concern regarding this apparent growing resistance of HIV strains to current therapies. Accordingly, there is a great need for new effective HIV therapeutics.

The present invention provides for the use of nitrosylating compounds, such as S-Nitrosoglutathione and derivatives thereof (for example, as an HIV–1 protease inhibitor) for the treatment of AIDS and neurodegenerative disorders.

Enhancement of Hematopoietic Cells

William J. Murphy (NCI), Susan M. Richards (NCI), Dan L. Longo (NIA)
DHHS Reference Nos. E–247–99/0 filed 21 Jan 1997 and E–247–99/1 filed 20 Jan 1998 (PCT/US98/00887)
Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

The present invention provides a method for enhancing hematopoiesis by contacting hematopoietic stem or progenitor cells with a composition containing prolactin, preferably recombinant prolactin. Stimulation of hematopoiesis can serve to replace hematopoietic cells. The invention further provides a method for treating an animal to improve hematopoiesis or prevent hematopoietic-suppression by administering a pharmaceutically acceptable composition containing prolactin. The invention further relates to a composition comprising a cytokine that can enhance hematopoiesis and prolactin, and a composition comprising a therapeutic that can cause hematopoietic-suppression and a prolactin.

Dated: July 19, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–19152 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

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Discovery of a Novel Human Aminopeptidase Which May Regulate Cleavage and Shedding of the Human Type-I Tumor Necrosis Factor Receptor

Stewart J. Levine (NHLBI)
DHHS Reference No. E–003–00/0 filed 28 Feb 2000
Licensing Contact: Richard U. Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

Cytokines are a large and diverse group of molecules which mediate interactions between cells. Aberrant regulation of cytokine signaling results in a wide variety of hyper-inflammatory, autoimmune and immune-deficiency pathological conditions. Tumor necrosis factor-α (TNF-α) is a multifunctional cytokine mediating pleiotropic biological functions in both healthy and disease states. TNF-α has been shown to have a role in the following activities: Destroying tumors, mediating responses to tissue injury, protecting hosts from infections by various microorganisms and activating numerous genes, including NF-κB and AP–1. TNF-α has also been implicated in the pathogenesis of a variety of diseases and disorders. The present invention provides compositions and methods related to regulation of cytokine signaling through the TNF-α pathway. Specifically, the invention provides a novel gene, polypeptide and related compositions and methods for the regulation of TNF Type-I receptor ectodomain shedding. It is contemplated that the compositions and methods of this invention will find use in therapeutics for the treatment of diseases and disorders of the immune system.

Amplification and Overexpression of Multiple Genes at 17q23 in Breast Cancer

Anne H Kallioniemi, Olli P Kallioniemi, Juha T Kononen, Maarit Barlund (NHGRI)
DHHS Reference No. E–051–00/0 filed 28 Jan 2000
Licensing Contact: Richard U. Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

This invention pertains to gene amplification and its role in the progression and initiation of many solid

tumors, including breast cancer. Amplification is a common mechanism for upregulation of critical genes involved in cancer development and progression. Discovery of HER–2 oncogene amplification in breast cancer has led to a specific therapy for breast cancer patients with an activated HER–2 gene. Chromosomal region 17q23 is frequently amplified in breast cancer but the genes involved in this amplification are not yet known. Amplification of four previously known genes, S6K, TBX2, PAT1, RAD51C, has been identified in breast cancer cell lines and primary breast tumors. The amplification in cell lines leads to overexpression at the mRNA level. Thus, these genes represent putative targets for the 17q23 amplification and their upregulation may contribute to the genesis and progression of breast cancer.

Inhibition of Cell Motility

Donald P. Bottaro, Terrence R. Burke, Jr., Zhu-Jun Yao, Nese S. Atabey, Diane E. Breckenbridge, Yang Gao (NCI)

DHHS Reference No. E–265–99/0 filed 22 Oct 1999

Licensing Contact: Richard U. Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

The present invention relates to a method of inhibiting cell motility induced by hepatocyte growth factor (HGF) and treating various diseases in a mammal. HGF stimulates mitogenesis, motogenesis and morphogenesis in a wide range of cellular targets including epithelial and endothelial cells, hematopoietic cells, neurons, melanocytes, and hepatocytes. These pleiotropic effects play important roles during development and tissue regeneration, but they are also implicated in several human cancers, including colon, breast, lung, thyroid and renal carcinomas, several sarcomas and gliolastomas. The ability of HGF to initiate a program of cell dissociation and increased cell motility coupled with increased protease production promotes aggressive cellular invasion and is linked to tumor metastasis. The methods of the present invention employ compounds, *e.g.*, phosphotyrosine mimetics, to inhibit cell motility. A key advantage of this invention is that the peptides are free of cytotoxicity. Further development and use of this invention could serve a serious public need.

Fibroblast Growth Factor-5 (FGF–5) is a Tumor Associated T-cell Antigen for Human Renal Cell Cancer and Other Adenocarcinomas

Ken-ichi Hanada and James C. Yang (NCI)

DHHS Reference No. E–243–99/0 filed 02 Oct 1999

Licensing Contact: Elaine Gese; 301/496–7056 ext. 282; e-mail: gesee@od.nih.gov

Renal cell carcinoma (RCC) is a form of kidney cancer caused when cells in the lining of the renal tubule undergo cancerous changes. The inventors have shown that fibroblast growth factor-5 (FGF–5) is a tumor associated antigen (TAA) for RCC and cancers of the breast and prostate. TAAs can be used to stimulate cytotoxic T-lymphocytes (CTL) which can be directed against specific tumor cells. This can be accomplished in at least two ways: (1) Activating a patient's immune system by administering a vaccine containing the TAA, or (2) by removing a patient's lymphoid cells, activating these cells ex vivo and then reintroducing these activated cells back into the patient to attack the tumor cells. The invention provides for methods of treating RCC and other adenocarcinomas with FGF–5 using the aforementioned approaches.

Genetic System in Yeast for Functional Identification of Human p53 Mutations

Michael A. Resnick, Alberto Inga (NIEHS)

DHHS Reference No. E–183–99/0 filed 30 Jul 1999

Licensing Specialist: Vasant Gandhi; 301/406–7056 ext. 224; e-mail: gandhiv@od.nih.gov

The tumor suppressor gene p53, a key regulator of cellular mechanisms that maintain genome integrity, is the most commonly inactivated gene target associated with neoplastic transformation. About 50% of all human tumors express a mutated form of p53 and more than 80% of these mutations are missense, leading to single amino acid changes. This invention relates to human p53 mutants and identification methods using screening assays in the yeast Saccharomyces cerevisiae to functionally categorize expressed p53 mutant proteins. Additionally, the invention relates to methods of detecting or generating novel human p53 mutations with properties that can include toxicity in yeast and growth suppression in human cells, enhanced or reduced transactivation relative to wild type p53, altered promoter selectivity, and reactivation of common tumor mutations for the transactivation function of major p53 downstream genes. The invention also provides for screening of genetic factors, peptides and chemicals that mimic the toxic or supertransactivating mutations or inhibit p53 function.

Dated: July 19, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–19153 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Antenatal Corticosteroids Revisited: Repeat Courses

Notice is hereby given of the National Institutes of Health (NIH) Consensus Development Conference on "Antenatal Corticosteroids Revisited: Repeat Courses," which will be held August 17–18, 2000, in Masur Auditorium of the NIH Clinical Center, 9000 Rockville Pike, Bethesda, Maryland, 20892. The conference begins at 8 a.m. on August 17, and at 8:30 a.m. on August 18 and is open to the public.

Preterm delivery is a major cause of death and illness in infants. Corticosteroid treatment of pregnant women delivering prematurely was first introduced in 1972 to enhance fetal lung maturity. Subsequent research has focused on the ability of glucocorticoids to reduce mortality and brain injury in preterm neonates.

In 1994 the National Institutes of Health sponsored a Consensus Development Conference on the Effect of Corticosteroids for Fetal Maturation on Perinatal Outcomes to assess the effectiveness of antenatal glucocorticoid therapy. The Consensus Panel concluded, in part, that giving corticosticoids to pregnant women at risk for preterm delivery reduces the risk of death, respiratory distress syndrome, and intraventricular hemorrhage in preterm infants.

The 1994 panel noted that optimal benefit of antenatal corticosteroid therapy last 7 days. The panel also noted that the potential benefits and risk of repeated administration of antenatal corticosteroids 7 days after the initial course are unknown and called for additional research on this issue.

The NIH is organizing this 1½ day conference to present research on repeat courses of antenatal corticosteroid therapy. After a day of presentations and audience discussion, an

independent, non-federal consensus development panel will weigh the scientific evidence and write a draft statement that will be presented to the audience on the second day. The panel's statement will address these questions:

- Is the evidence on benefits and risks of repeat courses of antenatal corticosteroids sufficient to permit consensus recommendations?
- If so, what are the recommendations?
- If not, what additional information should be obtained?

On the final day of the conference, the panel's draft statement will be read in public, at which time members of the public are invited to offer comments on the draft.

The primary sponsors of this meeting are the National Institute of Child Health and Human Development and the NIH Office of Medical Applications of Research. Co-sponsors include the National Institute of Nursing Research and the National Heart, Lung, and Blood Institute.

This is the 112th Consensus Development Conference held by the NIH in the 23-year history of the Consensus Development Program. Advance information about the conference and conference registration materials may be obtained from the NIH Consensus Program Web site—http://consensus.nih.gov. Conference information can also be obtained from Prospect Associates of Silver Spring, Maryland by calling (301) 592–3320 or by e-mail to *antenatal@prospect.com*. Prospect Associate's address is 10720 Columbia Pike, Suite 500, Silver Spring, Maryland 20901–4437.

Dated: July 20, 2000.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 00–19148 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Flexible system to advance innovative research for cancer drug discovery by small business FLAIR SBIR.

Date: July 25, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, 301/594–1279.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: July 17, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19140 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

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Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Behavioral Research in Cancer Control.

Date: August 11, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room J, 6130 Executive Plaza, Rockville, MD 20852.

Contact Person: C.M. Kerwin, PHD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Boulevard, Room 8086, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19141 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

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Name of Committee: National Cancer Institute Special Emphasis Panel, Diet, Lifestyle and Cancer in U.S. Special Populations.

Date: August 9, 2000.
Time: 12 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: Executive Plaza North, 6130 Executive Boulevard, Conference Room E, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Gerald G. Lovinger, PHD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7404, 301/496–7987.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 19, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19142 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Research Centers In Minority Institutions Review Committee.
Date: September 26, 2000.
Open: 8 a.m. to 10 a.m.
Agenda: To discuss program planning and program issues.
Place: Atlanta Airport Marriott, 4711 Best Road, College Park, GA 30337.
Closed: 10 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Atlanta Airport Marriott, 4711 Best Road, College Park, GA 30337.
Contact Person: C. William Angus, PhD., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0812.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 21, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19146 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel General Clinical Research Centers.
Date: September 12–13, 2000.
Time: September 12, 2000, 4:00 p.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Kingsgate Conference Center, 151 Goodman Drive, Cincinnati, OH 45219.
Contact Person: Camille M. King, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0815, kingc@ncrr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 21, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19147 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.
Date: September 14, 2000.
Open: 8:30 am to 11:30 am.
Agenda: Following opening remarks by the Acting Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies.
Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.
Closed: 11:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Contact Person: Lois DeNinno, National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., MSC 7167, Bethesda, MD 20892, 301–496–9110.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19143 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council

Date: September 7–8, 2000.

Open: September 7, 2000, 8:30 am to 2:00 pm.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: September 7, 2000 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville, Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Carlson, Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Disease Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 20, 2000

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19132 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel "Clinical Centers for the Clinical Network for the Treatment of the Adult Respiratory Distress Syndrome (ARDS)".

Date: August 1, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, II Rockledge Center, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892–7924 (Telephone Conference Call).

Contact Person: C. James Scheirer, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Rockledge Center II, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892–7924, 301–435–0266.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19133 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 26, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 21, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–19134 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 15, 2000.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: NIH Neuroscience Office Building, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20892.

Closed: 12:00 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: NIH Neuroscience Office Building, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20892.

Contact Person: Craig A. Jordan, PhD., Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 21, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–19135 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 7, 2000.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 21, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–19136 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Role of Nutrition in Prevention of MR and Birth Defects.

Date: July 27–28, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Tremont House, 2300 Ship's Mechanic Row, Galveston, TX 77550.

Contact Person: Norman Chang, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 18, 2000.
Anna P. Snouffer,
Acting Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–19138 Filed 7–27–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: August 23, 2000.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room, 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Stanley C. Oaks, Jr., PhD, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19139 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 14, 2000.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Peter R. Jackson, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, (301)–496–2550.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 15, 2000.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W. Washington, DC 20007.

Contact Person: Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550, yli@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 16, 2000.

Time: 9:00 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Allen C Stoolmiller, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 23–24, 2000.

Time: 8:30 am to 2:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Priti Mehrotra, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, (301)–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Disease Research, National Institutes of Health, HHS)

Dated: July 21, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19144 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: August 16, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 21, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19145 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Vietnamese Studies Ad Hoc Advisory Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting to be convened by the National Institute of Environmental Health Sciences (NIEHS) to discuss and receive input on scientific issues relating to possible studies in Vietnam relating to health and environmental aspects of Agent Orange exposure. Agent Orange was used as a defoliant during the Vietnam War and included, as contaminants, dioxin and related compounds. The format for the meeting is being developed; however, it is anticipated that (1) A panel of invited experts will identify, in public session, issues related to conducting studies in Vietnam and (2) time will be reserved for attendees to contribute issues and recommendations and/or comment on the panel's discussions.

The meeting will be held on Friday, August 18, 2000, from approximately 10 am to 5 pm at the Hyatt Regency Monterey Resort and Conference Center, One Golf Course Drive, Monterey, California, USA 93940, phone (831) 372–1234. The date and location of the meeting coincide with the 20th International Symposium on Halogenated Environmental Organic Pollutants and POP's, an annual conference of dioxin researchers, to take advantage of the attendance at that meeting of dioxin experts and the public interested in issues related to dioxin and Agent Orange.

SUPPLEMENTARY INFORMATION: The FY2000 Appropriations Conference Report included the following language: "* * * NIEHS is strongly urged to conduct research on the health and environmental aspects of agent orange and dioxin in Southeast Asia, in particular, Vietnam provided that the Vietnamese government supports collaborative research between U.S. and Vietnamese scientists * * *" The Vietnamese government has agreed to discuss these issues with the NIEHS at a time and place to be decided. Therefore, the NIEHS is seeking advice on the feasibility of conducting studies in Vietnam to learn more about the health and environmental aspects of Agent Orange and dioxin in Vietnam resulting from environmental exposure to Agent Orange. The Institute is convening the ad hoc public meeting on August 18 to solicit advice from scientific experts and other stakeholders and to learn what scientific issues and concerns would be associated with such studies. The NIEHS will use this information as it develops a dialog with the Vietnamese government and Vietnamese researchers about possible research agendas.

FOR FURTHER INFORMATION CONTACT: NTP Liaison and Scientific Review Office, NIEHS, PO Box 12233, A3–01, Research Triangle Park, NC 27709, phone (919) 541–0530 or email: liaison@starbase.niehs.nih.gov

Dated: July 19, 2000.

Kenneth Olden,

Director, NIEHS/NTP.

[FR Doc. 00–19149 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 28, 2000.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MET 01 M.

Date: August 1, 2000.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: N. Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2112, MSC 7890, Bethesda, MD 20892, (301) 435–1047, pearsonn@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 2000.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 7, 2000.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 8, 2000.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2000.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci-Aragon, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2000.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, banner@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Cal).

Contact Person: Everett E. Sinnett, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 10, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Dubois, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 10, 2000.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin Slater, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 10, 2000.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 10, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 10, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130,

MSC 7814, Bethesda, MD 20892, (301) 435–1789.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 11, 2000.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Mirage 1 Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 13–14, 2000.

Time: 7:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The American Inn, 8130 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 21, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19137 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Transcription Factor Decoy and Tumor Growth Inhibitor"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to U.S. Patent Applications 08/977,643, entitled: "Transcription Factor Decoy and Tumor Growth Inhibitor" plus, if available, corresponding foreign patent applications, to Genta Incorporated having a place of business in Lexington, MA. The patent rights in these inventions have been assigned to the United States of America and the contemplated license may be limited for use in the development and commercialization of diagnostic and therapeutic modalities to treat various diseases and inhibit tumor growth based on the use of cAMP Response Element-palindrome Oligonucleotide as a transcription factor decoy to regulate gene expression (*i.e.*, gene transcription and translation).

DATES: Only written comments and/or applications for a license which are received by NIH on or before September 26, 2000 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: J. R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 206; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The technology disclosed in USPA SN: 08/977,643 patent application provides compositions and methods for the use of cAMP Response Element-palindrome oligonucleotide as a transcription factor decoy and an inhibitor of tumor growth. Specifically, the 08/977,643 application provides nucleic acid molecules that compete with cAMP Response Elements ("CRE") for binding to transcription factors and a method for regulating gene transcription in target cells comprising: Providing one or more cAMP response element enhancer DNAs and one or more transcription factors that associate with the cAMP response element enhancer DNA; and exposing the target cells to the cAMP response element decoys under condition such that the cAMP response element decoys will compete with the cAMP response element enhancer DNA for binding to the one or more transcription factors.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development and commercialization of diagnostic and therapeutics modalities to treat various diseases and inhibit tumor growth based on the use of cAMP Response Element-palindrome Oligonucleotide as a transcription factor decoy to regulate gene expression (*i.e.*, gene transcription and translation).

Applications for a license [*i.e.*, completed "Application for License to Public Health Service Inventions"] in the field of use in the development and commercialization of diagnostic and therapeutics modalities to treat various diseases and inhibit tumor growth based on the use of cAMP Response Element-palindrome Oligonucleotide as a transcription factor decoy to regulate gene expression (*i.e.*, gene transcription and translation) filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 19, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–19154 Filed 7–27–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–47]

Notice of Submission of Proposed Information Collection to OMB; Monthly Report of Excess Income

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 28, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0086) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374, This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collection the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revisions of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Monthly Report of Excess Income.

OMB Approval Number: 2502–0086.

Form Numbers: HUD–93104.

Description of the Need for the Information and Its Proposed Use: Owners of Section 236 insured/noninsured projects are required by Law to pay to HUD the total rental changes collected that are in excess of the basic rents approved for all occupied units. Owners use the HUD–93104 to report the required payment due HUD.

Respondents: Business or other for-profit.

Frequency of Submission: Monthly and Annually.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
2,500		13		0.09		3,025

Total Estimated Burden Hours: 3,025.

Status: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 20, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–19070 Filed 7–27–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Information collection; request for comments.

SUMMARY: We will submit the collection of information described below to OMB for renewal under the provisions of the Paperwork Reduction Act of 1995. If you wish to obtain copies of the proposed information collection requirement, related forms, and/or explanatory material, contact the Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before September 26, 2000.

ADDRESSES: Send your comments on the requirement to Rebecca Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 1849 C Street NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Rebecca Mullin, Information Collection Clearance Officer, at (703) 358–2287; rebecca_mullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities. The U.S. Fish and Wildlife Service plans to submit a request to OMB to renew its approval of the collection of information concerning numbers of double-crested cormorants taken under the Depredation Order (50 CFR 21.47). We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB granted an emergency control number (1018–0097) for this collection of information, which expired in August 1998. The Service is currently in the process of preparing an Environmental Impact Statement and national management plan for the double-crested cormorant and would like to renew the control number so that it may collect relevant biological information from aquaculturists under the terms of the Depredation Order.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the management of migratory bird populations frequenting the United States. This responsibility dictates the gathering of accurate data on various characteristics of migratory bird populations. In 1998, we issued a standing Depredation Order that allows persons engaged in the production of commercial freshwater aquaculture stocks in 13 States to take depredating double-crested cormorants at aquacultural facilities. Under the conditions of the Depredation Order, any person exercising such privileges must keep and maintain a monthly log recording the date and number of all cormorants killed each month, maintain the log for a period of 3 years, and make the log available to Federal and State wildlife enforcement officers upon request. The mortality information that these logs provide is necessary for the development of population data and determination of program effectiveness to be used for management purposes.

Title: Depredation Order for the Double-crested Cormorant.

Approval Number: 1018–0097.

Service Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: Businesses, individuals, and State, local, or tribal governments.

Total Annual Burden Hours: The total annual burden is estimated at 875 hours.

Total Annual Responses: About 2,200 individuals are expected to complete the required mortality logs and approximately 250 individuals will complete the annual survey (for a total of 2,450).

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: July 20, 2000.

Rebecca Mullin,

Information Collection Clearance Officer.

[FR Doc. 00–19068 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bolsa Chica Lowlands Restoration Plan Draft Environmental Impact Statement/Report

AGENCY: Fish and Wildlife Service, Department of the Interior and the U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Availability of Draft Environmental Impact Statement/Report for the Bolsa Chica Lowlands Restoration Plan, Orange County, California.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Fish and Wildlife Service (FWS) and the U.S. Army Corps of Engineers (USACE) announce the availability of a draft environmental impact statement/report (DEIS/R) for the Bolsa Chica Lowlands Restoration Plan, Orange County, California.

DATES: A 45-day comment period will follow the Environmental Protection Agency's notice of availability of the DEIS/R on July 28, 2000. Comments must be received no later than Monday, September 11, 2000. A Public Hearing to receive comments on the DEIS/R will be held on Thursday, August 31, 2000 at 3:30 pm and again at 7 pm in the City of Huntington Beach Council Chamber, 2000 Main, Huntington Beach, California.

ADDRESSES: Public reading copies of the DEIS/R will be available for review at: Huntington Beach Central Library, 7111 Talbert, Huntington Beach, California, Garden Grove County Regional Library, 11200 Stanford, Garden Grove, California, Fountain Valley Branch Library, 17635 Los Alamos, Fountain Valley, California, Seal Beach Branch Library, 707 Electric Ave., Seal Beach, California, Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California, Corps of Engineers, Los Angeles District, 711 Wilshire Blvd, 14th floor, Los Angeles, California.

SUPPLEMENTARY INFORMATION: This DEIS/R has been prepared and is being circulated in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The Fish and Wildlife Service and the Corps of Engineers are NEPA co-lead agencies, cooperating with six other State and Federal agencies on implementation of the proposed plan. This project involves the proposal to implement a comprehensive wetland habitat restoration plan for an approximately 1300-acre area known as the Bolsa Chica Lowlands to benefit shorebirds, waterfowl, coastal seabirds, marine fishes, and a full spectrum of coastal ecosystem biota. The project site is separated from the Pacific Ocean by a State beach and highway, within the southwestern-most portions of the City of Huntington Beach, Orange County, California. Major components of this planning effort are: (1) Restoration of full tidal influence through new inlet and bridge construction and expansion of the wetland's tidal prism by dredging, (2) creation and enhancement of aquatic habitats and intertidal wetlands, (3) creation of nesting and feeding areas for Threatened and Endangered birds, (4) preservation of nontidal wetlands, and (5) phased removal of oil extraction facilities from the wetlands area.

Potentially significant environmental impacts have been identified in the areas of land use, hydrology/water quality, air quality, and biological resources. Analyzed alternatives include: three different inlet locations and no new inlet, storm water runoff around or through the wetlands, and phased implementation of tidal restoration features. The project includes measures to mitigate some potential impacts, while other mitigation will be made conditions of subsequent permits.

FOR FURTHER INFORMATION CONTACT: Jack Fancher, Coastal Program Coordinator, Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California 92008. Phone (760) 431-9440 or Pam Castens, Corps of Engineers, P.O. Box 532711, Los Angeles, California 90053-2325. Phone (213) 452–3851

Dated: July 19, 2000.

David G. Paullin,

Acting Manager, California-Nevada Office, Fish and Wildlife Service.

[FR Doc. 00–18858 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Reintroduction of the Riparian Brush Rabbit

AGENCY: Fish and Wildlife Service, Interior (Lead Agency).

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service (Service), Bureau of Reclamation (Reclamation), California Department of Fish and Game (CDFG), and the Endangered Species Recovery Program (ESRP) through California State University, Stanislaus, propose to participate in the reintroduction of the riparian brush rabbit (*Sylvilagus bachmani riparius*), which is federally listed as endangered, to restored riparian habitat.

The strategy for the conservation (i.e. recovery) of the riparian brush rabbit was published in the Recovery Plan for the Upland Species of the San Joaquin Valley (U.S. Fish and Wildlife Service 1998). This recovery plan outlines research and management actions necessary to support recovery of the species. It is the intent of the Service to recover federally listed species through actions which will lead to the maintenance of secure, self-sustaining wild populations of species with the minimum necessary investment of resources. In the case of a species as at risk of extinction as the riparian brush rabbit, efforts necessary to bring about recovery often require extraordinary measures. Because of the small size of remaining blocks of potential habitat, and the severely limited dispersal capability of the riparian brush rabbit, the brush rabbit is likely to require continuing special protection of its habitat and population. More specifically, captive breeding is needed to increase riparian brush rabbit numbers and preserve genetic diversity. Additionally, the release of their progeny will be needed to enhance existing populations as necessary and to

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establish reintroduced populations within the historic range.

The action proposed in this Notice of Intent, the reintroduction of riparian brush rabbits to restored riparian habitat, is considered a beneficial action. The Service does, however, recognize that there may be impacts to the human environment associated with reintroduction.

This notice describes the proposed action and possible alternatives, invites public participation in the scoping process for preparing the joint Environmental Impact Statement/ Environmental Impact Report, solicits written comments, and identifies the Service Official to whom questions and comments concerning the proposed action and the Environmental Impact Statement may be directed.

DATES: A public scoping meeting to solicit public comment on the proposed action and alternatives will be held on August 16, 2000, at the Manteca library, Manteca, California from 4:30 to 6:30 p.m. Written comments are encouraged and should be received on or before August 28, 2000.

ADDRESSES: Information, comments, or questions related to preparation of the Environmental Impact Statement and the National Environmental Policy Act process should be submitted to Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may also be sent by facsimile to (916) 414–6713. All comments, including names and addresses, will become part of the administrative record and may be released.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the Environmental Impact Statement may be directed to Ms. Heather Bell, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825–1888 (telephone 916–414–6600; email heather_bell@fws.gov) for questions concerning the Environmental Impact Report process under the California Environmental Quality Act, please contact Mr. Ron Schlorff, California Department of Fish and Game, 1416 9th Street, Sacramento, CA 95814–5509 (telephone 916–654–4262; email rschlorf@dfg.ca.gov).

SUPPLEMENTARY INFORMATION:

Background

Only two very small populations of riparian brush rabbit are known to exist (a population in Caswell Memorial State Park [MSP] and one in the Delta. Both populations face severe and proximate extinction due to various factors. One goal in the Conservation Recommendations for the riparian brush rabbit, as identified in the Recovery Plan for Upland Species of the San Joaquin Valley (Recovery Plan) (U.S. Fish and Wildlife Service 1998), is the reestablishment of at least three wild populations, in addition to the one at Caswell MSP, each with no less than 300 adults during average years during a precipitation cycle in the San Joaquin Valley in restored and expanded suitable habitat within the rabbit's historic range. Because the Caswell MSP and Delta populations remain in isolated pockets of habitat, and the species exhibits low vagility (ability to move between patches of habitat), the natural process of repatriation (dispersal into remaining habitat) is improbable. Reintroductions from existing populations are required to achieve the goal of establishing three wild populations. An action identified in the Recovery Plan which will help to accomplish this is the implementation of a captive breeding program and a reintroduction program. The Caswell MSP population is currently too small, nonproductive, and lacking in sufficient genetic variety to serve as the best source of rabbits for direct reintroduction. The Delta population has somewhat greater genetic diversity and, therefore, is intended to be used as the source of individuals for the captive breeding program. Captive breeding will take place on land owned by the California Department of Water Resources within large enclosed pens of natural habitat. The captive breeding program is designed to produce enough individuals with the highest possible genetic variability for reintroduction. The reintroduction would involve preparation of a reintroduction plan, site assessments, and varying degrees of riparian restoration, refugia construction, hunting restrictions, fire management, and finally, monitoring to insure that site specific goals as well as recovery goals are being met. Alternatives are being sought as to where and under what conditions populations will be reestablished through reintroduction.

Project Location

The reintroduction sites are yet to be determined, however, the general area for reintroduction will be within the historic range of the riparian brush rabbit. The riparian brush rabbit most likely ranged throughout the extensive riparian forests along major streams flowing onto the floor of the northern San Joaquin Valley (64 FR 8881). This includes the San Joaquin River and its tributaries, one of which is the Stanislaus River, current site of the Caswell MSP population. We also now have confirmation that the riparian brush rabbit extends northward into the Delta (Dr. Daniel Williams, CSU, Stanislaus, pers. comm. 1999). Directed restoration of habitat for the reintroduction of riparian brush rabbits will be conducted and coordinated with several other agencies who are restoring riparian habitat, as well as willing private landowners. For example, the U.S. Army Corps of Engineers is restoring riparian habitat for ecosystem functioning and improved flood flow capacity along the Stanislaus and San Joaquin Rivers. Reclamation also has authority and funding for conservation of natural resources; it allocates funds—through the Central Valley Project Improvement Act—for the restoration of habitats impacted by the Central Valley Project. Furthermore, the Service is expanding the San Joaquin River National Wildlife Refuge to provide protection and potential enhancement of essential habitat for the riparian brush rabbit and other species. It is anticipated that the Refuge land will be the first site available to receive rabbits. Specific site locations for reintroduction will be ranked based on a set of requirements proposed below. Tiered environmental documents would be prepared once site locations have been identified.

Proposed Action

The 1998 Recovery Plan for Upland Species of the San Joaquin Valley (U.S. Fish and Wildlife Service 1998) identifies the conservation strategy for the riparian brush rabbit which involves implementation of a captive breeding program and an accompanying reintroduction program as a means to achieve recovery. The captive breeding program would provide animals for the establishment of at least three wild populations (additional to the Caswell MSP population) in the San Joaquin Valley, in restored and expanded suitable habitat within the rabbit's historic range. It is anticipated that the Reintroduction program would consist of at least the following elements: (1) Preparation of a reintroduction plan; (2) development of site assessment criteria; (3) restoration of riparian habitat, as appropriate, at chosen sites; (4) construction of appropriate refugia (from flooding); (5) implementation of hunting restrictions; (6) fire management; and (7) implementation of a monitoring program to track the progress of the Reintroduction program.

Specific site locations for reintroduction within the historic range will be ranked based on a set of additional criteria which will include but are not limited to the following factors:

- Assessment of disease risk,
- Public or private ownership of property,
- Assessment of flood risk and availability of refugia during high water,
- Degree of riparian restoration required, and
- Degree of land use conflict.

Funding for the Reintroduction program for riparian brush rabbits is anticipated to come from several public agencies and associated programs including, but not necessarily limited to the Service, Reclamation, CDFG, and the CALFED (a program formalized by a Framework Agreement where State and Federal agencies work together on Bay-Delta Estuary management issues) program.

More cooperators are possible as the process continues. Potential partners include: Natural Resources Conservation Service, U.S. Department of Agriculture, U.S. Army Corps of Engineers, U.S. Department of the Army, California Department of Parks and Recreation, California Department of Water Resources, California Reclamation Board, and other public and private owners of riparian or riverbank land.

This action is being proposed under the authority of the Endangered Species Act of 1973, as amended. Take authorization under section 10(a)(1)(A) of the Endangered Species Act would be issued to ESRP to carry out the capture, propagation, and reintroduction program.

Alternatives

Over the past several years, the Service and Reclamation have been working together to prevent extirpation of the riparian brush rabbit at Caswell MSP. Due to the low numbers of individuals following the floods in January of 1997 and 1998 and the sluggish increase since then, we began deliberating the implementation of a captive breeding program to augment the population and provide individuals for reestablishment of populations within historic habitat. Reestablishment, through reintroduction, will protect the species from catastrophic events, such as flooding, which could lead to extinction. With the discovery that another population of riparian brush rabbits exist on private land in the Delta, and that this population is at risk due to both human activities (fire control measures and habitat conversion) and catastrophic events (wildfire), completing the facility for the captive breeding program became urgent. Rabbits are scheduled to be brought into captivity in the fall of 2000, and reintroductions are projected to begin in the fall of 2001. This necessitates establishing a reintroduction program expediently and beginning preparation of sites as soon as possible. Therefore, we need to determine where and under what conditions populations will be reestablished through reintroduction. Reintroduction choices might include:

- Private versus government land,
- Existing habitat versus restored or enhanced habitat, or
- Sites at or near Caswell MSP, the capture area in the Delta, San Joaquin National Wildlife Refuge, or at other locations in the brush rabbit's historical range.

Several considerations have influenced the alternatives we are considering. We will be choosing reintroduction sites within the historic range of the riparian brush rabbit. The riparian brush rabbit probably inhabited much of the riparian habitat that existed historically along the rivers and sloughs on the valley floor of the northern San Joaquin Valley. However, most of the original riparian woodland and brushland has been destroyed. We plan to choose specific sites according to their rank based on the factors needed for the habitat to be suitable. To reduce potential land use conflicts, we will concentrate our efforts on public lands, with the possibility of incorporating adjacent areas where conservation easements or fee title acquisitions may become available from willing sellers.

Another consideration that we expect to be important to the success of reintroduction is the relative ease of management of the reintroduction sites. The flood events of recent years demonstrate the value of having flood refugia in areas to be managed for riparian brush rabbits. Similarly, recent fires in the Delta area where brush rabbits have been found demonstrate the importance of being able to manage fire breaks, fuel loads, and water supplies for fire suppression to insure the safety of the brush rabbits, as well as minimizing risks to human property and safety.

One of the types of land we are strongly considering is National Wildlife Refuge land. Management for good ecosystem functioning, healthy populations of native wildlife species, and conservation of endangered species is already part of the recognized purpose of Refuge lands, and preliminary discussions with National Wildlife Refuge managers indicate they are willing to participate in reestablishing riparian brush rabbits on the Refuges. Other properties, already in government ownership or available from willing sellers, are also being considered. We do not foresee conflicts between rabbit reintroduction and most neighboring land uses because riparian brush rabbits remain near brush cover. However, we know that we must give careful consideration to the compatibility of brush rabbit management with the existing purposes and uses of such lands. This issue, in particular, is one for which we are seeking public input. We want to consider all possible conflicts. We welcome suggestions for sites with potential habitat and harmonious land uses. Please be sure to include as much information on these points as possible in your comments to us.

The Environmental Impact Statement will consider the proposed action (reintroduction of the riparian brush rabbit into restored historic habitat) and reasonable alternatives. Potential alternatives may include the reintroduction of rabbits only in areas of existing riparian habitat, and the "No Action" alternative. The preferred alternative (the proposed action) entails assessing an array of sites for suitability, managing to maximize ecosystem function and safety, and implementing controlled reintroductions as the suitability of each site becomes adequate and as the number of rabbits available becomes sufficient. The potential alternative of reintroducing riparian brush rabbits into areas of existing riparian habitat has limitations as there is little publically owned land which has existing riparian habitat that would immediately be suitable for rabbits during flooding events. The No Action alternative is one in which no reintroduction of the riparian brush rabbits will take place, with the resulting probability of their extinction. As a result of the scoping process, it is expected that these preliminary project alternatives will be further refined and/or additional alternatives considered. Once identified, the final alternatives will be carried forward into detailed analyses pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 432 *et seq.*) and the California Environmental Quality Act (CEQA) of 1970, as amended (Public Resources Code, Section 21000–21177).

Potential impacts identified thus far include possible land use restrictions (hunting, rodenticide use, vegetation management, levee maintenance), economic impacts (conservation and

flood easement restriction enforcement, land acquisition, riparian restoration, nonnative species control, fire management, species and habitat monitoring, perceived devaluation of property values), impacts to the riparian brush rabbit (mortality during acclimation, disease transference), and cultural resource impacts due to riparian restoration or refugia construction.

Scoping Process

The Service and the CDFG are preparing a joint Environmental Impact Statement/Report (EIS/R) to address potential impacts associated with implementing their respective discretionary actions for the proposed project. The Service is the lead Federal agency and Reclamation is a cooperator for compliance with NEPA for the Federal aspects of the project, and the CDFG is the lead State agency for compliance with CEQA for the non-Federal aspects of the project. The Draft EIS/R (DEIS/R) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DEIS/R will be sent out for a minimum 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final EIS/R (FEIS/R) will address the comments received on the DEIS/R during public review, and will be furnished to all who commented on the DEIS/R, and made available to anyone who requests a copy during a minimum 30-day period following publication of the FEIS/R. The final steps involve, for the Federal EIS, preparing a Record of Decision (ROD) and, for the State EIR, certifying the EIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Service (in cooperation with Reclamation) from among the alternatives presented in the FEIS/R. A certified EIR indicates that the environmental document has been completed in compliance with CEQA, that the decision-making body of the lead agency reviewed and considered the FEIR prior to approving the project; and that the FEIR reflects the lead agency's independent judgement and analysis.

This notice is provided pursuant to regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: July 10, 2000.

John Engbring,

Acting Manager, California/Nevada Operations Office, Region 1, Sacramento, California.

[FR Doc. 00–17966 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming between the Makah Indian Tribe and the State of Washington, which was executed on May 30, 2000.

DATES: This action is effective July 28, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: July 19, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–19061 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[1610 (014); Re: DCN #0–0264]

Notice of Intent To Prepare a Plan Amendment for the Upper Klamath Basin and Wood River Wetland RMP/EIS, Oregon

June 29, 2000.

AGENCY: Department of the Interior, Bureau of Land Management, Lakeview District, Klamath Falls Resource Area.

ACTION: Notice of Intent to Prepare a Plan Amendment and Environmental Impact Statement for the Upper Klamath Basin and Wood River Wetland RMP/EIS nominating and designating the Fourmile property as an Area of Critical Environmental Concern (ACEC) in South-central Oregon.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Lakeview District/Klamath Falls Resource Area will be directing the preparation of a Plan Amendment and Environmental Impact Statement (EIS) evaluating the impacts of designating the Fourmile property as an Area of Critical Environmental Concern (ACEC), proposed on public lands in Klamath County of south-central Oregon.

DATES: The Draft RMP plan amendment and EIS analysis would be available for public review by December of 2000. The Record of Decision and Final RMP designating Fourmile as an ACEC will be made in July of 2001.

ADDRESSES: Comments should be sent to Manager, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Avenue, Klamath Falls, OR 97603, ATTN: Upper Klamath Basin Wood River Wetland Plan Amendment.

FOR FURTHER INFORMATION CONTACT: Teresa A. Raml, Manager, (541) 883–6916

SUPPLEMENTARY INFORMATION: The proposed Plan Amendment is located on the Klamath Falls Resource Area of the Lakeview District. The evaluation for nominating the Fourmile area as an Area of Critical Environmental Concern will be completed in the summer of 2000. An ACEC designation allows the BLM to give special management attention to an area to protect and prevent irreparable damage to important historic, cultural and scenic values; fish or wildlife resources; or other natural systems or processes; or to protect human life and safety from natural hazards. The ACEC designation indicates that the BLM not only recognizes an area possesses significant values, but has also established special management measures to protect those values.

The primary reasons for the ACEC designation are (1) Klamath Basin water quality concerns, (2) endangered sucker species and critical habitat, and (3) other species of special importance (yellow rails and spotted frogs).

Teresa A. Raml,

Manager, Klamath Falls Resource Area.

[FR Doc. 00–19066 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–62943]

Notice of Plan Amendment and Notice of Realty Action, Direct Sale of Public Sale, Humboldt County, NV

SUMMARY: The Bureau of Land Management (BLM) is amending the Paradise-Denio Management Framework Plan (MFP), as amended, to change the land tenure designation from retention to disposal on 953.56 acres of land in Humboldt County, Nevada. BLM examined the following described federal lands and through the land use planning process determined them suitable for disposal by direct sale, including the mineral estate with no known value, pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at no less than fair market value.

Federal lands determined suitable for direct sale are described as:

Mount Diablo Meridian, Nevada

T. 43 N., R. 27 E.,
Sec. 2: S½NW¼;
Sec. 3: Lots 5, 6, 7, and 8;
Sec. 4: Lots 5 and 6.
T. 44 N., R. 27 E.,
Sec. 28: Lots 5, 6, and 7;
Sec. 33: NE¼, N½SE¼;
Sec. 34: NW¼, N½SW¼.
Containing approximately 953.36 acres.

The lands are not required for federal purposes, and it has been determined that disposal of these parcels would be in the public's interest. The land is being offered by direct sale to Richard Drake. It has been determined that the subject parcels contain no known mineral values. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445 (775) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands being offered to Richard Drake are interspersed with his private land which is used to grow alfalfa, and would be cultivated and incorporated into his existing agricultural operation. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statues, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A patent, when issued, will contain the following reservations to the United States,

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Will contain the following reservation to Humboldt County, Nevada,

1. An easement 60 feet in width for existing Humboldt County Route 203 (a.k.a.: Knott Creek Road), for road and public utility purposes to insure ingress and egress to adjacent public lands. The existing road is located in T. 43 N., R. 27 E., Sec. 3: Lot 6, and T. 44 N., R. 27 E., Sec. 34: E½E½NW¼, E½E½NW¼SW¼, MDM, NV.

And will be subject to,

1. Those rights granted to Alder Creek Ranch for an irrigation ditch under BLM Right-of-way NEV–057027.

2. Those rights granted to Harney Electric Cooperative, Inc., for an aerial power distribution line under BLM Right-of-way NEV–058651.

3. Those rights granted to Oregon-Idaho Utilities, Inc., dba Humboldt Telephone Co. for an aerial telephone line under BLM Right-of-way N–4524.

Planning Protests: Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action as it affects issues submitted for the record during the planning process. The protests shall be in writing and filed with the Director (WO–210), Bureau of Land Management, 1849 "C" Street NW., Washington, DC 20240 within 30 days of this notice. Associated planning documents may be examined at the Winnemucca Field Office between 7:30 AM and 4:30 PM, Monday through Friday.

Application Comments: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the land to the Field Manager, Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. Objections will be reviewed by the Field Manager who may sustain, vacate, or modify this realty action.

Dated: July 18, 2000.

Michael Holbert,

Associate Field Manager, Winnemucca Field Office.

[FR Doc. 00–19064 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–00–5320–HQ: GPO–0298]

Realty Action: Sale of Public Land in Deschutes County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land.

SUMMARY: The following public land is being considered for sale at the appraised fair market value, under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713). The parcel has been identified as suitable for public sale in the Brothers—La Pine Resource Management Plan.

Willamette Meridian

T. 15 S., R. 12 E., Section 1, SE¼NW¼; (portion), Small Tract, Comprising less than (½ acre

This land is being considered for direct sale to the adjacent landowner to resolve an unintentional trespass. The encroachment involves a portion of the driveway and garage that were inadvertently placed over the property line due to the incorrect location of the property corner. Federal regulations describe procedures to address unauthorized use which include provisions to reimburse BLM for administrative costs.

The affected public land would be surveyed and include an area measuring 50 feet by 400 feet. This configuration would minimize impacts to public resources, include all improvements and provide enough land to satisfy county set back requirements. A subsequent lot line adjustment processed through the Deschutes County Community Development Department would incorporate this parcel with the existing tax lot.

This parcel is included in an area described in the BLM land use plan with a Zone 3 designation. Lands in this zone are generally scattered, isolated tracts with low or unknown resource values. These lands are potentially suitable for exchange or sale if significant public values are not identified.

The buyer has expressed an interest to obtain the federal mineral estate which is offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976. In addition to the full purchase price, a non-refundable fee of $50 is necessary to purchase the mineral estate which would be conveyed simultaneously with the sale of the land.

The land described is segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

DATES: This office will prepare an Environmental Assessment report to evaluate the proposal, describe alternatives and determine impacts and mitigating measures. On or before September 6, 2000, interested persons may submit comments. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Comments should be submitted to the Prineville District Manager, P.O. Box 550, Prineville, Oregon 97754.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this public land sale is available from Phil Paterno, Realty Specialist, Deschutes Resource Area at the above address, phone (541) 416–6724.

Dated: July 21, 2000.

Robert Towne,

Acting District Manager.

[FR Doc. 00–19100 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–2810–HT]

Notice to the Public of Fire Restrictions

AGENCY: Bureau of Land Management, Winnemucca Field Office, Nevada.

ACTION: Notice to the Public of Fire Restrictions on public lands administered by the Bureau of Land Management, Winnemucca Field Office, Nevada.

SUMMARY: Notice is hereby given that pursuant to 43 CFR 9212.2, the following acts are prohibited on all public land areas, roads, and trails located within and administered by the Winnemucca Field Office, until further notice.

1. Building, maintaining, attending, or using a fire, campfire, or stove fire, except a portable stove using gas, jellied petroleum, or pressurized liquid fuel, outside of a developed recreation site.

2. Smoking, except within an enclosed vehicle or at a developed recreation site.

3. Welding or operating an acetylene torch with open flames, except by permit.

4. Using or causing to be used any explosives, except by permit.

5. Firing a tracer or incendiary device, *e.g.*, fireworks.

Pursuant to 43 CFR 9212.2, each of the following persons is exempt from this order.

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.

2. Any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.

Title 43 CFR 9212.4 provides that any person who knowingly and willfully performs any act restricted by a fire prevention order, is punishable by imprisonment of not more than 12 months or a fine in accordance with the applicable provisions of 18 USC 3571, or both. Prepared in Winnemucca, Nevada, this 13th day of July 2000.

DATES: Effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Don Tienhaara at the Bureau of Land Management, 5100 E. Winnemucca Blvd., Winnemucca NV 89445, (775) 623–1500.

Dated: July 17, 2000.

Michael R. Holbert,

Associate Field Manager, Winnemucca.

[FR Doc. 00–19065 Filed 7–27–00; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The Commission has requested OMB approval of this submission by COB Aug. 7, 2000.

DATE: Effective Date: July 18, 2000.

Purpose of Information Collection

The forms are for use by the Commission in connection with investigation No. 332–416, *The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation*, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the President through the Office of the Trade Representative. The Commission expects to deliver the results of its investigation to the Trade Representative by April 12, 2001.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of form:* Telephone Survey Worksheet: The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation.

(3) *Type of request:* New.

(4) *Frequency of use:* Telephone survey, single data gathering, scheduled for 2000.

(5) *Description of respondents:* Representative selection of U.S. firms and organizations that may be affected by the EU-South Africa Trade Agreement.

(6) *Estimated total number of respondents:* 200.

(7) *Estimated total number of hours to complete the forms:* 100.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents may be obtained from George S. Serletis, Office of Industries, USITC (202–205–3315). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD

terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

By order of the Commission.

Issued: July 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19051 Filed 7–27–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–669 (Review)]

Cased Pencils From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 1, 1999 (64 FR 67304, December 1, 1999) and determined on March 3, 2000 that it would conduct an expedited review (65 FR 15007, March 20, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on July 24, 2000. The views of the Commission are contained in USITC Publication 3328 (July 2000), entitled Cased Pencils From China: Investigation No. 731–TA–669 (Review).

Issued: July 24, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19050 Filed 7–27–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 207.2(f)).

DEPARTMENT OF JUSTICE

United States Marshals Service; Notice of Intent To Prepare a Draft Environmental Impact Statement for the Development of a Pre-Trial Detention Facility in Pinal County, AZ

July 20, 2000.

AGENCY: United States Marshals Service, U.S. Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The mission of the United States Department of Justice, United States Marshals Service (USMS) is to protect the federal courts and ensure the effective operation of the judicial system. In addition to this primary responsibility, the USMS assumes custody of individuals arrested by all federal agencies and is responsible for the housing and transportation of prisoners from the time they are brought into federal custody until they are either acquitted or incarcerated. Finally, the USMS has primary jurisdiction nationwide in conducting and investigating fugitive matters involving escaped federal prisoners, probation, parole, and bond default violators, and warrants generated by Drug Enforcement Administration investigations and certain other related felony cases.

During the past decade, the federal detainee population has experienced unprecedented growth as a result of expanded federal law enforcement initiatives and resources. The detainee population has increased by more than 725 percent, from almost 4,000 in 1981 to more than 33,000 today. Current projections indicate that approximately 38,000 detention beds will be needed for federal detainees by the year 2001, with approximately 43,000 beds required by 2002. The growth in the detainee population is occurring at the same time that available local jail space is decreasing. Local jail space is increasingly needed to house local offenders, leaving less space available for the contractual accommodation of federal detainees. These trends are projected to continue unabated for the foreseeable future and present a major challenge for those federal agencies responsible for detaining prisoners.

Faced with severe shortages in state and local prisoner bedspace, especially in major metropolitan areas (federal court cities), as well as court ordered caps on prisoner populations, the USMS is finding it increasingly difficult to house federal prisoners. The USMS has been forced to house prisoners in facilities that are further away from federal court cities. The resultant long-distance movement of federal prisoners involves substantial amounts of USMS time and resources and strains the USMS Justice Prisoner and Alien Transportation System to its limits. The USMS has determined that there is an immediate and long-term need for up to 2,000 beds located within a 100-mile radius of Tucson and Phoenix, Arizona, both of which are federal court cities. The high level of USMS and INS activity in the Southwestern corridor of the United States requires more beds than are readily available in local or state facilities. The shortage of beds has been ongoing for more than two years. The USMS has a specific need for detention facilities to be located near federal courthouses because of its responsibility to detain those individuals accused of violating federal laws.

Two sites in Pinal County, Arizona have been offered to the USMS for consideration in developing the pre-trial detention facility. The USMS has preliminarily evaluated these sites and determined that the prospective sites appear to be of sufficient size to provide space for housing, programs, administrative services and other support facilities associated with the detention facility. The DEIS to be prepared by the USMS will analyze the potential impacts of detention facility construction and operation at these sites.

The Process

In the process of evaluating the sites, several aspects will receive detailed examination including, but not limited to: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, socio-economics, hazardous materials, air and noise quality, among others.

Alternatives

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A public Scoping Meeting will be held at 7:00 P.M., August 16, 2000 at the Florence Elementary School, located at Brady and Orlando streets, Florence, Arizona. The meeting location, date, and time will be

well publicized and has been arranged to allow for the public as well as interested agencies and organizations to attend. The meeting is being held to allow interested persons to formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Scoping Meeting is being held to provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS may be directed to: Charles Coburn, Associate General Counsel, U.S. Marshals Service, 600 Army-Navy Drive, Suite 1200, Arlington, Virginia; Telephone: (202) 307–9045; Telefacsimile: (202) 307–9456.

Dated: July 20, 2000.

Charles Coburn,

Associate General Counsel, U.S. Marshals Service.

[FR Doc. 00–18862 Filed 7–27–00; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(BJS)–1286e]

National Incident Based Reporting System (NIBRS) Implementation Program

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, Justice.

ACTION: Extension of application deadline.

SUMMARY: This notice is to announce the extension of the application deadline for the Bureau of Justice Statistics' solicitation to make awards to States to provide funding to jurisdictions for implementing the National Incident Based Reporting System (NIBRS).

DATES: Proposals must be received by 5 p.m. ET on Thursday, August 31, 2000.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, Room 2406, 810 7th Street, NW., Washington, DC 20531, (202) 616–3497 [This is not a toll-free number].

FOR FURTHER INFORMATION CONTACT: Charles R. Kindermann, Ph.D., Senior Statistician, Bureau of Justice Statistics, (202) 616–3489, or Carol G. Kaplan, Chief, Criminal History Improvement Programs, (202) 307–0759 [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Extended Deadline for Proposals

BJS is extending the proposal submission date for the NIBRS solicitation which was published in the **Federal Register** on June 19, 2000 at 65 FR 38001. The prior due date was July 31, 2000. The new submission deadline is Thursday, August 31, 2000. Please refer to the original notice of solicitation (65 FR 38001) for information about the eligibility requirements, scope of work, application process and awards procedures.

Authority

The Crime Identification Technology Act (CITA) provides funding to states (in conjunction with units of Local government) and tribes that want to participate in the FBI's new approach to uniform crime reporting, the National Incident-Based Reporting System (NIBRS). The awards made pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with the provisions of 42 U.S.C. 3732 and the Crime Identification Technology Act of 1998 (CITA), 42 U.S.C. 14601.

Lawrence Greenfeld,

Acting Director, Bureau of Justice Statistics.

[FR Doc. 00–19224 Filed 7–27–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of

submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 20th day of July 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–18869 Filed 7–27–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. W–100]

Final Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits

AGENCY: Occupational Safety and Health Administration, USDOL.

ACTION: Notice of final policy

Authority: Sec. 8(a) and 8(b), Pub. L. 91–596, 84 Stat. 1599 (29 U.S.C. 657)

SUMMARY: The Occupational Safety and Health Administration (OSHA) has developed a final policy describing the Agency's treatment of voluntary employer self-audits that assess workplace safety and health conditions, including compliance with the Occupational Safety and Health Act (Act). The policy provides that the Agency will not routinely request self-audit reports at the initiation of an inspection, and the Agency will not use self-audit reports as a means of identifying hazards upon which to focus during an inspection. In addition, where a voluntary self-audit identifies a hazardous condition, and the employer has corrected the violative condition prior to the initiation of an inspection (or a related accident, illness, or injury that triggers the OSHA inspection) and has taken appropriate steps to prevent the recurrence of the condition, the Agency will refrain from issuing a citation, even if the violative condition existed within the six month limitations period during which OSHA is authorized to issue citations. Where a voluntary self-audit identifies a hazardous condition, and the employer promptly undertakes appropriate measures to correct the violative condition and to provide interim employee protection, but has not completely corrected the violative condition when an OSHA inspection occurs, the Agency will treat the audit report as evidence of good faith, and not as evidence of a willful violation of the Act.

FOR FURTHER INFORMATION CONTACT: Richard E. Fairfax, Occupational Safety and Health Administration, Directorate of Compliance Programs, Room N–3603, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone: 202–693–2100.

SUPPLEMENTARY INFORMATION:

I. Background Information

On October 6, 1999, OSHA published a "Proposed Policy Statement Concerning the Occupational Safety and Health Administration's Use of Voluntary Employer Safety and Health Self-Audits" in the **Federal Register**. 64 FR 54358 (1999). The policy statement described the Agency's proposal regarding the manner in which it would treat voluntary employer self-audits that assess workplace safety and health conditions, including compliance with the Act. The proposed policy statement provided that the Agency would not routinely request voluntary employer self-audit reports at the initiation of an inspection. Further, the proposed policy provided that, where an employer identified a hazardous condition through a voluntary self-audit, and the employer promptly undertook appropriate corrective measures, OSHA would treat the audit report as evidence of good faith, and not as evidence of a willful violation. It was, and remains, the Agency's intention to develop and implement a policy that recognizes the value of voluntary self-audit programs that are designed to allow employers, or their agents, to identify and promptly correct hazardous conditions. In limited situations, however, documentation related to voluntary self-audits plays an important role in the Agency's ability to effectively and faithfully carry out its inspection and enforcement obligations under the Act.

Although the Agency is not required by the Administrative Procedures Act, 5 U.S.C. 551, *et seq.*, to engage in notice and comment rulemaking procedures prior to the adoption and implementation of this policy, OSHA requested public comment regarding its proposed policy statement in order to gain input and insight from employers, employees, employee representatives, and other interested parties. OSHA received and thoroughly reviewed comments from a variety of sources. The Agency has modified the proposed policy to incorporate those comments that further OSHA's dual purposes in proposing the voluntary self-audit policy—*i.e.*, to provide appropriate, positive treatment that is in accord with the value that voluntary self-audits have for employers' safety and health compliance efforts, while maintaining the Agency's authority to gain access to voluntary self-audit documentation in limited circumstances in which access is important to effectively and faithfully enforce the Act. The Agency has not incorporated those comments that it considered to be contrary to its purposes in proposing this policy or that it

considered to be beyond the scope of its intent in proposing the policy.

II. Substantive Modifications to the Proposed Policy

Based upon input that the Agency received from interested parties, OSHA has made several substantive changes to its proposed policy on the treatment of voluntary employer self-audits.

1. Modifications to Certain Definitions in the Policy

In the final policy, the Agency has defined the term "self-audit" to include health and safety audits conducted for an employer by a third party. In addition, in defining the terms "systematic" and "documented," the Agency has added the words "or for" before the phrase "the employer" to clarify that an audit conducted by a third party for an employer is covered by the final policy. OSHA values the role that independent safety and health professionals play in furthering occupational safety and health and encourages employers to utilize their services when appropriate.

The Agency has changed the definition of the word "objective" by deleting reference to "safety and health professional[s]" and by broadening the class of persons who may conduct an "objective" self-audit to include competent employees and management officials. Thus, in the final policy, a self-audit is "objective" if it is conducted "by or under the direction of an individual or group of individuals who are competent to identify workplace safety or health hazards, given the scope and complexity of the processes under review." This modification is responsive to suggestions from small business employers, organizations such as the National Advisory Committee on Occupational Safety and Health, and other members of the public. Employers, particularly small business employers, who might not have the financial resources to hire an independent consultant, may use their own personnel who do not have professional certification, but who do have the necessary experience or training to conduct an effective and thorough self-audit. In addition, the Agency recognizes the expertise that many joint labor-management safety committees have developed with respect to workplace safety and health issues and acknowledges that audits conducted by such committees should qualify for recognition under this policy.

2. Training for Compliance Safety and Health Officers

In the final policy, the Agency has added the following statement: "All OSHA personnel applying this policy will receive instruction in order to ensure the consistent and appropriate application of the policy." The Agency received comments from employers expressing their concerns regarding the potential for inconsistent implementation and application of the policy. OSHA agrees that an effective policy can be achieved only through consistent implementation and application. Thus, in the final policy, OSHA has explicitly stated that training will be provided, over a period of time, to all personnel who will apply this policy in order to ensure its consistent and proper implementation.

3. Citation Policy for Violative Conditions Identified and Corrected Through Voluntary Self-Audits

In response to numerous suggestions from commenters, the Agency has added a provision explicitly stating that OSHA will not issue citations for violative conditions discovered during a voluntary self-audit and corrected prior to the initiation of an inspection (or a related accident, illness, or injury that triggers the inspection), even if the violative condition existed within the six month limitations period during which OSHA is authorized to issue citations. OSHA encourages employers to conduct voluntary self-audits and to promptly correct all violations of the Act that are discovered in order to ensure safety and health in the workplace. Thus, in the final policy, the Agency has incorporated its current enforcement practice and will refrain from issuing a citation for a violative condition that an employer discovered as a result of a voluntary self-audit, if the employer corrects the condition prior to the initiation of an OSHA inspection (or a related accident, illness, or injury that triggers the OSHA inspection), and if the employer has taken appropriate steps to prevent a recurrence of the violative condition.

4. Employers' Prerogative to Voluntarily Provide Self-Audit Documentation

Several parties requested that the Agency provide that, in those situations in which the Agency has not requested or used voluntary self-audit documentation in conducting its inspection, employers be permitted to take advantage of the policy by providing the Agency with evidence of their voluntary self-audit program. Since OSHA inspectors rarely request voluntary self-audit documentation when conducting inspections, and this policy states the Agency's intent that inspectors should request such documentation only in limited situations, OSHA recognizes that there will be a significant number of instances in which the Agency is unaware of an employer's voluntary self-audit activities, and thus the employer would not be considered for recognition under the policy. Therefore, the final policy provides that an employer voluntarily may provide the Agency with self-audit documentation, and the employer may be eligible to receive the benefits that are detailed in this policy.

III. Comments Not Incorporated Into Final Policy

A number of parties offered comments that have not been included in the final policy. While the Agency considered thoroughly each of the comments that it received, OSHA considered the following comments either to be inconsistent with the Agency's dual purposes in proposing the policy or to be beyond the scope of the proposed policy.

1. Employee Participation in the Voluntary Self-Audit Process

Two union representatives maintained that OSHA should require employers to disclose self-audit results to their employees and their representatives and that OSHA should not grant good faith credit to any employer who has not disclosed all of the audit results both to OSHA and to its employees. OSHA agrees that the interests of workplace safety and health are advanced when employers share self-audit results with employees and employee representatives. However, because this is not a rulemaking procedure, the Agency considers it to be inappropriate to use this policy to adopt a practice that may be deemed to modify the legal duties of employers. Moreover, insofar as the purpose of this statement is to clarify current OSHA practices and to provide appropriate, positive treatment that is in accord with the value of voluntary self-audits, the Agency believes that it may be counterproductive to impose additional requirements on employers in order to qualify for inclusion under the policy.

2. More Significant Proposed Penalty Reductions

Several parties suggested that OSHA should provide a more significant proposed penalty reduction for an employer's "good faith" by offering proposed penalty reductions in excess of 25 percent to employers who identify

violative conditions during voluntary self-audits and who have begun to correct the conditions, but who have not completed abatement prior to the initiation of an OSHA inspection. OSHA's current guidelines account for an employer's "good faith" when the Agency calculates a proposed penalty for a violation of the Act. These guidelines allow a penalty reduction of up to 25 percent in recognition of an employer's "good faith," if the employer has developed and implemented a written health and safety program, which provides for appropriate management commitment and employee involvement; worksite analysis for the purpose of hazard identification; hazard prevention and control measures; and safety and health training. The Agency has stated that it will treat a voluntary self-audit, which results in prompt corrective action and appropriate steps to prevent similar violations, as strong evidence of the employer's good faith with respect to the matters covered by the voluntary self-audit. However, a voluntary self-audit is only one of the many steps that employers can and do undertake to protect the health and safety of their employees, and OSHA does not believe that the goals of the Act would be furthered by an additional "good faith" penalty reduction that is keyed directly and exclusively to voluntary self-audits. Rather, the Agency believes that its current "good faith" penalty reduction provisions, in conjunction with the inherent advantages that employers gain by conducting voluntary self-audits and the treatment that this policy provides for voluntary self-audits, provide appropriate, positive recognition for voluntary self-audits.

3. Total Prohibition Against the Use of Voluntary Self-Audit Documentation

Many employers and employer associations stated that OSHA should refrain totally from using voluntary self-audit information as a part of the Agency's enforcement efforts under the Act. The Agency has not incorporated this comment into its policy because it believes that a complete prohibition is unnecessary in order to provide appropriate, positive treatment for voluntary self-audits. In addition, the Agency believes that, in some circumstances, a complete prohibition would prevent it from effectively enforcing the Act.

The implementation of this policy will publicly state the Agency's policy to request voluntary self-audit documentation only in limited situations. A substantial number of employers already conduct voluntary self-audits for their own benefit and for the benefit of their employees. The Agency believes that this policy, with its explicit provisions concerning the Agency's use of voluntary self-audit documentation, will provide the assurances that additional employers may need in order to conduct voluntary self-audits. Indeed, under the policy, employers who respond promptly and appropriately to hazardous conditions that are identified in a voluntary self-audit can only be rewarded for having conducted the self-audit.

On the other hand, there are legitimate circumstances in which voluntary self-audit data are important to enable the Agency to effectively enforce the Act. For example, such information may allow an inspector, who has already identified a hazard, to determine the scope of the hazard or to assess the manner in which the condition can be abated. In addition, pursuant to Occupational Safety and Health Review Commission precedent, the Secretary of Labor has the obligation to demonstrate that an employer had knowledge of a cited violative condition, and, in certain situations, the obligation to demonstrate that an employer was so indifferent to recognized occupational health or safety hazards that more significant penalties are justified in order to effectuate the provisions of the Act. Thus, the Agency believes that a complete prohibition against the use of voluntary self-audit documentation would be an imprudent policy because it would hamper OSHA's ability to enforce the Act effectively.

4. More Precisely Defined Limitations on the Agency's Use of Voluntary Self-Audit Documentation

In the proposed policy statement, the Agency had proposed to "refrain from routinely requesting reports of voluntary self-audits at the initiation of an enforcement inspection." OSHA explained that it intended to seek access to such reports only in limited situations in which the Agency had an independent basis to believe that a specific safety or health hazard warrants investigation, and had determined that such records may be relevant to identify or determine the circumstances or nature of the hazardous condition. However, several employers asked that the Agency more precisely detail the specific situations in which its inspectors may request voluntary self-audit documentation.

The Agency has decided not to attempt to modify its proposed policy in this manner for several reasons. First, OSHA believes that, given the diversity of circumstances that inspectors encounter in conducting thousands of workplace inspections each year, it is not feasible to comprehensively list or to describe with any specificity each of those situations in which it would be appropriate for an inspector to request voluntary self-audit documentation. Rather, the Agency believes that the implementation of this policy will provide sufficient specificity to assure employers that inspectors will seek voluntary self-audit documentation only in limited and generally defined situations. Second, OSHA recognizes the skill and experience of its inspectors and believes that it is essential for the Agency and its inspectors to have some discretion in implementing this policy in order to effectively and efficiently fulfill the Act's mandate to detect and identify occupational safety and health hazards. Third, in refraining from an attempt to more specifically define those discrete circumstances in which inspectors may request voluntary self-audit documentation, the Agency has adopted the comment offered by several employers and their representatives who expressed concern that such specificity may in practice increase the frequency with which inspectors request voluntary self-audit documentation, given the natural human inclination to interpret specific examples as situations in which a request for self-audit documentation is mandated, as opposed to merely permitted, pursuant to the policy.

5. Adoption of a Formal Rule Regarding the Agency's Treatment of Voluntary Self-Audits

Several commenters suggested that the Agency should adopt the "Final Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits" as a formal rule that would be legally binding on the Agency. However, OSHA has declined to incorporate this comment and believes that the policy, as adopted, provides sufficient assurance that employers who conduct voluntary self-audits, and who take prompt and appropriate steps to address occupational hazards that are identified in such audits, will not be penalized by OSHA for conducting voluntary self-audits. In addition, since this policy is an internal policy that is intended only to provide OSHA inspectors with guidance regarding the circumstances under which the Agency considers it appropriate to review and consider documentation generated by employers as a result of voluntary self-audits, the Agency believes it is imprudent and unnecessary to expend the time, money,

and other resources required to promulgate a formal rule. Finally, the Agency believes that a rule that creates legal rights for third parties would be more likely to produce unproductive litigation than will a policy that only provides guidance to OSHA inspectors. This type of litigation would not further the health and safety purposes of the Act.

6. No Citation for Partial or Planned Correction of Violative Conditions Identified through a Voluntary Self-Audit

A number of employers stated that the Agency should refrain from issuing a citation in any situation in which an employer has identified a hazardous condition and is in the process of correcting that condition, or has developed a plan or program for correcting that condition, at the time that OSHA conducts an inspection of the employer's facility. OSHA has decided not to incorporate this comment into the final policy for several reasons. First, the agency recognizes that the prompt correction of hazardous workplace conditions is essential for the prevention of occupational illnesses, injuries, and fatalities. The Agency is concerned that a policy that excuses an employer for an abatement plan alone, or for abatement actions that do not constitute the complete elimination of the hazard, may serve to diminish an employer's incentive to promptly and completely eliminate workplace hazards. Second, the Agency believes that such a policy would be inconsistent with the Act's mandate, which is to assure, so far as possible, safe and healthful working conditions for every working man and woman in the Nation. In enforcing the Act, OSHA only issues citations in cases in which employees actually are exposed to hazards associated with violative conditions. While the final policy recognizes that employers who identify hazardous conditions through the use of voluntary self-audits, and are in the process of correcting those hazards, may deserve a "good faith" reduction in the penalty that OSHA proposes for the violation, the Agency does not believe that the Act contemplates that OSHA will refrain totally from issuing citations in situations in which employees are working in an environment in which they are exposed to serious occupational hazards.

IV. Description of the Final Policy

The policy applies to audits (1) that are systematic, documented, and objective reviews conducted by, or for, employers to review their operations and practices to ascertain compliance with the Act, and (2) that are not mandated by the Act, rules or orders issued pursuant to the Act, or settlement agreements. A systematic audit is planned, and it is designed to be appropriate to the scope of the hazards that it addresses and to provide a basis for corrective action. Ad hoc observations and other ad hoc communications concerning a hazardous condition made during the ordinary course of business are not included within the definition of a "self-audit" or "voluntary self-audit report." The findings resulting from the systematic self-audit must be documented contemporaneously (at the time the condition is discovered or immediately after completion of the audit) so as to assure that they receive prompt attention.

The self-audit also must be conducted by or supervised by a competent person who is capable of identifying the relevant workplace hazards. Employees or management officials who have the training or experience that is necessary to identify workplace safety or health hazards, given the scope and complexity of the processes under review, are considered to be competent persons under the policy, even though they may not maintain engineering, scientific, industrial hygiene, or other relevant professional accreditation.

In order to qualify for inclusion under the policy, a self-audit need not review or analyze an entire plant, facility, or operation. For example, a voluntary self-audit designed to identify hazards associated with a particular process or hazard (as opposed to an entire plant, facility, or operation) will qualify for consideration under the policy.

The policy provides that OSHA will not routinely request voluntary self-audit reports when initiating an inspection, and that the Agency will not use voluntary self-audit reports as a means of identifying hazards upon which to focus during an inspection. Rather, OSHA intends to seek access to such reports only in limited situations in which the Agency has an independent basis to believe that a specific safety or health hazard warrants investigation, and has determined that such records may be relevant to identify or determine the circumstances of the hazardous condition. For example, an inspector might seek access to self-audit documentation following a fatal or catastrophic accident when OSHA is investigating the circumstances of the accident to assess compliance and to assure that hazardous conditions are abated. Likewise, it would be consistent with this policy to request self-audit documentation when the Agency has an independent basis for believing that a hazard exists. The Agency believes that this provision is responsive to the concerns of employers who sought assurances that OSHA would not use voluntary self-audit documentation during an inspection as a "road map" to identify violations of the Act.

OSHA emphasizes that it is not seeking through this policy to expand the situations in which it requests production of voluntary self-audit reports beyond its present practice. In addition, OSHA intends to seek access only to those audit reports, or portions of those reports, that are relevant to the particular matters that it is investigating.

OSHA has defined "voluntary self-audit report" to include information obtained in the audit, as well as analyses and recommendations. The effect is to include audit information in the documents that OSHA will not routinely request at the initiation of the inspection. OSHA has defined the term this way because the Agency believes that the definition responds to the concerns raised by employers about the effect of routine OSHA requests for voluntary self-audit findings.

The policy also contains provisions designed to assure that employers who respond with prompt corrective actions will receive corresponding benefits following an OSHA inspection. These provisions would come into play when OSHA obtains a voluntary self-audit report, either because the employer has voluntarily provided it to OSHA, as commonly occurs, or because OSHA has required production of the report. In response to public comment, OSHA has expressly stated in the final policy that employers may voluntarily provide OSHA with self-audit documentation and that those employers may be eligible to receive the benefits detailed in the policy.

The policy explains that OSHA will refrain from issuing a citation for a violative condition that an employer has discovered through a voluntary self-audit and has corrected prior to the initiation of an inspection (or a related accident, illness, or injury that triggers the inspection), if the employer also has taken appropriate steps to prevent the recurrence of the condition. In situations in which the corrective steps have not been completed at the time of the inspection, OSHA will treat the voluntary self-audit report as evidence of good faith, not as evidence of a willful violation, provided that the employer has responded promptly with appropriate corrective action to the violative conditions identified in the

audit. Accordingly, if the employer is responding in good faith and in a timely manner to correct a violative condition discovered in a voluntary self-audit, and OSHA detects the condition during an inspection, OSHA will not use the report as evidence of willfulness. A timely, good faith response includes promptly taking diligent steps to correct the violative condition, while providing effective interim employee protection, as necessary.

OSHA will treat a voluntary self-audit that results in prompt corrective action of the nature described above and appropriate steps to prevent similar violations, as strong evidence of the employer's good faith with respect to the matters addressed. Good faith is one of the statutory factors that OSHA is directed to take into account in assessing penalties. 29 U.S.C. 666(j). Where OSHA finds good faith, OSHA's Field Inspection Reference Manual (the "FIRM") authorizes up to a 25 percent reduction in the penalty that otherwise would be assessed. The FIRM treats the presence of a comprehensive safety and health program as a primary indicator of good faith. A comprehensive safety and health program includes voluntary self-audits, but is broader in concept, covering additional elements. In this policy, OSHA has concluded that a voluntary self-audit/correction program is evidence of good faith. OSHA believes that the policy will provide appropriate positive recognition of the value of voluntary self-audits, while simultaneously enabling the Agency to enforce the provisions of the Occupational Safety and Health Act effectively.

V. Final Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits

A. Purpose

1. This policy statement describes how the Occupational Safety and Health Administration (OSHA) will treat voluntary self-audits in carrying out Agency civil enforcement activities. Voluntary self-audits, properly conducted, may discover conditions that violate the Occupational Safety and Health Act (Act) so that those conditions can be corrected promptly and similar violations prevented from occurring in the future. This policy statement is intended to provide appropriate, positive treatment that is in accord with the value voluntary self-audits have for employers' safety and health compliance efforts, while also recognizing that access to relevant information is important to the Secretary of Labor's inspection and enforcement duties under the Act.

2. This policy statement sets forth factors that guide OSHA in exercising its informed discretion to request and use the information contained in employers' voluntary self-audit reports. All OSHA personnel applying this policy will receive instruction in order to ensure the consistent and appropriate application of the policy. The policy statement is not a final Agency action. It is intended only as general, internal OSHA guidance, and is to be applied flexibly, in light of all appropriate circumstances. It does not create any legal rights, duties, obligations, or defenses, implied or otherwise, for any party, or bind the Agency.

3. This policy statement has four main components:

(a.) It explains that OSHA will refrain from routinely requesting reports of voluntary self-audits at the initiation of an enforcement inspection;

(b.) It explains that OSHA will refrain from issuing a citation for a violative condition that an employer has discovered through a voluntary self-audit and has corrected prior to the initiation of an OSHA inspection (or a related accident, illness, or injury that triggers the inspection), if the employer also has taken appropriate steps to prevent the recurrence of the condition;

(c.) It contains a safe-harbor provision under which, if an employer is responding in good faith to a violative condition identified in a voluntary self-audit report, and OSHA discovers the violation during an enforcement inspection, OSHA will not treat that portion of the report as evidence of willfulness;

(d.) It describes how an employer's response to a voluntary self-audit may be considered evidence of good faith, qualifying the employer for a substantial civil penalty reduction, when OSHA determines a proposed penalty. *See* 29 U.S.C. 666(j). Under this section of the Act, a proposed penalty for an alleged violation is calculated giving due consideration to the "good faith" of the employer.

B. Definitions

1. "Self-Audit" means a systematic, documented, and objective review by or for an employer of its operations and practices related to meeting the requirements of the Act.

(a.) "Systematic" means that the self-audit is part of a planned effort to prevent, identify, and correct workplace safety and health hazards. A systematic self-audit is designed by or for the employer to be appropriate to the scope of hazards it is aimed at discovering, and to provide an adequate basis for corrective action;

(b.) "Documented" means that the findings of the self-audit are recorded contemporaneously and maintained by or for the employer;

(c.) "Objective" means that the self-audit is conducted by or under the direction of an individual or group of individuals who are competent to identify workplace safety or health hazards, given the scope and complexity of the processes under review.

2. "Voluntary" means that the self-audit is not required by statute, rule, order, or settlement agreement. Voluntary self-audits may assess compliance with substantive legal requirements (*e.g.*, an audit to assess overall compliance with the general machine guarding requirement in 29 CFR 1910.212).

3. "Voluntary self-audit report" means the written information, analyses, conclusions, and recommendations resulting from a voluntary self-audit, but does not include matters required to be disclosed to OSHA by the records access rule, 29 CFR 1910.1020, or other rules.

4. "Good faith" response means an objectively reasonable, timely, and diligent effort to comply with the requirements of the Act and OSHA standards.

C. OSHA's Treatment of Voluntary Self-Audit Reports

1. No Routine Initial Request for Voluntary Self-Audit Reports

(a.) OSHA will not routinely request voluntary self-audit reports at the initiation of an inspection. OSHA will not use such reports as a means of identifying hazards upon which to focus inspection activity.

(b.) However, if the Agency has an independent basis to believe that a specific safety or health hazard warranting investigation exists, OSHA may exercise its authority to obtain the relevant portions of voluntary self-audit reports relating to the hazard.

(c.) An employer voluntarily may provide OSHA with self-audit documentation and may be eligible to receive the benefits that are detailed in this policy.

2. No Citations for Violative Conditions Discovered During a Voluntary Self-Audit and Corrected Prior to an Inspection (or a Related Accident, Illness, or Injury That Triggers the Inspection)

It is OSHA's current enforcement practice to refrain from issuing a citation for a violative condition that an

employer has corrected prior to the initiation of an OSHA inspection (and prior to a related accident, illness, or injury that triggers the inspection), if the employer has taken appropriate steps to prevent a recurrence of the violative condition, even if the violative condition existed within the six month limitations period during which OSHA is authorized to issue citations. Consistent with this enforcement practice, OSHA will not issue a citation for a violative condition that an employer has discovered as a result of a voluntary self-audit, if the employer has corrected the violative condition prior to the initiation of an inspection (and prior to a related accident, illness, or injury that triggers the inspection) and has taken appropriate steps to prevent a recurrence of the violative condition that was discovered during the voluntary self-audit.

3. Safe Harbor—No Use of Voluntary Self-Audit Reports as Evidence of Willfulness

A violation is considered willful if the employer has intentionally violated a requirement of the Act, shown reckless disregard for whether it was in violation of the Act, or demonstrated plain indifference to employee safety and health. Consistent with the prevailing law on willfulness, if an employer is responding in good faith to a violative condition discovered through a voluntary self-audit and OSHA detects the condition during an inspection, OSHA will not use the voluntary self-audit report as evidence that the violation is willful.

This policy is intended to apply when, through a voluntary self-audit, the employer learns that a violative condition exists and promptly takes diligent steps to correct the violative condition and bring itself into compliance, while providing effective interim employee protection, as necessary.

4. "Good Faith" Penalty Reduction

Under the Act, an employer's good faith normally reduces the amount of the penalty that otherwise would be assessed for a violation. 29 U.S.C. 666(j). OSHA's FIRM provides up to a 25 percent penalty reduction for employers who have implemented an effective safety and health program, including voluntary self-audits. OSHA will treat a voluntary self-audit that results in prompt action to correct violations found, in accordance with paragraph C.3. above, and appropriate steps to prevent similar violations, as strong evidence of an employer's good faith with respect to the matters covered by the voluntary self-audit. This policy does not apply to repeat violations.

D. Federal Program Change

This policy statement describes a Federal OSHA Program change for which State adoption is not required; however, in the interest of national consistency, States are encouraged to adopt a similar policy regarding voluntary self-audits.

E. Effective Date

This policy is effective July 28, 2000.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary for Occupational Safety and Health, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 24th day of July, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–19067 Filed 7–27–00; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Legal Services Corporation's Board of Directors will meet by teleconference on Tuesday, August 1, 2000, at 4 p.m. EDT.

STATUS OF MEETING: Open.

LOCATION: Members of the Board will participate by way of telephonic conferencing equipment allowing them all to hear one another. Members of the Corporation's staff and the public will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Conference Room, on the 11th floor of 750 First Street, NE., Washington, DC 20002.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Consider and act on a proposed resolution recognizing and thanking the law firm of Nelson, Mullins, Riley & Scarborough for their *pro bono* representation of LSC in the case of *Regional Management Corp. et al.* v. *Legal Services Corporation.*
3. Consider and act on a proposed resolution recognizing and thanking the law firm of Porter, Wright, Morris & Arthur for their *pro bono* representation of LSC in the case of *Ashtabula County Legal Aid Corporation* v. *Legal Services Corporation.*
4. Consider and act on proposed extension of John McKay's tenure as President of LSC to September 30, 2001.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon N. Adaway, at (202) 336–8800.

Dated: July 25, 2000.

Victor M. Fortuno,

Vice President of Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–19200 Filed 7–25–00; 4:59 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Privacy Act of 1974: Republication of Notice of Systems of Records

AGENCY: National Endowment for the Arts.

ACTION: Notice of republication of systems of records, proposed systems of records, and new routine uses.

SUMMARY: The National Endowment for the Arts (Endowment) is publishing a notice of its systems of records with descriptions of the systems and the ways in which they are maintained, as required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4). This notice reflects administrative changes that have been made at the Endowment since the last publication of a notice of its systems of records. This notice also will enable individuals who wish to access information maintained in Endowment systems to make accurate and specific requests for such information.

DATES: In accordance with 5 U.S.C. 552a(r), on July 17, 2000, the Endowment filed a report as to the changes proposed in this notice with the Committee on Government Reform of the House of Representatives; the Committee on Governmental Affairs of the Senate; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The proposed changes to the Endowment's systems of records will become effective 40 days from the date the report was submitted to Congress and the OMB, or 30 days from the date of this publication in the **Federal Register**, whichever is later.

ADDRESSES: Karen Elias; Deputy General Counsel; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW;

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Room 518; Washington, DC 20506; telefax at (202) 682–5572 or by electronic mail at eliask@arts.endow.gov.

FOR FURTHER INFORMATION CONTACT: Karen Elias, (202) 682–5418

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), the Endowment is today republishing a notice of the existence and character of its systems of records in order to make available in one place in the Federal Register the most up-to-date information regarding these systems. This republication has become necessary to reflect administrative changes, such as agency restructuring and the increased use of electronic technology, that have been made at the Endowment since the last publication of a notice of its systems of records.

Statement of General Routine Uses

The following general routine uses are incorporated by this reference into each system of records set forth herein, unless specifically limited in the system description.

1. A record may be disclosed as a routine use to a Member of Congress or his or her staff, when the Member of Congress or his or her staff requests the information on behalf of and at the request of the individual who is the subject of the record.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the subject individual for employment purposes (including the hiring or retention of any employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency) to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. In the event that a record in a system of records maintained by the Endowment indicates, either by itself or in combination with other information in the Endowment's possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule, or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall be deemed to authorize: (1) Any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (2) Such other interagency referrals as may be necessary to carry out the receiving agencies' assigned law enforcement duties.

4. The names, Social Security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, as follows:

(a) For use in the Federal Parent Locator System (FPLS) and the Federal Tax Offset System for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193);

(b) For release to the Social Security Administration for the purpose of verifying Social Security numbers in connection with the operation of the FPLS; and

(c) For release to the U.S. Department of the Treasury (Treasury) for the purpose of payroll, savings bonds, and other deductions; administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986); and verifying a claim with respect to employment on a tax return, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

5. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate, or administrative tribunal of appropriate jurisdiction, and such disclosure may include disclosures to opposing counsel in the course of settlement negotiations.

6. Information from any system of records may be used as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

7. A record may be disclosed as a routine use to a contractor, expert, or consultant of the Endowment (or an office within the Endowment) when the purpose of the release is to perform a survey, audit, or other review of the Endowment's procedures and operations.

8. A record from any system of records may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the government's best interests.

10. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the recipient has incurred an indebtedness to the government through its receipt of government funds, and release of the record is for the purpose of allowing the debtor to effect a collection against a third party.

11. Information in a system of records may be disclosed as a routine use to the Treasury; other Federal agencies; "consumer reporting agencies" (as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)); or private collection contractors for the purpose of collecting a debt owed to the Federal government as provided in the regulations promulgated by the Endowment and published at 45 CFR 1150.

Table of Contents

This document gives notice that the following Endowment systems of records are in effect:

NEA–1 Panelists, Automated Panel Bank System (APBS).
NEA–2 Panelists, Paper Files.
NEA–3 National Council on the Arts (Council).
NEA–4 Grants, Grants Management System (GMS).
NEA–5 Grants, Paper Files.
NEA–6 Contracts and Cooperative Agreements.
NEA–7 Payroll/Personnel System.
NEA–8 Government Purchasing Card Holders
NEA–9 Financial Management Information System (FMIS).
NEA–10 Finance, Subsidiary Tracking Systems.
NEA–11 Finance, Paper Files.
NEA–12 Equal Employment Opportunity Complaint Case Files.
NEA–13 Civil Rights Complaint Case Files.
NEA–14 Office of the Inspector General Investigative Files.

NEA–1

SYSTEM NAME:

Panelists, Automated Panel Bank System (APBS).

SYSTEM LOCATION:

Information Management Division; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whom the Endowment may ask or has asked to serve on application review panels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, Social Security number, and other data concerning potential and actual panelists, including information about areas of artistic expertise and prior panel service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*)

PURPOSE(S):

To provide a central repository for information about art experts who could be or have been called upon to serve on application review panels and make recommendations on grant awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system is used for identification of panelists and their activities in this capacity. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in an electronic database.

RETRIEVABILITY:

Records in this system are retrieved by name or Social Security number.

SAFEGUARDS:

This system is maintained in a locked computer room that can be accessed only by authorized employees of the Endowment or the National Endowment for the Humanities. Access to records in this system is further controlled by password, with different levels of modification rights assigned to individuals and offices at the Endowment based on their specific job functions.

RETENTION AND DISPOSAL:

Records in this system are maintained and updated on a continuing basis, as new information is received by the Office of Guidelines and Panel Operations. Endowment staff will periodically request updated information from individuals who are registered in the APBS. Endowment staff will also periodically purge the APBS of records pertaining to individuals who have been in the APBS for three to five years, but who have not served on a panel or had their records updated. Records will be removed only with the concurrence of the appropriate discipline directors.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Guidelines and Panel Operations and/or Director of Information Management; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees and other individuals nominating potential panelists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–2

SYSTEM NAME:

Panelists, Paper Files.

SYSTEM LOCATION:

1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whom the Endowment may ask or has asked to serve on application review panels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Additional information about potential and actual panelists. This system includes materials such as resumes, panelist profile forms, and contracts concerning participation on panels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*)

PURPOSE(S):

To supplement the APBS with information well suited for maintenance in hard copy form.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system is used for identification of panelists and their activities in this capacity. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in filing cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name.

SAFEGUARDS:

Rooms containing the records in this system are kept locked during non-working hours.

RETENTION AND DISPOSAL:

The Office of Guidelines and Panel Operations maintains paper files that grow as individuals, or discipline directors who are proposing individuals for service on panels, submit resumes. Resumes and profile forms are removed from these files only when they are replaced by more recent information or when individuals are purged from the APBS, as described above. Discipline offices may also maintain paper files about individuals who have served on panels for their divisions. These files may include panelist contracts, copies of which are forwarded to the Endowment's Finance office. Each office destroys its panelist contracts after a set interval.

SYSTEM MANAGER(S) AND ADDRESS:

Coordinator of Panel Operations and/or Director of Finance/CFO; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees and other individuals nominating potential panelists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–3

SYSTEM NAME:

National Council on the Arts (Council).

SYSTEM LOCATION:

Office of Council Operations; 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present members of the National Council on the Arts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, Social Security number, and other information concerning past and present members of the Council, such as press clippings and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*).

PURPOSE(S):

To provide a central repository for information about past and present members of the Council.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system is used for identification of members of the Council and their activities in this capacity. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name.

SAFEGUARDS:

Rooms containing the records in this system are kept locked during non-working hours.

RETENTION AND DISPOSAL:

Records in this system are maintained on an indefinite basis for reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Coordinator of Council Operations; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees involved with the activities of the Council.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–4

SYSTEM NAME:

Grants, Grants Management System (GMS).

SYSTEM LOCATION:

Information Management Division; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied to the Endowment for financial assistance in the form of grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, date of birth, Social Security number, identification numbers assigned by the Endowment, National Standard and agency-established codes, and grant action dates. Financial and banking information is not maintained in the GMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq*).

PURPOSE(S):

To provide a central repository for information about grant applicants, recipients, and awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for general administration of the grant review and award process, statistical research, Congressional oversight, and analysis of trends. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in an electronic database.

RETRIEVABILITY:

Records in this system are retrieved by name, application number, grant number, or constituent identification number.

SAFEGUARDS:

This system is maintained in a locked computer room that can be accessed only by authorized employees of the Endowment and the National Endowment for the Humanities. Access to records in this system is further controlled by password, with different levels of modification rights assigned to individuals and offices at the Endowment based on their specific job functions.

RETENTION AND DISPOSAL:

Records in this system are maintained on an indefinite basis for reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Grants and Contracts and/or Director of Information Management; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees involved in the administration of grants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–5

SYSTEM NAME:

Grants, Paper Files.

SYSTEM LOCATION:

1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied to the Endowment for financial assistance in the form of grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Additional information concerning Endowment decisions to award grants, disburse funds, and close out grants. Materials include grant applications, samples of work, award notification letters and any approved amendments,

payment requests, correspondence, and final reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*)

PURPOSE(S):

To supplement the GMS with information well suited for maintenance in hard copy form.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for general administration of the grant review and award process, statistical research, Congressional oversight, and analysis of trends. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name, application number, or grant number.

SAFEGUARDS:

Rooms containing records in this system are kept locked during non-working hours.

RETENTION AND DISPOSAL:

The Grants and Contracts Office maintains grants paper files, which are retired and destroyed after seven years. Discipline offices also maintain paper files about grants in their divisions. When the final descriptive and financial status reports are received and accepted, the discipline office files are retired first to the Federal Records Center, and then to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Grants and Contracts and/or Director of Administrative Services; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees involved in the administration of grants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–6

SYSTEM NAME:

Contracts and Cooperative Agreements.

SYSTEM LOCATION:

1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have entered administrative contracts or cooperative agreements with the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Relevant information concerning the contract or cooperative agreement, such as copies of the signed document and requests for payment/invoices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq*).

PURPOSE(S):

To maintain a record of contracts and cooperative agreements entered by the Endowment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for General Accounting Office audits and Congressional oversight. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Grants and Contracts Office maintains records in this system in an electronic database, word processing files, and file cabinets. The Finance office also maintains paper files in this system in file cabinets.

RETRIEVABILITY:

Database files are retrieved by name or by contract or cooperative agreement number. Word processing files are retrieved by contract or cooperative agreement number. Paper files maintained by the Grants and Contracts Office are retrieved by name. Paper files maintained by the Finance Office are retrieved by name, Social Security number, vendor number, or cooperative agreement number.

SAFEGUARDS:

Database and word processing files are protected by a password available to Grants and Contracts Office staff. Rooms containing paper files are kept locked during non-working hours.

RETENTION AND DISPOSAL:

Database and word processing files are maintained on an indefinite basis for reference purposes. Paper files maintained by the Grants and Contracts Office are shipped to the National Archives and Records Administration after the contract or cooperative agreement is physically completed, and they are destroyed six years and three months later. Paper files maintained by the Finance Office are also maintained for six years and three months, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Grants and Contracts and/or Director of Finance/CFO; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees involved in contract development, administration, and execution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–7

SYSTEM NAME:

Payroll/Personnel System.

SYSTEM LOCATION:

1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and personnel information, such as time and attendance data, statements of earnings and leave, training data, wage and tax statements, and payroll and personnel transactions. This system includes data that is also maintained in the Endowment's official

personnel folders, which are managed in accordance with Office of Personnel Management (OPM) regulations. The OPM has given notice of its system of records covering official personnel folders in OPM/GOVT–1.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*); Federal Personnel Manual and Treasury Fiscal Requirements Manual.

PURPOSE(S):

To document the Endowment's personnel processes and to calculate and process payroll.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be transmitted to the U.S. Departments of Agriculture and Treasury, and employee-designated financial institutions to effect issuance of paychecks to employees and distributions of pay according to employee directions for authorized purposes. Data in this system may also be used to prepare payroll, meet government record keeping and reporting requirements, and retrieve and apply payroll and personnel information as required for agency needs. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records in this system are maintained off-site by the Department of Agriculture's National Finance Center (NFC). Paper records generated through the NFC are maintained in file cabinets by the Offices of Human Resources, Finance, and Budget after arriving at the Endowment. Discipline offices may also use file cabinets to maintain paper records concerning performance reviews and other personnel actions in their divisions.

RETRIEVABILITY:

Records in this system are retrieved by name, Social Security number, or date of birth.

SAFEGUARDS:

Access to the electronic records in this system is controlled by password on the limited number of Endowment computers that can be used to draw information from the NFC. File cabinets containing the paper records in this system are either kept locked during non-business hours, or are file cabinets are located in rooms which are kept locked during non-business hours.

RETENTION AND DISPOSAL:

The Office of Human Resources maintains paper records in this system in accordance with the General Services Administration's General Records Schedule 2. Division offices may maintain paper records concerning performance reviews and other personnel actions in their divisions for the duration of an individual's employment with the Endowment. The Finance Office maintains its records for six years and three months before destroying them.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees involved in the administration of personnel and payroll processes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–8

SYSTEM NAME:

Government Purchasing Card Holders

SYSTEM LOCATION:

1100 Pennsylvania Avenue, NW, Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Endowment employees who have been issued credit cards to make official purchases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office, account number, and spending limits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*).

PURPOSE(S):

To maintain a record of Endowment employees authorized to use government purchasing cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Grants and Contracts Office maintains records in this system in an electronic database. The Finance Office maintains additional paper records in this system in file cabinets.

RETRIEVABILITY:

Electronic records in this system are retrieved by name, office, account number, or spending limit. Paper records in this system are retrieved by name or social security number.

SAFEGUARDS:

Access to electronic records in this system is controlled by a password, which is available only to the Coordinator of Contracts and Cooperative Agreements. Rooms containing paper records in this system are kept locked during non-working hours.

RETENTION AND DISPOSAL:

Records in this system are maintained on an indefinite basis for reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Grants and Contracts and/or Director of Finance/CFO; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from Endowment employees involved in administration and oversight of government purchasing cards.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–9

SYSTEM NAME:

Financial Management Information System (FMIS).

SYSTEM LOCATION:

Information Management Division; 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant recipients, Endowment employees, vendors, and other individuals involved in financial transactions with the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number, object class, category code, discipline code, office code, sub-object class code, bank information, Common Accounting Number, Council meeting number, document number, schedule number, tax/employee identification number, vendor number, funding fiscal year, transaction processing dates, and fund type.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*).

PURPOSE(S):

To promote effective fund control and financial management; to provide a central repository for information about the Endowment's financial transactions; and to enable the Budget and Finance offices to share a common system for entering allocation, commitment, and obligation information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the list of General Routine Uses contained in the Preliminary Statement. In addition, this system interfaces with the Grants Management System (GMS) (see NEA–4) and extracts data from a magnetic tape containing Payroll/Personnel information generated by the Department of Agriculture's National Finance Center (NFC).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in computer processible storage media. Paper records are maintained in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name, Social Security number, tax/employee identification number, vendor number, document number, or coding elements.

SAFEGUARDS:

This system is maintained in a locked computer room that can be accessed only by authorized employees of the Endowment and the National Endowment for the Humanities. Access to records in this system is further controlled by password, available to the Budget, Finance, and Information Management Offices. Different levels of modification rights are assigned to these three offices and Endowment employees therein, based on their specific job functions. Rooms containing paper files are kept locked during non-working hours.

RETENTION AND DISPOSAL:

Records in this system are maintained for six years and three months.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Finance/CFO; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system and from Endowment employees who are involved with the Endowment's fund control and financial management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–10

SYSTEM NAME:

Finance, Subsidiary Tracking Systems.

SYSTEM LOCATION:

Finance Office; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant recipients, Endowment employees, vendors, and other individuals involved in financial transactions with the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The Electronic Certification System (ECS) Files contain payment information for processing all payments.

(2) The Metro Fare Card Program Files contain data concerning Endowment employees' applications for mass transit fare cards, and subsequent transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*).

PURPOSE(S):

To supplement the FMIS with electronic records that cannot be maintained within that system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in electronic databases.

RETRIEVABILITY:

(1) Records in the Electronic Certification System (ECS) are retrieved by name, Social Security number, or vendor number.

(2) Records in the Metro Fare Card Program Files are retrieved by name or Social Security number.

SAFEGUARDS:

Access to records in this system is controlled by password.

RETENTION AND DISPOSAL:

Records in this system are maintained on an indefinite basis for reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Finance/CFO; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system and from Endowment employees who are involved with the management of these subsidiary tracking systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–11

SYSTEM NAME:

Finance, Paper Files.

SYSTEM LOCATION:

Finance Office; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant recipients, Endowment employees, vendors, and other

individuals involved in financial transactions with the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The Accounts Receivables Files contain data concerning the type and amount of debts owed to the Endowment, as well as debt collection efforts. These files contain, as appropriate, the name and address of the debtor; taxpayer's identification number; basis of the debt; date a debt became delinquent; amounts accrued for interest, penalties, administrative costs, and payment on account; date the debt was referred to the Treasury for offset; and basis for termination of debt. These files also include copies of bills for collection; invoices; correspondence between the Endowment and the debtor relating to the debt; and documents required to refer accounts to the Treasury, other Federal agencies, or private collection contractor for debt collection.

(2) The Donations to Gift Fund Files contain copies of checks and letters submitted by donors.

(3) The 1099 Files contain data concerning expenses over $600 per calendar year that are reported to the Internal Revenue Service.

(4) The Travel Credit Cards Files contain applications for credit cards.

(5) The Travel Authorizations Files contain employee data for travel duty.

(6) The Travel Vouchers Files contain employee expense data from travel duty.

(7) The Imprest Fund Files contain data concerning local taxi and similar reimbursements to Endowment employees for authorized Endowment expenses.

(8) The Star Awards Files contain data concerning awards for Endowment employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). In addition, the maintenance of debt collection records in the Accounts Receivables Files is authorized by the Debt Collection Act of 1982, Pub. L. 97–365; the Cash Management Improvement Act Amendments of 1992; and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

PURPOSE(S):

To supplement the FMIS with information well suited for maintenance in hard copy form.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name; Social Security number; taxpayer identification number; or contract number of the employee, contractor, or grantee.

SAFEGUARDS:

Rooms containing the records in this system are kept locked during non-working hours.

RETENTION AND DISPOSAL:

The retention and disposal of debt collection records in the Accounts Receivables Files are covered by the General Services Administration's General Records Schedule 6. Other records in this system are retained on site or in storage for six years and three months, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Finance/CFO; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, Endowment employees, creditor agencies, collection agencies, credit bureaus, Federal employing agencies, and other Federal agencies furnishing identifying information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–12

SYSTEM NAME:

Equal Employment Opportunity Complaint Case Files.

SYSTEM LOCATION:

Civil Rights Office; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Endowment employees and applicants for employment at the Endowment who have filed formal complaints of discrimination against the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Relevant information concerning the complaint of discrimination, such as correspondence and documentation concerning the filing of the complaint and stages leading to its disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*).

PURPOSE(S):

To enable the Endowment to investigate and adjudicate internal complaints of discrimination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be disclosed as necessary to enforce or implement the statute, rule, regulation, or order under which the charge of discrimination has been filed. This authorization includes disclosures of data to a Federal, state, or local agency charged with the responsibility of investigating, enforcing, or implementing such a statute, rule, regulation, or order. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained on computer diskettes and in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name.

SAFEGUARDS:

Diskettes are kept in a locked file. Paper files are kept in a locked file cabinet.

RETENTION AND DISPOSAL:

Complaint files are destroyed four years after resolution of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Civil Rights; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system and from Endowment employees who are involved with the claim or proceeding.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–13

SYSTEM NAME:

Civil Rights Complaint Case Files.

SYSTEM LOCATION:

Civil Rights Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed formal complaints of discrimination against the Endowment. However, this system does not include complaints made by either Endowment employees or applicants for employment at the Endowment, which are covered as described above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Relevant information concerning the complaint of discrimination, including correspondence and documentation concerning the filing of the complaint and stages leading to its disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*).

PURPOSE(S):

To enable the Endowment to investigate and adjudicate external complaints of discrimination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be disclosed as necessary to enforce or implement the statute, rule, regulation, or order under which the charge of discrimination has been filed. This authorization includes disclosures of data to a Federal, state, or local agency charged with the responsibility of investigating, enforcing, or implementing such a statute, rule, regulation, or order. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained on computer diskettes and in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name or a control number assigned to each external complaint of discrimination.

SAFEGUARDS:

Diskettes are kept in a locked file. Paper files are kept in a locked file cabinet.

RETENTION AND DISPOSAL:

Complaint files are destroyed four years after resolution of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Civil Rights, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system and from Endowment employees who are involved with the claim or proceeding.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NEA–14

SYSTEM NAME:

Office of the Inspector General Investigative Files.

SYSTEM LOCATION:

Office of the Inspector General, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subject of investigations by the Office of the Inspector General, or who provide information in connection with such investigations. These individuals include, but are not limited to, former and present Endowment employees; former and present Endowment grant recipients; former and present contractors and subcontractors, and their employees; former and present consultants; and other individuals and entities that had, have, or are seeking to obtain business relationships with the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relevant to the investigation; working papers of the staff, investigative notes, internal staff memoranda, and other documents and records relating to the investigation; information about criminal, civil, or administrative referrals; information provided by subjects of the investigation, individuals with whom the subjects are associated, complainants, or witnesses; information provided by Federal, State, or local governmental investigative or law enforcement agencies, or other organizations; copies of subpoenas issues during the investigation; and opening reports, progress reports, and closing reports, with recommendations for corrective action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended (5 U.S.C. app. 3).

PURPOSE(S):

To maintain files of investigative and reporting activities carried out by the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be disclosed to any source, either private or governmental, to the extent necessary to secure from such source information relevant to, and sought in furtherance of, a legitimate investigation or audit. Data in this system may also be disclosed to the Office of the Inspector General's or the Endowment's legal representative, including the U.S. Department of Justice and other outside legal counsel, when the Office of the Inspector General or the Endowment is a party in actual or anticipated litigation or has an interest in such litigation. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name, report number, or chronological ordering.

SAFEGUARDS:

Work papers for allegation and other investigative reviews conducted by or for the Office of the Inspector General are kept in a locked file cabinet. All records in this system are kept in rooms that are locked during non-working hours.

RETENTION AND DISPOSAL:

Records in this system are maintained on-site until eligible for destruction. Work papers used in evaluating grantees' audit reports and financial statements are destroyed on a three-year cycle. Work papers and correspondence prepared and/or obtained during the clearance process of audit recommendations are destroyed on a six-year cycle from the date that the recommendations are cleared. All other records in this system are destroyed on a seven-year cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1159.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. Access requests must be sent to the Office of the General Counsel in accordance with the procedures published at 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). To the extent that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. Access requests must be sent to the Office of the General Counsel in accordance with the procedures published at 45 CFR part 1159.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals who are covered by the system, as well as from individuals with whom the subjects are associated; Federal, State, or local governmental investigative or law enforcement agencies; and other organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempted from 5 U.S.C. 552a except subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) under 552a(j)(2) to the extent that the system pertains to enforcement of criminal laws. This system is exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) under 5 U.S.C. 552a(k)(2) to the extent that the system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). These exemptions are contained in 45 CFR part 1159.

Dated: July 17, 2000.

Karen Elias,

Deputy General Counsel.

[FR Doc. 00–18680 Filed 7–27–00; 8:45 am]

BILLING CODE 7536–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Entergy Operations, Inc., (Entergy Operations or the licensee) for an amendment to Facility Operating License No. NPF–6 issued to the licensee for operation of the Arkansas Nuclear One, Unit No. 2, nuclear reactor located in Pope County, Arkansas. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 5, 2000 (65 FR 17914).

The purpose of the licensee's amendment request was to revise the license to permit operation of the reactor based on a risk-informed demonstration that predicted steam generator tube integrity, with consideration of eggcrate axial flaws, is adequate to meet Regulatory Guide 1.174 numerical acceptance criteria.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated July 21, 2000.

By August 28, 2000, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene pursuant to 10 CFR 2.714.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

For further details with respect to this action, see (1) The application for amendment dated March 9, 2000, as supplemented by letters dated April 11 and 28, May 30, June 20, 22, 23 (two letters), and 30, and July 7, 8, and 11, 2000, and (2) the Commission's letter to the licensee dated July 21, 2000.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 21st day of July 2000.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Director, Project Directorate IV and Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19195 Filed 7–27–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," provides guidance to licensees on voluntarily replacing the traditional source term used in design basis accident analyses with alternative source terms. These alternative source terms allow interested licensees to pursue cost-beneficial licensing actions to reduce unnecessary regulatory burden without compromising the margin of safety of the nuclear power facility.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's web site at <*WWW.NRC.GOV*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site; Regulatory Guide 1.183 is under Accession Number ML003716792. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 18th day of July 2000.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 00–19128 Filed 7–27–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27202]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 21, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 15, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 15, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp. (70–9501)

FirstEnergy Corp. ("FirstEnergy"), 76 South Main Street, Akron, Ohio 44308, a public utility holding company claiming exemption under section 3(a)(1) of the Public Utility Holding Company Act of 1935, as amended ("Act"), by rule 2 under the Act, from registration under section 5 of the Act, has filed an application under sections 9(a)(2) and 10 of the Act.

FirstEnergy proposes to acquire directly all of the issued and outstanding voting securities of American Transmission Systems, Inc. ("ATSI"), a corporation FirstEnergy will organize to own and operate certain transmission assets more particularly described below ("Transmission Assets"), currently owned by FirstEnergy's utility company subsidiaries. These subsidiaries include Ohio Edison, Cleveland Electric, Toledo Edison, and Penn Power (collectively, "Operating Companies").

Upon completion of the transfer of the Transmission Assets from the Operating Companies to ATSI, ATSI will become a "public-utility company" as defined in the Act. FirstEnergy states that the Transmission Assets include over 7,100 circuit miles of transmission lines with nominal voltages of 345 kV, 138 kV, and 69 kV, servicing over 2.2 million customers in a 13,200 square mile area in northern and central Ohio and western Pennsylvania.

FirstEnergy states that the proposed transaction will improve service in the region by tying together control, planning, maintenance and financial responsibilities of the Operating Companies' transmission facilities into a single company. FirstEnergy further states that the transfer of the Transmission Assets to ATSI is an intermediate step in its plan to transfer its assets to a regional transmission organization.

WGL Holdings, Inc., et al. (70–9553)

WGL Holdings, Inc. ("WGL Holdings"), which is currently a wholly owned subsidiary of Washington Gas Light Company ("Washington Gas"), a gas utility company, and Washington Gas' nonutility subsidiary companies, Hampshire Gas Company ("Hampshire"), Crab Run Gas Company ("Crab Run"), Washington Gas Resources Corp. ("WGR"), and Primary Investors, LLC ("Primary Investors"), (collectively, "Applicants"), all located at 1100 H Street, NW., Washington, DC 20080, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 11, 12(b), 12(c), 13, 32, and 33 of the Act and rules 45, 46, 47, and 80–92.

On January 13, 2000, Washington Gas entered into an Agreement of Merger and Reorganization ("Reorganization") which will result in WGL Holdings becoming a holding company over Washington Gas and the current nonutility subsidiaries ("Nonutilities") of Washington Gas becoming direct subsidiaries of WGL Holdings.[1] Washington Gas intends to merge with WGL Holdings' wholly owned subsidiary, Washington Gas Acquisition Corp. ("Acquisition"), with Washington Gas as the surviving company.[2] Following the Reorganization, WGL Holdings intends to register as a holding company under the Act.

Washington Gas sells and delivers natural gas to customers in metropolitan Washington, DC, the adjoining areas of Maryland and Virginia, and several cities and towns in the northern Shenandoah Valley of Virginia. On April 1, 2000, Washington Gas merged its former wholly owned gas distribution subsidiary, Shenandoah Gas ("Shenandoah") into itself.[3] The merged company now serves a total of 863,258 customer meters in an area having a population estimated at 4.5

[1] Washington Gas' shareholders and the Virginia State Corporation Commission ("VSCC") have both approved the Reorganization.

[2] Each share of Washington Gas common stock outstanding before the Reorganization will be converted into a new share of WGL Holdings common stock. All shares of Acquisition common stock outstanding prior to the Reorganization will be converted into shares of Washington Gas, resulting in WGL Holdings becoming the owner of all outstanding shares of Washington Gas common stock. The shares of WGL Holdings common stock held by Washington Gas immediately prior to the Reorganization will be canceled and the directors of Washington Gas will become the directors of WGL Holdings.

[3] *See* Petition of Washington Gas Light Company and Shenandoah Gas Company, Case No. PUA900071 (Dec. 22, 1999).

million. Approximately 41% of the customers are located in Virginia, approximately 17% in the District of Columbia and approximately 42% in Maryland.[4] In addition to its gas distribution operations, Washington Gas offers financing for the purchase of natural gas, electrical appliances and other energy-related products and services, and operates steam and chilled water facilities located in a mixed residential commercial complex in Washington DC. Washington Gas is subject to regulation regarding retail rates and transportation service, the issuance of securities, affiliate transactions and other matters by the VSCC, the Public Service Commission of the District of Columbia, ("PSC–DC") and the Public Service Commission of Maryland ("PSC–MD").

Washington Gas directly owns 100% of the outstanding voting securities of three active Nonutility subsidiaries: (i) Hampshire, which operates an underground gas storage field; (ii) Crab Run, which holds an investment in a partnership that is engaged in the exploration and production of oil and gas; and (iii) WGR, which serves as the holding company for other wholly owned, Nonutility subsidiaries. WGR's direct subsidiaries are: (i) Washington Gas Energy Services, Inc., an unregulated energy marketer which holds all of the voting securities of three other subsidiaries which are engaged in providing commercial energy services and in real estate development activities; (ii) American Combustion Industries, Inc., which designs, sells, installs and services commercial heating, ventilating and air-conditioning ("HVAC") equipment in Washington, DC and surrounding areas; (iii) WG Maritime Plaza I, Inc., whose sole purpose is to hold Washington Gas' interest in a venture to develop a 12-acre parcel of land in Washington, DC; and (iv) Washington Gas Consumer Services, Inc., which operates a fee-based program matching customers with finance companies for energy-related equipment.

Washington Gas also holds a 50% equity interest in Primary Investors, a Delaware limited liability company which serves as the holding company for investments in after-market products and services for residential and light commercial HVAC customers.

For the 12 months ended December 31, 1999, Washington Gas reported consolidated operating revenues of $1,148,853,000, of which $985,287,000 (85.8%) were derived from regulated sales of gas and transportation service, and $163,566,000 (14.2%) from diversified nonutility activities, including unregulated sales of gas and the sale, installation and servicing of residential and commercial HVAC equipment. At December 31, 1999, Washington Gas reported consolidated assets of $1,891,626,000, including net property, plant, and equipment of $1,409,036,000 and current assets of $373,143,000. Common equity represents 50% of Washington Gas' total capitalization, including short-term debt.

WGL Holdings requests that the Commission find that Washington Gas' gas distribution system constitutes an integrated gas utility system within the meaning of section 2(a)(29)(B) of the Act and that all of the direct and indirect Nonutility subsidiaries and investments are retainable under the standards of section 11(b)(1) of the Act and, as applicable, section 2 of the Gas-Related Activities Act.

In addition, the Applicants are seeking authority through December 31, 2005, ("Authorization Period") for certain financing activities related to WGL Holdings, and the utility and Nonutility subsidiaries ("Subsidiaries"), described below.

WGL Holdings Long-Term Financing

WGL Holdings proposes to issue and sell up to an aggregate amount of $300 million of securities in the form of common stock, preferred stock, long-term debt securities and other forms of preferred or equity linked securities. WGL Holdings also proposes to issue stock options, performance shares, stock appreciation rights ("SARs"), debentures, warrants or other stock purchase rights that are exercisable for Common Stock and to issue Common Stock upon the exercise of such options, SARs, warrants or other stock purchase rights.

Common stock may be issued in one or more public or private transactions through underwriters or dealers, through agents or directly to a limited number of purchasers or a single purchaser. If underwriters are used in the sale of Common Stock, such securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Common Stock may be offered to the public either through underwriting syndicates or directly by one or more underwriters acting alone. Common Stock may be sold directly by WGL Holdings or through agents designated by WGL Holdings from time to time.

WGL Holdings may use Common Stock as consideration for the acquisition of the securities or assets of other, existing companies WGL Holdings seeks to acquire provided that the acquisition of any such equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules thereunder. If Common Stock or other securities linked to Common Stock is used as consideration in connection with any such authorized or exempt acquisition, the market value of the Common Stock on the day before closing of the acquisition, or the average high and low market prices for a period prior to the closing, as negotiated by the parties, will be counted against the proposed $300 million limitation on financing.

WGL Holdings also proposes to issue Common Stock under Washington Gas' Dividend Reinvestment and Common Stock Purchase plan ("DRP"). Under the DRP, as amended, participating shareholders of WGL Holdings will be entitled to reinvest dividends and make optional cash purchases of shares of Common Stock. The DRP may also be amended to allow for purchases of Common Stock under the plan by new investors.

WGL Holdings also seeks authorization to issue Common Stock under current and possible future stock based plans maintained for the benefit of Washington Gas' employees and directors which WGL Holdings intends to adopt. Shares of Common Stock for use under the Stock Plans may either be newly issued shares, treasury shares or shares purchased in the open market. WGL Holdings will make open-market purchases of Common Stock in accordance with the terms of or in connection with the operation of the plans under rule 42. WGL Holdings may also acquire treasury shares through other open-market purchases. WGL Holdings also proposes to issue and/or sell shares of Common Stock pursuant to the existing Stock Plans and similar plans or plan funding arrangements hereafter adopted without any additional prior Commission order. Stock transactions of this variety would thus be treated the same as other stock transactions permitted pursuant to this Application/Declaration.

WGL Holdings Short-Term Debt

WGL Holdings seeks authorization to issue short-term debt up to an aggregate amount of $300 million outstanding at any one time to provide financing for general corporate purposes, other

[4] This number reflects data gathered from the companies operating separately as of December 31, 1999.

working capital requirements and investments in new enterprises until long-term financing can be obtained. The effective cost of money on short-term debt authorized in this proceeding will not exceed at the time of issuance 300 basis points over LIBOR for maturities of one year or less. WGL Holdings may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally.

WGL Holdings also proposes to establish bank lines in an aggregate principal amount sufficient to support projected levels of short-term borrowings and to provide an alternative source of liquidity. Loans under these lines will have maturities not more than one year from the date of each borrowing. WGL Holdings may also engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

Washington Gas Short-Term Debt

Washington Gas requests authority to issue and sell from time to time during the Authorization Period notes and other evidence of indebtedness having a maturity of one year or less in an aggregate principal amount outstanding at any one time not to exceed $350 million. Washington Gas also proposes to establish bank lines of credit in an aggregate principal amount sufficient to support projected levels of short-term borrowings and to provide an alternative source of liquidity. Short-term financing could include, without limitation, commercial paper sold in established domestic or European commercial paper markets in a manner similar to WGL Holdings, bank lines of credit and other debt securities. The effective cost of money on short-term debt of Washington Gas authorized in this proceeding will not exceed at the time of issuance 300 basis points over LIBOR for maturities of one year or less.

Nonutility Subsidiary Loans

Applicants request authority to make loans to associate, Nonutility subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital on the condition that the Nonutility is not directly or indirectly, wholly owned by WGL Holdings and does not sell goods or services to Washington Gas.

Guarantees

WGL Holdings requests authorization to enter into guarantees and capital maintenance agreements, obtain letters of credit, enter into expense agreements or otherwise provide credit support on behalf, or for the benefit, of any Subsidiary as may be appropriate to enable such Subsidiary to carry on its business in an aggregate principal amount not to exceed $400 million outstanding at any one time. WGL Holdings proposes to charge the cost of providing guarantees to the Subsidiary company receiving the guarantee. The cost will be determined by multiplying the amount of the WGL Holdings guarantee by the cost of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding. [5]

The Nonutility subsidiaries of WGL Holdings propose to provide guarantees and other forms of credit support on behalf, or for the benefit of, of other Nonutility subsidiaries in an aggregate principal amount not to exceed $200 million outstanding at any one time, exclusive of any guarantees and other forms of credit support that are exempt under rule 45(b)(7) and rule 52(b). The Nonutility subsidiary providing any such credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as guarantees offered by WGL Holdings to its Subsidiaries.

Hedging Transactions

WGL Holdings, and to the extent not exempt under rule 52, its Subsidiaries, request authorization to enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the counterparties' parent companies, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps. Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to th value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Anticipatory Hedges

In addition, WGL Holdings and the Subsidiaries request authorization to enter into interest rate hedging the transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"), (ii) the purchase of put options on U.S. Treasury obligations (a "Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a "Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade ("CBOT"), the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. WGL Holdings or a subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. WGL Holdings or a Subsidiary may decided to lock in interest rates and/or limit its exposure to interest rate increases. All open positions under Anticipatory Hedges will be closed on or prior to the date of the new issuance and neither WGL

[5] Necessary liquidity may include bank line commitment fees or letter of credit fees. In addition, WGL Holdings will pass along the cost of other transactional expenses to the Subsidiary company receiving the guarantee.

Holdings nor any Subsidiary will, at any time, take possession or make delivery of the underlying U.S. Treasury Securities.

System Money Pool

WGL Holdings, Washington Gas, Hampshire, Crab Run, WGR, Washington Gas Energy Systems, Inc., Washington Gas Energy Services, Inc., Brandywood Estates, Inc., American Combustion Industries, Inc., Washington Gas Consumer Services, and WG Maritime Plaza I, Inc. propose to establish a system money pool ("Money Pool") and, to the extent not exempted by rule 52, also request authorization to make unsecured short-term borrowings from the Money Pool, to contribute surplus funds to the Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool. Washington Gas requests authority to borrow up to $350 million at any one time outstanding from the Money Pool. WGL Holdings may lend to the Money Pool but may not borrow from it. Under the proposed terms of the Money Pool Agreement, short-term funds would be available from the following sources for short-term loans to the participating Subsidiaries from time to time: (1) Surplus funds in the treasuries of Money Pool participants other than WGL Holdings, (2) surplus funds in the treasury of WGL Holdings, and (3) proceeds from bank borrowings and/or commercial paper sales by WGL Holdings or any Money Pool participant ("External Funds"). The determination of whether Washington Gas at any time has surplus funds to lend to the Money Pool or shall lend funds to the Money Pool would be made by Washington Gas' chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors in Washington Gas' sole discretion. Only those Nonutility subsidiaries identified above shall borrow through the Money Pool. WGL Holdings shall undertake to file a post-effective amendment in this proceeding seeking approval to add any additional Nonutility subsidiary to borrow through the Money Pool. It is proposed that, without further authorization of the Commission, other current or future Nonutility subsidiaries may participate in the Money Pool as lenders but not as borrowers.

Proceeds of any short-term borrowings from the Money Pool may be used by a participant (i) For the interim financing of its construction and capital expenditure programs; (ii) for its working capital needs; (iii) for the repayment, redemption or refinancing of its debt and preferred stock; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) to otherwise finance its own business and for other lawful general corporate purposes.

Changes in Capital Stock

WGL Holdings requests authority to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by WGL Holdings or other intermediate parent company. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any such action by a utility subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commissions in the state or states in which such utility subsidiary is incorporated and doing business.

Financing Subsidiaries

The Applicants request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of WGL Holdings and the Subsidiaries through the issuance of long-term debt or equity securities, including but not limited to monthly income preferred securities, to third parties. Financing Subsidiaries would loan, dividend or otherwise transfer the proceeds of the financing to its parent or to other Subsidiaries. The terms of any loan of the proceeds of any securities issued by a Financing Subsidiary would mirror the terms of those securities. WGL Holdings may, if required, guarantee or enter into expense agreements in respect of the obligations of any Financing Subsidiary which it organizes. The Subsidiaries may also provide guarantees and enter into expense agreements, if required, on behalf of any Financing Subsidiaries which they organize pursuant to Rules 45(b)(7) and 52, as applicable. If the direct parent company of a Financing Subsidiary is authorized in this proceeding or any subsequent proceeding to issue long-term debt or similar types of equity securities, then the amount of securities issued by that Financing Subsidiary would count against the limitation applicable to its parent for those securities. However, the guarantee by the parent of that security issued by its Financing Subsidiary would not be counted against the limitations on WGL Holdings guarantees or Subsidiary guarantees. In other cases, in which the parent company is not authorized in this or in a subsequent proceeding to issue similar types of securities, the amount of any guarantee not exempt under rules 45(b)(7) and 52 that is entered into by the parent company with respect to securities issued by its Financing Subsidiary would be counted against the limitation on WGL Holdings guarantees or Subsidiary guarantees, as the case may be.

Intermediate Subsidiaries

WGL Holdings proposes to acquire, directly or indirectly through a Nonutility subsidiary, the securities of one or more new subsidiary companies ("Intermediate Subsidiaries") which may be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more exempt wholesale generators as defined in section 32 of the Act ("EWGs"), foreign utility companies as defined under section 33 of the Act ("FUCOs"), companies, the acquisition of which are, exempted from section 9(a) of the Act under rule 58 ("Rule 58 Companies"), exempt telecommunication companies as defined under section 34 of the Act ("ETCs") or other non-exempt Nonutility subsidiaries provided that Intermediate Subsidiaries may also engage in development activities and administrative activities relating to these Subsidiaries. To the extent such transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, WGL Holdings requests authority for Intermediate Subsidiaries to provide management, administrative, project development and operating services to such entities. Such services may be rendered at fair market prices to the extent they qualify for any of the exceptions from the "at cost" standard provided by rule 90(d)(1). WGL Holdings also requests that Washington Gas' investments prior to the date of the reorganization in Subsidiaries engaged in "energy-related" activities under rule 58 be disregarded for purposes of calculating the dollar limitation on such investments under rule 58.

An Intermediate Subsidiary may be organized, among other things, (1) In order to facilitate the making of birds or proposals to develop or acquire an interest in any EWG or FUCO, Rule 58 Company, ETC or other non-exempt Nonutility subsidiary; (2) after the award of a bid proposal, in order to

facilitate closing on the purchase or financing of the acquired company; (3) at any time subsequent to the consummation of an acquisition of an interest in a company in order, among other things, to effect an adjustment in the respective ownership interests in the business held by WGL Holdings and non-affiliated investors; (4) to facilitate the sale of ownership interests in one or more acquired Nonutility companies; (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit WGL Holdings' exposure to U.S. and foreign taxes; (7) to insulate WGL Holdings and Washington Gas from operational or other business risks that may be associated with investments in Nonutility companies; or (8) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) Purchase of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (2) capital contributions; (3) open account advances with or without interest; (4) loans; and (5) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from (1) financings authorized in this proceeding; (2) any appropriate future debt or equity securities issuance authorization obtained by WGL Holdings from the Commission; and (3) other available cash resources, including proceeds of securities sales by a Nonutility subsidiary under rule 52. To the extent that WGL Holdings provides funds or guarantees directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a rule 58 Company, the amount of such funds or guarantees will be included in WGL Holdings' "aggregate investment," as calculated in accordance with rule 53 or rule 58, as applicable.

WGL Holdings requests authorization to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries WGL Holdings' ownership interests in existing and future Nonutility subsidiaries. These transactions may take the form of a Nonutility subsidiary selling, contributing or transferring the equity securities of a Subsidiary as a dividend to an Intermediate Subsidiary, and Intermediate Subsidiaries acquiring, directly or indirectly, the equity securities of such companies, either by purchase or by receipt of a dividend. The purchasing Nonutility subsidiary in any transaction structured as an intrasystem sale of equity securities may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements and any transaction structured as a sale would be carried out for a consideration equal to the book value of the equity securities being sold. WGL Holdings will report each such transaction in the next quarterly certificate filed under rule 24 in this file, as described below.

Energy Consumer Financing Activities

Washington Gas currently offers financing to its customers for the purchase of natural gas and electric appliances and other energy-related products and services and may continue to do so after the Reorganization. WGL Holdings proposes to expand its financing program for purchases from nonassociate vendors of energy-related equipment and related products and services to include financing for purchases of new or replacement gas or oil furnaces, gas swimming pool heaters, gas or electric hot water heaters, gas fireplace inserts, heat pumps, air conditioning equipment, electric and gas kitchen appliances, air and water treatment equipment and other energy conservation equipment, products and services, and for the costs of any related installation and remodeling work, such as duct work, plumbing and electrical work.

WGL Holdings proposes to offer the expanded consumer financing through one or more existing or newly formed, direct or indirect, Nonutility subsidiaries. The proposed financing activities will be limited to Virginia, Maryland and the District of Columbia. It is anticipated that in the vast majority of cases, the individuals or businesses to whom consumer financing is provide will be natural gas customers of Washington Gas or individuals or businesses who are not currently served by any natural gas supplier. Consumer financing may take the form direct loans to customers, guarantees of third-party loans or purchases, with or without recourse, from vendors of the equipment, supplies or services of installment purchase obligations executed by customers.

During the Authorization Period, WGL Holdings proposes to invest not more than $100 million in existing or new Nonutility Subsidiaries that are engaged in the business of providing financing for purchase of energy-related equipment, goods and services. These investments would be in the form of purchases of stock or other equity securities, loans, cash capital contributions and/or open account advances, WGL Holdings will use the proceeds of the financing authorized in this proceeding and/or other available cash to make such investments.

Payment of Dividends Out of Capital or Unearned Surplus

WGL Holdings proposes, on behalf of each of its current ad future non-exempt, Nonutility subsidiaries that these companies be permitted to pay dividends with respect to the securities of such companies out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. However, a non-exempt, Nonutility subsidiary will seek approval of the Commission before declaring or paying any dividend out of capital or unearned surplus if the subsidiary derives any material part of its revenues from the sales of goods, services, electricity or natural gas to Washington Gas.

Services

Washington Gas has been providing administrative, management, technical, legal and other support services to its subsidiaries for many years, subject to approval of the terms of those arrangements by the VSCC–VA and also to the oversight of the PSC–DC C and PSC–MD. In addition, there have been occasions when subsidiaries of Washington Gas have provided services to Washington Gas or to other Washington Gas subsidiaries. Accordingly, Washington Gas requests authorization to provide administrative, management, technical, legal and other support services to the Nonutilities and to provide similar services to WGL Holding after the Reorganization. Consistent with Section 13(a) of the Act, WGL Holdings would not be able to provide any services to Washington Gas. The Nonutilities seek to provide services to Washington Gas or other Nonutilities as may be reasonably necessary. All services or goods shall be provided in accordance with rules 90 through 92.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19094 Filed 7–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24563; 812–11956]

Colchester Street Trust, et al.; Notice of Application

July 24, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under (a) section 6(c) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 18(f) and 21(b); (b) sections 6(c) and 17(a) for exemptions from sections 17(a)(1) and 17(a)(3); (c) section 12(d)(1)(J) for an exemption from section 12(d)(1); and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would amend a prior order ("Prior Order")[1] that permits an interfund lending and borrowing facility.

Applicants: Colchester Street Trust, Fidelity Aberdeen Street Trust, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Covington Trust, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Garrison Street Trust, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Oxford Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust II, Newbury Street Trust, Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the "Funds"); Fidelity Management & Research Company (together with any person controlling, controlled by, or under common control with Fidelity Management & Research Company ("FMR"); and all other registered open-end management investment companies for which FMR serves as investment adviser.[2]

Filing Dates: The application was filed on January 31, 2000, and an amendment was filed on July 14, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 18, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Special Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company and currently is organized as either a Massachusetts or Delaware business trust. Certain of the Funds are organized as series investment companies. FMR acts as each Fund's investment adviser. Fidelity Management & Research Company is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. The Prior Order permits the Funds to participate in a joint lending and borrowing facility under certain conditions ("Credit Facility"). The Credit Facility enables the Funds to lend money to each other for temporary purposes, such as when redemptions exceed anticipated levels ("Interfund Loans"). The Credit Facility is designed both to reduce the cost of borrowing for the Funds and enhance the lending Fund's ability to earn higher rates of interest on investment of their short-term balances. The Prior Order requires that the interest rate for loans made through the Credit Facility ("Interfund Loan Rate") be based on the average of the current rate of overnight repurchase agreements (the "FICASH Rate")[3] and a benchmark rate representing the lowest bank loan rate available to the Funds ("Bank Loan Rate"). Applicants request an order amending the Prior Order to permit FMR to calculate the Interfund Loan Rate as the average of (a) the higher of the overnight time deposit rate (the "OTD Rate") and the FICASH Rate, and (b) the Bank Loan Rate.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person, or affiliated person of an affiliate person ("second-tier affiliate"), from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(c) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be deemed to be under common control because they either

[1] *Colchester Street Trust, et al.*, Investment Company Act Release Nos. 23787 (Apr. 15, 1999) (notice) and 23831 (May 11, 1999) (order).

[2] All existing investment companies that currently intend to rely on the requested order are named as applicants. Any other existing or future investment company that subsequently relies on the requested order will comply with the terms and conditions of the application.

[3] FICASH is a joint account that was established pursuant to SEC exemptive orders. In the Matter of Daily Money Fund, *et al.*, Investment Company Act Releases Nos. 11962 (Sept. 29, 1981) (notice) and 12061 (Nov. 27, 1981) (order); In the Matter of Daily Money Fund, *et al.*, Investment Company Act Release Nos. 19594 (July 26, 1993) (notice) and 19647 (Aug. 23, 1993) (order). Pursuant to these orders, during each trading day, the Funds' cash balances may be deposited in FICASH. FICASH invests these cash balances in one or more large, short-term repurchase agreements. FMR administers FICASH as part of its duties under its existing advisory contract with each of the Funds, and does not charge any additional fee for this service.

share a common investment adviser or have an investment adviser that is under common control with the investment adviser of the other Funds.

2. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or a second-tier affiliate, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1).

3. Section 18(f)(1) of the Act prohibits an open-end investment company from issuing any senior security except that the company is permitted to borrow from any bank; provided that immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtness. The Prior Order granted relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

4. Section 17(b) of the Act authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) of and to the extent such exception is consistent with the public interest and the protection of investors.

5. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or second-tier affiliate, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon such applications, the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

6. Applicants request an order under (a) section 6(c) of the Act for exemptions from sections 18(f) and 21(b); (b) sections 6(c) and 17(a) for exemptions from sections 17(a)(1) and 17(a)(3); (c) section 12(d)(1)(J) for an exemption from section 12(d)(1); and (d) section 17(d) of the Act and rule 17d–1 under the Act. The requested order would amend the Prior Order to permit FMR to calculate the Interfund Loan Rate as the average of (a) the higher of the OTD Rate and the FICASH Rate, and (b) the Bank Loan Rate. Applicants state that the requested relief meets the standards for relief under sections 6(c), 12(d)(1)(J), and 17(b), and rule 17d–1.

7. Applicants state that the OTD Rate is at times a more accurate indicator of the actual overnight investment rate available to the lending Funds than the FICASH Rate. Applicants also state that using the higher of the OTD Rate and the FICASH Rate to calculate the Interfund Loan Rate will make it more likely that the lending Funds will receive a market rate of return in excess of other market alternatives while the borrowing Funds receive a loan rate lower than the Bank Loan Rate.

8. Applicants state that the Credit Facility will not involve any potential that one Fund might receive a preferential rate to the disadvantage of another Fund. Applicants assert that under the Credit Facility, rates will be set pursuant to a pre-established formula, approved the board of trustees of each Fund (the "Board"). Applicants state that all Funds participating in the Credit Facility on any given day will receive the same rate.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the Credit Facility will be the average of (a) the higher of the OTD Rate and the FICASH Rate and (b) the Bank Loan Rate.

2. The cash management department of Fidelity Service Company, Inc. ("Cash Management Department") on each business day will compare the Interfund Loan Rate set pursuant to the formula calculated as provided in condition 1 with the OTD Rate, the FICASH Rate negotiated that day, and all short-term borrowing rates quotes to any of the Funds by any bank with which any Fund has a loan agreement. At least three such quotations will be obtained each day in which any Fund borrows through the Credit Facility prior to such borrowing. The Cash Management Department will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the lending Fund than both the OTD Rate and the FICASH Rate and more favorable to the borrowing Fund than the lowest quoted Bank Loan Rate.

3. If a Fund has outstanding borrowings from one or more banks, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan, it will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Loan agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that the call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Credit Facility only on a secured basis. A Fund could not borrow through the Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may,

through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day afterwards: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition will no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may loan funds through the Credit Facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will be limited to 5% of the lending Fund's net assets.

8. The duration of the Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. All loans may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the Credit Facility must be consistent with its investment policies and limitations and declaration of trust. No Fund may borrow through the Credit Facility unless the Fund has a fundamental policy that prevents the Fund from borrowing for other than temporary or emergency purposes (and not for leveraging), except that certain Funds may engage in reverse repurchase agreements for any purpose.

11. The Cash Management Department will calculate total Fund borrowing and lending demand through the Credit Facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Department will not solicit cash for the Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio mangers. The Cash Management Department will invest amounts remaining after satisfaction of borrowing demand in FICASH or money market funds that are advised by FMR or return remaining amounts for investment directly by the portfolio managers of the Funds.

12. FMR will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make quarterly report to the Board and each Fund concerning the participation of the Funds in the Credit Facility and the terms and other conditions of any extensions of credit thereunder.

13. Each Fund's Board, including a majority of the trustees who are not interested persons of the Funds as defined in section 2(a)(19) of the Act ("Independent Trustees"), will: (a) Review, no less frequently than quarterly, the Fund's participation in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and (c) review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the Credit Facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Loan agreement, FMR will promptly refer the loan for arbitration to a retired Independent Trustee previously selected by the Board of each Fund, who no longer has any fiduciary responsibilities to any Fund, and who will serve a arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in which any transaction under the Credit Facility occurred, the first two years in an easily accessible place, written records of all transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and any other information presented to the Fund's Boards in connection with the review required by conditions 12 and 13.

16. Compliance with the conditions to any order issued on the application will be considered by the external auditors as part of their internal control procedures, performed in connection with Fund audit examinations, which form the basis, in part, of the auditors' report on internal accounting controls in Form N–SAR.

17. No Fund will be permitted to participate in the Credit Facility unless it has fully disclosed in its registration statement all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19093 Filed 7–27–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43043; File No. SR–CBOE–00–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Trade Standardized Equity Options on Trust Issued Receipts

July 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt new listing and maintenance standards to allow the Exchange to trade standardized equity options on trust issued receipts. The text of the proposed rule change follows. *Italics* indicate text to be added.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

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Rule 5.3 Criteria for Underlying Securities

(a)–(b) Unchanged.

* * * *Interpretations and Policies*

.01–.06 Unchanged.

.07 Securities deemed appropriate for options trading shall include shares or other securities ("Trust Issued Receipts") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent ownership of the specific deposited securities held by a trust, provided:

(a)(i) the Trust Issued Receipts meet the criteria and guidelines for underlying securities set forth in Interpretation and Policy .01 to this Rule 5.3; or

(ii) the Trust Issued Receipts must be available for issuance or cancellation each business day from the Trust in exchange for the underlying deposited securities; and

(b) not more than 20% of the weight of the Trust Issued Receipt is represented by ADRs on securities for which the primary market is not subject to a comprehensive surveillance agreement.

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Rule 5.4 Withdrawal of Approval of Underlying Securities

Unchanged.

* * * *Interpretations and Policies*

.01–.08 Unchanged.

.09 Absent exceptional circumstances, securities initially approved for options trading pursuant to Interpretation and Policy .07 under Rule 5.3 (such securities are defined and referred to in that Interpretation and Policy as "Trust Issued Receipts") shall not be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Trust Issued Receipts, whenever the Trust Issued Receipts are delisted and trading in the Receipts is suspended on a national securities exchange, or the Trust Issued Receipts are no longer traded as national market securities through the facilities of a national securities association. In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Trust Issued Receipts in any of the following circumstances:

(1) In accordance with the terms of paragraphs (a) through (g) of Interpretation and Policy .01 of this Rule 5.4 in the case of options covering Trust Issued Receipts when such options were approved pursuant to paragraph (a)(i) of Interpretation and Policy .07 under Rule 5.3;

(2) The Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(3) The Trust has fewer than 50,000 receipts issued and outstanding,[3]

(4) The market value of all receipts issued and outstanding is less than $1,000,000; or

(5) Such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

.10 For Holding Company Depositary Receipts (HOLDRs), the Exchange will not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) the proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options.

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[3] The Exchange has confirmed that "Trust" should be capitalized in the proposed rule text. Telephone conversation between Angelo Evangelou, Attorney, Legal Division, CBOE, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on July 12, 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for the trading of options, including FLEX equity options,[4] on exchange-listed trust issued receipts. The Exchange believes that the listing and maintenance criteria proposed in its new rule are consistent with the options listing and maintenance criteria for trust issued receipts currently used by the American Stock Exchange LLC ("Amex").[5] Trust issued receipts are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of trust issued receipts is similar to that of exchange-traded fund shares, which also may be created on any business day upon deposit of the requisite securities comprising a creation unit.[6] The trust will only issue receipts upon the deposit of the shares of underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may

[4] FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style and certain exercise prices.

[5] The Amex provisions were approved by the Commission on June 15, 2000. *See* Securities Exchange Act Release No. 42947 (June 15, 2000), 65 FR 39211 (June 23, 2000) (SR–Amex–99–37).

[6] The Exchange received approval to trade options on exchange-traded fund shares on July 2, 1998. *See* Securities Exchange Act Release No. 40166 (July 2, 1998), 63 FR 37430 (July 10, 1998).

obtain, hold, trade or surrender trust issued receipts in a round-lot and round-lot multiples of 100 receipts.

Generally, options (including FLEX equity options) on trust issued receipts are proposed to be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities or indexes of equity securities. The Exchange will list option contracts covering 100 trust issued receipts, the minimum required round-lot trading size for the underlying receipts. Strike prices for the non-FLEX contracts will be set to bracket the trust issued receipts at the same intervals that apply to other equity options under CBOE Rule 5.5 (*i.e.*, 2½ point intervals for underlying equity values up to $25; 5 point intervals for underlying equity values greater than $25 up to $200; and 10 point intervals for underlying equity values greater than $200). The proposed position and exercise limits for non-FLEX options on trust issued receipts would be the same as those established for other non-FLEX equity options, as set forth in CBOE Rule 4.11. The Exchange anticipates that most options on trust issued receipts will initially qualify for the lowest position limit. However, as with other equity options, applicable position limits will be increased for options if the volume of trading in the trust issued receipts increases to the extent needed to permit a higher limit. As is the case of all FLEX equity options, no position and exercise limits will be applicable to FLEX equity options overlying trust issued receipts.

The listing and maintenance standards proposed for options on trust issued receipts are set forth respectively in proposed Interpretation and Policy .07 under CBOE Rule 5.3, and in proposed Interpretation and Policy .09 under CBOE Rule 5.4. Pursuant to the proposed initial listing standards, the Exchange will list only trust issued receipts that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as national market securities. In addition, the initial listing standards require that either: (i) The trust issued receipts meet the uniform options listing standards in Interpretation and Policy .01 of CBOE Rule 5.3, which include criteria covering the minimum public float, trading volume, and share price of the underlying security in order to list the option;[7] or (ii) the trust issued receipts must be available for issuance or cancellation each business day from the trust in exchange for the underlying deposited securities.

In addition, listing standards for options on trust issued receipts will require that any American Depositary Receipts (ADRs) in the portfolio on which the Trust is based for which the securities underlying the ADRs' primary markets are in countries that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20 percent of the weight of the portfolio.

The Exchange's proposed maintenance standards provide that if a particular series of trust issued receipts should cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the trust issued receipts, and all such options will trade on a liquidation-only basis (*i.e.*, only closing transactions to permit the closing of outstanding open options positions will be permitted). In addition, the Exchange will consider the suspension of opening transactions in any series of options of the class covering trust issued receipts if: (i) For options on trust issued receipts that were listed pursuant to the equity option listing standards of Interpretation and Policy .01 of CBOE Rule 5.3, the options fail to meet the option maintenance standards in Interpretation and Policy .01 of CBOE Rule 5.4;[8] (ii) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of trust issued receipts for 30 or more consecutive trading days; (iii) the trust has fewer than 50,000 receipts issued and outstanding; (iv) the market value of all receipts issued and outstanding is less than $1,000,000; or (v) such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealing in such options on the Exchange inadvisable. Furthermore, the Exchange will not open additional series of options on any Holding Company Depositary Receipts ("HOLDRs") a type of trust issued receipt, without prior Commission approval, if: (1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80 percent (as measured by the relative weightings in the HOLDRs trust);[9] or (2) less than 80 percent of the number of securities held by a HOLDR trust underlie standardized options.

Options on trust issued receipts will be physically settled and will have the American-style exercise feature used on all non-FLEX equity options, and not the European-style feature. The Exchange, however, also proposes to trade FLEX equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX equity features.[10]

The proposed margin requirements for options on trust issued receipts are at the same levels that apply to options generally under CBOE Chapter 12, except, with respect to trust issued receipts based on a broad-based portfolio, minimum margin must be deposited and maintained equal to 100 percent of the current market value of the option plus 15 percent of the market value of equivalent units of the underlying security value. Trust issued receipts that hold securities based upon a narrow-based portfolio must have options margin that equals at least 100 percent of the current market value of the contract plus 20 percent of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on trust issued receipts are comparable to margin requirements that currently apply to broad-based and narrow-based index options. Also, holders of options on trust issued receipts who exercise and receive the underlying trust issued receipts must receive a product description or prospectus, as appropriate.

Lastly, the Exchange believes it has the necessary systems capacity to support the additional series of options that would result from the trading of options on HOLDRS.

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[7] Specifically, Interpretation and Policy .01 of CBOE Rule 5.3 requires the underlying security to have a public float of 7,000,000 shares, 2,000 holders, trading volume of 2,400,000 shares in the preceding 12 months, a share price of $7.50 for the majority of the business days during the three calendar months preceding the date of the selection, and that the issuer of the underlying security is in compliance with the Act.

[8] Specifically, Interpretation and Policy .01 of CBOE Rule 5.4 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things: (i) There are fewer than 6,300,000 publicly held shares; (ii) there are fewer than 1,600 holders; (iii) trading volume was less than 1,800,000 shares in the preceding twelve months; and (iv) the share price of the underlying security closed below $5 on a majority of the business days during the preceding six months.

[9] The Exchange represents that the weight of each security in a HOLDR trust will be determined by calculating the sum of the number of shares of each security (represented in a single HOLDR) and underlying options multiplied by its respective share price divided by the sum of the number of shares of all securities (represented in a single HOLDR) multiplied by their respective share prices.

[10] An American-style option may be exercised at any time prior to its expiration, while a European-style option may be exercised only at its expiration date.

2. Statutory Basis

The CBOE believes that, by providing investors with a better means to hedge their positions in the underlying trust issued receipts, as well as an alternative market center in which to trade these products, thereby increasing competition, the proposed rule change is consistent with Section 6(b)(5) of the Act.[11] Section 6(b)(5) requires that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. CBOE–00–25 and should be submitted by August 18, 2000.

[11] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[12] The Commission notes that is has previously approved similar listing standards proposed by the Amex for options on trust issued receipts, and believes that the CBOE's proposal contains adequate safeguards, matching those previously approved.[13] As the Commission found in its previous approval of the listing standards proposed by the Amex, the listing and trading of options, including FLEX equity options on exchange-traded trust issued receipts, should give investors a better means to hedge their positions in the underlying trust issued receipts. The Commission also believes that pricing of the underlying trust issued receipts may become more efficient, and market makers in these shares, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, the Commission believes that options on trust issued receipts likely will engender the same benefits to investors and the marketplace that exist with respect to options on common stock, thereby serving to promote the public interest, to remove impediments to a free and open securities market, and to promote efficiency, competition, and capital formation.[14]

The Commission finds that the Exchange's listing and delisting criteria for options on trust issued receipts are adequate. The proposed listing and maintenance requirements should ensure that there exist adequate supplies of the underlying trust issued receipts in case of the exercise of an option, and a minimum level of liquidity to control against manipulation and to allow for the maintenance of fair and orderly markets. The CBOE's additional requirements for opening additional series or options on HOLDRs will also ensure that the underlying securities are options eligible, and for the most part will satisfy minimum thresholds previously approved by the Commission.

The Commission also believes that the surveillance standards developed by the CBOE for options on trust issued receipts are adequate to address the concerns associated with the listing and trading of such securities. The CBOE's proposal to limit the weight of the portfolio that may be composed of ADRs whose primary markets are in countries that are not subject to comprehensive surveillance agreements is similar to that previously approved by the Commission.[15] As to domestically traded trust issued receipts themselves and the domestic stocks in the underlying portfolio, the Intermarket Surveillance Group ("ISG") Agreement will be applicable to the trading of options on trust issued receipts.[16]

Finally, the Commission believes that the CBOE's proposed margin requirements are appropriate. The Commission notes that they are comparable to margin requirements that currently apply to broad-based and narrow-based index options, and to those previously approved for use at the Amex.[17]

The Commission finds good cause for approving the proposed rule change (SR–CBOE–00–25) prior to the thirtieth day after the date of publication of notice thereof in the Federal Register under Section 19(b)(2) of the Act.[18] As noted above, the trading requirements for options on trust issued receipts at the CBOE will be substantially similar to those at the Amex, which the Commission has approved.[19] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not already addressed and should benefit holders of trust issued receipts by permitting them to use options to manage the risks of their positions in the receipts. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[20] to approve the proposal on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CBOE–00–25) is hereby approved on an accelerated basis.

[12] *Id.*

[13] *See supra* note 5.

[14] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See supra* note 5.

[16] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.

[17] *See supra* note 5.

[18] 15 U.S.C. 78s(b)(2).

[19] *See supra* note 5.

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19054 Filed 7–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43056; File No. SR–CBOE–99–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Membership Rules

July 19, 2000.

I. Introduction

On April 12, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the CBOE's membership rules. The CBOE amended its proposal on July 15, 1999, November 3, 1999, and April 26, 2000.[3]

Notice of the proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on November 18, 1999.[4] The Commission received no comment letters regarding the proposal. This order approves the proposal, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment No. 3 to the proposal.

II. Description of the Proposal

As described below, the CBOE proposes to make extensive changes to revise and update its membership rules.

A. Definitions

The CBOE proposes to amend the definition of "lessor" in CBOE Rule 1.1(ff) to clarify that a member organization that is a lessor of an Exchange membership may transact business with the public, provided the organization is approved to do so pursuant to CBOE Rule 9.1, "Exchange Approval." Specifically, CBOE proposes to delete the second sentence of CBOE Rule 1.1(ff) because the CBOE believes that the sentence could be ready to imply that a lessor member organization is not permitted to transact business with the public.

The CBOE proposes to amend the definition of "nominee" in CBOE Rule 1.1(pp) to: (1) Clarify that under the CBOE's rules, as amended, not all nominees are required to have an authorized floor function,[5] and (2) eliminate a provision in the current definition indicating that all nominees shall be deemed to be Exchange members because CBOE Rule 3.8(b), as amended, states that a nominee of a member organization approved to act solely as a lessor shall be deemed an associated person of the organization and not an individual member.

B. CBOE Rules 3.1, 3.2, and 3.3

The CBOE proposes to revise CBOE Rule 3.1, "Public Securities Business," to clarify that the members referred to in subparagraphs (b)(1)(i) and (b)(1)(ii) are member organizations. CBOE Rule 3.1(b)(1)(i) refers to member organizations approved to transact business with the public in accordance with CBOE Rule 9.1, and CBOE Rule 3.1(b)(ii) refers to member organizations approved to clear Exchange transactions.

In addition, the CBOE proposes to delete CBOE Rule 3.1(b)(2), which requires compliance with Section 11(a) of the Act[6] for the following reasons: (1) CBOE Rule 4.2, "Adherence to Law," currently requires compliance with the Act; and (2) CBOE Rule 3.1(b) is intended to set forth permissible membership capacities for the purpose of satisfying the requirement under Section 2.2 of Article II of the CBOE Constitution and CBOE Rule 3.1(a) that every member have as the principal purpose of its membership the conduct of a public securities business.

The CBOE also proposes to amend CBOE Rule 3.1 to refer separately to the membership capacity of a nominee and the membership capacity of an individual who has registered his or her membership for a member organization.

CBOE Rule 3.2, "Qualifications and Membership Statuses of Individual Members," as amended, clarifies certain requirements for individual members and lists individual membership statuses. Specifically, CBOE Rule 3.2(a) indicates that the current requirement that an individual member must be 21 years of age applies to every individual member and not solely to individual members who own memberships. CBOE Rule 3.2(b) and CBOE Rule 3.2, Interpretation and Policy .01, list all of the individual membership statuses under the Exchange's rules, including those that are approved by the CBOE's Membership Committee ("Membership Committee") and those that are approved by Exchange bodies other than the Membership Committee.[7] CBOE Rule 3.2(c) states that every individual member who is a lessee, a Chicago Board of Trade ("CBOT") exerciser, or an owner (who is not a lessor) must have an authorized floor function. CBOE Rule 3.2(c) also codifies the definition of an authorized floor function by indicating that an individual is deemed to have an authorized floor function if the member is approved by the Membership Committee to act as a market maker and/or floor broker.

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kenneth Rosen, Attorney, Division of Market Regulation ("Division"), Commission, dated July 14, 1999 ("Amendment No. 1"); letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Yvonne Fraticelli, Division, Commission, dated November 3, 1999 ("Amendment No. 2"); and letter from Arthur R. Reinstein, Assistant General Counsel, CBOE, to Yvonne Fraticelli, Division, Commission, dated April 25, 2000 ("Amendment No. 3"). Amendment No. 1 made numerous technical changes to the proposed rule language and corresponding changes in the Purpose section of the CBOE's filing. Amendment No. 2 made minor technical corrections to the text of the proposed rule and made a conforming change by deleting Section 8(h) from the Exchange's Option Trading Lease Pool Procedures. Amendment No. 3 revised the requirements proposed in CBOE Rule 3.4 for foreign member organizations.

[4] *See* Securities Exchange Act Release No. 42111 (November 5, 1999), 64 FR 63065.

[5] Under proposed CBOE Rules 3.8(a)(iii) and 3.8(b)(iii), nominees of member organizations approved solely to transact business with the public and nominees of lessor member organizations are not required to have an authorized floor function.

[6] 15 U.S.C. 78k(a).

[7] CBOE Rule 3.2(b) states that the individual membership statuses approved by the Membership Committee include: (i) owner; (ii) lessor; (iii) lessee; (iv) Chicago Board of Trade ("CBOT") exerciser; (v) sole proprietor; (vi) individual with a membership that has been registered for a member organization; (vii) nominee of a member organization; (viii) market maker; (ix) floor broker; (x) member eligible to trade securities pursuant to Chapter XXX of the CBOE's rules; and (xi) trust member. Proposed CBOE Rule 3.2(b) also notes that the individual permit statuses that are approved by the Membership Committee are IPC Permit exerciser and Options Trading Permit holder. Proposed Interpretation and Policy .01 lists the following individual membership statuses that are approved by CBOE bodies other than the Membership Committee: (i) Designated Primary Market Maker ("DPM") designee; (ii) FLEX appointed market maker for FLEX index options; (iii) FLEX qualified market maker for FLEX equity options; (iv) lead market maker in OEX or DJX options; and (v) supplemental market maker in OEX or DJX options. CBOE Rule 3.3, Interpretation and Policy .02 states that member organization membership statuses that are approved by CBOE bodies other than the Membership Committee include Designated Primary Market Makers.

CBOE Rule 3.3, "Qualifications and Membership Statuses of Member Organizations," as amended, is similar in structure to CBOE Rule 3.2 and sets forth all of the membership statuses of member organizations under the Exchange's rules, including those that are approved by the Membership Committee and those that are approved by Exchange bodies other than the Membership Committee. [8] CBOE Rule 3.3(c) sets forth the longstanding Exchange policy that a member organization that is a clearing member or an order service firm must possess at least one membership for which the organization is not a lessor. CBOE Rule 3.3(d) clarifies that a member organization that desires to become a different type of business entity must apply for membership in the name of the new entity.

CBOE Rule 3.3, Interpretation and Policy .01, indicates that the members of a limited liability company will be deemed its principal shareholders, and its members with management responsibility and its managers will be deemed executive officers.

C. CBOE Rule 3.4

Currently, CBOE Rule 3.3 provides that an organization not organized under United States law may not become a member organization unless the organization is organized under other laws approved by the Exchange's Board of Directors. Due to the increasingly global nature of the securities markets, the Exchange has decided to amend its rules to permit foreign entities to become members of the Exchange, provided that the foreign entities satisfy the requirements set forth in new CBOE Rule 3.4, "Qualifications of Foreign Member Organizations," that are designed to eliminate potential hindrances to regulating foreign members. On April 26, 2000, the CBOE filed Amendment No. 3 to the proposal, which provides additional requirements for foreign member organizations. [9] CBOE Rule 3.4, as amended, requires an organization not organized under the laws of the United States to:

- Be organized under the laws of a country with respect to which an information sharing agreement, memorandum of understanding, or treaty is in effect that provides the Commission with access to securities trading activity in that country;
- Disclose to the CBOE all persons associated with the organization and all tiers of ownership, until the ultimate beneficial owners of the organization are disclosed;
- Maintain in english at a location in the U.S. the books and records of the organization relating to the organization's business on the CBOE, including trading records, and any other books and records that a broker or dealer registered under Section 15 of the Act would be required to maintain;
- Maintain its financial records in accordance with U.S. accounting standards;
- Agree to permit inspections by the CBOE and by the Commission of the foreign operations of the organization related to its securities business;
- Waive applicable secrecy laws and be exempted from any applicable blocking statutes in its domiciliary jurisdiction;
- Provide the CBOE with an opinion of legal counsel of the domiciliary jurisdiction of the organization certifying that there are no applicable secrecy laws or blocking statutes or that the organization has effectively waived any applicable secrecy laws or is exempted from applicable blocking statutes in that jurisdiction;
- Require any customer of the organization that utilizes the organization to execute orders on the CBOE to have waived any applicable secrecy laws and be exempted from any applicable blocking statutes in the domiciliary jurisdiction of the organization;
- Agree to submit to the jurisdiction of the federal courts of the U.S. and the courts of Illinois and to irrevocably waive any objection the organization may have based on venue or forum non conveniens;
- Own its CBOE membership;
- Register as a broker or dealer pursuant to Section 15 of the Act; [10] and
- Meet the other qualification requirements for membership under the CBOE's Constitution and rules. [11]

D. CBOE Rule 3.5

New CBOE Rule 3.5, "Denial of and Conditions to Membership and Association," a revised version of current CBOE Rule 3.4, clarifies the criteria for denial or conditioning membership or association with a member that are applicable only to broker-dealer applicants and revises one of the current grounds for denial or conditioning approval of a broker-dealer applicant. Specifically, CBOE Rule 3.5(a) states that the Membership Committee shall deny membership where an applicant has failed a required membership test. CBOE Rule 3.5(c)(i) provides that the Membership Committee may deny or condition the approval of a broker-dealer applicant if the applicant is an individual and has net worth (excluding personal assets) below $25,000 or if the applicant is an organization and has net worth (excluding personal assets) below $50,000. The CBOE believes that the proposed standard is appropriate in light of the financial resources typically not required to operate as an Exchange member.

Revised CBOE Rule 3.5(c)(i) also reflects the Exchange's intention to refrain from using an applicant's failure to pay debts that have been discharged in bankruptcy as a ground for denial or conditioning approval of an applicant. However, the CBOE notes that this provision is not intended to limit the CBOE's consideration of fraud or other violations of just and equitable principles of trade in connection with a bankruptcy proceeding in determining whether to deny or condition approval of the applicant.

CBOE Rule 3.5(e) states that any decision by the Membership Committee to deny or condition approval of an applicant must be consistent with both the provision of CBOE Rule 3.5 and the provisions of the Act.

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[8] CBOE Rule 3.3(b) states that the member organization membership statuses approved by the Membership Committee for member organizations include: (i) owner; (ii) lessor; (iii); lessee; (iv) member organization for which an individual member has registered his or her membership; (v) member organization approved to transact business with the public; (vi) clearing member; and (vii) order service firm. CBOE Rule 3.3, Interpretation and Policy .02, indicates that the membership organization status approved by a body other than the Membership Committee includes is that of designated primary market maker. Proposed CBOE Rule 3.3(b) notes that member organization permit statuses approved by the Membership Committee are IPC permit exerciser and option trading permit holder. IPC permits were issued to persons who were member of the Bolsa Mexicana de Valores as of January 1, 1998. *See* CBOE Rule 3.28, "IPC Permits."

[9] Amendment No. 3 provides that: (1) a foreign member organization must be organized under the laws of a country which has an information sharing agreement, memorandum of understanding, or treaty in effect that provides the Commission with access to information concerning securities trading activity in that country; (2) clarifies that foreign member organizations must maintain in English at a location in the U.S. any books and records a U.S. broker-dealer is required to maintain at a location in the U.S.; (3) requires foreign member organizations to agree to permit inspections of their foreign securities operations by the Commission or the CBOE; (4) requires that foreign member organizations be exempted from applicable blocking statutes in their domiciliary jurisdiction; and (5) requires that customers of the organization that utilize the organization to execute orders on the CBOE to waive any applicable secrecy laws and be exempted from any applicable blocking statutes in the domiciliary jurisdiction of the organization. *See* Amendment No. 3, *supra* note 3.

[10] 15 U.S.C. 78o.

[11] *See* Amendment No. 3 *supra* note 3.

E. CBOE Rule 3.6

CBOE Rule 3.6, "Persons Associated with Member Organization," a revised version of current CBOE Rule 3.5, clarifies that the associated persons of a member organization that must be disclosed to the Exchange and approved by the Membership Committee include those associated persons that must be disclosed on the organization's Form BD as direct owners or executive officers, or, if the organization is a non-broker-dealer lessor member organization, those associated persons that would be required to be disclosed on Form BD in these capacities if the organization was broker-dealer. CBOE Rule 3.6 also states that no person may become associated with a member organization in the capacity of a direct owner or executive officer that is, or would be, required to be disclosed on Form BD unless and until the Membership Committee approves the association.

F. CBOE Rule 3.7

Many of the provision of CBOE Rule 3.7, "Certain Documents Required of Member, Applicants, and Associated Persons," restate with greater specificity the current requirements set forth in CBOE Rule 3.6 regarding documents that a member organization or applicant must file with the CBOE. For example, CBOE Rule 3.7(a) requires a member organization or applicant that is a corporation to file with the Membership Department a copy of the organization's articles or certificate of incorporation, by-laws, and amendments to those documents. CBOE Rule 3.7 establishes comparable requirements for member organizations or applicants that are partnerships and limited liability companies. In addition, CBOE Rule 3,7 requires member organizations and applicants to file with the Membership Department documents relating to the registration, governance, capital structure, or ownership of the organization that the CBOE requests and documents the CBOE, requests that are reasonable related to the member's businesses on the CBOE.

CBOE Rule 3.7 also requires members, member applicants, and their covered employees to comply with the provisions of Section 17(f) of the Act [12] and Exchange Act Rule 17f–2 [13] regarding fingerprinting. In addition, CBOE 3.7 requires members and member applicants that are registered broker-dealers to comply with the requirement under Section 15 of the Act that broker-dealers complete and keep current Form BD. Members and member applicants that are not registered broker-dealers must file and keep current a list of associated persons that have been or are applying to be approved by the Membership Committee. CBOE Rule 3.7, Interpretation and Policy .01, states that a limited liability company must file with the Membership Department a copy of the limited liability company's registration certificate, operating agreement and any amendments to those documents.

G. CBOE Rule 3.8

Currently, CBOE Rule 3.8, "Nominees," requires every member organization that owns leases a membership to authorize an individual nominee to represent the organization with respect to the membership in all matters relating to the CBOE. The CBOE proposes to amend CBOE Rule 3.8, which will be retitled as "Nominees and Members Who Register Their Memberships for Member Organizations," to restate and provide additional details regarding the requirements applicable nominees and members who register their memberships for member organizations.[14] CBOE Rule 3.8(a) requires each member organization that is not acting as a lessor and each member organization that a lessee of a membership to designate an individual nominee to represent the member organization with respect to CBOE matters, and to designate a different nominee for each membership the member organization owns a leases. The nominee, who must be approved for membership, must have an authorized floor function, except for the nominee for a member organization that is approved solely to transact business with the public. Each nominee will be deemed to be an individual member.

CBOE Rule 3.8(b) formalizes and clarifies the CBOE's rules regarding nominees of lessor member organizations. CBOE Rule 3.8(b) requires each lessor member organization to designate a single nominee to represent the organization in all matters relating to the Exchange with respect to all of the memberships for which the organization is a lessor. The nominee must satisfy all of the qualification requirements for membership other than the requirements that are not applicable to lessors or that are applicable solely to members who will have an authorized floor function. The nominee of a lessor will be considered an associated person of the lessor member organization and not an individual member by virtue of being approved to act as a nominee in this capacity.

CBOE Rule 3.8(c) sets forth the current requirements that are applicable to an individual member who owns a membership or a CBOT exerciser that applies to register his or her membership for a member organizations. An individual who registers his or her membership for a member organization will represent the organization in all matters relating to the CBOE in the same manner that a nominee a member organization.

CBOE Rule 3.8(d) states that a member organization represented by a nominee or an individual who has registered his or her membership for the organization must agree to be responsible for all obligations arising out of that person's representation of the member organization in all matters relating to the CBOE and to guarantee payment of all monetary disciplinary sanctions assessed against that person with respect to activity that take place while the person is a nominee of the organization or has registered his or her membership for the organization.

CBOE Rule 3.8(d) also clarifies that a nominee shall not, solely by virtue of being a nominee of a member organization, have any person liability to the Exchange or to any other member for Exchange transactions and other securities transactions made by the nominee on behalf to the member organization. CBOE Rule 3.8, Interpretation and Policy .01, makes clear that nothing in CBOE Rule 3.8(d) is intended to define or limit: (1) Any obligations between a nominee of a member organization, or an individual who has registered his or her membership for a member organization, and the member organization itself; (2) any responsibility such a person may have for obligations of the member organization by virtue of a contractual obligation or ownership relationship to the organization beyond merely being a nominee or individual who has registered his or her membership for the organization; or (3) the ability of the Exchange to sanction or take other remedial action against such a person pursuant to other Exchange rules for rule violations or other activity for which remedial measures may be imposed.

[12] 15 U.S.C. 78q(f).

[13] 17 CFR 240.17f–2.

[14] Under CBOE Rule 3.8(c), each individual member who owns a membership and each CBOT exerciser may apply to register his or her membership for a member organization. Upon approval of the application, an individual who has registered his or her membership for a member organization shall represent the organization in all matters relating to the CBOE in the same manner that a nominee represents a member organization. An individual who registers his or her membership for a member organization must have an authorized floor function.

CBOE Rule 3.8(e) provides that each nominee of a member organization and each individual who has registered his or her membership for a member organization must be materially involved in the daily operation of the Exchange business activities of the member organization. According to the CBOE, this provision in intended to eliminate the potential ability under the Exchange's current rules for an organization to qualify for membership by associating with an individual who is designated as that organization's nominee or who registers his or her membership for the organization but who has little or no involvement with the organization's Exchange business activities. The Exchange proposes to prohibit such arrangements because they would dilute the value of the membership rights of other Exchange members and allow a person who is not materially involved in an organization's Exchange business activities to be designated to represent the member organization in all matters relating to the Exchange.

CBOE Rule 3.8(g) specifies rules and requirements applicable to inactive nominees of member organizations.

H. CBOE Rule 3.9

The CBOE proposes to amend CBOE Rule 3.9, "Application Procedures and Approval or Disapproval," to restate and revise the CBOE's membership application procedures. Proposed CBOE Rule 3.9(a) states that the following individuals or organizations must submit an application to the Membership Department: (1) Any individual or organization desiring to become a CBOE member; (2) any applicant or member desiring to act in one or more of the membership statuses set forth in CBOE, Rules 3.2(b) or 3.3(b); (3) any associated person that must be approved by the Membership Committee pursuant to CBOE Rule 3.6(b); and (4) any member desiring to change the clearing member that guarantees the member's CBOE transactions.

The CBOE proposes to add CBOE Rule 3.9(d), which will require each applicant to promptly update the applicant's application materials if any information provided in the materials becomes inaccurate or incomplete after the date when the application is submitted to the Membership Department and prior to approval of the application. This requirement is currently set forth in the application materials.

CBOE Rule 3.9(e) clarifies the current procedure allowing the Membership Committee to utilize a posting period for any type of membership application.[15] CBOE Rule 3.9(f) states that the CBOE's Membership Department shall investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to CBOE Rule 3.6(b), and each applicant applying to be an individual member, except for an individual member applicant who was an individual member within six months prior to the Membership Department's receipt of the applicant's application.[16] The CBOE states that CBOE Rule 3.9(f) clarifies that the Exchange typically does not investigate an individual member applicant who was an individual member within the prior six months because the person was recently an Exchange member.[17]

CBOE Rule 3.9(g) sets forth requirements applicable to persons required to have an authorized floor function, including the requirement that a person score 75% or better on the Floor Member Qualification Exam to pass the exam. The CBOE notes that these requirements were approved previously by the Commission but are not currently set forth in CBOE Rule 3.9.[18]

CBOE Rule 3.9(h) allows the Membership Committee to approve an application only if the applicable posting period requirement has been satisfied, any investigation has been completed, and any applicable orientation and exam requirements have been satisfied. CBOE Rule 3.9(i) requires each applicant and each person associated with the applicant to submit any additional information requested by the CBOE and notes that such persons may be required to appear before the Membership Committee for an in-person interview or interviews.

CBOE Rule 3.9, Interpretation and Policy .01, requires a member to apply to the Membership Department to change the clearing member that guarantees the member's Exchange transactions. With its application, the member must include a financial statement setting forth the member's assets and liabilities. The Membership Department will provide a copy of the financial statement to the new clearing member designated in the application and will post notice to the membership that the application has been received unless the clearing member(s) that will no longer be guaranteeing the member's Exchange transactions waive this requirement. The amendment is intended to permit the clearing member(s) that will no longer be clearing the member's Exchange transactions, as well as other members, to notify the Membership Department of any outstanding liabilities that bear upon the member's qualification for membership and to provide the new clearing firm with information regarding the member's financial standing so that the clearing member will have the information available to manage the risk associated with the member's trading activities.

CBOE Rule 3.9, Interpretation and Policy .02 clarifies that a member organization seeking to change its name must submit an application to the Membership Department and that the Membership Committee may disapprove the name change application or membership application of an organization if the Membership Committee determines that the proposed name of the organization is confusingly similar to the name of an existing member organization.

I. CBOE Rule 3.10

The CBOE proposes to amend CBOE Rule 3.10, which will be retitled as "Effectiveness of Membership or Approved Person Status," to provide that each applicant for membership, for one of the membership statuses set forth in CBOE Rule 3.2(b) or 3.3(b), or for

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[15] CBOE Rule 3.9(b) currently states that the name of an applicant for membership shall be published in the Exchange Bulletin and posted on the Exchange Bulletin Board following the receipt of the application. CBOE Rule 3.9(e) states that for an application for membership, an application to change membership capacity statuses set forth in CBOE Rule 3.2(b) or 3.3(b), or an application to change clearing members, the name of the applicant and the application request shall be published in the Exchange Bulletin and posted on the Exchange Bulletin Board. The required posting period will be no less than 10 days, although the Membership Committee may shorten or waive the posting period. In addition, the required posting period for a member's application to change clearing members shall be waived if the clearing member(s) that will no longer be guaranteeing the member's CBOE transactions consents to a waiver.

[16] CBOE Rule 3.9(c) currently states every individual applicant and, in the case of applicant organizations, all persons associated with the organization, shall be investigated by the Membership Department before the Membership Committee approves an application.

[17] The CBOE generally conducts a less extensive review of the applications of individual member applicants who have been members within the previous six months, but will conduct a more extensive review if warranted. Telephone conversation between Arthur B. Reinstein, Assistant General Counsel, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on June 9, 2000 ("June 9 Conversation").

[18] See Securities Exchange Act Release No. 32943 (September 22, 1993), 58 FR 50984 (September 29, 1993) (order approving File No. SR–CBOE–91–38) ("Membership Qualification Exam Order") (regarding procedural provisions related to the Exchange's requirement that individual membership applicants applying for an authorized floor function must pass the Exchange's Floor Member Qualification Exam).

approved associated person status under CBOE Rule 3.6(b), must become effective in the status within 90 days of the applicant's approval for the status, except that an applicant to become a lessor may become effective in that status within six months of the date of the applicant's approval for that status. The CBOE is adopting the six-month requirement for lessors because a lessor generally must purchase a membership to become an effective lessor and it is often difficult for a lessor to purchase a membership within 90 days.

J. CBOE Rule 3.11

The CBOE proposes to amend CBOE Rule 3.11, which will be retitled as "Notice of Effectiveness of Membership or Approved Associated Person Status," to reflect the Exchange's current procedures for notifying the CBOE membership of the effectiveness of any membership, membership status, or associated person status by publishing notice of the effectiveness in the Exchange Bulletin. The CBOE is deleting from CBOE Rule 3.11 the current requirements that such notices be mailed to all members and posted on the Exchange Bulletin Board because the notices are included in the Exchange Bulletin (which is forwarded to all members) and because the notices relate to statuses that have been approved, unlike notices of pending membership applications which are posted on the Exchange Bulletin Board so that members may submit comments to the Membership Department regarding an applicant's fitness for membership.

K. CBOE Rule 3.12

The CBOE proposes to amend CBOE Rule 3.12, which will be retitled "Membership Rights and Restrictions on Their Transfer," to indicate that certain rights may be granted to the grantee of an Authorization to Sell, as discussed more fully below, pursuant to new CBOE Rules 3.14(b) and 3.15(b). CBOE Rule 3.12(b)(ii) incorporates a provision currently contained in CBOE Rule 3.15(g) regarding restrictions on the transfer of membership rights.

L. CBOE Rule 3.13

The CBOE proposes to amend CBOE Rule 3.13, "Purchase of Membership," to clarify that: (1) Newly issued memberships may be purchased pursuant to procedures established by the CBOE; (2) only those approved to be an owner or a lessor may purchase a membership; (3) any bid to purchase a membership shall be canceled at such time that the bidder is no longer approved to be an owner or lessor; and (4) the purchaser of a membership must pay for the membership within two business days of the acceptance of a bid for a newly issued membership or the matching of a bid and offer for an outstanding transferable membership.

M. CBOE Rule 3.14

The CBOE proposes several amendments to CBOE Rule 3.14, "Sale and Transfer of Membership." Specifically, the CBOE proposes to indicate in CBOE Rule 3.14(a) that the lowest offer for a CBOE membership will be published in the Exchange Bulletin as well as on the Exchange Bulletin Board. The CBOE proposes to amend CBOE Rule 3.14(b), "Sale by Exchange," to apply its provisions to members who are lessees as well as owner of transferable memberships.

The CBOE proposes to amend CBOE Rule 3.14(c) to require that an owner transferring a membership to an organization pursuant to CBOE Rule 3.14(c)(iii) must maintain an interest in the organization at least equal in value to the current market price of the membership, rather than an interest equal to the lower of the current market price or cost of the membership, as the rule currently provides. The CBOE notes that because the market price of a membership has increased significantly over the years, an ownership interest in an organization that equals the original cost of the membership may not longer reflect a material ownership interest in the organization. The CBOE also proposes to make a conforming change to CBOE Rule 3.14(c) to eliminate a deposit required under the current membership claims process, which the CBOE is revising as part of this proposed rule change.

The CBOE notes that Interpretation and Policy .01 to CBOE Rule 3.15, "Proceeds from the Sale of Membership," currently allows the Exchange to recognize and give effect to a valid instrument by which a member, in consideration of a loan or guarantee of a loan by another member for the purpose of purchasing a membership, has authorized the lending or guaranteeing member for the purpose of purchasing a membership, has authorized the lending or guaranteeing member to sell that membership. The CBOE proposes to adopt new CBOE Rule 3.14(d), "Authorizations to Sell," to replace this provision and expand upon it by permitting the owner of a transferable membership to voluntarily grant an Authorization to Sell the membership to any other member, including, but not limited to, another member who has provided or guaranteed a loan to the membership owner for the purpose of purchasing a membership.

CBOE Rule 3.14(d) states that a membership owner will not be permitted to grant an Authorization to Sell a particular membership to more than one member. The grantee of an Authorization to Sell will have all of the authority granted under the Exchange's Constitution and rules relating to the sale of the membership that would otherwise be vested in the membership owner, although the grantee must notify the membership owner in writing at least three business days prior to exercising the grantee's right to sell the membership. An Authorization to Sell will be irrevocable and may only be canceled if the grantee of the Authorization to Sell consents to its cancellation. A membership owner that grants an Authorization to Sell will have no authority to direct the sale or transfer of the membership.

The Exchange will take direction solely from the grantee of an Authorization to Sell a membership with respect to matters relating to the sale of the membership. A membership owner and the grantee of an Authorization to Sell may enter into a written agreement, which must be filed with the Membership Department, setting forth the circumstances under which the grantee may exercise the grantee's authority to sell the membership, and any breaches of this written contract may be redressed through arbitration under Chapter XVIII of the Exchange's rules or through other means permitted by Chapter XVIII. The grantee of an Authorization to Sell that exercises its right to sell the membership may not be the purchaser of the membership unless the membership owner consents. The Membership Department will provide a member's clearing member(s) with a copy of any Authorization to Sell granted by the member, a cancellation of the Authorization to Sell, or a contract concerning the exercise of authority under the Authorization to Sell.

The grant of an Authorization to Sell will include the grant of a security interest in any proceeds from the sale of the membership that the grantee is authorized to receive under CBOE Rule 3.15(b), as discussed below. The Exchange will recognize a security interest of the grantee in any proceeds from the sale of a membership that the grantee is entitled to receive pursuant to CBOE Rule 3.15(b), but will not recognize any other lien or security interest in a membership or in the proceeds from the sale of a membership.

N. CBOE Rule 3.15

Current CBOE Rule 3.15 and certain provisions of CBOE rules 3.14, "Sale and Transfer of Membership," and Rule 3.16, "Special Provisions Regarding Memberships," provide a claims process whenever a membership is sold or transferred without a sale, at the beginning of a membership lease, and at the end of a membership lease. At these times, the Exchange, the Options Clearing Corporation ("OCC"), and CBOE members may submit claims against the owner of the membership that is being sold, transferred, or leased. At the end of a membership lease, the Exchange, the OCC, and CBOE members also may submit claims against the lessee of the membership.

In the case of a sale, claims that the Board of Directors determines are valid are satisfied from the proceeds of the sale. In the case of a transfer or the beginning or end of a lease, the owner of the membership that is the subject of the transfer or lease must post cash with the Exchange in an amount equal to the last membership sale or obtain a letter of guarantee from a clearing member to satisfy the payment of any valid claims.[19]

The Exchange proposes to modify the membership claims process so that the only permissible claimant under the process will be the grantee of an Authorization to Sell. Under the revised procedures, the claims process will occur only upon the sale of a membership and lessors will no longer be liable under the claims process for the debts and liabilities of their lessees. The Exchange believes that it is not equitable for a lessor to be liable under the membership claims process for the debts and liabilities of a lessee, particularly when, as is usually the case, the lessor had no involvement in incurring a lessee's debts and liabilities and no means to monitor the lessee's activities. The Exchange also believes that the proposed modifications to the membership claims process, when coupled with the ability to grant an Authorization to Sell a membership, will produce greater demand for ownership of Exchange memberships. In addition, the CBOE believes that the proposed modifications will eliminate the significant administrative burden on the Exchange, clearing members, and other members that is a byproduct of the current membership claims process. At the same time, the CBOE notes that members will continue to have the right to pursue claims against other members through the arbitration process.

[19] *See* CBOE Rule 3.16(b)(ii).

Accordingly, the CBOE proposes to amend CBOE Rule 3.15 to establish a modified claims process following the sale of a membership. Specifically, CBOE Rule 3.15 provides that, following the sale of a membership for which an Authorization to Sell has been granted, the grantee will have two business days from the date of the sale to notify the Membership Department of any claims the grantee has against the member whose membership was sold. The claims must be related to the CBOE business activities of the member whose membership was sold.[20] The member whose membership was sold will have five business days from the date of the sale to either acknowledge or contest the claims. The Exchange will remit to the grantee the portion of the sale proceeds applicable to the claims acknowledged by the member whose membership was sold, escrow the portion of the sale proceeds applicable to any claims contested by the member whose membership was sold, and remit to the member whose membership was sold any remaining portion of the sale proceeds.

Any portion of the sale proceeds applicable to contested claims that have been escrowed will remain in escrow until the grantee and the member whose membership was sold resolve the claims through arbitration under Chapter XVIII of the Rules or through other means permitted by that Chapter. However, the Exchange may release to the member whose membership was sold sale proceeds that have been escrowed due to contested claims if the Exchange determines that the grantee of the Authorization to Sell is not proceeding in good faith to resolve the contested claims. Following the resolution of any contested claims for which sale proceeds have been escrowed, the Exchange will remit the escrowed proceeds to the grantee and the member whose membership was sold in accordance with the resolution of the claims.

O. CBOE Rule 3.16

The CBOE proposes to amend CBOE Rule 3.16, which will be retitled "Special Provisions Regarding Chicago Board of Trade Exerciser Memberships," to clarify that a nontransferable CBOT exerciser membership acquired pursuant to Paragraph (b) of Article Fifth of the Exchange's Certificate of Incorporation will terminate upon receipt by the Membership Department of written notice from the CBOT exerciser member that he or she is surrendering the membership or at such time when the CBOT exerciser member is no longer entitled to membership on the Exchange in accordance with Paragraph (b) of Article Fifth. In addition, the CBOE proposes to delete the provisions regarding leased memberships currently contained in CBOE Rule 3.16(b) and restate them in an amended form in new CBOE Rule 3.17, "Leased Memberships."[21]

P. CBOE Rule 3.17

CBOE Rule 3.17 restates many of the provisions regarding leased memberships that currently are contained in CBOE Rule 3.16(b) and also incorporates several substantive changes to those provisions. CBOE Rule 3.17(a) states that the owner of a transferable membership in good standing may lease the membership provided that the lessee is approved for membership, the lease is made pursuant to a written lease agreement, and the lease is preapproved by the CBOE. CBOE Rule 3.17(a) also clarifies that the Exchange will bear no liability to a lessor or lessee in connection with the Exchange's review and approval of a lease agreement.

In connection with the modification of the current membership claims process and the elimination of a lessor's liability under the process for claims against a lessee, the Exchange proposes to include a provision in CBOE rule 3.17(b) stating that a lessor of a membership will have no liability for claims against a lessee of the membership solely by virtue of being a lessor of the membership. CBOE Rule 3.17(b) also clarifies that this provision is not intended to limit or define any responsibility a lessor may have for claims against a lessee by virtue of a contractual obligation or ownership relationship between the lessor and lessee beyond the lease of a membership. Similarly, the Exchange proposes to eliminate the current provision of CBOE Rule 3.16(b) stating that any division of rights and responsibilities between the lessor and lessee will not affect the lessor's obligation to pay all amounts due to the CBOE.

[20] For purposes of CBOE Rule 3.15, claims related to CBOE business activities include claims associated with CBOE transactions, securities or futures transactions other than on the CBOE that are related to CBOE transactions or positions resulting from CBOE transactions, loans or guarantees of loans for the purpose of purchasing a CBOE membership, and services provided in connection with the foregoing. The CBOE will determine whether a claim is related to Exchange business activities. *See* CBOE Rule 3.15(b)(ii).

[21] Current CBOE Rule 3.17, "Death, Retirement, Withdrawal and Resignation," will be revised and will appear in new CBOE Rule 3.19, "Termination from Membership."

CBOE Rule 3.17(c) states that the Exchange may specify that particular provisions be included in membership lease agreements in addition to those specifically designated in CBOE rule 3.17(c).

CBOE Rule 3.17(d) requires a lessee to promptly file the lease agreement and any amendments to the lease agreement with the Membership Department and to promptly notify the Membership Department of any termination of the lease before the termination becomes effective. The CBOE proposes to place these obligations on lessees because lessees are present at the Exchange to conduct their activities.

CBOE Rule 3.17(e) provides that if a lessor sells or transfers a membership while it is being leased, the purchaser or transferee of the membership must lease the membership to the lessee pursuant to the terms of the lessee's existing lease agreement for a period of 20 business days following the date the membership is transferred to the purchaser or transferee. The purchaser or transferee may also satisfy this requirement by making arrangements with another membership owner to permit the lessee to lease a membership from that owner for the required time period pursuant to the terms of the lessee's existing lease agreement.

CBOE Rule 3.17(e) states that a lessor will violate CBOE Rule 3.17(e) if the lessor circumvents the requirements of proposed CBOE Rule 3.17(e) by improperly terminating a membership lease prior to the sale or transfer of the membership for the purpose of avoiding the applicability of proposed CBOE Rule 3.17(e). If the Exchange determines that a lessor has improperly terminated a membership lease to avoid the applicability of CBOE Rule 3.17(e), the Exchange may impose the requirements of CBOE Rule 3.17(e) upon the purchaser or transferee of the membership and/or take disciplinary action against the lessor.

CBOE Rule 3.17(f) states that a lessor that sells or transfers a membership while it is being leased must remit to the purchaser or transferee any amounts paid to the lessor under the lease agreement for any portion of the lease period, up to 20 business days, during which the lessor will no longer be leasing the membership. The lessor must remit these amounts to the purchaser or transferee no later than the date the membership is transferred. By the transfer date the lessor also must remit to the lessee any remaining amounts the lessee has paid to the lessor under the lease agreement for any portion of the lease period beyond the foregoing 20 business day period.

Q. CBOE Rule 3.18

The CBOE proposes to adopt new CBOE Rule 3.18, "Members and Associated Persons Who Are or Become Subject to a Statutory Disqualification," to modify its procedures for determining whether, or under what conditions, to permit the continued membership or association of a member or associated person who is or becomes subject to a statutory disqualification.[22]

Currently, CBOE Rule 3.4 authorizes the Membership Committee to determine whether to permit a member or associated person who is or becomes subject to a statutory disqualification to continue in membership or association with a member or to condition such continuance in membership or association. Under the CBOE's current rules, the member or associated person has the right to appeal the Membership Committee's decision to the Exchange's Appeals Committee and to appeal the Appeals Committee's decision to the Exchange's Appeals Committee and to appeal the Appeals Committee's decision to the Board of Directors. These appeal rights must be exhausted before the membership Committee's decision can take effect. Therefore, the CBOE notes that it is possible for a member or associated person to become subject to a statutory disqualification, such as a serious felony conviction, and continue to act as a member or associated person for an extended period of time while the appeal proceedings are pending.

Accordingly, the Exchange proposes to adopt more expedited procedures. The CBOE believes that its revised procedures will provide due process to the member or associated person that is or has become subject to a statutory disqualification without a right of appeal to the Appeals Committee and then to the Board of Directors.

Under the modified procedures in CBOE Rule 3.18, a member or associated person who is or becomes subject to a statutory disqualification and wants to continue in Exchange membership or association with a member must submit an application to the Membership Department within 10 days of becoming subject to the statutory disqualification.[23] Following receipt of the application, or in the event the Exchange becomes aware that a member or associated person is subject to statutory disqualification and has failed to submit an application to continue in membership or association within the required time period, the Chairperson of the Membership Committee will appoint a panel composed of the Membership Committee Chairperson and two other members of the Membership Committee to conduct a hearing concerning the matter. The hearing panel will hold a hearing 14 or more days following the receipt of the application or the initiation of the proceeding, and both the subject of the proceeding and Exchange staff will be afforded an opportunity to present relevant information, arguments, and witnesses during the hearing. Any person who is the subject of a proceeding under CBOE Rule 3.18 is entitled to be accompanied, represented, and advised by counsel at all stages of the proceeding.

Following the hearing, the hearing panel will present its recommended decision in writing to the Membership Committee, which may ratify or amend the decision. The Membership Committee will render its decision in writing and promptly provide its decision to the subject of the hearing and the Executive Committee, which may determine within seven days after the issuance of the Membership Committee's decision to order a review of the decision. If the Executive Committee does not order review of the decision, the Membership Committee's decision will become the final decision of the Exchange.

If the Executive Committee orders review of the Membership Committee's decision, the Executive Committee or a panel comprised of at least three members of the Executive Committee will conduct the review. The Executive Committee must ratify the panel's decision. The Executive Committee's decision, which must be in writing, will be the final decision of the Exchange.

The CBOE notes that the CBOE's Executive Committee is composed of the Exchange's Chairman, Vice Chairman, President, and at least four other Exchange directors. According to the CBOE, the Executive Committee generally is authorized under Section 7.2 of Article VII of the Exchange's Constitution to exercise all the powers and authority of the CBOE's Board of Directors in the management of the business and affairs of the Exchange. The Exchange proposes to utilize the Executive Committee as the review body under CBOE Rule 3.18, instead of the Board of Directors, because the Executive Committee is generally able to

[22] Current CBOE Rule 3.18, "Dissolution and Liquidation of Member Organizations," will be amended and renumbered as CBOE Rule 3.20.

[23] In addition, CBOE Rule 3.18, Interpretation and Policy .02, requires a member to provide immediate written notice to the Membership Department of the name of any associated person who is or becomes subject to a statutory disqualification, the person's capacity with the member, and the nature of the statutory disqualification.

convene more quickly than the Board of Directors because of its smaller size.

If the Exchange decided to permit a member or associated person who is subject to a statutory disqualification to remain in membership or association, the Exchange would also submit a notice to the Commission to the extent required by Rule 19h–1 under the Act.[24]

CBOE rule 3.18, Interpretation and Policy .01, allows the CBOE to waive the provisions of proposed CBOE Rule 3.18 when a proceeding is pending before another self-regulatory organization to determine whether to permit an associated person or a member to continue in association or membership. In addition, CBOE Rule 3.18, Interpretation and Policy .01 states that if the CBOE waives the provisions of CBOE Rule 3.18, the Department of Financial and Sales Practice Compliance will determine whether the CBOE will concur in any Exchange Act Rule 19h–1 filing made by another self-regulatory organization.

R. CBOE Rule 3.19

CBOE Rule 3.19, "Termination from Membership," which replaces current CBOE Rule 3.17, clarifies that the membership status of a member terminates automatically if the member does not possess a membership through ownership, lease, or registration of a membership to the member. In addition, CBOE Rule 3.19 states that the membership of a member organization terminates automatically if the member organization has no nominee or person who has registered his or her membership for the member organization.

S. CBOE Rule 3.20

CBOE Rule 3.20, "Dissolution and Liquidation of Member Organizations," restates the provisions currently set forth in current CBOE Rule 3.18 and amends those provisions by requiring a member organization to provide written notice of the adoption of a plan of liquidation or dissolution, and any actual liquidation or dissolution, to both the Department of Financial and Sales Practice Compliance and the Membership Department.

T. CBOE Rule 3.21

CBOE Rule 3.21, "Obligations of Terminating Members," restates requirements applicable to terminating members which are currently set forth in current CBOE Rule 3.19. In addition, in connection with the elimination of the Exchange's ability to submit claims against the proceeds of a membership sale, the Exchange proposes to delete the provision of current CBOE Rule 3.19 which permits the Exchange to withhold the distribution of the proceeds of the sale of a membership if the seller is not current in the payment of Exchange fees or the submission of various filing.

U. CBOE Rule 1.1(hh), 3.20, 3.21, 3.22, 3.22A, and 6.20

The CBOE proposes to delete current CBOE Rules 3.20, 3.21, 3.22, 3.22A, and 6.20, Interpretation and Policy .03, which relate to government securities options permits, because all the government securities options permits have expired. Similarly, the CBOE proposes to delete CBOE Rule 1.1.(hh), which defines a government securities options permit holder.

V. CBOE Rule 3.25

The CBOE proposes to amend CBOE Rule 3.25, "Transfer of Individual Membership in Trust," to clarify that: (1) A member who owns a membership may transfer the membership only into a living trust: (2) a member who wishes to transfer a membership into trust must submit an application to the Membership Department, which must be approved by the Exchange; (3) a member who has transferred a membership in trust ("Trust Member") must submit to the Membership Department any amendments to the trust agreement and notify the Membership Department of any changes in the information set forth in the application to transfer the membership in trust, any changes in the successor trustee, any release of the membership out of trust, and any termination of the trust; and (4) the Exchange will deem a membership held in trust to have reverted to the Trust Member to be held directly and not in trust if the membership is released from the trust, the trust terminates, or the trust agreement is amended so that it no longer complies with the requirements of CBOE Rule 3.25. CBOE Rule 3.25(c) also notes that a member may grant an Authorization to Sell with respect to a membership held in trust.

W. CBOE Rule 3.27

In connection with the modification of the current claims process that applies to memberships, the Exchange proposes to amend CBOE Rule 3.27 to make the same modifications to the corollary claims process that is applicable to Options Trading Permits. The CBOE proposes to make a corresponding conforming change to Regulatory Bulletin 00–37, "Option Trading Permit lease Pool Procedures," by deleting paragraph 8.h, which states that a lease of an Options Trading Permit will not become effective until a letter of guarantee equal to the last sale price of an Options Trading Permit has been deposited with the Membership Department.[25]

X. CBOE Rule 3.28

The CBOE proposes to adopt CBOE Rule 3.28, "Extension of Time Limits," to clarify that the Membership Committee may extend any time limit imposed on an applicant, member, or other person under Chapter III of the Exchange's rules if the Membership Committee determines that such an extension is warranted due to extenuating circumstances. This proposed provision is similar to CBOE Rule 17.13 "Extension of Time Limits," which authorizes the Exchange to extend time limits provided for under Chapte XVII of the Exchange's rules.

Y. CBOE Rule 3.29

The CBOE states that because there are many types of membership-related applications and approvals provided for under Chapter III, the Membership Committee may wish to delegate to the Membership Department the authority to act on certain routine types of applications and approvals to allow the Membership Committee to focus its attention on more significant types of membership-related applications and approvals. Accordingly, new CBOE Rule 3.29, "Delegation of Authority," clarifies that all of the authority granted to the Exchange under Chapter III of the Exchange's rules may be exercised by the Membership Committee and/or the Membership Department and that the Membership Committee may delegate to the Membership Department any of the authority that is granted to the Membership Committee under the Exchange's rules.

Z. CBOE Rule 6.76A

The CBOE proposes to adopt CBOE Rule 6.76A, "Automated Billing Process for Market Maker Brokerage Bills," to streamline the processing and payment of bills for brokerage services that floor brokers and order service firms provide to market makers. The CBOE also proposes to implement the automated billing process because floor brokers and order service firms will no longer have the ability to submit claims for outstanding brokerage bills as part of the membership claims process. The automated billing process operates as follows:

[24] 17 CFR 240.19h–1.

[25] *See* Amendment No. 2, *supra* note 3.

- Each floor broker and order service firm must submit a written bill by the sixth day of the month to each market maker customer of the floor broker or order service firm for brokerage fees the market maker incurred during the prior month.
- A market maker will have until the tenth day of the month to inform the floor broker or order service firm if the market maker disputes any portion of the bill.
- A floor broker or order service firm that has submitted a bill to a market maker by the sixth day of the month will notify the Exchange's Accounting Department by the twelfth day of the month of the amount to bill each market maker customer of the floor broker or order service firm for brokerage fees incurred during the prior month.
- The CBOE will take direction solely from the floor broker or order service firm with respect to the amount to bill a market maker pursuant to the automated billing process. If the market maker disputes the amount a floor broker or order service firm has instructed the CBOE to bill, the market maker may pursue a claim against the floor broker or order service firm in arbitration under Chapter XVIII of the CBOE's rules or through other means provided by Chapter XVIII. In addition, if a floor broker or order service firm improperly instructs the Exchange to bill a market maker for brokerage fees which the floor broker or order service firm is not entitled to receive, the Exchange may discipline the floor broker or order service firm pursuant to Chapter XVII of the Exchange's rules for violating CBOE Rule 4.6, "False Statements," by submitting false statements to the Exchange.
- By the twenty-first day of the month, the Accounting Department will provide a monthly market maker floor brokerage billing list to each clearing member that clears market maker transactions. The list will set forth the amounts floor brokers and order service firms have instructed the Accounting Department to bill each market maker that clears through that clearing member for brokerage fees incurred by the market maker during the prior month.
- A clearing member may instruct the Accounting Department not to draft the clearing member pursuant to the automated billing process for that portion of the brokerage fees billed to a market maker that would cause the market maker to have a negative balance in the market maker's account at the clearing member.
- On the twenty-fifth day of the month, the Exchange will draft from each clearing member's account at the OCC the total amount billed pursuant to the automated billing process to market makers that clear through that clearing member. The Exchange will then promptly distribute the amounts drafted to the applicable floor brokers and order service firms. Each clearing member will be authorized to deduct from a market maker's account at the clearing member the amounts the CBOE has drafted from the clearing member's account at the OCC for brokerage fees billed to the market maker.
- If a clearing member instructs the Accounting Department not to draft a portion of the brokerage fees billed to a market maker, the Exchange will distribute brokerage fees which were drafted from the clearing member for that market maker on a pro rata basis to the floor brokers and order service firms that submitted instructions to bill the market maker.
- If a clearing member instructs the Accounting Department not to draft a portion of the brokerage fees billed to a market maker and the market maker later has a positive balance in the market maker's account at the clearing member, the clearing member must deduct from the account the amount of the brokerage fees that the clearing member previously instructed the Accounting Department not to draft and distribute the funds to the floor brokers and order service firms who previously did not receive full payment.
- If a floor broker or order service firm fails to satisfy the submission deadlines provided for under the automated billing process, the floor broker or order service firm may not bill the market maker for brokerage fees pursuant to the automated billing process. However, the floor broker or order service firm may bill the market maker for brokerage fees in the regular, non-automated fashion.

To contribute to defraying the Exchange's cost of administering the automated billing process, the Exchange proposes to assess, in a form and manner prescribed by the Exchange: (1) A $0.50 fee to each floor broker and order service firm for each bill of $5.00 or more from the floor broker or order service firm that is assessed to a market maker under this billing process; and (2) a $0.50 fee to each market maker for each bill of $5.00 or more from a floor broker or order service firm that is assessed to the market maker under this billing process.

AA. CBOE Rules 6.72, 6.78 and 8.5

The CBOE proposes to amend CBOE Rules 6.72, "Letters of Authorization," 6.78, "Letters of Guarantee Required of Order Service Firms," and 8.5, "Letter of Guarantee," to provide that the CBOE will post notice of a clearing member's revocation of its guarantee only at the clearing member's request. The Exchange does not believe that it is necessary to require the posting of all revocations because most are routine and arise because a member is terminating from membership or is changing the clearing member that guarantees the member's Exchange transactions.

In addition, revised CBOE Rule 6.72 states that: (1) A revocation will not relieve a clearing member of responsibility for transactions guaranteed prior to the effective date of the revocation; and (2) a floor broker may only have one letter of authorization guarantee from a clearing member in effect at a time.

The CBOE proposes to amend CBOE Rule 8.5 to clarify that a market maker that clears transactions through more than one clearing member must have a letter of guarantee issued by each clearing member to cover the CBOE transactions executed by the market maker through the clearing member. The CBOE also proposes to add Interpretation and Policy .04 to CBOE Rule 8.5, which states that the CBOE will notify each clearing corporation that has approved a letter of guarantee for a market maker of the issuance and revocation, if applicable, of all other letters of guarantee issued to that market maker with regard to transactions subject to the rules of any other clearing corporation.

BB. CBOE Rule 8.9

The CBOE proposes to add Interpretation and Policy .08 to CBOE Rule 8.9, "Securities Accounts and Orders of Market Makers." Interpretation and Policy .08 clarifies that each participant in a joint account will be jointly and severally liable for any losses incurred by the joint account. However, Interpretation and Policy .08 also states that for a joint account participant that is the nominee of a member organization, or an individual who has registered his or her membership for a member organization, and who is not acting as an independent market maker pursuant to CBOE Rule 3.8(f), the member organization and not the participant will be liable for losses incurred by the joint account. The clarification is intended to make applicable to joint accounts the general provisions in CBOE Rule 3.8(d), which clarify that neither a nominee nor an individual who has registered his or her membership for a member organization shall, solely by virtue of being a nominee of a member organization or

having registered his or her membership for a member organization, have any personal liability to the Exchange or to any other member for Exchange transactions and other securities transactions made by the nominee or individual on behalf of the member organization.

CC. CBOE Rules 9.3, 10.11, and 15.1

The CBOE proposes to amend CBOE Rule 9.3, "Registration and Termination of Representatives," to clarify the associated persons who are required to complete Form U–4 (*i.e.*, persons who perform duties for member organizations approved to transact business with the public which are customarily performed by sales representatives, solicitors, customers' men, or branch office managers). Notwithstanding the foregoing, the Exchange may continue to require other applicants to complete Form U–4 during the application process solely as an information gathering tool. In addition, the CBOE proposes to add new Interpretation and Policy .01 to CBOE Rule 9.3, which will clarify that the application form referred to in CBOE Rule 9.3(a) is the Form U–4, and that any person required to file Form U–4 must promptly file any required amendments to Form U–4.

The CBOE proposes to amend CBOE Rule 10.11, "Contracts of Suspended Parties," to refer to the claims resolution procedures in CBOE Rule 3.15.

The CBOE proposes to amend Interpretation and Policy .01 to CBOE Rule 15.1, "Maintenance, Retention and Furnishing of Books, records and Other Information," to revise references to specific CBOE rules regarding the maintenance of books and records and the furnishing of information to the CBOE. The new references reflect the proposed changes to the CBOE's membership rules.

DD. CBOE Rule 18.2

To ensure that clearing members receive notice of proceedings involving disputed trades, the CBOE proposes to add Interpretation and Policy .01 to CBOE Rule 18.2, "Procedures in Member Controversies," which will require each party to an arbitration concerning the alleged failure to honor a trade to promptly provide copies of all documents filed or received in the arbitration by that party to the clearing member(s) that guaranteed that party's Exchange transactions when the alleged trade took place.

EE. CBOE Rules 6.72, 24A.15, 26.11, 26.13, and 30.74

The CBOE proposes to make conforming changes to CBOE Rules 6.72, 24A.15, "Letter of Guarantee or Authorization," 26.11, "Market Makers," 26.13, "Floor Broker Financial Requirements," and 30.74, "Clearing of System Transactions," that delete references to the current membership claims process.

FF. Membership Fee Circular

The Exchange is proposing to amend its Membership Fee Circular ("Circular") to delete two introductory paragraphs regarding certain rule requirements related to membership that will be set forth more fully in the membership rules themselves. The revised Circular will contain only information regarding membership fees.

The Exchange proposes to amend the description in the Membership Fee Circular of the fee payable by an applicant who is subject to a statutory disqualification to reflect that the rule provisions that govern such applicants are set forth in new CBOE Rule 3.18. The CBOE also proposes to clarify the fees relating to partnership agreement amendments by indicating that a fee is payable each time a member organization's bylaws, partnership agreement, or operating agreement is amended. In addition, the revised Circular will state that a CBOT exerciser, as well as other members, must pay the fingerprint processing fee.

GG. Special Members

The CBOE proposes to delete references to special members from CBOE Rules 3.12, 3.14, 3.16, 6.5, and 9.1 because all special memberships on the CBOE have expired.[26]

HH. Effectiveness of the Proposed Rule Change

The CBOE proposes to provide that the rule change will become effective 30 days from the date of its approval by the Commission. The CBOE believes that the 30-day period will provide the Exchange with an opportunity to notify the Exchange's membership of the effectiveness of the rule change and provide members who wish to grant or receive Authorization to Sell with an opportunity to do so before the amended rule provisions take effect.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.[27] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, as described more fully below, the Commission finds that various provisions of the proposal are consistent with the requirements of Sections 6(b)(1), 6(b)(4), and 6(c)(3) of the Act, and with Rules 15c3–1 and 19h–1 under the Act.[28]

A. Definitions

The Commission finds that the proposed amendments to CBOE Rule 1.1 will update and clarify CBOE Rule 1.1 and ensure consistency with other CBOE rules. Specifically, the Commission believes that the revised definition of "lessor" make clear that a lessor may conduct a public securities business, provided that the organization is approved to do so pursuant to CBOE Rule 9.1. Similarly, the revised the definition of "nominee" makes clear that all nominees need not have an authorized floor function, making the definition of "nominee" consistent with new CBOE Rules 3.8(a)(iii) and 3.8(b)(iii). In addition, the revised definition of "nominee" eliminates the provision in the current definition stating that a nominee will be deemed to be an Exchange member, thereby making the definition of "nominee" consistent with new CBOE Rule 3.8(b)(v), which states that the nominee of a member organization acting as a lessor will be deemed to be an associated person of the organization and not an individual member.

B. CBOE Rules 3.1, 3.2, and 3.3

The Commission finds that the proposed changes to CBOE Rules 3.1, 3.2, and 3.3 will clarify the rules and help to ensure consistency in the CBOE's rules. Specifically, the Commission believes that amending CBOE Rules 3.1(b)(1)(i) and (b)(1)(ii) to refer to member organizations, rather

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[26] *See* CBOE Constitution, Article II, Section 2.1(d).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(1), 78f(b)(4), 78f(c)(3), 17 CFR 240.15c3–1, and 17 CFR 240.19h–1. In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

than members, will add clarity and consistency to the CBOE's rules because only member organizations may perform the functions referred to in subparagraphs (b)(1)(i) and (b)(1)(ii).

The Commission believes that amendments to CBOE Rule 3.1(a)(3) and (4) that refer separately to the membership capacity of a nominee and the membership capacity of an individual who has registered his or her membership for a member organization make clear that both a nominee and an individual who has registered his or her membership for a member organization are CBOE members.

The Commission believes that the deletion of current CBOE Rule 3.1(b)(2), which requires compliance with Section 11(a) of the Act, will clarify CBOE Rule 3.1 by limiting its scope to the principal purpose of an Exchange membership, *i.e.*, the conduct of a public securities business, and the membership capacities that satisfy that requirement. At the same time, the Commission notes that the CBOE's rules and policies will continue to require compliance with Section 11(a) of the Act. In this regard, the Commission notes that CBOE Rule 4.2 prohibits CBOE members from engaging in conduct that violates the Act and other rules insofar as they relate to the reporting or clearance of any CBOE transactions,[20] and CBOE Rule 4.1, "Just and Equitable Principles of Trade," prohibits members and associated persons from engaging in acts or practices inconsistent with just and equitable principles of trade. In addition, CBOE Regulatory Circular RG94–11 explains the requirements of Section 11(a) of the Act to CBOE members.

The Commission believes that the proposal to amend CBOE Rule 3.2 to clarify that every individual member must be 21 years of age will help to ensure that only qualified persons will be eligible to become CBOE members. The Commission believes that the proposal to list in CBOE Rule 3.2 all of the individual membership statuses will help to inform individual members of the available individual membership statuses provided under the CBOE's rules. In addition, the Commission believes that CBOE Rule 3.2(c), which specifies the individual members who must have an authorized floor function, will help to notify individual members of the requirement applicable to them. The Commission believes that it is reasonable for the CBOE to further clarify this requirement by indicating that an individual member will be deemed to have an authorized floor function if the member is approved to act as a market maker and/or floor broker.

The Commission believes that the proposal to amend CBOE Rule 3.3 to set forth all of the member organization membership statuses will help to inform member organizations of the available member organization membership statuses provided under the CBOE's rules. The Commission also believes that the CBOE's proposal to codify in CBOE Rule 3.3(c) its long-standing policy that a clearing member or order service firm must possess at least one membership for which the organization is not a lessor will help to ensure that clearing members and order service firms are aware of the requirement. In addition, the Commission believes that the proposal to provide in CBOE Rule 3.3(d) that a member that wishes to become a different type of business entity must reapply for membership in the name of the new entity will help the CBOE to ensure that the new entity continues to satisfy the CBOE's membership requirements.

The Commission believes that the CBOE's proposal to amend CBOE Rule 3.3, Interpretation and Policy .01, to state that the limited liability company's members will be deemed principal shareholders and its members with management responsibility and its managers will be deemed executive officers will clarify the treatment of limited liability companies under the CBOE's rules.

C. CBOE Rule 3.4

New CBOE Rule 3.4 sets forth the membership requirements for entities that are not organized under the laws of one of the states of the United States. The Commission believes that the requirement under CBOE Rule 3.4 that a foreign organization register as a broker or dealer pursuant to Section 15 of the Act will help to protect investors and the public interest by ensuring that foreign CBOE members are subject to the same regulatory requirements a U.S. broker-dealers. The Commission also believes that the requirement that foreign members disclose all associated persons and all parents of the organization, including the ultimate individual beneficial owners of organization, will facilitate the CBOE's review of membership applications submitted by foreign organizations and help the CBOE to ensure that foreign applicants for membership satisfy all of the CBOE's requirements for membership.

The Commission also believes that it is reasonable for the CBOE to clarify that, in addition to satisfying the requirements of CBOE Rule 3.4, a foreign organization must satisfy the other membership qualification requirements under the CBOE's rules and Constitution, as well any additional requirements that the CBOE reasonably deems appropriate. The Commission believes that these provisions will clarify that a foreign organization, like a U.S. applicant for membership, must satisfy all of the CBOE's membership qualification requirements and provide the CBOE with flexibility to impose additional requirements that the CBOE reasonably believes are necessary with respect to foreign members.

In addition, the Commission believes that CBOE Rule 3.4 will facilitate the CBOE's examinations of foreign members, thereby helping the CBOE to enforce compliance by its foreign members with the CBOE's rules and the federal securities law, consistent with Section 6(b)(1) of the Act. The Commission also believes that CBOE Rule 3.4 will facilitate any CBOE or Commission investigation of a foreign member. In this regard, the Commission notes that CBOE Rule 3.4 requires a foreign CBOE member to maintain in English, at a location in the U.S., all of the books and records of the organization relating to its CBOE activities; to permit inspections by the CBOE and the Commission of the foreign operations of the organization related to its securities business; and to be located in a country in which an information sharing agreement, Memorandum of Understanding, or treaty enables the Commission to obtain information about securities trading in that country. In addition, CBOE Rule 3.4 requires that both a foreign member and any of its customers that utilize the organization to execute orders on the CBOE waive any applicable secrecy laws or obtain exemptions from blocking statutes.

The Commission believes that it is reasonable for the CBOE to require a foreign member to keep its financial records in accordance with U.S. accounting standards because all brokers or dealers registered under Section 15 of the Act must maintain their financial records in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"). In this regard, the Commission notes that a broker-dealer's net capital is computed under Rule 15c3–1 under the Act, in

[20] CBOE Rule 4.2 states that "[n]o member shall engage in conduct in violation of the Securities Exchange Act of 1934, as amended, rules or regulations thereunder, the Constitution or the Rules of the Exchange, or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange transactions, or any written interpretation thereof. Every member shall so supervise persons associated with the member as to assure compliance therewith."

accordance with U.S. GAAP. Accordingly, requiring a foreign member to maintain its financial records in accordance with U.S. GAAP will help the CBOE to monitor the financial status of foreign members and ensure their compliance with Rule 15c3–1 under the Act, and with Section 6(c)(3)(A) of the Act, which section provides, in part, that a national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if the broker or dealer does not meet the standards of financial responsibility prescribed by the rules of the exchange.

The Commission believes that the requirements under CBOE Rule 3.4 that a foreign member appoint a process agent in Illinois and agree to submit to the jurisdiction of the federal courts and the courts of Illinois will help a U.S. person involved in a dispute with a foreign CBOE member to pursue any available legal or equitable remedies against the member.

The Commission believes that it is reasonable for the CBOE to require a foreign member to own its CBOE membership. In addition, the Commission believes that it is reasonable for the CBOE to provide consistency with CBOE Rule 3.3, Interpretation and Policy .01 by providing in CBOE Rule 3.4, Interpretation and Policy .01 that the CBOE will deem a foreign member organized as a limited liability company to be a corporation for purposes of eligibility for membership.

D. CBOE Rule 3.5

The Commission finds that the proposed changes in CBOE Rule 3.5 will clarify the CBOE's membership requirements by indicating the criteria for denial or conditioning membership or association are applicable only to broker-dealer applicants. In addition, the Commission believes that the proposed net worth requirements will strengthen the CBOE's membership requirements and help the CBOE to deny or condition membership to individuals and organizations that have not demonstrated the ability to assume the economic responsibilities attendant to CBOE membership. In addition, the Commission believes that it is reasonable for the CBOE to indicate that it will not use an applicant's failure to pay debts that have been discharged in bankruptcy as a ground for denial or conditioning approval of the application, while reserving the right to consider fraudulent activity or other violations of just and equitable principles of trade in connection with a bankruptcy proceeding in determining whether to deny or condition approval of an applicant. The Commission also believes that it is reasonable for the CBOE to state in CBOE Rule 3.5 that any Membership Committee decision to deny or condition membership must be consistent with the provisions of CBOE Rule 3.5 and the Act.

E. CBOE Rule 3.6

The Commission believes that CBOE Rule 3.6 will clearly identify the associated persons that must be disclosed to the CBOE and approved by the Membership Committee and help to ensure that the Membership Committee has an opportunity to review the qualifications of those associated persons. CBOE Rule 3.6 also makes clear that no person may become associated with a member organization in the capacity of a direct owner or executive officer that is, or would be, required to be disclosed on Form BD unless and until the Membership Committee approves the association.

F. CBOE Rule 3.7

The Commission believes that the proposed changes in CBOE Rule 3.7 identify with greater specificity the documents that member organizations and member organization applicants must file with the CBOE, as well as the additional documents that member organizations and member organization applicants must file with the CBOE upon request. Accordingly, the Commission believes the proposed changes will more clearly notify member organizations and applicants of the documents they must file with the CBOE.

The Commission believes that the requirement that member organizations and applicants file, upon request, documents reasonably related to the member's business or proposed business on the CBOE and documents relating to the registration, governance, capital structure or ownership of the organization, will facilitate the CBOE's review of membership applications and help the CBOE to examine and verify the qualifications of an applicant for membership, consistent with Section 6(c)(3) of the Act. The requirements also should help the CBOE to enforce compliance by its members and associated persons with the Act, and the rules and regulations thereunder, and the rules of the CBOE, consistent with Section 6(b)(1) of the Act.

The Commission also believes that it is reasonable for the CBOE to add provisions in CBOE Rule 3.7 notifying members and applicants of their obligation to comply with Section 17(f) under the Act and Exchange Act Rule 17f–2. Similarly, the Commission believes that it is reasonable for the CBOE to notify members and member applicants that are registered brokers or dealers of their obligation to file and keep current Form BD and to require members and member applicants that are not registered broker-dealers to file with the CBOE and keep current a list of associated persons that must be approved by the Membership Committee pursuant to CBOE Rule 3.6(b).

The Commission believes that CBOE Rule 3.7, Interpretation .01, which specifies the documents that a limited liability company must file with the Membership Department, will clarify the CBOE's requirement with respect to limited liability companies and notify limited liability companies of the documents they must file with the Membership Department.

G. CBOE Rule 3.8

The Commission believes that the proposed changes to CBOE Rule 3.8 will clarify the CBOE's rules regarding nominees and individual members who register memberships for member organizations. By specifying requirements both for member organizations that are not lessors of memberships and for member organizations that are leasing memberships, the proposal helps to ensure that the CBOE will know which individual of a member organization will represent the organization in matters before the CBOE. In addition, by clarifying the procedures applicable to nominees and individual members who register memberships for member organization, the proposed changes should better inform CBOE member organizations and prospective member organizations of the requirements for obtaining these statuses, as well as the rights and obligations of nominees and individual members who register memberships for member organizations.

The Commission notes that the proposal provides that the nominee of a member organization that is not acting as a lessor, other than a member approved solely to transact business with the public, and an individual that registers a membership for a member organization, must have an authorized floor function. In addition, the proposal states that a nominee or individual who registers a membership for a member organization must be materially involved in the daily operation of the CBOE business activities of the member organization for which the person is a nominee or has registered his or her membership. The Commission believes that these requirements will help to

ensure that qualified persons represent member organizations in matters relating to the CBOE. In addition, the Commission believes that the requirements are consistent with Sections 6(c)(3)(A) and (B) of the Act, which provide that a national securities exchange may prescribe standards of training, experience, and competence for members or persons associated with its members.

The Commission believes that it is reasonable for the CBOE to clarify in CBOE Rule 3.8(d) that neither a nominee nor an individual member who has registered a membership for a member organization will have any personal liability, solely by virtue of being a nominee or an individual member who has registered a membership for a member organization, to the CBOE or to other members for transactions made by the nominee or individual member on behalf of the member organization. Similarly, the Commission believes that it is reasonable for the CBOE to clarify in CBOE Rule 3.8, Interpretation and Policy .01, that CBOE Rule 3.8(d) is not intended to limit any obligations between a nominee or individual member who has registered a membership for a member organization and the member organization, any responsibility that a nominee or individual member who has registered a membership for a member organization may have for obligations of the member organization by virtue of a contractual obligation or ownership relationship, or the CBOE's ability to sanction or take other remedial measures against a nominee or an individual member who has registered a membership for a member organization. The Commission believes that these changes will help to clarify the rights and obligations of members and nominees.

The Commission also believes that it is reasonable for the CBOE to provide that: (1) A member organization may designate one or more inactive nominees; (2) an inactive nominee of a member organization must become an effective nominee of the member organization, with authorized floor functions, within 90 days of approval for membership; and (3) an individual may be an inactive nominee of only one member organization. The Commission believes that these provisions will help to clarify the CBOE's policies, ensure that member organizations have an appropriate number of inactive nominees, and ensure that only qualified persons will be eligible to serve as nominees.

H. CBOE Rule 3.9

The Commission believes the proposed changes to CBOE Rule 3.9 will clarify the CBOE's application procedures and requirements by codifying several existing CBOE policies, thereby helping to notify members and applicants for membership of the CBOE's application procedures and requirements and helping to ensure compliance with those rules. In this regard, the Commission notes that the proposal codifies in CBOE Rule 3.9 requirements related to the CBOE's Floor Member Qualification Exam, which the Commission has approved previously,[30] as well as the requirement currently set forth in the CBOE's application materials (the Form U–4) that an applicant promptly update its application if any of the information contained in the application becomes inaccurate or incomplete after the date the applicant submits the materials to the CBOE and prior to approval of the application. The Commission believes that it is reasonable for the CBOE to codify these existing requirements in CBOE Rule 3.9.

CBOE Rule 3.9(e) clarifies the CBOE's use of posting periods for membership applications, applications to change a membership capacity status, and applications to change clearing members. CBOE Rule 3.9(e) also allows the Membership Committee to implement a posting requirement for other types of applications and to shorten or waive a required posting period. The Commission believes that it is reasonable for the CBOE to codify its posting requirements to notify members and membership applicants of the requirements. The Commission believes that the posting periods should provide CBOE members with an opportunity to provide the CBOE with comments and information relevant to an application, including comments relating to an applicant's fitness for membership. In addition, the Commission believes that providing the Membership Committee with the flexibility to implement a posting period for other types of applications and to reduce or waive a posting period will help the Membership Committee to utilize the posting requirements effectively.

CBOE Rule 3.9(f) makes clear that the Membership Department typically does not investigate an individual member applicant who was an individual member within the prior six months, since the person recently had been a CBOE member. CBOE Rule 3.9(f) also indicates that the Membership Department will investigate associated persons that the Membership Committee must approve pursuant to CBOE Rule 3.6(b), rather than all persons associated with an organization, as required currently under CBOE Rule 3.9(c)(1). In addition, CBOE Rule 3.9(f) states that the Membership Department may investigate any other person or organization that submits an application pursuant to CBOE Rule 3.9(a).

The Commission believes that CBOE Rule 3.9(f), as amended, will ensure that the Membership Department conducts necessary investigations of applicants for membership and of associated persons that the Membership Committee must approve pursuant to CBOE Rule 3.6(a), thereby helping to ensure that only qualified individuals and organizations become CBOE members or approved associated persons. The Commission believes that the provision in CBOE Rule 3.9(f) indicating that the Membership Department may conduct a less extensive review of an individual member applicant who was an individual member within the previous six months will provide the Membership Department with flexibility in reviewing the applications of individuals whom the Membership Department has investigated recently. The Commission notes, in addition, that the CBOE will conduct a more extensive review of an individual member applicant who was a member within the previous six months if such a review is warranted.[31] The Commission believes that the provision in CBOE Rule 3.9(f) allowing the Membership Department to investigate any other person or organization that submits an application pursuant to CBOE Rule 3.9(a) clarifies the Membership Department's authority and ensures that the Membership Department will have the flexibility to conduct necessary investigations.

The Commission believes that the requirements in CBOE Rule 3.9 applicable to a member seeking to change the clearing member that guarantees the member's CBOE transactions will help to ensure the financial integrity of CBOE members. Specifically, CBOE Rule 3.9 requires a member seeking to change clearing members to submit an application to the Membership Department, along with a financial statement setting forth the applicant's assets and liabilities. In addition, the application to change clearing members must be posted, unless the clearing member(s) that will not longer guarantee the applicant's CBOE transactions waives the posting

[30] *See* Membership Qualification Exam Order, *supra* note 18.

[31] *See* June 9 Conversation, *supra* note 17.

requirement. The Commission believes that the posting requirement will allow the clearing member(s) that will no longer clear the applicant's CBOE transactions, and other members, to notify the Membership Department of outstanding liabilities that may be relevant to the applicant's qualifications for membership. In addition, the information regarding the applicant's financial standing should help the new clearing member to manage the risk associated with the applicant's trading activities.

The Commission believes that CBOE Rule 3.9, Interpretation and Policy .02, which allows the Membership Committee to disapprove the name change application or membership application of an organization with a name that is confusingly similar to the name of an existing member organization will help to avoid confusion and help the CBOE to maintain a fair and orderly market.

I. CBOE Rule 3.10

The Commission finds that the provisions in CBOE Rule 3.10 requiring an applicant for membership, for certain membership statuses, and for approved associated person status to become effective in the status within 90 days will clarify the CBOE's rules and notify members of the CBOE's requirements. In addition, the Commission believes that it is reasonable for the CBOE to provide a lessor with six months to become effective in the status to allow lessors sufficient time to purchase a membership.

J. CBOE Rule 3.11

The Commission believes that the proposal to amend CBOE Rule 3.11 to reflect the CBOE's current procedures for notifying the CBOE membership of the effectiveness of any membership, membership status, or associated person status will help to inform members of the CBOE's current practice for providing such notifications. The Commission believes that it is reasonable for the CBOE to eliminate the requirement in CBOE Rule 3.11 that the CBOE mail notices to members because the Exchange Bulletin now is forwarded to all members and will accomplish the same purpose as mailing notices to members. In addition, the Commission believes that it is reasonable for the CBOE to eliminate the requirement that notices of approved statuses be posted on the CBOE's bulletin board because the notices relate to statuses that have been approved, rather than to pending applications on which members may wish to submit comments.

K. CBOE Rule 3.12

The Commission finds that the provisions of CBOE Rule 3.12 that restate current provisions of the CBOE's rules do not raise new regulatory issues. The Commission believes that the new reference in CBOE Rule 3.12 to an Authorization to Sell will help to ensure clarity and consistency in the CBOE's rules.

L. CBOE Rule 3.13

The Commission believes that the proposed amendments to CBOE Rule 3.13 will help to notify members of the CBOE's requirements and procedures for the purchase of memberships, thereby facilitating compliance with the CBOE's rules. In addition, the Commission finds that the provisions limiting the purchase of memberships to those approved by the Membership Committee to be an owner or lessor will help to ensure that only qualified individuals and organizations purchase CBOE memberships. The Commission finds that the provision requiring payment for a membership within two business days will clarify the CBOE's rule and help to facilitate the orderly transfer of CBOE memberships.

M. CBOE Rule 3.14

The Commission believes that amending CBOE Rule 3.14(a) to provide that the lowest offer to sell a membership will be published in the Exchange Bulletin may better inform members of sale offers and facilitate the sale of memberships.

The Commission believes that it is reasonable for the CBOE to amend CBOE Rule 3.14(b) to apply its provisions to lessees as well as members as a means to clarify the CBOE's authority to sell a membership if the lessee satisfies one of the conditions listed in CBOE Rule 3.14(b).

The Commission believes that amending CBOE Rule 3.14(c)(iii) to require a transferor to maintain an interest at least equal in value to the current market price of the membership will help to ensure that a transferor maintains a substantial ownership interest in the organization to which the transferor transfers his or her membership. The Commission believes that the proposed change will help to preserve the original intent of this provision in light of the increase in prices for CBOE memberships.

The Commission believes that it is reasonable for the CBOE to adopt the Authorization to Sell procedures specified in CBOE Rule 3.14(d). As the CBOE notes, CBOE Rule 3.14(d) expands upon the current provisions of CBOE Rule 3.15, Interpretation and Policy .01, which allow the CBOE to recognize and give effect to a valid instrument by which a member, in consideration of a loan or guarantee of a loan by another member for the purpose of purchasing a membership, has authorized the lending or guaranteeing member to sell that membership.

The Commission believes that CBOE Rule 3.14(d) expands upon and strengthens the CBOE's current rule by clarifying the rights and obligations of both a grantee and a membership owner that grants an Authorization to Sell. For example, CBOE Rule 3.14(d) states that a membership owner and a grantee may enter into a written contract setting forth the circumstances under which the grantee may exercise its authority to sell the membership. In addition, CBOE Rule 3.14(d) provides that any breaches of the written contract may be redressed through arbitration under Chapter XVIII of the CBOE's rules or other means permitted under Chapter XVIII. CBOE Rule 3.14(d) also clarifies, among other things, that a membership owner may grant only one Authorization to Sell a particular membership; that a grantee shall have all authority relating to the sale of a membership; and that a grantee shall have a security interest, which the grantee may act to perfect, in any proceeds from the sale of the membership that the grantee is entitled to receive pursuant to CBOE Rule 3.15(b). The Commission believes that the Authorization to Sell provisions should function with the revised claims process established in CBOE Rule 3.15, as discussed below, to provide an orderly and efficient procedure for resolving claims among CBOE members.

N. CBOE Rule 3.15

The Commission believes that the revised membership claims process will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by enhancing the CBOE's procedures for resolving claims between members. The Commission believes that the revised membership claims process is a reasonable effort by the CBOE to reduce the administrative burdens associated with its current claims process and to provide members with a fair and efficient means for resolving claims between the grantee of an Authorization to Sell and the membership owner who granted the Authorization to Sell.

CBOE Rule 3.15 revises the membership claims process by providing that the only possible claimant under the membership claims

process will be the grantee of an Authorization to Sell. Specifically, CBOE Rule 3.15 provides, among other things, that the grantee must submit in writing within two business days any claims related to the CBOE business activities of a member whose membership was sold.[32] The member whose membership was sold has five business days from the date of the sale to acknowledge or contest the claims. Contested claims will be resolved through arbitration under Chapter XVIII of the CBOE's rules or through other means permitted by Chapter XVIII.

Although the CBOE, the OCC, and other CBOE members will not be able to pursue claims against a member that has granted an Authorization to Sell under the revised claims process, they will continue to have the ability to pursue claims against the member who has granted an Authorization to Sell through arbitration under Chapter XVIII of the CBOE's rules or through other means permitted under Chapter XVIII. Accordingly, the Commission believes that the revised membership claims process, together with the CBOE's arbitration facilities, will provide fair procedures for the resolution of disputes involving CBOE members, the CBOE, or the OCC when an Authorization to Sell has been granted.

O. CBOE Rule 3.16

The Commission believes that the proposed changes to CBOE Rule 3.16 will help to notify members of the circumstances under which a CBOT exerciser membership terminates. In addition, the proposed changes will clarify the CBOE's rules by moving provisions relating to leased memberships from CBOE Rule 3.16 to CBOE Rule 3.17.

P. CBOE Rule 3.17

The Commission believes that new CBOE Rule 3.17 will clarify the requirements, rights, and obligations applicable to leased memberships. For example, CBOE Rule 3.17 makes clear that the CBOE must pre-approve a lease; that the CBOE will bear no liability to a lessor or lessee in connection with its review and approval of a lease agreement; and that the CBOE may specify additional provisions that must be included in a membership lease, in addition to those designated in CBOE Rule 3.17. CBOE Rule 3.17 also clarifies that a lessee must file a lease and any amendments to the lease with the Membership Department and notify the Membership Department of any termination of the lease before the termination becomes effective.

Consistent with the revised membership claims process, CBOE Rule 3.17 indicates that a lessor will have no liability for claims against a lessee solely by virtue of being a lessor of the membership. However, CBOE Rule 3.17 also states that this provision is not intended to limit or define any responsibility a lessor may have for claims against a lessee by virtue of a contractual obligation or ownership relationship between the lessor and lessee beyond the lease of the membership. Similarly, to provide consistency with the revised membership claims process, the Exchange is eliminating the current provision of CBOE Rule 3.16(b) which states that any division of rights and responsibilities between the lessor and lessee will not affect the lessor's obligation to pay all amounts due to the CBOE.

CBOE Rules 3.17(e) and 3.17(f) contain provisions that apply when a lessor sells or transfers a membership that is being leased. Specifically, CBOE Rule 3.17(e) requires a purchaser or transferee of a membership that is being leased to lease the membership to the lessee pursuant to the terms of the existing lease agreement for a period of 20 business days following the date of the transfer to the purchaser or transferee. The Commission believes that the 20-day period will provide a lessee with time to obtain the lease of another membership, thereby helping to ensure that a lessee will be able to continue its business uninterrupted if the membership it is leasing is sold or transferred during the term of the lease. By allowing a lessee to continue in business without interruption, the proposal will protect lessees and contribute to the maintenance of a fair and orderly market on the CBOE.

CBOE Rule 3.17(f) clarifies the application of CBOE Rule 3.17(e) by specifying the allocation of amounts paid under a lease agreement when the membership being leased is sold or transferred. The Commission believes that CBOE Rules 3.17(e) and 3.17(f) will notify members of the rights and obligations of a lessor, lessee, and transferee when a leased membership is sold or transferred.

Q. CBOE Rule 3.18

As described more fully above, the CBOE proposes to revise its procedures for determining whether to permit a member or associated person who becomes subject to a statutory disqualification to continue in membership or association and, if so, whether to condition such continuance in membership or association. The procedures adopted in new CBOE Rule 3.18 are similar to the procedures set forth in National Association of Securities Dealers ("NASD") Rules 9520 through 9526, which the Commission approved previously.[33] The Commission finds that new CBOE Rule 3.18 is consistent with Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Commission believes that CBOE Rule 3.18 should enhance investor protection by enabling more rapid identification of statutorily disqualified individuals. In this regard, the Commission notes, for example, that CBOE Rule 3.18 requires a member or associated person that becomes subject to a statutory disqualification to submit an application seeking to continue in membership or association to the Membership Department within 10 days of becoming subject to a statutory disqualification, rather than within 30 days of becoming subject to a statutory disqualification, as provided under current Policy .02 sets forth a member's obligation to notify the Membership Department of the name of an associated person who is or becomes subject to a statutory disqualification, the person's capacity with the member, and the nature of the statutory disqualification.

CBOE Rule 3.18 further expedites the CBOE's current procedures by requiring a panel of the Membership Committee to hold a hearing within 14 days following the receipt of an application to continue in membership or association, or the initiation of a proceeding by the CBOE if a member or associated person subject to a statutory disqualification fails to submit the required application to continue in membership or association. Following the hearing, the panel will present its recommended decision to the Membership Committee, which may ratify or amend the decision. The Membership Committee will present its decision to the Executive Committee, which may determine within seven days to review the Membership Committee's

[32] As noted above, CBOE Rule 3.15 defines claims related to CBOE business activities to include, among other things, claims associated with CBOE transactions and loans or loan guarantees for the purpose of purchasing a CBOE membership. The Exchange will determine whether a claim is related to CBOE business activities.

[33] *See* Securities Exchange Act Release No. 40853 (December 28, 1998), 64 FR 555 (January 5, 1999) (order approving File No. SR–NASD–98–57).

decision. If the Executive Committee does not order a review of the Membership Committee's decision, the Membership Committee's decision will become the final decision of the CBOE. If the Executive Committee orders a review of the Membership Committee's decision, the Executive Committee or a panel of the Executive Committee, whose decision must be ratified by the Executive Committee, will conduct the review. The Executive Committee's decision, which must be in writing, will become the final decision of the CBOE.

The Commission believes that CBOE Rule 3.18 will streamline the CBOE's procedures and allow the CBOE to proceed more expeditiously to discontinue or condition the membership or association of a member or associated person who is or becomes subject to a statutory disqualification. The CBOE's revised procedures should protect investors and the public interest by helping to ensure that CBOE members and associated persons are qualified and eligible for membership.

The Commission believes that it is reasonable for the CBOE to provide in CBOE Rule 3.18, Interpretation and Policy .01, that the CBOE may waive the provisions of CBOE Rule 3.18 when a proceeding is pending before another self-regulatory organization to determine whether to permit an associated person to continue in membership with the member notwithstanding a statutory disqualification, and to provide that, if the CBOE waives the provisions of CBOE Rule 3.18, the Department of Financial and Sales Practice Compliance will determine whether the CBOE will concur in any filing made under Rule 19h–1 of the Act by another self-regulatory organization. The Commission finds that this provision is consistent with Rule 19h–1 under the Act.[4]

R. CBOE Rule 3.19

The Commission finds that new CBOE Rule 3.19, a revised version of current CBOE Rule 3.17, will clarify that a member's membership status will terminate automatically when the member does not possess a membership and when a member organization has no nominee or member who has registered a membership for the member organization. The Commission believes that new CBOE Rule 3.19 will help to notify members of the CBOE's rules regarding the termination of membership status and provide consistency with the CBOE's requirement that a member organization select a nominee or member who has registered a membership for the member organization to represent the organization in all matters relating to the CBOE.

S. CBOE Rule 3.20

The Commission believes that the new requirements in CBOE Rule 3.20 that a member organization provide written notice to the Membership Department and the Department of Financial and Sales Practice Compliance of the adoption of a plan of liquidation or dissolution, and any actual liquidation or dissolution, will protect investors and the public interest by helping the CBOE to monitor the status and financial condition of its members.

T. CBOE Rule 3.21

The Commission believes that the deletion from CBOE Rule 3.21 of provisions allowing the CBOE to withhold the distribution of the proceeds of a sale of a membership if the seller is not current in the payment of CBOE fees or the submission of various fillings will ensure that CBOE Rule 3.21 is consistent with the CBOE's revised claims process.

U. CBOE Rules 1.1(hh), 3.20, 3.21, 3.22, 3.22A, and 6.20

The Commission believes that it is reasonable for the CBOE to delete CBOE Rules 1.1(hh), 3.20, 3.21, 3.22, 3.22A, and 6.20, Interpretation and Policy .03, which relate to government securities options permits, because all of the government securities options permits have expired. Accordingly, the Commission believes that eliminating these rules will clarify the CBOE's rules.

V. CBOE Rule 3.25

The Commission believes that the proposed changes to CBOE Rule 3.25 will clarify the CBOE's rules regarding a membership held in trust, thereby facilitating compliance with the CBOE's rules and requirements for memberships held in trust. Among other things, CBOE Rule 3.25, as amended, clarifies that a member transferring a membership into a trust must transfer the membership into a living trust. In addition, CBOE Rule 3.25 clarifies that the CBOE will deem the membership to have reverted to the Trust Member if the membership is released from the trust, the trust terminates, or the trust agreement no longer complies with the requirements of CBOE Rule 3.25. The requirement that a Trust Member submit to the Membership Department amendments to the trust agreement, any release of the membership out of trust, and any termination of the trust will help the CBOE monitor the status of a membership held in trust and determine whether a trust continues to satisfy the requirements of CBOE Rule 3.25.

W. CBOE Rule 3.27

The Commission believes that it is reasonable for the CBOE to amend CBOE Rule 3.27 and Regulatory Bulletin 00–37 to provide consistency with the revised membership claims process.

X. CBOE Rule 3.28

The Commission believes that new CBOE Rule 3.28 will provide necessary flexibility in the administration of the rules in Chapter III of the CBOE's rules by allowing the Membership Committee and/or the Membership Department to extend any time limit imposed under Chapter III of the CBOE's rules, relating to membership. The Commission notes that new CBOE Rule 3.28 is similar to current CBOE Rule 17.13, which allows the CBOE to extend time limits for the submission of materials required under Chapter XVII of the CBOE's rules.

Y. CBOE Rule 3.29

The Commission believes that new CBOE Rule 3.29 will facilitate the orderly administration of the CBOE's rules by clarifying that the Membership Committee and/or the Membership Department may exercise all of the authority granted to the CBOE under Chapter III of the CBOE's rules. In addition, CBOE Rule 3.29 will clarify the Membership Committee's ability to delegate authority to the Membership Department, thereby helping to ensure that the Membership Committee will be able to focus its attention on more significant membership applications and approvals.

Z. CBOE Rule 6.76A

The Commission believes that the automated billing process established in CBOE Rule 6.76A will streamline the processing and payment of bills for brokerage services performed by floor brokers and order service firms. The Commission believes that new CBOE Rule 6.76A will establish an efficient and effective automated billing process that will facilitate the prompt payment of amounts market makers owe to floor brokers and order service firms while providing market makers with an opportunity to review and dispute bills submitted by floor brokers and order service firms. In this regard, CBOE Rule 6.76A states that a market maker that disputes a bill may pursue a claim against the floor broker or order service firm in arbitration under Chapter XVIII of the CBOE's rules or through other means permitted by Chapter XVIII. In addition, the Commission notes that the

CBOE may discipline a floor broker or order service firm for violating CBOE Rule 4.6 by submitting a false statement to the CBOE if the floor broker or order service firm improperly instructs the CBOE to bill a market maker for brokerage fees which the floor broker or order service firm is not entitled to receive.

The Commission believes that CBOE Rule 6.76A provides a detailed description of the automated billing system that will notify members of the procedures and obligations associated with the new billing system, including monthly deadlines for submitting bills and instructions under the new procedures. In addition, CBOE Rule 6.76A(a)(vii) provides that a clearing member may instruct the CBOE's accounting department not to draft the clearing member for brokerage fees that would cause the market maker to have a negative balance in the market maker's account at the clearing member, thereby clarifying that a clearing member will not serve as a guarantor for a market maker's brokerage service bills. CBOE Rule 6.76A also establishes procedures for making deductions from a market maker's account if a clearing member instructs the accounting department not to draft the clearing member pursuant to CBOE Rule 6.76A(a)(vii) and the account subsequently has a positive balance.

The Commission notes that the automated billing system established in CBOE Rule 6.76A is similar to the Integrated Billing System established in CBOE Rule 3.23 for CBOE invoices, which the Commission has approved.[34]

The Commission believes that the fees that the CBOE proposes to assess to help to defray the CBOE's cost of administering the automated billing process provides for the equitable allocation of reasonable dues, fees, and other charges among members, consistent with Section 6(b)(4) of the Act.

AA. CBOE Rules 6.72, 6.78 and 8.5

The Commission believes that it is reasonable for the CBOE to amend CBOE Rules 6.72, 6.78, and 8.5 to provide that the CBOE will post notice of a clearing member's revocation of its letter of authorization only at the request of the clearing member because, according to the CBOE, most revocations are routine and arise because a member is terminating from membership or is changing the clearing member that guarantees the member's Exchange transactions.

The amendments to CBOE Rule 6.72 also clarify the rules applicable to letters of authorization by stating that: (1) A revocation will not relieve a clearing member of responsibility for transactions guaranteed prior to the effective date of the revocation; and (2) a floor broker may have only one letter of authorization guarantee from a clearing member in effect at a time. The Commission believes that these amendments will help to notify members of the rules applicable to floor brokers' letters of authorization.

In addition, the Commission believes that it is reasonable for the CBOE to amend CBOE Rule 8.5 to clarify that a market maker that clears transactions through more than one clearing member must have a letter of guarantee issued by each clearing member to cover the CBOE transactions executed by the market maker through the clearing member. The Commission believes that this amendment to CBOE Rule 8.5 will protect investors and the public interest by helping to ensure the financial integrity of market makers.

The Commission also believes that it is reasonable for the CBOE to amend CBOE Rule 8.5, Interpretation and Policy .04, to provide that the CBOE will notify each clearing corporation that has approved a letter of guarantee for a market maker of the issuance and revocation, if applicable, of all other letters of guarantee issued to the market maker in respect of transactions subject to the rules of any other clearing corporation. The Commission believes that the proposed change will help to inform a clearing corporation of the financial status of a market maker for whom the clearing corporation has approved a letter of guarantee.

BB. CBOE Rule 8.9

The Commission believes that new Interpretation and Policy .08 to CBOE Rule 8.9 will clarify the obligations of members by stating that each participant in a joint account will be jointly and severally liable for any losses incurred by the joint account. In addition, Interpretation and Policy .08 will provide consistency with CBOE Rule 3.8(d) by indicating that when a joint account participant that is the nominee of a member organization, or an individual who has registered his or her membership for a member organization, and the participant is not acting as an independent market maker pursuant to CBOE Rule 3.8(f), the member organization, rather than the participant, will be liable for losses incurred by the joint account.

CC. CBOE Rules 9.3, 10.11, and 15.1

The Commission believes that new Interpretation and Policy .01 to CBOE Rule 9.3 will clarify an existing CBOE requirement by stating that the application that associated persons who are representatives must file with the CBOE is the Form U–4. Similarly, Interpretation and Policy .01 will set forth the existing requirement that a person required to file Form U–4 also must file any required amendments to Form U–4. The Commission believes that the proposed changes will help to notify associated persons of their obligations with respect to Form U–4.

The Commission believes that the proposed amendment to CBOE Rule 10.11 will provide clarity and consistency in the CBOE's rules by referring to the claims resolution procedures established in CBOE Rule 3.15. Similarly, the proposed amendments to Interpretation and Policy .01 to CBOE Rule 15.1 will revise references to specific CBOE rules to reflect the changes to the CBOE's membership rules.

DD. CBOE Rule 18.2

The Commission believes that CBOE Rule 18.2, Interpretation and Policy .01, which will ensure that clearing members receive notice of proceedings involving disputed trades, is reasonable because it will help to keep clearing members apprised of proceedings involving members whose trades the clearing member has guaranteed.

EE. CBOE Rules 6.72, 24A.15, 26.11, 26.13, and 30.74

The Commission believes that the conforming changes to CBOE Rules 6.72, 24A.15, 26.11, 26,13, and 30.74, will provide clarity and consistency in the CBOE's rules by deleting references to the current membership claims process.

FF. Membership Fee Circular

The Commission believes that the amendments to the Circular will clarify the Circular by limiting the Circular solely to information regarding membership fees while moving the deleted portions of the Circular to the CBOE's rules. The Commission believes that the revised fees set forth in the Circular provide for the equitable allocation of reasonable dues, fees, and other charges among members, consistent with Section 6(b)(4) of the Act.

GG. Special Members

The Commission believes that the deletion of references to special members in CBOE Rules 3.12, 3.14,

[34] See Securities Exchange Act Release No. 20962 (May 15, 1984), 49 FR 21586 (May 22, 1984) (order approving File No. SR–CBOE–84–10).

3.16, 6.5, and 9.1 will clarify the CBOE's rules because all special memberships on the CBOE have expired.[35]

HH. Effectiveness of the Proposed Rule Change

The Commission believes that it is reasonable for the proposed rule change to become effective 30 days from the date of its approval by the Commission. The Commission believes that the 30-day period will provide the CBOE with an opportunity to notify the Exchange's membership of the effectiveness of the rule change.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 strengthens the CBOE's proposal by providing additional requirements for foreign organizations seeking to become CBOE members. Accordingly, the Commission believes that granting accelerated approval of Amendment No. 3 is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[36]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–CBOE–99–15 and should be submitted by August 18, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–CBOE–99–15), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19055 Filed 7–27–00; 8:45 am]

BILLING CODE 8010–01–M

[35] *See* note 22, *supra.*

[36] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43059; File No. SR–Phlx–00–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Certain PACE Rule Provisions

July 20, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On July 18, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 under the Act,[6] proposes to implement a change to the Phlx Automated Communication and Execution ("PACE") System. By incorporating two provisions into Phlx Rule 229 (concerning PACE), this change will provide an entering member organization with additional elections with respect to certain features of PACE similar to those currently provided for in the Rule. Specifically, the language "unless the entering member organization otherwise elects" is proposed to be added to both Supplementary Material .10(a)(i) and (ii).

The proposed change to Supplementary Material .10(a)(i) provides that round-lot orders up to 599 shares, and the round-lot portion of PRL[7] limit orders up to 599 shares, that are entered at the PACE Quote, shall be executed at the PACE Quote.[8] This proposal would codify that such execution guarantee can either be provided by the PACE System automatically or by the specialist, at the election of the entering member. This amendment does not change the fundamental principle of PACE that the specialist must provide the PACE Quote to eligible orders.

Second, the revision would permit the entering member organization to elect whether certain eligible non-marketable limit orders will be executed via PACE in accordance with the "primary market print protection" provision set forth in Supplementary Material .10(a)(ii) of the PACE Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange modified its proposed change to the text of Supplementary Material .10(a)(i). The modification clarifies that qualifying marketable limit orders will continue to be executed at the price quoted in the Phlx Automated Communication and Execution System, whether or not executed automatically. *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Steven Johnston, Special Counsel, Division of Market Regulation, dated July 17, 2000 ("Amendment No. 1").

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has represented that the proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(f)(6) under the Act. *Id.*

[6] 17 CFR 240.19b–4.

[7] The first paragraph of Rule 229 defines a PRL as a combined round-lot and odd-lot order.

[8] The PACE Quote is defined in Rule 229 as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate.

prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend to an entering member organization the ability to control all aspects of the handling of its orders in conjunction with the other elections already provided within the rule. Currently, entering member organizations can make an election regarding the price improvement provisions of Supplementary Material .07. An entering member organization may also elect manual, instead of default automatic execution of market orders if automatic execution would have occurred at a price outside of the day's primary market high-low range ("out-of-range protection"). Finally, under Supplementary Material .10(a)(iii), member organizations that enter limit orders after the opening may elect to have such orders executed manually at or within the New York market high-low range of the day. similar to the proposed elections, these provisions are intended to give member organizations greater flexibility as to the disposition of their orders, which should, in turn, enhance the Exchange's competitive position among firms seeking an appropriate venue for the execution of their order flow.[9]

The PACE System, as described in Rule 229, is the Exchange's automated order routing, delivery, execution and reporting system on the equity floor. PACE is available to member organizations, who are referred to here as either the entering member organizations sending order flow or the specialist on the equity trading floor, both of whom are users of the PACE System.

As stated above, the proposal is designed to provide entering member organizations with two elections similar to those currently noted within the rule. Member organizations may choose not to receive certain guarantees for many different reasons, which are often specific to their types of customers and business, as well as specific to certain securities, order types and sizes.

First, Supplementary material .10(a)(i) generally provides that marketable limit orders up to 599 shares entered at the PACE Quote shall be executed at the PACE Quote. The rule does not currently state that such orders are automatically executed, only that they are to be executed at the PACE Quote. Specifically, the proposal reflects that the automatic execution price guarantee would be available if the order is executed by the specialist or automatically.

Second, the entering member organization could elect not to receive the execution guarantee resulting from primary market trading at that price. A member organization may not wish, for example, to receive a partial execution of 500 shares of a 10,000-share order, if only 1,000 shares trade on the primary market.[10]

The Exchange believes that automatic and other order handling features, such as those provided by PACE, generally facilitate the ability of members firms to satisfy their best execution and other fiduciary obligations to their customers when routing orders to the Phlx. However, as the Commission has recognized, there is no single benchmark for what constitutes "best execution" for all customers, all firms and all orders. Member firms consider a variety of factors in determining whether to route their equity orders to the Phlx or to handle their orders in some other fashion, and the Exchange believes that a "one size fits all" execution and orer handling methodology for PACE-eligible orders could, in certain circumstances, be an impediment to firms in choosing to route eligible orders to the Phlx floor. The Phlx believes that entering members should have the greatest degree of flexibility in determining, based upon their business, their customers' desires, and the specific capabilities and characteristics of the Phlx equity floor, whether PACE-eligible orders would be equally well handled (or handled better) manually in some fashion other than that provided for in the pre-programmed PACE System.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act in general,[11] and furthers the objectives of Section 6(b)(5)[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to promote just and equitable principles of trade, by extending an entering member organization's election ability to control all aspects regarding the processing of that firm's orders. This flexibility should increase the Exchange's competitive position as well as provide a more tailored execution venue to member organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither received nor solicited written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of filing or such shorter period as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of

[9] Footnote deleted. Telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission, July 19, 2000.

[10] Amendment No. 1. supra.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–58 and should be submitted by August 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19053 Filed 7–27–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB): Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA): Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

1. Statement for Continuing Eligibility, Supplemental Security Income (SSI) Cases—0960–0416. SSA uses form SSA–8203–BK for high-error-profile (HEP) redeterminations completed by field offices. SSA employees conduct telephone or face-to face interviews with SSI recipients and representative payees of SSI recipients and document the information gathered during the interview on an SSA–8203–BK. Occasionally, due to systems limitations, the form is mailed to recipients for completion. A tear-off sheet (Pages 7 and 8 of the form) is given to recipients at the conclusion of a face-to-face interview or mailed to recipients at the completion of the telephone interview. It includes information about how, what, when, where, and why SSI recipients report when there is a change in income, resources, or living arrangements. The information collected is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. Periodic collection of this information is the only way SSA can make these determinations. The respondents are recipients of title XVI (SSI) benefits or their representative payees.

Number of Respondents: 920,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 260,667 hours.

2. Claimant's Statement About Loan of Food or Shelter (SSA–5062), and Statement About Food or Shelter Provided to Another (SSA–L5063)—0960–0529. Forms SSA–5062 and SSA–L5063 are used to obtain statements about food and/or shelter provided to an SSI claimant. SSA uses the information to determine whether food and/or shelter are a bona fide loan or should be counted as income. This determination can affect eligibility for SSI and the amount of SSI benefits payable. The respondents are claimants for SSI benefits and individuals who provide (loan) food or shelter to SSI Claimants.

	SSA–5062	SSA–L5063
Number of Respondents	65,540	65,540
Frequency of Response	1	1
Average Burden Per Response (minute)	10	10
Estimated Annual Burden (hours)	10,923	10,923

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Request for Withdrawal of Application—0960–0015. Form SSA–521 is completed by SSA when an individual wishes to withdraw his or her application for Social Security benefits. The respondents are individuals who wish to withdraw their applications for benefits.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8,333 hours.

2. Statement of Self-Employment Income—0960–0046. SSA uses the information on Form SSA–766 to expedite the payment of Social Security benefits to an individual who is self-employed and who is establishing insured status in the current year. The respondents are self-employed persons.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 417 hours.

3. Certification by Religious Group—0960–0093. The data that SSA collects via form SSA–1458 is used to determine if the religious group meets the qualifications set out in section 1402(g) of the Internal Revenue Code permitting its members to be exempt from payment of certain Social Security taxes. The respondents are spokespersons for a religious group or sect.

Number of Respondents: 180.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 45 hours.

4. You Can Make Your Payment by Credit Card—0960–0462. Forms SSA–4588 and SSA–4589 provide information to SSA on the debtor's

[13] 17 CFR 200.30–3(a)(12).

name, Social Security Number, credit card number, the amount being paid and the credit card type so that a remittance can be credited to the debtor's account. The respondents are Title II (Old-Age, Survivors and Disability Insurance) and Title XVI (SSI) debtors, and citizens requesting material through SSA.

Number of Respondents: 19,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,583 hours.

5. Statement Regarding Contributions—0960–0020. To determine eligibility of child applicants to Social Security benefits, SSA must collect information about the source of support and the amount of contributions. SSA uses the form SSA–783 for this purpose. The respondents are individuals who provide information to SSA about the child's sources of support.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 7,500 hours.

6. Medical Parking Permit Application—0960–NEW. SSA issues medical parking assignments at SSA-owned and leased facilities to individuals who have a medical condition that meets the criteria for medical parking. In order to issue a medical parking permit, SSA must obtain medical evidence from the applicant's physician. SSA uses the information collected on form SSA–3192 to determine whether the individual qualifies for a medical parking permit and to issue the permit. The respondents are physicians of applicants for medical parking permits.

Number of Respondents: 144.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 144 hours.

7. Authorization for Source to Release Information to SSA—0960–NEW. SSA must obtain sufficient medical evidence to make eligibility determinations for Social Security disability benefits and SSI payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use one of the forms SSA–827, SSA–827–OP1 or SSA–827–OP2 to provide consent for the release of information. Generally, the State Disability Determination Services completes the form(s), based on information provided by the applicant, and sends the form(s) to the designated medical source(s).

Number of Respondents: 3,853,928.

Frequency of Response (Average per case): 4.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 770,786 hours.

8. Lump-Sum Death Payment Application (Modernized Claims System)—0960–NEW. The information is collected through a computerized system and is required to authorize payment of the lump-sum death benefit to a widow, widower, or children as defined in Section 202(i) of the Social Security Act. The respondents are widows, widowers or children who apply for a lump-sum death payment.

Number of Respondents: 833,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 277,667 hours.

9. Electronic Death Registration (EDR) Survey—0960–NEW.

Background Information

In January 1997, the report "Toward an Electronic Death Registration System in the United States: Report of the Steering Committee to Reengineer the Death Registration Process" was prepared by a task force representing Federal agencies (the National Center for Health Statistics and the Social Security Administration) and professional organizations representing funeral directors, physicians, medical examiners, coroners, hospitals, medical records professionals, and vital records and statistics officials (NAPHSIS). The committee examined in detail the feasibility of developing electronic death registration in the United States. The conclusion of the report was that the introduction of automated registration processes in the States is a viable means to resolve several historical and continuing problems in the process of death registration.

Death certificates are used in the United States for administrative and public health purposes. For nearly a century the States have maintained centralized vital records agencies to collect, process and archive death certificates. Death records are universally recognized as the primary source of death information, but registration processes remain labor intensive, employ disparate and limited automated procedures, and require several professionals at different locations to complete each of the more than 2.3 million death certificates registered each year.

Even though each State has laws requiring the registration of death records within a specific time period, a significant number of certificates are not appropriately filed, may contain incorrect or inconsistent entries, or are not finalized until many weeks after the death occurred.

The States and Federal agencies understand the shortcomings of death registration methods currently practiced in the United Sates. Now that recent advances in computer and network access technology allow for the practical and efficient development and implementation of automated systems to register death information, several registration areas have independently pioneered electronic death registration methods. These different approaches will serve as the basis for developing standardized EDR attributes, methods and processes in order that the States may successfully implement electronic death registration to satisfy administrative and statistical death information needs.

Information Collection

In support of the EDR project, SSA entered into a contract with the National Association for Public Health Statistics and Information Systems to foster the adoption of a standardized form of EDR throughout the country. As the beginning step in the process, this survey is planned to provide a current picture of the readiness of the States to adopt EDR. This will, in turn, assist SSA to direct available funding anticipated in future years to those States that demonstrate sufficient resources, available technical expertise, and the political will and statutory readiness to implement EDR within the contract timeframe. Respondents to the survey will be officials from States, U.S. Territories and the city of New York with the knowledge and expertise to complete the survey. One survey will be sent to each State and territory and New York City.

Number of Respondents: 55.

Frequency of Response: 1.

Average Burden Per Response: 2 hours.

Estimated Annual Burden: 110 hours.

Dated: July 21, 2000.

Frederick W. Brickenkamp,

SSA Reports Clearance Officer.

[FR Doc. 00–19041 Filed 7–27–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Bureau of European Affairs

[Public Notice 3374]

Irish Peace Process, Cultural and Training Program Support

Introduction

The United States Department of State announces an open competition for an assistance award. Nongovernmental organizations may apply to establish and manage a program that assists young people from disadvantaged areas of designated counties in Ireland and Northern Ireland that suffer from sectarian violence and high unemployment to enter and work in the United States. Program objectives include developing job skills and conflict resolution abilities in a diverse, cooperative, peaceful, and prosperous environment. Once these skills are achieved, program participants can return home better able to contribute toward economic regeneration and domestic tranquility. The program shall promote cross-community and cross-border understanding to build grassroots support for long-term peaceful coexistence. A cooperative agreement will be subject to the availability of funds.

Authority

Statutory authority for this cooperative agreement is contained in the Irish Peace Process Cultural and Training Program Act of 1998, Public Law 105–319.

Eligible Applicants

Eligible applicants include all nongovernmental institutions, private organizations, and commercial entities.

Availability of Funds

Approximately $3 million remain for expenditure from appropriated funds. Additional funding may be appropriated for this program prior to the expiration of statutory authority in 2005.

Continuing awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

Primary objectives for this program are to develop employment skills, impart conflict resolution ability, provide social services support for program participants, source jobs in the USA in designated sectors, match program participants and employers for visa certification, and develop information technology support to promote program objectives, track activity, and assist in identifying employment opportunities for their return home.

Evaluation Criteria

Technically eligible applicants will be competitively reviewed under 7 criteria. The criteria are: (1) Program planning and the ability to achieve objectives; (2) Institutional capacity; (3) Cost effectiveness and cost sharing; (4) Ability to objectively evaluate program achievements; (5) "Multiplier effect/impact"—strengthening of bilateral and multilateral peace and understanding; (6) Support of Diversity; and (7) Cultural sensitivity.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and ten (10) copies of the application (Standard Form 424) must be submitted to the U.S. Department of State, Mr. William Zehnder, A/LM/AQM/IP, State Annex #44, Room M–27, 301 4th Street SW., Washington, DC 20547 on or before 1 September 2000. Late applications may only be considered at the sole discretion of the U.S. Department of State grant award officer.

Where To Obtain Additional Information

A detailed program description and application package may be obtained from Mr. William C. Zehnder., U.S. Department of State, A/LM/AQM/IP, State Annex #44, Room M–27, 301 4th Street SW., Washington, DC 20547, telephone (202) 619–4385. Please refer to the "Irish Peace Process" when requesting information or sending an application.

Dated: July 24, 2000.

Frank J. Kerber,

Country Officer for Ireland and Northern Ireland, U.S. Department of State.

[FR Doc. 00–19124 Filed 7–27–00; 8:45 am]

BILLING CODE 4710–29–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative

ACTION: Notice of open meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold an open meeting on August, 9, 2000, from 1:30 p.m. to 3 p.m.

DATES: The meeting is scheduled for August 9, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room B841, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, (202) 482–4792 or Emory Mayfield, Office of the United States Trade Representative, 1724 F St. NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold an open meeting on August 9, 2000, from 1:30 a.m. to 3:00 p.m. The agenda topic will be development of ISAC 14 advice on the future of the Advisory Committee Process.

Dominic Bianchi,

Acting Assistant, United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–19084 Filed 7–27–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare a Tiered Environmental Impact Statement (EIS) and To Conduct Environmental Scoping for Site Approval and the Proposed Acquisition of Land by the State of Illinois for a Supplemental Air Carrier Airport To Serve Northeast Illinois/Northwest Indiana Metropolitan Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this

notice to advise the public that a tiered Environmental Impact Statement will be prepared to consider the location and proposed acquisition of land by the state of Illinois for a potential future supplemental air carrier airport to serve the northeast Illinois and northwest Indiana metropolitan area. This scope is significantly different from earlier scoping completed in May and September of 1990, January of 1995, and April 1997 that considered development of aviation facilities in addition to site approval and land acquisition. New public scoping will be held in order that all significant issues related to the revised proposed actions are identified.

FOR FURTHER INFORMATION CONTACT: Denis R. Rewerts, Airport Capacity Officer, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Rewerts can be contacted at (847) 294–7195 (voice), (847) 294–7046 (facsimile).

SUPPLEMENTARY INFORMATION: At the request of the State of Illinois, Department of Transportation, the FAA is preparing a tiered Environmental Impact Statement. The first tier (tier 1) will address FAA site approval for a potential future supplemental air carrier airport. No use of Federal funds or Airport Layout Plan approval is contemplated under this action. A subsequent tier, or tiers, may be prepared and considered at a later date to assess the potential impacts resulting from development of aviation facilities, as these issues become ripe for decision. All reasonable alternatives will be considered including the no-action option.

Copies of a scoping document with additional detail can be obtained by contacting the FAA informational contact person identified above. Federal, State and local agencies and other interested parties are invited to make comments and suggestions to ensure that the full range of issues related to these proposed actions are addressed and all significant issues identified. The FAA informational contact person identified above should receive these comments and suggestions by September 14, 2000.

PUBLIC SCOPING MEETING: To facilitate receipt of comments, two public scoping meetings will be held on August 30, 2000 in Engbretson Hall (Auditorium) at Governors State University, University Park, Illinois. The first meeting will be held between 10:00 AM and 12:00 PM for Federal, State and local agencies. The second meeting will be held from 2:00 PM to 7:00 PM for other interested parties.

Issued in Des Plaines, Illinois on July 21, 2000.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office FAA, Great Lakes Region.

[FR Doc. 00–19039 Filed 7–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sarasota Bradenton International Airport; Sarasota, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sarasota Bradenton International Airport (SRQ) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 28, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Fredrick J. Piccolo, Executive Director of the Sarasota Manatee Airport Authority at the following address: Sarasota Manatee Airport Authority, 6000 Airport Circle, Sarasota, Florida 34243.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sarasota Manatee Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Vernon P. Rupinta, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 24. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sarasota Bradenton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 12, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Sarasota Manatee Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 9, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–04–C–00–SRQ.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: October 1, 2015.

Total estimated net PFC revenue: $36,126,915.

Brief description of proposed project(s): Airport Terminal Development Debt Service.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sarasota Manatee Airport Authority.

Issued in Orlando, Florida on July 12, 2000.

Bart Vernace,

Acting Manager, Orlando Airports District Office Southern Region.

[FR Doc. 00–19040 Filed 7–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)

AGENCY: Maritime Administration, DOT.

ACTION: Notice of open season for enrollment in fiscal year (FY) 2001 VISA Program.

Introduction

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended (DPA), which provides for voluntary agreements for emergency preparedness programs. VISA was approved for a two year term on January 30, 1997, and published in the **Federal Register** on February 13, 1997, (62 FR 6837). Approval was extended through February 13, 2001, and published in the **Federal Register** on February 18, 1999 (64 FR 8214).

As implemented, VISA is open to U.S.-flag vessel operators of militarily useful vessels, including bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to the bareboat charterer for purposes of VISA. By order of the Maritime Administrator on August 4, 1997, participation of U.S.-flag deepwater tug/barge operators in VISA was encouraged. Time, voyage, and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Concept

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies.

VISA provides for the staged, time-phased availability of participants' shipping services/systems to meet contingency requirements through prenegotiated contracts between the Government and participants. Such arrangements are jointly planned with the Maritime Administration (MARAD), U.S. Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, to provide DOD assured contingency access, and to minimize commercial disruption, whenever possible.

VISA Stages I and II provide for prenegotiated contracts between the DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III will provide for additional capacity to the DOD when Stage I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

FY 2001 VISA Enrollment Open Season

The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to participate in the program for FY 2001 (October 1, 2000 through September 30, 2001). Current participants in the VISA program are not required to apply for FY 2001 reenrollment, as VISA participation will be automatically extended for FY 2001. This is the third annual enrollment period since the commencement of VISA. The annual enrollment was initiated because VISA has been fully integrated into DOD's priority for award of cargo to VISA participants. It is necessary to link the VISA enrollment cycle with DOD's peacetime cargo contracting cycle.

New VISA applicants are required to submit their applications for the FY 2001 VISA program as described in this Notice no later than August 31, 2000. This alignment of VISA enrollment and eligibility for VISA priority will solidify the linkage between commitment of contingency assets by VISA participants and receiving VISA priority consideration for the award of FY 2001 DOD peacetime cargo.

This is the only planned enrollment period for carriers to join VISA and derive benefits for DOD peacetime contracts during FY 2001. The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

Advantages of Peacetime Participation

Because enrollment of carriers in VISA provides the DOD with assured access to sealift services during contingencies based on a level of commitment, as well as a mechanism for joint planning, the DOD awards peacetime cargo contracts to VISA participants on a priority basis. This applies to liner trades and charter contracts alike. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities:

- U.S.-flag vessel capacity operated by VISA participants, and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants.
- U.S.-flag vessel capacity operated by non-participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants.
- Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participants

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program. While vessel brokers and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they may not become participants in the VISA program due to lack of requisite vessel ownership or operation. However, brokers and agents should encourage the carriers they represent to join the program.

Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration in the award of DOD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. A participant desiring to bid on DOD peacetime contracts will be required to provide commitment levels to meet DOD-established Stages I and/or II minimum percentages of the participant's military useful, oceangoing U.S.-flag fleet capacity on an annual basis. The USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination

Agreements (CCA's) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCA's must be submitted to MARAD for coordination with the Department of Justice for approval, before they can be utilized.

Compensation

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation. During enrollment, each participant may choose a compensation methodology which is commensurate with risk and service provided. The compensation methodology selection will be completed with the appropriate DOD agency.

Enrollment

New applicants may enroll by obtaining a VISA application package (Form MA–1020 (OMB Approval No. 2133–0532)) from the Director, Office of Sealift Support, at the address indicated below. Form MA–1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the February 18, 1999 VISA will also be provided with the package. This information is needed in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must be able to provide an affidavit that demonstrates that the company is a citizen of the United States, at least for purposes of vessel documentation, within the meaning of 46 U.S.C., section 12102, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to VISA. As previously mentioned, VISA applicants must return the completed VISA application documents to MARAD not later than August 31, 2000. Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

In addition, the applicant will be required to enter into a contingency contract with the DOD. For the FY 2001 VISA open season, and prior to being enrolled in VISA, eligible VISA applicants will be required to execute a joint VISA Enrollment Contract (VEC) with the DOD [Military Traffic Management Command (MTMC) and Military Sealift Command (MSC)] which will specify the participant's Stage III commitment for FY 2001. Once the VEC is completed, the applicant completes the DOD contracting process by executing a Drytime Contingency Contract (DCC) with MSC (for Charter Operators) and/or as applicable, a VISA Contingency Contract (VCC) with MTMC (for Liner Operators). Upon completion of the DOD contingency contract(s), the Maritime Administrator will confirm the participant's enrollment by letter agreement, with a copy to all appropriate parties.

For Additional Information and Applications Contact: Raymond Barberesi, Director, Office of Sealift Support, U.S. Maritime Administration, Room 7307, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2323. Fax (202) 493–2180. The full text of this **Federal Register** Notice and other information about the VISA can be found on MARAD's Internet Web Page at http://www.marad.dot.gov.

By Order of the Maritime Administrator.

Dated: July 24, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–19076 Filed 7–27–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20969; MC–F–20970][1]

Stagecoach Holdings PLC and Coach USA, Inc., et al.—Control—B&A Charter Tours, Inc., Dillon's Bus Service, Inc., and The McMahon Transportation Co.; Stagecoach Holdings PLC and Coach USA, Inc., et al.—Control—Express Shuttle, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transactions.

SUMMARY: Stagecoach Holdings PLC (Stagecoach) and its subsidiary, Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each (collectively, applicants) have filed an application under 49 U.S.C. 14303 in STB Docket No. MC–F–20969 to acquire control of motor passenger carriers B&A Charter Tours, Inc. (B&A), Dillon's Bus Service, Inc. (Dillon's), and The McMahon Transportation Co. (McMahon) (collectively, Maryland Carriers); and in STB Docket No. MC–F–20970 to acquire control of motor passenger carrier Express Shuttle, Inc., (Express). Persons wishing to oppose this application must follow the rules under 49 CFR part 1182.5 and 1182.8. The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by September 11, 2000. Applicants may file a reply by September 26, 2000. If no comments are filed by September 11, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket Nos. MC–F–20969 and MC–F–20970 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland. With operations in several countries, Stagecoach is one of the world's largest providers of passenger transportation services. Stagecoach had annual revenues for the fiscal year ending April 30, 2000, of over $3.29 billion. Coach is a Delaware corporation that currently controls over 80 motor passenger carriers.

Stagecoach and its subsidiaries currently control Coach,[2] its noncarrier regional management subsidiaries, and the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[3] In previous Board decisions, Coach management subsidiaries, including Coach USA Northeast, Inc. and Coach USA North Central, Inc., have obtained authority to control motor passenger carriers jointly with Coach.[4]

Applicants state that Coach purchased all of the outstanding stock of the Maryland Carriers, which had been

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] Stagecoach controls Coach through various subsidiaries, namely, SUS 1 Limited, SUS 2 Limited, Stagecoach General Partnership, and SCH US Holdings Corp.

[3] *See Stagecoach Holdings PLC—Control—Coach USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

[4] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC–F–20931, *et al.* (STB served July 14, 1999).

commonly owned, in May 2000 and placed the stock of each into separate, independent voting trusts.[5] Applicants further state that Coach also purchased all of the outstanding stock of Express in April 2000 and placed that stock into an independent voting trust.[6] According to applicants, these transactions did not involve any transfer of the federal or state operating authorities held by any of these carriers and will not entail any change in their operations.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed transactions are consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transactions will not reduce competitive transportation options, adversely impact fixed charges, or adversely impact the interests of the employees of the acquired carriers. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from applicants' representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed transactions are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

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This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on September 11, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: July 24, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19168 Filed 7–27–00; 8:45 am]

BILLING CODE 4915–00–P

[5] B&A, Dillon's, and McMahon are Maryland corporations with integrated operations involving a fleet of approximately 28 buses and employing approximately 80 persons. B&A holds federally-issued operating authority in Docket No. MC–170895, authorizing it to provide charter and special services between points in the United States. Its revenues for the 12-month period ended December 31, 1999, were $98,641. Dillon's holds federally-issued operating authority in Docket No. MC–36788, authorizing it to provide regular route services between points in Maryland and Washington, DC, as well as charter and special services between points in the United States. For the twelve month period ended December 31, 1999, Dillon's operating revenues were approximately $5.1 million. McMahon holds federally-issued operating authority in Docket No. MC–788, authorizing it to provide regular route service between points in Maryland and nearby states. It also holds authority to provide charter and special services between points in the United States. McMahon's operating revenues for the twelve months ended December 31, 1999, were $117,911.

[6] Express is a North Dakota corporation that operates a fleet of approximately 20 vehicles and employs 73 persons. Its operations consist of the contract transportation of railroad crews between points in North Dakota or other nearby states pursuant to an ICC permit issued in Docket No. MC–254884. Express also holds a federally-issued certificate authorizing the transportation of property between points in the United States as a common carrier. For the fiscal year ended December 31, 1999, Express (together with Bismark Transportation, a related non-federally regulated carrier) had annual revenues in excess of $2 million.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33905]

Lackawanna County Railroad Authority—Acquisition Exemption—F&L Realty, Inc.

Lackawanna County Railroad Authority (LCRA), a political subdivision and nonoperating Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire 4.96 route miles of track (track) in Lackawanna County, PA, from F&L Realty, Inc. (F&L). The track consists of two small segments described as follows: (1) The Diamond Branch, of the former Delaware, Lackawanna & Western Railroad (DL&W), extending 0.85 miles from milepost 144.75 to milepost 145.6, in Scranton; and (2) the Laurel Line, of the former DL&W, extending 4.11 miles from LC 6253 milepost 0.7 (South Abutment of Roaring Brook Bridge) to milepost 4.81, at Montage Road, in the Borough of Moosic.[1] Delaware-Lackawanna Railroad Co., Inc. (D–L) will be the operator of the track.

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 33906, *Delaware-Lackawanna Railroad Co., Inc.—Operation Exemption—Lackawanna County Railroad Authority*, wherein D–L seeks to operate the track being acquired by LCRA.

The parties report that they intend to consummate the transaction on or about July 28, 2000. The earliest the transaction can be consummated is July 24, 2000, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33905, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Keith G. O'Brien, Esq., Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 21, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19167 Filed 7–27–00; 8:45 am]

BILLING CODE 4915–00–P

[1] According to the verified notice of exemption, Pocono Northeast Railway, a now defunct corporate affiliate of F&L, formerly provided service over the track but stopped providing that service some years ago without obtaining any regulatory approval.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33906]

Delaware-Lackawanna Railroad Co., Inc.—Operation Exemption—Lackawanna County Railroad Authority

Delaware-Lackawanna Railroad Co., Inc (D–L), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate 4.96 route miles of track (track) in Lackawanna County, PA, under contract with Lackawanna County Railroad Authority (LCRA). The track consists of two small segments described as follows: (1) The Diamond Branch, of the former Delaware, Lackawanna & Western Railroad (DL&W), extending 0.85 miles from milepost 144.75 to milepost 145.6, in Scranton; and (2) the Laurel Line, of the former DL&W, extending 4.11 miles from LC 6253 milepost 0.7 (South Abutment of Roaring Brook Bridge) to milepost 4.81, at Montage Road, in the Borough of Moosic.[1]

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 33905, *Lackawanna County Railroad Authority—Acquisition Exemption—F&L Realty, Inc.*, wherein LCRA seeks to acquire the track being operated by D–L.

The parties report that they intend to consummate the transaction on or about July 28, 2000. The earliest the transaction can be consummated is July 24, 2000, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33906, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Keith G. O'Brien, Esq., Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

[1] According to the verified notice of exemption, Pocono Northeast Railway, a now defunct corporate affiliate of F&L Realty, Inc., formerly provided service over the track but stopped providing that service some years ago without obtaining any regulatory approval.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Dated: Decided: July 21, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19166 Filed 7–27–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary, grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Board. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided (without charge) a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

DATES: Names that appear on the panel may be selected to serve on a Board or as a grievance examiner after August 28, 2000.

ADDRESSES: Send requests for the list of the names of employees on the panel and written comments to: The Secretary of Veterans Affairs (051), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or fax your request to (202) 273–9776.

FOR FURTHER INFORMATION CONTACT: Larry Ables or Douglas Katcher, Employee Relations Specialists (051), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9816.

SUPPLEMENTARY INFORMATION: Pub. L. 102–40 requires that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Approved: July 13, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–19061 Filed 7–27–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the Internal Revenue Service, Department of the Treasury

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

Notice is hereby given that the Department of Veterans Affairs (VA) and the Internal Revenue Service (IRS) propose to conduct a computer matching program. The purpose of the program is to locate taxpayers who owe delinquent debts to the Federal Government as a result of their participation in benefit programs (including health care) administered by VA. Once located, VA will pursue collection of debts through voluntary payments. If such payments are not forthcoming, VA may seek involuntary collection under the provisions of the Debt Collection Act of 1982, as amended.

The legal authority for undertaking this matching program is contained in the Internal Revenue Code at 26 U.S.C. 6103(m)(2)(A). VA and IRS have concluded an agreement to conduct the matching program pursuant to provisions of the Privacy Act of 1974, as amended [5 U.S.C. 552a(o)]. IRS will act as recipient (*i.e.*, matching) agency. VA will provide a tape extract to IRS that contains the Name Control (the first four characters of the surname) and social security number (SSN) of each record subject. IRS will compare the tape extract against its databases of taxpayers who have filed Federal individual income tax returns, establishing "hits" (*i.e.*, individuals common to both tapes) on the basis of matched SSNs and Name Controls. For each hit, IRS will disclose to VA the following information: Name Control, SSN and latest street address, P.O. Box or other address furnished by the taxpayer.

Records to be Matched: The systems of records maintained by the respective agencies from which records will be disclosed for the purpose of this computer match are as follows:

IRS: Individual Master File (IMF), Treasury/IRS 24.030, containing millions of records of taxpayers who

have filed Federal individual income tax returns. A full description of the system of records was last published at 63 FR 42908 (August 11, 1998).

VA: Accounts Receivable Records-VA (88VA244) containing records of approximately 200,000 debtors. Disclosure will be made under routine use No. 16 of that system, a full description of which was last published at 63 FR 16864 on April 6, 1998.

The matching program is expected to begin on or about August 28, 2000, and continue in effect for 18 months. The agreement governing the matching program may be extended an additional 12 months with the respective approval of VA's and the Department of the Treasury's Data Integrity Boards. Such extension must occur within 3 months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Room 1154, Washington, D.C. 20420. All relevant material received before August 28, 2000 will be considered. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, 810 Vermont Avenue, N.W., Washington, D.C. 20420, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mark Gottsacker, Debt Management Center (389/00A), Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 970–5700.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended [(5 U.S.C. 552a(e)(12)]. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: July 12, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–19082 Filed 7–27–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the United States Postal Service

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

Notice is hereby given that the Department of Veterans Affairs (VA) and the United States Postal Service (USPS) propose to conduct a computer matching program. The purpose of the match is to identify and locate USPS employees who owe delinquent debts to the Federal Government as a result of their participation in benefit programs administered by VA. Once identified and located, VA will pursue collection of debts through voluntary payments. If such payments are not forthcoming, VA may request USPS to offset up to 15 percent of the employees' disposable pay as authorized under the provisions of the Debt Collection Act of 1982.

The Debt Collection Improvement Act of 1996 [as codified at 5 U.S.C. 5514(a)] requires Federal creditor agencies to participate in computer matching to identify Federal employees who are delinquent in repayment of debts owed those agencies. VA and USPS have conducted an agreement to conduct the matching program pursuant to provisions to the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)). USPS will act as recipient (*i.e.*, matching) agency. VA will provide a tape extract to USPS containing the name and social security number (SSN) of each record subject. USPS will compare the tape extract against its database of employee records, establishing "hits" (*i.e.*, individuals common to both tapes) on the basis of matched SSNs. For each hit, USPS will disclose to VA the following information: Name, SSN, home address, and employee type (permanent or temporary).

Records to be Matched: The systems of records maintained by the respective agencies from which records will be disclosed for this computer match are as follows:

USPS: Finance Records-Payroll System (USPS 050.020) containing records of approximately 800,000 employees. Disclosure will be made under routine use 24 of that system, a full description of which was last published at 57 FR 57515 (December 4, 1992).

VA: Accounts Receivable Records-VA (88VA244) containing records of approximately 200,000 debtors. Disclosure will be made under routine use No. 7 of that system, a full description of which was last published in 63 FR 16864 on April 6, 1998.

The matching program is expected to begin on or about August 28, 2000, and continue in effect for 18 months. The agreement governing the matching program may be extended an additional 12 months with the respective approval of VA's and USPS' Data Integrity Boards. Such extension must occur within 3 months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. All relevant material received before August 28, 2000 will be considered. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, 810 Vermont Avenue, NW., Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Schultz, Debt Management Center (389), Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 970–5700.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(12)). A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: July 17, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–19170 Filed 7–27–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, New System of Records: Agency-Initiated Personnel Actions (Title 38)—VA (102VA05)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is proposing a new system of records entitled Agency-Initiated Personnel Actions (Title 38)—VA (102VA05). VA

is simultaneously altering and reissuing the system of records entitled General Personnel Records (Title 38)—VA (76VA05). The alteration removes from 76VA05 information associated with processing disciplinary and adverse actions, disqualification during probation, physical disqualification, agency-initiated disability retirements, and suitability determinations. A new system of records is proposed because the purposes of the records in this system differ from the records in 76VA05. The employees covered, the types of records, purposes of the records systems, legal authority for maintenance of the systems, and routine uses associated with each of these record systems are different. The physical location of these records may also differ from the records covered by 76VA05.

DATES: Submit comments on or before August 28, 2000.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this system of records to the Director, Office of Regulations Management (02D), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420 only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the reissued system of records is effective August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McVeigh, Department of Veterans Affairs (051A), 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9821.

SUPPLEMENTARY INFORMATION: VA issued a system of records entitled General Personnel Records (Title 38)—VA (76VA05) in the **Federal Register** 53 FR 40852 (7/19/88) and amended that system in 55 FR 42534 (10/19/90), 58 FR 40852 (7/30/93), and 61 FR 14853 (4/3/96). This system included all personnel records other than medical records for most Veterans Health Administration employees appointed under Title 38, United States Code.

This system of records would include information removed from 76VA05 concerning processing disciplinary and adverse actions, disqualification during probation, physical disqualification, agency-initiated disability retirements, and suitability determinations. This includes copies of any notice of proposed action, materials relied on by VA to support the reason(s) for the action, replies by employees, statements of witnesses, hearing notices, as well as reports and other correspondence or documents related to these actions. A new system of records is proposed because the purposes of the records in this system differ from the records in 76VA05. The employees covered, the types of records, purposes of the systems, legal authority for maintenance of the systems, and routine uses associated with each of these systems of records are different. The physical location of these records may also differ from the records covered by 76VA05.

Further, 76VA05 had 40 routine uses. Only 23 routine uses were determined to be appropriate for the records contained in this new records system. The changes to the routine uses formerly in 76VA05 are as follows:

a. Routine use 1 relating to disclosures to the Office of Personnel Management has been deleted. Such disclosures are only made from the system of records entitled Personnel and Accounting Pay System-VA (27VA047).

b. Routine uses 2 through 9 have been deleted. Disclosures of such information would come from other records systems (*e.g.*, 76VA05).

c. Routine use 10 (now 1) is being modified to clarify the conditions under which data is disclosed to officials of labor organizations recognized under 5 U.S.C., chapter 71. The clarification ties such disclosures to the law authorizing the disclosures, *i.e.*, 5 U.S.C. 7114(b)(4). The former version authorized disclosures to officials of labor organizations "when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions."

d. Routine use 11 is modified. VA is prohibited from promulgating routine uses that would permit disclosures in response to request for information for civil or law enforcement purposes or in response to court orders. Such requests must be submitted under the provisions of 5 U.S.C. 552a(b)(7) or (b)(11), as applicable. See *Doe* v. *DiGenova*, 779 F. 2d 74 (D.C. Cir. 1985) and *Doe* v. *Stephens*, 851 F. 2d 1457 (D.C. Cir. 1988), and an August 28, 1989, opinion from the Office of Legal Counsel, Department of Justice. Routine use 11 (now 2) no longer includes such disclosures; however, it has been modified to permit VA to disclose, on its own initiative, relevant information if there is reason to believe that a violation of statute, rule or regulation has occurred.

e. Routine use 14 (now 5) no longer permits disclosures at the request of agencies in the executive, legislative or judicial branch of the Federal government, or to the government of the District of Columbia for investigative purposes. Such requests must be submitted under the provisions of U.S.C. 552a(b)(7). That portion of the routine use has been deleted.

f. Routine use 15 (now 6) has been modified to limit the reason for such disclosures to obtaining accreditation or other approval ratings. It also now permits disclosures to other Federal agencies for this purpose. The former version of this routine use was overly broad.

g. Routine use 16 has been deleted. Disclosures of such information would come from other records systems (e.g., 76VA05).

h. Routine use 18 (now 8) has been modified so that it no longer permits disclosures in response to subpoenas or court orders. Applicable case law (see paragraph d above) prohibits disclosures in response to subpoenas. Court orders directing the production of information must also meet the requirements of 5 U.S.C. 552a(b)(11). The revised routine use would permit VA to disclose relevant information on its own initiative in certain legal proceedings if VA is party to those proceedings and disclosure is necessary to protect its interests.

i. Routine use 19, relating to requests for discovery or for the appearance of witnesses, has been deleted, since it is no longer consistent with applicable case law (see paragraph d above).

j. Routine use 24 (now 13) related to disclosures to VA-appointed representatives concerning fitness for duty examinations and disability retirement procedures has been moved from 76VA05, as it applies to actions covered by this system of records.

k. Routine use 25, concerning disclosures because an individual may have contracted an illness, been exposed to, or suffered from a health hazard while employed by the Federal government, is being deleted. This subject is addressed in 5 U.S.C. 552a(b)(8).

l. Routine uses 26 and 27 have been deleted. This information is disclosed from another system of records (76VA05).

m. Routine use 29 (now 15), is being changed to delete the language concerning disclosures to the Equal Employment Opportunity Commission to ensure compliance with the Uniform Guidelines on Employee Selection Procedures, since VA has not been chosen to adopt the Uniform Guidelines for use in its Title 38 employment procedures.

n. Routine use 30 (now 16), is being clarified to indicate that disclosures to the Federal Labor Relations Authority and Federal Service Impasses Panel may only be made after appropriate jurisdiction has been established. Matters or questions concerning or arising out of (1) professional conduct or competence, (2) peer review, and (3) the establishment, determination or adjustment of compensation shall be decided by the Secretary of Veterans Affairs and is not itself subject to collective bargaining and may not be reviewed by another agency. See 38 U.S.C. 7422.

o. Routine use 31 has been deleted. This information is disclosed from another system of records (76VA05).

p. Routine use 32 (now 17) is being modified to include Federal agencies. For example, disclosures will be made to the Department of Health and Human Services Exclusionary Database as required by Pub. L. 105–53.

q. Routine use 33 regarding disclosures of information in response to requests from agencies responsible for the issuance, retention or revocation of licenses, certification or registrations required to practice a health care profession has been deleted. Such requests must conform to the requirements of 5 U.S.C. 552a(b)(7).

r. Routine uses 35 and 36, relating to disclosures of information through computer matching, have been deleted, as such disclosures are not made from this system of records.

s. Routine use 39 (now 21) concerning disclosures to license monitoring agencies is being modified to exclude language concerning computer matching. Such disclosures are not made from this system of records.

t. Routine use 40 concerning disclosures to a garnishing party were not included in this system of records. Such information would be disclosed from 76VA05.

u. A new routine use (number 22) permits disclosures to contractors, subcontractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government. However, such disclosures must be in the interest of VA and compatible with the intended purposes for which the record was created.

v. A new routine use (number 23) permits disclosing information to the Department of Health and Human Services' Healthcare Integrity and Protection Data Base pursuant to Sec. 221(a), Pub. L. 104–191, and the associated Department of Health and Human Services regulations, 45 CFR part 61.

Approved: July 12, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

102VA05

SYSTEM NAME:

Agency-Initiated Personnel Actions (Title 38)–VA.

SYSTEM LOCATION:

All records related to Disciplinary Appeals Boards are maintained at VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. All other records in this system are maintained at the Department of Veterans Affairs (VA) Central Office, 810 Vermont Avenue, NW, Washington, DC 20420 and/or VA field facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees appointed under 38 U.S.C. 7306, 7401(1), or 7405(a)(1)(A), except those appointed on a without compensation basis. This includes employees such as physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name, address, Social Security number, current position title, employing facility, and the employee's current grade, level, or step rate. This system contains supporting documentation related to processing actions covered by this system of records. This includes, as appropriate, designations of board members and employee representative, copies of the notice of proposed action, materials relied on by the Agency to support the reasons in the notice, replies by the employee, statements of witnesses, hearing notices, reports, related correspondence, and Agency decisions.

AUTHORITY FOR MAINTENACE OF THE SYSTEM:

37 U.S.C. 501(a), 7304, and 7406(c)(1).

PURPOSE(S):

These records document the processing of disciplinary and adverse actions, disqualification during probation, physical disqualification, agency-initiated disability retirements, and proposed separations based on pre-employment suitability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To disclose the information listed in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

2. VA may, on its own initiative, disclose relevant information to a Federal agency (including Offices of the Inspector General), State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation if there is reason to believe that a violation may have occurred. This routine use does not authorize disclosures in response to requests for information for civil or criminal law enforcement activity purposes, nor does it authorize disclosure of information in response to court orders. Such requests must meet the requirements of 5 U.S.C. 552a(b)(7) or (b)(11), as applicable.

3. To disclose pertinent information when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

4. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to any agency decision concerning the hiring or retention of an employee, the issuance of security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit.

5. To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of license, grant or other benefit by the requesting agency, or the lawful statutory or administrative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

6. To disclose relevant information to Federal and non-Federal agencies (*i.e.*, State or local governments), and private sector organizations, boards, bureaus, or commissions (*e.g.*, the Joint Commission on Accreditation of Healthcare Organizations) when such disclosures are required to obtain accreditation or other approval ratings.

7. To provide information to a congressional office from the records of

an individual in response to an inquiry from the congressional office made at the request of the individual.

8. VA may, on its own initiative, disclose information to another Federal agency, court, or party in litigation before a court or other administrative proceeding conducted by a Federal agency, if VA is a party to the proceeding and VA needs to disclose such information to protect its interests.

9. To disclose information to the National Archives and Records Administration (NARA) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

10. To disclose to persons engaged in research and survey projects information necessary to locate individuals for personnel research or survey response, and to produces summary descriptive statistics and analytical studies in support to the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the date individually identifiable by inference.

11. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files in support of the functions for which the records were collected and maintained.

12. When an individual to whom records pertain is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person of entity responsible for managing the individual finances to the extent necessary to ensure payment of benefits to which the individual is entitled.

13. To disclose to the VA-appointed representative of an employee all notices, determination, decisions, or other written communications issues to the employee in connection with an examination ordered by the VA under fitness-for-duty examination procedures or Agency-filed disability retirement procedures.

14. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

15. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law.

16. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when appropriate jurisdiction has been established and the information has been requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Service Impasses Panel.

17. Records from this system or records may be disclosed to a Federal, State, or local government agency or licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment or practice histories or concerning the issuance, retention, or revocation of licenses or registration necessary to practice and occupation, profession or specialty, in order for the Agency to obtain information determined relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform licensing boards or the appropriate non-governmental entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional practice as to raise reasonable concern for the health and safety of private section patients.

18. To disclose relevant information to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

19. To disclose hiring, performance, or other personnel-related information to any facility with which there is, or there is proposed to be, and affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing maintaining, or expanding any such relationship.

20. Identifying information in this system, including name, address, Social Security number, and other information as is reasonably necessary to identify such individual, may be disclosed to the Department of Health and Human Services or the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA, in order the VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention, or termination of the applicant or employee.

21. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank or to a State or local government licensing board which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession, or specialty when under the following circumstances, through peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to a physician or licenses or certified health care practitioner: (1) On any payment in settlement (or partial settlement of, or in satisfaction of a judgement) in a medical malpractice action or claim; or, (2) on any final decision that adversely affects the clinical privileges of a physician or practitioner for a period or more than 30 days.

22. To disclose information to contractors, subcontractors, grantees, or others performing or working on a contract, grant, or cooperative agreement for the Federal government, provided disclosure is in the interest of the Government and the information to be disclosed is relevant and necessary for accomplishing the intended uses of the information and necessary to perform services under the contract, grant or cooperative agreement.

23. Information from this system of records will be disclosed to the Healthcare Integrity and Protection Data Base as required by section 1122E of the Social Security Act (as addeded by Sec. 221(a) of Pub. L. 104–191) and the associated implementing regulations issued by the Department of Health and Human Services, 45 CFR part 61. For example, VA is required to report adjudicated adverse personnel actiosn based on acts or omissions that either affected or could have affected the delivery of healthcare services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records may be maintained in file folders and computer processable storage media. The records may also be maintained on lists, forms, microfilm, microfiche, or audio-tape.

RETRIEVABILITY:

These records may be retrieved using various combinations of name, birth date, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Access to areas where these records are maintained is restricted to VA employees, contractors, or subcontractors on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on the same principle. File areas are locked after normal duty hours and are protected from outside access by VA police officers or other types of alarm systems.

RETENTION AND DISPOSAL:

Records in this system are disposed of no sooner than 6 years after the closing of the case. Disposal is by shredding and erasure of tapes or disks.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Human Resources Management (05), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

NOTIFICATION PROCEDURE:

Except as indicated below (see Record Access Procedures), individuals receiving notice of a proposed action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the record (see Record Access Procedures). Individuals should contact the human resources manager for the location where the action was processed regarding the existence of such records on them. However, all inquiries related to Disciplinary Appeals Boards should be directed to the Deputy Assistant Secretary for Human Resources Management (see System Manager). Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. If not the employee's current organization, the organizational component involved.

Requests for access must be consistent with the Privacy act and VA regulations concerning the release of information from Department of Veterans Affairs records other than claimant records. See 38 CFR 1.550, et seq.

RECORD ACCESS PROCEDURES:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, individuals may request access to the official file by contacting the human resources manager for the location where the action was processed. If the action relates to a Disciplinary Appeals Board, the individual must request access from the Deputy Assistant Secretary for Human Resources Management (see System Manager). Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. If not the employee's current organization, the organizational component involved.

Requests for access must be consistent with the Privacy Act and VA regulations concerning the release of information from Department of Veterans Affairs records other than claimant records. See 38 CFR 1.550, *et seq*. Note 1: When a request for access involves medical or psychological records that the responsible individual believes require special handling, the requester should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity, the records will be made available to the physician, who will have full authority to disclose those records to the data subject when appropriate.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment request of these records will be restricted to determining if the records accurately document the action on the case and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment of their records to correct factual errors should contact the human resources manager for the VA office where the action was processed. In cases concerning Disciplinary Appeals Boards, individuals should contact the Deputy Assistant Secretary for Human Resources Management (see System Manager) to request the amendment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. If not the individual's current organization, the organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By supervisors and managers.

b. By individual on whom the record is maintained.

c. By Professional Standards Boards and Disciplinary Appeals Boards.

d. By testimony of witnesses.

e. By other agency officials.

f. By other agency records.

g. From related correspondence or persons.

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Federal Register

Friday,
July 28, 2000

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 4, 14, and 32
Federal Acquisition Regulation; Definitions for Classified Acquisitions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 14, and 32

[FAR Case 2000–404]

RIN 9000–AI61

Federal Acquisition Regulation; Definitions for Classified Acquisitions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide consistent definitions for classified acquisitions. This case is one of a series of cases in response to the White House memorandum, Plain Language in Government Writing, dated June 1, 1999.

The Councils' proposed amendments are intended only to reorganize, simplify, and clarify the FAR. The Councils do not intend to make any substantive changes to the FAR by these amendments. Comments should address any potential unintended substantive changes to the FAR resulting from the proposed amendments.

DATES: Submit comments on or before September 26, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035; Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000–404@gsa.gov.

Please submit comments only and cite FAR case 2000–404 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2000–404.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the Federal Acquisition Regulation (FAR) to address perceived inconsistencies in definitions that are used for classified acquisitions. The rule moves the definitions of "classified acquisition," "classified contract," and "classified information" from FAR 4.401 to FAR 2.101 because the definitions apply to more than one FAR part. Those definitions also have been amended in accordance with plain language guidelines. We have also amended the policy regarding bid openings for classified acquisitions at FAR 14.402–2 to conform to plain language guidelines.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 14, and 32 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–404), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 14, and 32

Government procurement.

Dated: July 24, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 4, 14, and 32 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 14, and 32 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definitions "classified acquisition", "classified contract", and "classified information" to read as follows:

2.101 Definitions.

* * * * *

Classified acquisition means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

Classified contract means any contract in which the contractor or its employee must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

Classified information means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that—

(1) Is owned by, produced by or for, or is under the control of the United States Government; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, as amended, or classified in accordance with the Atomic Energy Act of 1954, as amended.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.401 [Reserved]

3. Section 4.401 is removed and reserved.

PART 14—SEALED BIDDING

14.103–1 [Amended]

4. Amend section 14.103–1 in paragraph (c) by removing "(see 4.401)".

5. Section 14.402–2 is revised to read as follows:

14.402–2 Classified bids.

The general public may not attend bid openings for classified acquisitions. A bidder or its representative may attend and record the results if the individual has the appropriate security clearance. The contracting officer may also make the bids available at a later time to properly cleared bidders or their properly cleared representatives. The contracting officer must not make a public record of the bids or the bid prices.

PART 32—CONTRACT FINANCING

32.1103 [Amended]

6. Amend section 32.1103 in paragraph (d) by removing "(see 4.401)".

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Part III

The President

Executive Order 13163—Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Government

Executive Order 13164—Requiring Federal Agencies To Establish Procedures To Facilitate the Provision of Reasonable Accommodation

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Title 3

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Presidential Documents

Title 3—

The President

Executive Order 13163 of July 26, 2000

Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the opportunities for individuals with disabilities to be employed at all levels and occupations of the Federal Government, and to support the goals articulated in section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), it is hereby ordered as follows:

Section 1. *Increasing the Federal Employment Opportunities for Individuals with Disabilities.* (a) Recent evidence demonstrates that, throughout the United States, qualified persons with disabilities have been refused employment despite their availability and qualifications, and many qualified persons with disabilities are never made aware of available employment opportunities. Evidence also suggests that increased efforts at outreach, and increased understanding of the reasonable accommodations available for persons with disabilities, will permit persons with disabilities to compete for employment on a more level playing field.

(b) Based on current hiring patterns and anticipated increases from expanded outreach efforts and appropriate accommodations, the Federal Government, over the next 5 years, will be able to hire 100,000 qualified individuals with disabilities. In furtherance of such efforts, Federal agencies shall:

(1) Use available hiring authorities, consistent with statutes, regulations, and prior Executive orders and Presidential Memoranda;

(2) Expand their outreach efforts, using both traditional and nontraditional methods; and

(3) Increase their efforts to accommodate individuals with disabilities.

(c) As a model employer, the Federal Government will take the lead in educating the public about employment opportunities available for individuals with disabilities.

(d) This order does not require agencies to create new positions or to change existing qualification standards for any position.

Sec. 2. *Implementation.* Each Federal agency shall prepare a plan to increase the opportunities for individuals with disabilities to be employed in the agency. Each agency shall submit that plan to the Office of Personnel Management within 60 days from the date of this order.

Sec. 3. *Authority to Develop Guidance.* The Office of Personnel Management shall develop guidance on the provisions of this order to increase the opportunities for individuals with disabilities employed in the Federal Government.

Sec. 4. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

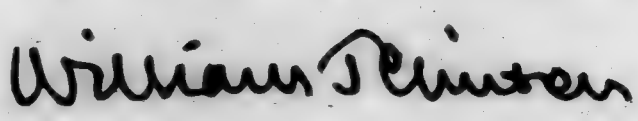

THE WHITE HOUSE,
July 26, 2000.

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Presidential Documents

Executive Order 13164 of July 26, 2000

Requiring Federal Agencies To Establish Procedures To Facilitate the Provision of Reasonable Accommodation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended, and in order to promote a model Federal workplace that provides reasonable accommodation for (1) individuals with disabilities in the application process for Federal employment; (2) Federal employees with disabilities to perform the essential functions of a position; and (3) Federal employees with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities, it is hereby ordered as follows:

Section 1. *Establishment of Effective Written Procedures to Facilitate the Provision of Reasonable Accommodation.* (a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. The written procedures may allow different components of an agency to tailor their procedures as necessary to ensure the expeditious processing of requests.

(b) As set forth in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities* (1998), effective written procedures for processing requests for reasonable accommodation should include the following:

(1) Explain that an employee or job applicant may initiate a request for reasonable accommodation orally or in writing. If the agency requires an applicant or employee to complete a reasonable accommodation request form for recordkeeping purposes, the form must be provided as an attachment to the agency's written procedures;

(2) Explain how the agency will process a request for reasonable accommodation, and from whom the individual will receive a final decision;

(3) Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. Time limits for decision making should be as short as reasonably possible;

(4) Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious;

(5) Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, or the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace;

(6) Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense;

(7) Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position;

(8) Provide that reasonable accommodation denials be in writing and specify the reasons for denial;

(9) Ensure that agencies' systems of recordkeeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulations; and

(10) Encourage the use of informal dispute resolution processes to allow individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation. Agencies must also inform individuals with disabilities that they have the right to file complaints in the Equal Employment Opportunity process and other statutory processes, as appropriate, if their requests for reasonable accommodation are denied.

Sec. 2. *Submission of Agency Reasonable Accommodation Procedures to the Equal Employment Opportunity Commission (EEOC).* Within 1 year from the date of this order, each agency shall submit its procedures to the EEOC. Each agency shall also submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted.

Sec. 3. *Collective Bargaining Obligations.* In adopting their reasonable accommodation procedures, agencies must honor their obligations to notify their collective bargaining representatives and bargain over such procedures to the extent required by law.

Sec. 4. *Implementation.* The EEOC shall issue guidance for the implementation of this order within 90 days from the date of this order.

Sec. 5. *Construction and Judicial Review.* (a) Nothing in this order limits the rights that individuals with disabilities may have under the Rehabilitation Act of 1973, as amended.

(b) This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

William J. Clinton

THE WHITE HOUSE,
July 26, 2000.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 966/P.L. 106–249

Griffith Project Prepayment and Conveyance Act (July 26, 2000; 114 Stat. 619)

Last List July 27, 2000

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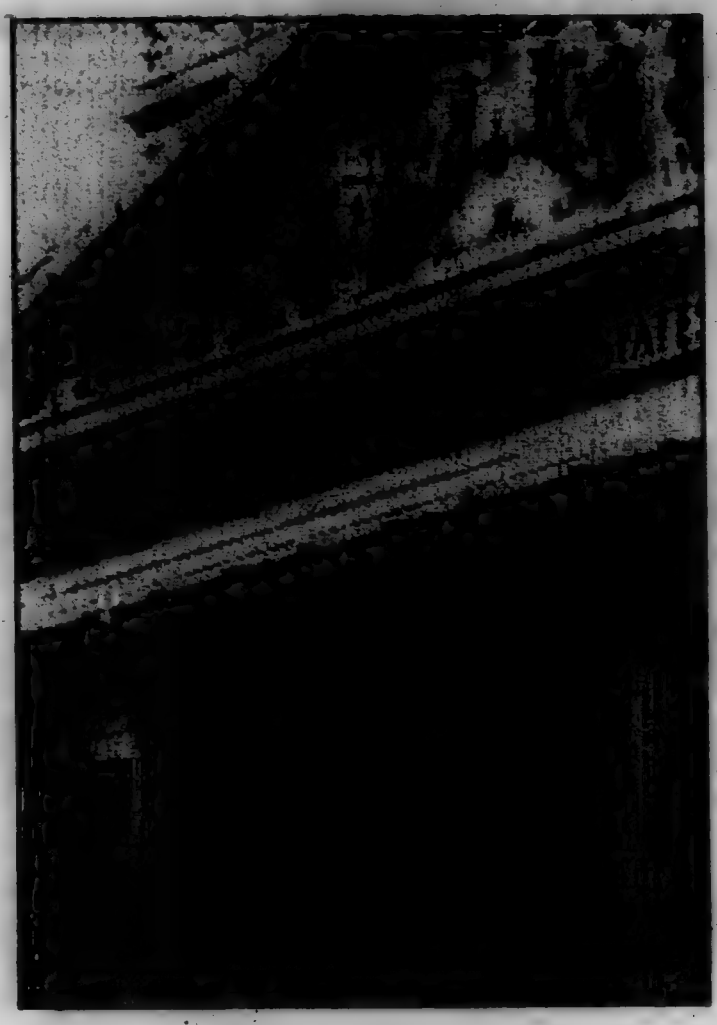

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106th Congress, 2nd Session, 2000

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–40–AD; Amendment 39–11837; AD 2000–14–51]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–501, AT–502, and AT–502A Airplanes

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting emergency Airworthiness Directive (AD) 2000–14–51. The Federal Aviation Administration (FAA) previously sent emergency AD 2000–14–51 to all known U.S. owners and operators of Air Tractor Models AT–501, AT–502, and AT–502A airplanes. This AD requires you to inspect the wing lower spar cap for cracks and modify or replace any cracked lower spar cap. This AD is the result of an accident report of an Air Tractor Model AT–502A airplane where the wing separated in flight. The actions specified by this AD are intended to detect and correct fatigue cracks in the wing lower spar cap, which could result in an in-flight separation of the wing from the airplane.

DATES: The AD becomes effective August 4, 2000, to all affected persons who did not receive emergency AD 2000–14–51, issued July 3, 2000. Emergency AD 2000–14–51 contained the requirements of this amendment and became effective immediately upon receipt.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 4, 2000.

The FAA must receive any comments on this rule on or before September 15, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments and information related to this AD at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What Has Happened So Far?

The FAA has received a report of an accident of an Air Tractor Model AT–502A airplane where the wing separated in flight. Investigation revealed that the wing lower spar cap was cracked at the wing center splice connection. We surveyed the Air Tractor Models AT–501, AT–502, and AT–502A airplane fleet and discovered 2 other airplanes that have had similar cracks in the lower spar caps.

On July 3, 2000, we issued emergency AD 2000–14–51. This AD directed the following:

—Repetitively inspect each wing lower spar cap for cracks; and

—Modify or replace any cracked lower spar cap, as specified in the service information.

Accomplishment of this action is required in accordance with the procedures in Snow Engineering Co. Service Letter #197, dated June 13, 2000.

Why Is It Important To Publish This AD?

The FAA found that immediate corrective action was required, notice and opportunity for prior public comment were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 3, 2000, to all known U.S. operators of Air Tractor, Inc. Models AT–501, AT–502, and AT–502A airplanes. These conditions still exist, and the AD is published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption ADDRESSES. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received.

How Can We Communicate More Clearly With You?

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.faa.gov/language/*.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive in the Rules Docket. We will file a report in the Rules Docket that summarizes each

FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure the FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–40–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

How Does This AD Impact Relations Between Federal and State governments?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. The FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

How Does This Action Involve an Emergency Situation?

The FAA determined that this is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. This action involves an emergency regulation under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The FAA will prepare a final regulatory evaluation if we determine that this emergency regulation is significant under DOT Regulatory Policies and Procedures. You may obtain a copy of the evaluation (if required) from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–14–51 Air Tractor Incorporated: Amendment 39–11837; Docket No. 2000–CE–40–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following Air Tractor airplane models and serial numbers:

Model	Serial numbers
AT–501	501–002 through 501–0060 that have been converted to turboprop power.
AT–502	502–003 through 502–0061, except those that have been upgraded to the 8,000-pound gross weight configuration through the incorporation of Snow Engineering Co. Service Letter #80J.
AT–502A	All serial numbers.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* This AD is intended to detect and correct fatigue cracks in the wing lower spar cap, which could result in an in-flight separation of the wing from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	When	Procedures
(1) Initial Inspection: Visually inspect the wing lower spar cap at the wing center splice connection for cracks.	At whichever of the following that is applicable: (i) For the Models AT–501 and AT–502 airplanes: Upon accumulating 4,000 hours time-in-service (TIS) on each wing or within the next 10 hours TIS after the effective date of this AD, whichever occurs later; or. (ii) For the Model AT–502A airplanes: Upon accumulating 3,000 hours TIS on each wing or within the next 10 hours TIS after the effective date of this AD, whichever occurs later.	Accomplish this inspection in accordance with the Inspection Requirements section of Snow Engineering Co. Service Letter #197, dated June 13, 2000.
(2) Repetitive Inspections: Inspect using visual or ultrasonic methods the wing lower spar-cap at center splice connection for cracks.	For all affected airplanes, accomplish the repetitive inspections as follows: (i) Visually: Within 50 hours TIS after the initial inspection and thereafter at intervals not to exceed 50 hours TIS; or. (ii) Using ultrasonic methods: Within 400 hours TIS after the initial inspection and thereafter at intervals not to exceed 400 hours TIS.	Accomplish these inspections in accordance with the Inspection Requirements section of Snow Engineering Co. the Service Letter #197, dated June 13, 2000.
(3) Replace or modify any cracked wing lower spar cap, as specified in the service information.	Prior to further flight after the inspection where the crack is found.	Accomplish the replacement and modification as follows: (i) Replacement: Remove the wing with the cracked lower spar cap and return to Air Tractor for spar cap replacement. Immediately notify Air Tractor that you are sending the wing if the cracked spar cap can not be modified.

Action	When	Procedures
(4) Modifying each lower spar cap is considered terminating action for the repetitive inspection requirement. This modification can only be accomplished if the lower spar caps are inspected before the modification is incorporated and: (i) no cracks are found; or (ii) any crack found can be removed by drilling the hole to the next larger size.	This terminating action may be accomplished at any time provided the lower spar caps are not cracked.	(ii) Modification: In accordance with the TERMINATING ACTION section of Snow Engineering Co. Service Letter #197, dated June 13, 2000. Accomplish in accordance with the TERMINATING ACTION section of Snow Engineering Co. Service Letter #197, dated June 13, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector. The inspector may add comments before sending it to the Manager, Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Rob Romero, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided you comply with the following:

(1) The hopper is empty;

(2) Vne is reduced to 138 miles per hour (mph) (120 knots) indicated airspeed (IAS); and

(3) Flight into known turbulence is prohibited.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Co. Service Letter #197, dated June 13, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies of this document from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this AD become effective?* This AD becomes effective August 4, 2000, to all affected persons who did not receive emergency AD 2000–14–51, issued July 3, 2000. Emergency AD 2000–14–51 contained the requirements of this amendment and became effective immediately upon receipt.

Issued in Kansas City, Missouri, on July 20, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18995 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–248–AD; Amendment 39–11836; AD 90–15–12 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Valsan Supplemental Type Certificate (STC) SA4363NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Boeing Model 727 series airplanes modified by the installation of Pratt and Whitney JT8D–217C or –219 engines in accordance with Valsan STC SA4363NM, that currently requires repetitive inspections of the through-bolt nut for proper torque and for certain other conditions of the through-bolt and nut, and replacement, if necessary. That AD also requires the installation of anti-rotation plates, which constitutes terminating action for the repetitive inspections. This amendment changes the responsible office for approval of an alternative method of compliance. This amendment is prompted by the transfer of the supplemental type certificate. The actions specified in this AD are intended to prevent the nut coming off the through-bolt allowing the through-bolt to migrate out of the engine mount flange and cone bolt and possible separation of the engine.

DATES: Effective August 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 29, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–248–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood,

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California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 6, 1990, the FAA issued AD 90–15–12, amendment 39–6663 (55 FR 29005, July 17, 1990), applicable to Boeing Model 727 series airplanes modified by the installation of Pratt and Whitney JT8D–217C or –219 engines in accordance with Valsan STC SA4363NM, to require repetitive inspections of the through-bolt nut for proper torque and for certain other conditions of the through-bolt and nut, and replacement, if necessary. That AD also requires the installation of anti-rotation plates, which constitutes terminating action for the repetitive inspections. The actions required by that AD are intended to prevent the nut coming off the through-bolt allowing the through-bolt to migrate out of the engine mount flange and cone bolt and possible separation of the engine.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has transferred the supplemental type certificate data from the Seattle Aircraft Certification Office (ACO) to the Los Angeles ACO. Therefore, the FAA has determined it is necessary to issue this AD to require that all future alternative methods of compliance and adjustments of compliance time be approved by the Manager of the Los Angeles ACO.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 90–15–12 to continue to require repetitive inspections of the through-bolt nut for proper torque and for certain other conditions of the through-bolt and nut, and replacement, if necessary. This AD also continues to require the installation of anti-rotation plates, which constitutes terminating action for the repetitive inspections. This AD changes the responsible office for approval of an alternative method of compliance.

Determination of Rule's Effective Date

Since this AD is a minor and merely technical amendment in which the public is not particularly interested, and does not change the existing requirements, it is found that notice and opportunity for prior public comment hereon are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that is a minor and merely technical amendment and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–248–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and comment hereon are unnecessary because this is a minor and merely technical amendment in which the public is not particularly interested.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6663 (55 FR 29005, July 17, 1990), and by adding a new airworthiness directive (AD), amendment 39–11838, to read as follows:

90–15–12 R1 Boeing: Amendment 39–11838. Docket 2000–NM–248–AD. Revises AD 90–15–12, Amendment 39–6663.

Applicability: Model 727 series airplanes, modified by installation of Pratt and Whitney JT8D–217C or –219 engines in accordance with Valsan Supplemental Type Certificate (STC) SA4363NM, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent the nut coming off the through-bolt allowing the through-bolt to migrate out of the engine mount flange and cone bolt and possible separation of the engine, accomplish the following:

Inspection/Corrective Action

(a) Within 48 clock hours (not flight hours) after receipt of Telegraphic AD T90–11–53, dated May 24, 1990, inspect the through-bolt nut, part number SPS83970–1216, for proper torque and for certain conditions as specified in Valsan Operator Service Letter OSL–727RE–007, Revision 1, dated May 23, 1990,

in accordance with the service letter. If any discrepancies are found, prior to further flight, take corrective action in accordance with the service letter.

(b) Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 35 flight hours.

Reporting Requirement

(c) Within 10 days after performing the inspection required by paragraph (a) of this AD, submit a report of any discrepancies discovered to the Manager, Los Angeles Manufacturing Inspection District Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137. The report must include the airplane's serial number.

Installation

(d) Within 60 days after July 31, 1990 (the effective date of AD 90–15–12, amendment 39–6663), install anti-rotation plates in accordance with Valsan Service Bulletin 71–002, dated June 1, 1990. This modification constitutes terminating action for the repetitive inspections required by paragraph (a) and (b) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on August 15, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19261 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–215–AD; Amendment 39–11836; AD 2000–15–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, that requires a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at a certain station to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. This AD also requires installation of spacers between the galley power feeder cable clamps and fuselage structure. This amendment is prompted by reports indicating that the galley power feeder cables chafed against a certain fuselage frame in the forward lower cargo compartment, which resulted in electrical arcing. The actions specified by this AD are intended to prevent such chafing and arcing due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment.

DATES: Effective September 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes was published in the **Federal Register** on January 26, 2000 (65 FR 4182). That action proposed to require a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at a certain station to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. That action also proposed to require installation of spacers between the galley power feeder cable clamps and fuselage structure.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for Proposed Rule

Several commenters support the proposed rule.

Request To Extend Compliance Time

One commenter requests that the compliance time from accomplishing the detailed visual inspection be extended from the proposed 6 months to 18 months. The commenter states that the inspection should be accomplished during a heavy maintenance visit to ensure that proper access can be obtained, all discrepancies are identified, and that any on-condition repairs can be performed in the proper maintenance environment.

The FAA does not concur. In developing an appropriate compliance time for this inspection, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. In light of these items, the FAA has determined that 6 months for

compliance is appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise Work Hour Estimate

One commenter requests that the work hour estimate for accomplishing the proposed inspection be revised from 2 work hours to 4 work hours. The commenter states that the proposed inspection alone will require 4 work hours. The commenter notes that any on-condition repairs will add additional time to this inspection, and that any structural repairs that may be needed will significantly increase the hours necessary to accomplish the requirements of the proposed AD.

The FAA does not concur. The work hour estimate (*i.e.*, 2 work hours) in the proposed AD reflects the time necessary to accomplish the required inspection (1 work hour) and installation of spacers (1 work hour). The FAA used the work hours specified in McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999 (which is referenced in the AD as the appropriate source of service information for accomplishment of the required inspection and installation). In addition, the economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repairing a crack if one is detected during a required inspection ("repair, if necessary"). Such "on-condition" repair actions would be required to be accomplished—regardless of AD direction—in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 168 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 103 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–15–07 McDonnell Douglas: Amendment 39–11836. Docket 99–NM–215–AD.

Applicability: Model DC–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the galley power feeder cables against the airplane structure due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment, accomplish the following:

Inspection, Installation of Spacers, and Corrective Actions, If Necessary

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the galley external power feeder cables and fuselage structure at station Y=635.000 to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any damage or chafing is detected, prior to further flight, accomplish the actions specified in paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) of this AD, as applicable, in accordance with Condition 2 of the Accomplishment Instructions of the service bulletin.

(i) Repair or replace the chafed cables with new cables.

(ii) Repair the damaged frame.

(iii) Replace the damaged insulation blanket with a new blanket; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install spacers between the galley power feeder cable clamps and fuselage structure.

(2) If no damage or chafing is detected, prior to further flight, install spacers between

the galley power feeder cable clamps and fuselage structure in accordance with Condition 1 of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 4, 2000.

Issued in Renton, Washington, on July 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18750 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–214–AD; Amendment 39–11835; AD 2000–15–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, that requires a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at a certain fuselage station to detect chafing and arcing damage, and corrective actions, if necessary; and installation of a standoff and clamp. This amendment is prompted by an incident in which the power feeder cables in the cabin electrical system were found to be chafed and arced against a fuselage frame due to insufficient clearance between the cables and airplane structure. The actions specified by this AD are intended to prevent such chafing and arcing, which could cause smoke and fire in the overhead of the main cabin.

DATES: Effective September 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes was published in the Federal Register on January 26, 2000 (65 FR 4184). That action proposed to require a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at a certain fuselage station to detect chafing and arcing damage, and corrective actions, if necessary; and installation of a standoff and clamp.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for Proposed AD

One commenter supports the proposed AD.

Request To Revise the Applicability

One commenter requests that the effectivity of McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999 (which was referenced in the applicability of the proposed AD as the appropriate source of service information for determining the affected manufacturer's fuselage numbers of the affected airplanes), be revised to exclude freighter airplanes N1852U through N1854U inclusive, and N1859U. The commenter states that the service bulletin is not applicable to freighter airplanes.

The FAA concurs. The cabin power feeder cables at station Y=1099.00, which is the subject area of the identified unsafe condition of this AD, were not installed on McDonnell Douglas Model DC–10 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, and Model DC–10–10F, –30F (KC–10A and KDC–10 military), and –40F series airplanes. Therefore, the FAA has revised the applicability of the final rule accordingly.

Request To Extend Compliance Time

One commenter requests that the compliance time for accomplishing the general visual inspection be extended from the proposed 6 months to 18 months. The commenter states that the

inspection should be accomplished during a heavy maintenance visit to ensure that proper access can be obtained, all discrepancies are identified, and that any on-condition repairs can be performed in the proper maintenance environment.

The FAA does not concur. In developing an appropriate compliance time for this inspection, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. In light of these items, the FAA has determined that 6 months for compliance is appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise the Work Hours Specified in the Cost Estimate

One commenter requests that the work hour figure specified in the Cost Impact section of the proposed AD be revised from 1 work hour to 5 work hours, which includes 3 hours to gain access, 1 hour to inspect, and 1 hour to install the clamp. The commenter states that the work hours will be even greater than 5 if any on-condition repairs are needed.

The FAA does not concur. The cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The work hours specified in the AD represent the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

In addition, the FAA notes that the economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repairing a crack if one is detected during a required inspection ("repair, if necessary"). Such "on-condition" actions would be required to be accomplished—regardless of AD direction—in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 160 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–15–06 McDonnell Douglas: Amendment 39–11835. Docket 99–NM–214–AD.

Applicability: Model DC–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999; certificated in any category; except those airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, and Model DC–10–10F, –30F (KC–10A and KDC–10 military), and –40F series airplanes.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the power feeder cables against the fuselage structure, which could cause smoke and fire in the overhead of the main cabin, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, perform a general visual inspection of the power feeder cables in the cabin electrical system, airplane structure, and insulation blankets at station Y=1099.000 between longerons 9 and 10 (right side) for evidence of chafing and arcing damage, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 Corrective Action

(1) If no chafing or damage to the power feeder cables, structure, or insulation blankets is detected: Prior to further flight, install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 1 of the Work Instructions of the service bulletin.

Condition 2 Corrective Action

(2) If any chafed power feeder cable is detected, and if no damage to adjacent structure or insulation blankets is detected: Prior to further flight, repair or replace the power feeder cables in the cabin electrical system with new power feeder cables; and install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 2 of the Work Instructions of the service bulletin.

Condition 3 Corrective Action

(3) If any chafed power feeder cable is detected, and if any damage to the adjacent structure and/or insulation blankets is detected: Prior to further flight, accomplish the actions specified in paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) of this AD, as applicable, in accordance with Condition 3 of the Work Instructions of the service bulletin.

(i) Repair or replace the damaged power feeder cables in the cabin electrical system with new power feeder cables.

(ii) Repair or replace the damaged structure with new structure.

(iii) Repair or replace the damaged insulation blankets with new insulation blankets; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install a standoff and clamp at station Y=1093.000, longeron 10.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 4, 2000.

Issued in Renton, Washington, on July 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18749 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–211–AD; Amendment 39–11834; AD 2000–15–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 Military), –40, and –40F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes, that requires a one-time inspection of the wiring and wire bundles of the aft main avionics rack (MAR) to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary. This amendment is prompted by an incident in which the automatic and manual cargo door test in the cockpit was inoperative during dispatch of the airplane, due to wiring of the MAR chafing against clamps as a result of the wire bundles being installed improperly during production of the airplane. The actions specified by this AD are intended to ensure that the wires that route from the main wire bundles to the MAR and associated brackets, clamps, braces, standoffs, and clips are installed properly. Improper installation of such wiring and structure could cause chafing of the wires/wire bundles, which could result in electrical arcing, smoke, and possible fire in the MAR.

DATES: Effective September 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes was published in the **Federal Register** on January 26, 2000 (65 FR 4190). That action proposed to require a one-time inspection of the wiring and wire bundles of the aft main avionics rack (MAR) to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Withdraw Proposed AD

One commenter requests that the proposed AD be withdrawn. The commenter states that the original problem, which was noted in the proposed AD, that led to the issuance of McDonnell Douglas Alert Service Bulletin DC10–24A165 was due to a production problem on McDonnell Douglas Model MD–11 series airplanes. The commenter also states that it has been performing general visual inspections of the subject area on numerous occasions as part of its FAA-approved DC–10 maintenance program. The commenter contends that performing these inspections again is overly redundant and unnecessary.

The FAA does not concur. The FAA acknowledges that Model DC–10 series airplanes have an extensive life of service, and that operators have performed numerous inspections as a part of the FAA-approved DC–10 maintenance program. As part of the continued airworthiness requirements, all operators are required to periodically maintain their airplanes in accordance with an FAA-approved maintenance program. However, the FAA finds that the subject inspections of the maintenance program may not adequately address certain in-service difficulties and, thus, do not adequately address the identified unsafe condition. The FAA has determined that the actions required by this AD will address the identified unsafe condition. In light of this, the FAA has determined that this AD is appropriate and warranted.

Request To Extend Compliance Time

One commenter requests that the compliance time from accomplishing the general visual inspection be extended from the proposed 60 days to 18 months. The commenter states that the 60-day compliance time is illogical given the extensive service life of the affected airplanes. The commenter also states that the inspection should be accomplished during the FAA-approved maintenance program task that accomplishes the same inspection.

The FAA does not concur. The FAA finds that an 18-month compliance time, which coincides with the FAA-approved maintenance program task that accomplishes a similar inspection required by this AD, would not maintain an adequate level of safety. In developing an appropriate compliance time for the inspection required by this AD, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. In light of these items, the FAA has determined that the compliance time, as proposed, represents an appropriate interval in which inspection can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety. However, under the provisions of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise Reporting Requirement

One commenter requests that the compliance time of the reporting requirement be revised from within 10 days after accomplishing the inspection to "within 10 days after the AD compliance date." The commenter also requests that the reporting requirement be limited to positive findings only. The commenter states that the compliance time extension would allow them to submit one report describing findings for its entire fleet.

The FAA partially concurs. The FAA does not concur with the commenter that only positive findings should be reported. The FAA finds that both negative and positive findings of the inspection are necessary to determine if further rulemaking is necessary. The FAA concurs with the commenter that the inspection results may be submitted to the FAA within 70 days after the effective date of this AD. Therefore, the FAA has revised paragraph (f) of the final rule accordingly.

Request To Revise Work Hour Estimate

One commenter requests that the work hour estimate for accomplishing the proposed inspection be revised from 3 work hours to 5 work hours, because of the large numbers of wires in the subject area.

The FAA does not concur. The FAA used the work hours (rounded up) specified in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999 (which is referenced in the AD as the appropriate source of service information for accomplishment of the required inspection). The FAA notes that the economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repairing a crack if one is detected during a required inspection ("repair, if necessary"). Such "on-condition" actions would be required to be accomplished—regardless of AD direction—in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change to the final rule is necessary.

Explanation of Change to Affected Airplane Models

Throughout the proposed AD, the affected airplanes are listed as "Model DC–10–10, –15, –30, –30F, and –40 series airplanes and KC–10A (military) airplanes." The FAA finds that operators may misinterpret the term

"series" when determining which airplane models are subject to the requirements of this AD. Therefore, the FAA finds that clarification is necessary. The FAA's intent was that applicability of the proposed AD include, among other series airplanes, all series of Model DC–10–10 and DC–10–40 airplanes (*i.e.*, Model DC–10–10, DC–10–10F, DC–10–40, and DC–10–40F), as listed in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999 (which references the specific affected manufacturer's fuselage numbers, including those numbers that correspond to Model DC–10–10F and DC–10–40F series airplanes). In addition, operators should note that Model DC–10–30F series airplanes, as listed in the applicability, include two military airplane models (i.e., KC–10A and KDC–10). The FAA has revised the affected airplanes throughout the final rule to read "Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 412 Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspection of the wiring and wire bundles, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspection by this AD on U.S. operators is estimated to be $54,000, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–15–05 McDonnell Douglas: Amendment 39–11834. Docket 99–NM–211–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the wires that route from the main wire bundles to the main avionics rack (MAR) and associated brackets, clamps, braces, standoffs, and clips are installed properly, accomplish the following:

One-Time General Visual Inspection

(a) Within 60 days after the effective date of this AD, perform a one-time general visual inspection of the wiring and wire bundles of the aft MAR to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Where there are differences between this AD and the referenced alert service bulletin, the AD prevails.

Note 4: The wording "main avionics rack" in this AD and the wording "main radio rack" in the alert service are used interchangeably.

Corrective Actions

(b) If any damaged wiring is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with the alert service bulletin.

(c) If any wire/wire bundle is detected to be riding or chafing on the subject areas during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Route and tie all wires/wire bundles so they are not in contact with adjacent wire bundles, clamps or structure, and install silicon rubber coated glass cloth wrapping on wiring, if necessary, in accordance with the alert service bulletin.

(2) Perform a general visual inspection of all brackets, clamps, braces, standoffs, and clips to make sure they are not bent or twisted and do not come in contact with wires/wire bundles, in accordance with the alert service bulletin. If any of these parts is bent or twisted or is in contact with wires/wire bundles, prior to further flight, reposition in accordance with the alert service bulletin.

(3) Perform a general visual inspection of the clamps for proper alignment or for damage of the rubber cushion, in accordance

with the alert service bulletin. If any clamp is not aligned properly, prior to further flight, realign the clamp in accordance with the alert service bulletin. If any rubber cushion is damaged, prior to further flight, replace the clamp in accordance with the alert service bulletin.

(d) If any damaged rubber cushion insert is detected during the inspection required by paragraph (a) of this AD, prior to further flight, replace the clamp with a new or serviceable clamp in accordance with McDonnell Douglas Process Engineering Order DPS 1.834–7, Revision CF, dated June 29, 1999.

(e) If any rubber cushion insert is out of alignment, prior to further flight, visually realign the cushion.

Reporting Requirement

(f) Within 70 days after the effective date of this AD, submit a report of the results (both positive and negative findings) of the inspection required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on September 4, 2000.

Issued in Renton, Washington, on July 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18748 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 5

RIN 3038–ZA00

Fees for Applications for Contract Market Designation, and Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Establish a new schedule of fees.

SUMMARY: The Commission charges fees to the contract markets and the National Futures Association ("NFA") to recover the costs incurred by the Commission in the operation of two programs that provide a service to these entities. The fees are charged for the Commission's review of applications for contract designation submitted by the contracts markets and for the Commission's conduct of its program of oversight over self-regulatory ("SRO") rule enforcement programs. (NFA and the contract markets are collectively referred to herein as the "SROs".) The calculation of the new amounts to be charged for the upcoming year is based upon an average of actual program costs incurred in the most recent three full fiscal years, as explained in SUPPLEMENTARY INFORMATION.

EFFECTIVE DATES: The fee schedule for processing of the contracts submitted by contract markets for designation by the Commission is effective on July 31, 2000 and must be paid at the time of submission to the Commission for processing. The fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Donald L. Tendick, Acting Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, 202–418–5160.

SUPPLEMENTARY INFORMATION:

I. General

The Commission re-calculated the fees charged each year with the intention of recovering the costs of operating the two Commission programs.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system which is operated according to a government-wide standard established by the Office of Management and Budget. Both types of fees are set each year based upon direct program costs plus an overhead factor, as explained in sections II., III. and IV. below.

The Commission previously had proposed to eliminate fees for contract market designation applications in connection with the Commission's adoption of Rule 5.3 which allows exchanges to list new contracts by certification (64 FR 66432, November 26, 1999). Since then, the Commission has embarked on a program of regulatory reform and has proposed a new regulatory framework for multilateral transaction execution facilities, which includes, among other things, alternative procedures for listing new products (65 FR 38985, June 22, "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations"). As a result, the Commission at this time is deferring any final determination whether to remove designation fees.

The new fee schedules are set forth below and information is provided on the effective date of the fees and the due date for payment:

A. *Fees charged to contract markets for processing applications for designation of futures and option contracts:*

1. For futures contracts and options on futures contracts which do not meet the multiple contract filing criteria set forth in 2 below:

- A single futures contract or an option on a physical—$6,300;
- A single option on a previously approved futures contract—$1,100;
- A combined submission of a futures contract and an option on the same futures contract—$7,000;

[1] See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

2. Reduced fees for simultaneous submission of certain multiple cash-settled index contracts and multiple contracts on the following major currencies—the Australian dollar; British pound; Euro (and its component Currencies); Japanese yen; Canadian dollar; Swiss franc; New Zealand dollar; Swedish krona; and the Norwegian krone. The Commission's reduced fees for simultaneous submission of multiple, related cash-settled or major-currency contracts is equal to the applicable fee listed above for the first contract plus 10 percent of that fee for each additional contract in the filing. For multiple, simultaneously submitted, major-currency or cash-settled contract filings to be eligible for the reduced fees, the contracts in the filing must meet the following criteria:

a. Each contract must be based on a major currency or be cash-settled based on an index representing measurements of physical properties or financial characteristics which are not traded per se in the cash market, except in regard to the specified currency or the temporal or spatial pricing characteristics of the cash settlement price or the multiplier used to determine the size of each contract;

b. The currency delivery procedures or the cash-settlement procedure must be the same for each contract in the filing;

c. All other terms and conditions of the contracts must be the same in all respects; and

d. The filing must contain a claim for the reduced fee and a representation that terms a.–c. are met. For multiple contract filings containing related contracts, the designation fees are:

- A submission of multiple related futures contracts—$6,300 for the first contract, plus $630 for each additional contract;
- A submission of multiple related options on futures contracts $1,100 for the first contract, plus $110 for each additional contract;
- A combined submission of multiple futures contracts and options on those futures contracts—$7,000 for the first combined futures and option contract, plus $700 for each additional futures and option contract.

B. Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission are:

Entity	Fee amount
Chicago Board of Trade	$207,586
Chicago Mercantile Exchange	283,444
New York Mercantile Exchange/COMEX	184,499
New York Board of Trade	96,466
Kansas City Board of Trade	6,779
Minneapolis Grain Exchange	3,531
Philadelphia Board of Trade	
National Futures Association	233,222
Total	1,017,528

II. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct labor program costs into the total amount of the Commission-wide overhead pool. In this connection, direct program labor costs are the salary costs of personnel working in all of the Commission's programs. Overhead costs consist generally of the following Commission wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 91 % for fiscal year 1997, 104% for fiscal year 1998 and 105% for fiscal year 1999. These are the overhead rates applied to the direct labor costs in calculating the costs of reviewing contract designations and oversight of SRO rule enforcement programs, as described below.

III. Processing Applications for Designation of Contracts

The calculation of the fees for processing applications for designation of contracts has become more refined over the years in response to changes in the types of contracts being designated.

On August 23, 1983, the Commission established a fee for Contract Market Designation (48 FR 38214). The fee was based upon a three-year moving average of the actual costs expended and the number of contracts reviewed by the Commission during that period of time. The formula for determining the fee was revised in 1985. At that time most designation applications were for futures contracts, as opposed to option contracts, and no separate fee was set for option contracts.

In 1992, the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the percentage of applications pertaining to options had increased and that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an application for an option contract. It was also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for reviewing both together was lower than for reviewing the contracts separately. Therefore, in the interest of recognizing the cost differences to the Commission of the different combinations of contract submission, three separate fees were established—one for futures alone; one for options alone; and one for combined futures and option contract applications (57 FR 1372).

Effective during fiscal year 1999, the Commission further refined its fee structure in order to recognize the unique processing cost characteristics of a class of contracts which are cash-settled based on a index of non-tangible commodities. In this connection the Commission determined to charge a reduced fee for "related" simultaneously submitted contracts for which the cash settlement procedure is identical, except in regard to a specified temporal or spatial pricing characteristic or the multiplier used to determine the size of each contract, and all other terms and conditions of the contracts in the filing are the same. The Commission also is including contracts on major currencies (including contracts based on currency cross rates) as contracts eligible for the reduced multiple contract fees. For this purpose, major currencies are defined as the Australian dollar; British pound; Euro (and its component currencies); Japanese yen; Canadian dollar; Swiss franc; New Zealand dollar; Swedish krona; and Norwegian krone.

Contracts having differentiated spatial features include contracts which are identical in all respects, including the cash settlement mechanism, but which may be based on different geographical areas. These may include contracts on weather-related data or vacancy rates for rental properties, where each individual contract is based on the value—temperature, local vacancy rate, etc.—for a specific city. To be eligible for the multiple contract filing fee, each contract must be cash-settled based on the same underlying data source and derived under identical calculation procedures, such that the integrity of the cash settlement mechanism is not dependent on the individual spatial specifications.[2] Contracts having

[2] Thus, for example, applications containing a number of similar cash-settled contracts based on the government debt of different foreign countries would not be eligible for the reduced fee, since the manipulation potential of each contract would be

Continued

differentiated temporal features include contracts that are the same in all respects except for the time to maturity of the individual underlying instruments. This may include cash-settled interest rate futures contracts within a specific segment of the yield curve, provided that for each contract the cash settlement mechanism and derivation procedure is identical, and the integrity of the cash settlement mechanism is not dependent on the individual temporal specifications. Examples are, short-term interest rate contracts having monthly maturities ranging up to one year.[3]

The Commission stated that a 10-percent marginal fee for additional contracts in a filing is appropriate for those simultaneously submitted applications eligible for the multiple-contract filing fee. Because the eligible, related contracts are based on indexes of non-tangible commodities not traded in the cash market, the Commission's review need not require a separate analysis of the different contracts in a filing related to the liquidity of the underlying cash markets or the reliability or transparency of prices for the individual commodities. Also, because each contract must use an identical cash-settlement procedure and all other material terms and conditions must be identical (except for the differentiated spatial or temporal term or the contract multiplier), the analysis of the cash settlement procedure for one contract would apply in large part to each of the additional contracts. Finally, because all of the contracts in a related group are differentiated from one another only with respect to a spatial or temporal feature that has no bearing upon the characteristics of the cash settlement mechanism, each separate contract would not require a separate analysis to ascertain its compliance with the requirements for designation. Thus, the Commission's analysis of the cash settlement procedure in general and its review of the other material terms and conditions would be equally applicable to all of the related contracts in the filing. Only a limited supplemental analysis is required for each additional contract in such a filing, resulting in a substantially reduced marginal cost for reviewing and processing the additional contracts.

Multiple contract filings of related futures and option contracts on major currencies are eligible for the multiple contract fees for the same reasons that reduced fees are appropriate for multiple, related cash settled contract filings. While currency contracts may not be cash settled, *per se*, issues related to physical delivery contracts do not arise for currencies since, like contracts providing for cash settlement, futures delivery and payment simply involves the exchange of cash (one currency for another). Moreover, the Commission previously has found that major currencies (as defined herein) have nearly inexhaustible deliverable supplies, exhibit extremely deep and liquid markets, are not subject to convertibility or delivery restrictions and are easily arbitraged between cash and futures markets; thus, it has exempted contracts based on them from speculative limits. In view of this, no separate analysis is required of the manipulation potential of each contract based on a major currency in a multiple contract filing. Also, the delivery and payment procedures and all other terms and conditions are identical for currency contracts, as the only difference is the actual currencies being transferred in the delivery and payment process. Accordingly, since only an incremental analysis is needed for each additional contract in a multiple contract filing, lower fees are more in line with actual processing costs.

The Commission's extensive experience in reviewing new contract designation applications indicates that, for simultaneous submission of multiple, related major-currency or cash-settled contracts, a fee for each additional contract equal to 10 percent of the single contract application fee would reflect the Commission's expected review costs for these types of applications. Thus, the Commission's fees for simultaneous submission of these types of related contracts is set to be equal to the prevailing, single contract applicable fee for the first contract plus 10 percent of that fee for each additional contract in the filing. This marginal-cost-based fee structure represents an extension of the policy adopted by the Commission in 1992 when it established reduced fees for option applications and for combined futures and option applications.

Separately, the Commission notes that the fees for futures contract applications also applies to applications for options on physical commodities, and that the reduced option fee applies only to applications for options on existing futures contracts. Because the requirements for designation of an option on a physical commodity are substantially identical to those of futures, the same fee will apply to both types of filings.[4]

The Commission staff compiled the actual costs of processing applications for contract market designation for a futures contract for fiscal years 1997, 1998 and 1999 and found that the average cost over the three-year period was $6,300 per contract. The review of actual costs of processing applications for contract market designation for an option contract for fiscal years 1997, 1998 and 1999 revealed that the average costs over the same three-year period was $1,116 per contract, including overhead applied. Accordingly, the Commission has determined that the fee for applications for contract market designation for a futures contract will be set at $6,300 and the fee for applications for contract market designation as an option contract will be set at $1,100, in accordance with the Commission's regulations (17 CFR Part 5, Appendix B). In addition, by reference to the above cost analysis, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract and fees for filings containing multiple cash-settled indexes on nontangible commodities have been set on a similar basis, as indicated in the schedule appearing above in the Summary section.

IV. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR Part 1, Appendix B), the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on a 3-year average of the actual cost of performing reviews at each SRO. The cost of operation of the Commission's program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The 3-year averaging is performed to smooth out some variations in year-to-year costs which can be large. In particular, the costs may vary year-to-year depending upon the timing of the reviews. This is

related to the liquidity of the underlying instruments, and the individual trading practices and governmental oversight in each specific country require separate analyses.

[3] Cash-settled contracts covering various segments of the yield curve would not be eligible for the reduced fee, since the underlying instruments may be priced differently and have different trading characteristics, and the manipulation potential of each contract would be related to the liquidity of the underlying instruments and would, therefore, require separate analyses.

[4] In this regard, under the Commission's Guideline No. 1, which details the information an application for contract market designation must include, all of the requirements for futures contract applications (whether providing for physical delivery or cash settlement) also apply to options on physicals applications, plus several additional requirements that apply uniquely to options. *See*, for example, 63 FR 38537, July 17, 1998.

because the conduct of a review may span two fiscal years and, also, reviews at each SRO are not usually conducted each and every year. An adjustment to actual costs may be made in order to relieve burden upon SROs with a disproportionately large share of program costs. That is, the Commission's formula provides for a reduction in the fee assessed if an SRO has a smaller percentage of U.S. industry contract volume than its percentage of overall Commission oversight program costs, as described below. The adjustment made is to reduce one-half of the costs so that, as a percentage of total Commission SRO oversight program costs, the costs are in line (in percentage terms) with the pro-rata percentage for that SRO of U.S. industry-wide contract volume. Following is a detailed description of the calculation:

The fee required to be paid to the Commission by each contract market is equal to the lesser of: actual costs based upon the three-year historical average of costs for that contract market or: (i) One-half of average costs incurred by the Commission pertaining to each contract market for the most recent three-years, plus (ii) a pro-rata share (based upon average trading volume for the most recent three years) of the aggregate of average annual costs of all the contract markets for the most recent three years.

The formula for calculating the second factor mentioned above is: 0.5a + 0.5vt = current fee. In the formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years and "t" equals the average annual cost for all exchanges. (The one registered futures association regulated by the Commission, the National Futures Association (NFA), has no contracts traded and, thus, the NFA's fee is based simply on costs for the most recent three fiscal years.)

Following is a summary of data used in the calculations and the resultant fee for each entity:

	3-year average actual costs	3-year average percentage of volume (percent)	2000 fee amount
Chicago Board of Trade	$207,586	44.6820	$207,586
Chicago Mercantile Exchange	283,444	35.3012	283,444
NYMEX/COMEX	226,295	15.6933	164,499
New York Board of Trade	165,269	3.5269	94,468
Kansas City Board of Trade	9,989	0.3975	6,779
Minneapolis Grain Exchange	5,295	0.1967	3,531
Philadelphia Board of Trade	0	0.0024	0
Sub-total	897,887	100.0000	784,306
National Futures Association	233,222	N/A	233,222
Total	1,131,099	100.0000	$1,017,528

Below is an example of how the fee was calculated for one exchange, the Minneapolis Grain Exchange:

(i) Actual 3-year average costs are $5,295;

(ii) Alternative computation is; (.5)($5,295) + (.5)(.1967%)($897,877) = 3,531

(iii) The fee is the lesser of (i) or (ii) = $3,531.

As noted above, the alternative calculation, which is based upon contracts traded, is not applicable to the NFA because it is not a contract market and, thus, has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 1997 through 1999 was $233,222 (⅓ of $699,666). Therefore, the fee to be paid by the NFA for the current fiscal year is $233,222.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on July 19, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–18729 Filed 7–28–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 241 and 271

[Release No. 34–43069; IC–24564]

Commission Guidance on Mini-Tender Offers and Limited Partnership Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: We are publishing our views regarding the following issues: the disclosure and dissemination of tender offers that result in the bidder holding five percent or less of the outstanding securities of a company; and the disclosure for tender offers for limited partnership units. This interpretive guidance is intended to help bidders, subject companies and others participating in tender offers meet their obligations under the applicable statutes and rules, including the antifraud provisions.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis O. Garris, Chief, or Nicholas P. Panos, Special Counsel, Office of

Mergers and Acquisitions, Division of Corporation Finance at (202) 942–2920.

SUPPLEMENTARY INFORMATION: We are aware of questions about the applicability of the tender offer rules under the Securities Exchange Act of 1934 ("Exchange Act")[1] to two specific situations: a tender offer resulting in ownership of not more than five percent of a company's securities (a "mini-tender offer") and a tender offer for limited partnership units. In the past, the staff has provided guidance on a case-by-case basis by responding to inquiries and through the review and comment process. This Commission interpretive release enhances investor protection by providing guidance in a broader context. It first describes the regulatory framework for tender offers and then sets forth our views on disclosure, dissemination and other obligations involving mini-tender offers and tender offers for limited partnership units. By following the guidelines set forth below, participants in tender offers will reduce the risk that they will violate the antifraud provisions of the statute and rules. However, in every instance, the determination will depend on the particular facts.

I. Tender Offer Regulatory Scheme

For purposes of determining whether our tender offer rules apply to a particular acquisition program, the threshold question is whether the transaction constitutes a "tender offer" within the scope of the Williams Act.[2] While the term "tender offer" has never been defined in any statutory provision or rule, the courts generally have applied an eight-factor test in determining whether a particular acquisition program constitutes a tender offer.[3] It is not necessary that all eight factors be present to conclude that the acquisition program is a tender offer.[4]

Both mini-tender offers and offers for limited partnership units are tender offers subject to our rules.

Mini-tender offers generally are structured to result in ownership of not more than five percent of a class of securities to avoid the filing, disclosure and procedural requirements of Section 14(d) of the Exchange Act and Regulation 14D.[5] While Congress limited the application of Section 14(d) to tender offers that would result in ownership of more than five percent of a class of securities, Section 14(e) has no similar limitation. Security holders faced with a mini-tender offer therefore are entitled to the protections of Section 14(e) and Regulation 14E.[6]

Federal tender offer regulation is based on three statutory sections of the Exchange Act and our regulations adopted under those sections. The applicability of each section and its underlying regulations depends on: (i) The party conducting the offers, (ii) the nature of the subject security, (iii) whether the security is registered under Section 12 of the Exchange Act,[7] and (iv) whether or not the bidder would own more than five percent of the securities after the tender offer.

A. Section 14(d) and Regulation 14D

Section 14(d) of the Exchange Act and Regulation 14D apply to all tender offers for Exchange Act registered equity securities made by parties other than the target (or affiliates of the target), so long as upon consummation of the tender offer the bidder would beneficially own more than five percent of the class of securities subject to the offer.[8] A bidder must include any shares it owns before the commencement of the tender offer in calculating the five percent amount. For example, if a bidder owns four percent of the target's securities before it commences the tender offer, it could not make an offer for more than one percent of the target's securities without triggering Section 14(d) and Regulation 14D requirements.[9]

Regulation 14D requires the bidder to make specific disclosures to security holders and mandates certain procedural protections. The disclosure focuses on the terms of the offer and information about the bidder.[10] The procedural protections include the right to withdraw tendered securities while the offer remains open,[11] the right to have tendered securities accepted on a pro rata basis[12] throughout the term of the offer if the offer is for less than all of the securities, and the requirement that all security holders of the subject class of securities be treated equally.[13] Also, Regulation 14D requires the bidder to file its offering documents and other information with the Commission[14] and hand deliver a copy to the target and any competing bidders.[15]

Regulation 14D also requires the target to send to security holders specific disclosure about its recommendation, file a Schedule 14D–9 containing that disclosure, and send the Schedule 14D–9 to the bidder.[16]

B. Rule 13e–4

Rule 13e–4,[17] promulgated under Section 13(e) of the Exchange Act, applies to all tender offers by the issuer for its equity securities when the issuer has a class of equity securities registered under Section 12 or when the issuer files periodic reports under Section 15(d) of the Exchange Act.[18] Rule 13e–4 also applies to a tender offer by an affiliate of the issuer for the issuer's securities where the tender offer is not subject to Section 14(d). Rule 13e–4 is different from Regulation 14D because it applies even if the class of securities sought in the offer is not registered under Section 12. Also, Rule 13e–4 applies regardless of the amount of securities sought in the offer. Rule 13e–4 provides for disclosure, filing and procedural safeguards that generally mirror those provided under Section 14(d) and Regulation 14D.

C. Section 14(e) and Regulation 14E

Section 14(e) of the Exchange Act is the antifraud provision for all tender offers, including mini-tender offers and tender offers under Regulation 14D and Rule 13e–4.[19] Section 14(e) prohibits

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[1] 15 U.S.C. 78a *et seq.*

[2] The Williams Act added a number of provisions to Sections 13 and 14 of the Exchange Act in 1968 addressing beneficial ownership disclosure, tender offers and changes in control, including Sections 13(d) and 13(e) [15 U.S.C. 78m(d)–(e)]; and Sections 14(d) and 14(e) [15 U.S.C. 78n(d)–(e)].

[3] These factors include whether the transaction: (1) Involves an active and widespread solicitation of security holders; (2) involves a solicitation for a substantial percentage of the issuer's stock; (3) offers a premium over the market price; (4) contains terms that are fixed as opposed to flexible; (5) is conditioned upon the tender of a fixed number of securities; (6) is open for a limited period of time; (7) pressures security holders to respond; and (8) would result in the bidder acquiring a substantial amount of securities. *SEC* v. *Carter Hawley Hale Stores, Inc.*, 760 F.2d 945 (9th Cir. 1985); *Wellman* v. *Dickinson*, 475 F.Supp. 783 (S.D.N.Y. 1979). *But see Hanson Trust plc* v. *SCM Corp.*, 774 F.2d 47 (2d Cir. 1985) (relevant determination is whether sellers need the protections of the tender offer rules).

[4] *Wellman* at 824.

[5] 17 CFR 240.14d–1 *et seq.*

[6] 17 CFR 240.14e–1 *et seq.*; *see also* Exchange Act Release No. 16384 (November 29, 1979) [44 FR 70326], n.7 and related text.

[7] 15 U.S.C. 78l.

[8] Section 14(d)(1) of the Exchange Act [15 U.S.C. 78n(d)(1)] and Rule 14d–1(a) [17 CFR 240.14d–1(a)].

[9] If the bidder acquires no more than two percent over a 12-month period, however, Regulation 14D will not be triggered notwithstanding the amount the bidder owned before the commencement of the tender offer. Section 14(d)(8) of the Exchange Act [15 U.S.C. 78n(d)(8)].

[10] Schedule TO [17 CFR 240.14d–100].

[11] Rule 14d–7 [17 CFR 240.14d–7].

[12] Rule 14d–8 [17 CFR 240.14d–8].

[13] Rule 14d–10 [17 CFR 240.14d–10]. This rule requires that the tender offer be made to all security holders and that the highest consideration paid to any security holder be paid to all security holders.

[14] Rule 14d–3(a)(1) [17 CFR 240.14d–3(a)(1)] and Schedule TO.

[15] Rule 14d–3(a)(2) [17 CFR 240.14d–3(a)(2)].

[16] Rule 14d–9 [17 CFR 240.14d–9] and Schedule 14D–9 [17 CFR 240.14d–101]. *Also see* the discussion of Rule 14e–2 in Section I.C below.

[17] 17 CFR 240.13e–4.

[18] 15 U.S.C. 78o(d).

[19] The antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b–5 also apply to all

fraudulent, deceptive, and manipulative acts in connection with a tender offer. Regulation 14E provides the basic procedural protections for all tender offers, including mini-tender offers and tender offers under Regulation 14D and Rule 13e–4.

Section 14(e) and Regulation 14E apply to all tender offers, even where the offer is for less than five percent of the outstanding securities and offers where the bidder would not own more than five percent after the consummation of the offer. Section 14(e) and Regulation 14E apply to tender offers for any type of security (including debt). These provisions apply both to registered and unregistered securities (including securities issued by a private company), except exempt securities under the Exchange Act, such as municipal bonds.

Regulation 14E requires that a tender offer be open for at least 20 business days,[20] that the offer remain open for 10 business days following a change in the offering price or the percentage of securities being sought,[21] and that the bidder promptly pay for or return securities when the tender offer expires.[22] Regulation 14E also requires the target company to state its position about the offer within 10 business days after the offer begins.[23] The target must state either that it recommends that its security holders accept or reject the offer; that it expresses no opinion and remains neutral toward the offer; or that it is unable to take a position on the offer.[24] With a tender offer not subject to Regulation 14D, however, the bidder is not required to send its offer to the target. Therefore, the target may not know about the tender offer. The target should take all steps to comply with its obligations under Regulation 14E within 10 business days or as soon as possible upon becoming aware of the offer.

II. Mini-Tender Offers

A. Background

We have observed an increase in tender offers that would result in the bidder holding not more than five percent of a company's securities. These so-called "mini-tender offers" are generally structured to avoid the filing, disclosure and procedural requirements of Section 14(d) and Regulation 14D. These offers are subject only to the provisions of Section 14(e) and Regulation 14E. Mini-tender offers have been common in the limited partnership area for several years. Bidders now make mini-tender offers for corporate securities and shares of closed-end funds that are traded on exchanges or quoted on the National Association of Securities Dealers Automated Quotation system ("Nasdaq").

We are concerned that the substance of the disclosure in many of these offers is not adequate under Section 14(e) and Regulation 14E. We also are concerned that bidders are not adequately disseminating the disclosure to security holders. Further, we are concerned that many bidders are not paying for securities promptly at the expiration of the tender offer, as required by Regulation 14E. Recently, we have brought enforcement actions that address some concerns we have with mini-tender offers.[25]

The offering documents in mini-tender offers frequently are very brief and contain very little information. Often, these mini-tender offers are made at a price below the current market price.[26] However, frequently there is no disclosure of this fact in the offering documents or in any disclosure that the security holders ultimately receive. This lack of disclosure can mislead security holders because most tender offers, especially third-party offers, historically have been made at prices that are at a premium to the current market price. Many investors could reasonably assume that a mini-tender offer also involves a premium to market price. However, because of the lack of disclosure given to shareholders, it is often difficult for shareholders to determine the actual price that will be paid in the offer and whether it is below the market price.

Some bidders have devised schemes to confuse security holders about the actual offer price. For example, we have seen situations where a bidder makes an offer at a price above market price but never intends to purchase the shares in the offer at a premium. In these cases, the bidder holds the shares tendered and continuously extends the offer until the market price rises above the offer price. During this time, security holders generally are not permitted to withdraw their securities from the offer. Then the bidder purchases the shares at the offer price. In these situations, the bidder does not disclose this plan to security holders.[27] We believe these practices are "fraudulent, deceptive or manipulative practices" within the meaning of Section 14(e), and we recently brought an enforcement action to stop such practices.[28]

We have seen other situations where a bidder does not make it clear that certain fees or expenses will be deducted from the offer price. After deducting the amount of the fees, the offer price is often less than the market price. These fees often are disclosed only in the fine print in the documents that the security holders send back to the bidder to accept the offer, but not in the disclosure document itself.[29] We believe that these disclosure practices may, under certain circumstances, be "fraudulent, deceptive or manipulative practices" within the meaning of Section 14(e).

Disclosure in mini-tender offers is usually deficient in other respects that may harm security holders. For instance, since mini-tender offers are not subject to the specific requirements of Regulation 14D, these offers are generally structured as first-come, first-served offers without withdrawal rights and prorationing. This structure pressures security holders into tendering quickly. Once they have tendered, they are locked into their decision. Security holders are then unable to take advantage of new information or opportunities that may become available during the course of the offer, such as the opportunity to sell their stock outside the tender offer at a higher market price, the target's recommendation, or a higher offer. It is not typical for this aspect of a mini-tender offer to be disclosed.

This lack of disclosure is compounded by the fact that some bidders do not adequately disseminate the tender offer disclosure to security holders. Often, bidders in mini-tender offers will deliver the offering documents to The Depository Trust Company ("DTC").[30] These bidders rely on DTC to forward a notice of the offer electronically to DTC's participant broker-dealers and banks. In some cases, the participants then send information to their customers for whom the

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tender offers, including mini-tender offers. 15 U.S.C. 78j; 17 CFR 240.10b–5.

[20] Rule 14e–1(a) [17 CFR 240.14e–1(a)].

[21] Rule 14e–1(b) [17 CFR 240.14e–1(b)].

[22] Rule 14e–1(c) [17 CFR 240.14e–1(c)].

[23] Rule 14e–2 [17 CFR 240.14e–2].

[24] Rule 14e–2(a) [17 CFR 240.14e–2(a)].

[25] *In the Matter of IG Holdings, Inc.*, Exchange Act Release No. 41759 (August 19, 1999); *In the Matter of Peachtree Partners*, Exchange Act Release No. 41760 (August 19, 1999); *In the Matter of City Investment Group, LLC*, Exchange Act Release No. 42910 (June 12, 2000).

[26] In the case of an illiquid security, such as a limited partnership unit, the offer is frequently made at less than net asset value.

[27] *See* Section II.B.

[28] *See City Investment Group.*

[29] *See* Section III.B.

[30] DTC is a clearing agency registered with the Commission under Section 17A of the Exchange Act [15 U.S.C. 78q–1] that holds securities in custody on behalf of broker-dealers, banks and others. In this capacity, DTC is the depository for more than 90% of the securities held in the United States.

participants hold securities in street name. Generally, bidders make no effort to send offering documents to security holders who hold their securities in their own name, rather than through brokers or banks in street name.

The information sent by the broker-dealer or bank participants to customers often is limited to notice of the tender offer, the expiration date, and, in some cases, the price. The participants do not always request copies of the offering documents from DTC. Even if the participants do obtain the offering documents, they may decide not to send them to their customers. Therefore, security holders may make investment decisions without receiving material information about the tender offer.

In mini-tender offers, bidders often wait 30 days or more after the offers expire to pay for securities. During this period, the bidder sells the securities it obtains in the tender offer at the market price, which may well be higher than the price the bidder paid in the offer. The bidder then uses the proceeds from the sales in the market to pay security holders who tendered into the offer. By conducting the offer in this manner, a bidder generally is not at risk. However, security holders are harmed because their funds are withheld for a significant amount of time. This practice is inconsistent with the prompt payment requirements of Rule 14e–1(c).

B. Disclosure Guidelines

As discussed above, we believe security holders need better and clearer disclosure in mini-tender offers. To avoid "fraudulent, deceptive or manipulative practices" within the meaning of Section 14(e), we recommend that bidders in mini-tender offers consider the following issues in crafting disclosures in the tender offer documents that are provided to security holders.[31]

• Offer Price: Price information is material to security holders. Because tender offers typically are made at prices that are at a premium to market, investors could reasonably assume that a mini-tender offer also includes a premium. Bidders should disclose clearly if the offer price is below the market price.

If the price offered is below the market price when the offer commences, the disclosure should clearly explain this prominently in the document. Also, the explanation should include the market price (or the bid and ask prices) on the day of commencement, or the most recent practicable date. For closed-end funds, the disclosure also should include the net asset value on the date the offer commences, or the most recent practicable date. If there is no liquid market for the securities, the bidder should disclose, if known, the latest price at which the security sold, including the date of sale, or the latest bid and ask prices.

Some mini-tender offers have been made at, or slightly above, the market price of the security. The offer is then repeatedly extended until the market price rises above the offer price. These offers generally do not have withdrawal rights. The bidder then purchases the shares below the market price. If the bidder intended never to purchase the shares unless the market price rose above the offer price, and did not disclose this intent, we believe that this would be a "fraudulent, deceptive or manipulative practice" within the meaning of Section 14(e).[32]

• Price Changes: We believe that a bidder's intent to reduce the offering price based on distributions made to security holders by the target company and fees imposed by the bidder is material information. In describing the offer price, the bidder should disclose, if applicable, that the price may be reduced by any distributions or fees and the amount, if known. If the bidder changes the price, the tender offer would need to be extended for 10 business days as provided by Rule 14e–1(b).

• Withdrawal Rights: The ability to withdraw a tender while the offer is open can influence an investor's decision whether to tender. The bidder should disclose clearly whether security holders have the right to withdraw the shares they tendered during the offer. If no withdrawal rights exist, the disclosure should indicate that security holders who tender their shares cannot withdraw their shares. The disclosure should also clearly state, if applicable, that if the bidder extends the offer, the shares tendered before the extension still cannot be withdrawn and may be held through the end of the offer until payment. If withdrawal rights do exist, the disclosure should explain fully the procedures for withdrawing tendered shares.

• Pro Rata Acceptance: A pro rata provision has a direct bearing on the amount of time available for an investment decision. If no pro rata provision exists, the offer can, in effect, be open for less than 20 business days because shares will be purchased on a first come, first served basis. The bidder should disclose clearly whether tendered securities will be accepted on a pro rata basis if the offer is oversubscribed. If shares will not be accepted on a pro rata basis, the disclosure should describe the effect on security holders.

• Target Recommendation: Security holders should be advised, before an investment decision is made, that additional, material information will come from management of the target company. This disclosure is especially important in instances where withdrawal rights do not exist. The bidder should disclose that if the target is aware of the offer, the target is required to make a recommendation to security holders regarding the offer within 10 business days of commencement. We encourage the bidder to send the offering document to the target at the commencement of the tender offer so the target can comply with its obligation under Rule 14e–2 to make a recommendation regarding the tender offer.

• Identity of Bidder: Identification of the bidder provides security holders with insight regarding financial resources, capacity to pay for tendered securities, and historic business practices. The bidder should completely and accurately disclose its identity, including control persons of the bidder and promoters. For example, it may be meaningful to disclose the controlling security holders, executive officers and directors of a corporate bidder, or the general partner (and its control persons) of a partnership bidder. The bidder also should disclose any affiliation between the target and the bidder.

• Plans or Proposals: In deciding whether to tender, it may be material to know whether the bidder intends to continue the acquisition program at some future point. The bidder should disclose its plans or proposals regarding future tender offers of the securities of the same target.

• Ability to Finance Offer: Security holders need to know whether the bidder has the ability to buy the securities. The bidder should disclose whether it has the funds necessary to consummate the offer. If the bidder does not have the financing for the offer (*e.g.*, cash or a commitment letter from a bank) at the commencement of the offer, the bidder should clearly state it cannot buy the securities until it obtains financing.

Bidders in mini-tender offers often do not have the financing necessary to purchase the shares in the offer. In many cases they merely accept the

[31] If the mini-tender offer is for a limited partnership, the bidder also must consider the information specified below in Section III. Further, guidance provided in this section also is applicable to tender offers that are subject to Section 14(d) and Regulation 14D.

[32] *See City Investment Group.*

shares in the offer and then attempt to sell those shares in the market and use the proceeds to pay the security holders who tendered. When the offer is made at a premium, bidders sometimes improperly hold the shares and wait for the market price to rise above the offer price before they attempt to sell the shares in the market. This plan is not disclosed to security holders. We believe this method of financing tender offers is inappropriate and may be a "fraudulent, deceptive or manipulative practice" within the meaning of Section 14(e).[33] Rule 14e–8(c) expressly prohibits a person from publicly announcing a tender offer if that person "does not have the reasonable belief that the person will have the means to purchase the securities to complete the offer."[34] Furthermore, this method of financing does not comply with prompt payment as required by Rule 14e–1(c).[35]

• Conditions to the Offer: It is important for security holders to be able to evaluate the genuineness of the offer. We believe therefore that a tender offer can be subject to conditions only where the conditions are based on objective criteria, and the conditions are not within the bidder's control. If the conditions are not objective and are within the bidder's control (*e.g.*, the offer may be terminated for any reason or may be extended indefinitely), we believe the offer would be illusory and may constitute a "fraudulent, deceptive or manipulative" practice within the meaning of Section 14(e). We believe the bidder should disclose all material conditions to the offer.

• Extensions of the Offer: We believe that a bidder's ability and intent to extend the offer period is material information. This information is particularly important when there are no withdrawal rights. Security holders will be unable to withdraw shares tendered even if the offer is extended and shares are locked up for an unexpectedly long time. The initial disclosure materials should state whether the offer could be extended, whether the bidder intends to extend the offer, under what circumstances the bidder would extend, and, if the bidder intends to extend, the anticipated length of any extension. If the offer is extended after the initial disclosure materials are provided to security holders, the bidder should publicly announce this fact.

[33] *See City Investment Group.*

[34] *See* Securities Act Release No. 7760, Section II.D.1. (October 22, 1999) [64 FR 61408].

[35] *See* Section II.D. of this release.

C. Dissemination Guidelines

In enacting the Williams Act, Congress stressed the importance of not merely specifying disclosure requirements but also ensuring that information is communicated to security holders.[36] The bidder in a tender offer must make reasonable efforts to disseminate material information about the tender offer to security holders. The failure to disseminate the disclosure frustrates the purpose of the tender offer rules.

Rule 14e–1(a) states that a tender offer must be held open for 20 business days from the date the offer is first "published or sent to security holders."[37] Section 14(e) and Regulation 14E do not state how tender offers should be "published or sent to security holders." However, Rule 14d–4,[38] which applies only to tender offers subject to Section 14(d) and Regulation 14D, provides guidance in this area. Rule 14d–4 sets out three alternative methods of dissemination for cash tender offers. The purpose of Rule 14d–4 is to add content and clarity to the term "published or sent or given" in Section 14(d)(1).[39] Dissemination under Rule 14d–4 is deemed "published or sent or given to security holders" for purposes of Section 14(d)(1). These dissemination methods are as follows:

1. Publishing the offering document in a newspaper;

2. Publishing a summary advertisement containing certain information in a newspaper and mailing to security holders a copy of the full offering document upon request; or

3. Mailing the offering document to security holders using a security holder list.

Rule 14d–4 also provides that these methods of dissemination are not exclusive or mandatory.

Depending on the facts and circumstances, adequate publication of a tender offer under Rule 14d–4 may require publication of the offering document in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation.[40] Publication in all editions of a daily newspaper with a national circulation will always constitute adequate publication for purposes of Rule 14d–4.[41]

We believe that dissemination of material information using mechanisms the bidder knows or is reckless in not knowing are inadequate would be a "fraudulent, deceptive or manipulative" practice within the meaning of Section 14(e) and Rule 14e–1. For example, we believe that merely sending the offering documents to DTC is not an adequate means of communicating the information to security holders. DTC is not in business to, and in fact does not disseminate the tender offer materials to security holders. DTC sends only limited notice information to its participants about tender offers. Broker-dealers and banks have taken a variety of approaches in dealing with mini-tender offer materials. As a result, the bidder has no reasonable assurance that dissemination to DTC and then through broker-dealers or banks will satisfy the requirements of Section 14(e). Further, many bidders have refused to pay broker-dealers and banks the costs of forwarding information to security holders. Consequently, the tender offer document is not consistently reaching security holders to whom the offer is made. It is the bidder's obligation to assure that security holders get material information about the tender offer. If a bidder adequately disseminates the information to security holders through another method, such as one of the methods provided in Rule 14d–4, the bidder also may send the information to DTC for forwarding to its participants.

Also, we believe that only posting the information on a web site would not be adequate dissemination.[42] Not all security holders have access to the Internet. By merely posting a tender offer on a web site, the bidder does not adequately publish the offer, nor is the offer deemed sent to security holders.[43]

If a bidder makes a material change to the tender offer, the bidder must disseminate the changes in a manner reasonably likely to inform security holders of the change. The bidder generally should disseminate the change

[36] "[T]he legislative history and case law recognize that dissemination as indicated in the term 'published, sent or given to security holders' is part of the disclosure process of the Williams Act." Exchange Act Release No. 15548 (February 5, 1979) [44 FR 9956]. In addressing the importance of dissemination to our disclosure rules, Chairman Manuel Cohen in testimony emphasized, "disclosure is useful if it reaches the people for whom it is intended." Hearings before the Subcommittee on Banking and Currency, United States Senate, March 21, 1967, p. 178.

[37] A primary reason for adopting a mandatory minimum offering period under Section 14(e) was to allow sufficient time for security holders to receive the offering materials. Exchange Act Release No. 16384 (November 29, 1979) [44 FR 70326].

[38] 17 CFR 240.14d–4.

[39] Exchange Act Release No. 15548 (February 5, 1979) [44 FR 9956].

[40] Rule 14d–4(b) [17 CFR 240.14d–4(b)].

[41] *Id.*

[42] Securities Act Release No. 7760, Section II.D.2.

[43] *See* Securities Act Release No. 7233 (October 6, 1995) [60 FR 53458] for our guidelines on the use of electronic media for delivery of information.

in the same manner as it disseminated the original offer.

D. Prompt Payment

Rule 14e–1(c) requires the bidder to pay the consideration offered or return the tendered securities promptly after the termination or withdrawal of the tender offer. The rule does not define "promptly." However, we have stated that this standard may be determined by the practices of the financial community, including current settlement practices.[44] In most cases, the current settlement practice is for the payment of funds and delivery of securities no later than the third business day after the date of the transaction.[45] We view payment within these time periods as "prompt" under Rule 14e–1(c). We understand that some bidders have waited up to 30 days to pay tendering security holders. We believe that this delay in payment is inconsistent with the prompt payment requirements of Rule 14e–1(c).

Where the target is a limited partnership, and its securities are not listed on an exchange or quoted on an interdealer quotation system, it may not be possible to pay within three days, due to delays in transferring the limited partnership interests. Where the bidder is a third party and, therefore, cannot control the transfer and settlement process, we would not consider a reasonable extension of the three- to five-day period to be a violation of Rule 14e–1(c). The offer should disclose the anticipated time frame for settlement if it is expected to be delayed for these reasons. However, where the bidder is an affiliate and is able to control the settlement process, payment should not be delayed for these reasons and should be made as soon as possible.

III. Tender Offers for Limited Partnership Units

A. Background

Tender offers for limited partnership units, whether or not the bidder is affiliated with the target, raise significant disclosure issues due to the nature of limited partnership investments. Limited partnership units may be difficult to sell, and general partners face conflicts of interest in deciding when and whether to liquidate the partnership. These issues are particularly important in the limited partnership context since many investors in limited partnerships are unsophisticated retail investors.

In most cases, the price offered in a tender offer for limited partnership units is significantly lower than the original purchase price. It may also be below any recent appraisals of the partnership's assets. The tender offer may be the only way limited partners can sell their units because the markets for many limited partnership units are generally illiquid. Even when markets do exist, the limited partnership units usually trade at a significant discount to their appraised value.

Further, in many partnerships, the general partner has not liquidated the partnership within the time frame disclosed in the original offering of the units. Limited partners must, therefore, hold their investment longer than originally anticipated. General partners have a conflict of interest in determining whether to liquidate the partnership since, upon liquidation, they would no longer receive management and other fees associated with continuing the partnership.

B. Disclosure Guidelines for Limited Partnership Tender Offers

In order to avoid misleading investors,[46] we believe that bidders should consider disclosing the particular risks and conflicts of interest that arise in tender offers for limited partnership units. Cash tender offers do not always fall within our roll-up rules,[47] and partial offers usually do not trigger the going-private rule.[48] However, in the course of review and comment, the Commission staff often draws upon these rules in assessing the adequacy of the disclosure furnished to limited partners. As we said in 1991, in the release adopting the roll-up disclosure rules, these provisions must be considered and applied to a transaction that is not a roll-up within the rules, but raises the same concerns as a roll-up, in order to comply with the antifraud provisions.[49] Since bidders must not violate the antifraud provisions, we believe that all tender offers for limited partnership units should consider making these disclosures, whether subject to Regulation 14D or only Regulation 14E, as is the case for mini-tender offers.[50]

The following disclosure guidelines are drawn from the releases discussed above regarding limited partnership offerings and roll-ups, as well as the Division of Corporation Finance staff's practices in issuing comments on limited partnership tender offer filings.[51]

1. Bidder Disclosure Guidelines

Bidders must provide disclosure that is balanced so as not to be misleading. When determining the adequacy of disclosure, the key focus is the materiality of the information to security holders. If the disclosure document is lengthy, the disclosure should include a table of contents. All disclosure should be prepared in plain English.[52] To avoid misleading security holders, we recommend that bidders consider the following issues in crafting disclosures in limited partnership tender offer documents provided to security holders.

• Risk Factors: The offering document should prominently include a description of the risks of the transaction. These risk factors should be presented clearly and concisely, for example in bullet form. The risk factors should disclose any valuations (*e.g.*, market price, net asset value) that are higher than the offering price.

• Affiliated Bidder: Because of the potential conflict of interest, the bidder should disclose if it is affiliated with the target, describing the affiliation.

• Conflicts of Interest: It is important for security holders assessing the merits of an offer to know whether the bidder lacks independence in structuring and negotiating the offer's terms. If the bidder is affiliated with the target, it should disclose the benefits of the transaction to the bidder and the reasons for conducting the tender offer versus liquidating the partnership. If known, the bidder should also disclose the anticipated holding period of the assets as described in the original offering documents. The focus should be on the anticipated holding period,

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[44] Exchange Act Release No. 16384 (November 29, 1979) [44 FR 70326].

[45] Rule 15c6–1(a) [17 CFR 240.15c6–1(a)]. Certain exceptions apply, including transactions involving limited partnership interests that are not listed on a securities exchange or quoted on an automated quotation system.

[46] Section 14(e) of the Exchange Act and Rule 14e–3 [17 CFR 240.14e–3]; Section 10(b) of the Exchange Act and Rule 10b–5.

[47] Section 14(h) of the Exchange Act [15 U.S.C. 78n(h)] and the 900 series of Regulation S–K [17 CFR 229.900 *et seq.*]. The roll-up rules may, however, apply to third party exchange offers.

[48] 48 Rule 13e–3 [17 CFR 240.13e–3].

[49] 49 Securities Act Release No. 6922 (October 30, 1991) [56 FR 57237].

[50] 50 The guidance in Section II also applies to limited partnership tender offers.

[51] In addition, the Division staff has provided public guidance in this area for several years in its "Current Issues and Rulemaking Projects" outline. This outline is available on our web site, www.sec.gov, and may be located at the icon "Current SEC Rulemaking" under the topic heading *Other Commission Notices and Information.*

[52] These requirements are contained in our release regarding the disclosure requirements for limited partnerships (Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979]) and roll-ups (Securities Act Release No. 6922 (October 30, 1991) [56 FR 57237]).

not the legal termination date of the partnership.

• Market Price: Secondary market sales price information is material because an investment decision can be based, in whole or in part, upon the comparison between historical or currently reported values and the consideration being offered. The bidder should disclose the prices at which recent sales have been made, to the extent known or reasonably available, even when there is no established market.

• Method of Determining the Offer Price: Security holders need to know what valuation methodologies were used in deciding the amount of consideration offered. The bidder should summarize how the offer price was determined. If the bidder prepared a valuation for the partnership, it should disclose the value along with the basis for the value. If the bidder decided not to perform a valuation analysis, investors may want to know why. The bidder should disclose any liquidation value that was calculated.

• Third Party Reports: General partners sometimes have engineering, property valuation, or other reports about the underlying assets or asset value of the partnership. Investors may find this information useful in evaluating the price they are offered. The bidder should summarize any report received from a third party that is materially related to the transaction. It should also disclose the identity of the third party that prepared the report. In addition, it should file the report as an exhibit to the Schedule TO, if a Schedule TO is required to be filed.

• Valuations by the General Partner: General partners are in the best position to know the value of the partnership assets. The bidder should disclose any valuations or projections prepared by the general partner or its affiliates and obtained by the bidder that are materially related to the transaction.

• Purpose and Plans: A bidder's intention to conduct successive tender offers or execute additional market purchases upon consummation of the current offer can influence a security holder's investment decision. The bidder should disclose the purpose of the offer, the bidder's plans for the issuer, and whether or not the bidder intends to continue to acquire units in the future until control is obtained.

• Property/Business Disclosure: Property/business information provides security holders with basic information concerning the partnership's core operations and industry, as well as partnership, profit potential. In real estate partnerships, the bidder should provide disclosure similar to that required by Items 14 and 15 of Form S–11 (*e.g.*, occupancy rate, location, average rental per square foot).[53] In other partnerships, the bidder should disclose comparable information specific to that industry. An unaffiliated bidder need only provide information that is otherwise publicly available unless it has received non-public information from the target, in which case the non-public information also would need to be disclosed, if material.

• Financial Information: Because limited partnerships do not hold annual meetings, the proxy rules do not require them to send the annual report to security holders that contains financial statements.[54] Security holders, as a result, may not otherwise have material financial information regarding the partnership's operating performance. The bidder should disclose, to the extent known, financial information about the target similar to that required by Item 301 of Regulation S–K (selected financial data).[55] If the partnership is a public reporting partnership, the information can be obtained from the most recent Form 10–K.[56] A non-affiliated bidder may disclose the extent of its due diligence with respect to such information if taken from the target's Form 10–K.

• Tax Consequences: One of the primary investment objectives of those who invest in limited partnerships is often favorable tax treatment. The bidder should disclose the tax consequences and any limitations on transfers in order to preserve favorable tax status.

• Transfer or Processing Fees: General partners frequently charge a fee to investors for transferring ownership interests on the books of the partnership when investors sell their interests to third parties. In tender offers by affiliates of the partnership, the general partner typically waives the fee. These fees can be significant in relation to the amount of the sales price. The fees may be charged on a per unit basis or one fee per investor for as many units that the investor sells. The bidder should disclose the amount of the transfer fees and whether the fees are charged on a per unit basis or per investor basis. The bidder also should disclose whether it intends to subtract the amount of these fees from the proceeds to be paid in the offer.

• Price Reductions due to Distributions: We believe that a bidder's intent to reduce the offering price by any cash or other distributions to security holders made by the target company is material information. In describing the offer price, the bidder should disclose, if applicable, that the price may be reduced by any distributions and the amount, if known. If a distribution occurs and the price is reduced, the tender offer would need to be extended for 10 business days as provided by Rule 14e–1(b).

2. Target Disclosure Guidelines

The general partner has an obligation under Rule 14e–2 to respond to an offer, stating the reasons for its position, within 10 days of commencement of the offer. To avoid misleading security holders, we recommend that targets consider the following issues in crafting disclosures in the tender offer documents that are provided to security holders:

• Conflicts of Interest: It is important for security holders considering the target's recommendation to know what conflicts of interest could affect that recommendation. The target should disclose the conflicts arising in making the recommendation whether or not to tender (*e.g.*, interest in recommending against the offer in order to continue to collect management fees). It also should disclose, if true, why the partnership is not being liquidated in accordance with the terms in the original offering document.

• Valuations by the General Partner: The target should disclose any valuations prepared by the general partner or its affiliates that are materially related to the transaction. The target also should disclose the basis for the valuations.

• Third Party Reports: The target should summarize any report received from a third party that is materially related to the transaction, and disclose the identity of the third party preparer. In addition, the target should file the report as an exhibit to the Schedule 14D–9, if a Schedule 14D–9 is required to be filed.

List of Subjects

17 CFR Parts 241 and 271

Securities.

17 CFR Part 271

Investment companies, Securities.

Amendments to the Code of Federal Regulations

For the reasons set forth in the release, we are amending title 17,

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[53] 17 CFR 239.16.

[54] Rule 14a–3 [17 CFR 240.14a–3] provides that a proxy or information statement relating to the election of directors must be accompanied or preceded by an annual report to security holders.

[55] 17 CFR 229.301.

[56] 17 CFR 249.310.

chapter II of the Code of Federal Regulations as follows:

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 241 is amended by adding Release No. 34–43069 and the release date of July 24, 2000 to the list of interpretive releases.

PART 271—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 271 is amended by adding Release No. IC–24564 and the release date of July 24, 2000 to the list of interpretive releases.

Dated: July 24, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19189 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8894]

RIN 1545–AE41

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These final regulations provide guidance on the application of section 72(p) of the Internal Revenue Code. These regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit participants or beneficiaries to receive loans from the plan, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: *Effective Date:* These regulations are effective July 31, 2000.

Applicability Date: For dates of applicability, see § 1.72(p)–1, Q&A–22 (a) through (c)(2).

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code). These regulations provide guidance concerning the tax treatment of loans that are deemed to be distributed under section 72(p). Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324), and amended by the Technical Corrections Act of 1982 (96 Stat. 2365), the Deficit Reduction Act of 1984 (98 Stat. 494), the Tax Reform Act of 1986 (100 Stat. 2085), and the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342).

On December 21, 1995, a notice of proposed rulemaking (EE–106–82) was published in the **Federal Register** (60 FR 66233) with respect to many of the issues arising under section 72(p)(2). The preamble to the 1995 proposed regulations requested comments on certain issues that were not addressed. Following publication of the 1995 proposed regulations, comments were received and a public hearing was held on June 28, 1996. One of the issues on which comments were requested and received was the effect of a deemed distribution on the tax treatment of subsequent distributions from a plan (such as whether a participant has tax basis as a result of a deemed distribution). After reviewing the written comments and comments made at the public hearing, additional proposed regulations addressing this issue were published January 2, 1998 (REG–209476–82), in the **Federal Register** (63 FR 42). Written comments were received on the 1998 proposed regulations, but no public hearing was requested. After consideration of all comments received on both the 1995 and the 1998 proposed regulations, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) to a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan and the repayment schedule, and to the extent the loan satisfies certain limitations on the amount loaned. For example, except in the case of certain home loans, the exception in section 72(p)(2) only applies to a loan that by its terms is to be repaid over not more than five years in substantially level installments.

For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities [1]), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified plan or a government plan.

Summary of Comments Received and Changes Made and Summary of the Final Regulations

In general, comments received on the proposed regulations were favorable and, accordingly, the final regulations retain the general structure and substance of the proposed regulations, including a wide variety of examples illustrating the rules in the final regulations. However, commentators made a number of specific recommendations for modifications and clarifications of the regulations. The comments are summarized below, along with the IRS' and Treasury's consideration of those comments.

A. Cure Period for Missed Payments

The 1995 proposed regulations stated that the section 72(p)(2)(C) requirement that repayments be made in level installments at least quarterly would not

[1] With respect to coverage under Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829) (ERISA), the Department of Labor (DOL) has advised the IRS that an employer's tax-sheltered annuity program would not necessarily fail to satisfy the Department's regulation at 29 CFR 2510.3–2(f) merely because the employer permits employees to make repayments of loans made in connection with the tax-sheltered annuity program through payroll deductions as part of the employer's payroll deduction system, if the program operates within the limitations set by that regulation.

be violated if payments are not made until the end of a grace period that the plan administrator may allow, but only to the extent the grace period does not continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due. Commentators suggested that the proposed regulations should specify how the grace period is to be established, such as whether the grace period must be contained in the plan document, a separate loan program that is deemed to be a part of the plan document pursuant to DOL 29 CFR 2550.408b–1(d)(2), or the summary plan description, and whether it is permissible for a plan to have grace periods on a participant by participant basis (so long as this did not discriminate in favor of the highly compensated employees).

Some commentators requested that a plan participant have a reasonable period of time (such as up to 30 days) to cure a default after the plan administrator has sent a notice of default, and that the section 72(p) regulations mandate that the plan administrator send a notice of default within a reasonable period of time (such as 30 days) after it has discovered the default. These commentators suggested that grace and cure periods might be conditioned upon the plan administrator having an appropriate procedure in place for timely identification of defaults and curing defects. Some commentators requested that final regulations permit a plan administrator to use his or her discretion, under special circumstances, to provide a grace period of up to one year from the date of a missed payment.

Many of these suggested changes relate to legal requirements other than section 72(p), such as the application of the fiduciary requirements of ERISA [2] and Federal and state laws that apply to debtors and creditors. The 1995 proposed regulations allowed a grace period up to the end of the next following quarter. Thus, a plan could select a grace period of, for example, 30 days or 90 days and could provide a special notice to the participant concerning the grace period. Thus, many of the suggested changes would involve the imposition of new and complicated rules for which there is no apparent basis in section 72(p) and which would in any case be difficult to enforce and to administer. Accordingly, the final regulations retain the same rules as the proposed regulations. However, the final regulations use the term *cure period* instead of *grace period*.

The final regulations also include a new cross-reference to section 414(u)(4), (relating to military service) which was added to the Code by the Small Business Job Protection Act of 1996 (110 Stat. 1755).

B. Treatment of Loans After Deemed Distribution

The 1998 proposed regulations provide that once a loan is deemed distributed under section 72(p) of the Code, interest that accrues thereafter on that loan is not included in income and, for purposes of calculating the maximum permitted amount of any subsequent loan, a loan that has been deemed distributed is considered outstanding until the loan obligation has been satisfied. The majority of the comments on this issue urged that the positions taken in the 1998 proposed regulations addressing post-default interest be adopted in the final regulations. Some commentators asked that the regulations provide further guidance on or revise the treatment of interest that accrues on a loan that is a deemed distribution under section 72(p), as described in Q&A–19 of the 1998 proposed regulations. Commentators noted that, in the case of a plan that has chosen to permit additional loans after a default that has not been cured, the rule in the proposed regulations requiring interest to be taken into account in determining the maximum amount of any subsequent loan would involve costs to make system and procedural changes to calculate the accrued interest on the defaulted loan for this limited application. Other commentators urged that participants be taxed on the additional interest after a default, either annually or as an accumulated amount at the time of a loan offset, as an incentive for the participant to repay the loan.

One commentator raised the issue of how a deemed distribution would be taken into account in a plan with a graded vesting schedule.

The final regulations generally adopt the rules in the proposed regulations, but the regulations have been revised to indicate that a deemed distribution is not taken into account as a distribution for purposes of the requirements of § 1.411(a)–7(d)(5) (relating to the determination of a participant's account balance if a distribution is made at a time when the participant's vesting percentage may increase).

C. Enforceable Agreement and New Technologies

The 1995 proposed regulations required that a loan be evidenced by a legally enforceable agreement and that the legally enforceable agreement be set forth in writing or in another form approved by the Commissioner. Commentators asked whether a participant needs to sign a loan agreement document and whether loans made electronically, such as over phone or voice response units, would be permitted.

Some comments requested elimination of the requirement that a loan be evidenced by a legally enforceable agreement. However, the final regulations retain this requirement. There is, arguably, no difference between a loan that is not legally enforceable and a cash distribution that the employee is permitted to return to the plan. The final regulations clarify that, as long as a signature is not required in order for the loan to be enforceable under applicable law, the agreement need not be signed.

The final regulations also require the agreement to be set forth in a written paper document or in another form approved by the Commissioner. However, the final regulations also treat this requirement as satisfied if the loan agreement is set forth in any electronic medium that satisfies certain standards. The standards in these final regulations for use of an electronic medium for a loan are the same as the standards for use of an electronic medium for a consent to a distribution under § 1.411(a)–11(f)(2). 65 FR 6001 (February 8, 2000). Specifically, a loan agreement will not fail to satisfy section

[2] The Department of Labor has advised the IRS that, with respect to plans covered by Title I of ERISA, the administration of a participant loan program involves the management of plan assets. Therefore, fiduciary conduct undertaken in the administration of such a loan program must conform to the rules that govern transactions involving plan assets. See, generally, ERISA sections 403, 404, and 406. Fiduciary conduct in the administration of a loan program would include decisions concerning the rules governing the program, including establishing standards to govern the appropriateness of making any particular loan and the appropriate treatment of any defaulted loan. Further, absent an exemption, any loan between a plan covered by Title I of ERISA and a party in interest to the plan (including plan participants and beneficiaries) would constitute a prohibited transaction under section 406(a)(1)(B) of ERISA. DOL has promulgated a regulation at 29 CFR 2550.408b–1 providing guidance regarding the statutory exemption contained in section 408(b)(1) of ERISA for plan loans to parties in interest who are participants or beneficiaries. Further, some loans by plans (whether or not covered under Title I of ERISA) may constitute prohibited transactions under section 4975(c)(1)(B) of the Internal Revenue Code. Under section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47,713) (1978), the Secretary of Labor has jurisdiction to promulgate regulations under section 4975(d)(1) of the Internal Revenue Code, which provides a limited exemption to the prohibition of section 4975(c)(1)(B) of the Internal Revenue Code.

72(p)(2) of the Code merely because the loan agreement is in an electronic medium reasonably accessible to the participant or the beneficiary under a system that is reasonably designed to preclude anyone other than the participant or the beneficiary from requesting a loan, that provides the participant or the beneficiary with a reasonable opportunity to review the terms of the loan and to confirm, modify, or rescind the terms of the loan before the loan is made, and that provides the participant or the beneficiary, within a reasonable period after the loan is made, with a confirmation of the loan terms through a written paper document or an electronic medium.[3] If an electronic medium is used to provide confirmation of the loan terms, the electronic medium must be reasonably accessible to the participant or the beneficiary and the electronic confirmation must be provided under a system reasonably designed to give the confirmation in a manner no less understandable to the participant or the beneficiary than a written paper document. Also, the participant or the beneficiary must be advised of the right to request and to receive a copy of the confirmation on a written paper document without charge.

The Electronic Signatures in Global and National Commerce Act (114 Stat. 464) (the Electronic Signatures Act) was signed on June 30, 2000. Title I of the Electronic Signatures Act, which is generally effective October 1, 2000, applies to certain electronic records and signatures in commerce. In the Notice of Proposed Rulemaking that appears in this issue of the **Federal Register**, comments are requested on the impact of the Electronic Signatures Act on these regulations and on any future guidance that may be needed on the application of the Electronic Signatures Act to plan loan transactions.

D. Mortgage Investment Program

Some commentators requested that the special rule in the 1995 proposed regulations under which section 72(p) would not apply to loans made under a residential mortgage investment program be revised to eliminate the requirement that the loans also be available to nonparticipants. This special rule is not based on an explicit statutory provision, but is based on legislative history[4] indicating the understanding that section 72(p) was not intended to apply to loans made in the ordinary course of a bona fide residential mortgage investment program. The IRS and Treasury have concluded that there is a risk that the intent of the section 72(p)(2) limitations might be thwarted if a category of loans extended solely to participants were not subject to section 72(p). However, the extension of this requirement to otherwise bona fide mortgage investment programs that were in effect at the time the 1995 proposed regulations were issued would be inappropriate and, accordingly, the final regulations permit plans with these preexisting programs to continue to make such loans. The special rule in the final regulations is not intended to provide guidance on whether, or to what extent, a plan that is covered by Title I of ERISA may make such residential mortgage loans available to participants or beneficiaries of the plan without violating the provisions of Title I of ERISA.[5]

E. Other Changes

The requirement that a loan be repaid within five years does not apply to a loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence of the participant. For this purpose, the 1995 proposed regulations provided that a principal residence has the same meaning as a principal residence under section 1034. To reflect the repeal of section 1034[6] and the use of the same term in section 121, the final regulations provide that a principal residence has the same meaning as a principal residence under section 121.[7]

F. Effective Date of Final Regulations

Both the 1995 and the 1998 proposed regulations were proposed to apply for assignments, pledges, and loans made on or after the first January 1 that is at least six months after the issuance of final regulations. Under certain limited conditions, the 1998 proposed regulations permitted loans made before this proposed general effective date to apply Q&A–19, relating to interest accruing after a deemed distribution, and Q&A–20, relating to basis resulting from repayments after a deemed distribution. Comments on these transition conditions were generally favorable, but one commentator requested that plan sponsors be permitted to rely on these rules for loans made before the general effective date if any reasonable and consistent method had been used to report deemed distributions before the general effective date. The rules in the 1998 proposed regulations for pre-effective date loans included carefully considered, specific conditions in order for such loans to be able to rely on Q&A–19 and Q&A–20 (including several detailed examples illustrating the application of these transition conditions) and these rules have been retained in the final regulations.

Commentators also requested that the general effective date be the first January 1 that is at least 6 or 12 months after the date of the final regulations to allow for proper redesign and testing of plan loan administration systems. Consistent with the proposed effective date and these comments, the final regulations are applicable to assignments, pledges, and loans made on or after January 1, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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[3] Neither the regulations regarding use of electronic medium under section 411 nor these regulations apply for purposes of satisfying the requirements of section 417, including the requirement of section 417(a)(2)(A) that spousal consent be witnessed by a notary public or plan representative.

[4] H.R. Conf. Rep. No. 97–760, 97th Cong., 2d Sess. 620 (1982), 1982–2 C.B. 672 and S. Rep. No. 97–494, 97th Cong., 2d Sess. 319, 321 (1982).

[5] See, for example, PTCE 88–59.

[6] Section 1034 was repealed by section 312(b) of the Taxpayer Relief Act of 1997 (Public Law 105–34) (111 Stat. 788).

[7] Like the 1995 proposed regulations, the final regulations (at Q&A–7) apply the tracing rules of section 163(h)(3) of the Code to trace whether a loan is a principal residence plan loan. Notice 88–74 (1988–2 C.B. 385), sets forth certain standards applicable under section 163(h)(3).

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.72–17A is amended as follows:

1. Paragraphs (d)(1), (d)(2) and (d)(3) are redesignated as paragraphs (d)(2), (d)(3) and (d)(4), respectively.

2. New paragraph (d)(1) is added.

The addition reads as follows:

§ 1.72–17A Special rules applicable to employee annuities and distributions under deferred compensation plans to self-employed individuals and owner-employees.

* * * * *

(d) * * * (1) The references in this paragraph (d) to section 72(m)(4) are to that section as in effect on August 13, 1982. Section 236(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) repealed section 72(m)(4), generally effective for assignments, pledges and loans made after August 13, 1982, and added section 72(p). See section 72(p) and § 1.72(p)–1 for rules governing the income tax treatment of certain assignments, pledges and loans from qualified employer plans made after August 13, 1982.

* * * * *

Par. 3. Section 1.72(p)–1 is added to read as follows:

§ 1.72(p)–1 Loans treated as distributions.

The questions and answers in this section provide guidance under section 72(p) pertaining to loans from qualified employer plans (including government plans and tax-sheltered annuities and employer plans that were formerly qualified). The examples included in the questions and answers in this section are based on the assumption that a bona fide loan is made to a participant from a qualified defined contribution plan pursuant to an enforceable agreement (in accordance with paragraph (b) of Q&A–3 of this section), with adequate security and with an interest rate and repayment terms that are commercially reasonable. (The particular interest rate used, which is solely for illustration, is 8.75 percent compounded annually.) In addition, unless the contrary is specified, it is assumed in the examples that the amount of the loan does not exceed 50 percent of the participant's nonforfeitable account balance, the participant has no other outstanding loan (and had no prior loan) from the plan or any other plan maintained by the participant's employer or any other person required to be aggregated with the employer under section 414(b), (c) or (m), and the loan is not excluded from section 72(p) as a loan made in the ordinary course of an investment program as described in Q&A–18 of this section. The regulations and examples in this section do not provide guidance on whether a loan from a plan would result in a prohibited transaction under section 4975 of the Internal Revenue Code or on whether a loan from a plan covered by Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829) (ERISA) would be consistent with the fiduciary standards of ERISA or would result in a prohibited transaction under section 406 of ERISA. The questions and answers are as follows:

Q–1: In general, what does section 72(p) provide with respect to loans from a qualified employer plan?

A–1: (a) *Loans.* Under section 72(p), an amount received by a participant or beneficiary as a loan from a qualified employer plan is treated as having been received as a distribution from the plan (a deemed distribution), unless the loan satisfies the requirements of Q&A–3 of this section. For purposes of section 72(p) and this section, a loan made from a contract that has been purchased under a qualified employer plan (including a contract that has been distributed to the participant or beneficiary) is considered a loan made under a qualified employer plan.

(b) *Pledges and assignments.* Under section 72(p), if a participant or beneficiary assigns or pledges (or agrees to assign or pledge) any portion of his or her interest in a qualified employer plan as security for a loan, the portion of the individual's interest assigned or pledged (or subject to an agreement to assign or pledge) is treated as a loan from the plan to the individual, with the result that such portion is subject to the deemed distribution rule described in paragraph (a) of this Q&A–1. For purposes of section 72(p) and this section, any assignment or pledge of (or agreement to assign or to pledge) any portion of a participant's or beneficiary's interest in a contract that has been purchased under a qualified employer plan (including a contract that has been distributed to the participant or beneficiary) is considered an assignment or pledge of (or agreement to assign or pledge) an interest in a qualified employer plan. However, if all or a portion of a participant's or beneficiary's interest in a qualified employer plan is pledged or assigned as security for a loan from the plan to the participant or the beneficiary, only the amount of the loan received by the participant or the beneficiary, not the amount pledged or assigned, is treated as a loan.

Q–2: What is a qualified employer plan for purposes of section 72(p)?

A–2: For purposes of section 72(p) and this section, a qualified employer plan means—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(b) An annuity plan described in section 403(a);

(c) A plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b);

(d) Any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of the United States, a State or a political subdivision of a State; or

(e) Any plan which was (or was determined to be) described in paragraph (a), (b), (c), or (d) of this Q&A–2.

Q–3: What requirements must be satisfied in order for a loan to a participant or beneficiary from a qualified employer plan not to be a deemed distribution?

A–3: (a) *In general.* A loan to a participant or beneficiary from a qualified employer plan will not be a deemed distribution to the participant or beneficiary if the loan satisfies the repayment term requirement of section 72(p)(2)(B), the level amortization requirement of section 72(p)(2)(C), and the enforceable agreement requirement of paragraph (b) of this Q&A–3, but only to the extent the loan satisfies the amount limitations of section 72(p)(2)(A).

(b) *Enforceable agreement requirement.* A loan does not satisfy the requirements of this paragraph unless the loan is evidenced by a legally enforceable agreement (which may include more than one document) and the terms of the agreement demonstrate compliance with the requirements of section 72(p)(2) and this section. Thus, the agreement must specify the amount and date of the loan and the repayment schedule. The agreement does not have to be signed if the agreement is enforceable under applicable law without being signed. The agreement must be set forth either—

(1) In a written paper document;
(2) In an electronic medium that is reasonably accessible to the participant or the beneficiary and that is provided under a system that satisfies the following requirements:
(i) The system must be reasonably designed to preclude any individual other than the participant or the beneficiary from requesting a loan.
(ii) The system must provide the participant or the beneficiary with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the loan before the loan is made.
(iii) The system must provide the participant or the beneficiary, within a reasonable time after the loan is made, a confirmation of the loan terms either through a written paper document or through an electronic medium that is reasonably accessible to the participant or the beneficiary and that is provided under a system that is reasonably designed to provide the confirmation in a manner no less understandable to the participant or beneficiary than a written document and, under which, at the time the confirmation is provided, the participant or the beneficiary is advised that he or she may request and receive a written paper document at no charge, and, upon request, that document is provided to the participant or beneficiary at no charge; or
(3) In such other form as may be approved by the Commissioner.

Q–4: If a loan from a qualified employer plan to a participant or beneficiary fails to satisfy the requirements of Q&A–3 of this section, when does a deemed distribution occur?

A–4: (a) *Deemed distribution.* For purposes of section 72, a deemed distribution occurs at the first time that the requirements of Q&A–3 of this section are not satisfied, in form or in operation. This may occur at the time the loan is made or at a later date. If the terms of the loan do not require repayments that satisfy the repayment term requirement of section 72(p)(2)(B) or the level amortization requirement of section 72(p)(2)(C), or the loan is not evidenced by an enforceable agreement satisfying the requirements of paragraph (b) of Q&A–3 of this section, the entire amount of the loan is a deemed distribution under section 72(p) at the time the loan is made. If the loan satisfies the requirements of Q&A–3 of this section except that the amount loaned exceeds the limitations of section 72(p)(2)(A), the amount of the loan in excess of the applicable limitation is a deemed distribution under section 72(p) at the time the loan is made. If the loan initially satisfies the requirements of section 72(p)(2)(A), (B) and (C) and the enforceable agreement requirement of paragraph (b) of Q&A–3 of this section, but payments are not made in accordance with the terms applicable to the loan, a deemed distribution occurs as a result of the failure to make such payments. See Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof and Q&A–11 of this section regarding the tax treatment of a deemed distribution.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q&A–4 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) A participant has a nonforfeitable account balance of $200,000 and receives $70,000 as a loan repayable in level quarterly installments over five years.
(ii) Under section 72(p), the participant has a deemed distribution of $20,000 (the excess of $70,000 over $50,000) at the time of the loan, because the loan exceeds the $50,000 limit in section 72(p)(2)(A)(i). The remaining $50,000 is not a deemed distribution.

Example 2. (i) A participant with a nonforfeitable account balance of $30,000 borrows $20,000 as a loan repayable in level monthly installments over five years.
(ii) Because the amount of the loan is $5,000 more than 50% of the participant's nonforfeitable account balance, the participant has a deemed distribution of $5,000 at the time of the loan. The remaining $15,000 is not a deemed distribution. (Note also that, if the loan is secured solely by the participant's account balance, the loan may be a prohibited transaction under section 4975 because the loan may not satisfy 29 CFR 2550.408b–1(f)(2).)

Example 3. (i) The nonforfeitable account balance of a participant is $100,000 and a $50,000 loan is made to the participant repayable in level quarterly installments over seven years. The loan is not eligible for the section 72(p)(2)(B)(ii) exception for loans used to acquire certain dwelling units.
(ii) Because the repayment period exceeds the maximum five-year period in section 72(p)(2)(B)(i), the participant has a deemed distribution of $50,000 at the time the loan is made.

Example 4. (i) On August 1, 2002, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over five years in level monthly installments due at the end of each month. After making monthly payments through July 2003, the participant fails to make any of the payments due thereafter.
(ii) As a result of the failure to satisfy the requirement that the loan be repaid in level monthly installments, the participant has a deemed distribution. See paragraph (c) of Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof.

Q–5: What is a principal residence for purposes of the exception in section 72(p)(2)(B)(ii) from the requirement that a loan be repaid in five years?

A–5: Section 72(p)(2)(B)(ii) provides that the requirement in section 72(p)(2)(B)(i) that a plan loan be repaid within five years does not apply to a loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence of the participant (a principal residence plan loan). For this purpose, a principal residence has the same meaning as a principal residence under section 121.

Q–6: In order to satisfy the requirements for a principal residence plan loan, is a loan required to be secured by the dwelling unit that will within a reasonable time be used as the principal residence of the participant?

A–6: A loan is not required to be secured by the dwelling unit that will within a reasonable time be used as the participant's principal residence in order to satisfy the requirements for a principal residence plan loan.

Q–7: What tracing rules apply in determining whether a loan qualifies as a principal residence plan loan?

A–7: The tracing rules established under section 163(h)(3)(B) apply in determining whether a loan is treated as for the acquisition of a principal residence in order to qualify as a principal residence plan loan.

Q–8: Can a refinancing qualify as a principal residence plan loan?

A–8: (a) *Refinancings.* In general, no, a refinancing cannot qualify as a principal residence plan loan. However, a loan from a qualified employer plan used to repay a loan from a third party will qualify as a principal residence plan loan if the plan loan qualifies as a principal residence plan loan without regard to the loan from the third party.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–8 and is based upon the assumptions described in the introductory text of this section:

Example. (i) On July 1, 2003, a participant requests a $50,000 plan loan to be repaid in level monthly installments over 15 years. On August 1, 2003, the participant acquires a principal residence and pays a portion of the purchase price with a $50,000 bank loan. On September 1, 2003, the plan loans $50,000 to the participant, which the participant uses to pay the bank loan.
(ii) Because the plan loan satisfies the requirements to qualify as a principal residence plan loan (taking into account the tracing rules of section 163(h)(3)(B)), the plan loan qualifies for the exception in section 72(p)(2)(B)(ii).

Q–9: Does the level amortization requirement of section 72(p)(2)(C) apply when a participant is on a leave of absence without pay?

A–9: (a) *Leave of absence.* The level amortization requirement of section

72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u)), that a participant is on a bona fide leave of absence, either without pay from the employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest date permitted under section 72(p)(2)(B) (*e.g.*, the suspension of payments cannot extend the term of the loan beyond 5 years, in the case of a loan that is not a principal residence plan loan) and the amount of the installments due after the leave ends (or, if earlier, after the first year of the leave or such longer period as may apply under section 414(u)) must not be less than the amount required under the terms of the original loan.

(b) *Military service.* See section 414(u)(4) for special rules relating to military service.

(c) *Example.* The following example illustrates the rules of paragraph (a) of this Q&A–9 and is based upon the assumptions described in the introductory text of this section:

Example. (i) On July 1, 2002, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid in full (including interest that accrued during the leave of absence). The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2007.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2007 repaid the full balance remaining due.

Q–10: If a participant fails to make the installment payments required under the terms of a loan that satisfied the requirements of Q&A–3 of this section when made, when does a deemed distribution occur and what is the amount of the deemed distribution?

A–10: (a) *Timing of deemed distribution.* Failure to make any installment payment when due in accordance with the terms of the loan violates section 72(p)(2)(C) and, accordingly, results in a deemed distribution at the time of such failure. However, the plan administrator may allow a cure period and section 72(p)(2)(C) will not be considered to have been violated if the installment payment is made not later than the end of the cure period, which period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.

(b) *Amount of deemed distribution.* If a loan satisfies Q&A–3 of this section when made, but there is a failure to pay the installment payments required under the terms of the loan (taking into account any cure period allowed under paragraph (a) of this Q&A–10), then the amount of the deemed distribution equals the entire outstanding balance of the loan (including accrued interest) at the time of such failure.

(c) *Example.* The following example illustrates the rules in paragraphs (a) and (b) of this Q&A–10 and is based upon the assumptions described in the introductory text of this section:

Example. (i) On August 1, 2002, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over 5 years in level monthly installments due at the end of each month. After making all monthly payments due through July 31, 2003, the participant fails to make the payment due on August 31, 2003 or any other monthly payments due thereafter. The plan administrator allows a three-month cure period.

(ii) As a result of the failure to satisfy the requirement that the loan be repaid in level installments pursuant to section 72(p)(2)(C), the participant has a deemed distribution on November 30, 2003, which is the last day of the three-month cure period for the August 31, 2003 installment. The amount of the deemed distribution is $17,157, which is the outstanding balance on the loan at November 30, 2003. Alternatively, if the plan administrator had allowed a cure period through the end of the next calendar quarter, there would be a deemed distribution on December 31, 2003 equal to $17,282, which is the outstanding balance of the loan at December 31, 2003.

Q–11: Does section 72 apply to a deemed distribution as if it were an actual distribution?

A–11: (a) *Tax basis.* If the employee's account includes after-tax contributions or other investment in the contract under section 72(e), section 72 applies to a deemed distribution as if it were an actual distribution, with the result that all or a portion of the deemed distribution may not be taxable.

(b) *Section 72(t) and (m).* Section 72(t) (which imposes a 10 percent tax on certain early distributions) and section 72(m)(5) (which imposes a separate 10 percent tax on certain amounts received by a 5-percent owner) apply to a deemed distribution under section 72(p) in the same manner as if the deemed distribution were an actual distribution.

Q–12: Is a deemed distribution under section 72(p) treated as an actual distribution for purposes of the qualification requirements of section 401, the distribution provisions of section 402, the distribution restrictions of section 401(k)(2)(B) or 403(b)(11), or the vesting requirements of § 1.411(a)–7(d)(5) (which affects the application of a graded vesting schedule in cases involving a prior distribution)?

A–12: No; thus, for example, if a participant in a money purchase plan who is an active employee has a deemed distribution under section 72(p), the plan will not be considered to have made an in-service distribution to the participant in violation of the qualification requirements applicable to money purchase plans. Similarly, the deemed distribution is not eligible to be rolled over to an eligible retirement plan and is not considered an impermissible distribution of an amount attributable to elective contributions in a section 401(k) plan. See also § 1.402(c)–2, Q&A–4(d) and § 1.401(k)–1(d)(6)(ii).

Q–13: How does a reduction (offset) of an account balance in order to repay a plan loan differ from a deemed distribution?

A–13: (a) *Difference between deemed distribution and plan loan offset amount.* (1) Loans to a participant from a qualified employer plan can give rise to two types of taxable distributions—

(i) A deemed distribution pursuant to section 72(p); and

(ii) A distribution of an offset amount.

(2) As described in Q&A–4 of this section, a deemed distribution occurs when the requirements of Q&A–3 of this section are not satisfied, either when the loan is made or at a later time. A deemed distribution is treated as a distribution to the participant or beneficiary only for certain tax purposes and is not a distribution of the accrued benefit. A distribution of a plan loan offset amount (as defined in § 1.402(c)–2, Q&A–9(b)) occurs when, under the terms governing a plan loan, the accrued benefit of the participant or beneficiary is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the accrued benefit). A distribution of a plan loan offset amount could occur in a variety of circumstances, such as where the terms governing the plan loan require that, in the event of the participant's request for a distribution, a loan be repaid immediately or treated as in default.

(b) *Plan loan offset.* In the event of a plan loan offset, the amount of the

account balance that is offset against the loan is an actual distribution for purposes of the Internal Revenue Code, not a deemed distribution under section 72(p). Accordingly, a plan may be prohibited from making such an offset under the provisions of section 401(a), 401(k)(2)(B) or 403(b)(11) prohibiting or limiting distributions to an active employee. See § 1.402(c)–2, Q&A–9(c), *Example 6*. See also Q&A–19 of this section for rules regarding the treatment of a loan after a deemed distribution.

Q–14: How is the amount includible in income as a result of a deemed distribution under section 72(p) required to be reported?

A–14: The amount includible in income as a result of a deemed distribution under section 72(p) is required to be reported on Form 1099–R (or any other form prescribed by the Commissioner).

Q–15: What withholding rules apply to plan loans?

A–15: To the extent that a loan, when made, is a deemed distribution or an account balance is reduced (offset) to repay a loan, the amount includible in income is subject to withholding. If a deemed distribution of a loan or a loan repayment by benefit offset results in income at a date after the date the loan is made, withholding is required only if a transfer of cash or property (excluding employer securities) is made to the participant or beneficiary from the plan at the same time. See §§ 35.3405–1, f–4, and 31.3405(c)–1, Q&A–9 and Q&A–11, of this chapter for further guidance on withholding rules.

Q–16: If a loan fails to satisfy the requirements of Q&A–3 of this section and is a prohibited transaction under section 4975, is the deemed distribution of the loan under section 72(p) a correction of the prohibited transaction?

A–16: No, a deemed distribution is not a correction of a prohibited transaction under section 4975. See §§ 141.4975–13 and 53.4941(e)–1(c)(1) of this chapter for guidance concerning correction of a prohibited transaction.

Q–17: What are the income tax consequences if an amount is transferred from a qualified employer plan to a participant or beneficiary as a loan, but there is an express or tacit understanding that the loan will not be repaid?

A–17: If there is an express or tacit understanding that the loan will not be repaid or, for any reason, the transaction does not create a debtor-creditor relationship or is otherwise not a bona fide loan, then the amount transferred is treated as an actual distribution from the plan for purposes of the Internal Revenue Code, and is not treated as a loan or as a deemed distribution under section 72(p).

Q–18: If a qualified employer plan maintains a program to invest in residential mortgages, are loans made pursuant to the investment program subject to section 72(p)?

A–18: (a) Residential mortgage loans made by a plan in the ordinary course of an investment program are not subject to section 72(p) if the property acquired with the loans is the primary security for such loans and the amount loaned does not exceed the fair market value of the property. An investment program exists only if the plan has established, in advance of a specific investment under the program, that a certain percentage or amount of plan assets will be invested in residential mortgages available to persons purchasing the property who satisfy commercially customary financial criteria. A loan will not be considered as made under an investment program if—

(1) Any of the loans made under the program matures upon a participant's termination from employment;

(2) Any of the loans made under the program is an earmarked asset of a participant's or beneficiary's individual account in the plan; or

(3) The loans made under the program are made available only to participants or beneficiaries in the plan.

(b) Paragraph (a)(3) of this Q&A–18 shall not apply to a plan which, on December 20, 1995, and at all times thereafter, has had in effect a loan program under which, but for paragraph (a)(3) of this Q&A–18, the loans comply with the conditions of paragraph (a) of this Q&A–18 to constitute residential mortgage loans in the ordinary course of an investment program.

(c) No loan that benefits an officer, director, or owner of the employer maintaining the plan, or their beneficiaries, will be treated as made under an investment program.

(d) This section does not provide guidance on whether a residential mortgage loan made under a plan's investment program would result in a prohibited transaction under section 4975, or on whether such a loan made by a plan covered by Title I of ERISA would be consistent with the fiduciary standards of ERISA or would result in a prohibited transaction under section 406 of ERISA. See 29 CFR 2550.408b–1.

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded in applying section 72 to the participant or beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and, thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. See Q&A–11 through Q&A–16 of this section.

(b) *Exception for purposes of applying section 72(p)(2)(A) to a subsequent loan.* In the case of a loan that is deemed distributed under section 72(p) and that has not been repaid (such as by a plan loan offset), the unpaid amount of such loan, including accrued interest, is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: [Reserved]

Q–21: Is a participant's tax basis under the plan increased if the participant repays the loan after a deemed distribution?

A–21: (a) *Repayments after deemed distribution.* Yes, if the participant or beneficiary repays the loan after a deemed distribution of the loan under section 72(p), then, for purposes of section 72(e), the participant's or beneficiary's investment in the contract (tax basis) under the plan increases by the amount of the cash repayments that the participant or beneficiary makes on the loan after the deemed distribution. However, loan repayments are not treated as after-tax contributions for other purposes, including sections 401(m) and 415(c)(2)(B).

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–21 and is based on the assumptions described in the introductory text of this section:

Example. (i) A participant receives a $20,000 loan on January 1, 2003, to be repaid in 20 quarterly installments of $1,245 each.

On December 31, 2003, the outstanding loan balance ($19,179) is deemed distributed as a result of a failure to make quarterly installment payments that were due on September 30, 2003 and December 31, 2003. On June 30, 2004, the participant repays $5,147 (which is the sum of the three installment payments that were due on September 30, 2003, December 31, 2003, and March 31, 2004, with interest thereon to June 30, 2004, plus the installment payment due on June 30, 2004). Thereafter, the participant resumes making the installment payments of $1,245 from September 30, 2004 through December 31, 2007. The loan repayments made after December 31, 2003 through December 31, 2007 total $22,577.

(ii) Because the participant repaid $22,577 after the deemed distribution that occurred on December 31, 2003, the participant has investment in the contract (tax basis) equal to $22,577 (14 payments of $1,245 each plus a single payment of $5,147) as of December 31, 2007.

Q–22: When is the effective date of section 72(p) and the regulations in this section?

A–22: (a) *Statutory effective date.* Section 72(p) generally applies to assignments, pledges, and loans made after August 13, 1982.

(b) *Regulatory effective date.* This section applies to assignments, pledges, and loans made on or after January 1, 2002.

(c) *Loans made before the regulatory effective date*—(1) *General rule.* A plan is permitted to apply Q&A–19 and Q&A–21 of this section to a loan made before the regulatory effective date in paragraph (b) of this Q&A–22 (and after the statutory effective date in paragraph (a) of this Q&A–22) if there has not been any deemed distribution of the loan before the transition date or if the conditions of paragraph (c)(2) of this Q&A–22 are satisfied with respect to the loan.

(2) *Consistency transition rule for certain loans deemed distributed before the regulatory effective date.* (i) The rules in this paragraph (c)(2) of this Q&A–22 apply to a loan made before the regulatory effective date in paragraph (b) of this Q&A–22 (and after the statutory effective date in paragraph (a) of this Q&A–22) if there has been any deemed distribution of the loan before the transition date.

(ii) The plan is permitted to apply Q&A–19 and Q&A–21 of this section to the loan beginning on any January 1, but only if the plan reported, in Box 1 of Form 1099–R, for a taxable year no later than the latest taxable year that would be permitted under this section (if this section had been in effect for all loans made after the statutory effective date in paragraph (a) of this Q&A–22), a gross distribution of an amount at least equal to the initial default amount. For purposes of this section, the initial default amount is the amount that would be reported as a gross distribution under Q&A–4 and Q&A–10 of this section and the transition date is the January 1 on which a plan begins applying Q&A–19 and Q&A–21 of this section to a loan.

(iii) If a plan applies Q&A–19 and Q&A–21 of this section to such a loan, then the plan, in its reporting and withholding on or after the transition date, must not attribute investment in the contract (tax basis) to the participant or beneficiary based upon the initial default amount.

(iv) This paragraph (c)(2)(iv) of this Q&A–22 applies if—

(A) The plan attributed investment in the contract (tax basis) to the participant or beneficiary based on the deemed distribution of the loan;

(B) The plan subsequently made an actual distribution to the participant or beneficiary before the transition date; and

(C) Immediately before the transition date, the initial default amount (or, if less, the amount of the investment in the contract so attributed) exceeds the participant's or beneficiary's investment in the contract (tax basis). If this paragraph (c)(2)(iv) of this Q&A–22 applies, the plan must treat the excess (the loan transition amount) as a loan amount that remains outstanding and must include the excess in the participant's or beneficiary's income at the time of the first actual distribution made on or after the transition date.

(3) *Examples.* The rules in paragraph (c)(2) of this Q&A–22 are illustrated by the following examples, which are based on the assumptions described in the introductory text of this section (and, except as specifically provided in the examples, also assume that no distributions are made to the participant and that the participant has no investment in the contract with respect to the plan). *Example 1*, *Example 2*, and *Example 4* of this paragraph (c)(3) of this Q&A–22 illustrate the application of the rules in paragraph (c)(2) of this Q&A–22 to a plan that, before the transition date, did not treat interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p). Example 3 of this paragraph (c)(3) of this Q&A–22 illustrates the application of the rules in paragraph (c)(2) of this Q&A–22 to a plan that, before the transition date, treated interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p). The examples are as follows:

Example 1. (i) In 1998, when a participant's account balance under a plan is $50,000, the participant receives a loan from the plan. The participant makes the required repayments until 1999 when there is a deemed distribution of $20,000 as a result of a failure to repay the loan. For 1999, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and, in Box 2 of Form 1099–R, a taxable amount of $20,000. The plan then records an increase in the participant's tax basis for the same amount ($20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution is $20,000 and the plan's records show that the participant's tax basis is the same amount ($20,000). As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is zero. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $60,000 in Box 1 of Form 1099–R and a taxable amount of $60,000 in Box 2 of Form 1099–R.

Example 2. (i) The facts are the same as in *Example 1*, except that in 1999, immediately prior to the deemed distribution, the participant's account balance under the plan totals $50,000 and the participant's tax basis is $10,000. For 1999, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and reports, in Box 2 of Form 1099–R, a taxable amount of $16,000 (the $20,000 deemed distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to the deemed distribution). The plan then records an increase in tax basis equal to the $20,000 deemed distribution, so that the participant's remaining tax basis as of December 31, 1999, totals $26,000 ($10,000 minus $4,000 plus $20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution is $16,000 and the plan's records show that the participant's tax basis is $26,000. As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's

remaining tax basis in the plan is $8,000. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $60,000 in Box 1 of Form 1099–R and a taxable amount of $54,000 in Box 2 of Form 1099–R.

Example 3. (i) In 1993, when a participant's account balance in a plan is $100,000, the participant receives a loan of $50,000 from the plan. The participant makes the required loan repayments until 1995 when there is a deemed distribution of $28,919 as a result of a failure to repay the loan. For 1995, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $28,919 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and, in Box 2 of Form 1099–R, a taxable amount of $28,919. For 1995, the plan also records an increase in the participant's tax basis for the same amount ($28,919). Each year thereafter through 2001, the plan reports a gross distribution equal to the interest accruing that year on the loan balance, reports a taxable amount equal to the interest accruing that year on the loan balance reduced by the participant's tax basis allocated to the gross distribution, and records a net increase in the participant's tax basis equal to that taxable amount. As of December 31, 2001, the taxable amount reported by the plan as a result of the loan totals $44,329 and the plan's records for purposes of section 72 show that the participant's tax basis totals the same amount ($44,329). As of January 1, 2002, the plan decides to apply Q&A–19 of this section. Accordingly, it reduces the participant's tax basis by the initial default amount of $28,919, so that the participant's remaining tax basis in the plan is $15,410 ($44,329 minus $28,919). Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $180,000 in cash and the loan receivable equal to the $28,919 outstanding loan amount in 1995 plus interest accrued thereafter to the payment date in 2003. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $180,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $180,000 in Box 1 of Form 1099–R and a taxable amount of $164,590 in Box 2 of Form 1099–R ($180,000 minus the remaining tax basis of $15,410).

Example 4. (i) The facts are the same as in Example 1, except that in 2000, after the deemed distribution, the participant receives a $10,000 hardship distribution. At the time of the hardship distribution, the participant's account balance under the plan totals $50,000. For 2000, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $10,000 and, in Box 2 of Form 1099–R, a taxable amount of $6,000 (the $10,000 actual distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to this actual distribution). The plan then records a decrease in tax basis equal to $4,000, so that the participant's remaining tax basis as of December 31, 2000, totals $16,000 ($20,000 minus $4,000). After 1999, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution plus the 2000 actual distribution is $26,000 and the plan's records show that the participant's tax basis is $16,000. As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is reduced from $16,000 to zero. However, because the $20,000 initial default amount exceeds $16,000, the plan records a loan transition amount of $4,000 ($20,000 minus $16,000). Thereafter, the amount of the outstanding loan, other than the $4,000 loan transition amount, is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) In accordance with paragraph (c)(2)(iv) of this Q&A–22, the plan must report in Box 1 of Form 1099–R a gross distribution of $64,000 and in Box 2 of Form 1099–R a taxable amount for the participant for the year 2003 equal to $64,000 (the sum of the $60,000 paid in the year 2003 plus $4,000 as the loan transition amount).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 13, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–18815 Filed 7–28–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 08–00–066]

RIN 2115–AE46

Special Local Regulations; Eighth Coast Guard District Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its list of annual marine events that occur within the Eighth Coast Guard District. This action is being taken to ensure the safety of life and property during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event. This list reflects the approximate dates and locations of each annual recurring marine event.

DATES: This Final Rule will become effective September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Project Attorney, Lieutenant Junior Grade Curtis Borland at Commander (dl), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396, (504) 589–6168.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was published on 28 April 2000 proposing to revise Table 1 to 33 CFR 100.801, the list of annual marine events that occur within the Eighth Coast Guard District. The Coast Guard received no comments on the proposed rulemaking. A public hearing was not requested and one was not held.

Background and Purpose

This rulemaking updates the existing list of anticipated annual marine events in the Eighth Coast Guard District.

Discussion of Comments and Changes

No comments were received in response to the NPRM. The Coast Guard has added new events and updated all event descriptions, as reported by the sponsor of the event.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT was unnecessary. The economic impact is not significant because this rule serves only to update an already existing list of marine events and does not change the process for reviewing such occurrences.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned, operated, and not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The segment of the listed waterways regulated is the minimum necessary to assure the safety of life and property on or adjacent to navigable waters. These regulations are relatively brief in duration and will only affect marine traffic. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard is revising its list of recurring marine events. The listing itself will not affect the environment. When an event application is received, the Coast Guard will conduct an environmental analysis for the event. Under figure 2–1 paragraph (34)(h) of Coast Guard Commandant Instruction M16475.1C, this revision is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; and 33 CFR 100.35.

2. § 100.801 is amended by revising Table 1 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

Table 1 of § 100.801—Eighth Coast Guard District Table of Annual Marine Events

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GROUP UPPER MISSISSIPPI RIVER

1. Riverfest Power Boat Grand Prix
   Sponsor: Twin City Power Boat Association
   Date: 1 Day—2nd Saturday in June
   Regulated Area: Upper Mississippi River miles 980.0–981.0, Little Falls, MN
2. W.A.M.S.O. Ball Fireworks
   Sponsor: St. Paul Parks and Recreation
   Date: 1 Day—1st or 2nd Saturday in June
   Regulated Area: Upper Mississippi River miles 839.1–839.7, St. Paul, MN
3. Winona Downtown Arts & River Festival
   Sponsor: Winona Downtown Cooperative
   Date: 2 Days—2nd or 3rd Weekend in June
   Regulated Area: Upper Mississippi River miles 725.0–726.0, Winona, MN
4. La Crosse Riverfest
   Sponsor: Riverfest, Inc.
   Date: 5 Days—Last Week of June or 1st Week of July
   Regulated Area: Upper Mississippi River miles 698.0–699.0, La Crosse, WI
5. Fair St. Louis
   Sponsor: Fair St. Louis Committee
   Date: 3 Days—1st Week in July
   Regulated Area: Upper Mississippi River miles 179.2–180.0, St. Louis, MO
6. Fourth of July River Front Blast
   Sponsor: Alton Exposition Commission
   Date: 1 Day—1st Week in July
   Regulated Area: River Front Park, Upper Mississippi River miles 202.5–203.5, Alton, IL
7. Steamboat days
   Sponsor: Winona Area Jaycees
   Date: 3 Days—1st Weekend in July
   Regulated Area: Upper Mississippi River miles 725.0–726.0, Winona, MN
8. Independence Day Celebration
   Sponsor: Marquette American Legion
   Date: 2 Days—1st Week in July
   Regulated Area: Upper Mississippi River miles 634.5–634.7, Marquette, IA
9. City of Redwing 4th of July Fireworks
   Sponsor: City of Redwing
   Date: 1 Day—4th of July
   Regulated Area: Upper Mississippi River miles 790.0–791.0, Red Wing, MN
10. City of Minneapolis 4th of July Fireworks
    Sponsor: City of Minneapolis
    Date: 1 Day—4th of July
    Regulated Area: Upper Mississippi River miles 854.7–855.8, Minneapolis, MN
11. The Great Steamboat Race
    Sponsor: Delta Queen Steamboat Company
    Date: 1 Day—4th of July
    Regulated Area: Upper Mississippi River miles 173.6–179.2, St. Louis, MO
12. Celebrate the Bridge Regatta
    Sponsor: Minneapolis Rowing Club
    Date: 1 Day—2nd or 3rd Saturday in July.
    Regulated Area: Upper Mississippi River miles 849.8–850.4, Minneapolis, MN
13. Hastings Rivertown Days
    Sponsor: Hastings Chamber of Commerce
    Date: 3 Days—3rd Weekend in July

Regulated Area: Upper Mississippi River miles 813.0–815.2, Hastings, MN

14. Lumberjack Days Festival
Sponsor: St. Croix Events and/or City of Stillwater
Date: 4 Days—3rd or 4th Weekend in July
Regulated Area: Lower St. Croix River miles 22.9–23.5, Stillwater, MN

15. Minneapolis Aquatennial
Sponsor: Minneapolis Aquatennial Association
Date: 9 Days—3rd Weekend through 4th Weekend in July
Regulated Area: Upper Mississippi River miles 854.7–856.2, Minneapolis, MN

16. Big Splash Festival
Sponsor: City of Prairie du Chien and Lentzkow Racing
Date: 4 Days—3rd Weekend of July
Regulated Area: Upper Mississippi River miles 634.5–636.0, Prairie du Chien, WI

17. RiverFeast
Sponsor: Capital City Partnership d.b.a. RiverFeast
Date: 1 Day—3rd or 4th Saturday in July
Regulated Area: Upper Mississippi River miles 839.0–839.8, St. Paul, MN

18. River City Days
Sponsor: Red Wing Chamber of Commerce
Date: 2 Days—1st or 2nd Weekend in August
Regulated Area: Upper Mississippi River miles 790.0–792.0, Red Wing, MN

19. Riverboat Days
Sponsor: City of Yankton, Twin City Power Boat Association, WNAX Radio
Date: 3 Days—3rd Weekend in August
Regulated Area: Missouri River miles 805.0–806.0, Yankton, SD

20. Labor Day Celebration
Sponsor: City of McGregor Chamber of Commerce
Date: 4 Days—Last Weekend in August
Regulated Area: Upper Mississippi River miles 633.0–634.0, McGregor, IA

21. Busch Beer Drag Boat Classic
Sponsor: St. Louis Drag Boat Association
Date: 2 Days—1st or 2nd Week of September
Regulated Area: Kaskaskia River miles 28.0–29.0, New Athens, IL

22. Minnesota Orchestra on the Mississippi Fireworks Show
Sponsor: City of St. Paul Parks and Recreation
Date: 1 Day—1st or 2nd Saturday in September
Regulated Area: Upper Mississippi River miles 839.1–839.7, St. Paul, MN

GROUP OHIO VALLEY

1. Eskimo Escapades—Water Ski Race
Sponsor: Skiers of Knoxville, TN
Date: 1 Day—2nd Saturday in January
Regulated Area: Tennessee River miles 648.0–649.0, Knoxville, TN

2. Tom White Invitational—Rowing
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—2nd or 3rd Saturday in March
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

3. Thunder Over Louisville
Sponsor: Thunder Over Louisville
Date: 1 Day—3rd Saturday in April
Regulated Area: Ohio River miles 602.0–605.0, Louisville, KY

4. Marietta Invitational Rowing Regatta
Sponsor: Marietta High School
Date: 2nd Week of April
Regulated Area: Muskingum River Mile 0.5–1.5, Marietta, OH

5. Southeast Intercollegiate Rowing Championships—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 2 Days—3rd Weekend in April
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

6. Oak Ridge Scholastics—Rowing Shells
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—4th Saturday in April
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

7. Kentucky Derby Festival Great Steamboat Race
Sponsor: Kentucky Derby Festival/ Belle of Louisville Operating Board
Date: 1 Day—Last Week in April or First Week in May
Regulated Area: Ohio River 597.0–604.0, Louisville, KY

8. Annual Boat Review—Marine Parade
Sponsor: Chattanooga Marine Trade Association
Date: 1 Day—1st Saturday in May
Regulated Area: Tennessee River miles 471.0–478.0, Hamilton County, TN

9. TRRA Scholastic Sprint
Sponsor: Three Rivers Rowing Association, Pittsburgh, PA
Date: 1 Day—1st Sunday in May
Regulated Area: Allegheny River miles 2.0–4.0, Pittsburgh, PA

10. UT Coaches Regatta—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—2nd or 3rd Saturday in May
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

11. NCAA Regional Championships—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—2nd or 3rd Saturday in May
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

12. Blessing of the Fleet—Parade of Boats
Sponsor: Jonathan Aurora Action Committee, Aurora, KY
Date: 1 Day—2nd or 3rd Weekend in May
Regulated Area: Tennessee River miles 42.0–43.0, Aurora, KY

13. West Virginia Governors Cup Regatta
Sponsor: University of Charleston
Date: 3rd Week of May
Regulated Area: Kanawha River Mile 59.5–62.0, Charleston, WV

14. Boats and Music Regatta
Sponsor: The Great Kanawha River Navy
Date: Last Week of May
Regulated Area: Kanawha River Mile 57.9–58.9, Charleston, WV

15. Albert Gallatin Regatta
Sponsor: Point Marion (Pennsylvania) Rotary Club
Date: 2 Days—Saturday & Sunday of Memorial Day Weekend
Regulated Area: Monongahela River miles 89.9–90.8, Point Marion, PA

16. West Virginia Symphony Fireworks
Sponsor: West Virginia Symphony
Date: 1st Week of June
Regulated Area: Kanawha River Mile 59.4–60.4, Charleston, WV

17. Riverbend Festival—Concerts and Fireworks
Sponsor: Friends of the Festival, Chattanooga, TN
Date: 4 Days—1st & 2nd Weekend in June
Regulated Area: Tennessee River miles 463.4–464.5, Chattanooga, TN

18. Annual Superman Celebration—Fireworks
Sponsor: Metro Chamber, Metropolis, IL
Date: 1 Day—2nd Saturday in June
Regulated Area: Ohio River miles 942.0–943.0, Metropolis, IL

19. Saint Brendan Cup Rowing Race
Sponsor: Pittsburgh Irish Rowing Club
Date: 1 Day—2nd or 3rd Saturday in June
Regulated Area: Ohio River miles 7.0–9.0, Pittsburgh, PA

20. Blessing of The Fleet
Sponsor: Pittsburgh Safe Boating Committee
Date: 1 Day—2nd or 3rd Sunday in June
Regulated Area: Allegheny River miles 0.0–0.2, Pittsburgh, PA

21. River Heritage Days Regatta And Powerboat Races

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Sponsor: River Heritage Days Committee
Date: 2 Days—Saturday & Sunday—2nd or 3rd Weekend in June
Regulated Area: Ohio River miles 127.6–128.5, New Martinsville, WV

22. Picnic With the Pops
Sponsor: Huntington Symphony Orchestra
Date: 2nd or 3rd week of June
Regulated Area: Ohio River Mile 307.5–308.5, Huntington, WV

23. Point Pleasant Sternwheel Regatta and River Festival
Sponsor: Point Pleasant Sternwheel Regatta
Date: 3 Days—Last Weekend in June
Regulated Area: Ohio River miles 265.0–266.0, Point Pleasant, WV

24. Thunder On The Ohio
Sponsor: Evansville Freedom Festival
Date: 3 Days—Last Weekend in June
Regulated Area: Ohio River miles 792.0–793.0, Evansville, IN

25. Augusta Sternwheel Days
Sponsor: City of Augusta/Sternwheel Days Committee
Date: 1 Day—Last Saturday in June
Regulated Area: Ohio River miles 426.0–429.0, Augusta, KY

26. Festival On The Lake—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 2 Days—4th Weekend in June
Regulated Area: Clinch River miles 50.3–50.8, Anderson County, TN

27. Chattanooga Dam Triathlon—Lake Swim
Sponsor: Chattanooga Track Club
Date: 1 Day—4th Sunday in June
Regulated Area: Tennessee River miles 471.0–471.5, Chattanooga, TN

28. Charleston 4th of July Celebration
Sponsor: Charleston Festival Commission
Date: 1st Week of July
Regulated Area: Kanawha River Mile 50.9–51.9, Charleston, WV

29. Annual River Recreational Festival
Sponsor: Gallia County Chamber of Commerce
Date: 1st Week of July
Regulated Area: Ohio River Mile 269.0–270.0, Gallipolis, OH

30. Civic Forum Fireworks and Entertainment
Sponsor: Civic Forum
Date: 1st Week of July
Regulated Area: Ohio River Mile 355.5–356.5, Portsmouth, OH

31. Freedomfest
Sponsor: WTCR FM
Date: 1st Week of July
Regulated Area: Ohio River Mile 307.5–308.5, Huntington, WV

32. City of Pittsburgh July 4th Celebration
Sponsor: Citiparks
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 0.0–0.2, Pittsburgh, PA

33. EZ Challenge Speedboat Race
Sponsor: APR Events Group, New Martinsville, WV
Date: 2 Days—Saturday & Sunday on or about 4th of July
Regulated Area: Ohio River miles 77.0–78.0, Brooke County, WV

34. St. Albans Riverfest
Sponsor: St. Albans Riverfest, Inc.
Date: 2 Days—1st Weekend in July
Regulated Area: Kanawha River miles 46.0–47.0, St. Albans, WV

35. Summer Motion Festival Tri-State Fireworks
Sponsor: Tri-State Fair and Regatta Committee
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 322.4–322.6, Ashland, KY

36. Indiana Governor's Cup
Sponsor: Madison Regatta Inc.
Date: 3 Days—1st Weekend in July
Regulated Area: Ohio River miles 557.0–558.0, Madison, IN

37. The New Kensington Recreational Commission's Fireworks Display
Sponsor: New Kensington Recreation Commission
Date: One day—July 3rd
Regulated Area: Allegeheny River mile 18.3–18.7

38. Toronto 4th of July Celebration
Sponsor: Toronto 4th of July Committee
Date: One day—July 3rd
Regulated Area: Ohio River between mile 58.1–59.1

39. Wheeling Symphony Conducky Derby
Sponsor: Wheeling Symphony Society Inc.
Date: One day—July 4th
Regulated Area: Ohio River between mile 90.2–90.7

40. Independence Day Celebration—Fireworks
Sponsor: Paducah Parks Department
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 935.5–936.0, Paducah, KY

41. Independence Day Celebration—Boat Parade and Fireworks
Sponsor: Metropolitan Board of Parks and Recreation, Nashville, TN
Date: 1 Day—4th of July
Regulated Area: Cumberland River miles 190.0–191.0, Nashville, TN

42. 4th of July Celebration—Fireworks
Sponsor: Players Riverboat Casino, Metropolis, IL
Date: 1 Day—3rd or 4th of July
Regulated Area: Ohio River miles 943.0–944.0, Metropolis, IL

43. Lottie McAlice Rowing Race
Sponsor: Three Rivers Rowing Association, Pittsburgh, PA
Date: 2 Days—Saturday & Sunday Near July 15
Regulated Area: Allegheny River miles 2.0–3.0, Pittsburgh, PA

44. Rocketman Triathlon—Lake Swim
Sponsor: Spring City Triathletes, Huntsville, AL
Date: 1 Day—2nd or 3rd Saturday in July
Regulated Area: Tennessee River miles 324.0–324.5, Madison County, TN

45. Cross River Swim Paducah Summerfest
Sponsor: Paducah Tourist & Convention Commission
Date: 1 Day—3rd Saturday in July
Regulated Area: Ohio River miles 934.5–936.0, Paducah, KY

46. Oak Ridge Sprints—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 3 Days—3rd Weekend in July
Regulated Area: Clinch River miles 49.0–51.1, Anderson County, TN

47. Summerfest
Sponsor: Tri-State Fair and Regatta
Date: 3rd or 4th Week of July
Regulated Area: Ohio River Mile 307.5–308.5, Huntington ,WV

48. Fitness System's Lock Triathlon—Lake Swim
Sponsor: Greater Knoxville Triathlon Club
Date: 1 Day—4th Weekend in July
Regulated Area: Clinch River miles 22.0–23.0, Loudon County, TN

49. Paducah Summer Festival—Fireworks
Sponsor: Paducah Promotions
Date: 1 Day—4th Weekend In July
Regulated Area: Ohio River miles 934.0–935.0, Paducah, KY

50. Oakmont Regatta
Sponsor: Oakmont Yacht Club, Oakmont, PA
Date: 2 Days—Last Saturday and Sunday in July
Regulated Area: Allegheny River miles 11.8–12.3, Oakmont, PA

51. Pittsburgh Three Rivers Regatta
Sponsor: Pittsburgh Three Rivers Regatta, Inc.
Date: 7 Days—End of July or beginning of August
Regulated Area: One mile around point at confluence of Allegheny River miles 0.0–1.0, Monongahela River miles 0.0–0.2, and Ohio River miles 0.0–0.9, Pittsburgh, PA

52. Beaver County Riverfest
Sponsor: Beaver County Chamber of Commerce, Beaver, PA
Date: 3 Days—Friday, Saturday & Sunday nearest August 15
Regulated Area: Ohio River miles 25.1–25.8, Beaver River miles 0.1–0.3, Beaver County, PA

53. Belpre Ohio Homecoming
Sponsor: Belpre Ohio Chamber of

Commerce
Date: 2nd Week of August
Regulated Area: Ohio River Mile 185.5–186.5, Belpre, OH
54. Rumble on the River
Sponsor: Southern Ohio Water Sports
Date: 2nd Week of August
Regulated: Ohio River Mile 355.5–356.5, Portsmouth OH
55. Steubenville (Ohio) Regatta Rumble On The River
Sponsor: Steubenville Regatta And Racing Association, Inc.
Date: 3 Days—Friday, Saturday & Sunday nearest August 15
Regulated Area: Ohio River miles 65.0–67.0, Jefferson County, OH
56. Armstrong County (Pennsylvania) Regatta
Sponsor: Three Rivers Outboard Racing Association
Date: 2 Days—Saturday & Sunday nearest August 15
Regulated Area: Allegheny River miles 43.8–45.7, Armstrong County, PA
57. Parkersburg Homecoming Festival
Sponsor: Parkersburg Homecoming Festival
Date: 2 Days—3rd Weekend in August
Regulated Area: Ohio River miles 184.0–185.0, Parkersburg, WV
58. Kentucky Drag Boat Association Inc.: Drag Boat Races
Sponsor: Kentucky Drag Boat Association Inc.
Date: 3 Days—End of August
Regulated Area: Green River miles 70.0–71.5, Livermore, KY
59. WEBN/Toyota Fireworks
Sponsor: WEBN
Date: 1 Day—Sunday before Labor Day
Regulated Area: Ohio River 469.2–470.5, Cincinnati, OH
60. Charleston Sternwheel Regatta
Sponsor: Charleston Festival Commission
Date: 4 Days—The 2 Weekends before Labor Day
Regulated Area: Kanawha River miles 57.0–59.0, Charleston, WV
61. Aurora APR Power Boat Races
Sponsor: Aurora Riverfront Beautification
Date: August 29
Regulated Area: Ohio River, at approximately mile 496.0–499.0, mid-channel, Aurora, IN
62. Portsmouth River Days
Sponsor: Portsmouth River Days Inc.
Date: 1st Week of September
Regulated Area: Ohio River Mile 355.5–356.5, Portsmouth, OH
63. Ohio River Sternwheel Festival
Sponsor: Ohio River Sternwheel Festival Commission
Date: 2 Days—1st or 2nd Weekend in September
Regulated Area: Ohio River miles 170.0–180.0, Marietta, OH
64. My 102 Booms Day—Fireworks
Sponsor: WMYU Radio, Knoxville, TN
Date: 1 Day—1st Weekend in September
Regulated Area: Tennessee River miles 645.0–649.0, Knoxville, TN
65. Ducks On The Ohio
Sponsor: Goodwill Industries, Inc.
Date: 1 Day—2nd or 3rd Weekend in September
Regulated Area: Ohio River miles 792.0–793.0, Evansville, IN
66. Head of Licking Regatta
Sponsor: Kendle, Cincinnati Rowing Club, City of Newport
Date: 1 Day—Last Saturday in September
Regulated Area: Licking River miles 0.0–3.5, Newport, KY
67. Fleur De Lis Regatta
Sponsor: City of Louisville, KY
Date: 2 Days—Last Weekend in September
Regulated Area: Ohio River miles 602.0–604.0, Louisville, KY,
68. Head of The Ohio
Sponsor: Pittsburgh Mercy Foundation
Date: 1 Day—1st Saturday in October
Regulated Area: Allegheny River miles 0.0–4.0, Pittsburgh, PA
69. Chattanooga Head Race—Rowing Race
Sponsor: Look Out Rowing Club
Date: 1 Day—2nd Saturday in October
Regulated Area: Tennessee River miles 464.0–467.0, Chattanooga, TN
70. Head of Tennessee Regatta
Sponsor: Knoxville Rowing Association
Date: 1 Day—2nd Saturday in October
Regulated Area: Tennessee River miles 641.5–645.0, Knoxville, TN
71. City of Pittsburgh Light Up Night Fireworks
Sponsor: Citiparks
Date: 1 Day—1st Friday in November
Regulated Area: Ohio River miles 0.0–0.2, Pittsburgh, PA
72. Light Up Pittsburgh
Sponsor: Kauffmans
Date: 3rd Friday in November
Regulated Area: Ohio River mile 0.0–0.1
73. Christmas on the River—Marine Parade
Sponsor: Chattanooga Downtown Partnership
Date: 1 Day—Last Weekend in November or 1st Weekend in December
Regulated Area: Tennessee River miles 464.0–469.0, Chattanooga, TN
74. First Night Pittsburgh
Sponsor: Forest City Management
Date: One day—31 December
Regulated Area: Ohio River mile 0.0–0.1

GROUP LOWER MISSISSIPPI RIVER

1. Memphis in May Canoe & Kayak Race
Sponsor: Outdoors, Inc.
Date: 1 Day—1st or 2nd Saturday in May
Regulated Area: Lower Mississippi River miles 735.5–738.5, Memphis, TN
2. Duckin' Down the River Rubber Duck Race
Sponsor: Young Women's Community Guild
Date: 1 Day—1st or 2nd Saturday in May
Regulated Area: Arkansas River miles 308.2–308.6, Fort Smith, AR
3. Memphis in May Sunset Symphony Fireworks Display
Sponsor: Memphis in May International Festival, Inc.
Date: 1 Day—Saturday before Memorial Day
Regulated Area: Lower Mississippi River miles 735.0–736.0, Memphis, TN
4. Riverfest, Little Rock Arkansas
Sponsor: Riverfest, Inc.
Date: 1 Day—Sunday before Memorial Day
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock, AR
5. Riverfest Fireworks Display
Sponsor: Old Fort Riverfest Committee
Date: 1 Day—2nd or 3rd Saturday in June
Regulated Area: Arkansas River miles 297.0–298.0, Fort Smith, AR
6. Fourth of July Fireworks
Sponsor: Memphis Center City Commission
Date: 1 Day—4th of July
Regulated Area: Lower Mississippi River miles 735.5–736.5, Mud Island, Memphis, TN
7. Pops on the River Fireworks Display
Sponsor: Arkansas Democrat-Gazette
Date: 1 Day—4th of July
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock AR
8. Fourth of July Celebration
Sponsor: Pickwick Landing State Park
Date: 4th of July
Regulated Area: Tennessee River Mile 206.7–209.0, Pickwick Dam, TN
9. Independence Day Celebration
Sponsor: City of Guntersville
Date: 4th of July
Regulated Area: Tennessee River Miles 356.0–360.0, Guntersville, AL
10. Spirit of Freedom Celebration
Sponsor: WLAY Radio
Date: 4th of July
Regulated Area: Tennessee River Mile

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255.0–256.5, Sheffield, AL
11. Meat on the River Barbecue Cook-Off Fireworks Display
Sponsor: Meat on the Mississippi
Date: 1 Day—1st Friday or Saturday in August
Regulated Area: Lower Mississippi River miles 847.0–849.0, Caruthersville, MO
12. Budweiser/Jesse Brent Memorial Boat Racing Association
Sponsor: Budweiser/Jesse Brent Memorial Boat Racing Association
Date: 1 Day—Sunday before Labor Day
Regulated Area: Lake Ferguson, Greenville, MS
13. Arkansas National Drag Boat Races
Sponsor: Mid-South Drag Boat Association
Date: 2 Days—Saturday and Sunday before Labor Day
Regulated Area: Lake Langhofer, Arkansas River miles 71.0–71.5, Pine Bluff, AR
14. The Great River Cook-Off Ski Exhibition
Sponsor: North Little Rock Junior League
Date: 2nd Weekend in September
Regulated Area: Arkansas River miles 118.8–119.1, Little Rock, AR

GROUP MOBILE

1. Air Sea Rescue
Sponsor: Gulf Coast Shows
Date: 1st or 2nd Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center, Mobile, AL
2. Bass Tournament Weigh-In
Sponsor: Gulf Coast Shows
Date: 2 Days—3rd or 4th Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center, Mobile, AL
3. Water Ski Demonstrations
Sponsor: Gulf Coast Shows
Date: 2 Days—3rd or 4th Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center, Mobile, AL
4. Mobile Boat and Sportsman Show
Sponsor: Gulf Coast Shows
Date: Last week of February
Regulated Area: Mobile River, ½ mile upriver and ½ mile down river from the Mobile Convention Center, Lower Mobile River
5. Blessing of the Fleet—Biloxi, MS
Sponsor: St. Michael's Catholic Church
Date: 1 Day—1st or 2nd Sunday in May
Regulated Area: Entire Biloxi Channel, Biloxi, MS
6. Blessing of the Fleet—Bayou La Batre, AL
Sponsor: St. Margaret Church
Date: 1 Day—2nd or 3rd Sunday in May
Regulated Area: Entire Bayou La Batre, Bayou La Batre, AL
7. Annual Krewe of Billy Bowlegs Pirate Festival
Sponsor: Krewe of Billy Bowlegs of Okaloosa County, Inc.
Date: First weekend in June
Regulated Area: Santa Rosa Sound, east of the Brooks Bridge to Fort Walton Yacht Club at Smack Point at the western end of Choctowatchee Bay and Cinco Bayou
8. Independence Day Fireworks, Destin, FL
Sponsor: City of Destin
Date: 1 Day—4th of July
Regulated Area: The entire Destin East Pass Between and Including Buoys 5 to 11, Destin, FL
9. Independence Day Fireworks, Gulf Shores, AL
Sponsor: City of Gulf Shores
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Main Pavilion at Gulf Shore Public Beach, Gulf Shores, AL
10. Independence Day Fireworks, Panama City, FL
Sponsor: US Navy MWR NSWCCSS CP21
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Hathaway Bridge in St. Andrews Bay, Panama City, FL
11. Independence Day Fireworks, Niceville & Valparaiso, FL
Sponsor: Niceville-Valparaiso Bay Chamber of Commerce
Date: 1 Day—4th of July
Regulated Area: Entire Boggy Bayou, Valparaiso, FL
12. Fourth of July Fireworks, Mobile
Sponsor: Mobile Register
Date: 1 Day—4th of July
Regulated Area: 500 feet from the east bank of the Lower Mobile River between latitudes 30–41.34N and 30–41.24N.
13. Flag Day Parade
Sponsor: Warrior River Boating Association
Date: 1 Day—July 5th
Regulated Area: Warrior River Bankhead Lake River miles 368.4–386.4, Cottondale, AL
14. Blue Angels Air Show, Pensacola Beach
Sponsor: Naval Air Station, Pensacola, FL
Date: 2nd weekend in July
Regulated Area: A 5 nautical mile radius from a center point located 1500 feet out from the Pensacola Beach shoreline in front of the Pensacola Beach water tank.
15. MWR Fort to Fort Swim
Sponsor: Morale, Welfare and Recreation, Naval Air Station, Pensacola, FL
Date: First weekend in August
Regulated Area: Fort Pickens Pier to Barrancas Beach, crossing the Gulf Intracoastal Water Eay at statute mile 180, between buoys 13, 14, 15, and 16.
16. Annual Labor Day Fireworks
Sponsor: City of Destin, FL
Date: Day of or day before Labor Day
Regulated Area: The entire Destin East Pass Between and Including Buoys 5 to 11, Destin, FL
17. Christmas Afloat, Tuscaloosa, AL
Sponsor: Christmas Afloat, Inc.
Date: 1 Day—2nd or 3rd Weekend in December
Regulated Area: Warrior River miles 338.0–341.0, Tuscaloosa County, AL

GROUP NEW ORLEANS

1. Blessing of The Fleet
Sponsor: Our Lady of Prompt Succor Catholic Church, Golden Meadow, LA
Date: 1 Day—2nd Saturday in May
Regulated Area: Bayou Lafourche in the area between Galliano, LA to the area of downtown Golden Meadow, LA
2. The Blessing of the Fleet and Fireworks Display, Morgan City, LA
Sponsor: LA Shrimp And Petroleum Festival and Fair Assoc., Inc.
Date: 1 Day—Sunday of Labor Day Weekend
Regulated Area: Berwick Bay From Junction of the Lower Atchafalaya River at Morgan City, LA to Berwick Locks Buoy 1 (LLNR 18445)
3. July Fourth Fireworks Display
Sponsor: City of Morgan City, LA
Date: 1 Day—4th of July
Regulated Area: Mile marker 0.0–1.0, Morgan City Port Allen Route
4. Annual Patterson Pirogue Race, Patterson, LA
Sponsor: Rotary Club of Patterson
Date: 1 Day—4th of July
Regulated Area: Lower Atchafalaya River—Jennings Bridge to 1 mile South of Jennings Bridge, Patterson, LA
5. USS KIDD Star Spangled Celebration, Baton Rouge, LA
Sponsor: USS KIDD and Nautical Center
Date: 1 Day—4th of July
Regulated Area: Lower Mississippi

River miles 229.4–229.6, Baton Rouge, LA
6. Uncle Sam Jam Fireworks, Alexandria, LA
Sponsor: Champion Broadcasting of Alexandria
Date: 1 Day—4th of July
Regulated Area: Red River, miles 83.0–87.0, Alexandria, LA
7. Monroe Jaycees Fireworks, Monroe, LA
Sponsor: Monroe Jaycees
Date: 1 Day—4th of July
Regulated Area: Ouachita River, miles 164.0–169.0, at the Parish Court House, Monroe, LA
8. Boomtown Casino Fireworks, Harvey, LA
Sponsor: Boomtown Casino
Date: 1 Day—4th of July
Regulated Area: Harvey Canal, miles 3.5—5.5, the entire width of the canal, Harvey, LA
9. Kenner Fireworks, Kenner, LA
Sponsor: City of Kenner
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform in Lake Pontchartrain at Williams Blvd, Kenner, LA
10. Bally's Casino Fireworks, New Orleans, LA
Sponsor: Bally's Casino
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform in Lake Pontchartrain, ¼ miles North of Bally's Casino, New Orleans, LA
11. Riverfront Marketing Fireworks, New Orleans, LA
Sponsor: Riverfront Marketing Group
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Woldenburg Park in Mississippi River, New Orleans, LA
12. Annual Hogdown Fireworks, Mandeville, LA
Sponsor: Mr. R. C. Lunn
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to intersection of Tangipahoa River and Lake Pontchartrain, Mandeville, LA
13. Riverfront Marketing Fireworks, New Orleans
Sponsor: Jax Brewery
Date: 1 Day—December 31
Regulated Area: 500 yard radius around fireworks platform in Mississippi River adjacent to Woldenburg Park, New Orleans, LA
14. Riverfront Marketing Fireworks, New Orleans
Sponsor: Riverfront Marketing Group
Date: 1 Day—Lundi Gras Day
Regulated Area: 500 yard radius around fireworks platform in Mississippi River adjacent to Algiers Point, New Orleans, LA

GROUP GALVESTON

1. Neches River Festival, Beaumont, TX
Sponsor: Neches River Festival, Inc.
Date: 2 Days—3rd Weekend in April
Regulated Area: Neches River from Collier's Ferry Landing to Lawson's Crossing at the end of Pine St. Beaumont, TX
2. Contraband Days Fireworks Display, Lake Charles, LA
Sponsor: Contraband Days Festivities, Inc.
Date: 1 Day—2nd Saturday of May
Regulated Area: 500 foot radius from the fireworks barge in Lake Charles anchored at approximate position 30°13'54" N–093°13'42" W, Lake Charles, LA
3. National Safe Boating Week
Sponsor: Houston Power Squadron
Date: Last weekend in May or first weekend in June
Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.
4. Sylvan Beach Fireworks Display, Sylvan Beach, Houston, TX
Sponsor: City of LaPorte
Date: 1 Day—End of June or Early July
Regulated Area: Rectangle Extending 250 feet East, 250 feet West; 1000 feet North, and 1000 feet South, centered around fireworks barge at Sylvan Beach, Houston, TX
5. Neches River 4th of July Celebration, Beaumont, Texas
Sponsor: City of Beaumont
Date: 1 Day—4th of July
Regulated Area: River Front Park, Beaumont, TX—All waters of the Neches River, bank to bank, from the Trinity Industries Dry Dock to the northeast corner of the Port of Beaumont's dock No. 5
6. Clear Lake Fireworks Display, Clear Lake, Houston, TX
Sponsor: Clear Lake Chamber of Commerce
Date: 1 Day—4th of July
Regulated Area: Rectangle extending 500 feet East, 500 feet West; 1000 feet North, and 1000 feet South, centered around fireworks barge at Light #19 on Clear Lake, Houston, TX
7. Blessing of the Fleet
Sponsor: Clear Lake Elks Club
Date: First Sunday in August
Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.
8. Galveston Harbor Lighted Boat Parade
Sponsor: Historic Downtown/Strand Partnership
Date: Last Saturday in November
Regulated Area: Galveston Channel from Pier 9 to the Pelican Island Bridge
9. Christmas on the Neches River, Port Neches Park
Sponsor: Port Neches Chamber of Commerce
Date: 1 Day—1st Saturday in December
Regulated Area: The areas of the Neches River from Neches River light 26 to Neches River light 30, Neches River Front Park, Port Neches, TX
10. Christmas Boat Parade on Clear Lake
Sponsor: Clear Lake Area Chamber of Commerce
Date: 2nd Saturday in December
Regulated Area: Clear Lake, Texas. From South Shore Harbor Marina down Clear Lake Channel, to Clear Creek Channel Light 2.

GROUP CORPUS CHRISTI

1. Buccaneer Days Fireworks Display
Sponsor: Buccaneer Commission, Inc.
Date: 1 Day—Last Friday in April or First Friday in May
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX
2. SPI Windsurf Blowout
Sponsor: South Padre Island Convention and Visitors Bureau
Date: 2 Day—First Saturday and Sunday in May
Regulated Area: Rectangle extending one mile East, Half mile North and Half mile South from Position 26–08N, 97–10.5W, in the Laguna Madre area known as "The Flats", South Padre Island, TX
3. Corpus Christi 4th of July Fireworks Display
Sponsor: City of Corpus Christi
Date: 1 Day—4th of July
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX
4. City of Port Aransas 4th of July Fireworks Display
Sponsor: City of Port Aransas
Date: 1 Day—4th of July
Regulated Area: 600 foot radius from a point half way between Port Aransas Harbor Daybeacon 2 to Port Aransas Ferry landing in the Corpus Christi Ship Channel, Port Aransas, TX
5. Bayfest Fireworks Display
Sponsor: Bayfest, Inc.
Date: 2 Days—3rd Friday & Saturday in September
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX
6. Great Tugboat Challenge
Sponsor: Bayfest Inc.

Date: 2 Days—3rd Friday & Saturday in September
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX

7. Harbor Lights
Sponsor: City of Corpus Christi
Date: 1 Day—1st Saturday in December
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX

Dated: July 11, 2000.

K.J. Eldridge,

Commander, Eighth Coast Guard District, Acting.

[FR Doc. 00–19221 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1999–5700]

RIN 2115–AF94

Traffic Separation Schemes: Off San Francisco, in the Santa Barbara Channel, in the Approaches to Los Angeles-Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the existing Traffic Separation Schemes (TSS's) off San Francisco and in the Santa Barbara Channel. The amendments have been adopted by the International Maritime Organization and validated by several recent vessel routing studies. The amended TSS's will route commercial vessels farther offshore, providing an extra margin of safety and environmental protection in the Monterey Bay National Marine Sanctuary and adjacent waters. This rule codifies descriptions of these TSS's into the Code of Federal Regulations.

DATES: This final rule is effective on August 30, 2000.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5700 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Commander Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951, e-mail btetreault@d11.uscg.mil; Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968, e-mail MvanHouten@d11.uscg.mil; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, at 202–267–0574; e-mail Gdetweiler@comdt.uscg.mil. For questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–0329.

SUPPLEMENTARY INFORMATION:

Regulatory History

In 1989, we published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California" (CGD 83–032, 54 FR 18258). The NPRM proposed implementing several IMO-adopted amendments to the existing TSS's and establishing a shipping safety fairway along the California coast. We elected to postpone implementing the amendments until the studies on the Monterey Bay National Marine Sanctuary (MBNMS) and on oil tanker routing along the California coast (the "Tanker Free Zone" study mandated by the Oil Pollution Act of 1990) were complete.

On June 17, 1999, we published an NPRM entitled "Traffic Separation Schemes: Off San Francisco, in the Santa Barbara Channel, in the Approaches to Los Angeles-Long Beach, California" in the **Federal Register** (64 FR 32451). We received six letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

This rule amends the Traffic Separation Schemes (TSS's) off San Francisco and in the Santa Barbara Channel adopted by the International Maritime Organization (IMO) in 1990 and 1985, respectively ("Ships' Routeing", Sixth Edition 1991, IMO). These amendments—

a. Shift the southern leg of the TSS off San Francisco westward to provide a true north/south alignment; and

b. Extend the existing TSS in the Santa Barbara Channel 18 nautical miles westward beyond Point Conception to Point Arguello.

In addition, this rule codifies these TSS's into Title 33 part 167 of the Code of Federal Regulations (CFR). It also adds the IMO definition of "Area to be avoided" in 33 CFR 167.5.

Discussion of Comments and Changes

We received six written comments in response to our NPRM entitled "Traffic Separation Schemes Off San Francisco, in the Santa Barbara Channel, and in the Approaches to Los Angeles-Long Beach, California" (64 FR 32451, June 17, 1999). Five comments were strongly in favor of the proposed rule without changes. One comment was in favor of the proposed rule, but requested that additional information be included about the underlying Sword Unit leases that would be affected by the extension of the Santa Barbara Channel. The comment wanted the regulations to alert readers of potential future conflicts between vessels transiting the extended TSS in the Santa Barbara Channel and the development of Sword Unit leases. Sword Unit leases, OCS–P 0319, 0320, 0322 and 0323A, underlie the proposed TSS extension. Exploration activities may occur on the Sword Unit as early as 2002, with development occurring as early as 2007. To accommodate exploration and development on the Sword Unit, we may temporarily suspend or amend the TSS, based on historical practice and sections 3.12 and 7.6 of the IMO publication, "Ships' Routeing", Sixth Edition 1991. We intend to work collaboratively with all of the agencies involved to develop and implement appropriate measures to facilitate both oil production and safe and efficient shipping. Close coordination throughout delineation drilling and any subsequent production phase will allow us to select appropriate measures based on the circumstances, as we know them at the time. While we agree that potential future conflicts may occur, to include information concerning Sword Unit leases in the CFR is beyond the scope of this rulemaking.

The section entitled "Off San Francisco: Area to be avoided" was created by removing § 167.401(c) from the NPRM and inserting it as § 167.406 in this rule. This presents the information in the regulations as it is in "Ships' Routeing", Sixth Edition 1991, International Maritime Organization.

Section 167.452 of the NPRM was divided into §§ 167.451 and 167.452 in this rule. This presents the information in the regulations as it is in "Ships' Routeing", Sixth Edition 1991, International Maritime Organization.

Sections 167.500 through 167.503 were proposed in the NPRM but were removed from this rule. As stated in the NPRM, we intended to codify the

existing Los Angeles-Long Beach TSS. Because of major port improvement projects to the ports of Los Angeles and Long Beach, we will temporarily suspend the TSS effective September 1, 2000. To avoid confusion, these sections will be codified after the improvement projects are completed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. A summary of the costs and benefits of this rule follows:

Costs

The amendments to the TSS's in the Santa Barbara Channel and off San Francisco will result in a slight increase in transit times and operating costs for vessels using them. Most of the vessels using the TSS are large commercial vessels such as containerships. The northbound transit distance through the TSS's will increase by 2.4 nautical miles (nm) and the southbound transit distance will increase by 4.1 nm. The time per transit will increase by approximately 8 minutes (.14 hours) northbound and 14 minutes (.23 hours) southbound. This corresponds to northbound 219.43 ((1 hour/17.5 nm) × 2.4 nm × 1600 transits/year)) and southbound 374.86 ((1 hour/17.5 nm) × 4.1 nm × 1600 transits/year)) additional hours per year. Assuming a fuel cost of approximately $600 per hour, the estimated increase in costs for industry would be $356,574 per year ((219.43 hours + 374.86 hours) × $600/hour).

Vessel operators will incur the minimal cost of plotting new coordinates on their existing charts or purchasing updated charts, when available.

Benefits

Amendments to the TSS in the Santa Barbara Channel. By extending the TSS 18 miles, this rule decreases the risk of allisions and groundings and resulting injuries, pollution, and property damage, by routing vessels farther away from oil platforms and Point Conception. The TSS extension also provides an increased margin of safety should future development in this area occur.

Amendments to the TSS off San Francisco. This rule rotates the approach lanes in a westward direction which reduces the risk of collisions and groundings and resulting injuries, pollution, and property damage. Vessels will transit farther offshore when entering or departing San Francisco Bay with their closest approach to land increased from 3 to 6 nautical miles. This increased distance provides an added margin of safety for vessels experiencing casualties (e.g. loss of power or steering) and more time for response vessels to reach a disabled vessel before it drifts ashore. The rotation also eliminates conflicts between large commercial vessels and fishing vessel fleets operating closer to shore.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will have a minimal economic impact on vessels operated by small entities. The rule amends two existing TSS's. This action improves safety for commercial vessels using the TSS's by reducing the risk of collisions, allisions, and groundings. Vessels voluntarily transiting the TSS in the Santa Barbara Channel will have to transit an additional 2 to 4 nautical miles per trip, depending on the direction traveled. This additional transit distance results in increased vessel operating costs ranging from approximately $80 to $140 per trip. Vessels that tend to use the TSS's are commercial vessels such as containerships, freighters, and tankers. These vessels by their very nature are large in size and capable of operating in an offshore environment. Because of their large size most of them would not qualify as small entities. However, even if a vessel does qualify as a small entity, the impact of the additional $80 to $140 per trip would be an insignificant increase to the overall cost of its complete voyage. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in this rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

Title I of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) (PWSA) authorizes the Secretary to promulgate regulations to designate and amend traffic separation schemes (TSS's) to protect the marine environment. In enacting PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSS's off San Francisco and in the Santa Barbara Channel, California, we have consulted with the San Francisco Harbor Safety Committee ("HSC"), the affected state and federal pilot's associations, vessel operators, users, and all affected stakeholders. The San Francisco HSC, which was established by the State of California, includes all the principal waterway users of the San Francisco ports and other key agencies. The HSC was an active participant in various meetings with the Coast Guard and has contributed to this rulemaking.

Presently, there are no California State laws or regulations concerning the same subjects as are contained in this proposed rule. We understand the state does not contemplate issuing any such rules. However, it should be noted, that by virtue of the PWSA authority, the TSS's in this rule will preempt any state rule on the same subject.

In order to be effective against foreign flag vessels on the high seas, TSS's must be submitted to, approved by, and implemented by the International Maritime Organization (IMO). Individual states are not represented at IMO; that is the role of the federal government. The Coast Guard is the principal United States agency responsible for advancing the interests of the United States at IMO. We recognize, however, the interest of all local stakeholders as we work at IMO to advance the goals of these TSS's. We will continue to work closely with such stakeholders to implement the final rule to ensure that the waters off San Francisco and in the Santa Barbara Channel affected by this rule are made safer and more environmentally secure.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Coast Guard has agreed that, to accommodate exploration and development on the Sword Unit, the TSS may be temporarily suspended or amended, based on historical practice and sections 3.12 and 7.6 of the IMO publication, "Ships' Routeing", Sixth Edition 1991.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(I), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule adjusts two existing TSS's. These adjustments will enhance safety in the MBNMS and adjacent waters by allowing additional response time for a vessel that is adrift, thus preventing groundings, and by routing vessels away from sensitive areas. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. In § 167.5, redesignate paragraphs (a) through (f) as paragraphs (b) through (g), respectively, and add new paragraph (a) to read as follows:

§ 167.5 Definitions.

(a) *Area to be avoided* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships or certain classes of ships.

* * * * *

3. Following § 167.350, add the undesignated center heading "Pacific West Coast" and §§ 167.400 through 167.406, and 167.450 through 167.452, to read as follows: Pacific West Coast

§ 167.400 Off San Francisco Traffic Separation Scheme: General.

The Off San Francisco Traffic Separation Scheme consists of six parts: a Precautionary Area, a Northern Approach, a Southern Approach, a Western Approach, a Main Ship Channel, and an Area to Be Avoided. The specific areas in the Off San Francisco TSS and Precautionary Area are described in §§ 167.401 through 167.406 of this chapter. The geographic coordinates in §§ 167.401 through 167.406 are defined using North American Datum 1983 (NAD 83).

§ 167.401 Off San Francisco: Precautionary area.

(a)(1) A precautionary area is established bounded to the west by an arc of a circle with a radius of 6 miles centering upon geographical position 37°45.00′N, 122°41.50′W and connecting the following geographical positions:

Latitude	Longitude
37°42.70′ N	122°34.60′ W.
37°50.30′ N	122°38.00′ W.

(2) The precautionary area is bounded to the east by a line connecting the following geographic positions:

Latitude	Longitude
37°42.70′ N	122°34.60′ W.
37°45.90′ N	122°38.00′ W.
37°50.30′ N	122°38.00′ W.

(b) A pilot boarding area is located near the center of the precautionary area described in paragraph (a) of this section. Due to heavy vessel traffic, mariners are advised not to anchor or linger in this precautionary area except to pick up or disembark a pilot.

§ 167.402 Off San Francisco: Northern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°48.40′ N	122°47.80′ W
37°56.70′ N	123°03.70′ W
37°55.20′ N	123°04.90′ W
37°47.70′ N	122°48.20′ W

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°49.20′ N	122°46.70′ W.
37°58.00′ N	123°02.70′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°53.90′ N	123°06.10′ W.
37°46.70′ N	122°48.70′ W.

§ 167.403 Off San Francisco: Southern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°39.10′ N	122°40.40′ W.
37°27.00′ N	122°40.40′ W.
37°27.00′ N	122°43.00′ W.
37°39.10′ N	122°43.00′ W.

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°39.30′ N	122°39.20′ W.
37°27.00′ N	122°39.20′ W.

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°27.00′ N	122°44.30′ W.
37°39.40′ N	122°44.30′ W.

§ 167.404 Off San Francisco: Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°41.90′ N	122°48.00′ W.
37°38.10′ N	122°58.10′ W.
37°36.50′ N	122°57.30′ W.
37°41.10′ N	122°47.20′ W.

(b) A traffic lane for south-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°42.80′ N	122°48.50′ W.
37°39.60′ N	122°58.80′ W.

(c) A traffic lane for north-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°35.00′ N	122°56.50′ W.
37°40.40′ N	122°46.30′ W.

§ 167.405 Off San Francisco: Main ship channel.

(a) A separation line connects the following geographical positions:

Latitude	Longitude
37°45.90′ N	122°38.00′ W.
37°47.00′ N	122°34.30′ W.
37°48.10′ N	122°31.00′ W.

(b) A traffic lane for eastbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	Longitude
37°45.80′ N	122°37.70′ W.
37°47.80′ N	122°30.80′ W.

(c) A traffic lane for westbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	Longitude
37°46.20′ N	122°37.90′ W.
37°46.90′ N	122°35.30′ W.
37°48.50′ N	122°31.30′ W.

§ 167.406 Off San Francisco: Area to be avoided.

A circular area to be avoided, with a radius of half of a nautical mile, is centered upon geographic position:

Latitude	Longitude
37°45.00′ N	122°41.50′ W.

§ 167.450 In the Santa Barbara Channel Traffic Separation Scheme: General.

The Traffic Separation Scheme in the Santa Barbara Channel is described in §§ 167.451 and 167.452. The geographic coordinates in §§ 167.451 and 167.452 are defined using North American Datum 1983 (NAD 83).

§ 167.451 In the Santa Barbara Channel: Between Point Vicente and Point Conception.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20.90′ N	120°30.16′ W
34°04.00′ N	119°15.96′ W.
33°44.90′ N	118°35.75′ W.
33°43.20′ N	118°36.95′ W.
34°02.20′ N	119°17.46′ W.
34°18.90′ N	120°30.96′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°21.80′ N	120°29.96′ W.
34°04.80′ N	119°15.16′ W.
33°45.80′ N	118°35.15′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°42.30′ N	118°37.55′ W.
34°01.40′ N	119°18.26′ W.
34°18.00′ N	120°31.16′ W.

§ 167.452 In the Santa Barbara Channel: Between Point Conception and Point Arguello.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20.90′ N	120°30.16′ W.
34°18.90′ N	120°30.96′ W.
34°25.70′ N	120°51.81′ W.
34°23.75′ N	120°52.51′ W.

(b) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°21.80′ N	120°29.96′ W.
34°26.60′ N	120°51.51′ W.

(c) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°18.00′ N	120°31.16′ W.
34°22.80′ N	120°52.76′ W.

Dated: July 18, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–19220 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6840–6]

Commonwealth of Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Commonwealth of Virginia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the Commonwealth's changes through this immediate final action.

EPA is publishing this rule to authorize the changes without a prior proposal because we view this as a routine program change and do not expect comments that oppose this approval. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Virginia's changes to its hazardous waste program will take effect as provided below. If we get comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing this rule, or portions thereof, before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on September 29, 2000, unless EPA receives adverse written comment by August 30, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; phone number: (215) 814–3381.

You can view and copy Virginia's application from 8:15 a.m. to 4:30 p.m., Monday through Friday, at the following addresses:

Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219; phone number: (804) 698–4213;

Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia 24019; phone number: (540) 562–6700; and

EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103; phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; phone number: (215) 814–3381.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA concludes that Virginia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, EPA grants Virginia Final authorization to operate its hazardous waste program with the changes described in the authorization application. Virginia has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Virginia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Virginia subject to RCRA will have to comply with the authorized Commonwealth requirements instead of the equivalent Federal requirements in order to comply with RCRA. Virginia has enforcement responsibilities for violations of its program, but EPA retains authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the Commonwealth has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Virginia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the Commonwealth program changes. If EPA receives comments which oppose this authorization or portion(s) thereof, that document will serve as a proposal to authorize such changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization decision, or portion(s) thereof, we will withdraw this authorization decision, or portion(s) thereof, by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the Commonwealth program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular change to the Commonwealth hazardous waste program, we may withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Virginia Previously Been Authorized for?

The Commonwealth of Virginia initially received Final authorization on December 4, 1984, effective December 18, 1984 (49 FR 47391) to implement the RCRA hazardous waste management

program. Since receiving final authorization, the Commonwealth has restructured its hazardous waste management program and revised its statutes and regulations. Virginia's Attorney General's Statement, dated June 26, 1984, amended by letter dated September 5, 1984, which was a component of the Commonwealth's original final authorization, cited the Virginia Waste Management Act (VWMA) contained in Title 32.1 of the Code of Virginia (Va. Code) as the controlling statute for the Commonwealth's hazardous waste program. Since then, the statutes have undergone a number of revisions, and in 1988, the Virginia General Assembly recodified the VWMA in the Va. Code, Chapter 14, Title 10.1.

The Virginia Waste Management Act was originally written to give the primary implementation of the hazardous waste program to the Virginia Department of Health. In 1986, the Virginia General Assembly created the Department of Waste Management under the new cabinet-level Secretary of Natural Resources. This action made the new department the successor in interest to the Department of Health in authority, duty and responsibility for solid, hazardous, and radioactive waste. The Assembly also retained in effect all the regulations that the Board of Health had issued in those areas. In 1992, the General Assembly established the new Department of Environmental Quality (DEQ) consisting of the Department of Air Pollution Control, the Department of Waste Management, the State Water Control Board, and the Council on the Environment. Based on legislative authority, the DEQ has the sole responsibility for the administration of laws and regulations concerning hazardous wastes. In 1993, the functions of the Hazardous Waste Program were vested in the DEQ Division of Waste Programs and six regional offices. This transfer of authority for the management of the Hazardous Waste Program was approved by EPA as an authorized program revision effective August 13, 1993 (58 FR 32855).

The Virginia General Assembly has made numerous amendments to the regulations promulgated under the Commonwealth's Waste Management Act in order to remain consistent with, and equivalent to, the Federal regulations promulgated under RCRA Subtitle C. Specifically, Virginia has revised the format of its hazardous waste regulations from one of incorporation of the full text of the Federal regulatory language with modifications, to "incorporation by reference" with modifications.

G. What Revisions Are We Authorizing With Today's Action?

Over a period of years, Virginia submitted several sets of draft regulations and elements of a draft authorization application to EPA for review and comment. The Agency reviewed each submission and provided comments to Virginia. On June 23, 2000, Virginia submitted an official, complete program revision application, seeking authorization for the restructuring of its hazardous waste program, as well as authorization of its program revisions, in accordance with 40 CFR 271.21. EPA Region III worked closely with Virginia in the development of the authorization package; therefore, EPA's comments relating to Virginia's legal authority to carry out the Federally delegated programs, the scope of and coverage of activities regulated, Commonwealth procedures, including the criteria for permit reviews, public participation and enforcement capabilities, were addressed before the submission of the final application by the Commonwealth. The Commonwealth solicited public comments on its draft regulations. EPA reviewed Virginia's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that the Commonwealth's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Virginia final authorization for the program modifications contained in the program revision application.

Virginia's program revision application includes Commonwealth regulatory changes that are equivalent to the Federal regulations published in the July 1, 1995 version of Title 40 of the Code of Federal Regulations, parts 124, 260 through 266, 268, 270, and 273, except for the final rules published in the **Federal Register** on September 10, 1992 (57 FR 41566); May 3, 1993 (58 FR 26420); June 17, 1993 (58 FR 33341); March 4, 1994 (59 FR 10550); December 6, 1994 (59 FR 62896); January 3, 1995 (60 FR 241); January 13, 1995 (60 FR 3089); February 9, 1995 (60 FR 7824); April 4, 1995 (60 FR 17001); April 17, 1995 (60 FR 19165); May 12, 1995 (60 FR 25619); May 19, 1995 (60 FR 26828); and on June 29, 1995 (60 FR 33911).

Virginia is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the Commonwealth analogs that are being recognized as no less stringent than the analogous Federal requirements. Unless otherwise stated, the Commonwealth's statutory references are to the Code of Virginia (Va. Code) Title 10.1, Chapter 14, §§ 10.1–1400 through 1457 (1999 Replacement Volume). The regulatory references are to Title 9, Virginia Administrative Code (9 VAC) effective February 17, 1999.

Federal requirement[1]	Analogous Virginia authority
Part 260—Hazardous Waste Management System: General, as of July 1, 1995.	Code of Virginia (Va. Code) §§ 10.1–1400, 10.1–1402(1), 10.1–1402(11); Title 9, Virginia Administrative Code (9 VAC) §§ 20–60–12, 20–60–14, 20–60–17A, 20–60–18, 20–60–260, 20–60–1370, 20–60–1380, 20–60–1390, 20–60–1400, 20–60–1410 A, 20–60–1420 A&B, 20–60–1420 C1, 20–60–1430 A1–4. (More stringent provisions are: 20–60–1370 B, 20–60–1420 B2, 20–60–1420 C1a).
Part 261—Identification and Listing of Hazardous Waste, as of July 1, 1995.	Va. Code §§ 10.1–1402(8), 10.1–1402(11), 10.1–1402(22); 9 VAC §§ 20–60–18, 20–60–261, 20–60–1430 A5. (More stringent provisions are: 20–60–261 B1 and 20–60–261 B5).
Part 262—Standards Applicable to the Generators of Hazardous Wastes, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1426(B) and 10.1–1450; 9 VAC §§ 20–60–18, 20–60–262, 20–60–305, 20–60–315, 20–60–325. (More stringent provisions are: 260–60–262 B4 and 20–60–262 B6).
Part 263—Standards Applicable to the Transporters of Hazardous Wastes, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1402(18), 10.1–1426(A) & (B) and 10.1–1450; 9 VAC §§ 20–60–263, 20–60–305, 20–60–315, 20–60–325, 20–60–420A–D, 20–60–430, 20–60–440, 20–60–450H, 20–60–460, 20–60–470, 20–60–480, 20–60–490, 20–60–500. (More stringent provisions are: 20–60–440 C, 20–60–480 G2, 20–60–490 C & D).
Part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1402(18), 10.1–1426(A), (B) & (C) 10.1–1427(B) and 10.1–1426; 9 VAC §§ 20–60–17B, 20–60–18, 20–60–264, 20–60–305, 20–60–315, 20–60–325, 20–60–1410B, 20–60–1420 C2.

Federal requirement[1]	Analogous Virginia authority
Part 265—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1995.	(More stringent provisions are: 20–60–264 B4, 20–60–264 B5, 20–60–264 B11, 20–60–264 B14, 20–60–264 B15a). Va. Code §§ 10.1–1402(1), 10.1–1402(11), 10.1–1426(A). 9 VAC §§ 20–60–17B, 20–60–18, 20–60–265, 20–60–305, 20–60–315, 20–60–325, 20–60–1410B, 20–60–1420 C2.
Part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, as of July 1, 1995.	(More stringent provisions are: 20–60–265 B3, 20–60–265 B4, 20–60–265 B5, 20–60–265 B6, 20–60–265 B7, 20–60–265 B15, 20–60–265 B16, 20–60–265 B17). Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1402(18), 10.1–1426(A), (B) & (C) 10.1–1427(B) and 10.1–1428; 9 VAC §§ 20–60–18, 20–60–266, 20–60–420F.
Part 268—Land Disposal Restrictions, as of July 1, 1995.	(More stringent provisions are: 20–60–266 B1–3). Va. Code §§ 10.1–1402(1), 10.1–1402(11); 9VAC §§ 20–60–18, 20–60–268, 20–60–1410C.
Part 270—The Hazardous Waste Permit Program and Part 124—Permit Procedures, as of July 1, 1995.	Va. Code §§ 10.1–1402, 10.1–1426, 10.1–1427, 2.1–342(A); 9 VAC §§ 20–60–14 B2 & B4, 20–60–17A, 20–60–18, 20–60–70 E & F, 20–60–124, 20–60–270, 20–60–970 through 20–60–1250, Appendix 11.2. (More stringent provisions are: 20–60–270 B4, 20–60–970 C, 20–60–1010 B5, 20–60–1010 B10, 20–60–1010 K3d, 20–60–1010 K4b, 20–60–1060 L1&2a, 20–60–1170 B4, 20–60–1170 C4, 20–60–1170 C7, 20–60–1200 C1b, 20–60–1200 E, Appendix 11.2 entries A(4)(b), B(1)(d), B(2)(b), B(5)(a)&(b), C(1)(a), C(3), I(3)&(4), and L(8)).
Part 273—Standards for Universal Waste Management, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(8), 10.1–1402(11), 10.1–1450, 10.1–1426(A) & (C); 9 VAC §§ 20–60–273, 20–60–305, 20–60–315, 20–60–325. (More stringent provision is: 20–60–273 B3).
Non-HSWA Cluster II	
Radioactive Mixed Waste (MW) (RCRA §§ 1004(27) and 3001(b)).	Va. Code §§ 10.1–1400 "Solid waste", 10.1–1402(22); 9VAC 20–60–261 B8.
HSWA Cluster I	
Sharing of Information With the Agency for Toxic Substances and Disease Registry (SI) (RCRA § 3019(b)).	Va. Code §§ 10.1–1402(1), 10.1–1402(2) and 10.1–1402(9).

[1] Federal Regulations as published in the 40 CFR, as of July 1, 1995 (Base Program through RCRA Cluster V), except rules published in the Federal Register as noted above.

H. Where Are the Revised Commonwealth Rules Different From the Federal Rules?

The Virginia hazardous waste program contains several provisions which are more stringent than is required by the RCRA program as codified in the July 1, 1995 edition of Title 40 of the Code of Federal Regulations (CFR). These more stringent provisions are part of the Federally authorized program and are Federally enforceable. The specific more stringent provisions are noted in the table above and the Commonwealth's authorization application, and include, but are not limited to, the following:

1. At 9 VAC 20–60–1420 C 1 a, (analog to 40 CFR 260.41(a)), Virginia requires compliance with all of 40 CFR part 262, including subpart B, the manifest requirements. Under the Federal code, the Administrator may only require compliance with subparts A, C, D and E of 40 CFR part 262.

2. In 9 VAC 20–60–261 B 5 (partial analog to 40 CFR 261.5(g)(3)(iv) & (v)), a conditionally exempt small quantity generator cannot send exempt hazardous waste to a solid waste facility unless that facility has written permission from the Department to receive such wastes.

3. In 9 VAC 20–60–262 B 4, prior to March 1, 1988, generators accumulating hazardous waste in accordance with 40 CFR 262.34 were required to notify the Department of that activity. Generators intending to open an accumulation area after March 1, 1988 are required to notify the Department of that intent 15 days before establishing the accumulation area. New generators are required to identify the location of accumulation areas when filing a Notification of Hazardous Waste Activity.

4. In 9 VAC 20–60–263 B 1, transporters of hazardous waste must comply with Part VII of the Virginia regulations. Part VII contains some provisions that are more stringent than the Federal requirements of 40 CFR part 263. Specifically, 9 VAC 20–60–440 C requires that identification numbers be placed on correspondence and spill documents; 9 VAC 20–60–480 G2 requires that any manifest be revised instead of allowing the designation by generators of an alternate facility on the manifest; and 9 VAC 20–60–490 C and D require that additional parties be notified in the case of a discharge.

5. In 9 VAC 20–60–264 B14, 9 VAC 20–60–265 B17, and 9 VAC 20–60–270 B4, underground injection of hazardous waste is prohibited. From the initiation of the hazardous waste program in Virginia, the Commonwealth determined that suitable geological conditions for underground injection facilities do not exist.

6. In addition to the requirements of 40 CFR 265.91, at 9 VAC 20–60–265 B7, Virginia requires that a log must be made of each groundwater monitoring well describing the soils and rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered, and a copy of the log with appropriate maps must be sent to the Department.

7. In Part XI, nine types of permit modifications (e.g., waste pile management practices and substitution of non-hazardous waste fuel) are considered to be more extensive modifications than the Federal program requires at 40 CFR 270.42. That is, EPA has three "classes" of permit

modifications triggering three types of procedures to affect their approval. These procedures consist of simple notification, agency approval, or public involvement. In some instances, Virginia re-designates EPA classes of permit modifications, requiring a more rigorous procedure for approval.

The Commonwealth's regulations do not include a number of provisions analogous to the Federal rules listed below. The following provisions are not part of the Commonwealth's program being authorized by today's action: Virginia is not seeking authorization at this time for the final rules published in the **Federal Register** on December 6, 1994 (59 FR 62896); January 3, 1995 (60 FR 241); January 13, 1995 (60 FR 3089); February 9, 1995 (60 FR 7824); April 4, 1995 (60 FR 17001); April 17, 1995 (60 FR 19165); May 12, 1995 (60 FR 25619); May 19, 1995 (60 FR 26828), and on June 29, 1995 (60 FR 33911).

The Commonwealth's regulations include a number of provisions that are not part of the Commonwealth's program being authorized by today's action. Such provisions include, but are not limited to, the following:

1. Virginia is not seeking authorization for hazardous waste procedures or the review of petitions regarding equivalent testing, or for excluding certain recycled wastes from being classified as solid waste.

2. Virginia has regulations defining how program information is to be shared with the public, but is not seeking authorization at this time for the Availability of Information requirements relative to RCRA § 3006(f).

3. At 9 VAC 20–60–279, Virginia has adopted provisions addressing the used oil management standards, as published in the **Federal Register** on September 10, 1992 (57 FR 41566); May 3, 1993 (58 FR 26420); June 17, 1993 (58 FR 33341); and March 4, 1994 (59 FR 10550) (40 CFR part 279). However, the Commonwealth is not seeking authorization for this portion of the program at this time.

4. Section 38.2–2200 of the Code of Virginia allows the Commonwealth to act directly against the insurer or guarantor of an owner's or operator's financial responsibility. This provision is similar to the ability of the Federal government to act under section 3004(t) of RCRA. EPA does not delegate its authority to act under the Federal statute; therefore, in this situation, the Virginia law creates a parallel cause of action viable in State courts, but the cause of action does not limit the availability of the Federal action. The Commonwealth's cause of action is separate and in addition to any Federal action.

5. At 9 VAC 20–60–262 A, 20–60–262 B2 and 20–60–262 B3, Virginia has adopted the requirements addressed by 40 CFR 262.12, 262.53, 262.54, 262.55, 262.56 and 262.57, and has correctly left the implementation authority with EPA for the non-delegable hazardous waste import and export requirements. Similarly, at 9 VAC 20–60–268 A and 20–60–268 B3, the Commonwealth has correctly left the implementation authority with EPA for the non-delegable provisions at 40 CFR 268.5, 268.6, 268.10, 268.11, 268.12, 268.40(b), 268.42(b) and 268.44(a) through (g).

The Commonwealth's regulations contain several requirements that are broader in scope than the Federal program, and are not part of the program being authorized by today's action. EPA cannot enforce these broader-in-scope requirements. Although compliance with these requirements is appropriate in accordance with Commonwealth law, they are not RCRA requirements. Such provisions include but are not limited to the following:

1. At 9 VAC 20–60–420 E, 20–60–450, 20–60–490 B 3 and Appendix 7.1, Virginia requires all transporters, including universal waste transporters, to obtain a transporter permit and pay a permit application fee if they handle shipments that originate or terminate in the Commonwealth.

2. At 9 VAC 20–60–266 B 3, to the degree Virginia places requirements beyond Federal requirements on transporters for shipments of spent lead-acid batteries destined for recovery, Virginia is broader in scope.

3. In Part XII, Virginia requires permit application fees from hazardous waste storage, treatment and disposal facilities.

I. Who Handles Permits After the Authorization Takes Effect?

After authorization, Virginia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until the timing and process for effective transfer to the Commonwealth are mutually agreed upon. Until such time as formal transfer of EPA permit responsibility to the Commonwealth occurs and EPA terminates its permit, EPA and the Commonwealth agree to the joint administration (*e.g.* modifications) of the EPA and Commonwealth permits so they remain consistent over time. EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Virginia is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Virginia?

Virginia is not seeking authority to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in the Commonwealth.

K. What Is Codification and Is EPA Codifying Virginia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the Commonwealth's statutes and regulations that comprise the Commonwealth's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized Commonwealth rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart VV, for such future use.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must

have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to Commonwealth, local and/or tribal governments already exist under the Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of Commonwealth programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the Commonwealth, this action does not impose a Federal intergovernmental mandate because UMRA does not apply to duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing Commonwealth laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, a small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or owners and/or operators of TSDFs are already subject to the regulatory requirements under the Commonwealth laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing Commonwealth requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have Federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Virginia's proposal to be authorized for updated requirements of the hazardous waste program that the Commonwealth has voluntarily chosen to operate.

Further, as a result of this action, newly authorized provisions of the Commonwealth's program apply in Virginia in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized Commonwealth program provisions, as opposed to being subject to both Federal and Commonwealth regulatory requirements. Thus the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a State program.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect communities of Indian tribal governments. Virginia is not authorized to implement the RCRA hazardous waste program in Indian country, since there are no Federally-recognized Indian lands in the Commonwealth.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve such technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 17, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00–19114 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket 97–217; FCC 00–244]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; further reconsideration.

SUMMARY: Previously, the Commission adopted a series of legal and technical rule changes to enhance the ability of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to provide non-video services, including transmission of high speed computer data applications such as Internet access. We later expanded the streamlined application processing system to cover all major modifications of ITFS facilities, modified certain rules related to interference issues, modified certain other rules related to the obligations of ITFS licensees and clarified certain other rules. The FCC is taking two actions. The first action, a rule, which is described in detail below, modifies rules related to ITFS leases, modifies some technical rules and clarifies other rules. The modifications and clarifications are designed to increase the flexibility of the service, lessen the burdens on the parties and preserve the services' interference protections. The second action is the proposed rulemaking, which is published elsewhere in this issue of the **Federal Register**.

DATES: Effective September 29, 2000, except for §§ 21.902(m), 21.913(b) introductory text, 21.913(b)(8), 21.913(e)(4)(ix), 74.931(d)(1), 74.985(b)(8), and 74.985(e)(4)(ix), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking* ("*Further Reconsideration Order*"), MM Docket, 97–217, FCC 00–244, adopted July 7, 2000 and released July 20, 2000. The full text of this *Further Reconsideration Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, S.W. Room CY–B402, Washington, D.C. 20554.

Synopsis of Report and Order on Further Reconsideration and Further Notice of Propose Rulemaking

I. Introduction

1. This *Further Reconsideration Order* is adopted by the Commission after receiving petitions for further reconsideration of its *Reconsideration Order*, 64 FR 63727 (November 22, 1999), in this docket. Previously, the *Two-Way Order*, 63 FR 65087 (November 25, 1998), was issued

following a notice of proposed rulemaking, which arose from a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, "Petitioners"), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. In the *Two-Way Order*, the Commission amended parts 21 and 74 of our rules to provide MDS and ITFS licensees with substantially increased operational and technical flexibility. Traditionally, the MDS service traditionally functioned as a one-way point-to-multipoint video transmission service that is often referred to as "wireless cable," whereas ITFS licensees ordinarily used their frequencies for one-way transmission of educational and instructional material to students.

2. The *Two-Way Order* (1) Permitted both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process for stations used in cellularized systems; and (6) modified the ITFS programming requirements in a digital environment. Following the release of the *Two-Way Order*, we received petitions for reconsideration which focused primarily on requests that we expand our new streamlined processing system to cover all ITFS modifications; formalize an interference complaint process; modify some rules regarding ITFS leased capacity and make certain technical clarifications to our rules. In the *Reconsideration Order*, we expanded on some of our MDS/ITFS rules and clarified others. In response to that decision, we received further petitions for reconsideration, asking that we: (1) Permit certain lease provisions; (2) review the treatment of boosters stations and receive sites; and (3) further refine our technical rules. In this document, we make additional modifications and clarifications to our MDS/ITFS rules in order to facilitate further the provision of these services to the public. The *Further Notice of Proposed Rulemaking* section of this document is published elsewhere in this issue of the **Federal Register**.

II. Changes to the Rules

A. Lease Assignments

3. In both the *Two-Way Order* and the *Reconsideration Order*, we determined to leave in place the existing ban on excess-capacity lease terms that would require assumption of the lease obligations by any assignee or transferee. BellSouth asked us to reconsider this position. We do not believe that there is any contradiction between an ITFS licensee performing its educational mission and that same licensee securing financial returns from the lease of its excess capacity. In fact, those financial returns can and do provide substantial resources to the ITFS licensee in the performance of its educational mission. We believe that the probable loss to ITFS licensees unable to freely negotiate an existing lease outweighs the potential effect on some hypothetical future transfer. Therefore, we will permit ITFS licensees to agree to clauses in excess capacity leases that would require that the lease be assigned if the underlying license is assigned. We do emphasize that no ITFS licensee is required to accept an assignment clause and any licensee is free to reject such a clause in its lease.

B. Lease Renewals

4. We have been asked to reconsider our decision not to grandfather ITFS leases entered into prior to March 31, 1997 that contain automatic renewal provisions effective after March 31, 1997. In the *Reconsideration Order*, we did not grant this relief because we were concerned that this could permit leases that would avoid compliance with the new rules into perpetuity. Petitioners argue that the class of leases for which they were seeking grandfathering could only have a total term of ten years. Because these leases cannot be continued without end, we will grant the requested relief. Therefore, ITFS excess capacity leases entered into prior to March 31, 1997 which contain a provision for automatic renewal which would be effective after March 31, 1997 are grandfathered provided that the total term for such a lease does not exceed fifteen years. Although the Petitioners only referred to leases with a total term of ten years in the petition for reconsideration, we will also grandfather any leases entered into during the relevant time that contained both an automatic renewal provision and the automatic five-year extension period we previously grandfathered.

C. Booster Station Licenses

5. In the *Reconsideration Order*, we authorized ITFS excess capacity lessees to hold booster station licenses on their leased frequencies subject to written approval by the ITFS licensee. We also required that the relevant lease contain a provision that the lessee must offer to assign the license to the ITFS licensee for purely nominal consideration at the end of the lease term. ITFS licensees argue that this amounts to reallocation of the spectrum and urge us to reconsider this point. BellSouth asks us to clarify that a party leasing capacity from an MDS licensee also is permitted to hold a booster station license on those frequencies subject to the same terms.

6. We modify our rules to state that lessees of ITFS excess capacity, who hold booster station licenses on that leased capacity, must either assign the booster station license to the underlying ITFS licensee or, if the ITFS licensee does not want the booster station license, turn the license into the Commission at the end of the lease term. Furthermore, the lessee must meet the educational set aside requirement that would be required if the ITFS licensee held the booster license in its own name. In addition, we will permit lessees of MDS capacity to hold booster station licenses on their leased channels. We will still require the lessee to either assign the booster license to the underlying MDS licensee or turn it into the Commission if the MDS licensee does not wish to receive the license at the end of the lease term.

7. Petitioners have requested that we exempt ITFS booster stations operating within their protected service area ("PSA"), but in areas where the licensee has no educational mission, from the minimum programming rules, but not from the reservation and recapture rules. Otherwise, the Petitioners argue that the affected spectrum would lie fallow because a party would be precluded from using it unless and until the ITFS licensee determined that it had an educational mission in that area. We agree with the Petitioners. We will permit a lessee of an ITFS channel to construct and operate a station on the leased frequency, even if the ITFS licensee has no need to utilize a station in that part of its PSA at the time of construction. However, the lessee must at all times set aside capacity on the channel in accord with the reservation and recapture rules. In no event, will we waive the reservation and recapture rules.

8. The Petitioners have also made an unopposed request that we defer booster

service area protection for low powered boosters until after the initial filing window established in the *Two-Way Order*. Because low-powered boosters are often cross-polarized relative to their main transmitter in order to minimize intra-system co-channel interference, and main antennas of neighboring systems are cross-polarized relative to each other in order to minimize inter-system interference, the result is that a low-power booster is often co-polarized to a neighboring system. This makes interference protection and system design particularly difficult and provides an unwarranted preference to these low-powered boosters. Therefore, we will grant the Petitioners request. We note that these boosters will not be left completely unprotected because they will benefit from the protection accorded their PSA or Basic Trading Area.

D. Treatment of Receive Sites

9. In the *Two-Way Order*, we granted a PSA to every ITFS licensee and granted individual protection to all receive sites registered through the date of adoption of the *Two-Way Order*. In the *Reconsideration Order*, we stated that the ITFS licensee's PSA is a 35 mile circle centered either on the fixed reference point of the associated wireless cable system, or on the authorized ITFS main station transmitter site, as elected by the ITFS licensee.

10. BellSouth asks that we exclude limited, point-to-point ITFS stations from the category of stations granted a 35-mile PSA and to clarify that licensees of "secondary" ITFS facilities are not entitled to an automatic 35-mile PSA. Notably, stations operating on a primary basis are not required to give protection to those stations operating on a secondary basis. We agree with BellSouth that point-to-point ITFS stations authorized on a secondary basis should not receive PSA protection. These stations, which operate mostly as studio to transmitter links have traditionally been subordinate to primary stations and we see no reason to change that arrangement. We do not agree with BellSouth, however, that all point-to-point stations should lose PSA protection. Licensees of primary ITFS point-to-point stations are making use of their allotted spectrum. Although their educational needs at this time only necessitate the use of point-to-point transmissions, those needs could easily change as the licensees exploit the benefits of two-way systems.

11. The Catholic Television Network ("CTN") asks that we "clarify" our rules and state that ITFS receive sites outside the 35-mile PSA can request a waiver and be treated as registered as of September 17, 1998. We decline to adopt this clarification. As we made clear in the *Reconsideration Order*, providing this kind of protection outside of the 35-mile radius is "inconsistent with the plain meaning of the rule. Limiting protection to a 35 mile radius provides certainty to co-channel and adjacent channel entities, especially now that booster stations can originate signals." ITFS licensees operating outside of their PSA are like any other qualified applicant and will have their sites protected only against subsequently filed applications.

12. CTN also asks that we clarify that an ITFS receive site that is registered does not lose that status even if it engages in substantial technical modifications, such as channel swapping. We agree with CTN's requested clarification. We also affirm that licensees may participate in channel shifting and channel swapping whether their operations are digital or analog. There is no reason to limit the flexibility provided by channel shifting and swapping to digital systems. Furthermore, some systems may be partially analog and partially digital and permitting channel shifting and swapping will help parties in those systems to make the most efficient use of their licensed spectrum.

13. Petitioners ask that we permit channel shifting and channel swapping without regard to whether the affected licensees are part of "the same system." We agree with the Petitioners that these activities should not be limited to licensees in the same system and should be allowed in any situation where they will facilitate the most efficient use of the spectrum.

E. Interference Resolution

14. CTN asks us to clarify that all ITFS and MDS licensees are obligated to help identify sources of harmful interference in connection with resolving complaints of interference. We emphasize that cooperation is essential to identify the source of interference and to attempt to resolve any interference issues once the source has been located.

F. Technical Issues

15. IPWireless requests that we conform the out-of-band emission limitations for MDS and ITFS low power response stations (i.e., response stations with an EIRP not exceeding –6 dBW) employing digital modulation to those adopted for certain fixed and mobile wireless stations in other frequency bands. Specifically, IPWireless requests the following requirements be applied to such stations: (a) At the edge of a 6 MHz channel, out-of-band power shall be attenuated by 25 dB relative to the power (P) within the 6 MHz channel; (b) Attenuated along a linear slope to at least 40 dB or 33+10log(P) dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge; and, (c) Attenuated along a linear slope from that level to at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at all other frequencies removed from the channel. We agree with IPWireless that it would be unreasonable to require low power response stations to comply with emission limitations crafted for much higher power levels. Therefore, we amend our rules as requested by IPWireless.

16. Also, with respect to low power MDS and ITFS response stations, IPWireless requests that the Commission amend its rules to incorporate into them certain provisions which were included in the *Reconsideration Order* in the form of a waiver of the rules. Specifically, referring to the blanket waiver in the *Reconsideration Order* of the requirement that low power response stations must use directional antennas, IPWireless states that "* * * the Commission must assure fixed wireless subscribers that they have a clear and unequivocal legal right under the Commission's Rules to use an omnidirectional antenna in connection with any MDS/ITFS Response Station equipment they purchase at retail."

17. The issue of the waiver was first raised by Qualcomm, which presented a type of low power response station which was small enough to easily be placed on a desktop or shelf and could be used as part of a very localized system of many such units, all communicating with a nearby hub station. The antenna for this unit is a very short 'whip' type metal rod, which is omnidirectional, i.e., radiates and receives signals equally on all azimuthal headings. Qualcomm contended, and we agreed, that the use of such antennas at low power stations posed very little risk of interference to neighboring systems and should therefore be permitted. With respect to the impact of omnidirectional antennas on interference from neighboring systems, we conditioned our waiver of the rules by requiring that all interference calculations involving protection of low power/omnidirectional response stations be conducted as if those station were using a directional antenna for reception. This proviso was included so

that the use of omnidirectional antennas for reception would not result in such stations receiving greater interference protection than that provided to non-omnidirectional stations. Although we believe that our blanket waiver of the pertinent rules was sufficient to provide the relief sought by Qualcomm, we believe that IPWireless has presented sufficient justification for amending our rules in order to codify our position on this matter. We therefore amend our rules as requested by IPWireless.

18. We also amend our rules to clarify the relationship between the provisions that permit subdivision of 6 MHz channels and the provisions that limit the number of response stations that may be operated. It was not our intent to impose a ceiling on the maximum number of permissible response stations within a 6 MHz channel that would limit the flexibility of licensees to create subchannels. In footnote 44 of the *Two-Way Order*, we explained how the power for a 6 MHz channel was to be subdivided when the channel was subdivided, and in §§ 21.902 and 74.903 governing interference protection standards for two-way systems, we required that, for channels other than 6 MHz in width, a power spectral density adjustment be applied to the interference criteria in order to account for the actual bandwidth in use. Nevertheless, in light of the concern for clarity expressed by the Wireless Communications Association ("WCA"), we amend our rules to clearly state that the numerical limitations imposed on the response stations in a 6 MHz channel are subject to adjustment, without Commission approval, when the 6 MHz channel is subdivided, so long as the appropriate power flux density requirements are observed. With respect to the CTN's position that such flexibility should be permissible only if the Commission also amends its rules to require that all subchannels be within the original 6 MHz response service area ("RSA"), we agree with WCA that such a requirement already exists and can be found in §§ 21.909(g)(1) and 74.939(g)(1). The creation of an RSA without an application for, and approval of, a separate hub station license is not permitted by our rules.

19. We recently released a revised version of the Appendix D of the *Two-Way Order*, the Methodology for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems ("Methodology"), which addresses all of the issues raised by these parties and we have also incorporated a number of clarifying amendments on our own motion. The full text of the revised Methodology can be found at *http://www.fcc.gov/mmb/vsd/files/methodology.doc*.

G. Other Matters

20. We have made some minor changes to our application filing and service rules. The data files required pursuant to the Methodology and the demonstrations and certifications required by our rules are to be filed with the Commission's Reference Room, rather than with the Commission's copy contractor. We will require that the Appendix D data files be in ASCII format on either CD–ROM or 3.5 inch diskette media. No hard copy version of these data files will be required. Demonstrations and certifications may be in either hard copy or ASCII or PDF format on CD–ROM or 3.5 inch diskette media. (If CD–ROM or 3.5 inch diskette media are used, no hard copy version is required.) Applicants serving the data files, demonstrations and certifications on other applicants and/or licensees will be required to do so using the same format(s) and media as used in their submissions to the Commission's Reference Room.

21. The *Further Notice of Proposed Rulemaking* section of this *Further Reconsideration Order* is published elsewhere in this issue of the **Federal Register**. The *Further Notice of Proposed Rulemaking* section addresses the issue of possible Gaussian noise interference that can occur in certain limited circumstances.

III. Second Supplemental Final Regulatory Analysis

22. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix B of the *Two-Way Order* and a Supplement was incorporated in Appendix B of the *Reconsideration Order* in this proceeding. The Commission's Second Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) in the *Further Reconsideration Order* reflects revised or additional information to that contained in the FRFA and Supplement. This Second Supplemental FRFA is thus limited to matters raised in response to the *Two-Way Order* and the *Reconsideration Order* and that are granted on reconsideration in the *Further Reconsideration Order*. The Second Supplemental FRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA); *see generally* 5 U.S.C. 601 *et seq.* Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need For and Objectives of Action

23. In the *Two-Way Order*, we amended parts 21 and 74 of our rules to enhance the ability of MDS and ITFS licensees to provide two-way communication services. The actions taken in the *Further Reconsideration Order* are in response to petitions for reconsideration, clarification or expansion of the rules and policies adopted in the *Two-Way Order* and the *Reconsideration Order*. The petitions have been granted in part and denied in part. The *Further Reconsideration Order* grants the petitions that sought to allow excess capacity leases between ITFS licensees and MDS operators to contain a provision that would require that the lease be assigned if the underlying license is assigned. We also grant those petitions that request we grandfather ITFS leases entered into prior to March 31, 1997 that contain automatic renewal provisions effective after March 31, 1997. We further grant those petitions for reconsideration that sought a modification of our rules to allow ITFS/MDS excess capacity to hold booster station licenses provided that at the end of the lease time such lessees either assign the booster station license to the underlying licensee or, if the ITFS licensee does not want the booster station license, turn the license into the Commission. We also grant those petitions that request that we permit lessees of ITFS capacity to request waivers of the ITFS programming requirements in areas within its Protected Service Area where the ITFS licensee does not yet provide educational service. Moreover, we grant those petitions seeking that we clarify our rules that an ITFS receive site does not lose its register status even if it engages in substantial technical modifications such as channel swapping. Finally, we grant those petitions seeking that we defer booster service area protection for low powered boosters until after the initial filing window. We believe these final rule amendments will facilitate further two-way transmission and other improvements to the MDS and ITFS services.

B. Significant Issues Raised by the Public in Response to the Initial Analysis

24. No comments were received specifically in response to the FRFA contained in the *Two-Way Order* or the Supplement in the *Reconsideration Order*.

C. Description and Number of Small Entities Involved

25. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act ("SBA"). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Small Business Act, 15 U.S.C. 632.

26. The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

27. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may take advantage of our amended rules to provide two-way MDS.

28. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. *See* 5 U.S.C. 601(3)–(5). ITFS is a non-pay, non-commercial broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. *See* 13 CFR 121.210 (SIC 4833, 4841, and 4899). However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we find that up to 1932 of these educational institutions are small entities that may take advantage of our amended rules to provide two-way ITFS.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

29. *The Further Reconsideration Order* adopts the following proposals that include reporting, recordkeeping, and compliance requirements: We refined our rules to require that lessees of ITFS excess capacity, who hold booster station licenses on that leased capacity, must either assign the booster station license to the underlying ITFS licensee, or if the ITFS licensee does not want the booster station license, turn it into the Commission at the end of the lease term. We allowed lessees of ITFS capacity to request waivers of the ITFS programming requirements in areas within the ITFS licensee's Protected Service Area where that ITFS licensee does not yet provide educational service. As stated above, we extended our filing requirements to allow filings to the Commission to be submitted electronically and via CD–ROM. These provisions are intended to give an added measure of flexibility to applicants and at the same time provide for administrative convenience.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The following step was taken in the *Further Reconsideration Order* to minimize the significant economic impact on small entities: We extended our filing requirements to allow filings to the Commission to be submitted electronically and via CD–ROM. This provision is intended to give an added measure of flexibility to applicants and at the same time provide for administrative convenience.

F. Report to Congress

31. The Commission will send a copy of the *Further Reconsideration Order*, including this Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Further Reconsideration Order*, including the Second Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Further Reconsideration Order* and Second Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Procedural Matters

A. Ordering Clauses

32. Accordingly, the above-referenced petitions for further reconsideration and/or clarification of the Order Are Granted in Part and Denied in Part, as described.

33. *It is Further Ordered* that, pursuant to the authority contained in Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(r), 308(b), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 308(b), 403, and 405, this Report and Order on Further Reconsideration is Adopted, the Order Is Modified and Clarified to the extent specified, and parts 21 and 74 of the Commission's Rules, 47 CFR 21 and 74, Are Amended.

34. The *Notice is Hereby Given* and *Comment is Sought* on the proposed clarification described in the Further Notice of Proposed Rulemaking.

35. The rule amendments set forth not pertaining to new or modified reporting or recordkeeping requirements will become effective September 29, 2000, except for §§ 21.902(m), 21.913(b) introductory text, 21.913(b)(8), 21.913(e)(4)(ix), 74.931(d)(1), 74.985(b)(8), and 74.985(e)(4)(ix), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

36. The Commission's Office of Public Affairs, Reference Operations Division, Shall Send a copy of this Report and Order on Further Consideration and Further Notice of Proposed Rulemaking including the Supplemental Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and Recordkeeping requirements, Television.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 21 and 74 as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. In § 21.23, paragraph (c)(2) is revised to read as follows:

§ 21.23 Amendment of applications.

* * * * *

(c) * * *

(2) Except during the sixty (60) day amendment period provided for in § 21.27(d), any amendment to an application for a new or modified response station hub, booster station or point-to-multipoint I channel(s) station or to an application for a modified main station that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility or submits any interference consent from a neighboring licensee, shall result in the application being assigned a new file number and being treated as newly filed.

* * * * *

3. In § 21.31, paragraph (a) is revised to read as follows:

§ 21.31 Mutually exclusive applications.

(a) Except with respect to applications for new or modified response stations hubs, booster stations, and point-to-multipoint I channel stations, and to applications for modified main stations, filed on the same day or during the same window, the Commission will consider applications to be mutually exclusive if their conflicts are such that grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications.

* * * * *

4. In § 21.42, paragraph (c)(8) is revised to read as follows:

§ 21.42 Certain modifications not requiring prior authorizations.

* * * * *

(c) * * *

(8) A change to a sectorized antenna system comprising an array of directional antennas, provided that such system does not change polarization or result in an increase in radiated power by more than one dB in any horizontal or vertical direction; provided, however, that notice of such change is provided to the Commission on FCC Form 331 within ten (10) days of installation.

* * * * *

5. In § 21.106, paragraph (a)(2) is revised to read as follows:

§ 21.106 Emission limitations.

(a) * * *

(2) When using transmissions employing digital modulation techniques (see § 21.122(b)) in situations other than those covered by subpart K of this part:

* * * * *

6. In § 21.902, paragraphs (c) introductory text and (i)(1) are revised, and paragraph (m) is added to read as follows:

§ 21.902 Interference.

* * * * *

(c) The following interference studies must be prepared:

* * * * *

(i) * * *

(1) For each application for a new station, or amendment thereto, proposing MDS facilities, filed on October 1, 1995, or thereafter, on or before the day the application or amendment is filed, the applicant must prepare an analysis demonstrating that operation of the MDS applicant's transmitter will not cause harmful electrical interference to each receive site registered as of September 17, 1998, nor within a protected service area as defined in paragraph (d)(1) of this section, of any cochannel or adjacent channel ITFS station licensed, with a conditional license, or proposed in a pending application on the day such MDS application is filed, with an ITFS transmitter site within 50 miles of the coordinates of the MDS station's proposed transmitter site.

* * * * *

(m) The following information formats and storage media are to be used in connection with applications for new and modified MDS and ITFS stations:

(1) The data file prepared for submission to the Commission's Reference Room pursuant to the requirements set out at paragraph 74 of Appendix D to the *Report and Order* in MM Docket 97–217, FCC 98–231, must be in ASCII format on either CD–ROMs or 3.5″ diskettes. Any supplementary information submitted in connection with Appendix D may be in either ASCII or PDF format (graphics must be in PDF format) on either CD–ROMs or 3.5″ diskettes. Applicants serving such data/information on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

(2) Demonstrations and certifications prepared for submission to the Commission's Reference Room may be in either hard copy or in ASCII or PDF format on CD–ROM's or 3.5″ diskettes. (Graphics must be either hard copy or PDF format) Applicants serving such demonstrations and certifications on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

7. In § 21.906, paragraph (d) is revised to read as follows:

§ 21.906 Antennas.

* * * * *

(d) Directive receiving antennas shall be used at all points other than response station hubs and response stations operating with an EIRP no greater than −6 dBW per 6 MHz channel and shall be elevated no higher than necessary to assure adequate service. Receiving antenna height shall not exceed the height criteria of Part 17 of this chapter, unless authorization for use of a specific maximum height (above ground and mean sea level) for each location has been obtained from the Commission prior to the erection of the antenna. (See part 17 of this chapter concerning construction, marking and lighting of antenna structures.) A response station operating with an EIRP no greater than −6 dBW per 6 MHz channel may use an omnidirectional receiving antenna. However, for the purpose of interference protection, such response stations will be treated as if utilizing a receive antenna meeting the requirements of the reference receiving antenna of Figure 1 of § 21.902(f)(3).

8. In § 21.908, paragraph (d) is revised to read as follows:

§ 21.908 Transmitting equipment.

* * * * *

(d) The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP greater than −6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the 6 MHz channel

edges at least 25 dB relative to the average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP no greater than –6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the channel edges at least 25 dB relative to the average 6 MHz channel transmitter output power level (P), then attenuated along a linear slope to at least 40 dB or 33+10log(P) dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at all other frequencies. Where MDS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (*e.g.*, a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

* * * * *

9. In § 21.909, paragraphs (c)(1), (c)(2), (d), (d)(1), (g)(3), (g)(4), (g)(6), (g)(6)(i), (g)(6)(ii), (g)(6)(iii), (h) and (o) are revised to read as set forth below and paragraphs (c)(3) and (g)(6)(iv) are removed.

§ 21.909 MDS response stations.

* * * * *

(c) * * *

(1) File FCC Form 331 with Mellon Bank, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section and that the interference data submitted under paragraph (d) of this section is complete and accurate. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub license, and may result in imposition of a monetary forfeiture; and

(2) Submit the following (see § 21.902(m) for permissible formats and media) to the Commission's Reference Room:

(i) The data files required by Appendix D to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems"; and

(ii) The demonstrations and certifications required by paragraph (d) of this section.

(d) An applicant for a response station hub license shall prepare the following:

(1) A demonstration describing the system channel plan, to the extent that such information is not contained in the data file required in (c)(2)(i) of this section; and

* * * * *

(g) * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate with an EIRP in excess of 33 dBW + 10log(X/6) dBW, where X is the channel width in MHz, and

(4) Each response station shall employ a transmission antenna oriented towards the response station hub with which the response station communicates and such antenna shall be no less directive than the worst-case outer envelope pattern specified in the application for the response station hub for the regional class of characteristics with which the response station is associated; and

* * * * *

(6) The response stations transmitting simultaneously at any given time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, where a response station hub licensee subchannelizes pursuant to § 21.909(a) and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on each subchannel the number of response stations specified in the license. Moreover, the licensee of a response station hub may alter the number of response stations of any class operated simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) Files with the Commission (see § 21.902(m) for permissible format(s) and media) a demonstration indicating the number of response stations of such class(es) to be operated simultaneously in such region and a certification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section and that the interference data submitted pursuant to paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's Reference Room (see § 21.902(m) for permissible formats and media) with an update of the previously-filed response station data and with a demonstration that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such demonstration and certification upon each party entitled to be served pursuant to paragraph (d)(3) of this section; and

* * * * *

(h) Applicants must comply with Part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

* * * * *

(o) Interference calculations shall be performed in accordance with Appendix D (as amended) to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems." (Note: This document is subject to change and will be updated/amended as needed without prior notification. Applicants should always utilize the most current version of the document, as found at the Commission's internet web site, http://

www.fcc.gov/mmb/vsd/files/methodology.doc). Compliance with out-of-band emission limitations shall be established in accordance with § 21.908(e).

10. In § 21.913, paragraphs (a), (b) introductory text, (b)(2), (e) introductory text, (e)(4)(vi), (e)(4)(viii) are revised, and paragraphs (b)(8) and (e)(4)(ix) are added to read as follows:

§ 21.913 Signal booster stations.

(a) An MDS booster station may reuse channels to repeat the signals of MDS stations or to originate signals on MDS channels. The aggregate power flux density generated by an MDS station and all associated signal booster stations and all simultaneously operating cochannel response stations may not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at or beyond the boundary of the protected service area, as defined in §§ 21.902(d) and 21.933, of the main MDS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the affected cochannel licensee is obtained.

(b) A licensee or conditional licensee of an MDS station, or the capacity lessee of such MDS station upon the written consent of the licensee or conditional licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of −9 dBW + 10 log(X/6) dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. The applicant for a high-power station, or for modification thereto, where not subject to § 21.41 or § 21.42, shall file FCC Form 331 with Mellon Bank, and certify on that form that the applicant has complied with the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this paragraph (b) shall result in dismissal of the application or revocation of the high-power MDS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is additionally required to submit (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

* * * * *

(2) A study which demonstrates that the aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service area of the MDS station whose channels are to be reused, does not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

* * * * *

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(ii) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

(e) A licensee or conditional licensee of an MDS station, or the capacity licensee of such MDS station upon the written consent of the licensee or conditional licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of −9 dBW + log10(X/6) dBW, where X is the channel width in MHz. A low-power MDS signal booster station may operate only on one or more MDS channels that are licensed to the licensee of the MDS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the MDS conditional licensee or licensee. Any licensee of a low-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the low-power booster station license, such a license must be returned to the Commission. An MDS licensee, conditional licensee, or capacity lessee thereof, may install and commence operation of a low-power MDS signal booster station for the purpose of retransmitting the signals of the MDS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power MDS signal booster station. An MDS licensee, conditional licensee, or capacity lessee thereof seeking to install a low-power MDS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after installation. In addition, the MDS licensee, conditional licensee, or capacity lessee must submit the following information (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

* * * * *

(4) * * *

(vi) The aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service areas of the MDS stations whose channels are to be reused, does not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

* * * * *

(viii) The applicant understands and agrees that, in the event harmful interference is claimed by the filing of an objection or petition to deny, it must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILLIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

11. The authority for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), and 554.

12. In § 74.902, paragraphs (f) and (i) are revised to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(f) An ITFS licensee may apply to exchange evenly one or more of its assigned channels with another ITFS licensee, or with an MDS licensee or conditional licensee, except that an ITFS licensee may not exchange one of its assigned channels for MDS channel 2A. The licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. The exchanged channel(s) shall be regulated according to the requirements applicable to the assignee; provided, however, that an ITFS licensee which receives one or more E or F Group channels through a channel exchange with an MDS licensee or conditional licensee shall not be subject to the restrictions on ITFS licensees who were authorized to operate on the E or F Group channels prior to May 26, 1983.

* * * * *

(i) On the E and F-channel frequencies, a point-to-point ITFS station may be involuntarily displaced by an MDS applicant or licensee, provided that suitable alternative spectrum is available and that the MDS entity bears the expenses of the migration. Suitability of spectrum will be determined on a case-by-base basis; at a minimum, the alternative spectrum must be licensable by ITFS operators on a primary basis (although it need not be specifically allocated to the ITFS service), and must provide a signal that is equivalent to the prior signal in picture quality and reliability, unless the ITFS licensee will accept an inferior signal. Potential expansion of the ITFS licensee may be considered in determining whether alternative available spectrum is suitable.

* * * * *

13. In § 74.903, paragraphs (b)(4), (c) and (d) are revised to read as follows:

§ 74.903 Interference.

* * * * *

(b) * * *

(4) In lieu of the interference analyses required by paragraphs (b)(1) and (2) of this section, an applicant may submit (a) statement(s) from the affected cochannel or adjacent channel licensee(s) that any resulting interference is acceptable.

* * * * *

(c) Existing licensees and prospective applicants, including those who lease or propose to lease excess capacity pursuant to § 74.931(c) or (d), are expected to cooperate fully and in good faith in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(d) Each authorized or previously-proposed applicant, or licensee must be protected from harmful electrical interference at each of its receive sites registered previously as of September 17, 1998, and within a protected service area as defined at § 21.902(d) of this chapter and in accordance with the reference receive antenna characteristics specified at § 21.902(f) of this chapter. An ITFS entity which did not receive protected service area protection prior to September 17, 1998 shall be accorded such protection by a cochannel or adjacent channel applicant for a new station or station modification, including a booster station, response station or response station hub, where the applicant is required to prepare an analysis, study or demonstration of the potential for harmful interference. An ITFS entity receiving interference protection provided by this section will continue to receive such protection if it elects to swap channels with another ITFS or MDS station as specified in § 74.902(f).

14. In § 74.911, paragraphs (b), (d), and (e) are revised to read as follows:

§ 74.911 Processing of ITFS station applications.

* * * * *

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(2) of this section, or results in a situation where the original party or parties to the application do not retain control of the applicant as originally filed. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of such licensee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

(d) Notwithstanding any other provisions of this part, effective as of September 17, 1998, there shall be a one-week window, at such time as the Commission shall announce by public notice, for the filing of applications for all major changes, high-power signal booster station, response station hub, and I channels point-to-multipoint transmissions licensee, during which all applications shall be deemed to have been filed as of the same day for purposes of 74.939 and 74.985. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously-proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or licensee of the station that would receive such additional interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for major changes, new or modified response station hub, high powered signal booster and booster station licenses may be filed and will be processed in accordance with the provisions of 74.939 and 74.985. Each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, licensee shall maintain a copy of the application at the transmitter site or response station hub

until such time as the Commission issues a license.

(e) Except as provided in paragraph (d) of this section, major change applications may be filed at any time. Except during the sixty (60) day amendment period provided for in paragraph (d) of this section, any amendment to a major change application that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility, or submits any interference consent from a neighboring licensee, shall cause the application to be considered newly-filed. Notwithstanding any other provision of part 74, major change applications meeting the requirements of part 74 shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the facilities proposed in the major change application. A facility proposed in a major change application shall not be entitled to protection from interference caused by any facilities proposed on or prior to the day the major change application is filed. A facility proposed in a major change application shall not be required to protect from interference facilities proposed on or after the day the major change application is filed. Except as provided by paragraph (d) of this section, any petition to deny a major change application shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application. Except as provided in paragraph (d) of this section a major change application that meets the requirements of part 74 shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, unless prior to such date either a party in interest files a timely petition to deny or files for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted at such time. Where an application is granted pursuant to the provisions of this paragraph, the licensee shall maintain a copy of the application at the facility until such time as the Commission issues a license for that facility's operations.

15. In § 74.931, paragraphs (c) and (d) are revised, paragraphs (e), (f), (g), (h), (i) and (j) are redesignated as paragraphs (f), (g), (h), (i), (j) and (k), and a new paragraph (e) is added to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(c) A licensee solely utilizing analog transmissions may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) Before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS educational usage on that channel, except as provided in paragraph (c)(2) and (c)(3) of this section. An additional 20 hours per week per channel must be strictly reserved for ITFS use and not used for non-ITFS purposes, or reserved for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the ITFS licensee and the lessee. This 20 hours per channel per week ITFS educational usage requirement and this recapture and/or reservation requirement of an additional 20 hours per channel per week shall apply spectrally over the licensee's whole actual service area.

(2) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITFS educational usage for at least 12 hours per channel per week, provided that the entity does not employ channel loading technology.

(3) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can lease full-time channel capacity on its ITFS station and/or associated ITFS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. The licensee also retains the unabridgeable right to recapture, subject to six months' advance written notification by the ITFS licensee to its lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. Regardless of whether the licensee has educational receive sites within its psa, the licensee may lease booster stations in the entire psa, provided that the licensee maintains the unabridgeable right to ready recapture at least 40 hours per channel per week for ITFS educational usage. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which leases excess capacity on any one of its channels to an operator may "channel shift" pursuant to and under the conditions of paragraph (d)(2) of this section.

(4) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to multipoint transmissions to facilitate the leasing of excess capacity.

(5) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (c)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(d) A licensee utilizing digital transmissions on any of its licensed channels may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only, and may not lease this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of ITFS educational usage. This 5% reservation and this 20 hours per licensed channel per week ITFS educational usage requirement shall apply spectrally over the licensee's

whole actual service area. However, regardless of whether the licensee has an educational receive sites within its pea served by a booster, the licensee may lease excess capacity without making at least 20 hours per licensed channel per week of ITFS educational usage, provided that the licensee maintains the unabridgeable right to recapture on one months' advance notice such capacity as it requires over and above the 5% reservation to make at least 20 hours per channel per week of ITFS educational usage.

(2) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite ITFS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can lease full-time channel capacity on its ITFS station, associated ITFS booster stations, and/or ITFS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of ITFS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. In addition, an ITFS entity receiving interference protection provided by § 74.903, will continue to receive such protection if it elects to swap channels with another ITFS or MDS station as specified in § 74.902(f).

(3) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to-multipoint transmissions to facilitate the leasing of excess capacity.

(4) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(5) A licensee leasing any of its licensed channels to be used as response channels shall be required to maintain at least 25% of the capacity of its channels for point-to-multipoint transmissions during the term of the lease and following termination of the leasing arrangement. This 25% preservation may be over the licensee's own authorized channels or over channels not authorized to it, but which are included in the wireless system of which it is a part.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (d)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(e) ITFS excess capacity leases entered into prior to March 31, 1997, which contain a provision for automatic renewal which would be effective after March 31, 1997, are exempt for the duration of said lease from compliance with subsequently adopted Commission rules. However, the total term of such applicable lease may not exceed fifteen years.

* * * * *

16. § 74.936(f) is revised to read as follows:

§ 74.936 Emissions and bandwidth.

* * * * *

(f) The maximum out-of-band power of an ITFS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP greater than −6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with § 21.908(e)) at the 6 MHz channel edges at least 25 dB relative to the average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an ITFS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP no greater than −6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with § 21.908(e)) at the channel edges at least 25 dB relative to the average 6 MHz channel transmitter output power level (P), then attenuated along a linear slope to at least 40 dB or 33+10log(P) dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at all other frequencies. Where ITFS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (*e.g.*, a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

* * * * *

17. In § 74.937, the text of paragraph (a) preceding Figure 1 and paragraph (b) are revised to read as follows:

§ 74.937 Antennas.

(a) In order to minimize the hazard of harmful cochannel and adjacent channel interference from other stations, directive receiving antennas should be used at all receiving locations other than response station hubs and response stations operating with an EIRP no greater than −6 dBW per 6 MHz channel. The choice of receiving antennas is left to the discretion of the licensee. However, for the purpose of interference calculations, except as set forth in § 74.939, the general characteristics of the reference receiving antenna shown in Figure 1 of this section (*i.e.*, a 0.6 meter (2 foot) parabolic reflector antenna, are assumed to be used in accordance with the provisions of § 74.903(a)(3) unless pertinent data is submitted of the actual antenna in use for reception. Licensees may install receiving antennas with general characteristics superior to those of the reference antenna. Should interference occur and it can be demonstrated that the existing receiving antenna is inadequate, a more suitable antenna should be installed. In such cases, installation of the new receiving antenna will be the responsibility of the system operator serving the receive site. A response station operating with an EIRP no greater than −6 dBW per 6 MHz channel may use an omnidirectional receiving antenna. However, for the purpose of interference

protection, such response stations will be treated as if utilizing a receive antenna meeting the requirements of the reference receiving antenna shown in Figure 1 of this section.

* * * * *

(b) Except as set forth in § 74.931(c)(4) and (d)(3), directive transmitting antennas shall be used whenever feasible so as to minimize interference to other licensees. The radiation pattern shall be designed to minimize radiation in directions where no reception is intended. When an ITFS station is used for point-to-point service, an appropriate directional antenna must be used. Notwithstanding these provisions, response stations operating with an EIRP no greater than −6 dBW per 6 MHz channel may utilize omnidirectional transmitting antennas.

* * * * *

18. In § 74.939, paragraphs (c)(2), (d) introductory text, (d)(1), (g)(3), (g)(4), (g)(6), (h), (l)(2), and (q) are revised as set forth below and paragraph (c)(3) is removed:

§ 74.939 ITFS response stations.

* * * * *

(c) * * *

(2) Submit the following (see § 21.902(m) for permissible formats and media) to the Commission's Reference Room:

(i) The data files required by Appendix D (as amended) to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems"; and

(ii) The demonstrations and certifications required by paragraph (d) of this section.

(d) An applicant for a response station hub license shall prepare the following:

(1) A demonstration describing the system channel plan, to the extent that such information is not contained in the data file required in (c)(2)(i) of this section; and

* * * * *

(g) * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate with an EIRP in excess of 33 dBW + 10log(X/6) dBW, where X is the channel width in MHz, and

(4) Each response station shall employ a transmission antenna oriented towards the response station hub with which the response station communicates and such antenna shall be no less directive than the worst-case outer envelope pattern specified in the application for the response station hub for the regional class of characteristics with which the response station is associated; and

* * * * *

(6) The response stations transmitting simultaneously at any given time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, where a response station hub licensee subchannelizes pursuant to § 74.939(a) and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on each subchannel the number of response stations specified in the license. Moreover, the licensee of a response station hub may alter the number of response stations of any class operated simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) Files with the Commission (see § 21.902(m) for permissible format(s) and media) a demonstration indicating the number of response stations of such class(es) to be operated simultaneously in such region and a certification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section and that the interference data submitted pursuant to paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's Reference Room (see § 21.902(m) for permissible formats and media) with an update of the previously-filed response station data and with a demonstration that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such demonstration and certification upon each party entitled to be served pursuant to paragraph (d)(3) of this section; and

* * * * *

(h) Applicants must comply with part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

* * * * *

(l) * * *

(2) Submit to the Commission's Reference Room (see § 21.902(m) for permissible format(s) and media) the following:

* * * * *

(q) Interference calculations shall be performed in accordance with Appendix D (as amended) to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems." (Note: This document is subject to change and will be updated/amended as needed without prior notification. Applicants should always utilize the most current version of the document, as found at the Commission's internet web site, http://www.fcc.gov/mmb/vsd/files/methodology.doc). Compliance with out-of-band emission limitations shall be established in accordance with § 21.908(e) of this chapter.

* * * * *

19. In § 74.951, paragraph (b) is revised to read as follows:

§ 74.951 Modification of transmission systems.

* * * * *

(b) Any change in the antenna system affecting the direction of radiation, directive radiation pattern, antenna gain, or radiated power; provided, however, that a licensee may install a sectorized antenna system without prior consent if such system does not change polarization or result in an increase in radiated power by more than one dB in any direction, and notice of such installation is provided to the Commission on FCC Form 331 within ten (10) days of installation. When an applicant proposes to employ a directional antenna, or a licensee notifies the Commission pursuant to this paragraph of the installation of a sectorized antenna system, the applicant shall provide the Commission with information regarding the orientation of the directional antenna(s), expressed in

degree of azimuth, with respect to true north, and the make and model of such antenna(s).

* * * * *

20. In § 74.985, paragraphs (b) introductory text, (b)(5), (b)(7), (d), (e) introductory text, (e)(4)(viii) are revised, and paragraphs (b)(8), (e)(4)(ix) are added, to read as follows:

§ 74.985 Signal booster stations.

* * * * *

(b) A licensee or the capacity lessee of such ITFS station upon the written consent of the licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of −9 dBW + 10 log(X/6) dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee of the ITFS station by and upon written notice to the Commission signed by the lessee and such. If upon termination or expiration of the capacity lease the licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. Furthermore, such capacity lessee must reserve 20 hours per week per channel for ITFS use, or reserve for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee, for a lessor using analog transmissions. Alternatively, the capacity lessee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only and provide at least 20 hours per licensed channel per week of ITFS educational usage for the lessor using digital transmissions. The applicant for a high-power station, or for modification thereto, shall file FCC Form 331 with the Commission Reference Room in Washington, DC, and certify on that form that the applicant has complied with the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this paragraph (b) shall result in dismissal of the application or revocation of the high-power ITFS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is additionally required to submit (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

* * * * *

(5) In lieu of the requirements of § 74.903, a study which demonstrates that the proposed signal booster station will cause no harmful interference (as defined in § 74.903(a)(1) and (2)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in § 21.902(d) of this chapter, to any authorized or previously-proposed response station hubs, booster service areas, or I channel stations associated with such ITFS and MDS stations, or to any ITFS receive sites registered as of September 17, 1998, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee stating that it does not object to operation of the high-power ITFS signal booster station may be submitted; and

* * * * *

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(5) of this section, and upon any affected holder of a BTA or PSA authorization pursuant to paragraph (b)(4) of this section.

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(ii) The applicant and the licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

(d) Notwithstanding the provisions of § 74.912 and except as provided in § 74.911(e), any petition to deny an application for a high-power ITFS signal booster station license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Except as provided in § 74.911(e), an application for a high-power ITFS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the licensee shall maintain a copy of the application at the ITFS booster station until such time as the Commission issues a high-power ITFS signal booster station license.

(e) A licensee or the capacity lessee of such ITFS station upon the written consent of the licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of −9 dBW +log10(X/6) dBW, where X is the channel width in MHz. A low-power ITFS signal booster station may operate only on one or more ITFS channels that are licensed to the licensee of the ITFS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the ITFS licensee. Any licensee of a low-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee of the ITFS station by and upon written notice to the Commission signed by the lessee and such licensee. If upon termination or expiration of the capacity lease the licensee no longer desires or needs the low-power booster station license, such a license must be returned to the Commission. An ITFS licensee or capacity lessee thereof may install and commence operation of a low-power ITFS signal booster station for the purpose of retransmitting the signals of the ITFS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power ITFS signal booster station. An ITFS licensee or capacity lessee thereof seeking to install a low-power ITFS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after

installation. In addition, the ITFS licensee, or capacity lessee must submit the following information (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

(4) * * *

(viii) The applicant understands and agrees that in the event harmful interference is claimed by the filing of an objection or petition to deny, it must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

[FR Doc. 00–19034 Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Parts 208, 212, 213, 214, 215, 232, and 252

[DFARS Case 98–D026]

Defense Federal Acquisition Regulation Supplement; Streamlined Payment Practices

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold, unless an exception is authorized. Use of the purchase card streamlines purchasing and payment procedures and, therefore, increases operational efficiency.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 98–D026.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for DoD purchases valued at or below the micro-purchase threshold of $2,500, unless an exception is authorized. The rule implements a policy memorandum issued by the Principal Deputy Under Secretary of Defense (Acquisition and Technology) on October 2, 1998, Subject: Streamlined Payment Practices for Awards/Orders Valued at or below the Micro-Purchase Threshold; and a policy memorandum issued by the Under Secretary of Defense (Personnel and Readiness) on September 25, 1998, Subject: Use of Government-Wide Purchase Cards. The October 2, 1998, memorandum is available via the Internet at http://www.acq.osd.mil/dp/micro2.pdf. The September 25, 1998, memorandum is available via the Internet at http://purchasecard.sarda.army.mil/deleon.htm.

DoD published a proposed rule at 64 FR 38878 on July 20, 1999. Six sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Governmentwide commercial purchase card is similar in nature to commercial credit cards that are commonly used in the commercial marketplace.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208, 212, 213, 214, 215, 232, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 208, 212, 213, 214, 215, 232, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 208, 212, 213, 214, 215, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.405–2 is amended by revising paragraph (4) to read as follows:

208.405–2 Order placement.

* * * * *

(4) If permitted under the schedule contract, use of the Governmentwide commercial purchase card—

(i) Is mandatory for placement of orders valued at or below the micro-purchase threshold; and

(ii) Is optional for placement of orders valued above the micro-purchase threshold.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(vi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vi) Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

4. Section 212.303 is added to read as follows:

212.303 Contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 213.101 is added to read as follows:

213.101 General.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

6. Subpart 213.2 is added to read as follows:

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

Sec.
213.270 Use of the Governmentwide commercial purchase card.

213.270 Use of the Governmentwide commercial purchase card.

Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless—

(a) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(b)(1) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident general or flag officer of SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(c) The purchase or payment meets one or more of the following criteria:

(1) The place of performance is entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) The purchase is a Standard Form 44 purchase for aviation fuel or oil.

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(4) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333.

(5) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations.

(6) The payment is made with an accommodation check.

(7) The payment is for a transportation bill.

(8) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card.

(9) The purchase is for medical services and—

(i) It involves a controlled substance or narcotic;

(ii) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(iii) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(iv) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(v) The purchaser is a beneficiary seeking medical care; or

(vi) The senior local commander or director of a hospital or laboratory determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

PART 214—SEALED BIDDING

7. Section 214.201–1 is added to read as follows:

214.201–1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 215—CONTRACTING BY NEGOTIATION

8. Section 215.204–1 is added to read as follows:

215.204–1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART232—CONTRACT FINANCING

9. Subpart 232.11—is added to read as follows:

Subpart 232.11–Electronic Funds Transfer

Sec.
232.1108 Payment by Governmentwide commercial purchase card.
232.1110 Solicitation provision and contract clauses.

232.1108 Payment by Governmentwide commercial purchase card.

The Governmentwide commercial purchase card is the mandatory EFT payment method for purchases valued at or below the micropurchase threshold, except as provided in 213.270.

232.1110 Solicitation provision and contract clauses.

Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements when—

(1) Placement of orders or calls valued at or below the micropurchase threshold is anticipated; and

(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micropurchase threshold under the contract or agreement.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.232–7009 is added to read as follows:

252.232–7009 Mandatory Payment by Governmentwide Commercial Purchase Card.

As prescribed in 232.1110, use the following clause:

Mandatory Payment by Governmentwide Commercial Purchase Card

(JUL 2000)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below $2,500 under this contract or agreement.

(End of clause)

[FR Doc. 00–19111 Filed 7–28–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 250

[DFARS Case 2000–D016]

Defense Federal Acquisition Regulation Supplement; Repeal of Reporting Requirements Under Public Law 85–804

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove policy on submission of reports to Congress

regarding contractor requests for extraordinary contractual relief. The statutory requirement for these reports has been repealed.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; telefax (703) 602–0350. Please cite DFARS Case 2000–D016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS 250.104. This section contained requirements for preparation of reports to Congress regarding actions taken on contractor requests for relief under the authority of Public Law 85–804. Section 901(r)(1) of the Federal Reports Elimination Act of 1998 (Public Law 105–362) repealed this reporting requirement, formerly found at 50 U.S.C. 1434.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affects DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D016.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 250

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 250 is amended as follows:

1. The authority citation for 48 CFR part 250 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

250.104 [Removed]

2. Section 250.104 is removed.

[FR Doc. 00–19110 Filed 7–28–00; 8:45 am]
BILLING CODE 5000–04–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852

Procedural Revisions for Awards Resulting From Broad Agency Announcements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to: allow grant officers to waive the submission of certain documents as part of the purchase request (PR) package for a grant; provide for the award of purchase orders, when appropriate, for awards less than the simplified acquisition threshold resulting from broad agency announcements; and make miscellaneous editorial and technical corrections.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Deback, NASA Headquarters-Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–0431, e-mail: tdeback@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The newly revised Grant Handbook no longer requires the submission of the NASA Research Announcement (NRA), results of the technical evaluation, and other documents as part of the PR package. The revised guidance also provides that if an action resulting from a broad agency announcement is to be awarded as a contract action and is less than the simplified acquisition threshold, the action may be completed as a purchase order. This final rule brings the NFS into agreement with the Grant handbook. Additionally, miscellaneous editorial and technical corrections are made to sections 1801.106, 1808.002–72, 1811.1, 1819.7206, 1842.7001, 1852.242–73, and Parts 1816 and 1831 to update listing of OMB approvals; correct citations, terminology, and titles; and provide consistent guidance on clause modification.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub Law 98–577 and publication for comments is not required. However, NASA will consider comments from small entities concerning the affected NFS subparts in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1801.106, revise the chart in paragraph (1) to read as follows:

1801.106 OMB approval under the Paperwork Reduction Act.

(1) * * *

NFS Segment	OMB Control No.
1804.470	2700–0098
1804.74	2700–0097
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1831	2700–0080
1843	2700–0054
1843.71	2700–0094
NF 533	2700–0003
NF 1018	2700–0017

* * * * *

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.002–72 [Amended]

3. In section 1808.002–72, amend paragraph (j) by removing "%" whenever it appears and adding "percent" in its place.

PART 1811—DESCRIBING AGENCY NEEDS

4. Add Subpart 1811.1 title to read as follows:

Subpart 1811.1—Selecting and Developing Requirements Documents

* * * * *

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

5. Revise section 1813.000 to read as follows:

1813.000 Scope of part.

FAR Part 13 and 1813 do not apply to NASA Research Announcements (NRA) and Announcements of Opportunity (AO). These acquisitions shall be conducted in accordance with the procedures in 1835.016–71 and 1872, respectively. However, awards resulting from NRAs or AOs that are to be made as procurement instruments, can be made as either a contract or a purchase order. When a purchase order is used, it must not exceed the simplified acquisition threshold and must include the appropriate clauses pertaining to data rights, key personnel requirements, and any other requirements determined necessary by the contracting officer. Contracting officers must determine whether obtaining the contractor's acceptance of the order is necessary (see FAR 13.302–3(a)).

PART 1816—TYPES OF CONTRACTS

1816.405–274 [Amended]

6. In section 1816.405–274, amend the first sentence of paragraph (g)(4) by removing the words "(f)(1) through (f)(3)" and adding the words "(g)(1) through (g)(3)" in its place.

1816.505 [Amended]

7. In section 1816.505, amend paragraph (b)(5) by removing the reference "1815.70" and adding "1815.7001" in its place.

1816.505–70 [Amended]

8. In section 1816.505–70, amend paragraph (b) by removing the reference "1816.404–270(a)" and adding the reference "1816.104–70(a)" in its place.

PART 1819—SMALL BUSINESS PROGRAMS

1819.7206 [Amended]

9. In section 1819.7206, amend the first sentence of paragraph (a) by removing the words "as a subfactor" from the end of the sentence.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1831.205–670 [Amended]

10. In section 1831.205–670, amend paragraphs (a) introductory text, (b) introductory text, (c)(1) and (2), (e), (f), and (g) by removing the word "shall" and adding "must" in its place.

1831.205–32 [Amended]

11. In section 1831.205–32, amend paragraphs (2) and (3) by removing the word "shall" and adding "must" in its place.

1831.205–70 [Amended]

12. Amend section 1831.205–70 by removing the word "shall" and adding "must" in its place.

1831.205–671 [Amended]

13. Amend section 1831.205–671 by removing the word "shall" and adding "must" in its place.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

14. In section 1835.016–71, revise paragraphs (d)(8)(i) and (ii) to read as follows:

1835.016–71 NASA Research Announcements.

* * * * *

(d) * * *

(8) * * *

(i) A copy of the NRA (This requirement may be waived in the case of a grant award at the discretion of the grant officer);

(ii) The results of the technical evaluation, including the total number of proposals received, the selection statement, and the listing of proposal(s) selected for funding (These requirements may be waived in the case of a grant award at the discretion of the grant officer if the purchase request specifically references the NRA number and states that the proposal forwarded for funding was selected under the NRA.);

* * * * *

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

15. In section 1842.7001, revise paragraph (c) to read as follows:

1842.7001 Observance of legal holidays.

* * * * *

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions. This alternate may be appropriately modified for fixed-price contracts.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1851.102 [Amended]

16. In section 1851.102, amend paragraph (e)(3) at the end of the section by removing "NHB 4100.1" and adding "NPG 4100.1" in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.242–73 [Amended]

17. In section 1852.242–73, revise the date "(JULY 1997)" to read "(JULY 2000)" and amend paragraph (a) by removing the words "Policy Guidance" and adding the words "Procedures and Guidelines" in its place.

[FR Doc. 00–19269 Filed 7–28–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–7648]

RIN 2127–AH 86

Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: This document responds to a number of issues raised by petitions for reconsideration of the agency's March 1999 final rule establishing Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems*, and of the agency's August 1999 final rule responding to the first round of petitions. Standard No. 225 has required vehicle manufacturers to provide the upper (tether) anchorage of a child restraint anchorage system in some of their vehicles since September 1, 1999. It also requires the installation of the lower anchorages of those systems in some vehicles beginning September 1, 2000.

In response to concerns of several petitioners about leadtime for and the

stringency of the anchorage strength and other requirements in the March 1999 final rule, our August 1999 rule permits vehicle manufacturers to meet alternative requirements during an initial several year period. During this period, manufacturers have the alternative of meeting either the requirements for tether anchorages set by the March 1999 final rule or those previously established by Transport Canada. Manufacturers also have the alternative of meeting the requirements for lower anchorages set by the March 1999 final rule, or those consistent with a draft standard being developed by a working group of the International Organization for Standardization (ISO). The temporary alternative for tether anchorages was to last until September 1, 2001, and that for lower anchorages until September 1, 2002. In response to petitions for reconsideration, today's rule extends the temporary alternatives until September 1, 2004.

This document also addresses certain other issues that need to be resolved or clarified concerning the installation of child restraint anchorage systems in vehicles and how those systems are to be tested in the agency's compliance tests. Other issues raised by the petitions for reconsideration will be addressed in a subsequent document.

DATES: The amendments made in this rule are effective August 30, 2000.

If you wish to petition for reconsideration of this rule, your petition must be received by September 14, 2000.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: Michael Huntley, (202–366–0029), Office of Crashworthiness Standards, NHTSA.

For legal issues: Deirdre R. Fujita, Office of the Chief Counsel (202–366–2992), NHTSA.

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

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I. Overview

a. The Most Important Changes Made by this Final Rule

1. Extension of Compliance Options Until 2004

This final rule responds to petitions for reconsideration of final rules published March 5, 1999 and August 31, 1999 establishing Federal motor vehicle safety requirements for child restraint anchorage systems. This document extends the period within which vehicle manufacturers may choose certain compliance options in certifying to Standard No. 225. Manufacturers were given the option of certifying tether anchorages to (1) Requirements that are consistent with those set by Transport Canada, or (2) the requirements set forth in the March 1999 final rule. The option was to expire September 1, 2001. Vehicle manufacturers also were given the option of certifying the lower anchorages of the anchorage system to (1) Requirements consistent with those set by a draft ISO standard, or (2) requirements set forth in the March 1999 final rule. The option was to expire September 1, 2002. This rule extends both of these expiration dates to September 1, 2004.

2. Other Issues Relating to Testing of Anchorage Systems

This final rule also addresses other issues that need to be resolved or clarified concerning the installation of child restraint anchorage systems in vehicles. It addresses the configuration requirements for the bars in S15 of Standard No. 225, and various aspects of the procedures for testing anchorages. It also addresses several issues concerning the applicability of the standard to manufacturers of particular types of vehicles.

b. Putting This Rule in Perspective

1. March 1999 Final Rule

On March 5, 1999, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems* (64 FR 10786, docket 98–3390, notice 2). The standard requires vehicle manufacturers to equip vehicles with child restraint anchorage systems that are standardized and independent of the vehicle seat belts.

The new system has two lower anchorages and one tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars will be located at the intersection of the vehicle seat cushion and seat back. The upper

anchorage is a fixture to which the tether of a child restraint system can be hooked.

For convenience, this document refers to the three-point child restraint anchorage system as the "LATCH" system. "LATCH" stands for the phrase "Lower Anchors and Tether for Children." LATCH was coined by some manufacturers and retailers for use in educating the public on the availability and use of the new system, and in marketing the system.

The standard required vehicle manufacturers to begin phasing-in the tether anchorage of the LATCH system in the production year beginning September 1, 1999, with full implementation beginning September 1, 2000. Manufacturers are required to begin phasing-in the lower anchorages in the production year beginning on September 1, 2000, with full implementation beginning September 1, 2002.[1]

2. Petitions for Reconsideration of the March 1999 Final Rule

We received petitions for reconsideration of the March 1999 final rule from the Alliance of Automobile Manufacturers ("Alliance")(whose members were then BMW, DaimlerChrysler, Ford, General Motors, Mazda, Nissan, Toyota, Volkswagen, and Volvo),[2] and from Honda, Volkswagen, Porsche, DaimlerChrysler, General Motors, Mitsubishi, the National Truck Equipment Association, Kolcraft, E–Z–On Products, Cosco, Toyota, Ford, the Coalition of Small Volume Automobile Manufacturers, and Indiana Mills and Manufacturing. *See* NHTSA Docket No. 98–3390, Notice 2.

The vehicle manufacturers asked us to reconsider certain performance and other requirements. Some of them expressed concern about the strength requirements for the tether anchorage and the lower bars, and asserted that:

(1) There is no safety need for requirements as stringent as those specified (*i.e.*, for a 15,000 N strength requirement for tether anchorages (S6.3 and S8.1) and a 11,000 N strength requirement for the LATCH system lower anchorages (S9.4.1(a))[3];

(2) They could provide tether and lower anchorages meeting less-stringent Canadian requirements for the tether anchorage and less-stringent requirements for lower anchorages set forth in a draft standard being developed by a working group of the International Organization for Standardization (ISO)[4], by the compliance dates set forth in the March 1999 final rule, but they could not provide tether and lower anchorages meeting the more-stringent strength requirements established in that rule by those dates; and

(3) Because the March 1999 final rule applied to LATCH and tether anchorages voluntarily installed on vehicles after September 1, 1999, manufacturers would have to tear out LATCH and tether anchorages that they had voluntarily installed beyond the number required by the March 1999 rule because the anchorages could not meet the strength requirements of the rule.

The Alliance suggested that the agency either delay the effective date of the rule or adopt the Canadian requirements for the tether anchorage and the draft ISO requirements for the lower anchorages.[5]

3. August 1999 Final Rule Responding to Petitions for Reconsideration

In response to concerns of several of the petitioners about leadtime for and the stringency of the anchorage strength and other requirements in the March 1999 final rule, NHTSA published a final rule on August 31, 1999 (64 FR 47566, docket 99–6160). Among other things, the August 1999 rule permitted vehicle manufacturers to meet alternative requirements during an initial several year period. Until September 1, 2001, manufacturers were permitted to meet either the requirements in the March 1999 final rule or the less-stringent Canadian requirements for tether anchorages. Until September 1, 2002, manufacturers were permitted to meet the requirements for the lower anchorages consistent with those set forth in the draft ISO standard.

NHTSA balanced the benefits associated with vehicle manufacturers providing the new tether and lower anchorages, albeit ones meeting the less-stringent Canadian and draft ISO requirements, in accordance with the original schedule against the possible consequences of not providing for that alternative means of compliance. One possible consequence could have been a delay in the introduction of the new tether and lower anchorages. We might have had to extend the leadtime for installation of anchorages that met the strength requirements of the March 1999 rule by several years or establish a more drawn out phase-in schedule. Another consequence could have been that manufacturers would have had to remove voluntarily-installed tether anchorages and LATCH systems that did not meet the requirements of the March 1999 final rule, even if they did meet the Canadian and draft ISO requirements.

We concluded that, on balance, safety would be best served if the Canadian and draft ISO requirements were allowed as a compliance option for an interim period. We determined that the early availability of tether anchorages, even ones meeting the Canadian requirements, would promote safety by increasing the likelihood that parents will attach a top tether on a child restraint system. Compared to an untethered child restraint, a tethered child restraint offers improved protection against head impact in a crash. A tether anchorage that complies with the Canadian strength requirement will offer a level of safety that is significantly better than the one that would exist with no tether anchorage at all. We similarly concluded that lower anchorages meeting the draft ISO requirements would provide safety benefits for parents who have difficulty attaching a child restraint correctly in a vehicle or whose vehicle seats are incompatible with child restraints. Thus, the agency's adoption of these interim compliance alternatives made it possible to begin reaping the benefits of LATCH systems sooner than would

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[1] The March 1999 final rule specified that, beginning September 1, 1999, 80 percent of a manufacturer's passenger cars were required to be equipped with tether anchorages, while all vehicles covered by the standard (including light trucks, vans, and multipurpose passenger vehicles with gross vehicle weight rating (GVWR) of 8,500 or less and buses with a GVWR of 10,000 pounds or less) are required to comply with the requirements by September 1, 2000. The final rule specified a 3-year phase-in period for the lower vehicle anchorages, which required 20 percent of each manufacturer's fleet to be equipped with compliant lower anchorages beginning September 1, 2000, 50 percent beginning September 1, 2001, and 100 percent beginning September 1, 2002.

[2] Later submissions from the Alliance on Standard No. 225 list Fiat, Mitsubishi, and Isuzu also as members of the group.

[3] Not all petitioners addressing this subject believe the strength requirements were too stringent. Petitioner E–Z–On Products suggested in its petition for reconsideration that we should consider *increasing* the strength requirements for the tether anchorage.

[4] The ISO is a worldwide voluntary federation of ISO member bodies. The draft ISO standard, ISO/22/12/WG1, is under development by Working Group 1 of the ISO.

[5] The most significant differences between the Canadian requirements and those in our March 1999 final rule are Canada's specification of a lower force (10,000 Newtons (N), instead of 15,000 N) and Canada's method of applying the force (permitting the manufacturer the option of specifying the force application rate, instead of specifying a range of application rates that the agency could use). The draft ISO standard differs from our rule with respect to, among other issues, the magnitude of the force that is applied to the lower anchorages (8,000 N, instead of 11,000 N) and the rate of application of the force. For a discussion of these and other differences, see the August 31, 1999 final rule, footnotes 6 and 10, 64 FR at 47569–47571.

have been possible under the March 1999 final rule.

The August 1999 final rule also responded to other issues. With regard to some issues, such as some of the technical ones addressing specifics on how an anchorage is to be tested and limiting the information that manufacturers have to provide in vehicle owners manuals on LATCH systems, the agency granted requests to amend the March 1999 rule. For some of the other issues, the agency denied or partially granted the petitions for reconsideration, which prompted some manufacturers to re-petition the agency to reconsider the decisions based on new information.

4. Petitions for Reconsideration of the August 1999 Final Rule

Petitions for reconsideration of the August 1999 final rule were submitted by the Alliance, Ford, Volkswagen, and Keiper GmbH & Co. (Keiper).

The petitions from the Alliance and Volkswagen [6] repeated or elaborated on many issues that were in the Alliance's original petition for reconsideration of the March 1999 final rule and that were not addressed by the August 1999 document (see I.b.6, below). The Alliance's petition also made the following key requests pertaining to the decisions we made in the August 1999 final rule. We were asked to reconsider our decisions:

A. To limit availability of the option that manufacturers may meet Canadian requirements for the tether anchorage until August 31, 2001 (manufacturers asked for a one-year extension of the interim tether requirements, until August 31, 2002);

B. To adopt specifications from the draft ISO standard that limit the design flexibility of the configuration of the lower bars;

C. To deny the request to shorten the rate of application of the applied forces and the length of time the force is held (Keiper also made this request);

D. To deny the request to require only two tether anchorages for multipurpose passenger vehicles (MPVs) [7] with five or fewer designated seating positions, and to deny the request to remove the requirement for a tether anchorage at a center rear seating position; [8]

E. On aspects of the test procedures used in compliance tests of anchorages, including our denial of the recommendation to use a device other than the 3-dimensional H-point machine to determine whether a tether anchorage is within the required zone;

F. To permit foldable or storable lower anchorages only during the period within which manufacturers may meet the draft ISO standard (this request was also made by Keiper);

G. On reducing the size of the child restraint fixture (manufacturers ask that the fixture be further reduced); and

H. To deny a request to remove the requirement that vehicle manufacturers provide step-by-step instructions on attaching a child restraint tether to the vehicle's tether anchorage.

Ford petitioned for reconsideration of the August 1999 final rule's amendments to several aspects of the test procedure for testing tether anchorages, making the following key requests. We were asked to reconsider our decisions:

I. To change the point at which displacement is measured when testing a tether anchorage using the test device that attaches to the vehicle seat by the vehicle's seat belt system; and

J. To use a cable to apply the test forces to the tether anchorages, instead of high-strength webbing material.

Ford also asked for clarification of various requirements set forth in Standard No. 225, and suggested technical corrections to the figures referenced in Standard No. 213.

5. To What Issues From the Petitions for Reconsideration Does This Rule Respond?

This final rule:

(1) Extends the period within which manufacturers may meet Canadian requirements for tether anchorages and draft ISO requirements for lower anchorages (addressing issue "A" in section I.b.4, *supra*); and addresses issues relating to—

(2) The configuration requirements for the bars set forth in S15 of Standard No. 225, (issue "B" in section I.b.4);

(3) Various aspects of the test procedures for testing anchorages (issues "E" and "G" in section I.b.4); and

(4) The applicability of the standard (to small manufacturers; to manufacturers of vehicles that cannot meet the pitch, roll and yaw requirements with the child restraint fixture installed; and to manufacturers of vehicles temporarily exempted from Standard No. 208's requirement to provide an air bag at the front passenger seating position).

This final rule also:

(5) Denies a request from the Alliance asking for a one-year deferral of the requirement for detailed instructions in vehicle owner's manuals on attaching a child restraint's tether strap to the vehicle's anchorage (issue "H" in section I.b.4).

6. The Remaining Key Issues

The key issues that we have yet to resolve from the petitions for reconsideration of the March and August 1999 final rules are listed below.

We will be addressing issues relating to the requirements establishing the strength of the anchorages. Key issues pertain to:

—The 15,000 N strength requirement for tether anchorages (S6.3 and S8.1) and the 11,000 N strength requirement for the LATCH system lower anchorages (S9.4.1(a));

—The displacement limit of 125 mm; and

—The rate of application of the applied forces and length of time the force is held.

As noted above, we received a number of petitions for reconsideration of the strength requirements of the

[6] Volkswagen (VW) also asked in its October 14, 1999 petition whether a tether anchorage would comply with the March 1999 final rule if it consists of (1) a fixed and permanent anchorage installed in a vehicle seatback structure and (2) "a deployable tether attachment device that could be removed without the use of any tools other than a screwdriver or a coin and separately stored until needed for attachment of a child restraint tether hook." We interpret Standard No. 225 as precluding such a tether anchorage. S3 of the standard defines "tether anchorage" as a user-ready, permanently installed vehicle system. S6.1 requires tether anchorages to be accessible without the need for any tools (other than a screwdriver or coin) and once accessed, be ready for use without the need for any tools. These requirements are intended to ensure that a vehicle owner will be able to use the tether anchorage when needed, without having to search for a part or to install an attachment device. VW asked for reconsideration of S6.1 if the requirements precluded such a tether anchorage. VW's request appears untimely. S6.1 was adopted by the March 1999 final rule and we did not receive any petition for reconsideration of the "user-ready" and "permanency" requirements. Under our rulemaking regulation (49 CFR Part 553), petitions for reconsideration must be received within 45 days after publication of a final rule. Petitions for reconsideration received after that period will be considered petitions filed under our rulemaking procedures (Part 552). We note further that VW's document is incomplete as a petition for rulemaking. It does not provide sufficient information setting forth facts establishing that an order is necessary, and does not set forth a brief description of the substance of the order which VW believes should be issued (§ 552.4(c) and (d)). We will not process the document as a petition for rulemaking until further information is received from the petitioner.

[7] "Multipurpose passenger vehicle" is defined in 49 CFR § 571.3 as "a motor vehicle with motive power, except a low-speed vehicle or trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation."

[8] In allowing manufacturers the option of meeting Canadian requirements for tether anchorages, the August 1999 final rule permitted the installation of only two tether anchorages during the optional compliance period. The rule also relieved manufacturers from the requirement that one of the tether anchorages must be at a center seating position during the optional compliance period.

March 1999 final rule. Many petitioners believe that the strength requirements were too stringent and discussed their reasons for that conclusion. In elaborating on its petition submitted in response to the March 1999 final rule in favor of reducing the strength requirements, the Alliance submitted a paper dated February 29, 2000 (entry 6160–11 in the docket) entitled, "Engineering Basis for Strength Tests of Child Restraint Anchors (FMVSS 225) (February 16, 2000)." The paper found that, based on a 27 kg mass (total mass of a child restraint system and child occupant) and a 27 g peak acceleration of a 1999 Dodge Intrepid vehicle in a frontal 30 mile per hour (mph) rigid barrier impact, the expected peak force on the child and child restraint is 7,200 N. Based on this, the report concluded that Standard No. 225 should specify a pull force of 8,000 N, and not 15,000 N. However, in following up on the analysis, Transport Canada substituted the crash pulses it had obtained in frontal 30 mph rigid barrier crash tests of 1995 to 1999 model year vehicles. Transport Canada found that peak accelerations of many of these vehicles were higher than the 27 g used in the Alliance report and, if a heavy child restraint and child were using a child restraint anchorage system, the forces on the child restraint anchorage system could be higher than 12,000 N (entry 6160–19). We are considering the merits of these comments.

Ford suggested in a submission dated December 17, 1999 (6160–8, page 3) that the displacement criterion of 125 mm be applied in forward pull tests only at an 8,000 N force (9,000 N for SFAD 2 with tether strap attached), and that the "ability to withstand" criterion be the measure of compliance at higher forces. Ford suggests:

> To allow a single test to determine compliance with both Standard 225 and the ISO standard, the 8 kN force should be applied with an approximately linear increase in force over 2 seconds, with ISO displacement measured after 0.25 seconds and Standard 225 displacement measured at the end of a 1 second hold period. After the hold period, force would increase roughly linearly to 15 kN over 25 seconds (11 kN for an untethered SFAD 2), followed by a 2 second hold period (for both the 11 kN and 15 kN tests).

We are considering the merits of this comment. An issue raised by the suggestion is the need for Standard No. 225's requirement for a 10-second hold period for the lower LATCH anchorages.

The Alliance suggested in its February 29 submission (6160–11) that an alternative approach to measuring displacement for determining compliance of the lower anchorages of a LATCH system is to use a sliding scale of excursion limits based on the available space where the child restraint system would be anchored. An excursion limit of 125 mm would be used in smaller vehicles while vehicles with larger seating areas could have larger limits (page 17 *et seq.*).

We are considering the merits of a sliding scale approach for determining compliance of the lower anchorages and the tether anchorage of LATCH systems. The sliding scale approach is also under consideration by Transport Canada for possible inclusion in that country's proposal for child restraint anchorage systems (6160–19).

We will also be addressing whether to:

—Make the configuration requirements for the lower bars (S9.1) consistent with today's amendments to S15.1.2;
—Expand the zone in which the lower bars may be placed (S9.2);
—Permit foldable or storable lower anchorages past August 31, 2004; and
—Remove the requirement for a tether anchorage in a center seating position and a third tether anchorage in some MPVs.

On the requirements that (1) all passenger vehicles with three forward-facing rear designated seating positions must have three tether anchorages at those positions and (2) all passenger vehicles with a center rear designated seating position must have a tether anchorage at that seat position, the Alliance submitted a document dated October 20, 1999 to supplement its petition for reconsideration of the August 1999 final rule (see docket 6160–6). The document suggests reasons why NHTSA should exclude certain vehicles from the requirements (page 8 *et seq.*). The Alliance included a suggestion that the following exclusions be added to the standard:

—A middle seating position which does not meet the requirements of the Society of Automotive Engineers (SAE) Recommended Practice J1819, "Securing Child Restraint Systems in Motor Vehicle Rear Seats," provided that the manufacturer provides language in its vehicle owners manual specifically instructing owners that the seating position is not recommended for use with child restraints;
—A middle seating position where the seatback is divided into two or more sections which may be folded independently of each other, and the division between two sections lies substantially along the seating reference plane of the middle seating position; and
—A middle seating position with a folding seat where an installed child restraint would bar access to the rear seats.

Further, the Alliance suggested in a June 2, 2000 submission that if an additional rear seating position is available in the vehicle, NHTSA should require this position to be equipped with a tether anchorage as a replacement for the exempted non-outboard anchorage position.

We are considering the merits of the suggestion.

We will also respond to the petitions for reconsideration that asked us to:

—Permit a LATCH system in the front passenger seating position in vehicles with or without an air bag on-off switch or an advanced air bag;
—Change the marking requirements (S9.5) for the lower bars; and
—Exclude backless booster seats from the requirement in Standard No. 213 to provide the attachments for connecting to the lower anchors of a LATCH system.

We will also be addressing the issues Ford raised in its petition for reconsideration of the August 1999 final rule.

II. Extending the Compliance Options Until 2004

a. What Did the Petitioners Request?

The Alliance asked in its petition for reconsideration of the August 1999 final rule that we extend the time period in which they are permitted to meet the alternative compliance options adopted in the rule. In its petition, the Alliance requested a one-year extension of the compliance option for tether anchorages, *i.e.*, until September 1, 2002. (October 15, 1999 petition for reconsideration.) Later, the petitioner asked that the compliance option for tether anchorages and for lower anchorages be extended until September 1, 2004. (Letters dated December 23, 1999, February 28, 2000, and April 13, 2000.)

Members of the Alliance, and other manufacturers, have indicated in submissions to Docket NHTSA 99–6160 that they are experiencing many difficulties designing and incorporating anchorages that meet the requirements prescribed in Standard No. 225 on several vehicles, especially sport utility vehicles (SUVs) and light trucks. They stated that they will need to make extensive structural changes to the affected vehicle models to meet the strength requirements of the March 1999 final rule. They said that those changes will substantially increase the cost and mass of the vehicles (Ford and General

Motors have quantified the increases in submissions that have been granted confidentiality by NHTSA), and may result in possible elimination of some desirable features now offered as options to customers, such as adjustable front passenger seats and split bench seats. That elimination might be the necessary result of our requirements because, unlike sedans that can meet the strength requirements of the March 1999 final rule because the rear filler panel just behind the top of the rear seat provides a stiff anchor area, vehicles such as station wagons, hatchbacks, pickups and SUVs have no comparable place to anchor a tether strap straight behind the top of the seat. The seats and the vehicle structure would have to be substantially strengthened to withstand the strength requirements, which would require plant modifications and retooling of assembly lines. Petitioners have stated that these impacts are unwarranted, given their belief that the strength requirements are overly stringent and demand margins of safety much beyond what is necessary for reasonable crash protection.

Manufacturers also raised concerns about how they are to design future vehicles to the rule's strength requirements. They stated that they petitioned for reconsideration of the March 1999 strength requirements in April 1999 and have not yet learned how the agency will resolve the issues. NHTSA has deferred responding to the objections to the strength requirements, partly to analyze the proposed regulation that Transport Canada will be issuing on the three-point child restraint anchorage system and the strength requirements of the proposal.[9] This deferral of our response has made it difficult for manufacturers to decide whether to expend large resources to redesign model year (MY) 2002 and 2003 vehicles.

b. NHTSA Decides To Extend the Compliance Options

Extending the compliance options until September 1, 2004 (through MY 2004) will reduce the uncertainty facing manufacturers. We are continuing to consider the petitions for reconsideration of the strength requirements of the March 1999 rule. Today's final rule extending the availability of the alternative compliance options will provide us additional time to complete our analysis of the petitions for reconsideration and decide whether the strength requirements should be amended.

Manufacturers have provided information supporting their contention that meeting the strength requirements of the March 1999 rule when the compliance options expire would entail extensive structural changes to their vehicles, resulting in considerable increases in the cost and mass of the vehicles. They state that they must now begin changing manufacturing processes for the vehicles produced after September 1, 2002 (MY 2003). If the compliance options were not extended, manufacturers would have to decide whether to change their processes, on the assumption that NHTSA will not amend the requirements of the March 1999 final rule, and substantially redesign vehicles which could not comply, at substantial cost. Alternatively, they could decide not to change their manufacturing processes, on the assumption that NHTSA will amend the requirements of the March 1999 final rule. However, they would not be allowed to sell those vehicles if NHTSA were not to amend the March 1999 rule and their vehicles could not comply.

Extending the compliance options until September 1, 2004 will help facilitate the installation of LATCH systems in vehicles. Manufacturers have indicated that, if the compliance options were not extended to 2004, they would be unable to meet the current phase-in schedule established by the March 1999 rule, even if they could use the lower strength anchorages through the end of the phase-in schedule. Further, if the compliance options were not extended, many voluntarily-installed tether anchorages would be removed from the designs of MY 2002 vehicles and many voluntarily-installed LATCH systems would be removed from the designs of MY 2003 vehicles, because the systems do not meet the March 1999 final rule and manufacturers do not know the requirements we will ultimately adopt. Accordingly, for the reasons stated above, we have decided to extend the compliance options until August 31, 2004.

III. Changes to the Alternative ISO-Based Lower Anchorages Requirements of S15

a. Why Are Changes Needed to S15?

In its petition for reconsideration of the August 1999 final rule, the Alliance petitioned NHTSA to amend some aspects of the agency's incorporation of the draft ISO requirements for lower anchorages into S15 of Standard No. 225. (S15 sets forth the temporary compliance option available to manufacturers to meet draft ISO requirements for the lower anchorages.) The Alliance believes that there are inconsistencies between the draft ISO requirements and our August rule concerning the features of the lower anchorages (S15.1.2.1). Manufacturers that have been designing lower anchorages to meet the draft ISO requirements will not be able to meet Standard No. 225 because of those inconsistencies. The petitioner believes that there is no reason for them and has petitioned us to remove them. Petitioner also asked for clarification of several other requirements.

We have reviewed the petition and generally agree that the inconsistencies should be resolved.[10] In adding the provisions of the draft ISO standard into Standard No. 225, we did not make any significant changes to the ISO provisions. However, some manufacturers have raised concerns that a few of the ISO provisions were meant to be design guides for vehicle manufacturers and were not intended as regulatory requirements. For instance, the ISO draft has a provision, which the August 1999 final rule added, that states that the lower anchorage bars must be 280 mm apart, center-to-center (S15.1.2.1(e)). As discussed immediately below, manufacturers have petitioned for reconsideration of the requirement in S15, believing that the distance should be *nominally* 280 mm, and not precisely 280 mm. A letter from the Alliance dated April 13, 2000 explains these differences in detail.

b. Are the specific provisions of S15.1.2.1(d) and (e) necessary?

S15.1.2.1(d) and (e) require that lower anchorage bars be made so that they can be connected to, over their entire 25 mm length, by the connectors of a child restraint system, and are 280 mm apart, measured from the center of the length of one bar to the center of the length of the other bar. The Alliance asked whether the requirements could be deleted as unnecessary. Our answer is yes. The requirements were adopted to ensure that the bars are sufficiently long and adequately spaced to couple effectively with the connectors of a child restraint system. These purposes can be achieved using the "child restraint fixture" (CRF) referenced in

[9] Transport Canada has announced it is considering proposing a regulation that would set strength requirements for tether anchorages at 15,000 N, and which would specify strength requirements for lower anchorages at the 11,000 N level.

[10] Some of the provisions in S9.1.1 of Standard No. 225 are identical to the ones in S15 addressed today. Our next final rule responding to pending issues from the petitions for reconsideration will address making changes to S9.1.1 of Standard No. 225 to reflect the changes made in today's document.

Standard No. 225, because the CRF rearward extensions are 280 mm apart and are 25 mm wide (see Figure 2 of Standard No. 225). Further, under S15.1.2.2, the vehicle must allow attachment of the CRF. Thus, the CRF's successful attachment to the anchorages would confirm compliance with the intention that the anchorages are long enough to attach a child restraint system and spaced an appropriate distance apart.

c. Can the lower bars be bolted into the vehicle?

S15.1.2.1(f) requires that the lower bars must be "an integral and permanent part of the vehicle or vehicle seat." The Alliance asked whether bars that were bolted into the vehicle would be considered permanent and integral, "just as bolted-in vehicle seats are permanent and integral?" Our answer is that anchorages that are bolted into the vehicle are considered permanent and integral, provided that they cannot be removed without the use of a tool, such as a screwdriver or wrench. This is consistent with the approach taken in S5.9 of Standard No. 213 with respect to the "permanent" attachment of the components to a child restraint that enable the child restraint to fasten to a LATCH system (see 64 FR 47584). S5.9(a) states, in part, that: "The components must be attached such that they can only be removed by use of a tool, such as a screwdriver." Specifying that the bars are permanently attached to the vehicle or vehicle seat such that they can only be removed by use of a tool, and specifying the type of tool, makes the requirement more objective while limiting how easily the bars can be removed. Limiting easy removal of the bars will increase the likelihood that the bars are in place when needed.

d. Is Horizontal Excursion of Point X on the Static Force Application Device (SFAD) Measured Relative to an Undeformed Part of the Vehicle Body?

S15.2.2 specifies that horizontal excursion of point X on the Static Force Application Device (SFAD) shall be not more than 125 mm, after preloading the device. The Alliance asked whether the horizontal excursion is measured relative to an undeformed part of the vehicle body. Our answer is yes.

The Alliance believes that movement of the vehicle body relative to the chassis frame during the Standard No. 225 static test is not relevant to child safety. Rather, the only relevant movement of the SFAD is movement relative to the body, particularly the front seats, etc., ahead of the SFAD. As such, for displacement limits, an undeformed reference frame should be used for measuring displacement in body-on-frame vehicles. The Alliance could not identify a reference point that would be appropriate for all body-on-frame vehicles, but instead has recommended that NHTSA incorporate language similar to that used in Standard No. 204, "Steering Control Rearward Displacement (49 CFR § 571.204)," which states that displacement should be measured "in relation to an undisturbed point on the vehicle."

We agree that it would be more appropriate to measure displacement relative to an undisturbed point on the vehicle body for the reasons provided by the Alliance. We have amended S15.2.2 and S9.4.1 to specify that horizontal excursion of point X is measured relative to an undisturbed point on the vehicle body.

e. Can the Marking Requirements of S15.4 Be Satisfied by Installable Guidance Fixtures?

S15.4 specifies that "at least one anchorage bar (when deployed for use), one guidance fixture, or one seat marking feature shall be readily visible to the person installing the CRF * * *" The guidance fixture may be permanent or nonpermanent ("installable," such as a snap-on accessory). The Alliance asked to add the parenthetical "(when installed)" after "guidance fixture". The petitioner suggested that the parenthetical should be added because NHTSA expressed an intent in the August 1999 final rule to incorporate the provisions of the draft ISO standard, and the ISO standard has been amended to include the parenthetical.

We will not add the parenthetical. The parenthetical suggests that manufacturers could satisfy marking requirements if they provided the guidance fixtures without actually installing them. We have concerns that consumers will fail to realize the existence of the installable guidance fixtures if the fixtures are not already attached to the bars at the point of sale. If the guidance fixtures are attached to the bars, the vehicle owner will either leave them attached or must handle them him- or herself in removing them. That attention to the fixtures will make it more likely that owners will realize that the fixtures exist and will remember to use them when they are needed. To clarify S15.4, we are adding a sentence that makes it clear that that section's marking and conspicuity requirements are met by either a guidance fixture that is installed in a vehicle when the vehicle is offered for sale to the consumer, or by one anchorage bar (when deployed for use) or one seat marking feature.

The Alliance suggested that the parenthetical should be added because NHTSA expressed an intent in the August 1999 final rule to incorporate the provisions of the draft ISO standard. NHTSA used the June 22, 1998 draft version of the ISO standard in developing the March 1999 final rule. The June 1998 version did not have the parenthetical "(when installed)" after "guidance fixture." ISO added the parenthetical in a subsequent version of the draft ISO standard. In any event, we do not believe that this aspect of the current draft ISO standard is crucial to making sure that LATCH systems can be installed as quickly as possible, or that installing snap-on guidance fixtures is so arduous that it would delay introduction of the systems in vehicles.

IV. Other Issues Relating to Installation and Testing of Anchorage Systems

The following amendments relate to the test procedures used in the interim to test tether anchorages and LATCH systems to the Canadian and draft ISO requirements, respectively. These changes are made in response to issues raised in petitions for reconsideration of the rules.

a. Adjusting the Seat Back When Using SFAD 2

The Alliance and Keiper asked in petitions for reconsideration of the March 1999 and August 1999 final rules whether a vehicle's seat back can be adjusted if the Static Force Application Device 2 (SFAD 2) cannot be attached to the lower anchorages with the seat back in its most upright position. In response, we have added a provision in today's rule that allows for adjustment of the seat back.

The March 1999 final rule provides for the adjustment of the vehicle's seat back when testing a tether anchor or a LATCH system at the seating position. The March rule had specified that, for the purpose of testing the lower bars or the tether anchorage of a LATCH system, the seat back is placed in its most upright position. Toyota stated:

> When the seat back is placed in its most upright position, in some vehicle seats the SFAD 2 cannot attach to the lower anchorages. In the real world, if a CRS [child restraint system] can not attach to the anchorages, we believe the vehicle owner will adjust the seat back such that the CRS can be attached. Therefore, Toyota requests that the agency amend S7(a) and S10(a) to allow for adjustment of the seat back for cases where the SFAD 2 can not be attached to the lower anchorages with the seat back in its most upright position.

To address Toyota's concern, in our August 1999 rule we amended S7(a) to add the following statements to the test procedure for testing tether anchorages:

When SFAD 2 is used in testing and cannot be attached to the lower anchorages with the seat back in this position, adjust the seat back as recommended by the manufacturer in its instructions for attaching child restraints. If no instructions are provided, adjust the seat back to the position that enables SFAD 2 to attach to the lower anchorages that is the closest to the most upright position.

Because the August 1999 rule did not address most testing issues concerning the lower anchors, we did not add the statement to S10(a). In their petitions for reconsideration of the August 1999 rule, the Alliance and Keiper, a vehicle seat manufacturer, asked us to add the statement to S10(a). We agree with the petitioners that the statement should be included in S10(a), and have added the provision to S10(a) for the same reasons we amended S7(a).

b. Locating a Tether Anchorage Using the 3-Dimensional Manikin

The Alliance included in its October 1999 petition for reconsideration a request for us to reconsider, for the second time, S6.2, "Location of the tether anchorage," to provide that the location of a tether anchorage is found using the design H-point for a seat position, rather than the actual H-point of the seat. The latter point is determined using a three-dimensional H-point machine (3-Dimensional seating manikin).

In the August 1999 rule, NHTSA denied the Alliance's request to use the design H-point to locate the tether anchor. The petitioner believed that—

Because of variability in position of the 3-Dimensional Seating Manikin when installed by different individuals and laboratories, the actual H-Point as determined with the Manikin will also vary in location with respect to the 'design H-Point' for that seat position. These variations also occur, in part, because of the poor fit of the Manikin in certain seating positions, and differences in trim materials (*e.g.*, cloth vs. leather). Because of this inherent variability, the NHTSA procedure does not objectively measure the proper position for a tether anchorage.

The petitioner emphasized that Canada uses the design H-point to locate the tether and argued that we should do the same.

We did so for several reasons. We believed compliance tests would be easier to conduct if we used the manikin. This was because using the manikin would allow us to forego consulting with manufacturers to determine the location of the design H-point. We also stated that using the manikin results in an H-point measurement that is more representative of the real world than the design H-point. Further, we disagreed with the petitioner's belief that there were variability problems using the manikin. We stated that we have not encountered problems using the manikin to determine the H-point of a seating position for positioning the test dummies in Standard No. 208 and 214 crash tests. We also stated that the manikin produces dummy positioning equivalent to that obtained by manufacturers using the device in their own test laboratories, and produces repeatable results when used repeatedly in the same vehicle. We stated that the position of the H-point obtained using the manikin is very close to the H-point obtained using the 2-dimensional template. We thus believed that, to the extent needed, manufacturers can compensate for and design around the small differences. However, we allowed manufacturers optional use of the design H-point during the period in which they are permitted by Standard No. 225 to meet the Canadian requirements for tether anchorages.

In its October 1999 petition for reconsideration, the Alliance reiterated that a round robin test program that its predecessor, the Motor Vehicle Manufacturer's Association (MVMA), undertook found that use of the 3-dimensional H-point machine did not achieve duplicate results when an identical vehicle was tested at different testing facilities. "Differences were as much as 2 inches in some cases." Further, the petitioner believed that the H-point machine could be used to determine the seating position of a crash test dummy, where some variability may be inconsequential, whereas using the machine for the determination of anchorage zones is a different matter. The petitioner stated:

A two inch (in all directions) uncertainty in H–Point location is not practicable when designing an anchorage location in a vehicle. Given the relatively close tolerance already specified for the anchorage zones, manufacturers cannot 'compensate for and design around the small differences' as the agency apparently believes.

We continue to believe that the H-point machine does not introduce excessive variability. However, on reconsideration, we have concluded that using the seating reference point (SgRP), as defined in 49 CFR 571.3, instead of the 3-dimensional machine, will accomplish the purposes of the standard and will remove potential controversy. "Seating reference point (SgRP)" is defined in 49 CFR 571.3 as:

the unique design H-point, as defined in SAE J1100 (June 1984), which:

(a) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(b) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SAE J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position.

Using the SgRP will be equivalent to using the "design H-point" referenced in the part of

Standard No. 225 that incorporates Transport Canada's requirements for tether anchorages. S6.2.1 of the standard will be revised to specify that the zone within which the tether anchorage must be located is defined with reference to the seating reference point. We note that the figures in the standard that depict the zones refer to the "H point." We will specify in the standard that for purposes of the figures, "H Point" is defined to mean seating reference point.

c. Reducing the Height of the Child Restraint Fixture

Standard No. 225 requires vehicles and LATCH systems to allow the child restraint fixture (CRF) specified in the standard to be placed inside the vehicle and attached to the lower anchorages. Several manufacturers petitioned for reconsideration of the March 1999 final rule asking uf to reduce the size of the CRF described in the standard because it was larger than many child restraint systems. We agreed in the August 1999 response to petitions for reconsideration and amended S9.3 to specify that, to facilitate installation of the CRF in a vehicle seat, the side and top frames of the CRF may be removed in order to place it in the vehicle. We added Figure 1A to the standard to illustrate the CRF with the side and top frames removed.

In its October 1999 petition for reconsideration of the August 1999 response, the Alliance petitioned to reduce height of the back of the CRF. The Alliance believed that the 720 mm height of the CRF is inappropriate for certain types of vehicles that have roof lines that drop sharply downward near the back (*e.g.*, sporty 2+2 passenger cars). In such vehicles, a 5th percentile female and most child restraints can fit into the rear seat, but the CRF, with a height of 720 mm, will not. The

petitioner suggested that NHTSA should reduce the height of the CRF to 550 mm.

NHTSA acknowledged in the August 1999 final rule responding to petitions for reconsideration that the CRF is larger than many child restraint systems, and that even if the CRF does not fit in a vehicle's rear seat, there will be child restraint models that will be small enough to fit. NHTSA is not opposed to reducing the height of the CRF to facilitate its installation in certain vehicles where the full-height CRF (720 mm) cannot fit. However, instead of adopting the 550 mm height suggested by the Alliance, NHTSA believes that 560 mm is more appropriate, as discussed below.

S5.2.1.1(a) of Standard No. 213 (49 CFR § 571.213) prescribes the minimum seat back height for child restraint systems according to the recommended weight ranges for those restraint systems. Under Standard No. 213, child restraints certified for use by children weighing more than 20 pounds (9 kilograms (kg)) but less than 40 pounds (18 kg) (typically forward-facing restraints or convertible restraints (which are adjustable so that they can be used rear-facing by an infant or a very young child, and forward-facing by a toddler)) must have a minimum seat back height of (510 mm) and restraints that are for use by children weighing more than 40 pounds (18 kg) must have a minimum seat back height of 22 inches (560 mm). We are revising S9.3 of Standard No. 225 to specify that, if necessary, the height of the CRF may be reduced to 560 mm. We believe that, with the height of the CRF reduced to 560 mm and disassembled as provided for in the August 1999 rule, the device will be able to fit in the space provided by all vehicle seats.

d. When Fitting the CRF Is Impracticable

S15.1.2.2 of Standard No. 225 (incorporating, for the interim, the draft ISO requirements for the lower anchorages of LATCH systems) specifies that the CRF is used to locate the lower bars. The CRF is placed against or near the vehicle seat back. With the CRF attached to the anchorages and resting on the seat cushion, S15.1.2.2 requires that the bottom surface of the CRF have attitude angles within certain limits (with angles measured relative to the vehicle horizontal, longitudinal and transverse reference planes). (Pitch must be 15° ± 10°, roll 0° ± 5°, and yaw 0° ± 10°.)[11]

In its petition for reconsideration of the March 1999 final rule, Porsche asked that NHTSA amend Standard No. 225 to exclude rear-engine, 4-seat passenger cars from the requirement that requires vehicles with not more than two rear designated seating positions to be equipped with a LATCH system at each rear seating position. The Porsche 911 is designed as a rear-engine, 4-seat vehicle, with the rear seats actually being two padded shells integrated into the body panel and separated by the middle tunnel used by the transmission. The backs of the seats are individually foldable to provide additional cargo space in case the compartment is not used for the transportation of passengers (only the seat padding folds, and not the actual seat structure as in typical foldable seats).

The contour of the 911's seat shell, along with the 120-mm and 70-mm spacing requirements, do not allow the CRF to be positioned in a stable or compliant manner. Given the shape of the seat/body shell, the spacing requirements in the regulation, and the interference of components behind the body shell, the lower anchorage points must be located so high in the shell that the positive pitch angle criteria (15 +/ −10 degrees) cannot be met, with the consequence that an installed child seat rests in an unstable, wobbly position with a negative pitch angle on the child seat bottom.

NHTSA has met with Porsche to view a model year 2000 Porsche 911 with prototype lower anchorages installed to visually examine the difficulties encountered as described above. (Summaries of the meetings have been placed in the docket.) Porsche has addressed numerous design alternatives presented by both NHTSA and Transport Canada in the meetings, and explained reasons underlying its conclusions that each alternative would not provide the necessary relief (*i.e.*, use of soft attachments, incorporation of foldable anchorages, and use of extra seatback padding).

We believe that incorporation of lower anchorages into the rear seating position of the Porsche 911 is impracticable, based on the following points:

—The proximity of the Porsche 911 body shell to the rear bucket seats, in conjunction with the spacing requirements for the lower LATCH anchorages in Standard No. 225, makes it impossible to locate the lower anchorages so that the CRF can meet the pitch, roll, and yaw requirements of the standard;

—Because the Porsche 911 is a rear engine vehicle, the anchorages cannot be moved and still meet the prescribed spacing requirements due to interference with transmission and suspension components located directly behind the rear seats; and

—There is not enough space behind the rear seating positions to accommodate foldable anchorages.

We conclude that LATCH systems should not be required in rear seating positions where it is impossible, due to interference with transmission and/or suspension components located directly behind the rear seats, to locate the lower anchorages so as to make it possible to meet the attitude angles of S15.1.2.2.[12] We believe that this decision will affect relatively few vehicles overall. We are not aware of any other model that cannot meet both spacing and pitch, roll, and yaw requirements.

We are not requiring Porsche in this situation to install a LATCH system in the front seat, unless it installs an on-off switch for the seat.[13] (Porsche has a system that turns off the air bag(s) for the front passenger seating position when used with Porsche's child restraint that is specially fitted with a latch plate device that fits into a bracket on the vehicle. The system does not turn off the air bag when the device is not used, as would happen when child restraints other than Porsche's are used in the vehicle.) However, we will require manufacturers of vehicles that do not have a LATCH system in a rear designated seating positions under the exclusion, and no air bag on-off switch, to provide a tether anchorage for the front passenger seating position. The tether anchorage is required to increase the likelihood that when a forward-facing child restraint is installed in the front passenger seating position, in a frontal crash the back of the child restraint will be retained as far as possible from injury-causing surfaces. We will require the tether anchorage in the vehicles beginning September 1, 2001, to provide adequate leadtime. If a

[11] A rulemaking document that we will be publishing later this year will be incorporating these pitch, roll and yaw requirements into the requirements of S9.

[12] We have concluded that the proposed wording from Porsche regarding "four seat rear engine vehicles" is overly broad and should not be adopted. In the future, it may be practicable for some four seat rear engine vehicles to have a LATCH system in a rear designated seating position.

[13] Vehicles are prohibited from having a LATCH system in a front passenger seating position in the absence of an on-off switch. The purpose of the prohibition is to reduce the likelihood that a child restraint system would be used in the front seat with an air bag. A LATCH system invites consumers to place a child restraint in the front seat and implies that the position is appropriate for children.

vehicle is equipped with an air bag on-off switch, there must be a LATCH system in a designated passenger seating position in the front seat (see S5(c)(1)(ii) and (2)(ii) of Standard No. 225).

e. Subjecting Tether Anchorages and Lower Anchorages to a Single Pull Test

The March 1999 final rule specified (S6.3.3) that the tether anchorage for a seating position need not meet requirements after the lower anchorages of the LATCH system of that position have met the standard's strength requirements. (We test a tether anchorage at a seating position that has the lower anchorages of a LATCH system by attaching the child restraint surrogate device (SFAD 2) to the lower anchorages and to the tether anchorage. Thus, in the tether anchorage test, both the lower anchorages and the tether anchorage are simultaneously stressed.) The Alliance asked that we also exclude tether anchorages from requirements if the lower bars at adjacent seating positions have been tested.

The petitioner is referring to the case where there are two LATCH systems on the outboard seating positions of a 3-passenger seat, and the inboard anchorages of these systems are approximately 280 mm apart, so that it would be possible to install a child restraint in the center position. The petitioner is concerned that if one of the outboard LATCH systems is tested, NHTSA could test the center position tether using the two inboard anchorages, one of which was already tested—and weakened—in the previous test. We agree that an anchorage should not be subjected to more than one pull test. Anchorages may be weakened and/or distorted in a previous test and may not perform as they would in an actual crash.

The March 1999 final rule specified (S9.4.2) that in the case of vehicle seat assemblies equipped with more than one LATCH system, we may choose to test each LATCH system simultaneously or sequentially. "Sequential testing may, at the agency's option, include testing one system to the requirement of S9.4.1(a) [forward pull] and another system to S9.4.1(b) [lateral pull]. * * *" The Alliance petitioned us to delete the provision allowing for sequential testing. The Alliance believes that the test of the first system could affect the results of a subsequent pull test to an adjacent LATCH system, and vice versa. The petitioner states that manufacturers cannot predict which test sequences would likely be most severe, so the sequential test requirement necessitates multiple development and compliance tests to investigate the interaction of various potential test sequences.

We have decided to delete the sequential test provision. We do not need the provision to test the second LATCH system in a subsequent test.

The March 1999 final rule also specified (S9.4.2) that the lower anchorage bars of a particular LATCH system need not meet further requirements after having met the forward-pull strength requirement or either lateral-pull requirement. The Alliance petitioned us to further specify that lower anchorages will not be subjected to further forces if they have been already subjected to a test assessing the strength of a tether anchorage. Petitioner believes that the tether anchorage test could weaken and/or distort the lower anchorage bars, so it would be inappropriate to subject the lower bars to further testing. It was an oversight not to have included the provision in S9.4.1. Thus, we have amended the section as suggested.

f. Simultaneously Testing LATCH Systems

In its petition for reconsideration of the March 1999 and August 1999 final rules, the Alliance asked us to consider amending the provisions in Standard No. 225 pertaining to the simultaneous testing of LATCH anchorages.

There are a number of references in Standard No. 225 to simultaneous testing. S9.4.2 specifies, inter alia, that where vehicle seat assemblies are equipped with more than one LATCH system, the LATCH systems may be tested simultaneously. There is a comparable requirement in S15.3.3 under the option that permits manufacturers to meet the draft ISO requirements for an interim period. If anchorages for more than one LATCH system are installed in a vehicle seat assembly and not directly into the vehicle structure, the LATCH systems shall be tested simultaneously. A "simultaneously tested" provision is also found in S6.3.3 for testing tether anchorages to the 15,000 N strength requirement, and in S6.3.4.3 for testing tether anchorages for an interim period to the Canadian strength requirements.

The Alliance addressed the issue of simultaneous testing of multiple anchorages in a seating row in its April 1999 petition for reconsideration. The Alliance believed that the provision was too broad because it required simultaneous testing of anchorage systems even when the width of a vehicle seat made it unlikely that all anchorage systems would be simultaneously used. The Alliance stated:

> In North America, because most child restraints are expected to be attached by webbing rather than by rigid attachments, there is added flexibility to install child restraints side-by-side. Therefore, the Alliance suggests that simultaneous testing be specified if the lower anchors for adjacent anchor systems are 120 mm or more apart, measured laterally between the lateral centers of the anchor bars.

Based on the above, the Alliance petitioned the agency to amend S9.4.2 to "clarify that simultaneous testing applies [when testing LATCH systems] only when anchor forces from multiple child restraint anchorage systems are applied to a single vehicle seat assembly, apply only if there is 120 mm or more lateral spacing between adjacent anchors for adjacent anchorage systems, and do not apply when forces are transferred directly to the vehicle structure."

In a letter to the agency on April 3, 2000, DaimlerChrysler also suggested that S9.4.2 should be interpreted not to require simultaneous testing of three LATCH systems on a vehicle seat if the seat row is not wide enough to allow three child restraints to be installed at the same time. DaimlerChrysler said that it has measured the widths of conventional child restraints and has developed a method by which the agency could determine whether more than two child restraints could simultaneously fit on a vehicle seat. Based on measurements of a range of available child restraints, DaimlerChrysler contended that a center-to-center distance between adjacent seating positions of at least 400 mm is necessary to install child restraints in adjacent seating positions properly. The width of the SFAD 1 and SFAD 2 devices (280 mm and 320 mm, respectively) are significantly narrower than the representative child restraints identified by DaimlerChrysler, and thus, DaimlerChrysler believes, the SFAD devices should not be used to determine whether adjacent seating positions should be subjected to simultaneous testing by NHTSA.

Based on its analysis, DaimlerChrysler recommended that adjacent seating positions should only be subject to simultaneous testing if two child restraints, 400 mm wide, can be properly installed side-by-side. To determine this, DaimlerChrysler recommended adoption of the following procedure:

(a) Determine the geometric center of the seating position, as the midpoint between the geometric centers of the lower anchorages (bars) of the seating position.

(b) Construct a vertical longitudinal plane intersecting the midpoint of each seating position.

(c) Measure the distance between the midpoints of adjacent seating positions.

(d) Do not test adjacent positions simultaneously if the distance between the midpoints of adjacent seating positions is less than 400 mm.

The approaches recommended in the April 1999 Alliance petition for reconsideration and in the April 2000 DaimlerChrysler request for interpretation—while different—yield the same minimum spacing between anchorages required for testing multiple child restraints in a seating row simultaneously. NHTSA concurs that where there are seat configurations where three adjacent seating positions are equipped with lower anchorages, but where it will be physically impossible to have three child restraints properly installed in these seating positions simultaneously, there is no need to test all three LATCH systems (or tether anchorages) simultaneously. We are adopting DaimlerChrysler's approach, and not the Alliance's, because it is more clearly understandable than the Alliance's approach for measuring the lateral spacing between lower anchorages for adjacent anchorage systems.

g. Requirement To Identify Vehicles Certified to the Vehicle Requirements During the Phase-In

DaimlerChrysler petitioned for reconsideration of the requirement in the March 1999 final rule that during the tether anchor and LATCH system phase-in periods, manufacturers must, upon request from NHTSA, provide information identifying the vehicles that have been certified as complying with Standard No. 225's requirements (S13.1 and S14.1 of Standard No. 225; § 596.5 of Part 596). The manufacturer also objected to the rule's provision that the manufacturer's designation of a vehicle as a certified vehicle is irrevocable (the "irrevocability" provision).

We explained in the rule that, where a safety standard provides manufacturers a phase-in period for a requirement to take effect, the agency needs to know whether a vehicle has been certified as meeting the standard when it selects a vehicle to test. A phased-in requirement typically includes a reporting requirement for manufacturers to identify to NHTSA which vehicles have been certified to the standard, but the report is made after the end of a production year. To enable NHTSA to identify which vehicles have been certified as part of the phase-in fleet during the production year, upon request, manufacturers must identify the vehicles during the production year that have been certified as complying with Standard No. 225. In addition, the standard precludes a manufacturer—when confronted with an apparent noncompliance'from attempting to avoid a recall or civil penalty by asserting that it had satisfied the percentage phase-in requirements with other vehicle models. We believed then, and continue to do so now, that a manufacturer should be responsible for assuring that its certification of its vehicles is accurate and that consequences must attach if it fails to do so. In addition, we noted that such a response by a manufacturer would create obvious difficulties for the agency in managing its resources for carrying out its enforcement responsibilities.

DaimlerChrysler stated that the reporting requirement and the irrevocability provision serve no safety function, are impracticable and overly burdensome, and should be deleted. With respect to the irrevocability clause, the petitioner stated that:

> When manufacturers plan to meet phase-in requirements, they consider which vehicle lines should comply with the regulation first. In doing so, to insure compliance, manufacturers plan to meet the phase-in requirement by including a percentage margin. During the production year, unforeseeable circumstances arise, such as supplier issues and production line issues, which make parts unavailable. Additionally, there are times when manufacturers comply with a phase-in by implementing running changes. These plans can be delayed, such that the vehicle may not phase-in until later than originally planned. If, in either of these instances, the manufacturer had made a prior declaration of vehicle compliance to the agency, they could be subject to non-compliance penalties *even though their annual percentage of complying vehicles still meets or exceeds the minimum required.* [Emphasis in text.]

DaimlerChrysler's contention misconstrues the language of the standard. Manufacturers were not required to identify in advance those vehicle *models* that would comply with the requirements during the phase-in; they were only required to identify particular vehicles that were so certified. Thus, any changes due to "unforeseen circumstances" or running changes implemented during the model year would not cause any certification difficulties. A manufacturer would simply advise the agency which particular vehicles (*e.g.*, those manufactured before a specific date) were certified as complying with the requirements of the standard. Accordingly, the provisions in S13.1, S14.1 and in 49 CFR § 596.5 are retained.

V. Request to Reconsider Owner's Manual Requirement

The March 1999 final rule included a requirement that vehicle owner's manuals must have step-by-step instructions, including diagrams, for properly attaching a child restraint to the lower anchors and tether anchor of a LATCH system. The Alliance asked in its April 1999 petition for reconsideration that we delete the requirement. The Alliance stated that the requirement calls for too much detail, and that vehicle manufacturers will not know all the different types of child restraint attachments that may be on the market.

Our August rule granted this request in part and denied it in part. We agreed that vehicle manufacturers may find it difficult to anticipate how different types of child restraints will be designed to attach to the lower anchor bars of a vehicle's LATCH system, and thus we deleted the requirement for detailed instructions about that issue. However, we decided to retain the requirement that vehicle owner's manuals provide detailed instructions on attaching a child restraint to a tether anchor. This was because Standard No. 213 specifies the configuration and geometry of the tether hook. Thus, we determined, vehicle manufacturers can develop their written instructions with the tether hook design in mind.

The Alliance's October 1999 petition for reconsideration asked for reexamination of this decision based on leadtime. The Alliance asked that the effective date for the requirement on detailed instructions on the tether be deferred one year from September 1, 1999, "which coincides with the date when the tether anchorage requirement becomes effective for 100% of passenger cars, and the applicable MPVs, trucks and buses."

The request is denied. The leadtime for the requirement was adequate, because manufacturers generally order owner's manuals three to four months (in June or July) before the start of the new model year of production. (See March 9, 1999 final rule amending the consumer information regulations to require a new rollover warning label.) The information is important to increase the likelihood that parents will attach a top tether on the child restraint system. A tethered child restraint offers improved protection against head impact in a crash.

VI. Issues Relating to Small Manufacturers and Manufacturers With Temporary Exemptions

a. Alternative Phase-In Schedule for Small Manufacturers

In its April 1999 petition for reconsideration of the March 1999 final rule, the Coalition of Small Volume Automobile Manufacturers (COSVAM) stated that the March 1999 rule should provide an alternative phase-in for small manufacturers. COSVAM requested that a company with only one carline should be permitted to comply with the requirements for lower anchors beginning September 1, 2002, rather than September 1, 2000. COSVAM indicated that its members produce fewer than 5,000 vehicles per year worldwide.

We are granting the request to provide small manufacturers more flexibility to install LATCH systems. We are providing that vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not required to meet the requirements for lower anchors until September 1, 2002.

b. Manufacturers With Temporary Exemption From Air Bag Requirement

S4 of Standard No. 225 generally requires vehicles without any rear designated seating positions to be equipped with a tether anchorage at each front passenger seating position. In those cases in which such a vehicle is equipped with an air bag on-off switch in accordance with S4.5.4 of Standard No. 208 (*i.e.*, the vehicle either has no rear seating positions, or rear seating positions that are too small to accommodate a rear-facing child restraint), the vehicle must be equipped with a LATCH system in a front designated passenger seating position. If the vehicle does not have an on-off switch, the manufacturer is prohibited from equipping the front passenger seating position with a LATCH system.

In a petition for reconsideration, Global Vehicle Services Corporation (Global) asks about the application of Standard No. 225 to vehicle manufacturers that have received a Part 555 temporary exemption from the air bag requirements of Standard No. 208. As a result of such a temporary exemption, exempted vehicles might not be equipped with a front passenger seat air bag.

There are currently four vehicle manufacturers that have been granted exemptions until March 31, 2001, from the air bag requirements of Standard No. 208. Three of these manufacture two-seat convertibles, while the fourth manufactures a sport utility vehicle.

For the purposes of whether a LATCH should be installed in the front seat of the vehicles, we have considered several factors. First is whether there is a rear seating position in which to place a LATCH system. If the vehicle has a rear designated seating position, a LATCH should be placed there, regardless of whether there is an air bag for the front passenger seating position. This is because children are safer seated in a rear seat than in the front seat, regardless of whether an air bag is installed. Second, if there is no rear seat in which to place a child, the question of whether a LATCH system should be at the front passenger designated seating position is answered by whether that position is equipped with an air bag. If an air bag is present that cannot be turned off, that seating position is unsuitable for a LATCH system.

We consider a vehicle with no rear seat whose front seating position does not have any air bag (because of a temporary exemption) analogous to a vehicle with no rear seat whose front seating position is equipped with an air bag and an air bag on-off switch. In both vehicles, the front passenger seating position should be equipped with a LATCH system to fully realize the benefits associated with this improved method of securing child restraints. Thus, we have concluded that vehicles with no rear designated seating positions and no passenger seat air bag due to a temporary exemption must have a LATCH system installed at a front passenger seating position. However, convertibles need have only the lower anchorages of a LATCH system, because they would remain excluded from the tether requirements of Standard No. 225 (see S5(a)). We will require the LATCH system in such vehicles beginning September 1, 2002. An earlier effective date would not provide adequate leadtime to meet the requirement.

A vehicle with a rear seat that meets the conditions in S4.5.4.1(b) of Standard No. 208 whose front seating position does not have any air bag (because of a temporary exemption) is analogous to a vehicle with a small rear seat whose front seating position is equipped with an air bag and an air bag on-off switch. In both vehicles, a LATCH system in a front passenger seating position is needed to fully realize the benefits associated with this improved method of securing child restraints. Thus, for both vehicles, we are requiring a LATCH system in a front passenger seating position in place of one of the LATCH systems required to be installed in the rear seat. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of the standard.

VII. Reasons for the Effective Date of This Rule

Section 30111(d) of the motor vehicle safety statute (Title 49 U.S.C., Chapter 301) provides that a safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed, unless we find, for good cause shown, that a different effective date is in the public interest and publish the reasons for the finding. The effective date for this final rule is 30 days after publication. Today's rule generally does not impose new requirements on manufacturers but extends alternative strength requirements for an interim period. We are delaying the more stringent requirements to allow manufacturers more certainty in designing future vehicles. To the extent that this rule places new requirements on some manufacturers (*e.g.*, manufacturers of vehicles that do not have air bags pursuant to a temporary exemption under Part 555), this rule provides two years leadtime for the manufacturers to comply. This rule also clarifies some requirements and test procedures that were specified in the March 1999 final rule and that become mandatory beginning September 1, 2000. Because of these considerations, it is in the public interest for the effective date for today's rule to be less than 180 days after issuance of this rule.

VIII. Rulemaking Analyses and Notices

a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." We have considered the impacts of this rulemaking action and have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. We have further determined that the effects of this rulemaking are sufficiently minimal that preparation of a full preliminary regulatory evaluation is not warranted. We believe that manufacturers will be minimally affected by this rulemaking because generally it does not change the manufacturers' responsibilities to install tether anchorages and LATCH systems on the compliance dates of the March 5, 1999 final rule. The rule instead extends the period during which manufacturers

may meet, at the manufacturer's option, alterative strength requirements. This rule also clarifies some requirements and test procedures, but overall does not impose new test burdens. Because the amendment is permissive in nature, there are no costs associated with it.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, almost all of which are not small business. Even if there are motor vehicle manufacturers that qualify as small entities, this rule will not have a significant economic impact on them because these amendments are generally permissive in nature, and have no costs associated with them. Accordingly, the agency has not prepared a regulatory flexibility analysis.

c. Executive Order 13132 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Accordingly, NHTSA has determined that this final rule does not contain provisions that have federalism implications or that preempt State law.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule does not impose any unfunded mandates as defined by that Act.

e. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA)
(Public Law 104–113),

all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

In developing Standard No. 225, we searched for standards developed or adopted by voluntary consensus standards bodies and found that the only standard for a child restraint anchorage system was the draft ISO standard.

This final rule extends the period during which manufacturers may meet the specifications in the draft ISO standard. The International Organization for Standardization (ISO) is a worldwide voluntary federation of ISO member bodies.

f. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

g. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

h. Paperwork Reduction Act

This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Public Law 104–13). We noted in the March 1999 final rule that the phase-in production reporting requirements described in that rule are considered to be information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. NHTSA will be submitting a clearance request to OMB for review and clearance in this summer.[14]

[14] Pursuant to the Paperwork Reduction Act and OMB's regulations at 5 CFR 1320.5(b)(2), NHTSA informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The agency's current OMB control numbers are displayed in NHTSA's regulations at 49 CFR Part 509, *OMB Control Numbers for Information Collection Requirements.*

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.225 is amended by:
a. Revising S4.5 introductory text;
b. Adding S5(c)(1)(iii), S5(c)(2)(iii) and S5(e);
c. Revising S6.2, S6.2.1, S6.2.2.1 introductory text, S6.3, S6.3.3, S6.3.4.1 introductory text, S6.3.4.3, S9, and S9.3(c);
d. Adding S9.4.1.2,
e. Revising S9.4.2 and S10(a);
f. Revising S14.3 in its entirety;
g. Revising S15 and S15.1.2.1(f);
h. Removing and reserving S15.1.2.1(d) and S15.1.2.1(e);
i. Revising S15.2.2, S15.3.3, and S15.4; and
j. Adding Figure 20 after Figure 19.
The revised and added text and figure read as follows:

§ 571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S4.5 As an alternative to complying with the requirements of S4.2 through S4.4 that specify the number of tether anchorages that are required in a vehicle and the designated seating positions for which tether anchorages must be provided, a vehicle manufactured from September 1, 1999 to August 31, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of this S4.5. This alternative ceases to be available on and after September 1, 2004. A tether anchorage conforming to the requirements of S6 must be installed—

* * * * *

S5. *General exceptions.*

* * * * *

(c)(1) * * *

(iii) For vehicles manufactured on or after September 1, 2002, each vehicle

that does not have a rear designated seating position, and does not have an air bag installed at front passenger designated seating positions pursuant to a temporary exemption granted by NHTSA under 49 CFR Part 555, must have a child restraint anchorage system installed at a front passenger designated seating position. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of this standard.

* * * * *

(c)(2) * * *

(iii) For vehicles manufactured on or after September 1, 2002, each vehicle that has a rear designated seating position and meets the conditions in S4.5.4.1(b) of Standard No. 208 (§ 571.208), and does not have an air bag installed at front passenger designated seating positions pursuant to a temporary exemption granted by NHTSA under 49 CFR Part 555, must have a child restraint anchorage system installed at a front passenger designated seating position in place of one of the child restraint anchorage systems that is required for the rear seat. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of this standard.

* * * * *

(e) A vehicle with a rear designated seating position for which interference with transmission and/or suspension components prevents the location of the lower bars of a child restraint anchorage system anywhere within the zone described by S9.2 or S15.1.2.2(b) such that the attitude angles of S15.1.2.2(a) could be met, is excluded from the requirement to provide a child restraint anchorage system at that position. However, except as provided elsewhere in S5 of this standard, for vehicles manufactured on or after September 1, 2001, such a vehicle must have a tether anchorage at a front passenger designated seating position.

* * * * *

S6.2 *Location of the tether anchorage.* A vehicle manufactured on or after September 1, 1999 and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of S6.2.1 or S6.2.2. Vehicles manufactured on or after September 1, 2004 must meet the requirements of S6.2.1 of this standard.

S6.2.1 Subject to S6.2.1.1 and S6.2.1.2, the part of each tether anchorage that attaches to a tether hook must be located within the shaded zone shown in Figures 3 to 7 of this standard of the designated seating position for which it is installed. The zone is defined with reference to the seating reference point (see § 571.3). (For purposes of the figures, "H Point" is defined to mean seating reference point.)

* * * * *

S6.2.2.1 In passenger cars and multipurpose passenger vehicles manufactured before September 1, 2004, the portion of each user-ready tether anchorage to which a tether strap hook attaches may be located within the shaded zone shown in Figures 8 to 11 of the designated seating position for which it is installed, with reference to the shoulder reference point of a template described in section 3.1 of SAE Standard J826 (June 1992) (incorporation by reference; see § 571.5), if:

* * * * *

S6.3 *Strength requirements for tether anchorages.* Subject to S6.3.2, a vehicle manufactured on or after September 1, 1999, and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of S6.3.1 or S6.3.4. Subject to S6.3.2, vehicles manufactured on or after September 1, 2004 must meet the requirements of S6.3.1 of this standard.

* * * * *

S6.3.3 *Provisions for simultaneous and sequential testing.*

(a) In the case of vehicle seat assemblies equipped with more than one tether anchorage system, the force referred to in S6.3.1 and S6.3.2 may, at the agency's option, be applied simultaneously to each of those tether anchorages. However, that force may not be applied simultaneously to tether anchorages for any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S6.3.3(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) A tether anchorage of a particular child restraint anchorage system will not be tested with the lower anchorages of that anchorage system if one or both of those lower anchorages have been previously tested under this standard.

* * * * *

S6.3.4.1 In a passenger car manufactured before September 1, 2004, every user-ready tether anchorage in a row of designated seating positions must, when tested, subject to subsection S6.3.4.2, withstand the application of a force of 5,300 N, which force must be—

* * * * *

S6.3.4.3 *Provisions for simultaneous and sequential testing.*

(a) In the case of vehicle seat assemblies equipped with more than one tether anchorage system, the force referred to in S6.3.4, 6.3.4.1 or S6.3.4.2 may, at the agency's option, be applied simultaneously to each of those tether anchorages. However, that force may not be applied simultaneously to tether anchorages for any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S6.3.4.3(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) A tether anchorage of a particular child restraint anchorage system will not be tested with the lower anchorages of that anchorage system if one or both of those lower anchorages have been previously tested under this standard.

* * * * *

S9 *Requirements for the lower anchorages of the child restraint anchorage system.* As an alternative to complying with the requirements of S9, a vehicle manufactured on or after September 1, 1999 and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements in S15 of this standard. Vehicles manufactured on or after September 1, 2004 must meet the requirements of S9 of this standard.

* * * * *

S9.3 * * *

(c) To facilitate installation of the CRF in a vehicle seat, the side, back and top frames of the CRF may be removed for installation in the vehicle, as indicated in Figure 1A of this standard. If necessary, the height of the CRF may be 560 mm.

* * * * *

S9.4.1.2 The amount of displacement is measured relative to an undisturbed point on the vehicle body.

* * * * *

S9.4.2 *Provisions for simultaneous and sequential testing.*

(a) In the case of vehicle seat assemblies equipped with more than one child restraint anchorage system, the lower anchorages may, at the agency's option, be tested simultaneously. However, forces may not be applied simultaneously for any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S9.4.2(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) The lower anchorages of a particular child restraint anchorage system will not be tested if one or both of the anchorages have been previously tested under this standard.

* * * * *

S10. *Test conditions for testing the lower anchorages.* * * *

(a) Adjust vehicle seats to their full rearward and full downward position and place the seat backs in their most upright position. When SFAD 2 is used in testing and cannot be attached to the lower anchorages with the seat back in this position, adjust the seat back as recommended by the manufacturer in its instructions for attaching child restraints. If no instructions are provided, adjust the seat back to the position closest to the upright position that enables SFAD 2 to attach to the lower anchorages.

* * * * *

S14. *Lower anchorage phase-in requirements for vehicles manufactured on or after September 1, 2000 and before September 1, 2002.*

* * * * *

S14.3 *Alternative phase-in schedules.*

(a) *Final-stage manufacturers and alterers.* A final-stage manufacturer or alterer may, at its option, comply with the requirements set forth in S14.3(a)(1) and (2) instead of the requirements set forth in S14.1.1 through S14.1.2.

(1) Vehicles manufactured on or after September 1, 2000 and before September 1, 2002 are not required to comply with the requirements specified in this standard.

(2) Vehicles manufactured on or after September 1, 2002 must comply with the requirements specified in this standard.

(b) *Small volume manufacturers.* Vehicles manufactured on or after September 1, 2000 and before September 1, 2002 that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not required to provide the lower anchorages specified in this standard.

* * * * *

S15 *Alternative to complying with the requirements of S9.* As an alternative to complying with the requirements of S9, a vehicle manufactured on or after September 1, 1999 and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements in S15 of this standard. Vehicles manufactured on or after September 1, 2004 must meet the requirements of S9 of this standard.

* * * * *

S15.1.2 *Anchorage dimensions and location.*

S15.1.2.1 The lower anchorages must consist of two bars that—

* * * * *

(d) [Reserved]

(e) [Reserved]

(f) Are permanently attached to the vehicle or vehicle seat such that they can only be removed by use of a tool, such as a screwdriver or wrench.

S15.2.2 Horizontal excursion of point X during application of the 8 kN and 5 kN forces must be not more than 125 mm, after preloading the device. The amount of displacement is measured relative to an undisturbed point on the vehicle body.

* * * * *

S15.3.3 *Provisions for simultaneous and sequential testing.*

(a) If anchorages for more than one child restraint anchorage system are installed in the vehicle seat assembly and not directly into the vehicle structure, the forces described in S15.3 may, at the agency's option, be applied simultaneously to SFADs engaged with the anchorages. However, that force may not be applied simultaneously to SFADs engaged at any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S15.3.3(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) The lower anchorages of a particular child restraint anchorage system will not be tested if one or both of the anchorages have been previously tested under this standard.

* * * * *

S15.4 *Marking and conspicuity of the lower anchorages.* At least one anchorage bar (when deployed for use), one guidance fixture, or one seat marking feature shall be readily visible to the person installing the CRF. If guidance fixtures are used to meet this requirement, the fixture(s) (although removable) must be installed. Storable anchorages shall be provided with a tell-tale or label that is visible when the anchorage is stored.

* * * * *

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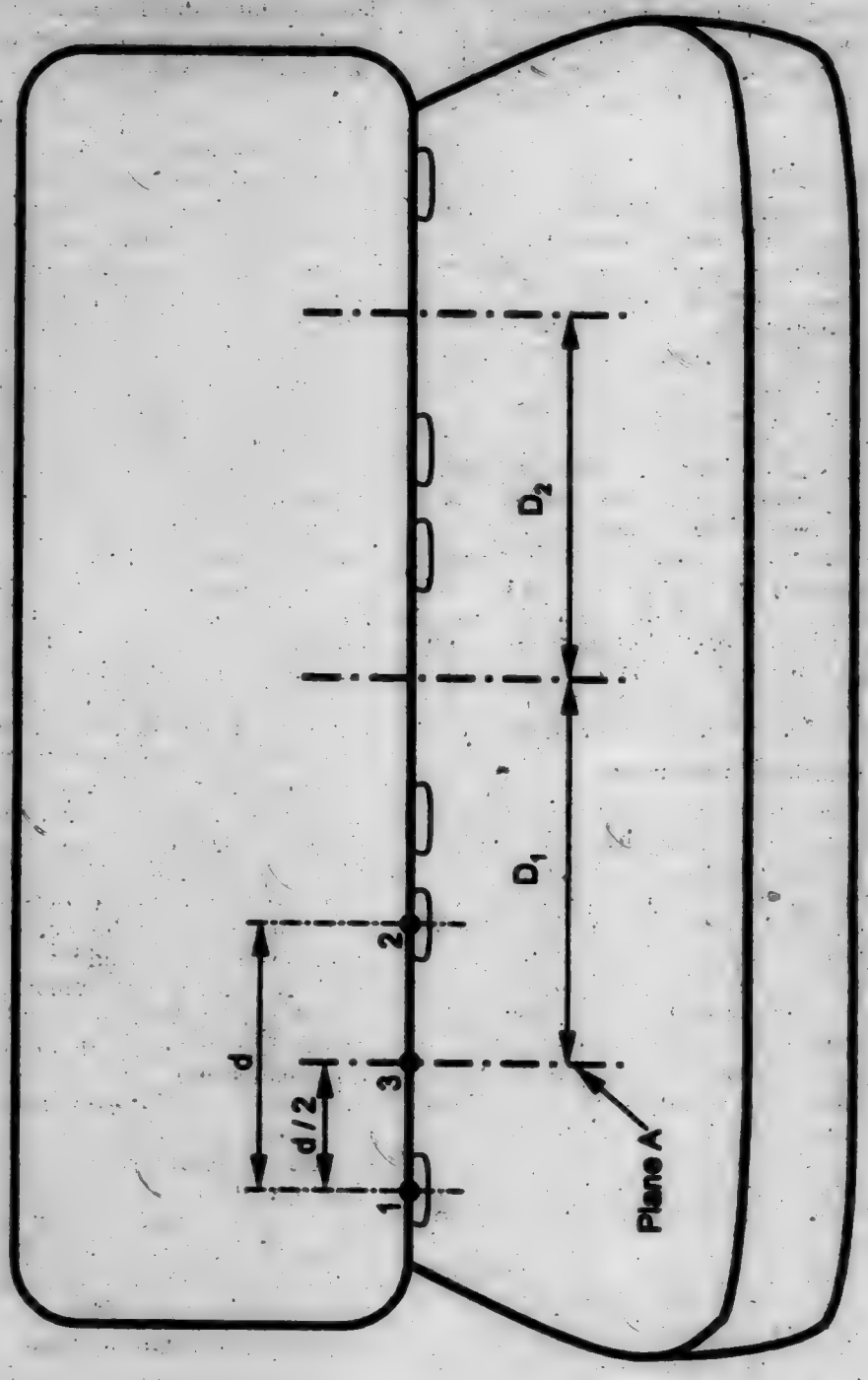

d = center to center distance between lower anchorages for a given seating position (nominally 280 mm).

D = distance between vertical longitudinal planes located midway between the anchorages for a given seating position.

Figure 20 -- Measurement of Distance Between Adjacent Seating Positions for Use in Simultaneous Testing

Issued on: July 25, 2000.

Rosalyn G. Millman,

Deputy Administrator.

[FR Doc. 00–19123 Filed 7–25–00; 5:00 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE91

Endangered and Threatened Wildlife and Plants; Final Rule To List the Short-Tailed Albatross as Endangered in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act (Act) of 1973, as amended, we, the U.S. Fish and Wildlife Service (Service), extend endangered status for the short-tailed albatross (*Phoebastria albatrus*) to include the species' range within the United States. As a result of an administrative error in the original listing, the short-tailed albatross is currently listed as endangered throughout its range except in the United States. Short-tailed albatrosses

range throughout the North Pacific Ocean and north into the Bering Sea during the nonbreeding season; breeding colonies are limited to two Japanese islands, Torishima and Minami-kojima. Originally numbering in the millions, the current worldwide population of breeding age birds is approximately 600 individuals and the worldwide total population is approximately 1,200 individuals. There are no breeding populations of short-tailed albatrosses in the United States, but several individuals have been regularly observed during the breeding season on Midway Atoll in the northwestern Hawaiian Islands. Current threats to the species include destruction of breeding habitat by volcanic eruption or mud or land slides caused by monsoon rains, and demographic or genetic vulnerability due to low population size and limited breeding distribution. Longline fisheries, plastics ingestion, contaminants, and airplane strikes may also be factors affecting the species' conservation. This rule implements the Federal protection and recovery provisions provided by the Act for individuals when they occur in the United States.

DATES: This rule is effective August 30, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–62, Anchorage, AK 99501 (telephone 907/271–2888).

FOR FURTHER INFORMATION CONTACT: Greg Balogh, Endangered Species Biologist, at the above address or telephone 907/271–2778.

SUPPLEMENTARY INFORMATION:

Background

Taxonomy

George Steller made the first record of the short-tailed albatross in the 1740s. The type specimen for the species was collected offshore of Kamchatka, Russia, and was described in 1769 by P.S. Pallas in *Spicilegia Zoologica* (American Ornithologists' Union (AOU) 1997). In the order of tube-nosed marine birds, Procellariiformes, the short-tailed albatross is classified within the family Diomedeidae. Until recently, it had been assigned to the genus *Diomedea*. Following the results of genetic studies by Nunn *et al.* (1996), the family Diomedeidae was arranged in four genera. The genus *Phoebastria*, North Pacific albatrosses, now includes the short-tailed albatross, the Laysan albatross (*P. immutabilis*), the black-footed albatross (*P. nigripes*), and the waved albatross (*P. irrorata*)(AOU 1998).

Description

The short-tailed albatross is a large pelagic bird with long narrow wings adapted for soaring just above the water surface. The bill, which is disproportionately large compared to the bills of other northern hemisphere albatrosses, is pink and hooked with a bluish tip, with external tubular nostrils, and a thin but conspicuous black line extending around the base. Adult short-tailed albatrosses are the only North Pacific albatross with an entirely white back. The white head develops a yellow-gold crown and nape over several years. Fledged juveniles are dark brown-black, but soon develop the pale bills and legs that distinguish them from black-footed and Laysan albatrosses (Tuck 1978, Roberson 1980).

Historical Distribution

The short-tailed albatross once ranged throughout most of the North Pacific Ocean and Bering Sea, with known nesting colonies on the following islands: Torishima in the Seven Islands of Izu Group in Japan; Mukojima, Nishinoshima, Yomeshima, and Kitanoshima in the Bonin Islands of Japan; Kita-daitojima, Minami-daitojima, and Okino-daitojima of the Daito group of Japan; Senkaku Retto of southern Ryukyu Islands of Japan, including Minami-kojima, Kobisho, and Uotsurijima; Iwo Jima in the western Volcanic Islands (Kazan-Retto) of Japan; Agincourt Island, Taiwan; and Pescadore Islands, of Taiwan, including Byosho Island (Hasegawa 1979, King 1981). Other undocumented nesting colonies may have existed. For example, recent observations, together with records from the 1930s, suggest that the short-tailed albatross may have once nested on Midway Atoll. However, no confirmed historical breeding accounts are available for this area. Throughout this rule when we refer to Midway Atoll, we mean the complex of islets that occur within Midway Atoll that includes Sand Islet, Eastern Islet, and Spit Islet. Midway Atoll is located east of Kure Atoll, at the northwestern end of the Hawaiian Archipelago. A subset of atolls, islands, and reefs located north and west of the main Hawaiian Islands (Hawaii Island to Kauai Island) is known as the northwestern Hawaiian Islands (Nihoa Island to Kure Atoll).

Early naturalists, such as Turner and Chamisso, believed that short-tailed albatrosses bred in the Aleutian Islands because high numbers of birds were seen nearshore during the summer and fall months (Yesner 1976). Alaska Aleut lore referred to local breeding birds, and the explorer O. Von Kotzebue reported that Natives harvested short-tailed albatross eggs. However, while adult bones were found in Aleut middens (refuse heaps), fledgling remains were not recorded in more than 400 samples (Yesner 1976). Yesner (1976) believed that short-tailed albatrosses did not breed in the Aleutians but were harvested offshore during the summer, nonbreeding season. Given the midwinter constraints on breeding at high latitudes and the known southerly location of winter breeding, it is highly unlikely that these birds ever bred in Alaska (Sherburne 1993).

Additional historical information on the species' range away from known breeding areas is scant. Evidence from archeological studies in middens suggests that hunters in kayaks had access to an abundant nearshore supply of short-tailed albatrosses from California north to St. Lawrence Island as early as 4,000 years ago (Howard and Dodson 1933, Yesner and Aigner 1976, Murie 1959). In the 1880s and 1890s, short-tailed albatross abundance and distribution during the nonbreeding season was generalized by statements such as "more or less numerous" in the vicinity of the Aleutian Islands (Yesner 1976). They were reported as highly abundant around Cape Newenham, in western Alaska (DeGange 1981), and Veniaminof regarded them as abundant near the Pribilof Islands (Gabrielson and Lincoln 1959). In 1904, they were considered "tolerably common on both coasts of Vancouver Island, but more abundant on the west coast" (Kermode in Campbell *et al.*, 1990).

Historical Population Status

At the beginning of the 20th century, the species declined in population numbers to near extinction, primarily as a result of hunting at the breeding colonies in Japan. Albatross were killed for their feathers and various other body parts. The down feathers were used for quilts and pillows, and wing and tail feathers were used for writing quills; their bodies were processed into fertilizer and rendered into fat, and their eggs were collected for food (Austin 1949).

Pre-exploitation worldwide population estimates of short-tailed albatrosses are not known; the total number of birds harvested may provide the best estimate, since the harvest drove the species nearly to extinction. Between approximately 1885 and 1903, an estimated five million short-tailed

albatrosses were harvested from the breeding colony on Torishima (Yamashina in Austin 1949), and harvest continued until the early 1930s, except for a few years following the 1903 volcanic eruption. One of the residents on the island (a schoolteacher) reported 3,000 albatrosses killed in December 1932 and January 1933. By 1949, there were no short-tailed albatrosses breeding at any of the historically known breeding sites, including Torishima, and the species was thought to be extinct (Austin 1949).

The species persisted, however, and in 1950, the chief of the weather station at Torishima, Mr. M. Yamamoto, reported nesting of the short-tailed albatross (Tickell 1973, 1975). By 1954 there were 25 birds and at least 6 pairs (Ono 1955). These were presumably birds that had been wandering the North Pacific during the final several years of slaughter. Since then, as a result of habitat management projects, stringent protection, and the absence of any significant volcanic eruption events, the population has gradually increased. The average growth of the Torishima, Tsubamesaki colony, between 1950 and 1977 was 2.5 adults per year; between 1978 and 1991 the average population increase was 11 adults per year. An average annual population growth of at least 7.8 percent per year (Hasegawa 1982, Cochrane and Starfield in prep.) has resulted in a continuing increase in the breeding population to an estimated 388 breeding birds on Torishima in 1997–1998 (H. Hasegawa, Toho University, Chiba, Japan, pers. comm. 1999). Torishima is under Japanese Government ownership and management and is managed for the conservation of wildlife. At this time, there is no evidence that the breeding population on Torishima is limited by the number of nest sites; therefore, ongoing management efforts focus on maintaining high rates of breeding success.

Two primary activities have been undertaken to enhance breeding success on Torishima. First, erosion control efforts at the Tsubamesaki colony have improved nesting success. Second, an attempt to establish a second breeding colony on Torishima involved an experimental program for luring breeding birds to the opposite side of the island from the Tsubamesaki colony. Preliminary results of the experiment are promising; the first chick was produced in 1997. The expectation is that absent a volcanic eruption or some other catastrophic event, the population on Torishima will continue to grow, but that it will be many years before the breeding sites are limited (Hasegawa 1997).

In 1971, 12 adult short-tailed albatrosses were discovered on Minami-kojima in the Senkaku Islands, one of the former breeding colony sites (Hasegawa 1984). Aerial surveys in 1979 and 1980 resulted in observations of between 16 and 35 adults. In April 1988, the first confirmed chicks on Minami-kojima were observed, and in March 1991, 10 chicks were observed. In 1991, the estimate for the population on Minami-kojima was 75 birds and 15 breeding pairs (Hasegawa 1991). In 1999, the estimate for the population is 150 birds and 30 breeding pairs (H. Hasegawa pers. comm. 1999). There is no information available on historical numbers at this breeding site.

Short-tailed albatrosses have been observed on Midway Atoll since the 1930s (Berger 1972, Hadden 1941, Fisher in Tickell 1973, Robbins in Hasegawa and DeGange 1982), but there have never been more than two individuals reported on the Atoll during the same year, and no successful nesting has been confirmed on the Atoll. The islets of Midway Atoll are vegetated, flat coral sand. Three species of albatross (black-footed, Laysan, and short-tailed) occur on the islets. Black-footed and Laysan albatrosses are common, nesting everywhere on the islands except where ironwood trees dominate the habitat. About 160 people live on these islands, and a maximum of 100 visitors are allowed at any one time.

Midway Atoll is a National Wildlife Refuge managed by the Service for the conservation of seabirds and other fish and wildlife and their habitats. The Refuge consists of roughly 31 square kilometers (12 square-miles) of marine waters and 607 hectares (1,500 acres) of land consisting of three islets (Sand Islet, Eastern Islet, and Spit Islet). The Refuge is between 28°05′ and 28°25′ N latitude and 177°10′ and 177°30′ W longitude, 4,505 kilometers (km) (2,800 miles (mi)) west of San Francisco and 3,539 km (2,200 mi) east of Japan. Approximately two million black-footed and Laysan albatrosses nest at Midway.

The first short-tailed albatross recorded on the Midway Atoll spent two winters between 1938 and 1940, but was somehow injured and died (Richardson 1994). Successful nesting by one pair in 1961 and 1962 was reported, but the validity of the report has been disputed (Tickell 1986). The report was made by Dr. Harvey Fisher in a private letter written in 1963 to Dr. Hiroshi Hasegawa of Toho University in Japan (Richardson 1994). However, no photographs, observation records, or log entries have been found to verify this observation. In the years following the reported observation, the reported nest location on Sand Islet in the Midway Atoll was paved, and tens of thousands of albatrosses were exterminated from Sand Islet to construct an aircraft runway and to provide safe conditions for aircraft landings and departures. It is possible that, if any short-tailed albatrosses were nesting on the island, the individuals were either displaced or killed during this process (E. Flint, Service, Honolulu pers. comm. 1999).

An adult short-tailed albatross was banded at Eastern Islet in Midway Atoll on March 18, 1966 (Sanger 1972). Beginning in November 1972 and continuing through at least February 10, 1983, an individual banded as a chick on Torishima in March 1964 (band number 558–30754) returned to the Midway Atoll during most or all breeding seasons, and was regularly observed on the west side of Sand Islet (Richardson 1994). An unbanded immature bird was observed on Sand Islet in February 1981, but was not seen again.

The first confirmed record of a short-tailed albatross nest and egg on the Midway Atoll occurred in 1993. The female was banded (Yellow 015) as a chick in Japan in 1982 and had been returning to the same location on Sand Islet during the breeding season each year since 1988. The nest was in a grassy space beside the southwest edge of the active runway on Sand Islet very close to several black-footed albatross nests. The female incubated the egg for at least 31 days, but eventually abandoned the nest, and the egg was collected by our biologists and determined to be inviable. Yellow 015 subsequently laid and incubated an egg in 1995 and 1997, but both eggs were inviable (N. Hoffman, Service, Midway Atoll National Wildlife Refuge pers. comm. 1999).

An adult short-tailed albatross, banded (White 000) as a chick at Torishima in 1979, was first recorded at Midway Atoll in November 1985. It returned to the same site each year in December and left each spring, usually in April, until early in the fall of 1994. Its pattern of behavior in the breeding season was to sit in the colony except for occasional trips of 2 to 3 days length out to sea. In March 1994, Dr. Lee Eberhardt observed and videotaped breeding displays between White 000 and Yellow 015 (Richardson 1994). White 000 returned to Midway in the fall of 1994, but failed to return after a routine foraging trip soon thereafter, and has not been sighted again.

A third adult short-tailed albatross, banded as Yellow 051 in 1989 on

Torishima Island in Japan, was first observed in January 1996 on Eastern Islet within the Midway Atoll. Yellow 051 was subsequently observed on Eastern Islet in December 1996 and in February 1997. A fourth short-tailed albatross, banded as Blue 057 in 1988 on Torishima Island in Japan, was first observed in February 1999 on Eastern Islet. Blue 057 was observed a second time in April 1999 on Sand Islet.

Observations of individuals have also been made during the breeding season on Laysan Island, Green Island at Kure Atoll, and French Frigate Shoals, but there is no indication that these occurrences represent established breeding populations (Sekora 1977, Fefer 1989).

The dramatic declines during the turn of the century and recent increases in numbers of short-tailed albatrosses were reflected in observations from the nonbreeding season. Between the 1950s and 1970, there were few records of the species away from the breeding grounds (Palmer 1962, Tramontano 1970). There were 12 reported marine sightings in the 1970s and 55 sightings in the 1980s; more than 250 sightings have been reported in the 1990s to date (Sanger 1972, Hasegawa and DeGange 1982, Service unpublished data). However, this observed increase in opportunistic sightings should be interpreted cautiously, because of the potential temporal, spatial, and numerical biases introduced by the opportunistic nature of the shipboard observations. Observation effort, total number of vessels present, and location of vessels may have affected the number of observations independent of an increase in total numbers of birds present. Moreover, the reporting rate of observations has likely increased with implementation of outreach efforts by Federal agencies and fishing interest groups in the last few years.

At-sea sightings since the 1940s indicate that the short-tailed albatross, while very few in number today, is distributed widely throughout its historical foraging range of the temperate and subarctic North Pacific Ocean (Sanger 1972; Service unpublished data) and is often found close to the U.S. coast. From December through April, distribution is concentrated near the breeding colonies in the Izu and Bonin Islands (McDermond and Morgan 1993), although foraging trips may extend hundreds of miles or more from the colony sites, if short-tailed albatross behavior is similar to black-footed and Laysan albatrosses. Recent satellite tracking of black-footed and Laysan albatrosses revealed that individuals of those species travel hundreds of miles from the breeding colonies during the breeding season (David Anderson, Wake Forest University, pers. comm. 1999).

In summer (the nonbreeding season), individuals appear to disperse widely throughout the historical range of the temperate and subarctic North Pacific Ocean (Sanger 1972), with reported observations concentrated in the northern Gulf of Alaska, Aleutian Islands, and Bering Sea (McDermond and Morgan 1993, Sherburne 1993, Service unpublished data). Individuals have been recorded along the west coast of North America as far south as the Baja Peninsula, Mexico (Palmer 1962).

Current Population

A worldwide population total may be coarsely estimated by combining information from a variety of sources. Estimates of total numbers of breeding age adults and immature birds may be obtained using a variety of different data and methods. We rounded the total estimates to the nearest hundred birds, reflecting the lack of precision in some of the data.

Breeding age population estimates come primarily from egg counts and breeding bird observations. Assuming 2 adults are present for each of the 212 eggs counted, 424 breeding adults would have been present on Torishima in 1998–1999 (H. Hasegawa pers. comm. 1999). Hasegawa (pers. comm. 1999) estimates there are currently 60 breeding adults on Minami-kojima. Based on these estimates, the total number of observed breeding birds is thought to be approximately 480. It has been noted that an average of approximately 25 percent of breeding adults may not return to breed each year (H. Hasegawa pers. comm. 1997). Therefore, a reasonable estimate is that approximately 120 additional breeding age birds may not be observed on the breeding grounds in a given year. Based on these estimates, we believe that there is a total of approximately 600 breeding age birds.

Estimates of the number of immature (nonbreeding) birds are more difficult to make because these individuals are rarely seen between fledging and breeding at approximately 6 years of age. We used two different methods to estimate the number of immature birds in the population: (1) Observational data of chicks fledged, and (2) modeling information. Both methods yielded similar results. H. Hasegawa (pers. comm. 1999) reports that 586 chicks were fledged from the Tsubamesaki colony on Torishima between 1993 and 1998. The only information on number of chicks from Minami-kojima is that ten chicks were counted by H. Hasegawa (pers. comm. 1997) in 1991. Over the past 6 years, therefore, assuming a stable population, an estimated minimum of 60 chicks may have fledged from Minami-kojima. Based on an assumed average juvenile (fledging to age of first breeding) survival rate of 94 percent (Cochrane and Starfield in prep.) and an average age of first breeding at 6 years (H. Hasegawa pers. comm. 1997), this technique yields an estimate of about 600 immature individuals in the population (rounded to tens). Alternatively, modeling information indicates that immature birds comprise approximately 47 percent of the total population in recent years, given current understanding of population dynamics. Breeding age birds are estimated at 600; therefore, based on the population modeling, we estimate that the immature birds also number approximately 600. The total population of short-tailed albatross is likely around 1,200 birds. No numerical estimates of uncertainty are available for this estimate.

The short-tailed albatross population on Torishima Island is growing at a fairly rapid rate, especially given that it is a long-lived and slow-to-reproduce species. Habitat management within the species main nesting colony has increased its nest success rate (H. Hasegawa, pers. comm. 1997) and probably its population growth rate as well. The recent annual population growth rate (Cochrane and Starfield in prep) in the Torishima short-tailed albatross colony (7.8 percent) approaches the maximum potential rate of increase (8 percent) that Fisher (1976) estimated for the Laysan albatross in the 1960s.

Demographic Information

Short-tailed albatrosses are long-lived and slow to mature; the average age at first breeding is 6 years old (H. Hasegawa pers. comm. 1997). As many as 25 percent of breeding age adults may not return to the colony in a given year (H. Hasegawa pers. comm. 1997). Females lay a single egg each year, which is not replaced if destroyed (Austin 1949). Survival rates for all post-fledging ages combined are high (96 percent; H. Hasegawa pers. comm. 1997). Actual juvenile survival rates are unknown, but are probably lower than adult survival rates. Cochrane and Starfield (in prep) assume a subadult survival rate of 94 percent. Breeding success (the percent of eggs laid that result in a fledged chick) varies between approximately 60 and 70 percent (H. Hasegawa pers. comm. 1997). Low

breeding success occurs in years when catastrophic volcanic or weather events occur during the breeding season.

Breeding Biology

At Torishima, birds arrive at the breeding colony in October and begin nest building. Egg-laying begins in late October and continues through late November. The female lays a single egg, incubation involves both parents and lasts for 64–65 days, eggs hatch in late December and January, and by late May or early June, the chicks are almost full grown and the adults begin abandoning their nests (H. Hasegawa pers. comm. 1997; Hasegawa and DeGange 1982). The chicks fledge soon after the adults leave the colony: by mid-July, the breeding colony is totally deserted (Austin 1949). Nonbreeders and failed breeders disperse from the breeding colony in late winter through spring (Hasegawa and DeGange 1982). There is no detailed information on breeding activities on Minami-kojima, but it is likely to be similar to that on Torishima.

Short-tailed albatrosses are monogamous and highly philopatric to nesting areas (returning to the same breeding site year after year). Chicks hatched at Torishima return there to breed. However, young birds may occasionally disperse from their natal colonies to breed, as evidenced by the appearance of adult birds on Midway Atoll that were banded as chicks on Torishima (H. Hasegawa pers. comm. 1997, Richardson 1994).

Breeding Habitat

Available evidence from historical accounts, and from current breeding sites, indicates that short-tailed albatross nesting occurs on flat or sloped sites, with sparse or full vegetation, on isolated windswept offshore islands, with restricted human access (Aronoff 1960, Sherburne 1993, DeGange 1981). Current nesting habitat on Torishima is steep sites on soils containing loose volcanic ash. The island is dominated by a grass, *Miscanthus sinensis* var. *condensatus*, but a composite, *Chrysanthemum pacificum*, and a nettle, *Boehmeria biloba*, are also present (Hasegawa 1977). The grass is likely to stabilize the soil, provide protection from weather, and minimize mutual interference between nesting pairs while allowing for safe, open takeoffs and landings (Hasegawa 1978). The nest is a grass or moss-lined concave scoop about 0.75 meters (m) (2 feet (ft.)) in diameter (Tickell 1975). The only terrestrial area within U.S. jurisdiction that is currently used by the short-tailed albatross for attempted nesting is the Midway Atoll.

Marine Habitat

Numerous records indicate that the short-tailed albatross frequents nearshore and coastal waters, which may explain why another common name for the species is the "coastal albatross." However, the source of these records derives from boats that were near shore to begin with. The lack of more pelagic observations may say more about the distribution of boats than of albatrosses. Nevertheless, our short-tailed albatross at-sea sightings' database contains many observations of short-tailed albatrosses within 10 km (6 mi) of shore, and several observations of birds within 5 km (3 mi) of the shore (Terry Antrobus, Service, Anchorage, pers. comm. 2000). Their presence may coincide with areas of high biological productivity, such as along the west coast of North America, the Bering Sea, and offshore from the Aleutians (Hasegawa and DeGange 1982). The North Pacific marine environment of the short-tailed albatross is characterized by coastal regions of upwelling and high productivity and expansive, deep water beyond the continental shelf.

Specific geographic and seasonal distribution patterns within the marine range are not well understood. The short-tailed albatross is a frequent visitor to the productive waters in shelf break areas of the Northern Gulf of Alaska, Aleutians Islands, and Bering Sea. Historically, short-tailed albatrosses were found in middens in coastal areas, suggesting that they were available to hunters in kayaks close to shore. References from the early and mid-1900s suggest that short-tailed albatrosses were more coastal in distribution than black-footed or Laysan albatrosses. Very little information exists on the distribution of the short-tailed albatross in open ocean areas; few systematic scientific studies have been conducted in these areas. Observations over the last 10–15 years from vessels and fishery observers are concentrated in the shelf break areas. Distributional data suggests that this species utilizes coastal shelf break areas of the Aleutian Islands, Bering Sea, and northern Gulf of Alaska on a regular basis for foraging. However, it is not known how important these areas are to the species, what percentage of the population visits these areas, what amount of time the species spends in these coastal areas, or if it uses open ocean areas to the same degree. Additionally, the short-tailed albatross is known to forage in the waters surrounding Hawaii including Midway Atoll in the northwest Hawaiian Island chain. In summary, the marine range of the short-tailed albatross within U.S. territorial waters includes Alaska's vast coastal shelf break areas and the marine waters of Hawaii for foraging, but we do not know how much or to what extent it utilizes open ocean areas of the Gulf of Alaska, North Pacific Ocean, and Bering Sea. There is no information on specific habitat or area use patterns within the vast shelf break areas used by the species.

Diet

The diet of short-tailed albatrosses includes squid, fish, eggs of flying fish, shrimp, and other crustaceans (Hattori in Austin 1949, H. Hasegawa pers. comm. 1997). There is currently no information on variation of diet by season, habitat, or environmental condition.

Previous Federal Action

Currently, the short-tailed albatross is listed as endangered under the Act, throughout its range, except in the United States (50 CFR 17.11). The species was originally listed as endangered in accordance with the Endangered Species Conservation Act of 1969 (ESCA). Pursuant to the ESCA, two separate lists of endangered wildlife were maintained, one for foreign species and one for species native to the United States. The short-tailed albatross appeared only on the List of Endangered Foreign Wildlife (35 FR 8495; June 2, 1970). When the Act became effective on December 28, 1973, it superseded the ESCA. The native and foreign lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When the lists were combined, prior notice of the action for the short-tailed albatross was not given to the governors of the affected States (Alaska, California, Hawaii, Oregon, and Washington), as required by the Act, because available data were interpreted as not supporting resident status for the short-tailed albatross. Thus, native individuals of this species were never formally proposed for listing pursuant to the criteria and procedures of the Act.

On July 25, 1979, we published a notice (44 FR 43705) stating that, through an oversight in the listing of the short-tailed albatross and six other endangered species, individuals occurring in the United States were not protected by the Act. The notice stated that our intent was that all populations and individuals of the seven species should be listed as endangered wherever they occurred. Therefore, the notice stated that we intended to take action to propose endangered status for

individuals occurring in the United States.

On July 25, 1980, we published a proposed rule (45 FR 49844; July 25, 1980) to list, in the United States, the short-tailed albatross and four of the other species referred to above. No final action was taken on the July 25, 1980, proposal. In 1996, we designated the short-tailed albatross as a candidate for listing in the United States (62 FR 49398; September 19, 1997). On November 2, 1998, we issued an updated proposed rule to list the short-tailed albatross as endangered in the United States (63 FR 58692; November 2, 1998).

The processing of this final rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Our first priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants (such as this final rule). Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority.

Summary of Comments and Recommendations

In the November 2, 1998, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, State governments, scientific organizations, and other interested parties were contacted and asked to comment. During the open public comment period, we solicited information from five independent scientists in compliance with our peer review policy (59 FR 34270; July 1, 1994). Three of the peer reviewers responded with comments. All three supported the listing of the short-tailed albatross as endangered throughout its range. We also solicited comments from the governments of Canada, the People's Republic of China, Vietnam, the Republic of Korea, the Phillippines, Norway, the Russian Federation, Japan, and Mexico. Comments were received from the Government of Mexico supporting the action; comments from the People's Republic of China were neutral, neither supporting nor objecting to the proposal. The comments from both Mexico and China were received after the close of the public comment period.

We also published notices of the proposed rule in the Seattle Times and Anchorage Daily News on December 13, 1998, and in the Juneau Empire on December 15, 1998. In addition to the three comments received from peer reviewers, two additional comments were received during the comment period. All five of the comments supported the proposed listing. We received two comments after the comment period closed (in addition to those submitted by the People's Republic of China and Mexico); one was in support of the proposed listing, and one was neutral. No comments questioned the action proposed, the information upon which we based our conclusions, or any other matters relevant to the section 4 listing. Editorial and technical comments were made by some reviewers and were incorporated into the final rule, as appropriate. No public hearings were requested.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that endangered status for the short-tailed albatross should be extended to include the species range within the United States. Under the procedures found at section 4(a)(1) of the Act, and the regulations implementing the listing provisions of the Act (50 CFR part 424), a species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the short-tailed albatross (*Phoebastria albatrus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Short-tailed albatrosses face a significant threat to the primary breeding colony on Torishima due to the potential of habitat destruction from volcanic eruptions on the island. The threat is not predictable in time or in magnitude. Eruptions could be catastrophic or minor, and could occur at any time of year. A catastrophic eruption during the breeding season could result in chick or adult mortalities as well as destruction of nesting habitat. Additionally, breeding habitat and nesting birds are threatened by frequent mud slides and erosion caused by the monsoon rains that occur on the island. Significant loss of currently occupied breeding habitat or breeding adults at Torishima would delay the recovery of the species or jeopardize its continued existence.

Torishima is an active volcano approximately 394 m (1,300 ft) high and 2.6 km (1.6 mi) wide (H. Hasegawa pers. comm. 1997) located at 30.48° N and 140.32° E (Simkin and Siebert 1994). The earliest record of a volcanic eruption at Torishima is a report of a submarine eruption in 1871 (Simkin and Siebert 1994), but there is no information on the magnitude or effects of this eruption. Since the first recorded human occupation on the island in 1887, four eruptions have been recorded: (1) On August 7, 1902, an explosive eruption in the central and flank vents resulted in lava flow and a submarine eruption and caused 125 human mortalities; (2) on August 17, 1939, an explosive eruption in the central vent resulted in lava flow and caused two human mortalities; (3) on November 13, 1965, a submarine eruption occurred; and (4) on October 2, 1975, a submarine eruption occurred 9 km (5.4 mi) south of Torishima (Simkin and Siebert 1994). The literature also refers to an additional eruption in 1940, which resulted in lava flow that filled the island's only place suitable for vessels to anchor (Austin 1949).

Austin (1949) visited the waters around Torishima in 1949 and made the following obeservations: "The only part of Torishima not affected by the recent volcanic activity is the steep northwest slopes where the low buildings occupied by the weather station staff are huddled. Elsewhere, except on the forbidding vertical cliffs, the entire surface of the island is now covered with stark, lifeless, black-gray lava. Where the flow thins out on the northwest slopes, a few dead, white sticks are mute remnants of the brush growth that formerly covered the island. Also on these slopes some sparse grassy vegetation is visible, but there is no sign of those thick reeds, or "makusa" that formerly sheltered the albatross colonies. The main crater is still smoking and fumes issue from cracks and fissures all over the summit of the island."

In 1965, meteorological staff stationed on the island were evacuated on an emergency basis due to a high level of seismic activity; although no eruption followed, the island has since been considered too dangerous for permanent human occupation (Tickell 1973). In late 1997, Hiroshi Hasegawa observed more steam from the volcano crater, a more pronounced bulge in the center of the crater, and more sulphur crusts around the crater than were previously

present (R. Steiner, Alaska Sea Grant Program, pers. comm. 1998).

The eruptions in 1902 and 1939 destroyed much of the original breeding colony sites. The remaining site used by albatrosses is a sparsely vegetated steep slope of loose volcanic soil. The monsoon rains that occur on the island result in frequent mud slides and erosion of these soils, which can result in habitat loss and chick mortality. A typhoon in 1995 occurred just before the breeding season and destroyed most of the vegetation at the Tsubamezaki colony. Without the protection provided by vegetation, eggs and chicks are at greater risk of mortality from monsoon rains, sand storms, and wind (H. Hasegawa pers. comm. 1997). Breeding success at Tsubamezaki is lower in years when significant typhoons result in mud slides (H. Hasegawa pers. comm. 1997).

In 1981, a project was supported by the Environment Agency of Japan and the Tokyo Metropolitan Government to improve nesting habitat by transplanting grass and stabilizing the loose volcanic soils (Hasegawa 1991). Breeding success at the Tsubamezaki colony has increased following habitat enhancement (H. Hasegawa pers. comm. 1997). Current population enhancement efforts in Japan are concentrated on attracting breeding birds to an alternate, well-vegetated colony site on Torishima that is less likely to be impacted by lava flow, mud slides, or erosion than the Tsubamezaki colony site (H. Hasegawa pers. comm. 1997). Japan's "Short-tailed Albatross Conservation and Management Master Plan" (Environment Agency 1996) sets forth a long-term goal of examining the possibility of establishing additional breeding grounds away from Torishima once there are at least 1,000 birds on Torishima. Until other safe breeding sites are established, however, short-tailed albatross survival will continue to be at risk due to the possibility of significant habitat loss and mortality from unpredictable natural catastrophic volcanic eruptions and frequent mud slides and erosion that result from monsoon rains on the island.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As described above under Historical Population Status, direct harvest of short-tailed albatrosses caused a catastrophic decline in population numbers (refer to the Historical Population Status section); today, direct harvest of short-tailed albatrosses is rare. Hasegawa (pers. comm. 1997) reports that some local Japanese fishermen in Izu and Ryukyuu Islands hunt seabirds and may take some short-tailed albatrosses, but the likelihood that short-tailed albatrosses are taken, or the level of such take, is not known. No other known direct take of short-tailed albatrosses occurs for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* No known diseases affect short-tailed albatrosses on Torishima or Minami-kojima today. However, the world population is vulnerable to the effects of disease because of the small population size and extremely limited number of breeding sites. H. Hasegawa (pers. comm. 1997) reports that he has observed a wing-disabled bird every few years on Torishima, but the cause of the disability is not known. An avian pox has been observed in chicks of albatross species on Midway Atoll, but whether this pox infects short-tailed albatrosses or may have an effect on the survivorship of any albatross species is unknown (T. Work, D.V.M., USGS, Hawaii).

Several parasites have been documented on short-tailed albatrosses on Torishima in the past including: a bloodsucking tick that attacks its host's feet, a feather louse, and a carnivorous beetle (Austin 1949). However, current evidence suggests that no parasites affect short-tailed albatrosses on Torishima today, and no evidence indicates that parasites caused mortality or had population level impacts in the past (H. Hasegawa pers. comm. 1997).

Sharks (subclass elasmobranchii) may take fledgling short-tailed albatrosses as they desert the colony and take to the surrounding waters (Harrison 1979). Shark predation is well documented among other albatross species, but has not been documented for the short-tailed albatross. The crow, *Corvus* sp., is the only historically known avian predator of chicks on Torishima. Hattori (in Austin 1949) reported that one-third of the chicks on Torishima were killed by crows, but crows are not present on the island today (H. Hasegawa pers. comm. 1997). Black or ship rats were introduced to Torishima at some point during human occupation, but their effect on short-tailed albatrosses in unknown. Cats were also present, most likely introduced during the feather hunting period. They have caused damage to other seabirds on the island (Ono 1955), but there is no evidence to indicate an adverse effect to short-tailed albatrosses. Cats were present on Torishima in 1973 (Tickell 1975), but Hasegawa (1982) did not subsequently find any evidence of cats on the island.

D. *The inadequacy of existing regulatory mechanisms.* The short-tailed albatross is currently listed under the Act as endangered outside of the United States. Listing the species within the United States as endangered would provide more comprehensive and extensive protection for the species through sections 7, 9, and 10 of the Act, and through recovery planning.

The short-tailed albatross is listed as endangered on the State of Alaska's list of endangered species (State of Alaska, Alaska Statutes, Article 4. Sec. 16.20.19). This classification was supported by a letter to Commissioner Noerenberg from J.C. Bartonek (1972, *in litt.*) in which he recommended endangered status because the short-tailed albatross occurs or "was likely" to occur in State waters within the 3-mile limit of State jurisdiction (Sherburne 1993). Under the Alaska Endangered Species Act, endangered species may not be harvested, captured, or propagated, except under a special permit from the Alaska Department of Fish and Game. In addition, the law requires the commissioners of the departments of Fish and Game and Natural Resources to protect the natural habitat of endangered species on lands under their jurisdiction (Schoen 1996). The short-tailed albatross does not appear on the State list of Hawaii's list of threatened and endangered species.

The Japanese Government designated the short-tailed albatross as a protected species in 1958, as a Special National Monument in 1962 (Hasegawa and DeGange 1982) and as a Special Bird for Protection in 1972 (King 1981). Torishima was declared a National Monument in 1965 (King 1981). These designations have resulted in tight restrictions on human activities and disturbance on Torishima (H. Hasegawa pers. comm. 1997). In 1992, the species was classified as "endangered" under the newly implemented "Species Preservation Act" in Japan, which makes Federal funds available for conservation programs and requires that a 10-year plan be in place that sets forth conservation goals for the species. The current Japanese "Short-tailed Albatross Conservation and Management Master Plan" outlines general goals for continuing management and monitoring of the species, and future conservation needs (Environment Agency 1996). The principal management practices used on Torishima are legal protection, habitat enhancement, and population monitoring. Torishima and Minami-kojima are the only two confirmed breeding sites for short-tailed albatrosses, and both are under Japanese ownership and management. Of concern is that Minami-kojima has also been claimed by the Nationalist Republic of China and the People's Republic of

China. The situation may present logistical and diplomatic problems in attempts to implement protection for the colony on the island (Tickell 1975).

We were informed by the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office that short-tailed albatross is listed as a national first-class wildlife species for protection in the Law of the People's Republic of China on the Protection of Wildlife that was promulgated in 1998 (Meng Xianlin, *in litt.* 1999). The hunting, capture, or killing of the short-tailed albatross is prohibited, and its habitats are legally protected.

On July 1, 1975, the short-tailed albatross was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is a treaty established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be imported for primarily commercial purposes. CITES export permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade. The Migratory Bird Treaty Act of 1918, as amended (MBTA: 16 U.S.C. 703 *et seq.*), currently protects short-tailed albatrosses from taking in areas under its jurisdiction.

E. Other natural or manmade factors affecting its continued existence. Other factors potentially represent threats to the species conservation and recovery.

One of these factors is small population size; another is the fact that only two breeding populations exist. The worldwide breeding-age population of short-tailed albatrosses numbers approximately 600 individuals. A significant proportion of these individuals nest in the Tsubamezaki colony on Torishima. The remaining small number of breeding birds nest on Minami-kojima. Because the population size is small, and breeding is limited to only two colonies, a catastrophic volcanic or weather event on Torishima or Minami-kojima has the potential not only to significantly reduce the numbers of birds in the world, but also to reduce the worldwide breeding population to a level where the risk of extinction is high. Both the small population size and severely limited number of breeding colonies increases the vulnerability of the species to extinction caused by random stochastic events. The natural or artificial establishment of additional breeding colonies in protected habitats would help to secure the recovery of the species; however, such an effort is problematic. First, the population must be large enough to allow them to be available to colonize new sites through natural dispersal or allow humans to take birds from the wild to initiate such an effort. Secondly, we do not sufficiently understand the ecological requirements of breeding colony sites to allow us to undertake such an effort with confidence of success. Thus far, the only other known site where the birds have attempted to nest is on the Midway Atoll, where all those attempts have been unsuccessful. Until the population increases significantly in number and additional breeding colonies are established, the short-tailed albatross will remain vulnerable to extinction. Genetic diversity of the worldwide population may also be cause for concern since the species experienced a severe genetic bottleneck during the middle of this century.

The risk of extinction caused by a catastrophic event at either of the two breeding colonies is buffered by adult and immature nonbreeding birds that are at sea during the breeding season. An average of 25 percent of breeding age adults do not return to breed each year (H. Hasegawa pers. comm. 1997), and immature birds do not return to the colony to breed until at least 6 years after fledging (H. Hasegawa pers. comm. 1997). Modeling information suggests that about half of the current total worldwide population may be immature birds. If suitable habitat were still available on Torishima or Minami-kojima, these birds could recolonize in years following a catastrophic event.

Another potential threat to the species' conservation and recovery is damage or injury related to oil contamination, which could cause physiological problems from petroleum toxicity and by interfering with the bird's ability to thermoregulate. Oil spills can occur in many parts of the short-tailed albatrosses' marine range. Oil development has been considered in the past in the vicinity of the Senkaku Islands (Hasegawa 1981, *in litt.*). Future industrial development would introduce the risk of local marine contamination, or pollution due to blowouts, spills, and leaks related to oil extraction, transfer, and transportation. Historically short-tailed albatrosses rafted together in the waters around Torishima (Austin 1949), and small groups of individuals have occasionally been observed at sea (Service unpublished data). An oil spill in an area where a large number of individuals were rafting, such as near breeding colonies, could affect the population significantly. The species' habit of feeding at the surface of the sea makes them vulnerable to oil contamination. Dr. Hiroshi Hasegawa (pers. comm. 1997) has observed some birds on Torishima with oil spots on their plumage.

Consumption of plastics may also be a factor affecting the species' conservation and recovery. Albatrosses often consume plastics at sea, presumably mistaking the plastics for food items, or consuming marine life such as the eggs of flying fish that are attached to floating objects. Dr. Hiroshi Hasegawa (pers. comm. 1997) reports that short-tailed albatrosses on Torishima commonly regurgitate large amounts of plastics debris. Plastics ingestion can result in injury or mortality to albatrosses if sharp plastic pieces cause internal injuries, or through reduction in ingested food volumes and dehydration (Sievert and Sileo in McDermond and Morgan 1993). Young birds may be particularly vulnerable to potential effects of plastic ingestion prior to developing the ability to regurgitate (Fefer 1989, *in litt.*). Auman (1994) found that Laysan albatross chicks found dead in the colony had significantly greater plastics loads than chicks within the population as a whole. This comparison was based on examinations of chicks injured by vehicles, which is presumably unrelated to plastics ingestion, and therefore representative of the population. Hasegawa has observed a large increase in the occurrence of plastics in birds on Torishima over the last 10 years (R. Steiner pers. comm. 1998), but the effect on survival and population growth is not known.

Another potential threat to short-tailed albatross conservation and recovery is mortality incidental to longline fishing in the North Pacific and Bering Sea. Short-tailed albatross mortalities occur in longline fisheries as a result of baited longline hooks that are accessible to foraging albatrosses, primarily during line setting. Five short-tailed albatrosses are known to have been taken by longline fisheries in Alaska from 1983–1996. In consultation with the National Marine Fisheries Service, we determined that the Alaskan groundfish and halibut fisheries are likely to adversely affect short-tailed albatrosses, but are not likely to result in an appreciable reduction in the likelihood of survival and recovery of the species (Service 1989 and amendments, Service 1996, Service 1999). Consultation under section 7 of the Act is now being conducted for the Hawaiian longline fishery; the amount

and likelihood of take in this fishery is difficult to determine because of the low rate of observer coverage (5 percent of fishing time is observed). No takes of short-tailed albatrosses in the Hawaiian longline fishery have been reported; however, black-footed albatrosses and Laysan albatrosses have been taken (E. Flint pers. comm. 2000). The National Marine Fisheries Service is currently investigating whether collisions with sonar cables (third wires) associated with commercial trawl vessels may be adversely affecting short-tailed albatrosses (K. Rivera, NMFS, pers. comm. 2000).

In general, seabirds are vulnerable to becoming entangled in derelict fishing gear. Laysan and black-footed albatrosses are occasionally entangled in derelict fishing gear on land and at sea in the Hawaiian Islands National Wildlife Refuge (E. Flint pers. comm. 2000). The magnitude of impacts caused by derelict gear from international longline fisheries is unknown. Hasegawa (pers. comm. 1997) reports that three to four birds per year on Torishima come ashore entangled in derelict fishing gear, some of which die as a result. He also stated that some take by Japanese fishermen (handliners) may occur near the nesting colonies, although no such take has been reported. There is no additional information on the potential effects of fisheries near Torishima on the species. Lost or abandoned fishing gear is a threat to the species throughout its range, and is not restricted to the short-tailed albatross colony around Torishima Island, Japan.

At the current population level and growth rate, the level of mortality resulting from longline fisheries is not thought to represent a threat to the species' continued survival, although it likely is slowing the recovery. In addition, in the event of a major population decline resulting from a natural environmental catastrophe or an oil spill, the effects of longline fisheries on short-tailed albatrosses could be significant.

We have documented seabird collisions with airplanes on Midway Atoll National Wildlife Refuge since operation of the airfield was transferred from the Department of Defense to the Department of the Interior in July 1997. Since acquiring the airfield, we have implemented several precautionary mechanisms to reduce and document seabird collisions. Transient aircraft (primarily U.S. Military or U.S. Coast Guard C–130 airplanes) are required to obtain prior permission before landing at the Midway Atoll National Wildlife Refuge. Aircraft are advised to land within the parameters provided by ground controllers to reduce air collisions with seabirds. Prior to any aircraft landing or takeoff, the runway and taxiways are "swept" to haze any birds resting on the airfield. Bird activity advisories are provided to the pilots, and recommendations are suggested to modify approaches and landings at the airfield to avoid collisions. During nesting seasons, runway sweeps become more involved with several crews hazing birds from the runway.

A female short-tailed albatross (band: yellow 015) has resided about 150 ft (50 m) from the end of the Midway Atoll National Wildlife Refuge runway since 1969. It is known to reside on the islet during the nesting season, from November to April. Although the bird is located close to the runway, aircraft are unlikely to collide with it because most landings and takeoffs, during November to April, occur at night when birds are less likely to be in flight. There have been no reports of Yellow 015 having a close encounter with aircraft, according to ground crews that monitor this bird during take-offs and landings (B. Dieli, Service, Midway Atoll National Wildlife Refuge pers. comm. 1999).

Summary

The worldwide population of short-tailed albatrosses continues to be in danger of extinction throughout its range due to natural environmental threats, small population size, and the small number of breeding colonies. Longline fishing, plastics pollution, oil contamination, and airplane strikes are not viewed as threats to the species survival, but we do consider them threats to the species conservation and recovery (*i.e.*, these factors, by themselves, will probably not cause the extinction of the species, but have the potential to slow down recovery of the species). We believe that these factors may hamper recovery not by adversly modifying or distroying habitat, but by affecting the survival of individual birds.

Most of the world's breeding population nests on Torishima Island in the Tsubamezaki colony. These individuals and the breeding habitat are at risk of measurable or significant population level impacts from a volcanic eruption on the island. The habitat at Tsubamezaki is further threatened by continued erosion and mud slides from monsoon rains despite the reduction of risk through habitat management. The only other known breeding location is on Minami-kojima, which is threatened by political unrest and internationally disputed ownership.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule. Based on this evaluation, we extend the listing of the short-tailed albatross as endangered to include its U.S. range. We are also correcting the information in the Historic Range column of the short-tailed albatross entry in the list of endangered and threatened species (50 CFR 17.11(h)). The information in this column currently indicates the species' historic range includes the North Pacific Ocean and Bering Sea, and lands and waters of Japan, China, Russia, and the United States. We will correct this entry to include Taiwan, Canada, and Mexico. This column is nonregulatory in nature and is provided for the information of the reader.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is defined in section 3(5)(a) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the November 2, 1998, proposed rule, we determined that designation of critical habitat was not prudent for the short-tailed albatross, based on our analysis and determination that such designation would not be beneficial to the species. With regard to breeding areas and potential breeding areas within the United States or under

United States jurisdiction, we concluded that there would be no additional benefit or protection conferred through the designation of critical habitat on the Midway Atoll National Wildlife Refuge over that conferred through the jeopardy standard of section 7 of the Act. With regard to foraging areas in the waters of the United States or under United States jurisdiction, we concluded there would be no additional benefit because there is currently no information to support a conclusion that any specific marine habitat areas within United States jurisdiction are uniquely important. More importantly, adverse effects that have occurred in the marine environment have been a result of activities, such as longline fishing, that threaten individual albatrosses rather than albatross habitat. These effects will be addressed through the jeopardy standard of section 7 of the Act and through the section 9 prohibitions of the Act. With regard to foraging areas in United States waters, the proposed rule also concluded there would be no additional benefit or protection conferred through the destruction or adverse modification standard for critical habitat under section 7 of the Act. We did not receive any comments during the public comment period on this proposed determination.

We believe that proposed determination was correct. Given the lack of habitat-related threats within U.S. territory for this species, the informational and educational benefits normally associated with critical habitat designation would not occur. Furthermore, there are no areas that we could identify as meeting the definition of critical habitat.

In accordance with the Act, a critical habitat designation can include areas outside the species current range if we determine that they are essential to the conservation of the species. We have not found any areas outside the current range of the species to be essential for the conservation of the species. Our best data suggests that the short-tailed albatross still occupies all of its marine-based historical range.

For areas within the geographical range currently occupied by the species, critical habitat is considered to be those areas that have the physical and biological features essential to the conservation of the species and require special management consideration or protection. Areas within the geographic range currently occupied by the species that might be considered to have the features essential for the conservation of the species and that might require special management or protection include both breeding and marine habitat.

Critical habitat cannot be designated within foreign countries or in other areas outside of United States jurisdiction (50 CFR 424.12(h)). Thus, we would only consider for designation any habitats on United States land, in United States territorial waters, within the United States Exclusive Economic Zone from 0–321 km (0–200 mi) from shore, or in other areas within the jurisdiction of the United States. This albatross comes ashore primarily for breeding. The only areas where the short-tailed albatross successfully breeds is on the Torishima and Minami-kojima Islands of Japan. The only area within U.S. jurisdiction where albatross have attempted breeding is Midway Atoll. However, there is no current breeding population on Midway, and no evidence that a breeding population existed there in the past. We currently do not consider Midway Atoll to provide important breeding habitat for the species. Given the short-tailed albatross' apparent failure to successfully colonize Midway Atoll, we find that it does not contain features essential to the conservation of the species at this time. Based on this information we determined that Midway Atoll does not constitute critical habitat for this species at this time. However, should these circumstances change, such as with successful breeding, we will reevaluate the contribution of this area to the conservation and recovery of the species.

With the exception of Midway Atoll, the short-tailed albatross habitat within United States jurisdiction is almost entirely marine (rare sightings of transient birds are made on other Hawaiian Islands). The species uses marine habitat for foraging. Marine habitats occupied by short-tailed albatrosses within United States jurisdiction are vast. Areas with essential physical and biological features are likely to occur throughout the temperate and subarctic North Pacific Ocean, along the west coast of North America as far south as the Baja Peninsula, Mexico. Individuals are widely distributed throughout this vast marine range. Because of the species' highly mobile, pelagic nature, any individual short-tailed albatross has the potential to occur at any location throughout its marine range. In addition to the species being highly mobile, its prey species (e.g., squid, fish, and eggs of flying fish) are also highly mobile, exhibiting seasonal and inter-annual variations in distribution. Available albatross observation data suggests that the short-tailed albatross concentrates its feeding efforts along the shelf-break areas in the Bering Sea and along the Aleutian Islands. However, the vast majority of these observations are made from commercial fishing vessels plying these waters; few vessels from which we have requested observation data operate very far from these shelf break areas. Some of these vessels have reported that short-tailed albatross are much more common during some years than others, suggesting that most of the birds are feeding elsewhere. Furthermore, we have recorded several short-tailed albatross observations made by individuals aboard research vessels far from the shelf-break areas frequented by commercial fishing vessels, suggesting that the birds do forage away from the shelf-break areas as well.

We note that this species has historically been referred to as the coastal albatross. However, there is no objective data to suggest that this species used coastal areas more heavily than offshore areas. That it was historically sighted from shore was likely an artifact of its once-large population size; given 5 million short-tailed albatrosses wandering across the North Pacific, many were bound to have been observed from shore.

The recent rate of annual growth in the Torishima short-tailed albatross colony (7.8 percent) approaches the maximum potential rate of increase (8 percent) that Fisher (1976) estimated for Laysan albatross in the 1960s, before fisheries bycatch and contaminants affected that population. The fact that the short-tailed albatross' population is growing at a rate that is probably near its maximum biological capacity for growth, allows us to infer that nothing about the bird's marine habitat is limiting population growth. Because the North Pacific Ocean and Bearing Sea once supported millions of short-tailed albatross, we believe that this species is not anywhere near its habitat carrying capacity, and it will be some time before any feature of its marine habitat becomes a critical limiting factor to population growth. Thus, we conclude that there is no need for special management or protection of any marine habitat feature with regards to the short-tailed albatross. Indeed, if we were able to increase the amount of forage fish throughout the species entire range, this action may not result in an appreciable increase in the population growth rate of short-tailed albatross, given that the species population is already growing at a rate that may be approaching its maximum biological capacity. To increase the availability of prey species within U.S. waters only would be even

less likely to result in an increase in population growth rate, yet this is the only portion of its global range for which we can designate critical habitat and enact special management or protections.

Because this species' precarious situation derives entirely from historical harvest of the birds themselves, and not from any action that caused habitat degradation, and because marine habitat does not appear to be a factor limiting current population growth rate, we do not believe that there are areas within the United States that contain features that are essential to the conservation of the species that require special management or protection. Special management or protection is defined by regulation as "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species." Because this species population growth is not limited by its marine habitat, nor do we believe that it will become limited by its marine habitat in the foreseeable future, we find that there are no methods or procedures that would be useful in protecting the physical and biological features of the marine environment. Therefore, we conclude that there are no areas within this environment that need special management or protection.

In summary, we do not find any habitats within the jurisdiction of the United States that meet the definition of critical habitat, *i.e.*, habitats within United States that contain the features essential for the conservation of the species and require special management and protection. Because there is no habitat that meets the definition of critical habitat, we find that it is not prudent to designate critical habitat for the short-tailed albatross.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat.

Federal agency actions that may require consultation as described in the preceding paragraph include National Marine Fisheries Service's Fishery Management Plans, management practices at the Midway Atoll National Wildlife Refuge, permits or authorization for oil tankering within the range of short-tailed albatrosses, and oil spill contingency plans.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of prohibitions and exceptions that apply to all endangered species of wildlife. All prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States, to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt to engage in any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits for endangered wildlife are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget Clearance number 1018–0094.

Our policy (59 FR 34272; July 1, 1994) is to identify to the maximum extent practicable, at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The known non-Federal activities that may result in incidental take of short-tailed albatrosses are State-managed hook-and-line longline fisheries. Activities that are not expected to result in any take of short-tailed albatrosses include: (1) Fishing activities in Alaska and Hawaii other than hook-and-line longline fishing; (2) lawfully conducted vessel operations such as transport, tankering, and barging; and (3) harbor operations or improvements. Questions regarding whether other specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Anchorage Field Office (See **ADDRESSES** section).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species law. Hawaii's endangered species law states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Federal Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State law. State law prohibits export, take, possession, processing, selling, delivering, carrying, transporting, or shipping of any listed species. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD–4 and 5).

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Anchorage Field Office, U.S. Fish and Wildlife Service (see ADDRESSES section).

Author

The primary author of this proposed rule is Janey Fadley, U.S. Fish and Wildlife Service, Juneau Fish and Wildlife Service Office, 3000 Vintage Park Blvd, Suite 201, Juneau, Alaska 99801, telephone (907) 586–7242.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), the table entry for "Albatross, short-tailed", under BIRDS, is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Albatross, short-tailed.	*Phoebastria* (=*Diomedea*) *albatrus*.	North Pacific Ocean and Bering Sea-Canada, China, Japan, Mexico, Russia, Taiwan, U.S.A. (AK, CA, HI, OR, WA).	Entire	E	3,700	NA	NA
*	*	*	*	*	*	*	*

Dated: July 25, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–19223 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 072100C]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of General category daily retention limit on previously designated restricted fishing days.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category restricted-fishing day (RFD) schedule should be adjusted; i.e., certain RFDs should be waived, to allow for maximum utilization of the General category June-August subquota. Therefore, NMFS increases the daily retention limit from zero to one large medium or giant BFT on the following previously designated RFDs for 2000: July 30 and 31, and August 6, 7, 13, 14, 20, 21, 27, and 28.

DATES: Effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. General category effort controls (including time-period subquotas and RFDs) are specified annually under §§ 635.23(a) and 635.27(a). The 2000 General category effort controls were implemented July 7, 2000 (65 FR 42683, July 12, 2000).

Adjustment of Daily Retention Limit for Selected Dates

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that adjustment to the RFD schedule is necessary to allow for full use of the subquota while ensuring an August fishery. Therefore, NMFS adjusts the daily retention limit for July 30 and 31, and August 6, 7, 13, 14, 20, 21, 27, and 28, 2000, previously identified as RFDs

to one large medium or giant BFT per vessel. NMFS has selected these days in order to give adequate advanced notice to fishery participants and NMFS enforcement.

The intent of this adjustment is to allow for maximum utilization of the June-August subquota (specified under § 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

While catch rates have been low so far this season, NMFS recognizes that they may increase. In addition, due to the temporal and geographical nature of the fishery, certain gear types and areas are more productive at various times during the fishery. In order to ensure that the June-August subquota is not filled prematurely and to ensure equitable fishing opportunities in all areas and for all gear types, NMFS has not waived all of the RFDs in August. The remaining previously scheduled RFDs (which have not been waived) correspond to market closures in Japan and may promote better ex-vessel prices.

Classification

This action is taken under § 635.23(a)(4) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 26, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19287 Filed 7–26–00; 4:06 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 072400E]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Connecticut

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Connecticut has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Connecticut for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Connecticut that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Connecticut.

DATES: Effective 0001 hours, July 31, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in Connecticut is 2.25708 percent, or 250,788 lb (113,756 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Connecticut has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, July 31, 2000, further landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, July 31, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19277 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072500A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the

Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of pelagic shelf rockfish for the Central Regulatory Area was established as 4,080 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for pelagic shelf rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,580 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of pelagic shelf rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19252 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072500B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of pelagic shelf rockfish for the West Yakutat District was established as 580 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for pelagic shelf rockfish in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 530 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of pelagic shelf rockfish for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19251 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072500C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of northern rockfish for the Central Regulatory Area was established as 4,490 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for northern rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,990 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of northern rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19250 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211036–0036–01; I.D. 072500D]

Fisheries of the Exclusive Economic Zone Off Alaska; Other Rockfish in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for other rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of other rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of other rockfish for the West Yakutat District was established as 250 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for other rockfish in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 200 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for other rockfish in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of other rockfish for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19249 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 147
Monday, July 31, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Docket No. FV00–920–2 PR]

Kiwifruit Grown in California and Imported Kiwifruit; Proposed Relaxation of the Minimum Maturity Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would relax the current minimum maturity requirements for fresh shipments of kiwifruit grown in California and for kiwifruit imported into the United States. The Kiwifruit Administrative Committee (Committee) which locally administers the marketing order for California kiwifruit unanimously recommended the change for California kiwifruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action would allow handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.2 percent soluble solids. This change is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

DATES: Comments must be received by August 30, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Current requirements include specifications that such shipments be at least Size 45, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The order authorizes under § 920.52(a)(1) the establishment of minimum maturity requirements. Section 920.302(a)(3) of the rules and regulations outlines the minimum maturity requirements for fresh shipments of California kiwifruit and specifies that kiwifruit shall have a minimum of 6.5 percent soluble solids at the time of inspection.

Maturity is generally determined on the basis of total solids or soluble solids content. Kiwifruit can ripen on or off the vine and typically contains between 5 and 8 percent starch at harvest. This starch hydrolyzes into sugars during ripening. Kiwifruit continues to ripen while stored in refrigerated facilities and may reach 16.2 percent soluble solids when completely ripe.

In the 1980's, the minimum maturity requirements were established at 6.5 percent soluble solids for both the domestic and import regulations. This

minimum soluble solids level was established because research showed that the majority of fruit harvested at 6.5 percent soluble solids ripened to a 13.5–14 percent soluble solids level or higher, and stored well. Also, consumer taste tests showed that fruit containing at least 13.5 percent soluble solids were more acceptable than fruit containing lower levels of soluble solids. These regulations benefited growers, handlers, consumers, and importers as improvements were seen in the quality of fruit shipped to the market place, domestic and export sales, and grower returns.

Since that time a number of factors have changed: (1) Research conducted during the 1990's has shown that fruit harvested at 6.2 percent soluble solids and handled properly has the potential to ripen to 12.6 percent soluble solids or higher, (2) recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability, and (3) the majority of the kiwifruit producing countries are now utilizing 6.2 percent soluble solids as their guideline for minimum maturity.

The six countries exporting kiwifruit to the United States are New Zealand, Chile, Greece, France, Italy, and Canada. New Zealand has a mandatory maturity standard of 6.2 percent soluble solids. Chile, Greece, France, Italy, and Canada utilize a voluntary 6.2 percent soluble solids guideline for minimum maturity.

The Committee, at its May 2, 2000, meeting, unanimously recommended relaxing the minimum maturity requirements to 6.2 percent soluble solids because of the above-mentioned factors and because this relaxation is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would relax the minimum maturity requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade, size, quality, and maturity requirements for kiwifruit imported into the United States are currently in effect under § 944.550 (7 CFR 944.550). The minimum maturity requirement is covered in paragraph (a) of § 944.550. Paragraph (a) of § 944.550 states that the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) (Standards), except that the kiwifruit shall be "not badly misshapen", and an additional tolerance of 7 percent is provided for "badly misshapen" fruit. The Standards define "Mature" to mean that the fruit has reached the stage of development which will ensure the proper completion of the ripening process. The Standards further specify that the minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent.

The relaxation in the minimum maturity requirement for importers of kiwifruit would also have a beneficial impact. This rule would relax the minimum maturity requirement for imported kiwifruit from 6.5 percent soluble solids to 6.2 percent soluble solids. The majority of the kiwifruit producing countries now are utilizing a 6.2 percent soluble solids level as their guideline for minimum maturity. Thus, importers would be able to utilize one minimum maturity standard for shipments of kiwifruit.

The metric equivalent of the minimum sizes currently specified is also added to paragraph (a) of § 944.550.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 56 handlers of California kiwifruit who are subject to regulation under the order and about 400 kiwifruit producers in the regulated area. There are approximately 50 importers of kiwifruit. Small agricultural service firms, which include kiwifruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. Fifty-six handlers and fifty importers have annual receipts of less than $5,000,000, excluding receipts from other sources. Three hundred ninety producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers, importers, and producers may be classified as small entities.

This rule would relax the minimum maturity requirements specified in § 920.302(a)(3) of the order's regulations and in § 944.550 (7 CFR 944.550) for imported kiwifruit. These sections, respectively, allow handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.5 percent soluble solids. Relaxation of the minimum maturity requirements to 6.2 percent soluble solids is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 (a)(1) of the order, section 8e of the Act.

Regarding the impact of this action on affected entities, relaxing the minimum maturity requirement to 6.2 percent soluble solids is expected to benefit handlers and importers. Handlers and importers would be able to utilize one minimum maturity standard for the majority of shipments of kiwifruit. The majority of the kiwifruit producing countries now utilize 6.2 percent soluble solids as their guideline for minimum maturity. Importers have not experienced problems meeting the minimum maturity requirement of 6.5 percent soluble solids. Therefore, it is expected that importers would not have any difficulty meeting the relaxed minimum maturity requirement of 6.2 percent soluble solids.

Imports account for 67 percent of domestic shipments and enter the United States between the months of March through August. Recent yearly data indicate that imports during the months of September through March are negligible. To date, New Zealand, Chile, and Italy have been the principal sources of imported fruit during the 1999–2000 (August 1–July 31) season, and accounted for 98 percent of the total import shipments, with the remaining imports being supplied by France, Greece, and Canada. Chile has been the largest exporter of kiwifruit to the United States since 1993. Chile shipped approximately 8 million tray equivalents (about 7 pounds of fruit per

tray) into the US market during the 1999–2000 season, representing over 56 percent of total market share. New Zealand shipped approximately 3 million tray equivalents; Italy shipped approximately 1 million tray equivalents; and Greece, France, and Canada had combined shipments of approximately 200,500 tray equivalents. The amount of imported kiwifruit is expected to increase during the 2000–2001 season. Italy is expected to have a bumper crop and the US tariff restrictions on imports from New Zealand were lifted in August 1999.

The Committee believes that lowering the minimum maturity requirements to 6.2 percent soluble solids would benefit large and small entities equally. Handlers and importers would be able to maximize shipments of early-season kiwifruit. The shipment of early-season kiwifruit is expected to result in increased grower returns, as such fruit normally commands a higher price than fruit harvested later in the season.

The amount of fruit harvested for the early market is dependent upon market conditions, the storability of fruit, and the overall size and quality of the crop. Since such information is not yet available, the Committee was not able to estimate the amount of fruit that would be shipped during the early season, nor estimate the amount of increased grower returns.

Additionally, recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability. Research conducted during the 1990's also has shown that fruit with 6.2 percent soluble solids and that is handled properly has the potential to ripen to 12.6 percent soluble solids. Relaxing the minimum maturity requirement should make more kiwifruit available to consumers early in the season.

In the past, some early season fruit failed to meet minimum maturity requirements at the time of inspection. Handlers had the option of re-conditioning the fruit or placing it into cold storage to ripen. After the soluble solids content was high enough to meet the minimum maturity requirements, the fruit was reinspected and the handler was billed for the original inspection and the reinspection. Relaxing the minimum maturity requirement to a 6.2 percent soluble solids level is expected to provide incentives for proper harvesting and handling of early fruit and to result in lower inspection costs. Thus, both large and small handlers should be able to benefit in the marketplace.

The Committee expressed concern that lowering the minimum maturity requirements to 6.2 percent soluble solids might result in a larger quantity of undersized fruit. However, the Committee expects growers to voluntarily test for minimum maturity and size before harvesting a field to limit harvesting unacceptable fruit.

Other alternatives have been suggested regarding the minimum maturity requirements, but would not adequately address the problem. The first alternative was to leave the regulation unchanged. However, this alternative would not address the changes in marketing conditions and in consumer acceptance of fruit with a lower level of soluble solids.

Another alternative considered was to regulate the current minimum maturity at the time of harvest. The Committee also considered utilizing the New Zealand "Kiwi Start" program which also tests for minimum maturity in the field at the time of harvest. These alternatives were not considered viable. The regulation of growers is not authorized under the Act.

Consideration was given to removing the 6.5 percent soluble solids minimum maturity requirement from the order and adding it to the California State Code of Regulations. This option was not acceptable to the Committee because of concerns regarding layers of regulation implementation, time, expenses, imports, and enforcement.

Another alternative discussed was to eliminate the minimum maturity requirement from the order. It was determined that there is still a need to have a maturity testing system in place to prevent the immature fruit from entering the market. Thus, this alternative was not adopted.

Utilizing a different testing method was also considered. Utilization of a dry weight test (total solids test) versus the currently used refractometer to measure maturity was discussed. This suggestion was not adopted because the test would be hard to implement, burdensome, and costly to the industry.

Finally, another alternative presented in the meeting was to increase the minimum maturity requirement. This alternative was not acceptable because it fails to recognize the recent findings that consumers find fruit with lower soluble solids acceptable.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

Further, the Committees' meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule is a relaxation and would need to be in place as soon as possible to allow handlers time to make operational decisions for the 2000–2001 season. The 2000–2001 season begins September 10, 2000. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 920 and 944 are proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 920 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(3) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *
(1) * * *
(2) * * *
(3) *Maturity Requirements.* Such kiwifruit shall have a minimum of 6.2 percent soluble solids at the time of inspection.
* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.550, paragraph (a) is revised to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be "not badly misshapen," and an additional tolerance of 7 percent is provided for kiwifruit that is "badly misshapen," and except that such kiwifruit shall have a minimum of 6.2 percent soluble solids. Such fruit shall be at least Size 45, which means there shall be a maximum of 55 pieces of fruit and the average weight of all samples in a specific lot must weigh at least 8 pounds (3.632 kilograms), provided that no individual sample may be less than 7 pounds 12 ounces (3.472 kilograms).
* * * * *

Dated: July 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19342 Filed 7–27–00; 1:45 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–64]

Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or "Commission") is denying a petition for rulemaking submitted by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. (PRM–50–64). The petitioners requested that the enforcement provisions of NRC regulations be amended to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.[1] The Commission is denying the petition because the NRC's intent is not to impose responsibilities for operating or decommissioning costs pursuant to NRC regulatory requirements on co-owners in a manner inconsistent with contractual ownership agreements, except, and only as a last resort, when highly unusual circumstances relating to the protection of the public's health and safety require it. Also, the petition would not improve the NRC's regulatory process and maintain the same level of protection of the public health and safety provided under current Commission regulations, legal precedent, and policies.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. These documents are also available at the NRC's rulemaking website at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, *e-mail-bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On January 5, 1999 (64 FR 432), the NRC published a notice of receipt of a petition for rulemaking (PRM) filed by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. The petitioners requested that the NRC amend the enforcement provisions of NRC regulations to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.

The petitioners are concerned that the NRC's "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry" (Policy Statement) published on August 19, 1997 (62 FR 44071), has resulted in confusion among joint owners of nuclear power plants regarding the potential liability of the owner of a relatively small share of a nuclear power plant. In the Policy Statement, the Commission indicated that it "reserves the right, in highly unusual situations where adequate protection of the public health and safety would be compromised, if such action were not taken, to *consider* imposing joint and several liability on co-owners of more than *de minimis* shares when one or more co-owners have defaulted." (This is as opposed to dividing costs by using a pro rata share approach.) The petitioners believe that a joint owner could incur the burden of all, or an excessive portion, of a plant's costs if other joint owners or the operators defaulted or became financially incapable of bearing their share of the burden. The petitioners believe that the NRC has changed its policy so that it would now ignore existing pro rata cost sharing arrangements that it had previously sanctioned. The petitioners stated that the NRC has published no information regarding what would constitute a *de minimis* share and that the particular circumstances under which the NRC might find the imposition of joint and several liability necessary to protect the public health and safety are not defined.

The petitioners have concluded that these factors have caused much confusion and uncertainty about the potential liability of a joint owner, and can adversely affect the ability to raise capital in an uncertain market that is undergoing consolidation and restructuring.

The petitioners requested that the issue of potential liability among joint owners be resolved by amending the regulations concerning enforcement in 10 CFR part 50. The petitioners proposed that the NRC's regulations be amended to provide that if the NRC

[1] In the "Final Policy Statement on the Restructuring and Deregulation of the Electric Utility Industry," published on August 19, 1997 (62 FR 44071), the NRC referred to "joint and several liability." As discussed subsequently in this notice, the NRC believes that "joint and several regulatory responsibility" more accurately reflects the concept intended in the final policy statement.

imposes additional requirements to protect public health and safety, the NRC would look first to the entity licensed to operate a nuclear power plant to assume whatever costs are incurred in meeting those requirements. The petitioners also requested that the regulations be amended to provide that if the NRC imposes these additional requirements on co-owners (licensees) who are not licensed to operate the plant, the NRC would not impose upon any of those licensees a proportional responsibility greater than that reflected in contracts establishing the allocation of responsibility among the co-owners.

Public Comments on the Petition

The NRC received 76 comments covering 20 topic areas from 16 commenters, all of whom were licensees or groups representing licensees. Of the 16 commenters, 11 were electric utilities (including five cooperatives) and five comments were from industry groups. Of the industry groups, two represented electric cooperatives and three represented investor-owned electric utilities. Almost all of the commenters agreed with the petitioners that NRC should not impose joint and several liability on its licensees. The cooperative utilities also agreed with other issues and in general favored the petition. The investor-owned utilities disagreed with other issues and consequently were against the petition.

The topic areas raised by the commenters follow (with the number of commenters making that statement appearing in parentheses). The NRC's responses are contained in the paragraphs after each comment.

Comment 1. The Policy Statement is at odds with the pro rata share contractual agreements (reviewed and approved by the NRC). The Commission should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations. (10)

Response: The Commission has decided against taking the requested action because it could adversely affect public health and safety in those highly unusual circumstances when public health and safety are at risk and all other remedies have been exhausted. Because all co-owners are co-licensees, each licensee is ultimately responsible for complying with the Commission's regulations and the terms of the license. Although, in virtually all situations, the Commission expects that obligations under a license will be handled on a pro rata basis among co-owners, it cannot rule out highly unusual situations in which it would seek a co-owner to pay more than its pro rata share when essential to protecting public health and safety, *e.g.*, where one of the other co-owners is no longer capable of paying its pro rata share of costs. The rule change contemplated by the petition could prohibit the Commission from remedying such a situation. It would suggest that no matter how much a co-owner's financial outlook changes for the worse from the time of initial licensing, the Commission may not take all necessary action to ensure safe operation or decommissioning. Such a scheme would be inconsistent with the Commission's longstanding authority to take regulatory action in situations involving changed circumstances from initial licensing. *See* Atomic Energy Act §§ 186, 187, 42 U.S.C. 2236, 2237; 10 CFR 50.100; *Cf., All Chemical Isotope Enrichment, Inc.*, LBP–90–26, 32 NRC 30 (1990) (Licensing Board sustained staff revocation of construction permits of a licensee that had failed to disclose its true financial condition during the original licensing proceeding).

Comment 2. Non-operating co-owners should not be liable for more than their contractually agreed upon share of additional, Commission-imposed requirements. (1)

Response: See response to Comment 1.

Comment 3. The Policy Statement has created uncertainty for minority owners because the Commission could impose operating or decommissioning costs on co-owners greater than their contractual obligations. This policy could affect the ability of co-owners to raise funds in financial markets. (6)

Response: The Commission believes that, given the limitations of this policy to highly unusual circumstances and its inapplicability to those co-licensees with *de minimis* shares, minority licensees will not experience significant uncertainty. The Commission notes that comments on the petition from investor-owned utilities or their representatives did not express concern about the impact of raising funds in capital markets, even though investor-owned utilities must go to essentially the same capital markets as the minority owners.

Comment 4. NRC imposition of joint and several liability on co-licensees in a manner inconsistent with co-licensees' contractual agreements would constitute unlawful retroactive rulemaking (4) and is an unconstitutional impairment of contracts and a "taking" of property without compensation. The Atomic Energy Act of 1954, as amended, does not contain explicit authorization for the Commission to impose retroactive rules on the subject of joint and several liability, and therefore, the Commission does not possess authority to retroactively impose joint and several liability, citing *Bowen* v. *Georgetown University Hospital*, 488 US 205 (1988). (1)

Response: Commission action ensuring that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not constitute a retroactive action. Contrary to the commenter's assumption, the Commission never "approved" the private contractual arrangements for the sharing of costs among co-owners/co-licensees. The Commission's consideration of co-applicants'/co-licensees' cost-sharing arrangements initially was solely for the purpose of determining, under 10 CFR 50.33, if the co-applicants/co-licensees had the financial qualifications necessary to construct and operate the nuclear power plant. After the Commission assured itself that the co-applicants'/co-licensees' financial qualifications provided for reasonable assurance that co-applicants/co-licensees together would be able to pay for all necessary costs of construction and operation, the Commission's inquiry was satisfied and the appropriate finding could be made.[2] The Commission has reviewed co-owners'/co-licensees' provisions for decommissioning financial assurance, pursuant to 10 CFR 50.75 in a similar manner.

Staff guidance on financial qualifications discloses no intent to approve the specific cost-sharing arrangements made between licensees, as opposed to reviewing the arrangements to ensure that the licensees together possess the necessary financial qualifications. Although power reactor licenses frequently recite the ownership percentages of the co-licensees, those percentages do not invariably reflect the allocation of decommissioning funding obligations. By reciting ownership percentages, the staff did not intend to make any finding about proportional allocation of decommissioning funding obligations. Therefore, the co-owners had no reasonable expectation that their regulatory obligations were limited by those arrangements. In the absence of any regulatory "approval" by the NRC of the private contractual arrangement by co-licensees with respect to pro rata cost sharing, there is no legal basis for a claim of retroactivity.

[2] However, since 1984, the NRC has not required Operating License Stage review of the financial qualifications of "electric utilities," as defined in the Commission's regulations (10 CFR 50.2).

Furthermore, Commission action recognizing joint and several regulatory responsibility on co-licensees [3], *e.g.*, to ensure that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs, does not alter and therefore leaves undisturbed the contractual rights of a co-owner to recover costs from another co-owner under their contractual agreements in a private cause of action or in a bankruptcy proceeding. The enforcement of those arrangements appropriately lies with the parties to those pro rata—share contracts and the courts, not the NRC, which is neither a party to the contracts nor a tribunal with authority to enforce them. Because Commission action to impose joint and several responsibility has no legal effect upon the private contractual arrangements for cost sharing among co-licensees, it per se follows that this Commission action does not constitute an unconstitutional impairment of the contractual cost sharing agreements among co-licensees, nor does it constitute an unlawful "taking."

In sum, the Commission never approved the private contractual arrangements among co-licensees/co-owners for sharing of costs. Therefore, Commission imposition of joint and several regulatory responsibility that may be inconsistent with these private contractual arrangements would not constitute retroactive rulemaking.

Comment 5. If the Commission imposed an additional financial burden on the remaining owners of a nuclear power plant (NPP), and if the rate authorities would not allow additional costs into the rate base, the result would drive the co-owners into financial distress, creating further risks. This action would not only affect minority owners of NPPs, but also investors and State regulatory authorities. (6)

Response: If a licensee experiences financial difficulties, the minority owners of NPPs as well as investors and State regulatory authorities would likely be affected whether or not the Commission imposed additional responsibilities on the minority owners above their pro rata share. Also, the Commission would consider imposing any additional burden only under highly unusual circumstances in which no other regulatory action would protect the public health and safety, such as through bankruptcy courts or financial markets. (Financial markets would come into play, for example, if a financially troubled licensee were to seek refinancing of its ownership share or if it were to sell its share to another party.)

Comment 6. The NRC should clarify its intent with respect to potential financial obligations of nuclear power plant licensees. (3)

Response: The Commission believes that it has already clearly stated its intent with respect to potential financial obligations of nuclear power plant licensees in the Policy Statement. To the extent that the petitioners are seeking clarification, the Commission trusts that the petitioners will find that clarification in this denial notice, including the Commission's response to these comments. The Commission notes that the term, "joint and several liability," may have connotations for contract law that the Commission did not intend to convey and that the term "joint and several regulatory responsibility" more accurately reflects the intent of the Commission's policy statement. Commission guidance on financial obligations is also provided in the "Standard Review Plan on Power Reactor Financial Qualifications and Decommissioning Funding Assurance" NUREG–1577, Rev. 1 (March 1999).

Comment 7. The NRC should define or clarify "*de minimis* share" and "joint and several liability" in "highly unusual circumstances." (5)

Response: As referenced in the Policy Statement, "*de minimis* share" means a level of plant ownership below which, even in highly unusual circumstances where recourse to all other potential remedies (*e.g.*, rate regulators, bankruptcy proceedings) has failed, the Commission would not attempt to impose joint and several regulatory responsibility on minority co-owners of a plant. The Commission did not specify a numerical value in the Policy Statement for "*de minimis* share." The Commission recognizes that a licensee with a relatively small percentage of plant ownership is unlikely in most circumstances to have sufficient resources available to assume responsibility for significantly more than its pro rata share if a co-owner defaults. For example, relatively small portions of nuclear units may be owned by small rural electric cooperatives or small municipal electric systems. In addition, ownership arrangements and percentages vary substantially from plant to plant. Given this variation, the Commission believes that it is appropriate to evaluate the imposition of joint and several responsibility on a case-by-case basis, when this consideration becomes necessary in highly unusual circumstances after all other remedies have failed. A unit-by-unit listing of plant ownership percentages is contained in NUREG/CR–6500, Rev. 1, "Owners of Nuclear Power Plants" (March 2000).

The Commission does not intend to impose inordinate financial stress on its licensees by seeking their payment of additional safety-related costs above their normal pro rata share as a result of default by a co-owner. The Commission recognizes that, particularly for smaller municipal and cooperative entities, requiring them to pay for more than their pro rata share (an already substantial sum, particularly for a smaller entity) could be counterproductive by potentially causing additional defaults by those entities. In practice, it is unlikely that the Commission would be able to obtain additional funds from a seriously financially stressed smaller licensee to cover a defaulting licensee's safety expenses. As indicated, the Commission would only consider imposing a joint and several regulatory responsibility in highly unusual and, presumably, quite rare circumstances after all other feasible remedies have been exhausted.

In any event, the Commission does not find it advisable to establish what would constitute a *de minimis* share of plant ownership applicable to all circumstances. If the Commission were to establish a numerical *de minimis* threshold of general applicability, it would likely do so by a process that provides an opportunity for public comment on the proposed numerical threshold. However, the Commission does not believe that establishing a numerical *de minimis* threshold is appropriate; the Commission needs to retain flexibility to respond to particular circumstances.

As noted above, the Commission intends to use the term "joint and several regulatory responsibility" in place of "joint and several liability." With regard to Commission regulations regarding NPPs, the obligations for which the co-owners/co-licensees could be jointly and severally responsible are those in the Commission's regulations or identified in the license. (See also the response to Comment 1.) By "highly unusual circumstances" we mean circumstances when the public health and safety may be at risk because of lack of appropriate action by licensees. The Commission would consider requiring other co-owners/co-licensees to assume additional health and safety expenditures in excess of their pro rata

[3] As discussed later in this notice, the NRC believes that the term, "joint and several regulatory responsibility" more accurately reflects the intent of the NRC's policy statement. Thus, the NRC will use the term "joint and several regulatory responsibility" in lieu of "joint and several liability."

share only after all other remedies have been exhausted (*e.g.*, rate regulators, bankruptcy courts).[4]

Comment 8. NRC's rule on Financial Assurance Requirements for Decommissioning Nuclear Power Plants (September 22, 1998; 63 FR 50465), identified problems that could result from trying to impose joint and several liability. The Policy Statement does not explain why it takes a position different from the rule. (3)

Response: The Commission does not believe that the Policy Statement takes a position different from the final rule on Financial Assurance Requirements for Decommissioning Nuclear Power Plants, but supplements it. The Commission addressed "joint liability" in some detail in the proposed rule, published in the **Federal Register** on September 10, 1997 (62 FR 47588). Both the rule and the Policy Statement stated that under virtually all circumstances, pro rata division of decommissioning is acceptable, although the rule did not explicitly address financial assurance in "highly unusual circumstances."

Comment 9. The Commission should focus its authority on the defaulting co-owner and its customers, not the other co-owners and their customers. (1)

Response: The Commission intends to focus on those licensees that are not fulfilling their obligations under the license to protect public health and safety. This would include a focus on the defaulting licensee and, as necessary to protect public health and safety in highly unusual circumstances, on the other non-*de minimis* licensees.

Comment 10. The Commission does not have the legal authority to impose joint and several liability. (10) Joint and several liability is neither necessary nor proper, and should be promptly removed by an appropriate rule. (1)

Response: The imposition of a regulatory obligation of joint and several responsibility for the costs of operation and decommissioning among co-licensees of a NPP is neither expressly authorized nor prohibited under the Atomic Energy Act of 1954, as amended (AEA) or related case law. However, the Commission has broad statutory authority under the AEA to take necessary actions to protect public health and safety. See AEA section 161 b & i, 42 U.S.C. 2201 b & i. In fact-specific circumstances joint and several regulatory responsibility has been imposed. *See Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI–88–10, 28 NRC 573 (1988); Order against Safety Light Corporation, its predecessor corporation, and several wholly-owned subsidiaries of the predecessor (54 FR 12035–38, 1989). Although joint and several regulatory responsibility has only been imposed in compelling circumstances where such action was necessary to protect public health and safety, the Commission believes it has this authority. Further, it would be inconsistent with the Commission's overriding mission to protect public health and safety for the Commission to remove its flexibility to impose joint and several regulatory responsibility in those highly unusual circumstances where this action is warranted. That position is reflected in the Policy Statement (see 62 FR 44074) and the Commission rejects the petitioners' request that this position be modified.

Comment 11. The Commission has more than sufficient safeguards to ensure adequate funding for NPP operations and decommissioning, even if one of the licensees experiences financial distress. (1)

Response: The Commission believes the statement to be generally true, but considers that there could be circumstances under which recourse to the financial resources of all joint owners that exceed a *de minimis* ownership level might be needed for the particular plant involved.

Comment 12. Private mechanisms are sufficient without reallocation by the Commission. There is no basis to believe that the Commission is better informed or better able to resolve financial arrangements than the parties and the relevant capital markets. (3)

Response: The Commission agrees with the commenters that, in general, it is not better informed nor better able to resolve financial arrangements than the parties and the relevant capital markets. However, the Commission's charge is to protect the public health and safety. When the Commission finds that a licensee's financial distress is such that it cannot fulfill its obligations under the license, and, as a result, the public's health and safety may be affected, the Commission is obligated to address this situation with whatever remedies it is authorized to use. Also, as indicated above, the Commission would only intervene as a last resort when the financial markets, rate regulators, or bankruptcy courts were unable to solve the problem.

Comment 13. If the Commission does not act early (in identifying and acting on a licensee having deteriorating financial circumstances) and fails to track the actual performance of an operator, because it could act late in any event, the Commission runs the risk of tolerating a deteriorating performer, rather than imposing the discipline of more rigorous regulatory attention. (3)

Response: The Commission believes that it has the means at its disposal to identify and respond to a poor performer. Through onsite inspections, the biennial decommissioning funding status reports required to be filed by NRC power reactor licensees under 10 CFR 50.75(f)(1), and other actions, the Commission is able to keep track of the performance of an operator. The Commission expects that these mechanisms would identify performance problems and problems with respect to the adequacy of financial assurance before extraordinary measures would need to be taken.

Comment 14. The Commission should amend its regulations to provide that, in imposing new arrangements, it will look first to the entity having the operating responsibility, and allow the existing contractual arrangements to work in how that operator passes through the additional costs. The Commission should not impose obligations beyond the pro rata or other contractual arrangements in place. (3)

Response: The commenters suggested that the Commission initiate a rulemaking that would require the NRC to look first at the plant operator for financial responsibility. The Commission does not intend to initiate this action because the plant operator may not have majority, or even any, ownership of the facility in many cases. The Commission also believes that it should retain flexibility in those highly unusual circumstances when pro rata responsibility would endanger public health and safety. With respect to the commenters' position on contractual arrangements, the NRC has addressed that point in its responses to Comments 1 and 4.

Comment 15. The Commission's assertion that the policy statement "expressed no change in prior NRC practice or policy" is "inexplicable and insupportable." Also, the commenter says that the Commission should provide for a full hearing if it considers a change in these policies in the future. (1)

Response: The NRC policy statement in question was published in the **Federal Register** as a proposed policy

[4] The Commission recognizes that if there are inadequate funds to operate the facility safely, the appropriate action would be for the Commission to order the plant to cease operation. Thus, it would be highly unusual for the Commission to require operation under these circumstances. However, should a co-licensee or co-owner default on its decommissioning funding obligation, and, in turn, create a health and safety problem and no other recourse were available, the Commission would be more likely to seek to impose a joint and several regulatory responsibility for decommissioning funding on the remaining owners/licensees.

statement with a request for public comment on the issue of the allocation of responsibility of co-owners (61 FR 49711, 49713 (1996)). The Commission responded to the comments it received on joint and several liability in publishing the final policy statement (62 FR 49071, 49074 (1997)). Moreover, because all co-owners are co-licensees under NRC legal precedent, *See Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB–459, 7 NRC 179, 198–201 (1978), the Commission does not believe that the policy statement represents a change in previous policy. In addition, as described above (Comments 1 and 7), under virtually all circumstances short of the highly unusual, the Commission will continue to defer to co-owners' contractually determined divisions of responsibility. Also, see the response to Comment 10.

Comment 16. If the rulemaking continues, it is important that the PRM be more closely aligned and consistent with the existing financial assurance requirements. (1)

Response: The Commission does not intend to initiate a rulemaking in response to the PRM. Hence, the point raised by the commenter is moot.

Comment 17. The PRM should not be granted because commenters disagree with the petitioners' proposed solution, that would establish an artificial distinction between the operator, operating owner, and non-operating owners that would shift the financial burden to the operator or operating owner. The PRM would not improve the NRC's regulatory process, or benefit the industry, and could be subject to misinterpretation. The proposed change would unfairly and inappropriately burden the licensed operator, who could be a minority co-owner, an entity the petition is attempting to protect. Further, the petitioners do not cite any statutes, regulations, etc. that justify the proposed rule. (5)

Response: The Commission agrees that granting the PRM would establish an artificial (and unwarranted for purposes of financial assurance for operations and decommissioning) distinction between operating and non-operating owners. The petitioners' attempt to establish this artificial distinction is counter to NRC legal precedent referred to in the response to Comment 15 (*i.e.*, that all co-owners are co-licensees). Further, the petitioners' position here appears to be contrary to the petitioner's position as discussed in Comment 1 (*i.e.*, NRC should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations). The petitioners also do not provide any evidence as to how the granting of the petition would improve the NRC's regulatory process by continuing to ensure that the NRC may take any necessary steps within its statutory authority to assure protection of the public health and safety.

Comment 18. The NRC's existing financial assurance regulations are clear regarding a licensee's and operator's responsibility for ensuring safe operation and that decommissioning costs are available for a NPP. (5) The commenters fail to see what extraordinary circumstances could arise that would allow NRC to consider implementing joint and several liability, given their view that decommissioning funding levels are adequate. (2)

Response: See responses to Comments 6 and 7.

Comment 19. The petitioners misconstrue the plain language of the NRC Policy Statement. (4)

Response: The Commission agrees with the comment, because the policy statement discussion and the response to Comment 15 have indicated that under virtually all circumstances short of the rare and highly unusual, the NRC will continue to defer to co-owners' contractually determined divisions of funding responsibility. However, as one commenter noted, "The petition appears to assume that the NRC will impose joint and several liability at the first sign of financial difficulty or insolvency." This is not the Commission's intent.

Comment 20. The commenter is opposed to the petitioners' position that the Commission should require the entity (the co-owner and also the licensed operator of the plant) to be the first imposed upon by the Commission if additional requirements are needed. There is no basis for singling out the operating co-owner for this extra burden. (1)

Response: The Commission agrees with the comment, because the petitioners' position appears to be contrary to the position the petitioners presented in Comment 1 (*i.e.*, NRC should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations). Also, as noted in the response to Comment 1, "* * * NRC expects that obligations under a license will be handled on a pro rata basis among co-owners * * *" Nevertheless, the Commission considers it necessary to maintain the flexibility it has to consider the circumstances regarding assurance of operations and decommissioning funds on a case-by-case basis. The Commission does not find merit in a regulation that would require it to impose the requirements and attendant financial demands first on the co-owner licensed to operate the NPP if financial problems affect one or more of the licensees of an NPP.

Reasons for Denial

The Commission is denying the petition for the following reasons:

1. The Commission has already publicly articulated its policy not to impose operating or decommissioning costs on co-owners in a manner inconsistent with their agreed-upon pro rata shares, except when highly unusual circumstances relating to the protection of the public's health and safety require this action. Further, the Commission has publicly articulated its policy that it would not seek more than pro rata shares from co-owners with *de minimis* ownership of the NPP.

2. The PRM would require the licensed operator of a plant to be the first imposed upon by the Commission should additional requirements be needed. This unnecessarily limits the Commission's flexibility when highly unusual circumstances affecting the protection of public health and safety would require action by the Commission.

3. The petitioners' attempt to establish an artificial distinction between the operator, operating owner, and non-operating owner would be counter to Commission legal precedent within the context of Commission consideration of the imposition of joint and several regulatory responsibility.

4. Further, the petitioners contradict themselves by claiming that the Commission should not impose operating or decommissioning costs on co-owners greater than their contractual obligations. However, the petitioners also stated that the financial burden should be shifted to the operator or operating owner (with no reference to the contractual obligations).

5. Commission action ensuring that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not constitute a retroactive action. Contrary to the petitioners' assertion, the Commission never "approved" the private contractual arrangements for the sharing of costs among co-owners. The Commission's consideration of co-applicants' or co-licensees' cost-sharing arrangements initially was solely for the purpose of determining, under 10 CFR 50.33, if the co-applicants/co-licensees, as a group, had the financial qualifications necessary to construct and operate the nuclear power plant.

Subsequently, the Commission also considered cost-sharing arrangements with respect to decommissioning financial assurance, but did not "approve" the contractual arrangements in that context either. Accordingly, Commission action to recognize joint and several regulatory responsibility on co-licensees does not constitute retroactive regulatory action.

6. Commission action ensuring that operating or decommissioning funds are available from co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not alter, and therefore leaves undisturbed, the contractual rights of a co-owner to recover costs from another co-owner under their contractual agreements in a private cause of action or in a bankruptcy proceeding.

7. Lastly, the PRM does not show how the proposed rule would improve the NRC's regulatory process and maintain the same level of protection of public health and safety provided under current Commission regulations, legal precedent, and policies.

For reasons cited in this document, the Commission denies the petition.

Dated at Rockville, Maryland, this 25th day of July, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–19242 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–373–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This proposal would require replacement of certain components. This action is necessary to prevent corrosion of the axle of the main landing gear, which could result in cracking and failure of the axle, loss of the wheels on that axle, and reduced controllability of the airplane on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–373–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–373–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–373–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–373–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that corrosion was found on an axle on the main landing gear (MLG) of a Boeing Model 777–200 series airplane. The corrosion occurred in an area on which chrome plating was missing. Investigation revealed that the chrome plating on that axle was applied incorrectly. The manufacturer's records indicated that 16 axles were plated at the same time, and the manufacturer has determined that the plating on these other axles (which are installed on a total of eight airplanes) was also applied incorrectly. This condition, if not corrected, could result in corrosion of the MLG axle, which could result in cracking and failure of the axle. Failure of one axle could result in loss of the MLG wheels on that axle. Failure of more than one axle on one MLG could result in loss of multiple wheels and reduced controllability of the airplane on the ground.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–32A0024, dated August 12, 1999, which describes procedures for replacement of existing defective MLG axles with new axles. Accomplishment of the actions

specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

There are approximately 8 airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD. It would take between 56 and 93 work hours per airplane (depending on which, and how many, of the airplane's MLG axles are affected) to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $3,360 and $5,580 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–373–AD.

Applicability: Model 777–200 series airplanes; line numbers 7 through 11 inclusive, 26, 28, and 33; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the axle of the main landing gear, which could result in cracking and failure of the axle, loss of the wheels on that axle, and reduced controllability of the airplane on the ground, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace specified axles of the main landing gear with new axles, in accordance with Boeing Alert Service Bulletin 777–32A0024, dated August 12, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19266 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–76–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that currently requires inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. This action would require repetitive accomplishment of the inspections using improved inspection methods; a one-time visual and repetitive general visual and detailed visual inspections; new repetitive non-destructive test (NDT) inspections; and corrective and follow-on actions, as

necessary. This action also would provide for terminating action for all repetitive inspections and would revise the applicability of the existing AD. The actions specified by the proposed AD are intended to prevent high bearing stress on the bushings of the flap fittings, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

DATES: Comments must be received by August 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–76–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–76–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 14, 1997, the FAA issued AD 96–25–06 R1, amendment 39–9891 (62 FR 3209, January 22, 1997), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, to require inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. That action was prompted by a report of jamming of a flap due to incorrect tolerances of the flap-hinge installation, which caused high bearing stress on the bushings in the flap fitting. The requirements of that AD are intended to prevent high bearing stress, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, has advised the FAA that the L-shaped flap fittings at WS 123.38, where the triangular flap fitting is installed, have failed in some cases due to fatigue. Investigation revealed that the initial failure occurred in the aft attachment lug where the swaged bushing is installed, which led to a failure in the bottom radius of the adjacent L-shaped fitting. The LFV further advises that the inspection methods specified by Saab Service Bulletin 340–57–027, Revision 01, dated June 30, 1995, and required in AD 96–25–06 R1, are inadequate to detect cracking of the forward and aft attachment lugs at WS 123.38. In that inspection, it is possible for small cracks to pass by undetected. Over time, these small cracks could cause failure of certain components of the flap fittings at WS 123.38.

The LFV also advises that, bushings with incorrect length may have been installed at the forward attachment point to the triangular fitting. Bolts and bushings with incorrect lengths also may have been installed at the aft attachment point. Consequently, high bearing stress can occur to the bushings and on the L-fittings due to short bushings and bolts.

In light of the recent events, the manufacturer has released new service information, and the FAA has determined that it is necessary to perform a new, one-time visual inspection, repetitive general and detailed visual inspections, and repetitive non-destructive test (NDT) inspections to enable early detection of discrepancies of the affected area.

Explanation of Relevant Service Information

The manufacturer has issued SAAB Service Bulletins 340–57–035, 340–57–037, and 340–57–038, each dated January 18, 2000, which describe procedures for the following:

- *Saab Service Bulletin 340–57–035:* One-time visual inspection of the flap assemblies to determine the serial numbers. If certain flap assemblies (as listed in the service bulletin) are installed, the follow-on actions include repetitive visual inspections of the affected flap assemblies (forward and aft attachment lugs) of the flap fittings at WS 123.38 to detect cracking or damage. The service bulletin also references Saab Service Bulletin 340–57–037 for performing NDT inspection of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking; and detailed visual inspections of the flap fittings to determine the size of the inboard and outboard holes (swaged bushings) and to detect loose swaged bushings. If no discrepancies (incorrectly sized hole, loose swaged bushings, or cracking) are detected, the service bulletin describes procedures for installing new fasteners (nuts, bolts, bushings, and washers) that attach to

the flap hinges. If any discrepancy (as described previously) is detected during the visual or NDT inspection, the service bulletin refers to Saab Service Bulletin 340–57–038 for replacement of all flap fittings.

• *Saab Service Bulletin 340–57–037:* One-time visual inspection of the aft attachment lugs (flap assemblies) of the flap fittings at WS 123.38 to determine the flap assembly modification status. If any flap assembly is installed that has a thinner lug, the follow-on actions include repetitive visual inspections of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking or damage. If any cracking or damage is detected, the service bulletin refers to Saab Service Bulletin 340–57–038 for replacement of all flap fittings. The service bulletin also describes procedures for repetitive NDT inspections of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking. If any cracking is detected, the service bulletin refers to Saab Service Bulletin 340–57–038 for replacement of the flap fittings.

• *Saab Service Bulletin 340–57–038:* Replacement of the flap fittings at WS 123.38, with new, improved flap fittings. Accomplishment of the replacement of all flap fittings would eliminate the need for all inspections specified by Service Bulletins 340–57–035 and 340–57–037, as described previously.

The LFV classified Saab Service Bulletins 340–57–035 and 340–57–037 as mandatory and issued Swedish airworthiness directives No. 1–152 and No. 1–153, each dated January 19, 2000, to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede all requirements of AD 96–25–06 R1. This proposed AD would require a new, one-time visual inspection; new repetitive general visual and detailed visual inspections; and a new repetitive NDT inspection; and corrective and follow-on actions, as necessary. The proposed AD also would provide for terminating action for the repetitive inspections, would revise the applicability of the existing AD to apply only to airplanes on which a certain flap assembly is installed, and would add airplanes that may be subject to the unsafe condition. The actions would be required to be accomplished in accordance with the Saab service bulletins described previously.

Cost Impact

The FAA estimates that 303 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed repetitive general visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed general visual inspections on U.S. operators is estimated to be $18,180, or $60 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed one-time general visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed general visual inspection on U.S. operators is estimated to be $18,180, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed repetitive detailed visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed detailed visual inspections on U.S. operators is estimated to be $18,180, or $60 per airplane, per inspection cycle.

It would take approximately 2 work hours per airplane to accomplish the proposed repetitive NDT inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed NDT inspections on U.S. operators is estimated to be $36,360, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required or elect to accomplish the terminating modification, it would take approximately 92 work hours per airplane (46 work hours per flap), at an average labor rate of $60 per hour. Required parts would cost $7,362 per airplane ($3,681 per flap). Based on these figures, the cost impact of the terminating modification on U.S. operators is estimated to be $12,882 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9891 (62 FR 3209, January 22, 1997), and by adding a new airworthiness directive (AD), to read as follows:

SAAB Aircraft AB: Docket 2000–NM–76–AD. Supersedes AD 96–25–06 R1, Amendment 39–9691.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers –004 through –159 inclusive; and SAAB 340B series airplanes, manufacturer's serial numbers –160 through –459 inclusive; certificated in any category; on which any flap assembly having part number (P/N) 7257800–501 through 508 inclusive, or 7257800–851 through 7257800–856 inclusive, is installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high bearing stress on the bushings in the flap fittings, which could result in jamming of the flaps and consequent reduced controllability of the airplane, accomplish the following:

Visual Inspection for Serial Numbers

(a) Within 800 flight hours after the effective date of this AD, perform a one-time visual inspection of the flap assemblies of the flap fittings at wing station (WS) 123.38 to determine the flap assembly serial numbers, in accordance with Saab Service Bulletin 340–57–035, dated January 18, 2000.

(1) If none of the serial numbers of the flap assemblies are listed in the service bulletin, no further action is required by this paragraph.

(2) If the serial number of any flap assembly is listed in the service bulletin, prior to further flight, accomplish the requirements of paragraph (a)(2)(i) and, at the time specified, accomplish the requirements of paragraph (a)(2)(ii) of this AD.

General Visual Inspection, Non-Destructive Test (NDT) Inspection, and Replacement of Bolts and Bushings

(i) Perform a general visual inspection of the affected flap fittings at WS 123.38 to detect cracking, in accordance with the service bulletin. If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 800 flight hours, until the requirements of paragraph (a)(2)(ii) are accomplished. If any cracking is detected, prior to further flight, accomplish the terminating action specified by paragraph (c) of this AD.

(ii) Within 4,800 flight hours after the effective date of this AD, perform a one-time detailed visual inspection of the flap fittings to determine the size of the inboard and outboard holes (swaged bushing) and to detect loose swaged bushings; and perform an NDT inspection of the aft attachment lugs of the flap assemblies at WS 123.38 to detect cracking, in accordance with the service bulletin. Accomplishment of the NDT inspection terminates the general visual inspection required by paragraph (a)(2)(i) of this AD.

Note 2: For the purpose of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: For the purpose of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(A) If all the hole sizes are within the limits specified by the service bulletin, no loose swaged bushings are found, and no cracking of the aft attachment lugs is detected: Prior to further flight, install new fasteners that attach to the flap hinges (nuts, bolts, bushing, and washers), in accordance with the service bulletin.

(B) If any hole size is outside the limits specified by the service bulletin, or any loose swaged bushing is found, or any cracking is detected on the aft attachment lugs: Prior to further flight, accomplish the terminating action specified in paragraph (c) of this AD.

Visual Inspection for Modification Status

(b) Within 800 flight hours after the effective date of this AD, perform a one-time visual inspection of the aft attachment lugs (flap assemblies) of the flap fittings at wing station (WS) 123.38 to determine the flap assembly modification status, in accordance with Saab Service Bulletin 340–57–037, dated January 18, 2000.

(1) If the modification status is such that all flap assemblies installed have thicker lugs, as specified by Figure 1 of the service bulletin, no further action is required by this paragraph.

(2) If the modification status is such that any flap assembly installed has a thinner lug, as specified by Figure 1 of the service bulletin, prior to further flight, accomplish the requirements of paragraph (b)(2)(i) and, at the time specified, accomplish the requirements of paragraph (b)(2)(ii) of this AD.

Visual Inspection and NDT Inspection

(i) Perform a general visual inspection of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking or damage, in accordance with the service bulletin. If no cracking or damage is detected during the visual inspection, repeat the inspection thereafter at intervals not to exceed 800 flight hours, until the requirements of paragraph (b)(2)(ii) of this AD are accomplished. If any cracking or damage is detected during any general visual inspection required by this paragraph, prior to further flight, accomplish the terminating action specified by paragraph (c) of this AD.

(ii) Within 6,000 flight cycles after the effective date of this AD, perform an NDT inspection of the aft attachment lug of the flap fittings at WS 123.38 to detect cracking, in accordance with the service bulletin. Accomplishment of the NDT inspection terminates the repetitive visual inspections required by paragraph (b)(2)(i) of this AD. If no cracking is detected, repeat the NDT inspection thereafter at intervals not to exceed 6,000 flight cycles, until the actions specified by paragraph (c) are accomplished. If any cracking is detected during any NDT inspection required by this paragraph, prior to further flight, accomplish the terminating action specified by paragraph (c) of this AD.

Terminating Action

(c) Replacement of all flap fittings at WS 123.38 with new, improved flap fittings in accordance with Saab Service Bulletin 340–57–038, dated January 18, 2000, terminates all inspections required by this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Swedish airworthiness directives No. 1–152 and No. 1–153, each dated January 19, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19264 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require replacement of the existing wire between certain circuit breakers with an improved wire. This action is necessary to prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–121–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Carla Worthey, Program Manager, Program Management & Services Branch, ACE–118A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6062; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received a report of overheating of the wire between the two circuit breakers that protect the Total Air Temperature (TAT) probe indication and the auxiliary pitot/static tube heating. Investigation revealed that the wire installed between the circuit breakers was of an incorrect size. Such overheating, if not corrected, could result in smoke emissions in the cockpit.

Explanation of Relevant Service Information

The manufacturer has issued EMBRAER Service Bulletin 120–30–0028, dated August 25, 1997, which describes procedures for replacement of the existing wire between circuit breakers 0304 and 0358 with a wire coded W200–1063–12. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 97–11–01, dated November 25, 1997, to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 240 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $8 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $30,720, or $128 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2000–NM–121–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120003, 120004, 120006 through 120306 inclusive, 120310, 120312 through 120314 inclusive, 120316 through 120323 inclusive, and 120325 through 120330 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit, accomplish the following:

(a) At the next scheduled maintenance inspection ("A"-check), but no later than 400 flight hours after the effective date of this AD: Replace the existing wire between circuit breakers 0304 and 0358 with a wire coded W200–1063–12, in accordance with EMBRAER Service Bulletin 120–30–0026, dated August 25, 1997.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–11–01, dated November 25, 1997.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19263 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. This action is necessary to detect and correct fatigue cracking of the front spar web, which could result in fuel leaking onto an engine and a consequent fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–134–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–134–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator found a 24-inch-long crack in the front spar web of the right wing of a Boeing Model 747 series airplane. Metallurgical analysis of the cracked web section indicated that three cracks initiated from a hole common to a rib post located on the front spar at front spar station inboard (FSSI) 656. The initiation and propagation of the cracking have been attributed to fatigue. This condition, if not corrected, could result in fuel leaking onto an engine and a consequent fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000, which describes procedures for various repetitive external inspections to detect cracking of the front spar web of the wing. The inspections include:

- A detailed visual inspection to detect cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 684;
- An ultrasonic inspection to detect cracking of the web behind the front spar stiffeners and for horizontal cracks in the web under the upper and lower chords between FSSI 628 and FSSI 684; and
- A high frequency eddy current (HFEC) inspection to detect vertical cracks in the web near the vertical flanges of the upper and lower chords.

The alert service bulletin also describes procedures for an optional web inspection that can be performed in lieu of the external web inspections. The optional inspection necessitates less access than the external inspection when the fuel tanks are already being accessed for other reasons, and is intended to provide an alternative method of inspection. The optional method includes:

- Detailed visual inspections from inside the fuel tank to detect cracks of the aft side of the web, and from outside the fuel tank to detect cracks between the upper and lower chords at the wing station (WS) 642 rib post;
- Ultrasonic inspections from outside the fuel tank to detect horizontal cracks in the web between the rib post and the upper and lower chords at the WS 642 rib post, and to detect cracks in the web behind the front spar stiffener at FSSI 628; and,
- An HFEC inspection to detect vertical cracks in the web near the vertical flanges of the upper and lower chords at the WS 642 rib post.

Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This Proposed AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 478 airplanes of the affected design in the worldwide fleet. The FAA estimates that 97 airplanes of U.S. registry would be affected by this proposed AD.

The external inspections that are one option for compliance with this proposed AD would take approximately 48 work hours per airplane (not including access and close-up), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed external inspections on U.S. operators is estimated to be $2,880 per airplane, per inspection cycle.

In lieu of accomplishment of the external inspections, this proposed AD would provide for an optional web inspection that would take approximately 50 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed optional web inspection on U.S. operators is estimated to be $3,000 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–134–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the front spar web of the wing, which could result in fuel leaking onto an engine and a consequent fire, accomplish the following:

Repetitive Inspections

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, perform the Part 1 external web inspection—including detailed visual, ultrasonic, and high frequency eddy current (HFEC) inspections—to detect cracking of the front spar web of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000. In lieu of the Part 1 external web inspection, accomplishment of the Part 2 optional web inspection to detect cracking—which also includes detailed visual, ultrasonic, and HFEC inspections—in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000, is acceptable for compliance with this paragraph. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) Prior to the accumulation of 13,000 total flight cycles or 30,000 total flight hours, whichever occurs first.

(2) Within 18 months after the effective date of this AD.

Repair

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19267 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98D–0795]

Revised Draft Guidance for Industry on Developing Medical Imaging Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled "Developing Medical Imaging Drugs and Biological Products." FDA has revised the draft guidance issued on October 14, 1998, in response to comments from industry and other interested persons. The revised draft guidance is intended to assist developers of drug and biological products used for medical imaging in conducting the clinical investigations of, and submitting various types of applications for, such products. The revised draft guidance also provides

information on how the agency will interpret and apply provisions in FDA's final rule on in vivo radiopharmaceuticals used for diagnosis and monitoring.

DATES: Submit written comments on the revised draft guidance by September 29, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the revised draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX or 301–827–3844. Send two self-addressed adhesive labels to assist either office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised draft guidance. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:
Robert K. Leedham, Jr., Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510, or
George Q. Mills, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5097.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

In the **Federal Register** of October 14, 1998 (63 FR 55067), FDA published a notice announcing the availability of a draft guidance for industry entitled "Developing Medical Imaging Drugs and Biological Products." The draft guidance is intended to assist developers of drug and biological products used for medical imaging in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance also provides information on how the agency will interpret and apply provisions in the final rule, published in the **Federal Register** of May 17, 1999 (64 FR 26657), on the evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis and monitoring of diseases. The final rule describes certain types of indications for which FDA will approve diagnostic radiopharmaceuticals and lists factors that the agency will consider in evaluating the safety and effectiveness of a diagnostic radiopharmaceutical drug or biological product under the Federal Food, Drug, and Cosmetic Act (the act) or the Public Health Service Act (the PHS Act), respectively.

The draft guidance applies to medical imaging agents that are used for diagnosis and monitoring and that are administered in vivo. Such agents include contrast agents used with medical imaging techniques such as radiography, computed tomography, ultrasonography, and magnetic resonance imaging, as well as radiopharmaceuticals used with imaging procedures such as single-photon emission computed tomography and positron emission tomography. The draft guidance is not intended to apply to possible therapeutic uses of these agents or to in vitro diagnostic products.

In a document published in the **Federal Register** of January 5, 1999 (64 FR 457), FDA reopened the comment period on the draft guidance until February 12, 1999. In another document published in the **Federal Register** of February 16, 1999 (64 FR 7561), FDA extended the comment period until April 14, 1999.

FDA received numerous written comments on the medical imaging draft guidance. In addition, the agency held public meetings on January 25 and March 26, 1999, to discuss various issues concerning the draft guidance.

II. Revisions to the Draft Guidance

In response to comments and on its own initiative, FDA has made several revisions to the medical imaging draft guidance. The revisions include substantive changes as well as relatively minor clarifications of terms and provisions. Following is a brief summary of the most significant revisions that FDA has made to the draft guidance.

A. Clinical Safety Assessments: Group 1 and Group 2 Agents

In accordance with several comments, FDA has redefined the category of medical imaging agents—Group 1 agents—that may be able to undergo a more focused clinical safety evaluation during development (i.e., a complete standard clinical safety evaluation may not be necessary). The revisions make it possible for more medical imaging agents to be eligible for Group 1 status than under the previous definition.

A principal change in Group 1 criteria is substitution of a no-observed-adverse-effect level (NOAEL) in place of a no-observed-effect-level (NOEL) in evaluations of the safety margin. An applicant will not be asked to demonstrate a NOEL that is at least 1,000 times greater than the maximal dose and dosage to be used in human studies, as stated in the original draft guidance. Instead, the NOAEL in expanded-acute, single-dose toxicity studies and safety pharmacology studies in suitable animal species should be at least 100 times greater than the maximal dose and dosage to be used in human studies. The NOAEL in short-term, repeated-dose toxicity studies should be at least 25 times greater than the maximal dose and dosage for humans.

The revised draft guidance also specifies when FDA will make Group 1 designations. Group 1 designations based on the safety margin will be made at the end of phase 1, after animal studies and initial human trials have been completed. Group 1 designations based on documented history of extensive clinical use without observed safety issues may occur at any time during drug development.

B. Blinded Imaging Evaluations

In response to concerns raised about blinding procedures discussed in the original draft guidance, FDA has substantially revised the recommendations on blinded imaging evaluations. The revised draft guidance states that either a fully blinded image evaluation or an image evaluation blinded to outcome by independent readers generally should serve as the principal image evaluation for demonstration of efficacy to support approval of a medical imaging agent. The revised draft guidance also notes that such image evaluations may be performed through sequential unblinding.

C. Endpoints in Trials of Medical Imaging Agents

The revised draft guidance includes a more detailed discussion of the use of primary endpoints in clinical trials designed to establish or support the efficacy of a medical imaging agent. The revised draft guidance clarifies that such primary endpoints usually should be related directly to clinically meaningful objectives. The revised draft guidance notes that image interpretations often have clinical implications that may be incorporated into the primary endpoint in clinical trials on the efficacy of a medical imaging agent. The revised

draft guidance also explains when objective imaging features, subjective image assessments, and clinical outcomes may be appropriate for use as primary imaging endpoints.

D. Other Issues on Imaging Conditions and Image Evaluations

FDA has made several other changes to the provisions in the original draft guidance on special considerations in the clinical evaluation of efficacy. These include the following: (1) Clarifying the steps in the evaluation of medical images (distinguishing between the assessment of objective image features and the interpretation of findings on an image); (2) providing a revised explanation of independent image evaluations; (3) suggesting when offsite and onsite image evaluations may be appropriate; (4) adding a discussion of the use of protocol and nonprotocol images in evaluating efficacy; and (5) clarifying the recommendations on separate or combined image evaluations.

E. Clinical Usefulness

FDA has revised the discussion of demonstrating the effectiveness of a medical imaging agent by evaluating its ability to provide useful clinical information related to its proposed indication. The revised draft guidance clarifies the ways in which a sponsor may establish the clinical usefulness of its product, depending on the specific indication. The agency also has provided several examples of how clinical usefulness should be established for different types of indications and under different circumstances.

III. Statement of Guidance Practices

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the development of medical imaging drugs and biological products. The revised draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the revised draft guidance document by September 29, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The revised draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the revised draft guidance at http://www.fda.gov/cder/ guidance/ index.htm or http://www.fda.gov/cber/ guidelines/ index.htm.

VI. The Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is provided in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comment on the following: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Developing Medical Imaging Drugs and Biological Products.

Description: FDA is issuing a revised draft guidance on the development of medical imaging drugs and biological products. The draft guidance is intended to assist developers of drug and biological products used for medical imaging in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance provides information on how the agency will interpret and apply provisions of the existing regulations regarding the content and format of an application for approval of a new drug (21 CFR 314.50) and the content of a biological product application (21 CFR 601.25). The draft guidance also provides information on how the agency will interpret and apply the final rule on the evaluation and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring (64 FR 26657). The final rule, by adding part 315 (21 CFR part 315), clarifies requirements for the evaluation and approval of drug and biological radiopharmaceuticals under the authority of the act and the PHS Act.

Existing regulations, which appear primarily in parts 314 and 601 (21 CFR parts 314 and 601), specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of new drugs and biological products. This information is usually submitted as part of a new drug application (NDA) or a biologics license application, or as a supplement to an approved application. Part 315 contains regulations that clarify what information is relevant for diagnostic radiopharmaceuticals. This revised draft guidance supplements these regulations. Under part 315 and the revised draft guidance, information required under the act and the PHS Act to establish safety and effectiveness would still have to be reported.

Description of Respondents: Manufacturers of medical imaging drugs and biological products, including contrast drug products and diagnostic radiopharmaceuticals.

Burden Estimate: The final rule on in vivo radiopharmaceuticals used for diagnosis and monitoring set forth an estimated annual reporting burden on the industry that would result from that rulemaking (64 FR 26657 at 26667). OMB has approved this collection of information until July 31, 2002, under OMB control number 0910–0409. This revised draft guidance on the development of medical imaging drugs and biological products is in part intended to explain how FDA will interpret and apply the final rule. Thus, the estimated annual reporting burden of the draft guidance is the same as that of the final rule, with one change. In addition to the diagnostic radiopharmaceuticals that are the subject of the final rule, the revised draft guidance also addresses the development of contrast drug products, which FDA evaluates and approves under part 314, but which are not affected by the final rule.

Table 1 provides an estimate of the annual reporting burden for contrast drug products. FDA estimates that the potential number of respondents who would submit applications or supplements for contrast drug products would be one. Although FDA did not approve any NDA's for contrast drugs

(there are no biological contrast drug products) in fiscal year 1999, for purposes of estimating the annual reporting burden, the agency assumes that it will approve one contrast drug each fiscal year. The annual frequency of responses for contrast drugs is estimated to be one response per application or supplement. The hours per response, which is the estimated number of hours that an applicant would spend preparing the information to be submitted for a contrast drug in accordance with this draft guidance, is estimated to be approximately 2,000 hours.

The revised draft guidance would not impose any additional reporting burden because safety and effectiveness information is already required by existing regulations. In fact, clarification by the revised draft guidance of FDA's standards for evaluation of medical imaging drugs and biological products is expected to reduce the overall burden of information collection. FDA received no comments on the analysis of information collection burdens stated in the notice of availability of the original draft guidance published on October 14, 1998. FDA invites comments on this revised analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Contrast Drugs	1	1	1	2,000	2,000
Total					2,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this revised draft guidance to OMB for review. Interested persons are requested to send comments on this information collection by August 30, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

Dated: July 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19176 Filed 7–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116495–99]

RIN 1545–AX88

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit participants or beneficiaries to receive loans from the plan, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: Written and electronic comments and requests for a public hearing must be received by October 30, 2000.

ADDRESSES: Send submissions to: CC:MSP:RU (REG–116495–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:MSP:RU (REG–116495–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Vernon S. Carter, (202) 622–6070; concerning submissions Sonya Cruse (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code).

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) by a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan and the repayment schedule, and to the extent the loan satisfies certain limitations on the amount loaned.

Section 1704(n) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755), added section 414(u) of the Code. Section 414(u)(4) provides that if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services, that suspension is not to be taken into account for purposes of section 72(p).[1] The proposed regulations provide a rule clarifying that, under section 414(u)(4), if a plan provides for the suspension of a participant's obligation to repay a loan for any part of any leave of absence for a period of military service (as defined in chapter 43 of title 38, United States Code), the suspension will not cause the loan to be deemed distributed, even if the leave exceeds one year, as long as loan repayments resume upon the completion of the military service, the amount then remaining due on the loan

[1] Rev. Proc. 98–49 (1998–2 C.B. 369), includes a model amendment that may be used to reflect section 414(u)(4).

is repaid in substantially level installments thereafter, and the loan is fully repaid by the end of the period equal to the original term of the loan plus the period of the military service.

Regulations were proposed in 1995 [2] with respect to many of the issues arising under section 72(p)(2). The preamble to the 1995 proposed regulations requested comments on whether further guidance should be provided on issues that were not addressed and how the issues should be resolved, including (1) the effect of a deemed distribution on the tax treatment of subsequent distributions from a plan (such as whether a participant has basis), (2) the application of the $50,000 limitation to multiple loan arrangements, and (3) the application of section 72(p)(2) to a refinancing and to multiple loan arrangements. Following publication of the 1995 proposed regulations, various comments were received and a public hearing was held on June 28, 1996. After reviewing the written comments and comments made at the public hearing, proposed regulations generally addressing the first issue were published in the **Federal Register** (63 FR 42) on January 2, 1998 (REG–209476–82).

Final regulations for the issues addressed in the 1995 and 1998 proposed regulations are being published elsewhere in this issue of the **Federal Register**. These proposed regulations address the remaining issues on which comments were requested in the preamble to the 1995 proposed regulations, namely, situations in which a loan is refinanced or more than one loan is made.

These proposed regulations provide that if a loan is deemed distributed to a participant or beneficiary and has not been repaid, then no payment made thereafter to the participant or beneficiary will be treated as a loan for purposes of section 72(p)(2), unless certain conditions are satisfied. Specifically, there must be an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding or the plan must receive adequate security for the additional loan (in addition to the participant's accrued benefit under the plan).[3]

The proposed regulations also provide that while a loan can be refinanced and additional amounts may be borrowed, the refinancing and multiple loan arrangements must satisfy the requirements in section 72(p)(2)(B) and (C) that each loan be repaid in level installments, not less often than quarterly, over five years (or longer for certain home loans). Under the proposed regulations, a refinancing is, in effect, treated as a new loan that is then applied to repay a prior loan if the new loan both replaces a prior loan and has a later repayment date. Thus, the transaction will result in a deemed distribution if the amount of the new loan plus the prior outstanding loan exceeds the amount limitations of section 72(p)(2)(A). This rule does not apply to a refinancing loan under which the amount of the prior loan is to be repaid by the original repayment date of the prior loan. These standards are illustrated in examples.[4]

In addition, a participant may borrow more than once from the plan under section 72(p)(2), but, in order to ensure that additional loans are not used to circumvent the requirements of section 72(p), a deemed distribution of a loan will occur if two loans have previously been made from the plan to the participant or beneficiary during the year.

Electronic Signatures Act

The Electronic Signatures in Global and National Commerce Act (114 Stat. 464) (the Electronic Signatures Act) was signed on June 30, 2000. Title I of the Electronic Signatures Act, which is generally effective October 1, 2000, applies to certain electronic records and signatures in commerce. Comments are requested on the impact of the Electronic Signatures Act on the final regulations under section 72(p) that appear in this issue of the **Federal Register** and on any future guidance that may be needed on the application of the Electronic Signatures Act to plan loan transactions.

Proposed Effective Date

The regulations are proposed to be effective with respect to loans made on or after the first January 1 that is at least six months after publication as final regulations. However, Q&A–19(b)(2) of the proposed regulations would not apply to loans, whenever made, under an insurance contract that is in effect before a date that is 12 months after publication as final regulations if the insurance carrier is required under the insurance contract to offer loans to contractholders that are not secured (other than being secured by the participant's or beneficiary's benefit under the contract).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will

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[2] Proposed § 1.72(p)–1 was published in the **Federal Register** (60 FR 66233) on December 21, 1995.

[3] The Department of Labor (DOL) has advised the IRS that, with respect to plans covered by Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829) (ERISA), the administration of a participant loan program involves the management of plan assets. Therefore, fiduciary conduct undertaken in the administration of such a loan program must conform to the rules that govern transactions involving plan assets. In particular, a loan program must be administered in a prudent manner, solely in the interest of the participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. See, generally, ERISA sections 403, 404, and 406. In the view of DOL, it is questionable whether a participant loan program of a plan covered by Title I of ERISA that does not provide for timely repayment of loans (through payroll withholding or otherwise), regular and effective collection efforts following a default, and adequate security for the plan in the event of default would be in compliance with the rules applicable under Title I of ERISA to transactions involving plan assets. In the view of DOL, it is also questionable whether such a program would qualify for the relief provided under section 406(b)(1) of ERISA. See Preamble to 29 CFR 2550.408b–1, (54 FR 30520, 30521) (July 20, 1989). Further, a plan may make a second loan to a defaulting participant whose prior loan remains unpaid only if such a loan would be in accordance with the applicable standards of Title I. A fiduciary must take steps to ensure, inter alia, that such a loan is bona fide and not a mere transfer of plan assets, that the loan is adequately secured, and that the plan's assets will be preserved in the event of default. See Preamble to 29 CFR 2550.408b–1, (54 FR at 30521).

[4] The examples in the new proposed regulations are based on the same assumptions described in § 1.72(p)–1 introductory text of the final regulations.

be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.72(p)–1 is amended as follows:

1. Q&A–9(b) and (c), Q&A–19 and Q&A–20 are revised.

2. Q&A–22 is amended by adding new paragraph (d).

The revisions and addition read as follows:

§ 1.72(p)–1 Loans treated as distributions.

* * * * *

A–9: * * *

(b) *Military service.* In accordance with section 414(u)(4), if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p) or this section. Thus, if a plan suspends loan repayments for any part of a period during which the employee is performing military service described in the preceding sentence, such suspension shall not cause the loan to be deemed distributed even if the suspension exceeds one year and even if the term of the loan is extended. However, the loan will not satisfy the repayment term requirement of section 72(p)(2)(B) and the level amortization requirement of section 72(p)(2)(C) unless loan repayments resume upon the completion of such period of military service, the frequency of the periodic installments due during the period beginning when the military service ends and ending when the loan is repaid in full, and the amount of each periodic installment, is not less than the frequency and amount of the periodic installments required under the terms of the original loan, and the loan is repaid in full (including interest that accrues during the period of military service) by the end of the period equal to the original term of the loan plus the period of such military service.

(c) *Examples.* The following examples illustrate the rules of paragraph (a) and (b) of this Q&A–9 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) On July 1, 2001, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. The participant was not performing military service during this period. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2006.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2006 repaid the full balance remaining due.

Example 2. (i) The facts are the same as in *Example 1*, except the participant was on leave of absence performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for two years. After the military service ends on April 2, 2004, the participant resumes active employment on April 19, 2004, continues the monthly installments of $825 thereafter, and on June 30, 2008 repays the full balance remaining due ($10,527).

(ii) Because the loan satisfies the requirements of section 72(p)(2) and paragraph (b) of this Q&A–9, the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would also be satisfied if the amount of each monthly installment after April 19, 2004, is increased to $983 in order to repay the loan by June 30, 2008 (without any balance remaining due then).

* * * * *

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes and what effect does the deemed distribution have on subsequent loans?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded for purposes of applying section 72 to the participant or the beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and, thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. See Q&A–16 of this section.

(b) *Effect on subsequent loans*—(1) *Application of section 72(p)(2)(A).* A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

(2) *Additional security for subsequent loans.* If a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan loan offset), then no payment made thereafter to the participant or beneficiary shall be treated as a loan for purposes of section 72(p)(2) unless the loan otherwise satisfies section 72(p)(2) and this section and either of the following conditions is satisfied:

(i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding. For this purpose, an arrangement will not fail to be enforceable merely because a party has the right to revoke the arrangement prospectively.

(ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

(3) *Condition no longer satisfied.* If, following a deemed distribution that has

not been repaid, a payment is made to a participant or beneficiary that satisfies the conditions in paragraph (b)(2) of this Q&A–19 for treatment as a plan loan and, subsequently, before repayment of the second loan, the conditions in paragraph (b)(2) of this Q&A–19 are no longer satisfied with respect to the second loan (for example, if the loan recipient revokes consent to payroll withholding), the amount then outstanding on the second loan is treated as a deemed distribution under section 72(p).

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: (a) *Refinancings and multiple loans*—(1) *General rule.* A participant who has an outstanding loan that satisfies section 72(p)(2) and this section may refinance that loan or borrow additional amounts, if, under the facts and circumstances, the loans collectively satisfy the amount limitations of section 72(p)(2)(A) and the prior loan and the additional loan each satisfy the requirements of section 72(p)(2)(B) and (C) and this section. For this purpose, a refinancing includes any situation in which one loan replaces another loan.

(2) *Loans that repay a prior loan and have a later repayment date.* For purposes of section 72(p)(2) and this section (including paragraph (a)(3) of this Q&A–20 and the amount limitations of section 72(p)(2)(A)), if a loan that satisfies section 72(p)(2) is replaced by a loan (a replacement loan) and the term of the replacement loan ends after the term of the loan it replaces (the replaced loan), the replacement loan and the replaced loan are both treated as outstanding on the date of the transaction. For purposes of the preceding sentence, the term of the replaced loan is determined under the terms of that loan as in effect immediately prior to the making of the replacement loan. Thus, for example, the replacement loan results in a deemed distribution if the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the replaced loan, fails to satisfy the amount limitations of section 72(p)(2)(A). This paragraph (a)(2) of this Q&A–20 does not apply to a replacement loan if the terms of the replacement loan would satisfy section 72(p)(2) and this section determined as if the replacement loan consisted of two separate loans, the replaced loan (amortized in substantially level payments over a period ending not later than the last day of the term of the replaced loan) and a new loan based on the difference between the amount of the replacement loan and the amount of the replaced loan.

(3) *Multiple loans.* For purposes of section 72(p)(2) and this section, a loan to a participant or beneficiary shall be treated as a deemed distribution if two or more loans have previously been made from the plan to the participant or beneficiary during the year. This limitation applies on the basis of a calendar year unless the plan applies this limit on the basis of the plan year or another consistent 12-month period.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q&A–20 and are based on the assumptions described in the introductory text of this section:

Example 1. (i) A participant with a vested account balance that exceeds $100,000 borrows $40,000 from a plan on January 1, 2003, to be repaid in 20 quarterly installments of $2,491 each. Thus, the term of the loan ends on December 31, 2007. On January 1, 2004, when the outstanding balance on the loan is $33,322, the loan is refinanced and is replaced by a new $40,000 loan from the plan to be repaid in 20 quarterly installments. Under the terms of the refinanced loan, the loan is to be repaid in level quarterly installments (of $2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2008.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2003 over the outstanding balance of loans from the plan on January 1, 2004, with such outstanding balance to be determined immediately prior to the new $40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is $40,000, the outstanding balance on January 1, 2004 of the loan it replaces is $33,322 and the highest outstanding balance of loans from the plan during 2003 was $40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2004 of the loan it replaces must not exceed $50,000 reduced by $6,678 (the excess of the $40,000 maximum outstanding loan balance during 2003 over the $33,322 outstanding balance on January 1, 2004, determined immediately prior to the new loan) and thus, must not exceed $43,322. The sum of the new loan ($40,000) and the outstanding balance on January 1, 2004 of the loan it replaces ($33,322) is $73,322. Since $73,322 exceeds the $43,322 limit under section 72(p)(2)(A) by $30,000, there is a deemed distribution of $30,000 on January 1, 2004.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to $2,907, which is the sum of the $2,491 originally scheduled quarterly installment payment amount under the first loan, plus $416 (which is the amount required to repay, in level quarterly installments over five years beginning on January 1, 2004, the excess of the refinanced loan over the January 1, 2004 balance of the first loan ($40,000 minus $33,322 equals $6,678)), and the amount of the 4 remaining installments were equal to $416. The refinancing would not be subject to paragraph (a)(2) of this Q&A–20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of two loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2007 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the refinanced loan provided for repayments to be made in level quarterly installments (of $2,990 each) over the next 16 quarters.

Example 2. (i) The facts are the same as in *Example 1*, except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to $2,848 and the amount of the next 4 installments on the refinanced loan is equal to $406. The $2,848 amount is the sum of $2,442 to repay the first loan by December 31, 2007 (the term of the first loan), plus $406 (which is the amount to repay, in level quarterly installments over five years beginning on January 1, 2004, the $6,678 excess of the refinanced loan over the January 1, 2004 balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A–20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of two loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2007 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of $2,931 each) over the next 16 quarters.

Example 3. (i) A participant with a vested account balance that exceeds $100,000 borrows $20,000 from a plan on January 1, 2005 to be repaid in 20 quarterly installments of $1,245 each. On March 31, 2005, when the

first installment is due, the participant receives a second loan equal to $1,245, with that March loan to be repaid in 20 quarterly installments of $78 each. On June 30, 2005, when the second installment is due on the January loan and the first installment is due on the March loan, the participant receives a third loan equal to $1,323 (which is the sum of the $1,245 installment and the $78 installment then due), with that June loan to be repaid in 20 quarterly installments of $82 each. On September 30, 2005, when the third installment is due on the January loan, the second installment is due on the March loan, and the first installment is due on the June loan, the participant receives a fourth loan equal to $1,405 (which is the sum of the $1,245 installment, the $78 installment and the $82 installment then due), with that September loan to be repaid in 20 quarterly installments of $88 each. On December 31, 2005, when the fourth installment is due on the January loan, the third installment is due on the March loan, the second installment is due on the June loan, and the first installment is due on the September loan, the participant receives a fifth loan equal to $1,493 (which is the sum of the $1,245 installment, the $78 installment, the $82 installment, and the $88 installment then due), with that December loan to be repaid in 20 quarterly installments of $93 each.

(ii) Under paragraph (a)(3) of this Q&A–20, the participant has deemed distributions on June 30, 2005 equal to $1,323 (which is the amount of the June loan), on September 30, 2005 equal to $1,405 (which is the amount of the September loan), and on December 31, 2005 equal to $1,493 (which is the amount of the December loan) because on each of these dates the participant had previously received two loans from the plan during the year.

* * * * *

A–22: * * *

(d) *Effective date for Q&A–19(b)(2) and Q&A–20.* Paragraph (b)(2) of Q&A–19 and Q&A–20 of this section apply to loans made on or after the first January 1 that is at least 6 months after publication of final regulations in the **Federal Register**, except that paragraph (b)(2) of Q&A–19 of this section does not apply to loans, whenever made, under an insurance contract that is in effect before the date that is 12 months after publication of final regulations in the **Federal Register** under which the insurance carrier is required to offer loans to contractholders that are not secured (other than being secured by the participant's or beneficiary's benefit under the contract).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–16816 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6840–8]

Virginia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: Virginia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Virginia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by August 30, 2000.

ADDRESSES: Send written comments to Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3381. You can examine copies of the materials submitted by Virginia during normal business hours at the following locations: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254; or Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219, Phone number: (804) 698–4213; or Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia 24019, Phone number: (540) 562–6700.

FOR FURTHER INFORMATION CONTACT: Joanne Cassidy at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 17, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–19115 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket 97–217; FCC 00–244]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Previously, the Commission adopted a series of legal and technical rule changes to enhance the ability of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to provide non-video services, including transmission of high speed computer data applications such as Internet access. We later expanded the streamlined application processing system to cover all major modifications of ITFS facilities, modified certain rules related to interference issues, modified certain other rules related to the obligations of ITFS licensees and clarified certain other rules. The FCC is taking two actions. The first action, a rule, which is published elsewhere in this issue of the **Federal Register**, modifies rules related to ITFS leases, modifies some technical rules and clarifies other rules. The second action, which is described in detail below, is the proposed rulemaking. The proposed rulemaking is limited to addressing the issue of possible Gaussian noise interference that can occur in certain limited circumstances.

DATES: Comments due on or before August 21, 2000. Reply comments are due on or before August 31, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking ("Further Notice of Proposed Rulemaking")*, MM Docket, 97–217, FCC 00–244, adopted July 7,

2000 and released July 20, 2000. The full text of this *Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Synopsis of Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking

I. Introduction

1. This *Further Notice of Proposed Rulemaking* is adopted by the Commission after receiving petitions for further reconsideration of its *Reconsideration Order*, 64 FR 63727 (November 22, 1999), in this docket. Previously, the *Two-Way Order*, 63 FR 65087 (November 25, 1998), was issued following a notice of proposed rulemaking, which arose from a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, "Petitioners"), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. In the *Two-Way Order*, the Commission amended parts 21 and 74 of our rules to provide MDS and ITFS licensees with substantially increased operational and technical flexibility. Traditionally, the MDS service traditionally functioned as a one-way point-to-multipoint video transmission service that is often referred to as "wireless cable," whereas ITFS licensees ordinarily used their frequencies for one-way transmission of educational and instructional material to students.

2. The *Two-Way Order* (1) Permitted both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process for stations used in cellularized systems; and (6) modified the ITFS programming requirements in a digital environment. Following the release of the *Two-Way Order*, we received petitions for reconsideration which focused primarily on requests that we expand our new streamlined processing system to cover all ITFS modifications; formalize an interference complaint process; modify some rules regarding ITFS leased capacity and make certain technical clarifications to our rules. In the *Reconsideration Order*, we expanded on some of our MDS/ITFS rules and clarified others. In response to that decision, we received further petitions for reconsideration, asking that we: (1) Permit certain lease provisions; (2) review the treatment of boosters stations and receive sites; and (3) further refine our technical rules. The *Further Reconsideration* section of this document is published elsewhere in this issue of the **Federal Register**. The *Further Reconsideration* section makes additional modifications and clarifications to our MDS/ITFS rules in order to facilitate further the provision of these services to the public. This *Further Notice of Proposed Rulemaking* is limited to addressing the issue of possible Gaussian noise interference that can occur in certain limited circumstances.

II. Further Notice of Proposed Rulemaking

3. The Wireless Communications Association ("WCA") raises a concern that there may be some uncertainty with respect to the proper interpretation of §§ 21.909(m) and 74.939(o), in particular the meaning of a phrase common to those sections which states that "Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden." WCA asks that the Commission clarify the meaning of this language so that it requires that a response station's transmitter "must be biased off so that no RF Gaussian noise will be emitted when the station is not engaged in communications." WCA argues that this interpretation is needed in order to assure that "the noise floor of adjacent channel and adjacent market licensees is protected against unnecessary emissions from transceivers." In an *ex parte* filing, WCA proposed to set the permissible level of Gaussian noise at the following levels: (1) 10 microvolts/meter per 1 MHz bandwidth at a distance of 3 meters for response stations utilizing antennas with 6 dB or less gain over isotropic; and, (2) 10 microvolts/meter × 10exp[(antenna gain −6 dB)/20] per 1 MHz bandwidth at a distance of 3 meters for stations utilizing antennas with more than 6 dB gain over isotropic.

4. We agree with WCA that a clarification of this issue is needed, however, because of the importance and potential impact of such a clarification, we believe that all interested parties should be given an opportunity to submit comments and replies. We request that commenting parties address, at a minimum, the following issues:

(1) Should we establish a numerical standard for the maximum permissible radiation level of a response station transmitter which is in the "off" state, *i.e.*, when it is powered up but not in the act of transmitting a signal to the response hub?

(2) If there should be a maximum off-state radiation level, what should that level be and how should it be defined? Should it be defined in terms of the transmitter power output into the antenna, or in terms of the radiated field strength? Should it be a function of antenna gain and/or antenna height?

(3) To what extent, and how, should a maximum off-state radiation level take into account the number of response station transmitters likely to be active in a 2-way system? Should the off-state radiation levels for multiple transmitters be directly additive or are there alternative ways to apportion among the response stations the total amount of permissible off-state radiation from a 2-way system?

(4) What degree of protection from off-state radiation should be afforded to neighboring systems? Should hub station receiver noise floors receive the same, more, or less protection from off-state radiation than from co-and adjacent channel interference as currently provided in the rules?

We also ask that parties include where possible an analysis of the relative costs and benefits of their proposals.

III. Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as set forth in paragraph 44 of the *Further Notice of Proposed Rulemaking*. The Commission will send a copy of the *Further Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small

Business Administration. See 5 U.S.C. 603(a). In addition, the *Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register. *Id.*

A. Need for, and Objectives of, the Proposed Rules

6. The goal of the rulemaking aspect of this proceeding is to clarify the meaning of the language contained in two Commission rules which states, "Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden." Wireless Communications Association ("WCA") proposes that the Commission require that a response station's transmitter "must be biased off so that no RF Gaussian noise will be emitted when the station is not engaged in communications." The *Further Notice of Proposed Rulemaking* seeks comments on WCA's proposal and requests responses to a number of questions related to the proposal. The overall intent of this inquiry is to clear up ambiguities surrounding the Commission's rules and improve the effectiveness of the service.

B. Legal Basis

7. Authority for actions proposed in the *Further Notice of Proposed Rulemaking* may be found in: Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(r), 308(b), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 308(b), 403, and 405.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

8. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act ("SBA"). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

9. The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

10. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be affected by the proposed change to our rules.

11. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. *See* 5 U.S.C. 601 (3)–(5). ITFS is a non-pay, non-commercial broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. *See* 13 CFR 121.210 (SIC 4833, 4841, and 4899). However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we find that up to 1932 of these educational institutions are small entities that may be affected by the proposed change to our rules.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. None.

E. Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any party thereof, for small entities.

14. The Commission expects that the proposed rule amendments will have a minimal impact on small entities. Moreover, the *Further Notice of Proposed Rulemaking* does not propose any reporting requirements applicable to small entities. We tentatively conclude that our proposals in the *Further Notice of Proposed Rulemaking* would impose minimum burdens on small entities. We encourage comment on this tentative conclusion.

F. Federal Rules that Duplicate, Overlap, or Conflict With Proposed Rules:

15. None.

IV. Procedural Matters

A. Ordering Clauses

16. *Notice is Hereby Given* and *Comment is Sought* on the proposed clarification described in the *Further Notice of Proposed Rulemaking.*

17. The Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, including the Supplemental Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and Recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Román Salas,

Secretary.

[FR Doc. 00–19035 Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1468, MM Docket No. 00–131, RM–9897]

Digital Television Broadcast Service; Dozier, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by. DTV Channel 11 can be allotted to Dozier, Alabama, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (31–33–16 N. and 86–23–32 W.). As requested, we propose to allot DTV Channel 11 to Dozier with a power of 1.0 and a height above average terrain (HAAT) of 487 meters.

DATES: Comments must be filed on or before September 18, 2000, and reply comments on or before October 3, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marissa G. Repp, F. William LeBeau, Hogan & Hartson, L.L.P., 555 13th Street, NW., Washington, DC 20004–1106 (Counsel for Alabama Educational Television Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–131, adopted July 25, 2000, and released July 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–19227 Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF92; RIN 1018–AF96

Endangered and Threatened Wildlife and Plants: Notice of Public Hearing on Critical Habitat for the Spectacled Eider and Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that a public hearing will be held on the proposed rules designating critical habitat for spectacled eider (Somateria fischeri) and Steller's eider (Polysticta stelleri). The spectacled eider and Steller's eider are found in marine waters and coastal wetlands in Alaska. All interested parties are invited to submit comments on these proposals.

DATES: The public hearing will begin at 7 p.m. Monday, August 28, 2000, in Barrow, Alaska.

ADDRESSES: The public hearing will be held at the Inupiat Heritage Center. Written data or comments on the spectacled eider should be submitted to the Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; Fax: 907/271–2786. Written data or comments on the Steller's eider should be submitted to the Field Supervisor, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK, 99701.

FOR FURTHER INFORMATION CONTACT: For spectacled eiders contact Ann G. Rappoport, Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; phone: 907/271–2787 or toll-free 800/272–4174; Fax: 907/271–2786. For Steller's eiders contact Ted Swem, Endangered Species Branch, at Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK, 99701; phone: 907/456–0203; fax: 907/456–0208.

SUPPLEMENTARY INFORMATION:

Background

The spectacled eider is a large seaduck found in marine waters and coastal areas from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian Border. The species may be threatened by habitat degradation, lead poisoning, increased predation rates, and hunting and other human disturbance. The Steller's eider is a seaduck found in coastal and marine waters from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. The Alaska-breeding population of this species is thought to have decreased significantly, but the causes of the suspected decline are unknown.

On February 8, 2000, the Service published a proposed rule to designate critical habitat for the spectacled eider under the Endangered Species Act of 1973, as amended. On March 13, 2000, the Service published a proposed rule to designate critical habitat for the Alaska-breeding population of the Steller's eider under the Endangered Species Act of 1973, as amended. Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. Public hearing requests were received within the allotted time period from George Ahmaogak, Sr., Mayor, North Slope Borough, P.O. Box 69, Barrow, Alaska, and Mr. Jacob Adams, President, Arctic Slope Regional Corporation, P.O. Box 129, Barrow, Alaska.

The Service has scheduled this hearing for August 28, 2000, 7:00 p.m., in Barrow, Alaska. Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to be presented to the Service at the start of the hearing. Legal notices announcing the dates, time, and location of the hearing are being published in newspapers concurrently with the **Federal Register** notice. The Service has also scheduled the following public meetings in Alaska: Nuiqsut (August 21, 2000), Wainwright (August 23, 2000), Point Lay (August 24, 2000), and Atqasuk (August 25, 2000). Meetings will begin at 7:00 p.m. Hearing and meeting dates are subject to change depending on weather, flight schedules, and other local conditions.

Written comments may be submitted until August 31, 2000, to the appropriate Service office as specified in the **ADDRESSES** section. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The deadline for requesting public hearings on the proposed rule regarding critical habitat for the spectacled eider was March 24, 2000. The deadline for requesting public hearings for the proposed rule regarding critical habitat for Steller's eider was April 27, 2000. We have not extended these deadlines. In order to be considered valid, requests for public hearings must have been submitted in writing and received at the appropriate office by the relevant deadline.

Author

The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, Division of Endangered Species, 1011 E. Tudor Rd., Anchorage, AK 99503.

Authority: The authority of this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 21, 2000.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 00–19183 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 147
Monday, July 31, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture; Notice of Meeting

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in August of the Commission on 21st Century Production Agriculture. The purpose of the meeting on August 22, 2000 is a working session, which will address issues regarding agricultural policy initiatives to be included in the Commission report. This meeting is open to the public.

PLACE, DATE, AND TIME OF MEETING: This meeting will be held August 22, 2000 from 8:00 am–5:00 pm in Room 108–A, Whitten Building.

FOR FURTHER INFORMATION CONTACT: Mickey Paggi (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: July 25, 2000.

Keith J. Collins,

Chief Economist.

[FR Doc. 00–19191 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on August 29, 2000, at Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held August 29, 2000, beginning at 8 a.m. and ending at 3:30 p.m.

ADDRESSES: The meeting will be held at Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2773.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Review of Expectations and Ground Rules; (2) New Chair Nominations; (3) FACA Regulations; (4) Lake Tahoe Federal Advisory Committee Program of Work, 2000–2001; (5) Review of the Federal Partnership Report; and (6) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: July 21, 2000.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 00–19258 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on August 18, 2000. The meeting will be held at the Satsop Development Park conference room in Satsop, Washington (Satsop Development Park Office, 471 Lambert Road). The meeting will begin at 9:30 a.m. and end at approximately 3:30 p.m.

Agenda topics are (1) Field trip tour to the Satsop Industrial/ Telecommunications Park; (2) field discussion of the Satsop Demonstration Forest; (3) Open forum; and (4) Public comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encourage to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: July 17, 2000.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 00–19180 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

National Power Cooperative, Inc., Notice of availability of an environmental assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an environmental assessment with respect to the potential environmental impacts related to the construction of a 510 megawatt, natural gas fired combustion turbine electric generation plant in northwest Ohio. RUS may provide financing assistance to National Power Cooperative for the project.

FOR FUTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571,

telephone: (202) 720–0468. Bob's e-mail address is bquigel@rus.usda.gov. Information is also available from Keith A. Crabtree of National Power Cooperative at (614) 846–5757. Keith's e-mail address is kac@buckeyepower.com.

SUPPLEMENTARY INFORMATION: National Power Cooperative, a wholly owned subsidiary of the Ohio Rural Electric Cooperatives, proposes to construct the natural gas fired electric generation plant at one of two potential sites. One site is located in Van Wert County near Convoy, just southwest of the intersection of Mentzer Road and Shaner Road. The other site is located in Allen County, east of Cairo, north of the Lincoln Highway between Stewart Road and Slabtown Road.

The proposed project will be composed of three gas fired turbine generation units with an output of 170 megawatts each. The entire plant will require approximately 30 acres. No major natural gas pipeline or electric transmission line improvements will be needed at either site beyond the proposed site boundaries.

National Power Cooperative prepared an environmental analysis for RUS which describes the project and assesses its environmental impacts. RUS has conducted an independent evaluation of the environmental analysis and believes that it accurately assesses the impacts of the proposed project. This environmental analysis will serve as RUS' environmental assessment of the project. No significant impacts are expected as a result of the construction of the project.

The environmental assessment can be reviewed at the National Power Cooperative headquarters located at 6677 Busch Boulevard, Columbus, Ohio. This document will also be available at the Lima Public Library, 650 W. Market St., Lima, Ohio (419–228–5113) and it's Cairo Branch, 519 Wall St., Cairo, Ohio (419–641–7744) and at the Brumback Library, 215 W. Main St. in Van Wert, Ohio (419–238–2168) and it's Convoy Branch, 116 E. Tully St., Convoy, Ohio (419–749–4000). It can also be reviewed at the headquarters of RUS at the address provided above.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on the environmental assessment for at least 30 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: July 24, 2000.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–19190 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[I.D. 072500E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Vessel Monitoring System for Atlantic Highly Migratory Species.

Form Number(s): None.

OMB Approval Number: 0648–0372.

Type of Request: Regular submission.

Burden Hours: 25.

Number of Respondents: 298.

Average Hour Per Response: 5 minutes.

Needs and Uses: Vessels fishing for Atlantic tuna and swordfish that use pelagic longline gear are required to install and operate vessel monitoring systems. Automatic position reports are submitted on an hourly basis whenever the vessel is at sea. NMFS proposes to revise the current requirements to add an installation checklist that vessel operators would follow and then submit to NMFS. The checklist provides information on the hardware and communications service selected by each vessel. NMFS will use the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 21, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19276 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Tapered Roller Bearings and Parts Thereof from the People's Republic of China and Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) from the Republic of Korea.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2001.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Oil Country Tubular Goods [1]	
A–122–506	06/01/99–05/31/00
Atlas Tube Inc.	
JAPAN: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products.	
A–588–846	02/19/99–05/31/00
Kawasaki Steel Corporation.	
Netherlands: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide ("PPD-T").	
A–421–805	06/01/99–05/31/00
Twaron Products V.o.F.	
Republic of Korea: Polyethylene Terephthalate Film, Sheet and Strip (Pet Film).	
A–580–807	06/01/99–05/31/00
SKC Co., Limited.	
H.S. Industries Co., Ltd.	
Hyosung Corporation.	
Taiwan: Certain Stainless Steel Butt-Weld Pipe Fittings.	
A–583–816	06/01/99–05/31/00
Ta Chen Stainless Steel Pipe, Ltd.	
The People's Republic of China:.	
Tapered Roller Bearings [2].	
A–570–601	06/01/99–05/31/00

[1] This order is currently undergoing a sunset review pursuant to section 751(c) of the Act. If subsequent to publication of this initiation notice the order is revoked pursuant to sunset, any review (if initiated) or automatic liquidation instruction (if no review is initiated) will only cover through the last day prior to the effective date of revocation.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

Zhejiang changsan (Bearing) Group Co. Ltd.
Yantai CMC Bearing Co., Ltd.
Louyang Bearing Factory
Wafangdian Bearing Factory
Wafangdian Bearing Industry Co.
Wafangdian Bearing Factory, Liaoning Province
Shanghai China Bearing Factory
Shanghai Zhenhua Bearing General Company
SKF Automobile Bearing Co., Ltd. (SKF -Zhenhua or SKF—Zhenghua)
Beijing SKF—Nankou Railway Bearings Corp., Ltd.
Xi'an Haihong Bearings Factory
Dalian Metallurgical Bearings Group Corp.
Luoyang Dongsheng Bearings Corp., Ltd.
City Bearings Industrial Co., Ltd.
Fujian Yong'an Bearing Co., Ltd.
Ningbo Huanchi Group Corporation
Shandong Lunan Bearing Co., Ltd.
Xinjiang Bearing General Company
Liaoning Xingcheng Bearing Co., Ltd.
Nanjing Bearing Factory
Renben Group (Hangzhou Bearing Factory)
Qingdao No. 2 Bearing Factory
Shandong Liangshan Jingjiu Bearing Co., Ltd.
Hubei Xishui Bearing Factory
Zhangjiagang AAA Bearing Co., Ltd.
Baishan Bearing Co., Ltd.
Dandong Bearing Factory
Xiantao Special Bearing Co., Ltd.
Jamusi Bearing Factory
Luoyang Luoling Bearing Co., Ltd.
Shandong Wendeng Bearing Factory
Jingjiang Bearing Factory
Yunnan Honghe Bearing Factory
Dalong Bearing Factory
Beijing Renmin Bearing Factory
Xiangyang No. 2 Bearing Factory
Sichuang Dongfang Bearing Factory
Shanxi Baoji Bearing Factory
Shanghai Lianhe (United) Rolling Bearing Co., Ltd.
FAG Automotive Bearing (Shanghai) Co., Ltd.
Guyang Bearing Factory
Harbin Bearing Group Corporation
Xiangyang Automobile Bearing Co., Ltd.
Xiangyang Bearings
Chengdu Bearing Factory
Xibei Bearing Group Company, Ltd.
Changzhi Bearing Factory
Wuxi No. 3 Bearing Factory
Chongqing Bearing Industrial Company
Changge Bearing Factory
Guizhou Hongshan Bearing Factory I/E Corp.
Hunan Zhuzhou Bearing General Factory
Nanan General Bearing Works
Ningbo Cixi Nailin Bearings Co., Ltd.
Ningxia Xibei Bearing Factory
Shenyang General Bearings
Taizhou Guotai Bearing Co., Ltd.
Zhejiang Lishui Waite Bearing Industrial Co., Ltd.
Shijiazhuang Imported Bearings
China National Machinery & Equipment Import & Export Corporation, Beijing
China National Machinery and Equipment Import and Export Corporation (CMEC), Beijing
Henan Machinery and Equipment Import and Export Corporation
The China National Machinery and Equipment Import and Export Corporation, Henan Co., Ltd.
Guizhou Machinery Import and Export Corporation
Liaoning Machinery Import and Export Corporation
The China National Machinery and Equipment Import and Export Corporation, Liaoning Co., Ltd.
Liaoning MEC Group Co., Ltd.
Jilin Machinery Import and Export Corporation
China National Machinery Import and Export Corporation of Jilin Province
The China National Machinery and Equipment Import and Export Corporation, Guizhou Branch
China National Machinery and Equipment Import Export Company (CMEC), Zhejiang
Guizhou Machinery Import and Export Corporation Guiyang, Guizhou China
China National Automotive Industry Import & Export Corporation
China National Automotive Industry Import & Export Corporation, Guizhou China
China National Automotive Industry Guizhou Import/ Export Corp.

Xiangfan Machinery Import & Export (Group) Corp.
Xiangfan Machinery Foreign Trade Corporation
Xiangfan International Trade Corp.
Wanxiang Group Corporation
Shandong Machinery and Equipment Import & Export Corporation
Shandong Machinery and Equipment Import & Export Group Corporation
Hangzhou Metals, Minerals, Machinery & Chemical Import Export Corporation
China Metals, Minerals, Machinery & Chemicals Import Export Corporation
China Great Wall Industry Company
Premier Bearing & Equipment, Ltd.
Chin Jun Industrial, Ltd.
China National Machinery Import/Export Corporation, Yantai
China National Machinery and Equipment Corp., Changsha
China National Machinery and Equipment Import Export Company (CMEC), Hunan
Shanghai Machinery & Equipment Import & Export Corp.
Shanghai Machinery Import/Export Corp.
Hubei Provincial Machinery Import & Export Corp.
Zhejang Machinery Import/Export Corp.
Tianshui Hailin Import & Export Corporation
Heilongjang Machinery Import/Export
Shandong Machinery Import/Export Corp.
Shanghai Pacific Machinery Import & Export Corp.
Shaanxi Machinery & Equipment I/E Corp.
Guangdong Machinery and Equipment Import & Export
Guangdong Machinery and Equipment Import & Export (Group) Corporation
East Sea Bearing Co., Ltd.
Shanghai General Bearing Co., Ltd.[3]
Direct Source International
Goldhill International Trading & Services Co.
Bilop International
China Aeolus Automotive Industries Import Export Corporation
Flying Dragon Machinery
Harbin Bearing Factory
Luoyang Bearing Research Institute of the Ministry Of Machinery & Electronics Industry
The Tenth Institute of Machinery Project Planning & Research of the Ministry of Machinery & Electronics Industry
Shanghai Rolling Bearing Factory
Xiangyang Bearing Factory
Shanghai Miniature Bearing Factory
Suzhou Bearing Factory
Chengdu General Bearing Factory
Hailin Bearing Factory
Hongshan Bearing Factory
Guiyang Bearing Factory
Haihong Bearing Factory
Lanzhou Bearing Factory
Xibei Bearing Factory
Beijing Bearing Research Institute
Changzhi People Factory
Beijing People Bearing Factory
Handan Bearing Factory
Jining Bearing Factory
Shenyang Bearing Factory
Chaoyang Bearing Factory
Shenyang Steel Ball Plant
Gongzhuling Bearing Factory
Wuxi Miniature Bearing Factory
Jiamusi Bearing Factory
Shanghai Bearing Technology Research Institute
Zhongguo Bearing Factory
Xiamen Bearing Factory
Shanghai Hongxing Bearing Factory
Shanghai Steel Ball Plant
Wuxi Bearing Factory
Hangzhou Bearing Factory
Hefei Bearing Factory
Huainan Bearing Factory
Longxi Bearing Factory
Jiangxi Bearing Factory
Liangshan Bearing Factory
Jinan Bearing Factory
Qingdao Steel Ball Plant
Huangshi Bearing Factory
Hhubei Steel Ball Plant
Changsha Bearing Factory
Guangzhou Bearing Factory
Guangxi Bearing Factory
Chongqing General Bearing Factory
Chongqing Steel Ball Plant
Yunnan Bearing Factory
Baoji Bearing Factory
Tianshui Bearing Instrument Plant
Beijing Needle Roller Bearing Factory
Tianjin Miniature Bearing Factory
Datong Bearing Factory
Hebei Rolling Mill Bearing Factory
Hebei Bearing Factory
Chengde Bearing Factory
The Third Bearing Factory of Shanxi
Anshan Bearing Factory
Yingkou Bearing Factory
Xingcheng Bearing Factory
Hunjiang Bearing Factory
Dean Bearing Factory
Shanghai Hunan Bearing Factory
Shanghai Pujiang Bearing Factory
Shanghai Changning Bearing Factory
Shanghai Needle Roller Bearing Factory
Xuzhou Revolving Support Factory
Taian Bearing Factory
Changshu Bearing Factory
Northwest Bearing Plant
Huangshi Bearing Factory
Guangxi Bearing Factory
Chongqing Bearing Factory
Yunnan Bearing Factory
Baoji Bearing Factory
Xiangtan Bearing Factory
Shaoguan Bearing Factory
Xinjiang Bearing Factory
The Second Bearing Factory of Xuzhou
Houzhou Bearing Factory
Yuxi Bearing Factory
Chifeng Bearing Factory
Huangyian Bearing Factory
Xingchang Bearing Factory
Liuan Bearing Factory
Zibo Bearing Factory
Jining Bearing Factory (Shandong)
Luoyang Dongfeng Bearing Factory
Kaifeng Bearing Factory
Ghangge Bearing Factory
The Second Machine Tools Electric Apparatus Plant of Anyang
Shashi Bearing Factory
Wuhan Bearing Factory
Changde Bearing Factory
Hengyang Bearing Factory
Hubei Bearing Factory
Yueyang Bearing Factory
Zhuzhou Bearing Factory
Fanchang Bearing Factory
Dongguan Bearing Factory
Chengdu Bearing Company
Sichuan Small Size Bearing Factory
Leshan Bearing Factory
Honghe Bearing Factory
Shaanxi Bearing Factory
Shijiazhuang Bearing factory
Shanxi Bearing Factory
Xiangtan Bearing Factory
Shaoguan Bearing Factory
Xinjiang Bearing Factory
Beijing-Pinggu Bearing Factory
Huhhot Bearing Factory
Dalian Bearing Instrument Plant
Nantong Bearing Factory
Qingjiang Bearing Factory
Wuhu Bearing Factory
Yiyang Bearing Factory
Zhongshan Bearing Factory
Handan Bearing Factory
Xingcheng Bearing Factory
China National Automotive Import & Export Corporation
China National Automotive Industry Import & Export Corporation
China National Automotive Industry Xiamen Import/Export Corporation/ Shanghai
China National Automotive Industry Xiamen Import/Export Corporation
China National Machinery/Equipment Corp., Harbin Branch
Kenwa Shipping Co., Ltd.
Far East Enterprising Co. (H.K.) Ltd.
Far East Enterprising (H.K.) Co.
Pantainer Express Line Co.
Intermodal Systems Ltd.
China Ningbo Int'l Economic & Technical Cooperation Corp.
China Ningbo Cixi Import/Export Corp.
Ningbo Xing Li Bearing Co., Ltd.
Ningbo Yinxian Import/Export Corp.
China

[3] With respect to Shanghai General Bearing Co., Ltd., this initiation notice only applies with respect to subject merchandise entered or sold during the period by Shanghai General Bearing Co., Ltd., but not produced by Shanghai General Bearing Co., Ltd.

Ningbo Yinxian Import/Export Corp. Hong Kong
Santoh HK Ltd.
Huuzhou Import and Export Corp.
Ideal Consolidators Ltd.
Cargo Services Far East Ltd.
China Resources Transportation & Godown Co., Ltd.
China Travel Service (HK) Ltd.
Fortune Network Ltd.
China Jiangsu Technical Import/Export Corp.
Kaitone Shipping Co., Ltd.
Profit Cargo Service Co., Ltd.
United Cargo Management, Inc.
Zhejang Expanded Bearing Co. China
Zhejang Expanded Bearing Co. Hong Kong
Zhejang Yongtong Company China
Zhejang Yongtong Company Hong Kong
Wafangdian Hyatt Bearing Manufacturing Co., Ltd.
China National Bearing Joint Export Corp.
PFL Pacific Forwarding, Ltd.
Sui Jun International Ltd.
Wah Shun Shipping Co., Ltd.
Aempac System, Inc.
Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province
Sunway Line, Inc.
Trans-Ocean Bridge Services, Ltd.
Scanwell Container Line Ltd.
Scanwell Consolidators & Forwarders Ltd.
China Machine-Bearing International Corp.
Hyaline Shipping (HK) Co., Ltd.
Long Trend Ltd.
Waiwell Shipping Ltd.
Special Line Ltd.
YK Shipping International, Inc.
Blue Anchor Line Co.
Onan Shipping Ltd.
Shanghai Bearing Corporation
Wing Tung Wei (China) Ltd.
China Merchants S & E Co., Ltd.
Zhejiang Huangli Bearing Co., Ltd.
China Ningbo International Economic & Technical Cooperation Corporation
Ningbo Free Trade Zone
China National Machinery Imp. & Exp. Corp., Chongquing Branch
China-East Resources International Distribution Services Ltd.
Inteks Inc. N.V.O.C.C.
Shaanxi Machinery & Equipment Imp. & Exp. Corp.
United Cargo Management Inc., Dalian Office
China Tiancheng Jiangsu Corp. Nanjing
China Tiancheng Jiangsu Corp. Shanghai
Zhejiang East Sea Bearing Co., Ltd.
Mayer Shipping Ltd. HK
Wholelucks Industrial Lim.
Peko Incorporation
O/B Manfred Development Co., (HK) Ltd.
Asia Stone Company Limited
Asia (USA) Inc. (Shanghai)
Xiamen Special Economic Zone Trade Co. Ltd.
SEC Line Ltd.
Jebsin Shipping Ltd.
Heika Express International Ltd.
J.P. Freight, Inc. Shanghai, PRC
Brilliant Ocean Ltd. Corp. (USA)
Transunion International Company Hong Kong
Roson Express Int'l Co., Ltd.
Streamline Shippers Association Hong Kong
Laconic Freight Forwarding Co., Ltd.
Mitrans Shipping Co., Ltd.
Distribution Services Ltd.
The Ultimate Freight Management (H.K.) Ltd.
Ideal Consolidators Ltd.
Luoyang Bearing Research Institute
Burlington Air Express Ltd.
Janco Int'l Freight Ltd.
Phoenix Shanghai China
Shanghai Dong Yu Materials Co., Ltd.
Guandong Lingnan Industrial Products
Guandong Lingnan Industrial Products Import & Export Corporation
Sunrise Industrial Technology Co.
Dongguan Industry Development Corp.
Hi Light Int'l, Inc.
Ever Concord Ltd.
Kin Bridge Express (USA) Inc.
Wice Marine Services Ltd.
Welley Shipping, Ltd.
WSA Lines, Ltd.
Triumph Express Service Int'l Ltd.
World Pacific Container Line Ltd.
Hellman Int'l Forwarders, Ltd.
Sino Eagle Co.
Ever Concord Ltd. (Guangzhou)
Ideal Ocean Lines, Ltd.
MSAS Cargo Int'l (Far East) Ltd.
Ocean Navigator Express Line
Sunrise Industries Technology Co.
China Mudanjiang Heading Factory
Apex Maritime Co., Inc.
Apex Maritime Co., Inc. (Dalian)
Dalian Machine Tool Accessories
Everich Shipping, Ltd.
Eternity Int'l Freight Forwarder
Ningbo Tiansheng Bearing Corp.
Trans-Am Sea Freight (HK) Ltd.
Zhong Shan Transportation Co., Ltd.
Shenzhen Rising Sun Bearing
Goldline Ltd.
Leader Express International (HK)
Transnation Shipping Ltd.
Mayer Shipping Ltd.
Shenzhen Jinyuan Industrial
Transunion International Co., Ltd.
Orient Star Consolidating
Capital Distribution Services
Buyers Consolidators Ltd.
Versatile Int'l Corp.
Panalpina China, Ltd.
Trust Freight Services, Inc.
Wah Hing Trading Co.
China North Industries
Point Talent International Ltd.
Votainer Far East BV
Seatop Shipping Ltd.
AEL Asia Express (HK) Ltd.
Kenwa Shipping Co., Ltd.
Wuxi Viking General
Exbo Shipping Co., Ltd.
Cots Shipping Co., Ltd.
Shenzen South China International
Oceanic Bridge International Inc.
Streamline Shippers Association
China Jiansu Technical Import & Export Corp.
Ever Concord Ltd.
Air Sea Container Line, Inc.
CL Consolidator Services Ltd.
OAG International, Inc.
Zhejiang Xinchang Foreign Economic
Heicone Jiang Machinery Import & Export
Wenling Foreign Trading Corporation
Scanwell Freight Express Co., Ltd.
C.U. Transport, Inc.
Shanghai Dongyu Materials Co.
EAS International
EAS International Transportation Co., Ltd.
Ensign Freight (China) Ltd.
Amec International Co., Inc.
China Dong Feng Motor
Rong Shang International Corp.
Air Sea Transport, Inc.
Air Sea Transport, Inc., Yantai Office
Air Sea Transport, Inc., Dalian
Wuhan Machinery & Equipment
STS Machinery, Inc.
USA International Business
Hang Cheong Shipping Co., Ltd.
Deckwell Sky Express, Inc.
China Machinery Equipment Import & Export Wuxi Co., Ltd.
China Machinery & Equipment Import & Export Co., Ltd. (Jiangying Bearing Works)
China Xian Import & Export Corporation
China Jiangsu Machinery and Equipment Import & Export Wuxi Co., Ltd.
China Jiangsu Machinery Import and Export (Group) Corp.
China National Packaging Import & Export Nanjing Corporation
China National Machinery and Equipment Import and Export Corporation (CMEC)
CMEC Sichan
CMEC Henan
CMEC Shandong
CMEC Jiangsu
CMEC Guangdong
CMEC Hebei
CMEC Hunan
CMEC Anhui
CMEC Hubei
CMEC Zhejiang
CMEC Liaoning
CMEC Jiangxi
CMEC Yunnan
CMEC Heilongjiang

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CMEC Shaanxi
CMEC Guizhou
CMEC Fujian
CMEC Shanxi
CMEC Jilin
CMEC Gansu
CMEC Hainan
CMEC Qinghai
CMEC Chengdu
CMEC Zengzhou
CMEC Tsinan
CMEC Nanjing
CMEC Guangzhou
CMEC Shijiazhuang
CMEC Changsha
CMEC Hefei
CMEC Wuhan
CMEC Hangzhou
CMEC Shenyang
CMEC Nanchang
CMEC Kunming
CMEC Harbin
CMEC Xian
CMEC Guiyang
CMEC Fuzhou
CMEC Taiyuan
CMEC Changchun
CMEC Lanzhou
CMEC Haikou
CMEC Xining
CMEC Guangxi Zhuang
CMEC Nei Monggol
CMEC Xinjiang Uygur
CMEC Ningxia Hui
CMEC Xizang
CMEC Nanning
CMEC Hohhot
CMEC Urumqi
CMEC Yinchuan
CMEC Lhasa
CMEC Shanghai
CMEC Beijing
CMEC Tianjin
China National Machinery Import and Export Corporation (CMC)
Sichuan CMC
Henan CMC
Shandong CMC
Jiangsu CMC
Guangdong CMC
Hebei CMC
Hunan CMC
Anhui CMC
Hubei CMC
Zhejiang CMC
Liaoning CMC
Jiangxi CMC
Yunnan CMC
Heilongjiang CMC
Shaanxi CMC
Guizhou CMC
Fujian CMC
Shanxi CMC
Jilin CMC
Gansu CMC
Hainan CMC
Qinghai CMC
Chengdu CMC
Zengzhou CMC
Tsinan CMC
Nanjing CMC
Guangzhou CMC
Shijiazhuang CMC
Changsha CMC
Hefei CMC
Wuhan CMC
Hangzhou CMC
Shenyang CMC
Nanchang CMC
Kunming CMC
Harbin CMC
Xian CMC
Guiyang CMC
Fuzhou CMC
Taiyuan CMC
Changchun CMC
Lanzhou CMC
Haikou CMC
Xining CMC
Guangxi Zhuang CMC
Nei Monggol CMC
Xinjiang Uygur CMC
Ningxia Hui CMC
Xizang CMC
Nanning CMC
Hohhot CMC
Urumqi CMC
Yinchuan CMC
Lhasa CMC
Shanghai CMC
Beijing CMC
Tianjin CMC

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 28, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 00–19285 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 10, 2000, the Department of Commerce published the preliminary results of its second administrative review of the antidumping duty order on persulfates from the People's Republic of China. The merchandise covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The period of review is July 1, 1998, through June 30, 1999.

We have determined that sales of subject merchandise by Shanghai Ai Jian Import & Export Corporation have been made below normal value during the period of review. This review has now been rescinded with respect to Sinochem Jiangsu Wuxi Import & Export Trade Corporation.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: James Nunno or Shawn Thompson, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0783 or (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On August 6, 1999, the Department published the preliminary results of administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 65 FR 18963 (April 10, 2000) (*Preliminary Results*). We gave interested parties an opportunity to comment on our preliminary results but received no comments. We are rescinding this review with respect to Sinochem Jiangsu Wuxi Import & Export Trade Corporation (Wuxi) because Wuxi reported no shipments and entry data provided by the Customs Service confirms that there were no period of review (POR) entries of persulfates sold by Wuxi. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Separate Rates

Shanghai Ai Jian Import & Export Corporation (Ai Jian) has requested a separate, company-specific antidumping duty rate. In our *Preliminary Results*, we found that Ai Jian had met the criteria for the application of a separate antidumping duty rate. *See* 65 FR at 18964. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Ai Jian in this administrative review should be assigned an individual dumping margin.

With respect to Guangdong Petroleum Chemical Import & Export Trade Corporation (Guangdong Petroleum), which did not respond to the Department's questionnaire, we determine that this company does not merit a separate rate. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We determine that Guangdong Petroleum is subject to the country-wide rate for this case because it failed to demonstrate an absence of government control.

Use of Facts Available

As explained in the preliminary results, the use of facts available is warranted in this case because Guangdong Petroleum, which is part of the PRC entity (*see* "Separate Rates" section above), has failed to respond to the original questionnaire and has refused to participate in this administrative review. Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, we find that the use of total facts available is appropriate for the PRC-wide rate. Furthermore, in the preliminary results we determined that Guangdong Petroleum did not cooperate to the best of its ability with our requests for necessary information. Therefore, in accordance with section 776(b) of the Act, we applied adverse inferences when selecting among the facts available. As adverse facts available in this proceeding, in accordance with the Department's practice, we preliminarily assigned Guangdong Petroleum and all other exporters subject to the PRC-wide rate the petition rate of 119.02 percent, which is the PRC-wide rate established in the less than fair value (LTFV) investigation, and the highest dumping margin determined in any segment of this proceeding. As explained in the preliminary results, we determined that this margin was corroborated in accordance with section 776(c) of the Act in the LTFV investigation. *See Preliminary Results*, 65 FR at 18964–5. We have determined that no evidence on the record warrants revisiting this issue in these final results, and no interested party submitted comments on our use of adverse facts available. Accordingly, we continue to use the petition rate from the LTFV investigation of 119.02 percent.

Changes Since the Preliminary Results

Based on determinations in recent PRC cases, we have made certain changes in the margin calculation for Ai Jian. These changes are as follows:

Labor: We valued labor based on the regression-based wage rate for 1998 in accordance with 19 CFR 351.408(c)(3). For purposes of the preliminary results we used the 1997 data because more recent data was not yet available.

Electricity: We derived a surrogate value for electricity based on electricity price data published by the Center for Monitoring Indian Economy and the Conference of Indian Industries, on an electricity-specific price index published by the Reserve Bank of India. These data were recently used in the antidumping duty administrative review of manganese metal from the PRC. *See Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China*, 65 FR 30067, 30067–8 (May 10, 2000); *Final Results Factors Valuation Memorandum from the Team to the File*, July 25, 2000.

Final Results of the Review

We determine that the following percentage weighted-average margins exist for the period July 1, 1998 through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	2.62
PRC-wide Rate	119.02

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to export price sales, we aggregated the dumping margins for the reviewed sales and divided this amount by the total quantity of those sales for each importer. We will direct Customs to assess the resulting unit margins against the entered Customs quantities for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this antidumping duty administrative review for all shipments of persulfates from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ai Jian will be the rate shown above; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters, including Guangdong Petroleum, will be 119.02 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-

PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: July 25, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19284 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Notice of Initiation and Preliminary Results of Changed Circumstance Antidumping Duty Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstance antidumping duty review, and intent to revoke order in part.

SUMMARY: On October 22, 1999, the Department of Commerce (the Department) received a request on behalf of Techni Edge Manufacturing Co. ("Techni Edge") for a changed circumstance antidumping duty (AD) review and an intent to revoke in part the AD order with respect to specific stainless steel sheet and strip from Japan. On May 9, 2000, Techni Edge submitted further information in support of its request. The Department received a letter on May 12, 2000, from petitioners (Allegheny Ludlum, AK Steel (formerly Armco, Inc.), Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc.) indicating that they do not oppose Techni Edge's request for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0162 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351.

Background

On July 27, 1999, the Department published the Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order on stainless steel sheet and strip from Japan (64 FR 40565).

On October 22, 1999, and May 9, 2000, Techni Edge requested revocation in part of the AD order pursuant to section 751(b) of the Act with respect to specific stainless steel sheet and strip in coils from Japan, as described below.

Scope of the Review

The product covered by this exclusion request is certain stainless steel used for razor blades, medical surgical blades, and industrial blades and sold under proprietary names such as DSRIK7, DSRIK8, and DSRIK9. This stainless steel strip in coils is a specialty product with a thickness of 0.15 mm to 1.000 mm, or 0.006 inches to 0.040 inches, and a width of 6 mm to 50 mm, or 0.250 inches to 2.000 inches. The edge of the product is slit, and the finish is bright. The steel contains the following chemical composition by weight:

Carbon 0.65% to 1.00%
Silicon 1.00% maximum
Manganese 1.00% maximum
Phosporus 0.35% maximum
Sulfur 0.25% maximum
Nickel 0.35% maximum
Chromium 0.15% maximum
Molybdenum 0.30% maximum

Initiation and Preliminary Results of Changed Circumstance AD Review, and Intent to Revoke Order in Part

At the request of Techni Edge, and in accordance with sections 751(d)(1) and 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstance review of stainless steel sheet and strip from Japan to determine whether partial revocation of the AD order is warranted with respect to the stainless steel sheet and strip subject to this request. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and sections 351.222(g)(1)(i) and 351.221(c)(3) of the Department's regulations, we are initiating this changed circumstance review and have determined that expedited action is warranted. Our decision to expedite this review stems from the domestic industry's lack of interest in applying the AD order to the specific stainless steel sheet and strip covered by this request. Additionally, in accordance with section 351.216(a) we find that the petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in continued application of the

AD order to the stainless steel sheet and strip subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the merchandise described above from Japan.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstance review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary determination. *See* section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* section 351.222(g)(4) of the Department's regulations. The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstance review.

This initiation of review and notice are in accordance with sections 751(b) of the Act (19 U.S.C. 1675(b)) and 19 CFR 351.216, 351.221, and 351.222.

Dated: July 24, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19283 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904: NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On July 7, 2000, CEMEX, S.A. de C.V. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty sunset review made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This antidumping order was published in the **Federal Register** (65 FR 41049), on July 3, 2000. The NAFTA Secretariat has assigned Case Number USA–MEX–00–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on July 7, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 7, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 21, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 10, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–19181 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072000D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting via conference call of the Red Drum Stock Assessment Panel (RDSAP).

DATES: This meeting will be via conference call on August 14, 2000 beginning at 10:00 a.m. EST.

ADDRESSES: A listening station will be available at the following location: NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702, Contact: Georgia Cranmore at 727–570–5305.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RDSAP will be convened via conference call on August 14, 2000 beginning at 10:00 a.m. EST. At the request of the Council, the RDSAP was asked to recommend how research needs listed in the RDSAP's most recent final report be accomplished, including cost estimates and a timeline for completion. Research needs included: 1) the age composition of the adults in offshore waters needs to be known, 2) the absolute abundance of adult red drum

in the Gulf of Mexico needs to be accurately measured, 3) random sampling of the commercial and recreational catches for age composition data is needed, 4) standardized stock assessment methodology needs to be developed that can accept area (state)-specific data and work with these within the context of a Gulf-wide stock assessment, 5) the area (state)-specific contributions of red drum to the offshore adult stock needs to be determined, 6) angler-release and shrimp-trawl bycatch mortality and the ages or lengths of caught-and-released fish needs to be determined, and 7) the length composition of the commercial catch needs to be measured.

The recommendations of the RDSAP will be reviewed by the Council at its next meeting held from September 11 to 14, 2000 in Mobile, AL.

Currently it is illegal to harvest or possess red drum in Federal waters.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Although other non-emergency issues not on the agenda may come before the RDSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the RDSAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 7, 2000.

Dated: July 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19278 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072400D]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Demersal Species Committee, meeting as a Council Committee of the Whole, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board; the Surfclam and Ocean Quahog Committee, meeting as a Council Committee of the Whole; the Atlantic Mackerel, Squid, and Butterfish Committee, meeting as a Council Committee of the Whole; the Coastal Migratory Committee, meeting as a Council Committee of the Whole, together with the ASMFC's Bluefish Board, and the Executive Committee will hold a public meeting.

DATES: The meetings will be held on Monday, August 14, 2000 to Thursday, August 17, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA. telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Monday, August 14, the Council will meet from 9:30 a.m. until 5:00 p.m. On Tuesday, August 15, the Council will meet from 8:00 a.m. until 5:30 p.m. On Wednesday, August 16, the Council will meet from 8:00 a.m. until 5:00 p.m. On Thursday, August 17, the Executive Committee will meet from 8:00–9:00 a.m. The Council will meet from 9:00 a.m. until 1:00 p.m.

Agenda items for this meeting are: The swearing in of new and reappointed Council members; election of Council officers; report of the Stock Assessment Review Committee (SARC); scup management measures for 2001 (review Scup Monitoring Committee's recommendations regarding 2001 harvest level and commercial management measures, recommend 2001 harvest level and commercial management measures, review and discuss scup framework action modifying gear restricted areas); summer flounder management measures for 2001 (review and comment on NMFS August 1 action regarding 2000 quota, review Summer Flounder Monitoring Committee's recommendations regarding 2001 harvest level and commercial management measures, recommend 2001 harvest level and commercial management measures); black sea bass management measures for 2001 (review Black Sea Bass Monitoring Committee's recommendation regarding 2001 harvest level and commercial management measures, recommend 2001 harvest level and commercial management measures); bluefish management measures for 2001 (review the Bluefish Monitoring Committee's recommendations regarding 2001 harvest level and management measures, recommend bluefish harvest level and management measures for 2001); surfclam and ocean quahog management measures for 2001 (review staff recommendations for 2001 quotas and management measures, develop and recommend 2001 quota specifications for surfclam and ocean quahogs); Atlantic mackerel, squid and butterfish management measures (review Monitoring Committee's recommendations for 2001 quotas and management measures, develop and recommend 2001 quota specifications and management measures for Atlantic mackerel, squids, and butterfish); possible consideration of provisions for quota set asides for research and data collection for all species but surfclams and ocean quahogs; hear organizational and committee reports.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19279 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072000C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Groundfish Oversight Committee and Groundfish Advisory Panel in August, 2000. Recommendations developed as a result of this meeting will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, August 15, 2000, at 10 a.m.

ADDRESSES: The meeting will be held at the Radisson Warwick Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee and its advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan. These groups will refine the alternative management approaches under consideration for Amendment 13 to the Northeast Multispecies Fishery Management Plan and will begin to develop definitive proposals. They will incorporate any guidance received from the full Council at its July Council meeting into their discussions. They also may review information on the current four year-round area closures, and develop preliminary options for changes to those areas.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19280 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement (DEIS/OEIS) for the Naval Air Warfare Center Weapons Division (NAWCWPNS) Point Mugu Sea Range

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) the DEIS/OEIS for the NAWCWPNS Point Mugu Sea Range. Public hearings will be held to provide information and receive oral and written comments on the DEIS/OEIS. Federal, state, local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES: Public hearings will be held on August 14–16, 2000 from 6:00 p.m.–9:00 p.m. and August 21–22, 2000 from 6:00 p.m.–9:00 p.m.

ADDRESSES: August 14, 2000—Oxnard, California, Ventura Room, Oxnard performing Arts & Community Center, 800 Hobson Way; August 15, 2000—Camarillo, California, Orchid Room, 816 Camarillo Springs Road; August 16, 2000—Ventura, California, Holiday Inn, 450 East Harbor Boulevard; August 21, 2000—Santa Barbara, California, Fess Parker Doubletree Hotel, 633 East Cabrillo Boulevard; and August 22, 2000—Santa Monica, California, Community Room, Santa Monica Place (shopping mall), 395 Santa Monica Place.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Smith, Naval Air Warfare Center Weapons Division, Facsimile (805) 989–0143. Additional information concerning this notice, including hearing dates and locations, may be obtained by calling toll-free (888) 217–9045 or by accessing the Point Mugu Sea Range EIS/OEIS Home Page at the following web address: http://www.nawcwpns.navy.mil/~pmeis.

SUPPLEMENTARY INFORMATION: The Navy has prepared and filed with the EPA the DEIS/OEIS for the NAWCWPNS Point Mugu Sea Range in accordance with the requirements of the National Environmental Policy Act of 1969 (42 USC Sections 4321–4345) and its implementing regulations (40 CFR Parts 1500 to 1508). The DEIS/OEIS also was prepared in accordance with the Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions).

A Notice of Intent for this EIS was published in the **Federal Register** on July 25, 1997 (62 FR 40061). Five public scoping meetings were held in Oxnard, California; Camarillo, California; Ventura, California; Santa Monica, California; and Santa Barbara, California, between August 21 and August 27, 1997.

The NAWCWPNS Point Mugu Sea Range currently supports test and evaluation of sea, land, and air weapons systems, fleet training exercises, small-scale amphibious warfare training, and special warfare training. The proposed action is to continue these test and training activities on the Sea Range. The proposed action would also accommodate Theater Missile Defense (TMD) test and training, an increase in the current level of both Fleet training exercises and special warfare training, and facilities modernization at NAS Point Mugu and San Nicolas Island. The TMD test and training would include four distinct types of events: (a) Boost phase intercept (up to three events per year), (b) upper tier (up to three events per year); (c) lower tier (up to three events per year); and (d) nearshore intercept events at San Nicolas Island (up to eight events per year). One additional Fleet training exercise per year would be accommodated at the Sea Range as well as two additional special warfare exercises per year. The facilities modernization at NAS Point Mugu would involve the use of two existing launch pads to serve as new launch locations. At San Nicolas Island, a missile launcher, a vertical launcher, a new range support building, and five multiple-purpose instrumentation sites would be constructed.

The DEIS/OEIS addresses the potential effects of the proposed action on geology and soils, air quality, noise, water quality, fish and sea turtles, marine mammals, terrestrial biology, cultural resources, land use, socioeconomics, hazardous and nonhazardous materials, and public safety.

Alternatives developed and analyzed in the DEIS/OEIS include: the Preferred Alternative as described above; the No Action Alternative, in which current test and training operations would continue but increased testing and training on the Sea Range and associated facilities modernization at NAS Point Mugu and San Nicolas Island would not be accommodated; and the Minimum Components Alternative. The Minimum Components Alternative would continue current test and training operations and accommodate eight TMD nearshore intercept events, one additional fleet training exercise per year, and construction of five multiple-purpose instrumentation sites on San Nicolas Island. The proposed action is the preferred alternative because it best meets the project's purpose and need.

The DEIS has been distributed to various Federal, state, local agencies, elected officials, special interest groups, and public libraries. Complete copies of the document are available for public review at the following eight information repositories:

Oxnard Public Library, Reference Desk, 251 South "A" Street, Oxnard, California
NAS Point Mugu Library, Code 836300E, Building No. 3–10, North Mugu Road, Point Mugu, California
Ray D. Prueter Library, 510 Park Avenue, Port Hueneme, California
Camarillo Public Library, 3100 Ponderosa Drive, Camarillo, California
E.P. Foster Library, 651 E. Main Street, Ventura, California
Malibu Library, 23519 West Civic Center Way, Malibu, California
Santa Barbara Public Library, 40 East Anapamu Street, Santa Barbara, California
Santa Monica Public Library, Reference Section, 1343 6th Street, Santa Monica, California

The Executive Summary of the DEIS/OEIS may be viewed on the Point Mugu Sea Range EIS/OEIS Home Page at the following web address: http://www.nawcwpns.navy.mil/~pmeis.

The Navy will conduct five public hearings to receive oral and written comments concerning the DEIS/OEIS. At each hearing location, information poster stations will be available from 6:00 p.m. to 7:00 p.m., followed by the official hearing beginning at 7:00 p.m. and ending at 9:00 p.m. Navy representatives will be available at the hearings to receive information and comments from agencies and the public regarding issues of concern. Federal, state, local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer.

To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record for the DEIS/OEIS. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to four minutes. Each individual may speak only once, and combining speaking times will not be permitted. Longer comments should be summarized at the public hearings and submitted in writing either at the hearings or mailed to Naval Air Warfare Center Weapons Division, Point Mugu Sea Range EIS, 521 9th Street, Point Mugu, CA 93042–5001 (Attn: Ms. Gina Smith, Code 8G0000E, facsimile (805) 989–0143). Written comments are requested not later than September 11, 2000.

Dated: July 26, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19282 Filed 7–28–00; 8:45 am]
BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 29, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2000.

Joseph Schubert,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: The Leveraging Educational Assistance and Partnership (LEAP) Program.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 56; Burden Hours: 560.

Abstract: The LEAP Program uses matching Federal and State funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. State agencies use this performance report to account for yearly program performance. The Department uses the information collected to assess the accomplishment of the program goals and objectives and to aid in program management and compliance assurance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify

the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–19232 Filed 7–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The Magnet Schools Assistance Program (MSAP) provides grants to eligible local educational agencies and consortia of such agencies to support magnet schools that are part of approved desegregation plans.

Eligible Applicants: Local educational agencies (LEAs) and consortia of such agencies.

Applications Available: August 23, 2000.

Deadline for Transmittal of Applications: December 22, 2000.

Deadline for Intergovernmental Review: February 23, 2001.

Estimated Available Funds: $92,000,000.

The actual level of funding, if any, is contingent on final congressional action. However, we are inviting applications at this time to allow enough time to complete the grant process before the end of the Federal fiscal year (October 1, 2001), if Congress appropriates funds for this program.

Estimated Range of Awards: $200,000—$3,000,000 per year.

Estimated Average Size of Awards: $1,533,000 per year.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, 99 and 299. (b) The regulations for this program in 34 CFR part 280.

Priorities: Under 34 CFR 75.105(c)(2)(i) and 34 CFR 280.32(b)–(f), we award up to an additional 45 points to an application, depending on how well the application meets the five priorities listed below. These points are in addition to any points the applicant earns under the selection criteria in 34 CFR 280.31.

Need for assistance. (5 points) The Secretary evaluates the applicant's need for assistance under this part, by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet school project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

New or revised magnet schools projects. (10 points) The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

Selection of students. (15 points) The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather that through academic examination.

Innovative approaches and systemic reform. (10 points) The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State's and LEA's systemic reform plans, if any, under Title III of Goals 2000: Educate America Act.

Collaborative efforts. (5 points) The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

Additionally, the Secretary gives preference to applications that use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture. Under 34 CFR 299.3 and 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this competitive priority over an application of comparable merit that does not meet this competitive priority.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

The Secretary also invites applications that meet the following invitational priority. Projects that propose to help the LEA(s) improve one or more low-performing schools by:

- Selecting schools identified for school improvement or corrective action under Title I of the ESEA as magnet schools to be funded under this project;
- Maximizing the opportunity of students in low-performing schools to attend higher performing schools under the project for the reduction, elimination or prevention of minority group isolation;
- Effectively involving and informing parents about improvement goals for the MSAP schools as well as the goals for their own children; and
- Improving the quality of teaching and instruction in the low-performing schools to be funded under the project.

Under 34 CFR 75.105(c)(1) an application that meets the invitational priority does not receive a competitive or absolute preference over other applications.

SUPPLEMENTARY INFORMATION:

Applicants must submit with their applications one of the following types of plans to establish eligibility to receive MSAP assistance: (1) A desegregation plan required by a court order; (2) a plan required by a State agency or an official of competent jurisdiction; (3) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (4) a voluntary plan adopted by the applicant.

Under the MSAP program regulations, applicants are required to provide all of the information required at § 280.20(a)–(g) in order to satisfy the civil rights eligibility requirements found in § 280.2(a)(2) and (b) of the regulations. This section of the notice describes those information requirements.

In addition to the particular data and other items for required and voluntary plans, described separately in the information that follows, an application must include:

- Signed civil rights assurances (included in the application package);
- A copy of the applicant's plan; and
- An assurance that the plan is being implemented or will be implemented if the application is funded.

Required Plans

1. Plans Required By a Court Order

An applicant that submits a plan required by a court must submit complete and signed copies of all court or State documents demonstrating that the magnet schools are a part of the approved plan. Examples of the types of documents that would meet this requirement include—

- A Federal or State court order that establishes or amends a previous order or orders by establishing additional or different specific magnet schools;
- A Federal or State court order that requires or approves the establishment of one or more unspecified magnet schools or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Plans Required By a State Agency or Official of Competent Jurisdiction

An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Title VI Required Plans

An applicant that submits a plan required by OCR under Title VI must submit a complete copy of the plan demonstrating that magnet schools are part of the approved plan.

4. Modifications to Required Plans

A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the plan must be approved by the court, agency, or official that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR Regional Office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof to ED of approval of all modifications to their plans by January 26, 2001.

Voluntary Plans

A voluntary plan must be approved by ED each time an application is submitted for funding. Even if we have approved a voluntary plan in an LEA in the past, the plan must be resubmitted to us for approval as part of the application.

An applicant submitting a voluntary plan must include in its application:

- A copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement the plan upon the award of assistance.
- Enrollment and other information as required by the regulations at § 280.20(f) and (g) for applicants with voluntary plans. Enrollment data and information are critical to our determination of an applicant's eligibility under a voluntary plan.

Narrow Tailoring

The purposes of the MSAP include the reduction, elimination or prevention of minority group isolation. In many instances, in order to carry out these purposes, districts take race into account in assigning students to magnet schools. In order to meet the requirements of Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment to the United States Constitution, applicants submitting voluntary plans that involve the use of race in decision making must ensure that the use of race satisfies strict scrutiny. That is, the use of race must be narrowly tailored to achieve the compelling interest in reducing, eliminating or preventing minority group isolation.

In order for us to make a determination that a voluntary plan involving a racial classification is adequate under Title VI the plan must be narrowly tailored. Among the considerations that affect a determination of whether the use of race in a voluntary plan is narrowly tailored are (1) whether the district tried or seriously considered race-neutral alternatives and determined that such measures have not been or would not be similarly effective, before resorting to race-conscious action; (2) the scope and flexibility of the use of race, including whether it is subject to a waiver; (3) the manner in which race is used, that is, whether race determines eligibility for a program or whether race is just one factor in the decision making process; (4) the duration of the use of race and whether it is subject to periodic review; and (5) the degree and type of burden imposed on students of other races.

Each of the considerations set out above should be specifically considered in framing a district's strategy. Some examples follow, although it must be recognized that the legal standards in this area are continuing to develop.

Race-Neutral Means

Before resorting to race-conscious action, school districts must try or seriously consider race-neutral alternatives and determine that they have not been or would not be similarly effective. One example of a race-neutral approach for applicants proposing to conduct a lottery for student admission to a magnet school would be to strengthen efforts to recruit a large pool of eligible students for the lottery that reflects the diverse racial and ethnic composition of the students in the applicant's district. If recruitment efforts are successful, the lottery should result in a racially and ethnically diverse student body.

It may be possible to broaden the appeal of a given magnet school by aggressively publicizing it, making application to it as easy as possible, and broadening the geographic area from which the school is intended to draw.

Use of Racial Criteria in Admissions

It may be permissible to establish a procedure whereby race is taken into account in admissions only if race-neutral steps are considered and a determination is made that they would not prove similarly effective. Racial caps are the most difficult use of race to justify under a narrow tailoring analysis.

The decision to consider race in admission decisions should be made on a school-by-school basis.

Scope and Flexibility

Over time, the enrollment at a magnet school may become stable and the school may attract a diverse group of students. At this point, use of race as a factor in admissions may no longer be necessary.

In some instances, exceptions to the use of race in admissions—where a relatively small number of students are adversely affected and their admission will not substantially affect the racial composition of the program—should be available.

Duration of the Program and Reexamination of the Use of Criteria

The school or school district should formally review the steps it has taken which involve the use of race on a regular basis, such as on an annual basis, to determine whether the use of race is still needed, or should be modified.

Effect on Students of Other Races

Where there are a number of magnet schools, it may also be possible to assign students to a comparable magnet school, if they are unable to gain admission to their first preference.

Enrollment and Other Information

A voluntary plan is a plan to reduce, eliminate, or prevent minority group isolation (MGI), either at a magnet school or at a feeder school—a school from which students are drawn to attend the magnet school. Under § 280.2, the establishment of the magnet school cannot result in an increase in MGI at a magnet school or any feeder school above the districtwide percentage of minority group students at the grade levels served by the magnet school.

The following example and those in subsequent sections of this notice are designed to assist applicants in the preparation of their application. The examples illustrate the types of data and information that have proven successful in the past for satisfying the voluntary plan regulation requirements.

District A has a districtwide percentage of 65.5 percent for its minority student population in elementary schools. District A has six elementary schools with the following minority student populations:

1. School A—67 percent.
2. School B—58 percent.
3. School C—64 percent.
4. School D—76 percent.
5. School E—47 percent.
6. School F—81 percent.

District A has five minority group isolated schools, *i.e.*, five schools with minority student enrollment of over 50 percent. District A seeks funding to establish a magnet program at School F to reduce MGI at that school. For District A to be eligible for a grant, the establishment of the magnet program at School F should not increase the minority student enrollment at feeder school C to more than 65.5 percent (the districtwide percentage). Also, the establishment of the magnet program should not increase the minority student enrollment at feeder schools A or D at all because those schools are already above the districtwide percentage for minority students. If projected enrollments at a magnet or feeder school indicate that there will be an increase in MGI, District A should provide an explanation in its application for the increase that shows it is not caused by the establishment of the magnet program. See the discussion below.

An applicant that proposes to establish new magnet schools must submit projected data for each magnet and feeder school that show that the magnet schools and all feeders will maintain eligibility for the entire three-year period of the grant. Projected data are included in the examples below.

Objective: Reduction of Minority Group Isolation in Existing Magnet Schools

In situations where the applicant intends to reduce minority isolation in an existing magnet program, whether in the magnet school or in one or more of the feeder schools, and minority isolation has increased, the applicant must provide data and information to demonstrate that the increase was not due to the applicant's magnet program, in accordance with § 280.20(g). See the following examples.

Options for Demonstrating Reduction

1. Magnet School Analysis

District Z has two existing magnet elementary schools. All of the other schools in the district are feeder schools to one or both of the magnet schools. District Z has six feeder schools and a districtwide minority enrollment of 60.0 percent at the elementary school level.

DISTRICT Z BASE YEAR DATA FOR MAGNET SCHOOLS

Magnet school (base year)	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams (1999)	449	382	85.1	67	14.9
Edison (1999)	387	306	79.1	81	20.9

Note: "Base Year" is the year prior to the year each school became a magnet.

DISTRICT Z CURRENT YEAR DATA FOR MAGNET SCHOOLS

Magnet school (base year)	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	459	365	79.5	94	20.5
Edison	400	326	81.5	74	18.5

Since becoming a magnet school last year, Adams has decreased in MGI from 85.1 percent to 79.5 percent and the district projects that through operation as a magnet school MGI will continue to be reduced over the next three years. At Edison, the district projects that MGI will be reduced over the next three years through its operation as a magnet even though MGI increased 2.4 percent, from 79.1 percent to 81.5 percent since the school first became a magnet. Because of the increase, this school would be found ineligible unless the increase in MGI in the current year was not caused by the magnet school. This may be shown through data indicating an increase either in minority enrollment districtwide or in the area served by the magnet school.

If District Z's districtwide elementary school enrollment has become more minority isolated due to districtwide demographic changes in the student population and if a magnet or a feeder school's increase in MGI is *less* than the districtwide increase in MGI, ED will conclude that the school's increase in MGI was not the result of the magnet programs, but due to the overall effect of demographic changes in the district as a whole at the elementary level.

DISTRICT Z BASE YEAR DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	396	301	75.6	97	24.4
Rocky Mt	289	199	68.9	90	31.1
Wheeler	239	144	60.3	95	39.7
King	289	144	49.8	145	50.2
Tinker	429	173	40.3	256	59.7
Holly	481	122	25.4	359	74.6
District-wide	2,961	1,771	59.8	1,190	40.2

DISTRICT Z CURRENT YEAR DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	401	278	69.3	123	30.7
Rocky Mt	291	211	72.5	80	27.5
Wheeler	251	153	61.0	98	39.0
King	277	149	53.8	128	46.2
Tinker	424	198	46.7	226	53.3
Holly	475	130	27.4	345	72.6
District-wide	2,978	1,810	60.8	1,168	39.2

DISTRICT Z PROJECTED 2001–2002 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	469	349	74.4	120	25.6
Edison	410	312	76.1	98	23.9

DISTRICT Z PROJECTED 2002–2003 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	483	331	68.5	152	31.5
Edison	407	289	71.0	118	29.0

DISTRICT Z PROJECTED 2003–2004 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	489	307	62.8	182	37.2
Edison	409	266	65.0	143	35.0

DISTRICT Z PROJECTED 2001–2002 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	400	272	68.0	128	32.0
Rocky Mt	306	216	70.6	90	29.4
Wheeler	250	148	59.2	102	40.8
King	280	151	53.9	129	46.1
Tinker	417	232	55.6	185	44.4
Holly	447	170	38.0	277	62.0
District-wide	2,979	1,850	62.1	1,129	37.9

DISTRICT Z PROJECTED 2002–2003 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	396	265	66.9	131	33.1
Rocky Mt	293	202	68.9	91	31.1
Wheeler	259	153	59.1	106	40.9
King	291	169	58.1	122	41.9
Tinker	418	242	57.9	176	42.1
Holly	451	216	47.9	235	52.1
District-wide	2,998	1,867	62.3	1,131	37.7

DISTRICT Z PROJECTED 2003–2004 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	400	267	66.8	133	33.2
Rocky Mount	299	204	68.2	95	31.8
Wheeler	262	154	58.8	108	41.2
King	302	181	59.9	121	40.1
Tinker	419	244	58.2	175	41.8
Holly	441	227	51.5	214	48.5
District-wide	3,021	1,850	61.2	1,171	38.8

However, as with the Edison magnet, if the MGI in a magnet increases above the districtwide increase between the base year and the current year, an applicant must demonstrate that the magnet is not causing the problem. In order to show that the increase in MGI at a particular school is not the result of the operation of a magnet, a district should provide student transfer data on the number of minority and non-minority students who attend the magnet program from the other feeder schools in the district for the current year. If, by subtracting from the magnet enrollment those students who came from other schools, the MGI is higher than the actual MGI for the current year, it can be concluded that the increase in MGI was not caused by the magnet school.

CURRENT YEAR STUDENT TRANSFER DATA FOR MAGNET SCHOOLS THAT INCREASE IN MINORITY GROUP ISOLATION ABOVE THE DISTRICTWIDE AVERAGE

	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Edison (2000)	400	326	81.5	74	18.5
Students who transferred from feeder schools to Edison in order to attend magnet	50	31		19	
Edison enrollment with transfer students "returned" to feeder schools	350	295	84.3	55	15.7

CURRENT YEAR STUDENT TRANSFER DATA FOR FEEDER SCHOOLS THAT INCREASE IN MINORITY GROUP ISOLATION ABOVE THE DISTRICTWIDE AVERAGE

	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rocky Mount (2000)	291	211	72.5	80	27.5
Students who transferred to Edison to attend magnet	10	8		2	
Students who transferred to Adams to attend magnet	6	6		0	
Rocky Mount enrollment if transfer students were "returned"	307	225	73.3	82	26.7

2. Feeder School Analysis

In District Z, two feeder schools whose MGI was greater than the districtwide average, Rocky Mount and Wheeler, increased in MGI by 3.7 percent and 0.7 percent respectively between the base year and the current year. Since Wheeler's MGI increase of 0.7 percent is less than the districtwide MGI increase of 1.0 percent for the same time period, Wheeler's MGI increase would be considered to be due to the demographic changes in the district and further scrutiny of Wheeler is not required.

Because Rocky Mount, a feeder school to magnet programs at Adams and Edison, increased in MGI over the districtwide average from 68.9 percent to 72.5 percent, this would make both Adams and Edison ineligible unless the district demonstrates that the increase was not because of the magnet programs. The clearest way for an applicant to show this is to provide student transfer data on the number of

minority and non-minority students who left Rocky Mount to attend magnet programs at Adams and Edison. (See student transfer data above.) By adding the number of students who transferred to the magnet programs to Rocky Mount's total enrollment, ED can determine whether the increase was due to the magnet program. If it can be demonstrated that without the magnet program, the MGI at the feeder school would be even higher, these magnet schools would be found eligible.

Some applicants may find that they are unable to provide the type of student transfer data referred to above. In some cases, these applicants may be able to present demographic or other statistical data and information that would satisfy the requirements of the statute and regulations. This demographic data must persuasively demonstrate that the operation of a proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's magnet schools and would not result in an increase of MGI at one of the applicant's feeder schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school. (34 CFR § 280.20(g)). For example, an applicant might include data provided to it by a local social service agency about the numbers and concentration of families in a recent influx of immigrants into the neighborhood or attendance zone of the feeder school.

3. Additional Base-Year Data

If an applicant believes that comparing a magnet program's current-year enrollment data with its base year enrollment data (*i.e.*, data from the year prior to the year each school became a magnet or a feeder) is misleading due to significant changes that have occurred in attendance zones or other factors affecting the magnet school or in the closing and combining of other schools with the magnet school, additional and more recent enrollment data for an alternative to the base year may be submitted along with a justification for its submission.

Objective: Conversion of an Existing School to a New Magnet Program

District X will convert Williams, an existing elementary school, to a new elementary magnet program. Currently, Williams has a minority enrollment of 94.67 percent. The district projects that the magnet program will reduce minority group isolation at Williams to 89 percent in the first year of the project. The projection of enrollment should be based upon reasonable assumptions and should clearly state the basis for these assumptions, e.g., parent or student interest surveys, or other objective indicators, such as waiting lists for other magnet schools in the district.

DISTRICT X CURRENT YEAR DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	450	426	94.7	24	5.3
Shaw (Feeder)	398	179	44.9	219	55.1
Smith (Feeder)	477	186	39.0	291	61.0
District-wide	4,704	2,598	55.2	2,106	44.8

DISTRICT X PROJECTED 2001–2002 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	450	400	89.0	50	11.0
Shaw (Feeder)	404	195	48.3	209	51.7
Smith (Feeder)	471	191	40.5	280	59.5
District-wide	4,712	2,622	55.6	2,090	44.4

DISTRICT X PROJECTED 2002–2003 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	500	415	83.0	85	17.0
Shaw (Feeder)	406	203	50.0	203	50.0
Smith (Feeder)	482	205	42.5	277	57.5
District-wide	4,794	2,683	55.9	2,111	44.1

DISTRICT X PROJECTED 2003–2004 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	600	450	75.0	150	25.0
Shaw (Feeder)	410	215	52.4	195	47.6
Smith (Feeder)	477	229	48.0	248	52.0
District-wide	4,815	2,690	55.9	2,125	44.1

Objective: Construction of New Magnet School/Reopening a Closed School

District Y will construct a new school, Ashe, and open its magnet program at the beginning of the 2002–2003 school year. There is no pre-existing school, and consequently, it appears that no enrollment data are readily available to use as a comparison. However, the district estimates that if the proposed magnet school had opened as a "neighborhood school," without a magnet program designed to attract students from outside the "neighborhood" or attendance zone, it would have a minority enrollment of 67 percent. This estimate was based on national census tract data, supplemented by more current data on the neighborhood provided by the local county government. The district further reasonably anticipates, based on surveys and other indicators, that when the new school opens as a magnet school in 2002, it will have a minority enrollment of 58 percent.

Note that in this example, since the school will not open until the second year of the project (the 2002–2003 school year), data are needed only for the current year and each of the two years of the project during which the magnet at Ashe will be implemented.

DISTRICT Y CURRENT YEAR DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	400	66.7	300	33.3
Mason (Feeder)	298	101	33.9	197	66.1
Vine (Feeder)	324	111	34.2	213	65.8
Districtwide	2,511	1,339	53.3	1,172	46.7

DISTRICT Y PROJECTED 2002–2003 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	348	58.0	252	42.0
Mason (Feeder)	290	133	45.8	157	54.2
Vine (Feeder)	332	144	43.4	188	56.6
Districtwide	2,559	1,352	52.8	1,207	47.2

DISTRICT Y PROJECTED 2003–2004 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	300	50.0	300	50.0
Mason (Feeder)	300	145	48.3	155	52.7
Vine (Feeder)	338	170	50.6	166	49.4
Districtwide	2,604	1,383	56.2	1,221	43.8

Objective: Reduction, Elimination, or Prevention of MGI at Targeted Feeder Schools

Many applicants apply for MSAP funding to reduce, eliminate, or prevent minority group isolation at a magnet school. However, some applicants have established magnet programs at schools that are not minority-isolated for the purpose of reducing, eliminating, or preventing minority isolation at one or more targeted feeder schools. The data requirements and analysis for this type of magnet program are the same as described for "Existing Magnet Schools." In this example, MGI is being reduced in each of the targeted feeder schools.

BASE YEAR DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	505	62	12.3	443	87.7
North (Feeder)	449	347	77.3	102	22.7
Lewis (Feeder)	404	355	87.9	49	12.1
Clark (Feeder)	471	459	97.5	12	2.5
Districtwide	1,829	1,223	66.9	606	33.1

CURRENT YEAR DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	520	105	20.2	415	79.8
North (Feeder)	453	338	74.6	115	25.4
Lewis (Feeder)	398	335	84.1	63	15.9
Clark (Feeder)	477	443	92.9	34	7.1
Districtwide	1,848	1,221	66.1	627	33.9

PROJECTED 2001–2002 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	526	139	26.5	387	73.5
North (Feeder)	461	331	71.9	130	28.1
Lewis (Feeder)	424	347	81.8	77	18.2
Clark (Feeder)	499	427	85.5	72	14.5
District-wide	1,910	1,244	65.1	664	34.9

PROJECTED 2002–2003 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	532	200	37.5	332	62.5
North (Feeder)	480	329	70.0	141	30.0
Lewis (Feeder)	445	344	77.2	101	22.8
Clark (Feeder)	528	425	80.4	103	19.6
District-wide	1,975	1,298	65.7	677	34.3

PROJECTED 2003–2004 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	548	263	48.0	285	52.0
North (Feeder)	475	316	66.5	159	33.5
Lewis (Feeder)	460	342	74.4	118	25.6
Clark (Feeder)	536	402	75.0	134	25.0
Districtwide	2,019	1,323	65.5	696	44.1

Objective: Prevention of Minority Group Isolation

An applicant that applies for MSAP funding for the purposes of preventing minority isolation must demonstrate that without the intervention of the magnet program, the magnet school or targeted feeder school will become minority-isolated within the project period. Generally this may be documented by showing a trend in the enrollment data for the proposed school. For example, if a neighborhood school currently has a 45 percent minority enrollment and, for the last three years, minority enrollment has increased an average of three percent each year (36 percent, 39 percent, and 42 percent), it is reasonable to expect that, in three years, the school would exceed 50 percent thereby becoming minority-isolated during the project period without the intervention of a magnet. The applicant in this example should submit this enrollment data in its application.

The preceding examples are not intended to be an exhaustive set of examples. Applicants with questions about their desegregation plans and the information required in support of those desegregation plans (including applicants that find that these examples do not fit their circumstances and applicants that find that the enrollment data requested are unavailable or do not reflect accurately the effectiveness of their proposed magnet program) are encouraged to contact ED for technical assistance, prior to submitting their application by calling the contact person listed under the **FOR FURTHER INFORMATION CONTACT** heading.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20749–1398. Telephone (toll free): 1–877–576–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*, or you may contact ED Pubs at its e-mail address: *Edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.165A.

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E112, Washington, DC

20202–6140. Telephone (202) 260–2476, or via Internet: OESE_MSAP@ed.gov

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting ED Pubs. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 3021–3032.

Dated: July 24, 2000.

Michael Cohen,

Assistant Secretary, Elementary and Secondary Education.

Appendix—Empowerment Zones and Enterprise Communities

EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Empowerment Zones

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

[FR Doc. 00–19198 Filed 7–28–00; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2571–001]

Duquesne Light Company; Notice of Filing

July 19, 2000.

Take notice that on July 14, 2000, pursuant to the Commission's Order dated June 15, 2000, Duquesne Light Company (Duquesne) tendered for filing under Duquesne's market-based rate tariff, an amended long-term service agreement between Duquesne and Orion Power Midwest, L.P., (Orion).

Duquesne reports that service commenced to Orion on April 28, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 4, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–19195 Filed 7–28–00; 8:45 am]

BILLING CODE 6717–01–M

* Denotes rural designee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2366–001]

Energetix, Inc.; Notice of Filing

July 25, 2000.

Take notice that on July 14, 2000, Energetix, Inc., tendered for filing with the Commission revisions to its market-based rate tariff, FERC Electric Rate Schedule No, 1 and its code of conduct.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 4, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–19194 Filed 7–28–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–173–000]

Entergy Nuclear New York Investment Company I; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

July 25, 2000.

Take notice that on July 21, 2000, Entergy Nuclear New York Investment Company I, c/o RL&F Service Corp., One Rodney Square, 10th Floor, Tenth & King Street, Wilmington, DE, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The amendment affirms that the applicant will engage indirectly and exclusively through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before August 4, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19196 Filed 7–28–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–172–000]

Entergy Nuclear New York Investment, Company II Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

July 25, 2000.

Take notice that on July 21, 2000, Entergy Nuclear New York Investment Company II, c/o RL&f Service Corp., One Rodney Square, 10th Floor, Tenth & King Street, Wilmington, DE, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The amendment affirms that the applicant will engage indirectly and exclusively through one or more affiliates, as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before August 4, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19197 Filed 7–28–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–93–000, et al.]

Midland Cogeneration Venture Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

July 25, 2000.

Take notice that the following filings have been made with the Commission:

1. Midland Cogeneration Venture Limited Partnership

[Docket No. EL00–93–000]

Take notice that on July 24, 2000, Midland Cogeneration Venture Limited Partnership (MCV) filed a Petition for Declaratory Order and Request for Expedited Consideration. MCV states that the purpose of the filing is to obtain an order declaring that the Commission would not consider MCV to be a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration or small power production facilities) in violation of Section 3(18) of the Federal Power Act, 16 U.S.C. 791a et seq.(1994), if MCV complies with Consumers Energy Company's (Consumers) Open-Access Transmission Tariff (OATT) by purchasing Delivery Scheduling and Balancing Service, a service which

transmission customers are required to take or supply under Schedule 4A of Consumers' OATT.

Comment date: August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER00–3214–000]

Take notice that on July 20, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing as a change in rate schedule, a revised "Interconnection Agreement between Northern California Power Agency and Pacific Gas and Electric Company" (PG&E–NCPA IA). The PG&E–NCPA IA, dated November 26, 1991, was accepted with its appendices for filing by the Commission on May 12, 1992, and designated as PG&E Rate Schedule FERC No. 142. The changes to the PG&E–NCPA IA consist of revised sections of Appendices A and E thereto and a Letter Agreement for the Sale of Additional Short-Term Firm Transmission Service, dated June 2, 2000 (Letter Agreement). The changes to Appendices A and E include certain market-based energy rates. The Letter Agreement provides for NCPA to pay the backbone rate for Short-Term Firm Transmission Type I Service beginning April 1, 1998.

Copies of this filing were served upon NCPA, the California Independent System Operation Corporation, the California Power Exchange Corporation and the California Public Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New York Independent System Operator, Inc.

[Docket No. ER00–3215–000]

Take notice that on July 20, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing a Revision to Procedures Governing Auctions of Transmission Congestion Contracts and a proposed tariff change related thereto.

A copy of this filing was served upon all parties who have executed Service Agreements under the ISO OATT.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Mid-Atlantic Energy Development Company

[Docket No. ER00–3216–000]

Take notice that on July 20, 2000, Mid-Atlantic Energy Development Company (Mid-Atlantic), tendered for filing a Power Sales Agreement dated July 21, 2000 between Mid-Atlantic as seller and Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (collectively, the FirstEnergy Operating Companies) as purchasing parties (the Agreement).

Mid-Atlantic states that its has acquired and is installing three new natural gas-fired combustion turbines, each of which has a generation capacity of approximately 130 MW. Mid-Atlantic states that under the Agreement, it will sell all of the capacity and associated energy from those units to the FirstEnergy Operating Companies at negotiated rates.

Mid-Atlantic is proposing to make the Agreement effective as of July 21, 2000.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company

[Docket No. ER00–3217–000]

Take notice that on July 20, 2000, pursuant to North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000) (NERC), Duquesne Light Company tendered for filing a notice of a generic amendment to its Open Access Transmission Tariff (OATT) reflecting the North American Electric Reliability Council (NERC) revised Transmission Loading Relief (TLR) procedures accepted by the Commission in NERC.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER00–3218–000]

Take notice that on July 20, 2000, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 11 (Docket No. ER99–1263–000), an executed Service Agreement for Service at Market-Based Rates with Tractebel Energy Marketing, Inc.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective June 27, 2000.

A copy of this filing was caused to be served upon Tractebel Energy Marketing, Inc., as noted in the filing letter.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. EnergyUSA-TPC Corporation

[Docket No. ER00–3219–000]

Take notice that on July 20, 2000, EnergyUSA-TPC Corporation (EnergyUSA), an indirect wholly owned subsidiary of NiSource, Inc., tendered for filing its FERC Electric Rate Schedule 1 and a Statement of Policy and Code of Conduct.

EnergyUSA seeks an effective date of September 18, 2000 for the tariff sheets submitted with this filing.

EnergyUSA states that it meets all requirements to sell electric energy and capacity at market based rates. In addition, EnergyUSA states Statement of Policy and Code of Conduct meets all Commission requirements regarding transactions and relationships with its franchised public utility affiliates.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy System

[Docket No. ER00–3220–000]

Take notice that on July 20, 2000, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for H.Q. Energy Services (U.S.) Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 19, 2000, for the above mentioned Service Agreement in this filing.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy System

[Docket No. ER00–3221–000]

Take notice that on July 20, 2000, FirstEnergy System filed Service Agreements to provide Firm Point-to-Point Transmission Service for H.Q. Energy Services (U.S.) Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 19, 2000 for the above mentioned Service Agreement in this filing.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER00–3222–000]

Take notice that on July 20, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Consumers Energy Company (d/b/a Consumers Energy Traders) will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 15, 2000.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER00–3223–000]

Take notice that on July 20, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Amerada Hess Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 23, 2000.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER00–3224–000]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with Virginia Power's merchant function, The Wholesale Power Group. This Agreement will be designated as Service Agreement No. 292 under Company's FERC Electric Tariff, First Revised Volume No. 5.

The foregoing Service Agreement is tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide long term firm point-to-point service to the Transmission Custpmer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of July 19, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon The Wholesale Power Group, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–3225–000]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Roswell Energy, Inc. Under the Service Agreement, Virginia Power will provide services to Roswell Energy, Inc. under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of July 19, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon Roswell Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER00–3226–000]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a Letter of Termination of the Service Agreement between Virginia Electric and Power Company and Duke Energy Trading and Marketing, L.L.C. (formerly Louis Dreyfus Electric Power Inc.) dated January 1, 1995 and approved by the FERC in a letter order on February 14, 1995 in Docket No. ER95–417–000. Virginia Power requests that the Letter of Termination be designated as First Revised Service Agreement No. 8 under FERC Electric Tariff, Original Volume No. 4.

Virginia Power also respectfully requests an effective date of the termination of the Service Agreement of September 20, 2000, which is sixty (60) days from the date of filing of the Letter of Termination.

Copies of the filing were served upon Duke Energy Trading and Marketing, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. MidAmerican Energy Company

[Docket No. ER00–3227–000]

Take notice that on July 20, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Cinergy Services, Inc. (Cinergy), dated June 30, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 30, 2000 for the Agreement with Cinergy, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Cinergy, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. American Energy Company

[Docket No. ER00–3228–000]

Take notice that on July 20, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Non-Firm Transmission Service Agreement with IES Utilities, Inc. (IES), dated July 10, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 10, 2000, for the Agreement with IES, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on IES, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Generation, LLC

[Docket No. ER00–3230–000]

Take notice that on July 20, 2000, Midwest Generation, LLC. (Midwest), tendered for filing an amendment to Service Agreement No. 1 under Midwest's FERC Electric Tariff, Original Volume No. 1 (the Collins Generating Station Power Purchase Agreement between Commonwealth Edison Company and Midwest).

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Company

[Docket No. ER00–3231–000]

Take notice that on July 20, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing with the Commission a Notice of Cancellation pursuant to Section 35.15 of the Commission's regulations. MidAmerican requests that the following rate schedule be canceled effective as of 11:59 p.m. on May 31, 1998:

1. Full Requirements Power Agreement dated July 6, 1988, between Iowa Public Service Company (a predecessor company of MidAmerican) and City of Estherville, Iowa. This Agreement has been designated as MidAmerican Service Agreement No. 4 under FERC Electric Tariff No. 7.

MidAmerican requests a waiver of Section 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican inadvertently failed to submit the Notice of Cancellation upon expiration of the agreement under its own terms.

MidAmerican has mailed a copy of this filing to City of Estherville, Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Company Services, Inc.

[Docket No. ER00–3232–000]

Take notice that on July 20, 2000, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), tendered for filing a Notice of Cancellation of the following rate schedules:

1. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated March 18, 1996 by and between Tampa Electric Company, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 93).

2. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated February 9, 1996 by and between Western Gas Resources Power Marketing, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 88).

3. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Contract dated June 30, 1991 by and between Cajun Electric Power Cooperative, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 76).

4. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Contract dated December 18, 1991 by and between Duke Power Company, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 77).

5. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated November 3, 1995 by and between Koch Power Services Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 82).

6. Service Schedule C (Economy Interchange) to the Interchange Contract dated December 22, 1988 by and between Florida Power Corporation, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 70).

7. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated February 9, 1996 by and between Intercoast Power Marketing Company, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 90).

These service schedules set forth the general terms and conditions governing certain transactions for Short Term Power and Economy Interchange service between Southern Companies and the above referenced parties, including the sale of such services by Southern Companies. Each of these service schedules has been terminated by the mutual agreement of the respective parties to each interchange contract listed above because such parties no longer desire to conduct transactions under such service schedules.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19226 Filed 7–28–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–6]

Agency Information Collection Activities; PCBs: Consolidated Reporting and Recordkeeping Requirements; Submission to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "PCBs: Consolidated Reporting and Recordkeeping Requirements" (EPA ICR No. 1446.07, OMB No. 2070–0112) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on October 31, 2001. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 10, 2000 (65 FR 1366). EPA received no comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before August 30, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 1446.07 and OMB Control No. 2070–0112, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail

Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; And to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260-2740, by e-mail: "farmer.sandy@epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1446.07.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew and consolidate currently approved information collections pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1446.07; OMB Control No. 2070–0112.

Title: PCBs: Consolidated Reporting and Recordkeeping Requirements.

Abstract: Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), directs EPA to regulate the marking and disposal of PCBs. Section 6(e)(2) bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR part 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping requirements covered by 40 CFR part 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR part 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste.

This ICR consolidates six separate existing ICRs that address PCB reporting and recordkeeping requirements. Detailed discussions of the existing ICRs and how their associated reporting and/or recordkeeping burdens have changed as a result of the final rule are found in the supporting statement for the information collection that is the subject of this notice.

Responses to the collection of information are mandatory (see 40 CFR part 761). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 0.57 hours per response for an estimated 1,300,240 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that currently possess PCB Items, PCB-contaminated equipment, or other PCB waste.

Estimated Total No. of Respondents: 1,300,240.

Estimated Total Annual Respondent Burden: 741,261 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: This consolidation of six existing ICRs, the burden for which totals 2,007,618 hours, will result in a net reduction of 1,266,357 hours. This reduction reflects numerous factors, including program changes and adjustments to the burdens of specific existing reporting or recordkeeping requirements, and is described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: July 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19256 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–2]

Notice of Public Meeting on Drinking Water Source Contamination Prevention

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) Office of Ground Water and Drinking Water is holding a meeting on September 11, 2000 from 9 a.m. to 3 p.m. at the Embassy Suites Hotel in Alexandria, Virginia to discuss the development of a national drinking water source contamination prevention strategy. With this strategy, EPA intends to develop a national vision for preventing contamination of the lakes, rivers, springs and aquifers that serve as public drinking water sources. This strategy will guide future prevention activities, identify meaningful measures to track progress toward this vision, and identify approaches to data management. All interested public are invited to participate and provide input on the future direction of this part of the national drinking water program.

Background

Drinking water source contamination prevention means that mechanisms are in place that significantly lower the likelihood of contaminants of concern entering waters that serve as public drinking water supplies, or that are likely to be used as a drinking water supply in the future. It is an important first step to providing safe drinking water to the public.

EPA is writing this strategy as a follow-up to the input received through public forums held during 1999. Public comments indicated that there needs to be:

- More agreement on the meaning of drinking water source contamination prevention and the near term milestones;
- Better coordination with water pollution prevention programs to make sure that source water contamination prevention is an integral part of comprehensive water quality planning and protection effort;
- Increased clarity and understanding over the players and their roles in source water contamination prevention; and
- National consensus on the best way to measure progress for source water contamination prevention, and the data needed at the national level.

The tentative meeting agenda is as follows:

I. Welcome and Charge 9:00–9:15; Cynthia Dougherty, Director, EPA Office of Ground Water and Drinking Water (OGWDW)

II. Overview of Strategic Plan 9:15–10; Bill Diamond, Director, EPA Drinking Water Protection Division (DWPD), OGWDW Discussion 10–11; Facilitator

III. Presentation and Discussion of a National Goal; 11:15–12:45 Joan Harrigan-Farrelly, EPA DWPD, OGWDW

IV. Measuring Achievement; 1:45–3:00. Presentation and open discussion of proposed measures and the process for identifying national measures for source water contamination prevention Roy Simon, EPA, DWPD, OGWDW

EPA encourages input from all interested public, even those unable to attend the meeting. Copies of the draft strategy will be made available to anyone requesting copies.

Date: September 11, 2000, 9 am to 3 pm

Location: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Please register with the Safe Drinking Water Hotline (800) 426–4791, or by e-mail, HOTLINE-SDWA@EPA.GOV. Registrants will receive an agenda and background materials, including a draft strategy prior to the meeting.

Dated: July 24, 2000.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–19257 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–6]

Massachusetts Marine Sanitation Device Standard; Notice of Determination Buzzards Bay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 16, 2000, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all waters of Buzzards Bay. The petition was filed pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are thirty disposal facilities available to service vessels operating in Buzzards Bay. A list of the facilities, phone numbers, locations, and hours of operation is appended at the end of the determination.

Based on the examination of the petition and its supporting information, which included site visits by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination which include all of Buzzards Bay.

Longitude	Latitude
71°07'12.80"	41°29'48.48"
71°05'45.60"	41°25'05.52"
71°03'32.04"	41°25'24.96"
71°59'51.72"	41°22'30.00"
70°56'57.12"	41°24'33.12"
70°.54'29.88"	41°25'17.04"
70°54'11.52"	41°25'17.04
70°51'19.80"	41°26'24.00"
70°50'22.92"	41°26'44.88"
70°48'28.80"	41°26'56.76"
70°48'18.00"	41°26'59.28"
70°42'06.12"	41°30'34.92"
70°41'58.20"	41°30'37.80"
70°40'51.80"	41°30'55.44"
70°40'58.44"	41°31'14.16"
70°37'27.48"	41°44'14.64"—Canal Entrance West
70°37'21.36"	41°44'10.68"—Canal Entrance East

This determination is made pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

FOR FURTHER INFORMATION CONTACT: A response to comments was prepared for the seven communications the EPA New England received during the 30 day comment period, and may be requested from EPA by written request to: Ann Rodney, U.S. EPA New England, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023.

Dated: July 28, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

City/town and location	VHF chan.	Telephone	Hours
Falmouth:			
Woods Hole Marine, pumpout boat	9	508–540–2402.	
Quisset Harbor boatyard, pumpout boat	9	508–548–0506	8–8/7.
Brewer's Fiddler Cove, dockside facility	9	508–564–6327	9–5/7.
Brewer's Fiddler Cove, pump–out cart	9	508–564–6327	9–5/7.
Town owned boat: W. Falmouth/Waquoit Bay			
Bourne:			
Parker's Boat Yard, dockside facility	69	508–563–8366	8–8/7.
Kingmen Marine, dockside facility	9	508–563–7136	8–8/7.
Dockside Facility, Pocasset River, town operated			
Monument Beach Marina, dockside facility, town owned			
Bourne Marina, dockside facility	9	508–759–0623	8–5/7.
Bourne Marina, pumpout boat #1, serving northside	9	508–759–0623	8–5/7.

City/town and location	VHF chan.	Telephone	Hours
Bourne Marina, pumpout boat #2, serving southside	9	508–759–0623	8–5/7.
Wareham:			
Bevans/Continental Marina, dockside facility	9	508–759–5451	Call.
Onset Bay Marina, dockside facility	9	508–295–0336	Call.
Onset Bay Marina, pumpout boat	9	508–295–0336	Call.
Pt. Independence YC, dockside facility	9	508–295–3972	Call.
Stonebridge Marina, dockside facility	9	508–295–8003	Call.
Onset Town Pier, dockside facility	9	508–295–8160	Call.
Warr's Marina, dockside facility	9	508–295–0022	Call.
Warr's Marina (Town oper.) pumpout boat #1	9	508–291–3100	Call.
Marion:			
Island Wharf, dockside facility	9	508–748–3535	8–5/7.
Island Wharf, pumpout boat	9	508–748–3535	8–5/7.
Mattapoisett:			
Mattapoisett Boat Yard, pumpout boat	68	508–758–3812	8–4/5.
Mattapoisett Town Dock, pumpout boat			
Mattapoisett Town Dock, dockside facility	68	508–758–4191	8–5/5.
Fairhaven:			
Earl's Marina, dockside facility	18	508–993–8600	7–6/7.
Shipyard Marine, pumpout boat does entire town	9	508–979–4023	On Call.
Shipyard Marine, pumpout boat			
New Bedford:			
Pope's Island Marina, dockside facility	9, 74	508–979–1456	7–8/7.
State Pier facility, dockside facility, large vessels			
Proposed Boat			
Dartmouth:			
No. Side Bridge, Town Dock, pumpout boat	9	508–999–0759	8–8/7.
Davis & Tripp's Marina, pumpout boat	9	508–999–0759	8–8/7.
Westport:			
Tripp's Marina	9	508–636–4058	Call.
Westport Point-Town Dock, boat #1	9	508–636–1105	Call.
Westport Point-Town Dock, boat #2	9	508–636–1105	Call.
Bay-wide:			
CBB Bay Keeper, Goenold and Bay-wide	TBA	508–999–6363	TBA.

[FR Doc. 00–19255 Filed 7–28–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2427]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

July 24, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in the Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 15, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Anniston and Ashland, Alabama, College Park, Covington, and Milledgeville, Georgia) (MM Docket No. 98–112, RM–9027, RM–9268, RM–9384).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Drummond and Victor, Montana) (MM Docket No. 99–134, RM–9543, RM–9572).

Number of Petitions Filed: 1.

Subject: Numbering Resource Optimization (CC Docket No. 99–200).

Number of Petitions Filed: 21.

Subject: Amendment of Section 73.202(b), Table of Allotments FM Broadcast Stations (Winslow, Camp Verde, Mayer and Sun City West, Arizona) (MM Docket No. 99–246, RM–9593, RM–9770).

Number of Petitions Filed: 1.

Subject: Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations (ET Docket No. 00–11).

Number of Petitions Filed: 2.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–19228 Filed 7–28–00; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1648]

Limited Low Power Television/Television Translator/Class A Television Auction Filing Window; Partial Extension

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the limited low power television/television translator/Class A television auction filing window originally scheduled to close on August 4, 2000, has been partially extended to August 31, 2000. However, the deadline for FCC Form 175 submissions remains August 4, 2000.

DATES: FCC Form 175's are due by 6 p.m., Eastern Standard Time (EST) on August 4, 2000. FCC Form 301–CA's or

346's are due by 7 p.m. EST on August 31, 2000.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: The filing window for the submission of FCC Form 175 will commence at 9 a.m. EST on July 31, 2000 and continue to 6 p.m. EST on August 4, 2000. Late-filed FCC Form 175's will not be considered. However, we will extend the deadline for the submission of the portions of FCC Forms 301–CA or 346 from August 4, 2000, to 7 p.m. EST August 31, 2000. We remind interested parties that a paper copy of the electronically filed FCC Form 175 must be included with each of the FCC Form 301–CA or 346 filings submitted from July 31st through August 31st.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 00–19171; Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[30Day–66–00]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of ATSDR Activities Among Priority Populations—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Re-authorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment.

As the agency responsible for determining the nature and extent of health problems at Superfund sites, ATSDR staff conduct public health assessments, health consultations and studies that serve as the basis for intervention strategies. ATSDR staff develop and disseminate to the public scientific and technical reports on the health effects of hazardous substances. Additionally, ATSDR staff collaborate with other governmental agencies, external partners and organizations to create and implement health services, educational and preventive programs.

To date, however, ATSDR has not conducted agency-wide quantitative research to evaluate the effectiveness of its services, products and programs. ATSDR staff is seeking information from its priority populations to determine their awareness of, access to and utilization of ATSDR products, programs and services. ATSDR staff will also evaluate whether priority populations derived health benefits from interventions.

ATSDR's priority populations include individuals, health care providers, health department officials and members of community organizations who live within two miles of National Priority Sites. Randomly stratified samples of individuals in these priority populations will be selected and asked to answer a questionnaire on two separate occasions within the three-year project. The questionnaire will be designed to use Computer Assisted Telephone Interviews (CATI) so that respondent burden can be reduced.

ATSDR will use the data from this study to evaluate and improve the effectiveness of health promotion and intervention activities in communities. This will translate into more effective organizational decisions on resource utilization, improved performance, and assessment of the future direction of the agency.

The total annual burden hours are 2,200.

Respondents	Number of respondents per year	Number of responses per respondent	Avg. burden per response (in hrs.)
Individuals in priority populations	6,667	1	.33

Dated: July 25, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19207 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–00–44]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Farm Stressor Inventory for Adult Farmers Supervising Children or Adolescents—New-National Institute of Occupational Health and Safety (NIOSH). The farm economic crisis of the mid-1980's brought renewed attention to severe episodes of stress, depression, and suicide experienced by farmers. Since that time, a variety of farm stress studies have been published that document some of the more severe consequences of stress and ill-health related to the economic and workload pressures experienced by farmers during this period. However, in the majority of these studies the effects of a stressful environment and the farmers' personal reactions to these environmental stressors cannot be separated. Lacking in these studies is a clear methodological distinction between:

1. Each farmer's description of the environmental stressors, (*e.g.* the amount and types of work performed),
2. The farmer's acute stress reaction, (*e.g.*, his/her immediate personal reaction to these conditions in terms of worry, sleep difficulties, bad temper, etc.), and
3. The build-up of chronic strain in response to accumulating stress, (*e.g.* depression, personality changes, withdrawal, anger, etc.).

Also lacking during these early studies of farm stress are the complex responsibilities of parents supervising the work of their children (and others). It has long been recognized that farm children make a critically important contribution to the labor needs on most family farms. More recently, increasing attention has been paid to the hazards faced by these children as they work. A number of studies have been conducted into a variety of aspects of child and adolescent labor on farms. However, only a small amount of attention has been given to the cognitive and emotional demands on adults while supervising children in farm tasks. This study will investigate supervision of child farm labor as a major work environment stressor.

Family owned and operated farms constitute the vast majority of farms in the U.S. Children of any age who are family members may work on the home farm without legal restrictions. Legal restrictions on employment in farm work apply to workers outside the resident family:

1. Adolescents who are sixteen or older are considered adults with respect to farm work and may work on any farm;
2. Adolescents who are fourteen or fifteen may be hired to work on any farm, with restrictions.
3. Children who are thirteen and under may be hired for selected non-hazardous activities with parental permission; and,
4. Children as young as ten may be hired for some short-term harvest activities with parental permission.

The purpose of this study is to conduct a psychometric validation of a new survey of farm work stressors including the supervision of children. As described above, the focus of the survey is on the work environment stressors encountered by farmers. Measures of acute stress and chronic strain will also be assessed, but the primary focus is an assessment of the work environment on family farms where children or adolescents also work.

A random sample will be drawn from a list of farms in the U.S. The sample will be selected to represent U.S. farms with respect to type and size of operation and by geographic location. Approximately 2,500 farms will be selected for initial telephone contact. Principal owner-operators of the selected farms will be contacted to briefly describe the project and to determine: (1) If children or adolescents have worked on the farm in the past year (adolescents who are fourteen or older need not be family members), and (2) if the farmer is willing to complete the one-hour survey. Approximately 700 farmers from the original sample are anticipated to have supervised children and to be willing to complete the survey (the qualified sample). Surveys will be mailed to the 700 farmers, along with a postage-paid reply envelope.

A comprehensive psychometric analysis will be performed on the data in the completed surveys. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Farmers (initial contacts)	2,500	1	6/60	250
Farmers (survey)	700	1	1	700
Total	.....	.....	.....	950

Dated: July 25, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19210 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–60–45]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC, Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Information Collection Procedures for Evaluating Toxicological Profiles (0923–0020)—Extension—Agency for Toxic Substance and Disease Registry (ATSDR). The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prepare toxicological profiles in accordance with guidelines developed by ATSDR and EPA. Each profile is revised and republished as necessary, but no less often than every three years. The principal audiences for the toxicological profiles are health professionals at the federal, state, and local levels, interested private sector organizations and groups, and members of the public.

This is a request for a three year extension of a previously approved data collection to collect information pertaining to: (a) Affiliation of users of the profiles, (b) clarity of discussion in the profiles, (c) consistency of information in the profiles, (d) completeness of information in the profile, and (e) utility of information in the profile.

The information will be used to maintain customer satisfaction concerning use of the profiles by these multi-disciplinary users. This will also ensure that we continue to provide a client-oriented product. This effort will be accomplished through enhancement of the system used for updating existing toxicological profiles and improving the utility of newly developed profiles by use of these user surveys. There is no cost to respondents.

Respondents	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Individuals completing questionnaires	1000	1	15/60	250

Dated: July 24, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19211 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–57–00]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

Proposed Project

Microbial Contamination of Produce: A Field Study in the Lower Rio Grande Valley, Texas—New—National Center for Environmental Health (NCEH). Foodborne diseases are common; an estimated 6–33 million cases occur each year in the United States. Although most of these infections cause mild illness, severe infections and serious complications do occur. The public health challenges of foodborne diseases are changing rapidly. In recent years, new and emerging foodborne pathogens have been described and changes in food production have led to new food safety concerns. Foodborne diseases have been associated with many different foods, including recent outbreaks linked to contaminated fresh fruits (*e.g.*, cantaloupe, strawberries) and vegetables (*e.g.*, leaf lettuce, alfalfa sprouts).

NCEH proposes to conduct a study to determine what specific farm and produce processing practices are

associated with fecal contamination of fruits and vegetables. Growing, handling and processing methods used in the produce industry may increase the risk that these foods will become contaminated with fecal matter. The study will describe the chain of farm to shipping practices for three vulnerable produce groups (leafy lettuces, leafy herbs, green onions). Critical agricultural practices where contamination with foodborne pathogens is likely will be identified by measuring the microbial quality of produce at each step during harvesting and processing (farm to shipping). Sources of fecal contamination will be determined by measuring the microbial quality of irrigation and process water, measuring fecal indicator organisms on hand rinses from farm laborers and handlers, and conducting sanitary surveys of sources of human and animal feces in and around the farms and processing areas. CDC/NCEH is requesting a 3-year clearance. The total annual burden hours are 54.2.

Respondents	No. of respondents	Responses/respondents	Avg. burden/respondent (in hrs.)
Farm Recruiting visit	14	1	30/60
Packing Facility Recruiting visit	9	1	30/60
Farm Manager Interview (in person)	12	2	30/60
Packing Facility Manager Interview (in person)	8	1	30/60
Hand rinse sample collection	160	1	30/60

Dated: July 21, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19208 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–55–00]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

Proposed Projects

STOP IT NOW! Public Awareness Campaign—New—It is estimated that one in five girls and one in ten boys have been sexually abused before the age of eighteen. The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC) has recognized child sexual abuse as a public health problem for several years. As a result, CDC plans to evaluate the effectiveness of the STOP IT NOW! public awareness campaign in Philadelphia as an innovative approach to child sexual abuse prevention and modify the campaign for national use. Ultimately, CDC will examine some of the more promising interventions implemented in communities across the nation to determine if these can be replicated. STOP IT NOW! is a non-profit organization founded to challenge and change sexual abuse behaviors toward children.

The goals of the proposed data collection are:

—To inform the implementation of the campaign

—To inform the modification and expansion of the program to a national level

—To collect baseline data that will later be compared to post-campaign data to evaluate the effectiveness of the campaign.

The total annual burden hours are 280.

Form	Type of respondents	No. of respondents per year	No. of responses per respondent	Avg. burden per response (in hours)
1	Philadelphia Residents	600	1	15/60
2	Legal Community	130 (65 intervention 65 comparison)	1	15/60
3	Treatment Community	130 (65 intervention 65 comparison)	1	15/60
4	Police	130 (65 intervention 65 comparison)	1	15/60
5	Child Protective Services	130 (65 intervention 65 comparison)	1	15/60

Dated: July 24, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19209 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 000147]

Innovative HIV Testing: Operational Research Among People of Color Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to conduct Human Immunodeficiency Virus (HIV) related operational research for the control and prevention of HIV. The purpose of this program is to: (1) Encourage studies of using the new rapid HIV tests in different settings (Operational Research), specifically focused on African American, Latino, and other racial and ethnic minorities that are underserved and/or disproportionally affected by the HIV epidemic, and conducted by researchers who have experience working with these populations; (2) learn more about the effects of rapid HIV testing on motivators and barriers to HIV testing at the individual, provider and system levels; and (3) foster collaborations between organizations serving minority communities and their respective state and local health departments in the design and implementation of innovative practical strategies using rapid HIV tests to increase knowledge of HIV serostatus and facilitate entry into prevention and care systems.

For the purpose of this announcement, operational research is defined as the design, implementation, and systematic observation of model health service delivery systems to evaluate their performance and improve their effectiveness.

For the purpose of this program announcement, research studies should specifically focus on racial and ethnic minorities that are underserved and/or disproportionally affected by the HIV epidemic (African Americans, Hispanics, American Indians, Asian and Pacific Islanders). Applicants should demonstrate access to and experience working with the selected minority population(s). Applications are encouraged from research organizations involving minority researchers as principal investigators (PIs) or major co-investigators.

This program addresses the "Healthy People 2010" focus area of HIV. For the conference copy of "Healthy People 2010" visit the internet site: <http://www.health.gov/healthypeople>.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations, community-based, national, and regional organizations, State and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $800,000 is available in FY 2000 to fund approximately four awards. It is expected that the average award will be $200,000, ranging from $100,000—$300,000. It is expected that awards will begin September 30, 2000, and will be made for a 12 month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period are based on the availability of funds and success in demonstrating progress toward achievement of objectives.

Funding Preferences

Preference for awards will be given to: (1) Ensuring geographic and risk group diversity; and (2) applicants with at least two years of demonstrated experience conducting operational research with minority populations that are underserved and/or disproportionally affected by the HIV epidemic.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1 (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities
   a. Develop and draft a research protocol.
   b. Implement activities according to the approved research protocol.
   c. Share study-related data with CDC as appropriate, with the frequency and in the format agreed upon after protocol development.
   d. Compile and disseminate findings of the operational research.
2. CDC Activities
   a. Assist as needed in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.
   b. Monitor and evaluate scientific and operational accomplishments of the project through periodic site visits, telephone calls, and review of technical reports and interim data analysis.
   c. Assist as needed in facilitating the planning and implementation of the necessary linkages with local or State health departments, and with the logistics of using investigational rapid HIV tests in operational research projects.
   d. Facilitate the technological and methodological dissemination of successful prevention and intervention models to appropriate target audiences such as State and local health departments, community based organizations, and other health professionals.
   e. Provide technical assistance in planning and evaluating strategies and protocols, as requested, and ongoing consultation and technical assistance for effective program planning and management.
   f. Convene meetings annually or as necessary for protocol development, information sharing, problem solving, and training.

E. Application Content

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should consist of:

1. Abstract (Not to exceed 1 page): An executive summary of the program proposed under this announcement.

2. Program Plan (Not to exceed 10 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely.

3. Budget: Submit an itemized budget and supporting justification that is consistent with your proposed program plan.

F. Submission and Deadlines

Application

Submit the original and five copies of the application on Form PHS 398 (OMB Number 0925–0001) (Adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/. . . Forms, or in the application kit. On or before September 8, 2000, submit your application to the Grants Management Specialist listed in the "Where to Obtain Additional Information" section of this announcement. Eligible applicants are encouraged to call the contact person for program technical assistance, also listed in the "Where to Obtain Additional Information" section of this announcement, before developing and submitting their applications.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need: Inclusion of a brief review of the scientific literature related to the use of rapid HIV testing and pertinent to the study being proposed; statement of specific research questions or hypotheses and techniques that will guide the operational research, the originality and need for the proposed research, the extent to which it does not replicate past or present research efforts, and how findings will be used to guide prevention and control efforts. (15 points)

2. Scientific Merit: The quality of the research design and plans to develop and implement the study, including identification of the rapid HIV tests to be used and a statement as to whether the design of the study is adequate to measure outcomes, including sample size calculations, when warranted. (25 points)

3. Collaboration and Minority Participation: Plans and supporting evidence for:

(a) Established and proposed linkages with community-based organizations serving racial and ethnic minorities that are underserved and/or disproportionately affected by the HIV epidemic, and the health department with jurisdiction for the proposed project area. This should include a description of the demographics of clients served by the CBO, evidence of past cooperative projects, and/or letters of intent which describe the relationship, roles, and responsibilities under the planned collaboration.

(b) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, the proposed justification when representation is limited or absent, and a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. (20 points)

4. Operational Feasibility. Extent to which the proposed activities, if well executed, support attaining project objectives and, if successful, lend themselves to replication in similar program settings to facilitate diffusion of innovation in rapid HIV testing to other communities. (20 points)

5. Project Management, Implementation Plan and Schedule.

(a) Extent to which personnel involved in this project are qualified, with realistic and sufficient time commitments. This should include curriculum vitae and evidence of past achievements appropriate to the project.

(b) Evidence of access to sufficient numbers of potential participants, and for the adequacy of facilities and other resources necessary to carry out the project.

(c) Inclusion of a time line with realistic and measurable milestones for major project activities (20 points)

6. Other (not scored)

(a) Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

(b) Human Subjects: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. A quarterly progress report,

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see attachment 1 in the application kit.

AR–1—Human Subjects Requirements
AR–2—Inclusion of Women and Racial and Ethnic Minorities in Research Requirements
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care Prohibitions
AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 317(k)(2)[42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number 93.943, Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an

application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Roslyn Currington, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2720, Facsimile at (770) 488–2777, Email address:http://www.RCURRINGTON@CDC.GOV

For program technical assistance, contact: Bernard Branson, M.D. National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, MS E46, Atlanta, GA 30333, Telephone (404) 639–6166, Email address: HTTP:\\BBranson@CDC.GOV

Dated: July 25, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19212 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Head Start Family and Child Experiences Survey (FACES).

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151).

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to extend the Head Start Family and Child Experience Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Elsworth Associates and the CDM Group as their subcontractors) (#105–96–1912) to collect information on Head Start performance measures. This revision is intended to extend the current design to a national probability sample of 43 additional Head Start programs in order to ascertain what progress has been made since 1997 in meeting Head Start program performance goals.

FACES currently involves seven phases of data collection. The first phase was a Spring 1997 Field test in which approximately 2400 parents and children were studies in a nationally stratified random sample of 40 Head Start programs. The second and third phases occurred in Fall 1997 (Wave 1) and Spring 1998 (Wave 2) when data were collected on a sample of 3200 children and families in the same 40 programs. Spring 1998 data collection included assessments of both Head Start children completing kindergarten (kindergarten field test) as well as interviews with their parents and ratings by their kindergarten teachers. In the fourth and fifth phases, follow-up continued for a second program year, plus a kindergarten follow-up. The sixth and seventh waves of data collection involve data collection in spring of the first-grade year for both cohorts of children, those competing kindergarten in spring 1999, and those completing kindergarten in spring 2000. The current plan is to extend data collection to a new cohort of 2825 children and families in a new sample of 43 Head Start programs.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Annual Burden Estimates

Estimated Response Burden for Respondents to the Head Start Family and Child Experience Survey (FACES 2000)—Fall 2000, Spring 2001, Spring 2002, Spring 2003.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2000):				
Head Start Parents	2825	1	1.00	2825
Head Start Children	2825	1	0.66	1865
Head Start Teachers (child ratings)	195	14	0.25	706
Center Directors	172	1	1.00	172
Education Coordinators	172	1	0.75	129
Classroom Teachers	195	1	1.00	195
Year 2 (2001):				
Head Start Parents	2400	1	0.75	1800
Head Start Children	2400	1	0.66	1584
Head Start Teachers (child ratings)	195	12	0.25	600
Family Services Coordinators	172	1	0.75	129
Year 3 (2002):				
Head Start Parents	800	1	0.75	600
Head Start Children	800	1	0.66	528
Head Start Teachers (child ratings)	65	12	0.25	200
Kindergarten Parents	1600	1	0.75	1200
Kindergarten Children	1600	1	0.75	1200
Kindergarten Teachers	1600	1	0.50	800
Year 4 (2003):				
Kindergarten Parents	800	1	0.75	600
Kindergarten Children	800	1	0.75	600

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Kindergarten Teachers	800	1	0.50	400

Annualized Totals:

Year 1, 5892

Year 2, 4113

Year 3, 4528

Year 4, 1600

Estimated Total Annual Burden Hours: 4033.

Note: The 4033 Total Annual Burden Hours is based on an average of 2000, 2001, 2002, and 2003 estimated burden hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of the this publication.

Dated: July 24, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–19259 Filed 7–28–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1622]

COPA Distributors, Inc.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 8C0263) proposing that the color additive regulations be amended to provide for the safe use of pyrogallol and ferrous sulfate as a color additive in hair dyes.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3078.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 8, 1998 (63 FR 67695), FDA announced that a color additive petition (CAP 8C0263) had been filed by COPA Distributors, Inc., c/o Research It!, Inc., 116 Huckleberry Lane, Henderson, NV 89014. The petition proposed to amend the color additive regulations in Part 73—*Listing of Color Additives Exempt From Certification* (21 CFR part 73) to provide for the safe use of pyrogallol and ferrous sulfate as a color additive in hair dyes. COPA Distributors, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: June 29, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–19175 Filed 7–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1200]

Dietary Supplements Containing Ephedrine Alkaloids; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening from August 10 to September 30, 2000, the comment period for a notice that published in the Federal Register of April 3, 2000 (65 FR 17510), that announced the availability of new adverse event reports (AER's) and related information concerning dietary supplements containing ephedrine alkaloids. This action is being taken in conjunction with a separate Federal Register notice by the U.S. Department of Health and Human Services' Office of Women's Health (OWH), which is part of the U.S. Public Health Service (PHS), announcing that it will hold a public meeting on August 8 and 9, 2000, to discuss available information about the safety of dietary supplements containing ephedrine alkaloids. FDA is also giving notice of the availability of a report on phenylpropanolomine and risk of hemorrhagic stroke.

DATES: Submit written comments on the notice of availability by September 30, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: FDADockets@oc.fda.gov, or http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Food Safety and Applied Nutrition (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6733.

SUPPLEMENTARY INFORMATION:

I. Reopening the Comment Period

In the **Federal Register** of April 3, 2000 (65 FR 17510), FDA published a notice announcing a new public docket that makes available new AER's and related information concerning dietary supplements containing ephedrine alkaloids. The **Federal Register** notice (65 FR 17510) also announced FDA's intent to participate in a public forum to address safety information on such products. Interested persons were given until May 18, 2000, to submit written comments on the April 3, 2000, **Federal Register** notice to FDA's public docket (Docket No. 00N–1200). FDA later extended this comment period until July 3, 2000 (65 FR 32113, May 22, 2000).

In a separate **Federal Register** notice (65 FR 43021, July 12, 2000), OWH announced that it will convene a public meeting to discuss available information about the safety of dietary supplements containing ephedrine alkaloids. These products are promoted for uses such as weight loss, body building, and increased energy. This meeting will afford all interested persons an opportunity to provide focused comment in a manner that will assist PHS in understanding the benefits and risks associated with dietary supplements containing ephedrine alkaloids. The PHS public meeting is scheduled for August 8 and 9, 2000. For more information, refer to the July 12, 2000, **Federal Register** notice, or visit the OWH Internet site (The National Women's Health Information Center) at http://www.4woman.gov/owh/public.

In light of this public meeting, FDA is reopening the comment period for the April 3, 2000, notice from August 10 to September 30, 2000. The information and comments generated from the PHS public meeting, along with the information in the public docket (Docket No. 00N–1200), will be considered by FDA in assessing the safety of dietary supplements containing ephedrine alkaloids that are promoted for uses such as weight loss, body building, and increased energy.

The agency has added a report entitled "Phenylpropanolomine and Risk of Stroke: Final Report of the Hemorrhagic Stroke Project" to the public docket (Docket No. 00N–1200). The agency seeks written comment on this report and its relevancy to an assessment of the safety of dietary supplements containing ephedrine alkaloids.

II. How to Submit Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments from August 10 to September 30, 2000. You may also send comments to the Dockets Management Branch via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm, or e-mail: FDADockets@oc.fda.gov. Comments are to be identified with the docket number found in brackets in the heading of this document. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

You may request a transcript of the PHS meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting after August 25, 2000, at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, as well as on the Internet at http://www.fda.gov.

Dated: July 25, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19286 Filed 7–26–00; 4:06 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10014]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. Due to an unanticipated event, we are requesting an emergency review because the data collection and the associated time frame is required by a Congressionally mandated demonstration project (Informatics, Telemedicine, and Education Demonstration Project). This project is defined under Section 4207 of the Balanced Budget Act of 1997 which specifies an overall time frame of four years. In order to meet this overall time frame study the pilot phase for the recruitment of subjects should begin in late August 2000, with the full implementation of the recruitment phase beginning on October 1, 2000. Subject recruitment, in turn, will involve data collection involved in the Paper Reduction Act submission.

HCFA is requesting OMB review and approval of this collection by 8/7/2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 8/3/2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection;

Title of Information Collection: Informatics, Telemedicine, and Education Demonstration Project;

Form No.: HCFA–10014 (OMB# 0938–NEW);

Use: Section 4207 of the Balanced Budget Act of 1997 mandated HCFA to conduct a demonstration project to evaluate the effectiveness of advanced computer and telecommunications technology ("telemedicine") to manage the care of people with diabetes. HCFA issued a request for proposals and, after review of the responses, selected a consortium led by Columbia University to conduct this project.

The consortium includes the following organizations and departments: Columbia University (Department of Medicine/Division of General Medicine, Department of Medical Informatics, and Russ Berrie Diabetes Center), NewYork Presbyterian Hospital, Harlem Hospital Center (Department of Medicine/Division of General Medicine, and Harlem Renaissance HealthCare Network), The Hebrew Home for the Aged at Riverdale, State University of New York (SUNY) Upstate Medical Center (Department of Medicine/Division of Endocrinology and Metabolism, Department of Family Medicine, Joslin Diabetes Center), Arnot Ogden Hospital, Olean General Hospital, Good Samaritan Hospital, American Diabetes Association, Bell Atlantic Telephone Co., and American TeleCare, Inc.

The project is designed as a randomized controlled trial. Half of the participants will receive the intervention, consisting of a home telemedicine unit and electronic services that can be accessed through this unit, and half will continue to receive usual care. There will be an urban component, to be conducted in northern Manhattan, and a rural component, to be conducted in upstate New York with SUNY, as the hub. Half of the participants will come from the urban area and half from the rural area, and randomization will be blocked within these components. Eligibility for participation requires that subjects be eligible Medicare beneficiaries with diabetes mellitus, reside in a medically underserved area (either MUA or HPSA) at time of enrollment, possess mental and visual capacities required for meaningful participation, and provide written informed consent.

Participants randomized to the intervention group will receive a home telemedicine unit (HTU) consisting of a web-enabled computer with modem connection to an existing telephone line. The HTU has several components: (a) a video camera and microphone that provides 8 frames/sec video and voice conferencing with nurse case managers at the Berrie Diabetes Center at Columbia University (urban component) or the Joslin Diabetes Center at SUNY Upstate Medical Center (rural component), (b) an FDA-approved home glucometer and blood pressure cuff (connected to the HTU through a generic medical device data port) to enable uploading of home fingerstick glucose and blood pressure data into a high performance computer database (NewYork Presbyterian Hospital Clinical Information System), (c) access to patients = own clinical data through graphic and other data displays, and (d) access to a special educational web page to be created for the project by the American Diabetes Association in English and Spanish and in regular and low-literacy versions in each language.

Nurse case managers will receive training in diabetes management, following the Veterans Hospital Administration diabetes guidelines, and in the use of computer-based case management tools. These tools will facilitate monitoring and interactions with patients through videoconferencing. The HTU devices will be provided by American TeleCare, Inc. Installation, training, help desk support, and de-installation of the HTUs at the end of the project will be provided by Gentiva HealthServices.

Sample size was determined using least detectable difference calculations, and was based on balancing adequacy of statistical power and involvement of the smallest number of subjects. Outcome parameters considered in these calculations included glycosylated hemoglobin, blood pressure levels, and others. These calculations assumed blocked randomization (urban and rural components), repeat measures at one and two years of follow-up, and attrition rates at two years of fifteen percent in the intervention group and twenty percent in the control group. The attrition assumption, which was purposely conservative, projects that approximately twelve hundred of the original fifteen hundred people randomized will fully complete the study. Baseline mean levels and standard deviations for glycosylated hemoglobin and systolic and diastolic blood pressures were based on reviews of published observational studies for subjects sixty five years of age and older.

The sample size is adequate for an intervention effect on systolic blood pressure of 5 mm Hg reduction. Unadjusted for clustering and unreliability, with n=600 completers in each group, power is 0.97, while for an effect of 3 mmHg power is approximately 0.68. For glycosylated hemoglobin, it is noteworthy that tight glucose control in type 2 diabetics has a relatively modest effect compared to duration of diabetes on this parameter. Recent data (UKPDS 33; Lancet 1998; 352:837–53) show that glycosylated hemoglobin levels continued to rise over time in both the intensively treated and control groups, although intervention resulted in lower levels compared to control. The power analysis indicated that a difference in mean glycosylated hemoglobin level of 0.6% (7.9% vs. 8.5% in the two groups) could be detected with a sample size of n=138 per group; adjustment for the cluster effect increased this number to 207 per group.

Thus, the study is adequately powered to detect a difference of this magnitude in the overall study, and also possibly in subgroups defined by race/ethnicity, sex, or by urban/rural source. The study is not over-powered, since the intervention effect for this variable may be smaller, due to the older age and longer duration of diabetes in the subjects, and because subgroup analysis would be highly desirable.

Project evaluation will comprise the following: (a) Feasibility will be assessed by whether the implementation is successful, (b) acceptability will be assessed by whether participants can use the devices effectively, like the devices and the electronic service delivery model of care, and are satisfied with their care, (c) effectiveness will be evaluated primarily by compering mean and adjusted mean levels of clinical outcomes in the intervention vs. control groups, and (d) cost-effectiveness will be assessed based on effectiveness, measures of health care services utilization, and technology and service costs of the intervention.

The demonstration will include collection of a comprehensive array of clinical, demographic, utilization, physician and patient satisfaction, and other data. Clinical data will be collected from all (intervention and control) participants at three visits: Visit 1 (baseline), Visit 2 (one year follow-up), and Visit 3 (two year follow-up). These data will include consent, demographics, medical and medication history, blood pressure, anthropometric data, fasting blood sample, and questionnaire data regarding health care service utilization, health status, smoking status, and satisfaction with care. Additional evaluation data will be collected from all participants by telephone at three-month intervals between the in-person visits. These data will focus on health care utilization and smoking status.

Clinical data will be collected from participants in the intervention arm of the study through the HTU. Participants will be encouraged to use the HTU to interact with the nurse case manager and to take an active role in self-monitoring of home glucose and blood pressure levels. These data will be used in the clinical management of the intervention arm participants by the project nurse case managers as well as the participants own primary care providers, who will also receive these data. Intervention group participants

may provide as little or as much of this category of data as they choose.

Frequency: Quarterly;

Affected Public: Business or other for-profit, and Individuals or Households;

Number of Respondents: 5,550;

Total Annual Responses: 10,043;

Total Annual Hours: 19,999.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 8/3/2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: July 13, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19182 Filed 7–28–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4446–FA–03]

Announcement of Funding Awards for the Welfare-to-Work Section 8 Tenant-Based Assistance Program for Fiscal Year 1999

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 1999 Notice of Funding Availability (NOFA) for the Welfare-to-Work Section 8 Tenant-Based Assistance Program. This announcement contains the consolidated names and addresses of those award recipients under the Section 8 Welfare-to-Work Rental Voucher program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Welfare-to-Work Section 8 Voucher awards, contact the Office of Public and Indian Housing's Grant Management Center, Director, Michael E. Diggs, Department of Housing and Urban Development, Washington, D.C., telephone (202) 358–0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This program provides tenant-based Section 8 rental assistance (vouchers) to help eligible families make the transition from welfare to work. Tenant-based Section 8 rental assistance is to be provided in connection with programs where housing agencies (HAs), Indian tribes and their tribally designated housing entities (TDHEs) have demonstrated that tenant-based rental-assistance is critical to the success of eligible families in obtaining or retaining employment. No additional funding was provided under the NOFA for welfare-to-work services for families. Funding was only for Section 8 Welfare-to-Work rental voucher housing assistance and regular Section 8 administrative fees for administration of such housing assistance. The rental assistance provided must be coordinated with other welfare reform and welfare-to-work initiatives. Recipients awarded Welfare-to-Work vouchers may use some of their current pool of other Section 8 voucher funding to augment the welfare-to-work vouchers in order to enlarge the pool of vouchers available to those families qualifying for the recipient's approved welfare-to-work program.

The Fiscal Year 1999 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on January 28, 1999 (64 FR 4496). Applications were scored and selected for funding based on the selection criteria in that Notice and a national competition.

The amount appropriated in Fiscal Year 1999 to fund Welfare-to-Work Rental Vouchers was $283,090,000. Of that amount, $2.83 million was reserved for HUD to conduct a detailed evaluation of the effect of providing Section 8 Welfare-to-Work Rental Voucher assistance. Another $32,340,700 was awarded to 8 HAs for local self-sufficiency/welfare-to-work initiatives in 8 set-aside communities under a separate Notice of Funding Availability (NOFA) published March 8, 1999. The remaining $247,829,300 was made available to fund 113 applications in rank order beginning with the highest scoring application under the national competition, and inclusive of 121 HAs and/or tribes/TDHEs funded, when accounting for multiple HAs in neighboring jurisdictions filing under one joint application. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 121 awards made under the national competition, including joint applicants, and the 8 set-aside awards in Appendix A to this document.

Dated: July 24, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

NOTICE OF FUNDING AVAILABILITY FOR THE FY 1999 PUBLIC AND INDIAN HOUSING SECTION 8 TENANT-BASED ASSISTANCE PROGRAM

Applicant	Contact	Street Address	City	State	Zip	Funding	Units

NOTICE OF FUNDING AVAILABILITY FOR THE FY 1999 PUBLIC AND INDIAN HOUSING SECTION 8 TENANT-BASED ASSISTANCE PROGRAM

Applicant	Contact	Street Address	City	State	Zip	Funding	Units
1 Housing Authority of Walker County	Charles D. Barton	P.O. Box 607	Dora	Alabama	35062	152,469	69
2 Housing Authority of Prichard	Charles Pharr	600 Hinson Avenue	Pritchard	Alabama	36610	2,593,879	525
3 Phoenix Housing Authority	James Boozer	830 East Jefferson St.	Phoenix	Arizona	85034	331,821	50
4 Los Angeles County	Carlos Jackson	4800 E Cesar Chavez Ave	Los Angeles	California	90022	4,358,125	700
5 Los Angeles City	Donald J. Smith	2600 Wilshire Blvd.	Los Angeles	California	90057	4,850,684	700
6 Housing Authority of Fresno City	Edward L. Stacey	1331 Fulton Hall P.O. Box 11985.	Fresno	California	93776–1985	2,666,969	700
J* Housing Authority of Fresno County	Edward L. Stacey	1331 Fulton Hall P.O. Box 11985.	Fresno	California	93776–1985	2,666,969	700
7 Sacramento Co. Housing Authority	Anne Moore	630 I St.	Sacramento	California	95814	3,318,718	700
8 Merced Housing Authority	Mitchell C. Sperling	405 U St.	Merced	California	95340	2,096,811	400
9 San Joaquin Housing Authority	Antonio Pizano	P. O. Box 447	Stockton	California	95201	2,543,047	700
10 Tulare Housing Authority	Tim Sciacqua	Housing Authority of Tulare P.O. Box 791.	Visalia	California	93279	1,300,303	400
11 Monterey Housing Authority	James Nakashima	123 Rico St.	Salinas	California	93907	2,240,073	450
12 Marin Housing Authority	Janet Miller Schoder	4020 Civic Center Dr.	San Rafael	California	94903	598,317	60
13 Vallejo Housing Authority	Gary W. Trueison	251 Georgia St. PO Box 1432.	Vallejo	California	94590	3,653,401	639
14 San Jose City Housing Authority	John C. Burns	505 W. Julian St.	San Jose	California	95110	3,861,432	366
15 Santa Clara Housing Authority	John C. Burns	505 W. Julian Street	San Jose	California	95110	7,395,824	700
16 Almeda City Housing Authority	Ophelia Basgal	22941 Atherton St.	Hayward	California	94541–6633	689,835	100
17 Plumas Co	Martin Zone	P. O. Box 319	Quincy	California	95971	200,331	60
18 Anaheim Housing Authority	Elisa Stipkovich	201 S. Anaheim Suite 203	Anaheim	California	92805	3,946,239	700
19 Culver City	Jody Hall-Esser	9770 Culver Blvd	Culver City	California	90232	353,696	75
20 Norwalk Housing Authority	Ernie Garcia	12035 Firestone Blvd	Norwalk	California	90650	563,947	100
21 Colorado Springs Housing Authority	Richard Sullivan	30 South Nevada Suite 304	Colorado Springs.	Colorado	80903	630,976	125
22 Jefferson County Housing Authority	Alan Feinstein	6025 W. 38th Avenue	Wheat Ridge	Colorado	80033	1,023,253	200
23 Colorado Dept. of Human Service	Marva L. Hammons	4131 S. Julian Way	Denver	Colorado	80236	1,095,885	160
24 Department of Social Services	Rita M. Pacheco	25 Sigourney St.	Hartford	Connecticut	06106	9,139,184	1489
25 Tampa Housing Authority	Jerome D. Ryans	1514 Union St.	Tampa	Florida	33607	2,725,197	450
26 Lakeland Housing Authority	Herbert Hernandez	P. O. Box 1009	Lakeland	Florida	33802–1009	1,195,353	373
27 Broward County	Kevin Cregan	1773 North State Rd 7	Lauderhill	Florida	33313	1,653,268	250
J* Fort Lauderdale	William Lindsey	437 S.W. 4th Avenue	Fort Lauderdale.	Florida	33315	1,023,917	150
J* Pompano Beach	Ralph Adderly	P.O. Box 2006	Pompano Beach.	Florida	33061–2006	387,039	75
J* Hollywood	Teresa Vomasal	7300 North Davie RD Extension.	Hollywood	Florida	33024	638,764	100
28 Augusta Housing Authority	Jacob Ogelsby	P.O. Box 3246	Augusta	Georgia	30914–3246	1,961,301	700
29 Atlanta Housing Authority	Renee Lewis Glover	1720 Peachtree St., NW Suite 500.	Atlanta	Georgia	30309	3,372,579	450
30 Georgia Department of Community Affairs.	Terry Ball	60 Executive Park South, NE	Atlanta	Georgia	30329	8,242,737	2000
31 Hawaii Co Housing Authority	Stephen K. Yamashiro.	50 Wailuku Dr.	Hilo	Hawaii	96720	909,974	200
32 Maui County Housing Authority	James H. Apana	200 South High St	Wailuku, Maui	Hawaii	96793	3,326,754	370
33 Hawaii HCDC (Honolulu)	Donald K. W. Lau	Housing & Community Developm P.O. Box 17907	Honolulu	Hawaii	96817	7,043,055	1106
34 Chicago HA	Joseph Shuldiner	626 West Jackson Blvd	Chicago	Illinois	60661	4,059,616	700
J* Lake County	Alon Jeffrey	33928 North Route 45	Grayslake	Illinois	60030–1700	411,039	75
J* DuPage County	John Day	128A S. County Farm Rd.	Wheaton	Illinois	60187	1,129,246	150
J* Cook County	Gary Jump	310 S. Michigan 15th Floor	Chicago	Illinois		627,202	100
36 Champaign Housing Authority	Elawence Davis	205 W. Park Ave.	Champaign	Illinois	61820	1,322,963	200

NOTICE OF FUNDING AVAILABILITY FOR THE FY 1999 PUBLIC AND INDIAN HOUSING SECTION 8 TENANT-BASED ASSISTANCE PROGRAM—Continued

Applicant	Contact	Street Address	City	State	Zip	Funding	Units
36 Housing of Hopkinsville	William L. Jones	400 North Elm St. P.O. Box 437.	Hopkinsville	Kentucky	42241–0437	241,658	60
37 Housing Authority of Pike County	Gaye Newsome	PO Box 1468	Pikeville	Kentucky	41502	620,501	185
38 Boston Housing Authority	Sandra B. Henriquez	52 Chauncy St	Boston	Massachusetts.	02111	3,337,263	300
39 Massachusetts Dept. of Hsg & Comm Dev..	Jane W. Gamble	One Congress St.	Boston	Massachusetts.	02114	13,041,671	2000
40 Housing Authority of Baltimore City	Daniel Henson	417 E Fayette St.	Baltimore	Maryland	21202	4,120,895	700
41 Housing Opportunities Commission	Richard J. Ferrara	10400 Detrick Ave.	Kensington	Maryland	20895	1,586,185	200
42 Housing Authority of Rockville	George T. Young	14 Moore Dr.	Rockville	Maryland	20850	411,952	50
43 St. Mary's County Housing Authority	Dennis Nicholson	23115 Leonard Hall Dr. P.O. Box 653.	Leonardtown	Maryland	20650	1,024,513	200
44 Baltimore County Dept of Social Services.	Lois B. Cramer	One Investment Place	Suite P–3 Towson.	Maryland	21204	2,047,776	700
45 Plymouth (Wayne)	Sharon Lee Thomas	1160 Sheridan	Plymouth	Michigan	48170	2,831,688	408
46 Ann Arbor HC (Wahtenaw)	Elizabeth A. Lindsley	727 Miller Ave	Plaza 1, 5th Floor.	Ann Arbor Michigan.	48103	1,361,970	250
47 Grand Rapids HC	Carlos A. Sanchez	1420 Fuller, SE	Grand Rapids	Michigan	49507	914,187	250
48 Wyoming	Michelle R. Scott	2450 36th St SW	Wyoming	Michigan	49509	783,934	175
49 MSHDA—Benton Harbor	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	66,206	20
50 MSHDA—Muskegon/Holland	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	601,089	160
51 MSHDA—Grand Rapids (non-metro)	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	1,984,861	500
52	MSHDA—Jackson	Larry Valencic	401 South Washington Square P.O. Box 30044 Lansing.	Michigan	48909	65,639	20
53 MSHDA—Lansing	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	213,031	50
54 St. Paul Housing Authority	Barbara Sporlein	480 Cedar St	St. Paul	Minnesota	55101	250,533	45
55 Metropolitan Council HRA	James Solem	230 East Fifth St.	St. Paul	Minnesota	55101	646,278	150
56 Billings Housing Authority	Lucy Brown	2415 1st Ave. North	Billings	Montana	59101	303,787	75
J" Missoula Housing Authority	Edward Mayer	1319 E. Broadway Missoula	Montana	59802	146,014	40	
57 Raleigh Housing Authority	Steve Beam	P.O. Box 28007	Raleigh	North Carolina.	27611–8007	3,942,569	700
58 Laurinburg Housing Authority	Nancy Walker	P. O. Box 1437	Laurinburg	North Carolina.	28353	290,229	100
59 Northwestern Regional Housing Authority.	EG Ned Fowler	P. O. Box 2510	Boone	North Carolina.	28607	354,580	100
60 New Hampshire Housing Finance Authority.	Claire Monier	P. O. Box 5087	Manchester	New Hampshire.	03108	2,571,740	500
61 Newark Housing Authority	Robert Graham	57 Sussex Ave	Newark	New Jersey	07103	5,271,130	700
62 Perth Amboy Housing Authority	Douglas Dzema	881 Amboy Ave PO Box 390	Perth Amboy	New Jersey	08862	1,326,589	160
63 West New York Housing Authority	Robert DiVincent	6100 Adams St	West New York.	New Jersey	07093	955,780	148
64 Bergen County Housing Authority	Jack R. D'Ambrosio	21 Main St—Court Plaza South Room 307W.	Hackensack	New Jersey	76017000	4,809,722	700
65 Monmouth County Housing Authority	Harry Larrison, Jr.	Monmouth County Hsg Agy PO Box 3000.	Freehold	New Jersey	07728	3,624,354	500
66 Albuquerque Housing Authority	Gerald Ortiz y Pino P. O. Box 1292.		Albuquerque	New Mexico	87103	3,155,326	700

63 West New York Housing Authority	Robert DiVincent	6100 Adams St	West New York.	New Jersey	07093	955,780	146	
64 Bergen County Housing Authority	Jack R. D'Ambrosio	21 Main St—Court Plaza South Room 307W.	Hackensack	New Jersey	76017000	4,809,722	700	
65 Monmouth County Housing Authority	Harry Larrison, Jr.	Monmouth County Hsg Agy PO Box 3000.	Freehold	New Jersey	07728	3,624,354	500	
66 Albuquerque Housing Authority	Gerald Ortiz y Pino P. O. Box 1292.		Albuquerque	New Mexico	87103	3,155,326	700	
67 Las Vegas Housing Authority	Frederick A. Brown	420 N. 10th St.	Las Vegas	Nevada	89101	4,713,157	700	
68 New York Housing Authority	Paul Graziano	250 Broadway	New York	New York	10007	5,767,747	700	
69 Albany NY Housing Authority	Steven Longo	4 Lincoln Square	Albany	New York	12202–1632	2,196,332	497	
70 Rochester Housing Authority	Thomas McHugh	140 West Ave	Rochester	New York	14611	1,875,010	450	
71 Geneva Housing Authority	Andrew Tyman	P. O. Box 153	Geneva	New York	14456	222,724	50	
72 City of Niagara Falls Housing Authority	James C. Galle	1022 Main St. PO Box 69	Niagara Falls	New York	14302–0069	277,302	100	
73 Town of Colonie Housing Authority	Mary Brizzell	Memorial Town Hall	Newtonville	New York	12128	174,563	50	
74 Lucas MHA	Dennis Morgan	211 S Byrne Rd	Toledo	Ohio	43615	836,030	200	
75 Akron MHA	Anthony W. O'Leary	100 West Cedar St.	Akron	Ohio	44307	348,854	100	
76 Zanesville MHA	Philip Allen	407 Pershing Rd.	Zanesville	Ohio	43701	147,647	50	
77 Licking Housing Authority	Sylvia Ray Taylor	85 West Church Street	Newark	Ohio	43055	411,459	100	
78 Hamilton MHA	David Krings	138 East Court St Room 507	Cincinnati	Ohio	45202	420,445	100	
79Housing Authority of the Cherokee Nation.	David Sutherland	Cherokee Nation HA PO Box 1007.	Tahlequah	Oklahoma	74465	3,054,381	638	
80 Tulsa Housing Authority	Roy Hancock	415 E. Independence P. O. Box 6369.	Tulsa	Oklahoma	74148–0369	2,267,702	400	
81 Norman Housing Authority	Kay Absher	700 North Berry Rd.	Norman	Oklahoma	73069	390,872	100	
82 Douglas County Housing Authority	E llona McCracken	902 West Stanton St	Roseburg	Oregon	97470	139,194	35	
83 Housing Authority of the City of Salem	Marcia King	P. O. Box 808	Salem	Oregon	97308–0808	931,180	225	
84 Washington County	Susan Wilson	111 NE Lincoln St #200–L	Hillsboro	Oregon	97124	3,158,812	700	
J° Portland	Dennis L. West	135 S.W. Ash St.	Portland	Oregon	97204	4,344,065	700	
85 Mid-Columbia	Ruby Mason	506 East Second St.	The Dalles	Oregon	97058	194,608	50	
J° Umatilla County	Stanley Stradley	155 S.W. 10th St.	Hermiston	Oregon	97838	189,270	50	
86 Central Oregon Regional Hsg Authority	Cyndy Cook	2445 SW Canal Blvd	Redmond	Oregon	97756	448,102	100	
87 Confederated Tribes of Siletz	Connie Hoffman	Siletz Indian Housing Authorit PO Box 549.	Siletz	Oregon	97380	214,677	37	
88 Butler Co. Housing Authority	Perry O'Malley	P.O. Box 1917	Butler	Pennsylvania.	16003–1917	1,180,584	300	
89 Montgomery County Housing Authority	Ronald Jackson	1875 New Hope St.	Norristown	Pennsylvania.	19401	309,204	50	
90 Easton Housing Authority	Gary A. Smith	157 S. 4th St.	Easton	Pennsylvania.	18044	245,500	50	
91 Chester County Housing Authority	Troy L. Chapman	30 West Barnard St. 1st Floor.	West Chester	Pennsylvania.	19382	329,636	50	
92 Aiken Housing Authority	Regional Barner	100 Rodgers Terrace	Aiken	South Carolina.	29801	812,113	165	
93 Chattanooga Housing Authority	Michael Kucharzak	505 West ML King Blvd. P. O. Box 1486.	Chattanooga	Tennessee	37401	2,631,924	650	
94 Austin Housing Authority	James L. Hargrove	P.O. Box 6159	Austin	Texas	78762–6159	3,593,260	700	
95 Houston Housing Authority	Ernie Etuk	Housing Authority of Houston PO Box 2971.	Houston	Texas	77252–2971	3,596,301	700	
96 City of Amarillo, Commty Service Division.	John Ward	P. O. Box 1971	Amarillo	Texas	79101–1971	422,905	100	
97 Hidalgo County Housing Authority	Mike Lopex	1800 N. Texas Blvd.	Weslaco	Texas	78596	322,844	100	
98 Texoma Council of Governments (Fanning).	Frances Pelley	3201 Texoma Parkway Suite 240.	Sherman	Texas	75090	161,761	50	
99 Texoma Council of Governments (Grayson).	Frances Pelley	3201 Texoma Parkway Suite 240.	Sherman	Texas	75090	376,453	100	
100 Salt Lake County Housing Authority	Scott Lancelot	3595 South Main St.	Salt Lake City	Utah	84114	2,411,669	400	
101 Salt Lake City	Rosemary Kappes	1776 S. West Temple	Salt Lake City	Utah	84115–1816	968,722	200	
102 St. George Housing Authority	Brenda Butler	975 N 1725 W #101	St. George	Utah	84770	292,083	80	
103 Chesapeake Housing Authority	Brenda Willis	1468 S. Military Highway P.O. Box 1304.	Chesapeake	Virginia	23327	1,507,277	350	
104 Virginia HDA (Bedford, Culpepper)	John Ritchie	601 S. Belvidere St.	Richmond	Virginia	23220	6,401,365	860	
105 King County Housing Authorities	Stephen Norman	120 Sixth Ave. North	Seattle	Washington	98109–5003	4,306,414	700	

NOTICE OF FUNDING AVAILABILITY FOR THE FY 1999 PUBLIC AND INDIAN HOUSING SECTION 8 TENANT-BASED ASSISTANCE PROGRAM—Continued

Applicant	Contact	Street Address	City	State	Zip	Funding	Units
J* Seattle Housing Authority	Harry Thomas	120 Sixth Ave. North	Seattle	Washington	98109–5003	4,564,687	700
106 Everett Housing Authority	Allan L. White	3107 Colby	Everett	Washington	98206–1547	4,219,735	575
J* Snohomish	Robert E. Davis	12625 4th Avenue, West Suite 200.	Everett	Washington	98204	3,667,860	700
107 Island County Housing Authority	Steven Gulliford	7 NW 6th St.	Coupeville	Washington	98239–3400	203,323	35
108 Bellingham/Whatcom County	John Harmon	P. O. Box 9701	Bellington	Washington	98227–9701	1,961,427	430
109 Thurston County Housing Authority	Christine Lowell	503 West 4th Ave.	Olympia	Washington	98501	1,279,537	250
110 Spokane Housing Authority	Mary Jo Harvey	W 55 Mission Suite 104	Spokane	Washington	99201–3298	2,468,483	700
111 City of Wala Wala				Washington		252,722	75
112 Kenosha	Mark McCarthy	625 52nd St Room 98	Kenosha	Wisconsin	53140–3480	$746,495	200
113 Parkersburg Housing Authority	Donna J. Morris	1901 Cameron Ave	Parkersburg	West Virginia.	26101	$655,040	233
SUBTOTALS						247,829,299	44798
1 Alaska Housing Finance Agency	Daniel R. Fauske	P.O. Box 101020	Anchorage	Alaska	99510	4,000,000	652
2 San Bernardino	John McGrath	1053 North D St.	San Bernardino.	California	92410	4,000,000	700
3 Miami-Dade	Merrett Stierheim	111 NW 1st St. 29th Floor	Miami	Florida	33125	4,000,000	581
4 Prince Georges County	Jalal Green	9400 Peppercorn Place Suite 200.	Largo	Maryland	20774	4,000,000	469
5 Kansas City	Dallas Parks	712 Broadway	Kansas City	Missouri	64105	4,000,000	700
6 Charlotte Housing Authority	Harrison Shannon	P.O. Box 36795	Charlotte	North Carolina.	28236	4,000,000	700
7 New York City DHPD	Richard T. Roberts	100 Gold St	New York	New York	10038	4,340,700	700
8 Cuyahoga	Terri Hamilton	1441 West 25th St	Cleveland	Ohio	44113	4,000,000	700
SUBTOTALS						32,340,700	5202
HUD Evaluation Study						2,830,000	
TOTALS						282,999,999	50000

J = joint application with multiple HAs

[FR Doc. 00–19193 Filed 7–28–00; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 21, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–18947 Filed 7–28–00; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Mountain Longleaf National Wildlife Refuge, Calhoun County, Alabama

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a draft environmental assessment and land protection plan for the proposed establishment of Mountain Longleaf National Wildlife Refuge in Calhoun County, Alabama.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a new national wildlife refuge at Fort McClellan, a U.S. Army military base that was recently closed under the Base Realignment and Closure Act. The purpose of the proposed refuge is to protect, enhance, and manage a unique mountain longleaf pine ecosystem for the benefit of neotropical migratory birds and a diversity of native wildlife and plants, with special emphasis on the red-cockaded woodpecker and other endangered and threatened species. A Draft Environmental Assessment and Land Protection Plan for the establishment of the proposed refuge has been prepared by Service biologists in coordination with the U.S. Army, the Alabama Game and Fish Division, and The nature Conservancy. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge and evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to address given below.

DATES: Land acquisition planning for the project is currently underway. The draft environmental assessment and land protection plan will be available to the public for review and comment on August 14, 2000. Written comments must be received no later than September 15, 2000, in order to be considered for the preparation of the final environmental assessment.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail your comments to Mr. Charles R. Danner, Planning and Support Team, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345. You may hand-deliver your comments to Mr. Danner at the same address. Or you may submit your comments by telephone at 1–800–419–9582. Our practice is to make comments, including the names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations and businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The proposal would establish a new national wildlife refuge on up to 15,000 acres of land in Calhoun County, Alabama, through an interagency transfer from the United States Army. The Service is proposing to establish the refuge by accepting the Army's offer to transfer the project lands in fee title.

The objectives of the proposed refuge are to (1) preserve and enhance the natural mountain longleaf pine ecosystem; (2) help perpetuate the neotropical migratory bird resource; (3) preserve a natural diversity and abundance of native fauna and flora, with special emphasis on the red-cockaded woodpecker and other endangered and threatened species; and (4) provide compatible, wildlife-dependent recreational opportunities such as hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Dated: July 24, 2000.

Sam D. Hamilton,

Regional Director.

[FR Doc. 00–19214 Filed 7–28–00; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Natural Resource Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Natural Resource Restoration Plan (NRRP) for the Jack's Creek/Sitkin Smelting National Priorities List Superfund Site (Jack's Creek/Sitkin Smelting Site). The Draft NRRP describes the DOI's proposal to restore natural resources injured as a result of

chemical contamination at the Jack's Creek/Sitkin Smelting Site.

DATES: Written comments must be submitted on or before August 31, 2000.

ADDRESSES: Requests for copies of the Draft NRRP may be made to: Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Written comments or materials regarding the Draft NRRP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. Interested parties may also call (814) 234–4090 or send e-mail to mark_roberts@fws.gov for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Response, Compensation and Liability Act of 1980, as amended (CERCLA), "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. At the Jack's Creek/Sitkin Smelting Site in Mifflin County, Pennsylvania, DOI was the sole natural resource trustee involved in the federal government's settlement with de minimus responsible parties. The Service determined that contamination at the Site had degraded habitat and injured trust resources (migratory birds). The injuries resulted from the exposure of migratory birds (such as killdeer, eastern bluebird, song sparrow, purple finch, American goldfinch, American robin, eastern phoebe, mourning doves, wood thrush, yellow warbler, and various species of waterfowl and shorebirds) to cadmium, chromium, copper, lead, mercury, selenium, silver, and zinc contamination in at least 5 acres of wetlands and 37 acres of upland habitat on the site.

As part of a Consent decree requiring remedial actions at the Jack's Creek/Sitkin Smelting Site, DOI agreed to a monetary settlement with de minimus responsible parties for natural resource damages. The settlement of $128,908 was designated for restoration, replacement, or acquisition of the equivalent natural resources injured by the release of contaminants at the site, and included reimbursement for costs related to assessing the damages.

The Draft NRRP is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43, Part 11 of the Code of Federal Regulations. The Draft NRRP describes habitat restoration and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative entails the use of the settlement funds to restore several acres of wetlands and upland habitat located within the Jack's Creek watershed. Details regarding the proposed project is contained in the Draft NRRP.

The Final Revised Procedures for the Service in implementing the National Environmental Protection Act were published in the **Federal Register** on January 16, 1997. That publication provides for a categorical exclusion for natural resource damage assessment restoration plans prepared under CERCLA when only minor or negligible change in the use of the affected areas is planned. The DOI has determined that the Preferred Alternative will result in only minor change in the use of the affected area. Accordingly this Restoration Plan qualifies for a categorical exclusion under NEPA.

Interested members of the public are invited to review and comment on the Draft NRRP. Copies of the Draft NRRP are available from the Service's Pennsylvania Field Office at 315 South Allen Street, Suite 322. State College, Pennsylvania 16801. Additionally the Draft NRRP is available for review at the Mifflin County Library located at 123 North Wayne Street, Lewistown, Pennsylvania. All comments received on the Draft NRRP will be considered and a response provided either through revision of this Draft Plan and incorporation into the Final Natural Resource Restoration Plan, or by letter to the commentor.

Author: The primary author of this notice is Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.

Dated: July 24, 2000.

John R. Lemon,

Acting Deputy Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 00–19184 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

St. Croix Meadows Racing Park, Draft Environmental Assessment; Notice of Availability

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior (DOI) announces the availability for public review and comment the draft environmental assessment (EA) for the proposed acquisition of the St. Croix Meadows Racing Park in trust for the Sokaogon Chippewa Community of Wisconsin, Lac Courte Oreilles Band of Lake Superior Chippewa and Red Cliff Band of Lake Superior Chippewa (Tribes), located in Hudson, St. Croix County, Wisconsin.

DATES: DOI invites all interested parties to submit comments on the draft EA during a comment period ending August 30, 2000. Written comments must be postmarked by August 30, 2000 to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Written comments on the draft EA should be directed to: Nancy Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070 MIB, Washington, DC 20240; by telefax at (202) 273–3153, or via the Internet: nancypierskalla@bia.gov. The draft EA is available electronically through the Internet at www.doi.gov/bia/gaming/hudson.htm. Copies of the draft EA are also available for review at the Hudson Public Library, 911 4th Street, Hudson, Wisconsin 54016, the Bureau of Indian Affairs, Midwest Regional Office, One Federal Drive, Room 550, Fort Snelling, Minnesota 55111, and the Bureau of Indian Affairs, Great Lakes Agency, 615 West Main, Ashland, Wisconsin 54806.

If you prefer to send your comments through the Internet, use the following address: nancypierskalla@bia.gov.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070 MIB, Washington, DC 20240; by telephone at (202) 219–4066; or by telefax at (202) 273–3153.

SUPPLEMENTARY INFORMATION: By letter dated March 23, 2000, Roger McGeshick, Jr, Chairman, Sokaogon Chippewa Community of Wisconsin, gaiashkibos, Chairman, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and Jean Buffalo-Reyes, Chairwoman, Red

Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes), submitted to the Assistant Secretary—Indian Affairs (AS–IA), the Tribes application for a two-part Secretarial determination that a gaming establishment on a 55.82 acre parcel of land to be acquired in trust for the benefit of the Tribes in Hudson, St. Croix County, Wisconsin, is in the best interest of the Tribe and its members, and not detrimental to the surrounding community, in accordance with Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(b)(1)(A).

The Tribes intend to use the Hudson Property for Class III gaming purposes. The main building of the St. Croix Meadows Racing Facility consists of a two story grandstand with a mezzanine level. The grandstand has two full floors, an intermediate mezzanine and a small rooftop booth area. The enclosed area of the grandstand is approximately 160,000 square feet. The ground floor area is 64,000 square feet, the mezzanine area is 32,000 square feet, the upper "grandstand" floor is 62,000 square feet, and a booth area of 2,600 square feet is at the roof level. A transitional plan has been developed for the retrofitting of the facility. The first phase will include the opening of the temporary casino in the clubhouse area on the second floor. The temporary facility will contain approximately 1,000 gaming machines and 15 table games. Pari-mutual areas will be maintained in the terrace areas adjacent to the structural glass wall overlooking the racetrack. There are existing food and beverage and lounge areas on this floor which will service both the temporary casino and pari-mutual operations.

The second phase of the operation is the development of the permanent casino which is expected to utilize approximately 50,000 square feet of the ground floor and contain 1,500 gaming machines and 30 table games. After the permanent casino is operating, the third floor temporary casino will be closed and converted into an upecale dining area and an extensive buffet restaurant area. Pari-mutual wagering will be offered along the glass on both the first and third floor gaming areas and in the sports bar area on the first floor.

The Bureau has prepared an Environmental Assessment (EA) under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*, to evaluate the potential impacts of the trust acquisition and to assist it in determining whether an environmental impact statement is required for the proposed acquisition. In the EA, the BIA analyzes the impacts of the proposed acquisition and the no action alternative (not acquiring the property in trust). Under the Settlement Agreement in Paragraph 10 in the case Sokaogon Chippewa Community, *et al.*, v. Babbitt. *et al.*, Case No. 95–C–0659–C, the BIA is releasing the draft EA for a thirty-day public comment period. Comments will be accepted at the address listed in the **ADDRESSES** section of this notice.

Dated: July 25, 2000.

Nancy Jemison,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 00–19275 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24– 1A; HAG0–0303]

Notice of Intent to Prepare a Cascade-Siskiyou National Monument Management Plan/Environmental Impact Statement and Initiation of Public Scoping

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the National Environmental Policy Act, the Bureau of Land Management, Medford District, Ashland Resource Area will be preparing a Management Plan and Environmental Impact Statement (EIS) for the Cascade-Siskiyou National Monument located in Jackson County, Oregon. The Cascade-Siskiyou National Monument was established by William J. Clinton, President of the United States of America, on June 9, 2000. As a result of the national monument designation on federal land previously identified as the Cascade Siskiyou Ecological Emphasis Area, a supplemental draft environmental impact statement (SDEIS) to the Cascade Siskiyou Ecological Emphasis Area Draft Management Plan/Environmental Impact Statement (USDI/BLM March, 2000) will be prepared. Upon completion of the SDEIS and a 90 day public review period, a Cascade-Siskiyou National Monument Management Plan/Final Environmental Impact Statement will be prepared. The planning process for the Cascade-Siskiyou National Monument will follow the Bureau of Land Management (BLM) planning process found in 43 Code of Federal Regulations 1610. This notice amends the Notice of Intent [OR–110–0777–30–24–1A;–HAG99–0298] to Prepare a Cascade-Siskiyou Ecological Emphasis Area Plan/Environmental Impact Statement published in the **Federal Register** (Vol. 64, No. 166) on Friday, August 27, 1999.

DATES: Written scoping comments for the supplemental draft environmental impact statement will be accepted through August 31, 2000. Comments previously received on the Cascade Siskiyou Ecological Emphasis Area Draft Management Plan/Environmental Impact Statement will be used in preparing the supplemental draft environmental impact statement. No public scoping meetings are scheduled.

The tentative project schedule is as follows:

1. Analyze comments, identify and address additional issues and develop appropriate alternative(s), if necessary.
2. File Supplemental Draft Environmental Impact Statement—December 2000 (90 day public review period).
3. File Final Environmental Impact Statement—July 2001 (30 day public review period).
4. Record of Decision—October 2001.

SUPPLEMENTARY INFORMATION: The Cascade-Siskiyou National Monument consists of the federal and managed by the Bureau of Land Management previously identified as the analysis area in the Cascade Siskiyou Ecological Emphasis Area (CSEEA) Draft Management Plan/Environmental Impact Statement (USDI/BLM March, 2000), with the addition of appropriately 290 acres and the exclusion of all lands in California. The National Monument is an ecological wonder, with biological diversity unmatched in the Cascade Range. This rich enclave of natural resources is a biological crossroads—the interface of the Cascade, Klamath, and Siskiyou ecoregions, in an area of unique geology, biology, climate, and topography. The Monument is home to a spectacular variety of rare and beautiful species of plants and animals, whose survival in this region depends upon its continued ecological integrity.

The Cascade-Siskiyou National Monument encompasses the following special designated areas on land managed by the Bureau of Land Management in Oregon.

—Soda Mountain Wilderness Study Area recommended for wilderness designation (5,867 ac.);
—Pacific Crest National Scenic Trail;
—Four Areas of Critical Environmental Concern, including two Research Natural Areas;
—Portions of land previously recognized as a Late-Successional Reserve before the monument designation.

Public participation has been an integral part of the planning process with the CSESA Draft Management Plan/Environmental Impact Statement and continues with this scooping process for the supplemental draft management plan (40 CFR 1501.7 and 43 CFR 1610.2), which defines:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper skills required for the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

Public participation will be solicited by mail to known interested and/or affected members of the public and key contacts. In addition, news releases will be used to give the public general notice. Comments from interested persons and organizations will be used in preparation of the supplemental draft environmental impact statement.

Local and regional groups differ over future management of the Cascade-Siskiyou National Monument. The presidential proclamation provided specific directions on minerals, commercial timber harvest, and off-road vehicle use in order to protect the objects for which the monument was designated. In addition, the proclamation directed the Secretary of the Interior to study the impacts of livestock grazing on the objects of biological interest in the monument in order to determine the compatibility of livestock grazing in protecting those objects. The formal designation also expanded the planning boundary and has the potential to have some off-site effects which were not addressed in the CSEEA Draft Management Plan/ Environmental Impact Statement.

The completed management plan will provide direction for management of public lands within the Cascade-Siskiyou National Monument. Several management alternatives were identified and analyzed in the CSEEA Draft Management Plan/Environmental Impact Statement and, as a result of the monument designation, additional alternatives may be proposed. These alternatives will be developed based on internal staff discussions, public comments, and meting with government agencies.

The BLM is seeking information, comments and assistance from federal, state, and local agencies and other individuals or organization interested in or affected by management plan.

The analysis will be completed by an interdisciplinary team. Disciplines to be represented on the team include, but are not limited to, archaeology, anthropology, botany, fire management, fisheries, forestry, geology, hydrology, realty, recreation, rangeland management, wilderness, and soils.

COMMENTS: Comments should be sent to Richard J. Drehobl, Ashland Field Manager/Interim Monument Manager, Medford District Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Tom Sensenig (541) 618–2319 or Bill Yocum (541) 618–2384. Fax can be sent to Tom Sensenig or Bill Yocum at (541) 618–2400 and e-mails to <*110mb@or.blm.gov*>. Information concerning the analysis will be available at the BLM office in Medford at the address shown above.

Pursuant to 7 CFR Part 1, subpart B, Section 1.27, all written submissions in response to this notice, the published scoping newsletter, draft, supplemental, and final environmental impact statements will be made available for public inspection including the submitter's name and address, unless the submitter specifically requests confidentiality. Anonymous comments will not be accepted. All written submissions from business entities and organizations, submitted on official letterheads, will be made available for public inspection in their entirety.

Dated: July 25, 2000.

Richard J. Drehobl,

Ashland Field Manager/Interim Monument Manager, Cascade-Siskiyou National Monument.

[FR Doc. 00–19217 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–00]

Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (public law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet in Bishop.

DATES: Friday and Saturday, August 11–12, 2000.

ADDRESSES: Patio Room, Tri-County Fairgrounds, Sierra Street and Fair Drive, Bishop, California.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. On Friday, the Council will hear reports on the General Accounting Office investigation of the BLM. Land exchange program and local grazing issues in the Bishop area. Saturday's session will be taken up with a discussion of off-highway vehicle issues, with a presentation of a national OHV strategy by the BLM. There will be a public comment period at 10:45 a.m. Saturday on OHV issues only. There will be other opportunities on both Friday and Saturday for public comments on any public land issue. Written comments will also be accepted, either at the meeting or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

Dated: July 14, 2000.

Ron Fellows,

Field Manager.

[FR Doc. 00–19185 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–040–01–5410–10–B128; CACA 41781]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 640.00 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room W–1928, Sacramento, California 95825, (916) 978–4677.

Serial No. CACA 41781.

T. 4 S., R. 17 E., Mount Diablo Meridian
Sec. 26, S½SE¼,
Sec. 35, W½SE¼, NE¼.
County-Mariposa.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

David McIlnay,
Chief, Lands Section.

[FR Doc. 00–19186 Filed 7–28–00; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–01–5410–10–B136; CACA 41770]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 75 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development. FOR FURTHER INFORMATION CONTACT: Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room W–1928, Sacramento, California 95825, (916) 978–4677. Serial No. CACA 41770.

T. 21 N., R. 3 E., Mount Diablo Meridian Sec. 1, NE¼SW¼, NW¼SW¼.
County—Butte.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

David McIlnay,
Chief, Lands Section.

[FR Doc. 00–19187 Filed 7–28–00; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection survey.

SUMMARY: To comply with the requirements of the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information collection request (ICR) to conduct a new survey on "Gulf of Mexico Labor Needs." We are preparing an ICR, which we will submit to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments by September 29, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600 for questions on the PRA information collection process or to obtain a copy of the survey. For information on the survey itself, contact Harry Luton in the Gulf of Mexico Regional Office, telephone (504) 736–2784.

SUPPLEMENTARY INFORMATION:

Title: Survey—Gulf of Mexico Labor Needs.

OMB Control Number: 1010–NEW.

Abstract: MMS is responsible for managing mineral resources on the Federal outer continental shelf (OCS). The National Environmental Policy Act (NEPA) of 1969, the Outer Continental Shelf Lands Act (OCSLA), as amended, the Coastal Zone Management Act (CZMA) of 1990, and the Endangered Species Act of 1973, require MMS to assess, mitigate, and monitor the effects of the OCS program on the environment.

The OCS oil and natural gas exploration and production industry impacts local and regional economies through many activities, including the demand for labor, the demand for services, and the demand for capital goods. Though thought to be in decline a decade ago, several mid-1990's changes have reinvigorated the industry. These include technical innovations such as three- and four-dimensional seismic surveys and subsurface completion systems that allow companies to operate in very deep

water, as well as passage of the Deep Water Royalty Relief Act of 1995. This recent and unexpected growth has increased the significance and urgency of the need for MMS to obtain data on current Gulf of Mexico (GOM) OCS conditions and operating practices.

We propose to conduct a survey to collect and analyze information for use in MMS documents and management decisions. We will use the information within NEPA documents, with special emphasis on development in deep water. We will use the patterns and trends found in the data to support descriptions of how the GOM offshore oil and natural gas industry operates, how it resembles and differs from other regional markets, and what trends appear to be influencing its current direction. The OCSLA stipulates that MMS management of the OCS must include evaluations of the effects of industry activities on area resources. The CZMA policies on industrial and water use in the OCS affect many MMS decisions relating to planning, procedures, and interactions with industry, governments, and communities. The Endangered Species Act requires MMS to evaluate OCS activity and its affect on regional populations. The data collected through the proposed survey is necessary for MMS to successfully do each of these.

The information under the proposed data collection will be obtained by randomly sampling from the following eight populations: (1) Seismic companies; (2) platform and rig construction companies; (3) pipeline operating companies; (4) air transportation companies; (5) OCS field production operating companies; (6) employees from each of the previous sectors; (7) contracting organizations for operating companies; and (8) operating companies that have bid for a lease within the GOM. For the purposes of the proposed tests, an offshore employee "earns money by working in any of three segments—operating companies, service and supply companies, and transportation companies. The offshore worker charges time directly to GOM activities." The employee form will provide important economic information to supplement and cross check the industry data and will include demographic information to help characterize the economic effects of the program and the worker point of view concerning certain industry trends.

Questionnaire completion is voluntary. The questionnaires will be administered under the guidelines established under 45 CFR 46. Procedures designed to protect the confidentiality of the information provided will include the use of coded identification numbers to protect the identities of respondents and the businesses they represent. The final report will summarize data by geographic region, business type, or population category so that individual persons and companies will not be identifiable. Identifying information will be removed from data files.

We do not consider that the information requested in the proposed survey instruments necessitate a classification as Confidential Business Information. As stated, we will take efforts to ensure the anonymity of the collected data. As the test surveys are, and future surveys will be, voluntary, companies may choose not to respond to questions on proprietary information, but they can be assured that proprietary data will not be able to be associated with their company.

Frequency: This survey will be conducted once every 5 years.

Estimated Number and Description of Respondents: Estimated 6,338 respondents from the categories listed in the following chart.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: Estimated 10,792 burden hours as described in the following chart.

Respondent	Total hour burden (divided by)	Predicted No. of respondents (equals)	Predicted hour burden per respondent
Seismic	292.25	21	13.9
Platform/Rig Construction	1,065.75	63	16.9
Pipeline Operators	473.00	34	13.9
Air Transportation	83.50	6	13.9
Operators	2,667.00	126	21.2
Employees	4,398.25	5,865	0.75
Contractors	1,622.75	189	8.6
Bidders	189.75	34	5.6
Total	10,792.25	6,338	

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: Beyond labor, the proposed information collection poses no cost burden to respondents. MMS will pay for all postage and telephone charges. Respondents will incur no capital and operation and maintenance costs.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *"

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Dated: July 18, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–19188 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 22, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 15, 2000.

Patrick W. Andrus,

Acting, Keeper of the National Register.

CALIFORNIA

Sacramento County

Brewster Building, 201 Fourth St., Galt, 00000981

FLORIDA

Orange County

Palm Cottage Gardens, 2267 Hempel Ave., Gotha, 00000982

IOWA

Black Hawk County

Walnut Street Baptist Church, 415 Walnut St., Waterloo, 00000983

Webster County

Oakland Cemetery, 1600 N. 15th St., Fort Dodge, 00000984

Worth County

First Methodist Episcopal Church, 401 2nd. St., Kensett, 00000985

MASSACHUSETTS

Berkshire County

Methodist Episcopal Society of Tyringham, 128–130 Main Rd., Tyringham, 00000986

NEW YORK

Allegany County

Rail and Titsworth Canal Warehouse, Hughes Rd., Belfast, 00000987

NORTH CAROLINA

Beaufort County

Zion Episcopal Church, US 264, 0.2 mi. E of jct. with NC 1601, Washington, 00000988

Davie County

Hodges Business College, NC 1819, 0.15 mi. SE of jct. with NC 801, Mocksville, 00000990

Durham County

Clark and Sorrell Garage, 323 Foster St., Durham, 00000991

Henderson County

Druid Hills Historic District, (Hendersonville MPS) Roughly bounded by Meadowbrook Terrace, US 25N, Ashwood Rd., and Ridgewood Ave., Hendersonville, 00000989

NORTH DAKOTA

Burleigh County

Brandt, Dr. Albert M. and Evelyn M., House, 323 E. Ave. B, Bismarck, 00000992

SOUTH DAKOTA

Clay County

Lincoln School #12, (Schools in South Dakota MPS), 45352 Timber Rd., Meckling, 00000995

Edmunds County

Edmunds County Courthouse, (Federal Relief Construction in South Dakota MPS), Second Ave., bet. 2nd and 3rd Sts., Ipswich, 00000997

Gregory County

Herrick Public School, (Schools in South Dakota MPS) 450 Eighth St., Herrick, 00001000

Lincoln County

Taylor, J.W., House, 308 N. Broadway St., Canton, 00001001

Meade County

Sturgis High School, (Schools in South Dakota MPS) 1425 Cedar St., Sturgis, 00000998

Moody County

First Scandinavian Baptist Church, 2.5 mi. S of Trent, Trent, 00000999

Pennington County

Casper Supply Company of SD, 415 Main St., Rapid City, 00000996

Roberts County

Hart School #3, (Schools in South Dakota MPS), Rte. 1, Sisseton, 00000994

TENNESSEE

Davidson County

Cheekwood, 1200 Forest Park Dr., Nashville, 00000993

[FR Doc. 00–19271 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

DEPARTMENT OF TREASURY

OFFICE OF MANAGEMENT AND BUDGET

Public Comment on Financial Privacy and Bankruptcy

AGENCIES: Department of Justice, Department of the Treasury, and Office of Management and Budget.

SUMMARY: The Department of Justice, Department of Treasury and Office of Management and Budget, in consultation with the Administrative Office of the U.S. Courts, are conducting a study (the "Study") of how the filing of a bankruptcy affects the privacy of individual consumer information that becomes part of a bankruptcy case. The Study will consider how the privacy interests of debtors in personal bankruptcy cases are affected by the public availability of information about them in those cases. It will also consider the need for access to this information and accountability in the bankruptcy system. Finally, it will consider how changes in business practices and technology may affect all of these interests. To assist in the Study, these agencies are requesting public comment on a series of questions.

DATES: To ensure their consideration in the Study, comments and responses to the questions listed below, along with any other comments, should be submitted by September 8, 2000.

ADDRESSES: All submissions must be in writing or in electronic form. Written submissions should be sent to Leander Barnhill, Office of General Counsel, Executive Office for United States Trustees, 901 E Street, NW., Suite 780, Washington DC 20530. Electronic submissions should be sent by email to USTPrivacyStudy@usdoj.gov. The submissions should include the submitter's name, address, telephone number, and if available, FAX number and e-mail address. All submissions should be captioned "Comments on Study of Privacy Issues in Bankruptcy Data."

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 2000, the President announced the "Clinton-Gore Plan to Enhance Consumers' Financial Privacy: Protecting Core Values in The Information Age." As part of the Plan, the President directed three federal agencies to conduct a study on "how best to handle privacy issues for sensitive financial information in bankruptcy records," including "the privacy impact of electronic availability of detailed bankruptcy records, containing financial information of vulnerable debtors." The Study, to be jointly conducted by the Department of Justice, the Department of Treasury, and the Office of Management and Budget (the "Study Agencies"), will be prepared in consultation with the Administrative Office of the U.S. Courts, and will be completed by December 31, 2000. The Study Agencies are requesting public comment on a series of questions regarding privacy issues

related to records that are established in the course of bankruptcy proceedings conducted in federal courts, including questions raised by electronic access to such bankruptcy records. The Study Agencies solicit responses to any or all of the questions listed below and welcome any other comments on these topics.

The Study Agencies also are aware of public attention in recent weeks focused on the troubling practice of organizations in bankruptcy seeking to sell personal data regarding their former customers, in violation of such organizations' privacy policies. Although this issue is outside the main scope of the Study—the privacy needs of debtors—the Study Agencies believe that this topic also involves the intersection of privacy and bankruptcy, and merits further attention. In part because of pending regulatory enforcement actions and/or pending legislation, the Study Agencies are not making this subject part of the formal Study. Nevertheless, the Study Agencies invite comments about the effect that a business bankruptcy filing has on consumer/customer information that the business has collected. Comments should not address pending legislative proposals or regulatory activities. After reviewing the comments and any other developments, the Study Agencies will determine whether it is appropriate to examine this issue in greater depth.

Currently, there are two different types of data maintained and used in a bankruptcy proceeding. The first is information in a court record that is made available to any member of the public. The second is information held by trustees administering bankruptcy cases that is not generally available to the public. These two categories of data are referred to here as "public record data" and "non-public data," respectively, and they are described more fully below. Each is currently governed by a different set of rules and procedures, and the privacy and access interests in each may vary.

A. Public Record Data

A consumer or individual who files a case under either chapter 7 or chapter 13 of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, must provide detailed financial information as part of the schedules filed with the bankruptcy court. This includes a list of bank accounts and identifying numbers, credit card account numbers, social security numbers, balances in bank accounts, balances owed to creditors, income, a detailed listing of assets, and a budget showing the individual's regular expenses. By statute, 11 U.S.C. 107(a), all documents filed with the court are "public records and open to examination by an entity at reasonable times without charge." Bankruptcy trustees (private entities appointed by U.S. Trustees) obtain this information in the course of administering cases assigned to them.

Much of the information provided in connection with a bankruptcy case is similar to financial information that, in other contexts, such as banking and credit reporting, may be covered by a system of regulation designed to ensure the confidentiality of such information. For example, in other contexts, an individual would be given notice of what uses might be made of the individual's bank account information or social security number, and would have some degree of choice as to how such information will be used. Security safeguards may also attach to the information.

In the past, access to public court record data has as a practical matter been quite limited. The individuals who obtained individual case files from the courts were those willing to spend considerable time, effort, and sometimes money. The development of electronic databases and other technologies allows for more widespread dissemination of information in bankruptcy records, along with far more convenient access, including access via the Internet. In some instances, courts are adopting technologies to convert their paper files to electronic form. This could result in a high volume of court records, including records containing sensitive personal information, appearing on the Internet.

B. Non-Public Data

While substantial amounts of personal data are filed by debtors in the bankruptcy courts, additional data are gathered by bankruptcy trustees in the course of administering the cases assigned to them. The trustee often will collect information about claims filed by creditors in a given case. The trustee also may find it necessary to supplement information that a debtor has provided in the bankruptcy schedules, and may request tax returns, as well as supporting information about the value of the debtor's assets, amounts of liabilities, and routine living expenses. The trustee's files also may contain information gathered from investigations about alleged wrongdoing in the case. In chapter 13 cases, the trustee tracks a debtor's payments to creditors under a payment plan. In general, only the parties in interest in a bankruptcy case (as defined by the court) receive both public and non-public data. By statute, the trustee "shall, unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest." 11 U.S.C. 704(7), 1302(b)(1). However, there are no well-defined limits on the trustee's authority to provide this information to others, nor on the authority of such third parties to use, sell, or transfer this information. In addition, some trustees and creditors are considering compiling information contained in bankruptcy records electronically for easier administration of bankruptcy cases in which they have a claim. They may also envision some possible commercial use.

II. Elements of the Study

The Study will examine:

- The types and amounts of information that are collected from and about individual debtors, as well as analyzed and disseminated, in personal bankruptcy cases.
- Current practices, and practices envisioned for the future, for the collection, analysis, and dissemination of information in personal bankruptcy proceedings.
- The needs of various parties for access to financial information in personal bankruptcy cases, including specifically which individuals or entities require access to which particular types of information, for what purposes, and under what circumstances.
- The privacy issues raised by the collection and use of financial and other information in personal bankruptcy cases.
- The effect of technology on access to, and the privacy of, a debtor's personal information.
- Business or governmental models that can provide access to, and protect debtors' privacy interests in, bankruptcy records.
- Principles for the responsible handling of information in bankruptcy records, and recommendations for any policy, regulatory, or statutory changes.

III. Questions to be Addressed

The Study Agencies seek comment and supporting information from all sources, including bankruptcy professionals, consumer representatives, privacy advocates, creditors, information brokers, the academic community, and the general public. The Study Agencies will summarize the comments in the Study. Views are welcome on any aspect of this subject, but the following questions are offered to stimulate thought in specific areas of interest.

1.01 What types and amounts of information are collected from and about individual debtors, analyzed, and disseminated in personal bankruptcy cases?

(1.1) What types of information are collected, maintained, and disseminated in bankruptcy?
(1.2) Which of these data elements are public record data?
(1.3) Which are non-public record data held by bankruptcy trustees?
(1.4) How much data is at issue?
(1.5) Are certain types of data more sensitive than others; that is, are there types of data in which debtors would have a stronger privacy interest? If so, which ones?
(1.6) How valuable is the information in the marketplace?

2.0 What are the current practices, and practices envisioned for the future, for the collection, analysis, and dissemination of information in personal bankruptcy proceedings?

(2.1) What methods of data collection and aggregation are now used by the courts, creditors, trustees, and other private actors to collect, analyze, and disseminate public record data and non-public data?
(2.2) What methods are being contemplated for the future?

3.0 What access do various parties need to financial information in personal bankruptcy cases? Which individuals or entities require access to which particular types of information, for what purposes, and under what circumstances?

(3.1) What entities currently access public record data?
(3.2) What entities currently access non-public data from trustees?
(3.3) What specific data elements do they need, and for what purposes?
(3.4) Are the purposes for which the information is sought consistent with the public interest?

A. Public Record Data

(3.5) What data elements in public record data should remain public for purposes of accountability in the bankruptcy system? For other purposes?
(3.6) Is there certain information that need not be made available to the general public, but could be made available to a limited class of persons?
(3.7) If so, what are these data elements, to whom should they be made available, and for what purpose?
(3.8) Is there a need to make the following data elements publicly available: (a) Social security numbers, (b) bank account numbers, (c) other account numbers?

B. Non-Public Data

(3.9) What issues, if any, are raised by existing limitations on trustees' handling of personal information?
(3.10) Are all of the data elements held by bankruptcy trustees necessary for case administration purposes? If not, which data elements are not?
(3.11) What interests would be served by private or commercial enterprises collecting, compiling electronically, and redistributing information from bankruptcy cases?

4.0 What are the privacy issues raised by the collection and use of personal financial and other information in personal bankruptcy proceedings?

A. Public Record Data

(4.1) Do debtors' have privacy interests in information contained in public record data made available through the bankruptcy courts? If so, what are those interests? Do they vary by data element? If so, how?
(4.2) What are the benefits of a public record system for court records in bankruptcy cases?
(4.3) What are the costs of collecting and retaining data in bankruptcy cases?
(4.4) To what extent do individuals who file for bankruptcy understand that all of the information contained in the public bankruptcy file is available to the public?
(4.5) Should debtors in bankruptcy be required to forego some expectation of privacy that other consumers have under other circumstances?
(4.6) Are there characteristics about debtors in bankruptcy that raise special concerns about wide public dissemination of their personal financial information?

B. Non-Public Data

(4.7) What are debtors' expectations about what uses and disclosures of information will be made by bankruptcy trustees?
(4.8) What, if any, privacy interests lie in non-public bankruptcy data held by bankruptcy trustees?
(4.9) If non-public data were made widely available to the public or to creditors for other non-bankruptcy purposes, what might be the consequences?
(4.10) Are privacy interests affected if the distribution of non-public data bankruptcy information is for profit?

5.0 What is the effect of technology on access to and privacy of personal information?

(5.1) Do privacy issues related to public record data in bankruptcy cases change when such data are made available electronically? On the Internet? If so, how?
(5.2) Do privacy interests in non-public data change when such data are compiled electronically for ease of administration of bankruptcy cases? For commercial use? For other use?
(5.3) Are new technologies being used to improve access to court records? Non-public bankruptcy data? Should they be? Why or why not?

6.0 What are current business or governmental models for protecting privacy and ensuring appropriate access in bankruptcy records?

(6.1) What statutes, rules, or policies can serve as models for maintaining appropriate levels or access and privacy protection for public bankruptcy records? For non-public bankruptcy information held by trustees?
(6.2) What statutes, rules, or policies are ineffective in providing appropriate access and privacy interests?
(6.3) What statutes, rules, or policies, are otherwise relevant to this Study?

7.0 What principles should govern the responsible handling of bankruptcy data? What are some recommendations for policy, regulatory or statutory changes?

A. Public Record Data

(7.1) To what extent are privacy safeguards appropriate for public record data? If safeguards are appropriate, what should they be? How should they be crafted to ensure that they do not interfere with legitimate public needs to access certain bankruptcy data?
(7.2) Should notice about the public nature of bankruptcy filings be provided to individuals who file for bankruptcy? What form should such notice take?
(7.3) Should there be any restrictions on the degree of accessibility of such information, such as rules that vary if information is made available electronically? Via the Internet? If so, what should they be? Should policies on the handling of information in bankruptcy cases be technology neutral, so that the rules for dealing with information are the same regardless of what medium is used to disclose such information? Why or why not?
(7.4) Are there any data elements in public record data that should be removed from the public record and held instead as non-public data by bankruptcy trustees or courts?
(7.5) Is there some experience with other public records that is relevant to the privacy and access issues in bankruptcy cases? Do any records or

filing systems, for example in the courts, provide instruction in this regard?

B. Non-Public Data

(7.6) To what extent are privacy safeguards appropriate for non-public data held by bankruptcy trustees in bankruptcy cases? If some safeguards are appropriate, how should they be structured? How should they be crafted to ensure that they not interfere with the needs of bankruptcy trustees to administer their cases?

(7.7) Should debtors receive notice of what uses and disclosures will be made of their information in the hands of bankruptcy trustees? What would be the effects of such disclosures?

(7.8) Should restrictions be imposed on the use and disclosure of information held by bankruptcy trustees? If so, what types of restrictions? What would be the effects of such restrictions?

(7.9) Should debtors be permitted to access the information held about them by bankruptcy trustees? If so, under what circumstances? What would be the effects of such access?

(7.10) If bankruptcy data are compiled and made easily and widely available to users outside of the bankruptcy system, should these users be charged for the collection and distribution process? How would the amount of the charge be set?

Dated: July 21, 2000.

Kevyn Orr,

Director, Executive Office For United States Trustees, Department of Justice.

Dated: July 24, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

Dated: July 21, 2000.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

[FR Doc. 00–19204 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–40–P; 4810–35–P; 3110–01–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 200–2000]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published November 4, 1997 (62 FR 59732):

Deportable Alien Control System (DACS), JUSTICE/INS–012.

INS proposes (1) to replace routine use C with an updated version which will expand access to more entities for law enforcement purposes; (2) to remove routine use disclosure D and replace it with two new routine use disclosures, identified as I and J (former routine use I is now H); (3) to make minor changes in the Categories of Records and Authority for Maintenance of the System sections to reflect changes required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208, September 30, 1996); and (4) to modify the Retention and Disposal section to reflect changes made in this system of records.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 30, 2000. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: July 19, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–012

SYSTEM NAME:

Deportable Alien Control System (DACS).

SYSTEM LOCATION:

Headquarters, Regional and District offices, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens deported and alleged to be deportable by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a computer data base that contains biographic information about deported and deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability/removability is alleged; data collected to support the INS position on deportability/excludability/removability, including information on any violations of law and conviction information; date, place, and type of last entry into the United States; Attorney/representative's identification number; family data, and other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1227, 1228, 1229, 1229a, and 1231.

PURPOSE(S):

The system provides INS with an automated data base which assists in the deportation or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

C. To the appropriate agency/organization/task force, regardless of whether it is Federal, State, local, foreign, or tribal, charged with the enforcement (e.g., investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty

D. Where there is an indication of a violation or potential violation of the

law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

E. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

F. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

G. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

H. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

I. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

J. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to the litigation or has an interest in the litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: (1) DOJ, or any DOJ component, or subdivision thereof; (2) any DOJ employee in his or her official capacity; (3) any DOJ employee in his or her individual capacity when the DOJ has agreed to represent the employee or has authorized a private attorney to represent him or her; and (4) the United States, where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by name and/or nationality, A-file number, or alien's Bureau of Prisons number, when applicable.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA. Cases which have been closed for a year are archived and stored in the database for 75 years, then deleted. Daily population reports are retained for six months and then destroyed. Work Measurement Reports are destroyed three years after creation. Copies of forms used within this system of records are placed in the Alien File. Electronic copies of records (copies from electronic mail and word processing systems) which are produced and made part of the file can be deleted within 180 days after the recordkeeping copy has been produced.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, nationality, and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from "The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A." Information may also come from the alien, the alien's attorney/representative, INS official, other Federal, State, local, and foreign agencies and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–19201 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 201–2000]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to establish a new system of records entitled, "Employee Assistance Program ("EAP") Record System" (JUSTICE/BOP–014). This system, which will become effective September 29, 2000, is being established to assist staff in providing crisis intervention, assessment, counseling, and referrals to outside treatment providers for Bureau employees who are experiencing personal or work-related problems.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires a 40-day period in which to review the system.

Therefore, please submit any comments by September 29, 2000. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the system of records is provided below. In addition, the Department of Justice has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: July 20, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/BOP–014

SYSTEM NAME:

Employee Assistance Program Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, and at any of the Bureau of Prisons (Bureau) facilities. A list of these system locations may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Bureau of Prisons who have sought counseling or been referred for treatment or referral through the Employee Assistance Program (EAP). To the limited degree that treatment and referral may be provided to family members of Bureau employees, these individuals are also covered by the system. The remainder of this notice will refer to all persons covered by the system as "EAP client(s)."

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of EAP clients who have sought or been referred to the EAP for treatment and/or referral. These records may include the following:

(1) Identification data, including name, Social Security number, driver's license number, Bureau employee number, EAP system-generated number, job title and/or series, age and/or date of birth, sex, financial history, medical/mental health insurance information, home and/or work addresses, e-mail addresses and telephone numbers;

(2) Information from other Bureau staff and/or the employee's supervisor, on work place or performance problems, address and telephone numbers for the supervisor and/or other Bureau staff, and referral memoranda and/or e-mail correspondence from the employee's supervisor and/or other staff;

(3) Information and correspondence from outside sources, *e.g.* initial contacts from interested persons who are not Bureau staff;

(4) Information generated by EAP staff concerning the EAP client, including background information, assessment, prognosis and counseling details;

(5) Information concerning referrals to community-based treatment programs or individuals, including the initial referral, addresses, telephone numbers, and credentials of treatment facilities or individuals providing treatment, and records of the employee's attendance, billing accounts, and progress;

(6) Pertinent employee records including leave and/or work Time and Attendance (T and A) records, written consent forms, disciplinary actions and/or abeyance agreements, drug testing records and information on confirmed unjustified positive drug tests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd *et seq.*; 42 CFR part 2; Executive Order 12564; 5 U.S.C. 3301, 7361, 7362, 7901 and 7904; 44 U.S.C. 3101 and Pub. L. 100–71, 101 Stat. 391, Sec. 503 (July 11, 1987).

PURPOSE OF THE SYSTEM:

These records assist EAP staff in the execution of its assessment, counseling and referral function. They document the nature and effects of EAP client problems and counseling by EAP staff, referral to, and participation in, outside treatment and counseling programs, and the EAP client's progress. These records may also be used to track compliance with abeyance agreements made to mitigate employee discipline actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To appropriate State or local authorities to report incidents of suspected child, elder, or domestic abuse and/or neglect, as required under State law;

(b) To any person or entity to the extent necessary to meet a bona fide medical emergency;

(c) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(d) To referral community health care providers authorized to provide services to EAP clients, to the extent that it is appropriate, relevant, and necessary to enable the provider to perform such services as evaluation, counseling, treatment, and/or rehabilitation; and

(e) To any person who is responsible for the care of an EAP client when the EAP client to whom the records pertain is mentally incompetent or under legal disability.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Documentary records are maintained in manual file folders and/or index cards and stored in locked GSA security-approved containers. Computer records are stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture, using hard drives, floppy diskettes, CDs, magnetic tape, and/or optical disks.

RETRIEVABILITY:

Records are indexed and retrieved only by a personal code number generated by the system.

SAFEGUARDS:

Electronic information is safeguarded in accordance with Bureau of Prisons rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Documentary records are kept in locked GSA security-approved containers in restricted access buildings. Only the EAP Administrator or designated Bureau staff will access or disclose the records.

RETENTION AND DISPOSAL:

Records are retained for three years after the EAP client ceases contact with the EAP counselor (in accordance with General Records Schedule No. 1, Item No. 26) unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Computerized records are destroyed by shredding, degaussing, etc., and documentary records are destroyed by shredding. All destruction of records must be performed by an EAP staff member.

SYSTEM MANAGER(S) AND ADDRESS:

National Employee Assistance Program Coordinator, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked "Privacy Act Request." In addition to a return address, requesters should provide the full name and notarized signature of the individual who is the subject of the record and is authorizing release of his/her information, the dates during which the individual was in counseling, and

any other information which may assist in identifying and locating the record. Pursuant to 28 CFR 16.41(d), an original signature on a "Certification of Identity" form (DOJ–361) may be submitted in lieu of a notarized signature. This form may be obtained from the Department of Justice website at *http://www.usdoj.gov* or by writing to the FOIA/PA Office, Bureau of Prisons, 320 First St. NW., Washington, DC 20534.

CONTESTING RECORD PROCEDURES:

All requests to contest or amend information should be directed to the Director of the Federal Bureau of Prisons at the address listed above. The request should follow the Record Access Procedures, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. The envelope should be clearly marked, "Privacy Act Request."

RECORD SOURCE CATEGORIES:

Records are generated by Bureau staff, outside sources, referral counseling and treatment programs or individuals, and the EAP client who is the subject of the record. In the case of drug abuse counseling, records also may be generated by staff of the Drug-Free Workplace Program and the Medical Review Officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–19202 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 202–2000]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to establish and publish a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) have been published. This system of records is entitled:

The FD–258 Fingerprint Tracking System, JUSTICE/INS–024.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 30, 2000. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: July 20, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–024

SYSTEM NAME:

FD–258 Fingerprint Tracking System.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS) Headquarters, Regional Service Centers, District Offices and sub-offices as detailed in Justice/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052). In addition, this system can be accessed from the three INS Regional offices and the Application Support Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed application or petitions for benefits under the Immigration and Nationality Act, as amended and are required to submit fingerprints in order for a criminal background check to be conducted by the Federal Bureau of Investigation (FBI), and who have submitted fingerprints to or have had their fingerprints taken by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information that identifies individuals named above, *e.g.*, name, date of birth, and alien registration number. Records in the system also include such information as date fingerprints were sent to the FBI for processing, the date a response was received from the FBI by INS, electronic rap sheet, and a unique control number. The response from the FBI that is included in the system of records includes such information as whether the individual has an arrest record, the charges on which the individual was arrested, whether the individual was convicted, and what the sentence or fine was. The unique seven digit control number is generated by the system and is used in the adjudication process to document that an applicant has a valid FBI response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1154(b), 1158(d), 1159, 1229b, 1254a, 1255, and 1446.

PURPOSE:

This system enables INS to determine the status of pending fingerprint submissions to the FBI and the results of the FBI check; and to account for and control the receipt and processing of fingerprints submitted to the FBI for a criminal background check.,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

A. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the submission to and response received from the FBI pertaining to an immigration benefit applicant's fingerprints in accordance with that agency's statutory responsibilities. A Federal Agency may request this information from the INS to assist in an investigation.

B. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: (1) The DOJ, or any DOJ component or subdivision thereof; (2) any DOJ employee in his or her official capacity; (3) any DOJ employee in his or her individual capacity when the DOJ has agreed to represent the employee or has authorized a private attorney to represent him or her; and (4) the United States, where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

C. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before INS or the Executive Office for Immigration Review.

D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

E. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

F. To General Services Administration and National Archives and Records Administration in records management

inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on magnetic disks and tape.

RETRIEVABILITY:

Records may be retrieved by the name or alien registration number.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Offices are locked during non-duty hours. Access to this system is obtained through remote terminals which require the use of restricted passwords and a user ID.

RETENTION AND DISPOSAL:

Records are archived and stored in the database for 10 years after adjudication of a benefits-seeking application and then deleted. The information contained on tapes is downloaded into the tracking system. The tapes are erased every three months and used to transmit and/or receive data from unrelated cases.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Field Operations, Immigration Services Division, Immigration and Naturalization Service, 801 I Street NW, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

Requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked "Privacy Act Request." The requester shall include a description of the general subject matter and, if known, the related file number. To identify a record relating to an individual, the requester should provide his or her full name, date and place of birth, verification of identity (in accordance with 8 CFR 103.2(b)), and any other identifying information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORDS PROCEDURE:

Direct all requests to contest or amend information to the FOIA/PA Officer at any INS office. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Amendment Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the individuals covered by the system and from the FBI.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–19203 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2051–00]

Extension of Memorandum of Understanding for Fines Mitigation Under Section 273 of the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Air and sea transportation companies (carriers) may enter into a Memorandum of Understanding (MOU) with the Immigration and Naturalization Service (Service). This MOU provides for mitigation of fines imposed under section 273 of the Immigration and Nationality Act (Act) related to transporting passengers without passports or visas. By signing the MOU, the carrier agrees to perform certain measures aimed at intercepting improperly documented aliens at foreign ports-of-embarkation. These MOUs are currently set to expire on September 30, 2000. This notice serves to extend the expiration date until September 30, 2001.

DATES: This notice is effective July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Una Brien, National Fines Office, Immigration and Naturalization Service, 1525 Wilson Blvd., Suite 425, Arlington, VA 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION:

Under What Authority Can the Service Reduce Fines?

Pursuant to section 273(e) of the Act, a violation for section 273(a)(1) of the Act may be reduced, refunded, or waived in cases in which a carrier demonstrates that it screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

The Service published a final rule in the Federal Register at 63 FR 23643 (April 30, 1998) establishing procedures that carriers must undertake for the proper screening of passengers at the ports-of-embarkation to become eligible for a reduction, refund, or waiver of a fine imposed under section 273 of the Act.

The final rule provided that carriers that voluntarily signed an MOU with the Service would receive an automatic reduction, refund, or waiver of fines imposed under section 273 of the Act. By signing the MOU, the carrier agrees in writing to meet passenger screening standards stated in 8 CFR 273.3, to train employees in documentary requirements, and to pay fines and user fees promptly. The Service agrees to provide document training and information guides to carriers and to mitigate fines as appropriate.

How Does the Service Measure the Carrier's Screening Performance?

The numerical standard, or Acceptable Performance Level (APL), is calculated by adding the total number of section 273(a)(1) violations involving nonimmigrants for all carriers, divided by the total number of nonimmigrants transported by all carriers, multiplied by 1,000. Each carrier is then rated against the APL using individual Performance Levels (PL). A carrier's individual PL is calculated by applying the same formula used to calculate the APL.

Carriers that meet or exceed the APL may be eligible for automatic fines reductions if the carrier entered into an MOU with the Service.

If a carrier's PL is not at or better than the APL, the carrier may still receive an automatic fine reduction of 25 percent if it is signatory to and in compliance with the MOU.

In order to provide carriers with additional incentives to screen documents, a second reduction factor (APL2) was developed. The APL2 uses the same formula but only uses the number of violations and total passenger counts for carriers whose PL fails between 0 and the APL. These carriers will automatically receive an additional 25 percent reduction.

Why Is the Service Extending the Expiration Date for MOUs?

The Service is not contemplating any amendments to the current MOU before

September 30, 2000. In this light, an extension of all existing MOUs will benefit both the Service and the carriers by avoiding the administrative costs that would result had the Service required that a new MOU be executed for each carrier. Carriers will remain eligible for automatic fine reductions during the extended period of the MOUs validity as long as the signatory carrier is in compliance with screening standards, training requirements, and payment requirements enumerated in the MOUs.

Will the Measurements for Screening Performance Be Changed?

The measurement for screening performance set forth in the **Federal Register** at 63 FR 23643 (April 30, 1998) will continue to remain in effect. The Service will inform carriers of any plans to change the methods used to calculate a carrier's screening performance by publishing a notice in the **Federal Register**.

Can a Carrier Sign Up for the MOU After September 30, 2000?

A carrier can apply to be signatory to the MOU at any time. A carrier must meet all requirements before their MOU will be approved. Generally, a carrier must have a PL either at or better than the Service's APL and must be current in its payment of all administrative fines, liquidated damages, and user fees. If a carrier does not have a PL or does not have a PL that meets the Service's APL, the carrier must submit evidence to demonstrate that they have screening procedures in place to prevent transporting improperly documented aliens to the United States. Once an MOU is approved, violations that occurred on or after the date of MOU signing will receive the automatic reductions.

How Does a Carrier or the Service Terminate an Existing MOU?

Either party may terminate an MOU upon 30 days written notice.

Dated: July 7, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–19179 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Core Competency Model Project

AGENCY: National Institute of Corrections.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The project will identify the competencies needed by correctional leaders and managers at each of four organizational levels. It will define the competency, identify the relevant knowledge needed for its development, describe the behaviors that reflect the competency, identify the skills required to use and develop the competency, and suggest training strategies appropriate to the competency and the management level being addressed.

Project Objectives

Given the premise of the Core Competency Model, the work developed under the cooperative agreement will:

- Identify the competencies needed by correctional leaders and managers.
- Develop a profile of four identified management levels which can be used by correctional trainers in developing and targeting their programs; Supervisors, Managers, Senior Managers and Executives.
- Determine, list, and justify which competencies are most critical to each of the four management levels.
- Identify a knowledge base and/or the relevant theories required by the program participant to use and develop the core competency.
- Identify behaviors that reflect the core competencies at each level.
- Identify the skills required to use and develop the core competencies at each level.
- Provide a tool with which correctional training staff can revise and/or develop programs with the appropriate combination of theoretical and skill-based content.
- Provide a tool to help correctional training staff ensure any content being offered is appropriate to the management level for which it is offered.
- Provide a tool with which correctional training staff can advise practitioners regarding the programs to which they should apply to enhance their leadership and management abilities.
- Provide a tool with which correctional training staff can review the content of leadership and management programs to avoid duplication.

Scope of Work

Introduction

As the correctional field begins its work in the new millennium its leaders will be faced with significant challenges. They must continue to study and apply as appropriate the latest research in offender management and treatment; lead an ever increasingly diverse workforce; design, improve and oversee an efficient operational program; and ensure the incorporation of new technologies in a manner beneficial to their agencies. They must also provide those they lead with guidance and direction for the future. Much of this work will be accomplished through the efforts of those under their supervision. The need for capable leaders is clear.

The Core Competency Model will rest on a basic premise. Leaders and managers need the same or similar core competencies to perform their tasks. However, the actions and behaviors driven by those competencies will vary with the individuals position in the organization and the context of the situations they face. Training content should be grounded in the basic competencies, but vary with the participant's assignments and responsibilities.

Leaders and managers at all levels must have an ability to communicate effectively. But, the skills and behaviors needed will vary depending on who is receiving the communications(s) and the context of the interaction. A first line supervisor counseling a line staff officer on the appropriate use of sick time will employ different methods and behaviors than a Chief Executive Officer (CEO) responding to questions from the media. Likewise, line supervisors may employ problem solving techniques different from the strategic planning approaches employed by the agency's executives.

Background

Correctional leadership programs, including those offered by the Institute, are usually designed for correctional leaders in general, to achieve the broad goal of developing and/or improving correctional leaders. The content is often designed without any systematic consideration given to the specific skills and abilities needed by individuals at various levels of management. This can result in some unanswered questions and issues.

- Are participants applying for and being placed into programs that match their developmental level?
- Does the material challenge the participants?

- Does the content address the needs of the participants at their management level?
- Does the content an appropriate balance of theoretical and skill related material for the target audience?
- Is there duplication between programs?
- Does the content allow for the development of measurable outcomes?

The Goals

The Core Competency Model Project will serve two goals. First, the work will provide a framework with which correctional agencies can assess the efficacy of existing leadership and management programs. Correctional trainers can also apply the Model to the development of new offerings.

Design and Implementation

Ultimately, the Core Competency Model will be designed as a matrix containing definitions and descriptions of the critical core competencies, plus the following elements related to those competencies:

- The relevant knowledge base or theory.
- The behaviors "driven" by the competency for each of the identified management levels,
- The skills necessary to ensure the behaviors, and
- Suggested training or delivery strategies.

These descriptions will be supplemented with an orientation to the Model, plus more detailed narrative explanations and references, as appropriate.

Completion of Phase One

As envisioned, completion of the Core Competency Model will be a comprehensive project and too complex to be accomplished in one year. It is estimated that it will be phased over 18 months. The project will be broken into two phases. During Phase One several key project elements will be developed. The recipient will:

- Develop Managerial Profiles for each of the four identified management levels; Supervisors, Managers, Senior Managers, and Executives.

These profiles will give an overall description of the duties, tasks, responsibilities and authority of correctional practitioners at each of the four levels. Regardless of an individual's title, a correctional trainer should be able to place a practitioner into one of the four levels by requesting information about their general tasks, duties and responsibilities verbally, or by reviewing their written job description and comparing it to the profile.

- Conduct a review of key leadership and management competencies.

The completion of this activity will determine which competencies are critical to each of the four specified levels.

- Develop a format for the Core Competency Model in the form of a matrix containing the name of each competency, plus a definition for each competency.
- Indicate which of the Core Competencies are most critical to each of the four management levels.

To "test" the Model two Core Competencies must be fully developed for the Senior Management level. These two "developed" competencies will include:

The name of the core competency,

- Its definition and description,
- The identified relevant knowledge or theoretical base for the competency at the Senior Management level,
- The behaviors that reflect the competency at the Senior Management level,
- The skills needed to use and develop the competency, and
- Suggested instructional strategies and possible activities that can be used at the Senior Management level to "teach" the competency.

Implementation and Use of Phase One Work

The work that is developed during Phase One will be applied by NIC staff first to the Academy's Correctional Leadership Development (CLD) program. CLD is one of the Academy's longest running training programs and has been at the heart of its offerings. Although it has gone through many stages, it has not been comprehensively reviewed for several years and requires updating. Applying the work completed during Phase One will allow staff to "test" the Model. NIC staff will be able to:

- Determine if the Model can be applied as envisioned.
- Assess the Model's usefulness to correctional trainers as an assessment and development tool for leadership and management training.
- Establish a refined time-table for the balance of the project.

The recipient will conduct a briefing for Institute staff to acquaint them with the concept and intended uses for the Model. During this meeting staff will be able to ask questions and offer ideas and feedback.

Completion of Phase Two

As Phase One progresses the Core Competency Model structure will be monitored. Once tested and revised as necessary the Phase Two work will continue. The Core Competencies for the Senior Manager will be developed, followed by those for the Executive, the Manager, and the Supervisor. When the project is complete the work will contain:

- An introduction to the Core Competency Model, plus an orientation and instructions regarding its application and use.
- A description of each of the four management levels identified by the Institute; Supervisors, Managers, Senior Managers, and Executives. These descriptions will identify the general duties, tasks, responsibilities and authority of correctional managers and leaders in these positions respectively.
- A list of the competencies needed by correctional leaders and managers.
- A general definition and/or description of each competency.
- A list of the competencies most critical to each of the four management levels, including a brief justification for its assignment to that level.
- For each management level a list and/or description of the theoretical framework or knowledge base needed by the participant to develop their ability to integrate and use that level's critical competencies.
- A description of the behaviors that reflect the critical competencies at each management level.
- A list of the skills necessary to apply the critical competencies at each management level.
- A comprehensive list of suggested instructional strategies, training techniques, and activities for each management level.

At the conclusion of the project the recipient will provide an orientation and training in the use of the Model for the NIC staff. This should include suggestions on preparing and transferring the Model to the field.

Products and Deliverables

Upon completion of the cooperative agreement's requirements the recipient will deliver the above described work to the NIC Academy in the form of the following products.

Phase One Products

- A brief narrative review of the project to date.
- Managerial Profiles for Supervisors, Managers, Senior Managers, and Executives.
- A narrative describing the review of the existing core competency work, outlining the suggested changes and the accompanying rationale.
- The Core Competency Model format in the form of a matrix containing; the

name of each core competency and a definition and description for each competency.

• A chart indicating the four management levels, their critical Core Competencies, and a brief justification or explanation of their assignment to their particular management level. (This might be done by breaking the Matrix into four separate matrices, one for each level.)

• Two fully developed Core Competencies. These two will be selected in conjunction with the NIC Project Coordinator. These fully developed competencies will include; the general definition and/or description of the competency, a brief justification for its assignment to the Senior management level, a description of the theoretical framework or knowledge base needed by the participant to use and develop the competency, a description of the behaviors that reflect the competency, the sills necessary to use and develop the competency, and suggested training styles, instructional strategies and activities appropriate for "teaching" these competencies at the Senior management level.

Phase Two Products

• A brief narrative review of the project.

• An introduction to the Core Competency Model, plus an orientation and instructions regarding its application and use.

• The fully developed Core Competencies for each of the four management levels in the established matrix format with accompanying detailed narratives and references.

Phase Two products will incorporate any revisions indicated by the review of the Phase One work.

All work will be completed in or converted to Corel WordPerfect 8 or 9. Graphics will be developed in or converted to Corel Presentations. Two camera ready copies of the work will be presented, along with computer files on Compact Disks. Technical terms and acronyms must be fully explained and/or defined. The work must be carefully proof-read and edited to ensure readable text and comprehension.

Authority: Public Law 93–415.

Funds Available: The award will be limited to $105,000 (direct and indirect costs) and project activity must be completed within 18 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy Division.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on 08/23/00. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at 202.307.3106, extension 0 for pick-up.

ADDRESSES: Requests for the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, DC 20534 or by calling 800.995.6423, ext. 159, 202.307.3106, ext. 159, or email: *jevens@bop.gov*. A copy of this announcement, application forms, and additional information may also be obtained through the NIC web site: http.//www.nicic.org (click on "What's New" and "Cooperative Agreements"). All technical and/or programmatic questions concerning this announcement should be directed to Dee Halley at 1960 Industrial Circle, Longmont, Coloredo, or by calling 800.995.6429, ext. 116 or 303.682.0382 or by E-mail via <dhalley@bop.gov>.

Eligible Applicants: An eligible applicant is any public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objective of the project. Applicants must have a background in corrections, adult training and/or education and competency based training.

Review Considerations: Applicants received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 00P14. This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

(Catalog of Federal Domestic Assistance Number: 16.601)

Dated: July 25, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–19177 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 20, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the office of Management and Budget (OMB) for review asnd approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs,. Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title: Notification of Methane Detected in Mine Atmosphere.

Type of Review: Extension.

OMB Number: 1219–0103.

Frequency: On occasion, Weekly, and Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 8.

Number of Annual Responses: 372.

Estimated Time Per Response: 0.08 minutes.

Total Burden Hours: 31.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Metal and Nonmetal mine operators are required to notify MSHA as soon as possible if any of the following events occur: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere; (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere; (c) there is an ignition of methane; (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B, or Category VI mine; If methane reaches 2.0 percent in a Category IV mine; or methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, and VI mines, MSHA shall be notified immediately.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–19253 Filed 7–28–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 21, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Chief Financial Officer.

Title: Disclosure of Information to Credit Reporting Agencies; Administrative Offset, Interest, Penalties, and Administrative Costs.

OMB Number: 1225–0030.

Affected Public: Individuals or Households, Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Frequency: On Occasion.

Cite/reference	Total respondents	*Total responses	Average time per response (hours)	Total burden hours
29 CFR 20.7	2000	2000 (×2)	1.75	7000
29 CFR 20.25	500	500 (×2)	1.75	1750
29 CFR 20.61	1000	1000 (×2)	1.75	3500
Totals	3500	3500 (×2)		12,250

*The notation "(×2) refers to the two correspondences from each debtor.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Information is collected from debtors to assist in determining whether an individual or organization is actually indebted to the Department of Labor, and if so indebted, to evaluate the individual's or organization's ability to repay the debt.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (Hours)	Total burden hours
Initiation	1,700	Annually	1,700	1	1,700
BLS–3007D	3,235	Monthly/Quarterly	38,540	.5625	21,679
Totals	4,935		40,240	.58	23,379

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Import Price Indexes.

OMB Number: 1220–0026.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (Hours)	Total burden hours
Initiation	1,700	Annually	1,700	1	1,700
BLS–3007D	3,235	Monthly/Quarterly	38,540	.586	22,546
Totals	4,935		40,240	.6	24,246

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They also are used to deflate the Gross Domestic Products.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–19254 Filed 7–28–00; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences; Committee of Visitors for the Focused Geosciences Education and Human Resource Development Activities (1755)

Date and Time: August 28–29, 2000—8:30 a.m.–5:00 p.m. each day; August 30, 2000—8:30 a.m.–12 noon

Place: Room 770, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Part-Open—(see Agenda, below)

Contact Person: Dr. Michael A. Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8557.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: August 28 from 1:00–5:00—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Earth Sciences Research Programs.

Open: August 28 from 8:30–12:00—Introductions, charge and general discussion of selection process. August 29 from 8:30–5:00 & August 30 from 8:30–12 noon—To assess the results of NSF program investments in the Focused Geosciences Education and Human Resource Development Activities. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 26, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–19241 Filed 7–28–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date/Time: August 16, 2000; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Roosevelt Y. Johnson, Program Director, AGEP Program, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendation concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Alliances for Graduate Education and the Professorate (AGEP) Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 26, 2000.

Karen J. York,

Committee Management.

[FR Doc. 00–19240 Filed 7–28–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3073]

Notice of Consideration of Amendment Request for Cushing Refinery Site, Cushing, Oklahoma and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Materials License SNM–1999 issued to Kerr-McGee Corporation (the licensee) for its Cushing Refinery site in Cushing, Oklahoma. The licensee requested, in a letter dated April 7, 2000, that NRC amend Materials License SNM–1999 to remove several "tie-down" and license

conditions. The licensee considers these conditions either redundant or no longer necessary as a result of NRC's issuance of License Amendments Nos. 10 and 11. License Amendment No. 10, issued August 23, 1999, authorized the licensee to remediate radioactive contamination. License Amendment No. 11, issued November 3, 1999, named Ms. Karen Morgan as the Cushing Refinery site Radiation Safety Officer. The licensee indicated that removal of redundant requirements would reduce potential confusion caused by these redundancies.

If the NRC approves this license amendment, the approval will be documented in an amendment to NRC license SNM–1999. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Center, PO Box 25861, Oklahoma City, Oklahoma, Attention: Mr. Jeff Lux, and;

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION: The application for amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room on the NRC Web site *http://www.nrc.gov/NRC/ADAMS/index.html*. Questions with respect to this action should be referred to Stewart Brown, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6605. Fax.: (301) 415–5397.

Dated at Rockville, Maryland, this 24th day of July, 2000.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–19244 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Northeast Nuclear Energy Company (NNECO/the licensee) for operation of the Millstone Nuclear Power Station, Unit No. 2 (MNPS–2) located in New London County, Connecticut.

The proposed amendment would change the Technical Specification (TSs) and Bases Sections associated with the requirements for the Reactor Coolant System (RCS) loops and Shutdown Cooling (SDC) System trains during all modes of plant operation. Many of the proposed changes are associated with the format and structure of the affected TSs and will not result in any technical changes to the current requirements. The proposed format changes will result in TSs that are clear, concise, and easier for the Control Room operators to use. Some of the changes are proposed to achieve consistency with the Standard TSs for Combustion Engineering Plants in NUREG–1432, Rev. 1. The Bases for the TSs would also be revised to reflect the proposed changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes are associated with the requirements for the RCS loops and SDC trains during all modes of plant operation. These systems provide for the transportation of heat from the reactor core to a heat sink. The proposed changes will not adversely affect power operation, and will ensure that two methods of decay heat removal are available when the plant is shut down. These specifications include requirements for various equipment, based on plant conditions, and provide appropriate actions to take if the required equipment is not available. This ensures the equipment necessary to mitigate the design basis accidents is available and functioning as assumed, or plant operation is limited accordingly.

Standardizing the terminology, format, and numbering of the Technical Specifications, adding or correcting amendment numbers, changing the action statements to be consistent with the proposed changes to the LCO [limiting condition for operation], removal of extraneous information from various SRs [surveillance requirements], and transferring information from the LCO to the associated Technical Specification Bases are non-technical changes that will not affect any of the current requirements.

The operation of, and requirements for, the equipment covered by the affected Technical Specifications will remain essentially the same. In Modes 1 and 2, the proposed requirements are more restrictive in that the two RCS loops must be operable in addition to being in operation. In Modes 3 (RCS loops) and 4 (RCS loops and SDC trains), the requirements remain the same. In Mode 5, the requirements will be separated into two specifications based on the status of the RCS loops. If the RCS loops are filled, two SDC trains will be required unless both steam generators (instead of one) have sufficient inventory. RCPs [reactor coolant pumps] will no longer be required. If the RCS loops are not filled, two SDC trains will be required. These are not significant changes to the Mode 5 requirements. In Mode 6, the SDC train requirements are more restrictive since both SDC trains will be required unless the refueling cavity is filled to at least 23 feet above the reactor vessel flange.

Changes to the action statements will be made based on the proposed changes to the LCOs. If the required equipment is not operable, the proposed action requirements will require timely restoration of the equipment, or the plant will be placed in a configuration where there is no adverse impact associated with the inoperable equipment. The changes to the action statements will also address additional combinations of inoperable equipment. The allowed outage times provide a reasonable time for repairs before requiring a plant shutdown to a lower mode, as applicable. The shutdown times will allow an orderly shutdown, as applicable, to be performed. Surveillance requirements will be added or modified as appropriate based on the changes to the LCOs. This will ensure the required equipment is operable. Additional restrictions will be placed on plant operation to properly control various evolutions when the plant is shutdown. These additional restrictions (e.g., how often the RCPs and SDC pumps can be secured) provide sufficient administrative control to ensure safe operation of the plant.

The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not significantly alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes are associated with the requirements for the RCS loops and SDC trains during all modes of plant operation. These systems provide for the transportation of heat from the reactor core to a heat sink. The specifications associated with these systems include requirements for various equipment, based on plant conditions, and provide appropriate actions to take if the required equipment is not available. This will ensure that the equipment necessary to mitigate the design basis accidents is available and functioning as assumed, or plant operation is limited accordingly.

The proposed changes will result in Technical Specifications that are clear, concise, and easier for the plant operators to use. The format, structure and technical content of the affected specifications is consistent with current industry guidance as contained in NUREG–1432, with the exception of the third note to the LCO for Technical Specification 3.9.8.1. This note, which will allow the SDC pumps to be removed from operation, will provide additional operational flexibility to perform work that is currently done during plant heatup after the SDC trains have been removed from service, and to perform work on the valves located in the common SDC suction line. However, the restrictions on what work can be performed utilizing the provisions of this note, the plant conditions that must first be established, and the required management review of the planned plant evolution will ensure plant safety is maintained.

The proposed changes to the Technical Specifications are consistent with the Millstone Unit No. 2 design basis accident analyses. This will ensure the analyses remains valid, and the consequences of the accidents are acceptable. They will provide the necessary control to ensure the required plant conditions are established and the required plant equipment is available. If the required equipment is not operable, the proposed action requirements will require timely restoration of the equipment or the plant will be placed in a configuration where there is no adverse impact associated with the inoperable equipment. The proposed allowed outage times provide a reasonable time for repairs before requiring a plant shutdown, as applicable, and reflect the low probability of an event occurring while the equipment is inoperable. The proposed shutdown times will allow an orderly shutdown, as applicable, to be performed. The proposed allowed outage times and shutdown times are consistent with times already contained in the Millstone Unit No. 2 Technical Specifications and with generic industry guidance (NUREG–1432), where applicable.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analyses. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 31, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 1, 2000, as supplemented on June 1 and July 13, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 26th day of July, 2000.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19247 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Peco Energy Company; Peach Bottom Atomic Power Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an exemption from Section III.F of Appendix R to 10 CFR Part 50 for Facility Operating Licenses Nos. DPR–44 and DPR–56, issued to PECO Energy Company (the licensee), along with other co-licensees, for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10

CFR Part 50, Appendix R, Section III.F, "Automatic Fire Detection," to the extent that they require the installation of automatic fire detection systems in certain fire areas that contain or present an exposure fire hazard to safety-related or safe shutdown systems or components. The licensee is seeking an exemption from the requirements for an automatic fire detection system for 8 fire zones in fire area 50 (the common area between both turbine buildings), 2 fire zones within fire area 6S (a portion of the Unit 2 reactor building), and 2 fire zones within fire area 13N (a portion of the Unit 3 reactor building).

Specifically, these fire zones are (1) the Condenser Bays Fire Zones 50–78W and 50–78V; (2) Equipment hatchway and adjoining equipment rooms, Fire Zone 50–78B; (3) Main Turbine Lube Oil Storage Tank Rooms, Fire Zones 50–86 and 50–89; (4) Reactor Feedwater Turbine Area Corridors, Fire Zone 50–78A; (5) Steam Jet Ejector Room, Fire Zone 50–78EE; (6) Feedwater Heater Room, Fire Zone 50–99; and (7) Reactor Water Cleanup System Equipment, Fire Zones 6S–42, 6S–5M, 13N–36, and 13N–13M.

The proposed action is in accordance with the licensee's application for exemption dated December 31, 1998, as supplemented by letters dated January 14 and April 14, 2000.

The Need for the Proposed Action

The proposed exemption from Section III.F to effectively allow the fire areas and zones, as discussed above, to not meet the provisions otherwise requiring the installation of automatic fire detection systems is needed in order to preclude a substantial hardship should plant modifications be required to be made that would not significantly increase the level of fire protection currently at Peach Bottom Units 2 and 3.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with the proposed exemption there will be an adequate level of fire protection and the underlying purpose of Section III.F, of Appendix R, for the affected areas of the plants will be met, such that there would be no significant increase in the risk of fires at these facilities, except for Fire Zone 50–78B (Room 429) and Fire Zone 50–99 (Room 222). The fire hazard associated with Fire Zones 50–78B and 50–99 warrant some fire protection system to provide reasonable assurance of safety. The staff concludes that an automatic detection system should be provided for these Fire Zones to provide prompt notification to the control room of a fire in these Fire Zones during its incipient stage to allow a rapid response from the plant fire brigade.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Peach Bottom Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on June 2, 2000, the staff consulted with the Pennsylvania State official, Mr. Dennis Dyckman of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 31, 1998, as supplemented by letters dated January 14 and April 14, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 24th day of July 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19245 Filed 7–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(c) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *<http://www.nrc.gov/NRC/ADAMS/index.html>* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant Date of application Date received Application No.	Description of material			Country of origin
	Material type	Total qty.	End use	
Philotechnics, Ltd., July 6, 2000, July 7, 2000, IW010.	Depleted Uranium Class A waste.	50,000 kgs DU metal, aircraft counter-weights.	For disposal at Waste Control Specialists, L.L.C., Andrews County, TX.	United Kingdom.

Dated this 25th day of July 2000 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 00–19243 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (TVA, the licensee) to withdraw its June 24, 1999, application for proposed amendments to Facility Operating Licenses Nos. DPR–77 and DPR–79 for the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

The proposed amendments would have revised the facility technical specifications (TS) pertaining to surveillance requirements for the ice weight in the ice condenser baskets.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on August 11, 1999 (64 FR 43781). The Commission subsequently sent a letter to TVA, dated December 9, 1999, noting that the staff had identified a number of deficiencies during the course of their review. Although these deficiencies did not dispute the no significant hazards consideration determination published in the **Federal Register**, they did fall short of the improvements to and clarifications of the present TS envisioned by the Commission staff. By letter dated June 9, 2000, TVA withdrew the proposed change on the basis that the Ice Condenser Utility Group reevaluated the original request and determined that the initial approach taken may not necessarily provide the desired improvements.

For further details with respect to this action, see the application for amendments dated June 24, 1999, the Commission's letter dated December 9, 1999, and the licensee's letter dated June 9, 2000, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 25th day of July 2000.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19246 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Amendments to Accounting for Property, Plant, and Equipment

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the sixteenth Statement of Federal Financial Accounting Standards (SFFAS), "Amendments to Accounting for Property, Plant, and Equipment." The statement was recommended by the Federal Accounting Standards Advisory Board (FASAB), approved by the Director of the Office of Management and Budget (OMB), the Comptroller General, and the Secretary of the Treasury, and adopted in its entirety by OMB on September 8, 1999. As required by the Chief Financial Officers Act of 1990, SFFAS No. 16 was reported to the Congress and a period of 45 days of continuous session of the Congress has expired.

ADDRESSES: Copies of SFFAS No. 16, "Amendments to Accounting for Property, Plant, and Equipment," may be obtained for $4.25 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800), Stock No. 041–001–00548–0.

FOR FURTHER INFORMATION CONTACT: Kim Geier (telephone: 202–395–6905), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Under a Memorandum of Understanding between the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, they are published in the **Federal Register** and distributed throughout the Federal Government.

This Notice is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/OMB/, under the caption "**Federal Register**."

Joshua Gotbaum,

Controller.

[FR Doc. 00–19206 Filed 7–28–00; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43063; File No. SR–OPRA–00–07]

Options Price Reporting Authority; Notice of Filing and Order Granting Temporary Effectiveness of Amendment to OPRA Plan Adopting a Capacity Allocation Plan

July 21, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on

[1] 17 CFR 240.11Aa3–2.

July 20, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would modify the current temporary capacity allocation plan for peak usage periods, which minimizes the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.*, Securities Industry Automation Corporation ("SIAC")) aggregate message handling capacity. The proposed amendment would revise the current temporary capacity allocation to account for the recent expansion of the message handling capacity of OPRA's processor. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment and to grant temporary effectiveness to the proposed OPRA Plan amendment not to exceed 120 days.

I. Description and Purpose of the Amendment

OPRA proposes to revise and extend the temporary allocation of the message handling capacity of its processor among the participant exchanges, which currently provides for the allocation of 3,540 messages per second ("mps") and is scheduled to end on August 24, 2000. The revised capacity allocation now being proposed takes into account the recent expansion of the maximum message handling capacity of OPRA's processor to 5,000 mps. During the extension of the temporary allocation provided for in this amendment, the processor's maximum aggregate message-handling capacity will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange:—1,320 mps
Chicago Board Options Exchange—1,715 mps
International Securities Exchange—355 mps
Pacific Exchange—875 mps
Philadelphia Stock Exchange—735 mps

The above capacity allocation would commence on July 21, 2000, or as soon thereafter as this amendment can be implemented by OPRA's processor. It would continue in effect until the earlier of (i) the time when OPRA's processor implements the next planned capacity upgrade by converting from the current T1 output network to the exclusive use of a new T3 output network (currently scheduled to take place on or about September 18, 2000), or (ii) the close of business on October 12, 2000.

OPRA has determined to treat this proposed revision and extension of its temporary capacity allocation program as an amendment to its national market system plan, and accordingly is filing the proposed amendment for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2 under the Act.

The purpose of the proposed amendment is to revise and extend the current temporary allocation of OPRA's message handling capacity to take into account the recent expansion of the maximum message handling capacity of OPRA's processor, and to provide an allocation that will remain in effect until the next planned capacity upgrade or until the close of business on October 12, 2000, whichever is first to occur.

II. Implementation of the Plan Amendment

OPRA believes the proposed modification of the temporary capacity allocation program is necessary and appropriate to avoid delays and queues in the dissemination of options market information, which in turn helps to achieve the objectives of Section 11A(a)(1)(C)(iii),[3] including assuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the modification of the proposed allocation program to be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3–2 of the Act,[4] based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. In particular, the Commission is soliciting comment on whether permanent approval of the amendment is appropriate and whether, in permanently approving such amendment, the Commission should modify the proposed amendment to remain effective until a later date than that set forth in the proposed amendment[5] or such time as the Commission may adopt an allocation formula.[6] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–07 and should be submitted by August 21, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[7] Specifically, the Commission believes

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[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the New York Stock Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange.

[3] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[4] 17 CFR 240.11Aa3–2.

[5] *See* Rule 11Aa3–2(c)(2), 17 CFR 240.11Aa3–2(c)(2).

[6] The Commission has solicited comment on a proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434). The Commission notes that this temporary plan could be superseded prior to its expiration date. If the OPRA participant exchanges file with the Commission a capacity allocation plan for peak usage periods that is consistent with the Act, the Commission will act to substitute that proposal for this plan.

[7] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3–2 under the Act[8] in that it will contribute to the maintenance of fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system.

The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of, and at times surpasses, OPRA's systems capacity. OPRA estimates that its current plans to expand OPRA systems capacity will not be completed until September, 2000. Consequently, the Commission is concerned that, absent a program to allocate systems capacity among the options markets, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation plan is a reasonable means to account for the recent increase in message handling capacity of OPRA's processor and to address potential strains on capacity.

The Commission notes that the anticipated enhancements to the OPRA system should increase systems capacity to 8,000 mps. The Commission does not, however, believe that the enhancement will end the need for a capacity allocation[9] as the imminent move to decimalization and the dissemination of quotations with size will continue to strain OPRA systems capacity.

The Commission finds good cause to accelerate effectiveness of the proposed OPRA Plan amendment prior to the date of publication in the **Federal Register**. The Commission notes that the proposed OPRA Plan amendment is intended to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the amendment will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate, and possibly implement, other quote mitigation strategies. In addition the limited time frame of this capacity allocation program provides the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting temporary effectiveness of the proposed OPRA Plan amendment is appropriate and consistent with Section 11A of the Act.[10]

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[11] and Rule 11Aa3–2[12] thereunder, that the proposed OPRA Plan amendment (SR–OPRA–00–07) is effective on a temporary basis not to exceed 120 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19229 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 240.11Aa3–2.

[9] *See supra* note 6.

[10] 15 U.S.C. 78k–1.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11 Aa3–2.

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43062; File No. SR–CHX–00–07]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Examination Requirements for Floor Clerks Who May Accept Orders From Professional Customers for Execution on the Exchange's Trading Floor

July 21, 2000.

I. Introduction

On March 17, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(10 of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4, thereunder,[2] a proposed rule change relating to the qualification requirements for Exchange floor clerks who may, among other functions, accept orders from professional customers[3] for execution on the Exchange's trading floor. The proposed rule change was published for comment in the **Federal Register** on June 12, 2000.[4] On June 30, 2000, the CHX filed Amendment No. 1 to the proposal.[5] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Under Exchange rules, a floor clerk of a qualified floor member may accept orders from professional customers for execution on the Exchange's trading floor, so long as the floor clerk has successfully completed either the General Securities Registered Representative Examination ("Series 7 Examination") or the Series 7B Examination.[6] The Exchange proposes to amend Interpretation .01(d) of CHX Article VI, Rule 3 by requiring Exchange floor clerks who may, among other functions, accept orders from professional customers for execution on the Exchange's trading floor, to successfully complete the Exchange's Floor Membership Examination[7] and either the Series 7 Examination or the Series 7A Examination.[8] The proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change defines the term "professional customer" to include a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; a charitable or nonprofit education institution regulated under the laws of the United States, or any state; a pension or profit sharing plan subject to ERISA, or of any agency of the United States or of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible assets of at least sixteen million dollars.

[4] Securities Exchange Act Release No. 42891 (June 1, 2000), 65 FR 36857.

[5] Letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (June 30, 2000) ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to make a grammatical correction to the language of the proposed rule. Amendment No. 1 also adds Section 6(c)(3)(B) of the Act to the Statutory basis of the proposed rule change. 15 U.S.C. 78f(c)(3)(B). Finally, Amendment No. 1 clarifies Item 8 of Form 19b–4 to reflect that the proposed rule change is based on a recent New York Stock Exchange, Inc. ("NYSE") proposal. *See* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (order approving the elimination of the Series 7B Qualification Examination ("Series 7B Examination") and establishing the Series 7A Qualification Examination ("Series 7A Examination") as the appropriate qualification examination for NYSE floor clerks). This amendment is technical and therefore is not required to be published for notice and comment.

[6] The NYSE implemented the Series 7B Examination in 1994 to serve as an alternative qualification examination to the Series 7 Examination. *See* Securities Exchange Act Release No. 34334 (July 8, 1994), 59 FR 35064 (July 14, 1994).

[7] The Exchange adopted the Floor Membership Exam in 1998. *See* Securities Exchange Act Release No. 37690 (September 17, 1998), 61 FR 49803 (September 23, 1996).

[8] The NYSE implemented the Series 7A Examination in 1993 to serve as an alternative qualification exam to the Series 7 Examination. *See* Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993). The Series 7A Examination and Series 7B Examination are identical except for an additional 25 questions on the Series 7B Examination that address floor rules and policies.

would eliminate the Series 7B Examination as an alternate requirement for floor clerks. The CHX's Floor Membership Examination addresses the rules and practices of other Exchange's trading floor but has broader coverage than the Series 7B Examination.[9]

III. Discussion

The Commission finds that the Exchange's proposal is consistent with the requirements of Section 6 of the Act,[10] and particularly Sections 6(c)(3)(A) and (B)[11] thereunder. Section 6(c)(3)(A) of the Act[12] provides that a national securities exchange may deny membership to, or condition the membership of, registered broker-dealer if any natural persons associated with such broker or dealer do not meet such standards of training, experience and competence as are prescribed by the rules of the exchange.[13]

Under Section 6(c)(3)(B) of the Act,[14] a national securities exchange may bar a natural person from becoming associated with a member if the person does not meet the exchange's standards of training, experience, or competence, or if the person has engaged and there is a reasonable likelihood the person will engage again in acts or practices inconsistent with just and equitable principles of trade. Under these statutory provisions, the various national securities exchange, including the CHX, are empowered to implement rules establishing the prerequisites to qualify and approve persons associated with members to engage in securities activities.

The Commission finds that the proposed rule change is consistent with the Act because the proposed rule change will help the Exchange to ensure that floor clerks satisfy prescribed standards of training, experience, and competence. Although the proposed rule change would eliminate the Series 7B Examination for floor clerks who may accept orders from professional customers for execution on the Exchange's trading floor, the subject matter included in the Series 7B Examination is covered, in part, by the recently implemented CHX Floor Membership Examination. The Commission believes that successful completion of the Floor Membership Examination and Series 7A Examination would help to ensure that floor clerks who may accept orders from professional customers for execution on the Exchange's trading floor are sufficiently familiar with the rules and practices of the Exchange's trading floor.

Moreover, the Commission previously approved a virtually identical proposal by the NYSE.[15] The NYSE recently eliminated the Series 7B Examination and now requires its floor clerks to pass a new Trading Assistant Examination ("Series 25 Examination")[16] and either the Series 7 Examination or the Series 7A Examination before becoming eligible to accept professional orders.[17] Like the CHX's Floor Membership Examination, the NYSE's new Trading Assistant Examination contains questions relating to its floor rules and policies and, according to the NYSE, has broader coverage than the questions formerly included in the Series 7B Examination.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change, SR–CHX–00–07, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19230 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–M

[9] Telephone conversation between Michael Cardin, Market Regulation Department, CHX and Susie Cho, Attorney, Division, Commission, on April 5, 2000.

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(c)(3)(A) and (B).

[12] 15 U.S.C. 78d(c)(3)(A).

[13] Under Section 15(b)(8) of the Act, all registered brokers or dealers must be members of an SRO—either a securities association or a national securities exchange. 15 U.S.C. 78o(b)(8).

[14] 15 U.S.C. 78f(c)(3)(B).

[15] *See* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999).

[16] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (order approving the Series 25 Examination).

[17] *See* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (order approving the elimination of the Series 7B Examination and establishing the Series 7A Examination as the appropriate qualification examination for NYSE floor clerks).

[18] *Id.*

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43084; File No. SR–Phlx–00–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Amending Its Rules To Mandate Decimal Pricing Testing

July 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Phlx. The Phlx has designated this proposal as one concerned solely with the administration of the Phlx under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 650 (currently titled "Mandatory Participation in Year 2000 Testing")[4] to require members and member organizations to participate in computer systems tests designed to prepare for the securities industry's conversion to decimal pricing. The Exchange proposes to change the title of Phlx 650 to "Mandatory Participation in Decimalization Testing."

The text of the proposed rule change is available upon request from the Phlx or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] Testing in connection with the Year 2000 date change has been completed and the current requirements of the rule are no longer necessary. Telephone conversion between Jurij Trypupenko, Counsel, Phlx, and Matthew Boesch, Division of Market Regulation, Commission, on July 14, 2000.

any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, in cooperation with the Commission, other self-regulatory organizations, and the Securities Industry Association, has been working toward a successful transition to decimal pricing. Advance testing by and among the various securities industry constituencies its necessary to avoid widespread problems during the transition. The Exchange has been conducting point-to-point testing of computers and computer-related systems of "upstairs" member firms that have computer interfaces with the Exchange[5] to ascertain the compatibility of such systems with the planned conversion to decimal pricing.

The purpose of the proposed rule change is to bring the efforts of the Phlx regarding decimal pricing testing into conformity with industry-wide decimalization testing efforts and to make mandatory the point-to-point testing of computers and computer-related systems which interface with the Exchange's systems. The rule, as amended, would require members and member firms that undergo decimalization testing to provide reports of such tests to the Exchange. According to the rule, the Exchange may indicate the manner and frequency of the testing and reporting requirements.

A member or member organization that violates the rule may be subject to disciplinary action pursuant to the Exchange's rules.[6]

The rule will expire automatically once decimal pricing has been fully implemented industry-wide.

2. Statutory Basis

The Phlx believes that rule change, whose purpose is to ensure the participation of Exchange members in important testing prior to the securities industry's conversion to decimal pricing, is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(3) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–55 and should be submitted by August 21, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19231 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–M

[5] Member firms that have computer equipment on the trading floors of the Exchange generally are exempted from point-to-point testing because the Exchange's internal testing encompasses all on-floor equipment and interfaces.

[6] Rule 650 provides that a member or member firm can be exempted from the requirements of the rule if the member or member firm (1) cannot be accommodated in the testing schedule, (2) does not employ computers in its business, (3) has an electronic interface through a service provider that conducts successful testing with the Exchange; or for other reasons determined by the Exchange.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3347]

Bureau of Intelligence and Research; Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union Notice of Committee Renewal

I. *Renewal of Advisory Committee.* The Department of State has renewed the Charter of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. This advisory committee makes recommendations to the Secretary of State on funding for applications submitted for the Research and Training Program on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII). These applications are submitted in response to an annual, open competition among U.S. national organizations with interest and expertise administering research and training programs in the Russian, Eurasian, and East European fields. The program seeks to build and sustain U.S. expertise on these regions through support for advanced graduate training, language training, and postdoctoral research.

The committee includes representatives of the Secretaries of Defense and Education, the Librarian of Congress, and the Presidents of the American Association for the Advancement of Slavic Studies and the Association of American Universities. The Assistant Secretary for Intelligence and Research chairs the advisory committee for the Secretary of State. The committee meets at least annually to recommend grant policies and recipients.

For further information, please call: Susan Nelson, INR/RES. U.S. Department of State, (202) 736–4155.

Dated: July 20, 2000.

W. Kendall Myers,

Executive Director, Advisory Committee for the Study of Eastern, Europe and the Independent States of the Former Soviet Union, U.S. Department of State.

[FR Doc. 00–19273 Filed 7–28–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 3375]

Registration for the Diversity Immigrant (DV–2002) Visa Program

ACTION: Notice of registration for the eighth year of the Diversity Immigrant Visa Program.

This public notice provides information on the procedures for obtaining an opportunity to apply for one of the 55,000 (maximum) immigrant visas to be made available in the Diversity Immigrant Visa (DV) category during Fiscal Year 2002. This notice is issued pursuant to 22 CFR 42.33(b)(2) which implements Sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)).

What Are the Entry Procedures for Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 2002?

Entries for the DV–2002 mail-in period must be *received* at the Kentucky Consular Center mailing address between noon (Eastern Time) on Monday, October 2, 2000 and noon (Eastern Time) on Wednesday, November 1, 2000. Entries received before or after these dates will be disqualified regardless of when they are postmarked. Entries sent to any address other than the Kentucky Consular Center address will also be disqualified.

How Are Visas Apportioned?

Visas are apportioned among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. No one country can receive more than 7 percent of the diversity visas issued in any one year. For DV–2002, natives of the following are not eligible to apply:

Canada
China (mainland-born and Macau)
Colombia
Dominican Republic
El Salvador
Haiti
India
Jamaica
Mexico
Pakistan
Philippines
South Korea
United Kingdom (except Northern Ireland) and its dependent territories
Vietnam

What Are the Requirements for Applying for a Diversity Immigrant Visa for FY 2002?

Nativity

To enter, an applicant must be able to claim nativity in an eligible country, and must meet either the education or training requirement of the DV program. Nativity in most cases is determined by the applicant's place of birth. However, if a person was born in an ineligible country but his or her spouse was born in an eligible country, such person can claim the spouse's country of birth rather than his or her own provided both the applicant and spouse are issued visas and enter the U.S. simultaneously. Also, if a person was born in an ineligible country, but neither of his or her parents was born there or resided there at the time of the birth, such person may be able to claim nativity in one of the parents' country of birth.

Education or Training

To enter, an applicant must have either a high school education or its equivalent, defined in the U.S. as successful completion of a 12-year course of elementary and secondary education; or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. U.S. Department of Labor definitions will apply. If an applicant does not meet these requirements, he or she should not submit an entry to the DV program.

What Are the Procedures for Submitting an Entry?

Only one entry may be submitted by or for each applicant during the registration period. The applicant must personally sign the entry with his or her usual and customary signature, preferably in his or her native alphabet. The entry will be disqualified if the applicant:

- Submits more than one entry;
- Does not personally sign the entry with his or her usual and customary signature;
- Does not attach a recent photograph with his or her name printed on the back.

Completing the Entry

There is no specific format for the entry. Simply use a plain sheet of paper and type or clearly print in the English alphabet (preferably in the following order): (Failure to provide all of this information will disqualify the applicant.)

1. Full Name, with the last (surname/family) name underlined

Examples: Public, Sara Jane (or) Lopez, Juan Antonio

2. Date and Place of Birth

Date: Day, Month, Year EXAMPLE: 15 November 1961

Place: City/Town, District/County/Province, Country EXAMPLE: Munich, Bavaria, Germany

The name of the country should be that which is currently in use for the place where the applicant was born (Slovenia, rather than Yugoslavia; Kazakhstan rather than Soviet Union, for example).

3. The Applicant's Native Country, if Different from Country of Birth

If the applicant is claiming nativity in a country other than his or her place of birth, this must be clearly indicated on the entry. This information must match with what is put on the upper left corner of the entry envelope. (See "MAILING THE ENTRY" below.) If an applicant is claiming nativity through spouse or parent, this must be indicated on the entry. (See "Requirements" section for more information on this item.)

4. Name, Date and Place of Birth of the Applicant's Spouse and Children (If Any) (Failure to provide all of this information will disqualify the applicant.)

5. Full Mailing Address

This must be clear and complete, as any communications will be sent there. A telephone number is optional, but useful.

6. Photograph. Attach a recent, preferably less than 6 months old, photograph of the applicant, 1.5 inches (37 mm) square in size, with the applicant's name *printed* on the back. The photograph (not a photocopy) should be attached to the entry with clear tape—do not use staples or paperclips, which can jam the mail processing equipment.

7. Signature. The applicant must personally sign the entry, using his or her usual and customary signature.

Failure to personally sign the entry will disqualify the applicant.

Mailing the Entry

The mailing address for all entries is the same, except for the Zip (Postal) Code. DV–2002 Program, Kentucky Consular Center, Lexington, KY (Zip Code)—(see below), U.S.A.

Submit the entry by regular or air mail to the above address using the ZIP CODE for the region of the applicant's country of nativity. Entries sent by express or priority mail, fax, hand, messenger, or any means requiring receipts or special handling will not be processed.

The envelope must be between 6 and 10 inches (15 to 25 cm) long and 3½ and 4½ inches (9 to 11 cm) wide. Postcards are not acceptable, nor are envelopes inside express or oversized mail packets. In the upper left hand corner of the envelope the applicant must write his or her country of nativity, followed by the applicant's name and full return address. The applicant must provide both the country of nativity and the country of the address, even if both are the same. Failure to provide this information will disqualify the entry. The mailing address for all entries is the same except for the Zip (Postal) Code.

The Zip (Postal) Codes are:

AFRICA—41901
ASIA—41902
EUROPE—41903
SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN—41904
OCEANIA—41905
NORTH AMERICA—41906

How are the regions divided?

AFRICA:

ZIP CODE: 41901 (includes all countries on the African continent and adjacent islands):

ALGERIA
ANGOLA
BENIN
BOTSWANA
BURKINA FASO
BURUNDI
CAMEROON
CAPE VERDE
CENTRAL AFRICAN REPUBLIC
CHAD
COMOROS
CONGO
CONGO, DEMOCRATIC REPUBLIC OF THE
COTE D'IVOIRE (IVORY COAST)
DJIBOUTI
EGYPT
EQUATORIAL GUINEA
ERITREA
ETHIOPIA
GABON
GAMBIA, THE
GHANA
GUINEA
GUINEA-BISSAU
KENYA
LESOTHO
LIBERIA
LIBYA
MADAGASCAR
MALAWI
MALI
MAURITANIA
MAURITIUS
MOROCCO
MOZAMBIQUE
NAMIBIA
NIGER
NIGERIA
RWANDA
SAO TOME & PRINCIPE
SENEGAL
SEYCHELLES
SIERRA LEONE
SOMALIA
SOUTH AFRICA
SUDAN
SWAZILAND
TANZANIA
TOGO
TUNISIA
UGANDA
ZAMBIA
ZIMBABWE

ASIA:

ZIP CODE: 41902 (extends from Israel to the northern Pacific islands, and includes Indonesia):

AFGHANISTAN
BAHRAIN
BANGLADESH
BHUTAN
BRUNEI
BURMA
CHINA-TAIWAN BORN ONLY
CAMBODIA
HONG KONG SPECIAL ADMINISTRATIVE REGION
INDONESIA
IRAN
IRAQ
ISRAEL
JAPAN
JORDAN
KUWAIT
LAOS
LEBANON
MALAYSIA
MALDIVES
MONGOLIA
NEPAL
NORTH KOREA
OMAN
QATAR
SAUDI ARABIA
SINGAPORE
SRI LANKA
SYRIA
THAILAND
UNITED ARAB EMIRATES
YEMEN

NB: In Asia CHINA-(mainland born, including Macau), India, Pakistan, Philippines, South Korea, and Vietnam do not qualify for this year's diversity program. [Hong Kong S.A.R. and Taiwan do qualify.]

EUROPE:

ZIP CODE: 41903 (Extends from Greenland to Russia, and includes all countries of the former USSR)

ALBANIA
ANDORRA
ARMENIA
AUSTRIA
AZERBAIJAN
BELARUS
BELGIUM
BOSNIA & HERZEGOVINA
BULGARIA
CROATIA
CYPRUS
CZECH REPUBLIC
DENMARK (including components and dependent areas overseas)
ESTONIA
FINLAND
FRANCE (including components and dependent areas overseas)
GEORGIA
GERMANY
GREECE
HUNGARY
ICELAND
IRELAND
ITALY
KAZAKHSTAN
KYRGYZSTAN
LATVIA
LIECHTENSTEIN
LITHUANIA
LUXEMBOURG
MACEDONIA, THE FORMER YUGOSLAV REPUBLIC OF
MALTA
MOLDOVA
MONACO
MONTENEGRO
NETHERLANDS (including components and dependent areas overseas)
NORTHERN IRELAND
NORWAY
POLAND
PORTUGAL
ROMANIA
RUSSIA
SAN MARINO
SERBIA
SLOVAKIA
SLOVENIA
SPAIN
SWEDEN
SWITZERLAND
TAJIKISTAN
TURKEY
TURKMENISTAN
UKRAINE

UZBEKISTAN
VATICAN CITY

NB: In Europe Great Britain, including the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands do not qualify for this year's Diversity Program. Note that for purposes of the Diversity Program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN:

ZIP CODE: 41904 (extends from Central America (Guatemala) and the Caribbean nations to Chile.)

ANTIGUA & BARBUDA
ARGENTINA
BARBADOS
BELIZE
BOLIVIA
BRAZIL
CHILE
COSTA RICA
CUBA
DOMINICA
ECUADOR
GRENADA
GUATEMALA
GUYANA
HONDURAS
NICARAGUA
PANAMA
PARAGUAY
PERU
SAINT KITTS & NEVIS
SAINT LUCIA
SAINT VINCENT & THE GRENADINES
SURINAME
TRINIDAD AND TOBAGO
URUGUAY
VENEZUELA

NB: In South America Colombia, Dominican Republic, El Salvador, Haiti, Jamaica, and Mexico *do not qualify* for this year's Diversity Program.

OCEANIA:

ZIP CODE: 41905 (includes Australia, New Zealand, Papua New Guinea and all countries and islands of the South Pacific):

AUSTRALIA (including components and dependent areas overseas)
FIJI
KIRIBATI
MARSHALL ISLANDS
MICRONESIA, FEDERATED STATES OF
NAURU
NEW ZEALAND (including components and dependent areas overseas)
PALAU
PAPUA NEW GUINEA
SOLOMON ISLANDS
TONGA
TUVALU
VANUATU
WESTERN SAMOA

NORTH AMERICA:

ZIP CODE: 41906 (includes the Bahamas):

BAHAMAS, THE

NB: In North America, Canada *does not qualify* for this year's Diversity Program.

IMPORTANT NOTICE: Applicants must meet all eligibility requirements under the U.S. law in order to be issued visas.

Processing of applications and issuance of diversity visas to successful applicants and their eligible family members MUST occur by September 30, 2002. Under no circumstances can Diversity Visas be issued or adjustments approved after this date. Family members may not obtain diversity visas to follow to join the applicant in the U.S. after this date.

There is no initial fee, other than postage, required to enter the DV–2002 program. The use of an outside intermediary or assistance to prepare a DV–2002 entry is entirely at the applicant's discretion. Qualified entries received directly from applicants or through intermediaries have equal chances of being selected by computer. There is no advantage to mailing early, or mailing from any particular place. Every application received during the mail-in period will have an equal random chance of being selected within its region. However, more than one application per person will disqualify the person from registration.

How are winners selected?

Applicants will be selected at random by computer from among all qualified entries.

Notifying Winners

Only successful entrants will be notified. They will be notified by mail between May through July of 2001 at the address listed on their entry. Winners will also be sent instructions on how to apply for an immigrant visa, including information on the fee for immigrant visas and a separate visa lottery surcharge. Successful entrants must complete the immigrant visa application process and meet all eligibility requirements under U.S. law to be issued a visa. Persons not selected will NOT be notified. U.S. embassies and consulates will not be able to provide a list of successful applicants. Spouses and unmarried children of successful applicants under 21 may also apply for visas to accompany or follow to join the principal applicant. DV 2002 visas will be issued between October 1, 2001 and September 30, 2002.

Being selected as a winner in the DV Lottery does not automatically guarantee being issued a visa even if the applicant is qualified, because the number of entries selected and registered is greater than the number of immigrant visas available. Those selected will, therefore, need to complete and file their immigrant visa applications quickly. Once all the diversity visas have been issued or on September 30, 2002, whichever is sooner, the DV Program for Fiscal Year 2002 will end.

Obtaining Instructions on Entering the DV Lottery

Interested persons may call (202) 331–7199, which describes the various means to obtain further details on entering the DV–2002 program. Applicants overseas may contact the nearest U.S. embassy or consulate for instructions on the DV lottery. DV information is also available in the *Visa Bulletin* on the Internet at *http://travel.state.gov* or via the Consular Affairs automated fax at (202) 647–3000 (code 1550). Calls to the automated fax service must be made from a fax machine using the receiver or voice option of the caller's fax equipment.

Dated: July 26, 2000.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 00–19363 Filed 7–28–00; 8:45 am]
BILLING CODE 4710–06–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 14, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–2000–7625.
Date Filed: July 10, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0083 dated 27 June 2000
Within Middle East Resolutions r1–r16
Minutes—PTC2 ME 0082 dated 23 June 2000
Tables—PTC2 ME Fares 0029 dated 30 June 2000
Intended effective date: 1 January 2001

Docket Number: OST–2000–7626.
Date Filed: July 10, 2000.
Parties: Members of the International Air Transport Association.
Subject:
CTC COMP 0289 dated 2 June 2000
Worldwide Area Resolutions, Standard Revalidating
Resolutions 002
Intended effective date: 1 October 2000

Docket Number: OST–2000–7632.
Date Filed: July 11, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 USA–EUR 0098 dated 20 June 2000 and
PTC12 USA–EUR 0104 dated 14 July 2000
Mail Vote 080—TC12 North Atlantic USA-Austria, Belgium, Germany, Italy, Netherlands,
Scandinavia, Switzerland
Minutes—PTC12 USA–EUR 0101 dated 23 June 2000
Tables—PTC12 USA–EUR Fares 0046 dated 14 July 2000
Intended effective date: 1 November 2000

Docket Number: OST–2000–7647.
Date Filed: July 13, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/408 dated June 30, 2000
Expedited Reso 860 r–1
Intended effective date: August 1, 2000

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 00–19237 Filed 7–28–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 21, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7668.
Date Filed: July 19, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 9, 2000.
Description: Application of Boston-Maine Airways Corp., d/b/a Pan Am Services ("BMAC"), pursuant to 49 U.S.C. Section 41102 and Subpart B, applies for a Certificate of Public Convenience and Necessity authorizing BMAC to engage in interstate scheduled service operations.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 00–19238 Filed 7–28–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7221]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 2115–0578, 2115–0592, 2115–0625, 2115–0563, 2115–0542, 2115–0135, 2115–0624, and 2115–0106

AGENCY: Coast Guard, DOT.
ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded eight Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 30, 2000.

ADDRESSES: Please send comments to both: (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street S.W., Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street N.W., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2000–7221 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street S.W., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [65 FR 20506 (April 17, 2000)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2000–7221. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Small Passenger Vessels—46 CFR subchapters K and T.
OMB Control Number: 2115–0578.
Type of Request: Extension of currently approved collection.
Affected Public: Owners and operators of small passenger vessels.
Form(s): CG–841, CG–854, CG–948, CG–949, CG–3752, CG–5256.
Abstract: The reporting and recordkeeping requirements are necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects

small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Annual Estimated Burden Hours: The estimated burden is 436,173 hours a year.

2. *Title:* Offshore Supply Vessels—46 CFR Subchapter L.

OMB Control Number: 2115–0592.

Type of Request: Revision of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: N/A.

Abstract: The requirements for posting and marking aboard OSVs are necessary to instruct those aboard of what to do in an emergency. The recordkeeping requirements verify compliance with regulations without CG presence to witness routine matters.

Annual Estimated Burden Hours: The estimated burden is 5,931 hours a year.

Frequency: On occasion.

3. *Title:* Customer Satisfaction Survey.

OMB Control Number: 2115–0625.

Type of Request: Extension of currently approved collection.

Affected Public: Recreational boaters, commercial mariners, industry groups, State and local governments.

Form(s): N/A.

Abstract: Putting people first means ensuring that the Federal Government provides the highest-quality service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public seek to meet established standards of customer service and—

- Identify the customers who are, or should be, served by the agency; and
- Survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

4. Title: Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

OMB Control Number: 2115–0563.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of tank barges.

Form(s): N/A.

Abstract: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Once every ten years it subjects such a tank, on an unmanned barge, 30 years old or older to nondestructive testing.

Annual Estimated Burden Hours: The estimated burden is 84.5 hours a year.

5. Title: Station Bills for Manned Outer Continental Shelf Facilities.

OMB Control Number: 2115–0542.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of facilities on the Outer Continental Shelf (OCS).

Form(s): N/A.

Abstract: Station Bills aboard manned facilities on the OCS are necessary to promote safety of life on these facilities. They are an efficient means for disseminating information to all persons on these facilities regarding their duties, duty stations, and signals used during emergencies and drills.

Annual Estimated Burden Hours: The estimated burden is 526 hours a year.

6. Title: Display of Fire Control Plans for Vessels.

OMB Control Number: 2115–0135.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and Operators of vessels.

Form(s): N/A.

Abstract: This information collection is for the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aids firefighters and damage-control efforts in response to emergencies.

Annual Estimated Burden Hours: The estimated burden is 798 hours a year.

7. Title: Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 Amendments.

OMB Control Number: 2115–0624.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels, training institutions, and mariners.

Form(s): N/A.

Abstract: This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

Annual Estimated Burden Hours: The estimated burden is 18,331 hours a year.

8. Title: Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

OMB Control Number: 2115–0106.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels.

Form(s): N/A.

Abstract: The Coast Guard reviews plans and records to determine whether foreign tank vessels comply with applicable standards of design and construction.

Annual Estimated Burden Hours: The estimated burden is 65 hours a year.

Dated: July 20, 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00–19218 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7689]

Acceptance by the Coast Guard of ASME's 1998 Boiler and Pressure-Vessel Code With 1999 Addenda

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy.

SUMMARY: The Coast Guard announces its acceptance of the American Society of Mechanical Engineers' (ASME's) 1998 Boiler and Pressure-Vessel Code with 1999 Addenda. Although the revised allowable stresses employ a lower design margin for the tensile strength of the material than ASME's 1989 Boiler and Pressure-Vessel Code with 1989 Addenda, the lower margin is acceptable because of better quality control in materials production. This acceptance should reduce costs to industry with no loss of safety to the public.

DATES: Comments to the docket for this notice must reach the Docket Management Facility on or before September 29, 2000.

ADDRESSES: You may submit your written comments and related material to the docket [USCG 2000–7689] by only one of the following methods:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By electronic means through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Wayne Lundy or LT Ryan D. Manning, Systems Engineering Division (G–MSE–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–2206, fax 202–267–4816. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG 2000–7689], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**, but please submit your comments and material by only one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background and Purpose

46 CFR part 52 incorporates by reference Section I of ASME's 1989 Boiler and Pressure-Vessel Code with 1989 Addenda. Likewise, 46 CFR part 54 incorporates by reference Division 1 of Section VIII of the same Code and Addenda. ASME publishes the Code every three years, and an Addendum every year, to reflect new industry standards, technological advances, and product improvements. If any edition of this Code published after 1989 or any Addendum published after then contains standards that you prefer to use instead of those already incorporated by reference, then you may apply for a waiver from Commandant (G–MSE) as referenced in 46 CFR 50.20–30. The Coast Guard proposes to update these incorporations by reference to let manufacturers use the 1998 Code with 1999 Addenda for construction of new boilers and pressure vessels.

The 1998 Code with 1999 Addenda reduces the design margins allowable for construction of new boilers and pressure vessels. The allowable stresses decrease from a margin of 4:1 to one of 3.5:1. Quality control in materials production has improved enough to make this lower margin acceptable. The lower margin in turn necessitates a decrease in requirements for the hydrostatic and pneumatic testing of pressure vessels to 1.3 times the maximum allowable working pressure (MAWP) and 1.1 times the MAWP, respectively. The requirement for the hydrostatic testing of power boilers, nevertheless, remains at 1.5 times the MAWP; however, at no time during the testing may any part of the boiler be subjected to a general primary membrane stress greater than 90 percent of its yield strength (0.2 percent offset) at the testing temperature.

We are working on a separate rule to update 46 CFR parts 52 and 54, and to incorporate by reference ASME's 1998 Boiler and Pressure-Vessel Code with 1999 Addenda. Until we do, though, the 1989 Code with 1989 Addenda remains the edition incorporated in both parts. If you choose to use the 1998 Code, you must comply with it and its 1999 Addenda in their entirety. You must meet all of the requirements and specifications set out in 46 CFR Tables 52.01–1(A) and 54.01–1(A), even if you use the 1998 Code. But, in either case, the design margins for independent type-C tank vessels and process pressure vessels described in 46 CFR part 154.450 must continue to satisfy the 1989 Code with 1989 Addenda.

Dated: July 24, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–19281 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7670]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial fishing industry safety. The meetings are open to the public.

DATES: CFIVAC will meet on Tuesday, August 22, 2000, from 7:30 a.m. to 5:00 p.m and Wednesday on August 23, 2000 from 7:30 a.m. to 5:00 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before August 14, 2000. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach Coast Guard on or before August 14, 2000.

ADDRESSES: The CFIVAC meeting will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington DC. Written material and requests to make oral presentations should be sent to Lieutenant Jennifer Williams, Commandant (G–MOC–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain Jon Sarubbi, Executive Director of CFIVAC, or Lieutenant Jennifer Williams, Assistant to the Executive Director, telephone (202) 267–0507.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings on August 22, 2000

Action Plan summary and Regional Listening Session Results—Summarize elements of the Commercial Fishing Vessel Safety Action Plan (CFVSAP) that were presented during seven Regional Listening Sessions held around the nation and present feedback submitted by the public on the CFVSAP consisting of verbal and written comments to the Coast Guard, as well as survey results.

Recommendations for new commercial fishing vessel safety initiatives—Present Coast Guard recommendations for certain new commercial fishing vessel safety initiatives developed after the consideration of Regional Listening Session results and existing commercial fishing industry data was analyzed. Receive input from Advisory Committee on proposed recommendations and new initiatives.

Agenda of Meetings of CFIVAC on August 23, 2000

(1) *Subcommittee on Data and Analysis*—Subcommittee members to identify fishing vessel industry numerator and denominator data, recommend revision to existing data collection, and recommend changes to CG Form 2692.

(2) *Subcommittee on Regionalization*—Subcommittee

members to identify fishing vessel industry safety issues that should be addressed with a regional/local focus.

(3) *Subcommittee on Training requirements*—Subcommittee members to identify what training standards should be applied to the fishing vessel industry.

(4) *Subcommittee on Examination requirements*—Subcommittee members to recommend details and or requirements for a mandatory dockside safety examination program for the commercial fishing vessel industry.

Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings, please notify the Executive Director no later than August 14, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than August 8, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the to the Executive Director no later than August 7, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: July 24, 2000.

Joseph J. Angelo,

Assistant Commandant for Marine Safety and Environmental Protection, Acting.

[FR Doc. 00–19222 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Blacklands Railroad Company

[Waiver Petition Docket No. FRA–2000–7255]

The Blacklands Railroad Company seeks a permanent waiver of compliance for two locomotives from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotives, MAGMA #2 and MAGMA #3, are Alco RS–3 type locomotives built in 1952. They state that both locomotives are equipped with auto type safety glazing. The locomotives are used between Greenville, Commerce, and Sulphur Springs, Texas, in switching service at speeds that do not exceed 15 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7255) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19236 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Charlotte Southern Railroad Company

[Waiver Petition Docket Number FRA–2000–6878]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan, has petitioned on behalf of Charlotte Southern Railroad Company for a permanent waiver of compliance for one locomotive from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotive is used in switching service over 3.22 miles at a speed not to exceed 10 mph and is equipped with auto type safety glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6878) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for

inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19235 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Detroit Connecting Railroad Company

[Waiver Petition Docket Number FRA–2000–6877]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan, has petitioned on behalf of Detroit Connecting Railroad Company for a permanent waiver of compliance for one locomotive from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotive is used in switching service over 2.29 miles at a speed not to exceed 10 mph and is equipped with auto type safety glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6877) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19234 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Lapeer Industrial Railroad Company

[Waiver Petition Docket Number FRA–2000–6876]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan, has petitioned on behalf of Lapeer Industrial Railroad Company for a permanent waiver of compliance for two locomotives from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotives are used in switching service over 2.22 miles at a speed not to exceed 10 mph and are equipped with auto type safety glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6876) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19233 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Advance Occupant Protection Technology In Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of Discretionary Cooperative Agreement to Advance Occupant Protection Technology in Passenger Vehicles.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement to advance occupant protection technology in passenger vehicles. NHTSA solicits applications from for-profit organizations (small or large), non-profit organizations and educational institutions. NHTSA's objective is to develop and evaluate new technologies and methodologies which have the potential for improving the crashworthiness of passenger vehicles and protecting their occupants. NHTSA seeks to establish a collaborative research effort between NHTSA and a qualified research organization to meet the above objective.

DATES: Applications must be received at the office designated below on or before September 14, 2000.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN. : Joseph Comella, 400 Seventh Street SW., Room 5301, Washington DC 20590. All applications submitted must include a reference to NHTSA Program Number NRD–01–0–07301.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Joseph Comella, Office of Contracts and Procurement, at 202–366–9568 (E-mail jcomella@nhtsa.dot.gov). Programmatic questions should be directed to Ms. Lori Summers, Crashworthiness Research, NHTSA, Room 6226 (NRD–11), 400 Seventh Street S.W. Washington, DC 20590, (202) 366–6734 (E-mail: lsummers@nhtsa.dot.gov). Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Each year in the United States, more than 40,000 deaths and millions of injuries occur as the direct result of motor vehicle traffic crashes. As part of its mission to alleviate this toll, the National Highway Traffic Safety Administration vigorously conducts an extensive research program to develop and evaluate new technologies and methodologies which have the potential for improving the crashworthiness of passenger vehicles and protecting their occupants. NHTSA is conducting crashworthiness research in the area of developing new or enhanced injury countermeasures.

Objective and Purpose

The proposed cooperative research agreement program seeks to establish collaborative research efforts between NHTSA and a qualified research organization to study advanced methodologies for occupant protection in passenger vehicle crashes. The collaboration will include problem definition, sharing of scientific and technical data, joint research and the development of new methodologies and technologies for occupant crash protection. Research areas could include, but are not limited to, the following:

—Advanced frontal occupant restraints.
—Advanced air bag inflator and/or air bag inflation methodologies.
—Adaptive air bag systems to tailor bag deployment over the expected range of crash severities, occupant sizes, occupant ages, occupant positioning, etc.
—Advanced occupant seating systems.
—Ejection mitigation technologies.
—Intrusion resistence countermeasures.
—Coupling of air bag inflation with anticipatory crash sensing technologies.
—Improved vehicle crash sensing methodologies.

The above list of potential programs constitutes only a sampling of the potential research areas. Applicants are encouraged to select from these research areas and other areas which are believed to provide the potential for practical improvement over current occupant crash protection and are most amenable to their special skills and experience.

The program shall include a maximum of three phases including the following: (1) Preliminary studies identifying the system performance improvement desired, an estimate of additional production costs related to the improvement, the benefits to be appreciated from such improvement, and the approximate magnitude of national injuries and fatalities now occurring due to the absence of the improvement. (2) Prototype development and establishment of reliable production costs. (3) Prototype demonstration. The duration of each phase will vary according to current state-of-the-art, and in some instances, phases may overlap.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide one professional staff person to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the cooperative agreement participant organization and NHTSA.
2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.
3. Provide liaison with other government agencies and organizations, as appropriate.
4. Stimulate the exchange of ideas, problems, and solutions among cooperative agreement recipients who agree to such sharing, and if appropriate, NHTSA contractors and other interested parties; and
5. Share nonproprietary information developed at Government expense with the scientific and industrial community.

Availability of Funds and Period of Support

The Cooperative Agreements may be awarded for a total period of support of up to four years. It is currently intended that no single award as a result of this notice shall exceed $150,000 per year.

The agency anticipates awarding multiple cooperative agreements for a base period of 12 months. NHTSA may choose to extend the period of performance under this agreement for three additional 12 month periods subject to availability of funds. If NHTSA elects to extend the period of performance, it will notify the recipient within 50 days prior to the expiration of this agreement. Funds allocated for these cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the project. Applicants should demonstrate a commitment of financial or in-kind resources to support the proposed project.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a for-profit organization (small or large), a non-profit organization, or an educational institution. Consortiums of organizations from any of the above categories may apply. Regardless of the type of organization applying for Federal assistance, no fee or profit will be allowed.

Application Procedure

Each applicant must submit one original and two copies of its application package to: Office of Contracts and Procurement (NAD–30), NHTSA, 400 Seventh Street, SW., Room 5301, Washington, D.C. 20590. An additional three copies will facilitate the review process, but are not required. Applications are due no later than 45 days after the appearance of the announcement in the Federal Register. Only complete application packages received by the due date will be considered. The applicant shall specifically identify any information in the application which is to be treated as proprietary, in accordance with the procedures of 49 CFR 512 Confidential Business Information. Applications must include a reference to NHTSA program number NRD–01–0–07301. The proposal shall not exceed 35 pages, not including budget proposal, letters of endorsement or support, and resumes.

Application Contents

The application package must be submitted with a Standard Form 424, Application for Federal Assistance,

including 424A, Budget Information—Nonconstruction Program, and 424B Assurances—Nonconstruction Programs, with the required information filled in and the certified assurances included. The OMB Standard Forms SF–424, SF–424A, and SF424B may be downloaded directly from the OMB Internet web site, http://www.whitehouse.gov/OMB/grants/index.html. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor categories, level of effort and rate; direct material, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts with similar cost detail, if known; and overhead costs) as well as any costs which the applicant proposes to contribute in support of this effort. The budget should detail cost for each year of the proposed project. Also, the application shall include a program narrative statement which contains the following:

1. A description of the research to be pursued which addresses:

a. The objectives, goals, and anticipated outcomes of the proposed research effort;

b. The method or methods that will be used;

c. The source of crash and injury statistics to be used;

d. The vehicle occupant protection population and crash modes to be addressed;

e. The project's estimated benefits, *e.g.*, amount of lives saved or injuries reduced, potential for timely development, reduction in vehicle crashes, etc.

2. An organizational plan detailing a plan of action for accomplishing the proposed work. The plan should include a time line of projected activities and milestones. The proposed program director and other key personnel should be identified for participation in the proposed research effort, including a description of their qualifications and their organizational responsibilities.

3. A description of the test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research and development effort. Also, where human subjects are proposed, a description of the policy and plan for protection of the rights and welfare of human subjects to meet the requirements of NHTSA Order 700 series.

4. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

5. A detailed schedule and budget for the proposed research effort, including any cost-sharing contribution proposed by the applicant as well as any additional financial commitments made by other sources.

6. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed program.

Application Review Process and Evaluation Criteria

Initially, all applications will be screened to ensure that they meet the eligibility requirements and to ensure that applications contain all information required by the Application Contents of this Notice. Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. Factors one and two are most important, then the factors are listed in descending order. The applications will be evaluated using the following criteria:

1. The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of its proposed research and development effort. Specific attention will be placed upon the applicant's stated proposed development and demonstration effort.

2. The potential of the proposed research effort accomplishments to make a timely and an innovative and/or significant contribution to occupant protection technology knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes. The potential of the project to save lives, reduce injuries, and result in timely development and implementation by vehicle manufacturers will be evaluated.

3. The technical and financial merit of the proposed research effort, including the feasibility of the approach, practicability, planned methodology, and anticipated results. Financial merit will be estimated by the cost of the cooperative agreement to be borne by NHTSA and the in-kind contribution provided by the applicant as compared to the anticipated benefits to vehicle crash occupants.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

Terms and Conditions of the Award

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in NHTSA Orders 700–1 and 700–3. Any recipient must satisfy the requirements and guidelines of these NHTSA Orders 700 series prior to any actual testing or research involving human subjects.

2. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

3. During the effective period of the cooperative agreement, the agreement shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR Part 29 and Certificate Regarding Lobbying 49 CFR 20. Each agreement with a non-profit organization or an educational institution shall also be subject to the general administrative requirements of 49 CFR Part 19.

4. The cooperative agreement will include the provisions of Federal Acquisition Regulation (FAR) Part 52 contract clause 52.227–11 Patent Rights Retention by the Contractor (short form).

5. Reporting Requirements

a. Written Research Reports

The recipient shall submit bimonthly research reports suitable for public dissemination which shall be due 15 days after the reporting period, and a final research report within 45 days after completion of the research effort. An original and three copies of each of these research reports shall be submitted to the COTR.

b. Oral Briefings

The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. These presentations will be conducted at the NHTSA Office of Vehicle Safety Research, Washington D.C. An original and three copies shall be submitted to the COTR.

c. Data Reports

Dynamic and other data measured in research, development, and prototype evaluation and demonstration tests will be provided by the recipient within 3 weeks after the data is obtained, in the format of a data package as described below. The recipient may be relieved of the data package report requirement for certain activities by agreement from the COTR.

A data package consists of high speed film, paper test report, and magnetic tape complying with the NHTSA Data Tape Reference Guide. The NHTSA's Crashworthiness Division maintains a Vehicle Crash Test and a Component Data Base which it provides upon request to the public.

To facilitate the input of data as well as the exchange of information, the recipient must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide". A copy of this document may be obtained from the programmatic information contact or on the NHTSA website: *www.nhtsa.dot.gov.*

Issued on: July 25, 2000.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 00–19239 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–99–5087]

Safety Performance Standards Program Meeting.

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Thursday, September 14, 2000, beginning at 9:45 a.m. and ending at approximately 12:00 p.m. at the Tysons Westpark Hotel in McLean, VA. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Wednesday, August 23, 2000, to the address shown below or by e-mail. If sufficient time is available, questions received after August 23, may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by August 23, 2000, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, September 11, 2000, and also will be available at the meeting. The agency will hold a second public meeting on September 14, devoted exclusively to a presentation or research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m. This meeting is described more fully in a separate announcement.

The next NHTSA Public Meeting will take place on Thursday, December 14, 2000, at the Best Western Gateway International Hotel, Romulus, Michigan 48174.

ADDRESSES: Questions for the September 14, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at Tysons Westpark Hotel, 8401 Westpark Drive, McLean, VA.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that related directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents per page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The transcript may also be accessed electronically at *http://dms.dot.gov,* at docket NHTSA–99–5087. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. Rulemaking

A. Crash avoidance
B. Crashworthiness
C. Other Rulemakings

II. Consumer Information

III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (*e.g.,* sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB Monday, September 11, 2000.

Issued: July 18, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–19172 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582–CR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582–CR, Passive Activity Credit Limitations.

DATES: Written comments should be received on or before September 29, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack,

(202) 622–3179, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Credit Limitations.

OMB Number: 1545–1034.

Form Number: 8582–CR.

Abstract: Under Internal Revenue Code section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed. Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 5 hr., 49 min.

Estimated Total Annual Burden Hours: 5,229,450.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–19178 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Pacific-Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Bend, Oregon.

DATES: The meeting will be held Friday, August 11, 2000 and Saturday, August 12, 2000.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, August 11, 2000, 8:30 a.m. to 4:30 p.m. at the Cascade Natural Gas Office, 334 NE Hawthorne Ave, Bend, Oregon 97701 and Saturday, August 12, 2000, 9 a.m. to Noon at the Riverhouse, 3075 N. Highway 97, Bend, Oregon 97701. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Judi Nicholas, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: various IRS issue updates.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: July 24, 2000.

M. Cathy VanHorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–19173 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday August 9, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Wednesday August 9, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: July 24, 2000.

M. Cathy VanHorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–19174 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
July 31, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 411, 413, and 489

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Final Rule

VOL 65 ISS 147 JL 31 2000 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 411, 413, and 489

[HCFA–1112–F]

RIN 0938–AJ93

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year 2001. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act, as amended by the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999, related to Medicare payments and consolidated billing for SNFs. In addition, this rule sets forth certain conforming revisions to the regulations that are necessary in order to implement amendments made to the Act by section 103 of the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999.

EFFECTIVE DATE: These regulations are effective on October 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Dana Burley, (410) 786–4547 or Sheila Lambowitz, (410) 786–7605 (for information related to the case-mix classification methodology).

John Davis, (410) 786–0008 (for information related to the Wage Index).

Bill Ullman, (410) 786–5667 (for information related to consolidated billing).

Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition rates).

Bill Ullman, (410) 786–5667 or Susan Burris (410) 786–6655 (for general information).

SUPPLEMENTARY INFORMATION:

Copies

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Please specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL Activity of Daily Living
BBA Balanced Budget Act of 1997, P.L. 105–33
BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, P.L. 106–113, Appendix F
BLS (U.S.) Bureau of Labor Statistics
CPI Consumer Price Index
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
IFC Interim Final Rule with Comments
MDS Minimum Data Set
MSA Metropolitan Statistical Area
PPI Producer Price Index
PPS Prospective Payment System
PRM Provider Reimbursement Manual
RUG–III Resource Utilization Groups, version III
SCHIP State Child Health Insurance Program
SNF Skilled Nursing Facility

I. Background

On April 10, 2000, we published in the **Federal Register** (65 FR 19188), a proposed rule that set forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2001. Furthermore, it specifically proposed changes to the SNF PPS case-mix methodology. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999, related to Medicare payments and consolidated billing for SNFs. In addition, the rule proposed certain conforming revisions to the regulations necessary in order to implement amendments made to the Act by section 103 of the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–113, Appendix F.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33) mandated the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. We are updating the per

diem payment rates for SNFs, for FY 2001. Major elements of the SNF PPS include:

• *Rates*: Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. Rates are case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). In addition, the Federal rates are adjusted by the hospital wage index to account for geographic variation in wages. Further, the rates are adjusted annually using an SNF market basket index.

• *Transition*: The SNF PPS includes a 3-year, phased transition that blends a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrates to the new system, the facility-specific portion of the blend decreases and the Federal portion increases, in 25 percent increments. For most facilities, the facility-specific rate is based on allowable costs from FY 1995. As discussed later in this final rule, section 102 of the BBRA authorized facilities to elect to bypass the transition to be paid at the full Federal rate.

• *Coverage*: The PPS statute did not change Medicare's fundamental requirements for SNF coverage. However, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted where possible to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities.

• *Consolidated Billing*: The statute includes a billing provision that requires a SNF to submit consolidated Medicare bills for its beneficiaries for virtually all services that are covered under either Part A or Part B. The statute excludes a small list of services (primarily those of physicians and certain other types of practitioners). As discussed later in this final rule, section 103 of the BBRA has identified certain additional services for exclusion, effective April 1, 2000.

B. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In addition, in the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to Part A SNF services or to the RUG–III classifications.

Along with a number of other revisions and refinements discussed later in this preamble, this final rule provides the annual updates to the Federal rates, as mandated by the Medicare statute.

C. The Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA)

As a result of enactment of the BBRA, there are several new provisions that result in adjustments to the PPS for SNFs. The following provisions were described in the proposed rule that we published on April 10, 2000 (65 FR 19188), and are discussed further in section III. of this preamble, to the extent that we received public comments concerning them:

• Section 101 provides for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). This legislation provides that the 20 percent increase takes effect with SNF services that are furnished on or after April 1, 2000, and continues until the later of October 1, 2000, or implementation by the Secretary of a refined RUG system. Thus, the 20 percent increase serves as a temporary, interim adjustment to the payment rates and RUG–III classification system as published in the final rule of July 30, 1999, and will continue until implementation of the case-mix refinements described in the legislation. As discussed in Section III., we are not implementing such case-mix refinements in this final rule. Therefore, the 20 percent increase for the specified RUG–III groups will remain in effect during FY 2001. Section 101 also includes an across-the-board increase in the adjusted Federal per diem payment rates by 4 percent each year for FYs 2001 and 2002, exclusive of the 20 percent increase.

• Section 102 authorizes SNFs that would otherwise be subject to the three-year, phased transition from facility-specific to Federal rates to elect instead to make an immediate transition to the full Federal rate.

• Effective April 1, 2000, section 103 excludes from the SNF PPS bundle and the consolidated billing requirement certain types of ambulance services, certain customized prosthetic devices, and certain services involving chemotherapy and its administration; beginning with FY 2001, this section also requires a corresponding proportional reduction in Part A SNF payments.

• Section 104 provides for a Part B add-on for facilities participating in the Multistate Nursing Home Case-Mix and Quality (NHCMQ) Demonstration Project.

• Section 105 provides for a 50 percent Federal, 50 percent facility-specific payment rate for those SNFs that serve certain specialized patient populations.

• Section 155 provides that PPS payment to certain SNF providers located in Baldwin or Mobile County, Alabama, are based on 100 percent of their facility specific rates for cost reporting periods that begin in FY 2000 or FY 2001.

We included further information on these provisions in Program Memorandums A–99–53 and A–99–61 (December 1999), and Program Memorandum A–00–18 (March 2000).

D. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252)).

1. Payment Provisions—Federal Rate

The statute sets forth a fairly prescriptive methodology for calculating the amount of payment under the SNF PPS. The PPS utilizes per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporate an estimate of the amounts that would be payable under Part B for covered SNF services to individuals who were receiving Part A covered services in an SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and standardized for facility differences in case-mix and for geographic variations in wages. Providers that received "new provider" exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits were excluded from the database used to compute the Federal rates. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately the payment rates for facilities located in urban and rural areas. In addition, we adjust the portion of the Federal rate attributable to wage related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix using a classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, utilizes beneficiary assessment data (from the Minimum Data Set or MDS) completed by SNFs to assign beneficiaries into one of 44 groups. The May 12, 1998 interim final rule (63 FR 26252) has a complete and detailed description of the RUG–III classification system. The BBA requires us to publish the SNF PPS case-mix classification methodology applicable for the next Federal FY before August 1 of each year. In the proposed rule, we discussed options for refining the existing RUG–III classification system. Further discussion of this issue appears in Section III. A. of this rule.

The Federal rates reflected in this rule update the rates in the July 30, 1999 update notice (64 FR 41684) by a factor equal to the SNF market basket index minus 1 percentage point. According to section 1888(e)(4)(E)(ii) of the Act, for FYs 2001 and 2002, we will update the rate by adjusting the current rates by the SNF market basket change minus 1 percentage point. For subsequent FYs, we will adjust the rates by the applicable SNF market basket change.

2. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During the transition period, SNFs receive a payment rate comprising a blend between the Federal rate and a facility-specific rate based on each facility's FY 1995 cost report. Under section 1888(e)(2)(E)(ii) of the Act, SNFs that received their first payment from Medicare on or after October 1, 1995 receive payment according to the Federal rates only.

For SNFs subject to transition, the composition of the blended rate varies depending on the year of transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, we base payments entirely on the Federal rates.

As noted elsewhere in this regulation, in accordance with section 102 of the BBRA, SNFs that would otherwise be subject to the statutory three-year, phased transition from facility-specific to Federal rates, may elect to bypass the transition and go directly to the full Federal rate. This amendment applies to elections made on or after December 15, 1999, except that no election will be effective for a cost reporting period beginning before January 1, 2000; an election is effective for a cost reporting period beginning no earlier than 30 days before the date of the election.

3. Payment Provisions—Facility-Specific Rate

For most facilities, we compute the facility-specific payment rate utilized for the transition using the allowable costs of SNF services for cost reporting periods beginning in FY 1995 (cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995). Included in the facility-specific per diem rate is an estimate of the amount that would be payable under Part B for covered SNF services furnished during FY 1995 to those beneficiaries in the facility who were receiving Part A covered services. The facility-specific rate, in contrast to the Federal rates, includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account "new provider" exemptions from the routine cost limits, but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting period after 1995 by a factor equal to the SNF market basket percentage increase minus 1 percentage point. In each subsequent year, we will update it by the applicable SNF market basket increase.

II. Provisions of the Proposed Rule

The proposed rule that we published in the **Federal Register** (65 FR 19188, April 10, 2000) included proposed FY 2001 updates to the Federal payment rates used under the SNF PPS. In accordance with section 1888(e)(4)(E)(ii)(II) of the Act, the proposed updates reflected the SNF market basket percentage change for that fiscal year minus 1 percentage point. Also, in order to facilitate the incorporation of proposed refinements into the case-mix classification system (see discussion in Section III. A. of this final rule), we created a separate component of the payment rates specifically to account for non-therapy ancillary costs (which have been included within the overall nursing case-mix component of the payment rates). In addition, the proposed rule described our methodology for adjusting the Federal rates in accordance with section 103 of the BBRA, in order to reflect that provision's exclusion of certain additional items and services from the SNF PPS and consolidated billing. Further, we provided for a 4 percent increase in the adjusted Federal rate, in accordance with section 101 of the BBRA. We also included a discussion of the rights of SNFs to appeal their payment rates under the PPS (65 FR 19192). In addition, we proposed to make certain refinements in the case-mix classification system, in accordance with section 101 of the BBRA (see discussion in Section III. A. of this final rule).

In addition to discussing these general issues in the proposed rule, we also proposed to make the following specific revisions to the existing text of the regulations:

- In § 411.15, paragraph (p)(2)(vii) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- In § 411.15, paragraph (p)(2) would also be revised to list the additional services that section 103 of the BBRA has excluded from consolidated billing.
- In § 411.15, paragraph (p)(3)(iv), the phrase "within 24 consecutive hours" would be revised to read "by midnight of the day of departure".
- In § 489.20, paragraph (s) would be revised to list the additional services that the BBRA has excluded from consolidated billing, and a conforming change would be made in § 489.21(h).
- In § 489.20, paragraph (s)(7) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- Section 489.20(s)(11) and § 411.15(p)(2)(xi), would be revised to reflect editorial revisions in the paragraphs concerning the transportation costs of electrocardiogram equipment.

More detailed information on each of these issues can be found in the discussion contained in the following section of this final rule.

III. Analysis of and Responses to Public Comments

In response to the publication of the proposed rule on April 10, 2000, we received approximately 750 comments. The majority consisted of form letters, in which we received multiple copies of an identically-worded letter that had been signed and submitted by different individuals. Furthermore, we received over 30 comments from various trade associations and other major organizations. Comments originated from nursing homes and other providers, suppliers and practitioners (both individually, and through their respective trade associations), nursing home resident advocacy groups, health care consulting firms, and private citizens. While the comments fell into several broad areas, by far the largest number involved the refinements that we proposed to make in the PPS case-mix classification system, in accordance with section 101 of the BBRA.

A. Case-Mix Refinements

The proposed rule discussed options for refinements to the RUG-III system, described ongoing research and analyses, shared the initial results that we proposed be incorporated into the Medicare PPS system effective October 1, 2000, and solicited comments from all interested parties.

1. Potential Case-Mix Refinements Described in the Proposed Rule

Comment: We received numerous comments on the potential refinements, the supporting data, and the analyses planned to validate the data. Commenters were concerned first about our ability to complete the analyses on a timely basis, and then on how we would use the additional analyses in setting the FY 2001 rates. They also expressed concerns that the proposed refinements might not adequately address the problems that they perceived with current PPS payment levels.

Response: In the proposed rule (65 FR 19202), we indicated that we believed our preliminary research findings to be valid, but we also noted that

> * * * it is certainly possible that additional testing will identify new issues or suggest alternative refinements to those presented here. We remain open to suggestions during the comment period and will carefully evaluate the validation analyses before proceeding to final rulemaking.

We conducted the validation analyses discussed in the proposed rule to identify the actual distribution of the Medicare population, to determine any cost or acuity differences associated with short stay beneficiaries, and to validate the predictive power of the unweighted and weighted models in identifying variations in ancillary costs using national data from a current period (for example, after the implementation of the SNF PPS). We identified several important variations in the volume and distribution of beneficiaries and ancillary services costs using the 1999 national data which appear to have affected the performance of the index models described in the proposed rule.

In examining the 1999 data, it is apparent that the introduction of the PPS and consolidated billing provisions for covered Part A SNF stays has caused changes in facility practice patterns and billing, although some of this change may be the effect of using national data. In part, these variations may be related to changes in facility practices regarding the use of pharmaceuticals and in the way respiratory therapy services are provided to Medicare beneficiaries. For example, respiratory therapy (RT) was a significant portion of the non-therapy ancillary services in the pre-PPS data base used to develop the refinement models. This component of cost provided a significant contribution to the predictive power of the index models presented in the proposed rule. However, mean RT costs decreased from $16.04 based on a re-analysis of the six State sample to $5.46 in the 1999 national data base (or a 66 percent decrease). We believe that the decrease may be a result of both more prudent use of the services (RT has been a target of OIG studies in utilization and pricing) and the incentives created by the PPS (for example, the use of nurses to provide RT care). On the other hand, average drug costs increased from $29.93 based on a re-analysis of the six State sample to $92.38 in 1999 national data base. Therefore, when applying the non-therapy ancillary index indicators to the national PPS data, we found the models were less effective in predicting ancillary cost variations than when applied to the earlier research data.

As stated in the proposed rule, we were committed to validating the research results before proceeding to a refinement which required such a large expansion of the RUG–III classification system and impact on the delivery of SNF care. Since our latest validation analyses do not confirm the effectiveness of index models in the current PPS environment, we are not proceeding with implementation of the RUG refinements discussed in the proposed rule. Therefore, for FY 2001, we will be maintaining the existing 44-group RUG–III configuration. Consequently, we will also maintain the 20 percent add-on to the Federal rates for the 15 selected RUG-III groups, in accordance with section 101 of BBRA.

The inability to validate the specific non-therapy ancillary index models described in the proposed rule does not preclude us from further efforts to improve the payment system's ability to allocate payments based on expected ancillary use. However, additional research will be needed to identify variables that will be effective predictors in the PPS environment. Now that we have developed a large national database of claims and MDS records from 1999, we plan to continue research on the development of a non-therapy ancillary index, as well as to investigate other potential refinement approaches. In continuing this research, we will carefully consider the comments we received, and use these comments to assist us in exploring potential solutions.

Finally, as indicated in the April 10, 2000, proposed rule, both non-therapy ancillary index models were designed in conjunction with an addition to the RUG–III hierarchy; for example, 14 combined Extensive Services/ Rehabilitation groups. While this approach may warrant further exploration, we are not adopting it at this time. The validation analyses looked at the impact of both components of the proposed refinements: the expansion of the RUG–III groups and the creation of a non-therapy ancillary index. The combined predictive power of both components was approximately 3 percent. Measured separately, the added predictive power of either component would be negligible. The benefit of expanding the number of RUG–III groups would be too small to justify the added complexity of the RUG–III system. We will continue to work to develop ways to address the needs of those beneficiaries who require an unusually heavy combination of clinical care, rehabilitation services, and ancillary utilization, without creating perverse incentives that could negatively affect the quality of care for this vulnerable segment of the beneficiary population.

2. Clinical Issues

Comment: One commenter raised an issue involving certain restrictions placed by SNF administrators on staff's provision of therapies. The commenter reported that SNFs frequently constrain the amount of therapy therapists are permitted to provide the beneficiaries in particular facilities. Specifically, the commenter stated that therapists have been instructed by SNFs to limit therapy minutes to the minimum required for the medium RUG–III groups.

Response: In view of this comment, in addition to other anecdotal evidence, we believe it is appropriate to reiterate some key points of Medicare policy. As we previously stated in the final rule of July 30, 1999 (64 FR 41662), the number of minutes per week that are used as qualifiers for classification into the rehabilitation RUG–III groups "are minimums and are not to be used as upper limits for service provision." Facilities with patterns of therapy service provided at the minimum levels may be targeted for medical review and other audit activities. Arbitrary decisions by facility administrative staff to override the professional decision-making regarding which types and how much therapy service are needed by, and will be provided to, the individual beneficiary are inconsistent with our requirements for individual evaluations by a licensed professional therapist, care plan development that involves the physician and the professional therapist, and the strict rules we have promulgated regarding supervision of therapy service provision when service is provided by someone other than the licensed professional.

Further, the Medicare requirements for participation (at section 1819(b) of the Act) require SNFs to provide the services necessary to attain each resident's highest level of physical functioning. Any facility level policy that obstructs this goal is in direct conflict with Medicare policy.

In addition, because we are not implementing the RUG–III refinements as proposed, we are concerned about some of the payment incentives associated with the 20 percent add-ons for 15 of the RUG–III groups. We are especially concerned about the effect on provider behavior that could result from the incentive provided by the add-on for such groups as those in the extensive services category, and for three of the rehabilitation RUG–III groups. For example, the additional payment for the RHC, RMC, and RMB groups results in higher payment for these groups than for some other, higher-level rehabilitation groups. We want to make clear that although this may create a fiscal incentive to provide less service in order to receive a higher rate of payment, we expect that facilities will continue to provide therapy at the levels most appropriate for each individual beneficiary.

However, we realize that this is a powerful incentive and, therefore, are working on ways to monitor the inappropriate denial of services to beneficiaries in facilities' attempts to achieve higher payment. We are exploring our monitoring options and strategies to detect and deter inappropriate practices in this area, and will be able to present more specific information about our plans at our fall fiscal intermediary and provider training sessions. Monitoring activities will include our use of MDS data linked to SNF bills (which allows us to identify patterns and trends of SNF use and RUG–III group distributions), the SNF PPS Quality Medical Review Pilot and Data Analysis Peer Review Organization (which will specifically focus on the impact of the PPS in terms of quality of care and the potential for underutilization), and survey reports. At the facility level, we would certainly expect that any significant shift in beneficiary RUG–III classifications (for example, all beneficiaries being classified into the rehabilitation groups that have the 20 percent add-on), would result in closer monitoring and possible intervention.

Comment: We received a few comments regarding the clinical items used as indicators for the non-therapy ancillary index. The commenters suggested additional MDS items that they believe should be used to trigger additional payment.

Response: The clinical items used as indicators for the non-therapy ancillary indices, in the models discussed in the proposed rule are based on the data analyses performed to create the models. We did not undertake the research with any preconceived expectations or preferences as to the variables we believed would be most predictive of non-therapy ancillary cost. Rather, we looked to the data itself to identify the MDS items that were predictive of costs. We did not make decisions about the inclusion of these items and the values accepted for them unless the decision could be supported by the data analyses. As we continue to perform data analyses to identify the best way to recognize non-therapy ancillary costs, we will take into consideration the suggestions offered during the comment period. We plan to reexamine, using national data, which MDS items are predictive of non-therapy ancillary costs.

3. Medical Review and Fiscal Intermediary Issues

Comment: Many comments suggested that implementation of the refinements should be accompanied by HCFA-sponsored provider training. The reasons given for the additional training request are the expectation that the refinements will require software changes as well as some other operational changes. A few also suggested that clinical staff in particular, needed additional training because the refined RUG–III groups would necessitate changes in assessing, coding and documenting clinical decisions.

Response: Although we are not going forward with the proposed refinements, we do intend to proceed with our plans for provider and fiscal intermediary training, in order to ensure that they have the most current information available on medical review procedures, claims processing requirements, and other aspects of the SNF PPS. We have already made plans for the provision of both "train-the-trainer" sessions for the fiscal intermediaries and for other HCFA-sponsored provider training to present updates on all aspects of the SNF PPS. We believe that having a full understanding of the payment and classification systems will help

providers achieve their highest levels of performance.

4. Section U of the Minimum Data Set

Comment: We received a few comments expressing disappointment at our decision not to collect medication data using Section U of the minimum data set (MDS). These commenters suggested that we are losing an opportunity to collect very important information about the medications being offered to Medicare beneficiaries. They point out the importance of this data collection from both quality of care and payment perspectives. We also received a comment applauding our decision not to collect the medication data, which stated that the MDS should be streamlined rather than expanded.

Response: We appreciate the commenters' concerns but, as stated in the proposed rule, we cannot collect the medication data beginning in October 2000, as we had planned. However, we are continuing our evaluation and will take all of the comments into consideration in that process.

B. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

1. Federal Prospective Payment System

This final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2000. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in an SNF during a Medicare-covered stay. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM

[Urban]

Rate component	Nursing—Case-mix	Therapy—Case-mix	Therapy—Non-case mix	Non-case-mix
Per Diem Amount	$114.38	$86.16	$11.35	$58.38

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM

[Rural]

Rate component	Nursing—Case-mix	Therapy—Case-mix	Therapy—Non-case mix	Non-case-mix
Per Diem Amount	$109.29	$99.34	$12.13	$59.45

2. Case-Mix Adjustment

As noted earlier in this final rule, we are not proceeding with the implemenation of the RUG refinements discussed in the proposed rule. Accordingly, the payment rates set forth in this final rule reflect the continued use of the 44-group RUG-III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix index values.

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
RUC	1.30	2.25	$148.69	$193.86	.....	$58.38	$400.93
RUB	0.95	2.25	108.66	193.86	.....	58.38	360.90
RUA	0.78	2.25	89.22	193.86	.....	58.38	341.46
RVC	1.13	1.41	129.25	121.49	.....	58.38	309.12
RVB	1.04	1.41	118.96	121.49	.....	58.38	298.83
RVA	0.81	1.41	92.65	121.49	.....	58.38	272.52
RHC	1.26	0.94	144.12	80.99	.....	58.38	283.49
RHB	1.06	0.94	121.24	80.99	.....	58.38	260.61
RHA	0.87	0.94	99.51	80.99	.....	58.38	238.88
RMC	1.35	0.77	154.41	66.34	.....	58.38	279.13
RMB	1.09	0.77	124.67	66.34	.....	58.38	249.39
RMA	0.96	0.77	109.80	66.34	.....	58.38	234.52
RLB	1.11	0.43	126.96	37.05	.....	58.38	222.39
RLA	0.80	0.43	91.50	37.05	.....	58.38	186.93
SE3	1.70	.....	194.45	.....	$11.35	58.38	264.18
SE2	1.39	.....	158.99	.....	11.35	58.38	228.72
SE1	1.17	.....	133.82	.....	11.35	58.38	203.55
SSC	1.13	.....	129.25	.....	11.35	58.38	198.98
SSB	1.05	.....	120.10	.....	11.35	58.38	189.83
SSA	1.01	.....	115.52	.....	11.35	58.38	185.25
CC2	1.12	.....	128.11	.....	11.35	58.38	197.84
CC1	0.99	.....	113.24	.....	11.35	58.38	182.97
CB2	0.91	.....	104.09	.....	11.35	58.38	173.82

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES—Continued

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
CB1	0.84		96.08		11.35	58.38	165.81
CA2	0.83		94.94		11.35	58.38	164.67
CA1	0.75		85.79		11.35	58.38	155.52
IB2	0.69		78.92		11.35	58.38	148.65
IB1	0.67		76.63		11.35	58.38	146.36
IA2	0.57		65.20		11.35	58.38	134.93
IA1	0.53		60.62		11.35	58.38	130.35
BB2	0.68		77.78		11.35	58.38	147.51
BB1	0.65		74.35		11.35	58.38	144.08
BA2	0.56		64.05		11.35	58.38	133.78
BA1	0.48		54.90		11.35	58.38	124.63
PE2	0.79		90.36		11.35	58.38	160.09
PE1	0.77		88.07		11.35	58.38	157.80
PD2	0.72		82.35		11.35	58.38	152.08
PD1	0.70		80.07		11.35	58.38	149.80
PC2	0.65		74.35		11.35	58.38	144.08
PC1	0.64		73.20		11.35	58.38	142.93
PB2	0.51		58.33		11.35	58.38	128.06
PB1	0.50		57.19		11.35	58.38	126.92
PA2	0.49		56.05		11.35	58.38	125.78
PA1	0.46		52.61		11.35	58.38	122.34

TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

[Rural]

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
RUC	1.30	2.25	$142.08	$223.52		$59.45	$425.05
RUB	0.95	2.25	103.83	223.52		59.45	386.80
RUA	0.78	2.25	85.25	223.52		59.45	368.22
RVC	1.13	1.41	123.50	140.07		59.45	323.02
RVB	1.04	1.41	113.66	140.07		59.45	313.18
RVA	0.81	1.41	88.52	140.07		59.45	288.04
RHC	1.26	0.94	137.71	93.38		59.45	290.54
RHB	1.06	0.94	115.85	93.38		59.45	268.68
RHA	0.87	0.94	95.08	93.38		59.45	247.91
RMC	1.35	0.77	147.54	76.49		59.45	283.48
RMB	1.09	0.77	119.13	76.49		59.45	255.07
RMA	0.96	0.77	104.92	76.49		59.45	240.86
RLB	1.11	0.43	121.31	42.72		59.45	223.48
RLA	0.80	0.43	87.43	42.72		59.45	189.60
SE3	1.70		185.79		12.13	59.45	257.37
SE2	1.39		151.91		12.13	59.45	223.49
SE1	1.17		127.87		12.13	59.45	199.45
SSC	1.13		123.50		12.13	59.45	195.08
SSB	1.05		114.75		12.13	59.45	186.33
SSA	1.01		110.38		12.13	59.45	181.96
CC2	1.12		122.40		12.13	59.45	193.98
CC1	0.99		108.20		12.13	59.45	179.78
CB2	0.91		99.45		12.13	59.45	171.03
CB1	0.84		91.80		12.13	59.45	163.38
CA2	0.83		90.71		12.13	59.45	162.29
CA1	0.75		81.97		12.13	59.45	153.55
IB2	0.69		75.41		12.13	59.45	146.99
IB1	0.67		73.22		12.13	59.45	144.80
IA2	0.57		62.30		12.13	59.45	133.88
IA1	0.53		57.92		12.13	59.45	129.50
BB2	0.68		74.32		12.13	59.45	145.90
BB1	0.65		71.04		12.13	59.45	142.62
BA2	0.56		61.20		12.13	59.45	132.78
BA1	0.48		52.46		12.13	59.45	124.04
PE2	0.79		86.34		12.13	59.45	157.92
PE1	0.77		84.15		12.13	59.45	155.73
PD2	0.72		78.69		12.13	59.45	150.27
PD1	0.70		76.50		12.13	59.45	148.08

TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES—Continued

[Rural]

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
PC2	0.65		71.04		12.13	59.45	142.62
PC1	0.64		69.95		12.13	59.45	141.53
PB2	0.51		55.74		12.13	59.45	127.32
PB1	0.50		54.65		12.13	59.45	126.23
PA2	0.49		53.55		12.13	59.45	125.13
PA1	0.46		50.27		12.13	59.45	121.85

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we provide for adjustments to the Federal rates to account for differences in area wage levels using an "appropriate" wage index as determined by the Secretary. It is our intent to evaluate a wage index based specifically on SNF data once it becomes available. The SNF wage data are currently being collected and evaluated to determine if we can utilize them in the future. If a wage index based on SNF data is developed, we will publish it for comment. However, in the interim, many commenters urged us to incorporate the latest wage data available. We continue to believe that, until a wage index based on SNF wage data is collected and analyzed, the hospital wage index's wage data provide the best available measure of comparable wages that should be paid by SNFs. Since hospitals and SNFs compete in the same labor market area, we believe that the use of this index's wage data results in an appropriate adjustment to the labor portion of SNF costs based on an "appropriate" wage index, as required under section 1888(e) of the Act.

The computation of the wage index is similar to past years in that we incorporate the latest data and methodology used to construct the hospital wage index (see the discussion in the May 12, 1998 interim final rule (63 FR 26274)). The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 77.870 percent of the total rate. Tables 5 and 6 below shows the Federal rates by labor-related and non-labor-related components.

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs IV category	Labor-related	Non-labor-related	Total federal rate
RUC	$312.20	$88.73	$400.93
RUB	281.03	79.87	360.90
RUA	265.89	75.57	341.46
RVC	240.71	68.41	309.12
RVB	232.70	66.13	298.83
RVA	212.21	60.31	272.52
RHC	220.75	62.74	283.49
RHB	202.94	57.67	260.61
RHA	186.02	52.86	238.88
RMC	217.36	61.77	279.13
RMB	194.20	55.19	249.39
RMA	182.62	51.90	234.52
RLB	173.18	49.21	222.39
RLA	145.56	41.37	186.93
SE3	205.72	58.46	264.18
SE2	178.10	50.62	228.72
SE1	158.50	45.05	203.55
SSC	154.95	44.03	198.98
SSB	147.82	42.01	189.83
SSA	144.25	41.00	185.25
CC2	154.06	43.78	197.84
CC1	142.48	40.49	182.97
CB2	135.35	38.47	173.82
CB1	129.12	36.69	165.81
CA2	128.23	36.44	164.67
CA1	121.10	34.42	155.52
IB2	115.75	32.90	148.65
IB1	113.97	32.39	146.36
IA2	105.07	29.86	134.93
IA1	101.50	28.85	130.35
BB2	114.87	32.64	147.51
BB1	112.20	31.88	144.08
BA2	104.17	29.61	133.78
BA1	97.05	27.58	124.63
PE2	124.66	35.43	160.09
PE1	122.88	34.92	157.80

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUGs IV category	Labor-related	Non-labor-related	Total federal rate
PD2	118.42	33.66	152.08
PD1	116.65	33.15	149.80
PC2	112.20	31.88	144.08
PC1	111.30	31.63	142.93
PB2	99.72	28.34	128.06
PB1	98.83	28.09	126.92
PA2	97.94	27.84	125.78
PA1	95.27	27.07	122.34

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs IV category	Labor-related	Non-labor-related	Total federal rate
RUC	$330.99	$94.06	$425.05
RUB	301.20	85.60	386.80
RUA	286.73	81.49	368.22
RVC	251.54	71.48	323.02
RVB	243.87	69.31	313.18
RVA	224.30	63.74	288.04
RHC	226.24	64.30	290.54
RHB	209.22	59.46	268.68
RHA	193.05	54.86	247.91
RMC	220.75	62.73	283.48
RMB	198.62	56.45	255.07
RMA	187.56	53.30	240.86
RLB	174.02	49.46	223.48
RLA	147.64	41.96	189.60
SE3	200.41	56.96	257.37
SE2	174.03	49.46	223.49
SE1	155.31	44.14	199.45
SSC	151.91	43.17	195.08
SSB	145.10	41.23	186.33
SSA	141.69	40.27	181.96
CC2	151.05	42.93	193.98
CC1	139.99	39.79	179.78
CB2	133.18	37.85	171.03
CB1	127.22	36.16	163.38
CA2	126.38	35.91	162.29
CA1	119.57	33.96	153.55
IB2	114.46	32.53	146.99
IB1	112.76	32.04	144.80
IA2	104.25	29.63	133.88
IA1	100.84	28.66	129.50
BB2	113.61	32.29	145.90
BB1	111.06	31.56	142.62
BA2	103.40	29.38	132.78
BA1	96.59	27.45	124.04
PE2	122.97	34.95	157.92
PE1	121.27	34.46	155.73
PD2	117.02	33.25	150.27
PD1	115.31	32.77	148.08
PC2	111.06	31.56	142.62
PC1	110.21	31.32	141.53
PB2	99.14	28.18	127.32
PB1	98.30	27.93	126.23
PA2	97.44	27.69	125.13
PA1	94.88	26.97	121.85

As discussed above and in the proposed rule, until an appropriate wage index based specifically on SNF data is available, we will use the latest available hospital wage index data in making annual updates to the payment rates. In making these annual updates, section 1888(e)(4)(G)(ii) of the Act requires that the application of this wage index be made in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. In this third PPS year (Federal rates effective October 1, 2000), we are updating the wage index applicable to SNF payments using the most recent hospital wage data and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying

each of the per diem rate components by the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2000. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MedPar) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for FY 2001 is 0.99909, which is multiplied by each of the Federal rate components.

Comment: We received one comment suggesting that the differences in the rural and urban wage indexes exacerbate rural access problems. The commenter indicates that the loss of adequate indirect and overhead reimbursement has taken away the incentive for ancillary providers to travel long distances, particularly to rural SNFs.

Response: The wage index used to adjust the SNF payment rate is currently based upon the wage and hourly data derived directly from the hospital cost report and, therefore, reflects the relative wage difference between a rural and urban area. In addition, the wages are adjusted to account for overhead allocated to excluded areas that are carved out of the computation. We do not believe that using the wage index to adjust payments to SNFs will affect access to care in rural SNFs.

Comment: We received several comments concerning the use of the hospital wage index to adjust payments for SNFs. Several of these commenters suggested that the hospital wage index does not adequately reflect the wages paid in the SNF setting. They argued that this is compounded by the fact that the SNF along with other areas are carved out or excluded from the computation of the hospital wage index. These commenters strongly suggested that we move quickly to a SNF-specific wage index. We also received other comments suggesting that we only implement a SNF-specific wage index if the data is significantly better, in order to justify the efforts involved in collecting and cleaning up the data.

Response: We are currently reviewing the data collected on the SNF cost reports to evaluate the possibility of developing a SNF-specific wage index. We are developing edits and screens on the data to evaluate the reasonableness and accuracy of the data. A full year's worth of data under the PPS will not be available until late fall 2000. We will review the data and consider the reasonableness of a SNF specific wage index. We hope to be able to provide detailed information on a SNF-specific wage index in our next proposed rule.

However, until that time, we continue to believe that the hospital wage data are an appropriate measure to adjust for area differences in wage rates. The statute provides that the Secretary use an "appropriate" wage index. We believe that the use of hospital wage data is appropriate because the relative difference between labor markets for hospitals and SNFs does not vary significantly, as they compete in the same labor market area.

Comment: One commenter suggested that we update the wage index every six months to attract the best nursing staff to nursing homes.

Response: We are not adopting this suggestion, because we do not believe that revising the wage index every six months would achieve the goal that the commenter seeks.

For any RUG–III group, to compute a wage-adjusted Federal payment rate, the labor-related portion of the payment rate is multiplied by the SNF's appropriate wage index factor listed in Table 7. The product of that calculation is added to the corresponding non-labor-related component. The resulting amount is the Federal rate applicable to a beneficiary in that RUG–III group for that SNF.

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent Counties or County Equivalents)	Wage Index
0040 Abilene, TX	0.8240
Taylor, TX	
0060 Aguadilla, PR	0.4391
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9736
Portage, OH	
Summit, OH	
0120 Albany, GA	0.9933
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8549
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9136
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8151
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0040
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9346
Blair, PA	
0320 Amarillo, TX	0.8715
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2793
Anchorage, AK	
0440 Ann Arbor, MI	1.1254
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8284
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9052
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4525
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9516
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9739
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0096
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1182
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8106
Lee, AL	
0600 Augusta-Aiken, GA–SC	0.9160
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9577
Bastrop, TX	
Caldwell, TX	
Hays, TX	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9678
Kern, CA	
0720 Baltimore, MD	0.9365
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9561
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3639
Barnstable, MA	
0760 Baton Rouge, LA	0.8842
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8744
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1439
Whatcom, WA	
0870 Benton Harbor, MI	0.8671
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1848
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9585
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8236
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8690
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8452
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7705
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8733
Monroe, IN	
1040 Bloomington-Normal, IL	0.9095
McLean, IL	
1080 Boise City, ID	0.9006
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1160
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9731
Boulder, CO	
1145 Brazoria, TX	0.8656
Brazoria, TX	
1150 Bremerton, WA	1.0975
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8722
Cameron, TX	
1260 Bryan-College Station, TX	0.8237
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9580
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0735
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4562
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8584
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8724
Natrona, WY	
1360 Cedar Rapids, IA	0.8736
Linn, IA	
1400 Champaign-Urbana, IL	0.9196
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9038
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9240
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9407
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	1.0789
Rowan, NC	
Stanly, NC	
Union, NC	0.9833
York, SC	
1540 Charlottesville, VA	1.1146
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.8308
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8736
Laramie, WY	
1600 Chicago, IL	0.9198
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9918
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9415
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8204
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9597
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9697
El Paso, CO	
1740 Columbia, MO	0.8961
Boone, MO	
1760 Columbia, SC	0.9554
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8568
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9619
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8726
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1326
Benton, OR	
1900 Cumberland, MD–WV	0.8369
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9913
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8589

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8898
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9442
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9200
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8534
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8125
Macon, IL	
2080 Denver, CO	1.0181
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9118
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0510
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7943
Dale, AL	
Houston, AL	
2190 Dover, DE	1.0078
Kent, DE	
2200 Dubuque, IA	0.8746
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0032
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0249
Dutchess, NY	
2290 Eau Claire, WI	0.8790
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9346
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9145
Elkhart, IN	
2335 Elmira, NY	0.8546
Chemung, NY	
2340 Enid, OK	0.8610
Garfield, OK	
2360 Erie, PA	0.8985
Erie, PA	
2400 Eugene-Springfield, OR	1.0965
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8173
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8749
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8655
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7910
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0686
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1205
Genesee, MI	
2650 Florence, AL	0.7616
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8777
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0647
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0121
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9247
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9538
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.8052
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9607
Okaloosa, FL	
2760 Fort Wayne, IN	0.8685
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Fort Worth-Arlington, TX	0.9527
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0104
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8423
Etowah, AL	
2900 Gainesville, FL	1.0074
Alachua, FL	
2920 Galveston-Texas City, TX	0.9918
Galveston, TX	
2960 Gary, IN	0.9454
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8361
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8423
Wayne, NC	
2985 Grand Forks, ND–MN	0.8816
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9109
Mesa, CO.	
3000 Grand Rapids-Muskegon-Holland, MI	1.0248
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9065
Cascade, MT	
3060 Greeley, CO	0.9814
Weld, CO	
3080 Green Bay, WI	0.9225
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9131
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9384
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9003
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9409
Washington, MD	
3200 Hamilton-Middletown, OH	0.9061
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9366
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1373
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7490
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9008
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1863
Honolulu, HI	
3350 Houma, LA	0.8086
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9732
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
3400 Huntington-Ashland, WV–KY–OH	0.9676
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8932
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9787
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9657
Johnson, IA	
3520 Jackson, MI	0.9134
Jackson, MI	
3560 Jackson, MS	0.8812
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8796
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9208
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7777
Onslow, NC	
3610 Jamestown, NY	0.7818
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9585
Rock, WI	
3640 Jersey City, NJ	1.1502
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8272
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8846
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7832
Craighead, AR	
3710 Joplin, MO	0.8148
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0453
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9902
Kankakee, IL	
3760 Kansas City, KS–MO	0.9498
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9611
Kenosha, WI	
3810 Killeen-Temple, TX	1.0119
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8340
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9518
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9211
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.9490
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8834
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7399
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9239
Polk, FL	
4000 Lancaster, PA	0.9259
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9934
Clinton, MI	
Eaton, MI	
Ingham, MI	
4060 Laredo, TX	0.8168
Webb, TX	
4100 Las Cruces, NM	0.8658
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.0796
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8190
Douglas, KS	
4200 Lawton, OK	0.8996
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9036
Androscoggin, ME	
4280 Lexington, KY	0.8868
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9320
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9628
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8908
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8922
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1996
Los Angeles, CA	
4520 Louisville, KY–IN	0.9350
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8838
Lubbock, TX	
4640 Lynchburg, VA	0.8867
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8974
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0271
Dane, WI	
4800 Mansfield, OH	0.8690
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4589
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8566
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0344
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9686
Brevard, FI	
4920 Memphis, TN–AR–MS	0.8723
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9646
Merced, CA	

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
5000 Miami, FL	1.0059
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1075
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9767
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN–WI	1.1017
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9274
Missoula, MT	
5160 Mobile, AL	0.8163
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0396
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.1278
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8396
Ouachita, LA	
5240 Montgomery, AL	0.7653
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	1.0969
Delaware, IN	
5330 Myrtle Beach, SC	0.8440
Horry, SC	
5345 Naples, FL	0.9661
Collier, FL	
5360 Nashville, TN	0.9490
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3932
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2297
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2063
New London, CT	
5560 New Orleans, LA	0.9295
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4651
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1837
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.0847
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8412
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.4983
Alameda, CA	
Contra Costa, CA 5790 Ocala, FL	0.8243
Marion, FL	
5800 Odessa-Midland, TX	0.9205
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8822
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0877
Thurston, WA	
5920 Omaha, NE–IA	0.9572
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1467
Orange, CA	
5960 Orlando, FL	0.9610
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8159
Daviess, KY	
6015 Panama City, FL	0.9010
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8274
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8176
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8645
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0937
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9669
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7791
Jefferson, AR	
6280 Pittsburgh, PA	0.9741
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0288
Berkshire, MA	
6340 Pocatello, ID	0.9076
Bannock, ID	
6360 Ponce, PR	0.5006
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9748
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.0910
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0864
Bristol, RI	
Kent, RI	
Newport, RI	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0029
Utah, UT	
6560 Pueblo, CO	0.8615
Pueblo, CO	
6580 Punta Gorda, FL	0.9613
Charlotte, FL	
6600 Racine, WI	0.9246
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9646
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8665
Pennington, SD	
6680 Reading, PA	0.9152
Berks, PA	
6690 Redding, CA	1.1664
Shasta, CA	
6720 Reno, NV	1.0550
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1460
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9617
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1239
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8750
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1315
Olmsted, MN	
6840 Rochester, NY	0.9182
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8819
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8849
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1950
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9575
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	1.0016
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9071
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.9049
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0189
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4502
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9807
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8083
Tom Green, TX	
7240 San Antonio, TX	0.8580
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1784
San Diego, CA	
7360 San Francisco, CA	1.4156
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.3652
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4690
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0673
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0597
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4040
Santa Cruz, CA	
7490 Santa Fe, NM	1.0537
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2646
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9809
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9697
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8421
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.0996
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7928
Mercer, PA	
7620 Sheboygan, WI	0.8379
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8694
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8750
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8473
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8790
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	1.0000
St. Joseph, IN	
7840 Spokane, WA	1.0513
Spokane, WA	
7880 Springfield, IL	0.8685
Menard, IL	
Sangamon, IL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
7920 Springfield, MO	0.8488
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0637
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9036
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8548
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0629
San Joaquin, CA	
8140 Sumter, SC	0.8271
Sumter, SC	
8160 Syracuse, NY	0.9549
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1564
Pierce, WA	
8240 Tallahassee, FL	0.8545
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.8982
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8304
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8363
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9832
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9117
Shawnee, KS	
8480 Trenton, NJ	1.0137
Mercer, NJ	
8520 Tucson, AZ	0.8794
Pima, AZ	
8560 Tulsa, OK	0.8454
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8064
Tuscaloosa, AL	
8640 Tyler, TX	0.9404
Smith, TX	
8680 Utica-Rome, NY	0.8560
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.2847
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1030
Ventura, CA	
8750 Victoria, TX	0.8154
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0501
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9551
Tulare, CA	
8800 Waco, TX	0.8314
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0755
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8404
Black Hawk, IA	
8940 Wausau, WI	0.9418
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9882
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7733
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9544
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7868
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8392
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1191
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9402
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	0.9907
Yakima, WA	
9270 Yolo, CA	1.0199
Yolo, CA	
9280 York, PA	0.9264
York, PA	
9320 Youngstown-Warren, OH	0.9543
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0706
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9529
Yuma, AZ	

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage Index
Alabama	0.7489
Alaska	1.2392
Arizona	0.8317
Arkansas	0.7445
California	0.9861
Colorado	0.8968
Connecticut	1.1715
Delaware	0.9074
Florida	0.8919
Georgia	0.8329
Guam	0.9611
Hawaii	1.1059
Idaho	0.8678
Illinois	0.8160
Indiana	0.8802
Iowa	0.8030
Kansas	0.7605
Kentucky	0.7931
Louisiana	0.7668
Maine	0.8766
Maryland	0.8651
Massachusetts	1.1204
Michigan	0.8987
Minnesota	0.8881
Mississippi	0.7491
Missouri	0.7698
Montana	0.8668
Nebraska	0.8109
Nevada	0.9232
New Hampshire	0.9845
New Jersey [1]	.....
New Mexico	0.8497
New York	0.8490
North Caroline	0.8445
North Dakota	0.7716
Ohio	0.8670
Oklahoma	0.7491
Oregon	1.0132
Pennsylvania	0.8578
Puerto Rico	0.4264
Rhode Island [1]	.....
South Caroline	0.8370
South Dakota	0.7570
Tennessee	0.7838
Texas	0.7502
Utah	0.9037
Vermont	0.9274
Virginia	0.8189
Virgin Islands	0.6306
Washington	1.0434

TABLE 8.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
West Virginia	0.8231
Wisconsin	0.8880
Wyoming	0.8817

[1] All counties within the State are classified urban.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, the proposed payment rates listed here have been updated by the SNF market basket minus 1 percentage point, which equals 2.161 percent. For each succeeding FY, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal FY.

For the current FY (FY 2001), and for FY 2002, section 1888(e)(4)(E)(ii) of the Act requires the rates to be increased by a factor equal to the SNF market index change minus 1 percentage point. For subsequent FYs, this section requires the rates to be increased by the applicable SNF market basket index increase.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

Regulations at § 413.345 provide that the information included in each update of the Federal payment rates in the **Federal Register** will include the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. In the proposed rule (65 FR 19228), we proposed to designate the following RUG–III classifications for this purpose: All groups within the proposed new Rehabilitation and Extensive category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; and, all groups within the Clinically Complex category.

Comment: A few commenters raised issues regarding specific aspects of the process for making SNF level of care determinations. One commenter recommended that the level of care presumption in existing regulations at § 409.30 (which extends through the assessment reference date (ARD) for the initial 5-day, Medicare-required assessment) be expanded to extend through the ARD for the 30-day assessment. This commenter also favored revising the regulations to allow for using a beneficiary's assignment to one of the designated RUG–III groups in lieu of following the physician certification and recertification procedures described in § 424.20. Another commenter suggested that requiring individual level of care determinations for those beneficiaries who are assigned to one of the "lower 18" RUG–III groups (that is, to a RUG–III group that is not designated for purposes of the administrative presumption) creates a barrier to care for beneficiaries with dementing diseases. However, by far the majority of comments in this area observed that the High Rehabilitation and Special Care categories, which had been included in the most recent update notice (64 FR 41696, July 30, 1999), were missing from the list in the proposed rule, and urged their restoration.

Response: We believe that the suggestion for expanding the administrative presumption's timeframe to encompass the 30-day assessment is inconsistent with the underlying rationale for this presumption. In the preamble to the final rule that was published on July 30, 1999 (64 FR 41666–67), we noted that the Medicare SNF benefit is a "posthospital" benefit, and

> * * * that SNF residents tend to be relatively unstable and require fairly intensive skilled care during the period immediately following admission from the prior hospitalization, but that this tendency typically diminishes as they get further on in the SNF stay * * *. [This] means, in effect, that the basis for making any type of presumption with regard to coverage would tend to become progressively less conclusive as a resident moves farther into the SNF stay, and would be at its most conclusive at the very outset of the stay, during the period immediately following the resident's admission from the prior hospitalization.

Further, the requirement for an initial physician certification and periodic recertification as to level of care is mandated by the law itself (at section 1814(a)(2)(B) of the Act) and, thus, cannot be eliminated administratively. We also note that the implementing regulations at § 424.20(a)(1)(ii) already allow, at the option of the physician, for the required initial certification to be completed simply by confirming that the beneficiary has been correctly assigned to one of the designated RUG–III groups, as provided in § 409.30.

In the preamble to the interim final rule that was published on May 12, 1998 (63 FR 26283), we provided that beneficiaries assigned to one of the upper 26 RUG–III groups would be automatically classified as meeting the SNF level of care definition under the administrative presumption, "* * * while those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria." This presumption recognized the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate posthospital period would actually require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups. However, we do not share the view of the commenter who characterized as a barrier to coverage the policy of providing for an individual level of care determination when a beneficiary is assigned to one of the lower 18 groups. To the contrary, we chose this particular approach—rather than a policy of summarily deeming all of the lower 18 groups to be noncovered—precisely in order to ensure coverage under the SNF PPS for individual beneficiaries within those groups who would have met the previous administrative criteria for determining a SNF level of care. This policy also helps ensure that any beneficiary who does, in fact, require a covered level of care will actually be able to receive coverage, without regard to the beneficiary's particular diagnosis.

Finally, we note that the omission of the High Rehabilitation and Special Care categories from the designation list that appeared in the proposed rule was inadvertent, and we concur with the recommendation of the commenters who urged that these categories be restored to the list. Further, as discussed elsewhere in this final rule, we have decided not to adopt the case-mix refinements (including the creation of a new Rehabilitation and Extensive category) that we had previously proposed. Accordingly, we hereby designate the upper 26 RUG–III groups for purposes of the administrative presumption described in § 409.30, as follows: all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Three-Year Transition Period

Under sections 1888(e)(1) and (2) of the Act, during a facility's first three cost reporting periods that begin on or after July 1, 1998 (that is, the transition period), the facility's PPS rate will be equal to the sum of a percentage of an adjusted facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. After the transition period, the PPS rate will equal the adjusted Federal per diem rate. The transition period payment method will not apply to SNFs that first received Medicare payments (interim or otherwise) on or after October 1, 1995 under present or previous ownership, or to those facilities choosing to bypass the transition in accordance with section 102 of the BBRA; these facilities will be paid based on 100 percent of the Federal rate.

The facility-specific per diem rate is the sum of the facility's total allowable Part A Medicare costs and an estimate of the amounts that would be payable under Part B for covered SNF services for cost reporting periods beginning in FY 1995 (base year). The base year cost report used to compute the facility-specific per diem rate in the transition period may be settled (either tentative or final) or as-submitted for Medicare payment purposes. Under section 1888(e)(3) of the Act, any adjustments to the base year cost report made as a result of settlement or other action by the fiscal intermediary, including cost limit exceptions and exemptions, or results of an appeal, will result in a revision to the facility-specific per diem rate. The instructions for calculating the facility-specific per diem rate are described in detail in the May 12, 1998 interim final rule. In order to implement section 104 of the BBRA, for providers that received payment under the RUG–III demonstration during a cost reporting period that began in calendar year 1997, we will determine their facility-specific per diem rate using the methodology described below.

It is possible that some providers participated in the demonstration but did not have a cost reporting period that began in calendar year 1997. For those providers, we will determine their facility-specific per diem rate by using the calculations outlined in the May 12, 1998 **Federal Register** interim final rule (63 FR 26251, section III. (A)(1)(a), (b), or (c)). As with the facility-specific per diem applicable to other providers, the allowable costs will be subject to change based on the settlement of the cost report used to determine the total payment under the demonstration. In addition, we derive a special market basket inflation factor, which is 1.105788, to adjust the 1997 costs to the midpoint of the rate setting period (October 1, 2000 to September 30, 2001.)

Step 1—Determine the aggregate payment during the cost reporting period that began in calendar year 1997—RUG–III payment plus routine capital costs plus ancillary costs (other than occupational therapy, physical therapy, and speech pathology).

Step 2—Divide the amount in Step 1 by the applicable total inpatient days for the cost reporting period.

Step 3—Adjust the amount in Step 2 by 1.105788 (inflation factor).

Step 4—Add the amount determined in Step 3 to the appropriate Part B add-on amount determined according to Program Memorandum transmittal no. A–99–53 (December 1999).

The amount in Step 4 is the facility-specific rate that is applicable for the facility's first cost reporting period beginning on or after October 1, 2000.

1. Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition

For the first three cost reporting periods beginning on or after July 1, 1998 (the transition period), an SNF's payment under the PPS is the sum of a percentage of the facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. Under section 1888(e)(2)(C) of the Act, for the first cost reporting period in the transition period, the SNF payment will be the sum of 75 percent of the facility-specific per diem rate and 25 percent of the Federal per diem rate. For the second cost reporting period, the SNF payment will be the sum of 50 percent of the facility-specific per diem rate and 50 percent of the Federal per diem rate. For the third cost reporting period, the SNF payment will be the sum of 25 percent of the facility-specific per diem rate and 75 percent of the Federal per diem rate. For all subsequent cost reporting periods beginning after the transition period, the SNF payment will be equal to 100 percent of the Federal per diem rate. An example is given below computing the SNF PPS rate and SNF payment.

Example of computation of adjusted PPS rates and SNF payment: Using the XYZ SNF described in Table 9, the following shows the adjustments made to the facility-specific per diem rate and the Federal per diem rate to compute the provider's actual per diem PPS payment in the transition period. XYZ's 12-month cost reporting period begins October 1, 2000. (This is the provider's third cost reporting period under the transition.)

Step 1

Compute:

Facility-specific per diem rate	$570.00
Market Basket Adjustment (Table 10.B)	× 1.14457
Adjusted facility-specific rate	$652.40

Step 2

Compute Federal per diem rate:

TABLE 9.—SNF XYZ FROM ABOVE IS LOCATED IN STATE COLLEGE, PA WITH A WAGE INDEX OF 0.9038

RUG group	Labor portion *	Wage index	Adjusted labor	Nonlabor portion *	Adjusted rate	Percent adjustment	Medicare Days	Payment
RVC	$240.71	0.9038	$217.55	$88.41	$285.96	** $297.40	50	$14,870
SSC	154.95	0.9038	140.04	44.03	184.07	*** 228.25	50	11,413
Total							100	26,283

* From Table 5.
** Reflects a 4 percent adjustment.
*** Reflects a 24 percent adjustment.

Step 3

Apply transition period percentages:	
Facility-specific per diem rate $652.40 × 100 days =	$65,240
Times transition percentage (25 percent)	.25
Actual facility-specific PPS payment	$16,310
Federal PPS payment	$26,283
Times transition percentage (75 percent)	.75
Actual Federal PPS payment	$19,712

Step 4

Compute total PPS payment:	
XYZ's total PPS payment ($16,310 + $19,712)	$36,022

G. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish an SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. The proposed rule incorporated the latest estimates of the SNF market basket index at that time. This rule incorporates updated projections based on the latest available projections as of this point in time. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the May 12, 1998 **Federal Register**, we included a complete discussion on rebasing the SNF market basket to FY 1992, and revising the index to include capital and ancillary costs. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Tables 4.A, 4.B, and Appendix A, found in the May 12, 1998 **Federal Register**.

Each year we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10.A summarizes the updated labor-related share for FY 2001.

TABLE 10.A.—FY 2001 LABOR-RELATED SHARE

Cost category	FY 2000 relative importance*	FY 2001 relative importance
Wages and Salaries	56.647	56.734
Employee Benefits	12.321	12.654
Nonmedical Professional Fees	1.959	1.957
Labor-intensive Services	3.738	3.719
Capital-related	2.880	2.807
Total	77.545	77.870

The forecasted rates of growth used to compute the projected SNF market basket percentages, described in the next section, are shown in Table 10.B, and the 12-month cost reporting period facility specific rate update factors are shown in Table 10C.

TABLE 10.B.—SKILLED NURSING FACILITY TOTAL COST MARKET BASKET, FORECASTED CHANGE, 1997–2002

Fiscal years beginning October 1	Skilled nursing facility total cost market basket
October 1996, FY 1997	2.4
October 1997, FY 1998	2.7
October 1998, FY 1999	3.0
October 1999, FY 2000	3.6
October 2000, FY 2001	3.2
October 2001, FY 2002	3.2
Forecasted Average: 2000–2002	3.3

Source: Standard & Poor's DRI HCC, 2nd QTR 2000; ●USSIM/TRENDLONG0500● CISSIM/TRENDLONG0500. Released by HCFA, OACT, National Health Statistics Group.

Use of the Skilled Nursing Facility Market Basket Percentage: Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, described in the previous section, from the midpoint of the prior FY (or period) to the midpoint of the current FY (or other period) involved. The facility-specific portion and Federal portion of the SNF PPS rates addressed in the proposed rule were based on cost reporting periods beginning in the base year, Federal FY 1995. For the Federal rates, the percentage increases in the SNF market basket index will be used to compute the update factors occurring between the midpoint of FY 2000 and the midpoint of FY 2001. We used the Standard & Poor's DRI CC, 2nd quarter 2000 historical and forecasted percentage increases of the revised and rebased SNF market basket index for routine, ancillary, and capital-related expenses, to compute the update factors. Finally, we used the update factors to adjust the base year costs for computing the facility-specific portion and Federal portion of the SNF PPS rates.

Comment: A number of commenters expressed concern with the SNF market basket. The commenters asserted that the market basket index used for updating the PPS rates does not reflect Medicare SNF care costs accurately. They added that we have the authority to address this issue through modifications to the market basket index. The comments included: trending forward the 1995 data to 1997 significantly understates the actual increase observed over this period; the market basket index is based on 1992 data that do not reflect the dynamic changes in the health care system that occurred between 1992 and 1997; the market basket labor inputs significantly understate the actual increases in labor costs for Medicare SNFs; and the one percentage point reduction to the market basket should be restored.

Response: A number of the provisions that were the subjects of the commenters' concerns are specifically mandated by the law itself. Section 1888(e)(4)(A) of the Act requires the use of 1995 costs as a base. Section 1888(e)(5)(A) of the Act specifically provides for the establishment of an SNF market basket, while section 1888(e)(4)(E) of the Act requires that the SNF PPS rates be updated annually using that index. Furthermore, for the current FY 2001, and for FY 2002, section 1888(e)(4)(E)(ii)(II) of the Act requires that the rates be increased by a factor equal to the SNF market basket index change minus 1 percentage point. For subsequent fiscal years, section 1888(e)(4)(E)(i)(III) of the Act requires the rates to be increased by the applicable SNF market basket index increase.

The statute at section 1888(e)(5)(A) specifies that the market basket should reflect "changes over time in the prices of an appropriate mix of goods and services included in covered SNF services". The SNF market basket index meets this statutory requirement. The SNF market basket captures the pure price change of inputs such as labor,

capital, etc., used to provide SNF services. While several commenters pointed to the large growth in per diem SNF costs between 1995 and 1998 (as indicated on SNF cost report data) as evidence that the SNF market basket was inaccurate, we wish to emphasize that we do not consider reported historical per diem SNF costs an appropriate benchmark for determining its accuracy. The SNF market basket index, like the market basket indices used for other Medicare payment systems, measures pure price changes of inputs associated with the efficient delivery of care. It should not reflect changes in historical reported SNF costs associated with inefficient care or medically unnecessary services. Suggestions that it should are antithetical to the very notion of a PPS. It should also not reflect changes in non-price factors, such as adding staff or purchasing additional supplies. In any event, the statute provides that, once the initial PPS rates have been established, the unadjusted payment rates for a given year are calculated by applying an update to the rates for the previous year; the statute does not provide for a complete recalculation of the rates by applying a revised market basket methodology retroactively to 1995.

It is also important to note that the statute itself sets forth a fairly prescriptive methodology for calculating and updating the initial per diem payments established under the SNF PPS in 1998. The statute requires the use of an FY 1995 base year to calculate the Federal rates, and the statute specifies the amount of the updates to the base year costs (market basket minus one). It further reduces the base year cost pool by eliminating the costs associated with atypical services exceptions and exemptions (under § 413.30 of the regulations), and sets the base payments at just above the freestanding mean. The current SNF PPS per diem payment rates reflect the methodology prescribed by statute, an intended consequence of which was the accumulation of budgetary savings. Thus, concerns regarding the level of funding associated with the base payment rates may actually have more to do with the statutory formula for establishing the payments than the market basket used to update them.

With regard to the weights used to allocate many of the price proxies within the market basket, these are based on 1992 data because these are the latest complete data available from the Bureau of the Census and the Bureau of Economic Analysis. When more recent data become available, we will review the data and determine whether to rebase the market basket index to a more recent year. However, previous experience has shown that there is very little impact in the overall percent change in the market basket index when it is rebased. This was shown in the May 12, 1998 **Federal Register** (63 FR 26292), when the SNF market basket index was last rebased to a 1992 base from a 1977 base.

All of the price proxies used in the calculation of the SNF market basket are based on the latest data released by their respective data sources. Therefore, the price proxies capture all of the dynamic price change which occurred or is expected to occur in any given period.

In response to the specific comment concerning the labor portion of the market basket, the labor input proxies used in the SNF market basket are based the Employment Cost Index, a proven national survey of wages, salaries, and benefits for nursing home and personal care facilities, published by the BLS. These measures are based on a fixed skill mix of workers and do not reflect changes in skill mix. They measure only actual changes in the wages of workers and not shifts in wage costs caused by a shift in the skill mix of workers used. This makes it the preferred proxy to use, since it measures only pure price changes and not changes caused by other factors.

As has always been our policy, we will continue to monitor and respond to any changes in the market for SNF services that affect the SNF market basket index. When data from the first fiscal year after full implementation of the SNF PPS become available, we plan to review the SNF market basket index to ensure that it accurately and appropriately captures all price changes faced by SNFs in providing services. This review includes updating weights used in allocating the price proxies within the market basket, as well as ensuring that our price proxies reflect market trends. For example, we monitor the proxy for prescription drugs to make sure that it reflects the price changes associated with both new and older medications.

Finally, HCFA and MedPAC recognize that the SNF input price index developed by HCFA is only one component of the change in SNF cost per day. The index is designed to capture only the pure price change of inputs used to produce a constant quantity and quality of care in a SNF. This is consistent with the definition as it is used by HCFA and MedPAC in the existing payment methodologies for SNFs, hospitals, home health agencies, and other settings.

Other factors in addition to input prices help determine the overall change in costs per day. These factors include changes in case-mix, intensity, and productivity. Under the inpatient hospital PPS, HCFA and MedPAC use an update framework to account for these other factors and to make annual recommendations to Congress on the magnitude of the update. HCFA and MedPAC are both exploring the possibility of developing a SNF PPS update framework to make similar annual recommendations to Congress. As part of this update framework, we would address non-market basket factors such as intensity, productivity, and changes in site of service. This would allow us to maintain the integrity (and stability) of the market basket by keeping it separate and distinct from these other factors.

It is very important to note that the non-market basket factors can be negative as well as positive. As SNFs move from a cost-based system to a fixed price PPS, there are likely to be substantial decreases in cost per unit of service. Increases in productivity, changes in site of service, elimination of ineffective practice patterns, and renegotiation to lower price contracts for inputs are some of the behavioral changes which result in negative factors.

1. Facility-Specific Rate Update Factor

Under section 1888(e)(3)(D)(i) of the Act, for the facility-specific portion of the SNF PPS rate, we will update a facility's base year costs up to the corresponding cost reporting period beginning October 1, 2000, and ending September 30, 2001, by the SNF market basket percentage. We took the following steps to develop the 12-month cost reporting period facility-specific rate update factors shown in Table 10.C.

TABLE 10.C.—UPDATE FACTORS[1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 2000 AND BEFORE OCTOBER 1, 2001 FROM COST REPORTING PERIODS BEGINNING IN FY 1995

[Base year]

If 12-month cost reporting period in initial period begins:	Adjust from 12-month cost reporting period in base year that begins:	Using update factor of:
October 1, 2000	October 1, 1994	1.14457
November 1, 2000	November 1, 1994	1.14475
December 1, 2000	December 1, 1994	1.14494
January 1, 2001	January 1, 1995	1.14522
February 1, 2001	February 1, 1995	1.14567
March 1, 2001	March 1, 1995	1.14630
April 1, 2001	April 1, 1995	1.14693
May 1, 2001	May 1, 1995	1.14739
June 1, 2001	June 1, 1995	1.14768
July 1, 2001	July 1, 1995	1.14797
August 1, 2001	August 1, 1995	1.14843
September 1, 2001	September 1, 1995	1.14905

[1] Source: Standard & Poor's DRI HCC, 2nd QTR 2000; ●USSIM/TRENDLONG0500●CISSIM/TRENDLONG0500.

For the facility rate, we developed factors to inflate data from cost reporting periods beginning October 1, 1994, through September 30, 1995, to the corresponding cost reporting period beginning in FY 2001. According to section 1888(e)(3)(D) of the Act, the years through FY 1999 were inflated at a rate of market basket minus 1 percentage point, while FY 2000 and FY 2001 are to be inflated at the full market basket rate of increase.

2. Federal Rate Update Factor

To update each facility's costs up to the common period, we:

A. Determined the total growth from the average market basket level for the period of October 1, 1999, through September 30, 2000, to the average market basket level for the period of October 1, 2000, through September 30, 2001.

B. Calculated the rate of growth between the midpoints of the two periods.

C. Calculated the annual average rate of growth for number 2, above.

D. Subtracted 1 percentage point from this annual average rate of growth.

E. Using the annual average minus 1 percentage point rate of growth, determined the cumulative growth between the midpoints of the two periods specified above.

This revised update factor was used to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

H. Consolidated Billing

The consolidated billing requirement places with the SNF itself the Medicare billing responsibility for virtually all of the services that an SNF resident receives. The original SNF PPS legislation in the BBA identified several service categories that were excluded from the SNF consolidated billing requirement, as well as from the bundled Part A payment made under the SNF PPS itself. As noted in the proposed rule, section 103(a) of the BBRA amended section 1888(e)(2)(A) of the Act, effective with services furnished on or after April 1, 2000, to exclude certain additional types of services from the consolidated billing requirement, thus allowing these services to be billed separately to Part B. We listed these excluded services, by HCPCS code, in Program Memorandum AB–00–18 (March 2000). Section 103(b) of the BBRA also amended section 1888(e)(4)(G) of the Act to provide for a corresponding proportional reduction in Part A SNF payments, beginning with FY 2001.

Comment: In addition to identifying certain individual services (within a number of broader service categories) for exclusion from the consolidated billing requirement, section 103 of the BBRA also gives the Secretary the authority to designate additional services within each of those categories for exclusion from this requirement. A number of commenters recommended that we exercise this authority to designate a variety of additional services for exclusion, such as modified barium swallow, stress tests, hyperbaric oxygen treatment, doppler studies, nuclear medicine, orthotic devices, gastrointestinal procedures performed in endoscopy rooms, and outpatient surgery performed in hospital treatment rooms or ambulatory surgical centers. Alternatively, some commenters suggested that we could accomplish this result by adding these services to the existing exclusion list (in regulations at § 411.15(p)(3)(iii)) for certain high-intensity outpatient hospital services. Others expressed the view that this latter authority should not be limited to only those services that actually require the intensity of a hospital setting, but rather, should also encompass services furnished in other, nonhospital settings as well. As an example, they cited magnetic resonance imaging (MRIs) furnished in freestanding imaging centers, which may be cheaper and more accessible in certain particular localities than those furnished by hospitals.

Response: The BBRA's discretionary authority applies only to identifying additional excluded services *within* the particular categories that are specified in the legislation itself (that is, chemotherapy and its administration; radioisotope services; and, customized prosthetic devices) and not to other services that fall outside of those particular categories. Further, we are not exercising this discretionary authority at the present time, because we believe that the particular HCPCS codes identified in the BBRA represent the service exclusions within the specified categories that are appropriate under current circumstances. We note that language in the BBRA conference agreement requests the GAO to conduct a review of the appropriateness of the particular HCPCS codes that this legislation has designated for exclusion from consolidated billing. As we indicated in the proposed rule, we will carefully consider the GAO's findings when they become available, in order to determine whether further refinements in the codes identified on the exclusion list might be warranted.

Moreover, we believe that the comments advocating broader exclusions, beyond the particular services identified in the BBRA, may reflect a misunderstanding of the overall objective of the consolidated billing provision. We do not view the identification of new service categories for exclusion from this provision in terms of a process of continual expansion to encompass an ever-broadening array of excluded services. As we noted in the May 12, 1998 interim final rule (63 FR 26297), the fundamental purpose of the consolidated billing provision is "* * * to make the SNF itself responsible for billing Medicare for essentially all of its residents' services, other than those identified in a small number of narrow and specifically delimited exclusions." This is consistent with the type of discretionary authority that the BBRA provided, which we regard as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice).

Finally, regarding the comment on MRIs, we noted in the May 1998, interim final rule (63 FR 26298) that the exclusion of certain outpatient hospital services (in regulations at § 411.15(p)(3)(iii)) is targeted specifically at those services "* * * that, under commonly accepted standards of medical practice, lie *exclusively* within the purview of hospitals * * *" (emphasis added); that is, services which generally require the intensity of the hospital setting in order to be furnished safely and effectively. Thus, to the extent that advances in medical practice over time may make it feasible to perform such a service more widely in a less intensive, nonhospital setting, this would not argue in favor of unbundling the nonhospital performance of the service, but rather, of considering whether to rebundle the service entirely back to the SNF.

Comment: A number of commenters noted that the BBRA has now excluded from consolidated billing those ambulance services that are furnished in conjunction with dialysis services, and asked that we extend this exclusion to apply as well to those ambulance services furnished in conjunction with the other newly excluded service categories identified in the BBRA (chemotherapy, radioisotope, etc.). Some suggested that we could accomplish this by administratively expanding the existing exclusion of certain high-intensity outpatient hospital services (in regulations at § 411.15(p)(3)(iii)) to encompass these newly excluded services (which would, in turn, result in excluding the associated ambulance services as well). Another argued that since many ambulance services have already been excluded from consolidated billing, it would be less complicated from an administrative standpoint simply to establish a categorical exclusion for all ambulance services.

Response: We note that, prior to the BBRA's exclusion of dialysis-related ambulance services from consolidated billing, we received a number of similar recommendations to designate the statutorily-excluded category of dialysis services as also being one of the excluded outpatient hospital services under § 411.15(p)(3)(iii), as a means of permitting the associated ambulance transportation to be excluded as well. In response, we noted in the preamble to the July 30, 1999 final rule (64 FR 41673) that such a recommendation reflects

> * * * a misunderstanding of the underlying purpose of the outpatient hospital exclusion. This exclusion from consolidated billing does not serve as a mechanism for unbundling ambulance services per se. The * * * unbundling of ambulance services associated with * * * excluded outpatient hospital services occurs simply because the bundling of ambulance services is itself tied to a beneficiary's status as an SNF "resident" for consolidated billing purposes, which is suspended by the receipt of these excluded types of outpatient hospital services.

Further, while the statute itself excludes a number of service categories from the consolidated billing requirement—including services of physicians and certain other practitioners that are defined as being entirely outside the scope of the Part A SNF benefit (see sections 1861(h)(7) and 1861(b)(4) of the Act)—the receipt of such services offsite does not have the effect of ending a beneficiary's status as an SNF "resident" for consolidated billing purposes and, consequently, does not result in unbundling the associated ambulance transportation. Thus, unbundling the ambulance transportation that is associated with the statutorily-excluded types of chemotherapy services, radioisotope services, and customized prosthetic devices would require legislation to amend the law itself, like that which Congress enacted in section 103(a)(2) of the BBRA with respect to dialysis-related ambulance services. Similarly, establishing a categorical exclusion of all ambulance services whatsoever would also require legislation to amend the law.

Comment: A number of commenters raised issues regarding so-called "Part B" consolidated billing, in connection with services furnished to those beneficiaries in the SNF who are not in a covered Part A stay. (As we noted in the proposed rule, implementation of this aspect of consolidated billing has been delayed as a result of higher-priority systems renovations that had to be completed timely in order to achieve Year 2000 (Y2K) compliance.) Most of these commenters recommended extending the timeframe for implementation of Part B consolidated billing until after implementation of the PPS case-mix refinements set forth in the proposed rule, and a few even suggested reconsidering whether to implement this aspect of consolidated billing at all. One commenter suggested that bills for these types of items that are currently submitted to the Durable Medical Equipment Regional Carriers (DMERCs) should continue to be submitted to them under Part B consolidated billing, since the DMERCs have acquired specialized expertise in this area. Another recommended that HCFA should impose limitations on the amounts that suppliers can charge SNFs for Part B services.

Response: Since the law provides that consolidated billing applies to services furnished to a SNF "resident" (regardless of whether Medicare covers a particular resident's stay), we do not have the discretion simply to decline to implement this aspect of the provision. As we indicated in the July 30, 1999 final rule (64 FR 41671), once we have determined the specific implementation timeframe for this aspect of consolidated billing, we will provide at least 90 days' advance notice in the **Federal Register**. However, specific operational instructions (such as those describing the details of particular billing procedures) are beyond the scope of this final rule, and will be addressed instead in HCFA program issuances. With regard to the suggestion that we limit the amount a supplier can charge a SNF for its services, we note that the Medicare transaction for a service that is subject to consolidated billing is the one that takes place between the Medicare program and the SNF itself. As we pointed out in the July 1999 final rule (64 FR 41677), a SNF's relationship with its supplier under consolidated billing is essentially a private contractual matter, and the specific terms of the supplier's payment by the SNF must be arrived at through direct negotiations between the two parties themselves.

Comment: Under the current regulations at § 411.15(p)(3)(iv), a beneficiary's status as a SNF "resident"

(for consolidated billing purposes) generally ends at the point of departure from the SNF. However, if the beneficiary returns to that or another SNF within 24 hours of departure, the beneficiary's status as a "resident" of the SNF from which he or she departed would continue during the absence, along with that SNF's consolidated billing responsibilities. As we noted in the proposed rule, since consolidated billing is currently in effect only for those SNF stays that are covered by Part A and paid by the PPS, this means in actual practice that such a beneficiary remains a SNF "resident" after leaving the SNF only if he or she then returns to the SNF by midnight. (This is because, under longstanding Medicare policy, a beneficiary generally must be present in the SNF at midnight of a given day in order for that day to be considered a Part A day.) We then proposed to revise the regulations to adopt this "midnight rule" in place of the current "24-hour rule," which would essentially extend the policy currently in effect under Part A consolidated billing to apply to Part B consolidated billing as well. The commenters overwhelmingly supported this proposal, indicating that the resulting uniformity in policy would reduce the potential for confusion and billing errors. One commenter, while supporting the idea of following a uniform policy for both aspects of consolidated billing, suggested that the policy should be the "24-hour rule" that currently appears in the regulations rather than the "midnight rule." The commenter cited, as a reason for taking this position, a concern over whether Part A payment under the SNF PPS recognizes those services that are furnished on the day of a beneficiary's discharge from the SNF, but before the actual moment of departure.

Response: As recommended by the majority of commenters, we are revising the regulations to adopt the "midnight rule." Thus, a beneficiary's status as a SNF "resident" for consolidated billing purposes ends upon departure, unless the beneficiary returns to that or another SNF by midnight of the day of departure. (As we explained in the proposed rule, a patient "day" begins at 12:01 A.M. and ends the following midnight, so that the phrase "midnight of the day of departure" refers to the midnight that immediately follows the actual moment of departure, rather than to the midnight that immediately precedes it.) With regard to the concern expressed by one commenter about services that are furnished on the day of (but before the actual moment of) discharge, we note that the SNF PPS does, in fact, recognize such services, as discussed below. Even though the day of discharge from a covered SNF stay is not itself a covered Part A day, under the pre-PPS (reasonable cost) SNF payment methodology, ancillary services furnished on that day but before the actual moment of departure were covered, included on the SNF's cost report, and reflected in final cost settlement. Accordingly, the cost of such services has been built into the SNF PPS base. This makes the PPS per diem amount somewhat higher than it would otherwise have been for all of the preceding SNF days that Part A *does* cover, even though the day of discharge itself is not a covered Part A day. Further, with regard to room and board, although the Medicare program uses a midnight-to-midnight approach as a convention for counting inpatient days, the routine costs for the covered day that immediately precedes the date of discharge would include (much like a hotel bill) the accommodations for that entire night.

Comment: In excluding the additional services from consolidated billing and the SNF PPS (and, thus, qualifying them for separate payment under Part B), section 103 of the BBRA also mandated a corresponding proportional reduction in Part A SNF payments, beginning with FY 2001. We described our methodology for making this adjustment in the proposed rule (65 FR 19202), and indicated that we expected the amount of the adjustment to be minimal. However, due to the complexity of the process and the amount of time involved in completing it, we added that we would publish the actual adjusted rates themselves prospectively in the final rule. One commenter requested us to share the methodology that we actually used in making this adjustment. Another argued that the reduction in Part A payment essentially cancels out the fiscal relief provided by allowing the newly-excluded services to be billed to Part B.

Response: Regarding our adjustment methodology, we have computed a reduction of 5 cents ($0.05) in the unadjusted urban and rural rates, using the identical data as used to establish the Part B add-on for a sample of approximately 1,500 SNFs from the 1995 base period. By matching the excluded codes specified in section 103 of the BBRA to the Part B bills, we identified an amount equal to a reduction of $0.05 in the Federal rate. While the amount of the reduction reflects those excluded codes that we were specifically able to identify, there may be additional excluded services that were not captured, since certain of these services were billed differently in 1995 than now, in a manner that may not have utilized the codes by which they were specified in the BBRA. We are, therefore, continuing to examine the billing practices in the PPS base year, and may revise our estimate of this reduction in the future to capture additional elements of allowable charges, as appropriate. Regarding the comment that characterized this adjustment as canceling out the fiscal relief that was otherwise provided by this section of the BBRA, we note that the reduction in Part A payment rates is specifically required by that same section of the law, in order to prevent the Medicare program from paying twice (once under Part A, and again under Part B) for the same service. Further, we believe that this comment may reflect a misunderstanding of the overall effect of this provision's fiscal relief. As amended by section 103(b) of the BBRA, section 1888(e)(4)(G)(iii) of the Act provides that the adjustment is to be made in such a way that the *aggregate* reduction in Part A payments is estimated to equal the *aggregate* increase in Part B payments attributable to the exclusion. Further, we note that the particular services were excluded in recognition that SNFs could experience "* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed" an individual SNF's PPS payment (H.R. Conf. Rep. No. 106–479 at 854). Thus, the actual result of this provision's mandatory Part A payment reduction is to take the expense of the excluded items (which could be financially devastating to an individual SNF that actually incurs it, if borne solely by that particular facility) and effectively redistribute it over the entire universe of providers. In much the same way that an insurance pool reduces the degree of financial risk to an individual member of the pool in the event of a catastrophic loss, effectively spreading the expense of the excluded items over such a large provider population helps minimize the potential financial liability that any individual provider might otherwise incur.

I. Appeal Rights

In the proposed rule, we discussed the appeal rights of SNFs to appeal their payment rates under SNF PPS. We received no comments on this discussion.

J. Impact Analysis of the Proposed Rule

As required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995 (UMRA, Public Law 104–4),

and the Regulatory Flexibility Act (RFA, Public Law 96–354), the proposed rule included a Regulatory Impact Statement, on which we received comments. (A regulatory impact analysis for this final rule appears in Section VI. below.)

Comment: Several commenters alleged that there is a large variance between the projections for FY 2001, including the 20 percent add-on, and the most recent actual SNF program expenditure data. Some added that the Congressional Budget Office (CBO) baseline spending estimates differ from HCFA's. They noted that changes in rates due to inflation updates and statutory amendments do not necessarily account for the variance between FY 1999 and FY 2001. The commenters requested clarification of our projections and fiscal impacts, including any assumptions about volume growth or behavioral changes in response to payment changes.

Response: We have, in the past, included a behavioral offset in estimates required by legislation; however, we do not include them in estimating the effects of regulations merely for purposes of routinely updating the rates. The calculation of $1 billion for the 20 percent add-on assumes a baseline for FY 2001 of $15.3 billion. Our estimate of the days covered by the 20 percent add-on is 43 percent and our estimate of the Federal portion of payments is 85 percent. We note that CBO's baseline spending estimates differ from HCFA's due to different assumptions about SNF utilization patterns. Further, since the time we did these estimates, we have in fact reduced our own baseline estimate for FY 2001 to $14.4 billion, which still yields $1 billion in the calculation. However, we have since revised our estimate to reflect the latest available SNF data, as indicated in the impact analysis for this final rule (see section VI., below).

Comment: There were a number of comments expressing concern over the financial viability of providers. In particular, commenters were concerned with the number of nursing home chains that have filed for bankruptcy nationwide.

Response: We are aware of the challenges that certain providers have faced in moving from a payment system that was based on reasonable costs to a PPS, which uses mean-based prices. One of the intended consequences of the BBA was an overall reduction in SNF payments. However, we do not agree that the changes introduced by the SNF PPS are the exclusive—or even the primary—cause of their current financial difficulties. We believe that many of these financial constraints are directly attributable to business decisions on the part of the providers themselves. For example, a GAO review ("Skilled Nursing Facilities: Medicare Payment Changes Require Provider Adjustments but Maintain Access," GAO/HEHS–00–23, December 1999) of two of the largest publicly held chains found that the financial position of both firms suffered from high capital-related costs; substantial, non-recurring expenses and write-offs; and reduced demand for ancillary services related to several of the other BBA provisions. In fact, in one of these chains, SNF operations themselves remained profitable after the introduction of the SNF PPS. This scenario is consistent with reports of other chains experiencing financial difficulties. In addition, media reports cite rapid expansion into other lines of business, high capital costs, and inadequate cost controls as other factors influencing current financial status within the SNF industry.

IV. Provisions of the Final Regulations

The provisions of this final rule restate the provisions of the April 10, 2000, proposed rule as discussed previously and a minor technical correction of a cross-reference in parts 413 and 489. Following is a highlight of the changes made:

- In § 411.15, paragraph (p)(2)(vii) is revised to exclude from consolidated billing those ambulance services that are furnished to a SNF resident in conjunction with dialysis services that are covered under Part B.
- In § 411.15, paragraph (p)(2) is also revised to list the additional services that section 103 of the BBRA has excluded from consolidated billing.
- In § 411.15, paragraph (p)(3)(iv), the phrase "within 24 consecutive hours" is revised to read "by midnight of the day of departure".
- In § 413.1, paragraph (b), the phrase "paragraphs (c) through (f) of this section" is revised to read "paragraphs (c) through (h) of this section", in order to reflect previous revisions to this section that provide for prospective payment to SNFs (63 FR 26309, May 12, 1998) and home health agencies (65 FR 41211, July 3, 2000).
- In § 489.20, paragraph (s) is revised to list the additional services that the BBRA has excluded from consolidated billing, and a conforming change is made at § 489.21(h) regarding a cross-reference to this list.
- In § 489.20, paragraph (s)(7) is revised to exclude from consolidated billing those ambulance services that are furnished to a SNF resident in conjunction with dialysis services that are covered under Part B.
- Sections 489.20(s)(11) and 411.15(p)(2)(xi) are revised to reflect editorial revisions in the paragraphs concerning the transportation costs of electrocardiogram equipment.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4), the Regulatory Flexibility Act (RFA) (Public Law 96–354), and the Federalism Executive Order (EO) 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This final rule is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate its impact will be to increase the payments to SNFs by approximately $3.1 billion in FY 2001. The update set forth in this final rule applies to payments in FY 2001. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

Executive Order 13132 (effective November 2, 1999), establishes certain

requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications. As stated above, this rule will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity. The policies contained in this rule would update the SNF PPS rates by increasing the payment rates published in the July 30, 1999 notice, but will not have a significant effect upon small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

A. Background

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for periods beginning on or after July 1, 1998. This section specifies that the base year cost data to be used for computing the RUG-III payment rates must be from FY 1995 (that is, October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, the urban and rural distinction used in the development or adjustment of the Federal rates, and other features.

This final rule sets forth updates of the SNF PPS rates contained in the April 10, 2000 proposed rule. Table 11 below, presents the projected effects of the policy changes in the SNF PPS from FY 2000 to FY 2001, as well as statutory changes effective for FY 2001 on SNFs. In so doing, we estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit based on the latest available Medicare claims data and MDS 2.0 assessment data from 1999. Because we are not incorporating the refinements to the case-mix classification system, we are not presenting any additional information regarding their distributional impact on facility payments as we had indicated we would in the proposed rule. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, BBRA, or new statutory provisions. Although these changes may not be specific to SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of This Final Rule

The purpose of this final rule is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to respond to the comments on the proposed rule and establish the update methodology for FY 2001 after completion of our validation of the analysis presented in the proposed rule, based upon national data. Accordingly, we believe that the revisions and clarifications mentioned elsewhere in the preamble (for example, the update to the wage index used for adjusting the Federal rates) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the proposed rule. As such, these revisions will not represent an additional burden to the industry.

As stated previously in this rule, the aggregate increase in payments associated with this final rule is estimated to be $3.1 billion. There are three areas of change that produce this increase for facilities—

1. The effect of the Federal transition, that results in many facilities being paid 75 percent at the Federal rate and 25 percent at the facility-specific rate instead of the current 50 percent Federal rate and 50 percent facility-specific rate. There is also the additional effect of the BBRA option to bypass the transition and be paid according to 100 percent of the Federal rate;

2. The implementation of various other provisions in the BBRA, such as the 20 percent and 4 percent add-ons to the Federal rates; and,

3. The total change in payments from FY 2000 levels to FY 2001 levels. This includes all of the previously noted changes in addition to the effect of the update to the rates.

As seen in Table 11 below, some of these areas result in increased aggregate payments and others tend to lower them. The breakdown of the various categories of data in the table are as follows:

The first row of the table describes the effects of the various policies on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban and rural categories. The remainder of the table shows the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database. The third column shows the effect of the transition to the Federal rates. It includes the impact of the normal progression of facilities in the transition to new cost reporting periods and, therefore, blended payment amounts (that is, facility-specific versus Federal rates) as well as those facilities that, as a result of the BBRA, elect to bypass the transition and go immediately to the full Federal rate. This change has an overall effect of raising payments by 4.2 percent, with most of the increase coming from freestanding facilities. There are several regions that have decreased payments due to this provision, but the majority (and most populous) of the regions evidence higher payments, with the largest increase being in the New England and mid-Atlantic regions for both urban and rural facilities.

We estimate that approximately 63 percent of SNFs under the transition at the enactment of the BBRA have or will elect to be paid based on 100 percent of

the Federal rate. Of these facilities, we estimate 22 percent are hospital-based and 78 percent are freestanding, consistent with the proposed rule.

The fourth column shows the projected effect of the 4 percent add-on to the adjusted Federal rate mandated by the BBRA. As expected, this provision results in an increase in payments for all facilities. However, as seen in the table, the varying effect of the SNF PPS transition results in a distributional impact of this provision. In addition, since this increase only applies to the Federal portion of the payment rate, the effect on total expenditures is less than 4 percent.

The fifth column of the table shows the effect of the update to the Federal and facility-specific payment rates. It reflects an update to the Federal rates of 2.161 percent, which is equivalent to the market basket increase minus 1 percentage point, as required by law. In addition, it reflects an update to the facility-specific rates of 3.161 percent, which is equivalent to the full market basket increase for this period. For this analysis, it is assumed that payments will increase by 2.3 percent in total if there are no behavioral changes by the facilities. As can be seen from this table, the effects of the update itself do not vary significantly by specific types of providers or by location.

The sixth column of the table shows the effect of all of the revised wage index on the FY 2001 payments. The total impact of this change is 0 percent since the law requires this component of the update to be budget neutral. However, there are distributional effects of this change, as seen in the table.

The seventh column of the table indicates the overall impact of the 20 percent add-on for 15 specific RUG–III groups required under the BBRA.

Finally, the eighth column of the table shows the effect of all of the changes on the FY 2001 payments. This includes all of the previous changes, including the update to this year's payment rates by the market basket, and the 20 percent add-on. It is assumed that payments will increase by 21.8 percent in total, assuming facilities do not change their care delivery and billing practices in response. As can be seen from this table, the combined effects of all of the changes vary much more widely by specific types of providers and by location. For example, freestanding facilities enjoy more significant payment increases due to the policy changes, while the effects of the transition tend to diminish the increase for hospital-based providers.

TABLE 11.—PROJECTED IMPACT OF FY 2001 UPDATE TO THE SNF PPS

	Number of facilities	Transition to federal rates (percent)	Add on to Federal rates (percent)	Update change (percent)	Wage index change (percent)	20% add on (percent)	Total FY 2001 change (percent)
Total	9034	4.2	3.5	2.3	0.0	10.4	21.8
Urban	6300	3.6	3.5	2.3	−0.1	10.2	20.8
Rural	2737	7.1	3.7	2.2	0.8	11.3	27.3
Hospital based urban	683	−4.5	3.0	2.4	0.0	9.6	10.4
Freestanding urban	5617	5.1	3.6	2.3	−0.1	10.2	22.6
Hospital based rural	533	2.0	3.4	2.3	0.9	12.2	22.1
Freestanding rural	2204	8.2	3.7	2.2	0.7	11.1	28.3
Urban by region.							
New England	630	10.5	3.8	2.2	−0.8	10.9	29.0
Middle Atlantic	877	14.3	3.8	2.2	−0.3	12.9	36.5
South Atlantic	959	−0.4	3.3	2.3	−0.4	8.9	14.2
East North Central	1232	6.1	3.6	2.2	0.4	10.1	24.2
East South Central	212	1.9	3.5	2.3	−0.7	9.8	17.6
West North Central	469	3.6	3.5	2.3	0.4	10.2	21.4
West South Central	519	−5.2	3.0	2.4	1.0	8.8	9.9
Mountain	303	−4.0	3.1	2.4	0.0	7.1	8.5
Pacific	1070	−2.3	3.2	2.4	−0.5	9.6	12.6
Rural by region:							
New England	88	14.4	3.9	2.2	−0.9	12.6	35.6
Middle Atlantic	144	13.1	3.9	2.2	0.0	13.4	36.2
South Atlantic	373	5.3	3.6	2.2	1.1	11.1	25.2
East North Central	561	9.2	3.7	2.2	1.0	11.1	29.9
East South Central	255	4.2	3.6	2.3	0.6	12.3	24.8
West North Central	581	11.1	3.7	2.2	0.8	12.5	33.5
West South Central	354	1.2	3.4	2.3	1.1	9.8	18.8
Mountain	204	3.3	3.5	2.3	0.7	9.4	20.5
Pacific	151	3.2	3.5	2.3	0.3	9.2	19.7

While not specifically detailed in Table 11, we would also like to indicate the impact of the proportional reduction in the Federal rates to account for the new services excluded from consolidated billing (and, therefore, SNF PPS) under section 103 of the BBRA. The 5 cent ($0.05) reduction to the urban and rural unadjusted Federal rate results in an overall impact of a $2 million decrease in SNF payments for FY 2001.

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VII. Federalism

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

2. Section 411.15 is amended by:

A. Republishing the introductory text, and paragraph (p)(2) introductory text.

B. Revising paragraphs (p)(2)(vii) and (p)(2)(xi).

C. Adding new paragraphs (p)(2)(xii), (p)(2)(xiii), (p)(2)(xiv), and (p)(2)(xv).

D. Revising paragraph (p)(3)(iv).

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.*

* * * * *

(2) *Exceptions.* The following services are not excluded from coverage:

* * * * *

(vii) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(xi) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(xii) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(xiii) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(xiv) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(xv) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

(3) *SNF resident defined.* * * *

(iv) The beneficiary is formally discharged (or otherwise departs) from the SNF, unless the beneficiary is readmitted (or returns) to that or another SNF by midnight of the day of departure.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as set forth below:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart A—Introduction and General Rules

2. Section 413.1, paragraph (b), is amended by revising the phrase "paragraphs (c) through (f) of this section" to read "paragraphs (c) through (h) of this section".

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

C. Part 489 is amended to read as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

2. Section 489.20 is amended by:

A. Republishing the introductory text and paragraph (s) introductory text.

B. Revising paragraphs (s)(7) and (s)(11).

C. Adding new paragraphs (s)(12), (s)(13), (s)(14), and (s)(15).

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF, except the following:

* * * * *

(7) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(11) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(12) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(13) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(14) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(15) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

§ 489.21 [Amended]

3. In § 489.21, paragraph (h), the phrase "§ 489.20(s)(1) through (11)" is revised to read "§ 489.20(s)(1) through (15)".

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 18, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: July 21, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–19004 Filed 7–25–00; 8:45 am]

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Federal Register

Monday,
July 31, 2000

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Nationally Recognized Testing Laboratories-Fees; Public Comment Period on Recognition Notices; Final Rule

VOL 65 ISS 147 JL 31 2000 UMI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. NRTL 96–F–1]

RIN 1218–AB57

Nationally Recognized Testing Laboratories—Fees; Public Comment Period on Recognition Notices

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending the requirements for nationally recognized testing laboratories (NRTLs) by adding provisions for the establishment of fees for services provided by the government. On August 18, 1999, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** requesting comments on a proposed fee schedule. The NPRM also proposed a reduction of the public comment period on the "preliminary" **Federal Register** notices that OSHA publishes for its NRTL recognition activities. The four comments received have been reviewed, and this final rule is based on OSHA's consideration of the public record.

OSHA is amending its requirements to establish fees and to reduce the comment periods on **Federal Register** notices related to recognition.

DATES: This rule is effective on August 30, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, D.C. 20210, Telephone: (202) 693–1999, or Mr. Bernard Pasquet, Office of Technical Programs and Coordination Activities, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 693–2110. You may also send an email to: nrtlprogram@osha-no.osha.gov, or review our web page on the NRTL Program. (See http://www.osha-slc.gov/dts/otpca/nrtl/index.html or see http://www.osha.gov and select "Programs")

SUPPLEMENTARY INFORMATION: This preamble is divided into seven (7) sections: background, summary and analysis of comments, explanation of the final rule, legal authority to charge fees, detailed discussion of the fees, the first fee schedule, and regulatory matters.

I. Background

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace to be tested and certified to help ensure they can be used safely (for example, see 29 CFR 1910.303(a) coupled with definition of "acceptable" under 29 CFR 1910.399). Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification have been done appropriately, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be recognized as an NRTL.

The NRTL Program requirements are in 29 CFR 1910.7, "Definition and requirements for a nationally recognized testing laboratory." To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) establish effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (*i.e.*, organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes, and procedures in writing when they apply for initial recognition. OSHA reviews the written information and conducts on-site assessments to determine whether the organization meets the requirements. OSHA uses a similar process when an NRTL (*i.e.*, an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs.

The NRTL Program is an effective public and private partnership. Rather than performing testing and certification itself, OSHA relies on private sector organizations to accomplish it. This helps to ensure worker safety, allows existing private sector systems to perform the work, and avoids the need for the government to maintain facilities for testing and certification.

Currently, there are 17 NRTLs operating 42 sites in the U.S., Europe, Canada, and the Far East. The NRTL Program has grown significantly in the past few years, both in terms of numbers of laboratories and sites, as well as the number of test standards included in their recognition.

OSHA has devoted significant resources in the last three years to improving the management of the NRTL Program, ensuring its viability, and enhancing its credibility with the public. This has included a process improvement project; audits of all the NRTL sites; reduction of the backlog of applications for recognition, expansion, and renewals; and development of application guidelines and information about our procedures to help people understand the process of NRTL recognition. A web page on the NRTL Program is now available to provide information about the recognized labs and the scope of their recognition, as well as a description of the NRTL Program. (See web page address in above "Contact" information.) We also have prepared a new training program for our compliance staff to increase awareness within the Agency of NRTL requirements.

The size of the NRTL Program and the amount of work involved in maintaining it have resulted in large costs for the Agency, both in terms of human resources and in direct costs such as travel. For example, OSHA's goal is to audit every site once a year. This involves about 40 annual visits, given the current number of sites recognized, not only to locations in the U.S. but also to many foreign locations. Time and travel costs are obviously much higher for foreign locations. Because international trade in many of the types of products OSHA requires to be tested and certified is increasing substantially, the Agency anticipates that there will be more applications for laboratories or sites in locations outside the U.S. In particular, under the terms of a recent Mutual Recognition Agreement (MRA) with the European Union (EU), a number of European laboratories are expected to submit applications for NRTL recognition. For more information on the MRA, refer to the U.S. Department of Commerce web site.

The number of people who can be assigned to work in a particular area in OSHA, as well as the travel money that can be used, is dependent on the overall funding the Agency receives from Congress in a given year. The potential for reduced funding, leaving OSHA with inadequate money to properly implement the Program, led to discussions about the possibility of

assessing fees. Having a consistent funding process related specifically to the time and travel needed to maintain the Program would help OSHA ensure that the NRTL Program can continue to function and can be perceived as a viable and credible part of OSHA's overall approach to workplace safety.

In 1995, OSHA sent a letter to the existing NRTLs regarding its plan to explore the possibility of assessing fees (Ex. 1), and received twelve responses. Nine responses were conditionally in favor of establishing fees (Exs. 2–2, 2–4, 2–5, 2–6, 2–7, 2–8, 2–9, 2–11, 2–12). The favorable responses generally were conditioned on OSHA utilizing the funds generated from the fees for the NRTL Program to improve the services provided to the NRTLs.

At a September 24, 1996, meeting with the NRTLs, OSHA released a draft **Federal Register** notice for a proposed revision of 29 CFR 1910.7 allowing the Agency to collect fees. Comments received on the September 1996 draft indicated that most of the NRTLs supported the concept of a fee schedule, although the specific approach they favored was not necessarily the one included in the draft notice (see, *e.g.*, Exs. 2–13, 2–17, 2–21, 2–22, 2–24).

OSHA reviewed a number of legal precedents concerning the assessment of fees by Federal agencies in developing its proposal. Based on this review, the Agency determined that it has the authority to charge fees for services it provides to users of the NRTL recognition process, *i.e.*, the NRTLs and NRTL applicants. These fees are not intended to cover all the costs of the program.

In response to the fee issue, OSHA requested specific authority from Congress to retain the fees that it collects for the NRTL Program. In its Fiscal Year 1997 appropriations for OSHA, Congress authorized the Secretary of Labor to collect and retain fees for services provided to NRTLs and to use such fees to administer the NRTL Program. Congress has renewed this authorization annually since then.

OSHA decided to implement the improvements in the Program described above before undertaking rulemaking to establish fees. The process of implementing these improvements also allowed OSHA to better estimate the time involved in providing certain services to NRTL applicants or existing NRTLs, and the travel costs associated with on-site visits. This informatibn helped to refine the approach proposed, which the Agency is now adopting in this final rule. In addition, the Agency examined the practices of other Federal agencies that assess fees and the fees of other organizations that recognize or accredit laboratories. Our findings in these areas are described below under section IV of this preamble.

OSHA also is reducing the time allowed for public comment on **Federal Register** notices required under the Program. OSHA has considered a number of ways to improve the program's application handling process and believes that a reduction in the comment period is an appropriate way to help make such improvements.

II. Summary and Analysis of the Comments

We accepted comments on the Notice of Proposed Rulemaking (NPRM) (64 FR 45098, August 18, 1999) for forty-five (45) days after publication. The end of the comment period was October 4, 1999. We received four (4) comments, and we will discuss each of them individually.

The NPRM addressed two issues: Modification of 29 CFR 1910.7 to include a fee schedule, and reduction of the comment period on **Federal Register** notices proposing or granting recognition or a change in the scope of recognition. The text proposing a fee schedule included a description of the model used to develop the proposed fees (64 FR 45102, 8/18/99), as well as the initial proposed fee schedule (64 FR 45105). We also included in the NPRM preamble a short discussion of fees charged by other organizations performing similar services for laboratories.

Participation in the NRTL Program is voluntary. OSHA assumes that any laboratory that has chosen to complete the application and recognition process, as well as submit to the requirements for regular audits, has benefitted from its participation. Although the fees that OSHA will assess do not relate directly to financial benefits that NRTLs receive from OSHA's NRTL services, laboratories do have a clear financial incentive to seek and maintain NRTL recognition. Laboratories undoubtedly analyze the financial benefits of participation in the NRTL Program when determining whether to apply for recognition initially, as well as whether to take the time and effort to continue recognition in the future.

None of the four comments received addressed the model used to develop the proposed fee schedule, or any of the supporting documentation related to the fees proposed. They focused instead on whether fees should be assessed, and what services are associated with the fees.

Exhibit 8–1; European Commission

As mentioned in the NPRM (64 FR 45099) and again in this notice, the United States and the European Union (EU) have entered into a Mutual Recognition Agreement (MRA). The MRA includes an Electrical Safety Annex, which permits a European laboratory to apply to the NRTL Program without separately establishing that its country of origin has "reciprocity" for U.S. laboratories doing electrical safety work. While the MRA has now been in effect for more than a year, OSHA has yet to receive and process any complete applications from laboratories in the European Union. In part, this is because there are differing interpretations of the agreed text of the MRA and how it applies.

The MRA anticipates that OSHA may charge fees for its activities in processing EU applications or monitoring EU NRTLs. Although OSHA had no fees at the time the agreement was negotiated, the U.S. has always made clear that authority to assess and retain fees is in place and that OSHA would be proposing fees in the near future.

The EC comment states that the activities for which OSHA will assess fees under the proposal are similar to activities for which fees are already assessed by European Union authorities. Under the conditions of the MRA, they argue, some of the activities performed by EU authorities duplicate activities that are part of OSHA's NRTL recognition process. Based on this argument, the EC contends that OSHA should not assess fees for any of these activities that are performed by an EU authority, to avoid the possibility that these fees would duplicate those already incurred, which would be in violation of the MRA.

OSHA does not intend to charge fees for services the Agency has not provided itself. Any comparable services that a European authority performs in the context of their own accreditation process are not duplicative services since they involve recognition or accreditation by two different organizations. Similarly, the process used by European authorities to designate a laboratory under the MRA for consideration by OSHA does not duplicate any procedures used by OSHA to determine whether recognition should be granted under the NRTL Program. Therefore, we do not believe there is a legitimate problem in terms of duplicative fee assessment, or violation of the MRA, in establishment of a fee schedule for the NRTL Program.

Exhibit 8–2; Underwriters Laboratories Inc.

Underwriters Laboratories Inc. (UL) is an NRTL. They are opposing the imposition of fees for the NRTL Program. The following four points are the major arguments in their comment:

1. UL opposes the imposition of fees for OSHA's NRTL process.

2. The OSHA NRTL process has not enhanced workplace safety.

3. Funding for the OSHA NRTL process should come from Federal funds, if at all, because the NRTL process does not provide any "special benefits".

4. A complete economic impact analysis will not support a proposal for fees.

In order to understand the context of the UL comments, we need to review the history of the NRTL Program requirements and UL's role in NRTL testing and certification. When OSHA initially promulgated its safety standards requiring third party testing and certification for a number of products used in the workplace, it specified and, in some cases, implied that this testing and certification was to be done by one of two laboratories: UL or Factory Mutual Research Corporation (FMRC). Thus UL and Factory Mutual had the "special benefits" of being the source for all mandatory testing and certification of products to be used in the workplace. This was a significant benefit that lasted for many years. It was challenged in court by other testing laboratories on the basis that it gave an unfair business advantage to these two laboratories when others were equally qualified to perform such testing and certification. The litigation was settled when OSHA agreed to establish a system to recognize other qualified laboratories. The NRTL Program, established in 1988 (53 FR 12102, 4/12/88), is the result of that litigation.

The 1988 NRTL regulation allowed UL and FMRC to continue to operate as NRTLs for five years without applying for OSHA recognition. At the end of the five-year temporary recognition period, they were to be treated like other testing laboratories, *i.e.*, they had to apply to OSHA and be evaluated to keep their NRTL status. However, the temporary recognition did not end automatically at the end of the five-year period. As long as they filed timely applications, their temporary NRTL status continued until OSHA acted on their application. Both companies did file timely applications for permanent recognition. In 1994, while OSHA was evaluating those applications, other NRTLs sued OSHA in Federal district court seeking an immediate end to UL's and FMRC's temporary recognition status. In a 1995 decision[1], the court held that OSHA had violated the earlier settlement agreement by continuing to give preferential treatment to UL and FMRC after the end of the five-year temporary recognition period and ordered OSHA to act on their applications as expeditiously as possible so that they would be treated the same as all other NRTLs. Later in 1995, OSHA completed its evaluations and recognized UL and FMRC as NRTLs.

UL argues that the NRTL Program has not increased workplace safety. In fact, the NRTL Program itself is an administrative mechanism to ensure that laboratories performing third party testing and certification have the competency and qualifications to do so. As UL notes in its comments, it is a "strong supporter of the benefits to the safety of the American public at large, as well as those in the workplace, provided by competent third party product safety certifications." OSHA has agreed with UL and others that third party certification is the best way to ensure workplace safety. The safety standards promulgated by OSHA that require third party testing and certification of products used in the workplace have, we believe, enhanced workplace safety. The NRTL Program is the means we use to ensure that enhancement continues by reviewing and monitoring the laboratories in the program as they implement an appropriate program to conduct testing and certification.

UL also argues that such testing and certification would take place regardless of OSHA requirements. Certainly it is true that voluntary testing and certification is undertaken by a number of manufacturers. In addition, there are other types of requirements that may encourage such manufacturers to do the testing and certification to protect themselves from liability, to comply with insurance company requirements, or to follow state or local requirements. However, a mandatory requirement for such testing and certification is most certainly a stronger incentive than most of those that result in voluntary testing and certification.

UL and Factory Mutual are unique among the current NRTLs in that their benefits changed as a result of the 1988 rule and the court's 1995 ruling that they should no longer receive preferential treatment. However, they continue to enjoy the benefits of NRTL status, even though they now share those benefits with other laboratories. Had OSHA not recognized them as NRTLs under the 1988 rule, they would no longer be able to test and certify products for workplace use. Thus, the argument that they do not receive benefits from the NRTL Program is not valid.

UL's continued participation in the NRTL Program is perhaps the most telling argument regarding the special benefits it receives. Since participation is completely voluntary, UL must have accrued benefits from its participation and regular expansion of UL's scope of recognition. Most recently, UL was the first NRTL to obtain recognition for sites in the European Union in order to do NRTL testing in Denmark, Italy, and the United Kingdom. UL also has sites in Taiwan and Hong Kong. These business decisions are undoubtedly based on the recognition of the special benefits of being able to test products for use in American workplaces, and give them an NRTL certification, in the countries where they are produced before they are shipped to the U.S. The costs to OSHA to deal with expansions into other countries are significant, particularly with regard to travel. These are the types of direct expenses that the fees are designed to address, so that resources are available as laboratories expand their NRTL business opportunities into other countries.

While UL makes no specific comment on the economic analysis included in the NPRM (64 FR 45107), it argues that more analysis is needed. In its arguments, however, UL tacitly acknowledges that the fees are not unreasonable: "The fees may be minimal now, but this may only be the initial assessment with the potential for substantial uncontrolled increases to follow."

As described in the NPRM (64 FR 45101), the fee structure is based essentially on the time that OSHA spends to perform activities related to a laboratory's application for recognition, expansion, renewal, or annual audits. The fees for these activities were calculated based on current experiences, and are related to the salaries of the individuals assigned to the Program, to the time needed to complete the required actions, as well as to the travel costs associated with on-site assessments and audits.

Under the requirements for Federal agencies that assess fees, a "substantial uncontrolled" increase in fees is not permitted. First, as proposed in the NPRM (64 FR 45104), OSHA will publish any proposed changes to the fee structure in the Federal Register for comment. In doing so, the Agency must

[1] MET Laboratories v. Reich, 875 F. Supp. 304 (D. Md., 1995)

explain any changes and the necessity for any increase in fees. Secondly, based on our review of the items that contribute to the fees, we believe that none of them are subject to great fluctuation or uncontrolled increases. We must emphasize that since the fees must be used only for the NRTL Program, we will only collect fees that are specifically related to that program.

Salaries of Federal employees, which are one of the two main bases for the fee structure, increase in relation to comparable salary increases in the private sector. These increases are modest, and would be unlikely to have a major impact on the fee structure. Similarly, while travel costs do increase periodically, these increases are also not expected to rise dramatically. If they increase, it will be commensurate with travel expenses in the private sector. Laboratories will benefit from the fact that travel expenses will be assessed based on rates paid by the government for items such as air travel and hotel bills, since these rates are generally lower than those paid by private sector business travelers.

We believe that the current economic analysis is adequate, and that it supports our determinations that the proposed fees are reasonable and that the manner of determining the fee schedule is fair, equitable, and unlikely to result in "substantial uncontrolled increases." The fees that OSHA will impose on laboratories for the NRTL Program are small, particularly when compared to the other costs of testing and certification that are already borne by manufacturers. The small additional cost to the laboratories will likely have little impact on the ultimate cost of the product itself.

UL mentions trade issues as a reason for more economic analysis. In fact, as noted in the NPRM (64 FR 45099), the opportunity for foreign laboratories to participate in the NRTL Program is expected to increase the costs to the Agency, particularly in the area of travel expenses. Assessment of fees for reimbursement of these direct costs will ensure that the costs are borne by those laboratories acquiring the benefits of participation in the NRTL Program rather than the American taxpayer.

Exhibit 6–3; ACIL

ACIL is a trade association of independent laboratories, including 12 of the 16 current NRTLs. It has a committee of NRTL laboratories that meets on a regular basis to discuss issues of common interest.

ACIL states that it supports the assessment of fees as follows:

ACIL supports OSHA's intent to obtain fees for services as necessary to maintain the NRTL Program and to insure greater workplace safety involving electrical products. We believe the method described for establishing fee schedules is fair and equitable. Every country or entity that offers laboratory accreditation charges a fee for services. Establishing this fee is reasonable and should be accepted by laboratories that desire NRTL accreditation and recognition.

However, ACIL then indicates that its support is contingent upon "improved services," and it enumerates what it would consider to be such services. The services ACIL describes are discussed below.

In response, OSHA notes that assessment of fees is based on the services currently provided, and expected to continue to be provided, on the processing of applications and on the maintenance of recognition. The fees are assessed on an individual laboratory basis and are related to specific actions involving that laboratory. These do not include any unrelated overhead or management activities of the program as a whole. The rules for assessment of such fees by a Federal Agency are very narrowly drawn and are not related to any of the items mentioned by ACIL. In other words, the items listed by ACIL are not "services" in the sense of the requirements for assessment of fees by a Federal agency, and the fees themselves are in no way related to those items. ACIL's list of items generally relates to the overall management of the Program and internal OSHA decisions regarding priorities and activities. However, we believe it is useful to list those items and specifically respond to them.

1. NRTL Program Training for Compliance Officers

OSHA has prepared a training program for compliance officers during the past year, and copies of the presentation have been made available to the NRTLs electronically. Furthermore, the training program has been made available to the public through OSHA's web site for the NRTL Program. The training presentation was a joint effort between the NRTL Program staff and OSHA's professional curriculum development staff in its Office of Training and Education. We consulted about the best and most useful format, as well as manner of presentation, given the competing training needs of OSHA's compliance staff. Ultimately, it was decided that the most useful way to get information about the Program out to our staff would be through the development and distribution of a training presentation that can be used at the Area and Regional Office level in staff meetings or as a module in other training courses. The program has been broadly distributed and well-received. Development of such a program was funded by the Agency, and would have been even if the fee schedule was in place, since it is not the type of activity that is specific to a laboratory and thus could be subject to fees. The training is an internal OSHA activity and is not a "service" to the laboratories.

2. OSHA Employing Outside Auditors To Assist and Support OSHA Staff, Whether They Be OSHA Trained Contract Auditors or Permanent OSHA Auditors

OSHA does not have a shortage of trained auditors to perform on-site visits under the NRTL Program, nor do we expect to be unable to meet the requirements of the Program any time in the foreseeable future. This is actually financially advantageous to the laboratories since we would be unlikely to be able to contract for the services performed for any less money than we currently spend using our own staff. If we were to have a shortage of staff, we would consider using this approach. At this point, it is not necessary. This again is not a "service" to the laboratories. It is related to the management of the program, and if we did have to use such an approach, we would have to adjust the fee schedule accordingly.

3. Increased Enforcement Efforts by Compliance Officers, OSHA Inspectors, and Program Auditors

In no way are OSHA enforcement activities a "service" to the NRTLs. OSHA determines its enforcement activities based on consideration of a number of factors, including targeting, complaints, and accidents. The safety standards that require NRTL testing and certification are among many other requirements that are reviewed by compliance staff as they conduct inspections. The fees to be collected for the NRTL Program are not and cannot be related to enforcement.

4. Development of a Program To Support the Significance of the NRTL Program

It is not clear what this means specifically, but we believe it is related to the efforts of some NRTLs to promote the use of the NRTL Program for purposes beyond workplace safety and health. For example, some NRTLs have encouraged State and local authorities to rely on NRTL product testing and certification in their public safety program activities outside the

workplace. This is outside the scope of OSHA's authority. While it is certainly the prerogative of these authorities to use testing laboratories, including NRTLs, for that purpose, OSHA does not endorse, promote, or engage in such activity since our mandate is limited to workplace safety and health. Again, this is unrelated to the services addressed by the fee schedule.

5. Promoting Employer Awareness of the NRTL Program

Promotion of employer awareness of any OSHA requirements is related to improving workplace safety and health. It is not a "service" to the NRTLs, and would not be an item subject to the fee schedule.

It appears from these suggestions that there is a basic misunderstanding about the fact that fees are specific to a laboratory, and to the activities related to recognition that are performed for that laboratory. There is a further issue underlying these items that should be addressed. Based on discussions OSHA has had with ACIL and the NRTLs they represent, we know that ACIL's suggestions are intended to promote the NRTL Program for marketing purposes. In other words, increased training, enforcement, and program promotion all increase the visibility of the NRTLs as business concerns. When OSHA promotes the NRTL Program, it does so to increase workplace safety and health. We continue to promote the Program in this way through various means funded directly by OSHA. Besides the training presentation already described, we have developed a web page on the NRTL Program that includes extensive information, as well as listing the NRTLs, showing their marks, and addressing their scope of recognition. We believe this is the most effective way to reach our own compliance staff, as well as the public, with substantive information about the NRTL Program and the recognized laboratories. This is done to enhance workplace safety and health, and is not a "service" to the NRTLs.

We have also completed a directive that details the policies and procedures of the NRTL Program for the first time in its history. This directive ensures that OSHA staff, as well as the NRTLs and the public, has access to information about the Program and its operation.

OSHA will continue to undertake such activities as resources permit and as found appropriate by the Agency. However, the fees to be collected will not be used for these purposes. We will be happy to continue to work with ACIL or any NRTL or other interested party, to define appropriate activities to increase workplace safety and health through enhancement of the NRTL Program and the testing and certification requirements.

ACIL also indicated that it did not believe that fees should be retroactively assessed. OSHA has no plans to assess fees on a retroactive basis for services already provided without cost to the laboratory. ACIL also suggested that OSHA bill for its services "at the time services are rendered," rather than at the beginning of the year, as proposed in the notice (64 FR 45105).

We find merit in ACIL's suggestion. This approach would reduce the collection activity of the Agency, since only one bill would have to be sent to the NRTL for an audit, rather than the two contemplated under the NPRM. There would be minimal financial burden to the Agency by delaying collection. We proposed "up-front" billing in the NPRM to ensure the Agency would receive payment regardless of the outcome of the audit process. Since an NRTL's recognition can be revoked for non-payment, we believe this is enough incentive to pay after the audit is performed. For similar reasons, we plan to bill the NRTLs for any assessment that we perform for a renewal or expansion after we have performed it. However, we will still require applicants seeking initial recognition to submit the assessment fee with their application to ensure the Agency is reimbursed for its costs should an applicant decide to withdraw its application after OSHA performs its assessment.

On the issue of reducing the comment period, ACIL indicated this would provide some benefit to the laboratories. Because the longest time period in the process precedes this formal comment period, ACIL suggests that OSHA should include a set time period for processing.

Based on OSHA's experience, this is not possible. The biggest delays in the process are generally associated with incomplete information provided in an application, or the time a laboratory spends to correct deficiencies found in on-site assessments. In addition, new applicants frequently have testing experience, but they may not have experience in the certification process. Considerable work may be required to ensure they have internal procedures to meet the requirements of OSHA's NRTL Program.

We have prepared application guidelines to help address the first issue, and have made them available on our web site. If an applicant provides all of the information and supporting documentation indicated in the guidelines, we should not need to go back to the laboratory on one or more occasions to gather additional information. The application guidelines also follow what is normally reviewed in an on-site assessment. If laboratories provide the information specified and are ready to show assessors what they do in these areas, they may have to correct fewer deficiencies before we grant recognition. These guidelines are just beginning to be used, and we will be monitoring their use to determine how well they are working.

We process applications in the order they arrive, and the time to wait for processing depends on the number that have already been submitted by other laboratories. There is no way to predict when applications will be submitted, and there is no advance indication about the numbers of laboratories that may choose to apply at any given time. We continue to encourage laboratories to cover as many test standards as possible in any one application to help reduce the overall number of applications to be processed.

ACIL also attached a paper regarding some issues on surveillance audits, which were not addressed by the NRPM. The paper contains certain suggestions that ACIL wants the Agency to consider, and OSHA will consider them for future action.

Exhibit 8–4; National Electrical Manufacturers Association

The National Electrical Manufacturers Association (NEMA) represents a number of manufacturers of products that are subject to requirements for third party testing and certification under OSHA's safety standards. NEMA objects to the assessment of fees, and questions whether OSHA has the authority to require fees. In particular, NEMA states that because the testing activities are mandatory, they "do not support the conclusion that the fee is incident to a voluntary act."

While testing and certification of equipment is mandatory, participation in the NRTL Program by a laboratory is completely voluntary. As noted in the NPRM (64 FR 45100), OSHA has the authority to collect fees under the OMB Circular, and Congress has given OSHA specific authority to collect and retain those fees for the specific use of the NRTL Program.

NEMA also notes that the fees will be passed on to manufacturers such as those they represent. While this is true, the fees themselves are quite small compared to the overall costs of testing and certification, and will be spread among the customers for whom the laboratories are testing and certifying

products for. In addition, the manufacturers will most likely distribute these costs to their customers through the pricing of their products. The costs are so small that the price increase for any particular product is also unlikely to be significant.

NEMA further argues that if fees are assessed, foreign laboratories should not be given any special treatment or privilege. OSHA will be applying any fee schedule in the same manner to all NRTL Program participants, both foreign and domestic.

Conclusion

OSHA has decided to establish a fee schedule for the NRTL Program in this final rule. The comments received did not address the specific fees proposed or the method of developing the proposed fee schedule. While two of the commenters objected to the assessment of fees (Exs. 8–2 and 8–4), their arguments were not compelling. ACIL, the trade association that includes 12 of the 16 organizations from whom fees would be collected, stated that the fees are fair and equitable and simply reflect what is common practice for other organizations doing similar work. OSHA has the authority to assess fees to laboratories for the direct expenses the Agency incurs as a result of providing services to them. The laboratories receive "special benefits" as a result of the requirements established by OSHA for testing and certification of products to be used in the workplace. In addition, Congress has given OSHA the authority to collect and retain these fees for the administration of the NRTL Program.

On the issue of reducing the comment period for **Federal Register** notices concerning recognition, only ACIL commented, and it agreed that this would lead to a useful reduction in the total time for processing applications. The reduction of the time for public comment is also being addressed in this final rule.

III. Explanation of Final Rule

A. Establishment of Fees

OSHA is modifying 29 CFR 1910.7 to add a new paragraph "(f) Fees" related to the assessment and payment of fees for certain services rendered to NRTLs and NRTL applicants. This new paragraph provides the general framework that OSHA will use to calculate, charge, and collect the fees. OSHA will provide the specific details for calculating, charging, and collecting the fees through appropriate OSHA Program Directives, which will be published on the OSHA web site, consistent with the framework laid out in this final rule.

1. Obligation To Pay and Fee Assessment

The first part of paragraph (f) reads as follows:

(1) Each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following services:

(i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and

(ii) Audits of sites.

Organizations seeking OSHA recognition (i.e., NRTL applicants) and organizations that OSHA has recognized as NRTLs must pay fees for the specific services that OSHA provides to them. The services for which the Agency will charge fees are: (1) processing of applications for initial recognition, expansion of recognition, or renewal of recognition, and (2) audits, which are post-recognition on-site or office reviews. The activities involved in providing these services are described in more detail later.

Typically, OSHA annually audits the testing sites it has recognized for an NRTL. However, if an NRTL has appropriate controls in place, OSHA allows it to use non-recognized sites, such as testing sites of other laboratories or even manufacturers, to conduct testing or other activities necessary for certifying products. OSHA may also need to audit such non-recognized sites to determine whether the NRTL or the site is properly controlling the NRTL-related activities. For example, OSHA may audit a manufacturer to determine how well it controls the NRTL's certification mark or maintains production or quality controls. NRTLs must also pay for these "special" audits when required and will be billed accordingly.

2. Fee Calculation

The second part of paragraph (f) reads as follows:

(2) The fee schedule established by OSHA reflects the cost of performing the activities for each service listed in paragraph (f)(1) of this section. OSHA calculates the fees based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = [Average (or Actual) Hours to Complete the Activity × Staff Costs per Hour] + Average (or Actual) Travel Costs

Each activity performed by OSHA accomplishes a particular phase of the service the Agency provides to the recipients (*i.e.*, NRTLs or NRTL applicants). Currently, these activities are as follows:

—Review of initial, expansion, and renewal applications;
—On-site assessment per person, per site—first day , and per person, per site—each additional day;
—Review and evaluation (per standard)—initial and expansion applications;
—Final report/**Federal Register** notice—initial and expansion or renewal applications; and
—On-site audit (per person, per site) and office audit (per site).

The fees that the Agency is initially establishing are shown in the Fee Schedule (Table A in section VI of this preamble). This schedule is somewhat different from the one we published in the NPRM. We have made changes as a result of our decision, as explained in section II of this preamble, to bill NRTLs for audits and for certain assessments after we perform them. We had proposed in the NPRM (64 FR 45105) to pre-bill the NRTLs for these activities. We further explained that we would bill or refund to NRTLs the difference between any pre-paid fee amounts and the "actual costs" for an assessment and or audit. Since we have decided not to pre-bill for these activities, we have changed the fee schedule to clearly reflect this approach. The fee schedule now contains two types of fees: flat fees and variable fees.

The "flat fees" are calculated by multiplying the average estimated time to perform the work by the equivalent staff cost per hour, and adding the average travel costs for any assessment we must perform for an application for initial recognition. Use of the average time spent on each activity simplifies the accounting for the NRTL and for OSHA since the recordkeeping time and associated costs are reduced. The variable fees are based on the "actual costs,", *i.e.*, actual staff time and travel costs to the government. These are calculated by multiplying the equivalent staff cost by the actual number of days or fractional days that staff spend in performing the on-site activity, and adding actual staff travel costs, using government rates where possible. In section V of this preamble, we show how we derived the equivalent staff cost per hour (Figure 1) and provide details on the costs and calculation for the fees.

As indicated above, we will bill applicants or NRTLs for the "actual costs" of an assessment and audit after we perform these activities. However, as we proposed in the NPRM (64 FR 45106) and now adopt in this final rule, applicants seeking initial recognition must still pay for an assessment in advance, i.e., at time of application, using the amount in the fee schedule. After we perform the assessment, OSHA will send them a bill or refund (i.e, credit their account) for the difference that reflects the "actual costs". We have added appropriate information to the fee schedule to clearly show the nature of the assessment fee for a new applicant.

3. Annual Review of Fee Schedule and Issuance

The third part of paragraph (f) reads as follows:

(3)(i) OSHA will review costs annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the implementation table in paragraph (f)(4) of this section. (ii) OSHA will publish all fee schedules in the **Federal Register**. Once published, a fee schedule remains in effect until it is superseded by a new fee schedule. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change. OSHA will consider such requests during its annual review of the fee schedule.

The first Fee Schedule, set forth in section VI of this preamble, will remain in effect until it is superseded by a revised schedule. OSHA will annually review the costs to the Government of providing the services to determine whether any changes to the fees are needed. In addition, as part of this annual review, OSHA will consider requests for changes to the fee schedule that it receives from the public. If OSHA believes that changes may be needed, we will publish a notice to provide the NRTLs and other members of the public an opportunity to comment on such changes. The Agency will follow the implementation table shown in paragraph (f)(4) of this rule. We will publish all subsequent fee schedules in the **Federal Register** and post them on the OSHA web site.

4. Fee Implementation

The fourth part of paragraph (f) reads as follows:

(4) OSHA will implement fee assessment, collection, and payment as follows:

Approximate dates	Action required
I. Annual Review of Fee Schedule	
November 1	OSHA will publish any proposed new Fee Schedule in the **Federal Register**, if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule.
December 15	OSHA will publish the final Fee Schedule in the **Federal Register**, making it effective.
II. Application Processing Fees	
Time of application	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.
Publication of preliminary notice	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
III. Audit Fees	
After audit performed	OSHA will bill each existing NRTL for the audit fees in effect at the time of audit, but will reflect actual travel costs and staff time in the bill.
30 days after bill date	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
45 days after bill date	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee.
60 days after bill date	OSHA will publish a notice in the Federal Register announcing its intent to revoke recognition for NRTLs that have not paid these audit fees.

One significant change has been made to the table as a result of comments from ACIL (Ex. 8–3). Rather than billing each NRTL at the beginning of the year as proposed (64 FR 45105), we will bill them after an audit is conducted. Failure to pay the bill in a timely fashion may lead to revocation of recognition.

With regard to the other items in the schedule, OSHA needs approximately 30 days after the close of the government fiscal year (GFY) on September 30th, to obtain and review data for its annual review of the fee schedule. If a change in the schedule is necessary, OSHA will publish a proposed revision around November 1st, including an analysis of the changes. The period for comments will be no less than 15 calendar days. Approximately 30 days thereafter, OSHA will officially issue the new fee schedule in the **Federal Register**.

After we have audited an NRTL, we will bill that NRTL for the appropriate audit fee shown in the fee schedule in effect at the time the audit is performed. This bill will reflect actual travel costs and staff time for the audit. OSHA anticipates that most of the bills will be for on-site audits, rather than office audits. OSHA will automatically assess the NRTL the late fee, shown in the fee schedule, if the Agency does not fully receive the amount billed within 30 days. Fifteen days thereafter, if payment has not been received, OSHA will send a letter notifying the NRTL of the failure to pay the fees for the audit and requesting immediate payment, including a late fee. If the NRTL fails to fully pay those fees within 15 days of the issuance of the letter, OSHA will publish a notice in the **Federal Register** announcing its intent to revoke the NRTL's recognition. OSHA will then proceed with permanent revocation of the NRTL's recognition, which includes publication of a second notice formally revoking recognition.

In revoking recognition due to non-payment of fees, OSHA will follow the procedures described in this paragraph and not those under II.E of Appendix A to 29 CFR 1910.7. The Agency may consider reinstating an organization's recognition if it provides an explanation for non-payment that is acceptable to OSHA and it pays all fees that are due. We will address such a reinstatement option in the directive mentioned in paragraph (f)(5) below.

OSHA will bill the NRTL separately for additional audits of a site or for any "special" audits, and will bill

applicants separately for any additional or special assessment that it must perform in connection with an application. OSHA will bill the NRTL or applicant for these fees after these audits or assessments and will follow the same collection process as described above.

5. Details for Payment

The fifth and last part of paragraph (f) reads as follows:

(5) OSHA will provide details about how to pay the fees through appropriate OSHA Program Directives, which will be available on the OSHA web site.

For application processing, OSHA will bill the NRTL applicant or NRTL for the balance of fees due, including the "actual costs" for any assessment, at the time we publish the preliminary notice to announce the application. As previously explained, publication of this notice occurs after we have completed any assessment for processing an application. For new applicants, the bill will reflect a refund (*i.e.*, a credit) if the amount pre-paid exceeds the "actual costs" for the assessment. For expansion and renewal applications, the bill to the NRTL will include the fees for any assessment that we performed. For audits, we will also bill the NRTL after completion of the audit. For application processing and audits, any fees that are not paid when due will result in cancellation of application or revocation of recognition, as appropriate. OSHA will follow the same collection process for applications as that described for audits in paragraph (f)(4).

The instructions that accompany a fee schedule will include appropriate details about fee payments. OSHA will require payment of all fees in U.S. dollars by certified check or money order drawn on a U.S.-based institution or organization, but may include additional payment terms in these instructions. The Agency may consider other modes or methods for payment in these instructions.

The fees established by this final rule go into effect on October 1, 2000. Fees must be submitted for any application (whether for initial recognition, or expansion or renewal of recognition) postmarked on or after the effective date of the Fee Schedule shown in section VI of this preamble. Also, any application pending on October 1, 2000, will be subject to the fees for activities that OSHA has not yet begun as of that date. OSHA will bill applicants accordingly. However, since delays in processing may have occurred through no fault of an applicant, OSHA will review the circumstances surrounding all applications that are pending on October 1, 2000, to determine whether some fees should be waived.

B. Reduction of Public Comment Period

OSHA is amending provisions in Appendix A to 29 CFR 1910.7 to reduce the 60-day comment period currently required for the "preliminary" Federal Register notices. "Preliminary" refers to the first of the two notices that OSHA must publish to initially recognize an organization as an NRTL, or to expand or renew an NRTL's recognition. The notice announces OSHA's "preliminary finding" on an initial, expansion, or renewal application. The amended provisions of Appendix A will now provide a 30-day comment period for notices on applications for initial recognitions, and a 15-day comment period for notices on applications for expansion or renewal of recognition. The 30-day period for initial applications is consistent with that provided for some other notices published by the Agency. The shorter 15-day period reflects the nature and scope of OSHA's evaluation of expansion and renewal requests. Based on our experience, OSHA believes that such requests will present few issues. However, anyone who believes that the NRTL's request affects them but needs more time may request an extension of time to comment.

As pointed out in the proposal (64 FR 45107), in recent years, OSHA has received few or no comments on the preliminary notices. The comment periods add significantly to the amount of time required to process an application. Thus OSHA proposed to reduce the time periods required. ACIL (Ex. 8–3) recognized that this would reduce overall processing time. No comments were received objecting to this change.

NRTLs routinely adopt new test standards for the products that are within their testing and certification capability. Many of the new test standards are simply new revisions that supersede those for which OSHA has already recognized the NRTL. As a result, the NRTL must often apply to OSHA to "expand" its recognition to enable it to use the new test standards. While the NRTL may "expand" its recognition primarily to attain or maintain an economic benefit, timely recognition of the new test standards for the NRTL could also enhance safety in the workplace. The shorter periods will speed up approval of those expansions.

Federal Register notices are currently accessible to the public through the Office of the Federal Register web site on the day they are published. Reviewers of the notice can always request an extension of the comment period if they need more time for presenting any comments. OSHA will include a statement regarding such extensions in the preliminary notices. Given the rapid telecommunication (e.g., Internet, electronic mail, fax) capabilities that now exist throughout the world, comments or requests for an extension of the comment period can be filed in much less time than 60 days. OSHA will generally grant an extension but will limit it to 15 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted.

IV. Legal Authority and Other Considerations

A. Statutory Authority

OSHA is basing its fees on the Office of Management and Budget's (OMB's) policies for user fees imposed by Federal Agencies. These policies are contained in OMB Circular A–25, "User Fees," dated 7/8/93. Some key portions of Circular A–25 are as follows:

—"General Policy:" A user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."

—"For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service * * * enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public, * * * or * * * is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public."

—" * * * user charges will be sufficient to recover the full cost to the Federal Government * * *"

OMB developed Circular A–25 in accordance with Title V of the Independent Offices Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. § 9701. The criteria established by the IOAA to guide agency heads in the establishment of fees were that the fees be "fair" and be based on:

(A) The costs to the Government;

(B) The value of the service or thing to the recipient;

(C) Public policy or interest served; and

(D) Other relevant facts.

31 U.S.C. 9701(b)

As discussed below, the U.S. Supreme Court has decided in two key cases that the intent of the IOAA was to require fees to be based on "value to the recipient" and not upon "public policy or interest served [or] other [relevant] * * * facts."

In a rider to OSHA's Fiscal Year 2000 appropriations, Congress specifically authorized the Secretary of Labor to collect and retain the fees to be collected under this rule: "* * * the Secretary of Labor is authorized, during the fiscal year ending September 30, 2000, to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace: * * *" Public Law 106–113 (113 Stat. 1501A–222). Through this rider, OSHA has the necessary authority to retain the fees, which otherwise would be credited to the general fund of the U.S. Treasury, as explained in OMB Circular A–25.

B. Legal Basis for Assessing the Fees

As noted in the proposal (64 FR 45100), to determine a proper basis for assessing the fees, OSHA reviewed a number of legal precedents and analyzed the costs and activities for the functions undertaken for the NRTL Program. We summarize our legal review below, and provide the details of our costs in section V of this preamble.

The legal precedents center on the application of the IOAA and its interpretation by federal agencies. The most pertinent precedents are two decisions by the U.S. Supreme Court, and four cases of the U.S. Court of Appeals for the D.C. Circuit.

In March 1974, the Supreme Court decided the companion cases of *National Cable Television Ass'n.* v. *United States and FCC*, 415 U.S. 336 (1974) and *Federal Power Commission* v. *New England Power Co.*, 415 U.S. 345 (1974). In *National Cable*, the Court expressed the view that an agency may charge a "fee" for services based on "value to the recipient." The Court essentially ruled out the other bases permitted in the IOAA, which, in the court's opinion, could change an assessed "fee" into the levy of a "tax." *In Federal Power Commission*, the Court held that only specific charges for specific services to specific individuals or companies may be recouped by the fees permitted by the IOAA.

The first of the Court of Appeals decisions was *National Cable Television Ass'n Inc.* v. *Federal Communications Commission* (FCC), 554 F.2d 1094 (1976). The Court of Appeals upheld the charging (by the FCC, in this case) of both an application fee and an annual fee, provided the agency makes clear which activities are covered by each of these fees to prevent charging twice for the same activity. The court acknowledged that fees based on reasonable approximations for costs of services rendered would be acceptable. The court stated the following: "It is sufficient for the Commission to identify the specific items of * * * cost incurred in providing each service or benefit * * *, and then to divide the cost among the * * * [recipients] in such as way as to assess each a fee which is roughly proportional to the "value" which that member has thereby received." *Id.* at 1105–06.

In *Electronic Industries Ass'n* v. *F.C.C.*, 554 F.2d 1109 (DC Cir. 1976), the court indicated that a fee for services may be charged for private benefits "although they may also create incidental public benefits as well." Id. at 1115. In the case of NRTLs, the services that OSHA provides to NRTLs and NRTL applicants result primarily in private benefits to these parties, as described below. In *Capital Cities Communications, Inc.* v. *F.C.C.*, 554 F.2d 1135 (D.C. Cir. 1976), the court held that a fee for services should bear a reasonable relationship to the cost to the government to provide the service.

Finally, in *Miss. Power and Light* v. *U.S. Nuclear Regulatory Comm'n* (NRC), 601 F.2d. 223 (5th Cir. 1979), the court upheld a fee for agency services. The NRC calculated its fees based upon the costs of providing the services to the private parties. OSHA is using a similar method to calculate the application processing and audit fees in this final rule.

Based in large part on the results of the foregoing six cases and on the guidelines of OMB Circular A–25, OSHA is establishing fees for specific benefits that organizations receive as a result of the specific services that OSHA provides to them for their initial and continued recognition as an NRTL. The fees will reflect the costs of providing these services, and the costs will be reasonably itemized to the smallest unit practical.

C. Special Benefits and Services Provided

To help clarify the basis for the fees in this final rule, the following describes how OSHA generally handles applications and continuing services under the NRTL Program.

When an organization submits its application, the NRTL Program staff thoroughly review it for completeness and adequacy. Each organization applies for a specific scope of recognition. This scope consists of the specific safety test standards, locations or sites, and programs for which the organization seeks recognition. OSHA has broadly grouped the activities an NRTL may perform in testing and certifying products into nine categories of "programs and procedures," or just "programs." (See 60 FR 12980, March 9, 1995)

When the NRTL Program staff determine that the application is complete and adequate, the staff performs an in-depth on-site review of the applicant's organization, programs, and facilities. Based upon the information obtained primarily through the on-site review, the staff prepares a report and recommendation. The report and the application provide the main basis for a preliminary finding on the application. OSHA publishes a notice of this finding in the **Federal Register** to allow for public comment. Following a comment period (now established as 30 days or 15 days in this final rule, but formerly 60 days), OSHA must publish a final decision and response to comments in the **Federal Register**. Publication makes the recognition official for successful applicants and officially denies the recognition for unsuccessful applicants.

NRTL recognition is valid for five years. During this period, OSHA program staff audit the NRTL to assure that it continues to meet the requirements for recognition. NRTLs may also on occasion request expansion of their scope of recognition to include additional test standards, facilities, or programs. At the end of its initial recognition period, the NRTL may apply for renewal of its recognition. OSHA processes requests for expansion and renewal following a process similar to that used for initial applications for recognition.

Program staff work closely with attorneys of the Department of Labor on a regular basis for both initial recognition and continuing recognition activities. These attorneys review the **Federal Register** notices. They also advise the program staff on issues and other matters that directly relate to the services covered by the fees.

In addition to application processing and audits, NRTL Program staff also perform a number of activities that are essential to the normal operation of the NRTL Program. These activities include administration of program, budgetary, and policy matters; assistance in

training OSHA personnel about the program; inter-agency and international coordination; response to requests for information related to the program; and participation in meetings with stakeholders and outside interest groups. Although necessary to the continued functioning of the program, these activities are incidental to the direct services of application processing and the audits of the NRTLs. Accordingly, costs for these activities are not covered by this final rule.

NRTLs accrue "special benefits" from the services that OSHA renders to them. These "special benefits" are the product of OSHA's initial and continuing evaluation of their qualifications to test and certify products used in the workplace, *e.g.*, the acknowledgment of their capability as an NRTL. The primary special benefits of NRTL recognition are the resulting business opportunities to test and certify products for manufacturers, the NRTL's clients. These opportunities may be in the form of new, additional, or continuing revenue and clients. Once the NRTL has properly certified a product, a manufacturer may then sell this product to employers, enabling them to comply with product approval requirements in OSHA standards.

The services rendered by OSHA that confer these "special benefits" to NRTLs are: (1) Processing of applications for initial recognition as an NRTL and for expansion and renewal of an existing NRTL's recognition, and (2) audits ("post recognition reviews"), which enable the NRTL to maintain the recognition from OSHA.

D. Fees of Other Agencies

Many other Federal agencies charge fees for services they provide to specific recipients. The following is a list of some of these agencies, along with a citation to the regulations that cover the fees they charge:

FEDERAL AGENCIES THAT CHARGE FEES FOR SERVICES

Agency	Regulation
Federal Communications Commission	47 CFR 1.1151
Federal Maritime Commission	46 CFR 514.21
Environmental Protection Agency	40 CFR 152.400
National Voluntary Laboratory Accreditation Program (NVLAP); US Department of Commerce	15 CFR 285
Mine Safety and Health Administration; Department of Labor	30 CFR 5.10
Bureau of Indian Affairs; Department of the Interior	25 CFR 143.4
Food Safety and Health Service; Department of Agriculture	9 CFR 318.21 and 391.5
Federal Aviation Administration; Department of Transportation	14 CFR 187.1

With the exception of the FCC and NVLAP, the above agencies also derive their authority for charging the fees from the IOAA.

OSHA has also examined the fee schedules for other non-governmental organizations that accredit or recognize testing laboratories or certification bodies. Although the fees established in this final rule are specific to the costs to OSHA, the practices of these other organizations may be of interest to reviewers of this rule.

FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS

Organization	Activity	Fee (as of 3/8/99)
Standards Council of Canada—Fees for Certification Organizations.	Application fee	$15,000
	Fees for assessments and audits	Per person on a per diem basis + travel expenses
	Annual accreditation fee	$9,000 + a business volume fee (up to $36,000)
ANSI Accreditation for Certification Programs	Application fee	$2,000
	Accreditation fees	$1,200/day per professional staff time + travel expenses
	Continuing accreditation	$1,200/day for professional staff time related to audits + travel expenses; plus, Percent of gross revenues related to the certification program, up to $40,000
National Voluntary Laboratory Accreditation Program (NVLAP).	Application fee	$500
	Assessment fee (for accreditation and every two years).	per program/field, $1,600 to $3,000 or variable
	Annual support fee	per program/field, $3000 to $3,925 less $2,200 for more than one field
	Annual proficiency testing fee	per program/field, $0 to $5,405 or variable
American Association for Laboratory Accreditation (A2LA).	Application fee	$800
	Assessment fee (for accreditation and every two years).	Deposit of $3,000 + $1,500/extra field/lab, actual costs billed at $750/day + travel expenses (fee also paid for surveillance visit in 2nd year)
	Annual fee	$1,100 for first field/lab, less for two or more fields/labs
American Industrial Hygiene Association—Laboratory Quality Assurance Programs.	Application fee	$250

FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS—Continued

Organization	Activity	Fee (as of 3/8/99)
	Site visit fee	$875/day or $2,400 outside North America + expenses
	Annual fee (also due with application)	$300/program ($150/program with application after June 30)
	Proficiency analytical testing program fee	program/sample specific, also based on # of samples, $86 to $1,800

V. Detailed Discussion of Fees

A. Cost Basis for the Fees

OSHA's first Fee Schedule (set forth in section VI of this preamble) is based on the "full cost" to OSHA of the activities it undertakes for NRTLs. "Full cost" is defined in Section 6d of OMB Circular A–25.[2]

For application processing, full costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other direct and indirect costs necessary to the processing and related support activities. The fees equal the estimated cost of staff time and the actual cost of travel for these activities. These activities mainly include the following: performing the office review of the application, preparing for and performing the on-site review of the organization's testing and administrative facilities, resolving findings of deficiencies in the application, drafting and finalizing the on-site review report, and preparing and publishing the Federal Register documents.

For audits, full costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other costs necessary to the audit and related support activities. The fees equal the estimated cost of staff time and the actual cost of travel for those activities. These activities mainly include the following: preparing for and performing the office or on-site audit of the NRTL, drafting and finalizing necessary reports or documentation, resolving findings of deficiencies in the NRTL's operations, and reviewing and processing audit reports.

Prior to developing the proposed rule on the fees, OSHA had not accounted separately for the costs of the NRTL Program. The personnel and other costs associated with performing activities related to the Program involve a number of different offices throughout the Department of Labor. In preparing the fee schedule presented in this final rule, OSHA has evaluated the total resources that it has committed to the NRTL Program overall and has then estimated the costs that are involved solely with the approval and periodic review functions. It is these costs alone that OSHA seeks to recover through its fees. Personnel costs are the wages, salary, and fringe benefit costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA has calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect costs per hour for "direct staff" members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. Direct costs are expenses for direct staff members. Indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff, and we include $29,800 in our estimate in Figure 1 to cover these costs. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the fees. We include $46,500 in our estimate in Figure 1 to cover these costs. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the total estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing the services to NRTLs and NRTL applicants. Figure 1 shows the costs used to calculate the fees.

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[2] OMB Circular A–25, Section 6. General policy: A user charge, as described below, will be assessed
* * *

a. Special benefits

1. * * *

2. Determining the amount of user charges to assess.

(a) Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6(d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign.
* * *

d. Determining full cost and market price

1. "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A–11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) an annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Avg. cost per FTE (including fringe)	Total est. costs
Direct Staff Costs	4.2	$83,860	$352,200
Travel	na	na	40,000
Indirect Staff & Other Costs	na	na	76,300
Total Est. Program Costs			$468,500
Avg. direct staff cost/hr ($352,200 ÷ 4.2 FTE (2,080) hours)	$40		
Equivalent avg. direct staff cost/hr ($428,500 ÷ 4.2 FTE hours) (includes direct & indirect costs)	$49		

[a] This amount consists of $29,800 of indirect staff costs and $46,500 for equipment and other costs.

The use of an "equivalent average direct staff cost per hour" measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs=10 hours × $40/hour = $400

The $40/hour is the direct staff cost/hour amount shown in Figure 1. The indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs=$76,300/$352,200 = 0.217

Next, the indirect costs would be calculated based on the $400 estimate of direct staff costs:

Indirect costs=$400 × 0.217 = $87

Finally, the total costs of the activity are calculated:

Total costs=direct staff costs+indirect costs=$400+$87=$487

Taking into account the rounding shown in Figure 1, the actual amount calculated would be $490.

Figures 2, 3, and 4 show the estimated time the Agency spends on each major service category. These estimates were developed, in part, for the information collection package for the NRTL Program submitted to OMB in September 1997 under the Paperwork Reduction Act. The major service categories are initial applications, expansion and renewal applications, and audits; and each figure shows the major activities performed and the estimated staff time and travel costs for each of these activities. The Agency calculates the cost of each major activity using the time estimates, the equivalent costs per hour, and the estimate of travel costs. These costs then serve as the basis for the fees shown in the first Fee Schedule (refer to section VI of this preamble).

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average costs [a]
Initial Application Review:		
Staff time: (includes review by office and field staff)	80	$3,924
On-Site Assessment—first day:		
Staff time: (includes 16 hours preparation, 4 hours travel, 8 hours at site)	28	1,373
Travel		670
Total (per site, per assessor)		2,043
On-Site Assessment—addnl. day:		
Staff time	8	392
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		462
Final Report & Federal Register notice:		
Staff time: (includes work performed by field staff and office staff)	160	7,848

[a] Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49).

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION

Major activity	Average hours	Average costs [a]
Initial Application Review (expansion):		
Staff time: (includes review by office and field staff)	32	$1,570
(Note for renewals: 2 hours, i.e. $98, are allotted for processing the NRTL's request)		
$1,570On-Site Assessment—first day:		

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION—Continued

Major activity	Average hours	Average costs [a]
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	981
Travel		670
Total (per site, per assessor)		1,651
On-Site Assessment—addnl. day:		
Staff time	8	392
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		462
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	88	4,316

[a] Average costs for staff time equal average hours x equivalent average direct staff cost/hr ($49).

FIGURE 4.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major activity	Average hours	Average costs [a]
Pre-Site Review:		
Staff time: (field staff only)	8	$392
On-Site Audit—first day:		
Staff time: (includes 4 hours travel)	12	589
Travel		670
Total (per site, per assessor)		1,259
Final Report:		
Staff time: (includes work performed by field staff and office staff)	16	785
Total costs		$2,438 [b]

[a] Average costs for staff time equal average hours x equivalent average direct staff cost/hr ($49).
[b] Based on a one day audit. The costs for any additional days are the same as the additional day costs for an assessment.

In deriving the fee amounts shown in the Fee Schedule shown in section VI of this preamble, OSHA has generally rounded the costs shown in Figures 2, 3, and 4, up or down, to the nearest $50 or $100 amount.

OSHA believes that the Fee Schedule accurately reflects costs to the Agency for the staff time and travel involved in performing and administering the application processing and auditing activities. The amounts shown in the schedule reflect the Agency's current reasonable estimation of the costs involved for the services rendered. As previously mentioned, OSHA is not attempting to recover the entire costs of the NRTL Program through the fees but only the costs of providing the specific services already described.

B. Description of the Fees

The following is a description of the fees and work involved for the activities currently covered under each type of fee service category, e.g., application processing fees, and the basis used to charge each fee. The amount of each fee is shown in the Fee Schedule set forth in section VI of this preamble.

Application Review Fees: This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. This fee does not cover the work involved in reviewing the test standards requested, which is reflected in the review and evaluation fee. Application fees are based on average costs per type of application. OSHA uses average costs since the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

Assessment Fees: There are three assessment fees: a fee for the first day for initial applications, a fee for the first day for expansion or renewal applications, and a fee for each additional day for any type of application. The assessment fee for an initial application covers the estimated time for staff preparatory and on-site work for the first day and an amount to cover travel in the 48 contiguous states (including the District of Columbia). As in the case of application review fee, the office preparation time generally involves the same types of tasks. Actual time assessing the facility may vary, but our staff devote at least a full day for traveling and for performing the on-site work. The fee for each additional day reflects time spent at the facility and an amount for one day's room and board. Generally, an applicant for initial recognition must pay for two additional days, submitting these fees with its application. Both the first day and the additional day fees are calculated per person per site. As previously explained, all applicants pay "actual costs" for an assessment (defined in section III of this preamble). Any difference between actual costs and the amounts submitted with an application will be reflected in the final bill that we provide to the applicant.

The assessment fee for expansion and renewal applications, submitted only by NRTLs, covers the estimated time for staff preparatory and the actual on-site work with travel expenses. Upon

completion of these activities, OSHA will bill the NRTL for "actual costs" of the assessment.

For initial applications, a supplemental travel amount is assessed for travel outside the 48 contiguous states (including the District of Columbia). The supplemental amount is 1,000 US dollars and is shown in footnote 4 of Table A. FEE SCHEDULE. This amount reflects an estimate of the additional cost of staff and travel. All travel amounts are only estimates for purposes of submitting the initial payment of the fees. As already noted, an applicant will be billed for actual travel expenses, based on government per diem and travel fares in effect at the time of the travel.

A supplemental travel cost table reflecting a specific dollar amount was not developed for applicants from each potential country that could apply for recognition. Even though such a table was proposed in the NPRM, it was not developed since the supplemental fee is only an estimate for prepayment of assessment fees, and is not the final billed cost to the applicant. The supplemental travel fee will be updated along with the fee schedule to reflect changes in the government travel rates. OSHA may develop supplemental travel fees based upon specific countries or regions as costs dictate. Specific instructions on submitting the fees will be made available to the public along with the current fee schedule.

Review and Evaluation Fee: This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly with the number of test standards requested by the applicant. The fee is based on the estimated time necessary to review each standard to determine whether it is "appropriate," as defined in 29 CFR 1910.7, and whether it covers equipment for which OSHA requires certification by an NRTL. The fee also covers time to determine the current designation and status (*i.e.*, active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. In addition, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. The current estimated average review time per test standard is one hour.

Final Report/Register Notice Fees: Each of these fees is charged per application. The fee reflects the staff time to prepare the report of the on-site review (*i.e.*, assessment) of an applicant's or an NRTL's facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required Federal Register notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant.

Audit (Post-Recognition Review) Fees: The on-site audit fee reflects the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. OSHA will bill the NRTL for the on-site audit fee after we have performed the audit, and the bill will reflect the actual staff time and travel costs for the audit. We have based the audit fee on the premise that we spend a full day at a site. In some cases, due to the proximity of two sites, we may actually audit two sites in one day. In such cases, we would apportion our audit fee between the two sites based on the percent of time we spent at each site.

Miscellaneous Fees: OSHA will also charge a fee for late payment of the annual audit fee. The amount for the late fee is based on 1 hour of staff time.

VI. Fee Schedule

The first Fee Schedule, included in this section VI of the preamble, is effective on October 1, 2000. The fees apply to any organization seeking recognition or already recognized as an NRTL on or after October 1, 2000. Fees must be submitted for any application (whether for initial recognition, or expansion or renewal of recognition) postmarked on or after October 1, 2000. The fees apply also to any pending application (*i.e.*, an application that OSHA has not yet completed processing) only for those activities that the Agency begins on or after the effective date of this first Fee Schedule.

OSHA establishes the following fee schedule:

TABLE A. FEE SCHEDULE—NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)

[Fee schedule (effective October 1, 2000)] [10]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
Application Processing	Initial Application Review [1]	$3,900.
	Expansion Application Review [1]	$1,550.
	Renewal Application Review [1]	$100.
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) [2, 4]	$5,900.
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) [2, 7, 8]	$1,350 + travel expenses.
	Assessment—Expansion or Renewal Application (per person, per site—first day) [3, 8]	$1,000 + travel expenses.
	Assessment—each addnl. day (per person, per site) [2, 3, 8]	$400 + travel expenses.
	Review & Evaluation (per standard) [5] (for initial or expansion applications)	$50.
	Final Report/Register Notice—Initial Application [5]	$7,850.
	Final Report/Register Notice—Expansion or Renewal Application [5]	$4,300.
Audits	On-site Audit (per person, per site-first day) [6]	$1,750 + travel expenses.
	On-site Audit (per person, per site-each addnl. day) [6]	$400 + travel expenses.
	Office Audit (per site) [6]	$400.
Miscellaneous	Supplemental Travel (per site—for sites located outside the 48 contiguous States, including the District of Columbia) [4].	$1,000.
	Late Payment [9]	$50.

Notes to OSHA Fee Schedule for NRTLs:

1. Who must pay the Application Review fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and include the fee with your expansion or renewal application.

2. What assessment fees do you submit for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay $5,900 for each site for which you wish to obtain recognition, and you must include this amount with your initial application. We base this amount on two assessors performing a three day assessment at each site. After we have completed the assessment work, we will calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We will calculate this fee at the rate of $1,350 for the first day and $400 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares. We will bill or refund the difference between the amount you pre-paid, $5,900/site, and this fee. We will reflect this difference in the final bill that we will send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

3. What assessment fees do you submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we will bill you for the fee after we perform the assessment for the actual staff time and travel costs we incurred in performing the assessment. We will assess this fee at the rate of $1,000 for the first day and $400 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares.

4. When do I pay the Supplemental Travel fee?

You must include this fee when you submit an initial application for recognition and the site you wish to recognized is located outside the 48 contiguous U.S. states (including the District of Columbia). The current supplemental travel fee is $1,000. We will factor in this prepayment when we bill for the actual costs of the assessment, as described in our note #2 above. See note 7 for possible refund of Assessment fees.

5. When do I pay the Review and Evaluation and the appropriate Final Report/Register Notice fees?

We will bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application.

6. When do I pay the Audit fee?

We will bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit. We will calculate our fee based on actual staff time and travel costs incurred in performing the audit. We will calculate this fee at the rate of $1,750 for the first day and $400 for each additional day, plus actual travel expenses for each auditor. Actual travel expenses are based on government per diem and travel fares.

7. When and how can I obtain a refund for the fees that I paid?

If you are applying for initial recognition as an NRTL, we will refund the assessment fees that we have collected if you withdraw your application before we have traveled to your site to perform the on-site assessment. We will also credit your account for any amount we owe you if the assessment fees we have collected are greater than the actual costs of the assessment. Other than these two cases, we will not refund or grant credit for any other fees that are due or that we have collected.

8. What rate does OSHA use to charge for staff time?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each "direct staff" member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $49.

9. What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill for the fees at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 8). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition.

10. How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202–693–2110) or visit the program's web site to determine the effective date of the most current Fee Schedule. Access the site by selecting "Subject Index" or "Programs" at *www.osha.gov*. Any application processing fees are those in effect on the date you submit your application. Audit fees are those in effect on the date we begin our audit. Any pending application (*i.e.*, an application that OSHA has not yet completed processing) will be subject only to the fees for the activities that OSHA begins on or after the effective date of the initial fee schedule.

The Fee Schedule shows the current activities for which OSHA plans to charge fees. However, the Agency may find, after it has gained experience charging the fees or based upon suggestions it receives, that it may be better to further break down or even combine some fee categories. OSHA would give the public an opportunity to comment on any such changes. However, these changes would merely reapportion costs or further detail the fees; they would not apply to different services than those described in this final rule. In evaluating any changes to a fee schedule, OSHA will also consider the following in determining the fees it needs to charge for its services: (1) Actual expenditures (direct and indirect) of the most recently completed government fiscal year for rendering the services for which fees will be charged, and (2) estimated costs (direct and indirect) of the upcoming government fiscal year for rendering the services for which fees will be charged.

An organization applying for its initial recognition as an NRTL must include both the application fee and on-site review ("assessment") fee with the application. An existing NRTL that is applying solely for an expansion or renewal of NRTL recognition need

include only the application fee. If we need to perform an on-site review for the expansion or renewal request, we will bill the NRTL for the fee after we perform the assessment. If a renewal applicant does not pay all fees that are due, OSHA will not renew the NRTL's recognition.

If an applicant withdraws its initial application before we have traveled to their site to perform an on-site assessment, we will refund any on-site assessment fee that we have collected. However, if we have begun our travel for the on-site visit, we will not refund any portion of the assessment fee. When we publish a preliminary **Federal Register** notice to announce an application for initial recognition, expansion, or renewal, we will bill the applicant for the balance of the application processing fees and will include actual travel costs and staff time for the assessment. For applications and audits, if an NRTL or applicant does not pay its fees, we will cancel the application or revoke its recognition, as appropriate.

VII. Regulatory Matters

A. Final Economic Analysis and Final Regulatory Flexibility Analysis

Executive Order 12866 and the Regulatory Flexibility Act require Federal agencies to analyze the cost, and other consequences and impacts, of proposed and final rules. In accordance with these requirements, OSHA prepared this final economic analysis to accompany this final rule by OSHA to allow the Department of Labor to charge and retain fees for services provided to Nationally Recognized Testing Laboratories (NRTLs). The analysis included a description of the industry, an estimation of the costs of compliance, and an evaluation of the economic and other impacts of the proposed rule on firms in this sector. The analysis also examined the costs and impacts of the proposal on affected small entities, as defined by the Small Business Administration. Because the fee structure has remained largely unchanged, and because there were no comments on the substance of this analysis, it is the same as that for the proposed rule.

Affected Industry

OSHA standards require that certain equipment and materials used in the workplace meet minimum criteria for performance or safety. In 29 CFR Parts 1910 (governing hazards in general industry) and 1926 (governing hazards in the construction industry), there are more than 160 paragraphs that require certain equipment to be either safety tested, listed, or approved in order for that equipment to be used in the workplace. Table 1 provides a listing of the types of equipment that require testing, listing or approval by NRTLs. The requirements to test, list or approve equipment are necessary to ensure that employees use appropriate safe equipment [2]. Although it is ultimately the employer's responsibility to provide safe equipment, few, if any, have the technical capabilities to test items such as electrical conductors and equipment, the fire resistance properties of materials, the lifting capacity of scaffold hoists, etc., for safety.

Table 1. Categories of Equipment/ Materials Required by Various Provisions in OSHA's Standards to Be Certified by an NRTL

Electrical Conductors or Equipment

- Automatic Sprinkler Systems
- Fixed Extinguishing Systems (Dry chemical, water spray, foam or gaseous agents)
- Fixed Extinguishing Systems Components and Agents
- Portable Fire Extinguishers
- Automatic Fire Detection Devices and Equipment
- Employee Alarm Systems
- Self-Closing Fire Doors
- Fire (B) Doors
- Windows (Frames)
- Heat Actuated (Closing) Devices (Dip Tanks)
- Exit Components
- Spray Booth Overspray Filters
- Flame Arresters, Check Valves, Hoses (Transfer Stations), Portable Tanks, and Safety Cans—Flammable Combustible Liquids)
- Pumps and Self-Closing Faucets (for Dispensing Class I Liquids)
- Flexible Connectors (Piping, Valves, Fittings)
- Service Station Dispensing Units (Automotive, Marine)
- Mechanical or Gravity Ventilation Systems (Automotive Service Station Dispensing Area)
- Automotive Service Station Latch—Open Devices for Dispensing Units
- New Commercial and Industrial LPG Consuming Appliances
- Flexible Connectors (Piping, Valves, Fittings)—LPG
- Powered Industrial Truck LPG Conversion Equipment
- LPG Storage and Handling Systems (DOT Containers, Cylinders)
- Automatic Shut-off Devices (Portable LPG Heaters Including Salamanders)
- LPG container assemblies (non-DOT) for interchangeable installation above or under ground.

sbull; Fixed electrostatic apparatus and devices (coating operations).

- Electrostatic hand spray apparatus and devices.
- Electrostatic fluidized beds and associated equipment.
- Each appurtenance (e.g., pumps, compressors, safety relief devices, liquid-level gauging devices, valves and pressure gauges) in storage and handling of anhydrous ammonia.
- Gasoline, LPG, diesel, or electrically powered industrial trucks used in hazardous atmospheres.
- Acetylene apparatus (torches, regulators or pressure-reducing valves, generators [stationary and portable], manifolds).
- Acetylene generator compressors or booster systems.
- Acetylene piping protective devices.
- Manifolds (fuel gas or oxygen)—separately for each component part or as assembled units.
- Scaffolding and power or manually operated units of single-point adjustable suspension scaffolds.
- Hoisting machine and supports (Stone setters' adjustable multiple-point suspension scaffold).
- Hoisting machines (Two-point suspension; Masons' adjustable multiple-point suspension scaffold).

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 2000.

A product testing lab tests equipment in accordance with test standards, such as those established by Underwriters Laboratories (UL), Factory Mutual Research Corporation (FMRC), the American National Standards Institute (ANSI), or the American Society for Testing and Materials (ASTM). These materials typically contain requirements concerning the design specifications of the equipment, the specific physical tests to be performed, the criteria for passing these tests, etc. The development of a product test standard for a particular type of product can be a deliberate, lengthy, and expensive process that involves a team of engineers and scientists. In addition, test standard development is a dynamic process in which test standards are constantly revised. For example, UL generally reviews each of its test standards at least once every 3 years. Further, at any point in time, between 10 and 20 percent of the UL test standards have been changed during the preceding 6 months. In light of this effort and expense, very few organizations develop their own product test standards.

Independent testing labs are entities that are separate from any manufacturer,

[2] A substantial amount of the equipment tested is used in situations other than those in which OSHA has sole interest. As one example, electrical conductors and equipment installed in buildings must conform with the state and local building code, the National Electrical Code, and any requirements established by the property insurer. In addition, manufacturers have products examined by testing laboratories in order to meet the demands of their product liability insurers as well as to improve the product. Thus, OSHA is not the only organization concerned about the safety of many of these products.

trade association, or equipment vendor. They typically test a variety of products within one or more general testing disciplines (*e.g.*, electrical, thermal, mechanical) for many clients, such as manufacturers, trade associations, physicians, and state agencies. Most of the smaller labs specialize in testing specific types of products within one or two general testing disciplines. Even the larger testing labs tend to specialize within one or two general testing disciplines and do not test every type of product within a general testing discipline.

According to the 1992 Census, there are approximately 4,704 independent testing labs in the United States, of which 4,540 are profit making and 164 are not-for-profit (see Table 2). Of the 4,704 testing labs, 1,776 perform chemical or biological testing [4] and about 2,928 concentrate on product testing [1]. The second category of testing labs performs such types of tests as electrical resistance or capacity, fire resistance of materials, materials strength, acoustic and vibration testing, etc. Some of these testing labs will be affected by the rule. Total combined receipts for taxable and non-taxable establishments were $5.13 billion in 1992. Not-for-profit establishments represent 3.4 percent of the total number of testing establishments and 7.2 percent of total revenues.

TABLE 2.—CHARACTERISTICS OF TESTING LABORATORIES

	Number of firms	Number of establishments	Number of employees	Total receipts ($million)	Percent receipts [b] from testing
Taxable Establishments	3,513	4,540	70,762	$4,784	94.47
Non-Taxable Establishments	135 [a]	164	6,256	371	90.13

Source: US Department of Commerce. 1992 Census of Service Industries. SC92–S–1. February 1995.
[a] Calculated based on the ratio of non-taxable firms to establishments in SIC 873.
[b] Other sources of receipts for taxable and non-taxable labs include physical or biological research and development, engineering consulting and design, and contributions (tax-exempt labs only).

By 1992, the testing industry increased by 40 percent, from a total of 3,458 testing labs in 1987; there are several reasons for this growth. First, as technology grows more complex, fewer personnel within the equipment manufacturing organization have the technical expertise to certify the quality of the finished product, *i.e.*, fewer people in a given organization have the ability to perform the overall product certification function. Product testing laboratories can help to provide this quality assurance function. Second, the increase in product liability suits has encouraged manufacturers to take additional steps to verify the safety characteristics of their products. Third, more information is now being sought on product toxicity [2].

The testing industry employs 76,718 workers. Small establishments with one to nine employees represent 3,002 establishments (64 percent of all establishments), but collectively employ only 11,095 employees (14 percent of all employees).

The rule contains requirements for the payment of fees for services provided by OSHA to the NRTLs. The two distinct groups of testing labs that will be affected by the rule are: (1) Testing labs that will seek acceptance by OSHA as "nationally recognized testing labs" for particular types of equipment testing, listing, and approval required under Part 1910.7, and (2) existing NRTLs wishing to retain their eligibility for testing and certification of workplace equipment and/or to expand their NRTL program. Testing labs that do not seek OSHA acceptance will not be affected by the rule and will, therefore, incur no costs of compliance.

Currently, there are 17 testing laboratories that have NRTL status and that operate over 40 testing facilities (sites). Table 3 lists the laboratories and the number of sites for these labs. Both domestic and foreign testing laboratories may be affected by this rule. The Canadian Standards Association (CSA) is a product testing lab that is Canadian-owned and operated and is the only foreign testing lab that has, to any significant degree, entered the American product safety testing market. CSA certification is accepted by some state and local building code authorities.

TABLE 3.—NATIONALLY RECOGNIZED TESTING LABORATORIES (NRTLS)

Testing laboratory	Number of sites
1. Applied Research Laboratories, Inc. (ARL)	1
2. Canadian Standards Association (CSA)	6
3. Communication Certification Laboratory, Inc. (CCL)	1
4. Curtis-Straus LLC. (CSL)	1
5. Detroit Testing Laboratory, Inc. (DTL)	1
6. Electro-Test, Inc. (ETI)	2
7. Entela, Inc. (ENT)	2
8. Factory Mutual Research Corporation (FM)	2
9. Intertek Testing Services NA, Inc. (ITS)	8

TABLE 3.—NATIONALLY RECOGNIZED TESTING LABORATORIES (NRTLS)—Continued

Testing laboratory	Number of sites
10. MET Laboratories, Inc. (MET)	1
11. National Technical Systems, Inc. (NTS)	1
12. NSF International (NSF)	1
13. SGS U.S. Testing Co., Inc. (SGSUS)	2
14. Southwest Research Institute (SwRI)	1
15. TUV Rheinland of North America, Inc. (TUV)	1
16. Underwriters Laboratories Inc. (UL)	10
17. Wyle Laboratories, Inc. (WL)	1
Total	42

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 2000.

Costs

This section presents estimates of the costs that will be incurred by firms to come into compliance with the final rule for NRTL fees. These costs do not represent new costs to the economy; instead, they represent a new method of paying for the costs of the NRTL certification program. Today, these costs are paid by taxpayers as part of OSHA's budget. This rule will transfer the payment of these costs to the NRTLs themselves and NRTL applicants.

Testing laboratories participating in the OSHA program will be subject to

[4] Biological and chemical testing labs perform such tests as chemical composition of substances, blood tests, etc., and would not be affected by the final rule.

costs for two types of services: (1) Application processing for the initial recognition of an organization, and for expansion and renewal of an existing NRTL's recognition; and (2) audits (post-recognition reviews), which enable the NRTL to maintain its recognition from OSHA. The fees for these services are based on the actual cost of the service rendered and will thus vary by circumstances. Table A, in Part VI of this notice, shows the elements of the fee structure and a sample fee schedule. The activities covered by each category of fees are explained in detail in that part.

OSHA relied on a review of the NRTL application information from 1988 to 1996 to develop estimates on the annual number of new applicants, and expansion and renewal requests. On average, OSHA receives about 3 initial applications for NRTLs and 3 applications for renewal, and 7 applications for expansions on an annual basis.

OSHA expects to receive NRTL application requests from foreign-based testing laboratories as a result of a Mutual Recognition Agreement (MRA) between the United States and the European Union (EU). Through the MRA, foreign labs located in the EU that apply for and are recognized as NRTLs can perform the same activities as US based NRTLs. The fees being adopted by OSHA will ensure that US taxpayers are not subsidizing foreign businesses. At this time, there is insufficient information to quantify the number of foreign labs that may apply for NRTL status and their future costs of compliance for these labs.

OSHA estimates that labs will require approximately 0.5 hours of an accountant's time to estimate OSHA-related activities and to process payment. Employee wages are based on the Bureau of Labor Statistics estimate of total employee compensation for the professional specialty of $30.17 per hour [3]. These costs and the estimated fee costs are shown combined in Table 5.

Estimates of the total cost of full compliance with the requirements of the NRTL fee rule are presented in Table 4. This table also shows OSHA's estimates of the average fee for each type of service costs, as well as a current estimate of total annual fee collections. Total estimated costs for the testing laboratory industry would amount to about $240,000 annually. OSHA estimates that initial recognitions will cost an average of $20,423 per establishment, expansions of recognition application will cost an average of $7,820 per establishment, renewals of recognition will cost an average of $8,641 per establishment, and annual audits will cost an average of $2,436 per establishment.

TABLE 4.—SUMMARY OF TOTAL ESTIMATED FEE COLLECTION BY CATEGORY

Category	Average cost per application or audit	Est. number per year	Estimated fee collection
Initial Recognition Applications	$20,423	3	$61,269
Expansion of Recognition Applications	7,820	7	54,739
Renewal of Recognition Applications	8,641	3	25,924
Annual Site Visits (Audits)	2,436	40	97,432
Total			239,364

Source: Office of Technical Programs and Coordination Activities, 1999.

Economic Impacts

OSHA assessed the economic impacts of the costs of compliance with the regulation for NRTL fees and has determined that the regulation is economically feasible for firms in this industry. The rule would have the advantage of encouraging economic efficiency by pricing the service of the NRTL program rather than providing the service for free. As mentioned above, the cost of the NRTL program is currently borne by taxpayers through OSHA's budget. This rule would transfer the payment of some of these costs to firms receiving the service from OSHA.

To determine whether the rule's projected costs of compliance would raise issues of economic feasibility for the affected industry or would adversely alter the competitive structure of the industry, OSHA developed quantitative estimates of the economic impact of the rule on establishments in the affected industry, and thus on the 17 firms already recognized as NRTLs. In this analysis, compliance costs are compared with industry revenues and profits.

Estimates of compliance costs are compared with estimates of annual revenues based on data from the U.S. Department of Commerce, Bureau of the Census, "Table 3: United States—The Number and Percent of Firms, Establishments, Employment, Annual Payroll, and Estimated Receipts by Industry and Employment Size for 1993," while estimates of pre-tax profits for most industries are based on data from Robert Morris Associates [3].

OSHA compared the baseline financial data with total annual compliance costs by computing compliance costs as a percentage of revenues. Table 5 shows compliance costs as a percentage of sales and pre-tax profits. This table is titled a screening analysis because it simply measures costs as a percentage of pre-tax profits and sales and does not predict impacts on these sales and pre-tax profits. The screening analysis is used to determine whether the compliance costs associated with the NRTL fees could lead to significant impacts on the affected firms. The actual impact of the rule on the profits and sales of firms will depend on the price elasticity of demand for the services provided by the affected firms.

TABLE 5.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FEES

	Annual costs of compliance	Revenues ($1000)	Pre-tax profits ($1000)	Annualized costs of compliance as a percent of	
				Sales	Pre-tax profit
Testing Laboratories (SIC 8734)	$239,825	$5,547,796	$316,224	0.004	0.08

Sources:
US Department of Labor, OSHA, Office of Regulatory Analysis, 1996; Office of Technical Programs and Coordination Activities, 1999.
US Small Business Administration, Office of Advocacy. Table 3: US Establishments, Employment, and Payroll by Industry and Firm Size, 1993.
[a] Revenues do not include foreign laboratories sales.

Price elasticity refers to the relationship between the price charged for a product and demand for that product; that is, the more elastic the relationship, the less able a firm is to pass the costs of compliance through to its customers in the form of a price increase and the more it will have to absorb the costs of compliance from its profit. When demand is completely inelastic, firms can absorb all the costs of compliance simply by raising the prices they charge for the service; under this scenario, profits are untouched. Where demand is inelastic, the impact of compliance costs that amount to 1 percent of revenues would be a 1 percent increase in the price of the product, with no decline either in demand or in profits. Such a situation would be most likely when there are few, if any, substitutes for the service offered by the affected establishments and where such services account only for a small portion of the income of its consumers. When demand is completely elastic, firms cannot absorb the costs simply by passing the cost increase through in the form of a price increase; instead, they must absorb the cost increase from their profits. In this case, no increase in price is possible, and before-tax profits would be reduced by an amount equal to the costs of compliance. Under this scenario, if the costs of compliance are a large percentage of the establishment's profits, some establishments might be forced to close. This scenario is highly unlikely to occur, however, because it can only arise when there are other services that are, in the eyes of consumers, perfect substitutes for the services the affected establishments provide. A common intermediate case would be a price elasticity of one. In this situation, if the costs of compliance amount to 1 percent of revenues, then production would decline by 1 percent and prices would rise by 1 percent. In this case, establishments remain in business and maintain the same revenue as before but would produce 1 percent less product or service. Consumers would effectively absorb the costs through a combination of increased prices and reduced consumption; this, as the court described in *ADA* v. *Secretary of Labor*, is the more typical case.

As shown in Table 5, the impacts imposed by the rule are not sizeable on the industry. On average, annualized compliance costs would amount to only 0.004 percent of estimated industry revenues and 0.08 percent of estimated profits. Even if no price increase were possible, a 0.08 percent decline in profits would not threaten the viability of the industry. These impacts are overestimated since the revenues do not include foreign organization revenues. Thus, the rule is determined to be economically feasible for affected laboratories.

As previously noted, OSHA received a comment from a "stakeholder" that stated the proposed fees would have a significant impact on the manufacturers who are customers of NRTL services [Ex. 2–19]. However, they did not present any information or evidence of such impacts. Testing fees are minor costs compared with the product's development and manufacturing costs. The price of testing entails not only the charges for the direct testing service, but also the length of time taken by the testing process. In other words, the time spent by the manufacturer waiting for the product to be tested is time during which the product is not being sold and the manufacturer is not receiving the income necessary to offset the expenses of designing the product, establishing a production line, etc. In addition to the time component, the market for testing services is highly competitive and the demand inelastic because, in general, the price for testing services is a very small component of the overall costs of the product. OSHA estimated in its Final Regulatory Impact Analysis of the Final Rule for 29 CFR Part 1910, Safety Testing of Certification of Certain Workplace Equipment and Materials and Programs, that the actual testing, listing and approval expenditures for tested equipment would be between 0.23 percent and 0.50 percent of the value of these products [2]. Thus, on average, product testing fees are a minor component of the cost of manufacturing equipment and will continue to remain so even after the fees have been implemented.

Potential Economic Impacts of the Regulation on Small Entities

This section measures the potential economic impacts of the regulation on small entities in the affected testing laboratory industry to determine whether the regulation has a significant impact on a substantial number of small firms, as required by the Regulatory Flexibility Act (as amended in 1996). For the purposes of this analysis, OSHA defines small entities using the Small Business Administration's (SBA) Table of Size Standards. The SBA size standards for-profit firms identify firms with less than $5 million in revenues as small in the testing laboratory service sector.

The Regulatory Flexibility Act addresses impacts on "small businesses," and "small not-for-profit organizations," both of which are referred to in this analysis as "small entities." What constitutes a small entity is defined by the SBA in terms of the number of employees or annual receipts (unless otherwise stated) constituting the largest size that a for-profit enterprise (together with its affiliates) may be and still remain eligible as a small business for various SBA and other Federal Government programs. A "small organization" is defined as any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Since this definition would include all of the not-for-profit entities, no separate analysis of small organizations is necessary.

The number of establishments operated by small firms and the number

of affected workers employed in small firms are based on Bureau of the Census data[5]. The Bureau of the Census data classify firms according to the number of workers employed by the enterprise. The following employment size classifications were used: 1–4, 5–9, 10–19, 20–99, 100–499, 500+. For each firm size classification, data were provided on the total number of firms, establishments, employees and estimated annual receipts.

Based on the SBA size category and the Census data, OSHA has determined that most of the testing labs with NRTL status are of substantial size in terms of both gross revenues and number of employees. The average revenue of these firms, based on the employment size categories provided by the Census data, is estimated to range from $6.9 million to $18.9 million per firm.

The purpose of this analysis is to assess the impacts on business organizations consisting of one or more domestic establishments under common ownership or control, without regard to the number of states in which a business organization may be operating establishments. However, the data provided by the Census do not include the number of enterprises, but rather the number of firms, which, by the Census' definition, is essentially the number of states in which an enterprise operates establishments in a specific industry. Thus, to the extent that enterprises operate establishments in the same industry in multiple states, estimates of the number of entities may be overestimated.

To estimate the number of small entities, average revenues per firm were calculated in each enterprise size category using Census data, and size categories where average revenues per firm were less than the standards set by SBA (i.e., less than $5 million for all other firms), firms in those size categories were assumed to be small entities. Table 6 shows the estimated number of small entities in the industry. Only 9 small businesses and 1 not-for-profit entity are currently NRTLs and thus certain to be affected. However, the rule could affect any of the 3,170 small independent testing laboratories if such entities wish to become NRTLs. About 87 percent of all independent testing laboratories are estimated to be operated by small entities.

Table 6 presents the results of the regulatory flexibility screening analysis. It shows the estimated annual compliance costs and economic impacts relative to revenues and pre-tax profit for affected small entities. For testing laboratories seeking NRTL status for the first time, the annual compliance cost amounts to only 0.22 percent of revenues and 3.90 percent of profits for small entities. The analysis also shows that for-profit testing labs with current NRTL status have compliance costs that are 0.25 percent of revenues and 4.36 percent of profits. For not-for-profit NRTLs, compliance costs represent 0.10 percent of revenues. Impacts of these magnitudes do not exceed the thresholds OSHA has established for significant impacts.

Thus, because this rule will not have a significant impact on small entities (as defined by the SBA), OSHA certifies that this final rule will not have a significant impact on a substantial number of small entities.

TABLE 6.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FEES RULE ON SMALL ENTITIES

	Definition of small entity	Employment size	Number of small firms	Annualized cost per firm	Average revenues per small firm	Pre-tax profits per small firm	Annualized cost of compliance as a percent of	
							Sales	Pre-tax profit
Testing Laboratories (SIC 8734).	<$5 million	<100	NA	$5,359	$2,413,243	$137,555	0.22	3.90
Testing Laboratories with NRTL Status								
For-Profit Firms.	<$5 million	<100	9	6,000	2,413,243	137,555	0.25	4.36
Not-For-Profit Firms.	Not-for-Profit ...	500+	1	18,180	18,913,183		0.10	

Source:
US Department of Labor, OSHA, Office of Regulatory Analysis, 2000; Office of Technical Programs and Coordination Activities, 1999.
US Small Business Administration, Office of Advocacy. Table 3: US Establishments, Employments, and Payroll by Industry and Firm Size, 1993.
Note: As defined by the Small Business Administration's Table of Size Standards.

References

1. US Department of Commerce, Bureau of the Census. 1992 Census of Service Industries: Industry Series: SC92–S–1, –4, –5. Washington, D.C., February 1995.

2. US Department of Labor, OSHA. Final Regulatory Impact Analysis of the Final Rule 29 CFR PART 1910 for Safety Testing of Certification of Certain Workplace Equipment and Materials and Programs. March 1988.

3. Robert Morris Associates. Annual Statement Studies. September 1995.

B. Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA regulations (40 CFR Part 1500), and the Department of Labor's NEPA regulations (29 CFR Part 11), the Assistant Secretary has determined that this final rule will not have a significant impact on the external environment.

C. Federalism

This final rule has been reviewed in accordance with Executive Order 13132,

[5] The Bureau of the Census defines a "firm" as "a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control," and an "enterprise" as "a business organization consisting of one or more domestic establishments that were specified under common ownership or control." In other words, if, for example, an enterprise with 100 employees operates nursing homes in four states, the Bureau of the Census would count this as four firms in the nursing home industry in the 100 to 499 employment size classification.

regarding Federalism. This final rule would only set fees for services provided by the Federal Government to private entities and has no impact on Federalism. The rule does not limit or restrict State policy options.

D. Paperwork Reduction Act of 1995

OSHA does not plan to develop or implement a form for NRTLs and NRTL applicants to use to pay the fees but will provide instructions on how to calculate the fees, as previously stated. The Agency does not believe a form is needed since the fee calculations are relatively simple. In addition, OSHA has no reporting requirements related to the fees. As a result, there are no additional burden hours associated with the fees.

E. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any year.

F. State Plan States

The 25 States and territories with their own OSHA approved occupational safety and health plans are not affected by this final rule. These 25 states and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

VIII. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. The final sections are issued under the authority of section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657); and Secretary of Labor's Order No 6–96 (62 FR 111). The final sections are also issued under authority of OMB Circular A–25 (dated 7/8/93); Public Law 106–113 (113 Stat. 1501A–222); 29 U.S.C. 9a; the Administrative Procedure Act (5 U.S.C. 553); and the Independent Offices Appropriations Act (31 U.S.C. 9701).

List of Subjects in 29 CFR Part 1910

Fees, Laboratories, Occupational safety and health.

Signed at Washington, D.C. this 20th day of July, 2000.

Charles N. Jeffress,

Assistant Secretary.

For the reasons discussed in the preamble, OSHA amends 29 CFR part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart A of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR Part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

2. Add new paragraph (f) to § 1910.7 to read as follows:

§ 1910.7 Definition and requirements for a nationally recognized testing laboratory.

* * * * *

(f) *Fees.* (1) Each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following services:

(i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and

(ii) Audits of sites.

(2) The fee schedule established by OSHA reflects the cost of performing the activities for each service listed in paragraph (f)(1) of this section. OSHA calculates the fees based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = [Average (or Actual) Hours to Complete the Activity × Staff Costs per Hour] + Average (or Actual) Travel Costs

(3) (i) OSHA will review costs annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the implementation table in paragraph (f)(4) of this section.

(ii) OSHA will publish all fee schedules in the **Federal Register**. Once published, a fee schedule remains in effect until it is superseded by a new fee schedule. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change. OSHA will consider such requests during its annual review of the fee schedule.

(4) OSHA will implement fee assessment, collection, and payment as follows:

Approximate dates	Action required
I. Annual Review of Fee Schedule	
November 1	OSHA will publish any proposed new Fee Schedule in the **Federal Register**, if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule.
December 15	OSHA will publish the final Fee Schedule in the **Federal Register**, making it effective.
II. Application Processing Fees	
Time of application	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.

Approximate dates	Action required
Publication of preliminary notice	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
	III. Audit Fees
After audit performed	OSHA will bill each existing NRTL for the audit fees in effect at the time of audit, but will reflect actual travel costs and staff time in the bill.
30 days after bill date	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
45 days after bill date	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee
60 days after bill date	OSHA will publish a notice in the **Federal Register** announcing its intent to revoke recognition for NRTLs that have not paid these audit fees.

(5) OSHA will provide details about how to pay the fees through appropriate OSHA Program Directives, which will be available on the OSHA web site.

3. Revise paragraphs I.B.5.a, II.B.2.a, and II.C.2.a of Appendix A to § 1910.7, to read as follows:

Appendix A to § 1910.7—OSHA Recognition Process for Nationally Recognized Testing Laboratories

* * * * *

I. Procedures for Initial OSHA Recognition

* * * * *

B. Review and Decision Process; Issuance or Renewal

* * * * *

5. *Public review and comment period.*—a. The **Federal Register** notice of preliminary finding will provide a period of not less than 30 calendar days for written comments on the applicant's fulfillment of the requirements for recognition. The application, supporting documents, staff recommendation, statement of applicant's reasons, and any comments received, will be available for public inspection in the OSHA Docket Office.

* * * * *

II. Supplementary Procedures

* * * * *

B. Expansion of Current Recognition

* * * * *

2. Procedure. a. OSHA will act upon and process the application for expansion in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

* * * * *

C. Renewal of OSHA Recognition

* * * * *

2. Procedure. a. OSHA will process the renewal request in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

* * * * *

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 960

Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No.: 951031258–6279–03]

RIN 0648–AC84

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) issues regulations revising the agency's minimum requirements for the licensing, monitoring and compliance of operators of private Earth remote sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992 (the Act). These regulations implement the provisions of the 1992 Act, as amended by the 1998 Commercial Space Act, and the Presidential Policy announced March 10, 1994 (hereinafter PDD 23). They are intended to facilitate the development of the U.S. commercial remote sensing industry and promote the collection and widespread availability of Earth remote sensing data, while preserving essential U.S. national security interests, foreign policy and international obligations.

DATES: This rule is effective August 30, 2000. Comments must be received by September 29, 2000.

ADDRESSES: Comments should be sent to, Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, 1335 East-West Highway, Room 7311, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Wooldridge at (301) 713–2024, ext. 207 or Karen D. Decres, NOAA, Office of the General Counsel, Office of the Senior Counselor for Atmospheric and Space Services and Research, at (301)713-1329, ext. 200.

SUPPLEMENTARY INFORMATION: Title II of the Act, 15 U.S.C. 5601 et seq., as amended by Public Law 105–303, authorizes the Secretary of Commerce (the Secretary) to issue licenses for operation of private remote sensing space systems. The authority to issue licenses has been delegated from the Secretary to the Administrator of NOAA (the Administrator) and redelegated to the Assistant Administrator for Satellite and Information Services (the Assistant Administrator).

On November 3, 1997, NOAA issued a Notice of Proposed Rulemaking (NPRM) (See 62 FR 59317). The regulations published herein update the 1987 Regulations and address the public comments received in response to the prior NPRM. These regulations apply to all existing licenses, as well as to all pending and future applications to operate a private remote sensing space system. They are intended to promote the development of the U.S. commercial remote sensing industry and promote the collection and widespread availability of earth remote sensing data while protecting U.S. national security concerns, foreign policy and international obligations.

NOAA encourages and promotes the development of advanced technologies in the remote sensing industry, but recognizes that national security concerns, foreign policy and international obligations of the United States may mandate that limitations be imposed on a system's operation.

1. Major Substantive Issues Raised by Public Comment

NOAA received 24 sets of public comments regarding the November 3, 1997, Notice of Proposed Rulemaking from a wide range of interests in industry, academia, government, and the foreign policy community. Despite the volume of comments, most issues raised can be summarized under the following categories:

(1) control, ownership, and investment;

(2) national security interests, foreign policy and international obligations;

(3) review of foreign agreements;

(4) confidentiality of information; and

(5) the interagency memorandum of understanding.

Control, Ownership, and Investment

Numerous public comments were related to NOAA's proposed approach to address the U.S. Government's requirement to regulate and monitor the control of licensees and the operation of their systems. Most commenters thought that the proposed regulations failed to adequately distinguish between control and ownership; that NOAA has no statutory authority to prohibit foreign investment per se; and that NOAA should harmonize its regulations with existing Treasury and Securities and Exchange Commission regulations to monitor change of control.

In developing these final regulations, NOAA accepted many of the suggestions by the commenters. This final rule focuses on control over the "operation" of the remote sensing system, consistent with NOAA's statutory authority to license "operations" in a manner that protects the national security, foreign policy and international obligations of the United States. In furtherance of these mandates, a fundamental obligation is incorporated into these regulations requiring the licensee to maintain operational control at all times and provide other safeguards to ensure the integrity of system operations. NOAA has added definitions for "operations" and "operational control". The definition of "operations" serves to effectively determine the scope of activities covered by the NOAA license. Foreign entities may be involved in the operations of the system with approval based on a review conducted by NOAA in consultation with other U.S. Government (USG) agencies. Operational control is defined to include the requirement that if entities, domestic or foreign, other than the licensee are involved in the operations of the system, the licensee must ultimately be able to override from U.S. territory all commands issued by any operations centers and stations.

A definition of administrative control has been included and is adapted from the definition of control contained in the Department of Treasury Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons (31 CFR Part 200). Transfer of administrative control is permissible on a case by case basis unless the USG believes that the foreign entity exercising control might take action that threatens to impair U.S. national security, foreign policy and international obligations. Licensees are required to obtain an amendment for any transaction that would constitute a transfer of administrative control. Consequently, NOAA has dropped the strict presumption of transfer of control based solely on level of foreign investment and has also deleted bright line tests linked to specific investment levels or thresholds. However, the level of investment will be one of several factors to be considered in our analysis.

In an effort to eliminate excessive and redundant regulatory burdens on industry, NOAA has eliminated certain portions of the lengthy and rigid notification, amendment, technology transfer, and export control requirements found in the section on investments (960.14) from the previous NPRM. Some of these requirements are now more appropriately addressed in the sections on amendments and foreign agreements. Others have been eliminated due to overlap with similar requirements imposed by other agencies' authorities relating to mergers and acquisitions, securities reporting,

and export control. For instance, for monitoring purposes NOAA will use quarterly reports filed by publicly-traded licensees as required by the SEC. In the event that the licensee is not a publicly-traded company, the licensee must provide the information required by the SEC in the 10K and 10Q forms.

National Security, Foreign Policy and International Obligations

Many commenters contended that the NPRM was too vague and lacked needed transparency with regard to limitations on data collection and/or dissemination (shutter control) during periods when national security, foreign policy or international obligations may be compromised. Further, some insisted that shutter control is fraught with constitutional issues relating to prior restraint of speech and therefore shutter control required tighter standards than those articulated in the NPRM. Finally, some commenters contended that shutter control could only be imposed by the Executive Branch after judicial review.

A fundamental precept of the 1992 Land Remote Sensing Policy Act and PDD 23 is that licensing of private remote sensing space systems must protect the national security, foreign policy and international obligations of the United States. The USG has reviewed these regulations in light of the expressed concerns and finds that the regulations strike an appropriate balance between promoting the U.S. commercial remote sensing industry and protecting U.S. national security, foreign policies and international obligations.

In an effort to provide more clarity, the Departments of State, Defense, Interior, Commerce, and the Intelligence Community, with the participation of the Office of Science and Technology Policy (OSTP) and the National Security Council (NSC), concluded an interagency Memorandum of Understanding (Interagency MOU) concerning the Licensing of Private Remote Sensing Space Systems. On February 2, 2000, a Fact Sheet on the Interagency MOU was released. This Fact Sheet is included as Appendix 2.

The MOU provides among other things that determinations involving impositions of limitations during commercial operations will be made at the highest level. The industry and its customers should be reassured by the MOU's terms which provide that any such limitation should be imposed for the smallest area and for the shortest period necessary to protect the national security, international obligation, or foreign policy concerns at issue. Alternatives to prohibitions on collection and/or distribution will be considered such as delaying the transmission or distribution of data, restricting the field of view of the system, encryption of the data if available, or other means to control the use of the data.

Review of Foreign Agreements

The definition of significant and substantial foreign agreement was too broad according to many comments. Several commenters stated that the NPRM lacked necessary timelines and criteria for the review of foreign agreements.

These regulations contain a revised definition of significant and substantial foreign agreement to reflect the tighter focus on issues of control. This definition has been harmonized with the definitions of administrative control, operations, and operational control. NOAA has also added timelines and criteria to indicate the scope of the review.

Confidentiality of Information

Several commenters argued that the NPRM levied burdensome and intrusive requirements on applicants/licensees to protect their proprietary information. Recommendations were made that NOAA treat anything marked proprietary by an applicant/licensee as such without further justification. Others felt that it is in the public interest for NOAA to make its licensing regime more transparent, specifically that the public should have access to summaries of license actions under review by the agency.

NOAA has removed the requirements of the previous NPRM to provide justification for all information submitted by an applicant/licensee in order for the USG to treat it as proprietary information. In accordance with Section 960.5 and the Federal Trade Secrets Act (18 U.S.C. 1905), NOAA will treat all information marked by the licensee as proprietary and no further action on the part of the licensee will be required. Any requests for information will be treated in accordance with the Freedom of Information Act in order to protect proprietary information. In the compelling public interest to have basic information concerning the regulatory activities of NOAA made more broadly available, these regulations retain the requirement that licensees provide an executive summary of their application that can be made available to the public.

Interagency Memorandum of Understanding

Several commenters stated that the Interagency MOU referenced in the preamble should be part of the public rulemaking process and submitted for public review and comment.

The Interagency MOU is to establish under the 1992 Act and the President's policy on remote sensing, interagency procedures concerning certain aspects of licensing of private remote sensing space systems. The Interagency MOU Fact Sheet released on February 2, 2000, is included as Appendix 2 and is not intended to solicit public comments.

2. Organization

Part 960 is organized into four (4) Subparts, discussed in greater detail below:

(a) Subpart A consists of general information about the regulations such as the purpose, scope and definitions;

(b) Subpart B addresses licensing procedures and conditions;

(c) Subpart C describes the prohibitions on operating a remote sensing space system under these regulations; and

(d) Subpart D sets forth the civil penalties available to the agency for noncompliance with these regulations and/or the terms of any license issued pursuant to these regulations.

3. Subpart A—General

Section 960.1. Purpose. This section sets forth the purpose of the regulations regarding licensing and regulating the operation of private remote sensing space systems under Title II of the Act and reflects the President's Policy announced on March 10, 1994, entitled, "U.S. Policy on Foreign Access to Remote Sensing Space Capabilities" (PDD 23).

Section 960.2. Scope. This section sets forth the legal parameters for application of the Act and these regulations. In addition, this Section makes the regulations applicable with respect to all existing and new licensees. Potential licensees may address questions regarding the applicability of the Act and these regulations to the Assistant Administrator.

Of particular interest is the fact that the Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote sensing space system, either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person is:

(1) An individual who is a United States citizen, or a foreign person

subject to the jurisdiction and control of the United States;

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States;

(3) A subsidiary (foreign or domestic) of a U.S. parent company;

(4) An affiliate (foreign or domestic) of a U.S. company; or

(5) Any other private remote sensing space system operator having substantial connections with the United States or deriving substantial benefits from the United States that support its international remote sensing operations sufficient to assert U.S. jurisdiction as a matter of common law.

Relevant connections may include: using a U.S. launch vehicle and/or platform; operating a spacecraft command and/or data acquisition or ground remote station in the United States; and processing the data at and/or marketing it from facilities within the United States. Please note that these examples are merely illustrative of the factors that may be examined in making a jurisdictional determination and are not intended to be all-encompassing.

Section 960.3. Definitions. This section defines terms used throughout these regulations, including the following terms:

(1) Administrative control; (2) significant and substantial foreign agreement; (3) remote sensing space system and (4) operational control.

4. Subpart B—Licenses

License applicants are encouraged to contact the Assistant Administrator or his or her designee at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early, thereby avoiding changes to system design or data collection characteristics.

Section 960.4. Application. This section sets forth license application instructions. Further information regarding the content of the license application has been included in Appendix 1. The agency record will be opened upon the filing of the license application.

In general, a license application should contain a complete description of the design of the sensor package. The level of detail should approximate that necessary for a contractor Preliminary Design Review. The potential licensee should note that subsequent changes to the design affecting those operational capabilities after a license is awarded may require a license amendment.

Section 960.5. Confidentiality of information. This section sets forth NOAA's obligation to keep confidential proprietary information submitted by licensees or potential licensees and imposes a requirement to provide a summary of such information that can be made public.

Section 960.6. Review Procedures for license applications. This section describes the application review process.

Section 960.7. Amendments to licenses. This section enumerates some of the events or conditions which may trigger the requirement for a license amendment. An application for a license amendment must contain all relevant new information and must be filed with the Assistant Administrator. Amendment applications must be filed in accordance with the procedures specified in Section 960.4 and Appendix 1 for original license applications.

Please note that for purposes of Section 960.7, the following transactions do not require an amendment to a license. However, they do require agency notification under its monitoring and compliance requirements in the Annual Compliance Audit:

(1) An acquisition of voting securities pursuant to a stock split or pro rata stock dividend which does not involve a change in administrative control;

(2) An acquisition of convertible voting securities that does not involve acquisition of administrative control;

(3) A purchase of voting securities or comparable interests in a licensee solely for the purpose of investment if, as a result of the acquisition:

(A) When the acquisition is by a foreign person, the foreign person would hold ten percent or less of the outstanding voting securities of the licensee, regardless of the dollar value of the voting securities so acquired and held; or

(B) The purchase is made directly by a bank, trust company, insurance company, pension fund, employee benefit plan, mutual fund, finance company or brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not involve the acquisition of entities.

(4) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting;

(5) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business;

(6) An acquisition of a security interest, but not control, in the voting securities or assets of a licensee at the time a loan or other financing is extended; or

(7) An acquisition of voting securities or assets of a U.S. person by a foreign person upon default or other condition, involving a loan or other financing, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender(s) is/are in the syndicate:

(A) Need(s) the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-a-vis the debtor; or

(B) Do/does not have the lead role in the syndicate, and are/is subject to a provision in the loan or financing documents limiting its influence, ownership or administrative control of the debtor.

Section 960.8. Notification of Foreign Agreements. This section reflects the balance between promoting the commercial U.S. remote sensing industry and those requirements imposed by national security concerns, foreign policy and international obligations of the U.S. Government. Specifically, this section establishes the procedures, timelines and criteria for review and approval of a licensee's significant and substantial foreign agreements.

Section 960.9. License Term. This section provides that the term of a license for operation of a remote sensing space system is the operational lifetime of the system as long as the system is operated in compliance with the terms and conditions of the license and in accordance with the Act and this Part. In particular, Section 201(b) of the Act authorizes the Secretary to grant licenses to operate a system, only upon a determination that the granting of such license and the operation of the system by the licensee would be consistent with the national security concerns, foreign policy and international obligations of the United States. The requirement set forth in Section 201(b) is an ongoing obligation of the Secretary, and as such, the Secretary must regularly monitor the operation of the system and the activities of the licensee to assure that the national security concerns, foreign policy and international obligations of the U.S. are being protected and that the licensee is in compliance with the requirements of this Act, any regulations issued pursuant to the Act,

and the terms and conditions of its license.

Section 960.10. Hearings and Appeals. This section sets forth the administrative appeals mechanism with regard to licensing and enforcement actions.

Section 960.11. Conditions for Operation. This section sets forth the conditions for operation of all systems licensed under these regulations and includes NOAA's requirement to protect national security concerns, foreign policy and international obligations of the United States. In furtherance of these obligations, the license contains rigorous conditions on the operation of a system, including the requirement that the licensee maintain operational control of its system from a U.S. territory at all times and incorporate safeguards to ensure the integrity of system operations. In particular, it is important to note that the license requirement imposed on the licensee that it maintain "operational control," as the term is defined in Section 960.3, is an implementation of U.S. obligations under the United Nations Outer Space Treaty of 1967. That treaty provides that the U.S. Government, as a State party, will be held strictly liable for any U.S. private or governmental entity's actions in outer-space. Consequently, NOAA requires that licensees under this part maintain ultimate control of their systems, in order to minimize the risk of such liability and assure that the national security concerns, foreign policy and international obligations of the United States are protected.

In determining what constitutes operational control, NOAA has moved away from a percentage formula of foreign ownership and has instead imposed a requirement that operational control of the system be based within the territorial jurisdiction of the United States including U.S. territories and protectorates. The Secretary may also examine the level of administrative control of a licensee exercised by foreign investors, including whether the respective controlling investment was a foreign merger, acquisition or takeover of a U.S. company that was reviewed by the Committee on Foreign Investment in the United States (CFIUS) under section 721 of the Defense Production Act.

In addition, Section 960.11 requires the licensee to maintain and make available to the U.S. Government, upon request, various records of operations for the previous year, and allow the Secretary of Commerce or his or her designee to inspect such records at all reasonable times, as described in the license.

As part of the reporting and recordkeeping requirements imposed by the license, the licensee is expected to provide various data as verification of compliance with the operating restrictions detailed in the operating license. In addition, monitoring and compliance requirements are imposed within the license such as quarterly reporting, on-site inspections and appropriate records review. Finally, the license sets forth reporting requirements for both publicly-traded and privately-held companies. Licensees that are registered pursuant to the Securities Exchange Act of 1934 (Exchange Act) may submit copies of their Securities and Exchange Commission (SEC) forms 10–K and 10–Q to fulfill this requirement. Licensees that are not registered pursuant to the Exchange Act must include, in their quarterly and annual reports, applicable information listed in the SEC's 10K and 10Q forms.

Monitoring and Compliance Program

Consistent with the requirements outlined in Section 960.11 and NOAA's monitoring and compliance program under these regulations, the following information shall be filed by the licensee, in order to evaluate its compliance with the provisions of its private remote sensing space system license. Data provided must be in sufficient detail to enable the Secretary to determine whether the licensee's actions meet the requirements of the Act, these regulations, and the license. Additional information may be required.

Section I—Annual Compliance Audit

An on-site audit shall be conducted at least annually, following the issuance of a license, to confirm the licensee's compliance with the national security, foreign policy, and international obligations of the United States and compliance with all other license conditions. This audit shall review, for example, any changes to corporate structure, board membership (including citizenship), ownership, and financial investments. The audit will also include Securities and Exchange Commission filings. In the event that the licensee is not a publicly-traded company, the licensee must provide applicable information required by the SEC in the 10K and 10Q forms. The Annual Compliance Audit will also review agreements which impact the national security, foreign policy and international obligations of the United States, and the concept of operations. Additional information may be required.

Section II—Twelve Months Prior to Launch

1. Submit plan for agency approval describing how licensee will comply with data collection restrictions, operational limitations, or any data protection plans, as required.

2. Submit operations plan for restricting collection and/or dissemination of imagery of Israeli territory to that which is no more detailed or precise than what will be available from non-U.S. commercial sources during the time of the licensee's planned operations.

Section III—No Later Than Six Months Prior To Launch

1. Submit a data flow diagram which graphically represents the data flow from the sensor to the final product delivery locations.

2. Submit satellite sub-systems drawing showing the various sub-system locations on the satellite.

3. Submit a final imaging system specification document for each sensor. This must be coordinated with the imaging system contractor.

Section IV—When the Spacecraft is Declared Operational

Spacecraft designation number.
Orbital altitude.
Orbital inclination.
Spacecraft state of health.
Imaging system state of health.
Spatial Resolution.
Spectral Resolution.
On-orbit absolute geo-positioning accuracy.
Circular Error and Linear Error.

Section V—Quarterly Reporting

1. Date, description, and corrective action performed for any anomalies or events which have caused the system to operate outside of license parameters and what action, if any, was performed to return the system to licensed baseline status.

2. Estimated GSD of all images collected and disseminated on the State of Israel.

Section VI—Annual Operational Audit and Record Keeping

In addition to the information required for the Annual Compliance Audit listed in Section I, all records and data from the previous twelve months pertaining to the following will be maintained by the licensee:

1. Spacecraft telemetry.

2. Imaging sensor(s) tasking and associated metadata to include date/time of collection, image number, imager used, image corner points in

latitude/longitude, inertial position (x,y,z), scan duration, azimuth. In addition, radar systems will include tasking and assorted meta data for phase history, grazing angle and polarization information.

3. Imagery data purges and purge alerts provided to the National Satellite Land Remote Sensing Data Archive (the National Archive).

Purge Notifications to the National Archive

Licensees are required to notify the National Archive of any data in its possession from its licensed remote-sensing space system that it intends to discard so that the Archive may acquire such data on reasonable cost terms as agreed by the licensee and the Archive. At the beginning of each quarter, licensees must notify the Archive of data sets it intends to purge for review by the National Archive.

Unenhanced Data

When Congress removed the blanket nondiscriminatory data access requirement, it was careful to ensure that access to the unenhanced data would remain consistent with the United Nations' Principles on Remote Sensing, that the government of a sensed state should have timely access to all such data concerning its own territory. Section 202(b)(2) of the 1992 Act requires that all licenses include the condition that the licensee shall make available upon request to the government of any country, including the United States, unenhanced data collected by the system concerning the territory under the jurisdiction of such government on reasonable commercial terms and conditions as soon as such data are available; consistent with the national security concerns, foreign policy and international obligations of the U.S.

The regulations incorporate this requirement and consistent with this requirement, NOAA interprets the terms and conditions that are "reasonable" in those cases where the data will not be made available on a nondiscriminatory basis. Making the data available to different classes of customers, e.g. non-commercial scientific and educational users, other public benefit users, commercial end users, and value-added re-distributors, at different prices is reasonable.

If a licensee intends to provide its unenhanced data on a restricted or exclusive basis, it becomes more difficult to determine what is "reasonable" vis-a-vis a sensed state. The price of these data, if measured in terms of their value to a particular commercial customer, may be prohibitive to a small government that simply wishes to monitor its own natural resources or to use the data, for example, for purposes of land use planning or to mitigate the effects of a recent natural disaster. On the other hand, the same price may be reasonable if the sensed state intends to use the data for competitive purposes. The reasonable commercial terms and conditions will have to be considered on a case-by-case basis. In any event, the sensed state has the opportunity to demonstrate that the terms result in an undue hardship.

NOAA fully expects that a licensee's obligation to make unenhanced data available to the sensed state will in almost all instances be satisfied as a normal commercial transaction where the government of a sensed state is a regular customer. In those instances where the sensed state has not been able to satisfy its desire to acquire unenhanced data directly from the licensee, the sensed state shall make a formal written request to the Assistant Administrator including the specific information (*i.e.*, geographic location, date) on the unenhanced data it desires to acquire.

Licensing of New or Advanced Systems

As a general matter, the NOAA license covers the end-to-end operational capability of a remote sensing space system's ability to quantify information that includes, but is not limited to spatial, spectral, temporal, coherence, and polarization properties of reflected, transmitted, or emitted electromagnetic radiation.

In issuing licenses for new and advanced technologies that have not previously been licensed by NOAA, NOAA may apply new license conditions to address the unique characteristics and attributes of these systems. For example, NOAA may grant a "two-tiered" license, allowing the licensee to operate its system at one level, available to all users, while reserving the full operational capability of that system for USG or USG-approved customers only. In some cases, the system may have a USG partnership client.

Since the 1997 NPRM, NOAA has licensed space-based radar and hyperspectral systems. The conditions outlined in section 960.11 apply to all systems, including licensed space-based radar and hyperspectral systems. However, in issuing licenses for synthetic aperture radar and hyperspectral systems, conditions or specific limitations may be placed, as necessary, on operational parameters, design characteristics, and data throughput due to national security, foreign policy and international obligations.

For synthetic aperture radar systems these include, but are not limited to:

(1) resolution in terms of impulse response (IPR);
(2) grazing angles;
(3) geolocational accuracy;
(4) multiple polarization;
(5) system throughput (*i.e.*, measurement of time during data collection, ground processing, and dissemination);
(6) protection of phase history data;
(7) location and function of non-U.S. operations centers and stations; and
(8) protection of all uplinks and downlinks.

For hyperspectral systems these include, but are not limited to:

(1) Spatial and spectral resolution;
(2) Co-registration of hyperspectral data with data provided by other on-board sensors;
(3) Operational wavelengths;
(4) System throughput (i.e., measurement of time during data collection, ground processing, and dissemination);
(5) Protection of remote sensing space system commanding, sensor tasking, and tasking information;
(6) Protection of raw data;
(7) Location and function of non-U.S. operations centers and stations; and
(8) Protection of all uplinks and downlinks.

Reimbursements

As allowed by Section 507 (d) of the Act, if additional technical modifications are imposed on a system operated under a previously granted license, on the basis of national security, the licensee may be reimbursed for those technical modifications. Generally, conditions in original licenses, previously-granted licenses or amendments that are the result of licensee initiated activities will not be considered for reimbursement. The Assistant Administrator, in consultation with the Secretary of Defense or other appropriate federal agencies, will determine whether actual modification costs or past development costs (including the cost of capital) incurred by the licensee shall be reimbursed by the government agency or agencies which requested such technical modifications. The costs and terms associated with meeting this condition will be negotiated directly between the licensee and the agency or agencies requesting the technical modifications. The loss of anticipated profits and the cost of security measures imposed on all licensees are not reimbursable.

Kyl-Bingaman Amendment

Consistent with the requirement that licensees operate their systems in a manner that protects national security concerns, foreign policy and international obligations, Section 1064, Pub. L. No. 104–201, (the 1997 Defense Authorization Act), referred to as the Kyl-Bingaman Amendment, requires that "[a] department or agency of the United States may issue a license for the collection or dissemination by a non-Federal entity of satellite imagery with respect to Israel only if such imagery is no more detailed or precise than satellite imagery of Israel that is available from commercial sources."

Pursuant to that law, the Department of Commerce will make a finding as to the level of detail or precision of satellite imagery of Israel available from commercial sources. Moreover, as the statutory limitation applies to U.S. licensees, the term "commercial sources" is interpreted for purposes of these regulations as referring to satellite imagery so readily and consistently available from non-U.S. commercial entities that the availability of additional imagery from U.S. commercial sources may be permitted.

To interpret the term "commercial availability" of imagery of Israel from non-U.S. sources, NOAA looks to regulations of the Commerce Department's Bureau of Export Administration, concerning findings on foreign availability for export control purposes, as a model (See 15 CFR 768). These regulations state that "foreign availability exists when the Secretary [of Commerce] determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of a license ineffective." (See 15 CFR 768.2(a)).

Applying the above approach to implement the Kyl-Bingaman Amendment, the Department of Commerce will monitor the level of imagery resolution readily and consistently available in sufficient quantities from non-U.S. sources, to determine what imaging or data dissemination restrictions, if any, shall apply to licensees. A review of non-U.S. commercial availability will be conducted on an annual basis or more frequently if warranted. Input from licensees or from the general public is welcome to assist in this determination. Findings of this review will be published in the **Federal Register** and will constitute the data collection and/or dissemination restrictions with respect to imagery of Israel.

As part of its licensing process, NOAA will require an applicant to submit a plan explaining how its proposed system will be able to restrict the collection and/or dissemination of imagery of Israeli territory at a level of resolution determined by the Commerce Department. NOAA will review this plan to ensure compliance.

Spacecraft Disposal and Orbital Debris Mitigation Plan

As an additional licensing requirement, licensees shall, "upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President," in accordance with Section 202(b)(4) of the Act. Under Section 960.11 and the terms and conditions of the license, NOAA has interpreted this requirement to mean that a licensee shall assess and minimize the amount of orbital debris released during the post-mission disposal of its satellite. Applicants are required to provide at the time of application a plan for post-mission disposition of remote sensing satellites.

The U.S. Government has developed orbital debris mitigation practices for use in government missions. These practices include control of orbital debris released during normal operations, minimization of debris generated by accidental explosions, selection of a safe flight profile and operational configuration, and post-mission disposal of space structures. NOAA will make available to applicants background information on three possible methods for post-mission disposal which are consistent with these practices: atmospheric re-entry, maneuvering to a storage orbit, or direct retrieval. NOAA will review an applicant's plan for post-mission disposal on a case-by-case basis. NOAA will assess whether the plan, including satellite design and components, provide an acceptable post-mission disposal method to mitigate orbital debris and minimize any potential adverse effects. Applicants are specifically required to submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

Section 960.12 Data Policy for Remote Sensing Space Systems. This section describes various circumstances under which the licensee may be required, consistent with the terms of its license, to make available some or all of the unenhanced data from the system on a nondiscriminatory basis in accordance with Section 501 of the Act. For example, if the U.S. Government has (either directly or indirectly) funded some of the development, fabrication, launch, or operations costs of a licensed system, the Secretary of Commerce or his or her designee, in consultation with other appropriate U.S. agencies, must determine whether the interest of the United States, in promoting widespread availability of remote sensing data, requires that some or all of the unenhanced data from the system be made available on a nondiscriminatory basis in accordance with Section 501 of the Act. In addition, the license must specify any data subject to this requirement.

The Act requires that an operator of a system that can be characterized as essentially a Governmental system, such as the Landsat system and those systems that are substantially funded by the U.S. Government, make its unenhanced data available on a nondiscriminatory basis, but allows the operator of a non-governmental system to follow normal commercial practices unless U.S. interests dictate otherwise. (See Sections 201(e), 202(b)(3), and 501).

Section 960.13 of the regulations implements this provision consistent with the Act's overall objective of making data available to the widest possible spectrum of users, particularly for scientific purposes in support of the public benefit upon reasonable terms and conditions. This section addresses three categories of licensees. The first are those whose development, fabrication, launch, or operations costs have been funded, entirely or in substantial part, directly by the Government. As dictated by the Act, these operators must make their unenhanced data available on a nondiscriminatory basis. This requirement ensures that the data are broadly accessible and is consistent with the basic policy, codified in the Paperwork Reduction Act, 44 U.S.C. 3506 *et seq.* and included in Office of Management and Budget Circular A–130, that data paid for by the taxpayer is a public benefit to be made equally available to all members of the public.

The second category of licensees are those that are fully commercial, *i.e.*, not funded by the Government in whole or in part. These operators will be allowed to follow their preferred commercial data practices, subject to providing the unenhanced data to the governments of those states sensed, and consistent with concerns regarding U.S. national security, foreign policy, and international obligations, as discussed below. These licensees will be encouraged to promote access to their data on as widespread a basis as

possible and it is anticipated that, in most cases, there will be a commercial incentive to reach a broad customer base. It is recognized that in some cases, some of the data collected by such systems may not become generally accessible. However, NOAA believes that this loss will be outweighed by the substantially greater volume of data that will be collected by a vigorous commercial industry. It should be noted that limited purchases by the U.S. Government, as a normal customer of the licensee, would not constitute funding or support for purposes of this section.

The third category of licensees consists of those systems in which the U.S. Government provides some support. Here, the Government's interest is more significant, because of taxpayer investment and the possible precedential effect of permitting restricted access to the data through international data exchange involving government subsidized public-private ventures. The data policy applicable to these licensees will be determined on a case-by-case basis, balancing the effect on the licensee of limiting its commercial options against the potential benefits of providing widespread access of the data for non-commercial scientific, educational and other public benefit purposes. In evaluating the potential for data loss, NOAA will consider both the data to be gathered by the particular licensee as well as the possible implications for future intergovernmental data exchanges.

It is anticipated that the U.S. Government interest in making the data available can usually be addressed through terms and conditions in the license that do not require a full nondiscriminatory data access policy. For example, it may be possible to accommodate such interests by ensuring access for non-commercial scientific, educational, and other public good purposes, while protecting a licensee's commercial options.

5. Subpart C—Prohibitions

Section 960.13 Prohibitions. This section sets forth the prohibitions under these regulations. Under this section, it is unlawful for any person who is subject to the jurisdiction or control of the United States, directly or through any subsidiary or affiliate to, among other things: (a) operate a system without possession of a valid license issued under the Act and these regulations; (b) violate any provision of the Act, these regulations or any term, condition, or restriction of the license; (c) violate any order, directive, or other notice issued by the Secretary; and/or (d) interfere with the enforcement of this Part.

6. Subpart D—Enforcement Procedures

Section 960.14 Civil Penalties. Generally, this section states that any person found to be in violation of the Act, this part, or any license issued under this part, will be subject to the civil penalty provisions prescribed in the Act, 15 CFR 904 (Civil Procedures) and other applicable laws.

7. Appendices

Appendix 1—Application Information. This Appendix contains the information requirements of the license application as discussed in Section 960.4. Pursuant to the Paperwork Reduction Act, we are asking for comments to this Appendix.

Appendix 2—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems. The Departments of State, Defense, Interior, Commerce, and the Intelligence Community, with the participation of OSTP and the NSC, concluded an interagency MOU concerning the Licensing of Private Remote Sensing Space Systems. On February 2, 2000, a Fact Sheet on the Interagency MOU was released. This Fact Sheet is included as Appendix 2. The MOU is not within the scope of this rulemaking. Appendix 2 is not subject to public comment.

Classification

A. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

These regulations establish a process intended to promote the development of the remote sensing industry and to minimize any adverse impact on any entity, large or small, that may seek a license to operate a private remote sensing space system.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this confirmation was on the fact that, given extraordinary capitalization required to operate a commercial remote sensing space system, costs of development and launch still remain high. As such, small entities have yet to enter this field and appear highly unlikely to do so. No comments were received regarding this certification. As a result, no final regulatory flexibility analysis was prepared.

B. Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et seq.)

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has received emergency approval by OMB under control number 0648–0174. NOAA intends to submit a clearance request to receive a three-year approval and is soliciting comments on that submission at this time using the same estimated reporting burden.

Public reporting burden for these collection-of-information requirements are estimated to average: 40 hours per license application; 10 hours for license amendment submissions; 1 hour to provide an executive summary of a license application or amendment; 2 hours for notification/submission of a foreign agreement; 2 hours for a notification of the demise of a system or a decision to discontinue system operations; 2 hours for notification of any operational deviation; 5 hours for a plan describing how the licensee will comply with data collection restrictions; 3 hours for an operations plan for restricting collection or dissemination of imagery of Israeli territory; 3 hours for a data flow diagram; 1 hour for a satellite sub-systems drawing; 3 hours for a final imaging system specification document; 2 hours for submission of spacecraft operational information submitted when a spacecraft becomes operational; 2 hours for notification of deviation in orbit or spacecraft disposition; 3 hours for quarterly reports; 2 hours for purge notifications to the Archive; 8 hours for annual compliance audits; and 10 hours for annual operational audits. No estimate is being given at this time to provide imagery data to the National Satellite Land Remote Sensing Data Archive. An estimate will be developed at a later date.

Public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden to Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, 1315 East-West Highway, Room 7311, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

C. National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Publication of these regulations does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

D. Executive Order 12866, Regulatory Planning and Review

This rule has been determined to be significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 960

Administrative practice and procedure, Confidential business information, Penalties, Reporting and recordkeeping requirements, Satellites, Scientific equipment, Space transportation and exploration.

Dated: July 19, 2000.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

Accordingly, for the reasons set forth above, Part 960 of title 15 of the Code of Federal Regulations is revised to read as follows:

PART 960—LICENSING OF PRIVATE REMOTE SENSING SYSTEMS

Subpart A—General

Sec.

960.1 Purpose.
960.2 Scope.
960.3 Definitions.

Subpart B—Licensee

960.4 Application.
960.5 Confidentiality of information.
960.6 Review procedures for license applications.
960.7 Amendments to licenses.
960.8 Notification of foreign agreements.
960.9 License term.
960.10 Appeals/hearings.
960.11 Conditions for operation.
960.12 Data policy for remote sensing space systems.

Subpart C—Prohibitions

960.13 Prohibitions.

Subpart D—Enforcement Procedures

960.14 In general.
960.15 Penalties and sanctions.

Appendix 1 to Part 960—Filing Instructions and Information To Be Included in the Licensing Applications

Appendix 2 to Part 960—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems Dated February 2, 2000

Authority: 15 U.S.C. 5624.

Subpart A—General

§ 960.1 Purpose.

(a) The regulations in this part set forth the procedural and informational requirements for obtaining a license to operate a private remote sensing space system under Title II of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 *et seq.*) (Public Law 102–555, 106 Stat. 4163) and the President's Policy announced on March 10, 1994, entitled, "U.S. Policy on Foreign Access to Remote Sensing Space Capabilities" (PDD 23) (Available from NOAA, National Environmental Satellite Data and Information Service, 1335 East-West Highway, Room 7311, Silver Spring, MD 20910). In addition, this part describes NOAA's regulation of such systems, pursuant to the Act and PDD 23. The regulations in this part are intended to:

(1) Facilitate development of the commercial space remote sensing industry in the United States and promote the broad use of remote sensing data;

(2) Preserve the national security of the United States;

(3) Observe the foreign policies and international obligations of the United States;

(4) Ensure that unenhanced data collected by licensed private remote sensing space systems concerning the territory of any country are made available to the government of that country upon its request, as soon as such data are available and on reasonable commercial terms and conditions as appropriate;

(5) Ensure that remotely sensed data are widely available for research, particularly environmental and global change research; and

(6) Maintain a permanent comprehensive U.S. government archive of global land remote sensing data for long-term monitoring and study of the changing global environment and other archival purposes.

(b) In accordance with the Act and the PDD 23, decisions regarding the issuance of licenses and operational conditions (*See* subpart B of this part) will be made by the Secretary of Commerce, or his/her designee. Determinations of conditions to meet national security, foreign policy and international obligations are made by the Secretaries of Defense and State respectively. Determinations will be made in accordance with the process described in the Interagency MOU Fact Sheet contained in Appendix 2 of this part.

§ 960.2 Scope.

(a) The Act and the regulations in this part apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote sensing space system, either directly or through an affiliate or subsidiary, and/or establishes substantial connections with the United States regarding the operation of a private remote sensing system.

(b) In determining whether substantial connections exist with regard to a specific system, the factors NOAA may consider include, but are not limited to: the location of a system control center or operations centers and stations; the administrative control of the system; use of a U.S. launch vehicle; location or administrative control of ground receiving stations; the investment, ownership, or technology included in the system.

(c) The regulations in this part apply to any action taken on or after August 30, 2000 with respect to any license, and to pre-existing licenses.

(d) If any provision of the regulations in this part or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the regulations in this part or the application of such provision to other persons and circumstances shall not be affected.

(e) Issuance of a license under the regulations in this part does not affect the authority of any Department or Agency of the U.S. Government including, but not limited to, the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*), the Department of Transportation under the Commercial Space Launch Act of 1984 (49 U.S.C. app.2601 *et seq.*), the Department of Commerce under the Export Administration Regulations (15 CFR parts 730–774), or the Department of State under the Arms Export Control Act (22 U.S.C. 2778) and the International Traffic in Arms Regulations (22 CFR parts 120–130).

§ 960.3 Definitions.

For purposes of the regulations in this part, the following terms have the following meanings:

Act means the Land Remote Sensing Policy Act of 1992 (Public Law 102–555, 106 Stat. 4163) as amended by the 1998 Commercial Space Act (Public Law 105–303, 112 Stat. 2846), 15 U.S.C. 5601 *et seq.*

Administrative control means the power or authority, direct or indirect, whether or not exercised through the legal or defacto ownership or possession thereof, ownership of voting securities of a licensee, or by proxy voting, contractual arrangements or other means, to determine, direct or decide matters affecting the operations of the system; specifically, to determine, direct, take, manage, administer, influence, reach, or cause decisions regarding the:

(1) Sale, lease, mortgage pledge, or other transfer of any or all of the system or system control assets of the licensee, whether in the ordinary course of business or not;

(2) Operation of the system(s), including but not limited to orbit maintenance and other housekeeping functions, tasking and tasking prioritization, data acquisition, data storage, data transmission, processing and dissemination;

(3) Dissolution of the licensee;

(4) Closing and/or relocation of the command and control center of the system;

(5) Execution, substantive modification and/or termination or non-fulfillment of any significant or substantial foreign agreement of the licensee regarding direct readout or tasking obligations; or

(6) Amendment of the Articles of Incorporation or constituent agreement of the licensee with respect to the matters described in paragraphs (1) through (4) of this definition.

Administrator means the Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere or his/her designee.

Affiliate means any person: (1) Which owns or controls more than a 5% interest in the applicant or licensee; or (2) Which is under common ownership or control with the applicant or licensee.

Applicant means a person who has submitted an application for a NOAA license to operate a remote sensing space system.

Archive means the National Satellite Land Remote Sensing Data Archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in Section 502 of the Act.

Assistant Administrator means the Assistant Administrator of NOAA for Satellite and Information Services or his/her designee.

Authorized Officer means an individual designated by the Secretary of Commerce or his/her designee to enforce the regulations in this part.

Basic data set means those unenhanced data generated by the Landsat system or by any remote sensing space system licensed under the Act that have been selected by the Secretary of the Interior to be maintained in the Archive, as described in Section 502(c) of the Act.

Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares: the right to exercise administrative control over a licensee; and the power to dispose of, or to direct the disposition of, any security interest in a license. All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person. A person shall be deemed to be the beneficial owner of a security interest if that person has the right to acquire beneficial ownership, as defined in this definition, within sixty (60) days from acquiring that interest, including, but not limited to, any right to acquire beneficial ownership through: the exercise of any option, warrant or right; the conversion of a security; the power to revoke a trust, discretionary account, or similar arrangement; or the automatic termination of a trust, discretionary account or similar arrangement.

License means a grant of authority under the Act by the Administrator to a person to operate a private remote-sensing space system.

Licensee means a person who holds a NOAA license to operate a remote sensing space system.

NOAA means the National Oceanic and Atmospheric Administration.

Operate means to manage, run, authorize, control, or otherwise affect the functioning of a remote sensing space system, directly or through an affiliate or subsidiary. This includes:

(1) Commanding, controlling, tasking, and navigation of the system; or

(2) Data acquisition, storage, processing, and dissemination.

Operational control means the ability to operate the system or override commands issued by any operations center or station.

Orbital debris means all human-generated debris in Earth orbit. This includes, but is not limited to, payloads that can no longer perform their mission, rocket bodies and other hardware (*e.g.*, bolt fragments and covers) left in orbit as a result of normal launch and operational activities, and fragmentation debris produced by failure or collision. Gases and liquids in free state are not considered orbital debris.

Person means any individual (whether or not a citizen of the United States) subject to U.S. jurisdiction; a corporation, partnership, association, or other entity organized or existing under the laws of the United States; a subsidiary (foreign or domestic) of a U.S. parent company; an affiliate (foreign or domestic) of a U.S. company; or any other private remote sensing space system operator having substantial connections with the United States or deriving substantial benefits from the United States that support its international remote sensing operations sufficient to assert U.S. jurisdiction as a matter of common law.

President's Policy means the President's Policy entitled, "U.S. Policy on Foreign Access to Remote Sensing Space Capabilities" announced on March 10, 1994 (PDD 23).

Proprietary information means any business or trade secrets or commercial or financial information explicitly designated as proprietary or confidential by the submitter, the public release of which would cause substantial harm to the competitive position of the submitter. Once the information is publicly-released by the submitter, it is no longer considered proprietary.

Remote sensing space system, Licensed system, or *System* means any device, instrument, or combination thereof, the space-borne platform upon which it is carried, and any related facilities capable of actively or passively sensing the Earth's surface, including bodies of water, from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of the regulations in this part, a licensed system consists of a finite number of satellites and associated facilities, including those for tasking, receiving, and storing data, designated at the time of the license application. Small, hand-held cameras shall not be considered remote sensing space systems.

Secretary means the Secretary of Commerce.

Security means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of

interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate, or certificate of deposit for a security; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); any put, call, straddle, option, or privilege entered into a national securities exchange relating to foreign currency; any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Significant or Substantial foreign agreement (also referred to in this part as foreign agreement or agreement) means an agreement with a foreign nation, entity, consortium, or person that provides for one or more of the following:

(1) Administrative control which may include distributorship arrangements involving the routine receipt of high volumes of the system's unenhanced data;

(2) Participation in the operations of the system;

(3) Direct access to the system's unenhanced data; or

(4) An equity interest in the licensee held by a foreign nation and/or person, if such interest equals or exceeds or will equal or exceed ten (10) percent of total outstanding shares, or entitles the foreign person to a position on the licensee's Board of Directors.

Subsidiary means a person over which the applicant or licensee may exercise administrative control.

Tasking means any action taken to command a remote sensing space system or its sensor to acquire data for transmission or storage on the satellite's recording subsystem. Such action can be in the form of commands sent to the system for execution or for storage in the satellite's memory for execution at a specified time or location within a given orbit.

Under Secretary means the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of NOAA or his/her designee.

Unenhanced data means remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing. Data preprocessing may include rectification of system and sensor distortions in remote sensing data as it is received directly from the satellite; registration of such data with respect to features of the Earth; and calibration of spectral response with respect to such data. It does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data. It also excludes phase history data for synthetic aperture radar systems or other space-based radar systems.

Subpart B—Licenses

§ 960.4 Application.

No person subject to the jurisdiction and/or control of the United States may operate a private remote sensing space system without a license issued pursuant to this part.

(a) Filing instructions, as well as a list of information to be included in the license application, are included in Appendix 1 of this part.

(b) If information in an application becomes inaccurate or incomplete prior to issuance of the license, the applicant must, within 14 days, file the new or corrected information with the Assistant Administrator. If new or revised information is filed during the application process, the Assistant Administrator shall, within fourteen (14) days, determine whether the deadline imposed by Section 201(c) of the Act and § 960.6(a) must be extended to allow adequate review of the revised application and, if so, for how long.

§ 960.5 Confidentiality of information.

(a) Any proprietary information contained in a license application or application for amendment and submitted to NOAA will be treated as business confidential or proprietary information, if that information is explicitly designated and marked as such by the submitter. This does not preclude the United States Government from citing information in the public domain provided by the licensee in another venue (*e.g.*, the licensee's website or a press release).

(b) Concurrently with the filing of a license application or an application for an amendment, the applicant or licensee shall provide the Assistant Administrator with a publicly-releasable summary of the application or amendment. This summary shall be available for public review at a location designated by the Assistant Administrator and shall include:

(1) The name, mailing address and telephone number of the applicant and any affiliates or subsidiaries;

(2) A general description of the system, its orbit(s) and the type of data to be acquired;

(3) The name and address upon whom service of all documents may be made;

(4) A general description of the information being modified by an amendment request.

§ 960.6 Review procedures for license applications.

The following procedures are consistent and have been harmonized with those procedures, including time lines, described in the Fact Sheet, at Appendix 2 of this part, which governs in lieu of this section and §§ 960.7 and 960.8 with respect to the process for reaching determinations of conditions necessary to meet national security, international obligations and foreign policy and which is outside the scope of the regulations in this part.

(a) The Assistant Administrator shall within three (3) working days of receipt of an application, forward a copy of the application to the Department of Defense, the Department of State, the Department of the Interior, and any other Federal agencies determined to have a substantial interest in the license application. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant. The Assistant Administrator shall make a determination to issue the license, in accordance with the Act and § 960.1(b), within 120 days of its receipt. If a determination has not been made within 120 days, the Assistant Administrator shall inform the applicant of any pending issues and any action required to resolve them.

(b) The reviewing agencies have ten (10) working days from receipt of application to notify the Assistant Administrator in writing whether the application omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the application. If these agencies cannot complete their review in the time allotted, they must notify NOAA in writing of the additional time needed to complete review, not to exceed ten (10) working days. This notification shall state the specific reasons why the additional information is sought. The Assistant Administrator shall then notify the applicant, in writing, what information is required to complete the license application. The 120-day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the license application is complete.

(c) Within thirty (30) days of receipt of a complete application, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (a) of this

section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the application in writing. If a reviewing agency is unable to complete its review in thirty days, it is required to notify NOAA in writing of additional time necessary to complete the review.

(d) If the license application is denied, the Assistant Administrator shall provide the applicant with written notification along with a concise statement of the facts in the record determined to support the denial. This denial will be considered final agency action twenty-one (21) days after the date the notice was mailed, unless the applicant files an appeal, as provided in § 960.10.

(e) The Assistant Administrator shall terminate the license application review process if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after receiving a request for additional information pursuant to paragraph (c) of this section, does not provide such information within the time stated in the request.

(f) No license shall be granted by the Secretary unless the Secretary determines, in writing, that the applicant will comply with the requirements of the Act, any regulations issued pursuant to the Act, and that the granting of such license and the operation of the license and system by the licensee would be consistent with the national security interest, foreign policy and international obligations of the United States.

§ 960.7 Amendments to licenses

(a) Prior to taking any of the following actions a licensee must obtain an amendment to the license:

(1) assignment of any interest in or transfer of the license from one entity to another, renaming, or any change in identity of the license holder;

(2) change in or transfer of administrative control;

(3) change of operational control; or

(4) deviation from orbital characteristics, performance specifications, data collection and exploitation capabilities, operational characteristics identified under Appendix 1.C(6) of this part, or any other change in license parameters.

(b) Applications for an amendment to an existing license shall contain all relevant new information and shall be filed at the same address identified in Appendix 1 of this part. Amendment applications shall be filed in accordance with the procedures in § 960.4 and Appendix 1 of this part for original license applications.

(c) The Assistant Administrator, in consultation with other appropriate agencies, shall review amendment applications within 120 days of the receipt of such completed applications. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (d) of this section to require additional information from the applicant. If a determination has not been made within 120 days, the Assistant Administrator shall inform the licensee of any pending issues and any actions necessary to resolve them.

(d) The reviewing agencies have ten (10) working days from receipt of the amendment request to notify the Assistant Administrator in writing whether the request omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the request. If these agencies cannot complete their review in the time allotted, they must notify NOAA in writing of the additional time needed to complete review, not to exceed ten (10) working days. This notification shall state the specific reasons why the additional information is sought. The Assistant Administrator shall then notify the licensee, in writing, what information is required to complete the amendment request. The 120 day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the amendment request is complete.

(e) Within thirty (30) days of receipt of a complete amendment application, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (a) of this section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the amendment application in writing.

(f)(1) When the licensee is seeking an amendment in order to transfer administrative control or change in the participation of the operations of the system to a foreign person or nation, pursuant to paragraph (a)(2) of this section, the licensee must provide the following information:

(i) the identity, residence and citizenship of the foreign person(s) or nation(s) who will acquire control;

(ii) the applicant's proposed plan to ensure that the licensee will protect the operational control of the licensed system from foreign influence and prevent technology transfer that would adversely impact national security, foreign policy or international obligations; and

(iii) such additional information as the Assistant Administrator may prescribe as necessary or appropriate to protect the national security, foreign policy or international obligations of the United States.

(2) Such an amendment request will be reviewed to determine whether the foreign person(s) or nation(s) that will exercise administrative control of the licensee will take no action that impairs the national security interests, foreign policy or international obligations of the United States.

(g) If the license amendment application is denied, the Assistant Administrator shall provide the applicant with written notification along with a concise statement of the facts in the record determined to support the denial. This denial will be considered final agency action twenty-one (21) days after the date the notice was mailed, unless the applicant files an appeal, as provided in § 960.10.

§ 960.8 Notification of foreign agreements

Pursuant to the Act, the 1998 Commercial Space Act and licenses issued under this part, licensees must notify the Assistant Administrator of any significant or substantial agreement that they intend to enter into with any foreign nation, entity, or consortium, not later than sixty (60) days prior to concluding the agreement.

(a) Upon notification by a licensee, pursuant to § 960.11(b)(5), the Assistant Administrator shall initiate review of the proposed agreement in light of the national security interests, foreign policy and international obligations of the U.S. Government.

(b) The Assistant Administrator, in consultation with other appropriate agencies, will review the proposed foreign agreement. As part of this review, the Assistant Administrator will ensure that the proposed foreign agreement contains the appropriate provisions to ensure compliance with all requirements concerning national security interests, foreign policy and international obligations under the Act or the licensee's ability to comply with the Act, these regulations and the terms of the license, are appropriately accommodated in the proposed agreement. These requirements include:

(1) The ability to implement, as appropriate, restrictions on the foreign party's acquisition and dissemination of imagery as imposed by the license or by the Secretary of Commerce;

(2) The obligations of the licensee to provide access to data for the Archive; and

(3) The obligations of the licensee to convey to the foreign party the license's

reporting and recordkeeping requirements and to facilitate any monitoring and compliance activities identified in the license.

(c) Within thirty (30) days of receipt of the proposed agreement, other agencies reviewing the agreement will notify the Assistant Administrator that the proposed agreement sufficiently addresses the requirements in paragraph (b) of this section or identify what changes will need to be made to the agreement to meet these requirements.

(d)(1) Within sixty (60) days of notification by the licensee, if the Assistant Administrator determines that a proposed agreement will impair his or her ability to enforce the Act, or the licensee's ability to comply with the Act, these regulations, or the terms or conditions of the license, the licensee will be notified which terms and conditions of the license are affected and, specifically, how the agreement impairs their enforcement.

(2) The proposed agreement may not be implemented by the licensee until the licensee has been advised by the Assistant Administrator that the provisions of the proposed agreement are acceptable.

(e) Following approval of the agreement, if the factual circumstances surrounding this transaction change, the licensee must notify NOAA within twenty-one (21) days of the change. The licensee's failure to notify NOAA in a timely manner may result in penalties for noncompliance being levied, pursuant to Section 203(a)(3) of the Act.

(f) A licensee seeking to enter into a foreign agreement that would require the modification of the terms of an existing license shall also submit a license amendment request and the proposed foreign agreement shall be considered in the context of the amendment review process.

§ 960.9 License term.

(a) Each license for operation of a system shall be valid for the operational lifetime of the system or until the Secretary determines that the licensee is not in compliance with the requirements of the Act, the regulations issued pursuant to the Act, the terms and conditions of the license, or that the licensee's activities or system operations are not consistent with the national security, foreign policy and international obligations of the United States.

(b) The licensee shall notify the Assistant Administrator within seven (7) days of financial insolvency, dissolution, the demise of its system or of its decision to discontinue system operation. Upon notification, the Assistant Administrator will terminate the license. However, termination will not affect the obligations of the licensee with regard to provisions in its license, requiring the licensee to:

(1) Provide data to the Archive for the basic data set;

(2) Make data available to the Archive that the licensee intends to purge from its holdings;

(3) Make data available to a sensed state; and

(4) Restrict acquisition and dissemination of imagery as imposed by the license or by the Secretary of Commerce; and

(5) Manage the re-entry segment, including but not limited to, the disposal of the system.

§ 960.10 Appeals/hearings.

(a) An applicant or licensee may submit a written appeal to the Administrator involving the granting, denial, or conditioning of a license; a license amendment; a foreign agreement; or enforcement action under this part. The appeal must state the action(s) appealed, must set forth a detailed explanation of the reasons for the appeal, and must be submitted within twenty-one (21) days of the action appealed. The appellant may request a hearing on the appeal before a designated hearing officer.

(b) The hearing shall be held no later than thirty (30) days after receipt of the appeal, unless the hearing officer extends the time. The appellant and other interested persons may appear personally or by counsel and submit information and present arguments, as determined appropriate by the hearing officer. Hearings may be closed to the public as necessary to protect classified or proprietary information. Hearings shall be transcribed, and transcripts made available to the public, as required by statute. Classified and proprietary information shall not be included in the public transcripts. Within thirty (30) days of the conclusion of the hearing, the hearing officer shall recommend a decision to the Administrator.

(c) The hearing requested under paragraph (a) of this section may be granted unless the issues being appealed involve the conduct of military or foreign affairs functions. Determinations concerning limitations on data collection or distribution, license conditions, or enforcement actions necessary to meet national security concerns, foreign policies or international obligations are not subject to a hearing under this Section. A determination to deny an appeal/hearing on this basis shall constitute final agency action.

(d) The Administrator may adopt the hearing officer's recommended decision or may reject or modify it. The Administrator will notify the appellant of the decision, and the reason(s) therefor, in writing, within thirty (30) days of receipt of the hearing officer's recommended decision. The Administrator's action shall constitute final Agency action.

(e) Any time limit prescribed in this section may be extended for a period not to exceed thirty (30) days by the Administrator for good cause, upon his/her own motion or written request from the appellant.

(f) The licensee shall be entitled to an expedited hearing on the review of a foreign agreement if the request is filed with the Administrator within seven (7) days of the date of mailing of the Assistant Administrator's notice under § 960.8(d)(1). The request shall set forth the licensee's response to the determinations contained in the notice, and demonstrate that the time necessary to complete the normal hearing process will jeopardize the agreement.

(1) Expedited hearings shall commence within five (5) days after the filing of the request with the Administrator unless the Administrator or the Hearing Officer postpones the date of the hearing or the parties agree that it shall commence at a later time.

(2) Within five (5) days of the conclusion of the hearing, the Hearing Officer shall prepare findings and conclusions for consideration by the Administrator.

(3) Within fourteen (14) days after receipt of such material, the Administrator shall issue his/her findings and conclusions and a statement of the reasons on which they are based. This decision constitutes final agency action.

§ 960.11 Conditions for operation.

(a) Each license issued for the operation of a system shall require the licensee to comply with the Act and the regulations in this part. The licensee shall ensure that its license information is kept current and accurate. A licensee's failure to notify NOAA in a timely manner of any changes to that information on which the determination to issue the license or a subsequent licensing action was or will be made may result in penalties for noncompliance being levied, pursuant to Section 203(a)(3) of Public Law 102–555.

(b) The following conditions, as a minimum, shall be included in all licenses:

(1) The licensee shall operate its system in a manner that preserves the

national security and observes the foreign policy and international obligations of the United States. Specific limitations on operational performance, including, but not limited to, limitations on data collection and dissemination, as appropriate, will be specified in each license.

(2) The licensee shall maintain operational control from a location within the United States at all times, including the ability to override all commands issued by any operations centers or stations.

(3) The licensee will maintain and make available to the Assistant Administrator records of system tasking, operations and other data as specified in the license for the purposes of monitoring and compliance. Periodic reporting and record keeping requirements will be specified in the license. The licensee shall allow the Administrator access, at all reasonable times, to all facilities which comprise the remote sensing space system for the purpose of conducting license monitoring and compliance inspections.

(4) The licensee may be required by the Secretary to limit data collection and/or distribution by the system as determined to be necessary to meet significant national security or significant foreign policy concerns, or international obligations of the United States, in accordance with the procedures set forth in the Interagency MOU Fact Sheet. During such limitations, the licensee shall, on request, provide unenhanced restricted images on a commercial basis exclusively to the U.S. Government using U.S. government-approved rekeyable encryption on the down-link and shall use a data down-link format that allows the U.S. Government access to these data during such periods.

(5) A licensee shall notify the Administrator of its intent to enter into any significant or substantial foreign agreement, and shall submit this agreement for review in accordance with § 960.8. The proposed agreement may not be implemented by the licensee until the licensee has been advised by the Administrator that the document's provisions are acceptable.

(i) Notification of any agreement that provides for an on-going or a continuous relationship serves as notification of specific transactions carried out within the scope of that agreement for purposes of the regulations in this part and the Act. Such notification does not relieve a licensee of any obligation under any other laws including U.S. export laws or regulations to secure necessary USG authorizations and/or licenses, to provide notification, or to comply with other requirements.

(ii) A licensee seeking to enter a foreign agreement that would require the modification of the terms of an existing license shall submit a license amendment, as provided in § 960.7.

(6) In accordance with Section 201 (e) of the Act and § 960.12, a licensee shall make available on reasonable commercial terms and conditions, in accordance with the Act and § 960.12, any unenhanced data designated by the Assistant Administrator.

(7) A licensee shall provide to the U.S. Government, upon request, a complete list of all archived, unenhanced data which has been generated by its licensed system which is not already maintained in a public catalog. Any information on this list which is deemed proprietary by the licensee should be so noted by the licensee when the list is provided to the U.S. Government.

(8) A licensee shall make available unenhanced data requested by the National Satellite Land Remote Sensing Data Archive ("the Archive") in the Department of the Interior on reasonable cost terms and conditions as agreed by the licensee and the Archive. After the expiration of any exclusive right to sell, or after a reasonable period of time, as agreed with the licensee, the Archive shall make these data available to the public at a price equivalent to the cost of fulfilling user requests.

(9) Before purging any licensed data in its possession, the licensee shall offer such data to the Archive at the cost of reproduction and transmission. The Archive shall make these data available immediately to the public at a price equivalent to the cost of fulfilling user requests.

(10) A licensee shall make available to the government of any country (including the United States) upon request by that government, unenhanced data collected by its system concerning the territory under the jurisdiction of such government. The data shall be provided as soon as the licensee is able to distribute the data commercially or as soon as the licensee has processed them into a format that the licensee uses for its own purposes, whichever occurs sooner, on reasonable terms and conditions. However, no data shall be provided to the sensed state if such release is contrary to U.S. national security concerns, foreign policy or international obligations or is otherwise prohibited by law, *e.g.* where transactions with the sensed state are prohibited by the laws of the United States. The USG may require, as a specific license condition, coordination with NOAA prior to fulfilling specific sensed state requests for unenhanced data.

(11) A licensee shall inform the Assistant Administrator immediately of any operational deviation or proposed deviation of the system which would violate the conditions of the license. If advance notice is not possible because of an emergency posing an imminent and substantial threat to human life, property, the environment or the system itself, the licensee shall notify the Assistant Administrator of the deviation as soon as circumstances permit.

(12) A licensee shall dispose of any satellites operated by the licensee upon termination of operations under the license in a manner satisfactory to the President. The licensee shall obtain approval from the Assistant Administrator of all plans and procedures for the disposition of satellites as part of the application process.

§ 960.12 Data policy for remote sensing space systems.

(a) In accordance with the Act, if the U.S. Government has or will directly fund all or a substantial part of the development, fabrication, launch, or operation costs of a licensed system, the license shall require that all of the unenhanced data from the system be made available on a nondiscriminatory basis except on the basis of national security, foreign policy or international obligations.

(b) If the U.S. Government has not funded and will not fund, either directly or indirectly, any of the development, fabrication, launch, or operations costs of a licensed system, the licensee may provide access to its unenhanced data in accordance with reasonable commercial terms and conditions, subject to the requirement of providing data to the government of any sensed state, pursuant to § 960.11(b)(10), and to implementation of the licensee's plan, as contained in its application, to provide widespread access to its unenhanced data for non-commercial scientific, educational or other public benefit purposes.

(c) If the U.S. Government has (either directly or indirectly) funded some of the development, fabrication, launch, or operations costs of a licensed system, the Assistant Administrator, in consultation with other appropriate U.S. agencies, shall, subject to national security concerns, determine whether the interest of the United States in promoting widespread availability of remote sensing data on reasonable cost terms and conditions requires that some or all of the unenhanced data from the

system be made available on a nondiscriminatory basis in accordance with the Act. The license shall specify any data subject to this requirement. In making this determination, the Assistant Administrator may consider:

(1) The extent and proportion of private and federal funding of the system;

(2) The extent of the governmental versus the commercial market for the unenhanced data;

(3) The effect of a nondiscriminatory data access designation on the applicant's commercial activity;

(4) The extent to which the applicant's proposed commercial data policies would encourage foreign operators to limit access, particularly for research and public benefit purposes; or

(5) The extent to which the U.S. interest in promoting widespread data availability can be satisfied through license conditions that ensure access to the data for scientific, educational, or other public benefit purposes.

Subpart C—Prohibitions

§ 960.13 Prohibitions.

It is unlawful for any person who is subject to the jurisdiction or control of the United States, directly or through any subsidiary or affiliate to:

(a) Operate a private remote sensing space system in such a manner as to jeopardize the national security or foreign policy and international obligations of the United States;

(b) Operate a private remote sensing space system without possession of a valid license issued under the Act and/or the regulations in this part;

(c) Operate a private remote sensing space system in violation of the terms and conditions of the license issued for such system under the Act and the regulations in this part;

(d) Violate any provision of the Act or the regulations in this part or any term, condition, or restriction of the license;

(e) Violate or fail to comply with any order, directive, or notice issued by the Secretary or his/her designee, pursuant to the Act and/or the regulations in this part, with regard to the operation of the licensed private remote sensing space system;

(f) Fail or refuse to provide to the Secretary or his/her designee all reports and/or information required to be submitted to the Secretary under the Act or the regulations in this part;

(g) Fail to update the information required to be submitted to the Secretary in the license application; or

(h) Interfere with the enforcement of this part by:

(1) Refusing to permit access by the Secretary or his/her designee to any facilities which comprise the remote sensing space system for the purposes of conducting any search or inspection in connection with the enforcement of the regulations in this part;

(2) Assaulting, resisting, opposing, impeding, intimidating, or interfering with any authorized officer in the conduct of any search or inspection performed under the regulations in this part;

(3) Submitting false information to the Secretary, his/her designee or any authorized officer; or

(4) Assaulting, resisting, opposing, impeding, intimidating, harassing, bribing, or interfering with any person authorized by the Secretary or his/her designee to implement the provisions of the regulations in this part.

Subpart D—Enforcement Procedures

§ 960.14 In general.

(a) The Secretary shall conduct such enforcement activities as are necessary to carry out his/her obligations under the Act.

(b) Any person who is authorized to enforce the regulations in this part may:

(1) Enter, search and inspect any facility suspected of being used to violate the regulations in this part or any license issued pursuant to the regulations in this part and inspect and seize any equipment or records contained in such facility;

(2) Seize any data obtained in violation of the regulations in this part or any license issued pursuant to the regulations in this part;

(3) Seize any evidence of a violation of the regulations in this part or of any license issued pursuant to the regulations in this part;

(4) Execute any warrant or other process issued by any court of competent jurisdiction; and

(5) Exercise any other lawful authority.

§ 960.15 Penalties and sanctions.

As authorized by Section 203(a) of the Act, if the Secretary or his/her designee determines that the licensee has substantially failed to comply with the Act, the regulations in this part, or any term, condition or restriction of the license, the Secretary or his/her designee may request the appropriate U.S. Attorney to seek an order of injunction or similar judicial determination from the U.S. District Court for the District of Columbia Circuit or a U.S. District Court within which the licensee resides or has its principal place of business, to terminate, modify, or suspend the license, and/or to terminate licensed operations on an immediate basis.

(a) In addition, any person who violates any provision of the Act, any license issued thereunder, or the regulations in this part may be assessed a civil penalty by the Secretary of not more that $10,000 for each violation. Each day of operation in violation constitutes a separate violation. All civil penalties procedures shall be in accordance with 15 CFR part 904.

(b) Violation of the Act, this part, or any license issued under this part, may be subject to criminal penalty provisions prescribed in other applicable laws.

Appendix 1 to Part 960—Filing Instructions and Information To Be Included in the Licensing Application

(a) Where to file. Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data and Information Service (NESDIS), NOAA, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910.

(b) Form. No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed by an authorized principal executive officer. In addition, applicants must submit a copy on electronic media using commonly-available commercial word processing software.

(c) Number of copies. One (1) copy of each application must be submitted in a readily reproducible form accompanied by a copy on electronic media. One (1) copy of the public summary required by § 960.5(b) must also be submitted in a readily reproducible form accompanied by a copy on electronic media.

(d) The following information shall be filed by the applicant in order to evaluate its suitability to hold a private remote sensing space system license. Data provided regarding the applicant's proposed remote sensing space system must be in sufficient detail to enable the Secretary to determine whether the proposal meets requirements of the Act.

Sec. I—*Corporate Information*

(1) The name, street address and mailing address, telephone number and citizenship(s) of (as applicable):

(i) Applicant as well as any affiliates or subsidiaries;

(ii) Chief executive officer of the applicant and each director;

(iii) Each general corporation partner;

(iv) All executive personnel or senior management of a partnership;

(v) Any directors, partners, executive personnel or senior management who hold positions with or serve as consultants for any foreign nation or person;

(vi) Each domestic beneficial owner of an interest equal to or greater than 10 percent in the applicant;

(vii) Each foreign owner of an interest equal to or greater than 5 percent in the applicant;

(viii) Each foreign lender and amount of debt where foreign indebtedness exceeds 25 percent of an applicants total indebtedness;

(ix) A person upon whom service of all documents may be made.

(2) A description of any significant or substantial agreements between the applicant, its affiliates and subsidiaries, with foreign nation or person, including copies if available;

(3) A copy of the charter or other authorizing instrument certified by the jurisdiction in which the applicant is incorporated or organized and authorized to do business.

Sec. II—*Launch Segment Information*

Provide the characteristics of the launch segment to include:

(1) proposed launch schedule;

(2) proposed launch vehicle source;

(3) proposed launch site;

(4) anticipated operational date;

(5) the range of orbits and altitudes (nominal apogee and perigee);

(6) inclination angle;

(7) orbital period;

Sec. III—*Space Segment*

(1) the number of satellites which will compose this system;

(2) provide technical space system information at the level of detail typical of a request for proposal specification;

(3) Anticipated best theoretical resolution (show calculation);

(4) Swath width of each sensor (typically at nadir);

(5) the various fields of view for each sensor (IFOV, in-track, cross-track);

(6) on-board storage capacity;

(7) navigation capabilities—GPS, star tracker accuracies;

(8) time-delayed integration with focal plane;

(9) oversampling capability;

(10) image motion parameters—linear motion, drift; aggregation modes;

(11) anticipated system lifetime.

Sec. IV—*Ground Segment*

(1) The system data collection and processing capabilities proposed including but not limited to: tasking procedures; scheduling plans; data format (downlinked and distributed data); timeliness of delivery; ground segment information regarding the location of proposed operations centers and stations, and tasking, telemetry and control; data distribution and archiving plans;

(2) The command (uplink and downlink) and mission data (downlink) transmission frequencies and system transmission (uplink and downlink) footprint, the downlink data rate, any plans for communications crosslinks;

(3) The plans for protection of uplink, downlink and any data links;

(4) The methods applicant will use to ensure the integrity of its operations, including plans for: positive control of the remote sensing space system and relevant operations centers and stations; denial of unauthorized access to data transmissions to or from the remote sensing space system; and restriction of collection and/or distribution of unenhanced data from specific areas at the request of the U.S. Government.

Sec. V—Other Information

A. The applicant's plans for providing access to or distributing the unenhanced data generated by the system including:

(1) a description of the plan for the sale and distribution of such data;

(2) the method for making the data available to governments whose territories have been sensed;

(3) a description of the plans for making data requested and purchased by the Department of the Interior available to the Archive for inclusion in the basic data set; and

(4) the licensee's plans to make the data available for non-commercial scientific, educational, or other public benefit purposes, such as the study of the changing global environment.

B. If the applicant is proposing to follow a commercial data distribution and pricing policy as provided for by § 960.12, the application shall include the following additional financial information:

(1) the extent of the private investment in the system;

(2) the extent of any direct funding or other direct assistance which the applicant or its affiliates or subsidiaries have received or anticipate receiving from any agency of the U.S. Government for the development, fabrication, launch, or operation of the system including direct financial support, loan guarantees, or the use of U.S. Government equipment or services;

(3) any existing or anticipated contract(s) between the applicant, affiliate, or subsidiary and U.S. Government agencies for the purchase of data, information, or services from the proposed system;

(4) any other relationship between the applicant, affiliate, or subsidiary and the U.S. Government which has supported the development, fabrication, launch, or operation of the system; and

(5) any plans to provide preferred or exclusive access to the unenhanced data to any particular user or class of users.

C. The applicant will submit a plan for post-mission disposition of any remote-sensing satellites owned or operated by the applicant. If the satellite disposition involves an atmospheric re-entry the applicant must provide an estimate of the total debris casualty area of the system's components and structure likely to survive re-entry.

Appendix 2 to Part 960—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems Dated February 2, 2000

The White House, Office of Science and Technology Policy and National Security Council

February 2, 2000.

FACT SHEET REGARDING THE MEMORANDUM OF UNDERSTANDING CONCERNING THE LICENSING OF PRIVATE REMOTE SENSING SATELLITE SYSTEMS

A Memorandum of Understanding (MOU) has been concluded between the Departments of Commerce, State, Defense, Interior and the Intelligence Community regarding interagency procedures on commercial remote sensing systems.

Background

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, is responsible for administering the licensing of private remote sensing satellite systems pursuant to the Land Remote Sensing Policy Act of 1992. The Act also grants to the Secretaries of State and Defense the authority to determine conditions necessary to protect international obligations, foreign policy concerns, and national security concerns. The purpose of the MOU is to establish interagency procedures concerning the process for handling remote sensing licensing actions, and consultation regarding interruption of normal commercial operations consistent with the President's policy on remote sensing.

In consultation with affected agencies, limitations on commercial remote sensing systems will be imposed by the Secretary of Commerce when necessary to meet international obligations and national security and foreign policy concerns and will be in accord with the determinations of the Secretary of Defense and the Secretary of State and with applicable law. Procedures for implementing this policy are set out below.

Procedures

A. Consultation during Review of Licensing Actions.

Pursuant to section 5621(c) of the Land Remote Sensing Policy Act of 1992, the Secretary of Commerce shall review any application and make a determination thereon within 120 days of receipt of such application. If final action has not occurred within such time, then the Secretary shall inform the applicant of any pending issues and of actions required to resolve them. Copies of requests for licensing actions received by the Department of Commerce (DOC) will be provided by DOC to the Department of State (DOS), the Department of Defense (DOD), the Department of the Interior (DOI), and the Intelligence Community (IC) within 3 working days.

DOC will defer its decision on such licensing actions until the other Parties concerned have had a reasonable time to review them, as provided in this section.

(1) Within 10 working days of receipt, DOS, DOD, DOI, or IC shall notify the Department of Commerce, in writing, of any additional information it believes is necessary to properly evaluate the licensing action, or notify DOC in writing of the additional time, not to exceed 10 working days, necessary to complete the review. This notification shall state the specific reasons why the additional information is sought.

(2) After receiving a complete license package or the information requested in paragraph (1), DOS, DOD, DOI, and IC will complete their review of the license package within 30 days or notify DOC in writing of additional time necessary to complete the review. If DOS, DOD, or IC conclude that imposition of conditions on the actions being reviewed may be necessary to protect international obligations, foreign policy concerns, or national security concerns, the agency identifying the concern will promptly notify DOC in writing with a copy to other

interested agencies. Such notification shall: (i) describe the national security interests, or the international obligations or specific foreign policies at risk if the applicant's system is approved as proposed; (ii) set forth in detail the basis for the conclusion that operation of the applicant's system as proposed will not preserve the national security interests or the international obligations or specific foreign policies identified; and (iii) specify the additional conditions necessary to preserve the relevant United States interests or set forth in detail why denial is required to preserve such interests.

(3) Within 10 days of sending this notification, representatives of DOS, DOD, DOC, DOI, and IC will meet to discuss and resolve any issues with regard to these proposed conditions.

(4) If, after such discussions, DOS or DOD conclude that such conditions are necessary but DOC does not concur, the Secretary of State or the Secretary of Defense may make such a determination of necessary conditions in writing. This function may not be delegated below the acting Secretary or the Deputy Secretary. Such determinations will be promptly forwarded to DOC and a copy will be provided to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) Upon notification of such a determination, DOC will suspend any further action on the license that would be inconsistent with the DOS or DOD determination. If the Secretary of Commerce believes the limits defined by another Secretary are inappropriate, the Secretary of Commerce or Deputy Secretary shall then consult with his or her counterpart in the relevant department within 10 days regarding any unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will so notify the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve a consensus within the interagency, or failing that, by referral to the President. All efforts will be taken to resolve the dispute within 3 weeks of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

B. Consultation Regarding Interruption of Normal Commercial Operations

(1) This section establishes the process for requiring the licensee to limit data collection and/or distribution by the system during periods when national security or international obligations and/or foreign policies may be compromised, as determined by the Secretary of Defense or the Secretary of State. DOC will provide to the other Parties copies of licensee correspondence and documents that describe how the licensee will comply with such interruptions of its commercial operations.

(2) Conditions should be imposed for the smallest area and for the shortest period necessary to protect the national security, international obligations, or foreign policy concerns at issue. Alternatives to prohibitions on collection and/or distribution shall be considered such as delaying the transmission or distribution of data, restricting the field of view of the system, encryption of the data if available, or other means to control the use of the data.

(3) Except where urgency precludes it, DOS, DOD, DOC and IC will consult to attempt to come to an agreement concerning appropriate conditions, if any, to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be constructed so that, in the event an agreement cannot be reached at the staff level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State or the Secretary of Defense, as appropriate, prior to the issuance of a determination by the Secretary of State or the Secretary of Defense in accordance with (4) below. That function shall not be delegated below the acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State or the Secretary of Defense, shall determine the conditions necessary to meet international obligations, significant foreign policy concerns, or significant national security concerns, especially where those interests identified in the National Security Strategy would be put at risk. This function shall not be delegated below the acting Secretary. The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce his or her determination regarding the conditions required to be imposed on the licensee. The determination will describe the international obligations, specific foreign policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensee of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification of, and imposition of such conditions on, the licensee, so notify the Secretary of Defense or the Secretary of State, as appropriate, the Assistant to the President for National Security Affairs, and the Assistant to the President for Science and Technology. The Assistant to the President for National Security Affairs, in coordination with the Assistant to the President for Science and Technology, will initiate as soon as possible a Principals-level consultative process to achieve a consensus within the interagency, or, failing that, refer the matter to the President for decision. All efforts will be taken to resolve the disagreement within 7 working days of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

C. Coordination Before Release of Information Provided or Generated by Other Agencies

Before releasing any information provided or generated by another agency to a licensee or potential licensee, to the public, or to an administrative law judge, each agency agrees to consult with the agency that provided or generated the information. The purpose of such consultations will be to review the propriety of any proposed release of information that may be privileged because it is classified, pre-decisional, deliberative, contain proprietary information, or is protected for other reasons. No information shall be released without the approval of the agency that provided or generated it unless required by law.

D. No Legal Rights or Remedies, or Legally Enforceable Causes of Action, are Created or Intended to be Created by the MOU.

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Part V

Department of the Interior

Fish and Wildlife Servce

50 CFR Part 20

Migratory Bird Hunting; Proposed Framework for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2000–01 Duck Hunting Season; Notice of Meeting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018–AG08

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2000–01 Duck Hunting Season; Notice of Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: We, the U.S. Fish and Wildlife Service, are proposing to establish the 2000–01 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This supplement to the proposed rule of April 25, 2000, also provides the regulatory alternatives for the 2000–01 duck hunting season.

DATES: You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by August 10, 2000, and for the forthcoming proposed late-season frameworks by September 8, 2000.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, 1849 C Street, NW, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2000

On April 25, 2000, we published in the **Federal Register** (65 FR 24260) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 20, 2000, we published in the **Federal Register** (65 FR 38400) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2000–01 duck hunting season. The June 20 supplement also provided detailed information on the 2000–01 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the final regulatory alternatives for the 2000–01 duck hunting season. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2000–01 season. We have considered all pertinent comments received through July 7, 2000, on the April 25 and June 20, 2000, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under DATES. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 2000.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 21–22, 2000, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2000–01 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2000–01 regular waterfowl seasons. Participants at the previously announced August 2–3, 2000, meetings will review information on the current status of waterfowl and develop 2000–01 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit written comments to the Director of the Service on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

In the Western or Traditional survey area, conditions were much drier this spring than the previous 6 years. These dry conditions are reflected in the Prairie May ponds estimate of 3.9 ±0.1 million, down 41 percent from 1999 and 20 percent below the 1974–99 average. Conditions ranged from poor in much of Alberta and parts of Montana and Saskatchewan to fair to good in most other areas. Only portions of northern Manitoba and the Dakotas were in excellent condition. In June, much of the prairie received heavy rains. While this may have increased breeding habitat quantity and quality, heavy rains in the Dakotas may have caused flooding and loss of nests. Southern Saskatchewan and Manitoba were in generally fair condition, and the Dakotas were in generally good condition, while most of Northern Saskatchewan and Manitoba were in good to excellent condition. In Alaska, a significant cooling down changed an early warm spring into a cool, late spring, resulting in a 2–3 week later-than-normal ice breakup. In Alaska, a later spring generally results in lower production. Overall, May habitat conditions in the traditional survey area were poor to good, improving to the north and east. July surveys will help determine if recent rain helped duck production.

Winter and spring were also warm and dry in the Eastern survey area. A seemingly early spring cooled down markedly, especially in Labrador, Newfoundland, and Eastern Quebec. In these easternmost regions, spring was 2–3 weeks behind normal. Water levels in southwestern Ontario, Maine, Nova Scotia, and New Brunswick are higher this year than last year. However, southern Ontario and southern Quebec are drier than normal. In southwest Ontario, Maine, and the Maritimes,

heavy thunderstorms in May caused severe flooding and may have caused much renesting. Overall, habitat conditions in the east are generally good, with the exception of some areas of southern Ontario and southern/central Quebec, where low water levels resulted in fair to poor habitat conditions. Overall, the survey area was in generally good condition, and production is expected to be good this year.

The 2000 total duck population estimate for the traditional survey area was 41.8 ±0.7 million birds. This was similar to last year's record estimate of 43.4 ±0.7 million birds, and still 27 percent above the 1955–99 average. Mallard abundance was 9.5 ±0.3 million, which is 12 percent below last year's record estimate but still 27 percent above the 1955–99 average. Blue-winged teal abundance was estimated at a record high of 7.4 ±0.4 million. This was similar to last year's estimate of 7.1 million, and 69 percent above the 1955–99 average. Gadwall (3.2 ±0.2, +100 percent), green-winged teal (3.2 ±0.2 million, +80 percent), northern shovelers (3.5 ±0.2 million, +73 percent), and redheads (0.9 ±0.1 million, +50 percent) were all above their long-term averages, while northern pintails (2.9 ±0.2 million, −33 percent) and scaup (4.0 ±0.2 million, −25 percent) were again below their long-term averages. Green-winged teal was the only species that increased over 1999, an increase of 21 percent.

This year, new areas have again been included in the Eastern survey area. In addition, we have redefined the total duck composition of this area to include scoters and mergansers, because they are important breeding species in this survey area. Therefore, the eastern 1999 total duck estimate used this year is not the same as that published last year. The 2000 total duck population estimate for the eastern survey area was 2.6 ±0.3 million birds, similar to last year's total duck estimate of 2.9 ±0.2 million birds. Abundances of individual species were similar to last year, with the exception of scaup (116.1 ±32 thousand, +296 percent), scoters (182.1 ±59 thousand, +288 percent), and green-winged teal (201.6 ±28.7 thousand, −52 percent).

Status of Teal

Blue-winged teal abundance this spring was a record high of 7.4 ±0.4 million, which is similar to last year's estimate of 7.1 million and 69 percent above the 1955–99 average. This population size is well above the 4.6 million trigger level needed for the liberal 16-day teal season in the Central and Mississippi Flyways and a 9-day teal season in the Atlantic Flyway. Green-winged teal abundance was estimated at 3.2 ±0.2 million, which is 21 percent above last year's estimate and 80 percent above the long-term average.

The 1999–2000 season was the second consecutive year of an extended (16 days vs. 9 days) September teal season in the Central and Mississippi Flyways. Preliminary harvest estimates from last year's September teal season in the Mississippi Flyway indicate that harvest increased from 266,000 to 413,000 teal, an increase of 55 percent over the 1998 September teal season. Preliminary estimates in the Central Flyway indicate that harvest decreased from 160,000 to 126,000 birds, a decrease of 23 percent over the 1998 September teal season. The total estimated harvest in the Mississippi and Central Flyways was 539,000 cinnamon, blue- and green-winged teal, which is 26 percent more than the 1998 September teal season harvests.

Last year, the Atlantic Flyway also participated in the second year of its 3-year experimental September teal season. Six States harvested an estimated 32,000 blue- and green-winged teal, an increase of 33 percent over the 1998 September teal season harvest of 24,000. Additionally, the Atlantic Flyway completed the second year of its required spy blind assessment of attempt rates at nontarget species. Results indicate that the average nontarget attempt rates for 1999 were virtually identical to those in 1998 (19 percent in 1998 vs. 20 percent in 1999). Since only 2 years of the required 3-year study have been completed, results are incomplete at this time. However, we note that a few individual States have exceeded the maximum acceptable nontarget attempt rate of 25 percent. After the third year, we will conduct a full assessment of nontarget attempt rates and review the further continuation of the season.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes appears to have stabilized following dramatic increases in the early 1980's. The Central Platte River Valley 2000 preliminary spring index, uncorrected for visibility, was 488,000. The photo-corrected 3-year average for the 1997–99 period was 450,126, which was within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1999–2000. About 6,700 hunters participated in these seasons, which was 18 percent lower than the previous year's seasons. About 19,800 cranes were harvested in 1999–2000 in the Central Flyway, a 7 percent decrease from the previous year's high estimate. Harvests from the Pacific Flyway, Canada, and Mexico are estimated to be about 13,800 for the 1999–2000 sport-hunting seasons. The total North American sport harvest, including crippling losses, was estimated to be about 37,207 for the Mid-Continent Population.

The fall 1999 premigration survey estimate for the Rocky Mountain Population was 19,501, which is similar to the 1998 estimate of 18,202. Limited special seasons were held during 1999 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in an estimated harvest of 658 cranes.

Woodcock

Singing-ground and Wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data from 2000 indicate that the number of displaying woodcock in the Eastern Region decreased 11.0 percent ($P<0.1$) from 1999 levels. In the Central Region, there was a 10.4 percent increase in the number of woodcock heard displaying ($P<0.1$) compared to 1999 levels. Trends from the Singing-ground Survey during 1990–00 were negative (−3.5 and −3.1 percent per year for the Eastern and Central regions, respectively; $P<0.01$). There were long-term (1968–00) declines ($P<0.01$) of 2.3 percent per year in the Eastern Region and 1.6 percent per year in the Central Region.

The 1999 recruitment index for the Eastern Region (1.1 immatures per adult female) was 35 percent below the long-term regional average; the recruitment index for the Central Region (1.2 immatures per adult female) was 29 percent below the long-term regional average. The index of daily hunting success in the Eastern Region increased from 1.9 woodcock per successful hunt in 1998 to 2.0 woodcock per successful hunt in 1999, and seasonal hunting success increased 3 percent, from 7.2 to 7.4 woodcock per successful hunter in 1998 and 1999, respectively. In the Central Region, the daily success index in 1999 was unchanged from the 1998 index (2.1 woodcock per successful hunt) but the seasonal success index decreased 11 percent from 11.3 to 10.0 woodcock per successful hunter.

Band-Tailed Pigeons and Doves

The status of the Coastal population of band-tailed pigeons appears to be improving. While a significant decline

occurred between 1968–99 as indicated by the Breeding Bird Survey (BBS), no trend was indicated over the most recent 10 years. Additionally, mineral site counts at 10 selected sites in Oregon indicate a steady increase over the past 10 years. The count in 1999 was 65 percent above the previous 31-year average. Call-count surveys conducted in Washington showed a nonsignificant decline between the 1975–99 and 1995–99 periods. Washington has opted not to select a hunting season for bandtails since 1991. The harvest of Coastal pigeons is estimated to be about 23,000 birds out of a population of about 3 million. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short- or long-term periods. Harvest estimates range from 1,300 to 1,900 birds. Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over the most recent 10 years and the entire 35 years of the survey in all three management units. A project has been funded recently to develop mourning dove population models for each unit to provide guidance in what needs to be done to improve our decision-making process with respect to harvest management. White-winged doves in Arizona are maintaining a fairly stable population since the 1970's. Between 1999 and 2000, the average number of doves heard per route doubled from 25 to 50. A low harvest (142,000 in 1999) is being maintained compared with birds taken several decades ago. In Texas, the phenomenon of the white-winged dove expansion continues. The population in the Lower Rio Grande Valley increased 19 percent from 1999 to an estimated 507,000 birds; in Upper South Texas, the count increased 7 percent to 999,000; and, in West Texas, the count increased 94 percent to 33,000. The whitewing population may reach epidemic proportions in 5–10 years and could begin causing substantial damage to agricultural crops being grown near cities that have a large population of whitewings. Hunting does not appear to be having any effect upon these norther urban nesters.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the April 25 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 20 **Federal Register**, defined the public comment period for the proposed regulatory alternatives for the 2000–01 duck hunting season. The public comment period for the proposed regulatory alternatives ended July 7, 2000. Early-season comments and comments pertaining to the proposed alternatives are summarized below and numbered in the order used in the April 25 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 25, 2000, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic Flyway Council recommended that duck hunting regulations in the Atlantic Flyway for the 2000–01 season be based on the optimal harvest strategy for eastern mallards.

Service Response: In the June 20, 2000, **Federal Register** document, we proposed to modify the existing Adaptive Harvest Management (AHM) protocol to account for the status of mallards breeding in eastern North America. Based on a technical assessment completed in January 2000 (available on the Internet at http://migratorybirds.fws.gov/reports/reports.html), there appear to be two possible approaches to modifying the current AHM protocol. The first would involve a single joint optimization of midcontinent and eastern mallard harvests. This approach would result in optimal regulatory choices for the Atlantic Flyway and for the remaining Flyways as a group for each possible combination of midcontinent population size, pond numbers in Canada, and eastern mallard population size. The characteristic feature of this approach is that all regulatory choices, regardless of harvest area, would be predicated on the status of both midcontinent and eastern mallards (with the degree of dependence based on each harvest area's unique combination of mallard populations). The second alternative would entail two separate harvest optimizations, in which the Atlantic Flyway regulation would be based solely on the status of eastern mallards, and the regulatory choice for the remainder of the country would be based solely on the status of midcontinent mallards. Both alternatives would be expected to significantly increase the frequency of liberal regulations in the Atlantic Flyway.

The recent technical assessment of AHM for eastern mallards formally considered only the large-scale status of mallard populations, and not the status of local breeding populations or segments of populations with affinities for certain wintering areas. Thus, it is not clear how AHM for eastern mallards might affect mallards at relatively small spatial scales. Some concern has been expressed regarding potential impacts of a modified AHM protocol on midcontinent mallards breeding in the Great Lakes States, and for midcontinent mallards that winter in the southern Atlantic Flyway. For those mallards breeding in the Great Lakes States and wintering in the Mississippi Flyway, a single, joint optimization of midcontinent and eastern mallards could result in a higher frequency of more liberal regulations in the Mississippi Flyway than would be the case in the absence of an accounting for eastern mallards. Only a small proportion (about 4 percent based on recent analyses) of Great Lakes' mallards winter in the Atlantic Flyway, so regulations there should have minimal impact on this population segment. On the other hand, the southern Atlantic Flyway derives a relatively high proportion of its wintering mallards from the midcontinent population, and it's not clear how a modified AHM protocol might affect this population segment.

Also, the recent assessment of AHM for eastern mallards did not formally consider potential impacts on species

other than mallards. Although the concern for other species is heightened by the prospect of more frequent liberal regulations in the Atlantic Flyway, the issue is no less a concern under the existing AHM protocol. Therefore, it is imperative to move quickly to consider how other key species might be incorporated into the AHM protocol. However, we reiterate that a full-featured AHM approach for all species is not realistic, and that concerns over many species necessarily will be handled on an as-needed basis.

The decision about how to account for eastern mallards in AHM would not affect the specification of the regulatory alternatives. The prescribed regulatory alternative for the Atlantic Flyway would consist of one of the existing regulatory alternatives. The only change is that the regulatory alternative prescribed for the Atlantic Flyway might differ from that prescribed for the remainder of the country. The Atlantic Flyway Council will have the opportunity to consider changes to the set of regulatory alternatives at the same time as the other Flyway Councils. The AHM technical working group is currently developing a recommended schedule and criteria for such changes.

We support appropriate modifications to the existing AHM protocol to account for eastern mallards, and will consider the implications discussed in the referenced technical report, as well as all public comment, in proposing a regulatory alternative for the Atlantic Flyway for the 2000–01 hunting season. In the meantime, we seek further discussion and review of this issue among the Flyway Councils at their joint meeting in July 2000. Modifications, if any, to the current AHM protocol will be proposed along with the late-season regulatory frameworks.

B. Regulatory Alternatives

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the regulations alternatives from 1999 be used in 2000, except that the framework opening and closing dates in all alternatives should be the Saturday nearest September 23 to the Sunday nearest January 28, with appropriate offsets (*e.g.*, reduction in season length) as determined by the Service.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening and closing dates in all regulatory alternatives should be the Saturday nearest September 23 to the Sunday nearest January 28, with no penalties in season length.

The Central Flyway Council recommended the continued use of the 1999 regulatory alternatives for the 2000–01 season, but with modifications. The Council recommended a framework opening date of the Saturday closest to September 24 in the "liberal" and "moderate" regulatory alternatives with no offsets, and a framework closing date of the Sunday closest to January 25. Additionally, the Council recommended that no additional changes be allowed to the alternatives for a 5-year period.

The Pacific Flyway Council recommended that the set of regulatory alternatives for the 2000–01 hunting season remain unchanged from those adopted in 1999.

Service Response: Due to the continuing absence of agreement among States and Flyways about how best to modify framework dates, no changes were made to the regulatory alternatives proposed in the June 20, 2000 Federal Register. We reiterate that our desire is to maintain current framework-date specifications through the 2002–03 hunting season, or until such time that the Flyway Councils can develop an approach that adequately addresses the concerns of the Service and a majority of States.

For the 2000–01 regular duck hunting season, we will use the four regulatory alternatives detailed in the accompanying table. Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will propose a specific regulatory alternative in early August when survey data on waterfowl population and habitat status are available.

D. Special Seasons/Species Management

iii. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that Nebraska be allowed to have an experimental 9-day teal season in the nonproduction area of the State.

Service Response: We concur with the Central Flyway Council's recommendation for an experimental 9-day special September teal season in the nonproduction area of Nebraska. The State would be required to evaluate the impacts to nontarget waterfowl species by conducting hunter performance surveys. This season will be experimental for a 3-year period but must include a pre-sunrise evaluation in order to have shooting hours begin ½-hour before sunrise.

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service and the Council's Wood Duck Technical Committee move forward during the current year (2000) to allow for implementation of a wood duck Flyway harvest management strategy by the year 2001 as scheduled. The Committee further recommended that September seasons remain an option for delineated wood duck reference areas (population units), provided that specified data-collection requirements are met.

Written Comments: Three individuals questioned the rationale for the Service's decision to terminate September teal/wood duck seasons when information indicating that such seasons are detrimental to wood duck populations seems to be lacking.

Service Response: September teal/wood duck seasons in Florida, Kentucky, and Tennessee have been in an experimental status since their inception in 1961. We have consistently requested that States collect information to evaluate these special seasons, including hunter and harvest surveys, banding, and population surveys. In 1996, due to decreases in wood duck survival rates in Kentucky and Tennessee, we restricted the bag limit during Experimental September teal/wood duck seasons to include no more than two wood ducks. At that time, we also noted that preseason wood duck banding in Florida was not sufficient to allow assessment of the impacts associated with the Experimental September season (51 FR 24418). On March 13, 1987 (52 FR 7997), we indicated that although September teal/wood duck seasons are in principle a feasible harvest management strategy, the situation with regard to their evaluation, including flyway-wide aspects of the management of target species, and their suitability for widespread application was under review. At that time, we also reaffirmed the need for cooperative studies that are flyway-oriented in scope to better understand and manage wood ducks. On June 6, 1990 (55 FR 23179), we noted that preseason banding programs were not meeting the regional requirements for sample size and distribution necessary to evaluate special seasons for wood ducks on a State-by-State basis. We stated that unless arrangements could be made to initiate regional banding programs and facilitate widespread data collection, experimental seasons may be modified or suspended (55 FR 23179). During

1991–96, a cooperative Wood Duck Population Monitoring-Initiative was undertaken by the Atlantic and Mississippi Flyway Councils and the Service to improve population-monitoring programs. We agreed not to discontinue or expand Experimental September teal/wood duck seasons until the Initiative was completed. Results from the Initiative indicated that wood duck population-monitoring programs at geographic scales below the flyway level were not meeting requisite sample sizes. Our evaluation of September teal/wood duck seasons in Florida, Kentucky, and Tennessee indicated that estimates of population parameters for individual States are usually imprecise, which precludes drawing meaningful conclusions about State or regional wood duck harvest-management experiments (63 FR 13751).

On August 28, 1998 (63 FR 46126), we stated our intent to discontinue September teal/wood duck seasons in Florida, Kentucky, and Tennessee after September 2000, due to our inability to adequately evaluate such seasons. We also stated that, without adequate regional population monitoring, wood duck harvest management should be approached at the flyway level during the regular season. During the interim, a flyway-wide harvest strategy was to be developed and ready for implementation during the 2001–02 regular season. We met with representatives from the Atlantic and Mississippi Flyway Council Technical Sections in September 1999 to discuss technical aspects of flyway wood duck harvest strategies. Development of the technical foundation for the strategy commenced following the working group meeting. A progress report of this work will be made at the Flyway Council meetings in July 2000. It is likely that several Technical Section representatives will be asked to attend a follow-up meeting in the Fall to address Council concerns and suggestions for a flyway wood duck harvest strategy. A draft harvest strategy will be distributed to Technical Sections prior to their February 2001 meetings. A final harvest strategy will be forwarded to the Flyway Councils for their consideration prior to their March 2001 meeting.

September wood duck seasons remain an option for delineated wood duck population units, provided that regional data-collection requirements are met. Such seasons should not be approached on a State-by-State basis. The final report of the Wood Duck Population-Monitoring Initiative outlined many of the sample size requirements needed for regional monitoring programs. We point out that the Initiative represented a period when Federal and State cooperators made special efforts to improve regional wood duck monitoring programs. The final report of the Initiative indicated that this goal was not achieved. Before a proposal for regional September wood duck seasons is considered in the future, we request that the Flyway Councils review the results of the Initiative and indicate how failure to achieve requisite regional sample sizes in the past will be avoided in the future.

v. Youth Hunt

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a special 2-day youth waterfowl hunt for the 2000–01 season.

The Central Flyway Council recommended expansion of the special youth waterfowl hunt to 2 days.

The Pacific Flyway Council recommended that the Service allow States the opportunity to select up to 2 consecutive days for a youth waterfowl hunt outside the general season and frameworks in 2000.

Service Response: In light of the continuing interest from the Flyway Councils, we have decided to expand the special youth waterfowl hunt to 2 consecutive days. Anecdotal data suggest that the special hunt has proven to be very popular and has provided an excellent opportunity to introduce youth hunters to the sport of waterfowling and waterfowl and wetland conservation. Expansion of the special hunt to 2 consecutive days should reduce travel difficulties and scheduling conflicts inherent with the current 1-day hunt.

Based on the limited number of youths participating, we do not expect any significant increase in harvest due to the expansion of the opportunity, and thus no significant impact on waterfowl populations.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the three counties near Saginaw Bay in Michigan (Huron, Saginaw, and Tuscola), which previously have been closed in the special early Canada goose season, be allowed an experimental special early season with a two-bird daily bag limit.

The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Central Flyway Council recommended that the framework closing date for operational September Canada goose seasons in the Central Flyway be extended to September 30 with no additional evaluation required.

The Pacific Flyway Council recommended that Wyoming's daily bag and season limits be increased from 2 and 4, to 3 and 6 birds, respectively, and that the bag and possession limits for Washington's September season increase from 3 and 6, to 5 and 10, respectively.

Service Response: Results of the previous experimental season in the three Saginaw-Bay Counties in Michigan indicated a substantial proportion of migrant Canada geese in the special-season harvest. The current proposal for a repetition of the experiment documents a significant increase in the number of resident Canada geese in the area since that time, but information concerning the population composition during the first half of September is sketchy. We agree that the change in resident Canada goose numbers warrants another experiment, but because of the small amount of information about the proportion of migrants in early September, we feel that the season should not extend beyond September 10.

We do not support the Central Flyway recommendation to remove evaluation requirements (August 29, 1995 **Federal Register**) for Special September Canada goose seasons for the period between September 16–30. Past experience with these special seasons has shown seasons during September 1–15 generally achieve the objective of targeting resident Canada geese and this period has been designated as operational. In contrast, harvests during the period of September 16–30 has indicated an increasing proportional take of migrant stocks of geese. We have no experience with special seasons in the Central Flyway during September 16–30, and the impacts on nontarget populations of Canada geese have not been determined. Although impacts to nontarget populations of Canada geese that are over objective levels may not be of immediate concern, we believe that evaluation during this period is necessary to insure that the objective of targeting resident geese is maintained. According to established special season guidelines, Central Flyway States have the option to conduct an experimental hunt during the late-September period with an appropriate evaluation. Although collection of neck collar data may not be possible due to low numbers of marked geese, current guidelines

allow for the use of morphological information of harvested geese to access the proportion of migrant geese during this period. Because migrant Canada geese are limited to small subspecies of the Tall Grass Prairie Population in the East-Tier States and the Short Grass Prairie Population in the West-Tier States, we believe that tail fan measurements of harvested geese will be sufficient to determine the proportion of harvested migrant geese. In the event that States are interested in conducting an experimental season during this period, we will cooperatively work with State personnel to determine appropriate sample sizes necessary to access proportional harvests of migrant Canada geese as required by existing guidelines for the experimental seasons.

Regarding the Lower-Region Regulation Committee's concern for cumulative impacts of special-season harvests on migrant Canada goose populations of concern, we are aware of the Committee's concern and are monitoring the harvests occurring during these seasons.

We concur with the Pacific Flyway Council recommendation.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular-goose-season opening date be as early as September 16 in Michigan and Wisconsin. The Committee further recommended that the framework opening date for regular goose seasons in the Mississippi Flyway be September 16.

The Central Flyway Council recommended that the framework opening date for regular dark-goose seasons in the East and West Tiers be fixed at September 1, rather than the current opening date of the Saturday nearest October 1.

Service Response: We do not support the Central Flyway's recommendation for changing the dark-goose framework opening dates from the Saturday nearest October 1 to September 1 or the Mississippi Flyway's light-and dark-goose seasons from the Saturday nearest October 1 to September 16. We have minimal experience with regular goose seasons that begin prior to the Saturday nearest October 1 and believe that management of several migratory goose populations would require complex special and temporal considerations within this period to address needs of various populations. The change in the framework opening date to earlier in September would require the movement of goose frameworks from the late-to the early-season process and, for some populations, would result in a serious timing problem in that decisions would have to be made prior to having breeding-ground information. We are also developing a management strategy for resident Canada geese that will allow for States to have more flexibility in addressing human/goose conflicts caused by growing populations of resident geese, and we believe that changes such as this may impede progress.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended a 95-day season with the option for a two-way split season for the hunting of Mid-Continent sandhill cranes. This change would result in a 37-day season length increase in North Dakota, South Dakota, Nebraska, Kansas, Montana, Wyoming, and Colorado and a 2-day season length increase in Oklahoma, Texas, and New Mexico.

The Council further recommended that the open area for the hunting of Mid-Continent sandhill cranes be extended eastward to the Mississippi Flyway. The Council recommends a season length of 37 days with outside framework dates of September 1 and February 28, and a daily bag/possession limit of 3 and 9, respectively, for this expanded area.

The Pacific Flyway Council recommended a boundary modification in Box Elder County, Utah, to exclude that portion of the County known to be used by greater sandhill cranes affiliated with the Lower Colorado River Population.

Service Response: We do not support the Central Flyway Council's recommendations to liberalize hunting seasons on the Mid-Continent Population of sandhill cranes. We believe that last year's hunting regulations should be maintained until ongoing satellite-transmitter tracking studies are completed. Recent genetic information on subspecies composition has further complicated management of the two identified subpopulations. We believe that information regarding the population status and harvests of the two subpopulations must be further refined before additional changes are implemented. Annual indices to the total Mid-Continent Population remain stable; however, harvests continue to increase. The proposed regulations changes along the eastern portion of the Mid-Continent range in the Flyway would affect the Gulf Coast Subpopulation, which contains almost all of the greater sandhill cranes in this population.

We concur with the Pacific Flyway Council recommendation.

12. Rails

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select rail-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

13. Snipe

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select snipe-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

14. Woodcock

Written Comments: An individual from Minnesota felt that the daily bag limit for woodcock should be four birds, and that the framework opening date for the Mississippi Flyway should be September 1, rather than the Saturday nearest September 22.

Service Response: In response to long-term population declines, we implemented several framework changes in 1997 to reduce the harvest of woodcock. In the Central Region, the bag limit was reduced from five to three birds, season length was reduced from 65 to 45 days, and the framework opening date was changed to the Saturday nearest September 22 (rather than September 1). Based on harvest information for various bag limits, it was determined that a reduction from five to three birds was necessary to achieve a meaningful reduction in harvest. Furthermore, a framework opening date of the Saturday nearest September 22 was contained in an interim woodcock harvest strategy proposed by the Mississippi Flyway Council in 1997 (62 FR 44232). The framework date we adopted reflected the opening date proposed in the Flyway Council strategy.

15. Band-tailed Pigeons

Council Recommendations: The Pacific Flyway Council recommended a change in frameworks for Pacific Coast band-tailed pigeons from 1999 to increase the possession limit from two to four birds.

Service Response: We concur.

16. Mourning Doves

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the

Central and Pacific Flyways be allowed to select dove season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended a reduction in sandhill crane bag limits from three to two in that portion of the State associated with the Pacific Flyway Population of lesser sandhill cranes.

Service Response: We concur.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES**.

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them after the closing date in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 2000–01 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

Executive Order 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,064 million at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES**.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the

magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: July 24, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2000–01 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select for certain migratory game birds between September 1, 2000, and March 10, 2001.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units:

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia,

and West Virginia. All seasons are experimental.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways, except in Nebraska where the season is not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, if evaluated; otherwise sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: A 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 23). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 consecutive days per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limit may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York, the Lake Champlain Region of New York and Vermont, the Eastern Unit of Maryland, and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons: Experimental Canada goose seasons of up to 20 days during September 1–20 may be selected by New York (Montezuma Region). Experimental seasons of up to 30 days during September 1–30 may be selected by New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons: An experimental Canada goose season of up to 7 consecutive days during September 16—22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 1—10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

Central Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected. The

daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons: Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. All participants must have a valid State permit for the special season.

3. A daily bag limit of 3, with season and possession limits of 6 will apply to the special season.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone, a 15-day season may be selected during the period September 1–20. Any portion of the season selected between September 16 and 20 will be considered experimental. Daily bag limits may not exceed 5 Canada geese. In the NW goose zone, at a minimum, Oregon must provide an annual evaluation of the number of dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting, in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

(1) In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

(2) In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years; and

(3) In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 21) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits: Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 6 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 23) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the

Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 4 band-tailed pigeons, respectively.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 4.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits: Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits: Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic duck limits, there is a sea duck daily bag limit of 10, with a possession limit of 20, scoter, common and king eiders, and common and red-breasted mergansers, singly or in the aggregate. Alaska may choose to allow these sea duck limits in addition to regular duck bag limits. However, the total daily bag limit for any duck species may not exceed 10.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required.

Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limit of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, Aleutian, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1—October 31.

3. In Game Management Unit (GMU) 18, no more than 500 swans may be harvested during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

4. In GMU 22, no more than 300 swans may be harvested during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 23, no more than 300 swans may be harvested during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

South Zone—The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Annes, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk

County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Two Goose Zone—That portion of the State lying east of Interstate Highway 35 and south of the Twin Cities Metropolitan Canada Goose Zone.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Two Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on KS–68 to its junction with KS–33, then north on KS–33 to its junction with US–56, then west on US–56 to its junction with KS–31, then west-northwest on KS–31 to its junction with KS–99, then north on KS–99 to its junction with US–24, then east on US–24 to its junction with KS–63, then north on KS–63 to its junction with KS–16, then east on KS–16 to its junction with KS–116, then east on KS–116 to its junction with US–59, then northeast on US–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with KS–68.

North Dakota

Special Early Canada Goose Unit—Richland and Sargent Counties.

South Dakota

September Canada Goose Unit—Brookings, Clark, Codington, Day, Deuel, Grant, Hamlin, Kingsbury, Lake, Marshall, McCook, Moody Counties, and Miner County east of SD 25, and that portion of Minnehaha County north and west of a line beginning at the junction of County 130 (Renner Road) and the Minnesota border, then west on County 130 to I–29 and along I–29 to the Lincoln County line.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Southwest Zone—Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone—Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Edon Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keeseville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of a line extending east from the Wyoming border, south along U.S. 85 to I–76, south along I–76 to I–25, south along I–25 to the New Mexico border.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway 92; east along Nebraska Highway 92 to Nebraska Highway 61; south along Nebraska Highway 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone—Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area—That portion of the State west of I–35.

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at

Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich and Cache Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10—except Unimak Island.

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

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FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2000-01 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY (a)				CENTRAL FLYWAY (b)				PACIFIC FLYWAY (c)(d)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Begining Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20
Season Length (in days)	20	30	45	60	20	30	45	60	25	39	60	74	39	60	86	107
Daily Bag/ Possession	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	4 8	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	3/1	3/1	5/1	5/2	3/1	3/1	5/2	7/2
Pintail	← ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY →															
Black Duck	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-
Scaup (e)	← TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION →															
Canvasback	← 0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY →															
Redhead	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	3	1	1	1	1	-	-	-	-

(a) In the States of Alabama, Mississippi, and Tennessee, the season length will be 51 days in the liberal alternative and 38 days in the moderate alternative with a framework closing date in both alternatives of January 31.

(b) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(c) In the Columbia Basin Mallard Mangement Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(d) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(e) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
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Water programs:
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Livestock and poultry products; equipment used in slaughter, processing, and packaging; certification of sanitary design and fabrication; comments due by 8-7-00; published 6-6-00
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 996/P.L. 106–249

Griffith Project Prepayment and Conveyance Act (July 26, 2000; 114 Stat. 619)

Last List July 27, 2000

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-038-00001-3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869-042-00002-1)	22.00	[1] Jan. 1, 2000
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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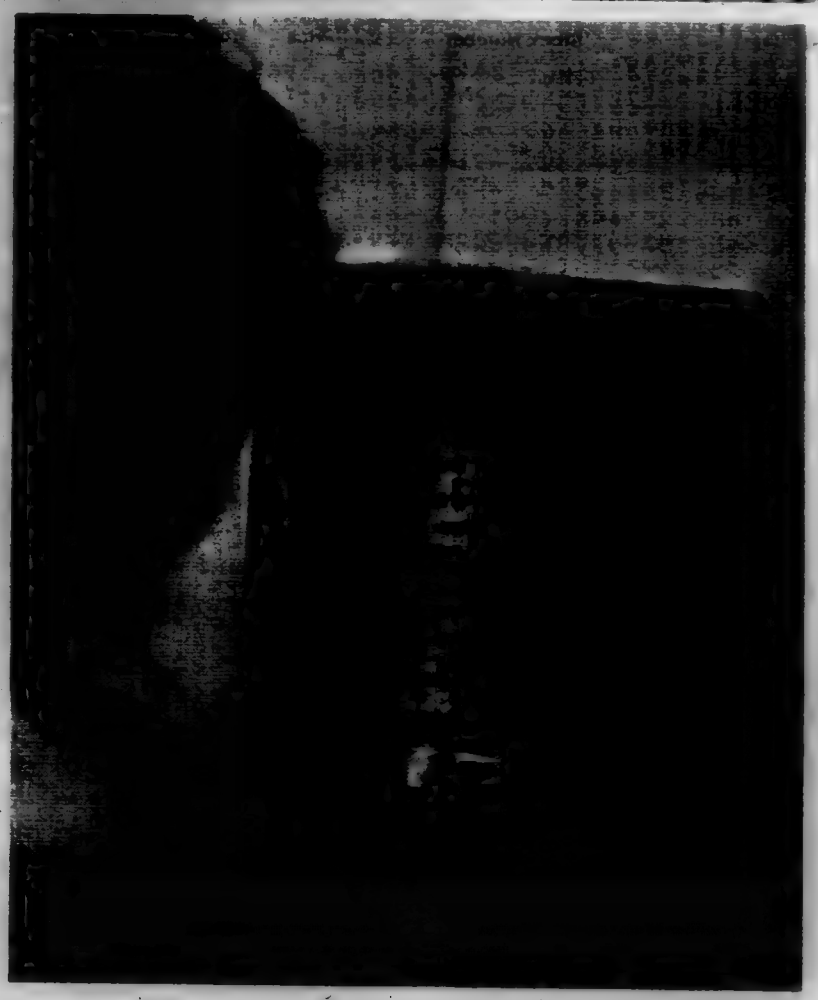

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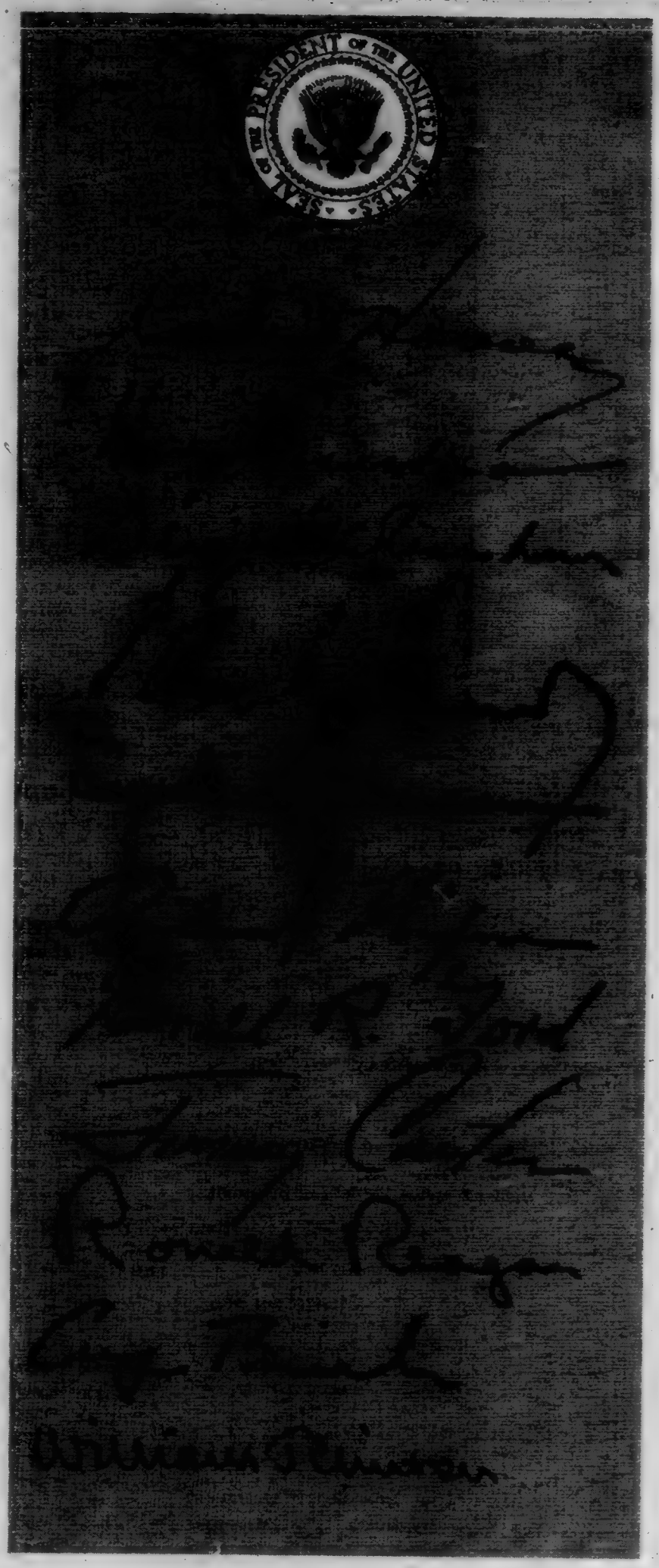

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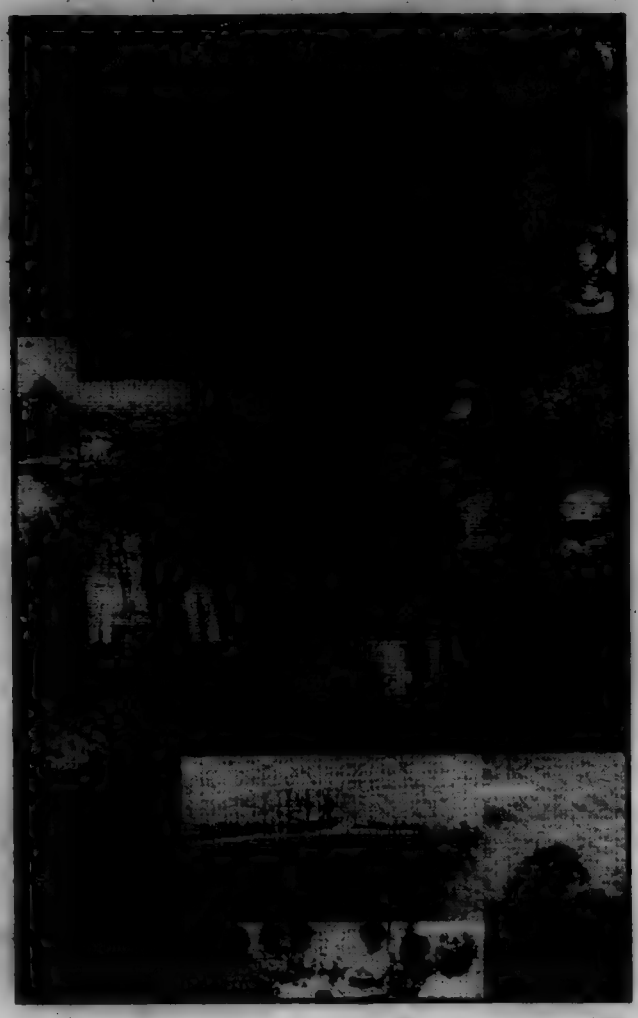

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Rules and Regulations

Federal Register
Vol. 65, No. 148
Tuesday, August 1, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 99–054–2]

Spanish Pure Breed Horses From Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations to allow Spanish Pure Breed horses from Spain to be imported into the United States under the same preexport testing and quarantine conditions that apply to thoroughbred horses from regions in which contagious equine metritis exists or may exist. This action will relieve some restrictions on the importation of Spanish Pure Breed horses into the United States while continuing to protect against the introduction and dissemination of contagious equine metritis.

EFFECTIVE DATE: August 16, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Gary S. Colgrove, Assistant Director, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart C—Horses, §§ 93.300 through 92.326 of the regulations, pertains to the importation of horses into the United States. Section 93.301 of the regulations contains specific provisions for the quarantine and testing of horses from regions affected with contagious equine metritis (CEM), a highly contagious bacterial venereal disease that affects breeding and fertility. Section 93.301 also identifies regions where CEM exists and regions that trade horses freely with those where CEM exists without testing for CEM. Section 93.301 prohibits, with certain exceptions, the importation of horses into the United States from those areas. The European Union—of which Spain is a Member State—is listed in § 93.301 as a region where CEM exists or may exist.

On April 3, 2000, we published in the **Federal Register** (65 FR 17455–17458, Docket No. 99–054–1) a proposal to amend the animal importation regulations by allowing Spanish Pure Breed horses to be imported from Spain into the United States under the same conditions that apply to thoroughbred horses from France, Germany, Ireland, and the United Kingdom. Specifically, the regulations previously provided that Spanish Pure Breed horses other than geldings, weanlings, and yearlings could be imported for permanent entry into the United States only in accordance with § 93.301(e), which requires preexport testing, Federal quarantine upon arrival, and further quarantine in a State approved to receive horses from listed regions. Under the proposal, imported Spanish Pure Breed stallions and mares that are more than 731 days old—like thoroughbred horses from France, Germany, Ireland, and the United Kingdom—that have tested negative for CEM in the country of origin and have undergone Federal quarantine upon arrival in the United States would not be subject to additional quarantine, testing, and treatment within an approved State. In addition, we proposed to add Spain's Servicio de Cria Caballar y Remonta as a breed association specifically approved by the U.S. Department of Agriculture to provide factual, current information regarding the activities of Spanish Pure Breed horses.

We solicited comments concerning our proposal for 60 days ending June 2, 2000. We received one comment by that date. The commenter, an importer of Spanish horses, expressed support for our proposal, stating that the proposed changes would help his industry. However, the commenter also asserted that our requirement that mares over 2 years old undergo Federal quarantine upon arrival in the United States was illogical and needlessly expensive, since Spanish veterinarians test and inspect the animals for CEM prior to export, and Spain is considered free of the disease.

We are making no changes to the final rule based on this comment. While we agree with the commenter that CEM presents a negligible risk in imported Spanish Pure Breed horses, with certain exceptions, all horses intended for permanent entry into the United States are also required to be detained under Federal quarantine while official tests for dourine, glanders, equine piroplasmosis, and equine infectious anemia are conducted. The animals must test negative for all of these diseases and be found by an Animal and Plant Health Inspection Service (APHIS) veterinarian to be free from any clinical evidence of disease before they can be released from quarantine. Because of the serious nature of these diseases, we believe that these requirements continue to be necessary to ensure that infected horses do not enter this country and jeopardize the health of the U.S. horse population.

CEM is difficult to diagnose and control, and infected horses of both sexes are often asymptomatic. Repeated sampling, at appropriate time intervals, constitutes the only satisfactory means of determining CEM status in horses. Therefore, we also must continue to require that all horses that have tested positive for CEM prior to importation—despite the fact that they must subsequently have been treated, tested, and found negative for the disease before being exported to the United States—undergo further quarantine, treatment, and repeated testing in a State approved to receive them upon completion of the Federal quarantine. Spanish Pure Breed horses that have tested positive for CEM prior to export and, upon treatment and retesting, been found free of the disease would still have to undergo treatment within a State approved to receive such horses. However, this action will save importers of Spanish Pure Breed horses that have tested negative to the disease prior to export and have undergone the requisite Federal quarantine the additional costs

that would be associated with further, in-State quarantine and testing.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. By allowing Spanish Pure Breed horses to be imported from Spain into the United States under the same conditions that apply to thoroughbred horses from certain other regions where contagious equine metritis exists or may exist, this rule will make the importation of Spanish Pure Breed horses less expensive for U.S. importers. We have determined that approximately 2 weeks are needed to ensure that APHIS personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of APHIS has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the regulations in 9 CFR part 93 to allow Spanish Pure Breed horses to be imported from Spain into the United States under the same conditions that apply to thoroughbred horses from France, Germany, Ireland, and the United Kingdom. We are taking this action in response to a request we have received from Spain's Equine Breeding Service to relieve some of the restrictions on the importation of Spanish Pure Breed horses from Spain since the life histories and medical records of these horses can be certified by Spanish Government veterinarians.

In 1997, there were 375,218 farms in the United States keeping 2,427,277 horses of all kinds. Approximately 79,516 farms sold 325,306 horses, receiving $1.03 billion in sale revenues. Approximately 98 percent of the farms that sold horses have less than $500,000 in annual revenue and, therefore, are considered small entities by the U.S. Small Business Administration.

U.S. importers and breeders of Spanish Pure Breed horses will be affected by this rule. This rule will make it less expensive for importers to import Spanish Pure Breed horses from Spain.

There are approximately 270 domestic breeders of Spanish Pure Breed horses in the United States, most of which are likely to be small entities. In 1998, there were approximately 2,500 Spanish Pure Breed horses in the United States, and only 225 foals were registered that year.

In 1995 and 1996, 4 horses (not all of which were Spanish Pure Breed horses) were imported into the United States from Spain; there were 21 horses in 1997, 39 in 1998, and 46 in 1999. Under this rule, we estimate that the number of Spanish Pure Breed horses imported into the United States from Spain will most likely increase to an average of about 60 per year, for the next 3 to 5 years, with a maximum of 100 in any given year.

Currently, the demand for Spanish Pure Breed horses in the United States is greater than can be supplied by domestic breeders and the small number of these horses imported from Costa Rica, Mexico, and Spain. In 1997, 225 Spanish Pure Breed foals were registered in the United States, while a total of 50 were imported into the United States from all over the world, despite the high costs of shipping (approximately $5,000 per horse for air freight plus insurance against mortality, figured at 1 percent of the horse's declared value), quarantine, and testing. Because domestic Spanish Pure Breed horses are less expensive than imports, the demand for domestic Spanish Pure Breed horses should not decrease as a result of this rule. This rule will help satisfy the growing demand for the horses in the United States and make it less expensive for U.S. breeders and importers to obtain them from Spain.

We do not expect domestic breeders of Spanish Pure Breed horses to be affected by this rule, since the demand in the United States for Spanish Pure Breed horses is greater than the domestic supply and since domestic Spanish Pure Breed horses will still be less expensive than imported ones.

Under these circumstances, the Administrator of APHIS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0152.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 93.301 is amended as follows:

a. In footnote 6, by adding the words "Servicio de Cria Caballar y Remonta for Spain;" immediately after the word "Department:".

b. By revising paragraph (c)(2)(v), the heading to paragraph (d), and the introductory text in paragraph (d)(1).

c. In paragraph (d)(1)(ii)(D), the first sentence, by removing the words "For thoroughbred horses" and adding the words "For Spanish Pure Breed horses and thoroughbred horses" in their place.

d. In paragraph (d)(3), by removing the words "Thoroughbred horses" and adding the words "Spanish Pure Breed horses and thoroughbred horses" in their place each time they appear.

§ 93.301 General prohibitions; exceptions.

* * * * *

(c) * * *

(2) * * *

(v) Spanish Pure Breed horses imported for permanent entry from Spain or thoroughbred horses imported for permanent entry from France, Germany, Ireland, or the United Kingdom if the horses meet the requirements of paragraph (d) of this section;

* * * * *

(d) *Spanish Pure Breed horses from Spain and thoroughbred horses from France, Germany, Ireland, and the United Kingdom.* (1) Spanish Pure Breed

horses from Spain and thoroughbred horses from France, Germany, Ireland, and the United Kingdom may be imported for permanent entry if the horses meet the following requirements:

* * * * *

Done in Washington, DC, this 25th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–19380 Filed 7–31–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–249–AD; Amendment 39–11839; AD 95–19–08 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and –200 Series Airplanes Equipped With an Engine Nose Cowl for Engine Numbers 1 and 3, Installed in Accordance With Supplemental Type Certificate (STC) SA4363NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 727–100 and –200 series airplanes, that currently requires replacing the attaching nutplates on certain engine nose cowls with washers and self-locking nuts. This amendment changes the responsible office for approval of an alternative method of compliance. This amendment is prompted by the transfer of the supplemental type certificate. The actions specified in this AD are intended to prevent the attach bolts from becoming loose, which could result in subsequent separation of the nose cowl from the engine.

DATES: Effective August 16, 2000.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 20, 1995 (60 FR 48630, September 20, 1995).

Comments for inclusion in the Rules Docket must be received on or before October 2, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–249–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–249–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from VALSAN Partnership Ltd., Aviation Products Management, Product Support Office, 39450 Third Street East, suite 121, Palmdale, California 93550.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On September 7, 1995, the FAA issued AD 95–19–08, amendment 39–9370 (60 FR 48630, September 20, 1995), applicable to certain Boeing Model 727–100 and –200 series airplanes, to require replacing the attaching nutplates on certain engine nose cowls with washers and self-locking nuts. That action was prompted by reports indicating that nose cowls separated (or nearly separated) from the engines of certain airplanes following failure of the engine fan blade and subsequent vibration of the engine, which caused loosening of the attach bolts on the nose cowl of the engine. The actions required by that AD are intended to prevent the attach bolts from becoming loose, which could result in subsequent separation of the nose cowl from the engine.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has transferred the supplemental type certificate data from the Seattle Aircraft Certification Office (ACO) to the Los Angeles ACO. Therefore, the FAA has determined it is necessary to issue this AD to require that all future alternative methods of compliance and adjustments of compliance time be approved by the Manager of the Los Angeles ACO.

Explanation of Requirements of Rule

Since unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 95–19–08 to continue to require replacing the attaching nutplates on certain engine nose cowls with washers and self-locking nuts. This AD changes the responsible office for approval of an alternative method of compliance.

Determination of Rule's Effective Date

Since this AD is a minor and merely technical amendment in which the public is not particularly interested, and does not change the existing requirements, it is found that notice and opportunity for prior public comment hereon are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that is a minor and merely technical amendment and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–249–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and comment hereon are unnecessary because this is a minor and merely technical amendment in which the public is not particularly interested.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9370 (60 FR 48630, September 20, 1995), and by adding a new airworthiness directive (AD), amendment 39–11839, to read as follows:

95–19–08 R1 Boeing: Amendment 39–11839. Docket 2000-NM–249-AD. Revises AD 95–19–08, Amendment 39–9370.

Applicability: Model 727–100 and –200 series airplanes equipped with an engine nose cowl for engine numbers 1 and 3, installed in accordance with Supplemental Type Certificate (STC) SA4363NM, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the attach bolts on the nose cowl of the engine from becoming loose, and subsequent separation of the nose cowl from the engine, accomplish the following:

Replacement

(a) Within 12 months after October 20, 1995 (the effective date of AD 95–19–08, amendment 39–9370), replace the attaching nutplates of the No. 1 and No. 3 engine nose cowls with washers and self-locking nuts in accordance with VALSAN B727–RE Service Bulletin 71–006, Revision 1, dated March 3, 1995.

Spares

(b) As of October 20, 1995, no person shall install a nose cowl having VALSAN part number 259–0002–501 or 259–0002–503 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with VALSAN B727–RE Service Bulletin 71–006, Revision 1, dated March 3, 1995. This incorporation by reference was approved previously by the Director of the Federal Register as of October 20, 1995 (60 FR 48630, September 20, 1995). Copies may be obtained from VALSAN Partnership Ltd., Aviation Products Management, Product Support Office, 39450 Third Street East, suite 121, Palmdale, California 93550. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 16, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19262 Filed 7–31–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–316–AD; Amendment 39–11754; AD 2000–11–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to all Boeing Model 767 series airplanes. That AD currently requires repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary. This document corrects the date for the relevant service information referenced in that AD. This correction is necessary to ensure that operators use the correct source of service information to accomplish the actions required by the existing AD, which are intended to ensure adequate protection from chafing for the fuel pump wire insulation.

DATES: Effective July 6, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of July 6, 2000 (65 FR 34928, June 1, 2000).

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer,

Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 23, 2000, the Federal Aviation Administration (FAA) issued AD 2000–11–06, amendment 39–11754 (65 FR 34928, June 1, 2000), which applies to all Boeing Model 767 series airplanes. That AD requires repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary.

That AD was prompted by reports of chafing of Teflon sleeves that surround and protect electrical wires inside conduits installed in the fuel tanks. The actions required by that AD are intended to ensure adequate protection to the fuel pump wire insulation. Such chafing of the wire insulation could eventually result in exposure of electrical conductor, permit arcing from the wire to the conduit, and create a potential for a fuel tank fire or explosion.

Need for the Correction

Since the issuance of that AD, the FAA has determined that the AD cites an incorrect date for the referenced service information. The actions in that AD are required to be accomplished under Boeing Service Bulletin 767–28A0053, Revision 1. The AD references that bulletin as being dated April 1, 1999. The correct date for the service bulletin is August 5, 1999. While the footer on each page of Revision 1 of the service bulletin shows a date of April 1, 1999, the first page of the bulletin, as well as the "Summary" and "Revision Transmittal Sheet," show a date of August 5, 1999. The manufacturer has informed the FAA that the correct date for the bulletin is August 5, 1999.

A correction to AD 2000–11–06 is necessary. The correction will eliminate confusion for operators and ensure that operators use the correct source of service information to accomplish the actions required by the existing AD.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains July 6, 2000.

Since this action only clarifies the correct date for the service information referenced in the existing AD, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–11–06 Boeing: Amendment 39–11754. Docket 98–NM–316–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent exposure of electrical conductor, which could permit arcing from the wire to the conduit and create a potential for a fuel tank fire or explosion, accomplish the following:

Inspections

(a) Perform a detailed visual inspection to detect discrepancies—including the presence of splices, cuts, splits, holes, worn areas, and lacing ties installed on the outside of the sleeves (except at the sleeve ends)—of the Teflon sleeves surrounding the wiring of the fuel tank boost pumps and override/jettison pumps, at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999. Repeat the inspection thereafter at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

(1) Prior to the accumulation of 50,000 total flight hours, or within 90 days after the effective date of this AD, whichever occurs later.

(2) Within 18 months after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, remove the Teflon sleeves and perform a detailed visual inspection to detect damage of the wiring, in accordance with paragraph D. of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999.

(1) If no damage to the wiring is detected, prior to further flight, install new Teflon sleeves in accordance with the service bulletin.

(2) If any damage to the wiring is detected, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(c) If any damage to the wiring is detected during any inspection required by paragraph (b) of this AD: Prior to further flight, perform a detailed visual inspection to determine if the wiring damage was caused by arcing, in accordance with paragraph D. of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999.

(1) If the wire damage was not caused by arcing: Prior to further flight, repair any damaged wires or replace the wires with new or serviceable wires, as applicable, and install new Teflon sleeves; in accordance with the service bulletin.

(2) If any damage caused by arcing is found: Prior to further flight, perform an inspection for signs of fuel inside the conduit or on the wires, in accordance with the service bulletin.

(i) If no sign of fuel is found, accomplish the actions specified by paragraphs (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(i)(C), and (c)(2)(i)(D) of this AD.

(A) Prior to further flight, repair the wires or replace the wires with new or serviceable wires, as applicable, in accordance with the service bulletin.

(B) Prior to further flight, install new Teflon sleeves, in accordance with the service bulletin.

(C) Repeat the inspection for signs of fuel inside the conduit thereafter at intervals not to exceed 500 flight hours, until the requirements of paragraph (c)(2)(i)(D) of this

AD have been accomplished. If any fuel is found inside the conduit during any inspection required by this paragraph, prior to further flight, replace the conduit with a new or serviceable conduit in accordance with the service bulletin. Thereafter, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

(D) Within 6,000 flight hours or 18 months after the initial fuel inspection specified by paragraph (c)(2) of this AD, whichever occurs first, replace the conduit with a new or serviceable conduit, in accordance with the service bulletin. Such conduit replacement constitutes terminating action for the repetitive fuel inspections required by paragraph (c)(2)(i)(C) of this AD.

(ii) If any fuel is found in the conduit or on any wire: Prior to further flight, replace the conduit with a new or serviceable conduit, replace damaged wires with new or serviceable wires, and install new Teflon sleeves; in accordance with the service bulletin. Thereafter, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

Pump Retest

(d) For any wire bundle removed and reinstalled during any inspection required by this AD: Prior to further flight after such reinstallation, retest the fuel pump in accordance with paragraph G., H., I., or J., as applicable, of the Accomplishment Instructions, of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999.

Reporting Requirement

(e) Submit a report of positive inspection findings (findings of discrepancies only), along with any damaged wiring and sleeves, to the Seattle Manufacturing Inspection District Office (MIDO), 2500 East Valley Road, Suite C–2, Renton, Washington 98055–4056; fax (425) 227–1159; at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the airplane serial number; the number of total flight hours and flight cycles on the airplane; the location of the electrical cable on the airplane; and a statement indicating, if known, whether any wire has ever been removed and inspected during maintenance, along with the date (if known) of any such inspection. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the initial inspection.

(2) For airplanes on which the initial inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit the report for the initial inspection within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999. This incorporation by reference was approved previously by the Director of the Federal Register as of July 6, 2000 (65 FR 34928, June 1, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) The effective date of this amendment remains July 6, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19260 Filed 7–31–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 341

[Docket No. 76N–052T]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antitussive drug products (products that relieve cough). Use of topical/inhalant products containing camphor or menthol near a flame, in hot water, or in a microwave oven may cause the products to splatter and cause serious burns to the user. As part of its ongoing review of OTC drug products, FDA is adding warnings and directions to inform consumers about these improper uses and is amending its final regulations for OTC drug labeling requirements to add this new flammability warning for antitussive drug products containing camphor or menthol.

DATES: This rule is effective May 16, 2002. The compliance date for products with annual sales less than $25,000 is May 16, 2003. The compliance date for all other OTC drug products is May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Ryland or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 12, 1987 (52 FR 30042), the agency published the final monograph for OTC antitussive drug products. The monograph included the ingredients camphor and menthol as single topical antitussives in an ointment vehicle or for steam inhalation use. Products containing camphor and menthol in combination are being considered as part of the ongoing rulemaking for OTC cough-cold combination drug products.

When the final monograph was published in 1987, the agency was not aware of safety problems occurring when products that contain camphor or menthol are added to hot water or used in a microwave oven. In the **Federal Register** of July 20, 1998 (63 FR 38762), the agency discussed new information concerning 34 fire-related events (flashing occurred) resulting from antitussive drug products containing camphor and menthol (in an ointment vehicle or an alcohol-based solution) that were placed in hot water or heated in a microwave oven. As a result, the agency proposed a flammability signal word and new warning and direction statements for these products (63 FR 38762 at 38765).

The agency proposed a flammability signal word and a warning ("Keep away

from fire or flame") for any product containing camphor or menthol in an ointment vehicle or for steam inhalation use. The agency also proposed a number of "do not use" warnings (e.g., near an open flame and in a microwave oven) and the following statements in the directions: "See important warnings about not using near a flame, in hot water, or in a microwave oven. Improper use may cause the mixture to splatter and cause burns."

In response to the proposal, the agency received two comments, copies of which are on public display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The agency's responses to the comments follow.

II. The Agency's Conclusions on the Comments

(Comment 1) One comment agreed with the proposal to require additional information to help increase appropriate use of the topical/inhalant drug products containing camphor and menthol.

(Comment 2) Two comments requested that the regulation clarify that a flammability signal word is not required on all products. The comments pointed out that the flammability signal words in 16 CFR 1500.3(b)(10) and (c)(6) state that "flammable" is any substance having a flashpoint above 20 °F and below 100 °F and that no flammability signal word is required if the flashpoint of the substance is above 150 °F. The comments added that camphor and menthol in ointment/cream products have flashpoints over 150 °F and would not need the flammability signal word or warnings, while steam inhalation products in an alcohol vehicle have a flashpoint between 20 °F and below 100 °F and would be labeled as flammable and contain the two proposed flammability warnings. One comment provided the results of flashpoint testing for its ointment, cream, and steam inhalation products (Ref. 1).

The agency has reviewed the testing results and concurs that products with a flashpoint above 150 °F would not need the flammability signal word or warnings. The agency only intended that those products that meet the criteria in 16 CFR 1500.3(b)(10) (flashpoint of 150 °F or below) be labeled with the flammability signal word and warnings. Accordingly, the agency is revising § 341.74(c)(5)(iii) (21 CFR 341.74(c)(5)(iii)) to require that the labeling contains the appropriate flammability signal word and the statement "Keep away from fire or flame" if the product meets the definition of one of the signal words ("extremely flammable," "flammable," "combustible") as described in 16 CFR 1500.3(b)(10). The agency is also amending § 201.66(c)(5)(ii)(C) (21 CFR 201.66(c)(5)(ii)(C)) to include § 341.74(c)(5)(iii) as an example where a flammability warning is found in an OTC drug monograph.

(Comment 3) Two comments requested that the warnings about not using these products in certain ways be included in the "Directions," and not the "Warnings," section. The comments contended that the warnings relate to appropriate use of the product and belong in the directions so consumers know how to use the product correctly. The comments argued that because space limitations on small package sizes make it very difficult to fit similar information in two places (warnings and directions), the information should be consolidated in the "Directions" section.

The agency has determined that this information is more appropriate in the "Warnings" section of the labeling. Under the new OTC drug product labeling format in § 201.66(c)(5)(vi), which was issued after the proposal in the current rulemaking, the subheading "When using this product" is used to describe activities consumers should avoid while using the product. Information about not using the product near a flame or in a microwave oven belongs under this subheading. However, because of the importance of the warning information, the agency is including a short cross-reference in the "Directions" section to the location of the information in the "Warnings" section. This approach is consistent with the "choking" warning for water-soluble gums in 21 CFR 201.319 where the information about choking appears in the "Warnings" section and a cross-reference to the warning appears in the "Directions" section.

The agency proposed a two-sentence cross-reference in the "Directions" section that was repetitive of some of the information in the "Warnings" section. The agency is removing the repetitive information in the first proposed sentence (i.e., about not using near a flame, in hot water, or in a microwave oven) and shortening the sentence to refer users to the same information in the "Warnings" section. The revised directions statement now reads: "[bullet] see important warnings under 'When using this product' " [appears as the first statement under the heading "Directions" and is highlighted in bold type]. The agency is moving the second proposed statement about the mixture splattering and causing burns to the "Warnings" section to follow the information about not using near a flame or in a microwave oven, because the second sentence should immediately follow that information.

(Comment 4) Two comments requested that the directions provide different instructions for ointment and steam inhalation products. One comment suggested the following wording for ointment products: "Do not expose to any heat source (including stove or microwave) or place in any container in which you are heating water. Improper use may cause the mixture to splatter and cause burns." The comment added that steam inhalation products would also include the word "flame" after "stove" and the words "except when adding to cold water in a hot steam vaporizer" after the words "heating water."

The second comment proposed similar but revised wording for ointment products: "Do not heat. Never expose to flame, microwave, or place in any container in which you are heating water. Improper use may cause the mixture to splatter and cause burns." The comment added that steam inhalation products should also include the words "except when adding to cold water in a hot steam vaporizer" after the words "heating water."

As discussed in part II, comment 3 of this document, this information about not using the products in certain ways will appear in the "Warnings" section. The agency agrees that ointment, cream, and steam inhalation products could have slightly different warnings depending on the flashpoint of the products. The data provided by one comment (Ref. 1) showed that the flashpoints of an ointment product were 158 and 165 °F, while the flashpoint of a cream product was 152 °F. As discussed in part II, comment 2 of this document, other manufacturers' products might have a flashpoint of 150 °F or below and thus be required to have a flammability signal word and warnings. The agency agrees with deletion of the word "flame" from the warnings for ointment/cream products if they are not flammable or combustible. The agency also agrees with inclusion of the words "except when adding to cold water only in a hot steam vaporizer" for steam inhalation products. To increase the amount of information provided to consumers and to state the information in a clear and concise way, the agency is revising the warnings as follows:

• *For any product containing camphor or menthol in a suitable ointment vehicle and that does not contain a flammability signal word as described in 16 CFR 1500.3(b)(10).* "When using this product, do not • heat

• microwave • add to hot water or any container where heating water. May cause splattering and result in burns." [Information highlighted in bold type.]

• *For any product containing camphor or menthol in a suitable ointment vehicle and that contains a flammability signal word as described in 16 CFR 1500.3(b)(10).* "When using this product, do not • heat • microwave • use near an open flame • add to hot water or any container where heating water. May cause splattering and result in burns." [Information highlighted in bold type.]

• *For any product containing camphor or menthol for steam inhalation use.* "When using this product, do not • heat • microwave • use near an open flame • add to hot water or any container where heating water except when adding to cold water only in a hot steam vaporizer. May cause splattering and result in burns." [Information highlighted in bold type.]

There are two types of products containing camphor or menthol for steam inhalation use on the market. One is formulated to be added directly to cold water inside a hot steam vaporizer before the water is heated, and the other is formulated to be placed into the medication chamber of the vaporizer. The agency is modifying the directions in § 341.74(d)(2)(iv) and (d)(2)(v) for products containing camphor or menthol for steam inhalation use to include appropriate directions for both types of these products, as follows:

• *For products formulated to be added directly to cold water inside a hot steam vaporizer.* • use 1 tablespoonful of solution for each quart of water or 1\1/2\ teaspoonsful of solution for each pint of water • add solution directly to cold water only in a hot steam vaporizer • follow manufacturer's directions for using vaporizer.

• *For products formulated to be placed in the medication chamber of a hot steam vaporizer.* • place water in the vaporizer and follow manufacturer's directions for using vaporizer • place solution in the medication chamber only.

(Comment 5) One comment stated that the proposed warning about not using an ointment product in a hot steam vaporizer is inappropriate (because these products are not used in that manner) and will lead to consumer confusion.

The agency notes that 1 of the 21 fire-related events discussed in the proposal (63 FR 38762) involved an ointment product that was added to hot water in a vaporizer. The agency believes that it is important to inform consumers about this potential problem. The portion of the warning about not adding the product to "hot water" covers both hot water in a container on the stove and hot water in a vaporizer; thus, this information should adequately inform consumers and should not cause confusion.

III. Reference

The following reference is on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C200, Docket No. 76N–052T, Dockets Management Branch.

IV. The Agency's Final Conclusions

The agency concludes that the case reports raise safety concerns that could be alleviated by providing consumers with additional warnings and directions for topical/inhalant OTC antitussive drug products that contain camphor or menthol. Products that meet the definition of one of the signal words ("extremely flammable," "flammable," "combustible") in 16 CFR 1500.3(b)(10) must state the signal word and "Keep away from fire or flame" in their labeling. Consumers need to be informed via warnings not to heat or microwave these products, not to add them to hot water, not to put them in any container where water is being heated (except for adding a steam inhalation product to cold water only in a hot steam vaporizer), and not to use near an open flame (if the product bears a flammability signal word). The agency has included warnings and directions with minor differences to fit the variety of products that might exist and a short cross-reference to the warnings information in the directions section. The agency has revised proposed warnings and directions in this final rule to state them in the new OTC drug labeling format required by § 201.66.

V. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The purpose of this final rule is to revise and improve the labeling (add additional warning and direction statements) for safer use of topical/inhalant products that contain camphor, menthol, or both ingredients. This revised labeling addresses the flammability of these products and alerts consumers not to heat or microwave the products, nor to use near an open flame, add to hot water, or put in any container in which water is being heated (with an exception for adding a steam inhalation product to cold water only in a hot steam vaporizer). Potential benefits include a reduction in the number of flash fires and serious burns that may occur if consumers should misuse these products.

This final rule will require relabeling of topical/inhalant products that contain camphor, menthol, or both ingredients. The agency's Drug Listing System identifies about 30 manufacturers and 80 marketers of over 100 stockkeeping units (SKU's) (individual products, packages, and sizes) of topical/inhalant antitussive drug products containing camphor, menthol, or both ingredients. There may be a few additional marketers and products that are not identified in the sources FDA reviewed.

The agency indicated in the proposal that relabeling costs of the type required by this final rule generally average about $2,000 to $3,000 per SKU. In determining this cost, the agency did not believe that manufacturers would need to increase the package size to add the additional labeling information. Almost all of these products are marketed in an outer carton, which should have adequate space for the additional information. Assuming that there are about 110 affected OTC SKU's in the marketplace, FDA estimated that the rule would impose total one-time compliance costs on industry for

relabeling of about $220,000 to $330,000. The agency did not receive any comments on these estimates.

The agency believes the actual cost could be lower for several reasons. First, most of the label changes will be made by private label small manufacturers that tend to use simpler and less expensive labeling. However, the final rule will not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed. Second, the agency has made the compliance dates for this final rule the same as the dates for these monographed products to be in compliance with the new standardized format and standardized content requirements for the labeling of OTC drug products (§ 201.66), which are now May 16, 2002 (and May 16, 2003, for products with annual sales less than $25,000). Manufacturers will not incur any expenses determining how to state the product's labeling. All manufacturers should have ample time to use up existing labeling stocks and the relabeling costs would be mitigated. Thus, all required labeling changes can be made at the same time, thereby reducing the labeling cost of this final rule.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that coordination of this labeling change with implementation of the new OTC "Drug Facts" labeling may significantly reduce the costs of this final rule. Both a shorter and a longer time period for this rule may cost more if firms would have to undertake two successive labeling revisions. In addition, a longer time period would unnecessarily delay the benefit of the new labeling to consumers who self-medicate with these products. The agency rejected an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities.

The agency does not believe that this final rule will have a significant economic impact on small entities, using the U.S. Small Business Administration designations for this industry (750 employees). The agency believes that any other unidentified manufacturer of these products is also a small entity. From information available to the agency, it appears that only one small entity manufactures more than three SKU's of these products. Based on the limited number of SKU's each manufacturer has to relabel, the cost for each manufacturer except one should be minimal.

Under the Unfunded Mandates Reform Act, FDA is not required to prepare a statement of costs and benefits for this final rule because this rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation.

This analysis shows that the agency has considered the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling requirements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201 and 341 are amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.66 is amended by revising paragraph (c)(5)(ii)(C) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(C) Flammability warning, with appropriate flammability signal word(s) (e.g., §§ 341.74(c)(5)(iii), 358.150(c), and 358.550(c) of this chapter). This warning shall follow a subheading containing the appropriate flammability signal word(s) described in an applicable OTC drug monograph or approved drug application.

* * * * *

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

4. Section 341.74 is amended by adding new paragraphs (c)(5)(iii) through (c)(5)(vii), and by revising paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iv), and (d)(2)(v) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(5) * * *

(iii) *For any product containing camphor or menthol in a suitable ointment vehicle or for steam inhalation use and meets the definition of one of the signal words ("extremely flammable," "flammable," "combustible") as described in 16 CFR 1500.3(b)(10).* The labeling contains the appropriate flammability signal word(s) followed by a colon and the statement "Keep away from fire or flame."

(iv) *For any product containing camphor or menthol in a suitable ointment vehicle and that does not contain a flammability signal word as described in 16 CFR 1500.3(b)(10).* "When using this product, do not [bullet] [1] heat [bullet] microwave [bullet] add to hot water or any container where heating water. May cause splattering and result in burns." [Information highlighted in bold type.]

(v) *For any product containing camphor or menthol in a suitable ointment vehicle and that contains a flammability signal word as described in 16 CFR 1500.3(b)(10).* "When using this

[1] For a definition of the term "bullet," see § 201.66(b)(4) of this chapter.

product, do not [bullet] heat [bullet] microwave [bullet] use near an open flame [bullet] add to hot water or any container where heating water. May cause splattering and result in burns." [Information highlighted in bold type.]

(vi) *For any product containing camphor or menthol for steam inhalation use.* "When using this product, do not [bullet] heat [bullet] microwave [bullet] use near an open flame [bullet] add to hot water or any container where heating water except when adding to cold water only in a hot steam vaporizer. May cause splattering and result in burns." [Information highlighted in bold type.]

(vii) *For any product formulated in a volatile vehicle.* The labeling contains the following statement under the heading "Other information": "Close container tightly and store at room temperature away from heat."

(d) * * *

(2) * * *

(i) *For products containing camphor identified in § 341.14(b)(1) in a suitable ointment vehicle.* The product contains 4.7 to 5.3 percent camphor. "[bullet] see important warnings under 'When using this product' " [appears as the first statement under the heading "Directions" and is highlighted in bold type] [bullet] adults and children 2 years and older: [bullet] rub on the throat and chest in a thick layer [bullet] cover with a warm, dry cloth if desired [bullet] clothing should be loose about throat and chest to help vapors reach the nose and mouth [bullet] use up to three times daily or as directed by a doctor [bullet] children under 2 years of age: Ask a doctor.

(ii) *For products containing menthol identified in § 341.14(b)(2) in a suitable ointment vehicle.* The product contains 2.6 to 2.8 percent menthol. "[bullet] see important warnings under 'When using this product' " [appears as the first statement under the heading "Directions" and is highlighted in bold type] [bullet] adults and children 2 years and older: [bullet] rub on the throat and chest in a thick layer [bullet] cover with a warm, dry cloth if desired [bullet] clothing should be loose about throat and chest to help vapors reach the nose and mouth [bullet] use up to three times daily or as directed by a doctor [bullet] children under 2 years of age: Ask a doctor.

* * * * *

(iv) *For products containing camphor identified in § 341.14(b)(1) for steam inhalation use.* The product contains 6.2 percent camphor. "[bullet] see important warnings under 'When using this product' " [appears as the first statement under the heading "Directions" and is highlighted in bold type] [bullet] adults and children 2 years and older: (select one of the following, as appropriate: *For products formulated to be added directly to cold water inside a hot steam vaporizer.* [bullet] use 1 tablespoonful of solution for each quart of water or 1½ teaspoonsful of solution for each pint of water [bullet] add solution directly to cold water only in a hot steam vaporizer [bullet] follow manufacturer's directions for using vaporizer or *For products formulated to be placed in the medication chamber of a hot steam vaporizer.* [bullet] place water in the vaporizer and follow manufacturer's directions for using vaporizer [bullet] place solution in the medication chamber only) [bullet] breathe in the medicated vapors [bullet] use up to three times daily or as directed by a doctor [bullet] children under 2 years of age: Ask a doctor.

(v) *For products containing menthol identified in § 341.14(b)(2) for steam inhalation use.* The product contains 3.2 percent menthol. "[bullet] see important warnings under 'When using this product' "[appears as the first statement under the heading "Directions" and is highlighted in bold type] [bullet] adults and children 2 years and older: (select one of the following, as appropriate: *For products formulated to be added directly to cold water inside a hot steam vaporizer.* [bullet] use 1 tablespoonful of solution for each quart of water or 1\1/2\ teaspoonsful of solution for each pint of water [bullet] add solution directly to cold water only in a hot steam vaporizer [bullet] follow manufacturer's directions for using vaporizer or *For products formulated to be placed in the medication chamber of a hot steam vaporizer.* [bullet] place water in the vaporizer and follow manufacturer's directions for using vaporizer [bullet] place solution in the medication chamber only) [bullet] breathe in the medicated vapors [bullet] use up to three times daily or as directed by a doctor [bullet] children under 2 years of age: Ask a doctor.

* * * * *

Dated: July 21, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19302 Filed 7–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–067]

RIN 2115–AE47

Drawbridge Operation Regulations: Gowanus Canal, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating rules for four New York City bridges across the Gowanus Canal—the Ninth Street Bridge, at mile 1.4; the Third Street Bridge, at mile 1.8; the Carroll Street Bridge, at mile 2.0; and the Union Street Bridge, at mile 2.1—all in Brooklyn, New York. The bridge owner asked the Coast Guard to change the regulations to require a two-hour advance notice for openings. This action will relieve the owner of the bridge from the requirement to crew these bridges at all times by using a roving crew of drawtenders and still meet the reasonable needs of navigation.

DATES: This rule is effective August 31, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–99–067) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 27, 2000, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Gowanus Canal, New York, in the **Federal Register** (65 FR 24664). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

Ninth Street Bridge

The Ninth Street Bridge, at mile 1.4, across the Gowanus Canal at Brooklyn, has a vertical clearance of 5 feet at mean high water and 9 feet at mean low water. The existing operating regulations for the Ninth Street Bridge require the bridge to open on signal at all times.

Third Street Bridge

The Third Street Bridge, at mile 1.8, across the Gowanus Canal at Brooklyn, has a vertical clearance of 10 feet at mean high water and 14 feet at mean low water. The existing operating regulations in 33 CFR 117.787, require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open on signal after a six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

Carroll Street Bridge

The Carroll Street Bridge, at mile 2.0, has a vertical clearance of 3 feet at MHW and 7 feet at MLW. The existing regulations require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open after a six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

Union Street Bridge

The Union Street Bridge, at mile 2.1, has a vertical clearance of 9 feet at MHW and 13 feet at MLW. The existing regulations require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open after a six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

The owner of all four bridges, the New York City Department of Transportation (NYCDOT), submitted bridge opening log data to the Coast Guard for review.

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Ninth	864	984	927	836	0	0	0	0	423
Third	410	549	663	732	432	256	149	107	244
Carroll	517	627	669	704	432	245	142	114	228
Union	502	547	657	713	432	236	144	104	245

The bridge owner plans to operate these bridges with a roving crew of drawtenders. A review of the monthly breakdown of the opening data did not identify any months that had a significantly higher number of openings that would make the roving crew concept unworkable. The waterway users are all commercial vessels which operate year round. They presently provide a six-hour advance notice May 1 through September 30 at all the above bridges except the Ninth Street Bridge, which is required to open on signal.

The bridge owner has requested that all four bridges open after a two-hour advance notice is given year round. This advance notice requirement will allow the bridge owner to use a roving crew of drawtenders to operate these bridges. The Coast Guard believes this rule is reasonable based upon the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the two-hour notice during those five months.

The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel transits on Gowanus Canal are scheduled in advance. Providing a two-hour notice for bridge openings for the additional seven months of the year, October 1 through April 30, should not prevent vessels from transiting the waterway in a timely manner.

The reduction from six-hours advance notice to two-hours advance notice during the remaining five months of the year, May 1 through September 30, should make vessel transits easier to schedule during that time period. This rule is expected to relieve the bridge owner of the burden of crewing each bridge continually, establish a consistent bridge operating schedule for the bridges listed in this rulemaking, and still meet the reasonable needs of navigation.

Discussion of Proposal

The Coast Guard is revising the operating regulations for the Gowanus Canal at 33 CFR 117.787 as follows:

Ninth Street Bridge

Add operating regulations for the Ninth Street Bridge, mile 1.4, Across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Third Street Bridge

Revise the operating regulations for the Third Street Bridge, mile 1.8, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Carroll Street Bridge

Revise the operating regulations for the Carroll Street, mile 2.0, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Union Street Bridge

Revise the operating regulations for the Union Street, mile 2.1, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Notice for bridge openings shall be given to the NYCDOT Hotline or NYCDOT Bridge Operation Office.

The bridge owner plans to use two crews of drawtenders to operate the Gowanus Canal bridges. The use of two crews is expected to provide bridge openings in a timely manner. The Hamilton Avenue Bridge, mile 1.2, also across Gowanus Canal was not included in the roving drawtender plan because the frequency of bridge openings were considerably higher than the other bridges on this waterway.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months.

The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel movements on Gowanus Canal are scheduled in advance by the commercial operators. Providing two-hours notice for bridge openings for the additional seven months of the year, October 1 through April 30, should not prevent vessels from still transiting the waterway in a timely manner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a

significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months.

The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel transits on Gowanus Canal are scheduled in advance by the commercial operators. Providing two-hours notice for bridge openings for the additional seven months of the year, October 1 through April 30, when the bridge formerly opened on signal, should not prevent vessels from still transiting the waterway in a timely manner.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.787 is revised to read as follows:

§ 117.787 Gowanus Canal

The draws of the Ninth Street Bridge, mile 1.4, the Third Street Bridge, mile 1.8, the Carroll Street Bridge, mile 2.0, and the Union Street Bridge, mile 2.1, at Brooklyn, shall open on signal, if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT), Radio Hotline, or the NYCDOT Bridge Operations Office.

Dated: July 19, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–19396 Filed 7–31–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–069]

RIN 2115–AE47

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills and their tributaries, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations for six New York City bridges: The Pulaski Bridge, at mile 0.6, across Newtown Creek between Brooklyn and Queens; the Greenpoint Avenue Bridge, at mile 1.3, across the Newtown Creek between Brooklyn and Queens; the Grand Street/ Avenue Bridge, at mile 3.1, across Newtown Creek (East Branch) between Brooklyn and Queens; the Metropolitan Avenue Bridge, at mile 3.4, across English Kills at Brooklyn; the Borden Avenue Bridge, at mile 1.2, across Dutch Kills at Queens; and the Hunters Point Avenue Bridge, at mile 1.4, across Dutch Kills at Queens all in New York.

The bridge owner asked the Coast Guard to change the regulations to require a two-hour advance notice for openings. It is expected to relieve the bridge owner from the requirement to crew the bridges at all times by using multiple crews of drawtenders and still meet the reasonable needs of navigation.

DATES: This rule is effective August 31, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–99–069) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 24, 2000, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Newtown Creek, Dutch Kills, English Kills and their tributaries, New York, in the **Federal Register** (65 FR 21683). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

Pulaski Bridge

The Pulaski Bridge, at mile 0.6, across Newtown Creek between Brooklyn and Queens has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water. The existing regulations require the draw to open on signal at all times.

Greenpoint Bridge

The Greenpoint Avenue Bridge, at mile 1.3, across the Newtown Creek between Brooklyn and Queens has a vertical clearance of 26 feet at mean high water and 31 feet at mean low water. The existing regulations require the draw to open on signal at all times.

Grand Street/Avenue Bridge

The Grand Street/Avenue Bridge, at mile 3.1 across the Newtown Creek (East Branch) between Brooklyn and Queens has a vertical clearance of 8 feet above mean high water and 12 feet at mean low water. The existing operating rules for the Grand Street/Avenue Bridge, listed at 33 CFR 117.801(e), require the bridge to open on signal unless the drawtender is at the Borden Avenue, Hunters Point Avenue or Roosevelt Island Bridges. In this event a notice to the New York City Department of Transportation (NYCDOT) Radio Hotline, or NYCDOT Bridge Operations Office shall be given, resulting in up to a one-hour delay.

Metropolitan Avenue Bridge

The Metropolitan Avenue Bridge, at mile 3.4, across the English Kills at Brooklyn has a vertical clearance of 10 feet above mean high water and 15 feet above mean low water. The existing operating regulations require the draw to open on signal at all times.

Borden Avenue Bridge

The Borden Avenue Bridge, at mile 1.3, across the Dutch Kills has a vertical clearance of 4 feet at mean high water and 9 feet at mean low water. The existing regulations in 33 CFR 117.801(c) require the draw to open on signal if at least a one-hour advance notice is given to the drawtender at the Grand Street/Avenue Bridge, the New York City Department of Transportation Radio Hotline or NYCDOT Bridge Operations Office. In the event the drawtender is at the Roosevelt Island Bridge or the Hunters Point Avenue Bridge, up to an additional half-hour delay may occur.

Hunters Point Avenue Bridge

The Hunters Point Avenue Bridge, at mile 1.4, over the Dutch Kills has vertical clearances of 8 feet at mean high water and 13 feet at mean low water. The existing regulations for the Hunters Point Avenue Bridge in 33 CFR 117.801(d) require the draw to open on signal if at least a one-hour advance notice is given to the drawtender at the Grand Street/Avenue Bridge, the NYCDOT Radio Hotline, or NYCDOT Bridge Operations Office. In the event the drawtender is at the Roosevelt Island Bridge or the Borden Avenue Bridge, up to an additional half-hour delay may occur.

The bridge owner, the New York City Department of Transportation (NYCDOT), submitted bridge opening log data to the Coast Guard for review. The bridge owner plans to operate these bridges with multiple crews of drawtenders. The two-hour advance notice should allow sufficient time for the crews to operate these bridges due to the close proximity of the bridges to each other. Recent yearly openings have been relatively low which will allow the bridge owner to utilize the roving crew concept and still meet the needs of navigation.

The total number of bridge openings at the above bridges from 1991 to 1999 are as follows:

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Pulaski	584	426	224	239	206	195	291	518	550
Greenpt	1014	880	587	549	498	557	626	920	1016
Grand	419	549	224	254	239	189	37	86	91
Borden	282	107	141	0	0	105	15	37	61
Hunters	264	106	141	0	0	113	15	42	77
Metro	301	356	225	310	272	407	432	588	688

The monthly distribution of openings for the above bridges were equally balanced without any specific months when opening requests were significantly greater.

Discussion of Proposal

This final rule should relieve the bridge owner the burden of crewing each bridge continually, and still meet the reasonable needs of navigation. A two-hour advance notice requirement for bridge openings will enable the bridge owner to utilize multiple crews of drawtenders to open these bridges for vessel traffic. The Coast Guard believes the roving drawtender concept requiring a two-hour advance notice is reasonable and should meet the needs of navigation based upon the low number of yearly openings at the bridges, the close proximity of the bridges, and the scheduling of commercial vessel transits. The bridges will still open on signal at all times provided that the advance notice is given. This rule is expected to relieve the bridge owner of the burden of crewing each bridge continually and still meet the reasonable needs of navigation.

The Coast Guard is changing the operating regulations for the Grand Street/Avenue Bridge, Borden Avenue Bridge, Hunters Point Bridge, Metropolitan Bridge, Pulaski Bridge and the Greenpoint Bridge, to require a two-hour advance notice for openings at all times.

Paragraph (a)(1) of 33 CFR 117.801 for public and state vessels used for public safety, will be removed because it is now listed at 33 CFR 117.31 under the general operating regulations for bridges.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridges will open for marine traffic but

will require mariners to provide a two-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridges will still open on signal after a two-hour notice is given.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.801 is revised to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills and their tributaries.

(a) The following requirements apply to all bridges across Newtown Creek, Dutch Kills, English Kills, and their tributaries:

(1) The owners of all bridges across Newtown Creek, Dutch Kills, English Kills and their tributaries listed under this section, shall provide and keep in good legible condition two clearance gauges with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(2) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed five minutes. If a train moving toward the bridge has crossed the home signal for the bridge before the request to open the bridge is given, that train may continue across the bridge, but must clear the interlock before stopping.

(b) The draws of the Long Island Railroad bridges, at mile 1.1, across Dutch Kills at Queens, shall open on signal if at least six-hours advance notice is given to the Long Island Railroad Movement Bureau, except as provided in paragraph (a)(2) of this section.

(c) The draw of the Borden Avenue Bridge, mile 1.2, across Dutch Kills at Queens, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

(d) The draw of the Hunters Point Avenue Bridge, mile 1.4, across Dutch Kills at Queens, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or the NYCDOT Bridge Operations Office.

(e) The draw of the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or the NYCDOT Bridge Operations Office.

(f) The draw of the Grand Street/ Avenue Bridge, mile 3.1, across Newtown Creek (East Branch) between Brooklyn and Queens, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or the NYCDOT Bridge Operations Office.

(g) The draws of the Pulaski Bridge, mile 0.6, and the Greenpoint Avenue Bridge, mile 1.3, both across the Newtown Creek between Brooklyn and Queens, shall open on signal if at least a two-hour advance notice given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

Dated: July 19, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–19395 Filed 7–31–00; 8:45 am]

BILLING CODE 4910–15–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 97–5B]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; Corrections Pertaining to Notices of Intent To Enforce Restored Copyrights

AGENCY: Copyright Office, Library of Congress.

ACTION: Correction of errors made pertaining to the filing of Notices of Intent to Enforce Restored Copyrights.

SUMMARY: This notice gives public notice that the Copyright Office is correcting certain errors in the filing and recordation of notices of intent to enforce restored copyrights under the Uruguay Round Agreement Act and issuing a policy decision permitting administrative correction of certain errors.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In 1997, the Copyright Office adopted an interim regulation which permitted correction of errors in the filing of Notices of Intent to Enforce (NIEs) restored copyrights under certain conditions, pursuant to the Uruguay Round Agreements Act. 62 FR 55736 (1997). In accordance with that regulation, a Correction Notice has been filed to correct certain information appearing on the NIE for the first work listed below, originally recorded effective August 22, 1997. The new information has been cataloged in Copyright Office records.

In a separate case, the Office has administratively amended the record for a Group NIE to reflect 45 additional titles not originally included. The effective date will be that of the original Group NIE, April 17, 1998. The Office is making this amendment to reflect a policy determination regarding the regulation permitting a single Group NIE to cover multiple works at a discounted rate where "all of the works are by the same author." 37 CFR 201.33 (1999). Previously the Copyright Office neither indexed nor listed titles from a Group NIE that did not have complete identity of authorship with other titles. For example, if a Group NIE listed titles 1and 2 by Author A and title 3 by Coauthors A and B, the Office required an additional NIE to be filed before publishing or indexing the nonconforming title.

In response to an inquiry and reexamination of the matter, the Office has since determined that the regulation might reasonably have been interpreted to permit group filing where the works had at least one common author. The Office has, therefore, decided that when it becomes aware that it has refused to list titles from Group NIEs because the listed works did not contain total unity of authorship but had one or more common authors, the Copyright Office will amend the original NIE record to reflect the previously omitted titles and publish those titles in the **Federal Register** on the next scheduled four-month publication date. If any corrections are received, the next projected publication date is December 1, 2000.

List of Corrected Notices of Intent To Enforce

Correction NIE

Republic Entertainment Inc.
Mimi

Administrative NIE Correction

Sociedad Argentina de Autores y Compositores de Musica
Amargura
Amores de estudiante
Apure delantero buey
Arrabal amargo
Ave sin rumbo
Brisas
Criollita de mis amores
Cuando tu no estás
Caminito soleado
Campanitas
Criollita deci que si
Cuesta abajo
Desden
El dia que me quieras
En los campos en flor
En vano, en vano
Estudiante
Golondrinas
Guitarra, guitarra mia
Hay una virgen
Lejana tierra mia
Mañanita de sol
Me da pena confesarlo
Melodia de arrabal
Mi Buenos Aires querido
Mi caballo bayo
Mi moro
Los ojos de mi moza
Olvido
El pangare
Pobre gallo bataraz
Pobre mi negra
Por una cabeza
Recuerdo malevo
Rubias de New York
Silencio
Soledad
Sus ojos se cerraron
Tu y yo
Un bailongo
Vals de las guitarras
Viejos tiempos
Volver
Volvió una noche
Yo te adoro

Dated: July 25, 2000.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 00–19098 Filed 7–31–00; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–0242; FRL–6733–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District and the Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District and the Kern County Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on October 18, 1999, and February 4, 2000, and concern oxides of nitrogen (NO_X) emissions from stationary gas turbines, and hot mix asphalt paving plants, respectively. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on August 31, 2000.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301, or
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1160.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On October 18, 1999 (64 FR 56181), and February 4, 2000 (65 FR 5465), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1134	Emissions of Oxides of Nitrogen from Stationary Gas Turbines	08/08/97,	03/10/98
KCAPCD	425.1	Hot Mix Asphalt Paving Plants (Oxides of Nitrogen)	10/13/94	10/19/94

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The rules are not subject to Executive Order 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rules do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the rules.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order does not apply to the rules.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The final rules will not have a significant impact on a substantial

number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The rules are not "major" rules as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2000. Filing a petition for reconsideration by the Administrator of the final rules does not affect the finality of the rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rules or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 7, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(202)(i)(B)(*2*) and (c)(254)(i)(D)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(202) * * *

(i) * * *

(B) * * *

(*2*) Rule 425.1 adopted on October 13, 1994.

* * * * *

(254) * * *

(i) * * *

(D) * * *

(*4*) Rule 1134 adopted on August 8, 1997.

* * * * *

[FR Doc. 00–19117 Filed 7–31–00; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807 and 1819

Contract Bundling

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to provide guidance on internal NASA procedures for justifying contract bundling.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0478.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular 97–15 included an interim rule addressing contract bundling that overlaps existing coverage at NFS 1819.202–170 on contract consolidations. To conform the NFS to the FAR, NASA is eliminating its separate coverage on consolidations. Instead, NASA is supplementing FAR 7.107, Additional requirements for acquisitions involving bundling of contract requirements, to establish the following internal administrative procedures: (1) the justification and documentation mandated by the FAR for "substantial bundling" must be performed for proposed NASA bundlings of $5 million or more; (2) the measurable benefit analysis, justification, and the bundling

documentation for each acquisition of $5 million or more must be sent to NASA Headquarters for review; (3) the analysis, justification, and documentation requirements apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contract, or other indefinite-delivery contract if the requirements consolidated under the order meet the definition of "bundling" at FAR 2.101; and (4) proposed acquisitions identified via the agency's Master Buy Plan process must indicate if they are a bundled acquisition.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. Law 98–577 and publication for comments is not required. However, NASA will consider comments from small entities concerning the affected NFS subparts in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1807 and 1819

Government Procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807 and 1819 are amended as follows:

1. The authority citation for 48 CFR Parts 1807 and 1819 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Add sections 1807.107 and 1807.107–70 to read as follows:

1807.107 Additional requirements for acquisitions involving bundling of contract requirements. (NASA supplements paragraphs (c) and (e).)

(c) Requests for approval of proposed bundlings that do not meet the thresholds in FAR 7.107(b) must be sent to the Headquarters Office of Procurement (Code HS).

(e) The substantial bundling documentation requirement applies to each proposed NASA bundling expected to exceed $5 million or more. The contracting officer must forward the documentation along with the measurable benefits analysis required by FAR 7.107(b) to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 10 days for review.

1807.107–70 Orders against Federal Supply Schedule contracts, Governmentwide acquisition contracts (GWACs), or other existing indefinite-delivery contracts.

The FAR and NFS requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contract, or other indefinite-delivery contract if the requirements consolidated under the order meet the definition of "bundling" at FAR 2.101.

3. Table 1807–1 is revised to read as follows:

TABLE 1807–1

FORMAT

MASTER BUY PLAN PROCEDURES

FY_____

Line Item No.:_____

Installation:_____

Page No.:_____

Date:_____

(1) Cognizant Headquarters Office	(2) Descriptive Title of Procurement	(3) Estimated Dollar Value	(4) Acquisition Plan	(5) JOFOC	(6) RFP

(7) SEB	(8) Pre-Neg	(9) Contract Review	(10) Current Status	(11) Remarks

INSTRUCTIONS

General

1. Prepare on 8½″x11″ paper or electronically.
2. List only *one* procurement on each page and number each page. Sequentially number each procurement action with a two digit "Line Item Number" beginning with "01" for each annual submission and subsequent amendments.
3. For the initial submissions only, list procurements and their current status from prior fiscal year(s) Master Buy Plans and amendments to MBPs that have not been completed.
4. Do not reproduce these instructions on the submission.

Supplementary instructions by heading number

(1) Include letter code and Headquarters contact, if known.
(2) Include an "N" to indicate new procurement or "FO" to indicate follow-on procurement.
(3) A range of dollar values may be used, if the exact value is unavailable. Express the range as $120M to $25M, $25M, $25M to $50M, and so forth in $25M increments. Include all phases of the procurement. All dollar values must be in real year dollars, *i.e.*, adjusted to include anticipated inflation.
(4) Installation recommendation ("Y" or "N") that an Acquisition Strategy Meeting be held. (The final decision will be made by Headquarters upon review of the MBP submission.)
(5)–(9) Use "X" to indicate applicable documents. If Column (7) contains an "X", include your recommendation in that column for the Source Selection Official (SSO). The recommendation should be either the Center SSO or Headquarters SSO (HSSO).
(10) Status should include scheduled date for next event. (Complete horizontally.)

(11) Include data considered pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, identify the firm(s) to which the procurement is being limited, and indicate the current status of the justification document. Include the names and telephone numbers of the cognizant installation procurement person and technical representative. Indicate if the procurement will result in a bundled contract as defined in FAR 2.101.

PART 1819—SMALL BUSINESS PROGRAMS

1819.202–170 [Removed]

4. Section 1819.202–170 is removed.

[FR Doc. 00–19270 Filed 7–31–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 072600E]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Summer Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvested for summer period.

SUMMARY: NMFS announces that the scup commercial quota available in the summer period to the coastal states from Maine to North Carolina has been harvested. Federally-permitted commercial vessels may not land scup in these states for the remainder of the 2000 summer quota period (through October 31, 2000). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing for the remainder of the summer period.

DATES: Effective 0001 hours, August 1, 2000 through 2400 hours, October 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods. The summer commercial quota (May through October) is distributed to the coastal states from Maine through North Carolina on a coastwide basis. The process to set the annual commercial quota and the seasonal allocation is described in § 648.120.

The total commercial quota for scup for the 2000 calendar year was set at 2,534,160 lb (1,149,476 kg)(65 FR 33486; May 24, 2000). The summer period quota was initially set at 987,055 lb (447,721 kg). As specified in § 648.120, landings in excess of the commercial quota in the 1999 summer period were deducted from the summer period allocation this year, resulting in a final summer quota allocation of 685,628 lb (310,996 kg).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish notification in the **Federal Register** advising that, effective upon a specific date, the scup commercial quota has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 2000 summer period has been harvested and no further quota is available through October 31, 2000.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree as a condition of the permit not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, August 1, 2000, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through October 31, 2000. The Winter II period for commercial scup harvest will open on November 1, 2000. Effective 0001 hours, August 1, 2000, federally-permitted dealers are also advised that they may not purchase scup from federally-permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the summer period (through October 31, 2000).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 27, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19360 Filed 7–27–00; 3:50 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000426114–0114–01; I.D. 072600D]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Quota Harvested for Period 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest for period 1.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available in period 1 to the coastal states from Maine through Florida has been harvested. Commercial vessels may not land spiny dogfish from Maine through Florida for the remainder of the 2000 quota period 1 (through October 31, 2000). Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing spiny dogfish in these states.

DATES: Effective August 1, 2000, 0001 hrs, local time, through October 31, 2000, 2400 hrs, local time.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual

specification of a commercial quota that is allocated into two quota periods based upon percentages of the annual quota. The period 1 commercial quota (May through October) is distributed to the coastal states from Maine through Florida. The process to set the annual commercial quota is described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2000 calendar year was set equal to 4,000,000 lb (1,814 mt) (65 FR 25887, May 4, 2000). The period 1 quota, which is equal to 57.9 percent of the annual commercial quota, was set at 2,316,000 lb (1,050 mt).

Section 648.231 requires the Regional Administrator Northeast Region, NMFS (Regional Administrator) to monitor the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data and other available information, to determine when the commercial quota has been harvested. NMFS is required to publish a notice in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the spiny dogfish commercial quota has been harvested and no commercial quota is available for landing spiny dogfish for the remainder of period 1. The Regional Administrator has determined, based upon dealer reports and other available information, that the spiny dogfish commercial quota for the 2000 period 1 has been harvested.

The regulations at § 648.4(b) provide that Federal spiny dogfish permit holders agree as a condition of the permit not to land spiny dogfish in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the spiny dogfish fishery is available. The Regional Administrator has determined that period 1 for spiny dogfish no longer has commercial quota available. Therefore, effective 0001 hrs local time, August 1, 2000, further landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through October 31, 2000, 2400 hrs local time. The quota for period 2 for commercial spiny dogfish harvest will open on November 1, 2000. Effective August 1, 2000, federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish permit holders that land in coastal states from Maine through Florida for the remainder of period 1 (through October 31, 2000).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Service.

[FR Doc. 00–19359 Filed 7–27–00; 3:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 148
Tuesday, August 1, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV00–905–3 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Proposed Increase in the Minimum Size Requirements for Dancy, Robinson, and Sunburst Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the minimum size requirements for Dancy, Robinson, and Sunburst tangerines grown in Florida. The minimum size requirements would be increased to 2$^{6}/_{16}$ inches diameter for both domestic and export shipments. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (Committee). This proposed rule would help the Florida tangerine industry meet market demands for larger fruit and should help increase returns to producers.

DATES: Comments must be received by August 31, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab/html.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade standard for domestic and export shipments of Dancy, Robinson, and Sunburst tangerines is U.S. No. 1. The current minimum size requirement for domestic shipments is 2$^{4}/_{16}$ inches in diameter (size 210), and the minimum size for export shipments is 2$^{2}/_{16}$ inches in diameter for Dancy tangerines and 2$^{4}/_{16}$ for Robinson and Sunburst.

This proposed rule invites comments on a change to the order's rules and regulations that would increase the minimum size requirement for domestic and export shipments of Dancy, Robinson, and Sunburst tangerines. This rule would increase the minimum size to 2$^{6}/_{16}$ inches in diameter for Dancy, Robinson, and Sunburst tangerines both for domestic and export shipments. This proposed rule would help the Florida tangerine industry meet market and industry demands for larger fruit and should help increase returns to producers. The Committee met on May 26, 2000, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR part 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida tangerines. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

This rule would adjust Table I and Table II to establish a minimum size of 2$^{9}/_{16}$ inches diameter for Dancy, Robinson, and Sunburst tangerines.

This proposed rule would increase the minimum size requirement for domestic and export shipments of Dancy, Robinson, and Sunburst tangerines. Based on an analysis of markets and demands of buyers, the Committee believes that an increase in minimum size would improve the marketing of Florida tangerines. This follows an industry movement toward shipping larger tangerines. New commercial varieties have resulted in larger-sized tangerines being shipped in response to a strong consumer demand. Because of this demand, production of larger tangerines has been a popular method of improving returns among producers as it also increases total yields.

The shift toward tangerine varieties producing larger fruit has been in response to customer needs. Robinson and Dancy tangerines tend to be smaller varieties. Overall, production of these two varieties has decreased by more than 60 percent from the 1995–96 season to the 1999–2000 season. Conversely, production of larger varieties such as Sunburst and Fallglo has been increasing. In terms of total shipments of Dancy, Robinson, and Sunburst tangerines, Sunburst represented almost 95 percent of combined shipments for the 1999–2000 season.

The preference for large sizes is also evident in the volume of small sizes shipped. From the 1995–96 season to the 1999–2000 season, shipments of size 210 fruit accounted for on average less than 1.3 percent of total Dancy, Robinson, and Sunburst tangerine shipments. Even during the 1998–99 season when sizes for all Florida citrus were unusually small, shipments of size 210 tangerines only accounted for 2.3 percent of total shipments of these three varieties.

The change in the minimum size was recommended to address this movement of customer demand and industry production toward larger sizes. Size continues to be a major influence on price. The Committee believes that the availability of small size 210 fruit has a negative affect on market price. In terms of price, a carton of size 210 (2$^{4}/_{16}$ inch diameter) tangerines can be as much as $3 less than a carton of size 176 (2$^{5}/_{16}$ inch) tangerines. For the 1999–2000 season, the average price for a carton of size 210 Dancy, Robinson, or Sunburst tangerines was $7.80. This compares to a weighted average price for all sizes of $11.26. The Committee believes increasing the minimum size would match supply with demand and lessen the price depressing affect of smaller sizes.

In addition, the seasons for these three varieties are short. The season for the Dancy tends to be three weeks long, five weeks for the Robinson, and 12 weeks for the Sunburst. With this short marketing window, it is of increased importance that only the best, most preferred fruit enters the market. The market has no time to recover from shipments of fruit that have a depressing effect on price. Also, on average, approximately 65 percent of the crop for these three varieties goes to the fresh market. With the on tree price for processing averaging less than $1.00, it is imperative that the fresh market be maintained.

The increase in the minimum size to 2$^{9}/_{16}$ inches in diameter is not expected to significantly affect the total number of shipments. During the 1999–2000 season, of the approximate 3,821,000 $^{4}/_{5}$ bushel container shipments of Dancy, Robinson, and Sunburst tangerines from Florida, only about 20,670 cartons were size 210. Therefore, the increase in the size requirement would only reduce shipments by around .5 percent. This change would also make the minimum size consistent for all tangerines, as the minimum size is already 2$^{9}/_{16}$ inches for Fallglo and Honey tangerines.

Experience has shown that providing uniform quality and size acceptable to consumers helps stabilize the market, improve grower returns, and foster market growth. The increased minimum size would match supply to market preferences, which would benefit both producers and handlers of Florida tangerines. Increasing the minimum size is expected to further enhance consumer demand and would encourage repeat purchases resulting in increased returns to producers. Therefore, based on available information, the Committee unanimously recommended that the minimum size for shipping Dancy, Robinson, or Sunburst tangerines to the domestic and export market be 2$^{9}/_{16}$ inches in diameter.

Handlers in Florida shipped approximately 3,821,000 4/5 bushel cartons of tangerines to the fresh market during the 1999–2000 season. Of these cartons, about 150,000 were exported. In the past three seasons, domestic shipments of Florida tangerines averaged about 3.5 million cartons.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 55 tangerine handlers who are subject to regulation under the order, and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which include tangerine handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.201).

Based on industry and Committee data for the 1999–2000 season, the average annual f.o.b. price for fresh tangerines was around $12.00 per 4/5 bushel carton, and total fresh shipments for the 1999–2000 season were 3,821,000 cartons of tangerines. Approximately 25 percent of all handlers handled 70 percent of Florida tangerine shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 55 percent of tangerine handlers could be considered small businesses under SBA's definition. The majority of these handlers, and growers may be classified as small entities.

This proposed rule would increase the minimum size requirement for domestic and export shipments of tangerines to 2$^{9}/_{16}$ inches in diameter for the Dancy, Robinson, and Sunburst varieties. The current minimum size requirement for domestic shipments is 2$^{4}/_{16}$ inches in diameter, and the minimum size for export shipments is 2$^{3}/_{16}$ inches in diameter for Dancy tangerines and 2$^{4}/_{16}$ for Robinson and Sunburst. Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR part 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida tangerines. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule would adjust

Table I and Table II to establish a minimum size of 2$^{9}/_{16}$ inches in diameter for Dancy, Robinson, and Sunburst tangerines. This proposed rule would help the Florida tangerine industry meet market and industry demands and should help increase returns to producers.

The costs associated with this rule are expected to be minimal. The increase in the minimum size is not expected to significantly affect the total number of tangerine shipments. Rather, the Committee believes this size increase would help improve the marketing of Florida tangerines. The direct cost related to this change would stem from the shipment volume of size 210 tangerines times price. In terms of last season, that would be approximately 20,670 cartons times the average price for size 210 tangerines, $7.80, for a possible cost of about $161,226.

However, the Committee believes that this action would help stabilize prices and increase shipments. This change was made to address the increasing demand for larger sizes. While there are some short-term costs associated with increasing the minimum size, the benefits are expected to outweigh the costs. If this regulation just succeeds in raising returns five cents a carton, it would more than cover its costs. In addition, this change should not require the purchase of any additional equipment. This action is consistent with current and anticipated demand. The opportunities and benefits of this rule are expected to be equally available to tangerine handlers and growers regardless of their size of operation.

The Committee considered one alternative to this action. The Committee discussed leaving the regulations as they were. However, this alternative was rejected based on the consideration of current demand for larger sizes and the possible negative impact on price resulting from maintaining the current minimum size.

This proposed rule would increase size requirements under the marketing order for Florida citrus. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large tangerine handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, tangerines must meet the requirements as specified in the U.S. Standards for Grades of Florida Tangerines (7 CFR 51.1810 through 51.1837) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping tangerines in September. Also, Florida tangerine handlers are aware of this issue which was discussed at a public meeting and was unanimously recommended by the Committee. All comments received in a timely manner will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangerines, Tangelos.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 905.306, Table I in paragraph (a) and Table II in paragraph b) are amended by revising the entries for Dancy, Robinson, and Sunburst under "Tangerines," to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
TANGERINES			
Dancy	On and after 9/1/00	U.S. No. 1	2$^{9}/_{16}$
Robinson	On and after 9/1/00	U.S. No. 1	2$^{9}/_{16}$
Sunburst	On and after 9/1/00	U.S. No. 1	2$^{9}/_{16}$

(b) * * *

TABLE II VARIETY

Variety	Regulation period	Minimum grade	Minumum diameter (inches)
(1)	(2)	(3)	(4)
TANGERINES			
Dancy	On and after 9/1/00	U.S. No. 1	2 9/16
Robinson	On and after 9/1/00	U.S. No. 1	2 9/16
Sunburst	On and after 9/1/00	U.S. No. 1	2 9/16

* * * * *

Dated: July 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19344 Filed 7–31–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 236, and 241

[INS No. 2029–00; AG Order No. 2310–2000]

RIN 1115–AF82

Detention of Aliens Ordered Removed

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 30, 2000, at 65 FR 40540, the Immigration and Naturalization Service published a proposed rule in the **Federal Register**, to provide a uniform review process governing the detention of criminal, inadmissible, and other aliens, excluding Mariel Cubans, who have received a final order but whose departure has not been effected within the 90-day removal period. To ensure that the public has ample opportunity to fully review and comment on the proposed rule, this notice extends the public comment period from July 31, 2000, through August 11, 2000.

DATES: Written comments must be submitted on or before August 11, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2029–00 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Joan S. Lieberman, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 6100, Washington, DC 20536, telephone 202–514–1932.

Dated: July 27, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–19412 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AG20

Loan Guaranty: Net Value and Pre-Foreclosure Debt Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Loan Guaranty Regulations to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers. The proposed changes regarding net value appear necessary to more accurately reflect current costs. The proposed changes regarding waivers appear necessary to more accurately reflect statutory intent.

DATES: Comments must be received on or before October 2, 2000. VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AG20." All written comments received will be available for public inspection at the above address, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fyne, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington DC 20420, (202) 273–7380.

SUPPLEMENTARY INFORMATION: We propose to amend the Loan Guaranty Regulations to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers.

Under current law, when a VA guaranteed loan is reported as being in default, the Secretary is required to establish the "net value" of the property securing the guaranteed loan in default. "Net value" means the fair market value of the property minus certain costs that VA would incur to acquire, manage, and dispose of the property. The relationship between the net value of the property, the total indebtedness of the veteran at the time of loan termination, and the amount of VA's guaranty determines whether or not VA may acquire the property following foreclosure from the foreclosing loan holder. These factors also affect the Government's claim payment to the foreclosing holder under the guaranty. In addition, they will affect the amount of the veteran's debt to the Government under those circumstances where, by law, VA is entitled to establish a debt against a veteran. Moreover, they affect the VA's loss on the guaranty transaction which, in turn, will affect the veteran's ability to have previously-used entitlement restored.

Under § 36.4301, VA computes "net value" using cost data for the preceding three fiscal years. We propose to change how VA computes "net value." Instead

of using three years data, we propose to use data only from the most recent fiscal year. VA believes this change will lead to a calculation of net value that is more reflective of current costs.

We also propose to make nonsubstantive changes to the definition of "net value" for purposes of clarification and conformance to statutory provisions.

Currently § 36.4323(e)(1) sets forth provisions regarding waiver by VA of the establishment of a debt against a veteran whose VA guaranteed loan is being foreclosed. We propose to include provisions stating that VA may grant a preforeclosure debt waiver if the default was caused by a transferee-owner, and there is no indication of fraud, misrepresentation, or bad faith on the part of the veteran. Public Law 101–236 eliminated "material fault" as a bar to waiving a veteran's debt. We believe our proposed changes are consistent with this statutory enactment.

We also would make citation corrections in § 36.4323(e)(4).

This proposed rule supercedes an earlier proposed rule published in the **Federal Register** on September 22, 1993 (58 FR 49251). The earlier proposed rule was the same in substance as this proposed rule.

Executive Order 12866

This proposed rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule only affects VA guaranteed loan foreclosures. Such foreclosures represent only a small part of affected lenders' businesses. Moreover, the effect of the proposed rule would be cost-neutral in almost all cases. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: March 16, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as follows:

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4301, the definition for the term "Net value" is amended by revising the introductory text and paragraph (3) to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of real property, minus an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the **Federal Register** (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses on resale incurred for properties acquired under § 36.4320 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

* * * * *

(3) *Administrative costs.* (i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss on property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value.

3. In § 36.4323 amend paragraph (e)(1)(v) at the end of the paragraph by removing "liability." and adding, in its place, "liability; or"; add paragraph (e)(1)(vi); and revise the first sentence in paragraph (e)(4) and the authority citation at the end of paragraph (e)(4), to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) * * *

(1) * * *

(vi) The obligor being released is not the current titleholder to the property and there are no indications of fraud, misrepresentation, or bad faith on the obligor's part in obtaining the loan or disposing of the property or in connection with the loan default.

* * * * *

(4) Determinations made under paragraphs (e)(1) and (e)(2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectable debts owning to the United States. * * *

(Authority: 38 U.S.C. 501, 3703(c)(1), 5302)

* * * * *

[FR Doc. 00–19083 Filed 7–31–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 2]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed rule; notification of congressional contacts.

SUMMARY: On January 13, 2000, FRA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) regarding the use of locomotive horns at highway-rail grade crossings (65 FR 2230). This document provides information pertaining to contacts that FRA officials have had with various with members of Congress regarding the NPRM.

ADDRESSES: The public docket is available at DOT's Docket Management Facility at room PL–401, 400 7th Street, SW., Washington, DC 20590. All documents are also available at the docket facilities web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mark H. Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6061).

SUPPLEMENTARY INFORMATION:

Backgrounds

Congressional Meeting

In the NPRM published on January 13, 2000, FRA established a comment period during which the public could provide its views on the NPRM. FRA stated: "Comments must be received by May 26, 2000. Comments received after that date will be considered to the extent possible without incurring additional expense or delay."

On June 22, 2000, Federal Railroad Administrator Jolene Molitoris met with certain members of Congress at their request to discuss the pending rulemaking. At the meeting, attended by Administrator Molitoris, FRA Chief Counsel S. Mark Lindsey, Speaker Dennis Hastert, Senator Richard Durbin, and Representatives William Lipinski, Judy Biggert, and John Porter, the FRA officials received a proposal from the Members concerning the proposed locomotive horn rule.

A summary of the discussion, together with the proposal presented to the Administrator has been placed in the public docket of this proceeding and is identified as Document Number 2316 of Docket No. FRA–1999–6439. This document, together with all other documents contained in the public docket is available at DOT's Docket Management Facility at room PL–401, 400 7th Street, SW,, Washington, DC 20590. All documents are also available at the docket facilities web site at *http://dms.dot.gov.*

Congressional Hearing

On July 18, 2000, Deputy Administrator John V. Wells testified before the House Subcommittee on Ground Transportation of the Committee on Transportation and Infrastructure regarding the NPRM. FRA will submit to the docket a copy of the transcript of that hearing when it is made available to FRA.

Issued in Washington, DC, on July 25, 2000.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 00–19397 Filed 7–31–00; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2000–6859; Notice 2]

RIN 2127–AC64

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document grants a request by the Alliance of Automobile Manufacturers to extend, for 30 days, the comment period on the agency's request for comment on the proposal to include ratings for rollover resistance in the New Car Assessment Program.

DATES: The comment period will close on August 30, 2000.

ADDRESSES: Comments should refer to Docket No. NHTSA–2000–6859 and be submitted to: Docket Management, Room PL–401, 400 Seventh St, SW, Washington, DC 20590. Docket room hours are from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gayle Dalrymple, Office of Crash Avoidance Standards 202–366–5559 or by FAX to 202–493–2739. The mailing address is National Highway Traffic Safety Administration, NPS–23, 400 Seventh St, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On Thursday, June 1, 2000, NHTSA published a request for comment on the agency's intent to include a vehicle measure of rollover resistance, its Static Stability Factor (SSF), as an addition to the New Car Assessment Program (NCAP).

The agency believes that consumer information on the rollover risk of passenger cars and light multipurpose passenger vehicles and trucks, based on the vehicle's SSF, would reduce the number of injuries and fatalities from rollover crashes. This information would enable prospective purchasers to make informed choices about new vehicles based on differences in real-world rollover risk and serve as a market incentive to manufacturers in striving to design their vehicles with greater rollover resistance.

Included in the notice was a new statistical study undertaken to demonstrate a relationship between SSF and rollover rate representative of the whole country. A relationship between rollover rate and SSF normalized to the national rollover rate and to a nationally representative set of driver and road use variables was developed as a basis for a comparative rating system for rollover risk in the event of a single-vehicle crash. We had available crash reports of 185,000 single-vehicle crashes from six states from 1994 to 1997 in which it was possible to determine the make/model of the vehicles and whether rollover occurred in the course of a single-vehicle crash, and for which SSF data were also available. We also had the NASS GES data sampling system, with far fewer but nationally representative crash reports, to determine the national average rollover rate for the population of vehicles investigated in the state reports.

The notice specified a comment closing date of July 31, 2000 (60 days after date of publication). However, on July 10, 2000 we received a request for an extension of the comment closing date from the Alliance of Automobile Manufacturers (AAM). The AAM stated that it would need an additional 30 days to allow for replication and analysis of the statistical study presented in the appendix to the notice.

NHTSA wants the public to have adequate time to analyze the statistical study and other facts that are the basis for our proposed rollover rating system. The request for an additional 30 days

does not seem excessive. Thus, in order to provide the AAM and other interested parties ample time and opportunity to analyze the study presented in the notice and to express their views on the proposal, NHTSA believes that there is good cause for the extension of the comment period and that such extension in consistent with the public interest. Accordingly, the AAM request to extend the comment period for an additional 30 days is granted. The comment period will now close August 30, 2000.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority is at 49 CFR 1.50.

Issued on: July 26, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–19398 Filed 7–31–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 070600C]

Atlantic Highly Migratory Species Fisheries; Additional Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scoping meetings.

SUMMARY: On July 19, 2000, NMFS published a notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS); notice of availability of Biological Opinion (BO); and an announcement of scoping meetings. NMFS also announced that additional scoping meetings may be scheduled at a later date. NMFS herewith announces two additional scoping meetings.

To accommodate people unable to attend a scoping meeting or wishing to provide written comments, NMFS also solicits written comments on these documents.

DATES: The additional scoping meetings are scheduled as follows:

1. Wednesday, August 16, 2000–Manteo, NC 7–9:30 p.m.

2. Thursday, August 18, 2000–Cape Canaveral, FL 7–9:30 p.m.

ADDRESSES: The locations for the additional scoping meetings are as follows:

1. N.C. Aquariums, Roanoke Island, Neptune Theater, 374 Airport Road, Manteo, NC 27954.

2. Radisson Resort at the Port & Conference Ctr. 8701 Astronaut Boulevard, Cape Canaveral, FL 32920.

Written comments on the proposal to prepare the SEIS and requests for copies of the BO should be sent to: Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to (301) 713–1917. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: Background information about the Supplemental Environmental Impact Statement (SEIS), the Biological Opinion, and a list of other scoping meetings are contained in the announcement published July 19,2000 (65 FR 44753) and is not repeated here.

Public Hearings and Special Accommodations

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Special Accommodations

The scoping meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen or Karyl Brewster-Geisz (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing or meeting.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: July 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19389 Filed 7–31–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 148
Tuesday, August 1, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 4, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 00–19493 Filed 7–28–00; 12:31 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 11, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 00–19494 Filed 7–28–00; 12:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 18, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 00–19495 Filed 7–28–00; 12:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission

TIME AND DATE: 11 a.m., Friday, August 25, 2000

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room

STATUS: Closed

MATTERS TO BE CONSIDERED: Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 00–19496 Filed 7–28–00; 12:32 pm]
BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants to Support the Martin Luther King, Jr. Service Day Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation), in consultation with the Martin Luther King, Jr. Center for Nonviolent Social Change, Inc. in Atlanta, invites applications for grants to pay for the federal share of the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. on January 15, 2001.

The purpose of the grants is to mobilize more Americans to observe the Martin Luther King, Jr. federal holiday as a day of service in communities and to bring people together around the common focus of service to others. To achieve this, we will make approximately $500,000 in grant funds available to support approved service opportunities. Eligible organizations may apply for a grant in one of the following two categories. The first category, in amounts of up to $3,500, will support national service and community volunteering projects of a relatively small scale and limited geographical scope. The second category, in amounts of up to $10,000, will support large-scale (*e.g.*, state-wide, city-wide, county-wide, or regional) service projects. By large-scale, we mean that the service involves a large number of participants in a geographic area. We expect to award a greater number of small-scale grants.

DATES: The deadline for submission of applications is September 15, 2000, no later than 5 p.m. local time.

ADDRESSES: Obtain applications from and return them to the Corporation state office in your state unless otherwise noted. See Supplementary Information section for Corporation state office addresses. Address the application to: Martin Luther King, Jr. Day of Service, Corporation for National Service (Appropriate State Address).

FOR FURTHER INFORMATION CONTACT: For further information, contact the person listed for the Corporation office in your state, unless otherwise noted. You may request this notice in an alternative format for the visually impaired by calling (202) 606–5000, ext. 262. The Corporation's T.D.D. number is (202) 565–2799 and is operational between the hours of 9 a.m. and 5 p.m. Eastern Daylight Time.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation, established by

Congress in the 1993 amendments to the National and Community Service Act of 1990 (the Act) that engages Americans of all ages and backgrounds in service to communities. This service addresses the nation's education, public safety, environmental, or other human needs to achieve direct and demonstrable results with special consideration to service that affects the needs of children. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. The Corporation supports a range of national service programs including AmeriCorps, Learn and Serve America, and the National Senior Service Corps. In providing grants to support service in connection with the Martin Luther King, Jr. federal holiday, the Corporation acts in consultation with the Martin Luther King, Jr. Center for Nonviolent Social Change, Inc. For more information about the Corporation and the programs it supports, go to http://www.nationalservice.org. For more information about the King Center, go to http://www.thekingcenter.com.

Section 12653(s) of the Act, as amended in 1994, authorizes the Corporation to make grants to share the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. We will fund grants to support activities that will (1) get necessary things done in communities, (2) strengthen the communities engaged in the service activity, (3) reflect the life and teaching of Martin Luther King, Jr., (4) respond to one or more of the goals set forth at the Presidents' Summit for America's Future and include young people as service providers, not just recipients of service, and (5) begin or occur in significant part on the federal legal holiday (January 15, 2001).

Getting things done means that projects funded under the Martin Luther King Jr. holiday grant will help communities meet education, public safety, environmental, or other human needs through direct service and effective citizen action. Accordingly, we expect well designed activities that meet compelling community needs and lead to measurable outcomes and impact.

Strengthening communities means bringing people together in pursuit of a common objective that is of value to the community. On Martin Luther King, Jr. Day in 1998, President Clinton said "* * * to achieve one America, we must go beyond words to deeds. Serving together on the King holiday—and everyday—will bring our nation closer together and help meet some of our toughest challenges." Projects should seek to engage a wide range of local partners in the communities served. You should design, implement, and evaluate projects with partners, including local and state King Holiday Commissions, national service programs (AmeriCorps, Learn and Serve America, and the National Senior Service Corps), state and local organizations affiliated with the campaign for children and youth launched at the Presidents' Summit for America's Future and carried forward by America's Promise—the Alliance for Youth, community-based agencies, schools and school districts, Volunteer Centers of the Points of Light Foundation and other volunteer organizations, local United Ways, communities of faith, businesses, foundations, state and local governments, labor organizations, and colleges and universities.

Reflecting the life and teaching of Martin Luther King, Jr. means demonstrating his proposition that, "Everybody can be great because everybody can serve." Dr. King's concept of greatness, when expressed through acts of service, offers everyone an opportunity to experience a sense of worth and dignity. His example encourages all ages, races, colors, ethnic groups, genders, nationalities, and abilities to respond to those in need. We are challenged to adopt his philosophy in addressing the evils of discrimination, poverty and violence. Dr. King's abiding faith and earnest belief in the "American Dream" is exemplified by his commitment to justice and his willingness to serve unselfishly. His strategies and determination to use non-violence as a means to transform the hearts of millions should be used as a rousing force to encourage others in their desire to be socially responsible through non-violent direct actions—direct service. You should consider service opportunities for this program that foster cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

Respond to one or more of the goals of the Presidents' Summit and include young people as service providers, not just recipients of service means that service projects should be designed to help achieve the five basic promises for all children and youth declared at the Presidents' Summit for America's Future and carried forward by America's Promise—the Alliance for Youth, the organization led by General Colin Powell to pursue the Summit's goals. Those five "promises" for young people are: an ongoing relationship with a caring adult—mentor, tutor, coach; safe spaces and structured activities during non-school hours; a healthy start; an effective education that equips with marketable skills; and an opportunity to give back to their communities through their own service. Particularly important is the fifth goal: to challenge and inspire young people to give at least one hundred hours of service a year. All young people must see themselves—and be seen by others—as resources and leaders, not just as problems or victims. Therefore, you should include young people as service providers and resources in project planning, not just as the recipients of service.

Begin or occur in significant part on the federal legal holiday means that a significant portion of the community service activities supported by the grant should occur on the holiday itself to strengthen the link between the observance of Martin Luther King, Jr.'s birthday, the federal legal holiday (January 15, 2001), and service that reflects his life and teaching.

The direct service you will do on and in connection with the King holiday may include, but is not limited to, the following types of activities: tutoring children or adults, feeding the hungry, packing lunches, delivering meals, stocking a food or clothing pantry, repairing a school and adding to its resources, translating books and documents into other languages, recording books for the visually impaired, restoring a public space, organizing a blood drive, registering bone marrow and organ donors, renovating low-income or senior housing, building a playground, removing graffiti and painting a mural, renovating or creating safe spaces for children who are out of school and whose parents are working, collecting oral histories of elders, running health fairs that provide health screenings, immunizations and health insurance information, gleaning and distributing fruits and vegetables, etc.

Although celebrations, parades, and recognition ceremonies may be a part of the activities that you plan on the holiday and lead to or celebrate a commitment to service, these activities do not constitute direct service under this grant and the grant will not fund such activities.

Other service outcomes we will consider in grant applications include, but are not limited to, the following: a day-of-service you design to produce a sustained long-term service commitment; community-wide

servathons that bring a broad cross-section of people together in a burst of energy on one day of service, including schools or school districts that seek to involve all students and teachers in joint service; service-learning projects that link student service in schools and universities with community-based organizations; faith-based service collaborations that bring together communities of faith and secular human service programs (subject to the limitations listed below); and service projects that include a pledge or commitment for continued service throughout the year.

Grant funding will be available on a one-time, non-renewable basis for a budget period not to exceed seven months, beginning no sooner than November 1, 2000 and ending no later than June 30, 2001. By statute, the grants we provide for this program, together with all other federal funds you use to plan or carry out the service opportunity, may not exceed 30 percent of the total cost.

For example, if you request $3,500 in federal dollars you must have a non-federal match of at least $8,167 (cash and/or in-kind contributions) and a total projected cost of at least $11,667. If you request $10,000 in federal dollars you must have a non-federal match of at least $23,333 (cash and/or in-kind contributions) and a total projected cost of at least $33,333. In other words the total project cost multiplied by .30 is the maximum amount of money you can request from the federal government. (Total project cost minus federal dollars requested equals the required match). It may assist in the calculation to apply the formula as follows:

Total Project Cost × .30 = Maximum Federal Contribution

Total Project Cost − Federal Dollars Requested = Non-Federal Match.

The non-federal match may include cash and in-kind contributions (including, but not limited to, supplies, staff time, trainers, food, transportation, facilities, equipment, and services) necessary to plan and carry out the service opportunity. Grants under this program constitute federal assistance and therefore may not be used primarily to inhibit or advance religion in a material way. You may not use any part of an award from the Corporation to fund religious instruction, worship or proselytization. You may not use any part of an award to pay honoraria or fees for speakers. You may not use any part of an award to support a celebration banquet or other activity that is not connected to the actual service.

The total amount of grant funds we will provide under this Notice will depend on the quality of applications and the availability of appropriated funds for this purpose.

Eligible Applicants

By law, any entity otherwise eligible for assistance under the national service laws is eligible to receive a grant under this announcement. The applicable laws include the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended.

Eligible applicants include, but are not limited to: nonprofit organizations, state commissions on service, volunteer centers, institutions of higher education, local education agencies, educational institutions, local or state governments, and private organizations that intend to utilize volunteers in carrying out the purposes of this program.

We especially invite applications from organizations with experience in—and commitment to—fostering service on Martin Luther King, Jr. Day, including state and local Martin Luther King, Jr. Commissions, local education agencies, faith-based partnerships, Volunteer Centers of the Points of Light Foundation, and United Ways and other community-based agencies.

Any grant recipient from the 1997, 1998, 1999, and 2000 Martin Luther King, Jr., Day of Service Initiatives will be ineligible if it has been non-compliant with the terms of those grant awards.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible.

Overview of Application Requirements

Applicants should submit the following standard components for federal grants:

1. An Application for Federal Assistance, Standard Form 424.

2. A Project Narrative describing:

a. the types of service activities (that lead to measurable outcomes) that you plan in observance of Martin Luther King, Jr. Day, which must take place significantly on the legal federal holiday (January 15, 2001), but which may extend for the budget period (November 1, 2000 through June 30, 2001);

b. partnerships in the local community, city, state or region that you are engaging in support of the service activities;

c. your organization's background and capacity to carry out this program; and

d. how you propose to staff the activity.

The project narrative portion of the application may be no longer than 7 single-sided pages for applications not to exceed $3,500 and 15 single-sided pages for applications not to exceed $10,000. You must type double-spaced in a font no smaller than 12 point and number each page.

3. A Budget Narrative (specific instructions are provided in the application materials).

4. Budget Information—Non-Construction Programs (SF 424A) form in the application package.

5. A signed Assurances—Non-Construction Programs (SF 424B) form incorporating conditions attendant to the receipt of federal funding.

6. Three complete copies (one signed original and two copies) of the application.

We must receive all applications by 5:00 p.m. local time, September 15, 2000 at the Corporation office in your state, unless otherwise noted, addressed as follows:

Martin Luther King, Jr. Day of Service
Corporation for National Service
(Appropriate state office address; see list of addresses provided below).

You may not submit an application by facsimile.

To ensure fairness to all applicants, we reserve the right to take action, up to and including disqualification, in the event that your application fails to comply with the requirements relating to page limits, line-spacing, font size, and application deadlines.

Budget

Detailed instructions about the budget information you must provide are in the application materials.

Selection Process and Criteria

We will review the applications initially to confirm that you are an eligible recipient and to ensure that your application contains the information we require and otherwise complies with the requirements of this notice. We will assess the quality of applications' responsiveness to the objectives included in this announcement based on the following criteria listed below:

1. Program Design (60%) The proposal must demonstrate your ability to get necessary things done, strengthen communities, reflect the life and teaching of Martin Luther King Jr., respond to one or more of the goals set forth at the Presidents' Summit for America's Future and include young people as service providers, not just

recipients of service, and begin or occur in significant part on the federal legal holiday, January 15, 2001.

2. Organizational Capacity (25%) Your application must demonstrate your organization's ability to carry out the activities described in the proposal, including the use of highly qualified staff.

3. Budget/Cost Effectiveness (15%) You must demonstrate how you will use this grant effectively, including the sources and uses of matching support.

After evaluating the overall quality of proposals and their responsiveness to the criteria noted above, we will seek to ensure that applications we select represent a portfolio that is: (1) Geographically diverse, including projects throughout the five geographical clusters as designated by the Corporation; (2) representative of different population tracts, i.e. rural, urban, suburban; (3) representative of a range of models of service projects.

Awards

We anticipate making selections under this announcement no later than November 1, 2000.

Corporation for National Service State Offices

AK
John Miller, Jackson Federal Bldg., Suite 3190, 915 Second Ave., Seattle, WA 98174–1103, Phone: (206) 220–7745 Fax: (206) 553–4415

AL
Nancy Reeder, Medical Forum, 950 22nd St., N., Suite 428, Birmingham, AL 35203, Phone: (205) 731–0027 Fax: (205) 731–0031

AR
Opal Sims, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201, Phone: (501) 324–5234 Fax: (501) 324–6949

AZ
Richard Persely, 522 North Central, Room 205A, Phoenix, AZ 80504–2190, Phone: (602) 379–4825 Fax: (602) 379–4030

CA
Javier LaFianza, 11150 W. Olympic Blvd., Suite 670, Los Angeles, CA 90064, Phone: (310) 235–7421 Fax: (310) 235–7422

CO
James Byrnes, 999 Eighteenth Street, Suite 1440 South, Denver, CO 80202, Phone: (303) 312–7952 Fax: (303) 312–7954

CT
Romero Cherry, 1 Commercial Plaza, 21st Floor, Hartford, CT 06103–3510, Phone: (860) 240–3237 Fax: (860) 240–3238

DC
Thomas Harmon, 400 North 8th Street, Suite 446, P.O. Box 10066, Richmond, VA 23240–1832, Phone: (804) 771–2197 Fax: (804) 771–2157

DE
Jerry Yates, Fallon Federal Bldg., 31 Hopkins Plaza, Suite 400–B, Baltimore, MD 21201, Phone: (410) 962–4443 Fax: (410) 962–3201

FL
Warren Smith, 3165 McCrory Street, Suite 115, Orlando, FL 32803–3750, Phone: (407) 648–6117 Fax: (407) 648–6116

GA
Daryl James, 75 Piedmont Avenue, N.E., Room 902, Atlanta, GA 30303–2587, Phone: (404) 331–4646 Fax: (404) 331–2898

HI
Lynn Dunn, 300 Ala Moana Blvd., Room 6213, Honolulu, HI 96850–0001, Phone: (808) 541–2832 Fax: (808) 541–3603

IA
Joel Weinstein, Federal Building, Room 917, 210 Walnut Street, DeMoines, IA 50309–2195, Phone: (515) 284–4816 Fax: (515) 284–6640

ID
V. Kent Griffitts, 304 North 8th Street, Room 344, Boise, ID 83702–5835, Phone: (208) 334–1707 Fax: (208) 334–1421

IL
Timothy Krieger, 77 West Jackson Boulevard, Suite 442, Chicago, IL 60604–3511, Phone: (312) 353–3622 Fax: (312) 353–5343

IN
Thomas Haskett, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922, Phone: (317) 226–6724 Fax: (317) 226–5437

KS
James Byrnes, 444 S.E. Quincy, Room 260, Topeka, KS 66683–3572, Phone: (785) 295–2540 Fax: (785) 295–2596

KY
Betsy Wells, 600 Martin L. King Place, Room 372–D, Louisville, KY 40202–2230, Phone: (502) 582–6384 Fax: (502) 582–6386

LA
Willard Labrie, 707 Florida Street, Suite 316, Baton Rouge, LA 70801, Phone: (225) 389–0473 Fax: (225) 389–0510

MA
Malcolm Coles, 10 Causeway Street, Room 473, Boston, MA 02222–1038, Phone: (617) 565–7001 Fax: (617) 565–7011

MD
Jerry Yates, Fallon Federal Bldg., 31 Hopkins Plaza, Suite 400–B, Baltimore, MD 21201, Phone: (410) 962–4443 Fax: (410) 962–3201

ME
Malcolm Coles, 1 Pillsbury Street, Suite 201, Concord, NH 03301–3556, Phone: (603) 225–1450 Fax: (603) 225–1459

MI
Mary Pfeiler, 211 West Fort Street, Suite 1408, Detroit, MI 48226–2799, Phone: (313) 226–7848 Fax: (313) 226–2557

MN
Robert Jackson, 431 South 7th Street, Room 2480, Minneapolis, MN 55415–1854, Phone: (612) 334–4083 Fax: (612) 334–4084

MO
John McDonald, 801 Walnut Street, Suite 504, Kansas City, MO 64106–2009, Phone: (816) 374–6300 Fax: (816) 374–6305

MS
R. Abdul-Azeez, 100 West Capitol Street, Room 1005A, Jackson, MS 39269–1092, Phone: (601) 965–5664 Fax: (601) 965–4671

MT
John Allen, 208 North Montana Avenue, Suite 206, Helena, MT 59601–3837, Phone: (406) 449–5404 Fax: (406) 449–5412

NC
Robert Winston, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739, Phone: (919) 856–4731 Fax: (919) 856–4738

ND
John Pohlman, 225 S. Pierre Street, Room 225, Pierre, SD 57501–2452, Phone: (605) 224–5996 Fax: (605) 224–9201

NE
Anne Johnson, Federal Building, Room 156, 100 Centennial Mall North, Lincoln, NE 68508–3896, Phone: (402) 437–5493 Fax: (402) 437–5495

NH
Malcolm Coles, 1 Pillsbury Street, Suite 201, Concord, NH 03301–3556, Phone: (603) 225–1450 Fax: (603) 225–1459

NJ
Stanley Gorland, 44 South Clinton Ave., Room 702, Trenton, NJ 08609–1507, Phone: (609) 989–2243 Fax: (609) 989–2304

NM
Ernesto Ramos, 120 S. Federal Place, Room 315, Sante Fe, NM 87501–2026, Phone: (505) 988–6577 Fax: (505) 988–6661

NV

Craig Warner, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033, Phone: (775) 784–5314 Fax: (775) 784–5026

NY
Donna Smith, Clinton Ave. & Pearl St., Room 818, Albany, NY 12207, Phone: (518) 431–4150 Fax: (518) 431–4154

OH
Paul Schrader, 51 North High Street, Suite 451, Columbus, OH 43215, Phone: (614) 469–7441 Fax: (614) 469–2125

OK
Zeke Rodriguez, 215 Dean A. McGee, Suite 324, Oklahoma City, OK 73102, Phone: (405) 231–5201 Fax: (405) 231–4329

OR
Robin Sutherland, 2010 Lloyd Center, Portland, OR 97232, Phone: (503) 231–2103 Fax: (503) 231–2106

PA
Jorina Ahmed, Robert N.C. Nix Federal Bldg., 900 Market St., Suite 229, Philadelphia, PA 19107, Phone: (215) 597–2806 Fax: (215) 597–2807

PR
Loretta Cordova, 150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1737, Phone: (787) 766–5314 Fax: (787) 766–5189

RI
Vincent Marzullo, 400 Westminster Street, Room 203, Providence, RI 02903, Phone: (401) 528–5426 Fax: (401) 528–5220

SC
Jerome Davis, 1835 Assembly Street, Suite 872, Columbia, SC 29201–2430, Phone: (803) 765–5771 Fax: (803) 765–5777

SD
John Pohlman, 225 S. Pierre Street, Room 225, Pierre, SD 57501–2452, Phone: (605) 224–5996 Fax: (605) 224–9201

TN
Jerry Herman, 265 Cumberland Bend Drive, Nashville, TN 37228, Phone: (615) 736–5561 Fax: (615) 736–7937

TX
Jerry Thompson, 903 San Jacinto, Suite 130, Austin, TX 78701–3747, Phone: (512) 916–5671 Fax: (512) 916–5806

UT
Rick Crawford, 350 S. Main Street, Room 504, Salt Lake City, UT 84101–2198, Phone: (801) 524–5411 Fax: (801) 524–3599

VA
Thomas Harmon 400 North 8th Street, Suite 446, P. O. Box 10066, Richmond, VA 23240–1832, Phone: (804) 771–2197 Fax: (804) 771–2157

VI
Loretta Cordova 150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1737, Phone: (787) 766–5314 Fax: (787) 766–5189

VT
Malcolm Coles 10 Causeway Street, Room 473, Boston, MA 02222–1038, Phone: (617) 565–7001 Fax: (617) 565–7011

WA
John Miller, Jackson Federal Bldg., Suite 3190, 915 Second Ave., Seattle, WA 98174–1103, Phone: (206) 220–7745 Fax: (206) 553–4415

WI
Linda Sunde, 310 W. Wisconsin Ave., Room 1240, Milwaukee, WI 53203–2211, Phone: (414) 297–1118 Fax: (414) 297–1863

WV
Judith Russell, 10 Hale Street, Suite 203, Charleston, WV 25301–1409, Phone: (304) 347–5246 Fax: (304) 347–5464

WY
Patrick Gallizzi, Federal Building, Room 1110, 2120 Capitol Avenue, Cheyenne, WY 82001–3649, Phone: (307) 772–2385 Fax: (307) 772–2389

Dated: July 25, 2000

Gary Kowalczyk,

Coordinator of National Service Programs, Corporation for National and Community Service.

[FR Doc. 00–19288 Filed 7–31–00; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; Report of Amended System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of amended system of records.

SUMMARY: Notice is hereby given that in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), ("the Act"), the Corporation for National and Community Service hereby publishes a notice of its amended system of records due to minor changes to the current system of records as set forth below. Title 5 U.S.C. 552a(e)(4) and (11) provides that the public be given 30 days to comment on the amended system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires 40 days to conclude its review of the amended system of records.

EFFECTIVE DATES: The proposed changes to the Corporation's system of records becomes effective September 11, 2000.

ADDRESSES: Comments should be addressed to the Corporation for National and Community Service, Office of Administrative and Management Services, Attn: Denise Moss, Corporation Records Liaison Officer, 1201 New York Avenue, N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Denise Moss, Corporation Records Liaison Officer, 202–606–5000, extension 384. A copy of this amended system of records may be obtained in an alternate format by calling: TDD, 202–606–5256, or by writing to the Corporation for National and Community Service, Office of Administrative and Management Services, Attn: Corporation Records Liaison Officer, 1201 New York Avenue, NW., Washington, DC, 20525.

SUPPLEMENTARY INFORMATION: The Corporation publishes the following notice of its system of records: Notice of System of Records—Preliminary Statement.

Corporation—when used in the notice refers to Corporation for National and Community Service.

AmeriCorps—when used in the notice refers to the Volunteers In Service To America (VISTA) program, the National Civilian Community Corps (NCCC) program, the Leaders program, or the state and national program.

Operating Units—The names of the operating units within the Corporation to which a particular system of records pertains are listed under the system manager and address section of each system notice.

Official Personnel Files—Official personnel files of Federal employees in the General Schedule and the Corporation's Alternative Personnel System, in the custody of the Corporation are considered the property of the Office of Personnel Management. Access to such files shall be in accordance with such notices published by OPM. Access to such files in the custody of the Corporation will be granted to individuals to whom such files pertain upon request to the Corporation for National and Community Service, Director, Human Resources, 1201 New York Avenue, NW., Washington, DC 20525.

Various offices in the Corporation maintain files which contain copies of miscellaneous personnel material affecting Corporation employees. These include copies of standard personnel

forms, evaluation forms, etc. These files are kept only for immediate office reference and are considered by the Corporation to be part of the personnel file system. The Corporation's internal policy provides that such information is a part of the general personnel files and can be disclosed only through the Director, Human Resources, in order that he or she may ensure that any material be disclosed is relevant, current, and fair to the individual employees. Also, it is the policy of the Corporation to limit the use of such files and to encourage the destruction of as many as possible.

Description of Changes

The changes made to the Corporation's system of records are considered to be minor in nature, and consist of the following: (1) Corporation #1, #2, and #17 were renamed; (2) Corporation #3, has been changed to reflect the Alumni Coordinator being responsible for the electronic recordkeeping of the service histories of past VISTA and AmeriCorps*VISTA members; (3) Corporation #12—the STORAGE category was changed to reflect computerized files, and the SAFEGUARDS category was changed to reflect an individual with authority to release files to other members of the Corporation for their official use.

Statement of General Routine Uses

The following general routine uses are incorporated by this reference into each system of records set forth herein, unless specifically limited in the system description.

1. In the event that a record in a system of records maintained by the Corporation indicates, either by itself or in combination with other information in the Corporation's possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall include, and be deemed to authorize: (1) Any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (2) such other interagency referrals as may be necessary to carry out the receiving agencies' assigned law enforcement duties.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the individual for employment purposes including the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved, provided, however, that other than information furnished for the issuance of authorized security clearances, information divulged hereunder as to full-time volunteers under Title I of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951), and the National and Community Service Act of 1990, as amended, shall be limited to the provision of dates of service and a standard description of service as heretofore provided by the Corporation.

3. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate or administrative tribunal of appropriate jurisdiction and such disclosure may include disclosures to opposing counsel in the course of settlement negotiations.

4. A record may be disclosed as a routine use to a member of Congress, or staff acting upon the constituent's behalf, when the member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

5. Information from certain systems of records, especially those relating to applicants for Federal employment or volunteer service, may be disclosed as a routine use to designated officers and employees of other agencies of the Federal government for the purpose of obtaining information as to suitability qualifications and loyalty to the United States Government.

6. Information from a system of records may be disclosed to any source from which information is requested in the course of an investigation to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

7. Information in any system of records may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

8. A record from any system of records may be disclosed as a routine use of the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. A record may be disclosed to a Federal or state grand jury agent pursuant to a Federal or state grand jury subpoena or prosecution request that such record be released for the purpose of its introduction to a grand jury.

10. A record may be referred to suspension/debarment authorities, internal to the Corporation, when the record released is germane to a determination of the propriety or necessity for a suspension or debarment action.

11. A record may be disclosed to a contractor, grantee or other recipient of Federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interests.

12. A record may be disclosed to a contractor, grantee or other recipient of Federal funds when the recipient has incurred an indebtedness to the Government through its receipt of Government funds, and release of the record is for the purpose of allowing the debtor to effect a collection against a third party.

13. Information in a system of records may be disclosed to "Consumer reporting agencies" (as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)), the U.S. Department of the Treasury or other Federal agencies maintaining debt servicing centers, and to private collection contractors as a routine use for the purpose of collecting a debt owed to the Federal government as provided in regulations promulgated by the Corporation.

14. The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the: (a) Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS), and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish

paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement action; (b) Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement; and (c) Office of Child Support Enforcement for release to the U.S. Department of the Treasury for payroll and savings bonds and other deduction purposes, and for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986), and verifying a claim with respect to employment on a tax return, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

15. A record may be disclosed as a routine use to a contractor, expert, or consultant of the Corporation (or an office within the Corporation) when the purpose of the release is in order to perform a survey, audit, or other review of the Corporation's procedures and operations.

Locations of Corporation Service Centers/State Offices

The Corporation maintains five Service Centers with State Offices within their service areas. The Services Centers, their addresses, and the States within their service areas are listed below. In the event of any doubt as to whether a record is maintained in a Service Center or State Office, a query should be directed to the address of the Service Center Director for the appropriate state under their jurisdiction where the volunteer performed their service as listed below. The Service Center Director shall furnish all assistance necessary to locate a specified record.

Atlantic Service Center, 801 Arch Street, Suite 103, Philadelphia, PA 19107–2416 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands).

Southern Service Center, 60 Forsyth, Street SW, Suite. 3M40, Atlanta, GA 30303–3201 (Alabama, District of Columbia, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia).

North Central Service Center, 77 West Jackson Blvd., Suite 442, Chicago, IL 60604–3511 (Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin).

Southwest Service Center, 1999 Bryan Street, Suite 2050, Dallas, TX 75201 (Arizona, Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas).

Pacific Service Center, P.O. Box 29996, Building 386, Morgan Avenue. Presidio of San Francisco, CA, 94129–09996 (Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming).

Notification

Individuals may inquire whether any system of records contains information pertaining to them by addressing the request to the specific Records Liaison Officer for each file category in writing. Such request should include the name and address of the individual, his or her social security number, any relevant data concerning the information sought, and, where possible, the place of assignment or employment, etc. In case of any doubt as to which system contains a record, interested individuals should contact the Corporation for National and Community Service, Office of Administrative and Management Services, Attn: Records Liaison Officer, 1201 New York Avenue, NW., Washington, DC 20525, which has overall supervision of records systems and will provide assistance in locating and/or identifying appropriate systems.

Access and Contest

In response to a written request by an individual, the appropriate Records Liaison Officer will arrange for access to the requested record or advise the requester if no record exists. If an individual wishes to contest the content of any record, he or she may do so by addressing a written request to the State Program Director in the state where the member performed their assigned duties. If the State Program Director determines that a request to amend an individual's record should be denied, the State Program Director shall provide all necessary information regarding the request to the Corporation's initial denial authority/Privacy Act Officer.

Locations of Corporation AmeriCorps National Civilian Community Corps Campuses

The Corporation maintains five AmeriCorps*National Civilian Community Corps Campuses (NCCC) under its jurisdiction. The Campuses, and their addresses are listed below. In the event there is any doubt as to whether a record is maintained at a campus location, questions should be directed to the address of the AmeriCorps*NCCC Regional Campus Director for the appropriate campus location where the volunteer performed their service as listed below. The Regional Campus Director shall furnish all assistance necessary to locate a specified record.

AmeriCorps*NCCC Capitol Region Campus, 2 D.C. Village Lane, S.W. Washington, D.C., 20032.

AmeriCorps*NCCC Northeast Campus, VA Medical Center, Building 15, Room 9, Perry Point, MD 21902–0027.

AmeriCorps*NCCC Southeast Campus, 2231 South Hopson Avenue, Charleston, S.C. 29405–2430.

AmeriCorps*NCCC Central Campus, 1059 South Yosemite Street, Bldg 758, Room 213, Aurora, CO 80010–6062.

AmeriCorps*NCCC Western Campus, 2650 Truxtun Road, San Diego, CA 92106–6001.

Access and Contest

In response to a written request by an individual, the appropriate Records Liaison Officer arranges for access to the requested record or advises the requester if no record exists. If an individual wishes to contest the content of any record, he or she may do so by addressing a written request to the AmeriCorps*NCCC Regional Campus Director, located at the pertinent address for each campus location as listed above. If the Regional Campus Director determines that a request to amend an individual's record should be denied, the Regional Campus Director shall provide all necessary information regarding the request to the Corporation's initial denial authority/Privacy Act Officer.

Location of the Corporation AmeriCorps*VISTA Alumni Office

The AmeriCorps*VISTA Alumni Office is located at the Corporation's Headquarters in Washington, D.C. This office maintains an electronic history of former VISTA and AmeriCorps*VISTA members.

Notification

Members may inquire whether this system of records contains information pertaining to them by addressing their request to the Corporation for National and Community Service, Attn: Alumni Coordinator, 1201 New York Avenue, Washington, D.C., 20525, who has overall supervision of this record system. Such request should include the member's name, social security number, and approximate dates of volunteer service.

Access and Contest

In response to a written request by a member, the Alumni Coordinator will arrange for access to the requested record or advise the requester if no record exists. If an individual wishes to contest the content of any record, he or she may do so by addressing a written request to the Corporation for National and Community Service, Attn: Alumni Coordinator, 1201 New York Avenue, Washington, DC 20525. If the Alumni Coordinator determines that the request to amend a member's record should be denied, the Alumni Coordinator shall provide all necessary information regarding the request to the Corporation's initial denial authority/ Privacy Act Officer.

Listing of System of Records

Momentum Financials Open Obligations and Automated Disbursement Files—Corporation-1
Momentum Financials Accounts Receivable Files—Corporation-2
Domestic Full-time Member Census Master File—Corporation-3
AmeriCorps Full-time Member Personnel Files—Corporation-4
Employee and Applicant Records Files—Corporation-5
Employee/Member Occupation Injury/Illness Reports and Claim Files—Corporation-6
Travel Files—Corporation-7
AmeriCorps Member Individual Accounts—Corporation-8
Counselors' Report Files—Corporation-9
Discrimination Complaint Files—Corporation-10
Employee Pay and Leave Record Files—Corporation-11
Freedom of Information Act and Privacy Act Request Files—Corporation-12
Legal Office Litigation/Correspondence Files—Corporation-13
Merit Promotion Plan Files—Corporation-14
Office of the Inspector General Investigative Files—Corporation-15
Travel Authorization Files—Corporation-16
Momentum Financials Vendor Files—Corporation-17
AmeriCorps*VISTA Volunteer Management System Files—Corporation-8

CORPORATION–1

SYSTEM NAME:

Momentum Financials Open Obligations and Automated Disbursement Files.

SYSTEM LOCATION:

Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom the agency owes money.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of payee, address, ABA routing number, financial institution name and address, depositor account number, taxpayer identification number, amount owed, date of liability, amount paid, schedule number authorizing the U.S. Department of the Treasury to issue payment and returned or cancelled payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended; the National and Community Service Act of 1990, as amended, and the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officer Act of 1990; and the Debt Collection Improvement Act of 1996.

PURPOSE(S):

To maintain a current record of amounts owed and paid by the Corporation.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement. Data is also released to the Internal Revenue Service in accordance with the Internal Revenue Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically and file folders are stored in locked metal file cabinets.

RETRIEVABILITY:

Hardcopy records are indexed alphabetically by name and electronic records may be accessed by name or TIN.

SAFEGUARDS:

Records are available only to staff in the Office of Accounting and Financial Management Services and other appropriate Corporation officials with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Hardcopy records are held for three (3) years and then retired to the Federal Records Center. Electronic records are archived periodically.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system about individual, that individual should submit a request in writing to the Records Liaison Officer giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the Records Liaison Officer at the address given and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by Corporation officials involved with managing and disbursing funds.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–2

SYSTEM NAME:

Momentum Financials Accounts Receivable Files.

SYSTEM LOCATION:

Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM.

Individuals owing money to the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of debtor, address, taxpayer identification number, amount owed, date of liability, and amount collected or amount forwarded to the U.S. Treasury for further collection action as mandated by DCIA of 1996.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended; the National and Community Service Act of 1990, as amended; the Budget and Accounting Procedures Act of 1950, as amended, and the Debt Collection Improvement Act of 1996.

PURPOSE(S):

To maintain a current record of amounts owed and paid to the Corporation.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement. Data may be disclosed to the U.S. Department of Justice for litigation action; the U.S. Department of the Treasury to pursue further collection action when the Corporation is unable to collect a debt through its own efforts and/or recommended write-off; or to the General Accounting Office in connection with inquiries, audits or investigations related to the Corporation's debt activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are available only to staff in the Office of Accounting and Financial Management Services, other authorized Corporation officials with the need for such records in the performance of their duties or forwarded to the U.S. Treasury for further collection action.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, N.W., Washington, D.C., 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system about an individual, that individual should submit a request in writing to the Records Liaison Officer giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the Records Liaison Officer and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by Corporation officials involved with managing and collecting debts.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–3

SYSTEM NAME:

Domestic Full-time Member Census Master File.

SYSTEM LOCATION:

Corporation for National and Community Service, AmeriCorps*VISTA, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has served as a VISTA, or an AmeriCorps*VISTA member.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained contain information extracted from the member's application, information about the member's period of service, and information about the member's history with the Corporation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended.

PURPOSE(S):

The system of records was established to maintain service histories on all former VISTA and AmeriCorps*VISTA members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic database form on the Corporation's internal computer network.

RETRIEVABILITY:

The member's name and/or social security number retrieves records.

SAFEGUARDS:

The material is available only to Corporation and AmeriCorps*VISTA staff. It is not available to anyone else without the express written consent from the individual to release his/her information.

RETENTION AND DISPOSAL:

These records are maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director of AmeriCorps*VISTA, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

NOTIFICATION PROCEDURE:

A former member wishing to determine if this system contains their records should contact the Corporation for National and Community Service, Attn: Alumni Coordinator, 1201 New York Avenue, NW, Washington, DC 20525, and provide their name, social security number, and approximate dates of volunteer service.

RECORDS ACCESS PROCEDURES:

A former member wishing access to information about his/her record should contact the Corporation for National and Community Services, Attn: Alumni Coordinator, 1201 New York Avenue, NW, Washington, DC 20525.

CONTESTING RECORDS PROCEDURES:

Any former member wishing to amend information maintained in his/her electronic record may do so by addressing such request to the Corporation for National and Community Service, Office of the General Counsel, Attn: Corporation Privacy Act Officer, 1201 New York Avenue, NW, Washington, DC 20525.

RECORD SOURCE CATEGORIES:

The data is obtained from the member's application, status change, and payroll change notices.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–4

SYSTEM NAME:

AmeriCorps Full-time Member Personnel Files.

SYSTEM LOCATION:

All Corporation State Offices, AmeriCorps*Leaders Office at Corporation Headquarters, and NCCC Regional Campuses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active AmeriCorps members assigned under programs operated by the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained contain member application and reference forms, member status and payroll information, member travel vouchers, future plans

forms, including evaluation of service, and general correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended; the National and Community Service Act of 1990, as amended.

PURPOSE(S):

This system of records was established to maintain information on AmeriCorps while they are assigned to their respective programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The content of these records may be disclosed to the member's sponsor (VISTA) and other Corporation officials concerning placement, performance, support and related matters for AmeriCorps members. Also, see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets.

RETRIEVABILITY:

Records are retrievable alphabetically by last name.

SAFEGUARDS:

Records in the system are available only to appropriate Corporation staff in State Offices, the AmeriCorps*Leaders Office at Corporation Headquarters, and Regional NCCC Campuses, and other appropriate officials of the Corporation with need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are retained for one (1) year after the member has terminated and then retired to the Federal Records Center where they are maintained for six (6) years.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager for VISTAs is the State Program Director in each Corporation State Office; the Regional NCCC Campus Director at each Campus location; and the Director, AmeriCorps*Leaders at Corporation Headquarters.

NOTIFICATION PROCEDURE:

Members wishing to determine if this system contains their records should contact the Corporation State Office (VISTAs) for the state where the member performed their service; NCCC Campus where the member was assigned, and the AmeriCorps*Leaders Office at Corporation Headquarters.

RECORD ACCESS PROCEDURES:

Members wishing access to information about their records should contact the particular Corporation State Office, NCCC Regional Campus where the member was assigned or performed their service, and the AmeriCorps*Leaders Office at Corporation Headquarters, and provide name, social security number, and dates and location of where the member performed their service.

CONTESTING RECORD PROCEDURES:

A member wishing to amend his or her record may do so by addressing a request to the Corporation for National and Community Service, Office of the General Counsel, Attn: Corporation Privacy Act Officer, 1201 New York Avenue, NW, Washington, DC 20525.

RECORD SOURCES CATEGORIES:

The data is supplied by the member or through forms signed and executed by the member, or by Corporation personnel.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–5

SYSTEM NAME:

Employee and Applicant Records Files.

SYSTEM LOCATION:

Human Resources, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees; applicants; any individual involved in a grievance or grievance appeal or who has filed a complaint with the Department of Labor, Federal Labor Relations Council, Federal Mediation and Conciliation Service, or similar organization; and individuals considered for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The Staff Security Files contain investigative information regarding an individual's character, conduct, behavior in the community where he or she lives; loyalty to the U.S. Government; arrest and convictions for any violations against the law; reports or interviews with former supervisors, coworkers, associates, educators, etc., about qualifications of an individual for a specific position; reports of inquires with law enforcement agencies, former employers, educational institutions attended; and other similar information developed from the above.

(2) The Grievance, Appeal and Arbitration Files contain copies of petitions, complaints, charges, responses, rebuttals, evidentiary materials, briefs, affidavits, statements, records of hearings and decisions or findings of fact with respect thereto and incidental correspondence regarding complaints and appeals with respect to grievances and arbitration matters.

(3) The Employees Indebtedness Files contain records which are primarily correspondence regarding alleged indebtedness of Corporation employees, including employees' responses, the Corporation's response to the employee and/or creditor and administrative correspondence and records relating to agency assistance to the employee in resolving the indebtedness, if appropriate.

(4) The Employee Reemployment and Repromotion Priority Consideration Files list a person's name and the positions he or she was considered for, dates of consideration and a copy of the individual's latest Standard Form 171 and performance evaluation.

(5) The Performance Evaluation File consists of the annual evaluations of employee performance prepared by supervisors and reviewed by supervisory reviewing officials, together with comments, if any by the employee evaluated.

(6) The Management-Union Records System consists of automated data printouts showing an employee's name, grade, series, title, organizational entity and other data which determine inclusion or exclusion from the bargaining unit under the existing union contract. The record also contains a printout showing the amount of dues withheld from each employee who has authorized such withholding, and other related data.

(7) The Human Resources Management Information System is a computer based record which includes data relating to tenure, benefits eligibility, awards, etc., and other data needed by the Office of Human Resources and Corporation managers.

(8) The Personnel History Program contains a record of personnel actions made during employment, forwarding address, reason for leaving, social security number, date of birth, tenure, information regarding date and reason for termination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended; the National and Community Service Act of 1990, as amended; provisions of the Federal Personnel Manual; Executive Orders concerning management relations with employee organizations; Executive Order 10450; and various acts of Congress relating to personnel investigations authorizing the same by the Office of Personnel Management whose responsibility can, under Civil Service regulations and law, be delegated in whole or in part to agencies.

PURPOSE(S):

To provide an information system which documents and supports the Corporation's personnel management process including those categories listed above.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

As indicated below, the subsystems incorporate all or some of the published routine uses.

(1) Staff Security Files—in addition to our general routine uses may be disclosed to the Office of Personnel Management as part of the central personnel investigation records system.

(2) Grievance, Appeal and Arbitration Records and Files—in addition to our general routine uses may be disclosed and used: (a) To OPM; the Merit System Protection Board; and the Office of Special Counsel, Merit System Protection Board, on request in conjunction with any appeal or in conjunction with its official duties with regard to personnel matters and investigations regarding complaints of Federal employees and applicants; and (b) To designated hearing examiners, arbitrators and third-party appellate authorities involved in the hearing or appeal procedures.

(3) Employees Indebtedness Records and Files—may be released under our routine uses numbers 1, 2, and 3 except that under routine use number 1, records may be released only to an appropriate Federal agency and the records may also be referred to a court of law or any administrative board of hearing on matters related to probation and parole.

(4) Employee Reemployment and Repromotion Priority Consideration Records and Files—in addition to our general routine uses may be disclosed to: (a) OPM as part of the OPM personnel management evaluation system; and (b) to OPM for information concerning reemployment and repromotion rights.

(5) Performance Evaluation Files—in addition to our general routine uses may be disclosed to OPM in connection with any request for information or inquiry as to Federal personnel regulation.

(6) Management Union Records—in addition to the general routine uses may be disclosed to and used for: (a) The Corporation employees union for maintenance of its dues and inclusion in the bargaining unit; (b) the Treasury Department for preparation of payroll checks with appropriate withholding of dues; and (c) OPM for reports of management/labor relations.

(7) Human Resources Management Information System—used by Corporation officials for day-to-day work information; statistical reports without personal identifiers and for in-house reports relating to management. Information contained in this record is reflected in the individual's official personnel folder.

(8) Personnel History Program—is used by the Human Resources staff to verify service and for day-to-day information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, floppy disks, lists or loose-leaf binders, and are stored in metal file cabinets with a lock or in secured rooms with access limited to those employees whose duties require access. Where data is obtained via computer, controlled access is maintained through computer security control procedures.

RETRIEVABILITY:

Records are indexed by name, social security number or employee number.

SAFEGUARDS:

Records are generally available to Corporation employees having a need for such records in the performance of their duties. Generally, the Security Files are available only to office heads or security personnel.

RETENTION AND DISPOSAL:

After termination, death or retirement or consideration of an applicant, the Staff Security Files are kept in the security office three (3) years and then retired to a Federal Records Center for twenty-seven (27) years and then destroyed. The Grievances, Appeals and Arbitration Files are retained indefinitely in Human Resources. The Employee Indebtedness Files are destroyed on a bi-annual basis or when the problem is resolved. The Employee Reemployment and Repromotion Priority Consideration Files are retained according to length of reemployment or repromotion eligibility. The Performance Evaluation Files are retained one year or until superseded. The Human Resources Management Information System records and the Personnel Program data are kept indefinitely in the Office of Human Resources. The Management-Union Lists are retained until superseded by a corrected or updated list.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Notification paragraph in the Preliminary Statement.

CONTESTING RECORD SOURCE CATEGORIES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

From the individual; the official personnel folder; statistical and other information developed by Human Resource staff, such as enter on duty date and within grade increase due dates; agency supervisors and reviewing officials; individual employee fiscal and payroll records; alleged creditors of employees; witnesses to occurrences giving rise to a grievance, appeal or other action; hearing records and affidavits and other documents used or usable in connection with grievance, appeal and arbitration hearings. Information contained in the Staff Security files is obtained from: (a) Applications and other personnel and security forms furnished by the individual; (b) investigative material furnished by other Federal agencies; (c) personal investigation or written inquiry from associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, and other sources as may be developed from the above; and (d) the individual.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION-6

SYSTEM NAME:

Employee/Member Occupational Injury/Illness Reports and Claim Files.

SYSTEM LOCATION:

Human Resources, Corporation for National and Community Service, 1201

New York Avenue, NW, Washington, DC, 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporation staff and full-time volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of work related injuries and illnesses and claims for workers' compensation submitted to Department of Labor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act & Occupational Safety and Health Administration Act.

PURPOSE(S):

To maintain injury/illness reports data and to track workers' compensation claims on behalf of Corporation staff and full-time members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine annual work related injury/illness data re: Corporation staff, and to identify trends if possible. To prepare and submit workers' compensation claims. Also, generally, see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets.

RETRIEVABILITY:

Records are maintained by name in alphabetical sequence.

SAFEGUARDS:

Records are available only to claimants and Corporation staff who demonstrate a need to know.

RETENTION AND DISPOSAL:

Official files are kept seven (7) years following year of occurrence. Disposal of records is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

OWCP Liaison Officer, Human Resources, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

NOTIFICATION PROCEDURE:

Claimant writes request for data to the address listed above.

RECORD ACCESS PROCEDURES:

Requester should give OWCP claim number, but it is not mandatory. Data requests may be requested in the name of injured employee/volunteer.

CONTESTING RECORD PROCEDURES:

Claimant or injured employee/member may submit any data deemed relevant to the case to address listed.

RECORD SOURCE CATEGORIES:

Individual who suffers work related injury/illness submits any pertinent data necessary; medical reports, witness statements, time and attendance records, medical bills, legal briefs.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION-7

SYSTEM NAME:

Travel Files.

SYSTEM LOCATION:

Office of Administrative and Management Services, Travel Unit, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Corporation Staff, Consultants, Invitational Travelers, and Relocated Staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' records and special event records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended, and the National Community Service Act of 1990, as amended.

PURPOSE(S):

To maintain travel files on all persons traveling on official Corporation business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in individual folders in a locked metal file cabinet when not in immediate use.

RETRIEVABILITY:

Individual's name in alphabetical order and Travel Authorization number.

SAFEGUARDS:

Access only to appropriate personnel and Corporation officials. The metal travel file cabinet is locked when not in use.

RETENTION AND DISPOSAL:

Retention three (3) years. Disposal of records is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Travel Analyst, Office of Administrative and Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

Send to address listed.

RECORD ACCESS PROCEDURES:

Travel Analyst, Office of Administrative and Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

CONTESTING RECORD PROCEDURES:

Send to address listed.

RECORD SOURCE CATEGORIES:

Submitted by Corporation employees etc.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION-8

SYSTEM NAME:

AmeriCorps Member Individual Accounts.

SYSTEM LOCATION:

Corporation for National and Community Service, National Service Trust Operations, 1201 New York Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has served or is serving as a member or other full-time, stipended member under a Corporation program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained contain information extracted from the application, information about the period of service, and information about the member's service history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended, and the National and Community Service Act of 1990, as amended.

PURPOSE(S):

The system of records was established to maintain service histories on all current and former and other full-time stipend volunteers serving in the Corporation programs and earning an education award.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, disks, electronic image, hard copy, and are kept in a locked room when not in use.

RETRIEVABILITY:

Records are retrieved by social security number.

SAFEGUARDS:

The material on tapes and disks is generally available only to the Corporation's OIT and Accounting staff, and is so coded as to be unavailable to anyone else. Hard copy records are available only to Corporation staff with a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

These records are maintained for a period of (7) seven years from date the volunteer earns an education award and then forwarded to the Federal Records Center for (3) three years. Electronically imaged documents will be maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Service Trust Operations, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

Persons wishing to determine if this system contains their records should contact the Corporation for National and Community Service, Director, National Service Trust Operations, 1201 New York Avenue, NW., Washington, DC 20525, and provide name, social security number, and dates of volunteer service.

RECORDS ACCESS PROCEDURES

Persons wishing access to information about their records should contact the Corporation for National and Community Services, Director, National Service Trust Operations, 1201 New York Avenue, NW., Washington, DC 20525.

CONTESTING RECORD PROCEDURES:

A person wishing to amend his or her record may do so by addressing such request to the Corporation for National and Community Service, Office of the General Counsel, Attn: Corporation Privacy Act Officer, 1201 New York Avenue, NW., Washington, DC 20525.

RECORD SOURCE CATEGORIES:

The data is obtained from enrollment and exit forms.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION-9

SYSTEM NAME:

Counselors' Report Files.

SYSTEM LOCATION:

Equal Opportunity Office, Corporation for National and Community Service, 1201 New York, Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee or applicant for employment, service member, or applicant or trainee for volunteer or service status, or employee of a grantee who has contacted or requested a Corporation Equal Opportunity Counselor for counseling but has not filed a formal discrimination complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Counselors' Reports, Privacy Act notice, confidentiality agreement, notice to members of collective bargaining agreement, notice of final interview, notes and correspondence, and copies of personnel records or other documents relevant to the matter presented to the Counselor, and any other records relating to the counseling instance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles VI and VII of the Civil Rights Act of 1964, as amended; Age Discrimination in Employment Act, as amended; Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; Domestic Volunteer Service Act of 1973, as amended; National and Community Service Act of 1990, as amended; and the Age Discrimination Act, as amended.

PURPOSE(S):

To enable Equal Opportunity Counselors to look into matters brought to their attention, provide counseling, attempt to resolve the matter, and document actions taken.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Referral or disclosure: (a) To a Federal, state, or local agency charged with the responsibility of investigating, enforcing, or implementing the statute, rule, regulation, or order; (b) to an investigator, Counselor, grantee or other recipient of Federal financial assistance, or hearing officer or arbitrator charged with the above responsibilities; (c) any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (d) such other referrals as may be necessary to carry out the enforcement and implementation of the statutes, rules, regulations, or orders.

2. Disclosure to the Congressional committees having legislative jurisdiction over the program involved, including when actions are proposed to be undertaken by suspending or terminating or refusing to grant or to continue Federal financial assistance for violation of the statutes, rules, regulations, or orders for recipients of Federal financial assistance from the Corporation.

3. Disclosure to any source, either private or governmental, to the extent necessary to secure from source information relevant to, and sought in furtherance of, a legitimate investigation or EO counseling matter.

4. Disclosure to a contractor, grantee or other recipient of Federal financial assistance, when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interests.

5. Disclosure to any party pursuant to the receipt of a valid subpoena.

6. Disclosure during the course of presenting evidence to a court magistrate or administrative tribunal of appropriate jurisdiction and such disclosure may include disclosure to opposing counsel in the course of settlement negotiations.

7. Disclosure to a member of Congress submitting a request involving an individual who is a constituent of such member who has requested assistance from the member with respect to the subject matter of the record.

8. Information in any system of records may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

9. Information in any system of records to be disclosed to a

Congressional office, in response to an inquiry from any such office, made at the request of the individual to whom the record pertains.

10. A record from any system of records may be disclosed as a routine use of the National Archives and Records Administration, in records management inspection conducted under authority of 44 U.S.C. 209 and 290.

11. Referral to Federal, state, local and professional licensing authorities when the record to be released reflects on the moral, educational, or vocational qualifications of an individual seeking to be licensed.

12. Disclosure to the Office of Government Ethics (OGE) for any purpose consistent with OGE's mission, including the compilation of statistical data.

13. Disclosure to the Department of Justice in order to obtain the Department's advice regarding Corporation's disclosure obligations under the Freedom of Information Act.

14. Disclosure of the Office of Management and Budget (OMB) or the Equal Employment Opportunity Commission (EEOC) in order to obtain OMB's advice regarding Corporation's obligations under the Privacy Act.

Note: The Agency-wide statement of general routine uses does not apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders or computer diskettes and locked in metal file cabinets when not in immediate use.

RETRIEVABILITY:

Retrievability is by the name of the person who contacted the Counselor.

SAFEGUARDS:

Records in the system are available only to appropriate personnel in the Office of Equal Opportunity and other designated officials of the Corporation with a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Two (2) years after completion of counseling, the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Equal Opportunity, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

NOTIFICATION PROCEDURE:

Request by individuals on whether a record is maintained about himself or herself should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Request for access to these records should be addressed to the System Manager.

CONTESTING RECORD PROCEDURES:

Contest to information included in these records should be addressed to the System Manager.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from the following categories of sources: (1) Aggrieved persons, witnesses, etc., in counseling matters; (2) Counselors' Reports; (3) Copies of documents relevant to any counseling matter; and (4) Correspondence.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–10

SYSTEM NAME:

Discrimination Complaint Files.

SYSTEM LOCATION:

Equal Opportunity Office, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee or applicant for employment, AmeriCorps member or applicant or trainee for volunteer or service status, or employee of a grantee, or program beneficiary who has filed a formal complaint with or against the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal complaints, Reports of Investigation, Counseling documents, case decisions, and relevant correspondence, including settlement agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles VI and VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act, as amended; the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; the Domestic Volunteer Service Act of 1973, as amended; the National and Community Service Act of 1990, as amended; and the Age Discrimination Act, as amended.

PURPOSE(S):

To enable the Corporation to investigate and adjudicate complaints of discrimination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Referral or disclosure: (a) To a Federal, state, or local agency charged with the responsibility of investigating, enforcing, or implementing the statute, rule, regulation, or order; (b) to an investigator, counselor, grantee or other recipient of Federal financial assistance or hearing officer or arbitrator charged with the above responsibilities; (c) any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (d) such other referrals as may be necessary to carry out the enforcement and implementation of the statutes, rules, regulations, or orders.

2. Disclosure to the Congressional committees having legislative oversight over the program involved, including when actions are proposed to be undertaken by suspending or terminating or refusing to grant or to continue Federal financial assistance for violation of the statutes, rules, regulations, or orders for recipients of Federal financial assistance from the Corporation.

3. Disclosure to any source, either private or governmental, to the extent necessary to secure from source information relevant to, and sought in furtherance of, a legitimate investigation or EO counseling matter.

4. Disclosure to a contractor, grantee or other recipient of Federal financial assistance, when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interests.

5. Disclosure to any party pursuant to the receipt of a valid subpoena.

6. Disclosure during the course of presenting evidence to a court, magistrate or administrative tribunal of appropriate jurisdiction and such disclosure may include disclosures to opposing counsel in the course settlement negotiations.

7. Disclosure to a member of Congress submitting a request involving an individual who has requested assistance from the member with respect to the subject matter of the record.

8. Information in any system of records may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to

respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

9. A record from any system of records may be disclosed as a routine use of the National Archives and Records Administration, in records management inspections conducted under authority of 44 U.S.C. 2094 and 2906.

10. Referral to Federal, state, local and professional licensing authorities when the record to be released reflects on the moral, educational, or vocational qualifications of an individual seeking to be licensed.

11. Disclosure to the Office of Government Ethics (OGE) for any purpose consistent with OGE's mission, including the compilation of statistical data.

12. Disclosure to the Department of Justice in order to obtain the Department's advice regarding the Corporation's disclosure obligations under the Freedom of Information Act.

13. Disclosure to the Office of Management and Budget (OMB) or the Equal Employment Opportunity Commission (EEOC) in order to obtain OMB's advice regarding the Corporation's obligations under the Privacy Act.

Note: The Agency-wide statement of general routine uses does not apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders or on computer diskettes which are locked in metal file cabinets when not in immediate use.

RETRIEVABILITY:

Files are retrieved by the complainant's name.

SAFEGUARDS:

Records in the system of records are available only to appropriate personnel in Equal Opportunity and other designated officials of the Corporation with a need of such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed four (4) years after the close of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Equal Opportunity, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

Request by individuals on whether a record is maintained about himself or herself should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Request for access to these records should be sent to the System Manager.

CONTESTING RECORD PROCEDURES:

Contest of information included in these records should be sent to the System Manger.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from the following categories of sources: (1) Complainants, witnesses, etc., in discrimination complaints; (2) Reports of investigations and Counselors' Reports; (3) Copies of documents relevant to any EO investigation; (4) Records of hearings on complaint; and (5) Correspondence.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–11

SYSTEM NAME:

Employee Pay and Leave Record Files.

SYSTEM LOCATION:

Human Resources, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporation employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions; employing, promoting and terminating employees; savings bond applications; advises of allotments; IRS tax withholdings, applications, and records regarding collections for overpayments; and time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual; 31 U.S.C. 66(a); and the Budget and Accounting Procedures Act of 1950, as amended.

PURPOSE(S):

To provide a system whereby Corporation employees can track payroll and leave information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records is routinely provided: (1) To the U.S. Department of Treasury for payroll and savings bonds and other deduction purposes; (2) to the Internal Revenue Service with regard to tax deductions; and (3) to participating insurance companies holding policies with respect to employees of the Corporation. Also, see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets. The individual Time and Attendance records maintained by designated timekeepers throughout the agency are also stored in locked metal file cabinets.

RETRIEVABILITY:

Records are by name in alphabetical order.

SAFEGUARDS:

Records in the system are available only to employees of the Corporation with a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records in the system are maintained for three (3) years after the end of the fiscal year in which an employee terminates employment with the Corporation and then retired to the nearest Federal Records Center in accordance with General Accounting Office instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Payroll Supervisor, Corporation for National and Community Service, Human Resources, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

RECORD SOURCE CATEGORIES:

Corporation employee to whom the record pertains.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–12

SYSTEM NAME:

Freedom of Information Act and Privacy Act Request Files.

SYSTEM LOCATION:

Office of the General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have submitted Freedom of Information Act and/or Privacy Act requests to the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal requests (FOIA/PA), research data, written decisions, and relevant correspondence, including final responses to the requesters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Freedom of Information Act of 1966, as amended, and the Privacy Act of 1974, as amended.

PURPOSE(S):

To maintain files of FOIA/Privacy Act requests and the Corporation's responses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets. Computerized files are maintained on the Corporation FOIA/PA Officer's computer.

RETRIEVABILITY:

Records are indexed by number and by year.

SAFEGUARDS:

Records in the system are available only to the Corporation FOIA/Privacy Act Officer or those officials authorized by the General Counsel with a need of such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records concerning requests and appeals are destroyed three (3) years after initial request.

SYSTEM MANAGER(S) AND ADDRESSES:

Corporation FOIA/Privacy Act Officer, Corporation for National and Community Service, Office of the General Counsel, 1201 New York Avenue, NW, Washington, DC 20525.

NOTIFICATION PROCEDURE:

See Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURES:

See Access and Consent paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See Access and Contest paragraph in the Preliminary Statement.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals engaging in official FOIA/Privacy Act requests as well as from responses issued by officials of the Corporation.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–13

SYSTEM NAME:

Legal Office Litigation/ Correspondence Files.

SYSTEM LOCATION:

Office of the General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation which requires General Counsel action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements; affidavits/declarations; investigatory and administrative reports; personnel, financial, medical and business records; discovery and discovery responses; motions; orders, rulings; letters; messages; forms; reports; surveys; audits; summons; English translations of foreign documents; photographs; legal opinions; subpoenas; pleadings; memos; related correspondence; briefs; petitions; court records involving litigation; and related matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained under general authority of the Office of the General Counsel to represent the Corporation in connection with its dealings with its employees, and the general functions of the Office of the General Counsel to provide advice and counsel to the Chief Executive Officer of the Corporation and his or her staff.

PURPOSE(S):

To maintain files relating to litigation matters involving the Corporation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To prepare correspondence and materials for litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets. Computerized files are maintained on employee computers.

RETRIEVABILITY:

Name of individual and the year litigation commenced.

SAFEGUARDS:

Records are available only to employees assigned to the General Counsel Office or those officials authorized by the General Counsel with a need of such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records will be maintained in the Office of the General Counsel for one (1) year after case closure. Records will then be sent to the Federal Records Center where they will be destroyed after ten (10) years.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

NOTIFICATION PROCEDURE:

Employees wishing to determine if this system contains records relating to them should contact the Corporation for National and Community Service, General Counsel Office, 1201 New York Avenue, NW, Washington, DC 20525.

RECORD ACCESS PROCEDURES:

Litigation files are not subject to access. Other files may be accessed in accordance with agency-wide regulations.

CONTESTING RECORD PROCEDURES:

Contest of information included in these records should be sent to the System Manager.

RECORD SOURCE CATEGORIES:

Data is obtained from the following categories of sources: (1) Corporation employees; (2) Correspondence and reports from persons and agencies dealing with the agency and its employees; (3) Work product and research by lawyers of the office; and (4) Court records.

EXEMPTION CLAIMED FOR THE SYSTEM:

Any information compiled in reasonable anticipation of a civil action or proceeding. 5 U.S.C. 552a(d)(5).

CORPORATION–14

SYSTEM NAME:

Merit Promotion Plan Files.

SYSTEM LOCATION:

Human Resources, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain copies of applications for employment (SF–612 or resumes) submitted by applicants and other background information regarding qualifications of the applicant for positions in the Corporation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended, and the National Community Service Act of 1990, as amended.

PURPOSE(S):

To provide documentation necessary to support the Corporation's merit selection process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: (1) To Human Resources with regard to any question of eligibility, suitability or qualifications of an applicant for employment; and (2) to any source which requests information in the course of an inquiry as to the qualifications of an applicant to the extent necessary to identify the individual, inform the source of the nature and purpose of the inquiry, and to identify the type of information requested. Also, see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets.

RETRIEVABILITY:

Records are indexed in order of vacancy announcement number.

SAFEGUARDS:

Records are generally available only to Corporation employees with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed when applications are two (2) years old. Applications which resulted in appointment are filed in the Official Personnel Folder and are subsequently retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD CATEGORIES:

Same as Record Access Procedures category.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the following categories of sources: Applications and other personnel forms furnished by the individual; oral or written inquires from sources disclosed by the applicant, such as, employers, schools, references, etc.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–15

SYSTEM NAME:

Office of the Inspector General Investigative Files.

SYSTEM LOCATION:

Office of the Inspector General, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects, complainants, and witnesses of investigations, complaints, or other matters, including (but not necessarily limited to) former and present Corporation employees; former and present Corporation grant recipients, applicants, consultants, contractors and subcontractors and their employees; and other parties doing business or proposing to conduct business with the Corporation or its recipients, contractors and subcontractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

All correspondence relevant to the investigation; all internal staff memoranda; information provided by subjects, witnesses, and governmental investigatory or law enforcement organizations; copies of all subpoenas issued during the investigation; affidavits, statements from witnesses, memoranda of interviews, transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; working papers of the staff, investigative notes, and other documents and records relating to the investigation; information about criminal, civil, or administrative referrals; and opening reports, progress reports, and closing reports, with recommendations for corrective action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. app. 3.

PURPOSE(S):

To maintain files of investigative and reporting activities carried out by the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Referral to Federal, state, local and foreign investigative or prospective authorities. A record in the system of records, which indicates either by itself or in combination with other information within the Corporation's possession, a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate Federal, foreign, state or local agency or professional organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statue or rule, regulation or order issued pursuant thereto.

2. Disclosure to a Federal or state grand jury agent pursuant to a Federal or state grand jury subpoena or prosecution request that such record be released for the purpose of its introduction to a grand jury.

3. Referral to suspension/debarment authorities, internal to the Corporation, when the record released is germane to a determination of the propriety of, or necessity for, a suspension or debarment action.

4. Referral to Federal, state, local and professional licensing authorities when the record to be released reflects on the moral, educational, or vocational

qualifications of an individual holding a license or seeking to be licensed.

5. Disclosure to a contractor, grantee, or subgrantee or other recipient of Federal funds, when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interest.

6. Disclosure to a contractor, grantee, or subgrantee or other recipient of Federal funds, when the recipient has incurred an indebtedness to the Government through its receipt of Government funds, and release of the record is for the purpose of allowing the debtor to effect a collection against a third party.

7. Disclosure to any source, either private or governmental, to the extent necessary to secure from such source information relevant to, and sought in furtherance of, a legitimate investigation or audit.

8. Disclosure to a domestic, foreign or international governmental agency considering personnel or other internal actions, such as assignment, hiring, promotion, or retention of an individual, issuance of a security clearance, reporting an investigation of an individual, award or other benefit, to the extent that the information is relevant to such agency's decision on the matter.

9. Disclosure to the Office of Government Ethics (OGE) for any purpose consistent with OGE's mission, including the compilation of statistical data, or the mission of the OIG.

10. Disclosure to a Board of Contract Appeals, the General Accounting Office or other tribunal hearing a bid protest involving a Corporation or OIG procurement.

11. Disclosure to a domestic, foreign or international government law enforcement agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, in order that the OIG may obtain information relevant to a decision concerning the assignment, hiring, promotion, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

12. Disclosure to the Department of Justice in order to obtain the Department's advice regarding OIG's obligations under the Freedom of Information Act.

13. Disclosure to the Office of Management and Budget (OMB) in order to obtain OMB's advice regarding OIG's obligations under the Privacy Act.

14. Disclosure to a member of Congress making a request at the behest of a party protected under the Privacy Act, when the member of Congress informs the appropriate official that the individual to whom the record pertains has authorized the member of Congress to have access.

15. Disclosure to any Federal agency pursuant to the receipt of a valid subpoena.

16. Disclosure to the U.S. Department of the Treasury or the U.S. Department of Justice when the Corporation or the OIG is seeking to obtain taxpayer information from the Internal Revenue Service.

17. Disclosure to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3713).

18. Disclosure to a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)), in order to obtain information in the course of an investigation or audit.

19. Disclosure to Corporation or OIG counsel, an administrative hearing tribunal, or counsel to the adverse party, in Program Fraud Civil Remedies Act or other litigation.

20. Disclosure to a Federal, State, or local agency for use in computer matching programs to prevent and detect fraud and abuse in benefit or other programs, to support civil and criminal law enforcement activities of those agencies and their components, and to collect debts and overpayments owed to those agencies and their components.

21. Disclosure to any court, magistrate or administrative authority during the course of any litigation or settlement negotiations in which the Corporation is a party or has an interest. A record in the system of records may be disclosed in a proceeding before a court or adjudicative body before which the Corporation or the OIG is authorized to appear, or in the course of settlement negotiations involving—

(1) OIG, the Corporation, or any component thereof;

(2) Any employee of the OIG or the Corporation in his or her official capacity;

(3) Any employee of the Corporation in his or her individual capacity, where the Government has agreed to represent the employee; or

(4) The United States, where the OIG determines that the litigation is likely to affect the OIG or the Corporation or any of its components.

22. Disclosure to OIG's or the Corporation's legal representative, including the U.S. Department of Justice and other outside legal counsel, when the OIG or the Corporation is a party in actual or anticipated litigation or has an interest in such litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of the Inspector General Investigative Files consist of paper records maintained in folders and an automated data base maintained on computer diskettes. The folders and diskettes are stored in locked metal file cabinets. The file cabinets are located in the Office of the Inspector General.

RETRIEVABILITY:

The records are retrieved by a unique control number assigned to each investigation.

SAFEGUARD:

Records in the system are available only to those persons whose duties require such access. The records are kept in limited access areas during duty hours and in locked file cabinets in a locked office at all other times.

RETENTION AND DISPOSAL:

Records will be held in the office pursuant to General Records Schedule 22, June 1988, and will be destroyed by shredding or burning when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of the Inspector General, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC, 20525.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains a record pertaining to the requesting individual, the individual should write to the System Manager furnishing his or her name, address, telephone number, and social security number.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this system of records should write to the System Manager, setting forth the basis for which the individual believes the record is incomplete, irrelevant, incorrect or untimely.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from: Corporation staff and official Corporation records; current and former employees, contractors, grantees and their employees; subgrantees and their employees; AmeriCorps members or former members in Corporation-funded programs; and non-Corporation persons. Individuals to be interviewed and records to be examined are selected based on the nature of the allegations being investigated.

EXEMPTION CLAIMED FOR THE SYSTEM:

The Office of Inspector General published exemptions under 5 U.S.C. 552a(j) and (k).

CORPORATION–16

SYSTEM NAME:

Travel Authorization Files.

SYSTEM LOCATION:

Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporation employees or any other person invited to travel at the expense of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of travel authorizations, vouchers, receipts, payment records, and other materials related to official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended; the National and Community Service Act of 1990, as amended, and the Budget and Accounting Procedures Act of 1950, as amended.

PURPOSE(S):

To record and manage the payment of expenses for official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal file cabinets. records are indexed alphabetically by name.

SAFEGUARDS:

Records are available only to staff in the Office of Accounting and Financial Management Services, and other appropriate Corporation officials with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system about an individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals engaging in official travel as well as documents issued by the Corporation officials involved with authorizing and managing travel.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–17

SYSTEM NAME:

Momentum Financials Vendor Files.

SYSTEM LOCATION:

Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals with whom the Corporation does business.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data recorded includes the name and address of the entity doing business with the Corporation, ABA routing number, financial institution name and address, depositor account number and the taxpayer identification number; *e.g.*, the SSN of an individual and the TIN of an organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended; the National and Community Service Act of 1990, as amended, and the Budget and Accounting Procedures Act of 1950, as amended.

PURPOSE(S):

To maintain a single registry of entities with which the agency does business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data is shared with the Department of Health and Human Services in the servicing of Corporation grant recipients; data may be disclosed to the U.S. Department of Justice, the U.S. Department of Treasury or the General Accounting Office in connection with debt servicing activities or to the Internal Revenue Service in the reporting of disbursements as required by the Internal Revenue Code. Also, *see* General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored on magnetic media in a computer system with access controlled by a security system that requires passwords and identification of each user.

RETRIEVABILITY:

Data can be retrieved from the system electronically by name or TIN.

SAFEGUARDS:

Access to data stored on magnetic media is controlled by a security system that requires password and identification of each user.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system of records about an

individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by the Corporation officials involved with managing funds.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–18

SYSTEM NAME:

AmeriCorps*VISTA Volunteer Management System Files.

SYSTEM LOCATION:

Office of Accounting and Financial Management Services, AmeriCorps*VISTA Payroll Office, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former AmeriCorps*VISTA members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, address, social security number, data concerning the individual's sex, marital status, skills, service as an AmeriCorps*VISTA member, including dates served and projects served, amounts paid to the member while serving, amounts overpaid, and repayment records of such overpayment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service of 1973, as amended, and the Budget and Accounting Procedures Act of 1950, as amended.

PURPOSE(S):

To record payments and allowances to AmeriCorps*VISTA members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement. Information is also disclosed to the Social Security Administration and the Internal Revenue Service about the funds paid to comply with legal requirements that enable these agencies to perform their functions. Data from the system is also disclosed to the Financial Management Service of the U.S. Department of the Treasury to enable payments to be made.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual data is stored alphabetically in locked filing cabinets that are kept in a room that is only used for storing such materials. That room is kept locked except when employees who work with the AmeriCorps*VISTA member payroll system are using the data. Access by all other individuals is not allowed. Data is also stored on magnetic media in a computer system with access controlled by a security system that requires passwords and identification of each user.

RETRIEVABILITY:

Data can be retrieved by individual name for manual records or by social security number for automated records.

SAFEGUARDS:

The storage room is kept locked except when employees who work with the AmeriCorps*VISTA member payroll system are using the data. Access by all other individuals is not allowed. Access to data stored on magnetic media is controlled by a security system that requires passwords and identification of each user.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND

Director, Office of Accounting and Financial Management Services, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system of records about an individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedure.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by Corporation officials involved with managing funds.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

Dated: July 25, 2000.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 00–19390 Filed 7–31–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4 p.m., September 8, 2000.

PLACE: The United States Air Force Academy, Colorado Springs, Colorado.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—May 19, 2000

(2) Faculty Matters

(3) Departmental Reports

(4) Financial Report

(5) Report—President, USUHS

(6) Report—Dean, School of Medicine

(7) Report—Dean, Graduate School of Nursing

(8) Comments—Chairman, Board of Regents

(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: July 26, 2000.

C.M. Robinson,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19437 Filed 7–27–00; 4:35 pm]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the meeting on September 15, 2000 beginning at 9:00 a.m. at the U.S. Department of Education, in the 8th Floor Conference Center, 1990 K Street, N.W., Washington, D.C. 20006.

What Access Does the Conference Center Provide for Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

What Are the Functions of the Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended by Public Law 105–244. The Committee's responsibilities are to (1) evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Are the Issues To Be Considered At This Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. Beginning August 18, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

Who Is the Contact Person for the Meeting?

Please contact Bonnie LeBold, who is the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, 7th Floor—Rm. 7007, 1990 K St. N.W., Washington, D.C. 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: Bonnie_LeBold@ed.gov. Individuals who use telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–19338 Filed 7–31–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted renewals for an additional three years for the information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Each entry contains the following information: (1) The collection number and title; (2) a summary of the collection of information, type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed on or before October 2, 2000. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, D.C. 20503. (Comments should also be addressed to the Office of Information, Records and Resource Management at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Peter J. Grahn, Jr., Office of Information, Records and Resource Management (SO–31), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0670. Mr. Grahn may be contacted by telephone at (301) 903–4653, FAX at (301) 903–6223, or e-mail at Peter.Grahn@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

The information collections submitted to OMB for review were:

1. *Current OMB No.:* 1910–0400. *Package Title:* Financial Assistance. *Summary:* A three-year extension is requested, which includes both mandatory and response to obtain or retain benefits. *Purpose:* This information is required by the Department to manage all phases of the process of awarding, administering and closing out financial assistance awards. The package contains 58 information and/or recordkeeping requirements. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses: 66,705. Estimated Total Burden Hours:* 664,673.

2. *Current OMB No.:* 1910–1000. *Package Title:* Personal Property. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This provides the Department with the information necessary for the management, control, reutilization, and disposal of government personal property. The package contains 29 information and/or recordkeeping requirements. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of*

Responses: 3,857. *Estimated Total Burden Hours:* 247,374.

3. *Current OMB No.:* 1910–1800. *Package Title:* Safeguards and Security. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department for guard service contracts, security classified records, facility security, nuclear facility safety, and nuclear facility security. The package contains 27 information and/or recordkeeping requirements. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 86,596. *Estimated Total Burden Hours:* 612,985.

Statutory Authority: Sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., July 20, 2000.

Peter J. Grahn, Jr.,

Director, Office of Records and Resource, Management.

[FR Doc. 00–19354 Filed 7–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office—Sandia National Lab

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Kirtland Area Office-Sandia National Lab. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, August 16, 2000 5:30 p.m.–9 p.m. (MST)

ADDRESSES: Thomas Bell Community Center, 3001 University Boulevard, SE, Albuquerque, NM 87106, (505) 768–3499.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy, Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, Phone (505) 845–4094, Fax (505) 845–6867.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 pm—Check in/Minutes/Agenda
5:45—DOE Quarterly Meeting
6:15—Mixed Waste Landfill Proposed Recommendations from Ad Hoc Committee
7:15—Break
7:30—Public Comment Period
7:45—Transition into Long-Term Stewardship Community Resources Presentation (Questions and Answers)
8:30—Report of meeting with Congressional Delegation
8:40—Task Group Reports
8:50—End of Meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing or calling Mike Zamorski, Acting Manager, Department of Energy, Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on July 31, 2000.

Carol A. Kennedy,

Acting Advisory Committee Management Officer.

[FR Doc. 00–19353 Filed 7–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. FE C&E 00–14; Certification Notice—168]

Office of Fossil Energy; Notice of Filing of Coal Capability of Freestone Power Generation, L.P. Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Freestone Power Generation, L.P. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant have filed a self-certification in acccordance with section 201(d).

Owner: Freestone Power Generation, L.P. (C&E 00–14).

Operator: Freestone Power Generation, L.P.

Location: Fairfield, Texas.

Plant Configuration: Combined-cycle.

Capacity: 1,030 MW.

Fuel: Natural gas.

Purchasing Entities: Not yet determined.

In-Service Date: April 1, 2002.

Issued in Washington, D.C., July 25, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–19355 Filed 7–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–168–B]

Application to Export Electric Energy; PG&E Energy Trading-Power, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: PG&E Energy Trading-Power, L.P. ("PGET-Power") has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 31, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized PGET-Power to transmit electric energy from the United States to Canada using the international transmission facilities of Detroit Edison, Minnesota Power, Niagara Mohawk and New York Power Authority. On August 25, 1998, in Order EA–168–A, DOE amended PGET-Power's electricity export authorization to add the remaining major transmission interconnections with Canada. That two year order will expire on August 25, 2000. On July 6, 2000, PEGET-Power filed an application with FE for renewal of its export authority and requested that authorization be issued for two years.

PGET-Power, is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised electric service territory in the United States. PGET-Power will purchase the electric energy to be exported at wholesale from electric utilities and Federal Power Marketing Administrations in the United States.

PGET-Power proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by PGET-Power, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PGET-Power application to export electric energy to Canada should be clearly marked with Docket EA–168–B. Additional copies are to be filed directly with Sanford L. Hartman, Assistant General Counsel, PG&E Energy Trading-Power, L.P., 7500 Old Georgetown Road, Suite 1300; Bethesda, MD 20814–6161 and Ms. Sarah Barpoulis, Senior Vice President, PG&E Energy Trading-Power, L.P., 7500 Old Georgetown Road, Suite 1300, Bethesda, MD 20814–6161.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–168. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–168 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on July 25, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–19356 Filed 7–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–416–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

July 26, 2000.

Take notice that on July 21, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective August 1, 2000:

First Revised Sheet No. 39A
Seventh Revised Sheet No. 40
Third Revised Sheet No. 40B
Fifth Revised Sheet No. 41
Fourth Revised Sheet No. 45

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Order Nos. 637 and 637–A issued on February 9, 2000 and May 19, 2000, respectively, in Docket Nos. RM98–10 and RM98–12, et al 90 FERC ¶61,109 (2000); 91 FERC ¶61,169 (2000). Among other things, Order Nos. 637 and 637–A waived the rate ceiling for short-term capacity release transactions and limited the availability of the Right of First Refusal to contracts at the maximum tariff rate having a term of twelve consecutive months or longer or, for services not available for 12 consecutive months, for a term of more than one year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–19321 Filed 7–31–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–415–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 26, 2000.

Take notice that on July 21, 2000, Kern River Gas Transmission Company (Kern River) tendered a non-conforming service agreement and the following tariff sheets for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 20, 2000.

First Revised Sheet No. 2
Sheet Nos. 423–489 (Reserved)
Original Sheet No. 490
Sheet Nos. 491–499 (Reserved)
First Revised Sheet No. 911

Kern River states that the purpose of this filing is to submit a Rate Schedule KRF–1 transportation service agreement between Southwest Gas Corporation and Kern River that does not conform to Kern River's Rate Schedule KRF–1, and to reference this agreement in Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–08–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–19320 Filed 7–28–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–53–023]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Refund Report

July 26, 2000.

Take notice that on May 18, 2000, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing its refund report in the above-referenced docket pursuant to the Commission's Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds for Kansas Ad Valorem Taxes dated September 10, 1997 (September 10, 1997 Order).

KMIGT states that the refund report summarizes the amounts received from producers or royalty owners by KMIGT through April 30, 2000, for Kansas ad valorem tax overpayments for the period October 4, 1983, through June 28, 1988. KMIGT states that the refund report also shows how KMIGT distributed these refunds to its former FERC-jurisdictional customers. In instances where payment has not been made within 30 days of receipt from producers, appropriate interest has been computed as provided for in the Order.

KMIGT states that copies of KMIGT's filing have been served on KMIGT's former FERC-jurisdictional customers, interested state commissions, and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 2, 2000. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–19318 Filed 7–31–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN00–1–001]

Kinder Morgan Interstate Gas Transmission LLC, et al; Notice of Filing of Refund Report

July 26, 2000.

Take notice that on June 26, 2000, Kinder Morgan Interstate Gas Transmission LLC, *et al.* (Kinder Morgan Interstate, *et al.*), filed a refund report pursuant to a stipulation and consent agreement approved by the Commission's March 29, 2000 order in Docket No. IN00–1–000.

Kinder Morgan Interstate, *et al.*, states that the refund report indicates that the refunds, inclusive of interest, were sent to shippers on May 26, 2000. The refund report details the shippers receiving the refunds and the amount of the refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 7, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–19315 Filed 7–31–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–12–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 26, 2000.

Take notice that on July 20, 2000, Mid Louisiana Gas Company (MIDLA) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Sixth Revised Sheet No. 130
Ninth Revised Sheet No. 131
Second Revised Sheet No. 132

MIDLA states that the primary purpose of the filing Revised Tariff sheets is to update its tariff to reflect recent changes in shared personnel and facilities, and to reflect minor housekeeping changes for clarification of MIDLA's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19317 Filed 7–31–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–11–000]

Midcoast Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 26, 2000.

Take notice that on July 20, 2000, Midcoast Gas Transmission, Inc. (MIT) tendered for filing as part of FERC Gas Tariff, Second Revised Volume No. 1, the following the tariff sheets, with an effective date of August 20, 2000:

Fifth Revised Sheet No. 148
Fourth Revised Sheet No. 149
Fourth Revised Sheet No. 150

MIT states that the primary purpose of the filing Revised Tariff sheets is to update its tariff to reflect recent changes in shared personnel and facilities, and to reflect minor housekeeping changes for clarification of MIT's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19316 Filed 7–31–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–257–000]

Ozark Gas Transmission, L.L.C., Notice of Technical Conference

July 26, 2000.

In the Commission's order issued on May 31, 2000, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, August 16, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,
Secretary.

[FR Doc. 00–19319 Filed 7–31–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: July 24, 2000, 65 FR 45596.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 26, 2000, 10 a.m.

CHANGE IN THE MEETING: The following Docket Nos. and Companies have been added to Item CAE–2 on the Agenda scheduled for the July 26, 2000 meeting.

Item No.	Docket No. and Company
CAE–2	EL00–83–001, NSTAR Services Company v. New England Power. Pool ER00–2811–000, 001, ISO New England, Inc. ER00–2937–000, ISO New England, Inc. EL00–62–000, ISO New England, Inc.

David P. Boergers,
Secretary.

[FR Doc. 00–19425 Filed 7–27–00; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–4]

Notice of Prevention of Significant Deterioration (PSD) Final Determination for RockGen Energy Center, Town of Christiana, Dane County, Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that on March 3, 2000, the Environmental Appeals Board (EAB) of the United States Environmental Protection Agency (EPA) dismissed a petition for review of a revised permit issued for the RockGen Energy Center by the Wisconsin Department of Natural Resources (WDNR) pursuant to the

Prevention of Significant Deterioration of Air Quality (PSD) regulations under 40 CFR 52.21.

DATES: The effective date for the Board's decision is March 3, 2000. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of today's date.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address by calling Raj Vakharia at (608) 267–2015 to arrange a visit: Department of Natural Resources, Bureau of Air Management, 101 South Webster Street, 7th Floor, Madison, WI.

FOR FURTHER INFORMATION CONTACT: Mr. Constantine Blathras (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886–0671.

SUPPLEMENTARY INFORMATION: On January 25, 1999, the WDNR issued PSD permit 98–RV–150 to RockGen Energy Center for the construction of a new 525 MW electric power generating facility in the Town of Christiana, Dane County, Wisconsin. The facility will include three 175-MW simple cycle combustion turbines using natural gas as a primary fuel and low sulfur No. 2 fuel oil as a back-up. The facility is subject to PSD for nitrogen oxides (NO_X) and carbon monoxide (CO).

On April 5, 1999, the Responsible Use of Rural and Agricultural Land (RURAL) petitioned the EAB to review this permit alleging: (i) WDNR's selection of BACT for NO_X was clearly erroneous; (ii) WDNR abused its discretion by failing to consider demand side management alternatives to the construction of the facility; (iii) WDNR's characterization of the facility as a "peak power generating facility" and its inclusion in the final permit of a continuous emission monitoring (CEM) exemption provision are inconsistent with applicable regulations; (iv) the start-up and shut-down provision in the final permit is not federally enforceable; and (5) WDNR failed to adequately reply to written comments on the draft permit or to explain changes to the draft permit.

On June 11, 1999, EPA filed an Amicus Brief that commented on (i) WDNR's BACT analysis, (ii) WDNR's conclusion that DLN was technically feasible as a control option, (iii) the permit provision regarding emissions during start-up and shutdown, and (iii) demand-side management or other alternatives.

On August 25, the EAB issued its order remanding the permit as to (i) the conditions under which NO_X estimation procedures may be used in lieu of CEM, (ii) the permit provision relating to exceedances of the permit's emission limitations during start-up or shutdown of the facility, and (iii) WDNR's reply to written comments, and denying review as to the BACT determination issue and the demand-side alternatives issue, which were not properly preserved for review, and all other issues raised in the petition.

On October 15, 1999, WDNR issued revised permit 98–RV–150–R1 to RockGen Energy Center and a revised response to comments. The revised permit strikes the permit condition concerning exceedances of emissions limits during start-up and shut-down and amends the permit conditions under which NO_X estimation procedures may be used in lieu of CEM to reflect the language of applicable regulatory language under 40 CFR 72.2.

RURAL filed a petition for review of the revised permit on November 17, 1999, alleging that WDNR erroneously refused to consider the opposition of local and county zoning authorities to the permit. On March 3, 2000, the EAB denied the petition for review on the grounds that the issue had not been properly preserved.

Dated: July 21, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–19374 Filed 7–31–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30498; FRL–6737–2]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30498, must be received on or before August 31, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30498 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, (PM–25), Registration Division, Office of Pesticide Programs (7505C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; and e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental

Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30498. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30498 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30498. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol:* 8033–RE. *Applicant:* Nippon Soda Co., Ltd. c/o Nisso America, 220 E. 42nd St., Suite 3002, New York, NY 10017. *Product name:* Equinox Herbicide. *Active ingredient:* Tepraloxydim [(*EZ*-(*RS*)-2-[1-[(2*E*)-3-chloro-allyloxyimino]propyl]-3-hydroxy-5-perhydropyran-4-ylcyclohex-2-en-1-one] at 20%. *Proposed classification/Use:* None. For use to control grasses in cotton, soybeans, and canola.

2. *File Symbol:* 8033–RG. *Applicant:* Nippon Soda Co., Ltd. *Product name:* BAS 620 H MUP. *Active ingredient:* Tepraloxydim [(*EZ*-(*RS*)-2-[1-[(2*E*)-3-chloro-allyloxyimino]propyl]-3-hydroxy-5-perhydropyran-4-ylcyclohex-2-en-1-one] at 94.8%. *Proposed classification/Use:* None. For use to control grasses in cotton, soybeans, and canola.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 20, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–19349 Filed 7–31–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–655; FRL–6595–4]

Notice of Filing of Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–955, must be received on or before August 31, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–955 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0515; e-mail address: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–955. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–955 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–955. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

July 18, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the view of the petitioners. The petition summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Natural Industries, Inc.

0F6163

EPA has received a pesticide petition 0F6163 from Natural Industries, Inc., 6223 Theall Road, Houston, TX 77066, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for microbial pesticide *Streptomyces lydicus* WYEC 108.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Natural Industries, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Natural Industries, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

The active ingredient *Streptomyces lydicus* WYEC 108 is intended for use as a biological fungicide for the control of soil borne plant root rot and damping-off fungi. Fungi controlled include: *Fusarium, Rhizoctonia, Pythium, Phytophthora, Phytomatotricum, Aphanomyces, Monosprascus, Armillaria* and other root-decay fungi. The active ingredient colonizes the root system, thus out competing other harmful fungi, and enhances plant vitality.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Streptomyces lydicus* WYEC 108 colonizes the growing root tips of plants and acts as a mycoparasite of fungal root pathogens to protect plants. Root colonization is a form of competitive exclusion of a pathogen from the root system. Other mechanisms of action include the production and excretion of anti-fungal metabolites (e.g., antibiotics and/or low molecular weight anti-fungal compounds) into the rhizosphere surrounding the roots of colonized plants, and mycoparasitism of the spores and vegetative mycelium of the fungal pathogens (e.g., via colonization of the spores of hyphae of the fungus, followed by the production of lytic enzymes such as chitinase). No deleterious effects to plants have been observed as a result of excretion of anti-fungal compounds from *Streptomyces lydicus* WYEC 108.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable. End-use products of *Streptomyces lydicus* WYEC 108 will be intended for greenhouse, nursery and turf grass use (food and non-food) as a soil mix or a soil drench. The products will be applied only to the soil, not to growing crops directly, and are not intended for use in irrigation systems. Residues of *Streptomyces lydicus* WYEC 108 are not expected on agricultural commodities.

C. Mammalian Toxicological Profile

The active ingredient *Streptomyces lydicus* WYEC 108 and the end-use product Actinovate™ Soluble have been evaluated for toxicity through oral, dermal, pulmonary, and eye routes of exposure. The results of the studies have indicated toxicity category IV, which pose no significant human health risks.

For the active ingredient, the acute pulmonary toxicity/pathogenicity in rats is greater than 9.1×10^8 colony forming units (CFU) per animal and the acute injection toxicity/pathogenicity in rats is greater than 9.33×10^8 cfu per animal. No pathogenic or infective effects were observed in the studies. For the end-use formulation, the acute oral toxicity in rats was greater than 5,050 milligrams per kilograms (mg/kg) (toxicity category IV), eye irritation in rabbits was not observed at a dose of 0.1 milliliters (mL) (toxicity category IV) and skin irritation in rabbits was not observed at a dose of 0.5 mL (toxicity category IV). Since its discovery no incidents of hypersensitivity have been reported by researchers, manufacturers or users.

A waiver is being requested for acute dermal toxicity/pathogenicity based on the fact that there was no toxicity or pathogenicity in the pulmonary and injection studies, and no effects were observed in the skin irritation study. Dermal toxicity or pathogenicity would not be expected for this active ingredient. Finally, the organism has never been reported as a pathogen of humans, or as causing any type of adverse effect to humans, in published literature or through commercial use.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure from use of *Streptomyces lydicus* WYEC 108, as proposed, is minimal. *Streptomyces lydicus* WYEC 108 is applied as a soil mix or soil drench. It is not applied to growing crops directly. Residues of *Streptomyces lydicus* WYEC 108 are not expected on agricultural commodities.

ii. *Drinking water.* Similarly, exposure to humans from residues of *Streptomyces lydicus* WYEC 108 in consumed drinking water would be unlikely. *Streptomyces lydicus* WYEC 108 is a naturally-occurring soil microorganism found in soil types world-wide. While spores of *Streptomyces lydicus* WYEC 108 may be found in aquatic environments, possibly because they are washed-in from surrounding terrestrial habitats, they are not known to grow or thrive in aquatic environments.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural and horticultural settings. However, non-

dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Person protective equipment mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural and horticultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, *Streptomyces lydicus* WYEC 108 would result in residues that would remain in human food items.

F. Safety Determination

1. *U.S. population. Streptomyces lydicus* WYEC 108 is not pathogenic or infective to mammals. There have been no reports of toxins or secondary metabolites associated with the organism, and acute toxicity studies have shown that *Streptomyces lydicus* WYEC 108 is non-toxic, non-pathogenic, and non-irritating. *Streptomyces lydicus* WYEC 108 is applied to the soil. It is not applied to growing crops directly. Residues of *Streptomyces lydicus* WYEC 108 are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated.

2. *Infants and children.* As mentioned above, residues of *Streptomyces lydicus* WYEC 108 are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to *Streptomyces lydicus* WYEC 108 from the proposed uses.

G. Effects on the Immune and Endocrine Systems

Streptomyces lydicus WYEC 108 is a naturally-occurring, non-pathogenic soil organism. To date there is no evidence to suggest that *Streptomyces lydicus* WYEC 108 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no U.S. EPA tolerance established for *Streptomyces lydicus* WYEC 108.

I. International Tolerances

A Codex Alimentarium Commission Maximum Residue Level is not required for *Streptomyces lydicus* WYEC 108.

II. Encore Technologies LLC

0F6170

EPA has received a pesticide petition 0F6170 from Encore Technologies LLC, 111 Cheshire Lane, Minnetonka, MN 55305, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for microbial pesticide *Colletotrichum gloeosporioides f. sp. malvae.*

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Encore Technologies LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Encore Technologies LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Colletotrichum gloeosporioides f. sp. malvae is a naturally occurring fungus that is pathogenic to the weeds round-leaved mallow (*Malva pusila*), small flowered mallow (*Malva parviflora*), common mallow (*Malva neglecta*), and velvet leaf (*Abutilon theophrasti*), all of which are members of the family *Malvaceae.* The organism will infect and kill round-leaved and small flowered mallows at any stage of growth, from seedling to mature plant. *Colletotrichum gloeosporioides f. sp. malvae* causes disease lesions that will completely encircle the stems and petioles of mallow, causing the plant to collapse in 2 to 4 weeks.

The end-use formulation, Mallet WP, is a two-component product. Mallet WP Component A consists of a 16-oz. bottle containing a water soluble spore nutrient and rehydrating agent that activates the spores prior to application. Mallet WP Component M consists of a bag containing a water suspendible dried fungal spore formulation of *Colletotrichum gloeosporioides f. sp. malvae.* The product is applied to field crops at an early stage to control target weeds.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Colletotrichum gloeosporioides f. sp. malvae* was originally isolated and characterized by Dr. Knud Mortensen, Agriculture Canada Research Scientist, Regina, Saskatchewan in 1982. *Colletotrichum gloeosporioides f. sp. malvae* has been reported as indigenous to the provinces of Saskatchewan and Manitoba, occurring as an endemic pathogen of round-leaved mallow producing lesions on aerial parts. The active ingredient is registered in Canada as BioMal® for control of round-leaved mallow in field crops. Extensive efficacy and field research trials were conducted in Canada, with results showing that the organism provided consistent and effective control over a wide variety of environmental conditions. Since it's discovery in 1982, there have been no reports of adverse effects, sensitivity or reaction of any type related to use or handling of this organism.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable. The use of *Colletotrichum gloeosporioides f. sp. malvae* calls for application to field crops at an early stage for control of mallow species. Consequently, there is a considerable time lag between application and harvesting of crops. Since survival of the organism is in part dependent on existence of the host plant, it is unlikely that application will result in the presence of *Colletotrichum gloeosporioides f. sp. malvae* in food crops. Furthermore, the host weed species are not palatable forage for cattle or other livestock populations, either through direct feeding upon diseased plants, or indirectly through feeding upon crops that have been treated with *Colletotrichum gloeosporioides f. sp. malvae.* Residues of *Colletotrichum gloeosporioides f. sp. malvae* are not expected on agricultural commodities.

C. Mammalian Toxicological Profile

The active ingredient *Colletotrichum gloeosporioides f. sp. malvae* has been evaluated for toxicity through oral, dermal, pulmonary, intraperitoneal, and eye routes of exposure. The results of the studies have indicated there are no significant human health risks.

For the active ingredient, the acute oral toxicity/pathogenicity in rats is greater than 6×10^5 cfu/(g) grams, the acute dermal toxicity/pathogenicity in rats is greater than 4.21×10^7 cfu/g, the acute pulmonary toxicity/pathogenicity in rats is greater than 4.55×10^4 cfu per animal, and the acute intraperitoneal toxicity/pathogenicity in rats is greater than 5.7×10^5 cfu per animal. No pathogenic or infective effects were observed in the studies. Data on the end-use formulation is cited from the substantially similar product Collego (*Colletotrichum gloeosporioides f. sp. aeschynomene*, EPA Reg. No. 70571–1). For the end-use formulation, slight eye irritation in rabbits was observed at a dose of 0.1 mL (toxicity category IV) and skin irritation in rabbits was not observed at a dose of 0.5 mL (Toxicity Category IV). Since its discovery, no

incidents of hypersensitivity have been reported by researchers, manufacturers or users.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure from use of *Colletotrichum gloeosporioides f. sp. malvae*, as proposed, is minimal. The use of *Colletotrichum gloeosporioides f. sp. malvae* calls for application to field crops at an early stage for control of mallow species. Consequently, there is a considerable time lag between application and harvesting of crops. Since survival of the organism is in part dependent on existence of the host plant, it is unlikely that application will result in the presence of *Colletotrichum gloeosporioides f. sp. malvae* in food crops. Residues of *Colletotrichum gloeosporioides f. sp. malvae* are not expected on agricultural commodities.

ii. *Drinking water.* Similarly, exposure to humans from residues of *Colletotrichum gloeosporioides f. sp. malvae* in consumed drinking water would be unlikely. *Colletotrichum gloeosporioides f. sp. malvae* is a naturally-occurring microorganism known to exist in terrestrial habitats in the presence of a host plant, it is not known to grow or thrive in aquatic environments.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Person protective equipment mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, *Colletotrichum gloeosporioides f.sp. malvae* would result in residues that would remain in human food items.

F. Safety Determination

1. *U.S. population. Colletotrichum gloeosporioides f. sp. malvae* is not pathogenic or infective to mammals. There have been no reports of toxins or secondary metabolites associated with the organism, and acute toxicity studies have shown that *Colletotrichum gloeosporioides f. sp. malvae* is non-toxic, non-pathogenic, and non-irritating. Residues of *Colletotrichum gloeosporioides f. sp. malvae* are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated.

2. *Infants and children.* As mentioned above, residues of *Colletotrichum gloeosporioides f. sp. malvae* are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to *Colletotrichum gloeosporioides f. sp. malvae* from the proposed uses.

G. Effects on the Immune and Endocrine Systems

Colletotrichum gloeosporioides f. sp. malvae is a naturally-occurring, non-pathogenic microorganism. To date there is no evidence to suggest that *Colletotrichum gloeosporioides f. sp. malvae* functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no U.S. EPA Tolerance for *Colletotrichum gloeosporioides f. sp. malvae.*

I. International Tolerances

A Codex Alimentarium Commission Maximum Residue Level is not required for *Colletotrichum gloeosporioides f. sp. malvae.*

[FR Doc. 00–19347 Filed 7–31–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–6]

Notification of Additional Public Listening Session on the Draft Title VI Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public listening session.

SUMMARY: This notice announces the addition of a seventh public listening session on the draft Title VI guidance documents. On June 27, 2000, EPA published a **Federal Register** notice (65 FR 39649) containing two draft Title VI guidance documents for public comment regarding Title VI of the Civil Rights Act of 1964. The first document is entitled the Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs ("Draft Recipient Guidance"). The second document is entitled the Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits ("Draft Revised Investigation Guidance").

EPA previously announced that six public listening sessions would be held to receive comments on the draft Title VI guidance documents. The first public listening session, held in the mid-Atlantic area, occurred the day before the documents were published in the **Federal Register**. In an effort to allow the public the opportunity to review the draft documents prior to attending a listening session, EPA will hold another session in that region.

The meeting will be held on Wednesday, August 9, 2000, from 4:00 p.m. to 7:00 p.m. in the Shenandoah Room (4th floor) of the U.S. Environmental Protection Agency Region 3 office located at 1650 Arch Street in Philadelphia, PA. Consistent with the other listening sessions, this meeting will be attended by the Director of the Office of Civil Rights and key regional personnel. Members of the public wishing to make oral comments during the public listening session will be limited to not more than five (5) minutes and must register at the meeting site the day of the conference. Seating will be limited and available on a first come, first-served basis. If anyone attending the listening session needs special accommodations (*i.e.*, sign language interpreter, alternative text format for materials), please contact Mavis Sanders of the EPA Office of Civil Rights (OCR) at (202) 564–7272 at least three business days before the EPA listening session.

DATES: The meeting will be held on August 9, 2000.

ADDRESSES: The meeting will be held from 4:00 p.m. to 7:00 p.m. in the Shenandoah Room (4th floor) of the U.S. Environmental Protection Agency Region 3 office located at 1650 Arch Street, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Mavis Sanders, U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue, NW, Washington, DC, 20460, telephone (202) 564–7272.

SUPPLEMENTARY INFORMATION: All comments on the draft Title VI guidance documents must be received in writing by EPA before August 28, 2000. Comments received by the Agency will be carefully considered in the revision of the draft guidance documents. Public comments should be mailed to: Title VI Guidance Comments, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue NW, Washington DC, 20460, or submitted to the following e-mail address: *civilrights@epa.gov*. Please include your name and address, and, optionally, your affiliation.

Information regarding the other public listening sessions, a current list of scheduled outreach activities, as well as the June 27, 2000, **Federal Register** notice containing the draft guidance documents is available on the EPA OCR Web site at *www.epa.gov/civilrights.*

Dated: July 26, 2000.

Ann E. Goode,

Director, Office of Civil Rights.

[FR Doc. 00–19377 Filed 7–31–00; 8:45 am]

BILLING CODE 6560–60–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Friday, August 11, 2000, at 9:30 a.m.to 12:00 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: This meeting will include a discussion of the joint National Academy of Science and Institute of International Economics study titled "The Future of the U.S. Ex-Im Bank", and other matters.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to August 4, 2000, Teri Stumpf, Room 1215, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 00–19379 Filed 7–31–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:24 a.m. on Thursday, July 27, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift, Supervision), seconded by Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than July 25, 2000, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: July 27, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–19472 Filed 7–28–00; 11:05 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision of the Following Reports

1. *Report title:* Monthly Survey of Industrial Electricity Use.

Agency form number: FR 2009.

OMB Control number: 7100–0057.

Frequency: Monthly.

Reporters: FR 2009a/c: Electric utility companies; FR 2009b: Cogenerators.

Annual reporting hours: FR 2009a/c: 2,196 hours; FR 2009b: 1,188 hours.

Estimated average hours per response: FR 2009a/c: 1 hour; FR 2009b: 30 minutes.

Number of respondents: FR 2009a/c: 183; FR 2009b: 198.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, 353 *et seq.*, and 461) and individual respondent data are given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The survey collects information on the volume of electric power delivered during the month to classes of industrial customers. There are now three versions of the survey: the FR 2009a, collects information from electric utilities that report using the Standard Industrial Classification (SIC) codes, the FR 2009b collects information from manufacturing and mining facilities that generate electric power for their own use, and the 2009c, collects information from electric utilities that report using the North American Industry Classification System (NAICS).

Current Actions: During the next two years the industrial output index will be revised to reflect the new NAICS. The published series will be categorized

under the NAICS codes instead of the current SIC codes. To facilitate this transition process, the Federal Reserve will ask utilities to reclassify their customers using the new codes. The FR 2009c has been created in the NAICS format for use by respondents that have made the transition from SIC to NAICS codes. The FR 2009a would be completed only by the respondents that choose to report SIC codes. This approach would not impose any added burden on the respondents. The Federal Reserve also proposes to eliminate the FR 2009a after the two-year transition period.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report titles:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans; Quarterly Report of Credit Card Plans.
Agency form number: FR 2835; FR 2835a.
OMB Control number: 7100–0085.
Frequency: Quarterly.
Reporters: Commercial Banks.
Annual reporting hours: FR 2835: 90 hours; FR 2835a: 200 hours.
Estimated average hours per response: FR 2835: 9 minutes; FR 2835a: 30 minutes.
Number of respondents: FR 2835: 150; FR 2835a: 100.
Small businesses are not affected.
General description of report: These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552 (b)(4)), the FR 2835 data however, is not given confidential treatment.
Abstract: The FR 2835 collects the most common interest rate charged at a sample of 150 commercial banks on two types of consumer loans made in a given week each quarter: new auto loans and other loans for consumer goods and personal expenditures. The data are reported for the calendar week beginning on the first Monday of each survey month (February, May, August, and November).
The FR 2835a collects information on two measures of credit card interest rates from a sample of 100 commercial banks (authorized panel size), selected to include banks with $1 billion or more in credit card receivables, and a representative group of smaller issuers. The data are representative of interest rates paid by consumers on bank credit cards because the panel includes virtually all large issuers and an appropriate sample of other issuers.

2. *Report title:* Report of Changes in Foreign Investments (Made Pursuant to Regulation K).
Agency form number: FR 2064.
OMB Control number: 7100–0109.
Frequency: Event-generated.
Reporters: Member banks, Edge and agreement corporations, and bank holding companies.
Annual reporting hours: 750 hours.
Estimated average hours per response: 30 minutes.
Number of respondents: 50.
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 602, 625 and 1844) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: Member banks, Edge and agreement corporations, and bank holding companies are required to file the FR 2064 to record changes in their international investments. The FR 2064 report is event generated and is filed no later than the last day of the month following the month in which the change occurred. The Federal Reserve uses the information to monitor investments in the international operations of U.S. banking organizations and to fulfill its supervisory responsibility under Regulation K.

Final Approval Under OMB Delegated Authority of the Discontinuation of the Following Reports

1. *Report title:* Quarterly Gasoline Company Report.
Agency form number: FR 2580.
OMB control number: 7100–0009.
Frequency: Quarterly.
Reporters: Gasoline companies.
Annual reporting hours: 4 hours.
Estimated average hours per response: 9 minutes.
Number of respondents: 7.
Small businesses are not affected.
Abstract: The FR 2580 collected outstanding balances on retail credit card accounts at gasoline companies. The number of FR 2580 reporters has declined over time as the industry structure has changed. Initially, the data were collected from the universe of approximately thirty gasoline companies; subsequently, some smaller companies withdrew from the sample or were merged into other companies. In recent years some major companies have entered into Aco-branding@ arrangements with banks and have significantly reduced, or eliminated, their own credit card portfolios. The Federal Reserve will discontinue the FR 2580 as of July 31, 2000 primarily because the number of respondents has dwindled. The decrease in reporting is due in part to the purchase of some of the gasoline companies' receivables by depository institutions in recent years. Because of the difficulty in maintaining a meaningful sample and because of the small fraction of consumer credit that these receivables represent, the Federal Reserve does not believe it is useful to continue the report.

Board of Governors of the Federal Reserve System, July 26, 2000.
Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 00–19313 Filed 7–31–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Report of Transaction Accounts, Other Deposits, and Vault Cash; Report of Certain Eurocurrency Transactions.

Agency form number: FR 2900; FR 2950/2951.
OMB control number: 7100–0087.
Frequency: Weekly, quarterly.
Reporters: Depository institutions.
Annual reporting hours: 984,138 hours.
Estimated average hours per response: FR 2900: 3.50; FR 2950/2951: 1.00.
Number of respondents: FR 2900: 4,813 weekly, and 5,880 quarterly; FR 2950/2951: 497 weekly, and 2 quarterly.
Small businesses are affected.
General description of report: These information collections are mandatory: FR 2900 and FR 2950 (12 U.S.C. 248(a), 461, 603, and 615) and FR 2951 (12 U.S.C. 248(a), 461, and 347d) and are given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The FR 2900 report collects information on deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements ("nonexempt institutions"). These institutions file weekly if their total deposits are greater than or equal to the nonexempt deposit cutoff and quarterly if their total deposits are less than the nonexempt deposit cutoff. The FR 2950/2951 collects information on Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches. The Federal Reserve raised the deposit cutoff used to determine weekly versus quarterly FR 2900 reporting (the "nonexempt cutoff") above its indexed level of $84.5 million to $95 million. These mandatory reports are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.

2. *Report title:* Annual Report of Total Deposits and Reservable Liabilities.
Agency form number: FR 2910a.
OMB control number: 7100–0175.
Frequency: Annual.
Reporters: Depository institutions.
Annual reporting hours: 2,734 hours.
Estimated average hours per response: 30 minutes.
Number of respondents: 5,468.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: This report collects two items of information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germaine Depository Institutions Act of 1982. This mandatory report is used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.

3. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.
Agency form number: FR 2930/2930a.
OMB control number: 7100–0088.
Frequency: Annually, and on occasion.
Reporters: Depository institutions.
Annual reporting hours: 64 hours.
Estimated average hours per response: 15 minutes.
Number of respondents: 255.
Small businesses are affected.
General description of report: This information collection is mandatory: FR 2930 (12 U.S.C. 248(a), 461, 603, and 615) and FR 2930a (12 U.S.C. 248(a) and 461). It is also given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The FR 2930 and the FR 2930a collect information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that submit separate FR 2900 deposits reports. The data collected on these reports are needed for the calculation of required reserves.

4. *Report title:* Report of Foreign (Non-U.S.) Currency Deposits.
Agency form number: FR 2915.
OMB control number: 7100–0237.
Frequency: Quarterly.
Reporters: Depository institutions.
Annual reporting hours: 366 hours.
Estimated average hours per response: 30 minutes.
Number of respondents: 183.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a)(2) and 347d) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The FR 2915 collects weekly averages of the amounts outstanding for foreign (non-U.S.) currency deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included on the FR 2900 (OMB No. 7100–0087), the principal deposits report that is used for the calculation of required reserves and for the construction of the monetary aggregates. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900. However, foreign currency deposits are not included in the monetary aggregates. The FR 2915 data are used to back foreign currency deposits out of the FR 2900 data for construction and interpretation of the monetary aggregates. The FR 2915 data are also used to monitor the volume of foreign currency deposits.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report

1. *Report title:* Daily Advance Report of Deposits.
Agency form number: FR 2000.
OMB control number: 7100–0087.
Frequency: Daily.
Reporters: Depository institutions.
Annual reporting hours: 24,960 hours.
Estimated average hours per response: 36 minutes.
Number of respondents: 160.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: This advance report is commonly referred to as the Markstat D. The Markstat D report collects selected deposit and vault cash data for the most recent reporting week from a sample of large commercial banks and thrifts before such data become available for the universe of all FR 2900 weekly reporters. At present, ten data items (a subset of those on the FR 2900) are collected on the report. The advance report is used in the construction of preliminary estimates of the monetary aggregates for the week just ending.
Current actions: The Federal Reserve dropped three items from the FR 2000 and reduced the authorized panel size from 186 to 160 institutions. The elimination of the three reporting items and the reduction of the authorized panel size reduces the reporting burden by 15,662 hours.

Discontinuance of the Following Report Under OMB Delegated Authority

1. *Report title:* Quarterly Report of Selected Deposits, Vault Cash, and Reserve Liabilities.
Agency form number: FR 2910q.
OMB control number: 7100–0175.
Frequency: Quarterly.
Reporters: Depository institutions.
Annual reporting hours: 3,936 hours.
Estimated average hours per response: 2 hours.
Number of respondents: 492.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collected information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germaine Depository Institutions Act of 1982. This report was used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates. The Federal Reserve eliminated the exempt deposit cutoff and discontinued this report associated with that cutoff. The Federal Reserve believes that, for exempt institutions, the quarterly reports of condition are adequate for quarterly benchmarking of the monetary aggregates. The Federal Reserve also believes that by shifting the current FR 2910q reporters to the annual, two-item FR 2910a, the Board will be able to adequately monitor compliance with Regulation D. The shift in reporting frequency of the almost 500 FR 2910q respondents to the FR 2910a would reduce reporting burden by 3,690 hours.

Board of Governors of the Federal Reserve System, July 26, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19314 Filed 7–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the "agencies"), hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection system described below. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On May 22, 2000, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the extension, without revision, of the currently approved information collection: the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019). The agencies, however, are making a minor clarification to the FFIEC 019 general instructions regarding the treatment of credit derivatives as guarantees, effective September 30, 2000.

DATES: Comments must be submitted on or before August 31, 2000.

ADDRESSES: Comments, which should refer to the OMB control number, should be addressed to the OMB desk officer: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Board: Written comments on the FFIEC 019 should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for review and approval may be requested from the agency clearance officer, whose name appears below.

Board: Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal To Extend for Three Years With Minor Instructional Clarification the Following Currently Approved Collection of Information

Report title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks

Form number: FFIEC 019.

OMB number: 7100–0213.

Frequency of response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Number of respondents: 230.

Estimated average hours per response: 10 hours.

Estimated Annual reporting hours: 9,200 hours.

General Description of Report

This information collection is mandatory: 12 U.S.C. 3105 and 3108 for the Board of Governors of the Federal Reserve System; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the Federal Deposit Insurance Corporation; and the National Bank Act (12 U.S.C. 161) for the Office of the Comptroller of the Currency). This information collection is given confidential treatment. (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract

All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The Agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form, however, minor clarifications are proposed to the instructions.

Current Actions: The agencies did not receive any comments in response to the notice published in the **Federal Register** on May 22, 2000, (65 FR 32098) requesting public comment on the extension without revision of this information collection. The agencies, however, are making a minor clarification to the FFIEC 019 general instructions regarding the treatment of credit derivatives as guarantees, effective September 30, 2000.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, July 26, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19312 Filed 7–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, August 7, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 28, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19585 Filed 7–28–00; 3:36 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistance Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
20002276	Pfizer Inc.	Warner-Lambert Company	Warner-Lambert Company
20003386	Novell, Inc.	Redleaf Group, Inc.	Redleaf Group, Inc.
20003390	Prime 66 Partners, L.P	NTL Incorporated	NTL Incorporated
20003398	Prime 66 Partners, L.P	CoreComm Limited	CoreComm Limited
20003405	Lincare Holdings Inc.	United Medical, Inc.	United Medical, Inc.
20003429	Vodafone AirTouch Plc	James R. Leininger	ATX Technologies, Inc.
20003443	Public Service Enterprise Group Incorporated.	Panda Energy International, Inc.	Panda Oneta Power, L.P., Union Power Partners, L.P. Trans-Union Interstate Pipeline, L.P.
20003450	COMSYS Holding, Inc.	Cotelligent, Inc.	Cotelligent, Inc.
20003452	KELP—1987 Limited Partnership	Bay View Capital Corporation	Bankers Mutual Mortgage, Inc.
20003457	ShopKo Stores, Inc.	P.M. Place Stores Company	P.M. Place Stores Company
20003472	The Walt Disney Company	Timothy P. Mayhew	Hibernia Communications, LLC
20003477	Geoworks Corporation	Science Applications International Corporation.	Telcordia Tecnologies, Inc.
20003483	Hewlett-Packard Company	Redswitch, Inc.	Redswitch, Inc.
20003494	UnitedGlobalCom, Inc.	Cignal Global Communications, Inc.	Cignal Global Communications, Inc.
20003497	Norske Skogindustrier ASA	Fletcher Challenge Limited	Fletcher Challenge Paper Limited
20003501	MDU Resources Group, Inc.	Philip H. Wagner	The Wagner-Smith Company, Wagner-Smith Pump&Systems, Inc. Wagner-Smith Equipment Co., Frabco, Inc., Newco, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—06/20/2000

20003382	Berkshire Hathaway Inc.	Edward Bridge	Ben Bridge Corporation
20003383	Edward Bridge	Berkshire Hathaway Inc.	Berkshire Hathaway Inc.

Trans No.	Acquiring	Acquired	Entities
20003474	Lernout & Hauspie Speech Products N.V.	Rodeer Systems, Inc.	Rodeer Systems, Inc.
20003478	Science Applications International Corporation.	Geoworks Corporation	Geoworks Corporation
20003486	First Union Corporation	First Albany Companies Inc.	First Albany Companies Inc.
20003500	The Progressive Corporation	PowerSports, Inc.	PowerSports, Inc.
20003502	FairPoint Communications, Inc.	W.B.W. Trust Number One	Comerco, Inc.
20003511	3Com Corporation	AnyDay.com, Inc.	AnyDay.com, Inc.
20003536	Michael B. Bates	InfoSpace, Inc.	InfoSpace, Inc.
20003548	Avanex Corporation	David F. Millet	Holographix, Inc.
20003558	Teligent, Inc.	Alan Widra	American Long Lines, Inc.
20003572	Chevron Corporation	PG&E Corporation	PG&E Energy Services Ventures, LLC
20003576	Bernard J. Ebbers	KLLM Transport Services, Inc.	KLLM Transport Services, Inc.
20003590	Matthew Schoenberg	Diageo plc	Burger King Corporation
20003609	New England Business Service, Inc.	Premium Wear, Inc.	Premium Wear, Inc.
20003632	Mohawk Corp	PSC Inc.	PSC Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—06/21/2000

20000238	Allied Waste Industries, Inc.	Republic Services, Inc.	Green Valley Environmental Corp., AAA Disposal of Tenn., Inc.
			Republic Ser. of Tenn. I, LLC, Safety Lights, Inc.
			York Waste Disposal, Inc., AAA Disposal Service, Inc.
20000239	Republic Services, Inc.	Allied Waste Industries, Inc.	American Disposal Services of Missouri, Inc.
			BFI Waste Systems of New Jersey, Inc.
			Tom Luciano's Disposal Service, Inc.
20003205	CompDent Corporation	OHS, Inc.	OHS, Inc.
20003214	Total Fina Elf S.A	Applied Power Inc.	Barry Wright Corporation
20003527	The BISYS Group, Inc.	PRIMEDIA Inc.	Pictorial Holdings Inc.
20003535	Citadel Communications Corporation	Dick Broadcasting Company, Inc. of Tennessee.	Dick Broadcasting Company, Inc. of Tennessee
20003540	Calpine Corporation	Edison International	Auburndale Power Partners, Limited Partnership
20003542	Scripps Health	SC Physicians Investment Company, Inc..	SC Physicians Organization, Inc.
20003545	Clear Channel Communications, Inc.	Eastern Radio Assets I, LLC	Eastern Radio Assets I, LLC
20003547	Pemstar, Inc.	John E. Miller	Turtle Mountain Corporation
20003549	Casella Waste Systems, Inc.	Louisiana-Pacific Corporation	Louisiana-Pacific Corporation
20003550	Louisiana-Pacific Corporation	Casella Waste Systems, Inc.	Casella Waste Systems, Inc.
20003552	Quanta Services, Inc.	IRBY Corp	IRBY Corp.
20003554	General Electric Company	M.A. Hanna Company	Cadillac Plastic (Canada), Inc.
			Cadillac Plastic Group, Inc., R.A. Products, Inc.
20003594	MBNA Corporation	Banknorth Group, Inc.	The Howard Bank, N.A.

TRANSACTIONS GRANTED EARLY TERMINATION—06/22/2000

20003321	Barry A. Ackerley	Fisher Companies Inc.	Fisher Broadcasting—Fresno, LLC
20003348	Yasumitsu Shigeta	Pixo, Inc.	Pixo, Inc.
20003426	Fairey Group plc	AGIV Aktiengesellschaft	Spectris AG Sensoren und Systeme
20003428	Comtech Telecommunications Corp.	Adaptive Broadband Corporation	Adaptive Broadband Corporation
20003453	Jamal Hamdani	Adaptive Broadband Corporation	Adaptive Broadband Corporation
20003482	Terence H. Matthews	IronBridge Networks Incorporated	IronBridge Networks Incorporated
20003487	L–3 Communications Holdings, Inc.	MPRI, Inc.	MPRI, Inc.
20003519	Safeguard Scientifics, Inc.	LifeF/X, Inc.	LifeF/X, Inc.
20003520	Varian Medical Systems, Inc.	IMPAC Medical Systems, Inc.	IMPAC Medical Systems, Inc.
20003525	BBA Group PLC	Lynton Group, Inc.	Lynton Group, Inc.
20003526	iXL Enterprises, Inc.	iBelong.com, Inc.	iBelong.com, Inc.
20003531	CRH plc	CCI Manufacturing, Inc.	CCI Manufacturing, Inc.
20003556	Alec E. Gores	Cabletron Systems, Inc.	Cabletron Systems, Inc.
20003559	Julie A. Dobson	Holding Company	Holding Company
20003560	Gerald T. Vento	Holding Company	Holding Company
20003561	Thomas H. Sullivan	Holding Company	Holding Company
20003562	M Financial Incorporated	Bank of America Corporation	Management Compensation Group, Northwest, L.L.C.
20003567	IntraNet Solutions, Inc.	Inso Corporation	Inso Chicago Corporation, Inso Kansas City Corporation
20003571	Mrs. Ginette Dalloz	Mr. John R. Liautaud	Fendall Co.
20003581	Centennial Communications Corp.	Raveesh Kumra	Lake Charles Cellteico/Centennial Lake Charles LLC

Trans No.	Acquiring	Acquired	Entities
20003584	Silver Lake Partners, L.P.	Girish Gaitonde	Xoriant Corporation
20003585	Piedmont/Hawthorne Holdings, L.L.C.	Lee Juan & Ethylene Lanford	Associated Hanger, Inc.
20003586	JAKKS Pacific, Inc.	Pentech International Inc.	Pentech International Inc.
20003608	Advance Paradigm, Inc.	First Florida International Holdings, Inc..	First Florida International Holdings, Inc.
20003615	BellSouth Corporation	DeVlieg-Bullard, Inc., (debtor-in-possession).	DeVlieg-Bullard, Inc., (debtor-in-possession)
20003630	Southern States Cooperative, Incorporated.	Agway, Inc.	Agway, Inc.
20003633	Joseph Littlejohn & Levy Fund II, L.P.	James D. Goldston, III	Goldston's Incorporated
TRANSACTIONS GRANTED EARLY TERMINATION—06/23/2000			
20003323	Danaher Corporation	Warner Electric Group, Inc.	Warner Electric Group, Inc.
20003417	Sonepar, S.A.	Viking Electric Supply, Inc.	Badger Electric Supply, Inc.
			Viking Electric Supply, Inc.
20003516	Edison International	P&L Coal Fields Holding Corporation	Citizens Power, LLC
20003553	General Electric Company	Morton R. French, Jr.	Aluplastic do Brazil
			Bodega de Plasticos
			Chesapeake Plastics, Inc.
			Comco Graphics, Inc.
			Comco IL., Inc.
			Comco Plastics Ltd. (Ireland)
			Comco Plastics, Ltd. (U.K.)
			Commercial Plastics & Supply Co., Inc.
			Commercial Plastics & Supply Corp.
			Commercial Plastics & Supply Corp. (P.R)
			Commercial Plastics & Supply Corp. of California
			Commercial Plastics & Supply Corp. of Connecticut
			Commercial Plastics & Supply Corp. of Florida
			Commercial Plastics & Supply Corp. of Georgia
			Commercial Plastics & Supply Corp. of MN.
			Commercial Plastics & Supply Corp. of New Jersey
			Commercial Plastics & Supply Corp. of Pennsylvania
			Commercial Plastics & Supply Corp. of Texas
			Commercial Plastics & Supply Corp. of TN
			Commercial Plastics & Supply Corp. of Utah
			Commercial Plastics de Mexico S.A. de C.V.
			Commercial Polymers Corp.
			Commercial Plastics (C.P.), Inc.
			Day Plas S.A.
			Dominicanos (Import) S.A.
			Estok Plastics Company, Inc.
			Flexlite Corp.
			Hyaline Plastics Corporation
			Insulgard Corp.
			Plasticos Commercial
20003587	webMethods, Inc.	Active Software, Inc.	Active Software, Inc.
20003592	Sovereign Bankcorp, Inc.	Diamond Lease Co. Ltd.	New England Capital Corporation
20003597	GTE Corporation	Southern Indiana RSA Limited Partnership.	Southern Indiana RSA Limited Partnership
20003598	Citigroup Inc.	Marathon Fund Limited Partnership III	Crescent Sleep Products Company
20003600	Hubbell Incorporated	Salient 3 Communications, Inc.	Gia-Tronics Corporation, a Delaware Corporation
20003601	Leucadia National Corporation	Reliance Group Holdings, Inc.	Reliance Group Holdings, Inc.
20003602	Odyssey Investment Partners Fund, L.P..	Gregory and Elizabeth Maday	Bristol Investments, Inc.
			Conspec Marketing & Manufacturing Co., Inc.
			Conspec Performance Products, Inc.
20003604	The Chase Manhattan Corporation	Robert Fleming Holdings Limited	Robert Fleming Holdings Limited

Trans No.	Acquiring	Acquired	Entities
20003605	Niku Corporation	ABT Corporation	ABT Corporation
20003641	Vantage-Sheakley Trust	HealthPlan Services Corporation	American Benefit Plan Administrators, Inc.
			Centra HealthPlan LLC
			HealthPlan Services, Inc.
			National Preferred Provider Network, Inc.
20003664	Hanover Compressor Company	Stewart & Stevenson Services, Inc.	Stewart & Stevenson Services, Inc.
20003730	MBNA Corporation	The Prudential Insurance Company of America.	PIC Realty Corporation
			The Prudential Bank and Trust Company
			The Prudential Savings Bank

TRANSACTIONS GRANTED EARLY TERMINATION—06/26/2000

20003456	Aurora Equity Partners II L.P.	Kennerly Plastics, L.P.	Supreme Plastics, Inc.
20003459	GC Companies, Inc.	VeloCom Inc.	VeloCom Inc.
20003505	ImageX.Com, Inc.	Herbert R. Porter, Jr.	Howard Press Limited Partnership
20003530	LSI Logic Corporation	DataPath Systems, Inc.	DataPath Systems, Inc.
20003583	Investor AB	Invesmart, Inc.	Invesmart, Inc.
20003599	Aventis S.A.	Serologicals Corporation	Seramed, Inc.
20003612	Advanced Radio Telecom Corp.	Paul S. Bachow	Bachow Communications, Inc.
20003614	Kellogg Company	Kashi Company	Kashi Company
20003617	Partek Oyj Abp	Timbco Hydraulics, Inc.	Timbco Hyraulics, Inc.
20003618	Royal Dutch Petroleum Company	Cytec Industries Inc.	Aviatrix Corporation, Mivida Corporation
20003619	Warburg, Pincus, Equity Partners, L.P.	Warburg, Pincus Ventures, L.P.	WebGain, Inc.
20003620	Gucci Group N.V.	Schweizerhall Holding AG	Boucheron International AG
20003621	Vesta Insurance Group, Inc.	American Founders financial Corp.	American Founders Financial Corp.
20003622	Entravision Communications Corporation.	Sunburst Media, L.P.	Sunburst Media, L.P.
20003624	Welsh, Carson, Anderson & Stowe IX, L.P..	Slugger Acquisition Corp. (Newco)	Slugger Acquisition Corp. (Newco)
20003625	Welsh, Carson, Anderson & Stowe VIII, L.P..	Slugger Acquisition Corp. (Newco)	Slugger Acquisition Corp. (Newco)
20003628	Merrill Lynch & Co., Inc.	Herzog, Heine, Geduld, Inc.	Herzog, Heine, Geduld, Inc.
20003631	BellSouth Corporation	United Road Services, Inc.	United Road Services, Inc.
20003635	Hampshire Equity Partners II, L.P.	Hampshire Equity Partners II, L.P.	GlobalLearningSystem.com,Inc.
20003636	V. Prem Watsa	The Trident Partnership, L.P.	Sen-Tech International Holdings, Inc.
20003638	Guilford Pharmaceuticals Inc.	Gilatech Inc.	Gilatech Inc.
20003642	Welsh, Carson, Anderson & Stowe VIII, L.P..	CFW Communications Company	CFW Communications Company
20003644	John C. Hampton	Industry Pacific, Inc.	Industry Pacific, Inc.
20003645	QIAGEN N.V.	Operon Technologies, Inc.	Operon Technologies, Inc.
20003650	Emanuel E. Geduld	Merrill Lynch & Co., Inc.	Merrill Lynch & Co., Inc.
20003651	Quanta Services, Inc.	Ronald A. Cindrich, Sr.	General Industries, Inc.
20003653	BPB Industries plc	Asbestos Settlement Trust	Capaul Corporation
			Celotex Corporation
			Celotex Metals Corporation
20003655	U.S. Bancorp	Pitney Bowes Inc.	Pitney Bowes Bank
20003657	Caisse de depot et placement du Quebec.	Windward Capital Associates, L.P.	Meridian Automotive Systems, Inc.
20003658	United Auto Group, Inc.	Fred D. Schneider	Great Western Inports, Inc.
			Great Western Management Corp.
			Lester Goodson Pontiac
20003659	PPG Industries, Inc.	Apogee Enterprises, Inc.	PPG Auto Glass, LLC
20003660	Robert C. Fanch	Elantic Communications, Inc.	Elantic Communications, Inc., a Delaware corporation
20003661	M/C Venture Partners IV, L.P.	Elantic Communications, Inc.	Elantic Communications, Inc., a Delaware corporation
20003662	KDZ Holdings, LLC	Elantic Communications, Inc.	Elantic Communications, Inc., a Delaware corporation
20003663	PerkinElmer, Inc.	Genstar Capital Partners II, L.P.	NEN Life Sciences, Inc.
20003665	Media/Communications Partners III Limited Partnership.	Elantic Communications, Inc.	Elantic Communications, Inc., a Delaware corporation
20003667	Brentwood Associates Private Equity III, L.P..	Timothy J. Battles	KCS industries, Inc.
20003668	Quantum Industrial Holdings, Ltd.	Jamcracker, Inc.	Jamcracker, Inc.
20003669	SIGH Schweizerische Industrie-Gesellschaft Holding AG.	Thyssen Krupp AG	Krupp Plastics & Rubber Machinery (USA), Inc.
20003670	3dfx Interactive, Inc.	GigaPixel Corporation	GigaPixel Corporation
20003671	George T. Haber	3dfx Interactive, Inc.	3dfx Interactive, Inc.
20003691	Summit Bankcorp.	National Bank of Canada	National Canada Business Corp.

Trans No.	Acquiring	Acquired	Entities
20003696	United Parcel Services, Inc.	James Nodine	Technical Service Corporation International, Inc.
			TSCI Holdings, Inc.
20003697	United Parcel Services, Inc.	Stephen McIlvain	Technical Service Corporation International, Inc.
			TSCI Holdings, Inc.
20003699	Windward Capital Associates, L.P.	Richard S. Crawford	Cambridge Ind., Inc., CE Automotive Trim Systems, Inc.
			Cambridge Industries Holdings, Inc.
20003704	Cedar Creek Partners LLC	Schaefer Manufacturing, Inc.	Schaefer Manufacturing, Inc.
20003713	Code Hennessy & Simmons IV, L.P.	John Mansfield Group PLC	WNA Holding Company
20003714	Greenwich Street Capital Partners II, LP..	WNA Holding Company	WNA Holding Company
20003716	John E. Feltl	Stockwalk.com Group, Inc.	Stockwalk.com Group, Inc.
20003717	Stockwalk.com Group, Inc.	John E Feltl	R.J. Steichen & Company
20003719	NACCO Industries, Inc.	Phillipp Holzmann AG	Dolet Hills Mining Venture
20003725	Huhtamaki Van Leer Oyi	Huhtamaki Van Leer Oyi	Sirco Systems, LLC
20003726	Castle Harlan Partners II, L.P.	Castle Harlan partners III, L.P.	Taylor Senior Holding Corp.
20003733	eBay Inc.	Half.com, Inc.	Half.com, Inc.
20003744	V.F. Corporation	Fruit of the Loom, Ltd.	Fruit of the Loom, Ltd.
20003764	Tyco International Ltd.	Thomas & Betts Corporation	Augat, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—06/27/2000

20003470	Buckeye Partners, L.P.	Agway, Inc.	Agway Energy Products LLC
20003473	RailWorks Corporation	HSQ Technology	HSQ Technology
20003475	Safeguard Scientifics, Inc.	Redleaf Group, Inc.	Redleaf Group, Inc.
20003529	Natural Wonders, Inc.	World of Science, Inc.	World of Science, Inc.
20003555	Signet Group plc	Marks & Morgan Jewelers, Inc.	Marks & Morgan Jewelers, Inc.
20003564	Oneida Ltd.	Glenn Simon	Sakura, Inc.
20003569	TechTronic Industries Co., Ltd.	Ryobi Limited	Ryobi America Corporation
			Ryobi North America, Inc., Ryobi Motor Products Corp.
20003626	Interfoods of America, Inc.	Household International, Inc.	RMS Family Restaurants, Inc.
20003678	Tyco International Ltd.	K2 Inc.	K2 Inc.
20003708	General Electric Company	Lunar Corporation	Lunar Corporation
20003715	GTCR Fund VI, LP.	Coram Healthcare Corporation	Curaflex Health Services, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—06/28/2000

20003391	DLJ Merchant Banking Partners II, LP.	E R D A, Inc.	E R D A, Inc.
20003541	Northern States Power Company (a Minnesota corporation).	Koch Industries, Inc.	Koch Power Louisiana, LLC
20003588	Sarna Polymer Holding, Inc.	Blue Water Plastics, Inc.	Blue Water Plastics, Inc.
20003728	KKR 1996 Fund L.P.	NewSouth Holdings, Inc.	NewSouth Holdings, Inc.
20003729	First Union Corporation	NewSouth Holdings, Inc.	NewSouth Holdings, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—06/29/2000

20003372	Advance Voting Trust	MediaNews Group, Inc.	MediaNews Group, Inc.
20003438	Lafarge S.A.	The LTV Corporation	Presque Isle Corporation
20003732	Swiss Reinsurance Company	National Capital Financial Corporation	National Capital Financial Corporation
20003812	China Aviation Development Foundation.	Sino Swearingen Aircraft Corporation	Sino Swearingen Aircraft Corporation

TRANSACTIONS GRANTED EARLY TERMINATION—06/30/2000

20003515	Dean Foods Company	Land O'Lakes, Inc.	Land O'Lakes, Inc.
20003521	Cablevision systems Corporation	AT&T Corp.	MediaOne of Greater New York, Inc.
			MediaOne of New York, Inc.
20003522	AT&T Corp.	Cablevision Systems Corporation	Cablevision of Boston, Inc.
			Cablevision of Brookline, L.P.
			Cablevision of Massachusetts, Inc.
20003568	Quanta Services, Inc.	William G. Schroeder	Flowers Holding Company, Inc.
20003579	Compart S.p.A.	Kay Akey & Randolph S. Creech	Trust of Kay Akey Creech Dated April 2, 1997
20003613	Carlisle Companies Incoprorated	UniTrek Corporation	UniTrek Corporation
20003623	Carl C. Icahn	CSX Corporation	CSX Corporation
20003627	Eramet SA	Special Metals Corporation	Special Metals Corporation
20003637	Cablevision Systems Corporation	AT&T Corp.	AT Home Corporation
20003649	Ronald S. Lauder	CFW Communications Company	CFW Information Services, Inc.
20003654	Marc Ladreit de Lacharriere	Celanese AG	Celanese Ltd.
20003673	Bollinger Shipyards, Inc.	Friede Goldman Halter, Inc.	Bludworth Bond Holding, Inc.
			Bludworth Bond LP
			Gretna Cleaning LLC

Trans No.	Acquiring	Acquired	Entities
	.....	.....	Halter Calcasieu, LLC
	.....	.....	Halter Gulf Repair, Inc.
	.....	.....	Marine Cleaning LLC
20003692	Datatec Limited	InaCom Corp.	InaCom Communications, Inc.
20003700	The Northwestern Mutual Life Insurance Company.	Windward Capital Associates, L.P.	Meridian Automotive Systems, Inc.
20003701	Hibernia Corporation	Leslie R. Jacobs	Rosenthal Agency, Inc.
20003702	Hibernia Corporation	Stephen R. Rosenthal	Rosenthal Agency, Inc.
20003703	GTCR Fund VII L.P.	Affiliated Computer Services, Inc.	Affiliated Computer Services, Inc.
20003705	Dimension Data Holdings Limited	Daily Business Products, Inc.	Daily Business Products, Inc.
20003706	Pinnacle Systems, Inc.	Avid Sports, Inc.	Avid Sports, Inc.
20003731	Ossama Hassanein	Corvis Corporation	Corvis Corporation
20003738	Greenwich Street Capital Partners, II, L.P..	American Financial Group, Inc.	Stonewall Insurance Company
20003742	The 1818 Fund III, L.P.	World Access, Inc.	World Access, Inc.
20003743	Banco Bilbao Vizcaya Argentaria, S.A.	Grupo Financiero Bancomer, S.A. de C. V..	Grupo Financiero Bancomer, S.A. de C. V.
20003745	Credit Suisse First Boston Equity Partners L.P..	Sunesis Pharmaceuticals, Inc.	Sunesis Pharmaceuticals, Inc.
20003750	New Enterprise Stone & Lime Co., Inc.	Richard E. Garman	2544 Clinton, Inc.; ABC Paving Co., Inc.
20003754	Compass Group PLC	Granada Group PLC	Granada Group PLC
20003755	Granada Group PLC	Compass Group PLC	Compass Group PLC
20003758	Sycamore Networks, Inc.	Sirocco Systems, Inc.	Sirocco Systems, Inc.
20003759	United Auto Group, Inc.	General Motors Corporation	Cerritos Pontiac-GMC Truck, Inc.
20003760	XServe, Inc.	Anco Insulations, Inc.	Anco Industries, Inc.
20003761	General Motors Corporation	Reynolds & Reynolds Co.	Reynolds & Reynolds Co.
20003762	Atlantic Equity Partners III, L.P.	J Herbert Ogden, Jr.	Unique Fabricating, Inc.
20003816	SCP Pool Corporation	Arch Chemicals, Inc.	Superior Pool Products, Inc.
20003825	Mediaplex, Inc.	The Interpublic Group of Companies, Inc..	Adware Systems, Inc.
20003833	Holding di Partecipazioni Industriali S.p.A..	Joseph Abboud	Houndstooth Corporation

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or, Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–19351 Filed 7–31–00; 8:45 am]

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—07/03/2000			
20003349	Conexant Systems, Inc.	Pixo, Inc.	Pixo, Inc.
20003533	Sync Research, Inc.	Osicom Technologies, Inc.	Osicom Technologies, Inc.
20003575	Stichting Administratiekantoor VSH	Royal Nedlloyd N.V.	Davenport Mammoet Heavy Transport Inc.
		Mamoet Transport B.V..	Mamoet Transport USA Inc.
			Mamoet Western Inc.
20003674	Tyco International, Ltd	Kaiser Group International, Inc.	Kaiser Engineers Corporation.
			Kaiser Group International, Inc.
20003680	Craig O. McCaw	Teledesic Corporation	Teledesic Corporation.
20003736	Avista Corp.	Enron Corp.	Coyote Springs 2, L.L.C.
20003749	Station Casinos, Inc.	Paul W. Lowden	Santa Fe Hotel Inc.
20003756	Campbell Bewley Group Limited	Cucina Holdings, Inc.	Cucina Holdings, Inc.
20003765	American States Water Company	Charles E. Hurwitz	Chaparral City Water Company.
20003766	American Securities Partners, II, L.P. ...	Morgenthaler Venture Partners IV, L.P	Cambridge International, Inc.

Trans No.	Acquiring	Acquired	Entities
20003776	AXA	Dominion Resources, Inc.	First Dominion Capital, L.L.C.
20003780	Quanta Services, Inc.	Christine Fluharty	MearsGroup, Inc.
20003782	North Castle Partners II, L.P	Kathleen McCarty-Carey	Travel Corporation of America, Inc.
20003783	North Castle Partners II, L.P	Betty Phillips	Travel Corporation of America, Inc.
20003784	Media General, Inc.	Kenneth R. Thomson	Thomson Newspapers Inc.
20003785	Wit Capital Group, Inc.	E*Offering Corp.	E*Offering Corp.
20003787	Inktomi Corporation	Walt Disney Company (The)	Ultraseek Corporation.
20003790	Stone & Webster, Incorporated (debtor-in-possession).	Jacobs Engineering Group Inc.	Jacobs Engineering Group Inc.
20003792	Triump Partners III, L.P	Certus Corporation	Certus Corporation.
20003793	Giovanni Agnelli e C.S.a.p.az	Arjo Wiggins Appleton p.l.c	Arjo Wiggins Appleton p.l.c.
20003796	Anheuser-Busch Companies, Inc.	MB Acquisitions, Inc.	MB Acquisitions, Inc.
20003802	Warburg, Pincus Equity Partners, L.P	Coventry Health Care, Inc.	Coventry Health Care, Inc.
20003804	Bayer AG	Zambon S.p.A	Inpharzam International.
20003806	Bayer AG	Forest Laboratories, Inc.	Inpharzam International
20003808	Paul J. Dujardin	AT&T Corp.	Liberty Livewire Corporation.
20003810	Microchip Technology Incorporated	Matsushita Electric Industrial Co., Ltd	Matsushita Semiconductor Corporation of America.
20003813	Invensys plc	Baan Company N.V	Baan Company N.V.
20003814	Pegasus Related Partners, L.P	Code-Alarm, Inc.	Code-Alarm, Inc.
20003818	Clayton, Dubilier & Rice Fund VI Limited Partnership.	Guidance Solutions, Inc.	Guidance Solutions, Inc.
20003820	Ditech Communications Corporation	Atmosphere Networks, Inc.	Atmosphere Networks, Inc.
20003821	Cedar Creek Partners, LLC	Denis Siemer	V-Tek, Inc.
20003829	U.S. Propane, L.P	Heritage Holdings, Inc.	Heritage Holdings, Inc.
20003830	Heritage Propane Partners, L.P	U.S. Propane, L.P	U.S. Propane, L.P.
20003835	The Shaw Group Inc.	Stone & Webster, Incorporated (debtor-in-possession).	Stone & Webster, Incorporated (debtor-in-possession).
20003836	Stone & Webster, Incorporated (debtor-in-possession).	The Shaw Group Inc.	The Shaw Group Inc.
20003858	Oak Hill Capital Partners, L.P	General Motors Corporation	TravelCenters of America, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—07/05/2000

20003689	Alloy Online, Inc.	Swander Pace Capital Fund, L.P	Kubic Marketing, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—07/07/2000

20003595	A. Jerrold Perenchio	Entravision Communications Corporation.	Entravision Communications Corporation.
20003770	ADC Telecommunications, Inc.	Centigam Communications Corporation.	Centigram Communications Corporation.
20003786	Ralcorp Holdings, Inc.	Tomkins PLC	RHM Holdings (USA) Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—07/10/2000

20003648	Oak Investment Partners IX, Limited Partnership.	Cogent Communications, Inc.	Cognet Communications, Inc.
20003675	J.R. Simplot Company	ECO Soil Systems, Inc.	ECO Soil Systems, Inc.
20003688	Gabriel Communications, Inc.	State Communications, Inc.	State Communications, Inc.
20003693	Reed International P.L.C	Data West Corporation (d.b.a. CourtLink).	Data West Corporation (d.b.a. CourtLink)
20003694	Elsevier NV	Data West Corporation (d.b.a. CourtLink).	Data West Corporation (d.b.a. CourtLink)
20003695	Counsel Corporation	Star Telecommunications, Inc.	PT–1 Communications Inc.
20003707	Cox Enterprises, Inc.	Lewis W. Dickey, Sr	Midwestern Broadcasting Company, Inc.
20003711	Cox Enterprises, Inc.	Salem Communications Corporation	CXR Holdings, Inc.
20003712	Salem Communications Corporation	Cox Enterprises, Inc.	Cox Enterprises, Inc.
20003739	Choice One Communications Inc.	Ronald Vander Pol	US Xchange, Inc.
20003740	Ronald Vander Pol	Choice One Communications Inc.	Choice One Communications Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—07/03/2000

20003741	Adelphia Communications Corporation	Allegheny Energy, Inc.	Allegheny Hyperion Telecommunications, LLC
20003763	Bershire Hathaway Inc.	Credit Suisse Group	Republic Insurance Company
20003795	Jonathan Reeves	Sycamore Networks, Inc.	Sycamore Networks, Inc.
20003807	Advance Voting Trust	WeddingChannel.com, Inc.	WeddingChannel.com, Inc.
20003823	Compass Group PLC	Viad Corp.	ProDine, Inc. Viad Corp.
20003824	Berkshire Hathaway Inc.	Assicurazioni Generali, A.p.A.	Unione Italiana Reinsurance Company of America
20003826	Green Equity Investors III, L.P.	Veterinary Centers of America	Veterinary Centers of America
20003828	General Atlantic Partners 61, L.P.	Wit Capital Group, Inc.	Wit Capital Group, Inc.

Trans No.	Acquiring	Acquired	Entities
20003834	General Atlantic Partners 68, L.P.	Wit Capital Group, Inc.	Wit Capital Group, Inc.
20003839	GAP Coinvestment Partners II, L.P.	Wit Capital Group, Inc.	Wit Capital Group, Inc.
20003846	Cisco Systems, Inc.	Hewlett-Packard Company	Hewlett-Packard Company
20003855	ING Groep N.V.	Iowa Network Services, Inc.	Iowa Telecommunications Services, Inc.
20003866	Oak Hill Capital Partners, L.P.	TCA Acquisition Corporation	TCA Acquisition Corporation
20003872	B III Capital Partners, L.P.	The Penn Traffic Company	The Penn Traffic Company
20003873	WPS Resources Corporation	Cinergy Corp.	CinCapVI, LLC
20003881	UBS AG	IFX Corporation	IFX Corporation
20003884	General Motors Corporation	Conseco, Inc.	Tutopia.com, Inc.
20003885	CMGI, Inc.	MediaBridge Technologies, Inc.	Consumer Acceptance Corporation
20003886	John Kent Cooke	Kenneth R. Thomson	MediaBridge Technologies, Inc.
20003888	Popular, Inc.	Oriental Financial Group, Inc.	Kenneth R. Thomson
20003895	Irwin Geduld	Merrill Lynch & Co., Inc.	Oriental Bank & Trust
20003896	John E. Herzog	Merrill Lynch & Co., Inc.	Merrill Lynch & Co., Inc.
20003901	Hamphire Group, Limited	Martin Axman	Merrill Lynch & Co., Inc.
20003902	Accor S.A. (a French company)	WorldRes.com, Inc.	Item-Eyes, Inc.
20003906	Levine Leichtman Capital Partners, L.P..	Carole Little	WorldRes.com, Inc.
20003907	Levine Leichtman Capital Partners, L.P..	Leonard Rabinowitz	California Fashion Industries, Inc.
20003908	Prosofttraining.com	R. William Pollock	California Fashion Industries, Inc.
20003909	Fendi S.r.l.	Irwin Tauber	ComputerPrep, Inc.
20003910	Kleiner Perkins Caufield & Buyers IX–A, L.P..	MyCFO, Inc.	Condotti Shops of Houstons, Inc.
20003912	Erikem Luxembourg S.A.	Huron Tech Corp.	Condotti Shops, Inc.
20003913	Waste Corporation of America, Inc.	Waste Management, Inc.	MyCFO, Inc.
20003915	Corning Incorporated	NextPath Technologies, Inc.	Huron Tech Corp.
20003919	Associates First Capital Corporation	Zale Corp.	Waste Management of Arkansas, Inc.
20003920	Code Hennessy & Simmons IV, L.P.	John Mansfield Group PLC	Waste Management of Louisiana, L.L.C.
20003932	Robert D. Phillips, Jr.	William Harkrider Trust	Willow Systems, Inc.
20003933	Code, Hennessy & Simmons III, L.P.	Best Distributing Co.	Zale Funding Trust
20003936	Robert D. Phillips, Jr.	Michael G. Barcum	Waddington North America, Inc.
20003937	Global Crossing Ltd.	American Communications Network, Inc..	H&W Petroleum Company, Inc.
20003940	Stephen Rosenberg	Extendicare Health Services, Inc.	Best Distributing Co.
20003942	Thomas H. Lee Equity Fund III, L.P.	The New York Times Company	Commercial Distributing, Inc.
20003945	Berkshire Fund V, Limited Partnership	Casella Waste Systems, Inc.	American Communications Network, Inc.
20003946	Koninlijke Ahold nv	James and Jayne Kennelly	Colonial Care Center
20003954	Pearson plc	The Forum Corporation of North America.	Lexington Terrance
20003955	E*TRADE Group, Inc.	Wit Capital Group, Inc.	Lakeland Ledger Publishing Corporation
20003957	Yahoo! Inc.	eGroups, Inc.	NYT Florida Holdings, Inc.
20003958	Stonebridge Partners Equity Fund II, L.P..	Louis A. deAntonio and Linda J. deAntonio.	NYT Management Services
20003961	Jones Apparel Group, Inc.	Recovery Equity Investors II, L.P.	The Houma Courier Newspaper Corporation
20003962	The PNC Financial Services Group, Inc..	The Bank of Tokyo-Mitsubishi, Ltd.	Casella Waste Systems, Inc.
20003969	UBS Capital Americas II, LLC	EYak, Inc.	GFG Foodservice, Inc. GFG Real Estate, LLC
20003971	The Interpublic Group of Companies, Inc..	James E. San Filippo	The Forum Corporation of North America
20003978	America Online, Inc.	America Online Latin America, Inc.	Wit Capital Group, Inc.
20003984	Vivendi, S.A.	Novartis AG	eGroups, Inc.
20003992	MyPoints, Inc.	Cybergold, Inc.	Hitech Corporation
20003993	Baker Communications Fund II (QP), LP.	MimEcom Corporation	Victoria+Co. Ltd.
20003998	Welsh, Carson, Anderson & Stowe IX, L.P..	CFW Communications Company	BTM Capital Corporation
20004001	Technip	Stone & Webster, Incorporated (debtor-in-possession).	EYak, Inc.
			Daytona Productions, Inc.
			Waylon Promotions, Inc.
			America Online Latin America, Inc.
			Novartis Pharmaceuticals Corporation, Novartis Corporation
			Cybergold, Inc.
			MimEcom Corporation
			CFW Communications Company
			Stone & Webster, Incorporated (debtor-in-possession

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—07/11/2000			
20003362	Public Service Company of New Mexico.	Tri-State Generation and Transmission Association, Inc.	Tri-State Generation and Transmission Association, Inc .
20003734	W.W. Grainger, Inc	Works.com Holding, Inc	Works.com Holding, Inc.
20003735	Hummer Winblad Venture Partners, III, L.P.	Works.com Holding, Inc.	Works.com Holding, Inc.
20003773	Jeffrey H. Smulyan	The Hearst Trust	Hearst-Argyle Properties, Inc.
20003778	Atlantic Equity Partners III, L.P	Morris Rochlin	Foamade Industries, Inc.
20003781	Christine Fluharty	Quanta Services, Inc	Quanta Services, Inc.
20003791	Francisco Partners, L.P	Advanced Micro Devices, Inc	BoldCo, Inc.
20003815	Adelphia Communications Corporation	Great Southern Printing and Manufacturing Company.	GS Communications, Inc.
20003831	VERITAS Software Corporation	Seagate Technology, Inc	Seagate Technology, Inc.
20003832	Paul G. Allen	FVC.COM, Inc	FVC.COM, Inc.
20003843	Rural LEC Acquisition, LLC	Sidney L. McDonald	Brindlee Mountain Telephone Company
20003847	Churchill Downs Incorporated	Richard L. Duchossois	Arlington International Racecourse, Inc. Arlington Management Services, Inc.
20003848	Richard L. Duchossois	Churchill Downs Incorporated	Turf Club of Illinois, Inc.
20003850	Charterhouse Equity Partners III, L.P ..	Alliance One Incorporated	Alliance One Incorporated
20003851	Triumph Group, Inc.	Loren L. Furnas	Airborne Nacelle Services, Inc. Airborne Supply, Inc. Chem-Fab Corporation FRS Partners d/b/a Master Tool Fabricators
20003852	Triumph Group, Inc.	Estate of Ronald E. Reagan	Airborne Nacelle Services, Inc. Airborne Supply, Inc. Chem-Fab Corporation FRS Partners d/b/a Master Tool Fabricators
20003854	AMEC PLC	Ogden Corporation	Ogden Environmental and Energy Services Co., Inc.
20003856	Rio Tinto Limited	North Limited	North Limited
20003857	Carlyle Bottling, L.L.C	Grant-Lydick Beverage Company	Grant-Lydick Beverage Company
20003859	Microsoft Corporation	Paul E. Tuttle, Jr	Tuttle Decision Systems, Inc.
20003860	Adelphia Communications Corporation	Benchmark Media, Inc	Benchmark Media, Inc.
20003863	GTCR Fund VII, L.P	Thomas M. Rouse	ACS Merchant Services, Inc.
20003864	Carlyle Partners III, L.P	The Reynolds and Reynolds Company	Dataforms, Inc. Information Solutions Group
20003865	Dimeling, Schreiber and Park Reorganization Fund, II.	Martin Color-Fi, Inc	Martin Color-Fi, Inc .
20003868	JSB Software Technologies plc	Mattel, Inc	CP Assets, Inc.
20003869	Advanced Radio Telecom Corp	Forest Communications, LLC	Forest Communications, LLC
20003871	EarthLink, Inc	OneMain. com, Inc	OneMain. com, Inc.
20003875	William H. Gates III	Craig O. McCaw	ICO-Teledesic Global Limited
20003880	Coolbrands International, Inc	Eskimo Pie Corporation	Eskimo Pie Corporation
20003883	EMSIcon Investments, LLC	Pensar Corporation	Pensar Corporation
20003900	New York-Presbyterian Healthcare System, Inc.	Westchester Square Medical Center, Inc.	Westchester Square Medical Center, Inc
20003911	James Clark	MyCFO, Inc.	MyCFO, Inc.
20003914	Berkshire Hathaway, Inc	Justin Industries, Inc	Justin Industries, Inc.
20003917	Pon Holdings B. V	Donald G. Moes	Bailey Forklift and Service Company, Ltd. Equipment Depot, Ltd., Equipment Depot of Dallas, Ltd.
20003923	Homestake Mining Company	Hadley Case and Elizabeth M. Case ...	Bargold Corporation
20003924	Hadley Case and Elizabeth M. Case ...	Homestake Mining Company	Homestake Mining Company
20003974	Respond Communicatins, Inc	iPCS, Inc	iPCS, Inc.
20003975	Geneseo Communications, Inc	iPCS, Inc	iPCS, Inc.
20003979	Riverview Media Corp	America Online Latin America, Inc	America Online Latin America, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/12/2000			
20002161	Southern Union Company	Providence Energy Corporation	Providence Energy Corporation
20002164	Southern Union Company	Valley Resources, Inc	Valley Resources, Inc.
20002172	Southern Union Company	Fall River Gas Company	Fall River Gas Company
20003589	CP&L Energy, Inc	Florida Progress Corporation	Florida Progress Corporation
20003652	CSR Limited	F. Browne Gregg	FCS Holdings, Inc.
20003676	Impala S.A	Solvay S.A	Solvay, S.A.
20003677	Solvay, S.A	Impala S.A	Impala S.A.
20003737	Calpine Corporation	Panada Energy International, Inc	PLC II, LLC

Trans No.	Acquiring	Acquired	Entities
20003746	James O. Hayles, Jr. and Myna C. Hayles, (husband & wife).	Paul E. Brown	DigiPH Communication, Inc.
			DigiPH Holding Company, Inc.
			DiGiPH PCS, Inc.
20003747	James O. Hayles, Jr. and Myna C. Hayles, (husband & wife).	Mr. and Mrs. Darrell R. Brown, (husband & wife).	DigiPH Communication, Inc.
			DigiPH Holding Company, Inc.
			DiGiPH PCS, Inc.
20003771	Calpine Corporation	Michael P. Polsky	Polsky Energy Corporation
20003772	Michael P. Polsky	Calpine Corporation	Calpine Corporation
20003797	Gannett Co., Inc.	Kenneth R. Thomson	The Thomson Company, Inc.
20003798	Gannett Co., Inc.	Kenneth R. Thomson	The Thomson Corporation
			Thomson Newspapers Licensing Corporation
			Thomson Newspapers, Inc.
			TN Customer Holding Inc.
			TN Customer Holding LLC
20003799	Gannett Co., Inc.	Kenneth R. Thomson	Thomson Newspapers Inc.
20003800	Gannett Co., Inc.	Kenneth R. Thomson	Thomson Newspapers Inc.
20003801	Gannett Co., Inc.	Kenneth R. Thomson	The Thomson Company, Inc.
20003891	Cardinal Health, Inc.	Advanced Polymer Systems, Inc.	Advanced Polymer Systems, Inc.
20003931	Whitehall Associates, L.P.	Borden Chemicals and Plastics Limited Partnership.	Borden Chemicals and Plastics Limited Partnership
20003950	Noranda Inc.	Falconbridge Limited	Falconbridge Limited

TRANSACTIONS GRANTED EARLY TERMINATION—07/13/2000

20003925	Fremont Partners, L.P.	Triumph-California Limited Partnership	Precision Components Group, LLC
20003965	The James S. Copley Marital Trust	Kenneth R. Thomson	Thomson Holdings, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—07/14/2000

19994334	Joseph M. & Marie H. Field	Sinclair Broadcast Group, Inc.	Sinclair Broadcast Group, Inc.
20003640	Carlyle Partners III, L.P.	Northrop Grumman Corporation	Northrop Grumman Corporation
20003723	Phillips-Van Heusen Corporation	Vestar Capital Partners III, L.P.	Arrow Factory Stores Inc.
			Cluett Designer Group, Inc.
			Cluett, Peabody & Co., Inc.
			Consumer Direct Corporation
20003768	ABN AMRO Holding N.V.	Resource America, Inc.	Fidelity Leasing, Inc.
20003982	Itausa-Investimentos Itau, S.A.	America Online Latin America, Inc.	America Online Latin America, Inc.
20003994	Safeguard Scientifics, Inc.	Atlas Commerce, Inc.	Atlas Commerce, Inc.
20003999	Corus Group, plc	Kienle + Spiess Holding GmbH	Kienle + Spiess Stanz and Druckgiesswerk GmbH
20004002	Charterhouse Equity Partners III, L.P.	Cap Gemini, S.A.	Cap Gemini, S.A.
20004010	The BISYS Group, Inc.	Leonard L. Reynolds	Ascensus Insurance Services, Inc.
20004016	Jonathan Burgstone	Ariba, Inc.	Ariba, Inc.
20004017	Asif Satchu	Ariba, Inc.	Ariba, Inc.
20004019	Ariba, Inc.	SupplierMarket.com, Inc.	SupplierMarket.com, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—07/17/2000

20003934	Ferro Corporation	Solutia Inc.	Solutia Inc.
20003987	Harvest Partners III, L.P.	GEEG Acquisition Holdings Corp.	GEEG Acquisition Holdings Corp.
20004034	SSCI Investors LP	Croda International Plc	Croda International Plc
20004037	TTL Information Technology AG	Jay L. Wertheimer	BDI Distributors, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—07/18/2000

20001136	Citadel Communications Corporation	Robert G. Liggett, Jr.	Liggett Broadcast, Inc.
			LLJ Realty, LLC
			New Tower, Inc.
			Rainbow Radio, LLC
20003803	Community Newspaper Holdings, Inc.	Kenneth R. Thomson	The Thomson Company, Inc.
20003887	MKS Instruments, Inc.	Michael J. Dent	Spectra International, LLC
20003904	Microsoft Corporation	CAIS Internet, Inc.	CAIS Internet, Inc.
20003921	Lottomatica S.p.A.	Autotote Corporation	Autotote Corporation
20003929	Innoveda, Inc.	Hiroshi Hashimoto	PADS Software, Inc.
20003952	Hiroshi Hashimoto	Innoveda, Inc.	Innoveda, Inc.
20003991	Brokat AG	Putera Sampoerna	Gemstone Systems, Inc.
20004004	George G. Beasley	Gordon Gray 1956 Living Trust	Centennial Broadcasting, LLC
20004005	George G. Beasley	Gordon Gray, Jr.	Centennial Broadcasting LLC
			Centennial Broadcasting Nevada, Inc.
20004007	Wolseley Plc	Fairfax Lumber & Millwork Company, Incorporated.	Fairfax Lumber & Millwork Company, Incorporated

Trans No.	Acquiring	Acquired	Entities
20004013	Mobex Communications, Inc.	American Commercial Lines Holdings LLC.	Waterway Communications System LLC
20004023	Brokat AG	Blaze Software, Inc.	Blaze Software, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/19/2000			
20003985	Partners Health Care Systems, Inc.	BWH Anesthesia Foundation, Inc.	BWH Anesthesia Foundation, Inc.
20003986	Partners Health Care System, Inc.	Brigham Medical Group Foundation, Inc..	Brigham Medical Group Foundation, Inc.
20004025	PA Holdings Limited	Hagler Bailly, Inc.	Hagler Bailly, Inc.
20004041	Grove Hill Medical Center, P.C.	PhyCor, Inc.	PhyCor of New Britain, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/20/2000			
20003960	Enron Corp.	Columbia Energy Group	Columbia Energy Power Meeting Corporation Columbia Energy Retail Corporation Columbia Energy Services Corporation
TRANSACTIONS GRANTED EARLY TERMINATION—07/21/2000			
20003842	Maverick Tube Corporation	Prudential Steel Ltd.	Prudential Steel Ltd.
20003916	Bell Atlantic Corporation	Kevin Douglas	Blackwater Cellular Corporation
20003930	Jeffrey H. Smulyan	Sinclair Broadcast Group, Inc.	Sinclair Broadcast Group, Inc.
20003943	Fortmann-Druhe-Mertens GmbH Co. Beteiligungs KG.	Armstrong Holdings, Inc.	Armstrong World Industries, Inc. The W.W. Henry Company
20003956	Galen Holdings PLC	Warner Chilcott Public Limited Company.	Warner Chilcott Public Limited Company
20003967	Media/Communications Partners II Limited Partnership.	CoreComm Limited	CoreComm Limited
20004003	Covad Communications Group, Inc.	BlueStar Communications Group, Inc.	BlueStar Communications Group, Inc.
20004015	Gannett Co., Inc.	BrassRing, Inc.	BrassRing, Inc.
20004020	Kenny Industrial Services, L.L.C.	Canisco Resources, Inc.	Canisco Resources, Inc.
20004028	Macrovision Corporation	Matthew Christiano, Sallie J. Calhoun (husband & wife).	GLOBEtrotter Software, Inc.
20004029	Matthew Christiano, Sallie J. Calhoun (husband & wife).	Macrovision Corporation	Macrovision Corporation
20004030	Aventis S.A.	Millennium Pharmaceuticals, Inc.	Millennium Pharmaceuticals, Inc.
20004031	Millenium Pharmaceuticals Inc.	Aventis S.A.	Aventis Pharmaceuticals Inc.
20004032	HMTF Equity Fund IV (1999), L.P.	ICG Communications, Inc.	ICG Communications, Inc.
20004035	Warburg, Pincus Ventures, L.P.	SkillSoft Corporation	SkillSoft Corporation
20004040	The May Department Stores Company	David's Bridal, Inc.	David's Bridal, Inc.
20004044	Weaverman SA	Robert E. Norman	Southwestern Wire Cloth, Inc.
20004048	Citizens Communications Company	Bell Atlantic Corporation	Contel of Minnesota, Inc., GTE West Coast Inc. GTE California Inc., GTE North Inc., GTE South Inc.
20004054	IFCO Systems N.V.	William Haines	Bromley Pallet Recyclers of Alabama LLC Bromley Pallet Recyclers of Ft. Meyers LLC Bromley Pallet Recyclers of Illinois LLC Bromley Pallet Recyclers of Indiana LLC Bromley Pallet Recyclers of Ohio LLC Bromley Pallet Recyclers of Tennessee LLC Bromley Pallet Recyclers, Inc Bromley Pallet Recyclers, LLC
20004058	Freedom Communications, Inc.	Kenneth R. Thomson	The Thomson Company, Inc.
20004059	Huhtamaki Van Leer Oyi	Graphic Packaging International Corporation.	Graphic Packaging Corporation
20004066	Raymond F. Kennedy	Masco Corporation	Masco Corporation
20004068	Invemed Catalyst Fund, L.P.	Softbank Corp.	Key3Media Group, Inc.
20004069	Bank of Montreal	Roger L. Freeman	Freeman Wellwood & Co., Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 00–19352 Filed 7–31–00; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 991 0306]

Etablissements Delhaize Freres et Cie "Le Lion" S.A., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 24, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 25, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Complaint and Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from Establissments Delhaize Freres et Cie "Le Lion" S.A. ("Delhaize"), Delhaize America, Inc. ("Delhaize America"), and Hannaford Bros. Co. ("Hannaford") (collectively "the Proposed Respondents"), an Agreement Containing Consent Order ("the proposed consent order"). The Proposed Respondents have also reviewed a draft complaint that the Commission contemplates issuing. The proposed consent order is designed to remedy likely anticompetitive effects arising from the proposed Agreement and Plan of Merger between Delhaize, Delhaize America, and Hannaford to acquire all of the outstanding voting stock of Hannaford.

II. Description of the Parties and the Proposed Acquisition

Delhaize America, a North Carolina corporation, which operates most of its stores under the names of "Food Lion" and "Kash N' Karry," has over 1,200 supermarkets in the Southeast and Mid-Atlantic regions of the United States. Food Lion stores are situated in Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Kentucky, West Virginia, Pennsylvania, Delaware, and Maryland. Delhaize America's total sales for fiscal year 1999 were $11 billion, with most generated by Food Lion stores' operations.

Hannaford, a publicly traded firm, is a Maine corporation with executive offices located in Scarborough, Maine. Approximately one-fourth of its common stock is owned by the Sobey family of Stellarton, Nova Scotia, Canada, and its various affiliated trusts and companies. Hannaford's total sales for fiscal year 1999 were $3.46 billion. Hannaford operates about 100 stores under the "Hannaford" or "Shop 'N Save" banner in metropolitan New England and New York markets, plus about 50 stores under the "Hannford" banner in Virginia and North Carolina markets. Hannaford entered the Southeast in the mid-1900's. The company's supermarkets are located in Maine, Massachusetts, New Hampshire, Vermont, New York, North Carolina, Virginia, and South Carolina.

Under the terms of the merger agreement, dated August 17, 1999, Delhaize America will acquire all of Hannaford's outstanding voting stock for approximately $3.6 billion.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")), as well as a deep inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space. Supermarkets in North Carolina and Virginia, where the parties propose to divest supermarkets, tend to be at least 20,000 square feet, selling some 25,000–35,000 SKUs. So called "supercenters" operated by mass merchants such as WalMart, which have full-line supermarkets attached to general merchandise stores, are included in the product market.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices on the prices primarily of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores such as club stores or limited assortment stores, and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do

not effectively constrain most prices at supermarkets. These other stores operate significantly different retail formats and sell far more limited assortments of items or in the case of military commissaries are only open to a limited population base. None of these formats would constrain a price increase taken by supermarkets in the geographic markets.

The draft complaint alleges that the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are the county or counties that include the following incorporated cities and towns. In Virginia the relevant geographic markets are: (a) a market consisting of the Richmond MSA; and (b) two markets that are part of the Norfolk-Virginia Beach-Newport News MSA (also known as the Tidewater area)—the Tidewater Peninsula (Newport News, Hampton and other portions of the peninsula north of the James River), and Southern Tidewater (including Norfolk, Virginia Beach, Portsmouth, and other parts of the MSA south of the James River). In North Carolina the relevant geographic markets are: (a) the Wilmington MSA; (b) Columbus County; (c) Duplin County; (d) Pender County; and (e) "greater Raleigh," which includes Wake County, excluding the towns of Wake Forest, Rolesville, Zebulon, and Wendell.

Food Lion and Hannaford are actual and direct competitors in all of the above listed markets. The acquisition will eliminate that competition. The draft complaint alleges that each of the post merger markets would be highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios.[1] The acquisition would substantially increase concentration in each market. Delhaize America and Hannaford would have a combined market share that ranges from 35 percent to 94 percent in each geographic market. The post-acquisition HHIs in the geographic markets range from 2562 points to 8817 points.

Concentration levels in the geographic markets alleged in the draft complaint would not be materially different even if club stores and limited assortment stores were included in the product market. The draft complaint further alleges that entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The draft complaint alleges that Delhaize America's proposed acquisition of all of the outstanding voting stock of Hannaford, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supermarkets owned or controlled by Delhaize and supermarkets owned or controlled by Hannaford; by increasing the likelihood that Delhaize will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects raises the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the geographic markets alleged in the proposed complaint.

IV. Terms of the Agreement Containing Consent Order ("the proposed consent order")

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition.[2] Under the terms of the proposed consent order, the Proposed Respondents must divest 37 identified Hannaford supermarkets and one identified Hannaford supermarket site in the relevant markets to three different up-front buyers. These buyers were selected by the parties and presented to the Commission for its review.

The Commission's goal is evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. When divestiture is an appropriate remedy for a supermarket merger, the Commission requires the merging parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is preliminarily satisfied that the purchasers presented by the parties are well qualified to run the divested stores and that divestiture to these purchasers poses no separate competitive issues. Public comments may address the suitability of the designated acquirers to acquire the supermarkets at issue.

The three up-front buyers and the number of stores each is acquiring are as follows: Kroger Co. (20 stores in Virginia), Lowe's Food Stores, Inc. (12 stores and one site in North Carolina), and the Sylvester Group (five stores in North Carolina). Kroger, headquartered in Ohio, operates 2,300 supermarkets in 31 states. Kroger is buying the stores in the Richmond and Tidewater areas where it does not currently operate supermarkets. Lowe's, a North Carolina corporation, operates 86 supermarkets throughout North Carolina and Virginia. Lowe's is buying supermarkets in Wilmington and Raleigh. Lowe's has a small presence in Raleigh, operating two supermarkets in that market, but operates no supermarkets in Wilmington. The Sylvester Group, a family-owned firm, operates 26 "Piggly Wiggly" supermarkets in rural North Carolina and will acquire five stores. The Sylvester Group operates one store in Duplin County, but the Hannaford it is acquiring is 20 miles from that store. A list of the specific supermarkets that Delhaize America and Hannaford must divest to each of the up-front buyers is attached at the end of this Analysis of the Draft Complaint and Proposed Consent Order to Aid Public Comment.

The proposed consent order requires that, no later than 10 days after the date on which the consent order becomes final, the Proposed Respondents shall divest these assets pursuant to and in accordance with their agreements with the buyers. The amount of time required for the divestitures varies with each of the buyers, based on the buyer's need to convert large numbers of new stores into its operations.

The proposed consent order also requires the Proposed Respondents to include rescission provisions in its up-front buyer agreements that allow it to rescind the transaction(s) if the Commission, after the comment period, decides to reject any of the up-front buyers. If, at the time the Commission decides to make the proposed consent order final, the Commission notifies the Proposed Respondents that any of the up-front buyers to which they have divested a supermarket or site is not an acceptable acquirer, or that any up-front buyer agreement is not an acceptable manner of divestiture, then the Proposed Respondents must immediately rescind the transaction in question and divest those assets within three months after the proposed consent order becomes final. At that time, the Proposed Respondents must divest those assets only to an acquirer that receives the prior approval of the

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

[2] Acceptance of the proposed consent order for public comment terminates the Hart-Scott-Rodino waiting period and enables Delhaize America to immediately acquire the Hannaford voting stock.

Commission and only in a manner that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, a trustee that the Commission may appoint has the power to divest any additional ancillary assets and effect such arrangements as are necessary to satisfy the requirements of the proposed consent order.

The proposed consent order specifically requires the Proposed Respondents to: (1) maintain the viability, competitiveness and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair their marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve existing relationships with suppliers, customers and employees; and (6) keep the supermarkets open for business and maintain the inventory of products in each store consistent with past practice. The proposed consent order also contains more specific details relating to maintaining store operations.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or site identified in the order that Delhaize America and Hannaford have not divested to satisfy the requirements of the proposed consent order. The proposed consent order also enables the Commission to seek civil penalties against Delhaize or Delhaize America for non-compliance with the proposed consent order.

For a period of 10 years from the date the proposed consent order becomes final, the Proposed Respondents are required to provide written notice to the Commission prior to acquiring supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in the county or counties that include the relevant geographic areas. Proposed Respondents may not complete such an acquisition until they have provided information requested by the Commission. This provision does not restrict the Proposed Respondents from constructing new supermarket facilities on their own; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

For a period of 10 years, the proposed consent order also prohibits the Proposed Respondents from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if such supermarket was formerly owned or operated by the Proposed Respondents in the county or counties that include the relevant geographic areas. In addition, the Proposed Respondents may not remove fixtures or equipment from a store or property owned or leased in these counties that is no longer in operation as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy, or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by Proposed Respondents.

The Proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within 30 days following the date on which they signed the proposed consent, every 30 days thereafter until the divestitures are completed, and annually for a period of 10 years.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to the various independent buyers listed below, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

Attachment—To Analysis of the Complaint and Proposed Consent Order to Aid Public Comment

Supermarkets Divested to Kroger

Hannaford Store No. 427, located at 9480 W. Broad St., Richmond, VA
Hannaford Store No. 474, located at 2738 Hannaford Plaza, Richmond, VA
Hannaford Store No. 477, located at 4816 S. Laburnum, Richmond, VA
Hannaford Store No. 478, located at 1356 Gaskins Rd., Richmond, VA
Hannaford Store No. 479, located at 3507 W. Cary St., Richmond, VA
Hannaford Store No. 480, located at 11400 Huguenot Rd., Midlothian, VA
Hannaford Store No. 481, located at 10921 Hull St., Midlothian, VA
Hannaford Store No. 484, located at 7951 Brook Rd., Richmond, VA
Hannaford Store No. 486, located at 12201 So. Chalkley, Chester, VA
Hannaford Store No. 490, located at 1601 Willow Lawn Dr., Richmond, VA
Hannaford Store No. 430, located at 14246 Warwick Blvd., Newport News, VA
Hannaford Store No. 432, located at 4692 Columbus St., Virginia Beach, VA
Hannaford Store No. 483, located at 4625 Shore Dr., Virginia Beach, VA
Hannaford Store No. 487, located at 1800 Republic Dr., Virginia Beach, VA
Hannaford Store No. 488, located at 101 Village Ave., York Co., VA
Hannaford Store No. 491, located at 2029 Lynnhaven Pkwy., Virginia Beach, VA
Hannaford Store No. 492, located at 205 East Little Creek Rd., Norfolk, VA
Hannaford Store No. 493, located at 5237 Providence Rd., Virginia Beach, VA
Hannaford Store No. 494, located at 5601 High St., Portsmouth, VA
Hannaford Store No. 496, located at King Richard Dr., Virginia Beach, VA

Supermarkets and Unbuilt Site Divested to Lowe's

Hannaford Store No. 410, located at 341 South College Rd., Wilmington, NC
Hannaford Store No. 415, located at 2316 North College Rd., Wilmington, NC
Hannaford Store No. 424, located at 930 High House Rd., Cary, NC
Hannaford Store No. 425, located at 9600 Strickland Rd., Raleigh, NC
Hannaford Store No. 426, located at 5309 Carolina Beach Rd., Wilmington, NC
Hannaford Store No. 428, located at 2900 Millbrook Rd., Raleigh, NC
Hannaford Store No. 436, located at 2900 Wake Forest Rd., Raleigh, NC
Hannaford Store No. 439, located at 1741 Walnut St., Cary, NC
Hannaford Store No. 441, located at 5051–3 Main St., Shallotte, NC
Hannaford Store No. 442, located at 4821 Long Beach Rd., S.E., Southport, NC
Hannaford Store No. 444, located at 3804 Oleander Dr., Wilmington, NC
Hannaford Store No. 455, located at 1405 W. Williams St., Suite A, Apex, NC Unbuilt Site, located at Ten Ten Road, Cary, NC

Supermarkets Divested to Ward Sylvester

Hannaford Store No. 402, located at 103 South Dudley Street, Burgaw, NC
Hannaford Store No. 408, located at 112A Village Road, Leland, NC
Hannaford Store No. 403, located at 107 South Pine Street, Warsaw, NC
Hannaford Store No. 420, located at 701B White's Crossing Shopping Center, Whiteville, NC
Hannaford Store No. 414, located at 604

Jefferson Street, Whiteville, NC

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–19350 Filed 7–31–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13⅞% for the quarter ended June 30, 2000. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 25, 2000.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 00–19295 Filed 7–31–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–54–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

Interstate Control of Communicable Diseases—New—The Food and Drug Administration (FDA) and Centers for Disease Control and Prevention (CDC) are planning to consolidate regulations related to controlling the spread of communicable diseases, thereby increasing their efficiency and effectiveness. Currently, the regulations contained in Part 1240 of Title 21, Code of Federal Regulations, which pertain to interstate control of communicable diseases, are administered by FDA. Regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States are separately promulgated in Part 71 of Title 42, Code of Federal Regulations and are administered by the CDC. FDA is transferring to CDC certain sections of 21 CFR Part 1240 that relate to restrictions on interstate travel of any person who is in the communicable period of cholera, plague, smallpox, typhus, or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof.

Of the regulations being transferred, 21 CFR 1240.50 (Certain communicable diseases; special requirements), contains a requirement for reporting certain information to the Federal government. Specifically, this regulation requires any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of State and Local health authorities, with Federal assistance being sought by those authorities on a cooperative basis, without application of Federal regulations. The regulations formerly administered by FDA and being assumed by CDC were developed to facilitate Federal action in the event of large outbreaks of disease requiring a coordinated effort involving several States, or in the event of inadequate local control. While it is not known whether, or to what extent, situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is not uncommon. Should this occur, the reporting and record keeping requirements contained in the regulations will be used by CDC to carry out quarantine responsibilities as required by law.

Because of the uncertainty about whether a situation will ever arise precipitating CDC's enforcement of this rule, the following data collection burden estimate was prepared using the article Smallpox: An Attack Scenario, Tara O'Toole; Emerging Infectious Diseases, Vol. 5, No. 4, Jul-Aug 1999. This article describes the aftermath of a hypothetical domestic public health emergency situation involving smallpox virus. Of the potentially 15,000 persons infected with smallpox, the data collection assumes that one-fourth of these would apply for a permit to move from one state to another while in the communicable period of or having been exposed to smallpox, under the requirements set forth in 42 CFR 70.5. During such an event, it is assumed that an additional 2,000 persons not infected with smallpox may, as a precautionary measure, be required to obtain a State permit in order to move from one State to another, and that 8 States would be involved, under the requirements set forth in 42 CFR 70.3.

Further, it is assumed that during such an event, the master of a vessel or person in charge of a conveyance may be required to notify a local health authority of as many as 1,500 suspected cases of communicable disease developed and/or observed during transit, involving as many as 20 State or local jurisdictions, under the requirements set forth in 42 CFR 70.4.

In such a scenario, it would be likely that CDC would obtain for followup and analysis any information it requires to be delivered to a State or local health authority. Accordingly, an additional burden may be imposed upon said authority to copy and transmit that information. We assume that the burden would apply to 100% of the information submitted under both 42 CFR 70.3 and 42 CFR 70.4.

The annualized burden is estimated to be 3,600 hours.

Regulation	Respondent	Number of applicants	Number of responses per applicant	Average Burden per Response (in minutes)
42 CFR 70.3	Traveler	2,000	1	15/60
	Attending physician	2,000	1	15/60
42 CFR 70.3	State Health Authority	8	250	6/60
42 CFR 70.4	The Master of a vessel or person in charge of a conveyance engaged in interstate traffic.	1,500	1	15/60
42 CFR 70.4	State or local Health authority	20	75	6/60
41 CFR 70.5	Traveler	3,750	1	15/60
	Attending physician	3,750	1	15/60

Dated: July 26, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19324 Filed 7–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Supplemental Awards under Program Announcement 98047

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting. This notice is published less than 15 days in advance of the meeting due to administrative delays.

NAME: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Supplemental Awards under Program Announcement 98047, meeting.

TIMES AND DATES: 1 p.m.–1:30 p.m., August 9, 2000 (Open). 1:30 p.m.–4 p.m., August 9, 2000 (Closed).

PLACE: The teleconference call will originate in the National Center for Chronic Disease Prevention and Health Promotion, Prevention Research Centers Program, Koger Center, Rhodes Building, 3005 Chamblee Tucker Rd., Atlanta, Ga 30341. Open access to the call will be available from 1–1:30 p.m. EDT, only. Interested parties may access the teleconference at 877/331–6867. The participant code is 949464.

STATUS: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

MATTERS TO BE DISCUSSED: The meeting will include the review, discussion, and evaluation of supplemental award applications received in response to Program Announcement 98047.

CONTACT PERSON FOR MORE INFORMATION: David Elswick, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway m/s K30, Atlanta, GA., 30341. Telephone 770/488–5395, email dce1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 25, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–19462 Filed 7–28–00; 10:36 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1418]

International Conference on Harmonisation; Draft Guidance on Good Manufacturing Practice for Active Pharmaceutical Ingredients; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Q7A ICH Good Manufacturing Practice Guide for Active Pharmaceutical Ingredients." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The document is intended to provide guidance regarding current good manufacturing practice (CGMP) for manufacturing of active pharmaceutical ingredients (API's). The recommendations in the draft guidance are intended to assist in the manufacture of API's that meet the standards for quality and purity they purport or are represented to possess.

DATES: Submit written comments by October 2, 2000.

ADDRESSES: Copies of the draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests.

To facilitate the submission and review of comments on this draft guidance, the agency has developed two methods for submitting electronic comments. Interested persons may submit comments to the Dockets Management Branch (HFA–305) online or offline by downloading a comments template. Both methods are accessible on the FDA web site at http://www.fda.gov/ohrms/dockets. The agency encourages the submission of electronic comments and anticipates that widespread use of these methods

will increase the effectiveness of the guidance development process.

Interested parties may also submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:
Regarding the guidance:
Joseph X. Phillips, Central Regional Office, U.S. Customhouse, 2d and Chestnut Sts., rm. 900, Philadelphia, PA 19106, 215–597–0492, JPhillip@ora.fda.gov, or
Edwin Rivera, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0095, Rivera@cder.fda.gov, or
John A. Eltermann, Center for Biologics Evaluation and Research (HFM–670), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3031, Eltermann@cber.fda.gov.
Regarding the ICH: Janet J. Showalter, Office of International Programs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In July 2000, the ICH Steering Committee agreed that a draft guidance entitled "Q7A ICH Good Manufacturing Practice Guide for Active Pharmaceutical Ingredients" should be made available for public comment. The draft guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

In accordance with FDA's good guidance practices (GGP's) (62 FR 8961, February 27, 1997), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedure for publishing ICH guidances. Beginning April 2000, we will no longer include the text of ICH guidances in the **Federal Register**. Instead, we will publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). The draft guidance will be left in the original ICH format. The final guidance will be reformatted to conform to the GGP style before publication.

The draft guidance describes CGMP for the manufacturing of API's. The recommendations in the draft guidance are intended to assist in the manufacture of API's that meet the standards for quality and purity they purport or are represented to possess. The draft guidance is not intended to define registration or filing requirements or modify pharmacopeial requirements.

In the draft guidance, "manufacturing" includes all operations, and related controls, of receipt of materials, production, packaging, repackaging, labeling, relabeling, quality control, release, storage, and distribution of API's. The draft guidance applies to the manufacture of API's for use in human drug products, including sterile API's up to the point immediately before the API is rendered sterile. The sterilization and aseptic processing of sterile API's are not covered by this draft guidance. CGMP's described in the draft guidance should be applied to the API manufacturing process beginning with the use of starting materials.

The draft guidance applies to API's that are manufactured by chemical synthesis, extraction, cell culture/fermentation, recovery from natural sources, or any combination of these processes. Intermediates and API's produced by recombinant DNA technology are covered provided they are proteinacious materials.

The draft guidance does not apply to vaccines, whole cells, whole blood and plasma, and API's derived from plasma fractionation, but does apply to API's produced using blood or plasma as raw materials. The draft guidance does not apply to cell substrates, medical gases, bulk-packaged drug products, and manufacturing/control aspects specific to radiopharmaceuticals.

This draft guidance represents the agency's current thinking on CGMP's for manufacturing of API's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit electronic comments to the Dockets Management Branch (http://www.fda.gov/ohrms/dockets) by October 2, 2000. Written comments also can be submitted on the draft guidance (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19332 Filed 7–27–00; 1:45 pm]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1385]

Draft Guidance for Industry on Refractive Implants: Investigational Device Exemptions (IDE's) and Premarket Approval Applications (PMA's); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Refractive Implants: Investigational Device Exemptions (IDE's) and Premarket Approval Applications (PMA's)." This guidance is neither final nor in effect at this time. This draft guidance describes preclinical and clinical information that may be used in support of IDE's and PMA's.

DATES: Submit written comments concerning this guidance by October 30, 2000.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance entitled "Refractive Implants: Investigational Device Exemptions (IDE's) and Premarket Approval Applications (PMA's)" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Ashley A. Boulware, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Refractive Implants: Investigational Device Exemptions (IDE's) and Premarket Approval Applications (PMA's)." This draft guidance is intended to provide detailed information about the type of preclinical testing that can support both clinical investigations and marketing applications for new refractive implants. This draft guidance also is intended to provide the basic principles that should be applied in the conduct of a clinical study for refractive implants. Parts of this guidance document were discussed at an Ophthalmic Devices Panel meeting in October 1998.

II. Significance of Guidance

This guidance document represents the agency's current thinking on submissions for refractive implants. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Refractive Implants: Investigational Device Exemptions (IDE's) and Premarket Approval Applications (PMA's)" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1145) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "Refractive Implants: Investigational Device Exemptions (IDE's) and Premarket Approval Applications (PMA's)," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Refractive Implants: Investigational Device Exemptions (IDE's) and Premarket Approval Applications (PMA's)" is available at http://www.fda.gov/cdrh/ode/guidance/1145.pdf.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by October 30, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–19337 Filed 7–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification

Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://www.health.org/workpl.htm*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71, Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232, (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; (UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Forth Worth, TX 76118, 817–215–8800, (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106, (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947, (Formerly: Damon Clinical Laboratories, Damon/MethPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484, (Formerly: SmithKline Beecham Clinical Laboratories, Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87108, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–339–4299, (Formerly: Met–West-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

The following laboratory will be voluntarily withdrawing from the National Laboratory Certification Program on August 12, 2000:

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–13485, (Formerly: Maryland Medical Laboratroy, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science) *

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Durg Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–19213 Filed 7–31–00; 8:45 am]

BILLING CODE 4160–20–M

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited Laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. Laboratories do.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Necedah National Wildlife Refuge, Wood and Juneau Counties, Wisconsin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish

and Wildlife Service (Service) has published the Necedah National Wildlife Refuge (Refuge) Draft Comprehensive Conservation Plan and associated Environmental Assessment. The Draft Plan describes how the Service intends to manage the Refuge for the next 10–15 years.

DATES: Submit written comments by August 25, 2000. All comments should be addressed to: Tom Magnuson, U.S. Fish and Wildlife Service, 1 Federal Drive, Room 530, Fort Snelling, Minnesota 55111. Comments may also be submitted through the Service's regional Web site at: http://midwest.fws.gov/planning.

ADDRESSES: A copy of the Draft Comprehensive Conservation Plan and Environmental Assessment, or a summary of the combined document, may be obtained by writing to Tom Magnuson at the address above or by placing a request through the Web site.

FOR FURTHER INFORMATION CONTACT: For additional information contact Larry Wargowsky, Necedah National Wildlife Refuge, W7996 20th Street West, Necedah, Wisconsin 54646–7531. Phone: 608–565–2551; E-Mail: larry_wargowsky@fws.gov

SUPPLEMENTARY INFORMATION: The Refuge was established in 1939 as a refuge and breeding ground for migratory birds and for use as an inviolate sanctuary for migratory birds. It is located in central Wisconsin, about 180 miles southeast of Minneapolis, Minnesota, 150 miles northwest of Milwaukee, Wisconsin, and about four miles west of Necedah, Wisconsin.

The history of the Refuge dates back to the early 1930s when the U.S. Government acquired 114,964 acres of land in Juneau, Wood, Monroe, and Jackson counties, Wisconsin, to assist farmers living within the area and to develop the area for wildlife.

Situated on the bed of former Glacial Lake Wisconsin and the Great Central Wisconsin Swamp, land in and around the Refuge was once a vast peat bog with some low wooded islands and savannas; the higher sand ridges were occupied by mature stands of pines and other species. Today, the Refuge consists of 43,696 acres of wetlands and open water areas; pine, oak, and aspen forests; grasslands and rare savannas, all of which support a rich diversity of fish, wildlife, and plant populations. Over 230 different species of birds have been observed on the Refuge since its inception. The Refuge also supports several threatened, endangered, and rare species like the Karner blue butterfly, Blanding's turtle, and the eastern massasauga rattlesnake, as well as resident game species including the white-tailed deer, wild turkey, and ruffed grouse. In addition, nearly 150,000 people visit the Refuge annually to hunt, fish, hike, observe and photograph wildlife, pick berries, or relax among the trees, wetlands, and wildlife.

Management of the Refuge is carried out by a multi-disciplined team of biologists, technicians, and support staff who are recognized leaders in their fields. Protecting, restoring, and maintaining biologically diverse and productive wetlands, forest land, grasslands, and savannas for fish and wildlife resources are key indicators of management success. Management tools involve water level manipulation, prescribed burning, timber harvest, land acquisition, and public outreach and environmental education. Scientifically rigorous monitoring and research activities create the foundation from which quality management decisions are made. Cooperative working relationships with universities, other Federal agencies, the State of Wisconsin, elementary and secondary educational institutions, and non-governmental organizations are key assets to management success.

Dated: July 26, 2000.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 00–19325 Filed 7–31–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–8103–4]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Doyon, Limited, notice of which was published in the **Federal Register**, 44 Fed. Reg. 28110, 28111 (May 14, 1979), is modified to remove EIN 4 C3, D1, D9, within Sec. 4, T. 29 S., R. 13 E., Kateel River Meridian, Alaska.

Notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 31, 2000 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Nora A. Benson,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–19327 Filed 7–31–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–00–1220–HQ]

Notice of Availability of the Record of Decision for the Soledad Canyon Sand and Gravel Mining Project

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969 , Title 40 Code of Federal Regulations Parts 1505 and 1506, and BLM Handbook H–1790–1, notice is hereby given that the U.S. Department of the Interior's Bureau of Land Management (BLM) has prepared the Record of Decision for the Soledad Canyon Sand and Gravel mining Project. It is the BLM's decision to approve the Reduced North Fines Storage Alternative with additional environmental modifications as described in the Final Environmental Impact Statement published by BLM on June 2, 2000.

This decision directs the manner in which the Transit Mixed Concrete Company (TMC) is authorized to extract a total of 78 million tons of material to produce and sell approximately 56.1 million tons of sand and gravel in the Soledad Canyon area of northeastern Los Angeles County, California over a 20-year period in conformance with Federal contracts issued by BLM to TMC in 1990.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary within 30 days from the date of this notice, in accordance with the regulations at Title 43 of the Code of Federal Regulations Part 4. For more information, contact BLM's Palm Springs-South Coast Field Office at the address and phone number listed below.

SUPPLEMENTARY INFORMATION: The Record of Decision is online at *www.ca.blm.gov*. Printed copies can also be obtained from the BLM in Palm Springs by calling (760) 251–4810 or by writing to the Bureau of Land Management, Palm Springs-South Coast Field Office, 690 W. Garnet, North Palm Springs, CA 92258, Attn: Elena Misquez.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez at (909) 697–5220, BLM California Desert District External Affairs.

Dated: July 25, 2000.

Tim Salt,

District Manager.

[FR Doc. 00–19216 Filed 7–31–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–15630 et al.]

Public Land Order No. 7437; Modification and Partial Revocation of Executive Orders; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 7437, 65 FR 15917–15918, published March 24, 2000.

On page 15917, second column under T. 9 S., R. 16 E., which read "Sec. 16, lots 7 to 16 inclusive." is hereby corrected to read "Sec. 16, lots 7 to 10, and 12" and under T. 10 S., R. 18 E., which reads "Sec. 3, lot 9, and SW¼NW¼." is hereby corrected to read "Sec. 3, lot 9, and SW¼SW¼."

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 00–19326 Filed 7–31–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (OMB Control Number 1010–0110).

SUMMARY: To comply with the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled, Training Evaluation and Outreach Forms. We will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval after this comment period closes.

DATES: Submit written comments on or before October 2, 2000.

ADDRESSES: Submit written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

PUBLIC COMMENT PROCEDURE: Submit your comments to the offices listed in the **ADDRESSES** section, or email your comments to us at *RMP.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Mr. Guzy at (303) 231–3432, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov* for public review.

Also, contact Mr. Guzy to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*. A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Training Evaluation and Outreach Forms.

OMB Control Number: 1010–0110.

Bureau Form Number: n/a.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. We perform the royalty management functions and assist the Secretary in carrying out DOI's Indian trust responsibility.

We provide training and outreach to our constituents to facilitate their compliance with laws and regulations and to ensure that constituents are well informed. We use training and outreach evaluation questionnaires to improve on our training and outreach efforts and to assure its continued relevance. We present training sessions to the oil and gas and solid minerals reporters on various aspects of royalty reporting, production reporting, and valuation. We also provide outreach sessions to individual Indian minerals owners, Indian Tribes, and the Bureau of Indian Affairs on Indian royalty management issues. Additionally, we provide training sessions to our financial and systems contractors and State and Tribal auditors.

During the last few minutes of each training or outreach session, RMP asks participants to complete and return evaluation questionnaires. Participant response is voluntary. Some questions are uniform across all of the evaluation questionnaires; however, we also ask questions specific to each type of training or outreach or specific to our audiences. Proprietary information is not requested, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 1800 industry representatives, State auditors, Indian auditors, Indian Tribes, and Indian allottees, MMS contractors, and MMS employees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 126 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: n/a.

Comments: The Paperwork Reduction Act, 44 U.S.C. 3506(c)(2)(A), requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act of 1995 provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: July 25, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–19340 Filed 7–31–00; 8:45 am]

BILLING CODE 4310–MR–W

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (OMB Control Number 1010–0042).

SUMMARY: To comply with the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled, Application for the Purchase of Royalty Oil. We will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval after this comment period closes.

DATES: Submit written comments on or before October 2, 2000.

ADDRESSES: Submit written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

PUBLIC COMMENT PROCEDURE: Submit your comments to the offices listed in the **ADDRESSES** section, or email your comments to us at *RMP.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Mr. Guzy at (303) 231–3432, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov* for public review.

Also, contact Mr. Guzy to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*. A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Application for the Purchase of Royalty Oil.

OMB Control Number: 1010–0042

Bureau Form Number: n/a.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. We perform the royalty management functions and assist the Secretary in carrying out DOI's Indian trust responsibility.

"Royalty oil" is crude oil produced from leased Federal lands, both onshore and offshore, in instances in which the Government exercises the option to accept a lessee's royalty payment in oil rather than in money. Title to the oil is transferred to the Government and then sold to an eligible refiner. When the Secretary determines that small refiners do not have access to adequate supplies of oil, the Secretary may dispose of any oil taken as royalty by conducting a sale of such oil, or by allocating it to eligible refiners.

When the Secretary decides to offer royalty oil taken in kind for sale to eligible refiners, MMS will publish a Notice of Availability of Royalty Oil in

the **Federal Register**, and other printed media, when appropriate. The Notice includes administrative details concerning the application, allocation, and contract award process for the royalty oil. The Application for the Purchase of Royalty Oil, Form MMS–4070, is submitted by refiners interested in purchasing royalty oil in accordance with instructions in the Notice, and with instructions issued by MMS for completion of the form. The information collected is used by MMS to determine if the applicant meets eligibility requirements to contract to purchase royalty oil. Information collected also provides a basis for the allocation of available royalty oil among qualified refiners.

Responses to this information are necessary for refiners to participate in royalty oil sales. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 25 small oil refiners.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 25 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: n/a.

Comments: The Paperwork Reduction Act, 44 U.S.C. 3506(c)(2)(A), requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act of 1995 provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: July 25, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–19341 Filed 7–31–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of Casa Grande Ruins National Monument, National Park Service, Coolidge, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of Casa Grande Ruins National Monument, National Park Service, Coolidge, AZ, that meet the definition of "sacred object" under Section 2 of the Act. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park unit that has control or possession of these Native American cultural items. The Assistant Director, Cultural Resources Stewardship and Partnerships, is not responsible for the determinations within this notice.

The approximately 203 cultural items comprise an ethnographic collection utilized by the Tohono O'odham Nation of Arizona for the Vikita ceremony. These cultural items are mostly fashioned from wood, many are painted, and include: 5 staffs, 14 spears, 12 bows, 59 sticks, 11 bullroarers, 50 prayersticks, 1 feather, 32 arrows, 1 mask, 1 kilt, 1 garter, 1 jar, 1 hide, 1 bundle, 3 unidentified ceremonial objects, 7 pieces of wood, 2 effigies, and 1 bundle with a feather. This collection of cultural items has been recorded in several anthropological documents as originating from the Tohono O'odham village of Santa Rosa and as having been used in the Vikita ceremony.

During the summer of 1922 or 1923, a trader told Frank Pinkley and George Boundey that a large amount of old Tohono O'odham ceremonial materials were cached northeast of the village of Santa Rosa (Gu Achi). About a mile and a half from this village, Pinkley and Boundey located a brush enclosure. Within the immediate vicinity of this enclosure, Pinkley and Boundey found a number of cultural items. Some of these items were found under scrub mesquite bushes, while others were deposited in the branches of trees. Local Tohono O'odham individuals indicated that these cultural items were used as part of a Vikita ceremony.

According to a 1937 article by Charles R. Steen, the dance at this enclosure was probably held in 1911. Several facts suggest that the Tohono O'odham intended that the ceremonial equipment collected by Pinkley and Boundey at the enclosure should only be used once, and that when the time for another ceremony arrived that a new enclosure and new ceremonial accoutrements for the ceremonies were to be prepared. The enclosure had not been kept in repair and had apparently seen no further use, the costumes and cultural items carried by the ceremony's participants had been discarded, and at least two Vikita ceremonies had been held since the 1911 Vikita event. Steen's article also noted that Tohono O'odham individuals expressed their satisfaction with the care the above-described cultural items received while in the possession of Pinkley.

In 1940, Pinkley donated the previously described cultural items to Casa Grande Ruins National Monument. The cultural items were subsequently accessioned into the Monument's collection and are now stored at the Western Archeological and Conservation Center in Tucson, Arizona.

On August 13, 1998, the National Park Service convened a consultation

meeting with approximately 45 members of the Tohono O'odham Nation of Arizona, which included Tohono O'odham elders, religious leaders and the Cultural Affairs Manager. National Park Service representatives attending this meeting included the Superintendent of Casa Grande Ruins National Monument and the Repository Chief of the Western Archeological Conservation Center. After the consultants viewed the entire Vikita-related collection, the Tohono O'odham representatives indicated that the above described cultural items were important ceremonial objects needed by traditional religious leaders for the practice of traditional Native American religions by their present-day adherents.

According to documents received from the Tohono O'odham Nation's Cultural Affairs Office in June 2000, the above-described cultural items were never intended to leave the land where they were left, and Tohono O'odham religious leaders will determine how they will be used in the future.

Based on the above-mentioned information, the Casa Grande Ruins National Monument Superintendent determined that, pursuant to 43 CFR 10.2 (d)(3), the approximately 203 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. The Casa Grande Ruins National Monument Superintendent also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Tohono O'odham Nation of Arizona.

This notice has been sent to officials of the Tohono O'odham Nation of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Don Spencer, Superintendent, Casa Grande Ruins National Monument, 1100 Ruins Drive, Coolidge, AZ, 85228, telephone (520) 723–3172, before August 31, 2000. Repatriation of these cultural items to the Tohono O'odham Nation of Arizona may begin after that date if no additional claimants come forward.

Dated: July 21, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–19293 Filed 7–31–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Salinas Pueblo Missions National Monument, National Park Service, Mountainair, NM

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Salinas Pueblo Missions National Monument, National Park Service, Mountainair, NM. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park unit that has control or possession of these Native American human remains and associated funerary objects. The Assistant Director, Cultural Resources Stewardship and Partnerships, is not responsible for the determinations within this notice.

A detailed assessment and inventory of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with representatives of the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of the Piro-Manso-Tiwa, a non-Federally recognized Indian group, were also present at one of the consultation meetings.

In 1923, human remains representing 43 individuals were recovered during legally authorized excavations conducted by Dr. Edgar L. Hewett, School of American Research, at the Pueblo de las Humanas complex, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

On the basis of architectural, osteological, archeological, and historical evidence, this site, which is associated with Mound 7 of the Pueblo de las Humanas complex, and these human remains are dated to Pueblo IV and Pueblo V (A.D. 1300-1672).

In 1956, human remains representing 99 individuals were recovered from 58 burials during a legally authorized National Park Service stabilization project conducted at the San Isidro Mission Church's Campo Santo Catholic Cemetery. This site is located at the Pueblo de las Humanas complex, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

An osteological analysis of the 99 individuals recovered from this site (Campo Santo) identified 95 of them as Jumano. Based upon architectural, archaeological, biological (cranial morphology), historical, and Church documentation evidence, San Isidro's cemetery (Campo Santo) was determined to have been in use from 1629-1672; therefore, this site and these human remains are dated to the Pueblo IV and Pueblo V (A.D. 1300-1672) periods.

In 1962, human remains representing 31 individuals were recovered during legally authorized National Park Service excavations conducted at San Buenaventura church, which is also situated within the Pueblo de Las Humanas complex, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

Based upon osteological, archeological, and historical evidence, the 31 individuals recovered from San Buenaventura were identified as Jumano. On the basis of historical evidence and Church documents, San Buenaventura is known to have been the second and largest of the Spanish mission churches constructed at Pueblo de las Humanas, Gran Quivira. The convento complex was in use, although the mission church is believed to have never fully been completed. Based on osteological, historical, and Church documentation evidence, this site (San Buenaventura) and these human remains are dated to the Pueblo IV (A.D. 1300-1600) and Pueblo V (A.D. 1600-1672) periods.

In 1951, human remains representing five individuals were recovered during legally authorized National Park Service excavations at the Pueblo de Las Humanas complex's House A, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

Based on architectural, archeological, historical, and Church documentation evidence, this site, (House A) and these human remains are dated to the Pueblo IV (A.D. 1300-1600) and Pueblo V (A.D. 1600-1672) periods.

Between 1965-67 and in 1973, human remains representing 716 individuals

were recovered during legally authorized National Park Service excavations at Mound 7 of the Pueblo de Las Humanas complex, a site located within Monument boundaries. No known individuals were identified. The 587 associated funerary objects include 146 beads, 1 scraper, 8 awls, 2 tinklers, 3 bifaces, 17 pendants, 2 ornaments, 3 jars, 26 tessera, 5 bowls, 1 pitcher, 1 pipe, 5 pieces of shell, 4 bone artifacts, 1 flute, 1 feather-wrapped blanket, 2 rubbing stones, 2 hair samples, 12 projectile points, 1 ground stone artifact, 2 effigies, 2 crystals, 6 pieces of pigment, 3 gizzard stones, 2 textiles, 1 drill, 1 eggshell, 2 pieces of cordage, 1 knife, 1 piece of basketry, 1 fiber knot, 1 flake tool, 1 bean, 23 bags of faunal specimens, 121 bags of corn cobs and corn kernels, 173 ceramic sherds, 2 pieces of metal, and 1 metal bar.

Based on osteological, architectural, and archeological evidence, as well as the associated funerary objects, Mound 7 has been identified as a Jumano culture puebloan structure. Therefore, this site (Mound 7), these human remains, and the associated funerary objects are dated to the Pueblo IV (A.D. 1300-1600) and Pueblo V (A.D. 1600-1672) periods.

Between 1984-1986, human remains representing 35 individuals were recovered during legally authorized excavations conducted by the University of Iowa at a midden site south of the Pueblo de Las Humanas complex's Mound 17, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

On the basis of osteology, non-funerary cultural items (ceramics, projectile points, etc.), archeological evidence, historical information, and the association with the Pueblo de Las Humanas complex, this site (midden site) and these human remains are dated to the Pueblo IV (A.D. 1300-1600) and Pueblo V (A.D. 1600-1672) periods.

In 1960, human remains representing one individual were recovered during legally authorized National Park Service excavation conducted in the Monument's residential compound, a site located within Monument boundaries. No known individual was identified. No associated funerary objects are present.

Based on osteological information, archeological evidence, and the proximity of the recovery location to previously dated structures, this site (residential compound) and these human remains have been determined to be likely related to the Jumano culture and are dated to Pueblo I-III (A.D. 900-1300).

In 1964, human remains representing one individual were recovered during a legally authorized National Park Service excavation, at GRQU #2, a site located within Monument boundaries. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence and architecture, this site (GRQU #2), a pithouse, has been determined to be related to the Jumano culture. Further, this site (GRQU #2) and these human remains have been dated to Pueblo I-III (AD 900-1300).

In 1984, human remains representing one individual were recovered during a legally authorized drainage control project conducted at the mission of San Gregorio, a site within Monument boundaries. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural evidence, this site (San Gregorio) and these human remains are dated to Pueblo IV-V (A.D. 1300-1673).

At an unknown date, human remains representing three individuals were recovered from the general area of Pueblo de las Humanas, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

Based upon archeological evidence, historical information, and their association with the Pueblo de Las Humanas complex, these human remains have been determined to be related to the Jumano culture and are dated to the Pueblo IV (A.D. 1300-1600) and Pueblo V (A.D. 1600-1672) periods.

At an unknown date, human remains representing one individual were recovered from the general area of Abo Pueblo, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

On the basis of archaeological evidence, historical information and their association with Abo Pueblo, these human remains have been determined to be related to the Tompiro culture and are dated to Pueblo IV-V (A.D. 1300-1673).

According to anthropological information, the Jumano culture is considered to be a blend of both Anasazi and Mogollon cultures, which eventually shifted through time from Mogollon to Rio Grande Anasazi characteristics. Relying upon archeological, historical, architectural, geographical, oral tradition, ethnographic, biological, historical, and expert opinion evidence, it has been determined that the above-described human remains and associated funerary objects are culturally affiliated with the Pueblo of Acoma, Hopi Tribe, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Sandia, Pueblo of Santo Domingo, Pueblo of Taos, Ysleta del Sur Pueblo, and the Zuni Tribe of the Zuni Reservation, and the non-Federally recognized Piro-Manso-Tiwa Indian group.

Based on the above-mentioned information, the Salinas Pueblo Missions National Monument Superintendent determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of approximately 932 individuals of Native American ancestry. The Salinas Pueblo Missions National Monument Superintendent also determined that, pursuant to 43 CFR 10.2 (d)(2), the 587 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, the Salinas Pueblo Missions National Monument Superintendent determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico. In addition, the National Park Service also has determined that a cultural affiliation exists between these human remains and associated funerary objects and the Piro-Manso-Tiwa, a non-Federally recognized Indian group.

This notice has been sent to officials of the Pueblo of Acoma, New Mexico; the Caddo Indian Tribe of Oklahoma; Hopi Tribe of Arizona; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; Ysleta del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico; and Piro-Manso-Tiwa, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and

associated funerary objects should contact Glenn M. Fulfer, Superintendent, Salinas Pueblo Missions National Monument, P.O. Box 517, Mountainair, NM 87036, telephone (505) 847-2585 Extension 25, before August 31, 2000. Repatriation of the human remains will begin after that date if no additional claimants come forward.

Dated: July 21, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–19291 Filed 7–31; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of Salinas Pueblo Missions National Monument, Mountainair, NM

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Salinas Pueblo Missions National Monument, National Park Service, Mountainair, NM. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park unit that has control or possession of these Native American human remains. The Assistant Director, Cultural Resources Stewardship and Partnerships, is not responsible for the determinations within this notice.

A detailed assessment and inventory of the human remains was made by National Park Service professional staff in consultation with representatives of the Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

In 1956, human remains representing 99 individuals were recovered from 58 burial sites during a legally authorized National Park Service stabilization project conducted at the San Isidro Mission Church's Campo Santo Catholic Cemetery (Campo Santo). This site is located at the Pueblo de las Humanas complex, a site located within Monument boundaries. No known individuals were identified. No associated funerary objects are present.

On the basis of architectural, archeological, biological (cranial morphology), historical, and Church documentation evidence, San Isidro's cemetery (Campo Santo) was determined to have been in use from 1629–1672; therefore, this site and these human remains are dated to the Pueblo IV and Pueblo V (A.D. 1300–1672) periods.

Based upon an osteological analysis of the 99 individuals recovered from this site (Campo Santo), 4 of these human remains were identified as Athabascan/Apache. This analysis found that the facial features of the four individuals were consistent with "Plains Indian" and are reported to be of Athabascan or Apachean ancestry. Archeological evidence obtained from the burials also suggests that these four individuals are of Athabascan/Apache origin.

Historical evidence records that Apache bands from the Apaches Perillos and Siete Rios raided the Salinas towns, which constitutes one of the reasons for their eventual abandonment. Additional documentary evidence indicates that some of these Apaches were killed during raids on the Salinas villages. Historical records also evidence that the Apache maintained friendships and established trading relationships with some of the Salinas towns on a band-to-town basis. Intermarriages between the Apaches and members of the towns also occurred.

Utilizing archeological, historical, geographical, biological, ethnographic, oral tradition, and expert opinion evidence, it has been determined that the above-described human remains are culturally affiliated with the Caddo, Kiowa, Mescalero Apache, White Mountain Apache, and Wichita Affiliated (Wichita, Keechi, Waco & Tawakonie) Tribes.

Based on the above-mentioned information, the Salinas Pueblo Missions National Monument Superintendent determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Lastly, the Salinas Pueblo Missions National Monument Superintendent also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Caddo Indian Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

This notice has been sent to officials of the Pueblo of Acoma, New Mexico; the Caddo Indian Tribe of Oklahoma; Hopi Tribe of Arizona; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; Ysleta del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico; and Piro-Manso-Tiwa, a non-Federally recognized Indian group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Glenn M. Fulfer, Superintendent, Salinas Pueblo Missions National Monument, P.O. Box 517, Mountainair, NM 87036, telephone (505) 847–2585 Extension 25, before August 31, 2000. Repatriation of the human remains will begin after that date if no additional claimants come forward.

Dated: July 21, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–19292 Filed 7–31; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: August 11, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–413–415 and 419 (Review) (Industrial Belts from Germany, Italy, Japan, and Singapore)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 18, 2000.)

5. Inv. Nos. 731–TA–96 and 439–445 (Review) (Industrial Nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 24, 2000.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19497 Filed 7–28–00; 2:03 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Settlement Agreement Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR § 50.7, the Department of Justice gives notice that a proposed consent decree in *United States and State of Indiana, et al.* v. *American Chemical Service, Inc. et al.*, No. 2:00CV430JM (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana on July 12, 2000.

The United States and the State of Indiana brought the action pursuant to various federal and state statues, including Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, to recover natural resource damages resulting from the release of hazardous substances at the American Chemical Service Superfund Site in Griffith, Lake County, Indiana ("Site"). The Complaint alleged that at relevant times the Defendants (or their successors) owned or operated the Site at the time of disposal of hazardous substances at the Site, or arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by that Defendant (or successor) at the Site. The Complaint alleges claims against 39 parties who either owned or operated the Site, or who arranged for treatment of disposal of hazardous substances at the Site.

Under the proposed Consent Decree, the Settling Defendants will pay $250,000 for the acquisition of certain real property proposed for restoration as a replacement for the injured natural resources at the Site, and $50,000 for natural resource restoration activities at the property to be acquired. In addition, the Settling Defendants will pay up to $30,000 toward the federal and state natural resource damage assessment costs, with the federal and state natural resource damage assessment costs, with the federal and state governments splitting that amount on a *pro rata* basis.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to DOJ No. 90–11–2–1094/4.

The proposed stipulation and settlement agreement may be examined at: (1) The U.S. Fish and Wildlife Service, 620 S. Walker, Bloomington, Indiana, (812) 334–4261; and (2) the Office of the United States Attorney for the Northern District of Indiana, 1001 Main St., Ste. A, Dyer, Indiana 46311–1234, (219) 322–8576.

A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the reference case and DOJ Reference Number 90–11–2–1094/4, and enclose a check in the amount of $6.00 for the consent decree (24 pages at 25 cents per page reproduction costs), or $16.75 for the consent decree and its appendices (67 pages at 25 cents per page reproduction costs) made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–19383 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree Pursuant to the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 13, 2000, a proposed Consent Decree in *United States* v. *Harris County Municipal Utility District No. 50* ("Defendant"), Civil Action No. H–00–1931, was lodged with the United States District Court for the Southern District of Texas, Houston Division.

In this action the United States, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Texas, sought injunctive relief and civil penalties arising from the operation of a publicly owned sewage treatment works located in Barrett Station, Harris County, Texas. Pursuant to the proposed Consent Decree, the Defendant will take measures to properly operate and maintain the collection system, identify problems that lead to noncompliance within the collection system and facility, and undertake the necessary capital improvements to eliminate unauthorized discharges. The proposed Consent Decree also requires the Defendant to pay $10,000. The proposed Consent Decree resolves the Defendant's liability under Section 309 of the Clean Water Act, 33 U.S.C. 1319 and Texas Water Code § 7.105.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, N.W., Washington, D.C. 20044–7611, and should refer to *United States* v. *Harris County Municipal Utility District No. 50*, D.J. Ref. 90–5–1–1–4505. The Consent Decree may be examined at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 30044–7611. In requesting a copy, please enclose a check in the amount of $7.75 payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–19385 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7 and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that May 26, 2000, two proposed Consent Decrees in *United States* v. *Elsa Morgan-Skinner, et al.*, Civ. Action No. C–1–00–424, were lodged with the United States District Court for the Southern District of Ohio. The first Consent Decree represents a settlement of claims of the

United States for recovery of response costs incurred by the United States in connection with the Skinner Landfill Superfund Site (Site) in West Chester, Ohio, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9607(a), against Elsa Morgan-Skinner and seventy-two (72) other potentially responsible parties (PRPs) that contributed hazardous substances to the Site. Under the terms of the Consent Decree (the Remedial Action of "RA Consent Decree"), the Settling Generator/Transporter Defendants, including approximately sixty-six (66) companies, (Work Parties) will implement an EPA-approved remedial action which includes, among other things, the construction of a cap over a former dump and buried waste lagoon area; and the interception, capture and treatment of contaminated groundwater located down-gradient from the capped area. The Settling Owner/Operator Defendant Elsa Morgan-Skinner, the current Site owner, agrees to grant access to and restrictive use covenants on the Site, and resolves her liability by selling an option to purchase the site for $5,000 to the Work Parties. A portion of the proceeds of any such sale will be deposited into an account known as the Skinner Landfill Special Account. Two Settling Federal Agencies, the General Services Administration and the Defense Logistics Agency, will pay $602,599.12 into the Skinner Landfill Special Account. Finally, the Settling *De Minimis* Federal Agencies, including the United States Army, United States Air Force, United States Information Agency and the United States Postal Service, each of which contributed less than 1% of the total volume of waste at the Site, will pay $87,804.29 into the Skinner Landfill Special Account. Eighty percent of the funds in the Special Account will be available for disbursement to the Work Parties for their remediation work. In exchange for these payments and performance of the remedial action, each of the Settling Defendants under the RA Consent Decree will receive covenants not to sue and contribution protection.

The second Consent Decree resolves the United States' claims for recovery of response costs incurred at the Site against seven municipalities, including the Cities of Blue Ash, Deer Park, Madiera, Mason, Sharonville and the Villages of Lincoln Heights and Monroe, each of which contributed municipal solid waste (MSW) to the Site. Under the terms of this Consent Decree (known as the "MSW Consent Decree") the Settling Municipalities will pay a total of $17,218 into the Skinner Special Account. These funds will be made available to the Work Parties for their remediation work. In exchange for this payment, each of the Settling Municipalities will receive a covenant not to sue and contribution protection.

From June 9, 2000, through July 10, 2000, the Department of Justice accepted comments on the proposed Consent Decrees. The Department of Justice will receive for an additional period of two weeks from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania, NW, Washington, DC 20530, and should refer to *United States* v. *Elsa Morgan-Skinner et al.* Civ. Action No. C–1–00–424; D.J. Ref. Nos. 90–11–3–1620, 90–11–6–118, 90–11–6–128.

The Consent Decrees may be examined at the Office of the United States Attorney, 220 United States Post Office & Courthouse, 100 E. 5th Street, Cincinnati, Ohio 45202, and at the United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or on the United States Environmental Protection Agency's internet website at *www.epa.gov/region5/sites*. A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library in amount of $65.50 for both Consent Decrees; or $60.00 (240 pages at 25 cents per page reproduction cost) for the RA Consent Decree; or $5.50 (22 pages at 25 cents per page reproduction cost) for the MSW Consent Decree.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 00–19832 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act

Notice is hereby given that, on July 20, 2000, a Consent Decree in *United States, Plaintiff, and States of Arkansas, Louisiana, and south Carolina Dept. of Health and Environmental Control, Plaintiff-Intervenors* v. *Willamette Industries, Inc.* Civil Action No. CV–00–1001–HA, was lodged in the United States District Court for the District of Oregon.

In this action the United States and the Plaintiff-Intervenors sought injunctive relief and civil penalties under Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) against Willamette Industries, Inc. ("Willamette"). The alleged violations include the failure to install pollution control devices and obtain permits, required by the CAA, at wood product manufacturing facilities owned and operated by Willamette in: Emerson and Malvern Arkansas; Dodson, Ruston, Zwolle, Lillie, Taylor and Simsboro Louisiana; Bend, Eugene, Foster, Springfield and Sweet Home Oregon, and Chester South Carolina. The Consent Decree resolves all of these claims. The Consent Decree requires Willamette to pay a civil penalty of just over $11.2 million, to perform Supplemental Environmental Projects costing at least $6 million, to install pollution control devices on its facilities, and to perform environmental audits of its facilities.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States et al.* v. *Willamette Industries, Inc.*, Civil Action No. CV–00–1001–HA (D. Oregon), DJ # 90–5–2–1–2186.

Copies of the Consent Decree may be examined at the Office of the United States Attorney for the District of Oregon, 1000 S.W. Third Ave., Suite 600, Portland OR 97204. An electronic copy of the Consent Decree is available online at: http://es.epa.gov/oeca/ore/aed/willamette/index.html. A copy of the Consent Decree may also be obtained by mail at the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. When requesting a copy of the proposed modification to the Consent Decree by mail, please enclose a check in the amount of $12.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 00–19384 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.

Notice is hereby given that, on May 4, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Digital Imaging Group, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ofoto, Berkeley, CA; PhotoTablet, Inc., Sebastopol, CA; The Workbook, Los Angeles, CA; Amazingmail.com, Inc., Scottsdale, AZ; House of Images, Inc., Beverly Hills, CA; Kablink, Sand Diego, CA; Pixami, Inc., San Ramon, CA; EZ Prints, Atlanta, GA; Zing, Inc., San Francisco, CA; and Fileflow As, Oslo, Norway have been added as parties to this venture. Also, Intellectual Protocols, Nannet, NY; Norwegian University of Science and Technology, Trundheim, Norway; Ditto.com (formerly Arribasoft), Emeryville, CA; and Tower Semiconducter Ltd., Migdal Haemek, Israel have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Digital Imaging Group, Inc. intends to file additional written notification disclosing all changes in membership.

On September 25, 1997, Digital Imaging Group, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on February 11, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (64 FR 40129).

Constance K. Robinson,

Director of Operations, Antitrust Division.

JOINT VENTURE WORKSHEET

[Supplemental Filings Only]

A. Name of venture: Digital Imaging group, Inc.
Nature of notification: supplemental
Concise statement of purpose (if purpose has changed): Same as before—no changes.

B. For ventures involving research and development only:

Identity of parties added to venture:	Identity of parties dropped from venture:
1. Ofoto, Berkely, CA	1. Intellectual Protocols, Nannet, NY.
2. PhotoTablet, Inc., Sebastopol, CA	2. Norwegian University of Science and Technology, Trundheim, NORWAY.
3. The Workbook Lose Angeles, CA	3. Ditto.com (formerly Arribasoft), Emeryville, CA.
4. Amazingmail.com, Inc., Scottsdale, AZ	4. Tower Semiconducter Ltd., Migdal Haemek, ISRAEL.
5. House of Images, Inc., Beverly Hills, CA.	
6. Kablink, San Diego, CA.	
7. Pixami, Inc., San Ramon, CA.	
8. EZ Prints, Atlanta, GA.	
9. Zing, Inc., San Francisco, CA.	
10. Fileflow As, Oslo, NORWAY.	

[FR Doc. 00–19388 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consotrium, Inc.

Notice is hereby given that, on April 20, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), J Consotrium, Inc. has filed written notifications similtaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, E–SIM, San Diego, CA; Bull Smart Cards and Terminals, Foster City, CA; and UK Ministry of Defence, Weymouth, United Kingdom have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on January 20, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2000 (65 FR 38596).

Constance K. Robinson,

Director of Operations, Antitrust Division.

Joint Venture Worksheet

(Supplemental Filings Only)

A. Name of venture: J. Consortium, Inc.
Nature of notification: Supplemental
Concise statement of purpose (if purpose has changed): Same as before—no changes.

B. For ventures involving research and development only:
Identity of parties added to venture:
1. E–SIM, San Diego, CA
2. Bull Smart Cards and Terminals, Foster City, CA
3. UK Ministry of Defence, Weymouth, UNITED KINGDOM
Identity of parties dropped from venture:

C. For ventures involving production:
Identity and nationality of parties to joint production venture:

Identity	Nationality	Place of incorporation	Location of principal executive offices

[FR Doc. 00–19386 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OBI Consortium, Inc.

Notice is hereby given that, on June 15, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OBI Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, bCandid Corporation, Boulder, CO; BEA Systems, San Jose, CA; Catalyst Capital, Newport Beach, CA; Consolidated Commerce, Des Plains, IL; Ectone, Santa Clara, CA; ESSELTE Corporation, Greenwich, CT; Medium, Wayne, PA; and Passport International, Ltd., Mt. Pleasant, SC have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OBI Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On September 10, 1997, OBI Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60531).

The last notification was filed with the Department on March 3, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40131).

Constance K. Robinson,

Director of Operations Antitrust Division.

Joint Venture Worksheet

(Supplemental Filings Only)

A. Name of venture: OBI Consortium, Inc.
Nature of notification: Supplemental
Concise statement of purpose (if purpose has changed): Same as before—no changes.

B. For ventures involving research and development only:
Identity of parties added to venture:
1. bCandid Corporation, Boulder, CO
2. BEA Systems, San Jose, CA
3. Catalyst Capital, Newport Beach, CA
4. Consolidated Commerce, Des Plaines, IL
5. Ectone, Santa Clara, CA
6. ESSELTE Corporation, Greenwich, CT
7. iMedium, Wayne, PA
8. Passport International, Ltd., Mt. Pleasant, SC

Identity of parties dropped from venture:

C. For ventures involving production:
Identity and nationality of parties to joint production venture:

[FR Doc. 00–19387 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 6, 2000, Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phyenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 11, 2000.

John H. King,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 00–19290 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of information collection under review; Extension of a currently approved collection; Return A—Monthly Return of Offenses Known to the Police and Supplement to Return A—Montly Offenses Known to the Police.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 30, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 31, 2000. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management

and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. Type of information collection: Extension of Current Collection

2. The title of the form/collection: Return A—Monthly Return of Offenses Known to the Police and Supplement to Return A—Monthly Offenses Known to the Police.

3. The agency form number, if any, and applicable component of the Department Sponsoring the collection. Form: 4–927A; 4–919. Federal Bureau of Investigation, Department of Justice.

4. Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. This collection is needed to collect data regarding criminal offenses and their respective clearances throughout the United States. Data is tabulated and published in the annual *Crime in the United States.*

5. The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity.*

6. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,667 agencies with 212,004 responses (including zero reports); and with an average of 30 minutes a month devoted to compilation of data for this information collection.

7. An estimate of the total public burden (in hours) associated with both collections: 74,201 hours annually.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW, Washington 20530.

Dated: July 27, 2000.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 00–19357 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of information collection under review; Extension of a currently approved collection; Hate Crime Incident Report and Quarterly Hate Crime Report.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 26, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 31, 2000. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. Type of information collection: Extension of Current Collection.

2. The title of the form/collection: Hate Crime Incident Report and Quarterly Hate Crime Report.

3. The agency form number, if any, and applicable component of the Department Sponsoring the collection. Form: 11–1; 11–2. Federal Bureau of Investigation, Department of Justice.

4. Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. This collection will gather information necessary to monitor the bias motivation of selected criminal offenses. The resulting statistics are published annually.

5. The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions*

for the Standards for the Classification of Federal Data on Race and Ethnicity.

6. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,667 agencies with 106,002 responses (including zero reports); and with an average of 6 hours and 35 minutes annually devoted to compilation of data for this information collection.

7. An estimate of the total public burden (in hours) associated with both collections: 15,900 annually.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contract: Mr. Robert B. Briggs, Department Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530.

Dated: July 27, 2000.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 00–19358 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–08–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2082–00]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Implementation of Border Barriers for Enforcement Initiatives in Arizona

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

In furtherance of its mission to gain and maintain control of the Arizona border, in 1994, the INS launched Operation Safeguard, an aggressive initiative that brought new agents, equipment, and technology to the Tucson Border Patrol Sector. The goal of Operation Safeguard is to heighten deterrence and improve control along the nearly 300 miles of international border in Arizona. The aim of INS' comprehensive border enforcement effort, which includes Operation Gatekeeper in California and Operations Hold the Line and Rio Grande in Texas, is to reduce the adverse effects of illegal immigration and improve the quality of life for residents along the immediate border and throughout the nation. The INS will now expand Operation Safeguard by utilizing new resources and technology within the following Arizona Border Patrol stations: Ajo/Why, Casa Grande, Douglas, Naco, Nogales, Sonoita, Tucson, Wellton, Wilcox, and Yuma. The enhancements will bolster the efforts to ensure the safety of migrants, ranchers, and local residents, as well as provide increased safety of operations for agents. Enhancement will include, but not be limited to, additional Border Patrol personnel, support vehicles, air support, border barriers, lighting, border road improvements, and remote video surveillance systems.

Alternatives

In developing the DEIS, the options of no action and alternatives for Operation Safeguard will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the environmental issues to be examined. The meetings will be well publicized and held at a time which will make it possible for the public and interested agencies or organizations to attend. Scoping meetings will be held in Douglas, Tucson, Yuma, and Nogales, Arizona. Notice of the Scoping meetings will be published in local newspapers prior to the meetings indicating the date, time, and location of each Scoping meeting.

DEIS Preparation

Public notice will be published in the **Federal Register** concerning the availability of the DEIS for public review and comment.

FOR FURTHER INFORMATION CONTACT: Manny Rodriguez, Chief Policy and Planning, Immigration and Naturalization Service, Facilities and Engineering Branch, 425 I Street, NW., Washington, D.C. 20536, Room 2060, Telephone: 202–353–0383.

Dated: July 25, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–19335 Filed 7–31–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision, thereof, have become totally or partially separated;

That sales or production, or both, of the firm or subdivision have decreased absolutely; and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,403; R. Daye Limited, New York, NY

TA–W–37,596; The Bethlehem Corp., Easton, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,837; American General Assurance Co., Reading, PA

TA–W–37,763; Destination Film Distribution Co., Inc., Wheelman Products, Santa Monica, CA

TA–W–37,762; Hearst Entertainment, King Telpro Productions, Los Angeles, CA

TA–W–37,623; Lear Corp., Mold and die Shop, El Paso, TX

TA–W–37,836; Shenandoah Rag Co., Inc., Shenandoah, PA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,631; Celestica Corp., Campton, KY
TA–W–37,522; INX International Ink Co., Warminster, PA
TA–W–37,757; Cutler-Hammer, Crane Transportation & Resistors, Milwaukee, WI
TA–W–37,868; American Meter Co., Erie, PA
TA–W–37,560; Honeywell International, Speciality Chemicals, Commercial Roofing Systems, Ironton, OH
TA–W–37,706; Fruit of The Loom, Sports and Licensing Div., Salem Sportswear, Inc., Frankfort, KY
TA–W–37,750; Acme Steel Co., Riverdale, IL
TA–W–37,493; Levi Strauss and Co., RMQ Lab, Pelicano Finishing Plant, El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,802; Lydal-Westex, Hamptonville, NC

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,852; Southwest Cupid Corp., Hominy, OK: June 15, 1999.
TA–W–37,523 & A; Sangamon, Inc., Taylorville, IL and Moultrie, GA: March 17, 1999.
TA–W–37,669, Wheeling-Labelle Nail Co., Wheeling, WV: May 2, 1999.
TA–W–37,433; Smithville Sportswear, including Workers of Skilstaf, Inc., Smithsville, TN: February 24, 1999.
TA–W–37,822; Kalkstein Silk Mills, Inc., Paterson, NJ: May 25, 1999.
TA–W–37,739; Applied Sewing Resources, Inc., Orland, CA: May 20, 1999.
TA–W–37,791; Erie Controls, Milwaukee, WI: May 19, 1999.
TA–W–37,602; Wil-Gro Fertilizer, Inc., Pryor, OK: April 3, 1999.
TA–W–37,667; AMF Reece, Inc., Mechanicsville, VA: April 6, 1999.
TA–W–37,813; Seton Co., Leather Div, Saxton, PA: June 5, 1999.
TA–W–37,862; K & R Sportswear, Spring Hope, NC: July 21, 1999.
TA–W–37,675; Hagale Industries, Inc., Salem MO: April 26, 1999.
TA–W–37,711; Dana Epic Technical Group, Fluid Systems Products, Kendallville, IN: May 5, 1999.
TA–W–37,771; A & B Dallco Industries, Inc., York, PA; Dalta, PA; and Spring Run, PA: May 31, 1999.
TA–W–37,641; Jo-B's, Inc., Frisco City, AL: April 23, 1999.
TA–W–37,806; W.E. Bassett Co., Derby, CT: June 9, 1999.
TA–W–37,691 & A; Four Seasons Apparel Co., Murfreesboro, NC and Sanford, NC: May 5, 1999.
TA–W–37,642; Zeller Corp., Defiance, OH: April 24, 1999.
TA–W–37,510; Cliftex Corp., New Bedford, MA: March 13, 1999.
TA–W–37,627; Bari Manufacturing Co., Inc., Passaic, NJ: April 10, 1999.
TA–W–37,677; Wheaton USA, Inc., Decora Operations, Pennsville, NJ: April 18, 1999.
TA–W–37,636; Voyager Emblems, Inc., Sanborn, NY: April 19, 1999.
TA–W–37,655; Cassie Cotillion, Albemarle, NC: April 17, 1999.
TA–W–37,699; Invensys Appliance Controls, Independence, VA: May 4, 1999.
TA–W–37,644; Ranco North America, Plain City, OH: May 1, 1999.
TA–W–37,814; Allied Signal, Honeywell, Inc., Torrance, CA: June 8, 1999.
TA–W–37,803; MNCO, LLC (Formerly McGuire-Nicholas Co. LLC), Commerce, CA: May 23, 1999.
TA–W–37,845; Sims Deltec, Inc., St. Paul, MN: June 15, 1999.
TA–W–37,770; H. H. Rosinsky Co., Inc., Philadelphia, PA: May 30, 1999.
TA–W–37,865; ITT Industries, Fluid Handling Systems, Tawas City, MI: June 24, 1999.
TA–W–37,838; Colorado Biomedical, Inc., Evergreen, CO: June 14, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such wokers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03977; Eagle River Knits, Inc., Monroe, NC
NAFTA–TAA–03925; Applied Sewing Resources, Inc., Orland, CA
NAFTA–TAA–03721; Rockwell Automation, Euclid Plant, Euclid, OH
NAFTA–TAA–03802; Levi Strauss & Co., RMQ Lab, Pelicano Finishing Plant, El Paso, TX
NAFTA–TAA–03940; Fruit of the Loom, Sports and Licensing Div., Salem Sportswear, Inc., Frankfort, KY
NAFTA–TAA–03996; Federal Mogul Corp., Milan, MI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NONE

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03990; Collins Pine Co., Collins Products, LLC, Klamath Falls, OR: June 23, 2000.
NAFTA–TAA–03995; John Manville International, Inc., Roofing Systems Group, Saco, ME: June 29, 1999.
NAFTA–TAA–04002; American Meter Co., Erie, PA: June 26, 1999.
NAFTA–TAA–03877; Erie Controls, Milwaukee, WI: April 26, 1999.
NAFTA–TAA–03976; The Raleigh Co., Div. of I.C. Isaacs & Co., Inc., Raleigh, MS: June 8, 1999.

NAFTA–TAA–03997; PL Industries, a/k/a PL Garment Finishers, McRae, GA: June 23, 1999.
NAFTA–TAA–03780; Smithville Sportswear, including Workers of Skilstaf, Inc., Smithville, TN: March 6, 1999.
NAFTA–TAA–3945; The Doe Run Resources Co., The Southeast Missouri Milling and Mining Div., Viburnum, MO: May 17, 1999.
NAFTA–TAA–04008; ITT Industries, Fluid Handling Systems, Tawas City, MI: June 24, 1999.
NAFTA–TAA–03890; Wheaton USA, Inc., Decora Operations, Pennsville, NJ: April 18, 1999.
NAFTA–TAA–03956; H. H. Rosinsky Company, Inc., Philadelphia, PA: May 30, 1999.
NAFTA–TAA–03991; Sims Deltec, Inc., St. Paul, MN: May 1, 1999.
NAFTA–TAA–03981; Thermadyne Holdings Corp., Tweco Products, Inc., Wichita, KS: May 31, 1999.
NAFTA–TAA–03859; ICI Explosives USA, Inc., Ammonium Nitrate Div., Joplin, MO: April 14, 1999.
NAFTA–TAA–03845; Honeywell International, Specialty Chemicals, Commercial Roofing Systems, Ironton, OH: April 12, 1999.
NAFTA–TAA–03912; The Kym Co., Jackson, GA: May 15, 1999.
NAFTA–TAA–03984; LaCrosse Footwear, Inc., Clintonville, WI: June 20, 1999.

I hereby certify that the aforementioned determinations were issued during the month of July, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 25, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19402 Filed 7–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,710]

A.T. Cross Company, Lincoln, Rhode Island; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 22, 2000, in response to a petition filed on the same date on behalf of workers at A.T. Cross Company, Lincoln, Rhode Island.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 11th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19407 Filed 7–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,825]

Georgia Pacific Corporation, CNS/Softwood Lumber Division, Baileyville, Maine; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 26, 2000, in response to a petition filed by a PACE International Union, Local #1–1867 representative on behalf of workers at Georgia Pacific Corporation, Baileyville, Maine. Workers are engaged in employment related to the production of lumber studs.

An active certification covering the petitioning group of workers remains in effect through January 18, 2001 (TA–W–35,257). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 12th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19406 Filed 7–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,570]

Lilly Industries, Inc., Indianapolis, Indiana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 17, 2000, in response to a petition filed on the same date on behalf of workers at Lilly Industries, Inc., Indianapolis, Indiana.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 10th day of July 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19409 Filed 7–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,156]

Ray-Ban Sun Optics, Luxottica, Formerly Known as Eyewear Division of Bausch & Lomb, San Antonio, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 4, 2000, applicable to workers of Ray-Ban Sun Optics, San Antonio, Texas. The notice was published in the **Federal Register** on March 17, 2000 (65 FR 14627).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sunglasses. Findings show that the subject firm, which was originally named the Eyewear Division of Bausch & Lomb, was sold in June 1999 to Luxottica and was renamed Ray-Ban Sun Optics. the Department is amending the certification determination to correctly identify the new title name to read "Ray-Ban Sun Optics, Luxottica, formerly known as Eyewear Division of Bausch & Lomb.;"

The amended notice applicable to TA–W–37,156 is hereby issued as follows:

All workers of Ray-Ban Sun Optics, Luxottica, formerly known as Eyewear Division of Bausch & Lomb, San Antonio, Texas who became totally or partially separated from employment on or after November 20, 1998 through February 4, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of July 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19403 Filed 7–31–00; 8:45am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 11, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 11, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/17/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	product(s)
37,877	Swiss Maid, Inc. (Wkrs)	Greentown, PA	06/28/2000	Embroidered Emblems.
37,878	Sebago (Co.)	Westbrook, ME	06/30/2000	Men's and Women's Footwear.
37,879	Beaulieu of America (Co.)	Anadarko, OK	06/29/2000	Broadloom Carpet.
37,880	All Technologies, Inc (Wkrs)	El Paso, TX	06/30/2000	Computers.
37,881	Hart Mountain Millworks (Wkrs)	Lakeview, OR	06/29/2000	Finger Joint Blocks.
37,882	Walpole, Inc. (Co.)	Westampton, NJ	06/30/2000	Industrial Textile Bags.
37,883	Compro Companies (Wkrs)	Midland, TX	06/30/2000	Provide Cathodic Protection Materials.
37,884	Rycraft, Inc (Co.)	Covallis, OR	06/27/2000	Cookie Stamps.
37,885	PF Technologies (Co.)	Phoenix, AZ	07/07/2000	Painting and Assembly of Cell Phones.
37,886	Racing Champions (Wkrs)	Dyersville, IA	06/27/2000	Toy's.
37,887	Avent, Inc. (Co.)	Tuscon, AZ	07/07/2000	Disposable Surgical Gowns, Caps.
37,888	Federal Mogul Wiper (Co.)	Michigan City, IN	07/06/2000	Wiper Blades and Refill Blades.
37,889	Crown Pacific (Wkrs)	Gilchrist, OR	07/05/2000	Lumber.
37,890	TCE, Inc (Co.)	Dunmore, PA	07/05/2000	27" Color Televisions Picture Tubes.
37,891	Acorn Window Systems (Wkrs)	Quincy, MI	06/30/2000	Windows and Patio Doors.
37,892	CRH Catering Co. (Wkrs)	Connellsville, PA	07/05/2000	Provides Vending Service, Catered Lunch.
37,893	IKG Industries (USWA)	Nashville, TN	06/27/2000	Steel and Fiberglass Grating.
37,894	GT Bicycles (Co.)	Santa Ana, CA	06/19/2000	Bicycles.
37,895	DeFarr, Inc (Wkrs)	New York, NY	07/07/2000	Ladies' Dresses.

[FR Doc. 00–19405 Filed 7–31–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,563]

Tecumseh Products Company, Somerset, Kentucky; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 7, 2000, attorneys on behalf of the workers (hereinafter referenced as the petitioner), request administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the Tecumseh Products Company, Somerset, Kentucky. The denial notice was signed on May 12, 2000, and published in the **Federal Register** on June 8, 2000 (65 FR 36469).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

To support the application for reconsideration, the petitioner provided a published article quoting a company official of Tecumseh Products Company linking the Somerset plant closing with the dumping of cheap Asian compressors in the United States, devastating the subject firm customer base. The petitioner states also that the article cites that the layoffs and plant closure are intended to help Tecumseh cut prices so it can combat the challenge.

The workers at Tecumseh Products Company, Somerset, Kentucky, produced refrigeration and air conditioner compressors. The workers were denied eligibility to apply for TAA based on the finding that the contributed importantly criterion (3) of the worker group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Section 222 (3) requires that increased imports of articles like or directly competitive with those produced at the subject firm contribute importantly to declines in sales or production and worker separations. Layoffs at Tecumseh Products Company were attributable to the company's decision to transfer production to other domestic facilities. The investigation further revealed that the majority of the output at the Somerset, Kentucky plant was for the export market. A lost of export market business cannot be considered a basis for worker group certification.

Conclusion

After review of the application and investigative findings, In conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 17th day of July 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19410 Filed 7–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) H–1B Technical Skill Training Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: *This Notice contains all of the necessary information and forms needed to apply for grant funding.* The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of grant funds for skill training programs for unemployed and employed workers. Funding for these grants is coming from the user fee mandated for applicants for new H–1B nonimmigrant visa workers and established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). The grants will have the longer term goal of raising the skill levels of domestic workers so that they can fill high skill jobs which are presently being filled by temporary workers being admitted to the United States under the provisions of H–1B. Department of Labor will convene Bidders Conferences in early August to share information with eligible applicants and other interested parties. Detailed information as to the exact times and locations of these sessions together with other pertinent facts may be found on the ETA web page (http:/www.doleta.gov) or by calling a toll-free help line (1–877–US2–JOBS).

Eligible applicants for these grants will be local Workforce Investment Boards (WIBs) established under section 117 of the Workforce Investment Act (WIA) that will carry out such programs or projects through one-stop delivery systems established under section 121 of WIA, or regional consortia of local boards. Regional consortia may be interstate. Successful applicants under earlier H–1B Solicitations will be eligible for grants under this competition; however those current awardees will be required to indicate that this proposal provides a completely new approach to skill training (including a different skill shortage area, e.g., health occupations rather than information technology) from that being conducted under their current grant. Proposals submitted by those current awardees will be subject to pre-screening to assure that they propose an approach that is clearly innovative and different from the activity that was implemented under the previous award.

WIA provides a framework for a national workforce investment and employment system designed to meet both the needs of the nation's businesses and the needs of job seekers and workers who want to further their careers. ACWIA will provide resources for skill training in occupations that are in employer demand; one measure of this demand is employer H–1B applications for workers. In particular, industries that appear to generate the most H–1B demand include information technology and health. Appendix A to this Solicitation provides information on the kinds of occupations certified under the H–1B program by the Department of Labor for Fiscal Year 1999 (Oct.1, 1998 to May 1999), and the number of job openings certified in each occupation.

This notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected. It is anticipated that about $45 million will be available for funding the projects covered in this second-round solicitation, that approximately fifteen projects will be selected for funding,

and that the maximum grant award will not exceed $3.0 million.

DATES: Applications for grant awards will be accepted commencing immediately. The closing date for receipt of applications shall be September 19, 2000 at 4 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Diemle Phan, SGA/DFA 00-108, 200 Constitution Avenue, NW, Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Diemle Phan, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll free number. All inquiries should include the SGA number (DFA 00–108) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at http://www.doleta.gov. Award notifications will also be published on this Homepage.

Background

This initiative will build on similar ETA initiatives that deal with the issue of skill shortages including the June 1998 dislocated worker technology demonstration, the new dislocated worker technology demonstration, the regional skills consortium building awards announced in March 2000, the individual training account demonstration grant awards announced in February 2000 and the skills strategies, partnership training/system building demonstration awards which were announced in June. These efforts were intended to strengthen linkages between employers experiencing skill shortages in specific occupations and the publicly funded workforce development system. In June 1998, $7.5 million in JTPA Title III dislocated worker funds was awarded to 11 organizations throughout the country to train workers in skills related to the information technology industry. In June 1999, over $9.57 million was awarded to 10 grantees to train dislocated workers in the skills necessary to obtain work requiring advanced skills in occupations in manufacturing industry settings, including computers and electronics manufacturing, machinery and motor vehicles, chemicals and petroleum, specialized instruments and devices, and biomedics. On March 2, 2000, 23 awards totaling $15.2 million were announced for the regional skills consortium competition. Finally, this Solicitation is taking into account the experience gained from the first and second rounds of the H–1B competition for which 9 awards totaling $12.4 million were announced on February 10, 2000 and 12 awards totaling $29.2 million were announced on July 19, 2000.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the conduct of demonstration projects to provide technical skills training for workers, including both employed and unemployed workers. This announcement consists of three parts:

- Part I Application Process.
- Part II Statement of Work/ Reporting Requirements.
- Part III Review Process/Rating Criteria

Legislative Mandate

The relevant portions of ACWIA dealing with the establishment of a fund for implementing a program of H–1B skill training grants state:

"Section 286(s)—H–1B Nonimmigrant Petitioner Account

(1) *In General*—There is established in the general fund of the Treasury a separate account, which shall be known as the "H–1B Nonimmigrant Petitioner Account." Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9).

(2) *Use of Fees For Job Training*—56.3 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 104(c) of the American Competitiveness and Workforce Improvement Act of 1998."

"Section 104(c)—Demonstration Programs and Projects To Provide Technical Skills Training for Workers

(1) *In General*—In establishing demonstration programs under section 452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of the enactment of this Act, or demonstration programs of projects under section 171(b) of the Workforce Investment Act of 1998, the Secretary of Labor shall use funds available under section 286(s) to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(2) *Grants*—The Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512), as in effect on the date of the enactment of this Act; or

(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act of 1998; or

(B) regional consortia of councils or local boards described in subparagraph (A). The Immigration and Nationality Act (INA) (section 101(a)(15)(H)(i) (b)) defines the "H–1B alien as one who is coming temporarily to the United States to perform services in a specialty occupation or as a fashion model."

The INA (Section 214(i)) sets criteria to define the term "specialty occupation:"

(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph 2, a "specialty occupation" means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States

(2) For purposes of section 101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—

(A) full state licensure to practice in the occupation, if such licensure is required.

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Part I—Application Process

A. Eligible Applicants

ACWIA specifies under Section 104(c)(2) that the Secretary shall award grants to private industry councils (PICs) established under section 102 of the Job Training Partnership Act (JTPA) (Note: The Workforce Investment Act was implemented on July 1, 2000 and superseded JTPA; therefore private industry councils have been replaced by workforce investment boards), or local boards that will carry out such programs or projects through one-stop delivery

systems established under section 121 of the Workforce Investment Act (WIA) of 1998, or regional consortia of councils or local boards. This Solicitation contemplates that the local boards will designate a fiscal agent to be the recipient of grant funds. Successful applicants under earlier H–1B Solicitations will be eligible for grants under this competition; however those current awardees will be required to indicate that this proposal provides a completely new approach to skill training (including a different skill shortage area, *e.g.*, health occupations rather than information technology) from that being conducted under their current grant. Proposals submitted by those current awardees will be subject to pre-screening to assure that they propose an approach that is clearly innovative and different from the activity that was implemented under previous award.

While the statute is quite specific about the fact that only local boards (through their designated fiscal agents) and consortia may apply for and receive these grant awards, it does not preempt the participation of other concerned entities which are integral to the process of planning for and conducting skill training in skill shortage areas. The Department of Labor is requiring that eligible applicants must demonstrate that they have the involvement of a wide representation of the business community in their region. They are also strongly encouraged to reach out widely and involve a broad spectrum of other organizations such as labor unions, community colleges and other postsecondary educational institutions, and community based and faith based organizations in a partnership or consortium arrangement.

Applicants are encouraged to associate with entities which possess a sound grasp of the job marketplace in the region and which are in a position to address the issue of skill shortage occupations. Such organizations would include private, for profit businesses—including small- and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. Also, those entities should include businesses and business associations which have experienced first hand the problems of coping with skill shortages and which employ workers engaged in skill shortage occupations. This Solicitation will not prescriptively define the roles of individual entities within the partnership beyond requiring, as ACWIA states, that local workforce investment boards, or consortia be the applicant and the recipient of (or fiscal agent for receiving) grant funds. It is anticipated, however, that the proposal will provide a detailed discussion of participating organizations' respective responsibilities. The proposal should describe a consortium of several employers that will lead the consortium and provide matching funds and who intend to employ workers participating in the technical skills training.

Based on Department of Labor experiences, regional partnerships that actively engage a wide range of participation from community groups—particularly with strong private employer involvement—appear to be successful. In general, applicants will be encouraged to include a broad spectrum of stakeholder groups, including such employers, in their partnership effort. Also, local workforce investment boards or consortia thereof representing more than one region that share common economic goals may band together as one applicant rather than applying individually.

The application must clearly identify who the applicant is (or who the fiscal agent is). As part of this certification, the applicant must identify who the grant recipient (and/or fiscal agent) is and describe its capacity to administer this project; it shall also indicate that the project is consistent with and will be coordinated with the workforce investment system(s) that are involved in technical skills activities in the region(s) encompassed by the applicant.

Part III of this announcement enumerates and defines in depth a series of criteria that will be utilized to rate applicant submissions. Briefly, these criteria are:

- Statement of Need
- Service Delivery Strategy
- Target Population
- Sustainability
- Linkages with Key Partners
- Outcomes
- Cost Effectiveness

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) separate and distinct parts, Parts I and II.

- Part I of the proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix B) and the Budget Information Form (Appendix C). The individual signing the (SF) 424 on behalf of the applicant shall represent the responsible financial and administrative entity for a grant should that application result in an award. The individual who signs the application should be the same individual who signs the certification discussed in the previous section. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501 (c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

In preparing the Budget Information form, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA is specific in stating that grant resources are to be expended for programs or projects to provide technical skills training. Therefore, ACWIA grant resources to be utilized for the costs of administration will be limited to no more than 10 percent of the request and should clearly support the goals of the project. Administrative costs include such items as project staff, travel, and fungible supplies. In general, however, this does not contemplate or permit the purchase of capital equipment. The budget narrative should discuss precisely how the administrative costs support those goals.

- Part II must contain a technical proposal that demonstrates the Offeror's capabilities in accordance with the Statement of Work contained in this announcement. A grant application is limited to twenty (20) double-spaced, single-side, 8.5 inch × 11 inch pages with 1-inch margins. The Offeror may provide statistical information and related material in attachments. Attachments may not exceed fifteen (15) pages. Letters of commitment from partners or from those providing matching resources may be submitted as attachments; however, letters of support are not required. Such letters will not count against the allowable maximum page total. The Applicant must briefly enumerate those entities in the text of the proposal. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities and an Executive Summary not to exceed two pages. The Time Line and the Executive Summary do not count against the 20 page limit. No cost data or reference to price is included in the technical proposal.

C. Hand Delivered Proposals

If proposals are hand delivered, they must be received at the address identified above by September 19, 2000, at 4:00 p.m., Eastern Time. All overnight mail will be considered to be hand delivered and must be received at the designated place by 2:00 on the

specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, a proposal submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for proposals. The term "working days" excludes weekends and U.S. Federal holidays. The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Period of Performance

The initial period of performance will be up to 24 months from the date of execution of the grant documents. It is anticipated that about $45 million will be disbursed. U.S. Department of Labor may elect to exercise its option to extend these grants for an additional period not to exceed 36 months, based on the availability of funding and successful program operation.

F. Definitions

For purposes of this solicitation:

- *Technical skills training* includes occupational skills training—that may combine academic and work-place learning and related instruction, customized training with a commitment of an employer or group of employers to employ an individual upon successful completion of training, and that may be tailored to meet the needs of the individual participant. Section 134 (d)(4)(D) of WIA provides a definition of training services that shall be viewed as generally applicable to the term "technical skills training" in this Solicitation. This definition of technical skills training specifically allows the use of grant funds to provide necessary books.
- *Region* means an area which exhibits a commonality of economic interest. Thus, a region may comprise a few labor market areas, one large labor market, one labor market area joined together with a couple of adjacent rural districts, a few special purpose districts, or a few contiguous local boards. Clearly, if the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single local board.

G. Sustainability

No applicant may receive a grant unless that applicant agrees to provide resources equivalent to at least 25 percent of the grant award amount as a match. That match may be provided in cash or in kind, however, Federal resources may not be counted against the matching requirement. In view of the fact that the singular focus of grant resources is to provide skill training, ETA particularly encourages the provision of essential capital equipment, such as computer equipment, as part of the match. The match will not be tied to the drawdown of funds, however, the amount and nature of it must be clearly described in the application.

The 25 percent matching requirement should be viewed as a minimum designed to assist grantees in developing sustainability. The Department is particularly interested that applicants demonstrate clear evidence through matched and/or leveraged resources (those Federal resources which may not be counted against match but which are integral to strengthening the quality of technical skills training provided and which contribute materially to sustainability) that the project will have the capacity to continue its training activities after the expiration date of the grant.

Part II—Statement of Work/Reporting Requirements

A. Principles

Five basic key principles underlie this effort:

- *Partnership Sustainability:* The grant awards will be of relatively short duration—up to 24 months. Although the primary focus of these awards is technical skill training, ETA intends that regional partnerships sustain themselves over the long term—well after the federal resources from this initiative have been exhausted. The 25 percent non-Federal matching requirement is an integral part of ensuring sustainability; matching resources will help sustain the skill shortages training effort beyond the term of the grant. This concept relates to Links with Key Partners and Sustainability (What resources does each partner bring to the table and how does this contribution assist in building the foundation for a permanent partnership?)
- *Business Involvement:* Business is an essential partner. It articulates skill requirements, hires skilled workers, and provides support for lifelong learning. Under WIA, business plays a critical role in planning and overseeing training and employment activities. WIA requires that the majority of the membership of State and local boards be business representatives, and that the State and local board chairs be drawn from business. For the purpose of these grants, it is imperative that businesses represented include businesses with current skill shortages who intend to hire graduates of the technical skills training. This concept relates to three Rating Criteria: Statement of Need (Assists in determining what skill shortage occupations are in demand in the region), Linkages with Key Partners and Sustainability (What private sector involvement is there in the partnership; what resources does each of the partners bring to the table; how do contributions assist in building the foundation for a permanent partnership?), and Outcomes (Businesses involved in the partnerships will provide a key resource in hiring/upgrading workers who have been trained).
- *Current Skills Gap:* Current skill shortages are the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as skill shortage areas. This concept relates to Statement of Need (The most important issue to be addressed under this section is identifying the particular skill shortages that manifest themselves in the region.) and Service Delivery Strategy (How will skill training meet the skill needs of the region.)
- *Innovative and Effective Tools:* The grantees will use innovative or proven tools and approaches to close particular skills gaps and provide strategies for training that promote regional development. This concept relates to Service Delivery Strategy (There can be innovation in the way training services are provided.) and Cost Effectiveness (Innovative tools and approaches may

more effectively deliver training services to individual participants thereby resulting in better employment outcomes and higher levels of skill achieved by those participants for the same cost.)

• *Target Population:* The primary emphasis of the ACWIA technical skills training will be to focus on employed and unemployed workers who can be trained and placed directly in the highly skilled H–1B occupations. As part of identifying people with the appropriate backgrounds that would benefit from such training, there should be a special outreach effort to target women, minorities, persons with disabilities, and other underrepresented groups. This relates to the rating criterion, Target Population (Discussion of who the targeted workers are.)

B. Skills Shortages

Section 104(c) of ACWIA mandates that the grants awarded under this authority be used for technical skill training to employed and unemployed workers. The basis of the funding for the grants, however, is a user fee paid by an employer seeking nonimmigrant alien workers (H–1B) that possess qualifications in occupations with skill shortages at high skill levels in American industry. Thus, training conducted under these auspices should be in occupations that have been demonstrated to be in short supply. What is a skills shortage? In the simplest terms possible, such shortages occur in a market economy when the demand for skilled workers for a particular occupation is greater than the supply of workers who are qualified, available, and willing to do that job. Although, some of the explanations for why this demand or supply disequilibrium exists are fairly complex, the basic concept is straightforward. In many instances, labor markets adjust quickly and the skill shortage is resolved.

Problematic skills shortages occur when there is imbalance between worker supply and demand for an unusual period of time. The H–1B visa program is a response to those shortages, and this skill training grant program helps alleviate such shortages. It should be noted that the concept of skill shortages also may include an imbalance between the demand and supply of workers at some definable skill level.

C. Skills Standards

As noted earlier, the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214 (i) of INA, speaks to a very high skill level for these "specialty occupations" (8 U.S.C. 1184 (i)). To reiterate, these are occupations that require "theoretical and practical application of a body of highly specialized knowledge," and full state licensure to practice in the occupation (if it is required). These occupations also must require either completion of at least a bachelor's degree or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Skill standards represent a benchmark by which an individual's achieved competence can be measured. Much work has been done in this area—some by private industry and trade associations, some by registered apprenticeship training systems, some by public and private partnerships, including local School-to-Work partnerships, and the Job Corps. Succinctly stated, well-defined skill standards can be a useful tool in matching training goals to targeted occupational areas. Applicants are encouraged to survey the progress to date in developing occupational skill standards in their communities. Do companies that will be seeking skilled workers for H–1B occupations have a clearly defined set of expectations for the requisite capabilities of those workers?

D. Regional Planning

Applicants must describe the local area or region that will be served with particular emphasis on its skill shortages. That discussion should include an articulation of the dimensions, nature and specifics of those skill shortages. The proposal must also identify the political jurisdictions to be included as well as provide an enumeration of the specific local areas under WIA. Although comprehensive occupational vacancy data do not exist, current H–1B applicant data should be utilized to the extent feasible to describe occupational shortages. Attachment A to this Solicitation is a listing by occupation of the most current H–1B applicant data. Applicants may take into consideration that occupations listed in high demand among those for which H–1B visas were sought nationally also might be in short supply in their region. However, applicants should avail themselves of all available local data including data provided by area businesses and business associations in making determinations as to shortages. They are encouraged to research widely and be inclusive in utilization of labor market information. In addition to the sources already described, applicants are encouraged to analyze data made available by the Bureau of Labor Statistics and through the local One-Stop delivery system.

E. Service Delivery and Supportive Services

Applicants should carefully describe skill training that will be provided under the grant in context of the goals that are to be achieved by participants. These goals should be expressed in terms of targeted occupations. The Statement of Work should provide a detailed discussion of the kinds of training to be provided and the mechanisms to be used to provide it. Applicants also should build linkages to the One-Stop system established under WIA to reach out, inform, and recruit individuals to participate in the H–1B financed training. It is expected that the applicant's work statement will include a discussion of the types of skills being trained for, the necessary skill levels that are targeted, how they will be measured, and how skill shortages in the local area or region will be met through this training

The central role of the local boards in the planning and policy activity surrounding these grants is critical. WIA requires the local board to prepare a strategic workforce investment plan for the area that it embraces. The local board also designates One-Stop service center operators and selects eligible training providers. In short, local boards are already engaged in much of the necessary work that could provide a solid foundation for the training activities to be undertaken in ACWIA.

ACWIA requires that grant resources be used for technical skills training. However, ETA anticipates that applicants may need to make available a range of supportive services to enhance the quality and effectiveness of the skill training provided under the grant. Grant funds may not be used to provide supportive services. Appropriately focused services, however—such as transportation or child care and others defined by section 101(46) of WIA—could be viewed as an important factor enhancing the technical skills training package. To the extent that these services are provided utilizing non-Federal resources, applicants may present them as part of the proposed matching requirement. Federal resources such as coenrollment in WIA while participating in ACWIA training for supportive services clearly cannot be counted toward the matching requirement; however, such coordinated coenrollment and services are clearly desirable features of these projects. Successful applicants are encouraged to

leverage such Federal resources as part of making the technical skills training more effective.

F. Reporting Requirements

The Grantee is required to provide the reports and documents listed below:

- *Quarterly Financial Reports.* The grantee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report (SF269) until such time as all funds have been expended or the period of availability has expired.
- *Progress Reports.* The grantee must submit brief narrative quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report provides a detailed account of activities undertaken during that quarter including:

a. A discussion of occupational areas for which skill training is being provided,

b. Job placements in skill shortage occupations, and

c. An indication of any current problems which may affect performance and proposed corrective action.

- *Final Report.* A draft final report which summarizes project activities and employment outcomes and related results of the demonstration shall be submitted no later than the expiration date of the grant. The final report shall be submitted in 3 copies no later than 60 days after the grant expiration date.

G. Evaluation

ETA will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of ETA.

Part III—Review Process and Rating Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

A. Statement of Need (15 points)

The underlying statute authorizing this competitive grant program—ACWIA—is a response to skill shortages around the country in specific occupations. ETA has provided the most recent H–1B application data as an attachment to this solicitation. The most important issue to be addressed under this section is identifying, to the extent possible, the particular skill shortages that manifest themselves in the region that is encompassed by the application. Applicants are encouraged to utilize all available data resources—H–1B applications, newspaper want ads, expressed employer consortium hiring desires, and One Stop system's labor market information—in responding to this criterion. To provide a focused backdrop for the discussion of skill shortages, applicants should describe clearly the region for which services are to be provided. What are the characteristics that make this area a cohesive region? What are the particular characteristics of the local political, economic and administrative jurisdictions—local workforce investment boards, labor market areas, special district authorities—that caused them to associate for the purpose of this application? There are several useful items of information that could be provided to enhance the description of the region. A general discussion of the region should include socioeconomic data—with a particular focus on the general education and skill level prevalent in the area. Also, it is useful to include such items as transportation patterns, demographic information (such as age and general income of residents). Judicious use of statistical information is encouraged. Other pertinent questions that will provide greater depth of description include: What is the general business environment? What industries and occupations are growing, and which ones are cutting back? What are the characteristics of the major employers in the region? What is the particular situation of the consortium member companies?

B. Service Delivery Strategy (30 points)

Applicants must lay out a comprehensive strategy for providing the technical skills training that is mandated as the core activity of these grant awards. Concomitantly, there needs to be a discussion of how this skill training will meet the skill needs of the region. Several specific issues must be focused on as part of this section. Those issues include:

What is the range of potential training providers, what kinds of skill training will be offered, how will that meet the regional skill needs, and how will training be provided? How will the types of training planned for project participants be determined? Also, although there is a separate section on outcomes, it is strongly recommended that some brief mention in context of the service delivery strategy, be made of them here. Such outcomes would include job placements in skill shortage occupations, increased salary, and measurable skill gains or certificates obtained that demonstrate how the training will alleviate skill shortages.

Supportive services, per se, are not an allowable activity with grant funds. However, making such services available on an as needed basis (utilizing other available resources) is encouraged. Innovation in the context of service delivery can represent a wide variety of items. There can be innovation in the way training services are provided—*e.g.*, distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate). Creativity in developing the service strategy is also encouraged.

C. Target Population (10 points)

The eligibility criterion for skill training enumerated in ACWIA is extremely broad—employed and unemployed workers. This section should include an extensive focused discussion of who the targeted workers are, including their characteristics, and why they are being targeted. A discussion of what assessment procedures are to be used is integral. In the case of employed workers, there should be some articulation of what is to be accomplished. The applicant should address some specific issues relating to the target employed worker population such as:

—How many employed workers will be targeted for services and why?

—What are the technical skills training needs of those workers to fulfill skill shortage occupations? In the case of unemployed workers, there needs to be an extensive discussion of criteria to be used to assess and enroll individuals. It is true that the target occupations and specific jobs to be trained for within the H–1B rubric are statutorily geared to a very high skill standard. It is extremely important that the selection process for workers be carefully described to make it clear how those individuals will possess the capacity after the

completion of training to take jobs that previously were filled by resorting to the H–1B visa process. In particular, the applicant should describe with precision the methods that will be used to reach out and include minorities, women, and individuals with disabilities who can meet these standards.

D. Sustainability (5 points)

There is a 25 percent matching requirement. To what extent does any of these partners provide matching funds or services and how does this contribution assist in building the foundation for a permanent partnership, *i.e.*, sustainability? As noted earlier, Federal resources cannot be counted against the matching requirement; however, it is important that such resources be provided as part of the project because they certainly support and strengthen the quality of the technical skills training provided in the project and contribute materially toward sustainability. ACWIA resources are limited to training individuals to fill high skill H–1B jobs, however, applicants will be given preference for enumerating other resources -Federal and non Federal—because they can contribute materially toward sustainability. For example, local boards could commit through One-Stop centers such valuable participant services as participant assessment and case management. Applicants are encouraged to enumerate these resources under this section to support their discussion of sustainability. This section should also enumerate any specific existing contractual commitments. Briefly stated, the sustainability issue can be addressed by providing concrete evidence that activities supported by the demonstration grant will be continued after the expiration date of the grant using other public or private resources.

E. Linkages With Key Partners (15 points)

The applicant should enumerate who the partners are in this endeavor and how they will link together—i.e., what role each will play. In particular, this section should articulate ties to the private sector, including ties with small- and medium-sized businesses and small business federations. The Service Delivery Strategy section of the Statement of Work described the role each of the actors would play in providing services. This section looks at the linkages from a somewhat different more structural perspective with particular emphasis on the employers in the consortium that are experiencing skill shortages. What resources does each partner bring to the table? The application will specify a management entity (together with a staffing pattern and resumes of major staff members) and will articulate with some precision the roles of various actors. Each application MUST designate an individual who will serve as project director and who will devote a substantial portion of his/her time to it. (For purposes of this requirement, a substantial portion of time is defined as at least 40 percent.) A short portion of this discussion should dwell upon the organizational capacity and track record of the primary actors in the partnership.

F. Outcomes (15 points)

Applicants must describe the predicted outcomes resulting from this training. It is posited that the projected results will be somewhat varied given the broad range of people that will probably be served. For example, employed workers may be trained to achieve a higher skill level than most unemployed workers. Their success could manifest itself through job placements in H–1B skill shortage occupations, increased wages, or skill attainment in H–1B occupations. There are, however, unemployed workers who may well already possess a very high skill level. They could receive refresher technical skills training to update their skills. The outcomes for this group may also be projected in terms of gaining employment and skills attainment; those outcomes would simply be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset. Ideally, the applicant's outcomes section will describe some version of a relatively cohesive mosaic that weaves together the outcomes for both employed and unemployed workers in the context described in the preceding three paragraphs. Additionally, the outcomes section should focus very specifically on the changes that occur because of the training. Thus, an applicant might state that a certain skill level is projected for a given group; but the applicant should couch that outcome in context of what the initial pre-training skill level had been for the group.

G. Cost Effectiveness (10 points)

Applicants will provide a detailed cost proposal including a discussion of the expected cost effectiveness of their proposal in terms of the expected cost per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes and the levels of skills to be achieved (such as attaining State licensing in an occupation) relative to the amount of training that the individual had to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained and quantitatively in terms of wage gains. Cost effectiveness may be demonstrated in part by cost per participant and cost per activity in relation to services provided and outcomes to be attained. This section MUST contain a detailed discussion of the size, nature, and quality of the non-Federal match. Proposals not presenting a detailed discussion of the non-Federal match or not meeting the 25 percent match requirement will be considered nonresponsive. Applicants are advised that discussions and/or site visits may be necessary in order to clarify any inconsistencies in their applications. The reviewers' evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the Grant Officer after considering the panelists' scoring decisions. The Grant Officer's decisions will be based on what he or she determines is most advantageous to the Federal Government in terms of technical quality and other factors.

Signed in Washington, D.C. , this 26th day of July 2000.

Laura A. Cesario,

Grant Officer.

Appendix A: Selected H–1B Professional, Technical and Managerial Occupations, and Fashion Models: Number of Job Openings Certified by the U.S. Department of Labor, Fiscal Year 1999 (Oct. 1, 1998–May 31, 1999).

Appendix B: (SF) 424–Application Form.

Appendix C: Budget Information Form.

Appendix A—Selected H–1B Professional, Technical and Managerial Occupations, and Fashion Models: Number of Job Openings Certified by the U.S. Department of Labor, Fiscal Year 1999 (Oct. 1, 1998—May 31, 1999)

Occupational code	Occupational title	Number of openings certified
030	Occupations In Systems Analysis And Programming	360,745

Occupational code	Occupational title	Number of openings certified
076	Therapists	161,665
160	Accountants, Auditors, And Related Occupations	35,665
039	Other Computer-Related Occupations	28,529
003	Electrical/Electronic Engineering Occupations	16,859
070	Physicians And Surgeons	11,264
019	Other Occupations In Architecture, Engineering And	11,175
090	Occupations In College And University Education	9,028
199	Miscellaneous Professional, Technical, And Manager	8,964
189	Miscellaneous Managers And Officials	8,824
007	Mechanical Engineering Occupations	7,115
050	Occupations In Economics	5,608
163	Sales And Distribution Management Occupations	5,368
033	Occupations In Computer Systems Technical Support	4,573
161	Budget And Management Systems Analysis Occupations	4,263
169	Other Occupations In Administrative Occupations	4,135
031	Occupations In Data Communications And Networks	4,121
041	Occupations In Biological Sciences	3,981
079	Other Occupations In Medicine And Health	3,764
012	Industrial Engineering Occupations	2,725
186	Finance, Insurance And Real Estate Managers And Off	2,624
020	Occupations In Mathematics	2,599
001	Architectural Occupations	2,490
141	Commercial Artists: Designers & Illustrators, Graphics	2,371
297	Fashion Models	2,367
092	Occupations In Preschool, Primary, Kindergarten Ed	2,359
187	Service Industry Managers And Officials	2,347
022	Occupations In Chemistry	2,345
005	Engineering Occupations	2,186
032	Occupations In Computer System User Support	1,595
091	Occupations In Secondary School Education	1,579
110	Lawyers	1,353
029	Other Occupations In Mathematics And Physical Sciences	1,306
131	Interpreters and Translators	1,270
166	Personnel Administration Occupations	1,229
165	Public Relations Management Occupations	1,216
185	Wholesale And Retail Trade Managers And Officials	1,183
008	Inspectors And Investigators, Managerial & Public	974
142	Environmental, Product And Related Designers	955
119	Other Occupations In Law And Jurisprudence	882
099	Other Occupations In Education	841
023	Occupations In Physics	836
010	Mining And Petroleum Engineering Occupations	777
164	Advertising Management Occupations	773
132	Editors: Publication, Broadcast, And Script	748
078	Occupations In Medical And Dental Technology	699
183	Manufacturing Industry Managers And Officials	681
184	Transportation, Communication, And Utilities Management	659
049	Other Occupations In Life Sciences	612
162	Purchasing Management Occupations	604
040	Occupations In Agricultural Sciences	574
074	Pharmacists	506
159	Other Occupations In Entertainment And Recreation	506

Technical Note: The Immigration and Nationality Act (Act) assigns responsibility to the Department of Labor with respect to the temporary entry of foreign professionals to work in specialty occupations in the U.S. under H–1B nonimmigrant status. Before the Immigration and Naturalization Service will approve a petition for an H–1B nonimmigrant worker, the employer must have filed and had certified by the Department a Labor Condition Application. The employer must indicate on the application the number of H–1B nonimmigrant workers sought, the rate of pay offered to the nonimmigrants, and the location where the nonimmigrants will work, among other things.

The Act limits the number of foreign workers who may be assigned H–1B status in each fiscal year, however, there is no limit on the number of job openings that may be certified by the Department. Historically, the actual number of job openings certified by the Department each year far exceeds the number of available visas. This excess in the number of certified openings is due to a number of factors: extension of status filings that are not subject to the annual cap; openings certified for anticipated employment that does not transpire; or movement from one employer to another (again, not subject to cap).

The occupational codes in the left-hand column represent the three-digit occupational groups codes for professional, technical and managerial occupations from the Dictionary of Occupational Titles (DOT).

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX B

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State — H. Independent School Dist. B. County — I. State Controlled Institution of Higher Learning C. Municipal — J. Private University D. Township — K. Indian Tribe E. Interstate — L. Individual F. Intermunicipal — M. Profit Organization G. Special District — N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*

3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 00–19296 Filed 7–31–00; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Workforce Investment Act of 1998; Minority Colleges and Universities Workforce Partnerships and Training Strategies To Address Skill Shortages Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces a competitive demonstration solicitation for grant applications (SGA) to respond to employers' identified skill shortages through the establishment or

strengthening of regional consortia. Grants will be made to successful applicants representing minority colleges and universities which provide evidence of being positioned to plan and implement a successful strategy to respond to shortages of workers seeking employment with skills needed by specific employers in a regional labor market (including typical local commuting area). Successful applicants must also initiate a skill training design for preparing eligible dislocated workers, incumbent workers and new entrants into the workforce that will alleviate skill shortages within the region which the applicant represents and provide the necessary skill sets to those seeking new employment or reemployment. DOL will convene an informational session in early August to share information with eligible applicants and other interested parties. Refer to Pre-Application Information Session.

The funding for this program will be the demonstration authority of the Secretary as appropriated for Title I, Section 171(b) (1) and (2) of the Workforce Investment Act of 1998 and administered in accordance with 29 CFR parts 95 and 97, as applicable. Applicants are encouraged to become familiar with the provisions of the Workforce Investment Act of 1998 (WIA). With the implementation of WIA which became effective July 1, 2000, and for the next few years, it is anticipated that even greater emphasis will be placed on regional and unified planning and other initiatives to accommodate or address regional workforce development concerns. It is expected that the consortia established or strengthened as a result of the award of these demonstration grant funds will actively collaborate with the emerging structures of WIA implementation.

The Department encourages interested applicants to consult with other on-going programs such as grantees funded by the June 1998 $7.7 million dislocated worker technology demonstration, June 1999 $10 million manufacturing technology demonstration program and the June 2000 $11.2 million skill shortages, partnership training/system building demonstration program. Information regarding these demonstrations may be found at http://www.doleta.gov.

Two types of demonstration grants to address skill shortages will be available under this solicitation—(1) Three to nine partnership building grants of up to $750,000 and (2) up to three training grants in the approximate range of $1.5 to $2 million. Each type of grant (partnership building and skill shortage training) will require coordination and collaboration with the local workforce investment system.

In addition, experiences gained through current regional initiatives may provide insight into developing a regional consortia approach to addressing workforce development needs and strategies for partnership building grants as well as training grants. The partnership building grants funded as a result of this SGA to address skill shortages will also support assessment of community employment needs (community audits), designing or adapting training curricula based upon specific employer needs, and limited operational testing of a training design. Partnerships and systems for responding to skill shortages developed as a part of this demonstration will be expected to continue, and indeed improve and expand, after the conclusion of this initiative. One objective of this demonstration initiative is to assist minority colleges and universities in developing and sustaining an active partnership with local workforce investment boards and chief elected officials in the addressing strategies and training programs that respond effectively to area employers' needs for skilled workers. Of particular interest to the Department are broad-based strategies that address such issues as shortages in technology, health care, and H–1B visa-identified occupations.

Consortia developed in response to this solicitation could also be appropriate applicants to apply for skill training grants established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). Potential grants under the ACWIA authority would provide additional funding to address the skill shortages identified under this grant, and could utilize the information gained from pilot testing the training curriculum to ensure an effective skill training delivery approach. Eligible applicants for the ACWIA grants are limited by statute to local Workforce Investment Boards (WIBs) under Section 117 of the Workforce Investment Act of 1998 (WIA), and consortia of WIBs. For this reason, WIB participation in activities conducted under the Partnership Building grants will be a requirement to show satisfactory progress toward achieving the objectives of this demonstration program for receipt of Phase II Implementation funding.

Training grants funded under this SGA will test the ability of minority colleges and universities to partner with the local workforce investment system with employers, training providers and others to train participants in the skills necessary to obtain work in occupations and industries experiencing shortages of such workers. In order to assure that the training provided under the grant is consistent with workforce development plans for the local area and to prepare the local area to possibly sustain the training activity by applying for a skill training grant under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), the local Workforce Investment Board(s) must be an active partner in planning for the training including the determination that the proposed training is consistent with employer-identified skill needs in the community. The application must contain a statement from the local Workforce Investment Board(s) explaining its role as the policy decision-making entities for the targeted geographic area(s) as well as the role its One Stop operator(s) will play in the planned service delivery activities.

DATES: The closing date for receipt of the application is Friday, September 22, 2000. Applications must be received by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie D. Williams, Reference: SGA/DFA 00–109; 200 Constitution Avenue, N.W., Room S–4203; Washington, DC 20210.

Hand Delivered Proposals. If proposals are hand delivered, they must be received at the designated address by 4:00 p.m., Eastern Standard Time on Friday, September 22, 2000. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

Late Proposals. A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before the award is made and it:

- Was sent by U.S. Postal Service registered or certified mail not later than the fifth (5th) calendar day before the closing date specified for receipt of applications (*e.g.*, an offer submitted in

response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

• Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the deadline date specified for receipt of proposals in this SGA. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of an application received after the deadline date for the receipt of proposals sent by the U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper affixed by the U.S. Postal Service and on the original receipt from the U.S. Postal Service. The term "post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

FOR FURTHER INFORMATION CONTACT: Questions/clarifications should be faxed to Mamie D. Williams, Grants Management Specialist, Division of Federal Assistance at (202) 219–8739 (this is not a toll free number). All inquiries should include the SGA/DFA 00–109 and contact name, fax and phone number. This solicitation will also be published on the Internet, on the Employment and Training Administration (ETA) Home Page at *http://www.doleta.gov.* Award notifications will also be published on the ETA Home Page.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the conduct of partnership system-building activities to assist minority colleges and universities in partnership with local Workforce Investment Boards and interested employers in developing the capacity to plan and implement regional skill shortage training strategies. It is envisioned that the consortia developed under this grant will focus on serving a regional labor market area. The area to be served may be multi-jurisdictional, and could be multi-State depending on the geographic area encompassing the regional labor market area.

This announcement consists of five (5) parts:

• *Part I—Background Summary:* describes the authorities, the purpose and the goals of the solicitation for this demonstration program;

• *Part II—Eligible Applicants and Application Process:* describes the organizations authorized to apply for funds under this program, the application process and requirements for submitting an application (deadlines);

• *Part III—Statement of Work:* contains the Statement of Work for the two types of projects that will be funded under this demonstration initiative;

• *Part IV—Monitoring, Independent Evaluation and Reporting Requirements:* provides for the monitoring of the grants by DOL staff to determine the project's performance, an independent evaluation of the grants awarded for this demonstration and describes the reviews that will be conducted by DOL of each of the projects; and notes the requirements for reports to DOL and the independent evaluator; and

Part VI—Rating Criteria for Award and Selection Process: describes the selection process, including the criteria for each type of demonstration application which will be used in reviewing and evaluating all applications received by DOL as a result of this solicitation.

See Appendix "C" for definitions

Part I. Background

A. Authority

Title I, Section 171(d) of the Workforce Investment Act authorizes the use for demonstration programs of funds reserved under section 132(a)(2)(A) and establishes the administration of these funds by the Secretary for that purpose under section 173(b). In addition, the DOL FY 2000 Appropriations Act enacted November 17, 1999 authorizes dislocated worker demonstration projects that provide assistance to new entrants in the workforce and incumbent workers.

B. Purpose

The growth in the U.S. economy and the increasing global competition that has occurred throughout the 1990's has been accompanied by significant restructuring actions regarding the organization and performance of work in many industries. These actions have redefined the job performance requirements in these industries and have resulted in the dual effects of substantial numbers of worker layoffs and of reported shortages of workers skilled in other areas.

As a result, employers and employees alike are facing increasing challenges in their efforts to remain competitive. Increased competition, along with other factors such as reductions in the defense industry, relocation of facilities outside the United States, and technological advances in manufacturing processes, have resulted in significant reductions in the size of many employers' workforces. The increased adoption of technology has resulted in the realization that the skills of many workers are redundant and must be upgraded in order for them to be able to compete in the current economy and for them to be successful candidates for available jobs in the future.

Despite the generally strong economy, pockets of Americans are at risk of being left behind the rest of the country. In an effort to encourage minority colleges and universities to partner with regional workforce investment leaders to address the challenge of keeping all citizens employed and competitive and ensuring the health of the businesses on which communities depend for their economic stability, this initiative will allow for the maximum flexibility in approaches to establishing and/or enhancing partnerships that will address skill shortages now and in the future.

Part II. Eligible Applicants and the Application Process

A. Eligible Applicants

Any minority college or university referred to in the following Executive Orders designed to strengthen the capacity of such institutions to provide quality education and increase the opportunities for them to participate in and benefit from Federal programs which are capable of fulfilling the terms and conditions of this solicitation may apply:

• Executive Order Number 12876 Historically Black Colleges and Universities issued November 1, 1993

• Executive Order Number 12900 Educational Excellence for Hispanic Americans issued February 22, 1994

• Executive Order Number 13021 Tribal Colleges and Universities issued October 19, 1996

Although present DOL demonstration grantees who have received awards addressing skill shortage training issues are not directly eligible for this grant. They may participate as a member of a local area consortium addressing which addresses a skill shortages for which the local area is not already receiving demonstration grant funds.

B. Demonstrated Capacity

Partnership Building Grant awards will be made to applicants that demonstrate to the satisfaction of the Department the capacity in conjunction with the local workforce investment system(s) (under the policy direction of the local board(s) and chief elected officials) and other partners to—

1. develop a collaborative, integrated regional approach for the involvement, design and implementation of a comprehensive skill shortage action plan. The basic design of the plan shall be sufficiently robust to respond to current and projected skill shortages in the region;

2. collect information on current (real time) local employer based skill needs and the availability of workers who possess such skills in the labor market and available training resources to meet the established or developed standards of the local employer or industry;

3. design a training strategy, that may include curricula, to respond to at least one specific skills shortage that currently exists in the region;

4. test the plan on a small scale, by implementing the training strategy developed and placing those trained in related employment that meets or exceeds the outcome goals of the grant; and

5. incorporate lessons learned into the local workforce investment system(s).

Note: As discussed later in this SGA, these areas of expertise are not viewed or presented by the Department as discrete or sequential activities, but rather to delineate the expected capacity of any successful candidate's application for funding under this Solicitation.

Training Grants will be made to applicants that demonstrate to the satisfaction of the Department the capacity to engage with workforce investment partners especially employers, workforce investment boards and local One-Stop operators to provide resources for skill training in occupations that are in employer demand. Measures of this demand could include data from employer surveys, review of local employment advertisements, job order listings at the local One-Stop, and employer H–1B applications.

C. Financial Management Capability

The applicant must demonstrate to the satisfaction of the Department that it has the financial management capacity to receive federal funds in accordance with Sections 184 and 185 of the Workforce Investment Act. A consortium organized by the applicant for the purpose of responding to this SGA must designate one entity of the group as the fiscal agent to manage the funds in the event an award is granted.

D. Cooperation With DOL, Technical Assistance Contractor and the Independent Demonstration Evaluation Contractor

An applicant must also commit to sharing on-going information with DOL and its independent evaluators. An applicant may propose to use grant funds to purchase technical assistance support for the project from sources known to the applicant. The Department will make technical assistance available to the grantee during the course of the grant activities. The technical assistance contractor will visit the grantee and, in coordination with the grantee and other consortium members, assist in identifying the topic or operational areas in which technical assistance would be helpful. The grantee and its partners may then determine which areas would be most beneficial and set priorities for the use of such assistance. A maximum number of hours of technical assistance per demonstration grantee will be established at the time of the grant award. The applicant must agree to participate with the DOL technical assistance contractor in its progress assessments. As part of the acceptance of a grant award the applicant agrees to participate in conference calls during the course of the demonstration and attend and conduct workshops at conferences and other meetings to assist with further guidance throughout the workforce investment system, as necessary and appropriate. A reasonable amount of grant funds may be earmarked for this purpose.

E. Partnerships

The establishment of creative partnership configurations that include representatives of employers with skill shortages and are broadly representative of community interest is strongly encouraged. It is highly recommended that applicants submit a statement (or chart) that shows how the actual or proposed configuration represents fully the community at large and how each partner adds value to the skill shortage assessment and planning process. Other federal partners, where present and appropriate, are suggested for inclusion in any consortium, such as the U.S. Department of Commerce Manufacturing Extension Program, Department of Housing and Urban Development neighborhood and community enhancement programs and others.

F. Support From Partners

The partnerships that are being established are an important part of any application. Partnership Building grant applicants are strongly encouraged to include letters of support signed by proposed consortium members, including the local WIB chair(s). Consideration should be given to demonstrations of support from representatives of key groups who are likely to have a significant impact on the likely success of this project in the region, such as employer associations, curriculum developers, etc. Grant-funded partnership-building activities operating in the local workforce investment area should be viewed as a mechanism to improve the capacity of the area to address skill shortages and to provide the types of training opportunities that result in improved outcomes for workers and an adequate supply of trained workers for employers.

1. The Partnership Building grant application must also describe a preliminary agreement of key regional stakeholders (beyond the required parties described above) to those activities to be undertaken in the course of operation described in the application, as well as a description of other organizations or individuals who are likely to be added to the list of collaborators, and what they are expected to contribute to the initiative.

Appropriate partners to serve as part of the consortium to be formed include local Workforce Investment Boards (WIBs) or consortia of WIBs; employers; business and trade associations; labor unions; other post-secondary educational institutions including community colleges; economic development agencies, and private-sector led groups including community- and faith-based organizations addressing the needs of specific cultures, among others.

Regional consortia may be interstate in composition to accommodate adequate coverage of cohesive labor markets or regional communities, including typical commuting patterns. No minimum size for the geographic or labor market to be covered by this demonstration program has been established, and the smallest grants may cover single local workforce investment areas or portions thereof. A key goal of this initiative is to encourage regional approaches to cover the commuting area from which employers in the region draw or hire their employees.

2. Training grant applicants must partner with the local Workforce Investment Board(s), which forms the policy-making body for local workforce investment activities. Applicants are also strongly encouraged to partner with other entities which possess a sound

grasp of the job marketplace in the region and which are in a position to assist in addressing the issue of skill shortage occupations. Such organizations would include private, for profit business—including small and medium-size business; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. While the Department is not prescriptive as to the partners required, beyond requiring comments from the WIB, in the past those grantees with strong private employer involvement have been particularly successful in achieving their grant's planned placement outcomes.

Pre-Application Information Session

Applicants interested in becoming a demonstration grantee are encouraged to attend a Pre-Application information session which will be held in Greensboro, North Carolina on August 10, 2000, on the campus of Bennett College. The purpose of this all-day session is to summarize the current knowledge about workforce partnerships, approaches to skill shortages and the basics of preparing an application in response to a grant solicitation. The session will review the goals and objectives of the demonstration project and explain the two phase methodology planned for funding of the demonstration grants. Attendees will learn about the technical assistance services that will be provided to grantees. This session is being offered, free of charge, to prospective applicants on a space-available basis. Attendees will, however, have to pay for their own travel and lodging. Attendance at this session is strongly encouraged but voluntary and no written summary of the meeting will be distributed. Further information about this session, the registration process, meeting agenda and availability of lodging can be found on the DOL web page *www.usworkforce.org* or by calling America's Workforce Network Toll-Free Telephone Number: 1–877–US–2JOBS.

Proposal Submission

Applicants must submit four (4) copies of their proposal, with original signatures. The introductory paragraph of the application must state the type of grant for which the proposal is directed—(1) a Partnership Building grant or (2) a Training grant. The proposal must consist of two (2) distinct parts, Part I and Part II.

Part I of the proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix #A) and Budget Form (Appendix #B). The Federal Domestic Assistance Catalog number is 17.246. Applicants shall indicate on the SF 424 the organization's IRS status, if applicable. According to the Lobbying disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The individual signing the SF 424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award.

The budget (Appendix #B) shall include on separate pages a detailed breakout of each proposed budget line item found on the Budget Information Sheet, including detailed administrative costs. An explanation of how the budget costs were derived must be included. The Salaries line item shall be used to document the project staffing plan by providing a detailed listing of each staff position providing more than .05 FTE support to the project, by annual salary, number of months assigned to demonstration responsibilities, and FTE percentage to be charged to the grant. In addition, for the Contractual line item, list each of the planned contracts and the amount of the contract. Where a contract amount exceeds $75,000, a detailed backup budget to show how the amount of the contract was derived must be included. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount and in-kind contributions, including any restrictions that may apply to these funds.

DOL will convene a two-day grantee orientation meeting in Washington, DC. Attendance will be mandatory for all grantees for this demonstration program. We anticipate this meeting to be scheduled within 45 days of the award of grants to allow sufficient time to have all project managers present as well as other appropriate representatives of the regional consortia in attendance. Travel for three individuals (one to be a WIB representative) to attend this meeting as well as at least one other meeting to be convened during the course of the grant's period of performance should be included in the grant budget .

Part II must contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this document. The grant application is limited to 25 one-sided, double-spaced pages with 12 point font size on 8.5 x 11 inch paper with 1-inch margins which *must* include the following:

I. Executive summary—(1 page)
II. Application narrative technical proposal
III. Time line implementation plan and the appendix

The 25 page limitation includes all attachments.

Funding/Period of Performance

It is anticipated that up to $12 million will be available for funding these demonstrations. It is expected that 6 to 12 awards will be made, depending upon the quality of the proposals received and the amount of funds requested and awarded. The maximum grant award will be $750,000 for Partnership Building grants (maximum of nine awards) and $2 million for Training grants (maximum of three grant awards).

1. For Partnership Building grant, twenty percent of the grant amount, up to a maximum of $100,000, will be made available upon announcement of the grant award. The funds will be released in phases: (1) Phase I: Plan Development; and, (2) Phase II: Implementation—this phase will only take place pending approval of the grant plan by DOL. Further directions regarding the expected products to be provided to indicate completion of Phase I: Plan Development will be provided by DOL at the grantee orientation meeting. The remaining grant funds will be made available based upon achievement of progress benchmarks consistent with the purposes of the Workforce Investment Act and this demonstration initiative.

2. For Training grants, the full amount of the grant will be available upon announcement of the grant award.

The maximum duration of any demonstration project under this SGA will be 30 months, beginning on the date of a signed award. This includes closeout time and preparation of the draft final report. Successful grantees will be expected to commence operations within 30 days of the award date. If the applicant anticipates that a period longer than the 30 days will be required prior to commencing operations, it should be stated in the application and provide an explanation for the expected delay.

Training grants shall be required to commence the delivery of services to participants within 90 days of execution of a grant unless a significant portion of the grant implementation addresses the development of new curriculum or planning strategies. If participant enrollments are not anticipated to occur within 90 days, the circumstances should be specifically addressed in the application with the reasons provided and an alternative time frame provided.

Option To Extend

DOL may elect to exercise its option to extend either type of grant offered under this solicitation for an additional one (1) or two (2) years of operation, based on the availability of demonstration funding under the Workforce Investment Act, successful program operation, and the determination that a grantee's initial program findings could further inform the workforce development system through refinement of the present demonstration. However, in most cases, future funding is expected to be the responsibility of all stakeholders, including employers, local Boards and other members of the community.

Part III—Statement of Work

A. Background

On January 12, 1999, during his summit on 21st Century Skills for 21st Century jobs, Vice President Gore announced a major new skills shortage initiative to accomplish two purposes:

- To promote the creation of regional consortia to assess employers' need for skilled workers and workers' skills deficits, and
- To provide resources to established partnerships to provide technical skill training to incumbent and unemployed workers.

Traditionally, overall tight labor markets and even skill shortages are good for workers in that they can lead to rising wages, improved working conditions, and new opportunities for workers and new labor market entrants. However, problematic regional or sectoral industry skills shortages—those that occur when there is imbalance between worker supply and demand for a persistent period of time—can mean that particular goods and services are not provided and that the economy is operating less efficiently than it could. At the microeconomic level, i.e., for individual employers, the inability to find an adequate supply of workers even after offering higher wages and better working conditions can cause a loss of business and profits.

B. Purpose

1. Partnership building grants will support minority colleges and universities in their creation of, or membership in, regional alliances for the development and implementation of skills training strategies focused on qualifying significant numbers of minorities to work within the identified occupations at specific companies experiencing such shortages. This initiative acknowledges that communities and regions will be at different starting points in their responses to skill shortages. It is envisioned that this demonstration will be used as a catalyst to build a coalition of community-wide leaders, including those from the applicant colleges and universities, to work with specific employers to identify skill shortages and then develop processes for ameliorating or eliminating them or to strengthen an existing partnership.

2. Training grants will enable minority colleges and universities to provide specific training in occupations experiencing skill shortages which have been identified by employers to assure minority participants access to jobs in growth occupations. Successful applications may be based on the use of innovative service strategies such as the involvement of traditionally under represented groups of dislocated workers for existing training programs; the development and use of curricula geared specifically to eligible groups of dislocated workers and the needs of employers with openings in skill shortage occupations; or the development of concentrated training models for workers with a residue of skill knowledge from previous related employment, or use of curriculum and skills training interventions designed to impart knowledge, skills and abilities of industry skill standards (where available or under development).

A major challenge, then, in addressing both types of grant applications, becomes how does a local workforce investment system work with employers to identify the skills they need, develop the necessary training to respond to the need, and outreach to the workers who are being laid off soon enough to acquire the skills needed for the jobs that employers have. This means that training curricula must be flexible and easily adjusted or reconfigured to meet employer needs in a timely and responsive manner as they respond to industry technological advances, market changes, new certification requirements and other changes. This approach is distinctly different from the general academic setting, and this type of flexibility and responsiveness will require substantial commitment on the part of the institution and its leadership.

Another challenge to the community is how to encourage individuals currently in the workforce to continually upgrade their skills (life-long learning) so that if a layoff occurs the transition to a new job can be quicker and smoother—a benefit to the economic well-being of the community and the economic security of the family. This means that applicants should consider training to upgrade currently employed individuals in skills in growth occupations, especially those with career ladders that may offer some of the best opportunities for the economic stability of both the community and the family. Offering training in the evenings and on Saturdays, to permit employed individuals to improve their skills and employability may be part of this strategy.

C. Activities Conducted as Part of Demonstration Program

1. Partnership Building Grants " There are four elements (they may run concurrently in some circumstances) in this initiative described below. Although they may be occurring concurrently, the funding related to the elements are indicated by Phase I and Phase II .

a. Phase I: Coalition Building and Planning

The first phase or element of a project will be the development and solidification of the coalition of all the partners—including the grantee and other educational institutions, community businesses (and business organizations), community-based organizations, labor organizations—into a functioning entity.

Throughout the demonstration, it is expected that there will be cooperation with and active collaboration and consultation between the grantee and the regional workforce investment system(s). This means that if the region proposed under this solicitation covers more than one local workforce investment area, the cooperation and consultation expected under this solicitation must be demonstrated to have taken place with the appropriate representatives and organizations in each local area from early in the development of application, on a continuing basis during the planning period as policies and systems are developed, and, finally but not less importantly, as the project activities are implemented. If there are regional strategies such as those authorized under WIA Section 116(c) in place currently, DOL expects those relationships will be built upon for the purpose of this initiative.

Skill shortage assessment and planning is a dynamic process—reflecting the changing nature of business demands and labor market supplies. It is therefore anticipated that the partnerships established under this rubric would be open-ended and invite additional members—especially from private industry—as emerging needs are perceived or additional sectors of

industry are considered for further strategic planning.

A significant aspect of coalition building is the resources that partners can bring to the table and contribute to the partnership. DOL is not requiring a match for this competition. However, a major emphasis of this effort is to create entities and relationships which can sustain themselves once the partnership building grant has expired, and a key aspect of that sustainability will be the amount of resources—both cash and in kind—that can be generated by the participants in the partnership. Sustainability is an important consideration for the full implementation of the action plan, beyond the scope of this grant, that will be developed as part of this project and which is discussed immediately below.

When a substantial number of the workers (20 percent or more) in a targeted skill shortage occupation/industry is represented by one or more labor organizations, or where the training is for jobs where a labor organization represents a substantial number of workers engaged in similar work, the application must provide documentation of consultation on the project concept from applicable labor organizations. Further, in incumbent worker settings or those involving customized training where the union has been involved in bargaining relative to the introduction of either the technology or the addition of new skilled workers at the workplace, the application shall provide information as to any role the union played in the design and delivery of the training as well as any impact on the workers with respect to the growth or shrinkage in the number of jobs, and the selection of workers for retraining.

b. Phase I: Plan Development

This element of the project will involve activities to assess specific employer skill needs and to measure the gaps between the skills needed by industry and the skills held by dislocated, employed and incumbent workers in the region. The application must identify what is presently known regarding the skill shortage needs of the employers, the skill needs of the workforce and the training resources available to meet these needs. In many instances, this information will be preliminary and require additional investigation, research and data collection. The selection of the assessment tools necessary to add to the existing body of knowledge including data sources, survey instruments, interview protocols, etc., as well as measurement processes, is a key aspect of the development of a strategy to address skill shortages. Although final selection of the specific assessment tools may not occur until the planning phase of the grant, inclusion of some discussion of the preliminary direction the consortium plans to consider would be useful in providing a sense of the level of understanding that presently exists among consortium members.

The plan will enumerate the data sources that are used to support the statement of skill shortages. Coalitions are encouraged to research widely and be inclusive in utilization of data. Resources for general skill shortage information include data generated by the Bureau of Labor Statistics (BLS) (such as the Current Population Survey (CPS) and the Occupational Employment Statistics (OES) survey), by regional and local trade associations, and by national and regional business associations (such as the U.S. Chamber of Commerce). However, the action plan will also be required to deal with current and short term needs of local employers identified, in part, by the initiatives developed as a result of this demonstration program such as community audits, evaluated in the context of the skills of workers currently seeking reemployment or employment. Regional and local hiring patterns as provided by local industry and trade associations are also extremely valuable information in terms of any sustained skills shortage. Information regarding minority skill levels and hiring practices in the targeted skill shortage occupations will also be helpful in assessing the need for the proposed project.

The plan for the implementation phase of the grant will include an analysis of the data information developed. The analysis will contribute substantially to the formulation of a training strategy that will be agreed to and signed off by all of the partners in the coalition and signed off on by the local board(s) if it is not an active member of the coalition. The certification by the local board in the latter instance will attest that this proposed specific training strategy is not inconsistent with and does not conflict with the activities of the workforce investment system and does not constitute the development of a parallel workforce investment system. Activities that may be part of the implementation plan include the identification, design and/or adaptation of appropriate training curricula to meet the needs of skill shortage occupational areas or to reflect the employment demands of key regional businesses or industries.

c. Phase II: Implementation—Operational Testing, Assessment of Results, and Program Adjustments

This phase of the project (which may, in fact, occur concurrently with the pursuit of strategies to begin to address other skill shortages) will be to test the implementation plan and the training strategy by training eligible individuals described in this SGA in the skills identified as a result of the first two elements of this demonstration program. Thus, although planning and capacity/partnership building are the primary objectives, grantees will be required to test any new curricula they develop and, in a limited trial fashion, to implement the action plan that they formulate. The test is required to see if the strategy developed can be operationalized, and if not, what changes need to be made. This test should be conducted to work out whatever imperfections there are in the action plan, so that upon completion of this grant period, the partnership is prepared to successfully implement the action plan on a fully operational basis. Most of the training to be conducted in this test period, will be relatively of an intensive or compressed nature. It is expected that during this period and upon completion of the pilot training effort, the consortium will determine the appropriateness of initiating the application process for the WIA State Eligible Training Provider List.

Please note that the training may be provided by more than one training provider based on level of complexity, geographic convenience or other reasons. The training may be developed as part of a career ladder system, with different training providers addressing different levels of the career ladder. However, regardless of the training approach used, the participants completing training are expected to be ready for jobs in the skill shortage areas identified and analyzed in the planning phase of the demonstration. Training may include paid and unpaid internships with employers.

(1) Operational Activities. Applicants must describe:

- How and through what entity(ies) trainees will be outreached and selected;
- What entity will have operational responsibility for the training and case management activities;
- The expected outcomes (jobs) for the trainees, including wage goals, and
- Training activities like those authorized under WIA Section 134(d)(4)(D) which will be conducted as part of the operational testing under this demonstration. Because the applicant

will likely not know what skill training will be provided as part of the demonstration, the description of the training activities to be funded as part of the operational test will at first need to be more conceptual in the initial application.

Grantees will receive more detailed information describing the information to be submitted in the Phase I plan in order for Phase II implementation funding to be released. In addition to other information, the grantee will be expected to submit a description of the training provider selection process; the development or modification of curricula; identification and recruitment of eligible individuals; and the types of assessments (including employer assessments) that will be used to identify candidates who would be likely to be able to succeed in the proposed skill training.

(2) Participant Services. Three categories of individuals who may be trained with any funds awarded as a result of this demonstration are eligible dislocated workers, employed and incumbent workers and new entrants.

The application will describe at what points during the operation of a demonstration the training is likely to occur. This is particularly important where applicants have already identified and gathered information on a skill shortage which they are prepared to begin addressing upon receipt of the grant. In other words, testing of a training concept or process is not limited to a period of time in any project that other "phases" or "segments" have been completed. In such cases, within a brief time after release of the Phase I planning funds, additional Phase II implementation funds will be released upon satisfying the Department's requirements to show that a consortium of appropriate community interests has been involved in the identification and planning regarding the skill shortage, adequate data exists to support the shortage, and the training plan addresses the additional information requirements.

Prior to the release of additional funds, the applicant must identify the entities responsible for the following:

- Determining eligibility;
- Selecting individuals for training or referral to employers participating in the demonstration for screening;
- Case management and other services (such as orientation to employer expectations, internships, supportive services, etc.,) that will be available to maximize the trainees' success in completing the training;
- Developing and filling job openings identified as part of the employers' participation in this demonstration;
- Addressing contingencies for trainees who encounter difficulties and for whom alternative reemployment strategies must be developed outside the demonstration;
- Developing opportunities for work-based training which may or may not be in conjunction with classroom training (if not held on site or not a type of contextual training);
- Arranging for trainees to receive credit toward some kind of credential that provides evidence of accomplishment in the event a participant later changes jobs.

Other categories of individuals may be served through processes developed under projects implemented as a result of this solicitation, using resources other than demonstration grant funds to support training expenses.

d. Internal Monitoring and Evaluation/ Next Steps

(1) Project Benchmarks

A time line (Appendix to the application) must be provided of implementation and project performance benchmarks covering the period of performance of the project. The monthly schedule of planned implementation activities and start-up events (including benchmarks such as completion of lease arrangements for space, selection of an employer or community advisory group, advisory group meetings, hiring of staff, completion of data collection survey, design of customer satisfaction measures, development of a participant selection policy, initiation of customer satisfaction activities for employers and participants, etc.).

(2) Quantitative projections

A chart indicating quarterly projections of cumulative expenditures for Phase I funds should be included with the grant application. Prior to the release of Phase II funds, a number of products will be required in addition to the Implementation Plan. These include a second chart of quarterly projections of cumulative expenditures based on full funding of the demonstration project and a chart providing planned participant activity levels-enrollments, assignment to training, entered employment (or retained employment) and terminations.

It is expected that there will be ongoing reports (monthly progress reports during the early stages of the project, followed by quarterly reports as the projects as the pilot testing phase of the training is underway) by the demonstration project director to the consortia signatories. Further, it is expected that there will be sufficient opportunity to review decisions made and strategies implemented if circumstances change or initial project design proves to be unproductive or insufficiently productive to proceed further. These reports and an active interest on the part of the key leadership in the Region and the entities involved will serve as a progress review and oversight function to ensure continuous improvement of the strategy and its implementation.

As indicated in the coalition building section and reemphasized here, part of this initiative also will be to explore the resources that the newly joined partners in the regional consortia can bring to the table. DOL is not imposing a matching requirement on this procurement. One of the key questions that has emerged with regard to this partnership initiative revolves around the issue of sustainability, i.e., how will these newly emerging partnerships keep themselves going once Federal funding abates? Clearly, one of the root factors in this area will be whether the partnership has managed to establish a viable financial base, as well as the leadership to ensure that the community can build a timely response to the needs of the employers and the workers, and continually improve the systems to meet this long-term commitment. At the end of the grant period, the grantee will be expected to prepare an assessment of the activities undertaken as part of the project, in particular providing an assessment of whatever operational testing was carried out under the authority of the project. That assessment will comprise a portion of the final report for the project. This requirement is in addition to the evaluation report that will be prepared by the independent evaluator.

2. Training Grants

a. Funds provided through this demonstration may be used only to provide services of the type described at Section 134(d)(2)(A)–(K), (3)(C), (4)(D), and (e)(2)and (3) of WIA. (Use DOL/ ETA's web site *www.doleta.gov* to view.)

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with the provisions of 20 CFR 663 subpart G. In addition to the limitations and requirements provided in WIA, prospective applicants should be aware that grant funds may not be used for the following purposes: (a) for training that an employer is in a position to provide

and would have provided in the absence of the requested grant; (b) to pay salaries for program participants; and (c) for acquisition of employers' equipment. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award, however, the level of detail in the project plan may affect the amount of funding provided.

b. Grant activities may include:

(1) Development, testing and initial application of curricula focused on intensive, short-term training to get participants into productive, high demand employment as quickly as possible;

(2) Working with employers in develop and apply worksite-based learning strategies that utilize cutting-edge technology and equipment;

(3) Development of employer-based training programs that will take advantage of opportunities created by employers' needs for workers;

(4) Development and initial application of contextual learning opportunities for participants to learn worksite theory and practices in a classroom setting while applying that learning in an on-the-job setting;

(5) Use of curriculum and skills training programs that are designed to impart learning to meet employer-specified or industry specific skill standards or certification requirements;

(6) Convening of an Employer Advisory Board to identify skills gaps of job applicants and present workers affecting the ability of the employer to offer a competitive product and develop a strategy for retraining;

(7) Innovative linkage and collaboration between employers and the local Substate Grantee and/or One-Stop/Career Center system to ensure a steady supply of high demand, skilled workers.

The above are illustrative examples and are not intended to be an exhaustive listing of possible demonstration project designs or approaches which may achieve the purpose of this solicitation. However, successful applicants must demonstrate the direct involvement by employers experiencing skill shortages in the design and operation of the project as well as provide substantive documentation about the existence of skill shortages for the industry or occupations to be targeted by the proposed project. Documentation should include a description of the employer involvement anticipated in the project. An employer advisory committee may be one means of accomplishing employer involvement.

c. Applications must address the following areas:

(1) Target Population

Describe the characteristics of the proposed target population for the project, e.g.,educational level, previous occupation, age range, likely transferrable skills, length of unemployment, and language limitations. If that population to be served represents a particular minority group, describe the size and needs of the target population in the local area as they relate to the services available either through the grant or other resources in the geographic area covered by the grant. Provide documentation or other assurance showing there are sufficient numbers of WIA eligible individuals with the target population's characteristics in the project area(s) who can be expected to succeed in the planned training.

Indicate how the number of workers to be enrolled was determined. Documentation should be provided to show that individuals with appropriate characteristics to meet the purposes of this grant are available in sufficient numbers to meet the recruitment goals of the grant recognizing that not all workers with appropriate characteristics will chose to participate.

Available Jobs

Describe the jobs that will be available and targeted for placement to project participants upon completion of training and placement services including the strategy(ies) for identifying job openings that appear appropriate to the training planned and meet the target wage at placement goals established in the proposal. Include information about the number and type of jobs, wage information and the specific set of skills, knowledge or duties (industry-sponsored standards of certifications). Provide documentation (Footnote sources) that a shortage of qualified workers exists in the local area to fill positions in the targeted occupations in the absence of the proposed project. Anecdotal data should not be used. Information from the Bureau of Labor Statistics (BLS) available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and WIA local workforce investment plan may also be cited. Other sources from the private sector such as Chamber of Commerce or employer association studies as well as university studies are also acceptable. The data must relate to local employment shortages.

Substantive linkages with specific employers who are experiencing skill shortages among their present workforce and/or the demand for additional employees with identified skill sets in documented occupational shortages must be provided. Letters from employers who have made a commitment to the demonstration project are the most appropriate form of documentation.

If some placements will be made with employers who have not been identified at the time of application, describe the job development and placement strategy to be used to assure placement of demonstration participants.

(3) Project Design

- Service Plan. Describe the services to be provided from the time of selection of participants through placement of those participants in jobs. Describe any services to be provided subsequent to job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and ways to address participants' financial needs during periods of training. Grant-funded activities should, at a minimum, include recruitment, eligibility determination, assessment, retraining, job placement, and supportive services.
- Outreach and recruitment. Describe how eligible dislocated workers will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the One-Stop Career Center system, use of community-based organizations and other service groups. Describe the applicant's experience in reaching dislocated workers, especially the targeted population. It is highly recommended that applicants partner with the appropriate local One-Stop Career Center operators to plan and implement effective outreach and recruitment strategies.
- Eligibility determination. Describe the process to be used in determining the WIA eligibility of potential participants in the project. It is highly recommended that applicants partner with the local One-Stop Career Center operators or community-based organizations with eligibility determination experience to carry out this critical activity.
- Selection criteria. Describe the criteria and process to be used in

selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project. Identify any assessment tools that will be used as part of selection process.

• Training Services. Describe the training to be provided—classroom, experiential, on-the-job, internships, etc. Include the length (days and hours) and schedule, any perquisite courses, and customization to account for transferable skills, previous education (note: whether the training requires new and higher educational levels than previous skill training in the same industry), and particular circumstances of the target population and the skill needs of the hiring employer(s). Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards, and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services including courses provided by both public and private providers in the local area. If the training is be customized to account for individual differences in skills levels of participants or employer hiring needs, describe how these considerations will be taken into account in the delivery of the training. The training provided must support the information provided regarding skill shortages and demand for jobs.

• Job Placement. Describe the role of the employer linkages previously addressed in assuring the availability of jobs for participants completing training. If an Employer Advisory Committee is the primary employer linkage, the members of the committee should be listed and the type of expertise they bring to the committee noted. Provide a discussion of the role(s) of the advisory committee and its projected meeting frequency. Describe any additional job seeking skills training or assistance provided to participants completing training.

• Post placement services. Describe any post placement services to be provided and explain their value to the achievement of the project's purpose and planned outcomes.

• Supportive services. Describe those supportive services determined to be appropriate to the target population's needs. Describe policies and procedures to ensure that supportive services are provided only when they are necessary to enable an individual who is eligible for training but cannot afford to pay for such supportive services, to participate in the training program. Indicate how the participants' financial needs during the period of training will be addressed.

• Relocation. Describe the limitations and eligibility criteria for relocation assistance, if such assistance is included in the proposal.

• Participant flow. Provide a flowchart noting length of time for various activities (such as one day for assessment, etc.) to illustrate how the project will ensure access to necessary and appropriate reemployment and retraining services. Show the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular participants. Note where service choice options will be available to participants. Indicate the average length of participation from eligibility determination and enrollment in the demonstration project to placement in an unsubsidized job.

• Relationship to prior experience. Discuss how the applicant's prior experience in working with the targeted population affects or influences the design of the proposed project. Note especially lessons learned or positive experiences that will be replicated.

(4) Collaboration

Describe the nature and extent of collaboration and working relationships between the applicant and other workforce development partners in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. Provide documentation that the collaboration described can reasonably be expected to occur (signed letters of agreement and/or the charter of a formally established advisory council are considered the strongest evidence, while letters of support are considered weaker evidence). Because a core purpose of this demonstration program involves the publicly funded workforce system, the applicant shall describe working relationships with local One-Stop Career Center partners where present.

Describe the number and types of employers to be directly involved in implementation of the demonstration through activities as participation on an advisory council, provision of input to curriculum development and design, training provider, internship supervision, participation in establishment of local skill standards, .etc. Describe activities, presently in place or to be undertaken to link activities to program interventions under this grant to employers, industry, or curriculum/learning centers currently designing and developing occupational/job skill standards and certifications.

Collaboration should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications. Employer linkages must be specifically addressed in the application and documentation provided of the specific role(s) the employer(s) will play in implementation of the grant provided.

D. Outcome Goals

Outcome goals for this demonstration program include, but are not limited to those stated below:

1. Partnership Building Grants

a. Increasing opportunities for minority colleges and universities to play a significant role in addressing skill shortages as a partner in the workforce investment system;

b. Increasing job opportunities for minorities through skill training in growth occupations where employers have identified skill shortages in order to access quality jobs that provide for economic self-sufficiency and long-term employability security;

c. Providing minority colleges and universities with access to timely, meaningful workforce data to be used in planning curriculum and future directions for their institutions;

d. Providing minority colleges and universities with an additional means of accessing the employer community;

e. Formation of region skills alliances that include minority colleges and universities to collaborate in implementing integrated strategies in response to employer needs;

f. Identification of ways to best respond to reported skill shortages;

g. Testing the viability of conducting on-going community audits to help avoid future skill shortages and to assist in community-or regional-wide planning for adjusting to economic change;

h. Development of a broad based consortium which will continue after the conclusion of this demonstration; and

i. Development of a process for collecting information and responding to employer needs which can be used by local workforce investment boards and chief elected officials as a basis for policy development for the local one stop system.

In addition, the Phase II—Operational Testing of the program should demonstrate connections between training provided to participants and the industries where participants are employed. Unless otherwise provided for in the grant, it is expected that 95% of the participants placed in jobs will find employment with those businesses or industries for which the training strategy is implemented. For dislocated workers, the wage replacement rate is expected to be 90% or better; for incumbent workers and new entrants, the wage rates will be consistent with requirements in the proposal, and any subsequent negotiations; and for employed workers, the wage rates will result in wages that meet the local workforce investment board's standard for achieving self-sufficiency, taking into consideration each application's description of these populations that will be trained as part of any funded project.

2. Training Grants

a. The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into new jobs; a minimum of—percent entered employment rate is required;

b. Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

c. Wages of participants prior to, at placement and 90 days after placement: (1) for dislocated worker participants: a minimum of—percent wage replacement rate is required for at least—percent of the participants and an average—percent wage replacement for the overall demonstration project is required; (2) for incumbent worker participants: a minimum of 100 percent wage retention is required for all participants successfully completing training and meeting the competencies/skills levels specified by the employer prior to the training.

d. For projects serving dislocated workers, as part of the targeted outcome for wage at placement, each project should benchmark at least two key wage averages for the labor market in which each project will operate. Suggested benchmarks might include: (1) The average weekly wage in the manufacturing sector, if the project is focused on manufacturing; the average weekly wage for technical and skilled trade jobs; or the average weekly wage for technical or professional workers; whichever is appropriate to the training program selected and (2) the average wage at placement for the local JTPA Title III, dislocated worker program operated June 1999 to July 2000 by the local Substate Grantee prior to transfer to the operations under the Workforce Investment Act. Provide an explanation of the particular benchmarks chosen for the project. For incumbent workers, indicate the present wage level of the workers to be trained and discuss how this wage level compares with the appropriate benchmark wage for the local labor market area.

e. For each project serving dislocated workers, at least 80 percent of the individuals placed shall be placed at a wage that meets or exceeds (1) the average benchmarked wage in the labor market area, or (2) the average wage at placement for the last program year completed (currently 1999) for the JTPA Title III dislocated worker program operated in the targeted labor market, whichever is greater. The manufacturing wage and other wage information for any labor market may be obtained from the Covered Wages and Employment Program administered by each State's Employment Service.

f. Customer satisfaction with the project services including participant at critical points in the service delivery process as well as upon placement and employer satisfaction with the skills and preparation of the participants placed with their organization; and

g. Planned average cost per placement (amount of the grant request divided by the number of program-related placements, and the cost per placement for continued placements (the amount of the grant request minus development/start-up costs divided by the number of program-related placements).

E. Staffing

Each grantee will be expected to hire a full-time project director who will begin within 30 days of the grant award to ensure that an appropriate level of effort is committed to the success of the initiative. A tentative staffing plan should be provided listing each position of more than .10 FTE with a brief description of the position, salary, fringe, and the percentage of time to be devoted to the demonstration project. The individual with primary accountability for the implementation of the demonstration should be identified, with the information provided as to where this key individual will be placed in the organizational structure and to whom he/she will report.

Part IV. Monitoring, Independent Evaluation and Reporting Requirements

As part of the agreement for the receipt of funds under this solicitation, each Grantee will be required to provide reports and documents as well as participate in evaluation and review activities described below. DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and participant data collection methods and processes taking into account the applicant's project management plan. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically.

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant in accordance with the WIA, the Regulations at 20 CFR 652, the provisions of this announcement and the negotiated grant agreement. Applicants should assume at least one on-site project review will be conducted by DOL staff, or their designees.

This review will focus on the project's progress and performance in meeting the grant's programmatic gals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with employers and other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to additional reviews at the discretion of the Department.

B. Independent Evaluation

DOL will contract for an independent evaluator of all phases of projects funded under this Solicitation. The purpose of the evaluation is to inform the system on all phases of the demonstration program in order that others who subsequently establish such partnerships to address skill shortages may learn from grantees' experiences. Each Grantee is required to participate in this effort.

C. Reporting

1. Progress Reports

a. Partnership Building Grants. The grantee must submit brief narrative progress reports. The reports will be submitted monthly during the Phase I of the project and during the first three months of Phase II funding and then quarterly thereafter. These reports are due 15 days following the end of each reporting period during which the project is operational (funded). The quarters end March 31, June 30, September 30 and December 31.

b. Training Grants. The grantee must submit brief narrative progress reports

as well as quantitative reports based on the planned levels of activity'enrollment, training assignment, completion, job placement. The reports will be submitted monthly until 50 percent of the enrollment goal has been reached. Thereafter they may be submitted quarterly.

2. Quarterly Financial Status Report. Each grantee must submit to the Grant Officer's Technical Representative (GOTR) identified in each grant agreement within the 30 days following the end of each quarter, three copies of a quarterly Financial Status Report (SF 269) until such time as all funds have been expended or the period of availability has expired.

3. Final Project report. A draft final report which summarizes project activities and results of the demonstration shall be submitted no later than 30 days prior to the expiration date of the grant. The grantee's assessment of operational testing activities under the grant is to be included. The final report shall be submitted in 3 copies no later than 15 days before the grant expiration date. It is expected that this report includes information on challenges to the system and how those challenges were overcome as well as what worked best and what did not work as well, or did not work at all.

D. Other Documents or Reports To Be Submitted to DOL

1. Partnership Building Grant

a. It is expected that either with the application or within 90 days after the grant award, the grantee shall submit a copy of a signed consortium partnership agreement. The agreement shall include a written statement of operating principles and procedures defining roles and decision-making processes for each member of the partnership, as appropriate, as well as the overall principles and procedures of the partnership. It must include the frequency of meetings and how the review and oversight function will be conducted. A copy of the partnership agreement when modified thereafter to add additional partners should also be submitted.

b. The grantee must submit a copy of the Phase II—Implementation Plan upon completion of its development, and when modified thereafter. The Implementation Plan must be signed by the consortium partners.

Part V. Rating Criteria for Award and Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed in the SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award grants with or without discussions with the offerors. In situations without discussions, an award will be based on the offeror's signature on the Standard Form (SF) 424, which constitutes a binding offer. The Government reserves the right to make awards under this section of the solicitation to ensure geographical balance. The Grant Officer will make final award decisions based upon what is most advantageous to the Federal Government in terms of technical quality, responsiveness to this Solicitation (including goals of the Department to be accomplished by this solicitation) and other factors.

Rating Criteria for Partnership Building Grants

A. Overall Statement of Problem and Objectives (5 Points)

A concise statement clearly setting forth the problem(s) to be addressed and the objectives for accomplishing the purposes of the grant.

B. Regional Characteristics (15 Points)

1. Region Description. The applicant must provide a clear statement describing the region or area that the partnership will encompass. The description must enumerate concisely the economic conditions of the region. Socioeconomic and demographic data should also be provided to buttress the discussion. Judicious use of relevant statistical information is encouraged. The statistical information must identify the characteristics that make this area a cohesive region.

2. Employer Characteristics. A discussion of the general business environment, including some emphasis on small and medium-sized businesses, the characteristics of the major employers in the region and in particular, identification of those employers—both major and small and medium-sized—that have experienced skill shortages. The application should include a discussion of the nature of the skills shortages as presently known and the extent to which additional areas of information needed to develop a response strategy and action plan and what is the nature of those shortages.

3. Identified Data Needs. The extent to which the applicant identified the additional information regarding the employer community necessary for the development of an implementation plan.

C. Strength of the Consortium (15 Points)

1. Partners and Roles. The applicant should enumerate who the partners are in this endeavor and how they will link together-i.e., what role each will play. This may be presented in chart form. The Department is interested in a broad representation of organizations and entities that are identified as able to contribute to this effort to address reported employer skills shortages in a timely and responsive manner. The application must clearly differentiate between actual and prospective partners.

2. Private Sector Involvement. This section should articulate ties to the private sector, including ties with small- and medium-sized businesses, minority businesses, and small business federations and businesses with skill shortages. Provide in detail the role of the private sector-employers, employer associations and training providers (where appropriate) in developing the application.

3. Resources provided by partners. A discussion of what resources, actual and leveraged, each partner will bring to the partnership. Although DOL has not imposed a matching requirement upon this procurement, applicants are strongly encouraged to enumerate in substantial detail exactly what assets the partners (including employers and employer associations) propose to contribute. Assets may include, but are not limited to, office or training space, equipment, curriculum development, office support staff, meeting space, communication lines, as well as cash contributions. Identify additional sources of support to be pursued if the grant is funded.

4. Role of training institutions. The development of a training strategy to equip individuals in the Region with the skills to address the skill shortages identified is important to the outcomes of the overall demonstration. This training may be accomplished through customized training contracts or through the Individual Training Account mechanisms established by the local workforce investment systems. In selecting a training approach, applicants will need to consider the replicability of the approach for other workforce investment systems as well as the sustainability of the approach under the WIA program design developed in the local area . The rationale on which consideration of the selection process will take occur or the approach most likely to be selected should be discussed. Note: There is no particular approach that is favored by DOL.

However, since the sustainability of the project will depend to some extent on the local or regional WIA program training designs, it will be important to recognize the philosophy of WIA training in developing the project's training rationale.

Role of unions should be discussed where appropriate.

5. Sustainability of the partnership and strategies. To be highly rated under this criterion, applicants must provide a detailed discussion of how the partnership is presently operating, or is envisioned to operate and how it will (could) sustain itself once the Federal grant funding has expired. Clearly, establishing a strong resource base is a significant factor in resolving that question.

D. Prospective Target Population (20 Points)

1. Characteristics of the target population. The description of the characteristics of those individuals the plan envisions serving should be clear and sufficiently detailed to determine the potential participants' service needs. If the individuals to be served will be drawn from one eligible group of participants (by industry, working status, etc.) the application should so state and provide the rationale for that group's selection. Describe the extent to which target populations will be drawn from groups under represented in the targeted industries/occupations.

2. Documentation of available participants. Documentation should be provided showing that a significant number of incumbent, employed, and dislocated workers as well as new entrants are available for participation within the project area.

E. Strategy and Service Plan (20 Points)

1. Collection and Data Analysis. The extent to which the applicant provides information about the approach to data collection and analysis, specifically citing rationale for methodology selected for data collection, responsibilities assigned regarding collection and analysis, and timeliness of data collection and analysis as it relates to development of an action plan and training strategy.

2. Strategy. The extent to which the proposed strategy approach addresses:

a. identification of the region or geographical area within the region to be served;

b. the relationship of the employers' skill shortages and employment needs, including an assessment of the current workforce's skills if the skill shortage is identified and confirmed as a result of the data collection and analysis at the time of application, or a description of those areas of reported skill shortages which the proposal plans to examine and verify and the types of data collection and analysis presently under consideration; and

c. the employment and training needs of the targeted minority population to assure that the required demonstration outcomes are achieved.

3. Geographic, neighborhood or industry concentration. Applicants are strongly encouraged to include under represented communities and populations particularly those that may reside in Empowerment Zones and Enterprise Communities (EZ/ECs) in the region, or industries, and/or areas in the community or region that have been targeted for other assistance that together with funds from this initiative may result in sufficient concentration of resources to achieve even greater goals than those established for this demonstration. This approach also allows for great opportunity to leverage other funding sources.

4. Participant Services. While this Solicitation envisions only limited operational testing of the action plan, it is expected that some participants will be served during the period of this start up grant. Applicants must describe with clarity the participant focus of projected activities (from outreach/recruitment, assessment, case management, and supportive services to job search and placement activities) that will emanate from the Phase II: Implementation Plan. It is expected that the appropriate mix of services will be tailored to the characteristics of the target population.

F. Previous Experience and Management Plan (15 Points)

1. Previous individual staff experience and experience of partner organizations. Applicants should provide a detailed discussion of specific experience in the activities contemplated by the Solicitation. The kinds and quality of experience the regional skills alliance (including the applicant and other partners) has had in economic planning including the use of economic and demographic data to identify skill shortage occupations. The level and quality of experience the applicant and other partners have in curriculum planning and development. The quality of the experience the partners bring to the demonstration regarding occupational skill training.

2. Staffing. The application should include resumes of key staff who will be expected to play a key role in the first six months of the project implementation. As noted above, it may well be that the individual staff members do not have substantive experience in partnership building activities. Therefore, it will be acceptable to demonstrate that the key staff has substantial background in economic planning and other activities (*e.g.*, curriculum development) contemplated as part of the coalition building effort for this initiative.

3. Management Plan. The application should include a management plan for how this grant will be administered. The structure under which the project will operate must be carefully described and must identify the lines of authority for accountability for the achievement of the project goals. The required time line will indicate the key benchmark achievements identified by the applicant and the timeframe for their accomplishment. It is recommended that the time line include such benchmarks as the selection and hiring of staff, finalization of an MOU with all demonstration project partners, selection of the methodology for gathering and analyzing necessary data to determine the occupational areas of skill shortages and employer needs, the identification of training needs and appropriate curricula, initial testing of training to meet employer skill shortage needs, formation of any subcommittees to focus on particular aspects of the demonstration activity, establishment of policies for the selection of participants and employers, approval of training strategy, assessment of customer satisfaction and assurance of continuous improvement efforts, and schedule for review of progress reports. This list is not meant to be inclusive, but rather to illustrate some activities to be accomplished that could serve as benchmarks for oversight review and for negotiation with DOL in determining the appropriate time for the release of the balance of demonstration grant funds.

G. Cost Effectiveness (10 Points)

Applicants will provide a detailed cost proposal including a detailed discussion of the expected cost effectiveness of their proposal. This discussion should be couched in terms of the reasonableness of the cost in relation to the activities planned, including such factors as the geographic area covered by the proposed project, the number and range of the partners, the operational testing of the Implementation Plan (in particular, training). The agreement shall include a written statement of operating principles and procedures defining roles and decision-making processes for each member of the partnership, as appropriate, as well as the overall

principles and procedures of the partnership. It must include the frequency of meetings and how the review and oversight function will be conducted. Expenses should be identified that will be incurred in terms of establishing and/or strengthening the collaborative, cooperative partnership. The cost benefits of assessing community needs and curriculum development should also be addressed. Benefits can be described both qualitatively in terms of the value of established cooperative relationships and skills attained and quantitatively in terms of wage gains and cost savings resulting from collaborative efforts and activities.

In view of the fact that there will be relatively little actual provision of services to individuals; proposals will have to discuss costs and benefits, to some extent, in terms of projected participants. This may, of necessity, involve a certain amount of hypothetical model building. However, it is anticipated that applicants would have a fully completed and tested action plan which is ready to be fully implemented upon completion of this grant, so that the model building could produce some excellent guide posts for the successful applicant to use in carrying out this grant.

Selection Criteria for Training Grants

A. Statement of Need (15 Points)

1. Region Description. The applicant must provide a clear statement describing the region or area that the partnership will encompass. The description must enumerate concisely the economic conditions of the region including those industries in growth and decline. Socioeconomic and demographic data should also be provided to buttress the discussion. Judicious use of relevant statistical information is encouraged. The statistical information must identify the characteristics that make this area a cohesive region.

2. Employer Characteristics. A discussion of the general business environment, including some emphasis on small and medium-sized businesses, the characteristics of the major employers in the region and in particular, identification of those employers—both major and small and medium-sized" that have experienced skill shortages.

3. Identification of the skill shortages. A discussion of information and data sources used in selecting the particular skill shortages selected for training must be provided. The application should include a discussion of the nature of the skills shortages as presently known and the extent to which additional areas of information needed to develop a response strategy and action plan and what is the nature of those shortages.

B. Target Population (10 Points)

1. Description of the characteristics. The applicant must provide a clear statement describing the target group to be served that is sufficiently detailed to determine the potential participants' service needs.

2. Availability of Sufficient Number of Workers. Documentation must be provided showing that a significant number of eligible dislocated workers who possess these characteristics are available for participation within the project area. An explanation of how the number of dislocated workers to be enrolled in the project was determined should be provided.

3. The recruitment plan must support the number of planned enrollments. The target population must be appropriate for the specific purpose of the proposed project.

C. Targeted Jobs (15 Points)

1. Appropriateness of Selected Occupations. The applicant should provide information indicating that the jobs identified for training are clearly available to workers who successfully complete the planned training and preparation given that:

a. the match between the documented skill shortage and the training planned;

b. the documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications;

c. the substantial level of involvement of employers in making known their needs regarding requisite worker skills necessary for hiring program completers;

d. the documentation and reliability of job availability is based upon recognized, reliable and timely sources of information;

e. where appropriate, the role of workers or representatives of a labor organization representing the workers in the design and/or delivery of training in enhancing worker skills during workplace change;

2. Consultation with labor unions has occurred where appropriate and a statement is included noting the consultation or determination that such consultation was not necessary.

D. Service Delivery Strategy. (20 Points)

1. Strategy. Applicants must lay out a comprehensive strategy of providing the skills training. It must include how many types of training will be provided, by what organizations (in addition to the grantee), and demonstrate that the scope of services to be provided is consistent with the demonstration program and project purposes.

2. Scope of Services. The scope of services must be adequate to meet the needs of the target population given:

a. their characteristics and circumstances;

b. the complexity of the training and the skills to be developed relative to their characteristics and previous job experience, including discussion on how internships, hands-on training, or other practicum opportunities will be part of the curricula;

c. the jobs in which they are to be placed relative to targeted wage at placement goals;

d. the length of program participation planned prior to placement.

3. Services to be Provided. The applicant should discuss the services to be provided including at a minimum: outreach and recruitment, assessment, selection process, training, job search assistance and job placement, supportive services and follow-up services. The provision of any training or employment related tools and uniforms should be noted.

4. Innovation. Innovation in the context of service delivery can represent a wide variety of items. There can be innovation in the way training services are provided—*e.g.*, distance learning to provide instruction to rural areas, interactive self-instructional video materials, flexible class scheduling (to accommodate employed and incumbent workers schedules), professional mentoring. Creativity in developing other aspects of service strategy (recruitment, assessment, transportation linkages, etc.) is also encouraged.

E. Cost Effectiveness (10 Points)

1. Reasonableness of Costs. Applicants should address the employment outcomes and the levels of skills to be achieved (such as attained State licensing, an industry-recognized certification, etc.) relative to the amount of training that the individual would need to receive in order to achieve those outcomes. The cost information provided regarding similar training available through other training providers is within an acceptable range or sufficient rationale is provided for the cost differences. The impact of development/start-up and innovation on costs is explained clearly in the proposal and is reasonable. Benefits can be described both qualitatively in terms of skills attained and quantitatively in terms of wage gains. Proposed costs must be reasonable in relation to the

characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination/collaboration with other entities, including One-Stop/Career Center organizations.

2. Leveraged resources. Identification should be provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-WIA resources committed to this project, including employer funds, grants, and other forms of assistance, public and private. The degree to which other interested partners in the workforce development system invest resources to test the concepts put forth in the application. In-kind contributions should also be discussed. Value and level of external resources being contributed, including employer contributions, to achieve program goals will be taken into consideration in the rating process.

3. Cost effectiveness may also be demonstrated in part by cost per participant and cost per activity in relation to services provided and outcomes to be attained taking into consideration the characteristics of the planned participants.

F. Management (10 Points)

1. Project progress tracking system. The project management plan must be designed to track project performance in such a way as to assure that benchmarks are achieved in a timely manner, issues affecting performance such as employer involvement, collaboration partners commitments, etc. are quickly identified and addressed, and planned outcomes will be achieved in a cost effective manner.

2. Integrity of WIA funds. The management structure and management plan for the proposed project must ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated.

3. Customer Satisfaction. The proposal must have a method of assessing customer feedback for both participants and employers involved, and establish a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

G. Collaboration (15 Points)

1. Evidence of involvement of key workforce investment stakeholders. The application must include evidence of partnership with the local Workforce Investment Board(s) and the local One-Stop/Career Center operator(s) in the planning and other appropriate demonstration activities. Evidence of coordination with other programs and entities for project design or provision of services should also be provided. A written agreement or memorandum of understanding is a suggested vehicle for presenting a clear indication that the signatory stakeholders have agreed to cooperate and coordinate resources and operating responsibilities, as applicable, for the life of the proposed project.

2. Employer Involvement. The applicant should discuss and provide documentation of the role of the employer(s) in the overall design of the project, the occupations targeted for training and the identification of the skills for which training is provided, and in the placement of training completers. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

H. Sustainability and Replicability (5 Points)

1. Sustainability. The applicant must provide evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using WIA-allotted formula funds or other public or private resources.

2. Replicability. The likelihood that the approach may be applicable to a broad range of dislocated worker programs across the country. The proposal must provide evidence that the approach and training strategy(ies) used can be replicated by other workforce development partners to address skill shortages in their local area.

This solicitation is designed to promote involvement and provide support of minority colleges and universities in establishing a role in their local workforce investment areas' strategies to address skill shortages as well as in their provision of training services in response to employer-identified skill shortages. For this reason, the Federal Government intends to award grants to institutions representing each of the three primary categories of minority colleges and universities—Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance (Standard Form) SF–424 constitutes a binding offer.

Signed this date, July 26, 2000 at Washington, D.C.

Laura A. Cesario,

Grant Officer.

Appendix "A"—Standard Form (SF) 424
Appendix "B"—Budget Information Sheet
Appendix "C"—Definitions

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipe
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: ***Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).***

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel:* Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. *Total, Direct Costs:* Add lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. *Training /Stipend Cost:* (If allowable)

11. *Total Federal funds Requested:* Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

BILLING CODE 4510-30-C

Appendix "C"

Definitions That Will Apply to This Demonstration Program

1. *Community Audit.* A mechanism used by a community or region that collects "real-time data" from regional employers regarding actual and projected short term and longer term labor surpluses and needs, to enable the regional workforce development system (the entire community) to plan effectively for expected events— both positive and negative—in order to improve the functioning of the market and minimize the overall negative impact on the community.

2. *Consortium.* A group of entities (agencies or organizations) representing key policy makers within a Region (as identified in the application, consistent with the definition herein) which has a common interest in developing strategies and processes to respond to skill shortages within the Region. At a minimum, the consortium must include the local workforce development board chairs, or their representatives (speaking on behalf of the board), and chief elected officials, or their representatives, within the Region who will use the outcomes developed as part of this demonstration to develop or direct policy decisions for the workforce investment system.

3. *Contextual Learning.* A combination of compressed work and class-based learning strategies that may include integrated basic skills, literacy, and vocational training.

4. *Chief Elected Officials.* Those elected officials whose responsibilities are defined in JTPA and the Workforce Investment Act.

5. *Customized Training.* Training and or curricula that is developed for specific employers' specific hiring needs in a collaborative fashion by the employer, the

education system, the local workforce investment system. It may be entirely work-based, entirely classroom or a combination of the two. The cost of the training must be leveraged from a variety of sources, including the employer, the education system and this demonstration program.

6. *Displaced Homemaker.* An individual who meets the definition at WIA Section 101(10).

6. *Eligible Dislocated Worker.* An individual who meets the definition at WIA Section 101(9)(A), (B), and (D). See also "employed dislocated worker."

7. *Employed Dislocated Worker.* An individual who meets the definition of an eligible dislocated worker at WIA Sec. 101(9) and who has not yet been laid off or has been dislocated and has accepted a temporary, income-maintenance job at a wage of less than 90% of layoff wage; and is determined by the project operator or the designated one-stop operator to require training to obtain or retain employment that permits the individual to achieve self-sufficiency in accordance with the criteria set by the State or local workforce investment board under WIA.

8. *H1–B Visa Skill Shortages.* Those skill shortages identified by the Immigration and Naturalization Service (I&NS) for which employers are permitted to apply to bring into the U.S. foreign workers to meet demands when the supply of workers with such skills in the local labor market are insufficient. A list of the occupations certified by the Department of Labor under the H1–B program for non-immigrant visas may be found on page 44549 of the **Federal Register**, Volume 64, Number 157, Monday, August 16, 1999.

9. *Incumbent Worker.* An individual who is currently employed at small or medium-sized businesses (see definition) whose job skills do not meet the current or future needs of the company if it is to remain competitive by keeping workers employed, averting layoffs, and upgrading workers' skills. As a result, the company has identified such workers as being at risk of being laid off in the future (5 year projection). This definition is for purposes of this grant solicitation.

10. *Independent Evaluation.* A process and outcome evaluation conducted by a contractor hired by DOL. The evaluation will be designed to identify the lessons learned and the variety of effective models developed in order to maximize the value of systems tested and inform the workforce investment system.

11. *Local Workforce Investment Areas.* Those geographic areas designated by the Governor of each State under the Workforce Investment Act (WIA) of 1998 (or service delivery areas under JTPA).

12. *Local Workforce Investment Boards.* Boards are authorized under Section 117 of the Workforce Investment Act (WIA) of 1998. More than half of the membership of each local board must be key officials from the private employers.

13. *Memorandum of Understanding or Cooperative Agreement.* A living and growing agreement that is a critical element of the establishment and on-going development of a regional skills alliance process. The initial agreement to be submitted with an application, at a minimum, articulate the outcomes and action plant to occur if a project is funded. It must include the affected local workforce development board chairs and the chief elected officials in the Region for which application is made must be parties to the agreement. This agreement shall include the role each organization will take in implementing the demonstration strategy as well as any monetary and in-kind contribution by each signatory organization.

14. *New Entrants.* Eligible individuals in this category include-young adults aged 18 years and over; welfare recipients; disabled individuals and others who have limited work histories but for whom the type of training envisioned under this demonstration will lead to self-sufficiency as defined by the State or local workforce investment board.

15. *Private Industry Council (PIC).* The policy making local entity as described in JTPA Sections 102 and 103.

16. *Performance Outcomes.* A determination of how many participants enter jobs for which the training was conducted and the wage received as a result of the training, both in terms of prior wage for incumbent workers and dislocated workers, and in relationship to self-sufficiency for new entrants to the workforce. Other performance factors will be negotiated for each grant depending upon the design of the demonstration project and shall include factors for planning and implementation of strategies to respond to area employers' skill shortages and consistent with the goals articulated in this SGA.

17. *Region.* An area which exhibits a commonality of economic interest. Thus, a region may comprise several labor market areas, one large labor market, one labor market area joined together with several of adjacent rural districts, special purpose districts, or a few contiguous PICs or local boards. If the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.

18. *Regional Planning.* A process described in WIA Section 116(c).

19. *Self-Sufficiency for:*

Dislocated workers. The wage of the job for which the individual is trained will pay at least 95% of the worker's layoff wage within one year of entering employment as a result of the training received.

New entrants. The wage of the job for which the individual is trained will at a minimum exceed the lower living standard for the family size as published by the DOL.

20. *Skills Shortage.* Those specific vocational skills that employers have identified as lacking in sufficient numbers to meet their needs. A labor shortage occurs when the demand for workers possessing a particular skill is greater than the supply of workers who are qualified, available and willing to perform those skills. Problematic skills shortages occur when there is an imbalance between worker supply and demons for a significant amount of time for which the labor market does not, or is unable, adjust in a timely manner.

21. *Small and Medium-sized Business.* A business with 500 or fewer full-time employees.

22. *Unified Plan.* A State plan authorized under WIA Section 501(b), containing coordination principles strongly encouraged by the Department.

[FR Doc. 00–19297 Filed 7–31–00; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3854]

Chevron Products Company, Roosevelt, UT Notice of Negative Determination Regarding Application for Reconsideration

By application transmitted May 25, 2000, the petitioners request administrative reconsideration of the Department's denial of TA–W–37,240, TA–W–36,295I, and North American Free Trade Agreement-Transitional Adjustment Assistant (NAFTA–TAA). The NAFTA–TAA petition number was not provided.

At an earlier date, the same petitioners filed application for reconsideration of the Department's denial of Trade Adjustment Assistance (TAA) for workers of Chevron Products Company, Roosevelt, Utah, TA–W–37,240, and were notified that their was dismissed. The dismissal notice, dated March 29, 2000, was published in the **Federal Register** on April 11, 2000 (65 FR 19387). With respect to TA–W–36,295I, the petition is a certification issued on July 6, 1999, applicable to workers of Chevron Production, Chevron USA, Inc., all locations in Utah. Since the petitioners in this case are not employees of that company, there is no basis to reexamine the findings of that investigation.

The only petition that the Department may consider under the May 25, 2000 appeal, is the denial of NAFTA-TAA for workers and former workers of Chevron Products Company, Roosevelt, Utah (NAFTA–3854), signed on April 24, 2000, and published in the **Federal Register** on May 11, 2000 (65 FR 30444).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners explain that the low price of imported crude oil forced U.S. producers to reduce activity which contributed to a loss of demand by oil producers for gaugers, and thus, worker separations at the subject firm. The petitioners also cite an increase in Canadian crude imports, including imports by Chevron, to replace lost production in the local area.

The petition investigation conducted on behalf of workers at Chevron Products Company in Roosevelt, Utah, revealed that there were no company imports of crude oil.

The petitioners state that other trucking and non-producing entities have been certified for TAA. That is not relevant to worker groups applying for NAFTA-TAA eligibility.

The Department's denial of NAFTA-TAA for workers engaged in lifting and transporting crude oil at Chevron Products Company, Roosevelt, Utah, NAFTA-3854, was based on the finding that the worker group provided a service and did not produce an article within the meaning of Section 250(a) of the Trade Act of 1974, as amended. As explained in the decision document for NAFTA–3854, eligibility requirement criteria under which service workers could be certified under the Trade Act were not met for the petitioning worker group. There were no NAFTA–TAA certifications in effect for workers of Chevron Products Company. Other findings of the investigation, not elaborated on in the decision document, show that the subject firm workers lifted and transported crude oil that was primarily purchased from unaffiliated firms.

The petitioners add that the Department's negative determination was premature because Utah had not issued their preliminary findings of the investigation. The Department had all of the information necessary (from the investigation conducted in response to the TAA petition for the same worker group), with which to determine if the group eligibility criteria under paragraph (a)(1) of Section 250 of the Trade Act of 1974 were met.

The petitioners state that the individual issuing denials of worker group eligibility should not be reviewing appeals. The response is that there is no provision in the Federal Regulations for any other means of administrative reconsideration. The appeal process described in 29 CFR § 90.18, affords the worker group the opportunity to present to the certifying officer (the

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 21st day of July 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19404 Filed 7–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04016]

ITT Industries, Fluid Handling Systems, Oscoda, Michigan; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 30, 2000 in response to a petition filed on behalf of workers at ITT Industries, Fluid Handling Systems, Oscoda, Michigan.

In a letter dated July 16, 2000, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 20th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19406 Filed 7–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03963]

Sagaz Industries, Inc., Miami, Florida; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 20, 2000, applicable to workers of Sagaz Industries, Inc., Miami, Florida. The notice was published in the Federal Register on June 29, 2000 (65 FR 40136).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of car seat covers. New information provided by the company shows that workers separated from employment at Sagaz Industries, Inc. had their wages reported under a separate unemployment insurance (UI) tax account, ADP Total Services, Miami, Florida.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Sagaz Industries, Inc. adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03963 is hereby issued as follows:

All workers of the Sagaz Industries, Inc., Miami, Florida, including those receiving their compensation through ADP Total Services, Miami, Florida, who became totally or partially separated from employment on or after March 31, 1999 through June 20, 2002 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19411 Filed 7–31–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–083]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before August 31, 2000.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Office of the General Counsel, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.
Title: Patent License Report.
OMB Number: 2700–0010.
Type of review: Extension.
Need and Uses: Each licensee is required to report annually on its activities in commercializing its licensed inventions and any royalties due. NASA uses information collected to monitor the activities of its licensees.
Affected Public: Individuals or households, business or other for-profit.
Number of Respondents: 60.
Responses Per Respondent: 1.
Annual Responses: 60.
Hours Per Request: 30 min.
Annual Burden Hours: 30.
Frequency of Report: Annually.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–19328 Filed 7–31–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 00–084]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before August 31, 2000.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Office of the General Counsel, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.
Title: Application for a Patent License.
OMB Number: 2700–0039.
Type of review: Extension.
Need and Uses: The information supplied is used by the NASA Associate General Counsel to make agency determinations that NASA should either grant or deny a request for a patent license, and whether the license should be exclusive, partially exclusive, or nonexclusive.
Affected Public: Individuals or households, business or other for-profit.
Number of Respondents: 80.
Responses Per Respondent: 1.
Annual Responses: 80.
Hours Per Request: 8.
Annual Burden Hours: 640.
Frequency of Report: Annually.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–19329 Filed 7–31–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–085]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before August 31, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: none.
Title: Patents.
OMB Number: 2700–0048.
Type of Review: Extension.
Need and Uses: The information is needed to ensure the proper disposition of rights to inventions made in the course of NASA funded research.
Affected Public: Businesses or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 9,347.
Responses Per Respondent: 1.
Estimated Annual Responses: 9,347.
Estimated Hours Per Request: 30 min to 8 hrs.
Estimated Annual Burden Hours: 17,276.
Frequency of Report: Annually.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–19330 Filed 7–31–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–086]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before August 31, 2000.

ADDRESSES: All comments should be addressed to Ms. Lois Ryno, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt Road, Greenbelt, MD 20771–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Reports

Title: Locator and Information Services Tracking System (LISTS).
OMB Number: 2700–0064.
Type of Review: Extension.
Need and Uses: The LIST System is used primarily to support services on the Center dependent upon accurate locator-type information.
Affected Public: Individuals or households.
Estimated Number of Respondents: 8,456.

Responses Per Respondent: 1.
Estimated Annual Responses: 8,456.
Estimated Hours Per Request: .083.
Estimated Annual Burden Hours: 702.
Frequency of Report: As required.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–19331 Filed 7–31–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–067]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before August 31, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Small Business and Small Disadvantaged Business Concerns.
OMB Number: 2700–0078.
Type of review: Extension.
Need and Uses: Reports are required to monitor Mentor-Protege performance and progress according to the Mentor-Protege Agreement. Reports are internal control to determine if Agency objectives are met.
Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 48.
Responses Per Respondent: 2.
Annual Responses: 96.
Hours Per Request: 1.
Annual Burden Hours: 96.
Frequency of Report: Semi-annually.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–19333 Filed 7–31–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–068]

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before August 31, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Uncompensated Overtime.
OMB Number: 2700–0080.
Type of review: Extension.
Need and Uses: For contracts over $500,000, uncompensated overtime information is used to determine (i) whether a contractor will be able to hire and retain qualified individuals, (ii) whether uncompensated overtime hours will be properly accounted, and (iii) the validity of the proposed uncompensated hours.
Affected Public: Business or other for-profit.
Number of Respondents: 650.
Responses Per Respondent: 1.
Annual Responses: 650.
Hours Per Request: 3.25.
Annual Burden Hours: 2113.
Frequency of Report: Annually.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–19334 Filed 7–31–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 15, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these

schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–99–10, 5 items, 5 temporary items). Electronic copies of documents created using electronic mail and word processing that are associated with unfavorable information files of enlisted personnel and officers. This schedule also revises the disposition instructions for recordkeeping copies of these files, which were previously approved for disposal.

2. Department of the Air Force, Agency-wide (N1–AFU–00–2, 6 items, 6 temporary items). Records relating to Air Force radio and television service. Included are workload reports, product quality assessments, information concerning broadcast scheduling, broadcast material inventories, and documents relating to the disposition and shipment of library materials. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of the Air Force, Agency-wide (N1–AFU–00–10, 2 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that are associated with student operations training records containing personal data and course information. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

4. Department of the Army, Agency-wide (N1–AU–00–12, 2 items, 2 temporary items). Master files and outputs of the Army Career and Alumni Program System, an electronic information system pertaining to services and benefits for military and civilian personnel transitioning from the Army. The system includes demographic data concerning program participants and information concerning the nature and scope of the assistance needed for them to successfully transition.

5. Department of the Army, Agency-wide (N1–AU–00–17, 2 items, 2 temporary items). Files relating to programs to provide active duty special work for reserve component personnel. Included are budget and resource management files, requests, approvals, and disapprovals. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of the Army, Agency-wide (N1–AU–00–19, 2 items, 2 temporary items). Individual academic records of military personnel. Files include information relating to such matters as courses attended, extent of completion, results, aptitudes and personal qualities, and grade or rating attained. Also included are electronic copies of documents created using electronic mail and word processing. Records predating 1981 were previously approved for disposal.

7. Department of the Army, Agency-wide (N1–AU–00–24, 2 items, 2 temporary items). Master files and outputs of the Dental Readiness System, an electronic information system concerning the dental readiness status of all active duty personnel. The system includes name and unit of service members and date of last annual dental examination.

8. Department of the Army, U.S. Forces Korea (N1–AU–00–25, 2 items, 2 temporary items). Master files and outputs of the Biometrics Identification System, an electronic information system used to control access to U.S. facilities in Korea. The system includes personal identifying data concerning U.S. military and civilian personnel, level of access, and vehicle and weapons registration information.

9. Department of Commerce, National Oceanographic and Atmospheric Administration (N1–370–00–1, 2 items, 2 temporary items). Records relating to the management of weather stations and field offices of the National Weather Service. Records document daily management, emergency procedures, and administrative policies. Included are such records as annual inspection reports, local office instructions, manuals, and electronic copies of documents created using electronic mail and word processing.

10. Department of Defense, Defense Information Systems Agency (N1–371–99–1, 3 items, 2 temporary items). Older records accumulated during the 1960s and 1970s consisting of area office correspondence and automatic secure voice communications system project management files. Records relate to such matters as circuitry problems and improvements, power outages, switch relocations, monthly maintenance, and technical support. Headquarters program correspondence, 1960–1964, is proposed for permanent retention.

11. Department of Defense, Defense Intelligence Agency (N1–373–00–2, 4 items, 4 temporary items). Records relating to identifying and addressing Y2K issues. Included are overall plans, risk assessments, budget records, and files relating to the testing and modification of specific systems. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of Defense, National Imagery and Mapping Agency (N1–537–00–3, 90 items, 88 temporary items). Paper and electronic records relating to budget, finance, and accounting, including electronic copies of documents created using electronic mail and word processing. Records relate to such matters as budget preparation, financial transactions, civilian personnel pay and accounting, property and fund accounting, non-appropriated fund accounting, and cost accounting. Recordkeeping copies of annual budget estimate submissions and Congressional budget justifications are proposed for permanent retention.

13. Department of Energy, Rocky Flats Environmental Technology Site (N1–434–98–26, 2 items, 2 temporary items). Incoming and outgoing controlled correspondence, which consists of documents identifying commitments to actions, dates, or resources for the on-site Management and Operations contractor. Also included are attachments, enclosures, written dissents, and electronic copies of documents created using electronic mail and word processing. Copies of records that have historical value are maintained in subject files, which were previously approved for permanent retention.

14. Department of Energy, Year 2000 Project Office (N1–434–00–2, 10 items, 10 temporary items). Records relating to efforts to ensure that agency computer systems are Y2K compliant. Included are records relating to such matters as policy and planning, system testing and verification, and project administration. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also authorizes the agency to apply the proposed disposition instructions to records regardless of medium.

15. Department of Energy, Assistant Secretary for Fossil Energy (N1–434–00–4, 4 items, 4 temporary items). Paper and microfilm copies of Natural Gas Import/Export Case Files. Included are such records as applications, Federal Register notices, correspondence, protests, interventions, and final opinions. Also included are electronic copies of documents created using electronic mail and word processing.

16. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–00–2, 3 items, 3 temporary items). Paper and electronic records relating to Y2K efforts, including reports, lists, correspondence, memorandums, spreadsheets, compact disks, and electronic copies of records created using electronic mail and word processing. Records relate to such subjects as system reviews, meetings, logistical matters, and contractor activities.

17. Department of Health and Human Services, Agency for Health and Human Services (N1–510–00–1, 3 items, 3 temporary items). User access logs and access log analysis reports for the Quality Interagency Coordination Task Force's web site. Records pertain to visits to the site and include such information as visitor's origin, length of stay, and activities while at the site. Also included are electronic copies of documents created using electronic mail and word processing.

18. Department of Housing and Urban Development, Office of Congressional Relations (N1–207–00–2, 16 items, 13 temporary items). Records accumulated by the Office of the Assistant Secretary for Congressional and Intergovernmental Relations. Included are such records as travel plans, speaking invitations, correspondence with Members of Congress, staff working files, notifications provided to Members of Congress concerning agency-assisted projects, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of substantive correspondence, calendars, and Congressional testimony are proposed for permanent retention.

19. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity (N1–207–00–3, 2 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing associated with case files relating to agency-regulated security contracts at public housing sites. Recordkeeping copies of case files are proposed for permanent retention.

20. Department of the Interior, Bureau of Land Management (N1–49–00–3, 30 items, 27 temporary items). Records relating to the Federal helium program including electronic copies of records created using electronic mail and word processing. Records relate to such matters as the processing and clearance of proposed and final rules, the design, inspection, and maintenance of pipelines, the preparation of reports on helium resources, helium sales, and helium wells. Also included are databases used for billings and for identifying sources of helium in natural gas. Recordkeeping copies of published reports, records of easements and rights-of-way, and files containing documentation concerning major policies and procedures are proposed for permanent retention.

21. Department of Justice, Drug Enforcement Administration (N1–170–00–2, 3 items, 3 temporary items). Records relating to the cleanup of hazardous waste sites and the disposal of hazardous waste in permanent landfills and incinerators. Files include correspondence, instructions to contractors, manifests, invoices, packing lists, delivery orders, teletypes, reports and supporting documentation, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files maintained by the office with agency-wide responsibility for the program will be retained for 75 years.

22. Department of Justice, U.S. Parole Commission (N1–438–00–1, 2 items, 1 temporary item). Input documents for the Decision Reporting and Monitoring System (DRAM), an electronic database relating to parole hearings. Records consist of such documents as copies of prisoner parole applications, summaries of prisoner interviews, and notices of action. Master files for DRAM are proposed for permanent retention.

23. Department of Justice, United States Marshals Service (N1–527–00–3, 10 items, 9 temporary items). Paper and electronic records relating to felony investigations, misdemeanor cases, and traffic cases, including electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant case files are proposed for permanent retention.

24. Department of Labor, National Occupational Information Coordinating Committee (N1–174–00–3, 41 items, 27 temporary items). Records relating to career development programs, including general correspondence, information memorandums, administrative meeting agendas, allotments, monthly planning calendars, grant files, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of administrative memorandums, interagency agreements and memorandums of understanding, speeches, publications, long range planning documents, sound and video recordings, and Career Development Training Institute Board minutes, agendas, and reports.

25. Department of State, Bureau of Personnel (N1–59–00–1, 20 items, 19 temporary items). Records accumulated by the Director General and Board of the Foreign Service. Included are such records as Director General messages and correspondence, Board of the Foreign Service administrative and subject files, and files relating to employee-management relations. Also included are electronic copies of records created using word processing and electronic mail. Recordkeeping copies of minutes, transcripts, and other records relating to meetings of the Board of the Foreign Service are proposed for permanent retention. This schedule proposes minor changes in series descriptions and disposition instructions for recordkeeping copies of these files, which were previously scheduled.

26. Department of State, Bureau of Personnel (N1–59–00–13, 84 items, 71 temporary items). Records relating to the administration of career development programs for Foreign

Service Officers. Included are such records as subject files relating to career counseling and assignments, files on applicants for limited duration assignments into Foreign Service positions, and other files accumulated in connection with the administration of career development and training programs. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to Presidential appointments, appointments to the Foreign Service, and the Great Seal of the United States. Most of the series covered by this schedule were previously scheduled; minor changes in disposition instructions are proposed for these records.

27. Department of State, Bureau of Information Resource Management (N1–59–00–19, 7 items, 7 temporary items). Records, including electronic copies created using electronic mail and word processing, that relate to identifying and addressing Y2K issues. Records relate to such matters as overall policies and plans, budgeting and resource allocation, and the testing and modification of specific systems.

28. Department of the Treasury, United States Secret Service (N1–87–00–1, 2 items, 2 temporary items). Records relating to Century Date Conversion (Y2K) efforts. Files pertain to such matters as the development of plans and strategies, the review and testing of computer systems and applications, and program reviews. Included are plans, copies of contracts, policy letters, correspondence, and electronic copies of documents created using electronic mail and word processing.

29. Department of the Treasury, United States Secret Service (N1–87–00–2, 6 items, 6 temporary items). Records accumulated by the Headquarters Office of the Counterfeit Division. Records include digests of counterfeit information, counterfeit U.S. Treasury checks, additional specimen notes, and raised and pieced notes. Also included are electronic copies of records created using electronic mail and word processing.

30. Department of the Treasury, United States Secret Service (N1–87–00–3, 8 items, 8 temporary items). Records accumulated by Field Offices of the Counterfeit Division. Records include logs of items provided to agents for use in investigations, contraband property and related records, counterfeit U.S. Treasury checks, additional specimen notes, and raised and pieced notes. Also included are electronic copies of records created using electronic mail and word processing.

31. Administrative Office of the U.S. Courts, Federal Appellate and District Courts (N1–116–00–1, 7 items, 4 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to disciplinary actions against attorneys, appellate judicial assignments and designations, attorney disbarment proceedings, attorney admissions, and the actions and minutes of circuit judicial councils. Recordkeeping copies of disciplinary action files and judicial assignment records are proposed for disposal. Recordkeeping copies of files relating to attorney admissions, disbarments, and the activities of judicial councils are proposed for permanent retention.

32. Environmental Protection Agency, Agency-wide (N1–412–00–1, 3 items, 3 temporary items). Software programs, electronic data, and documentation associated with the Envirofacts data warehouse. The Envirofacts system provides access to agency databases to allow cross media analyses of program information. The source data available in Envirofacts was previously approved for permanent retention.

33. Farm Credit Administration, Agency-wide (N1–103–00–1, 3 items, 3 temporary items). Loan performance reports and financial and statistical reports for which data has been entered into the Consolidated Reporting System. This schedule reduces the retention period for these reports, which are no longer created by the agency and were previously approved for disposal. The Consolidated Reporting System was previously approved for permanent retention.

34. Federal Retirement Thrift Investment Board, Agency-wide (N1–474–00–3, 1 item, 1 temporary item). Sound recordings of telephone conversations of Thrift Savings Plan customer service representatives with plan participants, Federal agency personnel and payroll offices, and other individuals or institutions.

35. Interagency Commission on Crime and Security in U.S. Seaports, Agency-wide (N1–220–00–5, 23 items, 15 temporary items). Unidentified photographs, web-based forms, documents placed on the Commission's web site, duplicate copies of documents, and electronic copies of documents created using electronic mail, word processing, and other applications. Records proposed for permanent retention include recordkeeping copies of Commissioners' minutes and correspondence, public meeting records, files accumulated by work groups, subject files, reports, still photographs, and reference materials relating to seaport crime and security.

36. National Aeronautics and Space Administration, Agency-wide (N1–255–00–4, 3 items, 3 temporary items). Research and technology plans and objectives files, which relate to the funding levels of ongoing and proposed space science research projects. Included are forms with project descriptions and funding profiles and electronic copies of documents created using electronic mail and word processing.

37. National Aeronautics and Space Administration, Agency-wide (N1–255–00–5, 2 items, 2 temporary items). Records of third party audits documenting the certification of computer and electronic equipment manufactured for the agency. Included are quality control reviews of printed wiring boards inspected for workmanship and defects and electronic copies of documents created using electronic mail and word processing.

38. Office of Personnel Management, Agency-wide (N1–478–00–1, 3 items, 2 temporary items). Electronic mail and word processing records associated with legal advisory files. This schedule also modifies the transfer instructions for recordkeeping copies of these files, which were previously approved for permanent retention.

Dated: July 24, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–19345 Filed 7–31–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional Nixon presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access approximately 420 hours of Nixon White House tape recordings among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning October 26, 2000. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense on or before August 31, 2000.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland, beginning at 8:45 a.m on October 26, 2000.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: NARA is proposing to open approximately 4,139 conversations which were recorded at the Nixon White House from August 1971 to December 1971. These tape segments total approximately 420 hours of listening time.

This is the eighth opening of Nixon White House tapes since 1980. Previous releases included conversations constituting "abuses of governmental power" and conversations recorded in the Cabinet Room of the Nixon White House. The tapes now being proposed for opening consist of the second of five segments comprising the remaining hours of conversations, processed for release in chronological order starting with February 1971.

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The tape recordings will be made available to the general public in the research room at 8601 Adelphi Road, College Park, Maryland, Monday through Friday between 8:45 a.m. and 4:30 p.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. No copies of the tape recordings will be sold or otherwise provided at this time. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log will be available for a fee in accordance with 36 CFR 1258.12.

Dated: July 25, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–19346 Filed 7–31–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following new information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was initially published as a proposed collection on April 28, 2000. No comments relating to the information collection were received within the 60 day comment period.

DATES: Comments will be accepted until August 31, 2000.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, James L. Baylen, (703) 518–6411. It is also available on the following website: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: New.

Form Number: N/A.

Type of Review: New.

Title: Office of Community Development Credit Unions Annual Survey Report.

Respondents: Certain low-income designated credit unions.

Estimated No. of Respondents/ Recordkeepers: 300.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 150 hours.

Estimated Total Annual Cost: N/A

By the National Credit Union Administration Board on July 25, 2000.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–19294 Filed 7–31–00; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; (Shearon Harris Nuclear Power Plant, Unit 1); Exemption

I. Carolina Power & Light Company (CP&L or the licensee) is the holder of Facility Operating License No. NPF–63, which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP). The facility consists of one pressurized-water reactor located at the licensee's site in Wake and Chatham Counties, North Carolina. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

II. Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operation, and hydrostatic pressure or leak testing conditions. Specifically, 10 CFR Part 50, Appendix G states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G Limits. Both 10 CFR Part 50, Appendix G and the ASME Code require that the effects of neutron

irradiation on the material properties of the RPV be considered. Regulatory Guide (RG) 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials," dated May 1988, provides an acceptable method to account for these effects.

To address provisions of amendments to the technical specifications (TS) P–T limits and low temperature overpressure protection (LTOP) system setpoints, the licensee requested in its submittal dated April 12, 2000, as amended by letter dated June 2, 2000, that the staff exempt HNP from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits and LTOP setpoints. Since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits and LTOP setpoints would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. It should be noted that although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the proposed P–T limits and LTOP setpoints (excluding Code Case N–640) are based on the 1989 edition of the ASME Code.

The proposed amendment will revise both the P–T limits of TS 3/4.4.9.2 related to the heatup and cooldown of the reactor coolant system (RCS), and the LTOP setpoints of TS 3/4.4.9.4, for operation to 36 effective full-power years (EFPYs).

The licensee has proposed an exemption to allow use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, to determine P–T limits and LTOP setpoints.

The proposed amendment to revise the P–T limits and LTOP setpoints for HNP relies in part on the requested exemption. These revised P–T limits and LTOP setpoints have been developed using the K_{IC} fracture toughness curve, in lieu of the K_{Ia} fracture toughness curve, as the lower bound for fracture toughness of the RPV materials.

Use of the K_{IC} curve in determining the lower bound fracture toughness in the development of P–T operating limit curves and LTOP setpoints is more technically correct than use of the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{IC} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the conservatism of the K_{Ia} curve since 1974, when the curve was adopted by the ASME Code. This conservatism was initially necessary due to the limited knowledge of the fracture toughness of RPV materials at that time. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve greatly exceeds the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves and LTOP setpoints based on the K_{IC} curve will enhance overall plant safety by opening the P–T operating window, with the greatest safety benefit in the region of low temperature operations.

Since an unnecessarily reduced P–T operating window can reduce operator flexibility without just basis, implementation of the proposed P–T curves and LTOP setpoints as allowed by ASME Code Case N–640 may result in enhanced safety during critical plant operational periods, specifically heatup and cooldown conditions. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of 10 CFR 50.60 and Appendix G to 10 CFR Part 50 will continue to be served.

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the NRC regulations to ensure an acceptable margin of safety.

III. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that exemption would be required to approve the use of Code Case N–640. The staff examined the licensee's rationale to support the exemption requests and concurred that the use of the Code case would meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR Part 50, Appendix G; Appendix G of the Code; and Regulatory Guide 1.99, Revision 2, the staff concludes that application of the Code case as described would provide an adequate margin of safety against brittle failure of the RPV. This conclusion is also consistent with the determinations that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits and LTOP setpoints for HNP.

IV. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Carolina Power & Light Company an exemption from the requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, for HNP.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the exemption will not result in any significant effect on the quality of the environment (65 FR 45628).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26 day of July 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19391 Filed 7–31–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York Indian Point Nuclear Generating Unit No. 3; Issuance of Director's Decision Under 10 CFR 2.206

By letter dated February 10, 2000, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists (Petitioner), pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to the Indian Point Nuclear Generating Unit No. 3 (IP3), owned and operated by the Power Authority of the State of New York (PASNY). The Petitioner requested that the NRC order PASNY to assess the corrective action process and the work environment at IP3 and to take timely actions to remedy any deficiencies it may identify.

The Director of the Office of Nuclear Reactor Regulation has addressed the technical concerns provided by the Petitioner. However, the Petitioner's request for the staff to take enforcement action was not granted for the reasons that are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–00–03). The complete text of the Director's Decision is available for public inspection at the Commission's Public Document Room located in the Gelman Building, 2120 L Street, NW., Washington, DC., and will be accessible electronically from the agencywide documents access and management system (ADAMS) public library component on the NRC Web site, http://www.nrc.gov (the electronic reading room).

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 26th day of July 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director,, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19392 Filed 7–31–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 31, August 7, 14, 21, 28, and September 4, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 31

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

Tuesday, August 15

9:25 a.m. Affirmation Session (Public Meeting) (If necessary)

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Ron Hauber, 301–415–2344)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of August 21—Tentative

Monday, August 21

1:55 p.m. Affirmation Section (Public Meeting) (If necessary)

Week of August 28—Tentative

There are no meetings scheduled for the Week of August 28.

Week of September 4—Tentative

There are no meetings scheduled for the Week of September 4.

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on July 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (a) Final Rule to Amend 10 CFR Part 70, Domestic Licensing of Special Nuclear Material and (b) Final Rule: 10 CFR Part 72—Clarification and Addition of Flexibility" be held on July 25, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please sent an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 28, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–19540 Filed 7–28–00; 2:16 pm]

BILLING CODE 7590–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Revisions to Existing Systems of Records

AGENCY: Social Security Administration (SSA).

ACTION: Revision to existing systems of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of a revision to SSA's special procedure for providing individuals notification of, or access to, their medical records in SSA's possession when direct access to the records may have an adverse affect on the individual to whom the record pertains. The revised procedure is applicable to 28 of SSA's systems of records. The revised procedure is the result of a Seventh Circuit decision invalidating SSA's regulation on access to medical records. *See* 20 CFR 401.55. Thus, we are changing the "Notification Procedure" and "Record Access Procedures" sections in each system of records notice to conform to the Seventh Circuit's decision.

We invite public comment on this proposal.

DATES: The proposed revisions will become effective August 1, 2000.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be

available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela McLaughlin, Social Insurance Program Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone (410) 965–3677.

SUPPLEMENTARY INFORMATION:

I. Discussion of Revision

On June 13, 2000, in *Bavido* v. *Apfel*, No. 98–4046, 2000 U.S. App. LEXIS 13547, the Seventh Circuit held that the special procedure in the Social Security Administration's (SSA's) regulations for providing individuals access to their medical records through a designated representative is invalid. *See* 20 CFR 401.55(b)(ii). Prior to the Seventh Circuit's decision, the special procedure required individuals requesting notification of, or access to, their medical records to designate a responsible representative to receive the record. The special procedures allowed the designated representative to use his or her discretion to withhold all or a portion of an individual's medical record. The Seventh Circuit held that the procedure was inconsistent with the Privacy Act (5 U.S.C. 552a) because it requires an individual to designate a representative who ultimately has complete discretion to disclose or to withhold the requested information. Although the court invalidated this portion of the regulation, it recognized that an agency may have a special procedure for access to sensitive medical records, such as psychological records, but the procedure must assure the ultimate disclosure of the records to the requesting individual.

As a result of the court's decision, SSA is revising the Agency's special procedure regarding providing individuals access to their medical records. The revised special procedure will still require individuals requesting access to medical records to designate a responsible representative to receive the medical records if the Agency determines that direct access may adversely affect the individual. However, the responsible representative chosen by the subject of the medical record(s) must ultimately provide all of the records to him or her. The representative cannot use discretion to withhold any portion of the records. The revised special procedure found in the "Notification Procedure" and "Record Access Procedures" sections of each Privacy Act system notice listed below will read as follows:

An individual who requests access to his or her medical records shall be given direct access to those records unless SSA determines that it is likely that direct access would adversely affect the individual. If SSA determines that direct access to the medical record(s) would likely adversely affect the individual, he or she must designate a responsible representative who is capable of explaining the contents of the medical record(s) to him and who would be willing to provide the entire record(s) to the individual.

We are not republishing in their entirety the notices of systems of records to which we are revising the special procedures for access to medical records because of the large number of those systems of records and the costs of republishing individual notices of each one. Instead, we are republishing only the identification number, and the name of each system, and the volume, page number, and date of the **Federal Register** issue in which the systems notice was last published. The revision will be included in the following SSA systems notices:

(1) Working File of the Appeals Council, 60–0004 (59 FR 46439, dated 09/08/94),

(2) Storage of Hearing Records: Tape Cassettes, 60–0006 (59 FR 46439, dated 09/08/94),

(3) Hearing and Appeals Case Control System, 60–0009 (59 46439, dated 09/08/94),

(4) Quality Review System, 60–0040 (59 FR 46439, dated 09/08/94),

(5) Quality Review Case Files, 60–0042 (59 FR 46439, dated 09/08/94),

(6) Disability Determination Service Processing File, 60–0044 (59 FR 46439, dated 09/08/94),

(7) Completed Determination Record-Continuing Disability Determinations, 60–0050 (59 FR 46439, dated 09/08/94),

(8) Quality Evaluation Data Records, 60–0057 (59 FR 46439, dated 09/08/94),

(9) Public Inquiry Correspondence File, 60–0078 (59 FR 52308, dated 10/17/94),

(10) Claims Folders System, 60–0089 (65 FR 13808, dated 03/14/00),

(11) Master Beneficiary Record, 60–0090 (60 FR 52948, dated 10/11/95),

(12) Supplemental Security Income Record and Special Veterans Benefits, 60–0103 (65 FR 32142, dated 05/22/00),

(13) Matches of Internal Revenue Service and Social Security Administration Data with Census Survey Data (Joint SSA/CENSUS Statistics Development Project), 60–0148 (47 FR 45589, dated 10/13/82),

(14) Matches of Internal Revenue Service (IRS) and Social Security Administration (SSA) Data (Joint SSA/Treasury Department, Office of Tax Analysis, Statistics Development Project), 60–0149 (47 FR 45589, dated 10/13/82),

(15) Continuous Work History Sample (Statistics), 60–0159 (47 FR 45589, dated 10/13/82),

(16) Disability Studies, Surveys, Records and Extracts (Statistics), 60–0196 (47 FR 45589, dated 10/13/82),

(17) Extramural Surveys (Statistics), 60–0199 (47 FR 45589, dated 10/13/82),

(18) Retirement and Survivors Studies, Surveys, Records and Extracts (Statistics), 60–0200 (47 FR 45589, dated 10/13/82),

(19) Old Age, Survivors and Disability Beneficiary and Worker Records and Extracts (Statistics), 60–0202 (47 FR 45589, dated 10/13/82),

(20) Supplemental Security Income Studies, Surveys, Records and Extracts (Statistics), 60–0203 (47 FR 45589, dated 10/13/82),

(21) Beneficiary, Family and Household Surveys, Records and Extracts System (Statistics), 60–0211 (47 FR 45589, dated 10/13/82),

(22) Quality Review of Hearing/Appellate Process, 60–0213 (59 FR 46439, dated 09/08/94),

(23) Disability Insurance and Supplemental Security Income Demonstration Projects and Experiments System, 60–0218 (59 FR 46439, dated 09/08/94),

(24) Vocational Rehabilitation Reimbursement Case Processing System, 60–0221 (59 FR 46439, dated 09/08/94),

(25) Plans for Achieving Self-Support (PASS), Management Information System, 60–0255 (formerly 05–009) (61 FR 46675, dated 09/04/96),

(26) Vocational Rehabilitation; State Vocational Rehabilitation Agency Information (VR SVRA) File, 60–0253 (formerly 05–007) (63 FR 7034, dated 02/11/98),

(27) Vocational Rehabilitation; SSA Disability Beneficiaries/Recipients Eligible for Re-referral to an Alternate Vocational Rehabilitation Service Provider (VR Re-referral), 60–0254 (formerly 05–008) (63 FR 7034, dated 02/11/98), and

(28) Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System, 60–0273 (65 FR 13803, dated 03/14/00)

We will amend SSA's disclosure regulation (20 CFR part 401) to include the revised special procedure. Pending amendment of the regulations, we are announcing the revised special procedure via this publication.

II. Effect of Revisions on Individual Rights

The proposed changes will:

(1) Revise SSA's special procedures for access to medical records in accordance with *Bavido* v. *Apfel*;

(2) Clarify that an individual is not required to designate a representative in writing unless the Agency first determines that direct access to those records would adversely affect him; and

(3) Indicate that a designated representative does not have discretion to withhold the records from the individual.

Dated: July 26, 2000.

Darrell Blevins,

SSA Privacy Officer.

[FR Doc. 00–19336 Filed 7–31–00; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Bureau of European Affairs, Office of European Security and Political Affairs (EUR/RPM)

[Public Notice 3376]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of State.

ACTION: 60-Day Notice of proposed information collection; election observer questionnaire.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Data Collection from Election Observers

Originating Office: Bureau of European Affairs, Office of European Security and Political Affairs (EUR/RPM)

Title of Information Collection: Election Observer Questionnaire.

Frequency: Occasionally, linked to elections in certain OSCE Participating States.

Form Number: None.

Respondents: U.S. citizens selected and funded by the U.S. Department of State to serve as election observers as part of OSCE Election Observation Missions.

Estimated Number of Respondents: 100 per year.

Average Hours Per Response: 10 minutes per response.

Total Estimated Burden: 1000 minutes = 16 hrs 40 minutes.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the OSCE Coordinator, Bureau of European Affairs, Room 6227, U.S. Department of State, Washington, DC 20520 (telephone number 202–736–7290).

Dated: July 19, 2000.

Walter E. Andrusyszyn,

Acting Deputy Assistant Secretary, Bureau of European Affairs, Department of State.

[FR Doc. 00–19364 Filed 7–31–00; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice: 3371]

United States-Egypt Science and Technology Joint Board; Science and Technology Program for Competitive Grants To Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

August 1, 2000.

AGENCY: U.S. Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION, CONTACT: Vickie Alexander, Program Administrator, U.S.-Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; E-mail: alexanderva@state.gov.

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin August 1, 2000. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2001 must be postmarked by November 1, 2000. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board. These include priorities in the areas of information technology, environmental technologies, biotechnology, standards and metrology, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

William R. Gaines,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, and Chair, U.S.-Egypt S&T Joint Board.

[FR Doc. 00–18784 Filed 7–31–00; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–176]

WTO Dispute Settlement Proceeding Regarding United States of America—Section 211 of the Department of Commerce Appropriations Act, 1999

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of a request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"), requested by the European Communities and their Member States (the "EC"). The EC has asked that a panel examine whether section 211 of the "Omnibus Appropriations Act of 1998" [sic] is consistent with U.S. obligations under

the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs Agreement"). The statutory provision to which the EC refers is section 211 of the Department of Commerce Appropriations Act, 1999, as included in Pub. L. 105–277 ("Section 211"). Section 211 concerns the registration or enforcement, by Cuban entities or their successors in interest, of trademarks, trade-names, or commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government, without the consent of the previous owners of the trademarks, trade-names or commercial names.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by September 1, 2000, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Section 211, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., 20508.

FOR FURTHER INFORMATION CONTACT: L. Daniel Mullaney, Associate General Counsel, at (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that, on June 30, 2000, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine the consistency of Section 211 with the WTO TRIPs Agreement. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

In its request for the establishment of a panel, the EC alleges that three substantive provisions of section 211 are inconsistent with the TRIPs Agreement:

1. The EC alleges that Section 211(a)(1) limits the right to register or renew trademarks, trade-names or commercial names at the United States Patent and Trademark Office, in violation of TRIPs Article 2.1, in conjunction with Article 6 quinquies A(1) of the Paris Convention for the Protection of Industrial Property (1967) ("Paris Convention"), and TRIPs Article 15.1. The EC alleges that Section 211(a)(1) does this by, in the case of trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government, requiring the consent of the original owner or his successor-in-interest of the trademark, trade-name, or commercial name.

2. The EC alleges that Section 211(a)(2)—by providing that U.S. courts shall not recognize, enforce, or otherwise validate common law or registration rights asserted by designated nationals or their successors in interest in trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names and commercial names associated with businesses confiscated without compensation by the Cuban government—violates TRIPs Art. 2.1, in conjunction with Articles 6 bis (1) and 8 of the Paris Convention, and TRIPs Article 16.1 (which require WTO Members to provide protection for well-known trademarks and for trade-names). The EC also alleges that Section 211(a)(2) violates the TRIPs enforcement provisions, such as TRIPs Article 42, and the most favored nation and national treatment provisions of the TRIPs Agreement (TRIPs Articles 3.1, 2.1 (in conjunction with Article 2(1) of the Paris Convention), and 4).

3. Finally, the EC alleges that Section 211(b)—by providing that U.S. courts shall not recognize, enforce, or otherwise validate treaty rights asserted by designated nationals or their successors in interest in trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government (unless the original owner consents)—violates TRIPs Art. 2.1, in conjunction with Articles 6 bis (1) and 8 of the Paris Convention (requiring protection of well-known trademarks and trade-names) and TRIPs Articles 3.1, 4, 16.1, and 42 (provisions concerning most favored nation treatment, national treatment, trademark rights conferred, and fair and equitable enforcement procedures).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the addressed provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information of advice. Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding, the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–176, "Section 211") made be made by calling Brenda Webb, (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–19367 Filed 7–31–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on August 15, 2000, at 2 p.m.

ADDRESSES: The meeting will be held in Conference Rooms 8A and B, Federal Office Building 10A (the "FAA Building"), 800 Independence Ave., SW, Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Mark Lawyer, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 493–4531.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on August 15, 2000. The agenda for this meeting will include a report from the Airplane Performance Working Group and presentation and request for approval of work plan by the Extended Range Operations of Airplanes (ETOPS) Working Group. Attendance is open to the interested public but may be limited by the space available. Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or require a reasonable accommodation for this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: Issued in Washington, DC, on July 25, 2000.

Gregory L. Michael,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–19399 Filed 7–31–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–33 (Sub-No. 148X) and AB–515 (Sub-No. 1X)]

Union Pacific Railroad Company—Abandonment Exemption—In Coos County, OR and Central Oregon & Pacific Railroad, Inc.—Discontinuance Exemption—In Coos County, OR

On July 12, 2000, Union Pacific Railroad Company (UP) and Central Oregon & Pacific Railroad, Inc. (CORP), jointly filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. UP seeks to abandon and CORP seeks to discontinue service over a line of railroad extending between milepost 785.50 and milepost 786.50 at Coquille, OR, a distance of 1 mile in Coos County, OR (the Line).[1] There are no stations on the Line, which traverses U.S. Postal Service Zip Code 97423.

The Line does not contain federally granted rights-of-way. Any documentation in UP's or CORP's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 30, 2000.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 and any request for trail use/rail banking under 49 CFR 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the **Federal Register**. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–33 (Sub-No. 148X) and AB–515 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005, and (3) James P. Gatlin, 1416 Dodge Street #830, Omaha, NE 68179.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 24, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19274 Filed 7–31–00; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 31, 1994, CORP leased the Line from Southern Pacific Transportation Company (SP). *See Central Oregon & Pacific Railroad, Inc.—Lease, Operation, and Acquisition Exemption—Southern Pacific Transportation Company*, Finance Docket No. 32567 (ICC notice served Jan. 19, 1995), (STB decision served Feb. 13, 1996). UP acquired the Line on February 1, 1996, when SP was merged into UP. *See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996).

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning July 1, 2000, the interest rates for overpayments will be 8 percent for corporations and 9 percent for non-corporations, and the interest rate for underpayments will be 9 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations. The interest rate applicable to underpayments is not so bifurcated.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2000–30 (*see*, 2000–25 IRB 1262, dated June 19, 2000), the IRS determined the rates of interest for the fourth quarter of fiscal year (FY) 2000 (the period of July 1–September 30, 2000). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (6%) plus three percentage points (3%) for a total of nine percent (9%). For corporate overpayments, the rate is the Federal short-term rate (6%) plus two percentage points (2%) for a total of eight percent (8%). For overpayments made by non-corporations, the rate is the Federal short-term rate (6%) plus three percentage points (3%) for a total of nine percent (9%). These interest rates are subject to change the first quarter of FY–2001 (the period of October 1–December 31, 2000).

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
Prior to:				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	093000	9	9	8

Dated: July 27, 2000.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 00–19400 Filed 7–31–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–33, Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before October 2, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS).

OMB Number: 1545–1546.

Revenue Procedure Number: Revenue Procedure 97–33.

Abstract: The Electronic Federal Tax Payment System (EFTPS) is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). Revenue Procedure 97–33 provides taxpayers with information and procedures that will help them to electronically make FTDs and tax payments through EFTPS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 557,243.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 278,622.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–19394 Filed 7–31–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Approved Motor Fuel Distribution Terminals

AGENCY: Internal Revenue Service, (IRS), Treasury

ACTION: Notice of Issuance of Terminal Control Numbers for Approved Motor Fuel Terminals

SUMMARY: Internal Revenue Service (IRS) developed and is publishing in this issue of the Federal Register, Terminal Control Numbers (TCN) to clearly communicate to the motor fuel industry and other interested parties such as state excise taxing authorities, the motor fuel terminal facilities that meet the definitions of Internal Revenue Code Section 4081 and the regulations thereunder. The IRS intends to use the terminal numbers to coordinate dyed fuel compliance activities and excise fuel information reporting systems. IRS encourages states to adopt and use the numbers for motor fuel information reporting where appropriate. This list is published under the authority of Internal Revenue Code Section 6103(k)(7).

What Is a Terminal Control Number (TCN)?

A terminal control number is a number that identifies an approved terminal in the bulk transfer/terminal system. A taxable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code -S-) will be issued a TCN for each physical location. Only one TCN will be assigned per terminal location per terminal operator.

What Is An Approved Terminal?

Approved motor fuel terminals, as defined by Internal Revenue Code Section 4081 and the regulations thereunder, receive taxable fuel via a pipeline, ship, or barge, deliver taxable fuel across a rack or other non-bulk delivery system and are operated by a terminal operator who is properly registered in good standing with the IRS. Only those taxpayers, who are registered with the IRS on registration for Tax-Free Transactions Form 637 (637 Registration) with a suffix code of "S" may operate an approved terminal. Each TCN identifies a unique physical location in the bulk transport/delivery system and is therefore independent of the registered operator.

When Does a Terminal Operator Need to Notify IRS of Changes?

A terminal operator must notify the IRS for any of the following changes:

—Terminal ownership or operator changes; or
—a new terminal is opened; or
—a terminal ceases operation.

How Should Notification be Made?

Notify the IRS District Office where the Form 637 is issued of the change and by FAX the IRS TCN Coordinator at:

Internal Revenue Service OP:E:Ex Unit 35
Attn: TCN Coordinator (859) 292-7128 FAX.

Changes to the terminal status or other information will be published by the Excise Program Office in the IRS Headquarters Office. Notification is required in order to retain approved status of the terminal and 637 Registration. Failure to notify of changes may lead to suspension or revocation of the approved status of the terminal or 637 Registration of the terminal operator. Changes or suspensions of approved status will be published as needed.

If you have any questions regarding the approved terminals or the listing, you may contact: Terminal Control Number Coordinator—Barbara Ruggles at (859) 292-2758 or Mary Burwell at (202) 622-4379 (not toll-free numbers).

Dated: July 24, 2000.

W. Ricky Stiff,

Acting National Director, Specialty Taxes.

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-92-AK-4500	Chevron Anchorage	459 W Bluff Rd	Anchorage	AK	99501
T-92-AK-4501	MAPCO Alaska Anchorage	1076 Ocean Dock Road	Anchorage	AK	99501
T-92-AK-4502	Equilon Enterprises LLC	1601 Tidewater	Anchorage	AK	99501
T-92-AK-4503	MAPCO Alaska North Pole	1150 H & H Lane	North Pole	AK	99705
T-92-AK-4504	Tesoro-Anchorage	1522 Anchorage Port Rd	Anchorage	AK	99501
T-92-AK-4505	Tesoro Alaska Petroleum Co	Mile 22.5 Kenai Spur Road	Kenai	AK	99611
T-63-AL-2300	Amoco Oil Birmingham	1600 Mims Ave. Southwest	Birmingham	AL	35211
T-63-AL-2301	Chevron Birmingham	2400 28th St Southwest	Birmingham	AL	35211
T-63-AL-2302	CITGO Birmingham	2200 25th St Southwest	Birmingham	AL	35211
T-63-AL-2303	Crown Central Birmingham	2500 Nabors Road	Birmingham	AL	35211
T-63-AL-2304	Southeast Terminal Montgomery	Hwy 31 North	Montgomery	AL	36108
T-63-AL-2305	B P Oil Co Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2306	MAPLLC Birmingham	2704 28th St Southwest	Birmingham	AL	35211
T-63-AL-2307	Phillips 66 Birmingham	2635 Balsam Avenue	Birmingham	AL	35211
T-63-AL-2308	Motiva Enterprises LLC	2601 Wilson Road	Birmingham	AL	35221
T-63-AL-2309	Southern Facilities Birmingham	2400 Nabors Road	Birmingham	AL	35211
T-63-AL-2310	Motiva Enterprises LLC	2529 28th Street SW	Birmingham	AL	35211
T-63-AL-2312	TransMontaigne Terminaling, Inc.	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2314	Amoco Oil Mobile	Hwy. 90 and 98	Mobile	AL	36601
T-63-AL-2315	Coastal Fuels Mobile	Highway 98, Blakely Island	Mobile	AL	36652
T-63-AL-2316	Coastal Mobile Chickasaw	200 Viaduct Rd	Chickasaw	AL	36611
T-63-AL-2322	Amoco Oil Montgomery	3560 Well Rd	Montgomery	AL	36108
T-63-AL-2323	Chevron USA Montgomery	200 Hunter Loop Road	Montgomery	AL	31608
T-63-AL-2324	B P Oil Mongtomery	Access Highway 31 North	Montgomery	AL	36108
T-63-AL-2325	MAPLLC Montgomery	320 Hunter Loop Rural Rt 6	Montgomery	AL	36125
T-63-AL-2326	S T Services Montgomery	520 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2327	Southern Facilities Montgomery	420 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2329	Hunt Refining Co	1855 Fairlawn RD	Tuscaloosa	AL	35401
T-63-AL-2330	S T Services Moundville	872 Second Ave.	Moundville	AL	35474
T-63-AL-2333	Murphy Oil USA—Oxford	2625 Highway 78 East	Anniston	AL	36201
T-63-AL-2334	Shell Chemical Co.—Saraland	400 Industrial Parkway	Saraland	AL	36571
T-63-AL-2335	Murphy Sheffield	136 Blackwell Road	Sheffield	AL	35660
T-63-AL-2336	BP OIL MOBILE	101 Bay Bridge Rd	Mobile	AL	36610
T-72-AL-2338	EOTT Energy Corp—Mobile	Magazine Point	Mobile	AL	36610
T-72-AL-2339	Midstream Fuel Service-Mobile	Hwy 90/98 Blakeley Island	Mobile	AL	36618
T-72-AL-2340	Radcliff Economy Marine-Mobile	5 South Water St Extension	Mobile	AL	36652
T-72-AL-2341	SouthEast Terminals	Highway 31 North	Montgomery	AL	36108
T-72-AL-2343	Allied Energy Corporation	2700 Ishkooda Wenonah Rd.	Birmingham	AL	35211
T-72-AL-2344	Goodway Refining, LLC	315 Belleville Av.	Brewton	AL	36427
T-71-AR-2451	Lion Oil El Dorado	1000 McHenry	El Dorado	AR	71730
T-71-AR-2453	Williams Pipe Line Fort Smith	8101 Hwy 71	Fort Smith	AR	72903
T-71-AR-2454	TEPPCO Helena	826 Old Highway	Helena	AR	72342
T-71-AR-2456	Transmontaigne N. Little Rock	2725 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2457	Exxon USA North Little Rock	2724 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2458	La Gloria Oil N Little Rock	2626 Central Airport Road	North Little Rock	AR	72117

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-71-AR-2459	Transmontaigne Little Rock	3222 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2460	Cross Oil Refining& Mktg. Inc.	484 E. 6th Street	Smackover	AR	71762
T-71-AR-2463	Truman Arnold West Memphis	South of 8th Street	West Memphis	AR	72303
T-71-AR-2464	Arkansas Terminaling & Trading	2207 Central Airport Rd.	North Little Rock	AR	72117
T-71-AR-2467	Razorback Terminaling	2801 West Hwy 102 Rt 2	Rogers	AR	72756
T-86-AZ-4300	Caljet Phoenix	125 N 53rd Ave	Phoenix	AZ	85043
T-86-AZ-4301	Chevron USA Phoenix	5110 West Madison	Phoenix	AZ	85043
T-86-AZ-4303	Pro Petroleum Phoenix	408 S 43rd Avenue	Phoenix	AZ	85043
T-86-AZ-4304	SFPP LP Phoenix	49 North 53rd Ave Van Buren	Phoenix	AZ	85043
T-86-AZ-4305	Mobil Oil Phoenix	24 South 51st Ave	Phoenix	AZ	85043
T-86-AZ-4306	Equilon Enterprises LLC	5525 West Van Buren	Phoenix	AZ	85043
T-86-AZ-4307	Tosco Corporation	10 South 51st Avenue	Phoenix	AZ	85043
T-86-AZ-4308	Chevron Products—Tucson	3865 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4309	S T Services-Tucson	3605 South Dodge	Tucson	AZ	85713
T-86-AZ-4310	SFPP LP Tucson	3841 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4312	Equilon Enterprises LLC	3735 South Dodge Boulevard	Tucson	AZ	85713
T-86-AZ-4313	ARCO Phoenix	5333 W Van Buren St	Phoenix	AZ	85043
T-33-CA-4750	Mobil Oil Atwood	1477 Jefferson	Anaheim	CA	92807
T-33-CA-4751	GATX Tank Storage	2000 East Sepulveda Blvd.	Carson	CA	90810
T-33-CA-4752	Tosco Corporation Wilmington	1660 W Anaheim St	Wilmington	CA	90744
T-33-CA-4753	ARCO Colton	2395 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4754	Kinder-Morgan Energy Partners #4	2305 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4756	Kinder-Morgan Energy Partners #2	2297 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4757	Kinder-Morgan Energy Partners #1	2359 S. Riverside Avenue	Bloomington	CA	92316
T-33-CA-4758	Equilon Enterprises LLC	2307 S. Riverside Ave.	Colton	CA	92316
T-33-CA-4759	Equilon Enterprises LLC	2237 S. Riverside Avenue	Bloomington	CA	92316
T-33-CA-4760	Tosco Refining Colton	271 E Slover Avenue	Rialto	CA	92376
T-33-CA-4761	Calnev Pipe Line Daggett	34277 Daggett-Yermo Road	Robert Brown	CA	92327
T-33-CA-4763	Kinder-Morgan Energy Partners	345 W Aten Road	Imperial	CA	92251
T-33-CA-4764	ARCO Long Beach	5905 Paramount Blvd.	Long Beach	CA	90805
T-33-CA-4765	Edington Oil Co.	2400 E. Artesia Bl.	Long Beach	CA	90805
T-33-CA-4766	Tosco Corporation Bloomington	2301 S. Riverside	Bloomington	CA	92316
T-33-CA-4767	Petro-Diamond Terminal Company	1920 Lugger Way	Long Beach	CA	90813
T-33-CA-4768	Equilon Enterprises LLC	1926 E. Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4769	ARCO Carson	2149 E. Sepulreda Blvd.	Carson	CA	90749
T-33-CA-4770	Equilon Enterprises LLC	2101 E. Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4771	Chevron USA Huntington Beach	17881 Gothard St.	Huntington Beach	CA	92647
T-33-CA-4772	Kinder-Morgan Energy Partners LLP.	1350 North Main Street	Orange	CA	92667
T-33-CA-4773	Chevron USA San Diego	2351 E. Harbor Drive	San Diego	CA	92113
T-33-CA-4776	SFPP, LP	9950 San Diego Mission Road	San Diego	CA	92108
T-33-CA-4777	Equilon Enterprises LLC	9950 San Diego Mission Blvd.	San Diego	CA	92108
T-33-CA-4778	Equilon Enterprises LLC	9966 San Diego Mission Rd.	San Diego	CA	92108
T-33-CA-4779	Chemoil Long Beach	2365 E. Sepulveda Blvd.	Long Beach	CA	90810
T-33-CA-4780	Westway Terminal—San Pedro	Port of LA Berths 70-71	San Pedro	CA	90733
T-33-CA-4782	ARCO San Diego	2295 E. Harbor Drive	San Diego	CA	92113
T-33-CA-4783	Mobil Oil San Diego	9950 San Diego Mission Rd	San Diego	CA	92108
T-33-CA-4784	ARCO Signal Hill	2350 Hathaway Drive	Signal Hill	CA	90806
T-33-CA-4785	Equilon Enterprises LLC	2457 Redondo Ave.	Signal Hill	CA	90806
T-33-CA-4786	Mobil Oil Torrance	3700 West 190th Street	Torrance	CA	90509
T-33-CA-4789	Ultramar Inc. Wilmington	2402 E Anaheim St	Wilmington	CA	90744
T-68-CA-4600	Kinder-Morgan Energy Partners	2570 Hegan Lane	Chico	CA	95927
T-68-CA-4601	Kinder-Morgan Energy Partners	2590 Hegan Lane	Chico	CA	95928
T-68-CA-4603	Valero Refining Company	3410 East Second Street	Benicia	CA	94510
T-68-CA-4604	Chevron USA Banta	22888 S. Kasson Rd.	Tracy	CA	95376
T-68-CA-4605	Shore Terminals LLC	90 San Pablo Ave	Crockett	CA	94525
T-68-CA-4606	Chevron USA Eureka	3400 Christie Street	Eureka	CA	95501
T-68-CA-4607	Chevron USA Avon	611 Solano Way	Martinez	CA	94553
T-68-CA-4609	ARCO Stockton Terminal	2700 West Washington St	Stockton	CA	95203
T-68-CA-4610	Equilon Enterprises LLC	1801 Marina Vista	Martinez	CA	94553
T-68-CA-4611	Tosco Refining Martinez	Solano Way & Waterfront Rd.	Martinez	CA	94553
T-68-CA-4612	ARCO Sacramento	1701 S. River Rd	West Sacramento	CA	95691
T-68-CA-4613	Kinder-Morgan Energy Partners	2901 Bradshaw Rd	Rancho Cordova	CA	95741
T-68-CA-4614	ARCO Richmond	1306 Canal Blvd	Richmond	CA	94807
T-68-CA-4616	Chevron Richmond	155 Castro St	Richmond	CA	94802
T-68-CA-4617	Tosco Corporation Richmond	1300 Canal Blvd	Richmond	CA	94804
T-68-CA-4619	IMTT Richmond-CA	100 Cutting Blvd.	Richmond	CA	94804
T-68-CA-4621	Chevron USA Sacramento	2420 Front Street	Sacramento	CA	95818
T-68-CA-4622	Equilon Enterprises LLC	1509 South River Road	West Sacramento	CA	95691
T-68-CA-4626	S T Services Stockton	2941 Navy Drive	Stockton	CA	95206
T-68-CA-4628	Equilon Enterprises LLC	3515 Navy Dirve	Stockton	CA	95203
T-68-CA-4629	Tesoro Refining Mktg Stockton	3003 Navy Drive	Stockton	CA	95205

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-77-CA-4650	Chevron Products Co.	1020 Berryessa Road	San Jose	CA	95133
T-77-CA-4651	Kinder Morgan Energy Partners LP	4149 South Maple Avenue	Fresno	CA	93725
T-77-CA-4652	Kinder Morgan Energy Partners LP	2150 Kruse Avenue	San Jose	CA	95131
T-77-CA-4653	Equilon Enterprises LLC	2165 O'Toole Ave.	San Jose	CA	95131
T-77-CA-4654	Equilon Enterprises LLC	3284 North Ventura Ave.	Ventura	CA	93001
T-77-CA-4655	Kern Oil & Refining Co.	7724 East Panama Lane	Bakersfield	CA	93307
T-77-CA-4657	Equilon Enterprises LLC	2436 Fruitvale Avenue	Bakersfield	CA	93302
T-77-CA-4658	Tesoro Marine Services, Inc.	141 West Hueneme Road	Pt. Hueneme	CA	93041
T-77-CA-4659	Occidental of Elk Hills, Inc.	26590 Hwy. 119	Tupman	CA	93276
T-77-CA-4661	Golden Bear Oil Specialties	1134 Manor	Oildale	CA	93308
T-77-CA-4664	San Joaquin Refining Co., Inc.	3542 Shell St.	Bakersfield	CA	93308
T-94-CA-4700	Kinder-Morgan Energy Partners, LP	950 Tunnel Av.	Brisbane	CA	94005
T-94-CA-4703	Equilon Enterprises LLC	135 North Access Road	So. San Francisco	CA	94080
T-94-CA-4705	Shore Terminals LLC	488 Wright Ave.	Richmond	CA	94802
T-95-CA-4800	Chevron USA El Segundo	324 West El Segundo Blvd	El Segundo	CA	90245
T-95-CA-4803	Tosco S. Broadway Los Angeles	13500 South Broadway	Los Angeles	CA	90061
T-95-CA-4804	Equilon Enterprises LLC	8100 Haskell Ave.	Van Nuys	CA	91406
T-95-CA-4805	Mobil Oil—Vernon	2709 East 37th Street	Vernon	CA	90058
T-95-CA-4807	ARCO South Gate	8601 S. Garfield Ave.	South Gate	CA	90280
T-95-CA-4808	Paramount Petroleum	8835 Sommerset Blvd.	Paramount	CA	90746
T-95-CA-4809	Equilon Enterprises LLC	2015 Long Beach Ave.	Los Angeles	CA	90058
T-95-CA-4810	Chevron USA Van Nuys	15359 Oxnard Street	Van Nuys	CA	91411
T-95-CA-4811	Chevron USA Montebella	601 South Vail Avenue	Montebella	CA	90640
T-84-CO-4100	Chase Pipeline Aurora	15000 E. Smith Rd.	Aurora	CO	80011
T-84-CO-4101	Colorado Refining Denver	5800 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4102	Conoco Denver	5575 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4103	Diamond Shamrock Denver	3601 East 56th Street	Commerce City	CO	80022
T-84-CO-4104	Phillips 66 Commerce City	3960 East 56th Avenue	Commerce City	CO	80022
T-84-CO-4105	Kaneb PipeLine Dupont	8160 Krameria	DuPont	CO	80024
T-84-CO-4106	Kaneb PipeLine Fountain	1004 S. Sante Fe	Fountain	CO	80817
T-84-CO-4107	Landmark Petroleum Fruita	1493 Hwy 6 & 50	Fruita	CO	81521
T-84-CO-4108	Diamond Colorado Springs	7810 Drennan	Colorado Springs	CO	80925
T-84-CO-4109	Sinclair Pipeline Henderson	8581 East 96th Ave	Henderson	CO	80640
T-84-CO-4110	Phillips Pipeline Co.—LaJunta Terminal.	31610 East Hwy 50	LaJunta	CO	81050
T-06-CT-1250	Hoffman Fuel Co. of Bridgeport	156 East Washington Ave	Bridgeport	CT	06604
T-06-CT-1251	Sprague Energy Stamford	10 Water St	Stamford	CT	06902
T-06-CT-1252	CITGO Rocky Hill	109 Dividend Road	Rocky Hill	CT	06067
T-06-CT-1253	Motiva Enterprises LLC	211 Riverside Drive	East Hartford	CT	06108
T-06-CT-1254	Motiva Enterprises LLC	481 East Shore Parkway	New Haven	CT	06512
T-06-CT-1255	Amerada Hess—Groton	443 Eastern Point Road	Groton	CT	06340
T-06-CT-1256	Motiva Enterprises LLC	250 Eagles Nest Rd.	Bridgeport	CT	06607
T-06-CT-1257	Amerada Hess—New Haven	100 River Street	New Haven	CT	06513
T-06-CT-1258	New Haven Terminal Inc	100 Waterfront St	New Haven	CT	06512
T-06-CT-1259	Amerada Hess—Wethersfield	50 Burbank Road	Wethersfield	CT	06109
T-06-CT-1261	Getty Terminal New Haven	85 Forbes Avenue	New Haven	CT	06512
T-06-CT-1262	Gulf Oil LP—New Haven	500 Waterfront Street	New Haven	CT	06512
T-06-CT-1263	Wyatt Energy, Inc.	134 Forbes Avenue	New Haven	CT	06512
T-06-CT-1264	Gateway Terminal New Haven	400 Waterfront St	New Haven	CT	06512
T-06-CT-1265	Wyatt Energy, Inc.	85 East Street	New Haven	CT	06536
T-06-CT-1266	Hi- Ho Petroleum	85 Harbor Street	Bridgeport	CT	06605
T-06-CT-1267	Consumer Petroleum Wholesaler	One Eagles Nest Rd	Bridgeport	CT	06605
T-06-CT-1269	38 Duffy Ave., LLC	56 Brownstone Ave.	Portland	CT	06480
T-06-CT-1270	Northeast Petroleum—Wethersfield	80 Burbank Road	Wethersfield	CT	06109
T-06-CT-1271	Signature Flight Support	100 Signature Way	East Granby	CT	06026
T-06-CT-1272	Devine Bros. Inc.—Norwalk	38 Commerce St	Norwalk	CT	06850
T-06-CT-1274	Wyatt Energy Incorporated	280 Waterfront St	New Haven	CT	06512
T-06-CT-1277	Sprague Energy	247 Riverside Dr.	East Hartford	CT	06902
T-06-CT-1279	Inland Fuel Terminal	154 Admiral St.	Bridgeport	CT	06605
T-06-CT-1280	B & B Petroleum Inc.	32 Brownstone Ave	Portland	CT	06480
T-06-CT-1281	Hall & Muska, Inc.	152 Broad Brook Rd	Broad Brook	CT	06016
T-06-CT-1282	Anthony Troiano & Sons, Inc.	777 Enfield St.	Enfield	CT	06082
T-06-CT-1284	Port Oil	248 Brownstone Ave.	Portland	CT	06480
T-06-CT-1285	Heating Oil Partners LP	410 Bank St.	New London	CT	06320
T-06-CT-1286	NORAA Enterprises, Inc.	1351 Main Street	East Hartford	CT	06109
T-52-MD-1564	S T Services Washington (M St)	1333 M St SE	Washington	DC	20003
T-54-VA-1686	Ogden Aviation Fueling Co., Inc.	11 Air Cargo Rd.	Washington	DC	20001
T-51-DE-1600	Motiva Enterprises LLC	River Rd and J Street	Delaware City	DE	19706
T-51-DE-1601	Blades Terminal-Peninsula Oil	Blades Causeway	Blades	DE	19973
T-51-DE-1603	Wilco Inc, Peninsula Oil Co	Blades Causeway	Seaford	DE	19973
T-52-MD-1572	The Sico Company	1050 Christiana Ave.	Wilmington	DE	19801
T-59-FL-2100	Murphy Oil USA Tampa	1306 Ingram Ave	Tampa	FL	33605

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-59-FL-2101	TransMontaigne Terminaling, Inc.	1523 Port Avenue	Tampa	FL	33605
T-59-FL-2102	Amerada Hess—Jacksonville	2617 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2103	Williams Energy Services, Inc.	2054 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2104	Chevron Products Company	3117 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2105	Coastal Fuels Jacksonville	3425 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2106	B P-Amoco Oil Jacksonville	12101 Heckscher Dr	Jacksonville	FL	32218
T-59-FL-2107	Amerada Hess—Tampa	504 N 19th Street	Tampa	FL	33605
T-59-FL-2109	Petroleum Fuel Jacksonville	1961 E Adams St	Jacksonville	FL	32202
T-59-FL-2112	S T Services Jacksonville	6531 Evergréen Avenue	Jacksonville	FL	32208
T-59-FL-2114	CITGO—Niceville	904 Bayshore Drive	Niceville	FL	32578
T-59-FL-2115	Murphy Oil Freeport	424 Madison St	Freeport	FL	32439
T-59-FL-2116	Chevron USA Product Co	525 West Beach Drive	Panama City	FL	32402
T-59-FL-2117	CITGO Panama City	122 S Center Ave	Panama City	FL	32401
T-59-FL-2118	Coastal Fuels Pensacola	640 S Barracks St	Pensacola	FL	32501
T-59-FL-2119	Radcliff/Economy-Pensacola	3100 Barrancas Avenue	Pensacola	FL	32507
T-59-FL-2120	TransMontaigne Terminaling, Inc.	511 South Clubb St	Pensacola	FL	32501
T-59-FL-2122	Coastal Fuels Port Manatee	804 N Dock St	Palmetto	FL	34220
T-59-FL-2123	GATX Terminals Port Tampa	2101 GATX Drive	Tampa	FL	33605
T-59-FL-2124	Motiva Enterprises LLC	6500 Commerce St	Port Tampa	FL	33616
T-59-FL-2125	Murphy Oil St Marks	585 Port Leon Drive	St Marks	FL	32355
T-59-FL-2127	TOC Terminals St Marks	815 Port Leon Drive	St. Marks	FL	32355
T-59-FL-2129	GATX Terminal Taft (CFPL)	9919 Orange Avenue	Orlando	FL	32824
T-59-FL-2130	Amoco Oil Tampa	848 McCloskey Boulevard	Tampa	FL	33605
T-59-FL-2131	Chevron USA Tampa	5500 Commerce Street	Tampa	FL	33616
T-59-FL-2133	CITGO Tampa	801 McCloskey Blvd	Tampa	FL	33605
T-59-FL-2136	MAPLLC Oil Tampa	425 South 20th Street	Tampa	FL	33605
T-59-FL-2138	Coastal Fuels Cape Canaveral	10 Tanker Turn Rd.	Cape Canaveral	FL	32920
T-65-FL-2150	Coastal Fuels Port Everglades	2401 Eisenhower Blvd	Fort Lauderdale	FL	33316
T-65-FL-2151	S T Services Homestead	13195 S W 288th Street	Homestead	FL	33033
T-65-FL-2152	Amoco Oil Port Everglades	1180 Spangler Road	Port Everglades	FL	33316
T-65-FL-2153	Chevron USA Port Everglades	1400 SE 24th St	Fort Lauderdale	FL	33335
T-65-FL-2154	Motiva Enterprises LLC	1500 SE 26 St	Ft. Lauderdale	FL	33316
T-65-FL-2155	Texaco Refining & Marketing, Inc.	4350 NW 20 St., Bldg. 3100	Miami	FL	33359
T-65-FL-2156	Amerada Hess—Port Everglades	1501 SE 20th St.	Fort Lauderdale	FL	33316
T-65-FL-2157	CITGO Port Everglades	800 SE 28th Street	Fort Lauderdale	FL	33316
T-65-FL-2160	MAPLLC Oil Port Everglades	1601 SE 20th St	Fort Lauderdale	FL	33316
T-65-FL-2161	Mobil Oil Port Everglades	1150 Spangler Blvd	Fort Lauderdale	FL	33316
T-65-FL-2163	Motiva Enterprises LLC	909 S.E. 24 St.	Fort Lauderdale	FL	33316
T-65-FL-2164	Motiva Enterprises LLC	1200 SE 28th St	Port Everglades	FL	33316
T-65-FL-2165	TransMontaigne Terminaling, Inc.	2701 SE 14th Ave	Fort Lauderdale	FL	33316
T-75-TX-2677	Martin Gas Sales, Inc.	4118 Pendola Point Rd.	Tampa	FL	33617
T-58-GA-2500	Phillips Pipeline Albany	1603 W Oakridge Dr	Albany	GA	31707
T-58-GA-2501	Williams Energy Ventures-Alban	1722 W Oakridge Dr	Albany	GA	31707
T-58-GA-2502	TransMontaigne Terminaling, Inc.	1162 Gillionville Rd	Albany	GA	31707
T-58-GA-2504	S T Services Augusta	209 Sand Bar Ferry Road	Augusta	GA	30901
T-58-GA-2505	TransMontaigne Terminaling, Inc.	Plains Road Highway 280 West	Americus	GA	31709
T-58-GA-2506	Charter—TRIAD Terminals LLC	3460 Jefferson Road	Athens	GA	30607
T-58-GA-2507	S T Services, West Terminal	2 Walstrom Rd.	Savannah	GA	31404
T-58-GA-2508	TransMontaigne Terminaling, Inc.	3450 Jefferson Road	Athens	GA	30607
T-58-GA-2510	Motiva Enterprises LLC	4127 Winter Chapel Rd.	Doraville	GA	30360
T-58-GA-2511	TransMontaigne Terminaling, Inc.	3132 Parrott Avenue Northwest	Atlanta	GA	30318
T-58-GA-2514	Motiva Enterprises LLC	803 East Shotwell St.	Bainbridge	GA	31717
T-58-GA-2515	TransMontaigne Terminaling, Inc.	1909 East Shotwell Street	Bainbridge	GA	31717
T-58-GA-2516	Stratus Petroleum Blakely	Hwy 62 W & Chattahoochee Rd	Blakely	GA	31723
T-58-GA-2517	S T Services Bremen	870 Alabama Avenue	Bremen	GA	30110
T-58-GA-2518	S T Services Brunswick	211 Newcastle Street NW	Brunswick	GA	31520
T-58-GA-2519	Fina Oil & Chemical Atlanta	2970 Parrott Avenue	Atlanta	GA	30318
T-58-GA-2520	Chevron USA Columbus	5131 Miller Road	Columbus	GA	31908
T-58-GA-2521	Crown Central Columbus	4840 Miller Rd	Columbus	GA	31904
T-58-GA-2522	ITAPCO Inc Columbus	5225 Miller Road	Columbus	GA	31904
T-58-GA-2523	MAPLLC Oil Columbus	5030 Miller Road	Columbus	GA	31909
T-58-GA-2524	S T Services Columbus	800 Lumpkin Boulevard	Columbus	GA	31901
T-58-GA-2525	TransMontaigne Terminaling, Inc.	2836 Woodwin Road	Doraville	GA	30362
T-58-GA-2526	Amoco Doraville Peachtree	6430 New Peachtree Road	Doraville	GA	30340
T-58-GA-2527	Motiva Enterprises LLC	4201 Winters Chappel Rd.	Doraville	GA	30340
T-58-GA-2528	Chevron USA Doraville	4026 Winters Chapel Road	Doraville	GA	30362
T-58-GA-2529	CITGO Doraville	3877 Flowers Drive	Doraville	GA	30362
T-58-GA-2531	Motiva Enterprises LLC	4143 Winters Chapel Rd	Doraville	GA	30360
T-58-GA-2532	MAPLLC Oil Doraville	6293 New Peachtree Road	Doraville	GA	30341
T-58-GA-2533	William Energy Ventures, Inc.	4149 Winters Chapel Road	Doraville	GA	30360
T-58-GA-2534	Amoco Doraville Chapel	4064 Winters Chapel Rd	Doraville	GA	30340
T-58-GA-2535	Southern Facilities Doraville	2797 Woodwin Road	Doraville	GA	30360

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-58-GA-2537	TransMontaigne Terminaling, Inc.	643B East McIntosh Road	Griffin	GA	30223
T-58-GA-2538	Chevron USA Macon	2476 Allen Road	Macon	GA	31206
T-58-GA-2541	MAPLLC Oil Macon	2445 Allen Road	Macon	GA	31206
T-58-GA-2542	S T Services Macon	6225 Hawkinsville Road	Macon	GA	31216
T-58-GA-2543	Southern Facilities Macon	2505 Allen Road	Macon	GA	31206
T-58-GA-2544	TransMontaigne Terminaling, Inc.	5041 Forsyth Rd.	Macon	GA	31210
T-58-GA-2545	MAPLLC Oil Powder Springs	3895 Anderson Farm Road NW	Powder Springs	GA	30073
T-58-GA-2547	TransMontaigne Terminaling, Inc.	2671 Calhoun Road	Rome	GA	30161
T-58-GA-2550	Colonial Terminal, Inc.	101 North Lathrop Ave	Savannah	GA	31415
T-58-GA-2551	Paktank Corp Savannah Term	Georgia Ports Garden City	Savannah	GA	31418
T-99-HI-4550	Tesoro Hawaii Corp. Refinery	91-325 Komohana St.	Kapolei	HI	96707
T-99-HI-4551	Aloha Petroleum Ltd.	91-119 Hanua Street	Kapolei	HI	96706
T-99-HI-4552	Chevron USA Hilo	666 Kalanianaole Avenue	Hilo	HI	96720
T-99-HI-4553	Chevron USA Honolulu	933 North Nimitz Highway	Honolulu	HI	96817
T-99-HI-4554	Chevron USA Kahului	100 A Hobron Avenue	Kahului	HI	96732
T-99-HI-4555	Chevron USA Port Allen	A & B Road, Port Allen	Eleele	HI	96705
T-99-HI-4556	Tosco Refining Co.	411 Pacific St	Honolulu	HI	96814
T-99-HI-4557	Equilon Enterprises LLC	789 N. Nimitz Hwy.	Honolulu	HI	96817
T-99-HI-4558	Equilon Enterprises LLC	661 Kalanianaole Ave.	Hilo	HI	96720
T-99-HI-4559	Tesoro Hawaii Corporation	607 Kalanianaole Ave.	Hilo	HI	96720
T-99-HI-4560	Aloha Petroleum Ltd.	999 Kalanianaole Ave.	Hilo	HI	96720
T-99-HI-4561	Tesoro Hawaii Corporation	701 Kalanianaole Street	Hilo	HI	96720
T-99-HI-4562	Shell Oil Nawiliwili	3145 Waapa Rd.	Lihue	HI	96766
T-99-HI-4563	Tesoro Hawaii Corporation	340 H Hobron Ave	Kahului	HI	96732
T-99-HI-4566	Equilon Enterprises LLC	60 Hobron Ave.	Kahului	HI	96732
T-99-HI-4567	Tosco Kawaihae	No. 1 Kawaihae Road	Kamuela	HI	96743
T-99-HI-4568	Tesoro Hawaii Corporation	2 Sand Island Access Rd.	Honolulu	HI	96819
T-99-HI-4569	Tesoro Hawaii Corporation	Pier 34	Honolulu	HI	96817
T-39-IA-3475	Sinclair Terminal	2506 260th St.	Montrose	IA	52639
T-42-IA-3450	Amoco Oil Bettendorf	75 South 31st Street	Bettendorf	IA	52722
T-42-IA-3451	Koch Petroleum Group-Bettendorf	4100 Elm St	Bettendorf	IA	52722
T-42-IA-3452	Phillips Pipeline Company	2925 Depot Street	Bettendorf	IA	52722
T-42-IA-3453	Williams Pipe Line Sioux South	3701 South Lewis Blvd	Sioux City	IA	51106
T-42-IA-3454	Amoco Oil Council Bluffs	829 East South Bridge Rd	Council Bluffs	IA	51501
T-42-IA-3455	National Coop. Council Bluffs	825 East South Omaha Bridge Rd	Council Bluffs	IA	51502
T-42-IA-3456	Amoco Oil Des Moines	1501 Northwest 86th Street	Des Moines	IA	50325
T-42-IA-3457	Williams Pipe Line Des Moines	2503 Southeast 43rd Street	Des Moines	IA	50317
T-42-IA-3458	Amoco Oil Dubuque	15437 Olde Highway Rd.	Dubuque	IA	52001
T-42-IA-3460	Williams Pipe Line Dubuque	8038 St Joe's Prairie Rd	Dubuque	IA	52003
T-42-IA-3461	Williams Pipe Line Fort Dodge	6 miles from Ft Dodge	Duncombe	IA	50532
T-42-IA-3463	Williams Pipe Line Iowa City	912 First Avenue	Coralville	IA	52241
T-42-IA-3464	Kaneb Pipe Line Le Mars	US Hwy 75/7 Miles N of LeMars	Le Mars	IA	51031
T-42-IA-3465	Williams Pipe Line Mason City	2810 East Main	Clear Lake	IA	50428
T-42-IA-3466	Kaneb Pipe Line Milford	1 mile W of Milford & Hwy 71	Milford	IA	51351
T-42-IA-3467	Williams Pipe Line Milford	RT #1	Milford	IA	51351
T-42-IA-3468	Amoco Oil North Liberty	2092 Hwy. 965 NE	North Liberty	IA	52317
T-42-IA-3469	Amoco Oil Ottumwa	Three miles west on US 34	Ottumwa	IA	52501
T-42-IA-3470	Conoco Pipeline Co.	4500 Vandalia	Pleasant Hill	IA	50317
T-42-IA-3471	CITGO—Bettendorf	312 South Bellingham Street	Bettendorf	IA	52722
T-42-IA-3472	Kaneb Pipeline Rock Rapids	State Hwy 9	Rock Rapids	IA	51246
T-42-IA-3473	Williams Pipe Line Sioux City	4300 41st Street	Sioux City	IA	51108
T-42-IA-3474	Williams Pipe Line Waterloo	5360 Eldora Rd	Waterloo	IA	50701
T-82-ID-4150	Boise Idaho Terminal	321 North Curtis Road	Boise	ID	83707
T-82-ID-4151	Northwest Terminaling Boise	201 N. Phillips Rd.	Boise	ID	83704
T-82-ID-4152	United Products Terminal	70 North Phillipi Road	Boise	ID	83706
T-82-ID-4155	Amoco Oil Burley	421 East Highway 81	Burley	ID	83318
T-82-ID-4157	Burley Products Terminal	425 East Hwy 81 PO Box 233	Burley	ID	83318
T-82-ID-4159	Chevron Pipeline Pocatello	1189 Tank Farm Rd.	Pocatello	ID	83201
T-36-IL-3300	Clark Refining and Marketing Inc.	131st & Homan Avenue	Blue Island	IL	60406
T-36-IL-3301	Amoco Oil Des Plaines	2201 South Elmhurst Rd	Des Plaines	IL	60018
T-36-IL-3302	Amoco Oil Forest View	4811 South Harlem Avenue	Forest View	IL	60402
T-36-IL-3303	Amoco Oil Company—Rochelle	100 East Standard Oil Road	Rochelle	IL	61068
T-36-IL-3304	CITGO Mt Prospect	2316 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3305	GATX Terminals Argo	8500 West 68th Street	Argo	IL	60501
T-36-IL-3306	Equilon Enterprises LLC	1511 South Meridian Rd	Rockford	IL	61102
T-36-IL-3307	Marathon Mt Prospect	3231 Busse Road	Arlington Heights	IL	60005
T-36-IL-3308	MAPLLC Oil Rockford	7312 Cunningham Road	Rockford	IL	61102
T-36-IL-3309	MAPLLC Willow Springs	7600 LaGrange Road	Willow Springs	IL	60480
T-36-IL-3310	S T Services—Blue Island	3210 West 131st Street	Blue Island	IL	60406
T-36-IL-3311	Mobil Oil Des Plaines	2312 Terminal Drive	Des Plaines	IL	60005
T-36-IL-3312	Petroleum Fuel Forest View	4801 South Harlem	Forest View	IL	60402
T-36-IL-3313	Phillips Pipeline Company—Kankakee.	275 North 2760 West Road	Kankakee	IL	60901

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-36-IL-3314	S T Services—Peru	2830 West Market Street	Peru	IL	61354
T-36-IL-3315	Equilon Enterprises LLC	8600 West 71st. Street	Bedford Park	IL	60501
T-36-IL-3316	Equilon Enterprises LLC	1605 E. Algonquin Road	Des Plaines	IL	60005
T-36-IL-3317	CITGO Petroleum Corp.—Lemont	135th & New Avenue	Lemont	IL	60439
T-36-IL-3318	CITGO—Des Plaines	2304 Terminal Drive	Des Plaines	IL	60056
T-36-IL-3319	Williams Pipe Line—Amboy	1222 U S Route 30	Amboy	IL	61310
T-36-IL-3320	Williams Pipeline Franklin	10601 Franklin Avenue	Franklin Park	IL	60131
T-36-IL-3322	Equilon Enterprises LLC—Des Plaines.	1000 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3323	TransMontaign Terminaling, Inc.	14410 North Old Galena Rd.	Chillicothe	IL	61523
T-36-IL-3324	Kinder Morgan Morris Complex	4755 E. Route 6	Morris	IL	60450
T-36-IL-3373	Clark Refining & Marketing Co.—Blue Is.	Kedzie Ave. & 131st	Blue Island	IL	60406
T-36-IL-3375	Mobil Oil Corporation—Lockport	1290 High Road	Lockport	IL	60441
T-37-IL-3351	Amoco Oil Wood River	335 South Old St Louis Rd	Wood River	IL	62095
T-37-IL-3352	Equilon Enterprises LLC	7022 South Cilco Lane	Bartonville	IL	61607
T-37-IL-3353	Conoco Wood River	Route 3	Hartford	IL	62048
T-37-IL-3354	Hartford Wood River	900 North Delmar	Hartford	IL	62048
T-37-IL-3355	Hicks Oils & Hicks Gas Inc	1118 Wesley Road	Creve Coeur	IL	61610
T-37-IL-3356	Equilon Enterprises LLC	South Side Hawthorne	Hartford	IL	62048
T-37-IL-3358	MAPLLC Champaign	511 S. Staley Road	Champaign	IL	61821
T-37-IL-3360	MAPLLC Robinson	Rural Route One	Robinson	IL	62454
T-37-IL-3361	La Gloria Oil Norris City	Rural Route 2	Norris City	IL	62869
T-37-IL-3362	Petroleum Fuel Granite City	2801 Rock Road	Granite City	IL	62040
T-37-IL-3364	Meloco Terminal	Rt 49 South	Ashkum	IL	60911
T-37-IL-3365	Phillips 66 Decatur	266 E Shafer	Forsyth	IL	62535
T-37-IL-3366	Phillips Petroleum E St Louis	3300 Mississippi Ave	Cahokia	IL	62206
T-37-IL-3367	S T Services—Chillicothe	20206 North State Rd, Rt 29	Chillicothe	IL	61523
T-37-IL-3368	Equilon Enterprises LLC	Route 45 N. R.R. 3	Effingham	IL	62401
T-37-IL-3369	Equilon Enterprises LLC	600 E. Lincoln Memorial Pky	Harristown	IL	62537
T-37-IL-3371	Williams Pipe Line Heyworth	Rural Route Two	Heyworth	IL	61745
T-37-IL-3372	Williams Pipe Line Menard Cty	Rural Route Three	Petersburg	IL	62675
T-43-IL-3729	Center Terminal Co—Hartford	1402 S Delmare	Hartford	IL	62048
T-35-IN-3201	Amoco Oil Brookston	11555 South IN 43	Brookston	IN	47923
T-35-IN-3202	Equilon Enterprises LLC	1020 141st St	Hammond	IN	46320
T-35-IN-3203	Amoco Oil Granger	12694 Adams Rd	Granger	IN	46530
T-35-IN-3204	Amoco Oil Indianpolis	2500 N Tibbs Avenue	Indianapolis	IN	46222
T-35-IN-3205	Amoco Oil Whiting	2530 Indianapolis Blvd.	Whiting	IN	46394
T-35-IN-3206	MAPLLC Clarksvile	214 Center Street	Clarksville	IN	47124
T-35-IN-3207	MAPLLC Evansville	2500 Broadway	Evansville	IN	47712
T-35-IN-3208	MAPLLC Huntington	4648 N. Meridian Road	Huntington	IN	46750
T-35-IN-3209	CITGO East Chicago	2500 East Chicago Ave	East Chicago	IN	46312
T-35-IN-3210	CITGO Huntington	4393 N Meridian Rd US 24	Huntington	IN	46750
T-35-IN-3211	Gladieux T & M Huntington	4757 US 24 E	Huntington	IN	46750
T-35-IN-3212	Kentuckiana Terminal	20 Jackson St	New Albany	IN	47150
T-35-IN-3213	Transmontaigne Terminaling Inc	2630 Broadway	Evansville	IN	47712
T-35-IN-3214	CountryMark—Mount Vernon	1200 Refinery Road	Mount Vernon	IN	47620
T-35-IN-3215	Crown Central Petro—Clermont	9323 West 30th	Clermont	IN	46234
T-35-IN-3216	Crown Central Petro—Seymour	9780 N US Hwy 31	Seymour	IN	47274
T-35-IN-3217	Equilon Enterprises LLC	10470 E County Rd, 300 North	Clermont	IN	46234
T-35-IN-3218	MAPLLC Hammond	4206 Columbia Avenue	Hammond	IN	46327
T-35-IN-3219	MAPLLC Indianapolis	4955 Robison Rd	Indianapolis	IN	46268
T-35-IN-3220	MAPLLC Mount Vernon	Old State Rd #69 South	Mount Vernon	IN	47620
T-35-IN-3221	MAPLLC Muncie	2100 East State Road 28	Muncie	IN	47303
T-35-IN-3222	MAPLLC Speedway	1304 Olin Ave	Indianapolis	IN	46222
T-35-IN-3224	Mobil Oil Hammond	1527 141th Street	Hammond	IN	46327
T-35-IN-3225	Phillips 66 East Chicago	400 East Columbus Dr	East Chicago	IN	46312
T-35-IN-3226	Phillips 66 Clermont	3230 N Raceway Road	Indiapolis	IN	46234
T-35-IN-3227	S T Services Clermont	3350 N Raceway Rd	Indianapolis	IN	46234
T-35-IN-3228	Equilon Enterprises LLC	2400 Michigan St.	Hammond	IN	46320
T-35-IN-3229	Equilon Enterprises LLC	2000 E. State Rd. 28	Muncie	IN	47302
T-35-IN-3230	Equilon Enterprises LLC	5405 W. 9th St.	Zionsville	IN	46268
T-35-IN-3231	Sun Huntington	4691 N Meridian St	Huntington	IN	46750
T-35-IN-3232	TEPPCO Princeton	Highway 64 West	Oakland City	IN	47660
T-35-IN-3233	Center Terminal Co-Indianapoli	10833 East County Rd 300 North	Indianapolis	IN	46234
T-35-IN-3234	Lassus Bros Huntington	4413 North Meridian Rd	Huntington	IN	46750
T-35-IN-3235	CountryMark Joliotville	17710 Mule Barn	Westfield	IN	46074
T-35-IN-3236	CountryMark—Peru	Highway 24 West	Peru	IN	46970
T-35-IN-3237	CountryMark Switz City	State Road 54 East	Switz City	IN	47465
T-35-IN-3238	Transmontaigne Terminaling Inc.	10700 E County Rd 300N	Indianapolis (CL)	IN	46234
T-35-IN-3242	Safety-Klean Oil Recovery Co.	601 Riley Road	East Chicago	IN	46312
T-35-IN-3243	Conrail Inc.-Avon Diesel Term	491 S. County Road 800 E.	Plainfield	IN	46168

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-35-IN-3244	Indiana Harbor Belt Railroad	2721—161st St.	Hammond	IN	46323
T-35-IN-3245	Conrail Inc.- Elkhart Terminal	2600 W. Lusher Rd	Elkhart	IN	46516
T-35-IN-3246	Transmontaigne—South Bend	20630 W. Ireland Rd.	South Bend	IN	46614
T-43-KS-3672	Phillips Pipeline Co.—Kansas City	2029 Fairfax Trafficway	Kansas City	KS	66115
T-48-KS-3651	Farmland Ind. Coffeyville	North & Linden Streets	Coffeyville	KS	67337
T-48-KS-3652	Kaneb Pipe Line Concordia	Route 1	Delphos	KS	67436
T-48-KS-3654	Frontier El Dorado Refining Company.	South Haverhill Road	El Dorado	KS	67042
T-48-KS-3655	Chase Pipeline Great Bend	Hwys 56 & 156 4 mi east of GB	Great Bend	KS	67530
T-48-KS-3656	Kaneb Pipe Line Hutchison	3300 East Avenue G	Hutchison	KS	67501
T-48-KS-3658	Sinclair Pipeline Kansas City	3401 Fairbanks Avenue	Kansas City	KS	66106
T-48-KS-3659	Williams Pipeline Kansas City	401 East Donovan Road	Kansas City	KS	66115
T-48-KS-3660	National Coop. McPherson	2000 South Main Street	McPherson	KS	67460
T-48-KS-3661	Williams Pipe Line Olathe	13745 W 135th St	Olathe	KS	66062
T-48-KS-3662	Farmland Coop. Phillipsburg	Hwy 183 N	Phillipsburg	KS	67661
T-48-KS-3663	S T Services Salina	2137 W Old Hwy 40	Salina	KS	67401
T-48-KS-3664	Chase Pipeline Scott City	Junction Highways 83 & 4	Scott City	KS	67871
T-48-KS-3665	Williams Pipe Line Topeka	US Hwy 75 RFD 1	Wakarusa	KS	66546
T-48-KS-3666	Center Terminal Co.—Wichita	7452 N Meridian	Valley Center	KS	67147
T-48-KS-3667	Williams Pipe Line Wathena	Rt. 2 Box 112	Wathena	KS	66090
T-48-KS-3669	Williams Pipe Line-Wichita	1100 East 21st Street	Wichita	KS	67214
T-48-KS-3670	Conoco Wichita	8001 Oak Knoll Road	Wichita	KS	67207
T-48-KS-3671	Phillips Pipeline Wichita	2400 East 37th Street North	Wichita	KS	67219
T-61-KY-3261	B P Oil Bromley	409 River Road	Bromley	KY	41016
T-61-KY-3262	MAPLLC Catlettsburg	Old St Rt 23	Catlettsburg	KY	41129
T-61-KY-3263	MAPLLC Covington	230 East 33rd Street	Covington	KY	41015
T-61-KY-3264	Transmontaigne—Greater Cincinnati.	700 River Road	Covington	KY	41017
T-61-KY-3265	Henderson Terminaling	2321 Old Geneva Road	Henderson	KY	42420
T-61-KY-3266	MAPLLC Lexington	1770 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3267	Chevron USA Lexington	1750 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3268	MAPLLC Louisville	4510 Algonquin Parkway	Louisville	KY	40211
T-61-KY-3269	B P Oil Louisville	1500 SW Parkway & Gibson Lane	Louisville	KY	40211
T-61-KY-3270	Chevron USA Louisville	4401 Bells Lane	Louisville	KY	40211
T-61-KY-3271	TransMontaigne—Louisville	4510 Bells Lane	Louisville	KY	40211
T-61-KY-3272	MAPLLC Oil Louisville	3920 Kramers Lane	Louisville	KY	40216
T-61-KY-3273	Sun Louisville	7800 Cane Run Road	Louisville	KY	40258
T-61-KY-3274	CITGO—Louisville	4724 Camp Ground Road	Louisville	KY	40216
T-61-KY-3276	MAPLLC Paducah	Highway 62 & MAPLLC Rd.	Paducah	KY	42003
T-61-KY-3278	TransMontaigne Terminal—Paducah.	233 Elizabeth St	Paducah	KY	42001
T-61-KY-3279	Transmontaigne-Henderson.	2633 Sunset Lane	Henderson	KY	42420
T-61-KY-3280	Southern States Coorperative	150 Coast Guard Lane	Owensboro	KY	42302
T-61-KY-3281	Somerset Refinery—Somerset	600 Monticello Street	Somerset	KY	42502
T-61-KY-3283	Transmontaigne—Owensboro	900 Pleasant Valley Road	Owensboro	KY	42302
T-61-KY-3284	Transmontaigne—Riverway	1350 South 3rd Street	Paducah	KY	42003
T-62-KY-2244	Transmontainge—Paducah	2000 So. 4th St.	Paducah	KY	42003
T-62-KY-3285	Catlettsburg Refining LLC	8023 Crider Dr.	Catlettsburg	KY	41129
T-72-LA-2350	B P Oil Alliance		Alliance	LA	
T-72-LA-2351	Chevron USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2353	Exxon Co USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2355	International Tank Terminals, Inc.	5450 River Rd.	Avondale	LA	70094
T-72-LA-2357	Chevron USA Baton Rouge	1315 Mengel Road	East Baton Rouge	LA	70807
T-72-LA-2358	Exxon USA Baton Rouge	3329 Scenic Highway	Baton Rouge	LA	70805
T-72-LA-2359	Petroleum Fuel Baton Rouge	995 Earnest Wilson Road	Port Allen	LA	70767
T-72-LA-2360	Mobil Oil Chalmette	1700 Paris Rd Gate 50	Chalmette	LA	70043
T-72-LA-2361	Motiva Enterprises LLC	Louisiana Street	Covent	LA	70723
T-72-LA-2363	MAPLLC Oil Garyville	Highway 61	Garyville	LA	70051
T-72-LA-2364	IMTT—Gretna	1145 Fourth Street	Gretna	LA	70058
T-72-LA-2365	Motiva Enterprises LLC	143 Firehouse Dr.	Kenner	LA	70062
T-72-LA-2366	Valero Refining Co.—Louisiana	Highway 105 South	Krotz Springs	LA	70750
T-72-LA-2367	Calcasieu Lake Charles	West End of Tank Farm Road	Lake Charles	LA	70606
T-72-LA-2368	CITGO Lake Charles	Cities Serv Hwy & LA Hwy 108	Lake Charles	LA	70601
T-72-LA-2371	Murphy Oil USA Meraux	2501 East St Bernard Hwy	Meraux	LA	70075
T-72-LA-2372	Mobil Oil Morgan City	1000 Young's Road	Morgan City	LA	70380
T-72-LA-2373	Motiva Enterprises, LLC	Marrero, Barataria & River Rd.	Marrero	LA	70072
T-72-LA-2374	GATX Terminals Norco	1601 River Road	Norco	LA	70079
T-72-LA-2375	Chevron USA Opelousas	Highway 182 South	Opelousas	LA	70571
T-72-LA-2376	Placid Refining Co Port Allen	1940 Louisiana Hwy One North	Port Allen	LA	70767
T-72-LA-2377	International Tank Terminals, Inc.	11842 River Rd.	Saint Rose	LA	70087
T-72-LA-2378	Pennzoil Product Co Shreveport	3333 Midway PO Box 3099	Shreveport	LA	71133
T-72-LA-2381	Conoco Westlake	1960 Old Spanish Trail	Westlake	LA	70669

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-72-LA-2382	Paktank Corp Westwego	106 Bridge City Avenue	Bridge City	LA	70094
T-72-LA-2383	Phibro Marine Fuels	7168 Shrimpers Row	Dulac	LA	70353
T-72-LA-2384	Phibro Marine Fuel Gretna	1125 Fourth St	Gretna	LA	70058
T-72-LA-2386	Goldline Refinery	11499 Plant Road	Jennings	LA	70546
T-72-LA-2388	Calvmet Lubricants-Cotton Vall	U. S. Hwy 371 South	Cotton Valley	LA	71018
T-72-LA-2389	Calvmet Lubricants-Princeton	10234 Hwy 157	Princeton	LA	71067
T-72-LA-2390	ST Services Westwego	660 La Bauve Drive	Westwego	LA	70094
T-72-LA-2391	Petro-United Term Sunshine	1725 Highway 75	Sunshine	LA	70780
T-72-LA-2392	Petron, Inc.	R.T. 2, Box 238A	Jonesville	LA	71343
T-72-LA-2393	Sunshine Oil and Storage, Inc.	486 Highway 165	Monroe	LA	71202
T-04-MA-1151	L E Belcher Springfield	615 St James Ave	Springfield	MA	01109
T-04-MA-1152	Chelsea Terminal L/P	11 Broadway	Chelsea	MA	02150
T-04-MA-1153	Gulf Oil Ltd Partnership Chelsea	123 Eastern Ave.	Chelsea	MA	02150
T-04-MA-1154	Mobil Oil East Boston	467 Chelsea Street	East Boston	MA	02128
T-04-MA-1155	CITGO East Braintree	385 Quincy Ave	Braintree	MA	02184
T-04-MA-1156	Exxon USA Everett	52 Beacham Street	Everett	MA	02149
T-04-MA-1160	Irving Oil Terminals, Inc.	41 Lee Burbank Highway	Revere	MA	02151
T-04-MA-1161	Global Petroleum Corp.	222 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1162	Global Petroleum Revere	140 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1163	Cargill, Inc.	25 Derby Street	Salem	MA	01970
T-04-MA-1164	Cargill, Inc.	3 Coast Guard Road	Sandwich	MA	02563
T-04-MA-1165	Coastal Oil NE South Boston	900 E First Street	South Boston	MA	02128
T-04-MA-1166	Global Petroleum	160 Rocus St.	Springfield	MA	01101
T-04-MA-1168	Mobil Oil Springfield	145 Albany Street	Springfield	MA	01105
T-04-MA-1172	Global Petroleum Corp	30 Pine St.	Bedford	MA	02740
T-04-MA-1173	Harbor Fuel Oil Corp	15 Sparks Ave	Nantucket	MA	02554
T-04-MA-1175	R M Packer Co. Inc	Beach Rd.	Vineyard Haven	MA	02568
T-04-MA-1176	Sprague Energy Corp	728 Southern Artery	Quincy	MA	02169
T-04-MA-1177	Springfield Terminals Inc	86 Robbins Road	Springfield	MA	01101
T-04-MA-1179	Wyatt Energy Inc	1053 Page Blvd	Springfield	MA	01104
T-04-MA-1180	Sprague Energy—Quincy	740 Washington St.	Quincy	MA	02170
T-04-MA-1181	Ultramar Energy, Inc.	60 Hannon St.	Springfield	MA	01101
T-52-MD-1550	Amerada Hess—Baltimore	6200 Pennington Avenue	Baltimore	MD	21226
T-52-MD-1551	Amoco Oil Baltimore	801 East Ordance Rd	Curtis Bay	MD	21226
T-52-MD-1552	Tosco/Bayway—Baltimore	2155 Northbridge Ave	Baltimore	MD	21226
T-52-MD-1554	Petroleum Fuel & Terminal N	5101 Erdman Avenue	Baltimore	MD	21205
T-52-MD-1558	Shell Oil Co. West	3445 Fairfield Road	Baltimore	MD	21226
T-52-MD-1559	Petroleum Fuel and Terminal S	1622 South Clinton Street	Baltimore	MD	21224
T-52-MD-1560	S T Services Baltimore	1800 Frankfurst Avenue	Baltimore	MD	21226
T-52-MD-1561	Motiva Enterprises LLC	2400 Petrolia Ave.	Baltimore	MD	21226
T-52-MD-1562	Motiva Enterprises LLC	2201 Southport Ave.	Baltimore	MD	21226
T-52-MD-1563	Stratus Petroleum Baltimore	3100 Vera Street	Baltimore	MD	21226
T-52-MD-1565	S T Services—Piney Point	17877 Piney Point Road	Piney Point	MD	20674
T-52-MD-1567	Cato Oil Salisbury	1030 Marine Road	Salisbury	MD	21801
T-52-MD-1568	Support Terminals Operating LP	1134 Marine Road	Salisbury	MD	21801
T-52-MD-1570	S T Services Andrews AFB	c/o 89th Supply Squadron/LGSS	Andrews AFB	MD	20331
T-52-MD-1571	Delmarva Oil Co.	Fitzwater St. Extended	Salisbury	MD	21803
T-01-ME-1000	Mobil Oil Bangor	730 Lower Main Street	Bangor	ME	04401
T-01-ME-1001	Sprague Energy—South Portland	5 Central Avenue	South Portland	ME	04106
T-01-ME-1002	Coldbrook Energy, Inc.	809 Main Road No	Hampden	ME	04444
T-01-ME-1003	Sprague Energy So. Portland	59 Main Street	South Portland	ME	04106
T-01-ME-1004	Mobil Oil Portland	170 Lincoln Street	South Portland	ME	04106
T-01-ME-1006	Irving Oil Searsport	Station Ave	Searsport	ME	04974
T-01-ME-1008	Gulf Oil South Portland	175 Front St	South Portland	ME	04106
T-01-ME-1009	Cargill Inc.	One Clarks Road	South Portland	ME	04106
T-01-ME-1010	Motiva Enterprises LLC	102 Mechanic Street	South Portland	ME	04106
T-01-ME-1011	Webber Oil Bangor	700 Main St	Bangor	ME	04401
T-01-ME-1012	Webber Tanks Buckport	Drawer CC River Road	Bucksport	ME	04416
T-01-ME-1013	Webber Tanks Brewer	225 South Main	Brewer	ME	04412
T-38-MI-3001	Amoco Oil Cheyboygan	311 Coast Guard Drive	Cheyboygan	MI	49721
T-38-MI-3004	Amoco Oil Napoleon	6777 Brooklyn Road	Napoleon	MI	49261
T-38-MI-3005	Amoco Oil River Rouge	205 Marion Street	River Rouge	MI	48218
T-38-MI-3006	Amoco Oil Taylor	8625 South Inkster Rd.	Taylor	MI	48180
T-38-MI-3007	B P Oil Taylor	24801 Ecorse Rd	Taylor	MI	48180
T-38-MI-3008	CITGO Ferrysburg	524 Third Street	Ferrysburg	MI	49409
T-38-MI-3009	CITGO Jackson	2001 Morrill Rd	Jackson	MI	49201
T-38-MI-3010	CITGO Niles	2233 South Third	Niles	MI	49120
T-38-MI-3011	MAPLLC Niles	2140 South Third St.	Niles	MI	49120
T-38-MI-3012	Cousins Petroleum Taylor	7965 Holland	Taylor	MI	48180
T-38-MI-3013	Equilon Enterprises LLC	17806 North Shore Dr.	Ferrysburg	MI	49409
T-38-MI-3015	MAPLLC Detroit	12700 Toronto St.	Detroit	MI	48217
T-38-MI-3016	MAPLLC Flint	6065 North Dort Highway	Mt. Morris	MI	48458

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-38-MI-3017	MAPLLC Jackson	2090 Morrill Rd	Jackson	MI	49201
T-38-MI-3019	MAPLLC Oil Niles	2216 South Third Street	Niles	MI	49120
T-38-MI-3020	MAPLLC N. Muskegon	3005 Holton Rd	North Muskegon	MI	49445
T-38-MI-3022	Mobil Oil Flint	G5340 North Dort Highway	Flint	MI	48505
T-38-MI-3023	Mobil Oil Niles	2150 South Third Street	Niles	MI	49120
T-38-MI-3024	Mobil Oil Woodhaven	20755 West Road	Woodhaven	MI	48183
T-38-MI-3025	Equilon Enterprises LLC	700 Deacon	Detroit	MI	48217
T-38-MI-3027	Equilon Enterprises LLC	2103 Morrill Rd.	Jackson	MI	49201
T-38-MI-3028	Equilon Enterprises LLC	325.5 Fulkerson Rd.	Niles	MI	49120
T-38-MI-3029	Sun Company Inc—Owosso	4004 West Main Rd	Owosso	MI	48867
T-38-MI-3030	Sun River Rouge	500 South Dix Avenue	Detroit	MI	48217
T-38-MI-3031	MAPLLC—Alma	1925 East Superior St	Alma	MI	48802
T-38-MI-3032	MAPLLC-Bay City	1806 Marquette	Bay City	MI	48706
T-38-MI-3033	MAPLLC- Lansing	6300 West Grand River	Lansing	MI	48906
T-38-MI-3034	MAPLLC-Romulus	28001 Citrin Drive	Romulus	MI	48174
T-38-MI-3035	MAPLLC-Traverse City	13544 W Bayshore Dr	Traverse City	MI	49684
T-38-MI-3036	MAPLLC-Bay City	5011 Wilder Road	Bay City	MI	48706
T-38-MI-3037	Leemon Oil Co., Inc.	29120 Wick Road	Romulus	MI	48174
T-38-MI-3039	Delta Fuels Of Michigan	40600 Grand River	Novi	MI	48374
T-38-MI-3041	Quality Oil Company	630 Ottawa Avenue	Holland	MI	49423
T-38-MI-3042	MAPLLC Detroit	22970 Ecorse Road	Taylor	MI	48180
T-38-MI-3043	Equilon Enterprises LLC	12451 Old US 27	Marshall	MI	49068
T-38-MI-3044	Clark Refining and Marketing	8000 S Beech Daly Rd	Taylor	MI	48180
T-41-MN-3400	Amoco Oil Moorhead	1101 Southeast Main	Moorhead	MN	56560
T-41-MN-3401	Amoco Oil Sauk Centre	1 Mile W on County Rd 72	Sauk Centre	MN	56378
T-41-MN-3402	Amoco Oil Spring Valley	2 Miles East of U S 16	Spring Valley	MN	55975
T-41-MN-3403	Amoco Oil Twin Cities	2288 West County Road C	Roseville	MN	55113
T-41-MN-3404	MAPLLC Refinery St. Paul	100 West Third Street	St. Paul Park	MN	55071
T-41-MN-3405	Conoco Wrenshall	10 Broadway Street	Wrenshall	MN	55797
T-41-MN-3406	Erickson Petroleum Newport	50 21st St	Newport	MN	55055
T-41-MN-3407	Koch Petroleum Group-Pine Bend	Junction Highways 52 & 55	St. Paul	MN	55164
T-41-MN-3410	Murphy Oil-Esko	5746 Old Hwy 61	Esko	MN	55733
T-41-MN-3412	Williams Pipe Line Alexandria	709 3rd Ave W	Alexandria	MN	56308
T-41-MN-3413	Williams Pipe Line Mankato	Rural Route Nine	Mankato	MN	56001
T-41-MN-3414	Williams Pipe Line Marshall	Route Four	Marshall	MN	56258
T-41-MN-3415	Williams Pipe Line Roseville	2451 W County Rd C	Roseville	MN	55113
T-41-MN-3416	Williams Pipe Line Rochester	1331 Hwy 42 SE	Eyota	MN	55934
T-41-MN-3418	ST Services Winona	1020 E. 2nd St.	Winona	MN	55987
T-43-MO-3700	Conoco Belle	Highway 28 South	Belle	MO	65013
T-43-MO-3701	JD Streett St Louis	3800 S. 1st St.	St Louis	MO	63118
T-43-MO-3702	Texon LP	19905 St. Hwy. 114	Dexter	MO	63841
T-43-MO-3703	Ayers Oil Company—Canton	Fourth & Grant	Canton	MO	63435
T-43-MO-3704	Transmontaigne Terminaling Inc.	1400 S Giboney	Cape Girardeau	MO	63701
T-43-MO-3705	TEPPCO Cape Girardeau	Rural Route 2, Hwy N	Scott City	MO	63780
T-43-MO-3706	Sinclair Pipeline Carrollton	S Main & 24 Business Route	Carrollton	MO	64633
T-43-MO-3707	Williams Pipeline Carthage	18195 County Rd. 138	Jasper	MO	64755
T-43-MO-3708	Williams Pipeline Columbia	5531 South Hwy 63	Columbia	MO	65201
T-43-MO-3709	Phillips 66 Jefferson City	2116 Idlewood	Jefferson City	MO	65109
T-43-MO-3710	Conoco Kansas City	6699 NW Riverpark Drive	Parkville	MO	64152
T-43-MO-3712	Sinclair Pipeline Mexico	Highway 54 East	Mexico	MO	65265
T-43-MO-3713	Conoco Mount Vernon	Rt. 2 Box 115	Mount Vernon	MO	65712
T-43-MO-3714	Artco North	3854 South 1st. St.	St. Louis	MO	63118
T-43-MO-3715	Sinclair Pipeline New Madrid	211 Water Street	New Madrid	MO	63869
T-43-MO-3716	Williams Pipeline Palmyra	6 mi North on Highway 61	Palmyra	MO	63461
T-43-MO-3718	Williams Pipeline Springfield	3132 S. State Hwy MM	Brookline	MO	65619
T-43-MO-3719	J D Street River Plant	1 River Road	St Louis	MO	63125
T-43-MO-3720	Amoco Oil Sugar Creek	1000 North Sterling	Sugar Creek	MO	64054
T-43-MO-3721	Williams Pipeline St Charles	4695 South Service Road	St Peter	MO	63376
T-43-MO-3722	Ogden Aviation Services	10735 Lambert International	St. Louis	MO	63145
T-43-MO-3723	Ogden Aviation Service	217 Burn	Kansas City	MO	64153
T-43-MO-3725	Equilon Enterprises LLC	239 E. Prairie St.	St. Louis	MO	63147
T-43-MO-3726	Equilon Enterprises LLC	4070 South First Street	St Louis	MO	63118
T-43-MO-3727	Transmontaign Terminaling Inc.	15376 Hwy 96	Mount Vernon	MO	65712
T-43-MO-3728	Sinclair Oil Corp—Carrollton	RR4, Box 48	Carrollton	MO	64633
T-64-MS-2400	Munro Petroleum Biloxi	540 Bayview Avenue	Biloxi	MS	39533
T-64-MS-2401	Chevron USA Collins	Old Highway 49 South	Collins	MS	39428
T-64-MS-2402	Exxon USA Collins	31 Kola Road	Collins	MS	39428
T-64-MS-2403	B P Oil Collins	First Avenue South	Collins	MS	39428
T-64-MS-2404	Motiva Enterprises LLC	49 So. & Kola Rd.	Collins	MS	39428
T-64-MS-2405	TransMontaigne Terminaling, Inc.	First Avenue South	Collins	MS	39428
T-64-MS-2406	Greenville Republic Terminal	310 Walthall Street	Greenville	MS	38701
T-64-MS-2408	Transmontainge Terminaling—Greenville.	208 Short Clay Street	Greenville	MS	38701

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-64-MS-2409	Southland Oil Lumberton	5 Mi North of Lumberton Hwy 11	Lumberton	MS	39455
T-64-MS-2410	Amoco Oil Meridian	181 65th Avenue	Meridian	MS	39307
T-64-MS-2411	MEG, Inc.	101 65th Avenue	Meridian	MS	39301
T-64-MS-2412	CITGO Meridian	180 65th Avenue	Meridian	MS	39305
T-64-MS-2413	B P Oil Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2414	Motiva Enterprises LLC	6540 N. Frontage Rd.	Meridian	MS	39301
T-64-MS-2415	TransMontaigne Terminaling, Inc.	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2416	Chevron USA Pascagola	Industrial Road State Hwy 611	Pascagoula	MS	39568
T-64-MS-2417	TransMontaigne Terminaling, Inc.	US Hwy. 11	Purvis	MS	39475
T-64-MS-2418	Southland Oil Sandersville	2 mi N on Hwy 11 PO Drawer A	Sandersville	MS	39477
T-64-MS-2419	CITGO Vicksburg	1585 Haining Rd	Vicksburg	MS	39180
T-72-MS-2421	Delta Terminal—Greenville	2181 Harbor Front	Greenville	MS	38701
T-72-MS-2422	Meiko Terminal	20096 Norm Connell Drive	Aberdeen	MS	39730
T-81-MT-4000	Conoco Billings	23rd & Fourth Ave South	Billings	MT	59107
T-81-MT-4001	Conoco Bozeman	316 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4002	Conoco Great Falls	1401 52nd N	Great Falls	MT	59405
T-81-MT-4003	Conoco Helena	3180 Highway 12 East	Helena	MT	59601
T-81-MT-4004	Conoco Missoula	3330 Raser Drive	Missoula	MT	59802
T-81-MT-4005	CENEX Laurel	P O Box 909	Laurel	MT	59044
T-81-MT-4006	CENEX Glendive	P O Box 240	Glendive	MT	59330
T-81-MT-4007	Exxon USA Billings	Lockwood Frontage Rd	Billings	MT	59101
T-81-MT-4008	Exxon USA Bozeman	220 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4009	Exxon USA Helena	3120 Highway 12 Easst	Helena	MT	59601
T-81-MT-4010	Exxon USA Missoula	3350 Raser Drive	Missoula	MT	59801
T-81-MT-4011	Montana Refining Great Falls	1900 10th Street	Great Falls	MT	59403
T-56-NC-2000	Exxon Corporation	6801 Freedom Dr	Charlotte	NC	28208
T-56-NC-2001	CITGO Petroleum Corp.	7800 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2002	MAPLLC	8035 Mt. Holly Rd.	Charlotte	NC	28214
T-56-NC-2003	Crown Central Petroleum-Charlotte	7720 Mount Holly Rd.	Charlotte	NC	28214
T-56-NC-2004	Phillips Pipeline Co.	502 Tom Sadler Rd.	Charlotte	NC	28130
T-56-NC-2005	Motiva Enterprises LLC	6851 Freedom Dr.	Charlotte	NC	28214
T-56-NC-2006	Southern Facilities	7145 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2007	Motiva Enterprises LLC	410 Tom Sadler Rd.	Charlotte	NC	28130
T-56-NC-2008	Southeast Terminal	7401 Old Mount Holly Road	Charlotte	NC	28214
T-56-NC-2009	Motiva Enterprises LLC	992 Shaw Mill Road	Fayetteville	NC	28303
T-56-NC-2010	TransMontaigne	6907B West Market Street	Greensboro	NC	27409
T-56-NC-2011	Williams Group 2	7109 West Market Street	Greensboro	NC	27409
T-56-NC-2012	MAPLLC Greensboro	6311 Burnt Poplar Road	Greensboro	NC	27409
T-56-NC-2013	Triad Terminal II	2101 West Oak St.	Selma	NC	27576
T-56-NC-2014	Exxon USA Greensboro	6907 West Market Street	Greensboro	NC	27409
T-56-NC-2015	Triad Terminal	6376 Burnt Poplar Rd	Greensboro	NC	27409
T-56-NC-2016	Atlantic Aero, Inc.	6423 Bryan Blvd.	Greensboro	NC	27425
T-56-NC-2018	Triad Terminal Selma	2200 West Oak St.	Selma	NC	27576
T-56-NC-2019	Apex Oil	6900 West Market St	Greensboro	NC	27409
T-56-NC-2020	Southern Facilities	115 Chimney Rock Road	Greensboro	NC	27409
T-56-NC-2021	Motiva Enterprises LLC	101 S. Chimney Rock Rd.	Greensboro	NC	27419
T-56-NC-2022	TransMontaigne	6801 West Market Street	Greensboro	NC	27409
T-56-NC-2023	TransMontaigne	7615 Old Mount Holly Road	Charlotte	NC	28214
T-56-NC-2024	Williams Energy	7924 Mt. Holly Rd	Charlotte	NC	28214
T-56-NC-2025	Crown	2999 W. Oak St.	Selma	NC	27576
T-56-NC-2026	Valero Marketing	7325 Old Mount Holly Rd.	Charlotte	NC	28214
T-56-NC-2027	Motiva Enterprises LLC	2232 Ten-Ten. Road	Apex	NC	27502
T-56-NC-2028	TransMontaigne	West State Road 1929	Selma	NC	27576
T-56-NC-2029	B P Oil	Buffalo Road	Selma	NC	27576
T-56-NC-2030	CITGO	State Hwy 1003 and Oak St Ext	Selma	NC	27576
T-56-NC-2031	Exxon USA	2555 West Oak Street	Selma	NC	27576
T-56-NC-2032	Airport Group International, Inc.	6502 Old Dowd Rd.	Charlotte	NC	28219
T-56-NC-2033	Valero Marketing	4383 Buffaloe Road	Selma	NC	27576
T-56-NC-2034	Phillips	4086 Buffalo Road	Selma	NC	27576
T-56-NC-2036	Southern Facilities	4414 Buffalow Road	Selma	NC	27576
T-56-NC-2037	Amerada Hess	1312 S Front St.	Wilmington	NC	28401
T-56-NC-2039	CTI of North Carolina Inc	1002 S. Front Street	Wilmington	NC	28402
T-56-NC-2041	Koch Petroleum	3325 River Road	Wilmington	NC	28412
T-56-NC-2042	Koch Petroleum	3334 River Rd.	Wilmington	NC	28412
T-56-NC-2043	Apex Oil	3314 River Road	Wilmington	NC	28403
T-45-ND-3500	Williams Pipeline Grand Forks	3930 Gateway Drive	Grand Forks	ND	58203
T-45-ND-3501	Williams Pipe Line Fargo	902 Main Avenue East	West Fargo	ND	58078
T-45-ND-3502	Amoco Oil Jamestown	10 Mi West on I-94 Stand Spur	Jamestown	ND	58401
T-45-ND-3503	Kaneb Pipe Line Jamestown	3790 Hwy 281 SE	Jamestown	ND	58401
T-45-ND-3504	CENEX Minot	700 Second Street SW	Minot	ND	58701
T-45-ND-3505	Amoco Oil Mandan		Mandan	ND	58554
T-47-NE-3600	Kaneb Pipe Line Columbus	Highway 30	Columbus	NE	68601

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-47-NE-3601	Kaneb Pipe Line Geneva	U S Highway 81	Geneva	NE	68361
T-47-NE-3602	Williams Pipe Line Doniphan	12275 South US Hwy 281	Doniphan	NE	68832
T-47-NE-3603	Conoco Lincoln Products	Route 1	Roca	NE	68430
T-47-NE-3605	Williams Pipe Line Lincoln	2000 Saltillo Road	Roca	NE	68430
T-47-NE-3606	Kaneb Pipe Line Norfolk	Highway 81	Norfolk	NE	68701
T-47-NE-3607	Kaneb Pipe Line North Platt	Rural Route Four	North Platte	NE	69101
T-47-NE-3608	Williams Pipe Line Omaha	Seventh & Yates Street	Omaha	NE	68103
T-47-NE-3609	Conoco Pipeline Sidney	Rural Route 1	Sidney	NE	69162
T-47-NE-3610	Kaneb Pipe Line Osceola	Rural Route 1	Osceola	NE	68651
T-02-NH-1050	Sprague Energy Newington	Spaulding Tpk. River Rd.	Newington	NH	03801
T-02-NH-1054	Sprague Energy Portsmouth	Gosseling Rd.	Portsmouth	NH	03801
T-02-NH-1056	Irving Oil Corp. Mainway	50 Preble Way	Portsmouth	NH	03801
T-04-NH-1057	Sprague Energy Newington	Avery Lane	Newington	NH	03801
T-22-NJ-1500	Amerada Hess—Bayonne	Lower Hook Road	Bayonne	NJ	07002
T-22-NJ-1501	Coastal Oil Bayonne	Foot of East Fifth Street	Bayonne	NJ	07002
T-22-NJ-1502	Amerada Hess—Newark Delanny	1111 Delanny St.	Newark	NJ	07105
T-22-NJ-1505	Amerada Hess—Bogota	238 West Fort Lee Road	Bogota	NJ	07503
T-22-NJ-1506	Amoco Oil Carteret Terminal	760 Roosevelt Avenue	Carteret	NJ	07008
T-22-NJ-1508	Amerada Hess—Edgewater	615 River Road	Edgewater	NJ	07020
T-22-NJ-1511	Koch Petroleum Group-Gloucester	Across Delaware River from PA	Gloucester City	NJ	08030
T-22-NJ-1512	Tosco Tremley PT	Foot of Southwood Ave	Linden	NJ	07036
T-22-NJ-1513	CITGO Linden	4801 South Wood Avenue	Linden	NJ	07036
T-22-NJ-1514	Bayway Refining Co	1100 US Highway One	Linden	NJ	07036
T-22-NJ-1515	Gulf Oil Linden	2600 Marshes Dock Road	Linden	NJ	07036
T-22-NJ-1516	Mobil Oil Linden	South Wood Avenue	Linden	NJ	07036
T-22-NJ-1518	Amerada Hess—Newark Doremus	148-182 Doremus Ave.	Newark	NJ	07105
T-22-NJ-1519	B P Oil Newark	Building 350 Coastel St	Port Newark	NJ	07114
T-22-NJ-1520	Getty Terminal Newark	86 Doremus Rd	Newark	NJ	07105
T-22-NJ-1521	Motiva Enterprises LLC	909 Delaney Street	Newark	NJ	07105
T-22-NJ-1522	Stratus Petroleum Newark	678 Doremus Ave	Newark	NJ	07105
T-22-NJ-1523	Sun Newark	436 Doremus Avenue	Newark	NJ	07105
T-22-NJ-1524	B P Oil Paulsboro	303 Mantua Avenue	Paulsboro	NJ	08066
T-22-NJ-1525	GATX Terminals Paulsboro	3rd St & Billingsport Road	Paulsboro	NJ	08066
T-22-NJ-1526	Valero Refining Company—New Jersey.	800 Billingsport	Paulsboro	NJ	08066
T-22-NJ-1528	Amerada Hess—Pennsauken	One Derousse Avenue	Pennsauken	NJ	08110
T-22-NJ-1530	Amerada Hess—Perth Amboy	State Street	Perth Amboy	NJ	08861
T-22-NJ-1531	Chevron USA Perth Amboy	1200 State St	Perth Amboy	NJ	08861
T-22-NJ-1533	CITGO Petty's Island	Route 36 & Deleware River	Pennsauken	NJ	08110
T-22-NJ-1534	Sun Piscataway	1028 Stelton Road	Piscataway	NJ	08854
T-22-NJ-1535	Amerada Hess—Port Reading	Cliff Road	Port Reading	NJ	07064
T-22-NJ-1536	Amerada Hess—Secaucus	35 Meadowlands Parkway	Secaucus	NJ	07094
T-22-NJ-1537	Motiva Enterprises, LLC—Sewaren	115 State Street	Sewaren	NJ	07077
T-22-NJ-1538	Motiva Enterprises LLC—Sewaren	111 State Street	Sewaren	NJ	07077
T-22-NJ-1540	Gulf Oil Thorofare	358 Kings Highway	Thorofare	NJ	08086
T-22-NJ-1542	Mobil Oil Trenton	2785 Lamberton Road	Trenton	NJ	08611
T-22-NJ-1544	Coastal Eagle Point Westville	U S Route 130	South Westville	NJ	08093
T-22-NJ-1545	Amerada Hess—Woodbridge	Smith Street & Convery Blvd.	Perth Amboy	NJ	08861
T-22-NJ-1547	Duck Island Terminal Inc.	1463 Lamberton Road	Trenton	NJ	08677
T-22-NJ-1548	SLF, Inc. T/a Consumers Oil	1473 Lamberton Road	Trenton	NJ	08611
T-85-NM-4251	Chevron USA Albuquerque	3200 Broadway SE within city	Albuquerque	NM	87105
T-85-NM-4252	Conoco Albuquerque	4036 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4253	Diamond Albuquerque	6348 State Road 303 SW	Albuquerque	NM	87105
T-85-NM-4254	Phillips 66 Albuquerque	6356 State Road 47 S W	Albuquerque	NM	87105
T-85-NM-4255	Giant Industries—Albuquerque	3209 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4256	Navajo Refining Artesia	US Highway 82, Drawer 159	Artesia	NM	88210
T-85-NM-4257	Giant Refining—Bloomfield	# 50 County Road 4990	Bloomfield	NM	87413
T-85-NM-4258	Giant Refining—Ciniza	I-40 Exit 39	Jamestown	NM	87347
T-85-NM-4259	S T Services Alamogordo	6026 Hwy 54 South	Alamogordo	NM	88310
T-86-NM-4250	Navajo Refining Co.	170 Rd. 4980	Bloomfield	NM	87413
T-86-NM-4261	USA Petroleum Southwest Terminal.	U.S. 10 & NM St. Rd. 29	Road Forks	NM	88045
T-86-NM-4262	Navajo Refining Company	1001 E. Martinez	Moriarty	NM	87035
T-88-NV-4350	Calnev Pipe Line Las Vegas	5049 N Sloan	Las Vegas	NV	89115
T-88-NV-4353	Kinder Morgan—Sparks	301 Nugget Avenue	Sparks	NV	89431
T-88-NV-4354	Shore Terminals LLC	525 Nugget Avenue	Sparks	NV	89431
T-88-NV-4358	Berry-Hinckley Terminal, Inc.	275 Nugget Ave	Sparks	NV	89431
T-88-NV-4359	Rebel Oil Las Vegas	5054 N Sloane Lane	Las Vegas	NV	89115
T-88-NV-4360	Berry Hinckley Terminal-Sparks	147 South Stanford Way	Sparks	NV	89431
T-11-NY-1300	Carbo Industries, Inc.	555 Doughty Blvd.	Inwood	NY	11696
T-11-NY-1301	Amoco Oil Brooklyn	125 Apollo St.	Brooklyn	NY	11222
T-11-NY-1302	Metro Terminals Brooklyn	498 Kingsland Avenue	Brooklyn	NY	11222

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-11-NY-1303	Tosco Pipeline Plainview	150 Fairchild Avenue	Plainview	NY	11803
T-11-NY-1304	Motiva Enterprises LLC	25 Paidge Ave.	Brooklyn	NY	11222
T-11-NY-1305	Mobil Oil Inwood	464 Doughty Blvd	Inwood	NY	11696
T-11-NY-1306	Lefferts Oil Terminal Inc.	31-70 College Point Blvd	Flushing	NY	11354
T-11-NY-1307	Castle Astoria	500 Mamaroneck Avenue	Harrison	NY	10528
T-11-NY-1308	Amerada Hess—Brooklyn	722 Court Street	Brooklyn	NY	11231
T-11-NY-1309	Mobil Oil Glenwood Landing	Shore & Glenwood Rd	Glenwood Landing	NY	11547
T-11-NY-1310	Tosco Pipeline Holtsville	586 Union Ave	Holtsville	NY	11742
T-11-NY-1311	Getty Terminal-Long Island	30-23 Greenpoint Ave.	Long Island City	NY	11101
T-11-NY-1312	Motiva Enterprises LLC	74 East Avenue	Lawrence	NY	11559
T-11-NY-1313	Bayside Fuel Oil Depot Corp.	One North 12th Street	Brooklyn	NY	11211
T-11-NY-1315	RAD Operating Oceanside	7 Hampton Road	Oceanside	NY	11572
T-11-NY-1316	Bayside Fuel Oil Depot Corp	510 Sackett Street	Brooklyn	NY	11214
T-11-NY-1317	Lewis Oil Port Washington	65 Shore Road	Port Washington	NY	11050
T-11-NY-1318	Tosco—Riverhead	212 Sound Shore Road	Riverhead	NY	11901
T-11-NY-1319	Tosco Pipeline East Setauket	19 Bell Meade Road	East Setauket	NY	11733
T-11-NY-1323	Ditmas Oil Associates Inc	364 Maspeth Avenue	Brooklyn	NY	11211
T-11-NY-1324	Carbo Industries Inc	1 Bay Blvd	Lawerence	NY	11559
T-11-NY-1325	Bayside Fuel Oil Corp.	1100 Grand Street	Brooklyn	NY	11211
T-11-NY-1328	Bayside Fuel Oil Depot	1776 Shore Parkway	Brooklyn	NY	11214
T-11-NY-1329	Bay Terminals of Rockaway, Inc.	75-02 Astel Blvd.	Rockaway	NY	11692
T-11-NY-1330	Lefferts Oil Terminal	Bldg. 140 JFK Inter'l Airport	Jamaica	NY	11430
T-11-NY-1331	A. R. Fuels, Inc.	2125 Mill Ave.	Brooklyn	NY	11234
T-11-NY-1332	Bayside Fuel Oil Corporation	537 Smith Street	Brooklyn	NY	11231
T-11-NY-1333	The Energy Conservation Group LLC.	DBA Skagge-Walsh	College Point	NY	11356
T-11-NY-1460	Mobil Oil Cold Spring Harbor	95 Shore Road	Cold Spring	NY	11724
T-13-NY-1352	Castle Port Morris Terminals	290 Locust Avenue	Bronx	NY	10454
T-13-NY-1353	Stuyvesant Fuel Service-Bronx	1040 East 149th Street	Bronx	NY	10455
T-13-NY-1354	Getty Terminal Bronx	4301 Boston Post Road	Bronx	NY	10466
T-13-NY-1355	Mobil Oil Port Mobil	4101 Arthur Kill Rd	Staten Island	NY	10309
T-13-NY-1356	Amoco Oil Mount Vernon	40 Canal St.	Mount Vernon	NY	10550
T-13-NY-1357	Fred M Schildwachter & Sons	1400 Ferris Place	Bronx	NY	10461
T-13-NY-1358	Meenan Peekskill	Roa Hook rd	Peekskill	NY	10566
T-13-NY-1359	Panco Equipment Corp	Main St Box 659	Stoney Point	NY	10980
T-13-NY-1360	Westmore Fuel Co Inc	2 Purdy Ave	Port Chester	NY	10573
T-13-NY-1361	West Vernon Petroleum Corp	701 S Columbus Ave	Mount Vernon	NY	10550
T-13-NY-1362	GATX Staten Island	500 Western Ave	Staten Island	NY	10302
T-13-NY-1363	A Tarricone Yonkers	91 Alexander St.	Yonkers	NY	10701
T-13-NY-1364	Commander Oil Corporation	240 East Shore Road	Great Neck	NY	11022
T-13-NY-1365	Castle North Terminals, Inc.	11 River Street	Sleepy Hollow	NY	10591
T-14-NY-1400	Agway Petroleum Albany	184 Port Rd	Albany	NY	12202
T-14-NY-1401	Cibro Petroleum Prod Albany	Port of Albany	Albany	NY	12202
T-14-NY-1402	Citgo Petroleum Corp Glenmont	495 River Road	Glenmont	NY	12077
T-14-NY-1403	Mobil Oil Albany	50 Church Street	Albany	NY	12202
T-14-NY-1404	Petroleum Fuel Albany	54 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1405	Sears Petroleum & Transport Co	Route 144 552 River Road	Glenmont	NY	12077
T-14-NY-1406	Stratus Petroleum Green Isle	1 Cegood Ave.	Green Island	NY	12183
T-14-NY-1409	Agway Petroleum Corp. Milton	Sands Ave.	Milton	NY	12547
T-14-NY-1411	Coastal Oil Newburgh	Hudson River	Newburgh	NY	12551
T-14-NY-1413	Mobil Oil Newburgh	20 River Road	Newburgh	NY	12551
T-14-NY-1414	Sun Refining New Windsor	49 River Road	New Windsor	NY	12553
T-14-NY-1415	Amerada Hess—Rensselaer	River Road E Greenbush	Rensselaer	NY	12144
T-14-NY-1416	Bray Terminals Rensselaer	50 Riverside Drive	Rensselaer	NY	12144
T-14-NY-1417	Sprague Energy Rensselaer	Riverside Avenue, PO Box 215	Rensselaer	NY	12144
T-14-NY-1418	Getty Terminal Rensselaer	49 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1420	TransMontaigne Terminaling, Inc.	58 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1421	Amerada Hess—Roseton	590 River Road	Newburgh	NY	12550
T-14-NY-1422	Effron Fuel Oil Co	154 Garden St	Poughkeepsie	NY	12601
T-16-NY-1450	Stratus Petro Baldwinsville	7431 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1451	Mobil Oil Binghamton	3301 Old Vestal Rd	Vestal	NY	13850
T-16-NY-1452	Amerada Hess—Rochester—Calm	22 Calm St.	Rochester	NY	14611
T-16-NY-1453	Coastal Oil New York, Inc.	3121 Shippers Road	Vestal	NY	13851
T-16-NY-1454	CITGO Vestal	3212 Old Vestal Road	Vestal	NY	13850
T-16-NY-1455	Sun Binghamton	4324 Watson Boulevard	Johnson City	NY	13790
T-16-NY-1456	Agway Petroleum Corp. Brewerton	Rt. 37 River Road	Brewerton	NY	13029
T-16-NY-1457	United Refining Tonawanda	4545 River Road	Tonawanda	NY	14150
T-16-NY-1458	Mobil Oil Buffalo	625 Elk St.	Buffalo	NY	14210
T-16-NY-1459	Noco Energy Corp	700 Grand Island Blvd	Tonawanda	NY	14151
T-16-NY-1461	IPT, LLC, INC.	End of Riverside Extension	Rensselaer	NY	12144
T-16-NY-1462	Agway Petroleum Corp. Geneva	West River Road	Geneva	NY	14456
T-16-NY-1463	Agway Petroleum Corp. Marcy	9586 River Road	Marcy	NY	13403

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-16-NY-1464	Amerada Hess—Marcy	9570 River Rd.	Marcy	NY	13403
T-16-NY-1465	Bray Terminals Marcy	9660 River Rd	Marcy	NY	13403
T-16-NY-1468	Agway Petroleum Rochester	754 Brooks Ave.	Rochester	NY	14619
T-16-NY-1469	Amerada Hess—Rochester Lyell	1975 Lyell Avenue	Rochester	NY	14606
T-16-NY-1470	Griffith Oil-Rochester	335 McKee Rd	Rochester	NY	14611
T-16-NY-1471	Griffith Oil Co., Inc. Big Flats	3351 Rt. 352	Big Flats	NY	14814
T-16-NY-1472	Mobil Oil Rochester	675 Brooks Avenue	Rochester	NY	14619
T-16-NY-1473	Sun Rochester	1840 Lyell Avenue	Rochester	NY	14606
T-16-NY-1474	United Refining Rochester	1075 Chili Avenue	Rochester	NY	14624
T-16-NY-1476	Amerada Hess—Warners	6700 Herman Rd.	Warners	NY	13164
T-16-NY-1480	Mobil Oil Syracuse	502 Solar Street	Syracuse	NY	13261
T-16-NY-1482	Sun Syracuse	540 Solar Street	Syracuse	NY	13204
T-16-NY-1484	Sun Tonawanda	3733 River Road	Tonawanda	NY	14150
T-16-NY-1486	Mobil Oil Utica	37 Wurz Avenue	Utica	NY	13502
T-16-NY-1487	Sears Oil Marcy Terminal	9788 River Road	Marcy	NY	13403
T-16-NY-1488	Agway Petroleum Corp. Vestal	3113 Shippers Rd.	Vestal	NY	13851
T-16-NY-1489	Amerada Hess Corp. Vestal	440 Prentice Road	Vestal	NY	13850
T-16-NY-1492	Alaskan Oil Co.—Baldwinsville	7437 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1493	Mohawk Valley Oil Co. Marcy	9678 River Road	Marcy	NY	13403
T-16-NY-1494	Alaskan Oil- Rochester	1935 Lyell Avenue	Rochester	NY	14606
T-16-NY-1495	Kingston Oil Supply-Port Ewen	North Broadway	Port Ewen	NY	12166
T-16-NY-1496	Kingston Oil Supply- Catskill	End Lower Main St.	Catskill	NY	12414
T-16-NY-1497	Walter Davenport & Son	625 Sawkill Rd.	Kingston	NY	12401
T-16-NY-1498	Riverstar—Highland	42 River Rd.	Highland	NY	12528
T-16-NY-1499	Warex Terminals Corp-Newburgh	1 South Water Street	Newburgh	NY	12550
T-31-OH-3100	MAPLLC Cincinnati	4015 River Road	Cincinnati	OH	45204
T-31-OH-3101	MAPLLC Columbus	3855 Fisher Road	Columbus	OH	43228
T-31-OH-3102	MAPLLC Heath	840 Heath Road	Heath	OH	43056
T-31-OH-3103	MAPLLC Marietta	Old Rt 7 & Moores Junction	Marietta	OH	45750
T-31-OH-3104	B P Oil Cincinnati	930 Tennessee Avenue	Cincinnati	OH	45229
T-31-OH-3105	B P Oil Columbus	303 North Wilson Road	Columbus	OH	43204
T-31-OH-3106	B P Oil Dayton	621 Brandt Pike	Dayton	OH	45404
T-31-OH-3107	Equilon Enterprises LLC	4033 Fisher Road	Columbus	OH	43228
T-31-OH-3108	B P Oil Sciotoville	106 Harding Ave	Portsmouth	OH	45662
T-31-OH-3110	ITAPCO, Inc., Marietta	RT 7 & Milerun Road	Marietta	OH	45750
T-31-OH-3111	Midwest Terminal Columbus	3866 Fisher Rd	Columbus	OH	43228
T-31-OH-3112	MAPLLC Columbus	4125 Fisher Rd	Columbus	OH	43228
T-31-OH-3113	MAPLLC Lebanon	999 West State Rt.122	Lebanon	OH	45036
T-31-OH-3114	Equilon Enterprises LLC	3651 Fisher Rd.	Columbus	OH	43228
T-31-OH-3115	Equilon Enterprises LLC	801 Brandt Pike	Dayton	OH	45404
T-31-OH-3116	Sun Columbus	3499 West Broad Street	Columbus	OH	43204
T-31-OH-3117	Sun Dayton	1708 Farr Drive	Dayton	OH	45404
T-31-OH-3118	TEPPCO Lebanon	2700 Hart Road	Lebanon	OH	45036
T-31-OH-3119	TEPPCO	3590 Yankee Rd.	Middletown	OH	45043
T-31-OH-3120	CITGO—Dublin	6433 Cosgray Road	Dublin	OH	43016
T-31-OH-3121	CITGO—Dayton	1800 Farr Drive	Dayton	OH	45404
T-31-OH-3122	Boswell Oil Company	5 W 4th St Floor 2500	Cincinnati	OH	45202
T-34-OH-3140	MAPLLC Refinery Canton	2408 Garnfrinus Rd SW	Canton	OH	44706
T-34-OH-3142	Aurora Terminal & Trans	1519 S Chillicothe Rd	Aurora	OH	44202
T-34-OH-3143	B P Oil Canton	807 Hartford Southeast	Canton	OH	44707
T-34-OH-3144	B P Oil Cleveland	4850 E 49th Street	Cuyahoga Hts	OH	44125
T-34-OH-3145	B P Oil Lorain	12545 S Avon Belden Rd	Grafton	OH	44044
T-34-OH-3146	Equilon Enterprises	817 West Vine Street	Lima	OH	45804
T-34-OH-3147	B P Oil Tiffin	197 Wall Street	Tiffin	OH	44883
T-34-OH-3148	B P Oil Toledo	2450 Hill Avenue	Toledo	OH	43607
T-34-OH-3149	Delta Fuels Toledo	1820 South Front	Toledo	OH	43605
T-34-OH-3150	Fleet Supplies	250 Mahoning Ave	Cleveland	OH	44101
T-34-OH-3151	MAPLLC Brecksville	10439 Brecksville Road	Brecksville	OH	44141
T-34-OH-3152	MAPLLC Lima	2990 South Dixie Highway	Lima	OH	45804
T-34-OH-3153	MAPLLC Oregon	4131 Seaman Road	Oregon	OH	43616
T-34-OH-3154	MAPLLC Steubenville	28371 Kingsdale Road	Steubenville	OH	43952
T-34-OH-3155	MAPLLC Youngstown	1140 Bears Den Road	Youngstown	OH	44511
T-34-OH-3157	Equilon Enterprises LLC	2201 W. Third Street	Cleveland	OH	44113
T-34-OH-3158	Equilon Enterprises LLC	1500 W. Buckeye Rd.	Lima	OH	45804
T-34-OH-3159	Sun Akron	999 Home Avenue	Akron	OH	44310
T-34-OH-3160	Sun Cleveland	3200 Independence Road	Cleveland	OH	44105
T-34-OH-3161	Sun Toledo	1601 Woodville Road	Toledo	OH	43605
T-34-OH-3162	Sun Company Youngstown	6331 Southern Boulevard	Youngstown	OH	44512
T-34-OH-3164	CITGO—Tallmadge	1595 Southeast Avenue	Tallmadge	OH	44278
T-34-OH-3165	CITGO—Oregon	1840 Otter Creek Road	Oregon	OH	43616
T-34-OH-3166	MAPLLC Bellevue	Rural Route 4	Bellevue	OH	44811
T-34-OH-3167	B P Oil Niles	1001 Youngstown Warren Rd	Niles	OH	41446

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-34-OH-3169	Equilon Enterprises LLC	2844 Summit St	Toledo	OH	43611
T-34-OH-3170	Equilon Enterprises LLC	10346 Brecksville Rd	Brecksville	OH	44141
T-34-OH-3173	TransMontaigne Terminaling	15982 U.S Rte 127 EW	Bryan	OH	43506
T-73-OK-2600	Total Petroleum Ardmore	Hwy 142 Bypass	Ardmore	OK	73401
T-73-OK-2606	Williams Pipeline Enid	1401 North 30th Street	Enid	OK	73701
T-73-OK-2608	Conoco—Jenks	Route Two	Jenks	OK	74037
T-73-OK-2609	Phillips 66 Laverne	U S 283	Laverne	OK	73848
T-73-OK-2610	Koch Hydrocarbon-Medford	US 81	Medford	OK	73759
T-73-OK-2612	Conoco Oklahoma City	4700 NE Tenth	Oklahoma City	OK	73111
T-73-OK-2613	Williams Pipeline Co Okla City	251 N Sunny Lane	Del City	OK	73117
T-73-OK-2614	Equilon Enterprises LLC	951 N. Vickie	Oklahoma City	OK	73117
T-73-OK-2616	Williams Pipeline Oklahoma Cty	1250 S High St	Oklahoma City	OK	73129
T-73-OK-2617	Conoco—Ponca City	South Highway 60	Ponca City	OK	74601
T-73-OK-2618	Sinclair Pipeline Shawnee	39101 MacArthur Road	Shawnee	OK	74802
T-73-OK-2620	Sinclair Pipeline Tulsa	1307 W 35th St	Tulsa	OK	74107
T-73-OK-2621	Sun—Tulsa	1700 South Union	Tulsa	OK	74102
T-73-OK-2622	Williams Pipeline Tulsa	2120 S 33rd Ave	Tulsa	OK	74107
T-73-OK-2623	Diamond Shamrock Turpin	Hwy 64 & Junction Rt 2	Turpin	OK	73950
T-73-OK-2624	Gary Williams Energy Corp	906 South Powell	Wynnewood	OK	73098
T-93-OR-4452	Tidewater Terminal Umatilla	535 Port Avenue	Umatilla	OR	97882
T-93-OR-4453	Toeco Coos Bay	2640 North Bayshore	Coos Bay	OR	97420
T-93-OR-4454	SFPP LP Eugene	1765 Prairie Road	Eugene	OR	97402
T-93-OR-4455	ARCO Portland Terminal	9930 NW St Helens Rd	Portland	OR	97231
T-93-OR-4456	Chevron USA Portland	5531 Northwest Doane Street	Portland	OR	97210
T-93-OR-4457	GATX Terminals Portland	11400 NW St Helen's Road	Portland	OR	97283
T-93-OR-4458	McCall Oil Portland	5480 NW Front Ave	Portland	OR	97210
T-93-OR-4459	Mobil Portland	9420 Northwest St Helen's Rd	Portland	OR	97231
T-93-OR-4460	GATX Portland	5880 NW St Helen's Road	Portland	OR	97210
T-93-OR-4461	Equilon Enterprises LLC	3800 NW St. Helen's Road	Portland	OR	97210
T-93-OR-4462	Shore Terminals LLC	9100 NW St Helen's Road	Portland	OR	97231
T-93-OR-4463	Time Oil Portland Burgard	12005 North Burgard Street	Portland	OR	97203
T-93-OR-4464	Toeco Portland	5528 Northwest Doane	Portland	OR	97210
T-23-PA-1700	Agway Petroleum Corp.—Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1701	Mobil Oil Allentown	1134 North Quebec Street	Allentown	PA	18103
T-23-PA-1702	Farm & Home Oil Co.—Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1703	Gulf Oil—Dupont	674 Suscon Rd	Pittston Township	PA	18641
T-23-PA-1704	Carlos R Leffler Inc Macungie	5088 Shippers Lane	Macungie	PA	18062
T-23-PA-1705	Petron Oil Corporation	One Ward Street	Chester	PA	19013
T-23-PA-1706	Petroleum Products—Avoca	801 Suscon Rd.	Avoca	PA	18641
T-23-PA-1707	Petroleum Products Du Pont	Suscon Road	Avoca	PA	18641
T-23-PA-1708	Carlos R Leffler Inc S Spring	Mountain Home Road	Sinking Spring	PA	19608
T-23-PA-1709	Montour Oil Service	112 Broad St	Montoursville	PA	17754
T-23-PA-1710	Sun Exton	601 East Lincoln Hwy	Exton	PA	19341
T-23-PA-1711	Sun—Fullerton	2480 Main St	Whitehall	PA	18052
T-23-PA-1713	Mobil Oil Harrisburg	5140 Paxton Street	Harrisburg	PA	17111
T-23-PA-1714	Petroleum Products Harrisburg	3300 Industrial Road	Harrisburg	PA	17110
T-23-PA-1715	Petroleum Products Harrisburg	RD #5 Texaco Drive	Mechanicsburg	PA	17055
T-23-PA-1716	Petroleum Products Highspire	900 Eisenhower Blvd	Middletown	PA	17057
T-23-PA-1717	Coastal Oil New York Inc	Sylvan Dell Rd	South Williamsport	PA	17701
T-23-PA-1718	Mobil Oil Malvern	8 South Malin Rd	Malvern	PA	19406
T-23-PA-1720	Sun Kingston	60 S Wyoming Avenue	Edwardsville	PA	18704
T-23-PA-1721	Mobil Oil Lancaster	1360 Manheim Pike	Lancaster	PA	17604
T-23-PA-1722	Sun Malvern	Lincoln Hwy & Malin Road	Malvern	PA	19355
T-23-PA-1724	Petroleum Products-Mechanicsbu	Sinclair Rd	Mechanicsburg	PA	17055
T-23-PA-1725	Gulf Oil Mechanicsburg	5125 Simpson Ferry Rd	Mechanicsburg	PA	17055
T-23-PA-1726	Sun Mechanicsburg	5145 Simpson Ferry Road	Mechanicsburg	PA	17055
T-23-PA-1727	Sun Montello	Fritztown Road	Sinking Spring	PA	19608
T-23-PA-1728	Petroleum Prod Northumberland	Rt 11 North RD 1	Northumberland	PA	17857
T-23-PA-1729	Sun Northumberland	Rt 11 North Rd 1	Northumberland	PA	17857
T-23-PA-1730	Amerada Hess—Philadelphia	1630 South 51st Street	Philadelphia	PA	19143
T-23-PA-1731	Amoco Oil Philadelphia	63rd & Passyunk Avenue	Philadelphia	PA	19153
T-23-PA-1732	Bayway Refining Co.—Phila	G Street & Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1733	Pipeline Petroleum-MaCungie	Shippers Lane	Macungie	PA	18062
T-23-PA-1734	Exxon USA Philadelphia	6850 Essington Avenue	Philadelphia	PA	19153
T-23-PA-1735	Artex Inc	Rt 54 & Lakeview Rd	Barnesville	PA	18214
T-23-PA-1736	Sun Philadelphia	2700 W Passyunk Avenue	Philadelphia	PA	19145
T-23-PA-1737	Support Terminals Operating LP	67th & Schuylkill River	Philadelphia	PA	19153
T-23-PA-1738	Pickelner Fuel Company Inc	210 Locust St	Williamsport	PA	17701
T-23-PA-1739	TravelCenters of America, Inc.	Rt 11 & Cemetary Rd.	Beach Haven	PA	18601
T-23-PA-1740	Montour Oil Service-Harrisburg	80 South 40th St.	Harrisburg	PA	17111
T-23-PA-1741	Montour Oil Service-Montoursville	Rt I-180/Warrensville	Montoursville	PA	17754
T-23-PA-1742	Petroleum Products-Sinking Spr	Mountain Home Rd	Sinking Spring	PA	19608

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-23-PA-1743	Carlos R Leffler Inc	Sylvan Dell Road	South Williamsport	PA	17701
T-23-PA-1744	Sun Tamaqua	Tuscarora State Park Rd	Tamaqua	PA	18252
T-23-PA-1745	C R Leffler Tuckerton	4030 Pottsville Pike	Reading	PA	19605
T-23-PA-1746	Sun Twin Oaks	4041 Market Street	Aston	PA	19014
T-23-PA-1747	Sun Company Inc (R&M)	9th Green St	Marcus Hook	PA	19061
T-23-PA-1748	Gulf Oil Whitehall	2451 Main Street	Whitehall	PA	18052
T-23-PA-1749	Gulf Oil Williamsport	Sylvan Dell Rd	Williamsport	PA	17703
T-23-PA-1751	Sun Willow Grove	3290 Sunset Lane	Hatboro	PA	19040
T-23-PA-1752	Berks Fuel Storage Inc-Reading	130 Whitman Road	Reading	PA	19605
T-23-PA-1753	Meenan Oil Co Tullytown	113 Main Street	Tullytown	PA	19007
T-23-PA-1754	C R Leffler New Kingston	236 Locust Pt Road	New Kingston	PA	17702
T-23-PA-1755	Major Oil-Philadelphia	501 E. Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1756	F C Haab Co Inc	Schuylkill River & Morris Rd	Philadelphia	PA	19145
T-23-PA-1757	Sun Company Inc (R&M)	Hewes Ave & Philadelphia Pike	Marcus Hook	PA	19061
T-23-PA-1758	Getty Oil—Highspire	911 Eisenhower Blvd.	Highspire	PA	17034
T-23-PA-1759	TransMontaigne Terminaling, Inc.	58th St. & Schuylkill River	Philadelphia	PA	19142
T-23-PA-1763	Two River Terminal-Duncannon	27 Chevron Drive	Duncannon	PA	17020
T-23-PA-1764	American Refining Bradford	77 North Kendall Ave.	Bradford	PA	16701
T-25-PA-1760	Buckeye Tank Term Coraopolis	520 Narrows Run Road	Coraopolis	PA	15108
T-25-PA-1761	Sun Delmont	Route 66 North	Delmont	PA	15626
T-25-PA-1762	Boswell Oil Co Dravosburg	702 Washington Avenue	Dravosburg	PA	15034
T-25-PA-1765	Petroleum Products-E. Freedom	Old Rte US 220	East Freedom	PA	16637
T-25-PA-1767	Petroleum Products Eldorado	Burns Avenue	Altoona	PA	16602
T-25-PA-1768	MAPLLC Floreffe	204 Glass House Road	Floreffe	PA	15025
T-25-PA-1769	B P Oil Greensburg	Rural Delivery 6	Greensburg	PA	15601
T-25-PA-1771	American Refining Indianola	State Route 910	Indianola	PA	15051
T-25-PA-1773	MAPLLC Petroleum-Midland	Rt. 68	Midland	PA	15059
T-25-PA-1776	Exxon USA Pittsburgh	2760 Neville Road	Pittsburgh	PA	15225
T-25-PA-1777	Gulf Oil Pittsburgh	400 Grand Ave	Pittsburgh	PA	15225
T-25-PA-1778	Gulf Oil Pittsburgh/Delmont	Route 22	Delmont	PA	15626
T-25-PA-1779	Pennzoil Products Pittsburgh	54th Street and AVRR	Pittsburgh	PA	15201
T-25-PA-1780	Motiva Enterprises LLC	Nine Thorn Street	Coraopolis	PA	15108
T-25-PA-1781	Sun Pittsburgh	5733 Butler Street	Pittsburgh	PA	15201
T-25-PA-1782	Pennzoil Products Rouseville	Two Main Street	Rouseville	PA	16344
T-25-PA-1783	United Refining Warren	15 Bradley St	Warren	PA	16365
T-25-PA-1785	Gulf Oil Altoona	6033 Sixth Avenue	ALtoona	PA	16602
T-25-PA-1788	Sun Altoona	Route 764 Sugar Run Road	Altoona	PA	16601
T-25-PA-1789	Sun Vanport	Route 68 & Division Lane	Vanport	PA	15009
T-25-PA-1790	Guttman Oil Belle Vernon	200 Speers Road	Belle Vernon	PA	15012
T-25-PA-1791	Sun Blawnox	Freeport Road & Boyd Avenue	Pittsburgh	PA	15238
T-25-PA-1792	B P Oil Coraopolis	Access State Route 51	Coraopolis	PA	15108
T-05-RI-1200	Getty Terminal Providence	Dexter Rd & Massasoit Ave	East Providence	RI	02914
T-05-RI-1201	Sprague Energy Providence	144 Allens Avenue	Providence	RI	02903
T-05-RI-1203	Capital Terminal Company	100 Dexter Road	East Providence	RI	02914
T-05-RI-1205	Motiva Enterprises LLC	520 Allens Avenue	Providence	RI	02905
T-05-RI-1207	Mobil Oil East Providence	1001 Wampanoag Trail	East Providence	RI	02915
T-06-RI-1208	Inland Fuel Terminal Inc.	25 State Ave.	Tiverton	RI	02878
T-57-SC-2050	TransMontaigne	Highway 20 North	Belton	SC	29627
T-57-SC-2051	TransMontaigne	Hwy 20 North	Belton	SC	29627
T-57-SC-2052	TransMontaigne	680 Delmar Road	Spartansburg	SC	29302
T-57-SC-2053	MAPLLC	14315 State Rt. 20	Belton	SC	29627
T-57-SC-2054	Allied Terminal	1500 Greenleaf St.	Charleston	SC	29405
T-57-SC-2059	Williams Energy	Sweet Water Road	North Augusta	SC	29841
T-57-SC-2060	Charter Terminal Co.	221 Laurel Lake Drive	North Augusta	SC	29841
T-57-SC-2061	B P Oil	221 Sweetwater Rd.	North Augusta	SC	29841
T-57-SC-2062	Phillips Pipeline	Highway 36 & Sweetwater	North Augusta	SC	29841
T-57-SC-2063	Southern Facilities	1222 Sweetwater Road	North Augusta	SC	29841
T-57-SC-2064	Amerada Hess	5150 Virginia Ave.	North Charleston	SC	29406
T-57-SC-2066	MAPLLC	5165 Virginia Ave	Charleston	SC	29406
T-57-SC-2067	TransMontaigne	Old Union Road	Spartansburg	SC	29304
T-57-SC-2068	Williams Energy	Old Union Rd Route 4	Spartansburg	SC	29304
T-57-SC-2071	Crown Central	400 Delmar Rd	Spartansburg	SC	29304
T-57-SC-2074	Phillips Pipeline	200 Nebo Street	Spartansburg	SC	29302
T-57-SC-2075	Motiva Enterprises LLC	300 Delmar Road	Spartansburg	SC	29302
T-57-SC-2076	Southern Facility	2430 Pine Street Ext	Spartansburg	SC	29302
T-57-SC-2077	CITGO Petroleum	2590 Southport Road	Spartansburg	SC	29302
T-46-SD-3550	Kaneb Pipe Line Aberdeen	Hwy 281	Aberdeen	SD	57401
T-46-SD-3551	Kaneb Pipe Line Mitchell	Hwy 38	Mitchell	SD	57301
T-46-SD-3552	Kaneb PipeLine Rapid City	3225 Eglin Street	Rapid City	SD	57701
T-46-SD-3553	Amoco Oil Sioux Falls	3751 S Grange	Sioux Falls	SD	57105
T-46-SD-3554	Williams Pipeline Sioux Falls	5300 west 12th Street	Sioux Falls	SD	57107
T-46-SD-3555	Williams Pipeline Watertown	1000 17th Street S E	Watertown	SD	57201

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-46-SD-3556	Kaneb Pipe Line Wolsey	US Hwy 14 & 281	Wolsey	SD	57384
T-46-SD-3557	Kaneb Pipe Line Yankton	Star Rte 50	Yanton	SD	57078
T-46-SD-3558	Williams Pipe Line Canton	RR #1 Box 12 A	Canton	SD	57013
T-62-TN-2200	Amoco Oil Chattanooga	4235 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2201	Chevron USA Chattanooga	4716 Bonny Oaks Drive	Chattanooga	TN	37416
T-62-TN-2202	CITGO Chattanooga	4233 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2203	Truman Arnold Memphis	1237 Riverside	Memphis	TN	38106
T-62-TN-2204	Lion Oil Nashville	90 Van Buren St	Nashville	TN	37208
T-62-TN-2205	MAPLLC Chattanooga	817 Pineville Road	Chattanooga	TN	37405
T-62-TN-2206	Louis Dreyfus Chattanooga	5800 St Elmo Avenue	Chattanooga	TN	37409
T-62-TN-2207	Benton Oil Service, Inc.	4211 Cromwell Rd.	Chattanooga	TN	37421
T-62-TN-2208	Southern Facility Chattanooga	4326 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2209	Amoco—Chattanooga	710 Manufacturers Road	Chattanooga	TN	37405
T-62-TN-2211	Amoco Oil Knoxville	5101 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2213	CITGO Knoxville	2409 Knott Road	Knoxville	TN	37921
T-62-TN-2214	Cummins Terminals Knoxville	4715 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2215	Exxon USA Knoxville	5009 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2216	B P Oil Knoxville	1908 Third Creek Road	Knoxville	TN	37921
T-62-TN-2217	MAPLLC Oil Knoxville	2601 Knott Road	Knoxville	TN	37950
T-62-TN-2218	Motiva Enterprises LLC	5001 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2219	Southern Facility Knoxville	4801 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2221	Louis Dreyfus Knoxville	1720 Island Home Avenue	Knoxville	TN	37920
T-62-TN-2225	Exxon USA Memphis	454 Wisconsin Avenue	Memphis	TN	38106
T-62-TN-2226	Lion Oil Memphis	1023 Riverside	Memphis	TN	38106
T-62-TN-2227	MAPCO Petroleum Memphis		Memphis	TN	38109
T-62-TN-2228	Petroleum Fuel Memphis	1232 Riverside	Memphis	TN	38106
T-62-TN-2231	Amoco Oil Nashville	1441 51st Avenue North	Nashville	TN	37209
T-62-TN-2232	MAPLLC Nashville	Five Main Street	Nashville	TN	37213
T-62-TN-2233	CITGO Nashville	720 South Second Street	Nashville	TN	37213
T-62-TN-2234	Cumberland Terminals Nashville	7260 Centennial Boulevard	Nashville	TN	37209
T-62-TN-2236	Exxon USA Nashville	1741 Ed Temple Blvd	Nashville	TN	37206
T-62-TN-2237	B P Oil Nashville	1409 51st Ave	Nashville	TN	37209
T-62-TN-2238	MAPLLC Nashville	2920 Old Hydes Ferry Road	Nashville	TN	37218
T-62-TN-2240	Williams Energy Ventures-Nashv	1609 63rd Avenue North	Nashvilleue North	TN	37209
T-62-TN-2241	Motiva Enterprises LLC	1717 61st & Centennial Bvld.	Nashville	TN	37209
T-62-TN-2242	Kerr-McGee Nashville	180 Anthes Avenue	Nashville	TN	37210
T-62-TN-2243	Cummins Terminal-Knoxville	5100 Middlebrook Pike	Knoxville	TN	37921
T-74-TX-2658	Mobil Oil Hearne	Highway 6 South	Hearne	TX	76705
T-74-TX-2700	Coastal Oil—Edinburg	222 W. Ingle Rd.	Edinburg	TX	78359
T-74-TX-2702	Motiva Enterprises LLC	Highway 6 South	Hearne	TX	77859
T-74-TX-2703	CITGO Victoria	1708 North Ben Jordan Blvd	Victoria	TX	77901
T-74-TX-2705	Motiva Enterprises LLC Waco	420 South Lacy drive	Waco	TX	76705
T-74-TX-2706	Koch Petroleum Group-Austin	9011 Johnny Morris Rd	Austin	TX	78724
T-74-TX-2707	Koch Petroleum Group-Waco	2017 Kendall Lane	Waco	TX	76705
T-74-TX-2709	CITGO—Brownsville	11001 R.L. Ostos Rd.	Brownsville	TX	78521
T-74-TX-2710	Equilon Enterprises LLC	6767 Gateway West	El Paso	TX	79926
T-74-TX-2711	CITGO Oil Corpus Christi	2505 N Port Ave	Corpus Christi	TX	78401
T-74-TX-2712	Age Refining, Inc.	7811 S. Presa	San Antonio	TX	78223
T-74-TX-2713	CITGO Bryan	1714 Finfeather Road	Bryan	TX	77801
T-74-TX-2715	Diamond Laredo	13380 S Unitec	Laredo	TX	78044
T-74-TX-2716	CITGO—Corpus Christi	1308 Oak Park Street	Corpus Christi	TX	78407
T-74-TX-2718	Coastal Oil Corpus Christi	1300 Cantwell	Corpus Christi	TX	78407
T-74-TX-2719	Diamond—Corpus Christi	2700 Texaco Road	Corpus Christi	TX	78403
T-74-TX-2721	Koch Petroleum Group-Corpus Christi.	2825 Suntide Road	Corpus Christi	TX	78403
T-74-TX-2724	Chevron USA El Paso	6501 Trowbridge	El Paso	TX	79905
T-74-TX-2726	Navajo Refining El Paso	1000 Eastside Road	El Paso	TX	79915
T-74-TX-2729	Diamond Harlingen	4.5 miles east on highway 106	Harlingen	TX	78550
T-74-TX-2731	Coastal Oil—Placedo	2 Mi S of Placedo Hwy 87	Placedo	TX	77977
T-74-TX-2733	Fina Oil Port Arthur Hwy 366	Highway 366 and 32nd Street	Port Arthur	TX	77640
T-74-TX-2737	CITGO—San Antonio	4851 Emil Road	San Antonio	TX	78219
T-74-TX-2738	Coastal Oil San Antonio	4719 Corner Parkway #2	San Antonio	TX	78219
T-74-TX-2739	Diamond San Antonio	10619 Highway 281 South	San Antonio	TX	78221
T-74-TX-2740	Exxon USA San Antonio	3214 North Pan Am Expressway	San Antonio	TX	78219
T-74-TX-2742	Koch Petroleum Group-San Antonio.	498 and Pop Gun	San Antonio	TX	78219
T-74-TX-2745	Motiva Enterprises LLC	510 Petroleum Drive	San Antonio	TX	78219
T-74-TX-2747	Diamond Three Rivers	301 Leroy Street	Three Rivers	TX	78071
T-74-TX-2748	Fina Oil and Chemical Co.	I-20 West Exit 278	Tye	TX	79563
T-74-TX-2749	CITGO Waco	1600 South Loop Dr	Waco	TX	76705
T-74-TX-2750	Ultramar—Diamond Shamrock	4200 J.C. Vera Montes	El Paso	TX	79936
T-75-TX-2650	Diamond Abernathy	Highway 54	Abernathy	TX	79311

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-75-TX-2651	Fina Oil Abilene	Highway 277 North	Abilene	TX	79604
T-75-TX-2652	Pride Abilene	Hwy 277 N Industrial District	Abilene	TX	79604
T-75-TX-2653	Diamond Amarillo	4200 West Cliffside	Amarillo	TX	79124
T-75-TX-2654	Phillips 66 Amarillo	4300 Cliffside Dr	Amarillo	TX	79142
T-75-TX-2655	Phillips Pipeline Company	12401 Calloway Cemetery Road	Euless	TX	76040
T-75-TX-2656	Fina Oil Big Spring	East IS-20 & Refinery Rd	Big Springs	TX	79721
T-75-TX-2657	Phillips 66 Borger	Spur 119 N	Borger	TX	79007
T-75-TX-2659	Truman Arnold Caddo Mills		Caddo Mills	TX	75505
T-75-TX-2660	Exxon USA Dallas	1201 East Airport Freeway	Irving	TX	75062
T-75-TX-2661	Williams Energy	4200 Singleton Boulevard	Dallas	TX	75212
T-75-TX-2662	Motiva Enterprises LLC	3900 Singleton Blvd.	Dallas	TX	75212
T-75-TX-2663	Ogden Aviation Co. of TX Love Field.	2734 Brookfield	Dallas	TX	75235
T-75-TX-2664	Koch Petroleum Group-Fort Worth	Highway 157 and Trinity Blvd	Euless	TX	76040
T-75-TX-2665	Pride Aledo	6000 IH20	Aledo	TX	76008
T-75-TX-2666	Chevron USA Fort Worth	2525 Brennan Street	Fort Worth	TX	76106
T-75-TX-2667	CITGO Fort Worth	301 Terminal Road	Fort Worth	TX	76106
T-75-TX-2668	Mobil Oil Fort Worth	3600 North Sylvania	Fort Worth	TX	76111
T-75-TX-2669	Motiva Enterprises LLC	3200 N. Sylvania	Fort Worth	TX	76111
T-75-TX-2671	Conoco Southlake	3100 Highway 26 West	Grapevine	TX	76051
T-75-TX-2672	Fina Oil Southlake	3000 Highway 26 West	Grapevine	TX	76051
T-75-TX-2673	Ogden Aviation Services of TX DFW.	2001 W. Airfield Dr.	DFW Airport	TX	75261
T-75-TX-2674	Phillips 66 Lubbock	Clovis Road and Flint Avenue	Lubbock	TX	79408
T-75-TX-2676	Conoco Mount Pleasant	1503 West Ferguson	Mount Pleasant	TX	75455
T-75-TX-2678	Mobil—Center	Hwy 87 South	Center	TX	75935
T-75-TX-2680	Diamond Southlake	1700 Hwy 26	Grapevine	TX	76051
T-75-TX-2681	La Gloria Oil Tyler	425 McMurry Drive	Tyler	TX	75702
T-75-TX-2682	Diamond Sunray	9 Mi NE of Dumas TX on FM 119	Sunray	TX	79086
T-75-TX-2683	Fina Oil Wichita Falls	Old Charlie & Sinclair Blvd	Wichita Falls	TX	76307
T-75-TX-2684	Conoco—Wichita Falls	1214 North Eastside	Wichita Falls	TX	76304
T-75-TX-2685	Equilon Enterprises LLC—Odessa	2700 S. Grandview	Odessa	TX	79760
T-75-TX-2686	Pride San Angelo	4008 U S Hwy 67N	San Angelo	TX	76905
T-75-TX-2687	Motiva Enterprises LLC	Farm Road 9	Waskom	TX	75692
T-75-TX-2688	Mobil Oil Waskom	9 South	Waskom	TX	75692
T-75-TX-2690	DFLP Terminal	12625 Calloway Cemetary Rd	Euless	TX	76040
T-76-TX-2780	Petro-United Terminals Bayport	11666 Port Road	Seabrook	TX	77586
T-76-TX-2782	Motiva Enterprises LLC	1320 West Shaw St.	Pasadena	TX	77501
T-76-TX-2783	Motiva Enterprises LLC	9406 West Port Arthur Rd	Beaumont	TX	77705
T-76-TX-2784	Chevron USA Product Co. Big Sandy.	Highway 155 and Sabine River	Big Sandy	TX	75755
T-76-TX-2785	Motiva Enterprises LLC	401 West 19th Street	Port Arthur	TX	77640
T-76-TX-2787	UNOCAL Beaumont	Hwy 366	Nederland	TX	77627
T-76-TX-2788	GATX Galena Park	906 Clinton Drive	Galena Park	TX	77547
T-76-TX-2789	Chevron USA Galena Park	12523 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2791	Specified Fuels and Chemicals LLC	1201 S Sheldon Rd	Channelview	TX	77530
T-76-TX-2792	Amerada Hess—Galena Park	12901 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2793	Coastal Refining & Marketing	8376 Monroe	Houston	TX	77061
T-76-TX-2794	CITGO Houston	12325 North Fwy at Greens Rd	Houston	TX	77060
T-76-TX-2795	Coastal Oil Houston	11650 Almeda Road Loop 610	Houston	TX	77045
T-76-TX-2796	Intercoastal Terminal, Inc.	159 Levee Rd.	Texas City	TX	77590
T-76-TX-2797	J A M Distributing Co.	7010 Myrawa	Houston	TX	77033
T-76-TX-2798	Mobil Oil Beaumont	Route 4	Beaumont	TX	77705
T-76-TX-2799	Jetera Fuels Houston	17617 Aldine-Westfield Road	Houston	TX	77073
T-76-TX-2800	Lyondell-CITGO Refining	12000 Lawndale	Houston	TX	77002
T-76-TX-2801	Fina Oil Port Arthur 32nd	Hwy 366 & 32nd St	Port Arthur	TX	77642
T-76-TX-2802	Oil Tanking Houston, Inc.	15602 Jacinto Port Blvd.	Houston	TX	77015
T-76-TX-2803	Motiva Enterprises LLC	2661 Stevens Street	Houston	TX	77226
T-76-TX-2805	Petroleum Wholesale, Inc.	1801 Collingsworth	Houston	TX	77099
T-76-TX-2806	Valero Refining Co.—Texas (Houston).	9701 Manchester	Houston	TX	77262
T-76-TX-2808	Exxon USA North Houston	8700 North Freeway	Houston	TX	77037
T-76-TX-2809	GATX Pasadena	530 North Witter	Pasadena	TX	77506
T-76-TX-2811	Phillips Pipeline Pasadena	100 Jefferson Street	Pasadena	TX	77501
T-76-TX-2812	Exxon USA South Houston	10501 East Almeda	Houston	TX	77051
T-76-TX-2813	Phillips 66 Sweeny	Hwys 35 & 36 at West Columbia	Sweeny	TX	77480
T-76-TX-2814	S T Services Texas City	201 Dock Road	Texas City	TX	77590
T-76-TX-2815	Intercontinental Terminals Co.	1943 Battleground Rd.	Deer Park	TX	77536
T-87-UT-4200	Flying J North Salt Lake	333 West Center St	North Salt Lake	UT	84054
T-87-UT-4202	Amoco Oil Salt Lake City	474 West 900 N	Salt Lake City	UT	84103
T-87-UT-4203	Chevron USA Salt Lake City	2351 North Tenth West	Salt Lake City	UT	84110
T-87-UT-4204	Conoco Pipeline Co.	245 East 1100 North	North Salt Lake City	UT	84054

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-87-UT-4205	Cryseen Refining Woods Cross	2355 South 1100 West	Woods Cross	UT	84087
T-87-UT-4206	Phillips 66 Woods Cross	393 South 800 West	Woods Cross	UT	84087
T-54-VA-1650	Amerada Hess Corporation	4030 Buell Street	Chesapeake	VA	23324
T-54-VA-1651	Center Point Terminal Co.	428 Barnes Road	Chesapeake	VA	23324
T-54-VA-1652	CITGO Petroleum Corporation	110 Freeman Street	Chesapeake	VA	23324
T-54-VA-1653	Allied Terminals, Inc.	502 Hill Street	Chesapeake	VA	23324
T-54-VA-1654	Exxon USA	4115 Buell Street	Chesapeake	VA	23324
T-54-VA-1656	TransMontaigne Terminaling, Inc.	7600 Halifax Lane	Chesapeake	VA	23324
T-54-VA-1657	Kinder Morgan Operating LP A	3302 Deepwater Terminal Rd	Richmond	VA	23234
T-54-VA-1658	S T Services Dumfries	18000 Cockpit Point Road	Dumfries	VA	22026
T-54-VA-1659	Amoco Oil Fairfax	9601 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1660	Global Petro	3790 Pickett Road	Fairfax	VA	22031
T-54-VA-1661	CITGO Fairfax	9600 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1662	Motiva Enterprises LLC	3800 Pickett Road	Fairfax	VA	22030
T-54-VA-1663	Mobil Oil Manassas	10315 Balleford Road	Manassas	VA	23109
T-54-VA-1664	TransMontaigne Terminaling, Inc.	Route 460	Montvale	VA	24122
T-54-VA-1665	Amoco Petroleum—Montvale	1070 Oil Terminal Rd	Montvale	VA	24122
T-54-VA-1666	Chevron Products Co—Montvale	1147 Oil Terminal Rd	Montvale	VA	24122
T-54-VA-1667	IMTT-Chesapeake	2801 S. Military Hwy.	Chesapeake	VA	23323
T-54-VA-1668	Williams Energy Ventures, Inc.	U S Highway 460, PO Box 113	Montvale	VA	24122
T-54-VA-1669	Koch Petroleum Group-Newport News.	801 Terminal Ave	Newport News	VA	23607
T-54-VA-1670	Crown Central Newington	8211 Terminal Road	Newington	VA	22122
T-54-VA-1671	Exxon USA Newington	8200 Terminal Road	Newington	VA	22122
T-54-VA-1672	Kinder Morgan Operating LP A	413 Bickerstaff Rd	Richmond	VA	23231
T-54-VA-1673	Crown Central Petroleum Corp.	801 Butt Street	Chesapeake	VA	23324
T-54-VA-1674	Mobil Oil Norfolk	Halifax Lane	Chesapeake	VA	23324
T-54-VA-1675	Quarles Energy Services	8219 Terminal Rd.	Newington	VA	22122
T-54-VA-1676	BP Air-Wash. Dulles Bulk Fuel Storage.	Rt. 28, Gate 4	Dulles	VA	20166
T-54-VA-1677	BP-Amoco Oil Richmond	1636 Commerce Road	Richmond	VA	23224
T-54-VA-1678	Chevron USA Richmond	700 Goodes Street	Richmond	VA	23224
T-54-VA-1679	CITGO Richmond	Third & Maury Street	Richmond	VA	23224
T-54-VA-1680	Crown Central Richmond	4405 E Main	Richmond	VA	23231
T-54-VA-1681	Exxon-Mobile USA Richmond	2000 Trenton Avenue	Richmond	VA	23234
T-54-VA-1682	First Energy Corporation	Second & Maury Streets	Richmond	VA	23224
T-54-VA-1683	Koch Petroleum Group-Richmond	4110 Deepwater Terminal Road	Richmond	VA	23234
T-54-VA-1684	Williams Energy Ventures-Richm	204 East First Avenue	Richmond	VA	23224
T-54-VA-1685	Motiva Enterprises LLC	5801 Petersburg Pike	Richmond	VA	23234
T-54-VA-1687	TransMontaigne Terminaling, Inc.	1314 Commerce Road	Richmond	VA	23224
T-54-VA-1688	Exxon USA Roanoke	835 Hollins Road Northeast	Roanoke	VA	24012
T-54-VA-1689	MAPLLC Oil Roanoke	5287 Terminal Road	Roanoke	VA	24014
T-54-VA-1690	Motiva Enterprises LLC	5280 Terminal Road SW	Roanoke	VA	24014
T-54-VA-1691	Motiva Enterprises LLC	U.S. Highway 460	Montvale	VA	24122
T-54-VA-1692	Motiva Enterprises LLC	8206 Terminal Road	Lorton	VA	22079
T-54-VA-1693	S T Services Virginia Beach	3925 North Landing Road	Virginia Beach	VA	23456
T-54-VA-1694	Amoco Oil Yorktown	Route 73 East Entrance	Yorktown	VA	23690
T-54-VA-1696	IMTT- Richmond, VA	5501 Old Osborne Turnpike	Richmond	VA	23231
T-91-WA-4400	Equilon Enterprises LLC	Marches Point Five Miles	Anacortes	WA	98221
T-91-WA-4401	Conoco Pipeline Co.	3 miles north of Moses Lake	Moses Lake	WA	98837
T-91-WA-4402	Northwest Terminaling Pasco	3000 Sacajawea Park Road	Pasco	WA	99301
T-91-WA-4404	Tosco Northwest Renton	2423 Lind Avenue Southwest	Renton	WA	98055
T-91-WA-4406	GATX Seattle	1733 Alaskan Way South	Seattle	WA	98134
T-91-WA-4408	Equilon Enterprises LLC	2555 13th Ave. S W	Seattle	WA	98134
T-91-WA-4409	Time Oil Seattle	2737 West Commodore Way	Seattle	WA	98199
T-91-WA-4410	Conoco Pipeline Co.	6317 East Sharp Avenue	Spokane	WA	99206
T-91-WA-4411	Exxon USA Spokane	6311 East Sharp Avenue	Spokane	WA	99211
T-91-WA-4412	Tosco Northwest Spokane	3225 East Lincoln Road	Spokane	WA	99207
T-91-WA-4413	Tosco Northwest Tacoma	520 E D Street	Tacoma	WA	98421
T-91-WA-4414	Sound Refining Tacoma	2628 Marine View Drive	Tacoma	WA	98421
T-91-WA-4415	Shore Terminals LLC	250 East D Street	Tacoma	WA	98401
T-91-WA-4416	Equilon Enterprises LLC	7370 Linderson Way SW	Tumwater	WA	98501
T-91-WA-4417	CENEX Vancouver	5420 Fruit Valley Road	Vancouver	WA	98660
T-91-WA-4418	ARCO Cherry Point Terminal	4519 Grandview	Blaine	WA	98231
T-91-WA-4419	Tesoro Alaska Petro Vancouver	2211 West 26th Street Ext	Vancouver	WA	98660
T-91-WA-4420	Tidewater Snake River	Tank Farm Road	Pasco	WA	99301
T-91-WA-4421	US Oil & Refining Co.	3001 Marshall Ave	Tacoma	WA	98421
T-91-WA-4422	Tosco Tacoma	516 East D Street	Tacoma	WA	98421
T-91-WA-4423	Tidewater Terminal Wilma	2950 Wilma Drive	North Clarkston	WA	99403
T-91-WA-4424	Pacific Northern Oil Corp	Pier 91 Bldg 19	Seattle	WA	98119
T-91-WA-4425	ARCO Seattle Terminal	1652 SW Lander St	Seattle	WA	95124
T-91-WA-4427	Tosco Northwest Co.—Ferndale	3901 Unic Rd.	Ferndale	WA	98248

Terminal Number	Terminal Name	Terminal Address	City	State	Zip Code
T-39-WI-3061	Amoco Oil Green Bay	1124 North Broadway	Green Bay	WI	54303
T-39-WI-3062	Amoco Oil Milwaukee	9101 North 107th Street	Milwaukee	WI	53224
T-39-WI-3063	Amoco Oil Superior	2904 Winter Street	Superior	WI	54880
T-39-WI-3064	CENEX Chippewa Falls	2331 N Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3065	CENEX McFarland	4103 Triangle St	McFarland	WI	53558
T-39-WI-3066	CITGO Green Bay	1391 Bylsby Avenue	Green Bay	WI	54303
T-39-WI-3067	CITGO McFarland	4606 Terminal Drive	McFarland	WI	53558
T-39-WI-3068	CITGO Milwaukee	9235 North 107th Street	Milwaukee	WI	53224
T-39-WI-3069	Terminal Oil Group Ltd	3910 Terminal Road	Madison	WI	53704
T-39-WI-3070	Hairon Oil Company Inc	2020 N Quincy St	Green Bay	WI	54306
T-39-WI-3071	Koch Petroleum Group-Junction City.	Junction US 10 & 34N	Junction City	WI	54443
T-39-WI-3072	Koch Petroleum Group-Madison	4505 Terminal Drive	McFarland	WI	53558
T-39-WI-3073	Koch Petroleum Group-Milwaukee	9343 North 107th Street	Milwaukee	WI	53224
T-39-WI-3074	Koch Petroleum Group-Waupun	Route Two	Waupun	WI	53963
T-39-WI-3075	Green Bay Terminal	1031 Hurlbut Street	Green Bay	WI	54303
T-39-WI-3076	MAPLLC Milwaukee	9125 North 107th St	Milwaukee	WI	53224
T-39-WI-3077	Mobil Oil Green Bay	410 Prairie Ave	Green Bay	WI	54303
T-39-WI-3078	Equilon Enterprises LLC	1445 Bylsby Ave	Green Bay	WI	54303
T-39-WI-3079	Mobil Oil Madison	4516 Sigglekow Road	McFarland	WI	53558
T-39-WI-3080	Murphy Oil Superior	2407 Stinson Ave	Superior	WI	54880
T-39-WI-3081	S T Services Milwaukee	1626 South Harbor Drive	Milwaukee	WI	53207
T-39-WI-3082	Tranamontaigne—Chippewa Fall	2553 North Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3083	Center Terminal Co—Madison	4009 Triangle St Hwy 51 S	McFarland	WI	53558
T-39-WI-3084	US Oil Milwaukee	9135 North 107th Street	Milwaukee	WI	53224
T-39-WI-3086	U.S. Oil Milwaukee-North	9521 North 107th Street	Milwaukee	WI	53224
T-39-WI-3087	Williams Pipe Line Mosinee	2007 Old Highway 51	Mosinee	WI	54455
T-39-WI-3088	US Oil Madison	4402 Terminal Dr	Madison	WI	53558
T-39-WI-3089	U S Oil Green Bay West	1075 Hurlbut Ct	Green Bay	WI	54303
T-39-WI-3090	Equilon Enterprises LLC	9451 North 107th Street	Milwaukee	WI	53224
T-39-WI-3091	U S Oil Green Bay East	1910 N Quincy St	Green Bay	WI	54302
T-54-WV-1697	MAPLLC Petro TriState-Kenova	237 23rd Street	Kenova	WV	25530
T-55-WV-3181	Exxon USA Charleston	Standard St & MacCorkle Ave	Charleston	WV	25314
T-55-WV-3182	Pennzoil Products Charleston	1015 Barlow Dr	Charleston	WV	25333
T-55-WV-3183	Ergon West Virginia Inc.	Rt 2 South	Newell	WV	26050
T-55-WV-3184	Go-Mart St Albans	Oliver & Terminal Rd	St Albans	WV	25177
T-55-WV-3185	St Marys Refining	201 Barkwill St	St Mary's	WV	26170
T-55-WV-3186	Guttman Oil Star City	437 Industrial Ave	Star City	WV	26505
T-55-WV-3188	Baker Oil Co	US 60 Hughes Creek Rd	Hugheston	WV	25110
T-83-WY-4050	Conoco Sheridan	3404 Highway 87	Sheridan	WY	82801
T-83-WY-4051	Conoco Rock Springs	90 Foot Hill Blvd	Rock Springs	WY	82902
T-83-WY-4052	Little America Refining Casper	5100 E Hwy 20-26	Evansville	WY	82636
T-83-WY-4053	Kaneb Pipe Line Co—Cheyenne	1112 Parsley Blvd	Cheyenne	WY	82007
T-83-WY-4054	Sinclair Oil	East Lincoln Highway	Sinclair	WY	82334
T-83-WY-4055	Frontier Refining Cheyenne	2700 East Fifth Street	Cheyenne	WY	82007
T-83-WY-4056	Wyoming Refining Newcastle	740 W Main	Newcastle	WY	82701
T-84-WY-4057	Hawk Point Terminal	9397 Highway 59 South	Gillette	WY	82717
T-84-WY-4058	Silver Eagle Refining	2990 County Rd. #180	Evanston	WY	82930

[FR Doc. 00–19366 Filed 7–31–00; 8:45 am]
BILLING CODE 4830–01–P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 2001 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 2001 Tax Counseling for the Elderly (TCE) Program is August 25, 2000.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, OP:C:E:W:E, Building C–7, Room 185.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Tyler, OP:C:E:W:E, Building C–7, Room 185, Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706. The non-toll-free telephone number is (202) 283–0189.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or pubic non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals.

Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 2001 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assitance in Section 21.006.

Dated: July 27, 2000.

John B. Gunner,

National Director, Education, Walk-In, and Correspondence Improvement Division.

[FR Doc. 00–19365 Filed 7–31–00; 8:45 am]

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Federal Register

Tuesday,
August 1, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 410, et al.

Medicare Program; Provisions of the Balanced Budget Refinement Act of 1999; Hospital Inpatient Payments and Rates and Costs of Graduate Medical Education; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 412, 413, 482, and 485

[HCFA–1131–IFC]

RIN 0938–AK20

Medicare Program; Provisions of the Balanced Budget Refinement Act of 1999; Hospital Inpatient Payments and Rates and Costs of Graduate Medical Education

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements, or conforms the regulations to, certain statutory provisions relating to Medicare payments to hospitals for inpatient services that are contained in the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (Public Law 106–113). These provisions relate to reclassification of hospitals from urban to rural status, reclassification of certain hospitals for purposes of payment during Federal fiscal year 2000, critical access hospitals, payments to hospitals excluded from the hospital inpatient prospective payment system, and payments for indirect and direct graduate medical education costs.

Many of the provisions of Public Law 106–113 modify changes to the Social Security Act made by the Balanced Budget Act of 1997 (P.L. 105–33). These provisions are already in effect in accordance with Public Law 106–113.

DATES: *Effective Date:* This interim final rule with comment period is effective on August 1, 2000.

Comment Period: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on August 31, 2000.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1131–IFC, P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the indicated addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1131–IFC.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke HCFA–1131-IFC; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt HCFA–1131–IFC, HCFA Desk Officer

FOR FURTHER INFORMATION CONTACT:

Steve Phillips, (410) 786–4531, Operating Prospective Payment, Wage Index, and Reclassifications

Tzvi Hefter, (410) 786–4487, Excluded Hospitals, Graduate Medical Education, and Critical Access Hospital Issues

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background: Program Summary

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs). Payment for cases within each DRG is weighted to account for the average resources used to treat patients within that DRG. In addition, these payments are adjusted by a wage index (and a geographic adjustment factor derived from the wage index in the case of capital payments) to account for the varying costs of labor across areas, and by separate adjustment factors for the additional operating costs associated with graduate medical education (GME) and for treating a disproportionate share of low-income patients.

Certain specialty hospitals are excluded from the prospective payment system. Under section 1886(d)(1)(B) of the Act, the following classes of hospitals and hospital units are excluded from the prospective payment system: psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on

reasonable costs subject to a hospital-specific annual limit.

Under sections 1814(l) and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural nonprofit hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(i)(A) of the Act and existing regulations under 42 CFR Parts 413 and 415.

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved GME programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's costs per resident in a base year and the hospital's number of residents in that period.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR Part 412. The regulations governing excluded hospitals and hospital units and the regulations governing direct GME are located in 42 CFR Part 413. The regulations governing CAHs are located in 42 CFR Part 485.

II. Provisions of the Interim Final Rule With Comment Period

On November 29, 1999, the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) was enacted. Public Law 106–113 made a number of changes to the Act affecting Medicare payments to hospitals for inpatient services. Many of the provisions of Public Law 106–113 are modifications to provisions of the Act included in the Balanced Budget Act of 1997 (Pub. L. 105–33). Some of the provisions of Public Law 106–113 became effective prior to, or shortly after, its passage on November 29, 1999. Other provisions do not become effective until Federal fiscal year (FY) 2001 or later. The provisions of Public Law 106–113 that are effective beginning October 1, 2000, were included in the proposed rule for FY 2001 Medicare hospital inpatient prospective payment system published in the **Federal Register** on May 5, 2000 (65 FR 26281) which is being finalized in this issue of the **Federal Register**.

The following is a summary of the policy changes we are implementing in this interim final rule with comment period as a result of Public Law 106–113:

A. Changes Relating to Payments for Operating Costs under the Hospital Inpatient Prospective Payment System

- *Reclassification of Certain Counties.* We are implementing the provisions of section 152(a) of Public Law 106–113 that reclassified hospitals in certain designated counties for purposes of making payments to those hospitals under section 1886(d) of the Act for FY 2000. The counties affected by this provision are identified under section III of this preamble.
- *Wage Index.* We are implementing sections 153 and 154 of Public Law 106–113 that contain provisions affecting the wage indexes of specific Metropolitan Statistical Areas (MSA). Under section 153, the Hattiesburg, Mississippi FY 2000 wage index is to be calculated including wage data from Wesley Medical Center. Under section 154, the Allentown-Bethlehem-Easton, Pennsylvania MSA FY 2000 wage index is to be calculated including wage data for Lehigh Valley Hospital.
- *Reclassification of Certain Urban Hospitals as Rural Hospitals.* We are implementing section 401 of Public Law 106–113 which directed the Secretary to treat certain hospitals located in urban areas as being located in the rural area of their State if the hospital meets statutory criteria and files an application with HCFA. This provision is effective on January 1, 2000.
- *Indirect Medical Education (IME) Adjustment.* We are implementing section 111 of Public Law 106–113 which provides for an additional payment to teaching hospitals equal to the additional amount the hospitals would have been paid for FY 2000 if the IME adjustment formula (which reflects the higher indirect operating costs associated with GME) for FY 2000 had remained the same as for FY 1999.
- *Medicare-Dependent, Small Rural Hospitals.* We are implementing section 404 of Public Law 106–113 which extends the Medicare-dependent, small rural hospital (MDH) program and its current payment methodology for an additional 5 years, from FY 2002 through FY 2006.

B. Additional Changes Relating to Direct GME and Indirect Medical Education

- *Initial Residency Period for Child Neurology Residency Programs.* We are implementing section 312 of Public Law 106–113 which provides that in determining the number of residents for purposes of GME and IME payments, the period of board eligibility and the initial residency period for child neurology is the period of board eligibility for pediatrics plus 2 years. This provision applies on and after July 1, 2000, to residency programs that began before, on, or after November 29, 1999.
- *Residents on Approved Leave of Absences.* We are implementing section 407(a) of Public Law 106–113 which provides that, for purposes of determining a hospital's full-time equivalent (FTE) cap for direct GME payments and the IME adjustment, a hospital may count an individual to the extent that the individual would have been counted as a primary care resident for purposes of the FTE cap but for the fact that the individual was on maternity or disability leave or a similar approved leave of absence. The provision relating to direct GME is effective with cost reporting periods beginning on or after November 29, 1999. The provision relating to the IME adjustment applies to discharges occurring in cost reporting periods beginning on or after November 29, 1999.
- *Expansion of Number of Unweighted Residents in Rural Hospitals.* We are implementing section 407(b) of Public Law 106–113 which provides that a rural hospital's resident FTE count for direct GME and IME may not exceed 130 percent of the number of unweighted residents that the rural hospital counted in its most recent cost reporting period ending on or before December 31, 1996. The provision relating to direct GME applies to cost reporting periods beginning on or after April 1, 2000. The provision relating to the IME adjustment applies to discharges occurring on or after April 1, 2000.
- *Urban Hospitals with Rural Training Tracks or Integrated Rural Tracks.* We are implementing section 407(c) of Public Law 106–113 which allows an urban hospital that establishes separately accredited approved medical residency training programs (or rural training tracks) in a rural area or has an accredited training program with an integrated rural track to receive an FTE cap adjustment for purposes of direct GME and IME. The provision is effective with cost reporting periods beginning on or after April 1, 2000, for direct GME, and with discharges occurring on or after April 1, 2000, for IME.
- *Residents Training at Certain Veterans Affairs Hospitals.* We are implementing section 407(d) of Public Law 106–113 which provides that a non-Veterans Affairs (VA) hospital may receive a temporary adjustment to its FTE cap to reflect residents who were training at a VA hospital and were transferred on or after January 1, 1997, and before July 31, 1998, to the non-VA

hospital because the program at the VA hospital would lose its accreditation by the Accreditation Council on Graduate Medical Education if the residents continued to train at the facility. This provision applies as if it was included in the enactment of Public Law 105–33, that is, for direct GME, with cost reporting periods beginning on or after October 1, 1997, and for IME, for discharges occurring on or after October 1, 1997. If a hospital is owed payments as a result of this provision, payments must be made immediately.

C. Payments for Nursing and Allied Health Education: Utilization of Medicare+Choice Enrollees

We are implementing section 541 of Public Law 106–113 which provides an additional payment to hospitals that receive payments under section 1861(v) of the Act for approved nursing and allied health education programs to reflect utilization of Medicare+Choice enrollees. This provision is effective for portions of cost reporting periods in a year beginning with calendar year 2000.

D. Changes Relating to Hospitals and Hospital Units Excluded From the Prospective Payment System

We are implementing section 121 of Public Law 106–113 which amended section 1886(b)(3)(H) of the Act to direct the Secretary to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals for cost reporting periods beginning on or after October 1, 1999.

E. Changes Relating to Critical Access Hospitals (CAHs)

We are implementing—

- Section 401(b)(2) of Public Law 106–113, which contains a conforming change to incorporate the reclassifications made by section 401(a) of Public Law 106–113 to the CAH criteria (section 1820(c)(2)(B)(i) of the Act). This provision is effective beginning on January 1, 2000.
- Section 403(a) of Public Law 106–113, which deletes the 96-hour length of stay restriction on inpatient care in a CAH and authorizes a period of stay that does not exceed, on an annual, average basis, 96 hours per patient. This provision is effective beginning on November 29, 1999.
- Section 403(b) of Public Law 106–113, which allows for-profit hospitals to qualify for CAH status. This provision is effective beginning on November 29, 1999.
- Section 403(c) of Public Law 106–113, which allows hospitals that have closed within 10 years prior to November 29, 1999, or hospitals that downsized to a health clinic or health center, to be designated as CAHs if they satisfy the established criteria for designation, other than the requirement for existing hospital status.
- Section 403(e) of Public Law 106–113, which eliminates the Medicare Part B deductible and coinsurance for clinical diagnostic laboratory tests furnished by a CAH on an outpatient basis. This provision is effective with respect to services furnished on or after November 29, 1999.
- Section 403(f) of Public Law 106–113, entitled "Participation in Swing Bed Program," which amended sections 1883(a)(1) and (c) of the Act.

F. Changes Relating to Hospital Swing Bed Program

We are implementing section 408(a) of Public Law 106–113 which eliminates the requirement for a hospital to obtain a certification of need to use acute care beds as swing beds for skilled nursing facility (SNF) level of care patients; and section 408(b) of Public Law 106–113 which eliminates constraints on the length of stay in swing beds for rural hospitals with 50 to 100 beds. These provisions are effective on the first day after the expiration of the transition period for prospective payments for covered SNF services under the Medicare program (that is, at the end of the transition period for the SNF prospective payments system that began with the facility's first cost reporting period beginning on or after July 1, 1998 and extend through the end of the facility's third cost reporting period after this date).

III. Reclassification of Certain Counties

Under section 152(a) of Public Law 106–113 hospitals in certain counties are deemed to be located in specified areas for purposes of payment to the hospitals under the hospital inpatient prospective payment system, for discharges occurring during FY 2000. For payment purposes, hospitals under section 152(a) are to be treated as though they were reclassified for purposes of both the standardized amount and the wage index. We have calculated FY 2000 wage indexes for hospitals in the affected counties. These wage indexes are listed below. No other hospitals' FY 2000 wage indexes were affected, including those hospitals in the areas to which these affected hospitals were reclassified, as well as nonreclassified hospitals located in the areas from which these hospitals were reclassified.

Section 152(a) provides that, for purposes of making payments under section 1886(d) of the Act for FY 2000—

- To hospitals in Iredell County, North Carolina, Iredell County is deemed to be located in the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA;
- To hospitals in Orange County, New York, Orange County is deemed to be located in the New York, New York MSA;
- To hospitals in Lake County, Indiana and Lee County, Illinois, Lake County and Lee County are deemed to be located in the Chicago, Illinois MSA;
- To hospitals in Hamilton-Middletown, Ohio, Hamilton-Middletown is deemed to be located in the Cincinnati, Ohio-Kentucky-Indiana MSA;
- To hospitals in Brazoria County, Texas, Brazoria County is deemed to be located in the Houston, Texas MSA;
- To hospitals in Chittenden County, Vermont, Chittenden County is deemed to be located in the Boston-Worcester-Lawrence-Lowell-Brockton, Massachusetts-New Hampshire MSA.

In accordance with section 153 of Public Law 106–113, for discharges occurring during FY 2000, the Hattiesburg, Mississippi MSA wage index was recalculated by including the wage data for Wesley Medical Center. In accordance with section 154(a), the Allentown-Bethlehem-Easton, Pennsylvania MSA FY 2000 wage index was recalculated by including the wage data for Lehigh Valley Hospital.

The following table shows the changes to the FY 2000 wage index values and geographic adjustment factors for capital payments for the hospitals in the affected areas. Hospitals affected by section 152(a) of Public Law 106–113 will now also be considered reclassified for purposes of the standardized amount.

County or MSA	New MSA (for wage index and standardized amount)	New wage index	New geographic adjustment factor (GAF)
Iredell County, NC	1520	0.9434	0.9609

County or MSA	New MSA (for wage index and standardized amount)	New wage index	New geographic adjustment factor (GAF)
Orange County, NY	5600	1.4342	1.2801
Lake County, IN	1600	1.0750	1.0508
Lee County, IL	1600	1.0750	1.0508
Hamilton-Middletown, OH	1640	0.9419	0.9598
Brazoria County, TX	3360	0.9388	0.9577
Chittenden County, VT	1123	1.1359	1.0912
Hattiesburg, MS MSA	MSA is not new	0.7634	0.8312
Allentown-Bethlehem-Easton, PA MSA	MSA is not new	1.0228	1.0156

IV. Reclassifications of Hospitals (Sections 401(a) and (b) of Public Law 106–113 and 42 CFR 412.63(b), 412.90(e), 412.102, and New 412.103)

A. Permitting Reclassification of Certain Urban Hospitals as Rural Hospitals

Under Medicare law, the location of a hospital can affect its payment methodology as well as whether the facility qualifies for special treatment both for operating and for capital payments. Whether a facility is situated in an urban or a rural area will, for example, affect payments based on the wage index values and Federal standardized amounts specific to the area. Similarly, the percentage increase in payments made to hospitals that treat a disproportionate share of low-income patients is based, in part, on its urban/rural status, as are determinations regarding a hospital's qualification as a sole community hospital (SCH), rural referral center (RRC), CAH, or other special category of facility. Section 1886(d)(2)(D) of the Act defines an "urban area" as an area within a MSA as defined by the Office of Management and Budget. The same provision defines a "large urban area," with respect to any fiscal year, as an urban area that the Secretary determines (in the publications described in section 1886(e)(5) of the Act before the fiscal year) has a population of more than 1 million as determined based on the most recent available published Census Bureau data. Section 1886(d)(2)(D) of the Act further defines a "rural area" as an area that is outside of a "large" urban area or "other" urban area. Since FY 1995, the average standardized amount for hospitals located in rural areas and "other" urban areas has been equal, as provided for in section 1886(b)(3)(B)(i)(X) of the Act.

Several provisions of the Act provide procedures under which a hospital can apply for reclassification from one geographic area to another: section 1886(d)(8)(B) of the Act, which provides that if certain conditions are met, the Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban area to which the greatest number of workers in the county commute; and section 1886(d)(10) of the Act, which establishes the Medicare Geographic Classification Review Board (MGCRB) process to permit hospitals to be reclassified for purposes of the standardized amount or the wage index if they meet criteria established by the Secretary.

Section 401(a) of Public Law 106–113, which amended section 1886(d)(8) by adding a new paragraph (E), directs the Secretary to treat any subsection (d) hospital located in an urban area as being located in the rural area of the State in which the hospital is located if the hospital files an application (in the form and manner determined by the Secretary) and meets one of the following criteria:

- The hospital is located in a rural census tract of a MSA (as determined under the most recent modification of the Goldsmith Modification, originally published in the **Federal Register** on February 27, 1992 (57 FR 6725));
- The hospital is located in an area designated by any law or regulation of the State as a rural area (or is designated by the State as a rural hospital);
- The hospital would qualify as a RRC, or as a SCH if the hospital were located in a rural area; or
- The hospital meets any other criteria specified by the Secretary.

The statutory effective date of this provision is January 1, 2000.

The Goldsmith Modification, one of the qualifying statutory criteria, evolved from an outreach grant program sponsored by the Office of Rural Health Policy of the Health Resources and Services Administration (HRSA). The program's purpose was to establish an operational definition of rural populations lacking easy geographic access to health services. Using 1980 Census Bureau data, Dr. Harold F. Goldsmith and his associates created a methodology for identification of census tracts that were located within a large metropolitan county of at least 1,225 square miles but were so isolated from the metropolitan core by distance or physical features as to be more rural than urban in character. The most important criterion used to identify these census tracts is the comparatively few residents in these areas, less than 15 percent of the labor force, who commute to work in the metropolitan core and suburbs. Appendix A of this interim final rule with comment period lists the identified urban counties with census tracts that may qualify as rural under the most recent Goldsmith Modification (January 1, 2000). The amendments made by section 401 of Public Law 106–113 enable a hospital located in one of these areas to be treated as if it were situated in the rural area of the State in which it is located. In making determinations under section 1886(d)(8)(E) of the Act, we will utilize the most recent Goldsmith Modification which reflects data based on the 1990 census.

Additionally, section 401(a) of Public Law 106–113 includes hospitals "* * * located in an area designated by any law or regulation of such State as a rural area (or is designated by such State as a rural hospital)." We are requiring that a hospital's designation as rural be in the form of either State law or regulation if it is the basis for a hospital's request for urban to rural reclassification under section 1886(d)(8)(E) of the Act. We believe this will help ensure that the provision is implemented consistently among States.

Finally, a hospital also may seek to qualify for reclassification premised on the fact that, had it been located in a rural area, it would have qualified as an RRC or as an SCH. The hospital would need to satisfy the criteria set forth in section 1886(d)(5)(C) of the Act (as implemented in regulations at § 412.96) as a RRC, or the criteria set forth in section 1886(d)(5)(D) of the Act (as implemented in regulations at § 412.92) as an SCH.

Although the statute authorizes the Secretary to specify further qualifying criteria for a section 1886(d)(8)(E) reclassification, we do not believe that additional criteria are warranted at this

time. However, we invite comment specifically on whether the criteria in this interim final rule are sufficient at this time, and if not, what additional criteria should be incorporated.

Section IV.C. of this preamble contains information on the application process for requesting reclassification under the section 401 provision.

A hospital that is reclassified as rural under section 1886(d)(8)(E) of the Act, as added by section 401(a) of Public Law 106–113, is treated as rural for all purposes of payment under the Medicare inpatient hospital prospective payment system (section 1886(d) of the Act), including standardized amount (§§ 412.60 *et seq.*), wage index (§ 412.63), and disproportionate share calculations (§ 412.106) as of the effective date of the reclassification.

B. Conforming Changes Under Section 401(b) of Public Law 106–113

Section 401(b) of Public Law 106–113 sets forth conforming statutory changes relating to urban to rural reclassifications under section 401(a) of Public Law 106–113:

- Section 401(b)(1) provides that if a hospital is being treated as being located in a rural area under section 1886(d)(8)(E) of the Act (for purposes of section 1886(d) of the Act), the hospital will also be treated under section 1833(t) of the Act as being located in a rural area. This provision is being addressed in a separate document.
- Section 401(b)(2) amends section 1820(c)(2)(B)(i) of the Act by extending the reclassification provisions of section 401(a) to the CAH program. A hospital that otherwise would have fulfilled the requirements for designation as a CAH had it been located in a rural area is now eligible for consideration as a CAH if it is treated as being located in a rural area under section 1886(d)(8)(E) of the Act, as added by section 401(a) of Public Law 106–113. (A list of certain existing hospitals that have been identified as being located in Goldsmith areas is included in Appendix B of this interim final rule with comment period.) A more detailed discussion of the effect on the CAH program in light of this provision, as well as the additional amendments to section 1820(c)(2)(B)(i) of the Act included in Public Law 106–113, is provided in section X.B. of this preamble.

C. Application Procedures

The statute provides that a hospital seeking reclassification from urban to rural under section 1886(d)(8)(E) of the Act must submit an application "in a form and manner determined by the Secretary." We are providing that a facility seeking reclassification under section 401(a) or (b) of Public Law 106–113 must apply in writing to the HCFA Regional Office and include documentation satisfying the criteria on which its request is based. For information about where to submit an application, hospitals may contact their fiscal intermediaries or utilize the HCFA website at <www.hcfa.gov/medicare/regions/default.htm>. The application must be mailed; facsimile or other electronic means are not acceptable.

1. Qualification Through the Goldsmith Modification Criteria

We are specifying that hospitals seeking reclassification through the Goldsmith Modification criteria must include specific census tract information with their application that can be obtained through the following steps:

(a) The hospital must determine whether it is located within one of the urban counties containing one or more Goldsmith areas included in Appendix A of this interim final rule with comment period.

(b) Since only certain census tracts within these listed counties qualify as Goldsmith areas, a hospital that identifies its county in the listing must find the tract number assigned to its specific street location by the U.S. Census Bureau. One way to determine this is through an interactive website provided by the U.S. Census Bureau: <http:/tier2.census.gov/ctsl/ctsl.htm>.

(c) The hospital must include the 4-digit census tract number in its application to the HCFA Regional Office. The HCFA Regional Office will utilize census tract data to determine whether the census tract in which the hospital is located is situated in a Goldsmith area.

2. Qualification by State Designation

For hospitals selecting reclassification under qualification by State designation, we are providing that the hospital's application must include a copy of the State law or regulation that verifies either the requesting hospital is situated in an area designated rural by the State or that the hospital has been designated as a rural hospital. The application must also note the effective date of the rural designation.

3. Qualification as an RRC or as an SCH

For hospitals seeking reclassification under qualification as an RRC or as an SCH, we are providing that the hospital's application must include documentation that supports the hospital's assertion that, other than its urban location, it satisfies the criteria set forth in section 1886(d)(5)(C) of the Act as an RRC, as implemented in regulations at § 412.90; or as an SCH as set forth in section 1886(d)(5)(D) of the Act and implemented in regulations at § 412.92. The HCFA Regional Office will review the application in a manner consistent with its current procedures in the case of a hospital in a rural area that applies for RRC or SCH status (except for the requirement that the hospital be located in a rural area).

D. Filing and Effective Dates

We are establishing the date of receipt of the application by the HCFA Regional Office as the filing date. The HCFA Regional Office will review the application and forward its approval or disapproval to the hospital within 60 calendar days from the filing date. The HCFA Regional Office also will forward a copy of its decision to the HCFA Central Office and the fiscal intermediary. A hospital that satisfies any of the criteria for rural reclassification under section 401(a) of Public Law 106–113 will be treated as being located in the rural area of the State in which it is located as of its application filing date.

The statutory effective date of the amendments made by section 401 of Public Law 106–113 is January 1, 2000. To allow hospitals a grace period for filing applications to accommodate this effective date, we are providing that a qualifying hospital whose application is received by HCFA on or before September 1, 2000, will be considered as being located in the rural area of its State for purposes of section 1886(d) of the Act as of January 1, 2000. Following that grace period, a hospital's filing date is the date on which a complete application is received by HCFA. A qualifying hospital that bases its application for rural reclassification under section 1886(d)(8)(E) of the Act on its satisfaction of either SCH or RRC criteria, and that files on or before September 1, 2000, will benefit from the grace period and will be considered as being located in the rural area of its State as of January 1, 2000, unless the hospital withdraws its request as described in section IV.D.3 of this preamble. Once the hospital is rural, it may seek either an SCH or an RRC status by following a two-step process described respectively, in sections IV.D.1 and IV.D.2 of this preamble. The process for approval of the hospital as either an SCH or an RRC must be consistent with the processes currently in place for approving these applications. We note that whereas SCH designation is effective 30 days after written notification of HCFA's approval,

under § 412.92(b)(2)(i), the effective date of RRC designation, under 1886(d)(5)(C)(i) of the Act, is linked to the beginning of a hospital's reporting period.

1. A Hospital Reclassified as Rural Seeking Designation as an SCH

A hospital that bases its application for rural reclassification on its satisfaction of all SCH criteria set forth in § 412.92, except rural location, may seek subsequent designation as an SCH if HCFA determines that it qualifies to be treated as rural under section 1886(d)(8)(E) of the Act. The hospital must indicate this intent on its application for rural reclassification. Designation as an SCH for such hospital, therefore, would be a two-step process: (1) The hospital's reclassification as rural for all payment purposes as of its filing date under section 1886(d)(8)(E) of the Act; and (2) the now-rural hospital's request for SCH status, which would be effective 30 days following the date of HCFA's written notification of approval, as set forth in the regulations at § 412.92(b)(2)(i).

In order to implement section 401(a) of Public Law 106–113 in the most expeditious and efficient manner, allowing for necessary payment system modifications, for the grace period which extends from January 1, 2000 to September 1, 2000, we are bundling the above two operations: the rural reclassification of a hospital, under section 401(a) of Public Law 106–113, and the designation of the hospital as an SCH. A hospital that has applied for rural status based on its eligibility as an SCH and also is applying to become an SCH, will be granted SCH status as of January 1, 2000, if it satisfies the conditions for SCH designation in § 412.92, except for rural location as of January 1, 2000, and its application is filed by September 1, 2000.

2. Hospitals Reclassified as Rural Seeking Designation as a RRC

A hospital qualifying for rural reclassification under section 401(a) of Public Law 106–113 because it satisfies RRC criteria under § 412.96, except for rural location, will be considered rural for all payment purposes as of January 1, 2000, if its application is received by September 1, 2000. After September 1, 2000, when the grace period expires, the filing date is the date HCFA receives the hospital's complete application. If the hospital seeks designation as a RRC, the hospital must state its intent to apply for RRC status on its application for rural reclassification under section 1886(d)(8)(E) of the Act. Designation as an RRC for such a hospital, therefore, is a two-step process: (1) The hospital's classification as rural for all payment purposes as of its filing date under section 1886(d)(8)(E) of the Act; and (2) the now rural hospital's request for RRC status by way of a letter to the Regional Office during the quarter preceding the start of a cost reporting period, referencing the data it previously submitted for rural status. If approved, the hospital is designated an RRC at the start of the hospital's next cost reporting period under section 1886(d)(5)(C)(i) of the Act (55 FR 36059). Therefore, whereas the grace period would grant rural status under section 1886(d)(8)(E) of the Act to such a hospital filing on or before September 1, 2000, statutory requirements preclude us from granting RRC status simultaneously as we are able to do in the case of SCHs described above.

3. Withdrawal of an Application for Rural Reclassification

A hospital may withdraw an application for rural reclassification at any time prior to the date of HCFA's decision on whether or not the hospital qualifies for rural reclassification under section 1886(d)(8)(E) of the Act.

4. Cancellation of Rural Reclassification

We are specifying that a hospital seeking cancellation of rural status established under section 1886(d)(8)(E) of the Act must submit its written request to HCFA not less than 120 days prior to the end of its current cost reporting period. With the beginning of the hospital's next cost reporting period, the hospital will be treated as being located in an urban area.

E. Changes in the Regulations

We are adding a new § 412.103 to incorporate the provisions on the urban to rural reclassification options set forth in section 1886(d)(8)(E) of the Act, as added by section 401(a) of Public Law 106–113, and the application procedures for requesting reclassification. A formula for transition payments to hospitals located in an area that has undergone geographic reclassification from urban to rural is set forth in section 1886(d)(8)(A) of the Act and implemented in regulations at §§ 412.90 and 412.102. We are revising existing §§ 412.63(b)(1) and 412.90(e) and the title of § 412.102 to clarify the distinction between hospital reclassification from urban to rural and the geographic reclassification (or redesignation) of an urban area to rural.

We are revising § 485.610 by redesignating paragraph (b)(4) as paragraph (b)(5) and adding a new paragraph (b)(4) to reflect the conforming provision of section 401(b)(2) of Public Law 106–113.

V. Medicare-Dependent, Small Rural Hospitals (Section 404 of Public Law 106–113 and 42 CFR 412.90(j) and 412.108)

Section 404 of Public Law 106–113 added a 5-year extension of the Medicare-dependent, small rural hospital (MDH) program (FY 2002 through FY 2006). This category of hospitals was originally created by section 6003(f) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239), which added section 1886(d)(5)(G) to the Act.

As set forth in section 1886(d)(5)(G) of the Act, in order to be classified as an MDH, a hospital must meet all of the following criteria:

- The hospital is located in a rural area.
- The hospital has 100 or fewer beds.
- The hospital is not classified as an SCH (as defined at § 412.92).
- In the hospital's cost reporting period that began during FY 1987, not less than 60 percent of its inpatient days or discharges were attributable to inpatients entitled to Medicare Part A benefits.

As provided by the law, MDHs were eligible for a special payment adjustment under the prospective payment system, effective for cost reporting periods beginning on or after April 1, 1990 and ending on or before March 31, 1993. Hospitals classified as MDHs were paid using the same methodology applicable to SCHs, that is, based on whichever of the following rates yielded the greatest aggregate payment for the cost reporting period:

- The national Federal rate applicable to the hospital.
- The updated hospital-specific rate using FY 1982 cost per discharge.
- The updated hospital-specific rate using FY 1987 cost per discharge.

Section 13501(e)(1) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) extended the MDH provision through FY 1994 and provided that, after the hospital's first three 12-month cost reporting periods beginning on or after April 1, 1990, the additional payment to an MDH whose applicable hospital-specific rate exceeded the Federal rate was limited to 50 percent of the amount by which the hospital-specific rate exceeded the Federal rate.

Section 4204(a)(3) of Public Law 105–33 reinstated the MDH special payment for discharges occurring on or after October 1, 1997 and before October 1, 2001, but did not revise either the

qualifying criteria for these hospitals or the payment methodology.

Section 404(a) of Public Law 106–113 extended the MDH provision to discharges occurring on or after October 1, 2002 and before October 1, 2006.

We are revising §§ 412.90(j) and 412.108 to reflect the extension of the MDH program.

VI. Changes to the IME Adjustment (Section 111 of Public Law 106–113 and 42 CFR 412.105(d)(3))

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved GME program receive an additional payment to reflect the higher indirect operating costs associated with GME. The regulations regarding the calculation of this additional payment, known as the IME adjustment, are located at § 412.105.

Section 111(a) of Public Law 106–113 amended section 1886(d)(5)(B) of the Act by modifying the transition for the IME adjustment. The IME adjustment factor is calculated using a formula multiplier that is represented as c in the following equation: $c \times [(1 + r)^{.405} - 1]$. The variable r represents the hospital's resident-to-bed ratio.

Public Law 105–33 established the formula multiplier for discharges occurring during FY 2000 at 1.47. However, section 111(b) of Public Law 106–113 provides for special payments to each hospital to reflect the amount of IME payments if c equaled 1.6 for discharges occurring during FY 2000, rather than 1.47. In accordance with section 111(b)(2) of Public Law 106–113, these special payments will not affect any other payments, determinations, or budget neutrality adjustments under section 1886(d) of the Act.

Under amendments enacted by section 111(a) of Public Law 106–113, for discharges occurring during FY 2001, the formula multiplier is 1.54. Changes to the factor for discharges occurring in FY 2001 were addressed in the proposed rule on FY 2001 hospital inpatient prospective payment system rates and changes that was published in the **Federal Register** on May 5, 2000 (65 FR 26281) and that will be finalized by August 1, 2000. Changes to the factor for discharges occurring in FY 2002 and thereafter are discussed in the final rule to be published by August 1, 2000.

We are amending § 412.105(d)(3) to reflect the additional payment provided for discharges occurring during FY 2000 under section 111(b)(1) of Public Law 106–113.

VII. Payment for Costs of GME

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of GME. The payments are based on the number of residents trained by the hospital. Section 1886(h) of the Act, as revised by Public Law 105–33, caps the number of residents a hospital may count for direct GME and IME. In general, the total number of residents in the fields of allopathic or osteopathic medicine in a hospital may not exceed the number of such FTE residents in the hospital with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996. In the regulations we published on August 29, 1997 (62 FR 46003), May 12, 1998 (63 FR 26327), July 31, 1998 (63 FR 40986), and July 30, 1999 (64 FR 41517), we established special rules for adjusting the FTE resident caps for indirect and direct GME for new medical residency programs. Public Law 106–113 further revised sections 1886(d) and 1886(h) of the Act to allow a hospital's caps to be adjusted if certain additional criteria are met.

A. Counting Primary Care Residents on Certain Approved Leaves of Absence in Base-Year FTE Count (Section 407(a)(1) of Public Law 106–113 and new 42 CFR 412.105(f)(1)(xi) and 413.86(g)(9))

The limit that was placed on the number of residents that a hospital may count for purposes of direct GME and IME is based on the number of residents in the hospital's most recent cost reporting period ending on or before December 31, 1996. In the situation where a primary care resident was previously training in a hospital's residency program, but was on an approved leave of absence during the hospital's most recent cost reporting period ending on or before December 31, 1996, the hospital's FTE cap may be lower than it would have been had the resident not been on an approved leave of absence. Section 407(a) of Public Law 106–113 amended section 1886(h)(4)(F) of the Act to direct the Secretary to count an individual for purposes of determining a hospital's FTE cap, to the extent that the individual would have been counted as a primary care resident for purposes of the FTE cap but for the fact that the individual was on maternity or disability leave or a similar approved leave of absence.

The statute allows a hospital to receive an adjustment for those residents to its individual FTE cap of up to three additional FTE residents. We are providing in this interim final rule with comment period that, in order for a hospital to receive this adjustment, the leave of absence must have been approved by the residency program director to allow the residents to be absent from the program and return to the program after the absence. We are requiring that no later than 6 months after the date of publication of this interim final rule, the hospital must submit a request to the fiscal intermediary for an adjustment to its FTE cap and must provide contemporaneous documentation of the approval of the leave of absence by the residency program director, specific to each additional resident that is to be counted for purposes of the adjustment. For example, a letter to the resident by the residency program director before the resident takes the leave would be sufficient documentation of prior approval of the leave of absence.

Under section 407(a)(3) of Public Law 106–113, this provision is effective for direct GME FTE counts with cost reporting periods beginning on or after November 29, 1999, and for IME FTE counts, with discharges occurring in cost reporting periods beginning on or after November 29, 1999.

We are adding new §§ 412.105(f)(1)(xi) and 413.86(g)(9) to incorporate the provisions of section 407(a) of Public Law 106–113.

B. Adjustments to the FTE Cap for Rural Hospitals (Section 407(b)(1) of Public Law 106–113 and 42 CFR 412.105(f)(l)(iv) and 413.86(g)(4))

Public Law 105–33 included several provisions with the intent of encouraging physician training and practice in rural areas. Section 1886(h)(4)(H)(i) of the Act, as added by section 4623 of Public Law 105–33, directed the Secretary, in promulgating rules for the purpose of the FTE cap, to give special consideration to facilities that meet the needs of underserved rural areas. Consistent with the intent of this provision, section 407(b) of Public Law 106–113 provides a 30-percent expansion of a rural hospital's direct and indirect FTE count for purposes of establishing the hospital's individual FTE cap. Specifically, section 407(b) provides that, effective for direct GME with cost reporting periods beginning on or after April 1, 2000, and for IME, with discharges occurring on or after April 1, 2000, the FTE count may not exceed 130 percent of the number of unweighted residents the rural hospital counted in its most recent cost reporting period ending on or before December 31, 1996.

For example, if a hospital located in a rural area had 10 unweighted FTEs for its count for both direct GME and IME in its most recent cost reporting period

ending on or before December 31, 1996, under this new provision the hospital would have a FTE cap of 13 unweighted FTEs, instead of 10 unweighted FTEs, because the hospital is located in a rural area. The revised FTE cap is equal to 130 percent of the number of unweighted residents in its most recent cost reporting period ending on or before December 31, 1996. The rural hospital's new FTE cap, effective April 1, 2000, is now 13 FTEs. However, if a hospital located in a rural area had zero unweighted FTEs for its count for both direct GME and IME in its most recent cost reporting period ending on or before December 31, 1996, under this new provision, this hospital would receive no adjustment to its FTE cap (130 percent of zero is zero FTEs).

We are incorporating the provisions of section 407(b) of Public Law 106–113 in §§ 412.105(f)(1)(iv) and 413.86(g)(4).

C. Rural Track FTE Limitation for Purposes of GME and IME for Urban Hospitals That Establish Separately Accredited Approved Medical Programs in a Rural Area (Section 407(c) of Public Law 106–113 and new 42 CFR 412.105(f)(1)(x) and 413.86(g)(11))

Section 407(c) of Public Law 106–113 amended section 1886(h)(4)(H) of the Act to add a provision that, in the case of a hospital that is not located in a rural area but establishes separately accredited approved medical residency training programs (or rural tracks) in a rural area or has an accredited training program with an integrated rural track, an adjustment may be made to the hospital's cap on the number of residents in order to encourage the training of physicians in rural areas. For direct GME, the amendment applies to payments to hospitals for cost reporting periods beginning on or after April 1, 2000; for IME, the amendment applies to discharges occurring on or after April 1, 2000.

Section 407(c) of Public Law 106–113 does not define "rural tracks" or an "integrated rural track," nor are these terms defined elsewhere in the Social Security Act or in any applicable Federal regulations. Currently, there are a number of accredited residency programs, particularly 3-year primary care residency programs, in which residents train for 1 year of the program at an urban hospital and are then rotated for training for the other 2 years of the 3-year program to a rural facility. These separately accredited "rural track" programs are identified by the Accreditation Council of Graduate Medical Education (ACGME) as "1–2" rural track programs. We are implementing section 407(c) to address these "1–2" programs. In addition, we are implementing section 407(c) to account for other programs that are not "1–2" programs but which include rural training portions.

As stated above, there is no existing definition of "rural track" or "integrated rural track." We are defining at § 413.86(b) a "rural track" and an "integrated rural track" as an approved medical residency training program established by an urban hospital in which residents train for a portion of the program at the urban hospital and then rotate for a portion of the program to a rural hospital(s) or to a rural nonhospital site(s). We note that "rural track" and "integrated rural track," for purposes of this definition, are synonymous.

We are amending § 413.86 to add paragraph (g)(11) (and amending § 412.105 to add paragraph (f)(1)(x)) to specify that, for direct GME, for cost reporting periods beginning on or after April 1, 2000, (or, for IME, for discharges occurring on or after April 1, 2000), an urban hospital that establishes a new residency program, or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks, in addition to the residents subject to the FTE cap at § 413.86(g)(4). An urban hospital may count the residents in the rural track up to a "rural track FTE limitation" for that hospital. We are defining this rural track FTE limitation at § 413.86(b) as the maximum number of residents (as specified at § 413.86(g)(11)(i) through (vi)) training in a rural track residency program that an urban hospital may include in its FTE count, that is in addition to the number of FTE residents already included in the hospital's FTE cap.

Generally, the rural track policy is divided into two categories: Rural track programs in which residents are rotated to a rural area for at least two-thirds of the duration of the program; and rural track programs in which residents are rotated to a rural area for less than two-thirds of the duration of the program. These two categories are then subdivided according to where the residents are training in the rural area; the residents may be trained in a rural hospital or the residents may be trained in a rural nonhospital site. To account for rural track residency programs with rural rotations that have program lengths greater than or less than 3 years, or that are not "1–2" programs, we are specifying "two-thirds of the length of the program," instead of "2 out of 3 program years," as a qualification to count FTEs in the rural track.

We are specifying that urban hospitals that wish to count FTE residents in rural tracks, up to a rural track FTE limitation, must comply with the conditions discussed below:

1. Rotating Residents for at Least Two-Thirds of the Program to a Rural Hospital(s)

We are specifying at § 413.86(g)(11)(i) that if an urban hospital rotates residents in the rural track program to a rural hospital(s) for at least two-thirds of the duration of the program, the urban hospital may include those residents in its FTE count for the time the rural track residents spend at the urban hospital. The urban hospital may include in its FTE count those residents in the rural track training at the urban hospital, not to exceed its rural track FTE limitation, determined as follows:

- For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents training in the rural track at the urban hospital.
- Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of: (a) The highest number of residents in any program year who, during the third year of the rural track's existence, are training in the rural track at the urban hospital or the rural hospital(s) and are designated at the beginning of their training to be rotated to the rural hospital(s) for at least two-thirds of the duration of the program; and (b) the number of years those residents are training at the urban hospital.

We are utilizing the term "designated" at § 413.86(g)(11)(i) (as well as at §§ 413.86(g)(11)(ii) and (iv)) to refer to the calculation of the rural track FTE limitation. "Designated" means that the residents must actually have enrolled in that rural track program to rotate for a portion of the rural track program to a rural area (either rural hospital(s) or rural nonhospital site(s)). To be counted as an FTE in this first scenario, these enrolled residents must actually rotate for at least two-thirds of the duration of the program to a rural hospital(s). If a resident, at the beginning of his or her training, intends to train in the rural area for at least two-thirds of the duration of the program, but ultimately never does so, this resident would be proportionately excluded from the urban hospital's FTE count and rural track FTE count.

We note that if the residents in the rural track are rotating to a rural hospital(s), the rural hospital(s) may be eligible to count the residents as part of

its FTE count. If the rural track residency program is a new residency program as specified in redesignated § 413.86(g)(12), the rural hospital may be eligible to receive an FTE cap adjustment for those residents training in the rural track for the time those residents are training at the rural hospital(s), in accordance with the provisions of existing § 413.86(g)(6)(iii). If the rural track residency program is an existing residency program, a rural hospital may be eligible to count the FTE residents training in the rural track at the rural hospital(s), in accordance with the provisions of § 413.86(g)(4), as amended in this interim final rule to implement section 407(b)(1) of Public Law 106–113.

2. Rotating Residents for at Least Two-Thirds of the Program to a Rural Nonhospital Site

We are specifying at § 413.86(g)(11)(ii) that if an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for at least two-thirds of the duration of the program, the urban hospital may include those residents in its FTE count, subject to the requirements under existing § 413.86(f)(4). The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track FTE limitation, determined as follows:

- For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents training in the rural track at the urban hospital and the rural nonhospital site.
- Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of: (a) The highest number of residents in any program year who, during the third year of the rural track's existence, are training in the rural track at the urban hospital and are designated at the beginning of their training to be rotated to a rural nonhospital site(s) for at least two-thirds of the duration of the program and the rural nonhospital site(s); and, (b) the number of years in which the residents are expected to complete each program based on the minimum accredited length for the type of program.

We note that we specify at § 413.86(g)(11)(ii) that an urban hospital may include in its FTE count those residents in the rural track rotating to a rural nonhospital site, subject to the requirements under § 413.86(f)(4). The regulations at § 413.86(f)(4) provide, in part, that a hospital that incurs "all or substantially all" of the costs of training residents in a nonhospital site may include those residents in determining the number of FTE residents (not to exceed the FTE cap) for that hospital. Under this new rural track policy, where the urban hospital rotates residents for at least two-thirds of the residency program to a rural nonhospital site, the urban hospital would be eligible to include in its FTE count residents training in the rural track up to its rural track FTE limitation, but the urban hospital must still reimburse the rural nonhospital site for the costs of training those residents, as specified under § 413.86(f)(4).

An example of this second scenario is where urban hospital A has a new internal medicine residency program that was established July 1, 1998, and rotates six PGY (program year) 2s and five PGY 3s in the third year of the program to rural nonhospital site B. In the third year of the program, five PGY 1s who will subsequently rotate to the rural nonhospital site are training at hospital A. If hospital A is complying with the requirements at § 413.86(f)(4) by incurring all or substantially all of the cost of the training at rural nonhospital site B, beginning with the fourth year of the program, hospital A will receive a rural track FTE limitation of 18 FTEs, because the highest number of residents training at either hospital A or rural nonhospital site B is six PGY 2s at rural nonhospital site B and the minimum accredited length for internal medicine is 3 years (thus, six PGY 2s × 3 years = 18 FTEs). (Note that for the first 3 years of the new rural track program, the actual count of residents training in the rural track at both hospital A and rural nonhospital site B will be hospital A's rural track FTE count (and rural track FTE limitation for the first 3 years of the new rural track program).)

3. Rotating Residents for Less Than Two-Thirds of the Program to a Rural Hospital(s)

We are specifying at § 413.86(g)(11)(iii) that if an urban hospital rotates residents in the rural track program to a rural hospital(s) for periods of time that are less than two-thirds of the duration of the program, the urban hospital may not include those residents in its FTE count (if the urban hospital FTE count exceeds the urban hospital FTE cap), nor may the urban hospital include those residents when calculating its rural track FTE count. However, we note that, in this scenario, if the rural track residency program is a new residency program as specified in redesignated § 413.86(g)(12), the rural hospital may be eligible to receive an FTE cap adjustment for those residents training in the rural track, in accordance with the provisions of existing § 413.86(g)(6)(iii). If the rural track residency program is an existing residency program, a rural hospital may count the FTE residents training in the rural track at the rural hospital(s), in accordance with the provisions of § 413.86(g)(4), as amended, to incorporate the provisions of section 407(b)(1) of Public Law 106–113.

We are not permitting an urban hospital to count the FTE of residents in a rural track rotating to a rural hospital(s) for less than two-thirds the duration of the program (either as part of the urban hospital's FTE count or as part of its rural track FTE limitation), because to do so would inappropriately allow the urban hospital to circumvent the FTE caps (assuming the urban hospital's FTE count exceeds its FTE cap) by creating a new program with minimal training in a rural track. However, in this situation, like the other three provisions that concern the training of residents in rural areas, we will allow Medicare payment for the rural portion of the training to the rural hospital.

4. Rotating Residents for Less Than Two-Thirds of the Program to a Rural Nonhospital Site

We are specifying at § 413.86(g)(11)(iv) that if an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for periods of time that are less than two-thirds of the duration of the program, the urban hospital may include those residents in its FTE count, subject to the requirements under existing § 413.86(f)(4). The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track FTE limitation, determined as follows:

- For the first 3 years of the rural track's existence, the rural track FTE limitation for the urban hospital will be the actual number of FTE residents training in the rural track at the rural nonhospital site.
- Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of: (a) the highest number of residents in any program year who, during the third year of the rural track's existence, are training in the rural track at the rural nonhospital site(s); and (b) the length of time in which the residents are being trained at the rural nonhospital site(s).

We note that, in this situation, an urban hospital would not be able to count the FTE for the rural track

resident while the resident is training at the urban hospital (unless the urban hospital's FTE count does not exceed its FTE cap). The rural track FTE count and the rural track FTE limitation for the urban hospital would be limited to account for the residents training at the rural nonhospital site.

As in the second scenario at new § 413.86(g)(11)(ii), we are specifying at § 413.86(g)(11)(iv) that an urban hospital may include in its FTE count those residents in the rural track rotating to a rural nonhospital site, subject to the requirements under § 413.86(f)(4). Under this new rural track policy, where the urban hospital rotates residents for less than two-thirds of the residency program to a rural nonhospital site, the urban hospital would be eligible to include in its FTE count residents training in the rural track up to its rural track FTE limitation, but the urban hospital must still reimburse the rural nonhospital site for the costs of training those residents, as specified under § 413.86(f)(4).

We note that, in this last scenario, we are allowing the urban hospital to receive a rural track FTE limitation even in situations where it is rotating residents to a rural area for a minimal period of time (less than two-thirds the duration of the program). We believe that this last scenario can be distinguished from the third scenario in which the urban hospital is rotating residents to a rural area for a minimal portion of the program but to a rural hospital instead of a rural nonhospital site. In the third scenario, we are allowing Medicare payment to go to the rural hospital for the portion of the urban hospital program that involves rural training (but not to the urban hospital, since the rural hospital is receiving an FTE cap adjustment for that training). However, in the last scenario, we are allowing the urban hospital to include the rural track residents in its FTE count (and as part of its rural track FTE limitation), based on how long it rotates the residents to the rural nonhospital site (and also incurs all or substantially all of the training costs). We do not believe that the urban hospital can circumvent its FTE cap in this last scenario because it will only count the rural track residents based on the portion of training in the rural nonhospital site (assuming the urban hospital's FTE count exceed its FTE cap).

An example of this last scenario would be in the situation where urban hospital C establishes a new residency program in FY 2001 by training six PGY 1s in the first year of the program's existence at the urban hospital. In the second year of the program, urban hospital C trains six PGY 1s and rotates the (now) six PGY 2s to rural nonhospital site D. In the third year of the program, urban hospital C trains seven PGY 1s, zero PGY 2s (rotating the six PGY 2s to rural nonhospital site D) and six PGY 3s. Urban hospital C would receive a rural track FTE limitation of zero FTEs in the first year of the program's existence, since urban hospital C did not rotate any residents to a rural nonhospital site in that first year; in the second year of the program, urban hospital C may count six FTE residents above its FTE cap as its second year rural track FTE limitation, since it rotated six PGY 2s to rural nonhospital site D in that second year; in the third year of the program, urban hospital C may count six FTE residents above its FTE cap as its third year rural track FTE limitation, as well, since it rotated six PGY 2s to the rural nonhospital site D in the third year. Finally, beginning with the fourth year of the rural track program's existence, urban hospital C will receive a rural track FTE limitation of seven FTEs (seven PGY 1 residents training at urban hospital C that are designated to rotate for one year of their training to rural nonhospital site D × 1 year of training at rural nonhospital site D), assuming urban hospital C complies with the requirements at § 413.86(f)(4) that urban hospital C incurs all or substantially all of the costs of training the six residents in rural nonhospital site D.

5. Conditions That Apply to All Urban Hospitals

We are specifying that all urban hospitals that wish to count FTE residents in rural tracks, not to exceed their respective rural track FTE limitations, must comply with each of the following conditions, as stated at §§ 413.86(g)(11)(v) and (vi):

(a) A hospital may not include in its rural track limitation or its FTE count (assuming the hospital's FTE count exceeds its cap), FTE residents who are training in a rural track residency program that were already included as part of the hospital's FTE cap (if the rural track program was in existence during the hospital's most recent cost reporting period ending on or before December 31, 1996).

(b) A hospital must base its count of residents in a rural track on written contemporaneous documentation that each resident enrolled in a rural track program at the urban hospital intends to rotate for a portion of the residency program to a rural area. For example, written contemporaneous documentation might be a letter of intent signed and dated by the rural track residency program director and the resident at the time of the resident's entrance into the rural track program as a PGY 1.

(c) All residents who are included by the hospital as part of its FTE count (not to exceed its rural track FTE limitation) must ultimately train in the rural area.

(d) If HCFA finds that residents who are included by the urban hospital as part of its FTE count did not actually complete the training in the rural area, HCFA will reopen the urban hospital's cost report within the 3-year reopening period (as specified in § 405.1885) and adjust the hospital's Medicare GME payments (and, where applicable, the hospital's rural track FTE limitation).

D. Not Counting Against Numerical Limitation Certain Residents Transferred From a Department of Veterans Affairs Hospital's Residency Program That Loses Accreditation (Section 407(d) of Public Law 106–113 and new 42 CFR 412.105(f)(1)(xii) and 413.86(g)(10))

Section 407(d) of Public Law 106–113 addresses the situation where residents were training in a residency training program at a Veterans Affairs (VA) hospital and then were transferred on or after January 1, 1997, and before July 31, 1998, to a non-VA hospital because the program in which the residents were training would lose its accreditation by the ACGME if the residents continued to train at the VA hospital. In this situation, the non-VA hospital may receive a temporary adjustment to its FTE cap to reflect those residents who were transferred to the non-VA hospital for the duration that those transferred residents were training at the non-VA hospital. We are specifying that, in order to receive this adjustment, the non-VA hospital must submit a request to its fiscal intermediary for a temporary adjustment to its FTE cap, document that the hospital is eligible for this temporary adjustment by identifying the residents who have come from the VA hospital, and specify the length of time the adjustment is needed.

We note that section 407(d) of Public Law 106–113 only refers to programs that would lose their accreditation by the ACGME. This provision does not apply to accreditation by the American Osteopathy Association (AOA), the American Podiatry Association (APA), or the American Dental Association (ADA).

Under section 407(d)(3) of Public Law 106–113, this policy is effective as if included in the enactment of Public Law 105–33, that is, for direct GME, with cost reporting periods beginning

on or after October 1, 1997, and for IME, discharges occurring on or after October 1, 1997. If a hospital is owed payments as a result of this provision, payments must be made immediately.

We are adding new §§ 412.105(f)(1)(xii) and 413.86(g)(10) to incorporate the provisions of section 407(d) of Public Law 106–113.

E. Initial Residency Period for Child Neurology Residency Programs (Section 312 of Public Law 106–113 and 42 CFR 413.86(g)(1))

Generally, section 1886(h)(5)(F) of the Act defines the term "initial residency period" to mean the "period of board eligibility." The period of board eligibility is defined in section 1886(h)(5)(G) of the Act as the period recognized by ACGME as specified in the *Graduate Medical Education Directory* which is published by the American Medical Association. The initial residency period limitation was designed to limit full Medicare payment for direct GME to the time required to train in a single specialty. Therefore, the initial residency period is determined based on the minimum time required for a resident to become board eligible in a specialty and the published periods included in the *Graduate Medical Education Directory*. During the initial residency period, the residents are weighted at 1.0 FTE for purposes of Medicare payment. Residents seeking additional specialty or subspecialty training are weighted at 0.5 FTE.

In order to become board eligible in child neurology, residents must complete training in more than one specialty. Thus, for example, before the effective date of section 312 of Public Law 106–113, if a resident enrolled in a child neurology residency program by first completing 2 years of training in pediatrics (which is associated with a 3-year initial residency period), followed by 3 years of training in child neurology, the resident would be limited by the initial residency period of pediatrics. Section 312 of Public Law 106–113 amended section 1886(h)(5) of the Act by adding at the end a clause (v) which states that "in the case of a resident enrolled in a child neurology residency training program, the period of board eligibility and the initial residency period shall be the period of board eligibility for pediatrics plus 2 years." (The initial residency period for pediatrics is currently 3 years). The amendments made by section 312(a) of Public Law 106–113 applies to future child neurology residents and to child neurology residents who have already begun their training (for whom an initial residency period was already established). However, it does not apply to residents who have completed their child neurology training before July 1, 2000.

We are revising § 413.86(g)(1) to reflect that, effective on or after July 1, 2000, for residency programs that began before, on, or after November 29, 1999, the period of board eligibility and the initial residency period for child neurology is now the period of board eligibility for pediatrics plus 2 years. We note that the initial residency period is the same for all child neurology residents, regardless of whether or not the resident completes the first year of training in pediatrics or neurology.

Following are four examples of how a child neurology resident's FTE status would be determined:

Example 1: Assume the resident completes 2 years of training in pediatrics followed by 3 years of training in child neurology.

Before Public Law 106–113:

Year 1: July 1, 1997–June 30, 1998. 1.0 FTE
Year 2: July 1, 1998–June 30, 1999. 1.0 FTE
Year 3: July 1, 1999–June 30, 2000. 1.0 FTE
Year 4: July 1, 2000–June 30, 2001. 0.5 FTE
Year 5: July 1, 2001–June 30, 2002. 0.5 FTE

After Public Law 106–113:

Year 1: July 1, 1997–June 30, 1998. 1.0 FTE
Year 2: July 1, 1998–June 30, 1999. 1.0 FTE
Year 3: July 1, 1999–June 30, 2000. 1.0 FTE
Year 4: July 1, 2000–June 30, 2001. 1.0 FTE
Year 5: July 1, 2001–June 30, 2002. 1.0 FTE

Example 2: Assume the resident completes 2 years of training in pediatrics followed by 3 years of training in child neurology.

Before Public Law 106–113:

Year 1: July 1, 1996–June 30, 1997. 1.0 FTE
Year 2: July 1, 1997–June 30, 1998. 1.0 FTE
Year 3: July 1, 1998–June 30, 1999. 1.0 FTE
Year 4: July 1, 1999–June 30, 2000. 0.5 FTE
Year 5: July 1, 2001–June 30, 2001. 0.5 FTE

After Public Law 106–113:

Year 1: July 1, 1996–June 30, 1997. 1.0 FTE
Year 2: July 1, 1997–June 30, 1998. 1.0 FTE
Year 3: July 1, 1998–June 30, 1999. 1.0 FTE
Year 4: July 1, 1999–June 30, 2000. 0.5 FTE
Year 5: July 1, 2000–June 30, 2001. 1.0 FTE

Example 3: Assume the resident completes 1 year of neurology training, followed by 1 year of pediatrics training, followed by 3 years of child neurology training.

Note: The initial residency period for neurology is currently 4 years.

Before Public Law 106–113:

Year 1: July 1, 1997–June 30, 1998. 1.0 FTE
Year 2: July 1, 1998–June 30, 1999. 1.0 FTE
Year 3: July 1, 1999–June 30, 2000. 1.0 FTE
Year 4: July 1, 2000–June 30, 2001. 1.0 FTE
Year 5: July 1, 2001–June 30, 2002. 0.5 FTE

After Public Law 106–113:

Year 1: July 1, 1997–June 30, 1998. 1.0 FTE
Year 2: July 1, 1998–June 30, 1999. 1.0 FTE
Year 3: July 1, 1999–June 30, 2000. 1.0 FTE
Year 4: July 1, 2000–June 30, 2001. 1.0 FTE
Year 5: July 1, 2001–June 30, 2002. 1.0 FTE

Example 4: Assume the resident completes 1 year of neurology training, followed by 1 year of pediatrics training, followed by 3 years of child neurology training.

Note: The initial residency period for neurology is currently 4 years.

Before Public Law 106–113:

Year 1: July 1, 1996–June 30, 1997. 1.0 FTE
Year 2: July 1, 1997–June 30, 1998. 1.0 FTE
Year 3: July 1, 1998–June 30, 1999. 1.0 FTE
Year 4: July 1, 1999–June 30, 2000. 1.0 FTE
Year 5: July 1, 2000–June 30, 2001. 0.5 FTE

After Public Law 106–113:

Year 1: July 1, 1996–June 30, 1997. 1.0 FTE
Year 2: July 1, 1997–June 30, 1998. 1.0 FTE
Year 3: July 1, 1998–June 30, 1999. 1.0 FTE
Year 4: July 1, 1999–June 30, 2000. 1.0 FTE
Year 5: July 1, 2000–June 30, 2001. 1.0 FTE

F. Technical Amendment

It has come to our attention that the first sentence of existing § 413.86(g)(1) contains a technical error. The first sentence of this paragraph reads "For purposes of this section, an initial residency period is the number of years necessary to satisfy the minimum requirements for certification in a specialty or subspecialty, plus one year." This section of the regulation was revised as a result of section 13563(b) of Public Law 103–66, and was effective only until June 30, 1995. Generally, effective July 1, 1995, an initial residency period is defined as the minimum number of years required for board eligibility. Therefore, we are revising the first sentence of paragraph (g)(1) of § 413.86 accordingly. The remainder of paragraph (g)(1) of § 413.86 is unchanged.

VIII. Additional Payment to Hospitals That Operate Approved Nursing and Allied Health Education Programs (Section 541 of Public Law 106–113 and 42 CFR 413.86(d) and new 413.87)

Under sections 1861(v) and 1886(a) of the Act, hospitals that operate approved nursing or allied health education programs may be eligible for the pass-through payment under the prospective payment system. Section 1886(h) of the Act establishes the methodology for determining payments to hospitals for the direct costs of GME programs. Section 1886(h) of the Act, as implemented in regulations at § 413.86, specifies that Medicare payments for direct costs of GME are based on a prospectively determined per resident amount (PRA). The PRA is multiplied by the number of FTE residents working in all areas of the hospital complex (and nonhospital sites, where applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payment.

Section 1886(h)(3)(D) of the Act, as added by section 4624 of Public Law 105–33, provides a 5-year phase-in of payments to teaching hospitals for direct costs of GME associated with

services to Medicare+Choice (managed care) enrollees for portions of cost reporting periods occurring on or after January 1, 1998. The amount of payment for direct GME is equal to the product of the PRA, the number of FTE residents working in all areas of the hospital (and nonhospital sites, if applicable), the ratio of the number of inpatient bed days that are attributable to Medicare+Choice enrollees to total inpatient bed days, and an applicable percentage. The applicable percentages are 20 percent for portions of cost reporting periods occurring in calendar year 1998, 40 percent in calendar year 1999, 60 percent in calendar year 2000, 80 percent in calendar year 2001, and 100 percent in calendar year 2002 and subsequent years. (Section 1886(d)(11) of the Act, as added by section 4622 of Public Law 105–33, provides a 5-year phase-in of payments to teaching hospitals for IME associated with services to Medicare+Choice enrollees for portions of cost reporting periods occurring on or after January 1, 1998, as well. However, the Medicare+Choice IME payments are irrelevant for the purposes of this section of the interim final rule, because although section 541 of Public Law 106-113 affects the payments for Medicare+Choice direct GME, it in no way affects the payments for Medicare+Choice IME.)

Section 541 of Public Law 106–113 further amended section 1886 of the Act by adding subsection (l) and amending section 1886(h)(3)(D) to provide for additional payments to hospitals for nursing and allied health education programs associated with services to Medicare+Choice enrollees. Hospitals that, under § 413.85, operate approved nursing or allied health education programs and receive Medicare reasonable cost reimbursement for these programs would receive additional payments. This provision is effective for portions of cost reporting periods occurring in a calendar year, beginning with calendar year 2000.

Section 1886(l) of the Act, as added by section 541 of Public Law 106–113, specifies the methodology to be used to calculate these additional payments and places a limitation on the total amount that is projected to be expended in any calendar year; that is, $60 million. In this document, we refer to the total amount of $60 million or less as the payment "pool." We emphasize that we use the term "pool" solely for ease of reference; the term reflects an estimated dollar figure, a number that is plugged into a formula to calculate the amount of additional payments. The term "pool" does not refer to a discrete fund of money that is set aside in order to make the additional payments (thus, for example, if the estimated "pool" is $50 million, we use the number 50 million to calculate the amount of additional payments, but this does not mean that we set aside $50 million in a separate fund from which we make the additional payments). The total amount of additional payments associated with utilization of Medicare+Choice enrollees is based on the ratio of total direct GME payments for Medicare+Choice enrollees to total Medicare direct GME payments, multiplied by the total Medicare nursing and allied health education payments. A hospital would receive its share of these additional payments in proportion to the amount of Medicare nursing and allied health education payments received in the cost reporting period that ended in the fiscal year that is 2 years prior to the current calendar year, to the total amount of nursing and allied health payments made to all hospitals in that cost reporting period. Section 541(b) of Public Law 106–113 amended section 1886(h)(3) of the Act to provide that direct GME payments for Medicare+Choice utilization will be reduced to account for the additional payments that are made for nursing and allied health education programs under the provisions of section 1886(l) of the Act.

We are implementing section 541 by establishing regulations at new § 413.87 to incorporate the provisions of section 1886(l) of the Act. We are specifying the rules for a hospital's eligibility to receive the additional payment under section 1886(l), the requirements for determining the additional payment to each eligible hospital, and the methodologies for calculating each additional payment and for calculating the payment "pool." These provisions are discussed below:

A. Qualifying Conditions for Payment

We are providing that, for portions of cost reporting periods occurring on or after January 1, 2000, a hospital that operates a nursing or allied health education program in accordance with § 413.85 may receive an additional payment amount associated with Medicare+Choice utilization if it meets two conditions.

First, section 541 of Public Law 106–113 directs the Secretary to determine the amount of payment for each hospital based on an "* * * estimate of the ratio of the amount of payments made under section 1861(v) to the hospital for nursing and allied health education activities for the hospital's cost reporting period ending in the *second preceding fiscal year* to the *total of such amounts for all hospitals for such cost reporting periods.*" (Emphasis added). Accordingly, we are providing that the hospital must have received reasonable cost Medicare payment for a nursing or allied health education program(s) in its cost reporting period(s) ending in the fiscal year that is 2 years prior to the current calendar year. For example, if the current calendar year is calendar year 2000, the fiscal year that is 2 years prior to calendar year 2000 is FY 1998. In this example, if a hospital did not receive reasonable cost payment for approved nursing or allied health education programs in FY 1998, but first establishes these programs and receives such payment as specified in § 413.85 after FY 1998, the hospital will only be eligible to receive an additional payment amount in the calendar year that is 2 years after the respective fiscal year. For example, if the hospital establishes a nursing or allied health program in FY 1999, it will first be eligible to receive an additional payment amount in calendar year 2001.

Second, section 541 of Public Law 106–113 states, "For portions of cost reporting periods occurring in a year (beginning with 2000), the Secretary shall provide for an additional payment amount for any hospital that *receives* payments for the costs of approved educational activities for nurse and allied health professional training * * *." (Emphasis added). Accordingly, we are specifying that the hospital also must be receiving reasonable costs payment for its nursing or allied health education program(s) in the current calendar year to receive these additional payments for nursing and allied health training.

B. Calculating the Additional Payment Amount

The Medicare fiscal intermediary will determine if the hospital is eligible to receive the additional payment by applying the two criteria specified in section VIII.A.1. of this preamble. For portions of cost reporting periods occurring on or after January 1, 2000, an eligible hospital will receive the additional payment amount calculated according to the following steps:

Step 1: Determine the hospital's total Medicare payments received for approved nursing or allied health education programs based on data from the settled cost reports for the period(s) ending in the fiscal year that is 2 years prior to the current calendar year.

For example, if the current calendar year is 2000, determine the hospital's total nursing or allied health education payments made in its cost reporting period ending in FY 1998. If a hospital

has more than one cost reporting period ending in that fiscal year, the fiscal intermediary will sum the nursing and allied health payments made to the hospital over those cost reporting periods.

Step 2: Determine the ratio of the individual hospital's total nursing or allied health payments from Step 1, to the total of all nursing and allied health education program payments made across all hospitals for all cost reporting periods ending in the fiscal year that is 2 years prior to the current calendar year.

To determine these total payments, we will use the best available cost reporting data for the applicable hospitals from the Hospital Cost Report Information System (HCRIS) that is for cost reporting periods in the fiscal year that is 2 years prior to the current calendar year. If the necessary data are not included in HCRIS because a hospital files a manual cost report, we will obtain the necessary data from the fiscal intermediaries that serve those hospitals. If a hospital has more than one cost reporting period ending in the fiscal year that is 2 years prior to the current calendar year, we will include all of the hospital's cost reports for those periods in our calculations. If a hospital does not have a cost reporting period ending in the fiscal year that is 2 years prior to the current calendar year (such as a hospital with a long cost reporting period), the hospital will be included in the calculations for the calendar year that is 2 years after the fiscal year in which the long cost reporting period ends.

Each calendar year, HCFA will determine and publish in a proposed rule and a final rule the total amount of nursing and allied health education payments made across all hospitals during the fiscal year that is 2 years prior to the current calendar year.

Step 3: Multiply the ratio calculated in step 2 by the Medicare+Choice nursing and allied health payment "pool" (described under section VIII.C. of this preamble) that is determined by HCFA for the current calendar year.

The resulting product is each respective hospital's additional payment amount. We note that, as evidenced by the methodology outlined above, in accordance with section 541 of Public Law 106–113, Congress is not requiring each hospital's additional payment amount for a given period to be based on the hospital's Medicare+Choice utilization in that period.

C. HCFA Calculation of Medicare+Choice Nursing and Allied Health Payment "Pool"

In accordance with section 1886(l) of the Act, each calendar year, HCFA estimates a total amount, not to exceed $60 million, which is the basis for determining the additional payments for nursing and allied health education associated with Medicare+Choice enrollees to hospitals that operate approved nursing or allied health education programs. The total amount is calculated in the following manner:

Step 1: We determine the ratio of projected total Medicare+Choice direct GME payments across all hospitals in the current calendar year to projected total direct GME payments across all hospitals in the current calendar year.

Step 2: We multiply the ratio calculated in step 1 by projected total nursing and allied health education reasonable cost payments across all hospitals in the current calendar year.

The resulting product of Step 1 and Step 2, not to exceed $60 million, is the Medicare+Choice nursing and allied health payment "pool" for the current calendar year.

The projections of Medicare+Choice direct GME, direct GME, and nursing and allied health payments for a calendar year are based on such payments from the best available cost report data from the HCRIS. (For example, for calendar year 2000, the projections are based on the best available cost report data from HCRIS 1998). These payment amounts are then increased to the appropriate calendar year using the increases allowed by section 1886(h) of the Act for these services (using the percentage applicable for the current calendar year for Medicare+Choice direct GME and the Consumer Price Index (CPI) increases for direct GME, and assuming nursing and allied health remains a constant percentage of inpatient hospital spending).

D. Proportional Reduction to Medicare+Choice Direct GME Payments

In order for the Secretary to make the additional payments to eligible hospitals operating approved nursing or allied health education programs, section 1886(h)(3)(D) of the Act, as amended by section 541(b) of Public Law 106–113, specifies that the Secretary will carve out an estimated percentage of payments that are made to teaching hospitals for direct GME associated with services to Medicare+Choice enrollees. Specifically, the law provides that the estimated reductions in Medicare+Choice direct GME payments must equal the estimated total additional Medicare+Choice nursing and allied health education payments. Because the data for the components of the formula used to calculate this percentage will change each year (due to percentage changes in the Medicare+Choice direct GME phase-in, changes in direct GME payment amounts, and changes in nursing and allied health education payment amounts), we will calculate and publish the applicable percentage reduction each year in the proposed rule and the final rule for the annual update to the hospital inpatient prospective payment system rates. The percentage is estimated by calculating the ratio of the Medicare+Choice nursing and allied health payment "pool" for the current calendar year to the projected total Medicare+Choice direct GME payments made across all hospitals for the current calendar year.

E. Calculation of Amounts for Calendar Year 2000

The total amount of nursing and allied health education payments made across all hospitals for cost reporting periods ending in FY 1998, that is, 2 fiscal years prior to calendar year 2000, is estimated at $220,622,805. We have calculated this amount for FY 2000 based upon data from hospitals' cost reporting periods ending during FY 1998 (October 1, 1997 through September 30, 1998), as provided by section 541 of Public Law 106–113. (Section VIII.B. of this preamble provides a more detailed explanation of how this amount was derived.) We note that, if a hospital did not have a cost reporting period ending in FY 1998, such as a hospital with a long cost reporting period beginning in FY 1997 and ending in FY 1999, the hospital was excluded from our calendar year 2000 calculations (but will be included in our calendar year 2001 calculations). We are including data for 1,257 hospitals in the calendar year 2000 calculations. Ten of these hospitals had more than one cost reporting period.

According to the methodology outlined in section VIII.C. of this preamble, we have estimated the Medicare+Choice nursing and allied health education payment "pool" for calendar year 2000 to be $26,272,140. The ratio of each hospital's nursing and allied health education payments from its cost reporting period ending in FY 1998 to total nursing and allied health education payments made from all cost reporting periods ending in FY 1998 is then multiplied by $26,272,140 to determine each hospital's additional

payment amount (as described in section VIII.B. of this preamble).

For calendar year 2000, the projected total Medicare+Choice direct GME payments made to all hospitals is $250 million. Therefore, consistent with the methodology described in section VIII.D. of this preamble, the ratio for calendar year 2000 is $26,272,140 to $250 million, which equals a 10.5 percent reduction to each hospital's Medicare+Choice direct GME payment during calendar year 2000.

Accordingly, for portions of cost reporting periods occurring in calendar year 2000, hospitals that receive Medicare+Choice direct GME payments will have these payments reduced by 10.5 percent. Specifically, each hospital with a calendar year cost reporting period that is receiving Medicare+Choice direct GME payments will have those payments reduced by 10.5 percent for the period of January through December 2000. If a hospital does not have a calendar year cost reporting period, then the reductions to its Medicare+Choice direct GME payments will depend upon the portion of its cost reporting period that falls within the current calendar year. For example, if a hospital has an October through September fiscal year, its Medicare+Choice direct GME payments from October through December 1999 will not be affected. However, the hospital's Medicare+Choice direct GME payments from January through September 2000 (from its FY 2000 cost reporting period), and its Medicare+Choice direct GME payments from October through December 2000 (from its FY 2001 cost reporting period), will be reduced by 10.5 percent. Its Medicare+Choice direct GME payments for the remainder of its FY 2001 cost reporting period, which extends from January through September 2001, will be reduced by the applicable percentage for calendar year 2001. Similarly, if a hospital has a July through June cost reporting period, its Medicare+Choice direct GME payments from July through December 1999 will not be affected. However, its Medicare+Choice direct GME payments from January through June 2000, and its Medicare+Choice direct GME payments from July through December 2000, will be reduced by 10.5 percent. Its Medicare+Choice direct GME payments for the remainder of its cost reporting period, which extends from January through June 2001, will be reduced by the applicable percentage for calendar year 2001.

In general, we note that hospitals that operate both GME and nursing or allied health education programs should experience either a net gain or loss as a result of this provision, because although their Medicare+Choice direct GME payments will be reduced by a certain percentage, their Medicare+Choice nursing and allied health payments will be increased. However, hospitals that operate only GME programs will see their Medicare reimbursement reduced, and hospitals that operate only nursing or allied health education programs will see their Medicare reimbursement increased.

F. Regulation Changes

We are adding a new § 413.87 to incorporate the provisions of section 541 of Public Law 106–113. In addition, we are making a conforming change to §§ 413.86(d)(4) through (d)(6) to account for the revised methodology in determining a hospital's Medicare+Choice direct GME payments.

IX. Hospitals and Units Excluded From the Prospective Payment System (Section 121 of Public Law 106–113 and 42 CFR 413.40(c)(4)(iii)(B) and 413.40(c)(4)(v))

A. Limitation on the Target Amounts

In the August 29, 1997 final rule (62 FR 46018), in accordance with section 4414 of Public Law 105–33, we implemented section 1886(b)(3)(H) of the Act, which provides for caps on the target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. The caps on the target amounts apply to the following three classes of excluded hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals. In establishing the caps on the target amounts within each class of hospital for new hospitals, section 1886(b)(7)(C) of the Act, as amended by section 4416 of Public Law 105–33, instructed the Secretary to provide an appropriate adjustment to take into account area differences in average wage-related costs. However, since the statutory language under section 4414 of Public Law 105–33 did not provide for the Secretary to account for area differences in wage-related costs in establishing the caps on the target amounts within each class of hospital for existing hospitals, HCFA did not account for wage-related differences in establishing the caps on the target amounts for existing facilities in FY 1998.

Section 121 of Public Law 106–113, which amended section 1886(b)(3)(H) of the Act, directed the Secretary to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. For purposes of calculating the caps, section 1886(b)(3)(H)(ii) of the Act requires the Secretary to first "estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996." Section 1886(b)(3)(H)(iii) of the Act, as added by Public Law 106–113, requires the Secretary to provide for "an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital."

For cost reporting periods beginning in FY 2000, we update the FY 1996 wage-neutralized national 75th percentile target amount for each class of hospital by the market basket percentage increase up through FY 2000. For cost reporting periods beginning during FY 2001 through 2002, we update the previous fiscal year's wage-neutralized national 75th percentile target amount for each class of hospital by the applicable market basket percentage increase. In determining the national 75th percentile target amount for each class of hospital and consistent with the broad authority conferred on the Secretary by section 1886(b)(3)(H)(iii) of the Act (as added by Public Law 106–113) to determine the appropriate wage adjustment, we have accounted for differences in wage-related costs by adjusting the caps on the target amounts for each class of hospital (psychiatric, rehabilitation, and long-term care) using the methodology described in the following section.

B. Wage-Neutralized National 75th Percentile Target Amounts

In determining the wage-neutralized national 75th percentile target amount for each class of hospital, we used FY 1996 hospital cost report data and determined the labor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the most recent actuarial estimate of the labor-related portion of excluded hospital costs (or 0.71553). This actuarial estimate of the labor-related share of excluded hospital costs reflects revisions made in connection with other revisions to the excluded hospital market basket published in the August 29, 1997 final rule (62 FR 45996). Based on the most recent estimate of the relative weights of the labor cost

categories (wages and salaries, employee benefits, professional fees, postal services, and all other labor intensive services), the labor-related portion is 71.553 percent. The remaining 28.447 percent is the most recent estimate of the nonlabor-related portion. Similarly, we determined the nonlabor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the actuarial estimate of the nonlabor-related portion of costs (or 0.28447).

Next, we wage-neutralized each hospital's FY 1996 target amount by dividing the labor-related portion of each hospital's FY 1996 target amount by the hospital's FY 2000 hospital wage index under the hospital inpatient prospective payment system (see § 412.63), as shown in Tables 4A and 4B of the July 30, 1999 final rule (64 FR 41585). The FY 2000 wage index is the most current wage index available. Moreover, the FY 2000 hospital inpatient prospective payment system wage index was calculated using FY 1996 data. Within the specified class of hospital, each hospital's FY 1996 target amount was wage-neutralized using the published FY 2000 wage index. Each hospital's wage-neutralized FY 1996 target amount was calculated by adding the nonlabor-related portion of its target amount and the wage-neutralized labor-related portion of its target amount.

This methodology for wage-neutralizing each hospital's target amount to determine the national 75th percentile of the target amounts for each class of hospital is identical to the methodology we utilized for the wage index adjustment described in the August 29, 1997 final rule (62 FR 46020) to calculate the wage-adjusted 110 percent of the national median target amounts for new excluded hospitals and units. Again, we recognize that wages may differ for prospective payment hospitals and excluded hospitals and units, but we believe that the wage data reflect area differences in wage-related costs.

In light of the short timeframe we have for implementing section 121 of Public Law 106–113 for cost reporting provisions beginning in FY 2000, the FY 2000 wage data for acute care hospitals was the most feasible data source to determine the wage-neutralized national 75th percentile target amounts since reliable wage data for hospitals and hospital units excluded from the prospective payment system is not available.

Within each class of hospital, the wage-neutralized national 75th percentile target amounts were determined by arraying the hospitals' wage-neutralized FY 1996 target amounts. The wage-neutralized national 75th percentile target amount for each class of hospital is then separated into a labor-related share and a nonlabor-related share based on actuarial estimates of 71.553 percent labor-related share and 28.447 percent nonlabor-related share.

In the July 30, 1999 final rule (64 FR 41557), based on the national 75th percentile of the target amounts for cost reporting periods ending during FY 1996 (which did not account for area wage-related differences), updated by the market basket percentage increase to FY 2000, we had established the caps on the target amounts for existing excluded hospitals and units as follows:

- Psychiatric hospitals and units: $11,100
- Rehabilitation hospitals and units: $20,129
- Long-term care hospitals: $39,712

Using the wage-neutralized national 75th percentile of the target amounts for cost reporting periods ending during FY 1996, updated by the applicable market basket percentage increase to FY 2000, and the wage adjustment provided for under the amendments made by Public Law 106–113, we are establishing the labor-related share and nonlabor-related share of the FY 2000 wage-neutralized national 75th percentile target amounts for each class of hospital to determine a hospital's FY 2000 cap on the target amount as follows:

Class of excluded hospital or unit	Labor-related share	Nonlabor-related share
Psychiatric	$7,863	$3,126
Rehabilitation	14,666	5,831
Long-Term Care	28,321	11,259

We note that the March 2000 Program Memorandum (Transmittal Number A–00–16) issued to all Medicare fiscal intermediaries listed incorrect amounts for the labor-related portion and nonlabor-related portion of the wage-neutralized caps on the target amounts for FY 2000. The FY 2001 proposed rule (65 FR 26314) also listed incorrect amounts for the labor-related portion and nonlabor-related portion of the proposed FY 2001 wage-neutralized national 75th percentile caps on the target amounts. The correct labor-related and nonlabor-related portions of the wage-neutralized national 75th percentile cap on the target amount for FY 2000 for each class of hospital are listed above. The correct labor-related and nonlabor-related portions of the FY 2001 wage-neutralized national 75th percentile caps on the target amounts for each class of hospital will be included in the FY 2001 hospital inpatient prospective payment system final rule to be published by August 1, 2000.

The estimates of the national 75th percentile of the target amounts were developed from the best available data on the hospital-specific target amounts for cost reporting periods ending during fiscal year 1996 and then updated by the market basket percentage increase for FY 2000. We used the data that have been reported to HCFA for over 3,000 hospitals and units within the three classes of hospitals specified by the statute. We note that, with respect to long-term care hospitals, we used the same data (provider universe and target amount figures for hospitals within that class) as were used to establish the caps on the target amounts for long-term care hospitals published in the May 12, 1998 final rule (63 FR 26347). The data for psychiatric hospitals and units and rehabilitation hospitals and units used to establish the caps on the target amounts for these classes of hospitals included updates to the hospital's FY 1996 target amounts resulting from settling cost reports that previously had not been settled prior to August 1997 when the final rule establishing the caps on the target amounts for existing excluded hospitals was published.

C. Wage-Adjusted Target Amounts

We are specifying that, within each class of hospital, a hospital's wage-adjusted cap on the target amount per discharge for FY 2000 is determined by adding the hospital's nonlabor-related portion of the wage-neutralized national 75th percentile cap to its wage-adjusted labor-related portion of the national 75th percentile cap. A hospital's wage-adjusted labor-related portion of the target amount is calculated by multiplying the labor-related portion of the wage-neutralized national 75th

percentile cap for the hospital's class by the hospital's applicable wage index. For FY 2000, a hospital's applicable wage index is the wage index under the hospital inpatient prospective payment system (see § 412.63) for cost reporting periods beginning on or after October 1, 1999, and ending on or before September 30, 2000 as shown in Tables 4A and 4B of the July 30, 1999 final rule (64 FR 41585). The FY 1996 wage-neutralized national 75th percentile target amount for each class of hospital updated through FY 2000 by the applicable market basket percentage increase for excluded hospitals and hospital units used to determine a hospital's limitation on its FY 2000 target amount. For FY 2000, a hospital's FY 2000 limitation on its target amount is used to determine payments for excluded hospitals and units under § 413.40(d). The FY 2000 acute care hospital wage index is used to wage-adjust the labor-related portion of the FY 2000 wage-neutralized national 75th percentile target amount within the specified class of hospital since it is used to provide for an appropriate wage adjustment by accounting for differences in area wage-related costs in FY 2000 hospital inpatient prospective payment system payments. As we stated previously in this section, we recognize that wages may differ for prospective payment hospitals and excluded hospitals and units, but we believe that these wage data reflect area differences in wage-related costs. A hospital's applicable wage index is the wage index value for the area in which the hospital or unit is physically located (MSA or rural area) without taking into account prospective payment system hospital reclassification under section 1886(d)(10) of the Act, and section 1886(d)(8) of the Act as amended by section 401 of Public Law 106–113.

D. Changes in the Regulations

We are revising §§ 413.40(c)(4)(iii)(B) and (c)(4)(v) to incorporate the changes in the methodology used to determine the limitation on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, as provided for under the amendments made by section 121 of Public Law 106–113.

X. Critical Access Hospitals (CAHs)

A. Background: The Medicare Rural Hospital Flexibility Program and CAHs

Section 4201 of Public Law 105–33 amended section 1820 of the Act to create a nationwide Medicare Rural Hospital Flexibility (MRHF) Program to replace the 7-State Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) program. Under section 1820(c)(2) of the Act, as amended, a State could designate certain rural hospitals as CAHs if they were located a specified distance from other hospitals, made 24-hour emergency care available, and kept inpatients for a limited period of time. Additionally, CAH staffing requirements differed from those of other hospitals under Medicare and CAHs received payment for inpatient and outpatient services on the basis of reasonable cost. A comprehensive discussion of CAHs within the context of the MRHF Program may be found in the August 29, 1997 **Federal Register** (62 FR 45970 and 46008–46010).

Sections 401(b) and 403 of Public Law 106–113 modified the CAH program set forth in section 1820 of the Act.

B. Permitting Certain Facilities To Be Designated as CAHs (Section 401(b) of Public Law 106–113 and 42 CFR 485.610)

One of the threshold criteria for designation as a CAH under section 1820(c)(2)(B)(i) of the Act is that the hospital must be rural as defined in section 1886(d)(2)(D) of the Act. Section IV. of this preamble discusses the option of urban to rural classification for a "subsection (d)" hospital authorized by section 401(a) of Public Law 106–113 under an amendment to section 1886(d)(8) of the Act. Section 401(b)(2) of Public Law 106–113 amended section 1820(c)(2)(B)(i) of the Act to authorize a State to designate a hospital in an urban area as a CAH if, under one of the criteria set forth in section 1886(d)(8)(E) of the Act, it would be treated as being located in the rural area of the State in which the hospital is located. Section 401(b)(2) only provides authority for a hospital to meet the rural requirement. We note that the hospital would have to otherwise meet the statutory and regulatory requirements governing CAH designation.

The first criteria in section 401(a) specified that a hospital will be treated as located in a rural area if the hospital is located in a rural census tract of an MSA, as determined under the most recent Goldsmith Modification, originally published in the **Federal Register** on February 27, 1992. A listing of existing hospitals that may qualify as CAHs because they are located in Goldsmith areas is included in Appendix B of this interim final rule with comment period.

The application procedures and effective dates for an urban hospital seeking to reclassify as rural and thus eligible for CAH designation are set forth in the new regulation at § 412.103 that implements section 401(a), and discussed in section IV.C. of this interim final rule with comment period. We also are revising the regulation concerning CAH location at § 485.610(b) to reflect this amendment.

C. Other Legislative Changes Affecting CAHs

1. 96-hour Average Length of Stay Standard (Section 403(a) of Public Law 106–113 and 42 CFR 485.620(b))

Prior to the enactment of Public Law 106–113, section 1820(c)(2)(B)(iii) of the Act limited CAH designation only to facilities that provided inpatient care to each patient for a period of time not to exceed 96 hours, unless a longer period was required because of inclement weather or other emergency conditions, or a peer review organization (PRO) or equivalent entity, on request, waived the 96-hour restriction. Section 403(a) of Public Law 106–113 amended section 1820(c)(2)(B)(iii) of the Act to require that the 96-hour limit on stays be applied on an annual average basis, and to delete the provisions regarding waiver of longer stays. Therefore, CAHs will be permitted to keep some individual patients more than 96 hours without a waiver request, so long as the facility's average length of acute stays in any 12-month cost reporting period is not more than 96 hours.

The effective date of this provision is November 29, 1999.

We are revising the conditions of participation for length of stay for CAHs at § 485.620(b) to reflect this change.

2. For-Profit Facilities (Section 403(b) of Public Law 106-113 and 42 CFR 485.610(a))

Prior to enactment of Public Law 106–113, section 1820(c)(2)(B) of the Act allowed only nonprofit or public hospitals to be designated as CAHs. Section 403(b) of Public Law 106–113 revises section 1820(c)(2)(B) of the Act to remove the words "nonprofit or public" before "hospitals," thus enabling for-profit hospitals to qualify for CAH status.

We are revising the conditions of participation related to the status and location for CAHs at § 485.610(a) to reflect this change.

3. Closed and Downsized Hospitals (Section 403(c) of Public Law 106–113 and 42 CFR 485.610(a)(1))

Under section 1820(c)(2) of the Act, CAH designation was available only to facilities currently operating as hospitals. Section 403(c) of Public Law 106–113 amended the statute to permit

a State to designate as a CAH a facility that previously was a hospital but ceased operations on or after November 29, 1989 (10 years prior to the enactment of Public Law 106–113), if that facility fulfills the criteria under section 1820(c)(2)(B) of the Act for CAH designation as of the effective date of its designation. The amendment also allows State CAH designation for facilities that previously had been hospitals, but are currently State-licensed health clinics or health centers if they meet the revised criteria for CAH designation under section 1820(c)(2)(B) of the Act as of the effective date of designation.

We are revising the CAH criteria for State certification at § 485.610(a)(1) to reflect this change.

4. Elimination of Coinsurance for Clinical Diagnostic Laboratory Tests Furnished by a CAH (Section 403(e) of Public Law 106–113 and 42 CFR 410.152 and 413.70))

Under the law in effect before the enactment of Public Law 106–113, clinical diagnostic laboratory services furnished by a CAH to its outpatients were, like other outpatient CAH services, paid for on a reasonable cost basis, subject to the Part B deductible and coinsurance provisions. With respect to coinsurance, this means that the beneficiary was responsible for payment of 20 percent of the CAH's customary charges for the services and the CAH received payment from the Medicare program equal to 80 percent of its reasonable costs of furnishing the services.

Section 403(e) of Public Law 106–113 eliminated the Part B coinsurance and deductible for laboratory tests furnished by a CAH on an outpatient basis by providing for Medicare payment to the full amount of the lesser of the fee schedule or billed charges. Thus, CAHs are not permitted to impose a deductible or coinsurance charge on the beneficiary for these services, and Medicare Part B is to pay 100 percent of the lesser of the amount determined under the local laboratory fee schedule, the national limitation amount for that test, or the amount of the charges billed for the tests. In the case of services paid for on the basis of a negotiated rate under section 1833(h)(6) of the Act, the amount to be paid is equal to 100 percent of the negotiated rate. The effect of this change is that clinical diagnostic laboratory tests furnished by a CAH to its outpatients will be paid for on the same basis as is paid for these services furnished by all hospitals to outpatients.

Section 403(e)(2) of Public Law 106–113 provides that this provision is effective with respect to services furnished on or after November 29, 1999.

We are clarifying our policy and incorporating the provisions of section 403(e) of Public Law 106–113 in §§ 410.152 and 413.70 of the regulations.

Since enactment of Public Law 106–113, we have received many inquiries from the provider community about implementation of section 403(e). In response, we wish to note that revised payment instructions were issued in June 2000 as Medicare Intermediary Manual Transmittal No. 1799 and as Medicare Hospital Manual Transmittal No. 757, and that needed Part B electronic bill processing system changes will be made as soon as possible. The payment instructions explain that CAHs are to no longer collect deductible or coinsurance for these services and that any amounts collected from beneficiaries for these services provided on or after November 29, 1999, are to be returned to the beneficiaries in an appropriate and timely manner. The instructions also explain that payments to CAHs for the services will be adjusted, at cost report settlement, to reflect the payment method required by section 403(e).

5. Participation in Swing-Bed Program (Section 403(f) of Public Law 106–113)

Section 403(f) of Public Law 106–113, entitled "Improvements in the Critical Access Hospital Program," includes a provision on swing-bed agreements. Since our existing regulations at § 485.645 already provide for swing beds in CAHs, we are not making any changes to our regulations based on this provision.

XI. Hospital Swing-Bed Program

Section 408(a) of Public Law 106–113 amended section 1883(b) of the Act to remove the provision that in order for a hospital to enter into an agreement to provide Medicare post-hospital extended care services, the hospital had to be granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act) for the State in which the hospital is located. Section 408(b) of Public Law 106–113 amended section 1883(d) of the Act to remove the provisions under paragraphs (d)(2) and (d)(3) that placed restrictions on lengths of stays in hospitals with more than 49 beds for post-hospital extended care services. These provisions are effective on the first day after the expiration of the transition period under section 1888(e)(2)(E) of the Act for payment for covered skilled nursing facility (SNF) services under the Medicare program; that is, at the end of the transition period for the SNF prospective payments system that began with the facility's first cost reporting period beginning on or after July 1, 1998 and extend through the end of the facility's third cost reporting period after this date.

The Medicare regulations that implemented the provision of section 1883(b) of the Act are located at § 482.66(a)(3). The regulations that implemented the provisions of sections 1883(d)(2) and (d)(3) of the Act are located at §§ 482.66(a)(6) and (a)(7). As a result of the changes made by section 408(a) and (b) of Public Law 106–113, we are removing §§ 482.66(a)(3), (a)(6), and (a)(7). (Existing paragraphs (a)(4) and (a)(5) are being redesignated as (a)(3) and (a)(4) respectively as a result of the removal of existing paragraph (a)(3).)

XII. Waiver of Notice of Proposed Rulemaking and Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the rule take effect. However, section 1871(b) of the Act provides that publication of a notice of proposed rulemaking is not required before a rule takes effect where "a statute establishes a specific deadline for the implementation of the provision and the deadline is less than 150 days after the date of enactment of the statute in which the deadline is contained." In addition, we may waive a notice of proposed rulemaking if we find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.

On July 30, 1999, we published a final rule addressing FY 2000 payment rates and policies for prospective payment system hospitals and excluded hospitals (64 FR 41490). Subsequently, on November 29, 1999, Public Law 106–113 was enacted. Public Law 106–113 contained a number of provisions relating to issues addressed in the final rule that have effective dates of October 1, 1999, November 29, 1999, or dates prior to the beginning of FY 2001 (that is, October 1, 2000).

In accordance with section 1871(b) of the Act, publication of a notice of proposed rulemaking is not required before implementing the statutory provisions of Public Law 106–113 that take effect on October 1, 1999, November 29, 1999, January 1, 2000, or

April 1, 2000. In addition, we find good cause to waive prior notice and comment procedures with respect to the provisions of this interim final rule with comment period that implement the specified provisions of Public Law 106–113 with these effective dates (except for sections 404 and 408), because the statutory provisions implemented by this document are clear and specific. Moreover, it would be impracticable to undertake such procedures before those provisions take effect, given the extremely short timeframe for implementing these statutory provisions.

Sections 404 and 408 are both provisions of Public Law 106–113 that contain changes to programs that have prospective effective dates after October 1, 2000. However, these provisions are specific and leave no room for further interpretation. That is, section 404 extends the MCH program as it is currently operated from FY 2002 through 2006. Sections 408(a) and (b) remove two provisions relating to implementation of the hospital swing-bed provision under sections 1883(b) and (d) that are effective on the first day after the expiration of the transition period under section 1888(e)(2)(E) of the Act for payment for covered SNF services; that is at the end of the transition period for the SNF prospective payments system that began with the facility's first cost reporting period beginning on or after July 1, 1998, and extend through the end of the facility's third cost reporting period after that date. These provisions of Public Law 106–113 require no exercise of discretion and we are merely conforming the Medicare regulations to the statute.

We are providing a 30-day period for public comments on all of these provisions.

This rule has been determined to be a major rule as defined in Title 5, United States Code, section 804(2). Ordinarily, under 5 U.S.C. 801, as added by section 251 of Public Law 104–121, major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to Congress or (2) the date the rule is published in the **Federal Register**. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency promulgating the rule determines, if, for good cause, the agency finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. As indicated above, for good cause we find that it was impracticable to complete notice and comment procedures before publication of this rule and to delay the effective date of this rule . Accordingly, pursuant to 5 U.S.C. 808, these regulations are effective August 1, 2000.

XIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the provisions of this interim final rule with comment period will be considered if we receive them by the date specified in the **DATES** section of this preamble.

XIV. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this interim final rule with comment period as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all hospitals are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This interim final rule with comment period does not mandate any requirements for State, local, or tribal governments.

It is clear that the changes being made in this document will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. We are providing below, in combination with the rest of this interim final rule with comment period, a discussion of the regulatory impact on providers of the various provisions of Public Law 106–113 implemented in this interim final rule with comment period for which we are able to compute estimates of fiscal impact. Two sections of Public Law 106–113, sections 401 and 403, authorize certain hospitals to reclassify into different payment categories or apply for designation as a different class of provider. Since we have no way of anticipating how many hospitals will avail themselves of these options, we cannot predict the financial impact on the Medicare program of these provisions. The total anticipated impact of the provisions for which we can gather data is $400 million for FY 2000. These provisions, along with those for which data cannot be predicted, are discussed below.

B. Anticipated Effects

1. Impact of Changes Relating to the IME Adjustment Factor Schedule

As discussed in section VI. of this interim final rule with comment period, we are implementing the revised transition schedule for the IME adjustment for FY 2000. Section 111 of Public Law 106–113 provides for special payments to be made to each hospital to reflect the amount of IME payments if the payment factor for FY 2000 equaled 1.6 rather than 1.47.

For the purposes of this interim final rule, we have simulated the difference in IME payments due to the change described above based on the figures we used for computing the proposed FY 2001 prospective payment system rates. We have estimated that, for FY 2000, the total increase in IME payments to teaching hospitals is approximately $342.2 million, or 0.81 percent.

2. Impact on Excluded Hospitals and Units

We are implementing section 121(a) of Public Law 106–113, which amended section 1886(b)(3)(H) of the Act to direct the Secretary to make an appropriate wage adjustment to the 75th percentile cap on target amounts for psychiatric

hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, established in FY 1998 by section 4414 of Public Law 105–33. The data sources for determining the wage-neutralized national 75th percentile target amounts were FY 1996 cost report data and the FY 2000 inpatient hospital prospective payment system wage index data.

Prior to the enactment of Public Law 106–113, target amounts for these hospitals were set, in accordance with the regulations at § 413.40(c)(4)(iii), at the lesser of the hospital-specific target amount or the national 75th percentile target amount, which was not adjusted to account for area differences in wage-related costs. Public Law 106–113 amended the regulations at § 413.40(c)(4)(iii) to specify that target amounts for FY 2000 for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals are set at the lesser of the hospital-specific target amount or the wage-adjusted cap on the target amount, which is derived from the national 75th percentile wage-neutralized target amount for each class of hospital.

In order to estimate the impact of the wage-adjusted target amounts on hospitals within each class, we first calculated the target amount for each hospital as it was set under section 4414 of Public Law 105–33. Each hospital's target amount was set at the lesser of the hospital's hospital-specific target amount or the national 75th percentile target amount. In accordance the regulations at 42 CFR 413.40(d), we then compared the resulting target amount to the hospital's costs per discharge.

Taking into account the provisions of section 123(a) of Public Law 106–113, we then repeated the comparative calculations described above, replacing the national unadjusted 75th percentile target amount with each hospital's wage-adjusted target amount. The results were compared to show the estimated impact on these classes of hospitals and units as follows:

PERCENT OF TOTAL PROVIDERS BY TYPE

Class of hospital/unit	Percent of free-standing hospitals	Percent of hospital-based units
Psychiatric	30.7	69.3
Rehabilitation	16.4	83.6
Long-Term Care	100.0	(1)

[1] Not applicable.

PERCENT OF TOTAL PROVIDERS BY GEOGRAPHIC LOCATION

Class of hospital/unit	Percent of large urban	Percent of other urban	Percent of rural
Psychiatric	48.3	33.5	18.2
Rehabilitation	49.8	38.1	12.1
Long Term Care	68.6	23.1	8.3

NET CHANGE IN FY 2000 CAP PER DISCHARGE

Class of hospital/unit	Unadjusted FY 2000 target amount [1]	Wage-neutral FY 2000 target amount	Net percentage change
Psychiatric	$11,100	$10,990	−1.0
Rehabilitation	20,129	20,496	+1.8
Long-Term Care	39,712	39,580	−0.3

[1] As published in the July 30, 1999 Final Rule (64 FR 41557).

NET CHANGE BY CLASS OF HOSPITAL

Class of hospital/unit	Percent of Providers estimated to experience negative impact	Percent of providers estimated to experience no impact	Percent of providers estimated to experience positive impacts
Psychiatric	6.7	87.7	5.6
Rehabilitation	2.5	95.0	2.5
Long-Term Care	6.5	90.2	3.3

The impact of the wage-adjusted caps on target amounts on excluded hospitals and units (psychiatric, rehabilitation, and long-term care) was estimated based on FY 1996 data as this was the most complete data source available. The target amounts (hospital-specific targets, 75th percentile targets, and wage-adjusted targets) and costs compared in this estimated impact analysis were trended forward to account for inflation through FY 2000.

When comparing the costs to target amounts to determine the impact on hospitals, we did not attempt to determine the impact on incentive payments, continuous improvement bonus payments, or other payment adjustments for excluded hospitals outlined in the regulations at § 413.40(d). The actual impact on payments to each class of hospital depends on the cost experienced by each excluded hospital or unit since its

applicable base period. It is important to note that while the providers whose hospital-specific target amounts exceed the wage-adjusted cap on the target amounts will have their target amounts reduced to their wage-adjusted target amount, the real impact on each hospital and unit will depend on the level of its operating cost per discharge in relation to its target amount as outlined in at § 413.40(d).

As discussed in the preceding paragraphs, excluded hospital payments are calculated based on the lesser of costs per discharge or the target amount as set forth under § 413.40(c)(4)(iii). Consequently, the fact that the wage-neutralized national 75th percentile target amounts decreased slightly for both psychiatric hospitals and units and long-term care hospitals does not necessarily imply lower payments.

Approximately 75 percent of the hospitals and units in each of these classes have hospital-specific target amounts lower than both the unadjusted and wage-neutralized target amounts, and of those hospitals and units whose hospital-specific target amounts are higher than both the unadjusted and wage-neutralized target amounts, many have costs lower than their target amounts. Consequently, as shown in the table "Net Change by Class of Hospital," most hospitals and hospital units do not appear to experience an impact from the wage-adjustment to the target amounts.

Among those hospitals that do appear to experience an impact from the wage-adjustment to the target amount, the wage-index associated with their location is an indicator in determining whether that impact is positive or negative. Since the wage-neutralized target amounts are wage-adjusted using the hospital inpatient prospective payment system wage index, hospital's located in areas with wage-index values greater than one will have higher wage-adjusted target amounts relative to hospitals located in areas with wage-index values less than one.

3. Impact of Provisions on Reclassification of Hospitals

We are implementing section 401(a) of Public Law 106–113, which added a new section 1886(d)(8)(E) to the Act that directs the Secretary to treat any hospital located in an urban area as being located in the rural area of a State if the hospital files an application and meets certain criteria specified in the statute.

The number of hospitals that will seek to reclassify from urban to rural is unknown at this time. However, generally, reclassification may affect payment rates under the prospective payment system, wage index calculations, and DSH, SCH, and IME adjustments.

4. Impact of Provisions on CAHs

We are implementing sections 401(b) and 403 of Public Law 106–113, which made a number of modifications to the CAH program under section 1820 of the Act. Specifically, it—

- Authorizes a State to designate a hospital as a CAH if, as set forth in the section 401(a) criteria for a hospital to be eligible to request reclassification from urban to rural, it would be considered as being located in the rural area of the State in which the hospital is located.
- Requires the 96-hour limit on stays in CAHs to be applied on an annual average basis and deletes the provisions regarding waiver for longer stays.
- Provides that for-profit hospitals may qualify for CAH status.
- Permits a State to designate as a CAH a facility that previously was a hospital but ceased operations on or after November 29, 1989 if that facility fulfills the criteria under section 1820(c)(2)(B) of the Act as of the effective date of its designation.
- Permits a State to designate as a CAH a facility that was once a hospital that downsized and now functions as a State licensed health clinic or health center, if the facility meets criteria under section 1820(c)(2)(B) of the Act as of the effective date of its designation.
- Eliminates the coinsurance and deductible for outpatient clinical diagnostic laboratory tests furnished by a CAH and requires that such tests be paid for on the same basis as would apply if the tests had been performed on an outpatient basis.
- Reaffirms the eligibility of CAHs that meet the applicable requirements to enter into "swing-bed" agreements, thus permitting inpatient CAH facilities to be used for furnishing of extended care services type (SNF) services.

The number of facilities that qualify as CAHs will increase as a consequence of the Public Law 106–113 amendments to the CAH program. CAHs are paid on a reasonable cost basis rather than under the prospective payment system. The budgetary impact of these amendments will correlate with the number of facilities that are designated as CAHs under the statutory amendment made by sections 401(b) and 403 of Public Law 106–113. However, we are unable at this time to predict the number of facilities that will be designated as CAHs under these provisions.

5. Impact of Provisions on MDHs

We are incorporating the provisions of section 404 of Public Law 106–113, which extended special payments under the prospective payment system to MDHs for 5 years, from FY 2002 through FY 2006. We estimate that the extension will amount to an increase in payment of 4.4 percent for each of the 5 years of the MDH extension. There is no increase in payment amounts for MDHs for FY 2000 as a result of PublicLaw 106–113.

6. Impact of Direct GME and IME Provisions

We are amending our regulations to incorporate changes mandated by sections 407(a) through (d) of Public Law 106-113, which amended sections 1886(d) and (h) of the Act to address specific GME FTE cap issues. These changes include increasing the cap for rural hospitals and urban hospitals that establish programs with training in rural areas, revising the FTE caps for hospitals with certain residents on leave during the base period, and temporarily increasing the cap for hospitals that train residents that transferred from certain VA hospitals. The regulations also reflect the provisions of section 312 of Public Law 106–113, which amended section 1886(h)(5) of the Act to change (for purposes of payment) the initial residency period for child neurology residents.

a. Approved Leave of Absences of Residents. Section VII.A. of this interim final rule implements section 407(a) of Public Law 106–113, which directs the Secretary to count an individual for purposes of determining a hospital's FTE cap, to the extent that the individual would have been counted as a primary care resident for purposes of the FTE cap but for the fact that the individual was on maternity or disability leave or a similar approved leave of absence. The provision allows a hospital to receive an adjustment to its individual FTE cap of up to three additional FTE residents. We are unable to predict at this time the number of residents affected by this provision. However, we believe the financial impact will be negligible, because few hospitals and FTEs are likely to be affected.

b. Adjustment to FTE Caps for Rural Hospitals. As explained in section VII.C. of this interim final rule, we are implementing section 407(b) of Public Law 106-113 which provides for a 30-percent expansion to a rural hospital's FTE resident cap. We have calculated an estimated impact on the Medicare program as a result of this provision. We used the best available cost report data

from 1995 HCRIS, which included the resident counts from which the rural hospitals' (and urban hospitals') caps were set. Seventy rural teaching hospitals were included in this impact analysis.

To determine the impact of this provision, we first estimated the average GME (direct GME and IME combined) payment amount made to rural hospitals in FY 1995. Then, we increased the average GME payment amount by 30-percent and multiplied this amount by 70 to reflect a potential 30-percent increase in the number of FTEs across all rural hospitals. Next, we updated this amount for inflation from FY 1995 to FY 2000, and from FY 2000 through FY 2004. Specifically, the estimated costs for each fiscal year are as follows:

FY 2000: $28.8 million
FY 2001: $29.5 million
FY 2002: $30.2 million
FY 2003: $31.1 million
FY 2004: $31.9 million

The total maximum estimated cost for FY 2000 through FY 2004 is $151.5 million. However, we do not anticipate that all rural hospitals will expand their counts by 30-percent in FY 2000. Therefore, we believe that the actual cost in FY 2000 will be somewhat less than $28.8 million.

c. Urban Hospitals with Rural Track Residency Programs. As discussed in section VII.C. of this interim final rule with comment period, we are implementing the provision that allows an urban hospital that establishes a new residency program or has an existing residency program with a rural track (or an integrated rural track) to include in its FTE count residents in those rural tracks, in addition to the residents already included in the hospital's FTE cap.

We estimated the costs to the Medicare program from FY 2000 through FY 2004 based on the number of currently existing (as of May 2000), separately accredited, "1–2" rural training track programs. Considering that there are currently 26 such programs, each averaging 4 residents, and making assumptions about the growth of new programs, we estimate that the cost from FY 2000 through FY 2004 will be $75 million. Specifically, the estimated cost per year is $5 million for FY 2000, $10 million for FY 2001, and $20 million for FYs 2002, 2003, and 2004.

d. Residents Training at VA Hospitals That Would Lose Accreditation. Section VII.D. of this interim final rule with comment period implements section 407(d) of Public Law 106–113 which addresses the situation where a non-VA hospital temporarily takes on residents training at a VA hospital because the program at the VA hospital would lose its ACGME accreditation if the residents continued to train at the VA hospital. We estimate that the number of residents affected by this provision will be small; we know of only one hospital that is affected by this provision. Therefore, the financial impact will be negligible.

e. Child Neurology Training. We are implementing the provisions of section 312 of Public Law 106–113 which amended section 1886(h)(5) of the Act to revise the initial residency period for child neurology residency programs. We believe this provision will have a minimal financial impact, because there are so few hospitals that will be affected by this provision.

7. Medicare+Choice Nursing and Allied Health Education Payments

As discussed in section VIII. of this interim final rule, we are implementing the methodology for determining the additional payments to be made to hospitals that receive reasonable cost payment for approved nursing or allied health education programs for their services associated with Medicare+Choice enrollees. The estimated total amount calculated for these payments, not to exceed $60,000,000 in a calendar year, is based on the proportion of projected total direct GME payments for Medicare+Choice enrollees to projected total direct GME payments, multiplied by projected total nursing and allied health education payments. Hospitals would receive these payments in proportion to the amount of Medicare nursing and allied health education payments received in the cost reporting period that ended in the fiscal year that is 2 years prior to the current calendar year, to the total amount of nursing and allied health education payments paid to all hospitals in that cost reporting period. Direct GME payments for Medicare+Choice utilization would be reduced to reflect the estimated amount of additional payments that would be made for nursing and allied health education programs under this provision. For a more detailed explanation of this policy, refer to section VIII. of this preamble.

By requiring that the Medicare+Choice direct GME payments be reduced in order to provide for the additional nursing and allied health education payments, this provision is designed to be budget neutral in the aggregate. However, on a hospital specific basis, hospitals that operate both GME and nursing or allied health education programs may experience either a net gain or loss as a result of this provision. This is because, although their Medicare+Choice direct GME payments will be reduced by a certain percentage, their nursing and allied health education payments will be increased. However, those hospitals that operate only GME programs will see their Medicare reimbursement reduced, and those hospitals that operate only nursing or allied health education programs will see their Medicare reimbursement increased.

As explained in section VIII.E. of this preamble, the percentage decrease to hospitals' Medicare+Choice direct GME payments is 10.5 percent. For purposes of this interim final rule with comment period, we have estimated a percentage increase to hospitals' nursing and allied health education payments for calendar year 2000. When the nursing and allied health education payment "pool" is added to the total projected nursing and allied health education payments for calendar year 2000, the estimated percentage increase in total nursing and allied health payments is 10.2 percent.

8. Hospital Swing Bed Program

The elimination of the requirements for State certification of need to use acute care beds as swing beds for long-term care patients and the elimination of the constraints on the length of stay in swing beds for rural hospitals with 50 to 100 beds will have a positive effect on providers, especially rural hospitals. However, we do not have the necessary data to determine at this time a budgetary impact of these provisions on Medicare payments.

C. Federalism

We have examined this interim final rule with comment period in accordance with Executive Order 13132, Federalism, and have determined that this interim final rule with comment period will not have any negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

D. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this interim final rule with comment period was reviewed by the Office of Management and Budget.

XV. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is

submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for § 412.103(b), which contains information collection and recordkeeping requirements.

Section 412.103(b) specifies that a facility seeking reclassification under section 401(a) or (b) of Public Law 106–113 must apply in writing to the HCFA Regional Office and include documentation of the criteria on which its request is based. The application must be mailed; facsimile or other electronic means are not acceptable.

The hospital's application must include a copy of the State law or regulation or other authoritative document verifying that the requesting hospital is situated in an area determined to be rural by the State or the hospital is considered to be a rural hospital.

We estimate that it will take each hospital approximately 30 minutes to complete the application process. We estimate that additional time would be needed to collect the required documentation. This recordkeeping should take no more than approximately 2 hours. Therefore, the paperwork burden associated with the reclassification process would add up to an additional 2½ hours per hospital that request reclassification under section 401 of Public Law 106–113.

These information collection and recordkeeping requirements are not effective until they are approved by OMB.

Comments on these information collection and recordkeeping requirements should be mailed to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Attn: John Burke HCFA–1131-IFC; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt HCFA–1131–IFC, HCFA Desk Officer.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as follows:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 410.152 is amended by revising paragraph (k) to read as follows:

§ 410.152 Amounts of payment.

* * * * *

(k) *Amount of payment: Outpatient CAH services.* (1) Payment for CAH outpatient services is the reasonable cost of the CAH in providing these services, as determined in accordance with section 1861(v)(1)(A) of the Act, with § 413.70(b) and (c) of this chapter, and with the applicable principles of cost reimbursement in part 413 and in part 415 of this chapter.

(2) Payment for CAH outpatient services is subject to the applicable Medicare Part B deductible and coinsurance amounts, except as described in § 413.70(c) of this chapter, with Part B coinsurance being calculated as 20 percent of the customary (insofar as reasonable) charges of the CAH for the services.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

B. Part 412 is amended as follows:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.63 is amended by revising paragraph (b)(1) to read as follows:

§ 412.63 Federal rates for inpatient operating costs for Federal fiscal years after Federal fiscal year 1994.

* * * * *

1. *Geographic classifications.* (1) For purposes of this section, the definitions set forth in § 412.62(f) apply, except that, effective January 1, 2000, a hospital reclassified as rural may mean a reclassification that results from a geographic redesignation as set forth in § 412.62(f)(1)(iv) or a reclassification that results from an urban hospital applying for reclassification as rural as set forth in § 412.103.

* * * * *

3. Section 412.90 is amended by revising paragraphs (e) and (j) to read as follows:

§ 412.90 General rules.

* * * * *

(e) *Hospitals located in areas that are reclassified from urban to rural.* (1) HCFA adjusts the rural Federal payment amounts for inpatient operating costs for hospitals located in geographic areas that are reclassified from urban to rural as defined in § 412.62(f). This adjustment is set forth in § 412.102.

(2) HCFA establishes a procedure by which certain individual hospitals located in urban areas may apply for reclassification as rural. The criteria for reclassification are set forth in § 412.103.

* * * * *

(j) *Medicare-dependent, small rural hospitals.* For cost reporting periods beginning on or after April 1, 1990 and before October 1, 1994, or beginning on or after October 1, 1997 and before October 1, 2006, HCFA adjusts the prospective payment rates for inpatient operating costs determined under subparts D and E of this part if a hospital is classified as a Medicare-dependent, small rural hospital.

* * * * *

4. The section heading of § 412.102 is revised to read as follows:

§ 412.102 Special treatment: Hospitals located in areas that are reclassified from urban to rural as a result of a geographic redesignation.

5. A new § 412.103 is added to read as follows:

§ 412.103 Special treatment: Hospitals located in urban areas and that apply for reclassification as rural.

(a) *General criteria.* A prospective payment hospital that is located in an urban area (as defined in § 412.62(f)(1)(ii)) may be reclassified as a rural hospital if it submits an application in accordance with paragraph (b) of this section and meets any of the following conditions:

(1) The hospital is located in a rural census tract of a Metropolitan Statistical Area (MSA) as determined under the most recent version of the Goldsmith Modification as determined by the Office of Rural Health Policy (ORHP) of the Health Resources and Services Administration which is available via the ORHP website at *http://www.nal.usda.gov/orph* or from the U.S. Department of Health and Human Services, Health Resources and Services Administration, Office of Rural Health Policy, 5600 Fishers Lane, Room 9–05, Rockville, MD 20857.

(2) The hospital is located in an area designated by any law or regulation of the State in which it is located as a rural area, or the hospital is designated as a rural hospital by State law or regulation.

(3) The hospital would qualify as a rural referral center as set forth in § 412.96, or as a sole community hospital as set forth in § 412.92, if the hospital were located in a rural area.

(b) *Application requirements.* (1) *Written application.* A hospital seeking reclassification under this section must submit a complete application in writing to HCFA in accordance with paragraphs (b)(2) and (b)(3) of this section.

(2) *Contents of application.* An application is complete if it contains an explanation of how the hospital meets the condition that constitutes the basis of the request for reclassification set forth in paragraph (a) of this section, including data and documentation necessary to support the request.

(3) *Mailing of application.* An application must be mailed to the HCFA Regional Office by the requesting hospital and may not be submitted by facsimile or other electronic means.

(4) *Notification by HCFA.* Within 5 business days after receiving the hospital's application, the HCFA Regional Office will send the hospital a letter acknowledging receipt, with a copy to the HCFA Central Office.

(5) *Filing date.* The filing date of the application is the date HCFA receives the application.

(c) *HCFA review.* The HCFA Regional Office will review the application and notify the hospital of its approval or disapproval of the request within 60 days of the filing date.

(d) *Effective dates of reclassification.* (1) Except as specified in paragraph (d)(2) of this section, HCFA will consider a hospital that satisfies any of the criteria set forth in paragraph (a) of this section as being located in the rural area of the State in which the hospital is located as of that filing date.

(2) If a hospital's complete application is received in HCFA by September 1, 2000, and satisfies any of the criteria set forth in paragraph (a) of this section, HCFA will consider the filing date to be January 1, 2000.

(e) *Withdrawal of application.* A hospital may withdraw an application at any time prior to the date of HCFA's decision as set forth in paragraph (c) of this section.

(f) *Duration of classification.* An approved reclassification under this section remains in effect without need for reapproval unless there is a change in the circumstances under which the classification was approved.

(g) *Cancellation of classification.* (1) A hospital may cancel its rural reclassification by submitting a written request to the HCFA Regional Office not less than 120 days prior to the end of its current cost reporting period.

(2) The hospital's cancellation of the classification is effective beginning with the hospital's next full cost reporting period following the date of its request for cancellation.

6. Section 412.105 is amended by:

A. Revising paragraph (d)(3)(iv).

B. Revising paragraph (f)(1)(iv).

C. Adding and reserving paragraphs (f)(1)(viii) and (ix).

D. Adding new paragraphs (f)(1)(x), (f)(1)(xi), and (f)(1)(xii).

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(d) *Determination of education adjustment factor.* * * *

(3) *Step three.* * * *

(iv) For discharges occurring during fiscal year 2000, 1.47.

(A) Each hospital receives an amount that is equal in the aggregate to the difference between the amount of payments made to the hospital if 'c' equaled 1.6, rather than 1.47.

(B) The payment of this amount will not affect any other payments, determinations, or budget neutrality adjustments.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.* (1) * * *

(iv) Effective for discharges occurring on or after October 1, 1997, the total number of FTE residents in the fields of allopathic and osteopathic medicine in either a hospital or a nonhospital setting that meets the criteria listed in paragraph (f)(1)(ii) of this section may not exceed the number of such FTE residents in the hospital (or, in the case of a hospital located in a rural area, effective for discharges occurring on or after April 1, 2000, 130 percent of that number) with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996.

* * * * *

(x) Effective for discharges occurring on or after April 1, 2000, an urban hospital that establishes a new residency program (as defined in § 413.86(g)(12) of this subchapter), or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks in accordance with the provisions of §§ 413.86(g)(11) of this subchapter.

(xi) Effective for discharges occurring in cost reporting periods beginning on or after November 29, 1999, a hospital may receive an adjustment to its FTE cap of up to three additional FTEs to the extent that the additional residents would have been counted as primary care residents for purposes of the hospital's FTE cap but for the fact that the additional residents were on maternity or disability leave or a similar approved leave of absence, in accordance with the provisions of § 413.86(g)(9) of this subchapter.

(xii) For discharges occurring on or after October 1, 1997, a non-Veterans Affairs (VA) hospital may receive a temporary adjustment to its FTE cap to reflect residents who had been previously trained at a VA hospital and were subsequently transferred to the non-VA hospital, if the hospital meets the criteria and other provisions of § 413.86(g)(10) of this subchapter.

* * * * *

§ 412.106 [Amended]

6. Section 412.106 is amended as follows:

a. In paragraph (a)(1), the date "October 1, 2001", is removed and "October 1, 2006" is added in its place.

b. In paragraph (c)(2)(ii) the date "October 1, 2001", is removed and "October 1, 2006" is added in its place.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as follows:

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.40 is amended by republishing the introductory text of paragraph (c)(4) and of paragraph (c)(4)(iii) and revising paragraphs (c)(4)(iii)(B) and (c)(4)(v), to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(c) *Costs subject to the ceiling.* * * *

(4) *Target amounts.* The intermediary will establish a target amount for each hospital. The target amount for a cost reporting period is determined as follows:

* * * * *

(iii) In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount is the lower of—

* * * * *

(B) One of the following for the applicable cost reporting period—

(*1*) For cost reporting periods beginning during fiscal year 1996, the 75th percentile of target amounts for hospitals in the same class (psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital) for cost reporting periods ending during FY 1996, increased by the applicable market basket percentage up to the first cost reporting period beginning on or after October 1, 1997.

(*2*) For cost reporting periods beginning during fiscal year 1999, the amount determined under paragraph (c)(4)(iii)(B)(*1*) of this section, increased by the market basket percentage up through the subject period, subject to the provisions of paragraph (c)(4)(iv) of this section.

(*3*) For cost reporting periods beginning during fiscal year 2000—

(*i*) The labor-related portion and the nonlabor-related portion of the wage-neutralized 75th percentile of target amounts for hospitals in the same class (psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital) for cost reporting periods ending during FY 1996, are increased by the applicable market basket percentage up to the first cost reporting period beginning on or after October 1, 1999.

(*ii*) The labor-related portion of the wage-neutralized 75th percentile target amounts under paragraph (c)(4)(iii)(B)(*4*)(*i*) of this section is wage adjusted by multiplying it by the hospital's FY 2000 hospital inpatient prospective payment system wage index.

(*iii*) The wage-adjusted 75th percentile target amounts for hospitals in the same class is determined by adding the nonlabor-related portion of the wage-neutralized 75th percentile target amounts under paragraph (c)(4)(iii)(B)(*3*)(*i*) of this section and the hospital's wage-adjusted labor-related portion of the wage-neutralized 75th percentile target amounts determined under paragraph (c)(4)(iii)(B)(*3*)(*ii*) of this section, subject to the provisions of paragraph (c)(4)(iv) of this section.

(*4*) For cost reporting periods beginning during fiscal years 2001 and 2002—

(*i*) The amounts determined under paragraph (c)(4)(iii)(B)(*3*)(*i*) of this section are increased by the market basket percentage up through the subject period.

(*ii*) The labor-related portion of the wage-neutralized 75th percentile target amounts under paragraph (c)(4)(iii)(B)(*4*)(*i*) of this section is wage-adjusted by multiplying by the hospital's FY 2001 hospital inpatient prospective payment system wage index, for cost reporting periods beginning during fiscal year 2001 and the hospital's FY 2002 hospital inpatient prospective payment system wage index for cost reporting periods beginning during fiscal year 2002.

(*iii*) The wage-adjusted 75th percentile target amounts for hospitals in the same class are determined by adding the nonlabor-related portion of the wage-neutralized 75th percentile target amounts under paragraph (c)(4)(iii)(B)(*4*)(*i*) of this section and the hospital's wage-adjusted labor-related portion of the wage-neutralized 75th percentile target amounts determined under paragraph (c)(4)(iii)(B)(*4*)(*ii*) of this section, subject to the provisions of paragraph (c)(4)(iv) of this section.

* * * * *

(v) In the case of a hospital that received payments under paragraph (f)(2)(ii) of this section as a newly created hospital or unit, to determine the hospital's target amount for the hospital's third 12-month cost reporting period, the payment amount determined under paragraph (f)(2)(ii)(A) of this section for the preceding cost reporting period is updated to the third cost reporting period.

* * * * *

3. Section 413.70 is amended by:

A. Revising paragraphs (b)(2)(iii) and (b)(2)(iv).

B. Removing paragraph (b)(2)(v).

C. Adding a new paragraph (c).

§ 413.70 Payment for services of a CAH.

* * * * *

(b) * * *

(2) * * *

(iii) Any type of reduction to operating or capital costs under § 413.124 or § 413.130(j)(7); and

(iv) Blended payment amounts for ASC, radiology, and other diagnostic services.

(c) The following payment principles are used when determining payment for outpatient clinical diagnostic laboratory tests:

(1) The amount paid is equal to 100 percent of the least of—

(i) Charges determined under the fee schedule as set forth in section 1833(h)(1) or section 1834(d)(1) of the Act;

(ii) The limitation amount for that test determined under section 1833(h)(4)(B) of the Act or the amount of the charges billed for the test; or

(iii) A negotiated rate established under section 1833(h)(6) of the Act.

(2) Payment for outpatient clinical diagnostic laboratory tests is not subject to the Medicare Part B deductible and coinsurance amounts, as specified in § 410.152(k) of this chapter.

4. Section 413.86 is amended by:

A. Adding definitions of "rural track FTE limitation" and "rural track or integrated rural track" in alphabetical order under paragraph (b).

B. Revising paragraphs (d)(4) and (d)(5).

C. Adding a new paragraph (d)(6).

D. Revising paragraph (g)(1).

E. Revising the first sentence of paragraph (g)(4).

F. Redesignating paragraph (g)(9) as paragraph (g)(12).

G. Add new paragraphs (g)(9), (g)(10), and (g)(11).

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* * * *

Rural track FTE limitation means the maximum number of residents (as

specified in paragraph (g)(11) of this section) training in a rural track residency program that an urban hospital may include in its FTE count and that is in addition to the number of FTE residents already included in the hospital's FTE cap.

Rural track or *integrated rural track* means an approved medical residency training program established by an urban hospital in which residents train for a portion of the program at the urban hospital and then rotate for a portion of the program to a rural hospital(s) or a rural nonhospital site(s).

* * * * *

(d) *Calculating payment for graduate medical education costs.* * * *

(4) *Step four.* Effective for cost reporting periods beginning on or after January 1, 2000, the product derived from step three is reduced in accordance with the provisions of § 413.87(f).

(5) *Step five.* (i) For portions of cost reporting periods beginning on or after January 1, 1998 and before January 1, 2000, add steps two and three.

(ii) Effective for portions of cost reporting periods beginning on or after January 1, 2000, add the results of steps two and four.

(6) *Step six.* The product derived in step two is apportioned between Part A and Part B of Medicare based on the ratio of Medicare's share of reasonable costs excluding graduate medical education costs attributable to each part as determined through the Medicare cost report.

* * * * *

(g) *Determining the weighted number of FTE residents.* (1) Generally, for purposes of this section, effective July 1, 1995, an initial residency period is defined as the minimum number of years required for board eligibility. Prior to July 1, 1995, the initial residency period equals the minimum number of years required for board eligibility in a specialty or subspecialty plus 1 year. An initial residency period may not exceed 5 years in order to be counted toward determining FTE status except in the case of fellows in an approved geriatric program whose initial residency period may last up to 2 additional years. Effective July 1, 2000, for residency programs that began before, on, or after November 29, 1999, the period of board eligibility and the initial residency period for a resident in an approved child neurology program is the period of board eligibility for pediatrics plus 2 years. Effective August 10, 1993, residents or fellows in an approved preventive medicine residency or fellowship program also may be counted as a full FTE resident for up to 2 additional years beyond the initial residency period limitations. For combined residency programs, an initial residency period is defined as the time required for individual certification in the longer of the programs. If the resident is enrolled in a combined medical residency training program in which all of the individual programs (that are combined) are for training primary care residents (as defined in paragraph (b) of this section) or obstetrics and gynecology residents, the initial residency period is the time required for individual certification in the longer of the programs plus 1 year.

* * * * *

(4) For purposes of determining direct graduate medical education payment, for cost reporting periods beginning on or after October 1, 1997, a hospital's unweighted FTE count for residents in allopathic and osteopathic medicine may not exceed the hospital's unweighted FTE count (or, effective for cost reporting periods beginning on or after April 1, 2000, 130 percent of the unweighted FTE count for a hospital located in a rural area) for these residents for the most recent cost reporting period ending on or before December 31, 1996. * * *

(9) Effective for cost reporting periods beginning on or after November 29, 1999, a hospital may receive an adjustment to its FTE cap of up to three additional resident FTEs, if the hospital meets the following criteria:

(i) The additional residents are residents of a primary care program that would have been counted by the hospital as residents for purposes of the hospital's FTE cap but for the fact that the additional residents were on maternity or disability leave or a similar approved leave of absence during the hospital's most recent cost reporting period ending on or before December 31, 1996;

(ii) The leave of absence was approved by the residency program director to allow the residents to be absent from the program and return to the program after the leave of absence; and

(iii) No later than 6 months after August 1, 2000, the hospital submits to the fiscal intermediary a request for an adjustment to its FTE cap, and provides contemporaneous documentation of the approval of the leave of absence by the residency director, specific to each additional resident that is to be counted for purposes of the adjustment.

(10) For cost reporting periods beginning on or after October 1, 1997, a non-Veterans Affairs (VA) hospital may receive a temporary adjustment to its FTE cap to reflect residents who had previously trained at a VA hospital and were subsequently transferred to the non-VA hospital, if that hospital meets the following criteria:

(i) The transferred residents had been training previously at a VA hospital in a program that would have lost its accreditation by the ACGME if the residents continued to train at the VA hospital;

(ii) The residents were transferred to the hospital from the VA hospital on or after January 1, 1997, and before July 31, 1998; and

(iii) The hospital submits a request to its fiscal intermediary for a temporary adjustment to its FTE cap, documents that it is eligible for this temporary adjustment by identifying the residents who have come from the VA hospital, and specifies the length of time those residents will be trained at the hospital.

(11) For cost reporting periods beginning on or after April 1, 2000, an urban hospital that establishes a new residency program, or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks, in addition to the residents subject to its FTE cap specified under paragraph (g)(4) of this section. An urban hospital with a rural track residency program may count residents in those rural tracks up to a rural track FTE limitation if the hospital complies with the conditions specified in paragraphs (g)(11)(i) through (g)(11)(vi) of this section.

(i) If an urban hospital rotates residents in the rural track program to a rural hospital(s) for at least two-thirds of the duration of the program, the urban hospital may include those residents in its FTE count for the time the rural track residents spend at the urban hospital. The urban hospital may include in its FTE count those residents in the rural track training at the urban hospital, not to exceed its rural track FTE limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents training in the rural track at the urban hospital.

(B) Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of the highest number of residents in any program year, who during the third year of the rural track's existence are training in the rural track at the urban hospital or the rural hospital(s) and are designated at the beginning of their training to be rotated to the rural hospital(s) for at least two-

thirds of the duration of the program, and the number of years those residents are training at the urban hospital.

(ii) If an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for at least two-thirds of the duration of the program, the urban hospital may include those residents in its FTE count, subject to the requirements under paragraph (f)(4) of this section. The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track FTE limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents training at the urban hospital and the rural nonhospital site(s).

(B) Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of—

(*1*) The highest number of residents in any program year who, during the third year of the rural track's existence, are training in the rural track at—

(*i*) The urban hospital and are designated at the beginning of their training to be rotated to a rural nonhospital site(s) for at least two-thirds of the duration of the program; and

(*ii*) The rural nonhospital site(s); and

(*2*) The number of years in which the residents are expected to complete each program based on the minimum accredited length for the type of program.

(iii) If an urban hospital rotates residents in the rural track program to a rural hospital(s) for periods of time that are less than two-thirds of the duration of the program, the rural hospital may not include those residents in its FTE count (if the urban hospital's FTE count exceeds that hospital's FTE cap), nor may the urban hospital include those residents when calculating its rural track FTE limitation.

(iv) If an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for periods of time that are less than two-thirds of the duration of the program, the urban hospital may include those residents in its FTE count, subject to the requirements under paragraph (f)(4) of this section. The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track FTE limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for the urban hospital will be the actual number of FTE residents training in the rural track at the rural nonhospital site(s).

(B) Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of—

(*1*) The highest number of residents in any program year who, during the third year of the rural track's existence, are training in the rural track at the rural nonhospital site(s) or are designated at the beginning of their training to be rotated to the rural nonhospital site(s) for a period that is less than two-thirds of the duration of the program; and

(*2*) The length of time in which the residents are being training at the rural nonhospital site(s) only.

(v) All urban hospitals that wish to count FTE residents in rural tracks, not to exceed their respective rural track FTE limitation, must also comply with all of the following conditions:

(A) An urban hospital may not include in its rural track FTE limitation or (assuming the urban hospital's FTE count exceeds its FTE cap) FTE count residents who are training in a rural track residency program that were already included as part of the hospital's FTE cap.

(B) The hospital must base its count of residents in a rural track on written contemporaneous documentation that each resident enrolled in a rural track program at the hospital intends to rotate for a portion of the residency program to a rural area.

(C) All residents that are included by the hospital as part of its FTE count (not to exceed its rural track FTE limitation) must ultimately train in the rural area.

(vi) If HCFA finds that residents who are included by the urban hospital as part of its FTE count did not actually complete the training in the rural area, HCFA will reopen the urban hospital's cost report within the 3-year reopening period as specified in § 405.1885 of this chapter and adjust the hospital's Medicare GME payments (and, where applicable, the hospital's rural track FTE limitation).

* * * * *

5. A new § 413.87 is added to read as follows:

§ 413.87 Payments for Medicare+Choice nursing and allied health education programs.

(a) *Statutory basis.* This section implements section 1886(l) of the Act, which provides for additional payments to hospitals that operate and receive Medicare reasonable cost reimbursement for approved nursing and allied health education programs and the methodology for determining the additional payments.

(b) *Scope.* This section sets forth the rules for determining an additional payment amount to hospitals that receive payments for the costs of operating approved nursing or allied health education programs under § 413.85.

(c) *Qualifying conditions for payment.* For portions of cost reporting periods occurring on or after January 1, 2000, a hospital that operates and receives payment for a nursing or allied health education program under § 413.85 may receive an additional payment amount. The hospital may receive the additional payment amount, which is calculated in accordance with the provisions of paragraph (d) of this section, if both of the conditions specified in paragraph (c)(1) and (c)(2) of this section are met.

(1) The hospital must have received Medicare reasonable cost payment for an approved nursing or allied health education program under § 413.85 in its cost reporting period(s) ending in the fiscal year that is 2 years prior to the current calendar year. (For example, if the current year is calendar year 2000, the fiscal year that is 2 years prior to calendar year 2000 is FY 1998.) For a hospital that first establishes a nursing or allied health education program and receives reasonable cost payment for the program as specified under § 413.85 after FY 1998, the hospital is eligible to receive an additional payment amount in a calendar year that is 2 years after the respective fiscal year so long as the hospital also meets the condition under paragraph (c)(2) of this section.

(2) The hospital must be receiving reasonable cost payment for an approved nursing or allied health education program under § 413.85 in the current calendar year.

(d) *Calculating the additional payment amount.* Subject to the provisions of paragraph (f) of this section relating to calculating a proportional reduction in Medicare+Choice direct GME payments, the additional payment amount specified in paragraph (c) of this section is calculated according to the following steps:

(1) *Step one.* Each calendar year, determine the hospital's total nursing and allied health education program payments from its cost reporting period(s) ending in the fiscal year that is 2 years prior to the current calendar year.

(2) *Step two.* Determine the ratio of the hospital's payments from step one to the total of all nursing and allied health education program payments across all hospitals for all cost reporting periods ending in the fiscal year that is 2 years prior to the current calendar year.

(3) *Step three.* Multiply the ratio calculated in step two by the amount determined in accordance with paragraph (e) of this section for the current calendar year. The resulting product is each respective hospital's additional payment amount.

(e) *Calculation of the payment "pool."* (1) Subject to paragraph (e)(3) of this section, each calendar year, HCFA will calculate a Medicare+Choice nursing and allied health payment "pool" according to the following steps:

(i) Determine the ratio of projected total Medicare+Choice direct GME payments made in accordance with the provisions of § 413.86(d)(3) across all hospitals in the current calendar year to projected total direct GME payments made across all hospitals in the current calendar year.

(ii) Multiply the ratio calculated in paragraph (e)(1)(i) of this section by projected total Medicare nursing and allied health education reasonable cost payments made across all hospitals in the current calendar year.

(2) The resulting product of the steps under paragraph (e)(1)(i) and (e)(1)(ii) of this section is the Medicare+Choice nursing and allied health payment pool for the current calendar year.

(3) The payment pool may not exceed $60 million in any calendar year.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

D. Part 482 is amended as follows:

1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 482.66 [Amended]

2. Section 482.66 is amended by:

A. Removing paragraph (a)(3).

B. Redesignating paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4), respectively.

C. Removing paragraphs (a)(6) and (a)(7).

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

E. Part 485 is amended as follows:

1. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.610 is amended by:

A. Revising paragraph (a).

B. Republishing the introductory text of paragraph (b).

C. Redesignating paragraph (b)(4) as paragraph (b)(5) and republishing newly designated paragraph (b)(5).

D. Adding a new paragraph (b)(4).

§ 485.610 Condition of participation: Status and location.

(a) *Standard:* Status. The facility is—

(1) A currently participating hospital that meets all conditions of participation set forth in this subpart;

(2) A recently closed facility, provided that the facility—

(i) Was a hospital that ceased operations on or after the date that is 10 years before November 29, 1999; and

(ii) Meets the criteria for designation under this subpart as of November 29, 1999; or

(3) A health clinic or a health center (as defined by the State) that—

(i) Is licensed by the State as a health clinic or a health center;

(ii) Was a hospital that was downsized to a health clinic or a health center; and

(iii) As of the effective date of its designation, meets the criteria for designation set forth in this subpart.

(b) *Standard: Location.* The CAH meets the following requirements:

* * * * *

(4) The CAH is being treated as being located in a rural area in accordance with § 412.103 of this chapter.

(5) The CAH is located more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital or another CAH, or the CAH is certified by the State as being a necessary provider of health care services to residents in the area.

3. Section 485.620 is amended by revising paragraph (b) to read as follows:

§ 485.620 Condition of participation: Number of beds and length of stay.

* * * * *

(b) *Standard: Length of stay.* The CAH provides acute inpatient care for a period that does not exceed, on an annual average basis, 96 hours per patient.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 21, 2000.

Nancy Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 24, 2000.

Donna E. Shalala,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

APPENDIX A—URBAN COUNTIES AS OF JANUARY 1, 2000 WITH CENSUS TRACTS THAT MAY QUALIFY AS RURAL UNDER GOLDSMITH MODIFICATION

[Based on 1990 Census Data]

County	State
BALDWIN	ALABAMA.
MOBILE	ALABAMA.
TUSCALOOSA	ALABAMA.
ANCHORAGE	ALASKA.
COCONINO	ARIZONA.
MARICOPA	ARIZONA.
MOHAVE	ARIZONA.
PIMA	ARIZONA.
PINAL	ARIZONA.
YUMA	ARIZONA.
BUTTE	CALIFORNIA.
EL DORADO	CALIFORNIA.
FRESNO	CALIFORNIA.
KERN	CALIFORNIA.
LOS ANGELES	CALIFORNIA.
MADERA	CALIFORNIA.
MERCED	CALIFORNIA.
MONTEREY	CALIFORNIA.
PLACER	CALIFORNIA.
RIVERSIDE	CALIFORNIA.
SAN BERNARDINO	CALIFORNIA.
SAN DIEGO	CALIFORNIA.
SAN JOAQUIN	CALIFORNIA.
SAN LUIS OBISPO	CALIFORNIA.
SANTA BARBARA	CALIFORNIA.
SANTA CLARA	CALIFORNIA.
SHASTA	CALIFORNIA.
SONOMA	CALIFORNIA.
STANISLAUS	CALIFORNIA.
TULARE	CALIFORNIA.
VENTURA	CALIFORNIA.
ADAMS	COLORADO.
EL PASO	COLORADO.
LARIMER	COLORADO.
MESA	COLORADO.
PUEBLO	COLORADO.
WELD	COLORADO.
COLLIER	FLORIDA.
DADE	FLORIDA.
MARION	FLORIDA.
OSCEOLA	FLORIDA.
PALM BEACH	FLORIDA.
POLK	FLORIDA.
BUTLER	KANSAS.
RAPIDES	LOUISIANA.
TERREBONNE	LOUISIANA.
PENOBSCOT	MAINE.
WORCESTER	MASSACHUSETTS.
POLK	MINNESOTA.
ST. LOUIS	MINNESOTA.
STEARNS	MINNESOTA.
CASCADE	MONTANA.
MISSOULA	MONTANA.
YELLOWSTONE	MONTANA.
CLARK	NEVADA.
NYE	NEVADA.
WASHOE	NEVADA.
DONA ANA	NEW MEXICO.
SANDOVAL	NEW MEXICO.
SANTA FE	NEW MEXICO.
HERKIMER	NEW YORK.
BURLEIGH	NORTH DAKOTA.
CASS	NORTH DAKOTA.
GRAND FORKS	NORTH DAKOTA.
MORTON	NORTH DAKOTA.
OSAGE	OKLAHOMA.

APPENDIX A—URBAN COUNTIES AS OF JANUARY 1, 2000 WITH CENSUS TRACTS THAT MAY QUALIFY AS RURAL UNDER GOLDSMITH MODIFICATION—Continued

[Based on 1990 Census Data]

County	State
CLACKAMAS	OREGON.
JACKSON	OREGON.
LANE	OREGON.
LYCOMING	PENNSYLVANIA.
PENNINGTON	SOUTH DAKOTA.
BEXAR	TEXAS.
BRAZORIA	TEXAS.
HARRIS	TEXAS.
HIDALGO	TEXAS.

APPENDIX A—URBAN COUNTIES AS OF JANUARY 1, 2000 WITH CENSUS TRACTS THAT MAY QUALIFY AS RURAL UNDER GOLDSMITH MODIFICATION—Continued

[Based on 1990 Census Data]

County	State
TOM GREEN	TEXAS.
WEBB	TEXAS.
KANE	UTAH.
UTAH	UTAH.
BENTON	WASHINGTON.
FRANKLIN	WASHINGTON.
KING	WASHINGTON.
PIERCE	WASHINGTON.
SNOHOMISH	WASHINGTON.

APPENDIX A—URBAN COUNTIES AS OF JANUARY 1, 2000 WITH CENSUS TRACTS THAT MAY QUALIFY AS RURAL UNDER GOLDSMITH MODIFICATION—Continued

[Based on 1990 Census Data]

County	State
SPOKANE	WASHINGTON.
WHATCOM	WASHINGTON.
YAKIMA	WASHINGTON.
DOUGLAS	WISCONSIN.
MARATHON	WISCONSIN.
LARAMIE	WYOMING.
NATRONA	WYOMING.

APPENDIX B.—HOSPITALS AS OF JANUARY 1, 2000 THAT MAY QUALIFY AS RURAL WITHIN A GOLDSMITH MODIFICATION AREA

[Based on 1990 Census Data]

Hospital name	County	State
North Baldwin Hospital	BALDWIN	ALABAMA.
South Baldwin Hospital	BALDWIN	ALABAMA.
Thomas Hospital	BALDWIN	ALABAMA.
Flagstaff Medical Center	COCONINO	ARIZONA.
Page Hospital	COCONINO	ARIZONA.
Wickenburg Regional Hospital	MARICOPA	ARIZONA.
Bullhead Community Hospital	MOHAVE	ARIZONA.
Havasu Samaritan Regional Hospital	MOHAVE	ARIZONA.
Kingman Regional Medical Center	MOHAVE	ARIZONA.
Mohave Valley Hospital and Medical Center	MOHAVE	ARIZONA.
Central Arizona Medical Center	PINAL	ARIZONA.
Casa Grande Regional Medical Center	PINAL	ARIZONA.
Bigge-Gridley Memorial Hospital	BUTTE	CALIFORNIA.
Feather River Hospital	BUTTE	CALIFORNIA.
Barton Memorial Hospital	EL DORADO	CALIFORNIA.
Coalinga Regional Medical Center	FRESNO	CALIFORNIA.
Kingsburg Medical Center	FRESNO	CALIFORNIA.
Sanger General Hospital	FRESNO	CALIFORNIA.
Selma District Hospital	FRESNO	CALIFORNIA.
Sierra Kings Health Care District	FRESNO	CALIFORNIA.
Delano Regional Medical Center	KERN	CALIFORNIA.
Kern Valley Hospital	KERN	CALIFORNIA.
Ridgecrest Community Hospital	KERN	CALIFORNIA.
Tehachapi Valley Hospital	KERN	CALIFORNIA.
Westside District Hospital	KERN	CALIFORNIA.
Avalon Municipal Hospital and Clinic	LOS ANGELES	CALIFORNIA.
Chowchilla District Memorial Hospital	MADERA	CALIFORNIA.
Madera Community Hospital	MADERA	CALIFORNIA.
Bloss Memorial Hospital	MERCED	CALIFORNIA.
Dos Palos Memorial Hospital	MERCED	CALIFORNIA.
Los Banos Community Hospital	MERCED	CALIFORNIA.
Sutter Auburn Faith Hospital	PLACER	CALIFORNIA.
Palo Verde Hospital	RIVERSIDE	CALIFORNIA.
San Gorgonio Memorial Hospital	RIVERSIDE	CALIFORNIA.
Santa Ynez Valley Cottage Hospital	SANTA BARBARA	CALIFORNIA.
Barstow Community Hospital	SAN BERNARDINO	CALIFORNIA.
Needles Desert Community Hospital	SAN BERNARDINO	CALIFORNIA.
Hi-Desert Medical Center	SAN BERNARDINO	CALIFORNIA.
Doctors Hospital of Manteca	SAN JOAQUIN	CALIFORNIA.
"St Dominic's Hospital"	SAN JOAQUIN	CALIFORNIA.
Tracy Community Memorial Hospital	SAN JOAQUIN	CALIFORNIA.
Twin Cities Community Hospital	SAN LUIS OBISPO	CALIFORNIA.
South Valley Hospital	SANTA CLARA	CALIFORNIA.
Petaluma Valley Hospital	SONOMA	CALIFORNIA.
Sonoma Valley Health Care District	SONOMA	CALIFORNIA.
Del Puerto Hospital	STANISLAUS	CALIFORNIA.
Emanuel Medical Center	STANISLAUS	CALIFORNIA.
Oak Valley District Hospital	STANISLAUS	CALIFORNIA.
Alta District Hospital	TULARE	CALIFORNIA.

APPENDIX B.—HOSPITALS AS OF JANUARY 1, 2000 THAT MAY QUALIFY AS RURAL WITHIN A GOLDSMITH MODIFICATION AREA—Continued

[Based on 1990 Census Data]

Hospital name	County	State
Sierra View District Hospital	TULARE	CALIFORNIA.
Tulare District Hospital	TULARE	CALIFORNIA.
Lindsay District Hospital	TULARE	CALIFORNIA.
Exeter Memorial Hospital	TULARE	CALIFORNIA.
Estes Park Medical Center	LARIMER	COLORADO.
McKee Medical Center	LARIMER	COLORADO.
Glades General Hospital	PALM BEACH	FLORIDA.
Bartow Memorial Hospital	POLK	FLORIDA.
Heart of Florida Hospital	POLK	FLORIDA.
Polk General Hospital	POLK	FLORIDA.
Lake Wales Medical Center	POLK	FLORIDA.
Susan B. Allen Memorial Hospital	BUTLER	KANSAS.
Millinocket Regional Hospital	PENOBSCOT	MAINE.
Penobscot Valley Hospital	PENOBSCOT	MAINE.
Harrington Memorial Hospital	WORCESTER	MASSACHUSETTS.
Heywood Hospital	WORCESTER	MASSACHUSETTS.
Athol Memorial Hospital	WORCESTER	MASSACHUSETTS.
Clinton Hospital	WORCESTER	MASSACHUSETTS.
First Care Medical Services	POLK	MINNESOTA.
Riverview Healthcare Association	POLK	MINNESOTA.
Ely-Bloomenson Community Hospital	ST. LOUIS	MINNESOTA.
Eveleth Health Services Park	ST. LOUIS	MINNESOTA.
Cook Hospital & Convalescent Center	ST. LOUIS	MINNESOTA.
University Medical Center—Mesabi	ST. LOUIS	MINNESOTA.
Virginia Regional Medical Center	ST. LOUIS	MINNESOTA.
White Community Hospital	ST. LOUIS	MINNESOTA.
Albany Area Hospital & Medical Center	STEARNS	MINNESOTA.
"St Michael's Hospital"	STEARNS	MINNESOTA.
Melrose Hospital & Pine Villa	STEARNS	MINNESOTA.
Paynesville Area Health Care	STEARNS	MINNESOTA.
Nye Regional Medical Center	NYE	NEVADA.
Lake Tahoe Medical Center	WASHOE	NEVADA.
Little Falls Hospital	HERKIMER	NEW YORK.
Northwood Deaconess Healthcare	GRAND FORKS	NORTH DAKOTA.
Fairfax Memorial Hospital	OSAGE	OKLAHOMA.
Pawhuska Hospital	OSAGE	OKLAHOMA.
Ashland Community Hospital	JACKSON	OREGON.
Cottage Grove Hospital	LANE	OREGON.
Peace Harbor Hospital	LANE	OREGON.
Jersey Shore Hospital	LYCOMING	PENNSYLVANIA.
Muncy Valley Hospital	LYCOMING	PENNSYLVANIA.
Angleton-Danbury General Hospital	BRAZORIA	TEXAS.
Brazosport Memorial Hospital	BRAZORIA	TEXAS.
Sweeny Community Hospital	BRAZORIA	TEXAS.
Kane County Hospital	KANE	UTAH.
Prosser Memorial Hospital	BENTON	WASHINGTON.
Providence Toppenish Hospital	YAKIMA	WASHINGTON.
Sunnyside Community Hospital	YAKIMA	WASHINGTON.

[FR Doc. 00–19107 Filed 7–31–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 412, 413, and 485

[HCFA–1118–F]

RIN 0938–AK09

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2001 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment system for operating costs to: implement applicable statutory requirements, including a number of provisions of the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (Pub. L. 106–113); and implement changes arising from our continuing experience with the system. In addition, in the Addendum to this final rule, we describe changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for

operating costs and capital-related costs. These changes apply to discharges occurring on or after October 1, 2000. We also set forth rate-of-increase limits and make changes to our policy for hospitals and hospital units excluded from the prospective payment systems.

We are making changes to the policies governing payments to hospitals for the direct costs of graduate medical education, sole community hospitals and critical access hospitals.

We are adding a new condition of participation on organ, tissue, and eye procurement for critical access hospitals that parallels the condition of participation that we previously published for all other Medicare-participating hospitals.

Lastly, we are finalizing a January 20, 2000 interim final rule with comment period (65 FR 3136) that sets forth the criteria to be used in calculating the Medicare disproportionate share adjustment in reference to Medicaid expansion waiver patient days under section 1115 of the Social Security Act.

DATES: The provisions of this final rule are effective October 1, 2000. This rule is a major rule as defined in 5 U.S.C. 804(2). Pursuant to 5 U.S.C. 801(a)(1)(A), we are submitting a report to Congress on this rule on August 1, 2000.

FOR FURTHER INFORMATION CONTACT:
Steve Phillips, (410) 786–4531, Operating Prospective Payment, Diagnostic Related Groups, Wage Index, Reclassifications, and Sole Community Hospital Issues
Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Graduate Medical Education and Critical Access Hospital Issues

SUPPLEMENTARY INFORMATION:

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I. Background

A. Summary

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

Certain specialty hospitals are excluded from the prospective payment systems. Under section 1886(d)(1)(B) of the Act, the following hospitals and hospital units are excluded from the prospective payment systems: psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit.

Under sections 1820 and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural nonprofit hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(i)(A) of the Act and existing regulations under 42 CFR Parts 413 and 415.

Under section 1886(a)(4) of the Act, costs of approved educational activities programs are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR Part 412. The regulations governing excluded hospitals and hospital units are located in 42 CFR Parts 412 and 413, and the GME regulations are located in 42 CFR Part 413.

On November 29, 1999, the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999, Public Law 106–113, was enacted. Public Law 106–113 made a number of changes to the Act affecting prospective payments to hospitals for inpatient services and payments to excluded hospitals. This final rule implements amendments enacted by Public Law 106–113 relating to FY 2001 payments for GME costs, disproportionate share hospitals (DSHs), sole community hospitals (SCHs), and CAHs. These changes are addressed in sections IV and VI of this preamble.

Other related provisions of Public Law 106–113 that pertain to Medicare hospital inpatient payments with an effective date prior to October 1, 2000, are addressed in an interim final rule with comment period that is published elsewhere in this issue of the **Federal Register**.

Public Law 106–113 also amended section 1886(j) of the Act, which was added by section 4421 of the Balanced Budget Act of 1997 (Public Law 105–33). Section 1886(j) of the Act provides for a fully implemented prospective payment system for inpatient rehabilitation hospitals and rehabilitation units, effective for cost reporting periods beginning on or after October 1, 2002, with payment provisions during a transitional period of October 1, 2000 to October 1, 2002 based on target amounts specified in section 1886(b) of the Act. We are issuing a separate notice of proposed rulemaking to implement the prospective payment system for inpatient rehabilitation hospitals and units.

B. Summary of the Provisions of the May 5, 2000 Proposed Rule

On May 5, 2000, we published a proposed rule in the **Federal Register** (65 FR 26282) that set forth proposed changes to the Medicare hospital inpatient prospective payment system for operating costs for FY 2001. In the proposed rule, we made no policy changes relating to payments for capital-related costs under the hospital inpatient prospective payment system in FY 2001. However, we did propose changes to the amounts and factors used in determining the rates for capital-related costs for FY 2001. The proposed rule also included changes relating to payments for GME costs and payments to excluded hospitals and units, SCHs, and CAHs.

The following is a summary of the major changes we proposed and the issues we addressed in the May 5, 2000 proposed rule:

- We proposed changes to the FY 2001 DRG classifications and relative weights, as required by section 1886(d)(4)(C) of the Act.
- We proposed an update to the FY 2001 hospital wage index, using FY 1997 wage data. We also proposed to implement the second year phaseout of Part A physician teaching-related costs, Part A certified registered nurse anesthetist (CRNA) costs and resident costs from the FY 2001 wage index calculation.
- We discussed the impact of our policy on post acute care transfers and set forth certain proposed changes concerning sole community hospitals (SCHs), rural referral centers (RRCs), the indirect medical education adjustment, the DSH adjustment and collection of data on uncompensated costs for services furnished in hospitals, the Medicare Geographic Classification Review Board (MGCRB) classifications, and payment for the direct costs of GME.
- We discussed FY 2001 as the last year of a 10-year transition established to phase-in the prospective payment system for capital-related costs for inpatient hospital services.
- We discussed a number of proposals concerning excluded hospital and hospital units and CAHs. The proposed changes addressed limits on and adjustments to the proposed target amounts for FY 2001; development of a prospective payment system for inpatient rehabilitation hospitals and units; continuous improvement bonus payments; clarification that the 5-percent threshold used in calculating an excluded hospital's cost per discharge is based only on Medicare inpatients discharged from the hospital-within-a-hospital; an all-inclusive payment rate option for CAHs; and adding a new condition of participation for CAHs relating to organ, tissue, and eye procurement.
- In the Addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2001 prospective payment rates for operating costs and capital-related costs. We also addressed update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2001 for hospitals and hospital units excluded from the prospective payment system.
- In Appendix A of the proposed rule, we set forth an analysis of the impact of the proposed changes on affected entities.
- In Appendix B of the proposed rule, we set forth the technical appendix on the proposed FY 2001 capital cost model.
- In Appendix C of the proposed rule, as required by section 1886(e)(3) (B) of the Act, we set forth our report to Congress on our initial estimate of a recommended update factor for FY 2001 for payments to hospitals included in the prospective payment systems, and hospitals excluded from the prospective payment systems.
- In Appendix D of the proposed rule, as required by sections 1886(e)(4) and (e)(5) of the Act, we included our recommendation of the appropriate percentage change for FY 2001 for:

—Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs; and

—Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

- In the proposed rule, we discussed recommendations by the Medicare Payment Advisory Commission (MedPAC) concerning hospital inpatient payment policies and presented our responses to those recommendations. Under section 1805(b) of the Act, MedPAC is required to submit a report to Congress that reviews and makes recommendations on Medicare payment policies no later than March 1 of each year. This year, MedPAC released a subsequent report in June containing additional recommendations. We respond to those recommendations in section IV.E. of this preamble.

C. Public Comments Received in Response to the Proposed Rule

We received a total of 290 timely items of correspondence containing multiple comments on the proposed rule. Major issues addressed by commenters included the creation of a new DRG for pancreas and kidney transplants, the adequacy of the DRG for heart assist devices, various aspects of the wage index calculation, rebasing of the SCH payment rates, and reclassification of hospitals.

Summaries of the public comments received and our responses to those comments are set forth below under the appropriate section heading.

D. Final Rule for the January 20, 2000 Interim Final Rule

On January 20, 2000, we published in the **Federal Register** an interim final rule with comment period (65 F 3136) to implement a change in the Medicare DSH adjustment calculation policy in reference to section 1115 expansion waiver days. The interim final rule set forth the criteria to use in calculating the Medicare DSH adjustment for hospitals for purposes of payment under the prospective payment system. This final rule finalizes the policy in this interim final rule with comment period. We discuss this policy in detail in Section IV.E.2. of this preamble.

II. Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. Changes to the DRG classification system and the recalibration of the DRG

weights for discharges occurring on or after October 1, 2000, are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). Medicare fiscal intermediaries enter the information into their claims processing systems and subject it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG.

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by the Medicare GROUPER software program. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

In the July 30, 1999 final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for the use of particular data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule, so that we can test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with the next year's proposed rule, and as appropriate, in the recalibration in the final rule following the proposed rule.

Currently, cases are assigned to one of 501 DRGs (including one DRG for a diagnosis that is invalid as a discharge diagnosis and one DRG for ungroupable diagnoses) in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6 (Diseases and Disorders of the Digestive System)); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22 (Burns)).

In general, cases are assigned to an MDC based on the principal diagnosis, before assignment to a DRG. However, there are presently five DRGs to which cases are directly assigned on the basis of procedure codes. These are the DRGs for liver, bone marrow, and lung transplants (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, the GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed several changes to the DRG classification system for FY 2001 and discussed other issues concerning DRGs. The proposed changes, the public comments we received concerning them, and the final DRG changes are set forth below. Unless otherwise noted, the changes we are implementing will be effective in the revised GROUPER software (Version 18.0) to be implemented for discharges on or after October 1, 2000. (Also unless otherwise specified, our DRG analysis is based on the full (100 percent) FY 1999 MedPAR file (bills received through December 31, 1999 for discharges in FY 1999).

2. MDC 5 (Diseases and Disorders of the Circulatory System)

In the August 29, 1997 final rule with comment period (62 FR 45974), we noted that, because of the many recent changes in heart surgery, we were considering conducting a comprehensive review of the MDC 5 surgical DRGs. In the July 31, 1998 final rule with comment period (63 FR 40956), we did adopt some changes to the MDC 5 surgical DRGs. Since that time, we have received inquiries on a continuing basis regarding these DRGs. We have continued to review Medicare claims data and, based on our analysis, we proposed several DRG changes in MDC 5 in the May 5, 2000 proposed rule.

a. Heart Transplant (DRG 103). As previously stated, cases are generally assigned to an MDC based on principal diagnosis and subsequently assigned to surgical or medical DRGs included in that MDC. However, cases involving liver, bone marrow, and lung transplants (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483) are directly assigned on the basis of procedure codes. Cases assigned to these DRGs before classification to an MDC are referred to as pre-MDC. However, cases involving heart transplants are currently assigned first to MDC 5 and then to DRG 103.

Currently, when a bone marrow transplant and a heart transplant are performed during the same admission, the case is assigned to DRG 481 (Bone Marrow Transplant). Because bone marrow transplant cases are first classified to pre-MDC, while heart transplants are first assigned to MDC 5, the bone marrow transplant assumes precedence in the assignment of the case to a DRG. However, payment for DRG 481 is substantially less than DRG 103. For FY 2000, the relative weight for DRG 103 is 19.5100, while the relative weight for DRG 481 is 8.7285.

To ensure appropriate DRG assignment of these cases, we proposed that the heart transplant DRG, which encompasses combined heart-lung transplantation (ICD–9–CM procedure code 33.6) and heart transplantation (ICD–9–CM procedure code 37.5) be assigned to pre-MDC. In this way, cases involving a bone marrow transplant and a heart transplant would be assigned to DRG 103 (DRG 103 would be reordered higher in the pre-MDC surgical hierarchy, as discussed in section II.B.5. of this preamble).

We received two comments in support of this proposed change and are adopting it as final.

b. Heart Assist Devices. We continue to review data in MDC 5 (Diseases and Disorders of the Circulatory System) to determine if cases are being assigned to the most appropriate DRG based on clinical coherence and similar resource consumption. At the December 1, 1994 ICD–9–CM Coordination and Maintenance Committee meeting, we recommended that new codes be created to capture single and bi-ventricular heart assist systems.

These codes, 37.65 (Implant of an external, pulsatile heart assist system) and 37.66 (Implant of an implantable, pulsatile heart assist system), were adopted for use for discharges occurring on or after October 1, 1995. However, code 37.66 was deemed investigational and was not considered a covered procedure. Effective May 5, 1997, we revised Medicare coverage of heart assist devices to allow coverage of a ventricular assist device (code 37.66) used for support of blood circulation postcardiotomy if certain conditions were met.

Due to some residual misunderstanding regarding this coverage policy, we emphasize that this device was and will continue to be listed as a noncovered procedure in the Medicare Code Editor (MCE), the front-end software product in the GROUPER program that detects and reports errors in the coding of claims data. The reason that this device is listed in the MCE, in spite of the fact that its implantation is covered, is because of the stringent conditions that must be met by hospitals in order to receive payment.

In the August 29, 1997 final rule (62 FR 45973), we moved procedure code 37.66 from DRGs 110 and 111 [1] (Major Cardiovascular Procedures with and without CCs, respectively) to DRG 108 (Other Cardiothoracic Procedures). As stated in the July 31, 1998 final rule (63 FR 40956), we moved procedure code 37.66 to DRGs 104 and 105 (Cardiac Valve and Other Major Cardiothoracic Procedures with and without CCs, respectively) for FY 1999.

In the July 30, 1999 final rule (64 FR 41498), we responded to a comment suggesting that heart assist devices be assigned to DRG 103. For the proposed rule we reviewed the 100 percent FY 1999 MedPAR file containing bills through December 31, 1999, and found that there were a total of 47 implantable heart assist system procedures performed on Medicare beneficiaries. Of these cases, 13 (approximately 28 percent) were assigned to DRG 103 (Heart Transplant) and four (approximately 9 percent) were assigned to DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses), and, therefore, were paid at significantly higher rates than the remaining 30 cases. All of the procedure code 37.66 cases have extremely high charges, which is consistent with past analysis, and all of these cases are subject to payment as cost outliers.

Our data analysis indicated that the most cases in any one hospital was 5, while 17 hospitals performed only one heart assist system implant each. We reiterate that only heart transplant cases can be properly assigned to the transplant DRG (August 29, 1997 final rule (62 FR 45974)). Since heart assist devices are used across DRGs, many not involving a transplant, we did not propose to assign procedure code 37.66 to DRG 103.

In addition to the review of 37.66, we also looked at procedure codes 37.62 (Implant of other heart assist system), 37.63 (Replacement and repair of heart assist system), and 37.65 (Implant of an external, pulsatile heart assist system). These cases are currently assigned to DRGs 110 and 111 (Major Cardiovascular Procedures). We believe that these procedures are similar both clinically and in terms of resource utilization to procedure code 37.66, which is already assigned to DRGs 104 and 105. Therefore, we proposed to move codes 37.62, 37.63, and 37.65 from DRGs 110 and 111 to DRGs 104 and 105.

Comment: We received four comments on this proposal.

Two comments in favor of our proposal were received from national associations concerned with health care delivery.

Two commenters requested reevaluation of the DRG assignment of mechanical heart assist devices, particularly procedure code 37.66, and suggested that a new DRG be created to classify this technology, or that these cases be assigned to DRG 103 (Heart Transplant). The commenters pointed out that the heart assist implantation procedure is typically performed in the same medical centers by the same surgical teams as the heart transplant procedure.

With respect to our past decision not to assign cases with procedure code 37.66 to DRG 103, one commenter acknowledged our analysis of 1996 MedPAR data showing the costs of these cases to be more similar to DRGs 104 and 105 than DRG 103, but suggested that we look at more recent data. The commenter also questioned our rationale for not assigning these cases to DRG 103 on the basis that heart assist devices are used across DRGs.

One commenter argued that, as all the cases with procedure code 37.66 were qualified as cost outliers, the misplacement of this procedure is evident. This commenter also noted that use of this procedure is likely to increase in the future and suggested that HCFA position itself ahead of the curve by increasing payment now in anticipation of this event. The commenter urged HCFA to examine the option of combining code 37.66 with other clinically similar low-volume procedures, and creating a new DRG that would more appropriately pay these cases. This recommended new DRG could conceivably include codes 37.62, 37.63, and 37.65, as they are similar both clinically and in terms of resource consumption.

Finally, one commenter expressed concern that the uncovered status of procedure code 37.66 in the MCE may be resulting in inappropriate payment denials. The commenter recommended that HCFA review the procedures employed by fiscal intermediaries to override the MCE edits.

Response: We are adopting our proposed change to assign procedure codes 37.62, 37.63, and 37.65 to DRGs 104 and 105.

With respect to the comments regarding procedure code 37.66, we have continually considered the issue of DRG assignment of heart assist devices since this technology was assigned an ICD–9–CM code in 1995, and became a Medicare covered procedure (if specific conditions were met) effective in 1997. As we noted in the proposed rule, these are costly cases that are currently spread across several DRGs. Although the outlier policy is intended to help hospitals offset unusually costly cases, we are concerned when a particular procedure always qualifies as an outlier case.

However, we do not believe it would be appropriate to redefine DRG 103 to include these cases at this time. The presently limited incidence of these cases, with very few cases occurring at any particular hospital over the course of a year, does not warrant disrupting the clinical coherence of DRG 103. The fact that these cases are spread across a number of DRGs indicates they do not represent a clinically cohesive group of patients in terms of their associated diagnoses or other procedures.

We will continue to monitor and evaluate these cases to determine whether a better approach might be

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases with patients who are age 0–17. Occasionally, a pair of DRGs is split between age ≥17 and age 0–17.

identified, including the possibility of a new DRG for procedure codes 37.62, 37.63, 37.65, and 37.66. We note that the classification of patients into DRGs is a constantly evolving process. As there are changes in the coding system, data collection, medical technology, or medical practice, all DRG definitions will be reviewed and potentially revised.

Concerning the concept of HCFA positioning itself "ahead of the curve" by anticipating increased use of heart assist devices and raising payment accordingly, we are reluctant to attempt to predict future trends in medical practice, especially when such predictions would affect payments across all DRGs as a result of DRG recalibration. We appreciate the industry's continued interest in this system, and look forward to working together to arrive at equitable payments for this and other new technologies.

With respect to the comment concerning fiscal intermediary overrides of MCE edits listing procedure code 37.66 as noncovered, we will instruct our fiscal intermediaries to be aware of this issue. We are concerned that Medicare payment for this procedure be limited to those cases for which coverage is appropriate and that payment is not inappropriately denied.

c. Platelet Inhibitors. Effective October 1, 1998, procedure code 99.20 (Injection or infusion of platelet inhibitor) was created. The use of platelet inhibitors have been shown to significantly decrease the rate of acute vessel closure, as well as the rate of cardiac complications and death.[2] Platelet inhibitors are frequently administered to patients undergoing percutaneous transluminal coronary angioplasty (PTCA). In addition, patients admitted with unstable angina may also benefit from platelet inhibitors.[2] This procedure code is designated as a non-OR procedure that does not affect DRG assignment (platelet inhibitors are administered either through intravenous injection or infusion).

For the past 2 years, a manufacturer of platelet inhibitors has submitted data to support its position that cases involving platelet inhibitor therapy receiving angioplasty should be reclassified from DRG 112 (Percutaneous Cardiovascular Procedures) to DRG 116 (Other Permanent Cardiac Pacemaker Implant or PTCA with Coronary Artery Stent Implant). Using the 100 percent FY 1999 MedPAR file that contains discharges through September 30, 1999, we performed analysis for the proposed rule of the cases for which procedure code 99.20 was reported. There were a total of 37,222 cases spread across 123 DRGs.

The majority of the platelet inhibitor cases, 28,022 (75 percent of all platelet inhibitor cases), are already assigned to DRG 116. The average standardized charges for these cases are approximately $26,683, compared to approximately $25,251 for DRG 116 overall. In DRG 112, there were 4,310 platelet inhibitor cases (12 percent of all platelet inhibitor cases) assigned. The average standardized charge for these cases is approximately $22,786, compared to approximately $20,224 for DRG 112 overall. Although the platelet inhibitor therapy cases that are classified to DRG 112 do have somewhat higher charges than the average case assigned to this DRG (11 percent, or $2,563), we found several procedures in DRG 112 with average standardized charges higher than the platelet inhibitor cases. For example, there were 1,560 cases in which a single vessel PTCA or coronary atherectomy with thrombolytic agent (procedure code 36.02) was performed with an average standardized charge of approximately $25,181, and there were 4,951 cases in which a multiple vessel PTCA or coronary atherectomy was performed, with or without a thrombolytic agent (procedure code 36.05) with an average standardized charge of approximately $23,608.

We also noted that there are several procedures assigned to DRG 112 that have average standardized charges lower than the average charges for all cases in the DRG. For example, average charges for cases with procedure code 37.34 (Catheter ablation of lesion or tissues of heart) were $18,429.

There is always some variation in charges within a DRG. The difference in variations of charges in DRG 112 is within the normal range of charge variations.

Clinical homogeneity within DRGs has always been a fundamental principle considered when assigning codes to appropriate DRGs. Currently, DRG 116 includes cases involving the insertion of a pacemaker as well as the insertion of coronary artery stents with PTCA. On the other hand, cases assigned to DRG 112 involve less invasive operating room and, in some cases, nonoperating room procedures.

The basis for DRG assignment has generally been the diagnosis of the patient or the procedures performed. To the extent the use of a particular technology becomes prevalent in the treatment of a particular type of case, the DRG system is designed to account for any increases or decreases in costs through recalibration. Hospitals frequently benefit from this process while efficiency-enhancing technology is being introduced. We believe that the update factors established in section 1886(b)(3)(B)(i) of the Act, combined with the potential for continuing improvements in hospital productivity, and annual recalibration of the DRG weights, are adequate to finance appropriate care of Medicare patients.

We also discussed in the proposed rule our analysis of cases where platelet inhibitor therapy is targeted on acute coronary syndrome patients without coronary intervention. These cases are assigned to DRG 124 (Circulatory Disorders Except Acute Myocardial Infarction with Cardiac Catheterization and Complex Diagnosis) or DRG 140 (Angina Pectoris). The concern is that both types of cases, those performed in conjunction with coronary intervention and those without, be given an equal focus in this evaluation.

Based on our analysis, we found 410 platelet inhibitor cases (1 percent) assigned to DRG 124. This is a small percentage of cases in comparison to the overall total of 134,759 cases assigned to this DRG. The platelet inhibitor cases had an average standardized charge of approximately $17,378 compared to approximately $14,730 for DRG 124 overall. As we have indicated, there is always some variation in charges within a DRG and this difference is within normal variation.

There were 66 platelet inhibitor cases (0.2 percent) assigned to DRG 140. The average standardized charge for these cases is higher than the overall DRG charge, approximately $8,992 and $5,657, respectively. However, it represents a small percentage of the total (76,913) cases assigned to DRG 140.

In summary, currently 75 percent of cases where code 99.20 is present are assigned to DRG 116. The next most common DRG where these cases are assigned is DRG 112 (12 percent). Cases assigned to DRG 116 generally involve implantation of a pacemaker or artery stent, while cases assigned to DRG 112 involve percutaneous cardiovascular procedures. Our analysis found a $3,897 difference between cases involving platelet inhibitor therapy that were assigned to DRG 116 and cases assigned to DRG 112, indicating a clinical distinction between the cases grouping to the two DRGs. Finally, among platelet

[2] Topol EJ and Serruys PW. "Frontiers in Interventional Cardiology." Circulation.1998; 98: 1802. and Frishman W *et al.* "Medical therapies for the Prevention of Restenosis after Percutaneous Coronary Interventions." Curr Probl Cardiology. 1998; 23: 555.

inhibitor therapy cases that are assigned to DRG 112, our analysis found that the average charges are well within the normal variation around the overall average charges within the DRG. Based on these findings, we believe it would be inappropriate to assign all cases where procedure code 99.20 is present to DRG 116. Therefore, we did not propose to change our current policy that specifies that assignment of cases to this code does not affect the DRG assignment.

Comment: We received two comments on this issue. One commenter from a national hospital association supported not assigning code 99.20 to DRG 116. The other commenter argued that the analysis on which our position was based is flawed. This commenter believed that perhaps as many as five times the 37,222 cases we identified with ICD–9–CM procedure code 99.20 actually exist in the data but the procedure was not coded. To remedy this, the commenter suggested two options HCFA could pursue. The first option would be to reexamine the data file with the goal of excluding cases that appear to be miscoded. The commenter suggested that HCFA might check total pharmacy charges in MedPAR and exclude from the analysis cases without ICD–9–CM procedure code 99.20 that have pharmacy charges over a certain threshold (for example, a threshold of $500). The second option would be to use outside data to capture pharmacy information which would provide more reliable information than coding with procedure code 99.20.

The commenter recommended that HCFA make a concerted effort, perhaps through the Medicare fiscal intermediaries, to instruct hospitals to use ICD–9–CM procedure code 99.20 on the claim of any case that receives any of the three platelet inhibitors.

Response: We appreciate the support of the hospital association for our position on this issue.

In response to the comment that the MedPAR data underreport procedure code 99.20 because the data do not affect DRG assignment and payment, we believe it is in hospitals' best interest to submit accurate billing data that are utilized in the DRG reclassification and recalibration of the DRG relative weights process.

We disagree with the recommendation that we exclude from our analysis any bill with over $500 in pharmacy charges that does not report procedure code 99.20. We question the analytical validity of this approach, particularly given that many Medicare beneficiaries have multiple chronic conditions requiring multiple medications. It is simply not possible to determine coding accuracy by reviewing charge data submitted on bills. The only way to identify coding errors would be to review the actual medical records. To exclude cases with pharmacy charges exceeding a certain predetermined threshold would likely skew the results of any such analysis.

We remain open to considering and using non-MedPAR data to make DRG changes if the data are reliable and validated. In the July 31, 1999 final rule (64 FR 41499), we described the timetable and process for interested parties to submit non-MedPAR data.

With respect to the recommendation that we make a concerted effort to ensure that hospitals use procedure code 99.20 appropriately, from the inception of this procedure code, effective October 1, 1998, HCFA has collaborated with the American Hospital Association (AHA) to educate coders on platelet inhibitor therapy. An extensive article in AHA's publication, *Coding Clinic for ICD–9–CM*, Fourth Quarter 1998, identifies the platelet inhibitor drugs and includes instructions on the appropriate code assignment. Coding instructions for platelet inhibitors are also available via the 1998 regulatory updates teleconference sponsored by AHA.

d. Extracorporeal Membrane Oxygenation. Extracorporeal Membrane Oxygenation (ECMO) is a cardiopulmonary bypass technique that offers long-term cardiopulmonary support to patients who have reversible cardiopulmonary insufficiency that has not responded to conventional management. It involves passing a patient's blood through an extracorporeal membrane oxygenator that adds oxygen and removes carbon dioxide. The oxygenated blood then is passed through a heat exchanger to warm it to body temperature prior to returning it to the patient. The process and equipment are similar to those used in open heart surgery, but are continued over prolonged periods of time. ECMO attempts to provide the patient with artificial cardiopulmonary function while his or her own cardiopulmonary functions are incapable of sustaining life.

Since ECMO involves the use of a device that sustains cardiopulmonary function while the underlying condition is being treated, it is important to identify and treat underlying conditions leading to cardiopulmonary failure if the patient is to return to normal cardiopulmonary function.

ECMO is assigned to procedure code 39.65 (Extracorporeal membrane oxygenation (ECMO)). This code is not recognized as an OR procedure within the DRG system and, therefore, does not affect payment. To evaluate the appropriateness of payment under the current DRG assignment, we have reviewed a 10-percent sample of Medicare claims in the FY 1999 MedPAR file and found only 4 cases in which ECMO was used. The charges for these cases ranged from $16,006 to $198,014. Since medical literature indicates that ECMO is predominately used on newborns and pediatric cases, this low number of claims is not surprising. Only in recent years have some hospitals started to use ECMO on adults. It is reserved for cases facing almost certain mortality.

Because ECMO is a procedure clinically similar to a heart assist device, we proposed that procedure code 39.65 be classified as an OR procedure and be classified in DRGs 104 and 105 along with the heart assist system procedures (as discussed in section II.B.2.b. of this preamble). Those cases in which ECMO was provided, but for which the principal diagnosis is not classified to MDC 5, would then be assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis). This would be appropriate since it is possible that secondary conditions or complications may arise during hospitalization that would require the use of ECMO. The relatively high weight of DRG 468 would be appropriate for these cases.

Comment: We received two comments in support of the proposal to classify procedure code 39.65 as an OR procedure and then assign it to DRGs 104 and 105. One of the commenters stated that most of the adult patients receiving ECMO will fall within MDC 5 since ECMO is used for patients with severe, but reversible, heart or lung disorders that have not responded to the usual treatments of mechanical ventilation, medicines, and extra oxygen. The commenter further stated that these severely ill patients may continue on ECMO for a period of days or weeks until the heart or lungs recover, or until the treatment is no longer effective.

Response: We acknowledge the support of the commenters to classify 39.65 as an OR procedure and then assign it to DRGs 104 and 105 and are adopting our proposal as final.

3. MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period)

a. V05.8 (Vaccination for disease, NEC). DRG 390 (Neonate with Other Significant Problems) contains newborn or neonate cases with other significant

problems, not assigned to DRGs 385 through 389, DRG 391, or DRG 469. In order to be classified into DRG 391 (Normal Newborn), the neonate must have a principal diagnosis as listed under DRG 391 and either no secondary diagnosis or a secondary diagnosis as listed under DRG 391. Neonates with a secondary diagnosis of V05.8 (Vaccination for disease, NEC) are currently classified to DRG 390. Although it would seem that healthy newborns who receive vaccinations and have no other problems would be assigned to DRG 391, code V05.8 is not included as one of the secondary diagnoses under DRG 391, and therefore the case would not be classified as a normal newborn (DRG 391). Code V05.8 is assigned to DRG 390 as a default, since it is not included under another complicated neonate DRG or the normal newborn DRG.

In the proposed rule, we discussed our review of the appropriateness of including diagnosis code V05.8 on the list of acceptable secondary diagnoses under DRG 390 based on inquires that we had received. We pointed out that by including V05.8 on the acceptable secondary diagnosis list for DRG 390, newborns who receive vaccinations are classified as having significant health problems. The inquirers believed this incorrectly labels an otherwise healthy newborn as having a significant medical condition. Providing a vaccination to a newborn is performed to prevent the infant from contracting a disease.

We agreed with the inquirers that, absent any evidence of disease, a newborn should not be considered as having a significant problem simply because a preventative vaccination was provided. Therefore, we proposed that V05.8 be removed from the list of acceptable secondary diagnoses under DRG 390 and assigned as a secondary diagnosis under DRG 391. In doing so, these cases would no longer be classified to DRG 390.

Comment: We received two comments in support of our proposal to remove code V05.8 from the list of acceptable secondary diagnoses under DRG 390. These commenters agreed that a prophylactic vaccination should not be classified as a significant problem. Newborns who receive these prophylactic vaccinations should still be considered normal newborns. We received no comments in opposition to the proposal.

Response: We are adopting the proposal to include V05.8 on the list of acceptable secondary diagnoses under DRG 391 Normal Newborn. Codes V05.3 (Viral hepatitis vaccination) and V05.4 (Varicella vaccination) are already listed as acceptable secondary diagnoses under DRG 391.

b. Diagnosis code 666.02 (Third-stage postpartum hemorrhage, delivered with postpartum complication). Diagnosis code 666.02 is assigned to DRG 373 (Vaginal Delivery without Complicating Diagnoses). This DRG was created for uncomplicated vaginal deliveries. However, code 666.22 (Delayed and secondary postpartum hemorrhage, delivered with postpartum complication) is assigned to DRG 372 (Vaginal Delivery with Complicating Diagnoses). This means that mothers who have a delayed and secondary postpartum hemorrhage would be assigned to DRG 372, while mothers who have a third-stage postpartum hemorrhage would not be considered as a complicated delivery.

We believe a third-stage postpartum hemorrhage should be considered a complicating diagnosis and, in order to categorize these cases more appropriately, we proposed to move diagnosis code 666.02 from DRG 373 and assign it as a complicating diagnosis under DRG 372.

Comment: We received two comments supporting the proposal to classify 666.02 as a complicating diagnosis under DRG 372. The commenters agreed that a third-stage postpartum hemorrhage should be classified as a complicated delivery. There were no comments submitted in opposition to this change.

Response: We are adopting as final our proposal to classify 666.02 as a complication diagnosis under DRG 372.

c. Diagnosis Code 759.89 (Specified congenital anomalies, NEC) (Alport's Syndrome). Alport's Syndrome (also referred to as hereditary nephritis) is an inherited disorder involving damage to the kidney, blood in the urine, and, in some cases, loss of hearing. It may also include loss of vision. Patients who are not treated early enough or who do not respond to treatment may progress to renal failure. A kidney transplant is one treatment option for these cases. As with many of the congenital anomalies, there is no unique ICD–9–CM code for this condition. Alport's Syndrome, along with many other rare and diverse congenital anomalies, is assigned to the rather nonspecific diagnosis code 759.89 (Specific congenital anomalies, NEC). Examples include William Syndrome, Brachio-Oto-Renal Syndrome, and Costello's Syndrome. Each of these is a unique hereditary disorder affecting a variety of body systems.

Patients can be diagnosed and treated for congenital anomalies throughout their lives; treatment is not restricted to the neonatal period. In our GROUPER, however, each diagnosis code is assigned to just one MDC. In this case, diagnosis code 759.89 is assigned to MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period) although the patient may be an adult.

In the proposed rule, we referred to a request from a physician concerning renal transplants for patients with Alport's Syndrome. The physician pointed out that when a patient with Alport's Syndrome is admitted for a kidney transplant, the case is assigned to DRG 390 (Neonate with Other Significant Problems). In these instances, when the principal diagnosis is code 759.89, the case is classified to MDC 15 although the patient may no longer be a newborn. The physician believed that these cases should be assigned to DRG 302 (Kidney Transplant).

The inquirer suggested moving diagnosis code 759.89 to MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract) so that when a kidney transplant is performed, it will be assigned to DRG 302. Although this seems quite appropriate for patients with Alport's Syndrome found in diagnosis code 759.89, it does not work well for the wide variety of patients also described by this code. Many others would be inappropriately classified to MDC 11.

Alport's Syndrome cases with code 759.89 as a principal diagnosis who receive a kidney transplant are assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis). This DRG has a FY 2000 relative weight of 3.6400. Also for FY 2000, DRG 302 (Kidney Transplant) has a relative weight of 3.5669. Therefore, the payment amounts are in fact comparable.

We discussed several options for resolving this issue:

(1) If the case is assigned a principal diagnosis code of renal failure with Alport's Syndrome as a secondary diagnosis, the case could be assigned to DRG 302. As this option would represent a change in the sequencing of congenital anomaly codes and related complications, it would have to be evaluated and subsequently approved by the Editorial Advisory Board for *Coding Clinic for ICD–9–CM*. The Editorial Advisory Board is comprised of representatives from the physician, coding, and hospital industry. Final decisions on coding policy issues are made by the representatives from the AHA, the American Health Information Management Association, the National Center for Health Statistics, and HCFA.

(2) A unique ICD–9–CM diagnosis code could be created for Alport's Syndrome that could then be evaluated for possible assignment within MDC 11. This issue has been referred to the National Center for Health Statistics for consideration as a future coding modification.

One difficulty with this option is the large number of congenital anomalies and the limited number of unused codes in this section of ICD–9–CM. Each new code must be carefully evaluated for appropriateness.

(3) A third option, which was already addressed, involves moving diagnosis code 759.89 to MDC 11. The problem with this approach is that many cases would then be misassigned to MDC 11 because the congenital anomaly would not involve diseases of the kidney and urinary tract.

(4) A fourth option would be to leave the coding and DRG assignment as they currently exist. Since few cases exist, the overall impact may be minimal.

To evaluate the impact of leaving the DRG assignment as it currently exists, in the proposed rule we examined data from a 10-percent sample of Medicare cases in the FY 1999 MedPAR file. There were 95 cases assigned to a wide range of DRGs with code 759.89 as a secondary diagnosis. There was only one case assigned to MDC 15 with a principal diagnosis of code 759.89.

In the proposed rule, we recommended that diagnosis code 759.89 remain in MDC 15, since it encompasses such a wide variety of conditions.

Comment: We received two comments in support of modifying the coding advice for this particular congenital anomaly so that renal failure is reported as the principal diagnosis and Alport's Syndrome is reported as a secondary diagnosis. One commenter pointed out that a distinction exists between those manifestations that are integral to the congenital anomaly (and thus, according to the official coding guidelines, would not be coded at all) and those that are not considered integral. This commenter also supported the recommendation for a change in guidelines that would allow sequencing a manifestation that is not integral to the congenital anomaly as the principal diagnosis. The other commenter indicated that while renal disease is usually present in Alport's Syndrome, it does not always lead to renal failure. The commenter also supported the reporting of renal failure as the principal diagnosis, with Alport's Syndrome as a secondary diagnosis.

Response: The coding and sequencing of Alport's Syndrome patients with renal failure who are admitted for renal transplant were addressed at the June 2000 meeting of the Editorial Advisory Board of Coding Clinic for ICD–9–CM. *Coding Clinic for ICD–9–CM* is a publication of the AHA. The issue specifically addressed was whether the code used for Alport's Syndrome or the code for renal failure should be sequenced first when the patient is admitted for a renal transplant for the renal failure. In cases where manifestations are a key aspect of the congenital anomaly, the congenital anomaly code is usually sequenced first.

After careful evaluation, the Board determined that, in this specific case, the code for renal failure would be sequenced first, followed by the code for Alport's Syndrome. The Board also determined that renal failure is not always present for patients with Alport's Syndrome. These patients may, in fact, develop renal failure as a result of other factors. Therefore, hospitals do not have to sequence the congenital anomaly code first. By reporting renal failure as the principal diagnosis, the case is appropriately assigned to DRG 302. The Board's advice will be published in the third quarter 2000 issue of *Coding Clinic for ICD–9–CM* and will be effective for discharges occurring on or after September 1, 2000.

4. MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasm)

Diagnosis code 273.8 (Disorders of plasma protein metabolism, NEC) is assigned to DRG 403 (Lymphoma and Nonacute Leukemia with CC) and DRG 404 (Lymphoma and Nonacute Leukemia without CC). A disorder of plasma protein metabolism does not mean one has a lymphoma with nonacute leukemia. An individual can have a disorder of plasma protein metabolism without having a lymphoma or leukemia.

In the proposed rule, we considered the appropriateness of including diagnosis code 273.8 in DRGs 403 and 404. Disorders of plasma protein metabolism are not lymphomas or leukemia, thus diagnosis code 273.8 is more closely related to DRG 413 (Other Myeloproliferative Disorders or Poorly Differentiated Neoplasm Diagnoses with CC) and DRG 414 (Other Myeloproliferative Disorders or Poorly Differentiated Neoplasm Diagnoses without CC).

We also examined charge data drawn from cases assigned to diagnosis code 273.8 in a 10-percent sample of Medicare cases in the FY 1999 MedPAR file and found that the average charges for these cases were also more closely related to DRGs 413 and 414 than to DRGs 403 and 404. We proposed to move diagnosis code 273.8 from DRGs 403 and 404 to DRGs 413 and 414.

We also noted that diagnosis code 273.8 is included in the following surgical DRGs that are performed on patients with lymphoma or leukemia:

- DRG 400 (Lymphoma and Leukemia with Major OR Procedure)
- DRG 401 (Lymphoma and Nonacute Leukemia with Other OR Procedure with CC)
- DRG 402 (Lymphoma and Nonacute Leukemia with Other OR Procedure without CC)

The same clinical issue would apply to these surgical DRGS performed on patients with lymphoma and leukemia. Code 273.8 should be assigned to the surgical DRGs for myeloproliferative disorders since the cases are clinically similar and, as stated before, code 273.8 is not clinically similar to lymphomas and leukemias. Therefore, we proposed to remove code 273.8 from the surgical DRGs related to lymphoma and leukemia (DRGS 400, 401, and 402) and assigned to the following myeloproliferative surgical DRGS, based on the procedure performed:

- DRG 406 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Major OR Procedures with CC)
- DRG 407 (Myeloproliferative Disorders Or Poorly Differentiated Neoplasms with Major OR Procedures without CC)
- DRG 408 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Other OR Procedures)

Comment: We received two comments supporting our proposal to remove code 273.8 from the DRGs for lymphomas and leukemia (medical DRGs 403 and 404 as well as surgical DRGs 400 through 402). They supported moving 273.8 to the DRGs for other myeloproliferative disorders (medical DRGs 413 and 414 as well as surgical DRGs 406 through 408). One commenter also pointed out that code 273.9 (Unspecified disorder of plasma protein metabolism) is clinically similar to 273.8 and is also included with the DRGs for lymphomas and leukemia. The commenter asked if HCFA also planned to move 273.9 in a similar fashion to that proposed for code 273.8 since they appear to be companion codes. The commenter asserted that it was inappropriate to keep 273.9 in the DRGS for lymphoma and leukemia.

Response: We agree that code 273.8 should be moved out of the DRGs for lymphoma and leukemia and into the DRGs for other myeloproliferative disorders. Also, we agree with the commenter who stated that code 273.9

is clinically similar to 273.8 and should be treated in the same manner. Each code would be more appropriately assigned to the DRGS for other myeloproliferative disorders. Therefore, we are removing 273.9 from medical DRGS 403 and 404 and assigning it to DRGS 413 and 414. We are adopting as final our proposal to remove 273.8 from medical DRGs 403 and 404 and assign it to medical DRGs 413 and 414. We are also removing 273.8 and 273.9 from surgical DRGs 400, 401, and 402 and assigning them to surgical DRGs 406, 407, and 408.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we were unable to test the effects of proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights because the revised GROUPER software was unavailable at the time the proposed rule was completed. Rather, we simulated most major classification changes to approximate the placement of cases under the proposed reclassification, then determined the average charge for each DRG. These average charges then served as our best estimate of relative resource use for each surgical class.

We proposed to revise the surgical hierarchy for the pre-MDC DRGs, MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), and MDC 10 (Endocrine, Nutritional, and Metabolic Diseases and Disorders) as follows:

- In the pre-MDC DRGs, we proposed to move DRG 103 (Heart Transplant) from MDC 5 to pre-MDC. We proposed to reorder DRG 103 (Heart Transplant) above DRG 483 (Tracheostomy Except for Face, Mouth, and Neck Diagnoses).
- In the pre-MDC DRGs, we proposed to reorder DRG 481 (Bone Marrow Transplant) above DRG 495 (Lung Transplant).
- In MDC 8, we proposed to reorder DRG 230 (Local Excision and Removal of Internal Fixation Devices of Hip and Femur) above DRGs 226 and 227 (Soft Tissue Procedures).
- In MDC 10, we proposed to reorder DRG 288 (OR Procedures for Obesity) above DRG 285 (Amputation of Lower Limb for Endocrine, Nutritional, and Metabolic Disorders).

Comment: One commenter supported the surgical hierarchy proposals. Another commenter opposed the reordering of DRG 230 above DRGs 226 and 227 in MDC 8. The commenter stated that, if both procedures are performed during the same operative episode, reordering DRGs 226 and 227 above DRG 230 would more appropriately capture facility resources.

Response: Although local excision and removal of internal fixation devices of hip and femur procedures may be less resource intensive than many of the surgical procedures in DRGs 226 and 227, we proposed the surgical hierarchy change because our data indicated cases of local excision and removal of internal fixation devices of hip and femur are more resource intensive than cases in DRGs 226 and 227. At the time of our proposed surgical hierarchy change, the average standardized charges for cases in DRG 230 were approximately $1,000 more than the average standardized charges for cases in DRGs 226 and 227. We are adopting the proposed surgical hierarchy change as final so that cases with multiple procedures will be assigned to the higher-weighted DRG. We will continue to monitor the MDC 8 surgical hierarchy as part of our ongoing review.

Based on a test of the proposed revisions using the most recent MedPAR file and the final GROUPER software, we have found that all the proposed

revisions are still supported by the data and no additional changes are indicated. Therefore, we are adopting these changes in this final rule.

6. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative coding or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this standard list of diagnoses using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. In the May 5, 2000 proposed rule, we proposed no deletions of the diagnosis codes on the CC list.

In the May 19, 1987 proposed notice (52 FR 18877) concerning changes to the DRG classification system, we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended only as a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR 36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; and the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions. In the July 30, 1999 final rule (64 FR 41490), no modifications were made to the CC Exclusions List for FY 2000 because we made no changes to the ICD–9–CM codes for FY 2000.

In this final rule, we are making limited revisions of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 2000. (See section II.B.8. below, for a discussion of ICD–9–CM changes.) These changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6F and 6G in section V. of the Addendum to this final rule contain the revised CC Exclusions List that is effective for discharges occurring on or after October 1, 2000. Each table shows the principal diagnoses along with changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that were added to the list appear in Table 6F—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2000, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that were deleted from the list are in Table 6G—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 2000, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $92.00 plus $6.00 shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, and those in Tables 6F and 6G of this document) must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 2000. (Note: There was no CC Exclusions List in FY 2000 because we did not make changes to the ICD–9–CM codes for FY 2000.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 17.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 18.0 of this manual, which includes the final FY 2001 DRG changes, will be available in October 2000 for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, Connecticut 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

We received no comments on the CC Exclusions List in the proposed rule.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477

(Nonextensive OR Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.94 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962), or in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496).

a. Moving Procedure Codes from DRGs 468 or 477 to MDCs. We annually conduct a review of procedures producing assignment to DRG 468 or DRG 477 on the basis of volume, by procedure, to determine the appropriateness of moving procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC. That is, using procedure code 57.49 (Other transurethral excision or destruction of lesion or tissue of bladder) as an example, we determined that this particular code accounted for the highest number of major operative procedures (162 cases, or 9.8 percent of all cases) reported in the sample of DRG 477. In addition, we determined that procedure code 57.49 appeared in MDC 4 (Diseases and Disorders of the Respiratory System) 28 times as well as in 9 other MDCs.

Using a 10-percent sample of the FY 1999 MedPAR file, we determined that the quantity of cases in DRG 477 totaled 1,650. There were 106 instances where the major operative procedure appeared only once (6.4 percent of the time), resulting in assignment to DRG 477.

Using the same 10-percent sample of the FY 1999 MedPAR file, we reviewed DRG 468. There were a total of 3,858 cases, with one major operative code causing the DRG assignment 311 times (or 8 percent) and 230 instances where the major operative procedure appeared only once (or 6 percent of the time).

Our medical consultants then identified those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under either DRG 468 or 477 and, therefore, did not propose to move any procedures from either DRG 468 or DRG 477 to one of the surgical DRGs. We received no comments on our review results and, therefore, we will not move any procedures from these DRGs for FY 2001.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also conduct an annual review of a list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be moved from one of these DRGs to another of these DRGs based on average charges and length of stay. We analyze the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment inappropriate. If our medical consultants were to find these shifts, we would propose moving cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on this year's review, we proposed not to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476. We received no comments on this proposal, and therefore are not moving any procedures from the DRGs indicated.

c. Adding Diagnosis Codes to MDCs. It has been brought to our attention that an ICD–9–CM diagnosis code should be added to DRG 482 (Tracheostomy for Face, Mouth and Neck Diagnoses) to preserve clinical coherence and homogeneity of the system. In the case of a patient who has a facial infection (diagnosis code 682.0 (Other cellulitis and abscess, Face)), the face may become extremely swollen and the patient's ability to breathe might be impaired. It might be deemed medically necessary to perform a temporary tracheostomy (procedure code 31.1) on the patient until the swelling subsides enough for the patient to once again breathe on his or her own.

The combination of diagnosis code 682.0 and procedure code 31.1 resulted in assignment to DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses). The absence of diagnosis code 682.0 in DRG 483 forces the GROUPER algorithm to assign the case based solely on the procedure code, without taking this diagnosis into account. Clearly this was not the intent, as diagnosis code 682.0 should be included with other face, mouth and neck diagnosis. We believe that cases such as these would appropriately be assigned to DRG 482. Therefore, we proposed to add diagnosis code 682.0 to the list of other face, mouth and neck diagnoses already in the principal diagnosis list in DRG 482.

We received one comment in support of the proposed change, and are adopting as final the proposal to add diagnosis code 682.0 to DRG 482.

8. Changes to the ICD–9–CM Coding System

As described in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for

Health Statistics (NCHS) and HCFA, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for FY 2000 at public meetings held on June 4, 1998 and November 2, 1998. Even though the Committee conducted public meetings and considered approval of coding changes for FY 2000 implementation, we did not implement any changes to ICD–9–CM codes for FY 2000 because of our major efforts to ensure that all of the Medicare computer systems were compliant with the year 2000. Therefore, the code proposals presented at the public meetings held on June 4, 1998 and November 2, 1998, that (if approved) ordinarily would have been included as new codes for October 1, 1999, were held for consideration for inclusion in the annual update for FY 2001.

The Committee also presented proposals for coding changes for implementation in FY 2001 at public meetings held on May 13, 1999 and November 12, 1999, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 7, 2000.

Copies of the Coordination and Maintenance Committee minutes of the 1999 meetings can be obtained from the HCFA Home Page by typing http://www.hcfa.gov/medicare/icd9cm.htm. Paper copies of these minutes are no longer available and the mailing list has been discontinued.

The ICD–9–CM code changes that have been approved will become effective October 1, 2000. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in section VI. of the Addendum to this final rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. In the May 5, 2000 proposed rule, we solicited comments only on the proposed DRG classification of these new codes.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or other codes, or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2000. For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A (New Diagnosis Codes). No procedure codes were replaced by expanded codes or other codes, and no procedure codes were deleted. Revisions to diagnosis code titles appear in Table 6D (Revised Diagnosis Code Titles), which also includes the DRG assignments for these revised codes. Revisions to procedure code titles appear in Table 6E (Revised Procedure Codes Titles).

Comment: One commenter questioned the DRG assignments in Table 6A for new ICD–9–CM codes V45.74, V45.76, V45.77, V45.78 and V45.79. The commenter pointed out that it has been HCFA's longstanding practice to assign a new code to the same DRG or DRGs as its predecessor code. The commenter had seen a draft conversion table prepared by the NCHS for codes being revised October 1, 2000, and indicated that the conversion table did not support the DRG assignments for these specific codes.

Response: The commenter is correct. HCFA bases DRG assignments on the DRG assignment of the predecessor code. Tables 6A through 6E in the proposed rule were prepared prior to NCHS' completion of the conversion table. The DRG assignments were based on a mapping of codes V45.74, V45.76, V45.77, and V45.78 from code V45.89. However, the correct mapping on the conversion table now shows the following predecessor codes:

New Code	Previous Code	Previous DRG
V45.74	593.89	331, 332, 333
	596.8	331, 332, 333
V45.76	518.89	101, 102
V45.77	602.8	352
	607.89	352
	608.89	352
	620.8	358, 359, 369
	621.8	358, 359, 369
	622.8	358, 359, 369
V45.78	360.89	46, 47, 48
V45.79	255.8	300, 301
	289.59	398, 399
	388.8	73, 74
	569.49	188, 189, 190
	577.8	204

New Code	Previous Code	Previous DRG
	V45.89	467

We have modified the DRG assignments for V45.74, V45.76, V45.77, and V45.78 in Table 6A of this final rule according to the mapping indicated in the third column in the preceding table. However, V45.79 has a number of predecessor codes appearing in multiple MDCs and, thus, would not relate to any specific MDC. After discussions with NCHS, we determined that this code should continue to use V45.89 as its predecessor code for purposes of DRG assignment, since it is not restricted to a specific body system. Therefore, the DRG assignment for V45.79 was not changed in Table 6A.

9. Other Issues

a. *Immunotherapy.* Effective October 1, 1994, procedure code 99.28 (Injection or infusion of biologic response modifier (BRM) as an antineoplastic agent) was created and designated as a non-OR procedure that does not affect DRG assignment. This cancer treatment involving biological response modifiers is also known as BRM therapy or immunotherapy.

In response to a comment on the May 7, 1999 proposed rule, for the FY 2000 final rule we analyzed cases for which procedure code 99.28 was reported using the 100 percent FY 1998 MedPAR file. The commenter requested that we create a new DRG for BRM therapy or assign cases in which BRM therapy is performed to an existing DRG with a high relative weight. The commenter suggested that DRG 403 (Lymphoma and Nonacute Leukemia with CC) would be an appropriate DRG.

For the proposed rule, we analyzed all cases for which procedure code 99.28 was reported. We identified 1,179 cases in 136 DRGs in 22 MDCs. No more than 141 cases were assigned to any one particular DRG.

Of the 1,179 cases, 141 cases (approximately 12 percent) were assigned to DRG 403 in MDC 17. We found approximately one-half of these cases had other procedures performed in addition to receiving immunotherapy, such as chemotherapy, bone marrow biopsy, insertion of totally implantable vascular access device, thoracentesis, or percutaneous abdominal drainage, which may account for the increased charges. There were 123 immunotherapy cases assigned to DRG 82 (Respiratory Neoplasms) in MDC 4 (Diseases and Disorders of the Respiratory System). We noted that, in some cases, in addition to immunotherapy, other procedures were performed, such as insertion of an intercostal catheter for drainage, thoracentesis, or chemotherapy.

There were 84 cases assigned to DRG 416 (Septicemia, Age >17) in MDC 18 (Infectious and Parasitic Diseases (Systemic or Unspecified Sites)). The principal diagnosis for this DRG is septicemia and, in addition to receiving treatment for septicemia, immunotherapy was also given. There were 79 cases assigned to DRG 410 (Chemotherapy without Acute Leukemia as Secondary Diagnosis) in MDC 17.

The cost of immunotherapy is averaged into the weight for these DRGS and, based on our analysis, we did not believe a reclassification of these cases was warranted. Due to the limited number of cases that were distributed throughout 136 DRGs in 22 MDCs and the variation of charges, we concluded that it would be inappropriate to classify these cases into a single DRG.

Although there were 141 cases assigned to DRG 403, it would be inappropriate to place all immunotherapy cases, regardless of diagnosis, into a DRG that is designated for lymphoma and nonacute leukemia. We establish DRGs based on clinical coherence and resource utilization. Each DRG encompasses a variety of cases, reflecting a range of services and a range of resources. Generally, then, each DRG reflects some higher cost cases and some lower cost cases. To the extent a new technology is extremely costly relative to the cases reflected in the DRG relative weight, the hospital might qualify for outlier payments, that is, additional payments over and above the standard prospective payment rate.

We did not receive any comments regarding payment for immunotherapy cases.

b. Pancreas Transplant. Effective July 1, 1999, Medicare covers whole organ pancreas transplantation if the transplantation is performed simultaneously with or after a kidney transplant (procedure codes 55.69, Other kidney transplantation, and V42.0, Organ or tissue replaced by transplant, Kidney) (Transmittal No. 115, April 1999). We noted that when we published the notification of this coverage in the July 30, 1999 final rule (64 FR 41497), we inadvertently made an error in announcing the covered codes. We cited the incorrect codes for pancreas transplantation as procedure code 52.80 (Pancreatic transplant, not otherwise specified) and 52.83 (Heterotransplant of pancreas). The correct procedure codes for pancreas transplantation are 52.80 (Pancreatic transplant, not otherwise specified) and 52.82 (Homotransplant of pancreas). The Coverage Issues Manual was revised to reflect this change via Transmittal 124, April 2000, effective October 1, 2000.

Pancreas transplantation is generally limited to those patients with severe secondary complications of diabetes, including kidney failure. However, pancreas transplantation is sometimes performed on patients with labile diabetes and hypoglycemic unawareness. Pancreas transplantation for diabetic patients who have not experienced end-stage renal failure secondary to diabetes is excluded from coverage. Medicare also excludes coverage of transplantation of partial pancreatic tissue or islet cells.

In the July 30, 1999 final rule (64 FR 41497), we indicated that we planned to review discharge data to determine whether a new DRG should be created, or existing DRGs modified, to further classify pancreas transplantation in combination with kidney transplantation.

Under the current DRG classification, if a kidney transplant and a pancreas transplant are performed simultaneously on a patient with chronic renal failure secondary to diabetes with renal manifestations (diagnosis codes 250.40 through 250.43), the case is assigned to DRG 302 (Kidney Transplant) in MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract). If a pancreas transplant is performed following a kidney transplant (that is, during a different hospital admission) on a patient with chronic renal failure secondary to diabetes with renal manifestations, the case is assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis). This is because pancreas transplant is not assigned to MDC 11, the MDC to which a principal diagnosis of chronic renal failure secondary to diabetes is assigned.

For the proposed rule, using 100 percent of the data in the FY 1999 MedPAR file (which contains hospital bills received for FY 1999 through

December 31, 1999), we analyzed the cases for which procedure codes 52.80 and 52.83 were reported. We identified a total of 79 cases in 8 DRGs, in 3 MDCs, and in 1 pre-MDC. Of the 79 cases identified, 49 cases were assigned to DRG 302, 14 cases were assigned to DRG 468, and 8 cases were assigned to DRG 191 (Pancreas, Liver and Shunt Procedures with CC). The additional 8 cases were distributed over 5 other assorted DRGs, and due to their disparity, were not considered in our evaluation.

We examined our data to determine whether it was appropriate to propose a new kidney and pancreas transplant DRG. We identified 49 such dual transplant cases in the FY 1999 MedPAR file. We do not believe this to be a sufficient sample size to warrant the creation of a new DRG. Furthermore, we noted that nearly half of these cases occurred at a hospital in Maryland, which is not paid under the prospective payment system. The rest of the cases are spread across multiple hospitals, with no single hospital having more than 5 cases in the FY 1999 MedPAR.

We received 261 comments on this issue, 244 of which were form letters.

We will continue to monitor these dual transplant cases to determine whether it may be appropriate in the future to establish a new DRG. However, we are not establishing a new DRG for these cases for FY 2001 and the current procedure code classification will remain in effect.

Comment: All commenters called for the establishment of a unique DRG recognizing the combined transplant of kidney and pancreas in the same operative episode. Some commenters cited increased utilization of hospital resources, especially operating-room time, recovery time, and immunosuppressive drugs as justification for a separate DRG for a combined pancreas-kidney transplant. One commenter forwarded to us facility-specific charge data for four dual-transplant patients seen at that center through December 1997.

Response: We stated in the proposed rule that there does appear to be a difference between the charges for dual kidney-pancreas transplant patients assigned to DRG 302 (Kidney Transplant) and those patients who received only a kidney transplant. However, the numbers of dual transplant cases in our database were insufficient to warrant establishing a new DRG for dual transplants.

We point out that, given the low volume of these cases and their infrequent occurrence in any particular hospital, we believe our outlier policy will provide adequate protection for any extraordinarily costly cases. Furthermore, there is always variation in terms of the costs for cases within a DRG relative to the payments under the prospective payment system for that DRG. Although examining these cases in isolation from other DRG 302 cases appears to suggest that dual transplants are more expensive, the nature of the prospective payment system is such that hospitals are expected to be able to offset cases where costs are greater than payments with those cases where payments exceed costs.

We further point out that additional Medicare coverage of a transplanted organ does not necessarily and immediately result in creation of a unique DRG. A specific example of not creating a unique DRG is the combined heart-lung transplant procedure. Effective for discharges occurring on or after October 1, 1990, Medicare was able to identify combined heart-lung transplant using ICD–9–CM code 33.6 (Combined heart-lung transplantation). Instead of assigning this new code to its own specific DRG, however, it was combined with heart transplant in DRG 103 (Heart Transplant). When DRG 495 (Lung Transplant) was created for cases discharged on or after October 1, 1994, review of our data revealed that assignment of code 33.6 was more clinically coherent with DRG 103 than DRG 495. Therefore, code 33.6 was not moved into the new lung transplant DRG. Although this does not indicate we will not create a distinct DRG for combined kidney and pancreas transplants, it does show a precedent for allowing a sufficient sample of cases to accumulate before deciding whether a new DRG is necessary.

Finally, one of the risks of establishing a new DRG based on few documentable cases is that a few extremely low-cost cases could dramatically reduce the average charges in a year, thereby lowering the relative weight and potentially underpaying cases in this DRG by a significant amount.

Comment: Several commenters argued that combined pancreas and kidney transplants are underpaid every time they are performed and expressed concern that this lack of funding provides limited access to this procedure for Medicare beneficiaries.

Response: We do not believe that beneficiaries' access will be limited by our decision. In addition, it is a violation of a hospital's Medicare provider agreement to place restrictions on the number of Medicare beneficiaries it accepts for treatment unless it places the same restrictions on all other patients.

Comment: One commenter argued that the incremental cost of the pancreas transplant was insufficient to cause the claim to move into outlier status.

Response: Our data show covered charges submitted by hospitals ranging from a low of approximately $42,000 to a high in excess of $182,000 for cases in DRG 302. Outlier payments are meant to alleviate the financial effects of treating extraordinarily high-cost cases. Therefore, the commenter may be correct in saying that some of the cases with lower charges might not be further compensated by outlier payments. However, other cases are further compensated to mitigate losses experienced by hospitals.

Comment: One commenter stated we underrepresented the volume of future dual transplants under Medicare, citing mid-year approval of Medicare coverage for pancreas transplants, and noting that this is not enough time to accurately reflect the numbers of procedures since patients normally must accrue longer wait times before they receive organ offers for transplant.

Response: It is true that we did not attempt to project the future volume of combined kidney and pancreas transplant procedures. We reported the number of actual hospital claims in our MedPAR data base, submitted through December 1999, when we published the proposed rule in the May 5, 2000 **Federal Register** (65 FR 26294). DRG categories and payment are always based on actual historical hospital charge data, not projected data. What must also be considered, however, is that dual transplants would only appear in statistics concerning DRG 302, while HCFA also covers pancreas transplants performed in separate operative episodes, subsequent to kidney transplantation. Those pancreatic transplants occurring after kidney transplant would appear in DRG 468, or potentially other DRGs as well, depending on the principal diagnosis.

Comment: Several commenters noted that the 1998 Annual Report of United Network for Organ Sharing (UNOS) indicated there were 966 simultaneous kidney-pancreas transplants, and questioned HCFA's reported 49 cases appearing in DRG 302 as being too low. One commenter, citing the inability of HCFA to be able to identify cases of dual kidney-pancreas transplants, pointed out the need for a specific DRG for this category of patients. Another commenter noted that data were lost because of the incorrect publication of ICD–9–CM code 52.83 (Heterotransplant

of pancreas) as being a covered procedure.

Response: Most patients who are experiencing end-stage renal disease should be eligible for Medicare benefits. We note, however, that none of the commenters submitted specific evidence contrary to our finding that, outside of a single hospital in Maryland, no individual hospital had more than five Medicare dual transplant cases during FY 1999.

Obviously one issue is the timing of the creation of the coverage benefit, which was conferred for cases discharged on or after July 1, 1999. Cases transplanted prior to that date should not have appeared in our data as covered procedures.

We recognize that 52.83 is an incorrect code, and have corrected this typographical error in the Medicare Coverage Issues Manual, as noted above. Interestingly, the original data reported in the proposed notice contained 79 cases of pancreas transplant, but there were only 7 instances in which code 52.83 was reported. We believe that hospital coders recognized the error in the original coverage instruction, and chose to submit the less specific code 52.80 instead.

Comment: Several commenters asserted that it was contradictory for us to argue that 49 cases is too few to establish a DRG but we indicated in the May 5, 2000 proposed rule that there were 40 DRGs with fewer than 10 cases per year.

Response: These low-volume DRGs are not new, but in most cases were created very early during or even prior to the implementation of the prospective payment system. Many of these DRGs are related to patient categories that are rare in the Medicare population, such as age less than 17 or labor and delivery during childbirth. The DRG relative-weights for these DRGs are adjusted based on the overall change in the DRG weights rather than through normal recalibration.

We do not believe our policy not to establish a new dual transplant DRG for combined kidney and pancreas transplants is contradicted by the existence of these low-volume DRGs. As the commenters indicated, the number of combined kidney and pancreas transplants is likely to increase in the next few years, and therefore it is important to ensure an accurate and stable DRG payment is established.

Comment: Several commenters offered to work closely with HCFA to identify cases and costs associated with this category of patients.

Response: We appreciate these offers and the cooperative spirit in which they were presented. Our ability to evaluate and implement potential DRG changes depends on the availability of validated, representative data. We remain open to using non-MedPAR data if the data are reliable and validated and enable us to appropriately measure relative resource use. We will continue to monitor this category of patients, and will address this issue in the FY 2002 proposed rule.

C. Recalibration of DRG Weights

We proposed to use the same basic methodology for the FY 2001 recalibration as we did for FY 2000 (July 30, 1999 final rule (64 FR 41498)). That is, we recalibrated the weights based on charge data for Medicare discharges. However, we used the most current charge information available, the FY 1999 MedPAR file. (For the FY 2000 recalibration, we used the FY 1998 MedPAR file.) The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills.

The final recalibrated DRG relative weights are constructed from FY 1999 MedPAR data (discharges occurring between October 1, 1998 and September 30, 1999), based on bills received by HCFA through March 2000, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1999 MedPAR file includes data for approximately 11.0 million Medicare discharges.

The methodology used to calculate the DRG relative weights from the FY 1999 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG are eliminated.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, transfer cases paid under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1999 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, lung, and pancreas transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); DRG 495 (Lung Transplant); and DRG 468 (Pancreas)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We proposed to use the same case threshold in recalibrating the DRG weights for FY 2001. Using the FY 1999 MedPAR data set, there were 40 DRGs containing fewer than 10 cases. We computed the weights for these 40 low-volume DRGs by adjusting the FY 2000 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The weights developed according to the methodology described above, using the DRG classification changes, resulted in an average case weight that differs from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor (1.45507) so that the

average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

We received no comments on DRG recalibration.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.a. of the Addendum to this final rule, we make a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). The OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

B. FY 2001 Wage Index Update

The FY 2001 wage index values in section VI of the Addendum to this final rule (effective for hospital discharges occurring on or after October 1, 2000 and before October 1, 2001) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1997 (the FY 2000 wage index was based on FY 1996 wage data).

The FY 2001 wage index includes the following categories of data associated with costs paid under the hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 2000 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 2000, the wage index for FY 2001 also continues to exclude the direct and overhead salaries and hours for services not paid through the inpatient prospective payment system such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

Comment: One commenter believed that the FY 2001 wage calculation does not allow for inflationary effects or existing contractual increases, and recommended that we consider using a more recent Medicare cost reporting year and allow for inflationary wage adjustments.

Response: Due to the time period allowed for: (1) hospitals to complete and submit their cost reports to their intermediaries, (2) intermediaries to review and submit the cost reports to HCFA, (3) intermediaries to perform a separate, detailed review of all wage data and submit the results to HCFA, and (4) HCFA to compile a complete set of all hospitals' wage data from a given Federal fiscal year, we do not have available more recent reliable data to calculate the wage index. As described in the proposed rule (65 FR 26299) and section III.E. of this final rule, we adjust the wage data to a common period that reflects the latest cost reporting period for the filing year. Because the wage index is a relative measure, comparing area average hourly wages to a national average hourly wage, we believe the wage index is minimally impacted by inflationary effects beyond those accounted for by adjusting the data to a common period.

C. FY 2001 Wage Index

Because the hospital wage index is used to adjust payments to hospitals under the prospective payment system, it should, to the extent possible, reflect the wage costs associated with the areas of the hospital included under the hospital inpatient prospective payment system. In response to concerns within the hospital community related to the removal from the wage index calculation costs related to GME (teaching physicians and residents) and certified registered nurse anesthetists (CRNAs), which are paid by Medicare separately from the prospective

payment system, in 1998 the AHA convened a workgroup to develop a consensus recommendation on this issue. The workgroup recommended that costs related to GME and CRNAs be phased out of the wage index calculation over a 5-year period. Based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we specified in the July 30, 1999 final rule (64 FR 41505) that we would phase-out these costs from the calculation of the wage index over a 5-year period, beginning in FY 2000. In keeping with the decision to phase-out costs related to GME and CRNAs, the final FY 2001 wage index is based on a blend of 60 percent of an average hourly wage including these costs, and 40 percent of an average hourly wage excluding these costs.

Comment: We received one comment in support of our continued transition of removing GME and CRNA costs from the wage index calculation. We also received a comment from a national association representing nurse anesthetists expressing concern that, as a result of disparities in cost reporting systems and vague fiscal intermediary instructions, CRNA costs that should be paid under Part B might still be reported in hospitals' FY 1997 cost reports. The commenter also stated that removing CRNA costs from the wage index eliminates a payment mechanism for the indirect patient care activities performed by CRNAs, resulting in a disincentive for hospitals to employ CRNAs. To avoid any disruption in the "continuous operations of hospitals," the commenter recommended that, prior to implementing any changes to the wage index calculation, HCFA should refine the Part A cost data collection and cost reporting process and instruct the fiscal intermediaries to provide all hospitals with "explicit instructions as to the appropriate reporting of CRNA costs." The commenter believed this refinement to the cost data will identify and exclude only the CRNA salary costs related to the rural hospital cost pass-through provisions and allow Part A reimbursement for indirect patient care which are not reimbursed under Medicare Part B. In keeping with the general policy to exclude costs that are not paid through the Medicare prospective payment system, the commenter also recommended that HCFA exclude salaries reported under Medicare Part A for anesthesia assistants.

Response: We note that the FY 2001 wage index is the second year of the transition to eliminating Part A CRNA costs from the wage index. As evidenced in the impact analysis in the May 5, 2000 proposed rule (65 FR 26415), eliminating these CRNA and GME costs has an insignificant impact, with no category of hospitals impacted by more than 0.1 percent. Therefore, we do not believe it is necessary to delay further removal of CRNA costs.

Payment for CRNA services is made under a fee schedule under Medicare Part B (Supplementary medical insurance), with the sole exception of payments to hospitals under the rural pass-through provision. Although a hospital contracting for CRNA services would include the costs on its cost report, the fiscal intermediary forwards the information to the carrier for payment under the fee schedule. As the commenter noted, this payment structure has been in place since January 1, 1989. We believe that intermediaries and carriers are generally well informed and experienced in the handling of these costs. However, we will consider whether further clarification of our instructions is necessary.

The commenter also stated that Medicare does not specifically exclude anesthesia assistants, who are also reimbursed under Part B, from the wage index. The cost report instructions for Worksheet A, Line 20, refer to nonphysician anesthetists, which include both CRNAs and anesthesia assistants. We will consider whether our Worksheet S–3 instructions need to be revised to explicitly instruct hospitals to remove the Part B costs associated with anesthesia assistants as well.

1. Teaching Physician Costs and Hours Survey

As discussed in the July 30, 1999 final rule, because the FY 1996 cost reporting data did not separate teaching physician costs from other physician Part A costs, we instructed our fiscal intermediaries to survey teaching hospitals to collect data on teaching physician costs and hours payable under the per resident amounts (§ 413.86) and reported on Worksheet A, Line 23 of the hospitals' cost report.

The FY 1997 cost reports also do not separately report teaching physician costs. Therefore, we once again conducted a special survey to collect data on these costs. (For the FY 1998 cost reports, we have revised the Worksheet S–3, Part II so that hospitals can separately report teaching physician Part A costs. Therefore, after this year, it will no longer be necessary for us to conduct this special survey.)

The survey data collected as of mid-January 2000 were included in the preliminary public use data file made available on the Internet in February 2000 at HCFA's home page (http://www.hcfa.gov). At that time, we had received teaching physician data for 459 out of 770 teaching hospitals reporting physician Part A costs on their Worksheet S–3, Part II. Also, in some cases, fiscal intermediaries reported that teaching hospitals did not incur teaching physician costs. In early January 2000, we instructed fiscal intermediaries to review the survey data for consistency with the Supplemental Worksheet A–8–2 of the hospitals' cost reports. Supplemental Worksheet A–8–2 is used to apply the reasonable compensation equivalency limits to the costs of provider-based physicians, itemizing these costs by the corresponding line number on Worksheet A.

When we notified the hospitals, through our fiscal intermediaries, that they could review the survey data on the Internet, we also notified hospitals that requests for changes to the teaching survey data had to be submitted by March 6, 2000. We instructed fiscal intermediaries to review the requests for changes received from hospitals and submit necessary data revisions to HCFA by April 3, 2000. We removed from the wage data the physician Part A teaching costs and hours reported on the survey form for every hospital that completed the survey. These data had been verified by the fiscal intermediary before submission to HCFA.

For the FY 2000 wage index, the AHA workgroup recommended that, if reliable teaching physician data were not available for removing teaching costs from hospitals' total physician Part A costs, HCFA should remove 80 percent of the costs and hours reported by hospitals attributable to physicians' Part A services. In calculating the FY 2000 wage index, if we did not receive survey data for a teaching hospital, we removed 80 percent of the hospital's reported total physician Part A costs and hours from the calculation. In the May 5, 2000 proposed rule, for the FY 2001 wage index, we proposed a different approach. In some instances, fiscal intermediaries had verified that teaching hospitals do not have teaching physician costs; for these hospitals, it is not necessary to adjust the hospitals' physician Part A costs. We conferred with the fiscal intermediaries to distinguish teaching hospitals that did not have teaching physician costs from teaching hospitals that had not identified the portion of their physician Part A costs associated with teaching physicians (that is, hospitals that did not complete the teaching survey).

In calculating the final FY 2001 wage index, we removed 100 percent of the physician Part A costs and hours (reported on Worksheet S–3, Lines 4, 10, 12, and 18) in the FY 2001 wage index calculation for those hospitals where the fiscal intermediary verifies that the hospital has otherwise unidentified teaching physician costs included in physician Part A costs and hours. For those teaching hospitals whose fiscal intermediaries identified as having costs attributable to teaching physicians but reported no physician Part A costs on the Worksheet S–3, we removed 100 percent of Worksheet A, Line 23, Column 1. To determine the hours to be removed, the costs reported on Line 23 of the Worksheet A, Column 1 are divided by the national average hourly wage for teaching physicians of $59.17 based upon the survey.

We note that Line 23 of Worksheet A, Column 1, flows directly into hospitals' total salaries on Worksheet S–3, Part II. Line 23 contains GME costs not directly attributable to residents' salaries or fringe benefits. Therefore, these costs tend to be costs associated with teaching physicians. To the extent a hospital fails to separately identify the proportion of its Line 23, Worksheet A costs associated with teaching physicians, we believe it is reasonable to remove all of these costs under the presumption that they are all associated with teaching physicians.

Thus, as we proposed in the May 5 proposed rule, for the FY 2001 wage index, we are either using the data submitted on the teaching physician survey (837 hospitals), or, in the absence of such data, removing 100 percent of physician Part A costs reported on Worksheet S–3 (287 hospitals), or removing the amount reported on Line 23 of Worksheet A, Column 1 (18 hospitals).

We received one comment in support of removing 100 percent of physician Part A costs and hours from teaching hospitals where the fiscal intermediary verifies that the hospital has otherwise unidentifiable teaching costs included in physician Part A costs and hours.

2. Nurse Practitioner and Clinical Nurse Specialist Costs

The current wage index includes salaries and wage-related costs for nurse practitioners (NPs) and clinical nurse specialists (CNSs) who, similar to physician assistants and CRNAs (unless at hospitals under the rural pass-through exception for CRNAs), are paid under the physician fee schedule. Over the past year, we have received several inquiries from hospitals and fiscal intermediaries regarding NP costs and how they should be handled for purposes of the hospital wage index. Because Medicare generally pays for NP and CNS costs under Part B outside the hospital prospective payment system, removing NP and CNS Part B costs from the wage index calculation would be consistent with our general policy to exclude, to the extent possible, costs that are not paid through the hospital prospective payment system. Because NP and CNS costs are not separately reported on the Worksheet S–3 for FYs 1997, 1998, and 1999, the FY 2000 Worksheet S–3 and cost reporting instructions will be revised to allow for separate reporting of NP and CNS Part A and Part B costs. We plan to exclude the Part B costs beginning with the FY 2004 wage index. These services are pervasive in both rural and urban settings. As such, because the wage index is a relative measure, we believe there will be no significant overall impact resulting from the removal of Part B costs for NPs and CNSs.

We did not receive any public comments on our plan to exclude NP and CNS Part B costs from the wage index calculation, beginning with the FY 2004 wage index.

3. Severance and Bonus Pay Costs

On October 6, 1999, we issued a memorandum to hospitals and fiscal intermediaries regarding our policy on treatment of severance and bonus pay costs in developing the wage index, effective beginning with the FY 2001 wage index. (The hospital cost report instructions also will be amended to reflect our policy on these costs.) We stated that severance pay costs may be included on Worksheet S–3 as salaries on Part II, Line 1, only if the associated hours are included. If the hospital has no accounting of the hours, or if the costs are not based on hours, the severance pay costs may not be included in the wage index. On the other hand, bonus pay costs may be included in the cost report on Line 1 of Worksheet S–3 with no corresponding hours. Due to the inquiries we continue to receive from hospitals regarding the inclusion of severance pay costs on cost reports, in the May 5 proposed rule, we clarified our policy in this area.

Hospitals vary in their accounting of severance pay costs. Some hospitals base the amounts to be paid on hours, for example, 80 hours worth of pay. Others do not; for example, a 15-year employee may be offered a $25,000 buyout package. Some hospitals record associated hours; others do not. The Wage Index Workgroup has suggested that we not include any severance pay costs in the wage index calculation, that these costs are for terminated employees, and, therefore, they should be considered an administrative rather than a salary expense.

Severance pay costs can be substantial amounts, particularly in periods of downsizing. In the proposed rule, we state our view that, if severance pay costs are included with no associated hours, the wage index, which is a relative measure of wage costs across labor market areas, would be distorted.

We included severance pay costs in the proposed FY 2001 wage index as a salary cost to the extent that associated hours also were reported. However, we solicited public comments on this issue. We received two comments on this issue.

Comment: Two national hospital associations disagree with our policy clarification that severance pay costs may be included on Worksheet S–3, Part II, Line 1 as salaries only if associated hours are included. These commenters argued that HCFA's wage index policy is that wages and benefits are to be determined in accordance with generally accepted accounting principles (GAAP) rather than Medicare cost reimbursement principles and that under GAAP severance pay is classified as salaries and wages. They also argued that, unless a terminated employee continues to work or is still considered to be employed by the provider after the last regular pay period that additional hours should not be reported for severance pay. Further, for employees receiving severance pay, "there are no hours to report" because "their job has been eliminated and they are no longer employed by the provider."

Response: As indicated in the proposed rule, we exclude severance pay costs from the wage index calculation if there are no associated hours because we believe that inclusion of such costs might lead to a distortion of the wage index. The wage index is a relative measure of average hourly wages across geographic areas, and we believe that severance pay costs (which might be significant) without associated hours might inappropriately inflate the average hourly wage for a given hospital or area for a given time period (which in turn would distort the relative measure of wages across areas). For example, if we included severance pay costs with no associated hours, then a hospital might be more likely to qualify for geographic reclassification for purposes of the wage index simply because it incurred significant severance pay costs in a given year. In light of the comments, we will continue to examine this issue to determine whether inclusion of severance pay costs with no

associated hours would lead to a better measure of relative wages as opposed to a distortion in the measure and to determine whether it is feasible and appropriate to revise our policy on severance pay costs in the future.

4. Health Insurance and Health-Related Costs

In the September 1, 1994 final rule (59 FR 45356), we stated that health insurance, purchased or self-insurance, is a core wage-related cost. Over the past year, we have received several inquiries from hospitals and hospital associations requesting that we define "purchased health insurance costs." In response, in the May 5 proposed rule, we clarified that, for wage index purposes, we define "purchased health insurance costs" as the premiums and administrative costs a hospital pays on behalf of its employees for health insurance coverage. "Self-insurance" includes the hospital's costs (not charges) for covered services delivered to its employees, less any amounts paid by the employees, and less the personnel costs for hospital staff who delivered the services (these costs are already included in the wage index). For purchased health insurance and self-health insurance, the included costs must be for services covered in a health insurance plan.

Also, in the September 1, 1994 final rule (59 FR 45357), we addressed a comment about the inclusion of health-related costs in the calculation of the wage index. Such health-related costs include employee physical examinations, flu shots, and clinic visits, and other services that are not covered by employees' health insurance plans but are provided at no cost or at discounted rates to employees of the hospital. In the May 5 proposed rule, we proposed to clarify that the costs for these services may be included as an "other" wage-related cost if (among other criteria), when all such health-related costs are combined, the total of such costs is greater than one percent of the hospital's total salaries (less excluded area salaries). As discussed in the September 1, 1994 final rule, a cost may be allowable as an "other wage-related cost" if it meets certain criteria. Under one criterion, the wage-related cost must be greater than one percent of total salaries (less excluded area salaries). For purposes of applying this 1-percent test with respect to the health-related costs at issue here, we look at the combined total of the health-related costs (not charges) for services delivered to its employees, less any amounts employees paid, and less the personnel costs for hospital staff who delivered the services (as these costs are already included in the wage index).

Comment: We received several comments regarding our policy and definitions for health insurance and health-related costs. Some commenters interpreted the policy clarification in the proposed rule as stating that self-insurance will no longer be included as core wage-related costs. They believe that not including these costs is inconsistent with the fundamental concept of core wage-related costs. One commenter pointed to the 1994 HCFA/Industry workgroup which established the list of core wage-related costs still in use, and contended that "(t)hese proposed changes are inconsistent with the agreements reached in those original workgroup meetings."

Response: As noted in the May 5 proposed rule, we previously stated our policy regarding health insurance and health-related costs in the FY 1995 final rule. We emphasize again in this final rule that, health insurance costs, whether purchased or self-insured, is, and will continue to be, a core wage-related cost. We did not propose a change in this policy, nor are we implementing a change in this policy in this final rule.

Comment: Some commenters objected to our statement in the proposed rule that only health self-insurance costs (not charges, and exclusive of any amounts paid by covered employees and less the personnel costs for hospital staff who delivered the services) are allowable core wage-related costs, and also argued that health self-insurance costs should be determined in accordance with GAAP which would include charges and personnel costs. They suggested that excluding costs that are determined in accordance with GAAP would create major inconsistencies among hospitals and inevitably result in major swings in the wage index for individual MSAs.

Two commenters recommended that HCFA review this policy to avoid creating disincentives to hospitals that develop cost-effective health-insurance benefits; they asserted that there should be no differentiation between purchased health insurance and self-funded health insurance.

Response: We disagree with the commenters that we are unfairly and inconsistently treating hospitals that self-insure by not allowing as a wage-related cost the salary costs for employees who deliver the health services. The personnel costs of delivering health care to all of a hospital's patients are already included in the wage index through line 1 of Worksheet S–3, Part II. Accounting for these hospital personnel costs on lines 13 or 14 for wage-related costs would falsely overstate a hospital's average hourly wage. Unless a hospital actually incurs the personnel costs twice, it is inappropriate to include the costs twice. Our policy does not require the exclusion of staff personnel costs from the premium costs for hospitals that purchase health insurance. As defined above and in the proposed rule, purchased health insurance costs include the premiums and administrative costs a hospital pays on behalf of its employees for health insurance coverage. The commenters suggested that the premium costs may include a hospital's staff personnel costs. We believe it is appropriate to allow the entire premium cost to a hospital as a wage-related cost if the intermediary verifies that the amount is an actual cost to the hospital.

Nevertheless, we agree with the commenters that, overall, for "wage-related costs", the application of GAAP creates a more static wage index and a better measure of relative wages across areas. For the FY 2002 wage index, we will advise hospitals to apply GAAP for wage-related costs, including health insurance and health-related costs. However, for self-health insurance and health-related costs, personnel costs associated with hospital staff that deliver the services to the employees must continue to be excluded from wage-related costs, if the costs are already included in the wage data as salaries on Worksheet S–3, Part II, Line 1.

Comment: One commenter recommended that the insurance plan requirements be eliminated from our definition of health insurance costs, stating that hospitals should be required to maintain adequate records in support of the services they provide to their employees at either no cost or below cost. In expressing the concern that employee health benefits are ever-changing, the commenter recommended that not only must HCFA's definition of insurance plans be specific but it should also be implemented prospectively with sufficient clarification to reduce inconsistency in interpretation by the fiscal intermediaries.

Response: We are concerned that adopting this recommendation would make it difficult for intermediaries to accurately track benefits provided to a hospital's employees, leading to greater disparity in the treatment of these costs across hospitals. We will give further consideration to the implications of this recommendation, however.

Comment: One commenter recommended that health-related costs, for such items as "employee physicals,

flu shots, and clinic visits" should be included as a core wage-related cost; therefore, the 1-percent threshold criteria for health related costs should be eliminated.

Response: In the September 1, 1994 final rule, when we published the list of core wage-related costs agreed upon by the workgroup, we responded to comments specifically suggesting that health-related services (as opposed to self-insured health services, which was clearly on the original core list) be added to the core list. In our response, we pointed out that the core list was developed in conjunction with the hospital industry, to establish a list of commonly recognized costs that contribute significantly to the wage costs of a hospital and are readily identifiable in the hospital's records. Health-related benefits was not included on the core list at that time. We continue to believe these health-related benefits do not fit the criteria established by the workgroup for identifying core wage-related costs.

5. Elimination of Wage Costs Associated With Rural Health Clinics and Federally Qualified Health Centers

The current hospital wage index includes the salaries and wage-related costs of hospital-based rural health clinics (RHCs) and federally qualified health centers (FQHCs). However, Medicare pays for these costs outside the hospital inpatient prospective payment system. Effective January 1, 1998, under section 1833(f) of the Act, as amended by section 4205 of Public Law 105–33, Medicare pays both hospital-based and freestanding RHCs and FQHCs on a cost-per-visit basis. Medicare cost reporting forms for RHCs and FQHCs were revised to reflect this legislative change, beginning with cost reporting periods ending on or after September 30, 1998 (the FY 1998 cost report). Other cost-reimbursed outpatient departments, such as ambulatory surgical centers, community mental health centers, and comprehensive outpatient rehabilitation facilities, are presently excluded from the wage index. Therefore, consistent with our wage index refinements that exclude, to the extent possible, costs associated with services not paid under the hospital inpatient prospective payment system, we believe it would be appropriate to exclude all salary costs associated with RHCs and FQHCs from the wage index calculation if we had feasible, reliable data for such exclusion.

Because RHC and FQHC costs are not separately reported on the Worksheet S–3 for FYs 1997, 1998, and 1999, we cannot exclude these costs from the FY 2001, FY 2002, or FY 2003 wage indexes. Therefore, we will revise the FY 2000 Worksheet S–3 to begin providing for the separate reporting of RHC and FQHC salaries, wage-related costs, and hours. We will evaluate the wage data for RHCs and FQHCs in developing the FY 2004 wage index.

We received no public comments on this issue.

D. Verification of Wage Data From the Medicare Cost Report

The data for the FY 2001 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1997 Medicare cost reports. The data file used to construct the wage index includes FY 1997 data submitted to HCFA as of mid-July 2000. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. The unresolved data elements that were included in the calculation of the proposed FY 2001 wage index have been resolved and are reflected in calculation of the final FY 2001 wage index. We note that, as part of this process to identify aberrant data and correct any errors prior to the calculation of the final FY 2001 wage index, we notified by letter those hospitals that were leading to large variations in the wage indexes of their labor market areas compared to the FY 2000 wage index. These hospitals were instructed to review their data to identify the reason for the large increases or decreases and notify their fiscal intermediary of any necessary corrections. This resulted in several revisions to the data.

Also, as part of our editing process, in the final wage index, we removed data for 15 hospitals that failed edits. For eight of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. Two hospitals had erroneous average hourly wages (negative and zero) after allocating overhead to their excluded areas and, therefore, were removed from the calculation. The data from the remaining five hospitals also failed the edits and were removed. As a result, the final FY 2001 wage index is calculated based on FY 1997 wage data for 4,950 hospitals.

E. Computation of the FY 2001 Wage Index

The method used to compute the FY 2001 wage index follows. We note one technical change to the formula used to calculate the proposed wage index. For the first time, in the proposed rule we subtracted line 13 of Worksheet S–3, Part III from total hours when determining the excluded hours ratio used to estimate the amount of overhead attributed to excluded areas. Although we continue to believe this is the correct formula for determining this ratio, it resulted in very large and inappropriate increases in the average hourly wages for some hospitals. Therefore, in calculating the final FY 2001 wage index, we are not subtracting line 13 of Worksheet S–3, Part III in the calculation.

Step 1—As noted above, we based the FY 2001 wage index on wage data reported on the FY 1997 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1996 and before October 1, 1997. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1996 and reported a cost reporting period exceeding 52 weeks. These data were included because they did not have a cost report begin during the period described above. However, we generally describe these wage data as FY 1997 data. We note that, if a hospital had more than one cost reporting period beginning during FY 1997 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1996 and before October 1, 1997), we included wage data from only one of the cost reporting periods, the longest, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the latest period in the wage index calculation.

Step 2—Salaries—The method used to compute a hospital's average hourly wage is a blend of 60 percent of the hospital's average hourly wage including all GME and CRNA costs, and 40 percent of the hospital's average hourly wage after eliminating all GME and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, including all GME and CRNA costs, we subtracted from Line 1 (total salaries) the Part B salaries reported on Lines 3 and 5, home office salaries reported on

Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Lines 2, 4, and 6. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, and physician Part A services (Lines 9 and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, 16, 18, and 20).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for specific categories of employees (Lines 16, 18, and 20) are excluded if no corresponding salaries are reported for those employees (Lines 2, 4, and 6, respectively).

We then calculated a hospital's salaries plus wage-related costs by subtracting from total salaries the salaries plus wage-related costs for teaching physicians, Part A CRNAs (Lines 2 and 16), and residents (Lines 6 and 20).

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S-3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 3, 5, and 7). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Finally, we subtracted the computed overhead salaries and hours associated with excluded areas from the total salaries and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1996 through April 15, 1998 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/96	11/15/96	1.02848
11/14/96	12/15/96	1.02748
12/14/96	01/15/97	1.02641
01/14/97	02/15/97	1.02521
02/14/97	03/15/97	1.02387
03/14/97	04/15/97	1.02236
04/14/97	05/15/97	1.02068
05/14/97	06/15/97	1.01883
06/14/97	07/15/97	1.01695
07/14/97	08/15/97	1.01520
08/14/97	09/15/97	1.01357
09/14/97	10/15/97	1.01182
10/14/97	11/15/97	1.00966
11/14/97	12/15/97	1.00712
12/14/97	01/15/98	1.00451
01/14/98	02/15/98	1.00213
02/14/98	03/15/98	1.00000
03/14/98	04/15/98	0.99798

For example, the midpoint of a cost reporting period beginning January 1, 1997 and ending December 31, 1997 is June 30, 1997. An adjustment factor of 1.01695 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1997 and covers a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 (with and without GME and CRNA costs) for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Because the FY 2001 wage index is based on a blend of average hourly wages, we then added 60 percent of the average hourly wage calculated without removing GME and CRNA costs, and 40 percent of the average hourly wage calculated with these costs excluded.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage (using the same blending methodology described in Step 7). Using the data as described above, the national average hourly wage is $21.7702.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $10.1902 for Puerto Rico.

For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to assure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2001, this change affects 193 hospitals in 34 MSAs. The MSAs affected by this

provision are identified in Table 4A by a footnote.

F. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Applications for MGCRB reclassification are now on the internet at http://www.hcfa.gov/regs/appeals.

1. Provisions of Public Law 106–113

Under section 152(b) of Public Law 106–113, hospitals in certain counties are deemed to be located in specified areas for purposes of payment under the hospital inpatient prospective payment system, for discharges occurring on or after October 1, 2000. For payment purposes, these hospitals are to be treated as though they were reclassified for purposes of both the standardized amount and the wage index. In the May 5 proposed rule we calculated FY 2001 wage indexes for hospitals in the affected counties as if they were reclassified to the specified area.

For purposes of making payments under section 1886(d) of the Act for FY 2001, section 152(b) provides the following:

- Iredell County, North Carolina is deemed to be located in the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA;
- Orange County, New York is deemed to be located in the New York, New York MSA;
- Lake County, Indiana and Lee County, Illinois are deemed to be located in the Chicago, Illinois MSA;
- Hamilton-Middletown, Ohio is deemed to be located in the Cincinnati, Ohio-Kentucky-Indiana MSA;
- Brazoria County, Texas is deemed to be located in the Houston, Texas MSA;
- Chittenden County, Vermont is deemed to be located in the Boston-Worcester-Lawrence-Lowell-Brockton, Massachusetts-New Hampshire MSA.

Section 152(b) also requires that these reclassifications be treated for FY 2001 as though they are reclassification decisions by the MGCRB. Therefore, in the May 5 proposed rule, we proposed that the wage indexes for the areas to which these hospitals are reclassifying, as well as the wage indexes for the areas in which they are located, would be subject to all of the normal rules for calculating wage indexes for hospitals affected by reclassification decisions by the MGCRB, as described below.

In addition, we proposed that the reclassifications enacted by section 152(b) pertain only to the hospitals located in the specified counties, not to hospitals in other counties within the MSA or hospitals reclassified into the MSA by the MGCRB.

Under section 154(b) of Public Law 106–113, the Allentown-Bethlehem-Easton, Pennsylvania MSA wage index was calculated including the wage data for Lehigh Valley Hospital. Section 154(b) states that, for FY 2001, "[n]otwithstanding any other provision of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)), in calculating and applying the wage indices under that section for discharges occurring during fiscal year 2001, Lehigh Valley Hospital shall be treated as being classified in the Allentown-Bethlehem-Easton Metropolitan Statistical Area." We stated in the proposed rule that this statutory language directs us to include Lehigh Valley Hospital's wage data in the wage index calculation for the Allentown-Bethlehem-Easton MSA for FY 2000 and FY 2001.

Section 1886(d)(8)(B) of the Act established that a hospital located in a rural county adjacent to one or more urban areas is treated as being located in the MSA to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an MSA (or NECMAs), if the commuting rates used in determining outlying counties were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs. Through FY 2000, hospitals are required to use standards published in the Federal Register on January 3, 1980, by the Office of Management and Budget. For FY 2000, there were 27 hospitals affected by this provision.

Section 402 of Public Law 106–113 amended section 1886(d)(8)(B) of the Act to allow hospitals to elect to use the standards published in the **Federal Register** on January 3, 1980 (1980 decennial census data) or March 30, 1990 (1990 decennial census data) during FY 2001 and FY 2002. As of FY 2003, hospitals will be required to use the standards published in the **Federal Register** by the Director of the Office of Management and Budget based on the most recent available decennial population data.

We are in the process of working with the Office of Management and Budget to identify the hospitals that would be affected by this amendment. We will revise payments to hospitals in the affected counties as soon as data is available. Hospitals will have this option during FY 2001 and FY 2002. After FY 2002, hospitals will be required to use data based on the 2000 decennial census. We refer the reader to the September 30, 1988 final rule (53 FR 38499) for a complete discussion of our approach to identify the outlying counties using the standards published in the January 3, 1980 **Federal Register**.

Comment: We received three comments on our proposed policy to treat hospitals reclassifying into an area containing one of the counties reclassified by section 152(b) in a manner similar to any other situation where a hospital reclassifies into an area where hospitals in that area have been reclassified into another area. The commenters, all hospitals that have been granted a reclassification into an area containing a county reclassified by section 152(b), requested that they should be permitted to reclassify along with the county identified by section 152(b). They added that, in the event it was determined that their preferred solution was not permissible, the wage index of the area to which they were reclassified should be calculated by including the wage data for the hospitals reclassified by section 152(b).

The commenters noted that they would be at a competitive disadvantage by the section 152(b) reclassifications if they were treated similar to other decisions by the MGCRB. In addition, they believed that the Secretary has some discretion with respect to calculating the wage indexes for areas with hospitals that have been reclassified, noting that the legislation does not specifically direct the Secretary to exclude reclassified hospitals from the calculation for the area in which a hospital is actually located.

Response: We have reconsidered the methodology for calculating the wage index applicable to hospitals reclassified into the MSAs that contain the counties specified in section 152(b) of Public Law 106–113. We continue to believe that the hospitals located in the counties specified in section 152(b) should be distinguished from the hospitals that were reclassified by the MGCRB into the MSAs containing those counties. Congress provided special treatment for hospitals in the counties specified in the statute, but it did not provide special treatment for hospitals

reclassified to the MSAs that contain those counties. Moreover, under the MGCRB process, hospitals are reclassified into MSAs as a whole, not into specific counties within an MSA; for example, some hospitals were reclassified by the MGCRB into the Newburgh, NY–PA MSA, which contains Orange County, NY and one other county, but those hospitals were not reclassified into Orange County itself. Thus, the benefits of section 152(b) apply only to the hospitals located in the counties specified by Congress.

Consistent with one of the suggestions of the commenters, however, we are revising the methodology reflected in the proposed rule with respect to the calculation of the wage index values for the MSAs containing the counties specified in section 152(b). The proposed rule reflected our normally applicable policy with respect to reclassifications, under which the wages of hospitals reclassified out of an MSA would be excluded from the calculation of the wage index value for that MSA; application of our normal rules might lead to an unexpected decrease in the wage index value for an MSA arising from the provisions of section 152(b). To address the unexpected decrease that might otherwise occur, we believe that it is appropriate to calculate the wage index values for the MSAs that contain the counties specified in section 152(b) (e.g., the Newburgh MSA) by including the wages of hospitals that were reclassified out of the area by section 152(b). We believe that we should not exclude the wages of those hospitals because Congress has provided special treatment for those hospitals, and we believe that including the wages of the reclassified hospitals appropriately reconciles the provisions of section 152(b) of Public Law 106–113, the MGCRB statutory and regulatory scheme, section 1886(d)(3)(E) of the Act, as well as the expectations of the hospitals prior to the enactment of section 152(b).

Comment: We received one comment related to our proposed treatment of Lehigh Valley Hospital's wage data under section 154(b) of Public Law 106–113. For FY 2001, Lehigh Valley Hospital was reclassified by the MGCRB to the Philadelphia MSA. The commenter argued that it was not Congress' intent that Lehigh Valley Hospital should be precluded from reclassifying.

The commenter also contended that the statutory language of section 154(b) could allow HCFA to permit Lehigh Valley Hospital to reclassify to Philadelphia, while the hospital's wage data would still be used to calculate the Allentown-Bethlehem-Easton MSA wage index. The commenter stated that by indicating this provision that Lehigh Valley "shall be treated" as being in the Allentown MSA, Congress did not intend to prohibit Lehigh Valley from reclassifying. If this had been Congress' intent, it would have been stated as such.

Response: In the proposed rule, we included Lehigh Valley Hospital's wage data in the wage index calculation for the Allentown-Bethlehem-Easton MSA. We also indicated that we believed the statutory language of section 154(b) required us to apply the Allentown-Bethlehem-Easton MSA wage index to Lehigh Valley Hospital for payments during FY 2001. However, we note that, despite the language of section 154(b), the MGCRB did reclassify Lehigh Valley Hospital to the Philadelphia MSA for FY 2001, and the HCFA Administrator did not reverse that decision. This has the effect of leaving stand the decision by the MGCRB to reclassify Lehigh Valley Hospital into the Philadelphia MSA for purposes of calculating and applying the Philadelphia wage index.

With respect to calculating the Allentown-Bethlehem-Easton MSA wage index, section 154(b) requires that we include Lehigh Valley Hospital's wage data in calculating the wage index for this MSA. We note that the provision is effective "(n)otwithstanding any other provision of section 1886(d) of the Social Security Act." Therefore, although our normal policy is to remove the wage data of a hospital reclassified out of an area when calculating that area's wage index, section 154(b) directs us to include Lehigh's wage data in calculating the wage index for the A–B–E MSA.

2. Effects of Reclassification

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, except as discussed above, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the redesignated hospitals are subject to that combined wage index value.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index value for an urban area below the statewide rural wage index value.

We note that, except for those rural areas in which redesignation would reduce the rural wage index value, the wage index value for each area is computed exclusive of the wage data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several urban areas listed in Table 4A have no hospitals remaining in the area. This is because all the hospitals originally in these urban areas have been reclassified to another area by the MGCRB. These areas with no remaining hospitals receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the area remains empty.

The final wage index values for FY 2001 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this final rule. Hospitals that are redesignated

should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural area of the State in which the hospital is located. When the wage index value of the area to which a hospital is redesignated is lower than the wage index value for the rural area of the State in which the hospital is located, the redesignated hospital receives the higher wage index value; that is, the wage index value for the rural area of the State in which it is located, rather than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4D and 4E list the average hourly wage for each labor market area, before the redesignation of hospitals, based on the FY 1997 wage data. In addition, Table 3C in the Addendum to this final rule includes the adjusted average hourly wage for each hospital based on the FY 1997 data as of July 2000 (reflecting the phase-out of GME and CRNA wages as described at section III.C of this preamble). The MGCRB will use the average hourly wage published in this final rule to evaluate a hospital's application for reclassification for FY 2002 (unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(w)(2)). We note that in adjudicating these wage index reclassifications the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 2001 wage index.

We indicated in the proposed rule that, at the time the proposed wage index was constructed, the MGCRB had completed its review of FY 2001 reclassification requests. The final FY 2001 wage index values incorporate all 493 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act, and section 152(b) Public Law 106–113) for FY 2001). Since publication of the May 5 proposed rule, the number of reclassifications has changed because some MGCRB decisions were still under review by the Administrator and because some hospitals decided to withdraw their requests for reclassification.

Changes to the wage index that resulted from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process have been incorporated into the wage index values published in this final rule. The changes affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive; that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated is affected.

Comment: One commenter recommended that the average hourly wages shown in Tables 4D and 4E should be consistent with the values shown in Tables 4A and 4B. In support of this recommendation, the commenter suggested that, because our policy for computing the wage index values for urban areas excludes wages for hospitals that have reclassified to another area, the average hourly wages shown in Table 4D should be computed exclusive of the reclassified hospitals. The commenter believed the recommended change has the potential of impacting a hospital's efforts to reclassify because the hospital may not qualify based on the "unadjusted" hourly wage currently shown in Table 4D.

Response: As discussed above and in the May 5 proposed rule (65 FR 26301), the average hourly wages in Tables 4D and 4E reflect the labor market area average hourly wages before hospital redesignations. We provide the unadjusted rather than adjusted average hourly wages because the MGCRB must use unadjusted average hourly wages in determining a hospital's eligibility for reclassification. A hospital that wishes to apply for reclassification for the FY 2002 wage index (deadline is September 1, 2000) should use the average hourly wage data in Tables 3C, 4D, and 4E of the FY 2001 proposed and final rules to determine whether it meets the requirements for reclassification. With the exception of urban areas that receive the statewide rural wage index value, an urban area's adjusted average hourly wage may be calculated by multiplying the area wage index value in Table 4A by the national average hourly wage.

Comment: One commenter questioned whether the number of hospitals reclassified for the wage index for FY 2001 cited in the proposed rule (586) was accurate.

Response: The correct number of wage index reclassifications for FY 2001 at the time the proposed rule was published was 386. As stated above, the final number of wage index reclassifications is 490.

A. Wage Data Corrections

In the proposed rule, we stated that, to allow hospitals time to evaluate the wage data used to construct the proposed FY 2001 hospital wage index, we would make available in May 2000 a final public data file containing the FY 1997 hospital wage data.

The final wage data file was released on May 5, 2000. As noted above in section III.C. of this preamble, this file included hospitals' teaching survey data as well as cost report data. As with the file made available in February 2000, we made the final wage data file released in May 2000 available to hospital associations and the public (on the Internet). However, this file was made available only for the limited purpose of identifying any potential errors made by HCFA or the fiscal intermediary in the entry of the final wage data that the hospital could not have known about before the release of the final wage data public use file. It is not for the initiation of new wage data correction requests.

If, after reviewing the May 2000 final data file, a hospital believed that its wage data were incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it was provided an opportunity to send a letter to both its fiscal intermediary and HCFA, outlining why the hospital believed an error exists and provide all supporting information, including dates. These requests had to be received by us and the intermediaries no later than June 5, 2000.

Changes to the hospital wage data were made only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor HCFA accepted the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to HCRIS on or before April 3, 2000.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the February 2000 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.
- Verified corrections to the wage index received timely (that is, by June 5, 2000) are incorporated into the final wage index in this final rule, to be effective October 1, 2000.

We believe the wage data correction process provides hospitals with sufficient opportunity to bring errors in

their wage data to the intermediary's attention. Moreover, because hospitals had access to the final wage data by early May 2000, they had the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the development and publication of the FY 2001 wage index and its implementation on October 1, 2000. If hospitals avail themselves of this opportunity, the FY 2001 wage index implemented on October 1 should be free of these errors. Nevertheless, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(w)(2), we may make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or HCFA made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2001 (that is, by the June 5, 2000 deadline). As indicated earlier, since a hospital had the opportunity to verify its data, and the intermediary notified the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

Comment: One commenter expressed concern about the process used in preparing the final wage index data, especially teaching survey data. The commenter was concerned that errors would not be corrected before the publication of the final rule. Without providing specific information, the commenter further stated that it still believed that there were a number of "omission errors in the data" and that the situation would have been better handled if the data were corrected and reposted.

Response: We acknowledge the commenter's concern and reiterate that the purpose of making the wage data available for review on the Internet is to allow hospitals time to evaluate the wage data used in constructing the hospital wage index. We encourage hospitals to review their data and to address and resolve issues in dispute prior to the publication of the final wage index data file. We acknowledge that the teaching physician data submitted by several providers were not accurately reported in the public use wage index data file published on May 5, 2000. Once we became aware of the errors, we took the necessary steps to review and incorporate the appropriate data. The updated file was then made available on our Internet website at: http://www.hcfa.gov/medicare/ippsmain.htm.

IV. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

A. Expanding the Transfer Definition to Include Postacute Care Discharges (§ 412.4)

In accordance with section 1886(d)(5)(I) of the Act, the prospective payment system distinguishes between "discharges," situations in which a patient leaves an acute care (prospective payment) hospital after receiving complete acute care treatment, and "transfers," situations in which the patient is transferred to another acute care hospital for related care. Our policy, as set forth in the regulations at § 412.4, provides that, in a transfer situation, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Effective with discharges on or after October 1, 1998, section 1886(d)(5)(J) of the Act required the Secretary to define and pay as transfers all cases assigned to one of 10 DRGs (identified below) selected by the Secretary if the individuals are discharged to one of the following settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital. (Section 1886(d)(1)(B) of the Act identifies the hospitals and hospital units that are excluded from the term "subsection (d) hospital" as psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals.)
- A skilled nursing facility (as defined at section 1819(a) of the Act).
- Home health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

Therefore, any discharge from a prospective payment hospital from one of the selected 10 DRGs that is admitted to a hospital excluded from the prospective payment system on the date of discharge from the acute care hospital, on or after October 1, 1998, would be considered a transfer and paid accordingly under the prospective payment systems (operating and capital) for inpatient hospital services. Similarly, a discharge from an acute care inpatient hospital paid under the prospective payment system to a skilled nursing facility on the same date would be defined as a transfer and paid as such. We consider situations in which home health services related to the condition or diagnosis of the inpatient admission are received within 3 days after the discharge as a transfer.

The statute specifies that the Secretary select 10 DRGs based upon a high volume of discharges to postacute care and a disproportionate use of postacute care services. We identified the following DRGs with the highest percentage of postacute care:

- DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack (Medical))
- DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe (Surgical))
- DRG 209 (Major Joint Limb Reattachment Procedures of Lower Extremity (Surgical))
- DRG 210 (Hip and Femur Procedures Except Major Joint Procedures Age >17 with CC (Surgical))
- DRG 211 (Hip and Femur Procedures Except Major Joint Procedures Age >17 without CC (Surgical))
- DRG 236 (Fractures of Hip and Pelvis (Medical))
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC (Surgical))
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC (Surgical))
- DRG 429 (Organic Disturbances and Mental Retardation (Medical))
- DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses (Surgical))

Generally, we pay for transfers based on a per diem payment, determined by dividing the DRG payment by the average length of stay for that DRG. The transferring hospital receives twice the per diem rate the first day and the per diem rate for each following day, up to the full DRG payment. Of the 10 selected DRGs, 7 are paid under this method. However, three DRGs exhibit a disproportionate share of costs very early in the hospital stay. For these three DRGs, hospitals receive one-half of the DRG payment for the first day of the stay and one-half of the payment they would receive under the current transfer payment method, up to the full DRG payment.

As required by section 1886(d)(5)(J)(iv) of the Act, we included in the FY 2001 proposed rule published on May 5, 2000 (65 FR 26302), a description of the effect of the provision to treat as transfers cases that are assigned to one of the 10 selected DRGs and receive postacute care upon their discharge from the hospital. Under contract with HCFA (Contract No. 500–95–0006), Health Economics Research, Inc. (HER) conducted an analysis of the impact on hospitals and hospital payments of the postacute transfer provision. The analysis sought to obtain information on four primary areas: How hospitals responded in terms of their transfer practices; a comparison of payments and costs for these cases; whether hospitals are attempting to circumvent the policy by delaying postacute care or coding the patient's discharge status as something other than a transfer; and what the next possible step is for expanding the transfer payment policy beyond the current 10 selected DRGs or the current postacute destinations.

In addition, in accordance with section 1886(d)(5)(J)(iv)(I) of the Act, we included in the May 5, 2000 proposed rule for FY 2001 a discussion of whether other postdischarge services should be added to this postacute care transfer provision. Since FY 1999 was the first year this policy was effective and because of pending changes to payment policies for other postacute care settings such as hospital outpatient departments, we have limited data to assess whether additional postacute care settings should be included. We will continue to closely monitor this issue as more data become available.

In its analysis, HER relied on HCFA's Standard Analytic Files containing claims submission data through September 1999. However, the second and third quarter submissions for calendar year 1999 were not complete. It was decided that transfer cases would be identified by linking acute hospital discharges with postacute records based on Medicare beneficiary numbers and dates of discharge from the acute hospital with dates of admission or provision of service by the postacute provider. This method was used rather than selecting cases based on the discharge status code on the claim even though this code is being used for payment to these cases because we wanted to also assess how accurately hospitals are coding this status. However, the need to link acute and postacute episodes further limited the analytic data, due to the greater time lag for collecting postacute records. Therefore, much of HER's analysis focused on only the first two quarters of FY 1999. The two preceding fiscal years served as a baseline for purposes of comparison.

Since the publication of the May 5, 2000 proposed rule for FY 2001, HER has updated the results of its study of the impact on hospitals and hospital payments of the postacute transfer provision. In its revised analysis, HER found that the volume of postacute transfers qualifying for the lower per diem payment during the first 6 months of FY 1999 fell from 28 percent of total discharges under the 10 DRGs before the implementation of the payment change to 18 percent. It appears this decline was largely the result of a drop in the geometric mean length of stay in two high-volume DRGs (DRGs 14 and 209) that reduced the number of days qualifying a case for the per diem payment. In FY 1998, the geometric mean length of stay was 5.1 days for DRG 14 and 5.3 days for DRG 209. The geometric mean length of stay for both DRGs in FY 1999 was 4.9 days. To qualify for a per diem payment, a case's length of stay must be less than the DRG's geometric mean length of stay minus one day. Therefore, cases in these two DRGs with lengths of stay of five days were counted as qualified for per diem payments under the postacute care transfer rules in FY 1998 but not in FY 1999. Because DRGs 14 and 209 account for approximately 65 percent of the cases in the 10 DRGs, the drop in the threshold for qualifying cases contributed significantly to the magnitude of the decline in qualifying cases overall.

Correspondingly, HER found an increase in the volume and share of postacute transfers that did not qualify for the lower per diem payment. The share of long-stay postacute transfers paid under the full DRG amount (*e.g.*, those with a length of stay equal to at least one day less than the geometric mean length of stay minus one day) increased from 35 percent during the first half of FY 1998 to 43 percent during the first 6 months of FY 1999. Again, some of this increase is attributable to the drop in the geometric mean lengths of stay in DRGs 14 and 209.

According to HER, to some extent, the shift in the distribution of postacute transfers from qualifying to nonqualifying cases may suggest that hospitals have responded to the policy change by holding patients longer before releasing them to a postacute care provider. Total postacute transfers fell by 13 percent between the two payment periods, suggesting that hospitals may also have responded by resuming the provision of services that were previously performed by postacute care providers, resulting in an elimination of some postacute transfers. However, additional analysis would be necessary to separate the effects of the drop in the geometric mean length of stay from the hospital behavioral effects.

The study shows that the average length of stay of qualifying postacute transfers rose slightly between the two payment periods, from 4.16 days before the policy change to 4.33 days after. In contrast, the average length of stay of long-stay transfers and nontransfers for the same set of DRGs fell between the two 6-month study periods, by 15.9 and 16.6 percent, respectively. This indicates that, overall, hospitals were keeping cases slightly longer prior to transfer.

The figures on the impact of "delayed" transfers (for example, those patients transferred to a postacute care provider beyond the 1 or 3 day qualifying time period) remain unchanged. HER found little evidence that hospitals are responding to the policy change by increasing the time interval between prospective payment system discharge and postacute care admission or visit.

The study also did not find evidence that changes in prospective payment system hospital treatment and discharge behavior are resulting in increased lengths of stay or numbers of visits during the subsequent postacute care episode. Average lengths of stay and number of visits at postacute care providers following provider payment system discharge actually fell between the two payment periods. It is likely that any adverse effects of hospital behavior on patient care would have manifested itself in greater postacute care lengths of stay and number of visits following the implementation of the payment reform. HER found no evidence of this.

The average cost of qualifying postacute transfers rose in real terms by 2.4 percent after the policy change. According to HER, average profits for qualifying postacute transfers fell from $3,496 per case prior to the transfer policy change to $2,255 following the implementation of the payment reform. Average payments with adjustments for IME, DSH and outliers declined in real terms by 9.6 percent.

HER found that the postacute transfer policy resulted in a reduction in expenditures of $239 million during the first half of FY 1999. Annualized over a 1-year period, the policy reform lowered annual payments by an estimated $478 million. (In our estimate of the impacts of this policy, we estimated the total impact to be $480

million (63 FR 40977).) The estimated annual savings resulting from the policy change is equivalent to a 4.5 percent reduction in program expenditures in the 10 pilot DRGs and a 0.5 percent reduction in overall prospective payment system expenditures. The "price" effect (for example, holding hospital treatment and admission patterns constant) resulted in a savings of $276 million during the first half of FY 1999 (or an estimated $552 million annually). However, the decline in the number of transfers qualifying for the lower per diem, as well as the longer lengths of stay of short-stay postacute transfer cases, resulted in an offsetting reduction in savings of $37 million during the first 6 months of FY 1999 (or $74 million annually). As stated above, the combination of the positive "price" effect and the negative "volume" effect led to a net savings of $239 million during the first half of FY 1999 (or an estimated $478 million annually).

The study also examined the discharge destination codes as reported on the acute care hospital claims against postacute care transfers identified on the basis of a postacute care claim indicating the patient qualifies as a transfer. This analysis found that, in 1998, only 74 percent of transfer cases had discharge destination codes on the acute care hospital claim that were consistent with whether there was a postacute care claim for the case matching the date of discharge. In FY 1999, the year the postacute care transfer policy went into effect, this rate rose to 79 percent. This indicates that hospitals are improving the accuracy of coding transfer cases.

Transfers to hospitals or units excluded from the prospective payment system must have a discharge destination code (Patient Status) of 05. Transfers to a skilled nursing facility must have a discharge destination code of 03. Transfers to a home health agency must have a discharge destination code of 06. If the hospital's continuing care plan for the patient is not related to the purpose of the inpatient hospital admission, a condition code 42 must be entered on the claim. If the continuing care plan is related to the purpose of the inpatient hospital admission, but care did not start within 3 days after the date of discharge, a condition code 43 must be entered on the claim. The presence of either of these condition codes in conjunction with discharge destination code 06 will result in full payment rather than the transfer payment amount. We intend to closely monitor the accuracy of hospitals' discharge destination coding in this regard and take whatever steps are necessary to ensure that accurate payment is made under this policy.

Section 1886(d)(5)(J)(iv)(II) of the Act authorized but did not require the Secretary to include as part of the proposed rule additional DRGs to include under the postacute care transfer provision. As part of "The President's Plan to Modernize and Strengthen Medicare for the 21st Century" (July 2, 1999), the Administration committed to not expanding the number of DRGs included in the policy until FY 2003. Therefore, we did not propose any change to the postacute care settings or the 10 DRGs.

HER did undertake an analysis of how additional DRGs might be considered for inclusion under the policy. The analysis supports the initial 10 DRGs selected as being consistent with the nature of the Congressional mandate. According to HER, "[t]he top 10 DRGs chosen initially by HCFA exhibit very large PAC [postacute care] levels and PAC discharge rates (except for DRG 264, Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC, which was paired with DRG 263). All 10 appear to be excellent choices based on the other criteria as well. Most have fairly high short-stay PAC [postacute care] rates (except possibly for Strokes, DRG 14, and Mental Retardation, DRG 429)."

Extending the policy beyond these initial DRGs, however, may well require more extensive analysis and grouping of like-DRGs. One concern raised in the analysis relates to single DRGs including multiple procedures with varying lengths of stay. Because the transfer payment methodology only considers the DRG overall geometric mean length of stay for a DRG, certain procedures with short lengths of stay relative to other procedures in the same DRG may be more likely to be treated as transfers. The analysis also considers pairs of DRGs, such as DRGs 263 and 264, as well as larger bundles of DRGs (grouped by common elements such as trauma, infections, and major organ procedures). According to HER, "[i]n extending the PAC transfer policy, it is necessary to go beyond the flawed concept of a single DRG to discover multiple DRGs with a common link that exhibit similar PAC statistics. Aggregation of this sort provides a logical bridge in expanding the PAC transfer policy that is easily justified to Congress and that avoids unintended inequities in the way DRGs-and potentially hospitals-are treated under this policy. Hospitals can be inadvertently penalized or not under the current implementation criteria due to systematic differences in the DRG mix."

Finally, the HER report concludes with a discussion of the issues related to potentially expanding the postacute care transfer policy to all DRGs. On the positive side, HER points to the benefits of expanding the policy to include all DRGs:

- A simple, uniform formula-driven policy;
- Same policy rationale exists for all DRGs-the statutory provision requiring the Secretary to select only 10 DRGs was a political compromise;
- DRGs with little utilization of short-stay postacute care would not be harmed by the policy;
- Less confusion in discharge destination coding; and
- Hospitals that happen to be disproportionately treating the current 10 DRGs may be harmed more than hospitals with an aggressive short-stay postacute care transfer policy for other DRGs.

According to HER, the negative implications of expanding the policy to all DRGs include:

- The postacute care transfer policy is irrelevant for many DRGs;
- Added burden for the fiscal intermediaries to verify discharge destination codes;
- Diluted program savings beyond the initial 10 DRGs;
- Difficulty in identifying ongoing postacute care that resumes after discharge; and
- Heterogeneous procedures within single DRGs having varying lengths of stay.

The HER report in final format may be obtained from the HCFA website at: http://www.hcfa.gov/medicare/ippsmain.htm

Comment: One commenter observed that in our discussion in the proposed rule (65 FR 26303) of postacute care transfers to a skilled facility, we stated that "(t)his would include cases discharged from one of the 10 selected DRGs to a designated swing bed for skilled nursing facilities." The commenter believed that HCFA clearly excluded swing bed transfers from the postacute care transfer policy in the July 31, 1998 final rule and asked for clarification.

Response: The commenter is correct that we excluded swing bed transfers from the postacute care transfer policy in the July 31, 1998 final rule (63 FR 40977). We are not changing the policy to include swing beds at this time. The sentence in question was inadvertently included in the proposed rule.

Comment: One commenter believed the transfer policy is contrary to the

design of the prospective payment system and penalizes clinical decision making by physicians in discharging their patients to the appropriate level of care. The commenter suggested that the HER study shows that the net outcome of the policy has been to pay hospitals less and increase the complexity and administrative costs of the inpatient prospective payment system. The commenter cited the disadvantages of expanding the policy to all DRGs set forth in the HER report and recommended that the Administration revisit this policy in light of the findings of the researchers that care, not finances, is driving the length of stay in these cases.

Response: We disagree with the commenter that the postacute transfer policy penalizes clinical decisionmaking by physicians in discharging their patients to the appropriate level of care, but rather believe that the policy appropriately adjusts payments to hospitals to reflect the amount of care actually provided in the acute care setting. Furthermore, this policy does not require a change in physician clinical decisionmaking nor in the manner in which physicians and hospitals practice medicine. It simply addresses the appropriate level of payments once those decisions have been made.

With respect to whether the provision is contrary to the original intent of the prospective payment system, we believe it is entirely consistent with the following statement made in the **Federal Register** during the first year of the prospective payment system in response to a comment concerning the hospital-to-hospital transfer policy: "(t)he rationale for per diem payments as part of our transfer policy is that the transferring hospital generally provides only a limited amount of treatment. Therefore, payment of the full prospective payment rate would be unwarranted" (49 FR 244). We also note that in its earliest update recommendations, the Prospective Payment Assessment Commission (MedPAC's predecessor organization) included what it called a site-of-service substitution adjustment to account for the shifting of portions of inpatient care to other settings. We believe this provision is an appropriate and consistent response to the changing treatment practice of the hospital industry.

Though we are not expanding the policy to include all DRGs at this time, HER points to advantages as well as the disadvantages cited by the commenter of doing so, including:

- A simple, uniform formula-driven policy;
- Same policy rationale exists for all DRGs—the statutory provision requiring the Secretary to select only 10 DRGs was a political compromise;
- DRGs with little utilization of short-stay postacute care would not be harmed by the policy;
- Less confusion in discharge destination coding; and
- Hospitals that happen to be disproportionately treating the current 10 DRGs may be harmed more than hospitals with an aggressive short-stay postacute care transfer policy for other DRGs.

Finally, we also believe that care, not finances, should drive the length of stay and all other clinical decisions in these cases, and that payments should be aligned with the care given in each provider setting.

Comment: One commenter agreed with our decision to not expand the number of DRGs subject to the postacute transfer policy. The commenter believed that the policy should be revoked because the cost savings have far exceeded the estimates relied on in developing the policy and, more fundamentally, because it violates the notion of averaging that is at the heart of an appropriate prospective payment system. The commenter also believed that the introduction of prospective payment in virtually all postacute settings obviates the need for this expansion of transfer policy.

The commenter stated that the use of the geometric mean length of stay to determine the payment amount does not fully consider the medical practice patterns of physicians in different regions of the country and appears to penalize those areas that already achieved a lower length of stay.

Response: Since updating its study after the proposed rule was published, HER reports that the policy resulted in savings of $478 million, remarkably close to our estimate of $480 million published in the July 31, 1998 final rule (63 FR 40977). Furthermore, as we stated in our previous response, we believe that the policy is entirely consistent with the original intent of the prospective payment system.

We disagree with the commenter's belief that the introduction of prospective payment systems to postacute settings obviates the need for the transfer policy. The purpose of the policy is to align payments with the care actually provided in the inpatient setting. The policy is particularly appropriate for areas of the country where care has been more aggressively shifted from acute to postacute settings.

B. Sole Community Hospitals (SCHs)(§§ 412.63, 412.73, and 413.75, proposed new § 412.77, and § 412.92)

Under the hospital inpatient prospective payment system, special payment protections are provided to sole community hospitals (SCHs). Section 1886(d)(5)(D)(iii) of the Act defines an SCH as, among other things, a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria a hospital must meet to be classified as an SCH are located at § 412.92(a).

Currently SCHs are paid based on whichever of the following rates yields the greatest aggregate payment to the hospital for the cost reporting period: The Federal national rate applicable to the hospital; or the hospital's "target amount"—that is, either the updated hospital-specific rate based on FY 1982 costs per discharge, or the updated hospital-specific rate based on FY 1987 costs per discharge.

Section 405 of Public Law 106–113, which amended section 1886(b)(3) of the Act, provides that an SCH that was paid for its cost reporting period beginning during 1999 on the basis of either its FY 1982 or FY 1987 target amount (the hospital-specific rate as opposed to the Federal rate) may elect to receive payment under a methodology using a third hospital-specific rate based on the hospital's FY 1996 costs per discharge. This amendment to the statute means that, for cost reporting periods beginning on or after October 1, 2000, eligible SCHs can elect to use the allowable FY 1996 operating costs for inpatient hospital services as the basis for their target amount, rather than either their FY 1982 or FY 1987 costs.

We are aware that language in the Conference Report accompanying Public Law 106–113 indicates that the House bill (H.R. 3075) would have permitted SCHs that were being paid the Federal rate to rebase, not SCHs that were paid on the basis of either their FY 1982 or FY 1987 target amount (H.R. Conf. Rep. No. 106–479, 106th Cong., 1st Sess. at 890 (1999)). The language of the section 405 amendment to section 1886(b)(3) (which added new subparagraph (I)(ii)) clearly limits the option to substitute the FY 1996 base year to SCHs that were paid for their cost reporting periods beginning during 1999 on the basis of the target amount applicable to the hospital under section 1886(b)(3)(C).

In the May 5 proposed rule, we proposed that, when calculating an eligible SCH's FY 1996 hospital-specific rate, we utilize the same basic methodology used to calculate FY 1982 and FY 1987 bases. That methodology is set forth in §§ 412.71 through 412.75 of the regulations and discussed in detail in several prospective payment system documents published in the **Federal Register** on September 1, 1983 (48 FR 3977); January 3, 1984 (49 FR 256); June 1, 1984 (49 FR 23010); and April 20, 1990 (55 FR 15150).

Since we anticipate that eligible hospitals will elect the option to rebase using their FY 1996 cost reporting periods, we proposed that our fiscal intermediaries would identify those SCHs that were paid for their cost reporting periods beginning during 1999 on the basis of their target amounts. For these hospitals, fiscal intermediaries would calculate the FY 1996 hospital-specific rate as described below in this section IV.B. If this rate exceeds a hospital's current target amount based on the greater of the FY 1982 or FY 1987 hospital-specific rate, the hospital will receive payment based on the FY 1996 hospital-specific rate (based on the blended amounts described at section 1886(b)(3)(I)(i) of the Act) unless the hospital notifies its fiscal intermediary in writing prior to the end of the cost reporting period that it does not wish to be paid on the basis of the FY 1996 hospital-specific rate. Thus, if a hospital does not notify its fiscal intermediary before the end of the cost reporting period that it declines the rebasing option, we would deem the lack of such notification as an election to have section 1886(b)(3)(I) of the Act apply to the hospital.

We further proposed that an SCH's decision to decline this option for a cost reporting period will remain in effect for subsequent periods until such time as the hospital notifies its fiscal intermediary otherwise.

The FY 1996 hospital-specific rate will be based on FY 1996 cost reporting periods beginning on or after October 1, 1995 and before October 1, 1996, that are 12 months or longer. If the hospital's last cost reporting period ending on or before September 30, 1996 is less than 12 months, the hospital's most recent 12-month or longer cost reporting period ending before the short period report would be utilized in the computations. If a hospital has no cost reporting period beginning in FY 1996, it would not have a hospital-specific rate based on FY 1996.

For each hospital eligible for FY 1996 rebasing, the fiscal intermediary will calculate a hospital-specific rate based on the hospital's FY 1996 cost report as follows:

- Determine the hospital's total allowable Medicare inpatient operating cost, as stated on the FY 1996 cost report.
- Divide the total Medicare operating cost by the number of Medicare discharges in the cost reporting period to determine the FY 1996 base period cost per case. For this purpose, transfers are considered to be discharges.
- In order to take into consideration the hospital's individual case-mix, divide the base year cost per case by the hospital's case-mix index applicable to the FY 1996 cost reporting period. This step is necessary to standardize the hospital's base period cost for case-mix and is consistent with our treatment of both FY 1982 and FY 1987 base-period costs per case. A hospital's case-mix is computed based on its Medicare patient discharges subject to DRG-based payment.

We proposed that the fiscal intermediary will notify eligible hospitals of their FY 1996 hospital-specific rate prior to October 1, 2000. Consistent with our policies relating to FY 1982 and FY 1987 hospital-specific rates, we proposed to permit hospitals to appeal a fiscal intermediary's determination of the FY 1996 hospital-specific rate under the procedures set forth in 42 CFR part 405, subpart R, which concern provider payment determinations and appeals. In the event of a modification of base period costs for FY 1996 rebasing due to a final nonappealable court judgment or certain administrative actions (as defined in § 412.72(a)(3)(i)), the adjustment would be retroactive to the time of the intermediary's initial calculation of the base period costs, consistent with the policy for rates based on FY 1982 and FY 1987 costs.

Section 405 prescribes the following formula to determine the payment for SCHs that elect rebasing:

For discharges during FY 2001:

- 75 percent of the updated FY 1982 or FY 1987 former target (identified in the statute as the "subparagraph (C) target amount"), plus
- 25 percent of the updated FY 1996 amount (identified in the statute as the "rebased target amount").

For discharges during FY 2002:

- 50 percent of the updated FY 1982 or FY 1987 former target, plus
- 50 percent of the updated FY 1996 amount.

For discharges during FY 2003:

- 25 percent of the updated FY 1982 or FY 1987 former target, plus
- 75 percent of the updated FY 1996 amount.

For discharges during FY 2004 or any subsequent fiscal year, the hospital-specific rate would be determined based on 100 percent of the updated FY 1996 amount.

We proposed to add a new § 412.77 and amend § 412.92(d) to incorporate the provisions of section 1886(b)(3)(I) of the Act, as added by section 405 of Public Law 106–113.

Section 406 of Public Law 106–113 amended section 1886(b)(3)(B)(i)(XVI) of the Act to provide, for fiscal year 2001, for full market basket updates to both the Federal and hospital-specific payment rates applicable to sole community hospitals. In the May 5 proposed rule, we proposed to amend §§ 412.63, 412.73, and 412.75 to incorporate the amendment made by section 406 of Public Law 106–113.

We received several public comments on our proposal.

Comment: Several commenters discussed the difference between the language in the statutory provision, which limits the updated 1996-rebasing option to SCHs that were paid on the basis of their target amount (hospital specific rate) in 1999, and the language of the accompanying Conference report (H.R. Conf. Rep. No. 106–479, 106th Cong., 1st Sess. at 890 (1999)). The Conference report indicated that the House bill (H.R. 3075) would have permitted SCHs that were being paid the Federal rate to rebase rather than SCHs that were paid on the basis of either their FY 1982 or FY 1987 target amount. One commenter, in particular, believed that despite the clear statutory language, HCFA had the ability to allow leeway in determining which hospitals were eligible to elect 1996 rebasing. In support of this view, the commenter made the assertion that the Federal rate used in SCH payment computations included outlier and disproportionate share payments (DSH) as well as other special provisions. Therefore, the hospital-specific rate should be compared to the base Federal rate of the geographic area, without the add-ons, to determine which amount would yield the largest payment. Additionally, the total Federal payments on the hospital's cost report may exceed the hospital-specific payments in some years, while falling below them in other years because of the potential fluctuations of outliers and DSH payments. The commenter argued, therefore, that to determine whether an SCH is to be paid on the basis of the target amount, hospital-specific payments should be compared to the base Federal payments without the addition of outliers and DSH payments.

Response: We disagree with the commenter's argument. The commenter is correct in saying that in any one year, the target amount may be exceeded by calculations of the Federal rate. This is the reason why the calculation is done yearly, so that the hospital may receive the highest possible payment for that specific year based on a comparison of what each payment scheme would generate for the hospital. The statute clearly states the rebasing option is available to an SCH that, for its cost reporting period beginning on or after October 1, 2000, is paid on the basis of the target amount. As we stated in the proposed rule, we are aware of the difference between this rebasing plan set forth in section 405 of Public Law 106–113 and the one described in the Conference Report, but the unambiguous language of the statute controls over the language of the Conference Report.

Comment: One commenter pointed to an inconsistency between the text of proposed § 412.77 and the preamble to the proposed rule. The preamble stated that, in the absence of notification to the contrary from the hospital, the intermediary will base payment on the 1996 hospital specific rate, if this rate exceeds the 1982 or 1987 hospital-specific rate. The proposed regulation language at § 412.77(a) indicated that, in the absence of notification, the hospital payment would be based on the 1996 hospital specific rate without the qualification that this rate would need to exceed the 1982 or 1987 base year rates.

Response: We believe that the commenter's concern about inconsistency may stem from a typographical error that appeared in the text of proposed § 412.77 in the proposed rule, that incorrectly referenced § 412.72, rather than revised § 412.92. The payment determination formula used for SCHs is set forth in § 412.92(d), which has been revised to include the 1996 rebasing option. That formula clearly states that an SCH is paid based on whichever yields the greatest aggregate payment for the cost reporting period: the Federal payment rate, the 1982 or 1987 hospital-specific rate, or the 1996 hospital-specific rate. We have deleted the incorrect reference to § 412.72. In addition, for the sake of clarity, we have added a sentence to § 412.77(a)(1), further modified § 412.92(d)(1), and added a new § 412.92(d)(2) (the existing paragraph (d)(2) is redesignated as paragraph (d)(3)).

Comment: One commenter disagreed with the proposal that the intermediary should include the 1996 hospital specific rate in its payment calculations it if it is higher than either the 1982 or 1987 hospital specific rates, in the absence of notification to the contrary. Rather, the commenter suggested that an eligible hospital be required to state its choice to be paid on this basis.

Response: We believe that it is more efficient from an administrative standpoint to require a hospital to notify its fiscal intermediary if it chooses not to receive payment based on the (higher) FY 1996 hospital-specific rate. The only time that a hospital that is eligible for rebasing will be paid based on its 1996 amount is if that amount is higher than either the 1982 or 1987 hospital specific rates and also higher than the Federal rate. We do not know why a hospital would elect not to receive payment based on the highest of its possible choices. Therefore, rather than requiring a hospital to provide written notification to the fiscal intermediary when its FY 1996 hospital-specific rate is higher than its FY 1982 and FY 1987 hospital-specific rates, we deem the hospital to have made an election to be paid based on the FY 1996 hospital-specific rate, unless it notifies its fiscal intermediary otherwise.

Comment: Two commenters requested a clarification as to the proposed timing for a hospital that is eligible for payment based on its 1996 hospital-specific rate to notify its intermediary of its intention not to elect payment based on this rate.

Response: We agree that in the proposed rule the preamble and the proposed regulation language were contradictory. Accordingly, we are revising § 412.77(a)(2) to require that an eligible hospital must notify its intermediary of its intent not to elect payment based on its FY 1996 hospital-specific rate prior to the end of the cost reporting period for which the payments would otherwise be made. This schedule will allow hospitals an opportunity to consider their options.

C. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center (RRC). For discharges occurring before October 1, 1994, RRCs received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts were the same for discharges beginning with that date, RRCs would continue to receive special treatment under both the DSH payment adjustment and the criteria for geographic reclassification.

As discussed in 62 FR 45999 and 63 FR 26317, under section 4202 of Public Law 105–33, a hospital that was classified as an RRC for FY 1991 is to be classified as an RRC for FY 1998 and later years so long as that hospital continued to be located in a rural area and did not voluntarily terminate its RRC status. Otherwise, a hospital seeking RRC status must satisfy applicable criteria. One of the criteria under which a hospital may qualify as an RRC is to have 275 or more beds available for use. A rural hospital that does not meet the bed size requirement can qualify as an RRC if the hospital meets two mandatory prerequisites (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume). With respect to the two mandatory prerequisites, a hospital may be classified as an RRC if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 per year, or if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining RRC status. The methodology we use to determine the national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national case-mix index value for FY 2001 in the May 5 proposed rule included all urban hospitals nationwide, and the regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These values were based on discharges occurring during FY 1999 (October 1, 1998 through September 30, 1999) and include bills posted to HCFA's records through March 2000.

We proposed that, in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial RRC status for cost reporting periods beginning on or after October 1, 2000, must have a case-mix index value for FY 1999 that is at least—

- 1.3408; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located. (See the table set forth in the May 5, 2000 proposed rule at 65 FR 26306.)

Based on the latest data available (FY 1999 bills received through March 31, 2000), the median case-mix values by region are set forth in the table below.

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2269
2. Middle Atlantic (PA, NJ, NY)	1.2385
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3113
4. East North Central (IL, IN, MI, OH, WI)	1.2623
5. East South Central (AL, KY, MS, TN)	1.2661
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1822
7. West South Central (AR, LA, OK, TX)	1.2813
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3250
9. Pacific (AK, CA, HI, OR, WA)	1.3036

For the benefit of hospitals seeking to qualify as RRCs or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1999 case-mix index value in Table 3C in section VI. of the Addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining RRC status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, in the May 5 proposed rule, we proposed to update the regional standards. The proposed regional standards were based on discharges for urban hospitals' cost reporting periods that began during FY 1998 (that is, October 1, 1997 through September 30, 1998). That is the latest year for which we have complete discharge data available.

Therefore, we proposed that, in addition to meeting other criteria, a hospital, if it is to qualify for initial RRC status for cost reporting periods beginning on or after October 1, 2000, must have as the number of discharges for its cost reporting period that began during FY 1999 a figure that is at least—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located. (See the table set forth in the May 5, 2000 proposed rule at 65 FR 26307.)

Based on the latest discharge data available for FY 1999, the final median number of discharges for urban hospitals by census region areas are as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6,725
2. Middle Atlantic (PA, NJ, NY)	8,736
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7,911
4. East North Central (IL, IN, MI, OH, WI)	7,661
5. East South Central (AL, KY, MS, TN)	6,883
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5,829
7. West South Central (AR, LA, OK, TX)	5,385
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8,026
9. Pacific (AK, CA, HI, OR, WA)	6,268

We note that the number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criterion for all hospitals.

We reiterate that an osteopathic hospital, if it is to qualify for RRC status for cost reporting periods beginning on or after October 1, 2000, must have at least 3,000 discharges for its cost reporting period that began during FY 1999.

We did not receive any comments on the RRC criteria.

D. Indirect Medical Education (IME) Adjustment(§ 412.105)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment to reflect the higher indirect operating costs associated with GME. The regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105.

Section 111 of Public Law 106–113 modified the transition for the IME adjustment that was established by Public Law 105–33. We are publishing these changes in a separate interim final rule with comment period that appears elsewhere in this issue of the **Federal Register**. However, for discharges occurring during FY 2001, the adjustment formula equation used to calculate the IME adjustment factor is $1.54 \times [(1+r)^{.405} - 1]$. (The variable r represents the hospital's resident-to-bed ratio.)

In the proposed rule, we inadvertently omitted the revised transition for the IME adjustment for FYs 2002 and thereafter. Specifically, for discharges occurring on or after October 1, 2001, the adjustment formula equation used to calculate the IME adjustment factor is $1.35 \times [(1+r)^{.405} - 1]$. We are adding a new § 412.105(d)(3)(vi) to reflect this change.

In the July 30, 1999 final rule (64 FR 41517), we set forth certain policies that affected payment for both direct and indirect GME. These policies related to adjustments to full-time equivalent (FTE) resident caps for new medical residency programs affecting both direct and indirect GME programs; the adjustment to GME caps for certain hospitals under construction prior to August 5, 1997 (the enactment date of Public Law 105–33) to account for residents in new medical residency training programs; and the temporary adjustment to FTE caps to reflect residents affected by hospital closures. When we amended the regulations under § 413.86 for direct GME, we inadvertently did not make the corresponding changes in § 412.105 for IME. In the May 5 proposed rule, we proposed to make the following conforming changes:

- To amend § 412.105(f)(1)(vii) to provide for an adjustment to the FTE caps for new medical residency programs as specified under § 413.86(g)(6).
- To add a new § 412.105(f)(1)(viii) related to the adjustment to the FTE caps for newly constructed hospitals that sponsor new residency programs in effect on or after January 1, 1995, and on or before August 5, 1997, that either received initial accreditation by the appropriate accrediting body or temporarily trained residents at another hospital(s) until the facility was completed, to conform to the provisions of § 413.86(g)(7).
- To add a new § 412.105(f)(1)(ix) to specify that a hospital may receive a

temporary adjustment to its FTE cap to take into account residents added because of another hospital's closure if the hospital meets the criteria listed under § 413.86(g)(8).

In addition, we proposed to add a cross-reference to "§ 413.86(d)(3)(i) through (v)" in § 412.105(g), and to correct the applicable period in both §§ 412.105(g) and 413.86(d)(3) by revising the phrase "For portions of cost reporting periods beginning on or after January 1, 1998" to read "For portions of cost reporting periods occurring on or after January 1, 1998".

We received one public comment on the proposed changes to the IME regulations.

Comment: One commenter recommended that the temporary adjustment allowed to a hospital's FTE cap under the proposed § 412.105(f)(1)(ix) to account for residents added because of another hospital's closure should be a permanent adjustment to maintain the current level of trainees.

Response: In the proposed rule, we were merely making a conforming change to the IME regulations based on a change in the GME regulations in the July 30, 1999 final rule. As indicated in the July 30, 1999 final rule (65 FR 41522), we continue to believe that, when a hospital assumes the training of additional residents because of another hospital's closure, an adjustment to the hospital's FTE cap should only be available for the period of time necessary to train those displaced residents. At that time we provided for the temporary adjustment because of hospitals' reluctance to accept additional residents from a closed hospital without a temporary adjustment to their caps. We do not believe currently there is justification for a permanent adjustment because of the temporary training provisions for the displaced residents.

E. Payments to DSH Hospitals (§ 412.106)

1. Changes to the DSH Formula

Effective for discharges beginning on or after May 1, 1986, hospitals that treat a disproportionately large number of low-income patients (as defined in section 1886(d)(5)(F) of the Act) receive additional payments through the DSH adjustment. Section 4403(a) of Public Law 105–33 amended section 1886(d)(5)(F) of the Act to reduce the payment a hospital would otherwise receive under the current DSH formula by 1 percent for FY 1998, 2 percent for FY 1999, 3 percent for FY 2000, 4 percent for FY 2001, 5 percent for 2002, and 0 percent for FY 2003 and each subsequent fiscal year. Subsequently, section 112 of Public Law 106–113 modified the amount of the reductions under Public Law 105–33 by changing the reduction to 3 percent for FY 2001 and 4 percent for FY 2002. The reduction continues to be 0 percent for FY 2003 and each subsequent fiscal year. In the May 5 proposed rule, we proposed to revise § 412.106(e) to reflect the changes in the statute made by Public Law 106–113.

Section 112 of Public Law 106–113 also directs the Secretary to require prospective payment system hospitals to submit data on the costs incurred by the hospitals for providing inpatient and outpatient hospital services for which the hospitals are not compensated, including non-Medicare bad debt, charity care, and charges for medical and indigent care to the Secretary as part of hospitals' cost reports. These data are required for cost reporting periods beginning on or after October 1, 2001. We will be revising our instructions to hospitals for cost reports for FY 2002 to capture these data.

Comment: Several commenters provided positive reinforcement concerning the impending collection of uncompensated care data via offers of assistance in this effort. Also, commenters made the point that, at this time, uncompensated care does not have a common national definition.

Response: We are aware that uncompensated care does not currently have a common national definition. One of our tasks will be to define the reporting parameters so that the data will be reported in a uniform manner. This is the main reason that we have not sought to use uncompensated care data in the Medicare DSH adjustment calculation in the past. We will keep these comments in mind as we proceed.

Comment: One commenter was concerned about the pending publication of the Report to Congress on the Medicare DSH formula. This commenter asked HCFA to complement its data collection efforts by issuing the report as required by Public Law 105–33.

Response: We are in the process of completing this report and intend to submit it to Congress in the near future.

2. DSH Adjustment Calculation: Change in the Treatment of Certain Medicaid Patient Days in States With Section 1115 Expansion Waivers

On January 20, 2000, we published in the **Federal Register** an interim final rule with comment period (65 FR 3136) to implement a change in the Medicare DSH adjustment calculation policy in reference to section 1115 expansion waiver days. That interim final rule set forth criteria to use in calculating the Medicare DSH adjustment for hospitals for purposes of payment under the prospective payment system.

Under section 1886(d)(5)(F) of the Act, an adjustment is made to the hospital's inpatient prospective payment system payment for serving a disproportionate share of low-income or Medicaid and Medicare patients. The size of a hospital's Medicare DSH adjustment is based on the sum of the percentage of patient days attributable to patients eligible for both Medicare Part A and Supplemental Security Income (SSI) and the percentage of patient days attributable to patients eligible for Medicaid but not Medicare Part A.

Some States provide medical assistance (Medicaid) under a demonstration project (also referred to as a section 1115 waiver).

Under policy in existence before the January 20, 2000 interim final rule, hospitals were to include in the Medicare DSH calculation only those days for populations under the section 1115 waiver who were or could have been made eligible under a State Medicaid plan. Patient days of the expanded eligibility groups, however, were not to be included in the Medicare DSH calculation.

In the January 20, 2000 interim final rule with comment period, we revised the policy, effective with discharges occurring on or after January 20, 2000, to allow hospitals to include the patient days of all populations eligible for Title XIX matching payments in a State's section 1115 waiver in calculating the hospital's Medicare DSH adjustment. This policy was reflected in a revision to § 412.106 of the regulations.

We received 11 public comments on the inclusion of Section 1115 waiver days in the Medicare disproportionate share adjustment calculation.

Comment: Several commenters were concerned with the inclusion in the January 20, 2000 interim final rule with comment period of expansion waiver days in the Medicaid portion of the Medicare DSH adjustment calculation. States without a Medicaid expansion waiver in place believed that States that did have a Medicaid expansion waiver in place received an unfair advantage. In addition, comments from Pennsylvania hospitals supported the continued inclusion of general assistance days in the Medicaid portion of the Medicare DSH adjustment calculation as well as expansion waiver days. Finally, some commenters urged HCFA to revise the

Medicare DSH adjustment calculation to include charity care days.

Response: While we initially determined that States under a Medicaid expansion waiver could not include those expansion waiver days as part of the Medicare DSH adjustment calculation, we have since consulted extensively with Medicaid staff and have determined that section 1115 expansion waiver days are utilized by patients whose care is considered to be an approved expenditure under Title XIX. While this does advantage States that have a section 1115 expansion waiver in place, these days are considered to be Title XIX days by Medicaid standards.

Some States operate under a section 1115 waiver without an expansion (for example, Arizona). The days that are utilized by patients under the section 1115 waiver are already part of the Medicaid portion of the Medicare DSH adjustment calculation because the section 1115 waiver includes patients who otherwise would have been eligible for Medicaid Title XIX.

General assistance days are days for patients covered under a State-only or county-only general assistance program, whether or not any payment is available for health care services under the program. Charity care days are those days that are utilized by patients who cannot afford to pay and whose care is not covered or paid by any health insurance program. While we recognize that these days may be included in the calculation of a State's Medicaid DSH payments, these patients are not Medicaid-eligible under the State plan and are not considered Title XIX beneficiaries. Therefore, Pennsylvania, and other States that have erroneously included these days in the Medicare disproportionate share adjustment calculation in the past, will be precluded from including such days in the future. We would like to point out that these States were held harmless from adverse action in this matter for any cost reporting period beginning prior to December 31, 1999. We are in the process of preparing a Report to Congress on the Medicare DSH adjustment calculation which presents various options for calculating the adjustment.

Comment: One commenter was concerned about the inclusion of days in the Medicaid portion of the Medicare DSH adjustment calculation for additional States that are approved for expansion waivers in the future. Also, this commenter questioned whether or not the expenditures related to the expansion waiver days for Medicare DSH would be considered in the budget neutrality evaluation prior to approval of the expansion waiver application.

Response: As stated in the January 20, 2000 interim final rule with comment period, days utilized under section 1115 expansion waivers will be included in the Medicaid portion of the Medicare DSH adjustment calculation. As a result, the days utilized under any approved section 1115 expansion waiver in the future would be included in this calculation. However, the State will not be held accountable for the expenditures associated with Medicare DSH in the budget neutrality test for the section 1115 expansion waiver, as those payments are made from the Medicare program, not the Medicaid program.

Comment: Several commenters were concerned that the inclusion of section 1115 expansion waiver days was effective on January 20, 2000, rather than on January 1, 2000. These same commenters pointed out that the hold harmless provisions of Program Memorandum A–99–62 (December 1999) concern hospitals whose cost reporting periods begin on or prior to December 31, 1999. Therefore, many hospitals may be paid differently during different periods of the same cost report.

Response: We understand that discharges prior to January 20, 2000 will be handled one way, and discharges as of January 20, 2000 may be paid differently. While we can enforce an existing policy for a previous time period, we do not believe we can retroactively institute new policy.

F. Medicare Geographic Classification Review Board (§§ 412.256 and 412.276)

With the creation of the Medicare Geographic Classification Review Board (MGCRB), beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in Subpart L of Part 412 (§ 412.230 *et seq.*) set forth criteria and conditions for redesignations from rural to urban, rural to rural, or from an urban area to another urban area with special rules for SCHs and RRCs.

1. Provisions of Public Law 106–113

Section 401 of Public Law 106–113 amended section 1886(d)(8) of the Act by adding subparagraph (E), which creates a mechanism, separate and apart from the MGCRB, permitting an urban hospital to apply to the Secretary to be treated as being located in the rural area of the State in which the hospital is located. The statute directs the Secretary to treat a qualifying hospital as being located in a rural area for purposes of provisions under section 1886(d) of the Act. In addition, section 401 of Public Law 106–113 went on to provide for such reclassifications from urban to rural for purposes of Medicare payments to outpatient departments and to hospitals that would qualify to become critical access hospitals.

Regulations implementing section 1886(d)(8)(E) of the Act are included in an interim final rule with comment period implementing certain provisions of Public Law 106–111 published elsewhere in this issue of the **Federal Register**. The statutory language of section 1886(d)(8)(E) of the Act does not address the issue of interactions between changes in classification under section 1886(d)(8)(E) of the Act and the MGCRB reclassification process under section 1886(d)(10) of the Act. The Secretary has extremely broad authority under section 1886(d)(10) of the Act to establish criteria for reclassification under the MGCRB process. Section 401 of Public Law 106–113 does not amend section 1886(d)(10) of the Act to limit the agency's discretion under the provision in any way, nor does section 1886(d)(8)(E) of the Act (as added by section 401) refer to section 1886(d)(10) of the Act. However, we note that in the Conference Report accompanying Public Law 106–113, the language discussing the House bill (H.R. 3075, as passed) indicates that: "[H]ospitals qualifying under this section shall be eligible to qualify for all categories and designations available to rural hospitals, including sole community, Medicare dependent, critical access, and referral centers. Additionally, qualifying hospitals shall be eligible to apply to the Medicare Geographic Reclassification Review Board for geographic reclassification to another area".

In the May 5, 2000 proposed rule, we indicated that we are concerned that section 1886(d)(8)(E) might create an opportunity for some urban hospitals to take advantage of the MGCRB process by first seeking to be reclassified as rural under section 1886(d)(8)(E) (and receiving the benefits afforded to rural hospitals) and in turn seek reclassification through the MGCRB back to the urban area for purposes of their standardized amount and wage index and thus also receive the higher payments that might result from being treated as being located in an urban area. That is, we were concerned that

some hospitals might inappropriately seek to be treated as being located in a rural area for some purposes and as being located in an urban area for other purposes. In light of the Conference Report language noted above discussing the House bill and what appears to be the potential for inappropriately inconsistent treatment of the same hospital on the other hand, in the May 5 proposed rule, we solicited public comment on this issue, and indicated that we might impose a limitation on such MGCRB reclassifications in this final rule for FY 2001, if such action appears warranted. We also sought specific comments on how such a limitation, if any, should be imposed and provided several examples and alternatives.

We received seven public comments on the interaction of urban to rural reclassification under section 1886(d)(8)(E) and reclassification under the MGCRB. Several additional comments were received regarding specific aspects of implementation of section 1886(d)(8)(E) of the Act (added by section 401 of Public Law 106–113). These issues are addressed in the interim final rule with comment period, published elsewhere in this issue of the **Federal Register**, that implements certain provisions of Public Law 106–113.

Comment: Several of our commenters urged HCFA to place no restrictions on access to MGCRB reclassification for urban hospitals that have elected to reclassify to rural under section 1886(d)(8)(E) of the Act, citing the Conference Report as evidence of the Congressional intent in enacting this provision. These commenters argued that these now-rural hospitals should receive the same treatment as geographically rural hospitals, noting that current Medicare policy permits geographically rural hospitals to reclassify, under the MGCRB, to urban areas for their wage index or standard payment amounts, or both. This means that geographically rural hospitals can take advantage of both rural as well as urban payment amounts. This same option, these commenters asserted, should be available to urban hospitals that petition for reclassification under section 1886(d)(8)(E).

Response: Under section 1886(d)(8)(E) of the Act, as added by section 401 of the Public Law 106–113, a hospital located in an urban area may file an application to be treated as being located in a rural area for purposes of payment under section 1886(d) of the Act. The issue here is whether a hospital that has been reclassified from an urban area to a rural area under section 1886(d)(8)(E) of the Act should be permitted to subsequently be reclassified under the MGCRB process from the rural area to another area. As discussed below, we believe that, for purposes of the MGCRB process, it is appropriate to distinguish between hospitals that are reclassified as rural under section 1886(d)(8)(E) of the Act and hospitals that are geographically rural. However, in light of our understanding of the intent underlying the language in the Conference Report for Public Law 106–113, we are revising a policy relating to RRCs so that certain urban hospitals that are not RRCs under current policy will be granted RRC status and can receive special treatment under the MGCRB process.

Section 1886(d)(8)(E) of the Act, as added by section 401 of Public Law 106–113, provides that, for purposes of section 1886(d) of the Act, if a hospital files an application and meets applicable criteria, the Secretary "shall treat the hospital as being located in the rural area * * * of the State in which the hospital is located." As discussed above and in the proposed rule, a description of the House bill in the Conference Report for Public Law 106–113 indicates that hospitals reclassified as rural under section 1886(d)(8)(E) of the Act would be "eligible to apply" to the MGCRB for reclassification under the MGCRB process. Significantly, however, the terms of section 1886(d)(8)(E) of the Act do not refer to section 1886(d)(10) of the Act (which addresses the MGCRB reclassification process), and section 401 of Public Law 106–113 did not amend section 1886(d)(10) of the Act to limit the agency's discretion under that provision in any way. Put another way, section 1886(d)(8)(E) of the Act does not contain any language indicating that hospitals treated as rural under that provision can subsequently be treated as urban under section 1886(d)(10) of the Act, and section 1886(d)(10) does not contain language indicating that the Secretary must permit reclassification to an urban area of hospitals treated as rural under section 1886(d)(8)(E) of the Act. Thus, under the statute, the Secretary has broad discretion to determine when MGCRB reclassification is appropriate and, in enacting section 401 of Public Law 106–113, Congress did not enact any statutory amendments to limit that discretion in any way.

The statutory language of section 1886(d)(8)(E) of the Act directs the Secretary to treat qualifying hospitals, for purposes of section 1886(d) of the Act, "as being located in the rural area * * * of the State in which the hospital is located". Section 1886(d) of the Act encompasses the hospital wage index and the standardized amount. Consistent with the statutory language, we are providing that a hospital reclassified as rural under section 1886(d)(8)(E) of the Act will be treated as being located in a rural area for purposes of section 1886(d) of the Act, and cannot subsequently be reclassified under the MGCRB process to an urban area (in order to be treated as being located in an urban area for certain purposes under section 1886(d) of the Act).

This policy is consistent not only with the statutory language but also with the policy considerations underlying the MGCRB process. The MGCRB process permits a hospital to be reclassified from one geographic area to another if it is significantly disadvantaged by its geographic location and would be paid more appropriately if it were reclassified to another area. We believe that it would be illogical to permit a hospital that applied to be reclassified from urban to rural under section 1886(d)(8)(E) of the Act because it was disadvantaged as an urban hospital to then utilize a process that was established to enable hospitals significantly disadvantaged by their rural or small urban location to reclassify to another urban location. If an urban hospital applies under section 1886(d)(8)(E) of the Act in order to be treated as being located in a rural area, then it would be anomalous at best for the urban hospital to subsequently claim that it is significantly disadvantaged by the rural status for which it applied and should be reclassified to an urban area.

Furthermore, permitting hospitals the option of seeking rural reclassification under section 1886(d)(8)(E) of the Act for certain payment advantages, coupled with the ability to pursue a subsequent MGCRB reclassification back to an urban area, could have implications beyond those originally envisioned under Public Law 106–113. In particular, we are concerned about the potential interface between rural reclassifications under section 401 and section 407(b)(2) of Public Law 106–113, which authorizes a 30-percent expansion in a rural hospital's resident full-time equivalent count for purposes of Medicare payment for the indirect costs of medical education (IME) under section 1886(d)(5)(B) of the Act. (Reclassification from urban to rural under section 1886(d)(8)(E) of the Act can affect IME payments to a hospital, which are made under section 1886(d)(5)(B) of the Act, but not payments for the direct costs of GME,

which are made under section 1886(h) of the Act.)

Congress clearly intended hospitals that become rural under section 1886(d)(8)(E) of the Act to receive some benefit as a result. For example, some hospitals currently located in very large urban counties are in fact fairly small, isolated hospitals. Some of these hospitals will now be able to be designated a rural hospital and become eligible to be designated a critical access hospital.

In addition, one of the criteria under section 1886(d)(8)(E) of the Act is that the hospital would qualify as an SCH or an RRC if it were located in a rural area. An SCH would be eligible to be paid on the basis of the higher of its hospital-specific rate or the Federal rate. On the other hand, the only benefit under section 1886(d) of the Act for an urban hospital to become an RRC would be waiver of the proximity requirements that are otherwise applicable under the MGCRB process, as set forth in § 412.230(a)(3).

We agree with the commenters that Congress contemplated that hospitals might seek to be reclassified as rural under section 1886(d)(E) of the Act in order to become RRCs so that the hospital would be exempt from the MGCRB proximity requirement and could be reclassified by the MGCRB to another urban area. -

Therefore, we sought a policy approach that would appropriately account for our concern that these urban to rural redesignations not be utilized inappropriately, but would benefit hospitals seeking to reclassify under the MGCRB process by achieving RRC status. We decided to reconsider our application of section 4202(b) of Public Law 105–33, which states, in part, "Any hospital classified as a rural referral center by the Secretary * * * for FY 1991 shall be classified as such a rural referral center for fiscal year 1998 and each subsequent fiscal year." In the August 29, 1997 final rule with comment period, we reinstated RRC status for all hospitals that lost the status due to triennial review or MGCRB reclassification, but not to hospitals that lost RRC status because they were now urban for all purposes because of the OMB designation of their geographic area as urban (62 FR 45999). Our rationale at that time for not reinstating RRC status for these hospitals was that a hospital had to be rural in order to qualify for reinstatement as an RRC, and these hospitals were no longer located in rural areas.

We are aware of several specific hospitals that were RRCs for FY 1991, but subsequently lost their status when the county in which they were located became urban, and have expressed their wish to be redesignated as an RRC in order to be eligible to reclassify. We believe that the language in the Conference Report accompanying Public Law 106–113 was intended to address these hospitals; that is, we believe that the intent underlying this language (a description of the House bill) was to allow certain urban hospitals to become RRCs (upon reclassifying from urban to rural under section 1886(d)(8)(E) of the Act) and then reclassify under the MGCRB process (as RRCs, the hospitals would be exempt from the MGCRB's proximity requirements). Accordingly, in light of section 1886(d)(8)(E) of the Act and the language in the Conference Report, we have decided to revisit our policy decision on section 4202(b) of Public Law 105–33. Effective as of October 1, 2000, hospitals located in what is now an urban area, if they were ever an RRC, will be reinstated to RRC status under section 4202(b) of Public Law 105–33. (In the August 27, 1997 final rule, we indicated that we recognized there were hospitals that qualified for RRC status after 1991 that lost their status in a subsequent year due to MGCRB reclassification. Therefore, we determined that we would permit any hospital that qualified as an RRC at any point that had lost its RRC status as a result of MGCRB reclassification to be reinstated, regardless of whether it was designated an RRC in 1991. Similarly, for purposes of this policy, we will permit hospitals that previously qualified as an RRC and that lost their status due to OMB redesignation of the county in which they are located from rural to urban to be reinstated as an RRC.) Such hospitals would benefit from the waiver of the MGCRB's proximity requirements, as long as they are designated as RRCs at the time the MGCRB acts on their application.

We are not permitting hospitals redesignated as rural under section 1886(d)(8)(E) of the Act to be eligible for subsequent reclassification by the MGCRB, and are revising the regulations governing MGCRB reclassifications (§ 412.230) accordingly.

Comment: Several commenters suggested alternative policy options regarding the interaction of the distinct reclassification provisions found under sections 1886(d)(8)(E) and 1886(d)(10) of the Act. First, it was recommended that HCFA formulate a policy that would allow urban hospitals reclassifying to rural under section 1886(d)(8)(E) of the Act the same access to urban reclassification under the MGCRB process that the law makes available to geographically rural hospitals. One commenter posits two possible limitations on MGCRB reclassifications for these now-rural hospitals. One possibility is that an urban hospital that reclassifies to rural under section 1886(d)(8)(E) of the Act be permitted to reclassify only to another MSA, but be precluded from reclassifying back to the MSA in which it is situated. Second, the commenter suggested that reclassifications under the MGCRB process be restricted solely to the wage index for formerly urban hospitals that have elected to reclassify to rural under section 1886(d)(8)(E) of the Act.

Response: Although the alternatives suggested by the commenters would limit to some degree the possible inappropriate incentives for hospitals to become rural under section 1886(d)(8)(E) of the Act, we are concerned that they would still allow these hospitals to receive inappropriate payments, albeit on a more limited basis. Therefore, we have not selected these alternative approaches.

Comment: One health system argued that preventing an urban hospital that has reclassified to rural under section 1886(d)(8)(E) of the Act from reclassifying through restricting the MGCRB process would reduce the number of hospitals reclassifying as rural under section 1886(d)(8)(E) of the Act. The commenter further noted that even if we permitted an urban hospital that reclassified to a rural area under section 1886(d)(8)(E) of the Act to reclassify through the MGCRB process, the hospital would suffer financial losses during the period between when it was rural for all payment purposes and its reclassification back to urban.

Response: We wish to emphasize that urban to rural reclassification under section 1886(d)(8)(E) of the Act is entirely voluntary. Each hospital anticipating that it may qualify under this provision should determine the impact of Medicare payment policies if it were to reclassify. As discussed above, we believe that our policies here are consistent with the Secretary's broad authority under section 1886(d)(10) of the Act, the statutory language in section 1886(d)(8)(E) of the Act, as well as our understanding of the intent underlying the description of the House bill in the Conference Report.

2. Revised Thresholds Applicable to Rural Hospitals for Wage Index Reclassifications

Existing §§ 412.230(e)(1)(iii) and (e)(1)(iv) provide that hospitals may obtain reclassification to another area for purposes of calculating and applying

the wage index if the hospital's average hourly wages are at least 108 percent of the average hourly wages in the area where it is physically located, and at least 84 percent of the average hourly wages in a proximate area to which the hospital seeks reclassification. These thresholds apply equally to urban and rural hospitals seeking reclassification.

Historically, the financial performance of rural hospitals under the prospective payment system has lagged behind that of urban hospitals. Despite an overall increase in recent years of Medicare inpatient operating profit margins, some rural hospitals continue to struggle financially (as measured by Medicare inpatient operating prospective payment system payments minus costs, divided by payments). For example, during FY 1997, while the national average hospital margin was 15.1 percent, it was 8.9 percent for rural hospitals. In addition, approximately one-third of rural hospitals continue to experience negative Medicare inpatient margins despite this relatively high average margin.

In response to the lower margins of rural hospitals and the potential for a negative impact on beneficiaries' access to care if these hospitals were to close, we considered potential administrative changes that could help improve payments for rural hospitals. One approach in that regard would be to make it easier for rural hospitals to reclassify for purposes of receiving a higher wage index. The current thresholds for applying for wage index reclassification are based on our previous analysis showing the average hospital wage as a percentage of its area wage was 96 percent, and one standard deviation from that average was equal to 12 percentage points (see the June 4, 1992 proposed rule (57 FR 23635) and the September 1, 1992 final rule (57 FR 39770)). Because rural hospitals' financial performance has consistently remained below that of urban hospitals, we now believe that rural hospitals merit special dispensation with respect to qualifying for reclassification for purposes of the wage index. Therefore, we proposed to change those average wage threshold percentages so more rural hospitals can be reclassified. Specifically, we proposed to lower the upper threshold for rural hospitals to 106 percent and the lower threshold to 82 percent. The thresholds for urban hospitals seeking reclassification for purposes of the wage index would be unchanged. We note that rural hospitals comprised nearly 90 percent of FY 2000 wage index reclassifications. Under the proposal, beginning October 1, 2000, rural hospitals would be able to reclassify for the wage index if, among other things, their average hourly wages are at least 106 percent of the area in which they are physically located, and at least 82 percent of the average hourly wages in the proximate area to which it seeks reclassification.

Although it is difficult to estimate precisely how many additional hospitals might qualify by lowering the thresholds because we do not have data indicating which hospitals meet all of the other reclassification criteria (e.g., proximity), our analysis indicated that, if we were to raise the 108 percent threshold to 109 percent, approximately 20 rural hospitals would no longer qualify. If the upper threshold were to be raised to 110 percent, another 16 hospitals would not qualify. On the other hand, increasing the lower threshold from 84 percent to 85 percent would result in only 2 rural hospitals becoming ineligible to reclassify. Only 1 additional hospital would be affected by raising the threshold to 86 percent. Based on this analysis, we anticipated approximately 50 rural hospitals are likely to benefit from the proposed change.

We believe this proposal, as adopted, achieves an appropriate balance between allowing certain hospitals that are currently just below the thresholds to become eligible for reclassification, while not liberalizing the criteria so much that an excessive number of hospitals begin to reclassify. Because these reclassifications are budget neutral, nonreclassified hospitals' payments are negatively impacted by reclassification.

We believe there are many factors associated with lower margins among rural hospitals. We note that section 410 of Public Law 106–113 requires the Comptroller General of the United States to "conduct a study of the current laws and regulations for geographic reclassification of hospitals to determine whether such reclassification is appropriate for purposes of applying wage indices." In addition, section 411 of Public Law 106–113 requires MedPAC to conduct a study on the adequacy and appropriateness of the special payment categories and methodologies established for rural hospitals. We anticipate that the results of these studies will help identify other areas to help improve payments for rural hospitals, either through reclassifications or other means.

Comment: Commenters were unclear about the effective date for the change in wage index thresholds for rural hospitals applying for reclassification.

Response: The revised thresholds apply to applications submitted to the MGCRB (by September 1, 2000) for reclassification for FY 2002. These revised guidelines do not apply to decisions that have already been issued by the MGCRB for FY 2001.

G. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based on the number of residents trained by the hospital. Section 1886(h) of the Act, as amended by section 4623 of Public Law 105–33, caps the number of residents that hospitals may count for direct GME.

Section 9202 of the Consolidated Omnibus Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272) established a methodology for determining payments to hospitals for the costs of approved GME programs at section 1886(h)(2) of the Act. Section 1886(h)(2) of the Act, as implemented in regulations at § 413.86(e), sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the number of full-time equivalent (FTE) residents working in all areas of the hospital complex (or non-hospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments. In addition, as specified in section 1886(h)(2)(D)(ii) of the Act, for cost reporting periods beginning on or after October 1, 1993, through September 30, 1995, each hospital's PRA for the previous cost reporting period is not adjusted for any FTE residents who are not either a primary care or an obstetrics and gynecology resident. As a result, hospitals with both primary care/obstetrics and gynecology residents and non-primary care residents have two separate PRAs for FY 1994 and, thereafter, one for primary care and one for non-primary care. (Thus, for purposes of this proposed rule, when we refer to a hospital's PRA, this amount is inclusive of any CPI–U adjustments the hospital may have received since the hospital's base-year, including any CPI–U adjustments the hospital may have received because the hospital trains primary care/non-

primary care residents, as specified under existing § 413.86(e)(3)(ii)).

2. Use of National Average Per Resident Amount Methodology in Computing Direct GME Payments

Section 311 of Public Law 106–113 amended section 1886(h)(2) of the Act to establish a methodology for the use of a national average PRA in computing direct GME payments for cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005. Generally, section 311 establishes a "floor" and a "ceiling" based on a locality-adjusted, updated, weighted average PRA. Each hospital's PRA is compared to the floor and ceiling to determine whether its PRA should be revised. Accordingly, in the May 5, 2000 proposed rule, we proposed to implement section 311 by setting forth the prescribed methodology for calculation of the weighted average PRA. We then discussed the proposed steps for determining whether a hospital's PRA will be adjusted based upon the proposed calculated weighted average PRA, in accordance with the methodology specified under section 311 of Public Law 106–113.

We proposed to calculate the weighted average PRA based upon data from hospitals' cost reporting periods ending during FY 1997 (October 1, 1996 through September 30, 1997), as directed by section 311 of Public Law 106–113. We accessed these FY 1997 cost reporting data from the Hospital Cost Report Information System (HCRIS) and also obtained the necessary data for those hospitals that are not included in HCRIS (because they file manual cost reports), from those hospitals' fiscal intermediaries. If a hospital had more than one cost reporting period ending in FY 1997, we proposed to include all of its cost reports ending in FY 1997 in our calculations. However, if a hospital did not have a cost reporting period ending in FY 1997, such as a hospital with a long cost reporting period beginning in FY 1996 and ending in FY 1998, the hospital is excluded from our calculations.

We have slightly revised the weighted average PRA in this final rule because of changes in the data that have come to our attention since the publication of the proposed rule. In the proposed rule, one hospital was excluded from our calculations because it was a new teaching hospital with no established PRA (the first year of training for a new teaching hospital is paid for by Medicare on a cost basis; a PRA is applied in calculating a hospital's payment beginning with the hospital's second year of residency training) even though it did have a cost reporting period ending during FY 1997. In the weighted average calculation in this final rule, we have excluded one more hospital because we learned that this hospital was also a new teaching hospital in FY 1997 with no established PRA. We also have added one hospital to the weighted average calculation because it was inadvertently excluded in the calculation in the proposed rule. In addition, we found that the data of two hospitals that were used in the weighted average calculation in the proposed rule were incorrect, and we have made the corrections for the weighted average calculation in this final rule. The total number of hospitals that we include in our calculation is unchanged from the proposed rule and remains at 1,235. Thirty-five of these hospitals are hospitals with more than one cost report.

In accordance with section 311 of Public Law 106–113, we proposed to calculate the weighted average PRA in the following manner:

Step 1: We determine each hospital's single PRA by adding each hospital's primary care and non-primary care PRAs, weighted by its respective FTEs, and dividing by the sum of the FTEs for primary care and non-primary care residents.

Step 2: We standardize each hospital's single PRA by dividing it by the 1999 geographic adjustment factor (GAF) (which is an average of the three geographic index values (weighted by the national average weight for the work component, practice expense component, and malpractice component)) in accordance with section 1848(e) of the Act and 42 CFR 414.26 (which is used to adjust physician payments for the different wage areas), for the physician fee schedule area in which the hospital is located.

Step 3: We add all the standardized hospital PRAs (as calculated in Step 2), each weighted by hospitals' respective FTEs, and then divide by the total number of FTEs.

Based upon this three-step calculation, we determined the weighted average PRA (for cost reporting periods ending during FY 1997) to be $68,464. (The weighted average PRA calculated for the proposed rule was $68,487.)

For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005 (FY 2001 through FY 2005), the national average PRA is applied using the following three steps:

Step 1: Update the weighted average PRA for inflation. Under section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, the weighted average PRA is updated by the estimated percentage increase in the consumer price index for all urban consumers (CPI–U) during the period beginning with the month that represents the midpoint of the cost reporting periods ending during FY 1997 and ending with the midpoint of the hospital's cost reporting period that begins in FY 2001. Therefore, the weighted average standardized PRA ($68,464) would be updated by the increase in CPI–U for the period beginning with the midpoint of all cost reporting periods for hospitals with cost reporting periods ending during FY 1997 (October 1, 1996), and ending with the midpoint of the individual hospital's cost reporting period that begins during FY 2001.

For example, Hospital A has a calendar year cost reporting period. Thus, for Hospital A, the weighted average PRA is updated from October 1, 1996 to July 1, 2001, because July 1 is the midpoint of its cost reporting period beginning on or after October 1, 2000. Or, for example, if Hospital B has a cost reporting period starting October 1, the weighted average PRA is updated from October 1, 1996 to April 1, 2001, the midpoint of the cost reporting period for Hospital B. Therefore, the starting point for updating the weighted average PRA is the same date for all hospitals (October 1, 1996), but the ending date is different because it is dependent upon the cost reporting period for each hospital.

Step 2: Adjust for locality. In accordance with section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, once the weighted average PRA is updated according to each hospital's cost reporting period, the updated weighted average PRA (the national average PRA) is further adjusted to calculate a locality-adjusted national average PRA for each hospital. This is done by multiplying the updated national average PRA by the 1999 GAF (as specified in the October 31, 1997 **Federal Register** (62 FR 59257)) for the fee schedule area in which the hospital is located.

Step 3: Determine possible revisions to the PRA. For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005, the locality-adjusted national average PRA, as calculated in Step 2, is then compared to the hospital's individual PRA. Based upon the provisions of section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, a hospital's PRA is revised, if appropriate, according to the following:

• *Floor*—For cost reporting periods beginning in FY 2001, to determine which PRAs (primary care and non-primary care separately) are below the 70 percent floor, a hospital's locality-adjusted national average PRA is multiplied by 70 percent. This resulting number is then compared to the hospital's PRA that is updated for inflation to the current cost reporting period. If the hospital's PRA would be less than 70 percent of the locality-adjusted national average PRA, the individual PRA is replaced by 70 percent of the locality-adjusted national average PRA for that cost reporting period and would be updated for inflation in future years by the CPI–U.

We noted that there may be some hospitals with primary care and non-primary care PRAs where both PRAs are replaced by 70 percent of the locality-adjusted national average PRA. In these situations, the hospital would receive identical PRAs; no distinction in PRAs would be made for differences in inflation (because a hospital has both primary care and non-primary care PRAs, each of which is updated as described in § 413.86(e)(3)(ii)) as of cost reporting periods beginning on or after October 1, 2000.

For example, if the FY 2001 locality-adjusted national average PRA for Area X is $100,000, then 70 percent of that amount is $70,000. If, in Area X, Hospital A has a primary care FY 2001 PRA of $69,000 and a non-primary care FY 2001 PRA of $67,000, both of Hospital A's FY 2001 PRAs are replaced by the $70,000 floor. Thus, $70,000 is the amount that would be used to determine Hospital A's direct GME payments for both primary care and non-primary care FTEs in its cost reporting period beginning in FY 2001, and the $70,000 PRA would be updated for inflation by the CPI–U in subsequent years.

• *Ceiling*—For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005 (FY 2001 through FY 2005), a ceiling that is equal to 140 percent of each locality-adjusted national average PRA is calculated and compared to each individual hospital's PRA. If the hospital's PRA is greater than 140 percent of the locality-adjusted national average PRA, the PRA would be adjusted depending on the fiscal year as follows:

a. FY 2001. For cost reporting periods beginning in FY 2001, each hospital's PRA from the preceding cost reporting period (that is, the PRA with which its direct GME payments were made in FY 2000) is compared to the FY 2001 locality-adjusted national average PRA. If the individual hospital's FY 2000 PRA exceeds 140 percent of the FY 2001 locality-adjusted national average PRA, the PRA is frozen at the FY 2000 PRA, and is not updated in FY 2001 by the CPI–U factor, subject to the limitation in section IV.G.2.d. of this preamble.

For example, if the FY 2001 locality-adjusted national average PRA "ceiling" for Area Y is $140,000 (that is, 140 percent of $100,000, the hypothetical locality-adjusted national average PRA), and if, in this area, Hospital B has a FY 2000 PRA of $140,001, then for FY 2001, Hospital B's PRA is frozen at $140,001 and is not updated by the CPI–U for FY 2001.

b. FY 2002. For cost reporting periods beginning in FY 2002, the methodology used to calculate each hospital's individual PRA would be the same as described in section IV.G.2.a. above for FY 2001. Each hospital's PRA from the preceding cost reporting period (that is, the PRA with which its direct GME payments were made in FY 2001) is compared to the FY 2002 locality-adjusted national average PRA. If the individual hospital's FY 2001 PRA exceeds 140 percent of the FY 2002 locality-adjusted national average PRA, the PRA is frozen at the FY 2001 PRA, and is not updated in FY 2002 by the CPI–U factor, subject to the limitation in section IV.G.2.d. of this preamble.

c. FY 2003, FY 2004, and FY 2005. For cost reporting periods beginning in FY 2003, FY 2004, and FY 2005, if the hospital's PRA for the previous cost reporting period is greater than 140 percent of the locality-adjusted national average PRA for that same previous cost reporting period (for example, for the cost reporting period beginning in FY 2003, compare the hospital's PRA from the FY 2002 cost reporting period to the locality-adjusted national average PRA from FY 2002), then, subject to the limitation in section IV.G.2.d. of this preamble, the hospital's PRA is updated in accordance with section 1886(h)(2)(D)(i) of the Act, except that the CPI–U applied is reduced (but not below zero) by 2 percentage points.

For example, for purposes of Hospital A's FY 2003 cost report, Hospital A's PRA for FY 2002 is compared to Hospital A's locality-adjusted national average PRA ceiling for FY 2002. If, in FY 2002, Hospital A's PRA is $100,001 and the FY 2002 locality-adjusted national average PRA ceiling is $100,000, then for FY 2003, Hospital A's PRA is updated with the FY 2003 CPI–U minus 2 percent. If, in this scenario, the CPI–U for FY 2003 is 1.024, Hospital A would update its PRA in FY 2003 by 1.004 (the CPI–U minus 2 percentage points). However, if the CPI–U factor for FY 2003 is 1.01 and subtracting 2 percentage points of 1.01 yields 0.99, the PRA for FY 2003 would not be updated, and would remain $100,001.

We note that, while the language in section 1886(h)(2)(D)(iv)(I) and in section 1886(h)(2)(D)(iv)(II) of the Act (the sections that describe the adjustments to PRAs for hospitals that exceed 140 percent of the locality-adjusted national average PRA) is very similar, the language does differ. Section 1886(h)(2)(D)(iv)(I) of the Act states that for a cost reporting period beginning during FY 2000 or FY 2001, "if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality-adjusted national average per resident amount * * * *for that hospital and period* * * *, the approved FTE resident amount for the period involved shall be the same as the approved FTE resident amount for such preceding cost reporting period." (Emphasis added.) Section 1886(h)(2)(D)(iv)(II) of the Act states that for a cost reporting period beginning during FY 2003, FY 2004, or FY 2005, "if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality-adjusted national average per resident amount * * * *for that hospital and preceding period*, the approved FTE resident amount for the period involved shall be updated * * *." (Emphasis added.) Accordingly, for FYs 2001 and 2002, a hospital's PRA from the previous cost reporting period is compared to the locality-adjusted national average PRA of the current cost reporting period. For FY 2003, FY 2004, or FY 2005, a hospital's PRA from the previous cost reporting period is compared to the locality-adjusted national average PRA from the previous cost reporting period.

d. General rule for hospitals that exceed the ceiling. For cost reporting periods beginning in FY 2001 through FY 2005, if a hospital's PRA exceeds 140 percent of the locality-adjusted national average PRA and it is adjusted under any of the above criteria, the current year PRA cannot be reduced below 140 percent of the locality-adjusted national average PRA.

For example, to determine the PRA of Hospital A, in FY 2003, Hospital A had a FY 2002 PRA of $100,001 and the FY 2002 locality-adjusted national average PRA ceiling is $100,000. For FY 2003, applying an update of the CPI–U factor minus 2 percentage points (for example, 1.024 − .02 = 1.004 would yield an updated PRA of $100,401) while the locality-adjusted national average PRA (before calculation of the ceiling) is

updated for FY 2003 with the full CPI–U factor (1.024) so that the ceiling of $100,000 is now increased to $102,400 (that is, $100,000 x 1.024 = $102,400). Therefore, applying the adjustment would result in a PRA of $100,401, which is under the ceiling of $102,400 for FY 2003. In this situation, for purposes of the FY 2003 cost report, Hospital A's PRA equals $102,400.

We note that if the hospital's PRA does not exceed 140 percent of the locality-adjusted national average PRA, the PRA is updated by the CPI–U for the respective fiscal year. If a hospital's PRA is updated by the CPI–U because it is less than 140 percent of the locality-adjusted national average PRA for a respective fiscal year, and once updated, the PRA exceeds the 140 percent ceiling for the respective fiscal year, the updated PRA would still be used to calculate the hospital's direct GME payments. Whether a hospital's PRA exceeds the ceiling is determined before the application of the update factors; if a hospital's PRA exceeds the ceiling only because of the application of the update factors, the hospital's PRA would retain the CPI–U factors.

For example, if, in FY 2001, the locality-adjusted national average PRA ceiling for Area Y is $140,000, and if, in this area, Hospital B has a FY 2000 PRA of $139,000, then for FY 2001, Hospital B's PRA is updated for inflation for FY 2001 because the PRA is below the ceiling. However, once the update factors are applied, Hospital B's PRA is now $142,000 (that is, above the $140,000 ceiling). In this scenario, Hospital B's inflated PRA would be used to calculate its direct GME payments because Hospital B has only exceeded the ceiling after the application of the inflation factors.

- *PRAs greater than or equal to the floor and less than or equal to the ceiling.* For cost reporting periods beginning in FY 2001 through FY 2005, if a hospital's PRA is greater than or equal to 70 percent and less than or equal to 140 percent of the locality-adjusted national average PRA, the hospital's PRA is updated using the existing methodology specified in § 413.86(e)(3)(i).

For cost reporting periods beginning in FY 2006 and thereafter, a hospital's PRA for its preceding cost reporting period would be updated using the existing methodology specified in § 413.86(e)(3)(i).

We proposed to redesignate the existing § 413.86(e)(4) as § 413.86(e)(5) and add the rules implementing section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, in the vacated § 413.86(e)(4). Because we proposed to apply the methodology for updating the PRA for inflation that is described in existing § 413.86(e)(3), we also proposed to amend § 413.86(e)(3) to make those rules applicable to the cost reporting periods (FY 2001 through FY 2005) specified in the proposed § 413.86(e)(4), and in subsequent cost reporting periods.

In addition, we proposed to make a conforming change by amending proposed redesignated § 413.86(e)(5) to account for situations in which hospitals do not have a 1984 base period and establish a PRA in a cost reporting period beginning on or after October 1, 2000. We believe there are two factors to consider when a new teaching hospital establishes its PRA under proposed redesignated § 413.86(e)(5). First, for example, when calculating the weighted mean value of PRAs of hospitals located in the same geographic area or the weighted mean of the PRAs in the hospital's census region (as specified in § 412.62(f)(1)(i)), the hospitals' PRAs used to calculate the weighted mean values are subject to the provisions of proposed § 413.86(e)(4), the national average PRA methodology. Second, the resulting PRA established under proposed redesignated § 413.86(e)(5) also would be subject to the national average PRA methodology specified in proposed § 413.86(e)(4).

We also proposed to make a clarifying amendment to the proposed redesignated § 413.86(e)(5)(i)(B) to account for an oversight in the regulations text when we amended our regulations on August 29, 1997 (62 FR 46004). In the preamble of the August 29, 1997 final rule, in setting forth our policy on the determination of per resident amounts for hospitals that did not have residents in the 1984 GME base period, we stated that we would use a "weighted" average of the per resident amounts for hospitals located in the same geographic area. However, we inadvertently did not include a specific reference to "weighted" in the language of the regulation text. Therefore, we are proposing to specify that the "weighted mean value" of per resident amounts of hospitals located in the same geographic wage area is used for determining the base period for certain hospitals for cost reporting periods beginning in the same fiscal years.

We received two public comments on the GME provisions included in the proposed rule.

Comment: One commenter supported the implementation of section 311 of Public Law 106–113. Another commenter suggested that there is ambiguity in our volunteer physician policy regarding the rotation of residents to nonhospital sites. The commenter requested that we explicitly state that, so long as the other criteria under the nonhospital policy are met, hospitals may receive direct GME payments for residents training in nonhospital sites when the hospitals do not incur supervisory costs, if the written agreement, which is signed by both the hospital and nonhospital site, indicates that the supervisory physician has agreed to volunteer his or her time in supervising activities.

Response: We did not propose to make any revisions to our policy regarding training residents in nonhospital sites. Any changes in policy regarding an adjustment for training at nonhospital sites would need to go through the notice and comment procedures. We will consider the merits of the commenter's recommendation for a change in policy for a future proposed rulemaking.

H. Outliers: Miscellaneous Change

Under the provisions of section 1886(d)(5)(A)(i) of the Act, the Secretary does not pay for day outliers for discharges from hospitals paid under the prospective payment systems that occur after September 30, 1997. In the May 5 proposed rule, we proposed to make a conforming change to § 412.2(a) by deleting the reference to an additional payment for both inpatient operating and inpatient capital-related costs for cases that have an atypically long length of stay. We did not receive any comments on this proposal and are adopting the change as final.

V. The Prospective Payment System for Capital-Related Costs: The Last Year of the Transition Period

Since FY 2001 is the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs, for the readers' benefit, we are providing a summary of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals, and the policy for providing exceptions payments during the transition period.

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in the August 30, 1991 final rule (56 FR 43409), in which we

established a 10-year transition period to change the payment methodology for Medicare inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

The 10-year transition period established to phase in the prospective payment system for capital-related costs is effective for discharges occurring on or after October 1, 1991 (FY 1992) through discharges occurring on or before September 30, 2001. For FY 2001, hospitals paid under the fully prospective transition period methodology will be paid 100 percent of the Federal rate and zero percent of their hospital-specific rate, while hospitals paid under the hold-harmless transition period methodology will be paid 85 percent of their allowable old capital costs (100 percent for sole community hospitals) plus a payment for new capital costs based on the Federal rate. Fiscal year 2001 is the final year of the capital transition period and, therefore, the last fiscal year for which a portion of a hold-harmless hospital's capital costs per discharge will be paid on a cost basis (except for new hospitals). In the proposed rule, we stated that since fully prospective hospitals will be paid based on 100 percent of the Federal rate and zero percent of their hospital-specific rate, we did not determine a proposed hospital-specific rate update for FY 2001 in section IV of the Addendum of the proposed rule. However, it has come to our attention that an update to the hospital-specific rate is necessary on October 1, 2000, for hospitals with cost reporting periods that do not coincide with the Federal fiscal year. Therefore, the hospital-specific rate update for FY 2001 is shown in section IV of the Addendum of this final rule. For cost reporting periods beginning on or after October 1, 2001 (FY 2002), payment for capital-related costs will be determined based solely on the capital standard Federal rate. Hospitals that were defined as "new" for the purposes of capital payments during the transition period (§ 412.30(b)) will continue to be paid according to the applicable payment methodology outlined in § 412.324.

Generally, during the transition period, inpatient capital-related costs are paid on a per discharge basis, and the amount of payment depends on the relationship between the hospital-specific rate and the Federal rate during the hospital's base year. A hospital with a base year hospital-specific rate lower than the Federal rate is paid under the fully prospective payment methodology during the transition period. This method is based on a dynamic blend percentage of the hospital's hospital-specific rate and the applicable Federal rate for each year during the transition period. A hospital with a base period hospital-specific rate greater than the Federal rate is paid under the hold-harmless payment methodology during the transition period. A hospital paid under the hold-harmless payment methodology receives the higher of (1) a blended payment of 85 percent of reasonable cost for old capital plus an amount for new capital based on a portion of the Federal rate or (2) a payment based on 100 percent of the adjusted Federal rate. The amount recognized as old capital is generally limited to the allowable Medicare capital-related costs that were in use for patient care as of December 31, 1990. Under limited circumstances, capital-related costs for assets obligated as of December 31, 1990, but put in use for patient care after December 31, 1990, also may be recognized as old capital if certain conditions are met. These costs are known as obligated capital costs. New capital costs are generally defined as allowable Medicare capital-related costs for assets put in use for patient care after December 31, 1990. Beginning in FY 2001, at the conclusion of the transition period for the capital prospective payment system, capital payments will be based solely on the Federal rate for the vast majority of hospitals.

During the transition period, new hospitals are exempt from the prospective payment system for capital-related costs for their first 2 years of operation and are paid 85 percent of their reasonable cost during that period. The hospital's first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months) beginning at least 1 year after the hospital accepts its first patient serves as the hospital's base period. Those base year costs qualify as old capital and are used to establish its hospital-specific rate used to determine its payment methodology under the capital prospective payment system. Effective with the third year of operation, the hospital is paid under either the fully prospective methodology or the hold-harmless methodology. If the fully prospective methodology is applicable, the hospital is paid using the appropriate transition blend of its hospital-specific rate and the Federal rate for that fiscal year until the conclusion of the transition period, at which time the hospital will be paid based on 100 percent of the Federal rate. If the hold-harmless methodology is applicable, the hospital will receive hold-harmless payment for assets in use during the base period for 8 years, which may extend beyond the transition period.

The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG Weight) × (GAF) × (Large Urban Add-on, if applicable) ×
(COLA Adjustment for Hospitals Located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor).

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs for qualifying classes of hospitals. For up to 10 years after the conclusion of the transition period, a hospital may also receive an additional payment under a special exceptions process if certain qualifying criteria are met and its total inpatient capital-related payments are less than the 70 percent minimum percentage of its allowable Medicare inpatient capital-related costs.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, under amendments to the Act enacted by section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the

operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital-related costs.

In the August 30, 1991 final rule, we established a capital exceptions policy, which provides for exceptions payments during the transition period (§ 412.348). Section 412.348 provides that, during the transition period, a hospital may receive additional payment under an exceptions process when its regular payments are less than a minimum percentage, established by class of hospital, of the hospital's reasonable capital-related costs. The amount of the exceptions payment is the difference between the hospital's minimum payment level and the payments the hospital would receive under the capital prospective payment system in the absence of an exceptions payment. The comparison is made on a cumulative basis for all cost reporting periods during which the hospital is subject to the capital prospective payment transition rules. The minimum payment percentages for regular capital exceptions payments by class of hospitals for FY 2001 are:

- For sole community hospitals, 90 percent;
- For urban hospitals with at least 100 beds that have a disproportionate share patient percentage of at least 20.2 percent or that received more than 30 percent of their net inpatient care revenues from State or local governments for indigent care, 80 percent;
- For all other hospitals, 70 percent of the hospital's reasonable inpatient capital-related costs.

The provision for regular exceptions payments will expire at the end of the transition period. Payments will no longer be adjusted to reflect regular exceptions payments at § 412.348. Accordingly, for cost reporting periods beginning on or after October 1, 2001, hospitals will receive only the per discharge payment based on the Federal rate for capital costs (plus any applicable DSH or IME and outlier adjustments) unless a hospital qualifies for a special exceptions payment under § 412.348(g).

Under the special exceptions provision at § 412.348(g), an additional payment may be made for up to 10 years beyond the end of the capital prospective payment system transition period for eligible hospitals. The capital special exceptions process is budget neutral; that is, even after the end of the capital prospective payment system transition, we will continue to make an adjustment to the capital Federal rate in a budget neutral manner to pay for exceptions, as long as an exceptions policy is in force. Currently, the limited special exceptions policy will allow for exceptions payments for 10 years beyond the conclusion of the 10-year capital transition period or through September 30, 2011.

VI. Changes for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Limits on and Adjustments to the Target Amounts for Excluded Hospitals and Units (§§ 413.40(b)(4) and (g))

1. Updated Caps

Section 1886(b)(3) of the Act (as amended by section 4414 of Public Law 105–33) establishes caps on the target amounts for certain existing excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. The caps on the target amounts apply to the following three classes of excluded hospitals: Psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

A discussion of how the caps on the target amounts were calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46018); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000), and the July 30, 1999 final rule (64 FR 41529). For purposes of calculating the caps on existing facilities, the statute required us to calculate the national 75th percentile of the target amounts for each class of hospital (psychiatric, rehabilitation, or long-term care) for cost reporting periods ending during FY 1996. Under section 1886(b)(3)(H)(iii) of the Act, the resulting amounts are updated by the market basket percentage to the applicable fiscal year. In establishing the caps on the target amounts within each class of hospital for new hospitals, section 1886(b)(7)(C) of the Act, as amended by section 4416 of Public Law 105–33, explicitly instructed the Secretary to provide an appropriate adjustment to take into account area differences in wage-related costs. However, since the statutory language under section 4414 of Public Law 105–33 did not provide for the Secretary to account for area differences in wage-related costs in establishing the caps on the target amounts for existing hospitals, HCFA did not account for wage-related differences in establishing the caps on the target amounts for existing facilities in FY 1998.

Section 121 of Public Law 106–113 amended section 1886(b)(3)(H) of the Act to direct the Secretary to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. Elsewhere in this issue of the **Federal Register** we are publishing an interim final rule with comment period implementing this provision for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000. This final rule addresses the wage adjusted caps on the target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 2000.

For purposes of calculating the caps on the target amounts, section 1886(b)(3)(H)(ii) of the Act requires the Secretary to first "estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996." Furthermore, section 1886(b)(3)(H)(iii), as added by Public Law 106–113, requires the Secretary to provide for "an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account the differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital."

For cost reporting periods beginning in FY 2000, we update the FY 1996 wage-neutralized national 75th percentile target amount for each class of hospital by the market basket increase through FY 2000. For cost reporting periods beginning during FY 2001 and FY 2002, we update the previous year's wage-neutralized national 75th percentile target amount for each class of hospital by the applicable market basket percentage increase. In determining the wage-neutralized 75th percentile target amount for each class of hospital and consistent with the broad authority conferred on the Secretary by section 1886(b)(3)(H)(iii) of the Act (as added by Pub. L. 106–113) to determine the appropriate wage

adjustment, we accounted for differences in wage-related costs by adjusting the caps on the target amounts for each class of hospital (psychiatric, rehabilitation, and long-term care) using the methodology, which is described in detail in the interim final rule with comment period that implements the provisions of section 121 Public Law 106–113 that is published elsewhere in this issue of the **Federal Register.**

As stated in the May 5, 2000 proposed rule, we wage neutralized each hospital's FY 1996 target amount to account for area differences in wage-related costs. For each class of hospitals, we determined the labor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the most recent actuarial estimate of the labor-related portion of excluded hospital costs (or 0.71553). This actuarial estimate of the labor-related share of PPS-excluded hospital costs was revised in connection with other revisions to the PPS-excluded hospital market basket published in the August 29, 1997 final rule (62 FR 45996). Based on the relative weights of the labor cost categories (wages and salaries, employee benefits, professional fees, postal services, and all other labor intensive services), the labor-related portion is 71.553 percent. The remaining 28.447 percent is the nonlabor-related portion. Similarly, we determined the nonlabor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the actuarial estimate of the nonlabor-related portion of costs (or 0.28447).

Next, as we stated in the May 5 proposed rule, we wage neutralize each hospital's FY 1996 target amount by dividing the labor-related portion of each hospital's FY 1996 target amount by the hospital's FY 1998 hospital wage index under the hospital inpatient prospective payment system (see § 412.63), as shown in Tables 4A and 4B of the August 29, 1997 final rule (62 FR 46070). Each hospital's wage-neutralized FY 1996 target amount was calculated by adding the nonlabor-related portion of its target amount and the wage-neutralized labor-related portion of its target amount. Then, the wage-neutralized target amounts for hospitals within each class were arrayed in order to determine the national wage-neutralized 75th percentile caps on the target amounts for each class of hospital.

As stated in the May 5 proposed rule, this methodology for wage-neutralizing the national 75th percentile of the target amounts is identical to the methodology we utilized for the wage index adjustment described in the August 29, 1997 final rule (62 FR 46020) to calculate the wage-adjusted 110 percent of the national median target amounts for new excluded hospitals and units. Again, we recognize that wages may differ for prospective payment hospitals and excluded hospitals, but we believe that the acute care hospital wage data utilized reflect area differences in wage-related costs. Moreover, in light of the short timeframe for implementing this provision, we used the wage data for acute hospitals since they are the most feasible data source. Reliable wage data for excluded hospitals and units are not available.

Comment: One commenter objected to our use of the FY 1998 hospital wage index, which is based on FY 1994 wage data from Medicare cost reports, to wage neutralize the labor-related portion of each hospital's FY 1996 target amount in establishing area wage adjustments to the caps on the target amounts for long-term care hospitals. The commenter favored using the most current wage data (the FY 2001 wage index, based on FY 1997 Medicare cost report data) to estimate wage adjustments to the caps on the target amounts for excluded hospitals and units.

Response: We reconsidered our methodology for wage-neutralizing each hospital's FY 1996 target amount used in determining the wage-neutralized national 75th percentile target amount for each class of hospital. In the May 5, 2000 proposed rule, the labor-related portion of each hospital's FY 1996 target amount was wage neutralized by dividing it by the FY 1998 hospital inpatient prospective payment system wage index. The FY 1998 hospital inpatient prospective payment system wage index was calculated using FY 1994 wage data due to the 4-year lag time in receiving the data used in the annual calculation of the wage index. We have reconsidered this methodology and believe it is appropriate to wage neutralize the labor-related portion of each hospital's FY 1996 target amount by the FY 2000 hospital inpatient prospective payment system wage index. The FY 2000 wage index is the most current wage data available to wage neutralize each hospital's FY 1996 target amount, and the FY 2000 wage index was calculated based on FY 1996 wage data and therefore reflects area differences in wage-related FY 1996 costs. The FY 2001 wage index will be applied to the wage-related portion of the cap to determine each hospital's FY 2001 wage-adjusted cap on its target amount.

In the May 5, 2000 proposed rule (65 FR 26314), we proposed the labor-related and nonlabor-related shares of the wage-neutralized national 75th percentile caps on the target amounts for FY 2001 as follows:

Class of excluded hospital or unit	FY 2001 proposed labor-related share	FY 2001 proposed nonlabor-related share
Psychiatric	$8,106	$3,223
Rehabilitation	15,106	6,007
Long-Term Care	29,312	11,654

Taking into account the national 75th percentile of the target amounts for cost reporting periods ending during FY 1996 (wage-neutralized using the FY 2000 acute care wage index), the wage adjustment provided for under Public Law 106–113, and the applicable update factor based on the market basket percentage increase to FY 2001, we are establishing the labor-related and nonlabor-related portions of the caps on the target amounts for FY 2001 using the methodology outlined above as follows:.

Class of excluded hospital or unit	FY 2001 labor-related share	FY 2001 nonlabor-related share
Psychiatric	$8,131	$3,233
Rehabilitation	15,164	6,029
Long-Term Care	29,294	11,642

These caps on the target amounts for FY 2001 reflect the use of the FY 2000 wage index in determining the FY 1996 national wage-neutralized 75th percentile target amounts, updated to FY 2001 by the applicable market basket percentage increase. The market basket percentage increase for excluded hospitals and units for FY 2001 is currently forecast at 3.4 percent. At the time the proposed rule was issued, the market basket increase was forecast at 3.1 percent.

Finally, the cap on a hospital's FY 2001 target amount per discharge is determined by adding the hospital's nonlabor-related portion of the national 75th percentile target amount to its wage-adjusted labor-related portion of the national 75th percentile target amount. A hospital's wage-adjusted labor-related portion of the target amount is calculated by multiplying the labor-related portion of the wage-neutralized national 75th percentile target amount for the hospital's class by the hospital's applicable wage index. For FY 2001, a hospital's applicable wage index is the wage index under the hospital inpatient prospective payment system (see § 412.63). For cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30, 2001 as shown in Tables 4A and 4B of this final rule, a hospital's applicable wage index corresponds to the area in which the hospital or unit is physically

located (MSA or rural area) and is not subject to prospective payment system hospital reclassification under section 1886(d)(10) of the Act.

Comment: One commenter requested that HCFA provide long-term care hospitals the opportunity to redesignate to another rural or urban area under the standards outlined in § 412.230 for prospective payment system hospitals. The commenter believed that section 121 of Public Law 106–113 directs HCFA to make accurate area wage adjustments for excluded hospitals and that, in the interest of equity, HCFA should afford long-term care hospitals a process analogous to the MGCRB so that these providers would be able to redesignate their wage area to a rural or urban area. Additionally, the commenter recommended that long-term care hospitals located in "close proximity" (as defined in § 412.230(b)) to a prospective payment system hospital that has been allowed to reclassify its area wage index, should also be allowed to reclassify to that wage area.

Response: Section 121 of Public Law 106–113 directs the Secretary to make "an appropriate adjustment" to account for area wage-related differences. As we stated in the May 5 proposed rule, long-term care hospitals and psychiatric and rehabilitation hospitals and units which are exempt from the prospective payment system are not subject to prospective payment system hospital reclassification under section 1886(d)(10)(A) of the Act. This section establishes the MGCRB for the purpose of evaluating applications from short-term acute care providers. There is no equivalent statutory provision for HCFA to develop an alternative board for long-term care hospitals or for psychiatric and rehabilitation hospitals and units, or both.

While it would be feasible to allow units physically located in PPS hospitals that have been reclassified by the MGCRB to use the wage-index for the area to which that hospital has been reclassified, at the present time there is no process in place to make reclassification determinations for excluded free-standing providers. The wage-adjustment to the cap on the target amounts for existing excluded providers is only effective through FY 2002 and there is not enough time to develop and implement a process to determine reclassification for free-standing excluded providers. There are approximately 1000 free-standing excluded facilities (529 psychiatric, 196 rehabilitation and 242 long-term care). Therefore, in the interest of equity, we believe that in determining a hospital's wage-adjusted cap on its target amount, it is appropriate for excluded hospitals and units to use the wage index associated with the area in which it is physically located (MSA or rural area) and prospective payment system reclassification under section 1886(d)(10) of the Act is not applicable. This policy is consistent with the determination of the wage-adjusted caps on the target amounts for new excluded hospitals and units, which are not subject to reclassification when applying the wage index in the calculation of the cap. Additionally, skilled-nursing facility and ambulatory surgical center payment systems both use the acute-care inpatient hospital PPS wage index and do not allow for reclassifications since there is no analogous determination process to the MGCRB, which only has authority over PPS hospitals under section 1886(d)(10)(a) of the Act. Therefore, consistent with these policies regarding the application of the acute care wage index to other types of facilities, we are not implementing the commenter's recommendation to permit reclassification of an excluded hospital's or unit's wage index in determining the wage-adjusted cap on their target amount under § 41340(c)(4)(iii).

Comment: One commenter asserted that this is the first time HCFA has applied area wage adjustments to excluded hospitals and units. The commenter suggested that HCFA assess whether long-term care hospitals have a different mix of occupations compared to short-term acute care facilities and recommended that HCFA propose an appropriate adjustment to the acute care wage index to account for the relative wage-related costs for the occupational categories of long-term care hospitals or establish a long-term care hospital specific area wage index. The commenter noted that the acute care wage index includes some wage data derived from hospital-based psychiatric and rehabilitation units, but contains no data from long-term care hospitals. Also, the commenter argued that HCFA did not meet the statutory requirements of section 1886(b)(3)(H) of the Act as amended by section 121 of Public Law 106–113, which states that the Secretary shall provide for an appropriate adjustment "to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs *within the same class of hospital*" (emphasis added), since the acute care wage index data are based on data exclusively from short-term acute care hospitals.

Response: As stated in the May 5, 2000 proposed rule (65 FR 26314), we recognize that wages may differ for prospective payment system acute care hospitals and excluded hospitals, but we believe the acute care wage index data accurately reflects area differences in wage-related costs and they are the most feasible data source. For this reason the acute care hospital wage index is used for the Medicare prospective payment systems for outpatient facilities, skilled nursing facilities, and home health facilities.

Currently, there is hospital specific wage data available to develop a wage index based on data from excluded hospitals (or, as the commenter specifically requested, a long-term care hospital exclusive wage index). We may consider exploring the feasibility of developing a wage index for excluded hospitals and units in the future. However, the commenter has not presented any evidence that the acute care wage index inappropriately reflects the differences in wage-related costs for excluded hospital and units. We believe that the acute care wage index provides for an appropriate adjustment to account for wage-related costs in determining a hospital's wage-adjusted cap on its target amount.

In the interim final rule with comment period implementing certain provisions of Public Law 106–113 that we are publishing elsewhere in this issue of the **Federal Register** we revised §§ 413.40(c)(4)(i) and (c)(4)(ii) to incorporate the changes in the formula used to determine the limitation on the target amounts for excluded hospitals and units, as provided for by section 121 of Public Law 106–113.

In response to the May 5, 2000 proposed rule, we received two public comments relating to establishment of the wage-adjusted caps on the target amounts for excluded hospitals and units.

Comment: One commenter believed that the provision for a wage-adjustment to the national 75th percentile target amount cap placed on hospitals excluded from the prospective payment system provided HCFA with the broad authority to transition to a wage-adjusted cap over more than one period. The commenter suggested that the wage-adjusted caps on target amounts be phased-in over a period of time in a manner similar to the removal of teaching physician costs from the wage index calculation.

Response: Public Law 106–113, which was enacted November 29, 1999, directed us to retroactively provide for

a wage adjustment for the national 75th percentile target amounts for psychiatric and rehabilitation hospitals and units and for long-term care hospitals as of October 1, 1999. The purpose of the wage-adjustment to the 75th percentile cap on target amounts for excluded providers is to account for area differences in wage-related costs. We believe that the intent of this provision is to account for these wage differences beginning with cost reporting periods starting during FY 2000. Phasing-in the wage-adjustment to the caps on the target amounts would mitigate the purpose of the wage-adjustment because hospitals located in areas with wage index values greater than one would not receive the full intended benefit of the provision. Additionally, as we stated in the interim final rule with comment that we are publishing elsewhere in this issue of the **Federal Register** we estimate that most providers (93.3 percent of psychiatric hospitals and units, 97.5 percent of rehabilitation hospitals and units, and 93.5 percent of long-term care hospitals) are either not effected or are positively effected by the wage adjustment to the caps on the target amounts. Therefore, we believe it is inappropriate to phase in the wage-adjustment to the caps on the target amounts as the commenter recommended.

Additionally, the removal of the teaching physician costs on the wage index is set for a 5-year phase-out, while the wage-adjusted caps on national target amounts are only legislated to remain in effect from FY 2000 to FY 2002. As such, the remaining period of time for which these caps are in effect is too brief to warrant the administrative resources that would be involved in such a transition. The 5-year phase-out of the removal of teaching costs from the wage index was implemented based on the recommendation of an industry group made up of representatives from national and state hospital associations. While one commenter advocated the phase-in of the wage-adjustment to the caps on the target amounts, another commenter supported the complete implementation of the wage-adjustment to the caps on the target amounts effective FY 2000, since this adjustment reflects the higher cost incurred by providers located in areas with higher than the national average of labor expenditures.

Comment: One commenter commended the wage-adjustment to the caps on the target amounts for psychiatric and rehabilitation hospital and units and long-term care hospitals mandated by section 121 of Public Law 106–113. The commenter supported the application of the acute care wage index to the caps on the national target amounts since the wage adjustment aids providers who incur costs higher than the national average simply because they are located in marketplaces with higher labor prices. The commenter also noted that the target amounts for existing hospitals are now in line with the target amounts for new hospitals, which have been wage adjusted since their implementation in FY 1998 by Public Law 105–33. The commenter further suggested that, if the three classes of hospitals have not been transitioned to prospective payment systems by FY 2002, the wage adjustment to the national target amounts for both new and existing providers should remain in place.

Response: We agree with the comment and we believe that our implementation of the wage adjustment is consistent with the statutory provision in Public Law 106–113. However, regardless of whether the prospective payment systems for these classes of providers have been implemented, we will only be in a position to continue the use of the wage-adjusted caps on the target amounts beyond FY 2002 if Congress directs us to do so through additional legislation.

2. Updated Caps for New Excluded Hospitals and Units (§ 413.40(f))

Section 1886(b)(7) of the Act establishes a payment methodology for new psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals. Under the statutory methodology, for a hospital that is within a class of hospitals specified in the statute and that first receives payment as a hospital or unit excluded from the prospective payment system on or after October 1, 1997, the amount of payment will be determined as follows:

For the first two 12-month cost reporting periods, the amount of payment is the lesser of (1) the operating costs per case; or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payments and adjusted for differences in area wage levels. The amounts included in the following table reflect the updated 110 percent of the wage neutral national median target amounts for each class of excluded hospitals and units for cost reporting periods beginning during FY 2001. These figures are updated to reflect the market basket increase of 3.4 percent. For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	Labor-related share	Nonlabor-related share
Psychiatric	$6,611	$2,630
Rehabilitation	13,002	5,169
Long-Term Care	16,757	6,662

3. Development of Prospective Payment System for Inpatient Rehabilitation Hospitals and Units

Section 4421 of Public Law 105–33 added section 1886(j) to the Act. Section 1886(j) of the Act mandates the phase-in of a case-mix adjusted prospective payment system for inpatient rehabilitation services (freestanding hospitals and units) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002. The prospective payment system will be fully implemented for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) was amended by section 125 of Public Law 106–113 to require the Secretary to use the discharge as the payment unit under the prospective payment system for inpatient rehabilitation services and to establish classes of patient discharges by functional-related groups.

We will issue a separate notice of proposed rulemaking in the **Federal Register** on the prospective payment system for inpatient rehabilitation facilities. That document will discuss the requirements in section 1886(j)(1)(A)(i) of the Act for a transition phase covering the first two cost reporting periods under the prospective payment system. During this transition phase, inpatient rehabilitation facilities will receive a payment rate comprised of a blend of the facility specific rate (the TEFRA percentage) based on the amount that would have been paid under Part A with respect to these costs if the prospective payment system would not be implemented and the inpatient rehabilitation facility prospective payment rate (prospective payment percentage). As set forth in sections 1886(j)(1)(C)(i) and (ii) of the Act, the TEFRA percentage for a cost reporting period beginning on or after October 1, 2000, and before October 1, 2001, is 66⅔ percent; the prospective payment percentage is 33⅓ percent. For cost reporting periods beginning on or after October 1, 2001 and before October 1, 2002, the TEFRA percentage is 33⅓

percent and the prospective payment percentage is 66⅔ percent.

As provided in section 1886(j)(3)(A) of the Act, the prospective payment rates will be based on the average inpatient operating and capital costs of rehabilitation facilities and units. Payments will be adjusted for case-mix using patient classification groups, area wages, inflation, outlier status and any other factors the Secretary determines necessary. We will propose to set the prospective payment amounts in effect during FY 2001 so that total payments under the system are projected to equal 98 percent of the amount of payments that would have been made under the current payment system. Outlier payments in a fiscal year may not be projected or estimated to exceed 5 percent of the total payments based on the rates for that fiscal year.

4. Continuous Improvement Bonus Payment

Under § 413.40(d)(4), for cost reporting periods beginning on or after October 1, 1997, an "eligible" hospital may receive continuous improvement bonus payments in addition to its payment for inpatient operating costs plus a percentage of the hospital's rate-of-increase ceiling (as specified in § 413.40(d)(2)). An eligible hospital is a hospital that has been a provider excluded from the prospective payment system for at least three full cost reporting periods prior to the applicable period and the hospital's operating costs per discharge for the applicable period are below the lowest of its target amount, trended costs, or expected costs for the applicable period. Prior to enactment of Public Law 106–113, the amount of the continuous improvement bonus payment was equal to the lesser of—

(a) 50 percent of the amount by which operating costs were less than the expected costs for the period; or

(b) 1 percent of the ceiling.

Section 122 of Public Law 106–113 amended section 1886(b)(2) of the Act to provide, for cost reporting periods beginning on or after October 1, 2000, and before September 30, 2001, for an increase in the continuous improvement bonus payment for long-term care and psychiatric hospitals and units. Under section 1886(b)(2) of the Act, as amended, a hospital that is within one of these two classes of hospitals (psychiatric hospitals or units and long-term-care hospitals) will receive the lesser of 50 percent of the amount by which the operating costs are less than the expected costs for the period, or the increased percentages mandated by statute as follows:

(a) For a cost reporting period beginning on or after October 1, 2000 and before September 30, 2001, 1.5 percent of the ceiling; and

(b) For a cost reporting period beginning on or after

October 1, 2001, and before September 30, 2002, 2 percent of the ceiling.

We did not receive any public comments on our proposed revision of § 413.40(d)(4) to incorporate this provision of the statute and, therefore, are adopting it as final.

5. Changes in the Types of Patients Served or Inpatient Care Services That Distort the Comparability of a Cost Reporting Period to the Base Year Are Grounds for Requesting an Adjustment Payment in Accordance With Section 1886(b)(4) of the Act

Section 4419(b) of Public Law 104–33 requires the Secretary to publish annually in the **Federal Register** a report describing the total amount of adjustment (exception) payments made to excluded hospitals and units, by reason of section 1886(b)(4) of the Act, during the previous fiscal year. However, the data on adjustment payments made during the previous fiscal year are not available in time to publish a report describing the total amount of adjustment payments made to all excluded hospitals and units in the subsequent year's final rule published in the **Federal Register**.

The process of requesting, adjudicating, and awarding an adjustment payment for a given cost reporting period occurs over a 2-year period or longer. An excluded hospital or unit must first file its cost report for the previous fiscal year with its intermediary within 5 months after the close of the previous fiscal year. The fiscal intermediary then reviews the cost report and issues a Notice of Program Reimbursement (NPR) in approximately 2 months. If the hospital's operating costs are in excess of the ceiling, the hospital may file a request for an adjustment payment within 6 months from the date of the NPR. The intermediary, or HCFA, depending on the type of adjustment requested, then reviews the request and determines if an adjustment payment is warranted. This determination is often not made until more than 6 months after the date the request is filed. Therefore, it is not possible to provide data in a final rule on adjustments granted for cost reports ending in the previous Federal fiscal year, since those adjustments have not even been requested by that time. However, in an attempt to provide interested parties at least some relevant data on adjustments, we are publishing data on requests for adjustments that were processed by the fiscal intermediaries or HCFA during the previous Federal fiscal year.

The table below includes the most recent data available from the fiscal intermediaries and HCFA on adjustment payments that were adjudicated during FY 1999. By definition these were for cost reporting periods ending in years prior to FY 1998. The total adjustment payments awarded to excluded hospitals and units during FY 1999 are $73,532,146. The table depicts for each class of hospital, in aggregate, the number of adjustment requests adjudicated, the excess operating cost over the ceiling, and the amount of the adjustment payment.

Class of hospital	Number	Excess cost over ceiling	Adjustment payment
Psychiatric	198	$100,861,663	$49,966,012
Rehabilitation	53	32,690,736	16,798,634
Long-term care	4	3,239,164	2,577,455
Children's	7	3,311,758	1,470,670
Cancer	2	4,849,093	2,699,375

B. Responsibility for Care of Patients in Hospitals-Within-Hospitals (§ 413.40(a)(3))

Effective October 1, 1999, for hospitals-within-hospitals, we implemented a policy that allows for a 5-percent threshold for cases in which a patient discharged from an excluded hospital-within-a-hospital and admitted to the host hospital was subsequently readmitted to the excluded hospital-within-a-hospital. With respect to these cases, if the excluded hospital exceeds the 5-percent threshold, we do not include any previous discharges to the prospective payment hospital in calculating the excluded hospital's cost per discharge. That is, the entire stay is considered one Medicare "discharge" for purposes of payments to the excluded hospital. The effect of this rule, as explained more fully in the May 7, 1999 proposed rule (64 FR 24716) and in the July 30, 1999 final rule (64 FR 41490), is to prevent inappropriate Medicare payment to hospitals having a large number of such stays.

In the existing regulations at § 413.40(a)(3), we state that the 5-percent threshold is determined based on the total number of discharges from the hospital-within-a-hospital. We have received questions as to whether, in determining whether the threshold is met, we consider Medicare patients only or all patients (Medicare and non-Medicare). To avoid any further misunderstanding, in the May 5, 2000 proposed rule, we indicated our intent to clarify the definition of "ceiling" in § 413.40(a)(3) by specifying that the 5-percent threshold is based on the Medicare inpatients discharged from the hospital-within-a-hospital in a particular cost reporting period, not on total Medicare and non-Medicare inpatient discharges.

We did not receive any public comments on our proposed clarification of the definition of "ceiling" in § 413.40(a)(3) and, therefore, are adopting the revision as final.

C. Critical Access Hospitals (CAHs)

1. Election of Payment Method (§ 413.70)

Section 1834(g) of the Act, as in effect before enactment of Public Law 106–113, provided that the amount of payment for outpatient CAH services is the reasonable costs of the CAH in providing such services. However, the reasonable costs of the CAH's services to outpatients included only the CAH's costs of providing facility services, and did not include any payment for professional services. Physicians and other practitioners who furnished professional services to CAH outpatients billed the Part B carrier for these services and were paid under the physician fee schedule in accordance with the provisions of section 1848 of the Act.

Section 403(d) of Public Law 106–113 amended section 1834(g) of the Act to permit the CAH to elect to be paid for its outpatient services under another option. CAHs making this election would be paid amounts equal to the sum of the following, less the amount that the hospital may charge as described in section 1866(a)(2)(A) of the Act (that is, Part A and Part B deductibles and coinsurance):

(1) For facility services, not including any services for which payment may be made as outpatient professional services, the reasonable costs of the CAH in providing the services; and

(2) For professional services otherwise included within outpatient CAH services, the amounts that would otherwise be paid under Medicare if the services were not included in outpatient CAH services.

Section 403(d) of Public Law 106–113 added section 1834(g)(3) to the Act to further specify that payment amounts under this election are be determined without regard to the amount of the customary or other charge.

The amendment made by section 403(d) is effective for cost reporting periods beginning on or after October 1, 2000.

In the May 5, 2000 proposed rule, we proposed to revise § 413.70 to incorporate the provisions of section 403(d) of Public Law 106–113. The existing § 413.70 specifies a single set of reasonable cost basis payment rules applicable to both inpatient and outpatient services furnished by CAHs. As section 403(d) of Public Law 106–113 provides that, for outpatient CAH services, CAHs may elect to be paid on a reasonable cost basis for facility services and on a fee schedule basis for professional services, we proposed to revise the section to allow for separate payment rules for CAH inpatient and outpatient services.

We proposed to place the provisions of existing § 413.70(a) and (b) that relate to payment on a reasonable cost basis for inpatient services furnished by a CAH under proposed § 413.70(a). Proposed § 413.70(a)(2) also stated that payment to a CAH for inpatient services does not include professional services to CAH inpatients and is subject to the Part A hospital deductible and coinsurance determined under 42 CFR Part 409, Subpart G.

We proposed to include under § 413.70(b) the payment rules for outpatient services furnished by CAHs, including the option for CAHs to elect to be paid on the basis of reasonable costs for facility services and on the basis of the physician fee schedule for professional services. Under proposed § 413.70(b)(2), we would retain the existing provision that unless the CAH elects the option provided for under section 403 of Public Law 106–113, payment for outpatient CAH services is on a reasonable cost basis, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in Parts 413 and 415 (except for certain payment principles that do not apply; that is, the lesser of costs or charges, RCE limits, any type of reduction to operating or capital costs under § 413.124 or § 413.130(j)(7), and blended payment amounts for ambulatory surgical center services, radiology services, and other diagnostic services).

Under proposed § 413.70(b)(3), we specified that any CAH that elects to be paid under the optional method must make an annual request in writing, and deliver the request for the election to the fiscal intermediary at least 60 days before the start of the affected cost reporting period. In addition, proposed § 413.70(b)(3)(ii) stated that if a CAH elects payment under this method, payment to the CAH for each outpatient visit will be the sum of the following two amounts:

- For facility services, not including any outpatient professional services for which payment may be made on a fee schedule basis, the amount would be the reasonable costs of the services as determined in accordance with applicable principles of cost reimbursement in 42 CFR Parts 413 and 415, except for certain payment principles that would not apply as specified above; and
- For professional services, otherwise payable to the physician or other practitioner on a fee schedule basis, the amounts would be those amounts that would otherwise be paid for the services if the CAH had not elected payment under this method.

We also proposed in § 413.70(b)(3)(iii) that payment to a CAH for outpatient services would be subject to the Part B deductible and coinsurance amounts, as determined under §§ 410.152, 410.160, and 410.161. In proposed § 413.70(c), we stated that final payment to the CAH for its facility services to inpatients and outpatients furnished during a cost reporting would be based on a cost report for that period, as required under § 413.20(b).

Comment: One commenter expressed concern about several CAH payment issues on which we did not propose to change existing policy. These comments related to payment for costs attributable to Medicare bed debts, counting of beds toward the 15- and 25-bed maximums, and payment for swing-bed services in CAHs.

Response: Because these comments dealt with matters beyond the scope of the proposed rule, we have received them with interest and will consider whether any changes in policy are needed at a later date.

We are adopting the proposed revisions to § 413.70 as final. The revised § 413.70 includes at paragraph (b)(2)(iii) the text of a paragraph (c) that was added in the interim final rule with comment period that implemented certain provisions of Public Law 106–33 published elsewhere in this issue of the **Federal Register**. We did not revise the text of this paragraph (c); we merely changed the paragraph coding to fit it into the scheme of coding of the revised § 413.70.

2. Condition of Participation: Organ, Tissue, and Eye Procurement (§ 485.643)

Sections 1820(c)(2)(B) and 1861(mm) of the Act set forth the criteria for designating a CAH. Under this authority, the Secretary has established in regulations the minimum requirements a CAH must meet to participate in Medicare (42 CFR Part 485, Subpart F).

Section 1905(a) of the Act provides that Medicaid payments may be made for any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary. The Secretary has specified CAH services as Medicaid services in regulations. Specifically, the regulations at 42 CFR 440.170(g)(1)(i), define CAH services under Medicaid as those services furnished by a provider meeting the Medicare conditions of participation (CoP).

Section 1138 of the Act provides that a CAH participating in Medicare must establish written protocols to identify potential organ donors that: (1) Assure that potential donors and their families are made aware of the full range of options for organ or tissue donation as well as their rights to decline donation; (2) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of those families; and (3) require that an organ procurement agency designated by the Secretary be notified of potential organ donors.

On June 22, 1998, as part of the Medicare hospital conditions of participation under Part 482, subpart C, we added to the regulations at § 482.45, a condition that specifically addressed organ, tissue, and eye procurement. However, Part 482 does not apply to CAHs, as CAHs are a distinct type of provider with separate CoP under Part 485. Therefore, in the proposed rule, we proposed to add a CoP for organ, tissue, and eye procurement for CAHs at a new § 485.643 that generally parallels the CoP at § 482.45 for all Medicare hospitals with respect to the statutory requirement in section 1138 of the Act concerning organ donation. CAHs are not full service hospitals and therefore are not equipped to perform organ transplantations. Therefore, we did not propose to include the standard applicable to Medicare hospitals that CAHs must be a member of the Organ Procurement and Transplantation Network (OPTN), abide by its rules and provide organ transplant-related data to the OPTN, the Scientific Registry, organ procurement agencies, or directly to the Department on request of the Secretary.

The proposed CoP for CAHs included several requirements designed to increase organ donation. One of these requirements is that a CAH must have an agreement with the Organ Procurement Organization (OPO) designated by the Secretary, under which the CAH will contact the OPO in a timely manner about individuals who die or whose death is imminent. The OPO will then determine the individual's medical suitability for donation. In addition, the CAH must have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes, as long as the agreement does not interfere with organ donation. The proposed CoP would require a CAH to ensure, in collaboration with the OPO with which it has an agreement, that the family of every potential donor is informed of its option to either donate or not donate organs, tissues, or eyes. The CAH may choose to have OPO staff perform this function, have CAH and OPO staff jointly perform this function, or rely exclusively on CAH staff. Research indicates that consent to organ donation is highest when the formal request is made by OPO staff or by OPO staff and hospital staff together. While we require collaboration, we also recognize that CAH staff may wish to perform this function and may do so when properly trained. Moreover, the CoP would require the CAH to ensure that CAH employees who initiate a request for donation to the family of a potential donor have been trained as designated requestors.

Finally, we proposed that the CoP would require the CAH to work with the OPO and at least one tissue bank and one eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of organs and tissues is underway.

Because we were sensitive to the possible burden the proposed CoP could place on CAHs, we invited public comments and information concerning the following requirements: (1) Developing written protocols for donations; (2) developing agreements with OPOs, tissue banks, and eye banks; (3) referring all deaths to the OPO; (4) working cooperatively with the designated OPO, tissue bank, and eye bank in educating staff on donation issues, reviewing death records, and maintaining potential donors. We note that the proposed requirement allowed some degree of flexibiilty for the CAH. For example, the CAH would have the option of using an OPO-approved education program to train its own employees as routine requestors or deferring requesting services to the OPO, the tissue bank, or the eye bank to provide requestors.

We did not receive any public comments on the proposed CAH CoP on organ, tissue, and eye procurement. We are adopting § 485.643 as final.

VII. MedPAC Recommendations

On March 1, 2000 the Medicare Payment Advisory Commission (MedPAC) issued its annual report to Congress, including several recommendations related to the inpatient operating payment system. Those related to the inpatient prospective payment systems were: Congress should establish a single set of payment adjustors for both the operating and capital systems; HCFA should expand the definition of transfers which applies a transfer policy to patients transferred to postacute settings; and, Congress should reformulate the Medicare DSH adjustment. In the proposed rule, we responded to these recommendations.

In addition, this year MedPAC published another report in June with additional recommendations. Among the recommendations were: FY 2001 updates to the operating and capital payment rates; moving to refined DRGs to better capture variations in patient severity; adopting DRG-specific outlier offsets; Congress should provide the Secretary the authority to adjust the

base payment amounts for anticipated coding changes; and, Congress should fold inpatient direct GME into the prospective payment system through a revised teaching hospital adjustment. A discussion of MedPAC's update recommendation can be found in Appendix D of this final rule.

A. Combined Operating and Capital Prospective Payment Systems (Recommendation 3J: March Report)

Recommendation: The Congress should combine prospective payment system operating and capital payment rates to create a single prospective rate for hospital inpatient care. This change would require a single set of payment adjustments—in particular, for indirect medical education and disproportionate share hospital payments—and a single payment update.

Response: We responded to a similar comment in the July 30, 1999 final rule (64 FR 41552), the July 31, 1998 final rule (63 FR 41013), and the September 1, 1995 final rule (60 FR 45816). In those rules, we stated that our long-term goal was to develop a single update framework for operating and capital prospective payments and that we would begin development of a unified framework. However, we have not yet developed such a single framework as the actual operating system update has been determined by Congress through FY 2002. In the meantime, we intend to maintain as much consistency as possible with the current operating framework in order to facilitate the eventual development of a unified framework. We maintain our goal of combining the update frameworks at the end of the 10-year capital transition period (the end of FY 2001) and may examine combining the payment systems post-transition. Because of the similarity of the update frameworks, we believe that they could be combined with little difficulty.

In the discussion of its recommendation, MedPAC notes that it "is examining broad reforms to the prospective payment system, including DRG refinement and modifications of the graduate medical education payment and the IME and DSH adjustments. The Commission believes that a combined hospital prospective payment rate should be established whether or not broader reforms are undertaken. However, if the Congress acts on any or all of the Commission's recommendations, it should consider combining operating and capital payments as part of a larger package."

We agree that ultimately the operating and capital prospective payment systems should be combined into a single system. However, we believe that, because of MedPAC's ongoing analysis and the Administration's pending DSH report to Congress, any such unification should occur within the context of other system refinements.

B. Continuing Postacute Transfer Payment Policy (Recommendation 3K: March Report)

Recommendation: The Commission recommends continuing the existing policy of adjusting per case payments through an expanded transfer policy when a short length of stay results from a portion of the patient's care being provided in another setting.

Response: As noted in section IV.A. of this preamble, we have undertaken (through a contract with HER) an analysis of the impact on hospitals and hospital payments of the postacute transfer provision. That analysis (based on preliminary data covering only approximately 6 months of discharge data) showed a minimal impact on the rate of short-stay postacute transfers after implementation of the policy. However, average profit margins as measured by HER declined from $3,496 prior to implementation of the policy to $2,255 after implementation. We believe these preliminary findings demonstrate that the postacute transfer provision has had only marginal impact on existing practice patterns while more closely aligning the payments to hospitals for these cases with the costs incurred. Therefore, we agree with MedPAC's recommendation that the policy should be continued.

C. Disproportionate Share Hospitals (DSH) (Recommendations 3L and 3M: March Report)

Recommendation: To address longstanding problems and current legal and regulatory developments, Congress should reform the disproportionate share adjustment to: Include the costs of all poor patients in calculating low-income shares used to distribute disproportionate share payments, and use the same formula to distribute payments to all hospitals covered by prospective payment.

Response: As we noted in section IV.E. of this preamble, Public Law 106–113 directed the Secretary to require subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Act) to submit data on costs incurred for providing inpatient and outpatient hospital services for which the hospital is not compensated, including non-Medicare bad debt, charity care, and charges for Medicaid and indigent care. These data must be reported on the hospital's cost reports for cost reporting periods beginning on or after October 1, 2001, and will provide information that will enable MedPAC and us to evaluate potential refinements to the DSH formula to address the issues referred to by MedPAC.

Medicare fiscal intermediaries will audit these data to ensure their accuracy and consistency. Our experience with administering the current DSH formula leads us to believe that this auditing function would necessarily be extensive, because the non-Medicare data that would be collected have never before been collected and reviewed by Medicare's fiscal intermediaries. The data would have to be determined to be accurate and usable, and corrected if necessary.

We agree that the current statutory payment formula could be improved, largely because of different threshold levels and different formula parameters applicable to different groups of hospitals. We are in the process of preparing a report to Congress on the Medicare DSH adjustment that includes options for amending the statutory formula.

Comment: We received one comment regarding MedPAC's recommendation. The commenter expressed the concern that any unrecoverable costs from certified registered nurse anesthetist services in providing anesthesia and related care to indigent patients may not be included in the bad debt costs of hospitals.

Response: One of the difficulties in collecting uncompensated care and non-Medicare bad debt data is defining exactly the types of data being sought, particularly when there are no existing cost reporting guidelines to follow. We will be working closely with the hospital industry to identify and collect these data.

Recommendation: To provide further protection for the primarily voluntary hospitals with mid-level low-income shares, the minimum value, or threshold, for the low-income share that a hospital must have before payment is made should be set to make 60 percent of hospitals eligible to receive disproportionate share payments.

Response: Currently, fewer than 40 percent of all prospective payment system hospitals receive DSH payments. Therefore, this recommendation would entail significant redistributions of existing DSH payments if implemented in a budget neutral manner. We are particularly concerned about the effect of this recommendation on hospitals receiving substantial DSH payments currently, including major teaching hospitals and public hospitals. The analysis by MedPAC demonstrates that

these hospitals would be negatively impacted, if more hospitals were made eligible for DSH payments.

D. Severity-Adjusted DRGs (Recommendation 3A: June Report)

Recommendation: The Secretary should improve the hospital inpatient prospective payment system by adopting, as soon as practicable, DRG refinements that more fully capture differences in severity of illness among patients. At the same time, she should make the DRG payment rates more accurate by basing the DRG relative weights on the national average of hospitals' relative values in each DRG.

Response: For its analysis, MedPAC used the severity classifications from the all patient refined diagnosis related groups (APR–DRG) system. According to MedPAC, under this system each patient is initially assigned to 1 of 355 APR–DRGs. Each APR–DRG is broken into four severity classes: minor, moderate, major or extreme. Assignment to these classes within the APR–DRG is based on specific combinations of secondary diagnoses, age, procedures, and other factors. This process yields 1,420 distinct groups, compared with fewer than 500 DRGs. The MedPAC points out that "to avoid creating refined DRGs that might have unstable relative weights, the Secretary should be selective in adopting clinical distinctions similar to those reflected in the APR–DRGs. This will require carefully weighing the benefits of more accurate clinical and economic distinctions against the potential for instability in relative weights based on small numbers of cases (p. 64)."

The MedPAC's predecessor, the Prospective Payment Assessment Commission, made a similar recommendation in 1995. In the June 2, 1995 proposed rule (60 FR 29246), we agreed with the Commission's judgment that adopting the severity DRGs would tend to reduce discrepancies between payments and costs for individual cases and thereby improve payment equity among hospitals. In the same rule, we also agreed with the Commission that basing DRG weights on standardized charges results in weights that are somewhat distorted as measures of the relative costliness of treating a typical case in each DRG, and that the hospital-specific relative value method of setting weights may reduce or eliminate distortions present in the current system.

However, in our discussion on DRG refinements in the same rule (60 FR 29209) we reiterated our position published in the final rule on September 1, 1992 (57 FR 39761) that we would not propose to make significant changes to the DRG classification system, unless we are able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG changes may have on coding behavior, or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments. In addition, we would need specific legislative authority to offset, through adjustments to the standardized amounts, any significant anticipated increase in payments attributable to changes in coding practices caused by significant changes to the DRG classification system. Because we have not been granted this authority, we do not believe it would be appropriate to adopt revised severity-adjusted DRGs at this time.

E. DRG-Specific Outlier Offsets (Recommendation 3B: June Report)

Recommendation: Congress should amend the law to change the method now used to finance outlier payments under the hospital inpatient prospective payment system. Projected outlier payments in each DRG should be financed through an offsetting adjustment to the relative weight for the category, rather than the current flat adjustment to the national average base payment amounts.

Response: Under this recommendation, outlier payments would be financed through an offset to the relative weight of each DRG based on the proportion of outlier cases in that DRG, rather than an overall offset to the standardized amounts as is done currently. This would more directly relate payments under each DRG to the proportion of outlier cases occurring within that DRG.

Because the effects on DRG weights of implementing severity refinements, changing the method used to calculate DRG relative weights, and adopting DRG-specific outlier financing are interactive, we believe that we should make appropriate changes concurrently. Therefore, as stated in our response to recommendation 3A, we would not recommend that Congress implement this recommendation until we are able to offset, through adjustments to the standardized amounts, any significant anticipated increase in payments attributable to changes in coding practices caused by significant changes to the DRG classification system.

In addition, we are concerned that any benefits of adopting the Commission's recommendation would not outweigh the additional complexity and variation it would add to the already complex process of calculating outlier thresholds so that outlier payments are projected to equal a certain percentage between 5 and 6 of DRG payments.

F. Gradual Implementation of DRG Refinement and DRG-Specific Outlier Offsets (Recommendation 3C: June Report)

Recommendation: To avoid imposing extraordinary financial burdens on individual providers, the Congress should ensure that the case-mix measurement and outlier financing policies recommended earlier are implemented gradually over a period of several years. Further, the Congress should consider including protective policies, such as exemptions or hold-harmless provisions, for providers in circumstances in which vulnerable populations' access to care might be disrupted.

Response: The Commission's analyses show that implementing its case-mix measurement and outlier financing recommendations would substantially change PPS payments for many hospitals and may impose heavy burdens on individual hospitals. The Commission believes that many of these hospitals could accommodate the changes in an orderly way under traditional phase-in mechanisms. The Commission also states that some hospitals, including some groups of rural hospitals, may need longer term relief from the financial impact of these changes. The Commission suggests that this relief might include such approaches as targeted additional payments, hold-harmless provisions, and temporary or permanent exemptions.

We are concerned that implementing the Commission's recommendations may increase the need for special payment exceptions for various categories of hospitals to ensure continued access to care for many Medicare beneficiaries. Before recommending implementation of these refinements to the payment system, they must be examined to determine how the changes would impact hospitals financially and strategies would need to be developed for countering effects that could endanger beneficiaries' access to quality health care.

G. Congress Should Grant the Secretary the Authority to Offset Payments for Anticipated Coding Changes (Recommendation 3D: June Report)

Recommendation: The Congress should give the Secretary explicit authority to adjust the hospital inpatient base payment amounts if anticipated

coding improvements in response to refinements in case-mix measurement are expected to increase aggregate payments by a substantial amount during the forthcoming year. This adjustment should be separate from the annual update. Further, the Congress should require the Secretary to measure the extent of actual coding improvements based on the bills providers submit for payment and make a timely adjustment to correct any substantial forecast error.

Response: In the past, whenever significant refinements to the DRGs have been implemented, there have been unanticipated payment increases as hospitals have responded with changes to their coding practices, resulting in more cases being assigned to higher-weighted DRGs than estimated when the DRG relative weights were calculated. We anticipate that a similar effect would occur following implementation of refined DRGs.

Therefore, we agree with MedPAC's recommendation that Congress give the Secretary explicit authority to adjust the hospital inpatient base payment amounts if anticipated coding improvements in response to refinements in case-mix measurement are expected to increase aggregate payments by a substantial amount during the forthcoming year. We also agree that adjustments to correct substantial forecast errors would be appropriate.

H. Fold Inpatient Direct GME Costs Into the Prospective Payment System (Recommendation 3E: June Report)

Recommendation: Congress should fold inpatient direct graduate medical education costs into prospective payment system payment rates through a revised teaching hospital adjustment. The new adjustment should be set such that the subsidy provided to teaching hospitals would be added to the IME adjustment. This recommendation should be implemented with a reasonable transition to limit the impact on hospitals of substantial changes in Medicare payments and to ensure that beneficiaries have continued access to the services that teaching hospitals provide.

Response: MedPAC cites two primary reasons for its recommendation: to improve payment equity among teaching hospitals by eliminating the wide variation in current hospital-specific GME payment amounts, and to establish that GME payments are a part of patient care costs. MedPAC proposes three options for folding direct GME costs into PPS in terms of its impact on total payments: fold inpatient direct GME costs into the prospective payment rates, holding aggregate payments and special payments to teaching hospitals constant; fold inpatient direct GME costs into the prospective payment rates, holding aggregate payments constant, and redistributing teaching hospital subsidies across all hospitals; and fold inpatient direct GME costs into prospective payment rates with no constraint on aggregate payments and no teaching hospital subsidy. The commission recommends the first option. While we do not disagree with MedPAC's objectives, we believe that there are still some significant issues related to these recommendations.

First, Congress has already taken steps towards addressing the direct GME payment variation. Section 311 of the BBRA of 1999 established a 70 percent floor and a 140 percent ceiling based on a national average per resident amount for direct GME payment purposes for FYs 2001 through 2005. While we agree with the objective of decreasing the variation in the current per resident amounts, the same objective can be achieved by moving to a national, rather than hospital-specific, per resident amount.

Second, MedPAC asserts that folding the direct GME payments into the prospective payment system will establish that GME payments are payments to account for the increased costs of inpatient care due to residency training. However, we would note the current direct GME payments are distributed on the basis of Medicare's patient share, based on the percentage of total Medicare inpatient days to total hospital inpatient days. It is unclear exactly how MedPAC's recommendation would better associate GME payments with the increased costs of patient care without rebasing the current IME adjustment to more appropriately reflect the empirical estimate of those increased costs, both direct and indirect. Furthermore, the current distribution of IME payments is not directly linked to the involvement of residents providing patient care, but instead is based on each Medicare discharge, adjusted for the other payment factors. In addition, if the recommended teaching adjustment is a mechanism for accounting for the extra costs of inpatient training, it seems inappropriate to include residents not training in inpatient settings in a payment for inpatient care costs.

Third, MedPAC estimates show that the IME adjustment for operating payments would be only 3.2 percent, if it were based on the empirical relationship between costs and the ratio of residents to hospital beds. This is significantly less than the adjustment of 5.5 percent, which is the adjustment set for the end of the phase-in under current law. MedPAC asserts that approximately $1.5 billion of the IME payments to teaching hospitals result from paying more than the empirical estimate suggests. Under MedPAC's recommendation, the direct GME payments would essentially be added to current IME payments. However, we feel that it is inappropriate to revise the teaching adjustment in such a way that would constitute a further add-on to the current IME payments which MedPAC believes are excessive. Before such a change is adopted, Congress should determine a more accurate level at which to set the IME adjustment.

In addition, we note that MedPAC recommends folding the direct GME costs into the prospective payment system based on the most recent cost reports. The costs associated with GME, however, are no longer routinely audited by the fiscal intermediaries. Any reconstitution of the direct GME payment methodology based on recent cost reports would require further extensive audit work by the fiscal intermediaries.

VIII. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at http://www.hcfa.gov/stats/pubfiles.html. In our May 5, 2000 proposed rule, we published a list of data files that are available for purchase (65 FR 26318 through 26320).

B. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.

- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the May 5, 2000 proposed rule, we solicited public comment on each of the information collection requirements in §§ 412.77, 412.92, and 485.643 described below.

Section 412.77, Determination of the hospital-specific rate for inpatient operating costs for certain sole community hospitals based on a Federal fiscal year 1996 base period, and § 412.92, Special treatment: sole community hospitals.

Sections 412.77(a)(2) and 412.92(d)(1)(ii) state that an otherwise eligible hospital that elects not to receive payment based on its hospital-specific rate as determined under § 412.77 must notify its fiscal intermediary of its decision prior to the beginning of its cost reporting period beginning on or after October 1, 2000.

We estimate that it will take each hospital that notifies its intermediary of its election not to receive payments based on its hospital-specific rate as determined under § 412.77 an hour to draft and send its notice. However, we are unable at this time to determine how many hospitals will make this election and, therefore, will need to notify their intermediaries of their decision.

Section 485.643, Condition of participation: Organ, tissue, and eye procurement.

It is important to note that because of the inherent flexibility of this final regulation, the extent of the information collection requirements is dependent upon decisions that will be made either by the CAH or by the CAH in conjunction with the OPO or the tissue and eye banks, or both. Thus, the paperwork burden on individual CAHs will vary and is subject, in large part, to their decisionmaking.

The burden associated with the requirements of this section include: (1) The requirement to maintain protocol documentation demonstrating that the five requirements of this section have been met; (2) the requirement for a CAH to notify an OPO, a tissue bank, or an eye bank of any imminent or actual death; and (3) the time required for a hospital to document and maintain OPO referral information.

We estimate that, on average, the requirement to maintain protocol documentation demonstrating that the requirements of this section have been met will impose one hour of burden on each CAH (on 161 CAHs) on an annual basis, resulting in a total of 161 annual burden hours.

The CoP in this section will require CAHs to notify the OPO about every death that occurs in the CAH. The average Medicare hospital has approximately 165 beds and 200 deaths per year. However, by statute and regulation, CAHs may use no more than 15 beds for acute care services. Assuming that the number of deaths in a hospital is related to the number of acute care beds, there should be approximately 18 deaths per year in the average CAH. We estimate that the average notification telephone call to the OPO takes 5 minutes. Based on this estimate, a CAH would need approximately 90 minutes per year to notify the OPO about all deaths and imminent deaths.

Under the CoP, a CAH may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the CAH's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. If a CAH chose to contact both a tissue bank and an eye bank directly on all deaths, it could need an additional 180 minutes per year (that is, 5 minutes per call) in order to call both the tissue and eye bank directly. Again, the impact is small, and this regulation permits the CAH to decide how this process will take place. We note that many communities already have a one-phone call system in place. In addition, some OPOs are also tissue banks or eye banks, or both. A CAH that chooses to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

We estimate that additional time would be needed by the CAH to annotate the patient record or fill out a form regarding the disposition of a call to the OPO, the tissue bank, or the eye bank, or all three. This recordkeeping should take no more than 5 minutes to record each disposition or call. Therefore, all of the paperwork burden associated with the call(s) could add up to an additional 270 minutes per year per CAH.

In summary, the information collection requirements of this section would be a range of 3 to 6 hours per CAH annually.

We did not receive any comments on the proposed information collection and recordkeeping requirements.

These new information collection and recordkeeping requirements have been submitted to the Office of Management and Budget (OMB) for review under the authority of PRA. These requirements will not be effective until they have been approved by OMB.

The requirements associated with a hospital's application for a geographic redesignation, codified in Part 412, are currently approved by OMB under OMB approval number 0938–0573, with an expiration date of September 30, 2002.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as follows:

1. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 410.152 [Amended]

2. In § 410.152, paragraph (k)(2), the cross-reference "§ 413.70(c)" is removed and "§ 413.70(b)(2)(iii)(B)" is added in its place.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

B. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.2 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 412.2 Basis of payment.

(a) *Payment on a per discharge basis.* * * * An additional payment is made for both inpatient operating and inpatient capital-related costs, in accordance with subpart F of this part, for cases that are extraordinarily costly to treat.

* * * * *

§ 412.4 [Amended]

3. In § 412.4(f)(3), the reference to "§ 412.2(e)" is removed and "§ 412.2(b)" is added in its place.

4. Section 412.63 is amended by:

A. Revising paragraph (s).

B. Redesignating paragraphs (t), (u), (v), and (w) as paragraphs (u), (v), (w), and (x) respectively.

C. Adding a new paragraph (t).

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1994.

* * * * *

(s) *Applicable percentage change for fiscal year 2001.* The applicable percentage change for fiscal year 2001 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) for sole community hospitals and the increase in the market basket index minus 1.1 percentage points for other hospitals in all areas.

(t) *Applicable percentage change for fiscal year 2002.* The applicable percentage change for fiscal year 2002 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) minus 1.1 percentage points for hospitals in all areas.

* * * * *

5. Section 412.73 is amended by:

A. Revising paragraph (c)(12).

B. Adding paragraphs (c)(13), (c)(14), and (c)(15).

§ 412.73 Determination of the hospital-specific rate based on a Federal fiscal year 1982 base period.

* * * * *

(c) *Updating base-year costs*—* * *

(12) *For Federal fiscal years 1996 through 2000.* For Federal fiscal years 1996 through 2000, the update factor is the applicable percentage change for other prospective payment hospitals in each respective year as set forth in §§ 412.63(n) through (r).

(13) *For Federal fiscal year 2001.* For Federal fiscal year 2001, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter).

(14) *For Federal fiscal year 2002.* For Federal fiscal year 2002, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter) minus 1.1 percentage points.

(15) *For Federal fiscal year 2003 and for subsequent years.* For Federal fiscal year 2003 and subsequent years, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter).

* * * * *

§ 412.75 [Amended]

6. In § 412.75(d), the cross reference "§ 412.73 (c)(5) through (c)(12)" is removed and "§ 412.75(c)(15)" is added in its place.

§ 412.76 [Redesignated]

7. Section 412.76 is redesignated as a new § 412.78.

8. A new § 412.77 is added to read as follows:

§ 412.77 Determination of the hospital-specific rate for inpatient operating costs for certain sole community hospitals based on a Federal fiscal year 1996 base period.

(a) *Applicability.* (1) This section applies to a hospital that has been designated as a sole community hospital, as described in § 412.92, that received payment for its cost reporting period beginning during 1999 based on its hospital-specific rate for either fiscal year 1982 under § 412.73 or fiscal year 1987 under § 412.75, and that elects under paragraph (a)(2) of this section to be paid based on a fiscal year 1996 base period. If the 1996 hospital-specific rate exceeds the hospital-specific rates for either fiscal year 1982 or 1987, unless the hospital elects to the contrary, this rate will be used in the payment formula set forth under § 412.92(d)(1).

(2) Hospitals that are otherwise eligible for but elect not to receive payment on the basis of their Federal fiscal year 1996 updated costs per case must notify their fiscal intermediary of this decision prior to the end of their cost reporting period beginning on or after October 1, 2000, for which such payments would otherwise be made. If a hospital does not make the notification to its fiscal intermediary before the end of the cost reporting period, the hospital is deemed to have elected to have section 1886(b)(3)(I) of the Act apply to the hospital.

(3) This section applies only to cost reporting periods beginning on or after October 1, 2000.

(4) The formula for determining the hospital-specific costs for hospitals described under paragraph (a)(1) of this section is set forth in paragraph (f) of this section.

(b) *Based costs for hospitals subject to fiscal year 1996 rebasing.* (1) *General rule.* Except as provided in paragraph (b)(2) of this section, for each hospital eligible under paragraph (a) of this section, the intermediary determines the hospital's Medicare Part A allowable inpatient operating costs, as described in § 412.2(c), for the 12-month or longer cost reporting period ending on or after September 30, 1996 and before September 30, 1997, and computes the hospital-specific rate for purposes of determining prospective payment rates for inpatient operating costs as determined under § 412.92(d).

(2) *Exceptions.* (i) If the hospital's last cost reporting period ending before September 30, 1997 is for less than 12 months, the base period is the hospital's most recent 12-month or longer cost reporting period ending before the short period report.

(ii) If the hospital does not have a cost reporting period ending on or after September 30, 1996 and before September 30, 1997, and does have a cost reporting period beginning on or after October 1, 1995 and before October 1, 1996, that cost reporting period is the base period unless the cost reporting period is for less than 12 months. If that cost reporting period is for less than 12 months, the base period is the hospital's most recent 12-month or longer cost reporting period ending before the short cost reporting period. If a hospital has no cost reporting period beginning in fiscal year 1996, the hospital will not have a hospital-specific rate based on fiscal year 1996.

(c) *Costs on a per discharge basis.* The intermediary determines the hospital's average base-period operating cost per discharge by dividing the total operating costs by the number of discharges in the base period. For purposes of this section, a transfer as defined in § 412.4(b) is considered to be a discharge.

(d) *Case-mix adjustment.* The intermediary divides the average base-period cost per discharge by the hospital's case-mix index for the base period.

(e) *Updating base-period costs.* For purposes of determining the updated base-period costs for cost reporting periods beginning in Federal fiscal year 1996, the update factor is determined using the methodology set forth in § 412.73(c)(12) through (c)(15).

(f) *DRG adjustment.* The applicable hospital-specific cost per discharge is multiplied by the appropriate DRG weighting factor to determine the hospital-specific base payment amount

(target amount) for a particular covered discharge.

(g) *Notice of hospital-specific rates.* The intermediary furnishes a hospital eligible for rebasing a notice of the hospital-specific rate as computed in accordance with this section. The notice will contain a statement of the hospital's Medicare Part A allowable inpatient operating costs, the number of Medicare discharges, and the case-mix index adjustment factor used to determine the hospital's cost per discharge for the Federal fiscal year 1996 base period.

(h) *Right to administrative and judicial review.* An intermediary's determination of the hospital-specific rate for a hospital is subject to administrative and judicial review. Review is available to a hospital upon receipt of the notice of the hospital-specific rate. This notice is treated as a final intermediary determination of the amount of program reimbursement for purposes of subpart R of part 405 of this chapter.

(i) *Modification of hospital-specific rate.* (1) The intermediary recalculates the hospital-specific rate to reflect the following:

(i) Any modifications that are determined as a result of administrative or judicial review of the hospital-specific rate determinations; or

(ii) Any additional costs that are recognized as allowable costs for the hospital's base period as a result of administrative or judicial review of the base-period notice of amount of program reimbursement.

(2) With respect to either the hospital-specific rate determination or the amount of program reimbursement determination, the actions taken on administrative or judicial review that provide a basis for the recalculations of the hospital-specific rate include the following:

(i) A reopening and revision of the hospital's base-period notice of amount of program reimbursement under §§ 405.1885 through 405.1889 of this chapter.

(ii) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under § 405.1821 or § 405.1853 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iii) An affirmation, modification, or reversal of a Provider Reimbursement Review Board decision by the Administrator of HCFA under § 405.1875 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iv) An administrative or judicial review decision under § 405.1831, § 405.1871, or § 405.1877 of this chapter that is final and no longer subject to review under applicable law or regulations by a higher reviewing authority, and that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(v) A final, nonappealable court judgment relating to the base-period costs.

(3) The adjustments to the hospital-specific rate made under paragraphs (i)(1) and (i)(2) of this section are effective retroactively to the time of the intermediary's initial determination of the rate.

9. Section 412.92 is amended by:

A. Revising paragraph (d)(1).

B. Redesignating paragraph (d)(2) as paragraph (d)(3).

C. Adding a new paragraph (d)(2).

§ 412.92 Special treatment: sole community hospitals.

* * * * *

(d) *Determining prospective payment rates for inpatient operating costs for sole community hospitals*—(1) *General rule.* For cost reporting periods beginning on or after April 1, 1990, a sole community hospital is paid based on whichever of the following amounts yields the greatest aggregate payment for the cost reporting period:

(i) The Federal payment rate applicable to the hospitals as determined under § 412.63.

(ii) The hospital-specific rate as determined under § 412.73.

(iii) The hospital-specific rate as determined under § 412.75.

(iv) For cost reporting periods beginning on or after October 1, 2000, the hospital-specific rate as determined under § 412.77 (calculated under the transition schedule set forth in paragraph (d)(2) of this section), if the sole community hospital was paid for its cost reporting period beginning during 1999 on the basis of the hospital-specific rate specified in paragraph (d)(1)(ii) or (d)(1)(iii) of this section, unless the hospital elects otherwise under § 412.77(a)(1).

(2) *Transition of FY 1996 hospital-specific rate.* The intermediary calculates the hospital-specific rate determined on the basis of the fiscal year 1996 base period rate as follows:

(i) For Federal fiscal year 2001, the hospital-specific rate is the sum of 75 percent of the greater of the hospital-specific rates specified in paragraph (d)(1)(ii) or (d)(1)(iii) of this section, plus 25 percent of the hospital-specific rate specified in paragraph (d)(1)(iv) of this section.

(ii) For Federal fiscal year 2002, the hospital-specific rate is the sum of 50 percent of the greater of the hospital-specific rates specified in paragraph (d)(1)(ii) or (d)(1)(iii) of this section plus 50 percent of the hospital-specific rate specified in paragraph (d)(1)(iv) of this section.

(iii) For Federal fiscal year 2003, the hospital-specific rate is the sum of 25 percent of the greater of the hospital-specific rates specified in paragraph (d)(1)(ii) or (d)(1)(iii) of this section, plus 75 percent of the hospital-specific rate specified in paragraph (d)(1)(iv) of this section.

(iv) For Federal fiscal year 2004 and any subsequent fiscal years, the hospital-specific rate is 100 percent of the hospital-specific rate specified in paragraph (d)(1)(iv) of this section.

* * * * *

10. Section 412.105 is amended by:

A. Revising paragraph (d)(3)(v).

B. Adding a new paragraph (d)(3)(vi).

C. Republishing paragraph (f)(1) introductory text and revising paragraph (f)(1)(vii).

D. Adding new paragraphs (f)(1)(viii) and (f)(1)(ix).

E. Revising paragraph (g).

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(d) *Determination of education adjustment factor.* * * *

(3) * * *

(v) For discharges occurring during fiscal year 2001, 1.54.

(vi) For discharges occurring on or after October 1, 2001, 1.35.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.* (1) For cost reporting periods beginning on or after July 1, 1991, the count of full-time equivalent residents for the purpose of determining the indirect medical education adjustment is determined as follows:

* * * * *

(vii) If a hospital establishes a new medical residency training program, as defined in § 413.86(g)(9) of this subchapter, the hospital's full-time equivalent cap may be adjusted in accordance with the provisions of §§ 413.86(g)(6)(i) through (iv) of this subchapter.

(viii) A hospital that began construction of its facility prior to August 5, 1997, and sponsored new medical residency training programs on

or after January 1, 1995 and on or before August 5, 1997, that either received initial accreditation by the appropriate accrediting body or temporarily trained residents at another hospital(s) until the facility was completed, may receive an adjustment to its full-time equivalent cap in accordance with the provisions of § 413.86(g)(7) of this subchapter.

(ix) A hospital may receive a temporary adjustment to its full-time equivalent cap to reflect residents added because of another hospital's closure if the hospital meets the criteria specified in § 413.86(g)(8) of this subchapter.

* * * * *

(g) *Indirect medical education payment for managed care enrollees.* For portions of cost reporting periods occurring on or after January 1, 1998, a payment is made to a hospital for indirect medical education costs, as determined under paragraph (e) of this section, for discharges associated with individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act or with a Medicare+Choice organization under title XVIII, Part C of the Act during the period, according to the applicable payment percentages described in §§ 413.86(d)(3)(i) through (d)(3)(v) of this subchapter.

11. In § 412.106, the introductory text of paragraph (e) is republished and paragraphs (e)(4) and (e)(5) are revised to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(e) *Reduction in payment for FYs 1998 through 2002.* The amounts otherwise payable to a hospital under paragraph (d) of this section are reduced by the following:

* * * * *

(4) For FY 2001, 3 percent.

(5) For FY 2002, 4 percent.

* * * * *

12. Section 412.230 is amended by:

A. Adding a new paragraph (a)(5)(iv).

B. Republishing the introductory text of paragraph (e)(1).

C. Revising paragraph (e)(1)(iii) and (e)(1)(iv).

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

(a) General. * * *

(5) *Limitations on redesignation.*

* * *

(iv) An urban hospital that has been granted redesignation as rural under § 412.103 cannot receive an additional reclassification by the MGCRB based on this acquired rural status as long as such redesignation is in effect.

* * * * *

(e) *Use of urban or other rural area's wage index—(1) Criteria for use of area's wage index.* Except as provided in paragraphs (e)(3) and (e)(4) of this section, to use an area's wage index, a hospital must demonstrate the following:

* * * * *

(iii) One of the following conditions apply:

(A) With respect to redesignations for Federal fiscal year 1994 through 2001, the hospital's average hourly wage is at least 108 percent of the average hourly wage of hospitals in the area in which the hospital is located; or

(B) With respect to redesignations for Federal fiscal year 2002 and later years, the hospital's average hourly wage is, in the case of a hospital located in a rural area, at least 106 percent, and, in the case of a hospital located in an urban area, at least 108 percent of the average hourly wage of hospitals in the area in which the hospital is located; and

(iv) One of the following conditions apply:

(A) For redesignations effective before fiscal year 1999, the hospital's average hourly wage weighted for occupational categories is at least 90 percent of the average hourly wages of hospitals in the area to which it seeks redesignation.

(B) With respect to redesignations for fiscal year 1994 through 2001, the hospital's average hourly wage is equal to at least 84 percent of the average hourly wage of hospitals in the area to which it seeks redesignation.

(C) With respect to redesignations for fiscal year 2002 and later years, the hospital's average hourly wage is equal to, in the case of a hospital located in a rural area, at least 82 percent, and in the case of a hospital located in an urban area, at least 84 percent of the average hourly wage of hospitals in the area to which it seeks redesignation.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as follows:

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.40, paragraph (a)(3) is amended by revising paragraph (B) of the definition of "ceiling" and paragraph (d)(4) is revised, to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

(a) *Introduction.* * * *

(3) *Definitions.* * * *

Ceiling. * * *

(B) The hospital-within-a-hospital has discharged to the other hospital and subsequently readmitted more than 5 percent (that is, in excess of 5.0 percent) of the total number of Medicare inpatients discharged from the hospital-within-a-hospital in that cost reporting period.

* * * * *

(d) *Application of the target amount in determining the amount of payment.*

* * *

(4) *Continuous improvement bonus payments.* (i) For cost reporting periods beginning on or after October 1, 1997 and ending before October 1, 2000, eligible hospitals (as defined in paragraph (d)(5) of this section) receive payments in addition to those in paragraph (d)(2) of this section, as applicable. These payments are equal to the lesser of—

(A) 50 percent of the amount by which the operating costs are less than the expected costs for the period; or

(B) 1 percent of the ceiling.

(ii) For cost reporting periods beginning on or after October 1, 2000, and ending before September 30, 2001, eligible psychiatric hospitals and units and long-term care hospitals (as defined in paragraph (d)(5) of this section) receive payments in addition to those in paragraph (d)(2) of this section, as applicable. These payments are equal to the lesser of—

(A) 50 percent of the amount by which the operating costs are less than the expected costs for the period; or

(B) 1.5 percent of the ceiling.

(iii) For cost reporting periods beginning on or after October 1, 2001, and before September 30, 2002, eligible psychiatric hospitals and units and long-term care hospitals receive payments in addition to those in paragraph (d)(5) of this section, as applicable. These payments are equal to the lesser of—

(A) 50 percent of the amount by which the operating costs are less than the expected costs for the periods; or

(B) 2 percent of the ceiling.

* * * * *

3. Section 413.70 is revised to read as follows:

§ 413.70 Payment for services of a CAH.

(a) *Payment for inpatient services furnished by a CAH.* (1) Payment for inpatient services of a CAH is the reasonable costs of the CAH in providing CAH services to its inpatients, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in Part 415 of this chapter, except that the following payment principles are excluded when determining payment for CAH inpatient services:

(i) Lesser of cost or charges;

(ii) Ceilings on hospital operating costs; and

(iii) Reasonable compensation equivalent (RCE) limits for physician services to providers.

(2) Payment to a CAH for inpatient services does not include any costs of physician services or other professional services to CAH inpatients, and is subject to the Part A hospital deductible and coinsurance, as determined under subpart G of part 409 of this chapter.

(b) *Payment for outpatient services furnished by a CAH*—(1) *General.* Unless the CAH elects to be paid for services to its outpatients under the method specified in paragraph (b)(3) of this section, the amount of payment for outpatient services of a CAH is the amount determined under paragraph (b)(2) of this section.

(2) *Reasonable costs for facility services.* (i) Payment for outpatient services of a CAH is the reasonable costs of the CAH in providing CAH services to its outpatients, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in Part 415 of this chapter, except that the following payment principles are excluded when determining payment for CAH outpatient services:

(A) Lesser of costs or charges;

(B) RCE limits;

(C) Any type of reduction to operating or capital costs under § 413.124 or § 413.130(j)(7); and

(D) Blended payment amounts for ambulatory surgical services, radiology services, and other diagnostic services;

(ii) Payment to a CAH under paragraph (b)(2) of this section does not include any costs of physician services or other professional services to CAH outpatients, and is subject to the Part B deductible and coinsurance amounts, as determined under §§ 410.152(k), 410.160, and 410.161 of this chapter.

(iii) The following payment principles are used when determining payment for outpatient clinical diagnostic laboratory tests.

(A) The amount paid is equal to 100 percent of the least of—

(*1*) Charges determined under the fee schedule as set forth in section 1833(h)(1) or section 1834(d)(1) of the Act;

(*2*) The limitation amount for that test determined under section 1833(h)(4)(B) of the Act or the amount of the charges billed for the test; or

(*3*) A negotiated rate established under section 1833(h)(6) of the Act.

(B) Payment for outpatient clinical diagnostic laboratory tests is not subject to the Medicare Part B deductible and coinsurance amounts, as specified in § 410.152(k) of this chapter.

(3) *Election to be paid reasonable costs for facility services plus fee schedule for professional services.* (i) A CAH may elect to be paid for outpatient services in any cost reporting period under the method described in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section. This election must be made in writing, made on an annual basis, and delivered to the intermediary at least 60 days before the start of each affected cost reporting period. An election of this payment method, once made for a cost reporting period, remains in effect for all of that period and applies to all services furnished to outpatients during that period.

(ii) If the CAH elects payment under this method, payment to the CAH for each outpatient visit will be the sum of the following amounts:

(A) For facility services, not including any services for which payment may be made under paragraph (b)(3)(ii)(B) of this section, the reasonable costs of the services as determined under paragraph (b)(2)(i) of this section; and

(B) For professional services otherwise payable to the physician or other practitioner on a fee schedule basis, the amounts that otherwise would be paid for the services if the CAH had not elected payment under this method.

(iii) Payment to a CAH is subject to the Part B deductible and coinsurance amounts, as determined under §§ 410.152, 410.160, and 410.161 of this chapter.

(c) *Final payment based on cost report.* Final payment to the CAH for CAH facility services to inpatients and outpatients furnished during a cost reporting is based on a cost report for that period, as required under § 413.20(b).

4. Section 413.86 is amended by:

A. Revising the first sentence of paragraph (d)(3).

B. Revising the introductory text of paragraph (e)(3).

C. Redesignating paragraph (e)(4) as paragraph (e)(5).

D. Adding a new paragraph (e)(4).

E. Revising newly designated paragraph(e)(5)(i)(B).

F. Adding a new paragraph (e)(5)(iv).

§ 413.86 Direct graduate medical education payments.

* * * * *

(d) *Calculating payment for graduate medical education costs.* * * *

(3) *Step Three.* For portions of cost reporting periods occurring on or after January 1, 1998, the product derived in step one is multiplied by the proportion of the hospital's inpatient days attributable to individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act and who are entitled to Medicare Part A or with a Medicare+Choice organization under Title XVIII, Part C of the Act. * * *

(e) *Determining per resident amounts for the base period.* * * *

(3) *For cost reporting periods beginning on or after July 1, 1986.* Subject to the provisions of paragraph (e)(4) of this section, for cost reporting periods beginning on or after July 1, 1986, a hospital's base-period per resident amount is adjusted as follows:

* * * * *

(4) *For cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30, 2005.* For cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30, 2005, a hospital's per resident amount for each fiscal year is adjusted in accordance with the following provisions:

(i) *General provisions.* For purposes of § 413.86(e)(4)—

(A) *Weighted average per resident amount.* The weighted average per resident amount is established as follows:

(*1*) Using data from hospitals' cost reporting periods ending during FY 1997, HCFA calculates each hospital's single per resident amount by adding each hospital's primary care and non-primary care per resident amounts, weighted by its respective FTEs, and dividing by the sum of the FTEs for primary care and non-primary care residents.

(*2*) Each hospital's single per resident amount calculated under paragraph (e)(4)(i)(A)(*1*) of this section is standardized by the 1999 geographic adjustment factor for the physician fee schedule area (as determined under § 414.26 of this chapter) in which the hospital is located.

(3) HCFA calculates an average of all hospitals' standardized per resident amounts that are determined under paragraph (e)(4)(i)(A)(2) of this section. The resulting amount is the weighted average per resident amount.

(B) *Primary care/obstetrics and gynecology and non-primary care per resident amounts.* A hospital's per resident amount is an amount inclusive of any CPI–U adjustments that the hospital may have received since the hospital's base year, including any CPI–U adjustments the hospital may have received because the hospital trains primary care/obstetrics and gynecology residents and non-primary care residents as specified under paragraph (e)(3)(ii) of this section.

(ii) *Adjustment beginning in FY 2001 and ending in FY 2005.* For cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30, 2005, a hospital's per resident amount is adjusted in accordance with paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(C) of this section, in that order:

(A) *Updating the weighted average per resident amount for inflation.* The weighted average per resident amount (as determined under paragraph (e)(4)(i)(A) of this section) is updated by the estimated percentage increase in the CPI–U during the period beginning with the month that represents the midpoint of the cost reporting periods ending during FY 1997 (that is, October 1, 1996) and ending with the midpoint of the hospital's cost reporting period that begins in FY 2001.

(B) *Adjusting for locality.* The updated weighted average per resident amount determined under paragraph (e)(4)(ii)(A) of this section (the national average per resident amount) is adjusted for the locality of each hospital by multiplying the national average per resident amount by the 1999 geographic adjustment factor for the physician Fee schedule area in which each hospital is located, established in accordance with § 414.26 of this subchapter.

(C) *Determining necessary revisions to the per resident amount.* The locality-adjusted national average per resident amount, as calculated in accordance with paragraph (e)(4)(ii)(B) of this section, is compared to the hospital's per resident amount is revised, if appropriate, according to the following three categories:

(1) *Floor.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2001, if the hospital's per resident amount would otherwise be less than 70 percent of the locality-adjusted national average per resident amount for FY 2001 (as determined under paragraph (e)(4)(ii)(B) of this section), the per resident amount is equal to 70 percent of the locality-adjusted national average per resident amount for FY 2001. For subsequent cost reporting periods, the hospital's per resident amount is updated using the methodology specified under paragraph (e)(3)(i) of this section.

(2) *Ceiling.* If the hospital's per resident amount is greater than 140 percent of the locality-adjusted national average per resident amount, the per resident amount is adjusted as follows for FY 2001 through FY 2005:

(*i*) *FY 2001.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2001, if the hospital's FY 2000 per resident amount exceeds 140 percent of the FY 2001 locality-adjusted national average per resident amount (as calculated under paragraph (e)(4)(ii)(B) of this section), then, subject to the provision stated in paragraph (e)(4)(ii)(C)(2)(*iv*) of this section, the hospital's per resident amount is frozen at the FY 2000 per resident amount and is not updated for FY 2001 by the CPI–U factor.

(*ii*) *FY 2002.* For cost reporting periods beginning on or after October 1, 2001 and on or before September 30, 2002, if the hospital's FY 2001 per resident amount exceeds 140 percent of the FY 2002 locality-adjusted national average per resident amount, then, subject to the provision stated in paragraph (e)(4)(ii)(C)(2)(*iv*) of this section, the hospital's per resident amount is frozen at the FY 2001 per resident amount and is not updated for FY 2002 by the CPI–U factor.

(iii) *FY 2003 through FY 2005.* For cost reporting periods beginning on or after October 1, 2002 and on or before September 30, 2005, if the hospital's per resident amount for the previous cost reporting period is greater than 140 percent of the locality-adjusted national average per resident amount for that same previous cost reporting period (for example, for cost reporting periods beginning in FY 2003, compare the hospital's per resident amount from the FY 2002 cost report to the hospital's locality-adjusted national average per resident amount from FY 2002), then, subject to the provision stated in paragraph (e)(4)(ii)(C)(2)(*iv*) of this section, the hospital's per resident amount is adjusted using the methodology specified in paragraph (e)(3)(i) of this section, except that the CPI–U applied for a 12-month period is reduced (but not below zero) by 2 percentage points.

(*iv*) *General rule for hospitals that exceed the ceiling.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005, if a hospital's per resident amount exceeds 140 percent of the hospital's locality-adjusted national average per resident amount and it is adjusted under any of the criteria (e)(4)(ii)(C)(2)(*i*) through (*iii*) of this section, the current year per resident amount cannot be reduced below 140 percent of the locality-adjusted national average per resident amount.

(3) *Per resident amounts greater than or equal to the floor and less than or equal to the ceiling.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005, if a hospital's per esident amount is greater than or equal to 70 percent and less than or equal to 140 percent of the hospital's locality-adjusted national average per resident amount for each respective fiscal year, the hospital's per resident amount is updated using the methodology specified in paragraph (e)(3)(i) of this section.

(5) *Exceptions*—(i) *Base period for certain hospitals.* * * *

(B) The weighted mean value of per resident amounts of hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter, for cost reporting periods beginning in the same fiscal years. If there are fewer than three amounts that can be used to calculate the weighted mean value, the calculation of the per resident amounts includes all hospitals in the hospital's region as that term is used in § 412.62(f)(1)(i) of his chapter.

* * * * *

(iv) Effective October 1, 2000, the per resident amounts established under paragraphs (e)(5)(i) through (iii) of this section are subject to the provisions of paragraph (e)(4) of this section.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

D. Part 485 is amended as follows:

1. The authority citation for part 485 continues to read as follows:

Authority: Sec. 1820 of the Act (42 U.S.C. 1395i–1114), unless otherwise noted.

2. A new § 485.643 is added to subpart F to read as follows:

§ 485.643 Condition of participation: Organ, tissue, and eye procurement.

The CAH must have and implement written protocols that:

(a) Incorporate an agreement with an OPO designated under part 486 of this chapter, under which it must notify, in a timely manner, the OPO or a third party designated by the OPO of individuals whose death is imminent or

who have died in the CAH. The OPO determines medical suitability for organ donation and, in the absence of alternative arrangements by the CAH, the OPO determines medical suitability for tissue and eye donation, using the definition of potential tissue and eye donor and the notification protocol developed in consultation with the tissue and eye banks identified by the CAH for this purpose;

(b) Incorporate an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage and distribution of tissues and eyes, as may be appropriate to assure that all usable tissues and eyes are obtained from potential donors, insofar as such an agreement does not interfere with organ procurement;

(c) Ensure, in collaboration with the designated OPO, that the family of each potential donor is informed of its option to either donate or not donate organs, tissues, or eyes. The individual designated by the CAH to initiate the request to the family must be a designated requestor. A designated requestor is an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families and requesting organ or tissue donation;

(d) Encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

(e) Ensure that the CAH works cooperatively with the designated OPO, tissue bank and eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place.

(f) For purposes of these standards, the term "Organ" means a human kidney, liver, heart, lung, or pancreas.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance)

Dated: July 24, 2000.

Nancy Ann Min DeParle,

Administrator, Health Care, Financing Administration

Dated: July 24, 2000.

Donna E. Shalala,

Secretary.

[Editorial Note: The following Addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective with Discharges Occurring On or After October 1, 2000 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2000

I. Summary and Background

In this Addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 2000, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if qualified, 25 percent of the updated hospital-specific rate based on FY 1996 cost per discharge, plus 75 percent of the updated FY 1982 or FY 1987 hospital-specific rate. Section 405 of Public Law 106–113 amended section 1886(b)(3) of the Act to allow a sole community hospital that was paid for its cost reporting period beginning during FY 1999 on the basis of either its FY 1982 or FY 1987 hospital-specific rate to elect to rebase its hospital-specific ate based on its FY 1996 cost per discharge.

Section 404 of Public Law 106–113 amended section 1886(d)(5)(G) of the Act to extend the special treatment for Medicare-dependent, small rural hospitals. Medicare-dependent, small rural hospitals are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a Federal national rate.

As discussed below in section II of this Addendum, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2001. The changes, to be applied prospectively, affect the calculation of the Federal rates. In section III of this Addendum, we finalize our proposal to discontinue listing updates to the payments per unit for blood clotting factor provided to hospital inpatients who have hemophilia. In section IV of this Addendum, we discuss our changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2001. Section V of this Addendum sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2001. The tables to which we refer in the preamble to this final rule are presented at the end of this Addendum in section VI.

II. Changes to Prospective Payment Rates For Inpatient Operating Costs for FY 2001

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes will be effective with discharges occurring on or after October 1, 2000. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 2001.

In summary, the standardized amounts set forth in Tables 1A and 1C of section VI of this Addendum reflect—

- Updates of 2.3 percent for all areas (that is, the market basket percentage increase of 3.4 percent minus 1.1 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 2000 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 2000 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

The standardized amounts set forth in table 1E of section VI of this Addendum, which apply to sole community hospitals, reflect updates of 3.4 percent (that is, the full market basket percentage increase) as provided for in section 406 of Public Law 106–113, but otherwise reflect the same adjustments as the national standardized amounts.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts

for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates.

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (d)(2)(C) of the Act required us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, a payments to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the prospective payment system. The average labor share in Puerto Rico is 71.3 percent. We are revising the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 1999 MedPAR file.

Comment: One commenter asserted that our labor share of 71.1 percent is overstated and particularly disadvantageous to small rural hospitals. The commenter questioned how we arrived at this percentage when their informal survey of 300 hospitals found none with salaries and benefits in excess of 56 percent of total operating costs. The commenter proposed that HCFA should only recognize costs that are included in the wage index survey on the cost report when recalculating the labor share.

Response: We set forth the latest revision of the labor share calculation in the August 29, 1997 final rule (62 FR 45993) after considering comments in response to our proposal set forth in the June 2, 1997 proposed rule (62 FR 29920). We feel that our current methodology accurately captures, on average, the operating costs faced by hospitals that are affected by local labor markets. It should also be noted that the wage and benefit shares of the prospective payment system's market basket are determined using the wage index survey data provided in the Medicare Cost Reports. However, we will take these comments into consideration when we perform our next periodic revision of the hospital operating market basket.

2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1998 population estimates published by the Bureau of the Census, 61 areas meet the criteria to be defined as large urban areas for FY 2001. These areas are identified by a footnote in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the area average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban areas' and the other areas' average standardized amounts for FY 2001 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XVI) of the Act specifies an update factor for the standardized amounts for FY 2001 equal to the market basket percentage increase minus 1.1 percentage points for hospitals, except sole community hospitals, in all areas. The Act, as amended by section 406 of Public Law 106–113, specifies an update factor equal to the market basket percentage increase for sole community hospitals.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 2001 is 3.4 percent. Thus, for FY 2001, the update to the average standardized amounts equals 3.4 percent for sole community hospitals and 2.3 percent for other hospitals.

As in the past, we are adjusting the FY 2000 standardized amounts to remove the effects of the FY 2000 geographic reclassifications and outliner payments before applying the FY 2001 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliners. We then apply the new offsets to the standardized amounts for outliners and geographic reclassifications for FY 2001.

Although the update factors for FY 2001 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY2001 for both prospective payment hospitals and hospitals excluded from the prospective payment system. We have included our final recommendations in Appendix C to this final rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment. Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used historical discharge data to simulate payments and compared aggregate payments using the FY 2000 relative weights and wage index to aggregate payments using the FY 2001 relative weights and wage index. The same methodology was used for the FY 2000 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.997225. We also adjusted the Puerto Rico-specific standardized amounts to adjust for the effects of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.999649. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2000 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we will continue to apply these same adjustment factors to the hospital-specific rates that are effective for cost

reporting periods beginning in on or after October 1, 2000. (See the discussion in the September 4, 1990 final rule (55 FR 6073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment. Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Georgraphic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Section 152(b) of Public Law 106–113 requires reclassifications under that subsection to be treated as reclassifications under section 1886(d)(10) of the Act. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. In the May 5, 2000 proposed rule, based on these simulations, we applied an adjustment factor of 0.994270 to ensure that the effects of reclassification are budget neutral. The final budget neutrality adjustment factor is 0.993187.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 2000 budget neutrality adjustment factor. We note that the proposed FY 2001 adjustment reflected wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 29, 2000. The effects of any additional reclassification changes that occurred as a result of appeals and reviews of MGCRB decisions for FY 2001 or hospitals' withdrawal of reclassification requests are reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in this final rule.

c. Outliers. Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

i. FY 2001 outlier thresholds. For FY 2000, the fixed loss cost outlier threshold was equal to the prospective payment for the DRG plus $14,050 ($12,827 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) was 80 percent. We applied an outlier adjustment to the FY 2000 standardized amounts of 0.948859 for the large urban and other areas rates and 0.9402 for the capital Federal rate.

For FY 2001, we proposed to establish a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus the IME and DSH payments plus $17,250 ($15,763 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we proposed to maintain the marginal cost factor for cost outliers at 80 percent. In setting the final FY 2001 outlier thresholds, we used updated data. In this final rule, we are establishing a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus the IME and DSH payments plus $17,550 ($16,036 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we are maintaining the marginal cost factor for cost outliers at 80 percent. As we have explained in the past, to calculate outlier thresholds we apply a cost inflation factor to update costs for the cases used to simulate payments. For FY 1999, we used a cost inflation factor of minus 1.724 percent (a cost per case decrease of 1.724 percent). For FY 2000, we used a cost inflation factor of zero percent. To set the proposed FY 2001 outlier thresholds, we used a cost inflation factor of 1.0 percent. We are using a cost inflation actor of 1.8 percent to set the final FY 2001 outlier thresholds. This factor reflects our analysis of the best available cost report data as well as calculations (using the best available data) indicating that the percentage of actual outlier payments for FY 1999 is higher than we projected before the beginning of FY 1999, and that the percentage of actual outlier payments for FY 2000 will likely be higher than we projected before the beginning of FY 2000. The calculations of "actual" outlier payments are discussed below.

ii. Other changes concerning outliers. In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the FY 2001 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we established outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the thresholds for FY 2001 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.9 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts for FY 2001 were as follows:

	Operating standardized amounts	Capital federal rate
National	0.948865	0.9416
Puerto Rico	0.975408	0.9709

The final outlier adjustment factors applied to the standardized amounts for FY 2001 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948908	0.9409
Puerto Rico	0.974791	0.9699

As in the proposed rule, we apply the outlier adjustment factors after removing the effects of the FY 2000 outlier adjustment factors on the standardized amounts.

Table 8A in section VI of this Addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the fiscal intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios replace the ratios published in the July 30, 1999 final rule (64 FR 41620). Table 8B contains comparable Statewide average capital cost-to-charge ratios. These average ratios will be used to calculate cost outlier payments for those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.200265 or greater than 1.298686 and capital cost-to-charge ratios lower than 0.01262 greater than 0.16792. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8A and 8B will be used during FY 2001 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or outside the three standard deviations range.

iii. FY 1999 and FY 2000 outlier payments. In the July 30, 1999 final rule (64 FR 41547), we stated that, based on available data, we estimated that actual

FY 1999 outlier payments would be approximately 6.3 percent of actual total DRG payments. This was computed by simulating payments using the March 1998 bill data available at the time. That is, the estimate of actual outlier payments did not reflect actual FY 1999 bills but instead reflected the application of FY 1999 rates and policies to available FY 1998 bills. Our current estimate, using available FY 1999 bills, indicates that actual outlier payments for FY 1999 were approximately 7.6 percent of actual total DRG payments. We note that the MedPAR file for FY 1999 discharges continues to be updated. Thus, the data indicate that, for FY 1999, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 1999 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 1999). In fact, the data indicate that the proportion of actual outlier payments for FY 1999 exceeds 6 percent. Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 1999.

We currently estimate that actual outlier payments for FY 2000 will be approximately 6.2 percent of actual total DRG payments, higher than the 5.1 percent we projected in setting outlier policies for FY 2000. This estimate is based on simulations using the March 2000 update of the provider-specific file and the March 2000 update of the FY 1999 MedPAR file (discharge data for FY 1999 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2000 by applying FY 2000 rates and policies to available FY 1999 bills.

Comment: Several commenters opposed the proposed change in the cost outlier fixed loss amount from $14,050 to $17,250. The commenters stated that our rationale for this change is that outlier payments were approximately 7.5 percent of total actual DRG payments in FY 1999 and are anticipated to be 6.1 percent in FY 2000. The commenters observed that no additional payments were made in previous years when outlier payments fell below 5.1 percent. The commenters stated that cost outlier thresholds were adjusted as a result of changes made by Public Law 105–33 and that the reason current payments exceed the 5.1 percent target was due to these changes. The commenters also noted that the majority of hospitals did not reap windfall profits on outlier cases, merely mitigated their losses. The commenters characterized these losses as particularly devastating as they come at a time when MedPAC's analyses show that hospitals' financial performance is deteriorating. One commenter suggested that the Secretary consider acting independently of Congress by lowering the FY 2001 outlier threshold without further reducing the standardized payment amount.

Response: We believe the commenters misunderstood the methodology for calculating the FY 2001 outlier fixed loss amount. Under section 1886(d)(5)(A)(iv) of the Act, we are required to set the outlier threshold at a level such that outlier payments are projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates. That FY 2000 outlier payments are now anticipated to exceed 5.1 percent of total payments is an indication that costs are rising faster than we predicted when setting the outlier fixed loss amount prior to the beginning of FY 2000. This was one of several factors taken into consideration when we estimated FY 2001 costs to model projected outlier payments for FY 2001. The outlier fixed loss amount is set to meet the aforementioned statutory requirement. Each year we set the outlier thresholds for the upcoming fiscal year by making projections based on the best available data; we do not make the thresholds more stringent simply because current data indicate that, in a previous year, actual outlier payments turned out to be more than we projected when we set the outlier thresholds for that year. Thus, the change in the outlier fixed loss amount from $14,050 (for FY 2000) to $17,250 (proposed FY 2001) reflects estimates and projections about costs in FY 2001. We did not increase the outlier fixed loss amount simply because we now expect that actual outlier payments exceed 5.1 percent of actual total DRG payments for FY 1999 and FY 2000 respectively.

We do not concur with the commenters' assertion that changes to the outlier methodology made by Public Law 105–33 caused current outlier payments to exceed 5.1 percent. Public Law 105–33 did not change the statutory requirement that projected outlier payments be between 5 percent and 6 percent of projected total payments based on DRG prospective payment rates. Again, we believe that current outlier payments are greater than expected in part because actual hospital costs may be higher than reflected in the methodology used to set the outlier threshold.

Finally, we believe in the concept of outlier payments as a protection against the financial effects of treating extraordinarily high-cost cases through an offsetting adjustment to the standardized amounts according to the statutory requirements set forth as required in sections 1886(d)(5)(A)(iv) and 1886(d)(3)(E) of the Act. These sections of the Act require that outlier thresholds be calculated so that outlier payments are projected to equal between 5 and 6 percent of total payments based on DRG prospective payment rates and the standardized amounts are to be reduced by the same percentage to account for the projected proportion of payments paid to outliers.

5. FY 2001 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A (Table 1E for sole community hospitals) contains the two national standardized amounts that are applicable to all hospitals, except hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A, 1C and 1E, as set forth in this Addendum, contain the labor-related and nonlabor-related shares used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this Addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of this preamble, we discuss the data and methodology for the FY 2001 wage index. The wage index is set forth in

Tables 4A through 4F of this Addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2001, we are adjusting the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska:	
All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.15
County of Kauai	1.225
County of Maui	.1.225
County of Kalawao	1.225

The above factors are based on data obtained from the U.S. Office of Personnel Management.

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section VI of this Addendum contains the relative weights that we will use for discharges occurring in FY 2001. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 2001

General Formula for Calculation of Prospective Payment Rates for FY 2001

The prospective payment rate for all hospitals located outside of Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals = Federal rate.

The prospective payment rate for sole community hospitals = whichever of the following rates yields the greatest aggregate payment: The Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if the sole community hospital was paid for its cost reporting period beginning during FY 1999 on the basis of either its FY 1982 or FY 1987 hospital-specific rate and elects rebasing, 25 percent of its updated hospital-specific rate based on FY 1996 cost per discharge plus 75 percent of its updated FY 1982 or FY 1987 hospital-specific rate.

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate, or, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 100 percent of the Federal rate plus 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 50 percent of the Puerto Rico rate + 50 percent of a discharge-weighted average of the national large urban standardized amount and the Federal national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 2000 and before October 1, 2001, except for sole community hospitals, Medicare-dependent, small rural hospitals and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Table 1A or 1E1 in section VI of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4A, 4B, and 4C of section VI of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section VI of this Addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural Hospitals)

Section 1886(b)(3)(C) of the Act, as amended by section 405 of Public Law 106–113, provides that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if the sole community hospital was paid for its cost reporting period beginning during FY 1999 on the basis of either its FY 1982 or FY 1987 hospital-specific rate and elects rebasing, 25 percent of its updated hospital-specific rate based on FY 1996 cost per discharge plus 75 percent of the updated FY 1982 or FY 1987 hospital-specific rate.

Section 1886(d)(5)(G) of the Act, as amended by section 404 of Public Law 106–113, provides that Medicare-dependent, small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 cost per discharge, the FY 1987 cost per discharge or, for qualifying sole community hospitals, the FY 1996 cost per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 2001. We are increasing the hospital-specific rates by 3.4 percent (the hospital market basket rate of increase) for sole community hospitals and by 2.3 percent (the hospital market basket percentage increase minus 1.1 percentage points) for Medicare-dependent, small rural hospitals for FY 2001. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for sole community hospitals in FY 2001, is the market basket rate of increase. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for Medicare-dependent, small rural hospitals equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2001, is the

market basket rate of increase minus 1.1 percentage points.

b. Calculation of Hospital-Specific Rate. For sole community hospitals, the applicable FY 2001 hospital-specific rate is the greater of the following: the hospital-specific rate for the preceding fiscal year, increased by the applicable update factor (3.4 percent); or, if the hospital qualifies to rebase its hospital-specific rate based on cost per case in FY 1996 and elects rebasing, 75 percent of the hospital-specific rate for the preceding fiscal year, increased by the applicable update factor, plus 25 percent of its rebased FY 1996 hospital-specific rate updated through FY 2001. For Medicare-dependent, small rural hospitals, the applicable FY 2001 hospital-specific rate is calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (2.3 percent), which is the same as the update for all prospective payment hospitals, except sole community hospitals. In addition, the hospital-specific rate is adjusted by the budget neutrality adjustment factor (that is, 0.997225) as discussed in section II.A.4.a. of this Addendum. The resulting rate is used in determining under which rate a sole community hospital or Medicare-dependent, small rural hospital is paid for its discharges beginning on or after October 1, 2000, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning on or After October 1, 2000 and Before October 1, 2001

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section VI of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section VI of the Addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section VI of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section VI of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Changes to the Payment Rates for Blood Clotting Factor for Hemophilia Inpatients

For the past 2 years in the **Federal Register** (63 FR 41010 and 64 FR 41549), we have discussed section 4452 of Public Law 105–33, which amended section 6011(d) of Public Law 101–239 to reinstate the add-on payment for the costs of administering blood clotting factor to Medicare beneficiaries who have hemophilia and who are hospital inpatients for discharges occurring on or after October 1, 1997. In these prior rules, we have described the payment policy that the payment amount for clotting factors covered by this inpatient benefit is equal to 85 percent of the AWP, subject to the Part A deductible and coinsurance requirements, and specifically listed the updated add-on payment amounts for each clotting factor, as described by HCFA's Common Procedure Coding System (HCPCS). Because we are not changing the policy established 2 years ago, we are discontinuing the practice of listing these amounts in the annual proposed and final rules. Instead, the program manuals will instruct fiscal intermediaries to follow this policy and obtain the average wholesale price (AWP) for each relevant HCPCS from either their corresponding local carrier or the Medicare durable medical equipment regional carrier (DMERC) that has jurisdiction in their area. Carriers already calculate the AWP based on the median AWP of the several products available in each category of factor.

The payment amounts will be determined using the most recent AWP data available to the carrier at the time the intermediary performs these annual update calculations.

These amounts are updated annually and are effective for discharges beginning on or after October 1 of the current year through September 30 of the following year. Payment will be made for blood clotting factor only if there is an ICD–9–CM diagnosis code for hemophilia included on the bill.

Comment: One commenter disagreed with our proposal to have individual Medicare contractors determine the payment allowance for the pass-through amount payable for clotting factors for inpatients with hemophilia. The commenter stated that individual Medicare contractors would not maintain a uniform payment amount and this inconsistency would result in wide disparities in reimbursement. The commenter recommended that HCFA continue to set a standard national rate that would be the same for everyone. The commenter also expressed concern that updates in payment allowances for clotting factors would vary widely among contractors.

Response: We continue to believe that our carriers are the most appropriate entities to obtain the AWP for these factors, and are therefore proceeding with our proposed change. While we do not anticipate inconsistency in the payment allowances for these products around the country, we do not want to jeopardize access to these essential biologicals for Medicare beneficiaries who are hemophiliacs. Therefore, we have determined that a more appropriate approximation for the cost of clotting factor furnished on an inpatient basis is 95 percent of the AWP, consistent with the Part B benefit for the same factors. This increase from 85 percent to 95 percent of the AWP will assure access despite possible Medicare contractor variations in the applicable AWP.

IV. Changes to Payment Rates for Inpatient Capital-Related Costs for FY 2001

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining capital Federal prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the capital

Federal rate and the hospital-specific rates and the hospital-specific rates for FY 2001. The rates will be effective for discharges occurring on or after October 1, 2000.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard capital Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the capital Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the capital Federal rate to total capital payments under the capital Federal rate. In addition, § 412.308(c)(3) requires that the capital Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the capital Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the capital Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966), we implemented section 4402 of Public Law 105–33, which requires that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard capital Federal rate is reduced by 17.78 percent. A small part of that reduction will be restored effective October 1, 2002.

For each hospital, the hospital-specific rate was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. Since FY 1992, the hospital-specific rate has been updated annually for inflation and for changes in the exceptions payment adjustment factor. For FYs 1992 through 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor. Section 4402 of Public Law 105–33 also requires that fFor discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted hospital-specific rate is reduced by 17.78 percent. A small part of this reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described in greater detail in Appendix B of this final rule.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the capital Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

In the July 30, 1999 final rule (64 FR 41551), we established a capital Federal rate of $377.03 for FY 2000. In the proposed rule, we stated that, as a result of the changes we proposed to the factors used to establish the capital Federal rate, the proposed FY 2001 capital Federal rate was $383.06. In this final rule, we are establishing a FY 2001 capital Federal rate of $382.03.

In the discussion that follows, we explain the factors that were used to determine the FY 2001 capital Federal rate. In particular, we explain why the FY 2001 capital Federal rate has increased 1.33 percent compared to the FY 2000 capital Federal rate. We also estimate aggregate capital payments will increase by 5.48 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions, the increase in case-mix, and the increase in the Federal blend percentage from 90 to 100 percent for fully prospective payment hospitals.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 2001 compared to FY 2000.

1. Standard Capital Federal Rate Update

a. Description of the Update Framework. Under § 412.308(c)(1), the standard capital Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CIPI) and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. The proposed rule reflected an update factor for FY 2001 under that framework of 0.9 percent, based on data available at that

time. Under the update framework, the final update factor for FY 2001 is 0.9 percent. This update factor is based on a projected 0.9 percent increase in the CIPI, a 0.0 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a 0.0 percent adjustment for the FY 1999 DRG reclassification and recalibration, and a forecast error correction of 0.0 percent. We explain the basis for the FY 2001 CIPI projection in section II.D of this Addendum. In this section IV of the Addendum, we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1999 DRG reclassification and recalibration as part of our FY 2001 update recommendation.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2001, we are projecting a 0.5 percent increase in the case-mix index. We estimate that real case-mix increase will equal 0.5 percent in FY 2001. Therefore, the net adjustment for case-mix change in FY 2001 is 0.0 percentage points.

Comment: One commenter stated that the magnitude of the upward adjustment of 0.5 percent for real case-mix change and the downward adjustment of 0.5 percent for projected case-mix change (a net case-mix adjustment of 0.0 percent) for FY 2001 appears inconsistent with past numbers published by HCFA. They recommend that we review our adjustment for case-mix and provide a basis for these adjustment amounts.

Response: HCFA's Office of the Actuary estimates the projection of total case-mix changes used in the capital and operating update frameworks. The estimate of case-mix change for FY 2001 is the same as the estimate of case-mix change for FY 2000 published in the July 30, 1999 final rule (64 FR 41551). This estimate of case-mix change for FY 2001 is also very close to what has been used for the past 5 years. Past estimates of case-mix change have always assumed that most of the case-mix change will be real, and therefore the net adjustments for case-mix change have always been small or zero. Again this year, our estimate assumes the same kind of relationship. Therefore, we believe that our projection of a 0.5 percent increase in the case-mix index and our estimate that real case-mix increase will equal 0.5 percent (for a net case-mix adjustment of 0.0 percent) in FY 2001 is consistent with past case-mix change update recommendations. As more experience develops we may be able to develop a better estimate of the real part of the case-mix increase.

We estimate that FY 1999 DRG reclassification and recalibration will result in a 0.0 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a 0.0 percent adjustment for DRG reclassification and recalibration in the update recommendation for FY 2001.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of 0.0 percentage points was calculated for the FY 1999 update. That is, current historical data indicate that the FY 1999 CIPI used in calculating the forecasted FY 1999 update factor did not overstate or understate realized price increases. We therefore are making a 0.0 percent adjustment for forecast error in the update for FY 2001.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2001, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1995 through 1999 data. In determining case-mix constant intensity, we found that observed case-mix increase was 1.7 percent in FY 1995, 1.6 percent in FY 1996, 0.3 percent in FY 1997, −0.4 percent in FY 1998, and −0.3 percent in FY 1999. For FY 1995 and FY 1996, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by

past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1995 through FY 1999. Based on this analysis, we believe that all of the observed case-mix increase for FY 1997, FY 1998, and FY 1999 is real. The increases for FY 1995 and FY 1996 were in excess of our estimate of real case-mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. Given estimates of real case-mix of 1.0 percent for FY 1995, 1.0 percent for FY 1996, 0.3 percent for FY 1997, −0.4 percent for FY 1998, and −0.3 percent for FY 1999, we estimate that case-mix constant intensity declined by an average 0.7 percent during FYs 1995 through 1999, for a cumulative decrease of 3.6 percent. If we assume that real case-mix increase was 1.4 percent for FY 1995, 1.4 percent for FY 1996, 0.3 percent for FY 1997, −0.4 percent for FY 1998, and −0.3 percent for FY 1999, we estimate that case-mix constant intensity declined by an average 0.9 percent during FYs 1995 through 1999, for a cumulative decrease of 4.5 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 2001.

We note that the operating recommendation addressed in Appendix C of this final rule reflects the possible range that a negative adjustment could span (−0.6 percent to 0.0 percent adjustment) based on our analyses that intensity has declined during that 5-year period. While the calculation of the adjustment for intensity is identical in both the capital and the operating update frameworks, consistent with past capital update recommendations and the FY 2001 operating recommendation, we did not make a negative adjustment for intensity in the FY 2001 capital update.

b. Comparison of HCFA and MedPAC Update Recommendations. MedPAC's FY 2001 update recommendation for capital prospective payments was not included in its March 2000 Report to Congress. In the May 5, 2000 proposed rule, we stated that we would address the comparison of HCFA's update recommendation and MedPAC's update recommendation in this final rule, once we have had the opportunity to review the data analyses that substantiate MedPAC's recommendation.

In its June 2000 Report to Congress, MedPAC presented a combined operating and capital update for hospital inpatient prospective payment system payments for FY 2001, and recommended that Congress implement a single combined (operating and capital) prospective payment system rate. With the end of the transition to fully prospective capital payments ending with FY 2001, both operating and capital prospective system payments will be made using standard Federal rates adjusted by hospital specific payment variables. Currently, section 1886(b)(3)(B)(i)(XVI) of the Act sets forth the FY 2001 percentage increase in the prospective payment system operating cost standardized amounts. The prospective payment system capital update is set under the framework established by the Secretary outlined in § 412.308(c)(1).

For FY 2001, MedPAC's update framework supports a combined operating and capital update for hospital inpatient prospective payment system payments of 3.5 percent to 4.0 percent (or between the increase in the combined operating and capital market basket plus 0.6 percentage points and the increase in the combined operating and capital market basket plus 1.1 percentage points). MedPAC also notes that while the number of hospitals with negative inpatient hospital margins have increased in FY 1998 (mostly likely as the result of the implementation of Pub. L. 105–33), overall high inpatient Medicare margins generally offset hospital losses on other lines of Medicare services. MedPAC continues to project positive (greater than 11 percentage points) Medicare inpatient hospital margins through FY 2002.

MedPAC's FY 2001 combined operating and capital update framework uses a weighted average of HCFA's forecasts of the operating (PPS Input Price Index) and capital (CIPI) market baskets. This combined market basket is used to develop an estimate of the change in overall operating and capital prices. MedPAC calculated a combined market basket forecast by weighting the operating market basket forecast by 0.92 and the capital market basket forecast by 0.08, since operating costs are estimated to represent 92 percent of total hospital costs (capital costs are estimated to represent the remaining 8 percent of total hospital costs). MedPAC's combined market basket for FY 2001 is estimated to increase by 2.9 percent, based on HCFA's March 2000 forecasted operating market basket increase of 3.1 percent and HCFA's March 2000 forecasted capital market basket increase of 0.9 percent.

HCFA's Response to MedPAC's Recommendation: As we stated in the May 5, 2000 proposed rule (65 FR 26317), we responded to a similar comment in the July 30, 1999 final rule (64 FR 41552), the July 31, 1998 final rule (63 FR 41013), and the September 1, 1995 final rule (60 FR 45816). In those rules, we stated that our long-term goal was to develop a single update framework for operating and capital prospective payments and that we would begin development of a unified framework. However, we have not yet developed such a single framework as the actual operating system update has been determined by Congress through FY 2002. In the meantime, we intend to maintain as much consistency as possible with the current operating framework in order to facilitate the eventual development of a unified framework. We maintain our goal of combining the update frameworks at the end of the 10-year capital transition period (the end of FY 2001) and may examine combining the payment systems post-transition. Because of the similarity of the update frameworks, we believe that they could be combined with little difficulty.

Our recommendation for updating the prospective payment system capital Federal rate is supported by the following analyses that measure changes in scientific and technological advances, practice pattern changes, changes in case-mix, the effect of reclassification and recalibration, and forecast error correction. MedPAC recommends a 3.5 to 4.0 percent combined operating and capital update for hospital inpatient prospective payments. Under our existing capital update framework, we are recommending a 0.9 percent update to the capital Federal rate. For purposes of comparing HCFA's capital update recommendation and MedPAC's update recommendation for FY 2001, we have isolated the capital component of MedPAC's combined market basket forecast, which was based on HCFA's March 2000 CIPI forecast of 0.9 percent. As a result, MedPAC's update recommendation for FY 2001 for capital

payments is between 1.4 percent and 1.9 percent (see Table 1).

There are some differences between HCFA's and MedPAC's update frameworks, which account for the difference in the respective update recommendations. In it's combined FY 2001 update recommendation, MedPAC uses HCFA's capital input price index (the CIPI) as the starting point for estimating the change in prices since the previous year. HCFA's CIPI includes price measures for interest expense, which are an indicator of the interest rates facing hospitals during their capital purchasing decisions. Previously, MedPAC's capital market basket did not include interest expense; instead it included a financing policy adjustment when necessary to account for the prolonged changes in interest rates. HCFA's CIPI is vintage-weighted, meaning that it takes into account price changes from past purchases of capital when determining the current period update. In the past, MedPAC's capital market basket was not vintage-weighted, and only accounted for the current year price changes. This year, both HCFA's and MedPAC's FY 2001 update frameworks use HCFA's CIPI, which is currently forecast at 0.9 percent.

MedPAC and HCFA also differ in the adjustments they make in their respective frameworks. (See Table 1 for a comparison of HCFA and MedPAC's update recommendations.) MedPAC makes an adjustment for scientific and technological advances, which is offset by a fixed standard for productivity growth. HCFA has not adopted a separate adjustment for capital science and technology or productivity and efficiency. Instead, we have identified a total intensity factor, which reflects scientific and technological advances, but we have not identified an adequate total productivity measure. The Commission also includes a site-of-care substitution adjustment (unbundling of the payment unit) to account for the decline in the average length of Medicare acute inpatient stays. This adjustment is designed to shift funding along with associated costs when Medicare patients are discharged to postacute settings that replace acute impatient days. Other factors, such as technological advances that allow for a decreased need in follow-up care and BBA mandated policy on payment for transfer cases that limits payments within certain DRGs, are reflected in the site-of-care substitution adjustment as well. A negative intensity adjustment would capture the site-of-care substitution accounted for in MedPAC's update framework. However, we did not make a negative adjustment for intensity this year. We may examine the appropriateness of adopting a negative intensity adjustment at a later date.

For FY 2001, MedPAC recommends a 0.0 percent combined adjustment for site-of-care substitutions. MedPAC recommends a 0.0 to a 0.5 percent combined adjustment for scientific and technological advances, which was offset by a fixed productivity standard of 0.5 percent for FY 2001. We recommend a 0.0 percent intensity adjustment.

Additionally, MedPAC has included an adjustment for one-time factors to account for significant costs incurred by hospitals for unusual, non-recurring events or for the costs of major new regulatory requirements. The Commission is not recommending any additional allowance for FY 2001 and recommends a 0.0 percent combined adjustment for one-time factors for FY 2001.

MedPAC makes a two-part adjustment for case-mix changes, which takes into account changes in case-mix in the past year. They recommend a 0.5 percent combined adjustment for DRG coding change and a 0.0 percent combined adjustment for within-DRG complexity change. This results in a combined total case mix adjustment of 0.5 percent. We recommend a 0.0 percent total case-mix adjustment, since we are projecting a 0.5 percent increase in the case-mix index and we estimate that real case-mix increase will equal 0.5 percent in FY 2001.

We recommend a 0.0 percent adjustment for forecast error correction. MedPAC's combined FY 2001 update recommendation includes a 0.1 percent adjustment for forecast error correction. However, they noted that this forecast error adjustment is a result of the difference between the forecasted FY 1999 operating market basket of 2.4 percent and the actual FY 1999 operating market basket increase of 2.5 percent. The FY 1999 capital market basket forecast was equal to the actual observed increase of 0.7 percent for capital costs. Therefore, we have included 0.0 percent adjustment for FY 1999 forecast error correction in the comparison of MedPAC's and HCFA's update recommendations for FY 2001 shown below in Table 1.

We applied MedPAC's ratio of hospital capital costs to total hospital costs (8 percent) to the adjustment factors in their update framework for comparison with HCFA's capital update framework. The net result of these adjustments is that MedPAC has recommended a 0.9 to 1.0 percent update to the capital Federal rate for FY 2001. MedPAC believes that the annual updates to the capital and operating payments under the prospective payment system should not differ substantially, even though they are determined separately, since they correspond to costs generated by providing the same inpatient hospital services to the same Medicare patients. We describe the basis for our 0.9 percent total capital update for FY 2001 in the preceding section. While our recommendation is below the range recommended by MedPAC, in past years our update recommendation has been above the lower limit of MedPAC's update recommendation. For instance, for FY 2000 MedPAC's update recommendation was −1.1 percent to 1.8 percent. HCFA's FY 2000 update factor was 0.3 percent, which is 1.4 percentage points higher than the lower limit of MedPAC's update recommendation. For FY 2001, our update 0.9 percent is only 0.5 percentage points below MedPAC's lower limit of their recommendation.

TABLE 1.—HCFA'S FY 2001 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION

	HCFA's update factor	MedPAC's recommendation
Capital Input Price Index	0.9	0.9[1]
Policy Adjustment Factors		
Intensity	0.0	
Science and Technology Intensity		0.0 to 0.5 ([2])

TABLE 1.—HCFA'S FY 2001 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION—Continued

	HCFA's update factor	MedPAC's recommendation
Real within DRG Change		(3)
Site-of-Care Substitution		0.0
Subtotal	0.0	0.0 to 0.5
Case-Mix Adjustment Factors		
Projected Case-Mix Change	−0.5	
Real Across DRG Change	0.5	
Coding Change		0.5
Real within DRG Change	[4]	0.0
Subtotal	0.0	0.5
One-Time Factors		0.0
Effect of FY 1998 Reclassification and Recalibration	0.0	
Forecast Error Correction	0.0	0.0
Total Update	0.9	1.4 to 1.9

[1] Used HCFA's March 2000 capital market basket forecast in its combined update recommendations.
[2] Included in MedPAC's productivity offset in its science and technology adjustment.
[3] Included in MedPAC's case-mix adjustment.
[4] Included in HCFA's intensity factor.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the capital Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 100 percent for cost reporting periods beginning in FY 2001 for hospitals paid under the fully prospective payment methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of outlier payments under the capital Federal rate to total inpatient capital-related payments under the capital Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the inpatient capital-related outlier payments that would be made if all hospitals were paid 100 percent of the capital Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model payments as if all hospitals were paid 100 percent of the capital Federal rate because, as explained above, outlier payments are made only on the portion of the capital Federal rate that is included in the hospital's inpatient capital-related payments.

In the July 30, 1999 final rule, we estimated that outlier payments for capital in FY 2000 would equal 5.98 percent of inpatient capital-related payments based on the capital Federal rate (64 FR 41553). Accordingly, we applied an outlier adjustment factor of 0.9402 to the capital Federal rate. Based on the thresholds as set forth in section II.A.4.d. of this Addendum, we estimate that outlier payments for capital will equal 5.91 percent of inpatient capital-related payments based on the capital Federal rate in FY 2001. Therefore, we are establishing an outlier adjustment factor of 0.9409 to the capital Federal rate. Thus, the projected percentage of capital outlier payments to total capital standard payments for FY 2001 is lower than the percentage for FY 2000.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the capital Federal rate. Therefore, the net change in the outlier adjustment to the capital Federal rate for FY 2001 is 1.0007 (0.9409/0.9402). The outlier adjustment increases the FY 2001 capital Federal rate by 0.07 percent compared with the FY 2000 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the capital Federal rate be adjusted so that aggregate payments for the fiscal year based on the capital Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the GAF are projected to equal aggregate payments that would have been made on the basis of the capital Federal rate without such changes. We use the actuarial model, described in Appendix B of this final rule, to estimate the aggregate payments that would have been made on the basis of the capital Federal rate without changes in the DRG classifications and weights and in the GAF. We also use the model to estimate aggregate payments that would be made on the basis of the capital Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF.

For FY 2000, we calculated a GAF/DRG budget neutrality factor of 0.9985. In the proposed rule for FY 2001, we proposed a GAF/DRG budget neutrality factor of 0.9986. In this final rule, based on calculations using updated data, we are applying a factor of 0.9979. The GAF/DRG budget neutrality factors are built permanently into the rates; that is,

they are applied cumulatively in determining the capital Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The incremental change in the adjustment from FY 2000 to FY 2001 is 0.9979. The cumulative change in the rate due to this adjustment is 0.9993 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, and FY 2001: 0.9980 × 1.0053 × 0.9998 × 0.9994 × 0.9987 × 0.9989 × 1.0028 × 0.9985 × 0.9979 = 0.9993).

This factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2001 geographic reclassification decisions made by the MGCRB compared to FY 2000 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard capital Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and capital Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this final rule.

For FY 2000, we estimated that exceptions payments would equal 2.70 percent of aggregate payments based on the capital Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9730 (1 − 0.0270) in determining the capital Federal rate. In the May 5, 2000 proposed rule, we estimated that exceptions payments for FY 2001 would equal 2.04 percent of aggregate payments based on the capital Federal rate and the hospital-specific rate. Therefore, we proposed an exceptions payment reduction factor of 0.9796 to the capital Federal rate for FY 2001. The proposed exceptions reduction factor for FY 2001 was 0.68 percent higher than the factor for FY 2000. For this final rule, based on updated data, we estimate that exceptions payments for FY 2001 will equal 2.15 percent of aggregate payments based on the capital Federal rate and the hospital-specific rate. We are, therefore, applying an exceptions payment reduction factor of 0.9785 (1 − 0.0215) to the capital Federal rate for FY 2001. The final exceptions reduction factor for FY 2001 is 0.57 percent higher than the factor for FY 2000 and 0.11 percent lower than the factor in the FY 2001 proposed rule.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the capital Federal rate. Therefore, the net adjustment to the FY 2001 capital Federal rate is 0.9785/0.9730, or 1.0057.

5. Standard Capital Federal Rate for FY 2001

For FY 2000, the capital Federal rate was $377.03. As a result of changes that we proposed to the factors used to establish the capital Federal rate, we proposed that the FY 2001 capital Federal rate would be $383.06. In this final rule, we are establishing the capital Federal rate of $382.03. The capital Federal rate for FY 2001 was calculated as follows:

- The FY 2001 update factor is 1.0090; that is, the update is 0.90 percent.
- The FY 2001 budget neutrality adjustment factor that is applied to the standard capital Federal payment rate for changes in the DRG relative weights and in the GAF is 0.9979.
- The FY 2001 outlier adjustment factor is 0.9409.
- The FY 2001 exceptions payments adjustment factor is 0.9785.

Since the capital Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we have made no additional adjustments in the standard capital Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 2001 affected the computation of the FY 2001 capital Federal rate in comparison to the FY 2000 capital Federal rate. The FY 2001 update factor has the effect of increasing the capital Federal rate by 0.90 percent compared to the rate in FY 2000, while the geographic and DRG budget neutrality factor has the effect of decreasing the capital Federal rate by 0.21 percent. The FY 2001 outlier adjustment factor has the effect of increasing the capital Federal rate by 0.07 percent compared to FY 2000. The FY 2001 exceptions reduction factor has the effect of increasing the capital Federal rate by 0.57 percent compared to the exceptions reduction for FY 2000. The combined effect of all the changes is to increase the capital Federal rate by 1.33 percent for FY 2001 compared to the capital Federal rate for FY 2000.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2000 CAPITAL FEDERAL RATE AND FY 2001 CAPITAL FEDERAL RATE

	FY 2000	FY 2001	Change	Percent change
Update factor [1]	1.0030	1.0090	1.0090	0.90
GAF/DRG Adjustment Factor [1]	0.9985	0.9979	0.9979	−0.21
Outlier Adjustment Factor [2]	0.9402	0.9409	1.0007	0.07
Exceptions Adjustment Factor [2]	0.9730	0.9785	1.0057	0.57
Federal Rate	$377.03	$382.03	1.0133	1.33

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 2000 to FY 2001 resulting from the application of the 0.9979 GAF/DRG budget neutrality factor for FY 2001 is 0.9979.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2001 outlier reduction factor is 0.9409/0.9402, or 1.0007.

As stated previously in this section, the FY 2001 capital Federal rate has increased 1.33 percent compared to the FY 2000 capital Federal rate as a result of the combination of the FY 2001 factors and adjustments applied to the

capital Federal rate. Specifically, the capital update factor increased the FY 2001 capital Federal rate 0.90 percent over FY 2000. The exceptions reduction factor increased 0.57 percent from 0.9730 for FY 2000 to 0.9785 for FY 2001, which results in an increase to the capital Federal rate for FY 2001 compared to FY 2000. Also, the outlier adjustment factor increased 0.07 percent from 0.9402 for FY 2000 to 0.9409 for FY 2001, which results in an increase to the capital Federal rate for FY 2001 compared to FY 2000. The GAF/DRG adjustment factor decreased 0.21 percent from 0.9986 for FY 2000 to 0.9979 for FY 2001, which results in a decrease the capital Federal rate for FY 2001 compared to FY 2000. The effect of all of these changes is a 1.33 percent increase in the FY 2001 capital Federal rate compared to FY 2000.

We are also providing a chart that shows how the final FY 2001 capital Federal rate differs from the proposed FY 2001 capital Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2001 PROPOSED CAPITAL FEDERAL RATE AND FY 2001 FINAL CAPITAL FEDERAL RATE

	Proposed FY 2001	Final FY 2001	Change	Percent change
Update Factor[1]	1.0090	1.0090	1.0000	0.00
GAF/DRG Adjustment Factor	0.9986	0.9979	0.9992	−0.08
Outlier Adjustment Factor	0.9416	0.9409	0.9992	−0.08
Exceptions Adjustment Factor	0.9796	0.9785	0.9989	−0.11
Federal Rate	$383.06	$382.03	0.9973	−0.27

6. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section IV of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the capital Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the capital Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a geographic adjustment factor (GAF) to both portions of the blended rate. The GAF is calculated using the operating prospective payment system wage index and varies depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Since we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. The Puerto Rico GAF budget neutrality factor is 1.0037, while the DRG adjustment is 1.0001, for a combined cumulative adjustment of 1.0037.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of Public Law 105–33.

For FY 2000, before application of the GAF, the special rate for Puerto Rico hospitals was $174.81. With the changes we proposed to the factors used to determine the rate, the proposed FY 2001 special rate for Puerto Rico was $185.38. In this final rule, the FY 2001 capital rate for Puerto Rico is $185.06.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 2001 be determined by adjusting the FY 2000 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard capital Federal rate determined under § 412.308(c)(1). For FY 2001, we are updating the hospital-specific rate by a factor of 1.0090.

2. Exceptions Payment Adjustment Factor

For FYs 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the capital Federal rate. For FY 2001, we estimated in the proposed rule that exceptions payments would be 2.04 percent of aggregate payments based on the capital Federal rate and the hospital-specific rate. Therefore, the proposed exceptions adjustment factor was 0.9796. In this final rule, we estimate that exceptions payments will be 2.15 percent of aggregate payments based on the capital Federal rate and hospital-specific rate. Accordingly, for FY 2001, we are applying an exceptions reduction factor of 0.9785 to the hospital-specific rate. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 2001 hospital-specific rate is 0.9785/0.9730, or 1.0057.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 2000 and FY 2001 and the net adjustment for each factor. It also shows that the cumulative net adjustment from FY 2000 to FY 2001 is 1.0147, which represents an increase of 1.47 percent to the hospital-specific rate. For each hospital, the FY 2001 hospital-specific rate is determined by multiplying the FY 2000 hospital-specific rate by the cumulative net adjustment of 1.0147.

FY 2001 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

	FY 2000	FY 2001	Net adjustment	Percent change
Update Factor	1.0030	1.0090	1.0090	0.90
Exceptions Payment Adjustment Factor	0.9730	0.9785	1.0057	0.57
Cumulative Adjustments	0.9759	0.9903	1.0147	1.47

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 2000 to FY 2001 is 1.0090. In contrast, the exceptions payment adjustment factor is not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 2000 to FY 2001 is 0.9785/0.9730, or 1.0057.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 2001

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two payment methodologies—the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the capital Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable capital Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the standard capital Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

If the hospital-specific rate is above the applicable capital Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable capital Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard capital Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable). The result is the adjusted capital Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of the following:

- 100 percent of the adjusted capital Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted capital Federal rate for each discharge. The percentage of the adjusted capital Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted capital Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is based on the applicable transition blend percentage of the hospital-specific rate and the adjusted capital Federal rate. Thus, for FY 2001 payments under the fully prospective methodology will be based on 100 percent of the adjusted capital Federal rate and zero percent of the hospital-specific rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the capital Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 100 percent of the capital Federal rate for discharges occurring in cost reporting periods beginning during FY 2001. Thus, a fully prospective hospital will receive 100 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 2001. For hold-harmless hospitals that are paid 85 percent of their reasonable costs for old inpatient capital, the portion of the capital Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the capital Federal rate, 100 percent of the capital Federal rate is included in the hospital's outlier payments.

The outlier thresholds for FY 2001 are in section II.A.4.c. of this Addendum. For FY 2001, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $17,550.

During the capital prospective payment system transition period, a hospital also may receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 2001 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent or that receive more than 30 percent of their net inpatient care revenues from State or local governments for indigent care, 80 percent; and
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the

cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period. New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990, or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

D. Capital Input Price Index

1. Background

Like the operating input price index, the Capital Input Price Index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

Using Medicare cost reports, American Hospital Association (AHA) data, and Securities Data Company data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent explanation of the CIPI was discussed in the final rule with comment period for FY 1998 published on August 29, 1997 (62 FR 46050).

2. Forecast of the CIPI for Federal Fiscal Year 2001

We are forecasting the CIPI to increase 0.9 percent for FY 2001. This reflects a projected 1.5 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.6 percent increase in other capital expense prices in FY 2001, partially offset by a 1.2 percent decline in vintage-weighted interest rates in FY 2001. The weighted average of these three factors produces the 0.9 percent increase for the CIPI as a whole.

V. Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in regulations at § 413.40. Under these limits, a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). In the case of a psychiatric hospital or hospital unit, a rehabilitation hospital or hospital unit, or a long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts adjusted to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital for hospitals and units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor.

Section 1886(b)(3)(B) of the Act, which is implemented in regulations at § 413.40(c)(3)(vii), provides that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 2002, the update factor for a hospital or unit depends on the hospital's or hospital unit's costs in relation to the ceiling for the most recent cost reporting period for which information is available. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by less than 10 percent, the update factor is the market basket minus .25 percent for each percentage point by which costs are less than 10 percent over the ceiling. For hospitals with costs equal to or less than the ceiling but greater than 66.7 percent of the ceiling, the update factor is the greater of 0 percent or the market basket minus 2.5 percent. For hospitals with costs that do not exceed 66.7 percent of the ceiling, the update factor is 0.

The most recent forecast of the market basket increase for FY 2001 for hospitals and hospital units excluded from the prospective payment system is 3.4 percent. Therefore, the update to a hospital's target amount for its cost reporting period beginning in FY 2001 would be between 0.9 and 3.4 percent, or 0 percent, depending on the hospital's or unit's costs in relation to its rate-of-increase limit.

In addition, § 413.40(c)(4)(iii) requires that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 2002, the target amount for each psychiatric hospital or hospital unit, rehabilitation hospital or hospital unit, and long-term care hospital cannot exceed a cap on the target amounts for hospitals in the same class.

Section 121 of Public Law 106–113 amended section 1886(b)(3)(H) of the Act to direct the Secretary to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. We are publishing an interim final rule with comment period elsewhere in this issue of the **Federal Register** that implements this provision for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000. This final rule addresses the wage adjustment to the caps for cost reporting periods beginning on or after October 1, 2000.

As discussed in section VI. of the preamble of this final rule, under section 121 of Public Law 106–113, the cap on the target amount per discharge is determined by adding the hospital's

nonlabor-related portion of the national 75th percentile cap to its wage-adjusted, labor-related portion of the national 75th percentile cap (the labor-related portion of costs equals 0.71553 and the nonlabor-related portion of costs equals 0.28447). A hospital's wage-adjusted, labor-related portion of the target amount is calculated by multiplying the labor-related portion of the national 75th percentile cap for the hospital's class by the wage index under the hospital inpatient prospective payment system (see § 412.63), without taking into account reclassifications under sections 1886(d)(10) and (d)(8)(B) of the Act.

For cost reporting periods beginning in FY 2001, in the May 5, 2000 proposed rule, we included the following proposed caps:

Class of excluded hospital or unit	Labor-related share	Nonlabor-related share
Psychiatric	$8,106	$3,223
Rehabilitation	15,108	6,007
Long-Term Care	29,312	11,654

We have reconsidered the methodology that was originally used to calculate the labor-related and nonlabor-related portions of the proposed FY 2001 wage neutralized national 75th percentile caps on the target amounts for each class of provider. Using the revised methodology discussed previously in this final rule, we have calculated revised labor-related and nonlabor-related portions of the wage-neutralized 75th percentile caps for FY 2001 for each class of hospital, updated by the market basket percentage increase of 3.4 percent. These revised caps are as follows:

Class of excluded hospital or unit	Labor-related share	Nonlabor-related share
Psychiatric	$8,131	$3,233
Rehabilitation	15,164	6,029
Long-Term Care	29,284	11,642

Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement. Regulations at § 413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units (psychiatric, rehabilitation, and long-term care) effective October 1, 1997.

VI. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this Addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 1E (a new table, as described in section II of this Addendum), 3C, 4A, 4B, 4C, 4D, 4E, 4F, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 7A, 7B, 8A, and 8B are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 1E—National Adjusted Operating Standardized Amounts for Sole Community Hospitals (SCH), Labor/Nonlabor
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1999 and Hospital Average Hourly Wage for Federal Fiscal Year 2001 Wage Index
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4D—Average Hourly Wage for Urban Areas
Table 4E—Average Hourly Wage for Rural Areas
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Arithmetic Mean Length of Stay Points Used in the Prospective Payment System
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Revised Diagnosis Code Titles
Table 6E—Revised Procedure Codes
Table 6F—Additions to the CC Exclusions List
Table 6G—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 99 MedPAR Update March 2000 GROUPER V18.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 99 MedPAR Update March 2000 GROUPER V18.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 2000
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 2000

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,884.19	$1,164.21	$2,818.85	$1,145.78

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$2,839.54	$1,154.19	$2,839.54	$1,154.19
Puerto Rico	$1,374.71	$553.36	$1,352.95	$544.60

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$382.03
Puerto Rico	$185.06

TABLE 1E.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR SOLE COMMUNITY HOSPITALS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,894.99	$1,176.73	$2,849.16	$1,158.10

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TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
010001	1.4294	16.41	010054	1.1479	18.51	010115	0.8833	14.63	020013	1.0626	23.88	030043	1.2567	20.93	040001	1.1695	15.16
010004	1.0044	17.97	010055	1.4580	18.95	010118	1.2295	18.85	020014	1.1928	27.38	030044	0.9256	16.86	040002	1.0910	13.96
010005	1.2569	17.60	010056	1.3402	19.22	010119	0.7792	18.80	020017	1.6747	26.83	030047	0.8534	22.64	040003	1.0688	14.21
010006	1.4036	16.75	010058	0.9956	16.17	010120	0.9619	17.23	020018	0.9065	.	030049	0.8945	19.09	040004	1.0075	17.85
010007	1.1138	15.48	010059	1.0672	19.13	010121	1.2258	14.64	020019	0.8528	.	030054	0.8303	15.33	040005	0.9870	13.26
010008	1.0833	14.74	010061	0.9939	14.95	010123	1.2088	16.73	020021	0.8366	.	030055	1.2371	16.36	040007	1.6827	21.96
010009	1.0063	18.77	010062	1.1102	14.77	010124	.	16.28	020024	1.0571	24.09	030059	1.3346	24.05	040008	1.0105	15.30
010010	1.0068	16.45	010064	1.8188	20.41	010125	1.0258	15.53	020025	0.8739	21.76	030060	1.1241	19.25	040010	1.2529	18.60
010011	1.6135	20.80	010065	1.2899	16.40	010126	1.0000	19.57	020026	1.4443	.	030061	1.6750	18.91	040011	0.9480	14.53
010012	1.3038	17.72	010066	0.8564	15.43	010127	.	19.52	020027	0.9082	.	030062	1.1595	17.67	040014	1.4158	17.63
010015	0.9899	15.45	010068	1.2573	12.65	010128	0.9027	14.51	030001	1.3064	20.37	030064	1.7338	19.57	040015	1.1465	16.59
010016	1.2613	17.25	010069	1.1544	13.86	010129	1.0725	14.73	030002	1.8284	21.60	030065	1.7690	20.51	040016	1.0681	19.03
010018	1.0518	17.64	010072	1.1121	14.98	010130	0.9882	16.66	030003	2.2227	23.48	030067	1.1041	14.44	040017	1.1712	13.51
010019	1.1661	16.35	010073	0.9005	13.86	010131	1.2711	17.83	030004	0.8926	14.67	030068	1.0055	17.36	040018	1.1358	17.69
010021	1.1942	16.29	010078	1.2718	17.92	010134	0.9006	18.88	030006	1.5668	18.27	030069	1.3563	19.19	040019	1.0003	22.68
010022	1.0136	18.59	010079	1.2274	16.44	010137	1.3064	12.12	030007	1.2597	19.67	030071	0.9991	.	040020	1.5809	16.48
010023	1.7322	16.10	010081	1.3837	18.95	010138	0.9812	12.87	030008	2.0657	22.28	030072	0.9288	.	040021	1.2285	17.64
010024	1.3776	16.29	010083	1.1292	16.89	010139	1.5811	19.00	030009	1.1423	18.18	030073	1.0190	.	040022	1.4527	17.04
010025	1.2879	15.14	010084	1.4692	18.50	010143	1.1566	16.79	030010	1.3006	19.00	030074	0.9265	.	040024	1.0006	14.48
010027	0.8259	11.79	010085	1.3063	18.47	010144	1.4241	17.13	030011	1.3809	19.36	030075	0.8143	.	040025	0.8685	11.51
010029	1.5761	17.65	010086	1.0461	16.67	010145	1.2522	20.84	030012	1.2250	18.99	030076	0.8824	.	040026	1.0629	19.56
010031	1.3658	18.78	010087	1.7486	19.06	010146	1.2928	18.52	030013	1.2636	20.75	030077	0.8316	.	040027	1.3958	16.10
010032	0.8643	12.69	010089	1.2784	16.08	010148	0.9675	12.22	030014	1.5278	19.93	030078	1.1550	.	040028	0.9947	14.66
010033	2.0361	20.39	010090	1.6552	18.59	010149	1.2031	18.63	030016	1.3250	19.40	030079	0.8532	.	040029	1.2717	17.88
010034	1.0742	15.10	010091	0.9348	13.94	010150	1.0446	17.90	030017	1.4749	22.88	030080	1.3831	20.51	040030	0.9476	13.54
010035	1.2514	20.19	010092	1.3958	16.99	010152	1.3255	17.83	030018	1.8370	20.20	030083	1.2566	23.33	040032	0.9430	13.70
010036	1.0391	17.81	010095	0.9431	12.45	010155	1.0005	9.63	030019	1.2062	21.70	030084	1.1368	.	040035	0.9187	12.83
010037	0.8778	.	010097	0.8641	13.04	010157	1.2005	.	030022	1.4630	19.30	030085	1.4857	21.10	040036	1.3651	18.98
010038	1.2084	18.27	010098	0.9271	15.92	010158	1.0038	17.32	030023	1.4061	23.67	030086	3.7429	19.54	040037	1.0850	14.66
010039	1.6113	20.10	010099	1.1321	15.00	010159	1.1094	.	030024	1.7409	22.25	030087	1.5530	21.41	040039	1.2261	14.36
010040	1.4462	18.94	010100	1.2972	17.29	020001	1.0068	28.17	030025	0.9397	12.73	030088	1.3840	19.87	040040	0.9444	18.60
010043	1.0081	20.75	010101	1.1227	15.39	020002	0.9067	24.58	030027	0.9273	15.76	030089	1.5975	20.40	040041	1.2162	15.90
010044	0.9614	22.01	010102	0.9069	13.79	020004	1.0678	30.57	030030	1.0006	20.83	030092	1.5044	20.70	040042	1.2969	19.21
010045	1.1919	15.22	010103	1.0406	17.94	020005	0.8735	30.29	030033	1.2115	20.06	030093	1.3235	19.73	040044	1.0486	12.63
010046	1.5067	17.40	010104	1.7001	17.71	020006	1.1421	31.24	030034	0.9490	16.82	030094	1.2428	21.62	040045	0.9457	14.94
010047	0.9424	13.38	010106	1.1575	17.90	020007	0.9291	27.83	030035	1.2644	19.28	030095	0.9687	13.73	040047	1.0251	16.67
010048	1.1840	14.76	010109	1.0211	15.31	020008	1.0779	29.41	030036	1.2445	20.76	030099	0.9037	16.15	040050	1.1711	13.38
010050	1.0828	16.52	010110	0.8856	15.63	020009	0.8178	29.19	030037	2.0155	22.83	030100	1.9339	.	040051	1.0437	15.06
010051	0.9004	11.93	010112	1.0448	15.14	020010	0.9185	28.67	030038	1.5744	22.66	030101	1.5314	.	040053	1.0540	16.36
010052	1.0027	16.55	010113	1.0456	16.97	020011	0.9448	30.47	030040	1.0672	18.55	030102	2.5448	.	040054	1.0177	15.32
010053	1.0167	14.63	010114	1.3073	15.23	020012	1.2715	24.85	030041	0.8921	15.89	030103	1.7199	.	040055	1.4755	17.13

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
040058	1.0416	17.68	050007	1.4710	30.71	050060	1.5040	25.94	050125	1.3280	29.61	050192	1.0679	18.67	050262	1.8330	28.88
040060	0.9520	12.81	050008	1.4627	26.25	050070	1.3239	32.52	050126	1.4539	23.92	050193	1.1441	22.63	050264	1.3004	32.13
040062	1.5004	18.20	050009	1.6316	26.82	050071	1.2726	33.19	050127	1.2390	22.19	050194	1.2700	29.74	050267	1.7125	26.23
040064	1.0366	10.73	050013	1.0020	23.22	050072	1.2787	33.29	050128	1.5292	25.72	050195	1.5364	25.56	050270	1.3453	24.04
040066	1.0579	16.24	050014	1.1284	22.85	050073	1.2725	33.30	050129	1.6756	26.50	050196	1.3104	18.52	050272	1.3004	22.42
040067	1.0048	14.60	050015	1.4834	26.23	050075	1.2822	33.91	050131	1.2002	31.07	050197	2.0333	35.74	050274	.	20.04
040068	1.0572	17.51	050016	1.2003	20.56	050076	2.3222	27.78	050132	1.3422	24.06	050204	1.4461	23.61	050276	1.2362	20.06
040070	0.9100	16.90	050017	2.1020	23.96	050077	1.5539	24.10	050133	1.2290	24.97	050205	1.2941	23.66	050277	1.3538	20.05
040071	1.0024	16.96	050018	1.2247	15.67	050078	1.3425	23.07	050135	1.3503	23.24	050207	1.2345	21.62	050278	1.5511	24.78
040072	1.0367	16.00	050021	.	25.90	050079	1.5305	33.24	050136	1.2005	24.79	050211	1.2337	31.61	050279	1.2429	20.04
040074	1.3020	18.32	050022	1.4505	24.63	050082	1.6310	22.10	050137	1.3378	32.65	050213	1.5293	21.48	050280	1.6091	25.21
040075	0.9033	13.36	050024	1.3078	21.40	050084	1.5000	25.50	050138	2.1666	37.33	050214	1.5271	21.73	050281	1.4200	19.60
040076	1.1100	19.07	050025	1.7307	23.39*	050085	0.9053	20.94	050139	1.1835	32.94	050215	1.3062	29.06	050282	1.3170	25.83
040077	1.0446	12.02	050026	1.5300	27.67	050089	1.2850	20.91	050140	1.3745	24.15	050217	1.2595	19.00	050283	1.5413	29.77
040078	1.5023	18.76	050028	1.3413	16.47	050090	1.2711	23.41	050144	1.4511	27.68	050219	1.0424	21.74	050286	.	16.57
040080	1.0138	19.23	050029	1.2061	25.13	050091	1.1411	25.28	050145	1.3366	32.39	050222	1.0000	27.48	050289	1.7654	34.14
040081	0.8786	11.32	050030	1.2006	20.96	050092	0.8504	16.80	050146	1.6421	.	050224	1.6218	23.53	050290	1.6656	28.62
040082	1.0675	16.22	050032	1.2823	25.20	050093	1.5472	25.21	050148	1.0679	21.02	050225	1.5005	23.35	050291	1.2406	20.27
040084	1.1048	17.26	050033	1.4763	24.93	050095	.	33.67	050149	1.3706	24.61	050226	1.4300	27.75	050292	1.0200	21.42
040085	1.1047	16.00	050034	1.7433	21.24	050096	1.0790	20.05	050150	1.2150	24.91	050228	1.3462	34.07*	050293	1.3062	22.30
040088	1.3780	17.96	050035	1.3741	23.05	050097	1.4174	16.71	050152	1.3229	34.06	050230	1.5468	27.74	050295	1.4557	21.29
040090	0.8886	17.83	050039	1.5539	22.71	050099	1.4500	24.81	050153	1.0072	30.57	050231	1.5727	26.15	050296	1.1953	27.29
040091	1.2247	19.87	050040	1.2725	22.13	050100	1.7215	29.86	050155	1.0586	21.03	050232	1.7006	24.31	050298	1.2702	24.45
040093	0.9349	12.35	050042	1.2383	24.81	050101	1.4135	31.03	050156	1.2003	27.56	050234	1.1399	25.70	050299	1.4001	26.45
040100	1.1440	14.76	050043	1.5332	33.00	050102	1.2000	22.29	050159	1.3159	23.29	050235	1.5004	25.25	050300	1.5152	23.51
040105	0.9015	15.33	050045	1.2152	19.86	050103	1.5001	24.70	050167	1.4416	21.91	050236	1.4039	26.96	050301	1.2121	22.52
040106	1.0000	15.06	050046	1.1300	25.32	050104	1.4003	25.56	050168	1.5005	23.35	050238	1.5410	24.20	050305	1.3659	24.52
040107	1.0427	18.81	050047	1.6291	29.92	050107	1.4003	21.27	050169	1.4000	22.39	050239	1.0572	22.06	050307	.	17.21
040109	1.1328	14.03	050051	0.9074	17.89	050108	1.5705	23.56	050170	1.4341	23.96	050240	1.5240	26.37	050308	1.4632	29.38
040114	1.0005	18.57	050054	1.1957	20.72	050110	1.1553	20.19	050172	1.2223	20.18	050241	.	26.37	050309	1.3005	23.79
040116	.	20.27	050055	1.1926	29.40	050111	1.2610	21.55	050173	1.1940	24.55	050242	1.3005	31.16	050312	1.9062	26.76
040118	1.4713	19.57	050056	1.3747	27.43	050112	1.4200	25.30	050174	1.7375	30.21	050243	1.5566	28.06	050313	1.2003	21.76
040119	1.1829	15.53	050057	1.0416	21.16	050113	1.2008	28.04	050175	1.3762	27.25	050245	1.5683	23.61	050315	1.2761	24.71
040124	0.9573	19.13	050058	1.4744	23.16	050114	1.3304	24.73	050177	1.2002	21.79	050246	1.2002	26.20	050317	.	21.60
040126	0.9199	12.54	050060	1.5002	30.77	050115	1.3005	21.33	050179	1.2160	21.72	050251	1.6565	21.06	050320	1.2288	30.41
040132	.	17.52	050061	1.3004	23.55	050116	1.5551	25.21	050180	1.5829	31.00	050253	1.4166	16.07	050324	2.0248	28.00
040134	2.6821	18.06	050063	1.5226	24.80*	050117	1.3003	23.30	050183	.	20.36	050254	1.1383	19.51	050325	1.2379	24.40
040135	1.4014	22.66	050065	1.7152	24.04	050118	1.1700	23.77	050186	1.3586	22.42	050256	1.7282	23.00	050327	1.6171	23.95
040136	2.2285	.	050066	1.3859	16.57	050121	1.3130	19.53	050188	1.4700	28.00	050257	1.0052	15.23	050329	1.2753	19.75
050002	1.5130	37.83	050067	1.2761	23.20	050122	1.6016	25.52	050189	0.9031	22.67	050260	0.9729	23.24	050331	1.4020	22.23
050006	1.4006	19.56	050068	1.0725	20.60	050124	1.2565	22.77	050191	1.3726	29.83	050261	1.2498	20.06	050333	1.0000	19.46

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
050334	1.7198	34.23	050411	1.3458	34.00	050488	1.3456	34.00	050567	1.5230	24.65	050641	1.1922	21.83	050721	1.3599	.
050335	1.3886	23.65	050414	1.2179	24.21	050491	1.1165	26.87	050568	1.2191	19.56	050643	0.8109	.	050722	1.1328	.
050336	1.3109	20.89	050417	1.2667	21.57	050492	1.4206	19.55	050569	1.2232	26.55	050644	1.0478	22.35	050723	1.1458	.
050337	1.3400	.	050419	1.4165	23.76	050494	1.2586	29.26	050570	1.5734	25.23	050660	1.3997	.	060001	1.6560	21.37
050342	1.2313	20.18	050420	1.2831	22.52	050496	1.6617	32.52	050571	1.3916	26.20	050661	.	19.68	060003	1.2450	19.80
050343	.	17.21	050423	1.1078	17.38	050497	0.8090	13.81	050573	1.5466	24.96	050662	0.7839	26.96	060004	1.2401	22.88
050345	0.8081	.	050424	1.6990	22.83	050498	1.2965	24.97	050575	1.0859	19.56	050663	1.0041	30.66	060006	1.1851	19.37
050346	1.7914	23.85	050425	1.2440	32.84	050502	1.7572	22.38	050577	1.3879	25.15	050667	0.9522	25.00	060007	1.1130	17.47
050349	0.9047	14.96	050426	1.4566	25.25	050503	1.3610	24.41	050578	1.3270	28.54	050668	1.0325	42.10	060008	1.0579	18.03
050350	1.4096	24.83	050427	0.9257	20.17	050506	1.3777	25.06	050579	1.3278	30.50	050670	0.7815	20.01	060009	1.5799	21.43
050351	1.4069	25.46	050430	0.9725	23.88	050510	1.1929	33.38	050580	1.2430	25.90	050674	1.2429	34.74	060010	1.6140	24.00
050352	1.3561	26.14	050432	1.5786	24.41	050512	1.3583	35.36	050581	1.4104	23.86	050675	.	15.68	060011	1.3550	23.44
050353	1.5662	23.96	050433	0.9762	17.46	050515	1.3774	35.34	050583	1.5678	24.40	050676	0.9591	18.67	060012	1.4000	20.14
050355	0.9485	17.28	050434	1.0406	19.76	050516	1.4047	24.80	050584	1.1273	21.24	050677	1.3476	35.65	060013	1.3094	22.73
050357	1.3946	22.65	050435	1.2440	25.67	050517	1.1886	20.96	050585	1.2592	25.94	050678	1.3369	26.87	060014	1.8352	24.25
050359	1.2332	17.70	050436	.	14.81	050522	1.1534	35.38	050586	1.2201	23.41	050680	1.2222	28.06	060015	1.0041	20.06
050360	1.3662	31.35	050438	1.7078	25.01	050523	1.2559	27.05	050588	1.3013	25.31	050682	0.9610	26.29	060016	1.1378	16.47
050366	1.2340	23.75	050440	1.2220	23.52	050526	1.2343	23.81	050589	1.1422	24.67	050684	1.2852	22.34	060018	1.2594	20.32
050367	1.2258	28.28	050441	1.9615	28.98	050528	1.1739	19.06	050590	1.3405	22.45	050685	1.2151	31.17	060020	1.0906	18.51
050368	1.3100	27.05	050443	0.7068	19.99	050531	1.1214	22.73	050591	1.2390	23.94	050686	1.2407	35.26	060022	1.5342	21.06
050373	1.3743	26.98	050444	1.3196	21.45	050534	1.2615	24.67	050592	1.2571	21.17	050688	1.1235	30.66	060023	1.6370	19.24
050376	1.5546	26.58	050446	0.8719	20.49	050535	1.2205	25.42	050594	1.7225	27.16	050689	1.5021	30.73	060024	1.0915	22.00
050377	0.9251	17.18	050447	1.0825	17.96	050537	1.2810	22.23	050597	1.2069	22.85	050690	1.5154	32.82	060027	1.6340	20.96
050378	1.1111	25.98	050448	1.0661	19.79	050539	1.2979	20.71	050598	1.2550	24.36	050693	1.2267	26.63	060028	1.5273	23.21
050379	0.8751	15.20	050449	1.4294	23.80	050541	1.5009	34.46	050599	1.5667	29.12	050694	1.3346	23.23	060029	0.8712	20.06
050380	1.6944	31.43	050454	1.7542	28.74	050542	1.0161	16.09	050601	1.4829	31.87	050695	1.1516	21.14	060030	1.3003	20.50
050382	1.3423	26.14	050455	1.9538	29.16	050543	0.8527	22.40	050603	1.3656	23.34	050696	2.0732	25.00	060031	1.4073	21.16
050385	1.4003	24.61	050456	1.1464	29.13	050545	0.7993	26.33	050604	1.4342	34.05	050697	1.1678	21.16	060032	1.4022	23.42
050386	0.8344	19.15	050457	1.6183	34.49	050546	0.6812	26.19	050606	1.2709	18.09	050699	0.5929	25.78	060033	1.0878	15.91
050390	1.1918	25.04	050464	1.7414	25.33	050547	0.8107	26.83	050609	1.5764	34.99	050701	1.2955	22.09	060034	1.5440	22.46
050391	1.2248	18.93	050466	1.5228	23.31	050548	.	28.81	050613	1.0324	23.36	050704	1.0454	22.57	060036	1.1614	15.67
050392	0.9406	21.67	050469	1.0325	23.86	050549	1.0673	27.28	050615	1.4553	23.86	050707	1.0000	26.27	060037	0.9899	15.56
050393	1.4701	25.70	050470	1.0020	16.03	050550	1.3328	24.80	050616	1.3937	22.74	050708	1.4627	22.78	060038	0.8834	14.06
050394	1.3619	23.06	050471	1.0064	25.62	050551	1.3151	25.47	050618	0.9067	21.65	050709	1.2556	21.96	060041	0.9407	14.80
050396	1.0567	24.06	050476	1.3078	22.46	050552	1.1745	21.52	050623	1.3428	29.16	050710	1.3017	26.91	060042	0.9939	19.19
050397	0.8335	20.26	050477	1.4887	27.96	050557	1.4051	21.12	050624	1.3036	22.71	050713	0.8043	17.73	060043	0.8817	15.67
050401	0.9837	20.75	050478	0.9067	24.54	050559	1.3270	23.56	050625	1.6121	28.48	050714	1.2846	28.93	060044	1.3006	19.70
050404	1.0584	17.34	050481	1.4495	28.97	050561	1.1901	34.58	050630	1.1951	23.92	050717	1.3723	25.95	060046	1.0232	19.46
050406	1.0405	17.30	050482	0.9444	18.12	050564	1.5745	23.59	050633	1.3377	23.19	050718	0.8128	17.61	060047	1.0220	15.88
050407	1.2799	29.96	050483	.	22.72	050565	.	23.78	050636	1.5786	21.26	050719	2.5629	25.55	060049	1.5733	21.78
050410	0.9752	17.68	050485	1.5735	24.20	050566	0.9370	17.44	050638	1.2157	18.28	050720	0.8820	.	060050	1.2397	18.22

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
000052	1.0006	13.42	070019	1.2559	23.73	100010	1.4768	21.91	100062	1.7067	19.44	100122	1.1578	19.88	100179	1.7878	22.30
000053	0.9780	15.96	070020	1.3363	24.00	100012	1.6500	19.62	100063	1.2326	19.26	100124	1.2700	17.07	100180	1.4200	20.21
000054	1.3002	22.90	070021	1.1070	25.30	100014	1.4070	19.90	100067	1.3627	18.00	100125	1.2050	19.95	100181	1.2057	23.08
000056	0.9313	18.28	070022	1.0535	20.57	100015	1.4230	18.46	100068	1.3243	19.08	100126	1.4207	19.54	100183	1.2032	26.01
000057	1.0493	26.40	070024	1.3313	25.30	100017	1.6012	19.06	100069	1.3150	16.83	100127	1.5701	19.90	100187	1.3006	20.25
000058	0.9402	15.40	070025	1.3062	25.13	100018	1.5501	21.03	100070	1.4646	18.76	100128	2.2136	20.15	100188	1.3210	21.37
000059	0.8852	15.65	070027	1.3014	23.64	100019	1.0476	22.62	100071	1.2401	17.35	100129	1.2952	19.19	100191	1.3014	19.99
000062	0.8990	17.30	070028	1.5478	24.68	100020	1.2538	21.35	100072	1.2405	21.02	100130	1.2636	16.67	100196	.	21.72
000064	1.4327	21.22	070029	1.3317	22.01	100022	1.7977	26.41	100073	1.7009	21.19	100131	1.3130	23.44	100200	1.3127	22.46
000065	1.3063	21.63*	070030	1.0064	28.91	100023	1.3043	19.97	100075	1.3177	18.37	100132	1.2704	18.12	100204	1.5569	20.00
000066	0.9653	16.35	070031	1.2704	23.44	100024	1.2306	21.88	100076	1.3327	17.57	100134	1.0026	15.18	100206	1.3718	19.57
000070	1.1118	17.32	070033	1.3709	30.42	100025	1.7122	18.78	100077	1.3677	22.34	100135	1.5436	18.83	100208	1.3718	21.21
000071	1.2200	17.00	070034	1.4206	28.02	100026	1.6855	20.96	100078	1.0113	18.05	100137	1.2029	18.00	100209	1.4002	22.46
000073	0.8001	18.70	070035	1.4142	23.00	100027	0.9677	19.15	100079	1.4007	.	100138	0.9934	17.14	100210	1.5748	21.36
000075	1.2310	24.16	070036	1.7708	28.84	100028	1.2175	19.38	100080	1.0026	22.20	100139	1.0511	15.68	100211	1.3116	20.64
000076	1.4510	24.67	070038	0.9007	.	100029	1.2068	20.87	100081	1.0771	14.83	100140	1.1455	17.14	100212	1.0065	21.12
000085	0.9227	13.63	070039	0.9155	22.90	100030	1.2253	22.62	100082	.	18.90	100142	1.2535	19.68	100213	1.5139	20.06
000086	1.0677	25.28	080001	1.0006	25.46	100032	1.0433	19.51	100084	1.5961	22.57	100144	.	12.29	100217	1.2276	20.50
000090	0.8332	22.30	080002	.	19.00	100034	1.7323	17.57	100085	.	22.12	100145	0.9040	16.13	100220	1.6369	21.28
000096	1.2000	21.06	080003	1.3339	22.19	100035	1.6444	20.15	100086	1.2263	21.70	100147	1.0454	14.66	100221	1.9717	17.40
000100	1.5438	23.00	080004	1.2756	21.94	100036	1.5062	23.36	100087	1.3011	23.61	100150	1.3644	21.28	100223	1.4612	20.63
000103	1.3062	24.52	080006	1.3223	20.06	100039	1.5100	21.53	100088	1.5738	20.37	100151	1.7566	21.61	100224	1.3062	20.06
000104	1.2500	22.23	080007	1.3634	19.62	100040	1.7918	19.04	100089	1.3006	19.15	100154	1.5362	20.00	100225	1.2067	20.68
000107	1.2606	14.27	080008	1.2135	.	100043	1.2933	18.00	100092	1.5578	17.02	100156	1.1110	19.50	100226	1.3750	20.00
000109	1.2053	.	080001	1.5000	21.75	100044	1.3450	21.46	100093	1.6751	16.51	100157	1.5741	22.67	100228	1.2532	21.32
070001	1.8000	26.00	080002	1.2581	19.42	100045	1.3467	20.02	100096	1.0405	19.24	100159	0.8737	10.28	100229	1.3076	19.60
070002	1.5501	26.28	080003	1.3564	22.11	100046	1.3400	21.62	100099	1.1718	15.78	100160	1.1062	20.56	100230	1.3000	20.51
070003	1.1623	25.00	080004	1.0040	24.34	100047	1.0042	20.01	100102	1.0366	18.97	100161	1.0053	22.30	100231	1.6423	17.92
070004	1.2703	22.40	080005	1.3353	23.06	100048	0.9400	15.06	100103	0.9617	17.24	100162	1.4192	20.14	100232	1.2000	19.35
070005	1.4204	26.65	080006	1.3430	20.67	100049	1.1979	18.85	100105	1.4120	21.06	100165	.	19.04	100234	1.3561	20.91
070006	1.3540	27.57	080007	1.5333	22.20	100050	1.2972	17.24	100106	1.0366	17.25	100166	1.4576	20.03	100235	.	17.16
070007	1.3005	26.95	080008	1.4797	20.22	100051	1.3291	23.13	100107	1.2761	20.13	100167	1.4333	23.41	100236	1.2962	20.35
070008	1.2543	23.62	080010	1.1376	24.13	100052	1.3220	17.95	100108	0.9743	19.96	100168	1.3333	20.20	100237	2.1466	22.60
070009	1.1583	24.62	080011	2.1415	27.46	100053	1.1953	20.17	100109	1.3754	20.84	100169	1.0060	20.05	100238	1.6206	19.64
070010	1.6702	28.24	100001	1.5566	19.56	100054	1.2500	23.55	100110	1.3563	20.00	100170	1.3547	18.51	100239	1.4006	21.32
070011	1.3717	23.36	100002	1.4001	20.71	100055	1.3618	18.05	100112	1.0431	25.26	100172	1.4557	14.34	100240	0.8726	20.43
070012	1.2277	23.03	100004	0.9041	14.63	100056	1.5504	25.79	100113	1.7246	23.20	100173	1.0063	18.57	100241	0.8328	14.72
070013	1.4027	23.52	100005	1.0004	20.11	100057	1.3415	19.97	100114	1.3500	21.63	100174	1.3537	26.18	100242	1.4072	17.06
070014	1.4708	24.01	100007	1.2040	21.72	100059	1.0003	.	100117	1.2235	20.76	100175	1.1227	18.17	100243	1.3004	21.26
070017	1.4003	26.29	100008	1.0001	20.50	100060	1.7353	23.26	100118	1.1406	22.57	100176	2.1308	22.06	100244	1.3200	18.62
070018	1.3509	23.07	100009	1.5195	22.04	100061	1.4100	22.11	100121	1.1625	.	100177	1.2040	24.43	100246	1.4021	19.04

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
100248	1.5201	20.70	110015	1.1561	21.21	110069	1.2529	19.31	110124	1.1240	17.57	110186	1.3162	17.43	120021	0.9029	23.45
100249	1.2562	19.28	110016	1.1897	22.53	110070	1.1370	21.02	110125	1.2091	19.13	110187	1.2613	20.12	120022	1.6644	21.79
100252	1.2063	17.78	110017	0.9461	13.20	110071	1.0977	14.80	110127	0.9462	14.61	110188	1.3277	24.84	120024	0.6619	29.46
100253	1.3554	21.32	110018	1.1354	19.61	110072	0.9639	12.79	110128	1.2140	18.18	110189	1.1009	22.27	120025	.	20.11
100254	1.5503	19.66	110020	1.2506	18.31	110073	1.1546	15.43	110129	1.6422	18.94	110190	1.0680	18.57	120026	1.2778	26.06
100255	1.2667	25.21	110023	1.3528	21.26	110074	1.5148	21.39	110130	0.9836	16.06	110191	1.3181	20.20	120027	1.4776	24.73
100256	2.0962	20.94	110024	1.3599	20.73	110075	1.3349	18.52	110132	1.1729	18.04	110192	1.3977	21.50	120028	1.4041	27.50
100258	1.6125	21.35	110025	1.3344	19.57	110076	1.4371	21.29	110134	0.9264	12.57	110193	1.2441	20.64	130001	1.0383	18.85
100259	1.3111	20.38	110026	1.1409	17.30	110078	1.7644	22.37	110135	1.3459	17.44	110194	0.9213	15.15	130002	1.3262	16.66
100260	1.4178	21.05	110027	1.1311	16.06	110079	1.3862	21.06	110136	1.1652	18.06	110195	1.0290	13.91	130003	1.3064	21.73
100262	1.3800	20.64	110028	1.7816	20.15	110080	1.2783	18.48	110140	0.9166	17.89	110196	1.3144	24.20	130005	1.3959	20.72
100264	1.3352	19.16	110029	1.3634	20.29	110082	2.0714	23.88	110141	1.0114	13.25	110200	1.8368	18.19	130006	1.0254	19.34
100265	1.3056	18.83	110030	1.3100	18.81	110083	1.7799	23.12*	110142	0.9247	14.61	110201	1.4260	20.47	130007	1.6733	20.83
100266	1.3903	18.30	110031	1.2251	19.95	110086	1.3569	18.28	110143	1.3909	20.16	110203	0.9334	20.61	130008	0.9495	12.53
100267	1.3462	20.11	110032	1.2364	15.73	110087	1.3990	21.78	110144	1.0711	16.87	110204	0.8906	19.73	130009	0.9356	19.16
100268	1.2061	23.92	110033	1.4377	22.19	110089	1.2185	18.56	110146	1.1375	16.13	110205	1.0118	21.14	130010	0.9065	17.68
100269	1.4262	21.67	110034	1.6830	19.66	110091	1.2467	19.91	110149	1.1382	17.75	110207	0.9424	12.97	130011	1.2351	20.50
100270	1.0016	15.15	110035	1.3909	19.38	110092	1.0674	17.35	110150	1.3942	20.26	110208	0.9243	15.17	130012	0.9391	22.96
100271	1.8641	20.48	110036	1.8382	22.25	110093	0.9405	.	110152	1.0318	15.40	110209	0.6585	17.92	130013	1.3163	17.40
100275	1.3912	20.62	110038	1.5174	17.71	110094	0.9977	14.56	110153	1.1311	19.27	110211	0.9765	20.94	130014	1.2630	18.98
100276	1.2153	22.36	110039	1.3613	20.00	110095	1.3360	16.47	110154	1.0059	14.96	110212	1.0169	11.85	130015	0.8878	19.72
100277	0.9847	16.63	110040	1.0234	17.07	110096	1.1202	16.83	110155	1.0140	15.93	110213	.	14.37	130016	0.9572	17.39
100279	1.2503	22.91	110041	1.1574	18.80	110097	1.0153	15.56	110156	1.0322	14.75	110215	1.1762	20.10	130017	1.0061	17.17
100280	1.3253	17.37	110042	1.1756	24.01	110098	0.9533	16.35	110161	1.3020	21.72	110216	1.0000	.	130018	1.4057	19.74
100281	1.2855	22.44	110043	1.0284	20.10	110100	0.9007	16.70	110162	0.7571	.	110217	1.0577	.	130019	1.1124	18.66
100282	1.0750	19.20	110044	1.1332	16.36	110101	1.0025	16.82	110163	1.5142	20.42	120001	1.7578	27.92	130021	1.1750	12.86
100284	1.1182	.	110045	1.1465	20.25	110103	0.9619	13.68	110164	1.4067	20.21	120002	1.2857	25.07	130022	1.2516	16.53
100366	0.5057	.	110046	1.3106	19.74	110104	1.1332	15.78	110165	1.5017	21.26	120003	1.0675	25.91	130024	1.1071	19.36
110001	1.2900	19.20	110048	1.1232	16.31	110105	1.3071	16.00	110166	1.4046	20.50	120004	1.2001	23.92	130025	1.1281	17.52
110002	1.2782	17.14	110049	1.1595	16.18	110107	1.0000	19.36	110168	1.7199	20.06	120005	1.2626	23.40	130026	1.1760	21.50
110003	1.3401	18.12	110050	1.1042	20.76	110108	0.9666	19.70	110169	1.2966	20.04	120006	1.2562	25.00	130027	0.9261	21.43
110004	1.3262	19.56	110051	1.0218	17.61	110109	1.1651	15.94	110171	1.6317	23.70	120007	1.7397	22.72	130028	1.2822	19.11
110005	1.1310	17.73	110054	1.4061	.	110111	1.2200	18.51	110172	1.4315	23.37	120009	1.0067	17.47	130029	1.0040	18.49
110006	1.4040	20.78	110056	1.0305	15.62	110112	1.0140	19.06	110174	0.8058	13.73	120010	1.7837	25.15	130030	0.9563	17.84
110007	1.0001	21.95	110059	1.1757	16.67	110113	1.0468	16.82	110177	1.6235	20.72	120011	1.4540	35.00	130031	0.9377	16.24
110008	1.1612	22.61	110061	1.0001	15.04	110114	1.1394	14.69	110178	.	18.85	120012	0.8968	23.11	130034	1.0440	16.99
110009	1.1614	16.31	110062	0.9078	18.80	110115	1.7105	43.04	110179	1.1381	22.78	120014	1.2467	22.80	130035	0.9058	19.35
110010	2.1822	23.32	110063	1.0045	16.96	110118	1.0066	20.54	110181	0.9770	14.00	120015	0.8200	32.00	130036	1.2858	18.79
110011	1.1567	18.61	110064	1.4002	18.95	110120	1.0474	15.26	110183	1.3561	23.38	120016	1.0310	27.91	130037	1.4367	18.81
110013	1.0518	16.28	110065	1.0354	15.68	110121	1.1613	16.27	110184	1.3194	22.20	120018	0.9068	24.50	130043	0.9466	16.51
110014	0.9991	16.07	110066	1.4062	21.82	110122	1.3656	21.14	110185	1.2359	16.72	120019	1.2774	22.93	130044	0.9313	17.82

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
130045	0.9858	16.10	140042	0.9882	15.41	140005	1.3673	24.05	140146	1.5761	15.06	140207	1.2694	21.96	150001	1.0001	22.51
130046	1.0804	16.09	140043	1.1005	19.47	140007	0.9290	17.51	140150	1.5408	27.34	140208	1.7009	25.90	150002	1.4610	19.34
130049	1.2907	20.51	140045	1.0042	15.56	140108	1.3430	21.36	140151	0.9279	21.39	140209	1.5033	18.12	150003	1.0126	19.77
130054	1.0003	17.27	140046	1.2000	18.06	140101	1.1732	21.35	140152	1.1005	24.03	140210	1.1252	15.00	150004	1.5304	20.37
130056	0.8208	14.00	140047	1.1728	17.15	140102	1.0783	17.15	140155	1.3323	19.97	140211	1.2324	21.00	150005	1.1002	20.03
130059	1.3119	21.57	140048	1.3506	24.00	140103	1.3008	19.28	140156	1.3329	22.76	140213	1.2796	27.04	150006	1.2057	20.02
130061	.	15.00	140049	1.0023	20.50	140106	1.2052	22.00	140160	1.1401	17.77	140215	0.9827	15.00	150007	1.1707	20.18
130062	0.7754	16.57	140051	1.4544	23.03	140107	0.9570	13.75	140161	1.1361	20.00	140217	1.3142	24.02	150008	1.3764	21.46
130063	1.0008	15.04	140052	1.2827	19.04	140109	1.8346	28.47	140162	1.0143	19.05	140218	0.9762	14.05	150009	1.3752	18.71
140001	1.2176	19.34	140053	2.0053	19.19	140100	1.1477	15.75	140164	1.4361	18.78	140220	1.1356	17.04	150010	1.3400	21.71
140002	1.2407	19.02	140054	1.3003	22.19	140110	1.1879	19.18	140165	1.1132	14.02	140223	1.3180	24.02	150011	1.1506	18.17
140003	1.0106	21.29	140055	0.9004	16.34	140112	1.0000	17.00	140166	1.1040	17.55	140224	1.4016	25.07	150012	1.3033	22.46
140004	1.1044	19.70	140058	1.3067	17.40	140113	1.3040	19.06	140167	1.1024	17.15	140228	1.0045	19.70	150013	1.0477	17.03
140006	0.9025	11.01	140059	1.1006	15.02	140114	1.3167	21.16	140168	1.2012	16.08	140230	0.9202	15.00	150014	1.3400	22.01
140007	1.4000	22.06	140061	1.1025	17.30	140115	1.3042	21.19*	140170	1.1240	16.16	140231	1.5297	23.02	150015	1.2052	22.54
140008	1.4727	21.03	140062	1.2475	20.00	140116	1.2352	23.12	140171	0.9000	14.16	140233	1.7450	19.45	150017	1.3570	18.77
140010	1.3751	21.52	140063	1.4062	25.35	140117	1.3556	21.57	140172	1.7225	23.04	140234	1.2127	18.00	150018	1.4056	20.40
140011	1.1054	17.67	140064	1.2306	19.10	140118	1.7413	23.00	140173	0.9333	15.15	140239	1.0400	16.01	150019	1.1102	16.03
140012	1.2706	23.07	140065	1.4177	24.11*	140119	1.7501	29.14	140174	1.5506	20.53	140240	1.5062	23.00	150020	1.0755	15.11
140013	1.3035	18.51	140066	1.1073	17.50	140120	1.3462	18.07	140176	1.2136	23.20	140242	1.6241	24.54	150021	1.0500	19.51
140014	1.1506	22.47	140067	1.7300	19.33	140121	1.3415	18.04	140177	1.3038	18.26	140245	1.1078	15.46	150022	1.1219	19.16
140015	1.2386	16.07	140068	1.4062	19.07	140122	1.5466	24.06	140179	1.3325	21.19	140246	1.0433	15.46	150023	1.3022	18.36
140016	1.0061	13.13	140069	0.9782	16.75	140124	1.1156	27.19	140180	1.4284	22.45	140250	1.2000	25.00	150024	1.3062	18.41
140018	1.3466	22.31	140070	1.1005	22.07	140125	1.3218	17.67	140181	1.4221	20.57	140251	1.3473	21.44	150025	1.4278	17.70
140019	1.0150	16.05	140074	0.9040	19.35	140127	1.4174	19.00	140182	1.3514	22.02	140252	1.4004	25.22	150026	1.2234	18.04
140024	0.9043	15.03	140075	1.2706	21.03	140128	1.0000	19.50	140184	1.1000	17.02	140253	1.1042	15.55	150027	1.0123	17.33
140025	1.0000	16.00	140077	1.0005	17.53	140129	1.1041	18.20	140185	1.4704	17.05	140256	1.5250	23.50	150029	1.3048	23.05
140026	1.1406	16.05	140078	1.1005	23.30	140130	1.1970	22.23	140186	1.3232	22.70	140271	0.9410	15.51	150030	1.2737	18.00
140027	1.2000	18.76	140080	1.4052	21.07	140132	1.4751	23.55	140187	1.0400	17.02	140275	1.2700	20.17	150031	1.0525	17.24
140029	1.3319	22.53	140081	1.0317	16.22	140133	1.5705	21.41	140188	0.9067	15.23	140276	2.0067	25.00	150033	1.5057	21.00
140030	1.5501	21.06	140082	1.3003	23.00	140135	1.2675	17.51	140189	1.2371	21.06	140280	1.4405	20.24	150034	1.4343	22.13
140031	1.1030	19.57	140083	1.3301	19.31	140137	1.0000	16.00	140190	1.0000	16.34	140281	1.6244	24.02	150035	1.4775	20.45
140032	1.2551	18.10	140084	1.2306	20.07	140138	0.9670	16.74	140191	1.2671	25.00	140285	1.2508	18.12	150036	1.0051	20.07
140033	1.2041	24.17	140085	1.0751	18.38	140139	1.0040	14.06	140193	0.9671	15.00	140286	1.1206	20.37	150037	1.2338	21.71
140034	1.2000	19.53	140087	1.3005	16.10	140140	1.1200	17.02	140197	1.2670	18.04	140288	1.6196	23.23	150038	1.1400	21.22
140035	1.0070	15.26	140088	1.7040	25.24	140141	1.2240	17.52	140199	1.0736	18.35	140289	1.3210	17.14	150039	0.9673	18.47
140036	1.2542	18.56	140089	1.2772	17.04	140143	1.0001	19.19	140200	1.5268	21.52	140290	1.3000	21.10	150042	1.2000	18.10
140037	1.0019	15.00	140090	1.4465	20.43	140144	0.9008	21.32	140202	1.3140	22.19	140291	1.3217	25.00	150043	1.1311	19.01
140038	1.0020	16.30	140091	1.5707	20.00	140145	1.1208	17.55	140203	1.1767	19.02	140292	1.2018	20.06	150044	1.2300	18.44
140040	1.1006	19.03	140093	1.1361	18.29	140146	1.0007	21.06	140205	1.5348	17.46	140294	1.1330	17.72	150045	1.1001	16.51
140041	1.1037	17.06	140094	1.2552	21.47	140147	1.2073	16.13	140206	1.2274	21.33	140300	1.5055	25.37	150046	1.4223	17.63

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
150047	1.5548	19.74	150087	1.0006	19.38	160016	1.1880	19.63	160065	1.0386	16.94	160113	1.0604	14.71	170023	1.4037	19.14
150048	1.1828	19.33	150088	1.1351	15.09	160018	0.9389	14.59	160066	1.0699	17.19	160114	0.9688	16.14	170024	1.0500	13.68
150049	1.1915	17.61	150089	.	22.42	160020	1.1347	15.47	160067	1.4189	17.85	160115	0.9615	15.90	170025	1.1828	17.87
150050	1.0691	16.83	150100	1.5717	18.41	160021	0.9996	16.50	160068	1.0723	17.99	160116	1.0506	16.93	170026	1.0303	15.05
150051	1.4700	19.01	150101	1.0453	18.46	160023	1.0324	15.07	160069	1.5072	19.73	160117	1.3336	17.94	170027	1.2437	17.36
150052	1.0296	15.86	150102	1.0009	19.74	160024	1.5676	19.71	160070	0.9286	16.70	160118	1.0368	17.25	170030	0.9983	14.65
150053	0.9666	19.14	150103	1.0079	18.45	160026	0.9704	15.84	160072	1.0484	14.95	160120	0.9606	16.69	170031	0.9963	13.96
150054	1.2297	17.38	150104	1.0488	17.70	160027	1.0597	16.35	160073	0.9992	11.83	160122	1.0888	18.92	170032	1.0181	15.61
150056	1.5704	22.41	150105	1.2888	20.04	160028	1.2276	19.96	160074	0.9931	19.51	160124	1.2749	18.09	170033	1.3716	16.41
150057	2.1466	16.59	150106	0.9758	16.15	160029	1.5419	20.47	160075	1.1054	19.49	160126	1.0585	17.81	170034	1.0464	15.82
150058	1.7018	20.62	150109	1.4431	18.81	160030	1.3367	19.93	160076	1.0723	17.94	160129	0.9310	16.71	170035	0.9164	18.59
150059	1.4196	21.25	150110	0.9738	18.06	160031	1.0458	15.24	160077	1.1064	12.86	160130	1.0192	16.05	170038	0.8930	14.78
150060	1.1497	17.07	150111	1.1113	18.46	160032	1.1096	17.32	160079	1.4272	17.62	160131	1.0854	15.40	170039	1.0411	15.86
150061	1.2136	17.39	150112	1.2496	20.41	160033	1.8678	18.87	160080	1.1627	18.67	160134	0.9949	13.47	170040	1.6231	21.64
150062	1.0000	20.54	150113	1.2243	20.36	160034	1.1002	15.00	160081	1.1175	17.01	160135	0.9469	18.27	170041	1.1056	11.76
150063	1.0294	22.09	150114	0.9415	19.52	160035	0.8439	15.22	160082	1.5732	19.65	160138	1.0465	16.87	170044	0.9420	15.30
150064	1.1329	18.14	150115	1.2734	17.43	160036	0.9888	17.86	160083	1.6823	20.62	160140	1.1040	18.40	170045	1.0821	14.99
150065	1.1819	19.80	150122	1.1132	18.71	160037	1.0334	19.05	160085	1.0408	18.01	160142	0.9676	16.29	170049	1.4188	19.94
150066	0.9694	19.34	150123	1.0230	14.11	160039	1.0217	17.48	160086	0.9972	17.33	160143	1.1451	16.62	170051	0.9580	15.09
150067	1.1307	18.29	150124	1.1623	14.62	160040	1.3529	18.19	160088	1.1114	20.23	160145	1.0588	15.92	170052	1.0777	15.01
150068	1.1721	21.53	150125	1.4005	20.67	160041	1.0096	16.78	160089	1.2300	16.95	160146	1.4364	16.69	170053	0.9645	16.31
150070	0.9390	17.93	150126	1.4190	21.37	160043	1.0505	15.00	160090	1.0131	17.11	160147	1.2866	17.40	170054	1.0501	14.44
150071	1.1041	13.48	150127	1.0338	17.20	160044	1.2178	16.74	160091	0.9832	12.85	160151	0.9959	16.83	170055	0.9156	16.98
150072	1.1923	16.21	150128	1.2621	18.51	160045	1.7238	20.12	160092	1.0498	15.50	160152	1.0281	15.62	170056	0.9157	17.04
150073	1.6447	22.39	150129	1.1517	24.77	160046	0.8208	14.57	160093	1.0756	17.75	160153	1.7619	20.23	170057	.	13.00
150074	1.0432	20.42	150130	1.3270	18.20	160047	1.4704	18.36	160094	1.1674	18.76	170001	1.1900	17.93	170058	1.1528	18.70
150075	1.1646	15.56	150132	1.4267	20.17	160048	1.1372	14.61	160095	1.0535	15.19	170004	1.0598	15.06	170060	0.9524	17.35
150076	1.1139	22.94	150133	1.2310	17.40	160049	0.9902	14.55	160097	1.1304	15.93	170006	1.2265	17.22	170061	1.1127	15.65
150078	1.0200	19.27	150134	1.0717	19.25	160050	1.0344	17.40	160098	0.9148	16.31	170008	0.9045	14.91	170063	0.8876	12.81
150079	1.2034	17.24	150135	0.8719	20.12	160051	1.0516	14.64	160099	0.9439	13.91	170009	1.1611	20.78	170066	0.9804	15.53
150082	1.3227	17.53	150140	.	16.00	160052	0.9804	16.00	160101	1.1048	18.37	170010	1.2832	16.74	170067	0.9901	14.75
150084	1.0364	23.25	160001	1.2868	18.00	160054	1.0094	16.17	160102	1.3544	18.88	170012	1.4492	17.87	170068	1.3058	15.18
150085	1.2075	18.97	160002	1.0064	15.96	160055	0.9237	14.76	160103	0.9899	17.10	170013	1.4096	18.68	170070	0.9596	14.24
150086	1.3246	18.99	160003	1.0300	16.00	160056	1.1034	16.16	160104	1.1675	18.83	170014	1.0168	17.93	170072	0.8337	12.63
150089	1.5038	23.86	160005	1.1423	17.62	160057	1.2725	18.18	160106	1.1340	16.96	170015	0.9421	16.58	170073	1.0589	17.54
150090	1.4078	20.77	160007	1.0002	13.21	160058	1.5146	21.12	160107	1.1110	18.06	170016	1.0007	19.21	170074	1.1477	17.58
150091	1.0239	20.41	160008	1.1119	15.97	160060	1.0746	16.84	160108	1.0645	16.65	170017	1.1933	17.86	170075	0.9137	12.42
150092	1.0534	16.74	160009	1.1900	16.84	160061	1.0021	17.32	160109	1.1929	16.56	170018	1.0340	15.30	170076	0.9228	14.59
150094	1.0040	16.58	160012	0.9906	16.48	160062	0.9942	17.81	160110	1.3329	19.14	170019	1.2564	15.21	170077	0.9011	13.52
150095	1.0506	17.13	160013	1.2031	18.40	160063	1.0218	16.88	160111	1.0004	14.16	170020	1.4588	17.34	170079	1.0031	13.53
150096	0.9651	23.28	160014	1.0396	15.91	160064	1.3638	20.55	160112	1.3662	16.83	170022	1.1240	16.53	170080	1.0157	12.00

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
170001	0.9179	13.81	170143	1.6806	15.65	180026	1.1966	14.68	180080	1.0590	16.50	190002	1.7040	19.19	190077	0.9390	15.78
170002	0.9560	12.86	170144	1.4747	19.69	180027	1.2062	16.41	180087	1.2432	14.92	190003	1.4197	19.77	190078	1.1615	14.59
170004	0.8987	12.54	170145	1.0837	17.18	180028	1.0852	19.53	180088	1.0618	22.04	190004	1.4585	17.77	190079	1.2231	17.71
170005	0.8780	15.45	170146	1.4371	20.91	180029	1.2353	17.77	180092	1.2189	18.24	190005	1.4428	17.24*	190081	0.8911	15.32
170006	1.5200	20.41	170147	1.1919	22.30	180030	1.1131	17.34	180093	1.5273	17.01	190006	1.2536	17.89	190083	0.9794	18.59
170008	0.9383	13.45	170148	1.2974	16.92	180031	1.0040	13.96	180094	0.9648	13.55	190007	1.0647	13.82	190085	1.3591	15.87
170009	0.8561	18.81	170150	1.1401	15.57	180032	1.0497	16.83	180095	1.0615	13.80	190008	1.5972	18.67	190086	1.1887	20.55
170010	1.0306	11.91	170151	1.0251	13.80	180033	1.0826	17.73	180099	1.0612	13.36	190009	1.2282	15.36	190089	1.1187	13.65
170013	0.9152	13.35	170152	0.9063	14.91	180034	1.0225	15.34	190101	1.0000	18.49	190010	1.0652	16.28	190090	1.1149	16.67
170014	0.9436	20.20	170160	0.9394	13.71	180035	1.5443	20.13	190102	1.5077	17.96	190011	1.1242	15.95	190095	1.0279	16.23
170015	1.0681	15.55	170164	0.9528	16.65	180036	1.1662	19.84	190103	2.2745	19.99	190013	1.2745	16.82	190096	1.7314	20.49
170017	0.9135	16.46	170166	1.0411	27.56	180037	1.2564	19.97	190104	1.5793	18.93	190014	1.1194	17.10	190099	1.2934	19.99
170018	1.1140	15.53	170171	1.0039	12.52	180038	1.4057	17.76	190105	0.8848	15.24	190015	1.2875	18.63	190102	1.0385	20.03
170019	1.2219	13.00	170175	1.3139	19.62	180040	1.0528	19.53	190106	0.8740	14.35	190017	1.3262	16.24	190103	0.9166	12.14
170101	0.8928	14.56	170176	1.5629	21.34	180041	1.1640	15.06	190108	0.8427	14.82	190018	1.1770	15.07	190106	1.1523	18.58
170102	1.0037	15.63	170180	.	16.09	180042	1.1421	16.77	190110	1.0407	16.70	190019	1.7462	18.53	190109	1.1535	15.56
170103	1.3629	17.28	170182	1.4962	22.22	180043	1.1611	16.89	190116	1.2349	18.04	190020	1.1662	17.53	190110	0.9774	15.81
170104	1.4777	20.62	170183	1.9768	20.35	180044	1.2021	18.56	190117	1.0023	17.78	190023	1.2825	18.64	190111	1.5967	19.75
170105	1.1432	16.54	170185	1.0822	.	180045	1.2788	17.71	190118	0.9296	15.86	190026	1.5256	18.10	190112	1.3528	21.62
170106	0.9683	18.55	170186	2.9004	.	180046	1.0300	19.25	190120	0.9696	16.16	190027	1.4896	17.66	190113	1.3703	12.56
170109	1.0114	17.26	180001	1.3208	17.99	180047	1.0459	16.23	190121	1.1356	15.10	190028	1.1610	16.52	190114	1.0231	12.64
170110	0.9676	16.96	180002	1.0414	17.97	180048	1.2349	18.34	190122	1.1054	18.51	190034	1.1765	16.85	190115	1.2496	20.25
170112	1.1397	14.39	180004	1.0481	17.26	180049	1.3001	16.43	190123	1.3656	21.06	190036	1.0931	20.18	190116	1.2116	15.55
170113	1.1135	13.90	180005	1.2239	21.14	180050	1.2654	17.85	190124	1.2309	17.90	190037	0.9934	17.60	190118	0.9705	14.79
170114	0.9553	14.45	180006	0.9725	11.44	180051	1.0163	16.40	190125	1.0652	19.04	190039	1.3003	19.47	190120	1.0772	13.96
170115	0.9614	12.70	180007	1.4014	17.68	180053	1.0510	15.93	190126	1.0659	12.92	190040	1.3342	21.46	190122	1.2334	15.48*
170116	1.0057	16.57	180009	1.3409	21.47	180054	1.1113	19.40	190127	1.2068	19.26	190041	1.5857	17.66	190124	1.0143	20.62
170117	0.8910	15.79	180010	1.0348	19.11	180055	1.2882	15.27	190128	1.0381	17.64	190043	1.0177	15.56	190125	1.0006	20.48
170119	0.9564	15.20	180011	1.3322	17.19	180056	1.1845	17.01	190129	0.9553	16.84	190044	1.1758	17.29	190128	1.1552	20.47
170120	1.2329	17.67	180012	1.3882	18.72	180058	0.9990	15.97	190130	1.4281	19.82	190045	1.5147	21.01	190130	0.9706	15.15
170122	1.7033	20.06	180013	1.4630	18.24	180059	0.8712	13.40	190132	1.2192	17.77	190046	1.4143	19.90	190131	1.2652	20.76
170123	1.7172	23.17	180014	1.0410	21.40	180063	1.1133	13.10	190133	1.3321	21.68	190048	1.1294	16.67	190133	0.9962	13.54
170124	1.0038	11.12	180016	1.2406	19.89	180064	1.2154	15.24	190134	1.0056	13.19	190049	0.9662	17.23	190134	.	12.17
170126	0.9277	12.81	180017	1.2719	15.41	180065	1.0311	12.06	190136	.	17.35	190050	1.0567	16.20	190135	1.4486	21.69
170128	0.9646	14.89	180018	1.2945	17.17	180066	1.0035	19.30	190138	1.1655	19.37	190053	1.1151	13.22	190136	0.9619	12.41
170131	.	16.16	180019	1.1635	17.40	180067	1.0537	20.63	190139	1.0331	18.72	190054	1.3637	19.17	190140	0.9561	14.23
170133	1.0646	18.02	180020	1.0080	17.73	180069	1.1159	17.79	190140	0.9901	16.82	190059	0.9251	15.09	190142	0.9569	15.49
170134	0.8935	14.11	180021	1.0062	15.46	180070	1.1350	15.19	190141	1.7567	20.96	190060	1.4186	14.72	190144	1.1790	16.21
170137	1.1867	17.53	180023	0.8646	15.86	180072	1.0071	16.99	190142	1.7748	.	190064	1.5435	20.45	190145	0.9717	15.23
170138	0.9065	14.20	180024	1.2686	16.17	180078	1.1201	21.12	190143	1.6771	.	190068	1.4662	20.09*	190146	1.5496	21.26
170142	1.3166	.	180025	1.1446	14.18	180079	1.1866	15.16	190001	0.8922	17.68	190071	0.9278	14.46	190147	0.9821	14.43

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
190148	0.8906	16.63	190238	2.2526	.	210001	1.3750	20.48	210051	1.3718	22.43	220055	.	21.37	220126	1.1979	22.52
190149	0.9665	17.00	190239	1.2930	.	210002	1.9731	19.92	210054	1.3449	22.35	220057	1.2991	25.39	220133	0.6689	25.46
190151	0.9874	14.73	190240	0.9393	.	210003	1.5516	20.34	210055	1.2826	20.25	220058	1.0709	19.94	220135	1.2670	25.65
190152	1.4654	22.21	200001	1.2974	18.05	210004	1.3195	24.29	210056	1.3522	19.27	220060	1.1973	25.08	220153	0.9335	22.96
190154	0.9348	15.75	200002	1.1115	19.36	210005	1.2893	21.49	210057	1.3527	23.83	220062	0.5889	20.47	220154	0.9417	22.48
190156	1.2527	20.46	200003	1.1105	16.96	210006	1.0867	18.94	210058	1.4772	22.06	220063	1.2556	20.40	220162	1.5749	.
190160	1.2291	17.10	200006	1.0504	17.66	210007	1.8486	23.10	210059	1.2070	22.68	220064	1.2030	22.33	220163	1.9697	29.11
190161	0.9063	15.57	200007	1.0325	18.80	210008	1.2749	21.18	210060	1.2192	.	220065	1.2547	20.14	220171	1.7342	24.56
190162	1.1566	20.61	200008	1.2729	21.75	210009	1.9447	20.54	210061	1.1158	17.22	220066	1.3452	20.78	230001	1.1432	19.80
190164	1.1628	15.18	200009	1.0745	22.23	210010	1.0726	18.72	220001	1.3264	21.94	220067	1.2798	26.44	230002	1.2574	22.89
190167	1.0912	16.67	200012	1.1257	18.35	210011	1.3814	21.49	220002	1.4324	24.13	220070	1.1693	19.75	230003	1.1861	19.84
190170	0.9034	14.18	200013	1.1578	18.06	210012	1.7070	20.72	220003	1.0393	16.92	220071	1.0058	25.62	230004	1.5751	23.10
190173	1.3000	23.64	200016	1.0186	18.09	210013	1.3658	19.73	220006	1.3492	22.31	220073	1.3530	25.00	230005	1.2670	18.56
190175	1.4252	19.36	200017	.	17.20	210015	1.3135	16.19	220008	1.3285	24.47	220074	1.3032	25.64	230006	1.0052	19.10
190176	1.3535	24.06	200018	1.1161	18.54	210016	1.7812	23.87	220010	1.3462	21.86	220075	1.5156	22.81	230007	.	15.55
190177	1.6845	18.67	200019	1.2339	19.23	210017	1.2263	18.80	220011	1.1325	20.18	220076	1.1831	22.67	230012	0.7495	15.06
190178	0.9652	11.07	200020	1.1906	22.45	210018	1.2192	22.21	220012	1.3273	32.06	220077	1.8447	25.26	230013	1.3260	20.80
190182	1.1494	20.28	200021	1.1993	19.91	210019	1.6507	19.30	220013	1.1643	22.58	220079	0.7680	22.63	230015	1.0862	20.11
190183	1.1619	16.77	200023	0.8613	16.17	210022	1.4497	22.64	220016	1.3200	23.36	220080	1.3219	21.32	230017	1.0036	22.28
190184	0.9918	17.20	200024	1.4154	19.48	210023	1.3948	23.19	220017	1.3161	22.46	220081	0.8693	20.17	230019	1.5446	22.26
190185	1.3294	20.14	200025	1.1506	20.23	210024	1.7226	20.60	220019	1.1190	19.56	220082	1.3934	21.67	230020	1.7448	22.13
190186	0.9135	18.76	200026	1.0696	18.12	210025	1.2925	19.50	220020	1.1919	21.42	220083	1.1961	23.92	230021	1.5037	18.96
190190	0.9366	17.46	200027	1.2380	18.57	210026	1.3244	12.13	220023	.	16.19	220084	1.3040	23.66	230022	1.2020	18.80
190191	1.1525	20.50	200028	0.9550	19.57	210027	1.2648	17.00	220024	1.1824	21.54	220086	1.7752	23.67	230024	1.3066	23.73
190196	0.8000	17.02	200031	1.2491	16.22	210028	1.1840	19.64	220025	1.1445	20.79	220088	1.6326	22.91	230027	1.0593	14.70
190197	1.2134	19.56	200032	1.2931	18.93	210029	1.2401	21.22	220028	1.4632	22.80	220089	1.2427	23.10	230029	1.6432	19.49
190199	1.2359	16.06	200033	1.8163	21.86	210030	1.2537	21.74	220029	1.1952	23.15	220090	1.2971	22.00	230030	1.3297	18.39
190200	1.3500	22.04	200034	1.2552	20.15	210031	1.1427	16.23	220030	1.1366	18.54	220092	1.1439	18.52	230031	1.4167	19.32
190201	1.2161	18.71	200037	1.2116	18.67	210032	1.1936	17.72	220031	1.6739	30.24	220095	1.2186	21.48	230032	1.7052	21.88
190202	1.2004	.	200038	1.1369	23.30	210033	1.2617	20.81	220033	1.2513	20.67	220098	1.2582	21.59	230034	1.2402	19.06
190203	1.4650	21.74	200039	1.2521	19.86	210034	1.2805	15.73	220035	1.2845	21.64	220100	1.3002	25.71	230035	1.1347	17.51
190204	1.4734	21.46	200040	1.1933	19.55	210035	1.2804	20.27	220036	1.6131	24.65	220101	1.6126	25.92	230036	1.2516	23.21
190205	1.8421	19.06	200041	1.1206	19.36	210037	1.2003	18.31	220038	1.3002	22.65	220104	.	28.00	230037	1.2570	20.47
190206	1.6321	21.70	200043	0.8145	16.72	210038	1.4281	23.50	220041	1.2373	23.47	220105	1.2465	21.41	230038	1.7303	23.53
190207	1.1356	20.51	200050	1.2191	20.12	210039	1.1973	19.99	220042	1.2302	25.06	220106	1.1883	25.65	230040	1.1232	21.44
190208	0.8355	20.01	200051	0.9570	22.15	210040	1.2818	21.50	220046	1.3510	22.71	220108	1.1610	21.91	230041	1.3357	20.31
190210	0.9027	19.75	200052	0.9037	17.21	210043	1.2915	19.65	220049	1.2912	26.00	220110	2.0558	28.71	230042	1.1919	22.10
190227	0.9050	.	200055	1.0153	18.84	210044	1.3683	22.58	220050	1.1623	22.61	220111	1.2403	23.61	230046	1.9225	25.57
190231	1.4047	15.83	200062	0.9335	17.23	210045	1.1044	11.61	220051	1.1874	21.10	220116	1.5733	26.17	230047	1.3063	21.54
190236	1.3000	19.34	200063	1.1780	19.93	210048	1.3341	23.05	220052	1.2388	23.76	220119	1.2002	23.32	230053	1.5045	25.50
190237	2.1990	.	200066	1.1319	17.03	210049	1.1474	19.06	220053	1.1723	19.13	220123	1.0042	23.99	230054	1.0701	20.70

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
230055	1.1203	20.79	230116	0.9063	16.54	230186	1.1002	19.53*	230279	0.6318	17.70	240047	1.5859	22.62	240102	0.8440	14.61
230056	0.9351	16.06	230117	1.0494	25.93	230188	1.0033	15.71	230280	1.0338	19.67	240050	1.2141	25.36	240103	1.2314	19.15
230058	1.0064	20.42	230118	1.0677	21.30	230189	0.9337	16.08	230283	1.0060	27.95	240051	0.9178	19.92	240104	1.1401	23.22
230059	1.4296	19.92	230119	1.3276	21.19	230190	0.9231	26.82	230284	1.5182	.	240052	1.2787	20.77	240105	.	14.40
230060	1.4082	19.90	230120	1.1257	16.53	230191	0.9500	19.00	230285	1.0000	.	240053	1.4361	22.96	240106	1.3868	23.51
230062	0.9324	17.15	230121	1.1820	20.32	230193	1.2756	19.71	230286	1.0244	.	240056	1.2534	23.42	240107	0.9531	20.40
230063	.	20.42	230122	.	20.91	230195	1.3362	21.78	230287	1.3072	.	240057	1.0006	24.22	240108	0.9321	15.35
230065	1.2761	22.35	230124	1.1525	20.36	230197	1.3916	24.62	240001	1.5028	24.62	240058	0.9246	14.97	240109	0.9410	13.35
230066	1.3365	22.18	230128	1.3047	24.91	230199	1.0017	19.44	240002	1.7890	22.90	240059	1.0536	23.62	240110	0.9112	19.48
230069	1.2071	23.21	230130	1.0043	23.52	230201	1.2368	17.21	240004	1.5075	25.19	240061	1.7531	27.26	240111	1.0183	17.21
230070	1.5125	20.25	230132	1.4020	26.64	230204	1.4473	25.42	240005	0.8905	17.96	240063	1.4499	23.79	240112	1.0171	15.84
230071	1.1499	22.91	230133	1.2282	17.09	230205	0.9746	14.38	240006	1.1281	25.16	240064	1.3532	23.20	240114	0.9035	16.25
230072	1.2378	20.80	230135	1.1610	22.53	230207	1.2400	20.64	240007	1.0000	17.76	240065	1.0543	12.79	240115	1.0062	23.78
230073	1.0860	20.05	230137	.	19.18	230208	1.2196	16.07	240008	1.1220	20.22	240066	1.2740	23.07	240116	0.8674	16.07
230076	1.4467	24.45	230141	1.0450	22.13	230211	0.9286	18.67	240009	0.9543	16.90	240069	1.1527	19.83	240117	1.1117	18.06
230077	1.0683	21.62	230142	1.2627	22.29	230212	0.9617	23.30	240010	1.0613	23.65	240071	1.1319	20.21	240119	0.8284	20.61
230078	1.1578	17.56	230143	1.2379	16.30	230213	0.9758	15.19	240011	1.1593	20.52	240072	0.9542	21.16	240121	0.9326	23.40
230080	1.2200	19.77	230144	1.0627	22.11	230216	1.6154	20.33	240013	1.2586	20.33	240073	0.9062	16.06	240122	0.9020	19.18
230081	1.2121	19.68	230145	1.1678	20.25	230217	1.2416	21.27	240014	1.0016	23.00	240075	1.1861	21.26	240123	1.0161	16.51
230082	1.0448	18.30	230146	1.3346	20.50	230219	0.8434	19.15	240016	1.3568	20.40	240076	1.0046	21.86	240124	0.9325	19.64
230085	1.2776	20.21	230147	1.3006	21.85	230222	1.3659	22.18	240017	1.1403	18.36	240077	0.9452	15.38	240125	0.8970	12.30
230086	1.0491	18.94	230149	1.2016	20.77	230223	1.2712	21.15	240018	1.2471	20.85	240078	1.5334	23.92	240127	1.0015	15.90
230087	1.0389	18.90	230151	1.4616	22.17	230227	1.4817	23.73	240019	1.3331	22.15	240079	0.9568	18.43	240128	1.0654	17.25
230089	1.3223	23.91	230153	0.9025	19.56	230230	1.5443	22.24	240020	1.1706	21.19	240080	1.6172	24.34	240129	0.9684	14.42
230092	1.3546	20.91	230154	0.8789	15.48	230235	1.6234	16.87	240021	0.9236	18.75	240082	1.0499	18.35	240130	0.9414	14.94
230093	1.1662	20.47	230155	0.9754	17.21	230236	1.3511	24.36	240022	1.1157	21.79	240083	1.1947	19.76	240132	1.2582	23.67
230095	1.1832	17.33	230156	1.0633	24.76	230239	1.1387	18.00	240023	0.9404	21.51	240084	1.3076	19.47	240133	1.1757	19.21
230096	1.0647	22.84	230157	0.9066	20.57	230241	1.1312	19.10	240025	1.1706	18.83	240085	1.0209	22.57	240135	0.8354	14.31
230097	1.0631	21.28	230159	.	20.07	230244	1.3067	21.74	240027	1.0164	19.10	240086	1.0139	16.94	240137	1.1304	20.36
230099	1.1334	21.19	230162	0.9966	21.46	230253	0.9338	20.59	240028	.	19.79	240087	1.1033	18.83	240138	0.9440	15.21
230100	1.1975	17.13	230165	1.5188	23.81	230254	1.2806	21.94	240029	1.1447	21.13	240088	1.3565	21.00	240139	1.0046	20.81
230101	1.0659	20.00	230167	1.7513	21.50	230257	0.9954	19.70	240030	1.2686	18.85	240090	0.9010	20.72	240141	1.1415	23.51
230103	0.9054	22.77	230169	1.3479	23.07	230259	1.1211	22.24	240031	0.9696	18.16	240092	1.0669	19.30	240142	1.0571	23.28
230104	1.6193	23.18	230171	0.9830	13.30	230264	1.4357	17.13	240034	1.5001	22.25	240093	1.2532	18.71	240143	0.8930	16.62
230105	1.7578	21.52	230172	1.2261	20.64	230269	1.5167	23.51	240037	1.0051	19.23	240094	0.9169	20.94	240144	1.0413	18.26
230106	1.1915	20.00	230174	1.3655	23.03	230270	1.2247	22.62	240038	1.4068	23.31	240096	1.0387	20.16	240145	0.9289	17.28
230107	0.9343	16.00	230175	2.7449	16.89	230273	1.5773	22.92	240040	1.3177	20.48	240097	1.0242	24.27	240146	0.9351	16.07
230108	1.2424	18.96	230176	1.2172	22.78	230275	0.5155	17.75	240041	1.1214	19.29	240098	0.9462	21.35	240148	0.9085	18.06
230110	1.3532	18.96	230178	0.9947	16.92	230276	0.5135	21.37	240043	1.2418	17.73	240099	1.0571	14.46	240150	0.7099	13.96
230113	.	16.94	230180	1.1004	15.86	230277	1.3065	23.15	240044	1.1411	18.84	240100	1.2704	20.83	240152	0.9069	21.17
230115	0.9632	18.41	230184	1.2576	19.06	230278	.	18.21	240045	1.1379	21.14	240101	1.1726	19.21	240153	1.0139	16.54

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
240154	0.9961	17.58	250023	0.9100	13.91	250079	0.8718	16.27	250149	0.9670	12.96	260034	1.3040	20.02	260120	1.1535	16.38
240155	0.9382	19.88	250024	0.9331	12.71	250081	1.2585	17.38	250150	1.7338	.	260055	0.9769	12.01	260122	1.0044	14.97
240157	0.9796	17.42	250025	1.0576	19.04	250082	1.5686	16.10	260001	1.7310	18.10	260057	1.0375	17.46	260123	0.9832	14.64
240160	0.9965	15.95	250027	0.9856	14.95	250083	0.9078	14.26	260002	1.3519	22.12	260059	1.2131	16.10	260127	1.1142	18.36
240161	0.9772	15.80	250029	0.8439	16.48	250084	1.1572	17.02	260003	1.1104	14.66	260061	1.0093	14.72	260128	1.0236	13.65
240162	1.0064	16.63	250030	0.9057	17.36	250085	0.9496	14.38	260004	0.9982	13.01	260062	1.1842	20.15	260131	1.1615	17.77
240163	0.9685	18.83	250031	1.1993	17.97	250088	0.9606	17.87	260005	1.5319	19.56	260063	1.0400	18.23	260134	1.1753	16.28
240166	1.0068	17.32	250032	1.2706	17.13	250089	1.0625	13.42	260006	1.5208	19.75	260064	1.3153	16.59	260137	1.7529	17.95
240169	.	16.67	250033	0.9662	17.83	250093	1.1749	15.20	260008	0.9459	13.85	260065	1.7721	19.44	260138	1.8777	22.65
240170	1.0680	18.88	250034	1.5050	16.70	250094	1.3628	18.08	260009	1.3027	18.51	260066	1.0261	14.96	260141	1.0575	19.16
240171	0.9467	17.29	250035	0.8318	15.24	250095	0.9066	17.00	260011	1.5625	19.10	260067	0.8096	14.22	260142	1.1147	17.12
240172	0.9243	18.28	250036	0.9373	15.84	250096	1.2288	19.07	260012	1.0105	14.36	260068	1.0754	20.24	260143	1.0674	12.79
240173	0.9561	17.26	250037	0.9013	15.43	250097	1.2227	16.90	260013	1.1272	15.90	260070	0.9082	.	260147	0.9506	14.08
240179	0.9728	17.51	250038	0.9448	16.85	250098	0.8736	13.13	260014	0.7243	.	260073	1.0537	14.26	260148	0.8093	11.87
240184	0.9066	15.38	250039	1.0126	14.16	250099	1.2360	16.85	260015	1.1866	16.58	260074	1.2874	19.03	260150	1.0756	12.30
240187	1.2630	19.92	250040	1.3202	17.34	250100	1.3085	17.17	260017	1.1993	16.79	260077	1.7842	18.65	260159	0.9736	20.32
240193	0.9661	17.82	250042	1.2329	16.39	250101	0.9552	18.47	260018	0.8936	12.01	260078	1.1331	15.64	260160	1.1133	15.84
240196	0.7807	24.35	250043	0.8712	16.07	250102	1.5106	23.93	260019	1.1483	18.61	260079	1.0014	14.39	260162	1.0546	19.57
240200	0.9272	14.34	250044	0.9589	16.12	250104	1.4599	18.25	260020	1.7749	20.51	260080	0.9773	13.54	260163	1.3117	16.42
240205	0.9243	.	250045	1.2967	22.06	250105	0.9041	14.54	260021	1.3795	22.10	260081	1.5736	21.01	260164	0.8809	14.94
240206	0.8234	.	250047	0.9750	13.37	250107	0.9187	15.15	260022	1.1858	17.25	260082	1.1306	15.94	260166	1.2100	20.10
240207	1.1594	24.11	250048	1.5786	16.89	250109	0.8783	22.16	260023	1.3634	16.47	260085	1.5483	20.47	260172	0.9469	15.42
240210	1.2491	24.22	250049	0.8829	11.67	250112	0.9094	15.56	260024	0.9467	15.24	260086	0.9234	14.32	260173	1.0151	12.85
240211	0.9674	19.74	250050	1.2094	14.39	250117	1.0394	16.12	260025	1.3670	15.49	260091	1.6738	20.09	260175	1.1562	16.90
250001	1.6112	18.42	250051	0.8618	9.35	250119	1.0912	15.22	260027	1.6845	20.64	260094	1.2029	18.01	260176	1.5718	26.87*
250002	0.8541	17.25	250057	1.1764	15.92	250120	1.1700	15.34	260029	1.1663	19.75	260095	1.3973	19.69	260177	1.2878	21.26
250003	1.0047	17.65	250058	1.1064	15.53	250122	1.1738	16.94	260030	1.0046	12.51	260096	1.5339	23.03	260178	1.5350	19.66
250004	1.5584	17.80	250059	1.0093	16.28	250123	1.1743	18.87	260031	1.5437	19.49	260097	1.1362	16.56	260179	1.6138	21.49
250005	0.9383	12.60	250060	0.7560	13.03	250124	0.9027	13.18	260032	1.7894	20.20	260100	0.9513	13.79	260180	1.6069	19.58
250006	0.9859	16.09	250061	0.8374	11.03	250125	1.3343	20.89	260034	0.9083	17.42	260102	0.9027	20.13	260183	1.6375	20.07
250007	1.2467	19.29	250063	0.9472	13.25	250126	0.9699	18.24	260035	0.9701	13.11	260103	1.3726	18.09	260186	1.0499	19.32
250008	1.0048	14.18	250065	0.8716	12.80	250127	0.8221	.	260036	0.9995	16.74	260104	1.0047	21.01	260188	1.2131	20.64
250009	1.3292	18.56	250066	0.8996	15.66	250128	1.0216	14.00	260039	1.0788	14.19	260105	1.8093	24.72	260189	0.8329	11.39
250010	0.9977	13.39	250067	1.1539	16.41	250131	1.0306	12.61	260040	1.6310	17.31	260107	1.4582	19.84	260190	1.1968	18.52
250012	0.9786	14.16	250068	0.8240	13.68	250134	0.9418	17.07	260042	1.0374	18.76	260108	1.8731	19.46	260191	1.3262	17.98
250015	0.9911	13.53	250069	1.2716	17.99	250136	0.8068	18.97	260044	0.9634	15.99	260109	1.0518	13.91	260193	1.2305	21.16
250017	1.0353	17.94	250071	0.8828	14.38	250138	1.2422	18.40	260047	1.5740	19.01	260110	1.6778	17.84	260195	1.1962	17.72
250018	0.8806	11.98	250072	1.4467	18.22	250141	1.2463	19.01	260048	1.3286	20.09	260113	1.2672	14.68	260197	1.2465	19.28
250019	1.3527	16.74	250076	.	10.51	250143	0.8594	10.25	260050	1.0042	15.09	260115	1.1526	19.23	260198	1.2928	11.98
250020	0.9004	13.48	250077	0.9834	12.26	250146	0.9466	14.49	260052	1.3534	18.06	260116	1.0764	16.28	260200	1.1747	20.53
250021	0.9033	9.43	250078	1.5177	18.63	250148	1.0049	18.10	260053	1.1619	18.22	260119	1.1354	16.88	260205	1.4868	17.62

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
260206	0.5316	.	270079	0.9367	15.60	280048	1.0618	15.57	290105	1.3280	18.66	300003	1.5880	22.91	310019	1.0477	24.05
270002	1.3163	20.00	270080	1.0688	16.32	280049	1.1344	18.36	290106	0.9852	16.12	300005	1.2652	20.75	310020	1.4285	24.18
270003	1.1745	22.10	270081	0.9728	15.63	280050	0.9190	16.04	290107	1.0640	13.33	300006	1.1972	23.78	310021	1.6999	23.94
270004	1.7340	19.63	270082	1.0700	17.34	280051	0.9767	15.63	290108	1.1057	17.56	300007	1.1466	20.24	310022	1.3040	21.27
270006	0.5733	16.62	270083	1.0246	16.44	280052	1.0544	14.08	290109	0.9706	12.68	300008	1.1617	20.77	310024	1.3490	24.24
270007	1.0201	11.31	270084	0.9263	16.62	280054	1.2303	18.89	290110	0.9681	12.75	300009	1.0513	18.06	310025	1.2383	24.35
270009	1.0858	17.23	280001	1.0557	17.35	280055	0.9476	13.57	290111	1.3031	21.38	300010	1.3185	19.39	310026	1.3332	23.55
270011	1.0194	20.27	280003	2.1265	22.32	280056	0.8578	12.65	290114	0.9370	15.72	300011	1.3296	22.43	310027	1.3242	21.86
270012	1.5776	19.73	280005	1.3027	19.24	280057	0.9221	16.05	290115	0.9539	16.70	300012	1.3252	24.57	310028	1.2710	23.46
270014	1.0266	19.69	280009	1.7899	19.81	280058	1.1285	19.67	290117	1.0364	17.71	300013	1.1199	19.12	310029	1.0586	22.66
270016	0.8704	19.67	280010	0.8870	17.49	280060	1.5678	19.75	290118	0.9359	16.87	300014	1.2241	20.33	310031	2.8282	26.16
270017	1.2583	21.06	280011	0.8768	15.96	280061	1.3965	17.16	290119	0.8813	.	300015	1.1925	20.40	310032	1.2800	24.35
270019	1.1179	18.11	280013	1.7399	22.81	280062	1.1617	16.49	290123	0.8967	14.06	300016	1.2015	21.87	310034	1.2957	23.27
270021	1.0774	17.18	280014	0.9194	15.96	280064	0.9695	16.30	290125	1.2270	16.13	300017	1.4332	21.06	310036	1.1709	20.19
270023	1.2742	22.26	280015	1.0655	17.83	280065	1.2540	19.29	290001	1.7238	22.82	300018	1.3174	21.24	310037	1.3727	27.78
270026	0.9444	17.51	280017	1.0439	14.21	280066	1.0137	11.66	290002	0.9215	17.26	300019	1.2062	20.98	310038	1.9045	26.72
270027	1.0369	13.14	280018	0.9921	15.13	280068	0.8544	9.49	290003	1.6788	22.88	300020	1.3569	21.62	310039	1.2730	22.17
270028	1.1116	21.15	280020	1.7874	19.97	280070	0.9526	17.74	290005	1.3001	19.49	300021	1.1376	18.62	310040	1.2261	26.15
270029	0.9261	16.57	280021	1.1393	17.10	280073	0.9619	17.42	290006	1.2330	21.81	300022	1.1045	18.35	310041	1.3005	24.90
270032	1.1138	17.74	280022	0.9370	16.72	280074	1.0434	16.43	290007	1.6320	29.77	300023	1.4287	22.12	310042	1.2518	23.25
270033	0.8109	16.06	280023	1.3767	25.85	280075	1.1198	15.53	290008	1.1901	20.62	300024	1.2956	19.91	310043	1.1469	21.90
270035	0.9566	16.83	280024	0.9566	14.22	280076	1.1016	14.55	290009	1.6469	23.34	300028	1.2847	17.41	310044	1.3209	21.07
270036	0.9063	14.25	280025	0.9383	15.50	280077	1.2257	19.21	290010	1.1177	15.64	300029	1.5948	22.57	310045	1.4617	28.40
270039	1.0428	15.04	280026	1.0491	16.69	280079	0.9470	16.45	290011	0.9065	20.16	300033	1.0674	17.19	310047	1.3206	25.11
270040	1.1301	18.81	280028	1.0583	17.32	280080	1.0743	15.53	290012	1.3568	21.83	300034	2.1189	25.52	310048	1.2095	23.61
270041	1.1196	19.03	280029	1.1040	23.13	280081	1.0635	21.06	290013	1.0146	18.27	310001	1.7580	28.13	310049	1.2083	24.83
270044	1.0827	16.77	280030	1.7572	24.54	280082	0.9945	14.34	290014	1.0345	18.97	310002	1.8321	28.34	310050	1.3112	25.17
270046	0.9947	17.61	280031	1.0339	13.57	280083	1.0392	18.30	290015	0.9466	22.35	310003	1.3223	29.11	310051	1.4177	27.13
270049	1.7311	22.24	280032	1.3346	18.00	280084	0.9569	12.56	290016	1.0072	14.35	310005	1.3372	22.11	310052	1.2477	22.93
270050	1.0823	16.71	280033	0.9823	15.76	280085	.	20.43	290019	1.3051	21.25	310006	1.2911	21.60	310054	1.3222	26.17
270051	1.3362	20.27	280035	1.0577	15.92	280086	.	20.30	290020	0.9228	20.87	310008	1.3617	23.51	310057	1.2506	21.17
270052	0.9741	14.46	280037	1.0002	16.80	280089	0.9474	16.17	290021	1.6563	21.58	310009	1.3139	23.64	310058	1.2174	26.53
270057	1.2884	21.13	280038	1.0720	17.00	280090	.	14.14	290022	1.6276	24.55	310010	1.2710	22.57	310060	1.2836	19.20
270058	0.9740	14.75	280039	1.6240	16.64	280091	1.6634	15.84	290027	0.8071	16.78	310011	1.2150	23.20	310061	1.2297	23.26
270059	0.7770	14.75	280040	1.7213	19.53	280092	1.0073	14.19	290029	0.9152	.	310012	1.6329	26.52	310062	.	22.91
270060	0.9007	15.27	280041	0.9411	16.41	280094	0.9541	17.00	290032	1.4466	22.84	310013	1.3374	21.23	310063	1.3701	21.90
270063	1.0414	12.61	280042	1.0223	16.12	280097	1.0200	14.17	290038	0.9500	20.67	310014	1.0575	27.46	310064	1.3388	24.86
270071	1.2129	14.46	280043	1.0100	16.06	280098	0.9236	13.00	290039	1.3617	25.39	310015	2.0201	27.43	310067	1.3359	25.00
270074	0.8911	.	280045	1.0114	16.00	280101	1.0304	15.53	290041	1.2968	.	310016	1.2300	24.38	310069	1.2380	23.75
270075	0.9206	.	280046	1.0052	17.52	280102	.	14.01	290043	1.4065	.	310017	1.3423	25.79	310070	1.3766	26.00
270076	0.8883	.	280047	1.0712	16.34	280104	0.9154	13.28	300001	1.5543	22.00	310018	1.1254	22.84	310072	1.3529	21.76

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
310073	1.0662	28.51	320011	1.1635	20.06	330007	.	18.90	330066	1.3239	19.56	330133	1.4015	37.25	330201	1.6150	32.11
310074	1.4017	23.83	320012	1.0161	16.44	330008	1.1462	19.00	330067	1.3648	20.94	330135	1.1921	18.71	330202	1.2954	31.44
310075	1.3322	23.33	320013	1.2933	22.06	330009	1.2478	30.60	330072	1.3899	30.86	330136	1.3329	18.24	330203	1.4145	20.76*
310076	1.4051	20.06	320014	1.0710	16.36	330010	1.3039	17.45	330073	1.2028	16.29	330140	1.7844	19.14	330204	1.4205	20.44
310077	1.5960	25.25	320016	1.1670	20.54	330011	1.2557	18.30	330074	1.2962	18.00	330141	1.3349	26.50	330205	1.2419	20.58
310078	1.3004	23.88	320017	1.0024	18.04	330012	1.2462	32.76	330075	1.0712	17.23	330144	0.9514	14.06	330206	1.2196	26.18
310081	1.3168	22.06	320018	1.4066	18.85	330013	2.0084	19.08	330078	1.4068	16.79	330145	1.0294	16.82	330209	1.1879	23.99
310083	1.2091	23.80	320019	1.4324	24.47	330014	1.3548	32.34	330079	1.1676	17.46	330151	1.1133	16.07	330211	1.2026	19.51
310084	1.2832	26.67	320021	1.7040	17.87	330016	1.0280	16.97	330080	1.2833	29.27	330152	1.4507	30.54	330212	1.0366	21.77
310085	1.2428	22.17	320022	1.1678	16.18	330019	1.3322	35.96	330084	1.0983	18.04	330153	1.6757	18.97	330213	1.0956	18.77
310087	1.3332	20.72	320023	0.9239	16.06	330020	1.0410	15.55	330085	1.2357	20.29	330154	1.7681	.	330214	1.0954	36.44
310088	1.2256	22.32	320030	1.1665	16.55	330023	1.3047	24.40	330086	1.3374	31.30	330157	1.3635	22.06	330215	1.1628	19.00
310089	1.3837	23.83	320031	0.9716	19.68	330024	1.7800	34.17	330088	1.0435	25.66	330158	1.4573	25.76	330216	1.1070	21.48
310091	1.2506	22.90	320032	0.9083	16.81	330025	1.1293	16.20	330089	1.5196	19.40	330159	1.2553	19.15	330219	1.5277	23.99
310092	1.3827	20.52	320033	1.0647	25.06	330027	1.3967	33.47	330091	1.3968	19.10	330160	1.4835	32.78	330221	1.4119	27.85
310093	1.2382	22.43	320035	0.9774	21.52	330028	1.4167	28.21	330092	1.0016	14.07	330162	1.3018	27.12	330222	1.2932	18.37
310096	2.0551	25.16	320037	1.2047	17.83	330029	1.0048	18.16*	330094	1.2723	17.56	330163	1.2807	18.78	330223	1.0727	17.62
310105	1.2277	25.59	320038	1.1866	16.81	330030	1.5264	17.50	330095	1.2586	20.11	330164	1.3877	19.86	330224	1.2910	19.64
310106	1.4164	22.46	320040	1.4004	18.32	330033	1.2438	18.53	330096	1.1052	17.06	330166	1.0961	15.10	330225	1.1884	25.58
310110	1.2388	21.83	320048	1.2906	19.96	330034	.	31.40	330097	1.1926	16.22	330167	1.7367	29.36	330226	1.3214	16.67
310111	1.2515	21.11	320056	0.9230	.	330036	1.2491	23.99	330100	1.0517	27.07	330169	1.4062	37.27	330229	1.2677	16.80
310112	1.3162	23.67	320057	0.9771	.	330037	1.1303	16.11	330101	1.7048	32.41	330171	1.2626	25.53	330230	1.2094	29.76
310113	1.2462	23.68	320058	0.9443	.	330038	1.0977	16.25	330102	1.3654	17.58	330175	1.1063	17.33	330231	1.6236	30.09
310115	1.2716	21.73	320059	1.0004	.	330041	1.2947	24.52	330103	1.2136	15.72	330177	0.9549	17.29	330232	1.2275	17.91
310116	1.3459	22.96	320060	0.9944	.	330043	1.3001	28.75*	330104	1.3363	31.65	330179	0.9966	13.50	330233	1.4092	30.92
310118	1.3494	26.46	320061	1.2060	.	330044	1.2702	29.62	330106	1.6799	40.27	330180	1.2308	16.88	330234	2.3628	35.18
310119	1.7942	33.67	320062	0.9443	.	330045	1.3082	28.06	330107	1.2277	28.56	330181	1.3669	32.52	330235	1.1567	21.06
310120	1.1620	23.97	320063	1.2658	18.32	330046	1.4433	32.42	330108	1.2557	17.36	330182	2.5752	32.94	330236	1.4014	29.59
310528	1.4071	.	320065	1.1439	16.79	330047	1.2317	18.18	330111	1.0706	19.53	330183	1.4721	19.92	330238	1.2153	15.02
310529	1.4071	.	320067	0.9611	23.87	330048	1.2506	17.88	330114	0.9066	17.35	330184	1.3660	30.04	330239	1.2077	17.48
310534	0.9967	.	320068	0.8780	17.48	330049	1.1966	19.50	330115	1.1376	17.44	330185	1.2576	25.61	330240	1.3427	29.71
310632	0.8079	.	320069	0.9668	13.01	330053	1.2453	17.44	330116	0.8406	24.46	330188	1.2380	20.96	330241	2.8322	24.61
310650	0.7641	.	320070	0.9979	.	330055	1.6360	36.11	330118	.	28.69	330189	0.9157	15.13	330242	1.3667	28.26
310656	0.8079	.	320074	1.1344	19.34	330056	1.3738	30.45	330119	1.0632	34.84	330191	1.2923	18.62	330245	1.6763	17.68
320001	1.5222	19.12	320079	1.1973	18.28	330057	1.7171	18.75	330121	1.0206	16.10	330193	1.4076	36.55	330246	1.3462	28.11
320002	1.3286	22.62	330001	1.1783	26.55	330058	1.2879	17.00	330122	1.0280	20.02	330194	1.0635	34.66	330247	0.9357	28.53
320003	1.1472	15.95	330002	1.3658	26.54	330059	1.5454	34.17	330125	1.8727	19.85	330195	1.6302	33.33	330249	1.1006	16.27
320004	1.2368	18.58	330003	1.3551	19.41	330061	1.2823	25.73	330126	1.2024	23.79	330196	1.2994	30.82	330250	1.3145	19.58
320005	1.3699	21.61	330004	1.2751	22.53	330062	1.1007	17.61	330127	1.3854	31.99	330197	1.0858	17.06	330254	1.3269	18.41
320006	1.4044	18.90	330005	1.6335	24.83	330064	1.3544	33.13	330128	1.3017	29.62	330198	1.4661	24.69	330258	1.2252	29.74
320009	1.0940	18.29	330006	1.3539	25.06	330065	1.2485	19.89	330132	1.1944	15.76	330199	1.3274	28.76	330259	1.4464	28.27

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
330261	1.2037	25.72	330393	1.5382	26.50	340037	1.1033	16.66	340088	1.0952	21.41	340158	1.0371	18.14	350042	1.0451	16.74
330263	0.9706	20.41	330394	1.5304	19.24	340038	1.0027	17.38	340089	1.0003	16.83	340159	1.1720	17.39	350043	1.5406	16.89
330264	1.1703	22.87	330395	1.3054	32.87	340039	1.2714	20.59	340101	1.0078	14.09	340160	1.0031	16.16	350044	0.8810	19.22
330265	1.3006	18.62	330396	1.2228	24.86	340040	1.7834	20.43	340104	0.8760	13.05	340162	.	14.35	350047	0.9007	14.40
330267	1.4341	24.52	330397	1.3012	33.91	340041	1.2080	15.14	340105	1.4826	20.30	340164	1.3481	21.25	350049	1.1631	14.90
330268	0.9360	13.06	330398	.	28.77	340042	1.2290	16.93	340106	1.1165	17.72	340166	1.3044	20.04	350050	0.9465	11.40
330270	1.0561	24.43	330399	1.2690	32.91	340044	1.0557	18.57	340107	1.2071	18.02	340168	0.5101	15.29	350051	0.9311	17.75
330273	1.3013	23.15	330400	0.5784	.	340045	0.9066	13.05	340109	1.3153	18.77	340171	1.1444	21.90	350053	1.0115	14.04
330275	1.9700	19.05	340001	1.4103	18.18	340047	1.5747	20.06	340111	1.0635	16.33	340173	1.2105	19.33	350055	1.0247	14.57
330276	1.2323	18.29	340002	1.0732	20.80	340049	0.7283	19.21	340112	0.9004	14.76	350001	0.9882	14.91	350056	0.9278	14.83
330277	1.1145	18.32	340003	1.0054	20.25	340050	1.1213	20.01	340113	1.0636	21.29	350002	1.0068	17.53	350058	0.9706	15.94
330279	1.3749	19.06	340004	1.4557	19.07	340051	1.2481	16.56	340114	1.5402	21.22	350003	1.2254	18.25	350060	0.8490	16.37
330285	1.0612	23.53	340005	1.0230	15.82	340052	1.0000	22.82	340115	1.5725	19.76	350004	1.0072	20.05	350061	1.0017	15.75
330286	1.2781	26.76	340006	0.9746	16.96	340053	1.5046	20.06	340116	1.8238	20.42	350005	1.0417	18.33	350063	0.9967	.
330290	1.7529	33.51	340007	1.1558	17.24	340054	1.1400	15.00	340119	1.2150	18.85	350006	1.5536	18.41	350064	0.7558	.
330293	1.1720	16.22	340008	1.1423	21.29	340055	1.2622	19.00	340120	1.0462	15.04	350007	0.8587	13.33	350065	1.2802	.
330297	1.0131	.	340009	.	20.50	340056	1.0067	18.71	340121	1.0746	16.33	350008	1.1662	20.48	360001	1.2943	17.06
330304	1.2360	26.77	340010	1.3394	18.34	340061	1.7364	21.54	340123	1.1160	16.91	350009	1.1136	19.16	360002	1.1397	18.61
330306	1.5163	27.58	340011	1.1279	13.66	340063	1.0003	17.02	340124	1.0777	15.58	350010	1.0119	16.28	360005	1.7057	22.75
330307	1.2304	21.07	340012	1.2312	18.87	340064	1.1283	20.71	340125	1.4295	19.72	350011	1.0859	18.20	360006	1.0148	21.00
330314	1.3586	24.54	340013	1.2490	20.17	340065	1.2213	17.54	340126	1.3008	18.81	350012	1.1412	15.76	360007	1.0242	18.00
330316	1.3137	27.61	340014	1.5206	20.57	340067	1.0005	19.38	340127	1.1952	19.30	350013	1.0371	16.46	360008	1.2461	18.34
330327	0.8647	16.46	340015	1.2709	20.16	340068	1.1733	16.63	340129	1.2483	20.46	350014	0.9712	16.84	360009	1.5341	18.93
330331	1.3001	31.62	340016	1.1190	17.54	340069	1.7753	21.06	340130	1.2839	19.74	350015	1.7379	16.54	360010	1.2338	19.23
330332	1.2556	27.00	340017	1.2066	19.42	340070	1.2877	19.78	340131	1.4389	19.79	350016	.	11.05	360011	1.3384	19.38
330333	1.2626	29.19	340018	1.0796	14.80	340071	1.0822	17.14	340132	1.3407	17.34	350017	1.2979	17.63	360012	1.3306	19.00
330336	1.2323	29.77	340019	0.9706	14.00	340072	1.2078	16.74	340133	1.0257	16.46	350018	1.0471	14.49	360013	1.1574	20.00
330338	1.1713	22.46	340020	1.1758	18.63	340073	1.2072	21.06	340137	1.0040	21.62	350019	1.0646	19.31	360014	1.1000	20.24
330339	0.8010	20.01	340021	1.2527	19.89	340075	1.1567	16.71	340138	1.1262	20.76	350021	1.0506	16.20	360016	1.5829	17.61
330340	1.1929	23.84	340022	1.0713	17.82	340080	.	22.23	340141	1.0800	21.36	350023	0.9037	17.00	360017	1.0321	21.75
330350	1.0644	30.00	340023	1.3571	18.54	340084	1.0707	17.15	340142	1.1065	17.15	350024	0.9642	14.75	360018	1.0750	23.52
330353	1.3479	32.20	340024	1.1093	17.36	340085	1.1000	17.35	340143	1.0567	21.36	350025	0.9326	17.12	360019	1.2000	18.71
330354	1.0425	.	340025	1.1962	17.26	340087	1.0073	17.30	340144	1.2427	20.91	350027	0.9559	15.08	360020	1.5244	21.78
330357	1.3539	26.59	340027	1.1833	18.06	340088	1.3566	21.62	340145	1.3002	20.11	350029	0.8521	13.52	360024	1.2677	19.86
330372	1.2479	28.68*	340028	1.5002	16.46	340089	0.9707	13.86	340146	1.1830	15.92	350030	1.0705	17.72	360025	1.3829	20.36
330381	1.2237	31.01	340030	2.0520	21.14	340090	1.1476	17.06	340147	1.2067	19.65	350031	0.9207	14.00	360026	1.3500	18.22
330385	1.2005	25.67	340031	0.9218	14.70	340091	1.6272	20.50	340148	1.2925	18.50	350034	0.9218	18.72	360027	1.4750	21.04
330386	1.1316	17.64	340032	1.4558	20.00	340092	1.0292	16.33	340151	1.1800	16.73	350035	0.9109	18.46	360028	1.4001	17.62
330387	0.9001	.	340034	1.2568	.	340094	1.5752	19.04	340153	1.5514	20.64	350038	1.0570	17.67	360029	1.1467	18.76
330389	1.5562	30.25	340035	1.0683	20.23	340096	1.1811	17.62	340155	1.4007	20.56	350039	0.9504	17.04	360030	1.2387	17.37
330390	1.3637	31.16	340036	1.0015	18.22	340097	1.1356	18.84	340156	0.8353	.	350041	1.1019	14.67	360031	1.2614	19.39

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
360032	1.1930	18.66	360079	1.0040	22.11	360132	1.3751	19.92	360180	1.0450	17.90	370019	1.3146	14.23	370080	0.9633	13.92
360034	1.2000	14.98	360080	1.1400	17.39	360133	1.5060	19.43	360182	1.3200	21.64	370020	1.2250	14.38	370082	0.8272	13.96
360035	1.6367	20.56	360081	1.3624	21.73	360134	1.0850	20.60*	360184	1.1006	17.19	370021	0.8554	12.06	370083	0.9352	13.15
360036	1.2498	20.21	360082	1.2764	22.05	360136	1.0035	17.78	360185	1.1079	19.93	370022	1.2006	17.23	370084	1.0547	22.05
360037	1.7878	23.51	360084	1.5179	20.40	360137	1.7667	20.17	360187	1.1036	20.06	370023	1.2673	17.76	370085	0.9432	11.26
360038	1.6177	21.25	360085	1.0538	21.91	360140	0.9452	20.28	360200	0.9540	16.23	370025	1.3664	17.50	370086	1.1237	15.44
360039	1.3100	18.78	360086	1.5008	19.54	360141	1.6731	23.00	360203	1.0078	16.32	370026	1.5030	18.34	370089	1.2280	16.10
360040	1.2325	18.16	360087	1.5438	20.17	360142	1.0195	17.01	360204	1.0541	22.25	370028	1.0043	18.44	370091	1.0042	19.17
360041	1.3558	19.57	360088	1.3338	24.01	360143	1.3575	20.20	360210	1.1394	21.00	370029	1.1685	16.40	370092	1.0128	14.96
360042	1.1140	17.43	360089	1.2060	18.39	360144	1.3413	23.22	360211	1.2947	19.99	370030	1.1316	16.32	370093	1.5140	18.46
360044	1.2326	17.06	360090	1.2526	21.04	360145	1.7451	19.44	360212	1.3355	21.11	370032	1.5632	18.28	370094	1.4121	18.00
360045	1.4030	22.15	360091	1.2923	21.31	360147	1.2678	16.06	360213	1.2000	19.46	370033	1.0528	13.52	370095	0.9514	12.64
360046	1.1640	20.48	360092	1.1336	20.48	360148	1.1100	19.28	360218	1.2990	18.95	370034	1.2294	15.64	370097	1.2813	22.97
360047	1.0000	17.19	360093	1.0056	19.33	360149	.	19.95	360230	1.4035	21.96	370035	.	25.56	370099	1.0039	15.45
360048	1.6272	22.58	360094	1.3367	18.86	360150	1.3867	21.13	360231	1.1068	12.96	370036	0.9960	12.40	370100	0.9114	14.02
360049	1.2966	20.46	360095	1.3127	20.41	360151	1.4056	16.00	360234	1.3214	23.26	370037	1.7616	16.70	370103	0.9544	19.24
360050	1.1453	12.99	360096	1.0704	18.22	360152	1.5126	20.83	360236	1.2767	17.84	370038	0.9615	13.31	370105	1.9096	21.33
360051	1.6254	20.83	360098	1.5096	19.53	360153	1.1645	15.41	360239	1.3379	20.19	370039	1.1423	15.52	370106	1.5203	18.55
360052	1.6229	19.62—	360099	1.0207	16.58	360154	1.0005	14.33	360241	0.4313	23.53	370040	1.0000	14.47	370108	0.9726	12.53
360054	1.2050	17.26	360100	1.2112	17.90	360155	1.4048	22.53	360242	1.5124	.	370041	0.9018	16.74	370112	1.0040	14.85
360055	1.3527	21.56	360101	1.3238	21.39	360156	1.2197	17.88	360243	.	14.87	370042	0.8535	14.92	370113	1.1539	16.10
360056	1.6036	19.05	360102	1.2857	19.43	360158	1.1594	20.28	360245	0.6004	16.46	370043	0.9540	15.95	370114	1.5822	16.53
360057	1.6036	15.91	360106	1.1941	18.96	360161	1.3026	19.29	360247	0.4151	16.31	370045	0.9785	19.29	370121	1.0004	22.56
360058	1.1162	18.76	360107	1.1829	19.76	360162	0.7901	.	360250	3.9346	.	370046	0.9928	18.83	370122	0.9493	15.06
360059	1.6015	20.56	360108	1.6318	17.56	360163	1.8350	20.73	360252	1.2846	.	370047	1.3912	16.76	370123	1.3673	18.92
360062	1.4229	20.76	360109	1.1163	20.10	360165	1.1664	18.26	360253	2.5196	.	370048	1.2019	18.22	370125	0.9161	15.63
360063	1.1771	18.46	360112	1.5530	22.56	360166	.	18.73	370001	1.7256	22.52	370049	1.2855	20.72	370126	1.0242	23.97
360064	1.0013	20.48	360113	1.2300	24.26	360170	1.3000	16.67	370002	1.3003	14.73	370051	0.9504	11.67	370131	0.8147	17.57
360065	1.2483	20.05	360114	1.0078	17.88	360172	1.3341	18.67	370004	1.2100	19.32	370054	1.2816	16.90	370133	1.0000	10.96
360066	1.6104	21.00	360115	1.3048	18.51	360174	1.2013	19.97	370005	0.8524	15.17	370056	1.0450	18.46	370138	0.9047	16.40
360067	1.0771	15.32	360116	1.2051	18.00	360175	1.2196	21.17	370006	1.1504	16.65	370057	1.0031	16.73	370139	0.9991	14.86
360068	1.0256	21.28	360118	1.4279	19.57	360176	1.1316	15.04	370007	1.0047	15.29	370059	1.0057	18.14	370140	1.0000	16.07
360069	1.1757	16.70	360121	1.1624	22.11	360177	1.1005	18.79	370008	1.4123	16.06	370060	1.0383	16.54	370141	1.2713	18.41
360070	1.7376	17.38	360123	1.3123	20.32	360178	1.2352	18.87	370011	1.0147	14.97	370061	1.2008	14.61	370146	1.0233	12.64
360071	1.3032	17.06	360125	1.2278	19.66	360179	1.4044	21.13	370012	0.9000	11.73	370064	0.8072	10.97	370148	1.4777	20.68
360072	1.2207	18.15	360126	1.2281	19.00	360180	2.1617	21.36	370013	1.0324	19.34	370065	0.9624	16.00	370149	1.3528	16.19
360074	1.2612	20.63	360127	1.1662	17.59	360184	.	19.12	370014	1.1740	20.65	370071	1.0000	16.14	370153	1.1165	17.83
360075	1.3400	22.48	360128	1.2292	16.12	360185	1.2320	18.73	370015	1.0000	17.63	370072	0.8627	14.47	370154	0.9806	15.51
360076	1.3672	20.67	360129	0.9200	15.50	360186	1.0140	18.32	370016	1.3358	19.12	370076	1.2000	13.57	370156	1.0648	13.98
360077	1.5736	21.10	360130	1.0412	17.20	360187	1.4775	18.51	370017	.	12.64	370078	1.5885	18.41	370158	0.9808	15.00
360078	1.2572	21.44	360131	1.2946	19.22	360188	0.9362	17.10	370018	1.3206	18.51	370079	0.9792	16.00	370159	1.2132	20.05

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
370163	0.9490	17.64	390020	1.4424	20.15	390067	1.2567	16.53	390043	1.1751	17.26	390068	1.2478	16.33	390147	1.2027	20.57
370165	1.1226	13.99	390021	1.2501	21.16	390068	0.9243	21.52	390044	1.0352	20.28	390069	1.4937	19.12	390150	1.1454	20.73
370166	1.0046	17.28	390022	1.1707	22.64	390069	1.2592	19.53	390045	1.0020	18.56	390087	1.2579	23.60	390151	1.2245	21.00
370169	1.0537	12.52	390023	1.1767	20.55	390070	1.3232	20.27	390046	1.3717	20.73	390100	1.0324	20.78	390152	1.0777	20.33
370170	1.0516	.	390025	1.3340	26.37	390091	1.2525	27.96	390047	1.0521	27.67	390101	1.2154	17.96	390153	1.2246	23.70
370171	0.9063	.	390026	1.0041	20.47	390091	1.5400	19.30	390048	1.1542	19.60	390102	1.3788	19.05	390154	1.2094	17.40
370172	0.9438	.	390027	1.2600	20.06	390092	1.3526	21.83	390049	1.0583	21.12	390103	1.1332	18.43	390156	1.4322	21.83
370173	1.1306	.	390029	1.1923	19.42	390093	1.2304	17.14	390050	2.1184	22.88	390104	1.0109	15.90	390157	1.3087	19.06
370174	0.9456	.	390031	0.9295	23.32	390094	1.3019	19.23	390051	2.1193	25.79	390105	1.0782	16.67	390160	1.2339	21.48
370176	1.2063	15.96	390033	1.7556	25.25	390095	1.1065	17.35	390052	1.1752	20.93	390107	1.4337	19.52	390161	1.0720	16.48
370177	0.9538	11.25	390035	1.2000	22.41	390096	1.0350	20.30	390054	1.2202	17.80	390108	1.3518	21.80	390162	1.4037	21.41
370178	1.0148	10.57	390036	.	27.16	390097	1.1621	21.75	390055	1.0512	24.22	390109	1.1714	16.46	390163	1.2000	16.90
370179	0.8041	17.28	390037	1.2564	21.92	390098	1.1629	17.83	390056	1.1545	17.78	390110	1.0077	21.53	390164	2.1000	24.68
370180	0.9414	.	390038	1.3121	20.00	390099	1.7853	20.68	390057	1.2000	20.21	390111	1.9596	27.52	390165	1.1290	19.04
370183	1.0832	10.29	390039	1.2786	23.17	390010	1.2237	17.51	390058	1.3441	19.74	390112	1.2207	14.94	390167	.	19.90
370186	0.9477	13.62	390040	1.2234	26.27	390011	1.3618	18.17	390061	1.0577	21.24	390113	1.2392	19.19	390168	1.4322	18.74
370190	1.4540	14.14	390042	0.9481	21.12	390012	1.1506	20.65	390062	1.1868	16.67	390114	1.1875	19.63	390169	1.4256	20.24
370192	1.3555	18.46	390047	1.6747	23.07	390013	1.2058	19.27	390063	1.5771	20.91	390115	1.3578	23.35	390170	1.0553	20.59
370196	0.8006	.	390048	0.9006	17.50	390015	1.1147	13.13	390065	1.2183	19.94	390116	1.3074	21.49	390173	1.1623	18.54
370198	.	21.31	390050	1.4245	20.30	390016	1.2108	16.99	390066	1.2000	19.85	390117	1.1923	17.94	390174	1.0421	25.42
370199	0.8408	.	390051	1.0000	22.36	390017	1.1000	16.75	390067	1.7231	20.97	390118	1.2200	18.34	390176	1.2018	17.87
370200	1.1167	.	390052	1.2346	19.46	390018	1.2446	21.36	390068	1.3352	18.32	390119	1.3516	18.30	390178	1.3214	16.70
370201	1.5233	.	390056	1.1446	19.52	390019	1.0000	16.78	390069	1.2268	19.65	390121	1.3983	20.58	390179	1.2722	21.00
370202	1.6376	.	390060	1.4007	24.27	390022	1.2621	21.51	390070	1.2000	16.20	390122	1.6574	17.19	390180	1.4437	25.71
370205	0.9723	.	390061	1.5383	22.37	390023	1.2729	21.83	390071	1.0706	15.72	390123	1.2957	20.83	390181	1.0691	19.47
390001	1.2467	20.31	390062	1.0646	20.77	390024	1.1956	24.04	390072	1.0662	16.31	390125	1.2811	16.69	390183	1.1931	17.83
390002	1.2141	24.02	390063	.	20.41	390025	0.4921	15.62	390073	1.0461	20.36	390126	.	20.08	390184	1.1406	20.61
390003	1.1384	21.78	390064	1.2431	19.96	390026	1.2531	22.39	390074	1.2043	18.46	390127	1.2969	21.77	390185	1.1726	18.88
390004	1.7735	23.15	390065	1.3706	26.14	390027	1.0067	26.89	390075	0.5141	17.96	390128	1.2367	19.06	390190	1.1611	20.09
390005	1.1597	24.06	390066	1.2332	22.63	390028	1.5226	22.77	390076	1.2350	20.25	390130	1.1429	17.76	390191	1.1866	16.32
390006	1.2294	21.27	390068	.	22.32	390029	2.0542	21.57	390078	1.1633	19.21	390131	1.3543	16.16	390192	1.1366	17.45
390007	1.5190	25.20	390069	0.9632	19.83	390030	1.3046	17.96	390079	1.0013	18.33	390132	1.3477	21.19	390193	1.2787	16.79
390008	1.1151	20.71	390070	1.2447	27.25	390031	1.1635	19.28	390080	1.3629	18.89	390133	1.7062	23.35	390194	1.2307	20.80
390009	1.5219	23.61	390071	1.2048	22.64	390032	1.2290	17.89	390081	1.2456	24.83	390135	1.2535	21.58	390195	1.5205	24.69
390010	1.0677	23.75	390072	0.9094	19.16	390035	1.2915	20.20	390083	1.1651	.	390136	1.1630	16.97	390196	1.5002	.
390011	1.1279	21.12	390073	1.3008	22.36	390036	1.4017	19.99	390084	1.1062	16.40	390137	1.4014	17.57	390197	1.4091	19.27
390013	1.1967	18.68	390076	0.9006	20.25	390037	1.4177	21.06	390085	1.1461	18.53	390138	1.3171	19.62	390198	1.2532	15.97*
390014	1.4063	24.06	390081	0.9038	20.00	390039	1.1906	17.10	390086	1.3522	23.62	390139	1.4050	24.48	390199	1.1578	17.06
390017	1.8293	26.06	390082	1.2819	22.23	390040	1.6206	15.96	390089	1.5116	21.64	390142	1.5751	26.81	390200	0.9552	15.14
390018	1.0422	22.38	390083	1.1537	21.30	390041	1.2784	19.81	390091	1.1336	18.16	390145	1.4000	20.37	390201	1.2359	20.68
390019	1.2490	22.12	390084	1.2465	24.28	390042	1.5056	22.77	390092	1.1624	17.72	390146	1.2747	18.79	390203	1.3449	20.94

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
390204	1.2778	20.18	390285	1.6773	.	400006	1.3040	9.33	420015	1.3625	18.84	420060	1.4061	22.34	430048	1.1084	18.35
390206	.	18.40	390286	1.1146	.	400102	1.1154	9.85	420016	0.9104	15.62	420062	1.5063	20.47	430049	0.8228	15.54
390209	1.0418	17.48	390287	1.5519	.	400103	1.4138	11.21	420018	1.0007	19.74	420063	1.3406	20.15	430051	0.8216	17.06
390211	1.2276	17.86	390288	1.3223	.	400104	1.2732	11.07	420019	1.1322	17.00	420065	1.4404	19.96	430054	0.9526	14.73
390213	1.1661	18.85	390289	1.2775	.	400105	1.1795	9.30	420020	1.1856	20.94	420066	1.4443	25.72	430056	0.8057	11.76
390215	1.1006	20.71	390290	1.9179	.	400106	1.2251	9.31	420023	1.4582	19.49	420067	1.7284	19.14	430057	0.9837	15.44
390217	1.2172	19.14	390291	1.0064	.	400109	1.4639	10.96	420026	1.0478	20.35	420068	1.0674	17.19	430060	0.8973	9.84
390219	1.2817	18.83	390292	1.6512	. .	400110	1.2211	10.33	420027	1.3624	18.85	420069	1.1728	20.25	430064	1.0133	14.44
390220	1.1341	18.72	390293	1.1807	.	400111	1.2002	9.56	420030	1.2525	19.15	420001	1.2948	18.87	430066	0.9006	14.36
390222	1.2828	21.57	400001	1.2704	9.95	400112	1.0782	10.18	420031	0.9074	14.19	420002	0.9000	17.47	430073	1.0143	16.11
390223	1.7000	23.65	400002	1.7014	10.14	400113	1.2004	9.22	420033	1.1229	21.73	420005	2.5155	.	430076	0.9191	12.76
390224	0.8400	15.30	400003	1.3336	10.88	400114	1.0038	9.05	420036	1.2331	17.61	420006	1.7514	.	430077	1.6721	19.39
390225	1.2363	18.61	400004	1.2013	8.99	400115	1.0071	9.82	420037	1.2053	21.79	430004	0.9033	18.54	430079	0.9000	13.66
390226	1.7155	21.83	400005	1.1000	9.56	400117	1.1337	10.23	420038	1.2437	17.67	430005	1.2825	16.31	430081	0.9463	. .
390228	1.3762	19.41	400006	1.1930	10.34	400118	1.2347	9.44	420039	1.1382	15.84	430007	1.0463	14.11	430082	0.8214	. .
390231	1.5428	22.75	400007	1.1671	8.45	400120	1.3234	9.53	420043	1.1810	19.45	430008	1.1204	17.66	430083	0.8717	. .
390233	1.3670	19.40	400009	1.0022	8.42	400121	0.9227	7.81	420045	1.2222	18.44	430010	1.0599	17.18	430084	0.8388	. .
390235	1.4497	23.06	400010	0.8818	10.65	400122	1.0333	8.19	420049	1.2976	17.38	430011	1.2701	16.96	430085	0.8145	. .
390236	1.1965	16.24	400011	1.0651	7.59	400123	1.2064	7.81	420051	1.5734	19.50	430012	1.2837	17.22	430086	0.8934	17.89
390237	1.5383	19.52	400012	1.2487	8.24	400124	2.9102	12.10	420053	1.1074	16.96	430013	1.2128	18.13	430090	1.5851	21.52
390238	1.3056	17.52	400013	1.2445	8.46	400125	1.0767	.	420054	1.2681	18.27	430014	1.2999	16.80	430091	1.0669	19.21
390244	0.9301	15.46	400014	1.3044	9.52	410001	1.3068	23.28	420055	1.0334	19.29	430015	1.1567	18.09	430092	2.0006	. .
390245	1.1300	26.82	400015	1.5550	10.95	410004	1.2068	22.48	420056	1.2204	14.87	430016	1.0045	19.46	430093	0.9831	. .
390246	1.1336	18.97	400016	1.3421	13.28	410005	1.2064	23.14	420057	1.1456	15.96	430018	0.9370	14.80	440001	1.1951	14.87
390247	1.0155	20.96	400017	1.2238	8.84	410006	1.2614	23.40	420059	0.9031	15.82	430022	0.8643	13.40	440002	1.0005	19.15
390248	0.9450	12.79	400018	1.2832	10.46	410007	1.0132	22.15	420061	1.1380	16.56	430023	0.9040	12.23	440003	1.2542	18.37
390250	1.0572	20.95	400019	1.5224	10.43	410008	1.2008	23.07	420062	1.1742	17.82	430024	0.9311	15.47	440006	1.3364	19.00
390256	1.4024	21.92	400021	1.4434	10.76	410009	1.3252	24.40	420064	1.1834	16.72	430027	1.7835	19.15	440007	1.0210	12.12
390258	1.1900	21.95	400022	1.3544	11.59	410010	1.1306	25.96	420065	1.3501	19.00	430028	1.1333	18.23	440008	1.0183	17.28
390262	1.0235	18.24	400024	0.9636	7.90	410011	1.2456	25.29	420066	1.0836	15.16	430029	0.9464	16.65	440009	1.1335	17.84
390263	1.3571	25.47	400026	1.6182	8.65	410012	1.5184	24.56	420067	1.2057	16.86	430031	0.8722	13.13	440010	0.9359	19.06
390265	1.2957	20.96	400027	.	9.50	410013	1.2785	24.51	420068	1.3324	18.50	430033	0.9751	15.36	440011	1.3657	17.69
390266	1.1667	17.17	400028	1.1211	8.06	420002	1.4661	19.48	420069	1.0437	17.06	430034	0.9643	15.41	440012	1.0460	15.98
390267	1.2494	21.30	400031	.	8.27	420004	1.0856	19.89	420070	1.2714	18.01	430036	0.9004	13.70	440014	0.9659	15.92
390268	1.3355	21.35	400032	1.2942	10.55	420008	1.0765	17.35	420071	1.3358	19.45	430037	0.9250	16.54	440015	1.0167	18.26
390270	1.3000	19.00	400044	1.4724	11.97	420009	1.0764	18.34	420072	0.9270	13.96	430038	1.0002	13.72	440016	1.0272	15.41
390272	0.5153	.	400048	1.1007	9.17	420007	1.0004	18.21	420073	1.2906	19.16	430040	1.0441	13.67	440017	1.0057	19.42
390275	0.9406	18.29	400051	1.7579	12.46	420009	1.1767	18.55	420074	0.9703	16.03	430041	0.8004	13.19	440018	1.2741	16.41
390279	1.0021	16.32	400079	1.2002	.	420010	1.1468	17.12	420075	0.9040	14.29	430043	1.1838	13.80	440019	1.7622	20.04
390281	1.3650	.	400087	1.5000	9.51	420011	1.1004	16.57	420076	1.5714	20.73	430044	0.7004	18.50	440020	1.1151	16.12
390284	1.4412	.	400094	1.0010	8.91	420014	1.0008	16.61	420079	1.4513	20.06	430047	1.0006	17.50	440022	.	15.65

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
440023	1.0011	15.47	440083	1.0260	14.85	440174	0.9274	17.33	450028	1.4881	18.86	450096	1.4321	17.88	450157	1.0333	15.64
440024	1.3614	18.44	440084	1.1547	13.44	440175	1.1196	20.06	450029	1.0906	17.47	450097	1.3663	19.57	450160	0.9633	16.65
440025	1.1416	15.88	440091	1.0378	19.61	440176	1.3125	18.03	450031	1.3750	22.22	450098	1.0440	20.56	450162	1.2453	20.96
440026	.	23.06	440100	0.9611	13.84	440180	1.1300	19.78	450032	1.2417	17.33	450099	1.1796	19.23	450163	1.0142	17.54
440029	1.2727	19.43	440102	1.1448	14.35	440181	0.9170	16.09	450033	1.0071	19.74	450101	1.5395	17.13	450164	1.1251	16.97
440030	1.1742	16.29	440103	.	20.31	440182	0.9915	17.75	450034	1.5586	19.67	450102	1.0849	18.67	450165	0.9970	13.92
440031	1.0000	15.54	440104	1.7583	22.44	440183	1.0054	22.71	450035	1.4406	20.10	450104	1.1458	16.67	450166	0.9991	11.46
440032	0.9957	13.96	440105	0.9719	16.71	440184	1.1707	17.20	450037	1.5433	19.54	450107	1.5558	25.20	450169	.	13.20
440033	1.1006	14.53	440109	1.1213	16.04	440185	1.1886	19.39	450039	1.5440	19.61	450108	1.0353	15.63	450170	0.9212	14.39
440034	1.5819	19.55	440110	1.1734	21.17	440186	0.9940	19.39	450040	1.7174	18.65	450109	0.9101	13.61	450176	1.3003	16.97
440035	1.2400	18.90	440111	1.4099	23.24	440187	1.1525	18.97	450042	1.0031	19.80	450110	.	19.38	450177	1.1288	14.92
440039	1.0440	19.94	440114	1.0852	14.50	440189	1.5018	.	450044	1.4981	24.00	450111	1.2670	19.64	450178	0.9711	17.65
440040	1.0510	16.37	440115	1.0340	17.45	440192	1.0453	19.66	450046	1.5067	18.65	450112	1.2106	16.64	450181	1.0173	15.56
440041	1.0031	14.66	440120	1.0720	17.24	440193	1.2536	19.06	450047	1.1154	19.45	450113	1.3525	20.96	450184	1.4239	21.13
440046	1.1700	18.17	440125	1.5428	15.66	440194	1.3420	19.57	450050	0.9166	14.77	450118	.	17.91	450185	0.9904	14.07
440047	0.9206	16.66	440130	1.1552	17.52	440197	1.2815	21.06	450051	1.0140	21.02	450119	1.2800	20.28	450187	1.2340	18.00
440048	1.0110	19.45	440131	1.1310	15.50	440200	1.1776	17.96	450052	1.0272	13.00	450121	1.4614	20.46	450188	0.9606	14.39
440049	1.0765	17.93	440132	1.1006	16.66	440203	0.9624	18.34	450053	1.0522	17.05	450123	1.1672	15.76	450191	1.0735	20.12
440050	1.2312	19.13	440133	1.5570	21.53	440206	.	16.44	450054	1.0107	22.90	450124	1.7502	22.75	450192	1.1837	20.36
440051	0.9193	13.19	440135	1.1965	19.20	440210	1.0246	11.02	450055	1.1121	15.04	450126	1.3516	21.72	450193	1.0904	23.20
440052	0.9791	16.65	440137	1.1342	14.56	440211	.	14.90	450056	1.0230	21.84	450128	1.2125	18.22	450194	1.3376	20.52
440053	1.3264	18.55	440141	0.9527	13.53	440212	.	17.67	450058	1.0127	16.10	450130	1.3541	20.42	450196	1.4145	17.19
440054	1.2247	13.87	440142	1.0005	15.73	440213	.	19.58	450059	1.2342	15.22	450131	1.2767	19.26	450200	1.4511	18.74
440056	1.0523	15.96	440143	1.0189	17.76	440214	1.0187	.	450063	0.8753	14.38	450132	1.5776	18.17	450201	1.0067	16.90
440057	1.0725	12.70	440144	1.2827	17.64	440217	1.2242	.	450064	1.4467	17.41	450133	1.5532	23.64	450203	1.0079	20.67
440058	1.1466	18.81	440145	0.9764	17.06	450002	1.4964	21.37	450065	0.9949	21.49	450135	1.6714	21.03	450209	1.7113	19.06
440059	1.4739	18.54	440147	1.7084	21.43	450004	1.0078	16.67	450066	1.0031	22.90	450137	1.5658	22.46	450210	1.0423	13.96
440060	1.1234	18.06	440148	1.0650	19.24	450005	1.1999	18.34	450072	1.2200	19.01	450140	0.9323	20.23	450211	1.3040	17.90
440061	1.1140	14.97	440149	1.0200	16.60	450007	1.2312	16.07	450073	1.1328	17.10	450143	1.0367	14.53	450213	1.7786	17.76
440063	1.0376	19.32	440150	1.3182	20.14	450008	1.2218	17.06	450076	1.7674	.	450144	1.0746	18.11	450214	1.3116	19.05
440064	1.1054	17.76	440151	1.1397	17.42	450010	1.4099	16.50	450078	0.9224	11.73	450145	0.9606	15.61	450217	0.9365	12.85
440065	1.3167	18.58	440152	2.0761	21.03	450011	1.3042	17.19	450079	1.4079	21.05	450146	0.8043	17.06	450219	0.9728	15.40
440067	1.1667	16.28	440153	1.1151	16.78	450014	1.1295	17.95	450080	1.1637	17.46	450147	1.3486	18.04	450221	1.0718	16.87
440068	1.2445	19.47	440156	1.4002	20.56	450015	1.3064	18.99	450081	0.9006	16.24	450148	1.1855	18.67	450222	1.5254	20.31
440070	1.0180	13.70	440157	1.0583	16.93	450016	1.5700	18.45	450082	0.9078	16.16	450149	1.5838	19.75	450224	1.3253	24.90
440071	1.1043	17.62	440159	1.2268	17.72	450018	1.4551	21.48	450083	1.7936	21.50	450150	0.9364	16.37	450229	1.0647	16.45
440072	1.2826	17.90	440161	1.8345	21.80	450020	0.9506	17.84	450085	1.1413	18.36	450151	1.1600	15.29	450231	1.5947	19.16
440073	1.2472	19.17	440162	0.7243	14.76	450021	1.8828	23.08	450087	1.4081	22.03	450152	1.1782	18.01	450234	1.0237	16.19
440076	1.0857	15.86	440166	1.6735	19.67	450023	1.4618	16.86	450089	1.1578	15.90	450153	1.5947	19.44	450235	1.0434	15.23
440081	1.0939	18.34	440168	1.0083	18.65	450024	1.3867	17.35	450092	1.1838	16.83	450154	1.2040	13.87	450236	1.2085	16.67
440082	2.0072	22.28	440173	1.0376	18.84	450025	.	17.00	450094	1.3042	21.32	450155	1.0000	11.58	450237	1.5007	20.79

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
450239	1.0093	17.13	450351	1.1962	18.41	450469	1.4654	19.63	450605	1.1715	21.14	450675	1.5244	22.50	450757	0.8813	13.87
450241	1.0067	12.57	450352	1.1558	18.75	450473	1.0004	19.96	450609	0.8760	15.96	450677	1.3378	22.66	450758	1.5780	21.87
450243	0.9967	11.91	450353	1.1247	17.75	450475	1.1266	16.34	450610	1.5025	18.99	450678	1.4676	23.26	450760	1.1219	17.49
450246	1.1557	16.55	450355	0.9621	11.95	450484	1.5182	16.81	450614	0.9407	17.99	450683	1.2556	20.91	450761	0.9067	13.62
450249	1.0006	12.03	450358	2.0636	22.32	450488	1.3168	19.35	450615	1.1009	14.56	450684	1.2246	19.70	450763	1.0783	18.21
450250	0.9060	10.28	450362	1.0670	15.88	450489	0.9233	9.93	450617	1.3662	20.34	450686	1.6703	16.57	450766	2.0468	22.43
450253	1.1334	12.24	450369	1.0434	15.22	450497	1.0756	15.09	450620	1.0723	15.84	450688	1.2886	19.63	450769	0.9131	14.59
450258	0.9566	16.05	450370	1.1661	12.61	450498	0.9646	13.86	450623	1.1467	22.19	450690	1.3023	21.06	450770	1.0386	16.53
450264	0.9279	13.89	450371	1.1437	24.63	450506	1.4174	18.81	450626	1.0306	18.17	450694	1.1863	17.48	450771	1.3344	22.45
450269	1.0241	12.36	450372	1.2145	20.69	450514	1.0529	21.32	450628	0.9750	20.56	450696	.	24.96	450774	1.5215	18.69
450270	1.1022	12.84	450373	1.0167	17.42	450517	0.9660	27.88	450630	1.4779	21.60	450697	1.3829	18.84	450775	1.2816	19.80
450271	1.2784	16.68	450374	0.9229	13.61	450518	1.4296	19.81	450631	1.7082	20.84	450698	0.8230	14.67	450776	0.9631	15.78
450272	1.2662	19.93	450378	1.3771	23.56	450523	1.4357	20.66	450632	0.9965	11.76	450700	0.9559	14.84	450777	0.9179	21.67
450276	1.0243	13.12	450379	1.4171	22.76	450530	1.2465	22.66	450633	1.5937	19.52	450702	1.3930	20.82	450779	1.3164	21.45
450278	0.9129	14.83	450381	0.9911	16.42	450534	0.9191	19.94	450634	1.7055	23.53	450704	1.1137	20.96	450780	1.0389	19.15
450280	1.0036	22.50	450385	1.7001	19.25	450535	1.2963	19.66	450636	1.5448	23.14	450705	0.8976	20.01	450785	0.8407	18.90
450283	1.0044	14.57	450389	1.2662	18.18	450537	1.2519	20.84	450639	1.4846	23.19	450706	1.2011	21.21	450788	1.5966	19.15
450288	1.1001	16.25	450393	1.1967	20.28	450539	1.1848	16.49	450641	0.9624	16.51	450709	1.2377	20.89	450794	.	18.22
450289	1.4195	20.31	450395	0.9810	18.38	450544	1.0004	23.93	450643	1.2457	18.71	450711	1.6707	19.81	450795	0.9453	16.05
450292	1.2167	16.97	450399	0.8867	15.78	450545	1.1753	19.56	450644	1.5251	23.06	450712	0.5334	13.62	450796	.	16.54
450293	0.9966	16.01	450400	1.3200	19.54	450547	1.0055	14.52	450646	1.4060	19.63	450713	1.4839	20.81	450797	0.9057	15.92
450298	1.1799	21.60	450403	1.2172	20.20	450551	1.0711	16.94	450647	1.5165	24.80	450715	1.3785	22.04	450798	.	9.46
450299	1.4776	21.57	450411	0.8201	14.46	450558	1.8452	22.26	450648	1.0150	16.85	450716	1.2460	20.55	450801	1.4415	17.57
450303	0.8824	12.46	450417	0.9596	13.50	450563	1.2796	19.92	450649	0.9511	16.45	450717	1.2586	20.72	450802	1.4068	19.92
450306	1.0552	13.82	450418	1.4687	21.92	450565	1.2368	16.26	450651	1.6865	22.77	450718	1.1925	19.69	450803	1.1873	18.38
450307	0.8915	16.46	450419	1.1974	20.63	450570	1.1068	18.96	450652	.	13.44	450723	1.3946	19.76	450804	1.6169	19.46
450309	1.0330	13.15	450422	1.0383	25.46	450571	1.5421	17.86	450653	1.1669	18.18	450724	1.2374	20.32	450806	1.0804	.
450315	0.9189	22.81	450423	.	22.71	450573	1.0077	12.25	450654	0.9530	16.53	450727	1.0614	13.55	450807	0.7878	11.32
450320	1.2164	20.99	450424	1.2348	18.97	450574	0.9175	14.69	450656	1.3430	17.67	450728	0.8811	17.53	450808	1.9776	18.99
450321	0.8578	13.18	450429	1.0777	13.87	450575	1.0419	19.30	450658	1.0274	16.26	450730	1.2146	22.06	450809	1.5552	20.82
450322	0.8218	22.77	450431	1.5196	19.63	450578	0.9388	15.46	450659	1.5200	22.26	450733	1.4184	20.77	450810	0.8196	.
450324	1.4633	17.79	450436	1.1740	19.96	450580	1.1906	15.83	450661	1.1569	19.72	450735	.	13.88	450811	2.3384	19.19
450327	0.9713	11.75	450446	0.7006	13.19	450583	1.0269	15.66	450662	1.4612	18.23	450742	1.2948	22.76	450813	0.9751	15.92
450330	1.1594	18.94	450447	1.3503	18.04	450584	1.0063	14.23	450665	0.8554	15.20	450743	1.3066	18.80	450817	0.7407	.
450334	0.9666	12.81	450451	1.1706	18.89	450586	1.0112	14.38	450666	1.2900	20.32	450746	0.9213	12.79	450818	1.1035	.
450337	1.0009	17.11	450457	1.0445	24.79	450587	1.1747	17.62	450668	1.6428	20.70	450747	1.2546	19.26	450819	1.5223	.
450340	1.3000	17.00	450460	1.0043	15.18	450591	1.1238	17.90	450669	1.2857	21.76	450749	0.9833	16.21	450820	1.0157	.
450341	1.0000	18.04	450462	1.7613	22.62	450596	1.2367	22.54	450670	1.3668	16.89	450750	1.0004	14.69	450822	1.3200	.
450346	1.3176	17.54	450464	0.8063	13.29	450597	0.9209	17.06	450672	1.6518	21.85	450751	1.2125	21.22	450823	0.8852	.
450347	1.2264	17.11	450465	1.2623	15.57	450603	0.6767	11.64	450673	0.9904	13.96	450754	0.9946	16.09	450824	2.1437	.
450348	1.0639	13.95	450467	1.0972	19.62	450604	1.3955	16.45	450674	1.0414	22.28	450755	1.0462	17.99	450825	1.7453	.

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
460027	1.3668	.	460051	1.1513	19.48	460052	1.0903	22.43	460100	.	22.56	500024	1.7078	23.75	500080	0.8127	15.06
460028	1.1367	.	460052	1.2190	.	460053	1.1000	21.17	460101	1.2667	24.76	500025	1.8526	26.46	500084	1.1794	23.40
460001	1.7774	21.00	470001	1.3216	20.23	460057	1.2400	16.38	460104	0.7590	25.00	500026	1.4310	23.80	500085	0.9772	21.44
460003	1.5123	20.05	470003	1.5857	23.69	460058	1.1722	21.02	460105	0.6195	18.56	500027	1.6267	22.22	500086	1.2476	23.33
460004	1.7367	21.37	470004	1.0678	16.88	460060	1.4247	22.71	460106	0.8205	17.06	500028	1.0295	19.27	500088	1.3476	23.27
460005	1.5765	19.71	470005	1.2279	21.92	460061	1.3266	18.36	460107	1.3750	23.52	500029	0.9294	17.92	500089	1.0605	18.71
460006	1.2699	20.63	470006	1.2142	17.87	460062	1.2593	16.47	460108	0.9190	20.21	500030	1.4388	24.90	500090	0.9553	16.16
460007	1.3638	20.80	470008	1.2017	19.61	460063	1.2850	22.16	460109	0.8819	23.06	500031	1.2628	20.27	500092	1.0462	16.79
460008	1.3326	18.87	470010	1.1124	20.30	460064	1.3719	18.31	460110	1.3340	19.51	500033	1.3065	22.35	500094	0.8833	18.58
460009	1.0610	21.90	470011	1.1746	21.77	460065	1.2390	20.53	460111	1.1784	17.18	500036	1.3717	22.11	500096	1.0370	21.61
460010	2.0946	21.98	470012	1.2339	18.53	460066	1.5433	18.48	460112	1.6377	21.48	500037	1.1283	20.71	500097	1.1266	19.77
460011	1.4191	18.87	470015	1.2624	19.54	460067	1.0565	23.84	460113	1.2776	23.22	500039	1.4020	23.80	500098	0.9592	16.35
460013	1.3800	20.73	470018	1.2000	21.54	460068	1.4078	18.44	460114	1.0703	17.30	500041	1.2884	23.96	500101	0.9060	19.73
460014	1.1723	18.30	470020	0.9223	20.06	460069	1.4045	23.87	460115	1.1005	18.52	500042	.	22.91	500102	0.9797	20.94
460015	1.2674	20.84	470023	1.3152	20.45	460070	1.0536	16.86	460116	1.1824	19.62	500043	0.9753	20.94	500104	1.2065	22.62
460016	1.0741	18.24	470024	1.1449	20.85	460073	1.2440	15.70	460117	1.1066	14.91	500044	1.0940	23.34	500106	0.9090	18.00
460017	1.3719	17.71	480001	1.1864	21.06	460074	1.0887	15.47	460118	1.7171	21.47	500045	1.0406	20.00	500107	1.1288	18.12
460018	0.9125	17.62	480002	1.0450	15.23	460077	1.0642	19.92	460119	1.4783	17.91	500046	0.9294	22.19	500108	1.7537	26.29
460019	1.0411	16.27	480003	0.6857	19.19	460079	1.5068	20.87	460120	1.3381	19.57	500049	1.4167	24.06	500110	1.1467	21.46
460020	0.9999	17.35	480004	1.2564	19.21	460080	1.0611	17.63	460122	1.3987	23.86	500050	1.3966	22.01	500118	1.1272	23.84
460021	1.4513	21.05	480005	1.6131	20.55	460083	1.7456	28.65	460123	1.1396	17.75	500051	1.7215	24.82	500119	1.2958	22.44
460022	0.9638	20.15	480006	1.1799	15.96	460086	1.2761	20.70	460124	1.0765	22.09	500052	1.3600	.	500122	1.2361	22.43
460023	1.2802	22.35	480007	2.1450	18.77	460087	1.2436	17.82	460126	1.3001	18.66	500053	1.3064	23.94	500123	1.0613	20.32
460025	0.7321	19.42	480009	1.8363	23.63	460090	1.4462	17.33	460127	1.0282	16.06	500054	1.9626	22.86	500124	1.3360	23.28
460026	1.1345	19.92	480010	.	21.74	460071	1.4389	21.50	460128	1.0021	22.50	500055	1.0000	23.74	500125	1.0770	15.11
460027	0.9043	21.00	480011	1.4281	18.61	460072	1.4347	20.80	460130	1.2500	16.43	500057	1.2646	18.27	500127	1.0638	.
460029	1.0286	20.51	480012	1.2111	16.00	460075	1.4661	18.70	460132	1.1018	18.06	500058	1.4537	24.70	500129	1.0027	20.16
460030	1.1570	17.61	480013	1.2821	17.33	460077	1.2561	21.37	500001	1.5023	22.19	500059	1.0052	23.35	500132	1.0006	15.67
460032	0.9642	21.10	480014	1.7731	25.63	460078	1.3613	17.06	500002	1.4656	21.63	500060	1.4506	25.02	500134	0.6304	17.75
460033	1.6207	19.54	480015	1.4506	19.64	460084	1.1478	16.78	500003	1.4101	24.28	500061	0.9435	21.70	500135	3.6641	.
460035	0.9156	16.00	480017	1.3074	18.46	460085	1.1531	17.46	500005	1.5106	22.40	500062	1.0001	18.63	500139	1.4068	22.23
460036	0.9855	23.50	480018	1.2300	18.34	460088	1.1448	16.44	500007	1.3742	26.06	500064	1.5061	25.57	500141	1.3706	23.88
460037	0.9002	18.00	480019	1.1702	19.62	460089	1.0040	17.77	500008	1.5316	25.31	500065	1.2610	21.08	500143	0.5356	18.03
460039	1.0268	24.91	480020	1.2437	18.57	460000	1.1100	17.02	500011	1.3619	24.02	500066	1.0026	19.06	500146	.	21.00
460041	1.2020	21.06	480021	1.4210	19.39	460091	1.2429	20.87	500012	1.5691	20.70	500068	1.0859	21.36	510001	1.0633	19.15
460042	1.3924	18.86	480022	1.5416	21.22	460092	1.1000	16.06	500014	1.5400	24.14	500071	1.2763	19.19	510002	1.2067	20.15
460043	1.0320	24.46	480023	1.1951	20.67	460093	1.4163	17.37	500015	1.3379	23.93	500072	1.1900	25.39	510005	1.0555	14.25
460044	1.1700	21.47	480024	1.0067	17.72	460094	1.0000	16.92	500016	1.5104	24.30	500073	0.9725	21.25	510006	1.2270	18.73
460046	.	18.22	480027	1.1200	16.28	460097	1.2102	15.58	500019	1.4016	22.42	500074	1.0070	18.97	510007	1.5827	21.27
460047	1.5233	23.84	480000	.	9.18	460098	1.1619	15.14	500021	1.4061	25.92	500077	1.2000	22.85	510008	1.2323	18.33
460048	2.0917	19.06	480031	1.0741	14.95	460099	0.9133	17.97	500023	1.1537	26.05	500079	1.2514	24.20	510012	0.9915	15.84

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

BILLING CODE 4120-01-P

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE	PROV.	CASE MIX INDEX	AVG. HOUR. WAGE
010013	1.0007	17.85	010083	1.2868	17.56	020048	1.4700	20.66	020109	1.0396	19.13	020173	1.1319	21.30			
010015	0.9348	16.90	010086	1.0521	13.48	020049	2.1000	20.35	020110	1.2264	20.45	020177	1.0413	22.72			
010018	1.0015	18.53	010088	1.0579	.	020051	1.7870	21.65	020111	0.9001	17.78	020178	1.0342	18.69			
010020	1.0351	13.18	020002	1.2428	19.74	020053	1.1606	17.39	020112	1.1339	19.18	020188	2.3936	13.91			
010022	1.0047	20.18	020003	1.1490	17.12	020054	1.0320	15.17	020113	1.3075	21.15	020189	1.0038	.			
010023	1.2000	16.01	020004	1.2152	19.65	020057	1.1289	19.00	020114	1.0060	16.66	020190	1.2800	.			
010024	1.5615	19.09	020006	1.0018	21.53	020058	1.1253	19.73	020115	1.2016	18.30	030002	1.1396	19.33			
010026	1.0022	13.00	020007	1.0581	16.20	020059	1.3209	20.99	020116	1.1292	19.85	030003	0.8619	16.21			
010027	0.9786	17.29	020008	1.0062	22.80	020060	1.4632	17.92	020117	1.0163	18.54	030004	0.9954	15.05			
010028	1.0350	20.06	020009	1.0044	18.00	020062	1.2308	19.15	020118	0.9954	14.23	030005	1.1870	13.35			
010029	1.2672	17.71	020010	1.1000	22.77	020063	1.1826	19.61	020120	.	18.74	030006	1.1200	18.50			
010030	1.0300	17.42	020011	1.1658	20.74	020064	1.3634	22.74	020121	0.9766	19.73	030007	0.9956	18.52			
010031	1.4199	28.67	020013	1.3414	20.40	020066	1.4300	22.88	020122	0.9672	16.24	030008	1.1835	18.83			
010033	1.2000	18.41	020014	1.1236	17.16	020068	0.9318	18.99	020123	1.0247	17.40	030009	0.9536	22.50			
010035	1.1863	16.50	020015	1.1640	18.61	020069	1.1932	20.29	020124	1.0367	17.26	030010	1.2254	21.61			
010036	0.9419	13.46	020016	1.1835	17.30	020070	1.5321	18.50	020130	1.0619	15.68	030011	1.1587	18.74			
010038	1.0707	15.81	020017	1.1203	19.60	020071	1.2017	18.73	020131	0.9922	16.73	030012	1.0508	18.99			
010039	1.4141	16.94	020018	1.0717	21.19	020074	1.0139	20.46	020132	1.1767	15.64	030014	1.4471	18.09			
010043	0.8997	14.07	020019	1.1934	19.54	020075	1.4673	19.85	020134	1.1351	18.10	030015	1.2324	22.46			
010046	1.2016	17.38	020021	1.4679	21.35	020076	1.1491	17.61	020135	0.8967	15.82	030016	1.2625	18.16			
010047	1.1611	19.90	020024	1.0039	14.02	020077	0.9328	17.78	020136	1.4611	19.85*	030017	0.9021	18.35			
010048	1.1368	21.04	020025	1.0617	18.24	020078	1.5814	21.34	020138	1.0050	21.23	030018	1.2119	18.38			
010050	1.7223	16.91	020026	1.1006	21.55	020082	.	17.74	020139	1.2575	21.00	030019	0.9196	18.54			
010053	1.0161	16.10	020027	1.2007	19.93	020083	1.0467	23.88	020140	1.0422	21.52	030022	1.1406	18.50			
010055	1.2006	23.72	020028	1.2032	21.28	020084	1.0071	20.84	020142	0.8522	20.56	030023	0.8642	20.19			
010056	1.2914	18.42	020029	0.9183	19.58	020087	1.0026	20.36	020144	1.0475	18.57	030025	1.4096	21.26			
010059	2.2171	16.56	020030	1.0624	20.30	020088	1.2040	20.63	020145	0.9006	18.26	030026	0.9932	17.01			
010060	.	17.56	020031	1.0527	20.48	020089	1.4630	21.55	020146	1.0506	17.06	030027	0.8875	18.17			
010061	1.0366	13.82	020032	1.2210	19.57	020090	1.3799	18.93	020148	1.1128	17.24	030029	0.9181	16.51			
010062	1.1700	19.30	020033	1.1933	19.36	020091	1.3147	20.99	020149	0.9111	14.19	030031	0.7851	18.33			
010066	.	12.29	020034	1.1826	17.13	020092	1.1112	17.65	020151	1.0428	17.33	030032	1.0991	21.04			
010067	1.1077	16.72	020035	1.2906	18.04	020094	0.7710	20.36	020152	1.0007	19.58						
010068	1.2062	18.79	020037	1.0611	20.67	020095	1.2738	20.33	020153	0.9397	15.98						
010070	1.3015	18.51	020038	1.2795	19.63	020096	1.4176	19.78	020154	1.1336	18.54						
010071	1.3221	17.21	020039	0.9857	20.76	020097	1.2967	20.24	020156	1.1393	21.34						
010072	1.0366	15.63	020040	1.5732	20.47	020098	1.8155	22.33	020157	1.0554	17.20						
010077	1.1000	18.07	020041	1.1839	17.19	020100	1.2287	18.38	020159	0.9103	18.68						
010080	1.0000	17.48	020042	1.0920	18.58	020101	1.1341	19.52	020160	1.7776	19.42						
010081	1.1326	13.64	020044	1.4397	18.48	020102	1.1000	20.19	020161	0.9066	19.49						
010082	1.1535	17.48	020045	1.0006	20.39	020103	1.3020	19.48	020170	1.2571	21.52						
010084	0.9774	17.24	020047	0.9048	18.30	020107	1.2263	20.37	020171	0.9407	17.46						

ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 4: GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Urb (constitu	
0040 Abi	
Taylor,	
0060 Ag	
Aguada,	
Aguadill	
Moca, P	
0080 Ak	
Portage,	
Summit,	
0120 Alb	
Dougher	
Lee, GA	
0160 Alb	
lady-Tro	
Albany,	
Montgo	
Rensse	
Saratog	
Schenec	
Schoha	
0200 Alb	
NM	
Bernalill	
Sandov	
Valencia	
0220 Ale	
Rapides	
0240 Alle	
lehem-E	
Carbon,	
Lehigh,	
Northam	
0280 Alt	
Blair, PA	
0320 Am	
Potter, T	
Randal	
0380 An	
Anchora	
0440 An	
Lenawe	
Livingst	
Washte	
0450 An	
Calhoun	
0460 Ap	
kosh-Ne	
Calumet	
Outagar	
Winnebi	
0470 Ar	
Arecibo,	
Camuy,	
Hatillo,	
0480 As	
Buncomb	
Madison	
0500 Atl	
Clarke,	
Madison	
Oconee	
0520 1 A	
Barrow,	
Bartow,	
Carroll,	
Cherokee	
Clayton	
Cobb, G	
Coweta	

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties)	Wage index	GAF
0040 Abilene, TX Taylor, TX	0.8240	0.8758
0060 Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4391	0.5692
0080 Akron, OH Portage, OH Summit, OH	0.9736	0.9818
0120 Albany, GA Dougherty, GA Lee, GA	0.9933	0.9954
0160 Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8549	0.8982
0200 Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	0.9136	0.9400
0220 Alexandria, LA Rapides, LA	0.8170	0.8707
0240 Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	1.0040	1.0027
0280 Altoona, PA Blair, PA	0.9346	0.9547
0320 Amarillo, TX Potter, TX Randall, TX	0.8715	0.9101
0380 Anchorage, AK Anchorage, AK	1.2865	1.1883
0440 Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.1254	1.0843
0450 Anniston, AL Calhoun, AL	0.8284	0.8790
0460 Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.9052	0.9341
0470 Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.4525	0.5810
0480 Asheville, NC Buncombe, NC Madison, NC	0.9516	0.9666
0500 Athens, GA Clarke, GA Madison, GA Oconee, GA	0.9739	0.9821
0520 [1] Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA	1.0096	1.0066
0560 Atlantic-Cape May, NJ Atlantic, NJ Cape May, NJ	1.1182	1.0795
0580 Auburn-Opelika, AL Lee, AL	0.8106	0.8661
0600 Augusta-Aiken, GA–SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	0.9160	0.9417
0640 [1] Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9577	0.9708
0680 [2] Bakersfield, CA Kern, CA	0.9861	0.9905
0720 [1] Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	0.9365	0.9561
0733 Bangor, ME Penobscot, ME	0.9561	0.9697
0743 Barnstable-Yarmouth, MA Barnstable, MA	1.3839	1.2492
0760 Baton Rouge, LA Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8842	0.9192
0840 Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8744	0.9122
0860 Bellingham, WA Whatcom, WA	1.1439	1.0964
0870 [2] Benton Harbor, MI Berrien, MI	0.9021	0.9319
0875 [1] Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.1605	1.1073
0880 Billings, MT Yellowstone, MT	0.9591	0.9718
0920 Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.8236	0.8756
0960 Binghamton, NY Broome, NY Tioga, NY	0.8690	0.9083
1000 Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.8477	0.8930
1010 Bismarck, ND Burleigh, ND Morton, ND	0.7897	0.8507
1020 Bloomington, IN Monroe, IN	0.8733	0.9114
1040 Bloomington-Normal, IL McLean, IL	0.9156	0.9414
1060 Boise City, ID Ada, ID Canyon, ID	0.9042	0.9334
1123 [1 2] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (MA Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1204	1.0810
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1160	1.0781
1125 Boulder-Longmont, CO Boulder, CO	0.9731	0.9815
1145 Brazoria, TX Brazoria, TX	0.8658	0.9060
1150 Bremerton, WA Kitsap, WA	1.0975	1.0658
1240 Brownsville-Harlingen-San Benito, TX	0.8722	0.9106

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Cameron, TX		
1260 Bryan-College Station, TX Brazos, TX	0.8237	0.8756
1280 [1]Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9580	0.9710
1303 Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	1.0735	1.0498
1310 Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.4562	0.5842
1320 [2]Canton-Massillon, OH Carroll, OH Stark, OH	0.8670	0.9069
1350 [2]Casper, WY Natrona, WY	0.8817	0.9174
1360 Cedar Rapids, IA Linn, IA	0.8736	0.9116
1400 Champaign-Urbana, IL Champaign, IL	0.9198	0.9444
1440 Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.9067	0.9351
1480 Charleston, WV Kanawha, WV Putnam, WV	0.9240	0.9473
1520 [1]Charlotte-Gastonia-Rock Hill, NC–SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC	0.9391	0.9579
1540 Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.0789	1.0534
1560 Chattanooga, TN–GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9633	0.9885
1580 [2]Cheyenne, WY Laramie, WY	0.8817	0.9174
1600 [1]Chicago, IL Cook, IL DeKalb, IL DuPage, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.1146	1.0771
1620 Chico-Paradise, CA Butte, CA	0.9918	0.9944
1640 [1]1Cincinnati, OH–KY–IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH	0.9415	0.9596
1660 Clarksville-Hopkinsville, TN–KY Christian, KY Montgomery, TN	0.8277	0.8785
1680 [1]Cleveland-Lorain-Elyria, OH Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH	0.9593	0.9719
1720 Colorado Springs, CO El Paso, CO	0.9697	0.9792
1740 Columbia, MO Boone, MO	0.8961	0.9276
1760 Columbia, SC Lexington, SC Richland, SC	0.9554	0.9692
1800 Columbus, GA–AL Russell, AL Chattahoochee, GA Harris, GA Muscogee, GA	0.8568	0.8996
1840 [1]Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	0.9619	0.9737
1880 Corpus Christi, TX Nueces, TX San Patricio, TX	0.8726	0.9109
1890 Corvallis, OR Benton, OR	1.1326	1.0890
1900 [2]Cumberland, MD–WV (MD Hospitals) Allegany, MD Mineral, WV	0.8651	0.9055
1900 Cumberland, MD–WV (WV Hospital) Allegany, MD Mineral, WV	0.8369	0.8852
1920 [1]Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	0.9913	0.9940
1950 Danville, VA Danville City, VA Pittsylvania, VA	0.8589	0.9011
1960 Davenport-Moline-Rock Island, IA–IL Scott, IA Henry, IL Rock Island, IL	0.8898	0.9232
2000 Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9442	0.9614
2020 Daytona Beach, FL Flagler, FL Volusia, FL	0.9147	0.9406
2030 Decatur, AL Lawrence, AL Morgan, AL	0.8534	0.8971
2040 [2]Decatur, IL Macon, IL	0.8160	0.8700
2080 [1]Denver, CO Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO	1.0181	1.0124
2120 Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.9118	0.9387
2160 [1]Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.0510	1.0347
2180 Dothan, AL Dale, AL Houston, AL	0.8013	0.8592
2190 Dover, DE Kent, DE	1.0078	1.0053
2200 Dubuque, IA Dubuque, IA	0.8746	0.9123
2240 Duluth-Superior, MN–WI	1.0043	1.0029

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
St. Louis, MN Douglas, WI		
2281 Dutchess County, NY Dutchess, NY	0.9491	0.9649
2290 [2]Eau Claire, WI Chippewa, WI Eau Claire, WI	0.8880	0.9219
2320 El Paso, TX El Paso, TX	0.9346	0.9547
2330 Elkhart-Goshen, IN Elkhart, IN	0.9145	0.9406
2335 Elmira, NY Chemung, NY	0.8546	0.8980
2340 Enid, OK Garfield, OK	0.8610	0.9026
2360 Erie, PA Erie, PA	0.8985	0.9293
2400 Eugene-Springfield, OR Lane, OR	1.0965	1.0651
2440 [2]Evansville-Henderson, IN–KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN	0.8602	0.9020
2440 Evansville-Henderson, IN–KY (KY Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8173	0.8710
2520 Fargo-Moorhead, ND–MN Clay, MN Cass, ND	0.8749	0.9125
2560 Fayetteville, NC Cumberland, NC	0.8655	0.9058
2580 Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.7910	0.8517
2620 Flagstaff, AZ–UT Coconino, AZ Kane, UT	1.0686	1.0465
2640 Flint, MI Genesee, MI	1.1205	1.0810
2650 Florence, AL Colbert, AL Lauderdale, AL	0.7852	0.8325
2655 Florence, SC Florence, SC	0.8777	0.9145
2670 Fort Collins-Loveland, CO Larimer, CO	1.0647	1.0439
2680 [1]Ft. Lauderdale, FL Broward, FL	1.0152	1.0104
2700 Fort Myers-Cape Coral, FL Lee, FL	0.9247	0.9478
2710 Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	0.9622	0.9740
2720 Fort Smith, AR–OK Crawford, AR Sebastian, AR Sequoyah, OK	0.8052	0.8621
2750 Fort Walton Beach, FL Okaloosa, FL	0.9607	0.9729
2760 Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.8665	0.9065
2800 [1]Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9527	0.9674
2840 Fresno, CA Fresno, CA Madera, CA	1.0104	1.0071
2880 Gadsden, AL Etowah, AL	0.8423	0.8691
2900 Gainesville, FL Alachua, FL	1.0074	1.0051
2920 Galveston-Texas City, TX Galveston, TX	0.9918	0.9944
2960 Gary, IN Lake, IN Porter, IN	0.9454	0.9623
2975 [2]Glens Falls, NY Warren, NY Washington, NY	0.8499	0.8946
2980 [2]Goldsboro, NC Wayne, NC	0.8441	0.8904
2985 Grand Forks, ND–MN Polk, MN Grand Forks, ND	0.8954	0.9271
2995 Grand Junction, CO Mesa, CO	0.9471	0.9635
3000 [1]Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	1.0248	1.0169
3040 Great Falls, MT Cascade, MT	0.9331	0.9537
3060 Greeley, CO Weld, CO	0.9814	0.9872
3080 Green Bay, WI Brown, WI	0.9308	0.9521
3120 [1]Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9124	0.9391
3150 Greenville, NC Pitt, NC	0.9384	0.9574
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9003	0.9306
3180 Hagerstown, MD Washington, MD	0.9409	0.9591
3200 Hamilton-Middletown, OH Butler, OH	0.9061	0.9347
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9386	0.9575
3283 [1][2]Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.1715	1.1145
3285 [2]Hattiesburg, MS Forrest, MS Lamar, MS	0.7491	0.8205
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.8755	0.9130
3320 Honolulu, HI Honolulu, HI	1.1886	1.1243
3350 Houma, LA Lafourche, LA Terrebonne, LA	0.8086	0.8646
3360 [1]Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	0.9732	0.9816
3400 Huntington-Ashland, WV–KY–OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9876	0.9915
3440 Huntsville, AL Limestone, AL Madison, AL	0.8932	0.9256
3480 [1]Indianapolis, IN Boone, IN Hamilton, IN	0.9787	0.9854

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN		
3500 Iowa City, IA Johnson, IA	0.9657	0.9764
3520 Jackson, MI Jackson, MI	0.9134	0.9399
3560 Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8812	0.9170
3580 Jackson, TN Madison, TN Chester, TN	0.8796	0.9159
3600 [1] Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.9208	0.9451
3605 [2] Jacksonville, NC Onslow, NC	0.8441	0.8904
3610 [2] Jamestown, NY Chautauqua, NY	0.8499	0.8948
3620 Janesville-Beloit, WI Rock, WI	0.9585	0.9714
3640 Jersey City, NJ Hudson, NJ	1.1573	1.1052
3660 Johnson City-Kingsport-Bristol, TN–VA Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	0.8328	0.8822
3680 Johnstown, PA Cambria, PA Somerset, PA	0.8578	0.9003
3700 Jonesboro, AR Craighead, AR	0.7832	0.8459
3710 Joplin, MO Jasper, MO Newton, MO	0.8148	0.8691
3720 Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	1.0453	1.0308
3740 Kankakee, IL Kankakee, IL	0.9902	0.9933
3760 [1] Kansas City, KS–MO Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO	0.9498	0.9653
Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO		
3800 Kenosha, WI Kenosha, WI	0.9611	0.9732
3810 Killeen-Temple, TX Bell, TX Coryell, TX	1.0119	1.0081
3840 Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.8340	0.8831
3850 Kokomo, IN Howard, IN Tipton, IN	0.9525	0.9672
3870 La Crosse, WI–MN Houston, MN La Crosse, WI	0.9211	0.9453
3880 Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8490	0.8940
3920 Lafayette, IN Clinton, IN Tippecanoe, IN	0.8834	0.9186
3960 [2] Lake Charles, LA Calcasieu, LA	0.7713	0.8371
3980 Lakeland-Winter Haven, FL Polk, FL	0.8928	0.9253
4000 Lancaster, PA Lancaster, PA	0.9259	0.9486
4040 Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	0.9934	0.9955
4080 Laredo, TX Webb, TX	0.8168	0.8706
4100 Las Cruces, NM Dona Ana, NM	0.8658	0.9060
4120 [1] Las Vegas, NV–AZ Mohave, AZ Clark, NV Nye, NV	1.0796	1.0538
4150 Lawrence, KS Douglas, KS	0.8190	0.8722
4200 Lawton, OK Comanche, OK	0.8996	0.9301
4243 Lewiston-Auburn, ME Androscoggin, ME	0.9036	0.9329
4280 Lexington, KY Bourbon, KY Clark, KY Fayette, KY	0.8866	0.9209
Jessamine, KY Madison, KY Scott, KY Woodford, KY		
4320 Lima, OH Allen, OH Auglaize, OH	0.9320	0.9529
4360 Lincoln, NE Lancaster, NE	0.9666	0.9770
4400 Little Rock-North Little Rock, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.8906	0.9237
4420 Longview-Marshall, TX Gregg, TX Harrison, TX Upshur, TX	0.8922	0.9249
4480 [1] Los Angeles-Long Beach, CA Los Angeles, CA	1.2033	1.1351
4520 Louisville, KY–IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9350	0.9550
4600 Lubbock, TX Lubbock, TX	0.8838	0.9189
4640 Lynchburg, VA Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	0.8867	0.9210
4680 Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.8974	0.9265
4720 Madison, WI Dane, WI	1.0271	1.0185
4800 Mansfield, OH Crawford, OH Richland, OH	0.8690	0.9083
4840 Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.4589	0.5866
4880 McAllen-Edinburg-Mission, TX Hidalgo, TX	0.8566	0.8994
4890 Medford-Ashland, OR Jackson, OR	1.0344	1.0234
4900 Melbourne-Titusville-Palm Bay, FL Brevard, Fl	0.9688	0.9785

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
4920 [1] Memphis, TN–AR–MS	0.8723	0.9107
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 [2] Merced, CA	0.9861	0.9905
Merced, CA		
5000 [1] Miami, FL	1.0059	1.0040
Dade, FL		
5015 [1] Middlesex-Somerset-Hunterdon, NJ	1.0333	1.0227
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 [1] Milwaukee-Waukesha, WI	0.9767	0.9840
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 [1] Minneapolis-St. Paul, MN–WI	1.1017	1.0686
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5140 Missoula, MT	0.9332	0.9538
Missoula, MT		
5160 Mobile, AL	0.8163	0.8702
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0396	1.0270
Stanislaus, CA		
5190 [1] Monmouth-Ocean, NJ	1.1283	1.0862
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8396	0.8872
Ouachita, LA		
5240 Montgomery, AL	0.7653	0.8326
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	1.0969	1.0654
Delaware, IN		
5330 Myrtle Beach, SC	0.8440	0.8903
Horry, SC		
5345 Naples, FL	0.9861	0.9767
Collier, FL		
5360 [1] Nashville, TN	0.9490	0.9648
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford, TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 [1] Nassau-Suffolk, NY	1.3932	1.2549
Nassau, NY		
Suffolk, NY		
5483 [1] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2034	1.1352
Fairfield, CT		
New Haven, CT		
5523 New London-Norwich, CT	1.2063	1.1371
New London, CT		
5560 [1] New Orleans, LA	0.9295	0.9512
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 [1] New York, NY	1.4651	1.2989
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 [1] Newark, NJ	1.0757	1.0512
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY–PA	1.0847	1.0573
Orange, NY		
Pike, PA		
5720 [1] Norfolk-Virginia Beach-Newport News, VA–NC	0.8422	0.8890
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
5775 [1] Oakland, CA	1.4983	1.3190
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL		
Marion, FL	0.9243	0.9475
5800 Odessa-Midland, TX	0.9205	0.9449
Ector, TX		
Midland, TX		
5880 [1] Oklahoma City, OK	0.8822	0.9177
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0677	1.0459
Thurston, WA		
5920 Omaha, NE–IA	0.9572	0.9705
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 [1] Orange County, CA	1.1411	1.0946
Orange, CA		
5960 [1] Orlando, FL	0.9610	0.9731
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.8159	0.8699
Daviess, KY		
6015 Panama City, FL	0.9010	0.9311
Bay, FL		
6020 Parkersburg-Marietta, WV–OH (WV Hospitals)	0.8274	0.8783
Washington, OH		
Wood, WV		
6020 [2] Parkersburg-Marietta, WV–OH (OH Hospitals)	0.8670	0.9069
Washington, OH		
Wood, WV		
6080 [2] Pensacola, FL	0.8928	0.9253
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8646	0.9052
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 [1] Philadelphia, PA–NJ	1.0937	1.0633
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ	0.9669	0.9772

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Maricopa, AZ Pinal, AZ		
6240 Pine Bluff, AR ... Jefferson, AR	0.7791	0.8429
6280 [1] Pittsburgh, PA Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.9741	0.9822
6323 [2] Pittsfield, MA ... Berkshire, MA	1.1204	1.0810
6340 Pocatello, ID ..... Bannock, ID	0.9076	0.9358
6360 Ponce, PR ..... Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.5006	0.6226
6403 Portland, ME ..... Cumberland, ME Sagadahoc, ME York, ME	0.9748	0.9827
6440 [1] Portland-Vancouver, OR–WA ..... Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA	1.0910	1.0615
6483 [1] Providence-Warwick-Pawtucket, RI ..... Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.0864	1.0584
6520 Provo-Orem, UT Utah, UT	1.0041	1.0028
6560 [2] Pueblo, CO ..... Pueblo, CO	0.8968	0.9281
6580 Punta Gorda, FL Charlotte, FL	0.9613	0.9733
6600 Racine, WI ..... Racine, WI	0.9246	0.9477
6640 [1] Raleigh-Durham-Chapel Hill, NC Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	0.9646	0.9756
6660 Rapid City, SD .. Pennington, SD	0.8865	0.9208
6680 Reading, PA ..... Berks, PA	0.9152	0.9411
6690 Redding, CA ..... Shasta, CA	1.1664	1.1112
6720 Reno, NV ..... Washoe, NV	1.0550	1.0373
6740 Richland-Kennewick-Pasco, WA ..... Benton, WA Franklin, WA	1.1460	1.0978
6760 Richmond-Petersburg, VA ..... Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	0.9617	0.9736
6780 [1] Riverside-San Bernardino, CA ..... Riverside, CA San Bernardino, CA	1.1115	1.0751
6800 Roanoke, VA ..... Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8782	0.9149
6820 Rochester, MN .. Olmsted, MN	1.1315	1.0883
6840 [1] Rochester, NY Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9182	0.9432
6880 Rockford, IL ..... Boone, IL Ogle, IL Winnebago, IL	0.8819	0.9175
6895 Rocky Mount, NC ..... Edgecombe, NC Nash, NC	0.8849	0.9197
6920 [1] Sacramento, CA ..... El Dorado, CA Placer, CA Sacramento, CA	1.1957	1.1302
6960 Saginaw-Bay City-Midland, MI ..... Bay, MI Midland, MI Saginaw, MI	0.9575	0.9707
6980 St. Cloud, MN ... Benton, MN Stearns, MN	1.0016	1.0011
7000 St. Joseph, MO Andrew, MO Buchanan, MO	0.9071	0.9354
7040 [1] St. Louis, MO–IL ..... Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO	0.9049	0.9339
7080 Salem, OR ..... Marion, OR Polk, OR	1.0132	1.0090
7120 Salinas, CA ..... Monterey, CA	1.4502	1.2899
7160 [1] Salt Lake City-Ogden, UT ..... Davis, UT Salt Lake, UT Weber, UT	0.9811	0.9870
7200 San Angelo, TX Tom Green, TX	0.8083	0.8644
7240 [1] San Antonio, TX ..... Bexar, TX Comal, TX Guadalupe, TX Wilson, TX	0.8580	0.9004
7320 [1] San Diego, CA San Diego, CA	1.1784	1.1190
7360 [1] San Francisco, CA ..... Marin, CA San Francisco, CA San Mateo, CA	1.4193	1.2710
7400 [1] San Jose, CA .. Santa Clara, CA	1.3564	1.2321
7440 [1] San Juan-Bayamon, PR ..... Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR	0.4690	0.5954

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Vega Alta, PR Vega Baja, PR Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo, CA	1.0673	1.0456
7480 Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara, CA	1.0597	1.0405
7485 Santa Cruz-Watsonville, CA Santa Cruz, CA	1.4095	1.2650
7490 Santa Fe, NM Los Alamos, NM Santa Fe, NM	1.0537	1.0365
7500 Santa Rosa, CA Sonoma, CA	1.2646	1.1744
7510 Sarasota-Bradenton, FL Manatee, FL Sarasota, FL	0.9809	0.9869
7520 Savannah, GA Bryan, GA Chatham, GA Effingham, GA	0.9697	0.9792
7560 [2]Scranton—Wilkes-Barre—Hazleton, PA Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8578	0.9003
7600 [1]Seattle-Bellevue-Everett, WA Island, WA King, WA Snohomish, WA	1.1016	1.0685
7610 [2]Sharon, PA Mercer, PA	0.8578	0.9003
7620 [2]Sheboygan, WI Sheboygan, WI	0.8880	0.9219
7640 Sherman-Denison, TX Grayson, TX	0.8795	0.9158
7680 Shreveport-Bossier City, LA Bossier, LA Caddo, LA Webster, LA	0.8750	0.9126
7720 Sioux City, IA–NE Woodbury, IA Dakota, NE	0.8473	0.8927
7760 Sioux Falls, SD Lincoln, SD Minnehaha, SD	0.8790	0.9155
7800 South Bend, IN St. Joseph, IN	1.0029	1.0020
7840 Spokane, WA Spokane, WA	1.0513	1.0349
7880 Springfield, IL Menard, IL Sangamon, IL	0.8685	0.9080
7920 Springfield, MO Christian, MO Greene, MO Webster, MO	0.8488	0.8938
8003 [2]Springfield, MA Hampden, MA Hampshire, MA	1.1204	1.0810
8050 State College, PA Centre, PA	0.9038	0.9331
8080 [2]Steubenville-Weirton, OH–WV (OH Hospitals) Jefferson, OH Brooke, WV Hancock, WV	0.8670	0.9069
8080 Steubenville-Weirton, OH–WV (WV Hospitals) Jefferson, OH Brooke, WV Hancock, WV	0.8548	0.8981
8120 Stockton-Lodi, CA San Joaquin, CA	1.0629	1.0427
8140 [2]Sumter, SC Sumter, SC	0.8370	0.8853
8160 Syracuse, NY Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9594	0.9720
8200 Tacoma, WA Pierce, WA	1.1564	1.1046
8240 [2]Tallahassee, FL Gadsden, FL Leon, FL	0.8928	0.9253
8280 [1]Tampa-St. Petersburg-Clearwater, FL Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9099	0.9374
8320 [2]Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN	0.8602	0.9020
8360 Texarkana, AR-Texarkana, TX Miller, AR Bowie, TX	0.8427	0.8894
8400 Toledo, OH Fulton, OH Lucas, OH Wood, OH	0.9664	0.9769
8440 Topeka, KS Shawnee, KS	0.9117	0.9387
8480 Trenton, NJ Mercer, NJ	1.0137	1.0094
8520 Tucson, AZ Pima, AZ	0.8621	0.9177
8560 Tulsa, OK Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8454	0.8914
8600 Tuscaloosa, AL Tuscaloosa, AL	0.8064	0.8630
8640 Tyler, TX Smith, TX	0.9404	0.9588
8680 Utica-Rome, NY Herkimer, NY Oneida, NY	0.8560	0.8990
8720 Vallejo-Fairfield-Napa, CA Napa, CA Solano, CA	1.2266	1.1501
8735 Ventura, CA Ventura, CA	1.0479	1.0326
8750 Victoria, TX Victoria, TX	0.8154	0.8696
8760 Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0501	1.0340
8780 [2]Visalia-Tulare-Porterville, CA Tulare, CA	0.9861	0.9905
8800 Waco, TX McLennan, TX	0.8314	0.8812
8840 [1]Washington, DC–MD–VA–WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpeper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0755	1.0511
8920 Waterloo-Cedar Falls, IA Black Hawk, IA	0.8802	0.9163
8940 Wausau, WI Marathon, WI	0.9426	0.9603
8960 [1]West Palm Beach-Boca Raton, FL Palm Beach, FL	0.9615	0.9735
9000 [2]Wheeling, WV–OH (WV Hospitals) Belmont, OH Marshall, WV	0.8231	0.8752

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Ohio, WV		
9000 [2] Wheeling, WV–OH (OH Hospitals)	0.8670	0.9069
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9544	0.9685
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7668	0.8337
Archer, TX		
Wichita, TX		
9140 [2] Williamsport, PA	0.8578	0.9003
Lycoming, PA		
9160 Wilmington-Newark, DE–MD	1.1191	1.0801
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9402	0.9587
New Hanover, NC		
Brunswick, NC		
9260 [2] Yakima, WA	1.0434	1.0295
Yakima, WA		
9270 Yolo, CA	1.0199	1.0136
Yolo, CA		
9280 York, PA	0.9264	0.9490
York, PA		
9320 Youngstown-Warren, OH	0.9543	0.9685
Columbiana, OH		
Mahoning, OH Trumbull, OH		
9340 Yuba City, CA ...	1.0706	1.0478
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.9529	0.9675
Yuma, AZ		

[1] Large Urban Area.
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2001.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7528	0.8233
Alaska	1.2392	1.1582
Arizona	0.8317	0.8814
Arkansas	0.7445	0.8171
California	0.9861	0.9905
Colorado	0.8968	0.9281
Connecticut	1.1715	1.1145
Delaware	0.9074	0.9356
Florida	0.8928	0.9253
Georgia	0.8329	0.8823
Hawaii	1.1059	1.0714
Idaho	0.8678	0.9075
Illinois	0.8160	0.8700
Indiana	0.8602	0.9020
Iowa	0.8030	0.8605
Kansas	0.7605	0.8290
Kentucky	0.7931	0.8532
Louisiana	0.7713	0.8371
Maine	0.8766	0.9138
Maryland	0.8651	0.9055
Massachusetts	1.1204	1.0810
Michigan	0.9021	0.9319
Minnesota	0.8881	0.9219
Mississippi	0.7491	0.8205
Missouri	0.7707	0.8366
Montana	0.8688	0.9082
Nebraska	0.8109	0.8663
Nevada	0.9232	0.9467
New Hampshire	0.9845	0.9894
New Jersey [1]	.....	.....
New Mexico	0.8497	0.8945
New York	0.8499	0.8946
North Carolina	0.8441	0.8904
North Dakota	0.7716	0.8373
Ohio	0.8670	0.9069
Oklahoma	0.7491	0.8205
Oregon	1.0132	1.0090
Pennsylvania	0.8578	0.9003
Puerto Rico	0.4264	0.5578
Rhode Island [1]	.....	.....
South Carolina	0.8370	0.8853
South Dakota	0.7570	0.8264
Tennessee	0.7838	0.8464
Texas	0.7507	0.8217
Utah	0.9037	0.9330
Vermont	0.9427	0.9604
Virginia	0.8189	0.8721
Washington	1.0434	1.0295
West Virginia	0.8231	0.8752
Wisconsin	0.8880	0.9219
Wyoming	0.8817	0.9174

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8240	0.8758
Akron, OH	0.9736	0.9818
Alexandria, LA	0.8170	0.8707
Amarillo, TX	0.8715	0.9101
Anchorage, AK	1.2865	1.1883
Ann Arbor, MI	1.1064	1.0717
Atlanta, GA	1.0096	1.0066
Atlantic-Cape May, NJ ..	1.0822	1.0556
Augusta-Aiken, GA–SC	0.9160	0.9417
Baton Rouge, LA	0.8734	0.9115
Benton Harbor, MI	0.9021	0.9319
Bergen-Passaic, NJ	1.1605	1.1073
Billings, MT	0.9591	0.9718
Binghamton, NY	0.8690	0.9063
Birmingham, AL	0.8477	0.8930
Bismarck, ND	0.7897	0.8507
Bloomington-Normal, IL	0.9156	0.9414
Boise City, ID	0.9042	0.9334
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH, RI, and VT Hospitals)	1.1160	1.0781
Burlington, VT	1.0550	1.0373
Casper, WY	0.8817	0.9174
Champaign-Urbana, IL	0.9084	0.9363
Charleston-North Charleston, SC	0.9067	0.9351
Charleston, WV	0.8904	0.9236
Charlotte-Gastonia-Rock Hill, NC–SC	0.9391	0.9579
Chattanooga, TN–GA ...	0.9624	0.9741
Chicago, IL	1.1015	1.0684
Cincinnati, OH–KY–IN ..	0.9415	0.9596
Clarksville-Hopkinsville, TN–KY	0.8277	0.8785
Cleveland-Lorain-Elyria, OH	0.9593	0.9719
Columbia, MO	0.8756	0.9130
Columbia, SC	0.9433	0.9608
Columbus, OH	0.9619	0.9737
Dallas, TX	0.9913	0.9940
Danville, VA	0.8212	0.8738
Davenport-Moline-Rock Island, IA–IL	0.8898	0.9232
Dayton-Springfield, OH	0.9442	0.9614
Denver, CO	1.0181	1.0124
Des Moines, IA	0.9011	0.9312
Dothan, AL	0.8013	0.8592
Dover, DE	0.9769	0.9841
Duluth-Superior, MN–WI	1.0043	1.0029
Eau Claire, WI	0.8880	0.9219
Erie, PA	0.8985	0.9293
Eugene-Springfield, OR	1.0965	1.0651
Fargo-Moorhead, ND–MN	0.8517	0.8959
Fayetteville, NC	0.8469	0.8924
Flagstaff, AZ–UT	1.0525	1.0357
Flint, MI	1.1058	1.0713
Florence, AL	0.7652	0.8325
Florence, SC	0.8777	0.9145
Fort Collins-Loveland, CO	1.0647	1.0439
Ft. Lauderdale, FL	1.0152	1.0104
Fort Pierce-Port St. Lucie, FL	0.9622	0.9740
Fort Smith, AR–OK	0.7947	0.8544
Fort Walton Beach, FL	0.9358	0.9556
Fort Wayne, IN	0.8665	0.9065
Forth Worth-Arlington, TX	0.9527	0.9674
Gadsden, AL	0.8423	0.8891
Grand Forks, ND–MN ...	0.8954	0.9271
Grand Junction, CO	0.9471	0.9635
Grand Rapids-Muskegon-Holland, MI	1.0248	1.0169
Great Falls, MT	0.9331	0.9537
Greeley, CO	0.9573	0.9706
Green Bay, WI	0.9308	0.9521
Greensboro-Winston-Salem-High Point, NC	0.9124	0.9391
Greenville, NC	0.9172	0.9425
Greenville-Spartanburg-Anderson, SC	0.9003	0.9306
Harrisburg-Lebanon-Carlisle, PA	0.9386	0.9575

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Hartford, CT (MA Hospital)	1.1420	1.0952
Hattiesburg, MS	0.7491	0.8205
Hickory-Morganton-Lenoir, NC	0.8577	0.9002
Honolulu, HI	1.1666	1.1243
Houston, TX	0.9732	0.9816
Huntington-Ashland, WV–KY–OH	0.9605	0.9728
Huntsville, AL	0.8779	0.9147
Indianapolis, IN	0.9787	0.9854
Jackson, MS	0.8698	0.9089
Jackson, TN	0.8796	0.9159
Jacksonville, FL	0.9208	0.9451
Jersey City, NJ	1.1573	1.1052
Johnson City-Kingsport-Bristol, TN–VA	0.8328	0.8822
Joplin, MO	0.8148	0.8691
Kalamazoo-Battlecreek, MI	1.0311	1.0212
Kansas City, KS–MO	0.9498	0.9653
Knoxville, TN	0.8340	0.8831
Kokomo, IN	0.9525	0.9672
Lafayette, LA	0.8490	0.8940
Lansing-East Lansing, MI	0.9934	0.9955
Las Cruces, NM	0.8510	0.8954
Las Vegas, NV–AZ	1.0796	1.0538
Lexington, KY	0.8712	0.9099
Lima, OH	0.9320	0.9529
Lincoln, NE	0.9666	0.9770
Little Rock-North Little Rock, AR	0.8791	0.9155
Longview-Marshall, TX	0.8732	0.9113
Los Angeles-Long Beach, CA	1.2033	1.1351
Louisville, KY–IN	0.9350	0.9550
Lynchburg, VA	0.8749	0.9125
Macon, GA	0.8974	0.9285
Madison, WI	1.0271	1.0185
Mansfield, OH	0.8690	0.9083
Memphis, TN–AR–MS	0.8584	0.9007
Milwaukee-Waukesha, WI	0.9767	0.9840
Minneapolis-St. Paul, MN–WI	1.1017	1.0686
Missoula, MT	0.9332	0.9536
Mobile, AL	0.8163	0.8702
Monmouth-Ocean, NJ	1.1283	1.0862
Montgomery, AL	0.7853	0.8326
Myrtle Beach, SC (NC Hospital)	0.8441	0.8904
Nashville, TN	0.9301	0.9516
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2034	1.1352
New London-Norwich, CT	1.1926	1.1262
New Orleans, LA	0.9295	0.9512
New York, NY	1.4463	1.2875
Newburgh, NY–PA	1.0686	1.0451
Norfolk-Virginia Beach-Newport News, VA–NC	0.8441	0.8904
Oakland, CA	1.4983	1.3190
Ocala, FL	0.9243	0.9475
Odessa-Midland, TX	0.9074	0.9356
Oklahoma City, OK	0.8822	0.9177
Omaha, NE–IA	0.9572	0.9705
Orange County, CA	1.1411	1.0946
Orlando, FL	0.9610	0.9731
Peoria-Pekin, IL	0.8646	0.9052
Philadelphia, PA–NJ	1.0937	1.0633
Pine Bluff, AR	0.7680	0.8346
Pittsburgh, PA	0.9575	0.9707
Pittsfield, MA (VT Hospital)	0.9914	0.9941
Pocatello, ID	0.8715	0.9101
Portland, ME	0.9629	0.9744
Portland-Vancouver, OR–WA	1.0910	1.0615
Provo-Orem, UT	1.0041	1.0028
Raleigh-Durham-Chapel Hill, NC	0.9646	0.9756
Rapid City, SD	0.8865	0.9208
Redding, CA	1.1664	1.1112
Reno, NV	1.0439	1.0298
Richland-Kennewick-Pasco, WA	1.1147	1.0772
Roanoke, VA	0.8782	0.9149
Rochester, MN	1.1315	1.0883
Rockford, IL	0.8819	0.9175
Sacramento, CA	1.1957	1.1302
Saginaw-Bay City-Midland, MI	0.9575	0.9707
St. Cloud, MN	1.0016	1.0011
St. Joseph, MO	0.8848	0.9196
St. Louis, MO–IL	0.9049	0.9339
Salinas, CA	1.4502	1.2899
Salt Lake City-Ogden, UT	0.9811	0.9870
San Diego, CA	1.1784	1.1190
Santa Cruz-Watsonville, CA	1.3897	1.2528
Santa Fe, NM	1.0000	1.0000
Santa Rosa, CA	1.2398	1.1586
Seattle-Bellevue-Everett, WA	1.1016	1.0685
Sherman-Denison, TX	0.8795	0.9158
Sioux City, IA–NE	0.8473	0.8927
South Bend, IN	1.0029	1.0020
Spokane, WA	1.0333	1.0227
Springfield, IL	0.8685	0.9080
Springfield, MO	0.8212	0.8736
Syracuse, NY	0.9594	0.9720
Tampa-St. Petersburg-Clearwater, FL	0.9099	0.9374
Texarkana, AR-Texarkana, TX	0.8427	0.8894
Toledo, OH	0.9684	0.9769
Topeka, KS	0.9117	0.9387
Tucson, AZ	0.8821	0.9177
Tulsa, OK	0.8454	0.8914
Tuscaloosa, AL	0.8064	0.8630
Tyler, TX	0.9141	0.9403
Victoria, TX	0.8154	0.8696
Washington, DC–MD–VA–WV	1.0755	1.0511
Waterloo-Cedar Falls, IA	0.8802	0.9163
Wausau, WI	0.9426	0.9803
Wichita, KS	0.9262	0.9489
Rural Alabama	0.7528	0.8233
Rural Florida	0.8928	0.9253
Rural Illinois	0.8160	0.8700
Rural Louisiana	0.7713	0.8371
Rural Michigan	0.9021	0.9319
Rural Minnesota	0.8881	0.9219
Rural Missouri	0.7707	0.8366
Rural Montana	0.8686	0.9082
Rural Oregon	1.0132	1.0090
Rural Texas	0.7507	0.8217
Rural Washington	1.0434	1.0295
Rural West Virginia	0.8231	0.8752
Rural Wisconsin	0.8680	0.9219
Rural Wyoming (NE Hospital)	0.8671	0.9070

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	17.9367
Aguadilla, PR	9.5583
Akron, OH	21.1962
Albany, GA	21.6247
Albany-Schenectady-Troy, NY	18.6106
Albuquerque, NM	19.8699
Alexandria, LA	17.7452
Allentown-Bethlehem-Easton, PA	21.8571
Altoona, PA	20.3472
Amarillo, TX	18.9724
Anchorage, AK	27.8515
Ann Arbor, MI	24.5003
Anniston, AL	18.0347
Appleton-Oshkosh-Neenah, WI	19.7058
Arecibo, PR	9.8505
Asheville, NC	20.7157
Athens, GA	21.2027
Atlanta, GA	21.9792
Atlantic-Cape May, NJ	24.3440
Auburn-Opelika, AL	17.6461
Augusta-Aiken, GA–SC	19.9424
Austin-San Marcos, TX	20.8502
Bakersfield, CA	21.0688
Baltimore, MD	20.3888
Bangor, ME	20.8150
Barnstable-Yarmouth, MA	30.1277
Baton Rouge, LA	19.2487
Beaumont-Port Arthur, TX	19.0352
Bellingham, WA	24.9039
Benton Harbor, MI	18.8768
Bergen-Passaic, NJ	25.7937
Billings, MT	20.8678
Biloxi-Gulfport-Pascagoula, MS	17.9290
Binghamton, NY	18.9175
Birmingham, AL	18.4002
Bismarck, ND	16.7742
Bloomington,IN	19.0130
Bloomington-Normal, IL	19.8003
Boise City, ID	19.6053
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	24.2959
Boulder-Longmont, CO	21.1843
Brazoria, TX	18.8483
Bremerton, WA	23.8918
Brownsville-Harlingen-San Benito, TX	18.9670

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Bryan-College Station, TX	17.9324
Buffalo-Niagara Falls, NY	20.8552
Burlington, VT	23.3707
Caguas, PR	9.9325
Canton-Massillon, OH	18.6867
Casper, WY	18.9923
Cedar Rapids, IA	19.0186
Champaign-Urbana, IL	20.0245
Charleston-North Charleston, SC	19.6765
Charleston, WV	20.1160
Charlotte-Gastonia-Rock Hill, NC–SC	20.4436
Charlottesville, VA	23.4885
Chattanooga, TN–GA	21.4064
Cheyenne, WY	18.0869
Chicago, IL	24.2653
Chico-Paradise, CA	21.5925
Cincinnati, OH–KY–IN	20.4967
Clarksville-Hopkinsville, TN–KY	17.8606
Cleveland-Lorain-Elyria, OH	20.8921
Colorado Springs, CO	21.1114
Columbia, MO	19.5074
Columbia, SC	20.7995
Columbus, GA–AL	18.6521
Columbus, OH	20.9403
Corpus Christi, TX	18.9962
Corvallis, OR	24.6574
Cumberland, MD–WV	18.2190
Dallas, TX	21.5801
Danville, VA	18.6983
Davenport-Moline-Rock Island, IA–IL	19.3712
Dayton-Springfield, OH	20.5545
Daytona Beach, FL	20.0282
Decatur, AL	18.5791
Decatur, IL	17.6894
Denver, CO	22.1647
Des Moines, IA	19.8506
Detroit, MI	22.8814
Dothan, AL	17.2926
Dover, DE	21.9391
Dubuque, IA	19.0397
Duluth-Superior, MN–WI	21.8368
Dutchess County, NY	22.3121
Eau Claire, WI	19.1358
El Paso, TX	20.3455
Elkhart-Goshen, IN	19.9093
Elmira, NY	18.6041
Enid, OK	18.7450
Erie, PA	19.5597
Eugene-Springfield, OR	23.8704
Evansville, Henderson, IN–KY	17.7939
Fargo-Moorhead, ND–MN	19.0467
Fayetteville, NC	18.8418
Fayetteville-Springdale-Rogers, AR	17.2213
Flagstaff, AZ–UT	23.2631
Flint, MI	24.3942
Florence, AL	16.5808
Florence, SC	19.1069
Fort Collins-Loveland, CO	23.1791
Fort Lauderdale, FL	22.0334
Fort Myers-Cape Coral, FL	20.1312
Fort Pierce-Port St. Lucie, FL	20.7635
Fort Smith, AR–OK	17.5292
Fort Walton Beach, FL	20.9154
Fort Wayne, IN	18.8629
Fort Worth-Arlington, TX	20.7411
Fresno, CA	21.9976
Gadsden, AL	18.3371
Gainesville, FL	21.9311
Galveston-Texas City, TX	21.5917
Gary, IN	20.5814
Glens Falls, NY	18.2029
Goldsboro, NC	18.3380
Grand Forks, ND–MN	19.1930
Grand Junction, CO	19.8299
Grand Rapids-Muskegon-Holland, MI	22.3091
Great Falls, MT	19.7346
Greeley, CO	21.3659
Green Bay, WI	20.0839
Greensboro-Winston-Salem-High Point, NC	19.8775
Greenville, NC	20.4282
Greenville-Spartanburg-Anderson, SC	19.5991
Hagerstown, MD	20.4841
Hamilton-Middletown, OH	19.7254
Harrisburg-Lebanon-Carlisle, PA	20.4334
Hartford, CT	24.7589
Hattiesburg, MS	16.3068
Hickory-Morganton-Lenoir, NC	19.6096
Honolulu, HI	25.8269
Houma, LA	17.6029
Houston, TX	21.1868
Huntington-Ashland, WV–KY–OH	21.4993
Huntsville, AL	19.4455
Indianapolis, IN	21.3060
Iowa City, IA	21.0244
Jackson, MI	19.8852
Jackson, MS	19.1842
Jackson, TN	19.1498
Jacksonville, FL	20.0465
Jacksonville, NC	16.9298
Jamestown, NY	17.0195
Janesville-Beloit, WI	20.8677
Jersey City, NJ	25.0412
Johnson City-Kingsport-Bristol, TN–VA	18.0083
Johnstown, PA	19.2587
Jonesboro, AR	17.0500
Joplin, MO	17.7376
Kalamazoo-Battlecreek, MI	22.7571
Kankakee, IL	21.5573
Kansas City, KS–MO	20.6781
Kenosha, WI	20.9242
Killeen-Temple, TX	22.0298
Knoxville, TN	18.1556
Kokomo, IN	20.7207
La Crosse, WI–MN	20.0533
Lafayette, LA	18.4836
Lafayette, IN	19.2317
Lake Charles, LA	16.1070
Lakeland-Winter Haven, FL	20.1126
Lancaster, PA	20.1576
Lansing-East Lansing, MI	21.6264
Laredo, TX	17.7822
Las Cruces, NM	18.8479
Las Vegas, NV–AZ	23.5027
Lawrence, KS	17.8290
Lawton, OK	19.5850
Lewiston-Auburn, ME	19.6724
Lexington, KY	19.3007
Lima, OH	20.2889
Lincoln, NE	20.9569
Little Rock-North Little Rock, AR	19.3875
Longview-Marshall, TX	19.4243
Los Angeles-Long Beach, CA	26.1164
Louisville, KY–IN	20.3544
Lubbock, TX	19.2404
Lynchburg, VA	19.3031
Macon, GA	19.5357
Madison, WI	22.3606
Mansfield, OH	18.9191
Mayaguez, PR	9.9900
McAllen-Edinburg-Mission, TX	18.6487
Medford-Ashland, OR	22.5185
Melbourne-Titusville-Palm Bay, FL	21.0904
Memphis, TN–AR–MS	18.9896
Merced, CA	20.9989
Miami, FL	21.8997
Middlesex-Somerset-Hunterdon, NJ	24.1094
Milwaukee-Waukesha, WI	21.2638
Minneapolis-St. Paul, MN–WI	23.9833
Missoula, MT	20.1896
Mobile, AL	17.7700
Modesto, CA	22.6325
Monmouth-Ocean, NJ	24.5529
Monroe, LA	18.2776
Montgomery, AL	16.6605
Muncie, IN	23.8791
Myrtle Beach, SC	18.3751
Naples, FL	21.0332
Nashville, TN	20.6801
Nassau-Suffolk, NY	30.3304
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	26.7711
New London-Norwich, CT	26.2605
New Orleans, LA	20.2347
New York, NY	31.8954
Newark, NJ	25.7698
Newburgh, NY–PA	23.6150
Norfolk-Virginia Beach-Newport News, VA–NC	18.3132
Oakland, CA	32.6189
Ocala, FL	20.1230
Odessa-Midland, TX	20.0403
Oklahoma City, OK	19.2048
Olympia, WA	23.2441
Omaha, NE–IA	20.8374
Orange County, CA	24.9648
Orlando, FL	20.9206
Owensboro, KY	17.7626
Panama City, FL	19.6150
Parkersburg-Marietta, WV–OH	18.0122
Pensacola, FL	17.7997
Peoria-Pekin, IL	18.8206
Philadelphia, PA–NJ	23.8095
Phoenix-Mesa, AZ	21.0494
Pine Bluff, AR	16.9610
Pittsburgh, PA	21.2070
Pittsfield, MA	22.3968
Pocatello, ID	19.7591
Ponce, PR	10.8985
Portland, ME	21.2220
Portland-Vancouver, OR–WA	23.7513
Providence-Warwick, RI	23.6503
Provo-Orem, UT	21.8338
Pueblo, CO	19.1909
Punta Gorda, FL	20.9268
Racine, WI	20.1287
Raleigh-Durham-Chapel Hill, NC	21.0003
Rapid City, SD	19.2995
Reading, PA	19.9251
Redding, CA	25.3926

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Reno, NV	22.9669
Richland-Kennewick-Pasco, WA	24.9481
Richmond-Petersburg, VA	20.9366
Riverside-San Bernardino, CA	24.4685
Roanoke, VA	19.0494
Rochester, MN	24.6337
Rochester, NY	19.9884
Rockford, IL	19.1994
Rocky Mount, NC	19.2653
Sacramento, CA	26.0143
Saginaw-Bay City-Midland, MI	20.8446
St. Cloud, MN	21.8042
St. Joseph, MO	19.7467
St. Louis, MO–IL	19.6997
Salem, OR	22.1817
Salinas, CA	31.5702
Salt Lake City-Ogden, UT	21.3500
San Angelo, TX	17.5980
San Antonio, TX	18.6797
San Diego, CA	25.6544
San Francisco, CA	30.8184
San Jose, CA	29.7210
San Juan-Bayamon, PR	10.2110
San Luis Obispo-Atascadero-Paso Robles, CA	23.2360
Santa Barbara-Santa Maria-Lompoc, CA	23.0707
Santa Cruz-Watsonville, CA	30.5664
Santa Fe, NM	22.9400
Santa Rosa, CA	27.5311
Sarasota-Bradenton, FL	21.3554
Savannah, GA	21.1099
Scranton-Wilkes Barre-Hazleton, PA	18.3332
Seattle-Bellevue-Everett, WA	23.9393
Sharon, PA	17.2591
Sheboygan, WI	18.2407
Sherman-Denison, TX	18.9273
Shreveport-Bossier City, LA	19.0499
Sioux City, IA–NE	18.4457
Sioux Falls, SD	19.1359
South Bend, IN	21.7709
Spokane, WA	22.8867
Springfield, IL	18.9066
Springfield, MO	18.4778
Springfield, MA	23.1578
State College, PA	19.6769
Steubenville-Weirton, OH–WV	18.6092
Stockton-Lodi, CA	23.1397
Sumter, SC	18.0057

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Syracuse, NY	20.7876
Tacoma, WA	25.1749
Tallahassee, FL	18.6017
Tampa-St. Petersburg-Clearwater, FL	19.5532
Terre Haute, IN	18.0773
Texarkana, AR-Texarkana, TX	18.2062
Toledo, OH	21.4050
Topeka, KS	19.8476
Trenton, NJ	22.0690
Tucson, AZ	19.1447
Tulsa, OK	18.4038
Tuscaloosa, AL	17.5550
Tyler, TX	20.4737
Utica-Rome, NY	18.6360
Vallejo-Fairfield-Napa, CA	27.9688
Ventura, CA	24.0125
Victoria, TX	17.7514
Vineland-Millville-Bridgeton, NJ	22.8607
Visalia-Tulare-Porterville, CA	20.7921
Waco, TX	18.1006
Washington, DC–MD–VA–WV	23.4147
Waterloo-Cedar Falls, IA	18.2949
Wausau, WI	20.5039
West Palm Beach-Boca Raton, FL	21.0777
Wheeling, OH–WV	16.8341
Wichita, KS	20.7776
Wichita Falls, TX	16.6925
Williamsport, PA	18.2688
Wilmington-Newark, DE–MD	24.3629
Wilmington, NC	20.4690
Yakima, WA	21.5675
Yolo, CA	22.2042
York, PA	20.1674
Youngstown-Warren, OH	20.7757
Yuba City, CA	23.3065
Yuma, AZ	20.7458

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	16.3047
Alaska	26.9769
Arizona	18.1056
Arkansas	16.2080
California	21.4673
Colorado	19.5235
Connecticut	25.5035
Delaware	19.7543
Florida	19.4165
Georgia	18.1321
Hawaii	24.0749
Idaho	18.8912
Illinois	17.7653
Indiana	18.7277
Iowa	17.4823
Kansas	16.5568
Kentucky	17.2663
Louisiana	16.6925
Maine	19.0838
Maryland	18.8330
Massachusetts	24.3924
Michigan	19.5659
Minnesota	19.3332
Mississippi	16.3073
Missouri	16.7596
Montana	18.9143
Nebraska	17.6541
Nevada	20.0985
New Hampshire	21.4334
New Jersey [1]	.....
New Mexico	18.4965
New York	18.5034
North Carolina	18.3772
North Dakota	16.7982
Ohio	18.6756
Oklahoma	16.3084
Oregon	22.0574
Pennsylvania	18.6739
Puerto Rico	9.2817
Rhode Island [1]	.....
South Carolina	18.2215
South Dakota	16.4806
Tennessee	17.0628
Texas	16.3317
Utah	19.6740
Vermont	20.1891
Virginia	17.8284
Washington	22.7144
West Virginia	17.9182
Wisconsin	19.3321
Wyoming	19.1944

[1] All counties within the State are classified as urban.

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclass. hospitals	GAF—reclass. hospitals
Aguadilla, PR	0.9380	0.9571	.....	.....
Arecibo, PR	0.9667	0.9771	.....	.....
Caguas, PR	0.9747	0.9826	.....	.....
Mayaguez, PR	0.9803	0.9865	.....	.....
Ponce, PR	1.0695	1.0471	.....	.....
San Juan-Bayamon, PR	1.0020	1.0014	.....	.....
Rural Puerto Rico	0.9108	0.9380	.....	.....

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0970	6.3	9.1
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.1142	7.3	9.7
3	01	SURG	*CRANIOTOMY AGE 0–17	1.9629	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.2918	4.8	7.4
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.4321	2.3	3.3
6	01	SURG	CARPAL TUNNEL RELEASE	.8246	2.2	3.2
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.5919	6.9	10.3
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	1.3948	2.1	3.0
9	01	MED	SPINAL DISORDERS & INJURIES	1.3134	4.7	6.6
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2273	4.9	6.7
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8345	3.1	4.2
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.8925	4.5	6.1
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7644	4.1	5.1
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2070	4.7	6.1
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.7480	2.9	3.6
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1652	4.7	6.2
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.8539	2.6	3.4
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9600	4.3	5.6
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6963	2.9	3.7
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.7744	7.9	10.6
21	01	MED	VIRAL MENINGITIS	1.4966	5.2	6.9
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	1.0082	3.8	5.0
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8027	3.2	4.2
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9914	3.7	5.0
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.6043	2.6	3.3
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.6441	2.4	3.2
27	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR	1.2912	3.2	5.1
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3102	4.5	6.3
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE ≤17 W/O CC	.7015	2.8	3.7
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3320	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8715	3.1	4.2
32	01	MED	CONCUSSION AGE >17 W/O CC	.5422	2.1	2.7
33	01	MED	*CONCUSSION AGE 0–17	.2086	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0099	3.8	5.2
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.6027	2.7	3.4
36	02	SURG	RETINAL PROCEDURES	.6639	1.2	1.4
37	02	SURG	ORBITAL PROCEDURES	1.0016	2.6	3.7
38	02	SURG	PRIMARY IRIS PROCEDURES	.4833	1.8	2.5
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5778	1.5	1.9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.8635	2.3	3.6
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	.3380	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6478	1.6	2.2
43	02	MED	HYPHEMA	.4977	2.6	3.4
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6337	4.1	5.0
45	02	MED	NEUROLOGICAL EYE DISORDERS	.7022	2.7	3.3
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7749	3.5	4.6
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.5085	2.5	3.3
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2977	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.8301	3.5	5.0
50	03	SURG	SIALOADENECTOMY	.8537	1.6	2.0
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.7934	1.8	2.5
52	03	SURG	CLEFT LIP & PALATE REPAIR	.8410	1.6	2.1
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.2118	2.3	3.7
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4826	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.9039	1.9	2.9
56	03	SURG	RHINOPLASTY	.9451	2.1	3.1
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.0704	2.5	4.0
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2740	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.6943	1.8	2.5
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	.2087	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2660	2.8	4.8
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2955	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3402	3.0	4.3
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2288	4.3	6.5
65	03	MED	DYSEQUILIBRIUM	.5385	2.3	2.9

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
66	03	MED	EPISTAXIS	.5590	2.5	3.2
67	03	MED	EPIGLOTTITIS	.8105	2.8	3.5
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6750	3.4	4.2
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5152	2.7	3.3
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.4628	2.4	2.9
71	03	MED	LARYNGOTRACHEITIS	.7712	3.0	3.9
72	03	MED	NASAL TRAUMA & DEFORMITY	.6428	2.6	3.3
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7777	3.3	4.4
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17	.3356	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.1331	7.8	10.0
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7906	8.4	11.3
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1887	3.5	5.0
78	04	MED	PULMONARY EMBOLISM	1.3698	6.0	7.0
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6501	6.6	8.5
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.9373	4.7	5.8
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	1.5204	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3799	5.2	7.0
83	04	MED	MAJOR CHEST TRAUMA W CC	.9808	4.4	5.6
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5539	2.8	3.4
85	04	MED	PLEURAL EFFUSION W CC	1.2198	4.9	6.4
86	04	MED	PLEURAL EFFUSION W/O CC	.6984	2.9	3.8
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3781	4.8	6.3
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9317	4.2	5.2
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0647	5.0	6.0
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6590	3.6	4.2
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.6890	2.8	3.4
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.1863	5.0	6.3
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7309	3.3	4.1
94	04	MED	PNEUMOTHORAX W CC	1.1704	4.8	6.3
95	04	MED	PNEUMOTHORAX W/O CC	.6098	3.0	3.7
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7871	3.9	4.7
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5873	3.1	3.7
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.6768	3.2	4.7
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.7117	2.5	3.2
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5437	1.8	2.2
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8563	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5550	2.1	2.7
103	PRE	SURG	HEART TRANSPLANT	19.0098	30.7	51.8
104	05	SURG	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH.	7.1843	8.9	11.7
105	05	SURG	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH.	5.6567	7.4	9.3
106	05	SURG	CORONARY BYPASS W PTCA	7.5203	9.3	11.2
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.3762	9.2	10.3
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.6525	8.0	10.6
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	4.0198	6.8	7.7
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1358	7.1	9.5
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2410	4.7	5.5
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.8677	2.6	3.6
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.7806	9.8	12.8
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5656	6.0	8.3
115	05	SURG	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR PR.	3.4711	6.0	8.4
116	05	SURG	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT.	2.4190	2.6	3.7
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.2966	2.6	4.0
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.4939	1.9	2.8
119	05	SURG	VEIN LIGATION & STRIPPING	1.2600	2.9	4.9
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.0352	4.9	8.1
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.6194	5.5	6.7
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.0884	3.3	4.0
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5528	2.8	4.6

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4134	3.3	4.4
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0606	2.2	2.8
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5379	9.3	12.0
127	05	MED	HEART FAILURE & SHOCK	1.0130	4.2	5.4
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7651	5.0	5.8
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0968	1.8	2.9
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9471	4.7	5.9
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5898	3.6	4.4
132	05	MED	ATHEROSCLEROSIS W CC	.6707	2.4	3.1
133	05	MED	ATHEROSCLEROSIS W/O CC	.5663	1.9	2.4
134	05	MED	HYPERTENSION	.5917	2.6	3.3
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC.	.9083	3.3	4.5
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.6065	2.2	2.9
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	.8192	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.8291	3.1	4.0
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5141	2.0	2.5
140	05	MED	ANGINA PECTORIS	.5740	2.2	2.7
141	05	MED	SYNCOPE & COLLAPSE W CC	.7219	2.9	3.7
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5552	2.2	2.7
143	05	MED	CHEST PAIN	.5402	1.8	2.2
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1668	3.8	5.4
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6322	2.2	2.8
146	06	SURG	RECTAL RESECTION W CC	2.7430	8.9	10.2
147	06	SURG	RECTAL RESECTION W/O CC	1.6221	6.0	6.6
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4347	10.1	12.1
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5667	6.1	6.7
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8523	9.1	11.2
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3427	4.8	5.9
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9462	6.8	8.2
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.2080	4.9	5.5
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1475	10.1	13.3
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3751	3.3	4.4
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8436	6.0	6.0
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2388	3.9	5.5
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6638	2.1	2.6
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3347	3.8	5.0
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7837	2.2	2.7
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1017	2.9	4.2
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.6229	1.6	2.0
163	06	SURG	HERNIA PROCEDURES AGE 0–17	.6921	2.4	2.9
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3760	7.1	8.4
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2838	4.3	4.9
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4802	4.0	5.1
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.8937	2.3	2.7
168	03	SURG	MOUTH PROCEDURES W CC	1.2141	3.2	4.7
169	03	SURG	MOUTH PROCEDURES W/O CC	.7455	1.9	2.4
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8686	7.7	11.2
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1975	3.6	4.8
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3485	5.1	7.0
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.7700	2.8	3.9
174	06	MED	G.I. HEMORRHAGE W CC	.9985	3.9	4.8
175	06	MED	G.I. HEMORRHAGE W/O CC	.5501	2.5	2.9
176	06	MED	COMPLICATED PEPTIC ULCER	1.1052	4.1	5.3
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8998	3.7	4.6
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6604	2.6	3.1
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0576	4.7	6.0
180	06	MED	G.I. OBSTRUCTION W CC	.9423	4.2	5.4
181	06	MED	G.I. OBSTRUCTION W/O CC	.5304	2.8	3.4
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7922	3.4	4.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5717	2.4	3.0
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.5119	2.5	3.3
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8621	3.3	4.5
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3216	2.9	2.9
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7649	2.9	3.8
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.1005	4.1	5.6
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5796	2.4	3.1
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	.9884	4.1	6.0
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.3914	10.5	14.2
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7916	5.3	6.6
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.3861	10.3	12.6
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6191	5.6	6.8
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.9062	8.3	9.9
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6593	4.9	5.7
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.4544	7.2	8.7
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2339	3.9	4.5
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3584	7.2	9.7
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.2282	7.0	10.8
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.4035	10.2	13.9
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3001	4.9	6.5
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3250	5.0	6.7
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2018	4.5	5.9
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.2048	4.7	6.3
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6751	3.0	3.9
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1032	4.0	5.2
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6538	2.3	2.9
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.0912	4.6	5.2
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8152	6.0	6.9
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2647	4.5	4.9
212	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	.8472	11.1	11.1
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7726	6.4	8.7
214	08	SURG	NO LONGER VALID	.0000	.0	.0
215	08	SURG	NO LONGER VALID	.0000	.0	.0
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.2042	7.1	9.8
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	2.9230	8.9	13.2
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.5337	4.2	5.4
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	1.0255	2.7	3.3
220	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5844	5.3	5.3
221	08	SURG	NO LONGER VALID	.0000	.0	.0
222	08	SURG	NO LONGER VALID	.0000	.0	.0
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.9585	2.0	2.6
224	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.7997	1.7	2.1
225	08	SURG	FOOT PROCEDURES	1.0651	3.3	4.7
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.4770	4.3	6.3
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.8036	2.1	2.7
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC.	1.0664	2.4	3.6
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.7169	1.8	2.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.2490	3.4	5.1
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.3825	3.2	4.8
232	08	SURG	ARTHROSCOPY	1.0828	2.3	3.6
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0890	5.3	7.7
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	1.2661	2.7	3.6
235	08	MED	FRACTURES OF FEMUR	.7582	3.8	5.2
236	08	MED	FRACTURES OF HIP & PELVIS	.7218	4.0	5.0
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5681	3.0	3.7
238	08	MED	OSTEOMYELITIS	1.3496	6.4	8.6
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	.9745	4.9	6.2
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2712	4.9	6.6
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6177	3.1	3.9
242	08	MED	SEPTIC ARTHRITIS	1.0724	5.1	6.6
243	08	MED	MEDICAL BACK PROBLEMS	.7262	3.7	4.7
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7155	3.7	4.8
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4832	2.8	3.6
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5570	2.9	3.6
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5696	2.6	3.5
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7864	3.7	4.8
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6913	2.6	3.8
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6929	3.3	4.3
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4995	2.4	3.0
252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17	.2536	1.8	1.8
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC.	.7253	3.7	4.7
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC.	.4413	2.6	3.2
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0–17.	.2956	2.9	2.9
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7959	3.8	5.2
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.9107	2.3	2.8
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7232	1.8	2.0
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.9068	1.8	2.8
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6532	1.3	1.4
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.9362	1.7	2.2
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.8754	2.7	3.8
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC.	2.1219	8.9	12.2
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1479	5.4	7.2
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5309	4.3	6.6
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.8707	2.4	3.3
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	1.0792	3.1	5.2
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	1.1405	2.4	3.7
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.7004	5.8	8.3
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7670	2.3	3.3
271	09	MED	SKIN ULCERS	1.0104	5.5	7.1
272	09	MED	MAJOR SKIN DISORDERS W CC	.9994	4.8	6.3
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6179	3.2	4.2
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.2061	4.9	7.0
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5301	2.4	3.4
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6899	3.6	4.6
277	09	MED	CELLULITIS AGE >17 W CC	.8396	4.7	5.7
278	09	MED	CELLULITIS AGE >17 W/O CC	.5522	3.6	4.3
279	09	MED	*CELLULITIS AGE 0–17	.6844	4.2	4.2
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	.6786	3.2	4.2

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4729	2.4	3.1
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	.2570	2.2	2.2
283	09	MED	MINOR SKIN DISORDERS W CC	.6917	3.5	4.6
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4336	2.5	3.2
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	1.9961	7.7	10.5
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.1299	4.9	6.2
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8283	7.8	10.5
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1607	4.5	5.7
289	10	SURG	PARATHYROID PROCEDURES	.9914	2.0	3.1
290	10	SURG	THYROID PROCEDURES	.9193	1.8	2.4
291	10	SURG	THYROGLOSSAL PROCEDURES	.5487	1.4	1.6
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.4536	6.9	10.0
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2289	3.6	5.1
294	10	MED	DIABETES AGE >35	.7589	3.6	4.7
295	10	MED	DIABETES AGE 0–35	.7587	2.9	3.9
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.8594	4.0	5.2
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5179	2.8	3.5
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	.5269	2.5	3.1
299	10	MED	INBORN ERRORS OF METABOLISM	.9632	4.0	5.6
300	10	MED	ENDOCRINE DISORDERS W CC	1.0629	4.7	6.1
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6133	2.9	3.7
302	11	SURG	KIDNEY TRANSPLANT	3.4241	7.9	9.4
303	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.4602	7.0	8.5
304	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3407	6.4	8.9
305	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1825	3.1	3.8
306	11	SURG	PROSTATECTOMY W CC	1.2489	3.7	5.5
307	11	SURG	PROSTATECTOMY W/O CC	.6460	1.9	2.3
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.6449	4.2	6.4
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.9339	2.0	2.5
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.1172	3.0	4.4
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.6174	1.6	1.9
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0173	3.0	4.5
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.6444	1.7	2.1
314	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4953	2.3	2.3
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0474	4.2	7.5
316	11	MED	RENAL FAILURE	1.3424	4.9	6.7
317	11	MED	ADMIT FOR RENAL DIALYSIS	.7395	2.1	3.2
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1313	4.3	6.0
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.6040	2.2	2.9
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.8621	4.3	5.4
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5686	3.2	3.8
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.4939	3.3	4.1
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7996	2.4	3.2
324	11	MED	URINARY STONES W/O CC	.4509	1.6	1.9
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	.6460	3.0	3.9
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4297	2.1	2.7
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	.3543	3.1	3.1
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.7455	2.8	3.9
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.5253	1.7	2.0
330	11	MED	*URETHRAL STRICTURE AGE 0–17	.3191	1.6	1.6
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0221	4.1	5.6
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.5997	2.5	3.3
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	.8247	3.5	5.0
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5591	4.2	4.9
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.1697	3.2	3.4
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8880	2.7	3.5
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6152	1.9	2.2
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.1900	3.5	5.3
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.0789	3.0	4.6

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2835	2.4	2.4
341	12	SURG	PENIS PROCEDURES	1.1709	2.1	3.2
342	12	SURG	CIRCUMCISION AGE >17	.8240	2.5	3.1
343	12	SURG	*CIRCUMCISION AGE 0–17	.1541	1.7	1.7
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.1519	1.6	2.3
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8800	2.6	3.8
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9756	4.3	5.8
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5922	2.4	3.4
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7142	3.2	4.2
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4380	2.0	2.6
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6992	3.6	4.4
351	12	MED	*STERILIZATION, MALE	.2364	1.3	1.3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.6858	2.8	3.8
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9292	5.3	6.7
354	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.5284	4.9	5.9
355	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9278	3.1	3.3
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7846	2.1	2.4
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3628	6.9	8.5
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2263	3.7	4.4
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8593	2.6	2.8
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8860	2.4	3.0
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.2318	2.2	3.5
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.3022	1.4	1.4
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.8136	2.5	3.5
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.7530	2.6	3.6
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.8425	4.9	7.3
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2467	4.8	6.8
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5676	2.4	3.2
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.1205	5.0	6.7
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5704	2.4	3.2
370	14	SURG	CESAREAN SECTION W CC	1.0631	4.4	5.7
371	14	SURG	CESAREAN SECTION W/O CC	.7157	3.3	3.6
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.6077	2.7	3.5
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.4169	2.0	2.3
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7565	2.6	3.4
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6860	4.4	4.4
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.5224	2.6	3.5
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	.8899	2.6	3.8
378	14	MED	ECTOPIC PREGNANCY	.7664	2.0	2.3
379	14	MED	THREATENED ABORTION	.3959	2.0	3.1
380	14	MED	ABORTION W/O D&C	.4843	1.8	2.2
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.5331	1.5	1.9
382	14	MED	FALSE LABOR	.2127	1.3	1.5
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.5137	2.7	3.9
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.3161	1.6	2.3
385	15	MED	*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3767	1.8	1.8
386	15	MED	*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5400	17.9	17.9
387	15	MED	*PREMATURITY W MAJOR PROBLEMS	3.1007	13.3	13.3
388	15	MED	*PREMATURITY W/O MAJOR PROBLEMS	1.8709	8.6	8.6
389	15	MED	*FULL TERM NEONATE W MAJOR PROBLEMS	1.8408	4.7	4.7
390	15	MED	NEONATE W OTHER SIGNIFICANT PROBLEMS	.9471	3.0	4.0
391	15	MED	*NORMAL NEWBORN	.1527	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.1739	7.1	9.5
393	16	SURG	*SPLENECTOMY AGE 0–17	1.3486	9.1	9.1

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.5969	4.1	6.7
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8257	3.3	4.5
396	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	1.1573	2.5	3.8
397	16	MED	COAGULATION DISORDERS	1.2278	3.8	5.2
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2750	4.7	6.0
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6881	2.8	3.6
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6309	5.8	9.1
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.7198	7.8	11.2
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0985	2.8	4.0
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.7594	5.7	8.1
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8480	3.1	4.2
405	17	MED	*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	1.9120	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.8275	7.6	10.3
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.3179	3.6	4.4
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	2.0006	4.8	7.7
409	17	MED	RADIOTHERAPY	1.1215	4.4	5.9
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.9468	2.9	3.7
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3305	2.0	2.3
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4841	2.0	2.7
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	1.3645	5.3	7.3
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7548	3.0	4.1
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5925	10.4	14.3
416	18	MED	SEPTICEMIA AGE >17	1.5278	5.5	7.4
417	18	MED	SEPTICEMIA AGE 0–17	1.1717	3.7	6.0
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0074	4.8	6.2
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8709	3.7	4.8
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6057	3.0	3.6
421	18	MED	VIRAL ILLNESS AGE >17	.6796	3.1	3.9
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	.7854	2.8	5.1
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.7250	5.9	8.2
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.2810	8.7	13.5
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION.	.7031	3.0	4.1
426	19	MED	DEPRESSIVE NEUROSES	.5301	3.3	4.6
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5637	3.3	5.0
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7342	4.4	7.1
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8530	4.9	6.7
430	19	MED	PSYCHOSES	.7644	5.8	8.2
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6392	4.8	6.6
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.6546	3.2	4.8
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2824	2.2	3.0
434	20	MED	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.7256	3.9	5.1
435	20	MED	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4176	3.4	4.3
436	20	MED	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.7433	10.3	12.9
437	20	MED	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.6606	7.5	9.0
438	20		NO LONGER VALID	.0000	.0	.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7092	5.3	8.2
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.9096	5.8	8.9
441	21	SURG	HAND PROCEDURES FOR INJURIES	.9463	2.2	3.3
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.3403	5.4	8.3
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.9978	2.5	3.4
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7243	3.2	4.2
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.5076	2.4	3.0
446	21	MED	*TRAUMATIC INJURY AGE 0–17	.2964	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	.5166	1.9	2.5
448	21	MED	*ALLERGIC REACTIONS AGE 0–17	.0975	2.9	2.9

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.8076	2.6	3.7
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4406	1.6	2.0
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2632	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	1.0152	3.5	5.0
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4987	2.2	2.8
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8593	3.2	4.6
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4672	2.0	2.6
456			NO LONGER VALID	.0000	.0	.0
457			NO LONGER VALID	.0000	.0	.0
458			NO LONGER VALID	.0000	.0	.0
459			NO LONGER VALID	.0000	.0	.0
460			NO LONGER VALID	.0000	.0	.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.2101	2.4	4.6
462	23	MED	REHABILITATION	1.2401	9.4	11.7
463	23	MED	SIGNS & SYMPTOMS W CC	.6936	3.3	4.3
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4775	2.4	3.1
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5756	2.1	3.4
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6840	2.3	3.9
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.5112	2.3	4.1
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6399	9.2	13.0
469			**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0
470			**UNGROUPABLE	.0000	.0	.0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.1957	5.0	5.7
472			NO LONGER VALID	.0000	.0	.0
473	17	SURG	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.5822	7.6	13.2
474			NO LONGER VALID	.0000	.0	.0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.6936	8.1	11.3
476		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2547	8.4	11.7
477		SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.8204	5.4	8.1
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3333	4.9	7.3
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4326	2.8	3.6
480	PRE	SURG	LIVER TRANSPLANT	9.4744	14.7	19.5
481	PRE	SURG	BONE MARROW TRANSPLANT	8.6120	23.8	26.6
482	PRE	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES	3.5785	10.0	12.9
483	PRE	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES.	15.9677	33.7	41.2
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5606	8.8	13.1
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	3.0998	7.7	9.5
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.9048	8.1	12.2
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.0604	5.6	7.8
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.5574	11.5	17.0
489	25	MED	HIV W MAJOR RELATED CONDITION	1.7414	6.0	8.6
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	.9680	3.7	5.1
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6685	2.9	3.5
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.2467	10.9	16.1
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8180	4.3	5.7
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0388	2.0	2.5
495	PRE	SURG	LUNG TRANSPLANT	8.6087	13.4	20.5
496	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.5532	7.8	10.0
497	08	SURG	SPINAL FUSION W CC	2.9441	4.9	6.2
498	08	SURG	SPINAL FUSION W/O CC	1.9057	2.8	3.4
499	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4572	3.6	4.8
500	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	.9805	2.2	2.7
501	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.6283	8.4	10.6
502	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.4434	4.9	6.0
503	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2156	3.1	4.0
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	12.6064	24.1	30.5

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
505 ...	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	2.0166	2.5	4.7
506 ...	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.4825	12.9	17.6
507 ...	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.8560	6.6	9.3
508 ...	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.3302	5.1	7.3
509 ...	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	.8071	4.1	6.2
510 ...	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.4088	5.2	7.9
511 ...	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.6536	3.1	4.5

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
007.5	Cycloesporiasis	N	6	182, 183,184
082.40	Unspecified ehrlichiosis	N	18	423
082.41	Ehrlichiosis Chafiensis (E. Chafiensis)	N	18	423
082.49	Other ehrlichiosis	N	18	423
285.21	Anemia in end-stage renal disease	N	16	395, 396
285.22	Anemia in neoplastic disease	N	16	395, 396
285.29	Anemia of other chronic illness	N	16	395, 396
294.10	Dementia in conditions classified elsewhere without behavioral disturbance	N	19	429
294.11	Dementia in conditions classified elsewhere with behavioral disturbance	N	19	429
372.81	Conjunctivochalasis	N	2	46, 47, 48
372.89	Other disorders of conjunctiva	N	2	46, 47, 48
477.1	Allergic rhinitis, due to food	N	3	68, 69, 70
493.02	Extrinsic asthma, with acute exacerbation	Y	4	96, 97, 98
493.12	Intrinsic asthma, with acute exacerbation	Y	4	96, 97, 98
493.22	Chronic obstructive asthma, with acute exacerbation	Y	4	88
493.92	Unspecified asthma, with acute exacerbation	Y	4	96, 97, 98
494.0	Bronchiectasis without acute exacerbation	N	4	88
494.1	Bronchiectasis with acute exacerbation	Y	4	88
558.3	Allergic gastroenteritis and colitis	N	6	182, 183, 184
600.0	Hypertrophy (benign) of prostate	N	12	348, 349
600.1	Nodular prostate	N	12	348, 349
600.2	Benign localized hyperplasia of prostate	N	12	348, 349
600.3	Cyst of prostate	N	12	348, 349
600.9	Unspecified hyperplasia of prostate	N	12	348, 349
645.10	Post term pregnancy, unspecified as to episode of care or not applicable	N	14	469
645.11	Post term pregnancy, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
645.13	Post term pregnancy, antepartum condition or complication	N	14	383, 384
645.20	Prolonged pregnancy, unspecified as to episode of care or not applicable	N	14	469
645.21	Prolonged pregnancy, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
645.23	Prolonged pregnancy, antepartum condition or complication	N	14	383, 384
692.75	Disseminated superficial actinic porokeratosis (DSAP)	N	9	283, 284
707.10	Unspecified ulcer of lower limb	Y	9	263, 264, 271
707.11	Ulcer of thigh	Y	9	263, 264, 271
707.12	Ulcer of calf	Y	9	263, 264, 271
707.13	Ulcer of ankle	Y	9	263, 264, 271
707.14	Ulcer of heel and midfoot	Y	9	263, 264, 271
707.15	Ulcer of other part of foot	Y	9	263, 264, 271
707.19	Ulcer of other part of lower limb	Y	9	263, 264, 271
727.83	Plica syndrome	N	8	248
781.91	Loss of height	N	1	34, 35
781.92	Abnormal posture	N	1	34, 35
781.99	Other symptoms involving nervous and musculoskeletal systems	N	1	34, 35
783.21	Loss of weight	N	10	296, 297, 298
783.22	Underweight	N	10	296, 297, 298
783.40	Unspecified lack of normal physiological development	N	10	296, 297, 298

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
783.41	Failure to thrive	N	10	296, 297, 298
783.42	Delayed milestones	N	10	296, 297, 298
783.43	Short stature	N	10	296, 297, 298
783.7	Adult failure to thrive	N	10	296, 297, 298
790.01	Precipitous drop in hematocrit	N	16	395, 396
790.09	Other abnormality of red blood cells	N	16	395, 396
792.5	Cloudy (hemodialysis) (peritoneal) dialysis effluent	N	23	463, 464
995.7	Other adverse food reactions, not elsewhere classified	N	21	454, 455
996.87	Complications of transplanted organ, intestine	Y	21	452, 453
V15.01	Allergy to peanuts	N	23	467
V15.02	Allergy to milk products	N	23	467
V15.03	Allergy to eggs	N	23	467
V15.04	Allergy to seafood	N	23	467
V15.05	Allergy to other foods	N	23	467
V15.06	Allergy to insects	N	23	467
V15.07	Allergy to latex	N	23	467
V15.08	Allergy to radiographic dye	N	23	467
V15.09	Other allergy, other than to medicinal agents	N	23	467
V21.30	Unspecified low birth weight status	N	23	467
V21.31	Low birth weight status, less than 500 grams	N	23	467
V21.32	Low birth weight status, 500–999 grams	N	23	467
V21.33	Low birth weight status, 1000–1499 grams	N	23	467
V21.34	Low birth weight status, 1500–1999 grams	N	23	467
V21.35	Low birth weight status, 2000–2500 grams	N	23	467
V26.21	Fertility testing	N	23	467
V26.22	Aftercare following sterilization reversal	N	23	467
V26.29	Other investigation and testing	N	23	467
V42.84	Organ or tissue replaced by transplant, intestines	Y	23	467
V45.74	Acquired absence of organ, other parts of urinary tract	N	11	331, 332, 333
V45.75	Acquired absence of organ, stomach	N	23	467
V45.76	Acquired absence of organ, lung	N	4	101, 102
V45.77	Acquired absence of organ, genital organs	N	12	352
			13	358, 359, 369
V45.78	Acquired absence of organ, eye	N	2	46, 47, 48
V45.79	Other acquired absence of organ	N	23	467
V49.81	Postmenopausal status (age-related) (natural)	N	23	467
V49.89	Other specified conditions influencing health status	N	23	467
V56.31	Encounter for adequacy testing for hemodialysis	N	11	317
V56.32	Encounter for adequacy testing for peritoneal dialysis	N	11	317
V58.83	Encounter for therapeutic drug monitoring	N	23	465, 466
V67.00	Follow-up examination, following unspecified surgery	N	23	465, 466
V67.01	Following surgery, follow-up vaginal pap smear	N	23	465, 466
V67.09	Follow-up examination, following other surgery	N	23	465, 466
V71.81	Observation for suspected abuse and neglect	N	23	467
V71.89	Observation for other specified suspected conditions	N	23	467
V76.46	Special screening for malignant neoplasms, ovary	N	23	467
V76.47	Special screening for malignant neoplasms, Vagina	N	23	467
V76.50	Special screening for malignant neoplasms, unspecified intestine	N	23	467
V76.51	Special screening for malignant neoplasms, colon	N	23	467
V76.52	Special screening for malignant neoplasms, small intestine	N	23	467
V76.81	Special screening for malignant neoplasms, nervous system	N	23	467
V76.89	Special screening for other malignant neoplasm	N	23	467
V77.91	Screening for lipoid disorders	N	23	467
V77.99	Other and unspecified endocrine, nutritional, metabolic, and immunity disorders.	N	23	467
V82.81	Special screening for osteoporosis	N	23	467
V82.89	Special screening for other specified conditions	N	23	467

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
39.71	Endovascular implantation of graft in abdominal aorta	Y	5	110, 111
			11	315
			21	442, 443
			24	486

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
39.79	Other endovascular graft repair of aneurysm	Y	1	1, 2, 3
			5	110, 111
			11	315
			21	442, 443
			24	486
41.07	Autologous hematopoietic stem cell transplant with purging	Y	PRE	481
41.08	Allogeneic hematopoietic stem cell transplant with purging	Y	PRE	481
41.09	Autologous bone marrow transplant with purging	Y	PRE	481
46.97	Transplant of intestine	Y	6	148, 149
			7	201
			17	400, 406, 407
			21	442, 443
			24	486
60.96	Transurethral destruction of prostate tissue by microwave thermotherapy	Y	11	306, 307
			12	1336, 337
			UNR	476
60.97	Other transurethral destruction of prostate tissue by other thermotherapy	Y	11	306, 307
			12	336, 337
			UNR	476
99.75	Administration of neuroprotective agent	N		

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
294.1	Dementia in conditions classified elsewhere	N	19	429
372.8	Other disorders of conjunctiva	N	2	46, 47, 48
494	Bronchiectasis	Y	4	88
600	Hyperplasia of prostate	N	12	348, 349
645.00	Prolonged pregnancy, unspecified as to episode of care or not applicable	N	14	469
645.01	Prolonged pregnancy, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
645.03	Prolonged pregnancy, antepartum condition or complication	N	14	383, 384
707.1	Ulcer of lower limb, except decubitus	Y	9	263, 264, 271
781.9	Other symptoms involving nervous and musculoskeletal systems	N	1	34, 35
783.2	Abnormal loss of weight	N	10	296, 297, 298
783.4	Lack of expected normal physiological development	N	10	296, 297, 298
790.0	Abnormality of red blood cells	N	16	395, 396
V15.0	Allergy, other than to medicinal agents	N	23	467
V26.2	Investigation and testing	N	23	467
V49.8	Other specified problems influencing health status	N	23	467
V67.0	Follow-up examination following surgery	N	23	465, 466
V71.8	Observation for other specified suspected conditions	N	23	467
V76.8	Special screening for malignant neoplasms, other neoplasm	N	23	467
V77.9	Other and unspecified endocrine, nutritional, metabolic, and immunity disorders.	N	23	467
V82.8	Special screening for other specified conditions	N	23	467

TABLE 6D.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
564.1	Irritable bowel syndrome	N	6	182
				183
				184
V26.3	Genetic counseling and testing	N	23	467
V76.49	Special screening for malignant, other sites	N	23	467

TABLE 6E.—REVISED PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
41.01	Autologous bone marrow transplant without purging	Y	PRE	481
41.04	Autologous hematopoietic stem cell transplant without purging	Y	PRE	481
41.05	Allogeneic hematopoietic stem cell transplant without purging	Y	PRE	481

TABLE 6E.—REVISED PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
86.59	Closure of skin and subcutaneous tissue other sites	N		

TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST

[CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*0075	2818	70713	49312	01170	4870	01152	4829
00841	2824	70714	49322	01171	4950	01153	4830
00842	28260	70715	49392	01172	4951	01154	4831
00843	28261	70719	*49391	01173	4952	01155	4838
00844	28262	*4871	49302	01174	4953	01156	4841
00845	28263	4941	49312	01175	4954	01160	4843
00846	28269	*49300	49322	01176	4955	01161	4845
00847	2830	49302	49392	01180	4956	01162	4846
00849	28310	49312	*49392	01181	4957	01163	4847
*01790	28311	49322	49301	01182	4958	01164	4848
4941	28319	49392	49302	01183	4959	01165	485
*01791	2832	*49301	49311	01184	496	01166	486
4941	2839	49302	49312	01185	5060	01170	4870
*01792	2840	49312	49320	01186	5061	01171	4941
4941	2848	49322	49321	01190	5070	01172	4950
*01793	2849	49392	49322	01191	5071	01173	4951
4941	2850	*49302	49391	01192	5078	01174	4952
*01794	2851	49301	49392	01193	5080	01175	4953
4941	*29410	49302	*4940	01194	5081	01176	4954
*01795	2910	49311	01100	01195	515	01180	4955
4941	2911	49312	01101	01196	5160	01181	4956
*01796	2912	49320	01102	01200	5161	01182	4957
4941	2913	49321	01103	01201	5162	01183	4958
*28521	2914	49322	01104	01202	5163	01184	4959
2800	29181	49391	01105	01203	5168	01185	496
2814	29189	49392	01106	01204	5169	01186	5060
2818	2919	*49310	01110	01205	5171	01190	5061
2824	2920	49302	01111	01206	5172	01191	5070
28260	29211	49312	01112	01210	5178	01192	5071
28261	29212	49322	01113	01211	74861	01193	5078
28262	2922	49392	01114	01212	*4941	01194	5080
28263	29281	*49311	01115	01213	01100	01195	5081
28269	29282	49302	01116	01214	01101	01196	515
2830	29283	49312	01120	01215	01102	01200	5160
28310	29284	49322	01121	01216	01103	01201	5161
28311	29289	49392	01122	0310	01104	01202	5162
28319	2929	*49312	01123	11505	01105	01203	5163
2832	29381	49301	01124	11515	01106	01204	5168
2839	29382	49302	01125	1304	01110	01205	5169
2840	29383	49311	01126	1363	01111	01206	5171
2848	29384	49312	01130	481	01112	01210	5172
2849	*29411	49320	01131	4820	01113	01211	5178
2850	2910	49321	01132	4821	01114	01212	74861
2851	2911	49322	01133	4822	01115	01213	*496
*28522	2912	49391	01134	48230	01116	01214	4941
2800	2913	49392	01135	48231	01120	01215	*5061
2814	2914	*49320	01136	48232	01121	01216	4941
2818	29181	49302	01140	48239	01122	0310	*5064
2824	29189	49312	01141	48240	01123	11505	4941
28260	2919	49322	01142	48241	01124	11515	*5069
28261	2920	49392	01143	48249	01125	1304	4941
28262	29211	*49321	01144	48281	01126	1363	*5178
28263	29212	49302	01145	48282	01130	481	49302
28269	2922	49312	01146	48283	01131	4820	49312
2830	29281	49322	01150	48284	01132	4821	49322
28310	29282	49392	01151	48289	01133	4822	49392
28311	29283	*49322	01152	4829	01134	48230	*51889
28319	29284	49301	01153	4830	01135	48231	49302
2832	29289	49302	01154	4831	01136	48232	49312
2839	2929	49311	01155	4838	01140	48239	49322
2840	29381	49312	01156	4841	01141	48240	49392
2848	29382	49320	01160	4843	01142	48241	*5198
2849	29383	49321	01161	4845	01143	48249	49302
2850	29384	49322	01162	4846	01144	48281	49312
2851	*44023	49391	01163	4847	01145	48282	49322
*28529	70710	49392	01164	4848	01146	48283	49392
2800	70711	*49390	01165	485	01150	48284	*5199
2814	70712	49302	01166	486	01151	48289	49302
49312	*70712	V421					
49322	70710	V426					
49392	70711	V427					
*5583	70712	V4281					

TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

00841	70713	V4282
00842	70714	V4283
00843	70715	V4289
00844	70719	V432
00845	*70713	*99689
00846	70710	V4284
00847	70711	*99791
00849	70712	99687
*6000	70713	*99799
5980	70714	99687
5996	70715	*V4284
6010	70719	V4284
6012	*70714	*V4289
6013	70710	V4284
6021	70711	*V429
78820	70712	V4284
78829	70713	
*6001	70714	
5980	70715	
5996	70719	
6010	*70715	
6012	70710	
6013	70711	
6021	70712	
78820	70713	
78829	70714	
*6002	70715	
5980	70719	
5996	*70719	
6010	70710	
6012	70711	
6013	70712	
6021	70713	
78820	70714	
78829	70715	
*6003	70719	
5980	*7078	
5996	70710	
6010	70711	
6012	70712	
6013	70713	
6021	70714	
78820	70715	
78829	70719	
*6009	*7079	
5980	70710	
5996	70711	
6010	70712	
6012	70713	
6013	70714	
6021	70715	
78820	70719	
78829	*7098	
*70710	70710	
70710	70711	
70711	70712	
70712	70713	
70713	70714	
70714	70715	
70715	70719	
70719	*74861	
*70711	4941	
70710	*99680	
70711	99687	
70712	V4284	
70713	*99687	
70714	99680	
70715	99687	
70719	V420	

TABLE 6G.—DELETIONS TO THE CC EXCLUSIONS LIST

[CCs that are deleted from the list are in Table 6G—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*01790	01135	48231	6021
494	01136	48232	78820
*01791	01140	48239	78829
494	01141	48240	*7071
*01792	01142	48241	7071
494	01143	48249	*7078
*01793	01144	48281	7071
494	01145	48282	*7079
*01794	01146	48283	7071
494	01150	48284	*7096
*01795	01151	48289	7071
494	01152	4829	*74861
*01796	01153	4830	494
494	01154	4831	
*2941	01155	4838	
2910	01156	4841	
2911	01160	4843	
2912	01161	4845	
2913	01162	4846	
2914	01163	4847	
29181	01164	4848	
29189	01165	485	
2919	01166	486	

TABLE 6G.—DELETIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are deleted from the list are in Table 6G—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

2920	01170	4870
29211	01171	494
29212	01172	4950
2922	01173	4951
29281	01174	4952
29282	01175	4953
29283	01176	4954
29284	01180	4955
29289	01181	4956
2929	01182	4957
29381	01183	4958
29382	01184	4959
29383	01185	496
29384	01186	5060
*44023	01190	5061
7071	01191	5070
*4871	01192	5071
494	01193	5078
*494	01194	5080
01100	01195	5081
01101	01196	515
01102	01200	5160
01103	01201	5161

TABLE 6G.—DELETIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are deleted from the list are in Table 6G—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

01104	01202	5162
01105	01203	5163
01106	01204	5168
01110	01205	5169
01111	01206	5171
01112	01210	5172
01113	01211	5178
01114	01212	74861
01115	01213	*496
01116	01214	494
01120	01215	*5061
01121	01216	494
01122	0310	*5084
01123	11505	494
01124	11515	*5089
01125	1304	494
01126	1363	*800
01130	481	5960
01131	4820	5996
01132	4821	6010
01133	4822	6012
01134	48230	6013

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY

[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	35352	9.1033	2	3	6	12	19
2	7158	9.6855	3	5	7	12	19
4	6095	7.3505	1	2	5	9	16
5	95604	3.2875	1	1	2	4	7
6	341	3.2405	1	1	2	4	7
7	12148	10.2934	2	4	7	13	21
8	3705	3.0103	1	1	2	4	7
9	1657	6.4484	1	3	5	8	12
10	18437	6.5993	2	3	5	8	13
11	3331	4.1654	1	2	3	5	8
12	45110	6.0509	2	3	4	7	11
13	6256	5.0973	2	3	4	6	9
14	331649	5.9608	2	3	5	7	11
15	140366	3.6304	1	2	3	5	7
16	11170	6.1346	2	3	5	7	12
17	3453	3.3687	1	2	3	4	6
18	26134	5.5426	2	3	4	7	10
19	8011	3.7410	1	2	3	5	7
20	5780	10.2894	3	5	8	13	20
21	1368	6.8575	2	3	5	9	13
22	2519	4.9389	2	2	4	6	9
23	8375	4.2302	1	2	3	5	8
24	52871	5.0135	1	2	4	6	10
25	24604	3.3081	1	2	3	4	6
26	20	3.2000	1	1	2	3	7
27	3645	5.1084	1	1	3	6	12
28	10833	6.2260	1	3	5	8	13
29	3985	3.7064	1	2	3	5	7
31	3301	4.2293	1	2	3	5	8
32	1585	2.7356	1	1	2	3	5
34	19657	5.1974	1	2	4	6	10
35	5225	3.4195	1	2	3	4	6
36	4249	1.3641	1	1	1	1	2
37	1494	3.6921	1	1	3	5	8
38	115	2.5304	1	1	1	3	5
39	1160	1.9112	1	1	1	2	4
40	1765	3.5955	1	1	2	4	8
41	1	4.0000	4	4	4	4	4
42	2723	2.2277	1	1	1	3	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
43	86	3.3605	1	2	3	4	7
44	1237	4.9871	2	3	4	6	9
45	2509	3.2790	1	2	3	4	6
46	2971	4.5796	1	2	4	6	9
47	1180	3.3034	1	1	3	4	6
49	2245	4.9875	1	2	4	6	9
50	2587	1.9849	1	1	1	2	3
51	264	2.5303	1	1	1	3	6
52	198	2.1414	1	1	1	2	5
53	2594	3.6727	1	1	2	4	8
54	4	1.5000	1	1	1	1	3
55	1573	2.8843	1	1	1	3	6
56	533	3.0507	1	1	2	4	6
57	587	3.9842	1	1	2	4	8
59	115	2.5304	1	1	2	3	5
60	2	1.0000	1	1	1	1	1
61	212	4.8302	1	1	2	6	13
62	2	3.5000	2	2	5	5	5
63	3207	4.2728	1	2	3	5	9
64	3189	6.5124	1	2	4	8	14
65	31923	2.8964	1	1	2	4	5
66	6984	3.1714	1	1	3	4	6
67	482	3.5270	1	2	3	4	7
68	13482	4.1567	1	2	3	5	8
69	4254	3.2795	1	2	3	4	6
70	33	2.9091	1	2	3	4	5
71	105	3.8667	1	2	3	6	7
72	824	3.2961	1	2	3	4	6
73	6461	4.3439	1	2	3	5	8
75	39513	10.0058	3	5	8	12	20
76	40171	11.2717	3	5	9	14	21
77	2385	4.8776	1	2	4	7	10
78	30651	6.9464	3	5	6	8	11
79	183896	8.4642	3	4	7	11	16
80	8331	5.6766	2	3	5	7	10
81	5	9.2000	2	2	10	10	19
82	64149	6.9422	2	3	5	9	14
83	6603	5.5326	2	3	4	7	10
84	1549	3.3719	1	2	3	4	6
85	20158	6.3636	2	3	5	8	12
86	1940	3.7845	1	2	3	5	7
87	63294	6.2499	1	3	5	8	12
88	405792	5.2217	2	3	4	7	9
89	526310	6.0247	2	3	5	7	11
90	51516	4.2278	2	3	4	5	7
91	49	3.3469	1	2	3	4	5
92	13842	6.2457	2	3	5	8	12
93	1557	3.9878	1	2	3	5	7
94	12470	6.3005	2	3	5	8	12
95	1589	3.6916	1	2	3	5	7
96	65180	4.7269	2	3	4	6	8
97	31758	3.6849	1	2	3	5	7
98	20	4.7000	1	1	3	6	7
99	18316	3.2260	1	1	2	4	6
100	7279	2.2124	1	1	2	3	4
101	19689	4.4315	1	2	3	6	8
102	5030	2.7356	1	1	2	3	5
103	461	49.5466	9	12	30	68	118
104	33364	11.6306	3	6	10	15	22
105	29546	9.2855	4	5	7	11	17
106	3820	11.2010	5	7	9	13	19
107	91043	10.3489	5	7	9	12	17
108	5267	10.5590	3	5	8	13	20
109	61942	7.7332	4	5	6	9	13
110	55263	9.4599	2	5	8	11	16
111	7172	5.4762	2	4	5	7	8
112	61239	3.7597	1	1	3	5	8
113	44445	12.0916	3	6	9	15	24
114	8543	8.2800	2	4	7	10	16
115	14129	8.4099	1	4	7	11	16

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
116	309840	3.7279	1	1	3	5	8
117	3419	4.0433	1	1	2	5	9
118	6687	2.8065	1	1	1	3	6
119	1461	4.8542	1	1	3	6	12
120	36980	8.1173	1	2	5	10	18
121	164131	6.4386	2	3	5	8	12
122	81181	3.8293	1	2	3	5	7
123	41102	4.5805	1	1	3	6	11
124	135568	4.3735	1	2	3	6	8
125	75438	2.7854	1	1	2	4	5
126	5171	11.7343	3	6	9	14	23
127	683849	5.3364	2	3	4	7	10
128	11601	5.8042	3	4	5	7	9
129	4224	2.8570	1	1	1	3	7
130	89606	5.8064	2	3	5	7	10
131	27035	4.3769	1	3	4	6	7
132	153726	3.0483	1	1	2	4	6
133	7633	2.3958	1	1	2	3	4
134	33046	3.2976	1	2	3	4	6
135	7144	4.4709	1	2	3	5	9
136	1170	2.9103	1	1	2	4	6
138	192439	4.0078	1	2	3	5	8
139	77691	2.5071	1	1	2	3	5
140	76921	2.7133	1	1	2	3	5
141	86225	3.7087	1	2	3	5	7
142	42891	2.6783	1	1	2	3	5
143	186941	2.1669	1	1	2	3	4
144	79553	5.3212	1	2	4	7	11
145	6948	2.8094	1	1	2	4	5
146	11289	10.1758	5	7	9	12	17
147	2427	6.6135	3	5	6	8	10
148	135012	12.1210	5	7	10	14	22
149	17660	6.6535	4	5	6	8	10
150	20425	11.1526	4	7	9	14	20
151	4513	5.9280	2	3	5	8	10
152	4470	8.1953	3	5	7	10	14
153	1931	5.4604	3	4	5	7	8
154	29554	13.2574	4	7	10	16	25
155	6109	4.3495	1	2	3	6	8
156	2	28.0000	28	28	28	28	28
157	8234	5.4966	1	2	4	7	11
158	4427	2.6286	1	1	2	3	5
159	16536	5.0206	1	2	4	6	10
160	11065	2.7237	1	1	2	4	5
161	11551	4.1674	1	2	3	5	9
162	7067	1.9544	1	1	1	2	4
163	10	2.9000	1	1	3	3	6
164	4748	8.3981	4	5	7	10	14
165	1953	4.8561	2	3	5	6	8
166	3332	5.0789	2	3	4	6	9
167	2935	2.7097	1	2	2	3	5
168	1530	4.8556	1	2	3	6	9
169	810	2.4247	1	1	2	3	5
170	11351	11.1690	2	5	8	14	23
171	1132	4.8012	1	2	4	6	9
172	30708	6.9805	2	3	5	9	14
173	2516	3.8557	1	1	3	5	8
174	237582	4.8236	2	3	4	6	9
175	28223	2.9429	1	2	3	4	5
176	15708	5.2687	2	3	4	6	10
177	9539	4.5524	2	2	4	6	8
178	3601	3.1427	1	2	3	4	6
179	12290	6.0134	2	3	5	7	11
180	85528	5.3979	2	3	4	7	10
181	24458	3.4102	1	2	3	4	6
182	234044	4.3621	1	2	3	5	8
183	79010	2.9636	1	1	2	4	6
184	99	3.2525	1	2	3	4	5
185	4361	4.5015	1	2	3	6	9
186	2	4.5000	2	2	7	7	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
187	747	3.8220	1	2	3	5	8
188	75016	5.5813	1	2	4	7	11
189	11186	3.1402	1	1	2	4	6
190	70	5.9857	2	3	4	6	11
191	9437	7.1379	4	7	10	18	28
192	984	6.5996	2	4	6	8	11
193	5705	12.5550	5	7	10	15	23
194	763	6.7720	2	4	6	8	12
195	4898	9.8944	4	6	8	12	17
196	1197	5.6942	2	4	5	7	9
197	20367	8.7332	3	5	7	11	16
198	6123	4.5065	2	3	4	6	8
199	1745	9.6682	3	4	8	13	19
200	1084	10.7694	2	4	8	14	22
201	1483	13.8206	3	6	11	18	27
202	25781	6.5065	2	3	5	8	13
203	29166	6.6874	2	3	5	9	13
204	55210	5.8583	2	3	4	7	11
205	22715	6.2907	2	3	5	8	12
206	1792	3.8337	1	2	3	5	7
207	30992	5.1140	1	2	4	6	10
208	9690	2.8994	1	1	2	4	6
209	343780	5.1256	3	3	4	6	8
210	127326	6.8134	3	4	6	8	11
211	31422	4.9172	3	4	4	6	7
212	7	3.0000	2	2	2	3	4
213	8933	8.7283	2	4	7	11	17
216	5871	9.7806	2	4	7	12	20
217	17768	13.1592	3	5	9	16	26
218	21587	5.3674	2	3	4	6	10
219	19362	3.2516	1	2	3	4	5
220	3	2.3333	1	1	2	4	4
223	17578	2.5962	1	1	2	3	5
224	8041	2.0520	1	1	2	3	4
225	5639	4.7074	1	2	3	6	10
226	5033	6.3012	1	2	4	8	13
227	4462	2.6627	1	1	2	3	5
228	2477	3.5620	1	1	2	4	6
229	1092	2.4011	1	1	2	3	5
230	2116	5.0965	1	2	3	6	10
231	10738	4.8361	1	2	3	6	10
232	571	3.5692	1	1	2	4	9
233	4606	7.7129	2	3	6	10	16
234	2701	3.5724	1	2	3	4	7
235	5378	5.1264	1	2	4	6	10
236	38845	4.8570	1	3	4	6	9
237	1587	3.7284	1	2	3	5	7
238	7674	8.4730	3	4	6	10	16
239	51992	6.2172	2	3	5	8	12
240	11950	6.5921	2	3	5	8	13
241	2981	3.9410	1	2	3	5	7
242	2498	6.5524	2	3	5	8	12
243	85571	4.7006	1	3	4	6	9
244	11962	4.7800	1	2	4	6	9
245	4967	3.7246	1	2	3	4	7
246	1344	3.6384	1	2	3	4	7
247	15158	3.4474	1	1	3	4	7
248	9412	4.7385	1	2	4	6	9
249	10792	3.7782	1	1	3	5	8
250	3543	4.2484	1	2	3	5	8
251	2382	2.9866	1	1	3	4	5
252	1	2.0000	2	2	2	2	2
253	19064	4.6962	1	3	4	6	9
254	10447	3.2049	1	2	3	4	6
255	1	1.0000	1	1	1	1	1
256	5875	5.1384	1	2	4	6	10
257	16895	2.8284	1	2	2	3	5
258	15820	2.0011	1	1	2	2	3
259	3743	2.7919	1	1	1	3	6
260	4815	1.4332	1	1	1	2	2

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
261	1766	2.1682	1	1	1	2	4
262	686	3.7886	1	1	3	5	7
263	24706	11.6014	3	5	8	14	23
264	3910	6.9575	2	3	5	8	14
265	3905	6.6197	1	2	4	8	14
266	2557	3.3136	1	1	2	4	7
267	257	5.2140	1	1	3	6	12
268	915	3.6907	1	1	2	4	8
269	8941	8.2543	2	3	6	10	16
270	2767	3.2754	1	1	2	4	7
271	21233	7.1222	2	4	6	8	13
272	5503	6.3353	2	3	5	8	12
273	1346	4.2132	1	2	3	5	8
274	2381	6.9475	2	3	5	9	14
275	229	3.3886	1	1	2	4	7
276	1089	4.6272	1	2	4	6	9
277	84246	5.7203	2	3	5	7	10
278	28748	4.3341	2	3	4	5	7
279	5	5.4000	2	2	5	5	11
280	15232	4.1962	1	2	3	5	8
281	6791	3.0711	1	1	3	4	6
283	5370	4.5551	1	2	3	6	9
284	1858	3.1975	1	1	2	4	6
285	6174	10.4691	3	5	8	13	20
286	2009	6.2225	2	3	5	7	11
287	6029	10.5382	3	5	8	13	20
288	2316	5.6973	2	3	4	6	9
289	4349	3.1474	1	1	2	3	7
290	8262	2.4317	1	1	2	2	4
291	58	1.6379	1	1	1	2	2
292	4999	9.9930	2	4	7	13	21
293	326	5.0644	1	2	4	7	10
294	84584	4.7150	1	2	4	6	9
295	3506	3.8811	1	2	3	5	7
296	233633	5.2417	2	3	4	6	10
297	41115	3.4726	1	2	3	4	6
298	112	3.1429	1	2	2	4	6
299	1067	5.6148	1	2	4	6	11
300	15674	6.1301	2	3	5	8	12
301	3130	3.7089	1	2	3	5	7
302	7834	9.3957	4	5	7	11	16
303	19520	8.4840	4	5	7	10	15
304	12114	8.9145	2	4	7	11	18
305	2886	3.8486	1	2	3	5	7
306	7971	5.4874	1	2	3	7	12
307	2231	2.2761	1	1	2	3	4
308	7729	6.3946	1	2	4	8	14
309	3973	2.4896	1	1	2	3	5
310	23848	4.3651	1	2	3	5	9
311	8261	1.8895	1	1	1	2	3
312	1576	4.5184	1	1	3	6	10
313	633	2.1137	1	1	1	3	4
314	2	1.0000	1	1	1	1	1
315	28842	7.5038	1	1	5	10	17
316	97171	6.6773	2	3	5	8	13
317	1237	3.1997	1	1	2	3	6
318	5569	6.0084	1	3	4	7	12
319	468	2.8782	1	1	2	4	6
320	182681	5.3860	2	3	4	7	10
321	28362	3.8457	1	2	3	5	7
322	72	4.1111	1	2	3	5	7
323	16489	3.2195	1	1	2	4	7
324	7423	1.8792	1	1	1	2	3
325	7844	3.8986	1	2	3	5	7
326	2434	2.6619	1	1	2	3	5
327	8	8.2500	1	1	1	4	13
328	724	3.8909	1	1	3	5	8
329	106	2.0472	1	1	1	3	4
331	43627	5.5325	1	2	4	7	11
332	4854	3.2701	1	1	2	4	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
333	306	5.0163	1	2	3	6	10
334	12207	4.8955	2	3	4	6	8
335	11491	3.4115	2	3	3	4	5
336	40724	3.5245	1	2	3	4	7
337	30688	2.1779	1	1	2	3	3
338	1647	5.3024	1	2	3	7	12
339	1514	4.5594	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3866	3.2219	1	1	2	3	7
342	778	3.1221	1	2	2	4	6
344	3962	2.2532	1	1	1	2	4
345	1285	3.7681	1	1	2	5	8
346	4659	5.8032	1	3	4	7	11
347	399	3.3734	1	1	2	4	7
348	3125	4.2074	1	2	3	5	8
349	595	2.6101	1	1	2	3	5
350	6202	4.3955	2	2	4	5	8
352	651	3.8218	1	2	3	5	8
353	2646	6.7154	3	3	5	8	13
354	8252	5.8838	3	3	4	7	10
355	5732	3.3217	2	3	3	4	5
356	26097	2.4163	1	1	2	3	4
357	5799	8.5049	3	4	7	10	16
358	21776	4.3958	2	3	3	5	8
359	29307	2.8120	2	2	3	3	4
360	16206	2.9646	1	2	2	3	5
361	427	3.4637	1	1	2	4	7
362	2	2.0000	1	1	3	3	3
363	3100	3.4668	1	2	2	3	7
364	1626	3.5689	1	1	2	5	7
365	1936	7.2758	1	3	5	9	16
366	4266	6.7203	1	3	5	8	14
367	478	3.1695	1	1	2	4	7
368	2889	6.7196	2	3	5	8	13
369	2858	3.1963	1	1	2	4	6
370	1175	5.7174	3	3	4	5	9
371	1232	3.6445	2	3	3	4	5
372	942	3.4809	1	2	2	3	5
373	3992	2.2856	1	2	2	2	3
374	138	3.3696	1	2	2	3	5
375	6	2.6667	2	2	2	3	3
376	260	3.4577	1	2	2	4	7
377	54	3.8333	1	1	2	5	8
378	156	2.3333	1	1	2	3	4
379	370	3.0676	1	1	2	3	6
380	77	2.1688	1	1	2	2	4
381	179	1.9441	1	1	1	2	3
382	43	1.4884	1	1	1	2	2
383	1582	3.8957	1	1	3	5	8
384	128	2.2969	1	1	1	2	4
389	8	5.8750	3	3	4	8	10
390	20	3.9500	1	1	3	6	8
392	2524	9.4624	3	4	7	12	19
393	2	7.5000	7	7	8	8	8
394	1742	6.6791	1	2	4	8	15
395	81014	4.5335	1	2	3	6	9
396	20	3.8000	1	1	2	5	7
397	18191	5.2238	1	2	4	7	10
398	18207	5.9565	2	3	5	7	11
399	1633	3.5536	1	2	3	4	7
400	6897	9.0738	1	3	6	12	20
401	5881	11.1770	2	5	8	14	23
402	1501	3.9480	1	1	3	5	8
403	33467	8.0557	2	3	6	10	17
404	4520	4.2199	1	2	3	6	9
406	2572	10.3476	3	4	7	13	21
407	701	4.4051	1	2	4	6	8
408	2260	7.7088	1	2	5	10	18
409	3308	5.9344	2	3	4	6	11
410	41166	3.7183	1	2	3	5	6

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
411	13	2.3077	1	1	2	4	4
412	29	2.7241	1	1	2	3	6
413	6216	7.2497	2	3	6	9	14
414	721	4.0902	1	2	3	5	8
415	40206	14.2110	4	6	11	18	28
416	196848	7.3514	2	4	6	9	14
417	36	5.8889	1	1	4	6	13
418	22285	6.1233	2	3	5	7	11
419	15990	4.8206	2	2	4	6	9
420	3108	3.5618	1	2	3	4	6
421	12326	3.8695	1	2	3	5	7
422	98	5.2551	1	2	2	5	7
423	8137	8.1292	2	3	6	10	17
424	1368	13.4561	2	5	9	16	28
425	15108	4.0764	1	2	3	5	8
426	4357	4.5582	1	2	3	6	9
427	1679	4.9803	1	2	3	6	10
428	849	7.0813	1	2	4	8	15
429	27615	6.4861	2	3	5	8	12
430	58361	8.1902	2	3	6	10	16
431	297	6.5758	2	3	5	8	13
432	394	4.8020	1	2	3	5	9
433	5831	3.0045	1	1	2	4	6
434	22063	5.0861	1	2	4	6	9
435	14652	4.3057	1	2	4	5	8
436	3548	12.8503	4	7	11	17	25
437	9841	8.9511	3	5	8	11	15
439	1306	8.1646	1	3	5	10	17
440	5063	8.8766	2	3	6	10	19
441	585	3.2496	1	1	2	4	7
442	16061	8.2365	1	3	6	10	17
443	3586	3.3943	1	1	2	4	7
444	5210	4.2263	1	2	3	5	8
445	2276	2.9921	1	1	2	4	5
447	4891	2.5113	1	1	2	3	5
448	1	4.0000	4	4	4	4	4
449	26785	3.6730	1	1	3	4	7
450	6439	2.0449	1	1	1	2	4
451	1	1.0000	1	1	1	1	1
452	21849	4.9674	1	2	3	6	10
453	4499	2.8137	1	1	2	3	5
454	4999	4.5603	1	2	3	6	9
455	1083	2.6214	1	1	2	3	5
461	3396	4.6184	1	1	2	5	11
462	12718	11.5531	4	6	9	15	21
463	19068	4.2743	1	2	3	5	8
464	5509	3.0764	1	1	2	4	6
465	228	3.3509	1	1	2	3	7
466	1752	3.9258	1	1	2	4	8
467	1320	4.0485	1	1	2	4	7
468	58920	12.9558	3	6	10	17	26
471	11488	5.7349	3	4	5	6	9
473	7674	12.8610	2	3	7	19	32
475	109697	11.1882	2	5	9	15	22
476	4474	11.6623	2	5	10	15	22
477	25946	8.1242	1	3	6	10	17
478	111979	7.3211	1	3	5	9	15
479	22533	3.6234	1	2	3	5	7
480	500	19.4980	7	9	14	23	39
481	274	26.7372	16	19	23	31	43
482	6178	12.8124	4	7	10	15	24
483	43726	39.1790	14	21	32	49	71
484	340	13.0853	2	5	10	18	28
485	3002	9.4867	4	5	7	11	18
486	2127	12.1208	1	5	9	16	25
487	3666	7.6328	1	3	6	10	15
488	779	16.9718	4	7	12	21	34
489	14444	8.5516	2	3	6	10	18
490	5357	5.1286	1	2	4	6	10
491	11403	3.4912	2	2	3	4	6

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
492	2695	16.1221	4	5	9	26	34
493	54404	5.7190	1	3	5	7	11
494	27453	2.4829	1	1	2	3	5
495	156	20.5000	6	8	12	19	33
496	1293	10.0093	4	5	7	12	18
497	22769	6.2233	2	3	5	7	11
498	19358	3.4145	1	2	3	4	6
499	30924	4.7726	1	2	4	6	9
500	42404	2.6896	1	1	2	3	5
501	1959	10.5630	4	5	8	13	20
502	621	5.9775	2	3	5	7	10
503	5625	3.9733	1	2	3	5	7
504	124	30.4677	10	15	25	40	63
505	155	4.7161	1	1	2	6	12
506	968	17.5651	4	8	14	24	37
507	285	9.2491	2	4	7	13	19
508	648	7.1605	2	3	5	9	15
509	167	6.0719	1	2	4	8	12
510	1673	7.8171	2	3	5	9	17
511	605	4.4413	1	1	3	6	10
	11001029						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY

[FY99 MEDPAR update 03/00 Grouper V.18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	35352	9.1033	2	3	6	12	19
2	7158	9.6855	3	5	7	12	19
4	6095	7.3505	1	2	5	9	16
5	95604	3.2875	1	1	2	4	7
6	341	3.2405	1	1	2	4	7
7	12147	10.2938	2	4	7	13	21
8	3706	3.0108	1	1	2	4	7
9	1657	6.4484	1	3	5	8	12
10	18433	6.5983	2	3	5	8	13
11	3335	4.1739	1	2	3	5	8
12	45110	6.0509	2	3	4	7	11
13	6256	5.0973	2	3	4	6	9
14	331649	5.9608	2	3	5	7	11
15	140366	3.6304	1	2	3	5	7
16	11166	6.1358	2	3	5	7	12
17	3457	3.3679	1	2	3	4	6
18	26127	5.5433	2	3	4	7	10
19	8018	3.7403	1	2	3	5	7
20	5780	10.2894	3	5	8	13	20
21	1368	6.8575	2	3	5	9	13
22	2519	4.9389	2	2	4	6	9
23	8375	4.2302	1	2	3	5	8
24	52856	5.0134	1	2	4	6	10
25	24619	3.3092	1	2	3	4	6
26	20	3.2000	1	1	2	3	7
27	3645	5.1084	1	1	3	6	12
28	10832	6.2250	1	3	5	8	13
29	3985	3.7064	1	2	3	5	7
31	3299	4.2301	1	2	3	5	8
32	1587	2.7360	1	1	2	3	5
34	19649	5.1979	1	2	4	6	10
35	5233	3.4204	1	2	3	4	6
36	4249	1.3641	1	1	1	1	2
37	1494	3.6921	1	1	3	5	8
38	115	2.5304	1	1	1	3	5
39	1160	1.9112	1	1	1	2	4
40	1765	3.5955	1	1	2	4	8
41	1	4.0000	4	4	4	4	4
42	2723	2.2277	1	1	1	3	5
43	86	3.3605	1	2	3	4	7

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V.18,0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
44	1237	4.9871	2	3	4	6	9
45	2509	3.2790	1	2	3	4	6
46	2970	4.5805	1	2	4	6	9
47	1181	3.3023	1	1	3	4	6
49	2245	4.9675	1	2	4	6	9
50	2587	1.9849	1	1	1	2	3
51	264	2.5303	1	1	1	3	6
52	198	2.1414	1	1	1	2	5
53	2594	3.6727	1	1	2	4	8
54	4	1.5000	1	1	1	1	3
55	1573	2.8843	1	1	1	3	6
56	533	3.0507	1	1	2	4	6
57	587	3.9642	1	1	2	4	8
59	115	2.5304	1	1	2	3	5
60	2	1.0000	1	1	1	1	1
61	212	4.8302	1	1	2	6	13
62	2	3.5000	2	2	5	5	5
63	3207	4.2728	1	2	3	5	9
64	3189	6.5124	1	2	4	8	14
65	31923	2.8964	1	1	2	4	5
66	6984	3.1714	1	1	3	4	6
67	482	3.5270	1	2	3	4	7
68	13468	4.1556	1	2	3	5	7
69	4268	3.2856	1	2	3	4	6
70	33	2.9091	1	2	3	4	5
71	105	3.8667	1	2	3	6	7
72	824	3.2961	1	2	3	4	6
73	6461	4.3439	1	2	3	5	8
75	39513	10.0058	3	5	8	12	20
76	40109	11.2755	3	5	9	14	21
77	2447	4.9775	1	2	4	7	10
78	30651	6.9464	3	5	6	8	11
79	183420	8.4683	3	4	7	11	16
80	8807	5.7434	2	3	5	7	10
81	5	9.2000	2	2	10	10	19
82	64149	6.9422	2	3	5	9	14
83	6599	5.5342	2	3	4	7	10
84	1553	3.3709	1	2	3	4	6
85	20150	6.3637	2	3	5	8	12
86	1948	3.7936	1	2	3	5	7
87	63294	6.2499	1	3	5	8	12
88	405792	5.2217	2	3	4	7	9
89	525499	6.0257	2	3	5	7	11
90	52326	4.2457	2	3	4	5	7
91	49	3.3469	1	2	3	4	5
92	13772	6.2509	2	3	5	8	12
93	1627	4.0412	1	2	3	5	7
94	12463	6.3016	2	3	5	8	12
95	1596	3.6942	1	2	3	5	7
96	65045	4.7268	2	3	4	6	8
97	31893	3.6895	1	2	3	5	7
98	20	4.7000	1	1	3	6	7
99	18262	3.2254	1	1	2	4	6
100	7333	2.2215	1	1	2	3	4
101	19863	4.4312	1	2	3	6	8
102	5056	2.7455	1	1	2	3	5
103	480	51.7875	9	13	31	70	121
104	33648	11.6443	3	6	10	15	22
105	29689	9.3034	4	5	7	11	17
106	3805	11.2100	5	7	9	13	19
107	90905	10.3450	5	7	9	12	17
108	5246	10.5442	3	5	8	13	20
109	61881	7.7309	4	5	6	9	13
110	55081	9.4414	2	5	8	11	18
111	7168	5.4788	2	4	5	7	8
112	61237	3.7595	1	1	3	5	8
113	44445	12.0916	3	6	9	15	24
114	8543	8.2800	2	4	7	10	16
115	14129	8.4099	1	4	7	11	16
116	309839	3.7278	1	1	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V.18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
117	3419	4.0433	1	1	2	5	9
118	6687	2.8065	1	1	1	3	6
119	1461	4.8542	1	1	3	6	12
120	36979	8.1175	1	2	5	10	18
121	164131	6.4386	2	3	5	8	12
122	81161	3.8293	1	2	3	5	7
123	41101	4.5805	1	1	3	6	11
124	135568	4.3735	1	2	3	6	8
125	75438	2.7854	1	1	2	4	5
126	5171	11.7343	3	6	9	14	23
127	683849	5.3364	2	3	4	7	10
128	11601	5.8042	3	4	5	7	9
129	4224	2.8570	1	1	1	3	7
130	89585	5.8066	2	3	5	7	10
131	27056	4.3774	1	3	4	6	7
132	153720	3.0483	1	1	2	4	6
133	7639	2.3961	1	1	2	3	4
134	33046	3.2976	1	2	3	4	6
135	7143	4.4714	1	2	3	5	9
136	1171	2.9086	1	1	2	4	6
138	192312	4.0086	1	2	3	5	8
139	77818	2.5076	1	1	2	3	5
140	76921	2.7133	1	1	2	3	5
141	86200	3.7088	1	2	3	5	7
142	42916	2.6786	1	1	2	3	5
143	186941	2.1669	1	1	2	3	4
144	79537	5.3212	1	2	4	7	11
145	6964	2.8153	1	1	2	4	6
146	11289	10.1758	5	7	9	12	17
147	2427	6.6135	3	5	6	8	10
148	134992	12.1212	5	7	10	14	22
149	17679	6.6565	4	5	6	8	10
150	20422	11.1531	4	7	9	14	20
151	4516	5.9289	2	3	5	8	10
152	4469	8.1962	3	5	7	10	14
153	1932	5.4596	3	4	5	7	8
154	29550	13.2586	4	7	10	16	25
155	6113	4.3496	1	2	3	6	8
156	2	28.0000	28	28	28	28	28
157	8234	5.4966	1	2	4	7	11
158	4427	2.6286	1	1	2	3	5
159	16531	5.0216	1	2	4	6	10
160	11070	2.7232	1	1	2	4	5
161	11547	4.1684	1	2	3	5	9
162	7071	1.9542	1	1	1	2	4
163	10	2.9000	1	1	3	3	6
164	4747	8.3994	4	5	7	10	14
165	1954	4.8547	2	3	5	6	8
166	3331	5.0793	2	3	4	6	9
167	2936	2.7101	1	2	2	3	5
168	1530	4.6556	1	2	3	6	9
169	810	2.4247	1	1	2	3	5
170	11351	11.1690	2	5	8	14	23
171	1132	4.8012	1	2	4	6	9
172	30705	6.9802	2	3	5	9	14
173	2519	3.8626	1	1	3	5	8
174	237539	4.8239	2	3	4	6	9
175	28266	2.9435	1	2	3	4	5
176	15708	5.2687	2	3	4	6	10
177	9537	4.5531	2	2	4	6	8
178	3603	3.1415	1	2	3	4	6
179	12290	6.0134	2	3	5	7	11
180	85505	5.3984	2	3	4	7	10
181	24481	3.4105	1	2	3	4	6
182	233949	4.3625	1	2	3	5	8
183	79105	2.9644	1	1	2	4	6
184	99	3.2525	1	2	3	4	5
185	4361	4.5015	1	2	3	6	9
186	2	4.5000	2	2	7	7	7
187	747	3.8220	1	2	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR update 03/00 Grouper V.18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
188	75007	5.5817	1	2	4	7	11
189	11195	3.1401	1	1	2	4	6
190	70	5.9857	2	3	4	6	11
191	9434	14.1406	4	7	10	18	28
192	987	6.5968	2	4	6	8	11
193	5705	12.5550	5	7	10	15	23
194	763	6.7720	2	4	6	8	12
195	4898	9.8944	4	6	8	12	17
196	1197	5.6942	2	4	5	7	9
197	20365	8.7337	3	5	7	11	16
198	6125	4.5063	2	3	4	6	8
199	1745	9.6682	3	4	8	13	19
200	1084	10.7694	2	4	8	14	22
201	1483	13.8206	3	6	11	18	27
202	25781	6.5065	2	3	5	8	13
203	29166	6.6874	2	3	5	9	13
204	55210	5.8583	2	3	4	7	11
205	22715	6.2907	2	3	5	8	12
206	1792	3.8337	1	2	3	5	7
207	30984	5.1140	1	2	4	6	10
208	9698	2.9013	1	1	2	4	6
209	343780	5.1256	3	3	4	6	8
210	127278	6.8141	3	4	6	8	11
211	31470	4.9173	3	4	4	6	7
212	7	3.0000	2	2	2	3	4
213	8933	8.7283	2	4	7	11	17
216	5871	9.7808	2	4	7	12	20
217	17768	13.1592	3	5	9	16	28
218	21572	5.3690	2	3	4	6	10
219	19377	3.2517	1	2	3	4	5
220	3	2.3333	1	1	2	4	4
223	17575	2.5861	1	1	2	3	5
224	8044	2.0525	1	1	2	3	4
225	5639	4.7074	1	2	3	6	10
226	4927	6.3028	1	2	4	8	13
227	4410	2.6689	1	1	2	3	5
228	2477	3.5620	1	1	2	4	8
229	1092	2.4011	1	1	2	3	5
230	2274	5.0721	1	2	3	6	10
231	10738	4.8361	1	2	3	6	10
232	571	3.5692	1	1	2	4	9
233	4607	7.7141	2	3	6	10	16
234	2702	3.5718	1	2	3	4	7
235	5378	5.1264	1	2	4	6	10
236	38845	4.8570	1	3	4	6	9
237	1587	3.7284	1	2	3	5	7
238	7674	8.4730	3	4	6	10	16
239	51992	6.2172	2	3	5	8	12
240	11944	6.5936	2	3	5	8	13
241	2987	3.9404	1	2	3	5	7
242	2498	6.5524	2	3	5	8	12
243	85571	4.7006	1	3	4	6	9
244	11961	4.7800	1	2	4	6	9
245	4968	3.7246	1	2	3	4	7
246	1344	3.6384	1	2	3	4	7
247	15158	3.4474	1	1	3	4	7
248	9412	4.7385	1	2	4	6	9
249	10792	3.7782	1	1	3	5	8
250	3542	4.2490	1	2	3	5	8
251	2383	2.9662	1	1	3	4	5
252	1	2.0000	2	2	2	2	2
253	19051	4.6987	1	3	4	6	9
254	10460	3.2059	1	2	3	4	6
255	1	1.0000	1	1	1	1	1
256	5875	5.1384	1	2	4	6	10
257	16871	2.8291	1	2	2	3	5
258	15844	2.0016	1	1	2	2	3
259	3741	2.7928	1	1	1	3	6
260	4817	1.4330	1	1	1	2	2
261	1766	2.1682	1	1	1	2	4

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY99 MEDPAR update 03/00 Grouper V.18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
262	686	3.7886	1	1	3	5	7
263	24706	11.6014	3	5	8	14	23
264	3910	6.9575	2	3	5	8	14
265	3904	6.6201	1	2	4	8	14
266	2558	3.3143	1	1	2	4	7
267	257	5.2140	1	1	3	6	12
268	915	3.6907	1	1	2	4	8
269	8938	8.2558	2	3	6	10	16
270	2770	3.2762	1	1	2	4	7
271	21233	7.1222	2	4	6	8	13
272	5501	6.3356	2	3	5	8	12
273	1348	4.2151	1	2	3	5	8
274	2381	6.9475	2	3	5	9	14
275	229	3.3886	1	1	2	4	7
276	1089	4.6272	1	2	4	6	9
277	84223	5.7207	2	3	5	7	10
278	28771	4.3340	2	3	4	5	7
279	5	5.4000	2	2	5	5	11
280	15227	4.1968	1	2	3	5	8
281	6796	3.0705	1	1	3	4	6
283	5368	4.5561	1	2	3	6	9
284	1860	3.1962	1	1	2	4	6
285	6166	10.4710	3	5	8	13	20
286	2009	6.2225	2	3	5	7	11
287	6029	10.5382	3	5	8	13	20
288	2324	5.7087	2	3	4	6	9
289	4349	3.1474	1	1	2	3	7
290	8262	2.4317	1	1	2	2	4
291	58	1.6379	1	1	1	2	2
292	4999	9.9930	2	4	7	13	21
293	326	5.0644	1	2	4	7	10
294	84584	4.7150	1	2	4	6	9
295	3506	3.8811	1	2	3	5	7
296	233520	5.2416	2	3	4	6	10
297	41231	3.4777	1	2	3	4	6
298	112	3.1429	1	2	2	4	6
299	1067	5.6148	1	2	4	6	11
300	15669	6.1305	2	3	5	8	12
301	3135	3.7107	1	2	3	5	7
302	7834	9.3957	4	5	7	11	16
303	19520	8.4840	4	5	7	10	15
304	12114	8.9145	2	4	7	11	18
305	2886	3.8486	1	2	3	5	7
306	7970	5.4877	1	2	3	7	12
307	2232	2.2764	1	1	2	3	4
308	7725	6.3969	1	2	4	8	14
309	3977	2.4891	1	1	2	3	5
310	23844	4.3654	1	2	3	5	9
311	8265	1.8897	1	1	1	2	3
312	1576	4.5184	1	1	3	6	10
313	633	2.1137	1	1	1	3	4
314	2	1.0000	1	1	1	1	1
315	28842	7.5038	1	1	5	10	17
316	97170	6.6773	2	3	5	8	13
317	1237	3.1997	1	1	2	3	6
318	5569	6.0084	1	3	4	7	12
319	468	2.8782	1	1	2	4	6
320	182655	5.3861	2	3	4	7	10
321	28388	3.8467	1	2	3	5	7
322	72	4.1111	1	2	3	5	7
323	16486	3.2195	1	1	2	4	7
324	7426	1.8796	1	1	1	2	3
325	7844	3.8986	1	2	3	5	7
326	2434	2.6619	1	1	2	3	5
327	8	8.2500	1	1	1	4	13
328	724	3.8909	1	1	3	5	8
329	106	2.0472	1	1	1	3	4
331	43621	5.5330	1	2	4	7	11
332	4860	3.2687	1	1	2	4	7
333	306	5.0163	1	2	3	6	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY99 MEDPAR update 03/00 Grouper V.18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
334	12201	4.8961	2	3	4	6	8
335	11497	3.4117	2	3	3	4	5
336	40717	3.5248	1	2	3	4	7
337	30695	2.1778	1	1	2	3	3
338	1647	5.3024	1	2	3	7	12
339	1514	4.5594	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3866	3.2219	1	1	2	3	7
342	778	3.1221	1	2	2	4	6
344	3962	2.2532	1	1	1	2	4
345	1285	3.7681	1	1	2	5	8
346	4659	5.8032	1	3	4	7	11
347	399	3.3734	1	1	2	4	7
348	3125	4.2074	1	2	3	5	8
349	595	2.6101	1	1	2	3	5
350	6202	4.3955	2	2	4	5	8
352	651	3.8218	1	2	3	5	8
353	2646	6.7154	3	3	5	8	13
354	8251	5.8841	3	3	4	7	10
355	5733	3.3216	2	3	3	4	5
356	26097	2.4163	1	1	2	3	4
357	5799	8.5049	3	4	7	10	16
358	21754	4.3966	2	3	3	5	8
359	29329	2.8125	2	2	3	3	4
360	16206	2.9646	1	2	2	3	5
361	427	3.4637	1	1	2	4	7
362	2	2.0000	1	1	3	3	3
363	3100	3.4668	1	2	2	3	7
364	1626	3.5689	1	1	2	5	7
365	1936	7.2758	1	3	5	9	16
366	4266	6.7203	1	3	5	8	14
367	478	3.1695	1	1	2	4	7
368	2889	6.7196	2	3	5	8	13
369	2858	3.1963	1	1	2	4	6
370	1175	5.7174	3	3	4	5	9
371	1232	3.6445	2	3	3	4	5
372	952	3.4758	2	2	2	3	5
373	3982	2.2838	1	2	2	2	3
374	138	3.3696	1	2	2	3	5
375	6	2.6667	2	2	2	3	3
376	260	3.4577	1	2	2	4	7
377	54	3.8333	1	1	2	5	8
378	156	2.3333	1	1	2	3	4
379	370	3.0676	1	1	2	3	6
380	77	2.1688	1	1	2	2	4
381	179	1.9441	1	1	1	2	3
382	43	1.4884	1	1	1	2	2
383	1582	3.8957	1	1	3	5	8
384	128	2.2969	1	1	1	2	4
389	8	5.8750	3	3	4	6	10
390	20	3.9500	1	1	3	6	8
392	2524	9.4624	3	4	7	12	19
393	2	7.5000	7	7	8	8	8
394	1742	6.6791	1	2	4	8	15
395	81014	4.5335	1	2	3	6	9
396	20	3.8000	1	1	2	5	7
397	18191	5.2238	1	2	4	7	10
398	18199	5.9577	2	3	5	7	11
399	1641	3.5521	1	2	3	4	7
400	6893	9.0730	1	3	6	12	20
401	5865	11.1758	2	5	8	14	23
402	1503	3.9508	1	1	3	5	8
403	33074	8.0664	2	3	6	10	17
404	4484	4.2219	1	2	3	6	9
406	2574	10.3528	3	4	7	13	21
407	703	4.4040	1	2	4	6	8
408	2275	7.7354	1	2	5	10	18
409	3308	5.9344	2	3	4	6	11
410	41165	3.7184	1	2	3	5	6
411	13	2.3077	1	1	2	4	4

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY99 MEDPAR update 03/00 Grouper V.18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
412	29	2.7241	1	1	2	3	6
413	6605	7.2450	2	3	6	9	14
414	761	4.0933	1	2	3	5	8
415	40206	14.2110	4	6	11	18	28
416	196848	7.3514	2	4	6	9	14
417	36	5.8889	1	1	4	6	13
418	22285	6.1233	2	3	5	7	11
419	15984	4.8204	2	2	4	6	9
420	3114	3.5649	1	2	3	4	6
421	12326	3.8695	1	2	3	5	7
422	98	5.2551	1	2	2	5	7
423	8137	8.1292	2	3	6	10	17
424	1368	13.4561	2	5	9	16	28
425	15108	4.0764	1	2	3	5	8
426	4357	4.5582	1	2	3	6	9
427	1679	4.9803	1	2	3	6	10
428	849	7.0813	1	2	4	8	15
429	27615	6.4861	2	3	5	8	12
430	58361	8.1902	2	3	6	10	16
431	297	6.5758	2	3	5	8	13
432	394	4.8020	1	2	3	5	9
433	5831	3.0045	1	1	2	4	6
434	22061	5.0864	1	2	4	6	9
435	14654	4.3052	1	2	4	5	8
436	3548	12.8503	4	7	11	17	25
437	9841	8.9511	3	5	8	11	15
439	1306	8.1646	1	3	5	10	17
440	5063	8.8766	2	3	6	10	19
441	585	3.2496	1	1	2	4	7
442	16061	8.2365	1	3	6	10	17
443	3586	3.3943	1	1	2	4	7
444	5206	4.2274	1	2	3	5	8
445	2280	2.9917	1	1	2	4	5
447	4891	2.5113	1	1	2	3	5
448	1	4.0000	4	4	4	4	4
449	26781	3.6732	1	1	3	4	7
450	6443	2.0449	1	1	1	2	4
451	1	1.0000	1	1	1	1	1
452	21847	4.9676	1	2	3	6	10
453	4501	2.8136	1	1	2	3	5
454	4997	4.5603	1	2	3	6	9
455	1085	2.6249	1	1	2	3	5
461	3397	4.6194	1	1	2	5	11
462	12718	11.5531	4	6	9	15	21
463	19065	4.2742	1	2	3	5	8
464	5511	3.0766	1	1	2	4	6
465	228	3.3509	1	1	2	3	7
466	1752	3.9258	1	1	2	4	8
467	1320	4.0485	1	1	2	4	7
468	58922	12.9489	3	6	10	17	26
471	11488	5.7349	3	4	5	6	9
473	7674	12.8610	2	3	7	19	32
475	109695	11.1883	2	5	9	15	22
476	4474	11.6623	2	5	10	15	22
477	25946	8.1242	1	3	6	10	17
478	111969	7.3211	1	3	5	9	15
479	22542	3.6236	1	2	3	5	7
480	500	19.4980	7	9	14	23	39
481	273	26.5641	16	19	23	31	41
482	6195	12.8199	4	7	10	15	24
483	43695	39.1662	14	22	32	49	71
484	340	13.0853	2	5	10	18	28
485	3002	9.4867	4	5	7	11	18
486	2127	12.1208	1	5	9	16	25
487	3666	7.6328	1	3	6	10	15
488	779	16.9718	4	7	12	21	34
489	14444	8.5516	2	3	6	10	18
490	5354	5.1291	1	2	4	6	10
491	11403	3.4912	2	2	3	4	6
492	2695	16.1221	4	5	9	26	34

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY99 MEDPAR update 03/00 Grouper V.18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
493	54388	5.7197	1	3	5	7	11
494	27469	2.4832	1	1	2	3	5
495	156	20.5000	6	8	12	19	33
496	1293	10.0093	4	5	7	12	18
497	22761	6.2244	2	3	5	7	11
498	19366	3.4143	1	2	3	4	6
499	30892	4.7750	1	2	4	6	9
500	42436	2.6894	1	1	2	3	5
501	1959	10.5630	4	5	8	13	20
502	621	5.9775	2	3	5	7	10
503	5625	3.9733	1	2	3	5	7
504	124	30.4677	10	15	25	40	63
505	155	4.7161	1	1	2	6	12
506	968	17.5651	4	8	14	24	37
507	285	9.2491	2	4	7	13	19
508	648	7.1605	2	3	5	9	15
509	167	6.0719	1	2	4	8	12
510	1673	7.8171	2	3	5	9	17
511	605	4.4413	1	1	3	6	10
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2000

State	Urban	Rural
ALABAMA	0.401	0.355
ALASKA	0.470	0.723
ARIZONA	0.373	0.517
ARKANSAS	0.478	0.454
CALIFORNIA	0.342	0.441
COLORADO	0.436	0.559
CONNECTICUT	0.495	0.503
DELAWARE	0.507	0.449
DISTRICT OF COLUMBIA	0.521	.....
FLORIDA	0.363	0.381
GEORGIA	0.475	0.486
HAWAII	0.409	0.554
IDAHO	0.549	0.571
ILLINOIS	0.425	0.509
INDIANA	0.532	0.544
IOWA	0.493	0.624
KANSAS	0.444	0.652
KENTUCKY	0.478	0.493
LOUISIANA	0.410	0.496
MAINE	0.597	0.550
MARYLAND	0.759	0.821
MASSACHUSETTS	0.526	0.538
MICHIGAN	0.466	0.572
MINNESOTA	0.509	0.591
MISSISSIPPI	0.456	0.454
MISSOURI	0.412	0.507
MONTANA	0.524	0.572
NEBRASKA	0.468	0.623
NEVADA	0.292	0.486
NEW HAMPSHIRE	0.541	0.579
NEW JERSEY	0.401	.....
NEW MEXICO	0.452	0.496
NEW YORK	0.529	0.611
NORTH CAROLINA	0.540	0.489
NORTH DAKOTA	0.622	0.661
OHIO	0.511	0.578
OKLAHOMA	0.423	0.509
OREGON	0.607	0.582

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2000—Continued

State	Urban	Rural
PENNSYLVANIA	0.396	0.517
PUERTO RICO	0.479	0.579
RHODE ISLAND	0.522	.....
SOUTH CAROLINA	0.447	0.451
SOUTH DAKOTA	0.537	0.600
TENNESSEE	0.441	0.482
TEXAS	0.404	0.503
UTAH	0.504	0.619
VERMONT	0.623	0.595
VIRGINIA	0.466	0.498
WASHINGTON	0.576	0.653
WEST VIRGINIA	0.575	0.532
WISCONSIN	0.551	0.621
WYOMING	0.475	0.682

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2000

State	Ratio
ALABAMA	0.040
ALASKA	0.070
ARIZONA	0.041
ARKANSAS	0.050
CALIFORNIA	0.036
COLORADO	0.046
CONNECTICUT	0.036
DELAWARE	0.051
DISTRICT OF COLUMBIA	0.039
FLORIDA	0.045
GEORGIA	0.056
HAWAII	0.043
IDAHO	0.049
ILLINOIS	0.042
INDIANA	0.057
IOWA	0.056

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2000—Continued

State	Ratio
KANSAS	0.054
KENTUCKY	0.046
LOUISIANA	0.050
MAINE	0.039
MARYLAND	0.013
MASSACHUSETTS	0.055
MICHIGAN	0.045
MINNESOTA	0.049
MISSISSIPPI	0.045
MISSOURI	0.046
MONTANA	0.055
NEBRASKA	0.054
NEVADA	0.030
NEW HAMPSHIRE	0.061
NEW JERSEY	0.036
NEW MEXICO	0.044
NEW YORK	0.051
NORTH CAROLINA	0.050
NORTH DAKOTA	0.074
OHIO	0.050
OKLAHOMA	0.048
OREGON	0.049
PENNSYLVANIA	0.040
PUERTO RICO	0.043
RHODE ISLAND	0.030
SOUTH CAROLINA	0.047
SOUTH DAKOTA	0.066
TENNESSEE	0.051
TEXAS	0.048
UTAH	0.049
VERMONT	0.051
VIRGINIA	0.058
WASHINGTON	0.064
WEST VIRGINIA	0.047
WISCONSIN	0.053
WYOMING	0.057

Appendix A—Regulatory Impact Analysis

I. Introduction

Section 804(2) of Title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a major rule is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers individual industries, Federal, State or local government agencies or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

We estimate that the impact of this final rule relating to the annual update in payment rates and policy changes for hospital inpatient services and the implementation of the specified changes under Public Law 106–113 will be to increase payments to hospitals by approximately $1.5 billion in FY 2001. We estimate that the impact of the final changes relating to the Medicare inpatient DSH adjustment calculation (a finalization of the January 20, 2000 interim final rule) to be $350 million for FY 2001. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes in this final rule will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that the final rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule does not mandate any requirements for State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

II. Changes in the Final Rule

Since we published the proposed rule, the market basket estimates for hospitals subject to the prospective payment system and hospitals and units excluded from the system have both risen by 0.3 percentage points. With the exception of these changes, we are generally implementing the policy and statutory provisions discussed in the proposed rule.

III. Limitations of Our Analysis

As has been the case in our previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our policy changes, as well as statutory changes effective for FY 2001, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix.

We received no comments on the methodology used for the impact analysis in the proposed rule.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 45 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of July 2000, we have included 4,888 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 20 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

V. Impact on Excluded Hospitals and Units

As of July 2000, there were 1,068 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 529 psychiatric, 196 rehabilitation, 242 long-term care, 74 children's, 17 Christian Science Sanatoria, and 10 cancer hospitals. In addition, there were 1,468 psychiatric units and 918 rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 36 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

As required by section 1886(b)(3)(B) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 2001 will be between 0 and 3.4 percent, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available.

The impact on excluded hospitals and units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Graduate Medical Education Impact of National Average Per Resident Amount (PRA)

As discussed in section IV.G. of the preamble, this final rule implements statutory provisions enacted by section 311 of Public Law 106–113 that establish a methodology for the use of a national average PRA in computing direct graduate medical education (GME) payments for cost reporting

periods beginning on or after October 1, 2000 and on or before September 30, 2005. The methodology establishes a "floor" and "ceiling" based on a locality-adjusted, updated national average PRA. Under section 1886(h)(2)(D)(iii) of the Act, as added by section 311(a) of Public Law 106–113, the PRA for a hospital for the cost reporting period beginning during FY 2001 cannot be below 70 percent of the locality-adjusted, updated national average PRA. Thus, if a hospital's PRA for the cost reporting period beginning during FY 2001 would otherwise be below the floor, the hospital's PRA for that cost reporting period is equal to 70 percent of the locality-adjusted, national average PRA. Under section 1886(h)(2)(D)(iv) of the Act, as added by section 311(a) of Public Law 106–113, if a hospital's PRA exceeds 140 percent of the locality-adjusted, updated national average PRA, the hospital's PRA is frozen (for FYs 2001 and 2002) or subject to a 2-percent reduction to the otherwise applicable update (for FYs 2003 through 2005). See section IV.G. of the preamble for a fuller explanation of this policy.

For purposes of the final rule, we have calculated an estimated impact of this policy on teaching hospitals' PRAs for FY 2001 making assumptions about update factors and geographic adjustment factors (GAF) for each hospital. Generally, utilizing FY 1997 data, we calculated a floor and a ceiling and estimated the impact on hospitals. This impact was then inflated to FY 2001 to estimate the total impact on the Medicare program for FY 2001. The estimated numbers for this impact should not be used by hospitals in calculating their own individual PRAs; hospitals must use the methodology stated in section IV.G. of this final rule to revise (if appropriate) their individual PRAs.

In calculating this impact, we utilized Medicare cost report data for all cost reports ending in FY 1997. We excluded hospitals that file manual cost reports because we did not have access to their Medicare utilization data. We also excluded all teaching hospitals in Maryland because these hospitals are paid under a Medicare waiver. For those hospitals that had two cost reporting periods ending in FY 1997, we used the later of the two periods. A total of 1,231 teaching hospitals were included in this analysis.

The impact in this final rule differs slightly from the impact in the proposed rule because we have determined a different weighted average PRA for this final rule, and we used the most recent CPI–U update factors to determine the impact for FY 2001. An explanation of why the weighted average PRA has changed for this final rule may be found in section IV.G.2 of this preamble.

Utilizing the FY 1997 weighted average PRA of $68,464, we calculated a FY 1997 70-percent floor of $47,925 and a FY 1997 140-percent ceiling of $95,850. We then estimated that, for cost reporting periods ending in FY 1997, 336 hospitals had PRAs that were below $47,925 (27.3 percent of 1,231 hospitals), and 180 hospitals had PRAs above $95,850 (14.6 percent of 1,231 hospitals). Thus, for example, to illustrate the extremes in impact for a hospital with PRAs below the floor, Hospital A had a FY 1997 primary care PRA of $22,000 and a non-primary care PRA of $20,000. When these PRAs are replaced by a single PRA of $47,925, the hospital gains approximately 110 percent in payments per resident. For a hospital with PRAs above the ceiling, Hospital B had a FY 1997 primary care PRA of $150,000 and a non-primary care PRA of $148,000. When these PRAs are frozen and not updated for inflation in FY 2001, the percentage loss in payments per resident that year would be equal to the CPI–U percentage that would otherwise have been used to update the PRA.

For the 336 hospitals that had PRAs below the FY 1997 $47,925 floor, we estimated that the total cost to the Medicare program for FY 2001 of applying the floor would be $33.2 million. For the 180 hospitals that had PRAs above the FY 1997 $95,850 ceiling, we estimated that the total savings to the Medicare program for FY 2001 would be $16 million. Subtracting the estimated savings of $16 million from the estimated costs of $33.2 million yields an estimated total net cost to the Medicare program for FY 2001 of $17.2 million.

VII. Quantitative Impact Analysis of the Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate impact analyses of the changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1999 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1999 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of FY 2001 changes to the capital prospective payment system are discussed in section IX of this Appendix.

The final changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1997 data).
- The effects of removing from the wage index the costs and hours associated with teaching physicians paid under Medicare Part A, residents, and certified registered nurse anesthetists (CRNAs) during the second year of a 5-year phase-out, by calculating a wage index based on 40 percent of hospitals' average hourly wages after removing these costs and hours, and 60 percent of hospitals' average hourly wages with these costs included.
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 2001.
- The total change in payments based on FY 2001 policies relative to payments based on FY 2000 policies.

To illustrate the impacts of the FY 2001 final changes, our analysis begins with a FY 2000 baseline simulation model using: the FY 2000 DRG GROUPER (version 17.0); the FY 2000 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG plus outlier payments.

Each final and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2001 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 2000 to FY 2001. Five factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas average standardized amounts for FY 2001 using the most recently forecasted hospital market basket increase for FY 2001 of 3.4 percent minus 1.1 percentage points (for an update of 2.3 percent).

Under section 1886(b)(3) of the Act, as amended by section 406 of Public Law 106–113, the updates to the average standardized amounts and the hospital-specific amounts for sole community hospitals (SCHs) will be equal to the full market basket increase for FY 2001. Consequently, the update factor used for SCHs in this impact analysis is 3.4 percent. Under section 1886(b)(3)(D) of the Act, the update factor for the hospital-specific amounts for MDHs is equal to the market basket increase of 3.4 percent minus 1.1 percentage points (for an update of 2.3 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 2000 to FY 2001 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 2000 that are no longer reclassified in FY

2001 may have a negative payment impact going from FY 2000 to FY 2001; conversely, hospitals not reclassified in FY 2000 that are reclassified in FY 2001 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 2000 will be 6.2 percent of actual total DRG payments. When the FY 2000 final rule was published, we projected FY 2000 outlier payments would be 5.1 percent of total DRG payments; the standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2000 (as discussed in the Addendum to this final rule) are reflected in the analyses below comparing our current estimates of FY 2000 payments per case to estimated FY 2001 payments per case.

Fourth, section 111 of Public Law 106–113 revised section 1886(d)(5)(B)(ii) of the Act so that the IME adjustment changes from FY 2000 to FY 2001 from approximately a 6.5 percent increase for every 10 percent increase in a hospital's resident-to-bed ratio during FY 2000 to approximately a 6.2 percent increase in FY 2001. Similarly, section 112 of Public Law 106–113 revised section 1886(d)(5)(F)(ix) of the Act so that the DSH adjustment for FY 2001 is reduced by 3 percent from what would otherwise have been paid (this is the same percentage reduction that was applied in FY 2000). Additionally, the January 20, 2000 interim final rule with comment revised policy, effective with discharges occurring on or after January 20, 2000, to allow hospitals to include the patient days of all populations eligible for Title XIX matching payments in a State's section 1115 waiver in calculating the hospital's Medicare DSH adjustment.

Finally, section 405 of Public Law 106–113 provided that certain SCHs may elect to receive payment on the basis of their costs per case during their cost reporting period that began during FY 1996. To be eligible, a SCH must have received payment on the basis of its hospital-specific rate for its cost reporting period beginning during 1999. For FY 2001, eligible SCHs that elect rebasing receive a hospital-specific rate comprised of 75-percent of the higher of their FY 1982 or FY 1987 hospital-specific rate, and 25-percent of their FY 1996 hospital-specific rate.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,888 hospitals included in the analysis. This number is 34 fewer hospitals than were included in the impact analysis in the FY 2000 final rule (64 FR 41624).

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,752 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,571 hospitals located in large urban areas (populations over 1 million), and 1,181 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,136 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2001 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations (after consideration of geographic reclassifications) are 2,833, 1,665, 1,168, and 2,055, respectively.

The next three groupings examine the impacts of the final changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,770 nonteaching hospitals in our analysis, 876 teaching hospitals with fewer than 100 residents, and 242 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the final changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (150), SCHs (661), MDHs (352), and SCH and RRCs (57) shown here were not reclassified for purposes of the standardized amount. There are 26 RRCs, 1 MDH, 4 SCHs and 3 SCH and RRCs that will be reclassified as urban for the standardized amount in FY 2001 and, therefore, are not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1998 Medicare cost report files, if available (otherwise FY 1997 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for 2 and 85 hospitals, respectively. For the most part, these are new hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for both FY 2000 and FY 2001, or for only one of those 2 years, by urban and rural status. The next rows illustrate the overall number of FY 2001 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2001 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hospe.[1]	DRG recalib.[2]	New wage data[3]	Phase out of GME and CRNA costs[4]	DRG and WI changes[5]	MGCRB reclassification[6]	All FY 2001 changes[7]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)
(BY GEOGRAPHIC LOCATION):							
ALL HOSPITALS	4,888	0.0	0.2	0.1	0.0	0.0	1.5
URBAN HOSPITALS	2,752	0.0	0.1	0.0	−0.1	−0.4	1.4
LARGE URBAN AREAS	1,571	0.0	0.1	0.0	−0.1	−0.5	1.3
OTHER URBAN AREAS	1,181	0.0	0.1	0.1	0.0	−0.3	1.5
RURAL HOSPITALS	2,136	0.2	0.6	0.1	0.6	2.5	2.5
BED SIZE (URBAN):							
0–99 BEDS	716	0.2	0.1	0.1	0.3	−0.6	1.6
100–199 BEDS	944	0.1	0.1	0.1	0.1	−0.5	1.5
200–299 BEDS	548	0.1	0.1	0.1	−0.1	−0.4	1.3
300–499 BEDS	401	0.0	0.0	0.1	−0.2	−0.4	1.1

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2001 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1] (0)	DRG recalib.[2] (1)	New wage data[3] (2)	Phase out of GME and CRNA costs[4] (3)	DRG and WI changes[5] (4)	MGCRB reclassification[6] (5)	All FY 2001 changes[7] (6)
500 OR MORE BEDS	143	−0.1	0.4	0.0	0.0	−0.4	1.6
BED SIZE (RURAL):							
0–49 BEDS	1,233	0.2	0.6	0.1	0.6	0.2	3.1
50–99 BEDS	535	0.2	0.6	0.1	0.6	0.8	2.6
100–149 BEDS	219	0.2	0.6	0.1	0.6	3.4	2.1
150–199 BEDS	81	0.2	0.7	0.1	0.6	5.2	2.6
200 OR MORE BEDS	68	0.1	0.6	0.1	0.5	4.5	2.2
URBAN BY CENSUS-DIVISION:							
NEW ENGLAND	146	0.0	−0.9	0.1	−0.3	−0.2	0.9
MIDDLE ATLANTIC	421	0.1	0.1	−0.1	−0.2	−0.3	1.2
SOUTH ATLANTIC	404	0.0	0.0	0.1	−0.2	−0.6	1.1
EAST NORTH CENTRAL	463	0.0	0.5	0.0	0.2	−0.3	2.0
EAST SOUTH CENTRAL	161	0.0	−0.1	0.0	−0.5	−0.6	0.8
WEST NORTH CENTRAL	188	−0.1	0.3	0.0	−0.1	−0.6	1.4
WEST SOUTH CENTRAL	351	0.0	1.3	0.1	1.0	−0.6	2.3
MOUNTAIN	133	0.0	0.3	0.1	0.0	−0.5	1.6
PACIFIC	440	0.0	−0.5	0.2	−0.6	−0.5	0.7
PUERTO RICO	45	0.1	−0.1	0.0	−0.1	−0.6	1.7
RURAL BY CENSUS DIVISION:							
NEW ENGLAND	52	0.1	−0.1	0.0	−0.3	2.8	2.2
MIDDLE ATLANTIC	80	0.2	−0.1	0.0	−0.2	2.5	2.2
SOUTH ATLANTIC	277	0.2	1.0	0.1	1.0	2.9	2.8
EAST NORTH CENTRAL	283	0.2	0.6	0.1	0.5	2.2	2.6
EAST SOUTH CENTRAL	266	0.2	0.6	0.1	0.5	2.8	2.6
WEST NORTH CENTRAL	492	0.1	0.5	0.1	0.4	2.3	2.5
WEST SOUTH CENTRAL	340	0.2	1.0	0.1	1.0	3.0	2.1
MOUNTAIN	201	0.2	0.4	0.1	0.3	1.6	2.7
PACIFIC	140	0.2	0.3	0.1	0.3	1.9	2.3
PUERTO RICO	5	0.2	0.3	−0.2	0.1	−0.7	0.2
(BY PAYMENT CATEGORIES):							
URBAN HOSPITALS	2,833	0.0	0.1	0.0	−0.1	−0.4	1.4
LARGE URBAN	1,665	0.0	0.1	0.0	−0.1	−0.3	1.4
OTHER URBAN	1,168	0.0	0.2	0.1	0.0	−0.4	1.3
RURAL HOSPITALS	2,055	0.2	0.6	0.1	0.6	2.2	2.6
TEACHING STATUS:							
NON-TEACHING	3,770	0.1	0.2	0.1	0.2	0.3	1.6
FEWER THAN 100 RESIDENTS	876	0.0	0.2	0.0	−0.1	−0.3	1.4
100 OR MORE RESIDENTS	242	−0.1	0.2	0.0	−0.2	−0.3	1.6
DISPROPORTIONATE SHARE HOSPITALS (DSH):							
NON-DSH	3,070	0.1	0.1	0.1	−0.1	0.3	1.5
URBAN DSH							
100 BEDS OR MORE	1,390	0.0	0.2	0.0	0.0	−0.4	1.5
FEWER THAN 100 BEDS	72	0.1	0.4	0.1	0.4	−0.5	1.9
RURAL DSH							
SOLE COMMUNITY (SCH)	149	0.3	0.9	0.1	0.9	0.2	3.6
REFERRAL CENTERS (RRC)	56	0.2	0.8	0.1	0.8	5.2	2.4
OTHER RURAL DSH HOSPITALS							
100 BEDS OR MORE	48	0.3	1.1	0.1	1.1	1.4	2.9
FEWER THAN 100 BEDS	103	0.3	0.9	0.1	1.0	0.3	2.3
URBAN TEACHING AND DSH:							
BOTH TEACHING AND DSH	726	0.0	0.2	0.0	0.0	−0.5	1.6
TEACHING AND NO DSH	327	0.0	0.0	0.0	−0.4	−0.2	1.2
NO TEACHING AND DSH	736	0.1	0.2	0.1	0.2	−0.3	1.3
NO TEACHING AND NO DSH	1,044	0.1	0.0	0.1	−0.1	−0.3	1.0
RURAL HOSPITAL TYPES:							
NONSPECIAL STATUS HOSPITALS	835	0.2	0.9	0.1	0.9	1.0	2.4
RRC	150	0.2	0.8	0.1	0.7	6.1	2.4
SCH	661	0.2	0.4	0.1	0.3	0.2	3.3
MDH	352	0.2	0.7	0.1	0.6	0.3	2.7
SCH AND RRC	57	0.1	0.3	0.0	0.1	1.6	2.2
TYPE OF OWNERSHIP:							
VOLUNTARY	2,840	0.0	0.2	0.0	0.0	−0.1	1.5
PROPRIETARY	745	0.1	0.2	0.1	0.1	−0.1	1.3
GOVERNMENT	1,301	0.1	0.2	0.1	0.0	0.2	1.8
UNKNOWN	2	0.0	0.5	0.1	0.3	−0.4	2.7

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2001 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1] (0)	DRG recalib.[2] (1)	New wage data[3] (2)	Phase out of GME and CRNA costs[4] (3)	DRG and WI changes[5] (4)	MGCRB reclassification[6] (5)	All FY 2001 changes[7] (6)
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:							
0—25	381	0.0	0.2	0.1	.....	−0.3	1.8
25—50	1,830	0.0	0.1	0.0	−0.1	−0.3	1.4
50—65	1,893	0.1	0.3	0.1	0.2	0.2	1.6
OVER 65	699	0.1	0.2	0.1	0.1	0.3	1.4
UNKNOWN	85	−0.1	0.5	−0.1	0.1	−0.6	1.2
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:							
RECLASSIFICATION STATUS DURING FY 2000 AND FY 2001							
RECLASSIFIED DURING BOTH FY 2000 AND FY 2001	377	0.1	0.4	0.1	0.4	6.0	1.6
URBAN	53	0.0	−0.1	0.1	0.1	5.8	1.7
RURAL	324	0.1	0.6	0.1	0.5	6.2	1.9
RECLASSIFIED DURING FY 2001 ONLY	149	0.1	0.4	0.1	0.3	4.8	7.1
URBAN	35	0.1	0.1	0.1	−0.1	4.7	6.6
RURAL	114	0.2	0.8	0.1	0.7	4.9	7.6
RECLASSIFIED DURING FY 2000 ONLY	172	0.1	0.5	0.1	0.3	−0.9	−1.7
URBAN	70	0.0	0.4	0.1	0.1	−1.1	−0.6
RURAL	102	0.2	0.7	0.1	0.7	−0.5	−3.1
FY 2000 RECLASSIFICATIONS:							
ALL RECLASSIFIED HOSPITALS	527	0.1	0.4	0.1	0.4	5.8	3.0
STANDARDIZED AMOUNT ONLY	66	0.2	0.6	0.1	0.6	4.1	4.1
WAGE INDEX ONLY	386	0.1	0.5	0.1	0.4	4.8	0.6
BOTH	46	0.2	0.1	0.1	0.0	4.3	2.6
NONRECLASSIFIED	4,364	0.0	0.2	0.0	0.0	−0.5	1.6
ALL URBAN RECLASSIFIED	88	0.0	0.0	0.1	0.1	5.4	3.2
STANDARDIZED AMOUNT ONLY	17	0.2	0.0	0.0	−0.1	0.7	0.9
WAGE INDEX ONLY	38	0.0	−0.1	0.1	0.2	5.8	2.5
BOTH	33	0.0	0.1	0.1	−0.1	6.2	5.1
NONRECLASSIFIED	2,638	0.0	0.1	0.0	−0.1	−0.7	1.3
ALL RURAL RECLASSIFIED	439	0.1	0.6	0.1	0.5	5.9	2.9
STANDARDIZED AMOUNT ONLY	54	0.1	0.6	0.1	0.5	4.2	−0.1
WAGE INDEX ONLY	358	0.2	0.6	0.1	0.6	5.8	3.2
BOTH	27	0.1	0.3	0.1	0.1	9.4	2.9
NONRECLASSIFIED	1,697	0.2	0.6	0.1	0.6	−0.5	2.2
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	26	0.2	−0.4	0.0	−0.4	1.0	1.3

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1999, and hospital cost report data are from reporting periods beginning in FY 1997 and FY 1998.

[2] This column displays the payment impact of the recalibration of the DRG weights based on FY 1999 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1997 cost reports.

[4] This column displays the impact of removing 60 percent of the costs and hours associated with teaching physicians Part A, residents, and CRNAs from the wage index calculation.

[5] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 1, 2 and 3, and the FY 2001 budget neutrality factor of .997225.

[6] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2001 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2001. Reclassification for prior years has no bearing on the payment impacts shown here.

[7] This column shows changes in payments from FY 2000 to FY 2001. It incorporates all of the changes displayed in columns 4 and 5 (the changes displayed in columns 1, 2, and 3 are included in column 4). It also displays the impact of the FY 2001 update (including the higher update for SCHs), changes in hospitals' reclassification status in FY 2001 compared to FY 2000, the difference in outlier payments from FY 2000 to FY 2001, and the reductions to payments through the IME adjustment taking effect during FY 2001. It also reflects section 405 of Public law 106–113, which permitted certain SCHs to rebase for a 1996 hospital-specific rate. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

B. Impact of the Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2000 DRG relative weights (GROUPER version 17) to aggregate payments using the

FY 2001 DRG relative weights (GROUPER version 18). Overall payments are unaffected by the DRG reclassification and recalibration. Consistent with the minor changes we made in the FY 2001 GROUPER, the redistributional impacts of DRG reclassifications and recalibration across hospital groups are very small (a 0.0 percent impact for large and other urban hospitals; a 0.2 percent increase for rural hospitals). Within hospital categories, the net effects for urban hospitals are small positive changes for small hospitals (a 0.2 percent increase for hospitals with fewer than 100 beds), and small decreases for larger hospitals (a 0.1 percent decrease for hospitals with more than 500 beds). Among rural hospitals, most hospital categories experienced small positive changes, 0.2 percent increases for hospitals with fewer than 200 beds and 0.1 percent increases for hospitals with more than 200 beds.

The breakdown by urban census division shows that the small decrease among urban hospitals is confined to the West North Central region. Payments to urban hospitals in most other regions are unchanged, while payments to urban hospitals in the Middle Atlantic and Puerto Rico regions rise by 0.1 percent. All rural hospital census divisions experience payment increases ranging from 0.1 percent for hospitals in New England and West North Central regions to 0.2 percent for hospitals in the South Atlantic, Middle Atlantic, East North Central, East South Central, West South Central, Pacific, Mountain, and Puerto Rico regions.

C. Impact of Updating the Wage Data (Column 2)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the wage index for FY 2001 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1996 and before October 1, 1997. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from a model using the FY 2000 wage index (based on FY 1996 wage data before geographic reclassifications to a model using the FY 2001 prereclassification wage index based on FY 1997 wage data). Section 152 of Public Law 106–113 reclassified certain hospitals for purposes of the wage index and the standardized amounts. For purposes of this column, these hospitals are located in their prereclassification geographic location. The impacts of these statutory reclassifications are shown in column 5, when examining the impacts of geographic reclassification.

The wage data collected on the FY 1997 cost reports are similar to the data used in the calculation of the FY 2000 wage index. For a thorough discussion of the data used to calculate the wage index, see section III.B. of this final rule.

The results indicate that the new wage data have an overall impact of a 0.2 percent increase in hospital payments (prior to applying the budget neutrality factor, see column 5). Rural hospitals appear to benefit from the update as their payments increase by 0.6 percent. These increases are attributable to positive increases in the wage index values for the rural areas of several States; California, Illinois, Indiana, Ohio, Texas and Minnesota all had increases of approximately 3 percent in their prereclassification wage index values.

Urban hospitals as a group are not significantly affected by the updated wage data. Hospitals in both other urban areas and large urban areas experienced a small positive increase (0.1 percent). Urban hospitals in New England experienced a 0.9 percent decrease from the updated wage data due to declines ranging from 5 to 1 percent in the wage index values for several MSAs in Connecticut and Massachusetts. Urban hospitals in the Pacific census region experience a 0.5 percent decline due to several MSAs in California with prereclassified FY 2001 wage indexes that fall by 5 percent or less.

The largest increases are seen in the rural census divisions. Rural South Atlantic and West South Central regions experience the greatest positive impact, 1.0 percent. Hospitals in five other census divisions receive positive impacts of 0.5 or greater: East North Central at 0.6, East South Central at 0.6, and West North Central at 0.5. The following chart compares the shifts in wage index values for labor market areas for FY 2000 relative to FY 2001. This chart demonstrates the impact of the changes for the FY 2001 wage index relative to the FY 2000 wage index. The majority of labor market areas (339) experience less than a 5 percent change. A total of 21 labor market areas experience an increase of more than 5 percent with only 1 having an increase greater than 10 percent. A total of 15 areas experience decreases of more than 5 percent. Of those, only 1 decline by 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 2000	FY 2001
Increase more than 10 percent	8	1
Increase more than 5 percent and less than 10 percent	22	20
Increase or decrease less than 5 percent	318	339
Decrease more than 5 percent and less than 10 percent	17	14
Decrease more than 10 percent	5	1

Among urban hospitals, 96 would experience an increase of between 5 and 10 percent and 2 more than 10 percent. No rural hospitals have increases greater than 5 percent. On the negative side, 106 urban hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. One urban hospital has a decrease in their wage index value that is greater than 10 percent. Two rural hospitals have decreases in their wage index values that are greater than 5 percent but less than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	2	0
Increase more than 5 percent and less than 10 percent	96	0
Increase or decrease less than 5 percent	2547	2134
Decrease more than 5 percent and less than 10 percent	106	2
Decrease more than 10 percent	1	0

D. Impact of 5-Year Phase-Out of Teaching Physicians', Residents', and CRNAs' Costs (Column 3)

As described in section III.C. of this preamble, the FY 2001 wage index is calculated by blending 60 percent of hospitals' average hourly wages calculated without removing teaching physician (paid under Medicare Part A), residents, or CRNA costs (and hours) and 40 percent of average hourly wages calculated after removing these costs (and hours). This constitutes the second year of a 5-year phase-out of these costs and hours, where the proportion of the calculation based upon average hourly wages after removing these costs increases by 20 percentage points per year.

In order to determine the impact of moving from the 80/20 blend percentage to the 60/40 blend percentage, we first estimated the payments for FY 2001 using the FY 2001 prereclassified wage index calculated using the 80/20 blend percentage (Column 2). We then estimated what the payments for FY 2001 would have been if the 60/40 blend percentage was applied to the FY 2001 prereclassified wage index. Column 3 compares the differences in these payment estimates and shows that the 60/40 blend percentage does not significantly impact overall payments (0.0 percent change). Although there were 165 labor market areas that experience a small percent decrease in their wage index, most of the decreases were less than 3 percent.

E. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 4)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section

1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this final rule, we compared simulated aggregate payments using the FY 2000 DRG relative weights and wage index to simulated aggregate payments using the FY 2001 DRG relative weights and blended wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.997225. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 4. The 0.0 percent impact for all hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 1, 2, and 3, minus approximately 0.3 percent attributable to the budget neutrality factor. There may be some variation of plus or minus 0.1 percent due to rounding.

F. Impact of MGCRB Reclassifications (Column 5)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 5 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2001. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments.

Beginning in 1998, by February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both, or for FYs 1999 through 2001, for purposes of qualifying for a DSH adjustment or to receive a higher DSH payment.

The FY 2001 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2001. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process. Additional changes that resulted from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application are reflected in this final rule for FY 2001.

Section 152 of Public Law 106–113 reclassified certain hospitals for purposes of the wage index and the standardized amounts. The impacts of these statutory reclassifications are included in this column.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.993187 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this final rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.5 percent, while payments to urban hospitals decline 0.4 percent. Hospitals in other urban areas see a decrease in payments of 0.3 percent, while large urban hospitals lose 0.5 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among most of the rural hospital groups. The largest decrease among the rural census divisions is 0.7 percent for Puerto Rico. The largest increases are in rural West South Central and South Atlantic. These regions receive increases of 3.0 and 2.9 percent, respectively.

Among rural hospitals designated as RRCs, 179 hospitals are reclassified for purposes of the wage index only, leading to the 6.1 percent increase in payments among RRCs overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 150–199 beds, which has a 5.2 percent increase in payments.

Rural hospitals reclassified for FY 2000 and FY 2001 experience a 6.2 percent increase in payments. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 2001 only experience a 4.9 percent increase in payments, while rural hospitals reclassified for FY 2000 only experience a 0.5 percent decrease in payments. Urban hospitals reclassified for FY 2001 but not FY 2000 experience a 4.7 percent increase in payments overall. Urban hospitals reclassified for FY 2000 but not for FY 2001 experience a 1.1 percent decline in payments.

The FY 2001 Reclassification rows of Table I show the changes in payments per case for all FY 2001 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive a 9.4 percent increase in payments. In addition, rural hospitals reclassified just for the wage index receive a 5.8 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.9 percent for FY 2001.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.5 percent. Rural nonreclassified hospitals decrease by 0.5 percent, and urban nonreclassified hospitals lose 0.7 percent (the amount of the budget neutrality offset).

G. All Changes (Column 6)

Column 6 compares our estimate of payments per case, incorporating all changes reflected in this final rule for FY 2001 (including statutory changes), to our estimate of payments per case in FY 2000. It includes the effects of the 2.3 percent update to the standardized amounts and the hospital-specific rates for MDHs and the 3.4 percent update for SCHs. It also reflects the 1.1 percentage point difference between the projected outlier payments in FY 2000 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2000 (6.2 percent), as described in the introduction to this Appendix and the Addendum to this final rule.

Another change affecting the difference between FY 2000 and FY 2001 payments arises from section 1886(d)(5)(B) of the Act, as amended by Public Law 106–113. As noted in the introduction to this impact analysis, for FY 2001, the IME adjustment is decreased from last year (6.5 percent in FY 2000 and 6.2 percent in FY 2001).

We also note that column 6 includes the impacts of FY 2001 MGCRB reclassifications compared to the payment impacts of FY 2000 reclassifications. Therefore, when comparing FY 2001 payments to FY 2000, the percent changes due to FY 2001 reclassifications shown in column 5 need to be offset by the effects of reclassification on hospitals' FY 2000 payments(column 7 of Table 1, July 30, 1999 final rule (64 FR 41625)). For example, the impact of MGCRB reclassifications on rural hospitals' FY 2001 payments was approximately a 2.5 percent increase, offsetting most of the 2.6 percent increase in column 7 for FY 2000. Therefore, the net change in FY 2001 payments due to reclassification for rural hospitals is actually a decrease of 0.1 percent relative to FY 2000. However, last year's analysis contained a somewhat different set of hospitals, so this might affect the numbers slightly.

Finally, section 405 of Public Law 106–113 provided that certain SCHs may elect to receive payment on the basis of their costs per case during their cost reporting period that began during 1996. To be eligible, a SCH must have received payment for cost reporting periods beginning during 1999 on the basis of its hospital-specific rate. For FY 2001, eligible SCHs that elect rebasing receive a hospital-specific rate comprised of 75 percent of the higher of their FY 1982 or FY 1987 hospital-specific rate, and 25 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 6 as well.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 6 may not equal the sum of the changes in columns 4 and 5, plus the other impacts that we are able to identify.

The overall payment change from FY 2000 to FY 2001 for all hospitals is a 1.5 percent increase. This reflects the 2.3 percent update for FY 2001 (3.4 percent for SCHs), the 1.0 percent lower outlier payments in FY 2001 compared to FY 2000 (5.1 percent compared to 6.2 percent); the change in the IME

adjustment (6.5 in FY 2000 to 6.2 in FY 2001); and the rebasing of certain SCHs to their 1996 hospital-specific rate.

Hospitals in urban areas experience a 1.4 percent increase in payments per case compared to FY 2000. The 0.4 percent negative impact due to reclassification is offset by an identical negative impact for FY 2000. Hospitals in rural areas, meanwhile, experience a 2.5 percent payment increase. As discussed previously, this is primarily due to the positive effect of the wage index and DRG changes and reclassifications.

Among urban census divisions, payments increased between 0.7 and 2.3 percent between FY 2000 and FY 2001. The rural census division experiencing the smallest increase in payments was Puerto Rico (0.2 percent). The largest increases by rural hospitals are in the South Atlantic and Mountain regions, 2.8 and 2.7 percent, respectively. Among other rural census divisions, the largest increases are in the East South Central and the East North Central, both with 2.6.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 3.3 percent, 2.7 percent, and 2.2 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in the percentage of outlier payments from FY 2000 to FY 2001 (from 6.2 of total DRG payments to 5.1 percent) as do hospitals paid based on the national standardized amounts.

The largest negative payment impacts from FY 2000 to FY 2001 are among hospitals that were reclassified for FY 2000 and are not reclassified for FY 2001. Overall, these hospitals lose 1.7 percent. The urban hospitals in this category lose 0.8 percent, while the rural hospitals lose 3.1 percent. On the other hand, hospitals reclassified for FY 2001 that were not reclassified for FY 2000 would experience the greatest payment increases: 7.1 percent overall; 7.6 percent for 114 rural hospitals in this category and 6.6 percent for 35 urban hospitals.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2000; OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals (1)	Average FY 2000 payment per case (2)[1]	Average FY 2001 payment per case (3)[1]	All changes (4)
(BY GEOGRAPHIC LOCATION):				
ALL HOSPITALS	4,888	6,783	6,885	1.5
URBAN HOSPITALS	2,752	7,354	7,454	1.4
LARGE URBAN AREAS	1,571	7,895	7,996	1.3
OTHER URBAN AREAS	1,181	6,650	6,747	1.5
RURAL HOSPITALS	2,136	4,544	4,658	2.5
BED SIZE (URBAN):				
0–99 BEDS	716	4,947	5,025	1.6
100–199 BEDS	944	6,202	6,294	1.5
200–299 BEDS	548	7,042	7,132	1.3
300–499 BEDS	401	7,885	7,974	1.1
500 OR MORE BEDS	143	9,547	9,703	1.6
BED SIZE (RURAL):				
0–49 BEDS	1,233	3,784	3,901	3.1
50–99 BEDS	535	4,248	4,358	2.6
100–149 BEDS	219	4,648	4,746	2.1
150–199 BEDS	81	5,090	5,220	2.6
200 OR MORE BEDS	68	5,710	5,836	2.2
URBAN BY CENSUS DIVISION:				
NEW ENGLAND	146	7,815	7,888	0.9
MIDDLE ATLANTIC	421	8,296	8,396	1.2
SOUTH ATLANTIC	404	7,022	7,098	1.1
EAST NORTH CENTRAL	463	7,006	7,144	2
EAST SOUTH CENTRAL	161	6,627	6,683	0.8
WEST NORTH CENTRAL	188	7,105	7,203	1.4
WEST SOUTH CENTRAL	351	6,760	6,917	2.3
MOUNTAIN	133	7,044	7,156	1.6
PACIFIC	440	8,572	8,633	0.7
PUERTO RICO	45	3,156	3,209	1.7
RURAL BY CENSUS DIVISION:				
NEW ENGLAND	52	5,468	5,586	2.2
MIDDLE ATLANTIC	80	4,910	5,016	2.2
SOUTH ATLANTIC	277	4,680	4,813	2.8
EAST NORTH CENTRAL	283	4,591	4,710	2.6
EAST SOUTH CENTRAL	266	4,209	4,317	2.6
WEST NORTH CENTRAL	492	4,348	4,458	2.5
WEST SOUTH CENTRAL	340	4,061	4,144	2.1
MOUNTAIN	201	4,863	4,995	2.7
PACIFIC	140	5,583	5,712	2.3
PUERTO RICO	5	2,447	2,453	0.2
(BY PAYMENT CATEGORIES):				
URBAN HOSPITALS	2,833	7,312	7,411	1.4
LARGE URBAN	1,665	7,797	7,905	1.4
OTHER URBAN	1,168	6,637	6,724	1.3
RURAL HOSPITALS	2,055	4,509	4,627	2.6
TEACHING STATUS:				
NON-TEACHING	3,770	5,464	5,550	1.6
FEWER THAN 100 RESIDENTS	876	7,125	7,223	1.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2000; OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 2000 payment per case (2)[1]	Average FY 2001 payment per case (3)[1]	All changes (4)
100 OR MORE RESIDENTS	242	10,828	11,001	1.6
DISPROPORTIONATE SHARE HOSPITALS (DSH):				
NON-DSH	3,070	5,610	5,695	1.5
URBAN DSH:				
100 BEDS OR MORE	1,390	7,919	8,037	1.5
FEWER THAN 100 BEDS	72	4,927	5,019	1.9
RURAL DSH:				
SOLE COMMUNITY (SCH)	149	4,140	4,290	3.6
REFERRAL CENTERS (RRC)	58	5,415	5,543	2.4
OTHER RURAL DSH HOSPITALS:				
100 BEDS OR MORE	48	4,097	4,218	2.9
FEWER THAN 100 BEDS	103	3,714	3,798	2.3
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH	726	8,826	8,962	1.6
TEACHING AND NO DSH	327	7,322	7,409	1.2
NO TEACHING AND DSH	736	6,311	6,395	1.3
NO TEACHING AND NO DSH	1,044	5,668	5,727	1
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS HOSPITALS	835	3,922	4,017	2.4
RRC	150	5,257	5,382	2.4
SCH	661	4,502	4,650	3.3
MDH	352	3,784	3,885	2.7
SCH AND RRC	57	5,500	5,620	2.2
TYPE OF OWNERSHIP:				
VOLUNTARY	2,840	6,945	7,079	1.5
PROPRIETARY	745	6,300	6,384	1.3
GOVERNMENT	1,301	6,400	6,512	1.8
UNKNOWN	2	3,406	3,499	2.7
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:				
0—25	381	9,013	9,172	1.8
25—50	1,830	7,856	7,968	1.4
50—65	1,893	5,910	6,007	1.6
OVER 65	699	5,260	5,336	1.4
UNKNOWN	85	9,997	10,116	1.2
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:				
RECLASSIFICATION STATUS DURING FY 2000 AND FY 2001:				
RECLASSIFIED DURING BOTH FY 2000 AND FY 2001	377	5,851	5,958	1.8
URBAN	53	8,027	8,161	1.7
RURAL	324	5,249	5,348	1.9
RECLASSIFIED DURING FY 2001 ONLY	149	5,537	5,930	7.1
URBAN	35	6,971	7,428	6.6
RURAL	114	4,623	4,975	7.6
RECLASSIFIED DURING FY 2000 ONLY	172	6,011	5,909	−1.7
URBAN	70	7,454	7,394	−0.8
RURAL	102	4,620	4,476	−3.1
FY 2000 RECLASSIFICATIONS:				
ALL RECLASSIFIED HOSPITALS	527	5,776	5,948	3
STANDARDIZED AMOUNT ONLY	66	4,697	4,888	4.1
WAGE INDEX ONLY	386	5,878	5,913	0.6
BOTH	46	6,295	6,457	2.6
NONRECLASSIFIED	4,364	6,912	7,019	1.6
ALL URBAN RECLASSIFIED	88	7,660	7,906	3.2
STANDARDIZED AMOUNT ONLY	17	5,333	5,379	0.9
WAGE INDEX ONLY	38	8,718	8,934	2.5
BOTH	33	7,217	7,584	5.1
NONRECLASSIFIED	2,638	7,355	7,449	1.3
ALL RURAL RECLASSIFIED	439	5,128	5,275	2.9
STANDARDIZED AMOUNT ONLY	54	4,785	4,779	−0.1
WAGE INDEX ONLY	358	5,153	5,316	3.2
BOTH	27	5,258	5,410	2.9
NONRECLASSIFIED	1,697	4,114	4,204	2.2
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	26	4,713	4,775	1.3

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the changes for FY 2001 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2000 with the average estimated per case payments for FY 2001, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 6 of Table I.

VIII. Impact of Organ, Tissue and Eye Procurement Condition of Participation on CAHs

In this final rule, we are adding a CoP for organ, tissue and eye procurement for CAHs. We estimate that the procurement costs for organ, eyes, and tissue for CAHs is negligible. This estimate is based on the following projections. There are several provisions in this condition that will impact CAHs to a greater or lesser degree. Specifically, CAHs are required to have written protocols; have agreements with an OPO, a tissue bank, and an eye bank; refer all deaths that occur in the CAH to the OPO or a third party designated by the OPO; ensure that CAH employees who initiate a request for donation to the family of a potential donor have been trained as a designated requestor; and work cooperatively with the OPO, tissue bank, and eye bank in educating CAH staff, reviewing death records, and maintaining potential donors. It is important to note that because of the inherent flexibility of this condition, the extent of its economic impact is dependent upon decisions that will be made either by the CAH or by the CAH in conjunction with the OPO or the tissue and eye banks. Thus, the impact on individual CAHs will vary and is subject in large part to their decision making. The impact will also vary based on whether a CAH currently has an organ donation protocol and its level of compliance with existing law and regulations. For example, if a CAH was a Medicare hospital in compliance with the hospital CoP for organ, tissue, and eye procurement prior to converting to a CAH, there will be no additional impact.

The first requirement in the CoP is that CAHs have and implement written protocols that reflect the various other requirements of the CoP. Currently, under section 1138 of the Act, CAHs must have written protocols for organ donation. Most CAHs will need to rewrite their existing protocols to conform with this regulation; however, this is clearly not a requirement that imposes a significant economic burden.

In addition, a CAH must have an agreement with its designated OPO and with at least one tissue bank and at least one eye bank. CAHs are required under section 1138 of the Act to refer all potential donors to an OPO. Also, the OPO regulation at 42 CFR 486.306 requires, as a qualification for designation as an OPO, that the OPO have a working relationship with at least 75 percent of the hospitals in its service area that participate in the Medicare and Medicaid programs and that have an operating room and the equipment and personnel for retrieving organs. Therefore, some CAHs may already have an agreement with their designated OPO. Although CAHs may need to modify those existing agreements, the need to make modifications would not impose a significant economic burden. Although there is no statutory or regulatory requirement for a CAH to have agreements with tissue and eye banks, we must assume some CAHs have agreements with tissue and eye banks, since hospitals are the source for virtually all tissues and eyes.

The CoP requires CAHs to notify the OPO about every death that occurs in the CAH. The average Medicare hospital has approximately 165 beds and 200 deaths per year. However, by statute and regulation, CAHs may use no more than 15 beds for acute care services. Assuming that the number of deaths in a hospital is related to the number of acute care beds, there should be approximately 18 deaths per year in the average CAH. Thus, the economic impact for a CAH of referring all deaths would be small.

Under the CoP, a CAH may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the CAH's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. Again, the impact is small, and the regulation permits the CAH to decide how this process will take place. We recognize that many communities already have a one-phone-call system in place. In addition, some OPOs are also tissue banks or eye banks or both. A CAH that chose to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

This CoP requires that the individual who initiates a request for donation to the family of a potential donor must be an OPO representative or a designated requestor. A designated requestor is an individual who has taken a course offered or approved by the OPO in the methodology for approaching families of potential donors and requesting donation. The CAH would need to arrange for designated requestor training. Most OPOs have trained designated requestors as part of the hospital CoP for organ, tissue, and eye procurement. Even if the CAH wants to have a sufficient number of designated requestors to ensure that all shifts are covered, this provision of the regulation would not have a significant economic impact on CAHs. In addition, the CAH may be able to choose to have donation requests initiated by the OPO, the tissue bank, or the eye bank staff rather than CAH staff, in which case there is no economic impact.

The regulation requires a CAH to work cooperatively with the OPO, a tissue bank, and an eye bank in educating CAH staff. We do not believe education of CAH staff will demand a significant amount of staff time. In addition, most OPOs already give educational presentations for the staff in their hospitals.

The regulation requires a CAH to work cooperatively with the OPO, a tissue bank, and an eye bank in reviewing death records. Most OPOs currently conduct extensive CAH death record reviews. The CAH's assistance is required only to provide lists of CAH deaths and facilitate access to records.

Finally, the regulation requires a CAH to work cooperatively with the OPO, a tissue bank, and an eye bank in maintaining potential donors while necessary testing and placement of potential donated organs and tissues take place. It is possible that because of the CoP, some CAHs may have their first organ donors. Therefore, we considered the impact on a CAH of maintaining a brain dead potential donor on a ventilator until the organs can be placed. CAHs with full ventilator capability should have no trouble maintaining a potential donor until the organs are placed. However, some CAHs have ventilator capability only so that a patient can be maintained until he or she is transferred to a larger facility for treatment. These CAHs would have the equipment and staffing to maintain a potential donor until transfer to another facility occurs. Some CAHs do not have ventilator capability and would be unable to maintain a potential donor. However, CAHs without ventilator capability would still be obligated to notify the OPO, or a third party designated by the OPO, of all individuals whose death is imminent or who have died in the CAH because there is a potential to obtain a tissue or an eye donation. We do not believe there will be a significant impact on CAHs no matter what their situation—full ventilator capability, ventilator capability only for patients who are to be transferred to a larger facility, or no ventilator capability.

Although, as stated previously, there are several requirements in this CoP that will impact CAHs to a greater or lesser degree, we assert that the potential benefits to beneficiaries exceed the associated costs of requiring CAHs to comply with this standard. As stated in the Hospital Conditions of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data regulation published on June 22, 1998 in the **Federal Register** (63 FR 33872), there were 3.11 organs transplanted for every donor recovered. Further, we do not believe there will be a significant impact on CAHs no matter what their situation—full ventilator capability, ventilator capability only for patients who are to be transferred to a larger facility, or no ventilator capability. Based on a HCFA actuarial opinion, the cost for CAHs to implement this requirement is negligible. We reviewed the comprehensive analysis in the impact section for the hospital CoP discussed in the above referenced regulation and determined that the analysis and assumptions made at that time are valid for this CAH CoP.

We expect that this regulation will increase tissue and eye donations as well as organ donations. A study of the impact of the Pennsylvania routine referral legislation on tissue and eye donations was presented at the Fourth International Society for Organ Sharing Congress and Transplant Congress in July 1997. (Nathan, HM, Abrams, J. Sparkman BA, *et al.* "Comprehensive State Legislation Increases Organ and Tissue

Donations") This study used data from the Delaware Valley Transplant Program, the OPO for Southeastern Pennsylvania, and found that although the maximum donor age was lowered from <66 to <60, tissue donations increased 14 percent from 1994 through 1996. The study also showed that eye donations increased 28 percent during the same period, despite more restrictive donor criteria. This virtually eliminated the waiting list for suitable corneas. North Carolina's routine referral legislation became effective in October 1997. The Carolina Organ Procurement Agency (one of three North Carolina OPOs) has seen heart valve donations increase by 109 percent and other tissue donations increase 114 percent through May 1998.

We did not receive any public comments on the impact of this provision.

IX. Impact of Medicare Disproportionate Share Hospital (DSH) Adjustment Calculation Policy Change in the Treatment of Certain Medicaid Patient Days in States With 1115 Expansion Waivers

As discussed in the January 20, 2000 interim final rule with comment period, we revised the policy for the Medicare disproportionate share hospital adjustment provision set forth under section 1886(d)(5)(F) of the Act to allow hospitals located in states with section 1115 expansion waivers to include the patient days of all populations eligible for title XIX matching payments under a State's section 1115 waiver in calculating the hospital's Medicare DSH adjustment.

There are currently eight States with section 1115 expansion waivers (Delaware, Hawaii, Massachusetts, Missouri, New York, Oregon, Tennessee, and Vermont). Under the provisions of this final rule, hospitals in these eight States will be allowed to include in the Medicaid percentage portion of their Medicare DSH calculation the inpatient hospital days attributable to patients who are eligible under the State's section 1115 expansion waiver. Because our policy was that these days were not allowable prior to January 20, 2000, by allowing hospitals to begin to include these days in their Medicare DSH calculation, the impact will be to increase the DSH payments these hospitals will receive compared to what they would receive absent this change.

We have estimated the impact of this change to be $270 million in higher FY 2000 prospective payments system payments (total FY 2000 DSH payments are projected to be $4.6 billion), and $370 million in FY 2001 payments. Thus the total impact of this change for the period from FY 2001 through FY 2005 is estimated to be $2.14 billion.

X. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

We now have cost report data for the 7th year of the capital prospective payment system (cost reports beginning in FY 1998) available through the March 2000 update of the HCRIS. We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of this information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example, in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals.
- Our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding fiscal intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 2001 capital cost projections. In Appendix B of this final rule, we discuss the assumptions and computations that we employ to generate the amount of obligated capital commitments for use in the FY 2001 capital cost projections.

In Table III of this section, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 2001. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the FY 2001 capital payment policies by the standard prospective payment system hospital groupings. While we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we still need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 2001 capital costs for individual hospitals, but with the most recent data on hospitals' experience under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

B. Projected Impact Based on the FY 2001 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 2000 to FY 2001 using a capital cost model. The FY 2001 model, as described in Appendix B of this final rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1998 as reported on the March 2000 update of HCRIS, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through April 1, 2000 in the provider-specific file. We used these data to determine the FY 2001 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1998, and we age that capital by a formula described in Appendix B. Therefore, we need to randomly generate only new capital acquisitions for any year after FY 1998. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 2001 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will change at the following rates during these periods:

AVERAGE PERCENTAGE CHANGE IN CAPITAL COSTS PER DISCHARGE

Fiscal year	Percentage change
1999	3.12
2000	3.31
2001	2.95

- We estimate that the Medicare case-mix index will increase by 0.5 percent in FY 2000 and in FY 2001.
- The Federal capital rate and the hospital-specific rate were updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The FY 2001 update is 0.9 percent (see section IV. of the Addendum to this final rule).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 2000 to FY 2001. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate and the applicable Federal rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY FOR FY 2001

Type of hospital	Percent of hospitals	Percent of discharges	Percent of capital costs	Percent of capital payments
Low Cost Hospital	67	62	56	61
High Cost Hospital	33	38	44	39

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital into use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we continue to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 2000 to FY 2001 using the above described actuarial model. With the Federal rate, we estimate aggregate Medicare capital payments will increase by 5.48 percent in FY 2001. This increase is noticeably higher than last year's (3.64 percent) due to the combination of the increase in the number of hospital admissions, the increase in case-mix, and the increase in the Federal blend percentage from 90 percent to 100 percent and a decrease in the hospital-specific rate percentage from 10 percent to 0 percent for fully prospective payment hospitals.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 2001 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hopital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 2000
FY 2000 Payments per Discharge:									
Low Cost Hospitals	3,194	6,723,732	$574.73	90.41	$30.18	$2.95	$7.84	$615.72	
Fully Prospective	3,020	6,252,299	571.02	90.00	32.46		7.45	610.93	
100% Federal Rate	159	438,006	635.95	100.00			3.42	639.38	
Hold Harmless	15	33,426	467.66	54.25		594.40	139.14	1,201.21	
High Cost Hospitals	1,598	4,078,374	650.66	97.86		19.26	13.05	682.97	
100% Federal Rate	1,383	3,717,412	665.24	100.00			6.98	672.22	
Hold Harmless	215	360,962	500.42	75.67		217.62	75.58	793.63	
Total Hospitals	4,792	10,802,106	603.40	93.30	18.79	9.11	9.81	641.11	
FY 2001 Payments per Discharge:									
Low Cost Hospitals	3,194	6,835,654	$637.91	99.74		$2.42	$9.69	$650.02	5.57
Fully Prospective	3,020	6,356,377	636.58	100.00			9.20	647.78	6.03
100% Federal Rate	159	445,296	638.34	100.00			4.35	642.69	0.52
Hold Harmless	15	33,981	506.60	60.11		486.54	170.96	1,164.09	−3.09
High Cost Hospitals	1,598	4,146,181	653.32	98.38		15.35	21.47	690.15	1.05
100% Federal Rate	1,394	3,793,349	664.47	100.00			10.65	675.12	0.43
Hold Harmless	204	352,832	533.52	80.86		180.41	137.76	851.69	7.32
Total Hospitals	4,792	10,981,835	643.73	99.21		7.30	14.14	665.17	3.75

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 6.03 percent, and high capital cost hospitals will experience an average increase of 1.05 percent. These results are due to the change in the blended percentages to the payment system to 100 percent adjusted Federal rate and 0 percent hospital-specific rate.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 90 percent to 100 percent and the hospital-specific rate payment percentage will decrease from 10 to 0 percent in FY 2001. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for high cost hospitals receiving a hold-harmless payment for old capital will increase from 75.67 percent to 80.86 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 86.55 percent to 87.23 percent. We estimate that the few remaining high cost hold-harmless hospitals (204) will experience an increase in payments of 7.32 percent from FY 2000 to FY 2001. This increase reflects our estimate that exception payments per discharge will increase 82.27 percent from FY 2000 to FY 2001 for high cost hold-harmless hospitals. While we estimate that this group's regular hold-harmless payments for old capital will decline by 17.10 percent due to the retirement of old capital, we estimate that its high overall capital costs will cause an increase in these hospitals' exceptions payments from $75.58 per discharge in FY 2000 to $137.76 per discharge in FY 2001. This is primarily due to the estimated decrease in outlier payments, which will cause an estimated increase in exceptions payments to cover unmet capital costs.

We estimate that the average hospital-specific rate payment per discharge will decrease from $32.46 in FY 2000 to $0.00 in FY 2001. This decrease is due to the decrease in the hospital-specific rate payment percentage from 10 percent in FY 2000 to 0 percent in FY 2001 for fully prospective payment hospitals.

We have made no changes in our exceptions policies for FY 2001. As a result, the minimum payment levels would be—

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or

• 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 1.53 percent of total capital payments in FY 2000 to 2.13 percent of payments in FY 2001. The projected distribution of the exception payments is shown in the chart below:

ESTIMATED FY 2001 EXCEPTIONS PAYMENTS

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	201	43
High Capital Cost	214	57
Total	415	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment metholology. This distribution is generated by our acturarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS (ESTIMATED FOR FY 2001)

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	4,792	4.6	32.4	63.0
Large urban areas (populations over 1 million)	1,524	4.3	41.0	54.7
Other urban areas (populations of 1 million or fewer)	1,149	5.8	39.5	54.7
Rural areas	2,119	4.1	22.4	73.5
Urban hospitals	2,673	4.9	40.4	54.7
0–99 beds	656	6.2	33.9	59.9
100–199 beds	929	7.2	45.5	47.3
200–299 beds	543	3.3	41.4	55.2
300–499 beds	400	0.8	37.0	62.3
500 or more beds	143	2.1	42.0	55.9
Rural hospitals	2,119	4.1	22.4	73.5
0–49 beds	1,220	2.9	16.6	80.6
50–99 beds	531	6.8	26.7	66.5
100–149 beds	219	5.9	35.2	58.9
150–199 beds	81	2.5	25.9	71.6
200 or more beds	68	1.5	47.1	51.5
By Region:				
Urban by Region	2,673	4.9	40.4	54.7
New England	145	0.7	25.5	73.8
Middle Atlantic	408	2.9	34.8	62.3
South Atlantic	398	5.5	51.8	42.7
East North Central	454	4.2	29.7	66.1
East South Central	154	8.4	46.1	45.5
West North Central	182	6.0	36.8	57.1
West South Central	328	8.8	58.2	32.9
Mountain	124	4.8	48.4	46.8
Pacific	435	4.1	36.3	59.5
Puerto Rico	45	2.2	26.7	71.1
Rural by Region	2,119	4.1	22.4	73.5
New England	52	0.0	23.1	76.9
Middle Atlantic	78	5.1	19.2	75.6
South Atlantic	276	2.2	33.3	64.5
East North Central	279	3.9	16.5	79.6
East South Central	265	3.4	32.8	63.8
West North Central	491	3.3	14.5	82.3
West South Central	334	4.5	26.3	69.2
Mountain	200	9.5	15.0	75.5
Pacific	139	5.0	23.7	71.2
By Payment Classification:				
Large urban areas (populations over 1 million)	1,618	4.2	41.3	54.5
Other urban areas (populations of 1 million or fewer)	1,136	6.0	38.8	55.2
Rural areas	2,038	4.1	21.8	74.1
Teaching Status:				
Non-teaching	3,682	5.1	31.6	63.3
Fewer than 100 Residents	871	2.9	35.9	61.2
100 or more Residents	239	2.1	32.2	65.7
Disproportionate share hospitals (DSH):	2,988	4.7	28.3	67.0
By Geographic Location:				
All hospitals	4,792	4.6	32.4	63.0

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS (ESTIMATED FOR FY 2001)—Continued

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
Non-DSH				
Urban DSH:				
100 or more beds	1,379	4.6	42.5	52.9
Less than 100 beds	70	4.3	25.7	70.0
Rural DSH:				
Sole Community (SCH/EACH)	149	5.4	20.1	74.5
Referral Center (RRC/EACH)	56	3.6	51.8	44.6
OTHER RURAL:				
100 OR MORE BEDS	48	.....	39.6	60.4
Less than 100 beds	102	2.0	23.5	74.5
Urban teaching and DSH:				
Both teaching and DSH	720	2.5	36.7	60.8
Teaching and no DSH	325	3.1	33.8	63.1
No teaching and DSH	729	6.7	46.6	46.6
No teaching and no DSH	980	6.0	40.3	53.7
Rural Hospital Types:				
Non special status hospitals	819	1.5	24.1	74.5
RRC/EACH	150	2.7	36.0	61.3
SCH/EACH	661	8.5	18.2	73.4
Medicare-dependent hospitals (MDH)	351	1.4	16.5	82.1
SCH, RRC and EACH	57	10.5	26.3	63.2
Type of Ownership:				
Voluntary	2,520	4.5	32.4	63.1
Proprietary	655	7.2	57.1	35.7
Government	1,093	4.1	19.2	76.7
Medicare Utilization as a Percent of Inpatient Days:				
0–25	369	5.4	27.6	66.9
25–50	1,820	4.3	35.1	60.7
50–65	1,882	4.7	31.2	64.1
Over 65	688	4.8	32.1	63.1

As we explain in Appendix B of this final rule, we were not able to use 96 of the 4,888 hospitals in our database due to insufficient (missing or unusable) data. Consequently, the payment methodology distribution is based on 4,792 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) geographic location; (2) region; and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and the hold-harmless payment methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 32.4 percent in FY 2001.

Table IV indicates that 63.0 percent of hospitals will be paid under the fully prospective payment methodology. (This figure, unlike the figure of 67 percent for low cost capital hospitals in the chart on "Capital Transition Payment Methodology for FY 2001," in section VII.B.2. of this impact analysis takes into account the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (74.1 percent and 76.7 percent, respectively by payment classification) are being paid under the fully prospective payment methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 35.7 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 2001 actuarial model to estimate the potential impact of our changes for FY 2001 on total capital payments per case, using a universe of 4,792 hospitals. The individual hospital payment parameters are taken from the best available data, including: the April 1, 2000 update to the provider-specific file, cost report data, and audit information supplied by intermediaries. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model and the aggregate impact of the FY 2001 payment policies. Columns 3 and 4 show estimates of payments per case under our model for FY 2000 and FY 2001. Column 5 shows the total percentage change in payments from FY 2000 to FY 2001. Column 6 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 6 include the 1.33 percent increase in the Federal rate, a 0.5 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB. Column 5 includes the effects of the Federal rate changes represented in Column 6. Column 5 also reflects the effects of all other changes, including the change from 90 percent to 100 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) geographic location, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 3.8 percent in FY 2001. The results show that the effect of the Federal

rate change alone is to increase payments by 0.3 percent. In addition to the increase attributable to the Federal rate change, a 3.5 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows an overall increase in payments to hospitals in all areas. This comparison also shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (3.6 percent and 4.6 percent, respectively). This difference is due to the lower rate of increase for urban hospitals relative to rural hospitals (0.1 percent and 1.4 percent, respectively) from the Federal rate changes alone. Urban hospitals are actually projected to gain slightly more than rural hospitals (3.5 percent versus 3.2 percent, respectively) from the effects of all other changes.

All regions are estimated to receive increases in total capital payments per case, partly due to the increased share of payments that are based on the Federal rate (from 90 to 100 percent). Changes by region vary from a minimum of 2.6 percent increase (West South Central urban region) to a maximum of 7.4 percent increase (Pacific rural region).

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (4.5 percent, a 0.6 percent increase due to the Federal rate changes, and a 3.9 percent increase from the effects of all other changes). Payments to voluntary hospitals will increase 3.7 percent (a 0.3 percent increase due to Federal rate changes, and a 3.4 percent increase from the effects of all other changes) and payments to proprietary hospitals will increase 2.6 percent (a 0.1 percent decrease due to Federal rate changes, and a 2.7 percent increase from the effects of all other changes).

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both, and for purposes of DSH for FYs 1999 through 2001. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2001 compared to the effects of reclassification for FY 2000, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2001 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2001 as a whole are projected to experience a 5.2 percent increase in payments (a 2.0 percent increase attributable to Federal rate changes and a 3.2 percent increase attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly less (3.8 percent) than reclassified hospitals (5.2 percent) overall. Payments to nonreclassified hospitals will increase less than reclassified hospitals due to the Federal rate changes (0.3 percent compared to 2.0 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2000 payments compared to FY 2001 payments]

	Number of hospitals	Average FY 2000 payments/case	Average FY 2001 payments/case	All changes	Portion attributable to federal rate change
By Geographic Location:					
All hospitals	4,792	641	665	3.8	0.3
Large urban areas (populations over 1 million)	1,524	745	772	3.6	0.0
Other urban areas (populations of 1 million or fewer)	1,149	629	653	3.7	0.4
Rural areas	2,119	429	449	4.6	1.4
Urban hospitals	2,673	695	720	3.6	0.1
0–99 beds	658	499	518	3.8	0.6
100–199 beds	929	610	630	3.4	0.3
200–299 beds	543	662	684	3.4	0.3
300–499 beds	400	726	754	3.8	−0.1
500 or more beds	143	869	923	3.8	0.0
Rural hospitals	2,119	429	449	4.6	1.4
0–49 beds	1,220	358	378	5.8	2.0
50–99 beds	531	409	429	4.9	1.4
100–149 beds	219	444	461	3.8	1.0
150–199 beds	81	467	489	4.7	1.8
200 or more beds	68	526	547	3.9	1.0
By Region:					
Urban by Region	2,673	695	720	3.6	0.1
New England	145	723	751	3.9	−0.1
Middle Atlantic	408	769	797	3.7	−0.1
South Atlantic	398	674	693	2.9	−0.2
East North Central	454	660	692	4.9	0.8
East South Central	154	638	660	3.4	−0.3
West North Central	182	691	715	3.4	0.1
West South Central	328	661	678	2.6	0.8
Mountain	124	687	723	5.3	0.3
Pacific	435	780	804	3.1	−0.5
Puerto Rico	45	293	311	6.1	2.3
Rural by Region	2,119	429	449	4.6	1.4
New England	52	525	544	3.6	0.2
Middle Atlantic	78	450	469	4.1	0.8
South Atlantic	276	443	462	4.4	1.8
East North Central	279	432	459	6.2	1.6
East South Central	265	395	411	4.2	1.5
West North Central	491	420	440	4.6	1.5
West South Central	334	391	404	3.4	1.0
Mountain	200	461	478	3.7	1.1

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2000 payments compared to FY 2001 payments]

	Number of hospitals	Average FY 2000 payments/case	Average FY 2001 payments/case	All changes	Portion attributable to federal rate change
Pacific	139	506	543	7.4	1.4
By Payment Classification:					
All hospitals	4,792	641	665	3.8	0.3
Large urban areas (populations over 1 million)	1,618	736	763	3.6	0.1
Other urban areas (populations of 1 million or fewer)	1,136	628	650	3.5	0.2
Rural areas	2,038	425	446	4.8	1.5
Teaching Status:					
Non-teaching	3,682	530	549	3.5	0.6
Fewer than 100 Residents	871	669	694	3.7	0.3
100 or more Residents	239	979	1,022	4.4	−0.2
Urban DSH:					
100 or more beds	1,379	733	759	3.6	0.1
Less than 100 beds	70	570	604	5.9	0.5
Rural DSH:					
Sole Community (SCH/EACH)	149	382	399	4.5	2.1
Referral Center (RRC/EACH)	56	490	506	3.2	1.0
Other Rural:					
100 or more beds	48	383	401	4.9	2.3
Less than 100 beds	102	343	360	5.0	1.9
Urban teaching and DSH:					
Both teaching and DSH	720	807	838	3.8	0.1
Teaching and no DSH	325	699	728	4.1	0.2
No teaching and DSH	729	603	621	3.1	0.2
No teaching and no DSH	980	570	588	3.0	0.2
Rural Hospital Types:					
Non special status hospitals	819	376	394	5.0	1.7
RRC/EACH	150	493	515	4.3	1.4
SCH/EACH	661	425	448	5.5	1.5
Medicare-dependent hospitals (MDH)	351	356	377	5.7	1.9
SCH, RRC and EACH	57	499	516	3.5	0.6
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY00 and FY01:					
Reclassified During Both FY00 and FY01	377	546	569	4.1	0.9
Reclassified During FY01 Only	149	531	579	9.1	6.0
Reclassified During FY00 Only	131	553	546	−1.2	−3.1
FY01 Reclassifications:					
All Reclassified Hospitals	526	543	571	5.2	2.0
All Nonreclassified Hospitals	4,268	654	679	3.8	0.3
All Urban Reclassified Hospitals	88	701	746	6.3	2.3
Urban Nonreclassified Hospitals	2,559	696	720	3.5	0.0
All Reclassified Rural Hospitals	438	488	510	4.7	1.9
Rural Nonreclassified Hospitals	1,681	386	404	4.6	1.0
Other Reclassified Hospitals (Section 1886(D)(8)(B))	26	463	473	2.1	0.7
Type of Ownership:					
Voluntary	2,520	655	680	3.7	0.3
Proprietary	655	626	643	2.6	−0.1
Government	1,093	576	602	4.5	0.6
Medicare Utilization as a Percent of Inpatient Days:					
0–25	369	801	838	4.7	0.1
25–50	1,820	736	763	3.7	0.0
50–65	1,882	568	590	3.8	0.6
Over 65	688	512	528	3.2	0.7

Appendix B: Technical Appendix on the Capital Cost Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expired effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor and the reduction in the Federal and hospital-specific rates for exceptions payments.

To determine these factors, we must continue to project capital costs and payments.

We used the capital acquisition model from the start of prospective payments for capital costs through FY 1997. We now have 7 years of cost reports under the capital prospective payment system. For FY 1998, we developed a new capital cost model to replace the capital acquisition model. This revised model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this final rule: the March 31, 2000 update of the cost reports for

PPS–IX (cost reporting periods beginning in FY 1992), PPS–X (cost reporting periods beginning in FY 1993), PPS–XI (cost reporting periods beginning in FY 1994), PPS–XII (cost reporting periods beginning in FY 1995), PPS–XIII (cost reporting periods beginning in FY 1996), PPS–XIV (cost reporting periods beginning in FY 1997), and PPS–XV (cost reporting periods beginning in FY 1998). In addition, to model payments, we use the April 1, 2000 update of the provider-specific file, and the March 1994 update of the intermediary audit file.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We developed FY 1992 through FY 2000 hospital-specific rates using the provider-specific file and the intermediary audit file. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

Source	Number of hospitals
Provider-Specific File Only	173
Provider-Specific and Audit File	4,715
Total	4,888

One hundred forty-three of the 4,888 hospitals had unusable or missing data, or had no cost reports available. For 42 of the 143 hospitals, we were unable to determine a hospital-specific rate from the available cost reports. However, there was adequate cost information to determine that these hospitals were paid under the hold-harmless methodology. Since the hospital-specific rate is not used to determine payments for hospitals paid under the hold-harmless methodology, there was sufficient cost report information available to include these 42 hospitals in the analysis. We were able to estimate hospital-specific amounts for five additional hospitals from the cost reports as shown in the following table:

Cost report	Number of hospitals
PPS–9	1
PPS–12	2
PPS–14	1
PPS–15	1
Total	5

Hence we were able to use 47 of the 143 hospitals. We used 4,792 hospitals for the analysis. Ninety-six hospitals could not be used in the analysis because of insufficient information. These hospitals account for less than 0.5 percent of admissions. Therefore, any effects from the elimination of their cost report data should be minimal.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large changes in bed-size (greater than ±20 percent). We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis to decreases in old capital. We did this since the opportunity for most hospitals to treat "obligated" capital put into service as old capital has expired. Old capital costs should decrease as assets become fully depreciated and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the first two groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with the greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase as follows:

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital costs changes were fitted to the entire gamma distribution, allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution, allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease).
- Bed-size increases over 20 percent (increase).
- Other (no change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed size for large hospitals. We found the probability somewhat dependent on the prior year change in bed size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of increases in capital costs varies with changes in bed size for large hospitals, we first projected changes in bed size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group, and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 1999 (the MedPAR data year) and later, we use the number of discharges from the MedPAR data. Some hospitals had considerably more discharges in FY 1999 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge, since fixed costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over more discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We address this situation by recalculating the cost per discharge with the MedPAR discharges if the MedPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received all of the FY 1999 discharges, and we have removed some discharges from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately (outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are

modeling the aging of "existing" assets. This model provides a distribution of capital costs among hospitals that is consistent with our aggregate capital projections.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital as determined from the provider-specific file and the cost reports. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1999 MedPAR file using the FY 2001 DRG relative weights included in section VI. of the Addendum to this final rule. The case-mix index is increased each year after FY 1999 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will increase 0.0 percent in FY 2000. We project that case-mix will increase 0.0 percent in FY 2001. (Since we are using FY 1999 cases for our analysis, the FY 1999 increase in case-mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 2000, the budget neutrality adjustment factors were 1.00142 for the national rate and 1.00134 for the Puerto Rico rate.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we applied separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We applied the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

To determine the factors for FY 2001, we first determined the portions of the Federal national and Puerto Rico rates that would be paid for each hospital in FY 2001 based on its applicable payment methodology. Using our model, we then compared, separately for the national rate and the Puerto Rico rate, estimated aggregate Federal rate payments based on the FY 2000 DRG relative weights and the FY 2000 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 2000 relative weights and the FY 2001 geographic adjustment factor. In making the comparison, we held the FY 2001 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. To achieve budget neutrality for the changes in the national geographic adjustment factor, we applied an incremental budget neutrality adjustment of 0.99782 for FY 2001 to the previous cumulative FY 2000 adjustment of 1.00142, yielding a cumulative adjustment of 0.99924 through FY 2001. For the Puerto Rico geographic adjustment factor, we applied an incremental budget neutrality adjustment of 1.00365 for FY 2001 to the previous cumulative FY 2000 adjustment of 1.00134, yielding a cumulative adjustment of 1.00499 through FY 2001. We then compared estimated aggregate Federal rate payments based on the FY 2000 DRG relative weights and the FY 2001 geographic adjustment factors to estimated aggregate Federal rate payments based on the FY 2001 DRG relative weights and the FY 2001 geographic adjustment factors. The incremental adjustment for DRG classifications and changes in relative weights would be 1.00009 nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the geographic adjustment factors through FY 2001 would be 0.99933 nationally and 1.00508 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			Cumulative
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined		Geographic adjustment factor	DRG reclassifications and recalibration	Combined	
1992				1.00000				
1993			0.99800	0.99800				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134
2001	0.99782	1.00009	0.99791	0.99933	1.00365	1.00009	1.00374	1.00508

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients or the large urban add-on payments.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors

generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FYs 1992 through 2000, the final factors for FY 2001, and the estimated factors that would be applicable through FY 2005. We caution that these are estimates for FYs 2002 and later, and are subject to revisions resulting from continued methodological refinements, receipt of additional data, and changes in payment policy. We note that in making these projections, we have assumed that the cumulative national DRG/GAF budget neutrality adjustment factor will remain at 0.99933 (1.00508 for Puerto Rico) for FY 2001 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 2001.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor [1]	Outlier adjustment factor	Federal rate adjustment	Federal rate (after outlier reduction)
1992	N/A	0.9813	0.9802	.....	.9497	.....	415.59
1993	6.07	.9756	.9162	.9960	.9496	.....	417.29
1994	3.04	.9485	.9947	1.0053	.9454	[2] .9280	378.34
1995	3.44	.9734	.9432	.9998	.9414	.....	378.83
1996	1.20	.9849	N/A	.9994	.9536	[3] .9972	461.96
1997	0.70	.9358	N/A	.9967	.9481	.....	436.92
1998	0.90	.9659	N/A	.9989	.9382	[4] .8222	371.51
1999	0.10	.9783	N/A	1.0028	.9392	.....	378.10
2000	0.30	.9730	N/A	.9985	.9402	.....	377.03
2001	0.90	.9785	N/A	.9979	.9409	.....	382.03
2002	0.90	[6] 1.0000	N/A	[5] 1.0000	[5] .9409	.....	393.94
2003	0.90	[6] 1.0000	N/A	1.0000	.9409	[4] 1.0255	407.64
2004	0.80	[5] 1.0000	N/A	1.0000	.9409	.....	410.90
2005	0.90	[6] 1.0000	N/A	1.0000	.9409	.....	414.60

[1] Note: The incremental change over the previous year.
[2] Note: OBRA 1993 adjustment.
[3] Note: Adjustment for change in the transfer policy.
[4] Note: Balanced Budget Act of 1997 adjustment.
[5] Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.
[6] Note: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

Appendix C: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 2001 by hospitals subject to the prospective payment system and by hospitals or units excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XVI) of the Act sets the FY 2001 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 1.1 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2001 percentage increase in the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act. For Medicare-dependent, small rural hospitals, the percentage increase is the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 1.1 percentage points. Section 406 of Public Law 106–113 amended section 1886(b)(3)(B)(i) of the Act to provide that, for sole community hospitals, the rate of increase for FY 2001 is equal to the market basket percentage increase.

Under section 1886(b)(3)(B)(ii) of the Act, the FY 2001 percentage increase in the rate-of-increase limits for hospitals and units excluded from the prospective payment system ranges from the percentage increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available, or 0 percentage point if costs do not exceed two-thirds of the limit.

In accordance with section 1886(d)(3)(A) of the Act, we are updating the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals and units excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the second quarter 2000 forecast of the FY 2001 market basket increase of 3.4 percent for hospitals and units subject to the prospective payment system, the update to the standardized amounts is 2.3 percent (that is, the market basket rate of increase minus 1.1 percent percentage points) for hospitals in both large urban and other areas. The update to the hospital-specific rate applicable to Medicare-dependent, small rural hospitals is also 2.3 percent. The update to the hospital-specific rate applicable to sole community hospitals is 3.4 percent. The update for hospitals and units excluded from the prospective payment system can range from the percentage increase in the excluded hospital market basket (currently estimated at 3.4 percent) minus a percentage between 0 and 2.5 percentage points, or 0 percentage point, resulting in an increase in the rate-of-increase limit between 0.9 and 3.4 percent, or zero percent (see section V of the Addendum of this final rule).

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, we published the FY 2001 update factors recommended by the Secretary in Appendix D of the May 5, 2000 proposed rule (65 FR 26434). In its March 1, 2000 report, MedPAC did not make a specific update recommendation for FY 2001 payments for Medicare acute inpatient hospitals. However, in its June 1, 2000 report, which was issued after the May 5, 2000 proposed rule, MedPAC recommended a combined operating and capital update for hospital inpatient prospective payment system payments for FY 2001. We describe the basis of our FY 2001 update recommendation in Appendix D of the May 5, 2000 proposed rule at 65 FR 26434. Our responses to the MedPAC recommendations concerning the update factors for FY 2001 are discussed below in section II of this Appendix.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, in the May 5, 2000 proposed rule, we recommended that an appropriate update factor for the standardized amounts was 2.0 percentage points for hospitals located in large urban and other areas. We also recommended an update of 2.0 percentage points to the hospital-specific rate for Medicare-dependent, small rural hospitals. In addition, we recommended an update of 3.1 percentage points to the hospital-specific rate for sole community hospitals. We believed these recommended update factors would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

Also in the proposed rule, we recommended that hospitals excluded from the prospective payment system receive an update of between 0.6 and 3.1 percentage

points, or zero percentage points. The update for excluded hospitals and units is equal to the increase in the excluded hospital operating market basket less a percentage between 0 and 2.5 percentage points, or 0 percentage points, depending on the hospital's or unit's costs in relation to its rate-of-increase limit for the most recent cost reporting period for which information is available. For the proposed rule, the market basket rate of increase for excluded hospitals and units was forecast at 3.1 percent.

III. MedPAC Recommendations for Updating the Prospective Payment System Operating Standardized Amounts

In its June 2000 Report to Congress, MedPAC presented a combined operating and capital update for hospital inpatient prospective payment system payments for FY 2001 and recommended that Congress implement a single combined (operating and capital) prospective payment system rate. With the end of the transition to fully prospective capital payments ending with FY 2001, both operating and capital prospective system payments will be made using standard Federal rates adjusted by hospital specific payment variables. Currently, section 1886(b)(3)(B)(i)(XVI) of the Act sets forth the FY 2001 percentage increase in the prospective payment system operating cost standardized amounts. The prospective payment system capital update is set under the framework established by the Secretary outlined in § 412.308(c)(1).

For FY 2001, MedPAC's update framework supports a combined operating and capital update for hospital inpatient prospective payment system payments of 3.5 percent to 4.0 percent (or between the increase in the combined operating and capital market basket plus 0.6 percentage points and the increase in the combined operating and capital market basket plus 1.1 percentage points). MedPAC also notes that while the number of hospitals with negative inpatient hospital margins have increased in FY 1998 (most likely as the result of the implementation of Public Law 105–33), overall high inpatient Medicare margins generally offset hospital losses on other lines of Medicare services. MedPAC continues to project positive (greater than 11 percentage points) Medicare inpatient hospital margins through FY 2002.

MedPAC's FY 2001 combined operating and capital update framework uses a weighted average of HCFA's forecasts of the operating (prospective payment system input price index) and capital (CIPI) market baskets. This combined market basket was used to develop an estimate of the change in overall operating and capital prices. MedPAC calculated a combined market basket forecast by weighting the operating market basket forecast by 0.92 and the capital market basket forecast by 0.08, since operating costs are estimated to represent 92 percent of total hospital costs (capital costs are estimated to represent the remaining 8 percent of total hospital costs). MedPAC's combined market basket for FY 2001 is estimated to increase by 2.9 percent, based on HCFA's March 2000 forecasted operating market basket increase of 3.1 percent and HCFA's March 2000 forecasted capital market basket increase of 0.9 percent.

Response: As we stated in the May 5, 2000 proposed rule (65 FR 26317), we responded to a similar comment in the July 30, 1999 final rule (64 FR 41552), the July 31, 1998 final rule (63 FR 41013), and the September 1, 1995 final rule (60 FR 45816). In those rules, we stated that our long-term goal was to develop a single update framework for operating and capital prospective payments. However, we have not yet developed such a single framework as the actual operating system update has been determined by Congress through FY 2002. In the meantime, we intend to maintain as much consistency as possible with the current operating framework in order to facilitate the eventual development of a unified framework. We maintain our goal of combining the update frameworks at the end of the 10-year capital transition period (the end of FY 2001) and may examine combining the payment systems post-transition. Because of the similarity of the update frameworks, we believe that they could be combined with little difficulty.

The update framework analysis is a largely empirical process carried out by HCFA that quantifies changes in the hospital productivity, scientific and technological advances, practice pattern changes, hospital case mix, the effects of reclassification on recalibration, and forecast error correction. The update framework suggests an update for the prospective payment system operating standardized amounts ranging from of 2.4 percent (market basket minus 1 percent) to 2.9 percent (market basket minus 0.5 percent) is supported by the analyses outlined below.

A. Productivity

Service level productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use a labor productivity measure since this update framework applies to operating payment. To recognize that we are apportioning the short-run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure for operating costs by the share of direct labor services in the market basket to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985 through 1989, or 1.2 percent annually. At the same time, ProPAC estimated total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35.

As stated in the proposed rule, since it was not possible at that time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket. This method estimates an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, expected quality-enhancing intensity growth, and net of expected decline in intensity due to reduction of cost-ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply the sum of the expected change in intensity (0.0 percent), projected admissions change (1.6 percent for FY 2001), and projected real case-mix growth (0.5 percent), or 2.1 percent. The share of direct labor services in the market basket (consisting of wages, salaries, and employee benefits) is 61.4 percent.

Multiplying the expected change in total hospital service output (2.1 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.4, provides our productivity standard of -0.5 to -0.4 percent. In past years, MedPAC made an adjustment for productivity improvement to reflect the level of improvement in the production of health care services, without affecting the quality of those services. Typically, MedPAC made a downward adjustment in their framework to reflect expected improvements in hospital productivity. In their FY 2001 combined update framework, MedPAC did not make an adjustment for productivity. Instead, MedPAC believes that the costs associated with scientific and technological advances should be financed partially through improvements in hospital productivity. As a result, MedPAC offset its adjustment for scientific and technological advances by a fixed standard of expected productivity

growth of 0.5 percent for FY 2001. Our productivity adjustment of -0.5 to -0.4 percent is within the range of MedPAC's fixed standard of expected productivity growth of 0.5 percent used to offset its scientific and technological advances adjustment for FY 2001.

B. Intensity

We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 2001, we recommended an adjustment of 0.0 percent. The basis of this recommendation is discussed below. We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. A study published in the Winter 1992 issue of the *Health Care Financing Review*, "Contributions of case mix and intensity change to hospital cost increases" (pp. 151–163), suggests that one-third of the intensity change is attributable to high-cost technology. The balance was unexplained but the authors speculated that it is attributable to fixed costs in service delivery.

Typically, a specific new technology increases cost in some uses and decreases cost in others. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost-increasing effects for individual technologies and new technologies.

Other things being equal, per-discharge fixed costs tend to fluctuate in inverse proportion to changes in volume. Fixed costs exist whether patients are treated or not. If volume is declining, per-discharge fixed costs will rise, but the reverse is true if volume is increasing.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FYs 1995 through 1999 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the CPI for hospital and related services and changes in real case-mix. Thus, in order to measure changes in intensity, one must measure changes in real case-mix.

For FYs 1995 through 1999, observed case-mix index change ranged from a low of −0.3 percent to a high of 1.7 percent, with a 5-year average change of 0.6 percent. Based on evidence from past studies of case-mix change, we estimate that real case-mix change fluctuates between 1.0 and 1.4 percent and the observed values generally fall in this range, although some years the figures fall outside this range. The average percentage change in charge per discharge was 3.6 percent and the average annual change in the CPI for hospital and related services was 4.1 percent. Dividing the change in charge per discharge by the quantity of the real case-mix index change and the CPI for hospital and related services yields an average annual change in intensity of −1.9 percent. Assuming the technology/fixed cost ratio still holds (.33), technology would account for a −0.6 percent annual decline while fixed costs would account for a −1.3 percent annual decline. The decline in fixed costs per discharge makes intuitive sense as volume, measured by total discharges, has increased during the period. In the past, we have not recommended a negative intensity adjustment. Although we did not recommend a negative adjustment for FY 2001, we reflected the possible range that such a negative adjustment could span, based on our analysis. Accordingly, for FY 2001, we recommended an intensity adjustment between 0 percent and −0.6 percent.

MedPAC does not make an adjustment for intensity per se, but its combined update recommendation for FY 2001 includes two categories that we consider to be comparable with our intensity recommendation. MedPAC is recommending a 0.0 to 0.5 percent update for scientific and technological advances to account for anticipated uses of emerging technologies that enhance the quality of hospital services, but increase costs of hospital care. The Commission recognized an allowance for science and technological advances of 0.5 percent to 1.0 percent. However, with their productivity offset of 0.5 percent, MedPAC's combined FY 2001 adjustment for science and technological advances is 0.0 percent to 0.5 percent.

MedPAC's recommendation also takes into account the increasingly apparent trend of some acute care providers to shift care to a post acute care facility. While this can occur for many reasons and the shifting of costs may maintain or improve quality of care for Medicare beneficiaries, it leads to a redistribution of payments and reduces the resources available for acute care providers to pay for services to other Medicare beneficiaries. In the past two years, MedPAC recommended a negative adjustment for site-of-care substitution or unbundling of the payment unit. However, in light of the financial pressures in the hospital industry during FYs 1998–1999 since the implementation of Public Law 105–33, MedPAC recommends a 0.0 percent adjustment for site-of-care substitution for FY 2001. We agree with MedPAC that the site-of-care substitution effect is real and that it is accounted for by our intensity recommendation.

C. Change in Case-Mix

Our analysis takes into account projected changes in case-mix, adjusted for changes attributable to improved coding practices. For our FY 2001 update recommendation, we projected a 0.5 percent increase in the case-mix index. We defined real case-mix as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that results in assignment of cases to higher weighted DRGs, but do not reflect greater resource requirements. Unlike in past years, where we differentiated between "real" case-mix increase and increases attributable to changes in coding behavior, we do not feel changes in coding behavior will impact the overall case-mix in FY 2001. As such, for FY 2001, we estimate that real case-mix is equal to projected change in case-mix. Thus, we recommended a 0.0 adjustment for case-mix.

MedPAC's analysis indicates that coding change has reduced case-mix index growth. In the past, MedPAC has recommended a negative adjustment when DRG coding changes has led to case-mix index growth. However, MedPAC now believes that it is appropriate to include a positive adjustment for DRG coding change in the FY 2001 update and recommends a combined adjustment of 0.5 percent.

MedPAC also makes an adjustment for within DRG severity. In past years, MedPAC has included an adjustment for increased case complexity not captured by the DRG classification system. The Commission recognizes that as the DRG system adjusts, it should account for more of the variation in costs by DRG assignment, leaving less within-DRG variation in case complexity and costliness. Therefore, MedPAC recommended a combined adjustment of 0.0 for FY 2001. As a result, for FY 2001, MedPAC recommends a total combined case-mix adjustment of 0.5 percent.

D. Effect of FY 1999 DRG Reclassification and Recalibration

We estimate that DRG reclassification and recalibration for FY 1999 resulted in a 0.0 percent change in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER.

E. Forecast Error Correction

We make a forecast error correction if the actual market basket changes differ from the forecasted market basket by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of forecast error. Our proposed update framework for FY 2001 did not reflect a forecast error correction because, for FY 1999, there was less than a 0.25 percentage point difference between the actual market basket and the forecasted market basket.

MedPAC also made a recommendation in its FY 2001 combined update framework to adjust for any error in the market basket forecasts used to set FY 1999 payment rates.

MedPAC recommended a combined adjustment for FY 1999 forecast error correction of 0.1 percent. However, they noted that this forecast error adjustment is a result of the difference between the forecasted FY 1999 operating market basket of 2.4 percent and the actual FY 1999 operating market basket increase of 2.5 percent. The FY 1999 capital market basket forecast was equal to the actual observed increase of 0.7 percent for capital costs. Therefore, we have included MedPAC's entire 0.1 percent adjustment for FY 1999 forecast error correction in the comparison of MedPAC and HCFA's update recommendations for FY 2001 shown below in Table 1.

F. One Time Factors

MedPAC includes an adjustment for one-time factors in its update framework to

account for significant costs incurred by hospitals for unusual nonrecurring events. While MedPAC's update framework has not explicitly considered such costs in the past, the Commission believes Medicare should aid hospitals when incurring systematic and substantial one-time costs will improve care for Medicare beneficiaries. For its FY 2001 update recommendation, MedPAC considered the costs of year 2000 improvements and the costs of major new regulatory requirements. The Commission did not recommend any additional allowance for these costs for FY 2001. Accordingly, MedPAC recommended a 0.0 percent combined adjustment for one-time factors in their update framework for FY 2001.

HCFA's update framework does not include an adjustment for one-time factors. As we mentioned in last year's proposed rule, higher input prices that hospitals incur to convert computer systems to be compliant on January 1, 2000, were accounted for through the market basket percentage increase.

TABLE 1.—COMPARISON OF FY 2001 UPDATE RECOMMENDATIONS

	HCFA	MedPAC
Market basket	MB	MB[1]
Policy Adjustment Factors		
Productivity	−0.5 to −0.4	([2])
Site-Of-Service Substitution	([3])	0.0
Intensity	0.0 to −0.6	
Science & Technology		0.0 to 0.5
Practice Patterns		([4])
Real Within DRG Change		([5])
Subtotal	−0.5 to −1.0	0.0 to 0.5
Case-Mix Adjustment Factors		
Projected Case-Mix Change	−0.5	
Real Across DRG Change	0.5	0.5
Real Within DRG Change	([3])	0.0
Subtotal	0.0	0.5
Effect of FY 1999 Reclassification and Recalibration	0.0	
Forecast Error Correction	0.0	0.1
Total Recommendation Update	MB −0.5 to MB −1.0	MB[1] + 0.6 to MB[1] +1.1

[1] Used HCFA's March 2000 operating market basket forecast in its combined update recommendation.
[2] Included in MedPAC's Science and Technology Adjustment.
[3] Included in HHS' Intensity Factor.
[4] Included in MedPAC's Productivity Measure in its Science and Technology Adjustment.
[5] Included in MedPAC's Case-Mix Adjustment.

MedPAC's combined update recommendation of between 3.5 percent and 4.0 percent for FY 2001 operating and capital payments is higher than the current law amount as set forth by Public Law 105–33 and the amount in the proposed rule. While the above analysis would support a recommendation that the update be between than the operating market basket minus 0.5 percentage points and the operating market basket minus 1.0 percentage points, consistent with current law we recommended an update of market basket increase minus 1.1 percentage points (or 2.3 percent). We note that this approximates the lower bound of the range suggested by our framework when accounting for a negative intensity change.

IV. Secretary's Final Recommendations for Updating the Prospective Payment System Standardized Amounts

In recommending an update, the Secretary takes into account the factors in the update framework, as well as other factors such as the recommendations of MedPAC, the long-term solvency of the Medicare Trust Funds, and the capacity of the hospital industry to continually provide access to high-quality care to Medicare beneficiaries through adequate reimbursement to health care providers.

To ensure that beneficiaries continue to have access to high-quality care and to allow more time to assess the full impact of Public Law 105–33 and Public Law 106–113, the Secretary recommends an update of 3.4 percent (full market basket) for FY 2001. We note that this recommendation requires a change in law. The FY 2001 President's Budget Mid-Session Review, released on June 26, 2000, included a proposal to provide for the full market basket update for FY 2001. We will continue to evaluate our current framework to ensure that the recommended update appropriately reflects current trends in health care delivery and that Medicare acts as a prudent purchaser providing incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

We received one comment concerning our proposed update recommendation.

Comment: One commenter stated that the continual update and routine replacement of procedures with more sophisticated, higher cost procedures is not picked up within the HCFA pricing system, particularly the use of pharmaceuticals and other scientific and technological advances. The commenter argued that the market basket minus 1.1 percent update for FY 2001 does not recognize the true impact of these factors on hospital-based payments, noting that from FYs 1998 through 2000 the cumulative market basket rose significantly higher than the Medicare operating prospective payment system updates, which were mandated by Public Law 105–33.

Response: By design, the market basket captures only the pure price change of inputs such as labor, materials, and capital that are used to produce a constant quantity and quality of care. This is done using price proxies that reflect the prices of the major inputs hospitals utilize in providing care. For pharmaceuticals, the price proxy used is the Producer Price Index (PPI) for pharmaceutical preparations produced by Bureau of Labor Statistics. This price proxy captures the price change of 'new' pharmaceuticals after they are introduced and the price changes between new drugs that replace existing drugs or generic drugs that replace brand-name drugs.

The market basket appropriately does not recognize the introduction or the increased

utilization of 'new' scientific and technological advances. Instead, these factors, including the increased use of 'new' pharmaceutical drugs, would be reflected in the intensity adjustment of the update framework. Our intensity standard is partly based on changes in the use of quality enhancing services or technology changes (along with changes in case-mix). HCFA's update recommendation uses this adjustment to account for the additional costs of adopting and utilizing new advances that an efficient provider would face in providing a high quality of patient care.

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50 CFR Part 635

Atlantic Highly Migratory Species; Pelagic Longline Management; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 991210332-0212-02; I.D. 110499B]

RIN 0648–AM79

Atlantic Highly Migratory Species; Pelagic Longline Management

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to prohibit pelagic longline fishing at certain times and in certain areas within the Exclusive Economic Zone of the Atlantic Ocean off the coast of the Southeastern United States and in the Gulf of Mexico, and to prohibit the use of live bait when deploying pelagic longline gear in the Gulf of Mexico. This action is necessary to reduce bycatch and incidental catch of overfished and protected species by pelagic longline fishermen who target highly migratory species (HMS).

DATES: This final rule is effective September 1, 2000.

ADDRESSES: For copies of the Final Supplemental Environmental Impact Statement/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA), contact Steve Meyers at 301–713–2347 or write to Rebecca Lent, Chief, HMS Division (SF/ 1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Meyers at 301–713–2347, fax 301–713–1917, e-mail steve.meyers@noaa.gov; or Buck Sutter at 727–570–5447, fax 727–570–5364, e-mail buck.sutter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is the dominant commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target highly migratory species. The gear consists of a mainline, often many miles in length, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Observer data and vessel logbooks indicate that pelagic longline fishing for Atlantic swordfish and tunas results in catch of non-target finfish species such as bluefin tuna, billfish, and undersized swordfish, and of protected species, including threatened and endangered sea turtles. Also, this fishing gear incidentally hooks marine mammals and sea birds during tuna and swordfish operations. The bycatch of animals that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality. Such bycatch mortality may significantly impair rebuilding of overfished finfish stocks or the recovery of protected species.

Proposed Bycatch Reduction Strategy

Atlantic blue marlin, white matlin, sailfish, bluefin tuna, and swordfish are overfished. In the HMS FMP and Amendment 1 to the Atlantic Billfish FMP (Billfish FMP Amendment), NMFS adopted a strategy for rebuilding these stocks through international cooperation at the International Commission for the Conservation of Atlantic Tunas (ICCAT). This strategy primarily involves reducing fishing mortality through the negotiation of country-specific catch quotas according to rebuilding schedules. However, the contribution of bycatch to total fishing mortality and the fact that ICCAT catch quotas for some species require that countries account for dead discards must be considered in the HMS fisheries. The swordfish rebuilding plan that was adopted by ICCAT at its 1999 meeting provides added incentive for the United States to reduce swordfish discards.

In addition to ICCAT stock rebuilding efforts, several other applicable laws require that NMFS address bycatch issues in the HMS fisheries. These include the Magnuson-Stevens Act, the Marine Mammal Protection Act (MMPA), and the Endangered Species Act (ESA). Magnuson-Stevens Act national standard 9 for fishery management plans requires U.S. action to minimize bycatch and bycatch mortality to the extent practicable.

Under the MMPA, the Atlantic pelagic longline fishery has been listed as a Category I fishery due to the frequency of incidental mortality and serious injury to marine mammals. The Atlantic Offshore Cetacean Take Reduction Team was formed in May 1996 to address protected species bycatch in the Atlantic pelagic fisheries. A take reduction plan, submitted to NMFS in November, 1996, that contained measures to address the bycatch of strategic stocks of marine mammals, noted that additional reductions in takes of marine mammals could occur with closures of certain fishing areas during times of high interaction rates.

Finally, under the ESA, NMFS is required to address fishery-related take of sea turtles that are considered threatened or endangered. Although most turtles are released alive, NMFS remains concerned about serious injuries of turtles hooked on pelagic longline gear. To the extent that turtle interactions occur at higher rates in certain fishing areas at particular times, time-area closures for pelagic longline fishing could affect turtle takes. An area closure to address swordfish discards could also help reduce sea turtle interactions if these animals tend to occur in the same ocean areas at the same time. Conversely, if sea turtle interactions are relatively higher in areas that remain open, fishing effort displaced from areas closed to protect juvenile swordfish could lead to increased turtle takes.

In the final HMS FMP and Billfish FMP Amendment, NMFS stated that a comprehensive approach to time-area closures would be undertaken as part of a bycatch reduction strategy after further analysis of the data and consultation with the HMS and Billfish Advisory Panels (APs). NMFS held a combined meeting of the HMS and Billfish APs on June 10–11, 1999, to discuss possible alternatives for a proposed rule under the framework provisions of the HMS FMP. The AP members were generally supportive of the time-area management strategy, provided several comments on temporal and/or spatial components that NMFS should consider further in its analyses, and requested that NMFS develop a written document outlining all analytical methods and results of the time-area evaluation. The APs' comments and suggestions were included in the development of a draft Technical Memorandum, which was made available to the public on November 2, 1999 (64 FR 59162).

Subsequent to the release of the Technical Memorandum, NMFS considered three alternative actions to reduce bycatch and/or bycatch mortality in the Atlantic HMS pelagic longline fishery: status quo, gear modifications that would decrease hook-ups and/or

increase survival of bycatch species, and the prohibition of longline fishing in areas where rates of bycatch or incidental catch are higher. NMFS considered gear modifications beyond those examined previously during development of the HMS FMP. NMFS also considered a broad range of closures, both in terms of area and time. A proposed rule was published December 15, 1999 (64 FR 69982), for which alternatives were identified and analyzed in a draft Supplemental Environmental Impact Statement (64 FR 73550, December 30, 1999). The proposed rule included closed areas for pelagic longline gear in the western Gulf of Mexico and off the southeast coast of the United States.

During the comment period on the proposed rule, NMFS received comment on many issues related to the proposed time/area closures. In particular, commenters noted that the proposed closure in the western Gulf of Mexico would not adequately address juvenile swordfish bycatch in the DeSoto Canyon area of the eastern portion of the Gulf. Additionally, commenters noted the significant economic impacts associated with large scale area closures in that vessel operators and shoreside support services would need considerable time for adjustment and relocation. Given these comments, NMFS analyzed the potential impacts of an additional closed area in the DeSoto Canyon. Subsequently, NMFS published supplementary information regarding the potential impacts of closing the DeSoto Canyon Area together with a revised summary of the IRFA prepared for the proposed rule (65 FR 24440, April 26, 2000). The comment period for the proposed rule was reopened through May 12, 2000, and NMFS specifically requested comments on the extent to which delayed effectiveness could mitigate the economic impacts of area closures.

ESA Consultation

On November 19, 1999, NMFS reinitiated consultation under section 7 of the ESA based on preliminary reports that observed incidental take of loggerhead sea turtles by the Atlantic pelagic longline fishery during 1999 had exceeded levels anticipated in the Incidental Take Statement (ITS) previously issued for the HMS FMP. Additionally, the consultation included the pelagic longline management rulemaking that was in preparation, as it was recognized that the time/area closures, if implemented, could affect the overall interaction rates with sea turtles. In a Biological Opinion issued on June 30, 2000 (BO), NMFS concluded that operation of the pelagic longline fishery was likely to jeopardize the continued existence of loggerhead and leatherback sea turtles. The BO identified the Reasonable and Prudent Alternatives (RPAs) necessary to avoid jeopardy and listed the Reasonable and Prudent Measures (RPMs) and Terms and Conditions (TCs) necessary to authorize continued take as part of a revised ITS. While the implications of the BO are discussed in this final rule, NMFS will undertake additional rulemaking and non-regulatory actions as required to implement the additional management measures required under the BO.

Response to Comments

NMFS received several hundred comments and several thousand form letters during the 2 comment periods, 13 public hearings, and 2 joint AP meetings of this rulemaking. Following are summaries of the comments together with NMFS' responses.

General

Comment 1: There is no conservation benefit from the proposed closures except for small swordfish; therefore, the proposed time/area closures will probably have an imperceptible effect on rebuilding overfished HMS.

Response: NMFS disagrees. Depending on the amount of redistribution of effort under the proposed closed areas, other species, such as sailfish and large coastal sharks, may benefit from these closures. Under the no-effort redistribution model, billfish discards are reduced by 19 to 43 percent, although, as discussed in the FSEIS, the actual benefit of these time/area closures is likely somewhere between the extremes predicted by the effort redistribution models. Further, prohibiting the use of live bait will provide a 10- to 46-percent reduction in billfish discards in the Gulf of Mexico. National standard 9 of the Magnuson-Stevens Act requires that FMPs reduce bycatch to the extent practicable. Although it was not a stated objective of the final rule to rebuild overfished stocks through time/area closures or gear modifications, some benefit to rebuilding may also be experienced to the degree that mortality rates will be reduced for juveniles, pre-adults, and reproductive fish. Also, to the extent that the United States can use the domestic bycatch reduction program, including time/area closures and gear modifications, to convince other ICCAT member nations that bycatch should be minimized, these actions may have a significant impact on Atlantic-wide rebuilding of overfished HMS stocks.

Comment 2: NMFS is already past the deadline for a rebuilding program for overfished HMS that includes bycatch reduction measures.

Response: NMFS disagrees. The HMS FMP and the Billfish FMP Amendment include rebuilding plans that meet Magnuson-Stevens Act guidelines. The swordfish rebuilding program recently adopted by ICCAT is based in large part on the rebuilding plan outlined in the HMS FMP. Similarly, the rebuilding plans for blue and white marlin emphasize the importance of international efforts to reduce bycatch and bycatch mortality. NMFS implemented bycatch reduction measures in the HMS FMP, including limited access for swordfish and shark fisheries, time/area closure for pelagic longline gear to reduce bluefin tuna dead discards, limiting the length of mainline for longline fishermen, and other measures summarized in the HMS FMP. The Billfish FMP Amendment also outlined a bycatch reduction strategy. NMFS expects that additional measures will continue to be implemented for all HMS fisheries, including educational workshops that share results of recent research on gear modifications. Finally, as a result of the jeopardy finding in the BO, NMFS will initiate implementation of the requirements of the BO via additional rulemaking and other non-regulatory means.

Comment 3: NMFS should extend the VMS implementation deadline past June 1, 2000.

Response: NMFS agrees. On April 19, 2000 (65 FR 20918), NMFS extended the effective date until September 1, 2000. This will provide adequate time (2 months) to ensure that all systems are fully functional prior to the implementation of the time/area closures. Also, implementation of the measures in the BO may require a time/area closure and/or gear setting restrictions to be enforced by VMS.

Comment 4: As the swordfish stocks continue to rebuild, the United States may need more U.S. boats to harvest the swordfish quota.

Response: NMFS disagrees. The final regulations implementing the HMS FMP (May 28, 1999; 64 FR 29090), NMFS established a limited access program for Atlantic swordfish, Atlantic shark, and the pelagic longline sector of the Atlantic tuna fisheries. A description of the qualifying requirements for a directed or incidental limited access permit is contained in Chapter 4 of the HMS FMP. Using a multi-tiered process based on participation, approximately 450 limited access swordfish permits (directed and incidental) were awarded.

Subsequent examination of fishing activity by these vessels in preparation of the proposed and final rule indicates that a significant portion did not report any HMS landings in either 1997 (331 vessels reported HMS landings) or 1998 (208 vessels reported HMS landings). Currently, the North Atlantic swordfish stock is estimated to be at 65 percent of the level needed to support maximum sustainable yield (MSY). When the stock attains the level consistent with MSY, it is likely that the number of U.S.-flagged vessels with directed or incidental swordfish permits will be sufficient to handle any potential increase in the U.S. swordfish quota.

Comment 5: NMFS should be concerned about small sources of mortality that may exacerbate overfishing and slow rebuilding.

Response: NMFS agrees and is concerned about all sources of mortality on HMS stocks. NMFS is committed to work through available international fora to rebuild overfished HMS stocks, even when U.S. fishing is responsible for only a small source of the total Atlantic-wide mortality. The rebuilding plans provided in the Billfish FMP Amendment are indicative of this commitment. Further, the Agency is required by the Magnuson-Stevens Act to take appropriate conservation actions, while considering the social and economic impacts on fishermen and fishing communities, and as such must consider management actions that meet the national standard guidelines.

Comment 6: NMFS should increase outreach efforts to inform the public of the need for management of HMS resources.

Response: NMFS agrees but is currently restricted from increasing outreach efforts by competing demands for funding (e.g., funds for observers, science). Note that the NMFS Highly Migratory Species Management Division posts current events and useful documents on the website www.nmfs.noaa.gov/sfa/hmspg.html. NMFS also produces informational brochures on current fishing regulations and mailouts, and NMFS uses a fax network for distribution of information. NMFS scientists are also participating in periodic outreach programs to share information on life history of billfish, sharks and tunas, as well as sharing information on methods that will enhance survival of released fish. An information hotline has also been established that summarizes current fisheries regulations as they apply to HMS. The hotline can be accessed by calling toll-free at 1–800–894–5528. Additional outreach efforts will be implemented as funding becomes available.

Comment 7: The proposed closed areas will result in an increase in swordfish imports into the United States; this would deny U.S. seafood consumers access to fresh, quality-controlled fish.

Response: NMFS does not anticipate that the U.S. fleet will be unable to meet its quota as a result of this final rule. Therefore, it is unlikely that imports will increase as a result of closed areas, although imports may increase for other unrelated reasons. NMFS does regulate the swordfish market other than to prohibit the import of undersized Atlantic swordfish into the U.S., which is monitored through the Certificate of Eligibility program. NMFS does not anticipate that this rule would affect the availability of high-quality, inspected seafood products provided to citizens of the United States by U.S. commercial fishermen. Imports of fishery products into the United States are also subject to the same hazard analysis and critical control point (HACCP) guidelines as are domestic landings.

Comment 8: The proposed closed areas are not equitable for constituents in different states.

Response: As required by national standard 2 of the Magnuson-Stevens Act, NMFS utilized the best available scientific information to develop the proposed rule and the final action. NMFS used logbooks, observer programs, and various scientific studies to identify distributional patterns of seasonal abundance, by species, and areas of overlap between various HMS, protected and endangered species, as defined by concentrations of bycatch and incidental catch from pelagic longline gear in the U.S. EEZ. Therefore, in large part, the biology of the species dictated the locations of the closures. In the selection of the final actions, international obligations and the national standards were considered, including the issue of equity, as required by national standard 4. While the final closed areas may have larger impacts on fishermen who fish in those areas, such impacts are not inconsistent with national standard 4.

Comment 9: NMFS is ignoring sea bird bycatch by the recreational fishermen who troll for HMS.

Response: NMFS disagrees that it is ignoring sea bird bycatch. NMFS has no data indicating that sea birds are caught and discarded in the recreational fishery for HMS. NMFS is currently implementing a logbook and a voluntary observer program for charter/headboats involved with HMS fisheries. This program will provide additional information on recreational fishing, including any possible interactions with seabirds or other protected or endangered species. If the data collected indicate that a sea bird bycatch problem exists in the U.S. recreational troll fisheries, NMFS will take appropriate action.

Comment 10: NMFS should quantify bycatch and bycatch mortality in the recreational fishery.

Response: NMFS agrees that quantifying bycatch and bycatch mortality in recreational fisheries is important and has collected data used to quantify bycatch of large pelagics in the recreational fishery. Such data are reported in the U.S. National Report prepared each year by NMFS for submission to ICCAT. The Billfish FMP Amendment established a catch-and-release fishery management program for the recreational Atlantic billfish fishery; therefore, all billfish released alive, regardless of size, by recreational anglers are not considered as bycatch. However, the mortality associated with the capture-and-release event is an important component to quantify for population assessment. NMFS currently collects data on the number of billfish retained and released at selected tournaments. NMFS has funded studies to quantify the bycatch mortality in bluefin tuna and billfish recreational fisheries, and NMFS scientists have recently reported on the use of circle hooks to reduce release mortality for the recreational billfish fishery. NMFS encourages fishermen to handle and release HMS in a manner that maximizes their chances of survival.

Comment 11: NMFS should re-establish the Second Harvest Program for swordfish whereby undersized swordfish are fed to the hungry instead of being discarded as bycatch.

Response: The specific regulations for the swordfish donation program were eliminated when the HMS regulations were consolidated in implementing the final HMS FMP and Billfish FMP Amendment (May 29, 1999; 64 FR 29090). During the consolidation process, the swordfish donation program regulations were evaluated under the President's Regulatory Reinvention Initiative. Given the low level of participation in the program at the time and the anticipated reduction in dead discards of undersized swordfish as the U.S. moved to adopt the alternative minimum size, it was determined that potential scale of operations did not require extensive regulatory text. However, under the current consolidated regulations, a fishermen could apply for an Exempted Fishing Permit (EFP) to authorize the

donation of certain fish that could not otherwise be retained (e.g., swordfish in excess of the bycatch limits in effect for the particular vessel). Thus, the regulations still provide a mechanism for a donation program.

Comment 12: NMFS regulations force pelagic longline fishermen to discard swordfish, thus increasing bycatch in this fishery. NMFS should have a higher minimum size with a tolerance for undersized fish to reduce bycatch.

Response: Swordfish caught below the minimum size are regulatory discards and, as such, are considered bycatch. The minimum size limit was established to create an incentive for fishermen to avoid areas of undersized swordfish, though this was found to be less successful than anticipated. NMFS discontinued the use of a higher minimum size with a 15-percent tolerance for smaller fish because of concerns about the difficulty in enforcing such a measure. NMFS proposed a lower minimum size with no tolerance, and industry participants largely supported this decrease, stating that most of the fish landed under the tolerance provisions were just under the higher minimum size. In the Spring of 1999, the ICCAT Advisory Committee recommended that NMFS evaluate the efficacy of the swordfish minimum size limit and reconsider eliminating that size limit if warranted. Pending the outcome of that evaluation, ICCAT is expressly considering discards in the swordfish catch allocation scheme. Under the 1999 ICCAT recommendation, total North Atlantic discards of undersized swordfish are subject to an allowance of 400 mt Atlantic-wide for the 2000 fishing season; the U.S. receives 80 percent of this dead discard allowance (320 mt). The United States is obligated by international agreement to address swordfish discards. The time/area closures defined in the final rule will significantly reduce swordfish discards by U.S. pelagic longline vessels. Although some small swordfish will still be encountered under time/area management, the overall proportion of the catch that is discarded will be reduced and may, in fact, provide an opportunity to consider alternatives to minimum sizes in the international management of Atlantic swordfish.

Comment 13: The proposed closed areas are expected to increase the catch of mako, thresher, and blue sharks. The pelagic shark stocks will not be able to withstand the possible increase in pelagic shark mortality (landings and discards) associated with pelagic longline effort redistribution.

Response: Although the status of the pelagic sharks stock is currently designated as unknown, NMFS disagrees that the final rule will have a significant adverse impact on pelagic shark mortality. However, this does not mean that NMFS is not concerned about the status of these stocks. In fact, the HMS FMP established a blue shark quota, including dead discards from pelagic longline gear, that effectively sets an upper limit to the magnitude of impacts from displaced effort. In analyzing the impacts of the final closed areas, NMFS predicts only a 4-percent increase in pelagic shark landings and estimated discard rates increase by 8 percent under the effort redistribution model, which may overestimate impacts on bycatch and target catch. NMFS will closely monitor all pelagic shark landings through logbook and observer programs to follow changes in landing patterns resulting from effort redistribution.

Comment 14: The proposed time/area closures will reduce gear conflicts between the growing recreational HMS fisheries and commercial fishing communities, but in some areas, particularly the eastern Gulf of Mexico and Mid-Atlantic Bight, conflicts could potentially increase.

Response: NMFS previously identified gear conflicts between recreational and commercial entities in the 1988 Atlantic Billfish FMP and in the 1999 Amendment to that FMP. NMFS agrees that conflicts between recreational and commercial fishing groups could escalate in areas that remain open as a result of pelagic longline effort redistribution. Mitigating possible user conflicts was one of several reasons that temporal and spatial components of the proposed action were refined in the final action and, in the case of the western Gulf of Mexico, replaced by a live bait prohibition. Any management measure leading to a reduction in bycatch of billfish from commercial fishing gear may lead to localized increases in angler success and resultant economic benefits to associated U.S. recreational industries.

Comment 15: NMFS should consider implementing Individual Transferable Quotas (ITQs) in the future as a bycatch reduction measure, particularly for bluefin tuna in the longline fishery.

Response: Implementation of an ITQ scheme, with the sole or even partial purpose of reducing discards, could be considered and would require extensive detailed analysis before proceeding. However, NMFS is prohibited by the Magnuson-Stevens Act from implementing new ITQ programs at this time. The HMS FMP specifically addressed the bycatch of bluefin tuna by the pelagic longline fishery through implementation of a time/area closure during June off the Mid-Atlantic Bight. Initial results of the efficacy of the first closure (June 1999) are preliminary and do not indicate that the anticipated reductions were fully achieved. NMFS is currently reviewing whether the results are due to (1) a limited time frame for outreach (the final rule was published on May 28, 1999, with an effective date of June 1, 1999, for the bluefin tuna pelagic longline closure); (2) enforcement issues (VMS implementation was delayed until September 1, 2000); or, (3) inter-annual variation in the areas of BFT interaction (increased discards occurred outside of the closed area).

Comment 16: Large closed areas will pose significant enforcement challenges to U.S. Coast Guard (USCG) since the areas identified for closure in the proposed rule are not routinely patrolled by cutters. (This comment received from the USCG was followed up by a comment that supports the use of VMS to enforce closed areas.)

Response: NMFS recognizes the need for effective enforcement of these closed areas and, as such, supports the use of VMS, which will become effective for all pelagic longline vessels on September 1, 2000 (65 FR 20918; April 19, 2000). USCG resources will continue to be utilized, as that Agency is capable of confirming a vessel's location and whether it is fishing in the closed area. NMFS has entered into a cooperative agreement with the USCG to assist in the monitoring of fishing vessels at USCG locations.

Comment 17: NMFS should define the closed area by latitude and longitude in the regulatory text, including the designation for the U.S. EEZ.

Response: Except for a small portion of the East Florida Coast area, NMFS provides latitude and longitude coordinates for the boundaries to the closed areas in the regulatory text of this final rule. Given the curvature of the EEZ boundary between the U.S. and the Bahamas, it would be too complicated to express that segment of the boundary in latitude and longitude coordinates. NMFS notes that the EEZ boundary is plotted on most NOAA nautical charts and that vessel operators fishing that area must be familiar with the EEZ boundary in any case, as they are not authorized to fish commercially in the Bahamas.

Comment 18: NMFS should take these proposed closed areas to ICCAT and encourage international closed areas.

Response: NMFS supports consideration of closed areas and gear modifications to reduce undersized swordfish catch and fishing mortality and to protect spawning and/or nursery areas for swordfish and billfish on an Atlantic-wide basis, as discussed in the HMS FMP and Billfish FMP Amendment. In 1999, ICCAT adopted a U.S.-sponsored resolution for the development of possible international time/area closures (and gear modifications), and the Standing Committee for Research and Statistics (SCRS) is scheduled to provide a report on this topic at the ICCAT meeting in 2002. The final rule will be included in the U.S. National Report that will be submitted to ICCAT in October, 2000.

Comment 19: NMFS should ban pelagic longline gear or, at least, ban the use of this gear inside the U.S. EEZ.

Response: NMFS disagrees. Banning pelagic longline gear in the U.S. EEZ is not necessary to protect highly migratory species. Bycatch can be addressed through time/area closures, education, and gear modifications. Requiring all vessels using pelagic longline gear to fish only outside the 200 mile limit may also be inconsistent with consideration of safety issues as required under national standard 10.

Comment 20: Closures are not necessary; swordfish are rebuilding.

Response: NMFS agrees that the North Atlantic swordfish stock may have stabilized and that an international rebuilding program is in place. To the extent that the time/area closures will reduce bycatch and bycatch mortality of undersized swordfish, pre-adults, and spawning fish, the closures will enhance stock rebuilding. Furthermore, NMFS is required by an ICCAT recommendation and under national standard 9 to minimize bycatch, to the extent practicable. Providing protection of small swordfish and reproducing fish though time/area closures is particularly critical as stocks begin to rebuild. The United States is allocated 29 percent of the north Atlantic swordfish quota (1997 through 1999), and approximately 80 percent of the reported dead discards. Under the 1999 ICCAT recommendation, the total North Atlantic dead discard allowance for the 2000 fishing season is 400 mt; the U.S. receives 80 percent of the North Atlantic dead discard allowance (320 mt). The dead discard allowance for the United States is reduced to 240 mt in 2001, 160 mt in 2002, and will be phased out by 2004, with any overage of the discard allowance coming off the following year's quota. A total of 443 mt of swordfish were reported discarded by U.S. fishermen in the North Atlantic during 1998. Under the time/area strategy of the final rule, the no effort redistribution model predicts a 41.5-percent reduction in discards; under the effort redistribution model, discards are reduced by 31.4 percent. The closures could potentially reduce discards from 1998 levels to 259 mt under the no-effort redistribution model and to 304 mt under the effort redistribution model, thereby meeting at least the year 2000 discard allocation levels without affecting the subsequent year's quota.

Comment 21: NMFS should increase observer coverage of all components of HMS fisheries, including the pelagic longline fishery.

Response: NMFS agrees that it would be beneficial to increase observer coverage to document bycatch in all HMS fishing sectors. Observer coverage of the pelagic longline averaged between 4 and 5 percent between 1992 through 1998; a total of 2.9 percent of pelagic longline sets were observed during 1998. However, given current fiscal constraints, NMFS will not likely be able to significantly increase observer coverage in the pelagic longline fishery. NMFS will investigate additional funding mechanisms. Depending on funding, NMFS may implement an initial phase of the HMS charter/headboat and voluntary observer program in the summer of 2000 that will provide additional bycatch information from recreational fisheries.

Comment 22: NMFS should develop a comprehensive bycatch strategy, including specific targets for bycatch reduction.

Response: NMFS disagrees that setting fixed bycatch targets is necessary; in fact, such targets may be counterproductive. The multi-species approach followed in the development of the proposed and final action to reduce bycatch, bycatch mortality, and incidental catch precludes setting target reduction for specific species without considering the impact on the remaining portion of the catch composition. For example, if the time/area closures were simply based on reducing swordfish discards by a set percentage, a concomitant increase in bycatch of other species could occur, or target catches could be reduced more than necessary to achieve national standard 9 mandates. NMFS agrees that a comprehensive bycatch strategy is necessary and has outlined a plan that incorporates data collection, analysis, and measures that minimize bycatch, to the extent practicable. This strategy is outlined in the HMS FMP and the Billfish FMP Amendment.

Comment 23: NMFS should conduct educational workshops.

Response: NMFS supports the use of educational workshops to disseminate information on current research regarding bycatch reduction and to provide a forum through which fishermen can share bycatch reduction techniques with each other. NMFS scientists periodically hold seminars for fishermen to discuss the benefits of circle hooks and other handling techniques in the recreational billfish fishery. NMFS will seek input from representatives of fishing organizations and from the AP members regarding opportunities for workshops. Depending upon available funding and staff, NMFS will hold educational workshops to examine bycatch reduction activities in HMS fisheries, both for recreational and commercial fishermen.

Comment 24: NMFS needs to be able to respond quickly to results of monitoring and evaluation of closed areas. NMFS should develop a framework process for adjusting closed areas, if necessary, in a timely manner.

Response: NMFS agrees that a quick response to shifting fishing effort patterns is necessary. NMFS is currently able to adjust or develop new closed areas through the framework process (proposed and final rules, including public comment period) without amending the HMS FMP in the event that closed areas need to be altered to maximize the benefits to the nation. However, it will take time to collect and analyze the appropriate information, including data from the mandatory logbooks, observer program, and VMS.

Comment 25: NMFS should reduce effort in the longline fishery, not just reduce bycatch.

Response: The intent of this rulemaking is not to reduce effort in the fishery, but to reduce bycatch while minimizing the reduction of target catch by shifting effort away from areas with high bycatch and incidental catch. NMFS agrees that under a quota system, a time/area closure scheme will not necessarily reduce effort, although some vessel operators may choose to discontinue fishing due to economic or social factors. The use of time/area closures and gear restrictions (prohibition of live bait) was deemed by NMFS to be the best available management tool to reduce current levels of bycatch by the pelagic longline fishery, as required by national standard 9.

Comment 26: NMFS should consider additional actions to address the impact of the increase in sea turtle interactions resulting from pelagic longline effort redistribution.

Response: NMFS agrees that sea turtle interactions with pelagic longline gear

must be minimized as required by the ESA for listed species. On November 19, 1999, NMFS reinitiated consultation with NMFS' Office of Protected Resources based on preliminary information on the 1999 take levels by the pelagic longline fishery. The BO issued on June 30, 2000 concluded that the continuation of the pelagic longline fishery could jeopardize the continued existence of loggerhead and leatherback sea turtles. The final time/area closures along the southeastern U.S. Atlantic coast were temporally and spatially reconfigured to mitigate, to the extent practicable, the impact of effort redistribution on sea turtle interactions. Bycatch rates, particularly for sea turtles, may be over-estimated by the effort redistribution model because the model estimated bycatch rates by assuming random or constant catch-per-unit-effort in all remaining open areas. This estimation procedure could skew results for certain species if those species are concentrated in certain areas (such as sea turtles in the Grand Banks), instead of being randomly distributed over the entire open area. Fishing activities will be monitored using VMS, as well as through logbooks and on-board observers, to determine impacts of actual effort redistribution, which may require further Agency action to address increased turtle takes. NMFS is initiating efforts to address the requirements of the BO, including possible regulatory and non-regulatory actions.

Comment 27: NMFS is proceeding with the use of time/area management strategies only because of litigation filed against NMFS by various environmental groups following publication of the final rules implementing the HMS FMP.

Response: NMFS disagrees. During public hearings held during the Fall of 1998 as part of the scoping process used to develop management alternatives for the draft HMS FMP and the Billfish FMP Amendment, NMFS received many comments regarding the utility of time/area closures to reduce bycatch in various HMS fisheries, including pelagic longline gear, and their use in protecting essential fish habitat (e.g., spawning and nursery grounds). The draft HMS FMP included a closure of a portion of the Florida Straits to reduce swordfish discards. Comments on the proposed action indicated that the area was spatially and temporally too limited to accomplish any significant reduction in bycatch, and, consequently, the area was not included as part of the final action. However, the HMS FMP clearly stated that, following publication of a final rule, an evaluation of wide-ranging time/area closures would be completed and implemented, if warranted. NMFS honored that commitment through the preparation of the Draft Technical Memorandum and the proposed and final rules, establishing both time/area and gear modifications to reduce bycatch by the U.S. Atlantic HMS pelagic longline fishery.

Comment 28: The comment period for the DeSoto Canyon area closure alternative is too short. Additional time must be provided to allow those in the affected area to adequately respond to this potentially devastating closure.

Response: NMFS disagrees that additional time was warranted for public comment on the DeSoto Canyon closure alternative. During the public hearing period for the proposed rule (December 15, 1999, to March 1, 2000), NMFS received many comments indicating that an additional closure was needed in the northeastern Gulf of Mexico because of the historically high swordfish discard rate in the area. In response to this comment, NMFS conducted additional analysis and identified an area generally around the DeSoto Canyon that in fact did have high incidence of discards of swordfish relative to swordfish kept. Although the DeSoto Canyon is included within areas that were analyzed in the DSEIS and draft Technical Memorandum (made available November 1999), NMFS decided that an additional comment period was needed specifically on the potential utility of this closure because pelagic longline effort has declined by greater than 50 percent in this area over the past 5 years. NMFS notified the public of its intentions to consider a sub-area of previously analyzed areas in the Gulf of Mexico (i.e., DeSoto Canyon) through the HMS fax network, which is sent to thousands of permit holders, seafood dealers and fish houses throughout the eastern United States. In addition, NMFS mailed the **Federal Register** notice with supplementary information summarizing the biological, economic, and social analysis of the DeSoto Canyon closure, and the VMS materials to all HMS pelagic longline permitees. As a result of the April 26, 2000, **Federal Register** notice (65 FR 24440) soliciting comment on this alternative, NMFS received hundreds of responses, indicating that adequate time was provided for comment.

Comment 29: Fish farming is the only answer to providing fish as a food for our population.

Response: NMFS agrees that aquaculture and mariculture play and have an important role to play in providing fishery products, but disagrees that they are the only answer.

Use of Time/Area Closures to Reduce Bycatch

Comment 1: NMFS should use time/area closures to reduce bycatch.

Response: NMFS agrees that closed areas can be an effective way to reduce bycatch, both in the U.S. and international pelagic longline fisheries, and this final rule implements time/area closures for the pelagic longline fisheries in the Gulf of Mexico and along the southeastern U.S. Atlantic coast. Due to efforts of the United States, ICCAT has asked its scientific committee to explore the use of closed areas throughout the management unit. Swordfish, marlin, sailfish, and other HMS are considered overfished and are currently experiencing overfishing Atlantic-wide. The rebuilding plans established in the HMS FMP and the Billfish FMP Amendment will be enhanced to the extent that reduction of bycatch will decrease mortality of juveniles and reproductive fish. Further, a reduction in swordfish discards is now critical for the U.S. pelagic longline fishery as a result of the 1999 ICCAT recommendation setting an North Atlantic discard allowance that is incrementally reduced to a zero tolerance level by 2004.

Comment 2: NMFS should change the size and/or shape of the proposed western Gulf of Mexico closed area.

Response: NMFS agrees and is closing the DeSoto Canyon area year-round to pelagic longline fishing to address undersized swordfish discards and to prevent further increases in swordfish discards as a result of possible effort displacement to this area in response to the southeastern U.S. Atlantic coastal closures. Further, NMFS has attempted to mitigate the economic effects of the actions specifically aimed at reducing billfish bycatch, by eliminating the proposed western Gulf closure and by prohibiting use of live bait by pelagic longline vessels in the Gulf of Mexico instead. This gear modification is potentially as effective in reducing sailfish discards as the western Gulf closure and is approximately half as effective in reducing marlin discards. However, in consideration of the magnitude of U.S. billfish discards relative to Atlantic-wide levels and the extent of the economic impacts associated with the proposed western Gulf closure, modifying fishing practices is a viable alternative that effectively accomplishes the objectives of reducing billfish bycatch while allowing fishing to continue in the western Gulf of Mexico.

Comment 3: Several commenters supported a closure of the Charleston

Bump area. Conversely, other commenters stated that the level of fishing activity in the Charleston Bump area does not warrant closure of this area.

Response: Although pelagic longline activity in the Charleston Bump area results in bycatch of small swordfish throughout the year, over 70 percent of the swordfish bycatch takes place during February through April. Therefore, NMFS is closing the Charleston Bump area for this 3-month time frame of the highest discard rates. This partial year closure addresses the bulk of swordfish discards while minimizing social and economic impacts of the rule by allowing fishing for 9 months, rather than the year-round closure included in the proposed Agency action. Minimizing the temporal component of the Charleston Bump closure also reduces the magnitude of potential increases in sea turtles interactions and white marlin discards predicted by the displaced effort model for the proposed rule. Nevertheless, NMFS is aware of the overall concerns regarding this area relative to potential increases in effort and concomitant effects on bycatch and incidental catch and will monitor fishing activity to determine whether a larger/longer closure is necessary in the Charleston Bump area. If necessary, NMFS would pursue further action through the FMP framework process.

Comment 4: NMFS should consider additional pelagic longline closed areas in a future rulemaking.

Response: NMFS agrees that additional closed areas may be necessary to address bycatch, bycatch mortality, and incidental catch, particularly to address sea turtle takes as discussed in section 5.8 of the FSEIS. Shifts in fishing effort patterns may also warrant future rulemaking to close affected areas. NMFS will continue to monitor the pelagic longline fleet throughout its range.

Comment 5: NMFS should change the shape, size, and/or timing of the South Atlantic proposed closed area.

Response: NMFS agrees. NMFS is closing the southern part of the proposed Southeast area below 31°N latitude (East Florida Coast) year-round in order to maximize the bycatch reduction benefits. The northern portion of the proposed closed area (Charleston Bump) is closed for the period of highest swordfish discards during February through April. NMFS may consider a larger closure in the Charleston Bump area if effort increases significantly in this area, resulting in increased incidental catches or discards of overfished HMS or protected species. NMFS would pursue this action through the FMP framework process.

Comment 6: NMFS should include a closure of the Mid-Atlantic Bight and/or a Northeast area to pelagic longline gear.

Response: NMFS disagrees that this rule should close the Mid-Atlantic Bight and/or Northeast coastal statistical areas. The areas closed by this rule are considered temporal and spatial "hot spots" for HMS bycatch from U.S. pelagic longline effort within the U.S. EEZ, as evaluated by the frequency of occurrence and the relationship between total catch and discard rates. NMFS has included a closure in the mid-Atlantic area as part of the final HMS FMP to reduce bluefin tuna discards from pelagic longline gear. Nevertheless, NMFS recognizes that pelagic longline effort will likely increase in areas that remain open (as analyzed in the redistribution of effort model in FSEIS). By minimizing the size of the closure in the Gulf of Mexico and shortening the closed season for the Charleston Bump area, NMFS expects that the effects of effort redistribution would be lessened from those evaluated in the DSEIS and proposed rule. Considering HMS bycatch, closures of the Mid-Atlantic Bight, beyond the June pelagic longline closure for bluefin tuna discards, or in the offshore waters in the Atlantic Ocean off the northeastern United States are not warranted at this time. NMFS will continue to monitor the pelagic longline fleet throughout its range and will take appropriate action if necessary through the proposed and final rule process to reconfigure closures. In addition, as required by the BO, NMFS will consider measures to reduce and monitor interactions with sea turtles, particularly in the pelagic longline fishing grounds on the Grand Banks. Such measures may include area closures.

Comment 7: NMFS should close areas to both commercial and recreational pelagic fishing. NMFS should consider closing areas to recreational rod and reel fishermen, particularly to protect small bluefin tuna.

Response: NMFS disagrees. The closures included in the final rule address the requirements of national standard 9, while minimizing, to the extent practicable, the significant economic impacts that will be experienced by this fishery, as required by national standard 8. Monitoring programs in place do not identify the recreational fishery as a source of excessive bycatch. In fact, NMFS established a catch-and-release fishery management program in the Billfish Amendment in recognition of the operational patterns of the recreational fishery to encourage further catch and release of Atlantic billfish. However, NMFS continues to address both monitoring of the recreational fishery and any bycatch mortality that does occur. At this time, NMFS encourages recreational fishermen to increase survival of released fish through the use of dehooking devices, circle hooks, and other gear modifications that may reduce stress on the hooked fish. Further, depending upon the availability of funding, NMFS will offer educational workshops in order to reduce bycatch in the recreational fishery.

Comment 8: NMFS should consider "rolling closures" to spread the impacts throughout the region.

Response: NMFS considered and rejected rolling closures. The HMS and Billfish APs advised NMFS that rolling closures may not be effective. MFS conducted analyses to consider closures with varying spatial limitations on a seasonal basis along the southeastern U.S. Atlantic coast; however, none were as effective as the final action (see section 7 of the FSEIS). Economic impacts of the closures were minimized, to the extent practicable, in light of the objectives of the conservation measures.

Comment 9: NMFS should use oceanographic conditions to define the size, shape, and timing of area closures.

Response: NMFS agrees that many life history characteristics of HMS are driven by oceanographic conditions, including the strength of the Gulf Stream in the Atlantic, the loop current in the Gulf, and the eddies that spin off these structures. By following long-term distributional patterns in establishing the temporal and spatial components of the closures, oceanographic conditions were indirectly utilized in defining and evaluating the effectiveness of the time/area closures. The sizes of the closures around the Charleston Bump and DeSoto Canyon are examples of how NMFS accounted for variations in the current patterns to establish the closed area boundaries.

Comment 10: NMFS should alter the closed areas to be consistent with Congressional proposals.

Response: NMFS disagrees. The objectives of the legislative proposals are not identical with those of this action. This final rule reflects the four objectives stated in the proposed rule: (1) maximize the reduction of finfish bycatch; (2) minimize the reduction in target catch of swordfish and other species; (3) consider impacts on the incidental catch of other species to minimize or reduce incidental catch levels; and (4) optimize survival of bycatch and incidental catch species.

NMFS has reviewed the various legislative proposals and provided, in testimony before Congress, an analysis of the relative effectiveness of the closures following the methods outlined in the FSEIS. In addition to bycatch reduction, the legislative actions also consider gear interactions and economic mitigation through a buyout program, which are beyond the scope of this rulemaking.

Comment 11: The closures proposed by NMFS ignore an historically high area of swordfish discards and nursery grounds in the DeSoto Canyon in the northeastern Gulf of Mexico.

Response: NMFS agrees and is closing an area in the northeastern Gulf of Mexico that includes the DeSoto Canyon. In the draft Technical Memorandum issued with the proposed rule, NMFS had evaluated the closure of a larger area in the Gulf of Mexico (area Bill D) that included the DeSoto Canyon. However, the primary objective for closures in the Gulf of Mexico in the proposed rule was to reduce billfish discards in the western Gulf of Mexico. In responding to comments on the use of live bait, NMFS noted in the FSEIS (see section 7.2) that the higher discards in the western Gulf were a likely result of fishing practices rather than a reflection of relatively higher abundance. Historically, catches of small swordfish were high in the DeSoto Canyon area; however there has been considerably less effort in this area in recent years, which is likely a reflection of the stricter minimum size limit for swordfish with no tolerance. Further rationale for the northeastern Gulf of Mexico closure is to prevent additional effort in this area by pelagic longline fishermen displaced from the southeastern U.S. Atlantic coast closures, which could negate the effectiveness of East Florida Coast and Charleston Bump closures in reducing swordfish discards.

Comment 12: NMFS should reconsider the proposed closed areas because the increase in the bycatch of blue marlin, white marlin, and large coastal sharks is not "worth" the decrease in swordfish bycatch expected to result from the proposed closed areas.

Response: The effort redistribution model used in the DSEIS and FSEIS is based on the assumption that all effort in the closed areas is randomly distributed throughout the remaining open areas and, as such, offers an estimation of the "worst-case scenario" from a biological perspective. This model estimates that discards of blue marlin could increase by 6.6 percent and white marlin by 10.8 percent. Blue marlin bycatch rates may be over-estimated by the effort redistribution model because the model estimated bycatch rates by assuming random or constant catch-per-unit-effort in all remaining open areas. This estimation procedure could skew results for certain species if those species are concentrated in certain areas, instead of being randomly distributed over the entire open area (see section 7 and appendix C of the FSEIS for full description of analytical procedures). Pelagic longline effort in the Caribbean (fishing areas below 22° N. latitude) represents approximately 14 percent of the total U.S. Atlantic-wide fishing effort, but accounts for over half of the total blue marlin discards by U.S. pelagic longline vessels. These areas were not considered for closure since they are generally located outside U.S. EEZ waters. Therefore, it is likely that the no-effort redistribution model would be more applicable for blue marlin (12 percent reduction in discards). White marlin discards were less concentrated in the Caribbean (32 percent of total Atlantic-wide levels) and did not show any identifiable patterns, particularly after the live bait effects were removed from the catch patterns. Therefore, the effort redistribution model (11 percent increase in white marlin discards) is probably more applicable in this case, indicating that white marlin discards are problematic and will need to be closely monitored. The prohibition of live bait in the Gulf will potentially further reduce Atlantic-wide discard levels of blue marlin and white marlin by approximately 3 percent and sailfish by 15 percent. Because large coastal sharks are overfished, management efforts that reduce discards (33.3 percent under the effort redistribution model) are likely to be beneficial to stock recovery and, in that regard, meet the objectives of the final rule.

Comment 13: The closures included in the proposed rule will not be effective in rebuilding overfished HMS stocks unless huge areas of the Atlantic Ocean outside the U.S. EEZ are also closed.

Response: National standard 9 requires FMPs to take actions to minimize bycatch to the extent practicable. The management actions included in the final rule have been formulated to meet the bycatch reduction directive of national standard 9, consistent with the requirements of other national standards for FMPs. To the extent that reducing bycatch and bycatch mortality impacts juvenile and reproductive HMS populations, the final actions may augment rebuilding programs for the overfished HMS stocks. While NMFS agrees that unilateral management action by the United States cannot rebuild overfished HMS stocks, the United States has been a leader in conservation of HMS resources and has taken many management actions (e.g., the time/area closures) to show the international forum our willingness to take the critical steps necessary to conserve these stocks. U.S. leadership has been used as a primary negotiation tool at ICCAT. The swordfish rebuilding program adopted by ICCAT in 1999 was based in large part on the rebuilding plan outlined in the HMS FMP. To the extent that the United States can use time/area closures and other bycatch reduction management strategies to convince other ICCAT member entities that bycatch can be minimized, the actions contained in the final rule may have a significant impact on Atlantic-wide rebuilding of overfished HMS stocks.

Comment 14: The entire Gulf of Mexico should be closed to pelagic longline fishing.

Response: NMFS disagrees that closure of the entire Gulf of Mexico to pelagic longline fishing is warranted. The proposed closure of the western Gulf of Mexico was predicated on the relatively higher billfish discards associated with the pelagic longline fishery operating in that area. Additional information and analyses obtained by NMFS subsequent to the publication of the DSEIS and proposed rule on December 15, 1999, indicate that prohibition of live bait could reduce blue and white marlin discards in the Gulf of Mexico by approximately 10 to 20 percent, and sailfish discards by 45 percent, depending upon the analytical procedure used. Closure of the DeSoto Canyon area in the northeastern Gulf of Mexico, although only a third the size of the western Gulf of Mexico closure (32,800 square miles versus 96,500 square miles), will provide a greater benefit in the reduction of swordfish discards (4 percent reduction Atlantic-wide versus a 3.1-percent increase under the effort redistribution model) and will prevent vessels displaced from the southeastern U.S. Atlantic coastal closures from fishing in an area with an historically high rate of swordfish discards. The cumulative benefits of the northeastern Gulf closure and live bait prohibition meet the objectives of the final rule by providing a reasonable alternative to reduce bycatch rates, while minimizing economic and social impacts throughout the Gulf of Mexico.

Comment 15: NMFS has already closed too many areas to commercial fishing. The proposed closures will eventually lead to total closure of the

entire Atlantic region to commercial fishing.

Response: NMFS disagrees that the final rule closures will lead to elimination of the commercial pelagic longline fishery. However, NMFS agrees that use of time/area closures as a fishery management tool must involve careful consideration of the impact of Agency action on all components of both the commercial and recreational fisheries. Implementation of practicable conservation measures that meet Magnuson-Stevens Act directives is the overarching objective of the Agency. To that end, NMFS has reduced the spatial and temporal constraints of the proposed closures and included a gear modification (prohibition of live bait) to help mitigate the economic and social concerns expected to result from the actions originally proposed.

Comment 16: Closure of the DeSoto Canyon area, in addition to the western Gulf closure, will displace vessels into the Atlantic and/or Caribbean, which will negate the conservation measures associated with the closures.

Response: NMFS disagrees because the effort redistribution model assumes that effort is displaced randomly throughout the remaining open areas. Therefore, the conservation benefits associated with the final action closures account for movement of effort into the Caribbean, Mid-Atlantic Bight, or any other open area. Further, since the final rule does not close the western Gulf of Mexico, it is likely that the limited fishing effort currently expended within the DeSoto Canyon closure area (approximately one-third the size of the proposed Gulf closure) will be dispersed largely within the Gulf of Mexico.

Comment 17: The proposed time/area closures are unjust, unnecessary, and inequitable and, as such, will result in further lawsuits against NMFS.

Response: National standard 9 of the Magnuson-Stevens Act requires that NMFS take action to reduce bycatch to the extent practicable. The use of time/area closures is a practicable means of reducing bycatch of HMS resources while considering the economic concerns of participants in the pelagic longline fishery who target these overfished, international fishery resources. The IRFA, RIR, and other components of the DSEIS clearly identified the significant economic, social, and community impacts associated with the proposed time/area closures. NMFS selected conservation measures in the final rule that meet the directives of the Magnuson-Stevens Act, while being mindful of the requirements of national standard 8 to minimize negative economic, social, and community impacts, to the extent practicable.

Comment 18: The DeSoto Canyon closure is needed to protect a swordfish nursery area, but it needs to be larger to be more effective.

Response: NMFS agrees that the DeSoto Canyon area is an area with an historically high ratio of swordfish discarded to swordfish kept. NMFS does not agree that additional closed areas are warranted at this time. The analysis undertaken for the FSEIS included catch history from the entire northeastern Gulf of Mexico, east of the Mississippi River, and north of 26° N. latitude (general location of the U.S. EEZ). Although effort has been declining around DeSoto Canyon in recent years, NMFS has selected this area for a closure to prevent further effort from being expended in this area, either by displaced effort from the Atlantic or by vessels shifting operations from other areas of the Gulf of Mexico.

Comment 19: NMFS should have considered closures in the Caribbean, including the EEZ around Puerto Rico and the U.S. Virgin Islands, to protect spawning populations of swordfish and billfish.

Response: Closed areas in the Caribbean were considered. However, as discussed in the DSEIS and FSEIS, closures were generally limited to U.S. EEZ waters where they would have maximum impact on all pelagic longline fishing effort. NMFS agrees that the Caribbean waters support important HMS spawning and nursery areas as identified in the essential fish habitat components of the HMS FMP and the Billfish FMP Amendment. Pelagic longline effort in the Caribbean (fishing areas below 22° N. latitude) by U.S. flagged vessels is very effective in targeting swordfish with relatively low discard rates (approximately 6.7 fish kept to 1 discarded, as compared to an average 0.9 swordfish kept to 1 discarded in the DeSoto Canyon area). Conversely, the U.S. pelagic longline effort in the Caribbean represents approximately 14 percent of the total U.S. Atlantic-wide fishing effort, but accounts for over half of the total blue marlin discards by U.S. pelagic longline vessels. NMFS did not select a closure in the Caribbean area because of the extensive range of the fishing effort in the Caribbean, which occurs mainly in international waters. In addition, the configuration of the EEZ around both Puerto Rico and the U.S. Virgin Islands would make closures relatively ineffective.

Comment 20: NMFS should close the DeSoto Canyon area in addition to, not in place of, the proposed western Gulf of Mexico closure.

Response: NMFS agrees that the DeSoto Canyon should be closed year-round to reduce swordfish discards and prevent an increase in fishing pressure in this area as a result of displaced effort from the East Florida Coast closure. However, NMFS does not agree that the proposed western Gulf of Mexico closure (March to September) is also warranted at this time. The final rule includes a prohibition on the use of live bait on pelagic longline gear in the Gulf of Mexico. Analysis of this alternative indicates that prohibiting the use of live bait is likely to be as effective in reducing sailfish discards as the western Gulf closure, and about half as effective in reducing marlin discards. However, in consideration of the magnitude of U.S. billfish discards relative to Atlantic-wide levels and the extent of the economic, social, and community impacts associated with the proposed western Gulf closure, modifying fishing practices is a reasonable alternative that effectively accomplishes the objective of reducing billfish bycatch, to the extent practicable, while allowing fishing to continue in the western Gulf of Mexico.

Comment 21: There is no reason for NMFS to close the DeSoto Canyon area to pelagic longline gear.

Response: NMFS disagrees. The rationale for closing the DeSoto Canyon area year-round to pelagic longline fishing is twofold. The first is to prohibit fishing in an area with an historically low ratio of swordfish kept to number of undersized swordfish discarded, which over the period of 1993 to 1998 has averaged less than one swordfish kept to one swordfish discarded. The second is to prevent further increases in swordfish discards as a result of effort displacement into this area from the Florida East Coast year-round closure.

Comment 22: The closures included in the proposed rule are more effective than the measures contained in various bills being considered in Congress.

Response: There are several bills currently before Congress. It is difficult at this time to predict whether any of the bills will be enacted and, if a bill is enacted, what measures it will contain. The objectives of the legislative proposals are also different in some respects from those of NMFS' final action.

Comment 23: Although the original proposed rule and the additional DeSoto Canyon closed area may not be contrary to ICCAT recommendations, they violate sections of the Magnuson-Stevens and Atlantic Tunas Convention

Acts. The action is not being taken to comply with ICCAT recommendations.

Response: NMFS disagrees that the proposed and final rules violate the Magnuson-Stevens Act and ATCA. In fact, if NMFS failed to address the issues developed in the final action, the Agency would be in violation of Magnuson-Stevens Act directives related to national standard 9. Further, the 1999 ICCAT recommendation established a dead discard allowance that will require the United States to reduce swordfish discards by 25 percent from 1998 levels (i.e., 443 mt to 320 mt) during the 2000 fishing year; any discards in excess of the dead discard allowance will be taken off the following year's quota. The dead discard allowance is subsequently reduced to 240 mt in 2001, 160 mt in 2002, and 0 mt by 2004. Thus, consistent with the ICCAT recommendation, NMFS must take action to reduce swordfish dead discards.

Gear Modifications

Comment 1: NMFS needs to do gear research specifically for the Atlantic pelagic longline HMS fishery. Results from gear modification research on other fisheries may not have the same effectiveness when applied to the Atlantic pelagic longline fishery.

Response: NMFS agrees that research on gear modifications would be most helpful if conducted in the Atlantic pelagic longline fishery. In fact, several gear-based data collection and research programs have been specifically directed on the Atlantic HMS pelagic longline fisheries. One study is looking at whether gear modifications, such as circle hooks, can reduce bycatch mortality and whether they are cost-effective. Results are either inconclusive or too preliminary for application in this final rule. Funding is very limited at this time, so research results from other study areas are often applied to similar fisheries (e.g., western Pacific tuna longline and Gulf of Mexico tuna longline fishery).

Comment 2: NMFS should provide exempted fishing permits (EFPs) to research vessels in closed areas to investigate the effectiveness of gear modifications and fishing practices to reduce bycatch and incidental catch interaction with pelagic longline gear.

Response: NMFS agrees. Researchers must obtain a Scientific Research Permit (SRP) or EFP from NMFS to conduct research in a closed area with pelagic longline gear. A mechanism exists whereby NMFS can grant an SRP/EFP in order to obtain data (50 CFR 600.745). If a research team submits the required information, including a research plan, NMFS would consider granting an SRP/EFP subject to the terms and requirements of the existing regulations.

Comment 3: NMFS received comments both supporting and opposing a regulation requiring the use of circle hooks in HMS fisheries. Comments include the following: Require them on commercial and/or recreational HMS vessels; do not require them; they are safer than regular hooks, and better, cheaper, and more effective than the DSEIS indicated.

Response: NMFS agrees that circle hooks are a promising tool that can be used in many hook and line fisheries to improve survival of hooked fish and turtles that must be released. NMFS has funded a study, now underway in the Azores, to evaluate the effectiveness of circle hooks on sea turtle interactions and survival. If analyses indicate that circle hooks are a cost-effective way to increase turtle survival, NMFS may issue regulations requiring the use of such gear. NMFS seeks the cooperation of all fishermen to explore the use of circle hooks as a means to reduce bycatch mortality, which is less expensive and may have less economic impact than other measures (e.g., more extensive time/area closures). Many recreational anglers have already switched to circle hooks, particularly when fishing with dead bait, with several recent articles in sportfishing magazines reporting on the value of using circle hooks to reduce hooking-related mortality levels. In certain fisheries, commercial fishermen have already adopted circle hooks as well, as there is evidence of increased catch rates for some target species (e.g., yellowfin tuna).

Comment 4: Some commenters noted that NMFS should prohibit the use of live bait in the pelagic longline fishery. Conversely, other commenters noted that, if NMFS prohibits live bait, fishermen will switch from targeting tuna to targeting swordfish. Since many pelagic longline fishermen operating in the Gulf of Mexico have incidental swordfish permits, this might result in increased discards of swordfish.

Response: NMFS agrees that live bait should be prohibited. Live bait is used for 13 percent (logbook data) to 21 percent (observer data) of all pelagic longline sets in the Gulf of Mexico. Logbook and observer data indicate that blue and white marlin discards occur approximately twice as frequently on hooks with live bait; sailfish are discarded four to five times more frequently when live bait is used. Live bait is generally used to target yellowfin tuna, although dead bait is used on the majority of pelagic longline sets. Prohibiting live bait may lead to additional use of squid or other dead bait, which may be less effective than live bait in catching yellowfin tuna, but is a reasonable alternative to a closure of the western Gulf of Mexico as a means of reducing billfish bycatch. Some fishermen may switch from targeting tuna (daytime fishery) to targeting swordfish with dead bait, thereby increasing swordfish discards. However, fishing for swordfish with pelagic longline gear generally takes place during night-time hours and has an added expense and complexity with the use of light sticks. In anticipation of fishermen targeting swordfish in the Gulf of Mexico in reaction to this prohibition, NMFS has implemented a time/area closure in a known swordfish nursery area in the eastern Gulf of Mexico (DeSoto Canyon) in an attempt to avoid the increased catch rates of small swordfish there. Further, if longline fishermen holding an Incidental category swordfish permit experience increased swordfish catch rates, NMFS may need to reconsider the incidental catch limit and the allocation of swordfish quota to the directed fishery. Prohibiting the use of live bait could be just as effective in reducing sailfish discards (approximately 15 percent reduction from the Atlantic-wide U.S. totals during 1995 through 1998) as the western Gulf closure. Although the live bait prohibition would be somewhat less effective in reducing marlin bycatch discards than the March to September area closure (e.g., blue marlin: 3.3 percent vs. a 7.2-percent reduction under the displaced effort model), it is less costly and is a practical alternative to the western Gulf closure.

Comment 5: NMFS should implement other gear modifications (e.g., decreasing length of longline, decreasing soak time, and timing of sets).

Response: NMFS agrees that gear modifications could be effective at reducing bycatch. However, many of these measures are difficult to enforce or could be circumvented by altering fishing patterns (e.g., additional sets made or increased soak time to offset a shorter mainline), resulting in no bycatch reduction. NMFS continues to support research projects regarding effectiveness of gear modifications.

Comment 6: NMFS should allow the U.S. Atlantic pelagic longline fishery 1 year to voluntarily reduce bycatch with the use of self-imposed gear modifications.

Response: As a result of a 1999 ICCAT recommendation setting Atlantic-wide discard quotas, the United States must

immediately reduce swordfish discards during the 2000 fishing year to 320 mt. This will have to be a significant reduction from 1998, when a total of 443 mt of swordfish discards from the North Atlantic were reported by the United States. The ICCAT recommendation also incrementally reduces the dead discard allowance to zero by the 2004 fishing year. Any dead discards over the annual allowance will be taken off the following year's quota. Therefore, NMFS has determined that it is necessary to initiate mandatory bycatch reduction measures at this time.

Comment 7: NMFS should limit the soak times of pelagic longline gear to reduce the number of dead discards.

Response: NMFS evaluated an alternative in the FSEIS that would reduce pelagic longline soak time to 6 hours. The strategy would reduce the amount of time that pelagic longline gear could be deployed and thus reduce fishing effort (hours/hook) for each longline set. The current range of soak time for pelagic longline gear is 5 to 13 hours. This alternative was rejected based on the practicality of enforcement and the likelihood that fishermen would make two sets during a day, or otherwise extend a fishing trip to execute a similar level of effort/trip. Since most billfish hit a longline hook during setting or retrieving, requiring a measure that forced a greater frequency of hooks moving through the water column could increase billfish discards. However, limiting soak to reduce sea turtle takes will likely be considered in developing alternatives to address concerns raised in the BO.

Environmental Justice

Comment 1: The proposed closed areas would disproportionately affect African-Americans in South Carolina, Vietnamese-Americans in the states bordering the Gulf of Mexico, and low-income crew members.

Response: NMFS considered environmental justice concerns as required by E.O. 12898 in selecting the preferred actions of the final rule. By minimizing the size of the closure in the Gulf of Mexico through prohibiting the use of live bait and by shortening the closed season for the Charleston Bump area, NMFS expects that the economic and social effects of the closures on minority groups and all other components of the pelagic longline fishing community will be minimized to the extent practicable.

Protected Species

Comment 1: NMFS should re-designate the longline fishery from a Category I to a Category II fishery under the MMPA because the fishery bycatch meets the criteria for a Category II designation.

Response: NMFS classifies fisheries on an annual basis. Classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. NMFS bases its classification of commercial fisheries on a variety of different types of information. The best source of information concerning the level of fishery-specific marine mammal incidental serious injury and mortality is the fishery observer program. If observer data are not available, NMFS may use fishermen's reports submitted per the requirements of the Marine Mammal Authorization Program since 1996 (or the Marine Mammal Exemption Program from 1989 to 1995), stranding data, data from other monitoring programs, and other sources of information. The Atlantic pelagic longline fishery has been monitored with about 2 to 5 percent observer coverage, in terms of sets observed, since 1992. The 1992–1997 estimated take was based on an analysis of the observed incidental take and self-reported incidental take and effort data. The 1998 stock assessment reports, which were used for the 1999 List of Fisheries, included data which placed the pelagic longline fishery into Category I. NMFS will reevaluate categories in developing the 2001 List of Fisheries. However, NMFS anticipates using serious injury data, which would likely cause the pelagic longline fishery to remain in Category I.

Comment 2: NMFS should be more concerned about fishermen than about sea turtles.

Response: NMFS is concerned about achieving conservation benefits of the final rule while at the same time minimizing expected economic impacts on fishermen and related businesses, to the extent practicable. However, NMFS also must be in compliance with the Endangered Species Act, which requires NMFS to take appropriate actions to protect endangered or threatened species (e.g., sea turtles). The final rule includes reasonable actions that meet requirements of the Magnuson-Stevens Act and ATCA (as it applies to swordfish discards) to reduce bycatch and seek long-term rebuilding of overfished HMS stocks, while balancing economic and social impacts. Even so, it is clear that the final actions will have significant social and economic impacts on various components of the pelagic longline communities. NMFS recognizes those impacts and has noted possible sources of economic relief (see section 8.0 of FSEIS).

Comment 3: The projected increase in turtle takes as a result of the proposed closures (under the redistribution of effort model) is not likely because many boats are not capable of redistributing their longline effort to the Grand Banks.

Response: NMFS agrees that turtle bycatch rates may be over-estimated by the effort redistribution model because estimation of catch-per-unit-effort in the remaining open areas could be skewed if species are concentrated in one area (such as sea turtles in the Grand Banks or blue marlin in the Caribbean; see FSEIS for further information), rather than randomly distributed over the entire open area. Although fishing in the Grand Banks area requires a relatively larger vessel than currently utilized in some of the closed areas (e.g., east Florida coast) for practical and safety reasons, it is possible that some boats could commence fishing on the Grand Banks or increase current effort in this area due to the closures in other areas, resulting in potential increases in turtle interactions. It is not known at this time how many vessels are expected to redistribute their effort to areas and times where turtle interactions are highest, but fishing activities will be continually monitored through the VMS program, as well as through logbooks and on-board observers. The anticipated takes for loggerheads and leatherback sea turtles for pelagic longline gear established by the incidental take statement were exceeded during 1999, as discussed in section 5.8 of the FSEIS. The June 30, 2000 BO contained jeopardy findings for both loggerhead and leatherback sea turtles. NMFS is initiating efforts to address this issue, including possible regulatory and non-regulatory actions.

Dolphin/Wahoo Issue

Comment 1: Comments were received that the mahi "loophole" undermines the effectiveness of the HMS time/area rule; Vessels using longline gear to target dolphin (mahi) should be prohibited from the HMS pelagic longline closed areas; NMFS should continue to work with the Councils to coordinate closed areas to reduce bycatch; If an exception is made for the closed area, HMS longline fishermen may move into the dolphin fishery.

Response: NMFS has notified the respective fishery management councils of the jurisdictional issues presented by vessels fishing with pelagic longline gear for species that are not directly managed by the Secretary of Commerce (e.g., dolphin). The South Atlantic

Fishery Management Council has prepared a Draft Dolphin and Wahoo Fishery Management Plan with a preferred alternative that would prohibit the use of pelagic longline gear for dolphin and wahoo in areas closed to such gear under HMS regulations. NMFS cannot predict whether HMS longline fishermen will move into the dolphin fishery, but it is unlikely that there would be a major shift in effort. Vessel operators may not fish with pelagic longline gear in closed areas if they hold an HMS permit; therefore, they would have to relinquish all HMS permits in order to do so. NMFS does not expect that longline fishermen would sell their swordfish and tuna permits in order to target dolphin for a seasonal fishery of limited size and duration.

Comment 2: NMFS should implement emergency regulations until the respective Councils can close the potential loophole posed by the longline fishery for dolphin.

Response: If the level of fishing effort targeting dolphin increases, it will most likely be due to factors other than the time/area closures implemented for bycatch reduction in the tuna/swordfish longline fisheries. It is unlikely that vessels affected by the HMS closures would give up HMS permits specifically to conduct a dolphin fishery. NMFS and the respective Councils can monitor effort, catch, and bycatch of non-HMS permitted longline fishermen targeting dolphin in the HMS closed areas and determine whether further action is required. The South Atlantic Fishery Management Council has already undertaken preliminary steps in preparing a proposed Dolphin and Wahoo FMP that includes parallel closures.

Comment 3: No billfish or swordfish are caught in the mahi fishery; NMFS should not shut down the mahi longline fishery; it has virtually no discards and the stock is healthy; NMFS needs to analyze the dolphin fishery more closely in evaluating the impacts of the pelagic longline time/area closure.

Response: Recognizing the jurisdictional issues, NMFS has asked the appropriate fishery management councils to examine management options guiding the use of pelagic longline gear to target dolphin. In the FSEIS, NMFS has included a more detailed discussion of the potential bycatch issues in the pelagic longline fishery for dolphin. Logbook reports from 1998 were examined for all sets made in the area from Key West, FL, to Wilmington Beach, NC. It was not possible to identify effort in the dolphin fishery with certainty, but sets were separated into those targeting swordfish/tunas/sharks and those listing a target as "other." It was presumed that sets listing a target as "other" are predominantly targeting dolphin, and this was reflected in the nearly tenfold higher catch per set of dolphin. While swordfish and bluefin tuna discards were generally lower for the presumed dolphin sets, bycatch of billfish, sharks and bigeye, albacore, yellowfin, and skipjack (BAYS) tunas seems to be a concern. More specific information on catch occurring when pelagic longlines are set to target dolphin would be needed to confirm or refute the bycatch concerns. In the interim, to facilitate enforcement and to take a precautionary approach, NMFS has decided that HMS-permitted vessels should be prohibited from setting all pelagic longline gear in the closed areas, regardless of target species. It is possible that an operator of an HMS-permitted vessel who wishes to target dolphin could apply for an exempted fishing permit (EFP). If EFPs are issued, the data collected (e.g., logbook or observer reports) can be used to determine whether a dolphin fishery could be undertaken that would be consistent with the bycatch reduction objectives of the HMS FMP. However, such authorization for EFPs would have to be considered in consultation with the councils having management authority for dolphin.

Redistribution of Effort

Comment 1: More pelagic longline fishermen will relocate to open fishing areas than exit the fishery as a result of the time/area closures.

Response: To estimate the range of potential ecological impacts of the time/area closures, NMFS examined two scenarios for effort reallocation: (1) all effort in the closed area is removed from the system (worst-case alternative from the economic, social and community standpoint) and (2) all effort is randomly moved to available open areas (which may overestimate impact of effort if a species is not relatively uniformly distributed throughout the area—see discussion of sea turtle and blue marlin distribution in the FSEIS). Available information is insufficient for NMFS to estimate the number of vessels that may decide to discontinue fishing or to determine where the remaining vessels will relocate. However, if total U.S. pelagic longline effort is reduced by vessels leaving this fishery, the estimates of the effectiveness of the time/area closures will be underestimated.

Comment 2: The NMFS western Gulf of Mexico proposed closure would force displacement of pelagic longline effort into known bycatch areas, particularly the DeSoto Canyon area in the eastern Gulf of Mexico, resulting in net losses in conservation effectiveness of the time/area closures.

Response: NMFS agrees that this is a possibility. The areas selected in the proposed rule were based on areas and times when discard rates were relatively higher than those in other temporal/spatial alternatives ("hot spots"). The overriding objective for the proposed closure in the Gulf of Mexico was to reduce billfish discards. A relatively higher discard-per-unit-effort was noted for marlin and sailfish in the western Gulf of Mexico. In conducting the analyses for the proposed rule, NMFS also recognized that there were discards of swordfish in the eastern Gulf; however, there was a relatively lower occurrence of billfish discards, particularly blue and white marlin, in this eastern area. Therefore, in consideration of the fact that the western Gulf area also had discards of undersized swordfish, NMFS selected this area for closure in the proposed rule. Information that became available subsequent to the preparation of the proposed rule and consistent with public comments received has provided additional insight into the differential bycatch of billfish from pelagic longline sets using live bait, a fishing practice which has occurred mainly in the western Gulf of Mexico. NMFS anticipated that this fishing technique would be moved to the eastern Gulf of Mexico if the proposed closure were implemented, resulting in an increase in billfish bycatch in this area. The final rule incorporates a prohibition on the use of live bait on pelagic longline gear which will reduce billfish bycatch without the need for a closure in the western Gulf of Mexico. As a result, NMFS re-examined other areas in the Gulf of Mexico and is closing the DeSoto Canyon and a portion of the west Florida shelf based on the historically high ratio of swordfish discards to swordfish kept in these areas. Further, this action will prevent an expansion of displaced fishing effort into this area following closures along the southeastern U.S. Atlantic coast.

Comment 3: Displaced boats will re-flag to another country or sell their vessel and gear to ICCAT non-member countries in the Caribbean, or other areas, which will negate any gain in the reduction of billfish and undersized swordfish discards by U.S. commercial pelagic longline effort.

Response: It is possible that U.S. owners will decide to sell their vessel(s) to citizens of one of the Caribbean countries. NMFS has information that

indicates that many Caribbean nations (some which may not be members of ICCAT) are interested in expanding their fishing fleets for HMS. NMFS is involved with many United States initiatives regarding issues of illegal, unregulated and unreported (IUU) fishing, including those developed through ICCAT and FAO. The recent ICCAT restrictions on swordfish imports from Honduras and Belize are evidence of this international effort. ICCAT also continues to work with Caribbean nations to discuss allocation criteria for these nations, as well as adherence to ICCAT recommendations, which has been a source of concern.

Comment 4: The time/area closures will increase competition in the shark fishery because pelagic longline vessels will re-rig to undertake bottom longline fishing.

Response: NMFS disagrees. The shark fishery operates under a limited access permit system. Most pelagic longline vessels have qualified for limited access shark permits. The level of retention allowable under an incidental permit is not sufficient to support profitable operations focusing on shark resources. While some pelagic longliners have directed permits and it is possible that some fishermen could purchase a directed shark permit, the total number of directed permits is capped, and the shark fishery operates under a quota system; therefore total effort and relative competition between vessels should remain unchanged.

Comment 5: NMFS will force pelagic longline fishermen with small vessels to fish farther from shore, which could be unsafe during inclement weather. NMFS should consider safety-at-sea implications of the proposed closed areas.

Response: NMFS agrees that vessel safety is an important component to be considered in developing reasonable management measures, as required by national standard 10 of the Magnuson-Stevens Act. Some pelagic longline vessels historically operating in the areas being closed are not capable of safely fishing farther out to sea in the open areas due to their size. However, the vast majority of pelagic longline effort targeting swordfish and tuna occurs in deep waters, generally in waters with depths in excess of 500 fathoms (3000 feet), requiring a vessel of sufficient size to safely handle open ocean conditions. The final rule closures should not adversely impact most of these vessels in regard to sea-worthiness, particularly with the removal of the western Gulf of Mexico closure and reducing the temporal restrictions of the Charleston Bump closure. However, there is a fleet of small pelagic longline vessels that fish the deep waters found relatively close to shore along the east Florida coast. This area will be closed year-round because of the magnitude of reported swordfish and billfish discards. If these vessels are moved to open areas that require fishing at a greater distance from shore, NMFS encourages vessel operators to follow U.S. Coast Guard-approved operating procedures and to exercise caution in determining the safe operating range for their sizes and types of vessels.

Comment 6: Directed shark fishermen should be allowed to catch more sharks since bycatch of large coastal sharks in the pelagic longline fishery would be reduced with the time/area closures.

Response: NMFS disagrees. Shark resources in the United States are either overfished (large coastal sharks), fully fished (small coastal) or unknown (pelagic sharks). Each shark category has a set harvest level that encompasses catch from all fishing sources. Time/area closures may result in an increase in pelagic shark discards and landings of approximately 8 and 4 percent, respectively, under complete effort redistribution. Conversely, the number of large coastal sharks discarded and landed from pelagic longline gear will likely decrease by 33 and 18 percent, respectively, which may increase the duration of the large coastal shark fishing season. However, further increases in shark quotas are not warranted at this time.

Comment 7: The effort redistribution model included in the DSEIS predicts an increase in BAYS tuna landings, but the United States has agreed to limit effort in the yellowfin tuna fishery under an ICCAT agreement.

Response: While NMFS agrees that, under the effort redistribution model, BAYS tuna landings may increase (mainly as a result of increased yellowfin tuna catches), the ICCAT agreement limits U.S. yellowfin effort to 1993 levels. The catch levels predicted by the effort redistribution model are based on total effort redistribution and, as such, are likely to be an over-estimation of actual effort and catches under the final rule time/area closures. As a result of the HMS FMP, a limited access system is now in place for the tuna pelagic longline fishery, and a recreational limit of three yellowfin tuna per person per trip was also implemented. Commercial yellowfin tuna landings in 1993 were 4,386 mt, while more recently (1996 to 1998), landings have averaged approximately 3,525 mt. The nearly 10 percent increase in BAYS landings predicted by the displaced effort model would increase average annual landings to only 3,700 to 3,800 mt, without an overall increase in effort.

Comment 8: Fishermen can and will fish in closed areas with other types of fishing gear.

Response: In the FSEIS, NMFS analyzed the potential impacts of fishermen changing target species through redistributing effort to other fisheries in which the vessel already may be active, or pursuing new fisheries by purchasing permits, as necessary. The South Atlantic Fishery Management Council is currently holding public hearings on a proposed dolphin/wahoo FMP that includes a preferred alternative that would prohibit pelagic longline fishing for dolphin and wahoo within the spatial and temporal constraints of closures for the HMS pelagic longline fishery. This could reduce effort redistribution from HMS to the dolphin and wahoo fisheries.

Comment 9: If Agency actions force fishermen to fish in areas with high turtle interactions, then the Agency is responsible for any increase in take, not fishermen.

Response: NMFS disagrees. The final time/area closures along the southeastern U.S. Atlantic coast were temporally and spatially reconfigured to mitigate, to the extent practicable, the impact of effort redistribution on sea turtle interactions. Turtle bycatch rates may be over-estimated by the effort redistribution model because estimation of catch-per-unit-effort in the remaining open areas could be skewed if species are concentrated more in one area (like sea turtles in the Grand Banks) rather than randomly distributed over the entire open area. NMFS will continue to monitor the fishery after implementation of the final rule. As a result of the jeopardy findings for loggerhead and leatherback sea turtles, NMFS will issue additional regulations that may include further modifications to gear and/or fishing methods, closed or limited fishing areas, and expanded monitoring (see section 5.8 of the FSEIS).

Comment 10: The majority of directed swordfish and tuna pelagic longline fishermen are not active in other commercial fisheries.

Response: NMFS disagrees. Of the 329 fishermen with swordfish limited access permits who held valid permits as of May 9, 2000, approximately half held only HMS limited access permits. The other fishermen held a range of permits including king mackerel, Spanish mackerel, golden crab, reef fish, red snapper (both Class 1 and Class 2 licences), rock shrimp, snapper-grouper, and spiny lobster. In addition, some of

the vessel permit holders held permits in fisheries that are managed by the Northeast Regional Office.

Comment 11: The closure will have unknown benefits because reallocation of effort will change the catch composition.

Response: NMFS examined a range of impacts of effort reallocation, including removal of all effort from closed areas to redistributing all effort to available open areas. While the models used by NMFS provide estimates of potential increases or decreases in catch and discards, NMFS agrees that a full, quantitative assessment of effort reallocation cannot be made until the closures are implemented and fishermen develop new fishing patterns. However, the closures implemented through the final rule will significantly reduce impacts on the level of discards from the U.S. pelagic longline fishery in the U.S. EEZ, which was the goal of the action. NMFS will monitor vessel activity through the use of VMS, observers, logbooks, and dealer reports.

Comment 12: The time/area closures will force vessels to increase effort and/or move into other South Atlantic fisheries for which they hold permits. Boats will move into the bottom longline fishery and catch grouper, snapper, and tilefish or shift to other pelagic longline fisheries, like dolphin and wahoo, in either the impacted closed areas or other locations along the Atlantic coast.

Response: NMFS agrees that some vessels will likely expend effort in other fisheries. Although some pelagic longline fishermen who homeport their vessels in the closed areas have other permits (e.g., coastal migratory pelagics, snapper-grouper, charter vessels), many have only directed or incidental swordfish, shark and tuna permits. Most of the southeastern fisheries require Federal permits, some of which are issued under limited access programs. Limited access permits may not be available, which may limit the ability of displaced pelagic longline fishermen to target other species. Other vessels may move into other activities consistent with their fishing experience (e.g., recreational charter fishing). The dolphin and wahoo fishery resources are not under the direct management jurisdiction of the Secretary of Commerce. However, the Agency agrees that some pelagic longline effort may be directed toward dolphin and wahoo. The South Atlantic Fishery Management Council has prepared a proposed dolphin/wahoo FMP that includes a preferred alternative prohibiting pelagic longline fishing for dolphin and wahoo within the spatial and temporal constraints of closures for the HMS pelagic longline fishery. The FSEIS provides an analysis of potential impacts of alternative fishing activity by displaced HMS pelagic longline vessels.

Analysis of Ecological Benefits of Closures

Comment 1: The DSEIS indicated that the proposed time/area closures would have a huge reduction in bluefin tuna discards, but reducing bluefin tuna bycatch is not listed as an objective of the Agency action.

Response: NMFS disagrees that reduction of bluefin tuna discards was not included as an objective of the proposed Agency action, which had four clear objectives: Maximize the reduction of finfish bycatch (which includes bluefin tuna); minimize the reduction in the target catch of swordfish and other species; ensure the incidental catch of other species remains unchanged or is reduced; and optimize the survival of released animals. Analysis of time/area closure effectiveness used for the proposed rule encompassed all closures for HMS, including the annual northeastern U.S. pelagic longline closure during June developed specifically to reduce bluefin tuna discards that was part of the final rule implementing the HMS FMP. Closures included in the final rule are listed by species and area to clarify the cumulative impacts for each spatial component. Bluefin tuna discards increased by 11 percent when pelagic longline effort was randomly redistributed throughout the operational range of the U.S. Atlantic pelagic longline fishery as a result of the East Florida Coast and Charleston Bump closures; however, when combined with the June closure already in place, the net effect on bluefin tuna is a 39-percent reduction in discards.

Comment 2: The Agency should have considered a more expansive scientific information baseline for evaluation of potential closures, including scientifically peer-reviewed literature prior to the 1995 to 1997 information included in the DSEIS, as well as more updated and/or near real-time data sources (e.g., satellite data).

Response: In preparing the FSEIS, the Agency expanded the data analyses to include logbook information from 1993 to 1998. These data provide further support for the temporal and spatial components of the time/area closures of the final rule. Historical scientific studies describing movement behavior of HMS, as well as oceanographic studies of current and water mass patterns were also reviewed in preparing the FSEIS. Setting closures or other fishing activities based on near real-time satellite information on water or current patterns may be considered in future management actions, particularly in conjunction with the communication capabilities of the VMS systems required for all pelagic longline fishing vessels beginning September 1, 2000. Recent scientific studies on the relationship between billfish discard rates relative to use of live and dead bait on pelagic longline gear were also used.

Comment 3: The evaluation of closed areas should be based on the ratio of catch to bycatch instead of absolute numbers of bycatch.

Response: NMFS agrees that the ratio of catch to bycatch should be used in evaluating which areas to close, but disagrees that the absolute numbers of bycatch should not be considered. In developing the final area closures, NMFS examined, where appropriate, the temporal and spatial variations of the ratio of bycatch to target catch, the absolute numbers of bycatch and target catch, and relative fishing effort. For example, an area that has a high discard to number kept ratio may be indicative of a problem area, depending upon the relative volume of fishing effort that is currently or historically conducted in the area. Conversely, an area that has a relatively high absolute number of discards but a low ratio of discards to number of fish kept would be evaluated based on the relative fishing effort in the area. The analytical methods are fully described in the DSEIS, and clarified, where appropriate, in the FSEIS.

Comment 4: A target bycatch threshold should be developed to allow for a tracking of the success of Agency actions.

Response: NMFS disagrees. The development of the proposed and final rules clearly follows a multispecies management approach, and as such, it is inappropriate to set target reductions for specific species without considering the impact on the remaining portion of the catch composition. For example, if the time/area closures were simply based on reducing swordfish discards by a set percentage, this could disproportionally increase the level of bycatch, bycatch mortality, and/or incidental catch of other species. The four overarching objectives discussed in the DSEIS and FSEIS guided the Agency throughout the development of the proposed and final actions.

Comment 5: NMFS should investigate the effectiveness of the pelagic longline closure in the Pacific Ocean to evaluate potential impacts of closures along the U.S. Atlantic coast.

Response: NMFS agrees that all similar closures should be evaluated to

determine potential biological, social, and economic impacts of final Agency actions. The closure of nearly 1 million square miles of Pacific Ocean near Hawaii to pelagic longline fishing vessels has been in effect since December 23, 1999; therefore, information on the impacts is limited at this time.

Comment 6: Observer data should be used to evaluate accuracy of the logbook reports used in the NMFS time/area analyses.

Response: NMFS agrees that observer coverage is needed to ground-truth information provided in the mandatory logbook program. The Draft Technical Memorandum, included as part of the DSEIS, provides a discussion of the limitations of logbook data and explains the rationale for using these data. The Atlantic pelagic longline fishery has been monitored with about 2 to 5 percent observer coverage, in terms of sets observed since 1992, and is used to ground-truth the mandatory logbook data, and to provide specific biological information (e.g., tagging, obtaining tissue samples for genetic work). The observer information was used in developing the prohibition on the use of live bait.

Comment 7: The analyses of the time/area closures are flawed because of the dependence upon mis-reported information in the mandatory logbooks.

Response: NMFS disagrees that the analyses are flawed. While NMFS recognizes that there are limitations and constraints in the use of logbook information as discussed in the Draft Technical Memorandum and HMS FMP, these data undergo thorough review by NMFS scientists and can be used to identify catch trends and patterns over time. Also, if logbooks under-report bycatch as indicated in public comment, then the benefits of the time/area closures are even greater than predicted in the FSEIS.

Comment 8: Use of percentages in the analyses make it difficult to assess benefits of the time/area closures.

Response: To allow for valid analysis of temporal and spatial variations in closure effectiveness on a suite of target species and bycatch, it was necessary to have a common denominator for all comparisons. The total U.S. Atlantic catch, by year and species, was used for this purpose, and was provided in tabular form in the DSEIS. The percentages provided in the analyses can easily be converted to number by multiplying the percentage value by the appropriate annual total (landings and discards were considered as separate groups). In the FSEIS, NMFS further clarifies the use of percentages, numerical values, and ratios of numbers caught to numbers discarded.

Comment 9: NMFS should not lump all BAYS together in the analysis of the time/area closures. Each tuna species should be separately analyzed, particularly for yellowfin tuna.

Response: NMFS agrees that it is important to separate out the impact of the time/area closures on the various species of the BAYS tuna complex. Atlantic-wide, yellowfin tuna and bigeye tuna represent over 91 percent of the U.S. pelagic longline fleet catch of BAYS tunas (YFT—70.4 percent and bigeye tuna—20.8 percent). In the Gulf of Mexico, the 99.1 percent of the BAYS harvested from the proposed western Gulf closed area consisted of yellowfin tuna; in the final rule closure of DeSoto Canyon, yellowfin make up 98.4 percent of the BAYS complex. The BAYS tunas in the closure of the southeastern U.S. Atlantic coast consist of 89.5 percent yellowfin tuna and 7.5 percent bigeye tuna. The potential changes in landings of yellowfin tuna, bigeye tuna, the aggregate BAYS complex, and bluefin tuna are summarized for each final action under the effort redistribution and no effort redistribution models described in the FSEIS.

Comment 10: NMFS should summarize the impacts of the time/area closures separately for the Gulf of Mexico and southeastern U.S. Atlantic coastal closures.

Response: NMFS agrees. Ecological and economic impacts may be better understood if summarized both separately and in combination, and, to that end, this presentation approach is taken in the FSEIS. Although the DSEIS combined the ecological impacts for the Gulf of Mexico and southeastern U.S. Atlantic coastal closures under the discussion of each alternative, the draft Technical Memorandum provided results of the no effort redistribution and effort redistribution models separately for each closure area.

Comment 11: NMFS should consider incorporating tagging data into the time/area analysis procedures.

Response: NMFS agrees that information from tagging studies of billfish, tunas, sharks, and other species released by recreational and commercial fishermen provides valuable data on the range and movement patterns of these species and, as such were included in the qualitative procedures used to identify general areas for potential closure.

Comment 12: The proposed Agency action is focused only on reducing swordfish discards, and does not consider the impacts on vessels.

Response: NMFS disagrees. The evaluation of the time/area closure fishery management strategy in the DSEIS and FSEIS followed a multi-species approach. Consistent with the objectives, patterns in the discards, bycatch and incidental catches of billfish, sea turtles, bluefin tuna, pelagic and large coastal sharks, and other overfished HMS were used to define time/area closures. The areas selected for closure in the final rule also seek to minimize the target catch of swordfish, tuna, dolphin, and other species and, thus, minimize the economic impacts on vessel owners. The evaluation of the impacts of the closures included all components of the pelagic longline catch, as well as those of dealers within the time/area closure locations.

Mitigation of Economic Impacts

Comment 1: NMFS should provide economic compensation for the displaced vessels and dealers who are negatively impacted from the closed areas (various vessel buyout schemes were suggested ranging from recreational permit fees to having the remaining commercial fishermen compensate those who go out of business; other schemes included employing all displaced longline fishermen in fish hatcheries). While vessel owners can sell their permits and receive some compensation, dealers cannot. NMFS should provide resources for retraining or education of displaced longline fishermen.

Response: NMFS recognizes that the time/area closures will adversely affect many vessels and dealers; and that the ripple effects of the closures will go beyond the immediate community of fishermen, and affect fishing families, associated businesses, and the larger coastal economy. NMFS also recognizes that the Magnuson-Stevens Act requirements to rebuild overfished fisheries and reduce bycatch are going to result in economic hardships—even closure of some businesses. Once the stocks are rebuilt, it may still not be possible for all the affected individuals to make a living because many fisheries are currently overcapitalized. NMFS has made a concerted effort to identify possible sources of economic relief for individuals and businesses affected by the regulatory measures in this rule. Some government agencies, such as the Small Business Administration, the Economic Development Administration, the Farm Credit System, the U.S. Department of Labor's Economic Dislocation and Worker Adjustment Assistance Act, may provide fishing industry participants with loans, training for new jobs, and/or grants for

economically stressed communities, and the Fisheries Finance Program could support an industry-sponsored vessel buyback. A summary of the types of buyback programs, loans, and government agencies that may be able to help are listed in section 3 of the FSEIS.

Comment 2: NMFS needs to consider other alternatives that might have fewer and lesser adverse economic impacts.

Response: In developing this final rule, NMFS considered and adopted a variety of options that minimize bycatch and bycatch mortality, achieve the same conservation goals, and mitigate the rule's economic impact. These option's include smaller closed areas and/or shorter closed periods than were proposed. In addition, the final rule substitutes a prohibition on the use of live bait in the Gulf of Mexico for the proposed closed area in the western Gulf. These alternatives are likely to have less of an adverse economic impact on fishermen and communities than the alternatives in the proposed rule.

Comment 3: NMFS received a number of comments regarding permit buyouts, including the following: NMFS should buy out displaced longline vessels; NMFS should not buy out displaced longline vessels; thousands of businesses fail every day and those businesses do not ask tax payers to buy them out; NMFS should destroy any longline vessels that are bought out; and, without a buyout, many companies will go out of business.

Response: This rule does not include a fishing capacity reduction program (buyback program); however, NMFS may implement a buyback program for this fishery if circumstances warrant. Any buyback program will be implemented in accordance with the Magnuson-Stevens Act, NMFS fishing capacity reduction regulations, and other applicable law. Under section 312 of the Magnuson-Stevens Act, NMFS may implement buyback programs that purchase fishing permits from permit holders or, alternatively, it may implement buyback programs that restrict vessels from participating in other fisheries by requiring that they be scrapped or be subject to title restrictions. The buyback method selected will depend on particular circumstances present when such buyback program, if any, is implemented. Furthermore, NMFS has concluded that it does have the authority to initiate and implement buyback programs for fisheries under the direct management authority of the Secretary of Commerce. Regulations implementing section 312, published May 18, 2000 (65 FR 31444), provide that "for a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements * * * that reasonably apply to a program not initiated by a request." Because of the significant negative economic impacts expected with this final rule, NMFS has made a concerted effort to identify possible sources of economic relief for individuals and businesses affected by regulatory measures in fishery management. A summary of the types of buyback programs, loans, and government agencies that may be able to help are listed in Section 3 of the FSEIS.

Comment 4: This proposed rule may cause Congress to abandon the legislative buyout that has been under consideration.

Response: NMFS announced in the 1999 HMS FMP that the Agency was committed to reducing bycatch and bycatch mortality, as required in the Magnuson-Stevens Act, and would proceed with rulemaking to address bycatch concerns. NMFS cannot predict what this rulemaking may have on Congressional action.

Comment 5: NMFS should recognize that there are economic and competitive disadvantages to businesses geographically close to the proposed closed areas.

Response: NMFS agrees and is aware of the potentially significant economic impacts to related businesses, not just to fishermen. However, these areas were not chosen with respect to the impacts on a specific region but rather to target "hot spots" for pelagic longline bycatch. Because of the anticipated significant economic impacts, NMFS has selected alternatives that minimize those impacts while still maintaining conservation benefits similar to those in the proposed rule. In the Gulf of Mexico, NMFS chose to prohibit live bait in lieu of the large Western Gulf closure and has also implemented a smaller closed area that focuses on swordfish bycatch reduction. Although this area has a year-round closure, it is also located offshore so that smaller fishing vessels may still be able to fish. Thus, businesses near this closure may not be affected to the same extent as they would be if the area extended to the coast. In addition, as discussed earlier, NMFS has made a concerted effort to identify possible sources of economic relief for individuals and businesses affected by regulatory measures in fishery management.

Comment 6: NMFS should reconsider limiting the capacity of the Atlantic pelagic longline fleet. NMFS should not implement further regulations and instead should monitor the fishery while giving the limited access program a chance to "settle." Limited access was an important first step that has not been given a chance to provide benefits.

Response: NMFS agrees that limiting access to the fishery is an important step. In July 1999, NMFS implemented limited access in the pelagic longline fleet. While it is true that limiting access to this fishery could provide an incentive for fishermen to reduce bycatch because they have an investment in the future of the fishery, NMFS has a mandate under the Magnuson-Stevens Act to minimize bycatch, to the extent practicable. In addition, the limited access program in place now was designed to reduce latent effort, not to reduce fishing effort. As a result, there is still excess capacity in this fishery. For example, of the 450 permit holders who qualified for a directed or incidental swordfish limited access permit, only 208 reported landings in the pelagic logbook in 1998. While other permit holders may be reporting landings in other logbooks, NMFS believes that many permit holders who do not fish regularly can still be bought out by fishermen who may be more active. Therefore, as announced in the HMS FMP and the 2000 SAFE report and in addition to this rule to reduce bycatch and bycatch mortality in the pelagic longline fishery, NMFS continues to monitor the status of this fishery and, if necessary, will work with the APs to consider additional steps to reduce fishing effort.

Comment 7: NMFS should make fishermen pay for an observer instead of VMS.

Response: NMFS agrees that a user fee system for funding observer coverage could be beneficial. However, a VMS program to track vessels in areas where bycatch is a concern has some advantages in that it costs less, is less intrusive, and has some vessel safety benefits. NMFS will continue to examine means of applying user fees in fisheries subject to observer coverage. In the interim, the Atlantic pelagic longline fishery VMS requirement is effective beginning September 1, 2000.

Comment 8: Minimizing bycatch through large area closures will result in greater overall economic benefits for all fishing industry sectors.

Response: NMFS agrees that minimizing bycatch enhances rebuilding of overfished stocks and, over the long term, should increase the economic benefits for all fishing sectors. However, in the short term, large area closures will force many small entities, such as fishermen and dealers, out of business. NMFS has chosen to close the areas that will provide the greatest

conservation and economic benefits in both the short and long terms. Because of the jeopardy finding for loggerhead and leatherback sea turtles, NMFS will propose additional measures to reduce the level of turtle takes. This could include a closure of the Grand Banks for the months of September through December, modifications in fishing methods, gear modifications, and increased monitoring activities.

Comment 9: Every effort should be made to mitigate the economic loss to commercial fishermen; however, given the current strong economy, there is ample opportunity for those disadvantaged by the closures to make a financial recovery.

Response: NMFS agrees that the economic loss to the commercial fishermen must be minimized as long as the conservation goals can still be achieved. Fishermen and others who lose their job or go out of business as a result of this rule may be able to relocate to either a different job altogether, or to a different job within the fishing industry. To aid displaced individuals, NMFS identified possible sources of economic relief for individuals and businesses affected by regulatory measures in fishery management. A summary of the types of loans and government agencies that may be able to help are listed in 3 of the FSEIS.

Comment 10: NMFS needs to consider actions to minimize economic impacts associated with moving families to areas that remain open to pelagic longline fishing.

Response: NMFS is aware that some families will need to move as a result of these regulations and that the cost of moving may be high. To examine more fully these impacts, NMFS published a **Federal Register** document (65 FR 24440) on April 26, 2000, asking specifically for comments on the impact of delaying the effective date to provide sufficient time to relocate. The comments received are discussed here. Also, as a result of these concerns, NMFS is delaying implementation of some of these regulations for different lengths of time.

Comment 11: The DeSoto Canyon closure is keyed to reducing swordfish discards and the analysis focuses on the social and economic impacts on the swordfish longline fishermen and their associated fishing communities. Other fisheries and fishing communities are likely to be affected by this closures and should be considered in the analysis.

Response: NMFS agrees that a variety of fisheries and fishing communities should be considered in undertaking efforts to minimize bycatch and bycatch mortality. As this final rule is directed at the activities of only pelagic longline fishermen, the analyses focus on the impacts to the pelagic longline fishery and communities. As NMFS collects additional information on other fisheries (e.g., recreational, bottom longline), NMFS may determine that additional rulemakings are needed to reduce bycatch and bycatch mortality in those fisheries. If NMFS undertakes such rulemakings, it will conduct analyses to determine the impact of those rules.

Comment 12: Many comments were received about the effective date. These comments included the following: NMFS should do the right thing and insist that the closures not be reduced and that they be implemented no later than 30 days after publication of the final rule expected on August 1; The closures must be enacted immediately without any delay; Fishermen and related businesses would need at least one full year prior to implementation to move and resettle into other regions; If NMFS is not going to provide compensation, NMFS needs to delay implementation by at least 6 months to relocate entire businesses, find a new docking facility, relocate staff, find a new church, find new schools for children, and find a new house; The swordfish rebuilding measures implemented last November at ICCAT are risk-prone and have less than a 50-percent chance of rebuilding in 10 years. Given this, NMFS needs to implement these closures immediately to reduce pressure on the stock and increase the chance of sticking to the rebuilding schedule.

Response: NMFS agrees that fishermen and related businesses will need time to relocate in response to the closures in this final rule. NMFS disagrees that even a short delay of these regulations would hinder rebuilding or cause irreparable harm to the resource. Any dead swordfish discards that happen between the publication of the final rule and implementation will be taken off the U.S. swordfish dead discard allowance included in the rebuilding plan. Thus, NMFS has decided to delay the implementation of the closures: 90 days for the DeSoto Canyon area (November 1, 2000) and 180 days (February 1, 2001) for the East Florida Coast closure, which coincides with the annual date that the seasonal Charleston Bump closure begins. Thus, the closures in the Southeast Atlantic would begin at the same time, making the regulations less confusing and allow fishermen and related businesses approximately 6 months to relocate if they so decide. The implementation of the DeSoto Canyon closure is not delayed for as long, because this closure is not as large an area as is the one the Atlantic and it is further offshore. Thus, fishermen who have fished pelagic longlines in the DeSoto Canyon area may be able to find alternative fishing sites within the Gulf of Mexico without having to relocate the home port of the vessel, and less time is necessary to prepare.

Comment 13: Unless NMFS undertook a detailed analysis of the behavior of longline fishermen and processing industry to investigate the impacts of delaying the effective date (costs, vessel's choice, etc.), any decision to delay implementation would be essentially arbitrary.

Response: NMFS disagrees. NMFS believes that commercial fishermen, dealers, and processors provided enough information in their comments on how long and why delayed implementation is needed for NMFS to make an informed decision.

Comment 14: NMFS asked the wrong question in regard to delayed implementation. The correct question is what approach would produce the highest net economic benefits, not what are the short-term gains.

Response: NMFS believes that asking the commercial fishing industry why they need delayed implementation and how long a delay it should be provides information needed for NMFS to decide the optimal approach. NMFS does not believe the highest net economic benefit would be achieved if all of the commercial fishermen were asked to move within 30 days. Instead, NMFS believes it could be more beneficial to the fishermen and the consumer if commercial industries were given time to relocate while still giving them time to fish during this season.

Comment 15: NMFS' entire approach on this rulemaking is fundamentally flawed because the Agency does not have the ability nor the authority to initiate an effort buyout program for Atlantic HMS.

Response: NMFS disagrees. NMFS announced in the HMS FMP that it was committed to reducing bycatch and bycatch mortality and would initiate rulemaking for time/area closures based on comments received during that rulemaking. NMFS has previously concluded (65 FR 31444, May 18, 2000) that section 312 of the Magnuson-Stevens Act provides authorization for the Atlantic HMS buyout "on NMFS' own motion by fulfilling the requirements * * * that reasonably apply to a program not initiated by a request." While NMFS recognizes that a buyout program may provide some compensation for vessel owners, a

buyout program would not provide any compensation for other business owners. Instead, NMFS has explored other ways of minimizing economic impacts including smaller time/area closures, a prohibition on live bait, and delayed implementation.

Comment 16: Closing the DeSoto Canyon in addition to the western Gulf of Mexico would only increase any social and economic impacts to vessels and their support and supplier community-based infrastructures.

Response: NMFS agrees that closing both the proposed Gulf B area and the DeSoto Canyon would have even greater economic impacts than closing either one alone. In addition, preliminary analyses indicate that prohibiting live bait may have similar conservation benefits for billfish as closing the western Gulf of Mexico. For this reason, NMFS decided to close the DeSoto Canyon to minimize bycatch, particularly small swordfish, and prohibit live bait to minimize billfish bycatch.

Comment 17: The Vietnamese Americans who have settled in states bordering the Gulf of Mexico are especially vulnerable to social and cultural disruption since they are dependent upon commercial fishing as a traditional livelihood that provides stability.

Response: NMFS agrees that the Vietnamese American fishermen may be affected by the social and economic impacts of these regulations. However, NMFS mitigated impacts to the fishermen in these final regulations by deciding against closing the Western Gulf of Mexico and choosing to prohibit live bait. Thus, although these fishermen may need to alter the current method of fishing, they should not need to relocate.

Comment 18: NMFS failed to factor in the economic benefits from decreased swordfish discards which would be added to the United States' total allowable landings under the ICCAT swordfish rebuilding program if swordfish discards are reduced below ICCAT targets.

Response: NMFS disagrees that the Agency failed to factor in the economic benefits from decreased swordfish discards in relation to the 1999 ICCAT swordfish rebuilding program. NMFS recognizes that reducing dead discards is crucial in order for U.S. fishermen to continue to land the full swordfish quota allocated to the United States (see section 7 of the FSEIS). For a full analysis of the social, economic, and conservation benefits of the 1999 swordfish rebuilding program, see the preamble to the proposed rule (64 FR 33519, December 15, 1999).

Comment 19: Adding the DeSoto Canyon area closure to the Western Gulf of Mexico closure still would not save that many blue and white marlins. NMFS must weigh that against the economic devastation the closures will cause.

Response: NMFS agrees that economic impacts must be considered. However, NMFS does not believe that Agency needs to "balance" the economic impacts against the conservation benefits. The Magnuson-Stevens Act mandates NMFS to rebuild overfished stocks, prevent overfishing, and minimize bycatch and bycatch mortality for all stocks, not just billfish. Recently, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Magnuson-Stevens Act requires NMFS to give priority to conservation benefits and to consider adverse economic impacts if two alternatives achieve the same conservation benefits. NMFS recognizes that some regulations that meet this mandate will cause economic harm and has provided a summary of alternatives that may help affected fishermen and communities in Section 3 of the FSEIS. In addition, NMFS has analyzed many different areas and seasons in order to determine whether time/area closures will be effective at meeting the goals of this FSEIS, which time/area closures are the most effective, and which time/area closures are effective but have the least economic impacts. NMFS believes that the management measures chosen will meet all of the goals of this action and minimize the economic impacts, to the extent practicable.

Social and Economic Analyses

Comment 1: NMFS received comments on the extent of the impacts of the proposed closed areas on the fishing fleet, including: One-third of the fleet would go out of business; hundreds of coastal communities would be negatively impacted; many fishermen would need to relocate; and the closures fall disproportionately on minority and low-income communities.

Response: Comments received on the proposed rule helped NMFS to develop final regulations that would minimize the impacts of the potential closed areas while yielding similar (or better) conservation benefits. For example, many comments suggested that NMFS consider the DeSoto Canyon area both instead of and in addition to the proposed western Gulf closure (area Gulf B). NMFS found that the proposed Gulf B closure could reduce the total gross revenues from the entire pelagic longline fleet by 6.4 percent while the DeSoto Canyon closure might reduce the total gross revenues from the entire fleet by 2.2 percent. In addition, while analyses indicate the Gulf B closure could increase swordfish discards by 3.9 percent, the DeSoto Canyon closure could decrease swordfish discards by 4.1 percent. In the South Atlantic, the proposed closure could reduce swordfish discards by 27.7 percent and reduce total gross revenues to the fleet by 19.2 percent while the final closure could reduce swordfish discards by 27.3 percent and reduce total gross revenues for the fleet by only 9.0 percent.

Comment 2: The closures will have almost no adverse impact on any group including commercial longline fishermen, as shown by NMFS' analyses. The economic and biological benefits of these zone closures far outstrip any commercial interests.

Response: NMFS disagrees that this rule will not have any adverse impacts. NMFS' analyses, as supported by numerous comments received, indicate that many fishermen, dealers, and related industries could go out of business as a result of this rule. In addition, this rule will have ripple effects throughout the entire fishing community, commercial and recreational, and into other jobs and industries such as mechanics, engineers, and fishing supply markets. The analyses conducted for this rule indicate that the closed areas and times will have positive biological impacts and significant negative economic impacts for some businesses. NMFS has tried to achieve the conservation goal of minimizing bycatch while minimizing the economic impacts.

Comment 3: Restrictions on commercial fishermen have economic impact not just on dealers and wholesalers but also on local grocery stores, welders, truckers, electrical technicians, mechanics, food banks, and other people in all communities.

Response: NMFS agrees that this rule will have indirect impacts beyond the immediate fishing industry. However, non-fishing industries are already dependent on a range of businesses and industries. Although some initial adverse impacts may occur, these indirectly affected industries should be able to adjust through increased business in other non-fishing sectors.

Comment 4: The economics of the pelagic longline fishery are integrated with other fisheries from a dealer's perspective.

Response: NMFS agrees. In both the initial and final regulatory flexibility analyses and the regulatory impact review, NMFS analyzed the impact of

this rule on dealers. NMFS stated that, as a result of this rule, some dealers may lose a substantial amount of fish previously supplied from fishermen who have been issued a directed or incidental swordfish permit. However, the actual amount of gross revenues dealers lose will depend on the type of fish and the amount of fish dealers can obtain from other fishermen and other fisheries. Although NMFS believes this regulation will have a significant economic impact on HMS dealers who are located in coastal ports adjacent to the closed areas, most dealers are not as specialized as fishermen are, and they may be in a position to develop alternative business opportunities (e.g., purchases of other domestic fish products, import/export, value-added processing).

Comment 5: Closing the DeSoto canyon area will force some businesses to close.

Response: NMFS agrees; assuming no effort redistribution, the economic analyses for the DeSoto Canyon closure indicate that approximately eight vessels (4 percent) would lose half of their gross revenues and seven dealers who received fish from limited access permit holders (5.6 percent) would lose business volume equal to about half of the fish now handled. However, the economic impacts of the DeSoto Canyon are smaller than the anticipated economic impacts of the proposed Gulf B closure (12 vessels and 3 dealers losing half of their business). In addition, the closure of the DeSoto Canyon area has greater biological benefits for undersized swordfish than the proposed Gulf B closure. Thus, although some vessels may still go out of business as a result of this closure, the DeSoto Canyon area closure minimizes the economic impacts for most individuals. Also, the DeSoto Canyon area is located offshore, so smaller fishing vessels may still be able to fish adjacent open areas without relocating. This is not true of the Gulf B closure, which would have forced small vessels owners who wished to continue to fish to relocate.

Comment 6: With the closures, pelagic longline fishermen are likely to move into other areas. Many existing fishermen and countless others working in those areas will be devastated by the concentration of boats. NMFS has failed to analyze the impact of displaced fishermen on communities in the open areas.

Response: NMFS agrees that with this rule, many pelagic longline fishermen are likely to move into other areas. While this rule may increase user conflicts in some areas, NMFS feels that this relocation will increase the social and economic benefits in many communities by increasing the level of economic activity in the area, including employment. It is likely that some dealers and marinas in the open areas or along the edges of the closed areas will see an increase in business as fishermen move. Other support businesses near the open areas will likely be similarly influenced. Also, communities in the closed areas may have some economic relief if they transfer effort from commercial fishing to recreational fishing. This may have the added benefits of lessening user conflicts in other areas and enhancing the recreational experience. In addition, due to the shorter Charleston Bump closure and the smaller DeSoto Canyon closure further off the coast, some fishermen in those areas may decide not to relocate.

Comment 7: Even though the quantity of swordfish available to consumers may not decrease due to imports, the quality of fresh swordfish will. Fresh fish should be available to everyone, not just to those who have the economic means to get it themselves or live across a line on a map. Even with a buyout, the level of economic activity will be diminished and consumers will lose access to the freshest product.

Response: NMFS agrees that it is advantageous when fresh fish is available to everyone, and future generations are considered in efforts to develop sustainable fisheries. For that reason, NMFS is working to rebuild overfished fisheries and to reduce bycatch and bycatch mortality while minimizing the economic impacts with methods such as time/area closures and gear modifications, without banning pelagic longline gear. These methods will allow the fishery to continue to provide as much fresh fish as possible.

Comment 8: This proposed rule should be considered as significant under Executive Order (E.O.) 12866.

Response: Both NMFS and the Office of Management and Budget(OMB) concluded that this rule does not meet the criteria for classification as "significant" for purposes of E.O. 12866 review. However, NMFS has prepared initial and final regulatory flexibility analyses as required by the Regulatory Flexibility Act (RFA). It should be noted that a rule could have a significant economic impact for purposes of the RFA without the rule being considered significant under the criteria of E.O. 12866.

Comment 9: The costs of the time/area closures have been overestimated while the benefits have been underestimated. NMFS has overestimated the man-hour cost of circle hooks. Many economic benefits have been underestimated or omitted from the analysis of the economic impact of the proposed closures.

Response: NMFS agrees that some of the costs have been overestimated and some of the benefits have been underestimated. In both the initial and final regulatory flexibility analyses and the regulatory impact review, NMFS estimated the maximum economic impact of each alternative and understated many of the benefits. This is different than the analyses NMFS conducted to analyze the conservation impacts. Those analyses estimated the conservation impacts under no effort redistribution and effort redistribution models. The no effort redistribution model allowed NMFS to estimate the maximum biological benefits. The effort redistribution model allowed NMFS to estimate the minimum biological benefits. For the economic analyses, NMFS assumed no effort redistribution. This model allowed NMFS to estimate the maximum economic impact of the final regulations. If NMFS had assumed effort redistribution, the economic analyses would have indicated no change from the status quo or, perhaps, an increase in gross revenues (see section 7 of the FSEIS). While NMFS believes that the actual costs and benefits of the regulations will be somewhere between status quo and the costs described in the analyses, NMFS used the estimates from the most conservative models to make its decisions. This means that, for the biological estimates, NMFS used the effort redistribution model, and for the economic estimates, NMFS used the no-effort redistribution model. However, NMFS believes that many fishermen and related industries will adapt to the regulations and will continue to work in either the HMS fisheries or in others. However, because NMFS cannot predict the behavior of individuals, NMFS cannot estimate the exact cost or benefit any regulation will have. In addition, NMFS recognizes that the ripple effect of the closures will impact other business that provide goods and services to the pelagic longline fishery (e.g., tackle manufactures and suppliers; dock-side services, including ice, bait, fuel, dockage, labor; and vessel manufacture and repair). Although the final regulatory flexibility analysis and regulatory impact review provide a more thorough discussion of economic factors associated with the final Agency actions, NMFS does not have the necessary detailed economic information to make a quantitative

assessment of the impacts on fishery support businesses.

Comment 10: The use of gross revenues to quantify impacts does not provide an accurate assessment of the economic impacts of the proposed rule; approximating loss changes by using average vessel costs would be a more appropriate technique.

Response: NMFS agrees that using net revenues instead of gross revenues would provide a more accurate assessment of the economic impacts. However, as described in the HMS FMP, NMFS has only one estimate of the average variable costs for vessels in the pelagic longline fishery. Removing this estimate from every estimate of gross revenues would be the same as removing a constant and would result in the same estimates as those from gross revenues in terms of percent change in net revenues. Thus, NMFS prefers, at this time, to discuss the impact in regard to gross revenues and variable costs separately. However, NMFS is working on expanding its collection of social and economic data. NMFS is seeking approval to make the economic add-on to the pelagic logbook data collection mandatory for selected vessels. This information could be used in future rulemakings to estimate the net revenues for each vessel.

Comment 11: The documents do not have enough data on people and the lives this rule will affect. Because of this, the rule fails to fully assess the social and economic impacts. NMFS needs to expand the social impact assessment.

Response: The data used to examine the alternatives considered in the rulemaking constitute the best available data. However, NMFS agrees that additional data will be beneficial to future analyses. Therefore, NMFS is increasing efforts to collect social and economic data for use in future analyses, such as through the cost-earnings add-on to the pelagic logbook and charter/headboat logbook, and social and economic data surveys to be administered to tournament participants.

Comment 12: NMFS needs additional information regarding any social and economic impacts from the proposed rule on the recreational fishing industry.

Response: The proposed rule and FSEIS included a discussion of the value of recreational HMS fisheries and the potential increases in fishing success as a result of the closure of commercial pelagic longline fishing along the U.S. Atlantic coast. Given the potential benefits of the rule on the recreational fishing industry and the comments received, NMFS expanded the discussion of the impacts on recreational fishermen in the final rule documents.

Comment 13: If the closures aid in the recovery of billfish, sharks, tunas, and swordfish, there will be tremendous economic gain in the recreational fishing sector. Healthy fish populations produce more economic benefit when they are used for recreational fishing first. The economic benefits of recreational angling have been demonstrated many times.

Response: NMFS agrees that the recreational fishing industry provides many economic benefits and employment. The 1988 Billfish Fishery Management Plan, which prohibited commercial vessels from possessing billfish, recognizes the importance of the recreational billfish fishery. Although increasing the recreational fishery benefits and decreasing user conflicts are not an objective of the rule, NMFS realizes that such benefits could occur as a result of the regulations.

Comment 14: NMFS needs to evaluate the economic impacts on recreational fishermen in the mid- Atlantic Bight that may result from increased interactions with displaced pelagic longline fishing activity.

Response: NMFS agrees that displacement of pelagic longline effort may have an impact on the remaining open areas in the Atlantic. Accordingly, NMFS includes a discussion of additional management measures specifically for the mid-Atlantic Bight to reduce potential interactions with endangered/threatened species and with recreational anglers. In addition, the reduced time/area closures will not only minimize economic impacts on the commercial fishing industry, but also reduce user conflicts that may have occurred under the proposed rule if effort had been concentrated into smaller remaining open areas. For example, NMFS reduced the closure along the Atlantic coast, particularly the Charleston Bump area. This should help to minimize any user conflicts that may have occurred as a result of the proposed rule because some commercial fishermen in the Charleston Bump area may decide not to relocate north. However, the goal of this regulation is to reduce bycatch and bycatch mortality in the pelagic longline fishery, consistent with the Magnuson-Stevens Act, not to reduce user conflicts. NMFS will continue to monitor the impacts of this regulation on the environment and fishing interests. If necessary, NMFS will work with the APs and may issue additional regulations in order to reduce user conflicts.

Comment 15: If one compares the 1997 summary economic statistics in the IRFA with the DSEIS and the 1998 summary statistics in the supplemental information about DeSoto Canyon, it appears that the fishery is collapsing.

Response: NMFS disagrees. The level of participation in the fishery may appear to have declined because the IRFA undertaken for the proposed rule and the DSEIS used data from the northeast logbooks, whereas the analysis for the supplemental DeSoto Canyon alternative did not. The use of these northeast logbooks in the DeSoto Canyon analysis would increase the number of vessels that reported landings in 1998; however, most of these vessels reported few, if any, landings from areas in or near the final time/area closures, and would not be directly affected by the DeSoto closure. In addition, the average gross revenue per permit holder increases by 21 percent when comparing the 1997 data with the 1998 data ($113,173 versus $137,126).

Comment 16: While smaller areas would minimize the economic impacts on commercial fishermen, the District of Columbia Circuit Court of Appeals recently held that conservation concerns outweigh concerns about the potential economic impacts of fishery regulations.

Response: NMFS agrees that conservation concerns are important. However, NMFS also recognizes that the proposed rule would have significant economic impacts. For this reason, NMFS re-examined the data and revised the final actions to achieve similar, or better, conservation impacts while reducing the economic impacts. NMFS feels that the suite of final actions (the revised time/area closures and the live bait prohibition) will have greater conservation benefits than the proposed regulations and serves to better mitigate economic impacts.

Comment 17: The proposal violates the Regulatory Flexibility Act and would create social and economic devastation to fishing families and communities.

Response: NMFS disagrees that the proposed or final regulations violate the RFA. The RFA imposes an analytical requirement and specifies procedures for assessing the impacts of proposed regulations on small entities. Federal Agencies must determine the economic impact, explore feasible alternatives for reducing the economic impact, and explain the reason for the regulatory choice. Further, the RFA requires that the Federal Agency obtain public comment on the analysis, and that comments be addressed in a justification of the final action. NMFS believes that the analyses in the

proposed rule and supplemental information meet all the requirements of the RFA. NMFS recognizes that the final regulations will have large impacts on many fishing families and communities but notes that the RFA does not preclude an Agency from implementing regulations having such impacts. NMFS chose final actions that meet the conservation goals and minimized the economic impacts, to the extent practicable.

Comment 18: Regional market gluts, especially associated with bad weather events and/or quota closures, should be expected to reduce ex-vessel prices.

Response: NMFS agrees that the time/area closures may have some impact on ex-vessel price particularly if closures or bad weather keep commercial fishermen from fishing in the open areas. However, given the extent of the remaining open areas in the Gulf and along the Atlantic coast, NMFS does not believe that the time/area closures would change the ex-vessel price significantly or cause significant market gluts.

Comment 19: NMFS should omit dealers who only import foreign fish from the analysis; in reality, domestic dealers who primarily offload and purchase "trip-fish" are few and far between and those in the closed areas will be impacted far greater than NMFS has analyzed.

Response: NMFS agrees that dealers who purchase most of their fish from vessels that now fish the designated closed areas will be greatly affected by these regulations. However, neither the IRFA nor FRFA considered imported fish. Instead, these analyses only considered fish sold to dealers by swordfish limited access permit holders.

Comment 20: Pelagic longline vessels need to gross at least $500,000 year to be profitable; NMFS' estimate for gross ex-vessel revenues is too low.

Response: NMFS disagrees that the estimate for average ex-vessel gross revenues used in the IRFA and FRFA is too low. A number of studies performed on the voluntary economic add-on of the pelagic logbook indicate that many fishermen are operating on the margin and are not profitable. One study found that the average gross revenue per vessel was $118,804. This is similar to the average of $113,173 used in the IRFA and $137,126 used in the FRFA. Thus, while some vessels may gross over $500,000, the majority of vessels do not.

Changes From the Proposed Rule

For reasons explained in the responses to comments listed in the preceding text, NMFS has modified the proposed rule to balance bycatch reduction objectives with the need to mitigate economic impacts. The proposed western Gulf of Mexico closure has been changed to a Gulf-wide prohibition on the use of live bait with pelagic longline gear. Also, the year-round DeSoto Canyon closed area has been added to further reduce dead discards of small swordfish. The proposed southeastern United States closed area has been split into northern and southern components: a seasonal (February 1– April 30) closure for the Charleston Bump area and a year-round closure for the Florida East Coast area.

To facilitate enforcement, several new definitions and prohibitions were added, and the proposed descriptions of fishing gear and the conditions for transit of the closed areas were revised. These revisions prohibit fishing activity of any type, regardless of gear actually deployed or target species, when a vessel issued an HMS permit is in a closed area with pelagic longline gear on board. Additionally, this final rule establishes a rebuttable presumption that fish on board a vessel in a closed area were taken in the closed area with a pelagic longline if that gear is on board. This imposes a burden on the vessel operator to demonstrate that such fish were taken outside the closed area (e.g., logbook entries, VMS signature).

Conclusions

In this final rule, NMFS prohibits pelagic longline fishing in areas with relatively higher bycatch rates because this alternative would best address the conservation and management objectives embodied in the FMP as required by the Magnuson-Stevens Act and ICCAT recommendations. Under the effort redistribution model, the final time/area closures, in conjunction with the live bait prohibition, are expected to reduce swordfish discards by 31 percent and sailfish discards by 29 percent; blue marlin and white marlin discards could increase by 3 percent and 7 percent, respectively. The final action time/area closures in the DeSoto Canyon, East Florida Coast and Charleston Bump could reduce the number of swordfish kept by 13 percent and the number of dolphin kept by 18 percent, while BAYS tunas landings would increase by nearly 10 percent.

The final area closures, together with the ban on live bait longlining in the Gulf of Mexico, appropriately meet the objectives of the Billfish and HMS FMPs and have the greatest likelihood of reducing bycatch while minimizing, to the extent possible, adverse impacts on fishing revenues and costs. Should future research indicate that practicable gear modifications could further reduce bycatch of managed HMS and/or protected resources, NMFS will consider those gear modifications in conjunction with, or as an alternative to, time-area closures. In addition, NMFS will address turtle bycatch in the pelagic longline fishery in a separate rulemaking (see the following ESA discussion). Future regulatory measures to reduce sea turtle bycatch may involve additional area closures and/or further modifications to fishing gear and methods in defined areas of high interaction rates.

NMFS notes that there are similarities and differences between the time-area closures for pelagic longline gear contained in this final rule and those contained in legislation pending before Congress. Should any of the Congressional bills become law, NMFS will modify the measures contained in this final rule as necessary.

Compliance Guide

Under the Small Business Regulatory Enforcement Fairness Act of 1996, Federal Agencies are required to provide small business entities with a plain-language summary of how to comply with new regulations. Copies of the compliance guide for this final rule are available from Rebecca Lent (see **ADDRESSES**). To facilitate distribution, the compliance guide is also included in this document:

Q1: I am a recreational fisherman. Will these regulations affect me?

A: No. These regulations only affect commercial fishermen who use pelagic longline gear in the Atlantic ocean and have a Federal permit for Atlantic HMS.

Q2: I use pelagic longline gear. Will these regulations affect me?

A: Yes, if you have a Federal permit for Atlantic HMS. These regulations will prohibit you from fishing with pelagic longline gear in certain areas and times and from using live bait in the Gulf of Mexico. The Gulf of Mexico is the area of the U.S. EEZ west of 83° W. longitude as defined in 50 CFR 600.105 (c).

Q3: What is longline gear?

A: A longline is fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

Q4: What is pelagic longline gear?

A: Pelagic longline gear is defined as a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. Your vessel has pelagic longline on board when:

1. A power-operated longline hauler,
2. A mainline,
3. High-flyers,

4. Floats capable of supporting the mainline, and

5. Leaders (gangions) with hooks are on board. Removal from the vessel of any one of these five elements constitutes removal of pelagic longline gear.

Q5: What are the areas where I can't fish using pelagic longline gear?

A: As of November 1, 2000, you will not be able to fish at any time using pelagic longline gear in the DeSoto Canyon area. This area, composed of two squares offshore of the west coast of Florida, is defined as the area within the following coordinates: 30°00' N. lat., 88°00' W. long.; 30°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 84°00' W. long.; 26°00' N. lat., 84°00' W. long.; 26°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 88°00' W. long.; 30°00' N. lat., 88°00' W. long.

As of February 1, 2001, you will not be able to fish at any time using pelagic longline gear in the East Florida Coast area. This area, located along the east coast of Florida through Georgia, is defined as the seaward area within the following coordinates: starting at 31°00' N. lat. near Jekyll Island, Georgia, and proceeding due east to 31°00' N. lat., 78°00' W. long.; 28°17' N. lat., 79°00' W. long.; then proceeding along the boundary of the Economic Exclusive Zone (EEZ) to 24°00' N. lat., 79°30' W. long.; then connecting by straight lines the following coordinates in the order stated: 24°00' N. lat., 79°30' W. long.; 24°00' N. lat., 81°00' W. long.; 24°00' N. lat., 81°47' W. long.; then proceeding due north to intersect the coast at 81°47' W. long. near Key West, Florida.

Also, as of February 1, 2001, you will not be able to fish using pelagic longline gear from February through April each year in the Charleston Bump area. This area, located off of North Carolina, is defined as 34°00' N. lat. near Wilmington Beach, North Carolina, and proceeding due east to connect by straight lines the following coordinates: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; then proceeding due west to intersect the coast at 31°00' N. lat. near Jekyll Island, Georgia.

Q6: Are all three areas closed year-round?

A: No. The Charleston Bump area is closed only February 1 through April 30 of each year. The other two areas, DeSoto Canyon and East Florida Coast, are closed year-round.

Q7: Are there any gear or fishing method restrictions in this rule?

A: Yes. As of September 1, 2000, in the Gulf of Mexico, pelagic longline fishermen are not allowed to use live bait. Setting up a live well or maintaining live baitfish on board is prohibited. You may not have a tank or well attached to an aeration or water circulation device or have live baitfish if a pelagic longline is on board.

Q8: I am a recreational fisherman. Can I use live bait?

A: Yes. These regulations do not affect recreational fishermen.

Q9: I am a commercial fisherman but I don't use pelagic longline. Will these regulations affect me?

A: As long as you do not have a pelagic longline on board your vessel, you will be able to fish in the closed areas. See question number 4 above for an explanation of the five elements of pelagic longline gear.

Q10: I use pelagic longline gear but do not have a limited access permit to fish for highly migratory species. Will these regulations affect me?

A: These closed areas and gear restrictions apply only to commercial fishermen who hold Federal permits for Atlantic HMS. While unpermitted vessels may fish for other species with pelagic longline gear in these areas, no tunas, swordfish, billfish, or sharks may be retained on board those vessels. However, NMFS is working with the Regional Councils to ensure consistency between regulations for all pelagic longline fisheries.

Q11: Will I need to buy a vessel monitoring system (VMS)?

A: If you are a commercial fisherman with Federal permits for Atlantic HMS and you have pelagic longline gear on board, you will need to have a VMS operational by September 1, 2000.

Q12: Can I transit the closed areas or will I need to go around them?

A: If you have pelagic longline gear on board and possess a Federal Atlantic HMS permit, you will be allowed to transit the area if your vessel has a working VMS unit, but you will not be allowed to fish with any gear type. If you have pelagic longline gear on board, it is assumed that any fish on board were caught with pelagic longline in the closed area and you will have to demonstrate that the fish were harvested outside the closed area. If you do not have pelagic longline on board, you may fish in the area.

Q13: Is there a vessel buyback program associated with this rule?

A: No. This rule does not have a buyback program associated with it. Legislation pending before Congress may address vessel buybacks.

Q14: I have the Federal swordfish, shark, and tuna limited access permits. If I decide to leave the pelagic longline fishery, can I sell my permits?

A: Yes. You can sell your limited access permits individually, as a group, with the vessel, or without the vessel. If you have directed permits, upgrading restrictions for horsepower, length overall, and net and gross tonnage apply. For more information on transferring or renewing limited access permits, please contact the NOAA Fisheries Southeast region permit office in St. Petersburg, FL, at (727) 570–5326.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NMFS prepared an initial regulatory flexibility analysis for the proposed rule. Based on comments received on the proposed rule and on the IRFA (see Comments and Responses section), NMFS has amended the final actions and has revised the regulatory flexibility analysis accordingly. The final regulatory flexibility analysis FRFA assumes that fishermen, during the time they would otherwise be pelagic longline fishing in the designated areas would instead (1) make longline sets in other areas, (2) participate in other commercial fisheries, or (3) exit commercial fishing. As of March 23, 2000, 450 vessel owners had been issued for limited access permits for swordfish, sharks, and the Atlantic tunas Longline category. With these three permits, these 450 fishermen may use a pelagic longline to target Atlantic swordfish (if they have a directed swordfish permit), Atlantic tunas, or Atlantic sharks (if they have a directed shark permit). If they have an incidental swordfish or incidental shark permit, these fishermen could still target Atlantic tunas. Thus, the number of small entities directly affected by this regulation consists of at least these 450 fishermen. In addition, other sectors of the commercial fishery might be affected by this regulation, including dealers, processors, bait houses, and hook manufacturers. Using the weighout slips submitted by fishermen reporting in the pelagic longline logbook, NMFS estimates that 125 dealers received fish in 1998 from the 450 fishermen who qualified under the limited access program. NMFS also received comments that the businesses associated with the recreational and charter/headboat sectors of the HMS fisheries may also experience economic impacts as a result of the commercial fishing effort displacement which would result from the time/area closures. On balance, though, these impacts are likely to be positive as gear conflicts will be reduced in some areas and the availability of target species will increase for the recreational sector.

Under this final action, a decrease in gross revenues will result for some proportion of the affected small entities in the commercial fishing sector. Under the final time/area closure actions, NMFS estimates that, assuming the worst case scenario, the average annual gross revenues per permit holder could decrease by nearly 5 percent to about $130,000. Additionally, NMFS estimates that under the final closure actions approximately 43 percent of the vessels that reported landings in 1998 will experience at least a 5-percent decrease in gross revenues and approximately 14 percent of the vessels will experience at least a 50-percent decrease in gross revenues (i.e., be forced out of business). The final rule closures will also have an economic impact on dealers. About 15 percent of the permitted dealers could experience at least a 5-percent reduction in the amount of fish handled due to the DeSoto Canyon area closure, while 28 percent could experience at least five percent reduction in the amount of fish handled due to the Charleston Bump and East Florida Coast closures. However, to the extent that landings of HMS are likely to increase in other areas, gains will accrue to certain other vessel operators and dealers.

Based on comments received on the proposed rule and the IRFA, NMFS has adopted a ban on live bait sets in lieu of the western Gulf of Mexico closed area. While a prohibition on live bait may reduce the landings of some pelagic longline fishermen, particularly yellowfin tuna landings, it is not likely that this final action will have a large impact on the gross revenues of any permit holder. More likely, this final action may have an impact on the net revenues of some permit holders since it will change the method of fishing. Requiring the use of frozen bait might increase costs by up to 22 percent for fishermen who currently use live bait. However, the use of dead bait might decrease the time at sea (since a number of days are used up fishing for live bait) and a decrease in the time spent at sea might decrease the cost of fuel, groceries, or the costs associated with catching the bait and keeping it alive. Thus, even though fishermen might need to spend additional money up front in order to leave for a fishing trip, this alternative might be beneficial if more sea time is available to fish for target species. In any event, the economic impacts of a live bait prohibition are expected to be less significant than under the proposed closure.

The alternatives considered include the status quo, gear modifications, and a ban on pelagic longline fishing by U.S. vessels in the Atlantic Ocean. Although the status quo and gear modification alternatives might have lesser economic impacts on participants in the pelagic longline fishery, those alternatives either do not reduce bycatch to the extent that NMFS expects to be achieved by the time-area closures or present enforcement difficulties. While a complete ban on longline fishing would reduce bycatch to a greater extent than the time-area closures, the lost value of commercial seafood products and the adverse impacts on fishery participants and fishing communities would impose greater costs than the final action.

In addition to changes from the proposed rule, NMFS has decided to delay implementation of some of the final regulations to help mitigate some of the economic impacts fishermen may experience as a result of the time/area closures and to give fishermen and related industries a chance to relocate both business interests and families. The RIR/FRFA provides further discussion of the economic effects of the final actions and all the alternatives considered.

This final action will not impose any additional reporting or recordkeeping requirements on vessel operators or dealers. Vessel logbooks, dealer reports, observer notification, and VMS requirements applicable to the HMS fisheries are all currently approved by the Office of Management and Budget under existing regulations.

In preparing the draft HMS FMP and Billfish Amendment, NMFS reinitiated formal consultation for all Highly Migratory Species commercial fisheries on May 12, 1998, under section 7 of the ESA. In a BO issued on April 23, 1999, NMFS concluded that operation of the Atlantic pelagic longline fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS' jurisdiction. Certain provisions of the BO were incorporated into the final rule that implemented the FMPs and consolidated the HMS regulations (e.g., moving after encounters and limiting the mainline length). Other provisions of the BO required non-regulatory programmatic actions (e.g., research and monitoring).

The Incidental Take Statement (ITS) of the April 23, 1999, BO authorized the following levels of incidental take in the pelagic longline fisheries: 690 leatherback sea turtles (*Dermochelys coriacea*), entangled or hooked (annual estimated number) of which no more than 11 are observed hooked by ingestion or moribund when released; 1541 loggerhead sea turtles (*Caretta caretta*) entangled or hooked (annual estimated number) of which no more than 23 may be hooked by ingestion or observed moribund when released.

Observed take levels documented in 1999 indicate that, of all the turtles taken, up to 50 loggerheads and 19 leatherbacks were observed "hooked by ingestion" or moribund upon release. However, only about 3 percent observer coverage was obtained and the anticipated take levels were based on 5 percent observer coverage. Thus, the observed levels of take would likely have been considerably higher had the required 5 percent coverage level been achieved. If the target observer coverage level had been achieved, NMFS preliminarily projects that up to 83 loggerheads and 32 leatherbacks would have been observed "hooked by ingestion" or moribund in 1999.

On November 19, 1999, NMFS reinitiated consultation under Section 7 of the ESA because observed take of loggerhead sea turtles by the Atlantic pelagic longline fishery had exceeded levels anticipated in the ITS. The consultation included this pelagic longline management rulemaking because the time/area closures, if implemented, could affect the overall interaction rates with sea turtles depending on fishermen's responses in terms of shifting pelagic longline effort or fishing for other species with other gear. The consultation also addressed the shark drift gillnet fishery and the Atlantic tunas purse seine fisheries; however, the following discussion addresses only issues in the BO that apply specifically to the pelagic longline fishery which is the subject of this final rule.

After reviewing the current status of the northern right whale, the humpback, fin and sperm whales, and leatherback, loggerhead, green, hawksbill, and Kemp's ridley sea turtles, the environmental baseline for the action area, the effects of implementation of the proposed Amendment to the Atlantic HMS FMP, the record of compliance with requirements of previous BOs on HMS fisheries, and probable cumulative effects, it is NMFS' BO that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of loggerhead and leatherback sea turtles.

According to the BO, to avoid the likelihood of jeopardizing the continued existence of loggerhead and leatherback sea turtles, NMFS must implement fishery management measures to reduce the number of these turtles that are incidentally captured, injured, killed by gear associated with federally-managed

fisheries by at least 75 percent from current levels; that is, a reduction in the number of loggerhead and leatherback sea turtles captured, injured, or killed compared with a running average of the number captured, injured, or killed during the period 1993 to 1999. The reduction can be accomplished directly by gear modifications or it can be accomplished indirectly by changing the method by which gear is deployed.

Indirect modifications could include managing fisheries that use harmful gear over time and space to eliminate the likelihood of interactions between loggerhead sea turtles and gear (proportional to the threat posed by specific gear); managing fisheries to eliminate the likelihood that loggerhead sea turtles captured by gear would drown before they can be released (such as keeping soak times to less than 30 to 45 minutes); excluding gear from areas that, based on available data, appear to be important for loggerhead sea turtles; or, any combination of these changes that reduce the number of loggerhead sea turtles that are incidentally captured, injured, and killed by gear associated with federally-managed fisheries by at least 75 percent from current levels.

The BO identified the Reasonable and Prudent Alternatives (RPAs) necessary to avoid jeopardy, and listed the Reasonable and Prudent Measures (RPMs) and Terms and Conditions (TCs) necessary to authorized continued takes. According to the BO, if NMFS cannot develop and implement direct or indirect management measures that reduce the number of loggerhead sea turtles that are incidentally captured, injured, and killed by gear associated with federally managed fisheries by at least 75 percent from current levels, the following RPAs must be implemented: modifications in fishing gear or method (e.g., requirement for corrodible hooks or limiting fishing activity to certain temperature and time of day regimes); or exclusion zones (e.g., temporally and spatially restricting pelagic longline effort in the Grand Banks area); and enhanced monitoring.

Section 9 of ESA and Federal regulations issued pursuant to section 4(d) of ESA prohibit the take of endangered and threatened species, respectively, without special exemption. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under sections 7(b)(4) and 7(o)(2) of the ESA, taking that is incidental to and not intended as part of the Agency action is not a prohibited taking, provided that such taking is in compliance with the RPMs and TCs of the ITS. Section 7(b)(4)(c) of the ESA specifies that in order to provide an ITS for an endangered or threatened species of marine mammal, the taking must be authorized under section 101(a)(5) of the Marine Mammal Protection Act of 1972 (MMPA). Since no incidental take has been authorized under section 101(a)(5) of the MMPA, no statement on incidental take of endangered whales is provided and no take is authorized.

Regarding anticipated incidental take of sea turtles in the pelagic longline fishery for swordfish, tunas, and sharks, it is hoped that this final rule to reduce bycatch in the pelagic longline fishery, which may slightly increase take levels of sea turtles, will be more than offset by the additional requirements to implement the RPMs according to the terms and conditions of the ITS. The BO states that the RPMs that are necessary and appropriate to minimize take of listed species include an effective monitoring and reporting system to document take, educating fishermen to reduce the potential for serious injury or mortality of hooked turtles, and assessments of current data to look for trends that may indicate management measures to reduce the number of protected species interactions.

In order to be exempt from the take prohibitions of section 9 of ESA, the June 30, 2000, BO requires NMFS to comply with certain terms and conditions which would implement the RPMs described earlier and outline required reporting/monitoring requirements. The terms and conditions are non-discretionary and require: at-sea observer coverage; information collection on the condition of sea turtles and marine mammals when released; the presence and use of dipnets and cutting devices on all longline vessels; review of turtle bycatch and release mortality studies; financial support for genetic research to identify sea turtle subpopulations; examination of the influence of gear and fishing technique modifications such as light sticks and length of mainline on protected species interaction rates.

NMFS will address the requirements of the BO in a subsequent rulemaking and by certain non-regulatory actions. In the interim, this final rule will not result in any irreversible and irretrievable commitment of resources that will have the effect of foreclosing the formulation or implementation of any RPAs necessary to reduce impacts on protected species.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 26, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635, is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definition of "High-flyer" is revised and new definitions for "Charleston Bump closed area," "DeSoto Canyon closed area," "East Florida Coast closed area," "Handline," "Longline," and "Pelagic longline" are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Charleston Bump closed area means the Atlantic Ocean area seaward of the baseline from which the territorial sea is measured from a point intersecting the U.S. coast at 34°00' N. lat. near Wilmington Beach, North Carolina, and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; then proceeding due west to intersect the coast at 31°00' N. lat. near Jekyll Island, Georgia.

* * * * *

DeSoto Canyon closed area means the area within the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 30°00' N. lat., 88°00' W. long.; 30°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 84°00' W. long.; 26°00' N. lat., 84°00' W. long.; 26°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 88°00' W. long.; 30°00' N. lat., 88°00' W. long.

* * * * *

East Florida Coast closed area means the Atlantic Ocean area seaward of the baseline from which the territorial sea is measured from a point intersecting the U.S. coast at 31°00' N. lat. near Jekyll Island, Georgia, and proceeding due east to connect by straight lines the following coordinates in the order

stated: 31°00' N. lat., 78°00' W. long.; 28°17' N. lat., 79°00' W. long.; then proceeding along the boundary of the EEZ to 24°00' N. lat., 79°30' W. long.; then connecting by straight lines the following coordinates in the order stated: 24°00' N. lat., 79°30' W. long.; 24°00' N. lat., 81°00' W. long.; 24°00' N. lat., 81°47' W. long.; then proceeding due north to intersect the coast at 81°47' W. long. near Key West, Florida.

* * * * *

Handline means fishing gear that consists of a mainline to which no more than two leaders (gangions) with hooks are attached, and that is released and retrieved by hand, rather than by mechanical means.

High-flyer means a flag, radar reflector or radio beacon transmitter, suitable for attachment to a longline to facilitate its location and retrieval.

* * * * *

Longline means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

* * * * *

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

* * * * *

3. In § 635.4, paragraph (a)(10) is added, and paragraph (e)(4) is removed, to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(10) *Permit condition.* An owner issued a swordfish or shark permit pursuant to this part must agree, as a condition of such permit, that the vessel's swordfish or shark fishing, catch and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, or outside the EEZ, and without regard to where such swordfish or shark, or gear are possessed, taken or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations on swordfish or shark fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

4. In § 635.21, paragraph (c) introductory paragraph and paragraph (c)(2) are revised, and paragraph (c)(4) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) *Pelagic longlines.* For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, high-flyers, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

* * * * *

(2) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calendar year;

(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;

(iii) In the Florida East Coast closed area at any time beginning at 12:01 a.m. on February 1, 2001; and,

(iv) In the DeSoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000.

* * * * *

(4) In the Gulf of Mexico: pelagic longline gear may not be fished or deployed from a vessel issued a permit under this part with live bait affixed to the hooks; and, a person aboard a vessel issued a permit under this part that has pelagic longline gear on board shall not maintain live baitfish in any tank or well on board the vessel and shall not possess live baitfish, and shall not set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

* * * * *

5. In § 635.69, paragraph (a) is revised by adding a second sentence to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* * * * A vessel is considered to have pelagic longline gear on board for the purposes of this section, when gear as specified at § 635.21(c) is on board.

* * * * *

6. In § 635.71, paragraphs (a)(30), (31), and (32) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(30) Deploy or fish with a pelagic longline greater than the maximum length authorized for any area specified at § 635.21(c)(1).

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any closed area during the time periods specified at § 635.21(c)(2).

(32) In the Gulf of Mexico, deploy or fish a pelagic longline with live bait affixed to the hooks or to possess live bait, or set up a well or tank to maintain live bait, aboard a vessel with pelagic longline gear on board as specified at § 635.21(c)(4).

* * * * *

[FR Doc. 00–19272 Filed 7–31–00; 8:45 am]
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Federal Register

Tuesday,
August 1, 2000

Part IV

The President

Notice of July 28, 2000—Continuation of Iraqi Emergency

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Federal Register
Vol. 65, No. 148
Tuesday, August 1, 2000

Presidential Documents

Title 3—

The President

Notice of July 28, 2000

Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
July 28, 2000.

[FR Doc. 00–19587
Filed 7–31–00; 8:45 am]
Billing code 3195–01–P

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Vol. 65, No. 148

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FEDERAL REGISTER PAGES AND DATE, AUGUST

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CFR PARTS AFFECTED DURING AUGUST

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REMINDERS

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RULES GOING INTO EFFECT AUGUST 1, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Kiwifruit grown in—
California; published 6-14-00
Prunes (dried) produced in California; published 5-10-00
Raisins produced from grapes grown in—
California; published 3-22-00
Walnuts grown in—
California; published 6-26-00
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Scup; published 8-1-00
Spiny dogfish; published 8-1-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Hospital inpatient payments and graduate medical education rates and costs; Balanced Budget Refinement Act provisions; published 8-1-00
Hospital outpatient services; prospective payment system; published 6-30-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare:
Hospital outpatient services; prospective payment system; published 6-30-00
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Uruguay Round Agreements Act (URAA):
Copyright restoration of certain Berne Convention and World Trade Organization works—
Restored copyrights, notices of intent to enforce; corrections procedure; correction; published 8-1-00
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Contract bundling; published 8-1-00
PENSION BENEFIT GUARANTY CORPORATION
Single employer plans:
Allocation of assets—
Interest assumptions for valuing benefits; published 7-14-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Administrative regulations:
Air traffic and related services for aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, U.S.; fees; published 6-6-00
Airworthiness directives:
McDonnell Douglas; published 6-27-00

COMMENTS DUE NEXT WEEK

ADVISORY COUNCIL ON HISTORIC PRESERVATION
Historic Preservation, Advisory Council
Protection of historic and cultural properties; comments due by 8-10-00; published 7-11-00
AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Meats, prepared meats, and meat products; grading, certification, and standards:
Livestock and poultry products; equipment used in slaughter, processing, and packaging; certification of sanitary design and fabrication; comments due by 8-7-00; published 6-6-00
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 8-7-00; published 7-6-00
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Mexican Hass avocados; comments due by 8-9-00; published 5-11-00
AGRICULTURE DEPARTMENT
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Blended beef, pork, poultry, or seafood products; identification; comments due by 8-7-00; published 6-8-00
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Gulf of Alaska groundfish; comments due by 8-10-00; published 6-26-00
Caribbean, Gulf of Mexico, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 8-11-00; published 7-12-00
Marine mammals:
Humpback whales in Alaska; approach prohibition; comments due by 8-10-00; published 6-26-00
COMMERCE DEPARTMENT
Patent and Trademark Office
Freedom of Information Act and Privacy Act; implementation; comments due by 8-7-00; published 7-7-00
Patent cases:
Treatment of unlocatable application and patent files; comments due by 8-9-00; published 7-10-00
COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Clearing organizations; regulatory framework; comments due by 8-7-00; published 6-22-00
Exemption for bilateral transactions; regulatory framework; comments due by 8-7-00; published 6-22-00
Intermediaries of commodity interest transactions; regulatory framework; comments due by 8-7-00; published 6-22-00
Multilateral transaction execution facilities, intermediaries and clearing organizations; regulatory framework; comments due by 8-7-00; published 6-22-00
EDUCATION DEPARTMENT
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Assistance to States for education of children with disabilities; comments due by 8-8-00; published 5-10-00
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Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards; comments due by 8-7-00; published 7-7-00
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Arizona; comments due by 8-10-00; published 7-11-00
Connecticut; comments due by 8-11-00; published 7-12-00
Massachusetts; comments due by 8-11-00; published 7-12-00
Minnesota; comments due by 8-11-00; published 7-12-00
New Hampshire, Rhode Island, and Vermont; comments due by 8-9-00; published 7-10-00
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Ohio; comments due by 8-9-00; published 7-10-00
Air quality implementation plans; approval and promulgation; various States:
Rhode Island; comments due by 8-11-00; published 7-12-00
Hazardous waste program authorizations:
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Ground water systems; waterborne pathogens

from fecal contamination; public health risk education; comments due by 8-9-00; published 6-14-00
Radon-222; maximum containment level goal; public health protection; comments due by 8-7-00; published 6-23-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Disease Control and Prevention
Coal mine safety and health:
Respirable coal mine dust; concentration determination; hearings; comments due by 8-7-00; published 7-7-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Operating fund formula; operating subsidies; comments due by 8-9-00; published 7-10-00

INTERIOR DEPARTMENT
Land Management Bureau
Minerals management:
Oil and gas leasing—
Alaska; National Petroleum Reserve unitization; comments due by 8-10-00; published 6-26-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Arroyo southwestern toad; comments due by 8-7-00; published 6-8-00
Zayante band-winged grasshopper; comments due by 8-7-00; published 7-7-00
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Regulations revised
Correction; comments due by 8-7-00; published 5-8-00
Correction; comments due by 8-7-00; published 6-29-00
Fish and wildlife restoration; Federal aid to States:
Sport fish program; participation by District of Columbia and U.S. insular territories and commonwealths; comments due by 8-8-00; published 6-9-00
Hunting and fishing:
Refuge-specific regulations; comments due by 8-9-00; published 7-10-00
Migratory bird hunting:
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Immigration and Naturalization Service
Immigration:
Aliens—
Detention of aliens ordered removed; comments due by 8-11-00; published 8-1-00

LABOR DEPARTMENT
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Respirable coal mine dust; concentration determination; hearings; comments due by 8-7-00; published 7-7-00
Samples used to determine respirable dust level; procedures revocation; comments due by 8-7-00; published 7-7-00

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H.R. 3544/P.L. 106–250

Pope John Paul II Congressional Gold Medal Congressional Gold Medal Act (July 27, 2000; 114 Stat. 622)

H.R. 3591/P.L. 106–251

To provide for the award of a gold medal on behalf of the Congress to former President Ronald Reagan and his wife Nancy Reagan in recognition of their service to the Nation. (July 27, 2000; 114 Stat. 624)

H.R. 4391/P.L. 106–252

Mobile Telecommunications Sourcing Act (July 28, 2000; 114 Stat. 626)

H.R. 4437/P.L. 106–253

Semipostal Authorization Act (July 28, 2000; 114 Stat. 634)

Last List July 28, 2000

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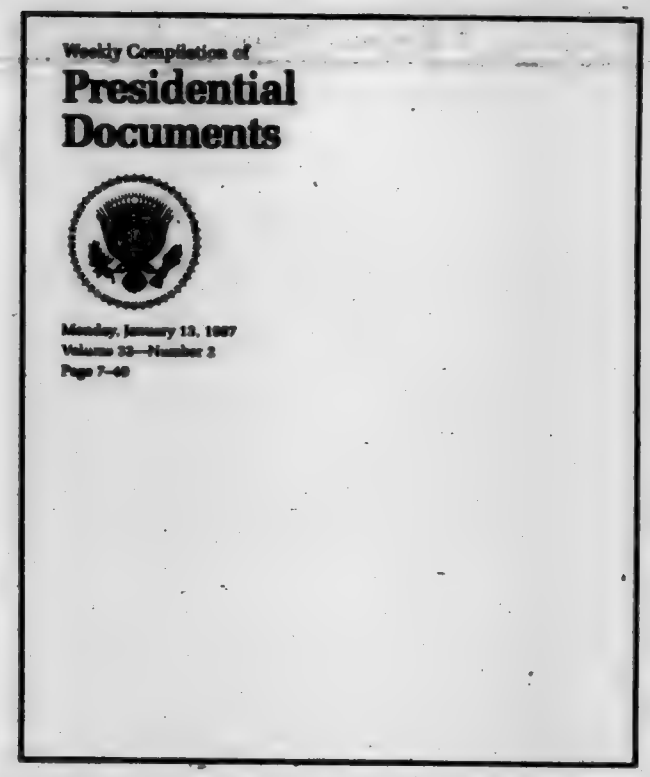

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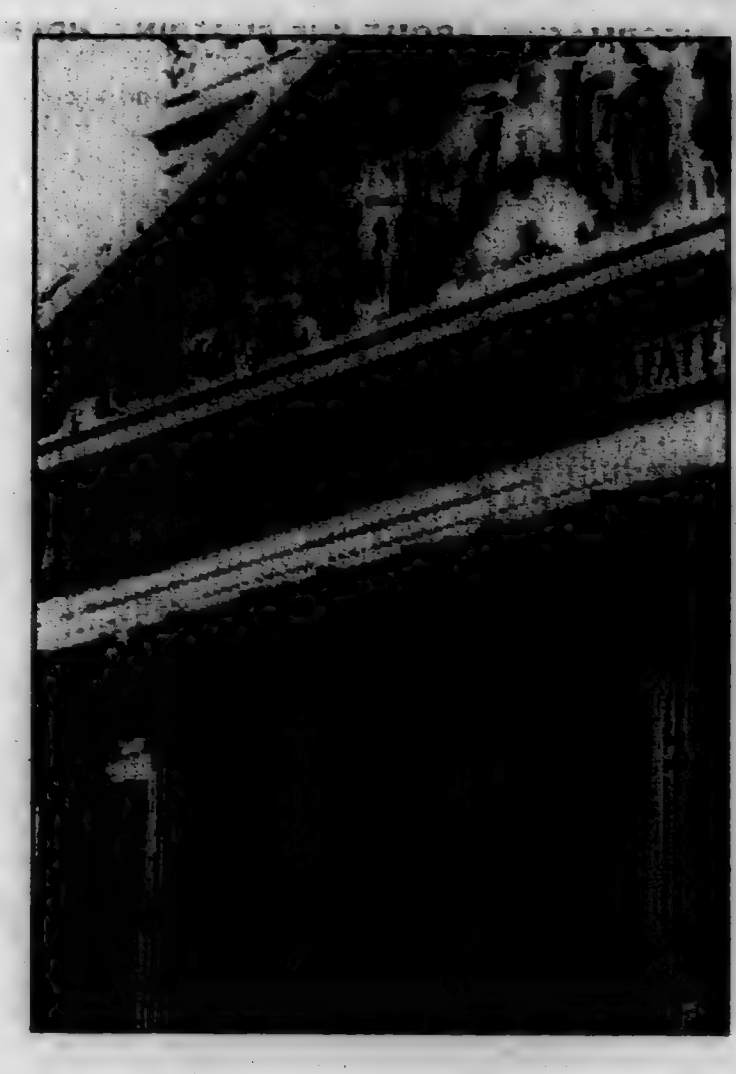

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Docket number ST 99–006 FR]

RIN 0581–AB71

Revision of Plant Variety Protection Office Fees

AGENCY: Agricultural Marketing Agency, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing Plant Variety Protection Office application, search, and certificate issuance fees by approximately 10 percent. Due to operating cost increases, the last fee increase in 1995 is no longer adequate to cover costs for this fully user-fee funded program. Also, the information symbol used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection is added to the USDA/AMS inventory of symbols and would appear in the regulations.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie Thro, Commissioner, Plant Variety Protection Office, Rm. 500 N.A.L. Building, 10301 Baltimore Blvd. Beltsville MD 20705, telephone 1–301–504–5518 and –7475; fax 1–301–504–5291.

SUPPLEMENTARY INFORMATION:

I. Executive Orders 12866 and 12988, and the Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be "not significant" for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has also been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this action on small entities. There are more than 800 users of the PVPO's variety protection service, of whom about 100 may file applications in a given year. Some of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small entities.

The Plant Variety Protection Office (PVPO) administers the Plant Variety Protection Act by issuing Certificates of Protection which provide legal intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover programs costs while maintaining an adequate reserve balance. Without a fee increase, fiscal year (FY) 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. With the increase in revenue, the trust fund balance will be maintained at $1,600,000, its level at the end of FY 1999.

This action raises the fee charged to users of plant variety protection. The AMS estimates that this rule would yield an additional $100,000 during FY 2000. The fee for plant variety protection would increase by approximately 10 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual users will be approximately $275.00 per Plant Variety Protection Certificate issued. Plant Variety Protection is sought on a voluntary basis. Any decision on their part to discontinue the use of plant variety protection would not prevent these entities from marketing their varieties. Finally, the addition of the information symbol to the USDA/AMS inventory of symbols and its inclusion in the regulations will not add further costs to users of the variety protection services.

II. Paperwork Reduction Act

This rule does not contain any information collection or recordkeeping requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

III. Background information

The Plant Variety Protection Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (PVPA), 7 U.S.C. 2321 *et seq.* The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and tubers. The act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

On April 4, 1995, AMS published a rule in the **Federal Register** (60 FR 17188) that increased Plant Variety Protection Office fees pursuant to amendments to the Plant Variety Protection Act became effective April 4, 1995. In its analysis of projected costs for FY 2000, AMS has identified increases in the costs of providing plant variety protection. Anticipated revenue will not cover increased program costs. Without a fee increase, FY 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. Due to the increase in revenue, the trust fund balance would be maintained at

$1,600,000, its value at the end of FY 1999. The AMS estimates that this rule would yield an additional $100,000 during FY 2000.

Program operating costs include salaries and benefits of examining staff, supervision, training, and all administrative costs of operating the program. Cost increases are attributed mainly (80 percent of total operating budget) to national and locality pay raises and increased benefit costs for Federal employees. A general and locality salary increase for Federal employees, totaling approximately 4.8 percent for the Washington, D.C. metropolitan area, will materially affect the costs of plant variety protection. Increases are expected to continue in following years. Administrative costs, including salary increases, increases in rent, increases in costs of supplies and replacement equipment, and training have increased, in amounts ranging from 3.1 to 22 percent per item. Due to these operating cost increases, the last fee increase in 1995 is no longer adequate to cover obligations and maintain an adequate reserve balance.

The fees set forth in Section 97.175 will be increased. The application fee will be increased from $300 to $320, the search fee from $2,150 to $2,385, and the issuance fee from $300 to $320. The fees for reviving an abandoned application, correcting or reissuance of a certificate are increased from $300 to $320. The charge for granting an extension for responding to a request is increased from $50 to $55. The hourly charge for any other service not specified is increased from $60 to $66. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $2,750 to $3,050. These fee increases are necessary to cover costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase on March 24, 1999. The Board recommended that fees be increased. This rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

The form of the official identification symbol, an umbrella over plant reproductive organs (a pistil with four stamens) illustrates the concept of intellectual property rights protection for sexually-reproduced crops.

Summary of Public Comment

A notice of proposed rule making was published in the **Federal Register** (65 FR 13917) on March 15, 2000. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small businesses.

The commentor observed that a charge for "any other service not specified" is in the current fee schedule, but was omitted from the proposed revised regulatory text. The hourly charge for "any other service not specified" was omitted from the list of fees and charges in § 97.175 due to an electronic error; however, it was included in the discussion of proposed increases in the text of the "Background" section of the proposed rule as published on March 15. The proposed increase was from $60 to $66. Accordingly, the text of § 97.175 is changed to reflect this fee. The comment also noted that first priority should be given to the examination and issue of certificates. This is done to the extent practicable.

List of Subjects in 7 CFR Part 97

Administrative practice and procedure, Labeling, Laboratories, Plants, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing—$320.00.

(b) Search or examination—$2,385.00.

(c) Allowance and issuance of certificate and notifying public of issuance—$320.00.

(d) Revive an abandoned application—$320.00.

(e) Reproduction of records, drawings, certificates, exhibits, or or pointed material (copy per page of material)—$1.10.

(f) Authentication (each page)—$1.10.

(g) Correcting or re-issuance of a certificate—$320.00.

(h) Recording assignments (per certificate/application)—$28.00.

(i) Copies of 8 x 10 photographs in color—$28.00.

(j) Additional fee for reconsideration—$320.00.

(k) Additional fee for late payment—$28.00.

(l) Additional fee for late replenishment of seed—$28.00.

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$3,050.00.

(n) Granting of extensions for responding to a request—$55.00.

(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(p) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $66.00 per employee-hour.

2. A new section 97.900 is added to read as follows:

§ 97.900 Form of official identification symbol.

The symbol set forth in Figure 1, containing the words "Plant Variety Protection Office" and "U.S. Department of Agriculture," shall be the official identification symbol of the Plant Variety Protection Office. This information symbol, used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection, has been approved by the Office of Communications to be added to the USDA/AMS inventory of symbols. It is approved for use with AMS materials.

Figure 1. Official identification symbol of the Plant Variety Protection Office.

Dated: July 27, 2000.

Robert L. Epstein,

Acting Deputy Administrator, Science and Technology.

[FR Doc. 00–19452 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV00–982–2 FR]

Hazelnuts Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate established for the Hazelnut Marketing Board (Board) for the 2000–2001 and subsequent marketing years from $0.004 to $0.005 per pound of hazelnuts handled. The Board locally administers the marketing order, which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning on July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2000–2001 and subsequent marketing years from $0.004 to $0.005 per pound of hazelnuts handled.

The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board

are producers and handlers of hazelnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate and budget were recommended by a mail vote. The recommendation will be discussed and reconfirmed at the Board's next scheduled public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board, in a mail vote completed at the end of April 2000, unanimously recommended 2000–2001 expenditures of $596,293 and an assessment rate of $0.005 per pound of hazelnuts. In comparison, last year's budgeted expenditures were $568,457. The assessment rate of $0.005 is $0.001 higher than the rate previously in effect. At a rate of $0.004 per pound and an estimated 2000–2001 hazelnut production of 50,000,000 pounds, the Board believes that the projected reserve on June 30, 2001, would not have been adequate to administer the program. The increased assessment rate is expected to result in an operating reserve of $150,147 at the end of the 2000–2001 marketing year.

The major expenditures recommended by the Board for the 2000–2001 marketing year include $39,613 for personal services (salaries and benefits), $7,416 for rent, $5,000 for compliance, $23,000 for the crop estimate, $275,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1999–2000 were $51,385, $7,308, $5,000, $21,000, $275,000, and $182,364, respectively. The Board will consider using emergency funds for authorized activities when it is reasonably certain that its estimate of assessable hazelnuts is reached. It will not be able to make this determination until December 2000, the month in which the hazelnut harvest and deliveries to handlers usually are completed.

The Board based its recommended assessment rate increase on the 2000–2001 crop estimate, the 2000–2001 marketing year expenditures estimate, and the current and projected balance of the operating reserve. Hazelnut shipments for the 2000–2001 marketing year are estimated at 50,000,000 pounds, which should provide $250,000 in assessment income. Income derived from handler assessments, along with interest income ($13,000) and funds from the Board's authorized reserve ($333,293), will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order (approximately one marketing year's operational expenses). Excess funds may be maintained and used by the Board until December 1 following the end of a marketing year (§ 982.62(b)). The Board shall refund to each handler upon request, or credit to the handler's account with the Board, the handler's share of such excess prior to January 1.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to conduct a mail vote prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Any mail votes will be discussed and reconfirmed at a public meeting. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget has been reviewed and approved. Budgets for subsequent marketing years will also be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 800 producers of hazelnuts in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. Currently, about 86 percent of hazelnut handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. Further, it is estimated that virtually all hazelnut producers have annual receipts of less than $500,000, excluding receipts from other sources. Thus, the majority of handlers and producers of hazelnuts may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent marketing years from $0.004 to $0.005 per pound of hazelnuts. The Board, in a mail vote completed at the end of April 2000, unanimously recommended 2000–2001 expenditures of $596,293 and an assessment rate of $0.005 per pound. The assessment rate of $0.005 per pound is $0.001 higher than the $0.004 per pound rate previously in effect. The quantity of assessable hazelnuts for the 2000–2001 marketing year is estimated at 50,000,000 pounds. Income derived from handler assessments, along with interest income and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2000–2001 marketing year include $39,613 for personal services (salaries and benefits), $7,416 for rent, $5,000 for compliance, $23,000 for the crop estimate, $275,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1999–2000 were $51,385, $7,308, $5,000, $21,000, $275,000, and $182,364, respectively. As mentioned earlier, the Board will not make any decision on using emergency funds until December 2000, at the earliest.

The Board based its recommended assessment rate increase on the 2000–2001 crop estimate, the 2000–2001 marketing year expenditures estimate, and the current and projected balance of the operating reserve. Hazelnut shipments for the 2000–2001 marketing year are estimated at 50,000,000

pounds, which should provide $250,000 in assessment income. Income derived from handler assessments, along with interest income ($13,000) and funds from the Board's authorized reserve ($333,293), will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order (approximately one marketing year's operational expenses). Excess funds may be maintained and used by the Board until December 1 following the end of a marketing year (§ 982.62(b)). The Board is required to refund or credit, upon request, each handler's share of the excess prior to January 1.

The Board reviewed and unanimously recommended 2000–2001 expenditures of $596,293. With the 2000–2001 marketing year assessable hazelnut crop estimated at 50,000,000 pounds, or 26,000,000 pounds less than for 1999–2000, the Board recommended the assessment rate increase to prevent its operating reserve from going lower than $150,000. The Board believes that a reserve less than this is too low. Prior to arriving at this budget, the Board considered information from various sources, including the Proration Committee, the Budget Committee, and the Marketing and Promotion Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research, marketing, and promotion projects to the hazelnut industry.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the producer price for the 2000–2001 marketing year could range between $0.32 and $0.49 per pound of hazelnuts. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could range between 1.02 and 1.56 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large hazelnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 14, 2000 (65 FR 37300). Copies of the proposed rule were also mailed or sent via facsimile to Board members. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending July 14, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 marketing year began on July 1, 2000, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable hazelnuts handled during such marketing year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.340 is revised to read as follows:

§ 982.340 Assessment rate.

On and after July 1, 2000, an assessment rate of $0.005 per pound is established for Oregon and Washington hazelnuts.

Dated: July 28, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19566 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, and 25

Changed Product Rule Meeting; Public Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Public meeting.

SUMMARY: This document announces two public meetings pertaining to the recent issue of the Changed Product Rule (65 FR 36243). Meetings in both the United States and in Europe have been planned. The international meeting will be held in Hoofddorp, The Netherlands September 20–21, 2000. The U.S. meeting will be held in Kansas City, Missouri, October 3–4, 2000. The international meeting is scheduled in support of the JAA Notice of Proposed Amendment (NPA) circulation to help commenters to better understand the NPA. The U.S. meeting will focus on the rule, transport category aircraft, as well as other products (normal, utility, acrobatic, and commuter airplanes; normal and transport category rotorcraft; manned free ballons; aircraft engines; and propellers). The meeting purpose is to present information regarding the rule, guidance material and to gather comments pertaining to the development of the follow-on Advisory Circular revisions related to general aviation aircraft and other product areas.

DATES: The international meeting will be held September 20–21, 2000, beginning at 11:00 a.m. in Hoofddorp, The Netherlands.

The U.S. industry meeting will be held October 3–4, 2000, starting at 9:00 a.m. in Kansas City, Missouri. Registration begins at 8:00 a.m.

ADDRESSES: The meetings will be held at the following locations:

International: Joint Aviation Authorities (JAA) Headquarters, Saturnusstraat 8–

10, 2132HB Hoofddorp, The Netherlands.

U.S. Industry: Marriott Downtown, 200 West 12th Street, Kansas City, Missouri.

FOR FURTHER INFORMATION CONTACT: Requests regarding the logistics of the U.S. meeting should be directed to the Federal Aviation Administration (FAA), Small Airplane Directorate, Attention: Lester Cheng, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4120. For international and all other product information, contact FAA, Headquarters Office, Attention: Randall Petersen, AIR–110, 800 Independence Avenue SW, Washington DC 20251; telephone (202) 267–9583. In Europe, contact Joint Aviation Authorities Headquarters (JAA), Ms. Rosa Serrano, Saturnusstraat 8–10, 2132HB Hoofddorp, The Netherlands (31–23–5679745). No official record of the meeting will be maintained.

SUPPLEMENTARY INFORMATION:

Participation at the Public Meeting

Background

On June 7, 2000 (65 FR 36243), the FAA published amended type certification procedures for changed products. These amendments affect changes accomplished through either an amended type certificate or a supplemental type certificate. The amendments are needed to address the trend toward fewer products that are of completely new design and more products with multiple changes to previously approved designs. This final rule action will enhance safety by applying the latest airworthiness standards, to the greatest extent practicable, for the certification of significant design changes of aircraft, aircraft engines, and propellers.

These amended regulations become effective June 7, 2000. Mandatory compliance dates are December 10, 2001, for transport category airplanes and restricted category airplanes that have been certified using transport category standards, and December 9, 2002, for all other category aircraft and engines and propellers.

For the purposes of implementing these amended regulations, the FAA has chartered a Changed Product Rule Team to develop the necessary guidance materials allowing for proper orientation, application and standardization for the Aircraft Certification Service. These guidance materials include Notice, Advisory Circular (AC) and training. The Changed Product Rule Team started its work in April 1999.

At present, the AC draft applicable to part 25 airplanes has been developed. The philosophy and methodology adopted for this AC are derived from the approaches presented by the ICPTF (International Certification Procedures Task Force) Working Group III. Harmonizing this AC with JAA's version has been a constant effort throughout the development process. Notice of availability for public comment of this AC draft (for part 25 only) is scheduled for publication August 2000.

The next phase of the effort is to update the current AC (for part 25 only) by adding elements that are applicable to other parts (that is, parts 23, 27, 29, 31, 33 and 35). The FAA has determined that it is in the public interest to hold a public meeting for the purposes of sharing thoughts and gathering comments that need to be considered for the development of an AC related to general aviation aircraft and other products. Accordingly, the FAA will conduct this public meeting in Kansas City, Missouri.

Public Meeting Procedures

The following procedures have been established for the U.S. industry meeting:

1. Admission and participation in the public meeting is free. Registration will occur on the date of the meeting between 8:00 a.m. and 9:00 a.m. Seating will be limited to the first 300 participants.

2. Representatives from the FAA will conduct the meeting. A technical panel of FAA personnel will discuss information.

3. The issue will be limited to the Changed Product Rule and the development of an AC.

4. Sign and oral interpretations will be made available at the meeting, including assistive listening devices, if requested from the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 calendar days before the meeting. Anyone requiring other accommodations under the Americans with Disability Act should notify the individual listed under **FOR FURTHER INFORMATION CONTACT** at least 10 calendar days before the meeting.

5. Statements made by FAA personnel are intended to clarify issues.

6. The meeting will be conducted in an informal and nonadversarial manner.

Issued in Kansas City, Missouri on July 19, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18894 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–40–AD; Amendment 39–11830; AD 2000–15–01]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C series turbofan engines, that requires initial and repetitive visual inspections of the fuel pump filter cover helicoil inserts and bolts for damage, and, if necessary, repair or replacement with serviceable parts. This amendment also requires the installation of new or reworked fuel pumps that incorporate an improved filter cover retention design (D-bolts), or an on-wing repair of existing fuel pumps, as terminating action to the inspections. This amendment is prompted by reports that fuel pump filter cover helicoil inserts have loosened or pulled out. The actions specified by this AD are intended to prevent fuel leakage from between the fuel pump filter cover and gear housing, which could result in an engine fire and damage to the airplane.

DATES: Effective date October 2, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone: (513) 552–2800, fax: (513) 552–2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7152, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C series turbofan engines was published in the **Federal Register** on January 24, 2000 (65 FR 3621). That action proposed to require initial and repetitive visual inspections of the fuel pump filter cover helicoil inserts and bolts for damage, and, if necessary, repair or replacement with serviceable parts. That action also proposed to require the installation of new fuel pumps that incorporate an improved filter cover retention design (D-bolts) as terminating action to the inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

On-Wing Gearbox Replacement

One comment requests that the requirement for on-wing gearbox replacements be removed from the terminating action since the fuel pump is routinely reinstalled and does not receive a shop visit. The comment also suggests that the fuel pump modification should be required at fuel pump shop visit only.

The FAA agrees in part. The FAA agrees that it is not necessary to replace the fuel pump at on-wing gearbox replacement. However, the FAA does not agree that modification of the fuel pump should only be accomplished at fuel pump shop visit. The FAA believes fuel pump modifications should be accomplished at engine shop visit. The terminating action at on-wing gearbox replacement will be removed and the final rule revised accordingly. For clarity, the following definitions will also be added: A fuel pump shop visit is defined as introduction of an engine into a shop for the purpose of removal of the fuel pump from the gearbox. An engine shop visit is defined as introduction of an engine into a shop for the purpose of maintenance or inspection.

Credit for Previous Inspections

Eight comments request that credit be given to operators who have performed initial inspections per the applicable service bulletins (SBs) or aircraft maintenance manuals. One comment requests a wording change so that operators will not have to repeat the initial inspection.

The FAA agrees. This final rule has been revised accordingly.

Terminating Action

One comment expresses concern that the fuel pump manufacturer and repair vendor will not be able to support the five-year compliance schedule. Another comment requests an extension of the terminating action date. Two comments request elimination of a five-year terminating-action requirement because there will be insufficent time to remove the fuel pumps on an attrition basis, and this requirement will disrupt planned component removal schedules.

The FAA does not agree. The engine manufacturer has informed the FAA that the fuel pump vendor should be able to support this five-year compliance schedule. The FAA has revised the final rule in response to another comment to allow an on-wing repair as a terminating action, which should help to minimize disruption in current maintenance schedules.

One comment requests that terminating action be mandated at the next shop visit or 6,000 hours because five years is too long.

The FAA agrees in part. Terminating action will be required at the next shop visit, however the FAA has determined that the terminating action date in this AD provides an adequate level of safety and allows operators time to properly schedule the required activity.

On-Wing Repair

Four comments request that an on-wing repair referenced in the inspection SBs be allowed as terminating action.

The FAA agrees. The FAA will revise the final rule to allow the on-wing repair as terminating action.

Military Operators

One comment requests that military CFM56–2B operators not be required to perform periodic inspections since they already inspect fuel filters every 60 hours.

The FAA does not agree. The FAA has a responsibility to manage the CFM56–2B type certificate. Military operators have the option to determine if incorporation of this part 39 amendment is appropriate for them.

Undue Burden

One comment requests that the requirement to reinspect the fuel filter cover assembly after every fuel filter change be removed since the inspection is already performed in accordance with the B737–300/–500 Aircraft Maintenance Manual, which is part of their FAA approved maintenance program. The comment also suggests that the documentation will create an undue burden.

The FAA does not agree. The FAA has determined that although performing the inspections in accordance with the B737–300/–500 Aircraft Maintenance Manual, may be prudent, it is not a requirement. This AD will mandate the inspection for all operators. The FAA does not consider the required documentation to be an undue burden.

Initial Inspection Interval

Two comments request that the initial inspection be changed from 200 to 300 cycles or 600 hours. Another comment states that preflight walk-around inspections will spot fuel leaks.

The FAA does not agree. The FAA has determined that the initial inspection needs to be performed in a timely manner to detect damaged helicoil inserts and prevent additional fuel leaks. The FAA has also determined that this type of fuel leak may not be consistently detected by a preflight walk-around.

Inspection on Both Engines

One comment suggests that a provision be included in the AD to not inspect all fuel pumps of an airplane during the same maintenance session.

The FAA agrees. This final rule prohibits servicing, replacement, and inspection on all engines of an airplane at one time by the same individual.

Unnecessary Corrective Action

One comment suggests that the AD is unnecessary because the inspections are already being carried out voluntarily.

The FAA does not agree. The FAA has determined that an unsafe condition has been discovered that could cause substantial fuel loss and pose a fire hazard and that it is necessary to mandate action to correct the problem.

CFM56–7B Model

One comment questions if the CFM56–7B model should be included.

The FAA does not agree. The FAA has determined that it is unnecessary to include the CFM56–7B because its configuration is not similar to the design associated with the unsafe condition.

New vs. Reworked Fuel Pumps

One comment requests that wording be added to the AD to indicate that there will be two groups of fuel pumps with D-bolts, reworked and newly made. Another comment requests that the definition of serviceable part be changed to include new fuel pumps.

The FAA agrees. This final rule indicates that both reworked and newly made fuel pumps are serviceable parts.

Adoption of the Rule as Proposed

One comment supports the adoption of the rule as proposed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Impact

No comments were received on the economic analysis contained in the proposed rules.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–15–01 CFM International: Amendment 39–11830. Docket 99–NE–40–AD.

Applicability

CFM International CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C series engines installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, Airbus Industrie A319, A320, A321 and A340 series, as well as Boeing E–3, E–6, and KC–135 (military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent fuel leakage from between the fuel pump filter cover and gear housing which could result in an engine fire and damage to the airplane, accomplish the following:

Inspections

(a) Perform initial and repetitive visual inspections of the fuel pump filter cover helicoil inserts and bolts for damage in accordance with Section 2, Accomplishment Instructions, of the applicable Service Bulletins (SBs) listed in paragraph (a)(5) of this AD, as follows:

(1) If the fuel pump has *not* been previously inspected prior to the effective date of this AD, inspect at the next fuel filter replacement, but not to exceed 200 cycles-in-service (CIS) after the effective date of this AD.

(2) If the fuel pump has been previously inspected prior to the effective date of this AD, inspect at the next fuel filter replacement.

(3) Thereafter, inspect at each fuel filter replacement.

Replacement or Repair

(4) If damage equals or exceeds the reject criteria stated in Section 2, Accomplishment Instructions, of the SBs listed in paragraph (a)(5) of this AD, prior to further flight remove the fuel pump from service and replace or repair the helicoil in accordance with Section 2, Accomplishment Instructions, of the SBs listed in paragraph (a)(5), (b) or (c) as applicable, of this AD.

Applicable Inspection SB

(5) Inspect and replace, if necessary, in accordance with the CFMI SB that applies to your engine from the following list:

CFM56–2 SB 73–110, Revision 2, dated April 29, 1999.
CFM56–2A SB 73–055, Revision 1, dated April 29, 1999.
CFM56–2B SB 73–076, Revision 1, dated April 29, 1999.
CFM56–3/3B/3C SB 73–126, Revision 1, dated April 29, 1999.
CFM56–5 SB 73–136, Revision 2, dated April 29, 1999.
CFM56–5B SB 73–056, Revision 2, dated April 29, 1999.
CFM56–5C SB 73–073, Revision 2, dated April 29, 1999.

Terminating Action

(b) Remove and replace the fuel pump with a newly manufactured or reworked fuel pump that incorporates a D-bolt filter cover attachment. This action must be done at the next engine or fuel pump shop visit, which ever occurs first, but no later than 5 years from the effective date of this AD in accordance with the CFMI SB that applies to your engine from the following list:

CFM56–2 SB 73–A113, dated August 17, 1999.
CFM56–2A SB 73–A058, dated August 17, 1999.
CFM56–2B SB 73–A079, Revision 1, dated October 22, 1999.
CFM56–3/3B/3C SB 73–A129, dated August 17, 1999.
CFM56–5 SB 73–A143, dated June 18, 1999.
CFM56–5B SB 73–A062, dated June 18, 1999.
CFM56–5C SB 73–A078, dated June 21, 1999.

Installation of a new or reworked fuel pump that incorporates a D-bolt filter cover attachment in accordance with this paragraph constitutes terminating action to the inspections required by paragraph (a) of this AD.

(c) An alternative terminating action is an on-wing repair that may be performed. Terminating action must be accomplished no later than 5 years from the effective date of this AD, in accordance with one of the following CFMI SB's that applies to your engine:

CFM56–2 SB 73–109, Revision 1, dated January 7, 1998.
CFM56–2A SB 73–054, Revision 1, dated January 7, 1998.
CFM56–2B SB 73–074, Revision 1, dated January 12, 1998.
CFM56–3/3B/3C SB 73–125, Revision 1, dated January 7, 1998.
CFM56–5 SB 73–135, Revision 1, dated January 7, 1998.
CFM56–5B SB 73–055, Revision 1, dated January 7, 1998.
CFM56–5C SB 73–070, Revision 1, dated January 7, 1998.

Prohibited Inspection or Replacement

(d) Inspection, replacement or repair of fuel pumps, in accordance with paragraph (a), (b) or (c) of this AD, on all engines installed on the same airplane by the same individual prior to the same flight is prohibited.

Definitions

(e) For the purpose of this AD:

(1) A serviceable part is defined as a part with gear housing helicoil inserts that meet the inspection requirements of the applicable CFMI SBs listed in paragraph (a)(5) of this AD. A serviceable part is also defined as a fuel pump that has been newly manufactured, reworked or repaired in accordance with the applicable CFMI SBs listed in paragraphs (a)(5), (b) or (c) of this AD.

(2) A fuel pump shop visit is defined as introduction of an engine into a shop for the purpose of removal of the fuel pump from the gearbox.

(3) An engine shop visit is defined as introduction of an engine into a shop for the purpose of maintenance or inspection.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation By Reference Material

(h) The FAA has reviewed and approved the technical content of the listed CFMI Service Bulletins (SBs). The actions required by this AD shall be done in accordance with the following CFMI SBs:

Document No.	Pages	Revision	Date
CFM56–2			
SB No. 73–110	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–2A			
SB No. 73–055	1–10	1	April 29, 1999.
Total pages: 10			
CFM56–2B			
SB No. 73–076	1–10	1	April 29, 1999.
Total pages: 10			
CFM56–3/3B/3C			
SB No. 73–126	1–10	1	April 29, 1999.
Total pages: 10			
CFM56–5			
SB No. 73–136	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–5B			
SB No. 73–056	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–5C			
SB No. 73–073	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–2			
SB No. 73–A113	1–6	Original	August 17, 1999.
708600–73–113	1–21	Original	May 24, 1999.
Total pages: 27			
CFM56–2A			
SB No. 73–A058	1–3	Original	August 17, 1999.
708400–73–101	1–14	Original	April 16, 1999.
Total pages: 17			
CFM56–2B			
SB No. 73–A079	1–4	1	October 22, 1999.
708600–73–112	1–19	Original	April 14, 1999.
Total pages: 23			
CFM56–3/3B/3C			
SB No. 73–A129	1–4	Original	August 17, 1999.
708600–73–110	1–19	Original	April 14, 1999.
Total pages: 23			
CFM56–5			
SB No. 73–A143	1–4	Original	June 18, 1999.
714900–73–106	1–14	Original	April 9, 1999.
Total pages: 18			
CFM56–5B			
SB No. 73–A062	1–4	Original	June 18, 1999.
714900–73–107	1–15	Original	April 13, 1999.
Total pages: 19			
CFM56–5C			
SB No. 73–A078	1–4	Original	June 21, 1999.
714900–73–108	1–15	Original	April 13, 1999.
Total pages: 19			
CFM56–2			
SB No. 73–109	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–2A			
SB No. 73–054	1–13	1	January 7, 1998.

Document No.	Pages	Revision	Date
Total pages: 13			
CFM56–2B			
SB No. 73–074	1–13	1	January 12, 1996.
Total pages: 13			
CFM56–3/3B/3C			
SB No. 73–125	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–5			
SB No. 73–135	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–5B			
SB No. 73–055	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–5C			
SB No. 73–070	1–13	1	January 7, 1998.
Total pages: 13			

The incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone: (513) 552–2800, fax: (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on October 2, 2000.

Issued in Burlington, Massachusetts on July 14, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–18523 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–79–AD; Amendment 39–11833; AD 2000–15–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped with General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200 and –300 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This amendment requires installation of a terminating modification, and repetitive functional tests of that installation, and repair, if necessary. This amendment is prompted by the results of a safety review of the thrust reverser systems on Model 747 series airplanes. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective September 6, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 6, 2000.

The incorporation by reference of Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 25, 1999 (64 FR 39003, July 21, 1999).

The incorporation by reference of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 13, 1995 (60 FR 13623, March 14, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–15–08, amendment 39–11227 (64 FR 39003, July 21, 1999), which is applicable to certain Boeing Model 747–200 and -300 series airplanes, was published in the **Federal Register** on December 28, 1999 (64 FR 72575). The action proposed to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system and correction of any discrepancy found, and installation of a terminating modification, repetitive functional tests of that installation, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request to Remove Running Torque Check From Functional Test Procedures

One commenter, the airplane manufacturer, requests that the running torque check of the thrust reverser system be removed from the functional test procedures contained in Appendix 1 of the proposed rule. The commenter states no justification for its request.

The FAA concurs with the commenter's request. The FAA finds that the running torque check of the

thrust reverser system is not directly related to the integrity of the cone brake or the actuation system lock. The running torque check is used to determine whether the thrust reverser is able to translate smoothly when commanded to deploy or stow. This check is described in Boeing 747 Airplane Maintenance Manual 78–31–00 "Thrust Reverser System—Adjustment/Test" and is performed when the angle gearbox and ballscrew actuator, the rotary flexible drive shaft, or the center drive unit is replaced. The FAA recognizes that it is appropriate to perform the running torque check when these components are replaced and finds that it is not necessary to perform this check as part of the functional test specified in Appendix 1. Therefore, the running torque check of the thrust reverser system has not been included in Appendix 1 of this final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 9 Model 747–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

The actions originally required by AD 95–06–01, and retained in this AD, take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,960, or $1,980 per airplane, per inspection/test cycle.

The other actions (repeating the functional test of the cone brake required by AD 95–06–01 at reduced intervals) that are currently required by AD 99–15–08, and retained in this AD, do not add any additional economic burden on affected operators.

The bracket installation required by this new AD takes approximately 64 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the bracket installation required by this AD on U.S. operators is estimated to be $7,680, or $3,840 per airplane.

The actuation system lock installation required by this new AD takes approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the lock installation required by this AD on U.S. operators is estimated to be $1,920, or $960 per airplane.

The functional test required by this new AD takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test required by this AD on U.S. operators is estimated to be $240, or $120 per airplane, per test cycle.

The wiring modifications required by this new AD take approximately 833 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of these modifications required by this AD on U.S. operators is estimated to be $99,960, or $49,980 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11227 (64 FR 39003, July 21, 1999), and by adding a new airworthiness directive (AD), amendment 39–11833, to read as follows:

2000–15–04 Boeing: Amendment 39–11833. Docket 99–NM–79–AD. Supersedes AD 99–15–08, Amendment 39–11227.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines with Power Management Control engine controls, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

RESTATEMENT OF THE ORIGINAL REQUIREMENTS OF AD 95–06–01:

Repetitive Tests and Inspections

(a) Within 90 days after April 13, 1995 (the effective date of AD 95–06–01, amendment 39–9171), perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect

damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service until the functional test required by paragraph (d) of this AD is accomplished.

(b) Within 9 months after April 13, 1995, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Corrective Action

(c) If any of the inspections and/or functional tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

RESTATEMENT OF REQUIREMENTS OF AD 99–15–08:

Repetitive Tests/Terminating Action

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after August 25, 1999 (the effective date of AD 99–15–08, amendment 39–11227), whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the functional test thereafter at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of such functional test constitutes terminating action for the repetitive test of the CDU cone brake required by paragraph (a) of this AD; the position switch module tests and the bullnose seal inspections continue to be required as specified in paragraph (a) of this AD.

(1) For airplanes equipped with thrust reversers NOT modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 650 hours time-in-service.

(2) For airplanes equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 1,000 hours time-in-service.

Corrective Action

(e) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (e)(1) or (e)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

NEW REQUIREMENTS OF THIS AD:

Terminating Action

(f) Accomplish the requirements of paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs. Accomplishment of the actions required by paragraph (f)(1) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), (d), and (e) of this AD.

(1) Within 36 months after the effective date of this AD, accomplish the requirements of paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Install an actuation system lock bracket and fastening hardware to each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, or Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998.

(ii) Install an actuation system lock (also called an electro-mechanical lock or electro-mechanical brake) on each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, or Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998.

(2) Prior to or concurrent with the accomplishment of the requirements of paragraph (f)(1)(ii) of this AD, perform the thrust reverser wiring modifications of the wings, strut, and fuselage, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996.

Repetitive Tests

(g) Within 1,000 hours time-in-service after accomplishment of paragraph (f) of this AD, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the CDU cone brake and actuation system lock on each thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747 Maintenance Manual. Repeat the functional tests thereafter at intervals not to exceed 1,000 hours time-in-service.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–15–08, amendment 39–11227, are approved as alternative methods of compliance with the corresponding requirements specified in this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (c)(2), (e)(2), and (g) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994; Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997; Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998; Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997; Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998; or Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996; as applicable.

(1) The incorporation by reference of Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997; Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998; Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997; Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998; and Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 4, 22–28	1	March 18, 1997.
2, 5–21	Original	August 30, 1997.

Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–5, 8, 12, 13, 15, 19–21, 23–36	2	March 20, 1997.
6, 7, 9–11, 14, 16–18, 22, 37	1	January 17, 1996.

(2) The incorporation by reference of Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, was approved previously by the Director of the Federal Register as of August 25, 1999 (64 FR 39003, July 21, 1999).

(3) The incorporation by reference of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, was approved previously by the Director of the Federal Register as of April 13, 1995 (60 FR 13623, March 14, 1995).

(4) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on September 6, 2000.

Appendix 1—Thrust Reverser Electro-Mechanical Brake and CDU Cone Brake Test

1. General
   A. This procedure contains steps to do two checks:
   (1) A check of the holding torque of the electro-mechanical brake.
   (2) A check of the holding torque of the CDU cone brake.
2. Electro-Mechanical Brake and CDU Cone Brake Torque Check
   A. Prepare to do the checks:
   (1) Open the fan cowl panels.
   B. Do a check of the torque of the electro-mechanical brake:
   (1) Do a check of the electro-mechanical brake holding torque:
   (a) Make sure the thrust reverser translating cowl is extended at least one inch.
   (b) Make sure the CDU lock handle is released.
   (c) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip.

Note: This will lock the electro-mechanical brake.

(d) With the manual drive lockout cover removed from the CDU, install a ⅛-inch extension tool and dial-type torque wrench into the drive pad.

Note: You will need a 24-inch extension to provide adequate clearance for the torque wrench.

(e) Apply 90 pound-inches of torque to the system.

(i) The electro-mechanical brake system is working correctly if the torque is reached before you turn the wrench 450 degrees (1¼ turns).

(ii) If the flexshaft turns more than 450 degrees before you reach the specified torque, you must replace the long flexshaft between the CDU and the upper angle gearbox.

(iii) If you do not get 90 pound-inches of torque, you must replace the electro-mechanical brake.

(f) Release the torque by turning the wrench in the opposite direction until you read zero pound-inches.

(i) If the wrench does not return to within 30 degrees of initial starting point, you must replace the long flexshaft between the CDU and upper angle gearbox.

(2) Fully retract the thrust reverser.

C. Do a check of the torque of the CDU cone brake:

(1) Pull up on the manual release handle to unlock the electro-mechanical brake.

(2) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(3) Return the manual brake release lever to the locked position to engage the cone brake.

(4) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(5) Install a ¼-inch drive and a dial type torque wrench into the CDU drive pad.

Caution: Do not use more than 100 pound-inches of torque when you do this check. Excessive torque will damage the CDU.

(6) Turn the torque wrench to try to manually extend the translating cowl until you get at lease 15-pound inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(a) If the torque is less than 15-pound-inches, you must replace the CDU.

D. Return the airplane to its usual condition:

(1) Re-install the lockout plate.

(2) Fully retract the thrust reverser (unless already accomplished).

(3) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on July 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18661 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–285–AD; Amendment 39–11840; AD 2000–15–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for damage or cracking of the aft pressure bulkhead, and cracking of the bulkhead web-to-Y-ring lap joint area and the upper segment of the bulkhead web. That AD also requires certain follow-on actions, if necessary. This amendment requires that a currently required one-time

inspection to detect cracking of the upper segment of the bulkhead web be accomplished repetitively, and adds additional repetitive inspections to detect cracking of the upper and lower segments of the aft bulkhead web. The actions specified by this AD are intended to detect and correct fatigue cracking of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane.

DATES: Effective September 6, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of October 7, 1998 (63 FR 50495, September 22, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–20–20, amendment 39–10786 (63 FR 50495, September 22, 1998), which is applicable to certain Boeing 747 series airplanes, was published in the **Federal Register** on February 2, 2000 (65 FR 4906). The action proposed to continue to require certain actions required by the existing AD. The action proposed to add a requirement that a detailed visual inspection to detect fatigue cracking of the upper segment of the bulkhead web required by the existing AD be accomplished repetitively, along with corrective actions, if necessary. The action also proposed to require additional repetitive surface probe high frequency eddy current (HFEC) inspections to detect cracking of the upper and lower segments of the bulkhead web, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Exclude Portion of Inspection Area

One commenter requests that the FAA revise paragraph (h) of the proposed AD to include the following statement: "For the inspection of the lower segment of the bulkhead web, the area between the 149 degree radial zee stiffeners may be omitted. These stiffeners are immediately outboard of pressure pans which reinforce the electrical wires [sic] penetrations, part number 65B02633–xx." The commenter states that this area does not need surface probe HFEC inspections because splice straps and reinforcing doublers installed on the web during production improve the durability of the lap joint and significantly reduce the stress level of the web-to-Y-ring lap joint in this area.

The FAA concurs with the commenter's request and its rationale. The FAA also infers that the commenter's request applies to paragraph (i) as well as paragraph (h), and has revised those paragraphs in this final rule accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 671 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 149 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 98–20–20 and retained in this AD take approximately 360 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,218,400, or $21,600 per airplane, per inspection cycle.

The new repetitive detailed visual inspections that are required in this AD take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $35,760, or $240 per airplane, per inspection cycle.

The new repetitive HFEC inspections that are required in this AD take approximately 48 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $429,120, or $2,880 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10786 (63 FR 50495, September 22, 1998), and by adding a new airworthiness directive (AD), amendment 39–11840, to read as follows:

2000–15–06 Boeing: Amendment 39–11840. Docket 98–NM–285–AD. Supersedes AD 98–20–20, Amendment 39–10786.

Applicability: Model 747 series airplanes, line numbers 1 through 671 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Actions Required by AD 98–20–20, Amendment 39–10786

Initial Detailed Visual Inspection

(a) Within 750 landings after December 10, 1987 (the effective date for AD 87–23–10, amendment 39–5758), unless accomplished within the last 1,250 landings [for airplanes subject to a 2,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], or unless accomplished within the last 250 landings [for airplanes subject to a 1,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], perform a detailed visual inspection; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998; of the aft side of the entire Body Station (BS) 2360 aft pressure bulkhead for damage such as dents, tears, nicks, gouges, or scratches; and cracks at splices and doublers, and around the Auxiliary Power Unit pressure pan cutout; and, for Group 4 airplanes only, inspect from the forward side, the area adjacent to the window cutout for damage or cracks.

Note 2: Notwithstanding provisions to the contrary in AD 87–23–10, and in Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, and Revision 5, dated January 16, 1997: For Model 747SR airplanes operating at a cabin pressure differential lower than 8.6 pounds-per-square-inch (psi), an adjustment factor of 1.2 shall NOT be used after October 7, 1998 (the effective date for AD 98–20–20), as a multiplier for inspection thresholds and intervals specified in this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Detailed Visual Inspections

(b) After initial compliance with paragraph (a) of this AD, continue to inspect as follows:

(1) For Group 1 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 2,000 landings.

(2) For Groups 2 and 3 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 1,000 landings; or optionally, at the applicable time specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) For Group 2 airplanes that operate the entire interval with aft lavatory complexes or galleys adjacent to bulkheads, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings.

(ii) For Groups 2 and 3 airplanes that operate the entire interval with an intact protective shield on the lower half of the forward side of the bulkhead, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings; and perform a detailed visual inspection of the protective shield for damage in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at intervals not to exceed 1,000 landings. If damage is found to the protective shield that exceeds the limits indicated in the service bulletin, prior to further flight, repeat the inspection required by paragraph (a) of this AD.

(3) For Group 4 airplanes, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 1,000 landings.

Repetitive Eddy Current, Ultrasonic, and X-Ray Inspections

(c) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 3,250 landings; and at intervals thereafter not to exceed 4,000 landings; perform eddy current, ultrasonic, and X-ray inspections of the aft side of the BS 2360 aft pressure bulkhead for cracks; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

Repetitive Detailed Visual Inspections

(d) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 6,250 landings; and thereafter at intervals not to exceed 7,000 landings until the inspection required by paragraph (g) of this AD is accomplished: Perform a detailed visual inspection to detect cracking of the BS 2360 aft pressure bulkhead web-to-Y-ring lap joint area between radial stiffeners from the forward side of the bulkhead, in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

Repair

(e) If any cracking or damage is found during any inspection required by paragraph (a), (b), (c), or (d) of this AD, repair prior to further flight in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

Cabin Pressure Differential

(f) For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 psi.

Initial Detailed Visual Inspection

(g) Perform a detailed visual inspection from the forward side of the bulkhead of the upper segment of the bulkhead web at BS 2360 to detect cracking, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD. Accomplishment of this inspection terminates the repetitive inspection requirement of paragraph (d) of this AD.

(1) Within 7,000 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(2) At the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Prior to the accumulation of 20,000 total landings.

(ii) Within 1,500 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(iii) Within 90 days after October 7, 1998 (the effective date of AD 98–20–20).

Follow-On Action: High Frequency Eddy Current Inspection

(h) If any cracking is detected during the detailed visual inspections required by paragraph (g) of this AD, prior to further flight, accomplish a surface probe high frequency eddy current (HFEC) inspection from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web around the fasteners that attach the web to the outer chord of the Y-ring, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. For the inspection of the lower segment of the bulkhead web, the area between the 149 degree radial zee stiffeners may be omitted. Repair any cracking, prior to further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

New Requirements of This AD

Repetitive Detailed Visual and HFEC Inspections

(i) If no cracking is detected during the detailed visual inspection required by paragraph (g) of this AD, within 1,500 flight cycles after accomplishment of that inspection or within 250 flight cycles after the effective date of this AD, whichever occurs later: Repeat the detailed visual inspection, as specified in paragraph (g); and perform a surface probe HFEC inspection from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web, in accordance with Figure 15 of Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. For the inspection of the lower segment of the bulkhead web, the area between the 149 degree radial zee stiffeners may be omitted.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 1,500 flight cycles; and repeat the surface probe HFEC inspection thereafter at intervals not to exceed 3,000 flight cycles.

Repair

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, or a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–20–20, amendment 39–10786, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(l) Except as provided by paragraphs (h) and (i)(2) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987; Boeing Service Bulletin 747–53–2275, Revision 1, dated August 13, 1987; Boeing Service Bulletin 747–53–2275, Revision 2, dated March 31, 1988; Boeing Service Bulletin 747–53–2275, Revision 3, dated March 29, 1990; Boeing Service Bulletin 747–53–2275, Revision 4, dated March 26, 1992; Boeing Service Bulletin 747–53–2275, Revision 5, dated January 16, 1997; or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of October 7, 1998 (63 FR 50495, September 22, 1998). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(m) This amendment becomes effective on September 6, 2000.

Issued in Renton, Washington, on July 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19381 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–11]

Amendment of Class E Airspace; Kearney, NE

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace area at Kearney, NE. The FAA received a request to amend the hours of the Class E surface area from part time to full time status. An increase in Part 121 and other Instrument Flight Rule operations have made this action necessary. This action amends the Class E surface area at Kearney, NE from part time to full time status.

EFFECTIVE DATE: 0901 UTC October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On May 22, 2000, the FAA proposed to amend Part 71 of Title 14 of the Federal Regulations (14 CFR part 71) by amending Class E surface area at Kearney, NE (65 FR 32046). The action will amend the Class E surface area from part time to full time status.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Title 14 of the Federal Regulations (14 CFR part 71) amends the Class E airspace area at Kearney, NE, from part time to full time status. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE NE E2 Kearney, NE [Revised]

Kearney Municipal Airport, NE
(Lat. 40°43'37"N., long. 99°00'24"W.)
Kearney, VOR
(Lat. 40°43'32"N., long. 99°00'18"W.)

Within a 4.2-mile radius of Kearney Municipal Airport and within 3.1 miles each side of the 194° radial of the Kearney VOR extending from the 4.2-mile radius to 9.2 miles south of the VOR and within 3.1 miles each side of the 329° radial of the Kearney VOR extending from the 4.2-mile radius to 10 miles northwest of the VOR and within 3.1 miles each side of the 360° radial of the Kearney VOR extending from the 4.2-mile radius to 10 miles north of the airport.

* * * * *

Issued in Kansas City, MO on July 14, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–19521 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–5]

Modification of Class E Airspace; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Elko, NV. A revision to the Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 23 at Elko Municipal-J.C. Harris Field has made action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV RWY 23 SIAP to Elko Municipal-J.C. Harris Field. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Elko Municipal-J.C. Harris Field, Elko, NV.

EFFECTIVE DATE: 0901 UTC August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On June 20, 2000, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Elko, NV (65 FR 38227). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV RWY 23 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV. This action will provide adequate controlled airspace for aircraft executing the RNAV RWY 23 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Elko, NV. A revision to the RNAV RWY 23 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV 23 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 59 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP NV E5 Elko, NV [Revised]

Elko Municipal–J.C. Harris Field, CA
(Lat. 40°49′31″N, long. 115°47′28″W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of the Elko Municipal–J.C. Harris Field and within 1.8 miles either side of the 248° bearing from the Elko Municipal–J.C. Harris Field, extending from the 8.3-mile radius to 11.7 miles southwest of the Elko Municipal–J.C. Harris Field and within 3.9 miles east and 8.3 miles west of the 161° bearing from the Elko Municipal–J.C. Harris Field, extending from 8.3-mile radius to 21.7 miles south of Elko Municipal–J.C. Harris Field and within 4.3 miles each side of the 075° bearing from the Elko Municipal–J.C. Harris Field, extending from the 8.3-mile radius to 17.8 miles southwest of the airport. That airspace extending upward from 1,200 feet above the surface with an 18.7-mile radius of Elko Municipal–J.C. Harris Field, and that airspace bounded on the north by the south edge of V–6, on the south by the north edge of V–32, on the east by the 30-mile radius of the Elko Municipal–J.C. Harris Field, between the southern edge of V–465 clockwise to the northern edge of V–32, thence west to the 18.7-mile radius of the Elko Municipal–J.C. Harris Field and that airspace bounded by a line beginning at lat. 40°34′00″N, long. 116°00′00″W; to lat. 40°27′00″N, long. 116°36′00″W; to lat. 40°31′00″N, long. 116°38′00″W; to lat. 40°32′00″N, long. 116°33′00″W, to lat. 40°33′30″N, long. 116°33′30″W, to lat. 40°38′00″N, long. 116°07′00″W, thence clockwise via the 18.7-mile radius of the Elko Municipal–J.C. Harris Field to the point of beginning .

* * * * *

Issued in Los Angeles, California, on July 14, 2000.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–19519 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–10]

Amendment of Class E Airspace; Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface area airspace at Savannah, GA. Hunter Army Air Field (AAF) is included in the Savannah Class D surface airspace area. However, when Hunger AAF control tower closes that segment of the Class D airspace area reverts to Class G airspace, as there is no remote communications to either Savannah Approach Control or Jacksonville Air Route Traffic Control Center (ARTCC) to control aircraft at Hunter AAF. Remote communications equipment is being installed and will be operational by October 5, 2000. Therefore, the airport will meet the criteria of Class E airspace designated as surface area on October 5, 2000. Additional controlled airspace extending upward from the surface is needed to accommodate instrument flight rules (IFR) operations at Hunter AAF when Hunter AAF control tower is closed. This action also makes a technical amendment to the name of the location, changing it from Savannah International Airport, GA, to Savannah, GA.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 5, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Savannah, GA (65 FR 26156). This action will provide Class E airspace designated as surface area to accommodate IFR operations at Hunter AAF when Hunter AAF control tower is closed. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1, dated September 1, 1999. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Savannah, GA for Hunter AAF. This action also makes a technical amendment to the name of the location, changing it from Savannah International Airport, GA, to Savannah, GA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103; 40113; 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–11963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO GA E2 Savannah, GA [Revised]

Hunter AAF
(Lat. 32°00′35″N, long. 81°06′44″ W)
Savannah International Airport
(Lat. 32°07′39″N, long. 81°12′08″ W)

Within a 5-mile radius of Savannah International Airport and within a 4.5-mile radius of Hunter AAF. This Class E airspace

area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 21, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–19518 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–7]

Amendment to Class E Airspace; Hampton, IA; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Hampton, IA, and corrects an error in the coordinates for the Hampton Municipal Airport, Airport Reference Point (ARP) and the Hampton Nondirectional Radio Beacon (NDB) as published in the **Federal Register** May 23, 2000 (65 FR 33250), Airspace Docket No. 00–ACE–7.

DATES: The direct final rule published at 65 FR 33250 is effective on 0901 UTC, October 5, 2000.

This correction is effective on October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On May 23, 2000, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Hampton, IA (FR document 00–12821, 65 FR 33250, Airspace Docket No. 00–ACE–7). An error was subsequently discovered in the coordinates for the Hampton Municipal Airport ARP and the Hampton NDB. This action corrects those errors. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the errors in the coordinates of the Hampton Municipal Airport ARP and the Hampton NDB and confirms the effective date to the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 5, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, coordinates for the Hampton Municipal Airport ARP and the Hampton NDB as published in the **Federal Register** on May 23, 2000 (65 FR 33250), (**Federal Register** Document 00–12821; page 33251, column two) are corrected as follows:

§71.1 [Corrected]

ACE IA E5 Hampton, IA [Corrected]

On page 33251, in the second column, after Hampton Municipal Airport, IA, correct the coordinates by removing (lat. 42°43′26″N., long. 93°13′35″W.) and substituting (lat. 42°43′25″N., long. 93°13′35″W.) and after Hampton NDB correct the coordinates by removing (lat. 42°43′32″N., long. 93°13′30″W.) and substituting (42°43′31″N., long. 93°13′30″W.)

Issued in Kansas City, MO on July 14, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–19520 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 423

Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Final amended rule.

SUMMARY: The Federal Trade Commission, pursuant to section 18 of the Federal Trade Commission Act, issues final amendments to its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods. The Commission is amending the Rule: To clarify what can constitute a reasonable basis for care instructions; and to change the definitions of "cold," "warm," and "hot" water in the Rule. The Commission has decided not to amend the Rule to require that an item that can be cleaned by home washing be labeled with instructions for home washing. In addition, it has decided not to amend the Rule at this time to include an instruction for professional wetcleaning. This document constitutes the Commission's Statement of Basis and Purpose for the amendments.

EFFECTIVE DATE: The amended Rule will become effective on September 1, 2000.

ADDRESSES: Requests for copies of the amended Rule and the Statement of Basis and Purpose should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or James Mills, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW, S–4302, Washington, DC 20580, (202) 326–2966 or (202) 326–3035.

SUPPLEMENTARY INFORMATION:

Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods; Statement of Basis and Purpose and Regulatory Analysis

Introduction

This document is published pursuant to section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of the Commission's rules of practice, 16 CFR 1.14, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

I. Background

A. The Care Labeling Rule

The Care Labeling Rule was promulgated by the Commission on December 16, 1971. 36 FR 23883. In

1983, the Commission amended the Rule to clarify its requirements by identifying in greater detail the washing or drycleaning information to be included on care labels. 48 FR 22733. The Care Labeling Rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to attach care labels to these items stating what regular care is needed for the ordinary use of the product. 16 CFR 423.6(a) and (b). The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. 16 CFR 423.6(c).

B. Procedural History

1. Regulatory Review of the Rule

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice on June 15, 1994, seeking comment on the costs and benefits of the Rule and related questions, such as what changes in the Rule would increase the Rule's benefits to purchasers and how those changes would affect the costs the Rule imposes on firms subject to its requirements. 59 FR 30733 ("the Regulatory Review Notice").[1] The comments in response to the Regulatory Review Notice generally expressed continuing support for the Rule, stating that correct care instructions benefit consumers by extending the useful life of the garment, by helping the consumer maximize the appearance of the garment, and by allowing the consumer to take the ease and cost of care into consideration when making a purchase.

2. The ANPR

Based on this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule. To begin the process, the Commission published an Advance Notice of Proposed Rulemaking on December 28, 1995. 60 FR 67102 ("the ANPR"). In the ANPR, the Commission discussed and solicited comment on standards for water temperature, the desirability of a home washing instruction and a professional wetcleaning instruction for items for which such processes are appropriate, and the Rule's reasonable basis standard. The Commission received 64 comments in response to this notice.

3. The NPR

Based on the comments responding to the ANPR, and on other evidence, the Commission published a Notice of Proposed Rulemaking on May 8, 1998, 63 FR 25417 ("the NPR"), in which the Commission proposed the following specific amendments to the Rule and sought comments thereon:

1. An amendment to require that an item that can be safely cleaned by home washing be labeled with instructions for home washing;

2. An amendment to establish a definition in the Rule for "professional wetcleaning" and to permit manufacturers to label a garment that can be professionally wetcleaned with a "Professionally Wetclean" instruction;

3. An amendment to clarify that manufacturers must establish a reasonable basis for care instructions for an item based on reliable evidence for each component of the item in conjunction with reliable evidence for the garment as a whole; and

4. An amendment changing the definitions of "cold," "warm" and "hot" water to be consistent with those of the American Association of Textile Chemists and Colorists ("AATCC"), and adding a new term—"very hot"—and corresponding definition consistent with AATCC's term and definition.

In the NPR, at 63 FR 25425–26, the Commission also made the following announcement:

The Commission has determined, pursuant to 16 CFR 1.20, to follow the procedures set forth in this notice for this proceeding. The Commission has decided to employ a modified version of the rulemaking procedures specified in Section 1.13 of the Commission's Rules of Practice. The proceeding will have a single Notice of Proposed Rulemaking, and disputed issues will not be designated.

The Commission will hold a public workshop-conference to discuss the issues raised by this NPR. Moreover, if comments in response to this NPR request hearings with cross-examination and rebuttal submissions, as specified in section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will also hold such hearings. After the public workshop, the Commission will publish a notice in the **Federal Register** stating whether hearings will be held in this matter, and, if so, the time and place of hearings and instructions for those desiring to present testimony or engage in cross-examination of witnesses.

There were no requests for hearings in the 38 comments received in response to the NPR.[2] Therefore, the Commission did not hold public hearings in this matter. The public workshop-conference (hereinafter "workshop")[3] took place on January 29, 1999 at the Commission's Headquarters Building at 600 Pennsylvania Avenue, NW, Washington, DC. There were 28 participants in the workshop, representing 20 different interests.[4] There also were approximately 30 observers, some of whom, upon request, contributed to the discussion. At the workshop, an announcement was made that post-workshop comments would be accepted

[1] The Regulatory Review Notice also sought comment on whether the Rule should be modified to permit the use of symbols in lieu of words. On November 16, 1995, the Commission published a notice announcing a tentative decision to adopt a conditional exemption to the Rule to permit the use of certain care symbols in lieu of words; it also sought additional comment on specific aspects of the proposal. 60 FR 57552. On February 6, 1997, the Commission announced its decision to adopt the conditional exemption, which became effective on July 1, 1997. 62 FR 5724.

[2] The comments were from: Johnson Group Management Services, Ltd. ("Johnson Group") (1); Mid-Atlantic Cleaners and Launderers Association ("MACLA") (2); Bonnie Peters (3); Aqua Clean Systems, Inc. ("Aqua Clean") (4); J. R. Viola Cleaners ("Viola") (5); David Nobil, Nature's Cleaners, Inc. ("Nature's Cleaners") (6); Bruce Barish, Maurice Garment Care (7); Industry Canada, Fair Business Practices Branch ("Industry Canada") (8); American Textile Manufacturers Institute ("ATMI") (9); Cleaner By Nature (10); American Apparel Manufacturers Association ("AAMA") (11); International Fabricare Institute ("IFI") (12); Elizabeth K. Scanlon ("Scanlon") (13); National Association of Hosiery Manufacturers ("NAHM") (14); Associazione Serica (15); Prestige. . . Exceptional Fabricare ("Prestige") (16); Neighborhood Cleaners Association International ("NCAI") (17); Association of Home Appliance Manufacturers ("AHAM") (18); Dr. Charles Riggs, Texas Woman's University ("Riggs") (19); Bruce W. Fifield ("Fifield") (20); Consumer Policy Institute of Consumers Union ("Consumers Union") (21); The Clorox Company ("Clorox") (22); Marilyn Fleming, Natural Cleaners (23); Pollution Prevention Education and Research Center ("PPERC") (24); Pendleton Woolen Mills ("Pendleton") (25); Gap, Inc. ("Gap") (26); Greenpeace (27); National Coalition of Petroleum Dry Cleaners ("NCPDC") (28); Kathy Knapp (29); Center for Neighborhood Technology ("CNT") (30); The Professional Wetcleaning Network ("PWN") (31); Bowe Permac, Inc. (32); Alliance Laundry Systems UniMac ("Alliance") (33); The Procter & Gamble Company ("P&G") (34); GINETEX International Association for Textile Care Labeling ("Ginetex") (35); Karen Smith (Smith) (36); Pellerin Milnor Corporation (Pellerin Milnor) (37); Mike Lynch (38). The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. The comments also are available for inspection on the Commission's website at <www.ftc.gov/bcp/rulemaking/carelabel/comments/comlist.htm>.

[3] The time and place of the workshop was announced in 63 FR 69232, December 16, 1998.

[4] The participants were: Ed Boorstein, Elaine Harvey, Prestige Cleaners; Martin Coppack, American Association of Family and Consumer Sciences; Deborah Davis, Cleaner by Nature; David DeRosa, Greenpeace; Corey Snyder, Liz Eggert, P&G; Eric Esmo, Clorox; Sylvia Ewing, Anthony Star, CNT; Gloria Ferrell, Capital Mercury Apparel, Ltd. ("Ferrell"); Ann Hargrove, PWN; Nancy Hobbs, Pat Slaven, Consumers Union; Steve Lamar, Rachel Subler, AAMA; Cindy Stroup, Steve Latham, Environmental Protection Agency ("EPA"); Melinda Oakes, Ronda Martinez, QVC, Inc. ("QVC"); Karen Musser, Sears, Roebuck & Co. ("Sears"); Jo Ann Pullen, American Society for Testing and Materials (ASTM); Dr. Charles Riggs; Roy Rosenthal, RCG Marketing; Mary Scalco, Jackie Stephens, IFI; Dick Selleh, MACLA; and Peter Sinsheimer, PPERC. Six Commission staff members also participated in the proceeding.

until March 1, 1999, and 40 such comments were submitted.[5]

II. Commission Determination

A. The Reasonable Basis Requirement of the Rule

1. Background and Current Requirements

The Rule requires that manufacturers and importers of textile wearing apparel possess, prior to sale, a reasonable basis for the care instructions they provide. A reasonable basis must consist of reliable evidence supporting the instructions on the label. Specifically, a reasonable basis can consist of: (1) Reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions; (2) reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label; (3) reliable evidence, like that described in (1) or (2), for each component part; (4) reliable evidence that the product or a fair sample of the product was successfully tested; (5) reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or (6) other reliable evidence. 16 CFR 423.6(c).

The Regulatory Review Notice solicited comment on whether the Commission should amend the Rule to conform with the interpretation of "reasonable basis" described in the *FTC Policy Statement Regarding Advertising Substantiation* ("Advertising Policy Statement"), 104 F.T.C. 839 (1984), or to change the definition of "reasonable basis" in some other manner. The comments in response to the Regulatory Review Notice suggested that a significant number of care labels lack a reasonable basis. Based on these comments, the ANPR proposed amending the reasonable basis requirement.

The ANPR sought comment on the incidence of inaccurate or incomplete care instructions, the extent to which it might be reduced by clarifying the reasonable basis standard, and the costs and benefits of such a clarification. The Commission further solicited comment on whether to amend the Rule to clarify that the reasonable basis requirement applies to a garment in its entirety rather than to each of its individual components.[6] Ten commenters responding to the ANPR discussed the reasonable basis provision. Seven of these supported modification of the Rule, contending that clarification would reduce mislabeling.[7] ATMI stated that the Rule should not be modified to require testing of completed garments; however, ATMI also asserted that "apparel manufacturers should be responsible for selecting and combining component materials that can be refurbished together" and should provide warnings about potential problems if components cannot be refurbished by the same method.[8] AAMA contended that changing the Rule was unnecessary.[9] Ginetex, the organization responsible for the voluntary care labeling system used in European countries, noted that it provides technical advice on appropriate test procedures to ensure correct care labeling.[10]

Two commenters provided data on the incidence of mislabeling, which in both cases indicated that there is a significant incidence of inaccurate and/or incomplete labeling.[11] ATMI, while stating that most home washing labels are accurate, and that the vast majority of dryclean instruction labels are accurate, noted that there are limited problems associated with care instructions for special items such as beaded apparel, sequins, and leather appliques.[12] IFI noted that its database shows that "a large portion of the garments damaged are the result of the trim or component part of the garment failing in a specified care procedure."[13]

Section 423.6(c)(3) of the Rule currently states that a manufacturer or importer establishes a reasonable basis for care information by "possessing prior to sale: Reliable evidence . . . for each component part of the product." In the NPR, the Commission proposed to amend the reasonable basis standard to make clear that the reasonable basis requirement applies to the garment in its entirety rather than to each of its individual components, noting that the record establishes that in some cases care instructions may not be accurate for the entire garment.[14] Thus, in the NPR, the Commission proposed amending § 423.6(c)(3) of the Rule to provide that "Reliable evidence . . . for each component part of the product, in conjunction with reliable evidence for the garment as a whole" can constitute a reasonable basis for care instructions.

2. Comments to the NPR

Most commenters favored the proposal to clarify the reasonable basis

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[5] The post-workshop comments were from: Specialized Technology Resources ("STR") (PW–1); Jo Ann Pullen ("Pullen") (PW–2); EPA (PW–3); Massachusetts Toxics Use Reduction Institute ("MTURI") (PW–4); Rawhide Cleaners ("Rawhide") (PW–5) [consisting of two NPR-comments from June 1998 originally lost in transit]; Valet Cleaners ("Valet") (PW–6); Minnesota Fabricare Institute ("MFI") (PW–7); D.D. French ("French") (PW–8); Coronado Cleaners & Laundry, Inc. ("Coronado") (PW–9); MACLA (PW–10); South Eastern Fabricare Association ("SEFA") (PW–11); Celanese Acetate ("Celanese") (PW–12); Dr. Charles Riggs (PW–13); Shoemaker's/COBS, Inc. ("COBS") (PW–14); PWN (PW–15); Prestige (PW–16); Dr. Manfred Wentz ("Wentz") (PW–17); Gloria Ferrell (PW–18); Consumers Union (PW–19); IFI (PW–20); PPERC (PW–21); Hallak Cleaners ("Hallak") (PW–22); Avon Cleaners ("Avon") (PW–23); AAMA (PW–24); Comet Cleaners ("Comet") (PW–25); CNT (PW–26); Spear Cleaning & Laundry ("Spear") (PW–27); Greenpeace (PW–28); Cowboy Cleaners ("Cowboy") (PW–29); Aqua Clean (PW–30); Randi Cleaners, Inc. ("Randi") (PW–31); Korean Youth & Community Center ("KYCC") (PW–32); Cypress Plaza Cleaners ("Cypress") (PW–33); Waco Comet Cleaners (PW–34) [an NPR-comment from June 1998 originally lost in transit]; Swannanoa Cleaners ("Swannanoa") (PW–35); Sno White Cleaners & Launderers ("Sno White") (PW–36); Environmental Finance Center, Region IX ("EFC9") (PW–37); Perrys-Flanagans Cleaners ("Perrys-Flanagans") (PW–38); Ecology Action, Inc. ("Ecology Action") (PW–39); Micell Technologies ("Micell") (PW–40). In addition, two written statements were read at the workshop and placed on the record: STR (PW–41), and PPERC (PW–42); and two presentations were made at the workshop with respect to which copies of graphic presentations were placed on the record: Clorox (PW–43), and P&G (PW–44).

[6] The ANPR also sought comment on: The option of indicating in the Rule that whether one or more of the types of evidence described in § 423.6(c) constitutes a reasonable basis for care labeling instructions depends on the factors set forth in the Advertising Policy Statement; whether the Rule should be amended to make testing of garments the only evidence that could serve as a reasonable basis for certain types of garments and, if so, whether the Rule should specify particular testing methodologies to be used; and whether the Rule should specify standards for determining acceptable and unacceptable changes in garments following cleaning as directed and identify properties, such as colorfastness and dimensional stability, to which such standards would apply. For reasons set forth in the NPR, 63 FR at 25423–24, the Commission decided not to propose any of these changes in the reasonable basis section of the Rule.

[7] University of Kentucky College of Agriculture Cooperative Extension Service, comment 20 to ANPR, p. 2; Clorox, comment 31 to ANPR, pp. 4–5; Soap and Detergent Association (SDA), comment 43 to ANPR, pp. 1, 3; Consumers Union, comment 46 to ANPR, pp. 2–3; AHAM, comment 51 to ANPR, p. 2; IFI, comment 56 to ANPR, p. 3; P&G, comment 60 to ANPR, p. 5.

[8] ATMI, comment 41 to ANPR, pp. 4–7.

[9] AAMA, comment 57 to ANPR, pp. 2–4.

[10] Ginetex, comment 63 to ANPR, p. 4.

[11] IFI, comment 56 to ANPR, p. 3 (in 1995, 40% of the 25,000 damaged garments in its Garment Analysis database incurred the damage because of inaccurate labeling); Clorox, comment 31 to ANPR, p. 2 (monitoring of bleach instructions on care labels showed 71% inaccuracy in November 1995).

[12] ATMI, comment 41 to ANPR, p. 5; see also AAMA, comment 57 to ANPR, p. 3. The ANPR noted that the Commission had litigated one case involving inaccurate care instructions that resulted in damage to garments (*FTC* v. *Bonnie & Co. Fashions*, No. 90–4454) (D.N.J. 1992)) and had obtained settlements in several other cases where the Commission alleged that care instructions were inaccurate because of damage to trim when the garments were cleaned according to those instructions.

[13] IFI, comment 56 to ANPR, p. 3.

[14] A garment component that may be cleaned satisfactorily by itself might, for example, bleed onto the body of a garment of which it is a part.

requirements of the Rule.[15] Some commenters, who believe that only testing can constitute a reasonable basis, stated that the proposal did not go far enough because it does not require testing.[16] Only one commenter, AAMA, opposed the proposed clarification of the reasonable basis standard. AAMA stated that its member manufacturers specify fabric performance from suppliers and test new styles to makeder sure that components are compatible. It also stated that there is only a very small portion of garments made in the United States with incompatible materials (for fashion reasons) and that "(t)o require that all garments be made entirely of compatible components unduly restricts the creation of fashion."[17]

3. Rule Amendments and Reasons Therefor

The Commission has decided to amend § 423.6(c)(3) of the Rule to provide that "Reliable evidence . . . for each component part of the product, in conjunction with reliable evidence for the garment as a whole" can constitute a reasonable basis for care instructions. This amendment does not require testing of the entire garment if there is an adequate reasonable basis for the garment as a whole without such testing; the amendment clarifies, however, that testing of separate components is not necessarily sufficient if problems are likely to occur when the components are combined.[18]

The Commission does not believe that this revision of the Rule will unduly restrict the creativity of fashion, as AAMA feared. If the combination of components used to make a garment are so incompatible that the garment cannot be cleaned without damage, the Rule provides that the garment can be labeled "Do not wash—do not dryclean." 16 CFR 423.6(b). This is information that the consumer has a right to know, and indeed, under the Rule, it would be deceptive to sell a garment with a care label indicating that it could be successfully cleaned when in fact it cannot. With truthful labeling that indicates the garment cannot be cleaned, consumers are given adequate information and can choose to purchase the garment if they wish to do so even though it cannot be cleaned without damage.

B. Definitions of Water Temperatures

1. Background and Current Definitions

The Rule currently requires that a care label recommending washing also must state a water temperature that may be used unless "the regular use of hot water will not harm the product." 16 CFR 423.6(b)(1)(i). The Rule also provides that if the term "machine wash" is used with no temperature indication, "hot water up to 150 degrees F (66 degrees C) can regularly be used." 16 CFR 423.1(d). This definition is repeated in Appendix 1.a. "Warm" is defined in Appendix 1.b. as ranging from 90 to 110 degrees F (32 to 43 degrees C), and "cold," in Appendix 1.c., as cold tap water up to 85 degrees F (29 degrees C).

Based on the comments filed in response to the Regulatory Review Notice and the ANPR, including recommendations that the Commission adopt definitions developed by the AATCC, the Commission, in the NPR, stated that the definition of "cold," "warm," and "hot" water should be changed because of changes in settings on water heaters and in consumer washing practices in the years since the definitions were established.[19] The Commission noted that AATCC has changed its definitions, which are used in textile testing by much of the apparel industry, to take account of these factors. The NPR proposed changing the upper range of temperature definitions in the Rule to the upper range of what is allowed in tests published by AATCC.[20] Specifically, the Commission proposed the following definitions for water temperature in Appendix.1.b-1.d: "Hot"—initial water temperature ranging from 112 to 125 degrees F (45 to 52 degrees C); "Warm"—initial water temperature ranging from 87 to 111 degrees F (31 to 44 degrees C); "Cold"—initial water temperature up to 86 degrees F (30 degrees C).

The Commission also proposed adding the term "very hot" to the Rule, defined consistently with the AATCC definition, *i.e.*, with an upper range of 63 degrees C (145 degrees F). The record indicated that some garments do need to be cleaned at temperatures higher than 125 degrees F, and that some consumers have access to water hotter than 125 degrees F, either at home or through laundering by professional cleaners. The Commission asked whether the addition of the term "very hot," together with appropriate consumer education, would give notice to those consumers whose hottest water is 120 degrees F that they may have to use professional laundering for garments that should be cleaned in very hot water. The Commission indicated that it was aware, however, that the term "very hot" may be confusing to some consumers because most washing machine dials offer only the choices of "cold," "warm," and "hot." The NPR requested comment on the issue, and, in particular, on suggestions for methods of consumer education.

The Commission noted in the NPR that some comments indicated that consumers need more precise information in order to select the appropriate temperature setting on their washing machines. For example, the comments suggested that some consumers in colder climates may unknowingly be using water that is too cold to activate detergents at the "cold" setting on their machines, and that these consumers would be alerted by a numerical temperature on the care label to use the "warm" setting to compensate. The comments contended that, similarly, an upper range for "warm" might also be helpful to consumers because on many machines the dial setting for warm simply produces a mixture of hot and cold, and if the incoming tap water is very cold, the water in the machine may be too cold to produce optimal cleaning of the clothes being washed. The comments argued that the addition of a precise temperature (52 degrees C, 125 degrees F) after the word "hot" on the care label of a garment may give some consumers an indication that their hot water may be too hot for that garment.[21]

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[15] Johnson Group (1) p. 1; MACLA (2); Industry Canada (8); ATMI (9); IFI (12) pp. 2–3; NAHM (14) p. 1; Associazione Serica (15) p. 1; NCAI (17) p. 4; AHAM (18) p. 3; Consumers Union (21) p. 2; Pendleton (25) p. 2; Gap (26) p. 1; P&G (34) pp. 2 and 4; Ginetex (35) p. 2.

[16] Prestige (16) p. 2; Consumers Union (21) p. 2; Clorox (22) p. 2; P&G (34) pp. 2 and 4; Ginetex (35) p. 2.

[17] AAMA (11) p. 3.

[18] For example, red trim that is to be placed on white fabric should be evaluated to determine if it is likely to bleed onto the surrounding fabric. A company may possess reliable evidence—for example, past experience with particular dyes and fabrics—that a particular red trim does not bleed onto surrounding fabric. In such a case, testing of the entire garment might not be necessary.

[19] For a detailed discussion of the comments and the analysis that led the Commission to this conclusion, *see* 63 FR 25417, 25424–426.

[20] The AATCC definitions were submitted as an attachment to AATCC's comment responding to the Regulatory Review Notice: "cold"—27 degrees C ± 3 degrees C (80 degrees F ± 5 degrees F); "warm"—41 degrees C ± 3 degrees C (105 degrees F ± 5 degrees F); "hot"—49 degrees C ± 3 degrees C (120 degrees F ± 5 degrees F); and "very hot"—60 degrees C ± 3 degrees C (140 degrees F ± 5 degrees F). AATCC (34) Attachment.

[21] The Commission noted that, although new water heaters are being set at lower temperatures, the comments indicated that many homes still have older heaters that produce water at 140 degrees F or even hotter. A garment that has been tested in water heated to 125 degrees F may withstand washing in that temperature without damage but nevertheless be damaged by water at 140 degrees F.

The Commission did not, however, propose in the NPR that the Rule be amended to require that precise temperatures be listed on care labels, noting that most Americans do not know the temperature of water in their washing machines. Although the Commission did not propose requiring precise temperatures on labels, it expressed interest in non-regulatory solutions to the problems discussed in the comments and asked for comment on the feasibility of a consumer education campaign to provide consumers with more precise information on water temperature in order to help them more accurately select the appropriate temperature setting on their washing machines.

2. Comments Responding to the NPR

a. The Proposal to Amend the Rule Definitions for "Cold," "Warm," and "Hot" to Be Consistent with the AATCC Definitions. Seventeen comments addressed the issue of water temperature definitions.[22] Five of the comments supported the Commission's proposal to amend the Rule's definitions for "cold," "warm," and "hot."[23] Pendleton supported the proposal because it "seems to reflect changes in consumer washing practices;" AAMA noted that its members already use the AATCC definitions when testing their garments.[24]

Four other comments provided partial support. Dr. Charles Riggs conceded that the proposed definitions are probably realistic for typical household hot water temperatures, but argued that their inclusion in the Rule will not address the problem posed by most detergents not being activated thoroughly in water colder than 65 degrees F.[25] IFI agreed that the proposed temperatures reflect current trends in home water temperatures but contended that they do not correlate to current consumer behavior and consumers' use of professional laundering.[26] MACLA favored amending the Rule to adopt the proposed definitions for "cold" and "warm," but suggested that the definition of "hot" include the range between 125 degrees F and 145 degrees F (52 degrees C—63 degrees C).[27] Like MACLA, AHAM recommended establishing definitions for "cold" and "warm" that are consistent with the definitions proposed in the NPR[28] and suggested a range of between 112 degrees F and 145 degrees F (44 degrees C—63 degrees C) for "hot." Contending that these definitions are "consistent with the clothes washer options available to consumers in their homes," AHAM provided a detailed explanation of how washing machines use cold and hot water to attain "cold," "warm," and "hot" water.[29]

Agreeing that the Rule's definitions for water temperature should be consistent with AATCC's definitions, Consumers Union suggested a definition for "cold" (60 degrees F to 80 degrees F) that was different from the Commission's proposed definition, because "most consumers are unaware that detergent becomes increasingly ineffective as temperatures drop below 60 degrees F,"[30] and a definition for "hot" (120 degrees F to 140 degrees F), "to realistically represent temperatures produced by domestic water heaters and scald laws in some states."[31]

Seven commenters remarked on the water temperature issue without making specific recommendations as to the proposed definitions.[32] For example, four commenters contended that consumers need water temperature numbers on care labels.[33] Ginetex stated that in its system, temperature numbers (in degrees Celsius) are disclosed in the system's washing instruction icons, and contended that terms like "hot," "warm," and "cold" are not precise enough.[34]

b. The Proposal to Add the Term "Very Hot" to the Rule. Four commenters expressed some level of support for the proposal to add the term "very hot" to the Rule. Gap agreed with the proposal without elaboration and Associazione Serica suggested associating the term to a "reference temperature."[35] Procter & Gamble supported the proposal, adding:

> Though the term 'very hot' will not be understood by many consumers, our qualitative research indicates that if consumers see 'very hot' they would be likely to select 'hot' on their washer. This will be the best of available choices and therefore this addition of 'very hot' will only be a benefit in providing more efficient cleaning for consumers.
>
> In addition, the separation of the old hot definition into 'very hot' and 'hot' categories allows more garments (that may have been harmed at temperatures above 125 degrees F) to be more efficiently and appropriately washed in hot temperatures less than 125 degrees F. P&G supports a consumer education campaign that would help consumers use appropriate and consistent water temperatures to achieve more efficient cleaning (better cleaning at less cost), especially in northern US states with colder water.[36]

While not specifically endorsing adoption of the proposed definition, Dr. Charles Riggs suggested that "very hot" have an upper limit of 160 degrees F rather than 145 degrees F, for use as a label for professional shirt laundering.[37]

Seven comments opposed the Commission's proposal to add a definition for "very hot" to the Rule.[38] As an alternative to the proposal, MACLA and AHAM suggested that the definition for "hot" in the amended Rule include a range of up to 145 degrees F, rather than the upper limit of 125 degrees F proposed by the Commission.[39] MACLA contended that the term would be too confusing for consumers, and AHAM stated: "It is not just an issue of confusing consumers or whether some garments do not need to be cleaned with temperatures above 125 degrees, it is an issue of the temperatures a product (clothes washer) can provide with the existing water inlet

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[22] MACLA (2); Industry Canada (8); ATMI (9); AAMA (11); IFI (12); Scanlon (13); NAHM (14); Associazione Serica (15); NCAI (17); AHAM (18); Riggs (19); Fifield (20); Consumers Union (21); Pendleton (25); Gap (26); P&G (34); Ginetex (35).

[23] AAMA (11) p. 3; NAHM (14) p. 2; Pendleton (25) p. 2; Gap (26) p. 2; P&G (34) pp. 2, 4.

[24] AAMA (11) p. 3; Pendleton (25) p. 2.

[25] Riggs (19) p. 2. Dr. Riggs contended that the only realistic solution to the problem would be for manufacturers to produce clothes washers equipped with thermostatic temperature controls.

[26] IFI (12) p. 3.

[27] MACLA (2) p. 1. MACLA stated that manufacturers, especially of bed linens and shirting materials, already test in water up to 150 degrees F before attaching care labels associated with commercial laundering procedures.

[28] AHAM proposed: "cold": <86 degrees F (30 degrees C) and "warm": 87 degrees F—111 degrees F (30 degrees C—44 degrees C).

[29] AHAM (18) pp. 1–2. AHAM also explained that the ranges of temperatures for each descriptor depend on several factors, including water heater temperature setting, heat loss in piping, the mix ratio of the particular washer, and the temperature of incoming cold water (which depends on geographical location and seasonal temperature).

[30] In this connection, Consumers Union recommended consumer education on "minimum wash water temperatures."

[31] Consumers Union (21) p. 3.

[32] Industry Canada (8) p. 3; ATMI (9) p. 3; Scanlon (13) p. 1; Associazione Serica (15); NCAI (17) p. 4; Fifield (20) p. 1; Ginetex (35) p. 2.

[33] ATMI (9) p. 3; Associazione Serica, (15) p. 2; Fifield (20) p. 1; Ginetex (35) p. 2. *See* the separate discussion of numerical temperatures in section II.B.2.c., below.

[34] Ginetex (35) p. 2 (stating that ". . . in Europe, clothes washers heat their own water internally. Consumers can choose a precise temperature and the washer will heat the water to it."); Associazione Serica (15), p. 2, recommended harmonization of the Commission's Rule with the Ginetex/ISO system.

[35] Gap (26) p. 2; Associazione Serica (15) p. 2.

[36] P&G (34) pp. 4–5.

[37] Riggs (19) p. 2.

[38] MACLA (2) p. 1; Industry Canada (8) pp. 3–4; IFI (12) p. 3; Scanlon (13) p. 1 ("I would find it hard to believe that "very hot" water was really good for my clothes, and what I would do is use the "hot" setting."); AHAM (18) p. 2; Pendleton (25) p. 2; Ginetex (35) p. 2 (Ginetex opposed the use of word designations as too imprecise, preferring its own system of temperature symbols tied to degrees Celsius.)

[39] MACLA (2) p. 2; AHAM (18) p. 2.

temperatures." [40] Industry Canada argued that consumers would be unlikely to use very hot water under normal washing conditions unless there were a "very hot" indicator on their washing machines, and that it is improbable that they would conclude that they should use a professional cleaner. Rather, concluded Industry Canada, consumers would use the "hot" setting on their machines instead of incurring the cost of professional laundering.[41] In contrast, IFI stated that consumer practice is to send out men's dress shirts, most of which are labeled "Machine wash warm, cool iron," to be commercially laundered and pressed. Pointing out that commercial laundering is done at temperatures in excess of 145 degrees F, IFI concluded that the "very hot" label would not apply even if manufacturers used it, which current practice suggests they would not do.[42] Noting that the need for the addition of a "very hot" water designation does not seem to be clearly demonstrated and that such an instruction would be confusing, Pendleton stated that the trend in home washing practices in recent years has been away from the use of hot water, citing as evidence that none of Pendleton's 30 or more current care labels carry a hot water instruction.[43]

Two textile industry trade associations, ATMI and AAMA, responded to the questions in the NPR without specifically supporting or opposing the proposed amendment. Speculating on how consumers would understand a care instruction to use "very hot" water, ATMI predicted that "responses may range from using the hottest temperature (consumers) can get from their water heater to adding a pot of boiling water to using the services of a professional wetcleaner."

ATMI suggested that the care label indicate that "consumers should use 'Temperatures which normally exceed home laundry and water heater settings,' which would justify a larger label if 'very hot' is truly the preferred method." [44] AAMA observed that "the question of whether consumers understand very hot is important only when professional cleaning is needed. For environmental reasons most hot water heaters in the U.S. do not generate water above 120 F." [45]

c. Numerical Temperatures and Consumer Education. Although the Commission did not propose requiring numerical temperatures on care labels, it sought comment on the possibility of a consumer education campaign on the issues surrounding numerical temperatures. AAMA agreed without elaboration with the Commission's decision not to require specific temperatures on labels.[46] Appliance service technician Bruce Fifield contended that the care label should include the numerical temperature of the water.[47] ATMI stated that consumers assume that there is a direct correlation between what the consumer sees on a care label (e.g., "machine wash hot water") and the temperature selection on their home washers without realizing the many factors that influence the water temperature in the machine. ATMI suggested that clothes washer manufacturers, with input from other affected parties, work towards a consensus on temperatures and a method for standardizing them.[48] Ginetex stated that in the Ginetex/ISO system numerical temperatures (in degrees Celsius) appear along with washing instructions icons.[49] Associazione Serica joined Ginetex in recommending harmonization of the Commission's Rule with the ISO/Ginetex system.[50]

Three comments expressed their support for consumer education in connection with the wash water temperature issue, although none offered specific consumer education plans. AAMA and P&G stated that consumer education would be necessary to help consumers understand the variability issues (geographical and seasonal temperature differences) that affect water temperature.[51] AAMA stated that "Part of the education process will take place as consumers use care symbols. The current NAFTA care symbol guide indicates the median temperature for 'hot,' 'warm,' and 'cold,' in both Fahrenheit and Celsius." [52] Bruce Fifield, who lives in Maine, noted the importance of information about the low end of the temperature range and suggested educating the public by disclosing temperature degrees along with words on detergent packages and clothes washer owners manuals as well as on care labels.[53]

3. Rule Amendments and Reasons Therefor

The Commission has decided to amend the definitions of "cold" and "warm" in the Rule to make them consistent with the AATCC definitions for these terms. The Commission has decided against adding the term "very hot" to the Rule. Rather, the Commission amends the Rule so that the term "hot" now includes the temperature range encompassed by both "hot" and "very hot" in the AATCC definitions. Finally, the Commission will leave unchanged its decision, announced in the NPR, not to require numerical temperatures on labels.

The Commission is changing the Rule's definitions for "cold" and "warm" to be consistent with the AATCC definitions primarily because the AATCC definitions are currently in widespread use in the textile industry and because of the changes in water heater settings, as discussed in the NPR and mentioned above. The Commission agrees with MACLA and AHAM that a "very hot" instruction on labels could be confusing to consumers and impractical in light of the temperature limitations on new water heaters and the majority of home clothes washers. Moreover, there is no evidence of consumer need or demand for information on such an instruction; nor is there evidence of any harm to garments because of the absence of such an instruction. Thus, the Commission will not create a separate temperature range for "very hot." Because AATCC defines "very hot" water as a maximum of 145 degrees F (63 degrees C), the Commission will lower the current range in place under the description of "hot water," with the top end of the range changed from 150 degrees F (66 degrees C) to 145 degrees F (63 degrees C), to be consistent with the AATCC definitions of "hot" and "very hot" taken together.

The Commission is not persuaded to add a requirement that labels include numerical temperatures. As indicated in the NPR, the Commission believes that requiring this type of additional information may not be cost-effective because most American consumers know so little about the temperature of

[40] AHAM (16) p. 2.

[41] Industry Canada (8) pp. 3–4.

[42] IFI (12) p. 3.

[43] Pendleton (25) pp. 2–3. Pendleton suggested that: "If hotter wash temperatures are commonly used or needed in professional laundering, it would seem appropriate for this aspect of cleaning to be controlled by a "professional laundering" care instruction, much as the specifics of dry cleaning are controlled by the professional dry cleaner when the "dry clean" care instruction is used."

[44] ATMI (9) p. 3. ATMI added that magazine articles, provided the advice is consistent, could influence consumers' behavior, and that further comments on what constitutes "very hot" would be important.

[45] AAMA (11) p. 4. In contrast, in responding to the ANPR, SDA estimated that only "20% of today's homes have hot water heaters set at 120 degrees—125 degrees F." SDA, comment 43 to ANPR, p. 2.

[46] AAMA (11) p. 3.

[47] Fifield (20) p. 1.

[48] ATMI (9) p. 3.

[49] Ginetex (35) p. 2.

[50] Associazione Serica (15) p. 2.

[51] AAMA (11) p. 3; P&G (34) p. 2.

[52] AAMA (11) p. 3.

[53] Fifield (20) p. 1.

their tap water, the water from their water heaters (especially after it has passed through plumbing pipes), or the water in their washing machines at the various settings. The Commission recognizes that more information could help consumers avoid using water that is too hot and may damage some items, or not hot enough to clean others thoroughly, or so cold that detergents will not be effective. The Commission believes that non-regulatory approaches, such as industry-sponsored consumer education campaigns or voluntary product labeling, hold the most promise for helping consumers understand how to use water temperatures to their best advantage in cleaning their washable items. The Commission is willing to consider partnering with industry, consumer, or public interest groups or others in such an undertaking.

C. Proposal to Require Home Washing Instruction

1. Background of Proposed Amendment

The Regulatory Review Notice noted that the EPA had been working with the dry-cleaning industry to reduce the public's exposure to perchloroethylene ("PCE" or "perc"), the most common drycleaning solvent,[54] and asked whether the Rule poses an impediment to this goal. The Rule currently requires that the manufacturer provide instruction as to one appropriate method of cleaning the garment, i.e., either a washing instruction or a drycleaning instruction. Thus, garments legally labeled with a "Dryclean" instruction alone may also be washable, but the manufacturer is not required to provide that additional information. In contrast, a "Dryclean Only" label constitutes a warning that the garment cannot be washed, and the manufacturer is required to have a reasonable basis for this instruction. The Regulatory Review Notice asked about the prevalence of care labeling that does not indicate both washing and drycleaning instructions. In addition, it asked whether the use of drycleaning solvents would be lessened, and whether consumers and cleaners could make more informed choices as to cleaning method, if the Rule were amended to require both washing and drycleaning instructions for garments cleanable by both methods.[55] 59 FR 30733–34. The response to this proposal was mixed; some commenters favored a required dual instruction, while others opposed it because of the increased cost to manufacturers of testing garments for both methods. Some pointed out that although many items routinely washed by consumers (such as "wash and wear" apparel) could safely be drycleaned, few consumers would choose to do so.

In the ANPR, the Commission requested comment on a proposed amendment of the Rule to require a home washing instruction for all covered products for which home washing is appropriate. Under the proposal, drycleaning instructions for such washable items would be optional. Manufacturers marketing items with a "Dryclean" instruction alone, however, would be required to substantiate both that the items could be safely drycleaned *and* that home washing would be inappropriate for them; thus, a "Dryclean" instruction would be subject to the same burden of substantiation presently required for a "Dryclean Only" instruction. This revised proposal would eliminate some of the additional substantiation testing costs that a "dual disclosure" requirement would necessitate. 60 FR 67104–05.

Eighteen commenters to the ANPR, including individual consumers, academics, and an appliance manufacturers' trade association, contended that many manufacturers currently label items that can be both washed and drycleaned with a "Dryclean" or "Dryclean Only" instruction. Many of these commenters suggested that a required home washing instruction could save consumers garment care dollars. Some commenters also noted that many consumers believe there are environmental benefits from home washing rather than drycleaning washable items. 63 FR 25418.

Based on the ANPR comments, the Commission concluded that it had reason to believe that "Dryclean" labels on home-washable items are prevalent, that consumers have a preference for being told when items that they are purchasing can be safely washed at home, and that this aspect of the Rule is an impediment to EPA's goal of reducing the use of drycleaning solvents.[56] The Commission also concluded that when a washable garment is labeled "Dryclean," consumers may be misled into believing that the garment cannot be washed at home and therefore incur a drycleaning expense that they would otherwise prefer to avoid. 63 FR 25419.

Accordingly, in the NPR the Commission proposed amending § 423.6(b) of the Rule to read, in pertinent part, as follows:

> (b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a drycleaning instruction. If an item of textile wearing apparel can be successfully washed and finished by a consumer at home, the label must provide an instruction for washing. If a washing instruction is not included, or if washing is warned against, the manufacturer or importer must establish a reasonable basis for warning that the item cannot be washed and adequately finished at home, by possessing, prior to sale, evidence of the type described in paragraph (c) of this section. * * *

2. Response to the NPR and Public Workshop-Conference

In the NPR, the Commission solicited empirical information about how consumers interpret a garment label that merely says "Dryclean." The NPR posed the following question:

> (1) Is there empirical evidence regarding whether consumers interpret a "dry clean" instruction to mean that a garment cannot be washed? What does the evidence show?

Several commenters offered opinions on this issue,[57] but only two—Clorox and P&G—offered empirical evidence.

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[54] Congress designated PCE as a hazardous air pollutant in section 112 of the Clean Air Act; many state legislatures have followed suit under state air toxics regulations.

[55] When it amended the Rule in 1983, the Commission had considered and rejected an "alternative care labeling" requirement that garments be labeled for both washing and drycleaning if both are appropriate. 48 FR 22742–43. (See Section II.C.3, infra.) In 1993, however, evidence about the harmful effects of PCE was not available. Therefore, it was appropriate for the Commission to revisit the issue during the recent regulatory review proceeding.

[56] EPA's comment (73) to the Regulatory Review Notice stated, at p.1, that the Rule should be revised to require manufacturers to state whether a garment "can be cleaned by solvent-based methods, water-based methods, or both. We believe this change is necessary to advance the use of water-based cleaning technology." EPA's comment to the ANPR suggested that the Rule be amended to recognize professional wetcleaning. EPA, comment 17 to ANPR, p. 1.

[57] Johnson Group (1) p. 1 (anecdotal evidence is more to the effect that consumers interpret the instruction to mean that a garment labeled "Dryclean" will last longer if drycleaned, than it is to the effect that they think it cannot be washed); Nature's Cleaners (6) p. 1 (no evidence, but the perception is true); Industry Canada (8) p. 1 (no data, but assume that's how most Canadian consumers read it); ATMI (9) p. 1 (it is possible that consumers make that assumption—a "casual poll" indicates that most consumers do make that interpretation, but do not necessarily follow their interpretation of the instruction); Scanlon (consumer) (13) ("Certainly I interpret a 'dry clean' instruction to mean that a garment cannot be washed; why else would the manufacturer put dry clean? If that's not what it means, I would appreciate it if you would require manufacturers to be more accurate. If what they really mean is 'dry cleaning preferred,' then they should say so."); Associazione Serica (15) (Comments "mainly based on European consumers' behavior") ("Yes, there is (evidence). This instruction is considered as a prohibition (against) other washing methods."); Prestige (16) p. 1 (experience has shown that many consumers who trust the care label will not attempt a non-listed care method).

Clorox provided, with its comment, the results of a nationally representative survey of 1013 respondents (507 males and 506 females) performed by Market Facts, Inc. and Telenation from June 19 to June 21, 1998.[58] This research was presented at the workshop by Eric Essma of Clorox.[59] Question 3 of the survey asked:

When the care instruction on an article of clothing reads "Dry Clean" what does that mean to you? (Probe:) How would you care for clothing like that? (Probe:) Any other ways? (Record Verbatim. Probe for Clarification. Probe to Exhaustion.)

A majority of the respondents (73.2%) said a "Dryclean" instruction means the garment must be drycleaned, professionally cleaned, or otherwise specially taken care of.

P&G stated, in its comment to the NPR, that it "has much experience and qualitative evidence to indicate that consumers interpret a "dry clean" instruction or a 'dry clean only' instruction to mean that a garment cannot be washed or cared for in the home."[60] At the workshop, P&G presented a description of data obtained from a nationally representative survey of about 1,000 female heads of household who currently do the laundry.[61] Respondents were asked which of five methods they would use to clean a garment labeled "Dryclean." Although multiple responses were allowed, 44% of respondents said drycleaning was the only acceptable way to clean such a garment.[62]

Thus, empirical data in the record indicates that many consumers interpret a "Dryclean" label to mean that the garment cannot be washed. In addition, question 4 in the Market Facts survey asked respondents whether they had "ever washed or laundered any clothing labeled 'Dry Clean.'" Almost half (49%) of the respondents said "yes."[63] These respondents were then asked (in question 8) whether they were "satisfied with the results of washing or laundering 'Dry Clean' items," and 63.4% said 'yes' and 11.1% said "sometimes."[64] Thus, the Market Facts study indicates that some garments labeled "Dryclean" can in fact be washed at home to the satisfaction of the consumer.

Several post-workshop comments discussed the Clorox research, but none questioned the finding that a large number of consumers interpret a "Dryclean" instruction to mean that a garment cannot be cared for at home. Rather, these comments focused on the data about consumer care label *preferences*. Question 9 in the Market Facts survey asked respondents:

For clothing items that can be either washed or dry cleaned if the label can only show one instruction, which instruction would you prefer to see included on the label: (Read List. Enter Single Response. If Unsure Encourage Best Guess.)

Washing instructions, or	1
Dry cleaning instructions	2
(Do Not Read):	
Don't know	X
Refused	R

The responses indicated that 88.8% of respondents would prefer washing instructions.[65]

Support for the proposed amendment came from Consumers Union, AHAM, Pendleton, Greenpeace, and individual consumers, as well as from Clorox and P&G.[66] AHAM, for example, stated that the proposed amendment "will result in consumers saving garment care dollars and will lead to reduction in adverse environment impact resulting from the use of percloroethylene."[67] Greenpeace asserted that "consumers want to know from a care label whether a garment can be cleaned at home, in water-based laundry systems."[68] Pendleton Woolen Mills stated:

This proposed change is consistent with Pendleton's current direction for increased emphasis on garment washability. Market information gathered by Pendleton staff has indicated the importance of washability to consumers. This requirement may mean a relatively small increase in the amount of testing, but Pendleton is already seeking to put washable care instructions on garments when possible.[69]

Commenting on the Clorox survey results, the International Fabricare Institute opposed the proposed amendment. IFI stated:

the fabricare industry takes issue with much of the data presented and believes that an additional consumer survey is required to provide the FTC with sufficiently broad information to determine consumer care label preferences. Clorox asked only whether consumers wanted to know when a garment can be home washed. The question should have been "Would you like to know if a garment can be washed or drycleaned, would you like to know all appropriate methods of care?"[70]

In its comment to the NPR, IFI argued that failure to provide drycleaning instructions when appropriate is an injustice to those consumers who wish to have their garments professionally cleaned and that all appropriate methods of care should be listed on the care label (a concept which it referred to as "alternative labeling").[71] IFI further asserted that "there are consumers who want some of their washable items drycleaned."[72]

[58] A description of the survey and its results are attached to Clorox's comment (22). Telenation conducted the survey using a single-stage, random digit-dial sample technique to select respondents from all available residential telephone numbers in the contiguous United States. Up to three attempts were made on the selected telephone numbers. Telenation's standard data tabulations are provided in a weighted format. The data are weighted on an individual multi-dimensional basis to give appropriate representation to the interaction between various demographic factors. The multi-dimensional array covers gender, within age, within household income in the four National Census regions, resulting in 144 different cells. The current Population Survey from the U.S. Census Bureau is used to determine the weighting targets for each of these 144 cells. Clorox (22) p. 5.

[59] A copy of Mr. Essma's presentation was placed on the public record as Clorox (PW–43).

[60] P&G (34) p. 3.

[61] P&G's two-page summary of the data was placed on the public record as P&G (PW–44).

[62] Workshop Transcript ("Tr."), pp. 26–27. The difference between the results of the P&G survey (44% mentioned only drycleaning) and the Clorox survey (73.2% said the garment must be drycleaned or otherwise specially taken care of) may be due to the fact that the respondents in the P&G survey were female heads of household who currently do the laundry, whereas the Clorox respondents were a random sample of the population. Female heads of household who currently do the laundry may be more aware than the general population that items labeled "Dryclean" may also be washable.

[63] Clorox (22) Weighted Data, p. 6.

[64] Clorox (22) Weighted Data, p. 10.

[65] Clorox (22) Weighted Data, p. 44. Pendleton (25) also stated, at p. 1, that its own market information indicates "the importance of washability to consumers."

[66] Consumers Union (21) p. 1; AHAM (18) p. 2; Pendleton (25) pp. 1–2; Greenpeace (27) p. 1; Smith (36) p 1; Clorox (22) p. 1; and P&G (34) pp. 2, 3.

[67] AHAM (18) p. 2.

[68] Greenpeace (27) p. 1.

[69] Pendleton (25) p. 1.

[70] IFI (PW–20), p. 2.

[71] IFI (12) p. 1. Many other cleaners and cleaners' trade associations also favored requiring instructions for both washing and drycleaning or for all methods by which an item can be cleaned (including, presumably, professional wetcleaning and newly emerging techniques such as the use of liquid carbon dioxide for cleaning): MACLA (2) p. 1; Viola (5) p. 2; Prestige (16) p. 1; NCAI (17) p. 2 (otherwise consumers might pay more in the long run because of "excess wear potentially caused by home care"); Valet (PW–6) p. 1; MFI (PW–7), p. 1; French (PW–8), p. 1; Coronado (PW–9), p. 1; MACLA (PW–10) p. 1; SEFA (PW–11) p. 1; COBS (PW–14) p. 1; Hallak (PW–22) p. 1; Avon (PW–23) p. 1; Comet (PW–25), p. 1; Spear (PW–27), p. 1; Cowboy (PW–29), p. 1; Randi (PW–31), p. 1; Swannanoa (PW–35) p. 1; Sno White (PW–36) p. 1; Perrys-Flanagans (PW–38) p. 1. One yarn manufacturer and one academic expert also favored dual or alternative labeling. Celanese (PW–12) p. 1; Riggs (PW–13) p. 3. EPA (PW–3) at pp.1–2, favored alternative labeling. Other cleaners and cleaners' trade associations opposed the proposed change and favored retaining the status quo—i.e., that either washing or drycleaning may be listed on the label of a garment that can either be washed or drycleaned. Rawhide (PW-5) pp. 1–4 (cleaning by consumers is more hazardous to the environment than cleaning by drycleaners); NCPDC (28) pp. 1–2 (recommending home washing as the preferred method is not necessarily providing consumers with the best method of cleaning their garments).

[72] IFI (12) p. 2.

The AAMA also criticized the Clorox Market Facts survey, noting that it showed "nothing more than a preference for home washable garments and not a preference for a change in the rule." [73] AAMA opposed requiring that garments that can be either washed or drycleaned be labeled for home washing, stating: "Responsible apparel firms label their garments according to what they believe to be the best method of cleaning." [74] AAMA contended that the proposed change in the Rule would not reduce underlabeling (i.e., labeling washable garments "Dryclean") without increased enforcement of the Rule; that the proposed change would increase costs to manufacturers; and that there is a "gray area between garments that need some type of professional cleaning and finishing and those that can be maintained with home washing and finishing." [75]

In its post-workshop comment, AAMA also argued that the proposed change would be burdensome because of a lack of specific standards:

> the definition of "successful home washing" is yet to be established. . . . While a definition may exist for a manufacturer establishing a reasonable basis for a garment that is traditionally home washed, it is unclear if this definition also applies to a garment that is traditionally dry cleaned. Does such a garment have to pass an absolute or a comparative test when reasonable basis is established? For example, is a garment "successfully" home washed if it can withstand a certain number of home wash cycles, even though it can withstand a greater number of dry clean cycles? Similarly, a mandatory home wash standard suggests that a garment must fail every conceivable home care method before the label can warn against home care. We are concerned that manufacturers will be expected to establish a reasonable basis with a law that is not fully defined. [76]

AAMA reiterated its belief that the proposed change would increase costs to manufacturers, including costs of "additional testing, increased paperwork, lost production time, increased liabilities, and damaged garments," but stated that its members were unable to quantify these costs. [77] AAMA asserted that the proposed change would result in manufacturers losing revenues and customers because of high garment return rates for garments labeled for home washing when they should "ideally be dry cleaned" and because of "consumer anger at prematurely worn-out clothes." [78]

In addition to its argument that the proposed change would harm manufacturers, AAMA contended that it would harm consumers for several reasons, including increased costs. AAMA stated: "One apparel manufacturer currently carries a 'performance-satisfaction guarantee' that it vows to revoke if the proposed amendment were to become part of the Rule." Consumers will also be hurt, according to AAMA, because they may not feel certain that they are caring for their garments in the best way: "AAMA believes that consumers prefer to be given the best care instructions, not just the possible care instructions." AAMA further suggested that the proposed change would be confusing to consumers because the meaning of a simple " Dryclean" instruction will in effect change to "Dryclean Only." Finally, AAMA argued that the proposed change should not be adopted because it would be difficult to convey in symbols. [79]

3. Commission Decision Not to Adopt the Proposed Amendment

In promulgating or amending a trade regulation rule pursuant to section 18 of the FTC Act, 15 U.S.C. 57a, the Commission must act within its statutory mandate to "define with specificity acts or practices which are unfair or deceptive . . . (within the meaning of (section 5(a)(1) of the FTC Act))" and to "include requirements prescribed for the purpose of preventing such acts or practices." In promulgating the Rule in 1971 and amending it in 1983, the Commission found that it is both unfair and deceptive to fail to disclose any instructions of a method by which a garment can be cleaned. 36 FR 23889 and 48 FR 22736. The Commission did not find, however, that it is either unfair or deceptive to label a garment with only one method of cleaning when another method also can be used. Indeed, in amending the Rule in 1983, the Commission considered but rejected requiring that instructions for *both* washing and drycleaning (which the Commission referred to as "alternative care labeling") be included on care labels, stating that the record did not show that the benefits of such a requirement would exceed its costs:

> An alternative care labeling requirement would impose significant testing and substantiation costs on manufacturers. For example, it would require [manufacturers] to give drycleaning instructions, and to have a reasonable basis for those instructions, for all items they already label as washable. 48 FR at 22742.

In order to amend the Rule to require that a garment manufacturer list a *particular* cleaning method on the care label in all cases where that method is applicable, the Commission would have to find evidence indicating that the failure to list the method is both a prevalent practice and an unfair or deceptive one. The Commission also would have to conclude that the particular remedy was an appropriate and cost effective way to address the unfair or deceptive practice. [80] There is evidence in the record that some garments labeled "Dryclean," or even "Dryclean Only," are in fact home washable. There is also evidence that some consumers believe a "Dryclean" instruction means that a garment cannot be washed; thus, they may be misled by the instruction and incur a cleaning cost they would not otherwise incur. The Commission is not convinced, however, that the evidence is sufficiently compelling to justify a change in the Care Labeling Rule at this time. Moreover, the benefits of the proposed amendment are highly uncertain. For example, it is not clear from the record how many garments currently labeled "Dryclean" would have to be labeled for home washing if the amendment were adopted. [81] In addition, it appears that there have been changes in the marketplace, since the beginning of this rulemaking proceeding, that suggest regulatory change may not be needed. Therefore, after carefully weighing the evidence and the competing considerations at stake, the Commission has decided not to adopt the proposed amendment to require a home washing instruction for all garments that may be washed. .

One impetus for the proposed amendment to require a home washing instruction where applicable was the environmental goal of reducing use of PCE. 63 FR at 25418–19. Discussion at the workshop and some post-workshop

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[73] AAMA (PW–24) p. 3.

[74] AAMA (11) p. 2.

[75] Id.

[76] AAMA (PW–24) p. 2. Johnson Group (1) made a similar point, at p. 2, stating that appropriate criteria must be developed "specifying the product performance after a given number of cleaning cycles."

[77] AAMA (PW–24) p. 2.

[78] Id. at 2–3.

[79] Id. at 4.

[80] 16 CFR 1.14.

[81] In the absence of standards for a successful wash result (in terms of the durability of the garment as compared to its durability when drycleaned), there is, as suggested by the AAMA, a "gray area" where deference would have to be accorded the manufacturer's best judgment. AAMA (11) p. 2, (PW–24) p. 2. In addition, the use of "Dryclean" labels on garments that also could be washed seems to be limited to certain kinds of fabrics. Silk, wool, and rayon have been mentioned most frequently as fabrics often labeled "Dryclean" when in fact they could be washed. Other factors, such as the type of weave in the fabric and the dyes used also affect washability. Tr. 38–39; ATMI (9) p. 1.

comments indicated, however, that use of this solvent by the drycleaning industry has already been dramatically reduced.[82] The discussion suggested that the reason for this decline may be higher recovery rates for PCE during the cleaning process, as opposed to the use of other solvents or methods.[83] Furthermore, the discussion showed that the effect of a mandatory wash instruction on consumer behavior simply could not be predicted.[84] While it is clear that many consumers have a preference for more information, including washing instructions, it is not at all clear that a required washing instruction would change consumer behavior sufficiently to reduce either the use of PCE or the cost to consumers of caring for their garments.[85]

Another change in the marketplace is the emergence of new cleaning technologies, including professional wetcleaning[86] and liquid carbon dioxide.[87] These new technologies are considered to be more "environmentally friendly" than PCE[88] and provide additional options for consumers. Another new technology is the formulation of home cleaning products, such as Dryel (a new P&G product).[89]

A number of commenters urged the Commission to amend the Rule to require that all appropriate methods of care be listed on the care label.[90] While this proposal would have the advantage of maximizing the information and options provided to consumers, it is potentially costly and burdensome on manufacturers for the Commission to require that an evolving list of cleaning technologies be named on a permanent garment label and that manufacturers have substantiation for all of them (including contrary evidence for those not mentioned). The EPA suggested that the Commission not establish a preference for one environmentally friendly technology over others.[91] The Commission agrees with this position; the Commission does not agree, however, that the rulemaking record supports a determination that it is an unfair or deceptive act or practice for a manufacturer to fail to provide a label listing all methods or technologies that could be used to clean a garment. Moreover, the rapidly changing nature of the garment care industry suggests that the Commission should not intervene with a regulatory change that might in the future prove to be inadequate or inappropriate.

The Market Facts study shows that despite the perception by some consumers that a "Dryclean" instruction is tantamount to a "Dryclean Only" instruction, nearly half of those surveyed had in fact washed a garment with a "Dryclean" label.[92] Moreover, the majority of that group was satisfied with the results of washing. This suggests that consumers may be getting information about the ability to wash some garments with a "Dryclean" label from other reliable sources. Such sources could include retailers, consumer publications[93] or media sources, professional cleaners, other consumers, or a consumer's own past experience.

Representatives of some large retailers, including J.C. Penney, Sears, and QVC, indicated that frequently they ask manufacturers to change the care labels of garments with a "Dryclean" instruction where the retailers' own testing shows them to be machine washable.[94] They do so because they believe that a washing instruction will be the most useful one for their customers. This is an example of the marketplace responding to consumer preferences and demonstrates the ability of retailers to ensure that their customers get the type of care information they want. In addition, some manufacturers themselves indicate they are responding to consumers' desire for information on washability by putting washing instructions on garments when possible.[95]

Finally, to the extent that consumers are being misled by "Dryclean Only" labels on clothing that can be home laundered, the Commission points out that such an instruction would be illegal under the current Rule. 16 CFR 423.6(c)(2). The term conveys to consumers a warning that the item cannot be washed successfully. A manufacturer using such a label must have a reasonable basis for this warning, just as the manufacturer must also have a reasonable basis for stating that the garment can be drycleaned successfully. Although the Commission has not to date brought enforcement actions based on a misleading instruction of "Dryclean Only," it may do so in the future if this practice occurs.

The Commission hopes that manufacturers and their trade associations will respond affirmatively to the evidence in this proceeding that consumers want more information about cleaning options, particularly washing instructions where applicable.[96] One manufacturer suggested, for example, use of label language such as: "machine wash...or dry clean for best results."[97] If manufacturers are reluctant to lengthen labels to communicate that washing is possible, although drycleaning may be preferred for best long term results, they certainly can find other ways to convey the information. They could use hang tags, for example, to inform consumers that a "Dryclean" instruction on the label does not mean that the garment cannot be cleaned by washing or other methods, but rather that drycleaning is an appropriate way to clean the item

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[82] An EPA representative stated: "From the numbers that I have seen . . . it would appear that the dry cleaners, the dry cleaning industry, has done an excellent job of reducing the use of PERC over the last ten and twenty years. . . . I think it's less than half of what it was ten years ago." Tr. p. 115. A representative of a drycleaners trade association in the Southwest stated in a written comment that improvements in the manner of using PERC over the last ten or fifteen years has resulted in a 75% reduction of usage of the solvent even though more clothes are cleaned in it every year. He further asserted that with the development of alternative solvents, including liquid carbon dioxide, drycleaning could become the environmentally preferable method of cleaning clothes in the future. Rawhide (PW–5) p. 2. IFI contends that PERC consumption has declined 70% over the past 10 years. IFI (PW–20) p. 2.

[83] Riggs Tr. p. 118 and (PW–13) p. 2; IFI (PW–20) p. 2.

[84] Stroup (EPA) Tr. pp. 115–16.

[85] As noted above, it is speculative as to how many garments now labeled "Dryclean" would actually have to be re-labeled for home washing. In addition, it has been suggested that some consumers take washable garments to a drycleaner rather than washing them at home simply for the convenience of professional cleaning and/or because they believe the clothing will look better or last longer if professionally cleaned. French (PW–8); IFI (12) p. 2; MFI (PW–7) p. 1; MACLA (PW–10) pp. 1–2; Spear (PW–27) p. 1; Greenpeace (27) p. 2; Tr. 107–08.

[86] *See* discussion in Part II.D, *infra*.

[87] *See* discussion in Part III, *infra*.

[88] EPA (PW–3) pp. 1–2.

[89] *See* discussion in Part III, *infra*. Although such products are not likely to be total replacements for professional drycleaning, they do offer consumers additional, and less costly, cleaning options.

[90] *E.g.*, IFI (PW–20) p. 2; Valet (PW–6) p. 1; MFI (PW–7) p. 1; MACLA (PW–10) p. 1; SEFA p. 1; Celanese (PW–12).

[91] EPA (PW–3) p. 2.

[92] As some commenters noted, however, this study does not necessarily provide insight about the total percentage of garments labeled "Dryclean" that might also be washable. The consumers who answered "yes" to this question could be referring to only one garment out of many wardrobe items with a "Dryclean" label or one garment over a period of many years.

[93] For example, Consumers Union published an article describing results obtained when blouses and sweaters with a "Dryclean" or "Dryclean Only" label were washed. Consumers Union concluded that many such garments can be home washed. Tr. pp. 38–39; article attached to comment of Consumers Union (21).

[94] Tr. pp. 58–60.

[95] *E.g.*, Pendleton (25) p. 1. A recent trade press article notes that, in direct response to consumer demand, some other manufacturers are dramatically increasing the number of washable items they offer for sale. "Cleaning Up With Washable Fabrics," A. D'Innocenzio, Women's Wear Daily, April 12, 2000.

[96] The AAMA agreed that "underlabeling" (i.e., labeling a garment simply "Dryclean" when washing at home is also a viable option) is a problem in the clothing industry. AAMA (PW–24) p. 8.

[97] Pendleton (25) p. 2.

and, in some cases, may be the preferred method for garment appearance or longevity. On a hang tag, consumers could be given additional useful information, not conducive to shortened form on a label, such as, with certain fabrics, white garments can be washed without harm, but brightly colored garments might fade if washed rather than drycleaned.

D. Professional Wetcleaning Instruction

1. Background of Proposed Amendment

Several comments submitted in response to the Regulatory Review Notice suggested that new technologies of professional wetcleaning offer promising alternatives to PCE-based drycleaning. Therefore, in the ANPR, the Commission requested information about the professional wetcleaning process. It also sought comment on the feasibility of amending the Rule to require such an instruction, when appropriate and in addition to a drycleaning instruction, for items that cannot be home laundered. 60 FR at 67105, 67107. Twenty-nine commenters addressed the wetcleaning issue. Some opposed amending the Rule to require such an instruction, arguing that the technology is too new and not yet well understood nor widely available. A number of commenters provided information about the available processes and equipment. In addition, they offered widely varying estimates of the percentage of garments now labeled "Dryclean" or "Dryclean Only" that could also be wetcleaned effectively. 63 FR at 25420–21. Ginetex stated that it is waiting for development of a standardized test method before incorporating wetcleaning into the European care labeling system.[98]

2. Response to the NPR

In the NPR, the Commission sought comment on a proposed amendment that would permit, though not require, a "Professionally Wetclean" instruction on care labels. Under the proposed amendment, this instruction would be in addition to, not in place of, a care instruction for another method of cleaning, such as washing or drycleaning. The NPR also set forth a proposed definition of "professional wetcleaning."[99] The proposed amendment specified that a label with a "Professionally Wetclean" instruction must state one type of professional wetcleaning equipment that may be used, unless the garment could be cleaned successfully by all commercially available types of professional wetcleaning equipment. The proposed amendment further specified that a label recommending professional wetcleaning must also list the fiber content of the garment.

In response to the NPR, 25 comments addressed the issue of professional wetcleaning. A few of these opposed the proposed amendment, stating that the technology and availability of this process are not yet sufficiently advanced to justify a care labeling instruction.[100] Most of the comments favored amending the Care Labeling Rule to recognize professional wetcleaning. They did not agree, however, on how this should be accomplished. Several argued that the Rule should require a "Professionally Wetclean" instruction whenever the method would be appropriate.[101] Some believed that a "Professionally Wetclean" instruction should always be accompanied by another appropriate care method,[102] while others asserted that a second instruction should be allowed, but not required.[103] With regard to the issue of specifying wetcleaning equipment, most thought it would be unnecessary and overly restrictive.[104] Of those addressing the issue of whether fiber content should be stated on a label with a "Professionally Wetclean" instruction, most suggested that fiber content should be required on all care labels, not just labels that recommend professional wetcleaning.[105] Eleven comments addressed the proposed definition of "wetcleaning:"[106] a few favored it, others suggested modifications, and others rejected it as too narrow, encompassing only the newest technology.

3. Public Workshop-Conference and Post-Workshop Comments

At the workshop, seven participants stated that professional wetcleaning is an established care method that is currently used not only by those who specialize in wetcleaning but also by many, if not most, conventional cleaners.[107] Six of the participants and two observers agreed that a definition and test procedure should be developed before the Commission amends the Rule to permit or to require a wetcleaning instruction.[108] The discussion made clear, however, that there is not one, clearly defined process performed by those who do professional wetcleaning.[109]

There was considerable discussion at the Workshop about the need to define "wetcleaning" and develop a test procedure that manufacturers could use to establish a reasonable basis for using a "Professionally Wetclean" instruction on labels. A representative of the Center for Neighborhood Technology read the definition CNT proposed in its comment responding to the NPR,[110] and representatives of ASTM and AATCC offered to consider establishing a definition and test procedure at the next meetings of those organizations, using

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[98] Ginetex, comment 63 to ANPR, p. 3

[99] See 63 FR 25417 at 25426:

Professional wet cleaning means a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer uses a frequency-controlled motor, which allows the computer to control precisely the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation, and extraction parameters. The dryer incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act.

[100] See, e.g., Viola (5) p. 2; AHAM (16) p. 3 (Delay incorporating a "Professionally Wet Clean" instruction in the Rule "until the manufacturers can establish a reasonable basis for this method of garment refurbishment."); Alliance (33) p. 1 ("To create special labeling at this time is premature.").

[101] See, e.g., Aqua Clean (4) p. 1; Cleaner By Nature (10) p. 1; Riggs (19) p. 2; PPERC (24) p. 2; Pendleton (25) p. 2; Greenpeace (27) p. 3; CNT (30) p. 2.

[102] See, e.g., Johnson Group (1) p. 1; MACLA (2) p. 1; Industry Canada (8) p. 2; ATMI (9) p. 2; IFI (12) p. 2; Scanlon (13) p. 1; Riggs (19) p. 2; Pendleton (25) p. 2.

[103] See, e.g., Nature's Cleaners (6) p. 1; Associazione Serica (15) p. 1; CNT (30) pp. 2–3.

[104] See, e.g., Riggs (19) p. 2; Consumers Union (21) p. 2; CNT (30) p. 3 (label should not specify equipment type, but should specify finishing instructions, when needed.); PWN (31) p. 2; P&G (34) pp. 2, 3 (equipment statement should not be required; allow an optional statement of at least one type of equipment that can be used, unless all would work). But, see PPERC (24) p. 4 (require "Professionally Wetclean" instructions to specify wetclean finishing equipment, if necessary).

[105] See, e.g., Consumers Union (21) p. 2; PPERC (24) p. 2; Greenpeace (27) p. 2; CNT (30) p. 3; PWN (31) p. 2.

[106] IFI (12) p. 2; Prestige Cleaners (16) p. 1; NCAI (17) p. 1; Riggs (19) p. 1; Consumers Union (21) p. 3; PPERC (24) p. 2; Greenpeace (27) p. 2; CNT (30) pp. 2–3; PWN (31) p. 2; P&G (34) pp. 2–3; Pellerin Milnor (37) p. 1.

[107] Star (CNT) Tr. pp. 155–59; Hargrove (PWN) Tr. p. 169; Boorstein (Prestige) Tr. p. 171; Sinsheimer (PPERC) Tr. p. 180; Oakes (QVC) Tr. p. 189; Davis (Cleaner by Nature) Tr. pp. 190–91; Scalco (IFI) Tr. p. 244.

[108] Riggs Tr. pp. 172–75; Easter (Univ. Ky.) [Observer] Tr. p. 176; Pullen Tr. pp. 181–83; Ferrell (Capital Mercury Apparel, Ltd.) Tr. p. 186; Lamar (AAMA) Tr. p. 189; Easma (Clorox) Tr. pp. 207–08; Jones, General Electric Company ("GE") [Observer] Tr. pp. 230–32; Stroup (EPA) Tr. p. 261.

[109] For example, Ms. Hargrove of PWN asked if IFI would agree that most of the nation's 30–35,000 cleaners do some amount of wetcleaning. Ms. Scalco of IFI agreed, but with the qualification that "there's vast differences in how they do that wet cleaning from shop to [shop]." Tr. p. 169.

[110] Ewing (CNT) Tr. p. 178.

the CNT definition and the definition proposed by the Commission in the NPR as a basis for discussion.[111] Responding to many participants' expressed need for additional time to standardize a definition and test method for wetcleaning, Commission staff conducting the workshop suggested that the rulemaking record could be kept open for nine months to a year to allow time for affected interests to develop a definition and test procedure before the Commission makes a final decision on whether to add a wetcleaning instruction to the Rule.[112] It was the general sense of the participants that this would be a desirable approach.[113]

Post-workshop comments confirmed that wetcleaning is a growing and viable technology for professional garment care,[114] and overwhelmingly supported the idea that the rulemaking record remain open on this issue for an extended period of time. The Center for Neighborhood Technology, for example, reported that at the February 1999 meeting of the AATCC, steps were taken to form a subcommittee to begin the development of the necessary test methods.[115] Another conference participant reported that the issue of defining "professional wetcleaning" had been placed on the ASTM D13.62 agenda.[116] Nineteen of the 23 post-workshop comments that addressed the timing question supported the idea of keeping the rulemaking record open to allow the relevant stakeholders a reasonable interval of time to continue the dialogue begun at the FTC's workshop.[117] The other four commenters believed the Commission should amend the Care Labeling Rule without delay so as not to hinder the development of this "environmentally friendly" cleaning technology.[118]

[111] Pullen Tr. p. 211; Riggs Tr. pp. 172–74.

[112] See Engle (FTC) Tr. pp. 228, 270–71; Kolish (FTC) Tr. pp.234–36, 294–95.

[113] See, e.g., Jones (GE) [Observer] Tr. pp. 230–32; Pullen Tr. p. 234. Sinsheimer (PPERC), however, asserted that, although some time would be necessary to standardize a definition and test, nine months would be too long a delay. Tr. pp. 229–30.

[114] E.g., EPA (PW–3) p. 1; Aqua Clean (PW–30) pp. 1–2; KYCC (PW–32) pp. 1–2.

[115] CNT (PW–26) p. 1.

[116] Pullen (PW–2) p. 1.

[117] EPA (PW–3) p. 2; Valet (PW–6) p. 2; Celanese (PW–12) p. 1; COBS (PW–14) p. 1; PWN (PW–15) p. 1; Prestige (PW–16) p. 1; Wentz (PW–17) p. 2; Consumers Union (PW–19) p. 1; IFI (PW–20) pp. 1, 4; Hallak (PW–22) p. 1; Avon (PW–23) p. 1; AAMA (PW–24) p. 7; Comet (PW–25) p. 2; CNT (PW–26) pp. 1–2; Randi (PW–31) p. 1; Swannanoa (PW–35) p. 3; Sno White (PW–36) p. 1; EFCG (PW–37) p. 2; Perrys-Flanagans (PW–38) p. 1.

[118] PPERC (PW–21) pp. 2, 6; Greenpeace (PW–28) p.1; KYCC (PW–32) p. 3; Cypress (PW–33) p. 2.

4. Commission Decision Not to Adopt the Proposed Amendment and To Close the Record

Based on the discussion of professional wetcleaning at the workshop, combined with the NPR comments and the post-workshop comments, the Commission has concluded that it would be premature at this time to amend the Rule to allow a "Professionally Wetclean" instruction. The Commission believes that a final definition of "professional wetcleaning" and an appropriate test method for the process must be developed before the Commission can amend the Rule to permit a "Professionally Wetclean" instruction on required care labels.[119] This is necessary in order to give manufacturers clear guidance as to how they may establish a reasonable basis for a wetclean instruction. Currently, manufacturers can test garments for drycleaning by having them drycleaned in perchloroethylene. They can test for home washing by having them laundered at various water temperatures. In order to have a reasonable basis for a "Professionally Wetclean" instruction, manufacturers would need to be able to subject the garments to such a cleaning method. In this case, however, the "method" may encompass many different processes, and the one chosen would depend in large part on the particular cleaner. In recommending a particular cleaning method, manufacturers must have assurance that the method they are recommending—and for which they have established a reasonable basis—is the same method that cleaners actually would use to clean the garment labeled for that method. For this reason, a definition of "professional wetcleaning," for purposes of amending the Care Labeling Rule, must either describe all important variables in the process, so that manufacturers could determine that their garments would not be damaged by the process, or be coupled with a specific test procedure that manufacturers could use to establish a reasonable basis.[120]

One workshop participant suggested that a reasonable basis already exists in the marketplace in the form of wetcleaning being performed on a daily basis by professional wetcleaners, and that the Commission should add a wetcleaning instruction to the Rule while the definition and test are being formally standardized.[121] The Neighborhood Cleaners Association International suggested, in its NPR comment, that the use of a computer-controlled washer and dryer is not necessary and that it is the operator's knowledge of the chemistry of wetcleaning and of fabrics, fibers, and dyes that is determinative.[122] It is not clear how this body of knowledge could be incorporated into a definition, however, given that there is no way to ensure that persons who attempt such cleaning will have such knowledge. A regional drycleaners association stated that professional wetcleaning is an emerging technology that "has yet to be standardized."[123]

The Commission has concluded that some level of standardization is necessary before a "Professionally Wetclean" instruction can be placed on garments that are to be sold throughout the entire country. The Commission is encouraged by the fact that, during the year since the workshop took place, standards-setting organizations and other interested participants in this proceeding appear to have been working independently to resolve these outstanding issues. It appears, however, that progress has been slow toward developing a definition and test procedure that would enable manufacturers to have a reasonable basis for a wetcleaning instruction.

The Commission has learned, for example, that although AATCC is close to a final definition for the wetcleaning process, the draft definition appears to be general enough in its terminology that a test procedure would be needed to complement it before manufacturers could have a reasonable basis to determine if their garments would

[119] Presumably, all garments that could be safely washed at home also could be cleaned by professional wet cleaning. The record indicates, however, that the reverse is not true: there are certain garments that can be professionally wet cleaned but cannot be successfully washed and finished at home. Under the Care Labeling Rule, the first category of garments can be labeled for washing. No amendment of the Rule is needed to provide cleaners with the information about cleaning such garments in water. A proposed definition of "professional wet cleaning" needs to focus, therefore, only on the second category of garments, i.e., those that cannot be washed at home but could be professionally wet cleaned.

[120] Although the Rule does not require a manufacturer to conduct testing to establish a reasonable basis (see discussion, Part II.A.1, supra), other indices of reliability, such as past experience, would likely not be present with respect to a new technology such as professional wetcleaning.

[121] Sinsheimer (PPERC) Tr. pp. 179–81, 229, and 241.

[122] NCAI (17) p 2.

[123] SEFA (PW–11) p. 1. SEFA further stated: "Wetcleaning, as practiced in our industry, to date, includes everything from hand washing to computerized equipment to specialized finishing equipment." Id.

survive the process.[124] If, as currently seems to be the case with the AATCC draft, the definition is not sufficiently specific for a manufacturer to make such a determination, there must be a test procedure in place upon which manufacturers can rely before the Commission can amend the Rule in this respect.

It is clear to the Commission that additional time is necessary for standards-setting organizations such as AATCC or ASTM to develop a test procedure.[125] Given the fact that more than one year has already elapsed since the workshop, with development of only a very general draft definition for professional wetcleaning and no agreement on an appropriate test procedure, it appears unlikely that a final test procedure will be established in the near future.

Accordingly, the Commission is not amending the Rule to include a definition and instruction for wetcleaning. If a more specific definition and/or test procedure, which would provide manufacturers with a reasonable basis for a wetcleaning instruction, is developed in the future, the Commission will consider a proposal to add such an instruction to the Rule. In the meantime, the Commission is concluding this rulemaking proceeding.

III. Other Issues Raised in the Comments and the Workshop

Other proposals introduced in the comments or in the workshop included: Care instructions for liquid carbon dioxide; home fabric care instructions for products such as Dryel; a "professionally clean" instruction; and requiring specific dryer temperatures on care labels. Neither the ANPR nor the NPR afforded notice or solicited comment about these issues; hence, their inclusion in the rulemaking proceeding at this final stage would be inappropriate.

The use of liquid carbon dioxide as a cleaning solvent is a new technique that was introduced last year at one site in the United States. Micell Technologies, Inc. ("Micell"), the corporation that developed this new technology and launched it on February 9, 1999, recommended that the Commission require a care instruction for "Liquid Carbon Dioxide Process."[126] In its post-workshop comment, EPA urged the Commission "to begin the process to develop a standard definition and test protocol, and eventually a "Liquid Carbon Dioxide Process" care label instruction requirement."[127]

As noted above, the Commission will consider amending the Rule to recognize a new technology for care label purposes when there is a standard definition of that technology, so that manufacturers can give an instruction for "Method X" with assurance that the "Method X" they are describing (and which they have a reasonable basis to believe will refurbish their garments without damage) is the same "Method X" that cleaners who attempt to clean their garments are using.[128] The development of a standardized process must precede the development of a standardized definition, however, and the standardization of a new technology must, to a large extent, occur within the industry that is offering the new technology to the public. The Commission can help articulate a definition for a new technology when the technology has progressed to a stage where there is at least some standardization of the process. It is not within the Commission's mandate, however, to try to create demand for new technologies that might be environmentally desirable; nor does the Commission have the expertise necessary to evaluate the environmental effects of such new technologies.

Procter & Gamble recommended that the Commission modify the Rule to permit manufacturers to include an optional "home fabric care instruction" on labels of garments that could be cleaned at home with the use of a product such as Dryel, a new product marketed by P&G. P&G described Dryel as an "in-dryer "dryclean only" fabric care product which offers the consumers a convenient, safe and inexpensive method for cleaning and freshening garments at home." P&G also stated that it has developed test methods for Dryel performance.[129]

The Commission does not believe it is appropriate at this time to include in the Rule provisions for labeling for products such as Dryel. The only evidence the record contains about Dryel is evidence P&G submitted in response to the NPR. Hence, inclusion of a labeling instruction for products such as Dryel would be premature. The product can be offered to consumers regardless of whether instructions for its use appear on garment care labels. Indeed, if garment manufacturers wish to recommend the use of this type of product on their garments, they are free to do so as long as they have a reasonable basis for whatever recommendations they give consumers.

The Center for Neighborhood Technology suggested that the Commission consider a "Professionally Clean" label, which would leave the choice of solvent to the cleaner and would encompass both wet and drycleaning, along with future technologies. It also stated that "if a particular garment would not be serviceable in a specific solvent, this label could have an exclusion for that solvent."[130]

The Commission does not believe it is appropriate to include the option of a "Professionally Clean" label in the Rule at this time. Currently, the Rule refers to one method of professional cleaning—drycleaning—and requires the manufacturer to provide warnings when the normal drycleaning process (as defined in the Rule) must be modified to prevent damage to the garment. CNT's proposal for a "Professionally Clean" label would absolve the manufacturer of the responsibility to provide such warnings but would make the manufacturer responsible for warning that particular solvents could not be used on the garment. In fact, however, whether or not certain drycleaning solvents can be used can depend on whether or not warnings (such as, for example, "short cycle") are provided. The responsibility to provide

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[124] According to the Winter, 2000 volume of Wetcleaning Update, published by the Center for Neighborhood Technology, AATCC's RA43 Committee on Professional Textile Care approved the following definition for wetcleaning:

Professional Wetcleaning—A process for cleaning sensitive textiles (e.g., wool, silk, rayon, linen) in water by professionals using special technology, detergents and additives to minimize the potential for adverse effects. It is followed by appropriate drying and restorative finishing procedures.

Wetcleaning Update reported that the Committee on Textile Cleaning of the International Standards Organization also is conducting a ballot on this definition.

[125] As part of a project known as AQUACARB (partially funded by the European Union), six European research institutes are also attempting to develop a test procedure for professional wetcleaning. AATCC is coordinating its efforts with AQUACARB , as well as with research efforts at North Carolina State University. "Dynamics of Change in Professional Garment Cleaning," Textile Chemist and Colorist & American Dyestuff Reporter, December 1999, pp. 38, 41.

[126] Micell (PW–40) p. 1.

[127] EPA (PW–3) p. 2. While not specifically referring to liquid carbon dioxide, Greenpeace (PW–28) also commented, at p. 2, that it encouraged the FTC "to find a way to streamline and accelerate the proper labeling of those [new] processes' and suggested that environmental impact studies are a good way "to objectively prioritize the value of consumer technologies."

[128] If such an instruction is to be the only instruction on the care label, the Commission would also inquire into the accessibility of the method to consumers, who are accustomed to garments that are labeled for one of two widely available cleaning methods, washing or drycleaning.

[129] P&G (34) p. 4.

[130] CNT (30) p. 2, (PW–28) p. 2. PWN (PW–15) p. 1 and EFC9 (PW–37) p. 2 also supported a "Professionally Clean" label.

warnings as to how the normal drycleaning process should be modified for a particular garment is currently placed on the manufacturer. This is appropriate because, as the Commission said when it amended the Rule in 1983, the manufacturer, having chosen all the components of a garment, would be able to determine the "care traits of a given item" and "professional drycleaners may be unable to determine the combination of fibers and finishes used in a particular fabric and thus may not be able to determine the appropriate solvent and drycleaning procedure to be followed." 48 FR 22739.

Consumers Union recommended that the Rule require specific dryer temperatures (instead of "high," "medium," and "low") on care labels that recommend washing and machine drying because there are no standardized temperature definitions in the dryer industry for these words.[131] The Commission agrees that consumers would benefit if the terms that appear on clothes dryers—such as "high," "medium," and "low"—had standardized definitions, and it urges the industry to develop such definitions through private standards-setting organizations.[132] At the present time, the Commission does not believe that requiring specific dryer temperatures on care labels would be helpful to consumers because consumers have no way of knowing the temperature in their clothes dryers.

IV. Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a final regulatory analysis for amendments to a rule only when it (1) estimates that the amendments will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendments will cause a substantial change in the cost or price of goods or services that are used extensively by particular industries, that are supplied extensively in particular geographic regions, or that are acquired in significant quantities by the federal government, or by state or local governments; or (3) otherwise determines that the amendments will have a significant effect upon covered entities and upon consumers. A final regulatory analysis is not required because the Commission finds that the amendments to the Rule will not have such effects on the national economy, on the cost of textile wearing apparel or piece goods, or on covered businesses and consumers.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires agencies to conduct an analysis of the anticipated economic impact of proposed amendments on small businesses.[133] The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Care Labeling Rule covers manufacturers and importers of textile wearing apparel and certain piece goods, and the Commission preliminarily concluded in the NPR that any amendments to the Rule may affect a substantial number of small businesses. For example, unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration ("SBA") show there are 288 manufacturers of men's and boys" suits and coats (SIC Code 2311), more than 75% of which qualify as small businesses under applicable SBA size standards.[134] There are more than 1,000 establishments manufacturing women's and misses' suits, skirts, and coats (SIC Code 2337), most of which are small businesses. Other small businesses are likely covered by the Rule.

Nevertheless, for reasons stated in the NPR, the Commission certified under the RFA that the proposed amendments to the Care Labeling Rule, if promulgated, would not have a significant economic impact on a substantial number of small businesses, and concluded, therefore, that a regulatory analysis was not necessary. To ensure that no significant economic impact was being overlooked, however, the Commission requested comments on this issue. The only commenters to address this issue did so with respect to the proposed amendment to require a home wash instruction for garments that can safely be washed at home " a proposal that the Commission has decided not to adopt at the present time.

The comments addressed no issues with regard to the impact of other proposed amendments on small businesses. The amendment to the reasonable basis provision of the rule is simply a clarification of the fact that the manufacturer or importer must have a reasonable basis for care instructions for the garment as a whole, not simply for the separate components. It does not impose any significant additional burden on covered entities. The amendments to the Rule's definitions of "cold," "warm," and "hot" simply conform the Rule to standards currently used in the textile industry and do not impose any additional burdens on manufacturers and importers. Therefore, the Commission has determined that the Rule will not have a significant impact on a substantial number of small entities and concludes that a regulatory flexibility analysis is not required. In light of the above, the Commission certifies, under section 605 of the RFA, 5 U.S.C. 605, that the Rule amendments adopted herein will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

The Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget Control Number 3084–0103. A notice soliciting public comment on extending the clearance for the Rule through December 31, 2001, was published in the **Federal Register** on October 6, 1999, 64 FR 54324. OMB subsequently extended the clearance until December 31, 2001.

As noted above, the Rule requires manufacturers and importers of textile wearing apparel to attach a permanent care label to all covered items and requires manufacturers and importers of piece goods used to make textile clothing to provide the same care information on the end of each bolt or roll of fabric. These requirements relate to the accurate disclosure of care instructions for textile wearing apparel. Although the Rule also requires manufacturers and importers to base their care instructions on reliable evidence, it does not contain any explicit record keeping requirements. The Rule also provides a procedure whereby an industry member may petition the Commission for an exemption for products that are claimed

[131] Consumers Union (21) p. 4.

[132] Pursuant to section 12(d)(1) and (3) of the National Technology Transfer and Advancement Act of 1995, P.L. 104–13, 110 Stat. 783, when setting standards, federal agencies are required to use "technical standards that are developed or adopted by voluntary consensus standards bodies' except when use of such standards is "inconsistent with other laws or otherwise impractical."

[133] The RFA addresses the impact of rules on "small entities," defined as "small businesses," "small governmental entities," and "small (not-for-profit) organizations," 5 U.S.C. 601. The Rule does not apply to the latter two types of entities.

[134] SBA's revised small business size standards are published at 61 FR 3280 (Jan. 31, 1996).

to be harmed in appearance by the requirement for a permanent label. Such petitions have been filed only rarely in recent years.

In the NPR, the Commission preliminarily concluded that the proposed amendments to the Rule, if enacted, would not increase the paperwork burden associated with these paperwork requirements. The Commission stated that the proposed amendment to change the numerical definitions of the words "hot," "warm," or "cold," when they appear on care labels, would not add to the burden for businesses because they are already required to indicate the temperature in words and to have a reasonable basis for whatever water temperature they recommend. Moreover, businesses would not be burdened with determining what temperature ranges should be included within the terms "hot," "warm," or "cold" because the Rule would provide the appropriate numerical temperatures. OMB regulations, at 5 CFR 1320.3(c)(2), provide that "the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of collection of information]."

The Commission concludes on the basis of the information now before it that the amendments to the Care Labeling Rule adopted herein will not increase the paperwork burden associated with Rule compliance.

VI. Environmental Assessment

In the NPR, the Commission noted that it had prepared a proposed Environmental Assessment in which it analyzed whether the proposed amendments to the Rule were required to be accompanied by an Environmental Impact Statement. Because the main effect of the amendments is to provide consumers with additional information rather than directly to affect the environment, the Commission concluded in the proposed Environmental Assessment that an Environmental Impact Statement is not necessary.[135]

In the NPR, the Commission requested comment on this issue. Consumers Union stated that it believed the proposed amendment to permit labeling for professional wetcleaning (as opposed to requiring labeling for professional wetcleaning) would be a disincentive to the widespread adoption and use of wetcleaning, and therefore the Rule as proposed in the NPR would require an environmental impact statement for its potential negative impacts on the increase of wetcleaning technology.[136] Greenpeace also stated that an environmental impact statement "would be helpful in deciding how to finally amend the proposed Care Labeling Rule."[137]

The Commission has concluded that a final Environmental Assessment and an Environmental Impact Statement are not necessary. The Commission is not amending the Rule at this time to include an instruction for professional wetcleaning. Even if the Commission were deciding to include professional wetcleaning in the Rule, the main effect of that decision would be to provide consumers with additional information rather than directly to affect the environment. With respect to the final amendments of the Rule that are adopted herein, the Commission concludes that there is no discernible effect on the environment.

List of Subjects in 16 CFR Part 423

Clothing; Labeling, Reporting and recordkeeping requirements; Textiles; Trade practices.

VII. Final Amendments

In consideration of the foregoing, the Commission amends title 16, chapter I, subchapter D of the Code of Federal Regulations, as follows:

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS AS AMENDED

1. The authority for part 423 continues to read as follows:

Authority: 38 Stat. 717, as amended; (15 U.S.C. 41, *et seq.*)

2. In § 423.1, the last sentence of paragraph (d) is revised to read as follows:

§ 423.1 Definitions.

* * * * *

(d) * * * When no temperature is given, e.g., *warm* or *cold*, hot water up to 145 degrees F (63 degrees C) can be regularly used.

3. In § 423.6, paragraphs (b)(1)(i) and (c)(3) are revised to read as follows:

§ 423.6 Textile wearing apparel.

* * * * *

(b) * * *

(1) * * *

(i) *Washing.* The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as *cold*, *warm*, or *hot*—that may be used. However, if the regular use of hot water up to 145 degrees F (63 degrees C) will not harm the product, the label need not mention any water temperature. [For example, *Machine wash* means hot, warm or cold water can be used.]

* * * * *

(c) * * *

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole; or

* * * * *

4. In Appendix A to Part 423—Glossary of Standard Terms, paragraphs 1.d. through 1.o. are redesignated as paragraphs 1.e. through 1.p., paragraphs 1.a. through 1.c. are revised, and a new paragraph 1.d. is added to read as follows:

Appendix A to Part 423—Glossary of Standard Terms

1. Washing, Machine Methods:

a. "Machine wash"—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation, and a machine designed for this purpose. When no temperature is given, e.g., "warm" or "cold," hot water up to 145 degrees F (63 degrees C) can be regularly used.

b. "Hot"—initial water temperature ranging from 112 to 145 degrees F [45 to 63 degrees C].

c. "Warm"—initial water temperature ranging from 87 to 111 degrees F [31 to 44 degrees C].

d. "Cold"—initial water temperature up to 86 degrees F [30 degrees C].

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–19491 Filed 8–1–00; 8:45 am]

BILLING CODE 6750–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

RIN 3038–AB46

Exemption From Registration for Certain Foreign FCMs and IBs

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

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[135] The proposed Environmental Assessment is on the public record and is available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, Washington, DC. It can also be obtained at the FTC's web site at http://www.ftc.gov on the Internet.

[136] Consumers Union (21) p. 2.

[137] Greenpeace (27) p. 3.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting amendments to Part 30 of the Commission's rules to include new Rule 30.12.[1] The new rule permits certain foreign firms acting in the capacity of FCMs and IBs to accept and to execute foreign futures and options orders directly from certain U.S. customers without having to register with the Commission. The Commission also is amending Rule 30.1 to include definitions of "foreign futures and options customer omnibus account" and "foreign futures and options broker."

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Proposed Rules

On August 26, 1999, the Commission published proposed amendments to Part 30 of its rules.[2] Part 30 sets forth rules governing the offer and sale of foreign futures[3] and foreign option[4] contracts. For example, with respect to foreign futures or foreign options customers,[5] Rule 30.4 requires any person engaged in the activities of a futures commission merchant ("FCM") or introducing broker ("IB"), as those activities are defined within the rule, to register with the Commission unless such person claims relief from registration under Part 30. The activities that are subject to regulation and that require registration under Part 30 include the solicitation or acceptance of orders for trading any foreign futures or foreign option contract and acceptance of money, securities or property to margin, guarantee or secure any foreign futures or foreign option trades or contracts.[6] Rule 30.10 allows the Commission to exempt a firm from compliance with any or all of the requirements of Part 30.[7]

In response to requests from industry representatives, the Commission proposed to adopt Rule 30.12 to permit certain foreign firms acting in the capacity of FCMs and IBs (referred to herein as foreign futures and options brokers ("FFOBs"))[8] to accept and to execute foreign futures and options orders directly from certain, sophisticated U.S. customers without having to register with the Commission.[9] Prior to the amendment to Part 30 adopted herein, only those FFOBs that were foreign affiliates of U.S. FCMs were permitted, subject to certain terms and conditions set forth in advisories issued by the Division of Trading and Markets ("T&M"), to accept and to execute orders from certain sophisticated U.S. customers, known as "authorized customers," through the FCM's foreign futures and options customer omnibus account.[10] As set forth in the final rule, any unregistered FFOB may accept orders directly from authorized customers for execution for or on behalf of such customers to be carried in the FCM's foreign futures and options customer omnibus account at the FFOB, or to be given up to another unregistered FFOB carrying the FCM's customer omnibus account. The Commission believes that permitting greater flexibility with respect to the direct foreign order transmittal process will provide authorized customers with more efficient access to international futures markets without requiring these customers to forfeit the operational and economic efficiencies that are the natural consequence of having all futures and options transactions carried by a well-capitalized U.S. FCM. The Commission also notes that such an arrangement affords the FCM a more complete picture of aggregate risk that the customer, and hence the FCM, is incurring.

II. Final Rule 30.12

The Commission received seven comment letters on the proposed rulemaking: One from a U.S. commodity exchange; one from the National Futures Association; two from futures industry professional associations; two from U.S. FCMs; and one from a global investment banking firm. The commenters generally supported the relief provided by proposed Rule 30.12, but suggested that the relief did not go far enough with respect to the participants in the direct foreign order transmittal process and the means by which orders may be transmitted. A discussion of the comments follows.

A. Authorized Customers

Proposed Rule 30.12 restricted the direct foreign order transmittal process to certain sophisticated U.S. customers, known as "authorized customers." The Commission derived its definition of "authorized customers" from the list of "eligible swap participants" ("ESPs") in Part 35 of the Commission's rules and the list of customers eligible to participate in the limited foreign order transmittal process set forth in prior advisories issued by T&M. As requested by industry representatives, the Commission also included in its definition certain commodity trading

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[1] Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] 64 FR 46613 (August 26, 1999); 64 FR 46616 (August 26, 1999).

[3] "Foreign futures" means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Rule 30.1(a).

[4] "Foreign option" means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Rule 30.1(b).

[5] "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of [Rule 1.31] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7] of this part." Rule 30.1(c).

[6] *See* Rule 30.4.

[7] In particular, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Act and compliance with certain provisions of Part 30 based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator (referred to herein as "Rule 30.10 relief").

[8] As defined in amended Rule 30.1(e), "foreign futures and options broker" means any person located outside the United States, its territories or possessions that is a member of a foreign board of trade, as defined in Rule 1.3(ss), and is licensed, authorized or otherwise subject to regulation in the jurisdiction in which the foreign board of trade is located; or a foreign affiliate of U.S. futures commission merchant licensed, authorized or otherwise subject to regulation in the jurisdiction in which the affiliate is located.

[9] 64 FR 46618 (August 26, 1999).

[10] *See* CFTC Advisory No. 93–115, Comm. Fut. L. Rep. (CCH) ¶ 25,932 at 41,047 (T&M December 23, 1993)(permitting unregistered foreign affiliates of a U.S. FCM that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customer omnibus account, provided that the affiliate had obtained confirmation of Rule 30.10 relief); CFTC Advisory No. 95–08, Comm. Fut. L. Rep. (CCH) ¶ 26,300 at 42,489 (T&M January 25, 1995)(extending the relief in Advisory No. 93–115 to unregistered foreign affiliates who had not received confirmation of Rule 30.10 relief). For a list of "authorized customers," see CFTC Advisory No. 93–115, ¶ 25,932 at 41,052–053. For a list of the terms and conditions governing the direct foreign order transmittal process under CFTC Advisories Nos. 93–115 and 95–08, see ¶ 25,932 at 41,053–054; ¶ 26,300 at 42,490–491, respectively.

As defined in amended Rule 30.1(d), "foreign futures and options customer omnibus account" means an account in which the transactions of one or more foreign futures or foreign options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures or foreign options customer. The Commission notes that a foreign futures and options customer omnibus account may contain one or more accounts of persons located outside the U.S. (*i.e.*, persons excluded from the definition of "foreign futures or foreign options customer"), provided that all customer funds are treated in a manner consistent with Commission rules.

advisors ("CTAs") and those foreign persons performing a similar function.

Commenters on the proposed rulemaking recommended that the Commission's definition of "authorized customer" be modified in two ways. First, the commenters sought uniformity in defining the class of sophisticated U.S. customers to which less regulatory protections apply. Currently, there exist within Commission rules six definitions of sophisticated U.S. customers: qualified eligible participants, qualified eligible clients, ESPs, eligible participants for exchange transactions under § 4(c) of the Commodity Exchange Act ("Act"), eligible customers for post-execution allocation, and customers for which FCMs and IBs are not required to provide the Rule 1.55 risk disclosure statement. One commenter stated, "[t]his new definition [of "authorized customer"], along with the others, subjects firms to unnecessary compliance burdens without adding any real regulatory benefit." Second, the commenters specifically questioned why the category of persons who are eligible to engage in direct foreign order transmittal should be any more restrictive than the category of persons who are eligible to engage in complex, over-the-counter swap transactions addressed in Part 35.[11]

Upon review of these comments and its own reconsideration of the issue, the Commission has determined to revise the definition of "authorized customer" in the final rule to incorporate those changes recommended by the commenters. The Commission notes, however, that certain characteristics unique to the direct foreign order transmittal process prevent the Commission from merely cross-referencing the definition of an ESP (or any other current class of sophisticated customer) in the definition for "authorized customer." For example, Part 30 generally does not govern the offer and sale of foreign futures and foreign options contracts to persons located outside the U.S.[12] As such, rules regulating the conduct of an FCM (or any firm exempt from such registration) are generally limited to the firm's interaction with U.S. customers or to customers engaged in transactions on U.S. markets. In light of the obligations, discussed below, that will be required of an FCM (or a firm exempt from such registration) flowing from a customer's classification as an "authorized customer," the definition of "authorized customer" does not include persons located outside the U.S. Additionally, at the request of futures industry representatives, Rule 30.12, unlike Part 35, will focus on the financial sophistication of the person managing the assets and not the individual contributors to a commodity pool or the clients of a CTA. As such, Rule 30.12 will permit certain domestic and foreign trading advisors to place orders directly for foreign futures and foreign options contracts for customers that do not otherwise qualify as ESPs. The inclusion of advisors in this context thus provides for greater participation in direct foreign order transmittal than is permitted in swaps.[13]

As previously stated, Rule 30.12 defines an authorized customer, in part, as a foreign futures or foreign options customer that the carrying FCM has authorized to place orders for the account of the FCM's foreign futures and foreign options customer omnibus account. Since non-U.S. persons cannot, by definition, be foreign futures or foreign options customers, Rule 30.12 does not regulate the manner in which they execute foreign futures and option transactions through an FCM's foreign futures and options customer omnibus account. Non-U.S. persons, however, may act on behalf of authorized customers, provided that the non-U.S. persons independently qualify as an eligible direct foreign order transmittal participant. To clarify that non-U.S. persons may act on behalf of authorized customers, the Commission has determined to define "authorized customer" as "[a]ny foreign futures or foreign options customer, as defined in paragraph (c) of § 30.1, *or its designated representative*," that the FCM has authorized to place orders for the account of the FCM's foreign futures and options customer omnibus account.

As noted, the Commission also is incorporating the request from industry representatives to focus on the financial sophistication of the person managing the assets and not on the sophistication of the individual contributors to the clients of a CTA. The Commission is adopting Rule 30.12 to include in the definition of "authorized customer" any person whose investment decisions with respect to foreign futures and foreign option transactions are made by a CTA, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as a CTA under the Act or Commission regulations, or a foreign person performing a similar role or function subject as such to foreign regulation, provided that the CTA has total assets under management exceeding $50,000,000 and that the CTA places the foreign futures or foreign options order. The Commission recognizes that, under this scenario, the contact with the unregistered FFOB is limited to contact with the individual with the demonstrated financial sophistication, *i.e.*, the CTA. For the sake of consistency, the $50,000,000 asset under management test will apply to those CTAs providing the investment decisions for employee benefit plans subject to the Employee Retirement Income Security Act of 1974 that do not independently have total assets exceeding $5,000,000.

B. Carrying FCMs

1. Capital Requirements

In the proposed rulemaking, the Commission proposed to limit direct foreign order transmittal to authorized customers of FCMs whose adjusted net capital exceeds certain minimum requirements. As discussed in the rule proposal, a participating FCM may not be able to prevent an authorized customer from placing orders in excess of its trading limits with an unaffiliated FFOB.[14] Under these circumstances, an FCM may be responsible for the trades even though the positions exceed a customer's trading limits. Therefore, FCMs should possess sufficient capital to meet an unusually large margin call and thereby mitigate the increased systemic risk.[15] Accordingly, as set forth in paragraph (b)(1) of the proposed rule, the Commission proposed to require FCMs whose authorized customers use

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[11] From the list of ESPs, the definition of "authorized customers" in proposed Rule 30.12 excluded: floor brokers, floor traders, employee benefit plans, individuals with net worth in excess of $10,000,000, state and local governments, and non-U.S. persons trading on their own behalf (the latter do not come within the definition of foreign futures or foreign options customer in Rule 30.1(c)).

[12] *But see, e.g.*, Rule 30.9(a)("It shall be unlawful for any person * * * in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction: (a) To cheat or defraud or attempt to cheat or defraud *any other person*." (emphasis added)); *In re Sogemin Metals*, CFTC Docket No. 00–04 (February 7, 2000) (Commission order instituting administrative proceedings against and accepting an offer of settlement from respondent located in the U.S. dealing with non-U.S. customers for trading on a non-U.S. exchange).

[13] *See* Rule 35.1(b)(2).

[14] Financial obligations arising from a customer trading in excess of its limits are resolved according to privately-negotiated contractual arrangements entered into by the customer, the FCM and/or the intermediating FFOBs, and/or the rules of the exchange or clearing organization governing such a transaction.

[15] While some of these risks are present in domestic give-up arrangements, they are mitigated by the fact that on U.S. exchanges all participants to the transaction, including the floor brokers and floor traders, are either clearing members of that exchange or guaranteed by clearing members. Not all foreign exchanges have similar requirements.

direct foreign order transmittal to maintain either $50,000,000 in adjusted net capital as defined by Rule 1.17(c)(5), or three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B).[16] In the alternative, the proposed rule stated that any FCM not satisfying either standard could seek relief from the capital requirement in accordance with the petition process described in Rule 140.99.

Three of the seven commenters addressed the capital requirements for carrying FCMs. One commenter agreed with the Commission that capital requirements are a necessary element of direct foreign order transmittal, but suggested that the standard for adjusted net capital be $50,000,000, or the greater of three times the FCM's capital requirement under Rule 1.17(a)(1)(i)(A) or three times the FCM's capital requirement under Rule 1.17(a)(i)(B) (and not just paragraph (a)(1)(i)(B)). The commenter noted that, under certain circumstances, an FCM possessing adjusted net capital of three times the amount set forth in paragraph (a)(1)(i)(B), i.e., three times four percent of the required segregated and secured amounts, but not (a)(1)(i)(A), i.e., three times $250,000, or $750,000, may not possess sufficient capital to provide the necessary cushion in the event of a systemic failure. The second commenter requested that the Commission more specifically describe the type of showing an FCM would be required to make in order to obtain relief from the capital requirement and recommended that the petition for relief from the capital requirement be made in accordance with Rule 30.10, instead of Rule 140.99. The third commenter questioned whether "less onerous [capital] requirements" for FCMs that cannot satisfy either capital standard are justified.

The Commission has determined to adopt Rule 30.12 by incorporating certain comments regarding the capital requirement for carrying FCMs. As adopted, Rule 30.12 will require that FCMs maintain adjusted net capital of $20,000,000, or the greater of three times the FCM's capital requirement under Rule 1.17(a)(1)(i)(A) or three times the FCM's capital requirement under Rule 1.17(a)(i)(B). After careful consideration, the Commission has determined that $20,000,000 in adjusted net capital provides sufficient cushion to protect against the risk of defaulting authorized customers. Accordingly, the Commission is adopting, for those FCMs who do not meet the requirement to maintain at least triple their minimum capital requirement under Rule 1.17, a $20,000,000 minimum adjusted net capital figure rather than the proposed $50,000,000. The decrease in the minimum capital requirement is consistent with the Commission's recent proposal to permit FCMs with at least $20,000,000 in adjusted net capital to act as intermediaries for non-institutional customers on derivatives transaction facilities.[17]

The Commission believes that the decrease in the required minimum capital for FCMs under Rule 30.12 as amended as compared to proposed Rule 30.12 should reduce the need for relief from this requirement. The Commission further believes that any request for relief from this capital requirement must be addressed on a case-by-case basis and believes that a petition for relief from this requirement should be made in accordance with Rule 140.99. The Commission expects that any FCM seeking relief from the Rule 30.12 capital requirement shall be required to likewise demonstrate its ability to mitigate the risk associated with the activities of its authorized customers, including, but not limited to, the use of internal controls to evaluate on an ongoing basis the risk of default for any given authorized customer.

2. Internal Controls

The proposed rulemaking also required carrying FCMs to institute internal controls designed to regulate the direct foreign order transactions entered into by authorized customers (or their designated representatives), including procedures to determine which customers qualify as authorized customers and to monitor the FCM's risk relative to its authorized customers' risk aggregated across all markets. The Commission did not receive any comments dealing with these aspects of the proposed rule.

3. Disclosure

The Commission received one comment regarding the requirement that carrying FCMs furnish a written disclosure to each authorized customer advising the customer of the additional risks the customer may be assuming in placing orders directly with an FFOB. The commenter inquired whether the FCM may provide the disclosure as a separate document or as additional text in the customer account agreement. Either method will be acceptable. The Commission also has determined to eliminate from the final rule the requirement that the written disclosure be "in a form acceptable to the Commission." In light of the existing requirement for written disclosures to track the language set forth in the rule, the requirement as to form is superfluous. Accordingly, paragraphs (b)(3)(i) and (ii) have been combined into one paragraph for the final rule.

C. Eligibility Requirements for Foreign Futures and Options Brokers

Proposed Rule 30.12 would have required participating foreign brokers to be FFOBs, as defined in Amended Rule 30.1(e), and either a clearing member of the foreign exchange on which the trade is executed, a majority-owned affiliate of such a clearing member, or an affiliate of the FCM carrying the authorized customer's account. Amended Rule 30.1(e) defines FFOB to mean a non-U.S. person that is a member of a foreign board of trade, as defined in Rule 1.3(ss), licensed, authorized or otherwise subject to regulation in the jurisdiction where the foreign board of trade is located, or a foreign affiliate of a U.S. FCM, licensed, authorized or otherwise subject to regulation in the jurisdiction where the affiliate is located.

Two commenters addressed the eligibility requirements for foreign brokers. While one commenter recommended that Rule 30.12 require a participating foreign broker to be an FFOB and either a clearing member on any foreign exchange (or its majority-owned affiliate) or an affiliate of any FCM, another commenter stated that any FFOB should be eligible to participate in the direct foreign order transmittal process.

In light of these comments and the foreign order transmittal-specific risk disclosure to be distributed by each authorized customer's FCM, combined with the sophisticated nature of the participating customers and the required internal controls for FCMs, the Commission has determined that the additional layer of protection set forth in the eligibility requirements for foreign brokers is not necessary. Accordingly, the adopted rule only will require participating foreign brokers to

[16] Rule 1.17(a)(1)(i)(B). Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of various defined amounts, including:

(A) $250,000, or

(B) Four percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured accounts.

[17] 65 FR 39006 (June 22, 2000).

be FFOBs, as defined in Amended Rule 30.1(e).

Commenters also requested that the Commission clarify the application of Rule 30.12 with respect to FFOBs that carry the customer account for any foreign futures and options customer directly rather than on an omnibus basis. The Commission confirms that an FFOB that directly carries the customer account for any foreign futures and options customer may permit that customer to place orders directly with another FFOB in accordance with the procedures set forth herein, provided that: (i) The carrying FFOB has registered as an FCM, or has applied for and received confirmation of Rule 30.10 relief in accordance with existing procedures; (ii) the carrying FFOB complies with the terms and conditions set forth in the rule; and (iii) the foreign futures and options customer qualifies as an authorized customer. Additionally, the Commission confirms that authorized customers of FCMs that maintain a customer omnibus account with a single foreign affiliate who, in turn, maintains customer omnibus accounts with clearing brokers at foreign exchanges also may participate in the direct foreign order transmittal process described in Rule 30.12.

D. Automated Order Routing Systems

Proposed Rule 30.12 permitted qualifying FFOBs to accept orders directly from authorized customers only via telephone, facsimile and email. The relief from registration under proposed Rule 30.12 did not extend to orders placed directly with FFOBs via automated order routing systems ("AORSs"). With one exception, the commenters generally requested that the Commission modify proposed Rule 30.12 to permit FFOBs to accept orders placed via AORSs.

The Commission has determined to revise Rule 30.12 to permit qualifying FFOBs to accept orders directly from authorized customers via an AORS.[18] The Commission notes that the requirement for each carrying FCM to establish control procedures governing the direct contacts between authorized customers and FFOBs and to have in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets applies regardless of whether the authorized customer places the order via telephone, facsimile, e-mail or an AORS.

E. Effect of the Adopted Rule

In the proposed rulemaking, the Commission noted that Rule 30.12, if adopted, would replace prior T&M advisories as the sole source of authorization for unregistered FFOBs to accept orders directly from foreign futures and options customers. The Commission invited comment from any party adversely affected by that determination. Having received no comment on this issue, the Commission hereby rescinds CFTC Advisories Nos. 93–115 and 95–06. Adopted Rule 30.12 will apply to all regulated activities with all current and new foreign futures and foreign options customers as of the effective date of the new rule. As a point of clarification, adopted Rule 30.12 will not apply to brokerage activities originating with non-U.S customers. Additionally, this rule does not amend, abrogate or otherwise alter the transactional relationship between any U.S. foreign futures and foreign options customer and any non-U.S. firm that has received confirmation of Rule 30.10 relief. With respect to U.S. customers, a firm with Rule 30.10 relief must continue to abide by the local laws, rules and regulations deemed acceptable for substituted compliance by the Commission, as well as the Commission laws and regulations outlined in orders issued by the Commission.

III. Amendments to Rule 30.1

In the **Federal Register** notice issued concurrently with proposed Rule 30.12, the Commission proposed, among other things, to amend Rule 30.1 to include definitions for "foreign futures and options customer omnibus account" and FFOBs.[19] Currently, for purposes of Parts 15 through 21 of the Act, Rule 15.00(a)(1) defines the term "foreign broker" to mean "any person located outside the United States or its territories who carries an account in commodity futures or commodity options on any contract market for any other person." For the sake of clarity, the Commission believes that a formal definition of FFOB is necessary to distinguish it from the definition of "foreign broker." Having gradually expanded the relief associated with direct foreign order transmittal by reference to customer omnibus accounts, it is also appropriate to define the term "foreign futures and options customer omnibus account." The Commission did not receive any comments regarding either of the proposed definitions. Accordingly, the Commission is adopting the proposed definitions of "foreign futures and options customer omnibus account" and "foreign futures and options brokers" as Rules 30.1(d) and (e), respectively.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[20] The Commission previously has determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.[21] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[22] Due to the minimum requirements for the amount of money under management for eligible CTAs under Rule 30.12, the Commission believes that it is unlikely that firms defined as small businesses could qualify as an authorized customer for the purpose of engaging in direct order transmittal. Further, the final rule would not add any legal, accounting, consulting or expert costs because the determination of whether a business qualifies as an authorized person requires minimal analysis of data that will be readily accessible. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. These rules contain information collection requirements. As required by the PRA, the Commission has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)). In response

[18] For purposes of Rule 30.12, an AORS generally means any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where trade matching or execution takes place.

[19] 64 FR 46613.

[20] 47 FR 18618–18621 (April 30, 1982).

[21] 47 FR 18619–18620.

[22] 47 FR 18618–18620.

to the Commission's invitation in the proposed rulemakings to comment on any potential paperwork burden associated with these rules, no comments were received.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.1 is amended by adding paragraphs (d) and (e) to read as follows:

§ 30.1 Definitions.

* * * * *

(d) *Foreign futures and options customer omnibus account* is defined as an account in which the transactions of one or more foreign futures and foreign options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures or foreign options customer.

(e) *Foreign futures and options broker* (FFOB) is defined as a non-U.S. person that is a member of a foreign board of trade, as defined in § 1.3(ss) of this chapter, licensed, authorized or otherwise subject to regulation in the jurisdiction in which the foreign board of trade is located; or a foreign affiliate of a U.S. futures commission merchant, licensed, authorized or otherwise subject to regulation in the jurisdiction in which the affiliate is located.

3. Section 30.12 is added to read as follows:

§ 30.12 Direct Foreign Order Transmittal.

(a) *Authorized customers defined.* For the purposes of this section, an "authorized customer" of a futures commission merchant shall mean any foreign futures or foreign options customer, as defined in § 30.1(c), or its designated representative, that:

(1) The futures commission merchant has authorized to place orders for the account of the futures commission merchant's foreign futures and options customer omnibus account; and

(2)(i) Is an eligible swap participant, as defined in § 35.1(b)(2) of this chapter, or

(ii) Whose investment decisions with respect to foreign futures and foreign option transactions are made by a commodity trading advisor subject to regulation under the Act, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as a commodity trading advisor under the Act or Commission regulations, or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that the commodity trading advisor has total assets under management exceeding $50,000,000 and that the commodity trading advisor places the foreign futures or foreign options order.

(b) *Procedures for futures commission merchants.* It shall be unlawful for any futures commission merchant to permit an authorized customer to place orders for execution in the futures commission merchant's foreign futures and options customer omnibus account directly with a person exempt from registration under paragraphs (c) and (d) of this section, unless, such futures commission merchant:

(1) Meets one of the following capital requirements, as determined by the futures commission merchant's most recent required filing of a Form 1–FR–FCM with the Commission:

(i) Possesses $20,000,000 in adjusted net capital, as defined by § 1.17(c)(5) of this chapter; or

(ii) Possesses the greater of three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(A) of this chapter or three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(B) of this chapter; and

(2) Has established control procedures that will serve as guidelines for permitting direct contacts between any authorized customer of the futures commission merchant and any person exempt from registration under paragraphs (c) or (d) of this section, and has in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets, including, but not limited to, procedures to ensure that each authorized customer satisfies the participation criteria set forth in paragraph (a) of this section and to specify the manner in which trades may be executed through its customer omnibus account pursuant to this section;

(3) Furnishes a written disclosure statement to each such authorized customer advising the customer of the additional risks the customer may be assuming in placing orders directly with the foreign broker. The disclosure statement must read as follows:

Direct Order Transmittal Client Disclosure Statement

This statement applies to the ability of authorized customers [1] of [FCM] to place orders for foreign futures and options transactions directly with non-US entities (each, an "Executing Firm") that execute transactions on behalf of [FCM's] foreign futures and options customer omnibus accounts.

Please be aware of the following should you be permitted to place the type of orders specified above.

- The orders you place with an Executing Firm are for [FCM's] foreign futures and options customer omnibus account maintained with a foreign clearing firm. Consequently, [FCM] may limit or otherwise condition the orders you place with the Executing Firm.
- You should be aware of the relationship of the Executing Firm and [FCM]. [FCM] may not be responsible for the acts, omissions, or errors of the Executing Firm, or its representatives, with which you place your orders. In addition, the Executing Firm may not be affiliated with [FCM]. If you choose to place orders directly with an Executing Firm, you may be doing so at your own risk.
- It is your responsibility to inquire about the applicable laws and regulations that govern the foreign exchanges on which transactions will be executed on your behalf. Any orders placed by you for execution on that exchange will be subject to such rules and regulations, its customs and usages, as well as any local laws that may govern transactions on that exchange. These laws, rules, regulations, customs and usages may offer different or diminished protection from those that govern transactions on US exchanges. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction. United States regulatory authorities may be unable to compel the enforcement of the rules of regulatory authorities or markets in non-US jurisdictions where transactions may be effected.
- It is your responsibility to determine whether the Executing Firm has consented to the jurisdiction of the courts in the United States. In general, neither the Executing Firm nor any individuals associated with the Executing Firm will be registered in any capacity with the Commodity Futures Trading Commission. Similarly, your contacts with the Executing Firm may not be sufficient to subject the Executing Firm to the

[1] You should contact your account executive regarding your eligibility to participate in the direct order transmittal process.

jurisdiction of courts in the United States in the absence of the Executing Firm's consent. Accordingly, neither the courts of the United States nor the Commission's reparations program may be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.

• Unless you object within five (5) days, by giving notice as provided in your customer agreement after receipt of this disclosure, [FCM] will assume your consent to the aforementioned conditions.

(c) *Exemption for foreign futures and options brokers.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant or as an introducing broker will be exempt from such registration, notwithstanding that such person accepts orders for foreign futures and foreign options transactions from authorized customers of a registered futures commission merchant that meets the requirements of paragraph (b)(1) of this section, provided, that:

(1) The orders are executed for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant;

(2) The person does not solicit or accept any money, securities or property (or extend credit in lieu thereof) directly from any U.S. foreign futures and options customer to margin, guarantee or secure any trades or contracts that result or may result therefrom; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

(d) *Exemption for foreign futures and options brokers carrying a foreign futures and options customer omnibus account.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant will be exempt from such registration, notwithstanding that such person:

(1) Carries the foreign futures and options customer omnibus account of a futures commission merchant that meets the requirements of paragraph (b)(1) of this section;

(2) Accepts orders for foreign futures and foreign options transactions from authorized customers for the execution of the trades for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant either directly or pursuant to a give-up arrangement; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

Dated: July 27, 2000.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–19444 Filed 8–1–00; 8:45 am]

BILLING CODE 8351–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 231, and 271

[Release Nos. 33–7877; IC–24582; File No. S7–14–00]

RIN 3235–AH93

Exemption From Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act for Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule with request for comments.

SUMMARY: The Securities and Exchange Commission is adopting, as an interim final rule, rule 160 under the Securities Act of 1933 to exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act ("Electronic Signatures Act") prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. Consistent with Commission interpretations of existing law, the rule permits a registered investment company to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining investor consent to the electronic format of the prospectus. The Commission also is clarifying its interpretation on the responsibility of registered investment companies for hyperlinks to third-party web sites from their advertisements or sales literature.

DATES: *Effective Date:* October 1, 2000, except for the amendments to parts 231 and 271, which are effective July 27, 2000.

Comment Date: We are publishing interim final regulations, rather than a notice of proposed rulemaking, for the reasons given below in the section entitled "Waiver of Proposed Rulemaking and Request for Comments." We will, however, consider any comments received on or before September 1, 2000, and will revise rule 160 if necessary.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–14–00; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).[1]

FOR FURTHER INFORMATION CONTACT: Maura S. McNulty, Senior Counsel, or Kimberly Dopkin Rasevic, Assistant Director, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting rule 160 [17 CFR 230.160] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") as an interim final rule pursuant to Section 104(d)(2) of the Electronic Signatures Act.

I. Exemption from Consumer Consent Requirements of the Electronic Signatures Act

A. Discussion

We are adopting, as an interim final rule, rule 160 under the Securities Act to exempt from the consumer consent requirements of the Electronic Signatures Act prospectuses of registered investment companies ("funds") that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. The rule implements Section 104(d)(2) of the Electronic Signatures Act, which directs the Commission to provide this exemption within 30 days after the date of enactment.[2] Rule 160, consistent with Commission interpretations of existing law, permits a fund to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining

[1] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, § 104(d)(2).

an investor's consent to the electronic format of the prospectus.[3]

The Electronic Signatures Act

On June 30, 2000, President Clinton signed the Electronic Signatures Act into law. The Electronic Signatures Act is designed to facilitate the use of electronic records and signatures in interstate or foreign commerce.[4] Among other things, the Act provides that if a statute or regulation requires that information relating to a transaction in interstate commerce be provided to a consumer in writing, the use of an electronic record to provide the information satisfies the "writing" requirement if the consumer consent requirements of the Electronic Signatures Act are met.[5]

Section 104(d)(2) of the Electronic Signatures Act directs the Commission to issue a regulation or order, within 30 days after the date of enactment, exempting from the Act's consumer consent requirements "any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by [a registered] investment company * * * to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act * * *." The purpose of this exemption is "to clarify that documents, such as sales literature, that appear on the same [w]eb site as, or which are hyperlinked to, the final prospectus required to be delivered under the federal securities laws, can continue to be accessed on a [w]eb site as they are today under [Commission] guidance for electronic delivery."[6]

Section 5(b)(1) and Section 2(a)(10)(a) of the Securities Act

Section 5(b)(1) of the Securities Act prohibits the use of interstate commerce to transmit any "prospectus" relating to a security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act.[7] "Prospectus" is broadly defined in Section 2(a)(10) of the Securities Act to include any advertisement or communication, "written or by radio or television, which offers any security for sale."[8] Because the term "offer" is defined and interpreted broadly under the Securities Act, written or broadcast communications that relate to a security or that aid in the selling effort with respect to a security generally must be in the form of a Section 10 prospectus to comply with Section 5(b)(1).[9]

There is a limited exception to the general requirement that written or broadcast offers after the filing of a registration statement must be in the form of a Section 10 prospectus. So-called "supplemental sales literature" may be used after the effective date of a registration statement if it is preceded or accompanied by a prospectus that meets the requirements of Section 10(a) of the Securities Act ("statutory prospectus").[10] Many investment companies, particularly mutual funds, continuously offer and sell their shares, and are continuously subject to the restrictions on communications imposed by Section 5(b)(1).[11] As a result, investment companies frequently rely on the "supplemental sales literature" exception.

Rule 160

Commission interpretations of existing law permit a fund to provide its supplemental sales literature on its web site or by other electronic means without first obtaining an investor's consent to receive in electronic form the statutory prospectus that is required to precede or accompany the supplemental sales literature.[12] Rule 160 would clarify that a fund may continue this practice after the effective date of the Electronic Signatures Act. Specifically, the rule would provide that a prospectus for an investment company registered under the Investment Company Act of 1940 that is sent or given for the sole purpose of permitting a communication not to be deemed a prospectus under Section 2(a)(10)(a) of the Securities Act is exempt from the consumer consent requirements of the Electronic Signatures Act. We remind funds, however, that we do not consider supplemental sales literature that is electronically delivered to have been preceded or accompanied by an electronic statutory prospectus unless investors are provided with reasonably comparable access to both the prospectus and the supplemental sales literature.[13]

The exemption provided by rule 160 is not available when a fund prospectus is provided to an investor for a purpose other than, or in addition to, permitting the fund's supplemental sales literature not to be deemed a prospectus under Section 2(a)(10)(a) of the Securities Act. For example, if an investor who views a fund's prospectus and supplemental sales literature on its web site subsequently purchases shares of the fund, rule 160 will not apply to the delivery of the prospectus that is required in connection with the purchase.[14]

Today we express no view regarding how the Electronic Signatures Act affects the federal securities laws. We are continuing to consider the implications of the Electronic Signatures Act on securities transactions.

B. Procedural Matters

Waiver of Proposed Rulemaking and Request for Comments

Under the Administrative Procedure Act ("APA"), the Commission may issue a final rule without prior notice and comment upon a finding of good cause.[15] We find that good cause exists for dispensing with the normal notice and comment requirements of the APA in connection with interim final rule 160.

Congress directed the Commission to issue, within 30 days after the date of enactment of the Electronic Signatures Act, a rule exempting from the consumer consent requirements of the Act fund prospectuses that are used for the purpose of permitting sales literature to be provided to prospective investors. It is impracticable for the Commission to comply with the normal notice and comment requirements within the mandated 30-day period. In making the determination that good cause exists for waiving notice and comment, we also note that rule 160 will make no changes to Commission

[3] *See* Securities Act Release No. 7856 (April 28, 2000) [65 FR 25843 (May 4, 2000)], at 25847 (the "2000 Release"); Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)], at 53463 and 53465, Ex. 14, Ex. 15, Ex. 34, and Ex. 35.

[4] Electronic Signatures Act preamble.

[5] Electronic Signatures Act § 101(c)(1).

[6] *See* 146 Cong. Rec. H4359 (daily ed. June 14, 2000) (statement of Rep. Dingell).

[7] 15 U.S.C. 77e(b)(1).

[8] 15 U.S.C. 77b(a)(10).

[9] Section 2(a)(3) of the Securities Act defines the term "offer" to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 15 U.S.C. 77b(a)(3).

[10] Under Section 2(a)(10)(a) of the Securities Act, supplemental sales literature that is preceded or accompanied by a prospectus meeting the requirements of Section 10(a) is not considered to be a prospectus and therefore is not subject to Section 5(b)(1) of the Securities Act.

[11] 15 U.S.C. 77e(b)(1). A "mutual fund" is a managed open-end investment company that issues redeemable securities. Section 5(a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(a)(1).

[12] *See* 2000 Release, *supra* note 3.

[13] *See* 2000 Release, *supra* note 3, at 25846, n. 34.

[14] *See, e.g.*, Section 5(b)(2) of the Securities Act, 15 U.S.C. 77e(b)(2) (statutory prospectus must precede or accompany securities delivered by mail or in interstate commerce).

[15] Under section 553(b)(3)(B) of the APA, the Commission may dispense with prior notice and comment when it finds, for good cause, that such notice and public comment are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B).

interpretations of existing law or industry practice. Thus, the Commission finds that the Congressional directive and the absence of any negative effect of the rule on any interested parties render observation of the normal notice and comment requirements under the APA impracticable and unnecessary.

Rule 160 will be effective October 1, 2000, the effective date for the consumer consent requirements of the Electronic Signatures Act. Although the Commission has dispensed with prior notice of proposed rulemaking, the Commission is interested in receiving written comments on the rule within 30 days after its publication in the **Federal Register**. The Commission will consider those comments and make changes to the rule if necessary.

Paperwork Reduction Act

This interim final rule does not contain a collection of information.

Cost/Benefit Analysis

The Commission is sensitive to the costs imposed by its rules. We anticipate that rule 160 will not impose any new regulatory costs on funds, since the rule would provide an exemption from the consumer consent requirements of the Electronic Signatures Act. Moreover, because the rule makes no changes to Commission interpretations of existing law or industry practice, it should not produce any new costs. However, we request that commenters address the costs and benefits of the rule, and provide supporting empirical data for any positions advanced.

Consideration of Burden on Promotion of Efficiency, Competition, and Capital Formation

Rule 160 is being issued as an interim final rule. In accordance with its responsibilities under Section 2(b) of the Securities Act, the Commission, in determining whether rule 160 is consistent with the public interest, has considered, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[16] Because the rule makes no changes to prior Commission interpretations of existing law or industry practice, it should not affect efficiency, competition, or capital formation. The Commission is, however, interested in receiving any comments regarding rule 160's impact on efficiency, competition, and capital formation. We will consider those comments in making any changes to the rule if necessary. Likewise, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[17] the Commission is interested in receiving information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that rule 160 will not have a significant economic impact on a substantial number of small entities. Rule 160 provides an exemption from the consumer consent requirements of the Electronic Signatures Act, effective on the date the Act goes into effect. The rule will make no changes to Commission interpretations of existing law or industry practice. Moreover, all registered investment companies that are small entities will qualify for the exemptive relief provided by rule 160. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities. We include the Certification in this release as Attachment A. Although rule 160 is being issued as an interim final rule, the Commission is interested in receiving written comments relating to the Certification. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

II. Clarification of Guidance on Responsibility for Hyperlinked Information

In the Commission's April release on the use of electronic media (the "2000 Release"), we expressed our view that when an issuer embeds a hyperlink to a web site within a document that is required to be filed or delivered under the federal securities laws, the issuer should always be deemed to be adopting the hyperlinked information for purposes of the antifraud provisions of the federal securities laws.[18] We wish to clarify, effective immediately, that this view does not extend to a mutual fund's responsibility for hyperlinks to third-party web sites from fund advertisements or sales literature.[19]

Mutual funds, unlike operating companies, are required to file their advertisements and sales literature with the Commission.[20] We do not believe, however, that it follows from this filing requirement that a mutual fund, unlike an operating company, should always be responsible for third-party information to which it establishes a hyperlink from an advertisement or sales literature, without regard to the specific facts and circumstances.

The issue of whether a fund should be deemed to have adopted information on a third-party web site to which a fund advertisement or sales literature is hyperlinked should be resolved by reference to the factors set forth in the 2000 Release, as applied to the specific facts and circumstances.[21] In addition, when a fund is in registration, if the fund establishes a hyperlink from its web site to information that meets the definition of an "offer to sell," "offer for sale," or "offer" under Section 2(a)(3) of the Securities Act, a strong inference arises that the fund has adopted that information for purposes of Section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5.[22]

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[16] Section 2(b) of the Securities Act, 15 U.S.C. 77b(b), requires the Commission, when determining whether a rule is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[17] Pub. L. No. 104–21, Title II, 110 Stat. 857 (1996).

[18] *See* 200 Release, *supra* note 3, at 25847, n. 41 and 25849. In the 2000 Release, we indicated that an issuer could be liable for third-party information to which the issuer establishes a hyperlink under either an "entanglement" or "adoption" theory. *Id.* at 25848–9. Here, we discuss the "adoption" theory only.

[19] Our references to mutual fund advertisements and sales literature include rule 482 advertisements, 17 CFR 230.482, tombstone advertisements, 17 CFR 230.134, supplemental sales literature, 15 U.S.C. 77b(a)(10)(a), and generic advertisements, 17 CFR 230.135a.

See Letter dated June 19, 2000, from the Investment Company Institute ("ICI Letter") and Letter dated June 16, 2000, from Fidelity Investments ("Fidelity Letter"), available in SEC Public Reference File S7–11–00 (requesting clarification on responsibility of mutual funds for hyperlinks to third-party web sites from advertisements or sales literature).

[20] *See* Section 24(b) of the Investment Company Act, 15 U.S.C. 80a–24(b). Pursuant to rule 24b–3 under the Investment Company Act, funds generally satisfy this requirement by filing advertisements and sales literature with NASD Regulation, Inc. 17 CFR 270.24b–3.

The filing requirements of Section 24(b) apply to registered unit investment trusts and registered face-amount certificate companies, as well as to mutual funds. We have used the term "mutual fund" in this section for simplicity, but we also intend our statements about mutual funds to apply to registered unit investment trusts and registered face-amount certificate companies. Closed-end investment companies are not subject to Section 24(b), and they are not covered by out statements about mutual funds.

[21] These factors include the context of the hyperlink, the presence or absence of precautions against investor confusion about the source of the information, and the presentation of hyperlinked information. *See* 2000 Release, *supra* note 3, at 25848–9. As we stated in the 2000 Release, these factors form a useful framework for analysis, but they are not intended to be exclusive or exhaustive.

[22] *See* 2000 Release, *supra* note 3, at 25849.

A fund may hyperlink to third-party web sites for a variety of reasons in a variety of circumstances, including links to educational materials such as our Mutual Fund Cost Calculator and continuous links to independent third-party news and information sources.[23] We wish to encourage mutual funds to provide information to investors that will educate them and assist them in making informed investment decisions. We also wish to discourage funds from providing information to investors that is inaccurate or misleading. Both goals are furthered by considering all the facts and circumstances in determining whether a fund has adopted information on a third-party web site to which a fund advertisement or sales literature is hyperlinked.[24]

III. Statutory Authority

The Commission is adopting rule 160 pursuant to authority set forth in Section 19(a) of the Securities Act [15 U.S.C. 77*s*(a)] and Section 104(d) of the Electronic Signatures Act.

List of Subjects

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 231

Securities.

17 CFR Part 271

Investment companies, Securities.

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 is amended by adding the following citation:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z-3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

Section 230.160 is also issued under Section 104(d) of the Electronic Signatures Act.

* * * * *

2. Section 230.160 is added to read as follows:

§ 230.160. Registered investment company exemption from Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act.

A prospectus for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that is sent or given for the sole purpose of permitting a communication not to be deemed a prospectus under section 2(a)(10)(a) of the Act (15 U.S.C. 77b(a)(10)(a)) shall be exempt from the requirements of section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 231 is amended by adding Release No. 33–7877 and the release date of July 27, 2000, to the list of interpretative releases.

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 271 is amended by adding Release No. IC–24582 and the release date of July 27, 2000, to the list of interpretative releases.

Dated: July 27, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Attachment A to the preamble will not appear in the Code of Federal Regulations.

Attachment A.—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. Section 605(b), that rule 160 under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (Release No. 33–7877) would not have a significant economic impact on a substantial number of small entities. The rule would exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act [Pub. L. No. 106–229] prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors.

The rule will make no changes to Commission interpretations of existing law or industry practice. Moreover, all registered investment companies that are small entities will qualify for the exemptive relief provided by rule 160. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities.

Dated: July 24, 2000.

Arthur Levitt,

Chairman

[FR Doc. 00–19446 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–U

[23] Securities and Exchange Commission, *The SEC Mutual Fund Cost Calculator* (last modified December 6, 1999) <http://www.sec.gov/mfcc/mfcc–int.htm>.

[24] Commenters on the 2000 Release have requested that we provide additional guidance for determining when a mutual fund is responsible for third-party information to which the fund establishes a hyperlink. *See* ICI Letter, *supra* note 19; Fidelity Letter, *supra* note 10. We have asked the Division of Investment Management to consider this suggestion.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 161, 250, and 284

[Docket Nos. RM98–10–005 and RM98–12–005; Order No. 637–B]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

Issued July 26, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order denying requests for rehearing and providing clarification of Order No. 637–A [65 FR 35705, Jun. 5, 2000]. Order No. 637 revised Commission regulations to enhance the competitiveness and efficiency of the interstate pipeline grid. The rehearing and clarification requests addressed in the order principally relate to posting and bidding requirements for pre-arranged capacity release transactions and segmentation. The order also addresses requests related to penalties, reporting requirements, and the right of first refusal (ROFR).

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Robert A. Flanders, Office of Markets, Tariffs, and Rates Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426, (202) 208–2084.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

In Order No. 637–A,[1] issued on May 19, 2000, the Commission denied in part and granted in part rehearing of Order No. 637,[2] and clarified its policies as they relate to the regulatory changes made in Order No. 637. Order Nos. 637 and 637–A revised the Commission's open access regulations to improve the efficiency of the market and to provide captive customers with the opportunity to reduce their cost of holding long-term pipeline capacity, while continuing to protect against the exercise of market power. Specifically, Order Nos. 637 and 637–A granted a waiver for a limited period of the price ceilings for short-term released capacity; revised the Commission's regulatory approach to pipeline pricing in order to enhance the efficient allocation of capacity; revised regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties to improve the efficiency and competitiveness of the pipeline grid; revised pipeline reporting requirements to provide greater transparency; and revised the right of first refusal (ROFR) to remove economic biases.

In Order No. 637–A, the Commission upheld the regulations adopted in Order No. 637, making only minor adjustments relating to penalties, reporting requirements, and the ROFR. The Commission also responded to requests for clarification and explained its policies relating to implementation of the regulations adopted in Order No. 637.

Twenty-one requests for rehearing or clarification of Order No. 637–A were filed.[3] The principal requests relate to the issues of posting and bidding requirements for pre-arranged capacity release transactions at the maximum tariff rate and the requirement that pipelines permit shippers to segment capacity as well as Commission policies as they relate to segmentation. There also are a few requests for rehearing or clarification relating to the penalty provisions, reporting requirements, and the ROFR.

As discussed below, this order denies the requests for rehearing. The order does not address rehearing or clarification requests that were fully discussed in Order No. 637–A or that are not generic, but relate to particular pipelines or potential issues that may arise in filings. These issues include requests by the Pa. Office of Consumer Advocate about pipeline filings to implement capacity auctions, by AGA, El Paso, and DTI relating to the mechanics of the ROFR pricing policy, and by National Fuel regarding the receipt and delivery points available to a shipper exercising its ROFR for a volumetric portion of its capacity. These concerns can be addressed in specific cases, if they arise.

I. Exemption from the Posting and Bidding Requirements for Pre-Arranged Capacity Release Transactions at the Previous Maximum Rate

In Order No. 637, the Commission granted a waiver of the maximum rate ceiling applicable to short-term capacity release transactions until September 30, 2002. The Commission, however, retained the pre-existing posting and bidding requirements for capacity release transactions.[4] Under the Commission regulations issued in Order No. 636 and continued in Order No. 637, the Commission requires all capacity release transactions, including prearranged deals, to be posted for bidding with two exceptions. First, pre-arranged deals for 31 days or less are not subject to posting and bidding, but any rollover or continuation of such transactions is subject to bidding. Second, transactions at the "maximum rate applicable to the release" are exempt from posting and bidding.[5]

On rehearing of Order No. 637, a number of shippers sought rehearing or clarification regarding the continued applicability to short-term capacity release transactions of the prior exemption from posting and bidding for prearranged capacity release transactions at the maximum tariff rate. They contended local distribution companies should be permitted to enter into pre-arranged transactions at the maximum tariff rate without having those transactions subject to the posting and bidding requirements. They argued that maintaining pre-arranged transactions at the maximum rate would facilitate state retail unbundling programs.

In Order No. 637–A, the Commission denied the rehearing and clarification requests. The Commission explained that the current regulation exempted transactions at the "maximum rate applicable to the release," so that once the maximum rate ceiling was removed, all transactions (except for transactions qualifying for the 31 days or less exemption) would be subject to the posting and bidding requirements. In order to ensure that the regulations are clear, the Commission amended 284.8 (i) to specify that the exemption from the posting and bidding requirements for transactions at the maximum rate would not apply to short-term capacity release transactions as long as the waiver of the maximum rate ceiling is in effect.

In denying rehearing, the Commission found that requiring posting and bidding is necessary to ensure that capacity is equally available to all shippers and to protect against undue discrimination and the exercise of market power.[6] The Commission also explained that in individual cases where an LDC considers an exemption from the posting and bidding requirement essential to further a state retail unbundling program, it, together with the appropriate state regulatory agency, may request the Commission to waive the regulation. If the LDC seeks such a waiver, the Commission stated the LDC should be prepared to have all of its capacity release transactions and any re-releases of that capacity limited to the applicable maximum rate for pipeline capacity.

AGA, UGI, Florida Cities, Dominion LDCs, New England Local Distribution Cos., Pa. Office of Consumer Advocate, and National Fuel seek rehearing of the Commission's determination to require posting and bidding for transactions at the previous maximum tariff rate for release transactions. They also request that local distribution companies not be required to relinquish their ability to sell above the maximum rate as condition of a waiver exempting maximum rate transactions from the posting and bidding requirements. They contend that failing to provide an exemption from posting and bidding for prearranged capacity release transactions at the previous maximum rate impedes state retail unbundling efforts where LDCs are required to release capacity to marketers serving in-state customers at maximum rates.

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[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637–A, 65 FR 35706 (Jun. 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099 (May 19, 2000).

[2] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,308 (Feb. 9, 2000).

[3] Those filing rehearing and clarification requests are listed on the Appendix.

[4] Order No. 637, 65 FR at 10182, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,279.

[5] 18 CFR 284.8(h)(1) (formerly 18 CFR 284.243(h)(1)).

[6] Order No. 637–A, 65 FR at 35718, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,568–69.

The Commission denies the requests for rehearing of its requirement for posting and bidding for capacity release transactions at the previous maximum tariff rate. As the Commission explained in Order No. 637–A, Order No. 636 generally required posting and bidding for capacity release transactions to ensure that capacity is equally available to all shippers and to protect against undue discrimination and the exercise of market power. The only reason that prearranged deals at the maximum rate were exempt from the posting and bidding requirements was that, as long as a rate ceiling was in effect, no other shipper could beat the pre-arranged deal and bidding and posting requirements would be superfluous.[7] With the removal of the rate ceiling during the waiver period, pre-arranged transactions always can be beaten by a higher bid, and posting and bidding for transactions at the previous (and now non-existent) maximum rate is necessary to ensure that capacity is available to all shippers and to protect against undue discrimination and the exercise of market power.

Order No. 637 proceeded from the premise that lifting the price ceiling for short-term capacity release transactions would create a more efficient and competitive national market for gas and transportation in which shippers seeking short-term capacity would pay the market price. Providing certain customers with a preferential rate for short-term capacity runs counter to that premise. It would make the overall gas market less efficient because capacity could be allocated to those shippers who do not place the greatest value on obtaining it. Indeed, providing preferential rates to certain customers is inconsistent with the basic premise of Order No. 637, because such preferences can lead to other customers having to pay higher than market rates for capacity. Reserving capacity at preferential rates for certain customers will remove that capacity from the market, with the likely effect of increasing prices for the capacity remaining to be sold to other customers.[8]

The rehearing requests also address potential conditions the Commission may impose in considering requests for waiver of the posting and bidding requirements. The Commission has yet to receive a waiver request or determine whether to grant such a waiver. Each waiver request, together with any associated conditions, will be considered on an individual basis based on the facts presented in the waiver request.

II. Segmentation

In Order No. 636, the Commission adopted a policy of requiring pipelines to permit shippers to divide their capacity into segments and use each segment for different purposes. In Order No. 637, the Commission responded to the inconsistent application of segmentation rights by adopting a regulation requiring pipelines to enable each shipper "to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible." [9] The Commission required pipelines to submit *pro forma* tariff filings to comply with this regulation. In Order No. 637–A, the Commission made no changes in the regulation, but explained some of its policies regarding the implementation of the segmentation requirement in the pipeline compliance filings.

Columbia Gas seeks rehearing of the requirement that pipelines make *pro forma* compliance filings. Other requests relate to policies involved in implementing the requirement, particularly those relating to segmentation on reticulated pipelines and policies relating to the use of primary receipt points, discounting, backhauls, and priority for transactions at secondary points.

A. Compliance Filing Requirement

Columbia Gas contends that under section 5 of the Natural Gas Act, the Commission must show that an existing pipeline tariff is unjust and unreasonable and that its proposed change is just and reasonable. Columbia Gas maintains the Commission has not explained whether it is acting under section 5 in the rulemaking or in the individual compliance filings and, accordingly, has not demonstrated that it has the authority to direct pipelines to make filings to change their tariffs to permit segmentation or to demonstrate that they should not have to comply with the new requirement.

The Commission exercised its section 5 authority in this case by making the generic determination that pipeline tariffs that do not permit segmentation, where segmentation is feasible, are unjust and unreasonable, because the pipeline is denying shippers the ability to use their firm capacity as flexibly as the pipelines did when they were merchants.[10] Because pipelines may have to implement segmentation in different ways depending on the operational characteristics of their systems, the Commission established *pro forma* compliance filings, just as it did in Order No. 636, as the means for determining how pipelines can best comply with the regulation. Any final determination on whether a particular pipeline tariff is unjust and unreasonable will be made in the individual compliance filing.

The Commission has the authority under section 5 of the NGA to establish a hearing to determine whether a pipeline's tariff is unjust and unreasonable and to determine the proper just and reasonable tariff provision.[11] The NGA gives the Commission the authority to require pipelines to provide information necessary to make those determinations,[12] which is the information required by the pro forma compliance filings. Indeed, Columbia Gas concedes the Commission "may have sufficient authority to direct a pipeline to show cause why a specific alleged conduct should not be found to be in violation of its tariff or the Commission's regulations." [13] In this case, the Commission has directed the filing of pro forma tariffs to determine whether pipelines are in compliance

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[7] Release of Firm Capacity on Interstate Natural Gas Pipelines, Order No. 577, 60 FR 16979 (Apr. 4, 1995), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] para. 31,017, at 31,316 (Mar. 29, 1995) ("when the pre-arranged deal is at the maximum rate, no other shipper can make a better bid for that capacity").

[8] For example, suppose an LDC has 10,000 Dth of available capacity with a maximum rate of $1 during a time at which the price of capacity would exceed the $1 value. Suppose that if the LDC places all 10,000 Dth for sale, the price per unit would be $1.25 given the demand characteristics of the shippers bidding for capacity. However, if the LDC sells 500 Dth to certain shippers, such as marketers who sell gas behind the LDC's city-gate, for the former maximum rate of $1.00, that leaves only 500 Dth remaining to be sold to other interstate shippers. By limiting the amount of available capacity through sales at below-market prices, the price for the remaining capacity is likely to rise above $1.25 in order to allocate the capacity to the remaining interstate shippers.

[9] Order No. 637, 65 FR at 10195, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,303–304; 18 CFR 284.7(e).

[10] Order No. 637–A, 65 FR at 35730, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,590–91; Transmission Access Policy Study Group v. FERC, No. 97–1715, at 59–61, 2000 U.S. App. LEXIS 15362 (D.C. Cir. June 30, 2000) (authority to make a generic public interest finding under *Mobile-Sierra*); Wisconsin Gas Co. v. FERC, 770 F.2d 144, 1166–67 (D.C. Cir. 1985) (authority to make generic finding that practices are unjust and unreasonable in rulemakings).

[11] 15 U.S.C. 717d(a).

[12] 15 U.S.C. 717l (Commission can require natural gas companies to file special reports and to require natural gas companies to answer questions); 717m (c) (Commission can summon witnesses and require production of documents relevant to a hearing).

[13] Columbia Gas Rehearing Request, at 15.

with its regulation requiring them to permit segmentation.

B. Segmentation on Reticulated Pipelines

Columbia Gas and DTI seek clarification or rehearing relating to the requirement for segmentation on reticulated pipelines. Columbia Gas seeks clarification that a pipeline is permitted to demonstrate that capacity segmentation is not operationally feasible on its system. DTI argues that in requiring segmentation for reticulated pipelines the Commission ignored the detrimental effect that requiring segmentation for one zone pipelines with postage stamp rate designs can have on the development of market centers.

DTI asserts that the Commission erred by not providing greater guidance on how segmentation on reticulated pipelines should be accomplished.

The determination as to whether and how to implement segmentation on particular pipelines will be determined in the *pro forma* compliance filing proceedings. As the Commission stated in Order No. 637–A, the Commission expects all pipelines, including reticulated pipelines, to implement segmentation to the maximum extent feasible and that factors such as current rate design should not be an obstacle to permitting segmentation. The Commission expects pipelines and their customers to work together to propose methods of segmentation that will work given the operational characteristics of the pipeline. On reticulated pipelines, this may include allowing segmentation on straight-line portions of the pipeline where capacity paths can be constructed, using different methods for allocating storage capacity so that customers will have capacity paths from storage to delivery points, or permitting shippers authority to segment subject to operational limitations when needed to protect system integrity or other shippers rights. The details of segmentation need to be worked out in the first instance between the pipelines and their customers who have the greatest knowledge of the physical operations of the system.

C. Allocation of Point Rights and Point Priority

In Order No. 637–A, the Commission discussed its policies on how segmentation should be implemented, including policies relating to overlapping capacity segments, allocation of primary point rights, point discounts, and mainline priority at secondary points within a contract path. Rehearing or clarification requests were received on several of these policies.

1. Segmentation at Paper Pooling Points

In Order No. 637–A, the Commission clarified that shippers can divide their capacity through segmentation at any transaction point on the pipeline system, including virtual transaction points, such as paper pooling points, as well as at physical interconnect points, such as market centers.[14] Columbia Gas and El Paso contend that the Commission has not explained how segmentation at paper points will work. Columbia contends that permitting segmentation at paper points will permit shippers to multiply their capacity beyond their contract demand.

The Commission was merely clarifying that shippers would have the right to segment capacity at locations on a pipeline that may not be physical interconnect points, but are recognized gas transaction points, such as paper pooling points. For example, a shipper may want to release capacity upstream of a pooling point and obtain gas at the pooling point for transportation on a downstream segment of its capacity. Columbia Gas has not explained how such segmentation will permit shippers to multiply their capacity beyond their contract demand. To the extent such difficulties exist, they are more appropriately examined in the compliance filings where the operational characteristics of the pipeline can be evaluated.

2. Forwardhaul-Backhaul Overlaps at a Point

In Order No. 637–A, the Commission explained its policy regarding overlap of capacity segments. As a general matter, the Commission's policy is that shippers are permitted to segment capacity and overlap those mainline segments up to the contract demand of the underlying contract. As part of this discussion, the Commission found that a shipper using a forwardhaul and a backhaul to bring gas to a delivery point in an amount that exceeds its contract demand is not overlapping mainline capacity.

INGAA, Williams, and El Paso Pipelines seek rehearing of this determination. They claim that the Commission is changing an existing policy without adequate justification and that overlaps of capacity at a point result in shippers receiving service in excess of the original shipper's contract.

In the first place, the Commission is not changing a well established policy. The only case cited by those seeking rehearing in which the Commission did not permit a forwardhaul and backhaul overlap to a single point was a Commission letter order, addressed only to the parties in the case and which did not discuss the policy issues involved.[15] More recently, in a formal order, the Commission found that a forwardhaul and a backhaul to 23 meter stations treated as a single delivery point for nomination and scheduling purposes would not be considered an overlap.[16] In making this determination, the Commission found it unnecessary to analyze whether gas may have physically overlapped at some mainline point in excess of the shipper's contract demand. Distinguishing between overlaps at a single point and those to a collection of points treated as a single point is not a useful basis for determining shippers' rights to use their capacity.

The Commission, therefore, has eliminated such artificial distinctions and moved to a policy in which forwardhauls and backhauls to the same point are not considered an overlap. Those seeking rehearing have not shown that pipelines face any operational problems in permitting such flexibility nor have they demonstrated that such flexibility adversely affects other shippers or the pipeline's ability to sell mainline capacity to other shippers. The shipper has contracted for a certain amount of mainline capacity from the pipeline and the use of that capacity to effect a forwardhaul and a backhaul does not exceed the shipper's contract demand in any mainline segment.

The Commission's policy since Order No. 636 has been that shippers should be permitted to make the full use of their firm capacity whether through a forwardhaul, backhaul, or through a combination of forwardhaul and backhaul.[17] After unbundling, shippers should have the same flexibility that pipelines had as merchants, which included the ability to forwardhaul and backhaul to the same point.

3. Primary Point Rights

In Order No. 637, the Commission explained that in the past it had adopted different policies on the issue of whether pipelines could restrict

[14] Order No. 637–A, 65 FR at 35731, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,591–92.

[15] Iroquois Gas Transmission System, L.P., 78 FERC ¶ 61,135 (1997).

[16] Transcontinental Gas Pipe Line Corporation, 91 FERC ¶ 61,031 (2000).

[17] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–B, 61 FERC ¶ 61,272, at 61,997 (1992) (shippers can use their capacity to release capacity through forwardhauls and backhauls).

replacement shippers' ability to choose new primary points depending on whether pipelines had historic tariff provisions that limited primary point rights to the same level as the shipper's mainline contract demand. Although the Commission accepted tariff filings during Order No. 636 that continued historic limitations on the number of primary receipt and delivery points, the Commission questioned in the Order No. 636 restructuring orders as well as in Order No. 637 whether allowing pipelines to limit receipt and delivery point quantities to the shipper's contract demand continued to be appropriate.

In Order No. 637, the Commission concluded that a pipeline's overly restrictive allocation of primary point rights to existing shippers could restrict the ability of shippers to use their capacity flexibly and required pipelines in their compliance filings to justify continued restrictions on primary receipt and delivery point allocation, in particular requiring pipelines to justify a proposal to deviate from the Commission policy that both releasing and replacement shippers could choose primary receipt and delivery points equal to their contract demand (*Texas Eastern/El Paso* policy).[18] In Order No. 637–A, the Commission stated that it could not clarify the role of primary receipt points on a generic basis, but would need to examine the issues raised in the pipelines' compliance filings.

El Paso Energy contends that the Commission has not justified its change in policy with respect to primary point rights, a justification it argues is especially necessary when the policy change affects contractual rights. El Paso argues that "first-in-time shippers and marketers will immediately seek to segment their capacity into the smallest pieces possible in order to confiscate the largest amount of primary point capacity as possible."[19]

Rather than being a change in Commission policy, as El Paso intimates, the Commission is seeking here to apply on a uniform basis policies that it first developed in Order No. 636, in part at least, in El Paso's own restructuring proceeding.[20] In that order, the Commission found:

> overly restrictive limits on the amount of primary receipt and delivery point capacity that a shipper can reserve could preclude a shipper from seeking alternative sources of gas at several primary receipt points. Thus, it may be unreasonable for a pipeline to limit primary receipt capacity to a firm transportation shipper's MDQ, particularly if the total receipt point capacity of the pipeline substantially exceeds its maximum daily transportation capacity. Furthermore, if a pipeline's consent is always required to change a primary receipt point, then the pipeline would have the ability to block a shipper's change in a primary point that might injure the commercial prospects of the pipeline's gas sales affiliate, or of favored transportation customers.[21]

In Order No. 637–A, the Commission further explained why permitting flexibility in the selection of primary points in segmented releases can be important to creating effective competition between pipeline services and released capacity. If replacement shippers are limited to the use of segmented points on a secondary basis, as El Paso suggests, the pipeline would still retain the right to sell that receipt point on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented release transactions.

Because of the potential effects that limitations on primary point rights can have on competition, such restrictions need to be reexamined in the pipeline's compliance filings. In those filings, pipelines need to justify restrictions on shippers' abilities to use additional primary points in segmentation transactions and any deviations from the *Texas Eastern/El Paso* policy.

El Paso is concerned that permitting shippers to select primary points in excess of their mainline contract demand could lead to possible hoarding of capacity. But, as the Commission stated in Order No. 637–A, its policy recognizes that pipelines might need to impose some restrictions on primary point rights, as appropriate to the circumstances of their systems, to prevent hoarding of capacity by some shippers to the detriment of others.[22] While the crafting of appropriate tariff provisions to limit hoarding may be challenging, as El Paso suggests, it does not appear infeasible.

4. Discount Provisions

In Order No. 637–A, the Commission addressed requests with respect to the interaction of its segmentation policy and its current policy permitting pipelines to limit discounts to particular points.[23] The Commission stated that this issue needs to be reexamined in the compliance filings when segmented transactions occur within the path of the shipper's transportation contract. The Commission explained that once the pipeline has decided that a discount is needed to stimulate throughput in a section of the pipeline, it has foreclosed the possibility of selling that capacity to a shipper at an upstream point and that the discount, therefore, should apply to all transactions within the capacity path.

Pipelines contend that the new rule will prevent them from selectively discounting because it will prevent them from offering selective discounts to all shippers within the capacity path.[24] INGAA states that as it reads the Commission's new rule, if long line pipelines decide to "discount transportation to New York from the Gulf of Mexico or southern Texas they are precluded from refusing discounts from the just and reasonable maximum rate for points of delivery along over 1,000 miles of pipeline into many different markets, which markets present diverse competitive conditions."[25]

The Commission will clarify that it did not intend to change the rules regarding selective discounting. Pipelines, for example, will still be able to discount transportation to a particular customer who has competitive options to stimulate throughput without necessarily offering the same discount to other customers who are not similarly situated.

As part of the examination of restrictions on segmentation, the compliance filings need to examine whether current restrictions on a discount shipper's use of its capacity impede segmentation and competition. In *Natural Gas Pipeline Company of America*,[26] the Commission refused to permit the pipeline to impose a condition in discount contracts that would suspend the discount in the event the shipper released capacity, because such a provision would inhibit the competition between capacity release and pipeline capacity by requiring the discount shipper to pay the maximum rate in order to release capacity.

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[18] Order No. 637, 65 FR at 10194, III FERC Stats. & Regs. Regulations Preambles para. 31,091, at 31,301–302; Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,452 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,991. See also Transwestern Pipeline Company, 61 FERC ¶ 61,332, at 62,232 (1992).

[19] El Paso Rehearing Request, at 9.

[20] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993).

[21] *Id.*

[22] Order No. 637–A, 65 FR at 35732, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,593. *See* El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993) (pipelines can propose methods for limiting the potential for hoarding).

[23] Order No. 637–A, 65 FR at 35733, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,595.

[24] DTI, INGAA, Williams, Reliant, Columbia Gas, Duke Energy Pipelines, Enron Pipelines, El Paso.

[25] Rehearing Request by INGAA, at 7.

[26] 82 FERC ¶ 61,298 (1998).

Once having granted a particular shipper a discount, some pipelines restrict the shipper's use of its capacity through capacity release or segmentation by requiring that shipper to pay the maximum rate for capacity in order to effectuate a segmented or release transaction. Placing such restrictions on discounted transactions could interfere with competition created through released capacity. Replacement shippers frequently need to use points different from those of the releasing shippers, and neither the releasing or replacement shipper may be willing to absorb the differential between the discounted and maximum rate. Given the increased use of discounted transportation by pipelines, it is important to explore in the compliance filings, the effect that allowing pipelines to restrict discount shippers' ability to segment and release capacity at alternative points would have on competition.

DTI asks for clarification that the policy with respect to point discounts should not necessarily be applied to reticulated pipelines which do not permit segmentation. The Commission stated in Order No. 637–A that discount policies on reticulated pipelines need to be evaluated differently than those on straight-line pipelines because a reticulated pipeline, with multiple laterals, may provide a shipper with a discount in order to stimulate throughput on a less-used lateral of its system, but not provide such discounts on more valuable laterals.[27]

5. Mainline Priority at Secondary Points Within the Capacity Path

In Order Nos. 637 and 637–A, the Commission addressed the question of whether shippers seeking to use mainline capacity within their path should receive a higher priority than shippers paying the same zone rate, but seeking to use capacity outside of their path. The Commission previously had found that giving priority to the shipper in the path and providing equal or *pro rata* rights were both just and reasonable.[28] In Order No. 637, the Commission chose not to adopt a specific policy with respect to assigning priority over mainline capacity among shippers using secondary points, leaving the *status quo* on individual pipelines. In Order No. 637–A, the Commission reconsidered and determined that providing priority to the shipper moving within its path would strengthen competition and promote capacity release because it would provide greater certainty as to the capacity rights of each of the shippers. Under *pro rata* allocation, the Commission found that neither the upstream nor downstream shipper would have definitive rights to the mainline capacity and that such uncertainty would make capacity trading difficult. The Commission provided that in the compliance filings, each pipeline must use the within-the-path allocation method unless it can demonstrate that such an approach is operationally infeasible or leads to anticompetitive outcomes on its system.

Columbia's Distribution Companies, Florida Gas, NYSEG, and FMNGA seek rehearing of the within-the-path allocation priority contending this policy reduces competition, is discriminatory, and unfairly confers competitive advantages on some shippers while disadvantaging others. They claim it contravenes the Commission's general policy that shippers receive the service for which they pay. They further assert it contravenes the Commission's recognition in Order No. 637 that one cannot tell whether the upstream or downstream shipper places the greatest value on the capacity. They contend that, as a result, there is no basis for giving preferential rights to the downstream shipper. They further argue adoption of within-the-path allocation rights will result in all shippers seeking to subscribe to capacity at the farthest downstream point in order to obtain the most valuable capacity. They also maintain that the Commission should not change its allocation priority policy without also addressing each pipeline's rate and zone design.

Enron and Florida Gas contend that the Commission should review the priority policy in individual cases. Florida Gas is concerned that the within-the-path allocation method will upset past agreements on Florida Gas Transmission Company. Enron maintains that in some situations, either within-the-path allocation or *pro rata* may be the most appropriate method and that the Commission should not mandate a single approach without close examination of pipeline's rate design.

The Commission affirms its determination that within-the-path allocation priority generally will best facilitate competition in the capacity release market. The issue presented is how to allocate mainline capacity to secondary points when shippers pay the same zone rate. In the following illustration, where shipper 1 (with a primary delivery point at A) and shipper 2 (with a primary delivery point downstream at C) pay the same rate in the zone, the issue would be whether the shippers should receive equal priority over mainline capacity to point B or whether shipper 2 should receive a higher priority over mainline capacity to point B than shipper 1, because point B is within shipper 2's path.

[27] This concern does not apply to long line pipelines, since selling capacity to a downstream point on a long line pipeline makes impossible the sale of that same capacity to an upstream point. Thus, in selling the capacity at a discount, the long line pipeline already has foregone the opportunity to collect a higher rate at the upstream point.

[28] *Compare* Tennessee Gas Pipeline Company, 71 FERC ¶ 61,399, at 62,577 (1995) (providing equal priority) *with* Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202, at pp. 61,870–71 (1997) (conditionally accepting within the path allocation); Northwest Pipeline Corporation, 67 FERC ¶ 61,095 (1994) (priority given to shippers moving within primary path).

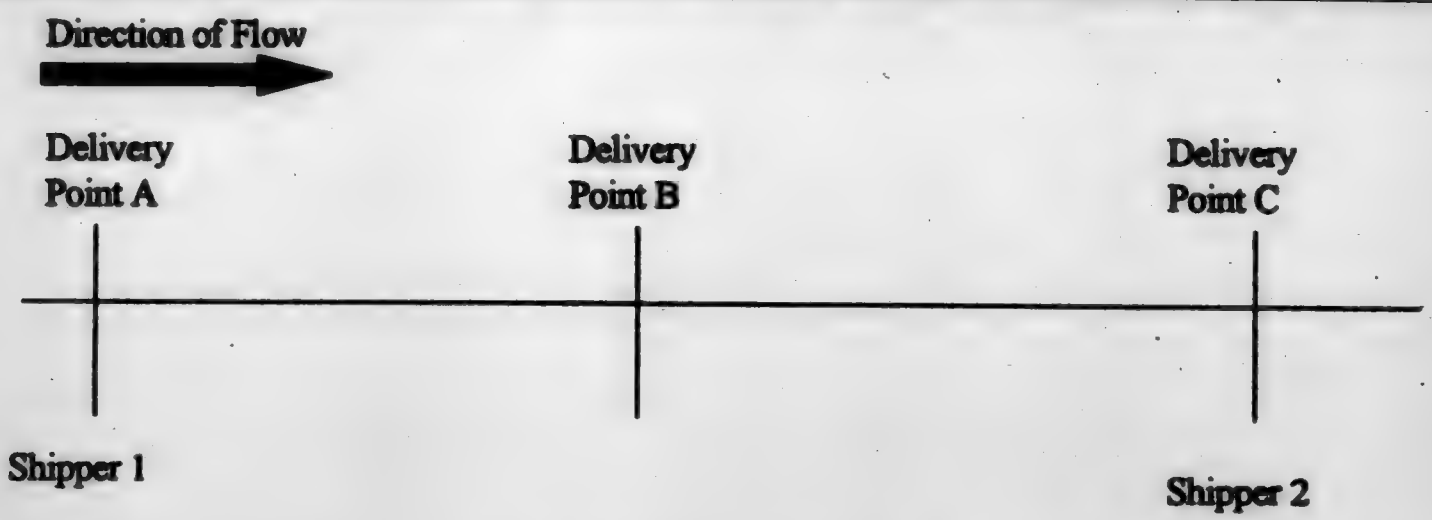

Capacity allocation is at its most efficient when capacity can be exchanged so that the shipper placing the highest value on the capacity can purchase it. As the Commission found in Order No. 637–A, competition and capacity release will be more efficient if one party has a defined right that can be exchanged, rather than two or more shippers having equal rights.[29] The problem with giving equal rights to reach secondary points is that neither the upstream (shipper 1) nor downstream shipper (shipper 2) has an alienable right to the mainstream capacity to point B. Thus, giving both shippers equal rights to the mainline capacity to point B gives neither shipper the right to make deliveries to point B and would make it difficult for either shipper to release capacity to a replacement shipper needing capacity to point B, because the replacement shipper would not be guaranteed the right to ship to point B. In addition, competition would be limited because a shipper with primary point capacity at B would have a competitive advantage in selling its capacity, since it can guarantee delivery to point B whereas neither shipper 1 nor shipper 2 can guarantee delivery to point B. In order to promote capacity trading, the right to the mainline capacity should be assigned to one shipper or the other, so that shipper has the right to release the capacity unencumbered by another shipper's claim.

The Commission agrees with the rehearing requesters that on an *a priori* basis, it is not possible to tell whether the upstream or downstream shipper places greater value on reaching the secondary point. But the purpose of assigning rights so as to permit capacity trading is to establish the value of the capacity and permit the allocation of that capacity to the highest valued use. In this case, the capacity cannot be allocated to the upstream shipper (shipper 1 in the example), because the downstream shipper (shipper 2) can always preempt the upstream shipper's ability to use the capacity by shipping to its primary point (point C). For instance, assume shipper 1 and shipper 2 each attempt to schedule 1000 Dth/day to delivery point B and the pipeline has only 1000 Dth/day available on the mainline between point A and point B. Once shipper 2 realizes its capacity will be cut, it will reschedule its capacity to its primary point C and thereby receive its full 1,000 Dth/day.[30] In that event, even if shipper 1 were given the higher priority to point B, it would be unable to schedule any gas to that point. If, on the other hand, the right were allocated to shipper 2, its use of the mainline to point B could not be interrupted or curtailed by shipper 1. Thus, as between the two shippers, the right to the secondary point needs to be allocated to shipper 2 in order to create a meaningful, tradable right to the capacity.

For this reason, the allocation of the priority to the downstream shipper is not unduly discriminatory, because the upstream and downstream shippers are not similarly situated. By virtue of the primary point rights in their contracts, shipper 2 already has the ability to preempt shipper 1's use of the downstream point. The Commission, therefore, is not creating discrimination, but is simply reacting to the facts as they stand to facilitate more effective capacity allocation. This determination is consistent with the conclusion reached in Order No. 636 that while upstream shippers can select downstream points in the same zone, the shipper will be using those points on an interruptible basis, subject to a higher priority to shippers using primary points.[31]

Those requesting rehearing contend that adoption of within-the-path allocation priority will lead all shippers, upon contract expiration, to seek to sign up for capacity at the end of the zone, since it is the most valuable. The Commission recognized in Order No. 637 that such an incentive could be created, but in reconsidering its decision, the Commission determined that enhancing capacity release competition was worth the difficulty of perhaps having to deal with potential conflicts in the future. It may well turn out that there is not a great incentive to move primary points to the end of the zone, because, as some of the rehearing requests point out,[32] shippers may not want to risk giving up their primary point rights at their former delivery points where they most need the gas.

Those seeking rehearing further contend that the Commission should not change policy until after it has examined pipelines' rate design and zone structures to ensure that the rates shippers pay equate with the service

[29] Order No. 637–A, 65 FR at 35734 & n.126, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,596 & n.126 (citing R. Posner, Economic Analysis of Law, § 3.1, at 28 (2d ed. 1977)).

[30] As was pointed out in Order No. 637–A, shipper 2 can often effect the full delivery of capacity to point B through the expedient of scheduling capacity to point C and then using a backhaul to reach point B. Thus, shipper 2 can preempt shipper 1's ability to deliver to point B, while preserving its ability to make the delivery itself.

[31] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,585 (Aug. 3, 1992), Order No. 636–B, 61 FERC ¶ 61,272, at 62,013 (1992). In *Northwest*, the Commission recognized that there is no undue discrimination in giving priority to shippers using their primary path over those using capacity between secondary points. Northwest Pipeline Corporation, 67 FERC ¶ 61,095, at 61,274 (1994).

[32] Rehearing Request FMNGA, at 9 (the shipper's right to use an upstream point is still secondary).

they receive. Cost-of-service rate design, however, may not perfectly represent the value of capacity, because both rates and zones may reflect considerations other than the value of reaching downstream delivery points. Indeed, the issue with respect to allocation of mainline capacity has arisen on Panhandle Eastern Pipe Line Company, a pipeline without rate zones and with rates that already are very mileage sensitive.[33] The Commission, therefore, will not generically delay implementation of within-the-path scheduling priority until after it has conducted an examination of pipeline rate structures.

ETG supports within-the-path allocation, but asks the Commission to clarify that it applies equally to receipt as well as the delivery points used in the Commission's illustration. The Commission grants the clarification. The analysis that applies to delivery points applies equally to receipt points, so that shippers seeking to move to receipt points within their path should generally have higher priority for mainline capacity than shippers moving to receipt points outside their path.[34] This means that a shipper would have a higher priority over mainline transportation to a receipt point downstream of its primary point than a shipper in the same zone seeking to use the same receipt point, which is upstream of its primary receipt point.

III. Imbalance Services, Operational Flow Orders, and Penalties

In Order No. 637–A, the Commission affirmed its new policy set forth in Order No. 637 that penalties may be imposed only when necessary to protect system integrity, and further explained that pipelines may not impose penalties for purposes other than system reliability, such as for enforcement of contractual obligations.[35] The Commission also held that under its definition of "penalty," [36] a tiered cash-out program is a penalty, while a cash-out mechanism that requires that a shipper reimburse for the cost of the gas provided by the pipeline is not a penalty. DTI and El Paso seek rehearing and clarification of these rulings.

DTI and El Paso argue that the Commission erred in finding that penalties cannot be used to enforce contractual rights because this ignores the pipeline's right as a contract carrier to impose reasonable penalties to enforce its contracts, and that where a pipeline and shipper have entered into a contract to transport a specific quantity of gas, the pipeline should not be forced to exceed that quantity. DTI asserts that the consequences of the Commission's approach will be that pipelines will be unable to enforce contracts because shippers will contract for *de minimis* amounts of contract capacity and rely on generic contract overrun rights to meet their requirements. Further, DTI asserts that this will lead to decontracting, jeopardize the pipeline's ability to recover its cost of service, and unlawfully force pipelines to become common carriers rather than contract carriers.

As the Commission explained in the prior orders, penalties can limit the ability of shippers to use their capacity and can create market distortions.[37] Therefore, the Commission shifted its policy away from one that fosters the use of penalties to a service-oriented policy that gives shippers other options to obtain flexibility and limits penalties to their intended purpose—to protect the reliability of the system.[38] The result of this shift in policy does not eliminate the ability of pipelines to charge a penalty for contract overruns, but merely means that such penalties must be structured so that a penalty is not imposed when the system is not reasonably threatened. For example, a pipeline should not impose a penalty on a day that there is sufficient available capacity and the pipeline would have granted an authorized overrun. On a day when there is sufficient capacity to provide overrun service, a shipper that takes service above its contractual level is receiving interruptible service and should pay the maximum rate for that service, but should not be charged a penalty, since its use of interruptible service does not threaten system reliability or deliveries to other shippers.

Designing contract overrun penalty provisions so that they are imposed only when necessary to protect system integrity does not give shippers an incentive to contract for less than their required capacity and rely instead on contract overruns to meet their needs. Shippers contract for firm service in order to be guaranteed the service necessary to meet their requirements on a peak day, and they will not be guaranteed service at peak if they contract for only a portion of their capacity needs. The capacity that a shipper would obtain by means of an unauthorized overrun is not firm service, but is interruptible service that is subject to bumping and is limited by the capacity available at the time. Shippers that contract for firm service have already made a choice not to rely on interruptible service to meet their needs and therefore are unlikely to rely on an interruptible overrun service. Further, pipelines can still impose reasonable penalties when such penalties are related to system integrity. For example, on a peak day when capacity is not available, a shipper ordinarily would not be entitled to an authorized overrun because the provision of overrun or interruptible service could impede system reliability or adversely affect other shippers. Thus, a firm shipper could expect to be charged a penalty for using overrun service on a peak day and this prospect would deter the shipper from decontracting.

DTI has not explained why a contract overrun should be treated any differently than other penalties. For instance, when a shipper runs an imbalance by taking more gas than it has delivered to the pipeline, its responsibility is to make-up or pay for the gas it has taken and, under the Commission's regulations, a penalty would be imposed only when necessary to protect system reliability. Similarly, when a shipper incurs a contract overrun, it must pay for the interruptible service it has used, and a penalty should be imposed only when needed to protect the reliability of the pipeline. Thus, contrary to DTI's suggestion, the Commission's shift in policy does not affect the nature of the service provided by the pipelines or the ability of pipelines and shippers to contract for service, and does not force pipelines to become common carriers.

El Paso asks the Commission to clarify that it is not abrogating GISB Standard

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[33] *See* Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202 (1997) (rates based on 100 mile increments); Panhandle Eastern Pipe Line Company, 87 FERC ¶ 61,331 (1997) (issue is still under consideration).

[34] Northwest Pipeline Corporation, 67 FERC ¶ 61,095 (1994) (shipper within the path receives priority over shipper outside the path).

[35] Order No. 637–A, 65 FR at 35741, III FERC Stats. & Regs. Regulations Preambles ¶ 31,090, at 31,608–09.

[36] The Commission stated that it considers a penalty to be any charge imposed by the pipeline on a shipper that is designed to deter shippers from engaging in certain conduct and reflects more than simply the costs incurred as a result of the conduct. Order No. 637–A , 65 FR at 35742, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,610.

[37] See Order No. 637, 65 FR at 10197–98, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,307–08; Order No. 637–A, 65 FR at 35740, III FERC Stats. & Regs. ¶ 31,099, at 31,607.

[38] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,424 (penalties are to deter behavior inimical to the welfare of the system).

1.3.19[39] with its statement that shippers should be given the flexibility to exceed contractual limitations unless such action jeopardizes system integrity. The Commission clarifies that the new penalty policy does not abrogate GISB Standard 1.3.19 because it does not change the process for seeking authorized overrun service.

El Paso also argues that a tiered cash-out mechanism should not be treated as a penalty because the primary purpose of a tiered cash-out mechanism is the same as a simple cash-out mechanism, *i.e.*, to address the costs resulting from using the pipeline's system supply. If the Commission does not grant rehearing on this issue, El Paso asks the Commission to modify the requirement that pipelines must include their cash-out mechanisms in their *pro forma* compliance filings and make clear that the cash-out mechanism provision is included in the compliance filing for informational purposes only. El Paso also asks the Commission to clarify that any currently effective settlement will remain in effect.

A tiered cash-out mechanism is a penalty provision because, unlike a simple cash-out mechanism, it does not simply recoup the cost of gas incurred as a result of shipper conduct, but imposes a greater penalty for larger imbalances. The filing of any cash-out mechanisms in the pro forma compliance filings is not for informational purposes only, but is for the purpose of enabling the Commission to evaluate how the pipeline's system management program, including the cash-out mechanism, imbalance services, netting and trading, OFO and penalty provisions work together in light of the pipeline's characteristics and the Commission's policy. As a general matter, the Commission will not exempt pipelines from complying with this policy simply because it provides service pursuant to a settlement. However, if the parties to an individual proceeding believe that a particular settlement should govern the imposition of penalties on a specific pipeline, this issue can be addressed in the compliance proceeding.

IV. Reporting Requirements for Interstate Pipelines

In Order No. 637–A, the Commission granted rehearing with respect to the time at which transactional information will be posted. In Order No. 637, the Commission held that firm transactional data must be posted contemporaneously with contract execution. In Order No. 637–A, the Commission modified this requirement to provide that the transactional information for both firm and interruptible service must be posted no later than the first nomination for service under the agreement. The Commission recognized that changing the time for posting of firm contracts may result in somewhat later disclosure of some contractual commitments, but explained that the effect of such a delay on the shippers' ability to obtain information about available capacity will be mitigated by other reporting requirements. Specifically, the Commission stated that under § 284.13(d), the pipeline is required to post all available firm capacity on its system, and once the pipeline enters into a contract committing firm capacity, the pipeline must amend its posting to reflect the fact that this capacity is no longer available, even if it does not immediately disclose the identity of the purchasers.

Amoco agrees that if the pipelines contemporaneously amend their capacity posting data at the time of the execution of the new contract, as the Commission assumes will be the case, this will provide some transactional information to the public at an early enough point to be helpful in the decisionmaking process. Amoco asserts that § 284.13(d) of the regulations should be clarified, consistent with the Commission's intent, to modify the language to require pipelines to amend their capacity availability posting simultaneous with the execution of the contract. Specifically, Amoco asserts that the word "timely" should be replaced with "contemporaneously" and "whenever capacity is scheduled" should be replaced with "whenever contracts are executed."

There is no need to modify the regulation because it already requires posting of changes to available capacity immediately after contract execution. Section 284.13(d) of the Commission's regulations require pipelines to post available capacity "whenever capacity is scheduled." GISB currently requires pipelines to schedule capacity four times a day,[40] and therefore the pipeline must post its available capacity four times daily. This not mean, however, that capacity under contract can be posted as available up until the time it is actually scheduled. A change in available capacity must be reflected in the next capacity posting after the execution of the contract because once the contract is executed, the capacity is no longer available. The pipeline cannot post capacity as available if it is no longer available.

V. Right of First Refusal

In Order No. 637, the Commission held that in the future, the ROFR will apply only to maximum rate contracts and, therefore will not apply to discounted contracts or negotiated rate contracts. The Commission grandfathered existing discounted contracts so that the ROFR will apply upon the expiration of those contracts, but explained that the ROFR will not apply to the re-executed contract unless it is at the maximum rate. In Order No. 637–A, the Commission affirmed these holdings and clarified that the ROFR does not apply to negotiated rate contracts regardless of whether the negotiated rate is equal to or higher than the maximum tariff rate for the service.[41] ETG, New England, and WPSC seek rehearing or clarification of these holdinga.

ETG and New England argue that the Commission erred in depriving negotiated rate contracts that are at the maximum tariff rate of ROFR protection. ETG argues that a negotiated contract to pay the maximum rate is a contract at the maximum rate within the meaning of the discussion in Order No. 637 and revised section 284.221(d) of the Commission's regulations. Further, ETG asserts that this limitation on the ROFR will discourage negotiated rate contracts and discounts, contrary to the Commission's policy of favoring settlements and approving procedures for negotiated rate contracts. New England asserts that in negotiating the re-execution of existing contracts, certain pipelines insisted that captive shippers enter into negotiated rate contracts at the maximum tariff rate, and that these customers are subject to the pipeline's monopoly power. New England states that under the Commission's rationale, a captive customer willing to pay the maximum rate must forego any benefits of the negotiated rate contract in order to retain the ROFR.[42] New England argues that this is unfair and tends to limit the service options available to captive customers.

A shipper with a negotiated rate contract is not paying the tariff rate. That shipper's rate will be established

[39] GISB Standard 1.3.19 provides "Overrun quantities should be requested on a separate transaction."

[40] 18 CFR § 284.12(b)(1)(i), Standard 1.3.2.

[41] Order No. 637–A, 65 FR at 35756, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,634.

[42] New England states that the contract may differ from the *pro forma* service agreement on non-rate matters, and therefore be termed a negotiated rate agreement. For example, New England states the shipper may obtain the right to reduce contract demand prior to the expiration of the contract under certain circumstances.

by its contract regardless of the tariff or any changes to the tariff rate during the term of the negotiated rate contract. Because a negotiated rate is not a tariff rate, it cannot be the maximum tariff rate within the meaning of the Commission's regulations regardless of how the level of the negotiated rate compares to the level of the tariff rate.

Pipelines cannot require captive customers to enter into negotiated rate agreements rather than to take service under the maximum tariff rate. All shippers are entitled to take service pursuant to the pipeline's generally applicable tariff, and the pipeline cannot refuse to provide service under the tariff if capacity is available and the shipper agrees to pay the maximum tariff rate. This limitation does not impact the Commission's policy regarding settlements in rate cases; a negotiated rate is not a rate case settlement rate. Further, while the Commission permits negotiated rate contracts, it does not permit negotiated terms and conditions of service. The limitation on the ROFR therefore cannot limit the service options available to captive customers under negotiated contracts because customers cannot negotiate terms and conditions of service.

ETG, New England, and WPSC ask the Commission to clarify that negotiated rate contracts entered into before the issuance of Order No. 637 are, like discounted contracts, grandfathered and the ROFR will apply upon their expiration. These parties argue that negotiated rate contracts should be treated the same as discounted rate contracts with regard to grandfathering because in both cases shippers entered into the contracts in reliance on the existence of the ROFR, and the purpose of grandfathering is to protect that reliance interest.

The ROFR applied to negotiated rate contracts prior to Order No. 637, and the Commission agrees that the same policy should apply to negotiated rate contracts as to discounted contracts. Thus, negotiated rate contracts entered into prior to the issuance of Order No. 637 will be grandfathered, and the ROFR will apply to the service at the expiration of the contract. However, the ROFR will not apply to future negotiated rate contracts, and will apply only to contracts for recourse service taken pursuant to the pipeline's tariff at the maximum rate.

VI. Conclusion

With this order, the rulemaking process is at an end. The next step is for the industry and the Commission to focus on the issues raised in the compliance filings so as to restructure pipeline services and penalties to enhance competition throughout the industry.

The Commission orders:

Order Nos. 637 and 637-A are clarified as discussed in this order and rehearing of Order No. 637-A is denied.

By the Commission. Commissioner Breathitt dissented with a separate statement attached.

David P. Boergers,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations

Appendix—Requests for Rehearing Docket Nos. RM98–10–005 and RM98–12–005

Applicant	Abbreviation
American Gas Association	AGA.
Amoco Energy Trading Corporation and Amoco Production Company.	Amoco.
Columbia Gas Transmission Corporation.	Columbia Gas.
Columbia's Distribution Companies (Columbia Gas of Kentucky, Maryland, Ohio and Pennsylvania).	Columbia's Distribution Companies.
Dominion LDCs (Peoples Natural Gas Co., East Ohio Gas Company, Hope Gas, Inc., Virginia Natural Gas Co.).	Dominion LDCs.
Dominion Transmission, Inc.	DTI.
Duke Energy Gas Transmission (Algonquin Gas Transmission Company, East Tennessee Natural Gas Company, Texas Eastern Transmission Corporation).	Duke
East Tennessee Group	ETG.
El Paso Corporation Interstate Pipelines.	El Paso.
Enron Interstate Pipelines	Enron.
Florida Cities	Florida Cities.
Florida Municipal Natural Gas Association.	FMNGA.
Interstate Natural Gas Association of America.	INGAA.
National Fuel gas Distribution Corporation.	National Fuel.
New England Local Distribution Companies.	New England Distribution Companies.
New York State Electric & Gas Corp. (The Berkshire Gas Company, Connecticut Natural Gas Corp., Southern Connecticut Gas Co.).	NYSEG.
Pennsylvania Office of Consumer Advocate and Ohio Office of Consumer Counsel.	Pa. Office of Consumer Advocate.
Reliant Energy Gas Transmission Company and Mississippi River Transmission Corporation.	Reliant.
The Williams Companies, Inc..	Williams.
UGI Utilities, Inc.	UGI.
Wisconsin Public Service Corporation.	WPSC.

Breathitt, Commissioner, *dissenting in part*:

I am dissenting in part on Order No. 637–B because of its determination that it is permissible for a shipper to use a forwardhaul and a backhaul to bring gas to a single delivery point in an amount that exceeds its contract demand. In a *Tennessee Gas Pipeline Company* proceeding, the Commission expressly prohibited shippers from using forwardhaul and backhaul transactions in a pipeline segment in excess of contract demand.[1] This prohibition was retained in Order No. 637–A. The rationale offered in *Tennessee* was that segmenting rights are not without limit. The Commission explained that the limiting factor was the shipper original entitlement or contract demand. Specifically, the Commission stated, "this means that they have no right to release and use overlapping segments, where, in the overlapped portion, the total capacity released and used exceeds their original entitlement."

In an *Iroquois Gas Transmission System, L.P.* decision, the Commission applied that prohibition to overlapping transactions at a single point, finding that a shipper could not schedule forwardhaul and backhaul transactions to the same delivery point in excess of its total contract demand.[2] The justification for this prohibition was the same in both cases. That is, the overlap of forwardhaul and backhaul transactions in excess of contract demand results in shippers receiving service in excess of that for which the shipper is paying. This is so, regardless of whether the overlap is at a single point or on a segment.

Today's order does not adequately respond to this inconsistency in policy between treatment of contract rights on a segment and treatment of contract rights at a single point. Parties have argued on rehearing that overlapping transactions in excess of contract demand at a point negatively effects shippers' attempts to sell unused capacity in the secondary market. I do not believe that this order has adequately addressed this concern about the impact of this decision on the capacity release market. For these reasons, I am dissenting on the majority's decision to allow shippers to exceed there contractual entitlements by overlapping capacity at a single point.

Linda K. Breathitt,

Commissioner.

[FR Doc. 00–19453 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–P

[1] Tennessee Gas Pipeline Co., 85 FERC ¶ 61,052, at 61,135 (1998).

[2] Iroquois Gas Transmission System, L.P., 78 FERC ¶ 61,135 at 61,524 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 330 and 385

[Docket No. RM99–5–001; Order No. 639–A]

Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf

Issued July 26, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing of final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is addressing the requests for rehearing of its final rule, Order No. 639, issued on April 10, 2000, implementing regulations under the Outer Continental Shelf Lands Act (OCSLA).[1] The final rule was issued to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS). The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. By rendering offshore transactions transparent, the regulations' reporting requirements should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting in greater efficiencies in this marketplace. This order clarifies and amends the regulations to grant, in part, the requests for rehearing of Order No. 639.

EFFECTIVE DATE: The order on rehearing is effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT:

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Gordon Wagner, Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–0122

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

[18 CFR Parts 330 and 385]

[Docket No. RM99–5–001]

Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf.

Order on Rehearing and Clarification

Order No. 639–A

Issued July 26, 2000.

I. Introduction

On April 10, 2000, the Federal Energy Regulatory Commission (Commission) issued a final rule, Order No. 639,[1] promulgating regulations under the Outer Continental Shelf Lands Act (OCSLA)[2] to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS).[3] The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA and will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The transactional transparency that reporting will bring should provide a sound basis for ensuring open and nondiscriminatory access offshore and produce greater efficiencies in this marketplace. The Order No. 639 regulations do not eliminate or modify any existing regulations or Commission policies relating to the regulation of offshore facilities pursuant to the Commission's authority under the Natural Gas Act (NGA).[4]

II. Background

Requests for rehearing and/or clarification of Order No. 639 were filed by Duke Energy Field Services Assets, LLC (Duke); El Paso Energy Corporation (El Paso); the Interstate Natural Gas Association of America (INGAA); the Independent Petroleum Association of America (IPAA);[5] the Natural Gas Supply Association (NGSA); OCS Producers; the Producer Coalition; and the Williams Companies, Inc. (Williams).[6]

Parties requesting rehearing endorse the expressed aim of the final rule—to ensure compliance with the OCSLA's open and nondiscriminatory access requirements. Producer interests generally support the Commission's means to this end—to require OCS service providers to report certain information on their affiliates and transactions—whereas pipeline interests generally oppose aspects of the new reporting requirements. In response to the concerns raised, for the reasons discussed below, we modify, clarify, and affirm the OCSLA reporting requirements set forth in Order No. 639.

III. Requests for Rehearing and/or Clarification and the Commission's Response

A. Commission Authority To Require OCSLA Reporting

1. Requests for Rehearing and/or Clarification

Duke, El Paso, INGAA, OCS Producers, and Williams claim that the Commission has failed to present an adequate legal foundation for promulgating new OCSLA reporting requirements. The parties stress that since the OCSLA's 1953 enactment, with but a handful of exceptions, the Commission has not relied on the OCSLA to ensure that gas is transported on or across the OCS on an open and nondiscriminatory basis.

Williams argues that the Commission should have, but did not, consult with the Attorney General prior to implementing a new rule.

Duke insists that other federal agencies—but not the Commission—can act under the OCSLA to enforce nondiscrimination by instituting a civil action in district court; therefore, the Commission's rule and its proposed enforcement are without foundation and invalid.

OCS Producers believe the Commission could employ other, less

[1] 43 U.S.C. 1301–1356.

[1] 65 FR 20354 (Apr. 17, 2000), FERC Stats. & Regs. ¶ 31,514 (2000).

[2] 43 U.S.C. 1301–1356.

[3] The OCS is defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters * * * and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a). *See also* 43 U.S.C. 1301(a)(1), defining "lands beneath navigable waters" as "all lands within the boundaries of each of the respective States."

[4] 15 U.S.C. 717.

[5] Rather than submit separate comments, IPAA states that it endorses and adopts the Producer Coalition's submission as its own, including the relief specified therein. Accordingly, references to the Producer Coalition may be read as including the IPAA.

[6] We accept the requests for rehearing pursuant to Rule 713 of the Commission's Rules of Practice and Procedure. 18 CFR 385.713.

burdensome means to secure the benefits of OCSLA compliance and assert the Commission has not demonstrated that reporting is needed for effective OCSLA enforcement.

2. Commission Response

We acknowledge that we have not established an extensive record of reliance upon the OCSLA. It was not until 1988 that we found cause to issue a rule interpreting the Commission's responsibilities under the OCSLA.[7] Until then, the NGA had appeared fully adequate to the task of regulating offshore natural gas facilities and services. As offshore exploration and development has evolved, it has grown beyond our ability to regulate by relying exclusively on the NGA.

Initial offshore construction consisted of gas companies building lines out from existing onshore facilities to production areas on the shallow shelf close to shore, stepping incrementally further out as technological advances led to the development of fields in increasing water depths. Typically, these early offshore lines were used to attach production from a single well or single platform in a field that produced gas for the system supply of a single company. It has proved to be the case that where an offshore pipeline serves to provide long-term, firm transportation for the pipeline's owner, issues of access do not arise. Generally, these offshore systems were owned and operated by, and used to carry the gas of, interstate pipeline companies. Thus, the Commission's NGA jurisdiction over interstate transportation extended to these offshore systems, and we consequently found no cause to turn to the OCSLA to guarantee open and nondiscriminatory access on these pipelines.

By the late 1980s, the nature of offshore operations had started to shift. In 1986, in Order No. 491, we observed that the offshore infrastructure consisted of major trunkline systems interconnected via a "proliferation" of laterals, resulting in a grid with the "flexibility to move offshore reserves from a variety of offshore locations via a number of pipeline facilities to onshore destinations."[8] We recognized that to take advantage of such flexibility, shippers were equally dependent on the physical capabilities of the facilities and "the degree of access which shippers have to the transportation system."[9] Consequently, in order to ensure open and nondiscriminatory access, we required all offshore NGA-jurisdictional pipelines to obtain blanket certificates under Part 284 of our regulations, authorizing transportation on behalf of others on an open and nondiscriminatory basis.[10]

At that time, the offshore transportation grid was still largely subject to our NGA jurisdiction, so we found no need to implement a separate set of regulations under the OCSLA targeted at NGA-exempt OCS service providers.[11] During the past decade, however, the character of the offshore environment has again undergone significant change, particularly after the 1989 *EP Operating Company* v. *FERC (EP Operating)* decision,[12] which led the Commission to reclassify numerous offshore facilities from transmission to gathering.

Now a more significant portion (approximately half) of the offshore gas infrastructure is excluded from NGA oversight, thereby eroding the applicability and effectiveness of our earlier OCSLA rule. Further, we expect a continuation of the recent trend of pipelines' requesting reclassification of existing certificated offshore lines from transmission to gathering. We expect a greater portion of new construction to qualify as gathering as well.[13] In view of these factors, the OCSLA's competitive principles no longer can be met by mandating that offshore NGA pipelines adhere to our Part 284 open access requirements. Since we can no longer rely on this scheme of regulatory piggybacking, the new OCSLA reporting requirements are needed to adequately monitor the dynamic, expanding portion of the offshore infrastructure that is not subject to NGA oversight.

Williams contends the Commission neglected to consult with other federal agencies, as specified in OCSLA section 1334(f)(3),[14] prior to implementing the reporting regulations. This same issue was raised in response to the Notice of Proposed Rulemaking (NOPR),[15] referencing the separate but similar consultation requirement specified in OCSLA section 1334(e).[16] In the final rule, we explained our belief that the act of requiring reporting under the OCSLA did not trigger the consultation requirement, a position we maintain.[17]

The OCSLA section 1334(f)(3) consultation requirement applies in the event that "specific conditions" are "included in any permit, license, easement, right-of-way, or grant of authority." The final rule's reporting requirements are not such a condition, as demonstrated by the fact that the reporting requirements apply not only to NGA-jurisdictional pipelines to which we have granted certificates, but also to NGA-exempt pipelines, to which we have granted no certificate or any other "permit, license, easement, right-of-way, or grant of authority." Thus, our rule is predicated entirely upon the OCSLA's open and nondiscriminatory access requirements, which pertain regardless of whether an OCS service provider is operating under authority of any permit or certificate. As such, we

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[7] Interpretation of Section 5 of the OCSLA, Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC ¶ 61,006 (1988).

[8] 43 FERC ¶ 61,006 at 61,030.

[9] *Id.*

[10] *See* Interpretation of, and Regulations Under, Section 5 of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, Order No. 509, 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. ¶ 30,842 (1988), *order on reh'g*, Order No. 509–A, 54 FR 8301 (Feb. 28, 1989), FERC Stats. & Regs. ¶ 30,848 (1989).

[11] On rehearing of Order No. 509, parties asserted it was unreasonable and discriminatory for the Commission to limit its actions to NGA-jurisdictional pipelines. They argued for extending the Part 284 blanket transportation requirements to NGA-exempt OSC service providers as well. In response, we explained that our application of the already established NGA open access requirements to NGA facilities was a "starting point" and that we would look to other remedies, as needed, to cover other OCS facilities.

[12] 876 F.2d 46 (5th Cir. 1989). The court questioned the Commission's rationale for finding a 16-inch diameter, 51-mile long line, extending from a floating rig in deep water to a fixed platform on the shallow shelf, to be a transmission line. In response, the Commission modified the manner in which it determined the primary function of facilities located offshore, and subsequently found increasingly larger sets of offshore facilities to be gathering. *See, e.g.*, Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990).

[13] Our 1996 Policy Statement established a rebuttable presumption that facilities located in deep water of 200 meters or more were engaged in production or gathering. Gas Pipeline Facilities and Services on the OCS—Issues Related to the Commission's Jurisdiction Under the NGA and the OCSLA, 74 FERC ¶ 61,222 (1996), *reh'g dismissed*, 75 FERC ¶ 61,291 (1996). Given that deep water prospects are predicted to provide substantial quantities of new offshore gas supplies, we expect additional pipeline construction in deep water areas.

[14] Specifically, Williams cites OCSLA section 1334(f)(3), which states that:

The Secretary of Energy and the Federal Energy Regulatory Commission shall consult with and give due consideration to the views of the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way, or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in paragraph (1) of this subsection. In preparing any such views, the Attorney General shall consult with the Federal Trade Commission.

[15] Regulations under the OCSLA Governing the Movement of Natural Gas on Facilities on the OCS, 64 FR 37718 (July 17, 1999), FERC Stats. & Regs. ¶ 32,542 (1999).

[16] OCSLA section 1334(e) states, in part, that the Commission "in consultation with the Secretary of Energy" may, in certain circumstances, determine proportionate amounts of gas to be transported.

[17] We note that Williams and all federal agencies received public notice of this rulemaking proceeding, and but for the Department of the Interior's Mineral Management Service (MMS), those agencies elected not to comment on either the NOPR or the final rule.

conclude consultation with the Attorney General is not a prerequisite for promulgating this reporting rule.

Williams notes that in the Order No. 509 rulemaking, the Commission requested the views of other federal agencies. There is a material distinction between that rulemaking and this one: there, we told OCS service providers how to operate; here, we merely have OCS service providers tell us how they operate.

In Order No. 509, we imposed specific conditions on service providers. Although the conditions were contained in our NGA regulations and were applied only to offshore pipelines already subject to the NGA, these NGA conditions were applied in fulfillment of the OCSLA's transportation requirements, compelling OCS service providers to adopt and follow certain business practices as a specific condition of complying with the competitive principles of OCSLA section 1334(f)(1).[18] In this rule, while we exhort NGA-exempt OCS service providers to adhere to the same competitive principles that NGA-jurisdictional pipelines are subject to under our Part 284 open access regulations, the only requirement of Order No. 639 issued under the OCSLA is that service providers present information on their business practices. We impose no new conditions on those practices.

Duke takes the position that the Commission's authority under OCSLA section 1334(f)(3) to impose conditions on OCS service providers "is not an independent grant of authority." Rather, Duke argues that section 1334(f)(3) only describes "steps the Commission is required to take when exercising its authority under another statute such as the NGA."[19] We disagree. Duke reads too much into our decision in Order No. 509 to limit the rule's applicability to offshore pipelines already subject to the NGA and our reliance on the operating obligations contained in our NGA regulations to compel compliance with the provisions of the OCSLA.

As we emphasized in the order on rehearing of Order No. 509, "the open-access mandate of the OCSLA applies to all pipeline operations on the OCS."[20] We might have gone further and exercised our OCSLA authority to impose specific open access regulatory requirements on all OCS facilities; instead, on rehearing of Order No. 509, we elected to "consider appropriate measures for remedying discriminatory access to other [NGA-exempt] OCS facilities on a case by case basis."[21] Thus, our approach in Order No. 509 does not indicate, as Duke advocates, that our OCSLA authority applies in some derivative manner only after we have already first established our jurisdiction by means of another statute. We conclude that, though administering and enforcing the OCSLA involves coordination and a division of labor among several federal entities, the Commission's OCSLA authority stands apart and independent from our statutory responsibilities under the NGA.

Duke is correct that several federal agencies can institute OCSLA enforcement actions. However, this sharing of responsibility does not preclude the Commission, as an independent agency, from acting without the assistance of other responsible federal agencies to oversee and enforce open and nondiscriminatory access. The Commission's capacity to compel open and nondiscriminatory access under the OCSLA is discussed in *Shell Oil Company* (*Shell*).[22] At issue in *Shell* was an offshore oil pipeline's refusal to serve a new customer. The Commission exercised its authority under section 1334(f) of the OCSLA to order the oil pipeline to accept and transport the new customer's volumes.[23] When the court issued its decision in *Shell*, the oil pipeline complied with the Commission's order to interconnect. Thus, issues relating to cooperative agency action were not reached. We note, however, that if the Commission finds it necessary to seek the imposition of monetary civil penalties for any OCS service provider's violation of the reporting requirements, as opposed to physical remedies to force open and nondiscriminatory access, the Commission expects to rely on the Secretary of the Interior's authority to "assess, collect, and compromise any such penalty," in accordance with section 1350(b) of the OCSLA.

B. Regulatory Conflict and Accord

1. Requests for Rehearing and/or Clarification

Duke, El Paso, INGAA, and Williams maintain it is inequitable to subject separate sets of offshore facilities to separate regulatory regimes. They stress that even if the new OCSLA reporting requirements diminish the difference between operating under the OCSLA as opposed to the NGA, OCS service providers subject exclusively to the OCSLA will still retain a competitive advantage over those also subject to the NGA.

INGAA proposes all offshore facilities be declared gathering, *i.e.*, exempt from the NGA under section 1(b), thereby leaving all offshore facilities and services subject exclusively to the OCSLA. Williams implicitly endorses this approach.

El Paso urges the Commission to rescind the new reporting requirements and regulate offshore activities as it has to date, by relying on the NGA in conjunction with complaints under the OCSLA.

OCS Producers caution that exploration, development, and production are properly the regulatory domain of the MMS, and the Commission risks clashing with MMS if it fails to plainly put these activities beyond its reach.

2. Commission Response

Concerns regarding the impacts of existing laws—*e.g.*, whether the statutory regime in place offshore favors one type of entity or activity over another—are appropriately directed to Congress rather than to this Commission. In the onshore context, we have been confronted with analogous allegations of commercial advantage conferred as a consequence of operating subject to state versus federal regulation. Weighing the comparative benefits and burdens of operating under one statute versus another, however, is beyond our purview.

We are charged with, and our authority extends only to, enforcing each statute as it applies; hence, we are

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[18] Specifically, Order No. 509 granted all NGA-regulated OCS pipelines Part 284, Subpart G, blanket transportation certificates, then mandated these pipelines file tariffs to implement their blanket certificates, and pursuant to their certificates, required that the offshore lines provide firm and interruptible transportation on an open and nondiscriminatory basis to owner and nonowner shippers. The rule had no impact on NGA-regulated pipelines onshore, as onshore entities retained the option to forego seeking a blanket transportation certificate.

[19] Duke's Request for Reconsideration and Rehearing at 4 (May 10, 2000).

[20] Order No. 509–A, 54 FR 8301 (Feb. 28, 1989), FERC Stats. & Regs. ¶; 30,848 at 31,334 (1989).

[21] *Id.*

[22] 47 F.3d 1186 (D.C. Cir. 1995). We note that in addition to enforcement action by federal agencies, OCSLA section 1349 provides for citizens suits, and the Shell case was initiated as such by a private party. Duke cites this case to stress that Congress granted original jurisdiction to the district courts of the United States for suits, cases, and controversies arising out of OCS operations. We concur, but note that the parties in the Shell case initially sought administrative relief from this Commission in Bonito Pipe Line Company, 61 FERC ¶ 61,050 (1992), prior to judicial review.

[23] The Commission determined that the oil pipeline had excess capacity sufficient to accommodate the maximum projected new volumes, and therefore found no need to act under OCSLA section 1334(e) to adopt an allocation methodology.

not at liberty to contemplate the equities and impacts of the existing regulatory regime on competitors' operations. We observe that here, if anything, the enhanced transactional transparency to be gained by OCSLA reporting will diminish the differences between OCS service providers now operating under joint NGA/OCSLA jurisdiction and those subject only to the OCSLA. We would not characterize the new reporting requirements as another layer of regulation, as does INGAA; rather, given the OCSLA's applicability to all OCS facilities and services, we view reporting as the foundation for implementation of a uniform, light-handed regulatory regime offshore.

We will not pursue INGAA's proposal that we find all offshore facilities gathering, and thereby remove them from our direct NGA oversight, since the application of our test for determining whether facilities are performing primary a gathering or transportation function [24] is not at issue in this rulemaking proceeding. However, as discussed in the NOPR and final rule, part of our motive for acting to enhance the availability of information about offshore operations is the development of the *Sea Robin* proceeding and the guidance offered by the court concerning the application of our primary function test to offshore facilities. That decision prompted us to review and revise our criteria for determining the primary function of offshore facilities, resulting in a determination that portions of Sea Robin's system, which had always been regulated under the NGA as transmission, should be reclassified as gathering.[25] While this result calls into question whether other offshore facilities that have traditionally been regulated as NGA transmission lines might be performing primarily a gathering function, we believe the proper approach is to examine such facilities individually, on a case-by-case basis, in separate proceedings.

If, in the wake of *Sea Robin*, additional offshore facilities are declared gathering, and are thereby pushed out from under the umbrella of the regulatory protections that the NGA provides, the NGA's scope will shrink, making it less effective as a means to check market power abuses.[26] Under these circumstances, we expect complaints brought under the OCSLA will play an increasingly significant role.

We have recently revised our complaint procedures to permit more efficient processing,[27] and where before a general allegation of wrongdoing might be deemed adequate to pursue a complaint, under the revised regulations, specific allegations must be presented that measure up to a more rigorous minimum criterion before the Commission will proceed. As discussed in the final rule, we expect it will be difficult for a shipper or service provider to fashion a sustainable complaint absent the availability of information about the business practices of service providers.

Setting forth the particulars of an alleged OCSLA violation by an NGA-regulated service provider can be straightforward, given the wealth of information regarding jurisdictional interstate pipelines' actions. However, while the NGA's disclosure requirements are arguably adequate to allow for a complaint-driven enforcement regime, the same cannot now be said regarding possible OCSLA violations by NGA-exempt entities, since without the data contained in the new OCSLA reports, we question whether a description of alleged violations could be set forth in sufficient detail to sustain a complaint. Because we believe the data that will be generated by OCSLA reports is necessary to effectively monitor NGA-exempt OCS service providers, we reject El Paso's proposal to rescind the OCSLA reporting requirement.

We envision no pending conflict with the MMS. First, offshore, traditionally, several federal agencies have simultaneously exercised overlapping duties without inducing intractable conflict. Second, as discussed below, production facilities are generally exempt from the OCSLA reporting requirements.

C. Reporting Requirements

1. Requests for Rehearing and/or Clarification

Duke, El Paso, OCS Producers, and Williams contend public disclosure will reveal commercially sensitive, confidential, and proprietary information, to the detriment of the reporting entities.

The Producer Coalition has the opposite apprehension, expecting service providers will request privileged and confidential treatment for most of the information they report. Therefore, to ensure transactional transparency, the Producer Coalition advocates eliminating such treatment and making all data public.

The final rule directs an OCS service provider to file a report on the first day of each quarter, describing its status as of the first day of the previous quarter. The Producer Coalition, OCS Producers, and NGSA are concerned that the filed report may omit the immediately preceding quarter's intra-quarter changes, *i.e.*, a change on October 2 will be omitted from the January 1 report, and only picked up in the April 1 report. The parties suggest this is too long.

The Producer Coalition proposes requiring that additional details be reported regarding rates and conditions of service. For example, the Producer Coalition requests we revise § 330.2(b) to clarify that the primary receipt and delivery points include both the points listed as primary receipt or delivery points in each contract and any other receipt or delivery points that are actually used for service under the contract during the reporting period. The Producer Coalition explains this clarification will discourage the practice of listing primary points in contracts, and then in fact flowing gas through other points. Further, the Producer Coalition believes it would be easier to find receipt and delivery points if the service provider designated them not just by meter identification numbers but by geographic location as well.

OCS Producers request clarification concerning events triggering the reporting requirement and an itemization of the conditions of service to be reported. NGSA notes that the regulations request a detailed description of the derivation of non-cost-based rates and ask whether it is sufficient to simply state that such rates were derived by negotiation.

OCS Producers suggest the affiliate reporting requirement be modified as

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[24] The Commission's "primary function" test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983).

[25] We note that the result of our review was to split Sea Robin's system, retaining as transmission a 36-inch diameter, 66-mile long line to shore, but reclassifying as gathering Sea Robin's remaining 372 miles of 4-to 30-inch diameter pipe. 87 FERC ¶ 61,384 (1999), *reh'g pending*.

[26] NGSA speculates that the NGA's effectiveness as a means to check market power abuses may also diminish if the currently applicable NGA reporting requirements are later trimmed back. If and when modifications to our NGA regulations are proposed, NGSA, other interested parties, and the Commission will have ample opportunity to consider the potential impacts on NGA-regulated OCS service providers and the implications for monitoring and ensuring compliance with the OCSLA. Such a future NGA rulemaking proceeding is the appropriate forum to consider these issues.

[27] *See* 18 CFR 385.206, Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), FERC Stat. & Regs. ¶ 31,071 (1999), 86 FERC ¶ 61,324 (1999), *order on reh'g and clarification*, Order No. 602–A, 64 FR 43600 (Aug. 11, 1999), FERC Stats. & Regs. ¶ 31,076 (1999), 88 FERC ¶ 61,114 (1999), order on reh'g, Order No. 602–B, 64 FR 53595 (Oct. 8, 1999), FERC Stats. & Regs. ¶ 32,545 (1999), 88 FERC ¶ 61,249 (1999).

follows: eliminate the need to identify gas consumer affiliates, since such affiliates are numerous, change often, and have little impact on upstream offshore operations; list only those affiliates that are active on the OCS; and add gas gathering affiliates to those that must be reported. El Paso would restrict named affiliates to those engaged in gas operations within the US and adjacent water bodies.

NGSA requests that the Commission specify a format, establish procedures for electronic filing, and make the filed information Internet accessible.

2. Commission Response

Reporting is not intended to force the revelation of commercially sensitive, confidential, or proprietary information immaterial to ensuring compliance with the OCSLA. That said, reporting will nonetheless compel OCS service providers to make public aspects of their operations that they have heretofore been permitted to keep private. While we appreciate companies' preference to withhold certain information, we note that the wide applicability of the new OCSLA reporting requirements, like the wide applicability of the existing NGA reporting requirements, serves to place competitors on a more consistent regulatory footing.

We intend to continue the current practice under § 388.112 of our regulations of considering requests for privileged treatment of information on a case-by-case basis. Because the outcome of each request typically turns on the specific facts presented, we are unable to make broad declarations on what information qualifies for such treatment. Accordingly, we reject the Producer Coalition's proposal that we generically declare no information can qualify for privileged treatment. However, we do not intend to extend privileged treatment to information that is necessary to determine whether service providers are operating in accord with the OCSLA, *e.g.*, a § 330.2 report that failed to state the actual rates charged would have no utility.

To date, in the context of exercising our non-OCSLA authority, we have been able to give adequate attention to individual requests for privileged treatment and expect to be able to do the same with respect to requests related to OCSLA reporting. Over time, the Commission has determined what types of data might be exempt from the mandatory disclosure requirements of the Freedom of Information Act,[28] and these past decisions can be expected to guide our assessment of requests for privileged treatment of information in OCSLA reports.

If circumstances arise that prompt the Commission, on its own initiative, to question a non-reporting OCS service provider's conformity with the OCSLA, we may deem it appropriate, initially, to permit the service provider to submit information to the Commission confidentially. If we subsequently determine the service provider does not qualify for an exemption, we would expect to then direct that reporting commence pursuant to § 330.2 of the regulations. Duke urges we expand upon this by revoking the reporting requirements and handling all OCSLA access disputes on a confidential basis. As noted, we expect there will be some cases where some portion of the information needed to resolve a dispute will be withheld from public view. However, because there is now no adequate repository of information regarding NGA-exempt OCSLA activities, there is now no straightforward means to gauge service providers' adherence to the OCSLA. Duke's proposal would preclude establishing a database sufficient to this task.

In the NOPR, we suggested that OCS service providers notify the Commission every time a change in affiliates or services took place, and to do so within 15 days of any such change. Comments in response painted the picture of a large, dynamic OCS service provider, compelled to make daily filings to keep the record up to date with ongoing changes to its system. To avoid burdening a service provider with perpetual filings, we modified our approach, foregoing ongoing updating in favor of quarterly reporting.

Because data's utility is a function of its accuracy, we share the concerns expressed that the reported data not be stale. Therefore, we will modify § 330.3(c) of the regulations. We will change the scheduled reporting date from the first day of a calender quarter to 15 days after the close of a calender quarter. However, a report must now reflect a service provider's status as of the *last* day of the preceding quarter and describe all changes to a service provider's affiliates, customers, rates, conditions of service, and facilities that have occurred during the course of that quarter. Thus, reports, when required, are due on April 15, July 15, October 15, and January 15.

In the final rule, we set October 1 as the due date for the initial § 330.2 reports. We revise that here. Reports will be due on October 15, 2000, and are to contain a description of activities during the third calender quarter of this year. However, because October 15, 2000 falls on a Sunday, pursuant to § 385.2007 of our rules of Practice and Procedure, reports are to be filed on Monday, October 16, 2000. This first OCSLA report will set a baseline specifying service providers' status; subsequent reports will look back to this baseline to determine what future changes merit reporting.

An exempt OCS service provider may become subject to reporting by virtue of taking on another shipper or as a result of a Commission decision that a shipper was denied service without good cause. Currently, § 330.3(b) gives such a service provider 90 days from the date it loses its exemption to file a report. We will modify this time frame so that if an exempt service loses its exemption during a calender quarter, it must file a § 330.2 report on the 15th day of the subsequent quarter. Where an exemption is lost due to serving another shipper, the date such service commences will be the date exempt status ends.[29] Where an exemption is lost due to a refusal to serve, the date the Commission determines the denial of service was unjustified is the date exempt status ends. In reaching such a determination, we note we may elect to alter this default date.

In the final rule, we stated that if an OCS service provider's operations are identical quarter to quarter, the service provider need not submit a report. Concerns were raised that this could entice a service provider to make intraquarter changes, while arranging to revert to an apparent static state in time to be able to claim no quarter-to-quarter change took place. We clarify that although reports need only be filed once per quarter, this report is to be a cumulative record of all changes that have taken place during the calender quarter covered. If there is no change during a given quarter, then there is no need to file a report on the 15th day of the subsequent quarter.

OCS Producers request clarification of §§ 330.3(a)(1) and (a)(2) of the regulations, which state that single-shipper and owner-shipper exemptions end when either the service provider agrees to serve another customer, or when a new customer requests service, is denied, and the Commission determines the denial is unjustified. Discussions with prospective shippers do not jeopardize an existing

[28] 5 U.S.C. 552.

[29] Although we identify service to a new shipper as ending an exemption and triggering the requirement to report, we note that for an exempt owner-shipper, changes in ownership or shipping rights may have the same effect.

exemption.[30] We are persuaded that the date parties reach an accord for future service should not be, as is now, the event that triggers the reporting requirement. Precedent agreements for future service may schedule long lead times before going into effect; actions that take place between the time the agreement is signed and service starts may void the agreement. Therefore, rather than make reaching an agreement to serve the reporting trigger, we will require actual service, and so modify §§ 330.3(a)(1) and (a)(2) to designate the time the Gas Service Provider "commences service" as the event that eliminates a reporting exemption.

Currently, §§ 330.3(a)(1) and (a)(2) state that an exempt service provider's denial of service can trigger reporting if the Commission finds the denial unjustified and the denied shipper objects. OCS Producers persuades us that there is little to be gained by requiring that the denied shipper contest a refusal to serve. In investigating a denial of service, the Commission will have the opportunity to weigh the legitimacy and the merits of both the shipper's request and the service provider's refusal. Thus, we find no need for the denied shipper to present the Commission with the circumstances of its denial, again, following a finding that the denial was unwarranted. We will modify §§ 330.3(a)(1) and (a)(2) accordingly.

This is a first effort at obtaining information under the OCSLA. Nothing has changed since the final rule, where in response to a request for a more detailed OCSLA report we explained that "[g]iven the complexities of offshore operations, the array of entities offshore, and the fact that we have not heretofore collected the information described in §§ 330.2 and 330.3(b) and (c), we feel it premature to fix the manner of presentation or filing format of an OCSLA report at this time." [31] If early rounds of OCSLA reports prove the information collected to be deficient, excessive, extraneous, redundant, inconsistent, or otherwise ineffective, we may then describe a more rigorous format and content for the reports. As is, we anticipate the information specified in our OCSLA regulations, as modified herein, will be adequate to enable interested parties to compare rates, conditions of service, and affiliate treatment among a pipeline's various customers and among various pipelines. Therefore, we deny rehearing requests to add details to the parameters of the OCSLA report.

For reporting to be effective, interested persons must be able to compare costs to ship gas between specific points. To address the Producer Coalition's apprehension that service providers might post rates between primary receipt and delivery points, then actually ship gas between other sets of points, we will revise our regulations. Sections 330.2(b)(5) and (b)(6), directing service providers to list their primary receipt and delivery points, remains unchanged. Section 330.2(b)(7) is expanded to require service providers to report "Rates between each pair of primary receipt and delivery points and each pair of any other points served."

We concur with the Producer Coalition that it would be easier to find receipt and delivery points if the service provider designated them not just by meter identification numbers but by geographic location as well. We encourage service providers to do so.

Section 330.2(b) of the regulations presents two reporting alternatives and asks service providers to file either copies of contracts or a description of the conditions of service that includes an explanation of the rates charged. The Producer Coalition proposes that we emphasize the alternative nature of this filing requirement by changing the format, but not the substance, of the regulations. We will do so, to avoid any possible confusion regarding the information to be submitted, as follows.

Section 330.2(b) is revised to read: "A Gas Service Provider must file with the Commission its conditions of service, consisting of the information specified in this paragraph (b), or alternatively, the information specified in paragraph (c). Under paragraph (b), a Gas Service Provider must submit, for each shipper served * * *." Section 330.2(b)(8) now concludes after "Gas Service Provider." Section 330.2(b)(9) is redesignated as § 330.2(c) and reads: "As an alternative to the above paragraph (b) requirements, a Gas Service Provider may file a statement of its rules, regulations, and conditions of service that includes * * *." Sections 330.2(b)(9)(i), (ii), (iii), and (iv) are redesignated as § 330.2(c)(1), (c)(2), (c)(3), and (c)(4), respectively.

In the final rule, we expressed the expectation "that, with limited exceptions, all filings by regulated entities will be made in electronic form." [32] We retain this expectation, but for the reasons noted above, believe it would be premature to attempt to establish the format, content, and procedural protocol for electronic filing of OCSLA reports before the experience of a single round of reporting. The reports, filed as paper copies, will be available in the Commission's Public Reference Room and may be accessed remotely via the Internet through the FERC Home Page (*http://www.ferc.fed.us*) using the Records and Information Management System (RIMS) link or the Energy Information OnLine icon.

We will expand the § 330.2(a)(6) definition of affiliate to include gathering affiliates and restrict it to affiliates engaged in gas operations within the US and adjacent water bodies. The omission of gathering affiliates was an oversight. We do not expect foreign affiliates will have any significant impact on OCS service providers' operations.

We will not adopt OCS Producers' proposal to further narrow the affiliate category to only those doing business on the OCS, as we can envision instances where onshore affiliates, *e.g.*, an affiliate owner of a processing plant, might influence an OCS service provider to modify the volumes or path of gas transported. We will adopt OCS Producer's proposal to omit identification of affiliate gas consumers, and modify § 330.2(a)(6) accordingly. Given end user's location at the far end of the wellhead-to-burnertip gas path, we do not expect consumer affiliates to exert an undue influence on upstream offshore operations.

If shippers are charged negotiated rates, NGSA asks whether additional information beyond this fact needs to be submitted. Section 330.2(b) itemizes the reporting requirements. Reports should enable interested persons, particularly prospective and existing shippers, to compare the rates and terms of service they might receive or are receiving, with that of other shippers. Thus, simply stating that all rates are negotiated will not do. As noted in *NorAm Gas Transmission Company*, a negotiated rate formula must be stated with "sufficient specificity to permit easy calculation of the actual negotiated rate, charge, and rate component for each transaction," [33] to enable a shipper to estimate the rate it would be charged to transport gas between specific points in

[30] Similarly, conversations with existing shippers concerning possible changes to rates or terms of service may continue in private indefinitely. Only when the results of such discussions are put into actual practice is the submission of a revised report required.

[31] 65 FR 20354 at 20366, FERC Stats. & Regs. ¶ 31,514 at 31,535.

[32] *Id.*, note 64.

[33] 75 FERC ¶ 61,091 (1996), *order on reh'g*, 77 FERC ¶ 61,011 at 61,037 (1996).

order to compare its hypothetical rate with the actual rates of other shippers.

D. Reporting Exemptions

1. Requests for Rehearing and/or Clarification

Williams would lift the single-shipper and owner-shipper reporting exemptions, claiming such exemptions make it difficult for a shipper to determine if it has been denied access or subject to discrimination. Duke is similarly concerned that reporting exemptions will produce an "information asymmetry," whereby nonreporting OCS service providers may exploit the public record to gain a competitive advantage over their reporting rivals.

El Paso urges that all reporting exemptions, other than the exemption for offshore pipelines subject to the NGA, be eliminated as a means of leveling the regulatory playing field.

El Paso, OCS Producers, and Williams expect existing effective offshore arrangements will be upset as service providers structure their business organization and facilities to come within the reporting exemptions.

OCS Producers would expand the reporting exemptions by (1) treating affiliates of the same corporate family as if they were one entity; (2) considering parties engaged in a common financial transaction, such as a sale and leaseback, as a single or joint owner; (3) applying the owner-shipper exemption to a jointly-owned pipeline that receives gas from multiple fields, even though all pipeline owners do not hold interests in each of the attached fields; (4) treating each owner of a pipeline with undivided ownership interests as if each were an individual pipeline (*i.e.*, a pipe within a pipe); (5) extending the shared ownership exemption of a single pipeline crossing multiple fields to include multiple pipelines crossing multiple fields; and (6) declaring that gas volumes shipped in conjunction with the MMS' royalty-in-kind program will not void the single-shipper or shipper-owner exemptions.

OCS Producers argue that production platforms, and facilities upstream thereof, should be exempt from reporting (effectively broadening the "feeder-line" exemption). NGSA would establish a rebuttable presumption that all production facilities and services qualify for the feeder-line exemption.

2. Commission Response

Adopting proposals to eliminate some or all of the reporting exemptions would admittedly meet our aim of producing a broader and more complete picture of offshore operations. However, we seek only the minimal information necessary to be able to verify that OCS service providers are operating in compliance with the OCSLA's open and nondiscriminatory access mandates. We continue to believe that an entity that serves a single customer, or that transports only its own gas, has little opportunity or motive to contravene these OCSLA mandates. Thus, we do not find it necessary to employ reporting to monitor such entities.

Given that adding a new customer will void the single-shipper or owner-shipper reporting exemption, it seems futile for an exempt service provider to offer prospective shippers discriminatory terms, since the service provider's first filing following termination of its exemption will advertise the disparity between new and existing customers' conditions of service and invite action contesting the disparity. Similarly, a Commission determination that a denial of service is unjustified informs the rejected shipper, without the need for any further inquiry, that the rejected shipper has cause to complain. Therefore, while a reporting exemption may place a service provider at an advantage in negotiating with prospective shippers, acting on this advantage will be ultimately self-defeating, since any impropriety will come to light in a first filing. In view of the above, we do not expect the single-shipper or owner-shipper reporting exemptions will be used to exploit shippers, as Williams worries, since discrimination or an unwarranted refusal to serve inevitably will be revealed and rectified.

Duke is correct that the cure for "information asymmetry" is a wider application of the transactional transparency that OCSLA reporting provides. However, an exempt service provider that is able to make use of the public record to enable it to add a new customer or entice one away from a competitor, will lose its reporting exemption by adding that shipper. Because reporting will end the "information asymmetry," the problem Duke identifies should prove largely self-correcting. To the extent we find evidence that this is not the case—*i.e.*, as Duke warns, the partial transparency produced by allowing reporting exemptions reduces competition and economic efficiency in the OCS marketplace—we will reevaluate the operation and outcome of the OCSLA reporting regime.

Duke asserts that OCS producers, when compared to OCS service providers, "often have superior market knowledge,"[34] and thus enjoy an advantage when weighing offers for transportation services. This advantage, coupled with a producer's capability to construct its own gathering and transportation facilities, leads Duke to conclude that the ultimate leverage holder and decision maker is the offshore producer. We find this assertion unpersuasive. Individual producers are compelled to publically disclose to the MMS a significant amount of information about their OCS leaseholdings, including their estimates of gas and oil reserves, exploration and development plans, information on deepwater discoveries, and data on production, existing and planned wells, structures, platforms and rigs, geographic mapping, and royalty relief. Although some of the producer-specific or lease-specific data is not publically available, enough is to permit OCS service providers to evaluate OCS producers' ongoing activities. Given this we do not expect that requiring some service providers to make certain information public to tip the competitive balance between producers and the pipelines that carry their gas. Both service providers and producers should be positioned to adequately monitor one another and reach rational accord on the merits of contracting for capacity versus constructing proprietary pipeline facilities.

El Paso would eliminate the single-shipper, owner-shipper, and feeder-line reporting exemptions in the interests of leveling the competitive playing field. As discussed, we do not expect the first two exemptions to confer any sustainable competitive benefit; therefore, we believe these exemptions can be retained without distorting offshore operations. With respect to the feeder-line exemption, as discussed in the final rule, feeder line facilities are typically owned and operated by the same entity that holds the right to produce gas from a particular field and are found upstream of a point where gas leaves a platform or platforms on its way from a producing field to shore. We do not expect issues of access or discrimination to arise with respect to such facilities, since where the same entity owns or leases both the mineral rights and the facilities necessary to draw gas from its own reservoirs.

OCSLA section 1334(f)(2) states the "Commission may, by order or regulation, exempt from any or all of the [open and nondiscriminatory access] requirements * * * any pipeline or class of pipelines which feeds into a

[34] Duke's Request for Rehearing, Appendix C, Affidavit at 2 (May 10, 2000).

facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed." We exercised this option, stating in § 330.3(a)(3) of the regulations that the reporting requirements would not apply to "[s]ervices rendered over facilities that feed into a facility where natural gas is first collected, separated, dehydrated, or otherwise processed."

OCS Producers and NGSA stress that the statute provides for an exemption for pipelines feeding into facilities where gas is first collected *or* into facilities where gas is first separated, dehydrated, or otherwise processed. They argue that because we eliminated the "or" between the point of first collection and the point of first separation, dehydration, or other processing, we restrict the exemption so that it holds only up to the first point where any of the specified activities occurs. OCS Producers maintain this excludes "the majority of production-related facilities" from qualifying for the feeder-line exemption, citing the example of a subsea manifold adjacent to wellbores as a potential point of first collection.

This was not our intention. In fact, we view our regulatory exemption as an expansive application of what OCSLA section 1334(f)(2) allows. However, to preclude any interpretative ambiguity, we will more explicitly follow the wording of the statute, and modify § 330.3(a)(3) to read "[a]ny pipeline or class of pipelines which feeds into a facility where gas is first collected or a facility where gas is first separated, dehydrated, or otherwise processed."

We decline OCS Producers' and NGSA's invitations to categorically exempt all production-related facilities. Without reviewing the configuration of offshore facilities, we cannot be satisfied that a pipeline's location upstream of a processing platform guarantees it serves as a feeder line and not as a transportation line, or that a platform is being used to support production activities rather than, for example, serving to collect, redistribute, and boost the pressure of gas already in transit en route to shore. Therefore, we will retain the feeder-line exemption, but will not broaden it.

We recognize that by providing reporting exemptions, we invite OCS service providers to organize their operations so as to come within these exemptions. For example, Williams anticipates exempt service providers, in contemplating expansions, may be motivated to deliberately undersize new capacity to be able to claim to be physically incapable of serving additional customers.

In the final rule, in response to this same example, we observed it would be economically irrational to reject the receipt of the additional revenues that new customers confer in favor retaining a reporting exemption. We do not believe the administrative convenience of not reporting will outweigh service providers' motivation to maximize profit. As we also observed in the final rule, "[g]iven that exempt and non-exempt service providers must ultimately abide by the same OCSLA nondiscrimination provisions, we do not expect opting out of reporting will confer a noticeable commercial advantage." [35] We do not expect legitimate efforts to obtain or retain exempt status will impede or distort offshore development, or have any significant adverse impact the offshore's competitive transportation markets, or upset offshore investments. Therefore, we will permit regulated entities to arrange their affairs with an eye to the regulatory impact thereof.

We do not intend, however, to let exempt form trump exempt substance, which leads us to reject OCS Producers' proposals to treat exemptions expansively. Specifically, our standard practice is to treat separate business entities as distinct, regardless of affiliation, and we will continue to do so. Thus, for the purposes of applying the single-shipper exemption, two affiliated shippers count as two shippers, and consequently could not both be served under the single-shipper criteria. Also, where a pipeline is jointly owned by more than one entity, each with an undivided interest in the line, the single-shipper exemption will only apply as long as one and only one party ships its gas through the pipeline.

In the same manner, we expect to rely on the formalities of financial arrangements, and treat entities engaged in a common financial transaction as separate parties. Thus, while OCS Producers propose treating entities engaged in a sale and leaseback as a single or joint owner, we view each participant as a separate actor. Accordingly, if individual entities wish to be treated as a collective joint owner, they should execute agreements to that effect, and not count on this Commission to examine the depth of their financial ties, affiliate status, or other indicia of intimacy in order to construe them to be a constructive joint owner.

[35] 65 FR 20354 at 20365, FERC Stats. & Regs. ¶ 31,514 at 31,534.

We clarify that where the same parties own a pipeline and all the gas flowing through it, if such parties contract with a third party as their agent to operate the pipeline, or manage other transportation matters on their behalf, the owner-shipper exemption remains intact. This same principle applies to the single-shipper exemption.

We presume that service providers serving themselves will not deny access to or discriminate against themselves, hence the owner-shipper exemption. Section 330.3(a)(2) states this exemption applies where a service provider's owners hold interests in a pipeline and the gas from the "field or fields connected to a single pipeline." OCS Producers suggest, and we agree, that the intent is clarified by changing "a single pipeline" to "that single pipeline." OCS Producers also suggest changing the reference from "that single pipeline" to "that pipeline or pipelines" in order to cover a configuration where laterals that gather gas from a production area feed into a trunkline. We will also adopt this change, but note this owner-shipper exemption holds only as long as all the same parties share ownership interests in all the pipeline facilities and in all the gas supplies transported by those facilities.

We recognize that, as a practical matter, due to arrangements such as production balancing agreements, an owner-shipper pipeline may not always flow gas volumes in constant proportion to the ownership interests in the production field. We clarify that as long as all the same parties share ownership interests in the pipeline and in all production attached to that line, the owner-shipper exemption will apply.

OCS Producers would expand the owner-shipper exemption to permit parties that are not shippers to hold interests in a pipeline. A premise of the owner-shipper exemption is that where all parties share the same ultimate interest, the self-dealing of one will be the self-dealing of all. Introducing non-shipping pipeline owners, introduces third parties that do not necessarily share interests in common with shipper-owners. This undermines our assumption that parties engaged in a single enterprise will have little motive to exploit one another; therefore, we will not broaden the shipper-owner exemption in the proposed manner.

We clarify that the fact that upstream laterals and/or extensions of a pipeline system qualify for reporting exemptions is not determinative of whether the downstream segments of the same pipeline system are exempt. For example, consider an offshore pipeline system configured in the form of an

inverted "Y," owned and operated by gas producers A, B, and C. Gas flows in separate paths along the left and right legs, merging into a single stream that moves along the trunk of the "Y." Assuming the legs are the only lines connecting to the trunk, if producer A owns and ships all the gas in the left leg, and producers B and C own and ship all of the gas in the right leg, then each leg qualifies for a reporting exemption. The left leg comes under the single-shipper exemption and the right leg under the shipper-owner exemption. In addition, because all gas flowing along the trunkline portion of the pipeline system is owned by the same parties that own that line, the trunkline would also qualify for the shipper-owner exemption. We note that if the trunkline were owned by only one or two of the three producers, the trunkline could not qualify for this exemption. The legs leading into the trunkline retain their exempt status regardless of the ownership of the trunkline.

We clarify that transporting gas on behalf of MMS under its royalty-in-kind program will be considered to be service for a separate shipper—but only if gas is actually moving under such an arrangement.[36] In theory, MMS royalty-in-kind gas could flow in every offshore pipeline. In practice, at present, only minimal amounts of such gas are actually flowing. In the final rule, we rejected MMS' suggestion that we treat its potential participation as a second shipper as voiding the single-shipper and owner-shipper exemptions. Here, we reject OCS Producers' contrary suggestion that we carve out an exception to retain those same exemptions where MMS participates as a shipper. Recognizing the provisional nature MMS' royalty-in-kind collection program, we reaffirm the wait-and-see approach of the final rule: "in the event MMS moves beyond its present royalty-in-kind pilot program and begins to collect a significant portion of royalty payments as gas volumes, we may be inclined to revisit the applicability of the reporting exemptions." [37]

E. Rate Regulation

1. Requests for Rehearing and/or Clarification

Williams urges the Commission to state that it does not intend to use the OCSLA to impose cost-based rates.

Duke and Williams are concerned that potential allegations of rate discrimination will create the need to renegotiate existing contracts every time a new customer is signed up under different terms.

Duke and Williams are concerned that the reporting requirements will compel pipelines to forego individually-tailored offerings in favor of uniform rates and services.

2. Commission Response

We recognize that the OCSLA contains no provision for the imposition of cost-based rates and clarify that it is not our intention to apply a full NGA cost-of-service review to non-NGA OCS entities. Our focus under the OCSLA is open and nondiscriminatory access, not ratemaking methodology. Thus, as long as an OCS service provider charges its customers compatible rates, and assuming there is no rate inequity, then under the OCSLA we would have no cause for further inquiry regarding the rates' derivation. Of course, if an OCS service provider is subject to the NGA, its rates would be scrutinized and authorized as just and reasonable under the NGA.

The prospect that OCSLA reporting might place a straightjacket on OCS service providers was raised and responded to in the final rule. There we rejected such speculation, stating that "we see no bar to a service provider offering different shippers different terms—provided the variation in the terms of service either reflect differences in costs incurred to provide service or reflect differences among the shippers served," [38] a position we reaffirm here. We clarify that our review of a service provider that charges a lower rate to one customer and a higher rate to another would not necessitate scrutiny of the service provider's full cost of service data. Rather, the service provider would only need to provide that data and other information material to justify the higher rate.

We reiterate that we will neither oblige an OCS service provider to offer identical rates and terms to all customers to meet the OCSLA's nondiscrimination mandate nor oblige comparable OCS service providers to offer identical rates and terms of service. Provided an OCS service provider can justify variable conditions of service among its customers, we may find such customers are not in fact similarly situated. Additionally, if comparable service providers can articulate an acceptable reason for differences in their rates and terms of service, we may accept the differences as reasonable reflections of distinctive business conditions and practices.[39]

Duke and Williams are correct to suggest that offering service to a new customer under terms at odds with those of existing customers may give rise to suspicions of discrimination. However, such suspicions may be set aside if the service provider demonstrates a legitimate reason for such treatment, *e.g.*, a disparity in new and existing customer reserve commitments. Thus, while a service provider may seek safe harbor by establishing a uniform tariff applicable to all customers, we do not interpret the OCSLA as requiring this. To clarify, we do not read the OCSLA's nondiscrimination requirement as a most-favored-nations clause; where an OCS service provider can present an acceptable rationale for offering its customers different rates and terms, we can find different conditions of service acceptable.

Duke asserts that reporting will lessen competition by reducing the business alternatives now available to offshore service providers, which will lead to diminished OCS investment. This conflicts with the premise of Order No. 639 that "the free flow of information

[36] This applies regardless of whether MMS holds title to the gas or the gas is transported under the name of another shipper on behalf of MMS.

[37] 65 FR 20354 at 20361, FERC Stats. & Regs. ¶ 31,514 at 31,526.

[38] 65 FR 20354 at 20358, FERC Stats. & Regs. ¶ 31,097 at 31,522.

[39] With this in mind, § 330.2(b)(8) solicits "[o]ther conditions of service deemed relevant by the Gas Service Provider." The Producer Coalition suggests the Commission spell this out, maintaining that without requiring specific information, rates and terms that superficially appear the same can mask discrimination. As an example, the Producer Coalition posits a service provider that charges a shipper a rate that includes recovery of costs incurred to build new facilities to serve that shipper, and then charges that same rate to a second shipper, but differently than the first shipper, the second shipper pays upfront for the new facilities needed for its service. The Producer Coalition asserts that unless the service provider is made to report and display this underlying disparity, it appears both shippers are subject to the same rate. The Producer Coalition would prevent this by revising § 330.2(b)(8) to require reporting of "other economically and operationally material conditions of service, including contract volumes, the effective and expiration date of the contract, dedication of gas supply, responsibility for construction of interconnection facilities, and any other economically or operationally material term of service (such as gas quality standards, scheduling priorities, imbalance provisions and billing and payment) that sets the subject contract apart from other contracts on Gas Service Provider's system." Although some of the itemized information may be relevant to determining whether a service provider is complying with the OCSLA, some of it may not. Without an explicit need for more data, we are reluctant to increase the reporting burden. In the case of the above example, we are not convinced the second shipper needs the additional information the Producer Coalition proposes to be alerted to the possibility that it may not be signing up for service under a rate reflecting the same set of conditions as the rate charged the first shipper. Accordingly, we place upon the service provider the responsibility of determining what information to report as relevant under § 330.2(b)(8) while reminding shippers of the need to remain alert to signs of service providers' sins of omission.

regarding offshore gas activities is critical to the successful creation of a competitive and efficient marketplace."[40] We are unclear which particular business practices depend on remaining closeted to remain viable. We stress that this new rule imposes no new obligations on how OCS service providers conduct business; it is the OCSLA that obligates OCS service providers to conduct business premised on open and nondiscriminatory access.

As discussed above, we do not intend for reporting to force all OCS service providers to adhere to one rigid tariff. We see no reason that the flexibility, variety, and experimentation reflected in existing offshore agreements and practices cannot be sustained under this new reporting regime, provided these business arrangements conform to the OCSLA's longstanding open and nondiscriminatory access requirements. Thus, reporting should neither diminish the number of legitimate business alternatives nor diminish offshore investments.

F. Gas and Oil Asymmetry

1. Requests for Rehearing and/or Clarification

Duke points out that the OCSLA applies with equal force to oil and gas transportation and asks why the new reporting requirements are confined to gas.[41]

2. Commission Response

Here we are concerned solely with offshore natural gas operations, and while this leads us to also consider other statutes' impact on such operations (principally the NGA), we find no cause to consider OCSLA provisions affecting oil operations. In the final rule, we explained to Duke that in this proceeding we have elected to confine our considerations to gas matters, given that we have found rates for transportation on oil pipelines to be just and reasonable,[42] but have made no such finding for rates for transportation on NGA-exempt OCS gas pipelines. Thus, to protect gas shippers using NGA-exempt OCS facilities from discriminatory, exorbitant charges, we look to the OCSLA. We do not rule out the future implementation of similar reporting requirements for offshore oil service providers, but that possibility is outside our present purpose.

G. Administrative Burdens

1. Requests for Rehearing and/or Clarification

OCS Producers expect the Commission to be inundated with requests for declarations that production-related facilities and services qualify for a reporting exemption.

2. Commission Response

We are unable to predict the number of petitions that might be presented with respect to OCSLA reporting status; however, we intend to give prudent consideration to the issues raised in each request and process all requests as expeditiously as our resources permit. Initial uncertainties about how to assess whether exemptions apply should recede with each declaratory order addressing the merits of the OCSLA exemptions. As discussed in the final rule, we entrust OCS service providers with undertaking a good faith analysis of whether they qualify for one of the reporting exemptions, *i.e.*, service providers need not obtain prior Commission permission in order to lay claim to a reporting exemption.

We expect requests for a review of an entity's OCSLA reporting status will follow the pattern we are familiar with for requests of an entity's NGA jurisdictional status, namely, the Commission sees primarily those cases where the circumstances give rise to doubts about results reached. In the far more numerous cases where the facts lead to a reasonably unambiguous outcome, unless a company seeks reassurance that its own analysis is correct, the Commission's own assessment is rarely requested.

H. Offshore Development

1. Requests for Rehearing and/or Clarification

NGSA suggests that service providers be permitted to reserve capacity for their own future use and offer such capacity to third parties until needed. NGSA points out that NGA-regulated pipelines can reserve capacity for future use, and is apprehensive that unless NGA-exempt OCS pipelines can do the same, shippers seeking access to a service provider's facilities could disrupt a development plan between an OCS service provider and producer. NGSA also suggests OCS service providers be required to enlarge capacity when prospective shippers agree to bear the cost of the expansion.

2. Commission Response

We endorse the idea of sizing facilities to match anticipated transportation needs. Particularly offshore, where developing a producing field may entail extensive time and expense, we recognize the practicality of coordination, whereby a producer incrementally bringing additional volumes on line can be assured that when the field's extraction reaches its zenith, pipeline facilities will be in place with the capacity to take away and transport all gas volumes. Although such coordination, ultimately, is efficient, there can be a period of underutilization between the time a large diameter line is completed and the field it serves reaches full production.

Under such circumstances, we believe it is appropriate to compel the service provider to allow other shippers to interconnect, at their own expense, with the underutilized line. However, given that the primary purpose of the new line is to pick up gas at a particular production platform, as the volumes available at that production platform increase with the development of the field, these other shippers may be curtailed. This is appropriate, given that such shippers will have elected to enter into contracts for service on an interim basis, *i.e.*, between the time the line is placed in operation and the time excess capacity on the line is needed by the producer-shipper. We will permit a service provider to reserve its own capacity, as NGSA requests, provided (1) potential shippers' transportation requirements are taken into consideration in designing the new line, (2) shippers willing to bear the economic costs of moving gas on an until-as-needed basis are allowed access to reserved but unused capacity, and (3) the service provider does not shift costs associated with the underutilization of its own reserved capacity onto other customers.

NGSA requests we mandate expansions. Our authority to do so is contained in OCSLA section 1334(f)(2)(B), which states that:

Upon the specific request of one or more owner or nonowner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers

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[40] 65 FR 20354 at 20364, FERC Stats. & Regs. ¶ 31,514 at 31,531.

[41] Duke also argues that in amending the OCSLA in 1978—an amendment that added the nondiscrimination mandate to the existing open access requirement—Congress was preoccupied with potentially anticompetitive activities of oil companies, not gas. This insight into the legislative history of the OCSLA, however, does not alter the fact that the plain language of the statute, as Duke points out, does not distinguish between oil and gas. Thus, the competitive principles of OCSLA section 1334(f) apply with equal force to OCS oil and gas service providers.

[42] *See* Revision to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985 (1993). Whether this presumption of just and reasonable oil rates applies to oil lines located wholly on the OCS has yet to be affirmed by judicial review.

requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of authority is approved or issued after the date of enactment of this subparagraph [enacted Sept. 18, 1978]. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

We have yet to exercise our authority under this section of the OCSLA, and until we are faced with a case of first impression covering our mandatory expansion authority, we believe it would be imprudent to speculate on how we might exercise that authority.

I. Applicability of the Rule

1. Requests for Rehearing and/or Clarification

OCS Producers point to instances where the Commission's applies its rule to "OCS service providers" and "facilities" used to "move" gas. OCS Producers believes these words designate categories that are improperly broad given that the OCSLA, by its own terms, applies to "pipelines" that "transport" gas.

2. Commission Response

The OCSLA, by its own terms, applies to the exploration, development, or production of OCS minerals—defining "production" to include the "transfer of minerals to shore;" [43] "minerals" being defined as including gas.[44] This is a broader regulatory sweep than the NGA. For example, NGA section 1(b) excludes production and gathering facilities, whereas the OCSLA contains no such limitations.

For this reason, rather than refer to an OCS "pipeline," which risks being associated with the narrower NGA usage, we deliberately refer to an OCS "service provider." Similarly, "transportation," as a term of art under the NGA, carries connotations and limitations that we seek to sidestep. Our reference to facilities that "move" gas is no more expansive than the OCSLA's section 1331(q) description of "transportation," which covers everything between a wellhead and shore.

We clarify that we do not intend to cross reference common OCSLA and NGA terms. Thus, the OCSLA's use of the terms "pipeline" and "transportation" is to be interpreted by exclusive reference to the OCSLA. NGA definitions are relevant to the OCSLA only to the extent that NGA-regulated interstate transportation facilities are exempt from OCSLA reporting.

OCS Producers request we refine the § 330.1(b) definition of an OCS gas service provider to explicitly exclude production and explicitly include gathering. The OCSLA contains an expansive view of "production," quoted above. Rather than attempt to define production more rigorously, we find the more prudent approach is to make use of our OCSLA authority to exclude feeder line facilities from compliance with the competitive principles of section 1334(f). This should have the effect of removing the bulk of production activities from the OCSLA reporting requirements. All other OCS facilities and services, unless they fall under the single-shipper, owner-shipper, or NGA-regulated exemption, remain subject to the reporting requirements.

IV. Effective Date

The amendments to our regulations adopted in this order on rehearing will become effective October 2, 2000. As discussed above, since October 15, 2000 is a Sunday, OCS service providers' initial reports will be due on October 16, 2000.

List of Subjects in 18 CFR 330

Natural gas, Pipelines, Reporting and record keeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission denies rehearing in part, grants rehearing in part, and clarifies Order No. 639. The Commission amends Part 330, Title 18, Code of Federal Regulations, as follows.

PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

1. The authority for Part 330 continues to read as follows:

Authority: 43 U.S.C. 1301–1356.

2. In § 330.2, paragraphs (a)(6), (b) introductory text, (b)(7), and (b)(8) are revised; the introductory text of paragraph (b)(9) is removed and paragraphs (b)(9)(i), (ii), (iii), and (iv) are redesignated, respectively, as paragraphs (c)(1), (c)(2), (c)(3), and (c)(4), and paragraph (c) is revised to read as follows:

§ 330.2 Reporting requirements.

(a) * * *

(6) For all entities affiliated with the Gas Service Provider and engaged in the exploration, development, production, processing, gathering, transportation, marketing, or sale of natural gas within the boundaries of the United States and the water bodies immediately adjacent thereto: the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) A Gas Service Provider must file with the Commission its conditions of service, consisting of the information specified in this paragraph (b), or alternatively, the information specified in paragraph (c) of this section. Under this paragraph (b), a Gas Service Provider must submit, for each shipper served:

* * * * *

(7) Rates between each pair of primary receipt and delivery points and each pair of any other points served, and;

(8) Other conditions of service deemed relevant by the Gas Service Provider.

(c) As an alternative to the requirements in paragraph (b) of this section, a Gas Service Provider may file a statement of its rules, regulations, and conditions of service that includes:

(1) The rate between each pair of receipt and delivery points, if point-to-point rates are charged;

(2) The rate per unit per mile, if mileage-based rates are charged;

(3) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;

(4) Any adjustments made by the Gas Service Provider to the rates charged based on gas volumes shipped, the conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

3. In § 330.3, paragraphs (a)(1), (a)(2), (a)(3), (b), and (c) are revised to read as follows:

§ 330.3 Applicability of reporting requirements.

(a) * * *

(1) A Gas Service Provider that serves exclusively a single entity (either itself

[43] 43 U.S.C. 1331(m). The OCSLA refers to, but does not define, "gathering" and "transportation."

[44] 43 U.S.C. 1331(q).

or one other party), until such time as the Gas Service Provider commences service to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from a field or fields connected to that single pipeline or pipelines, until such time as the Gas Service Provider commences service to a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified;

(3) Any pipeline or class of pipelines which feeds into a facility where gas is first collected or a facility where gas is first separated, dehydrated, or otherwise processed; and

* * * * *

(b) A Gas Service Provider that makes no filing pursuant to §§ 330.3(a)(1) or (a)(2) becomes subject to the § 330.2 reporting requirements at any time that it no longer meets the §§ 330.3(a)(1) or (a)(2) criteria. A Gas Service Provider that becomes subject to reporting during any calender quarter must submit a § 330.2 report on the 15th day of the following quarter. Gas Service Providers must comply with the § 330.2 reporting requirements as directed by the Commission.

(c) When a Gas Service Provider subject to the § 330.2 reporting requirements alters its affiliates, customers, rates, conditions of service, or facilities during any calender quarter, it must then file with the Commission, on the 15th day of the following quarter, a revised report describing all alterations occurring during the previous quarter.

[FR Doc. 00–19426 Filed 8–1–00; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 00P–1282]

Obstetrical and Gynecological Devices; Classification of the Clitoral Engorgement Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the clitoral engorgement device into class II (special controls). The special control that will apply is a guidance document entitled: "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance Document for Clitoral Engorgement Devices." The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the FDA Modernization Act of 1997. The agency is classifying the clitoral engorgement device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

In accordance with section 513(f)(1) of the act, FDA issued an order on April 25, 2000, classifying the Urometrics EROS–Clitoral Therapy Device into class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or to a device that was subsequently reclassified into class I or class II. On April 27, 2000, FDA filed a petition submitted by Urometrics, requesting classification of the Urometrics EROS–Clitoral Therapy Device into class II under section 513(f)(2) of the act.

After review of the information submitted in the petition, FDA determined that the Urometrics EROS–Clitoral Therapy Device can be classified in class II with the establishment of special controls. This device is indicated for use in women with female sexual arousal disorder, which can present with symptoms of diminished vaginal lubrication, diminished clitoral and genital engorgement, lowered sexual satisfaction, and a reduced ability to achieve orgasm. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: Unknown effects of extended use, and improper use of the device due to misplacement, or use of the device over compromised tissue. In addition to the general controls of the act, this type device is subject to the following special control: A special controls guidance document entitled "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance for Clitoral Engorgement Devices."

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of this type of device and, therefore, the device is not exempt from premarket notification requirements. FDA review of key design features, data sets from

bench studies and clinical trials, other relevant performance data, and labeling will ensure that minimum levels of performance, for both safety and effectiveness, are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the clitoral engorgement device before marketing the device.

On April 28, 2000, FDA issued an order to the petitioner classifying Urometrics EROS–Clitoral Therapy Device and substantially equivalent devices of this generic type into class II under the generic name, clitoral engorgement device. FDA identifies this generic type of device as a device designed to apply a vacuum to the clitoris. It is intended for use in the treatment of female sexual arousal disorder. FDA is codifying this device by adding 21 CFR 884.5970. This order also identifies the following special control applicable to this device: A special controls guidance document entitled "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance for Clitoral Engorgement Devices."

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve this manufacturer of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e) and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

List of Subjects in 21 CFR Part 884

Medical devices.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5970 is added to subpart F to read as follows:

§ 884.5970 Clitoral engorgement device.

(a) *Identification.* A clitoral engorgement device is designed to apply a vacuum to the clitoris. It is intended for use in the treatment of female sexual arousal disorder.

(b) *Classification.* Class II (special controls). The special control is a guidance document entitled: "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance Document for Clitoral Engorgement Devices."

Dated: July 17, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–19489 Filed 8–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–187F]

RIN 1117–AA51

Schedules of Controlled Substances: Exempt Anabolic Steroids Products; Republication

Editorial Note: Due to numerous printing errors, rule document FR Doc. 00-17915 originally published at 65 FR 43690-43694, Friday, July 14, 2000 is being reprinted in its entirety.

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) published an interim rule with request for comments (65 FR 3124, Jan. 20, 2000, as corrected at 65 FR 5024, Feb. 2, 2000) which identified six anabolic steroid products as being exempt from certain regulatory provisions of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) (CSA). No comments were received. Therefore, the interim rule is being adopted without change.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug

Enforcement Administration, Washington, D.C. 20537; Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

This rule finalizes an interim rule (65 FR 3124, Jan. 20, 2000, as corrected at 65 FR 5024, Feb. 2, 2000) which identified six products as being exempt from certain portions of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) (CSA). Section 1903 of the Anabolic Steroids Control Act of 1990 (title XIX of Pub. L. 101–647) (ASCA) provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the CSA if the products have no significant potential for abuse. The procedure for implementing this section of the ASCA is described in 21 CFR 1308.33. Exempt status removes each product from application of the registration, labeling, records, reports, prescription, physical security, and import and export restrictions associated with Schedule III substances.

Why Did DEA Add Six Products to the List of Exempt Anabolic Steroids Products?

Manufacturers of six anabolic steroid products submitted exempt status applications to the Deputy Assistant Administrator for the DEA Office of Diversion Control in accordance with 21 CFR 1308.33. Each application delineated a set of facts which the applicant believed justified the exempt status of its product. The applicants provided information which they believed showed that because of the specific product preparation, concentration, mixture, or delivery system these products had no significant potential for abuse. Upon acceptance of the applications, the Deputy Assistant Administrator requested from the Assistant Secretary for Health, Department of Health and Human Services (HHS) a recommendation as to whether these products should be considered for exemption from certain portions of the CSA. The Deputy Assistant Administrator received the determination and recommendation of the Assistant Secretary for Health and Surgeon General that there was sufficient evidence to establish that each product does not possess a significant potential for abuse.

Which Anabolic Steroid Products Are Affected and When Does the Rule Become Effective?

In the interim rule, the Deputy Assistant Administrator identified the following six products as being exempt from application of sections 302 and through 309 and 1002 through 1004 of the CSA (21 U.S.C. 822–829 and 952–954) and 21 CFR 1301.13, 1301.22, and 1301.71 through 1301.76:

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	NDC No.	Form	Ingredients	Quantity
Component E–H in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.	.....	Pail or drum ...	Testosterone propionate	10 parts
				Estradiol benzoate	1 part
Component E–H in process pellets.	Ivy Laboratories, Inc., Overland Parks, KS.	.....	Pail	Testosterone propionate	25 mg/
				Estradiol benzoate	2.5 mg/pellet
Component TE–S in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.	.....	Pail or drum ...	Trenbolone acetate	5 parts
				Estradiol USP	1 part
Component TE–S in process pellets.	Ivy Laboratories, Inc., Overland Parks, KS.	.....	Pail	Trenbolone acetate	120 mg/
				Estradiol USP	24 mg/pellet
Testoderm with Adhesive 4 mg/d.	Alza Corp., Palo Alto,CA	Export only	Patch	Testosterone	10 mg
Testosterone Ophthalmic Solutions.	Allergan, Irvine, CA	.....	Ophthalmic Solutions.	Testosterone	≤0.6% w/v

The interim rule became immediately effective on publication in the **Federal Register**, January 20, 2000, in order to provide a health benefit to the public by more expeditiously increasing the access to these anabolic steroid products and to reduce regulatory restrictions that DEA (in consultation with HHS) has determined to be an unnecessary burden on the businesses manufacturing these products.

What Comments to the Interim Rule Were Received?

Comments to the interim rule were requested, none were received.

What Exempt Anabolic Steroid Products are Included in the List Referred to in 21 CFR 1308.34?

With the publication of this final rule, the complete list of products referred to in 21 CFR 1308.34 is as follows:

EXEMPT ANABOLIC STEROID PRODUCTS

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Andro-Estro 90–4	Rugby Laboratories, Rockville Centre, NY.	0536–1605	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Androgyn L.A.	Forest Pharmaceuticals, St. Louis, MO.	0456–1005	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Component E–H in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.		Pail or drum ...	Testosterone propionate	10 parts
				Estradiol benzoate	1 part
Componenet E–H in process pellets.	Ivy Laboratories, Inc., Overland Park, KS.		Pail	Testosterone propionate	25 mg/
				Estradiol benzoate	2.5 mg/pellet
Component TE–S in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.		Pail or drum ...	Trenbolone acetate	5 parts
				Estradiol USP	1 part
Component TE–S in process pellets.	Ivy Laboratories, Inc., Overland Park, KS.		Pail	Trenbolone acetate	120 mg/
				Estradiol USP	24 mg/pellet

EXEMPT ANABOLIC STEROID PRODUCTS—Continued

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
depANDROGYN	Forest Pharmaceuticals, St. Louis, MO.	0456–1020	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
DEPTO–T.E.	Quality Research Pharm., Carmel, IN.	52765–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Depo-Testadiol	The Upjohn Company, Kalamazoo, MI.	0009–0253	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
depTESTROGEN	Martica Pharmaceuticals, Phoenix, AZ.	51698–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Duomone	Wintec Pharmaceutical, Pacific, MO.	52047–360	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
DUO–SPAN II	Primedics Laboratories, Gardena, CA.	0684–0102	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
DURATESTRIN	W. E. Hauck, Alpharetta, GA	43797–016	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Estratest	Solvay Pharmaceuticals, Marietta, GA.	0032–1026	TB	Esterified estrogens Methyltestosterone	1.25 mg 2.5 mg
Estratest HS	Solvay Pharmaceuticals, Marietta, GA.	0032–1023	TB	Esterified estrogens Methyltestosterone	0.625 mg 1.25 mg
Menogen	Sage Pharmaceuticals, Shreveport, LA.	59243–570	TB	Esterified estrogens Methyltestosterone	1.25 mg 2.5 mg
Menogen HS	Sage Pharmaceutical, Shreveport, LA.	59243–560	TB	Esterified estrogens Methyltestosterone	.0625 mg 1.25 mg
PAN ESTRA TEST	Pan American Labs., Covington, LA.	0525–0175	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Premarin with Methyltestosterone.	Ayerst Labs. Inc,. New York, NY.	0046–0878	TB	Conjugated estrogens Methyltestosterone	0.625 mg 5.0 mg
Premarin with Methyltestosterone.	Ayerst Labs. Inc., New York, NY.	0046–0879	TB	Conjugated estrogens Methyltestosterone	1.25 mg 10.0 mg
Synovex H in-process bulk pellets.	Syntex Animal health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	25 mg 2.5 mg/pellet
Synovex H in-process granulation.	Syntex Animal Health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	10 part 1 part
Synovex Plus in-process bulk pellets.	Fort Dodge Animal Health,. Fort Dodge, IA.		Drum	Trenbolone acetate Estradiol benzoate	25 mg/ 3.50 mg/pellet
Synovex Plus in-process granulation.	Fort Dodge Animal Health, Fort Dodge, IA.		Drum	Trenbolone acetate Estradiol benzoate	25 parts 3.5 parts
Testagen	Clint Pharmaceuticals, Nashville, TN.	55553–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
TEST–ESTRO Cypionates	Rugby Laboratories Rockvill Centre, NY.	0536–9470	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testoderm 4 mg/d	Alza Copr., Palo Alto, CA	17314–4608	Patch	Testosterone	10 mg
Testoderm 6 mg/d	Alza Corp., Palo Alto, CA	17314–4609	Patch	Testosterone	15 mg
Testoderm with Adhesive 4 mg/d.	Alza Corp., Palo Alto, CA	Export only	Patch	Testosterone	10 mg
Testoderm with Adhesive 6 mg/d.	Alza Corp., Palo Alto, CA	17314–2636	Patch	Testosterone	15 mg
Testoderm in-process film	Alza Corp, Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm2
Testoderm with Adhesive in-process film.	Alza Corp., Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm2
Testosterone Cypionate/Estradiol Cypionate Injection.	Best Generics, No. Miami Beach, FL.	54274–530	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Goldline Labs, Ft. Lauderdale, Fl.	0182–3069	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2mg/ml
Testosterone Cyp 50 Estradiol Cyp 2.	I.D.E.-Interstate, Amityville, NY.	0814–7737	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6611	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Steris Labs. Inc., Phoenix, AZ.	0402–0257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Goldline Labs, Ft. Lauderdale, Fl.	0182–3073	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6618	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Steris Labs. Inc., Phoenix, AZ.	0402–0360	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Ophthalmic Solutions.	Allergan, Irvine, CA		Ophthalmic solutions.	Testosterone	≤0.6% w/v
Tilapia Sex Reversal Feed (Investigational).	Rangen, Inc., Buhl, ID		Plastic bags	Methyltestosterone	60 mg/kg fish feed

EXEMPT ANABOLIC STEROID PRODUCTS—Continued

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Tilapia Sex Reversal Feed (Investigational).	Ziegler Brothers, Inc., Gardners, PA.		Plastic bags ...	Methyltestosterone	60 mg/kg fish feed

Additional copies of this list may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537.

Plain Language Instructions

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, for the DEA Office of Diversion Control, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this rule and by approving it, certifies that it will not have significant economic impact on a substantial number of small business entities. The granting of exempt status relieves persons who handle the exempt products in the course of legitimate business from the registration, labeling, records, reports, prescription, physical security, and import and export restrictions imposed by the CSA.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, section 1(b). The Office of Management and Budget (OMB) reviewed the interim rule as a significant action; the DEA received no comments regarding the interim rule. This final rule falls into a category of regulatory actions which OMB has determined are exempt from regulatory review. Therefore, this action has not been reviewed by the OMB.

Executive Order 13132

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132 and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

PART 1308—[AMENDED]

Pursuant to the authority delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100 and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration Office of Diversion Control, pursuant to 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule which was published at 65 FR 3124 on Jan. 20, 2000 and corrected at 65 FR 5024, on Feb. 2, 2000, amending the list described in 21 CFR 1308.34.

Dated: July 3, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 00–17915 Filed 7–13–00; 8:45 am]

Editorial Note: Due to numerous printing errors, rule document FR Doc. 00-17915 originally published at 65 FR 43690-43694, Friday, July 14, 2000 is being reprinted in its entirety.

[FR Doc. R0–17915 Filed 8–1–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–156F]

RIN # 1117–AA43

Listed Chemicals; Final Establishment of Thresholds for Iodine and Hydrochloric Gas (Anhydrous Hydrogen Chloride)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final Rule with request for comment.

SUMMARY: Effective October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) established that iodine is a List II chemical; however, it was not made subject to import/export regulatory controls. While exports of the listed chemical hydrochloric acid (including anhydrous hydrogen chloride, referred to in the MCA as hydrochloric gas, which is a form of hydrogen chloride) were already regulated pursuant to 21 CFR 1310, the MCA had the practical effect of directing the DEA to place domestic controls on anhydrous hydrogen chloride. Since no domestic thresholds for iodine or anhydrous hydrogen chloride have been established prior to this Final Rule, all domestic transactions involving such chemicals have been subject to recordkeeping and reporting requirements under the Controlled Substances Act since October 3, 1996.

This rule establishes a domestic threshold of zero (0.0 kilograms) for anhydrous hydrogen chloride, and a domestic threshold of 0.4 kilograms for iodine. Import and export transactions in anhydrous chloride are unaffected by this rule. Iodine transactions involving amounts below the threshold will not be subject to recordkeeping and reporting requirements except for reporting of any unusual or excessive loss or disappearance as required by 21 U.S.C. 830(b)(1)(C).

Although the threshold for anhydrous hydrogen chloride is established at 0.0 kilogram, DEA has concluded that certain transactions in anhydrous hydrogen chloride are not sources for

diversion. This rule also provides exemption from the recordkeeping and reporting requirements for both transactions involving pipeline distributions and distributions of 12,000 pounds (net weight) or more in a single container. Because these exemptions were not discussed in the Notice of Proposed Rulemaking published in September 30, 1997, DEA requests public comment with respect to the exemption for these two types of transactions involving anhydrous hydrogen chloride.

This rule reinserts the table in 21 CFR 1310.04(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 21 CFR 1310.08(b). This table was inadvertently omitted from the DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 (60 FR 32447). Finally, this final rule assigns the DEA chemical code number of 6699 for iodine.

DATES: This final rule is effective September 1, 2000, except that § 1310.08(h) and (i) are effective [insert date of publication]. Comments on § 1310.08(h) and (i) should be submitted by September 1, 2000.

ADDRESSES: Comments and objections should be submitted in triplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

1. Background

a. Effect of the Comprehensive Methamphetamine Control Act on Iodine and Anhydrous Hydrogen Chloride

Section 204 of The Comprehensive Methamphetamine Control Act of 1996 (MCA), which became effective on October 3, 1996, amended the definition of "List II chemicals" in Section 102(35) of the Controlled Substances Act (CSA) (21 U.S.C. 802(35)) to include iodide as a List II chemical. The MCA, however, did not control salts of iodine (*e.g.*, potassium iodide or sodium iodide).

The listed chemical iodine is currently available as crystals, tinctures, and formulations (*e.g.*, povidone-iodine and polozamer-iodine complexes). Under this rule, only transactions involving at least 0.4 kg of iodine crystals will be subject to regulatory controls. Since iodine tinctures and formulations are considered chemical mixtures, transactions in these materials are not currently regulated and are not affected by this rule. However, DEA is conducting a separate rulemaking to develop regulations governing the distribution of any chemical mixtures that contain a listed chemical (63 FR 49506). As such, some chemical mixtures may soon be subject to recordkeeping and other chemical regulatory control provisions of the CSA.

This rule also relates to the chemical described in the MCA as "hydrochloric gas." This term refers to the chemical hydrogen chloride that is free of water. The DEA has adopted the term "anhydrous hydrogen chloride," which is the term used most commonly by the industrial and scientific communities to describe this chemical. Prior to passage of the MCA, hydrochloric acid was included as a listed chemical by regulation. The anhydrous form of hydrochloric acid, anhydrous hydrogen chloride, is a regulated form of hydrochloric acid (57 FR 43614). Prior to the MCA, domestic transactions in hydrochloric acid, including anhydrous hydrogen chloride, were excluded from the definition of "regulated transaction" (21 CFR 1310.08(a)). However, the MCA provides that domestic transactions in the anhydrous hydrogen chloride form of hydrochloric acid are regulated transactions, and subject to the recordkeeping and reporting requirements of 21 CFR 1310. This change does not affect other forms of hydrochloric acid.

b. Thresholds Used to Define Regulated Transaction

Not all transactions involving a listed chemical are necessarily regulated. For purposes of defining a regulated transaction (21 U.S.C. 802(39)), the CSA provides that the Attorney General may establish a threshold amount for each listed chemical. A threshold amount is established to determine whether a receipt, sale, importation or exportation within a calendar month or cumulative transactions by an individual within a calendar month are considered regulated transactions. Unless the Attorney General sets a threshold, the threshold is considered to be zero; this has been the case of iodine and anhydrous hydrogen chloride since passage of the MCA on October 3, 1996.

When an amount of listed chemical distributed to any "person" in a calendar month is equal to or greater than the threshold, the transaction is a regulated transaction. Thereafter, all transactions within the calendar month to those persons involving the listed chemical are regulated transactions. If the transaction is considered a regulated transaction, recordkeeping and reporting requirements as specified in 21 CFR Part 1310 apply. A "person" is defined in 21 CFR 1300.02(21) as "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." This includes any consumer who takes possession of a product, even as a free sample.

c. Notice of Proposed Rulemaking and the Comment Period

Prior to this Rule, thresholds had not been established for iodine or anhydrous hydrogen chloride. Therefore, all domestic distributions involving these chemicals became regulated effective October 3, 1996. In order to establish thresholds, the DEA published a notice of proposed rulemaking on September 30, 1997, (62 FR 51072) that proposed domestic thresholds for anhydrous hydrogen chloride and iodine of 0.0 kilograms and 0.4 kilograms, respectively. Interested persons were invited to comment.

The proposed domestic threshold of anhydrous hydrogen chloride is based on several factors: Nature of its legitimate use in industry; quantities used by legitimate industry; and quantities of anhydrous hydrogen chloride seized at clandestine laboratories. DEA learned that most transactions of anhydrous hydrogen chloride involve thousands of pounds, whereas clandestine laboratories use containers holding quantities as small as 0.5 pounds. Since the majority of anhydrous hydrogen chloride transactions involved large quantities, and to ensure the most effective controls on the diversion of this chemical, the DEA proposed a domestic threshold of 0.0 kilograms.

The comment period lasted for 60 days after publication of the proposed rule in the **Federal Register**. Interested persons who might be affected by the proposed thresholds responded. The DEA considered each of the seven comments received as well as the concerns of law enforcement and the provisions of the MCA.

2. Comments

a. Comments Related To the Iodine Threshold

A total of seven comments were received with two of the seven comments referring to iodine. One

requested that the threshold be raised from 0.4 kilograms to 3 kilograms. The other comment encouraged DEA to take into account recognized industrial standards for iodine distribution and to reduce the reporting burden for all legitimate suppliers and consumers of iodine. The standard for iodine distribution refers to the iodine package size used in distributions.

b. Anhydrous Hydrogen Chloride Threshold

All seven comments mentioned anhydrous hydrogen chloride. These comments mostly requested clarification while one requested that the threshold be set at 5 pounds. The comments also included a description of types of transactions in anhydrous hydrogen chloride that the commenters stated should not be subject to regulation.

c. Exemption Request for Some Transactions in Anhydrous Hydrogen Chloride

Three comments described transactions involving very large amounts of anhydrous hydrogen chloride. These transactions involve a special form of anhydrous hydrogen chloride referred to as refrigerated liquid. The material is distributed via large tank trucks, tank cars or by pipeline. The DEA agrees that these transactions should not be subject to regulation. However, the Notice of Proposed Rulemaking did not propose that these methods of distribution be exempted from regulation. Therefore, the DEA will exempt these forms of transactions via this notice as an interim final rule. The rule will be in effect upon publication but the DEA will allow for a comment period.

This final rule will: (1) Establish the iodine threshold, (2) establish the anhydrous hydrogen chloride thresholds, and (3) serve as an interim rule that exempts certain transactions in anhydrous hydrogen chloride. Due to the complexity of this final rule, it will be broken into three parts.

Part I Iodine

a. Iodine Is a Listed Chemical Under the MCA

The majority of clandestine laboratory seizures in the United States are those manufacturing methamphetamine, a Schedule II controlled substance. From 1993 through calendar year 1998, the DEA has participated in more than 4,740 methamphetamine laboratory seizures in the United States. This number does not include thousands of additional methamphetamine laboratory seizures by state and local authorities.

Clandestine laboratory operators most frequently use the ephedrine/pseudoephedrine reduction method to synthesize methamphetamine. This method utilizes hydriodic acid, which is a List I chemical with a domestic threshold of one liter. Because of increased controls on hydriodic acid, clandestine laboratory operators are resorting to producing their own hydriodic acid. They produce hydriodic acid from iodine, either in a separate step or by using iodine directly in the synthesis of methamphetamine.

b. Legal Uses for Iodine

Iodine is used largely in the form of a complex, salt, or as part of some chemical, that contains iodine. Iodine may be found dissolved in some disinfectants. Iodine does not dissolve well in water and so needs to be bound to a stabilizer or in some way converted to a water stable form to be used in disinfectants. Iodine crystals have very limited direct use and are mostly restricted to laboratory settings.

The major end uses of iodine are in catalysts, stabilizers and animal feeds. DEA has identified that farriers use iodine crystals. It can be purchased from either veterinary supply stores, feed and tack/farm supply stores or chemical distributors.

c. Determining the Iodine Threshold

The reasons cited in the proposed rule for the 0.4 kilogram threshold included legitimate use in industry, including quantities normally required for such uses; quantities purchased by clandestine laboratory operators; quantities seized at clandestine laboratory sites; and iodine's use in the production of methamphetamine. The majority of clandestine laboratories that produce methamphetamine do so in less than one-half kilogram quantities. The DEA cannot determine the source of all of the iodine seized at the clandestine laboratories due to operators removing the original labels or transferring the iodine to other unmarked containers. At those sites where iodine was seized in its original containers, DEA identified that the iodine was being purchased from either veterinary supply stores, feed and tack/farm supply stores or chemical distributors. The DEA has determined that a 2-ounce bottle of iodine would last a rancher or a farrier several months and that, typically, an individual would purchase at the most three 2-ounce bottles (approximately 0.2 kilograms).

Based on the above information, the DEA proposed a domestic threshold of 0.4 kilograms for iodine. This would subject transactions of 1 pound package size or larger to recordkeeping requirements and would ensure the most effective controls on the diversion of iodine while minimizing the impact on industry, particularly for small businesses such as veterinary, feed, and farm supply stores.

d. Comments Pertaining to the Iodine Threshold

One comment suggested that the threshold be raised to 3 kilograms for iodine. The perceived substantial burden that the threshold will place on certain retailers, namely those associated with supplying the research community, is cited as the reason for this suggested threshold. The DEA believes that implementing a 3 kilogram threshold for iodine would allow current diversion of this chemical to continue mostly unabated. The DEA has queried suppliers of iodine to walk-in customers regarding the amounts of iodine that these customers would reasonably require for legitimate purposes and found that a 2 ounce bottle (approximately 60 grams) would last a typical purchaser several months. Additionally, the DEA has evidence that indicates that iodine is diverted for use at illicit methamphetamine laboratories often in one pound sizes. The DEA is aware that many legitimate distributors devote a good deal of effort the prevent their products from being sold to traffickers. However, some distributors sell to the general public under the pretense that the chemicals are to be used solely for research purposes without regard to how these chemicals are actually used. Based on these findings, the DEA concluded that the 0.4 kilogram threshold for iodine would impact traffickers while minimizing the burden upon legitimate industry.

DEA estimates that approximately 75 grams (0.17 pounds) of methamphetamine can be produced from 0.4 kilograms of iodine that has been converted into hydriodic acid. Approximately 563 grams (over 1 pound) of methamphetamine can be produced from 3 kilograms of iodine converted by hydriodic acid. The amount of 0.4 kilograms is twice the amount identified as the normal quantity range sold in legitimate face-to-face transactions. These factors contribute to setting the threshold at 0.4 kilograms.

It should be noted that to help lessen the burden of recordkeeping, 21 CFR 1310.06(b) provides that normal business records shall be considered adequate, provided they contain information described in 21 CFR 1310.06(a) and are readily retrievable from other business records. These

records can be those already required by other federal, state and local regulatory agencies.

e. Conclusion

DEA has determined that increasing the iodine threshold from 0.4 to 3 kilograms will not be sufficient to prevent diversion of iodine for illegitimate reasons. Therefore, the threshold for iodine will be set at 0.4 kilograms.

Part II Anhydrous Hydrogen Chloride Threashold

1. Background

a. What Is Anhydrous Hydrogen Chloride?

The statutory term "hydrochloric gas" is a form of hydrogen chloride more properly called anhydrous hydrogen chloride. Anhydrous hydrogen chloride is hydrogen chloride that is free from water. When in the form of a gas it is free of water. At ambient temperature and normal atmospheric pressure, anhydrous hydrogen chloride exists as a gas. Therefore, sometime anhydrous hydrogen chloride is referred to as hydrogen chloride gas or hydrochloric gas.

When the atmospheric pressure is increased and/or the temperature is decreased, anhydrous hydrogen chloride can change from a gas to a liquid. This is sometime referred to as refrigerated hydrogen chloride. Refrigerated hydrogen chloride is the same as anhydrous hydrogen chloride even though the physical state has been changed from a gas to a liquid.

Anhydrous hydrogen chloride is often dissolved in water. When dissolved it is usually referred to as hydrochloric acid. A commercial name for hydrochloric acid is muriatic acid. Because it is mixed with water, the term anhydrous cannot be used.

b. Past and Current Regulation of Anhydrous Hydrogen Chloride

Was Anhydrous Hydrogen Chloride a List II Chemical Prior to the MCA?

Yes. Prior to the MCA, by regulation, all forms of hydrochloric acid, which included anhydrous hydrogen chloride, were a list II chemical (21 CFR 1310.02(b)(8)). However, all domestic and import transactions of hydrochloric acid were excluded from the definition of "regulated transaction" (21 CFR 1310.08(a)). In addition, by regulation, all exports, transshipments and international transactions of anhydrous hydrogen chloride, except those to all South American countries and Panama above a threshold of 27 kilograms, had similarly been excluded from the definition of "regulated transaction" (21 CFR 1310.08(b)). This may have given the appearance that anhydrous hydrogen chloride was a non-regulated form of the chemical. Prior to enactment of the MCA, only exports to all South American countries and Panama above a threshold of 27 kilograms had been regulated transactions (21 CFR 1310.08(b)).

How Does the MCA Affect Transactions of Anhydrous Hydrogen Chloride?

The CSA amendment by the MCA had the practical effect of directing DEA to place domestic controls on anhydrous hydrogen chloride. As a result, domestic transactions and the already controlled exports, transshipments and international transactions of anhydrous hydrogen chloride to designated countries are regulated transactions. These designated countries are listed in 21 CFR 1310.08(b).

How Is Hydrochloric Acid Affected by This New Regulation?

Hydrochloric acid, that is, hydrogen chloride dissolved in water, is not affected by these regulations. Domestic and import transactions involving that form of the chemical are not regulated transactions. Only export transactions of threshold amounts to those countries designated in 21 CFR 1310.08(b) are regulated transactions.

C. Uses for Anhydrous Hydrogen Chloride

i. Legal uses. According to information gathered by the DEA, the major legitimate uses of anhydrous hydrogen chloride are in the cotton industry, the electronic/silicon industry, the pharmaceutical industry and other industries for use in chemical syntheses. All of those industries use large quantities of anhydrous hydrogen chloride for their manufacturing processes. Generally, thousands of pounds are involved in a single transaction with the exception of smaller quantities (i.e., single or multiple cylinders) being used by research, analytical or synthetic laboratories.

ii. Illicit uses. Anhydrous hydrogen chloride can be used to convert an illicitly produced controlled substance from the "base" form to the "salt" form. These two forms have different physical characteristics. It is the salt form that is typically sold and used by individuals for abuse purposes.

Hydrochloric acid can also be used to isolate the base by forming the salt. However, using hydrochloric acid is not as easy as using anhydrous hydrogen chloride and requires the proper solvents and laboratory technique. Hydrochloric acid has advantages in the illicit processing of cocaine and heroin. Anhydrous hydrogen chloride is the preferred chemical for the manufacture of methamphetamine into a usable form.

2. Comments for Anhydrous Hydrogen Chloride

Seven responses were received; two responses came from membership organizations. All seven comments requested clarifications or exemptions for specific types of transactions. One comment requested that the threshold be raised to 5 pounds. The DEA has carefully reviewed and considered the comments received in response to the Notice of Proposed Rulemaking. These will be discussed below.

a. Clarification as to the Form of Hydrogen Chloride Being Addressed in This Rulemaking

Five comments requested that the DEA clarify what is meant by hydrochloric gas. In response, DEA notes that the chemical being addressed in this rulemaking is the form of hydrochloric acid that is free of water. This substance is anhydrous hydrochloric acid or anhydrous hydrogen chloride. The DEA has responded to these concerns by revising 21 CFR 1310.02 and 1310.04 to include the term "anhydrous hydrogen chloride," thereby specifying the form of the chemical for which domestic transactions are regulated.

Two comments stated that the designations (*e.g.*, UN 1050, UN 1789 and UN 2186) used by the United Nations (UN) should be adopted to identify the different forms of the acid. The DEA agrees that this is an efficient means to identify the acid for industrial commerce. However, the introduction of these numbers into the CFR would not be advantageous. DEA believes that introducing new designations to the CFR may cause confusion and imply that a new chemical has been placed in list II.

Anhydrous forms of hydrochloric acid being addressed in this rulemaking are anhydrous hydrogen chloride (designated as UN 1050; Anhydrous gas) and refrigerated anhydrous hydrogen chloride (designated as UN 2186; anhydrous refrigerated liquid). These forms of hydrochloric acid are free from water and thus included as anhydrous hydrogen chloride. The form that is dissolved in water is hydrochloric acid (designated as UN 1789) which has been addressed under a separate rulemaking published on September 22, 1992, (57 FR 43614). That final rule identifies

anhydrous hydrogen chloride as a form of hydrochloric acid regulated under the chemical designation of hydrochloric acid (DEA chemical code number 6545).

The DEA does not treat the different forms of hydrogen chloride as separate listed chemicals with distinct DEA chemical code numbers (57 FR 43614). Certain transactions in hydrochloric acid, including domestic distributions, have been exempt from the recordkeeping and reporting requirements (21 CFR 1310.08(a)(b)). The MCA directed DEA to impose controls on domestic transactions of the anhydrous form of hydrochloric acid but not the form dissolved in water. However, no new chemical is being addressed. The use of UN numbers in the CFR may imply that new chemicals are being added to the list of regulated chemicals.

Introducing the UN numbers to the regulatory language would create additional problems. Reference to each form of the chemical will need to be made via UN numbers everywhere the chemical is mentioned. Because UN numbers may not be understood by all who use the CFR, it may cause confusion. The DEA would need to define the UN numbers in the CFR to make use of them.

b. Clarification of the Forms of Hydrochloric Acid in 21 CFR 1310.02(b)

Two comments raised the issue of including anhydrous hydrogen chloride in 21 CFR 1310.02(b)(8), which lists hydrochloric acid. The comments noted that if the different forms are named in the same subsection, then any time a reference in the regulation mentions hydrochloric acid, it also should include anhydrous hydrogen chloride. It was suggested that these different forms be listed separately in List II. The DEA concluded that this might imply that a new substance is being placed on the list. All forms of hydrogen chloride, as finalized in 57 FR 43614, are List II chemicals and currently regulated in 21 CFR 1310.02(b). To clarify, 21 CFR 1310.02(b)(8) will be modified to read: "Hydrochloric acid (including anhydrous hydrogen chloride)."

The comments raised the fact that DEA needs to clarify when a specific form of hydrogen chloride is referred to in the regulations. The appropriate sections of 21 CFR (*e.g.*, 1310.04 and 1310.08) will be modified accordingly to reflect this clarification. The new paragraph (l) in 21 CFR 1310.04(f)(2)(ii) will then be added to read "Anhydrous hydrogen chloride." 21 CFR 1310.04(f)(2)(iv)(A)(1) will read "Anhydrous hydrogen chloride." 21 CFR 1310.08(a) will be amended to read "Domestic and import transactions of hydrochloric and sulfuric acids but not including anhydrous hydrogen chloride." 21 CFR 1310.08(b) will be amended by inserting after "hydrochloric" the phrase "(including anhydrous hydrogen chloride)".

c. Threshold for Anhydrous Hydrogen Chloride

One comment suggested that the threshold for anhydrous hydrogen chloride be raised to 5 pounds. Many clandestine operations can be successfully carried out with 5 pounds or less of anhydrous hydrogen chloride. While most anhydrous hydrogen chloride containers seized at clandestine laboratories are 65 pounds and less, the DEA has identified small bottles containing 0.5 pounds of anhydrous hydrogen chloride at methamphetamine laboratories. The zero threshold for anhydrous hydrogen chloride has been chosen to prevent the diversion of smaller canisters, as small as 0.5 pounds, for use in illegal drug production.

As stated, the DEA is aware that legitimate chemical distributors understand the growing problem of diversion and act responsibly to prevent their products from being used for illicit purposes. However, some distributors sell products used for the production of illegal substances under the pretense that they are for research purposes only without regard for how the products will actually be used. Raising the threshold to 5 pounds would allow unscrupulous suppliers to sell almost without regard for the regulatory process. DEA determined that clandestine laboratories would be supplied with desired chemical if the threshold were raised to 5 pounds. Therefore, the threshold will be set at 0.0 kilograms.

d. Transactions Involving Residual Amounts of Anhydrous Hydrogen Chloride

One comment stated that undue burden would be placed upon industry if controls of anhydrous hydrogen chloride were to include all containers and physical states. The person stated that regardless of the physical state, all containers would have the gas phase in the container headspace. The headspace refers to the empty space above the solution within a container. When anhydrous hydrogen chloride is dissolved in water to form a solution of hydrochloric acid, a small amount of the hydrogen chloride gas will form in the headspace above the solution. Because of the zero threshold, the comment requests clarification for treatment of the small amount of gas that naturally forms in any container holding a solution of hydrochloric acid.

DEA would like to clarify that residual anhydrous hydrogen chloride contained in the head space of containers holding a solution of hydrochloric acid will not cause an otherwise non-regulated transaction to be regulated. The chemical being marketed as hydrochloric acid solution is distinctly different than that marketed as anhydrous hydrogen chloride. The natural formation of hydrogen chloride gas above the solution, along with water vapor, does not constitute the formation of anhydrous hydrogen chloride for purposes of this regulation.

The comment also stated that it is not clear from the proposed rule that the domestic regulatory controls would not apply to the inadvertent anhydrous hydrogen chloride present in container headspace of containers of anhydrous hydrogen chloride. The comment is referring to small amounts of anhydrous hydrogen chloride that remain inside a container of anhydrous hydrogen chloride because it is impossible to empty the container completely.

The DEA realizes that a container deemed empty may have residual anhydrous hydrogen chloride present. The purchaser frequently retains these containers until the hydrogen chloride is used and then the container is returned to the distributor. The DEA does not consider transactions involving depleted containers that held anhydrous hydrogen chloride to be regulated transactions just because a residual amount of anhydrous hydrogen chloride is present.

e. Anhydrous Hydrogen Chloride and the Surveillance List

A comment suggested that small quantities of anhydrous hydrogen chloride be include in the DEA Special Surveillance List in lieu of adopting a zero threshold for this chemical. Section 205 of the MCA requires that DEA establish a Special Surveillance List of laboratory supplies. This was established on May 13, 1999 (62 FR 25910). The MCA provides for a civil penalty for distribution of a laboratory supply made with reckless disregard to a person who uses, or attempts to use the laboratory supply in the manufacturing of a controlled substance. The term "laboratory supply" is defined to include listed chemicals. Therefore, listed chemicals are already included on the surveillance list.

The Special Surveillance List is an added means to help prevent the diversion of both listed and other

designated chemicals and equipment that can be used in clandestine synthesis of controlled substances. The surveillance list is not a substitute for regulatory controls on regulated transactions of anhydrous hydrogen chloride, a List II chemical. It does not impose recordkeeping, reporting or registration requirements as do regulations associated with listed chemicals.

f. Synthetic Alternative to Anhydrous Hydrogen Chloride

A comment pointed out that the regulation of anhydrous hydrogen chloride might be a futile attempt at controlling the use of anhydrous hydrogen chloride in the illegal production of controlled substances. Clandestine operators may form their own anhydrous hydrogen chloride by using a method simple enough for such operations.

DEA acknowledges that hydrogen chloride can be manufactured clandestinely. However, commercially produced anhydrous hydrogen chloride is commonly found at seized clandestine laboratories. The control of such chemicals is a valuable tool in denying traffickers a ready supply of anhydrous hydrogen chloride. This is why Congress included such control provisions in the MCA.

g. Impact of This Rule on the Anhydrous Hydrogen Chloride Trade

A comment questioned whether this rulemaking was a significant rule. The person stated that the DEA acknowledged that the industry was large by including the statement "the majority of anhydrous hydrogen chloride transactions involve thousands of pounds" in the proposed rulemaking. This statement refers to the amount of anhydrous hydrogen chloride traded in a single transaction and not the number of persons carrying out such transactions. The major uses of anhydrous hydrogen chloride were determined to be in the cotton industry, the electronic/silicon industry, the pharmaceutical industry and other industries for use in chemical synthesis. All of these industries use large quantities of anhydrous hydrogen chloride for their manufacturing processes.

Distributions of anhydrous hydrogen chloride have been identified as originating from manufacturing sites that produce anhydrous hydrogen chloride as a by-product of a principle manufacturing operation. Manufacturers distribute large quantities of anhydrous hydrogen chloride, sometimes under terms of a contract, to end-users. The impact of this rulemaking on the trade has been evaluated by considering the added cost of doing business, not the gross annual cost for the entire anhydrous chloride trade. The DEA, as stated, only requires access to records that are part of daily recordkeeping for most companies that trade in this commodity. These records can be those already required by other federal agencies, or by state and local agencies. Normal business records needed by companies for internal recordkeeping are likely to be adequate for the purposes of this rulemaking.

21 CFR 1310.06 states that "* * * normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section and are readily retrievable from other business records of the regulated person." This acceptance of records that are already maintained by persons in the anhydrous hydrogen chloride trade reduces the impact on the anhydrous hydrogen chloride industry.

3. Conclusion

The DEA has considered the comments submitted in response to the notice of proposed rulemaking (62 FR 51072) to establish the anhydrous hydrogen chloride threshold. Out of seven comments received, only one requested that the threshold be raised. Most comments raised issues of clarification or compliance. The DEA concluded that the threshold for anhydrous hydrogen chloride will be established at 0.0 kilograms for domestic distributions. This threshold is based on anhydrous hydrogen chloride cylinders containing as little as 0.5 pounds of the chemical being recovered at illicit methamphetamine laboratories and legitimate transactions of this chemical being large. Maintaining the zero threshold will help curtail diversion of amounts useful to the clandestine operator. Increasing the threshold will allow for the manufacturing of methamphetamine in quantities normally associated with clandestine operations with traffickers obtaining as little as 0.5 pounds of the chemical.

Part III Category Exemption

a. Comments Requesting Category Exemption

The DEA received comments requesting exemption for two categories of transactions involving anhydrous hydrogen chloride. These are transactions involving: (1) Refrigerated liquid; and (2) anhydrous hydrogen chloride distributed by pipeline. The DEA agrees that anhydous hydrogen chloride distributed by these methods is unlikely to be susceptible to diversion. The exemption for these categories was not proposed in the Notice of Proposed Rulemaking. Authority to remove a category of transaction from the definition of "regulated transaction" is given in 21 U.S.C. 802(39)(A)(iii), which permits exclusion of "any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this subchapter or subchapter II of this chapter."

b. Refrigerated Liquid; Large Quantity Distributions of Anhydrous Hydrogen Chloride

The DEA collected additional information from the affected industry. DEA learned that rail and truck carriers ship refrigerated liquid only in large containers. The average payload of a rail car is approximately 135,000 pounds. The capacity for tank trucks is approximately 12,000 to 30,000 pounds. These shipments are in single containers holding the specified weights. Specialized equipment and engineering skills are needed to off-load this commodity. Distributors are aware of their customers and are involved in tracking shipments. The DEA believes that anhydrous hydrogen chloride in this form and in these quantities is not likely to be diverted.

DEA has not identified any shipment of refrigerated anhydous hydrogen chloride less than the tank truck size of approximately 12,000 pounds. Therefore, domestic distributions of anhydous hydrogen chloride in single container shipments of 12,000 pounds (net weight) or more will be excluded from the definition of regulated transaction. Transactions that involve multiple containers, each containing less than 12,000 pounds of the chemical are regulated transactions even if the aggregate weight is over 12,000 pounds.

Why Not Just Provide an Exemption for All Transactions in "Anhydrous Hydrogen Chloride, Refrigerated Liquid"?

The refrigerated liquid is not clearly defined or distinguished from the gaseous form except by the weight of the anhydrous hydrogen chloride contained in a single vessel. Distributors use both cooling and pressure to liquefy the gas in order to increase the amount of anhydrous hydrogen chloride that the container can hold. However, the containers that transport the liquefied hydrogen chloride are not refrigerated. The method of distributing the

refrigerated form is only clearly distinguished by the size of the vessel used to transport the commodity. DEA is concerned that unscrupulous persons may attempt to deceive law enforcement personnel by distributing smaller quantities mislabeled as refrigerated liquid. Therefore, the DEA concluded that a category be defined by the net weight of anhydrous hydrogen chloride that a single container holds. Defining the category by using the net weight of anhydrous hydrogen chloride in a single container eliminates the possibility of misinterpreting whether or not a distribution is a regulated transaction.

c. Pipeline Transfers

The DEA also received comments that included reasons to eliminate pipeline transactions of anhydrous hydrogen chloride as regulated transactions. Pipeline transactions involve pumping the chemical through a closed system, directly to the customer from the distributor's site. Pipelines are located underground or in piperacks and are maintained at high pressure. Diversion from a pipeline is unlikely because of the location, construction and the obvious danger associated with the unauthorized tapping of this source. Pipeline distributions may involve thousands of pounds of anhydrous hydrogen chloride transferred on a given day.

The DEA concluded, in light of these comments, that these transactions have an insignificant risk of diversion. Therefore, domestic pipeline transactions will be the second category of transaction in anhydrous hydrogen chloride regarded as a non-regulated transaction.

d. Exclusion of Categories; Interim Rule With Request for Comments

This Final Rule will establish, on an interim basis, that domestic transactions of (1) anhydrous hydrogen chloride weighting 12,000 pounds (net weight) or more in a single container or (2) anhydrous hydrogen chloride by pipeline are excluded from the definition of regulated transactions. These exemptions will take effect on the day that this Final Rule is published in the **Federal Register**.

To exempt these categories, two new paragraphs (h) and (i) in Title 21 CFR Section 1310.08 will be added to read; (h) Domestic distribution of anhydrous hydrogen chloride weighing 12,000 pounds (net weight) or more in a single container; and (i) Domestic distribution of anhydrous hydrogen chloride by pipeline. The DEA is soliciting comments only on this portion of this Final Rule. The DEA will allow 30 days for persons to comment on these category exemptions.

After the close of this comment period pertaining to the exempted categories, DEA will publish a notice in the **Federal Register** to inform interested persons if changes are needed or if these categories will be adopted as stated.

e. Exemption Authority

The CSA authorizes DEA, pursuant to 21 U.S.C. 802(39)(A)(iii), to remove certain transactions in listed chemicals from the definition of regulated transaction. DEA has determined that transactions in anhydrous hydrogen chloride in the form of refrigerated liquid and transactions involving the direct transfer of anhydrous hydrogen chloride by pipeline are unlikely sources for diversion and should be removed from the definition of regulated transaction. DEA became aware of these types of transactions by the comments received in response to the **Federal Register** proposal to establish thresholds for iodine and anhydrous hydrogen chloride (62 FR 51072). Since that proposal did not propose that these categories of transactions in anhydrous hydrogen chloride would be exempt, the general public did not have the opportunity to comment on the exclusion of these transactions from the definition of regulated transaction.

The DEA has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553 *et seq.*) (APA) to forego a notice of proposed rulemaking for the exclusion of these transactions from the definition of regulated transaction. The AP states that an agency may forego a notice of proposed rule making if it is impracticable, unnecessary, or contrary to the public interest.

Although all transactions involving anhydrous hydrogen chloride are considered regulated until and unless DEA establishes a threshold, establishing a zero threshold for this substance may cause affected parties to implement a permanent system of recordkeeping and reporting for all transactions. This would involve some companies who otherwise may not engage in regulated transactions if the exemptions are finalized. If a proposal is published in the **Federal Register** to exclude these transactions from the definition of regulated transactions, each affected entity may find it necessary to establish these procedures on a permanent basis even though the requirement may only be temporary. To avoid unnecessary burdens on affected companies during the pendency of proceedings in this matter, the DEA will include as part of this rulemaking an interim rule, with request for comments, that removes these two types of transactions from the definition of regulated transactions.

The DEA is also including in this final rulemaking the reinsertion of the table in 21 CFR 1310.40(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 21 CFR 1310.08(b). The DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 (60 FR 32447), inadvertently omitted the table from the section. A DEA chemical code number for iodine, 6699, will also be included in this rule.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. The DEA has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

The Deputy Administrator in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The DEA sought information from legitimate handlers of iodine to determine the uses of iodine and the quantities typically sold in legitimate transactions. The DEA sought information from over 300 veterinary suppliers and feed and farm supply stores to determine how iodine is typically sold. The DEA learned that walk-in customers would purchase, at the most, three 2-ounce bottles (less than 0.2 kilograms). Suppliers and end-users claim that a 2-ounce bottle lasts several months. Iodine has very limited application for walk-in customers. Setting the iodine threshold at 0.4 kilograms will not have a significant effect on small businesses. The iodine portion of this Final Rule applies only to those companies manufacturing and distributing iodine in larger volumes. Recordkeeping requirements will not impact researchers or other end-users.

This regulation will not have a significant economic impact upon a substantial number of small entities that trade in anhydrous hydrogen chloride. Trade in anhydrous hydrogen chloride is mostly in very large quantities. Generally, thousands of pounds are involved in single industrial transactions. Smaller quantities *i.e.*,

single or multiple cylinders) are being used by research, analytical or synthetic laboratories. The majority of anhydrous hydrogen chloride is traded in thousands of pound quantities. The DEA has included in this Final Rule the exclusion from the definition of "regulated transaction" transactions involving anhydrous hydrogen chloride in bulk quantities of 12,000 pounds (net weight) or more. The DEA is soliciting comments on that part of this Final Rule.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1210

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR Part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by revising paragraph (b)(8) and adding paragraph (b)(11) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(b) List II chemicals:

* * * * *

(8) Hydrochloric acid (including anhydrous hydrogen chloride)	6545
* * * * *	
(11) Iodine	6699

3. Section 1310.04 is amended by adding new paragraphs (f)(2)(ii) (H) and (I), and revising (f)(2)(iv) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(ii) Domestic Sales

Chemical	Threshold by volume	Threshold by weight
* * * *	*	* *
(H) Iodine	N/A	0.4 kilograms.
(I) Anhydrous Hydrogen chloride	N/A	0.0 kilograms.

(iii) * * *

(iv) Exports, Transshipments and International Transactions to Designated Countries as Set Forth in § 1310.08(b).

Chemical	Threshold by volume	Threshold by weight
(A) Hydrochloric acid	50 gallons	
(*1*) Anhydrous Hydrogen chloride		27 kilograms.
(B) Sulfuric acid	50 gallons	

* * * * *

4. Section 1310.08 is amended by revising paragraphs (a) and (b) introductory text and by adding new paragraphs (f), (g), (h) and (i) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(a) Domestic and import transactions of hydrochloric and sulfuric acids but not including anhydrous hydrogen chloride.

(b) Exports, transshipments, and international transactions of hydrochloric (including anhydrous hydrogen chloride) and sulfuric acids, except for exports, transshipments and international transactions to the following countries:

* * * * *

(f) Import and export transactions of iodine.

(g) Import transactions of anhydrous hydrogen chloride.

(h) Domestic distribution of anhydrous hydrogen chloride weighing 12,000 pounds (net weight) or more in a single container.

(i) Domestic distribtuion of anhydrous hydrogen chloride by pipeline.

Dated: May 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–19289 Filed 8–1–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–027]

RIN 2115–AE46

Special Local Regulations for Marine Events; Thunder on the Narrows Hydroplane Races, Prospect Bay, Kent Island Narrows, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations during the "Thunder on the Narrows" hydroplane races to be held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: This rule is effective from 10:30 a.m., August 5, 2000 until 6:30 p.m., August 6, 2000.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as

documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–027 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, phone (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard received confirmation of the request for special local regulations on June 16, 2000. We were notified of the event with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We had insufficient time to prepare and publish this rule in the **Federal Register** 30 days in advance of the event. To delay the effective date of the rule would be contrary to the public interest since a timely rule is necessary to protect mariners from the hazards associated with the event.

Background and Purpose

On August 5 and August 6, 2000, the Kent Narrows Racing Association will sponsor the "Thunder on the Narrows" hydroplane races, on the waters of Prospect Bay, Kent Island Narrows, Maryland. The event will consist of 75 hydroplanes racing in heats counter-clockwise around an oval race course. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of Prospect Bay. The temporary special local regulations will be enforced from 10:30 a.m. to 6:30 p.m. on August 5 and August 6, 2000. The effect will be to restrict general navigation in the regulated areas during the event. Except for participants in the "Thunder on the Narrows" hydroplane, races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the event area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of Prospect Bay during the event, the effect of this regulation will not be significant due to the limited duration of the regulation, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of Prospect Bay during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of Prospect Bay during the event, the effect of this regulation will not be significant because of its limited duration, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–027 is added to read as follows:

§ 100.35–T05–027 Special Local Regulations for Marine Events; Thunder on the Narrows Hydroplane Races, Prospect Bay, Kent Island Narrows, Maryland.

(a) Definitions.

(1) *Regulated area.* (i) The waters of Prospect Bay enclosed by the following points:

Latitude	Longitude
38°57′52.0″ N	076°14′48.0″ W, to
38°58′02.0″ N	076°15′05.0″ W, to
38°57′38.0″ N	076°15′29.0″ W, to
38°57′28.0″ N	076°15′23.0″ W, to
38°57′52.0″ N	076°14′48.0″ W.

(ii) All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant.* Includes all vessels participating in the Thunder on the Narrows Hydroplane Races under the auspices of the Marine Event Permit, issued to the Event Sponsor and approved by Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates.* This section is effective from 10:30 a.m., on August 5, 2000, until 6:30 p.m., August 6, 2000. This section will be enforced from 10:30 a.m. to 6:30 p.m., each day.

Dated: July 20, 2000.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 00–19509 Filed 7–28–00; 2:23 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–146]

RIN 2115–AA97

Security Zone: Dignitary Arrival/Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York. This action is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This action establishes two permanent exclusion areas that are active from shortly before the dignitaries' arrival at the United Nations General Assembly meetings until shortly after their departure.

DATES: This rule is effective September 1, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–146) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York, 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 8, 2000, we published a notice of proposed rulemaking (NPRM) entitled Security Zone: Dignitary Arrival/Departure and United Nations Meetings, New York, NY. We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

New York City is often visited by the President and Vice President of the United States, as well as visiting heads of foreign states or foreign governments, on the average of 12 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. Due to the sensitive nature of these visits, a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard and no opportunity for public comment. Establishing permanent security zones by notice and comment rulemaking gave the public the opportunity to comment on the location and size of the zones. This regulation establishes two permanent security zones that can be activated upon request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. 3056.

These security zones have been narrowly tailored, in consultation with

the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary. Entry into or movement within these security zones is prohibited unless authorized by the Coast Guard Captain of the Port, New York. The activation of a particular security zone will be announced via facsimile and marine information broadcasts. The two security zones are as follows (all nautical positions are based on North American Datum of 1983):

The first security zone at United Nations Headquarters includes all waters of the East River bound by the following points: 40°44′37″N, 073°58′16.5″W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″N, 073°58′10.5″W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″N, 073°57′26.5″W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″N, 073°57′30.5″W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″N, 073°58′16.5″W. The security zone prevents vessels from transiting a portion of the East River. Marine traffic will still be able to transit through the eastern 100 yards of the western channel of the East River. Additionally, vessels may transit through the eastern channel of the East River during this security zone. This zone is generally enacted from 8 a.m. until 7 p.m. during the United Nations General Assembly meetings. Generally, these meetings take place from Monday through Saturday for two consecutive weeks. Normally this occurs between the final two weeks of September and the first two weeks of October.

This security zone is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The second security zone at United Nations Headquarters includes all waters of the East river north of a line drawn from approximate position 40°44′37″N, 073°58′16.5″W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″N, 073°57′44.5″W (Hunters Point, Long Island City), and south of the Queensboro Bridge. Marine traffic will not be able to transit through this portion of the East River because the zone extends bank to bank, and there are no alternate routes available in the river to go around the zone. This zone extends bank to bank while the President of the United States addresses, or is in attendance at, the United Nations General Assembly. Generally, this zone will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address or while the President is in attendance. This address has been held during the final week of September for the past two years. However, due to the late notification of the daily security requirements from the Secret Service, there was insufficient time to follow notice and comment rulemaking to give the public the opportunity to comment on the location and size of the zones. The Coast Guard expects this zone to be activated for only 2.5 hours during the morning and 3 hours during the afternoon.

This security zone is necessary to protect the Port of New York/New Jersey, the President of the United States, and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during visits by the President of the United States and dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The actual dates that these security zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each security zone by all appropriate means to provide the widest publicity among the affected segments of the public. Marine information broadcasts will normally be made for these security zones beginning 24 to 48 hours before the zone is enacted. Facsimile broadcasts will also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent security zone in this rulemaking will normally be made less than seven days before the zone is actually activated.

The two new security zones are being enacted to ensure the Coast Guard can provide the U.S. Secret Service with the services they require to protect the Port of New York/New Jersey and visiting dignitaries in a timely manner. This zone also gave the marine community the opportunity to comment on the zones location and size.

This rule revises 33 CFR 165.164 by renaming the section heading to "Dignitary Arrival/Departure and United Nations Meetings, New York, NY" and adding two new East River locations to the listed zones.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the fact that we anticipate these security zones will be activated on an average of 12 times per year, and the minimal time that vessels will be restricted from the zones. Marine traffic will still be able to transit through the eastern 100 yards of the western channel and recreational traffic will also be able to transit through the eastern channel of the East River while the first, smaller security zone at the United Nations Headquarters is enacted. We anticipate that the second security zone at the United Nations Headquarters, shutting down the East River in the vicinity of the United Nations Headquarters, will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address. This zone that shuts down the East River will normally only be in effect for 2.5 hours during the morning and 3 hours during the afternoon. Extensive advance notifications will be made to the maritime community via facsimile and marine information broadcasts. These security zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Port of New York/New Jersey during the times these zones are activated.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit through the eastern 100 yards of the western channel of the East River during the smaller security zone that is enacted when the President of the United States is not addressing the Assembly. Recreational traffic can also transit through the eastern channel of the East River during this same security zone. Before the effective period, we will issue maritime advisories widely available to users of the Port of New York/New Jersey by facsimile and marine information broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes two security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. In § 165.164, revise the Section Heading and paragraphs (a)(4) and (a)(5), and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 165.164 Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) * * *

(4) *Location.* All waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″N, 073°58′10.5″W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″ N, 073°58′16.5″W. All nautical positions are based on North American Datum of 1983.

(5) *Location.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″W (Hunters Point, Long Island City), and south of the Queensboro Bridge. All nautical positions are based on North American Datum of 1983.

(6) The security zone will be activated 30 minutes before the dignitaries' arrival into the zone and remain in effect until 15 minutes after the dignitaries' departure from the zone.

(7) The activation of a particular zone will be announced by facsimile and marine information broadcasts.

* * * * *

Dated: July 25, 2000.

R.E. Bennis,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–19486 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–184]

RIN 2115–AA97

Safety Zone: Fireworks Display, Peekskill Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located on Peekskill Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Peekskill Bay.

DATES: This rule is effective from 8:30 p.m. (e.s.t.), until 10 p.m. (e.s.t.) on August 6, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–184) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM for the event. Further, it is a local, community supported event with minimal impact on the waterway, vessels may still transit through Peekskill Bay Channel during the display, and the zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 20 minutes during this time. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterways and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: It is an annual event with local community support, it is a local event with minimal impact on the waterway, the zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 20 minutes during this time, and marine traffic will be able to transit through Peekskill Bay Channel during the display. Finally, this rule creates a safety zone that will only be enforced if the annual event, scheduled for Saturday, August 5, 2000, is cancelled due to inclement weather.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of Peekskill Bay. This regulation establishes a safety zone in all waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″ N 073°56′18″ W (NAD 1983), about 500 yards northeast of Peekskill Bay South Channel Buoy 3 (LLNR 37955). The safety zone is in effect from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Sunday, August 6, 2000. This is an annual event regulated by 33 CFR 100.114 for the first Saturday in August. This rule is for the rain date of August 6, 2000, which is not addressed in the current regulation. This safety zone will not be enforced on Sunday, August 6, if the fireworks display is held on Saturday, August 5, 2000. The safety zone prevents vessels from transiting a portion of Peekskill Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Peekskill Bay Channel during the event. This safety zone precludes the waterway users from entering only the safety zone itself. Public notifications will be made prior to the event via the Local Notice to Mariners. Furthermore, marine traffic will not be precluded from mooring at, or getting underway from, any piers in the vicinity of this event.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through Peekskill Bay Channel during the fireworks display, and advance notifications which will be made. Additionally, this is an annual event with local community support.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 12" mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is

a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–184 to read as follows:

§ 165.T01–184 Safety Zone: Fireworks Display, Peekskill Bay, NY.

(a) *Location.* The following area is a safety zone: All waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″ N 073°56′18″ W (NAD 1983), about 500 yards northeast of Peekskill Bay South Channel Buoy 3 (LLNR 37955).

(b) *Effective period.* This section is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Sunday, August 6, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 24, 2000.

R. E. Bennis,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–19485 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 20

Global Direct—Canada Admail Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Global Direct—Canada Admail is a service based on the Admail service offered by Canada Post Corporation. Canada Post Corporation is changing rates and the rate structure for items mailed in this service. Accordingly, the Postal Service is changing Global Direct—Canada Admail to comply with these changes.

EFFECTIVE DATE: August 2, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, International Pricing, International Business, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: In cooperation with Canada Post Corporation (CPC), the Postal Service offers Global Direct—Canada Admail. This international mail service is primarily intended for major printing firms, direct marketers, mail order companies, and other high-volume mailers seeking easier access to the Canadian domestic postal system. It is intended to provide mail delivery in an average of 5 to 10 business days in major urban areas throughout Canada. Ancillary services for local business reply and the return of undeliverable mail are also provided for use with Global Direct—Canada Admail.

CPC has announced a rate change for Admail. This makes it necessary for the Postal Service to adjust the rates it charges for Global Direct—Canada Admail.

The Postal Service is also eliminating discounts for Global Direct—Canada Admail. Discounts will no longer be available for Global Direct—Canada Mail; however, revenue from Global Direct—Canada Admail will count toward the revenue requirements for International Priority Airmail and International Surface Air Lift discounts. This enables the Postal Service to reduce the rate for Global Direct—Canada Admail.

Effective August 2, 2000, the following rates are adopted for Global Direct—Canada Admail:

	Standard	Large
Letter Carrier Presort (LCP)—Up to First 1.76 oz. (0.11 lbs.) (50 grams):		
Delivery Mode Direct	$0.216	$0.267
Delivery Facility	0.245	0.296
DCF	0.245	0.296
Residue	0.304	0.354
Over 1.76 oz. (.11 lbs.) (50 grams)	0.548	0.713
Per additional pound National Distribution Guide (NDG):		
First 1.76 oz.(0.11 lbs.) (50 grams)	0.275	0.325
Over 1.76 oz. (0.11 lbs.) (50 grams)	0.548	0.713
Per additional pound		

Note: An extra charge of 3.5 cents may be charged for the number of items not meeting address accuracy requirements.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Subchapter 612, Global Direct—Canada Admail, International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by as follows:

CHAPTER 6—SPECIAL PROGRAMS

610 Global Direct Service

* * * * *

612 Global Direct—Canada Admail

* * * * *

612.3 Postage

612.31 Rates

The rate of postage is determined by size, weight, and level of the items being mailed as specified in Exhibit 612.3. Global Direct postage dollars may be added to the ISAL/IPA total for the purpose of determining the discount earned; however, the discount will not be applied to the Global Direct—Canada published rates.

Exhibit 612.3 Canada Admail Rates

	Standard	Large
Letter Carrier Presort (LCP)—Up to First 1.76 oz. (0.11 lbs.) (50 grams):		
Delivery Mode Direct	$0.216	$0.267
Delivery Facility	0.245	0.296
DCF	0.245	0.296
Residue	0.304	0.354
Over 1.76 oz. (.11 lbs.) (50 grams)	0.548	0.713
Per additional pound		
National Distribution Guide (NDG):		
First 1.76 oz.(0.11 lbs.) (50 grams)	0.275	0.325
Over 1.76 oz. (0.11 lbs.) (50 grams)	0.548	0.713
Per additional pound		

Note: An extra charge of 3.5 cents may be charged for the number of items not meeting address accuracy requirements.

* * * * *

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19578 Filed 8–1–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

48 CFR Chapter 15

[Docket No. FRL–6487–4]

Change of Official EPA Mailing Address; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: EPA is relocating the majority of its Headquarter offices in the Washington Metropolitan area to new offices in downtown Washington, DC. Because of the relocations, EPA has changed its official mailing address and is amending the Code of Federal Regulations (CFR) to reflect this change where applicable. Although the official mailing address has changed, the physical location of the public information centers and dockets has not yet changed. This relocation effort will eventually consolidate the EPA Headquarter offices in the Washington Metropolitan area providing for increased savings, efficiency, and enhancement of customer services. The EPA mailing address change will be phased in for all EPA correspondence, publications, forms, and other documents.

DATES: This final rule is effective on August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Lapsley, Director of Regulatory Management, Office of Policy and Reinvention (2136A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5480; e-mail address: lapsley.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, and has particular applicability to anyone who might need or want to communicate in writing with EPA, or submit information to the Agency. Since this action may apply to anyone, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document?

You may obtain electronic copies of this document, and other information about EPA programs from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. What Action is the Agency Taking?

EPA is announcing a change in its official mailing address and is amending the CFR to reflect this change. EPA is relocating its Headquarter offices in the Washington Metropolitan area to new offices in downtown Washington, DC. This effort will consolidate the majority of the EPA Headquarter offices in the Washington Metropolitan area providing for increased savings, efficiency, and enhancement of customer services. To date, approximately two-thirds of the EPA Headquarter offices have been successfully relocated to the new location, with the remaining offices expected to move within the next 2 years. Although not all of the offices have been relocated, the Agency will begin to phase in the new address for all of its documents over the next 12 months. This announcement and amendments to the CFR will begin the implementation of this change.

Although EPA's official mailing address has changed, EPA will continue to receive mail with the old address until the EPA relocation is complete. The EPA mailing center which processes all of EPA's mail has not be relocated yet, so EPA will continue to physically receive and process all of its mail at its current location until this operation is relocated.

If you wish to inspect a rulemaking record or deliver documents (e.g., your comments on a rulemaking) directly to the public record centers, which are also referred to as the public docket or locations for the public version of the official record, you should pay particular attention to information about the specific location of the particular public record center, because these record centers have not been relocated. EPA intends to consolidate these centers in the new location, and will announce the relocation when it occurs. For information about the location of these centers go to http://www.epa.gov/epahome/dockets.htm.

In certain cases, the EPA mailing address provided in the regulations, or in instructions for submitting a form or other information to EPA, may be an address other than the official mailing address for EPA Headquarter offices. In amending the CFR to reflect the address change, this FR document specifically identifies those CFR sections where the EPA address provided should not be changed. In addition, if you are responding to a request for comments, or otherwise wish to deliver your submission directly to a public docket or a particular office, please be sure to verify the relevant location to ensure that you identify the proper delivery address.

EPA intends to review existing regulatory documents, particularly forms and instructions for submitting information to the Agency, to ensure that the EPA mailing address is properly identified. If necessary, EPA intends to amend these documents over the next 2 years.

IV. What is the Agency's Authority for Taking this Action?

EPA is issuing this document under its general rulemaking authority, Reorganization Plan No. 3 of 1970 (5 U.S.C. app.).

In addition, section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment. EPA has determined that these amendments are technical and non-substantive. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule implements technical amendments to 40 CFR chapter I and 48 CFR chapter 15 to reflect a change in the EPA Headquarters' official mailing address, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit IV.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. CRA section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA, if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of August 2, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Chapter I

Environmental protection.

48 CFR Chapter 15

Acquisition, procurement, contracts.

Dated: June 23, 2000.

Carol M. Browner,

Administrator.

Therefore, under the authority of Reorganization Plan No. 3 of 1970 (5 U.S.C. app.), 40 CFR chapter I and 48 CFR chapter 15 are amended as follows:

40 CFR CHAPTER I——AMENDED]

1. Remove the phrase "401 M St., SW." everywhere it appears and add in

its place "1200 Pennsylvania Ave., NW." except in the following places in 40 CFR chapter I: §§ 725.95, 761.19(b), 796.1950(b)(2)(i), 796.1955(a)(1), 796.3500(b)(1)(ii), 796.4360(d)(7)(i)(B), 799.1575(c)(1)(ii)(C), 799.1575(c)(2)(ii)(C), 799.1575(c)(3)(ii), 799.1575(d)(2), 799.2155(a)(1), 799.4360(d)(7)(i)(B), 799.9135(h), 799.9346(h), 799.9370(h), 799.9380(g), 799.9420(g), 799.9510(g), 799.9530(g), 799.9538(g), 799.9539(g), 799.9620(g), and 799.9780(j).

2. Remove the phrase "401 M St., S.W." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

3. Remove the phrase "401 M St., SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

4. Remove the phrase "401 M. St. SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in the following place in 40 CFR chapter I: § 68.115(b)(2).

5. Remove the phrase "401 M. St. SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in the following place in 40 CFR chapter I: part 430, Appendix A (sections 18.11 and 18.12).

6. Remove the phrase "401 M. St., SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

7. Remove the phrase "401 M. Street SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 62.12(b) and 435.41(h), the address is revised to read "401 M St., SW.".

8. Remove the phrase "401 M Street, SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 52.50(b)(3), 52.420(b)(3), 52.470(b)(3), 52.520(b)(3), 52.570(b)(3), 52.820(b)(3), 52.869(b)(3), 52.920(b)(3), 52.1270(b)(3), 52.1320(b)(3), 52.1420(b)(3), 52.1770(b)(3), 52.2120(b)(3), 52.2220(b)(3), 55.14(e), 59.213(a), 60.17(i), 60.17(k), 60.17(l), 63.14(a), 63.14(d), 63.404(a), 76.4(a), 79.56(d)(5(ii), 79.61(c)(3)(B), 80.2(w), 80.2(y), 80.2(z), 80.30(g)(2)(ii), 80.46(h), 80.125(f), Appendix E (sections 3.9 and 7.2) of part 80, 82.104(h), Appendix A (sections 2.1, 5.1, 5.3.2, and 5.4.3) of subpart F of part 82, 85.2231(a), 85.2231(c), 86.1(a), 86.094–8(h)(1)(ii)(A), 86.094–17(h), 86.094–35(h)(2)(i), 86.095–35(h)(2), 86.096–8(h)(1)(ii)(A), 86.099–17(h), 86.111–94(b)(3)(vii)(B), 86.1806–01(h), 86.1808–01(f), 87.82, 91.6(a), 92.5(a), 141.21(f)(8), 141.23 (footnotes 3, 4, 7, and 11), 141.24(e), 141.25 (footnote), 141.40(n)(11), 141.74(a), 141.142(d), 143.4 (footnotes), 147.2650(a), 272.1151(a)(1)(ii), 435.11(f), 503.8(b), 600.113–93(c)(3)(i), 720.95, 763.90(i)(5), 766.12, and 795.232(c)(2), the address is revised to read "401 M St., SW.".

9. Remove the phrase "401 M Street, S.W." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 52.03(d)(1) and 90.7(a), the address is revised to read "401 M St., SW.".

10. Remove the phrase "401 M Street, SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 52.170(b)(3), 52.970(b)(3), 52.1620(b)(3), 59.110(b), 59.412(a), 75.6, 85.2207(d), 85.2222(c), 86.1105–87(e), 141.131(a)(2), and 266.11(a)(11), the address is revised to read "401 M St., SW.".

11. Remove the phrase "401 M. Street, SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

12. Remove the phrase "401 M Street SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 72.13, 86.094–26(a)(6)(iii), 86.094–28(a)(4)(i)(B)(*2*)(*ii*), and 435.41(n), the address is revised to read "401 M St., SW.".

13. Remove the phrase "401 M Street, Southwest" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 80.164(a)(5), 80.165(a), 80.165(b), 80.165(c), 87.64, 87.71, 87.89, and 88.104–94(k)(2)(ii), the address is revised to read "401 M St., SW.".

14. Remove the phrase "Washington, DC., 20460" everywhere it appears and add in its place "Washington, DC 20460."

15. Remove the phrase "Washington, DC, 20460" everywhere it appears and add in its place "Washington, DC 20460."

16. Remove the phrase "Washington, DC. 20460" everywhere it appears and add in its place "Washington, DC 20460."

17. Remove the phrase "EPA Freedom of Information Officer, A–101" everywhere it appears and add in its place "Headquarters Freedom of Information Operations (1105)."

18. Remove the phrase "(PM–226F)" everywhere it appears and add in its place "(2734R)."

19. Remove the phrase "Hearing Clerk, A–110" everywhere it appears and add in its place "Office of the Hearing Clerk (1900)."

20. Remove the phrase "Grants Operation Branch (PM–216)" everywhere it appears and add in its place "(3903R)."

21. Remove the phrase "Waste Management Rules Docket" everywhere it appears and add in its place "Resource and Conservation Recovery Act (RCRA) Docket Information Center (5305G)."

22. Remove the phrase "OUST Docket" everywhere it appears and add in its place "UST Docket, located at 1235 Jefferson Davis Highway, First Floor , Arlington, VA 22202 (telephone number: 703–603–9231), or send mail to Mail Code 5305G."

23. Remove the phrase "Characteristics Section (OS–333)" everywhere it appears and add in its place "Waste Identification Branch (5304)."

24. Remove the phrase "the Section Chief, Variances Section, PSPD/OSW (OS–343)" everywhere it appears and add in its place "PSPD/OSW (5303W)."

25. Remove the phrase "the Section Chief, Delisting Section, OSW" everywhere it appears and add in its place "HWID/OSW (5304W)."

26. In part 112, Appendix E, section 10.1, remove the phrase "Room M2615, at the U.S. Environmental Protection Agency" and add in its place "at 1235 Jefferson Davis Highway, First Floor , Arlington, VA 22202, or send mail to Mail Code 5305G."

27. In § 265.1080(f)(2)(vii)(H)(*2*), remove "2129" and add in its place "1812."

28. In § 272.651(a)(1), remove the phrase "room 2427" and add in its place "Mail Code 5305G."

29. In § 300.905(a)(1), remove the phrase "1–202–260–2342" and add in its place "703–603–8760."

30. In § 300.915, footnotes 1 and 2, after the phrase "Environmental Protection Agency" add the phrase "Superfund Docket, located at 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202 or send mail to Mail Code 5305G," and remove the phrase "Room LG."

31. In part 307, Appendix D, remove "William O. Ross" and add in its place "Phyllis Anderson," and remove "603–8798" and add in its place "603–8971."

32. In § 374.6, remove "(A–100)" and add in its place "(1101)."

48 CFR CHAPTER 15—[AMENDED]

1. Remove the phrase "401 M Street, S.W. Washington, D.C." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW., Washington, DC".

2. Remove the phrase "401 M Street, SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

00–18165 Filed 8–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK–14–1–7367; FRL–6727–1]

Approval and Promulgation of Implementation Plans; Oklahoma; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is revising the format 40 CFR part 52, subpart LL, for materials submitted by Oklahoma that are incorporated by reference (IBR) into the Oklahoma State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA.

EFFECTIVE DATE: This action is effective August 2, 2000.

ADDRESSES: The SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket (6102A), Room M1500, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

The current Oklahoma SIP-approved regulations listed in table (c) in the rulemaking section of this action are available for public inspection by selecting "Oklahoma" at the following web site: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm (Must be all lower case). You can also get to this address via the EPA home page (http://www.epa.gov/) by selecting in order: Offices, Labs & Regions; Regions; Region 6; Air Programs; State Implementation Plans (SIP); SIP regulations; and selecting "Oklahoma" from the list of Region 6 States.

FOR FURTHER INFORMATION CONTACT: Bill Deese, Air Planning Section (6PD–L) at the Region 6 address or at (214) 665–7253.

SUPPLEMENTARY INFORMATION:

I. Background

Each State is required by section 110(a)(1) of the Federal Clean Air Act (the Act), to have a SIP that contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards. The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA pursuant to section 110(k) of the Act, after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans) of 40 CFR. The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the State is enforcing the regulations. It also allows EPA to take enforcement action or the public to bring citizen suits, should a State not enforce its SIP-approved regulations.

The SIP is an active or changing document which can be revised by the State as necessary to address the unique air pollution problems in the State as long as changes are not contrary to Federal law. Therefore, EPA, from time to time, must take action to incorporate into the SIP, revisions of the State program which may contain new and/or revised regulations. Regulations approved into the SIP are then incorporated by reference into part 52. Pursuant to section 110(h)(1) of the Act and as a result of consultations between EPA and the Office of Federal Register, EPA revised the procedures May 22, 1997 (62 FR 27968), for incorporating by reference federally-approved SIPs and began the process of developing: (1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51, (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

II. Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of State regulations and source specific permits submitted by each State agency. These regulations and source-specific permits have all been approved by EPA through previous rulemaking actions in the **Federal Register**. The SIP compilations are stored in 3-ring binders and will be updated primarily on an annual basis.

If no significant changes are made for any State to the SIP during the year, an update will not be made during that year. If significant changes occur during the year, an update could be done on a more frequent basis, as applicable. Typically, only the revised sections of the compilation will be updated. Complete resubmittals of a State SIP compilation will be done on an as-needed basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source-specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these States. The EPA Regional offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 6 EPA Office developed and will maintain the compilations for Oklahoma. A copy of the full text of the State's current SIP-approved regulations will also be maintained at the Office of the Federal Register and EPA's Air Docket and Information Center in Washington, DC. The EPA is phasing in the SIP compilations for individual States. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Act.

III. Revised Format of the "Identification of plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section of 40 CFR section 52.1920. The EPA is including additional information which will more clearly identify the provisions that constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope; (b) Incorporation by reference; (c) EPA approved regulations; (d) EPA approved source-specific permits; and (e) EPA approved nonregulatory provisions, such as

transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

IV. Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. As of the effective date of the final rule approving a SIP revision, all provisions identified in the **Federal Register** document announcing the SIP approval will be federally enforceable, both by EPA under section 113 of the Act and by citizens under section 304 of the Act, where applicable. All revisions to the applicable SIP are federally enforceable as of the effective date of EPA approval even if they have not yet been incorporated by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of Plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart.

V. Notice of Administrative Change

Today's action constitutes a "housekeeping" exercise to ensure that federally approved State plans are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA Regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the "Good Cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding good cause, authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is unnecessary since the codification only reflects existing law. Immediate revision to the CFR benefits the public by removing outdated citations.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule is effective August 2, 2000.

H. Petitions for Judicial Review

The EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions approving each individual component of Oklahoma SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization action for Oklahoma.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 19, 2000.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL—Oklahoma

2. Section 52.1920 is redesignated as § 52.1960 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1960 Original identification of plan section.

(a) This section identifies the original "State of Oklahoma Air Quality Control Implementation Plan" and all revisions submitted by Oklahoma that were federally approved prior to June 1, 2000.

* * * * *

3. A new § 52.1920 is added to read as follows:

§ 52.1920 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Oklahoma under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date on or before June 1, 2000, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after June 1, 2000, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of June 1, 2000.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 6 Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.; or at the Air and Radiation Docket (6102A), Room M1500, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

(c) EPA approved regulations.

EPA Approved Oklahoma Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Oklahoma Air Pollution Control Regulations				
Regulation 1.4. Air Resources Management Permits Required				
1.4.1. General Permit Requirements				
1.4.1(a)	Scope and Purpose	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.1(b)	General Requirements	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.1(c)	Necessity to Obtain Permit	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.1(d)	Permit fees	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.2. Construction Permit				
1.4.2(a)	Standards Required	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.2(b)	Stack Height Limitation	06/11/1989	08/20/1990, 55 FR 33905	Ref: 52.1960(c)(34)
1.4.2(c)	Permit Applications	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.2(d)	Action on Applications	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.2(e)	Public Review	06/11/1989	08/20/1990, 55 FR 33905	Ref: 52.1960(c)(34)
1.4.2(f)	Construction Permit Conditions	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.2(g)	Cancellation of Authority to Construct or Modify.	02/06/1984	07/27/1984, 49 FR 30184	Ref: 52.1960(c)(31)
1.4.2(h)	Relocation Permits	11/14/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.3. Operating Permit				
1.4.3(a)	Requirements	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.3(b)	Permit Applications	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.3(c)	Operating Permit Conditions	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.4. Major Sources—Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas				
1.4.4(a)	Applicability	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.4(b)	Definitions: Restricted Section 1.4.4.	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.4(c)	Source Applicability Determination.	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.4(d)	Review, Applicability, and Exemptions.	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.4(e)	Control Technology	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.4(f)	Air quality impact evaluation	08/10/1987	11/08/1999, 64 FR 60683	Ref: 52.1960(c)(49)
1.4.4(g)	Source Impacting Class I areas	08/10/1987	11/08/1999, 64 FR 60683	Ref: 52.1960(c)(49)
1.4.4(h)	Innovative Control Technology	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.5. Major Sources—Nonattainment Areas				
1.4.5(a)	Applicability	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.5(b)	Definitions: Restricted to Section 1.4.5.	06/11/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38)
1.4.5(c)	Source Applicability Determination.	06/11/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38)
1.4.5(d)	Exemptions	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.5(e)	Requirements for Sources Located in Nonattainment Areas.	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
Regulation 3.8. Control of Emission of Hazardous Air Contaminants				
3.8(a)	Purpose	04/19/1982	08/15/1983, 48 FR 36819.	
3.8(b)	Definitions	04/19/1982	08/15/1983, 48 FR 36819.	
3.8(c)	Emission Standards for Hazardous Air Contaminants.	04/19/1982	08/15/1983, 48 FR 36819.	
Oklahoma Administrative Code, Title 252. Department of Environmental Quality, Chapter 100 (OAC 252:100). Air Pollution Control (Oklahoma Air Pollution Control Rules)				
Subchapter 1. General Provisions				
252:100–1–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–1–2	Statutory definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–1–3	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 3. Air Quality Standards and Increments				
252:100–3–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–3–2	Primary standards	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–3–3	Secondary standards	05/26/1994	11/03/1999, 64 FR 59629.	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–3–4	Significant deterioration increments.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 5. Registration of Air Contaminant Sources				
252:100–5–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–5–2	Registration of potential sources of air contaminants.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–5–3	Confidentiality of proprietary information.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 9. Excess Emission and Malfunction Reporting Requirements				
252:100–9–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–3	General requirements	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–4	Maintenance procedures	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–5	Malfunctions and releases	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–6	Excesses resulting from engineering limitations.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 13. Prohibition of Open Burning				
252:100–13–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–3	Scope	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–4	Effective date	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–5	Open burning prohibited	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–6	Salvage operations utilizing open burning prohibited.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–7	Permissible open burning	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 15. Motor Vehicle Pollution Control Devices				
252:100–15–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–3	Scope	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–4	Prohibitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–5	Maintenance, repair, or testing	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–6	Liquefied petroleum gas	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 17. Incinerators				
252:100–17–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–2	Effective date; applicability	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–3	Prohibition on density of emissions.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–4	Prohibition on pounds per hour of emissions.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–5	Incinerator design requirements	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–6	Allowable emission of particulates.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 19. Particulate Matter Emissions From Fuel-Burning Equipment				
252:100–19–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–19–2	Emission of particulate matter prohibited.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–3	Existing equipment	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–4	New equipment	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–5	Refuse burning prohibited	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–6	Allowable emission of particulate matter.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–7	Particulate matter emission limits	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 23. Control of Emissions From Cotton Gins				
252:100–23–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–2	Definitions	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–3	General provisions; applicability	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–4	Smoke, visible emissions, and particulates.	05/26/1994	11/03/1999 64 FR 59629.	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–23–5	Emission control equipment	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–6	Fugitive dust controls	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 25. Smoke, Visible Emissions and Particulates				
252:100–25–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–25–2	General prohibition	05/26/1994	11/03/1999 64 FR 59629.	
252:100–25–3	Smoke, visible emissions and particulates.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–25–4	Alternative for particulates	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 27. Particulate Matter Emissions from Industrial and Other Processes and Operations				
252:100–27–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–2	Process emission limitations	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–3	Exception to emission limits	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–4	Sampling and testing	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–5	Allowable rate of emission	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 29. Control of Fugitive Dust				
252:100–29–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–29–2	Prohibitions	05/26/1994	11/03/1999 64 FR 59629.	
252:100–29–3	Precautions required in maintenance or nonattainment areas.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–29–4	Exception for agricultural purposes.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–29–5	Variance	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 31. Control of Emission of Sulfur Compounds Part 1. General Provisions				
252:100–31–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–3	Performance testing	05/26/1994	11/03/1999, 64 FR 59629.	
Part 3. Existing Equipment Standards				
252:100–31–12	Sulfur oxides	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–13	Sulfuric acid mist	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–14	Hydrogen sulfide	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–15	Total reduced sulfur	05/26/1994	11/03/1999, 64 FR 59629.	
Part 5. New Equipment Standards				
252:100–31–25	Sulfur oxides	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–26.	Hydrogen sulfide	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 33. Control of Emission of Nitrogen Oxides				
252:100–33–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–33–2	Emission limits	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–33–3	Performance testing	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 35. Control of Emission of Carbon Monoxide				
252:100–35–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–35–2	Emission limits	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–35–3	Performance testing	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 37. Control of Emissions of Organic Materials Part 1. General Provisions				
252:100–37–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–3	Applicability and compliance	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–4	Exemptions	05/26/1994	11/03/1999, 64 FR 59629.	
Part 3. Control of Volatile Organic Compounds				
252:100–37–15	Storage of volatile organic compounds.	05/26/1994	11/03/1999, 64 FR 59629.	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–37–16	Loading of volatile organic compounds.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–17	Effluent water separators	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–18	Pumps and compressors	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–36	Fuel-burning and refuse-burning equipment.	05/26/1994	11/03/1999; 64 FR 59629.	
Subchapter 39. Control of Emission of Organic Materials in Nonattainment Areas				
Part 1. General Provisions				
252:100–39–1	Purpose	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–2	Definitions	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–3	General applicability	05/26/1994	11/03/1999; 64 FR 59629.	
Part 3. Petroleum Refinery Operations				
252:100–39–15	Petroleum refinery equipment leaks.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–16	Refinery process unit turnaround	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–17	Refinery vacuum producing system.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–18	Refinery effluent water separators.	05/26/1994	11/03/1999; 64 FR 59629.	
Part 5. Petroleum Processing and Storage				
252:100–39–30	Liquid storage in external floating roof tanks.		05/26/1994	11/03/1999; 64 FR 59629
Part 7. Specific Operations				
252:100–39–40	Cutback asphalt (paving)	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–41	Vapor recovery systems	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–42	Metal cleaning	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–43	Graphic arts systems	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–44	Manufacture of pneumatic rubber tires.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–45	Petroleum (solvent) dry cleaning	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–46	Coating of parts and products	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–47	Control of VOS emissions from aerospace industries coatings operations.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–48	Vapor recovery systems	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–49	Manufacturing of fiberglass reinforced plastic products.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 43. Sampling and Testing Methods				
Part 1. General Provisions				
252:100–43–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–43–2	Test procedures	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–43–3	Conduct of tests	05/26/1994	11/03/1999, 64 FR 59629.	
Part 3. Specific Methods				
252:100–43–15	Gasoline vapor leak detection procedure by combustible gas detector.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 45. Monitoring of Emissions				
252:100–45–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–45–2	Monitoring equipment required	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–45–3	Records required	05/26/1994	11/03/1999, 64 FR 59629.	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Appendices				
Appendix A	Allowable Emissions for Incinerators with Capacities in Excess of 100 lbs/hr.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix B	Allowable Emissions for Incinerators with Capacities less than 100 lbs/hr.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix C	Particulate Matter Emission Limits for Fuel-Burning Equipment.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix E	Primary Ambient Air Quality Standards.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix F	Secondary Ambient Air Quality Standards.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix G	Allowable Rate of Emissions	05/26/1994	11/03/1999, 64 FR 59629.	
Oklahoma Administrative Code, Title 595. Department of Public Safety, Chapter 20 (OAC 595:20). Inspection and Equipment for Motor Vehicles				
Subchapter 3. Emission and Mechanical Inspection of Vehicles				
595:20–3–1	General Instructions	05/26/1994	02/29/1996, 61 FR 7709	Subsection (2) only.
595:20–3–3	When emission anti-tampering inspection required where population less than 500,000.	5/26/1994	02/29/1996, 61 FR 7709.	
595:20–3–5	Emission inspection areas	05/26/1994	02/29/1996, 61 FR 7709.	
595:20–3–6	Documentation for every inspection.	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–12	Inspection required each year	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–25	Motorcycle or motor-driven cycles (Class "B").	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–26	Trailer and semitrailer trucks, (Class "C").	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–27	School Buses (Class "D")	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–41	Supervisory responsibility of inspection station owners and operators.	05/26/1994	02/29/1996 61 FR 7709	Subsection (o) only.
595:20–3–42	Responsibility for signs, forms, etc.	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–46	Security measures	05/26/1994	02/29/1996 61 FR 7709	Subsections (a) and (b) only.
595:20–3–61	Refund of unused stickers	05/26/1994	02/29/1996 61 FR 7709	Subsections (a), (b), (e), and (f) only.
595:20–3–63	Rejected vehicles	05/26/1994	02/29/1996 61 FR 7709	Subsections (b) and (g) only.
Subchapter 7. Inspection Stickers and Monthly Tab Inserts for Windshield and Trailer/Motorcycle				
595:20–7–1	General	05/26/1994	02/29/1996 61 FR 7709	Subsections (c) and (f) only.
595:20–7–2	Inspection certificate	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–3	Rejection receipt—Form VID 44	05/26/1994	02/29/1996 61 FR 7709.	
595:20–7–4	Station monthly report—Form VID 21.	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–5	Signature card—Form VID 17	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–6	Request for inspection stickers—Form VID 19.	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–7	Request for refund—Form VID 25.	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
Subchapter 9. Class AE Inspection Station, Vehicle Emission Anti-Tampering Inspection				
595:20–9–1	General	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–9–3	Vehicle emission inspection	05/26/1994	02/29/1996 61 FR 7709	Subsections (f) and (m) only.
595:20–9–7	Catalytic Converter System (C.A.T.).	05/26/1994	02/29/1996, 61 FR 7709.	
595:20–9–10	Evaporative emission control system (E.N.P.).	05/26/1994	02/29/1996, 61 FR 7709	Subsections (a), (b), and (c) only.
595:20–9–11	Air injection system (A.I.S. or A.I.R.).	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
595:20–9–12	Positive crankcase ventilation system (P.C.V. Valve).	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–9–13	Oxygen sensor	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–9–14	Thermostatic air intake system (T.A.C.).	05/26/1994	02/29/1996, 61 FR 7709	Subsections (a) and (b) only.
595:20–9–15	Exhaust gas recirculation system (E.G.R.).	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
Subchapter 11. Annual Motor Vehicle Inspection and Emission Anti-Tampering Inspection Records and Reports				
595:20–11–1	General	05/26/1994	02/29/1996, 61 FR 7709.	
595:20–11–2	Inspection certificate—VEC–1	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–11–3	Rejection certificate—VIID–44	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–11–4	Appeal procedure	05/26/1994	02/29/1996, 61 FR 7709.	

[1] Submitted.

(d) EPA approved state source-specific requirements.

EPA APPROVED OKLAHOMA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State submittal date	EPA approval date	Explanation
General Motors, Oklahoma City: Addendum I to Chapter 4, Emissions Offset Agreement for Permit Application.		03/28/1977	12/20/1977, 42 FR 63781	Ref: 52.1960(c)(10).
McAlester Army Ammunition Plant McAlester, OK.	Variance	09/21/1979	05/26/1981, 46 FR 28159	Ref: 52.1960(c)(21).
Mesa Petroleum Company	Variance	02/06/1984	07/27/1984, 49 FR 30184	Ref: 52.1960(c)(31).
Rockwell International, Tulsa	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
McDonald Douglas, Tulsa	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
American Airlines, Tulsa	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
Nordam Lansing Street facility, Tulsa.	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
Conoco Refinery, Ponca City	88–116–C	11/07/1989	03/06/1992, 57 FR 08077	Ref: 52.1960(c)(42).
Conoco Refinery, Ponca City	88–117–O	11/07/1989	03/06/1992, 57 FR 08077	Ref: 52.1960(c)(42).

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA APPROVED OKLAHOMA NONREGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
Chapter 1, Abstract	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 2, Description of Regions.	Statewide	01/28/1972	05/31/1972, 37 FR 10842	Ref: 52.1960(b).
Chapter 3, Legal Authority	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 4, Control Strategy	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
A. Part D Requirements	Nonattainment areas	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
B. Photochemical Oxidants (Ozone).	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
C. Carbon Monoxide	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
D. Total Suspended Particulates	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
E. Public notification	Statewide	04/02/1979	05/14/1982, 47 FR 20771	Ref: 52.1960(c)(17).
F. Lead SIP	Statewide	03/05/1980	04/16/1982, 47 FR 16328	Ref: 52.1960(c)(18).
G. PM10 SIP	Statewide	08/22/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38).
H. Tulsa County Ozone Plan	Tulsa County	02/20/1985	01/31/1991, 56 FR 03777	Ref: 52.1960(c)(39).
I. Oklahoma County Carbon Monoxide Plan.	Oklahoma County	10/17/1985	08/08/1991, 56 FR 37851	Ref: 52.1960(c)(40).
Chapter 5, Compliance Schedules.	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 6, Emergency Episode Control Plan.	Statewide	08/22/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38).
Chapter 7, Atmospheric Surveillance System.	Statewide	03/07/1980	08/06/1981, 46 FR 40005	Ref: 52.1960(c)(22).
Chapter 8, Source Surveillance System.	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 9, Resources	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).

EPA Approved Oklahoma Nonregulatory Provisions—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Chapter 10, Intergovernmental Cooperation.	Statewide	04/02/1979	05/14/1982, 47 FR 20771	Ref: 52.1960(c)(17).
Small Business Assistance Program.	Statewide	11/19/1992	06/23/1994, 59 FR 32365	Ref: 52.1960(c)(45).
Oklahoma Vehicle Anti-Tampering Program.	Statewide	05/16/1994	02/29/1996, 61 FR 07709	Ref: 52.1960(c)(46).
Oklahoma Visibility Protection Plan.	Statewide	06/08/1990	11/08/1999, 64 FR 60683	Ref: 52.1960(c)(49).

EPA Approved Statutes in the Oklahoma SIP

State citation	Title/subject	State effective date	EPA approval date	Explanation
1992 Oklahoma Clean Air Act (63 O.S.A. 1992, Sections 1–1801 to 1–1819)				
Section 1–1801	Citation	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1802	Purpose	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1803	Municipal Regulations	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1804.1	Definitions	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1805.1	Administrative Agency Powers	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1806.1	Adoption of Rules	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1807.1	Air Quality Council	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1808.1	Powers and Duties of the Air Quality Council.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1809	Chief of Air Quality Council/Citizen Complaints.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1810	Variances	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1811	Compliance Orders	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1812	Field Citation Program/Administrative Penalties.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1813	Permitting Program	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1814	Fees	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1815	Emission Standards/Toxic Air Contaminant Emissions/Oil and Gas Emissions.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1816	Small Business Assistance Program	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1817	Criminal Penalties	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1818	Civil Action	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1819	Keeping Certain Rules and Enforcement Actions Effective.	05/15/1992	06/23/1994, 59 FR 32365.	
1992 Oklahoma Environmental Quality Act (27A O.S.A., Sections 1 to 12)				
Section 1	Citation	06/12/1992	06/23/1994, 59 FR 32365.	
Section 2	Purpose	06/12/1992	06/23/1994, 59 FR 32365.	
Section 3	Definitions	06/12/1992	06/23/1994, 59 FR 32365.	
Section 4	Transition	06/12/1992	06/23/1994, 59 FR 32365.	
Section 5	Pollution Control Coordinating Board and Department of Pollution Control.	06/12/1992	06/23/1994, 59 FR 32365.	
Section 6	Jurisdictional Areas of Environmental Responsibility.	06/12/1992	06/23/1994, 59 FR 32365.	

EPA APPROVED STATUTES IN THE OKLAHOMA SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 7	Environmental Quality Board	06/12/1992	06/23/1994, 59 FR 32365.	
Section 8	Executive Director	06/12/1992	06/23/1994, 59 FR 32365.	
Section 9	Department of Environmental Quality	06/12/1992	06/23/1994, 59 FR 32365.	
Section 10	Advisory Councils	06/12/1992	06/23/1994, 59 FR 32365.	
Section 11	Time Periods for Certain Permits and Complaints.	06/12/1992	06/23/1994, 59 FR 32365.	
Section 12	Resolution	06/12/1992	06/23/1994, 59 FR 32365.	

[FR Doc. 00–19376 Filed 8–1–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN100–1a; IN120–1a; FRL–6728–2a]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to total suspended particulate (TSP) and Sulfur Dioxide (SO_2) emissions regulations for National Starch and Chemical Company (National Starch), and TSP regulations for Allison Transmission (Allison). Both of these facilities are located in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 3, 1999, August 30, 1999, and May 17, 2000, as amendments to its State Implementation Plan (SIP). The revisions include the relaxation of some limits, the tightening of one limit, and the elimination of limits for several sources which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and recordkeeping requirements. These SIP revisions results in an overall decrease in allowed TSP emissions of about 406 tons per year (tpy) for National Starch, and no change in overall annual emissions for Allison.

DATES: This rule is effective on October 2, 2000, unless EPA receives relevant adverse written comments by September 1, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What is the EPA Approving?

We are approving revisions to TSP and SO_2 emissions regulations for National Starch, and TSP regulations for Allison, both of which are located in Marion County, Indiana. IDEM submitted the revised regulations on August 30, 1999, February 3, 1999, and May 17, 2000, as amendments to its SIP.

The revisions for National Starch include the elimination of TSP limits for 35 units and SO_2 limits for 4 boilers, all of which have shut down permanently. The National Starch revisions also include increases to the TSP limits of 6 units, and a decrease of the TSP limit for one unit. These SIP revisions results in an overall decrease in allowed TSP emissions of about 406 tpy of TSP.

For Allison, the revisions include combining the annual TSP emissions limits for 5 boilers into one, and the addition of recordkeeping requirements for these boilers. There are no changes to the short-term emissions limits for individual boilers. These revisions will not change the overall allowed emissions for Allison.

II. What are the changes from current rules?

A. Sources eliminated from the rules.

Indiana has eliminated 35 emission units at National Starch from TSP rule 326 IAC 6–1–12, and 4 boilers from SO_2 rule 326 IAC 7–4–2. The annual TSP emission limits for these eliminated sources totaled 519.7 tpy.

B. Revised limits.

Indiana has revised some short-term and some long-term TSP emissions limits for sources at National Starch. Indiana has increased the annual limits for processes 61–9, 56–2, 56–1, 40–4, 40–3, and 40–2 from 2.3, 1.1, 0.2, 6.7, 7.9, and 8.6 tpy to 4.1, 11.3, 7.02, 44.1, 42.3, and 31.9 tpy, respectively. Indiana has increased the hourly concentration limits for processes 56–2, 56–1, 40–4,

40–3, and 40–2 from 0.001, 0.001, 0.005, 0.005, 0.005 grains per dry standard cubic foot (gr/dscf) to 0.010, 0.020, 0.020, 0.020. 0.020 gr/dscf, respectively. Indiana has decreased the hourly concentration limit for process 575–2 from 0.018 to 0.011 gr/dscf.

C. Combined annual limits.

Indiana combined the annual emissions limits for boilers 1 through 5 at Allison into one overall limit. The previous version of the rule contained limits of 0.6, 3.9, 6.4, 19.9, and 8.5 tpy for boilers 1, 2, 3, 4, and 5, respectively. The revised rule contains one PM limit of 39.3 tpy for boilers 1 through 5 combined.

D. Recordkeeping requirements.

Indiana added recordkeeping requirements for Allison. Under these requirements, Allison is to maintain fuel type, fuel usage, and fuel heat content information for each boiler. Allison must also submit quarterly reports of this information to IDEM, and maintain the records for 5 years.

III. Analysis of supporting materials provided by Indiana.

The general criteria used by the EPA to evaluate such emissions trades, or "bubbles", under the Clean Air Act and applicable regulations are set out in the EPA's December 4, 1986, Emissions Trading Policy Statement (ETPS) (see 51 FR 43814). Emissions trades which result in an overall decrease in allowable emissions require a "Level II" modeling analysis under the ETPS to ensure that the NAAQS will be protected. A Level II analysis must include emissions from the sources involved in the trade, and must demonstrate that the air quality impact of the trade does not exceed set significance levels. For particulate matter, the significance levels are 10 micrograms per cubic meter ($\mu g/m^3$) for any 24-hour period, and 5 $\mu g/m^3$ for any annual period.

While the limits for Marion County, Indiana apply to TSP, the current National Ambient Air Quality Standards apply to particulate matter 10 microns or less in diameter (PM_{10}). In applying the ETPS, Indiana calculated allowed PM_{10} emissions from the sources involved in the trade based on published emissions fractions. These PM_{10} emissions estimates were used in determining the type of modeling analysis needed (i.e., Level II), and were also used in conducting the modeling analysis.

Indiana's PM_{10} analysis showed that these SIP revisions will result in a decrease in allowable emissions of 316 tpy of PM_{10} for National Starch, and no change in allowable PM_{10} emissions for Allison.

The modeling analyses submitted by the IDEM in support of the requested SIP revisions are consistent with a Level II analysis. The analyses shows that the SIP revisions will not cause or contribute to any exceedances of the PM_{10} NAAQS. The maximum modeled PM_{10} air quality impacts for National Starch were 9.18 $\mu g/m^3$ in 24-hours, and 0.0 $\mu g/m^3$ on an annual basis. The maximum modeled PM_{10} air quality impacts for Allison were 0.9 $\mu g/m^3$ in 24-hours, and 0.08 $\mu g/m^3$ on an annual basis. Therefore, IDEM has demonstrated that these SIP revisions will not have a significant adverse impact on air quality.

IV. What are the environmental effects of these actions?

These SIP revisions will result in a decrease in allowable TSP emissions of 406 tons per year for National Starch, and no change in overall annual TSP emissions for Allison. This equates to a reduction of 316 tpy of PM_{10} from National Starch, and no change in overall annual PM_{10} emissions for Allison. In addition, air quality modeling analyses conducted by IDEM show that the maximum daily and annual impacts of these SIP revisions are below established significance levels. Therefore, these SIP revisions will not have an adverse effect on air quality.

V. EPA rulemaking actions.

We are approving, through direct final rulemaking, revisions to TSP and SO_2 emissions regulations for National Starch, and TSP regulations for Allison, both of which are located in Marion County, Indiana. We are publishing these actions without prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revisions should adverse written comments be filed. These actions will be effective without further notice unless we receive relevant adverse written comment by September 1, 2000. Should we receive such comments, we will publish a final rule informing the public that these actions will not take effect. Any parties interested in commenting on these actions should do so at this time. If no such comments are received, you are advised that these actions will be effective on October 2, 2000.

VI. Administrative requirements.

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted these regulatory actions from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. These

actions do not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that these actions will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval actions promulgated do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. These Federal actions approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from these actions.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding these actions under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to these actions. Today's actions do not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 16, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraphs (c)(124) and (c)(136) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(124) On February 3, 1999, and May 17, 2000, Indiana submitted revised particulate matter emissions regulations for Allison Transmission in Marion County, Indiana. The submittal amends 326 IAC 6–1–12, and includes the combination of annual emissions limits for 5 boilers into one overall limit as well as new recordkeeping requirements.

(i) Incorporation by reference.

Emissions limits and recordkeeping requirements for Allison Transmission in Marion County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 12: Marion County. Added at 22 In. Reg. 416. Effective October 16, 1998.

* * * * *

(136) On August 30, 1999, and May 17, 2000, Indiana submitted revised particulate matter and sulfur dioxide emissions regulations for National Starch in Marion County, Indiana. The submittal amends 326 IAC 6–1–12, and includes elimination of shut down sources from the rules, increases in some limits, and a decrease in one limit.

(i) Incorporation by reference.

(a) Emissions limits for National Starch in Marion County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 12: Marion County. Added at 22 In. Reg. 1953. Effective March 11, 1999.

(b) Emissions limits for National Starch in Marion County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 7: Sulfur Dioxide Rules, Rule 4: Emission Limitations and Requirements by County, Section 2: Marion County Sulfur Dioxide Emission Limitations. Added at 22 In. Reg. 1953. Effective March 11, 1999.

[FR Doc. 00–19369 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV045–6012; FRL–6730–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Marshall County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the West Virginia State Implementation Plan (SIP). The revisions consist of Consent Orders modifying the sulfur dioxide (SO_2) allowable emissions at three stationary sources in Marshall County, West Virginia. The Orders are separate, enforceable agreements between PPG Industries, Inc.; Bayer Corporation; and Columbian Chemicals Company, and the West Virginia Office of Air Quality (WVOAQ). EPA is approving these revisions to incorporate the three Consent Orders into the federally approved State Implementation Plan (SIP). The intention of this action is to regulate SO_2 emissions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 2, 2000 without further notice, unless EPA receives adverse written comment by September 1, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Ms. Makeba Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192, or by e-mail at lohman.denny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 17, 2000, the West Virginia Division of Environmental Protection submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Consent Orders prescribing sulfur dioxide (SO_2) emission limits and operating practices for three facilities in Marshall County, West Virginia.

A. What Action Is EPA Taking in This Rulemaking?

The EPA is approving as a SIP revision, and incorporating by reference into the West Virginia SIP, three Consent Orders containing new SO_2 emission limits for three facilities located in Marshall County. The facilities are PPG Industries, Bayer Corporation, and Columbian Chemicals Company. Changes to the emission limits were enforceably established by the WVOAQ through Consent Orders. This action approves these Consent Orders into the SIP and makes them federally enforceable.

B. Why Were Changes in Emission Rates Necessary?

These three sources, and others, were modeled as "nearby background sources" in the preliminary modeling of the Kammer power plant in Marshall County. The preliminary modeling indicated that these sources, at their existing allowable emission rates, were substantial contributors to predicted violations of the national ambient air quality standards (NAAQS) for SO_2. The WVOAQ initiated action to complete a refined modeling analysis and determine appropriate emission limits for these sources and other sources in and near to Marshall County.

With the emission limits and work practice requirements being approved for these three facilities and the existing SIP-approved emission rates for the other sources modeled, the refined modeling results predict worst-case concentrations for the 3-hour, 24-hour, and annual averaging periods of 1294 micrograms per cubic meter of air (µg/m3), (for the secondary 3-hour), 352 µg/m3, (for the primary 24-hour standard) and 62 µg/m3, (for the primary annual standard) respectively. Therefore, upon approval of this SIP revision, the West

Virginia SIP for SO_2 in Marshall County ensures that all ambient concentrations are below the applicable NAAQS of 1300 µg/m3, 365 µg/m3, and 80 µg/m3, respectively.

C. What Is a SIP?

Section 110 of the Clean Air Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. These ambient air quality standards are established under the Clean Air Act and they address six criteria air pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each State must submit regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect its air quality. These SIPs are extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations. The West Virginia SIP contains various "Consent Orders" (Orders) to meet the SIP requirements and other State statutory requirements. The Orders are developed to contain specific conditions for a particular source and can provide specific conditions such as, emission limits, hours of operation, record keeping requirements, production rates, compliance demonstration requirements, etc. Once properly issued State-enforceable Consent Orders are approved by EPA as SIP revisions, those Orders are incorporated by reference into the SIP, and become federally enforceable.

D. What Are the Procedural Requirements West Virginia Must Follow for EPA Approval?

The Clean Air Act requires States to observe certain procedural requirements while developing SIP revisions for submission to and approval by the EPA. Section 110(l) of the Clean Air Act requires that a revision to a SIP must be adopted by such State after reasonable notice and public hearing. The EPA must also determine whether a submittal is complete and warrants further action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP revision submittals are found at 40 Code of Federal Regulations (CFR) Part 51, appendix V.

West Virginia's February 17, 2000 SIP submittal for Marshall County was determined to be administratively complete by EPA through a letter to the Chief of the WVOAQ dated March 6, 2000.

The State of West Virginia held a public hearing on this SIP revision on July 22, 1999. The SIP revision request was then submitted by the Director of the West Virginia Division of Environmental Protection to the EPA by cover letter dated February 17, 2000. The SIP revision demonstrates attainment of the SO_2 NAAQS in Marshall County, West Virginia.

All State regulations and supporting information approved by the EPA under Section 110 of the Act are incorporated into the federally approved SIP. Records of such SIP actions are maintained in the 40 CFR Part 52. The actual State regulations and Orders which are approved as SIP revisions are not reproduced in their entirety in the CFR but are "incorporated by reference," with a specific effective date.

E. What Are the Health Effects Associated With This Criteria Pollutant?

Sulfur dioxide belongs to the family of sulfur oxide gases. These gases are formed when fuel containing sulfur, such as coal and oil, is burned and during metal smelting, and other industrial processes. Sulfur dioxide is a rapidly-diffusing reactive gas that is very soluble in water. Sulfur dioxide and oxides of nitrogen are the major precursors to acidic deposition (acid rain), and are associated with the acidification of lakes and streams, corrosion of buildings and monuments. They are also associated with reduced visibility. Sulfur dioxide in the Marshall County area is emitted principally from combustion, or processing, of sulfur-containing fossil fuels and ores. At elevated concentrations, sulfur dioxide can adversely affect human health. The major health concerns associated with exposure to high concentrations of SO_2 include effects on breathing, respiratory illness, alterations in the lungs' defenses, and aggravation of existing cardiovascular disease. Sulfur dioxide can also produce damage to the foliage of trees and agricultural crops.

F. What Are the NAAQS for SO_2?

The primary national ambient air quality standards for sulfur oxides, measured as SO_2, are 0.14 parts per million (ppm), or 365 µg/m3, averaged over a period of 24 hours and not to be exceeded more than once per year, and an annual standard of 0.030 ppm, or 80 µg/m3, never to be exceeded. The secondary standard for SO_2 is 0.50 ppm, or 1300 µg/m3 averaged over a three-hour period. The secondary standard may not be exceeded more than once per year.

II. Summary of This SIP Revision

The purpose of this revision is to ensure the federal enforceability of Consent Orders entered between the West Virginia Division of Environmental Protection, Office of Air Quality, and three facilities in Marshall County, West Virginia. The essential compliance provisions of the three Consent Orders are presented below. Each Consent Order also contains generic provisions requiring compliance with 45CSR10, the West Virginia regulation to prevent and control air pollution from the emissions of sulfur oxides as well as good air pollution control practice.

A. CO–SIP–2000–1, PPG Industries, Inc., Dated January 25, 2000

1. Effective immediately:

a. Emissions of sulfur dioxide from Process #004, Inorganics Flare, shall not exceed 91.3 lbs. SO_2/hour.

b. Process #014 CS_3, Vaporizer A; Process #015, CS_3 Vaporizer B; Process #018, Molten Salt Furnace; and Process #019, Chlorine Recovery shall be fired only with natural gas.

c. Process #016, CS_3 Flare, shall only be operated during periods limited to start-up, shutdown or malfunctions for periods no greater than a total of one hour in any three-hour period. The flare shall not be operated for more than three non-contiguous hours in a calendar day. Emissions of sulfur dioxide shall not exceed 1011.6 lbs. SO_2/hour during periods of start-ups and shutdowns.

d. Emissions of sulfur dioxide from Process #017, Raw Brine Flare, shall not exceed 11.65 lbs. SO_2/hour.

e. Emissions of sulfur dioxide from Process #036, CS_3 Sulfur Recovery Unit, shall not exceed 300 lbs. SO_2/hour. The CS_3 Sulfur Recovery Unit shall not process more than 2.5 tons of sulfur per hour nor more than 60 tons of sulfur per day.

2. Effective on or after June 1, 2002:

a. All exhaust gases from Process #004, Inorganics Flare; Process #036, CS_3 Sulfur Recovery Unit; and Process #016, CS_3 Flare shall be exhausted from stacks having heights of 65 meters above grade, and all exhaust gases from Process #017, Raw Brine Flare, shall be exhausted from a stack having a height of 40 meters above grade.

B. CO–SIP–2000–2, Bayer Corporation, Dated January 26, 2000

1. Effective immediately:

a. The Company shall not operate Boiler Number 3.

b. The Company shall burn only natural gas in Boilers Number 4, Number 6, Number 7, and Number 8.

c. SO_2 emissions from Boiler Number 9 and Boiler Number 10 shall not exceed 86 lbs./hour and 62.5 lbs./hour respectively.

i. Sulfur content of the fuel oil burned in Boilers Number 9 and 10 shall not exceed 0.72%.

ii. The total combined fuel oil burn rate to Boilers Number 9 and 10 shall not exceed 22 gallons per minute.

d. SO_2 emissions from Incinerator #1, Solids Incinerator, shall not exceed 9.5 lbs./

hour. The unit's burners shall only fire natural gas.

e. SO_2 emissions from Incinerator #4, Fluidized Bed Incinerator, shall not exceed 7.1 lbs./hour and 28.4 tons per year.

f. SO_2 emissions from the Iron Oxide Pigment Kiln shall not exceed 10.4 lbs./hour.

i. Sulfur content of the #2 fuel oil burned at the Iron Oxide Pigment Kiln shall not exceed 0.5%.

ii. Total combined fuel oil burn rate to the Iron Oxide Pigment Kiln shall not exceed 146 gallons per hour.

C. CO–SIP–2000–3, Columbian Chemicals Company, Dated January 31, 2000

1. Effective immediately:

a. Boilers #1 and #2 shall be fired only with natural gas

b. The sulfur content of the feedstock used in the reactor furnaces shall not exceed 2.5% by weight.

2. Within 180 days the Company shall submit a permit application to the WVOAQ under 45CSR14.

The California Puff model (CALPUFF) was selected as the tool for the attainment demonstration. CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion model that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation and removal. CALPUFF can be applied on scales of tens of meters to hundreds of kilometers. CALPUFF is a Lagrangian puff model. The model is programmed to simulate continuous puffs of pollutants being emitted from a source into the ambient wind flow. As the wind flow changes from hour to hour, the path each puff takes changes to the new wind flow direction. Puff diffusion is Gaussian and concentrations are based on the contributions of each puff as it passes over or near a receptor point.

CALPUFF is not a recommended model in EPA's *Guideline on Air Quality Models* [40 CFR Part 51, Appendix W], and, therefore, EPA approval of its use is required. This approval is generally given on a case-specific basis for an individual permit or SIP. In a joint memorandum to the EPA Model Clearinghouse, EPA Regions III and V recommended the use of CALPUFF for the Marshall County application. In a letter dated May 5, 1998 to the State of West Virginia, Marcia L. Spink, Associate Director, Air Programs, Air Protection Division, Region III, approved the modeling protocol and the use of the CALPUFF model for the development of the Marshall County SIP.

The final dispersion modeling, based upon current SIP allowable SO_2 emission limits and the SO_2 emission limits of sources amended through Consent Orders, demonstrates that the maximum SO_2 impacts do not exceed the SO_2 NAAQS. The maximum modeled impacts, including background concentrations, are presented in Table 1 below:

TABLE 1.—PREDICTED SULFUR DIOXIDE IMPACTS (MICROGRAMS PER CUBIC METER)

Period	CALPUFF	NAAQS	Percent of NAAQS
3-Hour ..	1293.95	1300	99.53
24-Hour	352.22	365	96.50
Annual ..	61.54	80	76.93

In addition, as part of the study leading to the development of this SIP revision, emission limitations were determined for the Ormet Aluminum facility in Monroe County, Ohio. An attachment to the SIP revision request is a letter from Ormet Primary Aluminum Corporation to the Ohio EPA consenting to the development of an appropriate rulemaking to establish allowable emission limits as modeled under Table 8, of *Dispersion Modeling of Sulfur Dioxide Emissions in and Near Marshall County, West Virginia* (Revised, October 1999). The Ohio EPA has agreed to revise the Ohio SIP as it pertains to Ormet.

Finally, of special note, Attachment VI to the SIP Revision request contains a proposed revision to West Virginia State Regulation X at 45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides" and a January 12, 2000, letter from American Electric Power to the USEPA certifying compliance with Civil Action No. 5:94–CV–100. The revision to West Virginia State Regulation X at 45CSR10 will once again make it consistent with the applicable SIP limit of 2.7 lbs.(SO_2)/mmBTU for the Kammer power plant.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment given the fact that the affected sources have all agreed to the SIP revision's provisions. This rule approving a SIP revision based upon a cooperative study in which all stakeholders and their respective interests were considered. Furthermore, the comments from the public hearing on this rule do not indicate any dissatisfaction with the rule. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to [approve the SIP revision] if adverse comments are filed. This rule will be effective on October 2, 2000 without further notice unless EPA receives adverse comment by September 1, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Final Action

EPA is approving a revision to the West Virginia State Implementation Plan (SIP) submitted by the West Virginia Division of Environmental Protection on February 17, 2000. The revision consists of Consent Orders modifying the sulfur dioxide (SO_2) allowable emissions at three stationary sources in Marshall County, West Virginia.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from Section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under Section 801 because this is a rule of particular applicability.

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving a revision to the Marshall County, West Virginia, SO_2 SIP, must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and record keeping requirements, Sulfur oxides.

Dated: June 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart 2520—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(44) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(44) Revisions to the West Virginia Regulations to attain and maintain the sulfur dioxide national ambient air quality standards in Marshall County submitted on February 17, 2000, by the Director, West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 17, 2000, from the Division of Environmental Protection transmitting a revision to the State Implementation Plan (SIP) for Attainment and Maintenance of Sulfur Dioxide National Ambient Air Quality Standards.

(B) Consent Orders entered between the West Virginia Office of Air Quality and:

(*1*) CO–SIP–2000–1, PPG Industries, Inc., Dated January 25, 2000.

(*2*) CO–SIP–2000–2, Bayer Corporation, Dated January 26, 2000.

(*3*) CO–SIP–2000–3, Columbian Chemicals Company, Dated January 31, 2000.

(ii) Additional Material.—Remainder of February 17, 2000 SIP revision submittal.

[FR Doc. 00–19371 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 302

[FRL–6843–3]

RIN 2060–AI08

Redefinition of the Glycol Ethers Category Under Section 112(b)(1) of the Clean Air Act and Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA). Under section 112(b)(3)(D) of the CAA, EPA may delete specific substances from certain listed categories, including glycol ethers. To implement this action, EPA is revising the definition of glycol ethers to exclude the deleted compounds. This action is also making conforming changes with respect to designation of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These final rules are being issued by EPA in response to an analysis of potential exposure and hazards of SAED that was prepared by the Soap and Detergent Association (SDA) and submitted to EPA. Based on this information, EPA has made a final determination that there are adequate data on the health and environmental effects of these substances to determine that emissions, ambient concentrations, bioaccumulation, or deposition of these substances may not reasonably be anticipated to cause adverse human health or environmental effects.

EFFECTIVE DATE: August 2, 2000.

ADDRESSES: The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Docket, Room

M1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule, contact Dr. Roy L. Smith, Risk and Exposure Assessment Group, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5362, facsimile number (919) 541–0840, electronic mail address smith.roy@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

Docket number A–98–39 contains the supporting information for this promulgated rule, including SDA's report on SAED and EPA's analysis of that report. The docket also includes public comments on the proposed rule for this action, published on January 12, 1999 (64 FR 1780). The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. Alternatively, docket indexes are available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/oar/docket. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of this final rule will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Effective Dates

These rules will take effect on August 2, 2000. Although section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that substantive rules must be published at least 30 days prior to their effective date, this requirement does not apply to these rules. First, the rule deleting specified substances from the glycol ethers category in the CAA section 112(b)(1) HAP list was promulgated pursuant to CAA section 307(d), and that provision expressly states that the provisions of section 553 do not apply to this action. Second, even under section 553, the requirement that a rule be published 30 days prior to its effective date does not apply to a rule "which grants or recognizes an exemption or relieves a restriction," and both rules incorporated herein fit that criterion.

Judicial Review

The final rule deleting specified substances from the glycol ethers category in the CAA section 112(b)(1) HAP list is based on a determination of nationwide scope and effect. A petition for judicial review of this final rule may be filed solely in the United States Court of Appeals for the District of Columbia. Any such petition for judicial review of this rule must be filed no later than October 2, 2000, except for judicial review challenging solely the amendment to the CERCLA regulations in 40 CFR part 302, which must be filed no later than October 31, 2000. In any resulting action, no objection can be made which was not raised with reasonable specificity during the period for public comment.

Outline

The information presented in this preamble is organized as follows:

I. What is the background for this rule?
II. What was our analysis of the information SDA submitted?
III. What is the basis for our final decision to delete SAED compounds from the glycol ethers category under the CAA?
IV. What is the basis for the revised designation of glycol ethers as hazardous substances under CERCLA?
V. How have we involved stakeholders in this rulemaking?
VI. What are the administrative requirements for these final rules?
A. Executive Order 12866
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), (5 U.S.C. 601, *et seq.*)
D. Unfunded Mandates Reform Act
E. Executive Order 13045
F. Executive Order 13084
G. National Technology Transfer and Advancement Act
H. The Congressional Review Act
I. Executive Order 13132

I. What Is the Background for This Rule?

Section 112 of the CAA contains a mandate for EPA to evaluate and control emissions of HAP. Section 112(b)(1) includes an initial list of HAP that is composed of specific chemical compounds and groups of compounds. This list is used to identify source categories for which we will subsequently promulgate emissions standards.

Section 112(b)(2) requires EPA to conduct periodic reviews of the initial list of HAP set forth in section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be added to the list as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, * * *.

Section 112(b)(3) establishes general requirements for petitioning the Agency to modify the HAP list by adding or deleting a substance. In general, the burden is on a petitioner to include sufficient information to support the requested addition or deletion under the substantive criteria set forth in section 112(b)(3)(B) and (C). The Administrator must either grant or deny a petition within 18 months of receipt. If the Administrator decides to grant a petition, we publish a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. The proposed rule is open to public comment and public hearing and any additional information received is considered prior to issuance of a final rule. If the Administrator decides to deny the petition, we publish a written explanation of the basis for denial. A decision to deny a petition and/or the issuance of a final rule granting a petition is final Agency action subject to review in the D.C. Circuit Court of Appeals under section 307(b).

To promulgate a final rule deleting a substance from the HAP list, section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to

determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

We will grant a petition to delete a substance and publish a proposed rule to delete that substance if we make an initial determination that this criterion has been met. After affording an opportunity for comment and for a hearing, we will make a final determination whether the criterion has been met.

The Administrator may also act to add or delete a substance on her own initiative. In this instance, we have been engaged in a substantive dialogue with the SDA, a national trade association representing manufacturers of cleaning products and ingredients, concerning the toxicity of and exposure to SAED, a group of compounds that is within the definition of the glycol ethers category as listed in section 112(b)(1). The SDA initiated this dialogue by requesting that we revise the definition of glycol ethers to exclude SAED. We asked the SDA to support its request by compiling information to satisfy the statutory criteria for delisting this class of compounds under section 112(b)(3). The SDA submitted this information in a report to us. Although SDA elected not to formally petition us to delete SAED compounds from the HAP list, we chose to evaluate the SDA report against the standards by which substances may be removed from the list of HAP. We made an initial determination that the statutory criteria for delisting SAED were satisfied and published a notice of proposed rulemaking (64 FR 1780, January 12, 1999).

We do not interpret section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects to human health or the environment before it may be deleted from the list. The use of the terms "adequate" and "reasonably" indicate that we should weigh the potential uncertainties and their likely significance. Uncertainties concerning the risk of adverse health or environmental effects may be mitigated if we can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if we can determine that the levels that might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels.

II. What Was Our Analysis of the Information SDA Submitted?

The SDA contended that the present definition of glycol ethers adopted by Congress in section 112(b)(1) was incorporated verbatim from the definition of glycol ethers utilized in section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11023. The SDA noted that we subsequently modified the definition of glycol ethers under EPCRA to exclude SAED compounds (59 FR 34386, July 5, 1994) and the SDA requested that we make a conforming change in the CAA list. We responded that the substantive criteria for deleting chemicals under EPCRA section 313(d) are materially different than the criteria for deleting a hazardous pollutant under section 112(b)(3). It is our view that whatever the origins of the glycol ethers definition in section 112(b)(1), we cannot redefine the glycol ethers category to exclude particular compounds without making a substantive determination that such compounds meet the applicable criteria for HAP delisting. Under section 112(b)(3)(D), we may delete specific substances included in certain listed categories without a Chemical Abstract Service number, including the glycol ethers category.

Although the SDA does not necessarily agree with us that deletion of individual compounds is the only manner in which we may adopt the requested redefinition of the glycol ethers category, the SDA agreed to assist us in this effort by collecting information concerning SAED compounds that would enable us to make a substantive assessment of potential risks under section 112(b)(3). On April 25, 1997, the SDA submitted a report entitled "Exposure Assessment Undertaken to Support the Evaluation of the HAP Definition of 'Glycol Ethers'."

Surfactant alcohol ethoxylates and their derivatives comprise a group of compounds that, individually, satisfy the following definition:

$R-(OCH_2CH_2)_n-OR'$

Where:

n = 1, 2, or 3;
R = alkyl C8 or greater
R′= any group.

Rather than asking the SDA to compile an exhaustive list of each specified SAED compound, we requested that the SDA undertake a generic analysis of the potential toxicity of, and potential exposure to, SAED compounds as a group. We requested that the analysis be based, to the extent possible, on worst-case assumptions that could be deemed to be conservative with respect to each and every individual compound in the SAED group. Such an approach to delisting would normally be impracticable due to the likelihood that use of such extreme assumptions would greatly exaggerate the magnitude of potential risks. In this instance, such an approach was considered practical only because of assertions by the SDA that SAED compounds present both very low potential toxicity and very limited exposure potential.

The report submitted by the SDA presented estimates of both the potential exposure to, and potential toxicity of, SAED compounds. The principal emissions estimate in the report was based on a hypothetical facility either manufacturing SAED or formulating products from an SAED precursor. The facility was assumed to use 600 million pounds per year of SAED, the total annual domestic production of Shell Chemical Company, the largest SAED manufacturer. The report developed conservative emissions estimates for this facility associated with the storage and transfer, processing, and fugitive releases of SAED compounds.

Emissions of SAED from raw materials during storage and transfer were estimated by assuming emissions of a volume of air, fully saturated with SAED, equal to the total volume of 600 million pounds of displaced SAED liquid per year. The estimated SAED concentration in this air was based on the vapor pressure of the lowest molecular weight compound in the SAED category, although typical SAED compounds have greater molecular weight and substantially lower volatility.

Additional SAED emissions from manufacture of SAED compounds and formulation of other products containing SAED were estimated by a process factor derived from industry experience. The process factor incorporated assumptions on the effect on emissions of higher temperatures and air contact rates that are characteristic of SAED processing. Potential SAED emissions during processing were estimated to be three times greater than during storage and transfer.

Finally, fugitive emissions were estimated by applying a proportionality factor of 41 percent to the sum of raw material and process emissions. This factor was derived from reported emissions for all glycol ethers in the EPA Toxics Release Inventory database, although it is likely that the proportion of total emissions attributable to fugitive releases would be much less for SAED

compounds than for the lower molecular weight glycol ethers.

This analysis estimated a total emissions rate for the hypothetical facility of 105 pounds of SAED per year from raw materials storage and transfer, manufacturing processes, and fugitive emissions combined.

Exposures at the fence line for the hypothetical facility were then estimated using the SCREEN3 dispersion model, the calculated total emissions rate, and a variety of assumptions concerning terrain, stack height and configuration, and distance to the fence line. The predicted annual average SAED concentration associated with an emissions rate of 105 pounds per year was 0.03 micrograms of SAED per cubic meter of air for a "representative" facility and 97.3 micrograms per cubic meter for a "hypothetical worst-case" facility.

The SDA submission also summarized the available toxicity data on SAED compounds. There have been few acute and no subchronic or chronic inhalation studies utilizing SAED compounds. Available animal study data do not indicate any adverse effects at air concentrations up to those produced by full saturation with SAED vapors. Acute toxicity has been demonstrated only when animals inhaled undiluted SAED in the form of a respirable aerosol. In one 10-day repeated inhalation study, test animals exhibited local respiratory irritation. Long-term animal studies of SAED administered by the oral or dermal routes have not reported any significant effects such as skin sensitization, reproductive or developmental toxicity, genetic mutations, or cancer. Evidence on the toxic potential of glycol ethers as a group strongly suggests that toxic potency decreases as molecular weight increases. Therefore, SAED (which have high molecular weights) are likely to be substantially less toxic than lighter glycol ether compounds for which more complete toxicity data are available.

There is no verified or proposed reference concentration (RfC) for any SAED compound. The SDA developed a proposed "key exposure index" for chronic exposure to SAED compounds based on the subchronic RfC for 2-methoxy-1-propanol (MP), a structurally similar compound which also has no demonstrated systemic toxicity by inhalation. 2-Methoxy-1-propanol has a lower molecular weight (90 grams per mole) than the lightest SAED compound (ethylene glycol octyl ether, 174 grams per mole). Therefore, MP is expected to be more toxic than any SAED compound, and its use as a surrogate should be conservative.

The SDA's analysis began with the subchronic RfC for MP, then reduced it by a factor of 10 to account for the differences between subchronic effects and chronic effects, and by an additional factor of between 1 and 10 to account for the use of data for a structurally related compound. This resulted in a proposed concentration range of 0.2 to 2.0 milligrams per cubic meter (mg/m^3) at which no adverse effects would be expected in human populations, including sensitive individuals. The SDA's proposed concentration range is approximately 1,000 to 10,000 times lower than the acutely toxic level for inhalation in rats. It is also approximately 1,000 to 10,000 times greater than the exposure estimated by the SDA for a "representative" facility and 2 to 20 times greater than the estimated exposure for a "hypothetical worst-case" facility.

The proposed chronic no-effect concentration range for SAED of 0.2 to 2.0 mg/m^3 is also consistent with chronic RfCs available from EPA's Integrated Risk Information System (IRIS) for lower-molecular weight, non-SAED glycol ethers (*i.e.*, 0.02 mg/m^3 for 2-methoxyethanol, 0.2 mg/m^3 for 2-ethoxyethanol, and 13 mg/m^3 for ethylene glycol monobutyl ether). The SDA's analysis has, therefore, treated SAED as if they were as toxic as much lighter glycol ether compounds, which EPA considers to be unlikely and conservative.

Although the SDA document does not include a discussion of levels of SAED that would be protective of non-human species, the toxicity data used to support the health impact assessment were obtained from animal studies. The derivation of human no-effect levels from these animal data, appropriately adjusted for uncertainty, should be protective of non-human animal species as well. Overall, there is no evidence to suggest that any species or any ecosystem would be harmed by any exposure below the SAED no-effect level proposed for humans.

III. What Is the Basis for Our Final Decision To Delete SAED Compounds From the Glycol Ethers Category Under the CAA?

Based on the SDA submission as a whole, we believe that the available data on potential exposure to, and toxicity of, SAED compounds are considerably more limited than would normally be necessary to support the findings required by section 112(b)(3) before we may delete a substance from the HAP list. However, there is a sufficiently large discrepancy between the maximum predicted exposure level for these compounds based on plausible worst-case assumptions and the lowest concentration likely to present any potential risk of adverse effects to compensate for the paucity of the data. The conservative techniques used by the SDA in its submission, which tend to overestimate both exposure to and toxicity of SAED, are appropriate in the context of the limited data that are available on SAED compounds.

We cannot construe the process by which Congress adopted the current definition of glycol ethers in section 112(b)(1) as relieving us of the obligation to apply the statutory criteria before deleting any substance included in the present definition. Nevertheless, it is important to observe that there is no evidence suggesting that the current broader definition of glycol ethers was adopted because of any actual concerns regarding the potential hazards of SAED compounds. We believe that the absence of any discernable affirmative rationale for the initial inclusion of SAED compounds in the statutory HAP list, while not dispositive in itself, lends additional support to our conclusion that the available evidence supports deletion of these compounds.

Based on the available information, we have made a final determination, with respect to each and every individual substance that satisfies the definition of SAED compounds set forth above, that there are adequate data on the health and environmental effects of those substances to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substances may not reasonably be anticipated to cause adverse human health or environmental effects. Based on that determination, we have decided to delete from the glycol ethers category in the HAP list established by CAA section 112(b)(1) each and every SAED compound. The EPA will implement this action to delete all SAED compounds by adopting a revised definition of the entire glycol ethers category that excludes each of the deleted substances.

IV. What Is the Basis for the Revised Designation of Glycol Ethers as Hazardous Substances Under CERCLA?

When a HAP is listed under section 112 of the CAA, it is also defined as a hazardous substance under section 101(14) of CERCLA, 42 U.S.C. 9601(14). In an April 4, 1985 final rule, under our authority in section 102(a) of CERCLA, we designated and listed, in the table at 40 CFR 302.4, all the elements and compounds and hazardous wastes incorporated as hazardous substances

by reference to other environmental statutes under section 101(14)(50 FR 13456). In a June 12, 1995 final rule, we revised Table 302.4 to add, among other HAP newly listed by the 1990 CAA Amendments, the broad generic category of glycol ethers (60 FR 30926). We designated the broad generic category of glycol ethers as hazardous under CERCLA based solely on its inclusion in the CAA HAP list. We have no independent basis upon which to retain the current definition of the glycol ethers category in order to include the SAED compounds as CERCLA hazardous substances. Therefore, in addition to revising the definition of glycol ethers in the HAP list in the CAA, we are also making a corresponding change to the list of CERCLA hazardous substances at 40 CFR part 302, Table 302.4.

V. How Have We Involved Stakeholders in This Rulemaking?

The SDA has worked with us for several years to compile evidence supporting this action. This evidence, submitted in April 1997 as a technical report, is summarized above and can be obtained in complete form from the docket. The proposed rules were signed on December 30, 1998 and published in the **Federal Register** on January 12, 1999 (64 FR 1780). We solicited public comments on the proposal for a 2-month period ending on March 15, 1999, and received letters conveying comments from the Chemical Manufacturers Association, the Chemical Specialties Manufacturers Association, the Illinois Environmental Protection Agency, and the SDA.

All commenters expressed full approval of the proposed action, its likely effects, and the rationale on which it is based. We received no negative comments.

VI. What Are the Administrative Requirements for These Final Rules?

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order 12866. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Although EPA is not aware of any effects associated with the present inclusion of SAED compounds on the CAA HAP and the CERCLA hazardous substance lists, the effect of the final rules will be to reduce potential regulatory obligations. Neither of the final rules included in this action appear to meet any of the criteria enumerated above, and EPA, therefore, has determined that neither of these actions constitute a "significant regulatory action" under the terms of Executive Order 12866.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, OMB must clear any reporting and recordkeeping requirements that qualify as an "information collection request" under the PRA. Neither of the final rules in this notice contain any new information collection requirements.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), (5 U.S.C. 601, et seq.)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this proposed action, can include manufacturing (SIC 20 and SIC 30) and air transportation (SIC 45) operations that employ less 1,000 people and engineering services (SIC 87) operations that earn less than $20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000: and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. sections 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rules will eliminate the burden of additional controls necessary to reduce SAED emissions and the associated operating, monitoring and reporting requirements. We have therefore concluded that today's final rules will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, in any 1 year. Therefore, the requirements of sections 202 and 205 of the UMRA do not apply to this action. The EPA has likewise determined that today's action does not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13045

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children. Nevertheless, the estimated human no-effect levels on which this action is based were derived in a manner designed to protect children and other sensitive members of human populations. The EPA, therefore, anticipates that the action will impose no disproportionate risks upon children.

F. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rules do not significantly or uniquely affect the communities of Indian tribal governments because they will result in no increase either in air pollution or reporting requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards, and the requirements of the NTTAA do not apply.

H. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These rules will be effective August 2, 2000.

I. Executive Order 13132

The Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the regulation.

These rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132. Thus, the requirements of section 6 of Executive Order 13084 do not apply to these amendments.

List of Subjects

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Glycol ethers, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 302

Air pollution control, Chemicals, Glycol ethers, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: July 24, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 63 and 302 of the Code of Federal Regulations are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—[Amended]

2. Subpart C is amended by adding § 63.62 to read as follows:

§ 63.62 Redefinition of glycol ethers listed as hazardous air pollutants.

The following definition of the glycol ethers category of hazardous air pollutants applies instead of the definition set forth in 42 U.S.C. 7412(b)(1), footnote 2: Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH_2CH_2)_n$-OR′.

Where:

n = 1, 2, or 3;
R = alkyl C7 or less; or
R = phenyl or alkyl substituted phenyl;
R′= H or alkyl C7 or less; or
OR′ consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. In § 302.4, footnote d to Table 302.4 is revised to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

* * * * * * * * *

[d] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH_2CH_2)_n$-OR′.
Where:
n = 1, 2, or 3;
R = alkyl C7 or less; or
R = phenyl or alkyl substituted phenyl;
R′ = H or alkyl C7 or less; or
OR′ consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

* * * * * * * * *

[FR Doc. 00–19375 Filed 8–1–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 130

RIN 0906–AA58

Ricky Ray Hemophilia Relief Fund Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Interim final rule; status of comments and confirmation of effective date.

SUMMARY: This document is to inform potential petitioners that the Department has received several comments on the Ricky Ray Hemophilia Relief Fund Program's interim final rule, published on May 31, 2000. The Department has reviewed all of these comments carefully and continues to consider the suggestions made in these comments. However, none of the comments received by the Department leads us to change the substance of the regulation, the petition form, or the confidential physician or nurse practitioner affidavit appended to the interim final rule at this time. In addition, these comments do not change the effective date of the interim final rule or the fact that July 31, 2000, will be the first date that petitions for payment may be postmarked or accompanied by a receipt from a commercial carrier or the U.S. Postal Service.

DATES: The interim final rule published on May 31, 2000, remains effective on July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Clark, Program Manager, Ricky Ray Program Office, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–2330.

SUPPLEMENTARY INFORMATION: The Ricky Ray Hemophilia Relief Fund Act of 1998 established the Ricky Ray Hemophilia Relief Fund Program, which is designed to provide compassionate payments to certain individuals with blood-clotting disorders, such as hemophilia, who contracted HIV through the use of antihemophilic factor administered between July 1, 1982, and December 31, 1987. The Act also provides for compassionate payments for certain persons who contracted HIV from the foregoing individuals for for certain survivors of these individuals.

On May 31, 2000 (65 FR 34860), the Department published an interim final rule to establish procedures and requirements for documentation of eligibility and to establish a mechanism for providing compassionate payments to individuals who are eligible for payment under the Act. Attached to the rule was a confidential physician or nurse practitioner affidavit, a petition form, and petition instructions, which included a documentation checklist.

The May 31, 2000, document solicited public comments on the interim final rule and indicated that June 30, 2000, was the deadline for the submission of all such comments. The regulation further indicated that the interim final rule would become effective on July 31, 2000, and that petitions could be

postmarked, or accompanied by a receipt from a commercial carrier or the U.S. Postal Service, on but not before July 31, 2000. The interim final rule specified that should the Department receive any significant comments that would cause us to revise the rule in any way that would affect the filing of the petitions, the Department would be able to do so, or to advise potential petitioners of our intent to do so, before such potential petitioners took any final action to file petitions for compensation.

Since the date of the interim final rule's publication, the Department has received several comments. The Department has reviewed all of these comments carefully. Some of these comments may warrant minor modifications to the interim final rule and we may elect to publish a response to these comments at a later date. However, none of the comments received by the Department leads us to change the substance of the regulation, the petition form, or the confidential physician or nurse practitioner affidavit at this time. In addition, the documentation required for various categories of petitioners to file a complete petition has not changed. Finally, the comments received by the Department do not change the effective date of the interim final rule. thus July 31, 2000, will continue to be the effective date of the interim final rule. Petitions for compassionate payments may be postmarked, or accompanied by a receipt from a commercial carrier or the U.S. Postal Service, on but not before July 31, 2000.

Dated: July 18, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Dated: July 28, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–19471 Filed 7–31–00; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–209]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands.

DATES: The rules are effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Davida Grant, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 202–418–7050, or via the Internet at *dgrant@fcc.gov*.

SUPPLEMENTARY INFORMATION: Recognizing the unusually low telephone service penetration rates on tribal lands, the Commission released a Notice of Proposed Rulemaking on August 18, 1999, 64 FR 49128, seeking comment on the potential of various wireless technologies to provide service to tribal lands with low penetration rates. Specifically, the Notice sought comment on a variety of potential regulatory initiatives to encourage existing and new entrants to serve tribal lands, including: (1) Relaxing licensing and operational rules; (2) using unallocated spectrum to serve tribal residents; (3) awarding bidding credits as an incentive; (4) drawing geographic boundaries for spectrum licensing that recognize tribal boundaries; and (5) adopting satellite licensing policies to facilitate access to telecommunications services.

The record in this proceeding demonstrates that there is a substantial need for specific incentives targeted to the deployment of service on tribal lands. By virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. According to the 1990 Census, 23 of the 48 largest tribal reservations (those with 500 or more households) had telephone penetration rates below 60 percent, and 16 of these reservations had a penetration rate below 50 percent. Penetration rates at several of the largest reservations are lower still: 18.4 percent on the Navajo Reservation and Trust Lands in Arizona, New Mexico, and Utah; and 22.2 percent on the Gila River Reservation in Arizona. By contrast, the current nationwide telephone penetration rate is 94 percent.

The *Report and Order* adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. Specifically, the *Report and Order* expands the Commission's bidding credit policy to make bidding credits available to winning bidders who use their licenses to deploy facilities and provide service to federally-recognized tribal lands that have a telephone penetration rate equal to or below 70 percent ("qualifying tribal land"). Applicants who qualify for the tribal lands bidding credit may obtain this credit in addition to any other generally available bidding credit for which they are available.

The credit amount will be based on infrastructure costs and geographic area. A winning bidder may receive a $300,000 credit for up to the first 200 square miles (518 square kilometers) of qualifying tribal land within its license area. In instances where qualifying tribal lands within a license area exceed 200 square miles (518 kilometers), a winning bidder may receive an additional $1500 per square mile (2.59 square kilometer), or $300,000 for each additional 200 square miles (518 square kilometers). All credits will be subject to a maximum limit based on the gross bid amount for the license for which the credit is sought. Where the gross bid amount is $1 million or less, the cap will be 50 percent of the gross bid. Where the gross bid amount is greater than $1 million and equal to or less than $2 million, the cap will be $500,000. Finally, where the gross bid amount exceeds $2 million, the cap will be 25 percent of the gross bid. The credit will be subtracted from the applicant's final payment and will not impact the amount of the down payment required under § 1.2107 of our rules. 47 CFR 1.2107. The Commission will entertain waiver request for a higher credit where an applicant demonstrates that its infrastructure costs exceed the available credit under the formula. However, we will not grant waivers in excess of the applicable percentage caps.

A winning bidder interested in obtaining the tribal lands bidding credit for particular market must indicate on its long form application that it intends to serve qualifying tribal lands in that market. To receive the credit, an applicant must amend its long-form application within 90 days of the filing deadline for long-form applications to certify that it will comply with the bidding credit buildout requirements adopted in the *Report and Order* and consult with the tribal government(s) regarding the deployment of facilities and service on the tribal land. The applicant also must attach a certification from the tribal government that its land is a qualifying tribal land, that it will not enter into an exclusive agreement with the carrier precluding entry by other carriers or unreasonably discriminate against any carrier, and that it will consent to allow the applicant to deploy facilities on its tribal land. This requirement does not preclude tribal governments from

negotiating additional reasonable terms and conditions with carriers. After these certifications are received, the Commission will award the bidding credit and the applicant will pay the final net adjusted bid amount, which equals the gross high bid less the tribal lands bidding credit (for applicants entitled to the small business bidding credit, the final net adjusted bid equals the net high bid less the tribal lands bidding credit).

To retain the credit, any recipient of this bidding credit must file a notification of construction within 15 days of the third anniversary of the initial grant of its license that it has constructed and is operating a system capable of serving 75 percent of the population of the qualifying tribal land for which the credit was awarded. A licensee failing to comply with this condition will be required to repay the bidding credit plus interest 30 days after the conclusion of the three-year buildout period.

Licensees granted a higher credit pursuant to a waiver must also file a certification that the credit amount was spent on infrastructure to provide wireless coverage to qualifying tribal lands. This certification should include a final report prepared by an independent auditor retained by the licensee verifying that the infrastructure costs are reasonable to comply with our buildout requirements. If the credit amount obtained by waiver exceeds the infrastructure costs of providing service to a qualifying tribal land, the licensee must pay the difference between the credit amount and the infrastructure costs.

In addition, the *Report and Order* expresses the Commission's commitment to work with carriers seeking flexibility under our technical and operational rules to promote deployment of wireless services on tribal lands. We believe that parties should seek waivers of specific rules or file other requests for regulatory in instances where greater flexibility than the rules allows would facilitate the provision of service to tribal lands.

In cases where it would facilitate provisions of service to tribal lands; we specifically encourage carriers to seek such relief from the following rules: (1) Antenna height/power and other operational requirements; (2) buildout requirements, (3) private (non-CMRS) service policies; and (4) satellite policies. We also encourage applicants seeking to expand coverage into adjacent licensing areas to file waivers where such relief would facilitate the provision of service to tribal lands. Parties seeking a waiver are encouraged to provide evidence of an agreement with tribal authorities that includes a commitment to serve the tribal lands. Lastly, we commit to considering tribal land boundaries in establishing license areas for future services to avoid splitting tribal lands into multiple licensing areas.

Contemporaneous with the Report and Order, the Commission has issued a Further Notice of Proposed Rulemaking (published elsewhere in this publication) wherein it seeks comment on additional auctions-based incentives it could adopt to encourage the deployment of wireless telecommunications services to tribal and other underserved areas.

Final Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Notice) in WT Docket No. 99–266.[2] The Commission sought written comment on the policies and rules proposed in the Notice, including comment on the IRFA. The comment received is discussed below. This Final Regulatory Flexibility Analysis (FRFA) for the Report and Order conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

The record in this proceeding demonstrates that there is a substantial need for specific incentives targeted to the deployment of service on tribal lands. By virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. As set forth in Section III.A of the *Report and Order*, 1990 Census data indicates that 23 of the 48 largest tribal reservations (those with 500 or more households) had telephone penetration rates below 60 percent, and 16 of these reservations had a penetration rate below 50 percent. By contrast, the current nationwide telephone penetration rate is 94 percent. We believe telephone service is a necessity in today's world. The lack of basic telecommunications services puts affected tribal communities at a social and economic disadvantage.

The *Report and Order* adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. We make bidding credits available in future auctions to winning bidders who commit to deploy facilities to tribal areas that have a telephone service penetration rate at or below 70 percent. We also express our commitment to work with carriers seeking flexibility under our technical and operational rules to promote deployment of wireless services on tribal lands.

B. Summary of Significant Issues Raised by Public Comment in Response to the IRFA

The U.S. Small Business Administration, Office of Advocacy (SBA), submitted a response to the IRFA. SBA argues that the Commission's IRFA was insufficient because it did not assess the significant economic impact certain proposals may have on small businesses nor did it propose alternatives that might minimize any impact.[4] SBA also argues more specifically that the Commission's proposal to lift designated entity (DE) transfer restrictions may disadvantage small businesses.[5] Further, SBA claims that the proposal to award bidding credits to any entity, regardless of size, that commits to serve tribal lands may provide big businesses an unfair advantage.[6]

We disagree with SBA's argument that we did not consider alternatives to minimize any significant economic impact on small entities. We discussed in the IRFA the alternative of using unallocated or unlicensed spectrum by telecommunications providers, including small entities, to serve the needs of tribal lands. Similarly, we discussed the use of channels within licensed spectrum to achieve a similar result, and sought comment on these alternatives. SBA also argues against lifting the DE transfer restrictions, which was an alternative we set forth in the *Notice*. This argument is moot, however, because we do not adopt this proposal in the *Report and Order*. Last, SBA states that we proposed to "offer bidding credits in future auctions regardless of business size."[7] However, in this proceeding we have not changed the generally available bidding credit that is offered to small businesses, and our new tribal lands bidding credit is offered in addition to the small business bidding credit. This additional, targeted

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 USC 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Extending Wireless Telecommunications Services to Tribal Lands, *Notice of Proposed Rulemaking*, WT Docket No. 99–266 (rel. Aug. 18, 1999).

[3] *See* 5 U.S.C. 604.

[4] SBA Comments at 7–8.

[5] *Id.* at 7.

[6] *Id.* at 2, 3–6.

[7] SBA Comments at 7.

incentive for tribal areas does not detract from our separate effort to assist small businesses through the small business bidding credit. For small businesses, the two credits may be combined.[8]

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." [13] Nationwide, as of 1992, there were approximately 275;801 small organizations.[14] And finally, "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." [15] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[16] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[17] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[18] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[19] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated.

Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the policies and rules adopted in the *Report and Order*.

Below, we further describe and estimate the number of wireless small business concerns that may be affected by the rules we adopt in the Report and Order.

Cellular Providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[20] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[21] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[22] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the rules adopted herein.

Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[23] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[24] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[25] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[26] Based on this information, we conclude that the number of small broadband PCS

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[8] *See Report and Order* para. 30.

[9] 5 U.S.C. 603(b)(3).

[10] *Id.* at 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[12] Small Business Act, 15 U.S.C. 632.

[13] 5 U.S.C. 601(4).

[14] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[15] 5 U.S,C. 601(5).

[16] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[17] *Id.*

[18] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation*, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[19] 13 CFR 121.201, SIC Code 4812.

[20] 13 CFR 121.201, SIC code 4812.

[21] *1992* Census, Series UC92–S–1, at Table 5, SIC code 4812.

[22] Trends in Telephone Service, Table 19.3 (March 2000).

[23] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

[24] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[25] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[26] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

SMR Licensees. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[27] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[28] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[29] Therefore, if this general ratio continues in 2000 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[30] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[31] The SBA has approved these definitions.[32] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[33] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[34]

Paging Licensees. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[35] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[36] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, herein adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Narrowband PCS Licensees. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[37] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[38] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[39] There are

[27] 47 CFR 90.814(b)(1).

[28] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[29] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[30] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[31] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[32] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[33] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[34] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[35] 13 CFR 121.201, SIC code 4812.

[36] Trends in Telephone Service, Table 19.3 (February 19, 1999).

[37] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[38] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[39] 13 CFR 121.201, SIC code 4812.

approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[40] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[41] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Fixed Microwave Services. Microwave services include common carrier,[42] private-operational fixed,[43] and broadcast auxiliary radio services.[44] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons.[45] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[46] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

Multipoint Distribution Systems (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[47] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[48] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[49] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[50] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. [51] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This Report and Order requires entities taking advantage of the tribal lands bidding credit to satisfy several reporting and compliance requirements. Section III.B.5 requires an applicant to indicate on its long-form application that it intends to serve qualifying tribal lands in its license area(s). Also, the applicant will have 90 days after filing the long-form application to obtain a certification by the affected tribal government providing: (a) Its consent to allow the bidder to deploy facilities on its tribal land(s), in accordance with our rules; (b) a statement that the tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers and will not unreasonably discriminate against any carrier; and (c) confirmation that the tribal lands are qualifying tribal lands as defined in our rules.

In addition, an applicant must certify that it will comply with certain coverage requirements and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land. Further, at the end of the three-year build-out period, licensees that receive the tribal lands bidding credit must file a certification that they have satisfied the build-out requirements. To the extent that licensees choose to take advantage of any additional flexibility that we adopt, they may be required to comply with other reporting requirements.

The rules we adopt allow entities 90 days from the filing deadline of the long-form application to obtain the consent of a tribal government to serve its tribal land. Negotiation periods will vary tremendously within this timeframe. We anticipate that some entities will employ an attorney (average of $200.00 per hour) to assist with negotiations. It is difficult to approximate how long it may take to obtain the consent of a tribal government, nevertheless, we estimate that the cost of obtaining tribal consent should not exceed $50,000.

Preparation of the requisite certifications should be relatively straightforward, particularly since technical analyses are not required. We

[40] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[41] 13 CFR 121.201, SIC code 4812.

[42] CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[43] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[44] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[45] 13 CFR 121.201, SIC 4812.

[46] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

[47] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[48] 47 CFR 1.2110 (a)(1).

[49] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[50] 47 USC 309(j).

[51] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36–39.

estimate that it will take two (2) hours to prepare the certifications and that entities will use in-house staff (average $50.00 per hour), which should minimize costs. Since long-form applications are already required, we conclude that it should not take additional time to indicate an intention to take advantage of the tribal lands bidding credit.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

SBA claims that we did not sufficiently assess in the IRFA how small businesses could be affected by our decisions to seek comment on eliminating designated entity ("DE") transfer restrictions and awarding bidding credits in future auctions to entities that commit to deploy facilities to tribal lands. We disagree. The Notice sought comment on an array of alternatives, including the aforementioned, that the Commission could adopt to encourage the provision of wireless services to tribal areas. The RFA requires that the Commission ensure that regulations we adopt do not inhibit the ability of small entities to compete. The Notice did not propose to eliminate DE transfer restrictions, but rather sought comment on this alternative. In any event, the Report and Order does not address DE transfer restrictions.

Likewise, we sought comment on whether to award bidding credits in future auctions to any entity, regardless of size, that commits to serve tribal lands. SBA claims that such a proposal would unfairly advantage large businesses. We disagree. The Notice sought comment on whether to combine any credit for serving tribal lands with the small business credits available under our rules. Thus, small entities could potentially receive two credits for a license area. We did not propose a specific implementation program, but rather sought comment from the industry as to how to structure the program, including whether to limit the credit to designated entities, the appropriate credit amount, and any necessary safeguards. In addition, we sought comment on how to minimize any economic impact on small entities.

The Report and Order expands our bidding credit policy to facilitate the provision of wireless telecommunications services to tribal lands. Entities taking advantage of the credit must comply with certain reporting and compliance requirements. Expected costs include: (1) Negotiating with and obtaining consent from tribal governments; (2) preparing the requisite certifications, and (3) deploying facilities to tribal areas. We conclude that obtaining tribal consent and deploying facilities to tribal areas may have a significant economic impact on small entities. Below, we discuss our efforts to minimize the economic impact on small entities in both of these areas.

Obtaining Tribal Consent

As discussed in Section III.B.1 of the Report and Order, we find that tribal governments are uniquely situated to ensure that carriers who obtain credits will meet their commitments to deploy facilities to the tribal areas with the greatest need. Therefore, tribal consent is key to meeting the objectives of our bidding credit initiative. We recognize that negotiations with a tribal government could prove lengthy and costly, particularly where an entity seeks the consent of multiple tribal governments. To minimize the economic impact on successful bidders, we rejected our proposal to require entities taking advantage of the credit to file an executed agreement with tribal governments setting forth all the terms and conditions for deploying facilities and initiating service on tribal lands. We concluded that this approach would expand the negotiations process and prove overly burdensome. Instead, entities need only obtain the consent of the tribal authority and file two certifications, as set forth in Section III.B.5 of the Report and Order.

Deployment of Facilities

Compliance with the coverage requirements may have a significant economic impact on small entities, particularly in instances where infrastructure costs for serving tribal lands exceed the available credit. The rules we adopt, however, should minimize the infrastructure costs for serving tribal areas. As set forth in Section III.B.4 of the Report and Order, we adopt several caps for the tribal lands bidding credit, depending on the gross bid amount of a license, which takes into account the potential recovery level for infrastructure costs. For example, for licenses with a gross bid amount up to $1 million, carriers may receive a bidding credit up to 50 percent of the value of the license.[52] Further, in instances where a carrier's infrastructure costs exceed the available credit, the carrier may seek a waiver to obtain additional credit, subject to the applicable caps. This should allow for substantial recovery of infrastructure costs, thus minimizing the economic impact on small entities.

The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to SBREFA, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) also will be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), and 309(j), the *Report and Order* is hereby *Adopted*.

The Commission's rules *are amended* as set forth in Appendix B. The provisions of the Report and Order and the Commission's rules, as amended in Appendix B, shall become effective October 2, 2000.

The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Telecommunications, Penalties.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 325(e).

2. Section 1.2107 is amended by redesignating paragraph (e) as (f), and by adding a new paragraph (e) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(e) A winning bidder that seeks a bidding credit to serve a qualifying tribal land, as defined in § 1.2110(e)(3)(1), within a particular market must indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market.

* * * * *

[52] The total size of the qualifying tribal lands, however, is a significant factor in determining the amount of the availabale credit. See Section III.B.4.

3. Section 1.2110(e) is amended by adding paragraph (e)(3) to read as follows:

§ 1.2110 Designated entities

* * * * *

(e) * * *

(3) *Bidding credit for serving qualifying tribal land.* A winning bidder for a market will be eligible to receive a bidding credit for serving a qualifying tribal land within that market, provided that it complies with § 1.2107(e). The following definition, terms, and conditions shall apply for the purposes of this section and § 1.2107(e):

(i) Qualifying tribal land "means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments," (see 25 CFR 20.1(v)), that has a wireline telephone subscription rate equal to or less than seventy (70) percent based on the most recently available U.S. Census Data.

(ii)(A) *Certification.* Within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and attach a certification from the tribal government stating the following:

(*1*) The tribal government authorizes the winning bidder to site facilities and provide service on its tribal land;

(*2*) The tribal area to be served by the winning bidder constitutes qualifying tribal land; and

(*3*) The tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land.

(B) In addition, within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the buildout requirements set forth in § 1.2110(e)(vi) and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(iii) *Bidding credit formula.* Subject to the applicable bidding credit limit set forth in § 1.2110(e)(3)(iv), the bidding credit shall equal three hundred thousand (300,000) dollars for the first twohundred (200) square miles (518 square kilometers) of qualifying tribal land, and fifteen hundred (1500) dollars for each additional square mile (2.590 square kilometer) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) *Bidding credit limit.* If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed twenty five (25) percent of the high bid.

(v) *Application of credit.* The bidding credit amount, if approved by the Commission, will be subtracted from the final net bid amount. The bidding credit will not affect calculation of the down payment.

(vi) *Post-construction certification.* Within fifteen (15) days of the third anniversary of the initial grant of its license, a recipient of a bidding credit under this section shall file a certification that the recipient has constructed and is operating a system capable of serving seventy-five (75) percent of the population of the qualifying tribal land for which the credit was awarded.

(vii) *Performance penalties.* If a recipient of a bidding credit under this section fails to provide the post-construction certification required by § 1.2110(e)(3)(vi), then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license.

[FR Doc. 00–19479 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 149
Wednesday, August 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that currently requires wiring modifications to the engine and auxiliary power unit (APU) fire detection system. This action would require new wiring modifications for the engine and APU fire detection system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the fire warning from terminating prematurely, which could result in an unnoticed, uncontained engine/APU fire.

DATES: Comments must be received by September 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–48–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 23, 1999, the FAA issued AD 99–27–10, amendment 39–11491 (65 FR 204, January 4, 2000), applicable to certain Airbus Model A310 and A300–600 series airplanes, to require wiring modifications to the engine and auxiliary power unit (APU) fire detection system. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent the fire warning from terminating prematurely, which could result in an unnoticed, uncontained engine/APU fire.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–27–10, the FAA has received a report that the modification procedures, specified in Airbus Service Bulletin A310–26–2024, Revision 04, dated March 5, 1999 (for Model A310 series airplanes) and A300–26–6038, dated March 5, 1999, and Revision 1, dated September 8, 1999 (for Model A300–600 series airplanes), were inadequate. Although those service bulletins were referenced as appropriate sources of information by AD 99–27–10, operators reported that they were unable to accomplish the hook-up procedures specified in those service bulletins. As a result, a later revision of French airworthiness directive 1999–238–286(B) R2, dated May 17, 2000, was issued, which references two new service bulletins that revise the modification procedures.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins to replace the

procedures specified in earlier revisions of the service bulletins, which were referenced in AD 99–27–10.

• 310–26–2024, Revision 06, dated March 31, 2000 (for Model A310 series airplanes), specifies that additional work is necessary on certain airplanes that have accomplished Modification 06845 in accordance with Airbus Service Bulletin A320–26–2024, Revision 05, dated November 9, 1999. Revision 06 was issued to include improved hook-up and test procedures, change certain bundle part numbers, add a new kit number for certain airplanes, and update certain configuration numbers for certain airplanes.

• A300–26–6038, Revision 02, dated November 9, 1999, and Revision 03, dated March 30, 2000 (for Model A300–600 series airplanes) were issued to include improved hook-up procedures. Revision 02 specifies an additional Kit A03, and Revision 03 changes certain bundle part numbers, updates certain configuration numbers, and increases the work hours for accomplishing the modification.

The wiring modification procedures provided by these service bulletins include the use of new kits for the engine and APU fire detection system in relay box 282VU and the electronics rack 90VU. Procedures also specify new wiring modifications to the avionics compartment, which include the 20VU overhead panel, 282VU relay box, and 90VU electronics rack. After accomplishing the actions specified in those service bulletins, the manufacturer reports that it will no longer be necessary to manually disengage a faulty loop, and that the fire warning system will remain activated even if one loop becomes inoperative. The actions specified by the service bulletins are intended to significantly improve the airplane fire detection system.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 1999–238–286(B) R2, dated May 17, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–27–10 to propose new wiring modifications for the engine and APU fire detection system. Such modifications include the use of new kits for the fire detection system in relay box 282VU and the electronics rack 90VU, changes to the configuration numbers and bundle part numbers for certain airplanes, and revisions to the hook-up charts. The actions would be required to be accomplished in accordance with the applicable service bulletins described previously.

Cost Impact

There are approximately 113 Model A310 and A300–600 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are proposed in this AD action would take approximately 26 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $484 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $230,972, or $2,044 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11491 (65 FR 204, January 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–48–AD. Supersedes AD 99–27–10, Amendment 39–11491.

Applicability: Model A310 and A300–600 series airplanes, certificated in any category; except those on which Airbus Modifications 06267 and 07340 have been accomplished during production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the fire warning from terminating prematurely, which could result in an unnoticed, uncontained engine/auxiliary power unit (APU) fire, accomplish the following:

Modifications

(a) Within 12 months after the effective date of this AD, accomplish the wiring modifications for the engine and APU fire detection system in accordance with Airbus Service Bulletin A300–26–6038, Revision 03, dated March 30, 2000 (for Model A300–600 series airplanes); or A310–26–2024, Revision 06, dated March 31, 2000 (for Model A310 series airplanes); as applicable.

Note 2: Accomplishment of the wiring modifications prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–26–6038, Revision 02, dated November 9, 1999, is considered acceptable for compliance with the applicable actions specified in this AD.

Alternative Method of Compliance

(b)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–27–10, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–238–286(B) R2, dated May 17, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19265 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM00–11–000]

Five-Year Review of Oil Pipeline Pricing Index; Notice of Inquiry

July 27, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to seek comments on its five-year review of the oil pricing index, established in Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993). Specifically, the Commission is seeking comments on the adequacy of the Producer Price Index for Finished Goods minus one percent as an index to measure actual cost changes in the oil pipeline industry.

DATES: Written comments must be received by the Commission by September 1, 2000. Reply comments must be received by the Commission 30 days after the filing date for initial comments.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0224.

SUPPLEMENTARY INFORMATION: In this notice of inquiry (NOI), the Federal Energy Regulatory Commission (Commission) presents an opportunity for comments regarding its five-year review of the oil pricing index, established in Order No. 561.[1] Specifically, the Commission has undertaken a review of the effectiveness of the change in the Producer Price Index for Finished Goods, expressed as a percent, minus one percent (PPI–1)[2] as an index to measure actual cost changes in the oil pipeline industry, and welcomes comments on the result of that review. The annual percentage change in the PPI–1 Index is applied to the prior year's ceiling level for oil pipeline rates to derive the current year's ceiling rate.

I. Background

Oil pipelines have been subject to rate regulation under the Interstate Commerce Act (ICA)[3] since the enactment of the Hepburn Act in 1906.[4] From the enactment of the Hepburn Act until jurisdiction over oil pipeline rates was transferred from the Interstate Commerce Commission to the Commission in 1977,[5] oil pipeline rates were fixed according to a cost-of-service methodology grounded upon use of a valuation rate base—a mixture of original and replacement costs, or a "fair value" methodology. The Commission was required to utilize for oil pipeline ratemaking the ICA as it existed on October 1, 1977. The first adjudicated case decided by the Commission under the ICA was the Williams Pipe Line case, which resulted in the issuance of Opinion No. 154–B in 1985.[6] Opinion No. 154–B established a fairly traditional cost-of-service methodology for determining oil pipeline rates. This methodology used a trended original cost rate base, and a rate of return based on the actual embedded debt cost and equity costs reflecting the pipeline's risks. This Opinion No. 154–B methodology became the standard methodology for setting oil pipeline rates under the ICA.

Adjudicated proceedings for oil pipelines, though few in number, were long, complicated and costly, and required considerable expenditure of participants' time and resources, including those of the Commission.[7] As a result, Congress, in the Energy Policy

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[1] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Energy Policy Act, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993), 58 F.R. 58753 (Nov. 4, 1993); *order on reh'g*, Order No. 561–A, FERC Stats. & Regs. [Regs Preambles, 1991–1996] ¶ 31,000 (1994), 59 F.R. 40243 (Aug. 8, 1994), *affirmed, Association of Oil Pipelines* v. *FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

[2] The PPI represents the Producer Price Index for Finished Goods, also written PPI–FG. The PPI–FG is determined and issued by the Bureau of Labor Statistics, U.S. Department of Labor. Pursuant to 18 CFR Section 342.3(d)(2), "The index will be calculated by dividing the PPI–FG for the calendar year immediately preceding the index year by the previous calendar year's PPI–FG, and then subtracting 0.01." Multiplying the rate ceiling on June 30 of the index year by the resulting number gives the rate ceiling for the year beginning the next day, July 1.

[3] 49 U.S.C. app. 1 (1988).

[4] Pub. L. No. 59–337, 34 Stat.584.

[5] Jurisdiction over oil pipeline rates was transferred to the Commission pursuant to the Department of Energy Organization Act of 1977, 42 U.S.C. 7101.

[6] Williams Pipe Line Co. 31 FERC ¶ 61,377 (1985).

[7] The *Williams* case, which culminated in Opinion No. 154–B, took fourteen years to resolve, although some of the time was attributable to the transfer of jurisdiction of oil pipelines to the Commission from the Interstate Commerce Commission.

Energy Policy Act (Energy Policy Act),[8] required the Commission to establish a "simplified and generally applicable" ratemaking methodology for oil pipelines, consistent with the just and reasonable standard of the ICA. On October 22, 1993, the Commission issued Order No. 561 (final rule), promulgating regulations pertaining to the Commission's jurisdiction over oil pipelines under the ICA, and to fulfill the requirements of the Energy Policy Act. In so doing, the Commission found that using an indexing methodology to regulate oil pipeline rate changes, accompanied with certain alternative rate-changing methodologies where either the pipeline or the shipper could justify departure from the indexing methodology, would satisfy both the mandate of Congress and comply with the requirements of the ICA.

The final rule reflects the Commission's compliance with the mandate of Congress.[9] The final rule, in accordance with section 1801 of the Energy Policy Act, provided a "simplified and generally applicable" approach to changing just and reasonable rates through use of an index system to establish ceiling levels for such rates. The indexing methodology adopted in the final rule was designed to fulfill both the simplification directive of the Energy Policy Act and the just and reasonable standard of the ICA. The Commission found that the indexing methodology adopted in the final rule would simplify, and thereby expedite, the process of changing rates by allowing, as a general rule, such changes to be made in accordance with a generally applicable index, and that it would ensure compliance with the just and reasonable standard of the ICA by subjecting the chosen index to periodic monitoring and, if necessary, adjustment.

In determining which index to use, the Commission obtained the views of interested parties on its proposal to change its ratemaking methodology for oil pipelines. After extensive analysis of various suggested indices, the Commission adopted the PPI–1 index for the purpose of allowing oil pipelines to change rates without making a cost-of-service filing. This index was chosen over others considered because it comes the closest to tracking the historical changes in actual costs as reported in FERC Form No. 6. The Commission publishes the final annual change in the PPI–FG expressed as a percent minus one percent after the final PPI–FG is available in May of each calendar year. Pipelines are required to calculate the new ceiling level applicable to their indexed rates, and if the rates being charged by a pipeline exceed the new ceiling level, the pipeline must file to reduce the rates to a level not exceeding the new ceiling level. If the new ceiling level is higher than the rates being charged, the pipeline may file to increase such rates at any time in the index year to which the new level is applicable.

The Commission determined that the cost changes experienced by oil pipelines, which essentially do business at the wholesale level, had more closely resembled the cost changes experienced by producers of finished goods than by the economy as a whole, and that they would likely continue to do so in the future. Therefore, on a broad conceptual basis, the Commission determined that the PPI–FG is an appropriate choice for an oil pipeline industry-wide index.[10] Based on the evidence of record, the Commission determined that a modification of that index to include the "minus one percent" factor, or PPI–1, was the index that most closely approximated the reported costs of oil pipelines.[11]

Further, the Commission found that application of the index of the change in the PPI–1 to the whole rate, rather than applying the index to specific components of a rate, would, in addition to tracking economy-wide cost changes closely, obviate the need to incur the additional regulatory work and unintended consequences involved in breaking down rates to adjust some components and not adjust others.

The Commission stated in the final rule that the selection of the PPI–1 was not necessarily a choice for all time. The Commission recognized that its responsibilities under the ICA, to both shippers and pipelines, required it to monitor the relationship between the change in the PPI–1 Index and the actual cost changes experienced by the industry. The Commission undertook to review the effectiveness of the index every five years. This is the first of such reviews. The Commission stated that it would use the Form No. 6 information for this purpose. Staff's review is reflected in this NOI.

II. Review of PPI–1 Index and Oil Pipeline Industry Costs

The Commission requested that Staff review the change in the PPI–1 index as an effective means of tracking the historical changes in industry costs.[12] The PPI–1 index went into effect on January 1, 1995.[13] This section reviews industry cost experience with PPI–1 index for the period indexing has been in effect and for which data are available—January 1, 1995 through December 31, 1999.

According to Staff, this review compares the change in industry-wide operating costs with the change in the PPI–1 index during 1995–1999. Staff began by calculating the industry-wide annual operating costs per barrel mile from FERC Form No. 6 data and the year-to-year percentage changes in those costs. Next, Staff compared the percentage changes in the PPI–1 index[14] with the percentage changes in industry costs. This step is necessary because the newly published index is applied to the period from July through the following June, whereas the FERC Form No. 6 data are reported on a calendar year basis. Finally, Staff compared the annual changes in the PPI–1 index with the annual changes in industry-wide operating costs per barrel mile.

In this review Staff used the industry-wide annual operating cost per barrel mile as the primary measure of industry costs. Staff used operating costs as reported by pipelines in FERC Form No. 6[15] as the most appropriate single measure because these costs include both operating expenses incurred during in the relevant year and charges for amortization and depreciation for that year.[16] Staff divided these costs by

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[8] 42 U.S.C.A. 7172 note (West Supp. 1993). The Energy Policy Act "grandfathered" certain oil pipeline rates then in effect.

[9] In the final rule, the Commission recognized that Congress deemed certain rates to be just and reasonable, thereby forming a baseline for many future oil pipeline rate changes and obviating future debate over the appropriateness of existing rates, many of which are based on valuation or trended original cost methodologies.

[10] For a more detailed discussion, see Order No. 561–A, FERC Stats. and Regs. [Regs. Preambles] ¶ 31,000 (1994).

[11] Order No. 561, FERC Stats. & Regs. [Regs. Preambles] ¶ 30,985 at p. 30,951.

[12] Order No. 561 at p. 30,952.

[13] Staff calculated the initial change in the PPI–1 using the PPI figures for 1992 and 1993. These are the most recent final figures for the PPI available prior to January 1, 1995, when the index was first applied. The index is updated each year when the final PPI figures become available (usually mid-May), to be applied to rates for the period from July to the following June. Thus, for example, the PPI–1 index calculated and published in May 2000 applies to rates effective from July 1, 2000 to June 30, 2001.

[14] The PPI–1 index is adjusted to a calendar year basis. See Table 2, column 5, *infra*.

[15] Operating expenses were taken from Form No. 6, page 304, line 22, column m.

[16] Form No. 6 data were obtained in electronic form from OPRI, a subsidiary of Research Data International (RDI), which in turn is owned by the Financial Times. OPRI receives FERC Form No. 6 data, puts them into a database and sells the database to the public. Staff compared these data with the data filed with the Commission. In preparation for this comparison, Staff conducted a

Continued

barrel miles shipped because the pipelines' rates, to which the PPI–1 index is applied, are stated in dollars per barrel mile.

For purposes of this review, Staff excluded the Trans Alaska Pipeline System (TAPS) and those pipelines delivering oil directly or indirectly to TAPS.[17] Staff used only companies whose reports included both barrel mile and total cost information in calculating the overall average (these companies' reports comprised 99% of total reported costs for the period 1994 through 1999). Table 1 summarizes the industry cost data.

TABLE 1.—SUMMARY OF REPORTED COSTS FROM FERC FORM NO. 6, 1994 TO 1999

Year	Total Operating Costs Total Barrel Miles		Operating Cost ($/Thousand Barrel Miles)
	(Million $)	(Billions)	
1	2	3	4
1994	$3,182	3,111	$1.023
1995	3,176	3,125	1.016
1996	3,277	3,293	0.995
1997	3,375	3,267	1.033
1998	3,305	3,147	1.050
1999	3,139	3,150	0.997

The PPI–1 index is calculated and published each May when the final PPI values become available and applied to the period from July of the same year to June of the following year. For any calendar year, rates from January 1 to June 30 are subject to the index published the previous year, and rates from July 1 to December 31 are subject to the index published in that calendar year.

To compare how well the PPI–1 index tracks the costs, Staff constructed an index that applies to the specific period of the cost data, *i.e.*, to the calendar year of the reported information. Since each calendar year is affected by two PPI–1 indexes of six months' duration, Staff calculated the calendar year PPI–1 index as the simple average of the two applicable PPI–1 indexes. Table 2 presents the results of this calculation PPI and the calculation of the calendar year changes in the PPI–1 index to be applied to changes in the FERC Form No. 6 cost information.

TABLE 2.—CALCULATION OF PPI–1 INDEX FOR COMPARISON WITH FERC FORM NO. 6 COSTS

Year	PPI(FG)	Percent change in PPI(FG)	Percent change in PPI–1	Percent change in PPI–1 for calendar year
1	2	3	4	5
1992	123.2	.....	.....	.....
1993	124.7	.....	.....	.....
1994	125.5	1.22	0.22	.....
1995	127.9	0.64	−0.36	−0.07
1996	131.3	1.91	0.91	0.28
1997	131.8	2.66	1.66	1.29
1998	130.7	0.38	−0.62	0.52
1999	133.0	−0.83	−1.83	−1.23

Notes: Column 3 is computed by taking column 2 for the immediately prior year minus column 2 for the second prior year divided by the latter number. For example, (124.7—123.2)/123.2=.0122=1.22%. Subtracting 1 from column 3 gives column 4.

Column 4 contains the number by which a pipeline's rate ceiling on June 30 of a particular year is changed to determine its rate ceiling for the year beginning July 1 of that year.

Column 5 is calculated by taking one-half of column 4 for the prior year plus one-half of column 4 for the current year. For example, (0.22/2)+(−0.36/2)=0.11—0.18=−0.07. In summary, column 5 converts the July—June year corresponding to the index's application to the calendar year so it can be compared to Form No. 6 cost data.

Table 3 compares the percentage changes in the PPI–1 index and industry operating costs for the period 1995 through 1999. Year-to-year differences in the index and costs are to be expected, since the period used for the index lags the reporting period by up to 18 months. Staff compared an average of percentage changes in the index to percentage changes in industry-wide costs over a five-year period, which reduces the influence of year-to-year fluctuations and enables us to better evaluate the five-year relationship between the index and industry-wide costs. Over the entire period, the PPI–1 index averaged small, positive changes (0.16%) while the industry costs averaged small, negative changes (−0.47%). Thus, for the five-year

comprehensive review of operating cost data for the period 1990 to 1997 and a selected review of cost per barrel mile data to identify apparently anomalous values in cost per barrel mile figures. See Appendix A for a listing of the corrections staff made to the OPRI data.

[17] 18 CFR Section 342.0 (b).

period, the differences between the index and the costs are relatively small.

TABLE 3.—COMPARISON OF YEAR-TO-YEAR CHANGES IN OPERATING COSTS PER BARREL MILE AND PPI–1 INDEX

Year	Percent change in PPI–1 index	Percent change in operating costs per barrel mile
1	2	3
1995	−0.07	−0.68
1996	0.28	−2.07
1997	1.29	3.82
1998	0.52	1.65
1999	−1.23	−5.05
Average, 1995–1999	0.16	−0.47

Notes: Column 2 is column 5 of Table 2.

Column 3 is computed from data in Table 1, column 4, current year minus column 4, prior year divided by the latter number. For example, ($1.016—$1.023)/$1.023=−0.0068=−0.68%.

Based on the foregoing Staff review, it appears that the changes in the PPI–1 Index have closely approximated the changes in the reported cost data for the oil pipeline industry during the five-year period covered by this review.

III. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Upon evaluation of those comments, the Commission will determine what further action, if any, will be appropriate. The Commission intends to conclude any such further action by May 2001.

The original and 14 copies of such comments must be received by the Commission before 5 p.m. September 1, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM00–11–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00–11–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM00–11–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

IV. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

By direction of the Commission.

David P. Boergers,

Secretary.

Appendix A

Below is a list of six instances in which the OPRI data were found to reflect barrel rather than barrel-mile information. In the first instance, Form No. 6 contained only barrel information, and as a result both the Total Cost and Barrel Mile information reported were removed from Staff's data set. In the five other instances, barrel-mile data were found in Form No. 6 and, as a result, the OPRI data were adjusted to reflect the barrel-mile rather than the barrel figures.

Company	Year	Barrel miles reported	
		OPRI	Form No. 6
1. American Petrofina Pl. Co.	1995	27,877,793	N/A
2. Calnev Pipe Line Company	1996	37,894,152	[18] 8,367,187,000
3. Calnev Pipe Line Company	1997	39,018,728	[19] 8,569,572,000
4. West Gulf Coast P.L. Co.	1999	22,057,426	[20] 22,057,425,363
5. Sun Pipe Line Company	1998	96,155,360	[21] 14,695,314,496
6. Ashland Pipe Line LLC	1997	109,786,344	[22] 91,327,743,733

[18] See 1997 Form No. 6, page 700, col (c), line 4.
[19] See 1997 Form No. 6, page 700, col (b), line 4.
[20] See 1999 Form No. 6, page 700, col (b), line 4.
[21] See 1998 Form No. 6, page 700, col (b), line 4.
[22] See 1997 Form No. 6, page 700, col (b), line 4.

[FR Doc. 00–19506 Filed 8–1–00; 8:45 am]
BILLING CODE 6717–01–P

POSTAL SERVICE

39 CFR Part 111

Invalid Ancillary Service Endorsements

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Domestic Mail Manual to eliminate the transitional provisions for the handling of mail bearing invalid ancillary service endorsements. Under the proposal, the Postal Service may reject mail bearing invalid endorsements. Items bearing invalid or conflicting ancillary service endorsements that are found in the mailstream will be treated as unendorsed mail.

DATES: Comments must be received on or before September 1, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Delivery Policies and Programs, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 7142, Washington, DC 20260–2802. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. Comments may not be submitted via fax or email.

FOR FURTHER INFORMATION CONTACT: Jackie Estes, 202–268–3543.

SUPPLEMENTARY INFORMATION: In July 1997, the Postal Service simplified the endorsements for requesting ancillary services by eliminating the existing endorsements and substituting four choices: Address Service Requested, Change Service Requested, Forwarding Service Requested, and Return Service Requested (including Temp—Return Service Requested, for use with First-Class Mail only).

As a transitional accommodation to mailers with stationery bearing the former endorsements, the Postal Service adopted Domestic Mail Manual (DMM) F030.1.2 to provide for the handling of mail bearing invalid endorsements. This mail was to be accepted and handled in accordance with a current valid endorsement, based on the expectations implied by the improper endorsement on the mail.

In view of the length of time since the adoption of the current endorsements, and to reduce the risk of confusion and error created by conflicting and obsolete endorsements, the Postal Service considers it appropriate to eliminate the transitional provision. Accordingly, it proposes to revise DMM F030.1.2 to provide ancillary services only in accordance with the valid endorsements shown in DMM F010. Mail bearing invalid or conflicting ancillary service endorsements will no longer be considered acceptable for mailing, and the Postal Service may refuse to accept this mail. If mail bearing invalid or conflicting endorsements is discovered in the mailstream, it will be handled as unendorsed mail. In the case of Standard Mail (B), "treatment as unendorsed mail" effectively means that it will be treated as if endorsed "Forwarding Service Requested." This provision recognizes that the general public (in contrast with business mailers) is unfamiliar with ancillary service endorsements, and ensures its packages will be delivered or returned.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (39 U.S.C 410 (a)), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following section of the Domestic Mail Manual (DMM) as follows:

F Forwarding and Related Services

F000 Basic Services

* * * * *

F030 Address Correction, Address Change, FASTforward, and Return Services

1.0 ADDRESS CORRECTION SERVICE

* * * * *

1.2 Invalid Endorsement

Any obsolete ancillary service endorsement or similar sender endorsement not shown in F010 is considered invalid for address update service purposes. Material bearing invalid or conflicting ancillary service endorsements will not be accepted for mailing. If discovered in the mailstream, mail bearing an invalid ancillary service endorsement or conflicting endorsements is treated as unendorsed mail. Exception: Standard Mail (B) pieces that are unendorsed, or that bear invalid or conflicting ancillary service endorsements and are undeliverable, will be treated as if endorsed "Forwarding Service Requested."

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 00–19576 Filed 8–1–00; 8:45 am]
BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN100–1b, IN120–1b; FRL–6728–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to total suspended particulate (TSP) and sulfur dioxide (SO_2) emissions regulations for National Starch and Chemical Company (National Starch), and TSP regulations for Allison Transmission (Allison). Both of these facilities are located in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 3, 1999, August 30, 1999, and May 17, 2000, as amendments to its State Implementation Plan (SIP). The revisions include the relaxation of some limits, the tightening of one limit, and the elimination of limits for several sources which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and recordkeeping requirements. These SIP revisions result in an overall decrease in allowed TSP emissions of about 406 tons per year for National Starch, and no change in overall annual emissions for Allison. Air quality modeling analyses conducted by IDEM show that the maximum daily and annual impacts of these SIP revisions are below established significance levels. Therefore, these SIP revisions will not have an adverse effect on air quality.

DATES: EPA must receive written comments by September 1, 2000.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What actions is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Actions is EPA Taking Today?

We are proposing to approve revisions to TSP and SO_2 emissions regulations for National Starch, and TSP regulations for Allison. Both of these facilities are located in Marion County, Indiana. The revised regulations were submitted by IDEM on February 3, 1999, August 30, 1999, and May 17, 2000, as amendments to its SIP. The revisions include relaxation of some limits, tightening of one limit, and the elimination of limits for several sources which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and recordkeeping requirements.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 16, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–19370 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV045–6012b; FRL–6730–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Marshall County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing federally enforceable sulfur dioxide emission limits at three facilities in Marshall County. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 1, 2000.

ADDRESSES: Written comments should be addressed to Ms. Makeba Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192, at the EPA Region III address above, or by e-mail at lohman.denny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–19372 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6844–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Newsom Brothers Superfund Site from

the National Priorities List (NPL): Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the intent to delete the Newsom Brothers Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA and the State of Mississippi (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site will be accepted until September 1, 2000.

ADDRESSES: Comments may be mailed to: Carolyn B. Thompson, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303.

Comprehensive information on this Site, as well as information specific to this proposed deletion, is available through the EPA Region 4 public docket and at the Site information repository. The Regional Docket Center is located at EPA's Region 4 office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone No.: (404) 562–8862.

The regional public docket is also available for viewing at the Site information repository located at the following address: South Mississippi Regional Library, 900 Broad Street, Columbia, Mississippi 39429.

FOR FURTHER INFORMATION CONTACT: Carolyn B. Thompson, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303, (404) 562–8913; Michael T. Slack, P.E., CERCLA Division, Mississippi Department of Environmental Quality, Office of Pollution Control, 101 West Capitol Street, Jackson, MS 39201, (601) 961–5217.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Newsom Brothers/Reichhold Chemicals Superfund Site (the Site), in Columbia, Marion County, Mississippi from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. EPA and the State of Mississippi have determined that the remedial action for this site has been successfully implemented.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for the deletion of sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action. Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this site, no waste sources remain at the site. Thus, a five year review will not be required in the future.

If new information becomes available which indicates a need for further action, EPA may initiate further response actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

(1) The Site was listed on the NPL in 1986. Records of Decision were signed for Operable Unit One (OU1) on September 18, 1989, and for Operable Unit 2 (OU2) on August 8, 1997. All appropriate response actions under CERCLA have been implemented and no further action by EPA is appropriate. The site history is discussed in detail in Section IV.

(2) The Mississippi Department of Environmental Quality (Mississippi DEQ) concurs with the proposed deletion decision.

(3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete.

(4) All relevant documents have been made available for public review in the local Site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in Section II of this document, 40 CFR 300.425 (e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

Comments from the local community may be the most pertinent to deletion decisions. EPA will accept and evaluate

public comments before making a final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs after the EPA Region 4 Regional Administrator places a notice in the **Federal Register**. Generally, the NPL will reflect any deletions in the final update following the Notice of Deletion. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA Region 4.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

A. Site Location

The Newsom Brothers Site (Site) is located in Columbia, Marion County, Mississippi. The 81-acre Site is surrounded by residential neighborhoods which, in some cases, are located directly adjacent to the Site boundaries. There are numerous businesses located along High School Avenue which borders the western boundary of the Site. The Site is completely fenced and access to the Site is restricted.

B. Site History

The Site was used for industrial and commercial activities for over 50 years. From the early 1930s until 1943, J.J. White Lumber Company operated a sawmill on the Site. The Southern Naval Stores Company, Limited, concurrently ran an operation, called Naval Stores, on various parcels of the Site, from 1936 to 1951. Naval Stores produced wood derivatives such as resin, turpentine, pine oil, and tall oil. The ownership and operation of Naval Stores changed several times between 1936 and 1951, but the plant consistently produced the same wood-derived products. From the 1950s until 1965, the Site was owned and operated by Leach Brothers, Incorporated. Reasor Chemical Corporation owned the Site from 1965 to 1972, and Chem-Pro International Inc. owned it from 1972 to 1974.

Southern Naval Stores Company, Reasor Chemical Corporation, and Chem-Pro International ran similar production processes. These processes involved grinding pine stumps and digesting them with a boiling liquor of sodium hydroxide and sodium sulfite. The products were tall oils, which are 35 to 40 percent resin and 50 to 60 percent fatty acids. Turpentine was also extracted from the pine stumps using naphtha. In addition, Reasor Chemical Corporation specifically manufactured calcium and zinc resinates, polymerized resin, and rubber resins.

In January 1975, Reichhold Chemicals, Inc., (Reichhold) purchased the property. Reichhold's operation included mixing pentachlorophenol (PCP) with diesel oil. In other operations, boron trifluoride was mixed with phenol and di-isobutylene to form octal phenol resin. Xylenes were also used in a number of processes.

Reichhold continued operations at the property until March 1977, when an explosion and fire in one of the boiler units destroyed most of the processing facility. No operations were conducted at the Site from 1977 to 1980.

In 1980 and 1981, ownership of the 81-acre Site transferred to R.R. Newsom, Sr. and R.R. Newsom, Jr. (owners of New-Cros Construction Company) and Mr. William Earl Stogner (owner of Stogner Trucking Company). The Newsoms' owned 49 acres of the original 81 acres and Mr. Stogner owned the remaining 32 acres. Both Stogner and the Newsoms had buildings on the property from which they operated their respective trucking and construction businesses. In November 1988, Reichhold regained complete ownership of the Site in connection with resolution of legal proceedings brought by Mr. Stogner and the Newsoms.

EPA performed two emergency removal actions at the Site in 1984 and 1987. The 1984 action involved the removal of over 600 55-gallon drums and the draining of two onsite ponds. EPA filled the South Pond with clay and graded it. The North Pond was allowed to refill with rainwater and was investigated further during subsequent remedial investigations. EPA performed a second removal action in 1987 involving the removal of approximately 1,920 tons of contaminated soil and 3,900 empty and partially filled drums.

EPA conducted the Remedial Investigation and Feasibility Study (RI/FS) on OU1 and signed the ROD in September 1989. On July 25, 1990, the U.S. District Court for the Southern District of Mississippi entered a consent decree between EPA and Reichhold, R.R. Newsom, Jr., and R.R. Newsom, Sr., for the performance of the Remedial Design and Remedial Action (RD/RA) associated with OU1 at the Site. On October 20, 1994, an amendment to the OU1 consent decree was entered by the Court to include the RI/FS associated with OU2.

C. Remedial Investigations and Actions

The Site was listed on the NPL in 1986, and the initial ROD was signed on September 18, 1989 (1989 ROD). A detailed history of the Site is presented in the Phase I and Phase II Remedial Investigation (RI) Reports dated September 21, 1987, and November 8, 1988, respectively. The Feasibility Study (FS) was completed in December of 1988.

In addition to the drummed materials mentioned previously, soils, sediments and groundwater were found to be impacted at the site. A wide variety of inorganic and organic constituents were found in these different media. Organic compounds detected in soils included toluene, ethyl benzene, phenol, pentachlorophenol and xylenes; the major inorganic chemicals detected were barium, chromium, copper, nickel and vanadium. In sediments, the major constituents included copper, phenols, ethyl benzene and xylenes. No contaminant groundwater plume could be identified, but detections of benzene, ethyl benzene, 1,1,1-trichloroethane, phthalates, and other organics were identified. Various inorganic metals were also detected above background.

The list of constituents of concern (COCs) determined by the investigation included benzene, ethyl benzene, xylenes, various carcinogenic polyaromatic hydrocarbon compounds (PAHs) and pentachlorophenol. Cleanup goals for soil and sediment were selected based upon an increased potential cancer risk of 10^{-6}. Applicable or Relevant and Appropriate Requirements (ARARs) were utilized to develop Groundwater Protection Standards (GWPS) as cleanup criteria for groundwater. The establishment of the GWPS was based upon the Safe Drinking Water Act (SDWA) in the form of Maximum Contaminant Levels (MCLs) and Maximum Contaminant Level Goals (MCLGs). In cases where an MCL or MCLG had not been established, Federal Ambient Water Quality Criteria (AWQC) adjusted for drinking water, were used to establish the GWPS. Due to the sporadic detections and low concentration of the contaminants, groundwater remediation was not required by the 1989 ROD.

Remedial activities specified in the 1989 ROD included removal of asbestos-containing material; removal of above ground and underground storage tanks; drainage of on-site ponds; excavation and off-site disposal of contaminated pond sediments, contaminated soils and black tar-like waste; actions to prevent erosion; and groundwater monitoring. This work was performed by Reichhold pursuant to the consent decree. Substantial completion of remedial activities under the 1989 ROD was achieved for all areas in September 1993. A 5-year Operation and

Maintenance (O&M) period followed and included the groundwater monitoring activities described below and maintenance of the 1989 ROD remedy.

In the final stages of remedial activities under the 1989 ROD, contamination not previously identified was discovered in the North Pond area, located in the northeast corner of the Site adjacent to the Site boundary near Chinaberry Street. However, residual soil and drums which were found during the North Pond excavation contained different contaminants than those which were cited for disposal in the 1989 ROD. This material was stockpiled for further analysis. Due to the excavation of these materials, it was suspected that contamination extending below the bottom of the pond into the groundwater existed. In order to address the stockpiled excavated materials and the potential for groundwater contamination at the North Pond, EPA designated this area as a separate unit, OU2. The remedial activities covered under the 1989 ROD were thereinafter referred to as OU1 activities.

The RI for OU2 was completed in February of 1995. Since the contaminated soils and materials had already been removed (with the exception of the stockpiled materials from the North Pond, which were disposed off-site in October 1995), the primary focus of the OU2 RI was to determine the extent of the groundwater contamination at the Site. As described in the OU2 ROD, no discernable groundwater plume of contamination could be identified and detections of COCs were sporadic. The OU2 ROD, signed on August 8, 1997, specified that no remedial action was necessary for OU2. However, to ensure that possible groundwater contaminants did not pose a future threat to the off-site residents, the OU2 ROD specified a 3-year period of groundwater monitoring.

D. Groundwater Monitoring Network

In accordance with the OU1 Post Remedial Groundwater Monitoring Plan and the OU2 Revised Groundwater Monitoring Program, Reichhold has been conducting groundwater monitoring on selected OU1 monitoring wells since May 1994. The five-year OU1 monitoring was performed quarterly during the first year and semi-annually for the subsequent four years of the required 5-year O&M period. The OU2 wells have been monitored since May 1997 on a quarterly basis during the first year and on a semi-annual basis during the subsequent two years. The list of COCs included in these monitoring events remained constant throughout the groundwater monitoring program for both OU1 and OU2. A current analysis of the ARARs indicates that the GWPS established in the ROD are still consistent with the NCP. The last required monitoring event for OU1 took place in November 1998 and for OU2 in December 1999.

The results of the groundwater monitoring are thoroughly discussed in the *Final Summary Report, April 2000,* prepared by Malcolm, Pirnie, Inc., for Reichhold. The results of the groundwater monitoring program do not indicate the presence of any COCs in concentrations exceeding GWPS or ROD performance standards.

E. Characterization of Risk

As discussed in the OU2 ROD, the soil exposure pathway was eliminated when the stockpiled soils were removed from the site in 1995. The only remaining pathway was the potential effects caused by uncontrolled groundwater migration to off-site residential wells located down gradient from the site. However, this exposure pathway is incomplete because there are no receptors. The site is wholly owned by Reichhold and its access is restricted. All on-site water is supplied by the City of Columbia water system. No municipal or private drinking water wells are located offsite in the direction of the groundwater migration from the site. As described, above, the groundwater monitoring performed does not indicate the presence of any COCs in concentrations exceeding GWPS or ROD performance standards. Therefore, the groundwater does not pose a current or future threat to off-site residents.

F. Community Involvement

This site has always been of interest to the surrounding communities. EPA has been directly involved with the community since the NPL listing in 1986. Several community groups have formed to represent concerned citizens over the years. The most recent group is the Jesus People Against Pollution (JPAP), which formed in 1992. JPAP has been an active participant ever since and currently is the only active group around the site. JPAP was awarded the Technical Assistance Grant (TAG) for the Site.

G. Applicable Deletion Criteria

EPA must demonstrate that any of the three criteria for deletion described in Section II are satisfied. EPA, with concurrence from the Mississippi DEQ, believes that the responsible party, Reichhold, has implemented all appropriate response actions required for OU1 and OU2. Furthermore, with concurrence of the Mississippi DEQ, EPA has determined that all appropriate responses under CERCLA have been completed, and that no further action is necessary. The State of Mississippi concurred with the proposal to delete this site from the NPL, in a letter dated June 8, 2000, from Charles H. Chisholm, Mississippi DEQ, to Mario E. Villamarzo, Jr., EPA.

Therefore, EPA proposes to delete the Site from the NPL and requests public comments on the proposed deletion. Documents supporting this action are available in the site information repository and from the regional public docket.

Dated: July 21, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 4.

[FR Doc. 00–19537 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–209]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is issuing a Report and Order contemporaneous with this document that adopts rules and policies to encourage the deployment of wireless services to tribal lands. In this document, the Commission seeks comment on additional auctions-based incentives it could adopt to encourage the deployment of wireless telecommunications services to tribal and other underserved areas.

DATES: Comments are due on or before September 1, 2000. Reply comments are due on or before September 18, 2000.

ADDRESSES: Submit comments and reply comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Davida Grant, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 202–418–7050, or via the Internet at *dgrant@fcc.gov.*

SUPPLEMENTARY INFORMATION: Contemporaneous with the Further

Notice, the Commission is publishing a Report and Order (published elsewhere in this publication) which adopts initiatives to encourage the deployment of facilities, and ultimately service, to the most underserved tribal communities. We recognize, however, that there are other areas, both tribal and non-tribal, that have penetration levels above 70 percent, but significantly below the nationwide average. In the Further Notice, we seek comment on other possible uses of bidding credits to encourage deployment of wireless services to tribal communities and other areas. Specifically, we seek comment on whether to: (1) Award bidding credits to entities that commit to serve non-tribal areas and/or tribal areas with penetration levels above 70 percent, but significantly below the national penetration average; (2) expand the bidding credit program by awarding credits for use in future auctions to licensees in already-established wireless services who deploy facilities to unserved tribal communities; and (3) make credits available to licensees that epter into partitioning agreements with tribal authorities that allow the tribal government to provide service, either directly or through negotiation with a third-party carrier.

ELECTRONIC AND PAPER FILING: Comments and reply comments may be filed with the FCC using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Parties may also submit an electronic comment by Internet e-mail. Parties who choose to file by paper must file an original and four copies of each filing. If you want each Commissioner to receive a copy of your comments, you must file an original plus eleven copies. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. A 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software Diskettes should be submitted to: Davida Grant, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Room 4–C241, Washington, DC 20554. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case—WT Docket No. 99–266), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label also should include the following phrase, "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Further Notice of Proposed Rulemaking (Further Notice).[2] Written public comments are requested on this IRFA. These comments must be filed in accordance with the filing deadlines for comments on the rest of the Further Notice, provided in Section V.D, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.[3] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[4]

A. Need for, and Objectives of, the Proposed Rules

The initiatives we adopt in the Report and Order should facilitate the deployment of facilities, and ultimately service, to the most underserved tribal communities. We recognize however, that there are other areas, both tribal and non-tribal, that have penetration levels above 70 percent, but still significantly below the nationwide average of 94 percent. It is our goal to ensure that all Americans have access to telecommunications service. In the Further Notice, we seek comment on other possible uses of bidding credits to encourage deployment of wireless facilities, and ultimately service, to these areas.

B. Legal Basis

We have authority under Sections 4(i), 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), 309(j) and 706, to adopt the proposals set forth in the Further Notice.

C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[8]

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[9] Nationwide, as of 1992, there were approximately 275,801 small organizations.[10] And finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[11] As of 1992, there were approximately 85,006 such jurisdictions in the United

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[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Extending Wireless Telecommunications Services to Tribal Lands, Further Notice of Proposed Rulemaking, WT Docket No. 99–266, FCC 00–209 (adopted June 8, 2000).

[3] See 5 U.S.C. 603(a).

[4] See *id.*,

[5] 5 U.S.C. 603(b)(3).

[6] Id. at 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. section 601(3).

[8] Small Business Act, 15 U.S.C. 632.

[9] 5 U.S.C. 601(4).

[10] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[11] 5 U.S.C. 601(5).

States.[12] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[13] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[14] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[15] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the policies and rules proposed in this Further Notice.

We further describe and estimate the number of wireless small business concerns that may be affected by the rules we propose in the Further Notice.

Cellular Providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[16] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[17] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[18] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the rules adopted herein.

Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[19] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[20] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[21] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[22] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

SMR Licensees. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[23] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[24] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more

[12] 12 U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[13] Id.

[14] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[15] 13 CFR 121.201, SIC Code 4812.

[16] 13 CFR 121.201, SIC code 4812.

[17] 1992 Census, Series UC92–S–1, at Table 5, SIC code 4812.

[18] Trends in Telephone Service, Table 19.3 (March 2000).

[19] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

[20] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[21] 21 See, *e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

[22] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released Jan. 14, 1997).

[23] 47 CFR 90.814(b)(1).

[24] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

employees.[25] Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[26] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[27] The SBA has approved these definitions.[28] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[29] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[30]

Paging Licensees. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[31] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[32] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the rules adopted herein. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Narrowband PCS Licensees. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[33] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[34] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[35] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[36] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[37] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Fixed Microwave Services. Microwave services include common carrier,[38] private-operational fixed,[39] and broadcast auxiliary radio services.[40] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[41] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA

[25] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[26] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[27] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[28] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[29] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[30] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[31] 13 CFR 121.201, SIC code 4812.

[32] Trends in Telephone Service, Table 19.3 (February 19, 1999).

[33] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[34] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[35] 13 CFR 121.201, SIC code 4812.

[36] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[37] 13 CFR 121.201, SIC code 4812.

[38] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[39] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[40] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[41] 13 CFR 121.201, SIC 4812.

definition for radiotelephone companies.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[42] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

Multipoint Distribution Systems (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[43] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[44] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[45] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[46] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[47] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Further Notice does not propose any specific reporting, recordkeeping or compliance requirements. However, we seek comment on what, if any, such requirements we should impose if we adopt the proposals set forth in the Further Notice.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Further Notice seeks broad comment on additional uses of bidding credits to facilitate the provision of service to tribal and non-tribal areas.[48] The Further Notice does not make specific implementation proposals, but rather seeks guidance from the industry on how to further expand our bidding policies. We tentatively conclude that these initiatives should not have a significant economic impact on small carriers. Importantly, small business many combine any additional tribal lands bidding credits with the small business bidding credits available under our existing rules. Commenters are encouraged to discuss the alternatives proposed in the Further Notice, and specifically how to minimize any significant economic impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to Sections 1, 4(i), 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 309(j), and 706, that the *Further Notice of Proposed Rulemaking is hereby Adopted.*

List of Subjects in 47 CFR Part 1

Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19480 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–U

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[42] This service is governed by subpart I of part 22 of the Commission's Rules. See 47 CFR 22.1001 through 22.1037.

[43] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[44] 47 CFR 1.2110(a)(1).

[45] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[46] 47 U.S.C. 309(j).

[47] Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39.

[48] See Further Notice paras. 23–25.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1396, MM Docket No. 00–111, MM Docket No. 00–112, MM Docket No. 00–113, RM–9900, RM–9901, RM–9904]

Radio Broadcasting Services; Fallon, NV, Weiser, OR, Randolph, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on three petitions for rule making. FBB requests the allotment of Channel 281C to Fallon, NV, as the community's third local FM service. WE Broadcasting requests the allotment of Channel 280C1 to Weiser, OR, as the community's first local aural service. New Testament Christian Ministries, Inc., requests the allotment of Channel 290A to Randolph, NY, as the community's first local aural service.

DATES: Comments must be filed on or before August 14, 2000, and reply comments on or before August 29, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: A. Wray Fitch III, Gammon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, VA 22102–3807 (Counsel to FBB Broadcasting, petitioner in RM–9900, and WE Broadcasting, petitioner in RM–9901); David G. O'Neil, Rini, Coran & Lancellotta, P.C., 1350 Connecticut

Avenue, N.W., Suite 900, Washington, D.C. 20036–1701 (Counsel to New Testament Christian Ministries, Inc., petitioner in RM–9904).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–111, MM Docket No. 00–112, MM Docket No. 00–113, adopted June 14, 2000, and released June 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Channel 281C can be allotted to Fallon, NV, with a site restriction of 8.4 kilometers (5.2 miles) east, at coordinates 39–28–30 WL; 118–40–43 NL, to avoid a short-spacing to Station KODS, Channel 279C1, Carnelian Bay, CA, and Station KDOT, Channel 283C, Reno, NV. Channel 280C1 can be allotted to Weiser, OR, with a site restriction of 17.8 kilometers (11 miles) northwest, at coordinates 44–20–39 WL; 117–07–14 NL, to avoid a short-spacing to Station KARO, Channel 277C, Caldwell, ID, and Station KLTB, Channel 282C, Boise, ID. Channel 290A can be allotted to Randolph, NY, without the imposition of a site restriction, at coordinates 42–09–43 WL; 78–58–31 NL. However, the allotment will be short-spaced to Station CHRE-FM, Channel 289B, St. Catherines, Ontario, Canada. Therefore, concurrence in the allotment by the Canadian Government, as a specially negotiated, short-spaced allotment, must be obtained.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–19476 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register
Vol. 65, No. 149
Wednesday, August 2, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–985–5NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for the Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West, M.O. No. 985.

DATES: Comments on this notice must be received by October 2, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 720–8139, Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C., 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West, M.O. No. 985.

OMB Number: 0581–0065.

Expiration Date of Approval: April 30, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the program, which has operated since 1980.

The Far West spearmint marketing order regulates the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order authorizes the issuance of allotment provisions for producers and regulates the quantities of spearmint oil handled. The order also has research and development authority.

The order, and rules and regulations issued thereunder, authorize the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to spearmint supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. The marketing year for the order is June 1 through May 31, with production occurring in the months of June through September. Forms are utilized throughout the year. A USDA form is used to allow producers to vote on amendments to or continuance of the marketing order. In addition, the Committee is composed of spearmint oil producers, nominated by their peers, to serve as representatives on the Committee. All nominees must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .12 hours per response.

Respondents: Far West Spearmint producers and handlers and two public members in the production area.

Estimated Number of Respondents: 217.

Estimated Number of Responses per Respondent: 6.06.

Estimated Total Annual Burden on Respondents: 162 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility

and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0102 and the Spearmint Marketing Order No. 985, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 28, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19565 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request a reinstatement and revision of a previously approved information collection in support of the Cooperative Marketing Association Program.

DATE: Comments on this notice must be received on or before October 2, 2000, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, Price Support Division, USDA, FSA, 1400 Independence Avenue, S.W., STOP 0512, Washington, DC 20250–0512, telephone (202) 720–7935: e-mail chris_kyer@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1425, Cooperative Marketing Association Regulations

OMB Control Number: 0560–0040

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: This information is needed to administer the CCC's Cooperative Marketing Association Program. The information will be gathered from marketing cooperatives desiring to become Cooperative Marketing Associations (CMA) under 7 CFR 1425. The information will be used to determine whether applicants are eligible to become approved CMA's for CCC and whether approved CMA's can continue approved CMA status.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.38 hours per response.

Respondents: Cooperative Marketing Associations.

Estimated Number of Respondents: 41.

Estimated Number of Responses per Respondent: 100.

Estimated Total Annual Burden: 5,662 hours.

Proposed topics for comments are: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Chris Kyer, USDA-Farm Service Agency-Price Support Division, 1400 Independence Avenue, S.W., STOP 0512, Washington, D.C. 20250–0512; telephone (202) 720–7935 or e-mail chris_kyer@wdc.fsa.usda.gov. Copies of the information collection may be obtained from Chris Kyer at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 25, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–19450 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection. This information collection is used to support the USDA service center agencies (FSA, Natural Resources Conservation Service, and Rural Development) in conducting business and accepting signatures on certain documents via telefacsimile.

DATE: Comments on this notice must be received on or before October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Virgil Ireland, Agricultural Program Specialist, Emergency Preparedness and Program Branch, Production, Emergencies, and Compliance Division, FSA, at (202) 720–5103.

SUPPLEMENTARY INFORMATION:

Title: Facsimile Signature Authorization and Verification.

OMB Control Number: 0560–0203.

Expiration Date of Approval: October 31, 2000.

Type of Request: Extension of currently approved information collection.

Abstract: Persons wanting to conduct business and provide certain signed documents to the USDA service center agencies via telefacsimile machines must complete a FSA–237, Facsimile Signature Authorization and Verification, form. The FSA–237 serves as evidence that the person is willing to conduct business and provide signed documents through telefacsimile machines. The FSA–237 also provides the agencies a source to authenticate signatures and transactions in the event of errors or fraud that require legal remedies. The information collected on the FSA–237 is limited to the person's name, signature, and identification number. Persons must agree to the terms and conditions of conducting business via telefacsimile machines. Without the

collection of this information, USDA service center agencies cannot ensure the authenticity of signatures received via telefacsimile unless they are supplemented with the original signature.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .02 hours per response.

Respondents: Individuals who have signature authority for themselves and/or also for partnerships, corporations, tribes, and other legal entities.

Estimated Number of Respondents: 2,598,266.

Estimated Number of Annual Responses per Respondent: Collection of the information is a one-time occurrence. The FSA–237 will be maintained indefinitely.

Estimated Total Annual Burden on Respondent: Collection of the information is a one-time occurrence with an estimated reporting burden of .02 hours per response.

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the USDA service center the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) methods to enhance the usefulness of the information collected; (d) accepting electronic signatures via the internet; or (e) ways to minimize the burden of the collection of the information on those who respond. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Virgil Ireland, Agricultural Program Specialist, USDA–FSA–PECD, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250; telephone (202) 720–5103; or telefacsimile (202) 690–3610. Copies of the information collection may be obtained from Mr. Ireland at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 24, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–19451 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Supplemental Qualifications Statement.

DATES: Comments on this notice must be received by October 6, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Qualifications Statement.

OMB Control Number: 0535–0209.

Expiration Date of Approval: October 31, 2000.

Type of Request: To extend a currently approved information collection.

Abstract: Under Interagency Agreement Number DOA–1, between the Department of Agriculture and Office of Personnel Management, the Administrative and Financial Management Staff examines, rates, and certifies applicants for Agricultural Statistician positions, GS–1530 and Mathematical Statistician (Agricultural) GS–1529 positions within the National Agricultural Statistics Service. The Interagency Agreement was made under provisions of 5 U.S.C. Section 1104, as amended by Pub. L. No. 104–52 (1995).

Resumes, curriculum vitae, and the "Optional Application for Federal Employment" (OF–612) are general purpose forms used to evaluate applicants for positions in the Federal service. While these forms request specific information about an applicant, they do not always obtain detailed references to those knowledge, skills, and abilities (KSA's) that are critical to the job. The Supplemental Qualifications Statement for agricultural statistician and mathematical statistician positions (agricultural) allows applicants the opportunity to describe their achievements or accomplishments as they relate to the required KSA's.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Individual Job Applicants.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden on Respondents: 600 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 5336 South Building, Washington, D.C. 20250–2009. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., July 14, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–19504 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board;

[Docket 41–2000]

Foreign-Trade Zone 82—Mobile, AL Expansion of Manufacturing Authority—Subzone 82E, Zeneca Inc. (Agricultural Chemical Products), Mobile County, AL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mobile, Alabama, grantee of FTZ 82, requesting on behalf of Zeneca, Inc. (Zeneca), to expand the scope of manufacturing authority under zone procedures within Subzone 82E, at the Zeneca plant in Mobile County, Alabama. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 21, 2000.

The Zeneca facility (75 acres; 250 employees) is located at mile marker 21 on Highway 43, near Bucks (Mobile County), Alabama, some 20 miles north of Mobile. The facility is used to produce and/or distribute a wide range of agricultural chemical products, including herbicides, pesticides, insecticides and organic intermediate chemicals.

Zeneca is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 82E to include the agricultural chemical Mesotrione (a broadleaf herbicide), which currently has a duty rate of 8.9%. Foreign-sourced inputs for this production would be Nitromethylsulfonyl benzoic acid (9.3% duty rate) and Cyclohexandione (4.8% duty rate). Zeneca indicates that initial U.S. value added will be 40 percent of finished product's value, with subzone savings equivalent to one percent of the finished product's value.

Zone procedures would exempt Zeneca from Customs duty payments on foreign components used in production for export (anticipated to be 30% of total production). On its domestic sales, Zeneca would be able to choose the 8.9 percent duty rate that applies to the finished product for the foreign input with the 9.3 percent duty rate (noted above). Zeneca would be able to avoid duty on foreign inputs which become scrap/waste, estimated at 10 percent of imported inputs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 16, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

U.S. Department of Commerce Export Assistance Center, 365 Canal Street, Suite 1170 (One Canal Place), New Orleans, LA 70130

Dated: July 24, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–19557 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40–2000]

Foreign-Trade Zone 219—Yuma, AZ; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Yuma County Airport Authority, Inc., grantee of FTZ 219, requesting authority to expand its general-purpose zone site to include an additional parcel at the Yuma International Airport. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 20, 2000.

FTZ 219 was approved by the Board on April 2, 1997 (Board Order 874, 62 FR 17850, 4/10/97). The zone currently consists of 79 acres within the Yuma International Airport Complex, owned by Yuma County and leased to the Yuma County Airport Authority, Inc.

The applicant is now requesting authority to expand the existing zone site to include an additional parcel (46 acres) adjacent to the existing site at the Yuma International Airport located at 2191 East 32nd Street, Yuma County, Arizona. The parcel is owned by the Yuma County Airport Authority, Inc. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 16, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Yuma Main Library, 350 South 3rd Avenue, Yuma, AZ 85364

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington DC 20230

Dated: July 21, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19556 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2000]

Foreign-Trade Zone 154—Greater Baton Rouge, Louisiana Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Greater Baton Rouge Port Commission, grantee of Foreign-Trade Zone 154, requesting authority to expand and reorganize its zone in the Baton Rouge, Louisiana area, within the Baton Rouge Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 26, 2000.

FTZ 21 was approved on November 2, 1988 (Board Order 396, 53 FR 48003, 11/29/88). The zone project currently consists of the following sites (2,674 acres) in the Baton Rouge area: *Site 1* (16 acres)—within the Port's terminal area,

Ernest Wilson Drive, just inside the south city limits of the City of Port Allen; *Site 2* (244 acres)—Industriplex Park, East Baton Rouge Parish; *Site 3* (580 acres)—Sun Plus Industrial Park, Louisiana Highway 1, Port Allen; and, *Site 4* (1,834 acres)—industrial/chemical complex, Louisiana Highway 1, one mile north of the City of Plaquemine, within the Parishes of West Baton Rouge and Iberville.

The application proposes a significant revision of the zone plan for FTZ 154. As proposed, the zone would be expanded and reorganized to enlarge Site 1, to remove all of the existing Site 2, to add a new Site 2 in its place, and to reduce the acreage at Site 3. *Site 1* will be expanded from 16 acres to 370 acres to include the port's entire deep-water complex. The existing *Site 2* is being deleted in its entirety and it will be replaced by the new *Proposed Site 2*, which will consist of 1,277 acres at the Baton Rouge Metropolitan Airport (owned by the Greater Baton Rouge Airport District) in north Baton Rouge. *Site 3* at the Sun Plus Industrial Park will be reduced from 580 acres to 157 acres. The site has also been renamed the Inland Rivers Marine Terminal FTZ site. *Site 4* remains unchanged. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 16, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port of Greater Baton Rouge, 2425 Ernest Wilson Drive, Port Allen, LA 70767.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 26, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19553 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2000]

Foreign-Trade Zone 70—Detroit, Michigan Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, requesting authority to expand its zone to include an additional site in the Detroit, Michigan area, within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 24, 2000.

FTZ 70 was approved on July 21, 1981 (Board Order 176, 46 FR 38941, 7/30/81) and expanded on April 15, 1985 (Board Order 299, 50 FR 16119, 4/24/85); November 27, 1989 (Board Order 453, 54 FR 50258, 12/5/89); April 20, 1990 (Board Order 471, 55 FR 17775, 4/27/90); February 20, 1996 (Board Order 802, 61 FR 7237, 2/27/96); and, August 26, 1996 (Board Order 843, 61 FR 46763, 9/5/96). The general-purpose zone project currently consists of 15 sites (some 300 acres) for warehousing/storage operations in the Detroit, Michigan area.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site *Proposed Site 16* (31 acres)—Buske Lines logistics complex, 17300 Allen Road, Brownstown Township (Wayne County). The site will be used for warehousing/distribution activities for companies such as General Motors, Ford Motor Company, Anheuser-Busch, DaimlerChrysler, Seagrams and BASF Corporation. The site is owned by TMT Properties, which is the parent company of Buske Lines, Inc. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 16, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 211 W. Fort Street, Suite 2220, Detroit, MI 48226.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 25, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19552 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2000]

Foreign-Trade Zone 44—Mt. Olive, NJ; Request for Extension of Manufacturing Authority; Quest International Fragrances USA, Inc. (Flavor and Fragrance Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Jersey Commerce and Economic Growth Commission, Trenton, NJ, grantee of FTZ 44, on behalf of Quest International Fragrances USA, Inc. (Quest), requesting extension of authority to manufacture flavor and fragrance products under FTZ procedures. The application was formally filed on July 18, 2000.

Quest received approval for manufacturing authority on August 31, 1989 (A–22–89), subject to a 5-year time limit (to 8/31/94; extended to 8/31/01), and to special reporting requirements. Quest is now requesting that the authority to manufacture under zone procedures be extended on a permanent basis and without the special reporting requirements.

FTZ procedures exempt Quest from Customs duty payments on the foreign components used in export production. On its domestic sales, the company is able to defer Customs duty payments on foreign materials and choose the duty

rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign materials (duty rates on these items range from duty-free to 12.7%). The company is exempt from duty payments on foreign merchandise that becomes scrap/waste. The application indicates that savings from zone procedures would continue to help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period October 16, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 21, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19555 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–2000]

Foreign-Trade Zone 57—Asheville, North Carolina; Application for Foreign-Trade Subzone Status; Volvo Construction Equipment North America, Inc. (Construction Equipment) Asheville, NC, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina Department of Commerce, grantee of FTZ 57, requesting special-purpose subzone status for the manufacturing facilities (construction equipment) of Volvo Construction Equipment North America, Inc. (Volvo), located at sites in the Asheville, North Carolina area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 17, 2000.

The Volvo facilities are located at two sites in the Asheville, North Carolina, area (64 acres, 531,700 sq. ft. total): *Factory Site* (6 buildings/399,700 sq. ft.)—office and main manufacturing facilities, located at 2169 Hendersonville Rd. (U.S. Rt. 25), Skyland; and *Feeder Distribution Warehouse Site* (1 building/132,000 sq. ft.)—located at 1856 Hendersonville Rd., Asheville.

The facilities (400 employees) are used for the fabrication, assembly, and testing of Volvo's articulated haulers and loaders. Some of the components used in the manufacturing process are purchased from abroad (ranging from 36.1% to 82.8% of finished product value), including: Cabs; sheet metal (non-steel); hydraulic cylinders; axles; transmissions; engines; wheels; rims; tires; buckets; caulking materials; anti-corrosive preparations; locks; spanners and wrenches; electrical instruments and apparatuses; and lamps and lighting (duty rates on imported items range from duty-free to 9.0%). The company indicates that any foreign-produced steel products will be admitted to the proposed subzone in domestic (duty-paid) status.

Zone procedures would exempt Volvo from Customs duty payments on foreign components used in export production. FTZ procedures will help Volvo to implement a more efficient and cost-effective system for handling Customs requirements. On its domestic sales, Volvo would be able to choose the lower duty rate that applies to the finished products (duty-free) for foreign components, including those noted above. The company also would benefit from duty savings on scrap and waste resulting from the production process. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness, and could enable the company to shift additional production from overseas to the Asheville-area facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 16, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce Export Assistance Center, 521 East Morehead St., Suite 435, Charlotte, NC 28202.

Dated: July 21, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19554 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: cold-rolled carbon steel flat products from the Netherlands.

SUMMARY: On March 27, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (65 FR 16168) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (65 FR 16168) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 7.96 percent for Hoogovens Stal BV ("HSBV") and Hoogovens Steel USA, Inc. ("HS–USA"), and 7.96 percent for "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland, Inc., and LTV Steel Company, Inc. (collectively "domestic interested parties") requested a hearing in the sunset review. On May 3, 2000, Dofasco also requested a hearing. Subsequently, interested parties withdrew their requests for a hearing.

On May 8, 2000, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received case briefs on behalf of domestic interested parties and Corus Staal BV [1] and HS–USA (together, "Hoogovens"). On May 12, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs; on May 15, 2000, the Department granted an extension for interested parties to file rebuttal briefs until May 15, 2000.

[1] On April 3, 2000, Hoogovens Staal BV, the foreign producer/exporter of the subject merchandise changed its name to Corus Staal BV. For ease of reference, we have continued to refer to Corus Staal BV and Hoogoven's Steel USA, Inc., as "Hoogovens" herein.

Scope of Review

The products covered by this order include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra-flat, isotropic surface. These HTS item numbers are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the magnitude of the margin likely to prevail were the order revoked. Hoogovens argued that its margins had consistently decreased, thus warranting use of a more recent margin. However, we found that, in light of the increase in Hoogovens margin in the final results of the sixth administrative review, the appropriate rate to report to the Commission is the rate from the original investigation, 19.32 percent. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/, under the heading "Netherlands." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Hoogovens Stal BV	19.32
All Others	19.32

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19559 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Corrosion-Resistant Carbon Steel Flat Products From Canada; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Corrosion-Resistant Carbon Steel Flat Products from Canada.

SUMMARY: On April 7, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada (65 FR 18286) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties and held a public hearing. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada (65 FR 18286) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 11.71 percent for Dofasco, Inc. ("Dofasco"), 22.70 percent for Stelco, Inc. ("Stelco") and 18.71 percent for "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland, Inc., and LTV Steel Company, Inc. (collectively "domestic interested parties") requested a hearing in the sunset review. On May 3, 2000, Dofasco also requested a hearing.

On May 8, 2000, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received a case brief on behalf of Dofasco and Sorevco Inc., (collectively "Dofasco"). On May 12, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs; on May 15, 2000, the Department granted an extension for domestic interested parties to file a rebuttal brief until May 18, 2000. We received a case brief from domestic interested parties on May 18, 2000. On June 14, 2000, the Department held a public hearing.

On June 19, 2000, in response to the Department's request for further clarification of information on U.S. shipments of subject merchandise,[1] domestic interested parties submitted the underlying calculations to the data submitted in their October 15, 1999, rebuttal. On June 27, 2000, Dofasco submitted comments on domestic interested parties' underlying calculations.

Scope of Review

The scope of this order includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the scope are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")— for example, products which have been bevelled or rounded at the edges. Excluded from the scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Additionally, excluded from the scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20–60–20 percent ratio.

[1] *See* June 20, 2000, Memo to File: Sunset Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Request for Clarification of Information on U.S. Imports.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Canada." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Dofasco, Inc	11.71
Stelco, Inc	22.70
All Others	18.71

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19560 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–826]

Corrosion-Resistant Carbon Steel Flat Products From Japan; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Corrosion-Resistant Carbon Steel Flat Products from Japan.

SUMMARY: On March 27, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan (65 FR 16169) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On March 27, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan (65 FR 16169) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 36.41 percent for Nippon Steel Corporation ("NSC"), Kawasaki Steel Corporation ("Kawasaki") and "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation ("domestic interested parties") requested a hearing in the sunset review. On May 1, 2000, NSC notified the Department of its intent to participate in the hearing. Subsequently, interested parties withdrew their requests for a hearing.

On May 5, 2000, we received a request from NSC for an extension of the deadline for filing case briefs; the Department extended the deadline for filing case briefs and rebuttal briefs for all participants eligible to participate until May 12, 2000, and May 18, 2000, respectively.

On May 12, 2000, within the deadline specified in 19 CFR 351.309(c)(1)(i), we received a case brief on behalf of NSC. On May 17, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs. On May 19, 2000, the Department granted an extension for domestic interested parties to file rebuttal briefs until May 23, 2000. Also, on May 17, 2000, we received a request from NSC to file a letter in response to domestic interested parties' failure to file a case brief. On May 19, 2000, the Department, pursuant to 19 CFR 351.309(d)(2), rejected NSC's request.

We received a rebuttal brief from domestic interested parties on May 23, 2000.

Scope of Review

The order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if

of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or, if of a thickness of 4.75 millimeters or more, are of a width which exceeds 150 millimeters and measures at least twice the thickness.[1] These products are currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges.

Excluded from order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20–60–20 percent ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99 percent zinc, 0.5 percent cobalt, and 0.5 percent molybdenum followed by a layer consisting of chromate, and finally, a layer consisting of silicate.

There have been three completed changed circumstances administrative reviews. On December 22, 1997, the Department published the final results of a changed circumstances review requested by Sudo Corporation.[2] In this review, the Department revoked the antidumping duty order with regard to certain electrolytic zinc-coated steel coiled rolls from Japan.

In the second changed circumstances review, requested by Uchiyama, the Department revoked the antidumping duty order with regard to certain corrosion-resistant carbon steel flat products used in the manufacture of rubber seals and metal inserts for ball bearings.[3]

The Department completed a third changed circumstances review, requested by Taiho Corporation of America, in which it determined to revoke the order with respect to (1) certain products meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, and (2) certain products meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.[4]

A fourth changed circumstances review was initiated on July 12, 2000.[5]

There has been one circumvention inquiry initiated regarding this proceeding. On October 30, 1998, the Department initiated an anticircumvention inquiry regarding boron-added corrosion-resistant carbon steel flat products from Japan.[6] The inquiry was subsequently enjoined by the Court of International Trade in *Nippon Steel v. United States*, Ct. No. 98–10–03102 (Ct. Int'l Trade). The case is now pending before the Court of Appeals for the Federal Circuit, No. 99–1379, 1386 (Fed.Cir.).

The Department has conducted one scope ruling at the request of Drive Automotive Industries of America, Inc. ("Drive Automotive"). On February 24, 1998, the Department found that steel coils imported by Drive Automotive and having a thickness of 0.8 mm and a width of 2000 mm, electrolytically coated with zinc, were within the scope of the order (63 FR 29700, June 1, 1998).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Japan." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Nippon Steel Corporation	36.41
Kawasaki Steel Corporation	36.41
All Others	36.41

[1] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 44483 (August 16, 1999).

[2] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 66848 (December 22, 1997).

[3] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14861 (March 29, 1999).

[4] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 57032 (October 22, 1999).

[5] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Notice of Initiation of Change Circumstances Review of the Antidumping Order and Intent to Revoke the Order in Part*, 65 FR 42986 (July 12, 2000).

[6] *See Corrosion-Resistant Carbon Steel Flat Products from Japan; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 58364 (October 30, 1998).

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19562 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Final Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Cut-to-Length Carbon Steel Plate from Romania.

SUMMARY: On April 6, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length steel plate from Romania (65 FR 16171) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We did not receive comments from either domestic or respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Departments conduct of sunset reviews is set forth in the Departments Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 6, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length steel plate from Romania, pursuant to section 751(c) of the Act. In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of dumping, and we preliminarily determined the following dumping margins likely to prevail if the order were revoked:

Producer/exporter	Margin (In percent)
Metalexportimport, S.A.	75.04
All Others	75.04

We did not receive a case brief on behalf of either domestic or respondent interested parties within the deadline specified in 19 CFR 351.309(c)(1)(i).

Scope of Review

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.31.0000, 7208.32.0000, 7208.33.1000. 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.1000, 7212.40.1000, 7212.50.0000, and 7212.50.5000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

The Department did not receive case briefs from either domestic or respondent interested parties. Therefore, we have not made any changes to our preliminary results of April 6, 2000 (65 FR 616171).

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below:

Producer/exporter	Margin (In percent)
Metalexportimport, S.A.	75.04
All Others	75.04

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19558 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823]

Cut-to-Length Carbon Steel Plate From Canada; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Cut-to-Length Carbon Steel Plate from Canada.

SUMMARY: On April 7, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length carbon steel plate from Canada (65 FR 18290) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–3173, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length carbon steel plate from Canada (65 FR 18290) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 68.70 percent for Stelco, Inc. ("Stelco") and 61.88 percent for "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland, Inc., and LTV Steel Company, Inc. (collectively "domestic interested parties") requested a hearing in the sunset review. On May 1, 2000, Stelco also requested a hearing.

On May 9, 2000, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received a case brief on behalf of Stelco. On May 12 and May 17, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs; on May 19, 2000, the Department granted an extension for domestic interested parties to file rebuttal briefs until May 22, 2000.[1] Additionally, on May 17, 2000, because Stelco's case brief contained information from Gerdau MRM Steel's ("MRM") untimely submission to the notice of initiation, the Department requested that Stelco redact its case brief accordingly. Subsequently, we received Stelco's refiling of page 16 of its case brief. Additionally, the Department canceled the scheduled hearing in response to interested parties' withdrawal of their requests for a hearing.

Scope of Review

The scope of this order includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.5030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100 percent dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) 0.290 inches maximum thickness, plus 0.0, minus 0.030 inches; (3) 48.00 inch wide, plus 0.05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum). On February 28, 1996, the Department revoked the order with respect to certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides; and with certain dimensions and other characteristics.[2] On February 12, 1999, the Department revoked the order with respect certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides; and with certain dimensions and other characteristics.[3] In addition, there has been one circumvention inquiry initiated with respect to imports of

[1] *See* May 19, 2000, Letter from Jeffrey A. May, Office of Policy, to John Mangan of Skadden, Arps, Slate, Meagher & Flom LLP, Regarding Extension of Deadline for Filing Rebuttal Briefs.

[2] *See Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 61 FR 7471 (February 28, 1996).

[3] *See Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 7167 (February 12, 1999).

boron-added grader blade and draft key steel.[4] These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspension investigation terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Canada." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Stelco, Inc	68.70
All Others	61.88

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19561 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Cut-to-Length Carbon Steel Plate from Canada; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 29179 (May 28, 1998).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0165.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings from Germany are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On January 31, 2000, the Department initiated antidumping duty investigations of imports of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia, and the Philippines. *See Initiation of Antidumping Duty Investigations: Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia, and the Philippines*, 65 FR 4595 (January 31, 2000) ("Notice of Initiation"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (*see Notice of Initiation* at 4596). A response was received from Coprosider S.p.A. ("Coprosider") on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH and its affiliates ("Schulz") submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000, the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bhd. ("Kanzen"); Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. ("petitioners"). On February 8, 2000 and February 18, 2000, we received comments on our proposed product concordance criteria from Schulz.

On February 14, 2000, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines (65 FR 9298).

On January 27, 2000, the Department issued Section A of its antidumping questionnaire to Schulz, Butting Edelstahlrohre GmbH ("Butting"), Hage Fittings GmbH ("Hage Fittings GmbH"), Kremo-Werke Hermanns GmbH ("Kremo-Werke"), Uhlig-Rohrbogen GmbH ("Uhlig-Rohrbogen"), and Nirobo Metalverarbeitungs GmbH ("Nirobo Metalverarbeitungs"). On February 7, 2000, the Department received a letter from Kremo-Werke stating that it has not sold, directly or indirectly, subject merchandise to the United States. Also, on February 7, 2000, the Department received a letter from Uhlig-Rohrbogen stating that it has at no time delivered, directly or indirectly, subject merchandise to the United States. On February 18, 2000, Schulz submitted its

response to Section A of the questionnaire. On February 19, 2000, Butting submitted a letter to the Department stating that it does not produce the subject merchandise and did not supply the subject merchandise to the United States during the period of investigation ("POI"). On March 9, 2000, we issued Sections B, C, D, and E of the antidumping questionnaire to Schulz. On March 27, 2000, we issued a supplemental questionnaire on Section A. On April 10, 1999, Schulz submitted its supplemental questionnaire response for Section A. On May 8 and May 19, 2000, Schulz submitted its response to Sections B, C, and D of the antidumping questionnaire. On June 2, 2000 we issued a supplemental cost questionnaire and on June 6, 2000, we issued a supplemental sales questionnaire. Schulz submitted its response to the supplemental cost and sales questionnaires on June 20, 2000. On June 30, 2000, we issued a second supplemental questionnaire to Schulz, and on July 10, 2000, we received Schulz's response. On June 30, 2000, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Germany. On July 5, 2000, the Department sent a letter to Schulz requesting shipment data. On July 13, 2000, the Department issued a third supplemental questionnaire to Schulz. Petitioners submitted comments on Schulz's questionnaire responses in May, June, and July 2000. On July 21, 2000, Schulz submitted a letter withdrawing its participation in the investigation. Additionally, it requested that the Department return all business proprietary data submitted by Schulz during the course of the investigation.

On April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines*, 65 FR 19876 (April 13, 2000)).

Period of Investigation

The POI is October 1, 1998 through September 30, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to this investigation is generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. In accordance with sections 776(a)(2)(A) and (C), because Hage Fittings and Nirobo Metalverarbeitungs failed to respond to our questionnaire and thus significantly impeded the investigation, and because subsection 782(d) of the Act therefore does not apply, we must use facts otherwise available to determine the dumping margin for Hage Fittings and Nirobo Metalverarbeitungs. Also, although Schulz initially responded to the Department's questionnaires, upon notification that it was withdrawing its participation from the investigation, Schulz requested that the Department return all business proprietary data that had been provided by Schulz during the course of the proceeding. Therefore, the Department has no data on the record for Schulz upon which to base its margin calculation, nor would the Department be able to verify the information received in any event. Accordingly, we have determined that use of facts available is also appropriate for Schulz in accordance with sections 776(a)(2)(A) and (C).

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) . Based on Hage Fittings' and Nirobo Metalverarbeitungs' failure to respond to the Department's antidumping questionnaire and Schulz's subsequent withdrawal of its business proprietary data, we have determined that Hage Fittings, Nirobo Metalverarbeitung, and Schulz have not acted to the best of their ability to comply with the Department's information requests. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As adverse facts available, the Department has applied a margin of 76.24 percent, the highest margin alleged in the petition.

Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation *Id.; see also* 19 CFR Sec 351.308(d).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, data from U.S. producers, foreign market research

reports, and import statistics). *See Initiation Checklist: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines* (January 18, 2000), which is on file in the Central Records Unit ("CRU") of the Main Commerce Department Building. In order to determine the probative value of the petition margin for use as adverse facts available in this preliminary determination, we have re-examined evidence supporting the petition calculation. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based and found that the information has probative value (*see* the July 26, 2000 memorandum to the file regarding Facts Available Corroboration, which is on file in the CRU of the Main Commerce Department building). Moreover, we note that, because no information is available for any respondent in this investigation, the issues of relevance addressed by the Court of Appeals in *DeCecco* v. *United States*, App. No. 99–1318 (Fed. Cir. June 20, 2000) are not present in this case.

Critical Circumstances

On June 30, 2000, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Germany. According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" described in section 351.206(i) of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. Because we are not aware of and there is no record evidence of any antidumping order in any country on stainless steel butt-weld pipe fittings from Germany, we find that there is no reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii).

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the stainless steel butt-weld pipe fittings at less than fair value, the Department's normal practice is to consider for EP sales margins of 25 percent or more sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). As discussed above, we have applied, as adverse facts available for Hage Fittings, Nirobo Metalverarbeiungs, and Schulz the highest of the dumping margins presented in the petition and corroborated by the Department. These margins are in excess of 25 percent. Therefore, we impute knowledge of dumping in regard to exports by these companies.

Moreover, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department may look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. *Id.* The ITC has found that a reasonable indication of present material injury exists in regard to Germany. *See ITC Preliminary Determination*. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports in this case.

In determining whether there are "massive imports" over a "relatively short period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the base period) and following (the comparison period) the filing of the petition. *See* 19 CFR 351.206(i). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. *See* 19 CFR 351.206(h). Since there is no verifiable information on the record with respect to Hage Fittings', Nirobo Metalverarbeitungs', and Schulz's import volumes, we must use the facts available in accordance with section 776(a) of the Act. Accordingly, we examined U.S. Customs data on imports of stainless steel butt-weld pipe fittings from Germany in order to determine whether these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for any of these companies. However, these statistics, in the case of stainless steel butt-weld pipe fittings from Germany, cover an HTS category (HTS no. 730723000 "Stainless Steel Tube or Pipe Butt Welding Fittings") that includes merchandise other than subject merchandise. Therefore, we cannot rely on this data in determining if massive shipments of stainless steel butt-weld pipe fittings from Germany occurred over a relatively short time. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan ("Stainless Steel from Japan")*, 64 FR 30574, 30586 (June 8, 1999). Moreover, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. Nevertheless, in accordance with section 776(b) of the Act, the Department may used an adverse inference in applying facts available for non-responsive companies; thus we determine, as adverse facts available, that there were massive imports from Hage Fittings, Nirobo Metalverarbeitungs, and Schulz during a relatively short period. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan ("Roofing Nails from Taiwan")*, 62 FR 51427 (October 1, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India* ("*Elastic Rubber Tape from India*"), 64 FR 19123 (April 19, 1999). Because all of the necessary criteria

have been met, in accordance with section 733(e)(1) of the Act, the Department preliminarily finds that critical circumstances exist with respect to stainless steel butt-weld pipe fittings imported from Hage Fittings, Nirobo Metalverarbeitungs, and Schulz.

It is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey ("Rebars from Turkey")*, 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the "all others" rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. *See Stainless Steel from Japan* 64 FR at 30585. Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others'" rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the "all others" category for the antidumping investigation of stainless steel butt-weld pipe fittings from Germany. First, the dumping margin for the "all others" category, 51.34 percent, exceeds the 25 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from sales of the dumped merchandise by respondents other than Hage Fittings, Nirobo Metalverarbeitungs, and Schulz. *See Critical Circumstances Determination: Honey from the People's Republic of China*, 60 FR 29824, (June 6, 1995). However, the Department has not found that there are massive imports for the "all others" companies in this investigation. First, we have not used adverse facts available concerning massive imports. Unlike the companies that refused to provide information upon request at the outset of the case or withdrew their information from the record, the "all others" companies have not failed to act to the best of their ability. The Department does not use adverse inferences with respect to firms whose individual data have not been analyzed (as far as the Department has been able to determine, there were only the three producers/exporters of subject merchandise from Germany during the POI). Second, there is no evidence of massive imports from "all others" companies in this investigation. While we normally rely on our findings for the selected mandatory respondents, in this case our determinations with respect to all of the mandatory respondents were based on adverse facts available. Therefore, we have not used these findings as a basis for our determination with respect to all other companies. Further, in accordance with *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24338 (May 6, 1999), the Department considered whether U.S. Customs data on imports of stainless steel butt-weld pipe fittings from Germany could be used to make a determination regarding the "all others" category. In this case, however, these statistics cover an HTS category that includes merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining if there were massive imports for the "all others" category. *See Stainless Steel from Japan*. The Department does not have any other data indicating massive imports from the any other exporter/producer of stainless steel butt-weld pipe fittings from Germany. Therefore, the Department does not find massive imports with regard to the "all others" category in this case. Because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than Hage Fittings, Nirobo Metalverarbeitungs, and Schulz, the Department preliminarily finds that critical circumstances do not exist for the "all others" category in this case.

The All-Others Rate

All known foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated dumping margins determined for the exporters and producers individually investigated. In this case, the margins assigned to the only companies investigated are based on adverse facts available. Therefore, consistent with the statute and the SAA at 873, we are using an alternative method. As our alternative, we are basing the all-others rate on a weighted-average of all the margins alleged in the petition. As a result, the all-others rate is 51.34 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, for Hage Fittings, Nirobo Metalverarbeitungs, and Schulz we are directing the Customs Service to suspend liquidation of all entries of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior date of publication of this notice in the **Federal Register**. For all other companies, we are directing the Customs Service to suspend liquidation of entries of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (in percent)
Hage Fittings	76.24
Nirobo Metalverarbeitungs	76.24
Schulz	76.24
All-Others	51.34

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR Sec. 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries

should be limited to five pages total, including footnotes. 19 CFR Sec. 351.309(c) and (d). Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be scheduled to be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. 19 Sec. CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination. 19 CFR Sec. 351.210(b)(1).

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19548 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Butt-Weld Pipe Fittings From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Phyllis Hall at (202) 482-0405 and (202) 482–1398, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (April 1999).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings ("pipe fittings") from Italy are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

Case History

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595 (January 31, 2000). Since the initiation of this investigation the following events have occurred.

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595 (January 31, 2000) ("Notice of Initiation"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (see Notice of Initiation at 4596). A response was received from Coprosider S.p.A. ("Coprosider") on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH and its affiliates ("Schulz") submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000, the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bhd. ("Kanzen"); Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. ("petitioners"). On Feburary 8, 2000 and February 18, 2000, we received comments on our proposed product concordance criteria from Schulz.

On February 14, 2000, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines (65 FR 9298).

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On January 27, 2000, the Department issued Section A of its antidumping duty questionnaire to Coprosider S.p.A. ("Coprosider"). On February 9, 2000, the Department received Coprosider's

response to Question 1 of Section A. On March 9, 2000, the Department issued Sections B–E of its antidumping duty questionnaire to Coprosider. On the same day, petitioners filed comments on Coprosider's section A response. On March 10, 2000, the Department issued a supplemental questionnaire for Coprosider's Section A response. Coprosider responded on March 24, 2000.

On April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000 (Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines (65 FR 19876)).

Coprosider filed its Sections B and C response on May 1, 2000. On May 17, 2000, petitioners requested that the Department initiate a cost investigation. Petitioners submitted comments on Coprosider's Sections B and C response on May 19, 2000. The Department issued a supplemental questionnaire on May 23, 2000. On May 24, 2000, Coprosider filed comments on petitioners' request for a cost investigation. The Department initiated a cost investigation on June 1, 2000. On June 20, 2000, Coprosider filed its supplemental Section B and C response. The Department issued a second supplemental questionnaire on June 22, 2000. Coprosider filed its cost and second supplemental responses on July 3, 2000. Petitioners filed comments on these responses on July 10 and July 17, 2000, and Coprosider filed a rebuttal on July 12, 2000. Due to the late initiation of the sales below cost portion of this investigation, the Department did not receive the Section D questionnaire response, as noted above, until July 3, 2000. Consequently, there has been insufficient time for the Department to issue a supplemental section D questionnaire response to Coprosider and receive it back prior to the preliminary determination. Therefore, we are using the respondent's data for purposes of the preliminary determination, with one exception, as submitted. We will continue to analyze the cost response and petitioner's comments and will seek clarifications and corrections to the data as necessary.

On June 30, 2000, petitioners alleged that critical circumstances exist with respect to imports of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. The Department requested monthly shipment data from Coprosider for calendar year 1998 through May 2000 on July 6, 2000. Coprosider submitted data for October 1998 through March 2000 on July 13, 2000. On July 18, 2000, Coprosider submitted shipment data for April 2000 through June 2000.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On June 29, 2000, Coprosider requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. On June 30, 2000, Coprosider also agreed to an extension of the provisional measures to not more than six months. Therefore, in accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant portion of exports of subject merchandise, and (3) there is no compelling reason for denial, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination. Similarly, we are extending the application of the provisional measures.

Period of Investigation

The Period of Investigation ("POI") is October 1, 1998 through September 30, 1999. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 1999), and is in accordance with our regulations. See section 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation, above, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on six criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: type, grade, whether seamless or welded, size, schedule (wall thickness) and finished or blank. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's March 9, 2000, questionnaire.

Fair Value Comparisons

To determine whether sales of stainless steel butt-weld pipe fittings from Italy were made in the United States at LTFV, we compared the export price ("EP") to the normal value ("NV"),

as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because Coprosider sold the subject merchandise directly to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States prior to the date of importation, and because CEP methodology was not otherwise appropriate. We based EP on CIF duty unpaid prices to unaffiliated customers in the United States. In accordance with section 772(c)(2), we made deductions from the starting price for movement expenses, including foreign inland freight, warehouse handling expense, customs brokerage and international freight, and discounts, where appropriate.

Normal Value

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

Coprosider had a viable home market, and reported home market sales data for purposes of the calculation of NV. In deriving NV, we made certain adjustments described in detail in Calculation of Normal Value Based on Home Market Prices, below.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners on May 17, 2000, the Department found reasonable grounds to believe or suspect that Coprosider had made sales of pipe fittings manufactured in Italy at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. See Cost Memorandum, June 1, 2000. As a result, the Department initiated an investigation to determine whether Coprosider made home market sales during the POI at prices below the cost of production ("COP") within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Coprosider's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. The Department relied on the COP data submitted by Coprosider on July 3, 2000, with the exception that in those instances in which Coprosider submitted two costs for the same control number, we weight averaged those costs.

B. Test of Home Market Sales Prices

We compared the weighted-average COP for Coprosider to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, and discounts.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Coprosider's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of Coprosider's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

Calculation of Normal Value Based on Home Market Prices

We calculated NV based on ex-factory prices and made deductions from the starting price for inland freight to Coprosider's warehouse and warehouse and packing expense. In addition, we made circumstance of sale (COS) adjustments for discounts and commissions, where applicable, and direct expenses (i.e., credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade ("LOT") as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we examined information from Coprosider regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling activities performed by Coprosider for each channel of distribution. In identifying LOT for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

Coprosider claimed two LOTs in each market: LOT 1 including sales to end-users, engineering companies, equipment manufacturers and trading companies, and LOT 2 including sales to distributors/stockists, and claimed a LOT adjustment for differences in selling prices. We examined the chains

of distribution and customer categories reported in the home market and in the United States. In both the home and U.S. markets, Coprosider reported two channels of distribution, one which was identical to LOT 1, and another which was identical to LOT 2. We further examined the selling functions related to those sales. Coprosider claimed in its June 20, 2000, supplemental response (Exhibit SB1), that it provided technical advice and after-sale services and warranties for customers in the end-user, equipment manufacturer, and engineering company categories in both the home market and the U.S. market, and also to the trading company category in the United States, but not to distributors. However, in its Section B and C response of May 1, 2000, it stated it incurred no warranty and technical service expenses during the POI (other than quality control expenses reported under indirect selling expenses). Thus, the only remaining differences in reported selling functions between the claimed LOTs are inventory maintenance, order solicitation and order processing. We do not consider these differences in selling functions sufficient to find different LOTs. On this basis, it appears that there is insufficient evidence on the record to establish different LOTs in either market. Therefore, Coprosider has not met its burden of proof to establish its claim for a LOT adjustment for comparisons of EP sales to home market sales. Accordingly, the Department has preliminarily denied a LOT adjustment.

Currency Conversions

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Critical Circumstances

On June 30, 2000, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of pipe fittings from Italy. In accordance with 19 CFR 351.206(c)(2)(i), given that this allegation was filed at least 20 days prior to the preliminary determination, the Department must issue its preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

History of Dumping or Importer Knowledge of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, the Department considers evidence of an existing antidumping order on stainless steel butt-weld pipe fittings from other countries to be sufficient. We are unaware of any antidumping order against Italy on stainless steel butt-weld pipe fittings worldwide. Therefore, the Department must examine part (ii) of the first prong of the critical circumstances test.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling stainless steel butt-weld pipe fittings at less than fair value, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping and of resultant material injury. (See, *e.g.*, Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Steel Seamless Standard, Line and Pressure Pipe from the Czech Republic, 65 FR 33803, 33803 (May 25, 2000)). In the instant case, we have preliminarily determined that the margin for the respondent, Coprosider, is 32.12 percent. Therefore, we have imputed knowledge of dumping to importers of the subject merchandise from Coprosider.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the International Trade Commission ("ITC"). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for subject imports of stainless steel butt-weld pipe fittings from Italy. See Certain Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 9298 (February 24, 2000). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of the subject merchandise from Italy.

Massive Imports

In determining whether there are "massive imports" over a "relatively short time period," pursuant to section 733(e)(1)(B) of the Act, section 351.206(h)(1) of the Department's regulations provides that the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. On July 19, 2000, Coprosider submitted a letter to the Department arguing that the import data it provided on July 13, 2000, establish that its exports of the subject merchandise during the three months immediately following the filing of the petition did not increase by more

than 15 percent over imports during the three months preceding the petition, and that the Department should therefore issue a negative critical circumstances determination.

The Department's Antidumping Manual states:

> We generally consider the period beginning with the filing of the petition and ending with the preliminary determination. We then compare this period to a period of equal duration immediately prior to the filing of the petition to determine whether imports had been massive over a relatively short period of time.[1]

The petition was filed on December 29, 1999, and Coprosider provided data through June 2000 for its imports into the United States of the subject merchandise. Thus, in accordance with Department practice as described above, we compared Coprosider's average monthly imports during the second half of 1999 to its average monthly imports during the first half of 2000 to determine changes in the quantity of imports. Average monthly imports increased in the first half of 2000 by over 15 percent in volume over the base period of 1999. See Memorandum for Richard O. Weible from Helen M. Kramer Re: Analysis of Critical Circumstances in the Antidumping Investigation of Stainless Steel Butt-weld Pipe Fittings from Italy (July 21, 2000).

Although in our letter of July 6, 2000, we asked Coprosider to provide data for shipments of the subject merchandise to the United States for 1998, Coprosider provided data for only the last quarter of the year. The Department is therefore unable to make a complete analysis of the existence of seasonal factors affecting the imports of this product. However, Coprosider's imports of the subject merchandise into the United States fell by over 48 percent in volume between the last quarter of 1998 and the first quarter of 1999, but increased by over 14 percent between the last quarter of 1999 and the first quarter of 2000. Furthermore, U.S. Census Bureau monthly data for January 1998 through May 2000 show no seasonal pattern for imports of stainless steel butt-weld pipe fittings from Italy (including non-scope merchandise). Neither our analysis of the monthly imports data provided by Coprosider, nor petitioners' comments suggest that seasonality can explain the increase in imports during the first half of 2000. Thus, we do not consider seasonality to be relevant to the massive increase in imports of the subject merchandise.

With respect to item (iii), concerning the share of domestic consumption accounted for by the imports, we requested additional data from the petitioners. In response to this request, on July 20, 2000, petitioners submitted supplemental information regarding the share of domestic consumption accounted for by imports of stainless steel butt-weld pipe fittings from Italy. As current domestic producer U.S. shipments data are not publicly available, petitioners estimated these on the basis of ITC data from the preliminary determination in this case for the period January—September 1999. (See Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, Inv. 731-TA–864–867 (Pub. 3281), February 2000.) Petitioners state that domestic shipments have not increased between the first three quarters of 1999 and the September—December 1999 or January—April 2000 comparison periods used in their critical circumstances allegation, and that average shipments have actually declined. Petitioners used official U.S. import statistics to estimate the share of imports in domestic consumption. For Italy, the share of imports in the U.S. market for stainless steel butt-weld pipe fittings (including non-scope merchandise) increased from 7.7 to 11.5 percent in the comparison periods.

Given that Coprosider's average monthly imports into the United States increased by over 15 percent in a relatively short period of time, and taking into account that seasonal factors do not appear to be present, and that imports from Italy appear to have increased their share of the domestic market, we preliminarily determine that imports of stainless steel butt-weld pipe fittings from Italy have been massive.

Based on our determination that there is a reasonable basis to believe or suspect that importers had knowledge of dumping and the likelihood of material injury, and that there have been massive imports of stainless steel butt-weld pipe fittings from Italy over a relatively short period of time, we preliminarily determine that critical circumstances exist for imports of stainless steel butt-weld pipe fittings from Italy produced by Coprosider. Accordingly, we will require Customs to suspend liquidation of imports produced by Coprosider in accordance with section 733(e)(2) of the Act. (See Suspension of Liquidation, below.)

All Other Exporters

We have also analyzed the issue of critical circumstances for companies in the "all others" category. During the initiation of the current investigation, the Department determined that Coprosider was the only exporter of the subject merchandise from Italy to the United States during the POI. Therefore, we believe that the additional imports of stainless steel butt-weld pipe fittings from Italy entered under HTS No. 7307.23.0000 consist of non-scope merchandise, and there are no other companies affected by this critical circumstances determination.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

All Others

Pursuant to section 735(5)(A) of the Act, the estimated all-others rate is equal to the estimated weighted average dumping margin established for Coprosider, the only exporter/producer investigated.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, for Coprosider, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. For all other companies, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The margin in the preliminary determination is as follows:

Exporter/Manufacturer	Margin (In percent)
Coprosider	32.12
All others	32.12

Final Critical Circumstances Determination

We will make a final critical circumstances determination when we

[1] Import Administration Antidumping Manual, chapter 10 (Critical Circumstances), p. 4 (January 22, 1998).

issue our final determination in the less-than-fair-value investigation.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19549 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–801]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From the Philippines.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James at (202) 482-2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 1, 2000).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings from the Philippines are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

Case History

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia, and the Philippines. *See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines*, 65 FR 4595, (January 31, 2000) (*Initiation Notice*). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (*see Initiation Notice*, 65 FR at 4596). We received a response from Coprosider S.p.A. (Coprosider) on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH (Schulz) submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000 the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bdh.; Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. (petitioners). On February 8, 2000 and February 18, 2000, Schulz filed its comments on our proposed concordance.

On February 14, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines*, 65 FR 9298, (February 24, 2000) (*ITC Preliminary Determination*).

On January 24, 2000, the Department issued Section A of its antidumping duty questionnaire to Enlin Steel Corporation (Enlin) and Tung Fong Industrial Co., Inc., (Tung Fong). On February 7, 2000, the Department received Enlin's and Tung Fong's responses to Question 1 of Section A. The Department received the remainder of Enlin's and Tung Fong's section A responses on February 22, 2000. On March 1, 2000, the Department issued a memorandum announcing its determination that it would only be able to analyze the response of Enlin in this investigation. On March 2, 2000, petitioners filed comments on Tung Fong's section A response. On March 6, 2000, Tung Fong requested to be a voluntary respondent. On March 9, 2000, the Department issued sections B–E of its antidumping duty questionnaire to Enlin, requesting that Enlin respond

to sections B and C. On March 15, 2000, petitioners submitted comments on Enlin's section A response. On May 1, 2000, the Department received from Enlin its response to sections B and C of the Department's questionnaire. Also on May 1, 2000, Tung Fong submitted a voluntary section B and C questionnaire response. On May 19, 2000, petitioners submitted comments on Enlin's sections B and C responses. On May 21, 2000, petitioners alleged that sales had been made below the cost of production (COP) in Enlin's third-country market. On June 1, 2000, the Department issued to Enlin a supplemental questionnaire with respect to its sections A, B and C responses. Also on June 1, 2000, the Department initiated a COP investigation with respect to Enlin's third-country sales. On June 2, 2000, the Department requested that Enlin respond to section D of the March 9, 2000 questionnaire. On June 22, 2000, six days after the due date for Enlin's response to the supplemental questionnaire, Enlin informed the Department that it would not respond any further to the Department's requests for information. On June 27, 2000, petitioners submitted comments on Tung Fong's sections B and C responses. On June 30, 2000, petitioners alleged critical circumstances exist with respect to imports of subject merchandise from the Philippines. Tung Fong made a voluntary section D response on July 5, 2000. On July 11, 2000, petitioners submitted comments on Tung Fong's section D response. On July 14, 2000, the Department issued a supplemental questionnaire to Tung Fong regarding its sections A, B, C, and D responses.

In addition, on April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines*, 65 FR 19876 (April 13, 2000).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

These investigations do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to these investigations are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1998 through September 30, 1999.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Acts gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined.

After consideration of the complexities expected to arise in these proceedings and the resources available to the Department, we determined that it was not practicable in these investigations to examine all known producers/exporters of subject merchandise. With respect to the Philippines, we determined that, given our resources, we would be able to investigate only one such company. We selected Enlin as the mandatory respondent for the Philippines because it was the respondent with the greatest export volume. (For a more detailed discussion of respondent selection in these investigations, see the Department's Respondent Selection Memorandum dated March 1, 2000, available in room B–099 of the Department of Commerce building.) However, following Enlin's withdrawal from the investigation on June 22, 2000, the Department determined to investigate Tung Fong as a voluntary respondent. Upon review of Tung Fong's response, we found that we needed additional information from Tung Fong before we could calculate a dumping margin. We found, for instance, that there were inconsistencies in the reporting of some control numbers. Tung Fong had also failed to provide invoice dates on its sales listings, and had not supplied complete sample sales documentation. It had also not reported all of the sales adjustments necessary to make a dumping calculation. There also appeared to be discrepancies on the record regarding the amount of Tung Fong's input material costs. Thus, as noted above, we issued Tung Fong a supplemental questionnaire on July 14, 2000. However, insufficient time remained for Tung Fong to respond to the supplemental questionnaire and for the Department to analyze it prior to the due date for the preliminary determination. Tung Fong's response is due July 28, 2000. We will make a calculation of Tung Fong's dumping margin and issue an analysis following issuance of this preliminary determination as soon as practicable. We will disclose the results of this calculation and the analysis incorporated therein to the interested parties; a public version of this analysis will be available to the public in room B–099 of the main Commerce Building.

Facts Available

As noted above under "Case History," Enlin failed to respond to the Department's supplemental questionnaire regarding its sections A, B, and C responses, and notified the Department that it did not intend to respond any further to the Department's requests for information. Section 776(a)(2) of the Act provides that if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the

form or manner requested, subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. Because Enlin failed to respond to our request for additional information, pursuant to section 776(a)(2) of the Act we resorted to the facts otherwise available to calculate the dumping margin for this company.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for necessary information. *See also,* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316 (1994) (SAA) at 870. Failure by Enlin to respond to the Department's supplemental questionnaire constitutes a failure to act to the best of its ability to comply with a request for information within the meaning of section 776 of the Act. Because Enlin failed to respond, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted in selecting the facts available for this company.

Because we were unable to calculate a margin for Enlin, we assigned it the highest margin alleged in the amended petition calculations, submitted January 10, 2000. *See, Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany,* 63 FR 10847 (March 5, 1998). The highest petition margin is 60.17 percent. *See Initiation Notice,* 65 FR at 4599.

Section 776(b)(1) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also,* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (*e.g.,* the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see,* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see,* SAA at 870).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition to the extent appropriate information was available for this purpose. *See, Import Administration AD Investigation Initiation Checklist* (January 18, 2000) for a discussion of the margin calculations in the petition. In addition, in order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined the evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent, for the most part, with the POI (*e.g.,* inland freight, international freight and insurance, import duties). For purposes of this preliminary determination, the Department compared the export prices alleged by the petitioners for sales to the first unaffiliated purchasers with contemporaneous, average unit prices values of U.S. imports classified under the appropriate HTS number. *See Import Administration AD Investigation Initiation Checklist,* January 18, 2000, pp. 3–4. We noted that the unit values of the U.S. price quotes submitted by the petitioners were well within the range of the average unit values reported by U.S. Customs. U.S. official import statistics are sources which we consider to require no further corroboration by the Department. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China,* 62 FR 51410, 51412, (October 1, 1997).

However, with respect to certain other data included in the margin calculations of the petition (*e.g.,* home market unit prices), neither respondents nor other interested parties provided the Department with further relevant information and the Department is aware of no other independent sources of information that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation for section 776 of the Act, 19 CFR 351.308(d), states "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Furthermore, as indicated above, the Department corroborated numerous parts of the petition, including the contemporaneity of the adjustments and the range of the U.S. price quotes as compared to U.S. selling prices recorded by Customs data. Accordingly, we find, for purposes of this preliminary determination, that this information is corroborated to the extent practicable. We will further consider this issue for the final determination based upon any additional information available to the Department at that time.

All Others

On March 6, 2000 Tung Fong requested that it be permitted to participate as a voluntary respondent in this investigation. It submitted voluntary responses to sections B and C of the questionnaire on March 1, 2000, and a voluntary section D response on July 5, 2000. (Tung Fong had submitted mandatory section A responses on February 7, 2000 and February 22, 2000.) It voluntarily submitted additional information in a June 27, 2000 submission following comments from petitioners submitted June 6 and June 23, 2000. We issued a supplemental questionnaire to Tung Fong on July 14, 2000, the response for which is due July 28, 2000. We will make a preliminary calculation of Tung Fong's dumping margin and issue an analysis following issuance of this preliminary determination. In this preliminary determination, we have assigned Tung Fong the non-adverse all-others rate, as described below, because currently there is insufficient information available for us to calculate a separate margin for Tung Fong.

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the "all others" rate the simple average of the margins in the petition. *See, e.g.,*

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 21, 1999). In accordance with our recent practice, we are basing the "all others" rate in this investigation on the simple average of margins in the petition, which is 34.67 percent.

Critical Circumstances

On June 30, 2000, the petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from the Philippines. According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

Because we are not aware of any antidumping order in any country on stainless steel butt-weld pipe fittings from the Philippines, we do not find that there is a reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the subject merchandise at less than fair value, the Department's normal practice is to consider margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price sales (CEP), and margins of 25 percent or more sufficient to impute knowledge for EP sales. *See, Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 62 FR 31972, 31978 (June 11, 1997). As discussed above, we have applied, as adverse facts available for Enlin, the highest of the dumping margins presented in the petition and corroborated by the Department. This margin is in excess of 25 percent. Therefore, we impute knowledge of dumping in regard to exports by this company.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally looks to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. The ITC has found that a reasonable indication of present material injury exists in regard to the Philippines. See *ITC Preliminary Determination* 65 FR at 9299. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports from Enlin.

In determining whether there are "massive imports" over a "relatively short period," the Department typically compares the import volume of the subject merchandise for at least three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this "relatively short period." Since there is no verifiable information on the record with respect to Enlin's import volumes, we must use the facts available in accordance with section 776 of the Act. See also Comment 2 of the Decision Memo, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Quality Steel Flat Products from Venezuela*, 65 FR 18047, 18049 (April 6, 2000). Accordingly, we examined U.S. Customs data on imports of stainless steel butt-weld pipe fittings from the Philippines in order to determine whether these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for Enlin. These data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information.

As discussed above in the "Facts Available" section, Enlin has not cooperated to the best of its ability in this investigation, and application of adverse facts available is appropriate. Since there is no verified information on the record with respect to Enlin's volume of imports, and U.S. import statistics are unavailable because stainless steel butt-weld pipe fittings are entered under an HTSUS basket category which includes products other than subject merchandise, we have no choice but to apply the adverse inference that Enlin has made massive imports of the subject merchandise over a relatively short period of time. Therefore, we find that the second criterion for determining whether critical circumstances exist with respect to Enlin's exports of subject merchandise has been met. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51429 (October 1, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India*, 64 FR 19123, 19124 (April 19, 1999). Because all of the necessary criteria have been met, in accordance with section 733(e) of the Act, the Department preliminarily finds that critical circumstances exist with respect to fittings produced by Enlin.

In regard to the "all others" category, it is the Department's normal practice to conduct its critical circumstances analysis based on the experience of investigated companies. *See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebars from Turkey)*, 62 FR 9737, 9741 (March 4, 1997); *see also Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled, Flat-Rolled Carbon Steel Quality Products from Venezuela*, 64 FR 61826, 61832 (November 15, 1999). (For the purpose of this critical circumstances determination, are we including Tung

Fong among the "all other" companies because we have no relevant information on the record particular to Tung Fong.) In *Rebars from Turkey*, the Department determined that, because it found critical circumstances existed for three out of the four companies investigated, critical circumstances also existed for companies covered by the "all others" rate. However, in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan (Stainless Steel from Japan)*, 64 FR 30574 (June 8, 1999), the Department did not extend its affirmative critical circumstances findings to the "all others" category while finding affirmative critical circumstances for four of the five respondents, because the affirmative determinations were based on adverse facts available. Consistent with *Stainless Steel from Japan*, we believe it is appropriate to apply the traditional critical circumstances criteria to the "all others" category.

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the subject merchandise at less than fair value, we look to the "all others" rate, which is based, in the instant case, on facts available. The dumping margin for the "all others" category in the instant case, 34.67 percent, exceeds the 15 percent or more threshold necessary to impute knowledge of dumping for CEP sales, and the 25 percent or more sufficient to impute knowledge of dumping for EP sales. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise. Finally, with respect to massive imports, we are unable to base our determination on our findings for the mandatory respondent because our determination for the mandatory respondent was based on facts available. We have not inferred, as facts available, that massive imports exist for "all others" because, unlike Enlin, the "all others" companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to shipment levels by the "all others" companies is not appropriate.

Instead, consistent with the approach taken in recent investigations, we examined U.S. Customs data on overall imports from the Philippines in order to see if we could ascertain whether an increase in shipments of greater than 15 percent or more occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. See *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan (Hot-Rolled Steel from Japan)*, 64 FR 24329, 24337 (May 6, 1999), *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand (Cold-Rolled Steel from Japan)* 65 FR 5520, 5527 (February 4, 2000), and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Venezuela*, 64 FR 61826, 61832 (November 15, 1999).

For the purposes of this preliminary determination we examined data for the four months preceding and the four months following the filing of the petition. Information on the record indicates that these data cover an HTS category that includes merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining whether there were massive imports for the "all others" category. Because we are unable to determine on the basis of record evidence that massive imports of subject merchandise from the producers included in the "all others" category did occur and, consequently, that the third criterion necessary for determining affirmative critical circumstances has been met, we have preliminarily determined that critical circumstances do not exist for imports from the Philippines of stainless steel butt-weld pipe fittings for companies in the "all others" category.

Suspension of Liquidation

In accordance with section 733(d) of the Act, for Enlin, we are directing the Customs Service to suspend liquidation of all entries of subject merchandise from the Philippines that are entered, or withdrawn from warehouse, for consumption on or after the date of publication which is 90 days prior to the date of publication of this notice in the **Federal Register**. For Tung Fong and all other companies, we will instruct the Customs Service to suspend liquidation of all entries of subject merchandise from the Philippines that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/manufacturer	Margin (percent)
Enlin Steel Corporation	60.17
Tung Fong Industrial Co., Ltd	34.67
All Others	34.67

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting comments would provide the Department with an additional copy of a public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral

presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19550 Filed 8–1–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Stainless Steel Butt-Weld Pipe Fittings from Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Becky Hagen or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362 (Hagen) and (202) 482–3818 (Johnson).

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings ("pipe fittings") from Malaysia are not being sold, nor are likely to be sold, in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Act.

Case History

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595 (January 31, 2000) ("Notice of Initiation"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (see Notice of Initiation at 4596). A response was received from Coprosider S.p.A. ("Coprosider") on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH and its affiliates ("Schulz") submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000, the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bhd. ("Kanzen"); Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. ("petitioners"). On Feburary 8, 2000 and February 18, 2000, we received comments on our proposed product concordance criteria from Schulz.

On February 14, 2000, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines (65 FR 9298).

On January 27, 2000, the Department issued Section A of its antidumping duty questionnaire to Kanzen, Schulz, and Amalgamated Industrial Stainless Steel Sdn. Bhd. ("AISS"). On February 10, 2000, the Department received responses to Question 1 of Section A from Kanzen and S.P. United Sdn. Bhd. ("SP United"). On February 14, 2000, the Department received a response to Question 1 of Section A from AISS, and on February 18, 2000, Schulz submitted a response to Question 1 of Section A of the questionnaire. On February 24, 2000, Schulz, SP United, and Kanzen submitted responses to Section A of the questionnaire. On March 1, 2000, the Department determined that it would not be practicable to investigate all four Malaysian producers/exporters, and therefore limited our examination to the largest producer/exporter, Kanzen (see "Selection of Respondents" section, below). On March 3, 2000, petitioners filed comments on Kanzen's Section A response. On March 8, 2000, the Department issued Sections B–E of its antidumping duty questionnaire to Kanzen. On March 22, 2000, the Department issued a supplemental questionnaire for Kanzen's Section A response. Kanzen responded on April 5, 2000.

On April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000 (Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines (65 FR 19876)).

Kanzen filed its Sections B and C response on May 1, 2000. On May 15, 2000, petitioners filed comments on Kanzen's Section B and C and Section A supplemental questionnaire responses, and requested that the Department initiate a cost investigation. The Department issued a supplemental questionnaire on Sections B and C and initiated a cost investigation on May 26, 2000 (see Memorandum to Edward Yang, Petitioners' Allegation of Sales Below the Cost of Production for Kanzen Tetsu Sdn. Bhd., dated May 26, 2000). Kanzen submitted its Section B and C supplemental questionnaire responses on June 16, 2000. On June 23, 2000, Kanzen submitted its response to Section D of the questionnaire. Also, on June 23, 2000, petitioners submitted comments on Kanzen's June 16, 2000 Section B and C supplemental questionnaire responses. The Department issued a second supplemental questionnaire on Sections B and C on June 27, 2000. On June 30, 2000, petitioners submitted comments on Kanzen's Section D response. Also, on June 30, 2000, petitioners alleged that critical circumstances exist with respect to imports of pipe fittings from Malaysia. On July 5, 2000, the Department requested that Kanzen report monthly U.S. shipment data (including total quantity and value figures) from 1998 through May 2000. Kanzen submitted its responses to the second supplemental questionnaire on Sections B and C on July 10, 2000. On July 12, 2000, Kanzen submitted its monthly U.S. shipment data. On July 14, 2000, the Department issued a

supplemental questionnaire on Section D.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on May 24, 2000 Kanzen requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. Kanzen also requested a two-month extension of the four-month limit on the imposition of provisional measures. Additionally, on May 30, 2000, petitioners requested that, in the event of a negative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. In accordance with Section 735(a)(2)(B) of the Act, because our preliminary determination is negative, we are granting petitioners' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. See also 19 CFR 351.210(b).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings ("pipe fittings") are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The pipe fittings subject to this investigation are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is October 1, 1998 through September 30, 1999.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonable examined.

We examined producer-specific data accounting for total POI exports of pipe fittings from Malaysia. We identified four companies who exported pipe fittings to the U.S. during the POI. Due to constraints on our time and resources, we found it impracticable to examine all four of them. Therefore, because its export volume accounted for the vast majority of all exports from Malaysia, we selected Kanzen as the mandatory respondent. For a more detailed discussion of respondent selection in this investigation, see Respondent Selection Memorandum, dated March 1, 2000.

Fair Value Comparisons

To determine whether sales of pipe fittings from Malaysia to the United States were made at less than fair value, we compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Transactions Investigated

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since Kanzen's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was not viable. Therefore, we have based NV on third country (the United Kingdom) market ("foreign market") sales in the usual commercial quantities and in the ordinary course of trade, since Kanzen's aggregate volume of sales of the foreign like product in the United Kingdom were more than five percent of its aggregate volume of U.S. sales of the subject merchandise, and as such, considered viable.

B. Date of Sale

For both foreign market and U.S. transactions, Kanzen reported the date of the contract (*i.e.*, order confirmation) as the date of sale, *i.e.*, the date when price, quantity, and material specifications are finalized, because Kanzen stated that the contract confirms all major terms of sale—price, quantity, and product specification—as agreed to by Kanzen and the customer. Because the frequency of changes in price and quantity between contract and invoice date indicate that the essential terms of sale are fixed at the contract date, the Department preliminarily determines that the contract date is the most appropriate date to use for the date of sale.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of the Investigation" section, above, and sold in the foreign market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the foreign market to compare to U.S.

sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's March 9, 2000 questionnaire.

Export Price

Section 772(a) of the Act defines export price as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). Section 772(b) of the Act defines constructed export price as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this investigation, Kanzen has classified its sales as EP sales.

We based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on CIF U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight (plant to port of exportation), brokerage and handling, credit, international freight, bank charges incurred by Kanzen, fumigation service charges, and marine insurance, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

After testing whether the foreign market sales were made at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value Comparison" sections of this notice.

Cost of Production ("COP") Analysis

Based on the cost allegation submitted by petitioners on May 15, 2000, and in accordance with section 773(b)(2)(A)(i) of the Act, the Department found reasonable grounds to believe or suspect that Kanzen had made sales in the foreign market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. See Memorandum to Edward Yang, Petitioners' Allegation of Sales Below the Cost of Production for Kanzen Tetsu Sdn. Bhd., dated May 26, 2000. As a result, the Department initiated an investigation to determine whether Kanzen made foreign market sales during the POI at prices below its COP within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kanzen's cost of materials and fabrication ("COM") for the foreign like product, plus amounts for selling, general, and administrative expenses ("SG&A"), financial expense, and packing costs. For the preliminary results, we relied on Kanzen's submitted COM without adjustment. However, we did adjust the reported general and administrative ("G&A") and financial expenses because we excluded certain offsets and expenses used to calculate the reported G&A and financial expense ratios. To calculate our revised G&A ratio, we excluded certain items from the reported numerator. In addition, we excluded packing and transportation expenses from the amount used as the denominator. To calculate each control number's (CONNUM's) G&A expense, we applied our revised G&A expense ratio to each CONNUM's reported cost of manufacturing. As for the calculation of our revised financial expense ratio, we disallowed the interest income offset that Kanzen had included in the reported numerator. In addition, we excluded packing and transportation expenses from the amount used as the denominator. To calculate each CONNUM's financial expense, we applied the revised financial expense ratio to each CONNUM's reported cost of manufacturing.

B. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POI or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of Constructed Value ("CV")

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Kanzen's COM, SG&A, financial expense, packing and profit. As noted in the above COP section, we relied on Kanzen's submitted COM without adjustment. However, we did make adjustments to the reported G&A and financial expenses. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Kanzen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to foreign market customers. We calculated NV based on FOB port of export prices to unaffiliated foreign market customers. We made adjustments to starting price, where appropriate, for billing adjustments. We made deductions for inland freight from the plant to the customer in accordance with section 773(a)(6)(B) of the Act and bank charges incurred by Kanzen, in accordance with section 773(a)(6)(C)(iii) of the Act. Normally, we deduct foreign market packing costs and add U.S. packing costs, in accordance with section 773(a)(6); however, in the instant case, we did not deduct foreign market packing costs nor add U.S. packing costs because Kanzen has stated that there is

no difference between its foreign market and U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting foreign market direct selling expenses and adding U.S. direct selling expense, in accordance with section 773(a)(6)(C)(iii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Kanzen did not request a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and foreign markets, including the selling functions, classes of customer, and selling expenses. Kanzen stated that both U.S. and foreign market customers' products are made to order and that it did not maintain inventory. Technical advice and warranty services were not provided to either the U.S. or foreign market customers. Kanzen also stated that it did not incur any advertising expenses during the POI for its sales to the U.S. and the foreign market.

Regarding sales process, Kanzen stated that both the U.S. and foreign market customers normally solicited price quotations and available production capacity from Kanzen, via telephone or facsimile. Kanzen and the U.S. or foreign market customer then negotiated the terms of sales, after which the customer (U.S. or U.K.) would issue a purchase order to Kanzen based on the negotiated sales terms. If there were no discrepancies with the negotiated terms, Kanzen would then issue a contract, confirming the order. Kanzen did not use selling agents or pay commissions for its sales to the U.S. and foreign market. After production of the made-to-order fittings, they are shipped to the port near Kanzen's factory, loaded onto a vessel, and delivered directly to the United States or foreign market customer. At the time of shipment, Kanzen invoices both the United States and foreign market customer. Kanzen paid for freight and insurance for all its U.S. sales, while the foreign market customer paid for ocean freight and insurance. Additionally, while the foreign market customer takes title to the merchandise upon loading it onto the vessel, the U.S. customer takes title to the merchandise upon arrival at the U.S. port.

In both the U.S. and foreign market, Kanzen reported one sales channel, to unaffiliated distributors. Therefore, we preliminarily conclude that sales to unaffiliated distributors constitute one LOT in the foreign market. Further, we preliminarily conclude that because the U.S. LOT and the foreign market LOT included similar selling functions, as described above, these sales are made at the same LOT. Therefore, a LOT adjustment for Kanzen is not appropriate.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Critical Circumstances

On June 30, 2000, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Malaysia. According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of over 15 percent may be considered "massive" during the "relatively short period" described in 19 CFR 351.206(i). Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. Because we are not aware of any antidumping order in any country on pipe fittings from Malaysia, we find that there is no reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the pipe fittings at less than fair value, the Department's normal practice is to consider EP sales margins of 25 percent or more sufficient to impute knowledge of dumping. See Final Determination of Sales at Less Than Fair Value: Brake and Brake Rotors From the People's Republic of China, 62 FR 9160, 9164 (February 28, 1997). Since the company-specific margin for EP sales in our preliminary determination for pipe fittings is less than 25 percent for Kanzen, we have not imputed knowledge of dumping based on this margin. However, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department may look to the preliminary injury determination of the ITC. See Id. at 9164. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. See Id. The ITC has found that a reasonable indication of present material injury exists in regard to Malaysia. See ITC Preliminary Determination. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports in this case.

In determining whether there are "massive imports" over a "relatively short period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the "base period") and following (the "comparison period") the filing of the petition. See 19 CFR 351.206(i). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. See 19 CFR 351.206(h). On July 12, 2000, Kanzen submitted shipment information which shows that its imports did not increase by 15 percent or more than during the comparison period (January–May, 2000) from the level of the preceding five months. See Preliminary Determination Analysis Memorandum, dated July 26, 2000 ("Analysis Memorandum"). Therefore, we do not find that critical circumstances exist for Kanzen, since it did not have massive imports nor did it have a margin high enough to impute importer knowledge of dumping.

Next, in accordance with the Department's practice, we have evaluated whether critical circumstances exist for the "all others" companies. We are unaware of any antidumping order against Malaysia on pipe fittings worldwide. Therefore, the Department must examine part (ii) of the first prong of the critical circumstances test for the "all others" companies. Since the "all others" rate in our preliminary determination for pipe fittings is less than 25 percent, we have not imputed knowledge of dumping based on this margin.

Finally, we have evaluated whether there are "massive imports" for the "all others" companies in terms of both the imports of the investigated company and country-specific import data. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30585 (June 8, 1999). As discussed above, an evaluation of Kanzen's shipment data did not show an increase of fifteen percent or more during the relevant comparison periods, and we therefore found that Kanzen's data provided no evidence of massive imports. In accordance with our decision in the Final Determination of Sales at Less Than Fair Value: Hot-Rolled Steel from Japan, 64 FR 24329 (May 6, 1999), we also considered U.S. customs data on overall imports from Malaysia of the products at issue. These statistics, however, include merchandise other than subject merchandise. As such, we have not relied on this data in making our "massive imports" determination for "all others." Based on our review of Kanzen's data on massive imports, we find that imports from uninvestigated exporters (*e.g.*, "all others") were also not massive during the relevant comparison periods. Therefore, the Department determines that there are no critical circumstances with regard to "all other" imports of pipe fittings from Malaysia.

Suspension of Liquidation

Since the estimated weighted-average dumping margin for the examined company is 0.59 percent and therefore is de minimis, we are directing the Customs Service not to suspend liquidation of entries of stainless steel butt-weld pipe fittings from Malaysia. These instructions not suspending liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our negative preliminary determination. If our final determination is affirmative, the ITC will determine within 75 days after the date of our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19551 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–822]

Stainless Steel Plate in Coils From Italy; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: In response to a request from Acciai Speciali Terni S.p.A. ("AST"), an Italian producer of stainless steel plate in coils, and Acciai Speciali Terni USA, Inc. ("AST USA"), collectively referred to as AST/AST USA, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on stainless steel plate in coils from Italy on July 7, 2000, for one manufacturer/exporter of the subject merchandise, AST/AST USA, for the period November 4, 1998 through April 30, 2000. The Department received a timely request for withdrawal on July 19, 2000, from AST/AST USA. This review has now been rescinded as a result of the withdrawal of the request for review by AST/AST USA, the only party which requested the review.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0165.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1999).

Background

On May 31, 2000 AST/AST USA submitted a request for an administrative review of the antidumping duty order on stainless steel plate in coils from Italy pursuant to the *Notice of Opportunity to Request Administrative Review*, 65 FR 31141 (May 16, 2000).

On July 7, 2000, the Department initiated a review of the antidumping duty order on stainless steel plate in coils from Italy. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 65 FR 41942 (July 7, 2000). On July 19, 2000, AST/AST USA submitted a timely request for a withdrawal of its request for a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will allow a party that requests an administrative review to withdraw such request within 90 days of the date of publication of the notice of initiation of the administrative review. Because AST/AST USA's withdrawal request was submitted within the 90-day time limit, and there were no requests for review from other interested parties, we are rescinding this review. We will issue appropriate appraisement instructions directly to the U.S. Customs Service.

This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 27, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–19544 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–819, A–427–811, and A–533–806]

Continuation of Antidumping Duty Orders: Stainless Steel Wire Rod From Brazil, France, and India

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Continuation of Antidumping Duty Orders: Stainless Steel Wire Rod from Brazil, France, and India.

SUMMARY: On February 3, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India, is likely to lead to continuation or recurrence of dumping (65 FR 5319; 5317; 5315).

On July 21, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 45409). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1999, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India pursuant to section 751(c) of the Act (64 FR 35588 and 64 FR 35697). As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. *See* Final Results of Expedited Sunset Reviews: Certain Stainless Steel Wire Rod from Brazil, France, and India, 65 FR 5319; 5317; 5315 (February 3, 2000).

On July 21, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Certain Stainless Steel Wire Rod from Brazil, France, and India, 65 FR 45409 (July 21, 2000) and USITC Pub. 3321, Investigations Nos. 731–TA–636–638 (Review) (July 2000).

Scope

Imports covered by these orders are shipments of stainless steel wire rods ("SSWR") from Brazil, France, and India. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. The SSWR subject to these reviews are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS item numbers are provided for convenience and customs purposes only. The written product description of the scope of this order remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than July 2005.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19547 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–006R. Applicant: LDS Hospital (Intermountain Health Care), 8th Avenue & C Street, Salt Lake City, UT 84143. Instrument: Electron Microscope, Model JEM–1010. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used in support of ongoing research activities that involve three discrete ongoing projects: (a) Studies involving a large number of lung cancer trials that will include evaluation of lung cancer by electron microscopy, (b) evaluation of the sub-constituents of the vocal matrix using ultrastructural immunocytochemistry and histochemical procedures and (c) evaluation of cardiac muscle biopsies and transplant biopsies. Original notice of this resubmitted application was published in the **Federal Register** of April 6, 2000.

Docket Number: 00–016. Applicant: University of Washington, Physics Department, Physics-Astronomy Building, Box 351560, Seattle, WA 98195–1560. Instrument: Scanning Tunneling Microscope. Manufacturer: Omicron Associates, Germany. Intended Use: The instrument is intended to be used to study growth, etching and interface formation of inorganic materials, with primary emphasis on systems where at least one constituent is insulating or transparent. The materials of interest include calcium fluoride, gallium selenide, gallium-aluminum nitride, zinc oxide, silicon and water ice. The objectives of the investigations will include: (a) Developing new means to fabricate quantum nanostructure of desired morphology on insulating substrates, (b) establishing a unifying framework for growing wide band-gap material on dissimilar substrates and (c) obtaining quantifiable correlations between thermodynamic properties (heats of formation and adsorption), kinetic growth processing (islanding, nucleation), and nanostructure properties (catalytic activity, electron transport). In addition, the instrument will be used in various chemistry, physics and materials science and engineering courses to obtain data, learn how to conduct scientific research and how to interpret the results. Application accepted by Commissioner of Customs: June 22, 2000.

Docket Number: 00–017. Applicant: Lehigh University, Physics Department, 16 Memorial Drive East, Bethlehem, PA 18015. Instrument: Raman Fiber Laser. Manufacturer: Optocom Innovation, France. Intended Use: The instrument is intended to be used for further studies of stimulated Raman scattering in silica-based optical fibers. These studies will involve performing pump probe experiments, in which both a pump (the Raman converter) and a tunable signal are injected into an optical fiber. The pump energy will be transferred to the signal. The amount of energy transferred depends on the vibrational properties of the glass. By tuning the frequency difference between the pump and the sign, it is possible to probe the different vibrations in the glass, including those responsible for the Boson peak and broad band. Application accepted by Commissioner of Customs: May 30, 2000.

Docket Number: 00–018. Applicant: National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899–8371. Instrument: Auger Microprobe, Model JAMP–7830F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for the study of metals, ceramics and glasses; semiconductor, microelectronic and optoelectronic devices; thin film samples, multi-layered materials and protective coatings, fracture surfaces diffusion couples, and failure analysis specimens; microprecipitates, microparticles and nanoparticles; analysis standards, candidates for reference materials and numerous other specimen types. The instrument will be used in investigations to: (a) Determine the thickness of surface coatings and layered material by combination of ion sputtering, Auger electron spectroscopy, multiple accelerating potential x-ray emission analysis, and ultimately

microfocusing x-ray photoelectron spectroscopy and (b) determine composition heterogeneity (both in terms of included phases and surface coatings in individual microparticles and nanoparticles). The objective of these experiments is to provide standards, standard data and standard measurement methods that strengthen the U.S. economy and improve the quality of life. Application accepted by Commissioner of Customs: June 14, 2000.

Docket Number: 00–019. Applicant: University of Illinois at Urbana-Champaign, 207 Henry Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: E-beam Evaporator and Flux Controller, Model EGN4. Manufacturer: Oxford Applied Research, United Kingdom. Intended Use: The instrument is intended to be used to carry out experiments with the following objectives: (a) Achieve in-depth understanding of the formation of epitaxial cobalt-silicide ($CoSi_2$) on silicon-germanium (SiGe) substrate, (b) study the interaction of cobalt atoms with silicon substrate with the presence of germanium atoms and understand the role of germanium atoms during expitaxial ($CoSi_2$) growth and (c) investigate the effect of cobalt flux and substrate temperature during cobalt evaporation on the properties of the final epitaxial ($CoSi_2$) film. Application accepted by Commissioner of Customs: June 1, 2000.

Docket Number: 00–022. Applicant: California Association for Research in Astronomy, 65–1120 Mamalahoa Highway, Kamuela, HI 96743. Instrument: (4) Outrigger Observatories. Manufacturer: Electro Optic Systems Pty Limited, Australia. Intended Use: The instrument is intended to be used to form an interferometer (a system of telescopes) which will be used to search for planets outside our solar system. Application accepted by Commissioner of Customs: July 5, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–19541 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Tulane University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–010. Applicant: Tulane University, New Orleans, LA 70118–5698. Instrument: Electron Microscope, Model JEM–2010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 65 FR 34148, May 26, 2000. Order Date: December 6, 1999.

Docket Number: 00–015. Applicant: University of California, San Diego, La Jolla, CA 92093–0608. Instrument: Electron Microscope, Model JEM–3100. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 65 FR 37118, June 13, 2000. Order Date: January 12, 2000.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–19542 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Washington University; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Numbers: 00–012 and 00–014. Applicant: Washington University, St, Louis, WA 63110. Instruments: XY Shifting Tables, Model 240 with Accessories. Manufacturer: Luigs and Neuman, Germany. Intended Use: See notice at 65 FR 37117 and 37118, June 13, 2000. Advice received from: National Institutes of Health, July 3, 2000.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for instruments previously imported for the use of the applicant. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–19543 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matters (ISAC 3); Request for Nominations

AGENCY: International Trade Administration, Trade Development.

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) are seeking nominations for appointment of an environmental representative to the Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matters (ISAC 3). Appointment will be effective for the charter term of this Committee, which expires March 17, 2002. In order to be considered for appointment to the Committee, a nominee must be a U.S. citizen, must have an interest in and specialized knowledge of environmental issues relevant to the work of the Committee, and may not be a registered foreign agent under the Foreign Agents Registration Act.

In order to receive full consideration, nominations for the current charter period should be received not later than August 25, 2000. Recruitment information is available on the International Trade Administration website at www.ita.doc.gov/icp.

FOR FURTHER INFORMATION CONTACT: Further inquiries may be directed to Dominic Bianchi, Acting Assistant USTR for Intergovernmental Affairs, Winder Building, Room 100, 600 17th Street, NW., Washington, DC 20230 or Tamara Underwood, Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 2015–B, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to—"seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to:

(A) negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) the operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States. * * *"

Section 135(c)(2) of the 1974 Trade Act provides—

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) Consult with interested private organizations; and

(B) Take into account such factors as—

(i) Patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) The character of the nontariff barriers and other distortions affecting such competition,

(iii) The necessity for reasonable limits on the number of such advisory committees,

(iv) The necessity that each committee be reasonably limited in size, and

(v) In the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. Committees meet an average of four times a year in Washington, DC. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings. For additional information regarding the functions and membership of these committees, and general qualifications for membership, *see* 64 FR 10448–10449, March 4, 1999 (Volume 64, Number 42).

On April 27, 2000, a lawsuit was brought against Commerce and USTR in the United States District Court for the Western District of Washington by a group of environmental organizations seeking environmental representation on ISAC 3. Commerce and USTR have determined not to contest this lawsuit, and now solicit nominations for qualified environmental representatives to serve on this committee.

Eligibility

Eligibility to serve as an environmental representative on ISAC 3 is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a "U.S. entity", and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a "U.S. entity" is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) At least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Selection Criteria

USTR and Commerce will select an environmental representative eligible for appointment to ISAC 3 based upon the following:

(1) The nominee should demonstrate personal interest in and knowledge of the formulation of environmental policies in the sector relevant to the work of the Committee, and ability to work with governmental and officials and industry representatives to reach consensus on complex environmental and trade issues affecting the relevant industry sector.

(2) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sector, as well as with international trade matters, including trade policy development, relevant to that sector.

The environmental representative, as a member of the Committee, will be required to have a security clearance. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 2015–B, Washington, DC 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: July 27, 2000.

Michael J. Copps,

Assistant Secretary for Trade Development.

[FR Doc. 00–19449 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products From Germany; Final Results of Full Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products from Germany.

SUMMARY: On March 27, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products, cold-rolled carbon steel flat products, and cut-to-length carbon steel plate products (collectively the "steel products") from Germany (65 FR 16176) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of these orders would be likely to lead to continuation or recurrence of a countervailiable subsidy.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On March 27, 2000, the Department published in the **Federal Register** a notice of preliminary results of the full sunset reviews of the countervailing duty orders on steel products from Germany pursuant to the Act. In our preliminary results, we determined that revocation of the orders would be likely to lead to continuation or recurrence of a countervailiable subsidy. In addition, we preliminarily determined that the following net countervailable subsidies are likely to prevail for respective manufactures/exporters of steel products if the orders were revoked: for corrosion-resistant carbon steel flat products, a country-wide rate of 0.54 percent ad valorem; for cold-rolled carbon steel flat products, country-wide rate of 0.55 percent ad valorem; for cut-to-length steel plate products, 1.62 percent ad valorem for Salzgitter, 0.51 percent ad valorem for TKS, and a 14.84 percent ad valorem country-wide rate (including Dillinger).

On May 19, 2000, the Government of Germany ("GOG") submitted its case brief, and the rest of the interested parties (both domestic and respondent) submitted their case briefs on May 22, 2000, within the deadline specified in 19 CFR 351.309(c)(1)(i). We also received rebuttal comments from the GOG on June 2, 2000, and from both domestic and respondent interested parties on June 5, 2000, within the deadline specified in a Department Memorandum dated May 26, 2000.[1] The Department held a hearing on June 26, 2000.

Scope of Review

The products covered by these reviews are certain corrosion-resistant carbon steel flat products, cold-rolled carbon steel flat products, and cut-to-length steel plate products from Germany.

(1) Certain corrosion-resistant carbon steel flat products: the scope of countervailing duty order of certain corrosion-resistant carbon steel flat products ("corrosion-resistant") includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that

[1] On May 24, 2000, the domestic interested parties requested an extension of the deadline for filing rebuttal comments to respondents' case briefs. The Department extended the deadline until June 5, 2000 for all participants eligible to file rebuttal comments.

consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a "20 percent–60 percent–20 percent" ratio.

On September 22, 1999, the Department issued the final results of a changed circumstances review and revoked the order with respect to certain corrosion-resistant steel.[2]

(2) Certain cold-rolled carbon steel flat products: the scope of countervailing duty order of certain cold-rolled carbon steel flat products includes cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)— for example, products which have been bevelled or rounded at the edges. Excluded from this scope is certain shadow mask steel; *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

(3) Certain cut-to-length carbon steel plate products: the scope of countervailing duty order on certain cut-to-length carbon steel plate products ("cut-to-length steel") includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling) for example, products which have been bevelled or rounded at the edges. Excluded is grade X–70 plate.

On August 25, 1999, the Department issued the final results of a changed-circumstances review revoking the order in part, with respect to certain cut-to-length carbon steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2.[3]

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

ANALYSIS OF COMMENTS RECEIVED: All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of a countervailiable subsidy and the magnitude of the net subsidy likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review: We determine that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of countervailable subsidies at the following percentage weighted-average margins:

Manufacturer/Exporters	Margin (percent)
Corrosion-resistant carbon steel flat products:	
Country-wide rate	0.54

[2] See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08 percent; manganese is less than 0.30 percent; phosphorous is less than 0.20 percent; sulfur is less than 0.015 percent; aluminum is less than 0.01 percent; and the cladding material is a minimum of 99 percent aluminum with silicon/copper/iron of less than 1 percent. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3 percent/94 percent/3 percent to 10 percent/80 percent/10 percent.

[3] See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part, 64 FR 46343 (August 25, 1999).

Manufacturer/Exporters	Margin (percent)
Cold-rolled carbon steel flat products:	
Country-wide rate	0.55
Cut-to-length steel plate products:*	
Ilsenburg	0.80
Preussag	0.77
TKS	0.51
Country-wide (including Dillinger)	14.84

*Although Salzgitter is a successor-in-interest for both Ilsenburg and Preussag, without an appropriate review, we cannot discern the appropriate rate for the successor. Therefore, for Ilsenburg and Preussag, we are reporting the rates from the original investigation, as adjusted. The country-wide rate applies to Dillinger, and TKS is the successor-in-interests of Thyssen.

Nature of the Subsidy: The programs included in our calculation of the net countervailable subsidy likely to prevail if the orders were revoked do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19545 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–004]

Revocation of Countervailing Duty Order: Stainless Steel Wire Rod From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty order: stainless steel wire rod from Spain.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the countervailing duty order on stainless steel wire rod from Spain is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, 65 FR 45409 (July 21, 2000). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the countervailing duty order on stainless steel wire rod from Spain. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2) the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: For Further Information Contact: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

BACKGROUND: On July 1, 1999, the Department initiated and the Commission instituted, sunset reviews of the countervailing duty order on stainless steel wire rod from Spain, pursuant to section 751(c) of the Act. *See* 64 FR 35588 and 64 FR 35697. As a result of the review, the Department found that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. *See* Final Results of Expedited Sunset Review: Stainless Steel Wire Rod From Spain, 65 FR 6166 (February 8, 2000).

On July 21, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the countervailing duty order on stainless steel wire rod from Spain would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* 65 FR 45409 (July 21, 2000), and USITC Pub. 3321, Investigation No. 701–TA–178 (Review)(July 2000).

SCOPE: Imports covered by this order are shipments of stainless steel wire rod ("SSWR") from Spain, which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured, from Spain. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the Harmonized Tariff Schedule ("HTS") of the United States. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

DETERMINATION: As a result of the determination by the Commission that revocation of this countervailing duty order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the countervailing duty order on stainless steel wire rod from Spain. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), this revocation is effective January 1, 2000.

The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative review of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 27, 2000.

Troy H. Cribb.

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19546 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Joint Electronic Commerce Program Office.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Acquisition, Technology and Logistics)/Joint Electronic Commerce Program Office, announces the proposed

extension of a public information collection and seeks public comment on the provisions thereof. The Department of Defense (DoD) invites comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through November 30, 2000. DoD proposes that OMB approve an extension of the information collection requirement, to expire 3 years after the approval date.

DATES: Consideration will be given to all comments received by October 2, 2000.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Joint Electronic Commerce Program Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Attention: Ms. J. Lisa Romney, Ft. Belvoir, VA, 22060–6205. E-mail comments submitted via the Internet should be addressed to: *lisa romney@hq.dla.mil.*

FOR FURTHER INFORMATION CONTACT: To request further information on the proposed information collection, please write to the above address or call Ms. J. Lisa Romney at (703) 767–6920.

Title, Associated Form, and OMB Number: Central Contractor Registration (CCR), OMB Control Number 0704–0400.

Needs and Uses: The CCR provides a single point of entry for vendors that want to do business with the DoD. As of June 1, 1998, both current and potential DoD vendors are required to register in the CCR in order to do business with the DoD if the contract solicitation occurred after May 31, 1998. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration annually to maintain an active status. The CCR validates the vendor's information and electronically shares the secure and encrypted data with the Defense Finance and Accounting Service (DFAS) to facilitate paperless payments through electronic funds transfer (EFT). Additionally, CCR shares the data with several government procurement and electronic business systems.

Affected Public: Businesses or Other For-Profit; Not-For-Profit Institutions

Annual Burden Hours: 300,000

Number of Respondents: 300,000

Responses to Respondents: 1

Average Burden per Response: 1 hour

Frequency: On Occasion

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

In October 1993, the President issued a memorandum that mandated the Government reform its acquisition processes. Subsequently, the Federal Acquisition Streamlining Act (FASA) of 1994 was passed, requiring the establishment of a "single face to industry." To accomplish this, DoD identified a centralized, electronic registration process known as Central Contractor Registration (CCR) as the single point of entry for vendors that want to do business with the DoD. To this end, Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 204.7300, requires vendors to register in the CCR to conduct business with the DoD. Prospective vendors must be registered in CCR prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19417 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–45]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–45 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/006822

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-45, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 23 million
Other	$ 4 million
TOTAL	$ 27 million

(iii) Description of Articles or Services Offered: Sixteen SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AOI)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 10 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - SM-2 Block III STANDARD Missiles

The Government of Japan has requested a possible sale of 16 SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $27 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the East Asia.

Japan will use these missiles to update older or less reliable missiles currently in the Japanese Self Defense Force fleet. Japan, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The possible sale of STANDARD SM-2 missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:

a. Parametric documents (C)
b. Missile Handling Procedures (U)
c. General Performance Data (C)
d. Firing Guidance (C)
e. Dynamics Information (C)
f. Flight Analysis Procedures (C)

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19418 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–46].

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter of the Speaker of the House or Representatives, Transmittal 00–46 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/007131

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-46, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to New Zealand for defense articles and services estimated to cost $32 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: New Zealand

(ii) Total Estimated Value:

Major Defense Equipment*	$ 20 million
Other	$ 12 million
TOTAL	$ 32 million

(iii) Description of Articles or Services Offered: Twenty-four JAVELIN anti-tank missile systems (consisting of 24 JAVELIN command launch units and 164 JAVELIN missile rounds), simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) Military Department: Army (VJA)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 10 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

New Zealand - JAVELIN Anti-tank Missile Systems

The Government of New Zealand has requested a possible sale for 24 JAVELIN anti-tank missile systems (consisting of 24 JAVELIN command launch units and 164 JAVELIN missile rounds), simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $32 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of New Zealand and further weapon system standardization and interoperability with U.S. forces.

New Zealand will use these JAVELIN anti-tank missile systems to enhance their anti-tank ground forces and to increase interoperability with U.S. forces. New Zealand will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team to New Zealand for a week to assist in the delivery and deployment of the missiles. Two contractor representatives will be required for two years to perform maintenance services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. If the software was compromised, it could result in a loss of sensitive technology, revealing the performance capabilities of the JAVELIN Missile System. Reverse engineering of the software would require a substantial effort. While the JAVELIN system is Unclassified, Secret disclosure are required in order to employ, operate, and train on the system.

2. A determination has been made that the Government of New Zealand can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification. Further, the sale strengthens collective security and contributes to the standardization and interoperability in the case of coalition warfare. The benefits to be derived from the sale outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 00-19419 Filed 8-1-00; 8:45 am]
BILLING CODE 5001-10-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–47]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–47 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2000
In reply refer to:
I-00/007897

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-47, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Thailand

(ii) Total Estimated Value:

Major Defense Equipment*	$ 40 million
Other	$ 50 million
TOTAL	$ 90 million

(iii) Description of Articles or Services Offered: Two UH-60L BLACKHAWK helicopters with T-700 engines, two spare T-700 engines, M130 chaff dispenser, Supply Support Arrangements (FMSO I/II), External Stores Support System, non-MDE guns, ammunition, 2.75 rocket pods, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (WEC, WEE, JDG, OCW, and KZE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See annex attached.

(vii) Date Report Delivered to Congress: 18 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Thailand - UH-60L BLACKHAWK Helicopters

The Government of Thailand has requested a possible sale of two UH-60L BLACKHAWK helicopters with T-700 engines, two spare T-700 engines, M130 chaff dispenser, Supply Support Arrangements (FMSO I/II), External Stores Support System, non-MDE guns, ammunition, 2.75 rocket pods, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $90 million.

The Army Department has not completed the configuration requirements for Thailand's UH-60L, e.g. the Aircraft Survivability Equipment (ASE) suite. Once the configuration design for Thailand's UH-60L are completed, such as the ASE, communication group and etc., a formal notification under the provision of 36(b)(5) will be submitted.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South East Asia.

This procurement will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Thailand will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be United Technology, Sikorsky Aircraft of Stratford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Thailand. There will be five contractor representatives for one week intervals twice annually to participate in program management and technical reviews. Additional requirement of Mobile Training Team will be determined in joint negotiations as the program proceeds through the final stages.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential.

2. The UH-60L BLACKHAWK helicopter will include the following classified or sensitive components:

a. M-130 Chaff-Flare Dispenser is a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for operation and maintenance are Unclassified. Reverse engine is not a major concern.

3. A determination has been made that Thailand can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19420 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–48]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b0(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–48 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2000
In reply refer to:
I-00/007896

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-48, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $78 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Thailand

(ii) Total Estimated Value:

Major Defense Equipment*	$ 50 million
Other	$ 28 million
TOTAL	$ 78 million

(iii) Description of Articles or Services Offered: Three UH-60L BLACKHAWK helicopters with T-700 engines, radios, hoist, spare and repair parts, test and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (WEF and OCZ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See attached annex.

(vii) Date Report Delivered to Congress: 18 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Thailand - UH-60L BLACKHAWK Helicopters

The Government of Thailand has requested a possible sale of three UH-60L BLACKHAWK helicopters with T-700 engines, radios, hoist, spare and repair parts, test and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $78 million.

The Army Department has not completed the configuration requirements for Thailand's UH-60L, e.g. the Aircraft Survivability Equipment (ASE) suite. Once the configuration design for Thailand's UH-60L are completed, such as the ASE, communication group and etc., a formal notification under the provision of 36(b)(5) will be submitted.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South East Asia.

This procurement will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Thailand will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be United Technology, Sikorsky Aircraft of Stratford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Thailand. There will be five contractor representatives for one week intervals twice annually to participate in program management and technical reviews. Additional requirement of Mobile Training Team will be determined in joint negotiations as the program proceeds through the final stages.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-48

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential.

2. A determination has been made that Thailand can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19421 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–50]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–50 with attached transmittal and policy justification.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/007451

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-50, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to United Kingdom for defense articles and services estimated to cost $75 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-50

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: United Kingdom

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$75 million
TOTAL	$75 million

(iii) Description of Articles or Services Offered: Logistics support for TOMAHAWK BLOCK III Land Attack Missiles (TLAM) including maintenance and repair services, spare and repair parts, software/hardware modifications, contractor technical assistance, test equipment, publications and technical documentation, and other related elements.

(iv) Military Department: Navy (GXQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(vii) Date Report Delivered to Congress: 10 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom - Logistics Support for TOMAHAWK Block III Land Attack Missiles

The Government of United Kingdom has requested a possible sale of logistics support for TOMAHAWK BLOCK III Land Attack Missiles (TLAM) including maintenance and repair services, spare and repair parts, software/hardware modifications, contractor technical assistance, test equipment, publications and technical documentation, and other related elements. The estimated cost is $75 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by maintaining the military capabilities of United Kingdom while enhancing weapon system standardization and interoperability.

The United Kingdom needs this logistics support to maintain the operational level of its TLAM in NATO mission commitments. The United Kingdom will have no difficulty absorbing this additional logistics support in their armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The equipment and services will be provided by multiple U.S. Government and contractor representatives. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of an U.S. Government representative to United Kingdom for a period of up to five years. There may be several U.S. Government and contractor representative for one week intervals annually to participate in program review and technical assistance.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19422 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–51]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–51 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/007504

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-51, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $385 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-51

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$375 million
Other	$ 10 million
TOTAL	$385 million

(iii) Description of Articles or Services Offered: The F/A-18 Hornet Upgrade (HUG) Program (Phase II) will consist of 73 ALR-67(V)3 Radar Warning Receivers, 42 ALQ-165 Airborne Self-protection Jammers (ASPJ) or 42 ALQ-214(V)4 Radar Frequency (RF) Counter Measure System, 73 Joint Helmet Mounted Cueing Systems (JHMCS), 72 Multifunctional Information Distribution System (MIDS)/Low Volume Terminal (LVT), spare and repair parts, support and test equipment, maintenance and pilot training, software support, supply support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.

(iv) Military Department: Navy (LAI, LAL, LAB, and LZL or LAD)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 10 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia - F/A-18 Hornet Upgrade Program

The Government of Australia has requested a possible sale for the F/A-18 Hornet Upgrade (HUG) Program (Phase II). The upgrade program will consist of 73 ALR-67(V)3 Radar Warning Receivers, 42 ALQ-165 Airborne Self-protection Jammers (ASPJ) or 42 ALQ-214(V)4 Radar Frequency (RF) Counter Measure System, 73 Joint Helmet Mounted Cueing Systems (JHMCS), 72 Multifunctional Information Distribution System (MIDS)/Low Volume Terminal (LVT), spare and repair parts, support and test equipment, maintenance and pilot training, software support, supply support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $385 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Asia Pacific region.

The HUG Phase II program upgrade enhances early warning and self-protective features bringing the F/A-18 up to capabilities found in neighboring military forces. The Royal Australian Air Force (RAAF) intends to purchase the HUG Phase II equipment to enhance survivability, communications connectivity and extend the useful life of its F-18 fighter aircraft. Australia will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of several U.S. Government or contractor representatives to Australia for four months during the preparation, installation, test and checkout of the equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-51

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AN/ALQ-165 Airborne Self-protection Jammer (ASPJ) is a U.S. Navy system designed to provide self-protection electronic countermeasures (ECM) capability for Navy tactical aircraft. The ASPJ provides a high degree of combat survivability in a hostile air defense environment. The ASPJ is installed internally and is capable of selectively generating a wide variety of ECM responses and directing them in order of priority against individual threat weapons systems on an "as-encountered" basis. ECM techniques and threat identification criteria are flexible to respond to new intelligence inputs via adaptive reprogramming.

2. The configuration is compatible for use in F-18 aircraft. The 7 LRU configuration consists of the following Weapons Replaceable Assemblies (WRA's): low band receiver, high band receiver, processor, low band transmitter, high band transmitter 1/2, and WRA 10/11. Each ASPJ requires an interface unit (rack) which consists of aircraft interface unit and preamplifier. The ASPJ WRA is classified as Confidential.

3. The AN/ALQ-214 Radar Frequency Counter Measure Systems (RFCMs) is an automated modular reprogrammable active radar frequency deception jammer, which provides electronic self-protection of the host tactical aircraft from a variety of air-to-air and surface-to-air radar frequency threats. It provides the same capabilities as the AN/ALQ-165 ASPJ. Additionally, the AN/ALQ-214 can provide total Countermeasures Response Management for the host aircraft. It can determine which countermeasure is best suited for a given threat.

4. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following WRA: receiver, modulator, low band transmitter, processor, and high band transmitter 2. Each RFCM requires an interface unit (rack) which consists of the aircraft interface unit and preamplifier. The RFCM WRA is classified as Confidential.

5. The AN/ALR-67(V)3 Radar Warning Receivers (RWR) is a radar-warning receiver which supersedes the AN/ALR-67E(V)2 with extended capabilities in detection and processing of air defense threat radar of the mid-1990s and beyond. It functions cooperatively with on-board suppression and defensive systems such as the High-Speed Anti-Radiation Missile (HARM), countermeasure dispensers, radio frequency jammers, and the fire control radar via data exchanged over the avionics multiplex bus and as controller of the EW multiplex bus. The ALR-67(V)3 provides an order of magnitude increase in processing power. Its data collection categories include high band pulse, high band continuous wave, low band pulse, and millimeter wave. It provides signal detection, direction finding, and identification of radar frequency and threat emitters

including scanning radar, pulse doppler and continuous wave tracking radar, acquisition and early warning radar, and missile guidance radar.

6. The configuration is compatible for use in F-18 aircraft. The configuration consists of the following WRA's: countermeasures computer/receivers, quadrant receivers, interface antenna detector, interface antenna detector bracket, radome (left/right), antenna detector, isolated antenna controller, radome, and control indicator night vision goggles modification kit. Australia may elect to use existing low band antennas already installed on aircraft or purchase low band interface antenna. The ALR-67(V)3 RWR is classified as Confidential.

7. The Multifunctional Information Distribution System (MIDS) Low Volume Terminal (LVT) is a secure data and voice communication network using the Link-16 architecture. The system provides enhanced situational awareness, positive identification of participants within the network, secure fighter-to-fighter connectivity, secure voice capability, and ARN-118 TACAN functionality. It provides three major functions: Air Control, Wide Area Surveillance, and Fighter-to-Fighter. The MIDS LVT can be used to transfer data in Air-to-Air, Air-to-Surface, and Air-to-Ground scenarios.

8. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: RT-1765 C/USQ-140(V)C MIDS/LVT and MIDS notch filter set. MIDS/LVT is classified as Confidential.

9. The Joint Helmet Mounted Cueing System (JHMCS) provides an off-boresight visual targeting of sensors and weapons with a head-out display where the pilot is looking. The system improves situational awareness in visual combat while providing off-boresight visual cueing and threat identification. Also, when combined with a high off-boresight missile, aircraft weapon system lethality is improved for short-range air-to-air engagements.

10. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: electronics unit, cockpit unit, magnetic transition unit, seat position sensor, mounting bracket, lower helmet vehicle interface, helmet display unit, visor day, visor night, visor high contrast, oxygen mask, helmet upper interface, JHMCS/ANVIS-9 Night Vision Goggles adapters. JHMCS helmet bag. The JHMCS is classified as Confidential.

11. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

12. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19423 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–55]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–55 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2000
In reply refer to:
I-00/007898

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-55, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $159 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-55

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$114 million
Other	$ 45 million
TOTAL	$159 million

(iii) Description of Articles or Services Offered: One hundred ten SM-2 Block IIIA Standard missiles, 110 Mk 13 Mod 0 canisters, containers, spare and repair parts, supply support, personnel training and training equipment, publications and technical data, contractor engineering services and other related elements of logistics support.

(iv) Military Department: Navy (AHU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 18 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - SM-2 Block IIIA Standard Missiles

The Republic of Korea has requested a possible sale of 110 SM-2 Block IIIA Standard missiles, 110 Mk 13 Mod 0 canisters, containers, spare and repair parts, supply support, personnel training and training equipment, publications and technical data, contractor engineering services and other related elements of logistics support. The estimated cost is $159 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Northeast Asia.

Korea will use these missiles as the primary defensive system aboard the KDX-II Destroyer for anti-missile ship protection. Korea will have no difficulty absorbing these missiles into its armed forces

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government representatives in-country. There will be two contractor representatives for six months following the delivery of the missiles to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The SM-2 Block IIIA Standard missile is a U.S. Navy surface-launched guided missile and classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave radar link for homing to the target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor which is an integral part of the missile airframe. The target detecting device is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19424 Filed 8–01–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–56]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–56 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007950

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-56, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $400 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-56

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$250 million
Other	$150 million
TOTAL	$400 million

(iii) Description of Articles or Services Offered: Upgrade of 35 AH-64A to AH-64D model Attack helicopters excluding AH-64D Longbow Fire Control Radar, 35 Target Acquisition Designation Sight/Pilot Night Vision Sensor (TADS/PNVS), two Spare Target Acquisition Designation, spare and repair parts, support equipment, publications and technical documentation, U.S. Quality Assurance Teams, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (UTN)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - AH-64A to AH-64D Model Attack Helicopters

The Government of Egypt has requested a possible sale for the upgrade of 35 AH-64A to AH-64D model Attack helicopters excluding AH-64D Longbow Fire Control Radar, 35 Target Acquisition Designation Sight/Pilot Night Vision Sensor (TADS/PNVS), two Spare Target Acquisition Designation, spare and repair parts, support equipment, publications and technical documentation, U.S. Quality Assurance Teams, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $400 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt desires these articles to fulfill their strategic commitments for self-defense, with coalition support, in the region. The proposed sale will upgrade its anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. Egypt, which already has APACHE helicopters in its inventory, will have no difficulty absorbing these helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be the Boeing Company of Mesa, Arizona and Lockheed Martin Electronics and Missiles of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of several U.S. Government Quality Assurance Teams to Egypt for two weeks to assist in the delivery of deployment of the systems. There will be four U.S. Government and four contractor representatives for one week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-56
Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following classified or sensitive components:

a. The Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) with Optical Improvements (OIP) system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

b. The AN/APR-39A(V)(3) Radar Signal Detecting System provides warning of a radar directed air defense threat to permit appropriate countermeasures. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Technical performance data is classified Secret. Reverse engineering is not a major concern.

c. AN/ALQ-162(V)(6) Radar Jammer provides radar jamming and protection against surface-to-air missiles and Airborne Intercept missiles that continuous wave (CW) radar for guidance.

d. AN/AVR-2A(V) Laser Detecting Set provides passive laser warning system which receives, processes and displays threat information resulting from aircraft illumination by lasers, on the IP-1150A indicator. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised by competent advisory, there would be a substantial technology loss/transfer.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 00-19427 Filed 8-1-00; 8:45 am]
BILLING CODE 5001-10-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–57]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–57 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007951

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-57, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Kuwait for defense articles and services estimated to cost $150 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-57

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 8 million
Other	$142 million
TOTAL	$150 million

(iii) Description of Articles or Services Offered: Various ammunition consisting of 4,110 M831 120mm and 10,728 M433 40mm cartridges, 15,000 M107 155mm projectiles; various caliber of standard U.S. and foreign ammunition; publications and technical documentation; contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (UKL)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Various Ammunition

The Government of Kuwait has requested a possible sale of various ammunition consisting of 4,110 M831 120mm and 10,728 M433 40mm cartridges, 15,000 M107 155mm projectiles; various caliber of standard U.S. and foreign ammunition; publications and technical documentation; contractor technical support and other related elements of logistics support. The estimated cost is $150 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This proposed sale will provide the required munitions for the tracked vehicles, towed artillery, and crew served weapons previously purchased. Kuwait will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

No prime or principal contractors are identified since there are multiple contractors involved in the procurement of the ammunition. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-59

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 50 million
Other	$250 million
TOTAL	$300 million

(iii) Description of Article or Services Offered: Three hundred eleven AN/APX-113 Mark XII Airborne Identification Friend or Foe, Selective Identification Feature System, testing, aircraft integration, spares and repair parts, support equipment, personnel and maintenance training, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: Air Force (SHX)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

[FR Doc. 00–19428 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–60]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–60 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007954

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-60, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $182 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-60

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$137 million
Other	$ 45 million
TOTAL	$182 million

(iii) Description of Articles or Services Offered: Six SPS-48E Three Dimensional (3D) Land Based Radar, decoys, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Navy (LDO)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - SPS-48E Three Dimensional Land Based Radar

The Government of Egypt (GOE) has requested a possible sale of six SPS-48E Three Dimensional (3D) Land Based Radar, decoys, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $182 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This radar will allow the GOE to have overlapping detection capability as well as frequency agility within their 3D radar detection capability. This will enhance their ability to detect, identify, and report on all aircraft and missiles within their area of responsibility with increased probability. This radar will provide the GOE an Air Defense Command with real time display of all air activity and is rugged to support a wide range of operations in all types of weather and terrain conditions. Egypt will have no difficulty absorbing these radar into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the ITT Gilfillan of Van Nuys, California. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of several U.S. Government and contractor representatives to Egypt for a year to assist in the installation of the systems. There will be two U.S. Government representatives for a month to assist in the delivery and resolve problems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-60
Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The classification of the SPS-48 radar system and all associated hardware and software is Unclassified. The SPS-48E Electronic Counter-Counter Measures (ECCM) is critical technology, the ECCM is Unclassified. Threat and security concerns relative to the SPS-48E are founded solely upon the system's operational employment. There is significant anticipated consequence due to loss of this hardware technology to an advance or competent adversary.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 00–19429 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–58]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–58 with attached transmittal and policy justification.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007952

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-58 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $475 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-58

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$350 million
Other	$125 million
TOTAL	$475 million

(iii) Description of Articles or Services Offered: Five hundred AIM-120C Advanced Medium Range Air to Air Missiles (AMRAAM), software updates to support AMRAAM operational and training devices, missile containers, LAU-128 missile launchers, Captive Air Training Missiles, spare and repair parts, publications and technical documentation, maintenance and pilot training, and other related elements of logistical and program support

(iv) Military Department: Air Force (YPY)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Saudi Arabia has requested a possible sale of 500 AIM-120C Advanced Medium Range Air to Air Missiles (AMRAAM), software updates to support AMRAAM operational and training devices, missile containers, LAU-128 missile launchers, Captive Air Training Missiles, spare and repair parts, publications and technical documentation, maintenance and pilot training, and other related elements of logistical and program support. The estimated cost is $475 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Saudi Arabia needs these missiles to replace their current inventory of AIM-7F missiles, which are rapidly becoming obsolete and unsupportable logistically (1960's technology), and enhance the air-to-air self defense capability of its F-15 fleet. Saudi Arabia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Missile Systems, Tucson, Arizona and Boeing Aircraft, St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19430 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–59]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–59 with attached transmittal and policy justification.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007953

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-59 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $300 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-57

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The M433 40mm cartridges are Unclassified; however, the terminal effect requirements and the test result evaluations are classified Confidential.. This data could be used by a technologically advanced adversary to develop countermeasures and evasive tactics

2. A determination has been made that Kuwait can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

POLICY JUSTIFICATION

Egypt - AN/APX-113 Mark XII Airborne Identification Friend or Foe, Selective Identification Feature System

The Government of Egypt has requested a possible sale of 311 AN/APX-113 Mark XII Airborne Identification Friend or Foe, Selective Identification Feature System, testing, aircraft integration, spares and repair parts, support equipment, personnel and maintenance training, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $300 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Middle East.

Egypt will use this system to upgrade their identification capability and improve the overall air defense system within their country. The IFF system will be integrated into air, sea, and ground defense systems to provide identification of friendly aircraft within the Egyptian airspace. The system will increase interoperability with U.S. forces. Egypt will have no difficulty absorbing this system into their armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be BAE Systems, Advanced System of Greenlawn, New York and Lockheed Martin Tactical Aircraft System of Fort Worth, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19431 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–49]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–49 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007452

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-49, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Italy for defense articles and services estimated to cost $135 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Italy

(ii) Total Estimated Value:

Major Defense Equipment*	$ 75 million
Other	$ 60 million
TOTAL	$135 million

(iii) Description of Articles or Services Offered: Fifty SM-2 Block IIIA STANDARD missiles with weapon system components, four MK 74 Mod 15 (X-band) Missile Fire Control System, containers, test sets, systems, transmitters, modification kits, spare and repair parts, support and test equipment, publications and technical documentation, training, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (LFT)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy - SM-2 Block IIIA STANDARD Missiles

The Government of Italy has requested a possible purchase of 50 SM-2 Block IIIA STANDARD missiles with weapon system components, four MK 74 Mod 15 (X-band) Missile Fire Control System, containers, test sets, systems, transmitters, modification kits, spare and repair parts, support and test equipment, publications and technical documentation, training, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $135 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Italy and further weapon system standardization and interoperability with U.S. forces.

Italy will use these missiles as replacements for older or less effective missiles currently in the Italian Self Defense Force fleet. Italy, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be Raytheon Missile Systems Company of Tucson, Arizona; BAE Systems of Rockville, Maryland; Raytheon Electronic Systems of Sudbury, Massachusetts; United Defense of Minneapolis, Minnesota; and Litton Marine Systems of Charlottesville, Virginia. Typically the GOI imposes a 50% offset against U.S. contractors marketing weapons systems in Italy; however, at this time, there is no known offset agreement associated with this proposed sale.

Implementation of this proposed sale will require the assignment of four contractor representatives to Italy for four weeks to assist in the delivery and deployment of the missiles. Additionally, there will be 10 contractor representatives for one week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The possible sale of STANDARD SM-2 missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:

- **a. Parametric documents (C)**
- **b. Missile Handling Procedures (U)**
- **c. General Performance Data (C)**

2. The MK 612 Mod 4 Intermediate Maintenance Test Set is classified Secret due to the frequencies and formats contained in its software.

3. The MK 14 Weapon Direction System (WDS) is classified Confidential. The OT-134 Continuous Wave Illumination (CWI) Transmitter is unclassified, but considered sensitive. Technical documentation and publications for testing, operation and maintenance are Confidential.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Italy can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19432 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–52]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–52 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007505

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-52 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Portugal for defense articles and services estimated to cost $100 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-52

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Portugal

(ii) Total Estimated Value:

Major Defense Equipment*	$0 million
Other	$100 million
TOTAL	$100 million

(iii) Description of Articles or Services Offered: Twenty Mid-Life Update (MLU) modification kits for Portuguese Air Force (PAF) F-16A/B aircraft, radar, modem, receivers, installation, avionics, spare and repair parts, support equipment, training and training devices, technical assistance, publications and technical documentation, system drawings, U.S. Government and contractor engineering, and other related logistics elements necessary for full program support.

(iv) Military Department: Air Force (NMP, Amendment 2)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Portugal - F-16A/B Mid-Life Update Modification Kits

The Government of Portugal has requested a possible sale for 20 Mid-Life Update (MLU) modification kits for Portuguese Air Force (PAF) F-16A/B aircraft, radar, modem, receivers, installation, avionics, spare and repair parts, support equipment, training and training devices, technical assistance, publications and technical documentation, system drawings, U.S. Government and contractor engineering, and other related logistics elements necessary for full program support. The estimated cost is $100 million.

The MLU production phase is the continuation of the development program notified to the Congress in August 1990. This multi-national effort has included the countries of Belgium, Denmark, The Netherlands, Norway, and now Portugal who have participated with the United States Air Force in the full scale MLU engineering development and integration effort. The MLU is an avionics retrofit program for F-16 aircraft consisting of: Heads-Up Display Pilot's Display Unit, AN/APX-113 Advanced Identification Friend or Foe, Common Color Multi-Function Displays, Common Programmable Display Generator, Modular Mission Computer, Voice Message Unit, Common Data Entry Electronics Unit, Global Positioning System antennas, Interference Blanking Unit, configuration of APG-66(V)2 radar.

The proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Portugal and further weapon system standardization and interoperability with U.S. forces.

The proposed sale will enable Portugal to augment its current F-16 aircraft inventory and to develop a continuous air defense capability within its national boundaries.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Aircraft Systems of Fort Worth, Texas and Northrop-Grumman of Baltimore, Maryland. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Portugal.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-52

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The F-16 weapon system is unclassified except as noted below; however it possesses state-of-the art technology in weapon capabilities and manufacturing techniques. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters, munitions-related data, and similar critical information. If a technologically advanced adversary were to obtain knowledge of these specific hardware and software elements, it might be able to develop countermeasures or counter tactics that could reduce weapon system effectiveness.

2. The sensitive elements of the F-16 A/B Mid Life Update (MLU) configuration include the F-220(E) turbofan engine, the AN/APG-66(V)2 radar computer object code, the fly-by wire flight control system, AIM-7 and AIM-9, and AIM-120 (AMRAAM) missile capability. In addition, the MLU configuration contains cryptological equipment necessary for secure voice and data transmissions as well as the classified system, Advanced Identification Friend or Foe (AIFF). Classified elements of the F-16 also include the engine infrared signature, radar software documentation, Radar Cross Section (RCS) characteristics, signature reduction techniques, Operational Flight Program (OFP) and object code for the Fire Control Computer, Stores Management Set Computer, Multifunctional Display Computer and the Modular Mission Computer. Some operating manuals and maintenance technical orders (approximately 15) are also sensitive because they contain performance information, operating and test procedures, and other information related to support operations and repair.

3. A determination has been made that the Government of Portugal can provide substantially the same degree of protection for the technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification.

[FR Doc. 00-19433 Filed 8-1-00; 8:45 am]
BILLING CODE 5001-10-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00-53]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00-53 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-10-M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007630

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-53 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Denmark for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-53

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Denmark

(ii) Total Estimated Value:

Major Defense Equipment*	$18 million
Other	$22 million
TOTAL	$40 million

(iii) Description of Articles or Services Offered: Four hundred GBU-31 Joint Direct Attack Munition (JDAM) tail kits, 120 BLU-109 Bombs, 400 Joint Programmable Fuzes, four Common Munitions Bit Reprogramming Equipment devices, three inert warheads, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) Military Department: Air Force (YAH)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Denmark - Joint Direct Attack Munitions Tail Kits

The Government of Denmark has requested a possible purchase of 400 GBU-31 Joint Direct Attack Munition (JDAM) tail kits, 120 BLU-109 Bombs, 400 Joint Programmable Fuzes, four Common Munitions Bit Reprogramming Equipment devices, three inert warheads, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Denmark and further weapon system standardization and interoperability with U.S. forces.

Denmark will use these new munitions to upgrade and support their existing systems. This proposed sale will contribute significantly to U.S. strategic and tactical objectives by strengthening the unity and interoperability within NATO. Denmark will have no difficulty absorbing JDAM into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis, Missouri. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of a U.S. Government or contractor representatives to Denmark.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-53

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Joint Direct Attack Munition is actually a guidance kit that converts existing unguided free-fall bombs (such as MK 84 and BLU-109) into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS)/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs or BLU-109, the cost effective JDAM provides highly accurate weapons delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. Weapons accuracy is dependent on target coordinates and present position inputs into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates.
INS/GPS capability
Operational Test and Evaluation Plan.

3. The BLU-109/B is a penetrating bomb designed to penetrate 4-6 feet of concrete before detonation. The weapon is made of extremely hard steel casing material, with the shape optimized for penetration. It is Unclassified.

4. A determination has been made that the Government of Denmark can provide substantially the same degree of protection for the technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification.

[FR Doc. 00–19434 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–54]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–54 with attached transmittal, policy justification, Sensitivity of Technology, and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007810

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-54 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $250 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-54

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 16 million
Other	$234 million
TOTAL	$250 million

(iii) Description of Articles or Services Offered: Seven HAWK missiles, eight AN/MPQ-64 SENTINEL radar, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U. S. Government Quality Assurance Teams and other related elements of logistics support.

(iv) Military Department: Army (JBB and VAL)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - HAWK Missiles with SENTINEL Radars

The Government of Turkey has requested a possible sale for seven HAWK missiles, eight AN/MPQ-64 SENTINEL radar, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U. S. Government Quality Assurance Teams and other related elements of logistics support. The estimated cost is $250 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by maintaining the military capabilities of Turkey while enhancing weapon system standardization and interoperability.

Turkey will use these HAWK missiles to augment their inventory and maintain an air defense capability. The missiles will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company of Andover, Massachusetts. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five U.S. Government representatives for five years to support this program. There will be nine U.S. Government or contractor representatives for two weeks, twice annually, to participate in program management and technical reviews. Additionally, two contractor representatives will be required to Turkey for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-54

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HAWK missile system contains more than 500 components which are Classified as well as components that are sensitive but not classified. These items are so identified to protect the system from being defeated by exploiting specific system characteristics. Technology which must be protected is in the missile, radars, and control elements of the system. Continuous wave low noise Radio Frequency technology has been unique to HAWK for many years. The techniques for isolation of transmitter and receiver elements are difficult and sensitive.

2. The AN/MPQ-64 SENTINEL radar is a new generation, I/J-band, 3-Deminsional radar for the U.S. Army Forward Area Air Defense System (FAADS). It is used to generate track data to inform FAADS weapons of the location of targets approaching their front-line forces. Based on the TPQ-36A radar, the AN/MPQ-64 is the key to air surveillance and provides target acquisition/tracking information for division and corps weapons. The export version of SENTINEL radar hardware and software is Unclassified individually. The system classification is Confidential when software is loaded into the hardware.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Turkey can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under § 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (Sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Turkey seven HAWK, eight AN/MPQ SENTINEL radars, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Teams and other related elements of logistics support with a value of $250 million is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Adviser
for Arms Control and
International Security

[FR Doc. 00-19435 Filed 8-1-00; 8:45 am]
BILLING CODE 8001-10-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–61]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–61 with attached transmittal and policy justification.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007631

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-61, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Poland for defense articles and services estimated to cost $85 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-61

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Poland

(ii) Total Estimated Value:

Major Defense Equipment*	$ 2 million
Other	$83 million
TOTAL	$85 million

(iii) Description of Articles or Services Offered: Two SH-2G spare helicopter engines, aircraft activation, personnel training and training equipment, spare and repair parts, support equipment, facilities, calibration services, publications and technical documentation, supply support, U.S. Government and contractor technical and logistics personnel services and other related program elements to sustain the operational requirements of the excess helicopters.

(iv) Military Department: Navy (SAE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland - SH-2G Spare Engines, Services and Logistics Support

The Government of Poland has requested a possible sale for two SH-2G spare helicopter engines, aircraft activation, personnel training and training equipment, spare and repair parts, support equipment, facilities, calibration services, publications and technical documentation, supply support, U.S. Government and contractor technical and logistics personnel services and other related program elements to sustain the operational requirements of the excess helicopters. The estimated cost is $85 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Poland and further weapon system standardization and interoperability with U.S. forces.

Poland will use the spare engines on their excess SH-2G helicopters and supporting ASW helicopters to modernize its defensive naval capabilities. Poland will have no difficulty absorbing these engines into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Kaman Corporation of Bloomfield, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of a U.S. Government or contractor representatives to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19436 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:00 a.m. to 5:00 p.m. on September 7, 2000, and from 8:00 a.m. to 5:00 p.m. on September 8, 2000. The meeting will be held at The Inn at Newport Beach, Memorial Boulevard, Newport, Rhode Island. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than August 18, 2000.

Dated: July 27, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19416 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Date of Meeting: September 13, 2000 from 0830 to 1705, September 14, 2000 from 0830 to 1630, and September 15, 2000 from 0830 to 1115.

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19438 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Fourth Supplemental Record of Decision (FSROD) for the Disposal and Reuse of Grissom Air Force Base (AFB), Indiana

On July 14, 2000, the Air Force issued the Fourth Supplemental Record of Decision (FSROD) for the Disposal and Reuse of Grissom AFB, Indiana. The decision included in this FSROD has been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the disposal and reuse of Grissom AFB, filed with the Environmental Protection Agency and made available to the public on September 6, 1994.

Grissom AFB closed on September 30, 1994, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on October 11, 1994 and Supplemental RODs on June 30, 1997, April 14, 1998, and August 13, 1999, that documented decisions regarding the intended disposal of Government-owned property at the base. Since the issuance of the ROD and the Supplemental RODs, changing governmental priorities and economic situations have required a modification to the following Air Force disposal decisions: Parcel 01 (Electrical Distribution System, including approximately 1 acre of land) and 06 (Gas Distribution System) are made available for disposal by Economic Development Conveyance (EDC) rather than negotiated sale to utility companies.

The implementation of these conversion activities and associated environmental mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment. The analyses contained in the FEIS are still valid. Any questions regarding this matter may be directed to Mr. John J. Corradetti, Jr., Program Manager, Division A, at 703–696–5250. Correspondence should be sent to AFBCA/DA, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–19439 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1986]

Oregon Trail Electric Consumers Cooperative Inc.; Notice Soliciting Applications

July 27, 2000.

On July 1, 1991, Oregon Trail Electric Consumers Inc., licensee for the rock Creek Hydroelectric Project No. 1986, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act). The original license for Project No. 1986 was issued effective June 30, 1946, and expired June 29, 1996. The project occupies 6.29 acres of land of the United States within the Whitman National Forest.

The project is located on the Rock Creek, a tributary of the Powder River, in Baker County, Oregon. The principal project works consist of: (a) low concrete diversion dam; (b) an8,800-foot-long flume; (c) a regulating forebay of about 7 acre-feet; (d) a 2,720-foot-long penstock; (e) a powerhouse with a total installed capacity of 800 kW; (f) a transmission line; and (g) appurtenant facilities.

The licensee did not file an application for new license which was due by June 29, 1994. Pursuant to section 16.25 of the Commission's Regulations, the Commission solicited applications from potential applicants other than the existing licensee. On June 19, 1995, a prospective applicant

responded to the notice soliciting applications. The Commission accepted the notice of intent to file a license application and has been waiting since June 19, 1995, for an adequate application. However to date this has not happened. Therefore, the Commission is again soliciting applications for the Rock Creek Project.

Pursuant to section 16.19 of the Commission's Regulations, the licensee is required to make available certain information described in Section 16.7 of the regulations. Such information is available from the licensee at 3275 Baker Street, Baker City, OR 97814.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) may apply for a license under part 1 of the Act and part 4 (except section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of section 16.8 of the Commission's Regulations.

David P. Boergers,

Secretary.

[FR Doc. 00–19455 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–407–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

July 27, 2000.

Take notice that on July 19, 2000, Southern Natural Gas Company (Southern), 1900 5th Avenue North, Birmingham, Alabama 35203, filed in Docket No. CP00–407–000 a request pursuant to Section 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR sections 157.205 and 157.216) and Southern's blanket certificate authorization granted in Docket No. CP82–406–000 requests authorization to abandon certain facilities as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Specifically, Southern requests authorization to abandon by sale to Mississippi Valley Gas Company (MVGC): (1) The Clayton Village Meter Station in Oktibbeha County, Mississippi; and (2) the Starkville Meter Station in Oktibbeha County, Mississippi. Southern states that it will abandon these delivery points under section 157.216(b)(1). Southern also states that it will abandon by sale to MVGC: (a) Approximately 10 miles of the 6-inch Starkville Lateral in Lowndes and Oktibbeha Counties, Mississippi; and (b) the Starkville Tap Regulator Station which consists of two 3-inch regulators and a relief value and is located in Lowndes County, Mississippi, under the automatic authorization of section 157.216(a)(2). In addition, Southern also states that it will make such modifications as deemed necessary to effect delivery to MVGC's system after the purchase and sale of the Facilities. Specifically, Southern indicates that it will construct, install and operate a six-inch tap in Lowndes County, Mississippi. Southern has also indicated that it will construct, install and operate the tap as a delivery point facility under section 157.211(a) of the Commission's Regulations pursuant to its blanket certificate of public convenience and necessity. Southern states that MVGC will construct and own a new delivery station consisting of one six-inch and one four-inch meter run, one regulator station and appurtenant facilities, at its property located at Southern's tap.

Any person or the Commission's Staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 00–19457 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–157–000, et al.]

Kiowa Power Partners, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 26, 2000.

Take notice that the following filings have been made with the Commission.

1. Kiowa Power Partners, L.L.C.

[Docket No. EG00–157–000]

Take notice that on July 13, 2000, Kiowa Power Partners, L.L.C. (the Applicant) whose address is 359 Lake Park Road, Suite 128, Lewisville, Texas 75057, filed with the Federal Energy Regulatory Commission, an amendment to its application for determination of exempt wholesale generator status submitted in the above-referenced proceeding.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Duquesne Light Company

[Docket No. ER00–2571–001]

Take notice that on July 20, 2000, Duquesne Light Company (Duquesne) tendered for filing an Attachment A to an amended long-term service agreement between Duquesne and Orion Power Midwest, L.P. filed at the Commission on July 14, 2000. Duquesne reports that Attachment A was inadvertently omitted from the July 14th filing.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Energy Vermillion, LLC

[Docket No. ER00–2873–001]

Take notice that on July 21, 2000, Duke Energy Vermillion, LLC (Duke Vermillion) submitted for filing a response to the Staff's deficiency letter issued in this docket on June 22, 2000.

Duke Vermillion reiterates its request for an effective date of May 15, 2000, for its Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1 with Duke Energy Trenton, LLC and Cincap VIII.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy Madison, LLC

[Docket No. ER00–2874–001]

Take notice that on July 21, 2000, Duke Energy Madison, LLC (Duke Madison) submitted for filing a response

to the Staff's deficiency letter issued in this docket on June 22, 2000.

Duke Madison reiterates its request for an effective date of May 29, 2000, for its Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1 with Duke Energy Trenton, LLC and Cincap VIII.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Green Valley Hydro, LLC

[Docket No. ER00–2924–001]

Take notice that on July 21, 2000, Green Valley Hydro, LLC (Green Valley) filed an amendment to its application for a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates all as more fully described in the application.

Green Valley requests an effective date no later than July 24, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Rayburn Country Electric Cooperative, Inc.

[Docket No. ES00–49–000]

Take notice that on July 19, 2000, Rayburn Country Electric Cooperative, Inc. (Rayburn) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to borrow not more than $25 million under a Letter of Credit.

Rayburn also requests a waiver from the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER00–3004–001]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered an amended filing containing the executed versions of the following agreements with Sempra Energy Trading Corporation (Transmission Customer).

1. Second Amended Service Agreement for Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, First Revised Volume No. 5;

2. Second Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Original Volume No. 5.

The amended filing was made to replace and supercede unexecuted versions of the agreements with the executed versions. The Company requests an effective date of June 1, 2000, the date service was first provided to the customer under the amended agreements.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–3234–000]

Take notice that on July 21, 2000, Alliant Energy Corporate Services, Inc., tendered for filing an executed Service Agreement for Short-Term Firm Point-to-Point transmission service, establishing Central Minnesota Municipal Power Agency as a Short-Term Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of April 17, 2000 and accordingly seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER00–3235–000]

Take notice that on July 21, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Network Service Agreement, Network Operating Agreement, and Specifications for Network Integration Transmission Service under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and the City of Lebanon.

An Application for Network Integration Service for the City of Lebanon, Ohio has been included as an Exhibit to the Service Agreement under the OATT.

Copies of the filing were served upon the City of Lebanon, Ohio.

Cinergy and the City of Lebanon are requesting an effective date of July 1, 2000.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3236–000]

Take notice that on July 21, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and EnerZ Corporation, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 78.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER00–3237–000]

Take notice that on July 21, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and FPL Energy Power Marketing, Inc.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER00–3238–000]

Take notice that on July 21, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated July 20, 2000 with Cinergy Operating Companies under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Cinergy Operating Companies as a customer under the Tariff.

DLC requests an effective date of July 20, 2000, for the Service Agreement.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy Operating Companies

[Docket No. ER00–3239–000]

Take notice that on July 21, 2000, Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (collectively, the FirstEnergy Operating Companies), tendered for filing a Generating Interconnection and Operating Agreement with Mid-Atlantic Energy Development Company (Mid-Atlantic) (the Interconnection Agreement).

The FirstEnergy Operating Companies state that Mid-Atlantic is installing three generating units with a total capacity of 390 MW at the site of the Richland peaking plant of Toledo Edison in Defiance, Ohio. The FirstEnergy Operating Companies further state that the Interconnection Agreement establishes the terms and conditions under which the generating units being installed by Mid-Atlantic will be permitted to interconnect and operate in parallel with the existing FirstEnergy Operating Companies' electric system.

The FirstEnergy Operating Companies are proposing to make the Interconnection Agreement effective as of July 22, 2000.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19454 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

July 27, 2000.

Take notice that the Commission intends to hold scoping meetings for the following hydroelectric applications which have been filed with the Commission:

a. *Type of Applications:* Two Original Major Licenses.

b. *Project Nos.:* 10461–002 and 10462–002.

c. *Date filed:* May 31, 1990.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Parishville Project and Allens Falls Project.

f. *Location:* On the West Branch of the St. Regis River, near the village of Parishville, St. Lawrence County, New York. The projects would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Erie Boulevard Hydropower, L.P., Suite 201, 225 Greenfield Parkway, Liverpool, NY 13088–6656, (315) 413–2700.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803.

j. *Deadline for filing scoping comments:* September 18, 2000.

All documents (original and eight copies should be filed with: David P. Boergers. Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* The applications are not ready for environmental analysis at this time..

l. *Description of Projects:*

Parishville Project: The project consists of the following existing facilities: (1) a dam composed of an earthen dike and various concrete structures; (2) an intake structure; (3) a penstock 2,561 feet long and six to 10 feet in diameter; (4) a powerhouse housing a 2,400-kilowatt (kW) hydropower unit; (5) at tailrace 400 feet long; (6) a 4.8-kilovolt (kV) transmission line; and (7) appurtenant facilities.

Allens Falls Project: The project consists of the following existing facilities: (1) a concrete gravity type dam with flashboard two feet high; (2) an intake structure; (3) a pipeline 9,344 feet long and seven feet in diameter; (4) a differential surge tank; (5) a penstock 886 feet long and seven feet in diameter; (6) a powerhouse housing a 4,400-kW hydropower unit; (7) a tailrace 450 feet long; (8) a 115-kV transmission line; and (9) appurtenant facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Scoping Process.

The Commission staff intends to prepare a Multiple Project Environmental Assessment (MPEA) for the Parishville Project (FERC No. 10461–002) and the Allens Falls Project (FERC No. 10462–002). The staff believes that combining both the projects into one environmental document would provide the best approach for analyzing potential cumulative environmental effects associated with both projects located relatively close to one another on the West Branch of the St. Regis River.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to identify the scope of issues to be addressed in the MPEA.

The evening scoping meeting is primarily for public input, while the daytime scoping meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the MPEA. The times and locations of these meetings are as follows:

Evening Meeting

Date: August 16, 2000
Time: 7 p.m.–10 p.m.
Place: Auditorium
Parishville-Hopkinton Central School
12 County Route 47
Parishville, NY 13762

Daytime Meeting

Date: August 17, 2000

Time: 9 a.m.–12:00 p.m.

Place: High School Library

Parishville-Hopkinton Central School

12 County Route 47

Parishville, NY 13762

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the MPEA to the parties on the Commission's mailing lists. Copies of the SD1 will also be available at the scoping meetings.

Site Visits

The Applicant and Commission staff will conduct a site to the projects on Wednesday, August 16, 2000, starting at 10 a.m. We will meet at the Parishville Project dam on Route 72 in Parishville. Those who wish to attend the site visit should contact Peter Leitzke of FERC at (202) 219–2803 or Jerry Sabattis of Erie Boulevard Hydropoer, L.P., at (315) 413–2700 on or before August 11, 2000.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the MPEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the MPEA; (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis; and (6) identify how the projects contribute to cumulative impacts in each project area and the West Branch of the St. Regis River Basin.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding for these projects. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and to identify themselves clearly for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in this MPEA.

David P. Boergers,

Secretary.

[FR Doc. 00–19456 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

July 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Proposal to divert water released from Fairview Dam during concrete repairs.

b. *Project No.:* 2290–042.

c. *Date Filed:* June 27, 2000.

d. *Applicant:* Southern California Edison.

e. *Name of Project:* Kern River No. 3 Hydroelectric Project.

f. *Location:* The Project is located on the North Fork Kern River, Salmon and Corral Creeks in Tulare and Kern Counties, California.The project utilizes federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Cruz, Southern California Edison, 300 N. Lone Hill Avenue, San Dimas, CA 91773. Tel. (909) 394–8694.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. John K. Novak at (202) 219–2828 or by e-mail at *John.novak@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* August 22, 2000.

Please include project number (P–2290–042) on any comments or motions filed.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Filing:* Southern California Edison (Edison) filed plans and specifications for resurfacing the Fairview Dam to repair spalled concrete and seal the surface with a protective waterproof coating. In order to conduct this work in dry conditions, Edison will divert the minimum flow released from the dam to a point about 200 feet downstream of the dam. Edison proposes to start activities in late August 2000 and expects to take about 8–10 weeks. The Fairview dam is listed on the National Register of Historic Places.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19458 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00667; FRL–6594–3]

Data Acquisition for Registration; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Data Acquisition for Registration (EPA ICR No. 1503.03, OMB No. 2070–0122)." This is a request to renew an existing ICR that is currently approved and due to expire December 31, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00667, must be received on or before October 2, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00667 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant with a product registered under section 3 or section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected categories and entities may include, but are not limited to:

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6082 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00667. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00667 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00667. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Data Acquisition for Registration

ICR numbers: EPA ICR No. 1503.03, OMB No. 2070–0122

ICR status: This a renewal of an existing ICR that is currently approved by OMB and is due to expire December 31, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to the approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136) requires the EPA to register pesticides prior to distribution and sale within the United States. FIFRA also requires applicants for pesticide registration to provide EPA with the data needed to assess whether the registration of a pesticide would cause unreasonable adverse effects on human health or the environment, and grants EPA the authority to require registrants to provide additional data to maintain an existing registration.

Sometimes additional data are necessary for the Agency's Office of Pesticide Programs (OPP) to evaluate whether a current registration should be maintained. One common trigger for the requirement of additional data is the EPA's program to reduce the use of pesticide inert ingredients of toxicological concern, which may lead to additional data needed to support continued use of these ingredients in registered pesticides. When the need for additional data arises, OPP issues to affected registrants a Data Call-In notice (DCI) under the authority of FIFRA section 3(c)(2)(B). In addition, data supporting pesticide inert ingredients may be called-in based on OPP's policy statement on inert ingredients in pesticide products (52 FR 13305, April 22, 1987, and November 22, 1989, 54 FR 48314).

Registrants of products containing inert ingredients of toxicological concern (List 1, chemicals for which data already exist that demonstrate a defined toxicological effect) will be subject to a DCI. Since these inert ingredients have demonstrated certain toxic effects, OPP requires the submission of data equivalent to 40 CFR part 158 data requirements for active ingredients. The full complement of 40 CFR part 158 data requirements includes the submission of all applicable studies in the areas of product chemistry, residue chemistry, environmental fate, toxicology, wildlife and aquatic organisms, plant protection, and nontarget insects.

List 2 inert ingredients, which are potentially toxic may be subject to a lesser set of data. In these cases, after review of available studies, the data that will be required to be submitted will focus on the effects of concern that led to listing on List 2. The results of this testing will determine whether to elevate the inert ingredient to List 1.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated to be 91,196 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Nine

Frequency of response: Once annually

Estimated total/average number of responses for each respondent: One

Estimated total annual burden hours: 91,196

Estimated total annual burden costs: $7,571,569

VI. Are There Changes in the Estimates from the Last Approval?

The total annual burden hours and cost estimated for respondents have decreased from 208.132 to 91,196 due to a decrease in number of respondents and the associated cost from $16,011,809 to $7,571,569. While there was an increase in the number of responses from 5 to 6 for List 2 inert ingredients, the number of respondents for special studies decreased from 23 to respondents to one. Meeting the new FQPA standard has increased the burden hours for additional studies by 9%. Cost increases occurred in the estimated hourly rates for management, technical, and clerical reflect more current values from $114.2 to $123, $76.91 to $83, and from $34.96 to $38 respectively.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

Environmental protection, Reporting and recordkeeping requirements, Inert ingredients.

Dated: July 18, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–19348 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–8]

Agency Information Collection Activities Up for Renewal; Request for Comments: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB); Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (OMB) #2060–0060, approved through 8/31/00). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collections as described below.

DATES: Comments must be submitted on or before October 2, 2000.

ADDRESSES: Comments must be submitted to Chestine Payton, (6405J) U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Interested persons may request a copy of the ICR without charge, by calling Chestine Payton at (202) 564–9328.

FOR FURTHER INFORMATION CONTACT: Chestine Payton, Office of Transportation and Air Quality, Vehicle Programs and Compliance Division, (202) 564–9328, fax (202) 565–2057. E-mail address: *payton.chestine@epa.gov.*

SUPPLEMENTARY INFORMATION: Affected entities: Parties potentially affected by this action are those which automotive manufacturers and builders of automotive aftermarket parts.

Title: Emission Control Systems Performance Warranty Regulations & Voluntary Aftermarket Part Certification Program, OMB 32060–0060, Expiration date 8/31/00.

Abstract: The information required is the minimal necessary to ensure that the part to be certified actually performs as required. Without this information EPA would have no way to control and audit fraudulent or marginal submissions. Since information is only collected when the part is tested to be certified, if no information is collected at the time of testing there will be no means of showing later that the part was properly designed, EPA would not be able to control the self-certification of parts and this could, therefore, result in certified parts that cause vehicles to fail emissions standards.

The information collected is part of the requirement of Section 207(a) of the Clean Air Act, as described in section 40 CFR Part 85, Subpart V. This is a voluntary certification program and there is no requirement that any manufacturer participate.

The total estimated involvement of the aftermarket part industry 9 replacement and specialty parts) is 2 parts per year.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA's burden estimated for this information collection is broken down into three parts: reporting, testing and recordkeeping burden. EPA estimates that the reporting burden will be 116 hours, testing 260 hours and annual recordkeeping 3 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information;

adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Parties potentially affected by this action are automotive manufacturers and builders of automotive aftermarket parts;

Estimated Number of Respondents: 2.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,722 hours.

Estimated Total Annualized Cost Burden: $75,889.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address. Please refer to EPA ICR No. 0116.05 and OMB Control No. 2060–0060 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 27, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–19539 Filed 8–1–00; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34233; FRL–6598–3]

Pesticides; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of the EPA's process for making Reregistration Eligibility Decisions (REDs) for pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and ecological risk assessments and related documents for propargite. These risk assessments are being released to the public as part of the joint initiative between EPA and the Department of Agriculture (USDA) to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: The risk assessments and related documents are available in the OPP Docket. While there is no formal public comment period, the Agency will accept comments on the risk assessment documents. Comments submitted within the first 30 days are most likely to be considered.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number of the chemical of specific interest in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for propargite, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http: www.epa.gov/pesticides.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34233. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information

Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of EPA's process for tolerance reassessment and reregistration. While there is no formal public comment period, the Agency will accept comments on the risk assessment documents. Comments submitted within the first 30 days are most likely to be considered. REDs for pesticides developed under the interim process will be made available for public comment.

EPA and USDA have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as propargite, EPA and USDA have adopted an interim public participation process for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration in 2000. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. The interim public participation process for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration in 2000 and 2001 takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record is the Agency's risk assessments and related documents for propargite. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the pesticides listed in this notice. These risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 27, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–19511 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66278; FRL–6736–7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by, January 29, 2001, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT."

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday thru Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 55 pesticide products registered under section 3 or 24 of FIFRA. These registrations are listed in sequence by registration number (or company number and 24 number) in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000239–02483	Ortho Methoxychlor 70 Dust Base	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
000264–00512	Chlorinated Trisodium Phosphate	Chlorinated trisodium phosphate
000577–00546	Cuprinol Stain & Wood Preservative	Tetrachloroisophthalonitrile
		Bis(tributyltin) oxide
000787–00042	Mothine Mothproofing	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
000787–00043	Pro-Tec II Moth Proofing	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
001448–00030	Busan 25	2-(Thiocyanomethylthio)benzothiazole
		S-(2-Hydroxypropyl) thiomethanesulfonate
001448–00078	Busan 1005	*S*-(2-Hydroxypropyl) thiomethanesulfonate
001448–00090	Busan 1023	*S*-(2-Hydroxypropyl) thiomethanesulfonate
		Poly(oxyethylene(dimethy- liminio)ethylene(dimethyliminio) ethylene dichloride)
002217–00129	50% Methoxychlor Wettable Powder	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002217–00131	Methoxychlor Emulsion Concentrate	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002217–00527	Methoxychlor Tree Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002217–00628	Methoxychlor 75 Dust Base	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002935–00385	Methoxychlor 2 Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002935 WA–92–0037	Busan 1020	Sodium *N*-methyldithiocarbamate
002935 WA–93–0016	Wilbur-Ellis Diazinon 4 Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
003125 ND–93–0006	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 WA–97–0004	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
004691–00096	Horse Spray & Rub-On	Butoxypolypropylene glycol
		Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004708–00029	U-San-O Mothproofing Solution	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
005905–00239	Diazinon Methoxychlor Insecticide	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
006836–00262	Isocil OG 1.5	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
007401–00118	Hi-Yield 2 lb. Methoxychlor Emulsifiable Concentrate	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
007401–00121	V P G Range Cattle Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00172	Ferti-Lome Fruit Tree Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00187	Hi-Yield Brand Cattle Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00254	Vegetable Garden Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
007401–00271	Hi-Yield Livestock Spray No.3	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00275	Hi-Yield Dairy and Livestock Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00328	Hi-Yield General Purpose Garden Insect Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00368	Ferti-Lome Bagworm & Tent Caterpillar Killer	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00380	American Brand Bulb Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		Tetramethyl thiuramdisulfide
007401–00397	Hi-Yield Methoxychlor Garden Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
008660–00043	Vertagreen 25% Methoxychlor	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
008660–00051	50% Methoxychlor WP	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
008660–00135	Dairy Cattle Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
026293–00298	Martin's Livestock Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
033955–00528	Acme Methoxychlor 50% Wettable	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034704–00102	Clean Crop Methoxychlor 2 EC	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034704–00205	Clean Crop Malathion/Methoxychlor Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
034704–00652	Captan-Methoxychlor 75–3 WP Seed Protectant	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00660	Thiram-Methoxychlor 70–2 WP Seed Protectant	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) Tetramethyl thiuramdisulfide
034704–00670	Methoxychlor 25 EC	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034704–00760	Fruit Tree Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704 OR–97–0018	Clean Crop Methoxychlor 2 EC	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034911–00007	Hi-Yield General Purpose Insect Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00041	25% Methoxychlor Emulsifiable Insecticide	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
047000–00070	Spray Concentrate	Butoxypolypropylene glycol Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
050534 OR–77–0025	Bueno-6	Monosodium acid methanearsonate
058185–00017	Omalin Contact Fungicide 50% Wettable Powder/turf	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
058185–00021	Omalin Concentrate Fungicide	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
063281–00005	Beaucoup Germicidal Detergent	2-Benzyl-4-chlorophenol 4-tert-Amylphenol *o*-Phenylphenol
067517–00006	Horse Spray Concentrate Insecticide	Butoxypolypropylene glycol Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
067517–00016	Cattle Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
067619–00004	Cppc Ultra Bleach	Sodium hypochlorite
067760–00002	Cheminova Malathion—Methoxychlor Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

Unless a request is withdrawn by the registrant within 180 days (30 days when requested by registrant) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant during this comment period.

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000239	The Scotts Co., D/b/a The Ortho Group, Box 1749, Columbus, OH 43216.
000264	Aventis CropScience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000577	The Sherwin-Williams Co., Cuprinol Group/The Thompson's Co., 101 Prospect Ave, Cleveland, OH 44115.
000787	ADCO Inc., Po Box 999, Sedalia, MO 65301.
001448	Buckman Laboratories Inc., 1256 North Mclean Blvd, Memphis, TN 38108.
002217	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd, Box 4913, Kansas City, MO 64120.
004691	Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St Joseph, MO 64506.
004706	Laidlaw Corp., 1212 E. 5th Street, Metropolis, IL 62960.
005905	Helena Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
006836	Lonza Inc., 17–17 Rte 208, Fair Lawn, NJ 07410.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc, c/o Voluntary Purchasing Groups Inc., Box 460, Bonham, TX 75418.
008660	Pursell Industries, Inc., Box 540, Sylacauga, AL 35150.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
033955	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
034704	Jane Cogswell, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
034911	Brazos Associates, Inc., Agent For: Hi-Yield Chemical Co., c/o Voluntary Purchasing Groups, Box 460, Bonham, TX 75418.
047000	Chem-Tech Ltd, Attn: James Melton, 4515 Fleur Dr. #303, Des Moines, IA 50321.
050534	GB Biosciences Corp., c/o Zeneca Ag Products, 1800.Concord Pike Box 15458, Wilmington, DE 19850.
058185	Scotts-Sierra Crop Protection Co., Attn: Vincent Snyder, Jr, 14111 Scottslawn Rd, Marysville, OH 43041.
063281	RSP Private Label Packaging, Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55102.
067517	PM Resources Inc., 13001 St. Charles Rock Rd, Bridgeton, MO 63044.
067619	Clorox Professional Products Co, c/o PS & RC Box 493, Pleasanton, CA 94566.
067760	Cheminova Inc., Oak Hill Park 1700 Route 23 – Ste 210, Wayne, NJ 07470.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Loss of Active Ingredient

Unless the request for cancellation is withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of withdrawing their request for cancellation. The active ingredient is listed in the following Table 3, with the EPA company and CAS number.

TABLE 3.—DISAPPEARING ACTIVE INGREDIENT

CAS No.	Chemical Name	EPA Company No.
11084–85–8	Chlorinated trisodium phosphate	000264

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before January 29, 2001. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

VI. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** June 26, 1991; (56 FR 29362) (FRL–3846–4). Exception to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 25, 2000.

Richard D. Schmitt,

Associate Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 00–19510 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–950; FRL–6592–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–950, must be received on or before September 1, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–950 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–950. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–950 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–950. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Zeneca Ag Products

9F6058

EPA has received pesticide petition 9F6058 from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of azoxystrobin (methyl (*E*-2-(2-

(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate)) and its Z isomer methyl (*Z*-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3- (methoxyacrylate)) in or on the raw agricultural commodities (RAC) apples at 1.5 parts per million (ppm); barley, bran at 0.2 ppm; barley, grain at 0.1 ppm; barley, hay at 15 ppm; barley, straw at 4 ppm; beet, sugar, dried pulp at 0.8 ppm; cattle, fat at 0.03 ppm; cattle, meat by-products at 0.07 ppm; citrus, oil at 15 ppm; coriander, leaves at 30 ppm; coriander, seed at 30 ppm; corn, field, forage at 10 ppm; corn, field, grain at 0.05 ppm; corn, field, refined oil at 0.3 ppm; corn, field, stover at 25 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 25 ppm; corn, sweet, kernal plus cob with husks removed at 0.02 ppm; corn, sweet, forage at 10 ppm; corn, sweet, stover at 25 ppm; cotton at 0.01 ppm; cotton, gin by-products at 0.01 ppm; fruit, citrus, group at 3 ppm; fruit, citrus, dried pulp at 7 ppm; goat, fat at 0.03 ppm; goat, meat by-products at 0.07 ppm; horse, fat at 0.03 ppm; horse, meat by-products at 0.07 ppm; peanut at 0.2 ppm; peanut, hay at 15 ppm; peanut, refined oil at 0.6 ppm; sheep, fat at 0.03 ppm; sheep, meat by-products at 0.07 ppm; soybean, seed at 0.5 ppm; soybean, forage at 25 ppm; soybean, hay at 55 ppm; soybean, hulls at 1.25 ppm; soybean, seed at 0.5 ppm; rice, wild at 5 ppm; vegetable, bulb, group at 7.5 ppm; vegetable, leafy, except brassica vegetables, group at 30 ppm; vegetable, leaves of root and tuber, group at 50 ppm; and vegetable, root and tuber, group at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the tolerances. Plant metabolism has been evaluated in four diverse crops: cotton, grapes, wheat, and peanuts, which should serve to define the similar metabolism of azoxystrobin in a wide range of crops. Parent azoxystrobin is the major component found in crops. Azoxystrobin does not accumulate in crop seeds or fruits. Metabolism of azoxystrobin in plants is complex with more than 15 metabolites identified. These metabolites are present at low levels, typically much less than 5% of the total recoverable residues (TRR).

2. *Analytical method.* An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The analytical chemistry laboratory of the EPA concluded that the method(s) are adequate for enforcement. For azoxystrobin methods are also available for analyzing meat, milk, poultry, and eggs, and also underwent successful independent laboratory validations.

3. *Magnitude of residues.* Eleven onion trials (green and dry bulb) were carried out in the United States of America (U.S.) in 1998. Maximum residues of 6.9 ppm resulted from multiple foliar applications. Twenty–three citrus fruit trials (grapefruit, lemon and orange) were carried out in the U.S. in 1997–1998, Fourteen citrus fruit trials were carried out in South Africa in 1995–1998. Maximum residues of 2.9 ppm resulted from multiple foliar applications. Twenty corn trials were carried out in the U.S. in 1998. Maximum residues of 0.05 ppm in grain, 0.02 ppm in fresh kernals, 10 ppm in forage, and 25 ppm in stover resulted from multiple foliar applications. Twelve residue trials were carried out in the U.S. in 1997. Maximum residues of 0.01 ppm in cottonseed, and 0.01 ppm in cotton gin by-products resulted from in-furrow application. Twenty–four leafy vegetable (excluding brassica) trials were carried out in 1998. Maximum residues of 30 ppm resulted from multiple foliar applications. Twenty trials on the leaves of root and tuber vegetable group were carried out in the U.S. in 1998, resulting in maximum residues of 45 ppm from multiple foliar applications. Twenty root and tuber vegetable trials were carried out in the U.S. in 1998. Maximum residues of 0.46 ppm in root and tuber vegetables resulted from multiple foliar applications. Sixteen potato trials were carried out in the U.S. in 1997, previously submitted under pesticide petition 8F4995. Maximum residues of 0.03 ppm in potatoes resulted from multiple foliar applications. Twelve peanut trials were carried out in the U.S. in 1997. Maximum residues of 0.14 ppm in peanut, nutmeat, and 13.7 ppm in peanut hay resulted from multiple foliar applications. Twenty soybean trials were carried out in the U.S. in 1998. Maximum residues were 0.36 ppm in soybean, seed, 9.1 ppm in soybean, forage and 54 ppm in soybean, hay. Concentration of residues was observed in barley, bran; citrus, dried pulp; citrus oil; corn, oil; sugarbeet, dried pulp; peanut, oil; and soybean, hulls.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral toxicity study in rats of technical azoxystrobin resulted in a lethal dose 50% (LD_{50}) of >5,000 milligrams/kilogram (mg/kg) (limit test) for both males and females. The acute dermal toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >2,000 mg/kg (limit dose (LTD)).

The acute inhalation study of technical azoxystrobin in rats resulted in a lethal concentration 50% (LC_{50}) of 0.962 milligrams/liter (mg/L) in males and 0.698 mg/L in females. In an acute oral neurotoxicity study in rats dosed once by gavage with 0, 200, 600, or 2,000 mg/kg azoxystrobin, the systemic toxicity no observed adverse effect level (NOAEL) was <200 mg/kg and the systemic toxicity lowest observed adverse effect level (LOAEL) was 200 mg/kg, based on the occurrence of transient diarrhea in both sexes. There was no indication of neurotoxicity at the doses tested.

2. *Genotoxicty.* Azoxystrobin was negative for mutagenicity in the *salmonella/mammalian* activation gene mutation assay, the mouse micronucleus test, and the unscheduled deoxyribonucleic acid (DNA) synthesis in rat hepatocytes/mammalian cells in an *in vivo/in vitro* procedure study. In the forward mutation study using L5178 mouse lymphoma cells in culture, azoxystrobin tested positive for forward gene mutation at the TK locus. In the *in vitro* human lymphocytes cytogenetics assay of azoxystrobin, there was evidence of a concentration-related induction of chromosomal aberrations over background in the presence of moderate to severe cytotoxicity.

3. *Reproductive and developmental toxicity.* In a prenatal development study in rats gavaged with azoxystrobin at dose levels of 0, 25, 100, or 300 mg/kg/day during days 7 through 16 of gestation, lethality at the highest dose caused the discontinuation of dosing at that level. The developmental NOAEL was greater than or equal to 100 mg/kg/day and the developmental lowest observed adverse effect level (LOAEL) was >100 mg/kg/day because no significant adverse developmental effects were observed. In this same study, the maternal NOAEL was not established; the maternal LOAEL was 25 mg/kg/day, based on increased salivation.

In a prenatal developmental study in rabbits gavaged with 0, 50, 150, or 500 mg/kg/day during days 8 through 20 of gestation, the developmental NOAEL was 500 mg/kg/day and the developmental LOAEL was >500 mg/kg/day because no treatment-related adverse effects on development were seen. The maternal NOAEL was 150 mg/kg/day and the maternal LOAEL was 500 mg/kg/day, based on decreased body weight gain.

In a 2–generation reproduction study, rats were fed 0, 60, 300, or 1,500 ppm of azoxystrobin. The reproductive NOAEL was 32.2 mg/kg/day. The reproductive LOAEL was 165.4 mg/kg/day; reproductive toxicity was demonstrated as treatment-related reductions in adjusted pup body weights as observed in the F1S and F2 pups dosed at 1,500 ppm (165.4 mg/kg/day).

4. *Subchronic toxicity.* In a 90–day rat feeding study, the NOAEL was 20.4 mg/kg/day for males and females. The LOAEL was 211.0 mg/kg/day based on decreased weight gain in both sexes, clinical observations of distended abdomens and reduced body size, and clinical pathology findings attributable to reduced nutritional status.

In a subchronic toxicity study in which azoxystrobin was administered to dogs by capsule for 92 or 93 days, the NOAEL for both males and females was 50 mg/kg/day. The LOAEL was 250 mg/kg/day, based on treatment-related clinical observations and clinical chemistry alterations at this dose.

In a 21–day repeated-dose dermal rat study using azoxystrobin, the NOAEL for both males and females was greater than or equal to 1,000 mg/kg/day (the highest dosing regimen); a LOAEL was therefore not determined.

5. *Chronic toxicity.* In a 2–year feeding study in rats fed diets containing 0, 60, 300, and 750/1,500 ppm (males/females), the systemic toxicity NOAEL was 18.2 mg/kg/day for males and 22.3 mg/kg/day for females. The systemic toxicity LOAEL for males was 34 mg/kg/day, based on reduced body weights, food consumption, and food efficiency; and bile duct lesions. The systemic toxicity LOAEL for females was 117.1 mg/kg/day, based on reduced body weights. There was no evidence of carcinogenic activity in this study.

In a 1–year feeding study in dogs to which azoxystrobin was fed by capsule at doses of 0, 3, 25, or 200 mg/kg/day, the NOAEL for both males and females was 25 mg/kg/day and the LOAEL was 200 mg/kg/day for both sexes, based on clinical observations, clinical chemistry changes, and liver weight increases that were observed in both sexes.

In a 2–year carcinogenicity feeding study in mice using dosing concentrations of 0, 50, 300, or 2,000 ppm, the systemic toxicity NOAEL was 37.5 mg/kg/day for both males and females. The systemic toxicity LOAEL was 272.4 mg/kg/day for both sexes, based on reduced body weights in both at this dose. There was no evidence of carcinogenicity at the dose levels tested. According to the new proposed guidelines for Carcinogen Risk Assessment (April 1996), the appropriate descriptor for human carcinogenic potential of azoxystrobin is "not likely." The appropriate subdescriptor is "has been evaluated in at least two well conducted studies in two appropriate species without demonstrating carcinogenic effects."

6. *Animal metabolism.* In this study, azoxystrobin, either unlabeled or with a pyrimidinyl, phenylacrylate, or cyanophenyl label, was administered to rats by gavage as a single or 14–day repeated doses. Less than 0.5% of the administered dose was detected in the tissues and carcass up to 7 days post dosing and most of it was in excretion-related organs. There was no evidence of potential for bioaccumulation. The primary route of excretion was via the feces, though 9 to 18% was detected in the urine of the various dose groups. Absorbed azoxystrobin appeared to be extensively metabolized. A metabolic pathway was proposed showing hydrolysis and subsequent glucuronide conjugation as the major biotransformation process.

7. *Metabolite toxicology.* There are no metabolites of concern based on a differential metabolism between plants and animals.

8. *Endocrine disruption.* There is no evidence that azoxystrobin is an endocrine disrupter.

C. Aggregate Exposure

The Agency has concluded from review of available data that there is no acute toxicological endpoint of concern from the review of available data. Therefore, an acute risk assessment is not necessary. For azoxystrobin, only a chronic (noncancer) risk assessment is necessary.

1. *Dietary exposure.* Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer in or on a variety of RAC at levels ranging from 0.01 ppm on tree nuts to 20.0 ppm on rice hulls. Included in these tolerances are the numerous ones for animal commodities which were established in conjuction with tolerances for rice and wheat commodities. Time-limited tolerances range from 0.1 ppm in soybeans to 100 ppm in fresh parsley.

i. *Food.* In conducting a chronic dietary risk assessment, Zeneca has made the very conservative assumptions that 100% of all commodities having azoxystrobin tolerances or proposed tolerances will contain azoxystrobin residues at the level of the tolerance. Default concentration factors have been removed where data show no concentration of residues (grapes, juice, grapes, raisins, tomatoes, juice, tomatoes, puree, and potatoes, white (dry)). The chronic RfD of 0.18 mg/kg/day that was used as the endpoint value was derived from the NOAEL of 18.2 mg/kg/day from the rat chronic toxicity/carcinogenicity feeding study. The endpoint effects were decreased body weight and bile duct lesions that were observed in male rats at the LOAEL of 34 mg/kg/day. This NOAEL was divided by an uncertainty factor of 100 to allow for intraspecies and interspecies variability.

The Novigen Dietary Exposure Evaluation Model (DEEM) system was used for this Chronic Dietary Exposure Analysis. The analysis evaluates individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals (CSFII) survey that was conducted from 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure.

The existing azoxystrobin tolerances (both published and pending; section 18 tolerances have been excluded in this analysis because most are included as pending tolerances in this petition), result in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the chronic reference dose (RfD). Since the 10x safety factor was removed by EPA, the chronic RfD is equal to the chronic population-adjusted dose (cPAD) and the exposure given as a percentage of the total allowable is reported as the percentage of the cPAD. The U.S. population group will have a food exposure that is estimated as 0.023894 mg/kg/day (13.3% of the cPAD), the subgroup all infants (less than 1–year old) will have an estimated exposure of 0.029771 mg/kg/day (16.5% of the cPAD), the subgroup nursing infants (less than 1 year old) will have an estimated exposure of 0.014637 mg/kg/day (8.1% of the cPAD), the subgroup non-nursing infants (less than 1–year old) will have an estimated exposure of

0.036140 mg/kg/day (20.1% of the cPAD), the subgroup children (1–6 years old) will have an estimated exposure of 0.047270 mg/kg/day (26.3% of the cPAD), the subgroup children (7–12 years old) will have an estimated exposure of 0.032101 mg/kg/day (17.8% of the cPAD), the subgroup hispanics will have an estimated exposure of 0.026050 mg/kg/day (14.5% of the cPAD), the subgroup non-hispanic/non-white/non-black will have an estimated exposure of 0.030275 mg/kg/day (16.8% of the cPAD), and the subgroup females (13+ years old, nursing) will have an estimated 0.028866 mg/kg/day (16.0% of the cPAD).

ii. *Drinking water.* There is no established maximum concentration level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established. The concentration of azoxystrobin in surface water is based on Generic Estimated Environmental Concentration (GENEEC) modeling and in ground water is based on Screening Concentration in Ground Water (SCI-GROW) modeling (both models belong to EPA).

Based on the chronic dietary (food) exposure estimates, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and are summarised below. The group and subgroups that were analyzed are the group U.S. population and the two general subgroups females 13–50 and children. Within each of these two general subgroups, the specific subgroup with the highest food exposure was chosen for the analysis. EPA has determined that the highest estimated environmental concentration (EEC) of azoxystrobin in surface water is from the application of azoxystrobin to grapes (39 micrograms per liter (µg/L)). The EEC for ground water is 0.064 µg/L resulting from use on turf. For purposes of risk assessment, the maximum EEC for azoxystrobin in drinking water (39 µg/L) should be used for comparison to the back-calculated human health DWLOC for the chronic (non-cancer) endpoint. The maximum (chronic) water exposure (in mg/kg/day) is calculated by starting with the value for the chronic RfD (in mg/kg/day) and subtracting the food exposure (in mg/kg/day). The DWLOC (in micrograms per liter) (µg/L) is calculated by multiplying the maximum water exposure (in mg/kg/day) by the body weight (in kilograms), then dividing by 10^{-3} times the water consumed daily (in liters per day). The default body weights used were 70 kilograms (kg) for the group U.S. population, 60 kg for subgroups of females (13+ years old), and 10 kg for the subgroups of infants and children. The default drinking water rates used were 2 liters per day (L/day) for adults and 1 L/day for children. The scenarios for various groups and subgroups, leading up to the DWLOC for each, are summarized as follows. For the group U.S. population, the RfD is 0.18 mg/kg/day, the theoretical maximum residue contribution (TMRC) food exposure is 0.023894 mg/kg/day, the maximum water exposure is 0.156106 mg/kg/day, and the DWLOC is 5,463.71 g/L. For the subgroup females (13+, nursing), the RfD is 0.18 mg/kg/day, the TMRC food exposure is 0.028866 mg/kg/day, the maximum water exposure is 0.151134 mg/kg/day, and the DWLOC is 4,534.02 g/L. For the subgroup children (1–6 years old), the RfD is 0.18 mg/kg/day, the TMRC food exposure is 0.047270 mg/kg/day, the maximum water exposure is 0.13273 mg/kg/day, and the DWLOC is 1,327.3 g/L.

2. *Non-dietary exposure.* Azoxystrobin is registered for residential use on ornamentals and turf. The Agency evaluated the existing toxicological data base for azoxystrobin and assessed appropriate toxicological endpoints and dose levels of concern that should be assessed for risk assessment purposes. Dermal absorption data indicate that absorption is less than or equal to 4%. No appropriate endpoints were identified for acute dietary or short-term, intermediate-term, and chronic-term (noncancer) dermal and inhalation occupational exposure. Therefore, risk assessments are not required for these exposure scenarios.

D. Cumulative Effects

Azoxystrobin is related to the naturally occurring strobilurins. There are two other members of this class of fungicides registered with EPA. Zeneca concluded that further consideration of a common mechanism of toxicity is not appropriate at this time since there are no data to establish whether a common mechanism exists with any other substance.

E. Safety Determination

The acute safety analysis was not applicable since no suitable toxicological end-point of concern was identified during Agency review of the available data. The short-term and intermediate-term safety assessment also was not applicable, in this case because no indoor and outdoor residential exposure uses are currently registered for azoxystrobin. Therefore, only a chronic analysis was needed.

The chronic RfD for azoxystrobin is 0.18 milligrams per kilogram per day (mg/kg/day), based on the NOAEL of 18.2 mg/kg/day from the rat chronic toxicity/carcinogenicity feeding study in which endpoint effects of decreased body weight and bile duct lesions were observed in male rats at the LOAEL of 34 mg/kg/day. This NOAEL was divided by an uncertainty factor of 100, to allow for interspecies sensitivity and intraspecies variability.

1. *U.S. population.* The chronic dietary exposure analysis showed that exposure from the proposed new tolerances in or on apples; barley; coriander; corn, field; corn, pop; corn, sweet; cotton; fruit, citrus, group; rice, wild; vegetable, bulb, group; vegetable, leafy, except brassica vegetables, group; vegetable, leaves of root and tuber, group; vegetable, root and tuber, group; and soybeans for the group U.S. population would be 13.3% of the RfD.

2. *Infants and children.* The chronic dietary exposure analysis showed that exposure from the proposed new tolerances in or on apples; barley; coriander; corn, field; corn, pop; corn, sweet; cotton; fruit, citrus, group; rice, wild; vegetable, bulb, group; vegetable, leafy, except brassica vegetables, group; vegetable, leaves of root and tuber, group; vegetable, root and tuber, group; and soybeans for the subgroup children (1–6 years old) (the subgroup with the highest exposure) would be 26.3% of the RfD.

FFDCA section 408 provides that EPA shall apply an additional ten–fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through a margin of exposure analysis or else through use of Uncertainty (Safety) Factors in calculation of a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed effect level in the animal study appropriate to the particular risk assessment. This hundred–fold uncertainty (safety) factor/margin of exposure (safety) is designed to account for combined interspecies and intraspecies variability. EPA believes that reliable data support using the standard hundred–fold margin/factor without the additional ten–fold FQPA factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns

regarding the adequacy of the standard margin/factor. The Agency ad hoc FQPA safety factor committee removed the additional 10x FQPA safety factor that would otherwise be used to account for increased sensitivity of infants and children.

Zeneca has considered the potential aggregate exposure from food, water, and non-occupational exposure routes, concluding that aggregate exposure is not expected to exceed 100% of the RfD and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

F. International Tolerances

There are no Codex maximum residue levels established for azoxystrobin.

[FR Doc. 00–19378 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–9]

Notice of Proposed Settlement Trans Circuits, Inc. Superfund Site Lake Park, Palm Beach County, Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a "Prospective Purchaser Agreement" (PPA) concerning property located at 210 Newman Way in an industrial park in Lake Park, Palm Beach County, Florida. EPA proposes to enter into the PPA with the National Land Company (NLC).

The PPA obligates NLC to cooperate fully with any response action EPA may take on the Property. The PPA resolves NLC's potential liability for the Existing Contamination at the Site which would otherwise result from becoming the owner of the Site. This protection is contingent upon NLC fulfilling its obligations under the PPA.

EPA will consider public comment on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

Written comments may be submitted to Ms. Batchelor at the address noted above within thirty (30) calendar days of the date this notice is published.

Dated: July 18, 2000.

James L. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–19538 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 25, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 2, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: XXXXXX.

Title: Notification of Emergency Alert System Status.

Type of Review: New Collection.

Respondents: Business or other for-profit; and not-for-profit institutions, state, local or tribal government(s).

Number of Respondents: 125.

Estimate Time Per Response: 30 minutes.

Frequency of Response: On Occasion.

Total Annual Burden: 62 hrs.

Needs and Uses: The Resident Agent of the Agency's Alaska Office is developing a survey to assess whether FM translators located in isolated areas of Alaska are in compliance with the Emergency Alert System (EAS) rules adopted January 1, 1997. These rules state that FM translators not rebroadcasting the entire programming of other local FM broadcast stations must be in compliance by having EAS equipment installed and working properly. In remote areas of Alaska FM translators provide service to their communities by re-broadcasting programming from other local FM broadcast stations, however, in some cases the FM translators do not rebroadcast the entire contents of the program thus they could inadvertently eliminate any EAS warnings. EAS not only provides the President of the United States the capability to provide immediate communications and information to the general public during periods of national emergency, but it also allows the local and/or state officials the ability to warn the public in the remote areas of Alaska about avalanches, wildfires, etc. Due to its size, remoteness, and isolation, it is difficult for the Resident Agent to make on scene inspections to ensure that the FM translators are in compliance. Using the survey the Resident Agent can find out if licensed FM translators are either rebroadcasting local programming in their entirety including EAS warnings or, if not, then the FM translator station has EAS equipment installed and working properly. FM translator stations not in compliance could present a safety of life issue to the listening public.

OMB Control Number: 3060–0771.

Title: Procedure for Obtaining a Special Temporary Authorization in the Experimental Radio Service—Section 5.56.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities, State, Local or Tribal Government.

Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 500 hours.

Total Annual Cost: N.A.

Needs and Uses: The Commission may issue a special temporary authority (STA) under Part 5 of the rules in cases where a need is shown for operation of an authorized station for a limited time only, in a manner other than that specified in the existing authorization, but does not conflict with the Commission's rules. A request for STA may be filed as an informal application.

OMB Control No.: 3060–0854.

Title: Truth-in-Billing Format—CC Docket No. 98–170.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 3099.

Estimated Time Per Response: 505.3 Hours (avg.).

Total Annual Burden: 1,565,775 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $9,000,000.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Under Section 201(b) of the Communications Act, the charges, practices, and classifications of common carriers must be just and reasonable. The Commission believes that the telephone bill is an integral part of the relationship between a carrier and its customer. The manner in which charges are identified and articulated on the bill is essential to the consumer's understanding of the services that have been rendered, such that a carrier's provision of misleading or deceptive billing information may be an unjust and unreasonable practice in violation of Section 201(b). In the Truth-in-Billing and Billing Format Order on Reconsideration, the Commission addressed several petitions for reconsideration or clarification of the principles and guidelines contained in Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking (TIB Order), 64 FR 34487 (June 25, 1999). In the Order on Reconsideration, the Commission modified its collections of information to ensure that telephone bills contain information necessary for consumers to determine the validity of charges assessed on the bills and to combat telecommunications fraud. Telephone bills must clearly identify the name of the service provider associated with each charge. In the Order on Reconsideration, the Commission clarified that, where an entity bundles a number of services as a single package offered by a single company, such offering may be listed on the telephone bill as a single offering, rather than listed as separate charges by provider. Carriers providing bundled services in this manner must, however, make sure that an inquiry contact number or numbers appears on the bill for customer questions or complaints concerning the services provided through the bundle, as required by section 6.2401(d). The Commission also clarified that the carrier name of the telephone bill should be the name by which such company is known to its consumers for the provision of the respective service. In the TIB Order, the Commission required that all telephone bills containing wireline common carrier service (1) separate charges by service provider and (2) clearly and conspicuously show any change in service providers by identifying all service providers that did not bill for services on the previous billing statement and, where applicable, describing any new presubscribed or continuing relationship with the customer. In the Order on Reconsideration, the Commission modified its rule requiring highlighting of new service providers to only apply to providers that have a continuing arrangement with the subscriber that results in periodic charges on the subscriber's telephone bill. This change will ensure that services billed solely on a per-transaction basis, such as operator service and directory assistance, are not subject to the highlighting requirement. The TIB Order requires that (1) bills for wireline service include for each charge a brief, clear, plain-language description of the services rendered; and (2) when a bill for local wireline service contains additional carrier charges, the bill must differentiate between those charges for which non-payment could result in termination of local telephone service and those for which it could not. In the Order on Reconsideration, the Commission retained its requirement that carriers distinguish on telephone bills those charges that consumers may refuse to pay without jeopardizing the provision of basic, local service, and charges for which non-payment may result in such disconnection. The Commission, however, clarified that a carrier need not label every charge as either deniable or non-deniable. The TIB Order requires that all telephone bills display a toll-free number or numbers by which consumers may inquire about or dispute any charge on the bill. The number(s) must be displayed in a manner that permits a customer to identify easily the appropriate number to use to inquire about a particular charge. In the Order on Reconsideration, the Commission modified the requirement by creating a limited exception where the customer does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet. The information will be used by consumers to help them understand their telephone bills. Consumers need this information to protect themselves against fraud and to help them resolve billing disputes if they wish.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19477 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting

Thursday, August 3, 2000.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 3, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Telecommunications.	Title: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; and Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. Summary: The Commission will consider a Fifth Report on competitive conditions affecting the competitive mobile radio services industry.

Item No.	Bureau	Subject
2	Common Carrier, Cable Services, International, Wireless Telecommunications, Office of Engineering and Technology, and Office of Plans and Policy.	Title: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (CC Docket No. 98–146). Summary: The Commission will consider a Report concerning the deployment of advanced telecommunications capability to all Americans
3	Common Carrier	Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). Summary: The Commission will consider an Order on Reconsideration and Second Further Notice of Purposed Rule Making regarding the collocation obligations of incumbent LECs.
4	International	Title: Applications of INTELSAT LLC for Authority to Operate and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit (File Nos. SAT–A/O–20000119–00002 to SAT–A/O–20000119–00018; SAT–AMD–20000119–00029 to SAT–AMD–20000119–00041; SAT–LOA–20000119–00019 to SAT–LOA–20000119–00028). Summary: The Commission will consider a Memorandum Opinion Order and Authorization concerning applications requesting (1) licenses to operate 17 existing C-band and Ku-band satellites, presently owned and operated by the International Telecommunications Satellite Organization (INTELSAT); (2) licenses to construct, launch and operate 10 planned satellites by INTELSAT for operation in these bands; and (3) for authority to relocate certain currently operating satellites to other orbit locations upon the launch of planned satellites.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19610 Filed 7–28–00; 5:07 pm]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

DATE & TIME: Tuesday, August 8, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, August 10, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2000–16—Third Millennium: Advocates for the Future, Inc. by counsel, B. Holly Schadler and Brian G. Svoboda.

Draft Advisory Opinion 2000–18—Nader 2000 Primary Committee, Inc. by counsel, Michael B. Trister.

Draft Advisory Opinion 2000–19—Republican Party of Florida by counsel, Benjamin L. Ginsberg.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–19643 Filed 7–31–00; 11:25 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011290–026.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties:

APL Co. PTE Ltd.
Atlantic Container Line BV.
Australia-New Zealand Direct Line.
Crowley Maritime Corporation.
Delmas AAEL.
Evergreen Marine Corporation (Taiwan), Ltd.
Farrell Lines, Inc.
Hamburg-Sudamerikanische Dampfshifffahrtsgeesellschaft Eggert & Amsinck (Columbus Line).
Hapag-Lloyd Container Linie GmbH.
Hoegh Lines.

Hyundai Merchant Marine Co., Ltd.
Independent Container Line, Ltd.
Italia di Navigazione, S.p.A.
Kawasaki Kisen Kaisha Ltd.
Lykes Lines Limited, LLC.
Mediterranean Shipping Co. S.A.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Sealand.
National Shipping Co. of Saudi Arabia.
Nippon Yusen Kaisha Line.
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited.
Senator Lines GmbH.
Tecmarine Lines, Inc.
Wallenius Wilhelmsen Lines AS.
Zim Israel Navigation Company, Ltd.

Synopsis: The parties are amending their agreement to change the agreement name to that indicated above; to change the name of two member lines to reflect recent changes therein; and to provide for non-voting, associate membership in the agreement by any entity not qualified for membership as a vessel-operating common carrier.

Agreement No.: 011552–004.
Title: Colombia Express Joint Service Agreement.
Parties:
Associated Transport Line, L.L.C.
Smith & Johnson Carriers Inc.
Colombia Express, L.L.C.

Synopsis: The proposed modification expands the geographic scope of the agreement to include both Trinidad and Venezuela.

Agreement No.: 011715–001.
Title: IMC/Colombia Express Space Charter and Sailing Agreement.
Parties:
Industrial Maritime Carriers (U.S.A.) Inc.
Colombia Express, L.L.C.

Synopsis: The proposed modification expands the geographic scope of the agreement to include both Trinidad and Venezuela.

Agreement No.: 011718.
Title: Maersk Sealand/MOL Slot Transfer Agreement.
Parties:
A.P. Moller-Maersk Sealand.
Mitsui O.S.K. Lines, Ltd.

Synopsis: Under the agreement, Maersk Sealand will make available to Mitsui an average of 250 TEU slots eastbound and westbound on a weekly basis in the trade between U.S. East and Gulf ports and ports in Northern Europe. The parties request expedited review.

Agreement No.: 201105.
Title: Terminal Use Agreement between the Port of Oakland and China Shipping Container Lines.
Parties:
City of Oakland.
China Shipping Container Lines (Shanghai).

Synopsis: The agreement provides for the non-exclusive right to use areas within the Ben E. Nutter Container Terminal. The agreement runs through May 31, 2001.

By Order of the Federal Maritime Commission.

Dated: July 28, 2000.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 00–19581 Filed 8–1–00; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Terminations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 16388N.
Name: Airgate Int'l (SFO) Corp.
Address: 484 Grandview Drive, South San Francisco, CA 94080.
Date Revoked: April 15, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3771.
Name: Alex G. Weimer d/b/a AGW International Export Service and Customs Broker.
Address: P.O. Box 1555, 1085 So. Highway 80, Benson, AR 85602.
Date Revoked: April 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15393N.
Name: AMCO Cargo Systems, Inc.
Address: 1210 Koma Drive, Warehouse B, Compton, CA 90220.
Date Revoked: April 12, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3726NF.
Name: American Exhibition Services International, Inc.
Address: 1699 Wall Street, Suite 601, Mt. Prospect, IL 60056.
Date Revoked: July 6, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3969.
Name: Blue Sky Blue Sea, Inc. d/b/a International Shipping Company.
Address: Cargo Building 68, JFK Int'l Airport, Jamaica, NY 11430.
Date Revoked: July 8, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15324N.
Name: Cargo Management Consultant, USA Inc.
Address: 154–09 146th Avenue, Jamaica, NY 11434.
Date Terminated: May 18, 2000.
Reason: Surrendered license voluntarily.

License Number: 14124N.
Name: Cargo Saver, Inc.
Address: 16602 South Broadway Street, Gardena, CA 90248.
Date Revoked: June 1, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2489NF.
Name: Fuji Logitech America, Inc.
Address: 20434 Susana Road, Long Beach, CA 90810.
Date Terminated: May 8, 2000.
Reason: Surrendered license voluntarily.

License Number: 3375.
Name: General Air Freight Consolidators, Inc. d/b/a General Ocean Freight Container Line.
Address: 1031 W. Manchester Blvd., Unit A, Inglewood, CA 90301.
Date Revoked: June 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 8850N.
Name: Graybar Navigation, Inc.
Address: Graybar Building, 420 Lexington Ave., New York, NY 10170.
Date Revoked: June 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3206.
Name: Informa International, Ltd.
Address: 221 Woodbine Avenue, Narberth, PA 19072–0276.
Date Revoked: June 15, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15468N.
Name: Interatlantic Cargo Group Corp.
Address: 6952 NW 51 Street, Miami, FL 33166.
Date Revoked: June 1, 2000.
Reason: Failed to maintain a valid bond.

License Number: 1348NF.
Name: International Cargo Group, Inc. d/b/a ASG USA.
Address: 301 Edgewater Place, Wakefield, MA 01880.
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13581N.
Name: International Freight Systems (Of Oregon), Inc.

Address: 604 NE 20th Avenue, Portland, OR 97232.
Date Revoked: May 25, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13101N.
Name: International Moving Service, Ltd. d/b/a Tradewinds International Shipping Co.
Address: 1500 S.W. First Avenue, Suite 850, Portland, OR 97201.
Date Revoked: June 3, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15076N.
Name: Jeff Chang d/b/a Kana Logestics.
Address: 20780 Leapwood Avenue, Carson, CA 90746.
Date Revoked: April 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3907NF.
Name: Logistics Services Incorporated.
Address: 1612 NW 84th Avenue, Miami, FL 33126.
Date Revoked: April 5, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2477F.
Name: M D R Enterprises, Inc.
Address: 8031 West Center Road, Suite 206, Omaha, NE 68124.
Date Revoked: June 10, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4090.
Name: Mundus Shipping, Inc.
Address: 127 Schenck Blvd., Floral Park, NY 11001.
Date Revoked: July 5, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16146NF.
Name: Murphy International Corporation d/b/a Murphy Overseas Corporation d/b/a International Transport & Logistics Corporation.
Address: 249 E. Ocean Blvd., #400, Long Beach, CA 90802.
Date Terminated: March 16, 2000.
Reason: Surrendered license voluntarily.

License Number: 10380N.
Name: Pana-York Maritima, Ltd.
Address: 411 A North Wood Avenue, Suite #5, Linden, NJ 07036.
Date Terminated: June 1, 2000.
Reason: Failed to maintain a surety bond.

License Number: 3238.
Name: Rewico America Inc.
Address: 420 Lexington Avenue, Suite 1630, New York, NY 10170.
Date Revoked: June 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16367N.
Name: Rosario Antoniello d/b/a Paul Shipping Company.
Address: 45 John Street, New York, NY 10038.
Date Revoked: March 22, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4279N.
Name: SR International Logistics, LLC d/b/a High Country Maritime.
Address: 5310 Ward Road, Suite G–05, Arvada, CO 80002.
Date Revoked: July 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14138N.
Name: Southern Overseas Express Line, Inc.
Address: 330 Shipyard Blvd., Wilmington, NC 28412.
Date Revoked: May 28, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2810F.
Name: Travel All Over The World, Inc. d/b/a Shipping All Over The World and American Egyptian Shipping Company.
Address: 405 North Eola Road, Aurora, IL 60504.
Date Revoked: May 25, 2000.
Reason: Failed to maintain a valid bond.

License Number: 9735N.
Name: Vanderhelm International, Inc.
Address: 1851 Executive Center Drive, S–114, Jacksonville, FL 32207.
Date Revoked: June 9, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14992N.
Name: Venex Transportation Logistics, Inc.
Address: 8282 N.W. 66th Street, Miami, FL 33166.
Date Revoked: March 4, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14415N.
Name: Won Sik Kang d/b/a CMS Shipping Co.
Address: 11099 S. La Cienega Blvd., Suite 246, Los Angeles, CA 90045.
Date Revoked: April 26, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4158F.
Name: Winston International, Incorporated.
Address: 23131 Colony Park Drive, Carson, CA 90745–5566.
Date Terminated: May 22, 2000.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–19583 Filed 8–1–00; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

SHJ Int'l Express, LLC, 4339 Rowland Avenue, El Monte, CA 91731, Officers: Gary Yenkok Tan, Secretary, (Qualifying Individual), David Hsueh Wei Loo, President

Zust Ambrosetti SPA, Via Monteponi 26, 10135 Torino, Italy, Officer: Guido Porta, Director, (Qualifying Individual)

Delmas, 1 Gual Colbert, 76080 Le Harve France, Officer: Bernard Lugez, Vice President, (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Supply Chaw Services, LLC, 1250 Scottsville Road, Suite 7, Rochester, NY 14534, Officers: Thomas Hardenbrook Iuppa, President, (Qualifying Individual), James H. Wigton, Vice President

Global Cargo Corp., 8470 NW 30th Terrace, Miami, FL 33122, Officer: Patricia T. Suizu, Secretary, (Qualifying Individual)

General Express Group, Corp., 11455 NW 34th Street, Miami, FL 33178, Officers: Alejandro Orsini, President, (Qualifying Individual), Pedro Barreto, Vice President

Dated: July 28, 2000.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 00–19582 Filed 8–1–00; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414.

1. National Australia Bank Limited, Melbourne, Australia; to acquire indirectly through its wholly owned subsidiary, 02–E Limited, a 60 percent interest in Thinorswim.com, Melbourne, Australia, a newly formed limited liability company and thereby engage *de novo* in providing brokerage services over the internet, pursuant to § 225.28(b)(7)(i) of Regulation Y.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Franklin Bancorp, Inc., d/b/a Sunrise Community Banks, St. Paul, Minnesota; to engage *de novo* in employee benefits consulting services, pursuant to § 225.28(b)(9)(ii) of Regulation Y and data processing, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19459 Filed 8–1–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5) U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Director, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "General Research and Support Services". The RFP was published in the Commerce Business Daily on May 17, 2000.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—General Research and Support Services".

Date: August 16 & 17, 2000 (Closed to the public).

Place: Agency for Healthcare Research and Quality, 6010 Executive Blvd., 4th Floor Conference Center, Room B, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Tina Woodward, Division of Administrative Services, Office of Management, Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 601, Rockville, Mayland, 20852, 301–594–0342.

This notice is being published less than 15 days prior to the August 16–17 meeting due to the time constraints of reviews and funding cycles.

Dated: July 27, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–19490 Filed 8–1–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00144]

Environmental Signals and Sensors: A Virtual Center for Disease Prevention in Humans and Ecosystems; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant program to study the underlying biochemical and genetic mechanisms by which environmental chemicals affect human health and signal the onset of disease.

B. Eligible Applicant

Single Source

Assistance will be provided only to the University of Mississippi Medical Center. No other applications are solicited.

The University of Mississippi Medical Center (UMMC) is the most appropriate organization to conduct the work under this grant program for the following reasons:

1. The University of Mississippi and Tulane University have established a center for environmental medicine and toxicology at the University of Mississippi Medical Center in Jackson, Mississippi. [The Consolidated Appropriations Act, 2000, (Public Law 106–113) provided financial support which "shall be for the Center for Environmental Medicine and Toxicology at the University of Mississippi Medical Center at Jackson."]

2. The UMMC has taken a leadership role in forming a consortium with the University of Mississippi at Oxford and the Center for Bioenvironmental Research (CBR) at Tulane and Xavier Universities to assemble scientific teams to address environmental issues. Active collaborations between investigators at the participating institutions are in place to perform the required activities

of this program. UMMC is strategically located between the Tulane and Xavier Universities, and is the only university which focuses solely on biomedical research in the State of Mississippi. Ten investigators from the University of Mississippi Medical Center, six from the University of Mississippi at Oxford and seventeen from the Center for Bioenvironmental Research form the core of the consortium. Four clusters of investigators have been assembled to work jointly on important subsets of environmental research. Each cluster is co-chaired by investigators from two of the four participating institutions.

3. UMMC has formed a consortium with two other universities to conduct environmental research. Thus, UMMC may readily disseminate health and environmental data between participating partners which will be essential to completion of this project.

C. Availability of Funds

Approximately $2,634,547 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: William Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone number: (770) 488–2721; E-mail address: WEP2@cdc.gov.

For program technical assistance, contact: Lawrence E. Posey, Acting Deputy Director, Division of Environmental Hazards and Health Effects, 1600 Clifton Road, NE, M/S E–19, Atlanta, GA 30333. Telephone number: (404) 639–7274; E-mail address: LEP1@cdc.gov.

Dated: July 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19466 Filed 8–1–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00129]

Outcome Evaluation of HIV/AIDS Prevention Programs Implemented by Community-Based Organizations; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces a program for competitive fiscal year (FY) 2000 cooperative agreement applications to conduct outcome evaluations of individual-level Health Education and Risk Reduction (HE/RR) HIV prevention interventions implemented by community-based organizations (CBOs). This program addresses the "Healthy People 2010" focus area(s) of Educational and Community-Based Programs, HIV, and Sexually Transmitted Diseases.

Although CDC has supported the development and implementation of community-based HIV prevention programs aiming to reduce sex-related and drug-related risk behaviors, to date these locally implemented community-based and community-developed interventions have not been rigorously assessed. Assessing the effectiveness of these HE/RR interventions is important for improving our understanding of the behavioral impact of these programs, providing useful information for CBO program planners and implementers, and improving future HIV prevention efforts.

The goals of this program announcement are to support evaluations that assess the effectiveness of locally implemented HIV prevention interventions and to provide evaluation resources to CBOs that might not otherwise have the resources or capacity to conduct an outcome evaluation. These funds are intended to support the evaluation, not the intervention. This evaluation will use methods common to rigorous outcome evaluation research (*e.g.* comparison groups, individual baseline data, cross-sectional surveys, and the ability to track clients over time). In addition, efforts will be made to use methods and designs that integrate both qualitative and quantitative data collection.

B. Eligible Applicants

Limited Competition

Applications may be submitted by community-based organizations who are currently receiving funds to implement individual-level HIV prevention HE/RR interventions. Specifically, these will include those recipients funded under the following program announcements: 00023—Human Immunodeficiency Virus (HIV) Prevention Projects for Community-Based Organizations, 99091—Community-Based HIV Prevention Services and Capacity-Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection, 99092—Community Based Human Immunodeficiency Virus (HIV) Prevention Projects for African Americans, and 99096—Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects for African American Faith-based Organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $300,000 is available in FY 2000 to fund approximately three awards. It is anticipated that the average award will be $100,000, ranging from $75,000 to $125,000. It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, collaborative activities, site visits, goals set forth, and the availability of funds.

Use of Funds

Funds are intended solely to implement the evaluation and not to support the intervention itself. Allocate up to $5000 to ensure your technological capability to conduct evaluation activities.

Funding Preference

In making awards, preference for funding will be given to applicants who target high-risk populations as identified by their local community planning groups (*e.g.* men who have sex with men, persons of color and other racial or ethnic populations, youth in high risk situations).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and the CDC will be responsible for

activities under number 2. (CDC Activities) below.

1. Recipient Activities:

a. Develop a common evaluation methodology including a description of the intervention, the study research questions, sampling strategy, research design, and standardized data collection instruments.

b. Work with CDC to develop and submit application for IRB review and OMB approval as necessary.

c. Recruit study subjects and from existing interventions according to the evaluation design and methodology.

d. Conduct individual baseline and repeat assessments according to the evaluation methodology.

e. Collaborate and share evaluation data and programmatic experience with other grantees to answer specific evaluation research questions and strengthen program implementation.

f. Participate in regularly scheduled group conference calls, attend meetings with the project team, and participate in at least one site visit to each of the other participating CBOs.

g. Present findings and collaborate with other recipients and CDC in presenting findings at national meetings.

2. CDC Activities: To facilitate a successful research collaboration, CDC shall be responsible for conducting the following activities:

a. Assist the recipients as needed, in planning and implementing the evaluation methodology including providing technical guidance in the development of the evaluation methodology which includes data collection instruments, selection of comparison groups, data collection methodologies, and data analysis plans.

b. Conduct site visits as needed, to monitor activities and provide technical assistance when needed.

c. Assist the recipient as needed, in refining and establishing data management systems.

d. Assist as needed, in the data analysis of evaluation research information and in the presentation and publication of analytical findings.

E. Application Content

Competing Applications

Use the information in the Evaluation Criteria section to develop the application content. The application will be evaluated on the criteria listed, so it is important that applicants follow these criteria in their responses. Print all materials double-spaced, in a 12 point or larger font size, on one side of 8½" by 11" paper with at least 1" margins. Number each page. Submit your application unbound and unstapled. The application may not exceed 25 double-spaced pages (appendices are the appropriate location for references, publications, resumes, and other supportive documents).

F. Submission and Deadline

Submit the original and two copies of PHS–5161 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/. . . Forms, or in the application kit. On or before September 5, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each applicant will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Title and abstract (Not Scored). The title and abstract should be a clear 1-page summary of the applicants proposal.

2. Program Background (Not Scored). Title of the program, mission statement, years of service to the target population, recruitment venues for intervention participants, service setting(s), current funders, and the funding amounts.

3. Intervention Plan (30 Points). Describe the existing HE/RR intervention to be assessed and how it fits CDC individual-level intervention categorization (see attachment A). Indicate the degree to which the proposed goals and objectives of the intervention are specific, measurable, appropriate, realistic, and time-based, related to the proposed activities, and consistent with the program's long-term goals. Provide a detailed description of the scientific, theoretical, conceptual, or program experience foundation on which the proposed activities are based and the specific behaviors and practices the intervention is designed to promote and prevent (*e.g.*, increase in correct and consistent condom use). Clearly describe the target population(s), and the degree to which the target population reflects the community planning priorities. Clearly indicate how clients will be sufficiently recruited and tracked over time, and how the intervention activities are monitored for quality assurance.

4. Evaluation Capacity (30 points). Clearly describe current data collection, management, and reporting systems including a description of the types of data (variables) collected and how these data are collected. The extent to which current computer systems and Internet capabilities are used in managing data. Indicate areas in which technical assistance is anticipated in designing and implementing the evaluation methodology including staff training needs and refinement of current data management systems.

5. Staffing and Facilities (20 Points). Clearly describe the proposed staffing plan including number of staff (full, part-time, and volunteers) dedicated to the intervention and quality assurance. Specify the division of duties and responsibilities for the intervention and indicate percentages of each staff member's commitment to the intervention and other projects. Demonstrate the degree to which participating staff are qualified and available for carrying out the evaluation activities by providing copies of resumes or job descriptions of existing personnel. Indicate the number of staff with expertise in computer technology or describe personnel that would be hired for conducting the evaluation. Finally, describe the equipment and facilities to be used for the evaluation.

6. Collaboration Experience (20 points). Provide supporting evidence (letters and memorandums of agreement) that the applicant has experience working collaboratively with health departments, the local HIV prevention community planning group, or other community-based organizations to carry out community-based public health interventions, evaluations, or research. Specify the extent to which the applicant has the scientific and programmatic capacity in successfully designing, implementing, and completing similar evaluations, either alone or in partnership with a collaborator. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of

women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. Protection of Human Subjects (Not scored) Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects?

8. Budget (Not Scored). Provide a detailed, line-item budget for carrying out the evaluation activities, including travel expenses for meetings with other recipients and CDC staff and a budget narrative that justifies each line item.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports quarterly, no more than 30 days after the end of each 3 month period;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 2.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241(a) and 247b (a)], as amended. The Catalog of Federal Domestic Assistance number is 93.939.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements." To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Roslyn Currington, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146 telephone (770) 488–2720, Email: rcurrington@cdc.gov.

For program technical assistance, contact Francisco Sy, Behavioral Scientist, Program Evaluation Research Branch, Division of HIV/AIDS Prevention, Intervention, Research, and Support, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, Telephone (404) 639–0566, Email: Fsy@cdc.gov.

Dated: July 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19465 Filed 8–1–00; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978. Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Customer Satisfaction Surveys Among Recipients of CSAT Knowledge Application Program Products and Services—The Center for Substance Abuse Treatment (CSAT) in the Substance Abuse and Mental Health Services Administration is proposing a series of customer satisfaction surveys in support of objectives identified in its Government Performance and Results Act Strategic Plan. These surveys will measure the satisfaction of substance abuse services professionals with products and services that are part of CSAT's Knowledge Application programs. These programs provide training, technical assistance, and information products to promote the use of the best treatment strategies among substance abuse treatment professionals. Information products may also be distributed to other persons who are involved in substance abuse treatment.

Trainees include over 12,000 addictions treatment and public health/mental health personnel. Technical assistance is provided to state substance abuse agencies, academic institutions, community-based organizations and managed-care organizations.

Information products include pamphlets, newsletters, and fact sheets. These products may be sent on request or may be distributed on a periodic basis.

The proposed survey efforts are primarily focused on measuring the satisfaction of the various professionals receiving these products and services, as well as determining related outcomes such as sharing or using the knowledge. Substance abuse treatment professionals receiving training or participating in technical assistance events that are at least a half day in length will receive a brief survey to assess expectations for the event and satisfaction with the outcomes. Participants will also be

given an opportunity to complete a follow-up form at an appropriate interval after the session. This follow-up will again assess satisfaction with the training or technical assistance and will also ask two questions concerning the impact of the information in terms of sharing it with other appropriate professionals and using it in its appropriate manner. All qualifying training and technical assistance will target the complete attending population for the event survey. For technical assistance that includes grantee meetings only the follow-up survey will be distributed. For large events the follow-up survey may be administered to a sample of participants. For information products, requested information will include a feedback card to be returned once the product has been received and examined. For information products routinely sent to a subscription list, a sample will be drawn and a feedback form distributed to that sample. The list approach will be used on major information products only.

Annual burden estimates are contained in the following table. Numbers are approximate and represent maximums.

Type of product or service	Estimated maximum number of respondents	Average burden/response (hours)	Responses per respondent	Estimated annual burden (hours)
Training:				
at the event	12,000	.167	1	2,004
followup	6,000	.167	1	1,002
Technical assistance attendees:				
at the event	2,000	.167	1	334
followup	1,000	.167	1	167
Grantees (meetings)	200	.167	1	334
Requested information products	5,000	.167	1	835
Subscription/list based products	5,000	.167	1	835
Total	24,200			5,511

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 21, 2000

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–19467 Filed 8–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Telephone Conference Call meeting of the Center for Mental Health Services (CMHS) National Advisory Council in August 2000.

The meeting will include the review, discussion and evaluation of individual grant applications.

Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b (c)(6) and 5 U.S.C. App. 2, Section 10 (d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained from the contact listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: August 8, 2000 (Closed).

Time: 3:00 p.m. to 4:00 p.m.

Place(s): Parklawn Building, 5600 Fishers Lane, Conference Room 11C–10, Rockville, Maryland 20857.

Contact: Eileen S. Pensinger, M.Ed., 5600 Fishers Lane, Parklawn Building, Room 17C–27, Rockville, Maryland 20857. Telephone: (301) 443–4823.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 26, 2000.

Toian Vaughn, M.S.W.,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–19488 Filed 8–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in September 2000. A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, an update on the NLCP pilot PT program for alternative specimens, and an update on the draft guidelines for alternative specimen testing and on-site testing.

If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will also include the review, discussion, and evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014. The transcript for the open session will be available on the following website: www.health.org/workpl.htm. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Meeting Date: September 6, 2000; 8:30 a.m.–4:30 p.m., September 7, 2000; 8:30 a.m.–3:30 p.m.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Type: Open: September 6, 2000; 8:30 a.m.–Noon, Closed: September 6, 2000; Noon–4:30 p.m., Closed: September 7, 2000; 8:30 a.m.–3:30 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014, and FAX: (301) 443–3031.

Dated: July 25, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 00–19487 Filed 8–1–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment on Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft environmental assessment for proposed special regulations for the Preble's meadow jumping mouse.

SUMMARY: This Notice advises the public of the availability of a draft environmental assessment on proposed special regulations for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*). These regulations apply within the range of the species which includes portions of Boulder, Douglas, El Paso, Jefferson, and Weld counties in Colorado and Laramie and Goshen counties in Wyoming.

The proposed special regulations identify specific locations and situations under which take of the Preble's meadow jumping mouse would not be prohibited by the Endangered Species Act. This environmental assessment considers the biological, environmental, and socio-economic effects of these proposed regulations. The assessment also evaluates four alternative actions and their potential impact on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address below (see **ADDRESSEES**).

DATES: To be considered, written comments and materials should be received on or before September 1, 2000. All comments received by the end of this comment period will be considered in preparation of a Finding of No Significant Impact. All comments received on an environmental assessment become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR 1506.6(f)). When requested, comment letters with the names and addresses of the individuals who wrote the comments will generally be provided. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law: Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comments.

ADDRESSES: Comments and requests for copies of the assessment should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 61, Lakewood, Colorado 80215, telephone (303) 274–2370.

SUPPLEMENTARY INFORMATION The Preble's meadow jumping mouse is known to occur only in portions of Colorado and Wyoming. The final rule listing the Preble's as a threatened species under the Endangered Species Act was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 4(d) of the Endangered Species Act (U.S.C. Section 1533) provides that whenever a species is listed as a threatened species, the Secretary of the Department of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. On December 3, 1998, we proposed special regulations for the Preble's meadow jumping mouse under Section 4(d) of the Act and published them in the **Federal Register** (63 FR 66777), and at the same time, a public review period on the proposed special regulations was initiated. The public comment period closed on February 1, 1999. We reopened the public comment period on March 16, 1999, (64 FR 12924) and it closed on April 30, 1999.

In these regulations, we proposed to designate specific locations known to be occupied or potentially occupied by this species as Mouse Protection Areas or Potential Mouse Protection Areas. Section 9 prohibitions against take of this species would not apply to activities occurring outside of these designated areas, but would remain applicable to activities conducted within these designated areas. In addition, we proposed that Section 9 prohibitions against take of the species would not apply to four categories of activities that might occur within the species' habitat. These four categories of activities for which take of the species was exempted are—(1) rodent control activities, (2) ongoing agricultural activities, (3) existing landscaping activities, and (4) existing uses of perfected water rights. We also described a fifth range-wide exemption pertaining to periodic maintenance of existing water supply ditches. We considered this fifth exemption but did not propose it.

We have prepared an environmental assessment of the proposed special regulations for the Preble's meadow jumping mouse and other alternatives that we considered and, at this time, we would like make this assessment available for public review and comment.

Dated: July 26, 2000.

Elliott Sutta,

Acting Deputy, Regional Director, Denver, Colorado.

[FR Doc. 00–19468 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Enhance the Survival of the Columbian Sharp-tailed Grouse in Wallowa County, Oregon Through a Candidate Conservation Agreement With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Candidate Conservation Agreement with Assurances (Agreement) between the ODFW and the Service. The Agreement and permit application are available for public comment.

The purpose of the Agreement is for the ODFW and the Service to implement conservation measures for the Columbian sharp-tailed grouse (*Tympanuchus phasianellus*) in Wallowa County, Oregon, in support of ODFW's on-going efforts to reintroduce this species to areas that it historically

occupied. The conservation measures would be implemented by the ODFW, Service, and by Participating Landowners, and would generally consist of continued implementation of ODFW's Columbian sharp-tailed grouse reintroduction program, and protection and enhancement of sharp-tailed grouse habitat. Consistent with the Service's Candidate Conservation Agreement with Assurances Final Policy, the Agreement is intended to facilitate the conservation of Columbian sharp-tailed grouse by giving the State of Oregon and cooperating private landowners incentives to implement conservation measures. Participating Landowners would receive regulatory certainty concerning land use restrictions that might otherwise apply should the Columbian sharp-tailed grouse become listed under the Endangered Species Act. Participating Landowners, with property in an approximately 161,000-acre area, could sign up under the Agreement and the associated permit through a Certificate of Inclusion. The proposed term of the Agreement and the permit is 20 years. The Service has prepared an Environmental Assessment for approval of the Agreement and issuance of the permit.

We request comments from the public on the permit application, Agreement, and the Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before September 1, 2000.

ADDRESSES: Comments should be addressed to Dennis Mackey, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (telephone: 208/378–5267; facsimile: 208/378–5262).

FOR FURTHER INFORMATION CONTACT: Dennis Mackey at the above address or telephone 208/378–5267.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the individual named above. You also may make an appointment to view the documents at the above address during normal business hours. The documents are also available electronically on the World Wide Web at http://www.fws.gov/r1srbo.

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily implement conservation activities on their property to benefit species that are proposed for listing under the Endangered Species Act, candidate species, or other sensitive species. Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to unlisted species by assuring them they will not be subjected to increased property use restrictions if the species is listed in the future under the Endangered Species Act. Application requirements and issuance criteria for enhancement of survival permits through Candidate Conservation Agreements with Assurances are found in 50 CFR 17.22(d) and 17.32(d).

On October 26, 1999, the Service found that listing the Columbian sharp-tailed grouse under the Endangered Species Act may be warranted, and initiated a review of the species' status. The Columbian sharp-tailed grouse was extirpated from Oregon by the 1960's. The species persisted in Wallowa County until the late 1940's, and the last Columbian sharp-tails probably occurred in Baker County in northeast Oregon. Reintroduction of the Columbian sharp-tailed grouse in Oregon began in the spring of 1991. From 1991 through 1997, ODFW released a total of 179 Columbian sharp-tailed grouse in Wallowa County. Currently all known Columbian sharp-tailed grouse occur on private land. To date, landowners have been supportive of the Columbian sharp-tailed grouse reintroduction program, have cooperated with ODFW, and are providing habitat to support the birds. The ODFW is concerned that reintroduction efforts could result in land-use restrictions on cooperating landowners if this species is listed under the Endangered Species Act. Should this happen, landowners would have a disincentive to cooperate in future reintroduction efforts or to provide suitable grouse habitat. As a result of this potential regulatory concern of landowners, ODFW has developed a Candidate Conservation Agreement with Assurances for the Columbian sharp-tailed grouse in cooperation with the Service, and has applied to the Service for a permit under section 10(a) of the Endangered Species Act, which would authorize future incidental take of the birds by cooperating landowners.

Under the Agreement and permit, Participating Landowners would provide certain Columbian sharp-tailed grouse habitat protection or enhancement measures on their lands. Protection and enhancement measures will be directed towards sharp-tailed grouse lek, nest, roost, and/or winter habitat. If the Columbian sharp-tailed grouse is listed under the Endangered Species Act, and after a Participating Landowner has provided the agreed upon habitat conditions for the specified period of time, the permit would authorize incidental take of Columbian sharp-tailed grouse as a result of the landowner's agricultural-related activities: crop cultivation and harvesting, livestock grazing, and farm equipment operation.

We are providing this notice pursuant to section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to ODFW for take of Columbian sharp-tailed grouse incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: July 14, 1999.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 00–19469 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Agency Information Collection Activities; Submission to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request, "Documented Petitions for Federal Acknowledgment as an Indian Tribe," is submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, for review and extension of this information collection.

DATES: Submit comments on or before September 1, 2000.

ADDRESSES: Send your written comments to Attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102,725 17th Street, NW., Washington, DC 20503. Please send a duplicate copy to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, N.W., MS–4660 MIB, Washington, D.C. 20240. If you wish to submit comments by facsimile, the number is (202) 219–3008. You may submit comments by contacting R. Lee Fleming at (202) 208–3592. Please mention OMB Number 1076–0104.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information or copies of the information collection submission should be directed to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, N.W., MS–4660 MIB, Washington, D.C. 20240. You may also call (202) 208–3592.

All written comments will be available for public inspection in Room 4660 of the Main Interior Building, 1849 C Street, N.W., Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Federal recognition makes the group eligible for benefits from the federal government. No comments were received.

II. Method of Collection

The acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which unrecognized groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Respondents are not required to retain copies of information submitted to the Bureau of Indian Affairs but will probably maintain copies for their own use. No periodic reports are required which would impose a recordkeeping requirement.

III. Data

Title: Collection of Information for Federal Acknowledgment Under 25 CFR Part 83.

OMB Number: 1076–0104.

Expiration Date: July 31, 2000.

Type of Review: Extension of a currently approved collection.

Affected Entities: Groups petitioning for Federal acknowledgment as Indian tribes.

Response: Respondents are seeking to obtain a benefit.

Estimated Number of Petitioners: 10.

Estimated Time per Petition: 2,237.7 hours.

Estimated Total Annual Burden Hours: 22,377.

Estimated Annual Costs to petitioners: $895,080 (2,237.7 hrs × $40.00 per hr × 10 petitioners).

IV. Request for Comments

You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or the forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: July 28, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–19584 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the thirty-third meeting of the Gettysburg National Military Park Advisory Commission.

DATE: The Public meeting will be held on September 21, 2000, from 7 p.m.–9 p.m.

LOCATION: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, Federal Consistency Projects Within the Gettysburg Battlefield Historic District, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters

of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: July 20, 2000.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 00–19473 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft Revision of the Vacation Cabin Site Policy at Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service announces the availability for public review of the draft revision of the Vacation Cabin Site policy at Lake Mead National Recreation Area.

COMMENTS: Written comments must be postmarked or transmitted by September 1, 2000.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

ADDRESSES: The draft revision of the Vacation Cabin Site policy is available on the Internet at *http://www.nps.gov/lame/concessions/vcs.html.* Requests for copies and written comments should be sent to Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005

FOR FURTHER INFORMATION CONTACT: Concessions Program Management at 702/293–8923.

SUPPLEMENTARY INFORMATION: The last revision of the Lake Mead National Recreation Area Vacation Cabin Site policy occurred in 1992. Cabin site lease extensions expired in 1999 and 2000 and are being reauthorized for a one-year extension upon expiration. When the revised cabin site policy is finalized new permits will be issued for a five year period, the maximum length of time allowed by law. The finalized policy will become part of the permit.

There are three vacation cabin site areas within Lake Mead National Recreation Area. Stewart's Point (54 sites), located along Lake Mead in Nevada, approximately two miles northeast of Rogers Spring. Temple Bar (32 sites), located along Lake Mead in Arizona, approximately one mile southeast of Temple Bar Resort. Katherine (35 sites), located along Lake Mohave in Arizona, approximately two miles north of Katherine Landing.

Dated: July 14, 2000.

Alan O'Neill,

Superintendent, Lake Mead National Recreation Area.

[FR Doc. 00–19474 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Criteria

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of revised dates for public hearings on the proposed adoption of Colorado River Interim Surplus Criteria: INT–DES 00–25.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), has issued a Draft Environmental Impact Statement (DEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin during the next 15 years.

This notice updates the **Federal Register** notice published on July 7, 2000 (65 FR 42028) and provides notice of revised dates for public hearings on the proposed adoption of Colorado River Interim Surplus Criteria. Information on revised dates and locations for public hearings may be found below in the **DATES** section.

ADDRESSES: The comment period on the DEIS remains unchanged. Send comments on the DEIS to Ms. Jayne Harkins, Attention BCOO–4600, PO Box 61470, Boulder City, Nevada, 89006–1470, or fax comments to Ms. Harkins at (702) 293–8042. As provided in the **Federal Register** notice published on July 7, 2000 (65 FR 42028), comments on the DEIS must be received no later than September 8, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

DATES: The public comment period on the DEIS remains unchanged and comments on this DEIS must be received no later than September 8, 2000.

Public hearings will be held to receive written or verbal comments on the DEIS from interested organizations and individuals on the environmental impacts of the proposal. The public hearings identified in the **Federal Register** notice published on July 7, 2000 (65 FR 42028) will not be held. Instead, a revised schedule for the hearings follows. The hearings will be held at the following times and locations:

- August 21, Big Bear Room, Doubletree Hotel, 222 N. Vineyard Ave., Ontario, CA, 7 p.m.
- August 22, Comfort Dental Conference Room, Las Vegas Chamber of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 7 p.m.
- August 23, Jazz Room, Salt Lake City International Airport, 765 Terminal Drive, Salt Lake City, Utah, 7 p.m.
- August 24, Meeting Room 1 on Level 3, Terminal 4, Phoenix Sky Harbor Airport, Phoenix, Arizona, 7 p.m.

In addition to the public hearings, a separate hydrologic modeling meeting will be held in Las Vegas, NV. Reclamation will provide detailed assumptions and respond to questions regarding the model runs, use schedules, and post-processing analysis that was completed for this DEIS. The time and location for the hydrologic modeling meeting has not changed from the information provided in the **Federal Register** notice published on July 7, 2000 (65 FR 42028). The time and location for this technical meeting is as follows:

- August 15, Comfort Dental Conference Room, Las Vegas Chamber

of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 9 a.m. to 5 p.m.

The hearings and the hydrologic modeling meeting will accommodate those with hearing impairments or other special requirements upon request by calling Janet Steele at (702) 293–8551 at least 48 hours prior to the hearing.

The DEIS remains available for viewing on the Internet at *http://www.lc.usbr.gov* and *http://www.uc.usbr.gov*. Copies of the DEIS, in the form of a printed document or on compact disk, remain available upon written request to the following address: Ms. Janet Steele, Attention BCOO–4601, PO Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8785, or by fax at (702) 293–8042.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins at the above address or telephone Ms. Harkins at (702) 293–8785.

Dated: July 28, 2000.

Erica Petacchi,

Federal Register Liaison.

[FR Doc. 00–19580 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–527 (Review)]

Extruded Rubber Thread From Malaysia

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on extruded rubber thread from Malaysia would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on August 2, 1999 (64 FR 41954) and determined on November 4, 1999 that it would conduct a full review (64 FR 62689, November 17, 1999). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 20, 2000 (65 F.R. 3246). The hearing was held in Washington, DC, on June 1, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in this investigation to the Secretary of Commerce on July 27, 2000. The views of the Commission are contained in USITC Publication 3327 (July 2000), entitled *Extruded Rubber Thread from Malaysia (Inv. No. 731–TA–527 (Review))*.

Issued: July 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19570 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–639 and 640 (Review)]

Forged Stainless Steel Flanges From India and Taiwan

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on December 1, 1999 (64 FR 67313, December 1, 1999) and determined on March 3, 2000 that it would conduct expedited reviews (65 FR 15009, March 20, 2000). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 26, 2000. The views of the Commission are contained in USITC Publication 3329 (July 2000), entitled *Forged Stainless Steel Flanges from India and Taiwan: Investigations Nos. 731–TA–639 and 640 (Review)*.

Issued: July 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19568 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

[1] This record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–309–A–B and 731–TA–528 (Review)]

Magnesium From Canada

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty orders [2] and the antidumping duty order on magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 2, 1999, (64 FR 41961) and determined on November 4, 1999, that it would conduct full reviews (64 FR 62690, November 17, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 10, 2000 (65 FR 6628). The hearing was held in Washington, DC, on May 31, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 25, 2000. The views of the Commission are contained in USITC Publication 3324 (July 2000), entitled *Magnesium from Canada: Investigations Nos. 701–TA–309–A–B and 731–TA–528 (Review)*.

Issued: July 26, 2000.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Thelma J. Askey dissenting.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19567 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Review)]

Paper Clips From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 1, 1999 (64 FR 67320, December 1, 1999) and determined on March 3, 2000 that it would conduct an expedited review (65 FR 15010, March 20, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on July 28, 2000. The views of the Commission are contained in USITC Publication 3330 (July 2000), entitled *Paper Clips From China: Investigation No. 731–TA–663 (Review).*

Issued: July 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19569 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in Jerry Gribcheck v. U.S. Postal Service, MSPB Docket Nos. CH–0752–99–0002–I–1, Ch–0752–99–0014–I–1, CH–0752–99–0337–I–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM as set forth in the summary below.

SUMMARY: The appellant, a Postal Service preference eligible, filed three appeals challenging a series of actions that the agency took in 1998–99 when it ordered him to undergo psychiatric fitness-for-duty examinations, allegedly refused to allow him to return to work, and ultimately placed him on enforced leave when he refused to submit to the third examination. The docket numbers are listed above. The administrative judge issued a single initial decision in the first two appeals, dismissing them as moot and finding that the appellant failed to establish his affirmative defenses of disability discrimination and retaliation for filing equal employment opportunity complaints. In the third appeal, which concerned the enforced leave, the administrative judge sustained the agency's action and found that the appellant failed to establish the same defenses.

In his petition for review in all three cases, the appellant reasserts that the agency's placement of him on enforced leave for refusing to submit to a fitness-for-duty examination was not sustainable because the agency did not fulfill the requirements of 5 CFR § 339.301.

Under 5 CFR § 339.301, an agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A psychiatric examination is specifically called for in a position having medical standards or subject to a medical examination program established under this part.

5 CFR § 339.301(e)(1)(i).

The agency placed the appellant on enforced leave because of his failure to submit to the third psychiatric fitness-for-duty examination. The appellant argues that OMP's regulations precluded the agency from ordering the final psychiatric fitness-for-duty examination, and the record contains no evidence that the agency ordered the appellant to undergo a physical examination prior to doing so, as required by 5 CFR § 339.301(e)(i). the agency has not argued, and the record does not show, that subsection (e) (ii) is applicable.

The Postal Service's Employee and Labor Relations Manual (ELM) permits management to order psychiatric examinations. In at least two cases, the Board has relied on the ELM as authority for the Postal Service to order psychiatric examinations, without mentioning Part 339 of Title 5. *See Sellman* v. *U.S. Postal Service,* 63 M.S.P.R. 145, 152 (1994), and *Gannon* v. *U.S. Postal Service,* 61 M.S.P.R. 41, 44 (1994). However, it appears that the ELM is inconsistent with several portions of Part 339, and the Board has held that an agency may not discipline an employee for disobeying an order to submit to a psychiatric examination that was invalid under 5 CFR § 339.301. *See Harris* v. *Department of the Air Force,* 62 M.S.P.R. 524, 528–29, *review dismissed,* 39 F.3d 1195 (Fed. Cir. 1994) (Table). The Board has not specifically determined whether 5 CFR part 339 applies to the Postal Service. Under 39 U.S.C. § 410(a), Federal laws regarding employees do not apply to the Postal Service, unless they are made specifically applicable.

The members of the Board therefore have requested that the Director provide an advisory opinion on whether OPM intended 5 CFR part 339 to apply to the Postal Service and, if so, whether OPM has the authority to regulate the Postal Service in this area, considering that the Postal Service is generally exempt from Title 5 of the United States Code.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before September 1, 2000.

ADDRESSES: All briefs should include the case name and docket numbers noted above (*Jerry Gribcheck* v. *U.S. Postal Service,* MSPB Docket Nos. CH–0752–99–0002–I–1, CH–0752–99–0014–I–1, CH–0752–99–0337–I–1) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. **FOR FURTHER INFORMATION CONTACT:** Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: July 27, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–19463 Filed 8–1–00; 8:45 am]

BILLING CODE 7400–01–M

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–089)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Thursday, August 24, 2000, 9:00 a.m. to 4:00 p.m., and Friday, August 25, 2000, 9:00 a.m. to 12:00 Noon.

ADDRESSES: Kennedy Space Center (KSC), Florida 32899–0001. Headquarters Building Room 2201.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room 9K70, 300 E St., SW., Washington, DC 20546–0001, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of KSC
—Small Disadvantaged Business Participation in Major KSC Contracts
—Report on Mentor-Protégé Program
—Action Items
—NASA KSC Small Disadvantaged Business (SDB) Program Update
—Report of Chair
—Public Comment
—Report on MBRAC Sub Panels
—Technology Transfer and Commercialization
—Report on SDB Participation on Agency-Wide Contract(s)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 24, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–19440 Filed 8–1–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–090]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Information Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Naticnal Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee, Information Technology Subcommittee meeting.

DATES: Wednesday, August 30, 2000, 8:30 a.m. to 5:00 p.m. and Thursday, August 31, 2000, 8:30 a.m. to 12:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Glenn Research Center, Building 77, Room 217, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene L. Tu, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–4486.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of Information Technology Base Research at Glenn
—Integrated Instrumentation and Testing Systems
—Intelligent System Controls and Operations
—Software Integrity, Productivity and Security
—Discussions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 25, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–19441 Filed 8–2–00 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–091]

NASA Advisory Council (NAC), Aerospace Technology Advisory Committee (ASTAC); Flight Research Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Flight Research Subcommittee meeting.

DATES: Monday, August 21, 2000, 2:00 p.m. to 5:00 p.m., Tuesday, August 22, 2000, 8:00 a.m. to 5:00 p.m., and Wednesday, August 23, 2000, 8:00 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Center, Building 4800, Executive Conference Room 2100, Edwards, CA 93535.

FOR FURTHER INFORMATION CONTACT: Mr. David McBride, National Aeronautics and Space Administration, Dryden Flight Research Center, Edwards, CA 93523, 661–276–2851.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda topics for the meeting are as follows:

—Review of Flight Research Base R&T Program
—High Altitude, Long Endurance Aircraft
—Advanced Systems Concepts
—Revolutionary Concepts (REVCON)
—Atmospheric Flight of Space Systems
—Innovative Transport and Testbed Experiments
—Flight Research Productivity

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 25, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–19442 Filed 8–1–00; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear, Inc. and Jersey Central Power & Light Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear, Inc. and et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would remove a shutdown requirement with regard to the relief valve position indication system in Section 3.13 of the Technical Specifications (TSs). The licensee requests that the proposed revision be considered under exigent conditions as the Oyster Creek Nuclear Generating Station is currently operating under a Notice of Enforcement Discretion and needs the requested revision to prevent a shutdown of the reactor plant. The acoustic monitors provide an indication that an electromagnetic relief valve (EMRV) has closed after opening. This is an indication only, and provides no safety function.

The exigent need for the proposed amendment to the TSs was a result of failed plant equipment. Realizing that the acoustic monitors could require a plant shutdown on short notice, the licensee had previously installed spare monitors on all five EMRVs and believed that the redundancy of the components in the drywell would increase the reliability of the instrumentation. This is the first time in the Oyster Creek history that both acoustic monitors on one EMRV were inoperable and unable to be repaired.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability [or consequences] of an accident previously evaluated; (or)

This proposal will not increase the probability of occurrence or consequences of an accident previously evaluated in the SAR [Safety Analysis Report]. The EMRV Position Indication System does not affect the operation of the EMRVs. No failure of the Position Indication System can affect the ability of these valves to perform their design functions or result in any condition where operation of one or more EMRVs is required. Failure of the Position Indication System to actuate in the event of an actual valve actuation does not affect the consequences of that event.

During an event when an EMRV malfunctions (SORV [stuck open relief valve]) there are alternate indications available to the operator to indicate the malfunction of the valve in the event that the Position Indication System fails. EMRV tail pipe temperature rise above normal levels is a reliable indication of EMRV actuation and a reliable indication of closure. The probability of a stuck open EMRV (SORV) Event is not affected by the lack of position indication for the EMRV. The ability to detect the stuck open EMRV condition is adequately covered by backup indication or secondary (e.g. RPV [reactor pressure vessel] level, RPV pressure, and suppression pool temperature) indicators, and will not result in an increase in the probability or consequences of an accident previously evaluated. Operators will be able to determine that a SORV has occurred and procedures are in place to mitigate this condition that do not depend on the EMRV acoustical monitoring system for indication.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; (or)

This proposal does not create the possibility for an accident or malfunction of a different type than any previously identified in the SAR. The EMRV Position Indication System performs no control or protective function. It only provides an indirect indication of valve position. Failure of this device will not cause an unanalyzed failure of an engineered safety feature. Because of the diverse and redundant indications available, failure of the position indication system will not cause a new accident, nor will it cause the operator to commit errors to create the possibility of a new or different type of accident. This proposal does not affect the method of operation or maintenance or surveillance requirements of the EMRV position indication system, only the LCOs associated with the EMRV position indication system.

3. Involve a significant reduction in a margin of safety

This change does not reduce the margin of safety of any Technical Specification. Operating without one of the two position indicators for an EMRV does not reduce the design or operating basis margin to safety. In the unlikely event of an SORV, sufficient backup indication is available to identify and mitigate the occurrence. The SORV analysis assumes that operator action is taken on bulk suppression pool temperature (including a time delay) and does not credit any operator actions initiated as a result of operation of the position indicator system.

Existing plant procedures provide sufficient guidance for detecting this condition and taking appropriate actions to mitigate an effect on continued safe operation. Thus, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays.

Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 1, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 21, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 27th day of July, 2000.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19574 Filed 8–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–344 and 72–17]

In the Matter of Portland General Electric Company (Trojan Nuclear Plant and ISFSI); Order Approving Application Regarding Proposed Purchase of Portland General Electric Company by Sierra Pacific Resources

I

Portland General Electric Company (PGE or the licensee) owns a 67.5 percent interest in the Trojan Nuclear Plant (TNP) located on the west bank of the Columbia River in Columbia County, Oregon, and in connection with that interest holds Facility Operating License No. NPF–1 issued by the U.S.

Nuclear Regulatory Commission (NRC) pursuant to part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50) on November 21, 1975. Under this license, PGE has the authority to possess and maintain but not operate TNP. PGE also owns a 100 percent interest in the Trojan Independent Spent Fuel Storage Installation (ISFSI) and holds Materials License No. SNM–2509 for the Trojan ISFSI. PGE is currently a wholly owned subsidiary of Enron Corporation (Enron). PacifiCorp and the Eugene Water and Electric Board own the remaining 2.5 percent and 30 percent interests, respectively, in TNP, but are not involved in the transaction described below affecting PGE, which is the subject of this Order.

II

By application dated January 13, 2000, as supplemented by a submittal dated January 20, 2000 (collectively herein the application), PGE requested approval of an indirect transfer of the license for the TNP, to the extent held by PGE, and an indirect transfer of the license for the Trojan ISFSI. The requested transfer relates to a proposed purchase of all the issued and outstanding common stock of PGE from PGE's current parent, Enron, by Sierra Pacific Resources (SPR). PGE is an Oregon corporation engaged principally in the generation, transmission, distribution, and sale of electric energy in Oregon.

On November 5, 1999, Enron and SPR entered into a Stock Purchase Agreement providing for the purchase by SPR from Enron of all of the issued and outstanding common stock of PGE, subject to certain conditions, including the approval of the NRC. SPR, a Nevada corporation, is the parent holding company for Nevada Power Company and Sierra Pacific Power Company, providing electric service to approximately 843,000 customers throughout Nevada and northeastern California. The purchase will not affect PGE's status as a regulated public electric utility in the State of Oregon. No direct transfer of the TNP or ISFSI licenses will occur. Also, no changes to activities under the licenses or to the licenses themselves are being proposed in the application.

Approval of the indirect transfer was requested pursuant to 10 CFR 50.80 and 10 CFR 72.50. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on May 12, 2000 (65 FR 30642). No hearing requests were filed.

Under 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that SPR's proposed acquisition of PGE through the stock purchase by SPR will not affect the qualifications of PGE as a holder of Facility Operating License No. NPF–1 and as the holder of Materials License No. SNM–2509, and that the indirect transfer of the licenses, to the extent effected by the proposed acquisition, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated July 27, 2000.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, 10 CFR 50.80, and 10 CFR 72.50, *It is hereby ordered that* the application regarding the indirect license transfers referenced above is approved, subject to the following conditions:

(1) PGE shall provide the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PGE to its parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of PGE's consolidated net utility plant, as recorded on its books of account.

(2) Should the proposed stock purchase not be completed by June 30, 2001, this Order shall become null and void, provided, however, upon application and for good cause shown, such date may be extended.

IV

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated January 13, 2000, the supplement thereto dated January 20, 2000, and the safety evaluation dated July 27, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 27th day of July 2000.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19575 Filed 8–1–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purposes of this document are to publish notice of a change in title to grouping of records 170.000 Operations Data Collection System to read "170.000 Resource Management/Productivity Records" and to publish notice of a new Privacy Act system of records, USPS 170.020, Resource Management/Productivity Records—Resource Management Database. The new system contains information about the usage of leave including, but not limited to, continuation of pay, sick, annual, leave without pay, leave used as a result of the Family Medical Leave Act (FMLA), sick leave for dependent care, military leave, etc., by an employee. Additionally, employee work hours by operation are contained in this system. The system also contains information supporting the use of certain leave information concerning absence-related corrective actions and appeal information related to those actions. This information will be used by management to ensure accurate leave data collection, to monitor leave usage, to reduce administrative redundancy, and to monitor the health and wellness of employees.

DATES: Any interested party may submit written comments on the proposed new system of records. This proposal will become effective without further notice on September 11, 2000, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Finance Administration/FOIA, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8

a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, (202) 268–4872.

SUPPLEMENTARY INFORMATION: To more effectively manage leave, the Postal Service will collect and maintain leave type and attendance information in a fashion that will make this information readily accessible to first-line supervisors and managers when needed to make informed decisions that affect their employees. This information will be used by management to ensure accurate leave data collection, to monitor leave usage, to reduce administrative redundancy, and to monitor the health and wellness of employees.

Maintenance of these records is not expected to have a significant effect on individual privacy rights. The information will be kept in a secured environment, with automated data processing (ADP), physical, and administrative security, and technical software applied to information on computer media. Computers and hard copy records are maintained in a secured environment.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report on the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 170.020

SYSTEM NAME:

Resource Management/Productivity Records—Resource Management Database, USPS 170.020.

SYSTEM LOCATION:

Human Resources and Operations, Headquarters; and other postal facilities as determined by management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal employees.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Records contain, but are not limited to, the employee's name, home address, telephone, pay location, work hours, overtime status, lunch time, leave balance and usage-sick and annual leave, continuation of pay, sick leave for dependent care, family medical leave and supporting documentation—leave without pay, limited medical information, and information concerning corrective action and grievance outcomes as they relate to leave usage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001, 1003, 1005, and 5 U.S.C. 8339.

PURPOSE(S):

Use to establish effective leave administration, analyze employee absences of all types, identify potential attendance problems, and identify employees eligible for attendance-related awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in locked file cabinets and computer files on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

By the employee's name or social security number.

SAFEGUARDS:

Access to information in computer files is limited to personnel having an authorized computer password with hierarchical security clearance privileges. Hard copy records are maintained within locked file cabinets under the general scrutiny of designated postal personnel who have jurisdiction over the information. Supporting Family Medical Leave documentation containing restricted medical information will be maintained separately in a locked file cabinet by the FMLA coordinator, and supporting injury compensation documentation will be maintained separately in a locked file cabinet by the Injury Compensation Control Office.

RETENTION AND DISPOSAL:

(a) Hard copy records, including leave slips and leave analysis records, are maintained for 2 years from date of cutoff.

(b) Automated information including absence-related corrective action and disciplinary information is maintained as provided for in the National Agreement.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Operations, U.S. Postal Service, 475 L'Enfant Plz. SW, Washington DC 20260–2700.

Senior Vice President, Human Resources, U.S. Postal Service, 475 L'Enfant Plz. SW, Washington DC 20260–4200.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries to the department or facility head where employed at the time of reporting. Inquiries should contain full name and social security number.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel, leave, and timekeeping and other postal data systems of records.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19577 Filed 8–1–00; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collection.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques for other forms of information technology.

Title and purpose of information collection:

Application for Survivor Insurance Annuities: OMB 3220–0030

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor

annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees. The collection obtains the information required by the RRB to determine entitlement to and amount of the annuity applied for.

The RRB currently utilizes Form(s), AA–17, Application for Widow(ers) Annuity, AA–17b Applications for Determination of Widow(er) Disability, AA–18, Application for Mother's/Father's and Child's Annuity, AA–19, Application for Child's Annuity, AA–19a, Application for Determination of Child Disability, and AA–20, Application for Parent's Annuity to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB is proposing no changes to any of the forms currently in the information collection.

The RRB is proposing the addition of an electronic equivalent of Forms AA–17, AA–18, AA–19, and AA–20 to the collection. The information, which will be collected electronically by RRB field office staff, will mirror that obtained on manual forms AA–17, AA–18, AA–19, and AA–20. Upon completion of the electronic AA–17, AA–18, AA–19, and AA–20 application process, the applicant will receive Form AA–17cert, Application Summary and Certification, which will summarize all of the information provided by/or verified by the applicant. Implementation of the AA–17cert will largely eliminate the need for the manual versions of the AA–17, AA–18, AA–19, and AA–20. However, the RRB will still use the manual form in instances where the RRB representative is unable to contact the applicant in person or by telephone. For example, the applicant lives in another country. The RRB has no plans to collect Form AA–17b and AA–19a information electronically at the present time. One response will be requested of each respondent. Completion will be required to obtain benefits.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (min)	Burden (hrs)
AA–17 (manual, without assistance)	150	45	113
AA–17b (with assistance)	380	40	253
AA–17b (without assistance)	20	50	17
AA–17cert	3,265	20	1,088
AA–18 (manual, without assistance)	12	45	9
AA–19 (manual, without assistance)	9	45	7
AA–19a (with assistance)	285	45	214
AA–19a (without assistance)	15	65	16
AA–20 (manual, without assistance)	1	45	1

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–19513 Filed 8–1–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rule 17f–6; SEC File No. 270–392; OMB Control No. 3235–0447]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission" is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–6 under the Investment Company Act of 1940 [17 CFR 270.17f–6] permits registered investment companies ("funds") to maintain assets (*i.e.*, margin) with futures commission merchants ("FCMs") in connection with commodity transactions effected on both domestic and foreign exchanges.[1] Prior to the rule's adoption, funds generally were required to maintain these assets in special accounts with a custodian bank.

Rule 17f–6 permits funds to maintain their assets with FCMs that are registered under the Commodity Exchange Act ("CEA") and that are not affiliated with the fund. The rule requires that a written contract containing the following provisions govern the manner in which the FCM maintains a fund's assets:

- The FCM must comply with the segregation requirements of section 4d(2) of the CEA [7 U.S.C. 6d(2)] and the rules under that statute [17 CFR Chapter I] or, if applicable, the secured amount requirements of rule 30.7 under the CEA [17 CFR 30.7];
- If the FCM places the fund's margin with another entity for clearing purposes, the FCM must obtain an acknowledgment from the clearing organization that the fund's assets are held on behalf of the FCM's customers in accordance with provisions under the CEA; and
- Upon request the FCM must furnish records about the fund's assets to the Commission or its staff.

The rule requires a written contract that contains certain provisions to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. For example, the requirement that FCMs comply with the segregation or secured amount requirements of the CEA and the rules under that statute is designed to protect fund assets held by FCMs. The contract requirement that an FCM obtain an acknowledgment from an entity that clears fund transactions that the fund's assets are held on behalf of the FCM's

[1] Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

customers according to CEA provisions seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the protection of fund assets. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

The Commission estimates that approximately 3,031 funds could deposit margin with FCMs under rule 17f–6 in connection with their investments in futures contracts and commodity options. The Commission further estimates that each fund uses and deposits margin with 3 different FCMs in connection with its commodity transactions. Approximately 211 FCMs are eligible to hold fund and margin under the rule.[2]

The only collection of information requirements of rule 17f–6 are the rule's contract requirements. The Commission estimates that 3,031 funds will spend an average of 1 hour complying with the contract requirements of the rule (*e.g.*, signing contracts with additional FCMs), for a total of 3,031 burden hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information or respondents, including through the use of automated collection techniques or other forms of information technology. The Commission will consider comments and suggestions submitted in writing within 60 days after this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

[2] Commodity Futures Trading Commission, ANNUAL REPORT (1999).

Dated: July 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19447 Filed 8–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 206(4)–2; SEC File No. 270–217; OMB Control No. 3245–0241

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(4)–2, "Custody or Possession of Funds or Securities of Clients," governs the custody or possession of funds or securities by Commission-registered investment advisers. Rule 206(4)–2 makes it a fraudulent, deceptive or manipulative act, practice or course of business for any investment adviser who has custody or possession of funds or securities of its clients to do any act or take any action with respect to any such funds or securities unless (1) the securities are properly segregated and safely kept; (2) the funds are held in one or more specially designated client accounts with the adviser named as trustee; (3) the adviser promptly notifies the client as to the place and manner of safekeeping; (4) the adviser sends a detailed written statement to each client at least once every three months; and (5) at least once each year, on an unannounced basis, an independent public accountant verifies by actual examination the clients' funds and securities and files a certificate with the Commission describing the examination. The rule does not apply to an investment adviser that is also registered as a broker-dealer under the Securities Exchange Act of 1934, provided the adviser is in compliance with Rule 15c3–1 under the Exchange Act, or, if a member of an exchange, is in compliance with exchange requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of the customer.

The information required by Rule 206(4)–2. is used by the Commission in connection with its investment adviser inspection program to ensure that advisers are in compliance with Rule 206(4)–2. The information required by paragraphs (3) and (4) of the rule is also used by clients. Without the information collected under the rule, the Commission would be less efficient and effective in its inspection program and clients would not have information valuable for monitoring the adviser's handling of their accounts.

The respondents to this information collection are Commission-registered investment advisers that have custody of clients' funds or securities and are not also registered as broker-dealers. The Commissioner estimates that 173 advisers are subject to Rule 206(4)–2. The number of responses under Rule 206(4)–2 varies considerably depending on the number of clients for which an adviser has custody or possession of funds or securities. We estimate that an adviser subject to this rule is required to provide an average of 250 responses annually at an average of .5 hours per response. The total time burden for each respondent is estimated to be 125 hours. The annual aggregate burden for all respondents to the requirements of Rule 206(4)–2 is estimated to be 21,625 hours.

The estimated average burden hours are made solely for the purposes of Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange

Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 27, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19498 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24583; 812–11916]

Pioneer America Income Trust et al.; Notice of Application

July 27, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit certain registered investment companies to deposit their uninvested cash balances and their cash collateral in one or more joint accounts to be used to enter short-term investments.

Applicants: The Pioneer Family of Funds, consisting of: Pioneer America Income Trust, Pioneer Balanced Fund, Pioneer Bond Fund, Pioneer Emerging Markets Fund, Pioneer Equity-Income Fund, Pioneer Europe Fund, Pioneer Fund, Pioneer Growth Shares, Pioneer High Yield Fund, Pioneer Independence Fund, Pioneer Indo-Asia Fund, Pioneer Interest Shares, Pioneer International Growth Fund, Pioneer Limited Maturity Bond Fund, Pioneer Micor-Cap Fund, Pioneer Mid-Cap Fund, Pioneer Mid-Cap Value Fund (formerly Pioneer Capital Growth Fund), Pioneer Money Market Trust, a series fund consisting of Pioneer Cash Reserves Fund, Pioneer Real Estate Shares, Pioneer Science & Technology Fund, Pioneer Small Company Fund, Pioneer Strategic Income Fund, Pioneer Tax-Free Income Fund, Pioneer Tax-Managed Fund, Pioneer II, Pioneer World Equity Fund, Pioneer Variable Contracts Trust, a series fund consisting of the following series: Pioneer America Income VCT Portfolio, Pioneer Balanced VCT Portfolio, Pioneer Emerging Markets VCT Portfolio, Pioneer Equity-Income VCT Portfolio, Pioneer Europe VCT Portfolio, Pioneer Fund VCT Portfolio (formerly Growth & Income Portfolio), Pioneer Growth Shares VCT Portfolio, Pioneer High Yield VCT Portfolio, Pioneer International Growth VCT Portfolio, Pioneer Mid-Cap Value VCT Portfolio (formerly Capital Growth Portfolio), Pioneer Money Market VCT Portfolio, Pioneer Real Estate Growth VCT Portfolio, Pioneer Science & Technology VCT Portfolio, Pioneer Strategic Income VCT Portfolio, and Pioneer Swiss Franc Bond VCT Portfolio (individually, a "Fund" and, collectively, the "Funds") and Pioneer Investment Management, Inc. (the "Investment Manager").

Filing Dates: The application was filed on December 27, 1999 and amended on July 21, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 21, 2000, should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Robert P. Nault, Esq., The Pioneer Group, Inc., 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Fund, other than Pioneer Interest Shares, is an open-end management investment company registered under the Act. Pioneer Interest Shares is a closed-end management investment company registered under the Act. Each Fund currently offers one series of shares, except for the Pioneer Variable Contracts Trust which currently offers fifteen series of shares. The assets of the Funds are held by Brown Brothers, Harriman & Co. (the "Custodian"), which is not an affiliated person of any of the Funds or of the Investment Manager.

2. The Investment Manager is registered under the Investment Advisers Act of 1940 and serves as investment adviser for each of the Funds. The Investment Manager is a wholly-owned subsidiary of The Pioneer Group, Inc. ("PGI").

3. Applicants request that any relief granted pursuant to the application also apply to all future series of the Funds and other registered management investment companies for which the Investment Manager or any entity controlling, controlled by, or under common control with the Investment Manager acts as investment adviser.[1]

4. Several of the Funds are authorized to enter into securities lending transactions. In connection with such transactions, the Funds may receive collateral in the form of either cash ("Cash Collateral") or certain securities. When Cash Collateral is received, it is invested in a manner consistent with (i) each Fund's investment objectives and restrictions and (ii) Commission and staff guidelines concerning the investment of Cash Collateral.

5. On a daily basis, the Funds also may have uninvested cash balances representing proceeds from sales of portfolio securities, the cost of securities purchased but not yet delivered, cash available to meet the Fund's redemptions or other liquidity requirements and cash awaiting investment ("Uninvested Cash," and together with Cash Collateral, "Cash Balances"). The Cash Balance of each Fund is invested by the Investment Manager in short-term liquid investments authorized by the Fund's investment policies. Currently, the Investment Manager must make these investments separately on behalf of each Fund. Applicants assert that these separate purchases result in certain inefficiencies, a reduction in the returns that the Funds could otherwise achieve on such investments, and higher costs.

6. Applicants propose that the Funds deposit some or all of their Cash Balances into one or more joint accounts ("Joint Accounts"). The daily balances in the Joint Accounts would be invested in (i) repurchase agreements "collateralized fully" (as defined in Rule 2a–7 under the Act); (ii) interest-bearing or discounted commercial paper, including United States dollar-

[1] Each Fund that currently intends to rely on the requested order is named as an applicant. Any registered management investment company that relies on the requested relief in the future will do so only in compliance with the terms and conditions of the application.

denominated commercial paper of foreign issuers; (iii) government securities, as defined in section 2(a)(16) of the Act; and (iv) any other short-term taxable or tax-exempt money market instruments that constitute "Eligible Securities," as defined in rule 2a–7 under the Act (collectively, "Short-Term Investments").

7. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983) or any subsequent interpretive position of the Commission or its staff. The participating Funds will not enter into "hold-in-custody" repurchase agreements in which the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement except in instances when cash is received very late in the business day or would otherwise be unavailable for investment.

8. Each Fund's decision to invest through a Joint Account would be based on the same factors as its decision to make any other short-term liquid investments consistent with its investment objectives, policies, and restrictions. The Joint Accounts will only be used to aggregate what otherwise would be one or more daily transactions by some or all participating Funds to manage their respective daily Cash Balances.

9. The Investment Manger will be responsible for investing the Cash Balances in the Joint Accounts, establishing accounting and control procedures, and operating the Joint Accounts in accordance with procedures that seek to ensure fair treatment of the participating Funds. The Investment Manager will not charge any additional or separate fees for administering or advising the Joint Accounts and will not participate monetarily in the Joint Accounts.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the Commission has issued an order authorizing the arrangement. In determining whether to grant such an order, the Commission may consider whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the arrangement.

2. Under section 2(a)(3)(C) of the Act, each fund may be deemed to be an "affiliated person" of each other Fund if the Investment Manager were deemed to control each Fund. Applicants state that each Fund participating in a Joint Account and the Investment Manager, by managing that Joint Account, may be deemed to be "joint participants" in a transaction within the meaning of section 17(d) of the Act. Applicants further state that each Joint Account may be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

3. Applicants assert that no Fund would be in a less favorable position than any other Fund as a result of its participation in one or more Joint Accounts. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the Funds and the Investment Manager. Each Fund's liability on any Short-Term Investment invested in through the Joint Accounts will be limited to its interest in such Short-Term Investment.

4. Applicants state that operation of the Joint Accounts could result in certain benefits to the Funds. The Funds may earn a higher rate of return on Short-Term Investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert it is generally possible to negotiate a rate of return on larger Short-Term Investments that is higher than that available on smaller Short-Term Investments. Applicants also contend that the aggregation of Cash Balances in a Joint Account may make more investment opportunities available to the Funds and may reduce the possibility of the Funds' Cash Balances remaining uninvested. In addition, the Joint Accounts may result in certain administrative efficiencies and reduce the potential for error by reducing the number of trade tickets and cash wires that the sellers of Short-Term Investments, the Custodian, and the Investment Manager must process.

5. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants state that although the Investment Manager may realize some benefit through administrative convenience and reduced clerical costs, the Funds would be the primary beneficiaries of the Joint Accounts.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. One or more Joint Accounts will be established on behalf of the Funds as separate accounts into which a Fund may deposit daily all or a portion of its Cash Balances. The Joint Accounts will be subject to the Funds' custody agreements and will not be distinguishable from any other accounts maintained by the Funds at the Custodian except that monies from the Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have separate existences and will not be separate legal entities. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions, which would otherwise require daily management by the Investment Manager of Cash Balances.

2. Assets in the Joint Accounts will be invested in Short-Term Investments, as directed by the Investment manager (or, in the case of Cash Collateral, the Custodian, in its role as securities lending agent in instruments pre-approved by the Investment Manager). Short-Term Investments that are repurchase agreements will have a remaining maturity of 60 days or less and other Short-Term Investments will have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account will be invested in Short-Term Investments which have a remaining maturity of 397 calendar days or less calculated in accordance with rule 2a–7 under the Act. No Fund will be permitted to invest in a Joint Account unless the Short-Term Investments in that Joint Account will comply with the investment policies and restrictions of that Fund.

3. All assets held by the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable Commission or staff releases, rules, letters, or orders.

4. Each Fund valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Fund has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in the Joint Account on that day.

5. To prevent any Fund from using any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance

in any Joint Account for any reason, although each Fund will be permitted to draw down its entire balance at any time, provided the Investment Manager determines such draw-down would have no significant adverse impact on any other Fund in that Joint Account. Each Fund's decision to invest in a Joint Account would be solely at its option, and no Fund will be obligated to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in a Joint Account, including interest payable on such assets invested in the Joint Account.

6. The Investment Manager will administer, manage, and invest the cash in the Joint Accounts in accordance with, and as part of, its general duties under existing or future investment management agreements with the Funds and will not collect any additional or separate fee for advising any Joint Account.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Boards will adopt procedures for each of the Funds pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of this application will be met. Each Board will make and approve such changes as it deems necessary to ensure such procedures are followed. In addition, the Board of each Fund will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the adopted procedures and will only permit a Fund to continue to participate therein if it determines that there is a reasonable liklehood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Each Fund will participate in the Joint Accounts on the same basis as any other Fund in conformity with its respective fundamental investment objectives, policies, and restrictions.

10. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Funds in that Short-Term Investment.

11. Each Fund's investment in the Joint Accounts will be documented daily on its books and on the books of the Custodian. The Investment Manager and the Custodian of each Fund will maintain records documenting, for any given day, each Fund's aggregate investment in a Joint Account and each Fund's pro rata share of each investment made through such Joint Account. The records maintained for each Fund will be maintained in conformity with section 31 of the Act and the rules and regulations promulgated thereunder.

12. Every Fund participating in a Joint Account will not necessarily have its cash invested in every Short-Term Investment made through such Joint Account. However, to the extent that a Fund's cash is applied to a particular Short-Term Investment, the Fund will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Fund.

13. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (i) The Investment Manager believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Funds participating in the investment because of a credit downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. The Investment Manager may sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Funds prior to the maturity of the investment provided the cost of such transaction will be allocated solely to the selling Funds and the transaction will not adversely affect the other Funds participating in that Joint Account. In no case would an early termination by less than all Funds be permitted if such early termination would reduce the principal amount or yield received by other Funds in the Joint Account or otherwise adversely affect the other Funds. Each Fund in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

14. Short-Term Investments held through a Joint Account with remaining maturities of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Fund that is an open-end management investment company registered under the Act, subject to the restriction that the Fund may not invest more than 15%, or in the case of a money market fund, more than 10% (or such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, and any similar restrictions set forth in the Fund's investment restrictions and policies, if the Investment Manager cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19499 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43065; File No. SR–Amex–00–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Amendment of Article V, Section 1 of the Exchange Constitution and Exchange Rule 345

July 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2000, the American Stock Exchange LLC ("Amex" "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 345 and Article V, Section 1 of the Exchange Constitution: (i) To give the Exchange's Enforcement Department the right to appeal a decision of a Disciplinary Panel, and (ii) to give the Amex Adjudicatory Council and Amex Board of Governors authority to increase the penalty imposed by a Disciplinary Panel.

The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Constitution Article V, Section 1(c) and Rule 345(f)

Under Article V, Section 1(c) of the Exchange Constitution and Rule 345, any member, member organization, approved person, or employee of a member or member organization found guilty of charges by an Exchange Disciplinary Panel may appeal the determination and/or penalty imposed by the Panel to the Amex Adjudicatory Council ("AAC").[3] The Exchange's Enforcement Department, however, may not appeal a Disciplinary Panel's determination pursuant to these Constitutional and rule provisions. The Exchange believes that its staff should also have a direct right of appeal in those situations where it believes that the Disciplinary Panel has imposed inadequate sanctions or made a determination inconsistent with evidence presented.

In reviewing a disciplinary decision, the AAC currently may affirm the determination and penalty imposed, modify or reverse the determination, decrease or eliminate the penalty imposed, impose any lesser penalty permitted, or remand the matter to the Disciplinary Panel for further consideration. However, the AAC may not increase or impose a greater penalty on appeal. The Exchange proposes that the AAC be given the authority to increase the penalty imposed by the Disciplinary Panel if it deems it appropriate. This authority would give the reviewing body the full range of alternatives that it needs to deal effectively with appeals. Additionally, this authority is necessary to give effect to the Enforcement Department's proposed right of appeal.

b. Constitution Article V, Section 1(d) and Rule 345(g)

Pursuant to Exchange Constitution Article V, Section 1(d) and Rule 345(g), as the next level of review, any four members of the Board of Governors may call a proposed decision of the AAC in a contested disciplinary matter for review by the entire Board. In reviewing a decision by the AAC, the Board may affirm, modify or reverse the decision of the AAC, or remand the matter for further consideration. The Exchange proposes to expand the scope of the Board's authority to review proposed decisions of the AAC so that the Board may also sustain, increase or eliminate any penalty imposed, or impose a lesser penalty.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Sections 6(b)(1),[6] 6(b)(6),[7] and 6(b)(7)[8] in particular in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number SR–Amex–00–22 and should be submitted by August 23, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19503 Filed 8–1–00; 8:45 am]

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[3] Additionally, any member of the AAC has the authority to request a review of an Exchange Disciplinary Panel decision *sua sponte*.

[4] Pursuant to New York Stock Exchange ("NYSE") Rule 476(f), NYSE enforcement personnel have the authority to appeal adverse determinations by disciplinary panels and the review boards have the authority to increase penalties imposed by disciplinary panels. Further, National Association of Securities Dealers, Inc. ("NASD") Rule 9311 provides for similar authority.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43074; File No. SR–CHX–00–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Create a New Registration Fee and Annual Fee for Off-Floor Proprietary Securities Traders for CHX Member Firms for Which the CHX Acts as Designated Examining Authority

July 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to reflect a new registration fee and annual fee for certain associated persons of member firms for which the CHX acts as the designated examining authority. The text of the proposed rule change is available upon request at the CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule to establish a $500 per person registration fee and a $500 per person annual fee for certain associated persons of member firms for which the CHX acts as the designated examining authority ("DEA"). Specifically, these fees would apply to those persons who are acting as off-floor proprietary securities traders for CHX member firms for which the CHX acts as the DEA.

These fees reflect the increased costs of administration and oversight involved in preparing and processing necessary Series 7[4] registration sponsor forms for these off-floor traders; inputting and maintaining traders' employment, examination and disciplinary histories; tracking adherence to applicable Series 7 continuing education requirements; and conducting on-site examinations of firms that employ these off-floor traders. The new registration fee is designed to apply to all registration sponsor forms received on or after August 1, 2000. The new annual fee will be charged as of January 1, 2001.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–23, and should be submitted by August 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19502 Filed 8–1–00; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] U.S.C. 78s(b)(3)(A)(ii).

[4] CHX Rules require persons acting as off-floor proprietary securities traders for CHX member firms for which the CHX acts as DEA to successfully complete the Uniform Registered Representative Exam, Series 7, and to meet certain continuing education requirements. *See* Article VI, Rule 3, Interpretation .02; Article VI, Rule 9. The Series 7 examination is designed to ensure that registered representatives, such as CHX off-floor proprietary securities traders, understand the legal requirements applicable to their activities. *See* July 20, 2000 letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant director, Division of Market Regulation, SEC.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)((3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43066; File No. SR–MSRB–00–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Municipal Fund Securities

July 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2000, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission"

or "SEC") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the Board. The Board submitted an amendments to the proposed rule change on July 17, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of (i) proposed new Rule D–12, defining municipal fund security; (ii) amendments to Rule A–13, on underwriting and transaction assessments for brokers, dealers and municipal securities dealers, Rule G–3, on classification of principals and representatives, numerical requirements, testing and continuing education requirements, Rule G–8, on books and records to be made by brokers, dealers and municipal securities dealers, Rule G–14, on reports of sales or purchases, Rule G–15, on confirmation, clearance and settlement of transactions with customers, Rule G–26, on customer account transfers, Rule G–32, on disclosures in connection with new issues, and Rule G–34, on CUSIP numbers and new issue requirements; and (iii) a Board interpretation on sales or municipal fund securities in the primary market. The text of the proposed rule change is set forth below. Additions were italicized; deletions are bracketed.

Rule D–12, "Municipal Fund Security"

The term "municipal fund security" shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.

Rule A–13. Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers

(a) Underwriting Assessments—Scope. Each broker, dealer and municipal securities dealer shall pay to the Board an underwriting fee as set forth in section (b) for all municipal securities purchased from an issuer by or through such broker, dealer or municipal securities dealer, whether acting as principal or agent, as part of a primary offering, provided that *section (b) of* this rule shall not apply to a primary offering of securities of all such securities in the primary offering:

(i)–(ii) No change.

(iii) at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent; [or]

(iv) have authorized denominations of $100,000 or more and are sold to more than thirty-five persons each of whom the broker, dealer or municipal securities dealer reasonably believes: (A) Has the knowledge and experience necessary to evaluate the merits and risks of the investment; and (B) is not purchasing for more than one account, with a view toward distributing the securities; *or*

(v) constitute municipal fund securities.

If a syndicate or similar account has been formed for the purchase of the securities, the underwriting fee shall be paid by the managing underwriter on behalf of each participants in the syndicate or similar account.

(b)-(f) No change.

Rule G–3. Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

No broker, dealer or municipal securities dealer or person who is a municipal securities representative, municipal securities principal, municipal securities sales principal or financial and operations principal (as hereafter defined) shall be qualified for purposes of rule G–2 unless such broker, dealer or municipal securities dealer or person meets the requirements of this rule.

(a) Municipal Securities Representative.

(i) No change.

(ii) Qualification Requirements.

(A)–(B) No change.

(C) *The requirements of subparagraph (a)(ii)(A) of this rule shall not apply to any person who is duly qualified as limited representative—investment company and variable contracts products by reason of having taken and passed the Limited Representative—Investment Company and Variable Contracts Products Examination, but only if such person's activities with respect to municipal securities described in paragraph (a)(i) of this rule are limited solely to municipal fund securities.*

(D) Any person who ceases to be associated with a broker, dealer or municipal securities dealer (whether as a municipal securities representative or otherwise) for two or more years at any time after having qualified as a municipal securities representative in accordance with subparagraph[s] (a)(ii)(A), *(B) or (C)* [or (B)] shall again meet the requirements of subparagraph[s] (a)(ii)(A), *(B) or (C)* [or (B)] prior to being qualified as a municipal securities representative.

(iii) Apprenticeship.

(A) Any person who first become associated with a broker, dealer or municipal securities dealer in a representative capacity (whether as a municipal securities representative, [or] general securities representative *or limited representative—investment company and variable contracts products*) without having previously qualified as a municipal security representative, [or] general securities representative *or limited representative—investment company and variable contracts products* shall be permitted to function in a representative capacity without qualifying pursuant to subparagraph[s] (a)(ii)(A), *(B) or (C)* [or (B)] for a period of at least 90 days following the date such person becomes associated with a broker, dealer or municipal securities dealer, provided, however, that such person shall not transact business with any member of the public with respect to, or be compensated for transactions in, municipal securities during such 90 day period, regardless of such person's having qualified in accordance with the examination requirements of this rule. A person subject to the requirements of this paragraph (a)(iii) shall in no event continue to perform any of the functions of a municipal securities representative after 180 days following the commencement of such person's association with such broker, dealer or municipal securities dealer, unless such person qualifies as a municipal securities representative pursuant to subparagraph[s] (a)(ii)(A) *(B) or (C)* [or (B)].

(B) Prior experience, of at least 90 days, as a general securities representative, *limited representative—investment company and variable contracts products* [mutual fund salesperson] or *limited representative—*government securities [representative], will meet the requirements of this paragraph (a)(iii).

(b)-(h) No change.

[3] The Board submitted a new Form 19b–4, which supplements, the original filing. ("Amendment No. 1"). Specifically, Amendment No. 1 amends Rule G–8(g)(i) to clarify that the Commission does not approve a firm's arrangement with a transfer agent regarding books and records. In addition, Amendment No. 1 makes certain technical corrections to the proposed rule change.

Rule G–8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer.

(i) Records of Original Entry. "Blotters" or other records of original entry containing an itemized daily record of all purchases and sales of municipal securities, all receipts and deliveries of municipal securities (including certificate numbers and, if the securities are in registered form, an indication to such effect), all receipts and disbursement of cash with respect to transactions in municipal securities, all other debits and credits pertaining to transactions in municipal securities, and in the case of brokers, dealers and municipal securities dealers other than bank dealers, all other cash receipts and disbursements if not contained in the records required by any other provision of this rule. The records of original entry shall show the name or other designation of the account for which each such transaction was effected (whether effected for the account of such broker, dealer or municipal securities dealer, the account of a customer, or otherwise), the description of the securities, the aggregate par value of the securities, the dollar price or yield and aggregate purchase or sale price of the securities, accrued interest, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. With respect to accrued interest and information relating to "when issued" transactions which may not be available at the time a transaction is effected, entries setting forth such information shall be made promptly as such information becomes available. *Dollar price, yield and accrued interest relating to any transaction shall be required to be shown only to the extent required to be included in the confirmation delivered by the broker, dealer or municipal securities dealer in connection with such transaction under rule G–12 or rule G–15.*

(ii)–(viii) No change.

(ix) Copies of Confirmations, *Periodic Statements* and Certain Other Notices to Customers. A copy of all confirmations of purchase or sale of municipal securities, *of all periodic written statements disclosing purchases, sales or redemptions of municipal fund securities pursuant to rule G–15(a)(viii)* and, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, of all other notices sent to customers concerning debits and credits to customer accounts or, in the case of a bank dealer, notices of debits and credits for municipal securities, cash and other items with respect to transactions in municipal securities.

(x) No change.

(xi) Customer Account Information. A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A)–(G) No change.

(H) signature of municipal securities representative, [and] general securities representative *or limited representative—investment company and variable contracts products* introducing the account and signature of a municipal securities principal, municipal securities sales principal or general securities principal indicating acceptance of the account;

(I)–(K) No change.

For purposes of this subparagraph, the terms "general securities representative," [and] "general securities principal" *and "limited representative—investment company and variable contracts products"* shall mean such persons as so defined by the rules of a national securities exchange or registered securities association. For purposes of this subparagraph, the term "institutional account" shall mean the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million. Anything on this subparagraph to the contrary notwithstanding, every broker, dealer and municipal securities dealer shall maintain a record of the information required by items (A), (C), (F), (H), (I) and (K) of this subparagraph with respect to each customer which is an institutional account.

(xii)–(xix) No change.

(b)–(f) No change.

(g) Transactions in Municipal Fund Securities.

(i) Books and Records Maintained by Transfer Agents. Books and records required to be maintained by a broker, dealer or municipal securities dealer under this rule solely with respect to transactions in municipal fund securities may be maintained by a transfer agent registered under Section 17A(c)(2) of the Act used by such broker, dealer or municipal securities dealer in connection with such transactions; provided that, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the arrangements with such transfer agent have been approved by the Commission or, in the case of a bank dealer, such arrangements have been approved by the appropriate regulatory agency for such bank dealer, and further provided that such broker, dealer or municipal securities dealer shall remain responsible for the accurate maintenance and preservation of such books and records.

(ii) Price Substituted for Par Value of Municipal Fund Securities. For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (A) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (B) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

Rule G–14. Reports of Sales or Purchases

(a) No change.

(b) Transactions Reporting Requirements.

(i) Each broker, dealer or municipal securities dealer shall report to the Board or its designee information about its transactions in municipal securities *to the extent required by, and* using the formats and within the timeframes specified in, Rule G–14 Transaction Reporting Procedures. Transaction information collected by the Board under this rule will be used to make public reports of market activity and prices and to assess transaction fees. The transaction information will be made available by the Board to the Commission, securities associations registered under Section 15A of the Act and other appropriate regulatory agencies defined in Section 3(a)(34)(A) of the Act to assist in the inspection for compliance with and the enforcement of Board rules.

(ii)–(iii) No change.

Rule G–14 Transaction Reporting Procedures

(a) No change.

(b) Customer Transactions.

(i)–(ii) No change.

(iii) *The following transactions shall not be required to be reported under this section (b):*

(A) [A] *a* transaction in a *municipal* security that is ineligible for assignment of a CUSIP number by the Board or its designee; *and* [shall not be required to be reported under this section (b).]

(B) a transaction in a municipal fund security.

(iv) No change.

Rule G–15. Confirmation, Clearance and Settlement of Transactions With Customers

(a) Customer Confirmations.

(i) At or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer shall give or send to the customer a written confirmation that complies with the requirements of this paragraph (i):

(A) Transaction information. The confirmation shall include information regarding the terms of the transaction as set forth in this subparagraph (A):

(1)–(2) No change.

(3) Par value. The par value of the securities shall be shown, with special requirements for the following securities:

(a) No change.

(b) Municipal fund securities. For municipal fund securities, in place of par value, the confirmation shall show (i) in the case of a purchase of a municipal fund security by a customer, the total purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the total sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(4) No change.

(5) Yield and dollar price. Yields and dollar prices shall be computed and shown in the following manner, subject to the exceptions stated in subparagraph (A)(5)(d) of this paragraph:

(a)–(c) No change.

(d) Notwithstanding the requirements noted in subparagraphs (A)(5)(a) through (c) of this paragraph[,] above:

(i)–(v) No change.

(vi) Municipal fund securities. For municipal fund securities, neither yield nor dollar price shall be shown.

(6) Final Monies. The following information relating to the calculation and display of final monies shall be shown:

(a) No change.

(b) amount of accured interest, with special requirements for the following securities:

(i)–(ii) No change.

(iii) Municipal fund securities. For municipal fund securities, no figure for accrued interest shall be shown;

(c) if the securities *pay interest on a current basis but* are traded without interest, a notation of "flat;"

(d) extended principal amount, with special requirements for the following securities:

(i) No change.

(ii) Municipal fund securities. For municipal fund securities, no extended principal amount shall be shown;

(e)–(h) No change.

(7) Delivery of securities. The following information regarding the delivery of securities shall be shown:

(a) Securities other than bonds *or municipal fund securites.* For securities other than bonds *or municipal fund securities,* denominations to be delivered;

(b) No change.

(c) *Municipal fund securities.* For municipal fund securites, the purchase price, exclusive of commission, of each share or unit and the number of shares or units to be delivered;

(d) Delivery instructions. Instructions, if available, regarding receipt or delivery of securities[,] and form of payment, if other than as usual and customary between the parties.

(8) No change.

(B) Securities identification information. The confirmation shall include a securities identification which includes, at a minimum:

(1) the name of the issuer, with special requirements for the following securities:

(a) For stripped coupon securities, the trade name and series designation assigned to the stripped coupon municipal security by the *broker, dealer or municipal securities* dealer sponsoring the program *must be shown:*

(b) Municipal fund securities. For municipal fund securities, the name used by the issuer to identify such securities and, to the extent necessary to differentiate the securities from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation for such securities must be shown;

(2) No change.

(3) Maturity date, *if any,* with special requirements for the following securities:

(a) No change.

(b) Municipal fund securities. For municipal fund securities, no maturity date shall be shown;

(4) Interest rate, *if any,* with special requirements for the following securities:

(a)–(e) No change.

(f) Municipal fund securities. For municipal fund securities, no interest rate shall be shown;

(5) No change.

(C) Securities descriptive information. The confirmation shall include description information about the securities which includes, at a minimum:

(1)–(4) No change.

(5) *Municipal fund securities. For municipal fund securities, the information described in clauses (1) through (4) of this subparagraph (C) is not required to be shown; provided, however, that if the municipal fund securities are puttable or otherwise redeemable by the customer, the confirmation shall include a designation to that effect.*

(D) Disclosure statements:

(1)–(2) No change.

(3) The confirmation for securities for which a deferred commission or other charge is imposed upon redemption or as a condition for payment of principal or interest thereon shall include a statement that the customer may be required to make a payment of such deferred commission or other charge upon redemption of such securities or as a condition for payment of principal or interest thereon, as appropriate, and that information concerning such deferred commission or other charge will be furnished upon written request.

(E) Confirmation format. All requirements must be clearly and specifically indicated on the front of the confirmation, except that the following statements may be on the reverse side of the confirmation:

(1) The disclosure statements required in subparagraph (D)(1), *(D)(2) or (D)(3)* [and (2)] of this paragraph, provided that their specific applicability is noted on the front of the confirmation.

(2)–(3) No change.

(ii)–(iii) No change.

(iv) Confirmation to customers who tender put option bonds *or municipal fund securities.* A broker, dealer, or municipal securities dealer that has an interest in put option bonds (including acting as remarketing agent) and accepts for tender put *option* bonds from a customer, *or that has an interest in municipal fund securities (including acting as agent for the issuer thereof) and accepts for redemption municipal fund securities tendered by a customer,* is engaging in a transaction in such municipal securities and shall send a confirmation under paragraph (i) of this section.

(v) No change.

(vi) Definitions. For purposes of this rule, the following terms shall have the following meanings:

(A)–(F) No change.

(G) The term "periodic municipal fund security plan" shall mean any written authorization or arrangement for a broker, dealer or municipal securities dealer, acting as agent, to purchase, sell or redeem for a customer or group of customers one or more specific municipal fund securities, in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them).

(H) The term "non-periodic municipal fund security program" shall mean any written authorization or arrangement for a broker, dealer or municipal securities dealer, acting as agent, to purchase, sell or redeem for a customer or group of customers one or more specific municipal fund securities, setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them) and either (1) providing for the purchase, sale or redemption of such municipal fund securities at the direction of the customer or customers or (2) providing for the purchase, sale or redemption of such municipal fund securities at the direction of the customer or customers as well as authorizing purchase, sale or redemption of such municipal fund securities in specific amounts (calculated in security units or dollars) at specific time intervals.

(vii) Price substituted for par value of municipal fund securities. For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (i) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(viii) Alternative periodic reporting for certain transactions in municipal fund securities. Notwithstanding any other provision of this section (a), a broker, dealer or municipal securities dealer may effect transactions in municipal fund securities with customers without giving or sending to such customer the written confirmation required by paragraph (i) of this section (a) at or before completion of each such transaction if:

(A) such transactions are effected pursuant to a periodic municipal fund security plan or a non-periodic municipal fund security program; and

(B) such broker, dealer or municipal securities dealer gives or sends to such customer within five business days after the end of each quarterly period, in the case of a customer participating in a periodic municipal fund security plan, or each monthly period, in the case of a customer participating in a non-periodic municipal fund security program, a written statement disclosing, for each purchase, sale or redemption effected for or with, and each payment of investment earnings credited to or reinvested for, the account of such customer during the reporting period, the information required to be disclosed to customers pursuant to subparagraphs (A) through (D) if paragraph (i) of this section (a), with the information regarding each transaction clearly segregated; provided that it is permissible:

(1) for the name and address of the broker, dealer or municipal securities dealer and the customer to appear once at the beginning of the periodic statement; and

(2) for information required to be included pursuant to subparagraph (A)(1)(d), (A)(2)(a) (C)(5) or (D)(3) of paragraph (i) of this section (a) to:

(a) appear once in the periodic statement if such information is identical for all transactions disclosed in such statement; or

(b) be omitted from the periodic statement, but only if such information previously has been delivered to the customer in writing and the periodic statement includes a statement indicating that such information has been provided to the customer and identifying the document in which such information appears; and

(C) in the case of a periodic municipal fund security plan that consists of an arrangement involving a group of two or more customers and contemplating periodic purchases of municipal fund securities by each customer through a person designated by the group, such broker, dealer or municipal securities dealer:

(1) gives or sends to the designated person, at or before the completion of the transaction for the purchase of such municipal fund securities, a written notification of the receipt of the total amount paid by the group;

(2) sends to anyone in the group who was a customer in the prior quarter and on whose behalf payment has not been received in the current quarter a quarterly written statement reflecting that a payment was not received on such customer's behalf; and

(3) advises each customer in the group if a payment is not received from the designated person on behalf of the group within 10 days of a date certain specified in the arrangement for delivery of that payment by the designated person and either (a) thereafter sends to each customer the written confirmation described in paragraph (i) of this section (a) for the next three succeeding payments, or (b) includes in the quarterly statement referred to in subparagraph (B) of this paragraph (viii) each date certain specified in the arrangement for delivery of a payment by the designated person and each date on which a payment received from the designated person is applied to the purchase of municipal fund securities; and

(D) such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in subparagraph (B) of this paragraph (vii) on a periodic basis in lieu of an immediate confirmation for each transaction; and

(E) such customer has consented in writing to receipt of the written information referred to in subparagraph (B) of this paragraph (viii) on a periodic basis in lieu of an immediate confirmation for each transaction; provided, however, that such customer consent shall not be required if:

(1) the customer is not a natural person;

(2) the customer is a natural person who participates in a periodic municipal fund security plan described in subparagraph (C) of this paragraph (viii); or

(3) the customer is a natural person who participates in a periodic municipal fund security plan (other than a plan described in subparagraph (C) of this paragraph (viii) or a non-periodic municipal fund security program and the issuer has consented in writing to the use by the broker, dealer or municipal securities dealer of the periodic written information referred to in subparagraph (B) of this paragraph (viii) in lieu of an immediate confirmation for each transaction with each customer participating in such plan or program.

(b)–(e) No change.

Rule G–20. Customer Account Transfers

(a) Definitions. For purposes of this rule, the following terms have the following meanings:

(i)–(ii) No change.

(iii) The term "nontransferable asset" means an asset that is incapable of being transferred from the carrying party to the receiving party because (*A*) it is an

issue in default for which the carrying party does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the securities, *or (B) it is a municipal fund security which the issuer requires to be held in an account carried by one or more specified brokers, dealers or municipal securities dealers that does not include the receiving party.*

(b) No change.

(c) Transfer Instructions.

(i) No change.

(ii) If an account includes any nontransferable assets, the carrying party must request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. Such request shall provide the customer with the following alternative methods of disposition of nontransferable assets, if applicable.

(A) No change.

(B) retention by the carrying party for the customer's benefit; *or*

(C) in the case of a nontransferable asset described in section (a)(iii)(B), transfer to another broker, dealer or municipal securities dealer, if any, which the issuer has specified as being permitted to carry such asset.

(d)–(i) No change.

Rule G–32. Disclosures in Connection With New Issues

(a) *Customer* Disclosure Requirements. No broker, dealer or municipal securities dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer no later than the settlement of the transaction:

(i) a copy of the official statement in final form prepared by or on behalf of the issuer or, if an official statement in final form is not being prepared by or on behalf of the issuer, a written notice to that effect together with a copy of an official statement in preliminary form, if any; provided, however, that:

(A) if a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program has previously received a copy of the official statement in final form in connection with the purchase of municipal fund securities under such plan or program, a broker, dealer or municipal securities dealer may sell additional shares or units of the municipal fund securities under such plan or program to the customer if such broker, dealer or municipal securities dealer sends to the customer a copy of a new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally prompt means, promptly upon receipt thereof; provided that, if the broker, dealer or municipal securities dealer sends a supplement, amendment or sticker without including the remaining portions of the official statement in final form, such broker, dealer or municipal securities dealer includes a written statement describing which documents constitute the complete official statement in final form and stating that the complete official statement in final form is available upon request; or

(B) if an official statement in final form is being prepared for new issue municipal securities issued in a primary offering that qualifies for the exemption set forth in paragraph (iii) of section (d)(1) of Securities Exchange Act Rule 15c2–12, a broker, dealer or municipal securities dealer.

(A)–(B) Renumbered as (1)–(2).

(ii) in connection with a negotiated sale of new issue municipal securities, the following information concerning the underwriting arrangements:

(A) the underwriting spread, *in any;*

(B) the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities; *provided, however, that if a broker, dealer or municipal securities dealer selling municipal fund securities provides periodic statements to the customer pursuant to rule G–15(a)(viii) in lieu of individual transaction confirmations, this paragraph (ii)(B) shall be deemed to be satisfied if the broker, dealer or municipal securities dealer provides this information to the customer at least annually and provides information regarding any change in such fee on or prior to the sending of the next succeeding periodic statement to the customer; and*

(C) except with respect to an issue of municipal fund securities, the initial offering price for each maturity in the issue that is offered or to be offered in while or in part by the underwriters, including maturities that are not reoffered.

(b) Inter-Dealer Disclosure Requirements. Every broker, dealer or municipal securities dealer shall send, upon request, the documents and information referred to in [this] section (a) to any broker, dealer or municipal securities dealer to which it sells new issue municipal securities no later than the business day following the request or, if an official statement in final form is being prepared but has not been received from the issuer or its agent, no later than the business day following such receipt. Such items shall be sent by first class mail or other equally prompt means, unless the purchasing broker, dealer or municipal securities dealer arranges some other method of delivery and pays or agrees to pay for such delivery.

(b)–(c) Relettered as (c)–(d).

Rule G–34. CUSIP Numbers and New Issue Requirements

(a)–(b) No change.

(c) [CUSIP Number Eligibility] *Exemptions.* The provisions of this rule shall not apply to an issue of municipal securities (or for the purpose of section (b) any part of an outstanding maturity of an issue) which (*i*) does not meet the eligibility criteria for CUSIP number assignment *or (ii) consists entirely of municipal fund securities.*

* * * * *

Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market

The Municipal Securities Rulemaking Board ("Board") has learned that sales of certain interests in trust funds held by state or local governmental entities may be effected by or through brokers, dealers or municipal securities dealers ("dealers"). In particular, the Board has reviewed two types of state or local governmental programs in which dealers may effect transactions in such interests: pooled investment funds under trusts established by state or local governmental entities ("local government pools")[4] and higher education savings plan trusts established by states ("higher education trusts").[5] In response to a request of the Board, staff of the Division of Market

[4] *The Board understands that local government pools are established by state or local governmental entities as trusts that serve as vehicles for the pooled investment of public moneys of participating governmental entities. Participants purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors generally do not have a right to control investment of trust assets. See generally National Association of State Treasures ("NAST"), Special Report: Local Government Investment Pools (July 1995) ("NAST Report") Standard & Poor's Fund Services, Local Government Investment Pools (May 1999) ("S&P Report").*

[5] *The Board understands that higher education trusts generally are established by states under section 529(b) of the Internal Revenue Code as "qualified state tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Individuals purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors do not have a right to control investment of trust assets. See generally College Savings Plans Network, Special Report on State and College Savings Plans (1998) ("CSPN Report").*

Regulation of the Securities and Exchange Commission ("SEC") has stated that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the [Securities] Exchange Act of 1934]."[6] Any such interests that may, in fact, constitute municipal securities are referred to herein as "municipal fund securities." To the extent that dealers effect transactions in municipal fund securities, such transactions are subject to the jurisdiction of the Board pursuant to Section 15B of the Securities Exchange Act of 1934 ("Exchange act").

With respect to the applicability to municipal fund securities of Exchange Act Rule 15c2–12, relating to municipal securities disclosure, staff of the staff of the SEC's Division of Market Regulation has stated:

[W]e note that Rule 15c2–12(f)(7) under the Exchange act defines a "primary offering" as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon an analysis of programs that have been brought to our attention, it appears that interests in local government pools or higher education trusts generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a "primary offering" as that term is defined in Rule 15c2–12. If a dealer is acting as an "underwriter" (as defined in Rule 15c2–12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2–12.[7]

Rule 15c2–12(f)(8) defines an underwriter as "any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking."[8]

Consistent with SEC staff's view regarding the sale in primary offerings of municipal fund securities, dealers acting as underwriters in primary offerings of municipal fund securities generally would be subject to the requirements of rule G–36, on delivery of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to Board or its designee. Thus, unless such primary offering falls within one of the stated exemptions in Rule 15c2–12, the Board expects that the dealer would receive a final official statement from the issuer or its agent under its contractual agreement entered into pursuant to Rule 15c2–12(b)(3).[9] Such final official statement should be received from the issuer in sufficient time for the dealer to send it, together with Form G–36(OS), to the Board within one business day of receipt but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal fund securities, as required under rule G–36(b)(i).[10] "Final official statement," as used in rule G–36(b)(i), has the same meaning as in Rule 15c2–12(f)(3), which states, in relevant part:

The term official statement means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section.[11]

The Board understands that issuers of municipal fund securities typically issue and deliver the securities continuously as customers make purchases, rather than issuing and delivering a single issue on a specified date. As used in Board rules, the term "underwriting period" with respect to an offering involving a single dealer (i.e., not involving an underwriting syndicate) is defined as the period (A) commencing with the first submission to the dealer of an order for the purchase of the securities or the purchase of the securities from the issuer, whichever first occurs, and (B) ending at such time as the following two conditions both are met: (1) The issuer delivers the securities to the dealer, and (2) the dealer no longer retains an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs.[12] Since an offering consisting of securities issued and delivered on a continuous basis would not, by its very nature, ever meet the first condition for the termination of the underwriting period, such offering would continuously remain in its underwriting period.[13] Further, since rule G–36(d) requires a dealer that has previously provided an official statement to the Board to send any amendments to the official statement made by the issuer during the underwriting period, such dealer would remain obligated to send to the Board any amendments made to the official statement during such continuous underwriting period. However, in view of the increased possibility that an issuer may change the dealer that participates in the sale of its securities during such a continuous underwriting period, the Board has determine that rule G–36(d) would require that the dealer that is at the time of an amendment then serving as underwriter for securities that are still in the underwriting period send the amendment to the Board, regardless of

[6] Letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel of the Board, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire, published as Municipal Securities Rulemaking Board, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 032299033 (Feb. 26, 1999) ("SEC Letter").

[7] Id.

[8] The definition of underwriter excludes any person whose interest is limited to a commission, concession, or allowance from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

[9] Section (b)(3) of Rule 15c2–12 requires that a dealer serving as a Participating Underwriter in connection with a primary offering subject to the Rule contract with an issuer of municipal securities or its designated agent to receive copies of a final official statement at the time and in the quantities set forth in the Rule.

[10] If a primary offering of municipal fund securities is exempt from Rule 15c2–12 (other than as a result of being a limited offering as described in section (d)(1)(i) of the Rule) and an official statement in final form has been prepared by the issuer, then the dealer would be expected to send the official statement in final form, together with Form G–36(OS), to the Board under Rule G–36(c)(i).

[11] Dealers seeking guidance as to whether a particular document or set of documents constitutes a final official statement for purposes of Rule G–36(b)(i) may wish to consult with SEC staff to determine whether such document or set of documents constitutes a final official statement for purposes of Rule 15c2–12.

[12] See rule G–32(c)(ii)(B). If approved by the SEC, the proposed rule change will redesignate this section as Rule G–32(d)(ii)(B).

[13] Similarly, an offering involving an underwriting syndicate and consisting of securities issued and delivered on a continuous basis also would remain in its underwriting period under the definition thereof set forth in Rule G–11(a)(ix).

whether that dealer or another dealer sent the original official statement to the Board.

In addition, municipal fund securities sold in a primary offering would constitute new issue municipal securities for purposes of rule G–32, on disclosures in connection with new issues, so long as the securities remain in their underwriting period. Rule G–32 generally requires that a dealer selling a new issue municipal security to a customer must deliver the official statement in final form to the customer by settlement of such transaction. Thus, a dealer effecting transactions in municipal fund securities that are sold during a continuous underwriting period would be required to deliver to the customer the official statement by settlement of each such transaction. However, in the case of a customer purchasing such securities who is a repeat purchaser, no new delivery of the official statement would be required so long as the customer has previously received it in connection with a prior purchase and the official statement has not been changed from the one previously delivered to that customer.[14]

Certain other implications arise under Board rules as a result of the status, in the view of SEC staff, of sales of municipal fund securities as primary offerings. For example, dealers are reminded that the definition of "municipal securities business" under rule G–37, on political contributions and prohibitions on municipal securities business, and rule G–38, on consultants, includes the purchase of a primary offering from the issuer on other than a competitive bid basis or the offer or sale of a primary offering on behalf of any issuer. Thus, a dealer's transactions in municipal fund securities may affect such dealer's obligations under rules G–37 and G–38. In addition, rule G–23, on activities of financial advisors, applies to a dealer's financial advisory or consultant services to an issuer with respect to a new issue of municipal securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Dealers that effect transactions in municipal securities are subject to the Board's jurisdiction pursuant to Section 15B of the Act.[15] In particular, Section 15B(c)(1)[16] prohibits dealers from effecting transactions in, or inducing or attempting to induce the purchase or sale of, a municipal security in contravention of any Board rule. Thus, since the enactment of Section 15B and the creation of the Board in the Securities Acts Amendments of 1975 ("Securities Acts Amendments"),[17] a transaction effected by a dealer in a municipal security must be effected in conformity with Board rules.

The Board has learned that sales of certain interests in trust funds held by state or local governmental entities may be effected by or through dealers. In particular, the Board has reviewed two types of state or local governmental programs in which dealers may effect transactions in such interests: local government pools and higher education trusts.[18] In response to a request of the Board, staff of the SEC's Division of Market Regulation has stated that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the Act."[19] Any such interests that may, in fact, constitute municipal securities are referred to herein as "municipal fund securities." To the extent that dealers effect transactions in municipal fund securities, such transactions would be subject to the jurisdiction of the Board pursuant to Section 15B of the Act.[20]

Board rules do not apply to any interest in a local government pool or a higher education trust that is not a municipal security. In addition, Board rules apply only to activities of dealers that effect municipal securities transactions. Thus, Board rules do not apply to an issuer of, or a non-dealer entity providing advice to issuers on, municipal securities, including municipal fund securities. However, to the extent that interests in a local government pool or a higher education trust are municipal securities and dealers are effecting transactions in them, Board rules automatically govern such dealer transactions, without the necessity of further Board rulemaking.[21] On several previous occasions, the Board has alerted the industry to the applicability of Board rules to (and has adopted rule changes to accommodate) transactions in new forms of municipal securities or pre-existing forms of securities that many in the industry had not previously recognized as municipal securities.[22]

A municipal fund security is defined in proposed Rule D–12 as a municipal security issued by an issuer that, but for Section 2(b) of the Investment Company Act of 1940 ("Investment Company Act"),[23] would constitute an investment

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[14] *This is equally true for other forms of municipal securities for which a customer has already received an official statement in connection with an earlier purchase and who proceeds to make a second purchase of the same securities during the underwriting period. Furthermore, in the case of a repeat purchaser of municipal securities for which no official statement in final form is being prepared, no new delivery of the written notice to that effect or of any official statement in preliminary form would be required so long as the customer has received it in connection with a prior purchase. However, if an official statement in final form is subsequently prepared, the customer's next purchase would trigger the delivery requirement with respect of such official statement. Also, if an official statement which has previously been delivered is subsequently amended during the underwriting period, the customer's next purchase would trigger the delivery requirement with respect to such amendment.*

[15] 15 U.S.C. 78*o*–4.

[16] 15 U.S.C. 78*o*–4(c)(1).

[17] Pub. L. 94–29, 89 Stat. 97 (1975).

[18] *See supra* notes 4 and 5.

[19] SEC Letter, *see supra* note 5.

[20] 15 U.S.C. 78*o*–4.

[21] Dealers also should consider the current applicability of Rule 15c2–12 under the Act. *See supra* note 7 and accompanying text. Questions regarding Rule 15c2–12 should be directed to SEC staff. In addition, dealers should distinguish sales of municipal fund securities from sales of securities to, and purchases of securities from, the trust fund underlying such municipal fund securities. The Board believes that the municipal securities industry has been well aware of the applicability of Board rules to dealer transactions that involve the sale or purchase of municipal securities to or from higher education trusts or local government pools.

[22] *See* "Transactions in Municipal Collateralized Mortgage Obligations: Rule G–15," *MSRB Reports*, Vol. 12, No. 1 (April 1992) at 21; "Stripped Coupon Municipal Securities," *MSRB Reports*, Vol. 9, No. 1 (March 1989) at 3; "Taxable Securities," *MSRB Reports*, Vol. 6, No. 5 (Oct. 1986) at 5; "Tender Option Programs: SEC Response to Board Letter," *MSRB Reports*, Vol. 5, No. 2 (Feb. 1985) at 3; "Tax-Exempt Notes: Notice Concerning Application of Board Rules to Such Notes and of Filing of Rule Change," *MSRB Reports*, Vol. 2, No. 7 (Oct./Nov. 1982) at 17; "Application of Board's Rules to Municipal Commercial Paper," *MSRB Reports*, Vol. 2, No. 1 (Jan. 1982) at 9 ("CP Notice"); "Application of Board's Rules to Participation Interests in Municipal Tax-Exempt Financing Arrangements," *MSRB Reports*, Vol. 2, No. 1 (Jan. 1982) at 13; "Notice Concerning Application of Board's Rules to MAC Warrants," [1977–1987 Transfer Binder] *MSRB Manual* (CCH) ¶ 10,171 (Jan. 22, 1981) ("MAC Warrant Notice").

[23] 15 U.S.C. 80a–2(b). Section 2(b) provides that the Investment Company Act shall not apply to a state, or any political subdivision of a state, or any agency, authority, or instrumentality thereof.

company under the Investment Company Act. Thus, Board rules on municipal fund securities would apply to interests in state or local governmental trusts, such as local government pools and higher education trusts, only if the following three conditions are met:

1. A dealer is engaging in transactions in such interests;
2. Such interests, in fact, constitute municipal securities; and
3. Such interests are issued by an issuer that, but for the exemption under Section 2(b) of the Investment Company Act, would be considered an investment company within the meaning of that Act.

The Board understands the municipal fund securities may not have features typically associated with more traditional municipal securities. Instead, their features are similar to those of investment company securities.[24] Although Board rules generally have been drafted to accommodate the characteristics of debt securities, the Board believes that most current rules can appropriately be applied to municipal fund securities. Nonetheless, the Board feels that certain rules should be amended to recognize the unique characteristics of municipal fund securities. The proposed rule change does not seek to extend the reach of Board rules, because the rules already apply to municipal fund securities, but seeks to tailor certain Board rules to accommodate the nature of municipal fund securities.

Description of Proposed Rule Change

The proposed rule change defines a municipal fund security to include any interest in a local government pool or a higher education trust as they have been described to the Board, to the extent such interests are municipal securities. As a general matter, the proposed rule change has been drafted with the view that municipal fund securities should be treated differently from other municipal securities only under circumstances where current rules would not apply properly. In addition, the Board has not attempted to draft any proposed rule changes intended to address secondary market transactions in municipal fund securities because the Board understands that no such market now exists. The Board would undertake appropriate action should a secondary market develop in municipal fund securities.

Proposed Rule D–12—Definition of Municipal Fund Security. Proposed Rule D–12 defines municipal fund security as a municipal security that would qualify as a security of an investment company under the Investment Company Act if it had not been issued by a state or local governmental entity.[25] Before a security can be considered a municipal fund security, it must first be considered to be a municipal security. If an investment is deemed a municipal fund security, then dealer transactions are subject to all Board rules because of its status as a municipal security. Municipal securities, however, would receive special treatment in those instances where provisions are proposed to be added to relate specifically to municipal fund securities.[26]

Rule A–13—Assessments. Proposed Rule A–13 exempts the sale of municipal fund securities from the underwriting assessment imposed under section (b) thereof because the fee structure for dealers involved in the distribution of municipal fund securities is more like an administrative fee than an underwriting discount or commission given that these dealers do not undertake underwriting risks. As a result, fees generally are fixed and are low relative to traditional underwriting fees and the level of fees generated by the Board from underwriting assessments would be disproportionate to the resulting regulatory costs.

Rule G–3—Professional Qualifications. Proposed Rule G–3 permits an associated person qualified as an investment company limited representative to effect transactions in municipal fund securities (but not in other municipal securities).[27] However, a dealer must continue to have one or two municipal securities principals as required under existing section (b) of Rule G–3, even if the dealer's only municipal securities transactions are sales of municipal fund securities.

Rule G–8—Recordkeeping. Proposed Rule G–8 ensures consistency with proposed Rules G–3 and G–15. Thus, amended Rule G–8 would recognize that municipal fund securities do not have par values, dollar prices, yields and accrued interest and that investment company limited representatives may be permitted to effect transactions in municipal fund securities. In addition, proposed Rule G–8 requires dealers to retain copies of all periodic statements delivered to customers in lieu of individual confirmations with respect to transactions in municipal fund securities under proposed Rule G–15. Furthermore, proposed Rule G–8 would permit a dealer effecting transactions in municipal fund securities to meet its books and records requirements by having a transfer agent maintain books and records for such municipal fund securities so long as the books and records of the transfer agent meet the requirements of proposed Rule G–8 as proposed to be amended and the dealer remains responsible for the accurate maintenance and preservation of the books and records.

Rule G–14—Transaction Reporting. Proposed Rule G–14(b)(i) clarifies that certain types of municipal securities transactions may be excluded from transaction reporting as provided in the Rule G–14 Transaction Reporting Procedures. The Board is proposing to amend the Transaction Reporting Procedures to expressly exempt any transaction in municipal fund securities from the customer transaction reporting system. A number of factors unique to municipal fund securities have contributed to the Board's determination to exempt such securities from proposed Rule G–14 at this time. In particular, municipal fund securities do not trade in the secondary market. Thus, for example, unlike the bulk of data currently received by the Board through the system, any data obtained regarding transactions in municipal fund securities would be limited to one-time sales to customers upon initial issuance and one-time purchases (or redemptions) from customers upon cashing out. Municipal fund securities are sold by dealers on an agency basis generally without payment of commissions by customers; therefore, dealers effecting transactions in municipal fund securities would have little opportunity to alter the pricing on such securities from that set the issuer.

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[24] Municipal fund securities generally provide investment return and are valued based on the investment performance of an underlying pool of assets having an aggregate value that may increase or decrease from day to day, rather than providing interest payments at a stated rate or discount, as is the case for more traditional municipal securities. In addition, unlike traditional municipal securities, these interests do not have stated par values or maturity dates and cannot be priced based on yield or dollar price. *See generally* NAST Report; S&P Report; and CSPN Report, *supra* notes 3 and 4.

[25] This should be distinguished from shares in a mutual fund registered under the Investment Company Act with assets invested in municipal securities, which shares would not constitute municipal fund securities.

[26] The definition of municipal fund security is not strictly limited to interests in local government pools or higher education trusts that are municipal securities but would apply as well to any other municipal security issued under a program that would, but for the identity of the issuer as a state or local governmental entity, constitute an investment company under the Investment Company Act.

[27] Thus, an associated person who sells both municipal fund securities and other types of municipal securities must continue to qualify as either a municipal securities representative or a general securities representative.

Furthermore, certain critical data elements that the transaction reporting system currently collects (*e.g.*, dollar price, yield, etc.) would not apply to transactions in municipal fund securities. Nonetheless, should the Board in the future receive information that practices have developed in the municipal fund security market that merit reporting of transaction information, the Board would consider whether to revisit the exemption from Rule G–14.

Rule G–15—Customer Confirmations. Various amendments are being proposed to Rule G–15 relating to the concepts of par value, yield, dollar price, maturity date and interest, none of which apply to a municipal fund security. Thus, as proposed, a dealer is required to use the purchase of sale price of the securities, as appropriate, on a confirmation of a municipal fund securities transaction, rather than par value and would be able to omit yield, dollar price, accrued interest, extended principal, maturity date and interest rate. Dealers selling municipal fund securities are required to include the purchase price of each share or unit (rather than denomination) as well as the number of shares or units to be delivered. Confirmations of municipal fund securities transactions are required to include a disclosure that a deferred commission or other charge may be imposed upon redemption, if applicable.[28] The proposal also makes clear that dealers must confirm redemptions of municipal fund securities. A confirmation of a municipal fund security transaction need not show the information required under paragraph (a)(i)(C) other than whether the security is puttable. In addition, the confirmation must include the name used by the issuer to identify the security and, to the extent necessary to differentiate the security from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation.

In addition, the amendment would permit dealers to use periodic statements, rather than transaction-by-transaction confirmations, if customers are purchasing such securities pursuant to certain periodic plans or non-periodic programs, in a manner similar to the periodic reporting provision under Rule 10b–10 under the Act.[29]

[28] Disclosure of deferred commissions or other charges covers, for example, any deferred sales load or, in the case of interests in certain higher education trusts, any penalty imposed on a redemption that is not for a qualifying higher education expense.

[29] 17 CFR 240.10b–10.

Rule G–26—Customer Account Transfers. The definition of "nontransferable asset" and the transfer instructions for nontransferable assets in proposed Rule G–26 are proposed to be amended to reflect the fact that the issuer of municipal fund securities may limit the dealers that are authorized to carry accounts for customers in such securities.

Rule G–32—Disclosures in Connection with New Issues. Proposed Rule G–32 permits a dealer to sell, pursuant to a periodic plan or a non-periodic program as defined in Rule G–15, as proposed to be amended, a municipal fund security to a customer who has previously received the official statement for the security so long as its sends to the customers a copy of any new, supplemented, amended or stickered official statement promptly upon receipt from the issuer (*i.e.*, actual delivery by settlement is not required). The dealer is permitted to satisfy this delivery requirement by delivering the amendment alone (including a notice that the complete official statement is available upon request) so long as the customer already had the official statement that is being amended and the dealer ensures that the amendment makes clear what constitutes the complete official statement. The proposed rule change also excepts municipal fund securities for which periodic statements in lieu of transaction confirmations are provided from the requirement that information on the underwriting fees paid to the dealer by the issuer be provided to customers by settlement so long as such information is disclosed at least annually and information on any fee changes paid by the issuer to the dealer is sent to customers simultaneously with or prior to the sending of the next periodic statement.

Rule G–34—CUSIP Numbers and Depository Eligibility. The proposal would exempt municipal fund securities from the requirements of Rule G–34 because no secondary market is expected to develop.[30]

Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market. Interpretive guidance is provided in connection with the application of Rules G–23, G–32, G–36, G–37 and G–38 to dealer transactions in municipal fund securities.

[30] Dealers may still elect to acquire CUSIP numbers for municipal fund securities and to make such securities depository eligible, subject to meeting all of the eligibility requirements of the CUSIP Service Bureau and of any securities depository, respectively.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[31] of the Act, which requires the Board's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Board believes that the proposed rule change is consistent with the Act because it amends existing Board rules to better accommodate the unique characteristics of municipal fund securities, thereby removing impediments to a free and open market in these securities and promoting the protection of investors and the public interest

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all dealers effecting transactions in municipal fund securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 17, 1999, the Board published a notice ("March Notice") requesting comments on draft rule changes relating to transactions effected by or through dealers in municipal fund securities.[32] The Board received twelve comment letters on the March Notice.[33]

[31] 15 U.S.C. 78o–4(b)(2)(c).

[32] "Municipal Fund Securities," *MSRB Reports*, Vol. 19, No. 2 (April 1999) at 9.

[33] Letters from Laura Bramson, Senior Counsel, Teachers Personal Investors Services, Inc. ("TPIS"), to the Board, dated May 13, 1999 ("First TPIS Letter") and June 30, 1999 ("Second TPIS Letter"); letter from Barbara L. Hasson, President, Board of Trustees, Pennsylvania Local Government Investment Trust ("PLGIT"), to Ernesto A. Lanza, Associate General Counsel, Board, dated May 13, 1999 ("PLGIT Letter"); letter from Marty Margolis, Managing Director, Public Financial Management ("PFM"), to Ernesto A. Lanza, dated May 14, 1999 ("PFM Letter"); letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association ("TBMA"), to Ernesto A. Lanza, dated June 1, 1999 ("TBMA Letter"); letter from J. Todd Cook, Vice President and Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith

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THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

After reviewing these comments, the Board re-circulated the draft rule changes, with certain modifications and additions, for further comment from industry participants in a notice published on August 27, 1999 ("August Notice").[34] The Board received seven comment letters on the August Notice.[35] After reviewing these additional comments, the Board approved the revised draft rule changes, with certain additional modifications and additions, for filing with the SEC. The comments received, and the Board's response, are summarized below.

A. Authority of Board To Adopt Rules Governing Dealer Transactions in Municipal Fund Securities

1. Comments Received

Some commentators question the Board's authority to regulate municipal fund securities, particularly local government pool interests.[36] Fidelity, Fubright, MBIA–MISC and Schulte state that such interests are not municipal securities under the Act. They argue that the term "municipal securities" as used in the Act is limited to debt obligations of municipal issuers and that interests in local government pools represent equity interests in trust assets, not debt obligations.[37] Duane and Eckert question whether Congress intended that the Board regulate local government pools when it created the Board.

2. Board Response

A security must first be a municipal security in order to be a municipal fund security. The proposed rule change would not, and existing Board rules do not, apply to local government pool or higher education trust interests that are not municipal securities. Thus, the Board does not overstep its authority by regulating dealer transactions in municipal fund securities because, by definition, regulation is limited to interests that are municipal securities.

A firm wishing to determine if Board rules apply to services it provides to an issuer of local government pool or higher education trust interests may seek advice of counsel as to whether (1) such services constitute broker-dealer activities, or (2) such interests are municipal securities. In addition, the firm may seek no-action relief from SEC staff. If a non-dealer firm's activities do not constitute broker-dealer activities, the firm need not be a registered broker or dealer subject to Board rules, even if the interests re municipal securities.[38] If the interests are not municipal securities, the dealer need not comply with Board rules; however, the dealer's activities may be subject to provisions of the Act, the rules and regulations thereunder, and National Association of Securities Dealers ("NASD") rules, unless the interests otherwise qualify for an exemption (*e.g.*, as exempted securities other than municipal securities) under the Act.

Of course, the Board's rulemaking proposals meaningful only if municipal fund securities, in fact, exist. As noted above, the Board asked SEC staff whether local government pool and higher education trust interests are municipal securities. SEC staff replied that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the Act."[39] Although the Board is not empowered to determine whether a security is a municipal security within the meaning of Section 3(a)(29) of the Act, the Board believes that, based on the SEC's response as well as a close review of existing no-action letters and legislative history of the Securities Acts Amendments, the Act, and the Securities Act of 1933 ("Securities Act"), as discussed below, at least some interests in local government pools and higher education trusts are municipal securities.

For example, in agreeing not to recommend enforcement action in several no-action letters, SEC staff relied on opinions of counsel that interests in state or local governmental trusts were municipal securities under the Act.[40] In

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Incorporated ("Merrill"), to the Board, dated June 2, 1999 ("First Merrill Letter"); letter from Leonard M. Leiman, Partner, Fulbright & Jaworski LLP ("Fulbright"), as counsel to Fidelity Investment ("Fidelity"), to the Board, dated June 4, 1999 ("Fulbright Letter"); letter from Thomas R. Schmuhl, Duane, Morris & Heckscher LLP ("Duane"), as counsel to the Pennsylvania School District Liquid Asset Fund, to Ernesto A. Lanza, dated June 8, 1999 ("Duane Letter"); letter from Kenneth S. Gerstein, Schulte Roth & Zabel LLP ("Schulte"), as counsel to Cadre Financial Services, Inc., to the Board, dated June 16, 1999 ("Schulter Letter"); letter from Leonard I. Chubinsky, Assistant General Counsel, MBIA Municipal Investors Service Corporation ("MBIA–MISC"), to Ernesto A. Lanza, dated July 1, 1999 ("MBIA–MISC Letter"); letter from Thomas J. Wallace, Executive Director, Florida Prepaid College Board ("Florida"), to Ernesto A. Lanza, dated July 13, 1999 ("Florida Letter"); and letter from Betsy Dotson, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), to Ernesto A. Lanza, dated July 16, 1999 ("First GFOA Letter").

[34] "Municipal Fund Securities—Revised Draft Rule Changes," *MSRB Reports*, Vol. 19, No. 3 (Sept. 1999) at 3.

[35] Letter from David Unkovic, Saul, Ewing, Remick & Saul LLP ("Saul"), as counsel to PLIT, to Ernesto A. Lanza, dated October 27, 1999 ("Saul Letter"); letter from Joseph J. Connolly, Eckert Seamans Cherin & Mellott, LLC ("Eckert"), as counsel to PFM, to the Board, dated October 29, 1999 ("Eckert Letter"); letter from Betsy Dotson, Director, Federal Liaison Center, GFOA, to Ernesto A. Lanza, dated November 1, 1999 ("Second GFOA Letter"); letters from Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Investments ("Fidelity"), to the Board, dated November 1, 1999 ("First Fidelity Letter") and to each Board member, dated January 20, 2000 ("Second Fidelity Letter"); letter from J. Todd Cook, Vice President and Senior Counsel, Merrill, to the Board, dated November 5, 1999 ("Second Merrill Letter"); and letter from Marshall Bennett, Chairman, CSPN (NAST) and Mississippi State Treasurer, to Ernesto A. Lanza, dated January 11, 2000 ("NAST Letter").

[36] *See* Duane, Fulbright, MBIA–MISC, Schulte, Eckert, First Fidelity and Second Fidelity Letters. Fulbright states that, although the Board has no authority to regulate either local government pool or higher education trust interests, it believes that interested parties would not resist "appropriate regulation" of higher education trust interests. It states that regulation of transactions in such interests is "arguably both more important and less controversial" than regulation of local government pool interests, noting that higher education trust interests "clearly affect public investors and the public interest." Fidelity also believes that interests in higher education trusts are not municipal securities but states that such interests "are distributed to the public investors and therefore may raise unique public policy issues."

[37] These commentators observe that municipal securities are defined in Section 3(a)(29) of the Act as "securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof," in contrast to the language used in Section 3(a)(2) of the Securities Act of 1933 regarding any "security issue or guaranteed . . . by any State of the United States, or by any political subdivision of a State or Territory." They quote a Senate report statement on the Securities Acts Amendments that "'municipal securities' refers to debt obligations of state and local government issuers." Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S.Rep. No. 75, 94th Cong., 1st Sess. 38 (1975) ("1975 Senate Report"); *but cf.* Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 229, 94th Cong., 1st Sess. 101 (1975) ("1975 Conference Report") (amendments "provide a comprehensive pattern for the registration and regulation of securities firms and banks which underwrite and trade *securities issued by* States and municipalities") (emphasis added). They note references in SEC no-action letters to obligations under the Internal Revenue Code to support their position that municipal securities are limited to debt obligations. *See* Itel Corp., SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 100581018 (Oct. 1, 1981) ("Itel No-Action Letter"); Bedford-Watt Enterprises, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 062878091 (June 9, 1978) ("Bedford-Watt No-Action Letter"). In addition, CERS cites an SEC no-action letter to suggest that an equity security may not be a municipal security. *See* City Employees' Retirement System of the City of Los Angeles, SEC No-Action Letter, [1977–1978 Dec.] Fed. Sec. L. Rep. (CCH) ¶ 81,194 (May 12, 1977) ("CERS No-Action Letter").

[38] Thus, non-dealer firms may act as investment advisers to local government pool or higher education trust programs and not become subject to Board rules.

[39] *See* SEC Letter, *supra* note 5.

[40] *See, e.g.*, Virginia Higher Education Tuition Trust Fund, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 111599009 (Nov. 16, 1999) ("Virginia No-Action Letter"); Missouri Higher Education Savings Program, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 110199007 (Oct. 25, 1999) ("Missouri No-Action Letter"); Golden State Scholarshare Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 092099002 (Sept. 15, 1999) ("California No-Action Letter") Maine

one instance, SEC staff agreed not to recommend enforcement action if a dealer, in offering and selling interests in a higher education trust, were to comply with Board rules as they have been proposed to be amended in the March Notice, in lieu of complying with such rules as currently in effect.[41] In another no-action letter, SEC staff agree not to recommend enforcement action against dealers who (1) sold interests in a higher education trust through persons qualified to sell investment company products but who did not meet the Board's professional qualification requirements[42] and (2) complied with Rule 15c2–12(b)(5)[43] through a continuing disclosure undertaking from a dealer affiliate, rather than from the issuer. In reaching this position, SEC staff noted that the higher education trust interests were "atypical municipal securities."[44]

In other instances, SEC staff agreed not to recommend enforcement action if state entities and their employees sold higher education trust interests without registering as brokers.[45] The applicants opined in these cases that the interests were municipal securities under the Act, thereby exempting the issuers from registering as brokers by virtue of the exemption for issuers of municipal securities set forth in Section 3(d)[46] of the Act.[47] SEC staff also agreed not to recommend enforcement action if interests in a state trust were not registered under the Act, in reliance on an opinion that the exemption under Section 3(a)(12) of the Act[48] for exempted securities was available.[49]

SEC staff also has taken the position that non-debt securities may be municipal securities under the Act.[50] In one instance, SEC staff was unable to conclude that receipt/certificates evidencing developers' payments to a city of fees for the issuance of building permits were not municipal securities under the Act.[51] SEC staff also has advised the Board that warrants sold by a municipal corporation entitling the holders to purchase other municipal securities of that corporation are themselves municipal securities under the Act.[52] Finally, in those cases in which SEC staff concluded that an "obligation" within the meaning of the Internal Revenue Code would also constitute an "obligation" for purposes of Section 3(a)(29) of the Act, SEC staff did not conclude that the failure of a security to be an obligation for purposes of the Internal Revenue Code would mean that such security was not a municipal security for purposes of the Act.[53] In these cases, SEC staff was not presented with the issue of whether a non-debt security could be a municipal security. As noted above, on the last two occasions when SEC staff was confronted with this issue, it concluded that a non-debt security may be a municipal security for purposes of the Act.[54]

A review of legislative history also suggests that the commentator's position that the term "municipal securities" in the Act excludes non-debt securities is not justified. The Senate report on the Securities Acts Amendments notes that the legislation created a definition of municipal securities in new Section 3(a)(29) of the Securities Act[55] that, for all relevant purposes, used the same language as in the original version of the definition of exempted municipal securities in Section 3(a)(12) of the Act.[56] It also states that no substantive changes in meaning would be effected by creating Section 3(a)(29).[57] Thus, the import of the term "municipal securities" must be viewed, in the first instance, through the eyes of the original drafters of the Act in 1934

College Savings Program Fund, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 080999001 (Aug. 2, 1999) ("Maine No-Action Letter"); Teachers Personal Investors Services, Inc., SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 092898006 (Sept. 10, 1998) ("New York No-Action Letter"); New Hampshire Higher Education Savings Plan Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 070698010 (June 30, 1998) ("New Hampshire No-Action Letter"); Public Employees Retirement Board of the State of Oregon, SEC No-Action Letter, Wash. Serv. Bur (CCH) File No. 041398009 (March 3, 1998) ("Oregon State No-Action Letter"); North Carolina State Education Assistance Authority, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 032497016 (March 24, 1997) ("North Carolina No-Action Letter"); Missouri Family Trust Fund, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 101392001 (Sept. 22, 1992) ("Missouri Family Trust No-Action Letter"); School District No. 1—Mutnomah County, Oregon, SEC No-Action Letter (Mar. 26, 1976) ("Oregon School District No-Action Letter").

[41] Maine No-Action Letter. SEC staff's position was conditioned on the dealer complying with all existing Board rules, other than those proposed to be amended in the March Notice, and complying with all Board rules upon completion of the current Board rulemaking process. Counsel had opined that the interests were direct obligations of an instrumentality of a state and therefore were municipal securities within the meaning of Section 3(a)(29) of the Act. *See id.* and accompanying letter of inquiry.

[42] New York No-Action Letter. SEC staff stated that this no-action position expires six months after Rule G–3 is amended to establish qualification requirements for persons selling such interests.

[43] 17 CFR 240.15c2–12(b)(5).

[44] *Id.* Counsel had opined that the interests were direct obligations of an instrumentality of a state and, therefore, were municipal securities under the Act. *See id.* and accompanying letter of inquiry. *See also* New York State college Choice Tuition Savings Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) file No. 091498008 (Sept. 10, 1998) and accompanying letter of inquiry.

[45] *See, e.g.*, Virginia No-Action Letter; Missouri No-Action Letter; California No-Action Letter; Maine No-Action Letter; New Hampshire No-Action Letter; North Carolina No-Action Letter.

[46] 15 U.S.C 78c(d).

[47] *See* Virginia No-Action Letter, and accompanying letter of inquiry; Missouri No-Action Letter, and accompanying letter of inquiry; California No-Action Letter, and accompanying letter of inquiry; Maine No-Action Letter, and accompanying letter of inquiry; New Hampshire No-Action Letter, and accompanying letter of inquiry; North Carolina No-Action Letter, and accompanying letter of inquiry. *See also* Missouri Family Trust No-Action Letter, and accompanying letter of inquiry; Oregon School District No-Action Letter, and accompanying letter of inquiry;

[48] 15 U.S.C. 78c(a)(12).

[49] *See* Oregon State No-Action Letter. Counsel opined that the interests would be exempt from the registration requirements of the Act as securities issued by a state instrumentality. *See also* Pennsylvania Local Government Investment Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 022283009 (Feb. 21, 1983) ("Pennsylvania No-Action Letter") and accompanying letter of inquiry, in which counsel opined that interests in a local government pool were municipal securities under the Act that qualified for the exemption from the registration requirements of Section 12(g) of the Act. SEC staff did not expressly rely on this opinion in arriving at its no-action position.

[50] *See, e.g.*, City of El Paso de Robles, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 111285020 (June 18, 1985) ("El Paso de Robles No-Action Letter"); MAC Warrant Notice. The SEC's position with respect to these two types of non-debt securities stands in contrast to SEC staff's earlier position regarding call options in the CERS No-Action Letter.

[51] *See* El Paso de Robles No-Action Letter.

[52] *See* MAC Warrant Notice. The MAC Warrent Notice was cited with approval by SEC staff in a letter to the Office of the Comptroller of the Currency. *See* letter dated August 12, 1981 from Thomas G. Lovett, Attorney, SEC, to Owen Carney, Director, Investment Securities Division, Office of the Comptroller of the Currency ("CP Letter"), *reprinted in* CP Notice.

[53] *See* Itel No-Action Letter (stating that the term "obligation" in the Act's definition of municipal security would generally include obligations under the Internal Revenue Code); Bedford-Watt No-Action Letter (stating that the Internal Revenue Code "provides a useful analogy"). In the Bedford-Watt No-Action Letter, SEC staff recognized that "obligation" under Section 3(a)(29) of the Act could include non-financial obligations to take actions needed for payment of the security. *See also* Pennsylvania No-Action Letter and accompanying letter of inquiry. In arriving at its opinion that local government pool interests described in the Pennsylvania No-Action Letter were municipal securities, counsel suggested, in reference to the definition of municipal securities in the Act, "that the word 'obligations' need not be read as 'debt' in this context. The Trust is under obligation to redeem all Shares of Beneficial Interest presented for redemption." In addition, the Chairman of the College Savings Plans Network noted in Congressional testimony that "state-sponsored college tuition programs are secured by the moral or political *obligation* of the states" Marshall Bennett, Testimony Before the House Committee on Ways and Means, Hearing on Reducing the Tax Burden: II. Providing Tax Relief to Strengthen the Family and Sustain a Strong Economy, 106th Cong., 1st Sess. (June 23, 1999), *available at*, <http://www.house.gov/ways_means/fullcomm/106cong/6–23–99/6–23benn.htm> (visited April 5, 2000) (emphasis added).

[54] *See* El Paso de Robles No-Action Letter; MAC Warrant Notice.

[55] 15 U.S.C. 77c(a)(29).

[56] *See* 1975 Senate Report, at 90, 92.

[57] *Id.* at 92.

rather than the drafters of the Securities Acts Amendments in 1975.

The purpose of including municipal securities in the definition of exempted securities in the Act was to provide an exemption for municipal securities from most provisions of the Act and the Securities Act. Although commentators suggest that Board regulation of dealer transactions in non-debt securities of municipal issuers is inconsistent with the intent of drafters of the Securities Acts Amendments, the appropriate inquiry is whether the drafters of the original Act would have intended that *only* debt securities of municipal issuers be exempted from most provisions of the Act. That is, would the drafters of the original Act have intended that non-debt securities of state or local governmental entities—had such securities existed at the time—be subject to the entire range of regulation of the Act applicable to other equity securities, including in some instances a requirement for registration of such securities with the SEC? A review of Congressional debates, committee reports and hearing testimony relating to enactment of the Securities Act and the Act reveals that, in spite of differences in statutory language, both Acts were expected to exempt the same universe of municipal securities.

For example, the 1993 House report on the Securities Act speaks of exempted state and local government securities almost exclusively in terms of "obligations" and "bonds," not "securities."[58] The report explains the exemption set forth in Section 3(a) of the Securities Act as follows:

> Paragraph (2) exempts United States, Territorial and State obligations, or obligations of any political subdivision of these government units. The term "political subdivision" carries with it the exemption of such securities as county, town, or municipal obligations, as well as school district, drainage district, and levee district, and other similar bonds. The line drawn by the expression "political subdivision" corresponds generally with the line drawn by the courts as to what obligations of States, their units and instrumentalities created by them, are exempted from Federal taxation. By such delineation, any constitutional difficulties that might arise with reference to the inclusion of State and municipal obligations are avoided.[59]

Furthermore, during Congressional debate and hearings held in 1993 on the Securities Act, members of Congress used the terms "securities," "obligations" and "bonds" interchangeable.[60] Thus, although the statutory language in the Securities Act uses only the term "securities" and not the term "obligations" when describing municipal securities, there is no suggestion that Congress had anything in mind when enacting the Securities Act other than the tax-exempt bonds and other debt obligations of state and local governments that are customarily associated with municipal securities. Nonetheless, the commentators all have agreed that local government pool and higher education trust interests are exempt from the Securities from the Securities Act and none has suggested that this exemption is limited to tax-exempt debt obligations.

The initial draft of the Act introduced in Congress the following year exempted federal government securities but not municipal securities. Members of Congress expressed concern regarding the appropriateness of federal regulation of state and local governmental matters,[61] the burden that provisions of the Act would place on state and local issuers[62] and the relative detriment in the market to municipal securities if they were not exempted but federal government securities were exempted.[63] Some discussion focused on whether a distinction should be drawn between defaulted and non-defaulted municipal securities.[64] Ultimately, the language that was added to the Act to exempt municipal securities made no such distinction but instead was drafted in non-exclusive terms that paralleled the language used in the Act to describe federal government securities. This language also employed the same type of terminology that the drafters of the Securities Act had used in the legislative history to explain the statutory language on municipal securities in that Act.[65] Legislative history does not reflect any intent or understanding that the municipal securities contemplated in the Act were any different than those that were already exempted under the Securities Act.[66] It would be inconsistent with legislative intent to limit the exemption under the Act solely to debt securities of state and local governments without similarly limiting the reach of the exemption provided in the Securities Act.

Finally, in using the same term—"municipal securities"—that sets out the exemption from most provisions of the Act to also delineate the Board's rulemaking authority under Section 15B of the Act,[67] Congress elected in the Securities Acts Amendments to grant the Board jurisdiction over dealer transactions in the identical universe of securities as were otherwise exempted from the Act as municipal securities.[68]

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[58] *See, e.g.*, House Comm. on Interstate and Foreign Commerce, Federal Supervision of Traffic in Investment Securities in Interstate Commerce, H.R.Rep. No.85, 73d Cong., 1st Sess. 6, 14 (1933) ("1993 House Report").

[59] *Id.* at 14. This view was confirmed the following year during House committee hearings on the Act by the Commissioner of the Federal Trade Commission, which was charged with enforcing the Securities Act. *See* Stock Exchange Regulation: Hearing on H.R. 7852 and H.R. 8720 Before the House Comm. on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 899 (1934) ("1934 House Hearings") (statement of James M. Landis, Commissioner, Federal Trade Commission). Commissioner Landis stated: "We had that same problem up in the Securities Act, where the exemption that is given to what might be called municipal bonds, and bonds of States and their instrumentalities, and is drawn according to a line that parallels the line that is drawn which makes tax-exempt municipal bonds, State instrumentalities, and so. In other words, every instrumentality of a State which, like a municipality, or a political subdivision of a State, was exempted from taxation, would be exempted from registration upon an issue of securities. That is the line drawn in the Securities Act. If exempt from taxation they are also exempted from the necessity of registration under that Act."

[60] *See, e.g.*, Securities Act: Hearings on S. 875 Before the Senate Comm. on Banking and Currency on S. 875 Cong., 1st. Sess. 65 (1993) ("1933 Senate Hearings") (statement of Sen. Reynolds); *id.* at 228, 232 (statement of Sen. Kean); *id.* at 232 (statement of Sen. Costigan); *id* at 303 (statement of Sen. Norbeck); 77 Cong. Rec. 2925 (1933) (statement of Rep. Studley).

[61] *See* 1934 House Hearings, at 822 (statement of Rep. Pettingill); *id.* at 898–9 (statements of James M. Landis, Commissioner, Federal Trade Commission; Rep. Pettingill). This concern also served as a primary basis for the exemption of municipal securities under the Securities Act. *See* 1933 House Report, at 14, and text accompanying note 59 above.

[62] *See* 1934 House Hearings, at 721, 911–3 (statement of Rep. Holmes); Stock Exchange Practices: Practices: Hearings on S. Res. 84 and S. Res. 56 and S. Res. 97 Before the Senate Comm. on Banking and Currency, 73d Cong., 1st Sesses 7441–52 (1934) ("1934 Senate Hearings") (statements of Archibald B. Roosevelt, Roosevelt & Weifold, Inc.; George B. Gibbons, George B. Gibbons & Co.; Sen. Gore; Sen. Goldsborough).

[63] *See* 1934 House Hearings, at 720 (statement of Rep. Holmes).

[64] *See* 1934 Senate Hearings, at 7413 (statements of H.H. Cotton, Investment Bank of Los Angeles; Ferdinand Pecora, Counsel to the Committee; Sen. Fletcher); *id.* at 7477 (statement of Tom K. Smith, Assistant to the Secretary of the Treasury; Sen. Adams; Sen. Walcott); 1934 House Hearings, at 7201 (statements for Tom K. Smith, Assistant to the Secretary of the Treasury; Rep. Holmes); *id.* at 819–23 (statements of George B. Gibbons, George B. Gibbons & Co.; Rep. Merritt; Rep. Rayburn; Rep. Pettengill).

[65] *See supra* note 59 and accompanying text.

[66] The phrase "security issued or guaranteed by" used in Section 3(a)(2) of the Securities Act introduces bank securities (including bank equity securities) as well as government and municipal securities. In contrast, the phrase "securities which are direct obligations of or obligations guaranteed as to principal or interest by" used in Section 3(a)(12) of the Act introduced only municipal and government securities. Thus, even thoughth the drafters of both the Securities Act and the Act thought of municipal and government securities solely as debt securities, the term "obligation" (to the extent such term is limited to debt securities) could only be used in the Act.

[67] 15 U.S.C. 78*o*–4.

[68] The conference report on the Securities Acts Amendments states: "The Senate bill extended the

Thus, even if Congress did not have interests in local government pools or higher education trusts in mind when enacting the Securities Acts Amendments, it did have a specific intent that the Board would have authority over dealer transactions in any security that would constitute an exempted security by virtue of being a municipal security. In creating the Board, the Senate report on the Securities Act Amendments stated that it would not "be desirable to restrict the Board's authority by a specific enumeration of subject matters. The ingenuity of the financial community and the impossibility of anticipating all future circumstances are obvious reasons for allowing the Board a measure of flexibility in laying down the rules for the municipal securities industry." [69] The fact that certain types of instruments (such as non-debt securities of state or local governments) were essentially non-existent at the time of enactment of the Securities Acts Amendments did not, in the minds of the drafters, mean that regulations relating to newly created instruments would not be within the Board's power.[70]

B. Appropriateness of Regulating Dealer Transactions in Municipal Fund Securities

1. Comments Received

A number of commentators state that, even if the Board has authority to adopt the proposed rule change, the Board should refrain from doing so.[71] Fulbright, MBIA–MISC and Schulte argue that no need has been demonstrated for regulation to protect investors or the public interest in connection with local government pool interests.[72] They state that investors are local governments and not the typical public investor in municipal securities.[73] Fulbright and Schulte argue that no abuses or other threats to public investors or the public interest have been identified by the Board that would warrant federal regulatory action. They state that offerings of interests in local government pools do not pose risks that are similar to those identified in the legislative history of the Securities Acts Amendments.[74] MBIA–MISC argues that safeguards already exist to provide investor protections comparable to those in the proposed rule change.[75] With respect to interests in higher education trusts, NAST states that the Board "should not attempt to regulate qualified state tuition program transactions, because there is no demonstrated need for regulation to protect state and local government investors or the public interest." [76]

Duane, Eckert, Florida, Fulbright, GFOA and Schulte state that Board rulemaking would adversely affect state and local governments. In particular, they believe that underwriting assessments would be passed on, directly or indirectly, to issuers and issuers would face additional administrative burdens as a result of the application of Board rules. They note that any increased costs to issuers likely would be passed on to investors in the form of lower returns on their investments.[77]

Duane, Fidelity and Fulbright also state that interests in local government pools involve transactions between the state or local government-sponsored pools and participating local governmental entities of that same state.[78] Fulbright believes that Board rulemaking would be inconsistent with the Tenth Amendment because transactions in local government pool interest do not constitute interstate commerce. Furthermore, noting that the Act does not require registration of a broker or dealer whose business is exclusively intrastate, Fulbright suggests that the Board "follow Congress's restraint in approaching intrastate transactions in securities." Finally, Fulbright states that regulation of transactions in these interests would "improperly intrude on state sovereignty" by indirectly regulating states by mandating actions by their agents.

2. Board Response

As the Board has previously observed, the current rulemaking proposal would not subject dealer transactions in municipal fund securities to Board rules but instead would make certain Board rules, to which such transactions are already subject, better accommodate the

basic coverage of the Securities Exchange Act of 1934 to provide a comprehensive pattern for the registration and regulation of securities firms and banks which underwrite and trade securities issued by States and municipalities. Municipal securities dealers were required to register with the Commission and comply with rules concerning just and equitable principles of trade and other matters prescribed by a new self-regulatory organization, the Municipal Securities Rulemaking Board, established by the bill and delegated responsibility for formulating rules relating to the activities of all municipal securities dealers. The exemption for issuers of municipal securities from the basic regulatory requirements of the Federal securities laws was continued." 1975 Conference Report, at 101.

[69] 1975 Senate Report, at 47. *See also* CP Letter, at note 7.

[70] In testimony at a 1975 Senate committee hearing on the Securities Acts Amendments, a representative of the Municipal Finance Officers Association stated that the municipal securities market "is completely a debt market." Securities Act Amendments of 1975: Hearings on S. 249 Before the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. 479 (1975) (statement of Michael S. Zarin, Member, Comm. on Governmental Debt Administration, Municipal Finance Officers Association). Having been so informed, the Senate's description in the 1975 Senate Report of municipal securities as "debt obligations of state and local government issuers," as noted by some commentators on the March Notice, in fact merely reflected an understanding of the nature of the municipal securities market at such time, *not* an understanding that the Act's definition of municipal securities was to be limited only to the debt segment of a broader municipal market that might also include equity securities. *See* 1975 Senate Report at 38.

[71] *See* Duane, Florida, Fulbright, First GFOA, MBIA–MISC, Schulte, Eckert, Second Fidelity, and NAST Letters.

[72] GFOA makes a similar argument in the First GFOA Letter. GFOA also states in the First GFOA Letter that regulation of local government pools should be left to the states.

[73] Both Fidelity and Fulbright concede that interests in higher education trusts raise unique policy issues affecting public investors and the public interest. *See supra* note 36.

[74] For example, Fulbright and Schulte list Congressional concern about unconscionable markups, churning of accounts, misrepresentations, disregard of suitability standards, high-pressure sales techniques, fraudulent trading practices resulting in substantial losses to public investors, and threats to the integrity of the local government capital-raising system. They argue that there is no opportunity for unconscionable markups and little incentive for churning of accounts or use of high-pressure sales techniques for these interests because they are purchased and redeemed at the current net asset value and purchasers do not pay commissions. They also argue that suitability concerns are not raised because local government pools are operated like money market funds and invest solely in the types of investments that their participants are permitted by state law to purchase.

[75] MBIA–MISC states that protections exist under the Investment Advisers Act of 1940, state regulations, voluntary adherence to the Investment Company Act and related federal regulations applicable to investment company securities, and Governmental Accounting Standards Board Statement No. 31 relating to accounting and financial reporting for certain investments and for external investment pools.

[76] NAST further states that the Board "has not identified any abuses or other threats to public investors or the public interest that are sought to be avoided by applying existing rules to transactions in qualified state tuition programs. Rather, the Board appears to * * * intend to apply its rules to all transactions in state and local government securities, regardless of whether such regulation is needed."

[77] As discussed below, the Board has decided to exempt sales of municipal fund securities by or through dealers from the underwriting assessment imposed under Rule A–13. *See infra* note 105 and accompanying text.

[78] Fidelity argues in the Second Fidelity Letter: "State and local governments use LGIPs to manage their internal cash positions. They are organized under state statute for the performance of a governmental function and are available exclusively to state and local governments within the sponsoring state or locality. No legitimate federal purpose is served by interposing the MSRB in these arrangements."

nature of these securities. Making Board rules fit the characteristics of municipal fund securities is an appropriate Board undertaking. Also, Board rules do not govern the actions of issuers; instead, they impose standards on dealers effecting transactions in the securities of such issuers.[79] In establishing the Board, Congress determined that dealer regulation was the appropriate manner of providing investor protection in the municipal securities market while maintaining the existing exemption for issuers.[80]

The definition of customer under Rule D–9 includes issuers, except in connection with sales of an issuer's new issue municipal securities, and therefore board rules contemplate that governmental entities acting as investors are entitled to the protections afforded by such rules to all customers.[81] The Board understands that local government pools exist in nearly every state and that, in many states, more than one pool may be available to a local government.[82] One market observer states that these pools "can differ in their level of risk taking, internal oversight, shareholder services, and external reporting."[83] Although a number of pools have been rated, the vast majority remain unrated. Most local government pools appear to be designed to maintain, as nearly as possible, a constant net asset value (similar to regulated money market mutual funds), but some operate as variable net asset value pools that do not seek to maintain a constant share value. Furthermore, a number of local government pools have experienced financial difficulties.[84] These factors suggest that investor protection issues may be raised in connection with the sale by dealers of interests in local government pools.[85] The Board believes that investor protection issues also may arise with respect to sales by dealers of interests in higher education trusts.[86] For example, the Board believes that dealers have suitability obligations if they recommend a transaction in a local government pool or higher education trust interest to a local government or an individual, respectively, if such interest constitutes a municipal security.[87]

Local government pools are described by certain commentators as being operated "consistent with" the federal securities laws applicable to investment companies and managed and administered in a manner "similar" to money market mutual funds, "where practicable".[88] These comments imply that may programs in fact deviate to some degree from their voluntary compliance with existing federal regulations that would be applicable to these programs if they were not operated by state or local governmental entities. However, the Board notes that its rulemaking would not impose requirements on issuers and in fact has been drafted with the understanding that dealers may be effecting transactions in securities that are similar, but not identical, to investment company securities. In that respect, the Board believes that is rulemaking is more suitable for dealers effecting transactions in investment company securities because some SEC and NASD rules impose obligations on dealers based on the assumption that issuers, as registered investment companies, must comply with federal investment company laws are regulations. Thus, a dealer might have difficulty complying with the letter of existing regulations relating to securities of registered investment companies where the issuer of a local government pool or higher education trust interest has chosen not to voluntarily comply with the provisions that would be obligatory if it were a registered investment company. As is the case with all exiting Board rules, the proposed rule change recognizes that issuers, as largely unregulated entities, may act in widely divergent manners. Thus, obligations placed on dealers are sufficiently

[79] After reviewing the August Notice, GFOA states in the Second GFOA Letter that "the revised draft is persuasive in explaining the limitations of the rule changes under consideration [and] * * * indicates a narrow regulatory design which should not affect those local government investment pools (LGIPs) that do not utilize brokers or dealers in their transactions (non-dealer entities) or which are not municipal securities."

[80] *See supra* note 68.

[81] As originally proposed, Rule D–9 would have excluded from the definition of customer "the issuer of securities which are the subject of the transaction in question." *See* "Notice of Filing of Fair Practice Rules," [1977–1987 Transfer Binder] *MSRB Manual* (CCH) ¶ 10,030 (Sept. 20, 1977). In amending the original proposed rule language to limit this exclusion solely to "the issuer in connection with the sale of a new issue of its securities," the Board stated that it believed "that the protections afforded customers by its rules should be extended to issuers when they act in secondary market transactions." *See* "Notice of Filing of Amendments to Fair Practice Rules," [1977–1987 Transfer Binder] *MSRB Manual* (CCH) ¶ 10,058 (Feb. 28, 1978). Give that the Board has always felt that the issuers should be considered customers even in secondary market transactions involving their own securities, state and local governmental entities certainly should be considered customers in transactions involving securities of other such entities. Furthermore, in Congressional testimony on the bankruptcy filing of Orange County, California and its local government pool, SEC Chairman Arthur Levitt discussed customer protection rules of self-regulatory organizations as they may apply to state or local governmental entities acting as customers. *See* Derivative Financial Instruments Relating to Banks and Financial Institutions: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs, 104th Cong., 1st Sess. (1995) ("SEC Testimony").

[82] S&P Report, at 3, 6–11. The Board takes no position as to which of these local government pools may issue interests that would constitute municipal fund securities.

[83] *Id.* at 3.

[84] PFM identifies several state-run and country-run pools (including the Orange County, California pool) as having had recent financial difficulties. *See* PFM Letter. *See also* NAST Report, at 2, 5, 38; S&P Report, at 5.

[85] NAST has stated that it: "recognizes that potential pool participants have numerous alternative investment vehicles from which to choose. The goal of the * * * [NAST Guidelines for Local Government Investment Pools] is to insure that local government investment officials, when choosing among their available investment options, are fully aware of significant investment and administrative policies, practices and restrictions of the pool and are thereby able to make informed investment decisions on behalf of the local governments * * * NAST further recommends that the broker/dealer community govern itself to follow the same standards of conduct NAST has recommended for treasurers" NAST Report, at 8. As the self-regulatory organization established by Congress to adopt rules for dealer transactions in municipal securities, the Board has created a body of rules that, together with this proposed rule change, constitute the self-governance and standards of conduct that NAST has recommended be established.

[86] The Board understands that investment strategies, pay-out restrictions, and fees and redemption charges or penalties of the existing higher education trust vary. At least some higher education trusts permit sales of interests to persons living in other states and permit redemption proceeds to be used to pay higher education expenses in any state. In other cases, redemption proceeds may be limited for use within a specific state. *See generally* CSPN Report. Thus, a single customer may have a choice of investments in various higher education trusts having widely differing strategies and terms. Furthermore, recent press reports regarding higher education trust programs have suggested that investor protection issues may exist in this section. *See, e.g.*, "Saving for College—Strategies for Putting Your Plan on Course," *Consumer Reports* (Feb. 2000) at 56; Julie Vore, "College Savings Plan: A Guide to How They Work," *AAII Journal*, Vol. 22, No. 2 (Feb. 2000) at 11; Thomas Easton and Michael Maiello, "The College Saving Fund Scandal," *Forbes* (Mar. 6, 2000) at 172; Mike McNamee, "Piling Up Those bucks for College," *Business Week* (Mar. 13, 2000) at 155. The Board takes no position on which of these higher education trusts may issue interests that would constitute municipal fund securities.

[87] NAST Report, at 8 (stating the "[t]he investment alternatives offered by broker/dealers to public finance officials should be suitable for the public entity's objectives."). The fact that a local government pool's assets are invested in investments that are legally available as direct investments by local governments does not resolve suitability issues. *See supra* note 74. As with transactions in any other municipal security, Rule G–19 would require a dealer recommending a transaction in a municipal fund security to have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer or otherwise and the facts disclosed by or otherwise known about the customer. These suitability requirements do not differ in substance from those of the NASD, to which dealers effecting transactions in such interests might otherwise be subject if these interests are not municipal securities. *See also* SEC Testimony.

[88] *See* MBIA–MISC, PFM and PLGIT Letters.

flexible to permit dealers to act in a lawful manner in view of this wide divergence of circumstances while maintaining an adequate level of customer protection.

The Board believes that state regulation, federal rules applicable to investment advisors and Governmental Accounting Standards statements, although providing important protections in the areas governed by such rules and standards, do not serve as a substitute for regulation tailored specifically toward dealer activities in municipal fund securities. Furthermore, the Board believes that voluntary adherence to the substance of existing rules applicable to investment company securities and/or other equity securities provides inadequate protection to investors since dealers are free to deviate from these rules in any manner and at any time they choose without any apparent legal consequence. The existence of these collateral safeguards do not justify the Board refraining from making its rules more rational with respect to such securities.

With respect to NAST's comments, the Board notes that its rules generally apply to all transactions effected by dealers in municipal securities, regardless of whether there has been a demonstration that each type of municipal security has been the subject of some kind of specific abuse or other specific threat to public investors. Board rules generally focus on dealers' fair dealing duties to customers, including in particular the obligation of dealers to disclose to customers all material information regarding a municipal security transaction. The Board believes that some of the very arguments made by NAST in support of its position that Board regulation of dealer transactions in higher education trust interests is inappropriate in fact lend greater support to the position that the Board is acting in accordance with its statutory mandate to protect investors and the public interest by adopting the proposed rule change. For example, NAST states:

> substantial disincentives exist to discourage contributors from using the programs for any purpose other than the prepayment of tuition. Under the federal Internal Revenue Code, if the beneficiary does not use the contributions for qualified higher education purposes, except in cases of scholarship, death, or disability, the contributor is entitled to a limited refund and [in] most states the refund amount is reduced by a penalty and other charges. Generally, no earnings attributable to the account will be refunded. Moreover, tuition payments normally do not exceed the actual cost of a beneficiary's tuition. In addition, there is very limited opportunity to transfer program benefits.[89]

The Board believes that its existing rules, as amended by the proposed rule change, would provide great benefit to potential purchasers of interests in higher education trusts by ensuring that the unique characteristics of such interests are disclosed by the selling dealers to their customers. In addition, as described above, NAST has previously noted that there are significant investor protection issues with respect to the investment by local governments in local government pools.[90]

With regard to the argument that interests in local government pools are strictly intrastate in nature and therefore are not the appropriate subject of federal regulation, Board rules currently do not apply to any entity that, by virtue of the fact that its business is exclusively intrastate, is not registered as a broker or dealer under Section 15 of the Act.[91] Beyond this, the federal securities laws provide that, once an entity engages in some interstate activities that require it to register under the Act, the broker-dealer rules applicable to such entity apply to both its interstate and intrastate transactions. The Board believes that Congress has made clear its policy determination that intrastate transactions of registered broker-dealers should be subject to broker-dealer regulation.[92]

C. Applicability of Existing Board Rules to Transactions in Municipal Fund Securities Effected Prior to Effectiveness of Proposed Rule Change

1. Comments Received

Fulbright and Schulte argue that, to the extent that the Board may have authority to regulate dealer transactions in these interests, existing Board rules relating to municipal securities do not currently apply to transactions in local government pool interests.[93] They state that existing Board rules were never intended to apply to securities other than debt obligations, as evidenced by the Board's statement in the March Notice that its rules "generally have been drafted to accommodate the characteristics of debt obligations and not investment interests such as municipal fund securities." As a result, they believe that any interpretation by the Board that existing rules apply to municipal fund securities can only be effected through the rulemaking process.

2. Board Response

The Board believes that Section 15B(c)(1) of the Act[94] automatically subjects any dealer transactions in municipal fund securities to Board rules. This is true regardless of whether dealers effecting such transactions are aware that municipal fund securities are, in fact, municipal securities. It is incumbent upon dealers to be aware of the nature of the securities in which they deal and it is not a defense against the applicability of Board rules that the dealer did not know that the securities were municipal securities. Thus, the Board's statement that any interest in a local government pool or a higher education trust that is a municipal security currently is subject to Board rules was a statement of fact rather than an interpretation.[95]

The Board recognizes, however, that, prior to publication of the March Notice, it may not have been readily apparent to the vast majority of dealers, as well as to most regulatory agencies, that interests that constitute municipal fund securities were municipal securities. Although the Board does not have authority to direct enforcement of its rules it is statutorily charged with determining the best means of protecting investors and the public interest in regard to dealer transaction in municipal securities. As such, the Board believes that, under the unique circumstances relating to municipal fund securities, enforcement of its rules with regard to transactions in such securities that occurred prior to the industry having been put on notice of their applicability would serve no substantial investor protection purpose, absent extraordinary circumstances or a showing of investor harm resulting from a material departure from standards of fairness generally applicable under the federal securities laws.

D. Structure of Proposed Rule Change

1. Comments Received

Certain commentators express concern that the Board's rulemaking proposal contemplates amendments to existing rules rather than creation of a

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[89] *See* NAST Letter.

[90] *See supra* notes 84–85. *See also supra* notes 81–85 and accompanying text.

[91] 15 U.S.C. 78*o*.

[92] *See, e.g.*, Sections 15 (b)(3) and 15B(a)(3) of the Act. 15 U.S.C. 78*o*(b)(3); 15 U.S.C. 78*o*–4(a)(3).

[93] *See* Fulbright and Schulte Letters.

[94] 15 U.S.C. 78*o*–4(c)(1).

[95] Actual interpretations relating to how certain rules would be applied to transactions in municipal fund securities, such as the Board's Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market included in the proposed rule change, would be filed with the SEC to the extent required under Section 19(b) of the Act and Rule 19b–4 under the Act.

separate body of regulations.[96] TBMA states that the "attempt to fit a totally new product or way of doing business into existing regulation that was created to address fundamentally different products and a different market structure is fraught with danger."[97] TBMA also states that transactions in municipal fund securities should be regulated in a manner as similar as possible to the existing regulatory scheme for investment company securities.

2. Board Response

The Board reviewed its existing rules and compared them, where relevant, to rules that govern dealer transactions in securities of registered investment companies. In many resects, Board rules are functionally identical to these rules. In other cases, existing SEC or NASD rules provide a more appropriate method of regulating municipal fund securities and the Board sought to modify its rules in a manner that was consistent with those rules. In yet other cases, the regulation of registered investment companies has been effected by regulating issuers, an approach which the Board cannot, and does not seek to, duplicate. Finally, certain NASD and SEC rule provisions arise out of specific Congressional authorization in the Investment Company Act applicable to securities of registered investment companies but not applicable to unregistered municipal fund securities.

Under the circumstances, the Board believes that its approach is appropriate. The Board sought industry comment on the proposed rule change on two separate occasions and, in those circumstances where commentators noted specific shortcomings, the Board considered the merits of the comments and made revisions where appropriate. As noted previously, the Board believes that its rules, as amended by the proposed rule change, are in many respects particularly well suited to dealers effecting transactions in municipal fund securities because they recognize that issuers, being unregulated entities, may act in widely divergent manners. Thus, Board rules provide a greater degree of flexibility than existing rules governing dealer transactions in registered investment company securities.[98]

E. Specific Rule Provisions

1. Proposed Rule D–12, on Definition of "Municipal Fund Security"

Proposed Rule D–12 defines municipal fund security as a municipal security that would be an investment company security under the Investment Company Act but for the fact that the issuer is a state or local governmental entity or instrumentality. For a security to constitute a municipal fund security, the security must first constitute a municipal security. As discussed in detail above, existing Board rules do not, and the proposed rule change would not, apply to any local government pool or higher education trust interest that is not a municipal security.

Fulbright and MBIA–MISC suggest that the Board explicitly exclude local government pool investment from the definition of "municipal fund security."[99] In addition, Eckert urges "that the Board adopt a definition of 'Broker' which excludes federally registered investment advisors that do not engage in the sale or distribution of securities except in connection with services as investment advisor and administrator to the issuers of Municipal Fund Securities."[100] Eckert expresses concern that investment advisory firms that otherwise do not undertake broker or dealer activities will have difficulty in assessing standards applicable to dealers.

The Board has not revised the proposed definition. The Board believes that there is no basis for excluding interests in local government pools from the definition of municipal fund securities, as discussed above. With respect to registered investment advisors, the Board has noted that its rules do not apply to activities of non-dealers. A firm wishing to determine if Board rules apply to services it provides to an issuer of municipal fund securities may seek advice of counsel as to whether such services constitute broker-dealer activities and may seek comfort on counsel's opinion from SEC staff through the SEC's no-action procedure. If a non-dealer firm's activities do not constitute broker-dealer activities, the firm need not be a registered broker or dealer subject to Board rules. Thus, non-dealer firms may act as investment advisers to local government pool or higher education trust programs and not become subject to Board rules. However, once a firm does in fact undertake broker-dealer activities with respect to municipal securities, the Board believes that such firm must be cognizant of and comply with all Board rules, regardless of how infrequently such dealer may transact business in municipal securities or how narrow a range of municipal securities activities in which such dealer is involved.

2. Rule A–13, on Underwriting Assessments

The draft amendment to Rule A–13 included in the March Notice imposed an underwriting assessment on sales of municipal fund securities. Most commentators express concern regarding the assessment of underwriting fees on sales of municipal fund securities.[101] Fulbright, GFOA, Merrill, PLGIT and TPIS suggest that these sales should be exempted from the underwriting assessment. TBMA states that the fee structure for dealers involved in the distribution of municipal fund securities is more like an administrative fee than an underwriting discount or commission because these dealers do not undertake underwriting risks. As a result, fees generally are fixed and are low relative to traditional underwriting fees. Because of these small margins, Duane, Florida, GFOA, PFM, PLGIT, Schulte and TPIS state that underwriting assessments would be passed on to issuers and therefore would represent a financial burden on the issuers' programs.[102]

Merrill and TPIS state that given the volume of investments and redemptions in many local government pools,[103] the level of fees generated by the Board from underwriting assessments would be disproportionate to the resulting regulatory costs. Merrill stats that, if assessments are imposed, they should be at a significantly lower level than the assessments charged in connection with

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[96] *See* PRM, Schulte and TBMA Letters.

[97] *See* TBMA Letter. Similarly, PFM comments that "if the MSRB is intent on regulating activities relating to these funds, it should do so by developing a separate set of rules rather than by attempting to shoe horn the funds into the rules designed for underwritten fixed income securities." Schulte believes that "regulating the marketing of interests in * * * [local government pool investments] under existing MSRB rules, even if those rules are revised as the MSRB has proposed, would be like trying to put a square peg in a round hole."

[98] *See supra* note 88 and accompanying text.

[99] *See* Fulbright and MBIA–MISC Letters.

[100] *See* Eckert Letter.

[101] *See* Duane, Florida, Fulbright, First GFOA, Merrill, PLGIT, PFM, Schulte and Second TPIS Letters.

[102] Merrill and TBMA, on the other hand, suggest that the Board exempt municipal fund securities from the prohibition in Rule A–13(e) from passing through underwriting assessments to issuers.

[103] PFM and PLGIT note that many local government pools have annual share turn-over rates of approximately 3 to 4 times their assets, due to the fact that many participants are investing short-term funds that move in and out of the pools frequently during the course of the year. Schulte believes that this multiplier may reach as high as 10 times assets. PFM estimates that total issuances of interests in local government pools may be on the same order of magnitude as issuances of traditional municipal securities.

more traditional municipal securities offerings.[104]

Based on these comments, the Board revised the draft amendment to Rule A–13 to exempt sales of municipal fund securities from the underwriting assessment.[105] The continuous nature of offerings in municipal fund securities, the predetermined and automatic nature of most customer investments and the heightened potential that underwriting assessments could create significant financial burdens on issuers to their customers' detriment justify exempting municipal fund securities from the underwriting assessment. The Board also wishes to make clear that it does not intend to seek payment of any previously accrued underwriting assessments that may technically be due and owing on prior sales of municipal fund securities.

3. Rule G–3, on Professional Qualifications

The proposed amendment to Rule G–3 permits an associated person qualified as an investment company limited representative to effect transactions in municipal fund securities (but no other municipal securities).[106] A dealer must continue to have municipal securities principals as required under Rule G–3(b), even if the dealer's only municipal securities transactions are sales of municipal fund securities.

Schulte states that the amendment should be modified to exempt dealers in local government pool investments from the requirement that they have at least one municipal securities principal, provided that such dealers meet the requirements regarding principals established by the NASD.[107] Similarly, Fidelity states that investment company principals should be permitted to supervise sales representatives that sell municipal fund securities and to approve advertisements.[108]

The Board believes that requiring a dealer effecting transactions in municipal fund securities to have at least one municipal securities principal is appropriate because dealers must have at least one associated person who is familiar with Board rules. Consistent with this view, the Board believes that supervision of municipal securities activities is appropriately vested in individuals who have such familiarity with Board rules. The Board has not revised this proposed amendment.[109]

4. Rule G–8, on Recordkeeping

As published in the March Notice, the draft amendment to Rule G–8 would recognize that municipal fund securities do not have par values, dollar prices, yields and accrued interest and that some investment company limited representatives would be permitted to effect transactions in municipal fund securities.

Fidelity suggest that Rule G–8 be amended to permit a dealer to rely on a transfer agent for municipal fund securities to meet applicable books and records requirements under the rule, noting that a transfer agency system is typically used for mutual fund-type products.[110] Fidelity points to the existing provision in the rule that permits a non-clearing or introducing dealer to rely on records maintained by a clearing dealer.

The Board believes that it would be appropriate to permit a dealer effecting transactions in municipal fund securities to meet its books and records requirements by having its books and records maintained by a transfer agent so long as those books and records meet the requirements of Rule G–8 and the dealer remains responsible for the accurate maintenance and preservation of the books and records.[111] Therefore, the Board has proposed to revise Rule G–8(g) as suggested.

Fidelity also suggests that the definition of "institutional account" in Rule G–8(a)(xi) be amended to include states and their political subdivisions and instrumentalities, noting that the additional information required under this provision for non-institutional accounts is "simply inapposite" with respect to such entities.[112] The Board notes, however, that this definition is also used in Rule G–19, on suitability of recommendations and transactions, in connection with the requirement that dealers make reasonable efforts to obtain certain information about non-institutional accounts (but not institutional accounts as defined in Rule G–8(a)(xi)) prior to recommending a municipal security transaction.[113] This information is then required to be used by the dealer when making a suitability determination under Rule G–19 in connection with a recommended transaction.

The definition of institutional account under Rule G–8 is identical to the definition used under NASD rules and the Board believes that it should not diverge from this common definition without substantial cause. Further, because the definition of institutional account includes any entity with total assets of at least $50 million, a substantial proportion of state or local government customers would qualify as institutional accounts under the current

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[104] In the alternative, Merrill, PFM, Schulte and TPIS suggest that underwriting assessments should be based on net issuances of municipal fund securities, taking into account all securities retired. TPIS also suggests that a flat annual or monthly fee set at a modest level might be more appropriate.

[105] The Board published this revised version of the draft amendment to Rule A–13 in the August Notice. Commentators supported the Board's decision to exempt sales of municipal fund securities from the underwriting assessment. *See* Second GFOA and Saul Letters. Another commentator states, however, that "there is no assurance that the assessment will not be imposed at a future time." *See* Eckert Letter. The Board believes that no further revisions to Rule A–13 are warranted.

[106] Thus, an associated person who sells both municipal fund securities and other types of municipal securities would be required to qualify as a municipal securities representative or general securities representative.

[107] *See* Schulte Letter.

[108] *See* First Fidelity Letter. Rule G–21, on advertising, requires that each advertisement be approved by a municipal securities principal or general securities principal. Rule G–27, on supervision, requires either a municipal securities principal or municipal securities sales principal to supervise municipal securities sales activities. Fidelity incorrectly states that the draft amendment to Rule G–3 would require those who supervise sales representatives for local government pool investments to be qualified as a municipal securities sales principal. In fact, under Board rules, municipal securities principals may also supervise municipal sale activities.

[109] If at some future time the Investment Company and Variable Contracts Products Principal Examination (Series 26) were to include questions on relevant Board rules, including but not limited to those rules relating to municipal fund securities, the Board could reconsider the requirement that such supervisory activities be undertaken by a municipal securities principal.

[110] *See* First Fidelity Letter.

[111] This provision would parallel an existing provision in Rule G–8(c) permitting maintenance for a non-clearing dealer of records by clearing agencies that are not themselves dealers.

[112] An institutional account is defined as (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) a registered investment adviser; or (iii) any entity with total assets of at least $50 million. The additional information that dealers are required to record under Rule G–8(a)(xi) for non-institutional accounts as compared to institutional accounts includes (i) the customer's age, (ii) the customer's occupation and employer and (iii) any beneficial owner of the account if other that the customer.

[113] The information that dealers are obligated to make reasonable efforts to obtain prior to recommending a municipal security transaction to a non-institutional account (but not to an institutional account) includes information concerning (i) the customer's financial status, (ii) the customer's tax status, (iii) the customer's investment objectives, and (iv) such other information used or considered to be reasonable and necessary by the dealer in making recommendations to the customer. The collection of this information can have an impact on the nature of a dealer's suitability obligation because suitability determinations are required to be based on information disclosed by or otherwise known about the customer. Depending upon the specific facts and circumstances, Rule G–19 may require that dealers make a greater effort to obtain information on which to base a suitability determination from a non-institutional account than from an institutional account.

definition.[114] Finally, excluding state and local governments from the definition of institutional account could serve to weaken the Board's suitability requirement with respect to recommended transactions with smaller state and local governments (*i.e.*, those with assets of less than $50 million), which are the governmental entities arguably most likely in need of investor protection.[115] Therefore, the Board did not amend the rule as suggested.

Furthermore, in conjunction with revisions to the proposed amendment to Rule G–15, relating to periodic statements in lieu of individual transaction confirmations, as described below, the Board revised the amendments to Rule G–8 to require that dealers retain as part of their books and records copies of all periodic statements delivered to customers in lieu of individual confirmations.

5. Rule G–15, on Customer Confirmations

The draft amendments to Rule G–15, as published in the March Notice, change the concepts of par value, yield, dollar price, maturity date and interest, none of which would appropriately apply to a municipal fund security. Thus, on a confirmation of a municipal fund securities transaction, a dealer would use the purchase or sale price of the securities (as appropriate) rather than par value and would omit yield, dollar price, accrued interest, extended principal, maturity date and interest rate. Dealers selling municipal fund securities would be required to include the denomination or purchase price of each share or unit as well as the number of shares or units to be delivered. Confirmations of municipal fund securities transactions would require a disclosure to the effect that a deferred commission or other charge may be imposed upon redemption, if applicable.[116] The amendment also would make clear that dealers must confirm redemptions of municipal fund securities. Finally, the amendment would permit dealers to use quarterly statements, rather than transaction-by-transaction confirmations, if customers are purchasing the securities in an agreed amount on a periodic basis ("periodic plan"), in a manner similar to the periodic reporting provision of Rule 10b–10[117] under the Act.

The Board received a number of technical comments on various provisions in the draft amendments to Rule G–15 published in the March Notice. In response, the Board published revised draft amendments to Rule G–15 in the August Notice. The revised amendments generated additional comments and, in certain cases, resulted in the Board making further revisions. The comments received and the Board's responses are set forth below:

a. Periodic Statements—Rule G–15(a)(vi)(G) and (a)(viii). Several commentators state that the draft amendments, as published in the March Notice, would require individual confirmations for each transaction in local government pool interests.[118] Schulte suggests that dealers effecting transactions in local government pool investments be permitted to use monthly statements. Merrill states that transactions in higher education trust interests that are not effected pursuant to a periodic plan should nonetheless qualify for periodic statements in lieu of individual transaction confirmations.[119]

As a result, the Board revised the draft amendment to Rule G–15 to provide that information regarding transactions in municipal fund securities effected in connection with a program that does not provide for periodic purchases or redemptions of municipal fund securities (a "non-periodic program") may be disclosed to customers on a monthly statement in lieu of transaction confirmations.[120] With respect to natural persons who participate in a non-periodic program, this monthly reporting would require the written consent of such individual or of the issuer. If the issuer directs that monthly statements be used in lieu of transaction confirmations, the revised amendment to Rule G–15(a)(viii) would permit dealers effecting transactions in such municipal fund securities to use monthly statements without obtaining the consent of any customers. In addition, the amendment has been revised to eliminate the requirement that customers participating in a group periodic plan consent to the use of periodic statements in lieu of transaction confirmations.[121]

In commenting on the revised amendments published in the August Notice, Merrill suggested that the revision inadvertently imposes a more onerous condition on dealers using periodic statements for customers participating in periodic plans that are not part of a group plan, as compared to customers participating in a non-periodic program, because the issuer would not be permitted under the language of the draft amendment to provide consent on behalf of customers as in the case of non-periodic programs.[122] As a result, the Board has further revised the amendment to Rule G–15(a)(viii)(E) to allow issuers to provide consent for the use of periodic statements in these circumstances.[123]

b. Rule G–15(a)(i)(A)(7). One commentator states that municipal fund securities will not be issued in certificated form and therefore the

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[114] Because those state or local government customers do not qualify as an institutional account, the dealer would merely indicate in its records that such information (such as customer's age, occupation, etc.) is inapplicable, as with any other customer that does not qualify as an institutional account and is not a natural person.

[115] Because state and local governments with assets of less than $50 million are not considered institutional accounts under NASD rules, the suggested amendment would have the effect of making the Board's suitability requirements with respect to recommendations of municipal securities transactions to such entities weaker than NASD's suitability requirements with respect to recommendations of transactions in other types of securities to these same entities.

[116] Disclosure of deferred commissions or other charges would cover, for example, any deferred sales load or, in the case of interests in certain higher education trusts, any penalty imposed on a redemption that is not for a qualifying higher education expense.

[117] 17 CFR 240.10b–10.

[118] *See* PLGIT, PFM and Schulte Letters. PFM and PLGIT state that individual confirmations for the frequent purchases and redemptions of local government pool interests would impose high administrative and cost burdens. PLGIT notes that its program processes over 500,000 check redemptions each year, with some program participants using checks for such purposes as paying payroll.

[119] *See* First Merrill and Second Merrill Letters. Merrill states that this would be "analogous to and consistent with" the provisions of Rule 10b–10 permitting periodic statements in lieu of confirmations for non-periodic transactions in tax-qualified individual retirement and individual pension plans.

[120] In addition, the Board made a minor language change to paragraph (a)(vi)(G) of Rule G–15 to clarify that quarterly statements in lieu of individual confirmations for periodic plans also would be available for arrangements involving a group of two or more customers.

[121] TPIS states that requiring customer consent to receive quarterly statements would impose administrative burdens on dealers that are not justified by any investor protection interest. It notes practical difficulties with sending confirmations to some members of a group plan and quarterly statements to others, stating that if the dealer fails to receive consent from any customer, it might be forced to send individual confirmations to all customers. TPIS states that, in adopting the investment company plan exception to the confirmation requirements in Rule 10b–10, the SEC recognized that securities sold through such plans do not require the same level of reporting as other securities transactions because their regularized nature raised fewer concerns about whether a particular transaction was executed consistent with the expectations of the customer. *See* First TPIS Letter.

[122] *See* Second Merrill Letter.

[123] The Board believes that this further revision addresses any remaining concerns regarding the availability of periodic statements in lieu of confirmations alluded to by Fidelity in the First Fidelity Letter. The Board understands that these revisions to the confirmation provisions have adequately addressed PLGIT's concerns regarding the need for individual confirmations for each redemption. *See* Saul Letter.

delivery provisions under subparagraph (a)(i)(A)(7) would not be relevant.[124] In order to avoid the potential for ambiguity, this subparagraph has been revised to eliminate reference to denomination and to refers solely to the share purchase price.[125]

c. Rule G–15(a)(i)(C) and (A)(i)(B)(1). TPIS notes that the Board did not provide guidance regarding certain descriptive information regarding purchased securities required to be included in the confirmation under paragraph (a)(i)(C) and states that this paragraph should not be applicable to municipal fund securities. In the alternative, it suggests that confirmations should not be required to state that municipal fund securities are unrated.[126] The Board has revised the amendment to (i) provide that a confirmation of a municipal fund security transactions need not show the information required under paragraph (a)(i)(C) other than whether the security is puttable and (ii) include a requirement in subparagraph (a)(i)(B)(1) that the confirmation include the name used by the issuer to identify the security and, to the extent necessary to differentiate the security from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation. A statement to the effect that the security is unrated would not be required.

d. Rule G–15(a)(viii)(B). Merrill argues that certain information required to be disclosed on a periodic statement with respect to municipal fund security transactions would be unnecessarily repetitive and might best be disclosed in a separate disclosure document that is applicable to all transactions in these securities.[127] This information includes disclosure of deferred commissions or other charges, whether the security is redeemable, the capacity of the dealer, and the time of execution. The Board believes that dealers using a periodic statement where the information is identical for all transactions shown on the statement should be permitted to provide the information only once on the statement rather than repeatedly for each transaction. In addition, the Board believes that if the information is included in disclosure materials previously delivered to the customer and the periodic statement clearly indicates that the information is included in the disclosure material, the information may be omitted from the periodic statement. Of course, a dealer would not be able to rely on this provision if the disclosure materials have not in fact been delivered to the customer or if the information included in the disclosure materials is not accurate with respect to any transaction disclosed on the periodic statement (*e.g.*, if the information has subsequently been changed). As a result, the Board revised Rule G–15(a)(viii)(B) to this effect.

6. Rule G–21, on Advertising

The Board did not propose amending Rule G–21 in the March Notice. Schulte states that this rule should be revised to eliminate references to price and yield for purposes of municipal fund securities.[128] Section (d)(i) provides that an advertisement for new issue municipal securities may show the initial reoffering price or yield, even if they have changed, so long as the date of sale is shown. In addition, it provides that if the price of yield shown in the advertisement is other than the initial price or yield, the price or yield shown must have been accurate at the time the advertisement was submitted for publication. The Board believes that these provisions do not unnecessarily restrict the manner in which municipal fund securities may be advertised nor do they mandate that an advertisement for a municipal fund security specify a price or yield.[129] Therefore, no change has been proposed on Rule G–21.

7. Rule G–32, on New Issue Disclosures

No amendments to Rule G–32 were proposed in the March Notice. However, the Board stated that municipal fund securities sold in a primary offering would constitute new issue municipal securities for purposes of Rule G–32 so long as the securities are in the underwriting period. Because the Board understands that issuers of municipal fund securities are continuously issuing and delivering the securities as customers make purchases, the Board believes that municipal fund securities would remain in their underwriting period so long as such issuance and delivery continues.[130] Thus, a dealer effecting a transaction in a municipal fund security would be required to deliver to the customer the official statement, if one exists, by settlement of the transaction. However, in the case of any customer making repeat purchases of a municipal security (including but not limited to a municipal fund security), no new delivery of the official statement would be required so long as the customer has previously received it in connection with a prior purchase and the official statement has not been changed from the one previously delivered to that customer.[131]

TBMA expresses concern regarding the timing requirement of Rule G–32 in the limited circumstances where a revision has just been made to the official statement and a customer that participates in a periodic plan makes an automatic purchase of additional shares of municipal fund securities.[132] In spite of the best efforts of the dealer and the issuer, it may be impossible for the revised official statement to be delivered to the customer by settlement. TBMA suggests that, under these circumstances, the timing requirement under Rule G–32 should be based on the

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[124] *See* First TPIS Letter.

[125] Subparagraph (a)(i)(A)(7) would require that the confirmation for a municipal fund security transaction indicate the purchase price (exclusive of commission) of each share or unit and the number of shares or units to be delivered, regardless of whether a physical or book-entry delivery of the securities will occur.

[126] TPIS states that such securities are ineligible for ratings and such notation might be misleading. *See* First TPIS Letter. However, the Board notes that a relatively small number of local government pools have in fact been rated. *See* NAST Report, at 36. *See generally* S&P Report.

[127] *See* Second Merrill Letter. Fidelity believes that information regarding redemptions need not be disclosed at all. *See* First Fidelity Letter.

[128] *See* Schulte Letter.

[129] The Board understands that, in the context of local government pools, the terms "yield" may be used to refer to historical returns that may be used as a basis for comparing investment performance. *See* NAST Report, at 8. References in Rule G–21 to yield, consistent with its use in other Board rules, refer to a future rate of return on securities and do not refer to historical yields. The Board notes that any use of historical yields would be subject to section (c) of Rule G–21, which provides that no dealer shall publish or cause to be published any advertisement concerning municipal securities that the dealer knows or has reason to know is materially false or misleading. Thus, a dealer advertisement of municipal fund securities that refer to yield typically would require a description of the nature and significance of the yield shown in the advertisement in order to assure that the advertisement is not false or misleading.

[130] Rule G–32 defines underwriting period for securities purchased by a dealer (not in a syndicate) as the period commencing with the first submission to the dealer of an order for the purchase of the securities or the purchase of the securities from the issuer, whichever first occurs, and ending at such time as the following two conditions both are met: (1) the issuer delivers the securities to the dealer, and (2) the dealer no longer retains an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs. However, because the issuer continuously delivers municipal fund securities, the first condition for the termination of the underwriting period remains unmet.

[131] In addition, in the case of a repeat purchaser of municipal fund securities for which no official statement in final form is being prepared, no new delivery of the written notice to that effect or of any official statement in preliminary form would be required so long as the customer has previously received it in connection with a prior purchase. However, if an official statement in final form is subsequently prepared, the customer's next purchase would trigger the delivery requirement with respect to such official statement.

[132] *See* TBMA Letter.

sending rather than the delivery of the official statement.

As a result, the Board published in the August Notice a draft amendment to Rule G–32 that provided that, in the situation where the official statement is being amended or otherwise changed, a dealer may sell, pursuant to a periodic plan, a municipal fund security to a customer who has previously received the official statement so long as it sends to the customer a copy of any new, supplemented, amended or stickered official statement by first class mail promptly upon receipt from the issuer (*i.e.*, actual delivery by settlement would not be required). This draft amendment was designed to address the limited circumstances where an amendment to the official statement for a municipal fund security has just been produced but, because of standing arrangements with a customer under a periodic plan, a transaction in such security will automatically be effected and the securities delivered before the dealer is able to deliver the amended official statement to the customer, as would otherwise be required under the rule.

Fidelity suggests that this draft amendment to Rule G–32 be made to apply equally to periodic plans and non-periodic programs.[133] The Board believes that, although the problem that was intended to be addressed by the draft amendment would most likely arise under a periodic plan, such problems also may arise from time to time with respect to non-periodic programs. In addition, Merrill states that, in the case of an amendment to an official statement, dealers should be permitted to satisfy the delivery requirement under Rule G–32 with respect to the amended official statement by delivering the amendment alone (including a notice that the complete official statement is available upon request).[134] The Board understands that this is a typical practice in connection with amendments to mutual fund prospectuses. Although the Board believes that Rule G–32 currently would permit delivery of the amendment alone so long as the customer already has the official statement that is being amended and the dealer ensures that the amendment makes clear what constitutes the complete official statement as amended, the Board has determined that clarifying language consistent with Merrill's comment should be added to Rule G–32. as a result, the Board has made further revisions to Rule G–32 to effect both of these suggested changes.

Finally, Eckert implies that requiring dealers selling municipal fund securities to comply with the official statement delivery requirements of Rules G–32 and G–36 may not conform Section 15B(d)(2)[135] of the Act.[136] Except for the technical changes to Rule G–32 included in the proposed rule change, the provisions of Rules G–32 and G–36 apply to dealers effecting transactions in municipal fund securities in a manner identical to dealer transactions in other forms of municipal securities. The Board believes that its authority to require the delivery of official statements by dealers in the manner provided in these rules has long since been settled.

8. Rule G–33, on Calculations

The Board did not propose amendment Rule G–33 in the March Notice. Schulte states that this rule should be revised to eliminate references to par value, yield dollar price, maturity date and interest for purposes of municipal fund securities.[137] By its terms, Rule G–33 applies only to municipal securities that bear interest or are sold at a discount. Because municipal fund securities do not bear interest and are not sold at a discount, Rule G–33 would by its nature not apply. Therefore, no change has been made to Rule G–33.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Board. All submissions should refer to the File No. SR–MSRB–00–06 and should be submitted by August 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[138]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19448 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–M

[133] *See* First Fidelity Letter.

[134] *See* Second Merrill Letter.

[135] 15 U.S.C. 78*o*–4(d)(2).

[136] *See* Eckert Letter. Section 15B(d)(2) of the Act provides that the Board is not authorized to require any issuer, directly or indirectly, to furnish to the Board or a customer any document or information with respect to such issuer; provided that the Board may require dealers to furnish to the Board or customers such documents or information which is generally available from a source other than the issuer.

[137] *See* Schulte Letter.

[138] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43075; File No. SR–NYSE–00–20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees for Closed-End Funds

July 26, 2000.

I. Introduction

On May 3, 2000 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change. The proposed rule change was published for comment in the **Federal Register** on June 23, 2000.[3] The Commission did not receive any comment letters with respect to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–42948 (June 15, 2000), 65 FR 39216.

proposal. This order approves the Exchange's proposal.

II. Description of the Proposal

1. Purpose

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Listed Company Manual ("Manual"), as it applies to original listing fees. The Exchange seeks to adopt a minimum original listing fee for each new closed-end fund depending upon the number of shares offered. As proposed, closed-end funds would be subject to a minimum original listing fee based upon the number of shares outstanding as follows: up to 10 million shares—$100,000; up to 24 million shares—$125,000; and over 24 million shares—$150,000. This minimum would include the Exchange's one-time special charge of $36,800.

The Exchange recently received approval for a minimum fee that specifically excluded closed-end funds in anticipation of this filing because such funds, unlike corporations, do not issue additional shares of securities.[4] Thus, the Exchange felt it would be inappropriate to apply the same fee schedule applied to corporations to closed-end funds.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Commission believes that the Exchange's proposal to establish the minimum original listing fee schedule for closed-end funds described above is not unreasonable to the Exchange's issuers. Also, the Commission believes that because the fees are proportional to the number of shares outstanding, these fees are equitably allocated among the issuers. Thus, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–00–20) is approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19501 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 42606 (March 31, 2000), 65 FR 18415 (April 7, 2000) (SR–NYSE–00–10).

[5] 15 U.S.C. 78f.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43070; File No. SR–Phlx–00–69]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modifying the Concentration Requirements for the Gold/Silver Index

July 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19–b thereunder,[2] notice is hereby given that on July 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Rule 1009A(b)(6)(i) as a maintenance standard that establishes a concentration requirement for the Gold/Silver Index ("Index"). The rule is stated below. Additions to the rule are in italics.

* * * * *

Rule 1009A. Designation of the Index

(a) No change

(b) No change.

(1)–(5) No change.

(6) No single component security represents more than 25% of the weight of the index, and the five highest weighted components do not in aggregate account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index;

(i) With respect to the Gold/Silver Index, no single component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index. If the Index fails to meet this requirement, the Exchange shall reduce position limits to 8,000 contracts on the Monday following expiration of the farthest-out, then trading, non-LEAP series.

(c) No change.

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under section 19(b)(2) of the Exchange Act.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement, of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the concentration requirements of the maintenance standards for the Gold/Silver Index to provide the same concentration requirements as are adopted for the Computer Box Maker Index.[3] The Gold/Silver Index is a capitalization weighted index composed of the stocks of widely held U.S. companies that mine gold and silver. Options on the Index have an American style expiration and the settlement value is based on the closing values of the component stocks on the day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39895 (April 21, 1998), 63 FR 23327 (April 28, 1998).

exercised, or on the last trading day prior to expiration (P.M. settled).

The Gold/Silver Index was the first narrow-based index option approved for trading on the Exchange.[4] In 1996, the Exchange revised the composition of the Gold/Silver Index and adopted procedures to address replacements, additions, and deletions of component stocks.[5] In addition, the Exchange received approval to apply to the Index all the maintenance criteria of Phlx Rule 1009A(c), which applies to options on indexes listed pursuant to the "Generic Index Approval Order,"[6] except the requirement that an index option be designated as A.M.-settled.[7] Thus, the Gold/Silver Index is currently required to comply with the concentration requirements set forth in Phlx Rule 1009A(b)(6). This requirement states that no one component may account for more than 25% of the weight of the Index and the five highest weighted components should not account for more than 60% of the Index. The concentration requirement must be satisfied on January 1 and July 1 each year.

The Exchange now proposes to adopt concentration requirements similar to that approved for the Exchange's Computer Box Maker Index.[8] Specifically, the Exchange proposes to adopt new Rule 1009A(b)(6)(i), which provides that no one component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index. If the Index fails to satisfy this criteria, the Exchange proposes to reduce the position limits to 8,000 contracts.[9] In implementing this decrease, all series of Index options would be scheduled for a position limit decrease effective the Monday following expiration of the farthest-out, then trading, non-LEAP option series. If prior to the scheduled position limit decrease, the Index complied with the proposed 35%/65% concentration requirements, the position limit would not be reduced. All other maintenance requirements contained in Rule 1009A(c) would continue to apply to this Index.[10] Thus, if the Index fails to meet other maintenance criteria, the Exchange will not open for trading any additional series of options unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

In addition, the Exchange is adding two components to the Index in an effort to reduce the weightings of the already existing components consistent with the proposed rule change.[11] The Exchange will add Goldfields, Lpd. (ticker "GOLD") and Phelps Dodge Corp. (ticker "DP") to the Index.

The Exchange believes that this is the most effective method of continuing to list an active product,[12] while ensuring that the Index contains components that are highly capitalized, actively traded, and reported securities, and thus, are appropriate for index option trading. The Exchange further believes that the concentration requirements approved respecting the Computer Box Maker Index are appropriate for this Index because they would deter investors from using the Gold/Silver Index options as a method of increasing their position in the highest weighted stocks in the Index, while preserving the Index in similar form as an investment tool.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[13] in general, and with Section 6(b)(5),[14] in particular, in that it is designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change would allow investors to continue to trade options on the Gold/Silver Index, without interruption, as a hedging vehicle respecting mining stocks; is consistent with other indexes that impose concentration standards aimed at preventing the use of the index as a surrogate to trade options on individual stocks contained in the Index; and at the same time provides standards to prevent the manipulation of components of the Index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule imposes no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All Submissions should refer to File No. SR–Phlx–00–69 and should be submitted by August 23, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the Phlx's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.[15] Specifically, the Commission finds that the proposal is

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[4] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983).

[5] *See* Securities Exchange Act Release No. 37334 (June 19, 1996), 61 FR 33162 (June 26, 1996).

[6] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062–01 (June 10, 1994) (order approving File Nos. SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–Phlx–94–10).

[7] *See supra* note 5.

[8] *See supra* note 3.

[9] The position limits for the Gold/Silver Index are set under Phlx Rule 1001A(b)(i). The Phlx represents that the Gold/Silver Index would currently fall under the 16,000 position limit criteria. However, if the Index fails to satisfy the concentration requirements of the maintenance criteria the position limit will be set at 8,000. Telephone conversation between Marla Chidsey, Attorney, Division of Market Regulation ("Division"), Commission, and Nandita Yagnik, Attorney, Phlx (July 25, 2000).

[10] *See supra* note 5.

[11] *See* Letter to Elizabeth King, Associate Director, Division, Commission, and Nancy Sanow, Assistant Director, Division, Commission, from Edith Hallahan, Deputy General Counsel, Phlx, dated July 17, 2000 ("July 17, 2000 Letter"); and telephone conversation between Heather Traegar, Attorney, Division, Commission, Marla Chidsey, Attorney, Divsion, Commission, and Nandita Yagnik, Attorney, Phlx (July 24, 2000).

[12] The Gold/Silver Index option had open interest of 31,090 contracts on July 7, 2000.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act[16] because it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Commission notes that the Gold/Silver Index is currently traded under Phlx Rule 1009A, which requires that no single component security represents more than 25% of the weight of the Index, and the five highest weighted components do not in the aggregate account for more than 50% of the weight of the Index. Based on the Phlx's representations, the Index is one of the Phlx's most actively-traded index options with an average daily trading volume of 1,559 contracts from January to June 2000.[17] The Phlx proposes to change the concentration requirement to make it similar to that of the Exchange's Box Maker Index. Under the Box Maker Index, no single component security may represent more than 35% of he weight of the Index, and the three highest weighted components cannot in the aggregate account for more than 65% of the weight of the index.[18] The Commission finds that changing the Gold/Silver Index to adopt the requirements that no single component security represents more than 35% of the weight of the Index, and that the three highest weighted components do not in the aggregate account for more than 65% of the weight of the index, comports with the standards in the Box Maker Index, which were previously approved by the Commission.[19] Thus, the Commission finds that the proposed amendment to Phlx Rule 1009(a)(6) relating to the Gold/Silver Index is consistent with the Act.

The Commission also finds that by adopting the proposed rule change to provide that no one component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index is an effective way to continue listing the Index, while still protecting against material changes in the composition and design of the Index that might adversely affect the Exchange's obligations to protect investors and to maintain fair and orderly markets in options based on the Index.

The Commission finds that the trading of options on the Index may facilitate transactions in securities, help remove impediments to a free and open securities markets, and promote the interest of investors by providing investors with a means of hedging exposure to market risks associated with the securities issued by the companies in the Gold/Silver index. The proposed rule change will allow investors uninterrupted use of the Index as an additional trading and hedging mechanism.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission finds that in the interest of the public and for the protection of investors the proposed rule change should be given accelerated approval to allow for the uninterrupted trading of the Index and to continue listing additional series in the options following the July expiration.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–00–69) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19501 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b)(5).

[17] *See* July 17, 2000, *supra* note 11.

[18] *See supra* note 3.

[19] *See supra* note 3.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269, Amdt. #2]

State of North Dakota

In accordance with notices from the Federal Emergency Management Agency, dated July 21 and 24, 2000, the above-numbered Declaration is hereby amended to include the following counties in the State of North Dakota as a disaster area due to damages caused by severe storms, flooding, and ground saturation: Barnes, Burleigh, Burke, Cavalier, Dickey, Emmons, LaMoure, Logan, Morton, Montrail, Oliver, Pembina, Richland, Renville, Rolette, Sargent, Steele, Stutsman, Towner, and Ward. This Declaration is further amended to establish the incident period for this disaster as beginning on April 5, 2000 and continuing through July 21, 2000.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Divide, Dunn, Grant, McIntosh, McKenzie, Sioux, Stark, and Williams Counties in North Dakota; Brown, Campbell, Corson, Marshall, McPherson, and Roberts Counties in South Dakota; and Traverse County, Minnesota. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury number for the State of South Dakota is 9H8800.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 26, 2000 and for economic injury the deadline is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 2000.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–19460 Filed 8–1–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3379]

Bureau of Educational and Cultural Affairs Request for Proposals; Office of Citizen Exchanges; Community Connections Program: U.S. Hosting

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the Community Connections Program: U.S. Hosting. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to organize and implement Community Connections, a community-based, professional exchange program for business entrepreneurs and other professionals from Russia, Ukraine, Moldova, Armenia, Belarus, Georgia, Azerbaijan and Kazakhstan. The objective of Community Connections is to enhance the participants' skills in business and entrepreneurship, law, local governance, management, infrastructure development, curriculum development, and other professional-level fields. The Bureau is interested in proposals that provide both professional experience and exposure to American life and culture through internships hosted by U.S. businesses and other local institutions, and home stays with local community members. An overall objective of Community Connections is to establish long-term lasting

relationships among U.S. and international colleagues and communities. This program is not academic in nature. Rather, it is designed to provide practical, hands-on training in American business, legal, and public/private sector settings that can be transferred upon an individual's return home. The Bureau welcomes innovative proposals that combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

Note: The proposal submitted should not include any program activities related to the NIS recruitment and selection of Community Connections participants.

Specific Bureau program objectives are outlined in the attached Project Objectives, Goals, and Implementation (POGI) document.

Program Information

Participating organizations will be expected to host both English speaking business internship participants and professional development participants with little or no English-language skills.

Pending availability of funds, the Bureau estimates that approximately 1,800 professionals will participate in the FY 2001-funded Community Connections program. All participants will be recruited from the selected regions by experienced U.S. organizations with offices in participating NIS countries. The Bureau expects that approximately 800 participants will be from Russia, 500 from Ukraine, and the remainder from Moldova, Armenia, Belarus, Azerbaijan, Georgia, and Kazakhstan. Business internships generally are four to six weeks in length, and programs for other professionals generally run from three to four weeks in length. It is expected that programs will take place beginning in the fall of 2001 through the fall of 2002. Please take care to allow sufficient time between programs to prepare for the following group. Organizations that have not hosted Community Connections participants before are invited to submit a proposal to host 20 participants in total during the first year in the program. In an effort to minimize administrative expenses, all organizations must host participants in groups of ten participants each. Participants will be assigned to U.S. host communities by the Office of Citizen Exchanges, based on the following factors: existing ties between the regions of origin of the participants, the locations of the U.S. grantee organizations, the professional interests of the participants, preferences of the U.S. host community, any existing relationship with a community in the NIS, and the areas of strength of U.S. grantee organizations. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. For your reference, past programs have averaged a total of $6,500 for each participant hosted. Please use this figure as a guide when preparing a budget for Community Connections business and professional programs. Contingent upon the availability of funds from one fiscal year to the next, the Bureau intends to establish long-term continuing relationships with U.S. organizations that have demonstrated particular expertise in the planning and administration of long standing programs of importance to United States foreign policy, such as Community Connections. Accordingly, the Bureau reserves the right to extend grants programs found to be effective, by annual amendment for up to three additional fiscal years (not to exceed five years total), to provide continued support for this program. At the Bureau's discretion, organizations may be requested to continue activities for specific audiences or to expand their scope of the programming (*e.g.*, an organization may be requested to host participants from the same or another discipline—local government, business, or legal profession—from the same or from another country included in the program) to meet the changing needs of the Community Connection program. Specific budget guidelines are outlined in the attached Project Objectives, Goals, and Implementation (POGI) document.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–01–13.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges, Community Connections Program ECA/PE/C/EUR, Room 220, U.S. Department of State, 301 4th Street, SW., Washington, D.C. 20547, 202–401–6884, 202–260–0440, vrector@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Senior Program Officer Brent Beemer on all other inquiries and correspondence. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, December 1, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline. Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–01–13, Program Management, ECA/EX/PM, Room 336 301 4th Street, SW,. Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to

provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the Program Office. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program planning and ability to achieve objectives: Detailed agenda and relevant work plan should demonstrate careful and thorough preparation to carry out substantive programs that have a high likelihood of achieving program objectives. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible.

2. Institutional capability: Organization should demonstrate sufficient skills and experience in hosting visitors from other countries and ability to utilize local business, legal and governmental resources and voluntary support. Thematic expertise in project subject matter must be demonstrated.

3. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should also maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

4. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

5. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through The FREEDOM Support Act legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: July 26, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 00–19571 Filed 8–1–00; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–00–018]

Galveston Causeway Railroad Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: The U. S. Coast Guard announces a forthcoming public hearing for the presentation of views concerning the alteration of the Galveston Causeway Railroad Bridge near Galveston, Texas.

DATES: The hearing will be held at 9:00 a.m., August 30, 2000.

ADDRESSES: (a) The hearing will be held in Room 175, of the Jadwin Building, 2000 Fort Point Road, Galveston Texas 77553.

(b) Written comments may be submitted to and will be available for examination from 8 a.m. to 4 p.m., Monday through Friday, except holidays, to Commander, Coast Guard District Eight, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2832.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Bridge Administrator, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2832, (314) 539–3900 ext. 378.

SUPPLEMENTARY INFORMATION: Complaints have been received alleging that the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates there were 99 marine collisions with the bridge between 1990 and 1999. These collisions have caused moderate to heavy damage to the bridge. Based on this information, the bridge appears to be an unreasonable obstruction to free navigation. This may require increasing the horizontal clearance on the bridge to meet the needs of navigation. All interested parties shall have full opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed, and if so, what alterations are needed, giving due consideration to the necessities of free and unobstructed water navigation. The necessities of rail traffic will also be considered.

Any person who wishes, may appear and be heard at this public hearing.

Persons planning to appear and be heard are requested to notify Commander, Coast Guard Eighth District, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2832, Telephone: 314–539–3900 ext. 378, any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Bridge Administrator, Bridge Branch. Transcripts of the hearing will be made available for purchase upon request.

Authority: 33 U.S.C. 513; 49 CFR 1.46(c)(3).

Dated: July 26, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 00–19484 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of each of the information collection and the expected burden. The **Federal Register** Notice with a 60–day comment period soliciting comments on the following collections of information was published on May 9, 2000, (FR 65, pages 26871–26872).

DATES: Comments must be submitted on or before September 1, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA).

Title: Passenger Facility Charge (PFC) Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0557.

Forms(s) FAA Form 5500–1.

Affected Public: 450 respondents.

Abstract: 49 U.S.C. 40117 authorizes airports to impose passenger facility charges (PFC). The final rule (14 CFR part 158) implementing this Act was effective June 28, 1991. Changes have been made to this form to reflect those changes made to the statute by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Pub. L. 1060181, April 5, 2000). This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the Dot/FAA. This program provides additional funding for airport development which is needed now and in the future.

Estimated Annual Burden Hours: 26,592 burden hours annually.

Issued in Washington, DC, on July 25, 2000.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 00–19532 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Chandler Municipal Airport, Chandler, AZ

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the city of Chandler, Arizona, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 Code of Federal Regulations, Part 150 (FAR Part 150). These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 24, 1999 the FAA determined that the noise exposure maps submitted by the city of Chandler, Arizona, under Part 150 were in compliance with applicable requirements. On July 10, 2000 the Associate Administrator for Airports approved the Chandler Municipal Airport Noise Compatibility Program. All sixteen program measures were approved. Three measures were approved as voluntary measures and thirteen measures were approved outright.

EFFECTIVE DATE: The effective date of the FAA's approval of the Chandler Municipal Airport noise compatibility program is July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone: (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Chandler Municipal Airport, effective July 10, 2000.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map, may submit to the FAA, a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with FAR Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in FAR Part 150 of the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing

the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division office in Hawthorne, California.

The City of Chandler, Arizona, submitted the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 1997 through January 2000 to the FAA on February 19, 1999 and May 28, 1999. The Chandler Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 24, 1999. Notice of this determination was published in the **Federal Register** on July 8 , 1999.

The Chandler Municipal Airport study contains a proposed Noise Compatibility Program comprised of actions designed for implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 104(b) of the Act. The FAA began its review of the program on January 13, 2000 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained sixteen proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The Associate Administrator for Airports approved the overall program effective July 10, 2000.

All sixteen of the program elements were approved. The following three measures were approved as voluntary measures: Request aircraft departing on Runway 22L to fly to runway end before turning left; request aircraft departing on Runway 22R to fly to runway end before turning right; and, promote use of AOPA Noise Awareness Steps by light single and twin engine aircraft. The following thirteen measures were approved outright: Relocate heliport to east side of airport; establish Airport Influence Area; use combined 2003 and 2020 noise contours as basis for noise compatibility planning; set 55 DNL as the threshold for promoting airport-compatible development; establish noise compatibility guidelines for the review of development projects within the 55 DNL contour; amend Airport Impact Overlay Zoning Ordinance; enact Airport Impact Overlay Zoning Ordinance (Maricopa County, Town of Gilbert); amend subdivision regulations to require recording of fair disclosure covenants and granting of avigational easement in Airport Impact Overlay District; amend building code to add sound insulation standards supporting Airport Impact Overlay zoning requirements; maintain system of receiving, analyzing, and responding to noise complaints; review Noise Compatibility Plan implementation; Update Noise Exposure Maps and Noise Compatibility Program; and, publish pilot guide.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on July 10, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the city of Chandler, Arizona.

Issued in Hawthorne, California on July 17, 2000.

Herman C. Bliss,

Manager, Airports Division, AWP–600 Western-Pacific Region.

[FR Doc. 00–19529 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on June 30, 2000. This publication ensures that the agency is in compliance with statuory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20490; telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2), In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October.)

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 4055; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93 ..	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95 ..	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
4/1/96–6/30/96	61 FR 37526; 7/18/96.
7/1/96–9/30/96	61 FR 54833; 10/22/96.
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1/1/97–3/31/97	62 FR 24533; 5/2/97.
4/1/97–6/30/97	62 FR 38339; 7/17/97.
7/1/97–9/30/97	62 FR 53856; 10/16/97.
10/1/97–12/31/97 ..	63 FR 3373; 1/22/98.
1/1/98–3/31/98	63 FR 19559; 4/20/98.
4/1/98–6/30/98	63 FR 37914; 7/14/98.
7/1/98–9/30/98	63 FR 57729; 10/28/98.
10/1/98–12/31/98 ..	64 FR 1855; 1/12/99.
1/1/99–3/31/99	64 FR 24690; 5/7/99.
4/1/99–6/30/99	64 FR 43236; 8/9/99.
7/1/99–9/30/99	64 FR 58879; 11/1/99.
10/1/99–12/31/99 ..	65 FR 1654; 1/11/00.
1/1/00–3/31/00	65 FR 35973; 6/6/00.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. Also, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld).

A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice. Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet also appears at the end of this notice.

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Civil Penalty Actions—Orders Issued By the Administrator

Digests

(Current as of June 30, 2000)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1999, to June 30, 1999. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of USA Jet Airlines, Inc.

Order No. 2008–8 (5/9/2000)

Appeal Dismissed. USA Jet Airlines withdrew its appeal; therefore, its appeal is dismissed.

In the Matter of Tundra Copters, Inc.

Order No. 2000–9 (5/11/2000)

Appeal Dismissed. Tundra Copters failed to perfect its appeal by filing an appeal brief. Therefore, its appeal is dismissed.

In the Matter of Johnny Johnson

Order No. 2000–10 (5/11/200)

Appeal Dismissed. Mr. Johnson failed to perfect his appeal by filing an appeal brief; therefore, his appeal is dismissed.

In the Matter of Europex Inc.

Order No. 2000–11 (5/11/2000)

Appeal Dismissed. Europex has provided no explanation for its late filing of its notice of appeal; therefore, its appeal is dismissed.

In the Matter of Evergreen Helicopters of Alaska, Inc.

Order No. 2000–12 (6/8/2000)

Dismissal affirmed. Under a contract with the United Nations, Evergreen transported passengers on a U.S.-registered aircraft as part of a peacekeeping mission, using Angolan pilots on 19 flights that took place entirely inside Angola. The pilots held only Angolan airline transport pilot certificates; they did not hold U.S. airline transport pilot certificates. The Administrator rejected Complainant's argument that Evergreen violated 14 CFR 135.234(a) by using pilots who lacked U.S airline transport pilot certificates. Regardless of what the drafters intended, the regulation on its face does not require that a pilot-in-command hold a U.S.-issued certificate. Moreover, 14 CFR 61.3 expressly permits the use of a certificate by the country in which the aircraft is operated. This plain meaning interpretation of the regulations is consistent with a prior written interpretation issued by the agency.

In the Matter of Empire Airlines, Inc.

Order No. 2000–13 (6/8/2000)

Failure to Use Approved Data when making a Major Repair. Conair Aerospace repaired the left engine mount of one of Empire Airlines' Fairchild F–27F aircraft using sleeve repair data set forth in Advisory Circular (AC) 43.13–1A. Neither the Fairchild F–27 overhaul nor structural repair manual provide for sleeve repairs. Instead, the Fairchild overhaul and structural repair manuals provide for repair of non-negligible engine mount corrosion by a patch repair, insertion or replacement, and prohibit patch repairs if the damage is in the middle third of the tube. In this case, the corrosion extended into the middle third of the tube.

Under Section 121.379, a certificate holder may approve an aircraft for return to service after maintenance performed by another person but major repairs or major alterations must be done in accordance with technical data approved by the Administrator. It was undisputed that the left engine mount repair constituted a major repair, that Empire was obligated to use approved data, and that the Fairchild F–27 series overhaul and structural repair manuals contained approved data for a major repair of that aircraft. The sleeve repair was not included in either of these manuals as approved for the repair of the Fairchild F–27F's engine mount.

AC–43.13–1A is not normally considered to be approved data for a major repair, but it may be used as a basis for approval. There was no evidence that Empire or Conair had sought the approval of a DER for a sleeve repair of the left engine mount.

A sleeve repair was approved for an engine mount of another model aircraft, the Fairchild FH–227. The fact that a sleeve repair may be approved data for the repair of one model aircraft (*i.e.*, the Fairchild FH–227) does not mean necessarily that a sleeve repair is approved for the same type of damage to another similar aircraft (*i.e.*, the Fairchild F–27F). There may be subtle differences that would make a sleeve repair appropriate for the FH–227 and not for the F–27F. Aviation safety demands that maintenance personnel not assume that approved data for the repair of one specific aircraft can be used as approved data for a major repair on a different aircraft.

Empire argued that it was not precluded from using a sleeve repair because the manuals did not specifically prohibit the use of sleeve repairs. The Administrator held that it is unreasonable to expect the manufacturer to have listed all of the repairs that would not be appropriate for any given damage, and hence, the manufacturer's silence cannot be regarded as tacit approval of a repair.

The Administrator rejected Empire's argument that it was entitled to rely on the services performed by Conair. Empire's director of quality assurance and its customer coordinator were at the Conair facility when the repair was accomplished, and its customer coordinator observed the damage and the repair. The airworthiness release was signed by a Conair employee acting on Empire's behalf.

An air carrier cannot delegate away its primary responsibility for the airworthiness of its aircraft. While there may be certain limited circumstances in which an air carrier might not be held responsible for maintenance and inspections performed by a contractor or vendor, no such reasons exist in this case.

The Administrator denied Empire's appeal and affirmed the initial decision assessing a $5,000 civil penalty.

In the Matter of Warbelow's Air Ventures, Inc.

Order No. 2000–14 (6/8/2000)

Reconsideration Denied. In a timely petition to reconsider FAA Order No. 2000–3, which assessed a $6,500 civil penalty, Warbelow's renews two previous arguments. First, Warbelow's again challenges the credibility of its former Director of Maintenance, who testified that he failed to ensure that the screws on several fuel pumps were torques to the proper pressure. Second, Warbelow's again argues that the pumps must have been torques to the proper pressure because they did not leak in service. Neither argument is new; both were decided by the law judge and the Administrator. The Rules of Practice provide that the Administrator may summarily dismiss repetitious petitions to reconsider.

The only new argument in Warbelow's petition is its challenge to the factual accuracy of the following statement in FAA Order 2000–3: "Warbelow's demoted and fired [the Director of Maintenance] after he admitted to the FAA inspectors that he had been using an improper method to modify the fuel pumps." Warbelow's is correct that it actually fired the Director of Maintenance before he indicated at the hearing that he failed to use a torque wrench to ensure the proper pressure on the fuel pump screws. This factual error, however does not affected the outcome of this case. A law judge's credibility determinations are entitled to deference on appeal. The law judge was well aware of the Director of Maintenance's possible motives to misrepresent how he reassembled the fuel pumps, and yet the law judge specifically stated in his initial decision that he believed his testimony. Warbelow's has failed to provide sufficient grounds to overturn the law judge's credibility determinations, which were based on his personal observations of the witnesses.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA)
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve
- FedWorld

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591, (tel. No. 202–267–3641). The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the docket of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Suite PL–401, Washington, DC 20590, (tel. no. 202–366–9329). While the originals are retained in the FAA Hearing Docket, the DOT Docket scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 926A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), 1 Aviation Plaza, 159–30 Rockaway Blvd., Springfield Gardens, NY 11434; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (847) 294–7085.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803; (781) 238–7040.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137; (817) 222–5064.

Office of the Regional Counsel for the Technical Center (ACT–7), William J. Hughes Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7088.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (310) 725–7100.

Issued in Washington, DC on July 25th, 2000.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 00–19536 Filed 8–1–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–27]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No. 28454.
Petitioner: Civil Air Patrol.
Section of the FAR Affected: 14 CFR subpart F of part 91.
Description of Relief Sought/Disposition: To permit CAP to operate small aircraft under subpart F of part 91 and receive limited reimbursement for certain flights within the scope of and incidental to the CAP's corporate purposes and U.S. Air Force Auxiliary status.

Grant, 07/18/00, Exemption No. 6485B

Docket No.: 26582.
Petitioner: Air Transport Association, of America.
Section of the FAR Affected: 14 CFR 61.3(a) and (c), 63.3(a), and 121.383(a)(2).
Description of Relief Sought/Disposition: To permit an air carrier to issue written confirmation of an FAA-issued crewmember certificate to a flight crewmember employed by that air carrier based on information in the air carrier's approved record system.

Grant, 07/18/00, Exemption No. 5487D

Docket No.: 29304.
Petitioner: Rotorcraft Leasing Company, L.L.C.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit RLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 07/13/00, Exemption No. 6810A

Docket No.: 27785.
Petitioner: Chevron U.S.A. Production Company.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Chevron to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 07/18/00, Exemption No. 5948C

Docket No.: 29691.
Petitioner: Helping Hands Society of Hazleton Area/Carbon & Schuylkill County.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit HHSHA to conduct local sightseeing flights at Hazleton Municipal Airport for a two-day aviation festival in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/17/00, Exemption No. 7276

Docket No.: 30092.
Petitioner: Mr. Robert J. Ross.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Mr. Ross to conduct one local sightseeing flight at Santa Monica Airport, California, for compensation or hire benefiting the Ocean Park Community Center, on a date in 2000 to be agreed upon by Mr. Ross and the passengers, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/11/00, Exemption No. 7271

Docket No.: 30093.
Petitioner: Mr. Robert J. Ross.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Mr. Ross to conduct one local sightseeing flight at Santa Monica Airport, California, for compensation or hire benefiting the Lyon's Club Wilderness Camp for Deaf Children, on a date in 2000 to be agreed upon by Mr. Ross and the passengers, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/11/00, Exemption No. 7272

[FR Doc. 00–19522 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No.____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28158.
Petitioner: Twin Otter International, Ltd.
Section of the FAR Affected: 14 CFR 121.345(c)(2) and 135.143(c)(2).
Description of Relief Sought/Disposition: To permit TOIL to operate certain aircraft under part 121 and part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.

Grant, 02/15/00, Exemption No. 6111B

Docket No.: 28597.
Petitioner: U.S. Helicopters, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit U.S. Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.

Grant, 02/15/00, Exemption No. 6452B

Docket No.: 28496.
Petitioner: Bohlke International Airways.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit BIA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.

Grant, 02/15/00, Exemption No. 6454B

Docket No.: 27136.
Petitioner: Kenai Air Alaska, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit KAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 06/19/00, Exemption No. 5699C

Docket No.: 30025.
Petitioner: Ashland County Airport and Johnston Aviation.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit ACA and JA to conduct local sightseeing flights at Ashland County Airport, Ashland, Ohio, for a one-day event in July 2000, and a one-day event in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/15/00, Exemption No. 7245

Docket No.: 30039.
Petitioner: Big Foot Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit BFPA to conduct local sightseeing flights at Big Foot Airport, Walworth, Wisconsin, for a two-day fly-in-drive-in breakfast in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/15/00, Exemption No. 7244

Docket No.: 30064.
Petitioner: CP Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit CPA to conduct local sightseeing flights in the vicinity of Santa Paula, California for a one-day fundraising event on behalf of the Santa Paula Chamber of Commerce and the Aviation Museum of Santa Paula in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/15/00, Exemption No. 7242

Docket No.: 30061.
Petitioner: Grand Forks Flight Support.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/Disposition: To permit GFFS to conduct local sightseeing flights at Grand Forks International Airport, Grand Forks, North Dakota, for its four-day charitable airlift event in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/09/00, Exemption No. 7237

Docket No.: 30050.
Petitioner: Experimental Aircraft Association Chapter 16.
Section of the FAR Affected:: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit EAA Chapter 16 to conduct local sightseeing flights at Flora Municipal Airport, Illinois, for the one-day Arora of Flora fly-in event in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/09/00, Exemption No. 7238

Docket No.: 30073.
Petitioner: Plainwell Pilot's Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.33, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit PPA to conduct local sightseeing flights at Plainwell Airport, Michigan, for its one-day charitable airlift in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirement of part 135.

Grant, 06/15/00, Exemption No. 7243

Docket No.: 26743.
Petitioner: The Goodyear Tire & Rubber Company.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Goodyear to establish and maintain a number of fixed locations for the distribution of its repair station inspection procedures manual at each facility rather than providing a copy of the manual to each of its supervisory and inspection employees.

Grant, 06/06/00, Exemption No. 5543D

Docket No.: 29991.
Petitioner: ELDEC Corporation.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit ELDEC to make its Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.

Grant, 06/06/00, Exemption No. 7239

Docket No.: 28320.
Petitioner: Bombardier Aerospace, Learjet, Inc.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Learjet to assign a copy of its repair station Inspection Procedures Manual (IPM) to key individuals within departments and make the IPM available to all other repair station personnel rather than giving a copy of the manual to each of its supervisory and inspection personnel.

Grant, 06/06/00, Exemption No. 7240

Docket No.: 28492.
Petitioner: VARIG S.A.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/Disposition: To permit VARIG to use the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, Brazil's national standards organization, in lieu of the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment at its São Paulo facility.

Grant, 07/02/00, Exemption No. 6831A

Docket No.: 26710.
Petitioner: Skydive DeLand, Inc.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/Disposition: To permit Skydive to allow nonstudent parachutists who are foreign nationals to participate in parachute jumping events sponsored by Skydive without complying with the parachute equipment and packing requirements.

Grant, 06/27/00, Exemption No. 5542D

[FR Doc. 00–19523 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–29]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room, 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa

Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29911.
Petitioner: Adeletom Aviation, LLC.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit AAL to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7201

Docket No.: 29956.
Petitioner: Better Living Aviation.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit BLA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7206

Docket No.: 27170.
Petitioner: Minuteman Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit MAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7205

Docket No.: 30001.
Petitioner: Avcenter, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Avcenter to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7204

Docket No.: 29982.
Petitioner: G & L Service.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit G&L to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7203

Docket No.: 29936.
Petitioner: Mentone Flying Club, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit MFC to conduct local sightseeing flights at Fulton County Airport, Indiana for the one-day Round Barn Festival in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/12/00, Exemption No. 7202.

Docket No.: 29963.
Petitioner: Decatur Aero Club.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 136.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit DAC to conduct local sightseeing flights in the vicinity of Decatur, Illinois for their one-day pancake breakfast in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/15/00, Exemption No. 7211

Docket No: 30015.
Petitioner: Gulf and Ohio Airways.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Dispositions: To permit GOA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/15/00, Exemption No. 7208

Docket No.: 29968.
Petitioner: Vintage Aircraft Group, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit VAC to conduct local sightseeing flights at Pine Hill airport, New York for its one-day events in June 2000, and September 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/15/00, Exemption No. 7207

Docket No.: 27609.
Petitioner: M. Shannon & Associates.
Section of the FAR Affected: 14 CFR 91.9(a) and 91.531(A)(1) and (2).
Description of Relief Sought/Disposition: To permit Shannon and certain operators of Cessna Model 500, 550, and S550 Citation airplanes to operate those airplanes without a pilot designated as second in command.

Grant, 005/12/00, Exemption No. 6480C

[FR Doc. 00–19524 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28172.
Petitioner: Helicopter Services, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit HSI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 6/22/00, Exemption No. 6109B

Docket No.: 26006.
Petitioner: Raytheon Aircraft Company.
Section of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/Disposition: To permit Raytheon to use their Dealer's Aircraft Registration Certificate outside the United States for demonstrating, testing, selling, and marketing any and all aircraft manufactured by it.

Grant, 06/01/00, Exemption No. 7241

Docket No.: 29978.
Petitioner: Mr. Kent Walker Ewing.
Section of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/Disposition: To permit certain flight instruction in Beechcraft Bonanza, Baron, and Travel Air airplanes equipped with a functioning throwover wheel in place of functioning dual controls.

Grant, 06/14/00, Exemption No. 7245

Docket No.: 29961.
Petitioner: Horizon Air Industries, Inc. dba Horizon Air (Horizon).
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/Disposition: To permit Horizon to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 06/14/00, Exemption No. 7253

Docket No.: 2992.
Petitioner: Alaska Air Taxi.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit AAT to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/22/00, Exemption No. 7247

Docket No. 30084.
Petitioner: Crescent City Airport Day Committee.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit CCADC to conduct local sightseeing flights at Crescent City Airport, California, for its one-day Airport Day Scholarship Fundraising airlift in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements.

Grant, 06/22/00, Exemption No. 7248

Docket No.: 30066.
Petitioner: Aero Charter, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit ACI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/22/00, Exemption No. 7250

Docket No.: 29988.
Petitioner: EK Aviation.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353 and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit EKA to conduct local sightseeing flights at the Sidney, Ohio, airport airfair on June 24, 2000, and at the Urbana, Ohio, airport airfair on July 4, 2000, for compensation or hire, without complying with the drug and alcohol testing requirements.

Grant, 06/21/00, Exemption No. 7246

Docket No.: 23960.
Petitioner: United States Hang Gliding Association, Inc.
Section of the FAR Affected: 14 CFR 91.309 and 103.1(b).
Description of Relief Sought/Disposition: To permit USHGA members to tow unpowered ultralight vehicles (hang gliders) using powered ultralight vehicles.

Grant, 06/14/00, Exemption No. 4144H

Docket No.: 29987.
Petitioner: Helicorp, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Helicorp to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/22/00, Exemption No. 7251

Docket No.: 30098.
Petitioner: Pacific Helicopter Tours, Inc.
Section of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/Disposition: To permit PHT to operate its two Bell 212 helicopters under part 135 without each of those helicopters being equipped with an approved digital flight data recorder.

Grant, 06/29/00, Exemption No. 7257

Docket No.: 29854.
Petitioner: LifePort, Inc.
Section of the FAR Affected: 14 CFR 25.562 and 25.785(b).
Description of Relief Sought/Disposition: To permit supplemental type certification of a medical stretcher installation on Gulfstream G-V airplanes.

Grant, 05/02/00, Exemption No. 7189

Docket No.: CE157.
Petitioner: The Red Baron Stearman Squadron.
Section of the FAR Affected: 14 CFR 23.851 and Civil Air Regulation (CAR) 4a.532(j).
Description of Relief Sought/Disposition: To permit the removal of fire extinguishers from six Boeing Stearman airplanes, which do not comply with the requirements of the CAR and part 23.

Denial, 04/13/00, Exemption No. 7167

Docket No.: CE155.
Petitioner: Raytheon Aircraft Company.
Section of the FAR Affected: 14 CFR 23.181(b).
Description of Relief Sought/Disposition: To permit Raytheon Model 390 to be certified to a requirement equivalent to 14 CFR 25.181(b).

Grant, 04/24/00, Exemption No. 7190

Docket No.: 30074.
Petitioner: Lebanon Chapter of the Oregon Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit LCOPA to conduct local sightseeing flights at Lebanon State Airport, Oregon, for a one-day charitable airlift event in July, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/22/00, Exemption No. 7249

[FR Doc. 00–19525 Filed 8–1–00; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29869.
Petitioner: Dr. Hubert B. Bradburn.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J of part 121.
Description of Relief Sought/Disposition: To permit Dr. Hubert B. Bradburn to conduct two local sightseeing flights at an airport in the vicinity of Hamden, CT, to raise funds for your church, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/16/0, Exemption No. 7210

Docket No.: 30018.
Petitioner: Mr. William Scholberg.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J of part 121.
Description of Relief Sought/Disposition: To permit Mr. William Scholberg to conduct four local sightseeing flights, donated to the Saints Martha and Mary Episcopal Church's silent auction at an airport in the vicinity of Apple Valley, MN, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7213

Docket No.: 29939.
Petitioner: Galion Aviation Day Planning Committee.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J of part 121.
Description of Relief Sought/Disposition: To permit Mr. Lyons and the GADPC to conduct local sightseeing flights at Galion Municipal Airport for the Galion Aviation Day on May 21, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7217

Docket No.: 30012.
Petitioner: Washington Pilots Association, Okanogan County Chapter.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.351, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit WPAOCC to conduct local sightseeing flights at Chelan Municipal Airport for its one-day charitable airlift in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7216

Docket No.: 30035.
Petitioner: Northern Indiana Aviation Museum.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit NIAM to conduct local sightseeing flights at Goshen Airport, Goshen, Indiana, for its one-day C–45 Grand Roll Out Fly-In in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7214

Docket No.: 29994.
Petitioner: Eastern Pennsylvania Chapter of the International Organization of Women Pilots.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Eastern PA Chapter 99s to conduct local sightseeing flights at Mercer County Airport, Trenton, New Jersey, for its tow-day Pennies-A-Pound event in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7215

Docket No.: 29966.
Petitioner: Dr. William R. McElwee.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Rev. Dr. William R. McElwee to conduct local sightseeing flights on one day at South Jersey Regional Airport for the Rotary Club of Haddonfield, New Jersey, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/18/00, Exemption No. 7218

Docket No.: 29188.
Petitioner: Civil Air Patrol.
Section of the FAR Affected: 14 CFR 61.113(e).
Description of Relief Sought/Disposition: To permit CAP to reimburse CAP members who are private pilots for fuel, oil, supplemental oxygen, fluids, lubricants, preheating, deicing, airport expenses, servicing, and maintenance expenses and certain per diem expenses incurred while serving on official U.S. Air Force-assigned CAP missions.

Grant, 05/18/00, Exemption No. 67771

[FR Doc. 00–19526 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–32]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 30019.
Petitioner: Woodlake Flying Tigers, EAA Chapter 1292.
Section of the FAR Affected: 14 CFR 135.21, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit WFT to conduct local sightseeing flights at Woodlake Airport for its one-day event in May 2000, for compensation or hire,

without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/01/00, Exemption No. 7187

Docket No.: 30020.
Petitioner: Sulphur Springs Sport Aviation Association, EAA Chapter 1094.
Section of the FAR Affected: 14 CFR 135.215, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit SSSAA to conduct local sightseeing flights in the vicinity of Sulphur Springs, Texas, for its one-day Annual Airport Day in May 2000, and its one-day Annual Fly-In in September 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/01/00, Exemption No. 7188

Docket No.: 29609.
Petitioner: The Bush Pilot, Inc.
Section of the FAR Affected: 14 CFR 43.3(a) and (g) and paragraph (c) of appendix A to part 43.
Description of Relief Sought/Disposition: To permit The Bush Pilot to perform the preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135 without holding a mechanic certificate.

Denial, 05/02/00, Exemption No. 7192

Docket No.: 29532.
Petitioner: Cub Drivers.
Section of the FAR Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought/Disposition: To permit pilots employed by Cub Drivers to perform the preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Denial, 05/02/00, Exemption No. 7194

Docket No.: 29603.
Petitioner: Mr. James A. Atkins.
Section of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To permit Mr. James A. Atkins and pilots employed by him to perform certain preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on aircraft operated under 14 CFR part 135 without holding a mechanic certificate.

Denial, 05/02/00, Exemption No. 7197

Docket No.: 29989.
Petitioner: Experimental Aircraft Association Chapter 1047 and the Tar River Composite of the Civil Air Patrol.
Section of the FAR Affected: 14 CFR 135.1(a)(5).
Description of Relief Sought/Disposition: To permit EAA Chapter 1047 and the Tar River CAP to conduct local sightseeing flights at the Rocky Mount/Wilson Airport in Rocky Mount, NC, for their annual open house on May 6, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/05/00, Exemption No. 7198

Docket No.: 29722.
Petitioner: Flight Express.
Section of the FAR Affected: 14 CFR 135.243(c)(2).
Description of Relief Sought/Disposition: To permit each of its pilots to act as pilot in command under instrument flight rules with a minimum of 800 hours of total flight time, including 330 hours of cross-country flight time, 70 hours of night flight time, and 50 hours of actual or simulated instrument flight time of which 30 hours were in actual flight in lieu of flight-time requirements.

Denial, 05/05/00, Exemption No. 7199

Docket No.: 29137.
Petitioner: Weary Warriors Squadron.
Section of the FAR Affected: 14 CFR 91.315, 119.21(g), and 119.21(a).
Description of Relief Sought/Disposition: To permit WWS to operate its North American B–25 (B–25) aircraft, which is certificated in the limited category, for the purpose of carrying passengers for compensation or hire.

Grant, 05/10/00, Exemption No. 6786A

Docket No.: 29714.
Petitioner: State of Alaska Department of Transportation and Public Facilities.
Section of the FAR Affected: 14 CFR 107.14.
Description of Relief Sought/Disposition: To permit ADOT&PF to comply with the security of the air operations area requirements of § 107.13 rather than the access controls system requirements of § 107.14 at 15 remote airports operated by the ADOT&PF.

Grant, 05/15/00, Exemption No. 7209

Docket No.: 30041.
Petitioner: Samaritan's Purse.
Section of the FAR Affected: 14 CFR SFAR No. 79.
Description of Relief Sought/Disposition: To permit one flight to Pyongyang, the capital city of the Democratic People's Republic of Korea DPRK, on or about May 15, 2000.

Grant, 05/11/00, Exemption No. 7200

[FR Doc. 00–19527 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–33]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Purusant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29190.
Petitioner: Mr. Craig Roy Bailey.
Section of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/Disposition: To permit Mr. Craig Roy Bailey to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in lieu of functioning dual controls.

Grant, 05/19/00, Exemption No. 6763A

Docket No.: 30053.
Petitioner: Sabre Society of North Carolina.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit SSNA to conduct local sightseeing flights at Hickory Regional Airport, Hickory, NC, for a two-day charitable event in May 2000, for compensation or hire without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/19/00, Exemption No. 7219

Docket No.: 29944.
Petitioner: Palmyra Flying Club, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit PFC to conduct local sightseeing flights at Palmyra Airport, Palmyra, Wisconsin, for its one-day fly-in breakfast in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/19/00, Exemption No. 7220

Docket No.: 28546.
Petitioner: The Ranch Parachute Club, Ltd.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/Disposition: To permit nonstudent parachutists who are foreign nationals to participate in parachute-jumping events sponsored by The Ranch at its facilities without complying with the parachute equipment and packing requirements of 14 CFR.

Grant, 05/19/00, Exemption No. 6494B

Docket No.: 29672.
Petitioner: Corpac Canada, Ltd.
Section of the FAR Affected: 14 CFR 129.18(b).
Description of Relief Sought/Disposition: To permit Corporate Express to conduct nonscheduled, charter operations in the United States without an approved Traffic Alert and Collision Avoidance System (TCAS) installed in each of its British Aerospace Jetstream 31 airplanes.

Denial, 05/19/00, Exemption No. 7227

Docket No.: 29170.
Petitioner: Mr. Roland R. Cowser.
Section of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/Disposition: To permit Mr. Roland R. Cowser to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in lieu of functioning dual controls

Grant, 5/19/00, Exemption No. 6761A

Docket No.: 27821.
Petitioner: City of Cedar Rapids Police Department Air Support Division.
Section of the FAR Affected: 14 CFR 91.209(a) and (b).
Description of Relief Sought/Disposition: To permit CRPD to conduct air operations in support of law enforcement and drug interdiction without illuminating the lighted position and anticollision aircraft lights required by § 91.209.

Grant, 5/19/00, Exemption No. 6780A

Docket No.: 29979.
Petitioner: Chicago Express Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/Disposition: To permit CEA to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 5/19/00, Exemption No. 7288

Docket No.: 30002.
Petitioner: Ross Aviation, Inc.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Ross make its repair station Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.

Grant, 5/19/00, Exemption No. 7229

Docket No.: 30008.
Petitioner: Grant Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Grant Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 5/22/00, Exemption No. 7221

Docket No.: 30026.
Petitioner: Blue Ash Airport Days 2000.
Section of the FAR Affected: 14 CFR 135.251, 135.244, 135.251, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit BAAD to conduct local sightseeing flights at Blue Ash Airport, Cincinnati, Ohio, for Blue Ash Airport Days 2000 on June 10 and 11, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 5/22/00, Exemption No. 7222

Docket No.: 30046.
Petitioner: Mr. Dennis N. Odem and Mr. John S. Odem.
Section of the FAR Affected: 14 CFR 135.251, 135.244, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Mr. Dennis N. Odem and Mr. John S. Odem to conduct local sightseeing flights in the vicinity of Florence, Alabama, for the four-day Alabama Jubilee Hot Air Balloon festival in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 5/23/00, Exemption No. 7224

[FR Doc. 00–19528 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–135 meeting to be held August 17–18, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: January 17, (1) Welcome and Introductory Remarks; (a) Review Summary of Previous Meeting; (3) Review/Approval Section 8, RTCA Paper No. 163–00/SC135–593, Vibration; (4) Review/Approval Section 20, RTCA Paper No. 164–00/SC135–594, Radio Frequency Susceptibility (Radiated and Conducted); (5) Review/Approval Section 16; Tentative; (6) Review Schedule for Release of DO–160D/ED–14D, Change 1 to Environmental Conditions and Test Procedures for Airborne Equipment; (7) Consider a Schedule for Next Complete Update—DO–160E/ED–14E; (8) Other Business (9) Date and Location for Next Meeting; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statement or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 27, 2000.

Janice L. Peters,
Designated Official.

[FR Doc. 00–19530 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 159; Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given of a request from the Department of Transportation (DOT) for RTCA to develop appropriate material

for DOT consideration in preparing its comments on an FCC Notice of Proposed Rule-Making (NPRM), "In the Matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems."

In response to this request, RTCA's Program Management Committee has tasked Special Committee 159, Global Positioning System (GPS), to develop a response. Special Committee 159's recommended submission to DOT will be posted on the RTCA web site (*www.rtca.org*) on the Program Management Committee page by August 31, 2000. The Program Management Committee will review and approve this submission which will be forwarded to DOT on September 12, 2000.

Persons wishing to obtain information, or have questions/comments, should contact RTCA, Inc., Attn: Mr. Jerry Bryant, at (202) 833–9339 (phone), (202) 833–9424 (facsimile), or *jbryant@rtca.org* (e-mail).

Issued in Washington, DC on July 26, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19531 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held August 16, 2000, starting at 1:00 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, in the Bessie Coleman Conference Center, Room 2AB (second floor).

The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Report and Recommendations from the Free Flight Select Committee: (a) Consolidated Government/Industry Operational Concept; (b) Surveillance Operational Concept; (c) Surveillance Roadmap; (d) Safe Flight 21; (4) FAA Report: (e) Free Flight Phase 2; (5) Presentation: (f) Deutsche Flugsicherung (DFS) GmbH, the German Air Navigation Service; (6) Satellite Navigation Users Group; (7) Other Business; (6) Date and Location of Next Meeting; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile).

Issued in Washington, DC on July 25, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19533 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 192 meeting to be held August 21, 2000, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Welcome and Introductory Remarks; (2) Review/Approve Previous Plenary Minutes; (3) Review resolution of comments matrix for User Priorities for the National Airspace Redesign Document; (4) Review edited User Priorities for the National Airspace Redesign document with the High Altitude Airspace Concept integrated and Approve Document; (5) Review Edited User Recommendations on FAA Order 7400.2, Procedures for Handling Airspace Matters document including Detailed Discussion on Class B and C Airspace Design Specifications and Approve Document; (6) Review Edited Recommendation on Special Use Airspace in National Airspace Redesign Document with the Document Comment Form comments integrated and Approve Document; (7) Date and Location on Next Meeting; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9343 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19534 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government Industry Certification Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for RTCA Government/Industry Certification Steering Committee meeting to be held August 11, 2000, from 10 a.m. to 1 p.m. The meeting will be held at Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC, 20591, in Conference Room 5ABC (5th Floor).

The agenda will include: (1) Welcome and Introductory Remarks: (a) Review Steering Committee Charter; (2) Certification Select Committee: (b) Objectives; (c) Membership and Attendance; (d) Six Months Task Update; (3) Work Plans: (e) Link to TF4 Recommendations; (f) Road Map; (g) Products—Select Committee, CAST, SOIT, Etc.; (h) End State for TF4 Recommendations; (I) Metrics; (4) Other Business; (5) Date and Location of Next Meeting; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19535 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on March 20, 2000 (64 FR 15034–15035).

DATES: Comments must be submitted on or before September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph Scott at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–22), 202–366–8525, 400 Seventh Street, SW., Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Tire Identification and Record keeping.

OMB Number: 2127–0050.

Type of Request: Extension of a currently approved collection.

Abstract: Each tire manufacturer must collect and maintain records of the names and address of the first purchasers of new tires. All tire dealers and distributors must record the names and addresses of retail purchasers of new tires and identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms returned to the tire manufacturers where they are to remain for three years after the date received by the manufacturer. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers of new motor vehicles, together with the identification numbers of the tires on the new vehicles.

Affected Public: Businesses and other-for-profit institutions (tire manufacturers, dealers, and distributors).

Estimated Total Annual Burden: 245,000.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 28, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–19516 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 20, 2000 (64 FR 15034–15035).

DATES: Comments must be submitted on or before September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph Scott at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–22), 202–366–8525. 400 Seventh Street, SW, Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: Tires and Rims Labeling.

OMB Number: 2127–0503.

Type of Request: Extension of a currently approved collection.

Abstract: Each tire manufacturer and rim manufacturer must label their tire or rim with applicable safety information. These labeling requirements ensure that tires are mounted on the appropriate rims; and that the rims and tires are mounted on the vehicles for which they are intended. The tires and rims are labeled in accordance with the agency's Federal Motor Vehicle Safety Standards and regulations.

Affected Public: Businesses and other-for-profit institutions (tire and rim manufacturers).

Estimated Total Annual Burden: 128,979.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on July 20, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–19517 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4957; Notice 19]

Pipeline Safety: Revision of Natural Gas Transmission and Gathering Pipeline Incident and Annual Report Forms

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments on revision of Information Collection OMB 2137–0522.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) is publishing its intention to revise forms RSPA F 7100.2—Incident Report For Gas Transmission and Gathering Systems and RSPA F 7100.2–1—Annual Report For Gas Transmission and Gathering Systems. The purpose of this notice is to allow the public 60 days from the date of this notice to comment on the proposed changes in the forms and the information collection burden.

DATES: Comments on this notice must be received on or before October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, 400 Seventh Street, SW, Room 7128, Washington, DC, 20590, or by e-mail to roger.little@rspa.dot.gov.

ADDRESSES: Copies of this proposed information collection and the revised forms, RSPA F 7100.2—Incident Report for Gas Transmission and Gathering Systems and RSPA F 7100.2–1—Annual Report for Gas Transmission and Gathering Systems, can be reviewed in this docket at http://dms.dot.gov.

Address all comments concerning this notice to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except federal holidays. Comments should identify the docket number of this notice, RSPA–98–4957. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard.

Electronic Access and Filing Addresses

You may also submit or review comments electronically by accessing the Docket Management System's home page at http://dms.dot.gov. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

SUPPLEMENTARY INFORMATION:

Background

The information collected pertaining to reportable natural gas transmission incidents provide an important tool for identifying safety trends in the gas pipeline industry. The National Transportation Safety Board (NTSB), the Department of Transportation's Office of Inspector General, and the General Accounting Office have urged RSPA to revise the information collected on the natural gas transmission pipeline incident report form and annual report form. NTSB Safety Recommendation P–96–1 urges RSPA to:

develop within 1 year and implement within 2 years a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide the Research and Special Programs Administration with the capability to perform methodologically sound accident trend analyses and evaluations of pipeline operator performance using normalized accident data.

RSPA worked with representatives of the Interstate Natural Gas Association of America (INGAA) and the American Gas Association (AGA) to revise the natural gas transmission incident and annual report forms to make the information collected more useful to industry, government, and the public.

Abstract: To ensure adequate public protection from exposure to potential natural gas transmission pipeline failures, RSPA collects information on reportable transmission pipeline incidents. Additional information is also obtained concerning the characteristics of an operator's pipeline system. This information is needed for normalizing the incident information in order to provide for adequate safety trending. The requirements for reporting incidents are found in 49 CFR Part 191. The regulations require submission of the natural gas transmission annual report form by March 15 of each year for the preceding year's operations. Reports on transmission incidents must be submitted to RSPA in writing within 30 days of occurrence.

The reports to be revised are two of the four gas pipeline reporting forms authorized by Information Collection OMB 2137–0522, "Incident and Annual Reports for Gas Operators." The proposed revisions are part of an ongoing process to revise all incident and annual reports.

Title: Incident Report for Gas Transmission and Gathering Systems (RSPA F 7100.1–1) and Annual Report For Gas Transmission and Gathering Systems (RSPA F 7100.2–1).

OMB Number: 2137–0522.

Estimate of Burden: The average burden hours per response is approximately 6 hours for the revised transmission incident report and 3 hours for the revised transmission annual report.

Respondents: Gas transmission pipeline operators.

Estimated Number of Respondents: 900 gas transmission pipeline operators.

Estimated Number of Responses per Respondent per Year: Incident Reports: 0.1; Annual Reports: 1.0.

Estimated Total Annual Burden on Respondents: The burden for each gas transmission pipeline operator is an average of 6 hours per incident report form and 3 hours per annual report form. For all 900 gas transmission pipeline operators the burden estimate is 540 hours (6 hours x 900 operators x 0.1 incidents) for incidents and 2,700 hours (3 hours x 900 operators) for annual reports, for a total burden of 3,240 hours per annum.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, D.C. on July 27, 2000.

Stacey L. Gerard,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 00–19481 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–60–P

Corrections

Federal Register
Vol. 65, No. 149
Wednesday, August 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 389]

RIN 0584-AB88

Food Stamp Program: Recipient Claim Establishment and Collection Standards

Correction

In rule document 00–16775 beginning on page 41752 in the issue of Thursday, July 6, 2000, make the following corrections:

1. On page 41752, in the first column, under **DATES**, in the last line, "August 1, 2000" should read "August 1, 2001".

§272.1 [Corrected]

2. On page 41774, in the third column, in §272.1(g)(160), in the last line "August 1, 000" should read "August 1, 2001".

§273.18 [Corrected]

3. On page 41776, in the first column, in §273.18(e)(3)(iv), the text should read as set forth:

(iv) The initial demand letter or notice of adverse action must include language stating:
(A) The amount of the claim.
(B) The intent to collect from all adults in the household when the overpayment occurred.
(C) The type (IPV, IHE, AE or similar language) and reason for the claim.
(D) The time period associated with the claim.
(E) How the claim was calculated.
(F) The phone number to call for more information about the claim.
(G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
(H) The opportunity to inspect and copy records related to the claim.
(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.
(J) That, if not paid, the claim will be referred to the Federal government for federal collection action.
(K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
(L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.
(M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
(N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.
(O) If allotment reduction is to be imposed, the percentage to be used and the effective date.

4. On page 41776, in §273.18(g)(2)(ii), under the the table heading "**(A) For . collecting from active (or reactivated) EBT benefits . . .**", under the first entry heading "You . . .", in the last line "section;." should read "section;".

[FR Doc. C0–16775 Filed 8–1–00; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Wednesday,
August 2, 2000

Part II

Department of Education

34 CFR Part 668 et al.
Student Assistance General Provisions, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, 685, and 690

RIN 1845–AA17

Student Assistance General Provisions, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan (Direct Loan) Program, and Federal Pell Grant Program regulations. In these proposed regulations, the requirements for the loan default reduction and prevention measures would be moved to a new subpart and revised for clarity and consistency. The Secretary also proposes to make various substantive changes to these requirements.

DATES: We must receive your comments on or before September 18, 2000.

ADDRESSES: Address all comments about these proposed regulations to Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: CDRNPRM@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA), requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, D.C., Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, D.C. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee I (committee), which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Career College Association
Coalition of Higher Education Assistance Organizations
Consumer Bankers Association
Education Finance Council
Education Loan Management Resources
Legal Services
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Loan Administrators
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc.
Student Loan Servicing Alliance
The College Fund/United Negro College Fund

United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document, except for proposed § 668.183(c)(1)(iii), which provides that certain loans being repaid under the Direct Loan Program's income contingent repayment plan are considered to be in default when calculating a proprietary, non-degree-granting institution's cohort default rate.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Revising Cohort Default Rate Regulations for Clarity and Consistency (Subpart M of Part 668)

Statute: The statutory provisions governing the calculation and appeals of cohort default rates and related sanctions in the FFEL and Direct Loan programs are provided in section 435 of the HEA.

Current Regulations: Most of the current regulations for cohort default rates in the FFEL and Direct Loan programs are in § 668.17.

Proposed Regulations: We have moved the requirements in current § 668.17 to a new subpart M of part 668 and revised their text. We have tried to make the regulations easier to read. To do this, the proposed regulations use short paragraphs and sentences, they use personal pronouns ("you" and "we"), and they are organized differently than the current regulations.

The following general changes would also be made by these proposed regulations:

• *Submission deadlines.* Currently, the deadlines for challenges, requests for adjustments, and appeals vary, depending upon the particular action involved and the type of submission made. In the current regulations, some deadlines are measured in working days and others are measured in calendar days.

We are proposing to make the deadlines for submitting challenges, requests for adjustments, and appeals as consistent as possible. Revisions to achieve this goal are made throughout the proposed regulations and summarized in the proposed Appendix A to subpart M of part 668.

All deadlines in these proposed regulations are in calendar days. In general, an institution is allowed 15 calendar days to request records or pay a fee and is allowed 30 calendar days to submit its completed request for adjustment or appeal. The only exceptions to this general approach are in the draft cohort default rate process (during which an institution is allowed 45 calendar days to submit its challenge) and in relation to an economically disadvantaged appeal (during which an institution is allowed 30 calendar days to send us its management's written assertion and 60 calendar days to send us its completed appeal). Under the proposed regulations, a data manager is allowed 20 calendar days to respond to a request for records or for information.

• *Electronic processing.* These proposed regulations do not include explicit requirements for the electronic submission and processing of challenges, requests for adjustments, or appeals. Rather, wherever possible in revising these regulations, we have removed language that could be read as restricting our ability to implement efficient processes for issuing and adjudicating cohort default rates.

Reasons: We are proposing to rewrite these regulations so that the requirements for cohort default rates are more clear and consistent. In addition to restructuring and revising the regulatory text, these proposed regulations provide complete information about administrative requirements and make submission deadlines more consistent. Explicit requirements are not provided for electronic processing requirements because they could limit flexibility and make it difficult for us to adapt to changes in technology.

Calculation of Cohort Default Rates for Proprietary, Non-degree-granting Institutions (§ 668.183(c)(1)(iii))

Current Regulations: Under current §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii), one of the reasons for considering a Direct Loan to be in default, for the purposes of calculating a proprietary, non-degree-granting institution's cohort default rate, is that the loan has been repaid under the income contingent repayment plan for 360 days, with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, before the end of the fiscal year (FY) following the cohort's fiscal year.

Proposed Regulations: We are not proposing to change the current regulatory requirements. They are included in proposed § 668.183(c)(1)(iii).

Reasons: The inclusion of the current regulatory requirement in these proposed regulations was the subject of extensive discussion among the negotiators. Some non-Federal negotiators felt very strongly that this provision should be changed or dropped. We pointed out, however, that proposed § 668.183(c)(1)(iii) did not make any substantive change in our current regulations and had been presented to the committee only as part of the overall restructuring of the regulations. Because these non-Federal negotiators continued to disagree strongly with proposed § 668.183(c)(1)(iii), the committee agreed to exclude that provision in the call for consensus on the draft regulations.

Several non-Federal negotiators objected to this provision because they felt that it unfairly targets non-degree-granting proprietary institutions. They asked that the special treatment of Direct Loans being repaid under the income contingent repayment plan be removed or be applied to all institutions, not to non-degree-granting proprietary institutions only. These negotiators argued that this provision could provide an incentive for institutions to counsel students to defer repayment, rather than encourage them to repay under the income contingent repayment plan, even if the student might benefit from repayment under this plan. These negotiators also argued that an institution has little control over whether a borrower will choose to repay under the income contingent repayment plan, and the institution should not be held responsible for that choice.

We appreciate the negotiators' concerns but continue to believe that, without this provision, an institution could have a low cohort default rate even though a large proportion of its former students are making only minimal or no payments on their loans. We believe that situation is a potential area for abuse in the Direct Loan Program, and it is imperative to protect students and taxpayers from that potential abuse.

We also continue to believe that this provision should apply to non-degree-granting proprietary institutions only. Our experience and data show that student borrowers at non-degree-granting proprietary institutions are at a higher risk of default than other student borrowers. Non-degree-granting proprietary institutions provide students with education or training needed to secure employment, and a

borrower's repayment under income contingent repayment directly reflects the value of the education or training provided by that institution in the marketplace.

Determining Cohort Default Rates for Institutions That Have Undergone a Change in Status (§ 668.184)

Statute: Under section 435(m)(3) of the HEA, the Secretary must prescribe regulations that will prevent an institution from evading the consequences of cohort default rates by branching, consolidating, changing ownership or control, or by similar devices.

Current Regulations: Current § 668.17(g)(2) provides general requirements for the application of cohort default rates or combined cohort default rates to an institution that has undergone a change in status.

Proposed Regulations: Proposed § 668.184 provides detailed requirements for determining an institution's cohort default rate following three types of institutional restructuring: an institution's acquisition of or merger into a separate institution, an institution's acquisition of a branch or location that was formerly part of a separate institution, or a spin-off of an institution's branch or location to become a separate, new institution.

The requirements proposed for each of the three types of changes in status are summarized in the following paragraphs:

• *Acquisition or merger of institutions.* If an institution acquires another institution or a new institution is created by the merger of two or more institutions, the method for determining its cohort default rate depends on the date of the acquisition or merger and the date of publication of the cohort default rate:

1. *Cohort default rates published before the acquisition or merger.* For cohort default rates that were published before the date of the change in status, the institution's cohort default rate is the rate that was calculated for the predecessor institution with the greatest total number of borrowers entering repayment in the two most recent cohorts that were used to calculate those cohort default rates.

2. *Cohort default rates published after the acquisition or merger.* After the date of the acquisition or merger, the data for the institutions involved in the acquisition or merger would be combined, and the institution's cohort default rate would be calculated based on that combined data (in this preamble, this is referred to as a "merged rate").

Example #1. On January 1, 2000, Institution A merges with Institution B to form Institution C. Data and cohort default rates for Institutions A, B, and C, for FY 1996 through FY 2001, are provided in the following table. (In the following table, the "Borrowers in Cohort" rows identify the total number of borrowers in each institution's cohort for FY 1996 through FY 2001, and the "Borrowers in Default" rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
A		Borrowers in Cohort	59	68	63	70	52	45
		Borrowers in Default	8	6	9	9	6	7
		Cohort Default Rate	13.6%	8.8%	14.3%	12.9%	11.5%	15.6%
B		Borrowers in Cohort	35	42	40	39	40	31
		Borrowers in Default	2	1	3	2	2	1
		Cohort Default Rate	5.7%	2.4%	7.5%	5.1%	5.0%	3.2%
C	Actual	Borrowers in Cohort	N/A	N/A	N/A	N/A	6	21
		Borrowers in Default	N/A	N/A	N/A	N/A	1	2
	Application Method		1. Before		2. After			
	Applied	Borrowers in Cohorts	59	68	63+40+0 = 103	70+39+0 = 109	52+40+6 = 98	45+31+21 = 97
		Borrowers in Default	8	6	9+3+0 = 12	9+2+0 = 11	6+2+1 = 9	7+1+2 = 10
		Cohort Default Rate	13.6%	8.8%	11.7%	10.1%	9.2%	10.3%

Since Institution C was created by a merger of Institutions A and B, its data for borrowers in cohorts and in default are separated into "actual" data and "applied" data. Institution C's "actual" data includes only the borrowers who received loans to attend Institution C. Its "applied" data and cohort default rates reflect the data for all institutions and the calculations used to determine Institution C's cohort default rate under proposed § 668.184(b).

Institution C was created on January 1, 2000. Since cohort default rates for a fiscal year are generally published before the end of the second subsequent fiscal year (FY 1998's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, etc.), Institution C was created after the

FY 1997 cohort default rates were published (around September 1999) and before the FY 1998 cohort default rates were published (around September 2000).

As a result, under the proposed regulations, Institution C's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the merger.* For cohort default rates that were published before the merger (cohort default rates for FY 1997 and before), Institution C's cohort default rates will be the rates of its predecessor with the greatest total number of borrowers entering repayment in the two most recent cohorts that were used to calculate those cohort default rates (for FY 1996 and FY 1997). The total number of Institution A's borrowers for those 2 fiscal years is 127 (59 + 68 = 127), and the total number of Institution B's borrowers for those 2 fiscal years is 77 (35 + 42 = 77). Since the total for Institution A (127) is greater than the total for Institution B (77), Institution A's cohort default rates for FY 1997 and before apply to Institution C.

2. *Cohort default rates published after the merger.* All of Institution C's cohort default rates that are published after the date of the merger (cohort default rates for FY 1998 and after) are calculated as merged rates. To calculate Institution C's merged rates for FY 1998 and each following fiscal year, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A, B, and C in each fiscal year. For example, for FY 1998, totals are calculated for Institutions A, B, and C's "Borrowers in Cohort" (63 + 40 + 0 = 103) and for their "Borrowers in Default" (9 + 3 + 0 = 12). Since the total number of borrowers in Institution C's merged cohort is greater than 30 (103), Institution C's merged rate for FY 1998 is 11.7 percent (12 divided by 103 is 0.117). All of Institution C's subsequent cohort default rates are also calculated as merged rates.

• *Acquisition of branches or locations.* If an institution acquires a branch or a location from another institution, the method for determining its cohort default rate depends on the date of the acquisition and the date of publication of the cohort default rate:

1. *Cohort default rates published before the acquisition.* For cohort default rates that were published before the date of the acquisition, the institution's cohort default rate is unchanged. However, the institution's cohort default rate would apply to both the institution and to the newly acquired branch or location.

2. *Three cohort default rates published immediately after the acquisition.* For the three cohort default rates published after the date of the acquisition, the institution's cohort default rate is calculated as a merged rate. The calculations of the merged rates are based on the data for all of the borrowers at the institutions involved in the change in status, including all of their branches and locations. The cohort default rates for the institution from which the location or branch was acquired are not calculated as merged rates.

3. *Cohort default rates published after the third merged rate.* After the institution's third merged rate, its cohort default rate is no longer calculated as a merged rate. Its subsequent cohort default rates no longer include the data for the other institution involved in the change in status.

Example #2. On July 10, 2002, Institution B acquires a location from Institution A. Data and cohort default rates for Institutions A and B, for FY 1998 through FY 2003, are provided in the following table. (In the following table, the "Borrowers in Cohort" rows identify the total number of borrowers in each institution's cohort for FY 1998 through FY 2003, and the "Borrowers in Default" rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
A		Borrowers in Cohort	140	183	200	154	159	213
		Borrowers in Default	13	4	12	20	16	9
		Cohort Default Rate	9.3%	2.2%	6.0%	13.0%	10.1%	4.2%
B	Actual	Borrowers in Cohort	103	140	122	98	135	140
		Borrowers in Default	2	4	12	31	22	19
	Application Method		1. Before		2. Three FY's			3. After
	Applied	Borrowers in Cohorts	Institution B's cohort default rates for FY 1999 and earlier remain unchanged.		200+122 = 322	154+98 = 252	159+135 = 294	Merged rate no longer calculated.
		Borrowers in Default			12+12 = 24	20+31 = 51	16+22 = 38	
		Cohort Default Rate	1.9%	2.9%	7.5%	20.2%	12.9%	13.6%

Since Institution B acquired a location from Institution A, Institution B's data for "borrowers in cohorts" and "borrowers in default" are separated into "actual" data and "applied" data. Institution B's "actual" data includes only the borrowers who received loans to attend Institution B. Its "applied" data and cohort default rates reflect the data for both institutions and the calculations used to determine Institution B's cohort default rate under proposed § 668.184(c).

Institution B acquired the location from Institution A on July 10, 2002. Since cohort default rates for a fiscal year are generally published before the

end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, *etc.*), Institution B acquired the location after the FY 1999 cohort default rates were published (around September 2001) and before the FY 2000 cohort default rates were published (around September 2002).

As a result, under the proposed regulations, Institution B's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the acquisition.* For cohort default rates that were published before the acquisition (cohort default rates for FY 1999 and before), Institution B's cohort default rates are unchanged.

2. *Three cohort default rates published immediately after the acquisition.* For the three cohort default rates published after the acquisition (FY 2000, FY 2001, and FY 2002), Institution B's cohort default rates are calculated as merged rates. To calculate Institution B's merged rates for FY 2000, FY 2001, and FY 2002, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A and B in each fiscal year. For example, for FY 2001, totals are calculated for Institutions A and B's "Borrowers in Cohort" (154 + 98 = 252) and for their "Borrowers in Default" (20 + 31 = 51). Since the total number of borrowers in Institution B's merged cohort is greater than 30, Institution B's merged rate for FY 2001 is 20.2 percent (51 divided by 252 is 0.202).

3. *Cohort default rates published after the third merged rate.* After Institution B's third merged rate (for FY 2002), its cohort default rate is no longer calculated as a merged rate. Institution B's cohort default rates for FY 2003 and later no longer include data from Institution A.

• *Branches or locations becoming institutions.* If a branch or location of an institution becomes a separate, new institution, the method for determining its cohort default rate depends on the date of the change in status and the date of publication of the cohort default rate:

1. *Cohort default rates published before the change in status.* For cohort default rates that were published before the date of its change in status, the institution's cohort default rate is the same as the cohort default rate for its former parent institution.

2. *Three cohort default rates published immediately after the change in status.* For the three cohort default rates published after the date of the change in status, the institution's cohort default rate is calculated as a merged rate. The calculations of the merged rates are based on the data for all of the borrowers at the institution and at its former parent institution, including all of their branches and locations. The cohort default rates for the former parent institution are not calculated as merged rates.

3. *Cohort default rates published after the third merged rate.* After the institution's third merged rate, its cohort default rate is no longer calculated as a merged rate. Its subsequent cohort default rates no longer include the data for the former parent institution.

Example #3. On October 5, 2000, a location of Institution A becomes a separate, new Institution B. Data and cohort default rates for Institutions A and B, for FY 1997 through FY 2002, are provided in the following table. (In the following table, the "Borrowers in Cohort" rows identify the total number of borrowers in each institution's cohort for FY 1997 through FY 2002, and the "Borrowers in Default" rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
A		Borrowers in Cohort	35	33	41	32	31	35
		Borrowers in Default	9	10	3	3	6	4
		Cohort Default Rate	25.7%	30.3%	7.3%	9.4%	19.4%	11.4%
B	Actual	Borrowers in Cohort	N/A	N/A	N/A	3	7	31
		Borrowers in Default	N/A	N/A	N/A	2	1	2
	Application Method		1. Before		2. Three FY's			3. After
	Applied	Borrowers in Cohorts	35	33	41+0 = 41	32+3 = 35	31+7 = 38	Merged rate no longer calculated.
		Borrowers in Default	9	10	3+0 = 3	3+2 = 5	6+1 = 7	
		Cohort Default Rate	25.7%	30.3%	7.3%	14.3%	18.4%	6.5%

Since Institution B has undergone a change in status, its data for "borrowers in cohorts" and "borrowers in default" are separated into "actual" data and "applied" data. Institution B's "actual" data includes only the borrowers who received loans to attend Institution B. Its "applied" data and cohort default rates reflect the data for both institutions and the calculations used to determine Institution B's cohort default rate under proposed § 668.184(d).

Institution B became a new institution on October 5, 2000. Since cohort default rates for a fiscal year are generally published before the end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, etc.), Institution B

became a new institution after the FY 1998 cohort default rates were published (around September 2000) and before the FY 1999 cohort default rates were published (around September 2001).

As a result, under the proposed regulations, Institution B's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the change in status.* For cohort default rates that were published before Institution B became a new institution (cohort default rates for FY 1998 and before), Institution B's cohort default rates are the same as Institution A's.

2. *Three cohort default rates published immediately after the change in status.* For the three cohort default rates published after the change in status (FY 1999, FY 2000, and FY 2001), Institution B's cohort default rates are calculated as merged rates. To calculate Institution B's merged rates for FY 1999, FY 2000, and FY 2001, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A and B in each fiscal year. For example, for FY 2000, totals are calculated for Institutions A and B's "Borrowers in Cohort" (32+3=35) and for their "Borrowers in Default" (3+2=5). Since the total number of borrowers in Institution B's merged cohort is greater than 30 (35), Institution B's merged rate for FY 2000 is 14.3 percent (5 divided by 35 is 0.143).

3. *Cohort default rates published after the third merged rate.* After Institution B's third merged rate (for FY 2001), its cohort default rate is no longer calculated as a merged rate. Institution B's cohort default rates for FY 2002 and later no longer include data from Institution A.

Example #4. Institution A, as described in the previous example (Example #3), has an FY 1996 cohort default rate of 32.0 percent. When applying prior cohort default rates under § 668.184, Institution A's FY 1996 cohort default rate is applied to Institution B. Thus, Institution B's cohort default rates for FY 1996 through FY 2002 are—

FY 1996: 32.0%
FY 1997: 25.7%
FY 1998: 30.3%
FY 1999: 7.3%
FY 2000: 14.3%
FY 2001: 18.4%
FY 2002: 6.5%

Institution B has 3 consecutive cohort default rates of 25 percent or greater (for FY 1996, FY 1997, and FY 1998), but as we explain below, it is not necessarily subject to a loss of participation based on those cohort default rates.

In example #3, Institution B became a separate, new institution on October 5, 2000. This was after the FY 1998 cohort default rates are published (around September 2000) and before the FY 1999 cohort default rates are published (around September 2001). Therefore all of the consecutive cohort default rates of 25 percent or greater were published before Institution B became a separate, new institution, and Institution A was notified of the loss of participation based on those cohort default rates before Institution B became a separate, new institution.

Proposed § 668.184 addresses only the determination of an institution's cohort default rates after a change in status. Any application of an institution's prior loss of eligibility to another institution under this subpart is subject to the criteria in proposed § 668.188. In the preceding example, unless Institutions A and B meet the criteria described in § 668.188, there would be no action against Institution B based on its FY 1996, FY 1997, and FY 1998 cohort default rates. However, if Institution B's cohort default rate for FY 1999 had been 25 percent or greater (instead of 7.3 percent), Institution B would be subject to an action based on 3 consecutive cohort default rates of 25 percent or greater, under proposed § 668.187.

Reasons: Proposed § 668.184 more clearly describes the manner in which an institution's cohort default rate is determined after a change in status and would reduce the possibility of an institution's evasion of the consequences of high cohort default rates.

A separate proposed § 668.188 also addresses the possibility of an institution's evasion of the consequences of high cohort default rates. That proposed section would apply a loss of eligibility that was previously imposed against one institution to another institution following a change in status. Changes proposed for § 668.188 are discussed later in this preamble, under "Preventing Evasion of the Consequences of Cohort Default Rates (§ 668.188)."

Participation Rate Index Challenges and Appeals (§§ 668.185(c) and 668.195)

Statute: Under section 435(a)(6) of the HEA, an institution may challenge an anticipated loss of eligibility based on excessive cohort default rates, during the draft cohort default rate process, if its participation rate index is 0.0375 or less for any of the 3 most recent fiscal years for which it has received a cohort default rate. An institution's participation rate index for a fiscal year is derived by multiplying its cohort default rate for that fiscal year by the percentage of its students who received an FFEL or Direct Loan Program loan to attend it during a specified 12-month period.

Current Regulations: Current § 668.17(j)(4) simply tracks the statutory language. Under current § 668.17(c)(1)(ii)(A), an institution may also appeal on the basis of its participation rate index during the official cohort default rate process.

Proposed Regulations: The proposed regulations would make three changes to the current regulatory requirements:

- *Eligibility.* The proposed regulations would allow any institution subject to a loss of participation based on its cohort default rate (including institutions with cohort default rates greater than 40 percent) to submit a participation rate index challenge or appeal. Currently, only an institution subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater may appeal on this basis.
- *Ceiling.* The proposed regulations would use a participation rate index ceiling of 0.06015, rather than 0.0375, for institutions that are subject to a loss of participation based on 1 cohort default rate over 40 percent.
- *Average rates.* The proposed regulations would allow an institution with fewer than 30 borrowers in its cohort for a fiscal year to choose to calculate its participation rate index for that fiscal year using either the data for that fiscal year alone or the data for the 3 fiscal years considered in calculating an average rate for the institution, under proposed § 668.183(d)(2).

Reasons:

- *Eligibility.* In the interests of consistency, we are proposing to allow an institution to submit a participation rate index challenge or appeal to avoid the consequences of a cohort default rate over 40 percent. Additional reasons for this change are discussed later in this preamble, under "Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))."
- *Ceiling.* The proposed regulations include a higher participation rate index ceiling for institutions that are challenging or appealing a loss of eligibility based on 1 cohort default rate over 40 percent because, without this higher ceiling, those institution would be held to a more restrictive standard than other institutions.

An institution's participation rate index for a fiscal year is derived by multiplying its cohort default rate for that fiscal year by the percentage of its students who received an FFEL or Direct Loan Program loan to attend it

during a specified 12-month period. The statutory participation rate index ceiling of 0.0375, which applies to an institution that is challenging or appealing a loss of eligibility based on 3 consecutive cohort default rates of 25 percent or greater, is based on a maximum loan program participation rate of 15 percent. That is, an institution having the lowest default rate for which it could lose participation (25 percent) could meet the 0.0375 ceiling, and avoid the consequences of its three cohort default rates of 25 percent or greater, if 15 percent, at most, of its students received loans (0.25×0.15=0.0375).

If a participation rate index of 0.0375 was used for an institution that is subject to a loss of eligibility based on 1 cohort default rate over 40 percent, that institution would be subject to a participation rate index ceiling that reflected a loan program participation of, at most, about 9.35 percent of that institution's students (0.401×0.0935=0.0374935).

Under the proposed regulations, an institution that is subject to a loss of eligibility based on 1 cohort default rate greater than 40 percent would be able to submit a participation rate index challenge or appeal if its participation rate index for that cohort's fiscal year was equal to 0.06015 or less. That is, an institution having the lowest default rate for which it could lose participation (40.1 percent) could meet the 0.06015 ceiling if 15 percent, at most, of its students received loans (0.401×0.15=0.06015).

We especially request comments on whether it is appropriate to use this higher participation rate index for an institution that is subject to a loss of participation based on 1 cohort default rate greater than 40 percent, or whether it would be more appropriate to use the current participation rate index of 0.0375.

• *Average rates.* The draft cohort default rates that we provide to institutions are calculated using data for 1 fiscal year only. However, if an institution's cohort for a fiscal year includes fewer than 30 borrowers, its official cohort default rate will be calculated as an average rate, based on 3 years of data. Without the changes proposed for participation rate index challenges (which may be based on draft cohort default rates) and appeals (which are based on official cohort default rates), the proposed regulations might cause different participation rate indexes to be calculated for an institution during a challenge and an appeal.

Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))

Current Regulations: Under current § 668.17(a)(2), we may initiate a proceeding under subpart G of part 668 to limit, suspend, or terminate an institution's participation in the Title IV, HEA programs if the institution's cohort default rate is greater than 40 percent for any fiscal year.

Proposed Regulations: Proposed § 668.187(a)(1) would impose a loss of participation in the FFEL and Direct Loan programs against an institution having a cohort default rate greater than 40 percent. No proceedings under subpart G of part 668 would be needed to impose this loss of participation. The loss would continue for the remainder of the fiscal year in which the institution is notified and for the next 2 fiscal years.

Reasons: The proposed regulations would make the consequences of excessive cohort default rates more consistent. Under the proposed regulations, an institution with a cohort default rate greater than 40 percent and an institution with 3 consecutive cohort default rates of 25 percent or greater would both lose eligibility for the FFEL and Direct Loan programs for the same amount of time. Under the proposed regulations, both types of institutions would also be subject to the same liability for loans made during the adjustment and appeals process, would be required to meet the same criteria to regain participation in the FFEL or Direct Loan programs, and would be permitted to maintain participation in Federal campus-based programs.

Currently, an institution with a cohort default rate greater than 40 percent may be subject to a loss of participation in all Title IV, HEA programs for an indefinite period of time. An institution with 3 consecutive cohort default rates of 25 percent or greater can continue to participate in the Federal campus-based programs during the period that it is ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs, and it is then in a better position to re-establish its eligibility for the loan and Federal Pell Grant programs when its period of ineligibility ends.

During negotiated rulemaking, non-Federal negotiators voiced concerns about making the loss of participation "automatic" for an institution with a cohort default rate greater than 40 percent, rather than discretionary with the Secretary. This concern is addressed in these proposed regulations by providing essentially the same challenges, adjustments, and appeals for a loss of participation based on 1 cohort default rate greater than 40 percent as are available to an institution that is subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater. Currently, an institution with a cohort default rate greater than 40 percent has fewer options for appeal than an institution with 3 consecutive cohort default rates of 25 percent or greater.

During the negotiations, the Department agreed to treat institutions with 1 cohort default rate greater than 40 percent differently in one aspect of the appeals process, compared to institutions with 3 cohort default rates of 25 percent or greater. Generally, a loss of eligibility based on 3 consecutive cohort default rates of 25 percent or greater includes loss of participation in the FFEL, Direct Loan, and Federal Pell Grant programs. The Department agreed to propose that a loss of eligibility based on 1 cohort default rate greater than 40 percent would include loss of participation in the FFEL and Direct Loan programs only. It would not affect an institution's ability to participate in the Federal Pell Grant Program.

Some non-Federal negotiators contended that institutions with 1 cohort default rate greater than 40 percent should not be subject to a loss of participation in the Federal Pell Grant Program because they might not have an extended history of excessive rates. We agreed with the non-Federal negotiators. If the institution continues to have excessive cohort default rates, it will have 3 consecutive cohort default rates of 25 percent or greater and will be subject to a loss of participation in the Federal Pell Grant Program, along with an extended loss of participation in the FFEL and Direct Loan programs.

Use of Subpart G of Part 668 to End an Institution's Participation in the FFEL Program (§ 668.187(a)(2))

Current Regulations: Under § 668.17(a)(3), we may initiate a proceeding under subpart G of part 668 to limit, suspend, or terminate an institution's participation in the FFEL Program, if that institution's 3 most recent cohort default rates are 25 percent or greater and 1 or more Direct Loans were used to calculate any of those cohort default rates. However, under § 668.17(b)(2) the same institution, with the same three cohort default rates, would be subject to a loss of eligibility in the Direct Loan Program, without a proceeding under subpart G of part 668.

Proposed Regulations: We are proposing to end an institution's eligibility in the FFEL Program, under proposed § 668.187(a)(2), without initiating a proceeding under subpart G

of part 668, regardless of the inclusion of Direct Loans in the institution's cohort default rates.

Reasons: We believe that it is appropriate to try to provide consistent treatment for all institutions in this area. In every other requirement in § 668.17, an institution that is subject to § 668.17(a)(3) is treated the same as other institutions. Its ability to challenge, request an adjustment, or appeal the consequences of its cohort default rates is the same as any other institution subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater.

Preventing Evasion of the Consequences of Cohort Default Rates (§ 668.188)

Statute: Under section 435(m)(3) of the HEA, the Secretary is directed to prescribe regulations that will prevent an institution from evading the consequences of cohort default rates by branching, consolidating, changing ownership or control, or by similar devices.

Current Regulations: The current regulations, in § 668.17(g)(2), provide general requirements for the application of cohort default rates or combined cohort default rates to an institution that has undergone a change in status. These requirements are intended, in part, to prevent an institution from evading the consequences of its cohort default rates.

Proposed Regulations: Under proposed § 668.188, a loss of participation to which an institution was subject, as the result of 1 cohort default rate greater than 40 percent or 3 consecutive cohort default rates of 25 percent or greater, would be applied to another institution if all 4 of the following criteria are met:

1. *Loss of eligibility.* Before any change in institutional structure or identity occurs, 1 of the 2 institutions is subject to a loss of participation as the result of 1 cohort default rate greater than 40 percent or 3 consecutive cohort default rates of 25 percent or greater.

2. *Change in structure or identity.* Both institutions are parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity.

3. *Offer program at substantially the same address.* After the change in structure or identity, the currently eligible institution offers an educational program at substantially the same address as the ineligible institution.

In general, an institution would be considered to be offering an educational program at "substantially the same address" as an ineligible institution if its site is the same as the ineligible institution's or its site is physically located close enough to the ineligible institution's site to demonstrate that the educational programs that it provides are intended to serve the same population.

As examples, an institution may be considered to be offering an educational program at "substantially the same address" as an ineligible institution if its site is located across the street from the ineligible institution's site, on the same block as the ineligible institution's site, or in the same business complex as the ineligible institution's site. However, an institution may be located further away from an ineligible institution's site and still be considered to be offering an educational program at "substantially the same address" if its educational program is intended to serve the same population.

4. *Commonality of ownership or management.* There is a commonality of ownership or management between the two institutions. The term "commonality of ownership or management" is defined in proposed § 668.188(b). In general, a commonality of ownership or management exists if the same person (an individual, corporation, or partnership) or members of that person's family, directly or indirectly, were or are managers at both institutions or were or are able to affect substantially both institutions' actions.

If all four of these criteria are met, an institution is subject to the same loss of participation to which the ineligible institution is subject. The scope and the duration of the institution's loss of participation under § 668.188 is the same as the scope and duration of the previously ineligible institution's loss of participation. That is, the institution loses its participation in the same programs as the previously ineligible institution and cannot reapply to participate in those programs until the date on which the previously ineligible institution can or would have been able to reapply. An institution would only be able to challenge, request an adjustment, or appeal a loss of participation that is applied to it under proposed § 668.188 under the same requirements that apply to the previously ineligible institution.

The proposed regulations include an exception to the criteria concerning commonality of management. During a teach-out, the institution conducting the teach-out would be allowed 60 days to find replacements for the previous management and to notify us that any commonality of management has ended. If we determine, based on that notice, that the commonality of management has not ended, the institution would be allowed an additional 30 days to make the management changes that we request. As long as the institution conducting the teach-out complies with these requirements, we would not consider a commonality of management to exist, and the institution would not be subject to the previously ineligible institution's loss of eligibility. However, this teach-out exception applies only with respect to the commonality of management criteria. It does not apply to an institution conducting a teach-out if there is a commonality of ownership.

In proposed § 668.188(d), we encourage institutions to contact us if they anticipate a change in status described in § 668.188. By contacting us, an institution can learn the consequences, if any, of a change in status before it occurs and can consider those consequences before implementing the change. If an institution contacts us and gives us the information we request, we will notify it of our initial determination of the anticipated change's effect on the institution's eligibility.

In the following paragraphs, we provide four examples of the manner in which an institution's loss of participation would be applied to another institution under proposed § 668.188:

Example #1. We notify Institution A on September 25, 2001, that its cohort default rate for FY 1999 is 45 percent. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL and Direct Loan programs on December 10, 2001. On January 5, 2002, Institution A's owner sells it to Institution B, a corporation in which she holds a 25 percent ownership interest and that has a separate identification number for Federal student aid purposes. On the same day, Institution A's managers, students, staff, and equipment move across the street to a new building, and Institution B begins to provide educational programs in the new building.

To determine whether Institution A's loss of eligibility will be applied to Institution B under the proposed regulations, each of the following four questions must be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified

of its loss of participation on September 25, 2001, and the change in structure occurred more than 3 months later, on January 5, 2002.

2. *Was there a change in structure or identity?* Yes. As the result of a sale, Institution B took over Institution A's operations.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Though the owner moved the site for the educational programs across the street, Institutions A and B provided an educational program at substantially the same address. They are located close to one another and are intended to serve the same population.

4. *Is there a commonality of ownership or management between both institutions?* Yes. In this example, both a commonality of ownership and a commonality of management exist, and either of those, alone, would suffice to meet the criterion. Because the same individual was able to substantially affect the actions of Institutions A and B, there is a commonality of ownership between those institutions. Since there is no change in management, there is also a commonality of management between the two institutions.

Since Institutions A and B meet all four of the criteria, the loss of eligibility to which Institution A was subject is applied to Institution B. Institution B is ineligible to participate in the FFEL and Direct Loan programs for the same period that would have been applied to Institution A, until October 1, 2003.

Example #2. Institution A is notified on September 25, 2000, that its third consecutive cohort default rate is 25 percent or greater. After exhausting its administrative appeals, Institution A loses its ability to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on January 15, 2001. Institution A closes 2 months later, and on March 20, 2001, Institution B begins providing a teach-out for Institution A's students, at the same site. Institutions A and B are not owned or controlled by the same person, either directly or indirectly, and do not have the same student aid identification number. Institution B replaces all of Institution A's managers and, within 60 days after the change, notifies us that it believes that any commonality of management has ended. We determine that the commonality of management has ended. While conducting the teach-out, Institution B enrolls new students and continues to provide educational programs at that site.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified of its loss of participation on September 25, 2000, and the change in identity occurred on March 20, 2001, when Institution B began providing the teach-out for Institution A's students.

2. *Was there a change in structure or identity?* Yes. As a result of Institution A's closure, Institution B took over what had previously been Institution A's operations.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site.

4. *Is there a commonality of ownership or management between both institutions?* No. There is no indication that the same person, or members of that person's family, had the ability to affect the actions of both Institutions A and B. Though some of Institution A's managers continued to work at Institution B, they were replaced within 60 days, we were notified, and we determined that no commonality of management exists.

Because there is no commonality of ownership or management, the loss of eligibility to which Institution A was subject is not applied to Institution B under § 668.188.

Example #3. Institution A provides educational programs for automobile repair. It is notified on September 27, 2000, that its third consecutive cohort default rate is 25 percent or greater. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on January 6, 2001. Two weeks later, on January 20, 2001, the corporation that owns Institution A transfers the ownership of Institution A to a subsidiary company that owns and operates Institution B. The subsidiary company sells all of the equipment, replaces Institution A's managers and instructors, and begins providing Institution B's educational programs for airplane pilots at the former Institution A's site.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified of its loss of participation on September 27, 2000. The ownership of Institution A was transferred almost 4 months later, on January 20, 2001.

2. *Was there a change in structure or identity?* Yes. As a result of a transfer of assets, Institution A became part of Institution B.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site. The fact that the institutions provided different types of instruction at that site (automobile repair and airplane piloting) is not a factor in making this determination.

4. *Is there a commonality of ownership or management between both institutions?* Yes. Because the same corporation owned both Institution A and the subsidiary company to which its ownership was transferred, it had the ability to affect substantially the actions of both Institutions A and B.

Since Institutions A and B meet all four of the criteria, the loss of eligibility to which Institution A was subject is applied to Institution B: Institution B is ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs for the same period as Institution A.

Example #4. Institution A provides instruction at three locations. Its cohort default rate for FY 1997 is 29 percent and for FY 1998 its cohort default rate is 32 percent. On April 30, 2001, after we notify it that its draft cohort default rate for FY 1999 is 35 percent, Institution A closes one of its locations. On June 2, 2001, Institution B buys the building in which Institution A provided educational programs at that closed location. Institutions A and B are not owned or controlled by the same person, either directly or indirectly, and Institution B does not employ any of the same managers previously employed at Institution A. On September 28, 2001, we notify Institution A that its official cohort default rate for FY 1999 is 34 percent. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on December 12, 2001.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* No. Institution B purchased the building from Institution A on June 2, 2001. Institution A was not notified of its loss of participation until almost 4 months later, on September 28, 2001.

2. *Was there a change in structure or identity?* Yes. Institution B purchased the building from Institution A. There was a transfer of assets.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site.

4. *Is there a commonality of ownership or management between both*

institutions? No. None of Institution A's managers were employed by Institution B, and there is no indication that the same person, or members of that person's family, had the ability to affect the actions of both Institutions A and B.

Since Institutions A and B do not meet all four of the criteria (only two of the criteria are met), the loss of eligibility to which Institution A was subject is not applied to Institution B.

Reasons: The proposed regulations would revise the requirements to more clearly reflect the intent of the HEA and to reduce the possibility of evasion.

The proposal to allow additional time for an institution conducting a teach-out to end a commonality of management is included in these proposed regulations to provide for an emergency situation in which an institution agrees to provide a teach-out for another institution's students but is unable to immediately replace all of the individuals who held a managerial role at that institution.

Proposed § 668.188 deals exclusively with the attribution of previously imposed sanctions. A separate proposed § 668.184 also addresses the possibility of an institution's evasion of the consequences of high cohort default rates. That proposed section would provide requirements for determining how cohort default rates are calculated and attributed after a change in status. Changes proposed for § 668.184 were discussed earlier in this preamble, under "Determining Cohort Default Rates for Institutions that Have Undergone a Change in Status (§ 668.184)."

Erroneous Data Appeals (§ 668.192)

Statute: Section 435(a)(2) of the HEA allows an institution to appeal a loss of participation based on excessive cohort default rates if the institution demonstrates to the satisfaction of the Secretary that the calculation of its cohort default rate is not accurate and that a recalculation based on accurate data would reduce its cohort default rate below the applicable percentage.

Current Regulations: Current § 668.17(c)(1)(i) provides requirements for an erroneous data appeal that are consistent with statutory requirements. Under the current regulations, an institution may only submit an erroneous data appeal if it is subject to a loss of participation due to excessive cohort default rates.

Proposed Regulations: In addition to continuing to provide for an erroneous data appeal by an institution that is subject to a loss of participation due to excessive cohort default rates, the proposed regulations would permit an institution that is provisionally certified under § 668.16(m) to submit an erroneous data appeal.

Reasons: During the negotiated rulemaking process, some non-Federal negotiators proposed that all institutions be allowed to submit erroneous data appeals. Alternatively, they proposed that any institution that is provisionally certified under § 668.16(m) should be allowed to appeal on that basis. They argued that, without this change, an institution might not be able to appeal the accuracy of the data on which its cohort default rate is based. They also suggested that these institutions may have proof that data are incorrect but may be unable to get the data changed. In response to these comments, the Department explained that it is extremely costly to process erroneous data appeals, and that the Department does not have the resources to evaluate erroneous data appeals from all institutions. In recognition of these competing but valid concerns, the Department and the non-Federal negotiators agreed to propose to allow institutions that are provisionally certified under § 668.16(m) to submit erroneous data appeals. The proposed regulations would continue to allow institutions that are subject to loss of eligibility based on excessive cohort default rates to submit erroneous data appeals.

Loan Servicing Appeals (§ 668.193)

Statute: Under section 435(a)(3) of the HEA, an institution may appeal the calculation of its cohort default rate on the basis of improper loan servicing or collection if the institution is subject to loss of eligibility due to excessive rates or if its most recent cohort default rate is 20 percent or greater.

Current Regulations: Current § 668.17(h) provides the requirements for a loan servicing appeal.

Proposed Regulations: We are proposing to remove the 20 percent threshold and allow all institutions to appeal their most recent cohort default rate on the basis of improper loan servicing or collection.

Reasons: The proposed regulations would allow more institutions to submit loan servicing appeals and would make the requirements for loan servicing appeals more consistent with the requirements for certain other appeals.

Eligibility for Economically Disadvantaged Appeals (668.194(b)(1)(ii))

Statute: Under section 435(a)(4)(i)(II) of the HEA, one criterion that may be used to determine an institution's eligibility for an economically disadvantaged appeal is the percentage of the institution's students that have an adjusted gross income less than the poverty level. If the student is a dependent student, the student's parents' adjusted gross income is added to the student's adjusted gross income when determining whether the student's income is less than the poverty level.

Current Regulations: Current § 668.17(c)(1)(ii)(B)(*2*)(*ii*) tracks the language of the statute.

Proposed Regulations: The proposed regulations address independent as well as dependent students. In addition to the current criteria for an economically disadvantaged appeal, if an independent student is married, the student's spouse's adjusted gross income is added to the student's adjusted gross income when determining whether the student's income is less than the poverty level.

Reasons: When we published the current regulations, we inadvertently omitted the proposed requirement, which was included in previous regulations. We are proposing to restore the requirement in these proposed regulations because, without it, the calculation of an institution's low income rate during an economically disadvantaged appeal would not provide an accurate measure of its students' income levels.

Submitting Economically Disadvantaged Appeals (§ 668.194(f)(1))

Current Regulations: Current § 668.17(c)(7)(i)(A) requires an institution to notify us, within 30 days of receiving our notice that it is subject to a loss of eligibility, of its intent to submit an economically disadvantaged appeal. The institution submits all other materials within 60 days after receiving our notice.

Proposed Regulations: Under the proposed regulations, if an institution intends to submit an economically disadvantaged appeal, it must send us its management's written assertion within 30 days after receiving our notice of its loss of eligibility. The institution submits the independent auditor's report within 60 days after receiving our notice.

Reasons: During the negotiations, the Department proposed to require institutions to submit all the material for this type of appeal within 30 days after receiving our notice that they are subject to a loss of eligibility. Non-Federal negotiators voiced concerns that a time deadline of 30 days would not be adequate to allow an institution to find an independent auditor and for the independent auditor to provide an opinion. To address these concerns, the Federal and non-Federal negotiators

agreed on the deadlines in the proposed regulations.

Average Rates Appeals (§ 668.196)

Current Regulations: Under current § 668.17(c)(1)(ii)(C), an institution that is subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater may submit an average rates appeal if at least 2 of those cohort default rates were calculated as average rates and if those cohort default rates would have been less than 25 percent if calculated for the fiscal year alone.

Proposed Regulations: In addition to the current regulations' criteria for an average rates appeal, the proposed regulations would allow an institution that is subject to loss of participation based on 1 cohort default rate greater than 40 percent to submit an average rates appeal if that cohort default rate was calculated as an average rate, under proposed § 668.183(d)(2). This proposal would allow an institution to appeal a loss of eligibility based on 1 fiscal year's cohort default rate greater than 40 percent if the institution's cohort for that fiscal year included fewer than 30 borrowers.

Reasons: As discussed previously in this preamble, under "Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))," the proposed regulations would make requirements for cohort default rates more consistent. This change meets that goal.

Thirty-or-Fewer Borrowers Appeals (§ 668.197)

Current Regulations: Under § 668.17(c)(1)(ii)(D), an institution may appeal a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater if the total number of its borrowers in the 3 most recent cohorts used to calculate those cohorts default rates is 30 or fewer.

Proposed Regulations: The proposed regulations would allow any institution subject to a loss of participation based on its cohort default rate (including institutions with cohort default rates greater than 40 percent) to submit a thirty-or-fewer borrowers appeal.

Reasons: The proposed regulations would make requirements for thirty-or-fewer borrowers appeals more consistent. Additional reasons for these proposed regulations are discussed previously in this preamble, under "Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))."

Special Institutions (§ 668.198)

Statute: Under section 435(a)(5) of the HEA, certain minority institutions ("special institutions") that are subject to a loss of eligibility due to excessive cohort default rates may be excepted from that loss of eligibility if they submit default management plans that provide reasonable assurance that they will, by July 1, 2002, have cohort default rates that are less than 25 percent. To be excepted, the institution must also engage an independent third party to provide technical assistance and must submit evidence to the Secretary, on an annual basis, of cohort default rate improvement and of the default management plan's successful implementation.

Current Regulations: If a special institution is in compliance with the current § 668.17(k), it is exempt from a loss of eligibility based on 3 cohort default rates of 25 percent or greater. A special institution must send us information that demonstrates that it qualifies for the exception described in that paragraph by July 1, 1999, and it must send us the information we need to determine whether it continues to qualify for that exemption by July 1, 2000 and 2001.

Proposed Regulations: Under the proposed regulations, a special institution that is in compliance with § 668.198 would be exempt from a loss of eligibility based on 3 cohort default rates of 25 percent or greater or 1 cohort default rate greater than 40 percent. It would send us information to demonstrate that it qualifies for the exemption described in that paragraph by July 1 of the first 1-year period that begins after it receives our notice that it has lost eligibility, and it would send us the information we need to determine whether it continues to qualify for that exemption by July 1 of each subsequent 1-year period.

Reasons: We are proposing to exempt certain special institutions from the consequences of 1 cohort default rate greater than 40 percent to provide a consistent application of the statutory exception. Also, since the language of the current requirement does not provide for cases in which an institution becomes eligible for this exception after July 1, 1999, we are proposing to revise and clarify that language.

Appendix D to Part 668, "Default Reduction Measures"

Current Regulations: Appendix D to part 668, "Default Reduction Measures," describes measures that institutions may take to reduce their cohort default rates. The appendix is currently used only as an example of an acceptable default management plan, in § 668.14(b)(15)(iii), and to help institutions improve the initial and exit counseling they provide to FFEL and Direct Loan program borrowers.

Proposed Regulations: We are proposing to remove the current Appendix D to part 668.

Reasons: The information that Appendix D to part 668 contains is outdated and is no longer used for the primary purposes for which it was developed. The information can be updated more efficiently outside the regulatory process.

Additional Concerns of Non-Federal Negotiators

During the negotiated rulemaking process, non-Federal negotiators expressed concerns about a number of administrative processes that are not reflected in these proposed regulations, and asked us to explain these processes in this preamble. Our explanations are provided in the following paragraphs:

• *Loan record detail reports for merged rates (§ 668.186).* Proposed § 668.186 describes how an institution receives its loan record detail report during the official cohort default rate process. In general, the loan record detail report contains the data used to calculate an institution's cohort default rate. However, if an institution's cohort default rate is calculated under proposed § 668.184, by combining its data with another institution's data (in this preamble, this is referred to as a "merged rate"), the institution will also need to receive the loan record detail report for the other institution during the official cohort default rate process.

During negotiations, non-Federal negotiators asked us to explain in this preamble how an institution for which a merged rate is calculated would request additional loan record detail reports. An institution may do this in two ways. If an institution's cohort default rate is calculated as a merged rate because it acquired or merged with another institution (under § 668.184(b)), it may use that previous institution's identification number to request that institution's data from the National Student Loan Data System (NSLDS). If the institution's cohort default rate is calculated as a merged rate because it has purchased a branch or location of another institution (under § 668.184(c)) or because it was once a branch or location of another institution and is now a separate, new institution (under § 668.184(d)), then the institution should contact us, and we will provide the relevant data to the institution.

• *Deadline for publishing cohort default rates (§ 668.187(b)).* The HEA directs the Secretary to issue cohort default rates by September 30 of each year. During the negotiated rulemaking process, non-Federal negotiators expressed a concern about the possible consequences for institutions if we issued cohort default rates after the statutory deadline and asked us to repeat the guidance on this issue that we included in a previous Notice of Proposed Rulemaking, published in the Federal Register on July 30, 1999 (64 FR 41752).

Under proposed § 668.187(b), an institution's loss of participation in the FFEL, Direct Loan, and Federal Pell Grant programs, based on excessive cohort default rates, continues for the fiscal year in which we notify the institution that it is subject to the loss of eligibility and for the 2 succeeding fiscal years. Some non-Federal negotiators were concerned that institutions might be subject to an additional year of ineligibility if we issued cohort default rates after September 30.

We expect to meet the goal of issuing cohort default rates by September 30 of each year. If, however, cohort default rates are not issued until after that date, an institution's loss of eligibility would continue only for the remainder of the fiscal year in which the cohort default rates are issued and for the following fiscal year. For example, if we issue cohort default rates for FY 1998 on October 2, 2000, then a loss of eligibility that is based on an FY 1998 cohort default rate would continue only for the remainder of FY 2001 (the fiscal year in which the cohort default rates were issued) and to the end of FY 2002.

• *Recalculating cohort default rates (§ 668.189(a)(1)).* Under the proposed regulations, an institution's cohort default rate may be recalculated based on an uncorrected data adjustment, a new data adjustment, an erroneous data appeal, or a loan servicing appeal. During the official cohort default rate process, an institution may submit more than one type of adjustment or appeal, but all of its submissions are considered together before we make our final decision. For example, though an uncorrected data adjustment is not submitted under the same time deadlines as a new data adjustment, an erroneous data appeal, and a loan servicing appeal, we consider its results together with the results of any other adjustments and appeals when we determine an institution's cohort default rate.

During negotiations, non-Federal negotiators asked us to explain in this preamble the effect of the recalculation of an institution's cohort default rate upon its eligibility for an average rates appeal (under § 668.196) and a thirty-or-fewer borrowers appeal (under § 668.197). If an institution's cohort default rate is recalculated under proposed § 668.189(a)(1) and, as a result of that recalculation, the institution meets the criteria for an average rates appeal or for a thirty-or-fewer borrowers appeal, the institution does not lose eligibility under § 668.187.

• *Servicing of loans in income contingent repayment (§ 668.193).* As noted previously in this preamble, under current §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii), one of the reasons for considering a Direct Loan to be in default, for the purposes of calculating a proprietary, non-degree-granting institution's cohort default rate, is that the loan has been repaid under the income contingent repayment plan for 360 days, with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, before the end of the fiscal year following the cohort's fiscal year. Under proposed §§ 668.193(d)(1) and 668.193(f)(3), this type of default is excluded from consideration during a loan servicing appeal. Since these loans are being repaid by borrowers, they are not considered to be in default for purposes other than calculating cohort default rates. As a result, they cannot be evaluated meaningfully under the loan servicing or collection criteria in proposed § 668.193(b).

However, non-Federal negotiators were concerned about an institution's ability to dispute the servicing of a loan being repaid under the Direct Loan Program's income contingent repayment plan. Federal negotiators agreed to permit an institution to work with our Direct Loan Servicing Center to determine whether a loan's status is accurate, if the institution believes that a borrower has been incorrectly assigned to the income contingent repayment plan. Institutions will be able to do this as part of an incorrect data challenge (§ 668.185(b)), uncorrected data adjustment (§ 668.190), new data adjustment (§ 668.191), or erroneous data appeal (§ 668.192), as appropriate for the loan.

In general, if a loan is considered to be in default for cohort default rate purposes as the result of a borrower's repayment under the income contingent repayment plan, the institution may, to the extent permitted by the Privacy Act of 1974 (5 U.S.C. 552a), request the loan's payment information from the Direct Loan Servicing Center and may use that payment information in pursuing a challenge or requesting an adjustment if it believes that the borrower was assigned to income contingent repayment incorrectly. Before receiving its draft cohort default rate, an institution may learn about a borrower's repayment under income contingent repayment by reviewing its repayment information report in NSLDS. A more detailed description of the procedures for disputing the servicing of a loan being repaid under income contingent repayment will be provided in the FY 1999 Draft Cohort Default Rate Guide.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this SUPPLEMENTARY INFORMATION section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

These proposed regulations clarify and streamline provisions discussing institutional cohort default rates and their effect on eligibility to participate in the Title IV, HEA programs. The proposed regulations also make a number of procedural changes to the process by which institutions may challenge or appeal their cohort default rates. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

• Are the requirements in the proposed regulations clearly stated?

• Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 668.188 Preventing evasion of the consequences of cohort default rates.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education and guaranty agencies that participate in Title IV, HEA programs. The U.S. Small Business Administration (SBA) Size Standards define these institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000.

A relatively small number of the 6,000 institutions of higher education participating in the Title IV, HEA programs meet the SBA definition of "small entities." Guaranty agencies are State and private nonprofit entities that act as agents of the Federal Government and, as such, are not considered small entities under the Regulatory Flexibility Act.

These proposed regulations clarify and streamline provisions discussing institutional cohort default rates and their effect on eligibility to participate in the Title IV, HEA programs. The proposed regulations also make a number of procedural changes to the process by which institutions may challenge or appeal their cohort default rates. These proposed regulations would not have a significant economic impact on small entities.

Paperwork Reduction Act of 1995

Proposed §§ 668.181 through 668.198 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Assistance General Provisions—Subpart M—Cohort default rates.

The proposed regulations would make a number of changes affecting the information collections that institutions are required to submit during the cohort default rate process: an institution would be able to request an initial determination of the consequences of a change in status (§ 668.188); an institution conducting a teach-out after a change in status may need to notify us that a commonality of management has ended (§ 668.188); and more institutions would be eligible to submit erroneous data appeals (§ 668.192), loan servicing appeals (§ 668.193), participation rate index appeals (§ 668.195), average rates appeals (§ 668.196), and thirty-or-fewer borrower appeals (§ 668.197).

Our current estimate for the maximum annual recordkeeping and reporting burden hours for the cohort default rate requirements is 25,477 hours. We do not estimate that this number of burden hours will be increased as a result of these proposed regulations. We do not believe that the additional burden that may be imposed on institutions as a result of these proposed regulations will be substantial enough to merit an increase in our current estimate of the maximum number of burden hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal**

Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Leveraging Educational Assistance Partnership; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: July 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 668, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. In § 668.14, paragraph (b)(15)(iii) is removed.

3. Section 668.16 is amended—

A. In paragraph (m)(1), by removing "an FFEL Program cohort default rate, a Direct Loan cohort rate, or where applicable, a weighted average cohort rate" and adding, in its place, "a cohort default rate".

B. In paragraphs (m)(1)(i) and (m)(2)(ii), by removing "§ 668.17" and adding, in its place, "subpart M of this part".

4. Section 668.17 is removed and reserved.

5. In § 668.26, paragraph (a)(6) is amended by removing "§ 668.17(c)" and adding, in its place, "subpart M of this part".

6. In § 668.46, paragraph (c)(7) is amended by removing "Appendix E to this part", and adding, in its place, "the Appendix A to this subpart".

7. Section 668.85 is amended—

A. By revising paragraph (b)(1)(ii).

B. In paragraph (b)(3), by removing the third sentence.

§ 668.85 Suspension proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

* * * * *

8. Section 668.86 is amended—

A. By revising paragraph (b)(1)(ii).

B. In paragraph (b)(3), by removing the third sentence.

§ 668.86 Limitation or termination proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

* * * * *

9. In § 668.90, paragraphs (a)(1)(iii)(D) and (a)(3)(iv) are removed; and paragraphs (a)(3)(v), (a)(3)(vi), and (a)(3)(vii) are redesignated as paragraphs (a)(3)(iv), (a)(3)(v), and (a)(3)(vi), respectively.

10. In § 668.171, paragraph (b)(1) is amended by removing "appendices F and G" and adding, in its place, "appendices A and B to this subpart".

11. Section 668.172 is amended—

A. In the heading for paragraph (a), by removing "Appendices F and G", and adding, in its place, "Appendices A and B".

B. In paragraph (a), by removing "appendices F and G to this part" and adding, in its place, "appendices A and B to this subpart".

C. In paragraph (b), by removing "appendix F" and adding, in its place, "appendix A"; and by removing "appendix G" and adding, in its place, "appendix B".

12. A new subpart M is added to Part 668 to read as follows:

Subpart M—Cohort Default Rates

Sec.

668.181 Purpose of this subpart.
668.182 Definitions of terms used in this subpart.
668.183 Calculating and applying cohort default rates.
668.184 Determining cohort default rates for institutions that have undergone a change in status.
668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.
668.186 Notice of your official cohort default rate.
668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.
668.188 Preventing evasion of the consequences of cohort default rates.
668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.
668.190 Uncorrected data adjustments.
668.191 New data adjustments.
668.192 Erroneous data appeals.
668.193 Loan servicing appeals.
668.194 Economically disadvantaged appeals.
668.195 Participation rate index appeals.
668.196 Average rates appeals.
668.197 Thirty-or-fewer borrowers appeals.
668.198 Relief from the consequences of cohort default rates for special institutions.
Appendix A to Subpart M of Part 668—Summaries of eligibility and submission requirements for challenges, adjustments, and appeals
Appendix B to Subpart M of Part 668—Sample default management plan for special institutions to use when complying with § 668.198

§ 668.181 Purpose of this subpart.

Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL or Direct Loan Programs. This subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a "challenge" after you receive your draft cohort default rate, and you request an "adjustment" or "appeal" after your official cohort default rate is published.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.182 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort.* Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.183(b).

(b) *Data manager.* (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days.* In this subpart, "days" means calendar days.

(d) *Default.* A borrower is considered to be in default for cohort default rate purposes under the rules in § 668.183(c).

(e) *Draft cohort default rate.* Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.185.

(f) *Entering repayment.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of "repayment period") and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received a Federal Stafford loan for the same period of enrollment, as defined in 34 CFR 682.200; or

(ii) In all other cases, on the day after the student ceases to be enrolled at your institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if that repayment—

(i) Is made before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section; and

(ii) Is not made to consolidate the loan under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102).

(g) *Fiscal year.* A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *Loan record detail report.* The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) *Official cohort default rate.* Your official cohort default rate is the cohort default rate that we publish for you under § 668.186. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) *We.* We are the Department, the Secretary, or the Secretary's designee.

(k) *You.* You are an institution.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.183 Calculating and applying cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(2) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution.

(2) If a student receives a Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan to attend your institution but consolidates that loan before it enters repayment, under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102), the borrower is included in your cohort for the fiscal year in which the consolidation loan enters repayment.

(3) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, for the purposes of this subpart a borrower in a cohort for a fiscal year is considered to be in default if—

(i) Before the end of the following fiscal year, the borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998);

(iii) You are a proprietary, non-degree-granting institution, and before the end of the following fiscal year, the borrower has been in repayment for 360 days, under the Direct Loan Program's income contingent repayment plan, on a loan used to include the borrower in your cohort (or that repaid a loan that was used to include the borrower in your cohort), with scheduled payments that are less than 15 dollars per month and are less than the amount of interest accruing on the loan; or

(iv) Before the end of the following fiscal year, you or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the fiscal year immediately following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) No longer reinsured by us.

(d) *Calculate the cohort default rate.* Except as provided in § 668.184, if there are—

(1) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section; by

(ii) The number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section; by

(ii) The total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.184 Determining cohort default rates for institutions that have undergone a change in status.

(a) *General.* (1) If you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) If another institution's cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.185 and 668.189.

(b) *Acquisition or merger of institutions.* If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.183.

(c) *Acquisition of branches or locations.* If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.183;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.183; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.183; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.183.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) *General.* (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.183(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the "Cohort Default Rate Guide" that we provide to you. If your challenge does not comply with the requirements in the "Cohort Default Rate Guide," we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.190, or in an erroneous data appeal, under § 668.192.

(c) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(ii) You may challenge an anticipated loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those 3 cohorts' fiscal years.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.195(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.183(d)(2).

(3) You must send your participation rate index challenge, including all

supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility based on your participation rate index challenge, you will not lose eligibility under § 668.187 when your next official cohort default rate is published. A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility. However, if your successful challenge of a loss of eligibility under paragraph (c)(1)(ii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, we also excuse you from any subsequent loss of eligibility, under § 668.187(a)(2), that would be based on that official cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.186 Notice of your official cohort default rate.

(a) We notify you of your cohort default rate after we calculate it. After we send our notice to you, we publish a list of cohort default rates for all institutions.

(b) If your cohort default rate is 10 percent or more, we include a copy of the loan record detail report with the notice.

(c) If your cohort default rate is less than 10 percent—

(1) You may request a copy of the loan record detail reports that list loans included in your cohort default rate calculation; and

(2) If you are requesting an adjustment or appealing under this subpart, your request for a copy of the loan record detail report or reports must be sent to us within 15 days after you receive the notice of your cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (f) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (e) and (f) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your 3 most recent cohort default rates are each 25 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Special institutions.* If you are a special institution that satisfies the requirements for continued eligibility under § 668.198, you are not subject to any loss of eligibility under this section or to provisional certification under § 668.16(m).

(e) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on 3 cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(f) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.189(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (f)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.189.

(4) To avoid liabilities you might otherwise incur under paragraph (g) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(g) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (f)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(h) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) *General.* Unless you are a special institution complying with § 668.198, you are subject to a loss of eligibility that has already been imposed against another institution under § 668.187 if—

(1) You and the ineligible institution are both parties to a transaction that

results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) *Commonality of ownership or management.* For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person's family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution's actions, within the meaning of 34 CFR 600.21.

(c) *Teach-outs.* Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) *Initial determination.* We encourage you to contact us before undergoing a change described in this section. If you contact us and provide the information we request, we will provide an initial determination of the anticipated change's effect on your eligibility.

(e) *Notice of accountability.* (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.189.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* You do not lose eligibility under § 668.187 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.190;

(ii) A new data adjustment submitted under this section and § 668.191;

(iii) An erroneous data appeal submitted under this section and § 668.192; or

(iv) A loan servicing appeal submitted under this section and § 668.193; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.194;

(ii) A participation rate index appeal submitted under this section and § 668.195;

(iii) An average rates appeal submitted under this section and § 668.196; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.197.

(b) *Limitations on your ability to dispute your cohort default rate.* (1) You may not dispute the calculation of a cohort default rate except as described in this subpart.

(2) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.187, based entirely or partially on that cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the "Cohort Default Rate Guide" that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) Any correspondence sent to us by a data manager under this subpart should be in a format acceptable to us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.190 or § 668.191, or an appeal, under § 668.192 or § 668.193—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.187, within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.192(a) to avoid provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.190 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.185(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your cohort default rate, based on the corrected data, if we determine that—

(1) In response to your challenge under § 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.191 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(3) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(4) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request under paragraph (b)(3) of this section.

(5) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(6) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(7) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(7)(i) of this section or in § 668.192(b)(6)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.192 Erroneous data appeals.

(a) *Eligibility.* Except as provided in § 668.189(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under § 668.187, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.185(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed.

(b) *Deadlines for submitting an appeal.* (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or

clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.191(b)(7)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.193 Loan servicing appeals.

(a) *Eligibility.* Except as provided in § 668.189(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.187 is based.

(b) *Improper loan servicing.* For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan;

(2) Attempt at least one phone call to the borrower;

(3) Send a final demand letter to the borrower;

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address; and

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the list of students that we provided to you.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.191(b)(7)(i) or § 668.192(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing. However, for the purposes of this paragraph, the data manager does not identify a borrower as defaulted due to repayment under the Direct Loan Program's income contingent repayment plan, under § 668.183(c)(1)(iii).

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate.

(3) Our recalculation of your cohort default rate does not affect the number of borrowers who are considered to be in default due to payments made under the Direct Loan Program's income contingent repayment plan, under the criteria in § 668.183(c)(1)(iii).

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.194 Economically disadvantaged appeals.

(a) *Eligibility.* As described in this section, you may appeal a notice of a loss of eligibility under § 668.187 if an independent auditor's opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(b) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph (b)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student's family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year.

(c) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(d) *Placement rate.* (1) Except as provided in paragraph (d)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (d)(3) and (d)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(e) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(f) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management's written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (g) of this section.

(g) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountant's (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended; and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(h) *Determination.* You do not lose eligibility under § 668.187 if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.195 Participation rate index appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those 3 cohorts' fiscal years.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.183(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(d) *Determination.* (1) You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0375, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.187(a)(2) that would be based on the official cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.196 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.183(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if at least 2 of those cohort default rates—

(i) Are calculated as average rates under § 668.183(d)(2); and

(ii) Would be less than 25 percent if calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.197 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.187 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.198 Relief from the consequences of cohort default rates for special institutions.

(a) *Eligibility.* You are only eligible for relief from the consequences of cohort default rates under this section if you are a—

(1) Historically black college or university as defined in section 322(2) of the HEA;

(2) Tribally controlled community college as defined in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

(3) Navajo community college under the Navajo Community College Act.

(b) *Applicability of requirements.* We may determine that the loss of eligibility provisions in § 668.187 and the prohibition against full certification in § 668.16(m) do not apply to you for each 1-year period beginning on July 1 of 1999, 2000, or 2001, if you meet the requirements in paragraph (a) of this section and you send us—

(1) By July 1 of the first 1-year period that begins after you receive our notice of a loss of eligibility under § 668.187—

(i) A default management plan; and

(ii) A certification that you have engaged an independent third party, as described in this section; and

(2) By July 1 of each subsequent 1-year period—

(i) Evidence that you have implemented your default management plan during the preceding 1-year period;

(ii) Evidence that you have made substantial improvement in the preceding 1-year period in your cohort default rate; and

(iii) A certification that you continue to engage an independent third party, as described in this section.

(c) *Default management plan.* (1) Your default management plan must provide reasonable assurance that you will, no later than July 1, 2002, have a cohort default rate that is less than 25 percent. Measures that you must take to provide this assurance include but are not limited to—

(i) Establishing a default management team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office;

(ii) Identifying and allocating the personnel, administrative, and financial

resources appropriate to implement the default management plan;

(iii) Defining the roles and responsibilities of the independent third party;

(iv) Defining evaluation methods and establishing a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans;

(v) Establishing annual targets for reductions in your cohort default rate; and

(vi) Establishing a process to ensure the accuracy of your cohort default rate.

(2) We will determine whether your default management plan is acceptable, after considering your history, resources, dollars in default, and targets for default reduction in making this determination.

(3) If we determine that your proposed default management plan is unacceptable, you must consult with us to develop a revised plan and submit the revised plan to us within 30 days after you receive our notice that your proposed plan is unacceptable.

(4) If we determine, based on the evidence you submit under paragraph (b)(2) of this section, that your default management plan is no longer acceptable, you must develop a revised plan in consultation with us and submit the revised plan to us within 60 days after you receive our notice that your plan is no longer acceptable.

(5) A sample default management plan is provided in appendix B to this subpart. The sample is included to illustrate components of an acceptable default management plan. Since institutions' family income profiles, student borrowing patterns, histories, resources, dollars in default, and targets for default reduction are different, you must consider your own, individual circumstances in developing and submitting your plan.

(d) *Independent third party.* (1) An independent third party may be any individual or entity that—

(i) Provides technical assistance in developing and implementing your default management plan; and

(ii) Is not substantially controlled by a person who also exercises substantial control over your institution.

(2) An independent third party need not be paid by you for its services.

(3) The services of a lender, guaranty agency, or secondary market as an independent third party under this section are not considered to be inducements under 34 CFR 682.200 or 682.401(e).

(e) *Substantial improvement.* (1) For the purposes of this section, your substantial improvement is determined based on—

(i) A reduction in your most recent draft or official cohort default rate;

(ii) An increase in the percentage of delinquent borrowers who avoid default by using deferments, forbearances, and job placement assistance;

(iii) An increase in the academic persistence of student borrowers;

(iv) An increase in the percentage of students pursuing graduate or professional study;

(v) An increase in the percentage of borrowers for whom a current address is known;

(vi) An increase in the percentage of delinquent borrowers that you contacted;

(vii) The implementation of alternative financial aid award policies and development of financial resources that reduce the need for student borrowing; or

(viii) An increase in the percentage of accurate and timely enrollment status changes that you submitted to the National Student Loan Data System (NSLDS) on the Student Status Confirmation Report (SSCR).

(2) When making a determination of your substantial improvement, we consider your performance in light of—

(i) Your history, resources, dollars in default, and targets for default reduction;

(ii) Your level of effort in meeting the terms of your approved default management plan during the previous 1-year period; and

(iii) Any other mitigating circumstance at your institution during the 1-year period.

(f) *Determination.* (1) If we determine that you are in compliance with this section, the provisions of §§ 668.187 and 668.16(m) do not apply to you for that 1-year period, beginning on July 1 of 1999, 2000, or 2001.

(2) If we determine that you are not in compliance with this section, you are subject to the provisions of §§ 668.187 and 668.16(m). You lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on the date you receive our notice of the determination.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

Appendix A to Subpart M of Part 668—Summaries of Eligibility and Submission Requirements for Challenges, Adjustments, and Appeals

I. Summary of Submission Eligibility

Some types of appeals may be submitted only if you are subject to a loss of eligibility under § 668.187 or to provisional certification under § 668.16(m). These types of appeals are identified in the following table.

		§668	If you meet all other requirements, you may submit... Always	Only if subject to loss of eligibility
Draft Cohort Default Rate	Incorrect Data Challenges	.185(b)	X	
	Participation Rate Index Challenges	.185(c)	X	
Official Cohort Default Rate	Uncorrected Data Adjustments	.190	X	
	New Data Adjustments	.191	X	
	Erroneous Data Appeals	.192		X*
	Loan Servicing Appeals	.193	X	
	Economically Disadvantaged Appeals	.194		X
	Participation Rate Index Appeals	.195		X
	Average Rates Appeals	.196		X
	Thirty-or-Fewer Borrowers Appeals	.197		X

* You may also submit an erroneous data appeal if you are subject to provisional certification under §668.16(m).

II. Summary of Submission Deadlines

The deadlines you must meet when submitting a challenge, requesting an adjustment, or appealing are summarized in the following table. The full, official requirements for these deadlines are in § 668.189 and in the text cited in the table. Also, in the table—

1. "Days" means the number of *calendar* days within which the action must be performed.

2. Any timeframe that is directly connected by a line to the "Start", at the top of the table, begins when you receive your draft cohort default rate, official cohort default rate, notice of loss of eligibility, or notice of provisional certification. All other timeframes begin when you receive the response to your pending request, except that—

(i) If you are waiting for responses from more than one data manager, your next timeframe begins when you receive the final response from the last data manager; and

(ii) If you do not need to perform an action, the starting date for your next timeframe is based on the last action that was actually performed. (Actions that aren't always required have dotted borders.)

II. Summary of Submission Deadlines (Continued)

	§668	Incorrect Data Challenges .185(b)	Participation Rate Index Challenges .185(c)	Uncorrected Data Adjustments .190	Economically Disadvantaged Appeals .194	New Data Adjustments .191	Erroneous Data Appeals .192	Loan Servicing Appeals .193	All Other Appeals .195 to .197	§668
You receive the draft or official cohort default rate or notice of loss or provisional certification.		Start	Start	Start	Start	Start	Start	Start	Start	**You** receive the draft or official cohort default rate or notice of loss or provisional certification.
You request loan record detail report, if not sent with notice.				15 Days		15 Days		15 Days		**You** request loan record detail report, if not sent with notice.
We send loan record detail report.				20 Days		20 Days		20 Days		**We** send loan record detail report.
You send data manager your challenge or your request for information.		45 Days				15 Days	15 Days	15 Days		**You** send data manager your challenge or your request for information.
You send us your management's written assertion.					30 Days					**You** send us your management's written assertion.
Data manager notifies you of any fee for providing records.								20 Days		**Data manager** notifies you of any fee for providing records.
You pay the fee, if charged.								15 Days		**You** pay the fee, if charged.
Data manager sends information or challenge response.		30 Days				20 Days	20 Days	20 Days		**Data manager** sends information or challenge response.
You request replacement or our records (if we have the loan).						15 Days	15 Days	15 Days		**You** request replacement or our records (if we have the loan).
Data manager sends you information.						20 Days	20 Days	20 Days		**Data manager** sends you information.
You send us your completed challenge, adjustment, or appeal.			45 Days	30 Days	60 Days	30 Days	30 Days	30 Days	30 Days	**You** send us your completed challenge, adjustment, or appeal.

If filing more than one type of these adjustments or appeals, send by the latest deadline.

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Appendix B to Subpart M of Part 668—Sample Default Management Plan for Special Institutions To Use When Complying With § 668.198.

This appendix is provided as a sample plan for those institutions developing a default management plan in accordance with § 668.198. It describes some measures you may find helpful in reducing the number of students that default on federally funded loans. These are not the only measures you could implement when developing a default management plan. In developing a default management plan, you must consider your history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to your students and to you.

I. Core Default Reduction Strategies (from § 668.198(c)(1))

1. Establish a default management team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office.
2. Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default management plan.
3. Define the roles and responsibilities of the independent third party.
4. Define evaluation methods and establish a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans.
5. Establish annual targets for reductions in your rate.
6. Establish a process to ensure the accuracy of your rate.

II. Additional Default Reduction Strategies

1. Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.
2. Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.
3. Maintain contact with the borrower after he or she leaves your institution by using activities such as skip tracing to locate the borrower.
4. Track the borrower's delinquency status by obtaining reports from data managers and FFEL Program lenders.
5. Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.
6. Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.
7. Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.
8. Familiarize the parent, or other adult relative or guardian, with the student's debt profile, repayment obligations, and loan status by increasing, whenever possible, the communication and contact with the parent or adult relative or guardian.

III. Defining the Roles and Responsibilities of Independent Third Party

1. Specifically define the role of the independent third party.
2. Specify the scope of work to be performed by the independent third party.
3. Tie the receipt of payments, if required, to the performance of specific tasks.
4. Assure that all the required work is satisfactorily completed.

IV. Statistics for Measuring Progress

1. The number of students enrolled at your institution during each fiscal year.
2. The average amount borrowed by a student each fiscal year.
3. The number of borrowers scheduled to enter repayment each fiscal year.
4. The number of enrolled borrowers who received default prevention counseling services each fiscal year.
5. The average number of contacts that you or your agent had with a borrower who was in deferment or forbearance or in repayment status during each fiscal year.
6. The number of borrowers at least 60 days delinquent each fiscal year.
7. The number of borrowers who defaulted in each fiscal year.
8. The type, frequency, and results of activities performed in accordance with the default management plan.

13. Appendix A to Part 668 is removed.

14. Appendix B to Part 668 is redesignated as Appendix A to Subpart B of Part 668.

15. Appendix C to Part 668 is redesignated as Appendix B to Subpart B of Part 668.

16. Appendix D to Part 668 is removed.

17. Appendix E to Part 668 is redesignated as Appendix A to Subpart D of Part 668.

18. Appendix F to Part 668 is redesignated as Appendix A to Subpart L of Part 668.

19. Appendix G to Part 668 is redesignated as Appendix B to Subpart L of Part 668.

20. Appendix H to Part 668 is removed.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

21. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

22. In § 682.401, paragraph (b)(15) is revised to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(15) *Guaranty agency verification of default data.* A guaranty agency must meet the requirements and deadlines provided for it in subpart M of 34 CFR part 668 for the cohort default rate process.

* * * * *

23. In § 682.410, paragraph (c)(1)(i)(C) is revised to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(c) * * *
(1) * * *
(i) * * *

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR part 668, for either of the 2 immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20 percent, unless the school is under a mandate from the Secretary under subpart M of 34 CFR part 668 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the cohort default rate over 20 percent is based does not exceed $100,000; or

* * * * *

24. In § 682.601, paragraph (a)(6) is amended by removing "§ 668.17" and adding, in its place, "subpart M of 34 CFR part 668".

25. In § 682.603, paragraph (g) is amended by removing "an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate" and adding, in its place, "a cohort default rate".

26. Section 682.604 is amended—

A. In paragraphs (c)(5)(i), (c)(5)(ii), (c)(10)(i)(B), and (c)(10)(ii), by removing "an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate" and adding, in its place, "a cohort default rate, calculated under subpart M of 34 CFR part 668,".

B. By removing paragraph (f)(3).

C. By redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(3) and (f)(4), respectively.

D. By removing paragraph (g)(3).

E. By redesignating paragraphs (g)(4) and (g)(5) as paragraphs (g)(3) and (g)(4), respectively.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

27. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

28. Section 685.301 is amended—

A. In paragraphs (b)(8)(i)(A)(*2*) and (b)(8)(i)(B), by removing "a Direct Loan Program cohort rate, FFEL cohort

default rate, or weighted average cohort rate" and adding, in its place, "a cohort default rate, calculated under subpart M of 34 CFR part 668,".

B. In paragraph (b)(8)(ii), by removing "an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate" and adding, in its place, "a cohort default rate, calculated under subpart M of 34 CFR part 668,".

29. Section 685.303 is amended—

A. In paragraphs (b)(4)(i)(A) and (b)(4)(i)(B), by removing "a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate" and adding, in its place, "a cohort default rate, calculated under subpart M of 34 CFR part 668,".

B. In paragraph (b)(4)(ii), by removing "an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate", and adding, in its place, "a cohort default rate, calculated under subpart M of 34 CFR part 668,".

30. Section 685.304 is amended—

A. By removing paragraph (a)(4).

B. By redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(4), (a)(5), and (a)(6), respectively.

C. By removing paragraph (b)(5).

D. By redesignating paragraphs (b)(6) and (b)(7) as paragraphs (b)(5) and (b)(6), respectively.

PART 690—FEDERAL PELL GRANT PROGRAM

31. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

32. Section 690.7 is amended—

A. In paragraph (c)(1), by removing "34 CFR 668.17" and adding, in its place, "subpart M of 34 CFR part 668".

B. In paragraph (c)(2), by removing "34 CFR 668.17(b)" and adding, in its place, "34 CFR 668.187":

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Wednesday,
August 2, 2000

Part III

Department of Health and Human Services

Children and Families Administration

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications To Support Demonstration Projects Under the Projects of National Significance Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–00–03]

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications To Support Demonstration Projects Under the Projects of National Significance Program

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Invitation to apply for financial assistance.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announces that applications are being accepted for funding of Fiscal Year 2000 Projects of National Significance.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priority under which ADD requests applications for Fiscal Year 2000 funding of projects. Part V describes in detail how to prepare and submit an application.

Grants will be awarded under this program announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is September 1, 2000. Mailed or hand-carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, Mail Stop 326-HHH, Washington, DC 20447, Attention: Lois Hodge.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promendade SW, ACF Mail Center, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge". Applicants using express/overnight services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Any applications received after 4:30 p.m. on the deadline date will not be considered for competition.

ADD cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ADD electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ADD may extend the deadline for all applicants because of acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. However, if ADD does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

ADDRESSES: Application materials are available from Joan Rucker, 370 L'Enfant Promenade, SW., Rm. 300F, Washington, DC 20447, 202/690–7898, http://www.acf.dhhs.gov/programs/add; or add@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Joan Rucker, 370 L'Enfant Promenade, S.W., Rm. 300F, Washington, D.C., 20447, 202/690–7898; or add@acf.dhhs.gov.

Notice of Intent to Submit Application: If you intend to submit an application, please send a post card with the number and title of this announcement, your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address to: Administration on Developmental Disabilities, 370 L'Enfant Promenade SW., Washington, DC, 20447, Attn: Projects of National Significance.

This information will be used to determine the number of expert reviewers needed and to update the mailing list to whom program announcements are sent.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which

ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000, *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration and inclusion into the community.

In the Act, Congress expressly found that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

The Act further established as the policy of the United States:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Toward these ends, ADD seeks: to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the Act are:

- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individuals rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Statutory Authorities Covered Under This Announcement

The Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6000, *et seq.* The Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6081, *et seq.*

Part II. Background Information for Applicants

A. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for people with developmental disabilities, including:
  - —Technical assistance for the development of information and referral systems;
  - —Educating policy makers;
  - —Federal interagency initiatives;
  - —The enhancement of participation of minority and ethnic groups in public and private sector initiatives in developmental disabilities;
  - —Transition of youth with developmental disabilities from school to adult life; and
  - —Special pilots and evaluation studies to explore the expansion of programs under part B (State developmental disabilities councils) to individuals with severe disabilities other than developmental disabilities.

B. Comments on FY 2000 Proposed Priority Areas

ADD received 21 letters in response to the public comment notice. Commentary was from the following sources:

- Advocacy agencies, including national organizations and associations, national advocacy groups and State/local advocacy groups;
- Service organizations, including agencies that provide services for individuals with developmental disabilities as well as providing advocacy services on behalf of a particular disability, including developmental disabilities councils;
- Educational systems, including schools, colleges, and universities, programs located within a university setting and University Affiliated Programs;
- Private agencies, including national, State, and local nonprofit organizations;
- Government agencies, including Federal, State, county, and local government agencies; and
- Private individuals.

Comments ranged from requests for copies of the final application solicitation, to general support to informative, clarifying responses for this year's proposed funding priorities and recommendations for other priority areas. The vast majority supported and expanded upon what we proposed in the announcement. Other comments relate specifically to the program goals and priorities of the particular agencies that responded to the announcement.

The comments helped highlight the concerns of the developmental disabilities field and have been used in refining the final priority areas.

Comment: Ten letters recommended additional or other funding priorities for FY 2000. Suggestions included projects addressing: recruitment and retention of direct support service staff; waiting lists; adults living with aging parents; aging; child care; transportation; recreation; employment; economic empowerment; self-determination and research issues related to existing PNS projects. Three letters specifically expressed that the proposed areas were not critical areas in their states in the field of developmental disabilities, and did not relate to ADD's efforts in meeting the requirements of the Government Performance and Results Act (GPRA).

Response: ADD appreciates the comments it receives concerning other areas needing attention. Comments refine our understanding of the realities occurring with individuals with developmental disabilities and their families, and are often a sobering reminder of the unfulfilled goals that require our collective attention as a society. The comment process expands our awareness level and provides the basis for new priority areas.

ADD recognizes the need for recruitment and retention of direct support service staff; the elimination of waiting list; the resolution of recreation and transportation issues; the need for economic empowerment, including the use of Indivudial Development Accounts; and the critical impact these and other issues have on the quality of life for people with developmental disabilities. ADD welcomes applications in these and other areas. Such applications would appropriately be submitted under Priority Area 1: Mobilizing for Change/Rapid Deployment of Good Ideas which is open-ended as to subject, issue and topic.

Some of the areas suggested as priorities have been funded previously or are currently funded projects. Employment and the basic supports necessary to perform a job were the objectives of our six natural support projects which ended September, 1996. Strategies for securing first jobs, especially by young people, are two projects that ended in 1998. In June, 1998 ADD was a co-sponsor of the first national forum on careers in the arts and disability and has continued to co-sponsor such activities. In 1997, ADD funded the "National Center on Self-Determination and 21st Century Leadership", a consortium of self-advocacy groups, non-profit organizations and institutions of higher education. The Center was designed to build leadership capacities of people with development disabilities. Additionally, the Center focused on establishing linkages between disability organizations, and organizing national mentorship and consultant networks. The Center developed a clearinghouse on promising self-determination practices and strategies and sponsored a number of summits, forums and teleconferences.

In June, 2000, ADD and the National Council on the Aging co-sponsored a conference/work session on the subject of aging and adult sons and daughters with developmental disabilities living with aging parents. The purpose of the conference was to explore the issues aging parents must face as they continue to provide services to their adult sons and daughters; as well as explore potential resources and examine successful models in the field. Additional information regarding this conference may be obtained by writing to ADD. Additionally, in September, 1999 ADD awarded Family Support Grants to 20 States and 2 territories to develop, implement or enhance family support service system to families of children with disabilities. Several of these projects have goals which support families in planning for a secure future for the aging family member with a developmental disability as well as the aging parent. Finally, nine of ADD's University Affiliated Programs (UAPs) have undertaken projects in the area of Aging. Within ADD's website is a listing of current PNS projects with contact information; other ADD programs can be contacted by using the list contained there.

The majority of comments received were very supportive of the three proposed funding areas; many stated that these Priority Areas offer "incredible opportunities to share information and best practices through a variety of media as well as getting the technology down to the community level." The purpose of the Projects of National Significance program is not only to provide technical assistance to the developmental disabilities councils, the protection and advocacy systems, and the university affiliated programs, but to support projects "that hold promise to expand or improve opportunities for people with developmental disabilities." Representing only 4% of ADD's federal dollars, these PNS funds have initiated cutting edge projects, such as the "Reinventing Quality: Promising Practices in Person-Centered Community Services and quality Assurance for People with Development Disabilities" that are at the forefront of the developmental disabilities field challenging traditional thinking and practices. These priority areas directly relate to ADD's outcomes contained in its "Roadmap to the Future," our plan for implementing GPRA: (1) All are intended to increase community support and promote self-determination, (2) These priority areas will encourage interaction, and collaboration among all sectors of the Developmental Disabilities field to attain and share information.

Part III. The Review Process

A. Eligible Applicants

Before applications under this Announcement are reviewed, each will be screened to determine that the applicant is eligible for funding as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only public or non-profit private entities, not individuals, are eligible to apply under any of the priority areas. All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, sub-grantees or subcontractors.

Nonprofit organizations must submit proof of nonprofit status in their applications at the time of submission. One means of accomplishing this is by providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

B. Review Process and Funding Decisions

Timely applications under this Announcement from eligible applicants received by the deadline date will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ADD in making funding decisions.

In making decisions on awards, ADD will consider whether applications focus on or feature: Services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

This year, 5 points will be awarded in scoring for any project that includes partnership and collaboration with the 140 Empowerment Zones/Enterprise Communities. A discussion of how the involvement of the EZ/EC is related to the objectives and/or the activities of the project must be clearly outlined for the award of the 5 points. Also, a letter from the appropriate representatives of the EZ/EC must accompany the application indicating its agreement to participate and describing its role in the project.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

D. Structure of Priority Area Descriptions

The priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- *Evaluation Criteria:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to need for assistance, results expected, project design, and organizational and staff capabilities. Inclusion and discussion of these items is important since the information provided will be used by the reviewers in evaluating the application against the evaluation criteria. Applicants should review the section on the Uniform Project Description and the evaluation section under each priority area.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers to evaluate the applications against the evaluation criteria. Project products, continuation of the project after Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either cash or in-kind match, required.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects ADD anticipates funding under the priority area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applications under this Announcement that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed.

Applicants under this Announcement must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as an application more clearly focused on, and directly responsive to, the concerns of that specific priority area.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 2000, subject to the availability of funding. The size of the awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose shorter project periods than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas.

For multi-year projects, continued Federal funding beyond the first budget period, but within the approved project period, is subject to the availability of

funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (total project cost is $133,333, of which $33,333 is 25%).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of P. L. 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

G. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

1. Introduction: Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions.

2. Project summary/abstract: Provide a summary of the project description (a page or less) with reference to the funding request. Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

3. Objectives and Need for Assistance: Clearly identify the physical, economic, social, financial, institutional and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonies from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids should be attached. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

4. Results or Benefits Expected: Identify the results and benefits to be derived; the extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

5. Approach: Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cites factors which might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

ADD is particularly interested in discussing the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

6. Organization Profile: Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's

listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. ADD is particularly interested in the following: that the application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or under way by the applicant which is being supported by Federal assistance. This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

G. Cooperation in Evaluation Efforts

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

Part IV. Fiscal Year 2000 Priority Areas for Projects of National Significance—Description and Requirements

The following section presents the final priority areas for Fiscal Year 2000 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 2000 Priority Area 1: Mobilizing for Change/Rapid Deployment of Good Ideas

- *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.
- *Purpose:* ADD is interested in awarding grant funds that "reinvent" new projects models in the field of developmental disabilities which will transfer information and knowledge through the utilization of creative and innovative methods of implementation, replication and dissemination. These projects must demonstrate proven success by increasing the independence, productivity, integration and inclusion of people with developmental disabilities and their families in communities in which they live.
- *Background Information:* In March of 1993, President Clinton unveiled his new initiative to reinvent the federal government. He proposed a leaner, more efficient government that viewed the American people as its customers. The President discussed how all of us to some extent count on the government to do certain things such as, "protect the environment, to provide education and health care and other basic needs." However, he pointed out that a "democracy can become quickly an empty phrase, if those who are elected to serve cannot meet the needs of the people except with Government that costs too much or is too slow or too arrogant or too unresponsive." Federal workers were empowered to reinvent their agencies in ways that would put customers first, cut red tape, get results, and get back to basics.

At ADD, our agency efforts resulted in a document called "The Roadmap to the Future," which was developed together with the programs it funds, establishes a course of action for ADD and for its programs. The Roadmap defines the mission and vision of ADD, of the State Developmental Disabilities Councils (DDCs), of the Protection and Advocacy Systems (P&As), of the University Affiliated Programs (UAPs), and of the Projects of National Significance (PNS), and it identifies goals created to increase the independence, productivity, and integration and inclusion of people with developmental disabilities and their families. Program activities will be directed toward achieving the Roadmap goals.

The Projects of National Significance (PNS) Program is one of the activities of ADD. Every year since 1975 there have been model demonstration projects funded to increase the independence, productivity, and integration and inclusion of people with developmental disabilities. These projects have generated inventive approaches, strategies, and methodologies designed to address pervasive problems or needs of individuals with developmental disabilities and their families. Over the years, PNS projects have contributed to the knowledge base of the developmental disabilities field and the larger disability field as well.

In the past decade, the leadership capacity of individuals with developmental disabilities, especially self-advocates, has been nourished and strengthened by the funding of PNS projects.

Although dissemination of information from these projects has been a requirement of funding, it is a concern of ADD's that the rich volume of knowledge and information produced by these projects has not reached a broader range of people who either could directly benefit from it or are in a position to replicate it. More important, depending on the target audience, we have not been successful in influencing permanent behavioral changes. The explosion of communications arts and technology offer new possibilities for reaching a broader audience. A major challenge lies in connecting with those segments of our population who do not have easy access to a computer or English is not their primary language or there are cultural differences. New design models of transferring knowledge and fostering utilization must be explored if we are to meet the needs of Americans with disabilities and their families. ADD is extremely interested in supporting this "reinvention" of new models under this priority area.

These models must surpass our standard methods of communicating best practices, practical solutions to those we serve and those who serve them. Projects must be outcome driven—demonstrating effectiveness and behavioral changes of the targeted population. Content area is open to any proven, positive results-based practice, methodology or process in the field of developmental or other disabilities or directly related field such as universal design. It can be as expansive as systems change or a new paradigm. These new models should consider creative partnering in implementing the project. A few examples of this by the Federal government are the JedI project under the U.S. Geological Survey and The Knowledge Loom under the U.S. Department of Education/Office of Educational Research and Improvement. The former, which stands for joint

education initiative, utilized CD–ROM technology containing different types of data and in conjunction with teachers developed educational materials that could be used in the classroom. The latter is a recent project funded to create an electronic interactive workspace for anyone interested in the education environment.

In the last century we were the beneficiaries of extraordinary human developments that would have been considered inconceivable by many; it has raised our level of expectation for this new century. This is no less true for people with developmental disabilities and their families who, in this age of the Internet, the PC, and satellite downlinks, expect there will be new models available to everyone who needs them. ADD views this priority area as an unprecedented opportunity to take what we have learned through federally funded projects and find enterprising, inventive, and imaginative ways of using the knowledge so that all will benefit—people with developmental disabilities and other disabilities, professionals who serve them, their families, and the communities in which they live.

• *Minimum Requirements for Project Design:* ADD is particularly interested in supporting projects which include the following:

• Partnerships between consumers/advocacy organizations, research foundations, public/private entities and others to coordinate, implement and disseminate information and transfer of knowledge to a broad audience to include consumers and their families and entities that serve them.

• Project design must address barriers and issues of access to the mechanism(s) used to transfer knowledge and information, for persons using various assistive devices and equipment.

• All projects shall provide for the widespread distribution of their products (reports, summary documents, audio-visual materials, etc.) in accessible format and in languages other than English.

• Describe and develop methods/plans to be used to continue the transfer of knowledge and information once the project period ends.

• Develop and implement an evaluation process to ensure that systematic and objective information is available about the utilization and effectiveness of the products from this project.

• Specific outcomes tied to the ADD "Roadmap to the Future" to increase the independence, productivity, integration and inclusion of individuals with developmental disabilities must be built into the project for dissemination to a board audience.

• Describe measurable outcomes.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel who have direct life experience with living with a disability.

• Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served individuals, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with disabilities.

• Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (P.L. 102–569).

• Collaboration through partnerships and coalitions.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• Development and establishment of practices and programs beyond project period.

• Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

Evaluation Criteria: The four criteria that follow will be used to review and evaluate each application under this priority area. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional Information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids must be attached.

Criterion 2: Results or Benefits Expected (20 points)

The extent to which they are consistent with the objectives of the application, and the extent to which the Application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the Experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and the other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include description of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

• *Project Duration:* This announcement is soliciting applications

for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

- *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.
- *Matching Requirement:* Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (the total project cost is $133,333, of which $33,333 is 25%).
- *Anticipated Number of Projects to be Funded:* It is anticipated that up to six (6) projects will be funded.
- *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 2000 Priority Area 2: Bridging the Digital Divide: Building Content

Eligible Applicants: State agencies, public or private nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.

Purpose: Under this priority area, ADD will issue a grant award to fund one project, designed to build an Internet site that will provide relevant content and information on the Medicaid program for individuals with developmental disabilities and their families.

Background Information: In a White House speech on February 2, 2000, President Clinton stated: "Access to computers and the Internet and the ability to effectively use this technology are becoming increasingly important for full participation in America's economic, political and social life. People are using the Internet to find lower prices for goods and services, work from home or start their own business, acquire new skills using distance learning, and make better informed decisions about their healthcare needs."

The President expressed his concern over the widening gap of access: "Access to computers and the Internet has exploded during the Clinton-Gore Administration. Unfortunately, there is strong evidence of a 'digital divide'—a gap between those individuals and communities that have access to these Information Age tools and those who don't. In some instances, this divide is actually widening." The President has proposed three basic approaches to narrowing the digital divide: (1) Provide hardware and connections to people who do not yet have them; (2) Provide training in the use of computers and the internet; and (3) build relevant content on the Internet, to attract new users. ADD continues to encourage its grantees and partners in all three of these strategies, but realizes that a national approach is necessary to the third strategy of building relevant content.

A person with a developmental disability is legislatively defined as someone whose disability occurred before age 22; is severe and lifelong; and is likely to result in an ongoing, long-term need for services and supports. In other words, people with developmental disabilities are likely to need to rely on multiple systems of supports in order simply to live their lives. And yet, information that could be used to improve decision-making is not easily accessible to people with developmental disabilities, their families, their advocates, their providers of services and supports, or even to the policymakers who design and fund systems. For people with developmental disabilities, Internet access to relevant information is limited.

For the majority of people with developmental disabilities and their families, Medicaid is the most relevant system; it is a vital component in their life. Yet it is a very complex system that changes almost constantly, and quite rapidly. It is different in every State. As States submit new ideas to the Health Care Finance Administration (HCFA) in Home and Community-Based Services (HCBS) waiver plans, and as these state-generated plans are approved, possibilities for all other States and all other citizens shift. In addition, the Medicaid program is complex due to the "patchwork quilt of incremental statutory amendments and administrative policy changes spread over several decades." (GAO, 1996)

Nevertheless, many (though not all) of the Medicaid questions to which people need answers are repetitive and sometimes simple. Clear, honest, user-friendly answers to frequently asked questions are often a feature of Web sites on any topic and may be one of the best uses of the Internet.

Minimum Requirements for Project Design: ADD is proposing to fund one project to build an Internet site that will provide relevant content and attractive information on what is possible under the Medicaid program.

To be considered seriously for funding applicants must address the following elements:

- The site must be user-friendly and useful to a broad range of users, including people with developmental and other related disabilities, their families, their advocates, DD network members, state policymakers, regional HCFA staff, and other interested persons.
- The site must be responsive to the needs and wants of its users, and should collect and measure user satisfaction.
- Design must be interactive and post frequently asked questions (FAQs) about Medicaid and provide answers, which will encourage frank and open "human" interchanges between users.
- The site must be accessible to people with a broad range of disabilities.
- Proposing organizations must show that they (1) are credible sources of information to people with developmental disabilities and (2) that they intend to comply with accessibility standards and go beyond compliance to improve access as much as possible.
- Special care should be taken to make the site useful and attractive to young persons with developmental and other disabilities.
- Design should make use of audio-clips of personal stories in multiple languages where possible.
- Project Design must include Partnerships that are composed of consumers, family leaders, service providers and professionals working together to assist in addressing conflicting information and interpretations of the Medicaid program; and create a network which would allow for the exchange of ideas and expertise to improve services and effect systemic change.
- Site design must provide interactive links to State and local resources.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel who have direct life experience with living with a disability.
- Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflecting the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with disabilities.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (P.L. 102–569).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.
- *Evaluation Criteria:* The four criteria that follow will be used to review and evaluate each application under this priority area. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids should be attached.

Criterion 2: Results or Benefits Expected (20 points)

The extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contribution to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if The results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and the work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quality of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

- *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.
- *Federal Share of Project Costs:* The maximum Federal share is not to exceed $300,000 for the first 12-month budget period or a maximum of $900,000 for a three-year project period.
- *Matching Requirement:* Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $300,000 per budget period) must include a match of at least $100,000 (the total project cost is $400,000, of which your 25% share is $100,000).
- *Anticipated Number of Projects to be Funded:* It is anticipated that one (1) project will be funded.
- *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 2000 Priority Area 3: Managing Our Program Knowledge Through Web Improvement

Eligible Applicants: Nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.

Purpose: Under this priority area, ADD will issue a grant award to fund one (1) project to develop a model website which would enhance the ability of ADD's programs to exchange information and build upon ongoing diverse enterprise throughout the developmental disabilities community.

Background Information: The Developmental Disabilities Assistance and Bill of Rights Act (DD Act) provides authorization for three State programs and a national program that seek to increase the independence, productivity, and inclusion of persons with developmental disabilities.

A Developmental Disabilities Council (DD Council) in each State promotes, through systemic change, capacity building, and advocacy activities, the development of a comprehensive consumer-centered system of coordinated and culturally competent services, supports, and other assistance. The priority areas addressed by DD Councils include employment, community living, child development, and system coordination and community education.

The Protection and Advocacy (P&A) System provides for the protection and advocacy of legal and human rights. The P&A Systems advocate on behalf of, and provide advocacy services to persons

with developmental disabilities in issue areas related to their disabilities, including: education, abuse and neglect, institutional and habilitation services, guardianship issues, and housing issues.

The University Affiliated Programs (UAPs) are public and private non-profit agencies in the States and territories, each affiliated with a university. Each UAP receives annual discretionary funding for operational and administrative support, which provides a platform for interdisciplinary training, clinical and community-based service activities, technical assistance to community services personnel, and information/dissemination activities.

In addition to State-based programs, ADD funds research and demonstration grants in an effort to address and increase our understanding of issues of national scope. The Projects of National Significance (PNS) program focuses on the most pressing issues affecting people with developmental disabilities and their families. Project issues transcend the borders of States and territories, while project designs are oriented to permit local implementation of practical solutions.

Each of these programs has a uniqueness and breadth of knowledge that if managed through modern technology, would result in a knowledge resource warehouse. The nation can not afford a digital divide between these programs nor between these programs and those they serve. With these programs in mind, ADD is interested in funding a project for the development or enhancement of a model website whose design features are easily utilized by each of the ADD funded programs. It should be seen as the beginning of a new form of fluid cyber architecture with a focus on continuous improvement that will enable those programs to improve their use of the web and their ability to hyperlink to others.

Minimum Requirements for Project Design: This new model website would enhance the ability of ADD's programs to exchange information and build upon ongoing diverse enterprises throughout the developmental disabilities community. ADD envisions that the first year would begin with the UAPs with the understanding that the model website be inclusive of the of the other programs over the duration of the project. To be considered seriously for funding applicants must address the following elements:

- Project design must include the dissemination of contributions and achievements of these programs towards the quality of life of persons with disabilities and their families.
- It should support the development of strategies, technologies, and media channels for the management of knowledge generated/produced by these programs.
- The site should operate as an information center as well as a networking tool for the ADD programs and others. This website is not about outcomes but content and access to content that affects the lives of people with developmental disabilities and their families.
- Priority should be given to PNS projects. It is expected that the site would be open to everyone; including the average citizen, people working in each program, and people working in related programs.
- Site must be accessible to people with a broad range of disabilities utilizing the most current accessibility standards.
- ADD would be supportive of applicants that represent a consortia of UAPs and DD Councils.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel who have direct life experience with living with a disability.
- Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflecting the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with disabilities.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (P.L. 102–569).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.
- *Evaluation Criteria:* The four criteria that follow will be used to review and evaluate each application under this priority area. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids must be attached.

Criterion 2: Results or Benefits Expected (20 points)

To the extent to which they are consistent with the objectives of the application, and the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quality of services it provides, and/or the research and management capabilities it posses. It may include descriptions of any

current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $300,000 for the first 12-month budget period or a maximum of $900,000 for a three-year project period.

• *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $300,000 per budget period) must include a match of at least $100,000 (total project cost is $400,000, of which $100,000 is 25%).

• *Anticipated Number of Projects to be Funded:* It is anticipated that one (1) project will be funded under this priority area.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. An application package containing forms can be obtained by any of the following methods: Joan Rucker, ADD, 370 L'Enfant Promenade SW., Washington, DC 20447, 202/690–7898; http://www.acf.dhhs. gov/programs/add; or add@acf.dhhs.gov.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part IV.

A. Required Notification of the State Single Point of Contact (SPOC)

All applications under the ADD priority areas are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of September 22,1997, all States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. However, there is insufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days from the closing date for applications. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration on Children Youth and Families, Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop 326F–HHH, Washington, DC 20447, Attn: Lois Hodge ADD—Projects of National Significance.

Contact information for each State's SPOC is found in the application package or ADD's website.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils is included in the application package or ADD's website under Programs.

C. Deadline for Submittal of Applications

One signed original and two copies of the application must be submitted on or before September 1, 2000 to: U.S. Department of Health and Human Services, Administration on Children, Youth and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW, Mail Stop 326F–HHH, Washington, DC 20447, Attn: Lois Hodge.

Applications may be mailed or hand-delivered. Hand-delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications shall be considered as meeting an announced deadline if received by the deadline date at the ACYF Grants Office (Close of Business: 4:30 p.m., local prevailing time).

Late applications: Applications that do not meet the criterion stated above are considered late applications. ACYF/ADD shall notify each late applicant that the application will not be considered in the current competition.

Extension of deadlines: ACYF may extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or when there is a widespread disruption of the mail. However, if the granting agency

does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A–Page 2 and Certifications/Assurances are contained in the application package. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For all of ADD's priority areas, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Item 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/pre-application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, Parts 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;
(b) Results and Benefits Expected;
(c) Approach; and
(d) Organization Profile.

The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description.

The narrative should be typed double-spaced on a single-side of an 8 ½" × 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. This will be strictly enforced. A page is a single side of an 8½ × 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

4. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

____ One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

____ Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

____ Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

____ Application for Federal Assistance (SF 424, REV 4–88);

____ A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

___ Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
___ Budget justification for Section B—Budget Categories;
___ Table of Contents;
___ Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;
___ Copy of the applicant's approved indirect cost rate agreement, if appropriate;
___ Project Description (See Part III, Section C);
___ Any appendices/attachments;
___ Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
___ Certification Regarding Lobbying; and
___ Certification of Protection of Human Subjects, if necessary.
___ Certification of the Pro-Children Act of 1994; signature on the application represents certification.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

G. Paper Reduction Act of 1995 (Pub.L. 104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 10/31/2000.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: July 27, 2000.

Reginald F. Wells,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 00–19492 Filed 8–1–00; 8:45 am]

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Federal Register

Wednesday,
August 2, 2000

Part IV

Department of Education

34 CFR Parts 674, 682, and 685
Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1845–AA12

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice of proposed rulemaking

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Perkins (Perkins) Loan Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations in order to strengthen and improve the processes for granting loan discharges based on a borrower's death or total and permanent disability.

DATES: We must receive your comments on or before September 18, 2000.

ADDRESSES: Address all comments about these proposed regulations to Mr. Brian Smith or Mr. Jon Utz, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: DISABILITYNPRM@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: For the FFEL and Perkins Loan Programs, Mr. Brian Smith, or for the Direct Loan Program, Mr. Jon Utz; U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 13, Washington, DC 20202–5345. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service, (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

Under § 482(c) of the Higher Education Act of 1965, as amended (HEA), final regulations published before November 1 are generally effective on July 1 of the following year. We realize, however, that implementation of these proposed regulations might require significant operational changes for lenders, guaranty agencies, schools, and the Department. Therefore, we invite your comments on whether a later effective date should be considered for these regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4. p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

Background

In the Perkins Loan, FFEL, and Direct Loan programs, a borrower's obligation to repay a loan is discharged if the borrower dies or becomes totally and permanently disabled. In all three programs current regulations define a "total and permanent disability" as a medical impairment that (1) prevents an individual from working and earning money or attending school, and (2) is expected to continue indefinitely or result in death.

In June 1999, the Department of Education's Inspector General (IG) issued a report on the process of granting loan discharges in the FFEL Program due to death or total and permanent disability. The report, "Improving the Process for Forgiving Student Loans" (audit control number 06–80001), is available in Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/offices/OIG/Areports.htm The IG identified the borrowers who received death or disability discharges on FFEL Program loans from July 1, 1994 through December 31, 1996, and matched the list against the Social Security Administration's master earnings record. The IG found that 23 percent of borrowers who received total and permanent disability discharges and two percent of borrowers who received death discharges during the period covered by the report earned wages, in some cases in excess of $30,000 per year, after their loans were discharged. The IG also found that a significant number of borrowers whose loans had been discharged based on a total and permanent disability returned to school and received new loans within one year after having the previous loan discharged.

The IG concluded that inappropriate discharges were being granted because of weaknesses in the current procedures for determining eligibility for discharge. Although the IG looked only at discharges in the FFEL Program, current regulations in the Perkins Loan and Direct Loan programs are essentially the same as the FFEL regulations. In response to the IG's findings, we are proposing regulatory changes that would strengthen the current processes for approving discharges based on death or total and permanent disability.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants

in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM were discussed with Negotiating Committee I (the committee), which was made up of the following members:

- American Association of Collegiate Registrars and Admissions Officers
- American Association of Cosmetology Schools
- American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
- American Council on Education
- Career College Association
- Coalition of Higher Education Assistance Organizations
- Consumer Bankers Association
- Education Finance Council
- Education Loan Management Resources
- Legal Services
- National Association of College and University Business Officers
- National Association of Independent Colleges and Universities
- National Association of State Universities and Land-Grant Colleges
- National Association of Student Financial Aid Administrators
- National Association of Student Loan Administrators
- National Council of Higher Education Loan Programs
- National Direct Student Loan Coalition
- Sallie Mae, Inc.
- Student Loan Servicing Alliance
- The College Fund/United Negro College Fund
- United States Department of Education
- United States Student Association
- US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was not reached on the proposed regulations in this document.

During the negotiations, we proposed a conditional approach to granting loan discharges based on total and permanent disability. As reflected in these proposed regulations, a borrower who is initially determined to be totally and permanently disabled would receive a conditional discharge for a period of three years. A final discharge would be granted only if the borrower continues to meet the discharge eligibility requirements over the three-year conditional discharge period.

We believe that the conditional discharge approach proposed in these regulations is the proper response to the IG's findings. The IG's report indicates that the current approach of granting total and permanent disability discharges based on a physician's one-time certification of a borrower's condition has resulted in a significant number of inappropriate discharges being granted to borrowers who, although previously certified as totally and permanently disabled, subsequently had substantial earnings from work. The proposed conditional approach would allow for a more accurate assessment of a borrower's condition by monitoring the borrower's income over an extended period after the onset of the disabling condition. If a borrower had significant earnings from wages during the conditional discharge period, we believe it would be reasonable to conclude that the borrower was not totally and permanently disabled as we define that term in our regulations. The conditional discharge approach acknowledges that, as a result of advances in medicine and rehabilitative technologies, many individuals with conditions that once would have been totally and permanently disabling are now able to return to work. Moreover, the conditional discharge approach is consistent with other major government programs that provide disability benefits. We are not aware of any other major Federal program that provides disability-related benefits based on a one-time review of an individual's condition.

The non-Federal negotiators generally opposed our proposed approach for granting disability discharges. They felt that our proposal to place loans in a conditional discharge status would be unfair to borrowers, and that the conditional discharge approach would be complicated, confusing, and difficult to administer. The non-Federal negotiators believed that other steps should be taken to address the concerns raised by the IG's report, rather than significantly changing the process for granting total and permanent disability discharges. Several of the non-Federal negotiators pointed out that the IG's report had already increased awareness of the problem in the financial aid industry. Some of the non-Federal negotiators referred to a separate pilot program initiated by the Department to address some aspects of the deficiencies identified in the report. Some of the non-Federal negotiators recommended that we make further revisions to the disability discharge request form, in addition to changes that we already made in response to the IG's report. These negotiators expressed the view that a more comprehensive form might make it easier for a physician to determine whether a patient meets the criteria for a total and permanent disability discharge, and would enhance the ability of loan holders to review physician's certifications.

During the negotiations the non-Federal negotiators offered an alternative proposal. Under this proposal, the initial process for granting total and permanent disability discharges would remain substantially unchanged from current practice. However, if a borrower who had received a discharge worked and earned money over a certain income threshold, or took out another title IV loan within two years of receiving a discharge, the Secretary would revoke the discharge.

It is the position of the non-Federal negotiators that most loans discharged are for borrowers who are totally and permanently disabled in accordance with the regulations. The non-Federal negotiators stated that their alternative proposal would allow us to address the concerns raised by the IG's report by focusing directly on cases of potentially erroneous discharges, thus preventing unnecessary confusion and anxiety for all affected borrowers.

We understand the non-Federal negotiators' concerns about the

proposed conditional discharge approach. However, in light of the IG's findings, we are convinced that significant changes to the current procedures for granting discharges based on total and permanent disability are necessary. We believe that the conditional discharge approach proposed in these regulations would be the most fair method to discharge a borrower's loans, and would best protect the interests of taxpayers.

Some non-Federal negotiators also objected to our original proposal to require that a request for a loan discharge based on the death of the borrower (or student in the case of a PLUS loan) be supported by a certified or original copy of a death certificate. They felt that requiring a certified copy or original of a death certificate was not necessary in every case. Many of the negotiators proposed that the loan holder and guaranty agency be authorized to accept alternative documentation in certain circumstances.

We have decided to accept this proposal, in part. These draft regulations would authorize the chief executive officer of the guaranty agency (for FFEL loans) or the chief financial officer of the institution (for Perkins loans) to grant a discharge based on other evidence in exceptional circumstances.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Sections 674.61, 682.402, and 685.212 Death Discharge

Statute: Sections 437(a) and 455(a)(1) of the HEA provide for a discharge of a borrower's FFEL or Direct Loan program loan if the borrower, or the student for whom a parent takes out a PLUS loan, dies. Section 464(c)(1)(F) of the HEA provides for the cancellation of a borrower's Perkins loan if the borrower dies.

Current Regulations: The current Perkins Loan and FFEL Program regulations require a death certificate or other proof of death acceptable under State law in order to discharge a loan based on death. The FFEL Program regulations further provide that if a death certificate or other proof of death under State law is not available, a guaranty agency may discharge the loan based on other evidence establishing that the borrower has died.

The current Direct Loan Program regulations require acceptable documentation of a borrower's death. In practice, acceptable documentation for this purpose is the same types of documentation that are required in the FFEL Program.

Proposed Regulations: The proposed Perkins Loan and FFEL Program regulations would (1) require that the death certificate must be an original or certified copy, and (2) specify that other documentation of death may be used to support a discharge only under exceptional circumstances and only with the approval of the chief executive officer of the guaranty agency (for the FFEL Program) or the institution's chief financial officer (for the Perkins Loan Program).

The proposed Direct Loan Program regulations would (1) specify that an original or certified copy of the death certificate is required, and (2) provide for loan discharge based on other documentation of death only with the Secretary's approval.

Reasons: The proposed regulations address concerns raised in the IG's report. Specifically, the IG found that two percent of borrowers whose loans were discharged due to death during the period covered by the report had earnings from wages after the date of discharge. In reviewing a random sample of death certificates that were used as the basis for loan discharge, the IG found documents that had been typed, except for the deceased's name, which was hand-written. In one case, a guaranty agency reported receiving a death certificate that had been altered by changing the name and social security number of the deceased individual.

We believe that requiring an original or certified copy of the death certificate would help to ensure that death discharges are based on valid documentation. We also believe that this practice would be consistent with the evidence required by insurance companies and other government programs. However, we recognize that, in rare cases, an original or certified copy of the death certificate may not be available. The non-Federal negotiators representing guaranty agencies strongly urged us to permit the use of alternative documentation in some circumstances and to allow the decision to rest with the agency. We have decided to accept this proposal. However, the proposed regulations would limit the conditions under which other documentation may serve as the basis for discharge by requiring a senior official of the agency or school to approve the use of any alternative documentation.

This exception to the general requirement that an original or certified copy of a death certificate be obtained is intended to ensure that alternative documentation of death would be used only rarely, in exceptional circumstances. We expect guaranty agencies and schools to maintain separate records of their use of this exception and to make those records available to us upon request.

Sections 674.51, 682.200, and 685.102 Definitions.

Current Regulations: The current definition of "totally and permanently disabled" provides that an individual must be unable to work and earn money or attend school because of the disabling condition.

Proposed Regulations: The proposed regulations would remove the requirement that an individual be unable to attend school from the definition of "total and permanent disability."

Reasons: We believe that with the development of new technologies to aid disabled individuals and the increased availability of distance learning, it is no longer meaningful to use ability to attend school as a measure of whether an individual is totally and permanently disabled. Moreover, we have determined that our current definition of totally and permanently disabled could have the unintended consequence of discouraging disabled individuals from pursuing further education or retraining. Accordingly, we are proposing to remove the requirement that an individual be unable to attend school from the definition of a "total and permanent disability."

Sections 674.61, 682.402, 685.212, and 685.213 Total and Permanent Disability Discharge

Statute: Sections 437(a) and 455(a)(1) of the HEA provide for discharging a borrower's FFEL or Direct Loan program loan if the borrower becomes permanently and totally disabled. Section 464(c)(1)(F) of the HEA similarly provides for canceling a borrower's Perkins loan if the borrower becomes permanently and totally disabled. In all three programs, permanent and total disability must be determined in accordance with regulations of the Secretary.

Current Regulations: Under current regulations, schools (for Perkins loans), guaranty agencies (for FFEL loans), or the Secretary (for all Direct Loans, and any Perkins or FFEL loans held by the Secretary) discharge title IV loans after determining that a borrower meets the criteria for a total and permanent

disability discharge. Traditionally, in granting these discharges, the Secretary, schools, and guaranty agencies have primarily relied on a physician's certification to make that determination. The FFEL and Direct Loan program regulations define a "total and permanent disability" as "the condition of an individual who is unable to attend school because of an injury or illness that is expected to continue indefinitely or result in death." In the Perkins Loan Program the definition is "the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death."

If a borrower sends payments to the loan holder after it has discharged the loan the loan holder returns those payments to the borrower, with a notification that the loan has been discharged and that any further payments are unnecessary.

Under the current regulations, a borrower whose title IV loan has been discharged due to a disability may receive another title IV loan only if a physician certifies that the borrower now can engage in substantial gainful activity. The borrower must also acknowledge that any additional loans that are received cannot be discharged due to the same disability, unless the disability substantially deteriorates.

Proposed Regulations: Under the proposed regulations, a borrower would apply to the loan holder for a disability discharge. Approval of a request for a disability discharge would be based on either a physician's certification or documentation from the Social Security Administration that supports the conclusion that the borrower's condition meets our requirements. If the loan holder (and guaranty agency, for FFEL loans) approves the request, the loan would be assigned to us. We would review the documentation that is submitted. If we denied the request for a discharge, we would continue to hold the loan and resume collection activity. If we approved the request for a discharge, the borrower would receive a conditional discharge of the loan. During the conditional discharge period, which would last for up to three years, the borrower would not be required to make payments on the loan. At the end of the conditional discharge period we would make a final determination of eligibility for a disability discharge. If, during the conditional discharge period, the borrower's annual earnings from work are below the poverty line for a family of two, and the borrower does not receive any additional title IV loans, we would grant a final discharge of the loan. At that time, we would return any payments made on the loan after the onset of the disabling condition.

Sections 674.61(b)(3)(ii), 682.402(c)(2)(ii), and 685.213(b)(2) Use of Social Security Administration Disability Documentation

Proposed Regulations: Under the proposed regulations a borrower could submit, in lieu of the physician's certification, documentation from the Social Security Administration (SSA) that supports the borrower's claim of total and permanent disability. Documentation from the SSA must establish that the borrower is totally and permanently disabled as defined in these proposed regulations. We are also proposing that documentation from the SSA could be used when a borrower, in order to qualify for additional title IV loan funds, needs to document that the borrower's medical condition has improved to the extent that the borrower is capable of substantial gainful activity.

Reasons: Individuals who are eligible to receive disability benefits from the SSA have already gone through an extensive medical review process. For this reason, we are proposing regulations that would permit a borrower who is eligible for SSA disability benefits to receive a disability discharge without obtaining an additional certification from a physician, if the borrower can provide comparable documentation from the SSA establishing that he or she is totally and permanently disabled. Similarly, in the case of a borrower who wishes to receive a title IV loan after having had a previous loan discharged (or conditionally discharged) due to a total and permanent disability, the proposed regulations would not require an additional physician's certification if the borrower provides documentation from the SSA showing that the borrower is able to engage in substantial gainful activity.

The standard that an individual must meet to qualify for SSA disability benefits is not the same as the total and permanent disability standard in the proposed regulations. Some individuals who are eligible to receive SSA disability benefits would not be considered totally and permanently disabled according to our regulatory definition. Therefore, we do not believe that it would be appropriate to accept SSA documentation as an alternative to a physician's certification in all cases.

We are working with the SSA to determine if there is specific documentation that the SSA provides to some individuals that would be comparable to a physician's certification that a borrower is totally and permanently disabled as defined in our regulations. If we determine that the SSA provides such documentation to some borrowers, we will provide guidance on the specific documentation that a borrower would have to provide.

We welcome your comments on the feasibility of using documentation of eligibility for SSA disability benefits, in some cases, as an alternative to a physician's certification of total and permanent disability. We are especially interested in comments on how the use of SSA documentation might affect administrative burden, borrower understanding of the discharge eligibility requirements, and program integrity.

Sections 674.61(b)(3)–(6), 682.402(c)(2)–(12), and 685.213(b) Initial Determination of Total and Permanent Disability

Proposed Regulations: As noted earlier, the proposed regulations would modify the current regulations and establish a new process for evaluating disability discharge applications. Under the proposed regulations, a FFEL or Perkins loan borrower would initiate the discharge application process by submitting a discharge application to the loan holder. If the loan holder, based on a review of the application, determines that the borrower met the requirements for a disability discharge, the loan would be assigned to the Department. We would notify the borrower that we would be reviewing the application and assorted documentation. We would also continue to review disability discharge applications submitted by Direct Loan borrowers. In all three loan programs, we could ask the borrower to provide additional documentation to support the request for discharge.

Under the proposed regulations, if we determine that a borrower meets the eligibility criteria for a conditional disability discharge, we would place the loan into a conditional discharge status for up to three years.

If we determine that the borrower does not qualify for a total and permanent disability discharge, we would notify the borrower that we had denied the request and that we would resume collection activity on the loan.

Reasons: Under the proposed regulations, we would determine whether a borrower meets the eligibility criteria for a total and permanent disability discharge. During the negotiated rulemaking sessions, some negotiators for FFEL loan holders, Perkins Loan schools, and guaranty agencies indicated that they did not believe that they could properly

evaluate disability discharge applications. They felt that they had neither the staff, the resources, nor the expertise to thoroughly review or question a physician's certification of a borrower's disability. The IG found that, in some cases, disability discharges were approved based on an insufficient review of medical documentation. Disability discharges were granted based on physicians' diagnoses that were illegible, or for impairments that clearly were neither "permanent" nor "total." The proposed regulations would require the loan holder (or guaranty agency) to thoroughly review the documentation provided by a borrower requesting a discharge due to a total and permanent disability. However, we would assume the responsibility for making the ultimate decision as to whether to grant the discharge. We believe that this proposed process will help ensure that conditional and final disability discharges are granted based on adequate medical documentation, and that there is a consistent application of the standards for granting those discharges.

Sections 674.61(b)(1), (6), and (7), 682.402(c)(1), (12), and (13), and 685.213(a)(1) and (d) Conditional Discharge

Proposed Regulations: Under the proposed regulations, if we make a conditional determination that a borrower is totally and permanently disabled, we would place the borrower's loan in a conditional discharge status for a period of up to three years from the date of the onset of the disabling condition. We would not require the borrower to make payments on the loan.

If, at the end of the conditional discharge period, the borrower still meets the discharge eligibility requirements, we would make a final determination of eligibility for a total and permanent disability discharge. We would discharge the loan, including any accrued interest, and we would return any payments made on the loan after the onset of the disability.

If the borrower ceased to meet the discharge eligibility requirements during or at the end of the conditional discharge period, we would cancel the conditional discharge, and collection activity would resume on the loan. The borrower would not be required to repay any interest that accrued on the loan during the period when collection activity was suspended.

Reasons: The definition of "totally and permanently disabled" states, in part, that a borrower must be unable to work and earn money because of an impairment that is expected to continue indefinitely or result in death. However, the IG found that a significant number of borrowers who received a total and permanent disability discharge earned wages after their loans were discharged. We believe it is reasonable to conclude that a borrower is not totally and permanently disabled if there is evidence that the borrower has received income from wages in excess of a very modest amount. Under the conditional discharge approach proposed in these regulations, we would monitor a borrower's income—as an indicator of whether the borrower is working—over an extended period of time. We believe that this approach addresses the concerns raised in the IG's report by providing for a more accurate assessment of whether a borrower is totally and permanently disabled than the "snapshot" approach in the current regulations.

To minimize the administrative burden, and allow for final determinations of discharge eligibility in a reasonable period of time, we are proposing a conditional discharge period of up to three years. We are especially interested in receiving comments on whether that conditional discharge period is an appropriate length of time.

Sections 674.61(b)(2),(8), and (9), 682.402(c)(14) and (15), and 685.213(a)(2) and (c) Final Determination of Total and Permanent Disability

Proposed Regulations: These proposed regulations would describe the basis for the decision as to whether to grant a final disability discharge. Under the proposed regulations, the loan would generally be discharged if, during the conditional discharge period, the borrower's income from employment did not exceed the poverty line for a family of two for any 12-month period, and the borrower did not take out any additional title IV loans. If the borrower did earn income from employment above this threshold or did take out additional loans or was otherwise determined not to be totally and permanently disabled, we would not grant the final discharge.

A borrower could not apply for a total and permanent disability discharge on a loan that has gone back into active collection status after being conditionally discharged, unless the borrower's medical condition substantially deteriorated.

Reasons: Under the proposed regulations, a borrower whose loan is in a conditional discharge status would lose eligibility for a final discharge if the borrower's earnings from work exceeded the poverty line for a family of two for any 12-month period. The poverty guidelines are updated annually in the **Federal Register** by the U.S. Department of Health and Human Services (HHS) and are a reliable indicator of current economic conditions that can be used as a measure of minimal earnings. The poverty guidelines are posted on HHS' web site at the following address: http://aspe.hhs.gov/poverty/poverty.htm

The IG found that some borrowers who had received disability discharges were earning substantial wages after the discharge, in some cases over $30,000 a year. We do not believe that a borrower who has worked consistently for a significant period of time, as indicated by earnings above the poverty line, is totally and permanently disabled in accordance with our regulations.

On the other hand, we also believe that terminating a conditional discharge if the borrower had any earnings at all from work during the three-year conditional discharge period could have the undesirable effect of discouraging disabled borrowers from attempting to overcome their disabilities. A disabled borrower might be able to generate modest earnings from work, but find those earnings wiped out if the conditional discharge was immediately cancelled as a result. Therefore, the proposed regulations would not penalize a borrower who has minimal earnings from work. However, a borrower who is clearly capable of engaging in substantial gainful activity (as indicated by earnings in excess of the poverty line) would lose eligibility for the total and permanent disability discharge because, by definition, he or she would not be totally and permanently disabled.

Under the proposed regulations, if a borrower seeks another title IV loan during the conditional discharge period, we would cancel the conditional discharge before the borrower could receive an additional title IV loan. To receive another title IV loan, a borrower who has had a prior loan discharged (or conditionally discharged) due to a total and permanent disability must provide a certification, from a physician or from the SSA, that the borrower can engage in substantial gainful activity. By definition, a borrower who is totally and permanently disabled must be unable to work and earn money. In our view, a borrower no longer meets the eligibility requirements for a total and permanent disability if a physician or the SSA has certified that the borrower is capable of substantial gainful activity. Therefore, the borrower should remain obligated to

repay the loan for which the discharge was previously sought.

Sections 674.61(b)(11) and (12), 682.402(r)(2) and (3), 685.212(g)(2) Payments Received After the Onset of the Disabling Condition

Proposed Regulations: Under the proposed regulations, any payments sent to an institution (on a Perkins Loan) or a lender or guaranty agency (on an FFEL loan) by or on behalf of a borrower whose loan has been assigned to us after the borrower has applied for a disability discharge must be forwarded to us. If those payments are made on a loan that we have placed in a conditional discharge status, the payments will be applied to the loan. Similarly, we will apply any payments we receive for a Direct Loan that we have conditionally discharged to that loan. If we discharge the loan at the end of the conditional discharge period, we will return to the sender payments we received after the date of the onset of the disability.

Reasons: Once a loan is assigned to us, the prior holder of the loan may not know the loan's current status. We could still be in the process of determining if the borrower meets the eligibility requirements for a conditional discharge, the loan could be in the conditional discharge status, or a final determination could have been made and the loan already discharged. While a discharge application is pending or a loan is in a conditional discharge period, a final determination of eligibility for a total and permanent disability discharge has not been made. Until we have made a final determination that a borrower qualifies for a total and permanent disability discharge, any payments made on a loan should be applied to the loan. If it turns out that the borrower was not eligible for a final discharge of the loan, the payments would have reduced the outstanding balance due at the time of that determination. If, on the other hand, the loan is discharged at the end of the conditional discharge period, all payments received after the onset of the disability will be returned to the sender.

Sections 674.9, 682.201 and 685.200 Eligibility for Title IV Loans

Current Regulations: The current regulations state that a borrower who has received a discharge of a previous title IV loan based on total and permanent disability may receive another title IV loan only if a physician certifies that the borrower can now engage in substantial gainful activity. In addition, the borrower must sign a statement acknowledging that the new title IV loan cannot be discharged in the future based on any current impairment, unless that impairment substantially deteriorates.

Proposed regulations: The proposed regulations would establish similar eligibility requirements for a borrower who seeks a title IV loan while a previous title IV loan is in a conditional discharge period. Under the proposed regulations, in this situation, the borrower would be eligible to receive another title IV loan only if (1) a physician or the SSA certifies that the borrower is able to engage in substantial gainful activity, (2) the borrower acknowledges that neither the conditionally discharged loan nor the new loan could be discharged on the basis of a pre-existing impairment (unless the impairment substantially deteriorates), and (3) collection activity resumes on the conditionally discharged loan.

Reasons: The proposed requirements for the physician's (or SSA's) certification and borrower's acknowledgement would ensure that a borrower whose previous loan was approved for a conditional discharge or was permanently discharged is potentially capable of repaying the new loan before receiving that new title IV loan. When the borrower receives the new loan, he or she promises to repay the loan. We do not believe it is appropriate to provide a new loan to a borrower who has no prospect of repaying the loan. These students should request other financial aid that does not require repayment.

The proposed regulations would also prevent a borrower from obtaining a new loan and later having that loan discharged based on a medical condition that the borrower used as the basis for an earlier conditional or permanent discharge. The proposed regulations would allow the certification to be provided by either a physician or the SSA, as in the case with the documentation required for a conditional determination of total and permanent disability.

Under the proposed regulations, a conditional discharge on a borrower's prior loan must be cancelled and collection activity resume on the loan before a borrower may receive an additional loan during the conditional discharge period. This requirement reflects the fact that a borrower who has been certified as capable of substantial gainful activity no longer meets the eligibility requirements for a total and permanent disability discharge.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

These proposed regulations implement new procedures for borrowers who apply for loan discharges due to death or total and permanent disability. As more fully described elsewhere in this preamble, under these regulations a borrower who is initially determined to be totally and permanently disabled would receive a conditional discharge for a period of three years. The Department of Education has estimated that the proposed regulations would result in $72 million in Federal savings over FY 2001–2005 as a result of borrowers who previously would have received a discharge losing eligibility during the three-year conditional period.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 682.201 Eligible Borrowers*).
- Could the description of the proposed regulations in the

SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in title IV, HEA programs, and individual loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit or nonprofit institutions with total annual revenue below $5,000,000 or institutions controlled by governmental entities with populations below 50,000, and lenders with total assets under $100 million, as "small entities." Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered "small entities" under the Regulatory Act. Individuals are not defined as "small entities" under the Regulatory Flexibility Act.

A significant percentage of the over 4,000 lenders participating in the FFEL program meet the definition of "small entities." While these lenders and a number of institutions of higher education fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 674.9(h), 674.9(i), 674.61(a), 674.61(b), 682.201(a), 682.402(b), 682.402(c), 685.200(a), 685.212(a), 685.212(b), and 685.213(b) contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Sections 674.9, 682.201, and 685.200—Borrower Eligibility

We are proposing changes in the requirements for a borrower to re-establish eligibility for title IV loans after receiving a disability discharge. Under the proposed regulations, a borrower has the additional option of submitting a statement from the SSA certifying that the borrower can engage in substantial gainful activity. This change gives the borrower more flexibility in re-establishing eligibility for title IV loans, and produces no additional burden.

Under the proposed regulations, before a borrower receives another title IV loan, a conditional discharge on any prior loan must be cancelled and that loan placed in an active collection status. As a condition for receiving an additional title IV loan, the borrower must also sign a statement acknowledging that any new loan, or a loan for which a conditional or permanent discharge was previously granted, may not be discharged in the future on the basis of the same, pre-existing medical condition unless the borrower's medical condition substantially deteriorates.

Borrowers are already required, under current regulations, to sign such a statement to regain eligibility for an additional title IV loan after receiving a total and permanent disability discharge. This change does not alter the burden to borrowers.

Sections 674.61, 682.402, 685.212—Loan Discharge Due to Death

Guaranty agencies currently have the authority to discharge loans based on alternative documentation if a copy of the death certificate is unavailable. The proposed regulations maintain that requirement, but specify that the chief executive officer of the guaranty agency must make the decision to exercise that authority and limits the authority to exceptional circumstances. This change does not increase the burden on guaranty agencies.

Currently, schools in the Perkins Loan Program must base their death cancellations on a death certificate or other evidence acceptable under state law. By allowing only the chief financial officer of the institution to grant total and permanent disability cancellations based on alternative evidence of death, the burden on the schools is not changed.

Sections 674.61, 682.402, 685.212, 695.213—Loan Discharge Due to Disability

The proposed regulations do not alter the process for loan holders and guaranty agencies in the FFEL and Perkins programs to review requests for a discharge of a loan based on a total and permanent disability. The only difference under the proposed process is that the loan holder and guaranty agency will make a preliminary determination of eligibility for the discharge. After making that determination, the guaranty agency or other loan holder assigns the loan to us, and we decide whether to discharge the loan. This change does not increase the burden on loan holders or guaranty agencies.

In the Direct Loan Program, we will continue to make determinations of eligibility for total and permanent disability discharges.

In addition, the proposed regulations allow borrowers to qualify for a conditional discharge of their title IV loans by providing a certification of eligibility for disability benefits from the SSA. This allows borrowers increased flexibility in applying for the discharge, and does not increase burden.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30

days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

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http://www.access.gpo.gov/nara/index.html
(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 26, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 674, 682, and 685 of Title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.9 is amended by:
A. Revising paragraph (h)(1).
B. Redesignating paragraphs (i) and (j) as paragraphs (k) and (l).
C. Adding a new paragraph (i).
D. Adding a new paragraph (j).
The additions and revisions read as follows:

§ 674.9 Student eligibility.

* * * * *

(h)(1) In the case of a borrower whose previous loan under title IV of the HEA was discharged due to total and permanent disability, obtains a certification from a physician or from the Social Security Administration that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

* * * * *

(i) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged based on a preliminary determination that the borrower was totally and permanently disabled, the borrower must—

(1) Comply with the requirements of paragraph (h) of this section; and

(2) Sign a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge, unless that impairment substantially deteriorates.

(j) Does not have any loans under title IV of the HEA on which collection activity has been suspended based on a conditional determination that the borrower was totally and permanently disabled. If a borrower applies for a loan under title IV of the HEA during the conditional discharge period described in §§ 674.61(b), 682.402(c), or 685.212(b), the suspension of collection activity must be ended before the borrower becomes eligible to receive any additional loans.

* * * * *

3. Section 674.51 is amended by adding a new paragraph (s) to read as follows:

§ 674.51 Special definitions.

* * * * *

(s) *Total and permanent disability:* The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

* * * * *

4. Section 674.61 is amended by:
A. Revising the section heading.
B. Revising paragraph (a).
C. Revising paragraph (b).

§ 674.61 Discharge for death or disability.

(a) *Death.* An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon reliable documentation other than a death certificate that supports the discharge request.

(b) *Total and permanent disability.* (1) If the Secretary has made a conditional determination that the borrower is totally and permanently disabled, as defined in §.674.51(s), the loan is conditionally discharged for up to three years from the date that the disabling condition began. The Secretary suspends collection activity on the loan from the date of the conditional determination of total and permanent disability until the end of the three-year conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the onset of the disability as certified under § 674.61(b)(3) are returned to the sender.

(2) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year conditional discharge period described in paragraph (b)(1) of this section—

(i) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(ii) The borrower does not receive an additional loan under the FFEL, Direct Loan or Federal Perkins Loan Programs.

(3) If a borrower becomes totally and permanently disabled after receiving a Defense, NDSL, or Perkins loan, the institution shall, pursuant to § 674.50, assign the loan to the Secretary if—

(i) The borrower submits a certification by a physician and the institution reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 674.51(s); or

(ii) The borrower submits documentation from the Social Security Administration that the Secretary has identified as acceptable to support the

conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 674.51(s).

(4) At the time the loan is assigned to the Secretary the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

(5) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(6) If the Secretary makes a conditional determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years after the onset of the disability as certified under § 674.61(b)(3).

(7) During the conditional discharge period, the borrower—

(i) Is not required to make any payments on the loan beginning on the date the Secretary makes a conditional determination that the borrower is totally and permanently disabled;

(ii) Is not considered past due or in default on the loan;

(iii) Must promptly notify the Secretary of any changes in address or phone number;

(iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(2)(i) of this section; and

(v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(8) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in paragraph (b)(2) of this section, the balance of the loan is discharged.

(9) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (b)(6) of this section through the end of the conditional discharge period.

(10) The notification to the borrower described in paragraph (b)(6) of this section identifies the conditions of the conditional discharge period specified in paragraphs (b)(6) through (9) of this section.

(11) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(12) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender 100 percent of any payments received, directly or indirectly, from or on behalf of the borrower.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM—

5. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

6. In § 682.200(b) the definition of "Totally and permanently disabled" is revised to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Totally and permanently disabled. The condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

* * * * *

7. Section 682.201 is amended by:

A. Redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(6), (a)(8), and (a)(9).

B. Adding a new paragraph (a)(5).

C. Revising redesignated paragraph (a)(6).

D. Adding a new paragraph (a)(7).

§ 682.201 Eligible borrowers.

(a) * * *

(5) The suspension of collection activity has been lifted from any loan on which collection activity had been suspended based on a conditional determination that the borrower was totally and permanently disabled under § 682.402(c).

(6) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the student must—

(i) Obtain certification from a physician or from the Social Security Administration that the borrower is able to engage in substantial gainful activity; and

(ii) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(7) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on a preliminary determination that the borrower was totally and permanently disabled, the borrower must—

(i) Comply with the requirements of paragraph (a)(6) of this section; and

(ii) Sign a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge, unless that impairment substantially deteriorates.

* * * * *

8. Section 682.402 is amended by:

A. Revising paragraph (b)(2).

B. Revising paragraph (b)(3).

C. Revising paragraph (c)(1)(i).

D. Redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as paragraphs (c)(1)(iii) and (c)(1)(iv), respectively.

E. Adding a new paragraph (c)(1)(ii).

F. Amending redesignated paragraph (c)(1)(iii) by removing the reference to paragraph "(c)(1)(iii)(A)" and adding, in its place, "(c)(1)(iv)(A)".

G. Amending redesignated paragraph (c)(1)(iv)(A) by removing the reference to paragraphs "(c)(1)(i) and (ii)" and adding, in its place, "(c)(1)(i) through (iii)".

H. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraph "(c)(1)(iii)(A)" and adding, in its place, "(c)(1)(iv)(A)".

I. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraphs "(c)(1)(i) and (ii)" and adding, in its place, "(c)(1)(i) through (iii)".

J. Amending redesignated paragraph (c)(1)(iv)(C) by removing the reference to paragraph "(c)(1)(iii)(A)" and adding, in its place, "(c)(1)(iv)(A)".

K. Revising paragraph (c)(2).

L. Revising paragraph (c)(3).

M. Redesignating paragraph (c)(4) as paragraph (c)(5).

N. Adding a new paragraph (c)(4).

O. Revising redesignated paragraph (c)(5).

P. Adding new paragraphs (c)(6) through (c)(16).

Q. Revising paragraph (g)(1)(iii).

R. Revising paragraph (g)(1)(iv).

S. Revising paragraph (k)(5)(i).

T. Redesignating paragraph (k)(5)(ii) as paragraph (k)(5)(iii).

U. Adding a new paragraph (k)(5)(ii).

V. Redesignating paragraphs (r)(2) and (r)(3) as paragraphs (r)(4) and (r)(5), respectively.

W. Adding a new paragraph (r)(2).

X. Adding a new paragraph (r)(3).

Y. Revising redesignated paragraph (r)(5).

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(b) * * *

(2) To support a request for a discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan), the borrower's representative (or the parent in the case of a PLUS loan) must provide the lender with an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation supporting the discharge request.

(3) After receiving reliable information indicating that the borrower (or student) has died, the lender must suspend any collection activity against the borrower for up to 60 days and promptly request that the borrower's representative (or the student's parent in the case of a PLUS loan) provide the documentation described in paragraph (b)(2) of this section. If additional time is required to obtain the documentation, the period of suspension of collection activity may be extended up to an additional 60 days. If the lender is not able to obtain an original or certified copy of the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. The lender is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

* * * * *

(c) * * *

(1)(i) If the Secretary has made a conditional determination that the borrower is totally and permanently disabled, as defined in § 682.200(b), the loan is conditionally discharged for up to three years from the date that the disabling condition began. The Secretary suspends collection activity on the loan from the date of the conditional determination of total and permanent disability until the end of the conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the onset of the disability, as certified under § 682.402(c)(2) are returned to the sender.

(ii) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year period described in paragraph (c)(1)(i) of this section—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(B) The borrower does not receive an additional loan under the FFEL, Direct Loan or Federal Perkins Loan Programs.

* * * * *

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative—

(i) Submit, on a form approved by the Secretary, a certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 682.200(b); or

(ii) Submit documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in § 682.200(b).

(3) The lender must continue collection activities until it receives either the certification of total and permanent disability from a physician, a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled, or documentation from the Social Security Administration, as described in paragraph (c)(2)(ii) of this section. Except as provided in paragraph (c)(5) of this section, after receiving the physician's certification or letter, or the documentation from the Social Security Administration, the lender may not attempt to collect from the borrower or any endorser.

(4) The lender must submit a disability claim to the guaranty agency—

(i) If the borrower submits a certification by a physician and the lender makes a preliminary determination that the certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b); or

(ii) If the borrower submits documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in 682.200(b).

(5) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(3) of this section, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(6) The guaranty agency must pay a claim submitted by the lender if—

(i) In the case of a preliminary determination of total and permanent disability based on a physician's certification, the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b); or

(ii) In case of a preliminary determination of total and permanent disability based on a documentation from the Social Security Administration, the guaranty agency has determined that the documentation meets the requirements of § 682.402(c)(2)(ii).

(7) If the guaranty agency does not pay the disability claim, the lender must notify the borrower that the application for a disability discharge has been denied and the lender will continue to collect on the loan.

(8) If the guaranty agency pays the disability claim, the lender must notify the borrower that the loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

(9) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(10) The guaranty agency must assign the loan to the Secretary pursuant to § 682.409(c) and (d) after the Secretary pays the disability claim.

(11) If the Secretary determines that the certification and information provided by the borrower do not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(12) If the Secretary makes a preliminary determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan is conditionally discharged and that the conditional discharge period will last for up to three years after the onset of the disability as certified under § 682.402(c)(2).

(13) During the conditional discharge period, the borrower—

(i) Is not required to make any payments on the loan beginning on the date the Secretary makes the conditional determination that the borrower is totally and permanently disabled;

(ii) Is not considered delinquent or in default on the loan;

(iii) Must promptly notify the Secretary of any changes in address or phone number;

(iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(1)(ii)(A) of this section; and

(v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(14) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in § 682.402(c)(1)(ii), the balance of the loan is discharged.

(15) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (k)(12) of this section through the end of the conditional discharge period.

(16) The notification to the borrower described in paragraph (c)(12) of this section identifies the conditions of the conditional discharge period specified in paragraphs (c)(12) through (15) of this section.

* * * * *

(g) * * *

(1) * * *

(iii) In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in either paragraph (c)(2)(i) or (c)(2)(ii) of this section.

* * * * *

(k) * * *

(5) * * *

(i) For death or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) dies, or filed a petition for relief in bankruptcy until the Secretary authorizes payment;

(ii) For disability claims, the shorter of 60 days or the period from the date the guaranty agency makes a preliminary determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

* * * * *

(r) * * *

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the guaranty agency must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the agency forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(3) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender 100 percent of any payments received, directly or indirectly, from or on behalf of the borrower.

* * * * * *

(5) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (r)(1) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

9. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

10. Section 685.200 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 685.200 Borrower eligibility.

(a)(1) * * *

(iv)(A) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the borrower—

(*1*) Obtains a certification from a physician or from the Social Security Administration that the borrower is able to engage in substantial gainful activity; and

(*2*) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(B) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled—

(*1*) The suspension of collection activity on the previous loan has been lifted;

(*2*) The borrower complies with the requirement in paragraph (a)(1)(iv)(A)(*1*) of this section; and

(*3*) The borrower signs a statement acknowledging that neither the previous loan nor the Direct Loan Program loan that the borrower receives may be discharged in the future on the basis of any impairment present when the new

loan is made, unless that impairment substantially deteriorates.

* * * * *

11. Section 685.212 is amended as follows:

A. By revising paragraphs (a) and (b).

B. By revising paragraph (g)(1).

C. By redesignating paragraph (g)(2) as (g)(3).

D. By adding a new paragraph (g)(2).

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or the student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan if the borrower's representative (or the parent in the case of a Direct PLUS Loan) provides the Secretary with an original or certified copy of the borrower's (or student's) death certificate.

(2) If an original or certified copy of the death certificate is not available, the Secretary discharges the loan only if the borrower's representative (or the parent) provides the Secretary with other reliable documentation acceptable to the Secretary establishing that the borrower (or student) has died.

(b) *Total and permanent disability.* If a borrower meets the requirements in § 685.213(c), the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

* * * * *

(g) *Payments received after eligibility for discharge.* (1) *For the discharge conditions in paragraphs (a), (c), (d), and (e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, any payments received after the date that the eligibility requirements for discharge were met but before the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (b) of this section.* Upon making a final determination of eligibility for discharge based on total and permanent disability, the Secretary returns to the sender any payments received after the onset of the disability, as certified under § 685.213(b). The Secretary also returns any payments received after the date the final discharge was approved.

* * * * *

12. Section 685.214, 685.215, and 685.216 are redesignated as §§ 685.215; 685.216, and 685.220 respectively.

13. Section 685.213 is redesignated as § 685.214; a new § 685.213 is added to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) If the Secretary makes an initial determination that a borrower is totally and permanently disabled, the Secretary—

(i) Notifies the borrower that the loan will be in a conditional discharge status for up to three years from the date that the disabling condition began; and

(ii) Suspends any efforts to collect on the loan from the date of the initial determination described in paragraph (a)(1) of this section until the end of the conditional discharge period.

(2) If the borrower continues to meet the eligibility requirements for total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary—

(i) Discharges the obligation of the borrower and any endorser to make any further payments on the loan at the end of that period; and

(ii) Returns to the borrower any payments received—

(A) During the three-year conditional discharge period; or

(B) After the date a final discharge was approved under paragraph (a)(2)(i) of this section.

(3) If the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge at any time during or at the end of the three-year conditional discharge period, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (a)(1) of this section through the end of the conditional discharge period.

(4) Except as provided in paragraph (e)(1) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan, unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(b) *Conditional determination of total and permanent disability.* The Secretary makes a conditional determination that a borrower is totally and permanently disabled if the borrower (or the borrower's representative) provides the Secretary with—

(1) A certification (on a form approved by the Secretary) by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State that the borrower is totally and permanently disabled as defined in 34 CFR 682.200(b); or

(2) Documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in § 682.200(b).

(c) *Eligibility requirements for total and permanent disability discharge.* A borrower meets the eligibility requirements for total and permanent disability discharge if, during and at the end of the three-year conditional discharge period described in paragraph (a)(1) of this section—

(1) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(2) The borrower does not receive a new loan under the Direct Loan Program, the Federal Family Education Loan Program, or the Federal Perkins Loan Program.

(d) *Conditional discharge period.* During the conditional discharge period described in paragraph (a)(1) of this section, the borrower—

(1) Is not required to make any payments of principal or interest on the loan beginning on the date the Secretary makes a conditional determination that the borrower is totally and permanently disabled;

(2) Is not considered to be delinquent or in default on the loan;

(3) Must promptly notify the Secretary of any changes in the borrower's address or telephone number;

(4) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(1) of this section; and

(5) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(e) *Provisions for discharge of Direct Consolidation Loans.* (1) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under the provisions of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(2) For the purposes of discharging a loan under paragraph (e)(1) of this section, the provisions of this section apply to each loan included in the

Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(3) If requested, a borrower seeking to discharge a loan obligation under paragraph (e)(1) of this section must provide the Secretary with the disbursement dates of the underlying loans.

[FR Doc. 00–19508 Filed 8–1–00; 8:45 am]
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Federal Register

Wednesday,
August 2, 2000

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Emergency for the Summer Flounder Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000727220–0220–01; I.D. 072400A]

RIN 0648–AO32

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Emergency for the Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS amends the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations to revise the objective to be achieved by the annual specifications for the 2001 summer flounder fishery from obtaining a fishing mortality rate (F) target to obtaining a biomass (B) target and to require that, if a 2000 state summer flounder commercial quota allocation is not fully harvested, the underage be added to that state's 2001 allocation. The intent of this action is to comply with a decision issued on April 25, 2000, by the United States Court of Appeals for the District of Columbia Circuit (Court) and to protect the summer flounder stock from overfishing.

DATES: This emergency interim rule is effective from August 2, 2000, through January 29, 2001. Comments must be received no later than 5 p.m. EDT September 1, 2000.

ADDRESSES: Copies of the Regulatory Impact Review are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Written comments on this emergency interim rule should be sent to Patricia A. Kurkul at the same address. Comments may also be sent via facsimile (fax) to (978)281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, phone (978)281–9221; fax (978)281–9135; e-mail regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder fishery is managed jointly by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The summer flounder stock is currently overfished. The regulations implementing the FMP, at § 648.100, outline the process for specifying annually the catch limits for the commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, season, and area restrictions) intended to achieve the annual F target set forth in the FMP.

On April 25, 2000, the Court issued an opinion on a challenge to the 1999 summer flounder specifications brought by a number of environmental groups. The Court remanded the 1999 summer flounder total quota (as specified by commercial and recreational harvest limits) to NMFS "for further proceedings consistent with [the] opinion." The opinion found that (1) priority must be given to conservation measures, and, only when two different plans achieve similar conservation goals, may the agency consider adverse economic consequences, (2) management measures must provide at least a 50–percent probability of achieving the target reference point, and (3) reliance on conservation measures without quantified benefits is not acceptable to supplement an insufficient quota recommendation. The 1999 total quota, when adopted, relied on unquantified factors that were found insufficient by the Court to supplement the quantified 18–percent likelihood of meeting the conservation goals of the FMP.

In setting the 2000 total quota, unquantified factors were also relied upon to supplement the 25–percent quantified likelihood of not exceeding the conservation goal. NMFS published final specifications for the 2000 summer flounder fishery on May 24, 2000 (65 FR 33486). In that final rule, NMFS stated that it intended to revise the 2000 summer flounder total quota by August 1, 2000, to set it at a level with at least a 50–percent probability of not exceeding the F target as required by the Court's decision.

After reviewing the best available information on the status of the summer flounder stock, and to comply with the Court's decision, NMFS is taking, through this emergency interim rule, an action that differs from that anticipated in the May 24, 2000, final rule. This action establishes a clearer standard to be met in setting the 2001 summer flounder specifications. Specifically, NMFS is establishing a requirement that the 2001 total quota be set at a level that will achieve, with at least a 50–percent probability, the biomass level that would have been achieved at the end of 2001 if the F target had been met in 1999 and 2000 and would have been met in 2001, provided that the resultant F does not exceed the F that results in maximum yield per recruit (F_{max}). This requirement will compensate for the failure of the specifications to achieve the FMP's F target in 1999 and, based on preliminary analysis, in 2000 and put the rebuilding program for summer flounder back on schedule.

The results of an updated assessment of the summer flounder stock peer reviewed in June 2000 will be available in August. The new assessment will provide the best available scientific data on the summer flounder stock, including updated estimates of F and stock biomass. The new assessment will be used to make the necessary projections for the 2001 specifications.

The fishing year for summer flounder began January 1, 2000. Many states have already harvested a significant portion of their commercial allocation, and approximately 75 percent of the coastwide recreational fishery will be concluded by the end of August. It would, thus, be impracticable, if not impossible, for all of the affected states to implement needed management measures to respond to a mid-year adjustment in 2000. In many cases, states' commercial fisheries would immediately close as a result of such an inseason change, thus increasing summer flounder discards. However, this action does contain a measure that will encourage efforts by the states to reduce the commercial harvest for the remainder of this year. This measure is a provision to credit the underharvest of the 2000 commercial quota by individual states. Underages for a state in 2000 would be applied to that state's 2001 allocation and may, thus, reduce the impacts on the commercial sector in those states in that year. However, as noted in the final specifications, adjustments to the 2000 specifications for overages in the 1999 allocation of quota published in that rule were preliminary and subject to change. NMFS will adjust for any additional overages that are identified as those data become final. NMFS will publish those adjustments in the *Federal Register* as required by the FMP.

A similar overage and underage mechanism is not being established for the recreational fishery. Although data collected by the Marine Recreational Fisheries Statistics Survey are used to

estimate the annual recreational harvest of summer flounder, the use of those data to make deductions from the recreational harvest limit for the following year may result in annual quota changes reflective of inter-annual variability in the survey results rather than in actual landings.

Preliminary analyses based on the new stock assessment indicate at this time that the B quota would be 67,500 mt. A total quota with a 50–percent probability of achieving that target at the end of 2001 would be approximately 17.91 million lb (8,125 mt); the total quota with a 60–percent probability would be approximately 17.37 million lb (7,881 mt); and the total quota with a 75–percent probability would be approximately 16.57 million lb (7,515 mt). In the annual specification process for the 2001 fishing year, the Council will use the final assessment results to estimate what the biomass level would have been, had the F targets in 1999 and 2000 been achieved. The total summer flounder quota for 2001 will be set at a level that is expected to result in that biomass at the end of 2001. The total quota selected must have at least a 50–percent probability of achieving the required B target. The total quota will be allocated 60 percent to the commercial sector and 40 percent to the recreational sector, as currently specified in the FMP. Landings in excess of a state's commercial allocation will be deducted from that state's allocation in 2001.

In addition, this rule establishes a new provision that requires any the underharvest of an individual state's commercial quota in 2000 to be applied to the final specifications for 2001 for that state. The overage and underage adjustments will be made when final 2000 landings have been enumerated.

Classification

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

Providing prior notice and opportunity for comment would be contrary to the public interest because the framework established by this rule must be in place before the August meetings of the technical Monitoring Committee and Council so that the Committee and Council may recommend specifications for the 2001 fisheries that address the Court decision and are timely. Delay in instituting the framework would translate into a delay in setting the 2001 specifications and into a delay in addressing the Court decision in an equitable manner for the different states involved. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for comment.

Also, providing a 30-day delay in the effective date of this rule is unnecessary, because this rule merely establishes a framework designed to guide the Committee and Council in the specification process for the 2001 fishery and does not impose requirements on members of the public with which they have to comply. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) not to delay for 30 days the effective date of this rule.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule.

This emergency rule is exempt from the analytical requirements of the Regulatory Flexibility Act because prior notice and comment is not required by 5 U.S.C. 553 or any other law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.100, paragraphs (a) through (e) are suspended, and paragraphs (f) through (j) are added to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(f) *Annual review for the 2001 measures.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15, 2000, to determine the biomass level that would have resulted in 2001 (B_{2001}), assuming the target fishing mortality rate (F) been achieved in 1999 and 2000 and would be achieved in 2001, provided that the resultant F does not exceed F_{max}. The Summer Flounder Monitoring Committee shall also review the following data to determine the allowable levels of fishing and other restrictions necessary in 2001 to accomplish, with at least a 50–percent probability of success, the specified B_{2001} by the end of 2001: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(g) *Recommended measures for 2001.* Based on the review outlined in paragraph (f) of this section, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to assure that the B_{2001} is achieved with at least a 50–percent probability of success:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified B_{2001}.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified B_{2001}.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls.

(8) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (f) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(h) *Annual fishing measures for 2001.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the

environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the **Federal Register** by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement the measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved.

(i) *Distribution of the annual quota for 2001.* (1) The annual commercial quota for 2001 will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68296
Connecticut	2.25706
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year. If landings in any state implementing a commercial quota for the year 2000 are less than that state's allocation, the amount of the unharvested quota (i.e., quota underage), will be added to that state's 2001 allocation of commercial quota.

(j) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. If there is a quota underage among one or more of the states involved in the combination of quotas at the end of the 2000 fishing year, the underage will be added to the 2001 quota for each of the states involved in the combined quota. The addition will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (i) of this section.

3. In § 648.101, paragraph (a) is suspended and paragraph (c) is added to read as follows:

§ 648.101 Closures.

* * * * *

(c) *EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if he/she determines that the inaction of one or more states will cause the biomass target (B_{2001}) identified in § 648.100(f) not to be achieved or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state or if commercial fisheries in one or more states have been reopened without causing B_{2001} not to be achieved.

4. In § 648.104, the last sentence of paragraph (c) is suspended and paragraph (g) is added to read as follows:

§ 648.104 Gear restrictions.

* * * * *

(g) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (g), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh

configuration on the top of the regulated portion of the net, as defined in paragraph (e) of this section, if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 648.104(a).

5. In § 648.107, paragraphs (a) and (b) are suspended and paragraphs (c) and (d) are added to read as follows:

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

* * * * *

(c) Through September 5, 2000, states may implement on an annual basis conservation equivalent measures that reduce the recreational catch to the same extent as the annual Federal summer flounder measures specified under § 648.100(h) to achieve the recreational harvest limit in any year. These measures would be a different combination of minimum fish sizes, possession limits, and closed seasons that are the conservation equivalent of those Federal summer flounder measures specified on an annual basis.

(d) A determination of equivalency would be made annually for any state proposing alternative recreational measures by the Summer Flounder Technical Committee of the Commission. Conservation equivalent measures may be implemented by any state without a determination of equivalency by the Summer Flounder Technical Committee review, but only if states use the state-specific tables provided by the Commission and maintain a 15-inch (38-cm) or greater minimum fish size.

(1) Once a state receives a determination of equivalency from the Summer Flounder Technical Committee or a state implements conservation equivalent measures contained in the state-specific table provided by the Commission, the Commission will recommend to the Regional Administrator that a notification be published in the **Federal Register** to waive the annual Federal summer flounder measures specified under § 648.100(h) and to notify vessel permit holders of the equivalent measures approved by the Summer Flounder Technical Committee for landing summer flounder in that state.

(2) States electing not to implement conservation equivalent measures or states that did not receive a determination of equivalency from the Summer Flounder Technical Committee and not implementing conservation equivalent measures contained in the state-specific table provided by the Commission would be required to implement the annual Federal summer flounder measures specified under § 648.100(h) in accordance with the provisions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

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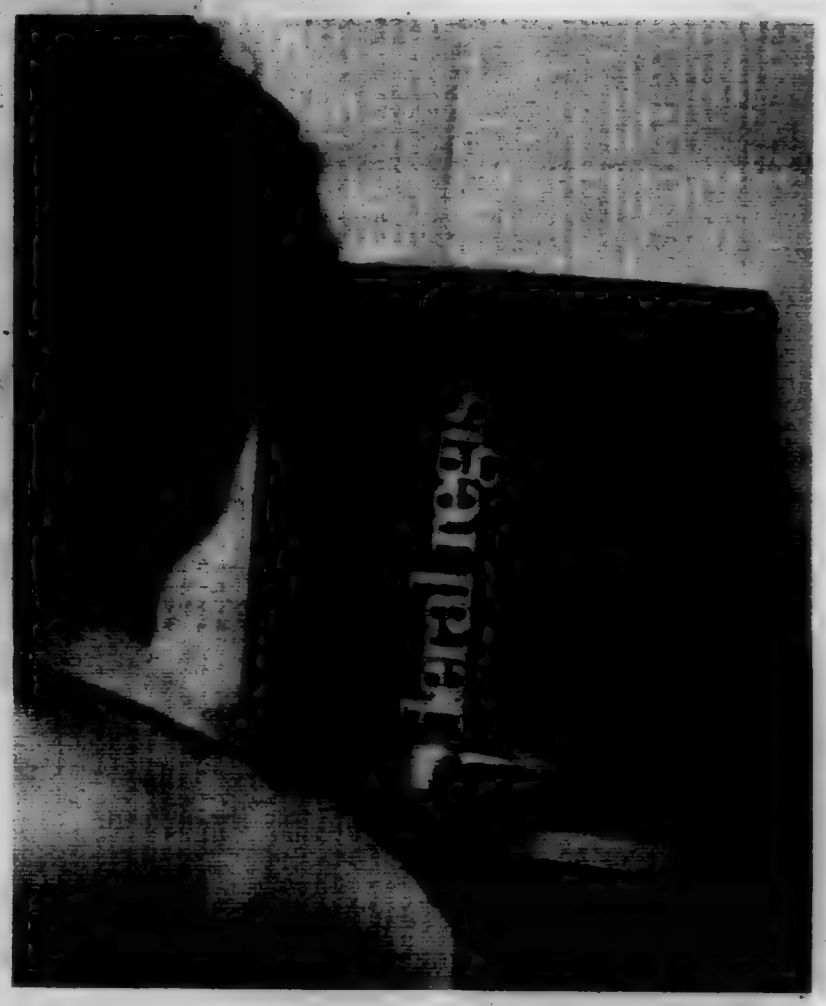

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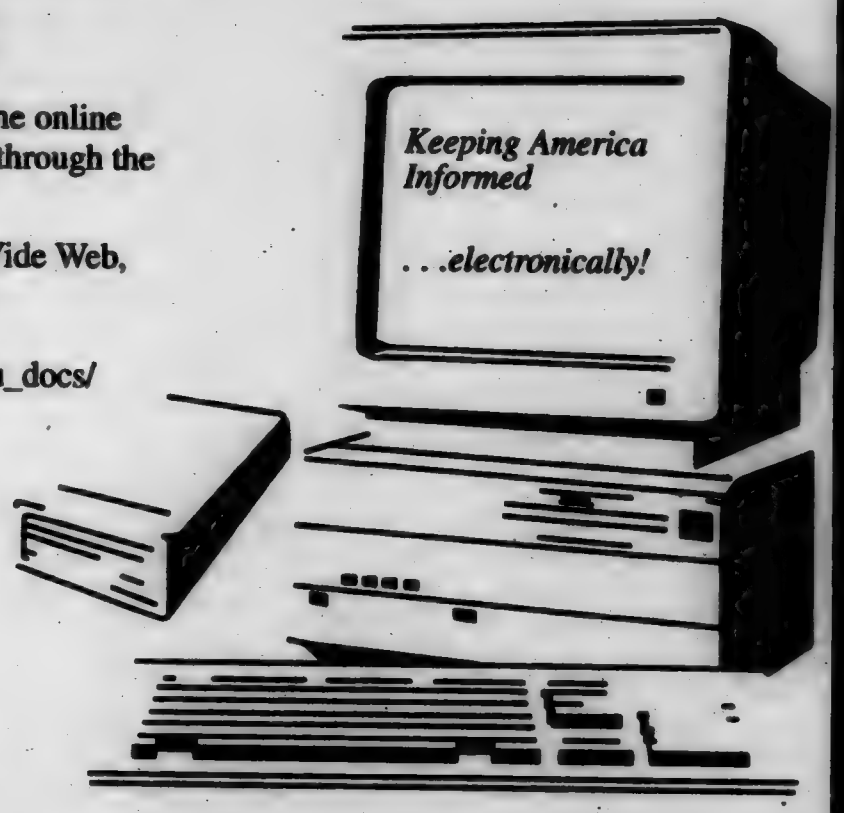

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Rules and Regulations

Federal Register
Vol. 65, No. 150
Thursday, August 3, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 99–052–1]

Brucellosis in Cattle; State and Area Classifications; Louisiana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class A to Class Free. We have determined that Louisiana meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Louisiana.

DATES: This interim rule was effective July 27, 2000. We invite you to comment on this docket. We will consider all comments that we receive by October 2, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–052–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–052–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactor cases found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Louisiana was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Louisiana, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Louisiana from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Louisiana.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Louisiana.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The

document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Louisiana from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Louisiana, as well as buyers and importers of cattle from this State.

There are an estimated 15,500 cattle herds in Louisiana that will be affected by this rule. About 98 percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

Therefore, we believe that changing the brucellosis status of Louisiana will not have a significant economic effect on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 is revised to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7CFR 2.22, 2.80, and 371.4.

§ 78.41 [Amended]

2. Section 78.41 is amended as follows:

a. In paragraph (a), by adding "Louisiana," in alphabetical order.

b. In paragraph (b), by removing "Louisiana,".

Done in Washington, DC, this 27th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–19608 Filed 8–2–00; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR CH. I

Medical Use of Byproduct Material; Policy Statement, Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement; revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its 1979 policy statement on the medical use of byproduct material. These revisions are one component of the Commission's overall program for revising its regulatory framework for medical use, including its regulations that govern the medical use of byproduct material. The overall goals of this program are to focus NRC regulation of medical use on those medical procedures that pose the highest risk and to structure its regulations to be risk-informed and more performance-based, consistent with NRC's "Strategic Plan for Fiscal Year 1997-Fiscal Year 2002." The policy informs NRC licensees, other Federal and State agencies, and the public of the Commission's general intentions in regulating the medical use of byproduct material.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5795, E-Mail: *tfy@nrc.gov* or Marjorie U. Rothschild, Office of the General Counsel, Nuclear Regulatory Commission, Washington, DC, 20555–0001, telephone (301) 415–1633, E-Mail: *mur@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1979, the NRC published a policy statement, "Regulation of the Medical Uses of Radioisotopes," (44 FR 8242, February 9, 1979) in which it informed NRC licensees, other Federal and State agencies, and the public of the Commission's general intention in regulating the medical use of byproduct material. Specifically,

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

NRC activities in the medical area, such as promulgation of regulations and development of regulatory guidance, as well as cooperative relationships with other Federal agencies, have been guided by this policy.

On August 6, 1997 (62 FR 42219–42220), NRC published a document in the **Federal Register**, "Medical Use of Byproduct Material: Issues and Request for Public Input," describing NRC's detailed, four-year examination of the issues surrounding its medical use program. This process started with a 1993 internal senior management review; continued with a 1996 independent external review by the National Academy of Sciences' (NAS) Institute of Medicine (IOM); and culminated in NRC's Strategic

Assessment and Rebaselining Project (SA). Since that **Federal Register** document was issued, NRC conducted an exhaustive and public review of the medical use program. Specifically, in 1997 and 1998, NRC's current and future role in regulating the medical use of byproduct material was discussed at meetings of the Advisory Committee on Medical Uses of Radioisotopes [1] (ACMUI) and the Organization of Agreement States (OAS), and with various professional societies and government agencies. During this period, the NRC staff also presented four alternative proposed revised versions of the 1979 Medical Policy Statement (MPS) to participants at NRC sponsored workshops and public meetings. These workshops and public meetings also included discussions on the major areas that were being considered for revision in 10 CFR Part 35, "Medical Use of Byproduct Material."

On August 13, 1998 (63 FR 43580), a proposed revision to the MPS was published in the **Federal Register** for a 90 day public comment period. This comment period was later extended 30 days, to December 16, 1998, (63 FR 64829; November 23, 1998) to allow additional time for public, stakeholder, and State comments. In addition, to allow for wide participation in the process, NRC discussed the proposed revision of the MPS with interested individuals and organizations at 3 public meetings during the comment period (San Francisco, California, on August 19 and 20, 1998; Kansas City, Missouri, on September 16 and 17, 1998; and Rockville, Maryland, on October 21 and 22, 1998).

NRC received 42 specific comments on the proposed MPS from various organizations and individuals. These comments were extracted from the transcripts of the 3 public meetings and the 10 written comment letters submitted in response to the **Federal Register** document. Additional details about the comments are provided in Section IV, "Discussion of Public Comments." These comments were similar to the comments that were discussed in the August 13, 1998 (63 FR 43582–43583), **Federal Register**. Based on NRC's consideration of all the comments, no changes to the proposed MPS are being made. (See the final statements that appear in Section II, below.)

[1] The ACMUI advises the Commission on regulating and licensing uses of radionuclides in medicine.

II. Statement of General Policy

This NRC policy statement informs NRC licensees, other Federal and State agencies, and the public of the Commission's general intentions regarding the regulation of the medical use of byproduct material. The current revision of 10 CFR part 35 is based on this statement of NRC policy. The Commission expects that future NRC rulemaking activities in the medical area and future NRC involvement with other Federal and State agencies will follow this statement of policy. This NRC policy promotes a more risk-informed approach to regulation of byproduct material.

The following is the final Medical Use Policy Statement to guide NRC's future regulation of the medical use of byproduct material.

1. NRC will continue to regulate the uses of radionuclides in medicine as necessary to provide for the radiation safety of workers and the general public.

2. NRC will not intrude into medical judgments affecting patients, except as necessary to provide for the radiation safety of workers and the general public.

3. NRC will, when justified by the risk to patients, regulate the radiation safety of patients primarily to assure the use of radionuclides is in accordance with the physician's directions.

4. NRC, in developing a specific regulatory approach, will consider industry and professional standards that define acceptable approaches of achieving radiation safety.

III. Rationale

NRC's principal statutory authority for regulating medical use of byproduct material is at sections 81, 161, 182, and 183 of the Atomic Energy Act of 1954, as amended (AEA). *See* 42 U.S.C. 2111, 2201, 2232, and 2233. Section 81 of the Act prohibits, without NRC authorization, the manufacture, production, transfer, receipt in interstate commerce, acquisition, ownership, possession, import, and export of byproduct material (42 U.S.C. 2111). Specifically, section 81 of the AEA provides in pertinent part that:

> The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards *to protect health* as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. *Id.* (emphasis added).

By virtue of section 161 of the Act, the Commission is authorized to undertake a variety of measures "(in) the performance of its functions" (42 U.S.C. 2201). As stated in subsection b, the Commission may "establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable * * * *to protect health or to minimize danger to life* or property" (42 U.S.C. 2201(b) (emphasis added)). Similarly, section 161.i. authorizes the Commission to "prescribe such regulations or orders as it may deem necessary" to "(3) govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activities, in order *to protect health and minimize danger to life* or property" (42 U.S.C. 2201(i) (emphasis added)).

The Commission is bound by statute to regulate byproduct material (as well as source and special nuclear material) to "protect health and minimize danger to life." This statutory standard applies to the myriad of uses of byproduct material, including not only medical use, but also, for example, radiography and irradiators. However, the Commission is not bound by the limitation in section 104.a. of the AEA, which is often mistakenly cited for the proposition that, in regulating the medical use of byproduct material, the AEA requires that the Commission "impose the minimum amount of regulation consistent with its obligations under this Act to promote the common defense and security and to protect health and safety of the public" (42 U.S.C. 2134(a)). This "minimum regulation" limitation does not apply to the medical use of byproduct material which falls within NRC's broad standard-setting authority in sections 81 and 161. Section 104.a., on its face, applies only to medical therapy licenses for "utilization facilities" (e.g., reactors) and "special nuclear material." This "minimum regulation" directive does not govern the Commission's regulation of the medical use of byproduct material.

For the most part, the regulations to carry out the broad statutory scheme for byproduct materials are set forth in 10 CFR parts 30 through 39. In addition, the public and occupational dose limits in 10 CFR Part 20, "Standards for Protection Against Radiation," apply whether the use of byproduct material is for medical or other purposes. However, the scope of Part 20 as stated in

§ 20.1002 is that, "[t]he limits in this part do not apply to doses due * * * to any medical administration the individual has received or due to voluntary participation in medical research programs." The Commission has clarified that "the medical administration of radiation or radioactive materials to any individual, even an individual not supposed to receive a medical administration, is regulated by the NRC's provisions governing the medical use of byproduct material rather than by the dose limits in the NRC's regulations concerning standards for protection against radiation" ("Medical Administration of Radiation and Radioactive Materials," 60 FR 48623; September 20, 1995). Thus, the Commission believes that "an administration to any individual is and should be subject to the regulations in part 35" (60 FR 48623).

The provisions of part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material" "are in addition to * * * other requirements in this chapter" (§ 30.2). This section requires that "any conflict between the general requirements in part 30 and the specific requirements in another part" are governed by those specific requirements (§ 30.2). The regulations in part 35 are designed "to provide for the protection of the public health and safety" and reflect the broad statutory standard in the AEA, discussed above (§ 35.1). The Commission has determined that, as a matter of policy, "the patient * * * as well as the general public * * * are all members of the public to be protected by NRC" (44 FR 8242, at 8244).

IV. Discussion of Public Comments

As previously noted, NRC received 42 comments on the proposed revision to the MPS, taken from 10 letters that were submitted and from the transcripts of the 3 public meetings. NRC received verbal comments on the proposed MPS (63 FR 43580; August 13, 1998) from stakeholders (e.g., physicians, medical physicists, nuclear medicine technologists, and radiation safety professionals) during the public meetings that were held in August, September, and October 1998. Stakeholders also submitted written comments to NRC in response to that **Federal Register** document.

NRC has reviewed all comments, identified the issues raised by the commenters, and combined comments where appropriate. The following discussion includes these issues, the combined comments, and the NRC responses to these combined comments.

General Comments

Issue 1: Absent Harm, What Is the Purpose of NRC Regulation?

Comment. A commenter stated that only physicians can determine what is unnecessary radiation exposure to patients. This commenter cited the "Rationale" portion of the August 13, 1998 (63 FR 43584) document about the responsibility of NRC to regulate actual medical use of byproduct material from the standpoint of reducing unnecessary radiation exposures. According to the commenter, "If the patient exposure is unnecessary and harm is done, then the physician may be guilty of malpractice (monetary awards, civil penalties, possible loss of medical license, etc.). NRC regulations won't prevent malpractice and NRC penalties are the least of the guilty physician's worries. If the patient exposure is unnecessary but no harm is done, then the physician may be still guilty of fraud (billing for unnecessary procedures). But if no harm is done, what is the purpose of NRC regulation?"

Response. The purpose of NRC regulation of the medical use of byproduct material is to reduce unnecessary radiation exposure to patients, workers, and the public. Protection of patient radiation safety is an overall goal in regulating the medical use of byproduct material. The focus of NRC regulation to protect the patient's health and safety is primarily to ensure that the authorized user physician's directions are followed as they pertain to the administration of the radiation or radionuclide, rather than to other, non-radiation related aspects of the administration. Although the Commission recognizes that physicians have primary responsibility for the protection of their patients, NRC also has a necessary role with respect to the radiation safety of patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interests of their patients. Moreover, there is nothing in the Commission's regulatory approach to medical use regulation that would in any way modify the legal rules governing malpractice suits arising out of the medical use of byproduct material.

Issue 2: Should the MPS Be Revised More Frequently?

Comment. A commenter noted that the proposed revision is an improvement over the 1979 MPS; however, the commenter recommended that the NRC review the MPS more frequently (e.g., every 10 years).

Response. How often the Commission reviews and/or revises the MPS depends on a variety of factors. These factors may be internal, such as the need for a change in the focus of NRC's regulations, or external, such as technological developments. NRC believes that a set interval to review the MPS would not provide the flexibility needed to respond to the many factors which may influence a decision to revise this policy. For example, this revision of the MPS coincides with the NRC's detailed examination of its medical use program which started in 1993 and includes issuance of the Commission's 1997 Strategic Plan (NUREG–1614, Vol. 1).

Issue 3: Is the MPS Being Revised To Justify the New Part 35?

Comment. Several commenters noted that the current MPS was adequate for effective regulation in safeguarding public health and safety in radiation protection and should not be revised, but simply understood and implemented as originally intended. Several other opinions were stated more strongly. Specifically, one commenter stated that NRC has never paid meaningful attention to the MPS because most existing provisions of Part 35 do not "pass muster" under the MPS, particularly as they apply to physicians conducting nuclear medicine procedures. Another commenter's opinion was that the proposed MPS was a step backward and the MPS is being revised to justify the proposed rule.

Response. The Commission agrees that the 1979 MPS was adequate. However, based on the Commission's recent review of its regulatory framework for medical use of byproduct material, these revisions are being made to emphasize a risk-informed regulatory approach. The Commission strongly disagrees with the commenters' opinions that the medical use regulations in part 35 were promulgated without considering the 1979 MPS. In point of fact, all part 35 rulemaking activities have been issued after ensuring compatibility with the 1979 MPS.

After the Commission initiated the review process in 1993, the policy and the rule were revised in parallel in order to achieve a consistent regulatory framework for medical use of byproduct material. As stated before in response to other comments and explanations of the background for this matter, the Commission's Strategic Assessment in 1997 included a decision to consider developing a more risk-informed, performance-based approach. In the process, the three-part 1979 MPS was

revised into a four-part MPS with re-arranged statements to clarify NRC's policy.

The revised MPS was published for public comment in the **Federal Register** (63 FR 43580–43586; August 13, 1998) and was discussed at meetings with stakeholders and Agreement States. Discussions with stakeholders were meaningful and beneficial, and addressed substantive issues from the medical community (e.g., patient safety, perceived NRC intrusion into the practice of medicine, and regulatory relief for diagnostic nuclear medicine). No new issues were identified during the public comment period and NRC has not revised the MPS any further.

Issue 4: Should NRC Regulation of the Medical Use of Byproduct Material Be Based on Section 104 of the Atomic Energy Act?

Comment. A commenter disagreed with NRC's interpretation that section 104 of the AEA applies only to special nuclear material. In the commenter's opinion, NRC's medical use regulations should be based on section 104 of the AEA.

Response. NRC's principal authority for regulating medical use of byproduct material is at Sections 81, 161, 182, and 183 of the AEA. As previously discussed under Section III, "Rationale", NRC regulation of byproduct material is not bound by the limitation in section 104.a. of the AEA, that refers to minimal regulation of reactor facilities or special nuclear material used for medical therapy.

Comments on Statements 1, 2, 3, and 4 of the MPS

Statement 1: NRC will continue to regulate the uses of radionuclides in medicine as necessary to provide for the radiation safety of workers and the general public.

Issue 1: Should the MPS Refer to "Radionuclides" or to "Byproduct Materials?"

Comment. Several commenters noted that Statement 1 made reference to uses of radionuclides in medicine. They indicated that NRC only has the statutory authority to regulate byproduct material.

Response. The Commission believes that the general term "radionuclide" is appropriate for a general statement of policy such as the MPS. The latter is intended to inform the public, NRC licensees, and other Federal and State agencies of the Commission's general intentions regarding the regulation of medical use. The 1979 MPS referred to "medical uses of radioisotopes" and the term is now being changed to "uses of radionuclides in medicine" (see 63 FR 43584; August 13, 1998). As rephrased, the term "radionuclide" is a more accurate technical statement of the scope of NRC regulation in this area.

Issue 2: Is Statement 1 Needed if Individuals Handling Radioactive Material Are Properly Trained?

Comment. According to one commenter, the goal of this statement is adequately served by assuring qualification of professionals involved in nuclear medicine. In the commenter's opinion, NRC has no evidence that these individuals do not already adequately provide for the radiation safety of workers and the public, and nuclear medicine is of low risk to workers and members of the public.

Response. The Commission agrees that one way of meeting the goal is to ensure that individuals are adequately trained in radiation safety practices and are placed in key positions within a licensee's organization to maintain radiation exposures as low as are reasonably achievable. Statement 1 sets forth this position. As previously stated, the Commission is bound by statute to regulate byproduct material (and source and special nuclear materials) to "protect health and minimize danger to life." Statement 1 of the MPS continues to provide a regulatory approach to maintain an adequate level of safety. The Commission expects all medical licensees to provide radiation safety for workers and the general public.

Statement 2: NRC will not intrude into medical judgments affecting patients, except as necessary to provide for the radiation safety of workers and the general public.

Issue 1: Does This Statement Provide Justification for NRC To Interfere in the Treatment of Patients?

Comment. One commenter was concerned that Statement 2 continues to justify NRC interference in the treatment of patients. According to the comment, there is no supporting data that clearly demonstrates that unsealed byproduct material, when used by qualified authorized users to treat patients, has harmed workers or the public.

Response. Statement 2 does not provide justification for NRC to "interfere" in the medical treatment of patients. The modifications to this statement express the Commission's policy not to intrude (rather than "minimizing" intrusion as set forth in the 1979 MPS) into judgments affecting patients except to provide for the radiation safety of workers and the general public. Providing for the radiation safety of the public and workers is essential for the Commission to carry out its statutory mandate. When this protection involves a degree of regulation of medical judgments affecting patients, the NRC may find it necessary to intrude, to a certain extent, into medical judgments affecting patients.

For example, the release from a hospital of a patient to whom radioactive materials have been administered has long been considered a matter of regulatory concern to protect members of the public, not just a matter of medical judgment ("Criteria for the Release of Individuals Administered Radioactive Material," 62 FR 4120; January 29, 1997). From a medical point of view, it may be appropriate for a physician to release from a hospital a patient to whom radioactive materials have been administered. However, the patient release criteria in NRC regulations may require hospital confinement of that patient if his or her release could result in a dose to other individuals that exceeds the dose-based limit stated in 10 CFR 35.75(a).

In recent years, the Commission has moved away from a more rigid scheme of medical use regulation, which at one time, for example, restricted the uses of therapeutic and certain diagnostic radioactive drugs to the indicated procedures that had been approved by the FDA (44 FR 8242; February 9, 1979). Commission regulations no longer prohibit authorized user physicians from using diagnostic or therapeutic radioactive drugs containing byproduct material for indications or methods of administration that are not listed in the FDA-approved package insert. In addition, Commission regulations now permit medical use licensees and commercial nuclear pharmacies to depart from the manufacturer's instructions for preparing radioactive drugs using radionuclide generators and reagent kits. The recent amendment of 10 CFR 35.75, cited above, substitutes a dose-based limit for patient release (rather than an activity-based limit) that may provide medical use licensees greater flexibility in determining when patients may be released from their control.

Finally, Statement 2 of the MPS is consistent with recent Federal legislation (specifically applicable to FDA), which is to be construed so as not to "limit or interfere with the authority of a health care practitioner to prescribe or administer any legally marketed device to a patient for any condition or disease within a legitimate health care practitioner-patient relationship." (There are certain exceptions to this

mandate, which do not change any existing prohibition on the promotion of unapproved uses of legally marketed devices.) "Food and Drug Administration Modernization Act of 1997," Public Law 105–115, sec. 906, 111 Stat. 2296 (1997).

Issue 2: Is the NRC the Appropriate Body To Be Involved in Medical Judgments Affecting Patients?

Comment. According to one commenter, the NRC is not the right body to intrude into medical judgments affecting patients because NRC's experience in this area is extremely limited.

Response. As discussed above and noted in Statement 2, the Commission's policy is not to intrude into medical judgments affecting patients, except as necessary to provide for the radiation safety of workers and the general public.

This comment does not account for the principle that "[t]he substantive area in which an agency is deemed to be expert is determined by statute." *Massachusetts* v. *United States*, 856 F.2d 378, 382 (1st Cir. 1988). See also, *Commonwealth of Massachusetts* v. *NRC*, 924 F.2d 311, 324 (D.C. Cir.), cert. denied, 112 S. Ct. 275 (1991). The AEA commits to the NRC the duty of regulating the use of radioactive byproduct materials, including radiopharmaceuticals, to protect public health and safety.

Issue 3: Should This Statement Include Reference To Providing for the Radiation Safety of Workers and the General Public?

Comment. Several commenters requested that Statement 2 be revised to read, as follows, "NRC will not intrude into medical judgments." They believed that the last phrase, "* * * except as necessary to provide for the radiation safety of workers and the general public," should be deleted.

Response. The Commission does not agree that this statement should be revised as indicated by the commenters because providing for the radiation safety of the public and workers is essential for the Commission to carry out its statutory mandate. The final MPS explicitly states that the Commission's intention is not to intrude into medical judgments affecting patients except to provide for the radiation safety of workers and the general public. When this protection necessitates a degree of regulation of medical judgments affecting patients, the NRC may find it necessary, as previously explained, to intrude, to a certain extent, into medical judgments to protect the public and workers.

Statement 3: NRC will, when justified by the risk to patients, regulate the radiation safety of patients primarily to assure the use of radionuclides is in accordance with the physician's directions.

Issue 1: Does This Statement Conflict With Statement 2?

Comment. One commenter believed that, as written, Statement 3 conflicted with Statement 2, unless the word "primarily" was deleted from Statement 3. Without this change, the commenter believed NRC would intrude into medical judgments affecting patients.

Response. The Commission does not agree that, as written, Statement 3 conflicts with Statement 2. Statement 3 makes clear that the focus of NRC regulation to protect the patient's health and safety is primarily to ensure that the authorized user physician's directions are followed. Statement 2 emphasizes the intent of NRC to avoid intrusion into medical judgments affecting patients, except where necessary to provide for the radiation safety of workers and the public. NRC's goal in this aspect of medical use regulation is focused on the physician's directions as they pertain to the administration of radiation or a radionuclide, rather than to other, non-radiation-related aspects of the administration. Consistent with its statutory authority, if a situation should arise in the future that identifies an additional risk to a patient's health and safety, the Commission will consider adopting an additional limitation or control on a particular radiation or radionuclide modality, as necessary.

Issue 2: Does the Commission Have Any Useful Role in Assuring the Accurate Delivery of Byproduct Material to Patients? Should References to Patient Radiation Safety Be Deleted?

Comment. Several commenters indicated that NRC has no useful role in assuring the accurate delivery of byproduct material to patients. They believe that all references to patient radiation safety should be removed, and that NRC should simply state that it will make regulatory efforts to ensure the physician's orders are followed.

Response. The Commission has a role in assuring accurate delivery of radiation doses and dosages to patients and has rejected the notion that NRC should not regulate patient radiation safety (44 FR 8243, February 9, 1979). NRC will continue to regulate the radiation safety of patients when justified by the risk to patients, primarily to ensure that the authorized user physician's directions are followed. The Commission recognizes that physicians have primary responsibility for the protection of their patients. However, NRC's role is also necessary to ensure radiation safety of patients.

Issue 3: Does NRC Regulation of the Medical Use of Byproduct Material Duplicate FDA Regulation?

Comment. One commenter noted that any attempt by NRC to regulate the radiation safety of patients would duplicate the efforts of the FDA and state boards of pharmacy and medicine and, as such, would be an unwarranted intrusion into the practice of medicine.

Response. The Commission disagrees with this comment. NRC is responsible for regulating the actual medical use of byproduct material from the standpoint of reducing unnecessary radiation exposures to the public, patients, and occupational workers. In general, the FDA is responsible for assuring the safety, effectiveness, and proper labeling of medical products (i.e., drugs, devices, and biologics). NRC routinely relies on prior FDA approval of medical devices as an essential component of NRC's sealed source and device safety evaluations. In a "Memorandum of Understanding" (MOU), effective August 26, 1993, NRC and FDA coordinated existing NRC and FDA regulatory programs for these devices, drugs, and products (58 FR 47300, September 8, 1993).

NRC regulation of the medical use of byproduct material does not duplicate licensing by State boards of pharmacy and medicine of pharmacists and physicians, respectively, to practice pharmacy or medicine within their borders. NRC regulations rely on the licensure of these professionals by a State (or Territory of the U.S., the District of Columbia, or Puerto Rico) to practice their respective professions as a prerequisite to NRC authorizing them to use byproduct material in pharmacy or medicine.

Issue 4: Should NRC Regulation Be Risk-Based and, If So, Should NRC Share Such an Approach With the Medical Community?

Comment. A commenter insisted that NRC regulation should be "risk-based" (i.e., justified by risk analysis), and if NRC adopts such an approach, the risk analysis should be shared with the medical community.

Response. The Commission believes the regulations for use of byproduct material in medicine should be "risk-informed" rather than "risk-based." In March 1997, the Commission directed the revision and restructuring of part 35 into a risk-informed and, where appropriate, more performance-based

regulation. The Commission is attempting to make its medical use regulatory framework more "risk-informed" and agreeable with its regulatory strategy of regulating "material uses consistent with the level of risk involved, by decreasing oversight of those materials that pose the lowest radiological risk to the public and continuing emphasis on high-risk activities.[2]" In addition, this portion of the MPS reflects the Commission's strategy of identifying those regulations and processes that are now or can be made risk-informed.[3]

The Commission's efforts to make the regulations more risk-informed are evidenced in its recent actions to revise part 35. Before initiating the rulemaking and the associated revision of the MPS, the Commission thoroughly reviewed several extensive assessments, as previously noted. In developing the overall revision of part 35 and the MPS, the Commission considered information on risk provided by members of the public and professional societies, professional medical standards of practice, and event databases maintained by NRC to determine where oversight of lower-risk activities could be decreased. The Commission also examined whether continuation, or even broadening, of the regulations governing higher-risk activities was needed. In addition, throughout the development of the proposed rule and associated MPS, NRC held public workshops with early opportunities for comment from potentially affected parties. These interactions included significant discussions on the risk associated with medical uses of byproduct material.

Although a formal risk assessment was not performed, the Commission believes that the risks associated with use of byproduct material in medicine have been adequately evaluated and considered. Based on these considerations, the revised regulatory approach is more risk-informed and more performance-based and significantly reduces regulatory burden in many areas. The Commission has retained prescriptive regulatory requirements (e.g., in part 35) only where it believes they are necessary to ensure adequate protection of workers, patients, and the public. However, there is nothing in the NRC's regulations that prohibits the medical community or other stakeholders from conducting an independent formal risk assessment of the medical use of byproduct material and forwarding its analysis and recommendations for Commission consideration.

Issue 5: Should NRC Be Involved With Prescriptions for the Medical Use of Byproduct Material?

Comment. A commenter pointed out that NRC should not be involved with prescriptions because the requirements for accurate delivery of prescriptions are covered under state medical and pharmacy law. The commenter believes that written directives are not necessary to ensure high confidence that the actual administration of radiation to the patient was intended by the authorized user.

Response. The Commission's statutory authority to regulate the medical use of byproduct material provides for NRC to have a role with respect to patient radiation safety. Statement 3 narrows the primary focus of NRC regulation of the radiation safety of patients to whether the physician's directions for the administration of byproduct material are followed. This regulatory role is in contrast to the broad regulation by a State board of pharmacy or medicine of the general practice of those disciplines within its borders.

The Commission is not using the term "prescription" because it might typically include aspects of the administration that are outside NRC's purview. Instead, the term "written directive" (as defined in part 35) is used to specify the physician's directions (i.e., the procedure to be performed and the dose or dosage). This regulatory objective is currently reflected in provisions of part 35 requiring "high confidence" that byproduct material will be administered as directed by an authorized user physician.

Statement 4: NRC, in developing a specific regulatory approach, will consider industry and professional standards that define acceptable approaches of achieving radiation safety.

Issue 1: How Should Industry Standards Be Used in Regulating the Medical Use of Byproduct Material?

Comment. According to several commenters, the NRC ignores professional standards and regulates as it pleases. In the commenters' opinions, NRC should accord industry and professional standards the respect they deserve. They believe that if NRC in fact endorses standards developed by private, consensus organizations, the revised MPS would be improved.

Response. The Commission believes that Statement 4 commits NRC to an approach for regulation of medical use that considers both industry and professional standards that define acceptable levels of achieving radiation safety. NRC reviewed industry and professional standards in developing and implementing part 35 and the guidance document (NUREG 1556, Volume 9). For example, some provisions in 10 CFR part 35 allow medical licensees the flexibility to use standards from nationally recognized organizations to meet the performance standards reflected in the rule.

Consideration of industry and professional standards as part of NRC's policy to achieve radiation safety in medical use of byproduct material conforms to the Commission's Strategic Plan[4] that encourages "industry to develop codes, standards, and guides that can be endorsed by the NRC and carried out by industry." The NRC's intention is to consider industry and professional standards in developing regulations and guidance for the medical use program, consistent with the concepts in the "National Technology Transfer and Advancement Act of 1995" (the NTTAA), Public Law 104–113, 110 Stat. 775 (1995). Section 12(d) of the NTTAA requires "all Federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus bodies * * * as a means to carry out policy objectives or activities, 'except when use of such standards,' is inconsistent with applicable law or otherwise impractical."

Not all "medical industry and professional standards" would meet the definition of "technical standards" in Section 12(d)(4) of the NTTAA ("performance-based or design-specific technical specifications and related management systems practices"). Nevertheless, as indicated above, in regulating medical use of byproduct material, the Commission endorses the concept in section 12 (a) of the NTTAA, of "emphasizing, where possible, the use of standards developed by private, consensus organizations."

Issue 2: Should NRC Consider Task Group Reports of the American Association of Physicists in Medicine (AAPM) for Developing Approaches for Achieving Radiation Safety?

Comment. A commenter pointed out that, in defining acceptable approaches for achieving radiation safety, NRC should consider the task group reports of the AAPM, which are the latest

[2] Page 11, NUREG–1614, Vol. 1, "Strategic Plan, Fiscal Year 1997–Fiscal Year 2002".

[3] Id.; and SRM dated March 20, 1997, COMSECY–96–057, "Materials/Medical Oversight (DSI 7) at 2.

[4] Page 10, NUREG–1614, Vol. 1, "Strategic Plan, Fiscal Year 1997–Fiscal Year 2002".

standards of practice for medical physicists.

Response. The Commission agrees that AAPM standards of practice for professionals involved in the use of certain byproduct material modalities and for radiation safety equipment should be considered as part of NRC's risk-informed and performance-based approaches to regulating the medical use of byproduct material. The Commission acknowledges that these and other standards of practice are often voluntary and, as such, medical professionals are not required to follow them. Therefore, where appropriate, the NRC focused part 35 on performance objectives to be achieved by licensees and is allowing licensees to select among the various performance standards to meet the objective of the regulation. This provides a licensee significant flexibility in designing its radiation protection program.

For example, in developing the final rule for the therapeutic uses of sealed sources, the NRC consulted several AAPM Radiation Therapy Committee Reports, including: Task Group 40 (Comprehensive QA for Radiation Oncology, 1994); Task Group 56 (Code of Practice for Brachytherapy Physics, 1998); Task Group 59 (HDR Treatment Delivery Safety, 1997 Draft); and AAPM Report No. 54 (Stereotactic Radiosurgery, 1995).

In addition to the AAPM, other groups and societies set professional radiation safety and practice standards for medical use. NRC plans to review such standards for possible use in developing regulatory positions (e.g., National Council on Radiation Protection and Measurements, Health Physics Society, and Society of Nuclear Medicine).

Issue 3: Does the Existence of Professional Standards Mean That NRC Regulation Is Unnecessary?

Comment. Several commenters expressed the opinion that NRC regulations were unnecessary. They believe that NRC should not make regulations or license conditions out of industry or professional standards, because that reduces flexibility (i.e., regulations cannot evolve as quickly and easily as professional standards). In their opinion, NRC should recognize that these standards are implemented by other appropriate oversight bodies and that the existence of professional standards should signal to the NRC that regulation is unnecessary. Finally, these commenters indicated that a mechanism is needed to require the NRC to justify why an implemented industry standard is not acceptable.

Response. The Commission disagrees with the comment about professional standards necessarily replacing NRC's radiation safety requirements. Many of the professional standards are voluntary in nature, do not have the force of law, and may not meet the definition of a consensus standard under the NTTAA. As such, not all professional standards are adequate to meet the Commission's objectives for the regulation of medical use of byproduct material.

The Commission must consider industry consensus standards before a "government-unique standard" is promulgated. The process is described in NRC Management Directive 6.5, "NRC Participation in the Development and Use of Consensus Standards." Further information on this topic is available on the NRC's web site, *www.nrc.gov/reference__library/standards program/reference documents*, e.g., Public Law 104–113, "National Technology Transfer Advancement Act of 1995" (NTTAA), OMB Circular on implementation of the NTTAA, NRC Annual Standards Reports (listings of consensus standards endorsed by NRC).

For example, NRC reviewed the technical literature to identify consensus standards and protocols that could be used or referenced in the rule and guidance document, thereby avoiding promulgation of "government-unique standards" when revising the MPS, 10 CFR part 35, and NUREG 1556 (Volume 9). Part 35, subparts C, F, and H, describe various performance objectives to be achieved (e.g., calibration of survey instruments, calibration of radiation sources used for manual brachytherapy and used in radiation therapy devices, and acceptance testing of treatment planning computers). A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the AAPM. Alternatively, a licensee may select and implement an appropriate voluntary performance standard from a published protocol that was accepted by a nationally recognized body in order to meet the performance objectives of these regulations. This approach is consistent with the Commission's goal to develop regulations that are more performance-based. The Commission believes this approach provides significant flexibility for medical use licensees to design radiation protection programs that, when fully implemented, maintain radiation exposures to workers, patients, and the public to levels that are as low as are reasonably achievable.

Dated at Rockville, Maryland, this 27th day of July, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–19573 Filed 8–2–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–100–AD; Amendment 39–11843; AD 2000–15–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration. This amendment requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. This amendment also requires, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and modification of the existing means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This amendment is prompted by the FAA's determination that certain main deck cargo door systems and the existing means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked, do not provide an adequate level of safety. The actions specified by this AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

EFFECTIVE DATE: September 7, 2000.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los

Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, was published in the **Federal Register** on May 16, 2000 (65 FR 31109). That action proposed to require a revision to the Airplane Flight Manual Supplement (AFMS) to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. That action also proposed to require, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and modification of the existing means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to Final Rule

Since the issuance of the proposed rule, the FAA has reviewed and approved installation of National Aircraft Service Inc. (NASI) Vent Door System Supplemental Type Certificate (STC) ST01245CH as an approved means of compliance with the requirements of paragraph (c) of the final rule. A new note (Note 3) has been added to the final rule to give credit for this installation, and the remaining notes have been renumbered accordingly.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 5 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the general visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the general visual inspections required by this AD on U.S. operators is estimated to be $240, or $60 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the AFMS revision and installation of associated placards, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFMS revision and installation of associated placards required by this AD on U.S. operators is estimated to be $240, or $60 per airplane.

The FAA estimates that it will take approximately 210 work hours per airplane to accomplish the modification required by paragraph (c) of this AD, at an average labor rate of $60 per work hour. The FAA also estimates that required parts will cost approximately $45,000 per airplane. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $230,400, or $57,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–15–11 McDonnell Douglas: Amendment 39–11843. Docket 2000–NM–100–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1862SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door

(a) Within 60 days after the effective date of this AD, accomplish a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; and perform a general visual inspection for damaged, loose, or missing hardware mounting components. If any crimped, frayed, or chafed wire, or damaged, loose, or missing hardware mounting component is detected, prior to further flight, repair in accordance with FAA-approved maintenance procedures.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) Within 60 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1862SO by inserting therein procedures to ensure that the main deck cargo door is fully closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFMS revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Actions Addressing the Main Deck Cargo Door Systems

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;

(2) Modify the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of elements of the door latching and locking mechanism;

(3) Install a means to visually inspect the locking mechanism of the main deck cargo door;

(4) Install a means to remove power to the door while the airplane is in flight; and

(5) Install a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

Note 3: Installation of National Aircraft Service Inc. (NASI) Vent Door System STC ST01245CH, is an approved means of compliance with the requirements of paragraph (c) of this AD.

(d) Compliance with paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD, and the AFMS revision and placards may be removed.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(g) This amendment becomes effective on September 7, 2000.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

"(1) Indication System:

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) Means to Visually Inspect the Locking Mechanism:

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) Means to Prevent Pressurization:

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) Lock Strength:

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) Power Availability:

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) Powered Lock Systems:

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on July 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19667 Filed 8–2–00; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

RIN 2700–AC38

Inspection of Persons and Personal Effects at NASA Installations or on NASA Property; Trespass or Unauthorized Introduction of Weapons or Dangerous Materials

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA published on January 19, 2000 an "Interim rule with request for comments," titled "Inspection of Persons and Personal Effects on NASA Property." NASA received and considered one letter in response to the request for comments on the interim rule. Consequently, the interim rule was further clarified as noted below. Accordingly, Subpart 10 of 14 CFR Part 1204 is retitled "Inspection of Persons and Personal Effects at NASA Installations or on NASA Property; Trespass or Unauthorized Introduction of Weapons or Dangerous Materials." In addition, language is added to clarify that the updated regulation merely reflects current Federal policy and NASA practice of upgraded security measures; and a new introductory statement is provided before reciting the provision of 18 U.S.C. Section 799.

To avoid confusion and for ease of reference, Subpart 10 of 14 CFR Part 1204—"Inspection of Persons and Personal Effects at NASA Installations or on NASA Property; Trespass or Unauthorized Introduction of Weapons or Dangerous Materials"—is republished in its entirety as a Final rule.

DATES: Effective Date: This rule is effective August 3, 2000.

ADDRESSES: NASA Security Management Office, Code JS, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mark R.J. Borsi, 202–358–2457.

SUPPLEMENTARY INFORMATION: This action revises Subpart 10 of 14 CFR part 1204 to update the regulation consistent with current Federal policy and Agency practice.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12866.

List of Subjects in 14 CFR Part 1204

Conduct, Dangerous materials, Employees, Explosives, Facilities, Federal buildings, Firearms, Inspections, Installations, Persons, Property, Real estate, Security, Trespass, Weapons.

For reasons set out in the Preamble, 14 CFR part 1204 is amended as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

1. 14 CFR part 1204, Subpart 10 is revised to read as follows:

Subpart 10—Inspection of Persons and Personal Effects at NASA Installations or on NASA Property; Trespass or Unauthorized Introduction of Weapons or Dangerous Materials

Sec.:

1204.1000 Scope of subpart.
1204.1001 Policy.
1204.1002 Responsibility.
1204.1003 Procedures.
1204.1004 Trespass.
1204.1005 Unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.
1204.1006 Violations.

Subpart 10—Inspection of Persons and Personal Effects at NASA Installations or on NASA Property; Trespass or Unauthorized Introduction of Weapons or Dangerous Materials

Authority: 42 U.S.C. 2455.

§ 1204.1000 Scope of subpart.

This subpart establishes NASA policy and prescribes minimum procedures concerning the inspection of persons and property in their possession while entering, or on, or exiting NASA real property or installations (including NASA Headquarters, Centers, or Component Facilities). In addition, it proscribes unauthorized entry or the unauthorized introduction of weapons or other dangerous instruments or materials at any NASA installation.

§ 1204.1001 Policy.

(a) In the interest of national security, NASA will provide appropriate and adequate protection or security for personnel, property, installations (including NASA Headquarters, Centers, and Component Facilities), and information in its possession or custody. In furtherance of this policy, NASA reserves the right to conduct an inspection of any person, including any property in the person's possession or control, as a condition of admission to, continued presence on, or exiting from, any NASA installation.

(b) It is determined that this policy is intended to comply with the heightened security measures for installations owned or occupied by Federal agencies (in this case NASA), to mitigate threats to such installations and to better protect the persons and property thereon.

§ 1204.1002 Responsibility.

The NASA Center Directors and the Associate Administrator for Headquarters Operations are responsible for implementing the provisions of this subpart. In implementing this subpart, these officials will coordinate their action with appropriate officials of other affected agencies.

§ 1204.1003 Procedures.

(a) All entrances to NASA real property or installations (including NASA Headquarters, Centers, or Component Facilities) will be conspicuously posted with the following notices:

(1) CONSENT TO INSPECTION: Your entry into, continued presence on, or exit from, this installation is contingent upon your consent to inspection of person and property.

(2) UNAUTHORIZED INTRODUCTION OF WEAPONS OR DANGEROUS MATERIALS IS PROHIBITED: Unless specifically authorized by NASA, you may not carry, transport, introduce, store, or use firearms or other dangerous weapons, explosives or other incendiary devices, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property.

(b) Only NASA security personnel or members of the installation's uniformed security force will conduct inspections pursuant to this subpart. Such inspections will be conducted in accordance with guidelines established by the Director, Security Management Office, NASA Headquarters.

(c) If an individual does not consent to an inspection, it will not be conducted, but the individual will be denied admission to, or be escorted off the installation.

(d) If, during an inspection, an individual is found to be in unauthorized possession of items believed to represent a threat to the safety or security of the installation, the individual will be denied admission to or be escorted off the installation, and appropriate law enforcement authorities will be notified immediately.

(e) If, during an inspection conducted pursuant to this subpart, an individual is in possession of U.S. Government property without proper authorization, that person will be required to

relinquish the property to the security representative pending proper authorization for the possession of the property or its removal from the installation. The individual relinquishing the property will be provided with a receipt for the property.

§ 1204.1004 Trespass.

Unauthorized entry upon any NASA real property or installation is prohibited.

§ 1204.1005 Unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.

(a) The unauthorized carrying, transporting, or otherwise introducing or causing to be introduced, or using firearms or other dangerous weapons, explosives or other incendiary devices, or other dangerous instrument, substance, or material likely to produce substantial injury or damage to persons or property, into or upon NASA real property, facility, or installation, is prohibited.

(b) Paragraph (a) of this section shall not apply to:

(1) The lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, or NASA contractor, who is authorized to carry firearms or other material covered by paragraph (a) of this section.

(2) The lawful carrying of firearms or other dangerous weapons at or on a NASA installation after written prior approval has been obtained from the installation Security Office in connection with sanctioned hunting, range practice, or other lawful purpose.

§ 1204.1006 Violations.

Please take notice that anyone violating these regulations may be cited for violating Title 18 of the United States Code (U.S.C.) Section 799, which states that whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration [NASA], or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined under this title [Title 18], or imprisoned not more than one year, or both.

Daniel S. Goldin,

Administrator.

[FR Doc. 00–19622 Filed 8–2–00; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM99–7–000; Order No. 618]

Depreciation Accounting

Issued July 27, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending the General Instructions of 18 CFR part 101 to establish, for those public utilities and licensees that are subject to part 101, standards for determining depreciation for accounting purposes. The Commission also explains how it intends to monitor depreciation practices. This action is necessary in order to fulfill the Commission's statutory obligation to ensure that electric utilities charge proper amounts of depreciation to expense in each financial reporting period. The effect of this action will be to ensure that utilities allocate in a systematic and rational manner the cost of utility property to the periods during which the property is used in utility operations.

DATES: This rule will be effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT:

Wayne McDanal (Technical Information), Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2622

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2128

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending the General Instructions of 18 CFR Part 101 to establish, for those public utilities and licensees that are subject to Part 101, standards for determining depreciation for accounting purposes. The Commission also explains how it intends to monitor depreciation practices.

II. Background

On July 29, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to establish the principles that public utilities and licensees subject to Part 101 must follow in determining depreciation rates for accounting purposes.[1] In the NOPR the Commission noted that it has authority under Section 301 of the Federal Power Act (FPA)[2] over the accounting practices of public utilities and licensees and that, under this Section, it has prescribed a Uniform System of Accounts (USofA)[3] that these jurisdictional entities must follow.

The Commission further noted in the NOPR that it also has authority under Section 302 of the FPA[4] over the depreciation accounting practices of public utilities and licensees and that this authority includes the authority to determine and fix proper and adequate depreciation rates for accounting purposes.

The Commission stated that, in order to fulfill its statutory obligation to ensure that electric utilities charge proper amounts of depreciation to expense in each financial reporting period, it had required public utilities and licensees to obtain Commission approval before changing their depreciation rates for accounting purposes.[5] The Commission noted, however, that a decision of the U.S. Court of Appeals for the District of Columbia Circuit, *Alabama Power Company, et al.* v. *FERC*, 160 F.3d 7 (D.C. Cir. 1998) (*Alabama Power*), overturned the Commission's action in *MidAmerican* on procedural grounds.

The Commission began this rulemaking proceeding to respond to the court's concern that the Commission could not exercise its authority with respect to depreciation accounting matters without first establishing standards. The Commission thus proposed to require utilities[6] to use

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[1] Depreciation Accounting, 64 FR 42304 (Aug. 4, 1999); FERC Stats. & Regs., Proposed Regulations ¶ 32,544 (July 29, 1999).

[2] 16 U.S.C. 825.

[3] *See* 18 CFR Part 101.

[4] 16 U.S.C. 825a.

[5] *See* MidAmerican Energy Company, 79 FERC ¶ 61,169 (1997), *reh'g denied*, 81 FERC ¶ 61,081 (1997) (*MidAmerican*).

[6] As in the NOPR, henceforth when we use the word "utilities" in this final rule, we intend to

depreciation rates for accounting purposes that were based on the straight-line method of depreciation and the assets' estimated useful lives, the predominant method traditionally used by utilities. The Commission proposed, also, to monitor utility depreciation rates for accounting purposes on a case-by-case basis, *e.g.*, as a result of or in conjunction with complaints or audits. The Commission's proposal to monitor depreciation practices and rates was in lieu of a requirement that utilities make individual filings and obtain prior Commission approval to change their depreciation rates for accounting purposes.

III. Comments Received

The Commission received 20 comments in response to the NOPR.[7] The overwhelming majority of those comments agreed with the Commission's proposal not to require individual utilities to file their accounting depreciation rates with us for our approval.[8] However, they strongly opposed the Commission's proposal to adopt the straight-line method of depreciation to the exclusion of other methods of depreciation that also result in systematically and rationally allocating the cost of utility property to the periods during which the utility uses the property in operations.

Only two Commenters, the Florida Public Service Commission and NARUC, supported the exclusive use of the straight-line method of depreciation,[9] and NARUC asked for clarification of the inconsistency between this proposal and the accelerated cost recovery provisions that we have agreed to consider with respect to new transmission investment.[10] All of the other Commenters opposed exclusive reliance upon the straight-line method of depreciation as the only permissible method of accounting for depreciation in the utility industry.

For example, the Edison Electric Institute (EEI) argued that the proposal is "inconsistent with the Commission's adopted policies promoting greater competition in electric markets * * * [which require] a flexible approach to depreciation accounting * * *"[11] EEI notes that in an era of rapid technological change an asset's productivity may vary greatly over its service life. EEI suggests that, under such circumstances, accelerated depreciation will provide a better match of expenses to revenues than would straight-line depreciation. EEI notes that unregulated companies have the advantage of using accelerated depreciation to meet the changing needs of a free market economy; it asks that the Commission make the same advantages available to utilities as they enter the competitive era.[12]

EEI urges the Commission to allow utilities the flexibility to meet the constantly changing conditions of the marketplace by permitting utilities to change the estimated service lives of their capital equipment and to adopt methods of depreciation other than straight-line, if, in their judgment, circumstances warrant. EEI points out that generally accepted accounting principles (GAAP)[13] allows for methods of depreciation other than straight-line that are also systematic and rational ways of accounting for the depreciable life of assets.[14] According to EEI, this flexibility would permit companies to use depreciation schedules that incorporate service lives of varying lengths as well as varying rates of obsolescence. This would allow management to more carefully track costs and cost causation.

EEI submits that the proposed adoption of a straight-line depreciation method of accounting does not meet the reporting needs of a changing industry and runs counter to the Commission's efforts to promote efficient competition by reducing the regulatory and accounting burden on utilities.[15] EEI also observes that the NOPR's proposal for universal straight-line depreciation is inconsistent with the Commission's recent Order No. 2000, in which the Commission indicated that it would consider the application of accelerated depreciation for new transmission investment.[16]

Detroit Edison submits that the Commission "is being far too prescriptive for an industry in transition and subject to competitive pressures."[17] According to Detroit Edison, GAAP mandates only that companies determine depreciation in a systematic and rational manner and recognizes several different methods of accounting for depreciation that would accomplish this.[18] Detroit Edison also argues that straight-line depreciation necessarily defers the recognition of certain costs to future years, when, in a competitive environment, a company charging the higher prices necessary to recover these deferred costs could drive away customers. Detroit Edison submits that other methods of depreciation, such as double or 150-percent declining balance or sum-of-the-years digits depreciation, better match cost accrual with revenues and allow companies the flexibility to survive in a competitive world.[19]

Detroit Edison observes that the straight-line method of accounting for depreciation worked well when there was an obligation to serve and a guarantee of future income because technology changed little and customers had few options. Today, technology is changing rapidly, costs are becoming more differentiated, and choice is becoming the norm. As a result, the assumption that assets will produce a steady stream of revenue throughout their physical lives is no longer valid.

Rather, Detroit Edison submits, the assumption in today's world should be that each asset will produce a different, individual income stream, which will depend on its economic usefulness. Detroit Edison argues that "accounting should reflect that reality[]"[20] and help the industry prepare for competition rather than re-enforce existing

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encompass both public utilities and licensees; we will refer to "utilities" for ease of reading. *See* 18 CFR Part 101, Definition No. 39.

[7] A list of Commenters appears in the Appendix; we will refer to each Commenter by the short form listed there next to each name. The Mississippi Public Service Commission filed a notice of intervention, but did not comment.

[8] FERC Stats. & Regs. ¶ 32,544 at 33,008. *See, e.g.*, EEI at 2.

[9] Florida Public Service Commission at 3; NARUC at 5.

[10] NARUC at 4.

[11] EEI at 2.

[12] EEI at 16.

[13] GAAP encompasses the conventions, rules and procedures necessary to define accepted accounting practices. GAAP incorporates the accounting profession's consensus at a particular time as to which economic resources and obligations companies should record as assets and liabilities, which changes in assets and liabilities they should record, how they should measure assets and liabilities and changes in them, what information they should disclose, how they should disclose it, and what financial statements they should prepare.

[14] EEI at 18–19.

[15] EEI at 4–6.

[16] EEI at 21. In Order No. 2000, the Commission included as one of the innovative rate treatments offered to Regional Transmission Organization (RTO) participants non-traditional depreciation for ratemaking purposes for new transmission investments. RTOs would have to support their proposals with: (a) a detailed explanation of how the proposed rate treatment would help achieve the goals of Regional Transmission Organizations; (b) a cost-benefit analysis, including rate impacts; and (c) a detailed explanation of why the proposed rate treatment is appropriate for the RTO requesting it. *See* 18 CFR 35.34(e)(1), .34 (2)(iii); Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶31,089 at 31,194–95, *order on reh'g*, Order 2000–A, FERC Stats. &)Regs. ¶31,092 at 31,387–88.

[17] Detroit Edison at 2.

[18] *Id.* at 2, 8.

[19] *Id.*

[20] *Id.* at 10.

regulatory practices.[21] Most of the other Commenters expressed similar views.[22]

IV. Discussion

The Commission's Uniform System of Accounts for electric utilities defines depreciation as the loss of an asset's service value not restored by current maintenance.[23] Some of the causes for the loss in service value include wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand, and requirements of public authorities. The primary objective of recording depreciation expense is to allocate an asset's service value over its remaining useful life. To accomplish this objective the Commission has traditionally used a straight-line depreciation method to allocate an asset's service value over its remaining life.

We thus initially proposed to adopt for accounting purposes the straight-line method of depreciation as our standard. As we noted in the NOPR, straight-line depreciation was the method typically used by utilities.[24] While, in general, we expect that that is likely to continue to be the case for most utility property, commenters have persuaded us that requiring its universal use would be overly prescriptive. The primary objective of depreciation accounting is to allocate in a systematic and rational manner the cost of property to the periods during which the property is used in utility operations, *i.e.*, over its estimated useful service life. As Commenters correctly observe, there are methods of depreciation other than the straight-line method that also meet this objective.

Therefore, we will modify our proposed rule and simply require utilities to use for accounting purposes methods of depreciation that allocate the cost of utility property over its useful service life in a systematic and rational manner. Such methods include not only a straight-line method of depreciation, but other methods of depreciation. The broader systematic and rational standard will ensure that depreciation for accounting purposes is done properly while at the same time allowing flexibility in a changing business environment.

We are not unmindful that this additional flexibility could create a potential for abuse. However, we believe that our monitoring of utility depreciation practices will mitigate that potential. Consequently, as noted in the NOPR, we will not require utilities to make a separate filing to obtain Commission approval before implementing changes in depreciation rates for accounting purposes.[25] Instead, we will monitor utility depreciation practices on a case-by-case basis.[26]

V. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[27] The promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended raises no environmental considerations.[28] This final rule amends Part 101 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised.

Further, approval of actions under Section 301 of the FPA, relating to accounting orders, also raises no environmental considerations.[29] The instant rule fundamentally involves accounting matters, establishing standardized depreciation accounting practices. Accordingly, no environmental consideration is necessary.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the final rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

Most public utilities to which this final rule would apply do not fall within

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[21] Id. at 11.

[22] *See, e.g.*, American Institute of Certified Public Accountants at 1, 4; Commonwealth Edison at 1, 3–4, 7 (competition mandates various types of accounting for depreciation, including accelerated depreciation); Consumers Energy at 4–5 (Commission should allow all methods of accounting for depreciation, including accelerated depreciation, that result in a rational and systematic allocation of the cost of a utility's plant); PSE&G at 1 (under certain conditions methods of accounting for depreciation, other than straight-line, provide for a better matching of expenses with revenues); NRECA at 2 (changes in technology often require accelerated depreciation because of rapid obsolescence of assets); Cinergy at 1 (endorses comments of EEI); Allegheny Energy at 1 (the changing needs of the market place are affecting the useful lives of capital equipment and the rate at which equipment is becoming obsolete); Virginia Power at 6 (same); Old Dominion at 2 (GAAP recognizes other methods of accounting for depreciation that result in systematically and rationally recording depreciation expense over an asset's useful life.); AEP at 4 (proposed rule would impose more regulation and record keeping on the utility industry at the very time that it needs far less regulation in order to meet the demands of competition.); Arthur Anderson at 3 (depreciation accounting should be flexible to recognize the economic effects of regulation during the transition to a competitive business environment); Price Waterhouse at 1 (if the expected productivity or revenue-earning power or maintenance requirements vary greatly over the life of an asset, a depreciation method of accounting other than straight-line may more appropriately allocate costs to revenues); First Energy at 2 (the Commission should accept all methods of depreciation, including accelerated depreciation, that are consistent with GAAP); Deloitte & Touche at 2 (same); Southern at 13 (proposal runs counter to Commission's willingness to consider accelerated depreciation for new investment in transmission facilities).

[23] 18 CFR Part 101, Definition No. 12.

[24] *See* 64 FR 42304 (1999); FERC Stats. & Regs. ¶32,544 at 33,806. *See also, e.g.*, J. Suelflow, Public Utility Accounting: Theory and Application 96 (1973) ("Straight line is the predominant method used by utilities and sanctioned by most regulatory bodies."); Deloitte Haskins & Sells, Public Utilities Manual 23 (1980) ("[T]he straight-line concept is applied almost universally for both accounting and rulemaking. * * *"); C. Phillips, The Regulation of Public Utilities: Theory and Practice 272 (3d ed. 1993) (The straight line method * * * is the simplest and most commonly used."); L. Hyman, America's Electric Utilities: Past, Present and Future 292 (5th ed. 1994) ("The book depreciation rate is a straight line rate for most utility companies."); *accord* Depreciation Subcommittee of the NARUC Committee on Engineering, Depreciation, and Valuation of the National Association of Regulatory Utility Commissioners, Public Utility Depreciation Practices 12 (1968) ("In the two decades, since the Report of the Committee on Depreciation of the NARUC was published in 1943, the use of the straight-line method for accounting and rate-making purposes has became almost universal for public utilities.").

In addition, the FERC Annual Report Form No. 1's appeared to indicate the same.

[25] Our action today authorizes utilities to change their method of depreciation for accounting purposes *only*; it does not authorize any utility to change prices charged for power sales or transmission services (whether determined by stated rates or formula rates) to reflect a change in depreciation.

To change prices charged for power sales or transmission services (whether determined by stated rates or formula rates) to reflect a change in depreciation, a utility would first have to make a filing with us, pursuant to sections 205 or 206, 16 U.S.C. 824d, 824e, as appropriate, to that effect.

[26] As we noted in Midwest Power Systems Inc., 67 FERC ¶ 61,076 at 61,209 (1994), utilities "most common[ly]" change their depreciation rates in the context of a rate case. *Accord, id.* at 61,208, n.7.

We expect that utilities will continue to change their depreciation accounting predominantly in the context of rate cases, and that, in fact, changes in depreciation accounting will rarely occur outside of a rate case.

[27] 18 CFR 380.4.

[28] 18 CFR 380.4(a)(2)(ii).

[29] 18 CFR 380.4(a)(16).

the definition of small entity.[30] Consequently, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII. Public Reporting Burden and Information Collection Statement

The Commission is amending 18 CFR part 101 to establish the principles for determining depreciation rates for accounting purposes. While we are adding an instruction to an information requirement, the instruction is not adding to the information reporting burden because the Commission is not requiring public utilities to do anything more or less than they are already doing to account for depreciation. Accordingly, this final rule does not impose any additional public reporting burden. We are forwarding a copy of this to the Office of Management and Budget for their information.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208–1415, Fax: (202) 208–2425, E-mail: mike.miller@ferc.fed.us].

To submit comments concerning collections of information and associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, Phone: (202) 395–3087, Fax: (202) 395–7285].

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in the Commission's Public Reference Room during regular business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222, or by E-Mail (to WebMaster@ferc.fed.us) or the Public Reference Room at (202) 208–1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

IX. Effective Date

This final rule will take effect October 2, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of the Small Business Regulatory Fairness Act of 1996.[31] The Commission will submit the Final Rule to both houses of Congress and to the General Accounting Office.[32]

List of Subjects in 18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Part 101, Title 18 of the Code of Federal Regulations, as follows.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for Part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7102–7352, 7651–7651o.

2. In Part 101, General Instructions, paragraph 22 is added to read as follows:

General Instructions

* * * * *

22. *Depreciation Accounting.*

A. *Method.* Utilities must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.

B. *Service lives.* Estimated useful service lives of depreciable property must be supported by engineering, economic, or other depreciation studies.

C. *Rate.* Utilities must use percentage rates of depreciation that are based on a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property to the service life of the property. Where composite depreciation rates are used, they should be based on the weighted average estimated useful service lives of the depreciable property comprising the composite group.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix—Commenters

Name	As styled in order
Allegheny Energy, Inc	Allegheny Energy.
American Electric Power Service Corporation (filing on behalf of itself and on behalf of its operating public utility affiliates: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company).	AEP.

[30] *See* 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation.

[31] 5 U.S.C. 804(2).

[32] 5 U.S.C. 801(a)(1)(A).

Name	As styled in order
American Institute of Certified Public Accountants	American Institute of Certified Public Accountants.
Arthur Andersen, LLP	Arthur Andersen.
Cinergy Services, Inc.	Cinergy.
Cleco Corporation	Cleco.
Commonwealth Edison Company	Commonwealth Edison.
Consumers Energy Company	Consumers Energy.
Deloitte & Touche LLP	Deloitte & Touche.
Detroit Edison Company	Detroit Edison.
Edison Electric Institute	EEI.
FirstEnergy Corp	FirstEnergy.
Florida Public Service Commission	Florida Commission.
Mississippi Public Service Commission	Mississippi Commission.
National Association of Regulatory Utility Commissioners	NARUC.
National Rural Electric Cooperative Association	NRECA.
Old Dominion Electric Cooperative	Old Dominion.
PricewaterhouseCoopers, LLP	Price Waterhouse.
Public Service Electric & Gas Company of New Jersey	PSE&G.
Southern Company Services, Inc. (acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Company).	Southern.
Virginia Electric and Power Company	Virginia Power.

[FR Doc. 00–19507 Filed 8–2–00; 8:45 am]
BILLING CODE 6560–00–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 99N–2151]

New Animal Drug Applications; Sheep as a Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reclassify sheep as a minor species for all data collection purposes. This reclassification will allow sponsors of new animal drug applications (NADA's) to extrapolate human food safety data from a major species such as cattle to sheep. In particular, this will enable the extrapolation of the tolerances for residues of new animal drugs in cattle to sheep.

DATES: This rule is effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Meg Oeller, Center For Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7581, e-mail: moeller@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 26, 1999 (64 FR 40321), FDA published a proposed rule to revise the definition of minor species in § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)) by deleting the following language: "Sheep are a minor species with respect to effectiveness and animal safety data collection requirements; sheep are a major species with respect to human safety data collection requirements arising from the possible presence of drug residues in food." This change makes sheep a minor species for all data collection purposes in support of NADA's.

As stated in the preamble to the proposed rule (64 FR 40321), new data that have become available since publication of the minor species final rule (48 FR 1922, January 14, 1983) allow the agency to conclude that sheep should be a minor species with respect to all data requirements. The new data concern the similarity of drug metabolism between sheep and cattle rather than consumption levels. While consumption levels can be a factor in determining whether a species should be classified as major or minor, the agency believes that the body of evidence concerning drug metabolism is more significant in determining the major/minor status of sheep than consumption data because it demonstrates the reliability of data extrapolated from cattle, a major species, to sheep.

II. Comments

FDA received seven comments on the proposed rule, six comments from organizations, and one from an individual. All the comments supported the proposed rule. The following is a summary of the comments:

(Comment 1) Six comments expressed the opinion that this change would lower research and development costs for sponsors seeking approval of new animal drugs for sheep.

(Comment 2) Six comments noted that the sheep industry suffers from a lack of animal drug availability to the detriment of the industry and animal health.

(Comment 3) Four of the comments praised the agency for its science-based approach to this issue.

Thus, FDA is adopting the rule as proposed.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. FDA estimates that the final rule will not impose any compliance costs on the animal drug industry, but rather expects it to provide a small cost savings for any company submitting an NADA for an animal drug to be used in sheep. Because this final rule makes no mandates on other government entities and will result in expenditures less than $100 million in any one year, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IV. Discussion

The benefit of this final rule will be to lessen the preapproval study requirements of NADA's for animal drugs to be used in sheep. It is therefore expected to lower research expenses and provide an impetus for sponsors to submit NADA's for minor use species rather than rely on extra-label use of animal drugs on sheep. More specifically, it would eliminate the need for a radio-labeled total residue study that can be costly and prohibitive for sponsors of new animal drugs for small markets such as sheep. FDA believes this study is unnecessary in this instance due to the similarities in the metabolism of most drugs in cattle and sheep. A more flexible approach that allows for this interspecies data extrapolation, along with the continued residue depletion studies, would encourage NADA submissions by decreasing research costs while continuing to protect human food safety. Apart from these cost savings, FDA does not expect this final rule to impose any other compliance burdens on sponsors of new animal drugs.

FDA is amending the animal drug regulations to reclassify sheep as a minor species for all data collection purposes, thereby allowing extrapolation of data from closely related species such as cattle to sheep. Currently, FDA considers sheep as a minor species for the purpose of the data necessary to demonstrate animal safety and effectiveness only. It currently considers sheep as a major species for the purpose of human food safety requirements. Because new data have led FDA to believe there are not significant differences in the metabolism of most drugs between ruminant species, FDA is reclassifying sheep as a minor species for all data collection purposes. Thus, most data packages supporting an NADA for use in sheep will be able to rely on the required human food safety data collected for cattle.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. In the proposed rule, the agency mistakenly made this determination under 21 CFR 25.33(d)(4), which applies to action on minor species NADA's.

VI. The Paperwork Reduction Act of 1995

The NADA's regulation, § 514.1, contains collections of information requirements previously approved under OMB Control No. 0910–0032. FDA is amending the new animal drug regulation to reclassify sheep as a minor species for all data collection purposes. This reclassification does not change the reporting or recordkeeping burden, thus clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

2. Section 514.1 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 514.1 Applications.

* * * * *

(d) * * *

(1) * * *

(ii) *Minor species* means animals other than cattle, horses, swine, chickens, turkeys, dogs, and cats.

* * * * *

Dated: July 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19627 Filed 8–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 00P–1117]

Medical Devices; Anesthesiology Devices; Classification of Devices to Relieve Upper Airway Obstruction; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 23, 2000 (65 FR 39098). The document classified devices to relieve acute upper airway obstruction. These type devices were classified into class II. The preamble to the final rule correctly states that the devices were exempt from premarket notification, but this exemption was not reflected in the regulatory text. This document corrects that error.

DATES: This rule is effective August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Carroll O'Neill, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8262, ext. 170.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–15864, appearing on page 39098 in the **Federal Register** of June 23, 2000, the following correction is made:

§ 868.5115 [Corrected]

On page 39099, in the third column, in § 868.5115 *Device to relieve acute upper airway obstruction*, in paragraph (b), insert at the end of the paragraph the sentence "The device is exempt

from the premarket notification procedures in subpart E of part 807 of this chapter, subject to § 868.9."

Dated: July 17, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–19593 Filed 8–2–00; 8:45 am]

BILLING CODE 4160–01–F

SELECTIVE SERVICE SYSTEM

32 CFR Part 1615

Change of Agency Address To Request a Verification Notice

AGENCY: Selective Service System.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment to the rule on administration of registration changes the Selective Service System (SSS) address for registrants to contact if they do not receive a verification notice from SSS within 90 days after completing and submitting a Registration Card. The present address in the Code of Federal Regulations is outdated due to a change of location for the Agency's headquarters and its Data Management Center.

DATES: Effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Rudy Sanchez, Office of the General Counsel, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425. (703–605–4071).

SUPPLEMENTARY INFORMATION: The SSS considers this rule (32 CFR part 1615) to be a procedural rule which is exempt from the notice-and-comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for the purpose of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, SSS certifies that these regulatory amendments will not have a significant impact on small business entities.

Lists of Subjects in 32 CFR Part 1615

Selective Service System.

For the reason set forth in the preamble, amend part 1615 of title 32 of the Code of Federal Regulations as follows:

PART 1615—ADMINISTRATION OF REGISTRATION

1. The authority citation for part 1615 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. 451 *et seq.* and E.O. 11623.

§ 1615.1 [Amended]

2. In § 1615.1(b), revise "600 E Street, NW., Washington, DC 20435" to read "P.O. Box 94638, Palatine, IL 60094–4638".

Dated: July 28, 2000.

Gil Coronado,

Director.

[FR Doc. 00–19514 Filed 8–2–00; 8:45 am]

BILLING CODE 8015–01–U

SELECTIVE SERVICE SYSTEM

32 CFR Part 1698

Change of Agency Address To Request an Advisory Opinion

AGENCY: Selective Service System.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment to the rule on advisory opinions changes the Selective Service System (SSS) address for persons to request an advisory opinion regarding the liability or obligation to register under the Military Selective Service Act. The present address listed in the Code of Federal Regulations to request advisory opinions is outdated due to a change of location for the Agency's headquarters and its Data Management Center.

DATES: Effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Rudy Sanchez, Office of the General Counsel, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425. (703–605–4071).

SUPPLEMENTARY INFORMATION: The SSS considers this rule (32 CFR part 1698) to be a procedural rule which is exempt from the notice-and-comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for the purpose of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, SSS certifies that these regulatory amendments will not have a significant impact on small business entities.

Lists of Subjects in 32 CFR Part 1698

Administrative practice and procedure, Selective Service System.

For the reason set forth in the preamble, amend part 1698 of title 32 of the Code of Federal Regulations as follows:

PART 1698—ADVISORY OPINIONS

1. The authority citation for part 1698 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. 451 *et seq.*; E.O. 11623.

§ 1698.2 [Amended]

2. In § 1698.2(b), revise "ATTN: GCAO, Washington, DC 20435" to read "ATTN: SIL, P.O. Box 94638, Palatine, IL 60094–4638".

Dated: July 28, 2000.

Gil Coronado,

Director.

[FR Doc. 00–19515 Filed 8–2–00; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413 and 419

[HCFA–1005–IFC]

RIN 0938–AI56

Medicare Program; Prospective Payment System for Hospital Outpatient Services: Revisions to Criteria to Define New or Innovative Medical Devices, Drugs, and Biologicals Eligible for Pass-Through Payments and Corrections to the Criteria for the Grandfather Provision for Certain Federally Qualified Health Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period changes one criterion and postpones the effective date for two other criteria that a new device, drug, or biological must meet in order for its cost to be considered "not insignificant" for purposes of determining its eligibility for transitional pass-through payments. It also changes the transitional pass-through payment policy to include new single use medical devices that come in contact with human tissue and that are surgically implanted or inserted in a patient whether or not the devices remain with the patient after the patient is released from the hospital outpatient department. These policies represent a departure from those presented in the April 7, 2000 **Federal Register** final rule with comment period entitled, "Prospective Payment System for Hospital Outpatient Services".

This interim final rule with comment period also corrects a trigger date for grandfathering of provider-based Federally Qualified Health Centers (FQHCs) to conform with the intent not to disrupt existing FQHCs with longstanding provider-based treatment that we discussed in the April 2000

final rule. Under the criteria in the April 2000 final rule with comment period, FQHCs are treated as departments of a provider without regard to the criteria for provider-based status in that document if they meet other criteria and were designated as FQHCs before 1995. Under this correction, facilities that meet those other criteria and were designated as FQHCs or "look-alikes" on or before April 7, 2000 would continue to be treated as provider-based. In addition, we are clarifying how the requirement for prior notice to beneficiaries is to be applied in emergency situations. Also, we are clarifying the protocols for off-campus departments in emergency situations.

DATES: *Effective date:* This interim final rule is effective August 1, 2000, except the amendments to § 413.65(m) that are effective October 10, 2000.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 5, 2000.

ADDRESSES: Mail an original and 3 copies of written comments to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1005–IFC, P.O. Box 8013, Baltimore, MD 21244–8013.

Since comments must be received by the date specified above, please allow sufficient time for mailed comments to be received timely in the event of delivery delays.

If you prefer, you may deliver your written comments by courier (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244.

Comments mailed to the two above addresses may be delayed and received too late to be considered.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1005–IFC.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (410) 786–4571 (for information related to transitional payment policy changes). George Morey, (410) 786–4653 (for information related to the grandfathering of Federally Qualified Health Centers and "look-alikes", the requirement for notice to beneficiaries of cost-sharing liability, and the protocols for off-campus departments).

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html.

I. Background

On April 7, 2000, we published in the **Federal Register** (65 FR 18434) a final rule with comment for implementation of a new prospective payment system (PPS) for hospital outpatient services. The new system establishes payment rates for each PPS covered service using ambulatory payment classification (APC) groups. On June 30, 2000, we published a notice in the **Federal Register** (65 FR 40535) announcing our decision to delay the effective date of the outpatient PPS from July 1, 2000 as set forth in the April 7, 2000 final rule until August 1, 2000. We stated in the June 30, 2000 notice that we are delaying the effective date because we have to make a major change to the current claims processing system to implement the new PPS. We further stated that the 1 month postponement would give us additional time to test and refine the complex software programs needed to operate the PPS and would give hospitals the additional time they require to prepare and train for the new system. Therefore, the PPS provisions incorporated in the April 7, 2000 final rule are effective August 1, 2000 and the provider-based provisions included in that rule are effective October 10, 2000.

Among the provisions of the April 7, 2000 final rule are those implementing section 1833(t)(6) of the Social Security Act (the Act), which was added by section 201(b) of the Balanced Budget Refinement Act of 1999 (BBRA 1999). This section provides for temporary additional payments, termed "transitional pass-through payments," for certain drugs, biologicals, and devices. The provision requires the Secretary to make additional payments to hospitals for at least 2 but no more than 3 years for specific items. The items designated by the law are the following: Current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act; current drugs, biologic agents, and brachytherapy devices used for the treatment of cancer; current radiopharmaceutical drugs and biological products; and new medical devices, drugs, and biologic agents, in instances in which the item was not being paid for as a hospital outpatient service as of December 31, 1996, and when the cost of the item is "not insignificant" in relation to the hospital outpatient PPS payment amount. For those drugs, biologicals, and devices referred to as "current," the transitional payment begins on the first date the new PPS is implemented, as required by section 1833(t)(6)(B)(i) of the Act.

In the April final rule, we established three criteria that a new device, drug, or biological must meet to determine whether its cost are not insignificant relative to the APC payment with which the item is associated. We stated that all of the following cost criteria must be satisfied in order for a new device, drug, or biological to be eligible for transitional pass-through payments:

(1) Its expected reasonable cost exceeds 25 percent of the applicable fee schedule amount for the associated service.

(2) The expected reasonable cost of the new drug, biological, or device must exceed the portion of the fee schedule amount determined to be associated with the drug, biological, or device by 25 percent.

(3) The difference between the expected, reasonable cost of the item and the portion of the hospital outpatient department fee schedule amount determined to be associated with the item exceed 10 percent of the applicable hospital outpatient department fee schedule amount.

In this interim final rule, we are revising the first criterion and delaying the effective date of the other two criteria.

Our plans for implementation of section 1833(t)(6) of the Act are discussed in the April 2000 final rule (65 FR 18478). This section, along with other sections implementing BBRA 1999 provisions that were included in the April 2000 final rule have not previously been subject to public comment were subject to comment until June 6, 2000. We explained in the April 2000 final rule that we found good cause to waive the customary procedure for prior notice and comment with respect to these BBRA 1999 provisions and the final rule provides a 60-day period for the public to comment on these provisions. (For a full discussion of the waiver of proposed rulemaking, refer to Section XI of the April 2000 final rule (65 FR 18535).)

The transitional pass-through payments provide a way for ensuring appropriate payment for new items for which the use and costs are not adequately represented in the 1996 base year claims data on which the hospital outpatient prospective payment system is based. Although individual items will receive transitional pass-through payments for 2 to 3 years from either the first date the PPS is implemented or on the first date payment is initiated for the specific item, the underlying provision is permanent and provides an on-going mechanism for new items to qualify for 2 to 3 years pass-through payments in the future.

Another provision of the April 2000 final rule (65 FR 18477) describes the payment approach for new technology services by defining a special category of APCs referred to as "new technology APCs." Services, such as new surgical techniques (for example, transurethral microwave thermotherapy) or items not eligible for transitional pass-through payments can be paid as a part of these new technology APCs. At a later stage, once data about the actual hospital costs incurred to furnish a new technology service are available, we expect to move payment for these services or items to other, APCs with services that are comparable clinically and with respect to resources. As explained in the April 2000 final rule, if we cannot move the new technology service to an existing APC because it is dissimilar clinically and, with respect to resource costs, from all other APCs, we will create a separate APC for the service. As stated in our April 2000 final rule, the timeframe for treating a service or item as new technology will be consistent with that for pass-through payments; that is at least 2 but no more than 3 years.

In the April 2000 final rule (65 FR 18480), we established eight specific criteria that new or innovative medical devices must meet to be considered eligible for pass-through payments under section 1833(t)(6) of the Act. We stated in the final rule that new or innovative medical devices must meet all of the following criteria to be considered eligible for transitional pass-through payments:

a. They were not recognized for payment as a hospital outpatient service prior to 1997.

b. They have been approved/cleared for use by the Food and Drug Administration.

c. They are determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part, as required by section 1862(a)(1)(A) of the Act. We recognize that some investigational devices are refinements of existing technologies or replications of existing technologies and may be considered reasonable and necessary. We will consider devices for coverage under the outpatient PPS if they have received an FDA investigational device exemption (IDE) and are classified by the FDA as Category B devices. (See §§ 405.203 (FDA categorization of investigational devices) to 405.215 (Confidential commercial and trade secret information).) However, in accordance with § 405.209 (Payment for a non-experimental/investigational (Category B) device), payment for a nonexperimental investigational device is based on, and may not exceed, the amount that would have been paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA.

d. They are an integral and subordinate part of the procedure performed, are used for one patient only, are surgically implanted or inserted, and remain with that patient after the patient is released from the hospital outpatient department.

e. The associated cost is not insignificant in relation to the APC payment for the service in which the innovative medical equipment is packaged. (For the definition of "not insignificant," see the April 2000 final rule (65 FR 18480).)

f. They are not equipment, instruments, apparatuses, implements, or such items for which depreciation and financing expenses are recovered as depreciable assets as defined in Chapter 1 of the Medicare Provider Reimbursement Manual (HCFA Pub. 15–1). (As discussed in the April 2000 final rule, these costs are considered overhead expenses that are and will continue to be factored into the APC payment.)

g. They are not materials and supplies such as sutures, clips, or customized surgical kits furnished incident to a service or procedure.

h. They are not materials such as biologicals or synthetics that may be used to replace human skin.

Note that devices that meet criteria "b" and "c" but not one of the others, though they are not eligible for transitional pass-through payments under section 1833(t)(6) of the Act, are paid through the usual payments for the associated APC. These payment levels will be updated over time to reflect the use of new items and services.

Three of the criteria, "c", "d", and "g," are the focus of the transitional pass-through payment changes contained in this interim final rule. In criterion "c", we stated that devices cleared by the FDA with IDE Category B status would be considered for transitional pass-through payment. We further stated that we would limit such payment to the amount that would be paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA. In criterion "d," we stated our intent to interpret the new device transitional pass-through payment provision in a way that would limit these payments to those devices that are implantable in the sense that they are surgically inserted in a patient and remain with that patient after the patient is released from the hospital outpatient department. In criterion "g" we expressed our intent to treat all "clips" equally as though they function solely as tools and supplies that are necessary for the surgeon to perform a surgical procedure without considering other functions that may qualify some as candidates for pass-through consideration.

In Addendum K of the April 2000 final rule, we published a preliminary list of those particular items and services for which we expect to make payment based on either the pass-through or new technology provision effective August 1, 2000. A slightly different version of this list was posted on our web site, www.hcfa.gov, on March 9, 2000. (A separate notice published elsewhere in the April 7, 2000 **Federal Register** (65 FR 18341) specifically identified this web site posting.) The April 2000 final rule and the web site posting contain instructions about how interested parties may apply for transitional pass-through or new technology payment status for items or services. On May 12, 2000, we updated our web site posting to reflect additional items approved for pass-through and new technology payments on implementation of the new system; that is, August 1, 2000. In addition, on June 22, 2000 we posted updated instructions and announced the application deadline of July 14, 2000 for transitional pass-through and new technology payments effective October 1, 2000.

The April 2000 final rule also specified a number of criteria that facilities or organizations must meet to be considered, for purposes of Medicare payment, to be "provider-based." We adopted these criteria in an attempt to ensure that only appropriately qualified facilities and organizations receive the higher payment levels typically associated with this status. The criteria for provider-based status are set forth in § 413.65 (Requirements for a determination that a facility or an

organization has provider-based status) of the April 2000 final rule (65 FR 18538).

In the April 2000 final rule, we included a special grandfathering provision applicable to FQHCs and "look-alikes" (facilities that are structured like FQHCs and meet all the requirements for grant funding but have not actually received these grants). The provision stated that a facility or entity would be treated as provider-based, without regard to compliance with the provider-based criteria if it has, since April 7, 1995, furnished only services that were billed as if they had been furnished by a department of a provider and received a grant before 1995 under section 330 of the Public Health Service Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the Public Health Service Act, or based on the recommendation of the Public Health Service (PHS), was determined by HCFA before 1995 to meet the requirements for receiving such a grant. We included this provision in response to comments suggesting that application of provider-based criteria to FQHCs and "look-alikes" could interfere with the continuity of care to patients served by these health centers. We also were concerned that application of the criteria could adversely affect access to care for the patients served by these facilities. Therefore, we indicated that we were accepting the comments and had crafted the criteria to give effect to these concerns.

The April 2000 final rule (65 FR 18540) also contained a requirement, in new § 413.65(g)(7) (Obligations of hospital outpatient departments and hospital-based entities), that when a Medicare beneficiary is treated in a hospital outpatient department or hospital-based entity (other than a rural health clinic) that is not located on the main provider's campus, the hospital has a duty to furnish written notice to the beneficiary, before the delivery of services, of the amount of the beneficiary's potential financial liability (that is, of the fact that the beneficiary will incur a coinsurance liability for an outpatient visit to the hospital as well as for the physician service and of the amount of that liability). The notice must be one that the beneficiary can read and understand. If the beneficiary is unconscious, under great duress, or for any other reason unable to read a written notice and understand and act on his or her own rights, the notice must be furnished, before the delivery of services, to the beneficiary's authorized representative.

In addition, the April 2000 final rule amended § 489.24 (Special responsibilities of Medicare hospitals in emergency cases), sometimes referred to the Emergency Medical Treatment and Active Labor Act (EMTALA) regulation. In new § 489.24(i)(2), we required that hospitals establish protocols for handling individuals with potential emergency conditions at off-campus departments. In new § 489.24(i)(2)(ii), we further required that if the off-campus department is a physical therapy, radiology, or other facility not routinely staffed with physicians, RNs, or LPNs, the department personnel must be given protocols that direct them to contact emergency personnel at the main hospital campus.

II. Provisions of the Interim Final Rule

A. New Medical Devices, Drugs, and Biologicals

We are revising § 419.43 (e)(1)(iv) to change one criterion and to postpone the effective date for two other criteria that a new device, drug, or biological must meet in order for its cost to be considered "not insignificant". In the April 2000 final rule, (65 FR 18434), the expected reasonable cost of a device had to exceed 25 percent of the applicable fee schedule amount for the associated service in order for the cost of the device to meet the "not insignificant" test. Based on the experience that we gained by reviewing the applications submitted for approval of new devices, drugs and biologicals as pass-through items, we concluded that the 25 percent-limitation was too restrictive and could result in limiting Medicare beneficiaries' access to new products. In order to ensure that Medicare beneficiaries will continue to have access to the latest technologies, we are changing that criterion. We will now require that the expected reasonable cost of a new device must exceed 10 percent of the applicable fee schedule amount for the associated service.

The additional two criteria, proposed in the April 2000 rule, for determining whether a new device, drug, or biological cost is "not insignificant" will be postponed and will apply to devices, drugs, and biologicals for which a transitional pass-through payment is first made on or after January 1, 2003. The delay in effective date for these criteria is necessary so that we will have sufficient time to gather and analyze data needed to determine the current portion of the fee schedule amounts associated with a device, drug, or biological, which is an essential factor in applying these criteria.

B. Revision to Criteria to Define New or Innovative Medical Devices Eligible for Pass-through Payments

In criterion "c", we stated that devices cleared by the FDA with IDE Category B status would be considered for transitional pass-through payment. We further stated that we would limit pass-through payment for the eligible IDE Category B device to the amount that would be paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA. This approach was taken based on the regulations requirement set forth in § 405.209 that limits payment for the IDE Category B device in the manner described. Since publishing our April 2000 final rule, we have reviewed this policy and now believe that it would be more appropriate to provide that the payment amount for IDE Category B items that qualify for transitional pass-through payments be determined in the same manner as other pass-through items (that is, no cap). Since IDE Category B devices are subjected to the same eligibility requirements as any other device applying for pass-through status and since pass-through payments for a specific device are temporary, we believe that, for purposes of making outpatient PPS pass-through payments, it is more appropriate to not impose a payment cap on eligible IDE Category B devices. Therefore, we are revising criterion "c" by removing the cost limitation provision for IDE Category B devices that qualify for transitional pass-through payments.

In addition, since publication of the April 2000 final rule, we have been processing a large number of applications for transitional pass-through payment status for new medical devices. It has become apparent that our attempt to distinguish implantable devices using the procedure we had outlined in the April 2000 final rule had practical limitations. For example, a significant number of applications received were for devices that consist of more than one component in which one component would be implantable according to the new medical device definition stated in the April 2000 final rule (65 FR 18480) while other components, such as catheters, guidewires, or certain clips would not meet this definition.

Distinguishing these components of a single product and pricing them separately appears unnecessarily cumbersome. In some instances, a particularly expensive catheter that is

surgically inserted, removed, and disposed of in the course of a procedure may be used in one of a number of procedures. In this instance the new medical device is implanted temporarily rather than permanently as indicated in our original policy published in the April 2000 final rule. However, we did not intend for our policy to exclude new medical devices that are implanted or inserted during a procedure but also may be removed during that procedure so that the patient leaves the hospital without the device. Rather, we believe that these devices should be considered for pass-through payments because they also are implantables.

In other instances, it became apparent that some clips are expensive and function other than as tools or supplies necessary for a surgeon to perform a surgical procedure. Some clips are radiological site or tissue markers that are implanted and may be used months after implantation to locate an area for imaging and later removed. We did not intend to exclude such clips from consideration for pass-through payments.

Separating components of a single product and pricing them separately could require the establishment of a number of new payment groups consisting of just one product as a result of introduction of a single, high-priced item. Industry representatives also indicated significant concerns about our way of proceeding.

Therefore, we are modifying our interpretation of which devices are eligible for transitional pass-through payments to include new medical devices that are used for one patient only, are single use, come in contact with human tissue, and are surgically implanted or inserted in a patient during a procedure but may also be removed during that procedure so that the patient leaves the hospital without the device. Our revised interpretation also includes clips that are used as radiological site or tissue markers.

In addition, we are clarifying our interpretation of criterion "g" to include as supplies pharmacological imaging and stressing agents other than radiopharmaceuticals (for which payment under the transitional pass-through provision is established by section 1833(t)(6)(A) of the Act). Also, in criterion "g" we have become aware of the need, based on our review of pass-through applications, to clarify that supplies include contrast media and stressing agents, excluding radiopharmaceuticals, that are used in imaging procedures. We are revising criteria "c", "d" and "g" of the eight criteria for defining new medical devices for pass-through payments that were discussed in the preamble of the April 2000 final rule to reflect this change. These three revised criteria are as follows:

- Criterion—c. They are determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part, as required by section 1862(a)(1)(A) of the Act. Some investigational devices are refinements of existing technologies or replications of existing technologies and may be considered reasonable and necessary. If such devices have received an FDA investigational device exemption (IDE) and are classified by the FDA as Category B devices in accordance with §§ 405.203 to 405.215 of this chapter, excluding § 405.209, they will be considered for coverage under the hospital outpatient prospective payment system.
- Criterion—d. They are an integral and subordinate part of the procedure performed, are used for one patient only, are single use, come in contact with human tissue, and are surgically implanted or inserted, whether or not they remain with the patient when the patient is released from the hospital outpatient department.
- Criterion—g. They are not materials and supplies such as sutures, customized surgical kits, clips (other than radiological site or tissue markers), or furnished incident to a service or procedure. Supplies include pharmacological imaging and stressing agents other than radiopharmaceuticals (for which transitional pass-through payment is authorized under section 1833(t)(6)(A) of the Act).

Also, we are revising § 419.43(e)(4) (Transitional pass-through for additional costs of innovative medical devices, drugs, and biologicals) to include all eight criteria to define new or innovative medical devices eligible for pass-through payments.

The policies discussed above represent a change from the policies stated in the April 2000, final rule. This interim final rule with comment, thus, supersedes the relevant aspects of the previous rule. Comments on our revised policy will be considered if received by September 5, 2000.

C. Revision to Grandfather Provision for Certain FQHCs and Look-Alikes

Since publication of the April 2000 final rule, we have become aware that, as currently worded, the rule would not fulfill its intended purpose in that the continuity of care and access to care for patients of some health centers could be jeopardized. This is because those centers meet other criteria for grandfathering but were not designated as FQHCs or "look-alikes" before 1995. To meet our original policy intent of helping to ensure that the new criteria do not disrupt the delivery of services to patients of these facilities, we are correcting § 413.65(m) to state that a facility or entity would be treated as provider-based, without regard to compliance with the provider-based criteria, if it has since April 7, 1995 furnished only services that were billed as if they had been furnished by a department of a provider and received a grant on or before April 7, 2000 under section 330 of the Public Health Service Act and continues to receive funding under such a grant, or is receiving funding from a grant made on or before April 7, 2000 under section 330 of the Public Health Service Act; or based on the recommendation of the PHS, was determined by HCFA on or before April 7, 2000 to meet the requirements for receiving a grant under section 330 of the Public Health Service Act, and continues to meet such requirements. We are making this change to clarify that grandfathering under § 413.65 is based on continued status as a section 330 of the Public Health Service Act grantee or a "look-alike" facility.

III. Clarification Issues

A. Clarification of Transitional Pass-Through/New Technology Codes

We wish to clarify that the "C" codes assigned to many items shown in the May 12, 2000 web site posting are temporary HCFA Common Procedure Coding System (HCPCS) codes that are to be used exclusively to bill pass-through and new technology items paid under the hospital outpatient PPS. These codes cannot be used to bill other Medicare payment systems, for example, the durable medical equipment fee schedule. Assignment of the "C" category of HCPCS codes for use in the hospital outpatient PPS is intended to expedite the processing of requests for pass-through and new technology status and to ensure beneficiaries timely access to new and appropriate technologies. Therefore, applicants may submit a single application as detailed in the April 2000 final rule (65 FR 18481) for such items that do not have an established HCPCS code to ATTN: PPS New Tech/Pass-Throughs, Division of Practitioner and Ambulatory Care, Mailstop C4–03–06, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, MD 21244–1850. HCPCS applications unrelated to the pass-through and new technology provisions should continue

to follow the regular HCPCS application process found on the Internet at http://www.hcfa.gov/medicare/hcpcs.htm.

As stated in the April 2000 final rule, if the item for which pass-through or new technology status is requested requires approval/clearance by the Food and Drug Administration (FDA), submit a copy of the FDA approval/clearance letter. Products may be considered for pass-through status as soon as they are approved/cleared by the FDA without a specified period of marketing experience. This approach reflects our policy on assigning "C" codes since the creation of these codes under the HCPCS.

B. Clarification of Notice of Beneficiary Cost-Sharing Liability

Following publication of the April 2000 final rule, some hospitals and their representatives have asked whether it is our intent that the beneficiary notice requirement in new § 413.65(g)(7) be followed in cases when the prohibition on patient dumping requirements in § 489.24, sometimes referred to as the Emergency Medical Treatment and Active Labor Act (EMTALA) requirements, apply. The concern expressed is that, in such cases, it would not be appropriate to delay mandated screening and stabilization services to deliver a notice of patient financial liability. Questions also have arisen as to whether hospitals can reasonably be expected to furnish an exact statement of the patient's financial liability, since the exact scope of services needed may not be known at the time notice must be given.

We understand this concern and wish to confirm that in EMTALA cases the requirements of § 489.24 continue to apply, so that hospitals are not required to deliver the notices before screening and stabilizing a patient with an emergency medical condition. We further understand the concerns that have been expressed regarding estimates of financial liability. We are clarifying that when the exact type and extent of care needed is not known, the hospital may furnish a written notice to the patient that explains the fact that the beneficiary will incur a coinsurance liability to the hospital that they would not incur if the facility were not provider-based. The hospital may furnish an estimate based on typical or average charges for visits to the facility or organization, while stating that the patients actual liability will depend upon the actual services furnished by the hospital. We are developing a separate proposed rule that will further revise and clarify the notice requirements and will issue that proposed rule for public comment as soon as possible.

C. Clarification of Protocols for Off-Campus Departments

Following publication of the April 2000 final rule, some hospitals and their representatives have asked whether it is our intent that the staff of off-campus departments described in new § 489.24(i)(2)(ii)), such as physical therapy, radiology, or other facilities not routinely staffed with physicians, RNs, or LPNs, be required to contact emergency personnel at the main hospital campus (as described in new § 489.24(i)(3)(ii) before arranging an appropriate transfer to a medical facility other than the main hospital. This question refers to cases in which an appropriate transfer is necessary either because the main hospital campus does not have the specialized capability or facilities required by the individual or because the individual's condition is deteriorating so rapidly that the time needed to move the individual to the main hospital campus would significantly jeopardize the individual's life or health.

We understand this concern and do not intend that new § 489.24(i)(2)(ii) be interpreted in a way that could delay an appropriate transfer. Therefore, we are clarifying that in any case arising in an off-campus department, of the kind described in new § 489.24(i)(2)(ii), the contact with emergency personnel at the main hospital campus should be made either after or concurrently with, the actions needed to arrange an appropriate transfer under new § 489.24(i)(3)(ii) if doing otherwise would significantly jeopardize the individual's life or health. We note that this clarification does not relieve the off-site department of the responsibility for making this contact, but only clarifies that the contact may be delayed in specific cases when doing otherwise would endanger a patient subject to EMTALA protection.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This interim final rule is not a major rule because we have determined that the economic impact will be negligible for the revisions related to the transitional pass-through payments for new or innovative medical devices and the grandfathering of FQHCs and "look-alikes."

In addition, the budget impact related to the transitional pass-through provision has already been addressed in the April 2000 final rule (65 FR 18530). As stated in that rule, the pass-through provision is budget neutral as required by section 1833(t)(2)(E) of the Act as amended by section 201(c) of the BBRA. Section 1833(t)(6)(D) of the Act caps the projected additional payments annually at 2.5 percent of the total projected payments for hospital outpatient services each year before calendar year 2004 and no more than 2.0 percent in year 2004 and in subsequent years. Under this provision, we have the authority to reduce pro rata the amount of the additional payments, if before the beginning of a year, we estimate that these payments would otherwise exceed the caps. We advised, in the April 2000 final rule, that it is extremely difficult for us to estimate projected pass-through expenditures as required by law because we do not have claims data available for most items that would be eligible for pass-through payments and because many eligible items would be added after the new system is implemented. For these reasons, in the April 2000 final rule, we stated that there would be no uniform reduction applied to the pass-through payments for calendar years 2000 and 2001. The pass-through change incorporated in this interim final rule does not alter these circumstances.

Also, the budgetary impact related to the grandfathering provision was already calculated in the April 2000 final rule (65 FR 18530) as if these providers were designated before April 7, 2000.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit

status or by having revenues of $5 million or less annually. For purposes of the RFA, all FQHCs and "look-alikes" are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with not more than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This interim final rule will not have a significant economic effect on these governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on States or local governments.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Waiver of Proposed Rulemaking and Waiver of the 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. For the reasons set forth below, we find good cause to waive the requirement for notice and comment procedures for the refinement of rules concerning provider based status for FQHCs (including "look-alike" facilities).

We believe that implementing the provider-based provisions contained in the April 2000 final rule without the refinements incorporated in this document could jeopardize continuity of care at certain facilities currently treated as provider-based FQHCs, and consequently disrupt care for Medicare beneficiaries served in those facilities. It would have been impracticable to complete notice-and-comment procedures by August 1, 2000. Given the limited timeframe and the time required to complete notice-and-comment procedures (to develop proposed policies, draft the proposed rule, provide a 60-day public comment period, consider public comments, develop final policies, and draft a final rule), it would not have been possible to issue this document as a proposed rule and issue a final rule by August 1, 2000. Therefore we find that notice and comment procedures on this issue would be impracticable and contrary to the public interest.

With respect to outpatient PPS, this rule revises a policy reflected in the April 7 final rule with comment period. The April 7 rule provided a waiver of notice and comment procedures for, among other things, the outpatient PPS policy revised herein.

We find the circumstances surrounding this interim final rule make it impracticable and contrary to the public interest to allow a 30-day delay in its effective date with respect to outpatient PPS. This interim final rule refines policies set forth in the April 2000 final rule including the definition of new medical devices, drugs, and biologicals eligible for pass-through payments. The provisions contained in the April 2000 final rule regarding the transitional pass-through payments will be implemented on August 1, 2000, while the provider-based provisions will be implemented on October 10, 2000. We do not believe that it would be feasible or desirable to implement pass-through provisions contained in the April 2000 final rule without the refinements incorporated in this document. We believe that it would be impracticable and contrary to the public interest to have an effective date for the policy revisions in this document relating to devices that differs from the effective date for the rest of outpatient PPS. If we allow a 30-day delay in the effective date of this rule, hospitals and fiscal intermediaries will be placed at greater risks to make additional changes soon after implementing major systems changes; will find it cumbersome; and will consider it an inefficient use of resources.

Therefore, we find good cause to waive the 30-day delay in the effective date.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 419

Health facilities, Hospitals, Medicare.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

A. Part 413 is amended as set forth below:

1. The authority citation for part 413 continues ro read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart E—Payments to Providers

2. In § 413.65, paragraph (m) is revised to read as follows:

§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.

* * * * *

(m) *FOHCs and "look-alikes".* A facility that has, since April 7, 1995, furnished only services that were billed as if they had been furnished by a department of a provider will continue to be treated, for purposes of this section, as a department of the provider without regard to whether it complies with the criteria for provider-based status in this section, if the facility—

(1) Received a grant on or before April 7, 2000 under section 330 of the Public Health Service Act and continues to receive funding under such a grant, or is receiving funding from a grant made on or before April 7, 2000 under section 330 of the Public Health Service Act under a contract with the recipient of such a grant, and continues to meet the requirements to receive a grant under section 330 of the Public Health Service Act; or

(2) Based on the recommendation of the Public Health Service, was determined by HCFA on or before April 7, 2000 to meet the requirements for receiving a grant under section 330 of the Public Health Service Act, and continues to meet such requirements.

* * * * *

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

B. Part 419 is amended as set forth below:

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395(t), and 1395hh).

Subpart D—Payments to Hospitals

2. Section 419.43 is amended by:

A. Revising paragraph (e)(1)(iv).

B. Redesignating paragraph (e)(4) as paragraph (e)(5).

C. Adding new paragraph (e)(4).

The revision and addition reads as follows:

§ 419.43 Adjustments to national program payment and beneficiary coinsurance amounts.

* * * * *

(e) *Transitional pass-through for additional costs of innovative medical devices, drugs, and biologicals*— * * *

(1) * * *

(iv) *New medical devices, drugs, and biologicals.* A medical device, drug, or biological not described in paragraph (e)(1)(i), (e)(1)(ii), or (e)(1)(iii) of this section if—

(A) Payment for the device, drug, or biological as an outpatient hospital service under this part was not being made as of December 31, 1996; and

(B) The cost of the device, drug, or biological is not insignificant (as defined in paragraph (e)(1)(iv)(C) and (D) of this section) in relation to the hospital outpatient fee schedule amount (as calculated under § 419.32(c)) payable for the service (or group of services) involved.

(C) In the case of a new device, drug, or biological for which a transitional pass-through payment is first made before January 1, 2003, the cost of the device, drug, or biological is considered not insignificant if its expected reasonable cost exceeds 10 percent of the applicable fee schedule amount for the associated service.

(D) In the case of a new device, drug, or biological for which a transitional pass-through payment is first made on or after January 1, 2003, the cost of the device, drug, or biological is considered not insignificant if it meets all of the following thresholds:

(*1*) Its expected reasonable cost exceeds 10 percent of the applicable fee schedule amount for the associated service.

(*2*) The expected reasonable cost of the new drug, biological, or device must exceed the current portion of the fee schedule amount determined to be associated with the drug, biological, or device by 25 percent.

(*3*) The difference between the expected reasonable cost of the item and the portion of the hospital outpatient fee schedule amount determined to be associated with the item exceeds 10 percent of the applicable hospital outpatient fee schedule amount.

* * * * *

(4) *Criteria to define new or innovative medical devices eligible for pass-through payments.* HCFA makes pass-through payment for new or innovative medical devices that meet all of the following criteria:

(i) They were not recognized for payment as a hospital outpatient service prior to 1997.

(ii) They have been approved/cleared for use by the FDA.

(iii) They are determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part, as required by section 1862(a)(1)(A) of the Act. Some investigational devices are refinements of existing technologies or replications of existing technologies and may be considered reasonable and necessary. If such devices have received an FDA investigational device exemption (IDE) and are classified by the FDA as Category B devices in accordance with sections §§ 405.203 to 405.215 of this chapter, excluding § 405.209, they will be considered for coverage under the hospital outpatient prospective payment system.

(iv) They are an integral and subordinate part of the procedure performed, are used for one patient only, are single use, come in contact with human tissue, and are surgically implanted or inserted whether or not they remain with the patient when the patient is released from the hospital outpatient department.

(v) The associated cost is not insignificant, as determined under paragraph (e)(1)(iv) of this section, in relation to the APC payment for the service in which the related medical device is packaged.

(vi) They are not equipment, instruments, apparatuses, implements, or such items for which depreciation and financing expenses are recovered as depreciable assets as defined in Chapter 1 of the Medicare Provider Reimbursement Manual (HCFA Pub. 15–1).

(vii) They are not materials and supplies such as sutures, customized surgical kits, or clips, other than radiological site markers, furnished incident to a service or procedure. Supplies include pharmacological imaging and stressing agents other than radiopharmaceutical (for which transitional pass-through payment is authorized under section 1833(t)(6)(A) of the Act).

(viii) They are not materials such as biologicals or synthetics that may be used to replace human skin.

* * * * *

(Catalog of Federal Domestic Assistance 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 27, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: July 27, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–19668 Filed 7–31–00; 2:48 pm]

BILLING CODE 4120–01–U

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 307

[Docket No. MARAD–2000–7706]

AMVER Bulletin Availability; Technical Amendment

AGENCY: Maritime Administration, Transportation.

ACTION: Technical amendment.

SUMMARY: The Maritime Administration (MARAD) is updating information regarding an address change for the availability of the "AMVER Bulletin". The intended effect of this technical amendment is to provide accurate information for the availability of the "AMVER Bulletin". This technical amendment updates an address and is effective without delay because it is nonsubstantive.

DATES: Effective on August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Walter Lockland, Chief, Division of Operations Support, (202) 366–2629, Maritime Administration MAR–613, Room 2123, 400 7th St., SW., Washington, DC, 20590–0001, or you may send e-mail to: *walter.lockland@marad.dot.gov.*

ADDRESSES: This technical amendment is available for inspection with the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m. E.T. Monday through Friday, except federal holidays. You may also view this document via the Internet at http://dms.dot.gov by using the search function and entering the docket number [MARAD–2000–7706].

SUPPLEMENTARY INFORMATION:

Background

Operators of U.S.-flag oceangoing vessels in U.S. foreign trade and certain foreign-flag vessels must report on their locations pursuant to 46 CFR part 307 to enhance the safety of vessel operations at sea and provide a contingency for events of national emergency. AMVER means Automated Mutual-Assistance Vessel Rescue System operated by the U.S. Coast Guard. The "AMVER Bulletin" is available from the U.S. Coast Guard, AMVER Maritime Relations Office, Battery Park Building, New York, NY 10004.

Previously, the "AMVER Bulletin" was available from the U.S. Coast Guard at AMVER Center, Governors Island, New York, NY 10004. However, the U.S. Coast Guard base on Governors Island is closed. Therefore, we are updating the address to reflect the Coast Guard's change of location.

List of Subjects in 46 CFR Part 307

Marine safety, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

Accordingly, 46 CFR part 307 is amended as follows:

PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

1. The authority citation for part 307 continues to read as follows:

Authority: Secs. 204(b), 212(A), 1203(a), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1122(a), 1283); Pub. L. 97–31; 46 CFR 1.66.

2. In § 307.13, revise the third sentence to read as follows:

§ 307.13 Where to report.

* * * The "AMVER Bulletin" is available from AMVER Maritime Relations Office, U.S. Coast Guard, Battery Park Building, New York, NY 10004. * * *

Dated: July 27, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–19368 Filed 8–2–00; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 64

[CC Docket No. 94–129; FCC 00–135]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends certain liability rules, grants in part petitions for reconsideration of our Slamming proceeding. We believe these modifications will strengthen the ability to deter slamming, while addressing concerns raised with respect to our previous administrative procedures.

DATES: Effective September 5, 2000, except for §§ 1.719(a) through (d), 64.1110(a) and (b), 64.1140(a) and (b), §§ 64.1150(a) through (d), 64.1160(b) through (f), and 64.1170(b) through (f), which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Michele Walters, Associate Division Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Order in CC Docket No. 94–129 released on May 3, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In our Second Report and Order and Further Notice of Proposed Rulemaking (Section 258 Order), 64 FR 7763 (February 16, 1999) we adopted rules to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). The goal of section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. In the Section 258 Order, we adopted various rules addressing verification of preferred carrier changes and preferred carrier freezes. We also adopted liability rules designed to take the profit out of slamming. In this First Order on Reconsideration (Order), we amend certain of our liability rules, granting in part petitions for reconsideration of our Section 258 Order. Specifically, the revised rules provide for slamming disputes between consumers and carriers to be brought before appropriate state commissions, or this Commission in cases where the state has not opted to administer our rules, rather than to authorized carriers. In light of this decision, we deny a petition filed by several long distance carriers seeking waiver of the slamming liability rules and proposing an industry-sponsored slamming liability administrator. In this order, we also modify the liability rules that apply when a consumer has paid charges to a slamming carrier. In such instances, our new rules require slamming carriers to pay out 150% of the collected charges to the authorized carrier, which, in turn, will pay to the consumer 50% of his or her original payment. Finally, the order sets forth certain notification requirements to

facilitate carriers' compliance with the liability rules. We believe these modifications will strengthen the ability of our rules to deter slamming, while addressing concerns raised with respect to our previous administrative procedures.

II. Discussion

A. Absolution

1. Retaining Limited Absolution

2. We restate our conviction that the limited absolution of consumer charges ordered by our slamming rules is essential to deterring slamming. By depriving unauthorized carriers of slamming revenues in the first instance, absolution takes the profit out of this illegal practice. Several petitioners and commenters, including all of the groups representing consumer and state interests, agree that absolution is "a reasonable and practical extension of the statutory intent reflected in section 258 that the slamming carrier not be allowed to keep any of its ill-gotten gains." The only commenters who oppose absolution are carriers that would be subject to the more stringent liability created by these rules.

3. As detailed in the Section 258 Order, we concluded that more aggressive slamming liability rules are essential because our previous rules had failed to stem the growth of slamming. As we summarized in that order:

> * * * our experience in this area leads us to the inescapable conclusion that slamming has become a profitable business for many carriers. For this reason, the rules we adopt in this *Order* not only seek to strengthen the existing verification rules, but are more broadly designed to prevent carriers from making any profits when they slam consumers * * * the strongest incentive for such carriers to implement strictly our verification rules is to know that failure to comply may mean that they will not get paid or any services rendered after such an unauthorized switch.

4. Accordingly, we reject the arguments of those long distance carriers that assert we failed to explain our departure from the slamming liability policies adopted in the 1995 Order, 60 FR 35846 (July 12, 1995). Under those previous rules, consumers remained obligated to pay charges to their slamming carriers in the amount they would have paid their authorized carriers absent the unauthorized change. Several commenters quote piecemeal from the 1995 Order to support their argument that our current approach to slamming liability is inexplicably inconsistent. We note, however, that those commenters fail to include in their filings the cautionary language in that order. In particular, the Commission there specifically warned that absolution might be an appropriate rule if the prior rules failed to abate the growth of slamming:

> Despite the compelling arguments of those favoring total absolution of all toll charges from unauthorized IXCs, we are not convinced that we should, as a policy matter, adopt that option at this time * * * We recognize, however, that [liability limited to re-rating] may not be the best deterrent against slamming. Some IXCs engaging in slamming may not be deterred unless all revenue gained through slamming is denied them. At this time, we believe that the equities tend to favor the "make whole" remedy and therefore support the policy of allowing unauthorized IXCs to collect from the consumer the amount of toll charges the consumer would have paid if the PIC had never been changed * * * However, we recognize that if "slamming" continues unabated—perhaps through abuses in areas other than the use of the LOA—we may have to revisit this question at a later date.

5. As noted, the number of slamming complaints processed by this Commission have more than doubled since adoption of the 1995 Order. The state commissions, which cumulatively receive a larger share of slamming complaints than this Commission, have seen a similar growth. Thus, consistent with our previous warning, and in light of the need for stronger and more effective deterrents to slamming, we are convinced that absolving consumers of liability for charges incurred over a limited time-period is now the appropriate policy. We point out that consumer groups and states support absolution from slamming charges as an effective method of deterring slamming. Indeed, many states have adopted absolution as a remedy for their own consumers.

6. As we stated in the Section 258 Order, absolution minimizes slamming carriers' physical control over slamming revenues, and thereby minimizes the incentive to slam consumers. The Commission has seen several cases in which slamming carriers went out of business or declared bankruptcy after the Commission or state enforcement agencies detected their illegal activities. Such evasion has made it difficult to provide restitution to injured consumers. Accordingly, it is important to deprive a slamming carrier of slamming revenues in the first instance.

7. Our absolution rules also place appropriate incentives on both consumers and carriers. They encourage consumers to scrutinize their telephone bills immediately and carefully. In doing so, absolution engages the general public in detecting slamming. Absolution also provides carriers with the incentive to verify all carrier changes properly, in order to protect themselves against any possible inappropriate consumer claims of slamming. The rules will motivate carriers not only to comply strictly with our verification procedures, but also to use methods that provide convincing proof of a subscriber's authorization.

8. Finally, limited absolution compensates a slammed subscriber, at least in part, for the inconvenience and frustration that results from an unauthorized change. In our extensive experience handling slamming complaints since the 1995 Order, it has become evident that consumers often experience a high level of confusion upon being slammed. After discovering the unauthorized change, consumers frequently have great difficulty in returning to their authorized carriers and in getting their telephone bills adjusted correctly. Indeed, as long as slamming carriers continue to receive payment, they have little incentive to be responsive to consumer complaints. Therefore, absolution also furthers Congress' desire to "provide that consumers are made whole."

9. As stated previously, the only parties that oppose the concept of absolution are the carriers themselves. States and consumer groups overwhelmingly support absolution as the best method to deter slamming. We are unpersuaded by the arguments of TRA and others that our absolution rule is inconsistent with the provisions of section 258 requiring slamming carriers to reimburse authorized carriers for forgone revenue. As we explained in the Section 258 Order, we believe that our absolution remedies are complementary to the congressional scheme and not inconsistent. The language of section 258 does not mandate that slammed consumers pay either the authorized or the unauthorized carrier. Rather, by its terms, section 258(b) applies only when a consumer in fact has made a payment. Furthermore, section 258 specifically states that its remedies are "in addition to any other remedies available by law." We emphasized in the Section 258 Order that the authorized carrier is free to seek compensation for lost profits or other damages in proceedings against the slamming carrier before the Commission or in a state or federal court. Furthermore, our rules do not deprive the authorized carrier of all charges incurred by the subscriber. The subscriber only receives absolution for service provided during the first 30 days after being slammed. The authorized carrier is entitled to collect charges for service provided after the first 30 days,

even though that service was provided by the slamming carrier.

2. Time Period for Absolution

10. We decline to extend the absolution period beyond the 30-day limit, as suggested by several petitioners, because we find that the 30-day limit strikes a reasonable balance between the interests of consumers and carriers. We find that the period of absolution should be limited in order to give consumers the incentive to look at their bills promptly and not to delay reporting slams. We also find that the time limitation should be tied to an event that is verifiable and easily tracked, such as the date a slam occurs, rather than an event that is not verifiable, such as the date the consumer notices an unauthorized change. Accordingly, we retain the limitation that absolution is only available for charges incurred within the first 30 days after the unauthorized change.

11. Furthermore, as explained in the Section 258 Order, we will grant waivers where special circumstances warrant a longer period of absolution, such as where the subscriber's telephone bill does not provide reasonable notice of a carrier change. We disagree with NTCA's contention that we should extend the time period for absolution because the waiver process is not a practical solution for consumers. NTCA's viewpoint appears to be based on the assumption that large numbers of consumers will be unable to detect carrier changes on their telephone bills. We acknowledged in the Truth-In-Billing proceeding that unclear telephone bills can prevent customers from recognizing that their carrier of choice has been switched. The principles adopted in that order address these concerns by requiring telephone bills to highlight when a consumer's preferred interLATA or intraLATA carrier has been changed. Our Truth-In-Billing Order also requires that telephone bills contain clear and conspicuous disclosure of consumer inquiry information, enabling consumers to report slamming and begin the process of returning to their authorized carrier. Accordingly, in the future, consumers should be better-equipped to detect and respond to unauthorized carrier changes. We also note that deliberate efforts by a carrier to conceal an unauthorized carrier switch may be the basis for extending the 30-day limit, and may also warrant additional enforcement action by the Commission.

B. Liability Where Consumer Has Paid Unauthorized Carrier

12. Frontier has requested reconsideration of the requirement in the Section 258 Order that an authorized carrier that collects slamming proceeds from an unauthorized carrier remit to the subscriber the difference between what the subscriber paid the unauthorized carrier and what he would have paid the authorized carrier absent a slam. Frontier asserts that this "re-rating" requirement is inconsistent with the specific statutory language of section 258, which mandates that the unauthorized carrier "shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation."

13. In the Section 258 Order, we concluded that requiring authorized carriers to remit to the subscriber amounts in excess of what they would have received but for the slam was consistent with the statute and the Congressional intent underlying section 258. Pointing to the language of the legislative history specifically directing that the Commission's rules implementing section 258 "should also provide that consumers be made whole," we concluded that Congress intended that subscribers who pay for slamming charges should pay no more than they would have paid their authorized carrier for the same service had they not been slammed. We also noted in the Section 258 Order that such a rule was consistent with existing Commission policy requiring slamming carriers to refund to subscribers amounts in excess of what the subscriber would have paid its preferred carrier; while the interpretation proffered by Frontier on reconsideration would leave consumers worse off than before passage of the legislation.

14. On reconsideration of this issue, we have considered comments filed in response to the Further Notice of Proposed Rulemaking (FNPRM) in this proceeding. Among the issues raised in the FNPRM, we asked whether we had authority under section 258 or other provisions of the Act to require the unauthorized carrier to pay to the authorized carrier double the amount of charges paid by the subscriber during the first 30 days after a slam, with the authorized carrier then remitting one-half that amount back to the subscriber. The modified liability approach we adopt here is a variation on that proposal in that it requires unauthorized carriers to disgorge more than the amount collected from the subscriber in order to compensate both the subscriber and the authorized carrier. In light of the comments received on the FNPRM and petitions for reconsideration, we now adopt a different liability scheme, for cases where the subscriber has paid charges to the unauthorized carrier, that we conclude more fully implements the congressional intent underlying section 258. Specifically, we now establish a remedy that both allows the authorized carrier to retain an amount of money equal to "all charges paid by the subscriber" to the unauthorized carrier, and also ensures that subscribers are "made whole" by reimbursing them the amount they paid in excess of what they would have paid their preferred carrier absent the slam (or a proxy for such amount). Thus, once a state commission or the FCC has made a finding that a slam has occurred, the unauthorized carrier will be required to disgorge to the authorized carrier an amount adequate to satisfy both of these obligations. As discussed, we find that an appropriate proxy for this harm is 150% of the amounts collected by the unauthorized carrier from the subscriber following a slam. Upon receipt of this money, the authorized carrier will then be required to remit one-third of this amount (*i.e.*, 50% of what the subscriber paid to the unauthorized carrier) to the injured subscriber.

15. We specifically reject Frontier's petition to the extent it asserts that any re-rating of the consumers' bill would be inconsistent with the statute. To the contrary, Frontier's interpretation would completely ignore the congressional intent that consumers be "made whole," by leaving consumers that pay money to an unauthorized carrier having paid more than they would have paid absent the slam. Even setting aside any time and expense incurred by the consumer in remedying the slam, such an approach cannot be considered making the subscriber "whole" in any meaningful sense. We note, in particular, that many of the long distance carriers favoring reconsideration of the absolution requirement apparently agree that the dual Congressional intent of section 258 mandates that slammed consumers should pay no more than they would have paid absent the slam.

16. We conclude that the approach we adopt here is both authorized by section 258, and is the most appropriate method for satisfying the dual congressional purposes reflected in the legislative history. The specific language of section 258 provides that the unauthorized carrier shall be liable to the authorized carrier for all amounts collected from the subscriber. As Frontier asserts, a

reasonable interpretation of this language is that Congress intended for the authorized carrier to retain all such amounts, even though they likely will be more than the authorized carrier would have received from the subscriber absent a slam. Such a bonus may serve as additional incentive for the authorized carrier to go after the unauthorized carrier to collect these amounts, thereby acting as an additional disincentive to slamming. Section 258 also specifically provides that this remedy is "in addition to any other remedies available at law." One such remedy that assuredly is available is the ability of consumers to bring a claim to the Commission or in federal court, or where allowed under state law to the state commissions, for damages due to slamming. For example, pursuant to sections 206–208 of the Act, a consumer bringing a complaint is entitled to actual and consequential damages following a finding of a slam. Indeed, prior to the Section 258 Order, Commission orders compensated slammed consumers by requiring slamming carriers, pursuant to sections 201(b) and 208 of the Act, to refund to the subscriber any amounts paid to the slamming carrier in excess of what he would have paid his preferred carrier absent the slam. Our modified liability requirements thus satisfy the congressional mandate of making consumers "whole," by retaining the availability of other existing remedies to ensure that subscribers pay no more for service than they would have but for being slammed. Accordingly, we find that the modifications to our liability rules adopted here most fully satisfy the dual congressional mandate of section 258. Thus, our decision to require the slamming carrier to disgorge 150% of the amount paid to it by the subscriber relies on our section 258 authority only with respect to that provision's express permission for the Commission to use "any other remedies available by law."

17. We note that, in response to the FNPRM, some carriers assert that we do not have jurisdiction to require the unauthorized carrier to disgorge more than it collected from the subscriber because this would result in punitive damages not authorized by the Act. We disagree. Even if such damages can be considered punitive, rather than purely compensatory, any punitive aspect arises from the specific statutory provision providing that the authorized carrier is entitled to amounts over and above what it would have collected if the slam had not occurred. The amount going to the subscriber, on the other hand, is no more than compensatory, and well within the range of relief authorized in other statutory provisions. As the statute specifically authorizes this additional liability to the authorized carrier, we find that it is clearly within our jurisdiction.

18. Finally, as noted, we find that 50% of the amount collected from the subscriber by the unauthorized carrier is an appropriate proxy for re-rating that also responds to concerns raised by the carriers that actual re-rating is administratively difficult and expensive. Frontier, for example, argues that obtaining the necessary call detail from the offending carrier, collecting the revenues from the offending carrier, re-rating calls, and remitting the difference to affected customers is a time-consuming, manual and expensive process. Other long-distance carriers similarly argue that administrative systems (such as electronic interfaces between carriers) would have to be developed to allow for accurate re-rating, imposing costs on the authorized carrier that has not been accused of slamming. In response to this perceived difficulty, the long-distance carriers themselves (including Frontier and MCI) have argued in conjunction with the Joint Waiver Petition that the Commission should provide carriers the option of refunding 50% to the subscriber, rather than requiring them to engage in an actual calculation of the amount paid by the subscriber in excess what he would have paid his preferred carrier. These carriers assert that such a proxy fully compensates the subscriber while not requiring the carriers to engage in a difficult and expensive comparison of rates of other carriers. As discussed more thoroughly, we agree that this is an appropriate remedy for these purposes and will significantly simplify the flow of money from the unauthorized carrier to the authorized carrier and subscriber.

C. Administration of the Slamming Liability Rules

1. Forum for Administration of Slamming Liability Rules

19. In the Section 258 Order, we set forth rules that imposed on authorized carriers certain responsibilities for resolving disputes between subscribers and allegedly unauthorized carriers. Recognizing that other alternatives might better serve consumer interests under our slamming liability scheme, however, we agreed to entertain requests for waiver of our rules if carriers implemented an independent third party administrator to discharge carrier obligations for resolving slamming disputes. We specified that such a proposal should give consumers a single point of contact to resolve slamming problems and provide consumers with a neutral forum for resolving disputes regarding slamming liability. On March 30, 1999, a coalition of interexchange carriers filed a Waiver Petition proposing a plan for an industry-funded third party to administer our slamming liability rules. On April 20, 1999, state commissions, through the National Association of Regulatory Utilities Commissions (NARUC), filed a letter asserting that they are well-equipped to handle slamming complaints and requesting that the Commission consider allowing them to be the primary adjudicators of slamming disputes. NARUC argues that the state commissions are more appropriate than the industry's proposed third-party administrator to execute our slamming liability provisions because the states have existing, neutral, and comprehensive mechanisms to handle slamming disputes.

20. We conclude that it is in the public interest to have state commissions, rather than a third party designated by carriers, perform the primary administrative functions of our slamming liability rules. In fact, it appears to be both appropriate and effective to establish this type of alliance with the states. The language of Section 258 itself contemplates a state and federal partnership to deter slamming. In addition, the states and the Commission have been working together for some time to share information and develop new and creative solutions to combat slamming. For example, the State and National Action Plan (SNAP), comprising staff from NARUC, the FCC, and the National Regulatory Research Institute, regularly meet to develop joint public information strategies to increase awareness of telecommunications issues affecting consumers, coordinate enforcement actions to protect consumers against abuses in the telecommunications marketplace, and coordinate regulatory initiatives. Joint state-federal activities have been very effective in protecting consumers against various types of telecommunications fraud. It is imperative that the states and the FCC continue to cooperate, and expand their interaction, in order to eradicate slamming.

21. We also find that the state commissions are, for several reasons, more appropriate for resolving slamming disputes than the administrator proposed by the long distance carriers. We agree with NARUC that the states are particularly well-

equipped to handle complaints because they are close to the consumers and familiar with carrier trends in their region. As NARUC describes, establishing the state commissions as the primary administrators of slamming liability issues will ensure that "consumers have realistic access to the full panoply of relief options available under both state and federal law. . . ." Moreover, state commissions have extensive experience in handling and resolving consumer complaints against carriers, particularly those involving slamming. In fact, the General Accounting Office (GAO) has reported that all state commissions have procedures in place for handling slamming complaints, and that those procedures have been effective in resolving such complaints. We specifically note that at present more than 35 states have committed to provide the resources necessary to resolve slamming disputes in a timely and fair manner.

22. Based upon these representations and the proven track record of customer satisfaction, we conclude that state commissions have the ability and desire to provide prompt and appropriate resolution of slamming disputes between consumers and carriers in a manner consistent with the rules adopted by this Commission. In most situations, state commissions will be able to provide consumers with a single point of contact for each state, thereby enabling slammed consumers to rectify their situations, receive refunds, and get appropriate relief with one phone call. State commissions also will be able to provide consumers and carriers with timely processing of slamming disputes. Finally, but of critical importance, states will provide a neutral forum for the resolution of slamming disputes. As noted, this was one of the essential criteria we set forth for the approval of a slamming liability administrator. We do not conclude here that an industry-sponsored administrator could not act as a "neutral" adjudicator of disputes between carriers and consumers. Nonetheless, we are troubled by the concerns raised by several consumer groups that such an entity would be perceived by consumers as biased in favor of carriers. The slamming liability rules are intended to protect consumers, and the effectiveness of any administrative mechanism we select will be dependent upon consumers having confidence in the fairness and impartiality of the process. We agree with the arguments of NARUC that state commissions will be perceived by consumers as more "neutral" adjudicators of disputes than the third-party administrator proposed by the interexchange carriers.

23. We recognize, however, that not all states have the resources to resolve these slamming complaints, or may choose not to take on this primary responsibility. Consumers in these states accordingly may seek resolution of their slamming disputes by filing a complaint with this Commission. To provide consumers who opt to file complaints with this Commission the full complement of rights and remedies contemplated by this order, we are amending our own rules for the adjudication of slamming complaints.

24. Our conclusion that states should have primary responsibility for administering our slamming liability rules shall not preclude a consumer from electing to file a slamming complaint with this Commission. In cases where the state has indicated it will administer our rules, however, this Commission will refer informal complaints to the appropriate state commission for resolution, unless the complainant expressly indicates it wishes to have the matter resolved by this Commission. This Commission will not adjudicate a complaint based on an allegation of slamming while the complainant has a complaint arising from the same set of facts pending before a state commission that has opted to administer our slamming rules. Additionally, these rules do not preclude the filing of a petition for declaratory ruling alleging that a state has improperly implemented our verification or liability rules. Finally, nothing in these procedures is intended to abrogate any party's right to pursue relief for a slamming violation in state or federal court.

3. Administrative Procedures

a. State Notification of Participation in Adjudication of Complaints.

25. To ensure full and seamless administration of complaints among this Commission and the states, each state commission that chooses to take on the primary responsibility for resolving consumer slamming complaints must notify this Commission of the procedures it will use to adjudicate individual slamming complaints on the effective date of these revised rules. Each state commission's notification should explain how consumers may file complaints (including where the complaint is to be filed, what if any filing fees a consumer must pay, and what documentation a consumer must provide in its complaint), any and all deadlines parties must adhere to that are shorter than those explicitly stated in these rules, what safeguards exist to ensure procedural fairness to consumers and carriers, and what rights parties have to appeal an initial decision.

26. If, after the effective date of these rules, additional states opt to administer complaints under the rules, they may do so by filing such notification in the captioned docket and sending a copy to the Chief of the FCC Consumer Information Bureau. In addition, state notification of an intention to discontinue administering complaints under the rules shall be filed in the captioned docket, with a copy of such notification provided to the Chief of the FCC Consumer Information Bureau.

b. Preliminary Consumer Relief is Granted upon Slamming Allegation.

27. We retain the requirement that an alleged unauthorized carrier must remove all charges assessed for the first 30 days of services from a subscriber's bill upon the subscriber's allegation that he or she was slammed. Several carriers state that the allegation of a slam should not trigger preliminary relief because many slamming complaints will turn out to be invalid or fraudulent. As we explained in the Section 258 Order, the fact that a subscriber can only be absolved of liability if he or she has in fact been slammed minimizes our concerns about fraud by consumers. In accordance with the revised rules described, if a carrier is able to produce proof of verification, it is entitled to receive full payment from the subscriber for all services provided. Our rules will motivate carriers to comply strictly with our verification procedures to protect themselves from inappropriate claims of slamming. We also explained in the Section 258 Order that the absolution remedy we adopted provides an easily administered remedy for consumers who have been slammed. The absolution remedy would not be as effective if the consumer had to pay for slamming charges in the first instance; we have emphasized repeatedly how essential it is to minimize the opportunity for unauthorized carriers to physically take control of slamming profits for any period of time. Accordingly, our rules will continue to require that, upon an allegation of a slam, the alleged unauthorized carrier must remove all charges assessed for the first 30 days of service immediately from the subscriber's bill.

28. Our retention of the requirement that an alleged unauthorized carrier must remove all charges assessed for the first 30 days of service from a subscriber's bill upon the subscriber's allegation that he or she was slammed, along with our modification of the administration procedures, creates the

need for an additional administrative rule. Specifically, because the subscriber receives preliminary relief pending a final determination of whether or not a slam occurred, our rules need to ensure that the subscriber benefiting from the relief promptly files a complaint with the state commission (or the FCC), thus giving the alleged unauthorized carrier an opportunity to provide proof of verification. Therefore, we modify our rules to require that the allegedly unauthorized carrier notify the subscriber that it must file a complaint with the appropriate state commission (or the FCC) within 30 days of the date it notifies the allegedly unauthorized carrier that a slam occurred, or be subject to re-billing for charges incurred. The allowance of such re-billing does not, however, prohibit the subscriber from subsequently filing a complaint alleging that a slam occurred with the state commission (or the FCC) and proceeding in accordance with the Commission's rules.

c. General procedures.

29. As discussed, when an allegedly unauthorized carrier is informed by a subscriber of an alleged slam, that carrier is required to remove charges for the first 30 days of service from the subscriber's bill. The subscriber must then file a complaint with a state commission (or the FCC) seeking a factual determination that a slam occurred. We recognize that some carriers may choose to make it their practice not to challenge allegations of slamming and to provide subscribers who allege a slam has occurred with all the relief to which they would be entitled under our rules. We do not intend for these rules to discourage carriers from providing subscribers with the most expedient relief possible. Accordingly, where an allegedly unauthorized carrier chooses to not challenge the allegation of a slam and provides the subscriber alleging that a slam occurred with all the relief to which the subscriber would be entitled pursuant to our rules, had the subscriber prevailed on a slamming complaint, the allegedly unauthorized carrier shall inform the subscriber of the remedies our rules provide and that the subscriber has the option of filing a complaint with the appropriate state commission (or the FCC) if the subscriber is not satisfied with the resolution of its dispute with the carrier.

30. We require any carrier that is informed by a subscriber of a slam to direct each unsatisfied subscriber to the proper state commission (or the FCC) for resolution of the slamming problem and inform such unsatisfied subscriber of all the relevant filing requirements. We conclude that this will achieve one of our objectives for a slamming liability administrator set forth in the Section 258 Order—minimizing the effort consumers must expend to resolve slamming disputes. We also expect that the states that have sufficient resources will launch public information campaigns to inform consumers of their rights and responsibilities with regard to slamming liability. We anticipate a productive state and federal partnership in this effort. Additionally, in order to fulfill our responsibilities under section 258 of the Act and to assist our enforcement efforts, we will require states that choose to administer the Commission's rules to regularly file information with the Commission that details slamming activity in their regions. Such filings should identify the number of slamming complaints handled, including data on the number of valid complaints per carrier; the identity of top slamming carriers; slamming trends; and other relevant information. Such reports will help the Commission to identify appropriate targets for slamming enforcement actions, such as forfeiture or section 214 revocation proceedings.

31. We also revise our rules to add a notification requirement to facilitate the administration of long distance slamming complaints. SBC, AT&T, and Sprint state that, because our rules lack a notification requirement that would enable carriers to learn each others' identity, the carriers involved in a slamming incident might not be able to take appropriate action against each other. Furthermore, this notification issue was also raised in the MCI WorldCom Motion for Stay filed with the D.C. Circuit. We will require an executing carrier who is informed of a slam by the subscriber to immediately notify both the authorized and alleged unauthorized carriers of the incident, including the identity of each carrier involved. We note that the industry has already taken steps to facilitate the transfer of this information between carriers. We agree that a notification requirement is important to the correct functioning of the liability mechanism. Requiring the LEC to notify both the authorized and the alleged unauthorized carriers of the other's identity in a slamming incident will enable the unauthorized carrier to forward appropriate amounts collected from the subscriber if it is determined that a slam occurred. This will also enable the authorized carrier to bring appropriate actions, such as a complaint before a state commission (or the FCC), against the unauthorized carrier should the unauthorized carrier fail to fulfill its responsibilities to the authorized carrier.

32. Upon receipt of a slamming complaint, the state commission (or this Commission if the complainant is from a non-participating state or has expressly indicated that it wants this Commission to resolve its complaint) will notify the allegedly unauthorized carrier of the slamming complaint and ensure that the carrier removes immediately all unpaid charges from the subscriber's bill, if it has not done so already. Within 30 days after notification of the slamming complaint, or such lesser time as required by the state commission, the alleged unauthorized carrier shall provide to the state commission (or the FCC) a copy of the valid proof of verification of the carrier change. This proof of verification should contain clear and convincing evidence that the subscriber knowingly authorized the carrier change, such as a written Letter of Agency (LOA) or an audiotape of an independent third party verification. The state commission (or the FCC) will make a determination on whether a slam occurred using proof supplied by the allegedly unauthorized carrier and any evidence supplied by the subscriber.

33. The following review procedures apply when a state commission has resolved a slamming complaint. Challenges to the factual determinations made by a state commission applying our rules shall be made in accordance with the relevant review provisions that are applicable to each state commission. Challenges to whether a state commission's process for resolving slamming complaints are consistent with this order must be brought to the FCC in the form of a petition for declaratory ruling. The following review procedures apply when the staff of this Commission has resolved a slamming complaint. A subscriber seeking to challenge the FCC staff's determination of whether a slam occurred may file a formal complaint against the allegedly unauthorized carrier in accordance with our formal complaint rules. An allegedly unauthorized carrier seeking to challenge the FCC staff's determination of whether a slam occurred may file a petition for declaratory ruling with this Commission.

d. Where the subscriber has not paid charges.

34. The following procedures shall apply when the subscriber has not paid charges to the allegedly unauthorized carrier. If the state commission (or the FCC) determines that the carrier change was authorized, the carrier may re-bill the subscriber for

charges incurred. If the state commission (or the FCC) determines that the subscriber was slammed, then the subscriber is entitled to absolution from the charges incurred during the first 30 days after the slam occurred, and the carrier may not pursue any collection actions against the subscriber to recover these charges.

35. If the subscriber has incurred charges for more than 30 days after the slam occurred, then the unauthorized carrier shall forward to the authorized carrier the billing information for service provided from the 31st day after the slam occurred through the date the unauthorized carrier stopped providing service. The authorized carrier has the option of billing the subscriber for calls made after the first 30 days after the slam at the rates the subscriber would have paid the authorized carrier absent the slam. After receiving billing information from the unauthorized carrier, the authorized carrier may re-rate such service according to its own rates and then bill the subscriber for such service. If the authorized carrier so chooses, rather than actually re-rating the service provided by the unauthorized carrier, it may bill the subscriber in accordance with a 50% proxy rate. In other words, it may bill the subscriber for 50% of the rate the unauthorized carrier would have charged. If the subscriber believes, however, that paying 50% results in a greater charge than re-rating to the authorized carrier's rates, at the request of the subscriber, the authorized carrier shall perform actual re-rating.

36. We note that we do not necessarily agree with the carriers' assessment of the administrative difficulty of re-rating. Although the carriers admit that the only information needed for re-rating is the length and time of the call, they fail to explain why the re-rating process, as described in the Section 258 Order, would require "electronic systems that interconnect with other carrier's billing and usage systems, so that they can exchange relevant price and call data electronically." Indeed, the carriers admit that manual re-rating can be easily accomplished for any particular complainant. Nevertheless, we permit authorized carriers to have the option of using a 50% proxy because the carriers assert that re-rating is an administrative burden, and because we are persuaded that a 50% proxy will generally yield a reasonable and fair result for the subscriber. Giving carriers this option will ensure that, in most cases, the authorized carrier is able to collect charges without having to perform re-rating and that the subscriber will receive adequate compensation.

e. Where the subscriber has paid charges.

37. The following procedures shall apply when the subscriber does not discover a slam until after he or she has already paid charges to the alleged unauthorized carrier. As explained in the Section 258 Order, section 258 requires the unauthorized carrier to pay the authorized carrier any charges collected following an unauthorized switch. We concluded in that order that this provision of the statute prevents us from providing absolution to slammed subscribers who have already paid charges to their unauthorized carriers.

38. As explained, however, we have herein modified the liability rules applicable in cases where the consumer has paid charges to the unauthorized carrier in order to more fully implement the dual goals of section 258 of compensating both the subscriber and the authorized carrier. Pursuant to this modified liability scheme, a carrier found to have slammed will be required to disgorge to the authorized carrier 150% of the amounts collected by that slamming carrier from the subscriber. Accordingly, when the state commission (or the FCC) determines that the alleged unauthorized carrier did slam the consumer, then it shall direct such carrier to forward to the authorized carrier 150% of (or one and one-half times) all amounts collected from the subscriber, as well as a copy of the customer's bill for the amounts paid. Upon receipt of these charges from the unauthorized carrier, the authorized carrier shall remit (either directly or through bill credits) one-third of this amount to the subscriber. As explained, this amount, which equals 50% of the charges paid by the subscriber to the unauthorized carrier, constitutes a reasonable proxy for the damages sustained by the subscriber, while not requiring the authorized carrier to engage in the arguably difficult and expensive task of actually re-rating the subscriber's bill. The authorized carrier shall also notify the state commission (or the FCC) that it has paid this amount to the subscriber. If the subscriber is failed to be made whole by the 50% proxy, the subscriber may ask the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier.

39. Finally, we note that if the authorized carrier does not collect any amounts from the unauthorized carrier, the authorized carrier is not responsible for providing refunds or credits to the subscriber. As explained in the Section 258 Order, the authorized carrier should not be, in effect, penalized for the wrongdoing of another carrier by having to pay a refund out of its own pocket. In such cases, of course, both the subscriber and the authorized carrier retain any other existing avenues to obtain relief from the unauthorized carrier.

D. Waiver Petition

40. As explained, petitioners filed a Waiver Petition setting forth a proposal for a third-party administrator to administer the liability aspects of the slamming rules. Petitioners seek a waiver of the following liability rules for those carriers electing to participate in the proposed third-party administrator plan: §§ 64.1100(c); 64.1100(d); 64.1170; and 64.1180. On April 8, 1999, the Commission issued a public notice seeking comment on the third-party administrator proposal. Because we believe that it is in the public interest for state commissions to undertake the responsibilities envisioned for the third-party administrator, we deny the waiver request.

41. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. A waiver of the Commission's general rules may only be granted if such waiver would not undermine the policy underlying that general rule. Petitioners have failed to demonstrate that the third party administrator proposal is in the public interest. In evaluating whether a waiver of these rules is in the public interest, our overriding criterion is whether a waiver would further the policy goals of section 258 and our implementing rules: to protect the rights of consumers who are slammed and, ultimately, to eliminate this type of fraud.

42. We find that adopting the third-party administrator proposal would not be in the public interest because, as described, we have revised our rules to address many of the concerns that prompted the filing of the waiver petition. The Waiver Petition sets forth an alternative administration scheme that would place a neutral, industry-endorsed entity in the role of resolving disputes between alleged slamming carriers and subscribers.

43. In addition to the fact that the state commissions (or the FCC) will better serve the public interest in administering the slamming liability rules, the record demonstrates that

segments of the industry have failed to reach consensus on the operation and administration of a third-party administrator. The local exchange and long distance carriers disagree strongly on many important aspects of the third-party administrator proposal. In inviting the industry to submit proposals for a third-party administrator, the Commission did not anticipate that the third-party administrator would be a mandatory requirement for all carriers. We did contemplate, however, that a workable third-party slamming liability administrator would have broad acceptance among different segments of the industry as well as the states and consumer interest groups. As reflected in the comments, the proposal put forth by the petitioning long distance carriers has not engendered such broad support, particularly among state and consumer interest representatives. We find this discord troubling. Despite many months of discussion between the local exchange and long distance carriers, and despite input from consumer groups and the states, the Commission has seen these various groups settle more firmly into their disparate positions rather than moving closer to resolution.

44. This lack of comprehensive industry participation and consumer group support undermines several important potential benefits of the third-party administrator proposal. We find that the lack of consensus will prevent the third-party administrator from being the single point of contact for the consumer. Without local exchange carrier participation and support of the third-party administrator mechanism, we are concerned that local exchange carriers will have no incentive to refer consumers to the third-party administrator. Accordingly, consumers may continue to call several entities in order to resolve their slamming disputes, undermining one of the primary benefits of a third-party administrator identified in the Section 258 Order—providing a single point of contact for slammed subscribers. We have additional concerns that, if a substantial portion of the industry does not participate in the third party administrator process, the non-participants may be able to derail the time limits and other procedures set by the third-party administrator, resulting in the delayed resolution of slamming complaints.

45. We believe that our revised rules address the concerns raised in the Waiver Petition in a manner that more fully satisfies the criteria set forth in the Section 258 Order. Our revised rules provide for state commissions (or the FCC) to handle administration of our slamming liability rules, rather than imposing burdens on authorized carriers, as originally provided in the Section 258 Order. Furthermore, authorized carriers now have the option of using a 50 % proxy to calculate refunds and subscriber charges, rather than performing actual re-rating, as was prescribed in the Section 258 Order.

46. In sum, we conclude that our revised rules will protect consumers more effectively than the third-party administrator proposed by the long distance industry. Consumer interest groups disagree with many aspects of the third-party administrator proposal, contending that the administrator will not be neutral towards consumers. Accordingly, the revised rules provide that state commissions (or the FCC) will resolve slamming disputes, thereby alleviating any neutrality concerns. Based on the states' representations discussed, we find that the majority of states have the resources and knowledge to provide prompt and effective resolution of slamming disputes. For these reasons, the public interest favors adoption of the revised rules, which utilize appropriate state commissions as reliable, timely, and neutral dispute-resolution forums, rather than the proposed industry-sponsored third-party administrator.

III. Procedural Issues

A. Supplemental Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the First Further Notice of Proposed Rulemaking and Memorandum Opinion and Order and Order on Reconsideration. The Commission sought written public comment on the proposals in the Further Notice and Order, including comment on the IRFA. Based on comments received in the Further Notice and Order, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Second Report and Order and Further Notice of Proposed Rulemaking. Petitions for Reconsideration and a Joint Petition for waiver of certain rules were filed in response to the rules adopted in the Section 258 Order. This present Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

1. Need for and Objectives of this Order and the Rules Adopted Herein

48. The goal of Section 258 of the Act is to eliminate the illegal practice of slamming—the unauthorized change of a subscriber's preferred carrier. Faced with over 20,000 slamming complaints a year from individuals and small businesses, the Commission created a comprehensive framework for combating slamming in the Section 258 Order by adopting rules to implement section 258 and strengthening existing anti-slamming rules. The cornerstone of that framework was a set of aggressive liability rules designed to take the profit out of slamming. In this Order, we make certain modifications to our liability rules, granting in part petitions for reconsideration of the Section 258 Order. The modifications are intended to resolve concerns raised in this proceeding and in the petitions for stay filed both with this Commission and with the D.C. Circuit.

2. Summary of Significant Issues Raised by Public Comments

49. We received no petitions for reconsideration directly addressing issues in the previous FRFA.

50. *Re-Rating Rules.* Commenters contend that requiring each authorized carrier to perform a re-rating to determine the size of the refund to each slammed subscriber would place a complex and costly administrative burden on them. Although we do not necessarily agree with carriers about the dimensions of this burden, we believe that the 50% proxy that authorized carriers propose to give to their slammed subscribers will benefit consumers in most cases. In those instances where a subscriber does not believe that it will benefit from the 50% proxy, the subscriber may request an actual re-rating. In most circumstances, however, authorized carriers will be able to avoid the alleged burden.

51. *Creation of an industry-sponsored third-party administrator.* As discussed in this *Order*, some commenters proposed that slamming complaints be adjudicated by an industry-funded third-party administrator. These commenters aver that the third-party administrator would benefit consumers and industry alike by creating a single point of contact to resolve slamming complaints and simplifying the complaint process. We reject this proposal, and instead conclude that state commissions should perform the primary function in administering our slamming liability rules.

52. The benefit claimed by proponents of the third-party administrator was belied by the fact that no workable proposal was offered. Various industry segments disagreed on the form and workings of the proposed third-party administrator, and states and consumer groups expressed their

disapproval of, and lack of confidence in, the idea. The absence of consensus, and the accompanying possibility that a substantial portion of the industry would not participate in the third-party administrator, could result in greater confusion for consumers and authorized carriers. The system we adopt, which requires all carriers to forward complaints they receive to the appropriate governmental agency (in most cases, the state commission) will provide a more efficient and comprehensive mechanism for all parties, including small entities. Moreover, the experience, neutrality, and resources of state commissions make them well-equipped forums for resolving slamming complaints.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

53. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," "small governmental jurisdiction," and "small business concern" under Section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992. We further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

54. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its Trends in Telephone Service report. In a recent news release, the Commission indicated that there are 4,144 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

55. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. We discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

56. We have included small incumbent LECs in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

57. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the new rules.

58. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the new rules.

59. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small

business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected by the new rules.

60. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 171 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 171 small entity IXCs that may be affected by the new rules.

61. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 212 small entity CAPs and 10 other LECs that may be affected by the new rules.

62. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 24 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 24 small entity operator service providers that may be affected by the new rules.

63. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 615 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 615 small entity pay telephone operators that may be affected by the new rules.

64. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the new rules.

65. *Toll-Free 800 and 800–Like Service Subscribers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800–like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the new rules.

66. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Census Bureau, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the new rules.

4. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

67. We analyze the projected reporting, recordkeeping, and other compliance requirements that may affect small entities.

68. *Liability Rules That Apply When a Subscriber Has Not Paid Charges.* Our liability rules retain the requirement that, upon allegation of a slam, the unauthorized carrier must absolve the subscriber of charges for up to thirty days following the slam, where the subscriber has not paid the unauthorized carrier. If the relevant governmental agency ultimately determines that the carrier change was authorized, and the limited absolution granted to the subscriber was therefore unwarranted, the carrier may re-bill the subscriber for charges incurred. The carrier has the option of re-rating the subscriber's calls from the unauthorized carrier's rates to the authorized carrier's rates using a 50% proxy, that is, reducing what the subscriber would have been billed by the unauthorized carrier by 50%. If, however, the subscriber would prefer an actual re-rating of the calls to the authorized carrier's rates, it can require that of the authorized carrier.

69. *Liability Rules That Apply When a Subscriber Has Paid Charges.* The revised liability rules require that, where the subscriber has paid the unauthorized carrier, the unauthorized carrier must forward 150% of the charges it collected from the subscriber to the authorized carrier. The authorized carrier will pay the subscriber one-third of that amount (50% of the original payment) and retain the remainder of the money received from the unauthorized carrier. Use of this proxy will reduce administrative burdens on carriers and, we believe, will adequately compensate most subscribers. When a subscriber believes that the 50% proxy refund or credit of the charges it paid is too low, it may request an actual re-rating from the authorized carrier and the authorized carrier may seek any additional money owed as a result of this actual re-rating from the unauthorized carrier.

70. *State Resolution of Most Slamming Complaints.* Designating appropriate state commissions, or this Commission, as the primary administrators of the slamming liability rules, rather than authorized carriers, is likely to reduce significantly the administrative burdens on carriers associated with these rules. Under this scheme, carriers must comply with certain notification requirements, listed. In addition, a carrier that is the subject of a slamming complaint must respond to the complaints filed with the relevant governmental agency, either the appropriate state commission or this Commission. If the carrier denies the alleged slam, it must provide the relevant governmental agency with evidence to refute the allegation, such as a valid carrier change authorization from the subscriber.

71. *Notification Requirements.* We revise our rules in this Order to add certain notification requirements to facilitate the resolution of slamming complaints. These include a requirement that, when an executing carrier (typically, the LEC that effects a carrier change) learns about an alleged slam, it must immediately notify both the authorized and alleged unauthorized carriers of the slamming allegation and the identities of the carriers involved. Requiring the LECS to notify the authorized and alleged unauthorized carriers of each others' identities will enable the unauthorized carrier to forward to the authorized carrier all amounts needed to satisfy the remedies this Order requires.

72. The revised rules also add a requirement that an allegedly unauthorized carrier that chooses not to challenge the allegation of a slam and provides the subscriber with all the relief to which the subscriber would be entitled pursuant to our rules, had the subscriber prevailed on a slamming complaint, must inform the subscriber of the remedies our rules provide. In addition, that carrier must inform the subscriber that it has the option to file a complaint with the appropriate state commission, or this Commission, if the subscriber is not satisfied with the resolution of its dispute with the carrier.

73. Under the revised rules, any carrier that is informed by a subscriber of a slam must direct each unsatisfied subscriber to the proper state commission, or this Commission, for resolution of the slamming problem and inform such unsatisfied subscriber of all the relevant filing requirements. To execute this notification requirement, carriers will be obligated to periodically request from this Commission a list of states that have opted to administer federal slamming rules. This modest notification requirement will help achieve an important objective: minimizing the effort consumers must expend to resolve slamming disputes.

5. Steps Taken to Minimize the Significant Economic Impact of This Order on Small Entities, Including the Significant Alternatives Considered

74. *Liability Rules That Apply When a Subscriber Has Not Paid Charges.* Our liability rules retain the requirement that, upon allegation of a slam, the unauthorized carrier must absolve the subscriber of charges for up to thirty days following the slam, where the subscriber has not paid the unauthorized carrier. If the relevant governmental agency ultimately determines that the carrier change was authorized, and the limited absolution granted to the subscriber was therefore unwarranted, the carrier may re-bill the subscriber for charges incurred. The carrier has the option of re-rating the subscriber's calls from the unauthorized carrier's rates to the authorized carrier's rates using a 50% proxy, that is, reducing what the subscriber would have been billed by the unauthorized carrier by 50%. If, however, the subscriber would prefer an actual re-rating of the calls to the authorized carrier's rates, it can require that of the authorized carrier.

75. *Liability Rules that Apply When a Subscriber Has Paid Charges.* The new requirement, under the revised liability rules, that an unauthorized carrier forward 150% of the charges collected from the subscriber to the authorized carrier is more advantageous to authorized carriers than the remedy provided under the old rules. The authorized carrier generally will pay the subscriber one-third of that amount (50% of the original payment) and retain the remainder of the money received from the unauthorized carrier. When a subscriber believes that the 50% proxy refund or credit of the charges it paid is too low, it may request an actual re-rating from the authorized carrier and the authorized carrier may seek any additional money owed as a result of this actual re-rating from the unauthorized carrier. This modification of the Commission's liability scheme will alleviate some problems of lost revenues that authorized carriers, including small carriers, face when slammed and will make slamming even more unprofitable for unauthorized carriers.

76. *Re-rating.* Several authorized carriers raised concerns about the administrative burden that re-rating may place on them. Although we do not necessarily agree with carriers about the dimensions of this burden, we revise our rules to address these concerns. The revision allows the authorized carrier to provide a refund or credit to the

subscriber of one-third of the payment the unauthorized carrier must make to the authorized carrier, which is prescribed to be 150% of the charges collected from the subscriber. Only when a subscriber believes that the 50% proxy refund or credit of the charges it paid is too low, and requests an actual re-rating, must the authorized carrier provide such re-rating.

77. *State Resolution of Most Slamming Complaints.* The modifications we adopt in this Order provide that disputes between alleged slamming carriers and subscribers now will be brought before an appropriate state commission, or this Commission in cases where the state has not elected to administer these rules, rather than to the authorized carriers, as provided in the Section 258 Order. Although we considered the third-party administrator alternative proposed by certain carriers, the lack of a consensus among industry, state regulators, and consumer groups left the Commission with concerns about the efficacy of such a plan. Designating states as the primary adjudicators of slamming complaints, rather than authorized carriers, lessens the administrative burden on authorized carriers, including small carriers. By placing these disputes before a neutral arbiter with experience in resolving slamming complaints and resources to do so expeditiously, the new administrative scheme will benefit carriers and subscribers, both groups that include small businesses.

78. *Notification Requirements.* We believe that the modest notification requirements we have adopted in this Order are necessary to ensure the seamless administration of slamming complaints under this scheme and will not impose an undue burden on carriers who are small businesses. These include a requirement that, when an executing carrier (typically, the LEC that effects a carrier change) learns about an alleged slam, it must immediately notify both the authorized and alleged unauthorized carriers of the slamming allegation and the identities of the carriers involved. This requirement, as pointed out in comments and in the petition for stay filed in the D.C. Circuit, is important to the functioning of the liability mechanism. With this information, the unauthorized carrier will be able to forward to the authorized carrier all amounts needed to satisfy the remedies this Order requires, and the authorized carrier will be able to bring appropriate action against the unauthorized carrier, if necessary. The industry has already taken steps to facilitate the transfer of this information between carriers.

79. The revised rules also add a requirement that an allegedly unauthorized carrier that chooses not to challenge the allegation of a slam and provides the subscriber with all the relief to which the subscriber would be entitled pursuant to our rules, had the subscriber prevailed on a slamming complaint, must inform the subscriber of the remedies our rules provide. This requirement will ensure that the rules do not discourage carriers from providing subscribers with the most expedient relief possible. In addition, the unauthorized carrier in this situation must inform the subscriber of the subscriber's ability to file a complaint with the appropriate state commission, or this Commission, if it is unsatisfied with the resolution of its dispute with the carrier.

80. Under the revised rules, any carrier that is informed by a subscriber of a slam must direct each unsatisfied subscriber to the proper state commission, or this Commission, for resolution of the slamming problem and inform such unsatisfied subscriber of all the relevant filing requirements. To execute this modest notification requirement, carriers will be obligated to periodically request from this Commission a list of states that have opted to administer federal slamming rules. This notification requirement will achieve an important objective: minimizing the effort consumers must expend to resolve slamming disputes.

6. Report to Congress

81. The Commission will send a copy of the Order, including this SFRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including the SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and SFRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Final Paperwork Reduction Act Analysis

82. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

83. Accordingly, it is ordered, pursuant to sections 1, 4(i), 4(j), 206, 207, 208, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 206, 207, 208, 258 and § 1.429 of the Commission's rules, that the petitions for reconsideration or clarification filed by AT&T Corp., Excel Telecommunications, Inc., Frontier Corp., GTE Service Corp., MediaOne Group, National Association of State Utility Consumer Advocates, National Telephone Cooperative Association, New York State Consumer Protection Board Petition for Reconsideration, RCN Telecom Services, Inc., Rural LECs, SBC Communications, Inc., and Sprint Corp. are granted in part and denied in part to the extent discussed.

84. The provisions of § 0.141, 64.1100, 64.1150, 64.1160, 64.1170, and 64.1180 are amended in accordance with our discussion and as described, and that such rules shall be effective September 5, 2000. The collections of information contained in §§ 64.1150 (a) through (d), 64.1160 (b) through (g), and 64.1170 (b) through (f) are contingent upon approval by the Office of Management and Budget. The procedures and relief described in these sections shall only be available to complainants who allege that the unauthorized carrier change occurred on or after the effective date of these sections.

85. Sections 1.719, 64.1110, 64.1120, 64.1140, and 64.1160 are enacted in accordance with our discussion, and that these rules are effective September 5, 2000. The collections of information contained in §§ 1.719 (a) through (d), 64.1110 (a) and (b), 64.1140 (a) and (b), are contingent upon approval by the Office of Management and Budget. The procedures and relief described in § 1.719 shall only be available to complainants who allege that the unauthorized carrier change occurred on or after the effective date of this section.

86. Pursuant to authority contained in sections 1, 4, and 258, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 258, that the waiver request filed by AT&T Corp., MCI WorldCom, Inc., Sprint Corp., Competitive Telecommunications Assn., Telecommunications Resellers Assn., Excel Telecommunications, Inc., Qwest Communications Corp., and Frontier Corp. on March 30, 1999 is denied.

87. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to

the Chief Counsel for Advocacy of the Small Business Administration.

88. The Joint Parties' Motion for Extension of the Effective Date of the Rules or, In the Alternative, For a Stay, is denied.

List of Subjects

47 CFR Part 0

Classified information, Freedom of information, Reporting and recordkeeping.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary,

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 0, 1, 64 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 5, 48 Stat. 1068, as amended; 47 U.C.S. 155, 225, unless otherwise noted.

2. In § 0.141 add paragraph (b)(1)(iii) to read as follows:

§ 0.141 Functions of the bureau.

* * * * *

(b) * * *

(1) * * *

(iii) Resolve certain classes of informal complaints, as specified by the Commission, through findings of fact and issuance of orders.

* * * * *

PART 1—PRACTICE AND PROCEDURE

3. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 unless otherwise noted.

4. Add § 1.719 to subpart E to read as follows:

§ 1.719 Informal complaints filed pursuant to section 258.

(a) Notwithstanding the requirements of §§ 1.716 through 1.718, the following procedures shall apply to complaints alleging that a carrier has violated section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, by making an unauthorized change of a subscriber's preferred carrier, as defined by § 64.1100(e) of this chapter.

(b) *Form.* The complaint shall be in writing, and should contain: The complainant's name, address, telephone number and e-mail address (if the complainant has one); the name of both the allegedly unauthorized carrier, as defined by § 64.1100(d) of this chapter, and authorized carrier, as defined by § 64.1100(c) of this chapter; a complete statement of the facts (including any documentation) tending to show that such carrier engaged in an unauthorized change of the subscriber's preferred carrier; a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and the specific relief sought.

(c) *Procedure.* The Commission will resolve slamming complaints under the definitions and procedures established in §§ 64.1100 through 64.1190 of this chapter. The Commission will issue a written (or electronic) order informing the complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160 through 64.1170 of this chapter.

(d) Unsatisfied Informal Complaints Involving Unauthorized Changes of a Subscriber's Preferred Carrier; Formal Complaints Relating Back to the Filing Dates of Informal Complaints. If the complainant is unsatisfied with the resolution of a complaint under this section, the complainant may file a formal complaint with the Commission in the form specified in § 1.721. Such filing will be deemed to relate back to the filing date of the informal complaint filed under this section, so long as the informal complaint complied with the requirements of paragraph (b) of this section and provided that: The formal complaint is filed within 45 days from the date an order resolving the informal complaint filed under this section is mailed or delivered electronically to the complainant; makes reference to both the informal complaint number assigned to and the initial date of filing the informal complaint filed under this section; and is based on the same cause of action as the informal complaint filed under this section. If no formal complaint is filed within the 45–day period, the complainant will be deemed to have abandoned its right to bring a formal complaint regarding the cause of action at issue.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

5. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

6. Revise § 64.1100 to read as follows:

§ 64.1100 Definitions.

(a) The term *submitting carrier* is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(b) The term *executing carrier* is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(c) The term *authorized carrier* is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this part.

(d) The term *unauthorized carrier* is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(e) The term *unauthorized change* is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this part.

(f) The term *state commission* shall include any state entity with the state-designated authority to resolve the complaints of such state's residents

arising out of an allegation that an unauthorized change of a telecommunication service provider has occurred that has elected, in accordance with the requirements of § 64.1110(a), to administer the Federal Communications Commission's slamming rules and remedies, as enumerated in §§ 64.1100 through 64.1190.

(g) The term *relevant governmental agency* shall be the state commission if the complainant files a complaint with the state commission or if the complaint is forwarded to the state commission by the Federal Communications Commission, and the Federal Communications Commission if the complainant files a complaint with the Federal Communications Commission, and the complaint is not forwarded to a state commission.

7. Add § 64.1110 to subpart K to read as follows:

§ 64.1110 State notification of election to administer FCC rules.

(a) *Initial Notification.* State notification of an intention to administer the Federal Communication Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such notification provided to the Consumer Information Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints.

(b) *Withdrawal of Notification.* State notification of an intention to discontinue administering the Federal Communication Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such amended notification provided to the Consumer Information Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter.

8. Add § 64.1120 to subpart K to read as follows:

§ 64.1120 Verification of orders for telecommunications service.

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this part as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of § 64.1130; or

(2) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information in paragraph (a)(1) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification; or

(3) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (*e.g.* the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(4) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

9. Add § 64.1140 to subpart K to read as follows:

§ 64.1140 Carrier liability for slamming.

(a) *Carrier Liability for Charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170. The remedies provided in this part are in addition to any other remedies available by law.

(b) *Subscriber Liability for Charges.* Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set for in this part is liable for charges as follows:

(1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a

subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30–day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of § 64.1160(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of § 64.1170(c).

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

10. Revise § 64.1150 to read as follows:

§ 64.1150 Procedures for resolution of unauthorized changes in preferred carrier.

(a) *Notification of Alleged Unauthorized Carrier Change.* Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) *Referral of Complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer Information Bureau, for resolution of the complaint.

(c) *Notification of Receipt of Complaint.* Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e), has occurred, if it has not already done so.

(d) *Proof of Verification.* Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§ 64.1150 through 64.1160. The relevant governmental agency will determine whether an unauthorized change, as defined by § 64.1100(e), has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(e) *Election of Forum.* The Federal Communications Commission will not adjudicate a complaint filed pursuant to § 1.719 or §§ 1.720 through 1.736 of this chapter, involving an alleged unauthorized change, as defined by § 64.1100(e), while a complaint based on the same set of facts is pending with a state commission.

11. Redesignate § 64.1160 as § 64.1130 and add a new § 64.1160 to read as follows.

§ 64.1160 Absolution procedures where the subscriber has not paid charges.

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by § 64.1100(e), from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e), occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: the complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to § 64.1110, or the FCC within 30 days of either; the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or; the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber's will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in § 64.1100(e), not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the

unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1170 shall apply to those payments. If the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

12. Revise § 64.1170 to read as follows:

§ 64.1170 Reimbursement procedures where the subscriber has paid charges.

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies:

(1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and

(2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber. This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

(c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the relevant governmental agency that it has given a refund or credit to the subscriber.

(d) If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

§ 64.1180 [Removed and reserve].

13. Remove and reserve § 64.1180.

[FR Doc. 00–17981 Filed 8–2–00; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 072800A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock for Processing by the Inshore Component in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by "open access" vessels (*i.e.*, those vessels that are not fishing in cooperatives), which are catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the C/D season allocation of pollock total allowable catch (TAC) specified for "open access" vessels in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 29, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(D)(*3*) and the revised interim 2000 TAC amounts for pollock in the Bering Sea subarea (65 FR 39107, June 23, 2000), the C/D season allocation of pollock TAC specified to the "open access" vessels in the Bering Sea subarea is 17,953 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the C/D season allocation of pollock TAC specified for the "open access" vessels, which are catching pollock for processing by the inshore component in the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing the C/D season allocation of pollock TAC as the directed fishing allowance (§ 679.20(a)(5)(i)(D)(*2*)). In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by "open access" vessels, which are catching pollock for processing by the inshore component in the Bering Sea subarea.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the C/D season allocation of pollock TAC specified for the vessels not participating in cooperatives catching pollock for processing by the inshore component in the Bering Sea subarea. A delay in the

effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19586 Filed 7–28–00; 4:39 pm]

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DEPARTMI

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7 CFR Part

RIN 0570–A

Methodolo Allocation Funds

AGENCY: Ru Service; Ru Utilities Se USDA.

ACTION: Pro

SUMMARY: T Cooperativ to amend th program fu action is ne Business O Program an for the Rur (RBEG) and Guaranteed The intend update the B&I and RE Offices and for allocati

DATES: Writ must be rec 2, 2000 to b

ADDRESSES in duplicat Regulations Managemen Developme Agriculture Independen DC 20250– submitted v them to "C must conta the subject pursuant to

Proposed Rules

Federal Register
Vol. 65, No. 150
Thursday, August 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

RIN 0570–AA30

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Rural Business-Cooperative Service; Rural Housing Service; Rural Utilities Service; Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is proposing to amend the regulations for allocating program funds to its State Offices. This action is needed to add the Rural Business Opportunity Grant (RBOG) Program and update the formulas used for the Rural Business Enterprise Grant (RBEG) and Business and Industry (B&I) Guaranteed and Direct Loan programs. The intended effect of this action is to update the formula used for allocating B&I and RBEG funds among State Offices and provide a regulatory formula for allocating RBOG funds.

DATES: Written or E-mail comments must be received on or before October 2, 2000 to be assured of consideration.

ADDRESSES: Submit written comments in duplicate to the Branch Chief, Regulations And Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. Comments may be submitted via the Internet by addressing them to "Comments@rus.usda.gov" and must contain the word "opportunity" in the subject. All written comments made pursuant to this notice will be available for public inspection at 300 E Street, SW., Washington, DC 20546, during normal working hours.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, Room 6868, 1400 Independence Ave. SW., Washington, DC 20250, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant and has not been reviewed by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance numbers for the programs impacted by this action are 10.773, Rural Business Opportunity Grants; 10.769, Rural Business Enterprise Grants; and 10.768, Business and Industry loans.

Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this proposed rule.

Intergovernmental Consultation

This action is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). RBS made this determination based on the fact that this action only impacts internal Agency procedures for determining how much of available program funds are allocated to each state. Small entities will not be impacted to a greater extent than large entities.

Background and Discussion

RBS proposes to amend its regulations for allocating program funds among its State Offices. This action is necessary to provide a regulatory basis for allocating funds for a new program, RBOG. Also, adjustments need to be made in the

formulas for allocating RBEG and B&I funds to reflect current policies and to add that one of the factors used for RBEG is the State percentage of national rural population with income below the poverty level.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is proposed to be amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Amend section 1940.588 by removing paragraph (k) and revising the heading and paragraphs (d), (g), (h), and (j) to read as follows:

§ 1940.588 Business and Industry Guaranteed and Direct Loans.

* * * * *

(d) *Transition formula.* The transition formula is not used for B&I Guaranteed and Direct Loans.

* * * * *

(g) *Reserve.* See § 1940.552(g). States may request reserve funds from the B&I reserve when all of the state allocation has been obligated or will be obligated to the project for which the request is made.

(h) *Pooling of funds.* See § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in a reserve and made available on a priority basis to all States.

* * * * *

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

* * * * *

3. Amend section 1940.589 by removing paragraph (k) and revising paragraphs (b)(1)(ii), (g), and (h) to read as follows:

§ 1940.589 Rural Business Enterprise Grants.

* * * * *

(b) * * *

(1) * * *

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

* * * * *

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

* * * * *

4. Add section 1940.593 to read as follows:

§ 1940.593 Rural Business Opportunity Grants.

(a) *Amount available for allocations.* See § 1949.552(a).

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State Factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation.* See § 1940.552(c).

(d) *Transition formula.* The transition formula is not used for Rural Business Opportunity Grants (RBOG).

(e) *Base allocation.* See § 1940.552(e).

(f) *Administrative allocation.* The administrative allocation is not used for RBOG.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i). The allocation of funds is made available to States on an annual basis.

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

* * * * *

Dated: July 19, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–19698 Filed 8–2–00; 8:45 am]

BILLING CODE 3410–XY–U

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1078]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System, after consultation with the Secretary of the Treasury, proposes to determine by rule that acting as a finder is an activity that is financial in nature or incidental to a financial activity and therefore permissible for financial holding companies. The proposed rule would authorize financial holding companies to act as a "finder," which is an activity defined as bringing together buyers and sellers of products or services for transactions that the buyers and sellers themselves negotiate and consummate. The proposal would amend Subpart I of Regulation Y to add finder activities to the list of activities permissible for financial holding companies. The proposed rule provides examples of services that financial holding companies may perform as a finder, and examples of actions that are outside the scope of permissible finder activities. In addition, the proposed rule would require financial holding companies that act as a finder to distinguish the products and services offered by third parties through the company's finder service from any products or services offered by the financial holding company or its subsidiaries.

The Board solicits comments on all aspects of the proposed rule and will amend the rule as appropriate in response to comments received.

DATES: Comments must be received by September 5, 2000.

ADDRESSES: Comments should refer to docket number R–1078 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. and, outside those hours, to the Board's security control room. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and

C Street, NW. Members of the public may inspect comments in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Kieran J. Fallon, Senior Counsel (202/452–5270), or Adrianne G. Threatt, Attorney (202/452–3554), Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf ("TDD") *only*, contact Janice Simms at 202/872–4984.

SUPPLEMENTARY INFORMATION:

Background

The Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)) ("GLB Act") amended the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1841 *et seq.*) to allow a bank holding company or foreign bank that qualifies as a financial holding company to engage in a broad range of activities that are defined by the GLB Act to be financial in nature or incidental to a financial activity. The GLB Act also permits financial holding companies to engage in other activities that the Board determines, by regulation or order and in consultation with the Secretary of the Treasury ("Secretary"), to be financial in nature or incidental to a financial activity.

In considering whether an activity is financial in nature or incidental to a financial activity, the GLB Act requires the Board to consider: (1) The purposes of the GLB Act and BHC Act; (2) the changes or reasonably expected changes in the marketplace in which financial holding companies compete; (3) the changes or reasonably expected changes in technology for delivering financial services; and (4) whether the proposed activity is necessary or appropriate to allow a financial holding company to compete effectively with companies seeking to provide financial services in the United States, efficiently deliver financial information and services through technological means, and offer customers any available or emerging technological means for using financial services or for the document imaging of data. The Board also may consider other factors and information that it considers relevant to its determination.

After considering the factors listed above and other relevant information, the Board, after consultation with the Secretary of the Treasury, proposes to determine by rule that acting as a finder is an activity that is incidental to a financial activity. The proposed rule would amend § 225.86 of the Board's Regulation Y to add a new activity, which, as explained below is denominated "acting as a finder," to the list of activities permissible for financial holding companies.[1] Bank holding companies and foreign banks that qualify as financial holding companies would be permitted to engage in finder activities by using the post-commencement notice procedure described in § 225.87 of Regulation Y. Bank holding companies and foreign banks that do not qualify as financial holding companies may engage only in those nonbanking activities that were permissible for bank holding companies prior to the enactment of the GLB Act and, thus, could not act as a finder under the proposed rule.

The Board has consulted with the Secretary of the Treasury concerning the proposed rule, and the Secretary supports the Board's determination to seek public comment on the proposed rule. Under the GLB Act, the Board may not determine that an activity is financial in nature or incidental to a financial activity if the Secretary notifies the Board in writing that the Secretary believes the activity is not financial in nature, incidental to a financial activity, or otherwise permissible under section 4 of the BHC Act. The Secretary must notify the Board of the Secretary's determination within 30 days of receiving notice from the Board of a request, proposal or application for a determination that an activity is financial in nature or incidental to a financial activity, or within such longer period as the Board may allow under the circumstances.

Proposed Rule

Definition of a Finder

The Board proposes to allow financial holding companies to act as an intermediary in bringing together buyers and sellers for transactions that the buyers and sellers themselves negotiate and consummate. This activity is referred to as "acting as a finder." Although the exact services provided by a finder in a particular transaction may vary, a finder essentially performs two functions. First, a finder locates and matches third parties that are interested in engaging in a business transaction between themselves. For example, a finder may locate buyers for a company's products or services, or locate sellers of a particular product or service for a consumer. Similarly, a finder may assist a company locate third parties interested in engaging in other types of business arrangements, such as a merger, acquisition, or joint venture. Once a finder locates a potential buyer, seller, or business partner, the finder may arrange a meeting between the parties or refer one party to the other so that they may negotiate and complete the transaction.

Second, a finder serves as a conduit of transaction-related information between third parties that are interested in conducting a business transaction. For example, a finder may provide potential buyers with information concerning a seller's products and services, or convey information about a potential buyer's preferences to a seller. In addition, a finder may receive bids, offers, expressions of interests or purchase orders from one party and convey them to the other party.

Although a finder may introduce a buyer and seller and act as a conduit for the exchange of transaction-related information between the parties, it is the parties themselves—and not the finder—that are responsible for negotiating, executing and consummating the transaction. A finder lacks the authority to negotiate on behalf of either party concerning the transaction or to bind a party to the terms of the transaction. Accordingly, the role of a finder is more limited than that of an agent or broker.[2] In addition, because a finder acts as an intermediary and not as a principal, a company acting as a finder also does not have an ownership interest in the products or services being offered and sold by third parties through the company's finder services.

Role of Financial Holding Companies as Finders

The activity of acting as a finder has taken on increased significance as technological developments in communications, computing, and the Internet have spurred innovations in the way buyers and sellers of products and services, including financial products

[1] Subpart I of the Board's Regulation Y includes the criteria that a bank holding company or foreign bank must meet to become a financial holding company, a list of the activities permissible for financial holding companies, and the procedures for persons to request a determination that an activity is financial in nature or incidental or complementary to a financial activity. *See* 65 FR 3785 (Jan. 25, 2000); 65 FR 14433 (March 17, 2000); 65 FR 15053 (March 21, 2000).

[2] An agent generally has the power to enter into or alter business or legal relationships on behalf of another person (the principal). 3 Am. Jur. 2d Agency § 2 (1986). A broker is defined generally as an agent that carries on negotiations on behalf of its principal with the purpose of bringing the parties together on the terms established by the principal. 12 Am. Jur. 2d Brokers § 1 (1997). A finder, on the other hand, finds, interests, introduces and brings parties together for a transaction that they themselves negotiate, enter into, and consummate.

and services, come together. These technological developments have encouraged the development of intermediaries who are able electronically to find and connect buyers and sellers in transactions that are negotiated and consummated by the buyers and sellers themselves.

While technological developments have made the intermediary function more common and important, the demands of buyers and sellers simultaneously have encouraged the combination of previously uncombined products and services as a means of attracting buyers through the added convenience of one-stop shopping tailored to the needs of specific consumers. Thus, finders increasingly are attempting to attract buyers by combining access to sellers of commercial or consumer products as well as providers of financial products, such as investment products and advice, loans, and various payment services.

Banking organizations, including banks and bank holding companies, have long facilitated the connection of buyers and sellers of nonfinancial products and services to a limited degree through the placement of commercial advertisements in customer mailings and through referrals that arise in connection with the banking organization's role as financial advisor or intermediary. More recently, the developments in electronic commerce over the Internet have allowed banking organizations to establish electronic sites that offer financial products and services in a manner comparable to the manner in which nonfinancial firms offer products and services. The electronic sites often include connections to and advertisements by sellers of nonfinancial products and services that may be of interest to consumers of financial products and services. The expertise gained in conducting these activities is operationally identical to the expertise needed to act more broadly as a finder.

The Office of the Comptroller of the Currency ("OCC") also has determined that acting as a finder is part of or incidental to the business of banking and therefore a permissible activity for national banks.[3] The OCC has permitted national banks to act as a finder for nonfinancial products and services within parameters that closely parallel the limitations discussed below. Many state-chartered banks also are permitted to act as finders.[4]

Financial Holding Companies Permitted To Act as a Finder

The Board's proposed rule would authorize financial holding companies to act as a finder, which is defined as acting as an intermediary in bringing together one or more buyers and sellers of financial or nonfinancial products or services for transactions that the parties themselves negotiate and consummate. Under the proposed rule, a financial holding company acting as a finder could provide any or all of the following services'

(1) Identifying third parties that may be interested in engaging in a transaction between themselves;

(2) Making inquiries of third parties as to their interest in engaging in a transaction with another party;

(3) Introducing and referring potential parties to each other;

(4) Arranging contacts and meetings between interested parties;

(5) Conveying expressions of interests, bids, offers, orders, and confirmations relating to a transaction between third parties; and

(6) Transmitting information concerning products and services to potential parties in connection with the activities described in paragraphs (1) through (5) above, such as transmitting to a buyer information concerning the products and services offered by a seller or transmitting to a seller the product preferences of a buyer.

The rule includes specific examples of services that a financial holding company could provide as a finder and the technological means through which such services could be provided. These examples are intended to illustrate some activities that constitute acting as a finder and do not attempt to define fully the ways in which a financial holding company may act as finder. These examples are included in the rule in order to remove ambiguity about the permissibility of certain activities specifically mentioned by various financial holding companies in their requests regarding finder activities. Accordingly, the rule illustrates that a financial holding company acting as a finder may—

- Host an "Internet marketplace" that consists of hypertext links to the web sites of third party buyers and sellers;
- Host on the company's computer servers an Internet web site that allows various buyers and sellers to post information about the products and services they are willing to purchase and sell, locate potential counterparties for transactions, aggregate their orders for goods and services with those of other parties, and negotiate and enter into transactions between themselves;
- Host on its computer servers the Internet web site of a merchant that provides information about the merchant and its products and services and allows customers to place orders with the merchant; and
- Operate a telephone call center that provides consumers with information about the services or benefits provided by a government or government agency and clerical assistance in completing applications to receive those services or benefits.

The Board invites comment on whether the rule should include additional examples of how a financial holding company could act as a finder.

The authority to act as finder does not restrict the manner in which a financial holding company may conduct activities that otherwise are permissible for a financial holding company to conduct. For example, financial holding companies have broad authority to act as a broker and advisor in the sale of securities. These activities, permissible under other provisions of Regulation Y, may be conducted without regard to the restrictions that apply to the financial holding company when it acts as a finder with regard to nonfinancial products or services.

Moreover, a financial holding company may conduct activities that otherwise are permissible for a financial holding company in conjunction with acting as a finder for other products and services so long as these other permissible activities are conducted within any limits applicable to those activities and the company's finder activities are conducted within the limitations applicable to finder activities under this proposed rule. For example, a financial holding company acting as a finder for a merchant under the proposed rule also could make, acquire, broker or service loans or other extensions of credit to the merchant or the merchant's customers; provide the merchant with check verification, check guaranty, collection agency and credit bureau services; provide financial or investment advice to the merchant or the merchant's customers; act as a

[3] *See* 12 CFR 7.1002; OCC Interpretive Ltr. No. 875 (Oct. 31, 1999); OCC Interpretive Ltr. No. 856 (March 5, 1999).

[4] *See* Tex. Admin. Code § 11.83(d) ("A state bank, pursuant to request, may act as a finder in bringing together a buyer and seller, where the bank's activity is limited to the introduction and it takes no further part in the negotiations."). Several states also have "wild card" statutes that allow their state-chartered banks to engage in any activity that is permissible for national banks, which would include acting as a finder. *See, e.g.*, 202 Ill. Comp. Stat. 5/5(11).

certification authority for digital signatures and thereby authenticate the identity of persons conducting business with the merchant over electronic networks; and process and transmit financial, economic, and banking data on behalf of the merchant, such as by processing the merchant's accounts receivables and debit and credit card transactions, providing the merchant with bill payment and billing services, and processing order, distribution, accounting, settlement, collection and payment information for the merchant's transactions.[5] Furthermore, under the proposal a financial holding company may market and provide its own financial products and services in conjunction with acting as a finder for buyers and sellers of nonfinancial products and services.

The Board expects that financial holding companies likely would engage in finder activities through electronic means, such as over the Internet or other electronic networks. The proposed rule, however, would allow a financial holding company to act as a finder through any technological means available.

Parameters Defining Finder Authority

As noted above, a finder's role is limited to acting as an intermediary in bringing third parties together for a transaction that the parties themselves negotiate and consummate. Paragraph (d)(1)(iii) of the proposed rule incorporates this restriction and includes several specific parameters designed to ensure that, when acting as a finder, a financial holding company does not exceed the limited role of a finder or otherwise become involved in any nonfinancial activity or transaction.

In particular, paragraph (d)(1)(iii) provides that a financial holding company acting as a finder may not bind any buyer or seller to a specific transaction or the terms of a specific transaction, or negotiate on behalf of a buyer or seller concerning a specific transaction. As noted above, these activities are outside the limited scope of a finder's role.

These restrictions, however, would not prohibit a financial holding company from conveying bids, offers, and orders between buyers and sellers, so long as the bids, offers and orders were negotiated and accepted by the buyers and sellers and not by the financial holding company. The proposed rule also would not prohibit a financial holding company from arranging for a seller to offer its goods or services on preferred terms to buyers generally or broad categories of buyers, if the financial holding company did not negotiate the terms of the arrangement as part of any individual transaction and the preferred terms were made available by the seller (and not the financial holding company). One of the permissible functions of a finder is to make inquiries as to the interest of a seller in entering into transactions with buyers, which includes determining the terms the seller is willing to offer buyers. Where the finder arranges for a seller to offer preferred terms to broad categories of buyers, and such negotiations are conducted outside the context of any individual transaction, the finder would not become involved in the negotiations between the buyer and seller concerning a specific transaction.

Under the proposed rule, a financial holding company may not take title to, acquire, or hold an interest in any product or service. A finder may act only as an intermediary between a buyer and seller in the sale of products and services, and may not have an ownership or principal interest in the products or services being offered or sold. Similarly, a financial holding company may not, under the auspices of acting as a finder, own or operate any real property that is used for the purpose of manufacturing, storing, or assembling products offered or sold through the company's finder services or provide distribution services for physical products or services offered or sold through the company's finder services. The Board requests comment on whether the rule should specify other activities that are outside the scope of finder activities.

Finally, paragraph (d)(1)(iii) clarifies that the proposed rule does not authorize a financial holding company to engage in any activity that would require the company to register or obtain a license as a real estate agent or broker under applicable law. The Board has made no determination to date regarding whether real estate agency, brokerage, investment or development activities are financial activities permissible for financial holding companies, and nothing in the proposed rule is intended to authorize a financial holding company to engage in these activities by, for example, owning or operating real property that serves as a shopping mall, a retail store, a manufacturing plant, or a product distribution center. The Board expects to monitor the finder activities of financial holding companies to ensure that companies engaged in finder activities comply with the restrictions contained in the rule and do not become impermissibly involved real estate activities or commercial transactions entered into by third parties through the company's finder services.

The limitations in paragraph (d)(1)(iii) are restrictions on the activities that a financial holding company may conduct as a finder under the proposed rule. They do not apply to or restrict the authority of financial holding companies to engage in other activities that are permissible for financial holding companies under section 4 of the BHC Act and the Board's Regulation Y, even if the financial holding company engages in such activities in conjunction with its finder activities. For example, since insurance agency and insurance underwriting activities are permissible for financial holding companies, a financial holding company acting as a finder for an insurance company could also accept and negotiate insurance contracts on behalf of the insurance company and have a principal interest in the insurance products being sold, if the financial holding company had appropriately notified the Board of the company's intent to engage in insurance agency and underwriting activities under section 4(k)(4)(B) of the BHC Act.

Disclosure of Role

To reduce the likelihood that customers using a financial holding company's finder services may be confused about the company's role in the underlying transactions, paragraph (d)(1)(iv) of the proposed rule provides that a financial holding company acting as a finder must distinguish the products and services it offers from those offered by a third party through the financial holding company's finder service.

Request for Comments

The Board invites comment on all aspects of the proposed rule. In particular, the Board invites comments on whether the examples included in paragraph (d)(1)(ii) of the proposed rule are useful and whether additional examples of permissible finder activities should be included in the rule. The Board also requests comments on whether the restrictions contained in paragraph (d)(1)(iii) of the proposed rule

[5] *See* 12 CFR 225.28(b)(1) (extending credit and servicing extensions of credit); (b)(2)(iii), (iv) and (v) (credit bureau, check guaranty, check verification, collection agency and credit bureau services); (b)(6) (financial and investment advice); 12 CFR 225.86(a)(2) (certification authority for digital signatures) and (b)(1) (management consulting services); and 12 CFR 225.28(b)(14). *Banc One Corporation, Inc.*, 83 Federal Reserve Bulletin 602 (1997); *Royal Bank of Canada*, 83 Federal Reserve Bulletin 135 (1997); *Compagnie Financiere de Paribas*, 82 Federal Reserve Bulletin 348 (1996) (financial data processing and data transmission services).

should be modified, expanded, or restricted in any way.

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the proposed rule in a simple and straightforward manner and has included in the rule examples of activities that would be permissible under the proposed rule. The Board invites comments on whether there are additional steps the Board could take to make the proposed rule easier to understand.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this proposed rulemaking. The proposed rule would determine that acting as a finder, as defined in the proposed rule, is an activity that is incidental to a financial activity and, consequently, permissible for financial holding companies. A description of the reasons why action by the Board is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material provided above.

The proposed rule would allow bank holding companies and foreign banks that qualify as financial holding companies to engage in a new activity—acting as a finder. The proposed rule would apply to all financial holding companies, regardless of their size. The proposed rule should enhance the ability of financial holding companies, including small financial holding companies, to compete with other providers of financial services in the United States and to respond to technological and other changes in the marketplace in which financial holding companies compete. The Board specifically seeks comment on the likely burden the proposed rule would have on financial holding companies.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, Title 12, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(*l*), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.86 is amended by adding a new paragraph (d) to read as follows:

§ 225.86 What activities are permissible for financial holding companies?

* * * * *

(d) *Activities determined to be financial in nature or incidental to financial activities by the Board*—(1) *Acting as a finder*—(i) *What is a finder?* A financial holding company may act as a finder in bringing together one or more buyers and sellers of products or services for transactions that the parties themselves negotiate and consummate. Acting as a finder includes providing any or all of the following services—

(A) Identifying potential parties, making inquiries as to interest, introducing and referring potential parties to each other, and arranging contacts between and meetings of interested parties;

(B) Conveying between interested parties expressions of interest, bids, offers, orders and confirmations relating to a transaction; and

(C) Transmitting information concerning products and services to potential parties in connection with the activities described in paragraphs (d)(1)(i)(B) and (C) of this section.

(ii) *What are examples of finder services?* The following are examples of services that a financial holding company may provide as a finder when done in accordance with paragraph (d)(1)(iii) of this section—

(A) Hosting an Internet marketplace on the financial holding company's Internet web site by providing hypertext links to the web sites of third party buyers or sellers;

(B) Hosting on the financial holding company's servers the Internet web site of a seller that provides information concerning the seller and its products or services and allows buyers to submit orders for such products or services;

(C) Operating an Internet web site that allows multiple buyers and sellers to post information concerning the products or services that they are willing to purchase or sell, locate potential counterparties for transactions, aggregate their orders for goods or services with those made by other parties, and enter into transactions between themselves;

(D) Operating a telephone call center that provides consumers with information concerning the services or benefits provided by a government or government agency and clerical assistance in completing applications to receive services or benefits from the government or agency.

(iii) *What limitations are applicable to a financial holding company acting as a finder?* In acting as a finder, a financial holding company may act only as an intermediary between a buyer and a seller and may not—

(A) Bind any buyer or seller to a specific transaction or the terms of a specific transaction;

(B) Negotiate on behalf of a buyer or seller concerning a specific transaction, except that a financial holding company may arrange for buyers to receive preferred terms from sellers so long as the terms are not negotiated as part of any individual transaction, are provided generally to customers or broad categories of customers, and are made available by the seller (and not by the company);

(C) Engage in any activity that would require the financial holding company to register or obtain a license as a real estate agent or broker under applicable law;

(D) Take title to or acquire or hold an ownership interest in any product or service offered or sold through the financial holding company's finder services or provide distribution services for physical products or services offered or sold through the company's finder services; or

(E) Own or operate any real property that—

(*1*) Is used for the purpose of manufacturing, storing or assembling products offered or sold by third parties; or

(*2*) Serves as a physical location for the physical purchase, sale or distribution of products or services offered or sold by third parties.

(iv) *What disclosures are required?* A financial holding company acting as a finder must distinguish the products and services offered by the financial holding company from those offered by a third party through the company's finder service.

(2) [Reserved]

By order of the Board of Governors of the Federal Reserve System, July 31, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19647 Filed 8–2–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. Models SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes. The proposed AD would require you to replace the brake shuttle valves with parts of improved design; and would require you to install a shield over the hydraulic lines. The proposed AD is the result of the wheel brake system malfunction caused by a faulty parking brake shuttle valve. The actions specified by the proposed AD are intended to correct potential brake shuttle valve problems, which could cause the brake assembly to drag and overheat. Hydraulic or fuel line damage could then occur if the overheated brake assembly is retracted into the main wheel well, with a consequent fire if the hydraulic or fuel lines ruptured.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 22, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to?

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

How can I be sure FAA receives my comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this AD?

The FAA received a report of an accident involving a Fairchild Model SA226–TC airplane where the flight crew lost control of the airplane at low altitude during the final approach for landing. Prior to the accident, the flight crew reported a loss of hydraulic pressure and a fire on the left side of the airplane.

Investigation of this accident indicates the following:

—the flight crew applied right rudder power during the takeoff roll to compensate for a dragging and overheated left wheel brake and then raised the landing gear into the left wheel well;

—the overheated wheel brake ignited the tires and the hydraulic fluid; and

—the hydraulic fluid burned the rubber fuel crossover hose and resulted in fuel leakage with a consequent fire.

The accident investigation shows that the parking brake shuttle valve may have caused the left wheel brake to drag and overheat.

What are the consequences if the condition is not corrected?

Original design parking brake shuttle valves, if not replaced with improved design valves, could cause the wheel brakes to drag and overheat. This could result in hydraulic or fuel line damage if the overheated brake assembly is retracted into the main wheel wells. A consequent fire could occur if the hydraulic or fuel lines ruptured.

Relevant Service Information

Is there service information that applies to this subject?

Fairchild has issued the following service bulletins:

—Service Bulletin No. 226–26–003, which applies to certain SA226 series airplanes and incorporates the following pages:

Pages	Date
1, 2, 4, 6, 8, 9, 10, 11, 14, and 15.	Issued: March 1, 2000.
3, 5, 7, 12, and 13.	Issued: March 1, 2000, Revised: June 27, 2000.

—Service Bulletin No. 227–26–002, which applies to certain SA227 series airplanes and incorporates the following pages:

Pages	Date
1, 2, 6, and 9	Issued: March 1, 2000.
3, 4, 5, 7, and 8.	Issued: March 1, 2000, Revised: June 27, 2000.

What are the provisions of this service bulletin?

The service bulletin includes procedures for:

—replacing each brake shuttle valve with a part number (P/N) MS28767–4 brake shuttle valve;

—replacing the rubber fuel hose with a metal device; and

—installing a shield over the hydraulic lines.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to prevent the possibility of hydraulic or fuel line damage should an overheated brake assembly be retracted in the main wheel well.

What does the proposed AD require?

This proposed AD would require you to accomplish the following in accordance with Fairchild Service Bulletin No. 226–26-003, Issued: March 1, 2000, Revised: June 27, 2000, or Fairchild Service Bulletin No. 227–26–002, Issued: March 1, 2000, Revised: June 27, 2000, as applicable:

—Replace each brake shuttle valve with a part number (P/N) MS28767–4 brake shuttle valve; and

—Install a shield over the hydraulic lines.

We will address replacement of the rubber fuel hose with a metal device in another AD action when parts to accomplish this replacement are available. This proposed AD would not apply to any airplane with an anti-skid/power brake system installed.

Cost Impact

How many airplanes does the proposed AD impact?

We estimate that the proposed AD affects 250 airplanes in the U.S. registry.

What is the cost impact of the proposed AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the proposed AD:

SA226 Series Airplanes

Labor cost for shuttle valve replacement	Labor cost for shield installation	Parts cost per airplane	Total cost per airplane
40 workhours × $60 per hour = $2,400	15 workhours × 60 per hour = $900	$532	$2,400 + $900 + $532 = $3,832

SA227 Series Airplanes

Labor cost for shuttle value replacement	Labor cost for shield installation	Parts costs per airplane	Total cost per airplane
50 workhours × $60 per hour = $3,000	15 workhours × 60 per hour = $900	$532	$3,000 + $900 + $532 = $4,432

Compliance Time of the Proposed AD

What is the compliance time of the proposed AD?

The compliance time of this proposed AD is at whichever of the following that occurs later:

—Within 500 hours time-in-service (TIS) after the effective date of this AD; or

—Within 6 months after the effective date of this AD.

Why is the compliance time of the proposed AD presented in both hours TIS and calendar time?

The affected airplanes are used in both general aviation and commuter operations. Those commuter operators may accumulate 500 hours TIS on the airplane in less than 2 months and many owners have numerous affected airplanes in their fleets. We have determined that the dual compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and accomplish the actions in this proposed AD; and

—Assures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

Regulatory Impact

How does this AD impact various entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

How does this AD involve a significant rule or regulatory action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

Fairchild Aircraft, Inc.: Docket No. 2000-CE–28–AD

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that:

(1) are certificated in any category; and

(2) do not have an anti-skid/power brake system installed:

Model	Serial Numbers
SA226–T	T201 through T248
SA226–T(A)	T(A)249 through T(A)–291
SA226–T(B)	T(B) 276 and T(B) 292 through T(B) 417
SA226–AT	AT001 through AT074
SA226–TC	TC201 through TC419
SA227–TT	TT421 through TT555
SA227–TT(300).	TT447, TT465, TT471, TT483, TT512, TT518, TT521, TT527, TT529, and 536
SA227–AT	AT421, AT423 through AT631, and AT695
SA227–AC (Shuttle Valve Replacement Only; paragraph (d)(1) of this AD).	AC406, AC415, AC416, and AC420 through AC534
SA227–AC (Hydraulic Line Shield Installation Only; paragraph (d)(2) of this AD).	AC406, AC415, AC416, and AC420 through AC788

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD. The AD does not apply to any airplane with an anti-skid/power brake system installed.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct potential brake shuttle valve problems, which could cause the brake assembly to drag and overheat. Hydraulic or fuel line damage could then occur if the overheated brake assembly is retracted into the main wheel well, with a consequent fire if the hydraulic or fuel lines ruptured.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Accomplish the following modifications: (i) Replace each brake shuttle valve with a part number (P/N) MS28767–4 brake shuttle valve (or FAA-approved equivalent part number). (ii) Install a shield over the hydraulic lines.	All actions within 500 hours time-in-service (TIS) after the effective date of this AD or within 6 months after the effective date of this AD, whichever occurs later.	Perform all actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of whichever of the following is applicable: (A) Fairchild Aircraft Service Bulletin No. 226–26–003, which incorporates the following pages: Pages—1, 2, 4, 6, 8, 9, 10, 11, 14, and 15. Date—Issued: March 1, 2000. Pages—3, 4, 5, 7, and 8. Date—Issued: March 1, 2000. Revised: June 27, 2000. (B) Fairchild Aircraft Service Bulletin No. 227–26–002, which incorporates the following pages: Pages—1, 2, 6, and 9. Date—Issued: March 1, 2000. Pages—3, 5, 7, 12, and 13. Issued: March 1, 2000. Revised: June 27, 2000.
(2) Do not install any brake shuttle valve that is not a P/N MS28767–4 brake shuttle valve (or FAA-approved equivalent part number).	As of the effective date of this AD	Not applicable.

Note: The service information in this document also specifies replacement of the rubber fuel hose with a metal device. We will address this replacement in another AD action when parts are available.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 24, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19268 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 142

RIN 1076–AE04

Alaska Resupply Operation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), proposes to revise its regulations in the area of its administration of the Alaska Resupply Operation. The USMS *North Star* was decommissioned in 1984. However, the need for a resupply operation in Alaska continues. The Alaska Regional Office administers the Alaska Resupply Operation through the Seattle Support Center. All accounts receivable and payable are handled by the Seattle Support Center, which also rates and publishes a tariff. The proposed revisions to the regulations regarding this operation are to the large extent technical in nature; however, a section regarding preference in hiring under the Indian Reorganization Act of 1934 has been added. The technical revisions remove the terms "Areas Director' and "Manager" and, in their places, add the terms "Regional Director" and "Traffic Manager" to reflect the current administration within the BIA and the terms now in common usage.

DATES: Comments must be submitted to the place noted under the heading **ADDRESSES** no later than October 2, 2000.

ADDRESSES: Comments should be addressed to: Regional Director, Alaska Regional Office, Bureau of Indian Affairs, Department of the Interior, 709 West 9th Street, Juneau, AK 99802. Comments may be hand-delivered to the same address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Warren Heisler, Deputy Regional Director, Alaska Regional Offices, Bureau of Indian Affairs, telephone 907/586–7179.

SUPPLEMENTARY INFORMATION:

A. Background

The USMS *North Star* was decommissioned in 1984. However, the need for a resupply operation in Alaska continues. The Alaska Regional Office administers the Alaska Resupply Operation through the Seattle Support Center. All accounts receivable and payable are handled by the Seattle Support center, which also rates and publishes a tariff. The proposed revisions to part 142 of 25 CFR make technical changes to references to the "Regional Director," rather than to an "Area Director," as this position no longer exists. Also, the term "Traffic Manager" is added to the term "Manager" to connote common usage of the person who oversees the traffic of supply routes through Alaska via the Seattle Support Center. Due to continued inquiry from the Alaska Native community, provisions regarding Indian preference in hiring have been added to part 142. No other significant changes have been made to part 142 through rulemaking.

B. Public Comments

Comments should be submitted to the address indicated in the **ADDRESSES** section of this notice, where they will be available for public inspection. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule.

C. Review Under Executive Order 12866

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or adversely effect an economic sector, productivity, jobs, the environment or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative and technical in nature and makes minor modifications to the existing Alaska Resupply Operation.

D. Regulatory Flexibility Act

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 USC 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

E. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 USC 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

F. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million a year. In accordance with the Unfunded Mandates Reform Act (2 USC 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

G. Federalism

This rule does not have significant Federalism effects to warrant the preparation of a Federalism Assessment under Executive Order 13132. This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

H. Paperwork Reduction Act

This regulation does not contain any information collection requirements.

List of Subjects in CFR Part 142

Indians, Maritime carriers, Shipping.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR part 142 as follows:

PART 142—ALASKA RESUPPLY OPERATION

1. The authority citation for part 142 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 486.

2. Section 142.1 is amended by removing the definitions "Area

Director," and "Manager," and adding the definitions "Regional Director," and "Traffic Manager" in their respective alphabetical order to read as follows:

§ 142.1 Definitions.

* * * * *

Regional Director means the Regional Director, Alaska Regional Offices, Bureau of Indian Affairs.

Traffic Manager means Traffic Manager of the Seattle Support Center.

3. Section 142.3 is amended by revising the first sentence of paragraph (c) and paragraph (d) to read as follows:

§ 142.3 Who is responsible for the Alaska Resupply Operation?

* * * * *

(c) The Traffic Manager must make itineraries for each voyage in conjunction with contracted carriers.

* * *

(d) The Regional Director is authorized to direct the Seattle Support Center to perform special services which may arise and to act in any emergency.

§ 142.4 [Amended]

4. Section 142.4 is amended by adding the word "Traffic" before the word "Manager" in paragraph (d).

5. Section 142.5 is amended by revising the introductory text, paragraph (a) introductory text, and paragraph (a)(1) to read as follows:

§ 142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?

The general authority of the Assistant Secretary—Indian Affairs to establish rates and conditions for users of the Alaska Resupply Operation is delegated to the Regional Director.

(a) The Traffic Manager must develop a tariff that establishes rates and conditions for charging users.

(1) The tariff must be approved by the Regional Director.

* * * * *

6. Section 142.6 is amended by revising paragraphs (a) and (c) to read as follows:

§ 142.6 How are the rates and conditions for the Alaska Resupply Operation established?

* * * * *

(a) The Regional Director's approval of the tariff constitutes a final action for the Department for the purpose of establishing billing rates.

* * * * *

(c) If the income from the tariff substantially exceeds actual costs, a prorated [reimbursement] payment will be issued to the shipper.

§ 142.7 [Amended]

7. Section 142.7 is amended adding the word "Traffic" before the word "Manager" in the first sentence of paragraph (a).

§ 142.8 [Amended]

8. Section 142.8 is amended by adding the word "Traffic" before the word "Manager" in the second sentence.

§ 142.9 [Amended]

9. Section 142.9 is amended by adding the word "Traffic" before the word "Manager" in paragraph (a).

§ 142.10 [Amended]

10. Section 142.10 is amended by adding the word "Traffic" before the word "Manager."

§ 142.12 [Amended]

11. Section 142.12 is amended by adding the words "or booker" after the word "shipper" in paragraph (b).

12. Section 142.13 is revised to read as follows:

§ 142.13 Does the Seattle Support Center apply preference in hiring?

Yes. In accordance with the Indian Reorganization Act of 1934 (25 USC 479), Congress extended preference in employment in the Bureau to qualified Indians. To that end, the Seattle Support Center will apply those principles as outline in 25 CFR part 5 which states in pertinent part: "Preference is extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal jurisdiction.

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation.

(c) All others of one-half or more Indian blood of tribes indigenous to the U.S.

(d) Eskimos and other aboriginal people of Alaska.

Dated: July 25, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–19461 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL196–2; MO 109–1109; FRL–6844–5]

Approval and Promulgation of Implementation Plans: Illinois and Missouri: Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: EPA is reopening the public comment period for a proposed rule published on April 17, 2000 (65 FR 20404). In the April 17, 2000 proposed rule, EPA proposed to approve the Illinois and Missouri 1-hour ozone attainment demonstration State Implementation Plans for the St. Louis moderate ozone nonattainment area. In the alternative, EPA proposed to disapprove the attainment demonstration if: Illinois and Missouri did not revise the attainment demonstration modeling and analyses to incorporate corrections to the 1999 base year emissions inventory and successfully demonstrate attainment of the 1-hour standard based on the revised modeling; Illinois or Missouri did not submit proposed regional oxides of nitrogen (NO_X) emission control regulations for electric generating units (EGUs) by June 2000 and final adopted regional NO_X emission control regulations for EGUs by December 2000; and, Missouri did not submit a proposed motor vehicle emissions budget by June 30, 2000. In the April 17, 2000 proposed rule, EPA also proposed to approve an exemption from NO_X emission control requirements for reasonably available control technology (RACT) for the Illinois portion of the St. Louis ozone nonattainment area, to extend the ozone attainment date for the entire St. Louis ozone nonattainment area to November 15, 2003, and, to approve the transportation conformity motor vehicle emissions budget submitted by Illinois for the Illinois portion of the St. Louis ozone nonattainment area. Final approval of the extension of the ozone attainment date and the motor vehicle emission budgets are contingent on the final approval of the ozone attainment demonstration. Final approval of the attainment demonstration is contingent on the final approval of the regional NO_X emission control regulations and on the submittal of adequate motor vehicle emissions budgets. Final approval of the NO_X RACT exemption for Illinois is contingent on final approval of an attainment demonstration that does not rely on NO_X emission reductions resulting from NO_X RACT implementation in the Illinois portion the St. Louis ozone nonattainment area. In the April 17, 2000 proposed rule, EPA proposed to disapprove Illinois' request for an exemption from NO_X requirements for New Source Review and general conformity. EPA received a request to extend the public comment period.

DATES: Comments must be received on or before August 14, 2000.

ADDRESSES: Written comments should be addressed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; or,

Wayne Leidwanger, Chief, Air Planning and Development Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101.

Copies of the States' submittals and EPA's Technical Support Document, and other relevant materials, are available for public inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (please telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office);

United States Protection Agency, Region 7, Air, Radiation, and Toxics Division, 901 North 5th Street, Kansas City, Kansas, 66101 (please telephone Aaron Worstell at (913) 551–7787 before visiting the Region 7 office).

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6057, E-Mail Address: doty.edward@epamail.epa.gov; or, Aaron Worstell, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, Telephone Number (913) 551–7787, E-Mail Address: worstell.aaron@epa.gov.

Dated: July 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–19681 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 69, 80, and 86

[AMS–FRL–6845–4]

RIN 2060–AL69

Control of Air Pollution from New Motor Vehicles: Proposed Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; document availability.

SUMMARY: On June 2, 2000, the U.S. Environmental Protection Agency (EPA or Agency) published a Notice of Proposed Rulemaking (NPRM) (see 65 FR 35430) proposing changes to standards for heavy-duty engines and sulfur fuel controls for highway diesel fuel. In the preamble of the June 2, 2000, NPRM we proposed to apply to heavy-duty highway engines and vehicles "not to exceed" (NTE) and supplemental steady state test provisions which were published as a proposed rule on October 29, 1999 (64 FR 58472) "Control of Emissions of Air Pollution from 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty On-Board Diagnostics Requirements" (2004 Rule).

The 2004 Rule was recently signed on July 31, 2000 but has not yet been submitted for publication in the Federal Register. To allow commenters as much time as possible to comment on the June 2, 2000, NPRM before the end of the comment period, the Agency is making the signed version of the 2004 Rule available on an EPA website listed in **ADDRESSES.** The end of the comment period for the June 2, 2000, NPRM is August 14, 2000.

DATES: The comment period for the June 2, 2000, NPRM remains open until August 14, 2000, for any parties wishing to comment.

ADDRESSES: Comments must be submitted to Margaret Borushko, U.S, EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105. Telephone (734) 214–4334, FAX (734) 214–4816, E-mail borushko.margaret@epa.gov.

The 2004 Rule is located in the EPA Office of Transportation and Air Quality (OTAQ) Website: *http://www.epa.gov/otaq/* (Look in "What's New" or under the "Heavy Trucks/Buses" topic.) and in the Air Docket, A–99–06.

Materials relevant to this rulemaking are contained in Docket No. A–99–06. The docket is located at The Air Docket (6102), Room M–1500, 401 M. St, SW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday except on government holidays. You can reach the Air Docket by telephone number at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket material as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105. Telephone (734) 214–4334, FAX (734) 214–4816, E-mail *borushko.margaret@epa.gov.*

Dated: July 31, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–19784 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1143–P]

RIN 0938–AK25

Medicare Program; Prospective Payment System for Hospital Outpatient Services: Revision of the Provider-Based Location Criteria for Certain PPS-Exempt Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the criteria related to provider-based status requirements for hospitals excluded from the hospital inpatient prospective payment system (PPS) under section 4417 of the Balanced Budget Act of 1997 (BBA). We are proposing to require that satellites of a hospital that qualifies for a PPS exclusion under section 4417 of BBA must be located within the same Metropolitan Statistical Area as the hospital, instead of requiring that these satellites meet the existing requirement of location within the immediate vicinity of the hospital. The satellites of these excluded hospitals would still be required to comply with the other provider-based status criteria.

DATES: We will consider comments if we receive them at the appropriate

address, as provided below, no later than 5 p.m. on October 2, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1143–P, P.O. Box 8013, Baltimore, MD 21244–8013.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to the above addresses may be delayed and received too late to be considered.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1143–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Miechal Lefkowitz, (410) 786–5316.

SUPPLEMENTARY INFORMATION:

I. Background

A. Provider-Based Status

On April 7, 2000, we published a final rule specifying the criteria that must be met for a determination regarding provider-based status (65 FR 18504). Since the beginning of the Medicare program, some providers, which we refer to as "main providers," have owned and operated other facilities that were administered by the main provider. The subordinate facilities may or may not be located on the main provider's campus. To accommodate for the financial integration of the two facilities without creating an administrative burden, we have permitted the subordinate facility to be considered a provider-based facility. Furthermore, a portion of the costs incurred by the main provider may be allocated to a provider-based facility. This allocation can result in additional Medicare payments to the provider-based facility.

The regulations at § 413.65, effective October 10, 2000, define provider-based status as, "the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility, that complies with the provisions of this section." Before a main provider may bill for services of a facility as if the facility were provider-based, or before it includes costs of those services on its cost report, the facility must meet the criteria listed in the regulations at § 413.65(d). Among these criteria are the requirements that the main provider and the facility must have common licensure (when appropriate), the facility must operate under the ownership and control of the main provider, and the facility must be located in the immediate vicinity of the main provider.

B. Satellite Facilities

A satellite facility is defined at § 412.22(h)(1) as, "a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital." A satellite facility is a type of facility that may be considered provider-based if it meets the criteria under § 413.65(d). In some cases, a hospital may have several satellite locations.

C. Long Term Care Hospitals and Satellite Facilities

Satellite facilities are common among long term care hospitals (LTHs). A LTH, as defined under section 1886(d) of the Social Security Act (the Act), is a hospital with an average length of stay of greater than 25 days. These hospitals are excluded from the prospective payment system (PPS) and are paid on a reasonable cost basis subject to a per-discharge cost limit for inpatient hospital services. A LTH that has a satellite facility must comply with the regulations at § 412.22(h)(2). Section 412.22(h)(2)(i) requires that if the hospital (other than a children's hospital) was excluded from the PPS for the most recent cost reporting period beginning before October 1, 1997, the hospital's number of State-licensed and Medicare-certified beds, including those at the satellite facilities, must not exceed the hospital's number of State-licensed and Medicare-certified beds on the last day of the hospital's last cost reporting period beginning before October 1, 1997.

D. Exception for Certain LTHs

Although section 1886(d) of the Act defines a LTH as a hospital with an average length of stay of greater than 25 days, under section 4417 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), as implemented in the regulations at § 412.23(e)(2), the Congress extended the LTH exclusion to any hospital that first received payment under section 1886(d)(1)(B)(iv) of the Act in 1986, has an average length of stay of greater than 20 days, and had 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in fiscal year 1997. On July 30, 1999, we published a final rule (64 FR 41490) at § 412.22(h)(2) specifying the criteria that a PPS exempt hospital with a remote inpatient satellite facility located within a PPS hospital must meet to qualify for payment as a PPS exempt hospital for services furnished at that satellite. We also stated in that final rule that, in view of the special status accorded to hospitals that qualify for LTH status under section 4417 of the BBA, we believed those hospitals should also be exempt from the requirements at § 412.22(h)(2), which are applicable to satellite facilities of PPS-excluded hospitals. Accordingly, at § 412.22(h)(3)(ii), we specified that the criteria at § 412.22(h)(2) do not apply to a hospital excluded from the PPS under § 412.23(e)(2).

II. Provisions of This Proposed Rule

Since the publication of the provider-based regulations on April 7, 2000, it has come to our attention that hospitals that qualify as LTHs under section 4417 of the BBA could be precluded from having a satellite facility under the revised provider-based regulations. Although those hospitals' satellites might meet all other criteria under § 413.65(d) for achieving provider-based status, they might not meet the requirement at § 413.65(d)(7) of being located in the immediate vicinity of the main provider. Under § 413.65(d)(7), to meet the provider-based criteria, the main provider must show that the satellite is located within its immediate vicinity by demonstrating that, either (A) at least 75 percent of the patients served by the satellite reside in the same zip code areas as at least 75 percent of the patients served by the main provider; or (B) at least 75 percent of the patients served by the facility or organization that required the type of care furnished by the main provider received that care from that provider (for example, at least 75 percent of the patients of a rural health clinic (RHC) seeking provider-based status received inpatient hospital services from the hospital that is the main provider); or

(C) if the facility or organization is unable to meet the criteria in § 413.65(d)(7)(i)(A) or § 413.65(d)(7)(i)(B) of this section because it was not in operation during all of the 12-month period described in the previous sentence, the facility or organization must be located in a zip code area included among those that, during all of the 12-month period described in the previous sentence, accounted for at least 75 percent of the patients served by the main provider.

In view of this concern, and in consideration of the special status accorded to hospitals under section 4417 of the BBA, and consistent with our earlier regulatory provision allowing for satellites for these hospitals, we believe it is also appropriate to revise the criteria in § 413.65(d)(7)(i) for hospitals excluded from the inpatient hospital PPS under section 4417 of the BBA. Specifically, we are proposing to require that satellites of a hospital that qualify for a PPS exclusion under § 412.23(e)(2) must be located within the same Metropolitan Statistical Area (MSA) as the hospital, instead of requiring that these satellites meet the existing requirement of determining that the satellite is located within the immediate vicinity of the hospital. Therefore, we are proposing to amend the regulations by adding subparagraph (iv) to existing § 413.65(d)(7) to allow for this revision to the provider-based rules. The satellites of these hospitals would still be required to comply with the other criteria in § 413.65.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This proposed rule is not a major rule because we have determined that the economic impact will be negligible since we know of only one hospital that may qualify for the revisions related to provider-based satellite facilities (of hospitals that qualify for LTH status under § 412.23(e)(2)) that are located within the same MSA as the main provider.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, hospitals with provider-based satellite facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with not more than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This proposed rule will not have a significant economic effect on these governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on States or local governments.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, HCFA proposes to amend 42 CFR chapter IV as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues ro read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart E—Payments to Providers

2. In § 413.65, paragraph (d)(7)(iv) is added to read as follows:

§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.

* * * * *

(d) *Requirements.* * * *

(7) *Location in immediate vicinity.*

* * *

(iv) A satellite facility that otherwise qualifies as a provider-based satellite of a main provider that is excluded from the prospective payment systems under § 412.23(e)(2) of this chapter, is considered to be located in the immediate vicinity of that main provider if it is located within the same Metropolitan Statistical Area as the main provider.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 18, 2000.

Approved: July 27, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Donna E. Shalala,

Secretary.

[FR Doc. 00–19669 Filed 7–31–00; 2:48 pm]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 65, No. 150
Thursday, August 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–069–1]

Availability of a Draft Environmental Assessment for Field Testing Salmonella Typhimurium Vaccine, Live Culture

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed live *Salmonella typhimurium* vaccine for use in poultry. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a veterinary biological product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensure.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 5, 2000.

ADDRESSES: Please send your comments and three copies to: Docket No. 00–069–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–069–1.

Copies of the draft environmental assessment may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. A copy of the draft environmental assessment (as well as the risk analysis with confidential business information removed) and any comments that we receive on this docket are available for public inspection in our reading room. The reading room is located in room 1141 of the South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register** , and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared a draft environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Biomune Company.

Product: Salmonella Typhimurium Vaccine, Live Culture.

Field test locations: Texas, Georgia, and Delaware.

The above-mentioned vaccine is for use in chickens as an aid in the reduction of colonization of the internal organs by *Salmonella typhimurium*. Genetic alterations limit the ability of the vaccine bacteria to replicate in vertebrate tissues.

The draft EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to issue a final EA and finding of no significant impact (FONSI) and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license

for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 24th day of July 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–19609 Filed 8–2–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Management Direction for the John Muir, Ansel Adams, and Dinkey Lakes Wilderness; Inyo and Sierra National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Revised Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare a revised draft environmental impact statement (DEIS) to establish management direction for the John Muir, Ansel Adams, and Dinkey Lakes Wilderness areas. Notices of Intent published in the August 12, 1992 issue of the **Federal Register** (57 FR 36061) and the June 2, 2000 issue of the **Federal Register** (65 FR 35317–35318) listed the Monarch Wilderness area on the Sequoia National Forest as included in the management direction to be established. The Monarch Wilderness is no longer included. All other information remains the same as published in the earlier Notices of Intent.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding the proposed action and revised DEIS to Mary Beth Hennessy, Wilderness Specialist, Inyo National Forests (760) 873–2400; or Teri Drivas, Recreation and Lands Officer, Sierra National Forest (559) 297–0706.

Bill Bramlette,

Acting Forest Supervisor, Inyo National Forest.

Alan M. Quan,

Acting Forest Supervisor, Sierra National Forest.

Arthur L. Gaffrey,

Acting Forest Supervisor, Sequoia National Forest.

[FR Doc. 00–19613 Filed 8–2–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–910–00–1610–DE–UCRB]

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain, and Pacific Northwest Regions; States of Oregon, Washington, Idaho, Montana

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Corrected notice of availability of a Congressionally-required report on the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

SUMMARY: The Forest Service and Bureau of Land Management published a notice of availability of a Congressionally-required report in the April 25, 2000, **Federal Register** (Volume 65, Number 80, page 24174). The notice specified a 120-day period for public review of, and comment on, the report. Recalculation of the final day of the comment period reveals that the date given in the April 25 notice is incorrect.

DATES: Written comments on the report will be accepted through August 26, 2000 (rather than August 23, as stated in the earlier notice). The ICBEMP interdisciplinary team will then analyze the comments and respond to them in the final EIS. The final EIS is expected to be available in late fall, 2000.

ADDRESSES: Copies of the report may be obtained from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334–1770, ext. 120. The report is also available via the internet (http://www.icbemp.gov). Comments on the report should be submitted in writing to SDEIS, P.O. Box 420, Boise, Idaho, 83701–0420. Comments may be submitted electronically at the ICBEMP's home page (http://www.icbemp.gov), where a comment form is available. Comments, including names and street addresses of respondents, will be available for public review at the Boise office during regular business hours (8:00 a.m. to 5:00 p.m. Monday through Friday, except holidays), and may be published as part of the final environmental impact statement. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the decision under 36 CFR 217 (Forest Service) or standing to protest the proposed decision under 43 CFR 1610.5–2 (Bureau of Land Management).

FOR FURTHER INFORMATION CONTACT: Susan Giannettino, Project Manager, 304 North 8th St., Room 250, Boise, Idaho 83702, phone (208) 334–1770; or Geoff Middaugh, Deputy Project Manager, P.O. Box 2295, Walla Walla, Washington 99362, phone (509) 522–4033.

Dated: July 27, 2000.

Susan Giannettino,

Project Manager, U.S. Forest Service.

Geoff Middaugh,

Deputy Project Manager, Bureau of Land Management.

[FR Doc. 00–19616 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Finding of No Significant Impact for the Williamson River Delta Restoration Project

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of a Finding of No Significant Impact for the Williamson River Delta Restoration Project in Oregon for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue a Finding of No Significant Impact for the Williamson River Delta Restoration Project in Oregon. An Environmental Assessment (EA) was previously prepared with the required public involvement and comment period.

DATES: Comments must be received on or before September 5, 2000.

ADDRESSES: Copies of this Finding of No Significant Impact will be made available upon written request. Address all requests and comments to C. R. Vigil, Jr., Acting State Conservationist, Natural Resources Conservation Service (NRCS),

101 SW Main Street, Suite 1300, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: C.R. Vigil, Jr., 503–414–3200.

SUPPLEMENTARY INFORMATION: Section 1506.6 of the Code of Federal Regulations states that there will be public involvement on actions proposed by Federal Agencies. For the next 30 days, the NRCS in Oregon will receive comments relative to the Finding of No Significant Impact. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of the Finding of No Significant Impact will be made.

Dated: July 28, 2000.

C.R. Vigil, Jr.,

Acting State Conservationist, Portland, Oregon.

[FR Doc. 00–19696 Filed 8–2–00; 8:45 am]

BILLING CODE 3410–16–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Louisiana Advisory Committee to the Commission will convene at 9 a.m and adjourn at 9 p.m. on Tuesday, September 12, 2000 and Wednesday, September 13, 2000, at the Best Western-Richmond Suites, 2600 Moelling, Lake Charles, Louisiana 70609. The purpose of the factfinding meeting is to collect data on environmental equity issues in Louisiana.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 27, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–19657 Filed 8–2–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–2000]

Foreign-Trade Zone 73—BWI Airport, Maryland, Expansion of Manufacturing Authority—Subzone 73A, Rotorex Company, Inc. (Air Cleaners); Walkersville, MD

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Maryland Department of Transportation, grantee of FTZ 73, requesting authority on behalf of the Rotorex Company, Inc. (Rotorex) and Trion, Inc. (Trion), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 73A at the Rotorex facility in Walkersville, Maryland. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 27, 2000.

Subzone 73A was approved by the Board in 1995 (Board Order 767, 60 FR 47149, 9/11/95). The Rotorex plant (210,000 sq. ft. on 18 acres) is located at 8301–B Retreat Road in Walkersville (Frederick County), Maryland, about 55 miles northwest of Washington, DC. Approval was originally granted for the manufacture of rolling piston rotary pumps and compressors for R–22 unitary heat pumps and air conditioners. The applicant is now seeking authority to manufacture residential air cleaners at the facility (HTS 8421.39, duty free). Components and materials sourced from abroad (representing about 28% of all parts consumed in manufacturing) include: motors and power supplies (HTS 8501.10 and 8501.40, duty rate ranges from 1.5% to 4.0%).

FTZ procedures would exempt Rotorex and Trion from Customs duty payments on the foreign components used in export production. Some 10 percent of the plant's shipments are exported. On its domestic sales, Rotorex and Trion would be able to choose the duty rates during Customs entry procedures that apply to finished air cleaners (duty-free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 17, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, World Trade Center, 401 East Pratt Street, Suite 2432, Baltimore, MD 21202

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: July 28, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19692 Filed 8–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2000]

Foreign-Trade Zone 46—Cincinnati, OH, Area Application for Zone Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, requesting authority to expand its zone in the Cincinnati, Ohio, area, adjacent to the Cincinnati Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 27, 2000.

FTZ 46 was approved in 1979 (Board Order 141, 44 FR 4003, 1–19–79) and relocated in 1994 (Board Order 720, 59 FR 66891, 12–28–94). In 1997 the zone was expanded to include a second, non-contiguous site (Board Order 943, 62 FR 67044, 12–23–97), and it was recently expanded with the addition of three sites in Clermont County and Brown County, some 25 miles east of Cincinnati (Board Order 1070, 64 FR 72643, 12–28–99). The zone currently consists of five sites in the greater Cincinnati area:

Site 1: (35 acres)—175 Progress Place, Springdale (Hamilton County), Ohio;

Site 2: (122 acres)—Cincinnati Machine-UNOVA facilities, 4701 Marburg Avenue, Cincinnati;

Site 3: (460 acres)—Milacron, Inc., facilities within the Clermont County Industrial Park, 4165 Half Acre Road, Batavia (Clermont County), Ohio;

Site 4: (490 acres)—Milacron, Inc., facilities within the Brown County Industrial Park, 418 West Main Street, Mt. Orab (Brown County), Ohio; and,

Site 5: (160 acres)—West Hamco Industrial Park, 4160 Half Acre Road, Batavia, Ohio.

The applicant is now requesting authority to expand Site 3 by adding additional industrial space (406 acres) located at 1981 Front Wheel Drive, Afton Industrial Area in Batavia, immediately adjacent to the western boundary of the existing site. The proposed expansion area (4 parcels) is owned by: A—Flannery Developers (89 acres); B—Central Trust (53 acres); C—Ronald E. Clark (33 acres); and D—ZF Batavia (231 acres).

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 17, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Suite 2650, 36 East 7th Street, Cincinnati, OH 45202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 27, 2000.

Dennis Puccinelli,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 00–19691 Filed 8–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–810]

Notice of Postponement of Final Antidumping Duty Determination and Extension of Provisional Measures: Certain Expandable Polystyrene Resins From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis at (202) 482–2336 or Charles Riggle at (202) 482–0650, AD/CVD Enforcement, Office V, DAS Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Postponement of Final Determinations

The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of certain expandable polystyrene resins from Indonesia.

On June 26, 2000, the Department published its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Expandable Polystyrene Resins From Indonesia,* 65 FR 39349. The notice stated that the Department would issue its final determination no later than 75 days after the date of issuance of the notice.

Pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), on July 11, 2000, PT Risjad Brasali Styrindo (RBS), the sole respondent in the investigation, requested that the Department postpone its final determination. Further to this request, RBS requested that the Department extend to not more than six months the application of the provisional measures prescribed under paragraphs (1) and (2) of section 733(d) of the Act. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), because the preliminary determination in this case is affirmative and the request for postponement was submitted in writing by an exporter who accounts for a significant proportion of exports of the subject merchandise in this investigation, we are postponing the final determination until no later than 135 days after the publication of the preliminary determination in the **Federal Register** (*i.e.*, until no later than November 8, 2000). Suspension of liquidation will be extended accordingly.

This extension is in accordance with section 735(a)(2)(A) of the Act, and 19 CFR 351.210(b)(2).

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19690 Filed 8–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China; Final Results of Antidumping Duty Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty sunset review; Pure magnesium from the People's Republic of China.

SUMMARY: On April 3, 2000, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on pure magnesium from the People's Republic of China ("China") (65 FR 17484) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the

effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On April 3, 2000, the Department initiated a sunset review of the antidumping duty order on pure magnesium from China (65 FR 17484), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On April 18, 2000, the Department received a notice of intent to participate on behalf of Magnesium Corporation of America ("Magcorp"), within the applicable deadline in accordance with 19 CFR 351.218(d)(1)(i). On May 3, 2000, the Department received a complete substantive response from Magcorp within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In its substantive response, Magcorp claimed interested party status under section 771(9)(C) of the Act, as a U.S. manufacturer of the domestic like product. Magcorp states that it was the petitioner in the original antidumping duty investigation that led to the order and has been diligent in maintaining the order. *See* Magcorp's, May 3, 2000, Substantive Response at 4. On June 7, 2000, we informed the International Trade Commission ("Commission") that, on the basis of inadequate responses from respondent interested parties, we were conducting an expedited sunset review of this order consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). *See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.

Scope of Review

The product covered by this review is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy. Pure primary magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents. Since the antidumping duty order was issued, we have clarified that the scope of the original order includes, but is not limited to, butt ends, stubs, crowns and crystals. *See* May 22, 1997, instructions in U.S. customs and November 14, 1997, Final Scope Rule of Antidumping Duty Order on Pure Magnesium from China: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) Products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) Products (generally referred to as "off-specification pure" magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium. "Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50 percent by weight), and remelted magnesium whose pure primary magnesium content is less than 50 percent by weight. Pure magnesium products covered by this order are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the case by the domestic interested party to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H.V. Cribb, Acting Assistant Secretary for Import Administration, dated August 1, 2000, which is adopted by this notice. The issues discussed in the Department's Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading ("China"). The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Country Wide rate	108.26

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 771(i) of the Act.

Dated: July 28, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19693 Filed 8–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072100B]

Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit (1259)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: This notice advises the public that the North Carolina Division of Marine Fisheries (NCDMF) has submitted an application to NMFS for an incidental take permit (Permit) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a draft conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of listed adult and juvenile sea turtles associated with otherwise lawful commercial fall gillnet fisheries for flounder in the southeastern portion of Pamlico Sound in the state of North Carolina. The duration of the proposed Permit is for 1 year. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit application. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. NMFS has not made a determination on the adequacy of the application and seeks comments particularly in regard to the details of the application and Plan, the level of incidental take, the description of management measures and the relationship of those measures to the trigger conditions identified in the application, the monitoring requirements (including observer provisions, and funding of the Plan), and the linkage of the Plan to current and future program management. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the Permit application, Plan, and draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on September 5, 2000.

ADDRESSES: Written comments on this action and requests for copies of the Permit application, Plan, and draft EA (these documents are also posted on the internet at (http://www.nmfs.noaa.gov/prot_res/permits/esapermit.html) should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376). The Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301–713–1401.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. The term "harm" includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the Plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) turtles.

Background

On June 21, 2000, NCDMF submitted an application to NMFS for a section 10(a)(1)(B) permit for the incidental take of listed sea turtles associated with commercial fall gillnet fisheries for flounder in the southeastern portion of Pamlico Sound. NCDMF's application is for the incidental take of endangered Kemp's ridley, leatherback, and hawksbill turtles and the threatened green and loggerhead turtles. The commercial fall gillnet fishery targets southern flounder. Implementation of the Plan will allow for the continued commercial harvest of this species which is estimated to have a value of over one million dollars per year and supports fishermen and the local economy.

Conservation Plan

The draft Plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental takes of listed turtles, focusing on the following fishery:

Fall Gillnet Flounder Fishery

The fishery is scheduled to occur from September 15 through December 15, 2000 in Pamlico Sound predominantly in an area lying south of a line running westerly from a point on Hatteras Island, Dare County (35° 23' 00" N.—75° 30' 00" W.) through the Avon Channel Entrance Beacon No. 1 (35° 23' 00" N.—75° 33' 38" W.) thence westerly to Bensons Point (35° 23' 00" N.—76° 03' 42" W.) at Wysocking Bay, Hyde County and east of a line running southerly from Bensons Point along the eastern edge of Bluff Shoal to the west side of Ocracoke Inlet, Carteret County (35° 03' 42" N.—76° 02' 12" W.) thence running easterly and northerly along the shoreline of the Pamlico Sound back to the point beginning at Hatteras Island. This area is referred to in the application as the Gillnet Restricted Area (GRA) and would be the affected area for the Plan and Permit. Flounder gillnets are set in the GRA from mid-September through mid-December in waters ranging between 10 and 20 feet (3 and 6.1 m) deep to target flounder migrating from the estuaries to offshore spawning grounds. Pamlico Sound flounder gillnets are normally hung with 5 and one-half to 6 and one-half inch (14 to 16.5 cm) stretch mesh monofilament webbing, and fisherman routinely set from 2,000 to 10,000 yards (1,800 to 9,700 m) of net at a time. Telephone (n=31) interviews by NCDMF staff with flounder gillnet fishermen indicate that in 1999 the average amount of 5 inch (12.7 cm) stretch mesh and larger mesh gillnet set per fishing operation was 4,750 yards (4,340 m). Many of the flounder gillnet fishermen use net reels to set and retrieve their gear. The nets are approximately 10 feet (3 m) deep, however many fishermen use tiedowns which restrict the nets to the bottom 3 to 4 feet (1 to 1.2 m) of the water column. The nets are constructed of small diameter (.40mm to .60mm) webbing that is hung loosely to create excess bag in the net which improves the catch of flounder. Flounder gillnets are normally fished every day or every other day depending on recent catches and weather conditions. Soak times generally range between 12 and 48

hours. It is estimated that in the fall of 1999, between 90 and 95 vessels participated in the large mesh and small mesh gillnet fisheries in the Pamlico Sound. Approximately one-half of these vessels are believed to have fished large mesh (i.e. greater than 5 inch (12.7 cm) stretch mesh) gillnets. NCDMF Trip Ticket Program information for 1999 indicates that 45 vessels greater than 25 feet (7.6 m) and 9 vessels less than 25 feet (7.6 m) in length landed more than 1,000 pounds (454 kg) of flounder per month from September through December.

Incidental mortalities of listed turtles associated with the commercial fall gillnet fishery for flounder in Pamlico Sound, NC, are requested by NCDMF at levels specified in the Permit application. NCDMF is proposing to limit the commercial fall gillnet fishery for flounder such that the incidental impacts on listed turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality in the fall gillnet fishery by 50 percent, relative to mortality levels indicated by strandings in 1999. Implementation of the monitoring requirements of the Plan–an observer program with 5 percent coverage–is contingent upon NCDMF receiving a funding grant, for which a final funding decision is expected in early August. NCDMF considered and rejected one other alternative, not applying for a permit and closing the fishery, when developing their Plan.

Summary of NMFS Concerns and Recommendations

NMFS has reviewed the NCDMF's Plan and has identified several concerns with the adequacy of the minimization and mitigation measures, monitoring, and the associated level of incidental take of listed turtles. The NCDMF's draft Plan could be strengthened by providing information on the abundance and distribution of the five listed species of turtles in North Carolina waters (including the Pamlico Sound), information on current fishing levels within North Carolina waters (including the Pamlico Sound) and more detailed information on the effect of implementing the proposed minimization measures, mitigation measures, commitments to monitoring, and alternatives to the proposed Plan.

NMFS specifically invites the public to provide comments on the measures proposed in the Plan, including the description of management measures, the relationship of the management measures to the trigger conditions identified in the application, the monitoring requirements (including observer provisions and funding), and the linkage of the Plan to current and future program management (This permit application and Plan are for 1 year only, so any future incidental take authorization in this fishery would require a new application and plan, incorporating any new information developed this year.). NMFS is also seeking comment on the incidental take level proposed in the Plan. The Plan could potentially reduce strandings within Pamlico Sound by up to 50 percent of the levels observed during the fall in 1999. NMFS solicits comment on the adequacy of this reduction to avoid appreciably reducing the numbers and distribution of listed turtles in the wild and the potential need for further reductions in the take level requested.

NMFS also invites comments on potential alternative options and practical measures that could reduce the adverse effects to turtles in Pamlico Sound. Variations on the alternatives provided in the Plan may also exist which could avoid and/or significantly reduce potential for conflict with ongoing fishing activities in North Carolina waters outside of Pamlico Sound, while minimizing and mitigating the incidental take of turtles. Specifically, NMFS wishes to receive comment on options that would minimize the use of gillnets in Pamlico Sound during times of turtle abundance, while still providing fishing opportunities to fishers. Additionally, we seek comments on the management of commercial and recreational fishing activities by the applicant in areas outside of Pamlico Sound that would provide the basis for the development of a multi-year Conservation Plan to minimize and mitigate strandings of listed turtles within all North Carolina waters. Comments on alternatives should include discussions of length of gillnets deployed, soak times, and seasonal closures to avoid, minimize, and mitigate incidental take. This information will assist NMFS and NCDMF in developing long-term Plans with appropriate adaptive management measures for future fishing activities.

This notice is provided pursuant to section 10(c) of the Act. NMFS will evaluate the permit application, Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for the incidental take of loggerhead, leatherback, green, hawksbill, and Kemp's ridley turtles, for the 2000 fall season only. Management of this fishery beyond 1 year of the issuance of the Permit, will require a new incidental take permit. The final permit decision will not be made prior to ensuring compliance with NEPA and not until after the end of the 30-day comment period in order to fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

The EA package includes a draft EA. A final determination of a Finding of No Significant Impact (which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended) will be made after the public comment period and prior to issuance of a Permit. Two Federal action alternatives have been analyzed in the EA, including: (1) the no action alternative (deny the permit); and (2) issue a permit.

Dated: July 28, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–19588 Filed 8–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071200A]

ICCAT Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) in conjunction with the Highly Migratory Species (HMS) Management Division of NMFS announces the schedule of regional public meetings to be held this fall.

DATES: The meetings are scheduled in September and October 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

ADDRESSES: The meetings will be held in Texas, Florida, New Jersey, and Massachusetts. See **SUPPLEMENTARY INFORMATION** for specific addresses of the meetings.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran (international issues) at 301–713-2276 or Rachel Husted (domestic issues) at 301–713–2347.

SUPPLEMENTARY INFORMATION: The meetings are scheduled as follows:

Thursday, September 7, 2000, 7 p.m. to 9:30 p.m.—Sandcastle Condominiums, 800 Sand Castle Drive, Port Aransas, Texas 78373;

Thursday, September 14, 2000, 7 p.m. to 9:30 p.m.—Sheraton Biscayne Bay Hotel, Brickell Point/Miami, 495 Brickell Avenue, Miami, Florida 33131;

Sunday, October 1, 2000, 7 p.m. to 9:30 p.m.—Four Points Hotels Sheraton, Route 132 and Bearse's Way, Hyannis, Massachusetts 02601;

Thursday, October 5, 2000, 7 p.m. to 9:30 p.m.—The Inn of Cape May, 7 Ocean Street, Cape May, New Jersey 08204.

The following topics may be presented to the public for discussion at the regional meetings:

International Issues

(1) Background on ICCAT
(2) Information on the Advisory Committee and Commissioners
(3) Status of Highly Migratory Species Managed by ICCAT
(4) Topics for the 2000 ICCAT Annual Meeting

Domestic Issues

(1) Implementation of ICCAT Recommendations
(2) Other HMS management actions

Representatives from the Advisory Committee to the U.S. Section to ICCAT and NMFS will be in attendance at the regional meetings. There will be an opportunity for public comment on each issue. The length of the meetings may be adjusted based on the progress of the discussions.

Additionally, the annual fall meeting of the Advisory Committee will be held on October 29–31, 2000, at the NOAA Silver Spring Metro Center complex, 1315 East-West Highway, Silver Spring, Maryland 20910. There will be opportunity for public comment on international issues on the first day (October 29) of this meeting. This session is scheduled from 1 to 6 p.m. Domestic issues will not be discussed at this meeting. Additional information on the annual fall Committee meeting will be provided at a later date.

The public is reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of Advisory Committee meetings. At the beginning of the meetings, an appropriate representative will explain the ground rules (e.g., alcohol in the meeting room is prohibited, attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, and attendees should not interrupt one another). The appropriate representative will attempt to structure the session so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patrick E. Moran at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: July 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19651 Filed 8–2–00; 8:45 am]

BILLING CODE 3510–22–F

UNITED STATES PATENT AND TRADEMARK OFFICE

Deposit of Biological Materials

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 2, 2000.

ADDRESSES: Direct all written comments to Thao P. Nguyen, Acting Records Officer, Office of Data Management, Data Administration Division, (703) 308–7397, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, United States Patent and Trademark Office (USPTO), Washington, DC 20231, by telephone at (703)305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required by 35 USC 2(b) and 37 CFR Ch. 1, Subpart G, 1.801–809. Every patent must contain a description of the invention sufficient to enable a person (knowledgeable in the relevant science) to make and use the invention as required by 35 USC 112, first paragraph. When the invention involves a biological material, sometimes words alone cannot sufficiently describe how to make and use the invention in a reproducible or repeatable manner. In such cases, the required biological material must either be known and readily (and continually) available, or be deposited in a suitable depository to meet the enablement and written description requirements of 35 USC 112, first paragraph. When a deposit is necessary, the USPTO collects information to determine whether the depositor is in compliance with the patent statute. This includes a statement proving notification to the interested public on where to obtain samples of the deposits. A viability statement showing that the biological material was tested by the depository, and is a viable or acceptable deposit, must also be submitted to the USPTO.

II. Method of Collection

By mail, facsimile, or hand carry when the applicant or agent files a patent application with the United States Patent and Trademark Office (USPTO) or submits subsequent papers during the prosecution of the application to the USPTO.

III. Data

OMB Number: 0651–0022.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Affected Public: Individuals or Households, Business or Other Non-Profit, Not-For-Profit Institutions, and the Federal Government.
Estimated Number of Respondents: 3,300 per year for deposited materials and 0.25 per year for depository approval.
Estimated Time Per Response: One hour per application for deposited materials and five hours per application for depository approval.
Estimated Total Annual Respondent Burden Hours: 3,301 hours per year.
Estimated Total Annual Respondent Cost Burden: $99,218.75 per year to submit the information to the USPTO. Additionally, depositories charge fees to depositors; all depositories charge about the same rates for their services. For example, the American Type Culture Collection (ATCC), one of the

recognized patent depositories, charges $1,100 for storage and informing, and $150 for viability testing of microorganisms.

Item	Estimated time for response in hours	Estimated annual burden hours	Estimated annual responses
Deposited Materials	1	3,300	3,300
Depository Approval	5	1.25	0.25
Total		3,301	3,301

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 28, 2000.

Thao P. Nguyen,

Acting Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 00–19589, Filed 8–2–00; 8:45 am]

BILLING CODE: 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/195,159 entitled "Desalination Through Methane Hydrate" Navy Case No. 79,584.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 26, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19628 Filed 8–2–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Grant Exclusive Patent License; Marine Desalination Systems, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Marine Desalination Systems, LLC, a revocable, nonassignable, exclusive license in the United States to practice the Government-Owned invention described in U.S. Patent Application Serial No. 09/195,159 (Navy Case No. 79,584) entitled "Desalination Through Methane Hydrate" filed November 18, 1998.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 2, 2000.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320; telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 25, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19629 Filed 8–2–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 2, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6)

reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 31, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Public Charter Schools Program, Data Collection Clearance Package: Year 2 and Year 3 Submission.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden: Responses: 3,590; Burden Hours: 2,390.

Abstract: The evaluation of the Public Charter Schools Program (PCSP) is the first national study of federal support for charter schools. The contractor, SRI International, will gather data on charter school policies and practices at the state, charter school authorizer, and charter school levels. The study examines the use of PCSP funds at these levels, assesses the impact of flexibility provisions in states' charter school legislation, and assesses the effect of charter schools on student performance. Respondents include federal PCSP staff, state charter school coordinators, representatives of charter school authorizing agencies, charter schools, and parents.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–19695 Filed 8–2–00; 8:45 am]

BILLING CODE 4000–01–U

FEDERAL ENERGY REGULATORY COMMISSION

[EL00–94–000]

Citizens Power Inc. v. FirstEnergy and FirstEnergy Operating Companies; Notice of Complaint

July 28, 2000.

Take notice that on July 26, 2000, Citizen Power Inc. filed a complaint under Section 306 of the Federal Power Act alleging that FirstEnergy System and FirstEnergy Operating Companies had failed to file a Section 203 application for the transfer of generating facilities to FirstEnergy's marketing affiliate.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before August 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before August 15, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–19597 Filed 8–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–408–000

Columbia Gas Transmission Corporation; Notice of Application

July 28, 2000.

Take notice that on July 19, 2000, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed a request with the Commission in Docket No. CP00–408–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct, install, and operate a 4,000 horsepower (HP) compressor unit at Columbia's existing Kenova Compressor Station in Wayne County, West Virginia, all as more fully set forth in the application which is open to the public for inspection. This application may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Columbia proposes to construct, install, and operate a 4,000 HP compressor unit at the Kenova Compressor Station to accommodate increasing receipts of natural gas from local producers upstream of the compressor station. Columbia states that Columbia Natural Resources Inc. (CNR), the operator of gathering lines upstream of the Kenova Compressor Station, would make a contribution in aid of construction to Columbia of 100 percent of the construction cost, estimated at $3,227,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 18, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any questions regarding the application should be directed to Fredric J. George, Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, (304) 357–2359.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–19604 Filed 8–2–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–330–001]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

July 28, 2000.

Take notice that on July 20, 2000, Dauphin Island Gathering Partners (DIGP) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 221, with an effective date of March 27, 2000.

DIGP states that the tariff sheet corrected an error in the definition of long-term transactions and is proposed to become effective on March 27, 2000.

DIGP states that on June 15, 2000, it filed tariff sheets to comply with the Federal Energy Regulatory Commission final rule regarding the regulation of short-term interstate natural gas transportation services in Docket Nos. RM98–10 and RM98–12 (Order No. 637). In the instant filing, DIGP is filing to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions. By Letter Order issued on July 13, 2000, these tariff sheets were accepted subject to the condition of correcting the above referenced language.

DIGP states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–19598 Filed 8–2–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–84–001]

Kansas Pipeline Company; Notice of Refund Report

July 28, 2000.

Take notice that on April 27, 2000, Kansas Pipeline Company (KPC) tendered for filing an Excess Interruptible Revenue Refund Report.

KPC states that the refund report is being filed pursuant to the Commission's April 3, 2000 order directing KPC to refile its refund report within 30 days of the April 3 date to include a delineation of interest calculations on the subject refund and complete refund calculations and allocations.

KPC states that pursuant to the Commission's directives, KPC is submitting a delineation of interest calculations on the subject refund, and a Refund Report covering the period from May 11, 1998 to September 30, 1998.

KPC requests waiver of Section 24.5 of the General Terms and Conditions of KPC's tariff, that requires excess revenues to be credited against reservation charges, so that KPC can issue a lump-sum payment to its firm shipper Kansas Gas Service Company.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–19600 Filed 8–2–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–300–003]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

July 28, 2000.

Take notice that on July 24, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of June 23, 2000.

Seventh Revised Sheet No. 405
Substitute Original Sheet No. 405A.01
Substitute Tenth Revised Sheet No. 405C
Substitute Original Sheet No. 405E

Tennessee states that the filing is being made in compliance with the Commission's Order issued June 23, 2000 in Docket No. RP00–300, 91 FERC ¶ 61,292 (2000).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–19599 Filed 8–2–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10942–001]

Skykomish River Hydro, Inc.; Notice of Intent To Prepare an Environmental Impact Statement and Soliciting Comments

July 28, 2000.

On March 8, 1994, the Federal Energy Regulatory Commission (FERC or Commission) received an application for the construction and operation of the Martin Creek Project located on Martin Creek and Kelley Creek in King County, Washington. The project would be located on about 17 acres of the Mt. Baker-Snoqualmie National Forest and would have an installed capacity of 10.2 megawatts.

A Notice of Intent to prepare an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) was issued July 29, 1994. Public scoping meetings were held on August 24 and 25, 1994, in Skykomish, Washington and Bellevue, Washington, respectively. Following scoping and based on preliminary environmental analysis of the Martin Creek Project, the FERC staff has determined that licensing of the Martin Creek Project could constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) for the Martin Creek Project in accordance with the NEPA.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in the final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

This notice informs all interested individuals, organizations, and agencies with environmental expertise and concerns, that: (1) The Commission staff has decided to prepare an EIS; (2) the scoping conducted on the Martin Creek Project for the EA and comments filed with the Commission still apply; (3) additional comments for the Martin Creek Project that may result from the change from an Environmental Assessment to an EIS may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, within 60 days from the date of this notice.

All written correspondence should clearly show the following caption on the first page:

Martin Creek Hydroelectric Project, (FERC Project No. 10942–001)

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to David Turner at (202) 219–2844.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–19602 Filed 8–2–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

July 28, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* 9902–005.

c. *Date Filed:* June 19, 2000.

d. *Applicant:* Carlsbad Municipal Water District.

e. *Name of Project:* Fred Maerkle Hydroelectric Project.

f. *Location:* On the Applicant's domestic water supply conduit which delivers water from the San Diego County Water Authority connection No. 3 on the Tri-Agencies Pipeline to the Fred Maerkle Reservoir, near Carlsbad, in San Diego County, California.

g. *Filed pursuant to:* 18 CFR 4.102.

h. *Applicant Contact:* Mr. William Plummer, District Engineer/Deputy City Engineer, 1635 Faraday Avenue, Carlsbad, CA 92008–7314, (760) 602–2720.

i. *FERC Contact:* Any questions related to this notice should be addressed to Rafael Montag at (202) 208–0985, or e-mail address: *rafael.montag@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* August 30, 2000.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (9902–005) on any comments or motions filed.

k. *Description of Project:* The project consisted of a powerhouse containing a single turbine-generator unit with a rated capacity of 60 kilowatts under a head of 325 feet. A 200-volt, 300-foot-long transmission line connected the project to a radio transmitter.

Carlsbad Municipal Water District requests to surrender the exemption for this constructed project because the project facilities have been removed and there are no plans to install new equipment, or in any way use the site for energy generation in conjunction with the existing exemption.

l. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–19603 Filed 8–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communication; Public Notice

July 28, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (Call 202–208–2222 for assistance).

Exempt:

1. CP00–14–000, 5–26–00, Todd Potas
2. CP00–14–000, 6–16–00, Todd Potas
3. CP00–14–000, 7–12–00, Todd Mattson
4. Project No. 3090, 7–18–00, Maureen Winters
5. Project No. 2035–006, 7–17–00, Dianne Rodman, FERC
6. CP00–6–000, 7–13–00, James. J. Slack
7. CP00–114–000, 6–19–00, Fannie May Henley Nichols
8. CP00–114–000, 6–19–00, Mae Campbell Armstrong
9. CP00–114–000, 6–20–00, James Rutland Moore
10. CP00–114–000, 7–12–00, Judy O'Neal
11. CP00–114–000, 6–20–00, Roy D. Pesson
12. CP00–114–000, 6–19–00, Ralph Litterst
13. CP00–114–000, 7–5–00, James H. Massey

Prohibited:

1. CP97–315–000, 7–20–00, Larry Janchar

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–19601 Filed 8–2–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–1]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Voluntary Cover Sheet for TSCA Submissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Voluntary Cover Sheet for TSCA Submissions; EPA ICR No. 1780.02; OMB Control No. 2070–0156. The ICR is abstracted below and describes the nature of the information collection and its estimated cost and burden.

DATES: Additional comments may be submitted on or before September 5, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 1780.02 and OMB Control No. 2070–0156, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1780.02.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Cover Sheet for TSCA Submissions (OMB Control No. 2070–0156; EPA ICR No. 1780.02) expiring 09/30/2000. This is a request for extension of a currently approved collection.

Abstract: The Toxic Substances Control Act (TSCA) requires industry to submit information and studies for existing chemical substances under sections 4, 6, and 8. Under normal reporting conditions, EPA receives approximately 1,700 submissions each year; each submission represents on average three studies. In addition, specific data call-ins can be imposed on industry.

The Agency, in cooperation with industry stakeholders, is pursuing the electronic transfer of TSCA summary data and of full submissions to EPA. The Chemical Manufacturers Association developed a standardized cover sheet for voluntary use by industry to begin familiarizing companies with standard requirements and concepts of electronic transfer. This form was designed for voluntary use as

a cover sheet for submissions of information under TSCA sections 4, 8(d) and 8(e). The cover sheet facilitates submission of information by displaying certain basic data elements, permitting EPA more easily to identify, log, track, distribute, review and index submissions, and to make information publicly available more rapidly and at reduced cost, to the mutual benefit of both the respondents and EPA. The information collection request referenced in this notice applies to the use of this form/cover sheet.

Responses to the collection of information are voluntary. Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 1, 1999 (64 FR 53377). EPA received no comments on this ICR during the comment period.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Companies that manufacture, process, use or import chemical substances and that are subject to reporting requirements under TSCA sections 4, 8(d) or 8(e).

Frequency of Collection: On occasion.

Estimated No. of Respondents: 1,830.

Estimated Total Annual Burden on Respondents: 915 hours.

Estimated Total Annual Non-Labor Costs: $0.

Changes in Burden Estimates: The total burden associated with this ICR has decreased from 1,348 hours in the previous ICR to 915 for this ICR. This decrease in burden represents an adjustment resulting from a net decrease in the number of submissions expected.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: July 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19684 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6844–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request: The SunWise School Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review: The SunWise School Program EPA ICR Number 1904.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 5, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1904.01. For technical questions about the ICR contact Kristin Kenausis at (202) 564–2289.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request: The SunWise School Program EPA ICR No. 1904.01, This is a new collection.

Abstract: The goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise School Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through surveying is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; (2) Parent survey to compare findings with those of their children as well as to draw comparisons with the benchmarks established in other national surveys; (3) Teacher questionnaire for measuring their receptivity to the educational component of the Program; and (4) School administrator questionnaire to show receptivity to the SunWise School Program and its standards. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8 (d), soliciting comments on this collection of information was published on 12/21/99; Two positive comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Elementary and middle school students, parents, teachers, and school administrators.

Estimated Number of Respondents: 6,000.

Frequency of Response: Students, 2 times per year; Parents, teachers, and school administrators, once a year.

Estimated Total Annual Hour Burden: 2,000 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1904.01.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19685 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6844–8]

Agency Information Collection Activities; Submission of EPA ICR No. 0922.06 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Data Call-Ins for the Special Review and Registration Review Programs (EPA ICR No. 0922.06, OMB No. 2070–0057) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. A **Federal Register** notice announcing the Agency's intent to seek OMB approval for this ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on March 24, 1999 (64 FR 14229). No comments were received on this ICR during the comment period.

DATES: Additional comments may be submitted on or before September 5, 2000.

ADDRESSES: Send comments to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to:

Office of Information and Regulatory Affairs; Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer by phone at 202–260–2740, or via e-mail at "farmer.sandy@epa.gov", or using the address indicated below. You can download the ICR from the Internet at *http://www.epa.gov/icr.* Please refer to EPA ICR No. 0922.06 and OMB Control No. 2070–0057.

SUPPLEMENTARY INFORMATION: The following information collection activity has been submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA is asking OMB to approve this ICR for three years.

Title: Data Call-Ins for the Special Review and Registration Review Programs.

ICR Numbers: EPA ICR No. 0922.06; OMB Control No. 2070–0057.

ICR Status: This ICR involves a collection activity that is currently approved and is scheduled to expire on September 30, 2000, and a new collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the Paperwork Reduction Act, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: The EPA is responsible for the registration of pesticides as mandated by FIFRA. The information collection document discusses activities for the Special Review Program and the new Registration Review Program. The Special Review Program has been a part of the existing ICR activities for sometime while the new Registration Review Program is an addition to the ICR. Currently, as part of the on-going administrative process under section 6 of FIFRA, registrants are required to submit additional information to EPA regarding unreasonable adverse effects on the environment from the use of the pesticide. EPA may also determine that additional information is needed from the registrant to maintain an existing registration. When the Agency identifies a hazard or a potential hazard from the use of a pesticide that was not known at the time of registration, this information collection is used in the Special Review Program to determine whether regulatory actions are needed.

The Registration Review Program was created by the Food Quality Protection Act in 1996. Under the new Registration Review Program, EPA must periodically review all pesticide registrations (see section 3(g) of FIFRA). Therefore, continued registration of all pesticides, regardless of whether a hazard or potential hazard is identified, requires that the Agency obtain additional data, if necessary, and assess the information necessary for it to determine whether a registration should continue.

Burden: Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice:

Respondents/Affected Entities: Pesticide Registrants.

Estimated Number of Respondents: 68.

Frequency of Response: One time and only as needed.

Estimated Total/Average Number of Responses: 1.5 to 8.

Estimated Total Annual Burden: 71,132 hours.

Estimated Total Annualized Non-Labor Costs: $0.

Changes in the Burden Estimates: The total burden associated with this ICR has decreased from 127,741 hours to 71,132. This net reduction is associated with a program increase of 63,780 hours and a decreasing adjustment of 120,389 hours. This change is discussed in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

After providing a 30 day opportunity for additional comments from the public, OMB will review and take action on the Agency's request. Periodically, EPA publishes a notice in the **Federal Register** listing recent OMB actions on the Agency's ICR submissions. If you have any questions about this ICR or the approval process, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: July 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19686 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–2]

Section 112(c)(6) Source Category List: Tire Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's finding that there are no hexachlorobenzene (HCB) emissions from tire production manufacturing. Tire production was listed in the **Federal Register** on April 10, 1998 (63 FR 17838) as a source category to be regulated to meet the requirements of Section 112(c)(6) of the Clean Air Act (CAA). The April 10 notice listed tire production as a major contributor of HCB emissions based on information available at that time. Our finding that there are no HCB emissions from tire production sources does not require EPA, pursuant to section 112(c)(6), to list other source categories that emit HCB. The national emission standards for hazardous air pollutants (NESHAP) for tire production (renamed rubber tire manufacturing) is being proposed in a separate **Federal Register** document, which addresses pollutants other than HCB.

ADDRESSES: Docket No. A–97–05 contains information relevant to this notice. You can read and copy it between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays), at our Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 2060; telephone (202) 260–7548. The docket office may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Anthony Wayne, Policy, Planning and Standards Group, Emission Standards Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5439; facsimile number (919) 541–0942; electronic mail address "wayne.tony@epa.gov."

SUPPLEMENTARY INFORMATION:

I. Purpose and Basis

This notice informs the public that we have evaluated additional information regarding the emission data provided in the April 10, 1998 **Federal Register** document (63 FR 17838) and have concluded that tire manufacturing sources emit no HCB.

A. Why Did We Look at HCB Emissions From Rubber Tire Manufacturing?

Section 112(c)(6) of the CAA lists seven specific hazardous air pollutants (HAP [1]) and directs EPA to identify sources emitting these HAP and to assure that 90 percent of the emissions of these HAP are subject to standards under section 112(d). The April 10, 1998 notice identified the sources and the contributions of these sources to emissions of the seven listed HAP. That notice included tire production as a source of HCB based on 1994 estimated emission factor information. Tire production was also identified as a source of polycyclic organic matter (POM). That notice also stated that the source category list would act as an impetus for us to perform further analyses on emissions and control methods for the listed source categories.

B. How Was Tire Production Identified for the April 10, 1998 Section 112(c)(6) Listing?

Tire production was listed as a contributor to emissions of HCB based on industry test data generated in 1994 in developing emission factors for the industry to supplement exiting EPA stationary source emission factor information. Industry testing detected HCB in the air samples collected during one test of a rubber missing process for one specific natural rubber compound (Compound No. 3).

The detected level was below the lab quantitation limit of the analysis techniques used at that time. The result, however, was reported as an "estimate" to the public. Additionally, the estimated value was used to supplement the lack of tested air emissions for tire production processes other than rubber mixing and thus was extrapolated to estimate HCB emissions for the tire manufacturing processes of calendaring and extruding.

In developing the HCB emissions inventory estimate for tire manufacturing in the April 10, 1998 document, we used the estimated emission factor developed from the emissions tests of rubber Compound No. 3 mixing. To calculate total HCB emissions from the tire manufacturing source category, we applied this emission factor to all rubber mixing, as well as calendaring and extruding processes. As a result, in that notice, we listed the annual HCB emissions from the tire manufacturing source category as 0.435 tons per year (Table 1 of that document). This level of emissions was approximately 29.5 percent of the total HCB emissions contribution by the three source categories listed as contributing 100 percent of the HCB emissions (Table 2 of that document).

C. What Were Some of the Concerns With the HCB Emissions Estimate Presented for Tire Production?

The Rubber Manufacturers Association (RMA) claimed that HCB is not emitted from tire manufacturing sources and that the emission factor data relied upon by EPA in the April 10, 1998 listing were inaccurate.

During development of the proposed rubber tire manufacturing NESHAP, the RMA questioned the presence and amount of HCB associated with tire manufacturing. They claimed that there is no reason to expect HCB to occur from tire manufacturing. They raised questions concerning the validity of the earlier testing results for mixing rubber Compound No. 3. Specifically, they stated that the original laboratory analysis that identified HCB may have been contaminated by an artifact of thermal degradation of the absorbent resin sampling medium used in the original testing.

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[1] The listed HAP are alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlordibenzofurans, and 2,3,7,8-tetrachlordibenzo-p-dioxin.

The RMA also claimed that even if HCB is present in emissions from some mixing processes, EPA's calculation of total HCB emissions from the source category were overestimated. They provided revised calculation assumptions and procedures for determining the total amount of HCB emitted.

D. What Did We Learn During the Review of HCB Emissions From Tire Manufacturing and Subsequent Emission Testing?

To address the questions concerning the validity of the 1994 testing data, the RMA, in the interest of its member tire manufacturers, offered to retest the emissions from mixing processes using rubber Compound No. 3. The RMA proposed to conduct a test of a larger rubber compound mixer and a larger batch of the original compound formulation under conditions very similar to those used in the testing conducted in 1994. The RMA then developed the testing protocol for our review, conducted the test under our observation, and submitted the findings of the tests for our review and discussion. We found the test protocol and the manner in which the test was conducted to be acceptable for the purpose of determining the presence of HCB. The test was also structured to determine the quantity of HCB in the event that HCB was detected. The analytical procedure had a lab quantitation limit which was an order of magnitude better than the limit for the procedure used in 1994.

The new testing and analysis of air samples have indicated to our satisfaction that HCB is not present in the compounding of rubber as previously reported. The data showed that HCB is not emitted from rubber Compound No. 3 (the original and only suspect compound). As a result of this new test information, the improved method quantitation limit, and the probable contamination of the original sample, we have concluded that the previous rubber compound mixing test results should be rejected. In addition, the emission factors (estimated based on the mixing test of 1994) for tire calendaring and extruding processes are invalid since these were extrapolated from the 1994 mixing test data.

Today's document only changes our findings with respect to HCB emissions from tire manufacturing sources as identified in Table 1 of the April 10, 1998 notice, and their percent contribution as provided in Table 2 of the notice. We are notifying the public that the HCB emission information associated with the tire manufacturing source category, specifically the 0.435 tons per year, should be 0.0 tons per year. We are also advising the public that the two remaining source categories, chlorinated solvent production and pesticide manufacture, therefore, comprise 100 percent of the contribution of HCB.

II. Administrative Requirements

Today's document is not a rule, it imposes no regulatory requirements or costs on any sources, including small businesses. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risk and Safety Risks), Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735), October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may either:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this regulatory action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Dated: July 27, 2000.

Robert Perciasepe,

Assistant Administrator for the Office of Air and Radiation.

[FR Doc. 00–19680 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0040; FRL–6844–2]

Adequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the following submitted Colorado maintenance plans are adequate for conformity purposes: The Denver carbon monoxide maintenance plan, the Pagosa Springs PM_{10} maintenance plan, and the Telluride PM_{10} maintenance plan, all submitted on May 10, 2000. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Denver Regional Council of Governments, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from these submitted maintenance plans for future conformity determinations.

DATES: This document is effective August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Megan Williams, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, ph. (303) 312–6431 The letter documenting our finding is available at EPA's conformity website: http://www.epa.gov/oms/transp/conform/adequacy.htm.

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region 8 sent a letter to the Colorado Air Pollution Control Division on July 12, 2000 stating that the motor vehicle emissions budgets in the submitted Denver carbon monoxide maintenance plan, Pagosa Springs PM_{10} maintenance plan, and Telluride PM_{10} maintenance plan are adequate. This finding has also been announced on EPA's conformity website: http://www.epa.gov/oms/transp/conform/adequacy.htm.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes

the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 26, 2000.

Jack McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–19683 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6844–4]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Amoco Petroleum Products

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on no migration petition reissuance.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Amoco Petroleum Products (Amoco) for three Class I injection wells located at Texas City, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Amoco, of the specific restricted hazardous wastes identified in the exemption, into three Class I hazardous waste injection wells Nos. WDW–80, WDW–127, and WDW–128 at the Texas City, Texas facility, until December 31, 2010, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued May 24, 2000. The public comment period closed on July 10, 2000. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 25, 2000.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Jayne Fontenot,

Acting Division Director, Water Quality Protection Division (6WQ).

[FR Doc. 00–19682 Filed 8–2–00; 8:45 am]

BILLING CODE 6560–50–U

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 8, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

July 20, 2000 (Open and Closed).

Dated: August 1, 2000.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 00–19831 Filed 8–1–00; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Hazard Mitigation Planning/State Hazard Mitigation Plan.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0212.

Abstract: To obtain federal grant assistance through Federal programs such as the Hazard Mitigation Grant Program or the Fire Suppression Programs, States are required to conduct an evaluation of existing natural hazards to identify beneficial hazard mitigation measures. Plans must be updated and submitted for FEMA approval after a major disaster or emergency declaration before a State can request and receive Federal Financial assistance.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 16 States.

Estimated Time per Respondent: 1.6 responses per State.

Estimated Total Annual Burden Hours: 4,160 hours.

Frequency of Response: On occassions.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget,

Washington, DC 20503 on or before September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Dated: July 26, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–19713 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Fillmore, Houston, and Mower Counties for Individual Assistance (already designated for Public Assistance).

Dakota County for Individual Assistance and Public Assistance.

Ramsey County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19703 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 12, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19704 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1335–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1335–DR), dated July 21, 2000, and related determinations.

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 21, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms and flooding beginning on May 3, 2000, and continuing through June 30, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne C. Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Albany, Chenango, Herkimer, Lewis, Madison, Montgomery, Niagara, Oneida, Onondaga, Otsego, Tioga, and Tompkins Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537,

Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–19711 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1334–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster, which was designated as June 12, 2000, and continuing, is now amended. The incident period for this declared disaster is now April 5, 2000, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–19705 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

North Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, FEMA–1334–DR, dated June 27, 2000, and related determinations.

EFFECTIVE DATE: July 24, 2000

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Benson and Ramsey Counties for Public Assistance (already designated for Individual Assistance).

Barnes, Burleigh, Burke, Cavalier, Dickey, Emmons, LaMoure, Logan, Morton, Mountrail, Oliver, Pembina, Richland, Renville, Rolette, Sargent, Steele, Stutsman, Towner, and Ward Counties for Individual Assistance.

Burleigh, Pembina, Richland, Renville, Rolette, and Sargent Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19709 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

North Dakota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota FEMA–1334–DR, dated June 27, 2000, and related determinations.

EFFECTIVE DATE: July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 21, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19710 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened. The incident period for this declared disaster is now May 26, 2000, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–19699 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000: Racine County for Individual Assistance.

Richland and Sauk Counties for Individual Assistance (already designated for Public Assistance).

Ashland, Barron, Burnett, Forest, Iron, Oneida, Polk, Rusk, Sawyer, and Washburn Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19700 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

Crawford, Dane, Grant, Kenosha, Vernon, and Walworth Counties for Individual Assistance (already designated for Public Assistance).

Milwaukee County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–19701 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

Milwaukee County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19702 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 19, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19706 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Cooperating Technical Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Cooperating Technical Communities flood hazard mapping initiative.

SUMMARY: We (FEMA) give notice of the Cooperating Technical Communities initiative that will recognize and encourage participation by states, regional agencies, and communities in the flood hazard mapping process.

DATES: Pilot projects are ongoing.

FOR FURTHER INFORMATION CONTACT: Your FEMA Regional Cooperating Technical Communities Coordinator. We list contact names for the coordinators under Section (e) of this document.

SUPPLEMENTARY INFORMATION: (a) *Background.* Throughout this notice, the terms "we," "our," and "us," refers to FEMA. We administer the National Flood Insurance Program (NFIP) and under § 1360 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4101), we establish and update flood-risk zone data in floodplain areas. In the identification of flood-prone areas, we may consult with, receive information from, and enter into agreements or other arrangements with the head of any State, regional, or local agency in order to identify these floodplain areas.

We are implementing the Cooperating Technical Communities (CTC) concept as part of our Flood Map Modernization plan (*http://www.fema.gov/library/mapmod.pdf*). The CTC initiative will formally recognize and encourage the ongoing contributions that our mapping partners—States, regional agencies, and communities—make in assisting us in providing timely and accurate flood hazard information. The participating entity will enter into a partnership agreement with us to develop or maintain all or a component of its flood hazard maps.

CTC partnerships will maximize the effectiveness of the limited local and Federal funding available for flood mapping, while maintaining consistent national standards. Through these partnerships, the integration of locally-funded or developed flood and mapping data in the flood mapping process will enable contributing partners to expand the scope of our flood mapping efforts. We expect that this will result in enhanced responsibility for the maps by the partners and, in turn, heightened local awareness of flood risks, more effective floodplain management, and more accurate maps. The Cooperating Technical Communities initiative includes both locally-funded and FEMA-funded activities.

Under the initiative, we and the partner will enter a general overall agreement (CTC Agreement) that recognizes the fundamental importance of flood hazard identification, as well as flood insurance and floodplain management. Then, as the CTC partner and we identify specific flood mapping activities to undertake, we and the CTC partner will develop and enter into Mapping Activity Agreements under the umbrella of the overall CTC Agreement.

We envision that most Mapping Activity Agreements will be collaborative efforts where both the CTC partner and FEMA contribute data and units of work to maximize the extent, accuracy, and utility of flood studies to best meet local and Federal needs, while minimizing costs for all parties. Federal funding will be limited even if we can allocate supplemental map modernization funding. In any event, we will allocate funding within the context of our flood study prioritization process.

We will consider Fiscal Year 2000 as a pilot year for this initiative. Initial Guidance is available at *http://www.fema.gov/mit/tsd/CTC_main.htm.*

(b) *Availability of Fiscal Year 2000 Funds.*

We have set aside $3,500,000 to be available for FEMA-funded CTC activities in Fiscal Year 2000. We have identified partners as potential recipients of funding through CTC agreements for this pilot year. We based the selection on floodplain mapping needs and on the partners' interest, contributions, and their capability to perform the types of activities that we identified for the pilot effort.

(c) *Activities.*

All of the activities listed below contain the following benefits for both the CTC partner and for FEMA:

- Local capabilities in hazard identification and risk assessment—the building blocks for disaster resistance—will be enhanced through FEMA technical assistance, experience, standards, and funding;
- The data, methods, and mapping used for local, regional, and state permitting processes will also be used for NFIP mapping, to the extent possible;
- Close coordination and involvement in the flood hazard mapping process will result in more efficient local floodplain management by the CTC partners;
- The program has the potential to interject a tailored, local focus into a national program where unique conditions may exist that necessitate special approaches to flood hazard identification.
- By incorporating local knowledge and expertise, we expect that National Flood Insurance Program flood hazard maps will be more accurate and can be updated faster than now.

Mapping Activity Agreements will support the development of flood hazard mapping or a component of the production and maintenance of flood hazard mapping. The CTC partner and we will collaborate on these mapping activities. We may provide technical assistance, support, and data to the CTC partner. In some cases, funding may also be available. The following mapping activities may receive funding in Fiscal Year 2000 through a cooperative agreement with us:

Activity	Partner	Description
Refinement of Approximate Zone A Boundaries.	Community/Regional/State Agency	The CTC partner works with FEMA to perform analyses to refine Zone A boundaries. Emphasis placed on automation techniques.
Hydrologic & Hydraulic (H&H) Modeling and Floodplain Mapping.	Community/Regional/State Agency	The CTC partner develops digital engineering data and floodplain mapping using GIS-based or traditional H&H modeling.

Activity	Partner	Description
DFIRM Preparation	Community/Regional/State Agency	The CTC partner digitizes the effective FIRM into a DFIRM.
Redelineation of Detailed Flood Hazard Information Using Updated Topographic Data.	Community/Regional/State Agency	The CTC partner redelineates the effective flood hazard information using more up-to-date topographic data. GIS is used, where available.

Where no funding will be provided to CTC partners for the following mapping activities, we may provide techical assistance, support, and data to the CTC partner:

Activity	Partner	Description
Base Map Inventory	Regional or State Agency	The CTC partner performs an investigation and provides an inventory of base maps meeting FEMA's specifications for NFIP communities in the state.
Digital Base Map Data Sharing	Community/Regional/State Agency	The CTC partner supplies a base map for DFIRM production. The base map will comply with FEMP's minimum accuracy requirements and be distributable by FEMA to the public (hardcopy and electronic formats).
DFIRM Maintenance	Community/Regional/State Agency	The CTC partner assumes responsibility for long-term, periodic maintenance of the DFIRM. This can include base map and/or flood information.
Hydrologic and Hydraulic Review Agreement [1].	Community/Regional/State Agency	The CTC partner evaluates H&H studies prepared for flood data updates and/or 44 CFR Part 65 map revisions. The review will focus on compliance with the technical and regulatory requirements contained in FEMA's varous flood mapping guidelines and specifications, the pertinent NFIP flood mapping regulations, as well as standard accepted engineering practices.
Analysis of Community Mapping Needs (*to support FEMNA's Mapping Needs Update Support System (MNUSS)*).	Regional/State Agency	The CTC partner performs a detailed community-by-community investigation and assessment of every NFIP community's mapping needs, including flood date updates, map maintenance, and includes unmapped communities. *(This activity was eligible for funding in FY 1999, but is no longer eligible for funding).*
Technical Standards Agreement	Community/Regional/State Agency	Adoption of specific technical standards or processes appropriate for local conditions for NFIP flood mapping purposes.

[1] This activity is currently being considered as a pilot activity.

(d) *Eligibility Criteria.*

We intend the cooperative agreements (CAs) awarded in this effort to supplement and not supplant on-going mapping efforts by the community, regional agency, or State. The FEMA funds would be in addition to the partner's current effort. This is the second year of this initiative and our Regional Offices have selected pilot communities based on the following criteria:

(1) The CTC partner must have existing processes or systems in place that support mapping or data collection activities that contribute to flood hazard identification. These ongoing processes or systems must be supported by non-federal funding.

(2) The CTC partner must have demonstrated the capability to perform the mapping activities for which it is applying.

(3) The CTC partner must be a community participating in the NFIP, and be in good standing in the program as determined by our Regional Office, or be a State or regional agency that serves communities that participate in the NFIP.

We will evaluate these criteria, which have been used in this pilot year, and we will further enhance them in subsequent years. In addition to the selection criteria above, communities that receive a CA must be able to perform the financial management activities required as part of the cooperative agreement (*i.e.*, account for federal funds, prepare financial reports). Our regional offices will assist the communities with these financial management activities.

(e) *Cooperating Technical Community Contacts.*

Region 1: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Dean Savramis, 442 J.W. McCormack POCH, Boston, MA 02109, Telephone: (617) 223–9564, (e:mail) *dean.savramis@fema.gov.*

Region 2: (New Jersey, New York, Puerto Rico, Virgin Islands), Paul Weberg, 26 Federal Plaza, Room 1337, New York, NY 10278, (212) 225–7229, (e:mail) *paul.weberg@fema.gov.*

Region 3: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), Erik Rourke, 615 Chestnut Street, 6th Floor, Philadelphia, PA 19106, (215) 931–5665, (e:mail) *erik.rourke@fema.gov.*

Region 4: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Laura Algeo, 3003 Chamblee Tucker Rd., Atlanta, GA 30341, Telephone: (770) 220–5436, (e:mail) *laura.algeo@fema.gov.*

Region 5: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Ken Hinterlong, 536 S. Clark Street, 6th Floor, Chicago, IL 60605, Telephone: (312) 408–5529, (e:mail) *ken.hinterlong@fema.gov.*

Region 6: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Jack Quarles, FRC 800 North Loop 288, Denton, TX 76210, Telephone: (817) 898–5156, (e:mail) *jack.quarles@fema.gov.*

Region 7: (Iowa, Kansas, Missouri, Nebraska), Bob Franke, 2323 Grand Avenue, Suite 900, Kansas City, MO 64108, Telephone: (816) 283–7073, (e:mail) *bob.franke@fema.gov.*

Region 8: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), John Liou, Denver Federal Center, Bldg. 710, Box 25267, Denver, CO 80225, Telephone: (303) 235–4836, (e:mail) *john.liou@fema.gov.*

Region 9: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Les Sakumoto, Bldg. 105, Presidio of San Francisco, San

Francisco, CA 94129, Telephone: (415) 923–7183, (e:mail) *leslie.sakumoto@fema.gov.*

Region 10: (Alaska, Idaho, Oregon, Washington), Larry Basich, Federal Regional Center, 130—228th Street, Bothell, WA 98021, Telephone: (425) 487–4703, (e:mail) *lawrence.basich@fema.gov.*

Dated: July 19, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–19707 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for Processing Requests for Map Changes, for Flood Insurance Study Backup Data, and for National Flood Insurance Program Map and Insurance Products

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction of notice.

SUMMARY: This document corrects the notice published on Wednesday, May 3, 2000 (65 FR 25728). The correction relates to fees for paper copies of FHBM, FIRM, DFIRM, or FBFM panels.

EFFECTIVE DATE: May 3, 2000.

FOR FURTHER INFORMATION CONTACT: Matthew Miller, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or (telephone) (202) 646–3610, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency published a notice on May 3, 2000 that revised fee schedules for processing certain types of requests for changes to National Flood Insurance Program (NFIP) maps, for processing requests for Flood Insurance Study (FIS) technical and administrative support data, and for processing requests for particular NFIP map and insurance produces. As published the notice incorrectly printed the fee per panel for paper copies of FHBM, FIRM, DFIRM, or FBFM panels.

Accordingly, the notice published as FR Doc. 00–11013 on May 3, 2000, 65 FR 25726, is corrected as follows:

On page 25728, in the table, the first entry under the column entitled "Fee", which reads "$1.50 per panel", should read "$1.05 per panel".

Dated: July 21, 2000.

Michael Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–19708 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

NAME: Federal Interagency Committee on Emergency Medical Services (FICEMS).

DATE OF MEETING: September 7, 2000.

PLACE: Room 212, Maryland Institute of Emergency Medical Services Systems (MIEMSS), 653 West Pratt Street in Baltimore, Maryland 21201.

TIME: 10:30 a.m.

PROPOSED AGENDA: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; reports of other interested parties; briefing on Public Access Defibrillation (National Perspective); Briefing on Public Access Defibrillation (Federal Perspective); and Recommendation and Nomination of New Chair for FICEMS Technology Subcommittee.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447-1231, on or before Tuesday, September 5, 2000.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on December 7, 2000. Copies of the latest approved FICEMS Committee Meeting Minutes are also available for viewing and download from the following site on the World Wide Web; http://www.usfa.fema.gov/about/ficems.htm.

Kenneth O. Burris, Jr.,

Chief Operating Officer, United States Fire Administration.

[FR Doc. 00–19712 Filed 8–2–00; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President, 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Pinnacle Financial Partners, Inc., Nashville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Pinnacle National Bank (in organization), Nashville, Tennessee.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. Greater Bay Bancorp, Palo Alto, California; to acquire 100 percent of the voting shares of Bank of Petaluma, Petaluma, California.

Board of Governors of the Federal Reserve System, July 28, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19594 8–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to acquire Home Bancorporation, Fort Wayne, Indiana, and to thereby indirectly acquire Home Loan Bank, fsb, Fort Wayne, Indiana, and to thereby engage in operating a savings association, pursuant to Section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19595 Filed 8–2–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00134]

Leadership and Investment in Fighting an Epidemic (LIFE) Global AIDS Activity; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2000 funds to establish a increase United States support for sub-Saharan African countries and India to limit the further spread of HIV and to care for those affected by this devastating disease was published in the **Federal Register** on July 11, 2000, [Vol. 65, No. 133, Pages 42704–42706]. The notice is amended as follows:

On page 42704, Second Column, under Section B. Eligible Applicants, Item (1), delete: "Be a U.S. Private Volunteer Organization (PVO)" and change to read: "(1) Have been granted tax-exempt status under Section 501(c)(3), evidenced by an Internal Revenue Service (IRS) determination letter;'.

On page 42704, Second Column, under Section B. Eligible Applicants, Item No. (2), change to read: "have at least 2 years experience in delivering HIV, STD, or TB prevention and/or prenatal/obstetric/reproductive programs in accordance with GAA objectives in at least 2 of the 15 countries (Botswana, Cote d'Ivoire, Ethiopia, Kenya, Malawi, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Uganda, Zambia, Zimbabwe, India).

On page 42705, Third Column, Under Section F. Submission and Deadline, change to read: "On or before September 6, 2000 submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

John L. Williams,

Director, Procurement and Grants Office Center for Disease Control and Prevention (CDC).

[FR Doc. 00–19617 Filed 8–2–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1426]

Agency Information Collection Activities; Proposed Collection; Comment Request; Emergency Health Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on emergency health surveys to obtain data from health professionals and medical-device-user facilities when FDA must quickly determine whether or not a problem with a medical device impacts the public health.

DATES: Submit written comments on the collection of information by October 2, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information

before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Emergency Health Surveys

Under section 519 of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(i)), FDA is authorized to require: (1) Manufacturers to report medical-device-related deaths, serious injuries, and malfunctions; and (2) user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360(l)) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(b)(2) of the act (21 U.S.C. 393(b)(2)) authorizes the Commissioner of Food and Drugs (the Commissioner) to implement general powers (including conducting research) to effectively carry out the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical device usage that are not foreseen or apparent during the premarket notification and review process. Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch Reporting Systems using FDA Forms 3500 and 3500A (OMB Control No. 0910–0281).

FDA is seeking OMB clearance to collect information via a series of surveys, thus implementing section 705(b) of the act and the Commissioner's authority as specified in section 903(b)(2) of the act. Participation in these surveys will be voluntary. This request covers emergency health surveys for general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), and health professionals, but more typically risk managers working in medical facilities.

FDA will use the information gathered from these surveys to quickly obtain vital information from the appropriate clinical sources so that FDA may take appropriate public health or regulatory action. FDA projects 10 emergency health surveys per year with a sample of between 50 and 200 respondents per survey.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
200	10 (maximum)	2,000	2	4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the maximum sample size per questionnaire that FDA could analyze in a timely manner. The annual frequency of respondent was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while another respondent may be contacted several times, depending on the medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, at a maximum it will take 2 hours for a respondent to gather the requested information and fill in the answers.

Dated: July 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–19625 Filed 8–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0725]

Agency Information Collection Activities; Announcement of OMB Approval; Interstate Shellfish Dealer's Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Interstate Shellfish Dealer's Certificate" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 2000 (65 FR 35651), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–00021. The approval expires on July 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–19624 Filed 8–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1268]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Additives and Food Additive Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 5, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Additives and Food Additive Petitions—21 CFR 171.1 and Parts 172, 173, 175 through 178, and 180—(OMB Control Number 0910–0016)—Extension

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that any particular use or intended use of a food additive shall be deemed to be unsafe, unless the additive and its use or intended use are in conformity with a regulation issued under Section 409 of the act that describes the condition(s) under which the additive may be safely used, or unless the additive and its use or intended use conform to the terms of an exemption for investigational use, or unless a food contact notification submitted under paragraph (h) is effective. Food additive petitions are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 175 through 178, and 180 (21 CFR parts 172, 173, 175 through 178, and 180) contain labeling requirements for certain food additives to ensure their safe use.

FDA scientific personnel review food additive petitions to ensure the safety of the intended use of the food additive in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food. FDA requires food additive petitions to contain the information specified in § 171.1 in order to determine whether a petitioned use for a food additive is safe, as required by the act. This regulation (§ 171.1) implements section 409(b)(2) of the act.

Respondents are businesses engaged in the manufacture or sale of food, food ingredients, or substances used in materials that come into contact with food.

In the **Federal Register** of May 16, 2000 (65 FR 31178), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section/Part	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
171.1	13	1	13	5,332	69,316
Part 172	13	1	13	0	0
Part 173	13	1	13	0	0
Parts 175 through 178	13	1	13	0	0
Part 180	13	1	13	0	0
Total					69,316

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number of new food additive petitions received in fiscal year 1999 and the total hours expended by petitioners to prepare the petitions. A reduction was estimated based on expected eligibility of some substances previously submitted as food additive petitions for submission as food contact notices under new section 409(h) of the the act. The burden varies with the complexity of the petition submitted, because food additive petitions involve the analysis of scientific data and information, as well as the work of assembling the petition itself. Because labeling requirements under parts 172, 173, 175 through 178, and 180 for particular food additives involve information required as part of the food petition safety review process under § 171.1, the estimate for the number of respondents is the same and the burden hours for labeling are included in the estimate for § 171.1.

Dated: July 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–19623 Filed 8–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1060]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Adoption of the FDA Food Code by Local, State, and Tribal Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 5, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adoption of the FDA Food Code by Local, State, and Tribal Governments

FDA has developed the model Food Code to assist and promote consistent implementation of national food safety regulatory policy among the several thousand local, State, and tribal jurisdictions that have primary responsibility for the regulation or oversight of retail level for operations. The FDA Food Code provides a scientifically sound technical and legal basis for regulating the retail segment of the food industry. Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243) and delegation of authority from the Public Health Service to the Commissioner of Food and Drugs relative to food protection is contained in 21 CFR 5.10(a)(2) and (a)(4). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies such as the Indian Health Service.

Nationwide adoption of the model FDA Food Code is an important step to further the goals of the President's Council on Food Safety for consistent, scientifically sound, and risk-based food safety standards and practices and to work more effectively with partners in State, local, and tribal governments. FDA has established a site on the Internet at http://cfsan.fda.gov under "Federal/State Food Programs" and "Retail Food Safety References" to list jurisdictions that have reported adoptions of the FDA Food Code. Because it is self-reported, the list is incomplete and has not been evaluated to determine whether all the adopted codes are equivalent to the model Food Code. It is important to FDA to have a comprehensive, accurate, and current inventory of Food Code adoptions to help achieve the aims of the President's Council on Food Safety and the agency's Food Safety Initiative goals.

FDA has obtained the services of the Association of Food and Drug Officials (AFDO) to develop and implement an active surveillance system to track and report on the adoption of the FDA Food Code by State and local agencies and tribal nations of native Americans. AFDO will develop and maintain an active data base to track adoptions of the Food Code; identify and periodically contact State, local, and tribal food safety program administrators to determine the current status of adoptions of the Food Code or its equivalent; evaluate the equivalency of the adopted codes with the FDA Food Code; and provide quarterly progress reports to FDA from the data base in tabular and graphic form. Reports may be placed on the Internet at http://www.fda.gov.

Initial contacts by AFDO to local, State, and tribal program administrators will be by telephone and/or e-mail to determine the Food Code status in their jurisdiction(s). Verbal responses to questions will be acceptable as will electronic or facsimile information. Followup contacts to clarify responses will be by telephone or e-mail to minimize the burden on respondents.

The questions will concern whether or not the FDA Food Code has been adopted in the respondent's jurisdiction; which version of the Food Code is in effect; and whether local jurisdictions need to be contacted for Food Code adoption status. AFDO will also determine with the local/State/tribal governments that it has the latest version of the code for analysis.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
500	2	1,000	1	1,000
Total				1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates on the number of State agencies (100) involved in Food Code-related regulatory programs, 300 local agencies with local ordinance authority that may consider Food Code adoption in any one year, and 100 tribal agencies. Estimating the number of local agencies is difficult before the start of this project because in some States, adoption by a State agency automatically applies to all local jurisdictions in that State. In other States, some metropolitan jurisdictions may adopt the FDA Food Code individually. Similar circumstances may apply to tribal nation's agencies that may be adopting the FDA Food Code. When the initial information gathering is completed, FDA will be able to identify more accurately the number of local and tribal agencies for which tracking adoption of the FDA Food Code will be necessary.

Frequency of reporting will range from once per year to quarterly for any one jurisdiction. This is because agencies that have already adopted the Food Code will require less frequent contact, perhaps only annually, than those that are in the process of adopting the Food Code. An average of two contacts in 1 year, therefore, was selected. Because most reporting will be done telephonically or electronically, reporting times often will be less than 1 hour.

These estimates will fluctuate from year to year as agencies adopt, revise, and consider adoption of the FDA Food Code. Over the next 3 years, the frequency of contacts should decrease as jurisdictions adopt the FDA Food Code. This project will take several years to complete because the adoption process in some States can extend to 2 years or longer. For example, some States have biennial legislative sessions. Others have extensive notice-and-comment administrative rulemaking procedures that can extend well beyond 1 year.

In accordance with 5 CFR 1320.8(d) on April 6, 2000 (65 FR 18110), a 60-day notice for public comment was published in the **Federal Register**. One comment was received which questioned the necessity for the information and criticized the funding mechanism for obtaining the information. FDA disagrees with the commentator on both points.

Regarding the necessity for a nationwide adoption of the model FDA Food Code is an important step to further the goals of the President's Council on Food Safety for consistent, scientifically sound, and risk-based food safety standards and practices and to work more effectively with partners in State, local, and tribal governments and with other Federal agencies. To help achieve these aims and FDA's Food Safety Initiative goals, FDA needs a comprehensive, accurate, and current inventory of Food Code adoptions to monitor the effectiveness of FDA's assistance to these agencies and to identify gaps where additional assistance may be needed.

FDA has established a site on the Internet at http://www.cfsan.fda.gov "Federal/State Food Programs" and "Retail Food Safety References" to list agencies that have reported adoptions of the FDA Food Code. Because it is self-reported, the current list is incomplete and those codes adopted have not been evaluated for consistency with the model FDA Food Code. FDA has obtained the services of AFDO to develop and implement an active surveillance system to track and report on the adoptions of the FDA Food Code by State and local agencies and tribal nations of native Americans.

AFDO will develop an active computer data base that will capture adoptions of the FDA Food Code; identify and periodically contact State, local, and tribal food safety program administrators to determine the current status of Food Code adoptions; collect information to identify consistency of adopted codes with the FDA Food Code focused only on the Centers for Disease Control identified risk factors and the FDA Food Code interventions; and provide quarterly progress reports to FDA from the data base in tabular and graphic form. Reports may be placed on the Internet at http://www.cfsan.fda.gov.

On the comment's second point regarding propriety of funding the project, the purchase requisition for services was well within the limits and fully compliant with regulations for purchasing the services of AFDO to conduct the information gathering.

Dated: July 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–19626 Filed 8–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10013]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare beneficiary line survey; *Form No.:* HCFA–10013 (OMB# 0938–NEW); *Use:* This survey will be used by the Michigan Peer Review Organization to obtain information that will assist it in improving its services; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 3,600; *Total Annual Responses:* 360; *Total Annual Hours:* 90.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19675 Filed 8–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0094]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Sterilization Regulations and Consent Form; *Form No.:* HCFA–R–0094 (OMB# 0938–0481); *Use:* All Medicaid-eligible individuals seeking sterilization are required to provide informed consent, acknowledging that they understand the risks and benefits; *Frequency:* On occasion; *Affected Public:* Individuals or households; State, local or tribal gov't;

Number of Respondents: 135,923; *Total Annual Responses:* 135,923; *Total Annual Hours:* 169,903.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 25, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19677 Filed 8–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–199 & HCFA–255]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Medicaid Report on Payables and Receivables;

Form No.: HCFA–R–199 (OMB# 0938–0697);

Use: The Chief Financial Officers Act of 1990 requires government agencies to produce auditable financial statements. This form will collect accounting data from the States on Payables and Receivables;

Frequency: Annually;

Affected Public: State, Local or Tribal Government;

Number of Respondents: 57;

Total Annual Responses: 57;

Total Annual Hours: 342.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Municipal Health Services Cost Report Form and Supporting Regulations in 42 CFR 405.2470;

Form No.: HCFA–255 (OMB# 0938–0155);

Use: The Municipal Health Services Program Cost Report (HCFA–255) is used by the participating clinics to report costs for health care services rendered to Medicare beneficiaries. It is also used to gather data to properly evaluate the demonstration. It has been in use since 1979;

Frequency: Annually;

Affected Public: State, Local or Tribal Government, and Not-for-profit institutions;

Number of Respondents: 14;

Total Annual Responses: 14;

Total Annual Hours: 476.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19678 Filed 8–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–462A/B]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Clinical Laboratory Improvement Amendments (CLIA) Adverse Action Extract and Supporting Regulations at 42 CFR 493.1840; *Form No.:* HCFA–462A/B (OMB 0938–0655; *Use:* The CLIA Adverse Action Extract will be used by HCFA surveyors (State health department, and other HCFA agents) to report to regional staff and record the adverse actions imposed against a laboratory. The form will also serve to track dates of the imposition of adverse actions, date on which a laboratory corrects deficiencies, and all appeals activity; *Frequency:* On occasion, Biennially; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 52; *Total Annual Responses:* 1573; *Total Annual Hours:* 786.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19676 Filed 8–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Support Services for Studies of Emergent Cancer.

Date: August 15, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North, Conference Room G, 6130 Executive Plaza, Rockville, MD 20852.

Contact Person: C.M. Kerwin, PhD, Scientific Review Administrator, Special Review And Resources Branch, Division Of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Boulevard, Room 8086, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19639 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI Transition Career Development Award (K22).

Date: August 15, 2000.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Grants Review Branch, 6116 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Mary Bell, PHD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8058, Bethesda, MD 20892, 301/496–7978.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19640 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Research Resources Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 4 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council, Executive Subcommittee.

Date: September 7, 2000.

Open: 8:00 a.m. to 9:00 a.m.

Agenda: To discuss policy issues.

Place: National Center for Research Resources, National Institute of Health, Conference Room 3B13, Building 31, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892; 301–496–6023.

Name of Committee: National Advisory Research Resources Council.

Date: September 7, 2000.

Open: 9:15 a.m. to 1:30 p.m.
Agenda: Report of Center Director and other issues.
Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Closed: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Open: 3:30 p.m. to adjournment.
Agenda: Issues related to Council business.
Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Contact Person: Louise E. Ramm, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19633 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel.
Date: August 8, 2000.
Time: 11 am to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John D. Harding, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel.
Date: August 8, 2000.
Time: 2 pm to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John D. Harding, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19644 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Effect of the Antiandrogen DDE on Anthropometric Measures at Birth.
Date: September 1, 2000.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate contract proposals.
Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (telephone conference call).
Contact Person: David P. Brown, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709; (919) 541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Cooperative Agreements (U13s).
Date: September 14, 2000.
Time: 10 a.m. to 11 a.m.
Agenda: To review and evaluate cooperative agreement applications.
Place: NIEHS—East Campus, 79 T.W. Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (telephone conference call).
Contact Person: J. Patrick Mastin, Scientific Review Administrator, Scientific Review Branch/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19630 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: August 2, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: 45 Natcher Bldg, Rm. 5As.25u, Bethesda, MD 20892 (telephone conference call).

Contact Person: Tommy L. Broadwater, Chief, Grants Review Branch, NIAMS, NIH, 45 Center Drive, Rm. 5AS25U, Bethesda, MD 20892; 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19631 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, August 1, 2000, 11 a.m. to August 1, 2000, 5 p.m., Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815 which was published in the **Federal Register** on June 23, 2000, 65 FR 39153.

The meeting will now be held at the Neuroscience Center as a telephone conference call. The meeting is closed to the public.

Dated: July 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19632 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 26, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesdas, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 200892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19636 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2(03).

Date: August 2–4, 2000.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel, 26300 Chagrin Boulevard, Beachwood, Ohio 44122.

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 643, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19637 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, July 31, 2000, 11 a.m. to July 31, 2000, 12 p.m., 6707 Democracy Blvd, 2 Democracy Plaza, Rm 653, Bethesda, MD 20892 which was published in the **Federal Register** on July 13, 2000, 65 FR 43379.

The meeting is cancelled due to application being withdrawn.

Dated: July 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19638 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Information for the National Heart Attack Alert Program Phase II.

Date: August 2, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

Contact Person: Sharee Pepper, PhD., Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 25, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19641 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientifc Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–1159, ameros@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientifc Review Special Emphasis Panel.

Date: August 3, 2000.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed Quadri, PhD, Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, 301–435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientifc Review Special Emphasis Panel.

Date: August 4, 2000.

Time: 4:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Harold M. Davidson, PhD, Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301–435–1776, davidsoh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientifc Review Special Emphasis Panel.

Date: August 8, 2000.

Time: 2 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, PhD, Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, 301–435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientifc Review Special Emphasis Panel.

Date: August 11, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, 301–435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientifc Review Special Emphasis Panel.

Date: August 14, 2000.

Time: 2 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 14, 2000.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 14, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gertrude K. McFarland, RN, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 14, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2112, MSC 7890, Bethesda, MD 20892, (301) 435–1047, pearsonn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 15, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 15, 2000.

Time: 12 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 17, 2000.

Time: 1 pm to 2 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 17, 2000.

Time: 3 pm to 4 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 17, 2000.

Time: 4:15 pm to 5:30 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19635 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 31, 2000.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19642 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mariana Dimitrov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7848, Bethesda, MD 20892, 301–435–0902.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 2 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle..

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892 (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant application.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special emphasis Panel.

Date: August 1, 2000.

Time: 2:30 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda MD 20892 (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2000.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Chhanada L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1–2, 2000.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The American Inn, 8130 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892 (301) 435–1038, remondid@CSR.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–6 (02).

Date: August 2, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2–4, 2000.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BM–1 01.

Date: August 2, 2000.

Time: 10 am to 12:30 p.m

Agenda: To review and evaluate grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2000.

Time: 2:30 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard. marcus@nih//gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2–4 2000.

Time: 8 pm to 10 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Golden Gateway, 1500 Van Ness Avenue, San Francisco, CA 94109.

Contact Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 2000.

Time: 10:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Kozak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, kozakm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 2000.

Time: 5 pm to 6:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 4, 2000.

Time: 12 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 7, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (02)B.

Date: August 8, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th street NW, Washington, DC 20007.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 8, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–6 (03).

Date: August 8, 2000.

Time: 11:15 am to 12:45 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 8, 2000.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 8, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 8, 2000.

Time: 2:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 25, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19646 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the CLINICAL CENTER, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

Date: September 18–19, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: David K. Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/402–0244.

Dated: July 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19645 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: September 12, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To provide advice on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; and to assist in monitoring compliance regarding the inclusion of women in clinical research.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892; 301/402–1770.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–19634 Filed 8–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program: Final Notice of Allocations to States of FY 2000 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Final notice of allocations to States of FY 2000 funds for refugee social services.

SUMMARY: This notice establishes the allocations to States of FY 2000 funds for social services under the Refugee Resettlement Program (RRP).

This notice includes a $15.5 million set-aside to: (1) Provide outreach and referral services to ensure that eligible refugees access the State Children's Health Insurance Program (SCHIP)and other programs for low income working populations; and (2) provide specialized interpreter training and the hiring of interpreters to enable refugees to have equal access to medical and legal services.

DATES: Effective August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara R. Chesnik, (202) 401–4558; email: bchesnik@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: A notice of proposed allocations to States of FY 2000 funds for refugee social services was published in the **Federal Register** on May 1, 2000 (65 FR 25345).

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $143,953,000 in FY 2000 refugee social service funds as part of the FY 2000 appropriation for the Department of Health and Human Services (Pub. L. No. 106–113).

The FY 2000 House Appropriations Committee Report (H.R. Rept. No. 106–370) reads as follows with respect to social services funds:

> The bill provides $140,000,000 for social services, about the same as the fiscal year 1999 appropriation and $7,990,000 below the budget request. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set aside $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost benefits, including SSI, TANF and Medicaid, in obtaining citizenship.

In addition, the House report provides:

> It is estimated that approximately $20,000,000 will be available in FY 2000 from carryover funds, and the Committee intends that these funds be used under social services to increase educational support to schools with a significant proportion of refugee children and for the development of alternative cash assistance programs that involve case management approaches to improve resettlement outcomes. Such support should include intensive English language training and cultural assimilation programs.

The FY 2000 Senate Appropriations Committee Report (S. Rept. No. 106–166) recommended $147,990,00 for social services in the FY 2000 budget:

The Committee provides $19,000,000 to serve communities affected by the Cuban and Haitian entrants and refugees, the same as the amount contained in last year's appropriation. The Committee also includes $14,000,000 to address the needs of refugees and communities affected by recent changes in Federal assistance programs, and $16,000,000 to assist communities with large concentrations of refugees whose cultural differences make assimilation difficult. These funds are included in the social services line item.

The FY 2000 Conference Report on Appropriations (H.R. Conf. 106–479) reads as follows concerning social services:

The conference agreement includes $20,000,000 from carryover funds that are to be used under social services to increase educational support to schools with a significant proportion of refugee children and for the development of alternative cash assistance programs that involve case management approaches to improve resettlement outcomes. Such support should include intensive English language training and cultural assimilation programs.

The agreement also includes $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance.

The Conference report provided $143,995,000 in FY 2000 new budget authority for social services.

The Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Act, P.L. 106–113, Appendix E, Section 301, rescinded discretionary budget authority government-wide by .38 percent. Agencies, however, were provided flexibility regarding how the recission would be applied. Accordingly, ORR's total social services appropriation was reduced from $143,995,000 to $143,953,000. Additionally, a reduction of $23,159 was made by the Secretary of HHS under section 206 of this Act, which allows the Secretary, within stipulated limitations, to transfer funds between appropriation accounts, subject to the advance notification of the appropriation committees. The Director is therefore reducing the final amount available for social services discretionary grants by $23,159.

In accordance with Congressional report language, the Director of the Office of Refugee Resettlement (ORR) will use FY 2000 social services as follows:

- $72,203,750 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees. These funds include social services formula allocations to discretionary grantees ($2,136,616) under the Wilson Fish authority where the State has dropped out of the program.
- $12,726,091 will be awarded as social service discretionary grants through competitive grant announcements that will be issued separately from this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds would be awarded through a discretionary grant announcement that will be issued separately from this notice.
- $26,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Awards will be made through announcements issued separately from this notice.
- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through announcements issued separately from this notice.

Congress provided ORR with broad carry-over authority in the FY 2000 HHS appropriations law to use unexpended FY 1998 and FY 1999 CMA funds for assistance and other activities in the refugee program provided through September 30, 2001. The appropriations law states:

That funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Public Law 105–78 for fiscal year 1998 and under Public Law 105–227 for fiscal year 1999 shall be available for the costs of assistance provided and other activities through September 30, 2001.

Among the uses of these funds:

- $20,000,000 will be awarded to increase educational support to schools with a significant proportion of refugee children and for the development of alternative cash assistance programs that involve case management approaches to improve resettlement outcomes. This support will include intensive English language training and cultural assimilation programs. Awards will be made through an announcement issued separately from this notice.
- $15,500,000 will be added to the FY 2000 formula social services allocation as a set-aside for referral and interpreter services, increasing the total amount available for the formula social services program in FY 2000 to $87,703,750.

Refugee Social Service Funds

The population figures for the social services allocation include refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees since these populations may be served through funds addressed in this notice and this is data that is available in the ORR Refugee Data System. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $72,203,750 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1999 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

The Director is also allocating an additional $15.5 million from prior year carry-over funds as a set-aside to: (1) Provide referral services, including outreach, to ensure that refugees are

able to access the State Children's Health Insurance Program (SCHIP) and other programs for low income populations; and (2) provide for the hiring of interpreters and special interpreter training to enable refugees to have equal access to medical and certain legal services. Depending upon the existing capacity and need in the community, we encourage States to use the funds equally for both activities. Both types of services are not subject to the 5-year limitation and may be provided to refugees regardless of their length of time in the U.S. See 45 CFR 400.152(b).

Eligible refugee families often are not aware of, or do not know how, to access other Federal support programs available to low income working families in the community. We believe that these programs, including SCHIP, Food Stamps, Low Income Home Energy Assistance Program (LIHEAP), Medicaid, Head Start, low-income housing, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), child care assistance, adult day care for aged dependents, and other support programs for low-income families, are important for the well-being of working refugees, particularly refugee families, and are necessary to help these refugees maintain employment and move toward full self-sufficiency.

The organizations funded by the set-aside amount are expected to conduct outreach into the community to identify low-income refugees and to help these refugees enroll in and to be familiar with the services available and the participation requirements of these programs. We expect States to fund community-based organizations, to the maximum extent possible, to provide hands-on assistance, which means having the application forms available and helping refugees to fill out the application, accompanying the refugee to the eligibility office, assisting in the communication between the family and the eligibility worker, closely following the application process until the family has been found eligible, and then helping the family effectively use the service or support program in which they have been enrolled. For example, there may be different levels of medical coverage available to a family, depending on the ages of the children and the income level of the family, each with different requirements. It is important for the caseworkers/advocates funded through this initiative to understand the program requirements (such as a co-payment structure) in order to help the family make decisions and fully participate.

The organizations funded under this set-aside should develop effective ways to provide an on-going link between these services, the population they serve, and the targeted low income programs. Methods might include: partnering with schools to identify refugee children who may be eligible for SCHIP by virtue of their eligibility for the school lunch program; connecting with local Head Start programs to help identify refugee children who are eligible for SCHIP and other health care programs; arranging to have Medicaid eligibility workers visit the Mutual Assistance Association (MAA) or other participating organization on a scheduled basis; and working with other groups serving low income families, such as hospitals, WIC programs, low-income housing programs, and food assistance programs to make these services widely known to the refugee community being served.

It is also important that States provide as high a standard as possible in interpretation to non-English speaking and to Limited-English-Proficient (LEP) refugees, particularly in regard to medical and legal issues. As mentioned earlier, we are therefore including funding in the set-aside for States to improve the availability and quality of interpreter services for refugees in their communities. The set-aside funds are to be used by States: (1) To fund specialized interpreter training for medical and legal services; and (2) to pay for the hiring and employment of these trained interpreters by MAAs, voluntary agencies, and other community-based organizations serving refugees, to the maximum extent possible, in order to increase the number of skilled interpreters in the community.

Interpretation requires a great deal of skill—interpreters need to be fluent in English and the language spoken by the refugee. They must have the ability to quickly understand the message and terminology, if technical, in one language and to express it as quickly and correctly in another language. In addition to fluency in two languages, interpreters must have the skills to handle confidential client information and to deal with a variety of professionals in the medical, legal, law enforcement, social services, and other fields.

States should use qualified training programs or trainers to provide the interpreter training. Several strategies may be employed, *e.g.*, the direct training of interpreters in a group setting, paying the course tuition and associated expenses for individuals at a community college or university, and the training of trainers in order to establish and maintain an efficient training capacity in the community. To the extent possible, we would expect States to use an established curriculum rather than incurring costs to develop a new one. Funding of interpreter services should be directed to areas of greatest need and to the most linguistically isolated communities.

States must determine a community's capacity to ensure refugee access to medical and other services, and then examine how best to fund and maintain interpreter services for refugees based upon the need and size of refugee population. For example, an interpreter bank with dedicated interpreters may be a preferred option if the needs of the community can justify full-time interpreters. However, because the provision of interpreter services may not fully occupy funded staff in some locations or in certain languages, States may choose to train bilingual caseworkers at voluntary resettlement agencies, MAAs and refugee service providers. States may also consider cross-training of interpreters so that they may also assist, for example, in enrolling clients in SCHIP, Medicaid, or other services for low-income clients, and/or serve as case managers or in other staff positions. Staff with both bilingual interpreter skills and knowledge of the family services network, such as child protective services and the domestic violence system, are also highly desirable.

We also encourage States to set up creative ways to maintain and expand the availability of interpreter services in the community, such as seeking reimbursement for services from the courts, hospitals, and agencies which may be able to pay for interpreter services but have been otherwise hindered in providing these services by the lack of available and appropriately trained individuals. However, fees from low-income refugee clients may not be sought.

In light of the unique position that refugee MAAs have in the communities where refugees reside, we are asking that States give special consideration to MAAs in using the set-aside amount, where possible, to provide these services to refugee families. However, qualified community based organizations with refugee experience, voluntary resettlement agencies, or refugee service providers may be funded as well.

A State that can demonstrate that the total amount of set-aside funds awarded is not needed to provide the services described above may submit a written request to the Director to use a portion

of the funds for another non-employment service. This request must fully describe how the need for the specified set-aside services is already being met in the State, as well as a description of the additional service proposed, why it is needed, and how it will be provided.

Population To Be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22, 2000)) and 45 CFR 401.2 (Cuban and Haitian entrants).

Services to refugees must be provided in accordance with the rules of 45 CFR Part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the 3-year refugee population, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, under 45 CFR 400.152, States may not provide services funded by this notice, except for referral and interpreter services and citizenship and naturalization preparation services, to refugees who have been in the United States for more than 60 months (5 years).

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections which the State may wish to provide must be submitted to and approved by the Director of ORR (§ 400.155(h)).

Service Priorities

In the past, a number of States have focused primarily on serving refugee cash assistance (RCA) recipients because of the need to help these refugees become employed and self-sufficient within the 8-month RCA eligibility period. Now, with the passage of welfare reform, refugee recipients of Temporary Assistance for Needy Families (TANF) also face a time limit for cash assistance and need appropriate services as quickly as possible to become employed and self-sufficient. In order for refugees to move quickly off TANF, we believe it is crucial for these refugees to receive refugee-specific services that are designed to address the employment barriers that refugees typically face.

Some States are doing remarkably well in helping refugees achieve early self-sufficiency through entry-level jobs. These States should re-examine the range of services they currently offer to refugees. Particularly, we encourage these States to offer job upgrade services to refugees to help them realize a more secure economic foundation. Additionally, we encourage these States to look at expanding the range of services to address the broader needs that refugees have in order to successfully integrate into the community.

States should also expect that these funds will be made available to pay for social services which are provided to refugees who participate in Wilson/Fish projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (64 FR 19793, issued April 22, 1999).

II. Discussion of Comments Received

We received one letter of comment in response to the notice of proposed FY 2000 allocations to States for refugee social services. This comment is summarized below and followed by the Department's response.

Comment: The commenter expressed concern that too large a proportion of the social services appropriation is being awarded under discretionary grants. The commenter more specifically indicated that discretionary funds awarded for communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals appeared to result in a duplication of funding for this population. The commenter noted that while Congress expressed interest in the allocation of funds for discretionary programs, the commenter felt that diversion of an increasing proportion of social services funding to discretionary programs is leading to a refugee program in his State that is disjointed, lacking in direction and coordination. The commenter also expressed concern about the ongoing use of the three-year population formula for determining formula allocations, as it has decreased the level of funding for the refugee population who need services in his State. The commenter recommends that ORR support and communicate the State's position on these concerns to the House and Senate Appropriations Committees. He further recommends that ORR consider pursuing a modification of the formula used to allocate social services, stating that a formula based on the total State refugee population requiring employment services would allow a more equitable distribution of funds and would be more consistent with the actual needs of the State and the refugees who require services in order to achieve economic self-sufficiency.

Response: ORR has not changed the percentage of social services funds available to the Director to fund projects to carry out national initiatives and special projects that respond to the changing needs and circumstances in the refugee program. Other funds have been provided by Congress for specific purposes, such as the $19,000,000 to serve communities affected by the Cuban and Haitian entrants and refugees. We have no reason to believe that if these funds were not provided for this special need that the total social services funds appropriated would remain at the higher amount.

Regarding the recommendation that the three-year formula be changed, States with large concentrations of refugees also receive targeted assistance funding which is expressly intended for services to long-term refugee welfare recipients, such as the post-36 month population, who are still in need of employment services. Therefore, we do not see a particular need to request legislative action to amend the statutory formula for social services.

III. Allocation Formulas

Of the funds available for FY 2000 for social services, $72,203,750 is allocated to States in accordance with the formula specified below. In addition, $15.5 million in set-aside funds are allocated in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1999, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 2000 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1999, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants, and Kurdish asylees.

For fiscal year 2000, ORR's formula allocations for the States for social services are based on the numbers of refugees, Amerasians, Kurdish asylees, and entrants who arrived during the preceding three fiscal years: 1997, 1998, and 1999, based on arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1996, and September 30, 1999, who are thought to be living in each State as of October 1, 1999.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1999. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians and Kurdish asylees are included in the refugee figures.

Havana parolees (HP's) are enumerated in a separate column in Table 1, below because they are tabulated separately from other entrants. For FY 1999, Havana parolee arrivals for all States are based on actual data. For FY 1998, Florida's HP's (10,163) are based on actual data, while HP's in other States (3,258) are prorated according to the States proportion of the three-year ((FY 1996–FY 1998) entrant populations. For FY 1997, Florida's HP's (3,957) are based on actual data, while HP's in other States (2,035) were prorated according to their proportions of the three-year entrant population.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1999, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); total refugee/entrant population, (col. 4); the formula amounts which the population estimates yield (col. 5); the allocation amounts after allowing for the minimum amounts (col. 6); the set-aside amount (col.7); and the total allocation (col. 8).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations. Annual services plans are due at ORR by November 15th of each year.

The following amounts are for allocation for refugee social services in FY 2000:

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 2000

State	Refugees[1]	Entrants	Havana parolees[2]	Total population	Final formula amount	Final allocation	Final set-aside	Total final allocation
	(1)	(2)	(3)	(4)	(5)	(6)		
Alabama	569	4	69	642	$161,339	$161,339	$34,810	$196,149
Alaska[3]	0	0	0	0	0	0	0	0
Arizona	7,124	367	292	7,783	1,956,798	1,956,798	422,197	2,378,995
Arkansas	64	0	10	74	18,698	75,000	4,034	79,034
California	30,744	41	476	31,261	7,859,733	7,859,733	1,695,807	9,555,540
Colorado	3,402	3	6	3,411	857,595	857,595	185,034	1,042,629
Connecticut	3,084	19	150	3,253	817,835	817,835	176,455	994,290
Delaware	74	7	2	83	20,861	75,000	4,501	79,501
Dist. of Columbia	1,665	1	10	1,676	421,370	421,370	90,914	512,284
Florida	12,715	7,666	27,667	48,048	12,080,347	12,080,247	2,606,443	14,686,790
Georgia	10,573	18	129	10,720	2,695,144	2,695,144	581,501	3,276,645
Hawaii	100	0	0	100	25,264	75,000	5,451	80,451
Idaho[4]	2,041	0	0	2,041	513,153	513,153	110,717	623,870
Illinois	11,997	7	239	12,243	3,078,206	3,078,206	664,150	3,742,356
Indiana	1,750	0	11	1,761	442,863	442,863	95,552	538,415
Iowa	6,075	0	4	6,079	1,528,390	1,528,390	329,764	1,858,154
Kansas	868	0	8	876	220,339	220,339	47,540	267,879
Kentucky[5]	3,670	918	503	5,091	1,280,095	1,280,095	276,192	1,556,287
Louisiana	1,492	57	93	1,642	412,926	412,926	89,092	502,018
Maine	635	0	0	635	159,653	159,653	34,447	194,100
Maryland	2,754	6	61	2,821	709,347	709,347	153,048	862,395
Massachusetts	6,711	67	99	6,877	1,729,101	1,729,101	373,069	2,102,170
Michigan	8,425	432	263	9,120	2,293,095	2,293,095	494,756	2,787,851
Minnesota	8,362	0	10	8,372	2,105,009	2,105,009	454,175	2,559,184
Mississippi	115	2	11	128	32,146	75,000	6,936	81,936
Missouri	7,552	2	16	7,570	1,903,239	1,903,239	410,641	2,313,880
Montana	59	0	0	59	14,834	75,000	3,201	78,201
Nebraska	2,338	4	30	2,372	596,495	596,495	128,699	725,194
Nevada[5]	1,371	520	479	2,370	595,796	595,796	128,548	724,344
New Hampshire	1,496	0	0	1,496	376,128	376,128	81,153	457,281
New Jersey	4,486	167	801	5,454	1,371,315	1,371,315	295,873	1,667,188
New Mexico	456	256	375	1,087	273,234	273,234	58,953	332,187
New York	26,876	818	692	28,386	7,136,897	7,136,897	1,539,849	8,676,746
North Carolina	3,855	3	39	3,897	979,814	979,814	211,404	1,191,218
North Dakota	1,505	0	1	1,506	378,642	378,642	81,695	460,337

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 2000—Continued

State	Refugees[1] (1)	Entrants (2)	Havana parolees[2] (3)	Total population (4)	Final formula amount (5)	Final allocation (6)	Final set-aside	Total final allocation
Ohio	4,283	5	36	4,324	1,087,242	1,087,242	234,582	1,321,824
Oklahoma	501	0	9	510	128,326	128,326	27,687	156,013
Oregon	4,881	285	266	5,432	1,365,734	1,365,734	294,669	1,660,403
Pennsylvania	7,531	62	201	7,794	1,959,577	1,959,577	422,796	2,382,373
Rhode Island	397	1	6	404	101,682	101,682	21,939	123,621
South Carolina	268	1	9	278	69,874	100,000	15,076	115,076
South Dakota[5]	1,037	0	0	1,037	260,725	260,725	56,254	316,979
Tennessee	3,763	4	140	3,907	982,315	982,315	211,943	1,194,258
Texas	12,924	637	622	14,183	3,565,864	3,565,864	769,367	4,335,231
Utah	3,522	0	2	3,524	886,135	886,135	191,191	1,077,326
Vermont	1,048	0	0	1,048	263,491	263,491	56,850	320,341
Virginia	4,537	101	111	4,749	1,194,094	1,194,094	257,636	1,451,730
Washington	17,778	4	41	17,823	4,481,065	4,481,065	966,830	5,447,895
West Virginia	16	0	0	16	4,023	75,000	868	75,868
Wisconsin	1,755	2	7	1,764	443,602	443,602	95,711	539,313
Wyoming[3]	0	0	0	0	0	0	0	0
Total	239,244	12,487	34,001	285,732	71,839,450	72,203,750	15,500,000	87,703,750

[1] Includes: refugees, Kurdish asylees, and Amerasian immigrants from Vietnam adjusted for secondary migration.
[2] For FY 1999, Havana Parolee arrivals for all States are based on actual data. For FY 1998, Florida's HP's (10,183) are based on actual data, while HP's in other States (3,258) are prorated according to the State's proportion of the three-year (FY 1996–FY 1998) entrant population. For FY 1997, Florida's HP's (3,957) are based on actual data, while HP's in other States (2,035) were prorated according to their proportions of the three-year entrant population.
[3] Alaska and Wyoming no longer participate in the Refugee Program.
[4] The allocation for Idaho is expected to be awarded to the State replacement designee, subject to the Director's approval.
[5] The allocations for South Dakota, Kentucky, and Nevada are expected to be awarded to Wilson/Fish projects, subject to the Director's approval.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: July 25, 2000.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 00–19309 Filed 8–2–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program; Availability of Formula Allocation Funding for FY 2000 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of availability of formula allocation funding for FY 2000 targeted assistance grants to States for services to refugees in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 2000 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources.

This notice continues the eligibility of those 50 counties located in 29 States that previously qualified for and received targeted assistance program (TAP) grants beginning in FY 1999 as a result of the three-year qualification process. The FY 2000 TAP formula allocations are based on the same formula as in FY 1999, updated to reflect arrivals during the five-year period from FY 1995 through FY 1999. The final notice reflects an adjustment in final allocations to States as a result of additional arrival data.

DATES: The closing date for submission of applications is September 5, 2000. Applications postmarked after the closing date will be classified as late.

SUPPLEMENTARY INFORMATION: A notice of proposed allocations to States of FY 2000 funds for targeted assistance was published in the **Federal Register** on May 1, 2000 (65 FR 25341).

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average of four hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 10/31/2000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Gayle Smith, Director, Division of Refugee Self-Sufficiency, (202) 205–3590; email: gsmith@acf.dhhs.gov.

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for

supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $49,477,000 in FY 2000 funds for the targeted assistance program (TAP) as part of the FY 2000 appropriation for the Department of Health and Human Services (Pub. L. No. 106–113).

The Director of the Office of Refugee Resettlement (ORR) will use the $49,477,000 in targeted assistance funds as follows:

$44,529,300 will be allocated to States under the five-year population formula, as set forth in this notice.

$4,947,700 (10 percent of the total) will be used to award discretionary grants to States under a separate grant announcement.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. No. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513).

III. Use of Funds

Targeted assistance funding must be used to assist refugee families to achieve economic independence in accordance with regulations at 45 CFR Part 400. The term "refugee" includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22, 2000)) and 45 CFR 401.2 (Cuban and Haitian entrants). In addition to the statutory requirement that TAP funds be used "primarily for the purpose of facilitating refugee employment" (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Under 45 CFR 400.316, a State may provide the same scope of services under targeted assistance as may be provided to refugees under 45 CFR 400.154 and 45 CFR 400.155, with the exception of 45 CFR 400.155(h). Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (five years). Specifically, States may not provide citizenship preparation services to refugees who have been in the United States for more than 60 months(five years) using targeted assistance funds.

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In accordance with 45 CFR 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services for children. For an employed refugee, TAP-funded day care is limited to a maximum of one year after the refugee becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must "ensure that women have the same opportunities as men to participate in training and instruction." In addition, in accordance with 45 CFR 400.317, targeted assistance services must be provided, to the maximum extent feasible, in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women.

In accordance with 45 CFR 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services that are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions

of Mutual Assistance Associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section VIII below.

IV. Discussion of Comments Received

ORR did not receive any comments in response to the notice of proposed FY 2000 allocations to States for targeted assistance.

V. Eligible Grantees

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties that qualify for FY 2000 targeted assistance awards.

The Director of ORR determined the eligibility of counties for inclusion in the FY 2000 targeted assistance program on the basis of the method described in section VI of this notice.

The use of targeted assistance funds for services to Cuban and Haitian entrants are limited to States that have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments that are qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in the final notice, in accordance with § 400.319, the FY 2000 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent five-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 2000 targeted assistance funds in a manner different from the formula set forth in this final notice, the FY 2000 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to this final notice are not subject to review by State and area-wide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

VI. Qualification and Allocation

A. Qualification

The Director of ORR will determine the qualification of counties for targeted assistance once every three years, as stated in the FY 1999 notice of proposed availability of targeted assistance allocations to States which was published in the **Federal Register** on March 10, 1999 (64 FR 11927). Since ORR determined the qualification of counties for targeted assistance in FY 1999, those qualifying counties determined eligible in FY 1999 and listed in this notice as qualified to apply for FY 2000 TAP funding will remain qualified for TAP funding through FY 2001 on the basis of the most current five-year refugee/entrant arrival data. ORR does not plan to consider the eligibility of additional counties for TAP funding until FY 2002, when ORR will again review data on all counties that could potentially qualify for TAP funds.

B. Allocation Formula

Of the funds available for FY 2000 for targeted assistance, $44,529,300 will be allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, entrants (including Havana parolees), and Kurdish asylees in these counties during the five-year period from FY 1995 through FY 1999 (October 1, 1994–September 30, 1999). This is data that is available in the ORR Refugee Data System.

With regard to Havana parolees, for FY 1999, the Havana parolees for all counties are based on actual data. For previous years, the Havana parolees of Florida counties are based on actual data, while parolees from other counties are prorated based on each county's proportion of the four-year (FY 1995–1998) entrant population.

VII. Allocations

Table 1 lists the qualifying counties; the number of refugee (column 3) and entrant (column 4) arrivals in those counties during the five-year period from October 1, 1994–September 30, 1999; the number of Havana parolees (column 5) credited to each county during this period, the total number of arrivals; and the final amount of each county's allocation based on its five-year arrival population.

Table 1.—Final Targeted Assistance Allocations By County: FY 2000 is attached.

Table 2.—State totals for final targeted assistance allocations is attached.

VIII. Application and Implementation Process

States that are currently operating under approved management plans for their FY 1999 targeted assistance program and wish to continue to do so for their FY 2000 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application for FY 2000 funding shall provide:

- Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR in FY 1999, will continue to be in full force and effect for the FY 2000 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be identified in the application and are subject to ORR review and approval, *e.g.*, if the State assumes local administration of the program or if the State chooses to determine county allocations differently. Any proposed changes must address and reference all appropriate portions of the FY 1999 application content requirements to ensure complete incorporation in the State's management plan.

Budget and Budget Justification

- A line item budget and justification for State administrative costs limited to a maximum of five percent of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project.
- Targeted assistance performance goals as described under Section IX.

IX. Results or Benefits Expected

All applicants must establish targeted assistance proposed performance goals for each of the six ORR performance outcome measures for each targeted

assistance county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The six ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the "Quarterly Performance Report."

X. Reporting Requirements

States will be required to submit quarterly reports on the outcomes of the targeted assistance program, using the same form which States use for reporting on refugee social services formula grants. This is Schedule A and Schedule C, pages 1 and 2 of the ORR–6 Quarterly Performance Report form (OMB #0970–0036).

XI. The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance. The Uniform Project Description reads as follows:

OMB No. 0970–0139 Expires 10/31/00

ACF Uniform Project Description (UPD)

Part I—Table of Menu Options

Menu Option: *Results or Benefits Expected*

Menu Option: *Budget and Budget Justification*

Part II—The Project Description—Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Part III—General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

(Catalog of Federal Domestic Assistance (CFDA) Number: 93.584)

Dated: July 27, 2000.

Lavinia Limón,

Director, Office of Refugee Resettlement.

TABLE 1.—FINAL TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 2000

County and State	Refugees [1]	Entrants	Havana parolees [2]	Total arrivals FY 1995–1999	Total FY 2000 final allocation
1. Maricopa County, Arizona	8,929	818	514	10,261	$1,211,318
2. Fresno County, California	1,799	2	1	1,802	212,727
3. Los Angeles County, California	13,313	351	390	14,054	1,659,084
4. Orange County, California	8,367	24	19	8,410	992,806
5. Sacramento County, California	11,646	4	7	11,657	1,376,117
6. San Diego County, California	6,973	397	344	7,714	910,643
7. San Francisco, California	6,288	33	34	6,355	750,212
8. Santa Clara County, California	8,322	47	37	8,406	992,334
9. Yolo County, California	1,341	5	3	1,349	159,250
10. Denver County, Colorado	3,085	1	5	3,091	364,895
11. District of Columbia, District of Columbia	3,626	15	14	3,655	431,475
12. Broward County, Florida	790	1,421	1,287	3,498	412,941
13. Dade County, Florida	7,885	26,710	38,238	72,833	8,597,998
14. Duval County, Florida	4,239	21	51	4,311	508,916
15. Hillsborough County, Florida	1,654	646	1,142	3,442	406,330
16. DeKalb County, Georgia	7,902	12	9	7,923	935,315
17. Fulton County, Georgia	5,145	196	153	5,494	648,570

TABLE 1.—FINAL TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 2000—Continued

County and State	Refugees[1]	Entrants	Havana parolees[2]	Total arrivals FY 1995–1999	Total FY 2000 final allocation
18. Cook/Kane, Illinois	15,790	368	298	16,456	1,942,642
19. Polk County, Iowa	3,612	1	2	3,615	426,753
20. Jefferson County,[3] Kentucky	3,813	1,353	621	5,787	683,159
21. Hampden County, Massachusetts	2,281	9	6	2,296	271,044
22. Suffolk County, Massachusetts	4,285	53	59	4,397	519,069
23. Ingham County, Michigan	1,927	647	290	2,864	338,097
24. Kent County, Michigan	2,836	73	34	2,943	347,432
25. Hennepin County, Minnesota	6,601	3	4	6,608	780,079
26. Ramsey County, Minnesota	2,024	10	7	2,041	240,941
27. City of St. Louis, Missouri	8,606	1	1	8,608	1,016,180
28. Lancaster County, Nebraska	2,378	38	25	2,441	288,162
29. Clark County,[4] Nevada	1,566	1,261	867	3,694	436,079
30. Hudson County, New Jersey	1,327	665	825	2,817	332,549
31. Bernalillo County, New Mexico	1,051	1,006	827	2,884	340,458
32. Monroe County, New York	2,730	833	452	4,015	473,973
33. New York, New York	42,317	590	531	43,438	5,127,885
34. Oneida County, New York	4,698	1	0	4,699	554,720
35. Guilford County, North Carolina	2,430	7	10	2,447	288,870
36. Cass County, North Dakota	1,791	3	2	1,796	212,019
37. Cuyahoga County, Ohio	3,600	7	8	3,615	426,753
38. Multnomah, Oregon	11,319	776	404	12,499	1,475,515
39. Erie County, Pennsylvania	1,922	0	0	1,922	226,893
40. Philadelphia County, Pennsylvania	4,833	44	37	4,914	580,101
41. Minnehaha County,[5] South Dakota	1,592	0	0	1,592	187,937
42. Davidson County, Tennessee	3,248	54	42	3,344	394,761
43. Dallas/Tarrant, Texas	11,248	525	485	12,258	1,447,065
44. Harris County, Texas	8,525	348	137	9,010	1,063,636
45. Davis/Salt Lake, Utah	5,135	1	3	5,139	606,662
46. Fairfax County, Virginia	3,152	7	10	3,169	374,103
47. City of Richmond, Virginia	2,310	103	72	2,485	293,356
48. King/Snohomish, Washington	13,378	51	34	13,463	1,589,316
49. Pierce County, Washington	2,421	10	7	2,438	287,808
50. Spokane County, Washington	3,255	0	1	3,256	384,373
Total	289,305	39,551	48,349	377,205	44,529,300

[1] Refugees include refugees, Kurdish asylees, and Amerasian immigrants from Vietnam.
[2] For FY 1999, the Havana parolees for all counties are based on actual data. For previous years, the Havana parolees of Florida counties are based on actual data, while parolees from other counties are prorated based on each county's proportion of the four-year (FY 1995–1998) entrant population.
[3] The allocation for Jefferson County, Kentucky will be awarded to the Kentucky Wilson/Fish project.
[4] The allocation for Clark County, Nevada will be awarded to the Nevada Wilson/Fish project.
[5] The allocation for Minnehaha County, South Dakota will be awarded to the South Dakota Wilson/Fish project.

TABLE 2.—TARGETED ASSISTANCE—FINAL ALLOCATIONS BY STATE: FY 2000

State	Amount
Arizona	$1,211,318
California	7,053,173
Colorado	364,895
District of Columbia	431,475
Florida	9,926,173
Georgia	1,583,885
Illinois	1,942,642
Iowa	426,753
Kentucky	683,159
Massachusetts	790,113
Michigan	685,520
Minnesota	1,021,020
Missouri	1,016,180
Nebraska	288,162
Nevada	436,079
New Jersey	332,549
New Mexico	340,458
New York	6,156,578
North Carolina	288,870

TABLE 2.—TARGETED ASSISTANCE—FINAL ALLOCATIONS BY STATE: FY 2000—Continued

State	Amount
North Dakota	212,019
Ohio	426,753
Oregon	1,475,515
Pennsylvania	806,994
South Dakota	187,937
Tennessee	394,761
Texas	2,510,701
Utah	606,662
Virginia	667,459
Washington	2,261,497
Total FY 2000 allocation	44,529,300

[FR Doc. 00–19649 Filed 8–2–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–10]

Notice of Proposed Information Collection for Public and Indian Housing—LOCCS/VRS Payment Vouchers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 2, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public and Indian Housing—LOCCS/VRS Payment Vouchers.

OMB Control Number: 2577–0166.

Description of the need for the information and proposed use: Form HUD–50080 will be used by grant recipients to request funds from HUD through the LOCCS/VRS voice activated system. The information collected on this form will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds as well as provide a service to program recipients.

Agency form number: HUD–50080 Series.

Members of affected public: State, Local or Tribal government; Resident Organizations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 5,312 respondents, 22 responses per respondent, 116,864 total responses, 17,540 (116,864x.15) total burden hours.

Status of the proposed information collection: Reinstatement, with new vouchers for the Resident Opportunities and Self-Sufficiency (ROSS) Program.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 27, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-M

LOCCS / VRS
Capacity-Building Grant
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

HUD implemented the Line of Credit Control System/Voice Response System (LOCCS/VRS) to process requests for payments to grantees. Grant recipients fill out a voucher form for the applicable HUD program with all the necessary information prior to making a telephone call using a touch tone telephone to initiate the drawdown process. The grantee will be prompted for entering the information and for confirming information that is spoken back by the VRS simulated voice. This information is required to obtain benefits under the Native American Housing and Self-Determination Act of 1996. The information requested does not lend itself to confidentiality.

1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)
083	ONAP	from: to:

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name
8. Grant or Project No.	6a. Grantee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars)	(cents)
1605	Title VI - Grant Funds		
1610	Title VI- Administration		
1620	Title VI - Technical Assistance Tribes/TDHEs		
1630	Title VI - Pass-through Funds for Capacity-Building Activities		
1631	Title VI - Fiscal Services		
1632	Title VI - Security Enhancement		
1633	Title VI - Affordable Housing Activities		
1634	Title VI - Economic Benefits		
	10. Voucher Total	$	

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the person who completed this form	12. Name & Title of Authorized Signatory (type or print clearly)
	13. Signature X / 14. Date of Request

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Privacy Statement: Public Law 97-255, Financial Integrity Act, 31 U.S.C. 3512, authorizes the Department of Housing and Urban Development (HUD) to collect all the information (except the Social Security Number (SSN)) which will be used by HUD to protect disbursement data from fraudulent actions. The purpose of the data is to safeguard the Line of Credit Control System (LOCCS) from unauthorized access. The data are used to ensure that individuals who no longer require access to LOCCS have their access capability promptly deleted. Failure to provide the information requested on the form may delay the processing of your approval for access to LOCCS. While the provision of the SSN is voluntary, HUD uses it as a unique identifier for safeguarding the LOCCS from unauthorized access. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

form HUD-[illegible]-CBG (4/2000)

LOCCS / VRS Comprehensive Improvement Assistance Program Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

HUD implemented the Line of Credit Control System/Voice Response System (LOCCS/VRS) to process requests for payments to grantees. Grant recipients fill out a voucher form for the applicable HUD program with all the necessary information prior to making a telephone call using a touch tone telephone to initiate the drawdwon process. The grantee will be prompted for entering the information and for confirming information that is spoken back by the VRS simulated voice. This information is required to obtain benefits under the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
029	CIAP	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount :(dollars) . (cents)
1406	Operations	.
1408	Management Improvements	.
1410	Administration	.
1430	Fees & Costs	.
1440	Site Acquisition	.
1450	Site Improvement	.
1460	Dwelling Structures	.
1465	Dwelling Equipment - Non-Expendable	.
1470	Non-Dwelling Structures	.
1475	Non-Dwelling Equipment	.
1485	Demolition	.
1492	Moving to Work Demonstration	.
1495	Relocation Costs	.
1498	Mod Used for Development	.
1500	FY 1992 & Prior Year Grants	.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Privacy Statement: Public Law 97-255, Financial Integrity Act, 31 U.S.C. 3512, authorizes the Department of Housing and Urban Development (HUD) to collect all the information (except the Social Security Number (SSN)) which will be used by HUD to protect disbursement data from fraudulent actions. The purpose of the data is to safeguard the Line of Credit Control System (LOCCS) from unauthorized access. The data are used to ensure that individuals who no longer require access to LOCCS have their access capability promptly deleted. Failure to provide the information requested on the form may delay the processing of your approval for access to LOCCS. While the provision of the SSN is voluntary, HUD uses it as a unique identifier for safeguarding the LOCCS from unauthorized access. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Previous edition is obsolete

form HUD-50080-CIAP (4/2000)

LOCCS / VRS
Comprehensive Improvement Assistance Program-Technical Assistance
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166
(exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

HUD implemented the Line of Credit Control System/Voice Response System (LOCCS/VRS) to process requests for payments to grantees. Grant recipients fill out a voucher form for the applicable HUD program with all the necessary information prior to making a telephone call using a touch tone telephone to initiate the drawdwon process. The grantee will be prompted for entering the information and for confirming information that is spoken back by the VRS simulated voice. This information is required to obtain benefits under the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

1. Voucher Number	2. LOCCS Pgrm. Area	3. Period Covered by this Request (mm/yyyy)	4.
029	CIAP	from: to:	☐ 1 = Partial Disbursement 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project Number	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
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	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the person who completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature	14. Date of Request (mm/dd/yyyy)

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Privacy Statement: Public Law 97-255, Financial Integrity Act, 31 U.S.C. 3512, authorizes the Department of Housing and Urban Development (HUD) to collect all the information (except the Social Security Number (SSN)) which will be used by HUD to protect disbursement data from fraudulent actions. The purpose of the data is to safeguard the Line of Credit Control System (LOCCS) from unauthorized access. The data are used to ensure that individuals who no longer require access to LOCCS have their access capability promptly deleted. Failure to provide the information requested on the form may delay the processing of your approval for access to LOCCS. While the provision of the SSN is voluntary, HUD uses it as a unique identifier for safeguarding the LOCCS from unauthorized access. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

form HUD-50080-CIAP-TA (4/2000)

LOCCS / VRS
Comprehensive Grant

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
028	COMP	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	**8a. Grantee Organization's TIN**	**7a. Payee Organization's TIN**

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
1406	Operations	.
1408	Management Improvements	.
1410	Administration	.
1411	Audit Costs (CGP)	.
1430	Fees & Costs	.
1440	Site Acquisition	.
1450	Site Improvement	.
1460	Dwelling Structures	.
1465	Dwelling Equipment - Non-Expendable	.
1470	Non-Dwelling Structures	.
1475	Non-Dwelling Equipment	.
1485	Demolition	.
1490	Replacement Reserve (CGP)	.
1492	Moving to Work Demonstration	.
1495	Relocation Costs	.
1498	Mod Used for Development	.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001,1010 1012; 31 U.S.C. 3729, 3802)

Privacy Statement: Public Law 97-255, Financial Integrity Act, 31 U.S.C. 3512, authorizes the Department of Housing and Urban Development (HUD) to collect all the information (except the Social Security Number (SSN)) which will be used by HUD to protect disbursement data from fraudulent actions. The purpose of the data is to safeguard the Line of Credit Control System (LOCCS) from unauthorized access. The data are used to ensure that individuals who no longer require access to LOCCS have their access capability promptly deleted. Failure to provide the information requested on the form may delay the processing of your approval for access to LOCCS. While the provision of the SSN is voluntary, HUD uses it as a unique identifier for safeguarding the LOCCS from unauthorized access. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Previous edition is obsolete

form HUD-50080-COMP (4/2000)

LOCCS / VRS
Drug Elimination Program
Assisted Housing
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0476 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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1. Voucher Number	2. LOCCS Pgrm. Area	3. Period Covered by this Request (mm/yyyy)	
042	DF2B	from: to:	
5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name		
8. Grant or Project No.	6a. Grantee Organization's TIN		

9. Line Item No.	Type of Funds Requested	Amount (dollars)	* (cents)
9150	Physical Improvements		*
9160	Drug Prevention		*
9170	Drug Intervention		*
9180	Drug Treatment		*
9190	Other Program Costs		*
			*
			*
			*
			*
			*
			*
	10. Voucher Total	$	*

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (Including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS
Economic Development and Supportive Services
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0166), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Do not send this form to the above address.

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
073	EDSS	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	**8a. Grantee Organization's TIN**	**7a. Payee Organization's TIN**

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
4210	Supportive Services	.
4220	Economic Development Activities	.
4230	Administrative Costs	.
4240	Service Coordinator(s) / Case Manager(s) Salary	.
4250	Other Program Costs	.
		.
		.
		.
		.
		.
		.
		.
		.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-50080-EDSS (4/2000)

LOCCS / VRS
Drug Elimination Program
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0188 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
018	DRUG	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	6a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars)	* (cents)
9110	Reimbursement of Law Enforcement		*
9115	Special Initiative		*
9116	Gun Buyback TA Match		*
9120	Employment of Security Personnel		*
9130	Employment of Investigators		*
9140	Voluntary Tenant Patrol		*
9150	Physical Improvements		*
9160	Drug Prevention		*
9170	Drug Intervention		*
9180	Drug Treatment		*
9190	Other Program Costs		*
9191	FY 1991 Grant Costs		*
			*
	10. Voucher Total	$	*

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS
Family Investment Centers Program
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
060	FIC	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) * (cents)
9610	Administrative Costs	*
9620	Other Program Costs	*
9630	Supportive Services	*
9640	Conversion/Renovation Activities	*
		*
		*
		*
		*
		*
		*
		*
		*
		*
	10. Voucher Total	$ *

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-50080-FIC (4/2000)

LOCCS / VRS
Hope - Elderly Independence
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
041	HEI	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	**6a. Grantee Organization's TIN**	**7a. Payee Organization's TIN**

9. Line Item No.	Type of Funds Requested	Amount (dollars) * (cents)
2000	Hope Grant - Year 1 Approved Budget	*
3000	Hope Grant - Year 2 Approved Budget	*
4000	Hope Grant - Year 3 Approved Budget	*
5000	Hope Grant - Year 4 Approved Budget	*
6000	Hope Grant - Year 5 Approved Budget	*
		*
		*
		*
		*
		*
		*
	10. Voucher Total	*

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS
HOPE 1 Implementation Grant
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	
021	HOP1	from: to:	
5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name		
4. Grant or Project No.	6a. Grantee Organization's TIN		

a. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
9410	Architecture & Engineering	.
9415	Implementation of Homeownership Program	.
9420	Rehabilitation Costs	.
9425	Administrative Costs	.
9430	Development of RMCs/RCs	.
9435	Counseling & Training	.
9440	Relocation	.
9445	Temporary Relocation	.
9450	Assistance for Operating Expenses	.
9455	Replacement Reserves	.
9460	Replacement Housing	.
9465	Legal Fees	.
9470	Ongoing Training Needs	.
9475	Economic Development	.
9480	Other Eligible Activities	.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-[illegible]-HOP1-b (4/2000)

LOCCS / VRS
HOPE VI Program
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Prgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
058	URP	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
1408	Management Improvement	.
1410	Administration	.
1430	Fees & Costs	.
1440	Site Acquisition	.
1450	Site Improvement	.
1460	Dwelling Structures	.
1465	Dwelling Equipment - Non-Expendable	.
1470	Non-Dwelling Structures	.
1475	Non-Dwelling Equipment	.
1485	Demolition	.
1495	Relocation Costs	.
		.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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Previous editions are obsolete

form HUD-50080-URP (4/2000)

LOCCS / VRS Indian HOME Program Payment Certification Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp.6/30/2000)

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Do not send this form to the above address.

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1. Voucher/Certification Number:	2. LOCCS Pgm. Area:	3. Period Covered by this Request (mm/yy):	4. 1 = Partial Disbursement, 2 = Final Disbursement
027	HOMI	from: to:	☐

5. Voice Response No. (5 digits, hyphen, 5 more):	6. Indian Tribe's Name:	7. Payee Organization's Name:
8. Grant No:	6a. Indian Tribe's Taxpayer ID No.:	7a. Payee Organization's TIN:

9. Line Item No.	Type of Funds Requested	Amount: (dollars) * (cents)
1000	Non-Administrative Costs	*
2000	Administrative Costs	*
		*
		*
		*
		*
		*
		*
		*
		*
		*
	10. Voucher/Certification Total:	$ *

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who called:	12. Name & Title of Authorized Signatory (type or print clearly):	
	13. Signature: X	14. Date of Request:

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Privacy Statement: Public Law 97-255, Financial Integrity Act, 31 U.S.C. 3512, authorizes the Department of Housing and Urban Development (HUD) to collect all the information (except the Social Security Number (SSN)) which will be used by HUD to protect disbursement data from fraudulent actions. The purpose of the data is to safeguard the Line of Credit Control System (LOCCS) from unauthorized access. The data are used to ensure that individuals who no longer require access to LOCCS have their access capability promptly deleted. Failure to provide the information requested on the form may delay the processing of your approval for access to LOCCS. While the provision of the SSN is voluntary, HUD uses it as a unique identifier for safeguarding the LOCCS from unauthorized access. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

form HUD-[illegible]-HOMI (4/2000)

LOCCS / VRS
Indian Housing Block Grant
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

HUD implemented the Line of Credit Control System/Voice Response System (LOCCS/VRS) to process requests for payments to grantees. Grant recipients fill out a voucher form for the applicable HUD program with all the necessary information prior to making a telephone call using a touch tone telephone to initiate the drawdown process. The grantee will be prompted for entering the information and for confirming information that is spoken back by the VRS simulated voice. This information is required to obtain benefits under the Native American Housing and Self-Determination Act of 1996. The information requested does not lend itself to confidentiality.

1. Voucher Number	2. LOCCS Pgrm. Area	3. Period Covered by this Request (mm/yy)
079	IHBG	from: to:
5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	
8. Grant or Project No.	6a. Grantee Organization's TIN	

9. Line Item No.	Type of Funds Requested	Amount (dollars)	(cents)
1600	Current Assisted Stock Operating Subsidy		
1601	Investments		
1602	IHBG Balance		
	10. Voucher Total	$	

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this Form:	12. Name & Title of Authorized Signatory (type or print clearly):	
	13. Signature: X	14. Date of Request:

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

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form HUD-50080-IHBG (4/2000)

LOCCS / VRS
Lead-Based Paint Risk Assessment
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
036	LBP	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	6a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
1410	Administration	.
1430	Fees & Costs	.
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	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS
Moving to Work
Demonstration Program
Technical Assistance Grants
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher/Certification Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yy)	4. ☐ 1 = Partial Disbursement 2 = Final Disbursement
094	MTWG	from: to:	

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant No	8a. Grantee Organization's TIN No.	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars)	(cents)
0100	MTW Technical Assistance		
	10. Voucher/Certification Total:	$	

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who called:	12. Name & Title of Authorized Signatory (type or print clearly) :	
	13. Signature : X	14. Date of Request :

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form HUD-50080-MTW (8/20/2000)

LOCCS / VRS
Public Housing Development
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (Exp.8/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0166), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Do not send this form to the above address.

HUD implemented the Line of Credit Control System/Voice Response System (LOCCS/VRS) to process requests for payments to grantees. Grant recipients fill out a voucher form for the applicable HUD program with all the necessary information prior to making a telephone call using a touch tone telephone to initiate the drawdown process. The grantee will be prompted for entering the information and for confirming information that is spoken back by the VRS simulated voice. This information is required to obtain benefits under the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

1. Voucher Number:	2. LOCCS Pgm. Area:	3. Period Covered by this Request (mm/yy):	4. 1 = Partial Disbursement, 2 = Final Disbursement
032	PDEV	from: to:	

5. Voice Response No. (5 digits, hyphen, 5 more):	6. Grantee Organization's Name:	7. Payee Organization's Name:
8. Grant or Project No:	8a. Grantee Organization's TIN:	7a. Payee Organization's TIN:

9. Line Item No.	Type of Funds Requested	Amount: (dollars) . (cents)
1406	Operations	.
1410	Administration	.
1425	Initial Operating Deficit	.
1430	Planning (except HUD technical service fee)	.
1440	Site Acquisition & Expenses	.
1450	Site Improvements	.
1475	Non-Dwelling Equipment	.
1480	Construction Work/Contract Work-In Progress	.
1485	Demolition	.
1495	Relocation Costs	.
1499	Development Used for Mod	.
1500	FY 94 & Prior Year Grants & Loans	.
	10. Voucher Total:	.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this Form:	12. Name & Title of Authorized Signatory (type or print clearly):	
	13. Signature: X	14. Date of Request:

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form HUD-50080-PDEV 4/2000

LOCCS / VRS
Public Housing
Technical Assistance
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (Exp.6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
049	PHTA	from to	1 = Partial Disbursement 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project Number	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount: (dollars) * (cents)
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		*
		*
		*
	10. Voucher Total	$ *

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the person who completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS
PH Apprenticeship Demonstration Program in Construction Trades
(Urban Youth Corp) Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Prgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
067	UYC	from: to:	☐ 1 = Partial Disbursement 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
9910	Administrative Costs	.
9920	Stipends	.
9930	Supportive Services	.
9940	Uniforms and Tools	.
9950	Subgrants	.
9970	Other Program Costs	.
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	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY (ROSS) PROGRAM

Payment Voucher (All Grantees) Resident Service Delivery Models

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
090	ROSS	from: to:	☐ 1 = Partial Disbursement 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
FY 1999-FY 2000	RESIDENT SERVICE DELIVERY MODELS	.
2005	Program Coordinator	.
2010	Physical Improvements	.
2020	Entrepreneur Business Development	.
2021	Establishing a Revolving Loan Fund (RLF Establishment)	.
2022	Developing a Credit Union (CU Development)	.
2030	Business Development	.
2031	Develop Business Plan	.
2032	Conduct Market Analysis	.
2033	Secure Licensing, Insurance, Bonding (Licensing/Bonding)	.
2034	Training Related to Resident Owned Business (ROB Training)	.
2035	Establishment of Resident Managed Business Development (RMBD Establishment)	.
2040	Resident Organization Development Activities	.
2041	Organize Community	.
2042	Operating Procedures	.
2043	Develop MOU	.
2044	Develop Plan for Technical Assistance (T/A Plan Development)	.
2045	Consultant Contracts	.
2046	Self Sufficiency Programs	.
2050	Resident Management	.
2051	Conduct Feasibility Study	.
2052	Secure Training/Skills/Expertise (RM Training)	.

Continued on next page

Continued from page 1

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
2053	Develop MOU	.
2054	Consultant	.
2055	Secure T/A to Draft Contract (Draft Contract T/A)	.
2056	Negotiate Contract with PHA (Contract Negotiation)	.
2057	Conduct Resident Training Preparation (Resident Training)	.
2060	Self Sufficiency Program	.
2061	Program Coordinator	.
2062	Physical Improvements	.
2063	Employment and Job Readiness (Job Readiness)	.
2064	Job Training	.
2065	Management Related Employment Training (Mgmt/Employment Training)	.
2066	Vocational Training	.
2067	Technical Assistance	.
2070	Family Supportive Services	.
2070	Elderly Supportive Services	.
9100	Travel Costs	.
9200	Other Resident Costs (Stipends, Reimbursements) – (Resident Costs)	.
9300	Contract Administrator	.
9400	Administrative and Other Costs	.
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	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS
RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY (ROSS) PROGRAM
Payment Voucher (All Grantees)
Service Coordinators for Public Housing

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
073	ROSS	from: to:	☐ 1 = Partial Disbursement 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	6a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
FY 1998-FY 2000	ELDERLY SERVICE COORDINATORS	.
9810	Administrative Costs	.
9820	Other Program Expenses	.
9830	Training	.
9840	Salaries	.
9850	Fringe	.
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	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-50080-SC (4/7/2000)

LOCCS / VRS RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY (ROSS) PROGRAM

Payment Voucher (All Grantees)

Resident Management and Business Development

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Prgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
090	ROSS	from: to:	☐ 1 = Partial Disbursement 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
FY 1998-FY 2000	RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT	.
1010	Physical Improvements	.
1020	Resident Business Development	.
1021	Develop Business Plan	.
1022	Conduct Market Analysis	.
1023	Licensing, Insurance Bonding (Licensing/Bonding)	.
1024	Training Related to Resident Owned Business (R.O.B. Business Training)	.
1025	Establishment of Resident Managed Business Development (RMBD Establishment)	.
1026	Technical Assistance	.
1030	Resident Organization Development Activities (RO Activities)	.
1031	Organize Community	.
1032	Operating Procedures	.
1033	Develop MOU	.
1034	Develop Plan for Technical Assistance (Develop T/A Plan)	.
1035	Consultant Contracts	.
1036	Self Sufficiency Programs	.
1040	Resident Management	.
1041	Conduct Feasibility Study	.

Continued on next page

Continued from page 1

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
1042	Secure Training/Skills/Expertise (RM Training)	.
1043	Develop MOU	.
1044	Secure T/A to Draft Contract (Draft Contract T/A)	.
1045	Negotiate Contract with PHA (PHA Contract Negotiation)	.
1046	Conduct Resident Training/Preparation (Resident Training)	.
1050	Self Sufficiency Program	.
1051	Employment and Job Readiness	.
1052	Job Training	.
1053	Management Related Employment Training (Mgmt. Employment Training)	.
1054	Vocational Training	.
1055	Technical Assistance	.
1060	Supportive Services	.
9100	Travel Costs	.
9200	Other Resident Costs (Stipends, Reimbursements) – (Resident Costs)	.
9300	Contract Administrator	.
9400	Administrative and Other Costs	.
		.
		.
		.
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		.
		.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY (ROSS) PROGRAM

Payment Voucher (All Grantees)

Capacity Building/Conflict Resolution

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
090	ROSS	from: to:	☐ 1 = Partial Disbursement 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	**8a. Grantee Organization's TIN**	**7a. Payee Organization's TIN**

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
FY 1999-FY 2000	CAPACITY BUILDING	.
3000	Capacity Building Activities	.
3010	Training	.
3011	Consultants	.
3012	Other	.
		.
9100	Travel Costs	.
9400	Administrative Costs	.
	CONFLICT RESOLUTION	
4000	Mediation Activities	.
4010	Establishment of Violence Free Zones (Violence Free Zones)	.
4011	Youth Services Activities	.
4012	Resident/PHA Issues	.
4013	Development of Materials	.
4014	Training for Mediation/Reconciliation (Mediation/Reconciliation Trng)	.
4015	Technical Assistance to RAs (RA T/A)	.
		.
9100	Travel Costs	.
9400	Administrative Costs	.
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		.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (Including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-50080-CB/CR (4/7/2000)

LOCCS / VRS
Service Coordinators for Public Housing
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp.6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
064	SCPH	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	6a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
9810	Administrative Costs (Excluding Salaries)	.
9820	Other Program Expenses	.
9830	Supportive Services	.
9840	Training	.
9850	Salaries	.
		.
		.
		.
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		.
	10. Voucher Total	$.

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-50080-SCPH (4/2000)

LOCCS / VRS
Special Purpose Grants
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0188
(exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
044	SPG	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
1000	Personnel	.
1100	Fringe Benefits	.
1200	Travel	.
1300	Equipment	.
1400	Supplies	.
1500	Contractual / Sub-Grantees	.
1600	Construction	.
1700	Other	.
1800	Indirect Charges	.
		.
		.
		.
	10. Voucher Total	$.

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11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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LOCCS / VRS
Tenant Opportunities Program
Payment Voucher (All Grantees)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yy)
025	TOP	from to
5. Voice Response No. (9 digits, hyphen, 5 more)	6. Grantee Organization's Name	
8. Grant or Project No.	6a. Grantee Organization's TIN	

9. Line Item No.	Type of Funds Requested	Amount (dollars)	(cents)
9810	Employment Readiness Training Contract		
9820	Business/Job Training Contracts		
9830	Job Placement Retention Contracts		
9840	Mediation Activities		
9850	Resident Organization Development Activities		
9851	Organize Community		
9852	Operating Procedures		
9853	Develop MOU		
9854	Plan for Technical Assistance		
9855	Consultant Contracts		
9856	Implement Property Management		
9857	Self-Sufficiency Programs		
9860	Travel Costs		
9870	Other Resident Costs (Stipends, Reimbursements)		
9880	Administrative and Other Costs		
	10. Voucher Total	$	

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11. Name & Phone Number (including area code) of the person who completed this form.	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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Previous editions are obsolete

form HUD-50080-TOP (4/2000)

LOCCS / VRS
Traditional Indian Housing Development
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (Exp.6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)	4.
031	TIHD	from: to:	☐ 1 = Partial Disbursement ☐ 2 = Final Disbursement

5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	7. Payee Organization's Name
8. Grant or Project No.	8a. Grantee Organization's TIN	7a. Payee Organization's TIN

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
1406	Operations	.
1410	Administration	.
1425	Initial Operating Deficit	.
1430	Planning	.
1440	Site Acquisition	.
1450	Site Improvements	.
1451	Off Site Sewer & Water	.
1475	Non-Dwelling Equipment	.
1480	Construction Work/Contracts In Progress	.
1485	Demolition	.
1495	Relocation Costs	.
1499	Development Used for Mod	.
1500	FY 1994 & Prior Year Grants	.
	10. Voucher Total	$.

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form HUD-53000-TIHD (4/2000)

LOCCS / VRS
Vacancy Reduction Program
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)
059	VRP	from: to:
5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	
8. Grant or Project No.	6a. Grantee Organization's TIN	

9. Line Item No.	Type of Funds Requested	Amount (dollars) . (cents)
1408	Management Improvement	.
1410	Administration	.
1430	Fees & Costs	.
1440	Site Acquisition	.
1450	Site Improvement	.
1460	Dwelling Structures	.
1465	Dwelling Equipment - Non-Expendable	.
1470	Non-Dwelling Structures	.
1475	Non-Dwelling Equipment	.
1495	Relocation Costs	.
		.
		.
	10. Voucher Total	$.

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11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-50080-VRP (4/2000)

LOCCS / VRS
Youth Apprenticeship Program
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)
062	YAP	from: to:
5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	
8. Grant or Project No.	6a. Grantee Organization's TIN	

9. Line Item No.	Type of Funds Requested	Amount (dollars) * (cents)
9910	Administrative Costs	*
9920	Stipends	*
9930	Supportive Services	*
9940	Uniforms and Tools	*
9950	Subgrants	*
9960	Data Collection/Evaluation	*
9970	Other Program Costs	*
		*
		*
		*
		*
		*
		*
		*
	10. Voucher Total	$ *

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this form	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

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form HUD-50080-YAP (4/2000)

LOCCS / VRS
Youth Development Initiative
Payment Voucher

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0166 (exp. 6/30/2000)

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1. Voucher Number	2. LOCCS Pgm. Area	3. Period Covered by this Request (mm/yyyy)
063	YDI	from: to:
5. Voice Response No. (5 digits, hyphen, 5 more)	6. Grantee Organization's Name	
8. Grant or Project No.	6a. Grantee Organization's TIN	

9. Line Item No.	Type of Funds Requested	Amount (dollars) * (cents)
9710	Administrative Costs	*
9720	Other Program Expenses	*
9730	Supportive Services	*
9740	Conversion/Renovation	*
9750	Service Coordinator	*
9760	Acquisition	*
9770	New Construction	*
		*
		*
		*
		*
		*
		*
	10. Voucher Total	$ *

I certify the data reported and funds requested on this voucher are correct and the amount requested is not in excess of immediate disbursement needs for this program. In the event the funds provided become more than necessary, such excess will be promptly returned, as directed by HUD.

11. Name & Phone Number (including area code) of the Person who Completed this Form:	12. Name & Title of Authorized Signatory (type or print clearly)	
	13. Signature X	14. Date of Request

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Privacy Statement: Public Law 97-255, Financial Integrity Act, 31 U.S.C. 3512, authorizes the Department of Housing and Urban Development (HUD) to collect all the information (except the Social Security Number (SSN)) which will be used by HUD to protect disbursement data from fraudulent actions. The purpose of the data is to safeguard the Line of Credit Control System (LOCCS) from unauthorized access. The data are used to ensure that individuals who no longer require access to LOCCS have their access capability promptly deleted. Failure to provide the information requested on the form may delay the processing of your approval for access to LOCCS. While the provision of the SSN is voluntary, HUD uses it as a unique identifier for safeguarding the LOCCS from unauthorized access. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

form HUD-50080-YDI (4/2000)

[FR Doc. 00–19591 Filed 8–2–00; 8:45 am]
BILLING CODE 4210-33-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4563–N–11]

Notice of Proposed Information Collection for Public Comment for the Public Housing Agency (PHA) Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation Report

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 2, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation Report.

OMB Control Number: 2577–0036.

Description of the need for the information and proposed use: HUD needs the information on the Cost Budget/Statement to determine whether PHA expenditures or requests for funds are reasonable in relation to the stage of development so that, if they are not, appropriate action can be taken to prevent budget overruns or excessive financing. PHAs submit the Actual Development Cost Certificate to notify HUD that all development work has been completed, and to report the amount for all costs relating to development. Acquisition and relocation reports enable HUD to determine PHA compliance with acquisition and relocation requirements pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Agency form numbers, if applicable: HUD–52427. HUD–52484.

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 824 respondents, annually, semi-annually, and quarterly, five average hours per response, 11,667 hours for a total reporting burden.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 27, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Development Cost Budget/ Cost Statement

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0030 (exp. 7/31/2000)

Dwelling Units			Copy Number:	PR/Project Number:
Family	Elderly	Total		
			Public Housing Agency:	Locality of Project:

No financial or technical assistance may be provided to a project pursuant to an Annual Contributions Contract unless a PHA Proposal, including a development cost budget, has been approved (24 CFR 941).

Housing Type and Production Method	Turnkey	Conv.	Force Act.
New Construction			
ACQ W/Subst. Rehab.			
ACQ W/O/Subst. Rehab.			

Status (Check one) ☐ PHA Proposal (PP) Budget
☐ Budget Between PP and Contract Award
☐ Contract of Sale/Contract Award Budget
☐ Budget Between Contract Award & Final
☐ Final Development Cost Budget
☐ Development Cost Control Statement
☐ Statement of Actual Development Cost

Subpart I - Budget

Line No.	Account Classification (a)		Latest Approved Budget Date ____ (b)	Actual Development Cost Incurred To ____ (c)	Actual Contract Award Balance (d)	Estimated Additional to Complete (e)	Amount (c) + (d) + (e) (f)	Per Unit (g)
Developer's Price								
1	1440	Site						
2	1450	Site Improvements						
3	1460	Dwelling Construction						
4	1465	Dwelling Equipment						
5	1470	Nondwelling Construction						
6	1475	Nondwelling Equipment						
7	1430.1	Archit. & Engr. Svcs.						
8		Other						
9		Total Developer's Price						
Public Housing Agency Costs								
	Operations							
10	1408	Operations						
	Administration							
11	1410.1	Nontechnical Salaries						
12	1410.2	Technical Salaries						
13	1410.4	Legal Expenses						
14	1410.9	Employee Benefit Contribution						
15	1410.10	Travel						
16	1410.18	Equipment Expended						
17	1410.19	Sundry						
18		Total Administration						
	Liquidated Damages							
19	1415	Liquidated Damages						
	Interest							
20	1420.1	Interest to HUD						
21	1420.2	Interest on Notes—Non-HUD						
22	1420.7	Interest Earned from Invest.						
23		Total Interest						
	Initial Operating Deficit							
24	1425	Initial Operating Deficit						
	Planning							
25	1430.1	Architectural & Engr. Fees						
26	1430.2	Consultant Fees						
27	1430.6	Permit Fees						
28	1430.7	Inspection Costs						
29	1430.9	Housing Surveys						
30	1430.19	Sundry Planning Costs						
31		Total Planning						

form HUD-52484 (6/96)
ref Handbook 7417.1

Copy Number:	PP/Project Number:

Subpart I - Budget (continued)

Line No.	Account Classification (a)	Latest Approved Budget Date _____ (b)	Actual Development Cost Incurred To _____ (c)	Actual Contract Award Balance (d)	Estimated Additional to Complete (e)	Amount (c) + (d) + (e) (f)	Per Unit (g)
Site Acquisition							
32	1440.1 Property Purchases						
33	1440.2 Condemnation Deposits						
34	1440.3 Excess Property						
35	1440.4 Surveys and Maps						
36	1440.5 Appraisals						
37	1440.6 Title Information						
38	1440.8 Legal Costs – Site						
39	1440.10 Option Negotiations						
40	1440.12 Current Tax Settlement						
41	1440.19 Sundry Site Costs						
42	1440.20 Site Net Income						
43	**Total Site Acquisition**						
44	1450 Site Improvements						
45	1460 Dwelling Construction						
46	1465 Dwelling Equipment						
47	1470 Nondwelling Construction						
48	1475 Nondwelling Equipment						
49	1480 Contract Work In Progress						
50	1485 Demolition						
51	1495 Relocation Costs						
52	1499 Development Used for Mod.						
53	Total (Including Donations)						
54	Less Donations						
55	Total Before Contingency (less Donations)						
56	Contingency: 1% to 5% (or less) of line 55						
57	Total Development Cost						

Subpart II - Detail of Other in Developer's Price

1. Developer's Fee and Overhead $_____
2. Interim Financing _____
3. Closing Costs _____
4. Property Taxes and Assessments _____
5. State or Local Sales, Excise or Other Taxes _____

Total Other $_____

Subpart III - Supporting Data for Cost Estimates

For the PP Budget, attach an itemized breakdown of the costs chargeable to each of the following accounts. For subsequent budgets, provide this information only for accounts that are being changed.

1410.1 and 1410.2: List, by job title, each PHA employee whose salary, or portions thereof, will be chargeable to these accounts. For each, show the annual rate of gross salary, the estimated length of time to be spent in connection with development of this project, and the total gross salary which is properly chargeable to either of these accounts. If only a portion of the employee's time will be chargeable to this project, show the percentage that will be so chargeable; and show, in a footnote, the percentage distribution to other projects and the accounts to which distributed.

1410.19: List and show the cost of each item of administrative and general expense for which a specific account is not provided in the 1410 group of accounts. If only a portion of the cost of any item will be chargeable to this project, show the percentage and amount that will be so chargeable; and show, in a footnote, the percentage distribution to other projects.

1430.2: List all planning consultants not paid under the architect's contract and, for each, identify and show the cost of the services provided.

1430.7: Provide the same information required for 1410.1 and 1410.2, listing employees of the architect (or PHA when use of PHA employees has been previously approved) who will perform inspection work for the project.

1450: Where off-site facilities are proposed to be included, identify and show the cost of such facilities and provide justification for including such costs in TDC.

1465: Identify and show the cost of each item included in this account.

1475: Complete the Table below and, on a separate attachment, list and show the cost of each item included in each sub-account.

Nondwelling Equipment (1475)	Cost
1475.1 Office Furniture and Equipment	
1475.2 Maintenance Equipment	
1475.3 Community Space Equipment	
1475.7 Automotive Equipment	
1475.9 Expendable Equipment	
Total Nonewelling Equipment	

1495: State the number of households and businesses to be displaced, and identify and show the estimated cost of relocation services and payments to be provided.

Copy Number:

PR/Project Number:

Subpart IV - New Construction – Prototype Cost Comparison Percentage

A. Dwelling Construction and Equipment (DC&E) Cost from Subpart I
1. Total for Account 1460 $
2. Total for Account 1465
3. Subtotal (1 + 2) $
4. Contingency (_____% x line 3)
5. Total DC&E (3 + 4) $

B. PPCL Total
(Attach calculation from PP, Part I, Subpart B, Item 3)

C. Comparison Percentage = %
(Line A5 ÷ Line B)

Subpart V - Acquisition–Development Cost Comparison Percentage

A. Proposed TDC from Subpart I $

B. Hypothetical TDC $
(Attach calculation from PP, Part I, Subpart B, Item 5a or, if applicable, other estimate and rationale.)

C. Comparison Percentage = %
(Line A ÷ Line B)

Subpart VI - Detail of Donations

Line No.	Item (Please List)	Amount (Value)
1		
2		
3		
4		
	Total	

Subpart VII - Previously Approved Budgets

List chronologically the dates and TDC on all previously approved budgets, beginning with the PHA Proposal (P) Budget, and state the purpose (i.e., one of the budgets listed in the "Status" block on page 1 and any amendments thereto).

Date	TDC	Purpose
		PP

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Submitted By: Name & Title of Official Authorized to Sign for PHA:

Signature of PHA's Authorized Official & Date:

X

[redacted]

Recommended for Approval By: Name & Title of Authorized Official:

Signature of Authorized Official & Date:

X

Approved By: Name & Title of Authorized Official:

Signature of Authorized Official & Date:

X

This form HUD-52484 includes the account classification numbers, actual development cost incurred, actual contract award balance, and total development cost which are apart of a Public Housing Agency's (PHA's) development cost budget/cost statement for development of a public housing project.

PHAs provide information on the amount of monies which will be needed to develop the project and other costs associated with it . The information collected in the proposal is used by HUD for review and approval of development funds.

Public Reporting Burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Response to this collection of information is mandatory to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Instructions for Preparing Development Cost Budgets/Cost Statements, Form HUD-52484

A. General

This form HUD-52484 shall be used for all Development Cost Budgets and Statements identified in the "Status" section on page 1 and should be carefully completed for each type of submission. For information supplementing these instructions, see Public Housing Development Handbook 7417.1 Descriptions of the budget accounts to which costs should be charged are set forth in Low-Rent Technical Accounting Guide 7510.1, Chapter 4, Section 15. The HUD Field Office, upon request, will assist PHAs in the distribution of costs to individual accounts.

1. **General Preparation.** The Form should cover all of the housing to be built under a single Contract of Sale/Construction Contract, whether on one or several sites. The "Dwelling Units" section at the top of page 1 shall show, in the "Elderly" block, the total of all units designed specifically for the elderly, including any such units which have more than one bedroom; and the other sections at the top of the page shall be completed as appropriate. Round out all amounts to even dollars. Where descriptions or supplementary data are required, use an attached sheet, identifying the item to which it is applicable.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

2. **Use of Form as Development Cost Budget**

a. When first used (with form HUD-52483-A, PHA Proposal (PP), Part I, Subpart B, Item 2), the PHA shall submit an original and 2 copies to the HUD Field Office, as in the case of the PP and other related attachments. (If any major changes are proposed following approval of the PP, a revised PP and PP budget shall be submitted in accordance with Handbook 7417.1.) If there was no preliminary loan, the PHA shall enter the estimated costs for development of the project in column (f) and complete column (g) as appropriate. If the PHA received a preliminary loan, the form shall be completed as follows. In column (b), cross out the words "Latest Approved Budget" in the heading and enter the date the Preliminary Loan Contract was executed; enter the words "Preliminary Loan Contract" lengthwise in the column; and enter the total preliminary loan amount in line 58. In columns (c) and (d), enter the latest readily available figures from the books of account maintained for the Preliminary Loan Contract; and, in the heading of column (c), enter the date as of which such figures were taken. In column (e), enter the estimated costs for development of the project. Enter in column (f) the sum of columns (c), (d) and (e); and complete column (g) as appropriate.

b. For subsequent Development Cost Budgets, submit an original and 2 copies to the HUD Field Office. Enter the date of the latest approved budget in the heading of column (b) and, for each line item, enter the applicable latest approved cost. Enter in columns (c) and (d) the latest readily available figures from the books of account for Accounts 1410 through 1475 and Accounts 1485, 1495, and 1499; and, in the heading of column (c), show the date as of which such figures were taken. Enter in column (e) for each Account 1410 through 1475, 1485, 1495, and 1499 an estimate of any additional cost to be incurred in completing the development work. Enter in column (v) the sum of columns (c), (d) and (e); and complete column (g) as appropriate. For Account 1480, which is not applicable to turnkey projects, leave all columns blank until submission of the Contract Award Budget. At that time and thereafter, the entries for Account 1480 shall be as follows:

(1) For a Contract Award Budget, list each proposed construction contract to be included under Account 1480 in column (a) by name of contractor and type of work. Opposite each such listing, enter in columns (d) and (f) the amount shown in column (3) of the corresponding form HUD-52396, Analysis of Main Construction Contact (or, in cases where a change in any bid amount is proposed, enter the amount shown in column (5) of form HUD-52396 and identify change order(s) included in the contract amount). Amounts for all work and equipment not covered by contracts shall remain in the appropriate subsidiary account.

(2) For each budget submitted after a Contract Award Budget, enter in column (c) the total of payments made to each contractor; in column (d) the balance owing under each original contract; in column (e) the amount of any increases or decreases for change orders known to be needed at the time the budget is submitted; and in column (f) the sum of columns (c), (d) and (e). If the sum of columns (c) and (d) differs from the original contract amount in column (f) of the latest approved budget because of executed change orders, identify such change orders.

(3) For the Final Budget, this Account 1480 is to be left blank and the amounts for each completed construction contract shall be redistributed to the appropriate Accounts 1450 through 1475, 1485, and 1499. On an attachment to the Final Budget, identify each construction contract by name of contractor and type of work; and show the final contract amounts, broken down in to the appropriate Accounts 1450 through 1475, 1485, and 1499.

3. **Use of Form as Cost Statement**

a. When used as the quarterly Development Cost Control Statement (required during the period beginning with the date a project is placed under an ACC and ending with the date the form HUD-52427, Actual Development Cost Certificate, is submitted for each project), columns (b), (c), (d) and (f) shall be completed; and columns (e) and (g) shall be left blank. However, in cases where the PHA is reasonably certain that it will be necessary to incur additional costs that were not anticipated at the time of submission of the latest approved budget (identified in column (b)), the PHA shall enter the estimated amounts of such additional costs in column (e) so the Field Office will be aware of its budgetary problems and can take appropriate steps to help solve them. (In such cases, the amount in column (f) will be the sum of columns (c), (d) and (e).) If

it is determined that the solution involves a change in any of the latest approved budget amounts, the PHA shall prepare a revised budget and submit it to the Field Office in accordance with instructions in Handbook 7417.1 and item A2b, above.

b. When used as the Statement of Actual Development Cost (which is submitted simultaneously with form HUD-52427, Actual Development Cost Certificate), only columns (b) and (c) shall be completed for all accounts, except Account 1480 (which requires no entries in any column).

B. Subpart I – Budget

1. **Development Method**

a. **Turnkey.** For projects developed under the turnkey method, the account classifications for Developer's Price (lines 1 through 9) are to be completed. Where preselected sites are used, entries should be made in lines 32 through 43, as applicable, for those site costs borne by the PHA prior to the assignment to the developer of the right to purchase the site. The Total Developer's Price (line 9) shall be the price agreed upon by the developer, the PHA and HUD. The amounts entered for site and architectural and engineering services (lines 1 and 7) should be the amounts to be included, where applicable, in the Preliminary Contract of Sale for the eventuality of separate purchase by he PHA. The amount entered for Other (line 98 and Subpart II) should be the sum of (1) Developer's fee and Overhead, exclusive of builder-contractor's overhead and profit which is in other items of the developer's price; (2) Interim Financing; (3) Closing Costs; (4) property taxes and assessments during construction; and (5) State or local sales, excise or other taxes, if any. Planning costs approved by the HUD Field Office will allow for entries in lines 25 and 26, as well as in line 7 (in addition to inspections for which an entry will be made in line 28).

b. **Conventional.** For conventional projects, lines 1 through 9 will remain blank and, instead, those accounts will be completed utilizing lines 25 through 48. For lines 44 through 48, the Schematic Design Documents and the Architect's Estimate of Project Construction Cost will provide a basis for reasonable estimates for costs. Any comments from the HUD Field Office as a result of the prior submission of these documents shall be reflected in the Budget.

c. **Acquisition.** For acquisition projects, Account 1440 will be the approved price for the site, including the structures thereon which are to be acquired for the project; and Accounts 1450 through 1485 will be used for the work to be done. Lines 1 through 9, or 32 through 48, will be completed as required by the development method being used and other instructions herein.

2. **1410 – Administration (lines 10 through 18).** PHAs with experience in the development of low-income housing should estimate development-related administration costs on the basis of such experience, as applicable, for the current development method. For turnkey projects, there will be less administration activity than for conventional projects. The amounts for the various subaccounts shall be the costs of the items of expense which are directly traceable to and essential in the planning, construction and completion of the project, and the prorata amounts of the PHA's total administration costs with respect to the items which are not wholly traceable to the project. Administration (1410) and Planning (1430) Costs ordinarily terminate with the End of the Initial Operating Period. After this date, only costs of personnel employed full time in development work may be charged to these accounts.

3. **1420 – Interest (lines 22 through 26).** For turnkey projects, because of the limited PHA financing until the completed project is acquired, PHA interest shall be limited to not more than 5 percent for 5 months on the total development cost, excluding interest and contingency. If the project is so planned as to be completed and occupied in several stages, PHA interest shall be computed from the time the PHA takes title to completed increments of the projects to not more than 5 percent for 5 months after completion of the last increment. For a conventional project PP budget, interest shall be limited to not more than 5 percent for each 12 months or portion thereof. For budgets subsequent to the PP Budget, Accounts 1420.1 and .2 shall be charged, to the extent specifically approved by HUD, in accordance with Handbook 7510.1. Line 26, Total Interest, is the amount which results after the deducting interest earned on investments from the interest charged.

4. **1425 – Initial Operating Deficit (line 24).** In the absence of dependable previous experience data on which to base a preliminary estimate of the initial operating deficit, an allowance of not to exceed $50 per dwelling unit may be used unless more is specifically authorized by HUD.

5. **1430 – Planning (lines 25 through 31).** For turnkey projects generally, architectural-engineering services will be included in the Developer's Price except for periodic inspection of construction by an independent architect employed by the PHA (Account 1430.7).

6. **1440.5 – Appraisals (line 36).** No entry shall be made in this Account when HUD performs the appraisal since no fee will be charged. This Account shall be charged with the costs incurred by the PHA for appraisals of land or improvements when provided by fee appraisers.

7. **Donations (lines 53 and 54).** Account 2850 is described in Handbook 7510.1. A donation represents cash and/or the reasonable value of property donated to the project. Any costs met from cash donations and the value of any donations in kind will be included under the appropriate cost account and itemized in Subpart VI. Since donations cannot be included in the Total Development Cost, the total of donations will be subtracted therefrom in Subpart I of the Budget.

8. **Contingency (line 58).** Enter not more than 5 percent for conventional projects; nor more than 1 percent for turnkey, of the Total Before Contingency.

C. Subpart III – Supporting Data for Cost Estimate in Account 1475 (Lines 6 and 48). Generally, the PHA provides nondwelling equipment, requiring an entry in line 48 only. Include only nondwelling equipment intended for use in developing the specific project. Account 1475 shall not include automotive passenger vehicles; and shall not, without detailed, itemized justification fully endorsed by the officials involved in its approval, exceed one-half of one percent of the project's Total Development Cost.

D. Subpart IV – New Construction-Prototype Comparison Percentage The accounts used in this comparison—1460 and 1465 (lines 3, 4, 45 and 46)—should be carefully prepared. It is particularly important that nondwelling construction and equipment costs (chargeable to Accounts 1470 and 1475) not be combined with the dwelling construction and equipment costs in Accounts 1460 and 1465 because this could adversely affect the prototype comparison percentage. Care should also be taken to assure that, in the case of a turnkey project where the developer and the PHA will each provide certain items of dwelling equipment, the amount in item A2 of this Subpart is the sum of lines 4 and 46.

Actual Development Cost Certificate

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0036
(exp. 7/31/2000)

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this collection of information is mandatory to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality. HUD may not conduct or sponsor, and person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Name of Public Housing Agency (PHA)

Annual Contributions Contract Number	Project Number

The PHA hereby certifies to the Department of Housing and Urban Development as follows:

1. That the total amount of the Development Cost (herein called the "Actual Development Cost") of the Project is $_____, which amount is shown in detail on the attached Statement of Actual Development Cost;

2. That all development work in connection with the Project has been completed;

3. That the entire Development Cost or liabilities therefor incurred by the PHA have been fully paid;

4. That there are no undischarged mechanics', laborers', contractors', or material-men's liens against such Project on file in any public office where the same should be filed in order to be valid against such Project; and

5. That the time in which such liens could be filed has expired.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Submitted By	Name of Official Authorized to Sign for PHA	
	Title	
	Signature	Date (mm/dd/yyyy)
Recommended for Approval By	Name of Authorized Official	
	Title	
	Signature	Date (mm/dd/yyyy)
Approved By	Name of Authorized Official	
	Title	
	Signature	Date (mm/dd/yyyy)

Previous editions are obsolete

form HUD-52427 (2/93)
ref. Handbook 7417.1

[FR Doc. 00–19592 Filed 8–2–00; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-057-1040-PH-GPO-0300]

Proposed Information Collection—Program Evaluation for the National Riparian Service Team and Extended Riparian Network

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management, the U.S. Forest Service, and the National Resource Conservation Service announce its intention to request approval for the collection of new information. The Bureau of Land Management (BLM) is soliciting comments concerning a proposed collection of information, conducting surveys and interviews of individuals who work within or receive services from the interagency National Riparian Service Team (NRST) and the extended riparian network. The information will allow the BLM to measure satisfaction and program effectiveness, and comply with the requirements and spirit of the Government Performance and Results Act of 1993 and Executive Order No. 12862.

DATES: BLM must receive comments on the proposed information collection by October 2, 2000.

ADDRESSES: Mail comments to: Director (630), Bureau of Land Management, 1849 C Street, NW., Room 401LS, Washington, DC 20240.

Send comments via Internet to: *WOComment@blm.gov*. Please include "NRST Survey" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Laura Van Riper, Bureua of Land Management, 541–416–6702.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a) BLM must provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

I. Background

On March 20, 1996 the Agency heads of the USDI Bureau of Land Management and the USDA Forest Service signed a letter agreeing to aggressively implement a cooperative management strategy to accelerate the restoration and improved management of riparian-wetland areas in the western United States. The USDA Natural Resource Conservation Service is a principal partner in this strategy. The NRST, which is an interagency team that is service oriented and emphasizes collaboration to accomplish riparian-wetland restoration objectives, serves as a catalyst for this effort.

In an effort to improve Federal program effectiveness and public accountability, the Government Performance and Results Act of 1993 (Sec. 2, Pub. L. 103–62) promotes a new focus on results, service quality, and customer satisfaction. This course of action is fortified by Executive Order Number 12862, signed by President Clinton on September 11, 1993, which is aimed at ensuring the Federal Government provides the highest quality service possible to the American people. In order to fulfill these responsibilities, the BLM is in the process of conducting a program evaluation of the NRST and the extended riparian network.

Different program evaluation models exist within the field of evaluation research, and it is widely recognized that multiple approaches should be used in an attempt to increase the validity of the overall evaluation by balancing out the strengths and weaknesses of different approaches. This study will be divided into two stages, using two complementary approaches. The first will be a large scale, quantitative mail survey, designed to attain generalizable and objective measures of customer satisfaction and program effectiveness. The second stage will be a qualitative, in-depth analysis of two states that are part of the extended riparian network (case studies), with the goal of producing a comprehensive understanding of the factors that influence successful program implementation.

Information will be collected on a biannual basis and the stages will be staggered. The results will be used internally, and summaries will be provided to the Office of Management and Budget.

II. Current Actions

The request to OMB will be for a three-year clearance for the BLM to conduct surveys and interviews for the purposes of NRST program evaluation.

III. Methodology

Stage one: Respondents will be individuals who have participated in Proper Functioning Condition (PFC) training sessions/service trips sponsored by the National Team and the State Cadres (members of the extended riparian network). A randomized sampling technique will be used.

Respondents will be asked to voluntarily complete and return a mail survey. In an effort to achieve the goal of an 80% response rate, an advance-notice letter will be sent, followed by a questionnaire (with a cover letter and a prepaid return envelope), to each member of the sample. Approximately, one week later, a postcard reminder will be sent. Approximately two weeks later (three weeks from the initial mailing), another survey package will be sent to individuals who have not responded. A final reminder will be given after 30 days, either by mail or telephone.

Stage two: The second stage of the program evaluation will focus on two case studies. A stratified, purposive sampling technique will be employed to ensure the sample is representative of the range of viewpoints. Approximately 15–20 respondents will be chosen from each state. Unlike stage one, the sampling strategy employed within stage two is designed to provide an in-depth understanding of representative types of individuals who work within or receive services from the NRST and the extended riparian network.

Prospective respondents will be sent an advance-notice letter, introducing the study and requesting their participation in a voluntary face-to-face interview. These individuals will be contacted by phone and a time for conducting the interview will be established. Interviews

will consist of primarily open-ended questions, and an interview guide will be used to ensure results are comparable across interviews. Given that this is a face-to-face interview, a 100% response rate is expected.

Questions in both stages' one and two will address the following areas: (1) Satisfaction with the team as a facilitator of cooperative riparian restoration/management; (2) program effectiveness (*e.g.*, on-the-ground implementation and/or achievement of interim steps toward implementation of riparian management strategies; impact of thought process, PFC as a tool for creating a common vocabulary, for facilitating effective cooperation); and (3) general demographic information.

Data gathered in this information collection is not available from other sources. Furthermore, the use of different methods will allow for the collection of different types of information. Unlike a quantitative approach, qualitative methods recognize the importance of background and context to the process of understanding interpreting data. The results generated from stage one (primarily quantitative—mail survey) will be generalizable, and will provide the opportunity to evaluate perceptions regarding customer satisfaction and program effectiveness. The results generated from stage two (primarily qualitative—interviews) will be necessary to understand why different "representative types" hold certain perceptions.

IV. Burden on Respondent

A. *Stage one:* The average public reporting burden for the mail survey is estimated to be 25 minutes per respondent, and the frequency of response is once every other year. The number of responses is estimated to total 500. The estimated total annual burden is approximately 210 hours biannually (500 respondents every two years × .42 hours per respondent = 210 hours biannually).

B. *Stage two:* The average public reporting burden for an in-depth, face-to-face interview is 45 minutes per respondent. The respondents are both internal and external customers of the NRST. The frequency of response is once every other year. The number of responses is estimated to be between 30 and 40. The estimated total annual burden is approximately 22.5 hours biannually at a minimum, and 30 hours biannually at a maximum (30 respondents every other year × .75 hours per respondent = 22.5 hours biannually; 40 respondents every other year × .75 hours per respondent = 30 hours biannually).

The total biannual response burden will be between 232.5 (minimum) and 240 (maximum) hours. BLM is specifically requesting your comments on these estimates.

BLM will summarize all responses to this notice and include in the request for Office of Management and Budget approval. Responses to this notice will also become a matter of public record.

Dated: July 21, 2000.

Shirlean Beshir,

BLM Information Clearance Officer.

[FR Doc. 00–18951 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1320–PB–02 24 1A]

Extension of Approved Information Collection, OMB Number 1004–0073

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of existing approval to collect certain information from any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association or corporation interested in leasing for or developing Federal coal. This information allows BLM to determine if the applicant to lease or develop Federal coal is qualified to hold a Federal coal lease.

DATES: BLM must receive comments on the proposed information collection by October 2, 2000, to assure its consideration of them.

ADDRESSES: Mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Send comments via Internet to: WOComment@blm.gov. Please include "ATTN: 1004–0073" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC 20036.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Radden-Lesage, Solid Minerals Group, WO–320, 202–452–0360.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM (Form 3400–12 and 3440), 43 CFR Group 3400, Coal Management, to solicit comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

BLM plans to seek from the Office of Management and Budget an extension approval for the information collection requirements in 43 CFR Parts 3400 through 3487, which cover the leasing and development of Federal coal. These regulations implement the statutory authority governing leasing activities on Federal land which is found in the Mineral Leasing Act of 1920, including the 1976 coal amendments (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*); the Multiple Mineral Development Act of 1954, 30 U.S.C. 521–531; the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); and the Act of October 30, 1978 (92 STAT. 2073–2075).

BLM uses the information provided by the applicant(s) to determine if the applicant to lease or develop Federal coal is qualified to hold such a lease. If BLM did not collect this information, it would not be able to gather relevant data to manage the leasing and development of coal in the public interest.

Based on BLM's experience administering the activities described

above, the public reporting burden for the information collected is estimated to average 20 hours and 15 minutes per response. The respondents are applicants to lease or develop Federal coal, and vary from individuals to small businesses and major corporations. The frequency of response is occasionally, usually upon application. The number of responses per year is estimated to total 1,185. The estimated total annual burden on all new respondents is about 23,986 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

Type of application	43 CFR cross reference	Number of responses	Hours/response	Total hours
Application for an exploration license	3410.2–1	10	36	360
Issuance and termination of an exploration license	3410.3–1	5	12	60
Operations under and modification of an exploration license	3410.3–3	1	1	1
Collection and submission of data from an exploration license	3410.4	5	18	90
Call for coal resource and other resource information	3420.1–2	0	3	0
Surface owner consultation	3420.1–4	7	1	7
Expressions of leasing interest	3420.3–2	0	7	0
Response to notice for sale	3422.2	8	56	448
Consultation with the Attorney General	3422.3–4	7	4	28
Leasing on application	3425	15	308	4,620
Surface owner consent	3427.2(c)	7	1	7
Preference right lease application	3430.3–1, 3430.4–1	3	800	2,400
Lease modifications	3432.1	5	12	60
License to mine	3440	2	21	42
Relinquishments	3452.1–1, 3452.1–2	30	18	540
Transfers, assignments, subleases	3453.2–1	43	10	430
Bonds	3410.3–4, 3453.2–4, 3474.1, 3474.2.	196	8	1,568
Land description requirements	3471.1–1	15	2	30
Future interest lease application	3471.4	0	16	0
Special leasing qualifications	3472.1–2	4	3	12
Qualification statements	3472.2	4	3	12
Lease rental and royalty rate reductions	3473.3–4	9	13	117
Lease suspensions	3473.4, 3483.3	7	20	140
Lease form	3475.1	12	1	12
Logical mining units	3475.6, 3481.2, 3487	5	170	850
General obligations of the operator/lessee	3481.1	1	1	1
Exploration plans	3482.1(a)	11	30	330
Resource recovery and protection plan	3482.1(b)	4	192	768
Modifications to exploration plans and resource recovery and protection plans.	3482.2	79	16	1,264
Mining operations maps	3482.3	311	20	6,220
Request for payment of advance royalty in lieu of continued operation.	3483.4	12	22	264
Performance standards for exploration (Retention of samples)	3484.1(a)	22	1	22
Performance standards for surface and underground coal mines	3484.1(b)	6	1	6
Exploration reports	3485.1(a), 3485.1(b), 3485.1(c).	7	4	28
Production reports	3485.1(d), 3485.3	323	10	3,230
Notices and orders	3486.2	1	3	3
Enforcement	3486.3	8	2	16
Total		1,185		23,986

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: July 31, 2000.

Shirlean Beshir,

BLM Information Clearance Officer.

[FR Doc. 00–19694 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24–1A; HAG0–0295]

Cascade-Siskiyou National Monument Map and Boundary Description

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice is to publish the official map and boundary description of the Cascade-Siskiyou National Monument, established by Presidential Proclamation on June 9, 2000.

SUPPLEMENTARY INFORMATION: The Cascade-Siskiyou National Monument involves Federal lands managed by the Bureau of Land Management in Jackson County, Oregon. The following description refers to the map entitled "Cascade-Siskiyou National Monument" on file at the Ashland Field Office, Medford, Oregon.

Beginning at a point on the Oregon-California State Line, at its intersection with the range line between Ranges 1 East and 2 East, Willamette Meridian, Oregon;

Thence northerly approximately 5.25 miles along the aforementioned range line to a point where said range line

intersects the hydrologic divide between the Klamath River and the Rogue River;

Thence easterly and southeasterly approximately 5.50 miles along said hydrologic divide to a point approximately 150 feet north of the section line between section 34, T. 40 S., R. 2 E., and section 3, T. 41 S., R. 2 E.;

Thence northeasterly along and down a ridgeline approximately 1.00 miles to the section line between section 34 and 35, T. 40 S., R. 2 E.;

Thence northerly along the section lines between sections 34 and 35, 26 and 27, 22 and 23, 14 and 15, 10 and 11, to the section corner of sections 2, 3, 10, and 11, T. 40 S., R. 2 E.;

Thence easterly along the section lines between sections 2 and 11, 1 and 12, T. 40 S., R. 2 E., and sections 6 and 7, T. 40 S., R. 3 E., to the section corner of sections 5, 6, 7, and 8, T. 40 S., R. 3 E.;

Thence northerly along the section line between sections 5 and 6, T. 40 S., R. 3 E., to the intersection with the centerline of Oregon State Highway 66 (Greensprings Highway);

Thence easterly along the centerline of Oregon State Highway 66 approximately 3.50 miles to a point on the section line between sections 3 and 4, T. 40 S., R. 3 E.;

Thence northerly along the section lines between sections 3 and 4, T. 40 S., R. 3 E., and sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, T. 39 S., R. 3 E., to the section corner of sections 9, 10, 15, and 16, T. 39 S., R. 3 E.;

Thence easterly along the section lines between sections 10 and 15, 11 and 14, 12 and 13, T. 39 S., R. 3 E., to the section corner of sections 12 and 13, T. 39 S., R. 3 E., and sections 7 and 18, T. 39 S., R. 4 E.;

Thence northerly along the section line between section 12, T. 39 S., R. 3 E., and section 7, T. 39 S., R. 4 E., to the section corner of sections 1 and 12, T. 39 S., R. 3 E., and sections 6 and 7, T. 39 S., R. 4 E.;

Thence easterly along the section line between sections 6 and 7, T. 39 S., R. 4 E., to the section corner of sections 5, 6, 7, and 8, T. 39 S., R. 4 E.;

Thence southerly along the section line between sections 7 and 8, T. 39 S., R. 4 E., to the section corner of sections 7, 8, 17, and 18, T. 39 S., R. 4 E.;

Thence easterly along the section line between sections 8 and 17, T. 39 S., R. 4 E., to the section corner of sections 8, 9, 16, and 17, T. 39 S., R. 4 E.;

Thence northerly along the section line between sections 8 and 9, T. 39 S., R. 4 E., to the section corner of sections 4, 5, 8, and 9, T. 39 S., R. 4 E.;

Thence easterly along the section line between sections 4 and 9, T. 39 S., R. 4 E., to the section corner of sections 3, 4, 9, and 10, T. 39 S., R. 4 E.;

Thence southerly along the section line between sections 9 and 10, T. 39 S., R. 4 E., to the section corner of sections 9, 10, 15, and 16, T. 39 S., R. 4. E.;

Thence easterly along the section line between sections 10 and 15, T. 39 S., R. 4 E., to the section corner of sections 10, 11, 14, and 15, T. 39 S., R. 4. E.;

Thence southerly along the section line between sections 14 and 15, T. 39 S., R. 4 E., to the section corner of sections 14, 15, 22, and 23, T. 39 S., R. 4 E.;

Thence easterly along the section line between sections 14 and 23, T. 39 S., R. 4 E., to the section corner of sections 13, 14, 23, and 24, T. 39 S., R. 4 E.;

Thence southerly along the section line between sections 23 and 24, T. 39 S., R. 4 E., to the section corner of sections 23, 24, 25, and 26, T. 39 S., R. 4 E.;

Thence westerly along the section lines between sections 23 and 26, 22 and 27, T. 39 S., R. 4 E., to the East 1/16 corner of sections 22 and 27, T. 39 S., R. 4 E.;

Thence southerly along the north and south centerline of the NE1/4 of section 27, T. 39 S., R. 4 E., to the Northeast 1/16 corner of section 27, T. 39 S., R. 4 E.;

Thence westerly along the east and west centerline of the NE1/4 of section 27, T. 39 S., R. 4 E., to the Center-North 1/16 corner of section 27, T. 39 S., R. 4 E.;

Thence southerly along the north and south centerline of section 27, T. 39 S., R. 4 E., to the 1/4 corner of sections 27 and 34, T. 39 S., R. 4 E.;

Thence westerly along the section line between sections 27 and 34, T. 39 S., R. 4 E., to the section corner of sections 27, 28, 33, and 34, T. 39 S., R. 4 E.;

Thence southerly along the section line between sections 33 and 34, T. 39 S., R. 4 E., to the section corner of sections 33 and 34, T. 39 S., R. 4 E.;

Thence westerly along the section line between section 33, T. 39 S., R. 4 E., and section 3, T. 40 S., R. 4 E., to the section corner of sections 3 and 4, T. 40 S., R. 4 E.;

Thence southerly along the section line between sections 3 and 4, T. 40 S., R. 4 E., approximately 1,000 feet to the centerline of Oregon State Highway 66;

Thence westerly along the centerline of Oregon State Highway 66 approximatley 1.50 miles to the intersection of the section line between sections 4 and 5, T. 40 S., R. 4 E.;

Thence southerly along the section line between sections 4 and 5, T. 40 S., R. 4 E., to the South 1/16 corner of sections 4 and 5, T. 40 S., R. 4 E.;

Thence easterly along the east and west centerline of SW1/4 of section 4, T. 40 S., R. 4 E., to the Southwest 1/16 corner of section 4, T. 40 S., R. 4 E.;

Thence southerly along the north and south centerline of SW1/4 of section 4, T. 40 S., R. 4 E., to the West 1/16 corner of sections 4 and 9, T. 40 S., R. 4 E.;

Thence easterly along the section line between sections 4 and 9, T. 40 S., R. 4 E., to the 1/4 corner of sections 4 and 9, T. 40 S., R. 4 E.;

Thence southerly along the north and south centerline of section 9, T. 40 S., R. 4 E., to the 1/4 corner of sections 9 and 16, T. 40 S., R. 4 E.;

Thence westerly along the section line between sections 9 and 16, T. 40 S., R. 4 E., to the section corner of sections 8, 9, 16, and 17, T. 40 S., R. 4 E.;

Thence southerly along the section line between sections 16 and 17, T. 40 S., R. 4 E., to the section corner of sections 16, 17, 20, and 21, T. 40 S., R. 4 E.;

Thence easterly along the section line between sections 16 and 21, T. 40 S., R. 4 E., to the section corner of sections 15, 16, 21, and 22, T. 40 S., R. 4 E.;

Thence northeasterly approximately 600 feet to the intersection with the 3400 foot contour line;

Thence southerly approximately 1,500 feet, following the aforementioned 3400 foot contour line to the intersection with the east and west centerline of section 22, T. 40 S., R. 4 E.;

Thence easterly along the east and west centerline of section 22, T. 40 S., R. 4 E., to the center 1/4 corner of section 22, T. 40 S., R. 4 E.;

Thence southerly along the north and south centerline of section 22, T. 40 S., R. 4 E., to the 1/4 corner of section 22 and 27, T. 40 S., R. 4 E.;

Thence southerly along the north and south centerline of section 27, T. 40 S., R. 4 E., to the Center-North 1/16 corner of section 27, T. 40 S., R. 4 E.;

Thence westerly along the east and west centerline of the NW1/4 of section 27 T. 40 S., R. 4 E., approximately 1,200 feet to the intersection with the 3400 foot contour line;

Thence southerly approximately 1,500 feet, following the aforementioned 3400 foot contour line to the intersection with the east and west centerline of section 27, T. 40 S., R. 4 E.;

Thence easterly along the east and west centerline of section 27, T. 40 S., R. 4 E., to the center 1/4 corner of section 27, T. 40 S., R. 4 E.;

Thence southerly along the north and south centerline of section 27, T. 40 S.,

R. 4 E., to the ¼ corner of sections 27 and 34, T. 40 S., R. 4 E.;

Thence easterly along the section line between section 27 and 34, T. 40 S., R. 4 E., to the section corner of sections 26, 27, 34, and 35, T. 40 S., R. 4 E.;

Thence southerly along the section lines between sections 34 and 35, T. 40 S., R. 4 E., and sections 2 and 3, T. 41 S., R. 4 E., to the South 1/16 corner of sections 2 and 3, T. 41 S., R. 4 E.;

Thence westerly along the east and west centerline of the South ½ of section 3, T. 41 S., R. 4 E., approximately 3,900 feet to the intersection with the north edge of BLM road #41–2E–10.1;

Thence southwesterly along the north edge of BLM road #41–2E–10.1., approximately 1,850 feet to the section corner of sections 3, 4, 9, and 10, T. 41 S., R. 4 E.;

Thence easterly along the section line between sections 3 and 10, T. 41 S., R. 4 E., to the West 1/16 corner of Sections 3 and 10, T. 41 S., R. 4 E.;

Thence southerly along the north and south centerline of the NW¼ of section 10, T. 41 S., R. 4 E.; to the Center-West 1/16 corner of section 10, T. 41 S., R. 4 E.;

Thence westerly along the east and west centerline of section 10, T. 41 S., R. 4 E., to the ¼ corner of sections 9 and 10, T. 41 S., R. 4 E.;

Thence westerly along the east and west centerline of section 9, T. 41 S., R. 4 E., to the Center ¼ corner of section 9, T. 41 S., R. 4 E.;

Thence southerly along the north and south centerline of section 9, T. 41 S., R. 4 E., to the ¼ corner of section 9 and 16, T. 41 S., R. 4 E.;

Thence southerly along the north and south centerline of section 16, T. 41 S., R. 4 E., approximately 490 feet, to a point of intersection on the Oregon-California State Line;

Thence westerly along the Oregon-California State Line, approximately 14.50 miles, to the point of beginning.

For Further Information Contact: Richard J. Drehobl, Field Manager, Bureau of Land Management, Ashland Field Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone (541) 618–2331.

Dated: July 19, 2000.

Richard J. Drehobl,

Field Manager, Ashland Field Office.

[FR Doc. 00–19605 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–1430–01]

Public Meeting

AGENCY: Bureau of Land Management.

ACTION: Public meeting.

SUMMARY: Public Meeting to gather public comments on the Timbisha Homeland Legislative EIS.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Ahmed Mohsen, Ridgecrest Field Office, BLM, 300 South Richmond Road, Ridgecrest, CA 93555, (760) 384–5429.

SUPPLEMENTARY INFORMATION: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) that a public meeting will be held by the Bureau of Land Management and the National Park Service on Thursday August 10th, 2000 at 7 p.m. at the Boulder Creek Mobile Home Park, 2550 Highway 395 in Lone Pine, California. The purpose of this meeting is to gather public comments on water resources issues relating to the Centennial parcel of the proposed project. For more information, contact Ahmed Mohsen, Resource Management Specialist, at (760) 384–5421.

Dated: July 26, 2000.

Hector A. Villalobos,

Field Office Manager.

[FR Doc. 00–19652 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. 4310–DN]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement to the Final Environmental Impact Statement, for the Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: In accordance with Section 203(b) of the Federal Land Policy and Management Act of 1976 and Section 102(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management will prepare a supplement to the Final Environmental Impact Statement (EIS) on the Zortman and Landusky Mines Reclamation Plan Modifications to consider final reclamation and closure of the Zortman and Landusky mines in Northcentral Montana. The Supplemental EIS will address additional reclamation alternatives that would constitute a substantial change in the proposed action presented in the Final EIS.

DATES: Comments and recommendations on this notice should be received by September 30, 2000.

ADDRESSES: Written comments should be addressed to Scott Haight, Team Lead, Bureau of Land Management, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

FOR FURTHER INFORMATION CONTACT: Bruce Reed, Field Manager, Bureau of Land Management, Malta Field Office, 501 S. 2nd St. E., Malta, MT 59538–0047 (406–654–1240); or Scott Haight, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457–1160 (406–538–1930).

SUPPLEMENTARY INFORMATION: In April 1996, the BLM and Montana Department of Environmental Quality (DEQ) issued the Final EIS for the Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions. The purpose of the EIS was to analyze the need for modified reclamation plans in response to acid rock drainage conditions at the mines and to consider the operator's proposal for additional mining. In October 1996, the BLM and DEQ issued a Record of Decision (ROD) for the approval of expanded mining and modified reclamation plans. Subsequent to the issuance of the ROD, the operator decided not to proceed with the mine expansion and filed for bankruptcy. In June 1998, BLM and DEQ issued a second ROD that selected an alternative from the Final EIS for reclamation without mine expansion, using agency-developed mitigating measures. In November 1998, the Interior Board of Land Appeals (IBLA) vacated the BLM's June 1998, ROD and ordered additional consultation with the Fort Belknap Indian Community Council. As a result of the bankruptcy proceeding the DEQ reached an agreement with the operator's surety companies to fund reclamation up to the limits of the surety bond amount. Subsequent evaluations of reclamation costs have identified a shortfall in funding to implement the agency preferred reclamation plan in the Final EIS. In addition, consultation between Fort Belknap, BLM and DEQ have identified additional reclamation alternatives which should be considered for implementation because they are either more cost effective, more protective of

the environment, or both. BLM and DEQ have determined that selection of one of these additional reclamation alternatives may constitute a substantial change in the proposed action and that a Supplemental EIS is should be prepared. The Supplemental EIS will address alternative reclamation plans for the Zortman and Landusky mines that have been developed through the consultation process. The Supplemental EIS will be the basis for a new ROD to select a final reclamation plan for the Zortman and Landusky mines. Interim reclamation will continue at the mines during preparation of the Supplemental EIS in order to prevent unnecessary or undue degradation. The BLM and DEQ will be co-lead agencies for the preparation of the Supplemental EIS. The agencies anticipate holding informational meetings in September of 2000 and requesting public comments on the draft supplemental EIS in the spring of 2001.

Dated: July 24, 2000.

Bruce W. Reed,

Field Office Manager.

[FR Doc. 00–19658 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24–1A; HAG0–0294]

Interim Travel Restrictions to Motorized and Mechanized Vehicles in the Cascade-Siskiyou National Monument, Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice of travel restrictions to motorized and mechanized vehicles in the Cascade-Siskiyou National Monument, Oregon.

SUMMARY: Notice is hereby given that all motorized and mechanized travel is prohibited on specific roads in the recently established Cascade-Siskiyou National Monument. The affected land is located southeast of Ashland, Oregon in Jackson County.

This prohibition includes the following roads and road segments:

The Schoheim Road (#41–2E–10.1). The Randcore Pass Road(#40–4E–19.2) past the junction with road #40–4E–31.0. The Skookum Creek Road (#s 40–3E–28 and 40–3E–27.2) past the junction with road #40–3E–27.1. Road # 41–2E–3.0 past the point where it crosses the Pacific Crest National Scenic Trail. Road # 41–2E–9.0 past the barricade in T. 41 S., 2 E., Section 9, SW¼NW¼. The Lone Pine Ridge Road (#41–3E–31) past the block in T. 40 S., R. 3 E., Section 31. An unnumbered road which crosses the Oregon-California border, at the south section line between Section 7 and 18, T. 41 S., R. 4 E. T41 S., R. 4E. An numbered road which crosses the Oregon-California border, at the south section line of Section 13, T. 41 S., 2 E.

This action is in accordance with the Presidential Proclamation dated June 9, 2000, which closed the Schoheim Road and directed the Secretary of the Interior to prepare a management plan that includes appropriate transportation planning that addressed the actions, including road closures or travel restrictions, necessary to protect the objects identified in the proclamation.

EFFECTIVE DATES: The prohibition will become effective upon the publication of this notice in the **Federal Register** and will remain in effect until completion of the Cascade-Siskiyou National Monument management plan. The planning process may result in a decision to maintain or modify this prohibition.

SUPPLEMENTARY INFORMATION: Persons who are exempt from the prohibition include (1) Any federal, state, or local officers engaged in fire, emergency and law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized to travel on designated routes by the Ashland Field Office Manager.

Penalties: Any person who fails to comply with provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Richard J. Drehobl, Field Manager, Bureau of Land Management, Ashland Field Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone (541) 618–2331.

Dated: July 24, 2000.

Richard J. Drehobl,

Field Manager, Ashland Field Office.

[FR Doc. 00–19660 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1430–ES]

COC–62979 Recreation and Public Purpose Classification; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: COC–62979 Recreation and Public Purpose Classification. The following public lands are classified as suitable for lease and patent under the Recreation and Public Purposes Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 *et seq.*, and the regulations thereunder 43 CFR 2740 and 2912. The public lands involved are segregated from the public land laws including the general mining laws, except for the R&PP Act. The purpose of the classification is to segregate the site from conflicting applications and proposals pending consideration of an application from the Colorado Division of Wildlife for use as an administrative site and other educational and recreational uses.

Sixth Principal Meridian, Park County, Colorado

T. 9 S., R. 77 W.,
Sec. 27, S½N½, NW¼SE¼
Consisting of approximately 200 acres

This parcel of public land is one mile north of Fairplay on U.S. 285. The lands are not needed for Federal purposes. This action is consistent with current BLM land use planning and would be in the public interest.

DATES: Interested parties may submit comments on the classification of the land or on the lease/conveyance action on or before September 6, 2000. Please reference the applicable serial number in all correspondence. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Unless vacated or modified, this realty action will become final.

ADDRESSES: Royal Gorge Field Office Manager, Bureau of Land Management, 3170 E. Main St., Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Stu Parker, Realty Specialist BLM, (719) 269–8546; Royal Gorge Field Office, 3170 E. Main St., Canon City, CO 81212.

Donnie R. Sparks,

Field Office Manager,

[FR Doc. 00–19656 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–2810–HT; GPO–0307]

Regulated Fire Closure for Bureau of Land Management Public Lands in the State of Washington, CFR Citation Amendment to Federal Register Notice GPO–0284, Dated July 11, 2000

AGENCY: Bureau of Land Management, Spokane District.

SUMMARY: Pursuant to 43 CFR.9212.2, the following acts are prohibited on public lands within the Spokane District, Bureau of Land Management (BLM) including Juniper Forest/Juniper Dunes Recreation Area, and areas surrounding Hog Canyon, Miller Ranch/Fishtrap, Pacific Lake, Twin Lakes, Coffeepot, Yakima River Canyon, Douglas Creek, Chopaka/Palmer Mountain, Split Rock, Liberty, Saddle Mountains, Lakeview Ranch/Lake Creek, Horse Heaven Hills, Duffy Creek Management Area, Boundary Dam, and Escure Ranch/Rock Creek recreation sites, beginning at noon July 15, 2000 until further notice.

1. Building, maintaining, attending or using a fire, campfire or stove fire, including charcoal briquette fire (43 CFR 9212.1(h)).

Note: Liquified and bottled gas stoves and heaters are permitted provided that they are within an area at least 10 feet in diameter that is barren or clear of all flammable material.

2. Smoking while traveling in timber, brush or grass areas, except in vehicles on roads, on barren or cleared areas at least 3 feet in diameter or boats on rivers and lakes. (43 CFR 9212.1(h)).

3. Operating any type of motorized vehicle off developed roadways. Parking of vehicles off roadways must be done in an area barren of flammable materials (43 CFR 9212.1(g)).

Note: Developed roadways are those which are clear of flammable debris, berm to berm. *Juniper Dunes Recreation Area is Exempt.*

Pursuant to 43 CFR 9212.2(3) the following persons are exempt from this order:

1. Persons with a permit that specifically authorized the otherwise prohibited act or omission 43 CFR 9212.3(a)).

2. Any Federal, State or local officer or a member of an organized rescue or firefighting force in the performance of an official duty 43 CFR 9212.2(3).

Violation of these prohibitions is punishable by a fine of not more than $1,000.00 or to imprisonment of not more than 12 months, or both 43 CFR 9212.4.

FOR FURTHER INFORMATION CONTACT: Scott Boyd, Fire Management Officer, Bureau of Land Management, Spokane District Officer, 1103 N. Fancher Road, Spokane, Washington 99212; or call (509) 536–1200.

Dated: July 28, 2000.

Gary J. Yeager,

Acting District Manager.

[FR Doc. 00–19614 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–1430–EU; Serial No. NMNM 104295]

Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for Possible Disposal of Public Land in Eddy County, NM

AGENCY: Bureau of Land Management, DOI

SUMMARY: The Bureau of Land Management (BLM), Carlsbad Field Office, is initiating the preparation of an RMPA which will include an EA for the possible disposal by direct sale at fair market value of 40 acres of BLM-administered public land in Eddy County in southeastern New Mexico. The land is located in T. 23 S., R. 25 E., Section 12, NE¼NE¼. The RMPA will allow for direct sale of the land if that is the alternative chosen by the BLM New Mexico State Director. The public is invited to participate in the scoping process to identify issues and planning criteria to be considered in the development of the RMPA/EA. The BLM will maintain a mailing list of parties and persons interested in being kept informed about the RMPA/EA.

DATES: Comments related to this action will be accepted on or before September 18, 2000.

ADDRESSES: Comments should be sent to Bobbe Young, Lead Realty Specialist, P.O. Box 1778, Carlsbad, NM 88220.

FOR FURTHER INFORMATION CONTACT: Mary Jo Rugwell, Assistant Field Manager at (505) 234–5907 or Bobbe Young at (505) 234–5963.

SUPPLEMENTARY INFORMATION: The City of Carlsbad has proposed to acquire 40 acres of BLM-administered land adjacent to their #6 water well for expansion/upgrade to accommodate two new City reservoirs and a new disinfection station as part of the City's $20 million water/sewer bond projects. This land was identified for retention in Federal ownership in the Carlsbad RMP completed in 1988. In order to consider direct sale of the land, the RMP must be amended.

The RMPA/EA will be prepared by an interdisciplinary team of BLM resource specialists including realty, recreation, cultural, minerals, and hazardous materials specialists. Additional technical support will be provided by other specialists as needed.

Dated: July 24, 2000.

Douglas A. Melton,

Acting Field Manager.

[FR Doc. 00–19679 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of an information collection (OMB Control Number 1010–0120).

SUMMARY: To comply with the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled, Solid Minerals Production and Royalty Report, MMS–4430. We will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval after this comment period closes.

DATES: Submit written comments on or before October 2, 2000.

ADDRESSES: Submit written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

PUBLIC COMMENT PROCEDURE: Submit your comments to the offices listed in the **ADDRESSES** section, or email your comments to us at *RMP.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Mr. Guzy at (303) 231–3432, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov for public review*.

Also, contact Mr. Guzy to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we

withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*. A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Solid Minerals Production and Royalty Report

OMB Control Number: 1010–0120.

Bureau Form Number: MMS–4430.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. We perform the royalty management functions and assist the Secretary in carrying out DOI's Indian trust responsibility.

When a company or an individual enters into a contract or lease to develop, mine, and dispose of Federal or Indian minerals, that company or individual (the respondent) agrees to pay the appropriate royalty due based upon gross proceeds received from the sale of production from the leased lands. Royalty rates are specified in the lease agreement.

Specific lease language varies; however, respondents agree by the lease terms to furnish statements providing the details of all operations conducted on a lease and the quantity and quality of all production from the lease at such times and in such form as the Secretary may prescribe. Rules require respondents to provide accurate, complete, and timely reports for all minerals produced, in the manner and form prescribed by MMS in 30 CFR 210 Subpart E and 216.21. In January 1999, we introduced the Production and Royalty Report, Form MMS–4430, to collect the required information from respondents participating in the solid minerals operational model. Because of the success of this streamlined reporting method, we are proposing to expand the use of this report to all solid mineral operators.

Submission of this information collection will be mandatory. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: Monthly.

Estimated Number and Description of Respondents: 290 solid mineral operators.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1 hour.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: n/a.

Comments: The Paperwork Reduction Act, 44 U.S.C. 3506(c)(2)(A), requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also require agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major costs factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act of 1995 provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: July 31, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–19654 Filed 8–2–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents. Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Kerr-McGee Oil and Gas Corporation, Pipeline Activity, SEA Nos. P–12504 and P–12505 (G–14942 and G–14200).	Garden Banks Area, Block 184; High Island Area, East Addition, South Extension, Block A–371; Leases OCS–G 14942 and 14200; 110 miles off the Texas Coast.	06/28/00
Fugro GeoServices, Inc., G&G Activity, SEA No. M00–004	12–94 miles off the Florida Coast	05/24/00
BP Amoco Corporation, Development Activity, SEA No. R–3382	Viosca Knoll, Block 989, Lease OCS–G 6898, 43 miles off the Louisiana Coast.	05/16/99
Apache Corporation, Exploration Activity, SEA No. R–3439	South Pass Area, Block 62, Lease OCS–G 1294, 18 miles off the Louisiana Coast.	06/26/00
Shell Deepwater Development Inc., Development Activity, SEA No. N–6570.	Green Canyon Area, Block 158 and 202, Leases OCS–G 7995 and 7996, 89 miles off the Louisiana Coast.	05/08/00
Chevron U.S.A. Inc., Development Activity, SEA No. N–6678; Pipeline Activity, SEA Nos. P–12417 (G–21486), P–12441, P–12442, P–12443, and P–12444.	Viosca Knoll Area, Blocks 251, 207, 163, 119, 75, and 31; Mobile Area Blocks 999, 995, 911, 867, and 868; Leases OCS–G 10930, 13983, 13981, 13982, 1.6 to 30 miles south of Mobile County, Alabama.	05/01/00
Forest Oil Corporation, Structure Removal Activity, SEA No. ES/SR 00–022.	Vermilion Area, Block 101, Lease OCS–G 10658, 92 miles southwest of Vermilion Parish, Louisiana.	04/19/00
EOG Resources, Inc., Structure Removal Activity, SEA No. ES/SR 00–024A.	West Cameron Area, Block 491, Lease OCS–G 9425, 87 miles south of Cameron Parish, Louisiana.	07/06/00
Apache Corporation, Structure Removal Activity, SEA No. ER/SR 00–042A.	Vermilion Area, Block 257, Lease OCS–G 8671, 70 miles south of Vermilion Parish, Louisiana.	04/27/00
TDC Energy Corporation, Structure Removal Activity, SEA No. ES/SR 00–043.	Viosca Knoll Area, Block 155, Lease OCS–G 13047, 15 miles east of St. Bernard Parish, Louisiana.	04/17/00
Apache Corporation, Structure Removal Activity, SEA Nos. ES/SR 00–044 through 00–047.	South Timbalier Area, Blocks 143 and 144, Leases OCS–G 6767 and 12965, 32 miles south of Terrebonne Parish, Louisiana.	04/19/00
CNG Producing Company, Structure Removal Activity, SEA No. ES/SR 00–048.	Ship Shoal Area, Block 247, Lease OCS–G 1026, 48 miles south of Terrebonne Parish, Louisiana.	04/26/00
Apache Corporation, Structure Removal Activity, SEA No. ES/SR 00–049.	Main Pass Area, Block 129, Lease OCS–G 4010, 17 miles each of Plaquemines Parish, Louisiana.	05/02/00
Chevron U.S.A. Inc., Structure Removal Activity, SEA No. ES/SR 00–050.	Bay Marchand Area, Block 2, Lease OCS–G 0369, 5 miles south of Lafourche Parish, Louisiana.	05/02/00
Shell Offshore Inc., Structure Removal Activity, SEA No. ES/SR 00–051.	Vermilion Area, Block 156, Lease OCS–G 12866, 42 miles south of Vermilion Parish, Louisiana.	05/08/00
Samedan Oil Corporation, Structure Removal Activity, SEA Nos. ES/SR 00–052 and 00–053.	South Marsh Island Area, Block 232, Lease OCS–G 8687, 15 miles south of Vermilion Parish, Louisiana.	05/31/00
Union Oil Company of California, Structure Removal Activity, SEA No. ES/SR 00–054.	Vermilion Area, Block 75, Lease OCS–G 12863, 18 miles south of Vermilion Parish, Louisiana.	05/23/00
Newfield Exploration Company, Structure Removal Activity, SEA No. ES/SR 00–055.	West Cameron Area, Block 118, Lease OCS–G 0757, 15 miles south of Cameron Parish, Louisiana.	05/23/00
Santa Fe Snyder Corporation, Structure Removal Activity, SEA Nos. ES/SR 00–056 and 00–057.	South Marsh Island Area, Blocks 236 and 242, Leases OCS–G 4437 and 0310, 12 miles south of Iberia Parish, Louisiana.	05/18/00
Newfield Exploration Company, Structure Removal Activity, SEA No. 00–058.	Eugene Island Area, Block 199, Lease OCS–G 0437, 48 miles south of St. Mary Parish, Louisiana.	05/31/00
Apache Corporation, Structure Removal Activity, SEA No. ES/SR 00–059.	Eugene Island Area, Block 99, Lease OCS–G 0795, 21 miles southwest of Terrebonne Parish, Louisiana.	05/31/00
Santa Fe Snyder Corporation, Structure Removal Activity, SEA Nos. ES/SR 00–060 through 00–062.	West Cameron Area, Blocks 95 and 285, Leases OCS–G 4750 and 10566, 15 to 67 miles south of Cameron Parish, Louisiana.	05/31/00
Coastal Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 00–063.	High Island Area, Block A–280, Lease OCS–G 3313, 95 miles south of Cameron Parish, Louisiana.	06/01/00
Newfield Exploration Company, Structure Removal Activity, SEA Nos. ES/SR 00–064 and 00–065.	Eugene Island Area, Block 199, Lease OCS–G 0437, 53 miles south of New Iberia Parish, Louisiana.	06/01/00
EOG Resources, Inc., Structure Removal Activity, SEA No. ES/SR 00–066.	West Cameron Area, Block 405, Lease OCS–G 3280, 65 miles south of Cameron Parish, Louisiana.	06/13/00
Murphy Exploration & Production Company, Structure Removal Activity, SEA Nos. ES/SR 00–067 through 00–069.	Ship Shoal Area, Block 120, Lease OCS–G 5545, 18 miles south of Terrerbonne Parish, Louisiana.	06/12/00
Murphy Exploration & Production Company, Structure Removal Activity, SEA Nos. ES/SR 00–070 through 00–078.	Ship Shoal Area, Block 135, Lease 3164, 18 miles south of Terrebonne Parish, Louisiana.	06/12/00
Murphy Exploration & Production Company, Structure Removal Activity, SEA Nos. ES/SR 00–079 through 00–093.	Ship Shoal Area, Block 134, Lease OCS–G 5201, 20 miles south of Terrebonne Parish, Louisiana.	06/12/00
OXY USA, Inc., Structure Removal Activity, SEA Nos. ES/SR 00–094 and 00–0905.	Matagorda Island Area, Block 527, Lease OCS–G 3932, 11 miles east of Calhoun County, Texas.	06/13/00
Pogo Producing Company, Structure Removal Activity, SEA No. ES/SR 00–096.	West Cameron Area, Block 253, Lease OCS–G 3500, 46 miles south of Cameron Parish, Louisiana.	06/13/00
Cockrell Oil Corporation, Structure Removal Activity, SEA No. ES/SR 00–097.	Eugene Island Area, Block 24, Lease OCS–G 2893, 9 miles south of Iberia Parish, Louisiana.	06/22/00
Pogo Producing Company, Structure Removal Activity, SEA No. ES/SR 00–098.	West Cameron Area, Block 252, Lease OCS–G 5186, 46 miles south of Cameron Parish, Louisiana.	06/27/00
Global Production Services, Structure Removal Activity, SEA No. ES/SR 00–099 and 00–100.	High Island Area, Block A–285, Lease OCS–G 03485, 90 miles south of Jefferson County, Texas.	06/30/00
British-Borneo Exploration, Inc., Structure Removal Activity, SEA No. ES/SR 00–101.	East Cameron Area, Block 236, Lease OCS–G 14373, 69 miles south of Cameron Parish, Louisiana.	07/06/00

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 28, 2000.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–19615 Filed 8–2–00; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of Information Collection under Review: Extension of a Currently Approved Collection; COPS Grant Status Survey.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, § 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments may also be submitted to Marcia O. Samuels, COPS Count Project Manager, Office of Community Oriented Policing Services, Grant Monitoring Division, 1100 Vermont Avenue, NW., Washington, DC 20530, or via facsimile at (202) 633–1293.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information, *e.g.*, permitting electronic submission of responses.

Overview of This Collection

1. *Type of Information Collection:* Second collection.

2. *Title of the Form/Collection:* COPS Grant Status Survey.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 301/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The COPS Count Project surveys agencies who currently have been awarded a Hiring and/or MORE grants from the COPS Office. The information collected provides an accurate up to date account on the status of officers hired/redeployed.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated number of respondents: 11,559. Estimated time for average respondent to respond: 1 hour annually.

6. *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 11,559 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: July 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer.

[FR Doc. 00–19687 Filed 8–2–00; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Applicant Self-Assessment Form.

3. *The form number if applicable:* NRC Form 563.

4. *How often the collection is required:* Once, upon application for employment.

5. *Who will be required or asked to report:* Basically qualified external applicants applying for engineering and scientific positions with the NRC.

6. *An estimate of the number of responses:* 1,200.

7. *The estimated number of annual respondents:* 1,200.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 100 hours (five minutes per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* The Applicant Self-Assessment will be used to collect uniform information from external applicants as to which technical specialties they possess that are unique to the needs of the NRC. This information will be reviewed by the Office of Human Resources staff and used to match applicants technical specialties with those required by selecting officials when an engineering or scientific vacancy position is to be filled.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 5, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0177), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 27th day of July 2000.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–19621 Filed 8–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Discrimination Task Group; Announcement and Meeting Notice

This Notice serves to announce the formation of an NRC Discrimination Task Group, which will evaluate the NRC processes used in the handling of discrimination allegations and violations of employee protection standards (Applicable regulations include 10 CFR 30.7, 10 CFR 40.7. 10 CFR 50.7, 10 CFR 60.9, 10 CFR 61.9, 10 CFR 70.7, 10 CFR 76.7, 10 CFR 72.10, 10 CFR 150.20). The group will function as a management-level review group to evaluate the Commission's handling of discrimination cases. The overall objective of the NRC employee protection regulations is to promote an atmosphere where employees feel comfortable raising safety concerns or engaging in other protected activity without fear of reprisal. Because the NRC has traditionally relied on the openness of employees to identify issues, an effective and consistent NRC approach for dealing with discrimination cases is an important feature of encouraging and ensuring a safety conscious work environment. Resulting enforcement actions need to be predictable, fair and able to withstand scrutiny, since they could result in civil penalties, orders, or actions to individuals and are viewed by stakeholders as an indicator of the seriousness with which the NRC views discrimination issues.

The group's overall objective is to develop recommendations for revisions to the regulatory requirements, the enforcement policy or other agency guidelines as appropriate. A Commission Paper will be developed outlining the recommendations for NRC offices to consider in making changes to their processes.

The group's preliminary schedule is:

- Evaluation of current NRC processes.
  July–Sept., 2000
- Conduct Stakeholder meetings.
  August, 2000–April, 2001
- Review of other Federal agency processes.
  Oct.–Dec., 2000
- Develop recommendations for process improvements.
  Jan.–March, 2001.
- Provide Commission draft recommendation.
  April, 2001
- Draft recommendations issued for comment.
  May–June, 2001
- Issue Report with recommendations.
  June 30, 2001

Task group activities being considered include:

1. Interaction with other agencies (such as Federal Aviation Administration, Department of Labor, Food and Drug Administration, Department of Agriculture, National Institutes of Health, Center for Disease Control, Department of Energy, and Office of Special Counsel) to understand how they process these issues.

2. Conduct internal and external stakeholder meetings to solicit input on the Agency's handling of discrimination issues.

3. Consider the issues raised in the Petition for Rulemaking "Employee Protection Training", Docket PRM–30–62, 64 Fed. Reg. 57785 (Oct. 27, 1999), regarding requiring training of first line and above supervisors of their responsibilities in implementing the employee protection regulations.

4. The review will also:

(a) Evaluate the current NRC processes for dealing with discrimination matters.

(b) Determine whether the Enforcement Policy supplements need to consider a more graded approach regarding the appropriate enforcement sanction given the specific facts of the case, rather than the current supplement guidance which largely relies on the individual's position. Examples of guidance to consider revising include consideration of the severity of the adverse action, and better defining thresholds for taking individual action.

(c) Consider changes to the current enforcement process in discrimination cases, such as the usefulness of pre-decisional Enforcement Conferences and settlement discussions.

(d) Evaluate the process used for DOL deferrals.

(e) Evaluate the release of documents prior to final action being taken.

(f) Evaluate the reliance on regulations such as 10 CFR 50.5 for Individual Actions and evaluate revising 10 CFR 50.7 to include individual actions.

(g) Clarify how the NRC should use the decisions of other Agencies (*e.g.*, DOL, MSPB).

(h) Review the role of the complainant in the process.

The Task Group meeting participants are listed below along with their affiliation:

• Bill Borchardt; Director, Office of Enforcement, Nuclear Regulatory Commission.

• Dennis Dambly; Assistant General Counsel for Materials Litigation and Enforcement, OGC, Nuclear Regulatory Commission.

• Cynthia D. Pederson; Director, Division of Nuclear Materials Safety, Region III, Nuclear Regulatory Commission.

• Barry Letts; Field Office Director, Office of Investigations, Region I, Nuclear Regulatory Commission.

• Edward Baker; Agency Allegation Advisor; Nuclear Regulatory Commission.

• Brad Fewell; Regional Counsel, Region I, Nuclear Regulatory Commission.

Over the next several months the Task Group plans to hold several public stakeholder meetings in various areas of the country to solicit input on areas of improvement in the Agency's handling of discrimination issues.

The following public meeting shave been scheduled:

The first public meeting will be held on September 5, 2000, at the USNRC offices in the TWFN Auditorium, located at 11555 Rockville Pike, Rockville Maryland. The meeting will start at 1 p.m.

A public meeting will be held in Chattanooga TN, on September 7, 2000, at the USNRC Technical Training Center, Osborne Office Center, 5746 Marlin Road, Chattanooga TN 37411 This will be an evening meeting beginning at 7:00 p.m.

A public meeting will be held in San Luis Obispo CA, on September 14, 2000, at the Embassy Suites Hotel, 333 Madonna Road. This will be an evening meeting beginning at 7:00 p.m.

Subsequent workshops in the vicinity of the Milestone Nuclear Power Plant, the Paducah Gaseous Diffusion Plant and in the Chicago area will be announced in the **Federal Register**, local newspapers and on the NRC web site as specific plans are made.

These public meetings are open to the members of the public. Oral or written views regarding the NRC's processes for handling employee protection issues may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make prepared oral presentations or statements should notify Mr. Barry Westreich (Telephone 301/415–3456, e-mail BCW@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such a presentation or statements. Use of still, motion picture, and television cameras as well as audio recording devices will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; may be obtained by contacting Mr. Barry Westreich between 8:00 a.m. and 4:30 p.m. EDT.

This meeting will not be transcribed but, if needed, a meeting report will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). The Task Group Charter and other pertinent documents related to Task Group Activities will also be periodically posted and updated on the Office of Enforcement Web site at *http://www.nrc.gov/OE*. For those unable to attend one of the public meetings on this issue, comments on the discrimination process will be solicited in the **Federal Register** in the future.

Dated this 27th day of July 2000.

R.W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 00–19620 Filed 8–2–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–1866]

Designation of NASD Regulation, Inc. To Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees

July 28, 2000.

AGENCY: Securities and Exchange Commission.

ACTION: Notice and order.

SUMMARY: The Commission is designating NASD Regulation, Inc. (NASDR) to establish and maintain a new electronic filing and disclosure system for investment advisers. The new system is called the Investment Adviser Registration Depository (IARD). The Commission is also approving IARD filing fees.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Lori H. Price, Senior Counsel, or Karen L. Goldstein, Attorney, 202–942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

Discussion

In 1996, Congress gave us authority to participate in an electronic system for the registration of investment advisers. Section 203A(d) of the Investment Advisers Act of 1940 (Advisers Act) allows us to require investment advisers to file forms "through any entity designated [by us] for that purpose," and to "pay the reasonable costs associated with [these] filings." [1] The NASDR is building the IARD for us and the North American Securities Administrators Association. The IARD will permit advisers to file with us and the states electronically through the Internet.[2]

Today, pursuant to our authority under the Advisers Act, we are designating NASDR as operator of the IARD. NASDR has extensive experience administering the Central Registration Depository (CRD) through which broker-dealers make electronic filings with NASDR, the state securities authorities, and us. NASDR is the self-regulatory organization for broker-dealers.[3] In operating the IARD, NASDR will perform certain administrative tasks related to the IARD, but will not act as a self-regulatory organization for advisers.

NASDR has submitted to us a schedule of filing fees that it proposes to charge advisers to initially register through the IARD and to file updating annual amendments. Today we are approving these fees. The fees will be used to pay for the operation and maintenance of the IARD. Because larger advisers will make greater use of the system and derive greater benefits, NASDR has proposed that they pay higher fees than smaller advisers. Thus, the filing fee requirements are set in three tiers, based on the amount of an adviser's assets under management. We approve these fees, which follow, as

[1] 15 USC 80b–3a(d).

[2] The IARD will permit advisers to satisfy filing obligations under state and federal laws by making a single electronic filing. Information contained in the filings made through the IARD will be stored in a database that will be publicly accessible through the Internet. We have proposed new rules under the Advisers Act, and amendments to current rules, that would require advisers to submit their filings through the IARD. The release proposing these rules provides further details on how the IARD will work. See Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Investment Advisers Act Release No. 1862 (April 5, 2000) [65 FR 20524 (April 17, 2000)].

[3] NASDR was established in 1996 as a wholly owned subsidiary of the National Association of Securities Dealers (NASD).

payment by advisers for the reasonable costs associated with using the IARD:

Assets under management	Initial fee	Annual updating fee
More than $100 million	$1,100	$550
$25 million to $100 million	800	400
Less than $25 million	150	100

It Is Therefore Ordered, pursuant to section 203A(d) of the Investment Advisers Act of 1940, that:

(1) NASD Regulation, Inc. is designated as the entity to accept electronic and such other filings that our rules require to be filed through the Investment Adviser Registration Depository; and

(2) The proposed filing fees described above are approved.

Dated: July 28, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19673 Filed 8–2–00; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24585]

Notice of Applications for Deregulation Under Section 8(f) of the Investment Company Act of 1940

July 28, 2000.

The following is a notice of applications for deregulation under section 8(f) of the Investment Company Act of 1940 for the month of July 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 22, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary. SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Senior Floating Income Fund, Inc. [File No. 811–9111]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on April 19, 2000, and amended on July 10, 2000.

Applicant's Address: c/o Fund Asset Management L.P., P.O. Box 9011, Princeton, New Jersey 08543–9011.

Fundmanager Portfolios [File No. 811–8992]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2000 applicant distributed all of its assets to its shareholders based on net asset value. Expenses of $4,705 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on June 23, 2000.

Applicant's Address: One Beacon Street, 5th Floor, Boston, Massachusetts 02108.

Piper Funds Inc. [File No. 811–4905]; American Government Income Fund Inc. [File No. 811–5470]; American Government Income Fund Inc. [File No. 811–5622]; American Opportunity Income Fund Inc. [File No. 811–5854]; Piper Global Funds Inc. [File No. 811–6046]; Piper Funds Inc.—II [File 811–7279]; Highlander Income Fund Inc. [File No. 811–8280]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By August 28, 1998, each applicant has transferred its assets to Fist American Investment Funds, Inc. based on net asset value. Expenses of $125,536, $19,524, $19,524, $20,923, $10,461, and $19,524, respectively, were incurred in connection with the reorganizations and were paid by U.S. Bank National Association, investment adviser to the acquiring fund.

Filing Date: The applications were filed on June 28, 2000.

Applicants' Address: First American Asset Management, U.S. Bank Place, 601 Second Avenue South, Minneapolis, Minnesota 55402.

Insured Tax Free Income Trust National Series 85–1 (and Subsequent Series of the Trust) [File No. 811–4121]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 16, 1999, applicant made a final liquidating distribution to shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 6, 2000.

Applicant's Address: c/o Van Kampen Funds Inc., Administrator, 1 Parkview Plaza, P.O. Box 5555, Oakbrook Terrace, Illinois 60181–5555.

The Explorer Institutional Trust [File No. 811–8808]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By April 28, 2000, applicant had distributed all of its assets to shareholders based on net asset value. Expenses of $75 incurred in connection with the liquidation were paid by Van Kampen Management Inc., applicant's investment adviser.

Filing Date: The application was filed on June 30, 2000.

Applicant's Address: 1 Parkview Plaza, P.O. Box 5555, Oakbrook Terrance, Illinois 60181–5555.

U.S. Small Company Portfolio [File No. 811–8954]; Emerging Markets Portfolio [File No. 811–8233]; U.S. Mid-Cap Portfolio [File No. 811–8467]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By October 27, 1999, all shareholders of U.S. Small Company Portfolio had redeemed their shares at net asset value. By October 30, 1998, all shareholders of Emerging

Markets Portfolio had redeemed their shares at net asset value. On February 16, 1999, U.S. Mid-Cap Portfolio made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidations.

Filing Dates: The applications for U.S. Small Company Portfolio and Emerging Markets Portfolio were filed on April 12, 2000, and the application for U.S. Mid-Cap Portfolio was filed on April 13, 2000. Each application was amended on July 11, 2000.

Applicants' Address: Butterfield House, 4th Floor, Fort Street, P.O. Box 2330, George Town, Grand Canyon, Cayman Islands, B.W.I.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19674 Filed 8–2–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3380]

Bureau of Educational and Cultural Affairs; International Education and Cultural Activities Open Grant Program; Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs of the U.S. Department of State, announces an open competition for an assistance award program. U.S. public or private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501c may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright Hays Act.

The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries but that do not respond specifically to themes included below will also be considered. Programs and projects must conform with Bureau requirements and guidelines outlined in the Application Package. Bureau projects and programs are subject to the availability of funds.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

Announcement Name and Number: All communications concerning this announcement should refer to the Annual Open Grant Program. The announcement number is E/P–01–1. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

Deadline for Proposals: All copies must be received by the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, October 27, 2000. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through October 27, 2000, for projects where activities will begin between March 1, 2001 and December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, ECA/PE/C, Room 216, Bureau of Educational and Cultural Affairs, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, (202) 619–5348, to request detailed application packets which include award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before beginning to download.

ADDRESSES: Applicants must follow all instructions in the Solicitation Package. The original and 10 copies should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref: E/P–01–1 Annual Open Grant Competition, Program Management, ECA/EX/PM, 301 4th Street, SW, Room 336, Washington, DC 20547.

Applicants must also submit to E/XE the "Executive Summary" and "Proposal Narrative" sections of each proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to U.S. embassies overseas for their review, with the goal of reducing the time it takes to get the respective Embassy's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

Overview

The Office of Citizen Exchanges works with U.S. private sector, non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures and international interests. The Office supports international projects in the

United States or overseas involving leaders or potential leaders in the following fields and professions: urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, NGO leaders, environmental specialists, parliamentarians, educators, economists, and other government officials.

Guidelines

Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

Central and Eastern Europe (CEE) and the Newly Independent States (NIS)

Requests for proposals involving the following countries will be announced in separate competitions: CEE—Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic, and Slovenia; NIS—Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Proposals involving these regions will not be accepted under this competition.

Western Europe (WEU)

Proposals involving this region will not be accepted under this competition.

East Asia and the Pacific (EAP)

For all of EAP: We welcome proposals that directly respond to the following suggestions in each of the following countries. Given budgetary consideration, projects in other countries and for other themes will not be eligible for consideration.

For China: We welcome proposals in the following fields:

(1) Rule of Law: Projects focussed on the protection of intellectual property rights, judicial reform and court administration are encouraged as well as projects designed to assist in the development of China's economic legal framework to support the implementation of membership in the WTO.

(2) NGO Development: Projects designed to strengthen the role of NGOs in Chinese society and the Chinese Government's cooperation with NGOs through an exchange of representatives from NGOs and public-sector organizations cutting across fields such as legal aid, consumerism, family issues, and environmental protection to examine the role of NGOs and public-private sector cooperation in the U.S.

For Indonesia: We welcome proposals in the following areas:

(1) Political Leadership: Projects that focus on meeting the challenges and responsibilities of public office; specifically, projects on rule of law; transparency in government, and funding and regulatory processes.

(2) Strengthening Grassroots Democracy: Projects that include training NGO leadership and addressing organizational governance issues; building locations, networking, lobbying elected officials; media strategies needed for the above, volunteerism; addressing civic values; civic education/human rights education; the role of NGOs in mediating conflict in the community.

(3) Local Governance: Projects designed to strengthen local governments and make them more responsive to local needs with emphasis on local government administration, including budget development, financial management, tax policies and mechanisms; election practices, management of municipal services, committee and staff structures; drafting of legislation and relationship with regional and national governments.

(4) Media: Projects to provide training in media ethics and investigate journalism. Ideally, the project in investigative journalism would primarily take place in the U.S. and the project on media ethics would primarily take place in Indonesia.

For Korea: We welcome proposals in the following fields:

(1) The Role of a Free Press in a New Democracy: Projects designed to put Korean Media Associations in direct contact with both Schools of Journalism and media professionals in the U.S. to discuss the proper relationship between the Government and media with emphasis on standards of objectivity and the distinction between editorializing and factual reporting.

(2) NGO Development: Projects will provide support for democratic processes, assisting NGO development and increasing citizen participation with emphasis on teaching practical management and administrative skills relevant to NGOs and to share techniques appropriate to Korea for conducting outreach, education, and fundraising. The training should focus on NGOs dedicated to increasing citizen participation, particularly the role of women in politics. The project's objective would be to improve specific skills of the target NGOs and to support a demonstrable increase in citizen/female political participation.

(3) Local Autonomy: In Korea, the devolution of responsibility from the Central Government to autonomous local bodies continues. The most fundamental problem hampering this process is defining the proper relationship between the Central Government and local bodies. Project submitted under this category should include an element that provides the Korean participants with the direct experiences with the working level local government officials in the U.S. and access to the latest academic research in the field of public administration. Funded projects must be designed to teach participants ideas and concepts that have practical application within the political, economic and societal realities of Korea; identify participants from among local government officials whose work will have a continued impact on their community; consist of modest objectives with a timeframe that is realistic and achievable; provide continuity independent of USG funding.

For Thailand: We seek proposals that address the issue of higher education reform with specific emphasis on the following themes: (1) Definition of the university's relationship with the society and the State with emphasis on the role of the university as innovator; (2) Improvement of the quality of professional education; (3) Stimulation of scientific and technological research within the university to promote local and regional development; (4) Consolidation of the university's role in supporting national culture; (5) Strengthening bonds between the university and the private sector; (6) Rationalization of resources and diversification of financing of the university; (7) Incorporation of new systems of academic and administrative management.

For Vietnam: We welcome proposals on the following themes:

(1) Market Economics: Projects designed to assist in furthering the development of a free market and economic reform in Vietnam with emphasis on the role of privatization and decentralization within the economy.

(2) International Trade: Projects focused on promoting the development of Vietnam's economic legal framework to support the implementation of the U.S.-Vietnam bilateral trade agreement.

ECA contact for EA programs: Raymond Harvey, 202/260–5491; E-Mail (RHarvey@pd.state.gov)

Western Hemispheric Affairs (WHA)

The Office of Western Hemispheric Affairs includes the countries of Canada, Mexico, Central and South America, and the Caribbean.

For all of WHA: We welcome proposals which contribute to strengthening democratic institution building; administration of justice, including exchanges of judges and prosecutors and between associations and NGOs promoting justice; law enforcement, including community-based anti-gang or anti-drug organizations; and economic reform, free trade and regional economic integration, sustainable development, environmental education, public administration, and municipal government for all countries in the region. For the countries mentioned below, some preference may be given to proposals that track closely the following suggestions:

For Mexico: We welcome proposals that would create opportunities for Mexican and U.S. public administration practitioners and academicians to work together. Project activities might focus on such local government issues as responding to the needs of the people it serves; interacting with other levels of government, implementing experimental ideas, and how city administrators communicate with each other. Participants should have opportunities to meet with academics, practitioners, and with NGOs dedicated to improving governance.

For Brazil: We welcome proposals in the field of women and political leadership. Project activities should focus on running for elective office and/or managing electoral campaigns; developing a media strategy; public speaking/communication skills; meeting challenges and responsibilities of public office once elected. Competitive proposals should include a two-week U.S. study tour for at least five Brazilians from five regions (Sao Paulo, Rio de Janeiro, the south, centerwest, and northeast) as well as a two-week in-country program for American trainers.

For Costa Rica, Honduras, El Salvador, and Panama: We welcome proposals in the field of environmental education. Competitive proposals should involve participants in developing pilot environmental education programs in schools and/or with selected municipalities, capitalizing on the new interest of fledgling NGO environmental groups. Hurricane Mitch's destruction raised awareness throughout Central America of the potential for deforestation to intensify the severity of natural disasters. A particularly vulnerable area is the Panama Canal Watershed, whose protection is vital to ensuring adequate water supply for the functioning of the Canal. In El Salvador as well as Panama, there is growing public awareness that the time for action is now and that education is the key. Therefore, for both Panama and El Salvador, we welcome proposals that focus on environmental education in the public schools as well as community-based projects on recycling, resource conservation, and sustainable development.

For Nicaragua and Guatemala: We welcome projects that work to strengthen institutions of government whose work has a direct impact on the quality of a country's democracy and to increase their transparency, accountability, and responsiveness, and effectiveness of operations. Especially welcome would be proposals that address anti-corruption methods. Projects might focus on local government or elements of executive branches, legislatures, or judicial systems. One example might be an exchange for local mayors to see innovations in city government and citizen participation in municipal affairs, with a return visit by a group of U.S. mayors and city managers and municipal experts to hold larger workshops on the same theme.

For Peru: We welcome proposals on decentralization and resource management issues for local government. Competitive proposals should include an exchange for a group of local mayors and other decentralization specialists who would meet with U.S. local government representatives, businesses and neighborhood groups in order to gain a more in-depth understanding of local government in the U.S.

For Haiti: We welcome proposals for the strengthening of civil society organizations.

ECA/PE/C/WHA/EAP contact for WHA programs: Laverne Johnson, 202/619–5337; E–Mail {LJohnson@pd.state.gov}

Africa (AF)

Proposals are requested for projects that would advance sustainable democracy by building human capital in Africa and strengthening partnerships between the United States and Africa in the thematic categories delineated below. These themes are presented in order to stimulate thinking and planning in areas important to the Office of Citizen Exchanges, but no guarantee is made or implied that grants will be made in all categories. Projects that foster networking across political as well as government-civil society divisions are encouraged.

Proposed activities will be supported only in those countries in which there is a Public Affairs Section (PAS) at the U.S. Embassy. Currently there is no PAS in Guinea Bissau, Cape Verde, Gambia, Burundi, Central African Republic, Equatorial Guinea, Gabon, Sao Tome and Principe, Djibouti, Lesotho, Sierra Leone, Somalia, Sudan, or Mauritania.

Proposals for single country, sub-regional and regional projects will be accepted. The Bureau encourages applicants to consider carefully the choice of target countries. In order to prevent duplication of effort, applicants should research the work of development agencies on the target themes, and select countries for which there has been limited investment on the issue. Applicants are welcome to contact the Public Affairs Sections in U.S. Embassies in Africa, or the Office of Citizen Exchanges, to discuss proposed activities and their relevance to mission priorities.

Proposals will be strengthened if partner organizations and individuals in Africa are identified and their commitment demonstrated. Previous cooperative programming and contacts with partners should be described. Specific information about the African organizations' activities and accomplishments is required and should be included in the section on "Institutional Capacity."

ECA seeks programs that address the following themes: *

1. Equal Treatment of Women Under the Law
2. Joining Forces to Combat HIV/AIDS
3. Post-Election Training for Legislative Staff
4. Professionalism in the Media and Strengthening Journalistic Independence
5. Religious and Inter-Ethnic Conflict: Anti-Incitement and the Search for Common Ground
6. Transparency in Democratic Governance
7. U.S.-Africa Economic Partnership
8. Urban Environment
9. Women and Political Leadership
10. Women as Economic Partners in Nation Building
11. Young Leaders and the Building of Civil Society

* Funding for select projects may be provided by the Education for Development and Democracy Initiative.

Equal Treatment of Women Under the Law

We invite proposals for single-country or regional programs focusing on women's leadership in combating bias against women in the political, judicial and social sectors. Topics may include educating women about existing anti-discriminatory laws, including domestic violence legislation; understanding legal rights and options; addressing attitudes of the judiciary; building community support to combat violence against women, and/or education on the prevention of trafficking in women and girls.

Joining Forces To Combat HIV/AIDS

The Bureau welcomes proposals for creative community-based initiatives that, through public education, will promote better health care and prevent the spread of HIV/AIDS. Projects should explore the need to develop and reward leadership, and to remove barriers that impede a cooperative multi-sectoral response to HIV/AIDS. Citizen exchange projects should address some of following topics: Prevention and stigma reduction strategies, especially for women and youth; engagement of political, religious, cultural and other leaders in public education efforts; support for orphaned children; voluntary counseling; grassroots mobilization and advocacy. Of special interest to the Bureau is the link between cultural practices, the empowerment of women, and the spread of HIV/AIDS in Africa.

Post-Election Training for Legislative Staff

With national and local elections scheduled for many African countries in the year ahead, the Bureau is interested in programs that will enhance legislative staffers' management skills. Applicants must demonstrate expertise and knowledge of the political landscape and how the legislature functions in the target country. Programs may include a combination of U.S.-based internships, in-country workshops, roundtables, panel discussions, case studies and specially tailored projects. Training topics may address accountability to and communication with constituencies; working with the press; negotiation skills; conflict resolution; consensus building; coalition building (particularly related to bloc or partisan communications); ethics in government; working with diverse populations; conducting issue-related casework; drafting legislation and implementing policy.

Professionalism in the Media and Strengthening Journalistic Independence

Professionalism in the media—*i.e.*, gaining an appreciation of and skill for objective reporting; developing subject specialization (*e.g.* justice/legal issues); giving fair coverage to positive as well as negative news; separating comment from news coverage; avoiding inflammatory presentations; maintaining independence from special interests; etc.—remains an area requiring serious development if the fourth estate is to fulfill its potential as a pillar of democratic society. Concomitantly, attention must be given to laws which constrain freedom of information and to forces which urge journalists, editors, producers and publishers to censor themselves, lest governments punish the media for having conveyed the message. We welcome proposals for exchange programs that improve professionalism generally in the media and strengthen specific efforts of individuals and organizations that report on issues of importance to national and/or regional development.

Religious and Inter-Ethnic Conflict: Anti-Incitement and the Search for Common Ground

The problems of incitement to hatred and violence, as well as those of ethnic/religious stereotyping, must be addressed as a key component of the consolidation of democracy in Africa. If peace is to have meaning, citizens of the region must address one another in constructive ways, overcoming the fears and resentments that have built up over time. A project that includes stakeholders from different nations, ethnic groups, or religious communities is solicited in an effort to expand the dialogue for coexistence. Two major components of any effort to focus on anti-incitement are the media and the educational establishment. One of the most important areas for the promotion of dialogue and mutual respect as well as the management of conflict is the media. Any effort in this area would need to involve expertise in conflict resolution as well as in professional journalism ethics and the addressing of problems of prejudice, discrimination, and outright incitement to violence. Incitement via curriculum and teacher prejudice is also a legitimate focus. A regional project to examine how contentious historical events are treated, how former enemies are portrayed, and how curricula can help advance tolerance and peace is a high priority.

Transparency in Democratic Governance

Proposals should work to strengthen institutions of government whose work has a direct impact on the quality of a country's democracy and to increase their transparency, accountability, responsiveness, and effectiveness of operations. Especially welcome would be proposals that address anti-corruption methods and ethics in government. Projects might focus on local government or elements of executive branches, legislatures, or judicial systems.

Urban Environment

The quality of life in urban areas throughout Africa is deteriorating rapidly due to unchecked population growth, the byproducts of industrialization, economic exploitation, conflict, and unprecedented—and unsatisfiable—demands on social infrastructure and natural resources. This undermines the viability of Africa's cities both as places to live and as commercial centers, and has become a serious threat to biodiversity. A project is needed which will bring together community activists, city officials, and industry and business representatives to address such urban environmental issues as the need for clean air, clean water, effective waste management, and recycling. Communities should be mobilized to practice environmental stewardship while supporting sustainable development, thereby creating a more hospitable environment for human habitation and for regional and international trade and investment.

U.S.-Africa Economic Partnership

The Bureau welcomes proposals that would encourage the creation of free trade areas through reduced tariff and non-tariff barriers. Such a project might be carried out with regional chambers of commerce and/or the Southern African Development Community (SADC) Secretariat. Proposals on free trade areas also would be of interest to posts in West and East Africa. Projects should foster an understanding of and commitment to policies and practices that support economic growth in a democratic framework through the private sector and international trade. Especially encouraged are proposals that focus on creating an "enabling environment" supportive of these goals. Related issues might include intellectual property rights, trade liberalization (*e.g.*, tax and investment laws, along with other incentives), mechanisms of transparency and accountability, the role of business associations, and regional economic cooperation/integration.

Women as Economic Partners in Nation Building

In many countries in Africa, women are the backbone of the economy and yet they remain relatively unorganized and unconnected from one another. The organizations for businesswomen that do exist currently have the capacity to effect little systemic change, but have the potential to have a profound impact on the economy. Priority will be given to proposals that offer African

businesswomen the opportunity to interact with U.S. women-owned businesses and interest groups, and to see first hand the work they do to enable businesswomen to network and profit from relationships they create, both domestically and internationally. Successful proposals will expose business leaders to democratic, team-centered approaches to organizational management appropriate to democratic, civil societies. Proposals may also encourage the development of self-help/micro-enterprise programs for women in disadvantaged communities, by providing training and counseling to loan recipients.

Women and Political Leadership

ECA welcomes proposals for single-country or regional programs with a focus on political leadership for women. Specifically, the program should combine elements such as leadership fundamentals, the introduction or improvement of skills associated with campaign management, accountability to constituencies, lobbying, surveying, polling, advocacy, voter outreach, networking, message development, working with the media, fundraising, and meeting challenges and responsibilities of public office once elected. Proposals must indicate a practical and sophisticated knowledge of the political and legislative environment in the target African country.

Young Leaders and the Building of Civil Society

Proposals should focus on the role that young African leaders should and can play in building civil society. Participants would be emerging leaders—recent graduates—who appear to be on a trajectory to prominent positions in their societies and/or work with youth organizations and non-governmental organizations. Issues to be addressed would include the meaning of civil society, the separation of powers, the role of non-governmental organizations, components of democracy, issues of national identity, democratic and team-centered approaches to organizational management, etc. The exchange should encompass both the theoretical and the experiential, with participants working with and learning from American young leaders active in the development and strengthening of civil society through civic education and grassroots mobilization. Of special interest to ECA are programs that focus on leadership programs for at-risk youth, and the reintegration of child soldiers into civil society.

Additional Guidelines for Africa

Equal Opportunities for Persons with Disabilities: The Bureau is particularly interested in projects that focus on or include persons with disabilities in any of the above-listed themes.

Opportunity for Small Grants Programming: Program plans for projects in any of the above themes may include a component for a Small Grants Competition (often referred to as "seed" grants). This requires a detailed plan for recruitment and advertising; sample application; description of the proposal review and award mechanism; a plan for how the grantee would monitor and evaluate small grant activity; and a proposed amount for an average grant. Funds for the Small Grants Competition should be no more than 25 percent total requested from the Bureau.

Content-Based Internet Training: The President has recently extolled the virtues of using the Internet to lift countries out of poverty. The Bureau therefore encourages applicants to use the Internet to assist African counterparts in conducting research, networking, and communicating on the above-listed priority issues. The purpose of the training is not to instruct in Internet technology and use, but to encourage citizen participation in workshops, fora, chats, and/or discussions via the Internet that will stimulate communication and information sharing on relevant topics. Proposals that include content-based Internet training must reflect knowledge of the opportunities and obstacles that exist for information technologies in the target country or countries, and, if needed, provide hardware, software and servers, preferably as a form of cost sharing.

Contact for ECA/PE/C/AF programs: Orna Blum, 202/260–2754; E-Mail {OBlum@pd.state.gov}

Near East and North Africa (NEA)

South Asia (SA)

Proposals that respond to the following suggested themes and organizational approaches will receive priority consideration in the awarding of grants for exchange activity in the Near East, North Africa, and South Asia. While not all countries suggested as participants for each project must be included in the exchange, and proposals for single-country projects will receive full consideration, projects bringing together representatives from three or more countries will be given priority consideration. Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries but that do not respond specifically to the themes included below will also be considered. The countries/entities comprising the NEA and SA AREAS are listed below. Currently there is no U.S. mission in Afghanistan, Iran, Iraq, or Libya. Please consider countries listed (specific interest) as potential exchange partners in projects that address the theme, but recognize that all themes may be appropriate for region-wide (any country or group of countries) consideration.

Countries/Entities of the Near East and North Africa

Algeria; Bahrain; Egypt; Iran; Iraq; Israel; Jordan; Kuwait; Lebanon; Libya; Morocco; Oman; Qatar; Saudi Arabia; Syria; Tunisia; the United Arab Emirates (UAE); the West Bank and Gaza; Yemen

Countries of South Asia

Afghanistan; Bangladesh; Bhutan; India; the Maldives; Nepal; Pakistan; Sri Lanka

Citizen Participation and Advocacy (Building and Strengthening Non-Governmental Organizations)

Of specific interest for India; Bangladesh; Pakistan; Nepal; Egypt; Morocco; Israel; the West Bank and Gaza; Lebanon; Syria; Saudi Arabia; Kuwait; and the UAE

Social and political activism, encouraged, focussed, and channeled through non-governmental organizations, is a basic underpinning of democratic society. Strengthening NGO advocacy skills, management, grassroots support, recruitment and motivation of volunteers, fundraising and financial management, media relations, and networking for mutual support and reinforcement will strengthen democratic/civil society trends in the region. Among other emphases, this project should focus on answering questions about the proper role of NGO's, facilitating Internet communication and on developing cooperation between educators and NGO's and between government agencies and NGO's for community action. It is essential that organizations submitting proposals in this category recognize that democratic activism is viewed with distrust by some of the governments in the area and that foreign involvement with local NGO's must be carefully thought out and approached with subtlety and sensitivity, as such involvement may be viewed with suspicion. Close consultation with American Embassy/Consulate officers is critical.

Women's Activism, Organizational Skills, and Political Leadership

Of specific interest for Egypt; Israel, Lebanon; Saudi Arabia; Kuwait; UAE; Bahrain; Oman; Qatar; Yemen.

This theme is also highly appropriate for a binational India-Pakistan project, a South Asia regional exchange, or a regional project involving the countries of the Arabian Gulf. Throughout the region, women exercise disproportionately little political and social influence. While some women's groups have organized themselves and actively campaign for equal rights and a greater say in local issues, women need to learn how to develop consensus on issues and build a constituency, mobilize support—both urban/political and grassroots—raise money at the municipal, state, and national levels, and how to win elections. Once elected, how can they most effectively represent the interests of their constituents? What can women activists do to affect policy as well as practice in the areas of health care, education, domestic violence, and equal treatment under the law?

Environmental Protection; Environmental Education; Wildlife Conservation

Of specific interest for Egypt; Israel; the West Bank and Gaza; Lebanon; Bahrain; India; and Nepal

Environmental degradation undermines the quality of human life. It is closely linked, both directly and indirectly, with issues of public health (air and water pollution; solid waste management) and economic welfare (preservation of natural sites; ecotourism; agricultural productivity; the rational management of natural resources). Pollutant-laden air and impure groundwater are trans-boundary issues, faced by all countries/entities. Projects are sought that enhance public awareness of the threat posed by environmental deterioration, that facilitate efforts to combat the threat by mobilizing either governmental or non-governmental organizations, and that work at multiple levels to educate and to develop solutions. Of special concern to India is the need for increased awareness and training regarding the treatment and disposal of hazardous, often medical/bio-medical, waste.

Professionalism in Media and the Strengthening of Journalistic Independence

Of specific interest for Israel; Jordan; the West Bank and Gaza; Lebanon; Tunisia; Morocco; India; Nepal; and Pakistan

The development of professionalism in media—gaining an appreciation for the importance of objective reporting; developing subject specialization; applying rational management techniques to newspaper publishing; *etc.*—remains an area in which serious efforts must be expended if the fourth estate is to fulfill its potential as a pillar of democratic society. Concomitantly, laws throughout the region constrain press freedoms, and journalists, editors, and publishers are forced to self-censor, lest governments punish the media for having conveyed the message. Projects are needed to address professionalism and to focus on training and advice to individuals and organizations devoted to the protection of press freedoms and to the defense of journalists and their right to practice their profession with integrity.

Judicial Reform and the Administration of Justice or Conflict Resolution/ Consensual Dispute Resolution

Of specific interest for Egypt; Morocco; Tunisia; Oman; Lebanon; Israel; Bangladesh; India; Pakistan

A well trained, independent judiciary is fundamental to a democratic political and social system. The integrity of the judicial process and, by extrapolation, public confidence in the ability of the judicial process to deliver justice must be protected from political interference in legal proceedings and public perception of unequal and unfair treatment before the bench of women, members of ethnic minority communities, and the poor. Even well qualified and well intentioned judges are obstructed in their efforts to deliver justice by case backlog, by procedural delay, and by insufficient authority to exercise judicial discretion in court management. It is important that judges of both lower and higher courts be introduced to the principles and practices of U.S. jurisprudence and that such fundamental procedures as alternative dispute resolution, early neutral evaluation, case management, the acceptance of guilty pleas, continuous trial proceedings, and arbitration/mediation be familiar to them. A corollary to this issue, to be dealt with in the context of administration of justice, is the need to address the unequal treatment of women by officers at all levels within the justice system and of the need to recognize and seriously to deal with the problem of sexual harassment in the workplace.

Civic Education: Educating for Democracy

Of specific interest for Egypt; Israel; the West Bank and Gaza; Lebanon; Pakistan; Saudi Arabia; Kuwait; UAE

Enhanced citizen awareness of and increased participation in those activities that support democratic goals are a high priority. Regional or single-country exchange projects should be designed to assist educators, community activists, and journalists teach about and demonstrate the efficacy of civic responsibility, citizens' initiative, and tolerance while avoiding direct political advocacy for the establishment of "liberal democracy." The importance of active citizenship and the potent role of democratically oriented institutions in social change should be highlighted, with emphasis on average citizens sharing a sense of responsibility for their national future, voluntarism, and promoting community initiatives for change. Participants might include teachers, administrators, curriculum planners, Ministry of Education policy-makers, community activists, journalists, etc.

Education

Of specific interest for Egypt and Israel

Curriculum development, textbook writing, teacher training and skills enhancement, and the teaching of English in context are all areas of strong need and interest. Special interest is expressed in the utilization of computers and the Internet to stimulate student creativity and to move away from rote learning.

Young Leaders and the Building of Civil Society

Of specific interest for Jordan; Israel; Egypt; the West Bank and Gaza; Lebanon; Morocco

This theme is also very appropriate for a joint India-Pakistan project or for a South Asia regional project. Proposals should focus on the role young leaders should and can play in building civil society. Participants would be emergent leaders—recent graduates—who appear to be on a trajectory to prominent positions in their societies and/or work with youth organizations and non-governmental organizations. Issues to be addressed would include the meaning of civil society, the role of a responsible citizenry, the separation of powers, the role—both in setting social agendas and in providing social services—of non-governmental organizations, components of democracy, the centrality of human rights, issues of national identity, etc. The exchange should encompass both the theoretical

and the experiential, with participants working with and learning from American young leaders active in the development and strengthening of civil society.

Economic Policy, Investment, and the Norms of International Commerce

Of specific interest for Tunisia; Morocco; Algeria; and Egypt

The countries of North Africa would welcome proposals to strengthen ongoing efforts to establish a degree of regional economic integration, to stimulate serious thinking about transnational trade and investment, and to link North African business groups with American counterparts. Relevant issues to be incorporated into an exchange would be decentralization of commercial regulation, support for privatization, and competitiveness.

ECA/PE/CE/NEA contact for NEA and SA programs: Thomas Johnston, 202/619–5325; E-Mail (TJohnston@pd.state.gov)

Additional Guidance

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; *i.e.*, clerical work, auto maintenance, *etc.*, and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support. The Office does not support proposals limited to conferences or seminars (*i.e.*, one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope that is receiving Bureau funding from this competition. Bureau-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including, where applicable, the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country U.S. Embassies *prior* to submitting proposals.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, the Bureau and U.S. Embassies abroad retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by the Bureau to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the Embassy representative in the relevant country, and pre-selected participants will also be subject to Embassy review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities that take place exclusively in other countries when U.S. Embassies are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register**.

For projects that would begin after December 31, 2001, competition details will be announced in the **Federal Register** on or about June 1, 2001. Inquiries concerning technical requirements are welcome prior to submission of applications.

Funding

Although no set funding limit exists, proposals for less than $135,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate Bureau decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for Bureau funding support is keen. To illustrate, the Bureau received 94 grant proposals in response to the FY–2000 Open Grants Program. Funding from Bureau resources and Interagency transfer supported a total of 26 awards. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, and other institutions, will be deemed highly competitive. The Recipient must provide a minimum of 33 percent cost sharing of the total project cost.

The following project costs are eligible for consideration for funding:

1. Travel costs. International and domestic air fares; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. **Note:** U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Interpreters: If needed, interpreters for the U.S. program are available through the State Department's Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally-arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter:participation ratio. Costs associated with using their services may not exceed rates for State Department interpreters.

4. Book and cultural allowance: Foreign participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. program staff are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. Room rental. Room rental may not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. Equipment. Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

9. Working Meal. The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered under the terms of a Department of State-sponsored health insurance policy. The premium is paid by the Department of State directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the Solicitation Package. **Note:** the 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP. Please refer to the Solicitation Package for complete budget guidelines.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Solicitation Packet. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. All eligible proposals will also be reviewed by the program office, as well the U.S. Embassy officers for advisory review, where appropriate. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices in the Department of State. Funding decisions will be made at the discretion of the Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

The Bureau will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning/Ability to Achieve Program Objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate the substantive support of the Bureau's policy on diversity. Program content (training sessions, resource materials, follow-on activities) and program administration (participant selection process, orientation, evaluation, resource/staff persons) should address diversity in a comprehensive and innovative manner. Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines on page four of the Proposal Submission Instructions (PSI).

5. *Institutional Capacity/Reputation/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goal. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) which ensures that Bureau-supported programs are not isolated events.

7. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

8. *Cost-Effectiveness/Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept

as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the need of the program and the availability of funds. Organizations will be expected to cooperate with the Bureau in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been fully appropriated by the Congress, allocated, and committed through internal Bureau procedures.

Dated: July 26, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–19572 Filed 8–2–00; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Addition of Electric Generation Peaking Capacity at Greenfield Sites, Mississippi

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) for the proposed construction and operation of a natural gas-fired generating plant in Mississippi. The plant would supply peaking capacity to the TVA electric generation system to meet growing power demands. The EIS will evaluate the potential environmental impacts of constructing and operating a simple-cycle, natural gas-fired combustion turbine plant. TVA may build and operate such a plant or, alternatively, TVA may choose to purchase power from such a plant owned by others in order to meet TVA's needs. If built by TVA, the plant would be constructed on a previously undeveloped, greenfield site. TVA will use the EIS process to obtain public involvement on this proposal. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of the EIS.

DATES: Comments on the scope and environmental issues for the EIS must be postmarked or e-mailed no later than September 5, 2000 to ensure consideration. Late comments will receive every consideration possible.

ADDRESSES: Written comments should be sent to Bruce L. Yeager, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, Mail stop WT 8B, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may be e-mailed to blyeager@tva.gov.

FOR FURTHER INFORMATION CONTACT: Roy V. Carter, P.E., EIS Project Manager, Energy Research and Technology Applications, Tennessee Valley Authority, Mail stop CEB 4C, Muscle Shoals, Alabama 35662–1010. E-mail may be sent to rvcarter@tva.gov.

SUPPLEMENTARY INFORMATION:

Project Description

TVA proposes to construct and operate an electric power plant as early as June 2002. The proposed plant would be a simple-cycle, natural gas-fired combustion turbine plant for peaking operation. The generation capacity of the plant would be up to approximately 340 megawatts (MWs) for peaking power.

Several candidate greenfield sites have been identified in Mississippi. These candidate sites were identified through a detailed screening process that considered: (1) TVA's need for generating capacity; (2) transmission system stability across TVA's service region; (3) transmission system capacity at the locale; (4) reliability and economy of long-term supply of natural gas; (5) engineering suitability of the site; (6) compatibility with surrounding land use; and (7) environmental factors including wetlands, floodplains, water supply, water quality, air quality, and historic and archaeological resources.

Peaking Plant

A typical peaking plant would consist of four simple-cycle combustion turbines such as the General Electric Model GE 7EA with a rated net power output of 85 MWs. These turbines would be fired with natural gas as the primary fuel and low sulfur fuel oil as the secondary fuel. These combustion turbines would employ dry low-NO_x combustion chambers and water injection for NO_x control when firing fuel oil.

The proposed sites would be located near TVA power transmission lines or substation and adequate natural gas service to minimize the lengths and, therefore, the cost of these interconnections. A plant would require a site area of approximately 50 acres.

Other appurtenances and ancillary equipment would include step-up transformers for 161 kV or 500 kV service, transmission line interconnection, natural gas pipeline connection and metering, demineralized water supply for the water injection NO_x control systems, fuel oil storage tank(s), and control and maintenance support buildings.

TVA's Integrated Resource Plan and the Need for Power

This EIS will tier from TVA's *Energy Vision 2020: An Integrated Resource Plan and Final Programmatic Environmental Impact Statement.* Energy Vision 2020 was completed in December 1995 and a Record of Decision issued on February 28, 1996 (61 FR 7572). Energy Vision 2020 analyzed a full range of supply-side and demand-side options to meet customer energy needs for the period 1995 to 2020. These options were ranked using several criteria including environmental performance. Favorable options were formulated into strategies. A group of options drawn from several effective strategies was chosen as TVA's preferred alternative. The supply-side options selected to meet peaking and baseload capacity needs through the 2005 period included: (1) Addition of simple-cycle or combined-cycle combustion turbines to TVA's generation system, (2) purchase of call options for peaking or baseload capacity, and (3) market purchases of peaking or baseload capacity. The short-term action plan of Energy Vision 2020 identified a need for 3,000 MWs of baseload and peaking additions through the year 2002. This is in addition to the baseload capacity additions of the successful completion of Watts Bar Nuclear Plant Unit 1 and the return-to-service of Browns Ferry Nuclear Plant Unit 3.

Each year TVA provides updated projections of supply and demand for the TVA sub-region of the Southeastern Electric Reliability Council (SERC). This is for the U.S. Department of Energy's (DOE) annual report, EIA–411. This year's report (2000) shows expected peak demands growing at 2.4 percent from 2000 to 2005 and beyond. The net

capacity resources needed to meet the growth in demand increases 2,000 MWs by the year 2002, and 3,200 MWs by the year 2004. The addition of the combustion turbines is needed by TVA to meet the peaking capacity requirements from both a reliability and cost standpoint.

Since 1995, additional power needs have been met or will be met through the following steps: (1) Continuing to modernize existing TVA hydroelectric plants (both conventional and pumped storage) and, thus, adding approximately 388 MWs of peaking capacity through 2002; (2) completion in 2001 of the Red Hills Power Project, a 440 MW lignite coal-fired plant supplying baseload power commercially (TVA Record of Decision, 63 FR 44944); (3) the installation and operation in 2000 of 680 MWs of peaking power capacity at the TVA Johnsonville and Gallatin Fossil Plants (TVA Record of Decision, 64 FR 138); (4) the installation and operation of up to 1,400 MWs of peaking power capacity at a greenfield site in Haywood County, Tennessee (TVA Record of Decision, 64 FR 92); (5) the completion of various power purchase agreements in effect over this period; (6) the implementation of demand-side customer service programs through TVA power distributors with an estimated 154 MWs of capacity added from 1995 to 2002 and an additional 264 MWs from 2000 through 2002; (7) the pursuance of distributed generation initiatives by TVA, including the operation of the 14 MW emergency diesel generators at the unfinished Bellefonte Nuclear Power Plant site; and (8) the implementation of a Green Power Program in 2000 as a market test providing several MWs of capacity. Technologies for this program include landfill gas, photovoltaics, and wind.

Because Energy Vision 2020 identified and evaluated alternative supply-side and demand-side energy resources and technologies for meeting peak and baseload capacity needs, this EIS will not reevaluate those alternatives. This EIS will focus on the site-specific impacts of constructing and operating simple-cycle combustion turbines at candidate sites.

Proposed Issues To Be Addressed

The EIS will describe the existing environmental and socioeconomic resources at and in the vicinity of each candidate site that would be affected by the construction and operation of the proposed power plant. TVA's evaluation of environmental impacts to these resources will include, but not necessarily be limited to, the potential impacts on air quality, water quality, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, noise, land use, historic and archaeological resources, and socioeconomic resources.

Alternatives

The results of evaluating the potential environmental impacts and other important issues identified in the scoping process together with engineering and economic considerations will be used by TVA in selecting a preferred alternative. Currently, TVA plans to evaluate in detail, the construction and operation of a simple-cycle combustion turbine peaking plant at two or more candidate sites in Mississippi by as early as May 2002, as well as the alternative of no action. All of the potential power plant sites currently under consideration are in Kemper County.

Scoping Process

Scoping, which is integral to the National Environmental Policy Act (NEPA) process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA's NEPA procedures require that the scoping process commence soon after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope and for identifying the significant issues related to the proposed action. The scope of issues to be addressed in the draft EIS will be determined, in part, from written comments submitted by mail or e-mail, and comments presented orally or in writing at public meetings. The preliminary identification in this notice of reasonable alternatives and environmental issues is not meant to be exhaustive or final.

The scoping process will include both interagency and public scoping input. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice.

TVA is conducting a public scoping meeting at the East Mississippi Community College, 1512 Kemper Street in Scooba, Mississippi on August 3, 2000. Registration is at 5:30 p.m. and the meeting begins at 6 p.m. At this meeting, TVA management and project staff will present an overview of the proposed power plant project, answer questions, and solicit comments on the issues that the public expresses an interest in having addressed in the EIS. The meeting was publicized through notices in local newspapers, through TVA press releases, and in meetings conducted between TVA officials and local elected officials preceding the public meetings.

The agencies to be included in the interagency scoping are U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Mississippi Department of Environmental Quality, the Mississippi State Historic Preservation Officer, and other agencies as appropriate.

After consideration of the scoping comments, TVA will further develop alternatives and environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. The Environmental Protection Agency will publish a notice of availability (NOA) of the draft EIS in the **Federal Register**. In the NOA, TVA will solicit written comments on the draft EIS, as well as announce information pertaining to the schedule of public meetings to be held for the purpose of receiving comments on the draft EIS. TVA expects to release a draft EIS in December 2000 and a final EIS in April 2001.

Dated: July 25, 2000.

Kathryn J. Jackson,

Executive Vice-President, River System Operations and Environment.

[FR Doc. 00–19663 Filed 8–2–00; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Trade Area of the Americas

AGENCY: Office of the United States Trade Representative.

ACTION: Free Trade Area of the Americas (FTAA) Joint Government-Private Sector Experts Committee on Electronic Commerce (Joint Committee) request for public comment on the identification of a private sector expert on consumer issues related to electronic commerce who may wish to participate in the work of the Joint Committee.

SUMMARY: The Joint Committee on Electronic Commerce was established by the 34 countries in the Western Hemisphere participating in the Free Trade Area of the Americas. The Trade Policy Staff Committee (TPSC) seeks to identify a U.S. private sector expert on consumer issues related to electronic commerce who may be interested in

participating in the work of the Joint Committee. interested members of the public are invited to submit written notice of their interest and their qualifications.

DATES: Written expressions of interest in participating in the work of the Joint Committee should be submitted no later than August 11, 2000.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–9557. All questions concerning the Joint Committee may be directed to Regina Vargo, Deputy Assistant Secretary for the Western Hemisphere, U.S. Department of Commerce (202) 482–5324, Regina_Vargo@ita.doc.gov.

SUPPLEMENTARY INFORMATION: At the Second Summit of the Americas in April 1998, in Santiago, Chile, the 34 democratically elected Western Hemisphere leaders initiated negotiations to create the FTAA no later than the year 2005. They established nine initial negotiating groups, a consultative group, and two committees, one of which is the Joint Committee, which began its work in August 1998. The trade ministers mandated that both government and private sector experts meet as the Joint Committee to make recommendations on how to increase and broaden the benefits of electronic commerce; the Joint Committee is not a negotiating group. Inclusion of the private sector on the committee is consistent with President Clinton's principle that the private sector should take the lead in global electronic commerce.

The Joint Committee was chaired by the government of Barbados during the initial 18-month period and will be chaired by an Uruguayan private sector representative and vice chaired by a Canadian government representative through April 2001. Regina Vargo, Deputy Assistant Secretary for the Western Hemisphere, U.S. Department of Commerce, leads the joint U.S. government-private sector delegation to the Joint Committee.

Status of Work in the Joint Committee: At the FTAA Ministerial meeting in Toronto in November 1999, trade ministers received, and released to the public, a report prepared by the Joint Committee reflecting its discussions over the preceding 18 months on a broad range of electronic commerce issues; its recommendations on increasing and broadening the benefits of electronic commerce issues; its recommendations on increasing and broadening the benefits of electronic commerce were drafted with the full participation of government and private sector experts from every region in the Hemisphere. FTAA trade ministers committed to share the report and its recommendations with other relevant authorities within their governments. They also requested that the Joint Committee continue its work as a non-negotiating group and produce further recommendations over the next 18-month period. The full report ("Report with Recommendations to Ministers," FTAA.ecom/01) is available in English and Spanish on the official FTAA website (*http://www.ftaa-alca.org*) and the U.S. Government Electronic Commerce website (*http://www.ecommerce.gov*).

At the Joint Committee's January meeting in Miami, the Joint Committee's private sector and government representatives identified issues to be discussed during the next phase of its work. The Joint Committee will focus on issues related to access and infrastructure, small and medium-size enterprises, authentication, and online payments, and consider developments in other areas such as intellectual property, taxation and consumer protection. The Joint Committee will make further recommendations to trade ministers for their consideration at the next FTAA Ministerial meeting in April 2001. At the next meeting, August 28–30, the Joint Committee will address issues on its workplan including authentication and payment systems. Consumer protection issues may also rise.

Private Sector Participating: During the first 18-month period, 13 U.S. private sector representatives, reflecting a balance of interests and electronic commerce issue expertise, participated in the work of the Joint Committee. Each representative had responded to notices in the **Federal Register** (63 FR 42090 August 6, 1998 and 64 FR 26811, May 17, 1999) or a request to official trade advisors inviting expressions of interest and qualifications to participate in the work of the Joint Committee.

When the Committee entered its second phase of work, the TPSC solicited U.S. private sector interest in participating, taking into consideration the current workplan (FR Notice February 29, 2000, Vol. 65, No. 40). However, the TPSC received no responses from individuals with expertise in consumer issues. The newly constituted U.S. private sector contingent in the Joint Committee includes 19 participants. The TPSC is now seeking to expand private sector participation on the Joint Committee to include an expert on consumer issues related to electronic commerce.

Public Comments

The TPSC is seeking to supplement U.S. private sector participation on the Joint Committee, to include expertise in consumer issues related to electronic commerce. In order to assist the TPSC in identifying U.S. private sector expert(s) on consumer issues related to electronic commerce, members of the public are invited to submit written notice of their interest and describe their qualifications. Qualifications of interest include: Demonstrated expertise in one or more aspects of electronic commerce and consumer protection; an ability and willingness to broadly solicit views from and disseminate information to consumer groups; and familiarity with U.S. and foreign trade and investment policies and obligations. Knowledge of the Western Hemisphere, including established contacts with foreign private sector interests in the region, would be helpful.

Those persons wishing to make written submissions should provide twenty (20) typed copies (in English) no later than noon, August 11, 2000 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW., Washington, DC 20508.

Written submission in connection with this request will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The Reading room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

David Walters,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 00–19697 Filed 8–2–00; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dallas County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be

prepared for a proposed transportation project in Dallas County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, Acting District Engineer, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, Telephone 512–916–5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and the North Texas Tollway Authority (NTTA), will prepare an environmental impact statement (EIS) for the Eastern Extension of the President George Bush Turnpike from SH 78 to IH 30 within northeast Dallas County. The corridor is approximately 10.5 miles in length and crosses Lake Ray Hubbard. From a regional and local perspective, there is a great demand for additional transportation capacity and access through the corridor. Over the last 30 years, the area has experienced tremendous growth and has nearly tripled in population.

As directed by TEA–21, the Major Investment Study (MIS) will be integrated with the EIS. Previous feasibility studies and Mobility 2025, the Metropolitan Transportation Plan (MTP) for the Dallas-Fort Worth region have examined a full range of alternatives and alignments within the corridor. The Eastern Extension is included in the MTP as a new location 4-lane tollway with controlled access. The environmental study will examine viable alternatives and potential transportation modes including the No-Build; Transportation Systems Management/Congestion Management Systems; controlled access freeway; and tollway options. it will also include extensive and continuous public involvement to address the long-term mobility needs of both the region and local community. The environmental study will include the determination of the number of lanes (four to six lanes are anticipated), roadway configuration, and operational characteristics. It will also include a discussion of the effects on the social, economic, and environment and of other known and reasonably foreseeable agency options proposed with the Eastern Extension Corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed an interest or are known to have an interest in this proposal. A public scoping meeting is planned to be held in the Fall of 2000. The date will be announced locally at a later time. This will be the first in a series of meetings to solicit public comments on the proposed action during the National Environmental Policy Act (NEPA) process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and the hearing. The Draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Salvador Deocampo,

Acting District Engineer, Austin, Texas.

[FR Doc. 00–19664 Filed 8–2–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Forsyth County, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental draft environmental impact statement will be prepared for a proposed highway project in Forsyth County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare a supplemental draft environmental impact statement (EIS) on an extension of the proposed Northern Beltway (Eastern Section) of Winston-Salem in Forsyth County. The proposed action would be the construction of a multi-lane divided, controlled access highway on new location from US 421 east of Winston-Salem to US 311 southeast of Winston-Salem. A Draft Environmental Impact Statement on the Eastern Section, the portion of the facility from US 52 northwest of Winston-Salem to US 421 east of Winston-Salem (FHWA–NC–EIS–95–04–D) was approved by FHWA on 14 September, 1995. The Eastern Section together with the Eastern Section Extension will carry proposed I–74 and will relieve congestion on US 52 and US 421. The proposed action is a part of the 1987 Winston-Salem/Forsyth County Thoroughfare Plan.

Alternatives under consideration include: (1) The "no-build", (2) improving existing facilities, and (3) a controlled access highway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A public meeting and meetings with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The supplemental draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Roy C. Shelton,

Operations Engineer, Federal Highway Administration, Raleigh, North Carolina.

[FR Doc. 00–19606 Filed 8–2–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson Parish, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be

prepared for a proposed bridge project in Jefferson Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Program Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana, 70808, Telephone: (225) 757–7615, Facsimile: (225) 757–7601.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LDOTD), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new bridge facility on an alignment to be determined. The proposed project, known locally as the Kerner's Ferry Bridge over Bayou Barataria, is located in the town of Jean Lafitte in Jefferson Parish, Louisiana. The project will connect LA 3257 with LA 45. The approximate distance of the project is 0.27 miles. Final length will depend on the alternative selected.

The proposed improvements would improve the connectivity, travel time, and safety of the area and increase regional access to the area.

The study area encompasses the logical termini, which are LA 302 on the west bank and LA 45 on the east bank of Bayou Barataria. The corridor limits for the project will be one mile north of the existing bridge to five miles south.

Alternatives to be considered are:

(1) Low level moveable bridge
(2) Mid level moveable bridge
(3) High level fixed bridge
(4) No Action

An agency scoping meeting will be held at a time and place to be determined at a later date. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups of individuals who have expressed interest in the project in the past. At least one public informational meeting will be held in the project area that will be affected. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the public informational meeting(s) and the Public Hearing. The draft EIS will be available for public and agency review and comment prior to the Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: Issued on July 21, 2000.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc. 00–19655 Filed 8–2–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–00–4470]

Pipeline Safety: Meetings of the Hazardous Liquid Pipeline Safety Advisory Committee

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of Hazardous Liquid Advisory Committee Telephone Conference Meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) the Office of Pipeline Safety (OPS) is giving notice of a meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) to consider two Notices of Proposed Rulemaking (NPRM), "Areas Unusually Sensitive to Environmental Damage" (64 FR 73464) and "Pipeline Integrity Management in High Consequence Areas for Hazardous Liquid Pipelines" (65 FR 21695). In addition, OPS is providing notice of an earlier telephone conference call to provide the members an oral briefing on: (1) A summary of issues raised in comments to the docket on both NPRMs; and, (2) the results of the technical review of the proposed definition of areas unusually sensitive to environmental damage.

DATES: OPS will hold the conference call briefing on Thursday, August 24, 2000, at 11:30 a.m. EST. The meeting of the THLPSSC will be conducted by conference call on Monday, September 11, 2000, at 11:30 a.m.

ADDRESSES: Members of the public may attend the meetings at the Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The August 24 meeting is in room 8442 and the September 11 meeting is in room 6200.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Juan Carlos Martinez, (202) 366–1933, not later than August 16, 2000, on the topic of the statement and the time requested for presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance during the telephone conference calls, contact Juan Carlos Martinez at (202) 366–1933.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The THLPSSC is a statutorily mandated advisory committee that advises OPS on proposed safety standards and other safety policies for hazardous liquid pipelines. The committee consists of 15 members representing government, industry, and the public. The committees meet twice a year, usually in May and November. However, because the THLPSSC requested a delay in its formal review of two proposed rules at the May 2000 meeting and OPS intends to complete action on both rulemakings this year, a meeting is being held in September.

The biannual meeting generally held in November for both the THLPSSC and the Technical Pipeline Safety Standards Committee will be postponed until February 2001.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on July 27, 2000.

Stacey L. Gerard,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 00–19607 Filed 8–2–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33894]

Gateway Western Railway Company—Trackage Rights Exemption—The Kansas City Southern Railway Company

The Kansas City Southern Railway Company (KCS) has agreed to grant non-exclusive overhead trackage rights to

Gateway Western Railway Company (GWWR) [1] over KCS" rail line extending between milepost 5.59 near Airline Junction, MO, and milepost 29.49 near Grandview, MO, for a total distance of approximately 23.9 miles.[2]

The purpose of the trackage rights is to allow GWWR to access KCS" new automotive and intermodal facility located at the former Richards Gebaur Airport south of Kansas City, avoiding interchange costs and delays and allowing enhanced train scheduling and equipment utilization.

The transaction was scheduled to be consummated on or shortly after July 26, 2000.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33894, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert K. Dreiling, Esq., The Kansas City Southern Railway Company, 114 West Eleventh Street, Kansas City, MO 64105.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19781 Filed 8–2–00; 8:45 am]

BILLING CODE 4915–00–P

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[1] KCS and GWWR are commonly controlled and affiliated railroad companies. *See Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company—Control—Gateway Western Railway Company and Gateway Eastern Railway Company*, STB Finance Docket No. 33311 (STB served May 1, 1997).

[2] A redacted version of the trackage rights agreement between KCS and GWWR was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order. A protective order was served July 27, 2000.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 24, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 5, 2000 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0004.
Form Number: PD F 1522.
Type of Review: Extension.
Title: Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized.
Description: PD F 1522 is used to request payment of United States Savings and Retirement Securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 56,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 14,000 hours.

OMB Number: 1535–0005.
Form Number: PD F 3253.
Type of Review: Extension.
Title: Exchange Application for United States Savings Bonds of Series HH.
Description: PD F 3253 is used by owners of Series EE/E bonds or notes to request exchange for Series HH bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Respondent: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 39,960 hours.

OMB Number: 1535–0006.
Form Number: PD F 2458.
Type of Review: Extension.
Title: Certificate of Entitlement United States Savings and Retirement Securities and Checks After Administration of Decedent's Estate.
Description: PD F 2458 is used to establish who is entitled to Savings Bonds/Notes after the estate of a decedent has been settled.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,000.
Estimated Burden Hours Per Respondent: 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 938 hours.

OMB Number: 1535–0008.
Form Number: PD F 1938.
Type of Review: Extension.
Title: Request for Reissue of United States Savings Bonds/Notes During the Lives of Both Coowners.
Description: PD F 1938 is used to request reissue of Savings Bonds/Notes during the lives of both coowners.
Respondents: Individuals or households.
Estimated Number of Respondents: 37,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 6,179 hours.

OMB Number: 1535–0014.
Form Number: PD F 1025.
Type of Review: Extension.
Title: Application for Relief on Account of Loss, Theft, or Destruction of United States Registered Securities.
Description: PD F 1025 is used to support a request for relief because of the loss, theft, or destruction of United States Registered Securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 460 hours.

OMB Number: 1535–0015.
Form Number: PD F 1022.
Type of Review: Extension.
Title: Report/Application for Relief on Account of Loss, Theft or Destruction of United States Securities (Organizations).
Description: PD F 1022 is used to obtain relief for lost, stolen or destroyed bearer securities.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 55 minutes.
Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 92 hours.

OMB Number: 1535–0016.
Form Number: PD F 1022–1.
Type of Review: Extension.
Title: Report Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals).
Description: PD F 1022–1 is used to request relief because of the loss, theft or destruction of bearer securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 92 hours.

OMB Number: 1535–0067.
Form Number: PD F 0974.
Type of Review: Extension.
Title: Certificate by Owner of the United States Registered Securities Forged Requests for Payment or Assignments.
Description: PD F 0974 is used by owners of United States Securities to certify that they signature was forged to request for payment or an assignment.
Respondents: Individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 750 hours.

OMB Number: 1535–0098.
Form Number: PD F 3062–4.
Type of Review: Extension.
Title: Claim for Relief on Account of the Nonreceipt of United States Savings Bonds.
Description: PD F 3062–4 is an application for owner to request a substitute bond in lieu of bonds not received.
Respondents: Individuals or households.
Estimated Number of Respondents: 30,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 5,010 hours.

OMB Number: 1535–0101.
Form Number: PD F 0345.
Type of Review: Extension.
Title: Description of Registered Securities.
Description: This form is used to identify an owner's registered securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 1,250 hours.
Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–19688 Filed 8–2–00; 8:45 am]
BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 25, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 5, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1359.
Regulation Project Number: INTL–978–86 NPRM.
Type of Review: Extension.
Title: Information Reporting by Passport and Permanent Residence Applicants.
Description: The regulations require applicants for passports and permanent residence status to report certain tax information on the applications. The regulations are intended to give the Service notice of non-filers and of persons with foreign source income not subject to normal withholding, and to notify such persons of their duty to file U.S. tax returns.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,500,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Estimated Total Reporting Burden: 750,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–19689 Filed 8–2–00; 8:45 am]
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To provide for the award of a gold medal on behalf of the Congress to former President Ronald Reagan and his wife Nancy Reagan in recognition of their service to the Nation. (July 27, 2000; 114 Stat. 624)

H.R. 4391/P.L. 106–252

Mobile Telecommunications Sourcing Act (July 28, 2000; 114 Stat. 626)

H.R. 4437/P.L. 106–253

Semipostal Authorization Act (July 28, 2000; 114 Stat. 634)

Last List July 28, 2000

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Editorial Note: In the Federal Register of August 2, 2000, the agency and page number listed under Part III at the end of that issue's table of contents were incorrect. Part III should have read, "Department of Health and Human Services, Administration for Children and Families, 47618-47632."

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Title 3—

The President

Proclamation 7332 of August 1, 2000

Helsinki Human Rights Day, 2000

By the President of the United States of America

A Proclamation

Twenty-five years ago today, in a world marked by brutal divisions and ideological conflict, the United States joined 33 European nations and Canada in signing the Helsinki Final Act. That watershed event established the Conference on Security and Cooperation in Europe (CSCE) and affirmed an international commitment to respect "freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language, or religion."

During the Cold War, the Helsinki Principles were the rallying point for courageous men and women who confronted tyranny—often at great personal risk—to win the fundamental freedoms set forth by the Final Act. Today, citizens of our vast Euro-Atlantic community from Vancouver to Vladivostok live by, or aspire to live, by those fundamental freedoms. The Helsinki Final Act has been instrumental in the progress we have made together toward building a Europe that is whole and free; a Europe where our partnership for peace is overcoming the possibility of war. The Helsinki Final Act continues to shape our vision for the future of transatlantic cooperation, and the Helsinki accords remain the basic definition of common goals and standards for how all countries in the new Europe should treat their citizens and one another.

The evolution of the CSCE into the Organization for Security and Cooperation in Europe (OSCE) reflects the changing face of Europe. The OSCE's integrated structure of commitments in the areas of human rights, economics, arms control, and conflict resolution provides a defining framework for a free and undivided Europe. The United States will continue to promote the OSCE's efforts to build security within and cooperation among democratic societies; to defuse conflicts; to battle corruption and organized crime; and to champion human rights, fundamental freedoms, and the rule of law throughout the Euro-Atlantic community. We remain committed to the OSCE's essential work of bringing peace and civil society back to Bosnia and Kosovo, and we are grateful to the many dedicated men and women engaged in the OSCE's field missions, who in many ways are our front line of conflict prevention in Europe.

Today, as we mark the 25th anniversary of the Helsinki Final Act, the United States takes pride in remembering our role as one of its original signatories—a ringing call for freedom and human dignity that played a decisive role in lifting the Iron Curtain and ending the tragic division of Europe.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 1, 2000, as Helsinki Human Rights Day and reaffirm our Nation's support for the full implementation of the Helsinki Final Act. I urge the American people to observe this anniversary with appropriate programs, ceremonies, and activities that reflect our dedication to the noble principles of human rights and democracy. I also call upon the governments and peoples of all other

signatory states to renew their commitment to comply with the principles established and consecrated in the Helsinki Final Act.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00-19939
Filed 8-3-00; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Presidential Determination No. 2000–27 of July 21, 2000

Determination To Authorize the Furnishing of Emergency Military Assistance to the United Nations Mission in Sierra Leone (UNAMSIL), Countries Participating in UNAMSIL, and Other Countries Involved in Peacekeeping Efforts or Affiliated Coalition Operations With Respect to Sierra Leone

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1)(A) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists that requires immediate military assistance to UNAMSIL, countries currently or in the future participating in UNAMSIL, and other countries involved in peacekeeping efforts or affiliated coalition operations with respect to Sierra Leone, including the Government of Sierra Leone, and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a)(1) of the Act.

I therefore direct the drawdown of defense articles from the stocks of the Department of Defense, defense services from the Department of Defense, and military education and training of an aggregate value not to exceed $18 million to UNAMSIL and such countries to support peacekeeping efforts with respect to Sierra Leone.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 21, 2000.

[FR Doc. 00–19940
Filed 8–3–00; 8:45 am]
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Rules and Regulations

Federal Register
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Friday, August 4, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AI39

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing final regulations on the current career transition assistance programs. These programs assist Federal employees displaced from their jobs by downsizing. These programs began in 1995 as a temporary replacement for the Interagency Placement Program, with a planned sunset date of September 30, 1999. Interim regulations published July 27, 1999, extended the sunset date for an additional 2 years. These final regulations address comments submitted on the interim regulations.

DATES: This regulation is effective on September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman on (202) 606–0960, FAX (202) 606–2329, TDD (202) 606–0023, email: jryeatma@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, OPM published interim regulations with a request for comment on the government's career transition assistance programs in 5 CFR part 330. These regulations extended the Career Transition Assistance Plan (CTAP) and the Interagency Career Transition Assistance Plan (ICTAP) until September 30, 2001. The regulations also made some technical changes and clarifications.

Four agencies and one union commented on the interim regulations. All supported OPM's extension of these programs in light of their successful placement rates.

One agency stated its desire to move employees from one component to another, or to jobs in the same component located in a different commuting area, without checking for CTAP eligibles. We understand the concerns agencies have with this requirement. However, this was not part of the interim regulation as published—it would constitute a major change in the program, and the interim regulations included only minor technical changes and clarifications. Reassignments within a component and commuting area continue to be exempt from the CTAP requirements.

One agency asked for clarification on how the ICTAP exception in § 330.705(c)(19) relates to § 330.708(b) on selection. The exception in § 330.705(c)(19) allows an agency to select an ICTAP eligible at any time with or without announcing the vacancy. However, if the vacancy is announced and more than one well-qualified ICTAP eligible applies, then the agency is free to select any of them. Another agency commented that the term "reassignment" should be deleted from this paragraph. Since these eligibles would only be appointed through a transfer or reinstatement action, we agree that the word "reassignment" is unnecessary and have deleted it.

One agency recommended that we eliminate the requirement for a second review when an ICTAP eligible fails to meet the well-qualified requirement. The agency preferred to conduct this review only when the ICTAP eligible requested it. This provision was part of the final regulations published June 9, 1997, and no change to this provision was proposed in the July 27, 1999, interim regulation. Therefore, this provision remains unchanged.

Another agency suggested that we further define the type of documentation described in § 330.607(b) that the agency could use when they have no CTAP eligibles in a given location. We have considered this suggestion but feel that agencies should have the flexibility to use the type of documentation that best suits their needs.

Finally, we discovered a typographical error in the interim regulation which we are correcting here. In the process of adding a clarifying sentence in § 330.607(b), another sentence was accidentally deleted. We are restoring that dropped sentence here.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Government employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

U.S. Office of Personnel Management

Janice R. Lachance,
Director.

Accordingly, the interim rule amending part 330 of title 5, Code of Federal Regulations, published at 64 FR 40506 on July 27, 1999, is adopted as final with the following changes:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subparts F–G also issued under Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees"; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note and sec. 4432 of Pub. Law 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. Law 105–33, 111 Stat. 251

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

2. In § 330.607, paragraph (b) is revised to read as follows:

§ 330.607 Notification of surplus and displaced employees.

* * * * *

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling in locations where there are CTAP eligibles, and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the agency can apply, what proof of eligibility is required, and the agency's definition of "well-qualified." If there are no CTAP eligibles in a local commuting area, the agency may document this fact as an alternative to posting the vacancy under the CTAP program.

* * * * *

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

3. In § 330.705, paragraph (c)(19) is revised to read as follows:

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

* * * * *

(c) * * *

(19) Transfer or reinstatement of an individual who meets the eligibility requirements of § 330.704 to a position having promotion potential no greater than the potential of a position the individual currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

* * * * *

[FR Doc. 00–19765 Filed 8–3–00; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Exemption Under 18 U.S.C. 208(b)(2) for Financial Interests of Non-Federal Government Employers in the Decennial Census

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule, permitting certain temporary employees of the Department of Commerce Bureau of the Census (the Bureau) who have been hired under authority of 13 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying financial interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers.

EFFECTIVE DATE: September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Kimball, Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they, or, *inter alia*, any organization in which they are serving as an employee, have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On March 29, 2000, the Office of Government Ethics (OGE) published an interim rule with a 30-day request for comments to provide for an additional exemption under 5 CFR 2640.203 from the prohibition in the conflict of interest statute at 18 U.S.C. 208(a). See 65 FR 16511–16513 (March 29, 2000).

The new exemption, to be codified at 5 CFR 2640.203(l), permits employees who work for State, local, or tribal governments to work temporarily as enumerators, crew leaders, and field operations supervisors in a Local Census Office or an Accuracy and Coverage Evaluation function at the Department of Commerce Bureau of the Census (the Bureau). These employees have been hired under authority of 18 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers. However, the exemption does not cover employees who work for State, local, or tribal governments whose positions are filled through public election.

The interim rule was published after obtaining the concurrence of the Department of Justice pursuant to section 201 of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on the interim rule. No further consultation with the Department of Justice or the Office of Personnel Management is required because the interim rule is being adopted without change.

As noted, the interim rule provided for a 30-day comment period. Comments were received from two sources, one from the Department of Commerce and one from a private citizen. After carefully considering these comments, the Office of Government Ethics is adopting the interim rule as final without change.

Summary of Comments

The Department of Commerce recommended a change to the exemption to provide for a newly created position of "crew leader assistant" and to cover any future positions that the Department might create within the occupations of enumerator, crew leader, or field operations supervisor. These newly created positions would have similar duties and responsibilities as those occupations covered by the exemption, but would be performed at different activity levels, such as crew leader assistant. In OGE's view, it would not be necessary to amend the regulation to cover such newly created positions since all activity levels within those designated occupations in a Local Census Office or an Accuracy and Coverage Evaluation function would automatically be covered by the exemption.

The second commenter, an elected member of a city council, raised two concerns. The commenter believes that the distinction between elected and nonelected officials is arbitrary and both too broad and, at the same time, too narrow in that some elected officials (*e.g.*, coroners) would have no interest in the outcome of the census while some nonelected officials (*e.g.*, city managers) serve in policy-making positions and would have an interest in the outcome of the census. The commenter recommends that the line be drawn to exclude those employees who serve in policy-making positions.

As indicated in the preamble to the interim rule, the distinction between elected and nonelected officials was a general attempt to eliminate concerns about appearances arising from the greater interest that elected officials might have regarding the impact of the census count on their employers. The distinction represents the best line that could be drawn to include the greatest number of individuals who might be perceived as having an interest in the outcome of the census. It also serves the Department of Commerce's need to quickly and easily identify those

individuals whose non-Federal employment might present a conflict of interest or appearance thereof. It may be that, in drawing such a broad distinction, some individuals might be included who need not have been and that some few individuals might not have been excluded who perhaps could have been. However, the distinction represents OGE's best view of how the line should be drawn under the specified circumstances here.

Drawing the distinction on the basis of whether an individual holds a policy-making position would be both cumbersome and unworkable. The exemption must set forth a bright-line distinction because both the Department of Commerce and the employees it hires need to know who is clearly covered by the exemption and who is not. Any incorrect decisions about who is covered by the exemption could potentially subject the employee to criminal penalties should 18 U.S.C. 208(a) be violated. In addition, attempting to define who does and does not serve in a policy-making position would seriously hamper and unnecessarily complicate and impede a truncated hiring process.

The commenter also believes that the exemption would prevent the Department of Commerce from issuing individual waivers which would permit some elected officials to perform work on the decennial census. However, the exemption does not prevent the Department of Commerce from issuing waivers in individual cases in accordance with 18 U.S.C. 208(b)(1) and the requirements set forth in OGE regulations at 5 CFR 2640.301. An agency may issue such waivers in individual cases where it determines that a disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

Finally, the commenter believes that the exemption may not be necessary due to the nature of the work to be performed, the inability of the temporary employees to affect the census count to any significant degree, and the remoteness of the financial interests of their non-Federal government employers due to the number of various steps in the census process. However, on balance and in an abundance of caution, OGE believes that an exemption is in the best interest of the Department of Commerce which initiated the request for an exemption and in the best interest of individuals who will be employed by Commerce to work on the decennial census.

Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: June 1, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim rule amending 5 CFR part 2640 which was published at 65 FR 16511–16513 on March 29, 2000, as a final rule without change.

[FR Doc. 00–19772 Filed 8–3–00; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

RIN: 0584–AC81

Food Distribution Program on Indian Reservations: Income Deductions and Miscellaneous Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service is amending the regulations for the Food Distribution Program on Indian Reservations. The changes are intended to improve program service by allowing households two additional income deductions when proper verification is provided. The first income deduction will be given to households that pay legally required child support for a nonhousehold member. This change conforms to an income deduction allowed under the Food Stamp Program. The second income deduction will be provided to households that pay the premium for their Medicare Part B medical insurance. This deduction was prompted by a resolution passed by the National Association of Food Distribution Programs on Indian Reservations. This rule will also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

EFFECTIVE DATE: This rule is effective October 3, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or by telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters
II. Background and Discussion of the Final Rule

I. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L.

104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567, and for the reasons set forth in the final rule of 7 CFR part 3015, subpart V, and related Notice (48 FR 29115), is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. While program participants and Indian Tribal Organizations and State agencies that administer the Food Distribution Program on Indian Reservations will be affected by this rulemaking, the economic effect will not be significant.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

Paperwork Reduction Act

The information collection requirements included in 7 CFR 253.7(a)(6)(i) have been approved by the Office of Management and Budget under OMB. No. 0584–0293.

II. Background and Discussion of the Final Rule

On January 14, 2000, the Food and Nutrition Service (FNS) published a rule in the **Federal Register** (65 FR 2358) proposing amendments to the regulations at 7 CFR part 253 for the Food Distribution Program on Indian Reservations (FDPIR). We indicated that the proposed changes would improve program service by allowing households two additional income deductions when proper verification is provided. The first income deduction would be given to households that pay legally required child support for a nonhousehold member. The second income deduction would be provided to households that pay the premium for their Medicare Part B medical insurance. The Department also proposed making certain technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

Comments were solicited through March 14, 2000, on the provisions of the proposed rulemaking. FNS received two comments from the public on the proposed regulatory changes, and no comments on the proposed information collection burden changes. Both commenters wrote in support of the proposed changes. Consequently, we are adopting the proposed rule as final, with one minor change, which is discussed below. For a full understanding of the provisions of this final rule, the reader should refer to the preamble of the proposed rule.

One of the commenters requested clarification in regard to the verification requirements associated with this rulemaking. By this action, the regulations at 7 CFR 253.7(a)(6)(i)(B) and (C) require the verification of Medicare Part B premium withholdings or payments, and child support payments, before the income deductions can be granted to a household. The commenter asked whether the Medicare Part B premium must be verified if it is not included in the Social Security check received by the household member. The State agency is required to verify the payment of the Medicare Part B premium whenever this cost is incurred by a household member. When conducting an eligibility interview, the State agency should first determine whether any household members are Medicare beneficiaries. If none of the household members are Medicare beneficiaries, the income deduction cannot be granted. If the household contains a Medicare beneficiary, the State agency should determine whether the Medicare Part B premium is withheld from a Social Security, Railroad Retirement Board, or Civil Service Retirement payment, or if it is paid directly by the household member to Medicare. If the premium is withheld from one of the above retirement/disability payments, documentation of this expense could include a copy of the Social Security benefit statement (SSA–4926–SM) for the current calendar year, or a similar statement provided to Railroad Retirement Board and Civil Service Retirement beneficiaries. The proposed rule at 7 CFR 253.7(a)(6)(i)(C)(*1*) identified only the Social Security benefit statement as a source of documentation for premium withholdings. We have revised this provision to include Railroad Retirement Board and Civil Service Retirement benefit statements as additional sources of documentation. If the benefit statement does not reflect that the Medicare Part B premium is being withheld from the monthly retirement payment, the income deduction cannot be granted.

Some individuals make direct payments to Medicare because they do not receive a Federal retirement or disability payment from which the Medicare premium can be withheld. This may include persons under 65-years of age who have chronic kidney disease or other disabilities. Documentation for these individuals could include money order receipts, canceled checks, or other receipts showing payment for the current calendar year. Direct payments to Medicare are usually made on a quarterly basis; therefore, the premium payment in these cases must be averaged over the 3-month payment period to determine a monthly amount for certification purposes. If the household cannot provide adequate documentation of this expense, the income deduction cannot be granted.

Similarly, the State agency must verify the household's payment of child support to or for a non-household member. Specifically, the State agency must verify the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the

household actually pays. A court order, or similar documentation, is necessary to verify the household member's legal obligation to pay the child support, but it cannot be used to verify the household's actual monthly child support payments. Some non-custodial parents fail to fully meet their court-ordered obligation and owe hundreds of dollars in child support. Verification of actual payments will ensure that these non-custodial parents receive an income deduction for the amount of child support they pay—not the amount they are required, but fail, to pay each month.

During the eligibility interview, the State agency should determine the actual monthly amount of child support that has been paid by the household member, and obtain documentation of payment (for example, money order receipts or canceled checks). In many cases, the amount paid each month may fluctuate. In such instances, we recommend that the State agency average the amounts paid each month to determine the amount to be used for certification purposes. For example, Mr. Smith is legally obligated to pay $300 in child support each month. In December, he paid $300; in January, he only paid $200; in February, he paid $350, and in March he paid $350. The eligibility worker averages the total amount of child support paid over the four months ($1200 ÷ 4 months) and determines that Mr. Smith is entitled to receive an income deduction of $300.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2032).

2. In § 253.3, revise the third sentence of paragraph (d) to read as follows:

§ 253.3 Availability of commodities.

* * * * *

(d) * * * The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size—Vegetables, Fruit, Bread-Cereal-Rice-Pasta, Meat-Poultry-Fish-Dry Beans-Eggs-Nuts, Milk-Yogurt-Cheese, and Fats-Oils-Sweets. * * *

§§ 253.5 and 253.6 [Amended]

3. In § 253.5(a)(2)(vii) and § 253.6(e)(2)(iii)(B), remove the acronym "AFDC", wherever it appears, and add in its place the acronym "TANF".

§ 253.5 [Amended]

4. In § 253.5, remove paragraph (f)(2), and redesignate paragraph (f)(3) as paragraph (f)(2).

5. In § 253.6:

a. Remove paragraph (d)(2)(iv)(F);

b. Amend paragraph (e)(1)(ii) by removing the words "January 1 and July 1" and adding, in their place, the words "October 1";

c. Amend paragraph (e)(2)(i)(C) by removing the words "Comprehensive Employment and Training Act" and adding, in their place, the words "Job Training Partnership Act";

d. Amend paragraph (e)(2)(ii)(A) by removing the words "Aid to Families with Dependent Children (AFDC)" and adding, in their place, the words "Temporary Assistance for Needy Families (TANF)";

e. Remove paragraphs (e)(3)(x)(F) and (e)(3)(x)(G); and

f. Add new paragraphs (f)(3) and (f)(4) to read as follows:

§ 253.6 Eligibility of households.

* * * * *

(f) * * *

(3) Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) Households will receive a deduction for the full amount of the Medicare Part B medical insurance premium that is withheld from the Federal retirement or disability payment of a household member or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary or where household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service.

6. In § 253.7, revise paragraph (a)(6)(i) to read as follows:

§ 253.7 Certification of households.

(a) * * *

(6) * * *

(i) *Mandatory verification.*

(A) *Gross non-exempt income.* The State agency must obtain verification of each household's gross non-exempt income prior to certification. Households certified under the expedited service processing standards at paragraph (a)(9) of this section are not subject to this requirement. Income does not need to be verified to the exact dollar amount unless the household's eligibility would be affected, since Food Distribution Program benefits are not reduced as income rises. If the eligibility worker is unable to verify the household's income, the worker must determine an amount to be used for certification purposes based on the best available information. Reasons for inability to verify income include failure of the person or organization providing the income to cooperate with the household and the State agency, or lack of other sources of verification.

(B) *Legal obligation and actual child support payments.* The State agency must obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household's legal obligation to pay child support, such as a court order, cannot be used to verify the household's actual monthly child support payments.

(C) *Medicare Part B medical insurance premium.* The State agency must obtain verification of the household's payment of the Medicare Part B medical insurance premium. Documentation of this expense could include:

(*1*) A copy of the current year Social Security benefit statement (SSA–4926–SM), or a similar statement provided to Railroad Retirement Board and Civil Service Retirement beneficiaries, which identifies the amount of the Medicare Part B premium withheld each month; or

(*2*) A receipt for Medicare Part B premium payments paid directly to Medicare by the household.

* * * * *

Dated: July 28, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–19726 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes crop provisions for the insurance of the Figs, Pears, Walnuts, Almonds, Prunes, Table Grapes, Peaches, Plums, Apples and Stonefruit. The intended effect of this action is to provide policy changes to better meet the needs of the insured. The changes will be effective for the 2001 and subsequent crop years.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On February 8, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 6033–6040 to revise 7 CFR 457.110 Fig Crop Insurance Provisions, section 457.111 Pear Crop Insurance Provisions, section 457.122 Walnut Crop Insurance Provisions, section 457.123 Almond Crop Insurance Provisions, section 457.133 Prune Crop Insurance Provisions, section 457.149 Table Grape Crop Insurance Provisions, section 457.153 Peach Crop Insurance Provisions, section 457.157 Plum Crop Insurance Provisions, section 457.158 Apple Crop Insurance Provisions, and section 457.159 Stonefruit Crop Insurance Provisions, effective for the 2001 and succeeding crop years.

Following publication of the proposed rule the public was afforded 30 days to submit written comments and opinions. A total of 10 comments were received from 2 reinsured companies and a trade association. The comments received and FCIC's responses are as follows:

Comment. A reinsured company questioned if the wording "could or would reduce the yield" in section 2 or 3 of the applicable crop provisions (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities), is subject to interpretation. The commenter questioned: (1) If all of the acreage of the crop will need to be inspected if the producer requests a higher level of coverage or an increased price election; (2) if FCIC will determine that coverage cannot be increased in a specified area and publish this information in a bulletin, or if the company will be allowed to make the determination; and (3) when the determination must be made.

Response. The provisions require the insurance provider to determine whether a cause of loss occurred that "could or would reduce the yield." The producer is not allowed to increase the coverage level or price election if it is evident that a cause of loss had occurred prior to the producer's request for such increase. There is no requirement to inspect any acreage to determine if a loss occurred. The insurance provider must simply determine whether a cause of loss has occurred prior to accepting the application for increased coverage. Therefore, no change has been made.

Comment. A reinsured company recommended changing the word "unshelled" to "in-shell" in the definition of "meat pounds" in section 1 of the Almond Crop Insurance Provisions because this is the common term used by the almond industry.

Response. FCIC has incorporated the change.

Comment. A reinsured company recommended that there should be one specific calendar date for the end of the insurance period for all of the crops listed in this final rule. The commenter stated there are so many dates represented by different varieties, crops, etc., that administrative problems are caused.

Response. Changing the end of insurance period to one specific date for all of the crops listed in this final rule is not feasible. The insurance period is set to provide insurance during the time when the crop is at risk from normal causes of loss. This period is not the same for all crops. There needs to be variance in the beginning and ending of insurance periods to reflect differences in the crops being insured and the areas where they are grown. The calendar date for the end of insurance period must reflect the normal harvest date for each crop. Therefore, no change has been made.

Comment. A reinsured company recommended that claim examples for almonds and walnuts listed in this final rule should not be included in the Settlement of Claim section. The commenter stated the examples are too simple and do not provide any explanation of "Quality Adjustment or Stage."

Response. FCIC does not agree with the comment. Claim examples were added to the Settlement of Claim section to provide a general explanation of how the indemnity payment would be calculated. There is no quality adjustment on almonds. Quality Adjustment for walnuts is provided only for mold damage and is rarely used. The claim examples for almonds and walnuts are consistent with other crop policies. Therefore, no change has been made.

Comment. A reinsured company recommended that almond rejects be counted as production to count and should remain part of the Almond Crop Insurance Provisions.

Response. FCIC disagrees with the idea that all rejects should be counted as production to count. Rejects that are due to an insured cause of loss which is beyond the control of the producer should not be counted as production to count. However, FCIC does agree that rejects due to uninsured causes of loss should be counted as production to count. Therefore, FCIC has revised section 11(c)(2) to include meat pounds damaged due to uninsured causes of loss as production to count.

Comment. A reinsured company recommended revising section 14 of the Apple Crop Insurance Provisions which allows optional units and price elections by varietal group. The commenter stated that apple trees may be planted in a block that consists of only a few trees in a row being the same variety or a few rows of trees being the same variety, or even a single tree of a variety that was planted as a replacement. To allow units by variety would create problems for determining production and acreage.

Response. A block of apples may include different varieties. However, producers harvest and market apples by variety. The provisions in this final rule provide producers with optional units and price elections based on varietal groups. These varietal groups, which currently consist of two groups, are listed in the Special Provisions. Producers have the responsibility of identifying the acreage of each varietal group and separately maintaining production records. FCIC has revised the option to specify that producers are not eligible if they do not have separate production records for each varietal group or cannot identify the acreage upon which each varietal group is produced.

Comment. A reinsured company questioned if the provisions under section 14 of the Apple Crop Insurance Provisions that provide prices and units by varietal group will be available under the Fresh Fruit Option B.

Response. Prices and units by varietal group under section 14 are available under Fresh Fruit Option B provided that both Option B and C are elected.

Comment. A reinsured company stated the requirement to give notice of loss 15 days prior to harvest of walnuts when there is mold damage will be very difficult. Walnuts will not show mold damage prior to removal from the tree, so the grower generally will not know there will be mold before harvest.

Response. FCIC has changed the policy to give notice when knowledge is obtained or 15 days prior to harvest. The 15 day requirement allows the insurance provider adequate time to inspect the damaged production. Therefore, no change will be made.

In addition to the changes described above, FCIC has made the following changes:

1. *Section 457.110 Fig crop insurance provisions.*

a. Added a definition of "Interplanted" to standardize the term interplanted between other perennial crop provisions and the Fig Crop Insurance Provisions.

b. Added a section 3(c) that requires the insured to report damage, removal of trees, change in practices or any other circumstance that may reduce yields. The insured must report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and type, if applicable, of any interplanted crop, the planting pattern, and any other information needed to establish the approved yield. If the insured fails to report these changes, the acreage or yield used to establish the production guarantee, or both, may be adjusted when the insurance provider becomes aware of the situation.

c. Redesignated sections 8 through 11 as sections 9 through 12 respectively and added a new section 8 to allow interplanting as an insurable farming practice if the fig crop is interplanted with another perennial crop. This change makes insurance available on more acreage and reduces reliance on the noninsured crop disaster assistance program (NAP) for protection for crop losses.

d. Removed language in previous designated sections 8(a), (c), (d), (e), as this language is in the Basic Provisions. Previous designated sections 8(b) and (d) have been added to new section 9(a)(2) of these provisions.

e. Added language to redesignated section 9(a) to clarify the date on which coverage begins for the year the application is first signed.

2. *Section 457.111 Pear crop insurance provisions.*

Section 8(c)—Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of the provisions contained in section 8(c) to clarify that the dates insurance attaches contained in section 8(a)(1) do not apply to subsequent crop years. The dates contained in section 8(a)(1) apply only to the initial crop year. This change clarifies when year round coverage begins for each crop year.

3. *Section 457.122 Walnut crop insurance provisions.*

a. Section 4—Revised to state that October 31 is the contract change date for California only and added the contract change date of August 31 for all other states. This change will promote the walnut crop insurance program in states outside California.

b. Section 5—Revised to state that January 31 is the cancellation and termination dates for California only and added the cancellation and termination dates of November 20 for all other states. This change will promote the walnut crop insurance program in states outside of California.

c. Section 8(a)(1), (2) and (3)—Revised (a)(1) to state that February 1 is the date when insurance attaches in California

and added November 21 when insurance attaches in all other states. This change will promote the walnut crop insurance program in states outside of California. Added to (a)(2) the words, "(Exceptions, if any, for specific counties, or varieties or varietal group are contained in the Special Provisions.)" Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 8(a)(3) to clarify that the dates insurance attach under paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. These changes provide insurance periods similar to other perennial crops and clarify when year round coverage begins.

4. *Section 457.123 Almond crop insurance provisions.*

Section 8(a)(3)—Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 8(a)(3) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

5. *Section 457.133 Prune crop insurance provisions.*

Section 8(c)—Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

6. *Section 457.149 Table grape crop insurance provisions.*

Section 9(c)—Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 9(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

7. *Section 457.153 Peach crop insurance provisions.*

Section 7(c)—Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 7(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

8. *Section 457.157 Plum crop insurance provisions.*

Section 8(c)—Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

9. *Section 457.158 Apple crop insurance provision.*

a. Section 8(c)—Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

b. Section 11(c)(1)(iii)—Revised to read "unharvested marketable production;" This change provides clarification that quality standards for appraisals of unharvested production are based on the definition of "marketable."

10. *Section 457.159 Stonefruit crop insurance provisions.*

a. Section 1—Revised the definition of "grading standards" to refer to the Special Provisions. This change provides recognition of all other states grading standards. The current regulation contains only grading standards for the state of California.

b. Section 4—Revised to state that October 31 is the contract change date for California only and added the contract change date of August 31 for all other states. This change will promote the stonefruit crop insurance program in states outside of California and provide a contract change date similar to that for other perennial crops.

c. Section 5—Revised to state that January 31 is the cancellation and termination dates for California only and added the cancellation and termination dates of November 20 for all other states. This change provides cancellation and termination dates similar to other perennial crops.

d. Section 6(e)—Revised to provide for the recognized grading standards for all states, not just California. This change provides for the recognition of other states' grading standards. The current regulation contains only grading standards for the state of California.

e. Section 8(a)(1), (a)(2)(iii) and (c)—Revised (a)(1) to state that February 1 is the date when insurance attaches in California only and added November 21 for when insurance attaches for all other states. Added (a)(2)(iii) with regard to the end of insurance period to read "As otherwise provided for specific counties or types in the Special Provisions." These changes will promote the stonefruit crop insurance program in states outside California. Added the phrase "Notwithstanding paragraph (a)(1) of this section" to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This change provides insurance periods similar to other perennial crops and clarify when year round coverage begins.

Good cause is shown to make this rule effective upon publication in the Office of the Federal Register. This rule must be effective prior to the August 31, 2000, contract change date for Almond and Walnut, to be effective for the 2001 crop year. Therefore, public interest requires that FCIC act immediately to make these provisions available.

List of Subjects in 7 CFR Part 457

Almond, Apple, Crop insurance, Fig, Peach, Pear, Plum, Prune, Reporting and recordkeeping requirements, Stonefruit, Table Grape, and Walnut.

Final Rule

Accordingly, as set forth in the preamble, The Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) for the 2001 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend 457.110 as follows:

a. Revise the first sentence of the introductory text;

b. Add a definition of "Interplanted" in section 1 of the crop insurance provisions;

c. Redesignate sections 8 through 11 of the crop insurance provisions as sections 9 through 12;

d. Add a new section 8 to the crop insurance provisions;

e. Revise section 3 and newly designated section 9 of the crop insurance provisions to read as follows:

§ 457.110 Fig crop insurance provisions.

The Fig Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements under section 3 of the Basic Provisions, you may select only one price election for each fig type designated in the Special Provisions and insured in the county under this policy.

(b) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time you request the increase.

(c) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern;

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed, the age of the crop that is interplanted with the figs, and type if applicable, and the planting pattern; and

(5) Any other information that we request in order to establish your approved yield. We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: Interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

* * * * *

8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions, that prohibit insurance attaching to a crop planted with another crop, figs interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on March 1, except that for the year of application, if your application is received after February 19 but prior to March 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is October 31 or the date harvest of the figs (by type) should have started on any acreage that will not be harvested (Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions).

(b) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(c) If your fig policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

3. Amend 457.111 as follows:

a. Revise the first sentence of the introductory text;

b. In the crop insurance provisions add sections 3(c) and 8(c) and (d); all to read as follows:

§ 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your pear policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

4. Amend 457.122 to:

a. Revise the first sentence of the introductory text;

b. Amend the introductory text of section 3 and section 3(b) of the crop provisions by removing in each place the parenthetical phrase, "(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities);"

c. Add new section 3(c);

d. Revise sections 4 and 5 of the crop provisions;

e. Amend the introductory text to section 6 of the crop provisions, by removing the parenthetical phrase, "(Insured Crop);"

f. Amend the introductory text to section 7 of the crop provisions, by removing the parenthetical phrase, "(Insurable Acreage);"

g. In section 8 of the crop provisions, revise paragraph (a);

h. Amend the introductory text to section 9 of the crop provisions paragraph (a), by removing the parenthetical phrase "(Causes of Loss);"

i. Revise section 10 of the crop provisions; and

j. In the crop provisions add an example of settlement of claim in section 11 after paragraph (b)(7) and revise paragraph (d) to read as follows:

§ 457.122 Walnut crop insurance provisions.

The Walnut Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change dates are October 31 for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states.

* * * * *

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 in California and November 21 in all other states of each crop year, except that for the year of application, if your application is

received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all states, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is November 15 (Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions).

(3) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your walnut policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Duties in the Event of Damage or Loss.

(a) In addition to the requirements of section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(1) You must notify us prior to the beginning of harvest so that we may inspect the damaged production;

(2) You must give notice when knowledge is obtained of any mold damage or 15 days prior to harvest so that we may inspect the mold damaged production; and

(3) You must not sell or dispose of the damaged crop until we have given you written consent to do so.

(b) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of walnuts in the unit, with a guarantee of 2,500 pounds per acre and a price election of $0.61 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 2,500 pounds = 250,000 pound insurance guarantee;

(2 & 3) 250,000 pounds × $0.61 price election = $152,500 total value of insurance guarantee;

(4 & 5) 200,000 pounds production to count × $0.61 price election = $122,000 total value of production to count;

(6) $152,500 total value guarantee—$122,000 total value of production to count = $30,500 loss; and

(7) $30,500 × 100 percent share = $30,500 indemnity payment.

* * * * *

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association or during our loss adjustment process. Walnut production that has mold damage greater than 8 percent, based on the net delivered weight, will be reduced by the quality adjustment factors contained in the Special Provisions. Walnut production that exceeds 30 percent mold damage and will not be sold, the production to count will be zero.

* * * * *

5. Amend 457.123 as follows:

a. Revise the first sentence of the introductory text;

b. In the crop provisions in section 1 revise the definition of "meat pounds;"

c. In the crop provisions amend section 3, the introductory text and paragraph (b), by removing in each place the parenthetical phrase, "(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities);"

d. In the crop provisions add section 3(c);

e. In the crop provisions amend section 4 by removing the parenthetical phrase, "(Contract Changes);"

f. In the crop provisions amend section 5 by removing the parenthetical phrase, "(Life of Policy, Cancellation and Termination);"

g. In the crop provisions amend section 6 by removing the parenthetical phrase, "(Insured Crop);"

h. In the crop provisions amend section 7 by removing the parenthetical phrase, "(Insurable Acreage);"

i. In the crop provisions amend section 8(a), by removing the parenthetical phrase, "(Insurance Period);"

j. In the crop provisions add section 8(a)(3) and (4);

k. In the crop provisions amend section 9(a), by removing the parenthetical phrase, "(Causes of Loss);"

l. In the crop provisions amend section 10 by removing the parenthetical phrase, "(Duties In the Event of Damage or Loss);"

m. In the crop provisions add an example of settlement of claim in section 11 after paragraph (b)(7) and revise paragraph (c)(2) to read as follows:

§ 457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Meat pounds. The total pounds of almond meats (whole, chipped and broken, and in-shell meats). In-shell almonds will be converted to meat pounds in accordance with FCIC approved procedures.

* * * * *

3. Insurance Guaranteed, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that would or could reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period

* * * * *

(a) * * *

(3) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your almond policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

11. Settlement of Claim.

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of almonds in the unit, with a guarantee of 1,200 pounds per acre and a price election of $1.70 per pound. You are only able to harvest 100,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 1,200 pounds = 120,000 pound insurance guarantee;

(2 & 3) 120,000 pounds × $1.70 price election = $204,000 total value of insurance guarantee;

(4 & 5) 100,000 pounds production to count × $1.70 price election = $170,000 total value of production to count;

(6) $204,000 total of value guarantee—$170,000 total value of production to count = $34,000 loss; and

(7) $34,000 × 100 percent share = $34,000 indemnity payment.

(c) * * *

(2) All harvested meat pounds, including meat pounds damaged due to uninsured causes of loss.

* * * * *

6. Amend 457.133 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add sections 3(c), 8(c) and (d); all to read as follows:

§ 457.133 Prune crop insurance provisions.

The Prune Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your prune policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

7. Amend 457.149 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add sections 3(c), 9(c) and (d); all to read as follows:

§ 457.149 Table grape crop insurance provisions.

The Table Grape Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

9. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your table grape policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

8. Amend 457.153 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for "marketable" in section 1;

c. In the crop provisions add sections 2(c), and 7(c) and (d); all to read as follows:

§ 457.153 Peach crop insurance provisions.

The Peach Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Marketable. Peach production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

* * * * *

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

7. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your peach policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

9. Amend 457.157 to:

a. Revise the first sentence of the introductory text; and

b. In the crop provisions add sections 3(c) and 9(c) and (d); all to read as follows:

§ 457.157 Plum crop insurance provisions.

The Plum Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your plum policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Amend 457.158 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for "varietal group" in section 1;

c. In the crop provisions revise section 2;

d. In the crop provisions section 3 revise paragraphs (a), (b) introductory text and (b)(4), and add paragraph (c);

e. In the crop provisions add sections 8(c) and (d);

f. In the crop provisions revise section 11(e)(1)(iii); and

g. In the crop provisions add a new section 14; all to read as follows:

§ 457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Varietal group. Apple varieties with similar characteristics that are grouped for

insurance purposes as specified in the Special Provisions.

2. Unit Division.

In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is located on non-contiguous land. Optional units may also be established by varietal group in accordance with section 14 of these provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type or varietal group, in which case you may select one price election for each apple type or varietal group designated in the Special Provisions. The price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type or varietal group, you must also choose 100 percent of the maximum price election for all other types or varietal group.

(b) You must report, by the production reporting date contained in section 3 of the Basic Provisions, by type or varietal group if applicable:

* * * * *

(4) The separate acreage for each varietal group of apples intended for fresh-market or processing, for each varietal group as shown on the actuarial documents; and

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your apple policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

11. Settlement of Claim.

* * * * *

(c) * * *

(1) * * *

(iii) Unharvested marketable production; and

* * * * *

14. Option C—Prices and Units by Varietal Group.

(a) Exclusive of other options, optional units and price elections by varietal group apply only if the following conditions are met:

(1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement;

(2) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered notice of cancellation of the option by you; and

(3) You have maintained separate records of production for each varietal group and you can identify the acreage upon which each varietal group is produced.

(b) If you select the Fresh Fruit Option A for all insurable acreage, Option C is not available.

11. Amend 457.159 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions revise definition of "grading standards" in section 1;

c. In the crop provisions add section 3(c);

d. In the crop provisions revise sections 4, 5 and 6(e);

e. In the crop provisions in section 8 revise paragraphs (a)(1) and (a)(2)(ii) and add paragraphs (a)(2)(iii), (c) and (d); all to read as follows:

§ 457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Grading standards—As specified in the Special Provisions.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states.

6. Insured Crop.

* * * * *

(e) That are regulated by the applicable state's Tree Fruit Agreement or related crop advisory board for the state (for applicable crop or type);

* * * * *

8. Insurance Period.

(a) * * *

(1) Coverage begins on February 1 in California and November 21 for all other states of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all other states, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) * * *

(ii) September 30 for all nectarines and peaches; and

(iii) As otherwise provided for specific counties or types in the Special Provisions.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your stonefruit policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is the later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

Signed in Washington, DC on July 27, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–19659 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1479

RIN 0560–AG14

Agricultural Disaster and Market Assistance; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule; correction.

SUMMARY: This document contains corrections to the interim rule published in the Federal Register on Thursday, June 8, 2000 (65 FR 36549). This document corrects the section entitled "Producer eligibility", which was incorrectly numbered and the paragraphs of that section, which were incorrectly designated.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Operations Review and Analysis Staff, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0540, 1400 Independence Avenue, SW, Washington, DC, 20250–0540, telephone (202) 205–5851, or by e-mail to: tom__witzig@wdc.fsa.usda.gov.

Correction of Publication

Accordingly, in the interim rule published June 8, 2000, (65 FR 36549) make the following correction:

On page 36584, in the second column, the section number " § 1439.7" for the section entitled "Producer eligibility" is corrected to read "§ 1479.7" and paragraphs (d) through (f) of § 1479.7 are redesignated as paragraphs (c) through (e), respectively.

Signed at Washington, DC, on July 27, 2000.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–19811 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–05–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM173; Special Conditions No. 25–183–SC]

Special Conditions: Boeing Model 747–2G4B Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 747–2G4B series airplanes modified by Boeing Airplane Services. These modified airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new Electronic Flight Instrument System (EFIS) displays. The EFIS displays will utilize electrical and electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 27, 2000.

Comments must be received on or before September 5, 2000.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM173, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM173. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM173." The postcard will be date stamped and returned to the commenter.

Background

On August 25, 1997, Boeing Airplane Services, Wichita Division, P.O. Box 7730, Wichita, KS 67277–7730, applied for a Supplemental Type Certificate (STC) for the Boeing Model 747–2G4B series airplanes. The Boeing Model 747–2G4B is a Model 747–200 series airplane with four CF6–80C2B1 engines. The Model 747–200 series airplanes are an extended range passenger version of the Model 747–100 airplanes with changes to increase its strength and fuel capacity. The Model 747–2G4B will incorporate an Electronic Flight Instrument System (EFIS), which displays attitude and heading information and is manufactured by Astronautics. The modified airplanes are scheduled for certification in November 2000.

The Astronautics EFIS is a critical function that displays attitude and heading information. The EFIS must be designed and installed to ensure that their operations are not adversely affected by high intensity radiated fields (HIRF). These functions can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by HIRF external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing Airplane Services must show that the Boeing Model 747–2G4B series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations included in the certification basis for the Boeing Model 747–2G4B series airplanes include Title 14, Code of Federal Regulations (14 CFR) part 25, as amended by Amendments 25–1 through 25–8, plus additional requirements in Type Certificate Data Sheet (TCDS) A20WE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–2G4B series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–2G4B series airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747–2G4B series airplanes will incorporate the Astronautics EFIS system, which performs critical functions. The EFIS system contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. This system may be vulnerable to HIRF external to the airplane. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses the requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 747–2G4B airplanes modified to include the Astronautics EFIS system. These special conditions will require that this system, which performs critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–2G4B series airplanes modified by Boeing to include the Astronautics EFIS system. Should Boeing Airplane Services apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A20WE to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747–2G4B series airplanes modified by Boeing Airplane Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the

supplemental type certification basis for the Boeing Model 747–2G4B series airplanes modified by Boeing Airplane Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 27, 2000

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19841 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–23]

Establishment of Class D Airspace: Kissimmee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Kissimmee, FL. Air traffic controllers at Kissimmee Municipal Airport, FL, will be certificated weather observers by October 5, 2000. Therefore, the airport will meet criteria for Class D airspace on October 5, 2000. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,500 feet mean sea level (MSL) within a 4-mile radius of the Kissimmee Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On June 20, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Kissimmee, FL (65 FR 38224). Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Kissimmee Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Kissimmee, FL [New]

Kissimmee Municipal Airport, FL
(Lat. 28°17′23″N, long. 81°26′14″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4-mile radius of Kissimmee Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 27, 2000.

Wade T. Carpenter,

Acting Manager, Southern Region.

[FR Doc. 00–19838 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB35

Final Rules Concerning Amendments to Insider Trading Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") hereby amends Commission Regulation 1.59, which addresses various trading prohibitions imposed on persons associated with a self-regulatory organization ("SRO"). Regulation 1.59 requires SROs to adopt rules prohibiting employees, governing board members, and committee members from certain trading activities and from improperly disclosing any material, non-public

information obtained in the course of their official duties. The Commission is now amending Regulation 1.59 so that governing board members and committee members, and individuals serving as the "functional equivalent" of such members, are clearly excluded from the definition of "employee" for purposes of Regulation 1.59. The Commission also takes this opportunity to clarify the meaning of Regulation 1.59(b)(1)(i) regarding the scope of the SRO employee trading prohibition, and to make clear that "non-paid advisors" to exchange governing boards and committees will be deemed the "functional equivalent" of whomever they are advising. Finally, the Commission has determined to amend Regulation 1.59 so that consultants to SROs are, at minimum, subject to the same restrictions as governing board members.

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 28, 1999, the Commission published proposed amendments to Regulation 1.59 ("proposing release"),[1] which generally requires SROs to adopt rules prohibiting employees, governing board members, and committee members from trading commodity interests on the basis of material, non-public information obtained in the course of their official duties (hereinafter referred to as "material, non-public information"). As proposed, the amendments would exclude governing board members, and any "functional equivalent" thereof, from the definition of "employee," and would clarify the scope of the SRO employee trading prohibition. The Commission also sought comment on how Regulation 1.59 should treat consultants to SRO management and staff, in addition to non-paid advisors to SRO governing boards and committees. The Commission received 6 comment letters in response to the proposed amendments.[2]

[1] *See* 64 FR 72587 (Dec. 28, 1999).

[2] Letters were received from (1) New York Mercantile Exchange, (2) National Futures Association ("NFA"), (3) Minneapolis Grain Exchange, (4) Chicago Mercantile Exchange ("CME"), (5) Chicago Board of Trade ("CBT"), and (6) Board of Trade Clearing Corporation ("BOTCC").

II. Rule Amendments

A. Background

Historically, two categories of individuals have been subject to Commission Regulation 1.59: (1) SRO employees, including those employed by the SRO on a salaried or contract basis, and (2) SRO governing board and committee members. Regulation 1.59 prohibits these groups from trading under various circumstances.

Specifically, employees are absolutely prohibited from trading in any commodity interest traded on or cleared by their employing contract market or clearing organization, or from trading in any "related commodity interest," as that term is defined by Regulation 1.59(a).[3] Additionally, employees with access to material, non-public information concerning a particular commodity interest are prohibited from trading in such commodity interest if it is traded on or cleared by contract markets or clearing organizations other than their employing SRO, or traded on or cleared by a linked exchange.

Governing board members and committee members, on the other hand, are prohibited only from using material, non-public information for any purpose other than the performance of their official duties. The possession of material, non-public information, therefore, does not absolutely bar these individuals from trading commodity interests. Rather, under Regulation 1.59(d), governing board and committee members are prohibited from trading for their own account, or for or on behalf of any other account, based on this material, non-public information.

B. Governing Board Members

The Commission proposed to exclude salaried governing board members from the definition of "employee" under Regulation 1.59(a) in order to ensure that salaried governing board members are not subject to two inconsistent trading restrictions—one for governing board members and another, more restrictive, prohibition for employees. At the time these clauses were adopted, members of governing boards generally were not salaried. Because the industry now typically gives stipends to governing board members, the Commission proposed to remove any confusion by excepting salaried governing board members from the definition of "employee."

The Commission believes that inclusion of salaried governing board members in the definition of "employee" might create disincentives for competent individuals to serve in this capacity. If excluded from the definition of "employee," governing board members would remain prohibited from using material, non-public information for purposes other than performance of their official duties, pursuant to Regulation 1.59(c). All but one commenter supported this amendment,[4] and the Commission has determined to adopt the proposal.

C. Individuals Serving as the "Functional Equivalent" of Governing Board Members

The Commission proposed to add a clause defining the term "governing board member" to include certain individuals who work closely with, but who are not technically members of, the governing board, like *ex officio* or *emeritus* governing board members. The proposed language would deem such individuals to be the "functional equivalent" of governing board members. Because of their experience, these members can provide valuable guidance to the governing board. However, including them in the definition of "employee" would subject them to broad restrictions on trading, potentially creating a disincentive to counsel the board on matters within their expertise.

Four commenters supported the proposal, and another expressed its support while noting that its board presently does not have any such individuals participating.[5] The Commission has determined to adopt the proposal.

D. Employees With Access to Material, Non-Public Information Concerning Commodity Interests Traded on or Cleared by Other SROs

Regulation 1.59(b)(1)(i) requires SROs to maintain in effect rules which, at a minimum, prohibit employees from trading in the following four scenarios:

In any commodity interest traded on or cleared by the employing contract market or

[3] "*Related commodity interest* means any commodity interest which is traded on or subject to the rules of a contract market, linked exchange, or other board of trade, exchange or market, other than the self-regulatory organization by which a person is employed, and with respect to which:

(i) Such employing self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing self-regulatory organization; or

(ii) Such other self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material, nonpublic information."

[4] BOTCC did not express an opinion on this issue.

[5] *See* CBT comment letter, January 31, 2000. BOTCC did not comment on this issue.

clearing organization, in any related commodity interest, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization, and in any commodity interest traded on or cleared by a linked exchange *where the employee has access to material nonpublic information concerning such commodity interest;*

Regulation 1.59(b)(1)(i) (emphasis added).

As discussed in the proposing release, the Commission believes the existing structure of this paragraph may create confusion as to which trading prohibitions the italicized clause modifies. In particular, because no punctuation precedes the clause "where the employee has access to material nonpublic information concerning such commodity interest" (hereinafter referred to as the "access clause"), this precondition for the application of the trading restriction would appear to apply to only one trading scenario—the trading scenario that immediately precedes it. However, an examination of this provision as it existed prior to the 1993 amendments to Regulation 1.59 ("1993 Amendments"), and of the **Federal Register** releases promulgating the 1993 Amendments,[6] confirms that the access clause should also apply to the prohibition on trading "in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization."

The Commission has decided to amend Regulation 1.59(b)(1)(i) by subdividing each prohibition into a separate subparagraph, as proposed. This amendment to paragraph (b)(1)(i) will help differentiate between situations in which employees of SROs are absolutely prohibited from trading commodity interests from those in which they are prohibited from trading only if they have access to material, non-public information.

Toward that end, the Commission has also determined to edit the language of the third clause of the paragraph. In the proposing release, the Commission suggested adding the access clause back to the third prohibition, so that it would read as it was originally intended. No commenters disagreed with this proposal. However, it also has come to the attention of the Commission that merely inserting the access clause at the end of the third prohibition, without further editing, might still result in an unclear articulation of the nature of the prohibited conduct. The clause, as proposed, would have read:

From trading, directly or indirectly, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization where the employee has access to material, nonpublic information concerning such commodity interest; and

64 FR 72587, 72590 (Dec. 28, 1999).

Regulatory history clearly indicates that this clause was only meant to prohibit an SRO employee from trading a commodity interest on another, non-linked exchange if he or she has access to material, non-public information about that particular commodity interest. The **Federal Register** release promulgating Regulation 1.59 states unequivocally that exchanges may permit their employees to trade "unrelated" commodity interests on other exchanges, if they do not have access to material, non-public information.[7] The original rule proposal included an outright ban on employee trading at other exchanges,[8] but the Commission ultimately adopted less restrictive rules after receiving comments from the industry.[9]

On its face, however, the third clause could be misconstrued to mean that employees are prohibited from trading all commodity interests on a non-employing exchange, even if they only have access to material, non-public information concerning a single commodity interest traded on that exchange. This potential confusion arises out of the meaning of the word "any," which connotes a slightly different meaning in the two preceding clauses. A reader applying the meaning of "any" consistently throughout the paragraph, as it is used in the first two clauses, might be led to believe that the prohibition extends to all contracts at another exchange. The Commission has therefore determined to edit the language of this third prohibition to read as follows:

From trading, directly or indirectly, in a commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization if the employee has access to material, non-public information concerning such commodity interest;[10]

E. Clarification of the Treatment of "Consultants"

The Commission requested comment on whether "consultants" should be included in the definition of "employee" for purposes of Regulation 1.59, based upon its understanding that exchanges hire consultants for a variety of purposes,[11] often with respect to information technology issues. These consultants may or may not gain access to material, non-public information during the course of their duties, depending on the nature of the work they are performing. Although the current provisions do not explicitly include consultants within the definition of "employee," the original promulgation of Regulation 1.59 in 1985 indicated the Commission's intention that consultants be included.[12] Furthermore, the definition of "employee" under Regulation 1.59(a) clearly states: "Employee means any person hired or otherwise employed on a salaried *or contract basis* by a self-regulatory organization." (emphasis added) Although this language appears to indicate that consultants fall into the definition of "employee" under Regulation 1.59, it has recently come to the attention of the Commission that some exchanges retain consultants that they do not consider "employees."[13]

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[6] *See* 58 FR 44470 (Aug. 23, 1993); 58 FR 54966 (Oct. 25, 1993).

[7] The word "unrelated" refers to "related commodity interest," as defined by Regulation 1.59(a). *See* note 3, *supra*.

[8] *See* 50 FR 24533 (June 11, 1985).

[9] *See* 51 FR 44866, 44867 (Dec. 12, 1986). "Commenters contended that * * * the provision need not bar employees from trading on other contract markets in commodity interests unrelated to the employing exchange's products merely because the employee was in a position to receive information that is material to activity on the employing contract market." In response, the Commission wrote: "although remaining subject to the strict ban on trading on the employing exchange, if the exchange permits, an employee now would be able to trade an unrelated commodity interest on another exchange where he did not have access to material non-public information concerning such commodity interest. The Commission emphasizes that the two limiting factors with respect to trading by an employee on another exchange are: (1) That the commodity interest by [sic] unrelated to any commodity interest traded on the employing exchange, and (2) that the employee not have access to material, non-public information concerning the commodity interest or a related commodity interest."

[10] As a result of these changes to the third prohibition, the Commission also made non-substantive changes to the language of the fourth prohibition—*i.e.*, new Regulation 1.59(b)(1)(i)(D)—for purposes of consistency.

[11] Barron's Business Guides defines a consultant as an "individual or organization providing professional advice to an organization for a fee. A wide variety of consultants exist for many areas of organizational concerns, including management, accounting, finance, and legal and technical matters. A consultant is an INDEPENDENT CONTRACTOR." Barron's Dictionary of Business Terms 120 (2d ed. 1994) (emphasis in original).

[12] 51 FR 44866, 44867 at note 6 (Dec. 12, 1986). "It should be noted that consultants and independent contractors employed by the self-regulatory organization would be included within the definition of 'employee' under regulation 1.59 and, therefore, would be subject to the same restrictions applicable to all other exchange employees."

[13] *See, e.g.*, BOTOC comment letter, February 10, 2000. "The Clearing Corporation is further concerned by the characterization of such persons as 'employees', albeit for limited purposes. The Clearing Corporation, in its written agreements with

Continued

The Commission received a wide variety of comments with respect to this issue. Three commenters supported the idea of holding consultants to the same standard as governing board members, *i.e.*, they shall not use or disclose material, non-public information for any purpose other than the performance of official duties. NFA added that such a standard should apply only if the consultants "are truly independent contractors and are not under the SRO's control." [14] Another commenter, BOTCC, stated that most of its consultants do not obtain access to material, non-public information, that it does not believe any "purpose is served by requiring such persons to adhere to the complex policies that apply to its regular employees," and that it instead requires its consultants with access to material, non-public information to sign confidentiality agreements prohibiting personal use of such information.[15] CME and CBT expressed some support for classifying certain consultants as employees, or the "functional equivalent" thereof, depending on the nature and duration of their relationship with the SRO.[16] CME asserted, however, that consultants not subject to an employee-type trading restriction should sign an agreement not to use or disclose any material, non-public information obtained from its relationship with the SRO. CBT represented that it has no effective means of policing these consultants' trading activities.

Based upon comments received, the Commission has determined that consultants should, at minimum, be held to the same standard as governing board members. This prohibition, more narrow than one which would absolutely ban trading in any commodity interest on the contracting SRO, is based in large part on commenters' representations that most consultants do not gain access to material, non-public information during the course of their work. Moreover, the Commission acknowledges that the relationship between SROs and their consultants is generally more attenuated than their relationship with employees and, as a result, policing the trading activity of consultants could be difficult for an SRO. Accordingly, the Commission has determined to apply a less restrictive trading prohibition that will still establish appropriate safeguards against the misuse of material, non-public information.

The Commission believes that, in the first instance, it is the SRO's responsibility to distinguish between its "employees" and "consultants." Such determinations should be made consistent with the purposes of Regulation 1.59, and should also take into account how the SRO distinguishes between employees and consultants for other business purposes.[17] The Commission will review that process in an oversight role, as appropriate.

The Commission reminds SROs that it remains their duty to enforce their own rules. In that connection, the Commission suggests that one way SROs can ensure consultants do not abuse their access to material, non-public information is to require consultants to sign confidentiality agreements prohibiting use or disclosure of material, non-public information gained as a result of the relationship. As previously noted, this is the practice of BOTCC, which was supported by CME in its comment letter. Finally, the Commission notes that those exchanges desiring greater restrictions on personal trading by consultants remain free to enforce stricter procedures.

F. Use of Non-Paid Advisors by Governing Boards and Committees

The Commission also sought comment on the application of Regulation 1.59 to non-paid advisors of SRO governing boards and committees, and requested information about the extent to which these advisors are utilized and their level of participation in deliberations. Such individuals have not been subject to Regulation 1.59 requirements. All commenters were generally in agreement that non-paid advisors to governing boards and committees should not be held to a standard more strict than the one applicable to governing board members or committee members, and several noted that they do not use such advisors. The Commission agrees and has determined that these individuals are the "functional equivalent" of governing board members or committee members.

G. Committee Members and the "Functional Equivalent" Thereof

In association with its comments regarding the exclusion of governing board members from the definition of "employee," CBT noted that it also routinely pays a small fee to non-member panelists of disciplinary committees and arbitration panels and asked that the Commission also consider excepting "committee members who are compensated by a self-regulatory organization solely for committee activities." [18] The Commission has considered this idea and agrees that it should be incorporated into final amendments.[19] These individuals often provide valuable advice and counsel, and the Commission would like to ensure that the potential disincentive for members to serve in this capacity is removed.

III. Conclusion

The Commission believes that these amendments to Regulation 1.59 clarify existing ambiguities and appropriately adapt to business practices and changes in the industry since the regulation was last amended. This action is taken pursuant to the Commission's authority under Sections 5(7), 8a(5) and 9(f) of the Commodity Exchange Act ("Act"). Amendments to Commission Regulation 1.59 will not become effective until 120 days after the date of publication, to provide SROs time to adopt and submit to the Commission conforming rules. The Commission expects SROs to act expeditiously in submitting appropriate rules.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies, in promulgating rules, consider the impact of those rules on small businesses.[20] The Commission previously has determined that contract markets are not "small entities" for purposes of the RFA and that the Commission, therefore, need not consider the effect of proposed rules on contract markets.[21] Furthermore, the Acting Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals affecting registered futures associations, if adopted, would not have a significant

consultants, takes great care to ensure that such persons may not be deemed to be 'employees' for any purposes. We believe that the Commission's characterization of consultants as 'employees' under Regulation 1.59 undermines this effort."

[14] *See* NFA comment letter, January 25, 2000.

[15] *See* BOTCC comment letter, February 10, 2000.

[16] *See* CME comment letter, January 26, 2000; CBT comment letter, January 27, 2000.

[17] To the extent an SRO outsources a significant function which affords access to material, non-public information, the persons with such access should be treated as SRO employees, to the extent practicable. The Commission intends to address this issue on a case-by-case basis and, in the future, will consider whether other action is indicated.

[18] *See* CBT comment letter, January 27, 2000.

[19] This change to the final amendments requires adding to Regulation 1.59(a) both a definition of "committee member" and a specific exception to the definition of "employee," for reasons consistent with those in sections II.B., II.C., and II.F., *supra*.

[20] 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

[21] *See* 47 FR 18618, 18619 (Apr. 30, 1982).

economic impact on a substantial number of small entities.[22]

This rulemaking will impact SROs—both contract markets and registered futures associations—and their employees, governing board members, committee members, and certain independent contractors. The Commission previously has determined that the establishment of Regulation 1.59, as well as subsequent amendments to the regulation, have not created significant economic impact for affected entities or persons.[23]

The Commission does not believe that these amendments will have a significant economic impact on SROs or employees, governing board members, committee members, and independent contractors. The new amendments merely clarify the existing rule. The obligations and prohibitions established by the amendments are essentially the same as those created by SRO rules promulgated pursuant to existing Regulation 1.59.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA"),[24] which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes the rule does not contain information collection requirements which require the approval of the Office of Management and Budget.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract markets.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 8b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 23, 21 and 26(b), the Commission hereby amends Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.59 is amended as follows:

A. The section title is revised.

B. Paragraphs (a)(3) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(10).

C. Paragraph (a)(2) is redesignated as paragraph (a)(4) and revised, and new paragraphs (a)(2) and (a)(3) are added.

D. Paragraph (b) introductory text, paragraph (b)(1), and paragraph (b)(1)(i) are revised.

E. Paragraphs (c) and (d) are revised.

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members, and consultants.

(a) *Definitions.* For purposes of this section:

* * * * *

(2) *Governing board member* means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(3) *Committee member* means a member, or functional equivalent thereof, of any committee of a self-regulatory organization.

(4) *Employee* means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization, but does not include:

(i) Any governing board member compensated by a self-regulatory organization solely for governing board activities; or

(ii) Any committee member compensated by a self-regulatory organization solely for committee activities; or

(iii) Any consultant hired by a self-regulatory organization.

* * * * *

(b) *Employees of self-regulatory organizations; Self-regulatory organization rules.* (1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) Employees of the self-regulatory organization from:

(A) Trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market or clearing organization;

(B) Trading, directly or indirectly, in any related commodity interest;

(C) Trading, directly or indirectly, in a commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization if the employee has access to material, non-public information concerning such commodity interest;

(D) Trading, directly or indirectly, in a commodity interest traded on or cleared by a linked exchange if the employee has access to material, non-public information concerning such commodity interest; and

* * * * *

(c) *Governing board members, committee members, and consultants; Self-regulatory organization rules.* Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 (or, pursuant to Section 17(j) of the Act in the case of a registered futures association) which provide that no governing board member, committee member, or consultant shall use or disclose—for any purpose other than the performance of official duties as a governing board member, committee member, or consultant—material, non-public information obtained as a result of the performance of such person's official duties.

(d) *Prohibited conduct.* (1) No employee, governing board member, committee member, or consultant shall:

(i) Trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant; or

(ii) Disclose for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties.

(2) No person shall trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (d)(1) of this section from an employee, governing board member, committee member, or consultant.

Issued in Washington, DC, on July 27, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–19443 Filed 8–3–00; 8:45 am]

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[22] *See* 58 FR 13566, 13569 (Mar. 12, 1993).

[23] *See* 47 FR 18618 (Apr. 30, 1982); 50 FR 24533 (June 11, 1985); 51 FR 44886 (Dec. 12, 1986); 52 FR 32569 (Aug. 28, 1987); 52 FR 46074 (Dec. 28, 1987); 58 FR 44470 (Aug. 23, 1993); and 58 FR 54686 (Oct. 25, 1993).

[24] 44 U.S.C. 3507(d).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 4, 30, 140 and 180

RIN 3038–AB37

Exemption from Certain Part 4 Requirements for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Persons and for Commodity Trading Advisors With Respect to Advising Qualified Eligible Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is revising Commission Rule 4.7 ("Revision")[1] through both substantive and technical revisions. Rule 4.7 provides a simplified regulatory framework for commodity pool operators ("CPOs") operating commodity pools consisting of certain highly accredited pool participants and for commodity trading advisors ("CTAs") directing or guiding the commodity interest trading accounts of certain highly accredited clients. These persons formerly were termed "qualified eligible participants" (or "QEPs") and "qualified eligible clients" (or "QECs"), respectively. Under the Revision, all such persons are termed "qualified eligible persons."

The substantive revisions will make Rule 4.7 available to more CPOs and CTAs and under more situations, by bringing within the scope of the rule additional persons. They add, among others, the following persons to the qualified eligible person definition: Principals of certain registered investment professionals who themselves are defined as qualified eligible persons; certain registered securities investment advisers and their principals; "qualified purchasers" and "knowledgeable employees" as those terms are defined under the federal securities laws; certain employees and agents of pools, CPOs and CTAs and certain of those employees' and agents' immediate family members; and trusts whose advisors and settlors are qualified eligible persons. In addition, these revisions make it easier for certain charitable organizations, trusts and collective investment vehicles to be qualified eligible persons, and it includes persons who are not "United States persons" in the qualified eligible person definition with respect to both Rule 4.7 exempt pools and exempt accounts. Certain of the technical revisions, *i.e.*, those which reorganize the rule, will facilitate employment of the rule. Other technical revisions conform the nomenclature of the text of Rule 4.7 to reflect the revised structure of the Rule. The Commission has made similar conforming revisions to Rules 30.6(b), 140.99(i)(A) and 180.3(b)(2)(vi), which prior to these revisions referred to, *e.g.*, "qualified eligible participants" in their text.

In light of the breadth of the revisions to Rule 4.7, the Commission is including at Part IV of this release a distribution table that indicates where the provisions of the former rule can be found in the revised rule and a derivation table that indicates where the provisions of the revised rule can be found in the former rule.

DATES: Effective August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Stern Gold, Assistant Chief Counsel, Helene D. Schroeder, Attorney-Advisor or Ky Tran-Trong, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

In 1992, the Commission adopted Rule 4.7 as part of the Commission's ongoing program for review of its rules.[2] Rule 4.7 provides an exemption from certain disclosure, reporting and recordkeeping requirements for registered CPOs in connection with their operation of commodity pools whose participants meet specified eligibility criteria.[3] The exemption provides relief from all of the specific disclosures required by Rules 4.21 and 4.24 through 4.26 and streamlines the reporting and recordkeeping requirements of Rules 4.22 and 4.23, respectively.[4] Rule 4.7 provides similar relief from the specific disclosure requirements of Rules 4.31 and 4.34 through 4.36 and recordkeeping requirements of Rule 4.33 to registered CTAs who direct or guide the commodity interest trading accounts of clients who meet specified eligibility criteria.[5]

Subsequent to the adoption of Rule 4.7, and consistent with the purposes of the rule, Commission staff permitted various CPOs and CTAs to claim relief under the rule with respect to certain persons who did not meet the specified eligibility criteria of the rule. In addition, in 1996, Congress enacted the National Securities Markets Improvement Act of 1996 ("NSMIA").[6] Among other things, NSMIA added Section 3(c)(7) to the ICA[7] thereby providing an additional exemption from the definition of the term "investment company" under the ICA with respect to funds comprised exclusively of qualified purchasers ("QPs"). NSMIA also directed the Securities and Exchange Commission ("SEC") to promulgate rules that would permit ownership by knowledgeable employees

[1] Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] 57 FR 34853 (Aug. 7, 1992). The Commission made certain technical, non-substantive amendments to Rule 4.7 in 1995. 60 FR 38146, 38162–63 (July 25, 1995). These amendments were necessary to conform certain of the references in Rule 4.7 to other Part 4 rules the Commission had renumbered in connection with revising the disclosure rules generally applicable to CPOs and CTAs.

[3] As stated above, these persons formerly were termed "qualified eligible participants." As a result of the Revision, they are now termed "qualified eligible persons."

[4] Under Rule 4.7, however, a registered CPO operating a pool for which it has claimed Rule 4.7 relief ("exempt pool") remains subject to all other applicable requirements of the Act and the Commission's regulations issued thereunder with respect to the exempt pool and any other pool the CPO operates or intends to operate. Former Rule 4.7(a)(4); Revised Rule 4.7(d)(4)(i). For example, it remains subject to the antifraud provisions of Sections 4b and 4*o* of the Act, 7 U.S.C. 6b and 6*o* (1994), the prohibited activities and advertising provisions applicable to CPOs in Rules 4.20 and 4.41, respectively, and the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations. Moreover, if a CPO distributes an offering memorandum in connection with soliciting participations in an exempt pool, the memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading. Former Rule 4.7(a)(2)(i)(A); Revised Rule 4.7(b)(1)(i).

[5] As also stated above, these persons formerly were termed "qualified eligible clients." As a result of the Revision, they, too, are termed "qualified eligible persons."

Under Rule 4.7, a CTA that has claimed Rule 4.7 relief with respect to a qualified eligible person likewise remains subject to all other applicable requirements of the Act and the Commission's regulations with respect to the qualified eligible person and any other client to which the CTA provides or intends to provide commodity interest trading advice. Former Rule 4.7(b)(4); Revised Rule 4.7(d)(4)(ii). Similarly, if a CTA delivers a brochure or other disclosure statement to qualified eligible persons, the brochure or statement must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading. Former Rule 4.7(b)(2)(i)(A); Revised Rule 4.7(c)(1)(i).

[6] Pub. L. No. 104–290, 110 Stat. 3416 (codified as amended in scattered sections of 15 U.S.C. and 29 U.S.C.). Many collective investment vehicles trade both securities and commodity interests, and absent an exemption, they are subject to registration as an investment company under the Investment Company Act of 1940 (the "ICA") and their operators are subject to registration as a CPO under the Act. *See, e.g., Peavey Commodity Futures Funds I, II, III,* [1983–1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,511 (June 2, 1983).

[7] 15 U.S.C. 80a–3(c)(7) (Supp. III 1997).

of the securities of the issuer (or affiliate) without loss of the issuer's definitional exemption under Section 3(c)(1)[8] or 3(c)(7) of the ICA. In 1997, the SEC adopted Rule 3c–5 under the ICA,[9] which defines the term "knowledgeable employee."[10]

Based upon staff's experience in administering Rule 4.7 and taking into account these recent developments in the federal securities laws, on March 2, 2000 the Commission published for comment in the **Federal Register** proposed revisions to Rule 4.7 (the "Proposal").[11] Certain of the proposed revisions were substantive in nature—*i.e.*, they would expand the definitions employed in Rule 4.7, which would have the effect of permitting registered CPOs and CTAs to claim relief in additional circumstances under the rule. In proposing this action, the Commission noted that it had been guided by the purposes of Rule 4.7. With respect to CPOs, these purposes are to: (1) Reduce unnecessary regulatory burdens with respect to persons who appear not to need the full protections of the Part 4 framework; and (2) coordinate the Commission's rules with certain federal securities laws.[12] As for CTAs, the rationale for relief "is analogous to that for * * * CPOs, *i.e.*, that [qualified eligible persons] are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require."[13]

B. The Comments

The Commission received six comment letters on the Proposal: one from a firm registered as a futures commission merchant, CPO and CTA; one from a firm registered as a CPO; one from a designated self-regulatory organization; one from a bar association; one from a member of the commodities bar; and one from a trade association representing CPOs and CTAs.[14] All of the persons who commented on the proposed revisions to Rule 4.7 expressed strong support for the Proposal. Among the reasons commenters provided for their support were that the Proposal: (1) Would coordinate and harmonize the commodities and securities laws where they have a common purpose; (2) would relieve Commission staff from expending its resources on what have become routine and redundant Rule 4.7 letters; (3) would provide similar relief to the applicants for those letters; and (4) would make the rules more "user friendly."

In light of the comments received, the Commission generally has adopted the revisions to Rule 4.7 that it proposed.[15] In addition, the Commission has further reorganized the rule and has included more persons in the qualified eligible person definition. Each of the changes from the Proposal is discussed below, and distribution and derivation tables are provided at Section IV below.

In the **Federal Register** release announcing the Proposal ("Proposing Release"), the Commission gave a detailed explanation of each revision it had proposed to make to Rule 4.7.[16] The scope of this **Federal Register** release generally is restricted to the comments received on the Proposal and changes to the Proposal that the Commission has made in response thereto. Accordingly, the Commission encourages interested persons to read the Proposing Release for a discussion of the purpose of each of the revisions the Commission proposed to make to the various provisions under Rule 4.7.

II. Responses to the Comments Received

A. Reorganization of Rule 4.7

The Commission proposed to reorganize Rule 4.7 to assist CPOs and CTAs in determining the availability of the rule to them. This proposed reorganization would have put all of the definitions used in Rule 4.7 in one place, proposed paragraph (a) of the rule.[17] In particular, proposed paragraph (a)(1) would have contained the general definitions used throughout Rule 4.7.[18] One of those definitions was the term "Portfolio Requirement" in proposed paragraph (a)(1)(v).[19] One of the commenters questioned the need for two separate definitions of the term "Portfolio Requirement" (one for QEPs and one for QECs) because, as it noted, these definitions were virtually identical except for those references where the definition applicable to QEPs concerned "pool participants" and "exempt pool" and the definition applicable to QECs concerned "clients" and "exempt account." Accordingly, the commenter recommended that the Commission should merge the two "Portfolio Requirement" definitions into one definition. The Commission believes this is a useful recommendation, and it has thus adopted in Rule 4.7(a)(1)(v) a single definition of "Portfolio Requirement" that equally applies to pool participants and exempt pools and to clients and exempt accounts.

In furtherance of this comment, the Commission additionally has streamlined other definitions used in Rule 4.7, such that now the rule solely refers to "qualified eligible persons." Under both the former rule and the Proposal, persons for whom a CPO or CTA could claim relief under Rule 4.7 were termed QEPs and QECs, respectively, and the criteria each such person had to satisfy was separately set forth depending on whether the person had to meet the Portfolio Requirement. Thus, under proposed Rule 4.7(a)(2), two categories of persons were defined as QEPs (persons who were QEPs irrespective of the Portfolio Requirement and persons who were required to satisfy the Portfolio Requirement to be QEPs) and under proposed Rule 4.7(a)(3) two categories of persons were defined as QECs (persons who were QECs irrespective of the Portfolio Requirement and persons who were required to satisfy the Portfolio Requirement to be QECs). This

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[8] 15 U.S.C. 80a–3(c) (1)(1994 & Supp. III 1997).

[9] 17 CFR 270.3c–5 (1999).

[10] 62 FR 17512 (Apr. 9, 1997).

[11] 65 FR 11253.

[12] 57 FR 3148, 3150–51 (Jan. 28, 1992).

[13] 57 FR at 3151.

[14] Not all of the comments, however, were directly related to the Proposal. One comment recommended adoption of a uniform "sophisticated customer definition" for various of the Commission's rules (*i.e.*, Rules 1.3, 1.55, 4.7, 35.1 and 36.1); another comment recommended adoption of an exemption from CPO registration for operators of privately-offered collective investment vehicles limited solely to Non-United States persons; and yet another comment recommended adoption of an exclusion from the CPO definition for a collective investment vehicle using commodity interests solely for recognized risk management purposes. Inasmuch as these comments do not specifically concern Rule 4.7, the Commission is not by this **Federal Register** release addressing them (although, as discussed below, the Commission has revised Rule 4.7 so that it now provides relief with respect to "qualified eligible *persons*" (emphasis added)). The Commission does, however, intend to consider these comments in connection with other regulatory reform initiatives that it may propose—*e.g.*, in connection with revisions to the registration requirements for CPOs and CTAs that it may propose.

[15] As discussed more fully below, the Commission has adopted certain provisions without the qualifying limitations it had proposed thereon. These provisions concern the treatment of family members of—*e.g.*, the CPO of the exempt pool or the CTA of the exempt account—as qualified eligible persons for other purposes of Rule 4.7 (see Section II.D.3. below) and the availability of rule 4.7 relief to a CTA with respect to those of its clients who are Non-United States persons (see Section II.E. below).

[16] The Commission also cited at various places in the Proposing Release to the letters its staff had issued granting relief from the definitional requirements of Rule 4.7.

[17] *See generally* 65 FR at 11255–56.

[18] 65 FR at 11256.

[19] *Id.*

made for a total of four eligibility categories under Rule 4.7.[20] By employing solely the term "qualified eligible person" in Rule 4.7, the Commission has reduced to two from four the categories of persons defined under the rule: Persons who do not need to satisfy the Portfolio Requirement to be qualified eligible persons (Rule 4.7(a)(2))[21] and persons who do need to satisfy the Portfolio Requirement to be qualified eligible persons (Rule 4.7(a)(3)).[22]

The Commission additionally has streamlined Rule 4.7 by combining at one place, Rule 4.7(d), text applicable to the notice of claim for exemption that must be made to claim the relief available under Rule 4.7. Under both the former rule and the Proposal, text applicable to this notice was included at two places in Rule 4.7: After the relief that CPOs could claim and after the relief that CTAs could claim. Inasmuch as this text was virtually identical at both places, the Commission has combined it into one location, Rule 4.7(d).

Finally, to assist CPOs and CTAs in their reading and application of Rule 4.7, the Commission has adopted introductory text to the rule, which explains the organization of Rule 4.7 as follows: Paragraph (a) contains definitions for the purposes of Rule 4.7; paragraph (b) contains the relief available to CPOs under Rule 4.7; paragraph (c) contains the relief available to CTAs under Rule 4.7; paragraph (d) concerns the Notice of Claim for Exemption under Rule 4.7; and paragraph (e) concerns insignificant deviations from a term, condition or requirement of Rule 4.7.

B. Clarification of the Term "Non-United States Person"

Under the Proposal, the term "Non-United States person" would have been defined at proposed Rule 4.7(a)(1)(iv).[23] Similar to the definition of the term "Portfolio Requirement," the Commission did not propose to change the definition but, rather, it proposed to change its placement within the rule and to replace with the term "Non-United States person" the former reference in the rule to "a person that is not a United States person."

Under the Proposal, a Non-United States person would have been defined to include, among other persons:

(D) An entity organized principally for passive investment such as a pool, investment company or other similar entity; *Provided*, That units of participation in the entity held by persons who do not qualify as Non-United States persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain requirements of Part 4 of the Commission's regulations by virtue of its participants being Non-United States persons.

One of the commenters stated that it was unclear as to how, if at all, persons who did not qualify as Non-United States persons but who otherwise were QEPs should be counted for purposes of the 10% limitation of this definition. This commenter contended that they should not be counted because they were, after all, QEPs in their own right.

The Commission agrees with this commenter, and has revised the rule accordingly. Thus, as adopted, the ownership limitation of Rule 4.7(a)(1)(iv)(D) provides that "units of participation in the entity held by persons who do not qualify as Non-United States persons *or otherwise as qualified eligible persons* represent in the aggregate less than 10% of the beneficial interest in the entity" (emphasis added).

C. The Reasonable Belief Standard

Because of the organization of the former rule, CPOs and CTAs were required to have a "reasonable belief" that certain persons defined in Rule 4.7 as QEPs and QECs, respectively were, in fact, QEPs and QECs. Under the proposed reorganization of the rule, CPOs and CTAs would have been required to have a "reasonable belief" that *all* persons defined as QEPs and QECs, respectively, were, in fact, QEPs and QECs. While the Commission stated that it did not believe that this should impose any additional burdens on CPOs and CTAs, it nonetheless requested comment on the proposed revision.[24] The three persons who commented on this proposed revision stated that they had no objection to it. And, in response to one of those commenters, the Commission is clarifying that CPOs and CTAs have latitude in determining how to obtain a "reasonable belief"—e.g., whether by statements from the prospective participant or client, its agent, or other similar means. Of course, what will establish a "reasonable belief" will depend on the facts of each particular case.

D. Transferees of Insiders, Agents Engaged by Insiders, and the Family Members of Insiders as Qualified Eligible Persons

1. Transferees of Insiders as Qualified Eligible Persons

Under the Proposal, the QEP definition would have been expanded in proposed Rule 4.7(a)(2)(i)(H) to include, in addition to the CPO or the CTA of the exempt pool, the following persons: the investment adviser of the exempt pool; an affiliate of the exempt pool, CPO, CTA or investment adviser; a principal of these persons; certain employees of these persons; and certain family members of these persons.[25] Similarly, the QEC definition would have been expanded in proposed Rule 4.7(a)(3)(i)(B) to include the following persons: an affiliate of the CTA of the exempt account; a principal of the CTA or the affiliate; certain employees of these persons; and certain family members of these persons.[26] For the purposes of the discussion below, all of the foregoing persons collectively are referred to as "Insiders."

The Commission has adopted as proposed the provisions that would define each of the Insiders as a qualified eligible person. Further, in response to the comments received, the Commission

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[20] *See generally* 65 FR at 11256–61 for persons who were proposed to be QEPs and QECs irrespective of the Portfolio Requirement and 65 FR at 11261–62 for persons who were proposed to be QEPs and QECs if they satisfied the Portfolio Requirement.

[21] As proposed, the Commission employed the phrase "persons who are QEPs or QECs irrespective of the Portfolio Requirement." As adopted, the Commission is employing the phrase "persons who do not need to satisfy the Portfolio Requirement to be qualifying eligible persons." This phrase is consistent with the other phrase employed for eligibility status under Rule 4.7 applicable to "persons who must satisfy the Portfolio Requirement to be qualified eligible persons."

[22] As a result of this reorganization, Rule 4.7(a)(3)(xi) now defines a qualified eligible person as:

A *pool*, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of either participating in the exempt pool or opening an exempt account, and whose participation in the exempt pool or investment in the exempt account is directed by a qualified eligible person (emphasis added.)

Former Rule 4.7 included pools within the applicable QEP definition but it did not include pools within the applicable QEC definition. The Commission stated that this difference in definitions was "to ensure that pools generally, that is pools whose participants are not all QEPs, continue to receive a Disclosure Document from their CTAs." 57 FR at 34856. Upon reconsideration, the Commission is now of the view that all pools which meet the criteria of Rule 4.7(a)(3)(xi) should be defined as qualified eligible persons. With respect to exempt accounts in particular, this is because investment by a pool in an exempt account must be directed by a qualified eligible person—who, as the CPO of the pool and on behalf of the participants in the pool, will direct the investment in the exempt account.

[23] 65 FR at 11256 and n.32.

[24] 65 FR at 11257.

[25] 65 FR at 11259–61.

[26] *Id.*

has included certain other persons as qualified eligible persons and has expanded from the Proposal the availability of the qualified eligible person definition to certain family members of Insiders.

For example, one of the commenters on the proposed addition of Insiders to the QEP and QEC definitions suggested that the Commission include in Rule 4.7 a provision allowing transfers of interests in a Rule 4.7 exempt pool or exempt account from Insiders to other persons by gift or bequest. This commenter stated that support for including such a provision is found in rules under the ICA,[27] which permit transfers of interests in a Section 3(c)(1) or 3(c)(7) fund from a knowledgeable employee or QP to another person under specified situations. The Commission agrees with this suggestion and has adopted it in Rule 4.7(a)(2)(viii), which provides that a qualified eligible person includes the following: (1) Asny person who acquires a participation in the exempt pool or an interest in the exempt account by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from an Insider; (2) the estate of an Insider; or (3) a company established by an Insider exclusively for the benefit of (or owned exclusively by) the Insider and any other permitted transferee. This language generally follows the provisions of Rule 3c–6(b) under the ICA, which applies to transfers of interests in Section 3(c)(1) and (3)(c)(7) funds.

2. Agents Engaged by Insiders as Qualified Eligible Persons

Proposed Rule 4.7(a)(2)(i)(H)(*4*) would have included within the QEP definition certain employees of the exempt pool, CPO, CTA, investment adviser of the exempt pool, or affiliate thereof, and proposed Rule 4.7(a)(3)(i)(B)(*4*) would have included within the QEC definition certain employees of the CTA of the exempt account or of an affiliate of the CTA, provided that the employee: (1) Was an accredited investor as defined in Rule 501(a)(5) or (a)(6) under the Securities Act of 1933 [28] ("Accredited Investor"); and (2) had been employed by any of the foregoing persons, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. As the Commission explained, the purpose of these rules was in furtherance of the intent of Rule 4.7: to reduce unnecessary regulatory prescriptions for CPOs and CTAs with respect to persons who do not appear to need the full protections offered by the Part 4 framework.[29] The Commission has adopted this proposed definition and, in response to a comment received, has additionally included certain agents as qualified eligible persons under this rule.

One of the commenters on the Proposal suggested that the Commission consider including as QEPs and QECs certain attorneys and other persons similarly engaged whose activities and degree of sophistication would merit their being treated as QEPs and QECs. The Commission agrees with this comment and has incorporated it in Rule 4.7. Specifically, Rule 4.7(a)(2)(viii)(A)(*4*) defines a qualified eligible person with respect to an exempt pool as "any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for," the exempt pool or the CPO, CTA or investment adviser of the exempt pool, or for an affiliate of any of the foregoing, provided that the employee or agent: (1) Is an Accredited Investor; and (2) has been engaged by the exempt pool, CPO, CTA, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. Similarly, Rule 4.7(a)(2)(viii)(B)(*4*) defines a qualified eligible person with respect to an exempt account as "any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for," the CTA of the exempt account, or for an affiliate of the CTA, provided that the employee or agent: (1) Is an Accredited Investor; and (2) has been engaged by the CTA or the affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. Consistent with the treatment of employees under Rule 4.7, this definition excludes agents who perform solely clerical, secretarial or administrative functions.

3. Restriction on Family Members of Insiders Being Qualified Eligible Persons

Proposed Rule 4.7(a)(2)(i)(H)(*5*) would have included in the QEP definition the spouse, child, sibling or parent of an Insider, provided that an investment in the exempt pool by any such family member was made with the knowledge and at the direction of the Insider.[30] Proposed Rule 4.7(a)(3)(i)(B)(*5*) similarly would have included in the QEC definition the spouse, child, sibling or parent of an Insider, provided that the establishment of an exempt account by any such family member was made with the knowledge and at the direction of the trading advisor.[31] The Commission received no comments on these criteria and, accordingly, has adopted them as proposed in Rules 4.7(a)(2)(viii)(A)(*5*)(*i*) with respect to exempt pools and 4.7(a)(2)(viii)(B)(*5*)(*i*) with respect to exempt accounts.

The proposed rules also would have strictly limited the application of the QEP and QEC definitions, such that these family members would not have been QEPs or QECs for any other purposes of Rule 4.7—*e.g.*, for the purpose of being a QEP settlor of a trust under proposed Rule 4.7(a)(2)(i)(I). The commenter on this proposed criterion stated that it was unnecessarily opaque, and urged the Commission to treat these family members as QEPs and QECs for all purposes of Rule 4.7. Upon further reflection, the Commission agrees that the proposed limitation may have been overly broad where the source of funds used for participating in an exempt pool or investing in an exempt account was one of the specified family members. Accordingly, Rules 4.7(a)(2)(viii)(A)(*5*)(*ii*) with respect to exempt pools and (a)(2)(viii)(B)(*5*)(*ii*) with respect to exempt accounts provide that these family members are qualified eligible persons *except for* the purposes of paragraph (a)(3)(xi) of the rule. That paragraph provides that certain collective investment vehicles, such as a pool, are qualified eligible persons if, among other things, they satisfy the Portfolio Requirement, have in excess of $5,000,000 in total assets and their "participation in the exempt pool or investment in the exempt account is directed by a qualified eligible person." Because the source of funds in a collective investment vehicle such as a pool will always be either in addition to or other than from the family member, the Commission has provided that the family member is not a qualified eligible person for the purposes of Rule 4.7(a)(3)(xi).

E. Non-United States Persons as Qualified Eligible Persons for the Purpose of Opening an Exempt Account With a CTA

Proposed Rule 4.7(a)(3)(i)(A)(*2*) would have defined Non-United States persons as QECs, provided that the CTA who sought to direct or guide the commodity interest trading account of the Non-United States person: (1) Provided

[27] 17 CFR 270.3c-5 and 3c-6 (1999).

[28] 17 CFR 230.501(a)(5) or (a)(6)(1999), respectively.

[29] 65 FR at 11260.

[30] *Id.*

[31] *Id.*

commodity interest trading advice exclusively to persons who were QECs (including persons who were Non-United States persons); and (2) had filed a notice of claim for exemption under Rule 4.7. In the Proposing Release, the Commission noted that a CTA who directs or guides the accounts of United States persons who are not QECs would be subject to the Disclosure Document requirements of Rules 4.31, 4.34, 4.35 and 4.36 and the recordkeeping requirements of Rule 4.33. Accordingly, the Commission reasoned that requiring the CTA to comply with requirements to which it already would be subject would not impose any additional burden on the CTA with respect to clients who are Non-United States persons.[32]

Four persons commented on this proposed provision. While they generally expressed support for expanding the QEC definition to include Non-United States persons, they objected to the proposed limitation on permitting CTAs to claim relief under Rule 4.7 where the CTA has both United States and Non-United States persons as clients. Commenters disagreed with the Commission's argument that this framework would not impose any additional burdens on these CTAs because they would already be subject to disclosure and recordkeeping requirements with regard to their (other) Non-QEC clients. One of these commenters further stated that while this may be true where the trading programs and solicitation documents are substantially the same, this frequently will impose a significant burden on CTAs where the trading programs and solicitation documents are different—thereby requiring significant additional work for the CTA in what is likely to be a very different context. In support of permitting CTAs to treat Non-United States persons as QECs without limitation, commenters noted that a CTA soliciting Non-United States persons is subject to the requirements of applicable foreign law, including any mandatory disclosure requirements. On the whole, then, the commenters on this proposed provision saw no reason why the Commission should treat Non-United States persons differently for the purpose of participating in an exempt pool or opening an exempt account.

Based upon the comments received, and in light of the increasing globalization of the futures markets and competitiveness concerns, the Commission has decided not to adopt the proposed limitation. Thus, Rule 4.7(a)(2)(xi) defines a Non-United States person as a qualified eligible person, without regard to whether the Non-United States person is seeking to participate in an exempt pool or to open an exempt account.[33]

III. QPs and Knowledgeable Employees as Qualified Eligible Persons

By the Proposal the Commission proposed to add QPs and knowledgeable employees to the QEP and QEC definitions,[34] and by the Revision the Commission has included QPs and knowledgeable employees in the qualified eligible person definition. As the Commission stated in the Proposing Release:

> The Commission intends to follow interpretations issued by the SEC and its staff of the QP and knowledgeable employee definitions. The Commission has the right further to interpret or to amend Rule 4.7 to exclude from the [qualified eligible person definition] any person that the SEC or its staff found to be a QP or knowledgeable employee or to include in the [qualified eligible person definition] any person the SEC or its staff excluded from the QP or knowledgeable employee definition, if such action is found to be necessary to effectuate the purposes of the Act and the Commission's regulations. The Commission expects that it would exercise this right infrequently.[35]

In particular, the Commission noted that in April of 1999, staff of the SEC's Division of Investment Management responded to a series of inquiries from the Subcommittee on Private Investment Entities of the Federal Regulation of Securities Committee, Section of Business Law of the American Bar Association concerning the scope of both the qualified purchaser and knowledgeable employee definitions.[36] As stated in the SEC staff's letter:

> Whether an employee actively participates in the investment activities of a Fund is a factual determination that must be made on a case-by-case basis by the Fund. Nevertheless, as a general matter, with the possible exception of some research analysts (*e.g.*, a research analyst who researches all potential portfolio investments and provides recommendations to the portfolio manager), we believe that the types of employees described * * * [*i.e.*, certain marketing and investor relations professionals, research analysts, attorneys, brokers, traders and financial, compliance, operational and accounting officers of a fund] would not qualify as knowledgeable employees under Rule 3c–5.[37]

IV. Distribution and Derivation Tables

The following distribution table indicates where the provisions of former Rule 4.7 can be found in revised Rule 4.7 and the derivation table indicates where the provisions of revised Rule 4.7 can be found in former Rule 4.7. The derivation table indicates by "—" any provision in the revised rule that is not derived from the former rule (*i.e.*, it is an entirely new provision). To avoid what otherwise would be a very lengthy presentation, as appropriate each table groups together certain paragraphs.

A. Distribution Table

Former rule 4.7	Revised rule 4.7
(a)(1)	(a)(1)
(a)(1)(i)	(a)(1)(iii)
(a)(1)(ii)(A)	(a)(2)
(a)(1)(ii)(A)(*1*)–(*4*)	a)(2)(i)–(iv)
(a)(1)(ii)(A)(*5*)	(a)(2)(viii)(A)(*1*)
(a)(1)(ii)(B)(*1*)	(a)(1)(v)
(a)(1)(ii)(B)(*2*)(*i*)–(*xii*)	(a)(3)(i)–(xii)
(a)(1)(ii)(C)	(a)(1)(iv); (a)(1)(vi); (a)(2)(xi)
(a)(1)(ii)(D)	(a)(1)(xii)(A)
(a)(2)	(b)
(a)(3)	(d)

[32] 65 FR at 11261.

[33] CTAs claiming relief under Rule 4.7 are nonetheless required under paagraph (c)(1)(i) of the rule to display a prescribed disclaimer statement on the cover page of any brochure or other disclosure statement they provide to prospective clients or, if none is provided, immediately above the signature line of the agreement the client must execute before it opens an account. CPOs claiming relief under Rule 4.7 are subject to a similar requirement under paragraph (b)(1)(i).

[34] 65 FR at 11256–59.

[35] 65 FR at 11259 (footnote omitted).

[36] *American Bar Ass'n* [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,548 (Apr. 22, 1999).

[37] *Id.* at 78,746 (footnote omitted).

A. DISTRIBUTION TABLE—Continued

Former rule 4.7	Revised rule 4.7
(b)(1)	(a)(1)
(b)(1)(i)	(a)(1)(ii)
(b)(1)(ii)(A)	(a)(2)(i)–(iv)
(b)(1)(ii)(B)(*1*)	(a)(1)(v)
(b)(1)(ii)(B)(*2*)(*i*)–(*xii*)	(a)(3)(i)–(xii)
(b)(1)(ii)(C)	(a)(2)(xii)(B)
(b)(1)(ii)(D)	(a)(2)(xii)(A)
(b)(1)(ii)(E)	(a)(2)(xii)(C)
(b)(2)	(c)
(b)(3)	(d)
(c)	(e)

B. DERIVATION TABLE

Revised rule 4.7	Former rule 4.7
(a)	(a)(1)
(a)(1)	- -
(a)(1)(i)	- -
(a)(1)(ii)	(b)(1)(i)
(a)(1)(iii)	(a)(1)(i)
(a)(1)(iv)	(a)(1)(ii)(C)
(a)(1)(v)	(a)(1)(ii)(b)(*1*); (b)(1)(ii)(B)(*1*)
(a)(1)(vi)	(a)(1)(ii)(C)
(a)(2)	(a)(1)(ii)(A); (b)(1)(ii)(A)
(a)(2)(i)–(iv)	(a)(1)(ii)(A)(*1*)–(*4*); (b)(1)(ii)(A)
(a)(2)(v)–(vii)	- -
(a)(2)(viii)(A)(*1*)	(a)(1)(ii)(A)(*5*)
(a)(2)(viii)(A)(*2*)–(6)	- -
(a)(2)(viii)(B)	- -
(a)(2)(ix)–(x)	- -
(a)(2)(xi)	(a)(1)(ii)(C)
(a)(2)(xii)(A)	(a)(1)(ii)(D); (b)(1)(ii)(D)
(a)(2)(xii)(B)	(b)(1)(ii)(C)
(a)(2)(xii)(C)	(b)(1)(ii)(E)
(a)(3)	(a)(1)(ii)(B)(*2*); (b)(1)(ii)(B)(*2*)
(a)(3)(i)–(xii)	(a)(1)(ii)(B)(*2*)(*i*)–(*xii*); (b)(1)(ii)(B)(*2*)(*i*)–(*xii*)
(b)	(a)(2)
(c)	(b)(2)
(d)	(a)(3); (b)(3)
(e)	(c)

V. Technical Revisions to Rules 30.6(b), 140.99(i)(A) and 180.3(b)(2)

A. Rule 30.6(b)

Part 30 of the Commission's rules governs the offer and sale of foreign futures and foreign options contracts to persons located in the United States. Rule 30.6 sets forth the disclosure requirements that apply to domestic and foreign persons who are registered or required to be registered under Part 30 or who have obtained an exemption from such registration under Rule 30.5. Specifically, Rule 30.6(b) sets forth those requirements with respect to CPOs and CTAs, differentiating between disclosures applicable in the context of participants and clients, respectively, who meet the requirements of Rule 4.7 (Rule 30.6(b)(1)) and those who do not (Rule 30.6(b)(2)).

As discussed above, under the Revision persons who formerly were termed "qualified eligible participants" or "qualified eligible clients" are now all termed "qualified eligible persons" and the provisions of Rule 4.7 have been reorganized. The Commission accordingly has conformed the nomenclature of Rule 30.6(b) to that of revised Rule 4.7.

B. Rule 140.99(i)(A)

Rule 140.99 governs requests for exemptive, no-action and interpretative letters. Among other things, it sets forth the procedures that an applicant must follow in making a request for a letter. Paragraph (i)(A) makes clear that Rule 140.99 does not affect the requirements of, or is otherwise applicable to, notice filings required to be made to claim relief from the Act or from a Commission rule—*e.g.*, pursuant to Rule 4.7.

As stated above, all claims for relief under Rule 4.7 are now found in paragraph (d) of the rule. Accordingly, the Commission has revised Rule 140.99(i)(A) such that it similarly refers to Rule 4.7(d).

C. Rule 180.3(b)(2)

Part 180 of the Commission's rules governs arbitration or other dispute settlement procedures. Rule 180.3(b)(2) concerns the signing of a pre-dispute arbitration agreement and certain endorsement procedures that may be followed by certain persons. The Commission similarly has conformed the nomenclature of Rule 180.3(b)(2)(vi) so that it now refers to "A person who is a 'qualified eligible person' under § 4.7(a) of this chapter." [38]

[38] This action is consistent with the Commission's recent regulatory reform proposals, which, among other things, would provide in new Rule 166.5 for the use of pre-dispute arbitration agreements for certain customer claims and grievances and which "expands the use of the 'single-signature format' for

Continued

VI. Related Matters

A. Paperwork Reduction Act

Rule 4.7 affects information collection requirements. As required by the Paperwork Reduction Act of 1995, the Commission has submitted a copy of this Rule 4.7 to the Office of Management and Budget (OMB) for its review.[39] The Commission did not receive any comments on any potential paperwork burden associated with the Proposal.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[40] requires each federal agency to consider the impact of proposed rules on small entities. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[41] The Commission has determined that registered CPOs are not small entities for the purposes of the RFA.[42] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[43]

Rule 4.7 reduces the regulatory burdens on registered CPOs and CTAs by providing exemptive relief from the disclosure, reporting and recordkeeping requirements that are otherwise applicable to these registrants. As revised, Rule 4.7 makes this relief available to more CPOs and CTAs and under more situations. This expanded relief, moreover, is available to all CPOs and CTAs, regardless of size.

C. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for "a substantive rule which grants or recognizes an exemption or relieves a restriction."[44] Rule 4.7 makes available an exemption from certain Part 4 requirements for CPOs who operate commodity pools consisting of qualified eligible persons and for CTAs who direct or guide the commodity interest trading accounts of qualified eligible persons. Accordingly, the Commission has determined to make the proposed amendments to Rule 4.7 effective immediately.

List of Subjects

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 30

Definitions, Foreign futures, Foreign options, Reporting and recordkeeping requirements, Registration requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount, Customer protection.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 180

Arbitration or other dispute settlement procedures, Consumer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 1a(4), 1a(5), 4b, 4*l*, 4m, 4n, 4*o* and 8a, 7 U.S.C. 1a, 6b, 6*l*, 6m, 6n, 6*o* and 12a, the Commission hereby amends Parts 4, 30, 140 and 180 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a, and 23.

2. Section 4.7 is revised to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

This section is organized as follows: Paragraph (a) contains definitions for the purposes of § 4.7; paragraph (b) contains the relief available to commodity pool operators under § 4.7; paragraph (c) contains the relief available to commodity trading advisors under § 4.7; paragraph (d) concerns the Notice of Claim for Exemption under § 4.7; and paragraph (e) addresses the effect of an insignificant deviation from a term, condition or requirement of § 4.7.

(a) *Definitions.* Paragraph (a)(1) of this section contains general definitions, paragraph (a)(2) of this section contains the definition of the term *qualified eligible person* with respect to those persons who do not need to satisfy the Portfolio Requirement and paragraph (a)(3) of this section contains the definition of the term *qualified eligible person* with respect to those persons who must satisfy the Portfolio Requirement. For the purposes of this section:

(1) *In general.*

(i) *Affiliate* of, or a person *affiliated* with, a specified person means a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person.

(ii) *Exempt account* means the account of a qualified eligible person that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under § 4.7.

(iii) *Exempt pool* means a pool that is operated pursuant to an effective claim for exemption under § 4.7.

(iv) *Non-United States person* means:

(A) A natural person who is not a resident of the United States;

(B) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal place of business in a foreign jurisdiction;

(C) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(D) An entity organized principally for passive investment such as a pool, investment company or other similar entity; *Provided,* That units of participation in the entity held by persons who do not qualify as Non-United States persons or otherwise as qualified eligible persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain

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account opening agreements to include * * * 'qualified eligible clients' as defined in Rule 4.7." 65 FR 39008, 39016 n. 31 (June 22, 2000). As footnote 31 sates, the Commission has proposed to delete Part 180 in its entirety. If the Commission adopts these regulatory reform proposals, references in Rule 166.5 solely will be to "qualified eligible persons."

[39] 44 U.S.C. 3507(d) (Supp. I 1995).

[40] 5 U.S.C. 601 *et seq.* (1994 & Supp. II 1996).

[41] 47 FR 18618 (Apr. 30, 1982).

[42] *Id.* at 18619–20.

[43] *Id.* at 18620.

[44] 5 U.S.C. 553(d) (1994).

requirements of Part 4 of the Commission's regulations by virtue of its participants being Non-United States persons; and

(E) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States.

(v) *Portfolio Requirement* means that a person:

(A) Owns securities (including pool participations) of issuers not affiliated with such person and other investments with an aggregate market value of at least $2,000,000;

(B) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding either the date of sale to that person of a pool participation in the exempt pool or the date that the person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(C) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(v)(A) and (B) of this section in which the sum of the funds or property includable under paragraph (a)(1)(v)(A), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under paragraph (a)(1)(v)(B), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(v)(C) would consist of $1,000,000 in securities and other property (50% of paragraph (a)(1)(v)(A)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(v)(B)).

(vi) *United States* means the United States, its states, territories or possessions, or an enclave of the United States government, its agencies or instrumentalities.

(2) *Persons who do not need to satisfy the Portfolio Requirement to be qualified eligible persons. Qualified eligible person* means any person, acting for its own account or for the account of a qualified eligible person, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, or who the commodity trading advisor reasonably believes, at the time that person opens an exempt account, is:

(i) A futures commission merchant registered pursuant to section 4d of the Act, or a principal thereof;

(ii) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, or a principal thereof;

(iii) A commodity pool operator registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the pool operator:

(A) Has been registered and active as such for two years; or

(B) Operates pools which, in the aggregate, have total assets in excess of $5,000,000;

(iv) A commodity trading advisor registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the trading advisor:

(A) Has been registered and active as such for two years; or

(B) Provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more futures commission merchants;

(v) An investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 ("Investment Advisers Act") or pursuant to the laws of any state, or a principal thereof; *Provided,* That the investment adviser:

(A) Has been registered and active as such for two years; or

(B) Provides securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more registered securities brokers;

(vi) A "qualified purchaser" as defined in section 2(51)(A) of the Investment Company Act of 1940 (the "Investment Company Act");

(vii) A "knowledgeable employee" as defined in § 270.3c-5 of this title;

(viii)(A) With respect to an exempt pool:

(*1*) The commodity pool operator, commodity trading advisor or investment adviser of the exempt pool offered or sold, or an affiliate of any of the foregoing;

(*2*) A principal of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing;

(*3*) An employee of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the exempt pool, other commodity pools operated by the pool operator of the exempt pool or other accounts advised by the trading advisor or the investment adviser of the exempt pool, or by the affiliate; *Provided,* That such employee has been performing such functions and duties for or on behalf of the exempt pool, pool operator, trading advisor, investment adviser or affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(*4*) Any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for, the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or any other employee of, or agent so engaged by, an affiliate of any of the foregoing (other than an employee or agent performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided,* That such employee or agent:

(*i*) Is an accredited investor as defined in § 230.501(a)(5) or (6) of this title; and

(*ii*) Has been employed or engaged by the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months;

(*5*) The spouse, child, sibling or parent of a person who satisfies the criteria of paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*) or (*4*) of this section; *Provided,* That:

(*i*) An investment in the exempt pool by any such family member is made with the knowledge and at the direction of the person; and

(*ii*) The family member is not a qualified eligible person for the purposes of paragraph (a)(3)(xi) of this section;

(*6*)(*i*) Any person who acquires a participation in the exempt pool by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from a person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section;

(*ii*) The estate of any person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section; or

(*iii*) A company established by any person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (5) of this section exclusively for the benefit of (or owned exclusively by) that person and any person listed in paragraph (a)(2)(viii)(A)(*6*)(*i*) or (*ii*) of this section;

(B) With respect to an exempt account:

(*1*) An affiliate of the commodity trading advisor of the exempt account;

(*2*) A principal of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor;

(*3*) An employee of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the trading advisor or the affiliate; *Provided*, That such employee has been performing such functions and duties for or on behalf of the trading advisor or the affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(*4*) Any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for, the commodity trading advisor of the exempt account or any other employee of, or agent so engaged by, an affiliate of the trading advisor (other than an employee or agent performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided*, That such employee or agent:

(*i*) Is an accredited investor as defined in § 230.501(a)(5) or (a)(6) of this title; and

(*ii*) Has been employed or engaged by the commodity trading advisor or the affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months; or

(*5*) The spouse, child, sibling or parent of the commodity trading advisor of the exempt account or of a person who satisfies the criteria of paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*) or (*4*) of this section; *Provided*, That:

(*i*) The establishment of an exempt account by any such family member is made with the knowledge and at the direction of the person; and

(*ii*) The family member is not a qualified eligible person for the purposes of paragraph (a)(3)(xi) of this section;

(*6*)(*i*) Any person who acquires an interest in an exempt account by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from a person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section;

(*ii*) The estate of any person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section; or

(*iii*) A company established by any person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section exclusively for the benefit of (or owned exclusively by) that person and any person listed in paragraph (a)(2)(viii)(B)(*6*)(*i*) or (*ii*) of this section;

(ix) A trust; *Provided*, That:

(A) The trust was not formed for the specific purpose of either participating in the exempt pool or opening an exempt account; and

(B) The trustee or other person authorized to make investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible person;

(x) An organization described in section 501(c)(3) of the Internal Revenue Code (the "IRC"); *Provided*, That the trustee or other person authorized to make investment decisions with respect to the organization, and the person who has established the organization, is a qualified eligible person;

(xi) A Non-United States person;

(xii)(A) An entity in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible persons;

(B) An exempt pool; or

(C) Notwithstanding paragraph (a)(3) of this section, an entity as to which a notice of eligibility has been filed pursuant to § 4.5 which is operated in accordance with such rule and in which all unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible persons.

(3) *Persons who must satisfy the Portfolio Requirement to be qualified eligible persons. Qualified eligible person* means any person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, or any person who the commodity trading advisor reasonably believes, at the time that person opens an exempt account, satisfies the Portfolio Requirement and is:

(i) An investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of such Act not formed for the specific purpose of either investing in the exempt pool or opening an exempt account;

(ii) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act") or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible person;

(iii) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible person;

(iv) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(v) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974; *Provided*, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible persons;

(vi) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(vii) An organization described in section 501(c)(3) of the IRC, with total assets in excess of $5,000,000;

(viii) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of either participating in the exempt pool or opening an exempt account;

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of either his purchase in the exempt pool or his opening of an exempt account exceeds $1,000,000;

(x) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(xi) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of either participating in the exempt pool or opening an exempt account, and whose participation in the exempt pool or investment in the exempt account is directed by a qualified eligible person; or

(xii) Except as provided for the governmental entities referenced in paragraph (a)(3)(iv) of this section, if

otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing.

(b) *Relief available to commodity pool operators.* Upon filing the notice required by paragraph (d) of this section, and subject to compliance with the conditions specified in paragraph (d) of this section, any registered commodity pool operator who offers or sells participations in a pool solely to qualified eligible persons in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act or pursuant to Regulation S, 17 CFR 230.901 *et seq.*, and any bank registered as a commodity pool operator in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to qualified eligible persons, may claim any or all of the following relief with respect to such pool:

(1) *Disclosure relief.* (i) Exemption from the specific requirements of §§ 4.21, 4.24, 4.25 and 4.26 with respect to each exempt pool; *Provided*, That if an offering memorandum is distributed in connection with soliciting prospective participants in the exempt pool, such offering memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently disclosed on the cover page of the offering memorandum, or, if none is provided, immediately above the signature line on the subscription agreement or other document that the prospective participant must execute to become a participant in the pool:

"PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH POOLS WHOSE PARTICIPANTS ARE LIMITED TO QUALIFIED ELIGIBLE PERSONS, AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR ANY OFFERING MEMORANDUM FOR THIS POOL."

(ii) Exemption from disclosing the past performance of exempt pools in the Disclosure Document of non-exempt pools except to the extent that such past performance is material to the non-exempt pool being offered; *Provided*, That a pool operator that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document of non-exempt pools shall state in a footnote to the performance disclosure therein that the operator is operating or has operated exempt pools whose performance is not disclosed in this Disclosure Document.

(2) *Periodic reporting relief.* Exemption from the specific requirements of §§ 4.22(a) and (b); *Provided*, That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(i) The net asset value of the exempt pool as of the end of the reporting period;

(ii) The change in net asset value from the end of the previous reporting period; and

(iii) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(3) *Annual report relief.* (i) Exemption from the specific requirements of §§ 4.22(c) and (d); *Provided*, That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, signed and affirmed in accordance with § 4.22(h) which contains, at a minimum:

(A) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(B) A Statement of Income (Loss) for that year; and

(C) Appropriate footnote disclosure and any other material information.

(ii) Such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(iii) Legend. (A) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

(B) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report and state that a certified audit will be provided upon the request of the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator.

(4) *Recordkeeping relief.* Exemption from the specific requirements of § 4.23; *Provided*, That the commodity pool operator must maintain the reports referred to in paragraphs (b)(2) and (b)(3) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible persons and substantiating any performance representations) at his main business address and must make such books and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(c) *Relief available to commodity trading advisors.* Upon filing the notice required by paragraph (d) of this section, and subject to compliance with the conditions specified in paragraph (d) of this section, any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible persons may claim any or all of the following relief with respect to the accounts of qualified eligible persons who have given due consent to their account being an exempt account under § 4.7:

(1) *Disclosure relief.* (i) Exemption from the specific requirements of §§ 4.31, 4.34, 4.35 and 4.36; *Provided*, That if the commodity trading advisor delivers a brochure or other disclosure statement to such qualified eligible persons, such brochure or statement shall include all additional disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently displayed on the cover page of the brochure or statement or, if none is provided, immediately above the signature line of the agreement that the client must execute before it opens an account with the commodity trading advisor:

"PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE PERSONS, THIS BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OR ACCOUNT DOCUMENT."

(ii) Exemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered; *Provided*, That a commodity trading advisor that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document for non-exempt accounts shall state in a footnote to the performance disclosure therein that the advisor is advising or has advised exempt accounts for qualified eligible persons whose performance is not disclosed in this Disclosure Document.

(2) *Recordkeeping relief.* Exemption from the specific requirements of § 4.33; *Provided*, That the commodity trading advisor must maintain, at its main business office, all books and records prepared in connection with his activities as the commodity trading advisor of qualified eligible persons (including, without limitation, records relating to the qualifications of such qualified eligible persons and substantiating any performance representations) and must make such books and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(d) *Notice of claim for exemption.*

(1) A notice of a claim for exemption under this section must:

(i) Be in writing;

(ii) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator or commodity trading advisor identification number of the person claiming the exemption;

(iii)(A) Where the claimant is a commodity pool operator, provide the name(s) of the pool(s) for which the request is made; *Provided*, That a single notice representing that the pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(B) Where the claimant is a commodity trading advisor, contain a representation that the trading advisor anticipates providing commodity interest trading advice to qualified eligible persons;

(iv) Contain representations that:

(A) Neither the commodity pool operator or commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph (d);

(B) The commodity pool operator or commodity trading advisor will comply with the applicable requirements of § 4.7; and

(C) Where the claimant is a commodity pool operator, that the exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(v) Specify the relief claimed under § 4.7;

(vi) Where the claimant is a commodity pool operator, state the closing date of the offering or that the offering will be continuous;

(vii) Be signed by the commodity pool operator or commodity trading advisor as follows: If it is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(viii) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(ix)(A)(*1*) Where the claimant is a commodity pool operator, except as provided in paragraph (d)(1)(iii)(A) of this section with respect to single-investor pools and in paragraph (d)(1)(ix)(A)(*2*) of this section, be received by the Commission:

(*i*) Before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (b)(2), (3) and (4) of this section; or

(*ii*) Prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under paragraph (b)(1) of this section.

(*2*) Where participations in a pool have been offered or sold in full compliance with Part 4, the notice of a claim for exemption may be filed with the Commission at any time; *Provided*, That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under § 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (d)(1)(ix)(A)(*2*) shall either provide disclosure and reporting in accordance with the requirements of Part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(B) Where the claimant is a commodity trading advisor, be received by the Commission before the date the trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible person pursuant to § 4.7.

(2) The notice will be effective upon receipt by the Commission with respect to each pool for which it was made where the claimant is a commodity pool operator and otherwise generally where the claimant is a commodity trading advisor; *Provided*, That any notice which does not include all the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the pool operator or trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(3) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity pool operator of an exempt pool to be ineligible for the relief claimed with respect to such pool or which would cause a commodity trading advisor to be ineligible for the relief claimed. The pool operator or trading advisor must promptly file a

notice advising the Commission of such change.

(4)(i) Any exemption from the requirements of § 4.21, 4.22, 4.23, 4.24, 4.25 or 4.26 claimed hereunder with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to the pool and any other pool the pool operator operates or intends to operate.

(ii) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35 or 4.36 claimed hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible person and any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(e) *Insignificant deviations from a term, condition or requirement of § 4.7.*

(1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible person;

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular exempt account; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (e)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

3. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

4. Section 30.6 is amended by revising paragraph (b) to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to persons who satisfy the requirements of qualified eligible persons, as defined in § 4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible person with the Risk Disclosure Statement set forth in § 4.24(b)(2) of this chapter and the statement in § 4.7(b)(1)(i) of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each qualified eligible person with the Risk Disclosure Statement set forth in § 4.34(b)(2) of this chapter and the statement in § 4.7(c)(1)(i) of this chapter.

(2) With respect to persons who do not satisfy the requirements of qualified eligible persons, as defined in § 4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.21 of this chapter and files the Disclosure Document in accordance with § 4.26 of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished customers or potential customers pursuant to § 4.31 of this chapter and files the Disclosure Document in accordance with § 4.36 of this chapter.

* * * * *

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

5. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 4a and 12a.

§ 140.99 [Amended]

6. In § 140.99, paragraphs (i)(A) and (B) are correctly designated as paragraphs (i)(1) and (2). In paragraph (i)(1), the phrase "§§ 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter" is revised to read "§§ 4.5, 4.7(d), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter".

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

7. The authority citation for part 180 continues to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21, unless otherwise noted.

8. Section 180.3 is amended by revising paragraph (b)(2)(vi) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) * * *

(2) * * *

(vi) A person who is a "qualified eligible person" as defined in § 4.7(a) of this chapter.

* * * * *

Issued in Washington, D.C., on July 27, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–19445 Filed 8–3–00; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 0

[USMS NO. 100F; AG Order No. 2316–2000]

RIN 1105–AA84

Revision to United States Marshals Service Fees for Services

AGENCY: United States Marshals Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in Federal court proceedings. A proposed rule with invitation to comment was published in the Federal Register on December 7, 1999, at 64 FR

68307. No comments were received within the 60-day comment period. Accordingly, the proposed rule is finalized without change.

DATES: Effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Joe Lazar, Associate General Counsel, United States Marshals Service, 600 Army Navy Drive, CS–3, Arlington, Virginia 22202, telephone number (202) 307–9054.

SUPPLEMENTARY INFORMATION:

What Legal Authority does the United States Marshals Service Have to Charge Fees?

The Attorney General must establish fees to be taxed and collected for certain services rendered by the United States Marshals Service in connection with Federal court proceedings. 28 U.S.C. § 1921(b). These services include, but are not limited to, serving writs, subpoenas, or summonses, preparing notices or bills of sale, keeping attached property, and certain necessary travel. To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. The Attorney General initially established the fee schedule in 1991 based on the actual costs, *e.g.*, salaries, overhead, etc., of the services rendered and the hours expended at that time. See 56 FR 2436 (January 23, 1991). Due to an increase in the salaries and benefits of United States Marshals Service personnel over time, the current fee schedule is inadequate and no longer reflects the actual and reasonable costs of the services rendered.

What Federal Cost Accounting and Fee Setting Standards and Guidelines are Being Used?

When developing fees for services, the United States Marshals Service adheres to the principles contained in OMB Circular No. A–25, User Charges. OMB Circular A–25 states that, as a general policy, a "user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."

The guidance contained in OMB Circular A–25 is applicable to the extent that it is not inconsistent with any Federal statute. Specific legislative authority to charge fees for services takes precedence over OMB Circular A–25 when the statute "prohibits assessment of a user charge on a service or addresses an aspect of the user charge (*e.g.*, who pays the charge; how much is the charge; where collections are deposited)." When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular A–25 to the fullest extent allowable. The guidance directs Federal agencies when calculating fees to charge the "full cost" of providing services that provide a specific benefit to recipients. OMB Circular A–25 defines full cost as including "all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of":

- Direct or indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- The management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

What Processes Were Used to Determine the Amount of the Fee Revision?

As previously stated, the Attorney General initially established the fee schedule in 1991 based on the average salaries, benefits, and overhead of the Deputy U.S. Marshals who executed process on behalf of a requesting party. The 1991 rates are:

For each item served (or service attempted) in person:

(a) Within two hours, during published duty hours—a minimum charge of $40 per Deputy (or guard). If necessary, for each associated additional hour, or portion thereof—$20 per Deputy (or guard) per additional hour.

(b) Within two hours, after published duty hours—a minimum charge of $50 per Deputy (or guard). If necessary, for each associated additional hour, or portion thereof—$25 per Deputy (or guard) per additional hour.

In addition, the Attorney General established a flat fee of $3 for each item served by mail or forwarded for service in another judicial district.

In November 1995, the Department of Justice, Office of Inspector General, issued an audit report on the United States Marshals Service's Collection of Service Fees and Commissions (Audit Report 96–01).[1] In the report, the Office of Inspector General recommended that the United States Marshals Service determine whether the fee schedule reflects actual and reasonable costs of the services provided. As a result of the audit report, in 1998, the United States Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over time, the existing fee schedule accurately reflects the costs of serving process. The following cost module reflects the average hourly cost of serving process in person on behalf of a requesting party.

	Cost module
Hourly Wage	$27.53
Fringe Benefits	11.01
Indirect Costs	6.94
Total Personnel Costs	$45.48

The hourly wage was determined by dividing the annual salary, including locality pay, of the average Deputy U.S. Marshal in 1998 who serves process into the total work hours in a year. The cost of Law Enforcement Availability Pay is also factored into the hourly wage of a Deputy U.S. Marshal.[2] The fringe benefits rate reflected 40 percent of wage costs. Finally, the indirect costs, which are reflective of the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, are approximately 18 percent of the total wage and benefits costs.[3] As a result of the cost module, the United States Marshals Service has determined that the existing fee schedule no longer reflects the actual and reasonable costs of serving process.

The total personnel costs of serving process were rounded to the nearest whole dollar. Thus, in order to recover the actual and reasonable costs of serving process, the United States Marshals Service will be charging $45 per hour (or portion thereof) for each item served by one Deputy U.S. Marshal. In order to simplify the calculation of the fees, the United States Marshals Service is eliminating the minimum charge for serving process within two hours and, instead, will

[1] Copies of the audit report are available at www.usdoj.gov/oig/au9601/au9601.htm.

[2] In 1994, Congress passed the Law Enforcement Availability Pay Act, Pub. L. No. 103–329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. § 5545a), which provides that law enforcement officers, such as Deputy U.S. Marshals, who are required to work unscheduled hours in excess of each regular work day, are entitled to a 25% premium pay in addition to their base salary.

[3] The indirect cost rate was derived by determining the proportion of management costs expended by the United States Marshals Service relative to direct program expenses assumed by the agency in Fiscal Year 1998.

charge a fee based on a straight hourly rate for service.

The United States Marshals Service also conducted a survey of a representative sampling of its district offices to determine whether the $3 flat fee for mailing process reflected the actual costs of mailing. The results of the survey indicated that the average actual cost of mailing process (which in most cases, required certified mail, return receipt delivery) is approximately $7 per item. Thus, the United States Marshals Service has determined that the flat mailing fee of $3 per item no longer reflects the costs of mailing. The United States Marshals Service will be charging a flat fee of $8 per item as an accurate reflection of the costs of mailing or forwarding process. The $8 fee is based on the combination of the average actual cost of mailing or forwarding process and the indirect costs associated with mailing or forwarding process.

What are the Other Revisions to the Fee Regulation?

The United States Marshals Service makes three additional clarifications to the fee regulation. One of the revisions establishes a specific fee for the administrative preparation of a notice of sale, bill of sale, or U.S. Marshal deed on behalf of a requesting party. The other two revisions are housekeeping revisions, setting forth the definitions of "item" and "process."

1. Fee for Administrative Preparation of Notice of Sale, Bill of Sale, or U.S. Marshal Deed

28 U.S.C. § 1921(a)(1)(D) authorizes the United States Marshals Service to collect a fee for the preparation of a notice of sale or bill of sale on behalf of a requesting party. When the Attorney General initially established the fee schedule in 1991, there was no specific provision made for a fee for the preparation of a notice of sale, bill of sale (in cases where personality is sold), or a U.S. Marshal deed (in cases where realty is sold).

The United States Marshals Service conducted an analysis to determine the administrative cost of preparing a notice of sale, bill of sale, or a U.S. Marshal deed. The following module reflects the average hourly administrative costs to complete this task.

	Cost Module
Average Hourly Wage of GS–7/9 Employee	$21.49
Fringe Benefits	7.73
Indirect Costs	5.26
Total Costs	$34.48

The hourly wage was determined by dividing the average annual salary of an administrative employee who prepares the notice of sale, bill of sale, or U.S. Marshal deed into the total work hours in a year. The fringe benefits rate of 36 percent [4] of wage costs was also added to reflect the average hourly personnel cost of preparing these documents. Finally, as previously described, the indirect costs are approximately 18 percent of the total wage and benefits costs.

The analysis disclosed that the average administrative employee spent approximately 30–45 minutes conducting the task of preparing each of these documents. Thus, the typical cost for the preparation of these documents is between $17.24 and $25.86 for each item. Because the time to prepare notices of sale, bills of sale, or U.S. Marshal deeds does not vary widely, and in most cases takes less than one hour to accomplish, the United States Marshals Service will be charging a flat fee of $20 per item rather than calculating the fee based on a straight hourly rate per item.

2. Housekeeping Provisions

The calculation of the fee charged under the current fee regulation is dependent upon the number of endeavors to serve a piece of process, also referred to in the regulation as an "item." Although "item" is not defined in 28 U.S.C. § 1921 or the fee regulation, it has been defined by the United States Marshals Service in its internal guidance disseminated to its employees, as "all papers issued in one action which are served simultaneously on one person or organization." The regulation includes this definition of "item." Under this definition, a Deputy U.S. Marshal who serves one person with one or more pieces of process in one case at one time serves one item. When two different people or organizations, however, are served with one or more pieces of process from one case at one time, then the number of items served would be two. Although the United States Marshals Service has the discretion to determine the number of items upon which fees will be calculated, the United States Marshals Service will exercise reasonableness to avoid excessive charges.

[4] The fringe benefits rate to budget for an administrative position is less than the rate to budget for a Deputy U.S. Marshal position.

Similarly, consistent with 28 U.S.C. 1921(a)(1)(A), the United States Marshals Service broadly defines "process" to include, but not be limited to, a summons and complaint, subpoena, writ, and the execution of court-ordered injunctions, and civil commitments on behalf of a requesting party. Process may also include the execution of ancillary court orders (other than subpoenas issued on behalf of indigent defendants and arrest warrants) in criminal cases. The regulation sets forth the United States Marshals Service's internal policy regarding this matter.

As previously stated, this rule revised the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in Federal court proceedings. A proposed rule with invitation to comment was published in the **Federal Register** on December 7, 1999, at 64 FR 68307. No comments were received within the 60-day comment period. Accordingly, the proposed rule is finalized without change.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the current fee structure, the United States Marshals Service collected $1,341,921 in service of process fees in FY1998.[5] The implementation of this rule will provide the United States Marshals Service with an additional $1,000,000 in revenue over the revenue that would be collected under the current fee structure. This revenue increase is a recovery of costs based on an increase in salaries, expenses, and employee benefits.

The economic impact on individual entities that utilize the services of the United States Marshals Service is minimal. The service of process fees only affect entities that pursue litigation in Federal court and, in most instances, seek to have the United States Marshals Service levy upon or seize property. The service of process fees, currently set at essentially $20 per duty hour and $25 per non-duty hour, will be increased to $45 per hour. The fees are consonant with similar fees already paid by these entities in state court litigation.

[5] This amount does not include $1,152,565 in United States Marshals Service commissions collected for sales during FY1998. This rule does not affect commissions, only the fees charged for service of process.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866 (Regulatory Planning and Review), section 1(b) (Principles of Regulation). The Department of Justice, United States Marshals Service, has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice, United States Marshals Service, has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

This rule does not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501–20).

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Joe Lazar, Associate General Counsel, United States Marshals Service, 600 Army Navy Drive, CS–3, Arlington, Virginia 22202, telephone number (202) 307–9054.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, Title 28, Part 0, Subpart U of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.114 is transferred from subpart U to the end of subpart T; paragraphs (b) through (d) are redesignated as paragraphs (f) through (h), respectively; paragraph (a) is revised; and new paragraphs (b) through (e) are added to read as follows:

§ 0.114 Fees for services.

(a) The United States Marshals Service shall routinely collect fees according to the following schedule:

(1) For process forwarded for service from one U.S. Marshals Service Office or suboffice to another—$8 per item forwarded;

(2) For process served by mail—$8 per item mailed;

(3) For process served or executed personally—$45 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses. For each additional U.S. Marshals Service employee, agent, or contractor who is needed to serve process—$45 per person per hour for each item served, plus travel costs and any other out-of-pocket expenses.

(4) For copies at the request of any party—$.10 per page;

(5) For preparing notice of sale, bill of sale, or U.S. Marshal deed—$20 per item;

(6) For keeping and advertisement of property attached— actual expenses incurred in seizing, maintaining, and disposing of property.

(b) Out-of-pocket expenses include, but are not limited to, advertising, inventorying, storage, moving, insurance, guard hire, prisoner transportation and housing, and any other third-party expenditure incurred in executing process.

(c) Travel costs, including mileage, shall be calculated according to 5 U.S.C. chapter 57.

(d) "Item" is defined as all documents issued in one action which are served simultaneously on one person or organization.

(e) "Process" is defined to include, but is not limited to, a summons and complaint, subpoena, writ, orders, and the execution of court-ordered injunctions, and civil commitments on behalf of a requesting party. Process may also include the execution of ancillary court orders (other than subpoenas issued on behalf of indigent defendants and arrest warrants) in criminal cases.

* * * * *

Dated: July 28, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–19809 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 026–CORR; FRL–6733–5]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects language to Title 40 of the Code of Federal Regulations that appeared in a direct final rule published in the **Federal Register** on April 19, 2000. It also corrects language that appeared in various other final **Federal Register** actions.

EFFECTIVE DATE: This action is effective August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: On April 19, 2000 at 65 FR 20913, EPA published a direct final rulemaking action approving a rule from the Sacramento Metropolitan Air Quality Management District of the California State

Implementation Plan (SIP). The direct final rulemaking contained amendments to 40 CFR part 52, subpart F. The amendment which incorporated material by reference into § 52.220, Identification of plan, paragraph (c)(263)(i)(C)(*2*) is incorrect. The amendment is being corrected in this action. Paragraph (C) should have been identified as Sacramento Metropolitan Air Quality Management District and paragraph (1) should have listed Rule 464 instead of paragraph (*2*). The identification of these two paragraphs is being corrected in this action.

On May 7, 1996, at 61 FR 20454, EPA published a direct final rulemaking action approving Rule 359 for the Santa Barbara County Air Pollution Control District. The direct final rulemaking contained amendments to 40 CFR part 52, subpart F. The material incorporated by reference into § 52.220, Identification of plan, paragraph (c)(198)(i)(K)(*2*) was identified in the **Federal Register**, however, the information was not transferred to the Code of Federal Regulations (CFR). Paragraph (*2*) should read: "Rule 359, adopted on June 28, 1994." This omission is being corrected in this action.

Additional omissions in 40 CFR 52.220 are being corrected in this action. Paragraph (c)(184)(i)(D) should be identified as San Diego County Air Pollution Control District. Paragraph (c)(220)(i)(B) should be identified as Placer County Air Pollution Control District. Paragraph (c)(225)(i)(C) should be identified as El Dorado County Air Pollution Control District. The identification of these paragraphs is being corrected in this action.

On March 1, 1996, at 61 FR 7994, the deletion of Kern County Air Pollution Control District Rule 425 was incorrectly added as paragraph (c)(194)(i)(D)(*3*). In today's action, the deletion of Rule 425 is being correctly added to paragraph (c)(132)(B) and paragraph (c)(194)(i)(D)(*3*) is being removed.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is correcting omissions and amending the rules listed in the currently approved information. The affected regulations are codified at 40 CFR part 52, subpart F, § 52.220. These rules were previously subject to notice and comment prior to EPA approval. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implication of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 8, 2000 **Federal Register** document.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 4, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Nora McGee,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (132)(i)(B), (184)(i)(D) introductory text, (198)(i)(K)(2), (220)(i)(B) introductory text, (225)(i)(C) introductory text, (263)(i)(C) introductory text, (263)(i)(C)(*1*) and by removing

(194)(i)(D)(*3*) and (263)(i)(C)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(132) * * *

(i) * * *

(B) Previously approved on May 3, 1984 and now deleted without replacement, Rule 425.

* * * * *

(184) * * *

(i) * * *

(D) San Diego County Air Pollution Control District.

* * * * *

(198) * * *

(i) * * *

(K) * * *

(*2*) Rule 359, adopted on June 28, 1994.

* * * * *

(220) * * *

(i) * * *

(B) Placer County Air Pollution Control District.

* * * * *

(225) * * *

(i) * * *

(C) El Dorado County Air Pollution Control District.

* * * * *

(263) * * *

(i) * * *

(C) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 464, adopted on July 23, 1998.

* * * * *

[FR Doc. 00–18641 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6846–3]

Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submissions From the States of Michigan, Ohio, Indiana, and Illinois, and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (i.e., March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submissions of the States of Michigan, Ohio, Indiana and Illinois. EPA's final action consists of approving those elements of the States' submissions that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply in the portion of each State within the Great Lakes basin where a State either failed to adopt required elements or adopted elements that are inconsistent with the Guidance. EPA is separately taking final action on the Guidance submissions of the States of Minnesota, New York, Pennsylvania and Wisconsin.

EFFECTIVE DATE: September 5, 2000.

ADDRESSES: The public docket for EPA's final actions with respect to the Guidance submissions of the States of Michigan, Ohio, Indiana, and Illinois is available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mery Jackson-Willis (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202–260–0312); or Mery Jackson-Willis, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 (312–353–3717).

SUPPLEMENTARY INFORMATION

I. Discussion

A. Potentially Affected Entities

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System in the States of Michigan, Ohio, Indiana and Illinois. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in the States identified above.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in the States identified above.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected. This table lists the types of entities that EPA believes could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by these final actions, you should examine the definition of "Great Lakes System" in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the Part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On March 23, 1995, EPA published the Guidance. *See* 60 FR 15366 (The term "Guidance" as used below refers to the regulation promulgated by EPA on March 23, 1995 and codified at 40 CFR Part 132). The Guidance establishes minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The Guidance also contains minimum implementation procedures and an antidegradation policy.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance. *American Iron*

and Steel Institute, et al. v. *EPA (AISI)*, 115 F.3d 979 (D.C. Cir. 1997). The Court vacated the human health criterion for polychlorinated biphenyls (PCBs) and the acute aquatic life criterion for selenium, and the provisions of the Guidance "insofar as it would eliminate mixing zones for [BCCs] and impose [WQBELs] upon internal facility waste streams." 115 F.3d at 985. On October 9, 1997, EPA published a notice revoking the PCB human health criteria pursuant to the Court's decision. 62 FR 52922. On April 23, 1998, EPA published a second notice amending the 1995 Guidance to remove the BCC mixing zone provisions from 40 CFR Part 132 (found in Procedure 3.C. of Appendix F) and to remove language in the Pollutant Minimization Program provisions (Procedure 8.D. of Appendix F) that might imply that permitting authorities are required to impose WQBELs on internal waste streams or to specify control measures to meet WQBELs. 63 FR 20107. On June 2, 2000, EPA published a third notice withdrawing the acute criteria for selenium. 65 FR 35283.

40 CFR 132.4 requires the Great Lakes States to adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the Guidance or be subject to EPA promulgation. 40 CFR 132.5(d) provides that, where a State makes no submission to EPA, the Guidance shall apply to discharges to waters in that State upon EPA's publication of a final rule indicating the effective date of the Part 132 requirements in that jurisdiction.

On July 1, 1997, the National Wildlife Federation filed suit alleging that EPA had a non-discretionary duty to promulgate the Guidance for any State that failed to adopt standards, policies and procedures consistent with the Guidance. *National Wildlife Federation* v. *Browner*, Civ. No. 97–1504–HHK (D.D.C.). EPA negotiated a consent decree providing that the EPA Administrator must sign, by February 27, 1998, a **Federal Register** notice making Part 132 effective in any State in the Great Lakes Basin that failed to make a submission to EPA by that date under 40 CFR Part 132. However, all of the Great Lakes States made complete submissions to EPA on or before the February deadline. On March 2, April 14, April 20 and April 28, 1998, EPA published in the **Federal Register** notices of its receipt of each of the States' Great Lakes Guidance submissions and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portions of those submissions. 63 FR 10221; 63 FR 18195; 63 FR 19490; 63 FR 23285.

40 CFR 132.5(f) provides that, once EPA completes its review of a State's submission, it must either publish notice of approval of the State's submission in the **Federal Register** or issue a letter notifying the State that EPA has determined that all or part of its submission is inconsistent with the CWA or the Guidance, and identify any changes needed to obtain EPA approval. If EPA issues a letter to the State making findings of inconsistencies, the State then has 90 days to make the necessary changes. If the State fails to make the necessary changes, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that will apply to discharges within the State.

On November 15, 1999, the National Wildlife Federation and the Lake Michigan Federation filed suit alleging that EPA had a non-discretionary duty to take action on the Great Lakes States' Guidance submissions. *National Wildlife Federation* v. *Browner*, Civ. No. 99–3025–HHK (D.D.C.). EPA negotiated a consent decree providing that EPA must sign **Federal Register** notices by July 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Pennsylvania; and **Federal Register** notices by September 29, and October 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of New York and Wisconsin, respectively. Today's **Federal Register** notice fulfills EPA's obligations under that Consent Decree with respect to the States of Michigan, Ohio, Indiana and Illinois. EPA is separately taking final action with respect to the States of Minnesota, New York, Pennsylvania and Wisconsin. EPA notes that each of the States' Guidance submissions may contain provisions that revise its NPDES program or water quality standards in areas or with respect to regulated entities not covered by the Guidance. EPA is not taking action at this time to either approve or disapprove any such provisions.

EPA has conducted its review of the States' submissions in accordance with the requirements of Section 118(c)(2) of the CWA and 40 CFR Part 132. Section 118 requires that States adopt policies, standards and procedures that are "consistent with" the Guidance. EPA has interpreted the statutory term "consistent with" to mean "as protective as" the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State's standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

Where EPA has promulgated a final rule that identifies a provision of the Guidance that shall apply in a State, EPA explains below its reasons for concluding that the State failed to adopt requirements that are consistent with the Guidance. Additional explanation of EPA's conclusions are contained in EPA's correspondence with each State (identified in relevant sections below) where EPA initially identified inconsistencies in the States's submission. Notice of the availability of each of these letters was published in the **Federal Register** and EPA has considered all public comments received regarding any conclusions as to whether a State had adopted provisions consistent with the Guidance.

In this proceeding, EPA has reviewed the States' submissions to determine their consistency with 40 CFR Part 132. EPA has not reopened Part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of Part 132. To the extent any members of the public commented during this proceeding that any provision of Part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to those elements of the State submissions being approved by EPA, EPA is approving those provisions as amendments to each State's NPDES permitting program under Section 402 of the CWA and as revisions to each State's water quality standards under Section 303 of the CWA. Today's notice identifies those approved elements. Additional explanations of EPA's review of and conclusions regarding the States' submissions, including the specific State provisions that EPA is approving, are contained in the administrative record for today's actions in documents prepared for each State entitled "[particular State] Provisions Being Approved as Being Consistent With the Guidance," "Analysis of Whether [the particular State] Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps

Taken By [the particular State] in Response to EPA's 90-Day Letter."

C. Today's Final Actions

1. The State of Michigan

On June 30 and August 16, 1999, EPA issued letters notifying the Michigan Department of Environmental Quality (MDEQ) that, while the State of Michigan had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its June 30 and August 16, 1999, letters. 64 FR 49803. EPA has completed its review of the State of Michigan's response to, and all public comments on, the June 30 and August 16, 1999, letters, and has determined that, with one exception described below, Michigan has adopted requirements consistent with all aspects of the Guidance. Specifically, Michigan has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to: the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with one exception, the implementation procedures in Appendix F. As explained more fully below, Michigan has not adopted requirements consistent with the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's June 30, 1999, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, MDEQ provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which MDEQ commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its Memorandum of Agreement (MOA) or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Michigan Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Michigan Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Michigan in Response to EPA's 90-Day Letter" included in the record for this action.

EPA has determined that Michigan's provisions at R 323.1219(4) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Michigan's whole effluent toxicity requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132. The Guidance procedure for evaluating reasonable potential for whole effluent toxicity (WET) is based on comparing a projected 95th percentile WET value at a 95 percent confidence level with the acute and chronic WET criteria after accounting for any available dilution. This conservative approach is designed to ensure that WQBELs are imposed when there is a reasonable potential for toxicity, taking into account the effluent variability and the size of the data set, even if no toxicity has actually been observed.

In evaluating State reasonable potential procedures for WET, EPA looked for an equivalent level of protection to that provided by the Guidance procedure. In the case of a procedure to determine when a WQBEL is needed, one important consideration is whether the alternative procedure would indicate the need for a WQBEL in similar situations to those that would trigger a WQBEL under Section D of Procedure 6.

In most cases where there is quantifiable effluent data, EPA's procedure will project an effluent value greater than the maximum observed value to characterize the reasonable worst case effluent. Michigan's procedures for determining WET reasonable potential are based on comparisons of preliminary effluent limits to average effluent toxicity values (with further possible adjustment based on the frequency of failures), rather than comparisons of preliminary effluent limits to maximum effluent toxicity values multiplied by factors to account for effluent variability and size of the data set as required by Paragraph D of Procedure 6 of the Guidance. Michigan's use of the average effluent toxicity value will, except in highly unusual circumstances, be lower than the maximum toxicity value multiplied by the factors to account for effluent variability set forth in the Guidance. Indeed, in certain circumstances, Michigan's procedure would not require a reasonable potential finding even where testing has shown actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

EPA notes that Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Michigan's R. 323.1219(2) also provides that WQBELs shall be imposed whenever the WET reasonable potential procedures in Michigan's R. 323.1219(4) show reasonable potential. As discussed above, however, Michigan's WET reasonable potential rules are not consistent with the Guidance. Because R.323.1219(2) links establishment of WQBELs for WET to a finding of reasonable potential under procedures that EPA has determined are not consistent with Section D of Procedure 6 (i.e., the procedures in R. 323.1219(4)), R.323.1219(2) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of R. 323.1219 (2) and (4), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Michigan.

EPA understands that MDEQ intends to initiate rulemaking to revise its regulations to insure that the State's WET reasonable potential provisions are consistent with the Guidance. EPA will work closely with MDEQ to insure that its revised regulations will be consistent with the Guidance. MDEQ will then submit its revised regulations to EPA for approval pursuant to 40 CFR 123.62 as a revision to its NPDES program and, upon EPA approval of those revisions, EPA will revise its regulations so that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 will no longer apply to discharges into the Great Lakes System in the State of Michigan. EPA also notes

that, based upon Michigan's adoption of criteria consistent with the Guidance, EPA intends, in a separate action in the future, to remove Michigan from the list of States specified at 40 CFR 131.36 for which EPA has promulgated specific criteria under Section 304(a) of the Clean Water Act.

2. The State of Ohio

On June 30 and August 16, 1999, EPA issued letters notifying the Ohio Environmental Protection Agency (OEPA) that, while the State of Ohio had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its June 30 and August 16, 1999, letters. 64 FR 49803. EPA has completed its review of the State of Ohio's response to, and all public comments on, the June 30 and August 16, 1999, letters, and has determined that, with only one exception described below, Ohio has adopted requirements consistent with all aspects of the Guidance. Specifically, Ohio has adopted requirements consistent with and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with one exception, the implementation procedures in Appendix F. As explained more fully below, Ohio has not adopted requirements consistent with the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's June 30, 1999, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, OEPA provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which OEPA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Ohio Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Ohio Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Ohio in Response to EPA's 90-Day Letter."

EPA has determined that Ohio's procedure at OAC 3745–33–07(B) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Ohio's whole effluent toxicity requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132. Ohio's procedure is based on consideration of a wide range of available data, including the number of tests performed, the magnitude and frequency of toxicity exhibited by the effluent and available biological data. Ohio's procedure is not consistent with the Guidance because rather than provide safety factors to be applied to observed WET data as does Procedure 6, they apply factors that devalue observed WET test results and would not require a WQBEL even where WET test results show observed levels of unacceptable toxicity.

Specifically, where biological data are unavailable to corroborate effluent toxicity data, Ohio's procedures generally do not require establishment of a WQBEL unless the maximum observed toxicity value is at least three times greater than the expected toxicity limit, the average toxicity exceeds one-third the expected effluent limit, and more than 30 percent of the test results exceed a projected wasteload allocation. Where biological data are present to corroborate effluent data that a toxicity problem exists, Ohio's procedure would allow a permit writer to consider WET data at full value (*i.e.*, compare the maximum observed WET result to the expected toxicity limit), but it also requires the permit writer, in determining whether a WQBEL is needed, to weigh factors related to a minimum frequency of actual exceedances and a comparison of the average of WET test results to a percentage of the expected toxicity limit similar to those that must be considered when only WET data are available. Because these procedures devalue toxicity results and fail to require a limit even in cases of observed toxicity, Ohio's procedure would not require a reasonable potential finding even where testing has showed actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

As discussed above with respect to Michigan, Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Ohio's rules at OAC 3745–33–07(B)(2) provide that WQBELs shall be imposed whenever the WET reasonable potential procedures in Ohio's rules at OAC 3745–33–07(B) show reasonable potential. Because OAC 3745–33–07(B)(2) links establishment of WQBELs for WET to a finding of reasonable potential under procedures that EPA has determined are not consistent with Section D of Procedure 6 (*i.e.*, the procedures in OAC 3745–33–07(B)), OAC 3745–33–07(B)(2) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of OAC 3745–33–07(B), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Ohio.

3. The State of Indiana

On August 16, 1999, EPA issued a letter notifying the Indiana Department of Environmental Management (IDEM) that, while the State of Indiana had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its August 16, 1999, letter. 64 FR 49803. EPA has completed its review of the State of Indiana's response to, and all public comments on, the August 16, 1999, letter, and has determined that, with the exceptions described below, Indiana has adopted requirements consistent with all aspects of the Guidance. Specifically, Indiana has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water

quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with the exceptions described below, the implementation procedures in Appendix F. As explained more fully below, Indiana has not adopted requirements consistent with the criteria for granting variances set forth in Paragraph 1 of Section C of Procedure 2 in Appendix F, requirements for including WQBELs in permits set forth in Paragraph 2 of Section F of Procedure 5 in Appendix F, and the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's August 16, 1999, letter concluded that some of the provisions that EPA is now approving were inconsistent with the Guidance because authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, IDEM provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which IDEM commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with exceptions identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Indiana Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Indiana Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Indiana in Response to EPA's 90-Day Letter."

EPA has determined that Indiana's provisions at 327 IAC 2–1.5–17(b), which allow IDEM to grant a variance from water quality standards if the permit applicant demonstrates that failure to grant the variance "will cause an undue hardship or burden upon the applicant," are inconsistent with the criteria for granting variances set forth at Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132. Specifically, the Guidance only allows variances based upon economic considerations if the failure to grant the variance "would result in substantial and widespread economic and social impact." EPA believes, and Indiana agrees, that it is possible that a failure to grant a variance could result in "an undue hardship or burden upon [a particular discharger]" without also causing "substantial and widespread economic and social impact." Consequently, Indiana's provisions allow variances to be issued that relax water quality standards, and consequently permit conditions to meet standards, in instances where such a loosening of applicable requirements would not be permitted by the Guidance. Therefore, these provisions of Indiana's submission are not consistent with the Guidance.

EPA, therefore, disapproves of 327 IAC 2–1.5–17(b), and has determined that Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana. EPA notes that Indiana's "undue hardship or burden upon the applicant" criterion for granting a variance, as applied to municipal dischargers, may often be consistent with the "substantial and widespread social and economic impact" criterion in Paragraph 1.f of Section C of Procedure 2 in Appendix F to 40 CFR Part 132. This is because an undue hardship on the discharger (*i.e.*, the community served by the municipal discharger) may also constitute widespread social and economic impact. Consequently, EPA believes that specifying that Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132 applies to discharges into the Great Lakes System in the State of Indiana may, as a practical matter, not have a significant effect on the granting of variances for municipalities in Indiana. In any case, under today's rule, Indiana may only grant variances that meet the criteria specified in Procedure 2 in Appendix F to 40 CFR Part 132.

EPA has further determined that Indiana's provisions at 327 IAC 5–3–4.1(b)(1), which prevent Indiana from including necessary WQBELs in permits simply because a variance application has been submitted, is inconsistent with Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 and with 40 CFR 122.44(d). Under those federal provisions, WQBELs must be included in NPDES permits whenever there is reasonable potential that a discharge will cause or contribute to causing nonattainment of an existing water quality standard. The mere filing of a variance application does not change a water quality standard. Consequently, 327 IAC 5–3–4.1(b)(1), which prevents Indiana from including WQBELs when there is reasonable potential for a discharge to cause or contribute to causing nonattainment of an existing water quality standard where a permittee has applied for a variance from that standard, is not consistent with the Guidance and 40 CFR 122.44(d).

EPA, therefore, disapproves of 327 IAC 5–3–4.1(b)(1), and has determined that Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana.

EPA also has determined that Indiana's provisions at 327 IAC 5–2–11.5(c)(1) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Indiana's WET requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132.

As described above with respect to Michigan, EPA's procedure, in most cases, will project an effluent value greater than the maximum observed value to characterize the reasonable worst case effluent. Indiana's procedure, on the other hand, uses the mean value of effluent data, further "discounted" by the fraction of tests exceeding the wasteload allocation. This both lessens the impact of observed toxicity on the calculation and fails to account for the reasonable possibility that effluent toxicity may exceed the level observed in the tests because sampling did not coincide with periods of maximum toxicity. An analysis of Indiana's procedure shows that those procedures often do not require a limit on WET where one would be required under the procedures in the Guidance. In fact, in some cases, Indiana's procedure would not require imposition of a WQBEL even where testing has showed actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

As discussed above with respect to Michigan and Ohio, Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Indiana's rules at 327 IAC 5–

2–11.5(c), which specify when the permitting authority must include a WQBEL for WET, limits the permitting authority to using the WET reasonable potential procedures in Indiana's rules at 327 IAC 5–2–11.5(c)(1). Because 327 IAC 5–2–11.5(c) links establishment of WQBELs for WET to the Indiana WET reasonable potential procedures that EPA has determined are not consistent with Section D of Procedure 6 (i.e., the procedures in 327 IAC 5–2–11.5(c)(1)), 327 IAC 5–2–11.5(c) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of 327 IAC 5–2–11.5(c), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana.

4. The State of Illinois

On November 12, 1999, EPA issued a letter notifying the Illinois Environmental Protection Agency (IEPA) that, while the State of Illinois had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the State's rules were not consistent with corresponding provisions of the Guidance. On December 9, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its November 12, 1999, letter. 64 FR 69019. EPA has completed its review of the State of Illinois' response to, and all public comments on, the November 12, 1999, letter, and has determined that, with one exception, Illinois has adopted requirements consistent with all aspects of the Guidance. Specifically, Illinois has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B—D; the antidegradation policy in Appendix E; and, with one exception described below, the implementation procedures in Appendix F. As explained more fully below, Illinois has not adopted requirements consistent with the requirements governing total maximum daily loads in Procedure 3 in Appendix F.

EPA's November 12, 1999, letter, had concluded that some of the provisions that EPA is now approving were inconsistent with the Guidance because they authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, Illinois provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which IEPA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Illinois Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Illinois Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Illinois in Response to EPA's 90-Day Letter."

EPA has determined that Procedure 3 in Appendix F to 40 CFR Part 132 shall apply with regard to development of total maximum daily loads (TMDLs) for the Great Lakes System in the State of Illinois because Illinois decided not to adopt TMDL provisions for the Great Lakes System. Illinois did not adopt such provisions because EPA has indicated that it will be developing a TMDL for Lake Michigan and so Illinois does not believe that the State should be required to develop any TMDLs for the Great Lakes System. Today's action ensures that the provisions of Procedure 3 in Appendix F will apply in developing TMDLs in the Great Lakes System in the State of Illinois, regardless of who develops the TMDL. EPA notes that this promulgation has no effect on the reasonable potential procedures at 35 Ill. Adm. Code 309.141(h)(4), which EPA approves as being consistent with the reasonable potential procedures in Procedure 5 in Appendix F to 40 CFR Part 132, and which therefore apply in the Great Lakes System in the State of Illinois for purposes of developing preliminary effluent limitations in making reasonable potential determinations.

As noted above, EPA, in this notice, is not taking action to approve or disapprove portions of the States' Guidance submissions pertaining to NPDES permitting and water quality standards issues that are not addressed by the Guidance. While EPA is not taking action under Section 118 with regard to the following issue, EPA nevertheless wishes to describe its understanding with regard to one aspect of Illinois' submission that is not addressed by the Guidance. Specifically, Illinois' rules at 35 Ill. Adm. Code 352.700(a)(2) provide that, when a WQBEL is below the level of quantification, "[t]he analytical method adopted by the [Illinois Pollution Control] Board and specified in the permit shall be the method used for compliance assessment including enforcement actions."

EPA is concerned about this language because EPA believes, as a matter of law, that any credible evidence (subject to generally applicable rules of evidence), not just evidence generated by use of an analytical method specified in a permit, can be used in an enforcement action to establish that a violation of an effluent limitation has occurred. IEPA has clarified that 35 Ill. Adm. Code 352.700(a)(2) is only a limitation on the types of evidence that IEPA may use in an enforcement action; it does not place limits on the types of evidence that the federal government or third parties can use in an enforcement action or citizen suit. IEPA also has clarified that it does not intend to include the language of 35 Ill. Adm. Code 352.700(a)(2) in NPDES permits. Finally, IEPA is considering revising its rules to address EPA's concerns. While EPA is not, at this time, taking action to either approve or disapprove 35 Ill. Adm. Code 352.700(a)(2) as a modification of Illinois NPDES program, EPA notes that revisions to State NPDES programs do not become effective until approved by EPA. 40 CFR 123.62(b)(4).

D. Public Comments

EPA received a large number of public comments in response to its **Federal Register** notices of its receipt of the States' Guidance submissions and of the availability of EPA's letters to the States of Michigan, Ohio, Indiana and Illinois regarding their Guidance submissions. EPA has responded to each of those comments in a document entitled "EPA Responses to Comments Regarding the Great Lakes Guidance Submissions of the States of Michigan, Ohio, Indiana and Illinois' that has been included as part of the record in this matter. The following is a summary of EPA's responses to the most significant of these comments.

Comment: A number of commenters asserted that EPA's regulatory

determinations are being made without affected parties having any chance to review the Agency's reasoning or to raise issues as to the validity of that reasoning, in violation of the Administrative Procedure Act and EPA's public participation regulations at 40 CFR 25.

Response: The final rule being promulgated today makes certain provisions of 40 CFR Part 132 applicable to discharges in certain States within the Great Lakes System. Those provisions were adopted after publication of a proposed rule for public comment. See 58 FR 20802 (April 16, 1993). EPA is not modifying those provisions, but merely making them effective in accordance with 40 CFR 132.5(f)(2). Therefore, the public had a full opportunity to comment on the contents of today's rule. Moreover, public comment was also received regarding EPA's review of the State submissions. EPA provided public notice of the availability of, and solicited comment on, the NPDES portions of these States' Guidance submissions in **Federal Register** notices dated March 2, 1998 and April 28, 1998. 63 FR 10221; 63 FR 23285. In **Federal Register** notices dated September 14, 1999, and December 9, 1999, EPA subsequently provided notice of the availability of letters to the States of Michigan, Ohio, Indiana and Illinois in which EPA provided (a) detailed explanations of the bases for its findings that certain States had not adopted provisions consistent with certain provisions of the Great Lakes Guidance and (b) its preliminary conclusions that, with the exception of those findings, the States had adopted provisions consistent with the Guidance. 64 FR 49803, 64 FR 69019. EPA also solicited comment on all aspects of those letters, and has considered and responded to all comments received before taking today's final actions. Consequently, EPA has complied with all applicable public participation requirements.

Comment: A number of commenters raised questions regarding the basis for EPA's decisions to approve a State's provisions pertaining to a specific element of the Guidance where the State's provisions, on their face, do not plainly require the State's permitting or water quality standards authority to act in a manner consistent with the Guidance.

Response: EPA believes that these commenters' view is both unreasonable and contrary to EPA regulations governing the Agency's review of the State submissions. EPA regulations required each State to submit to EPA not only the criteria, methodologies, policies and procedures developed pursuant to the Guidance but also "general information which will aid EPA in determining whether the criteria, methodologies, policies and procedures are consistent with" the Act and the Guidance, and "information on general policies which may affect their application and administration." 40 CFR 132.5(b)(1) and (4). Consistent with these regulations, EPA has not limited its review to solely the plain language of each State's criteria, methodologies, policies and procedures, but has considered the totality of the State's submission in determining whether it was consistent with the Guidance, including information regarding interpretation or implementation of a State's criteria, methodologies, policies and procedures.

As noted previously, the States were not required to adopt requirements that are identical to the Guidance. States' submissions can—and do—differ from the Guidance, and this difference is permissible provided the State's approach is consistent with (i.e., as protective as) the Guidance. Given the complexity of the States' submissions and EPA's review, it is not surprising that particular State provisions may be amenable to more than one interpretation or manner of application. Where a State's provision was either unclear or authorized the State to act consistent with the Guidance, but there was uncertainty as to whether the State would actually exercise its discretion consistent with the Guidance, EPA considered supplementary information to aid in determining the meaning and protectiveness of the State's provision vis-a-vis the Guidance. This information included, for example, States' legal interpretations of its criteria, methodologies, policies and procedures, or a State's position on how it would implement State law. For each of the States, clarification on the manner in which the State would exercise its discretion was provided on some issues in an addendum of the MOA with EPA governing its administration of the NPDES program. See 40 CFR 123.24. This MOA governs how each State will administer its NPDES program, and failure to comply with the terms of the MOA is grounds for EPA objection to a State permit and withdrawal of State's NPDES program. See 40 CFR 123.44(c)(3) and 123.63(a)(4).

Commenters suggest that EPA is required to ignore such supplementary information in its review and appear to believe that, simply because a State provision may be ambiguous or grants some flexibility to the State, EPA has no choice but to disapprove the provision as being inconsistent with the Guidance. Nothing in EPA's regulations or in the CWA compels such a cabined exercise of judgment by EPA. Where the totality of a State's submission demonstrates that the State will administer its program consistent with the Guidance, EPA believes that it is appropriate to approve the submission.

Comment: A commenter disagrees that Indiana's variance procedures, which allow Indiana to grant variances based upon a finding that compliance with the existing water quality standard would have an "undue hardship or burden upon the applicant," is not consistent with the Guidance requirement that variances only be granted where compliance with the existing standard "would result in widespread economic and social impact." According to the commenter, Indiana has the ability to obtain and consider information regarding societal impacts in deciding whether to grant a variance and so Indiana's provisions are consistent with the Guidance. The commenter also argues that, even if Indiana's provisions are not consistent with the Guidance, EPA can apply its "substantial and widespread" test in deciding whether to approve of any variance that Indiana decides to grant under its applicant-specific test.

Response: The fact that Indiana "has the ability to obtain and consider information regarding societal impacts in deciding whether to grant a variance" does not change the fact that Indiana law requires that variances be allowed in circumstances where the Guidance does not allow for variances to be granted: i.e., where the failure to grant the variance would have an "undue hardship or burden upon the applicant" but not cause "widespread social and economic impact." Indiana's variance provisions, therefore, are not consistent with the Guidance.

With regard to the comment that EPA can apply the Guidance variance procedures in reviewing any variances that Indiana decides to grant, 40 CFR 132.4(a) requires that States "adopt requirements * * * that are consistent with * * * [t]he Implementation Procedures in Appendix F [to 40 CFR Part 132]." The affirmative obligation imposed on States by 40 CFR 132.4(a) to adopt such requirements would be rendered meaningless if EPA simply relied upon its approval/disapproval authorities as a basis to approve a State's provisions where the State does not interpret or implement a State provision in a manner that would be consistent with the Guidance.

Comment: One commenter believes that Indiana's provisions prohibiting it

from imposing necessary WQBELs in NPDES permits simply because a variance application is pending are consistent with the Guidance. According to the commenter, "EPA has no authority, based on "protectiveness," to demand that the State issue a limit that will later need to be withdrawn because a variance has been granted. Moreover, * * * [u]nder the EPA rule, the State would be fully authorized to issue a limit while a variance application is pending and, at the same time, issue a compliance schedule that applies to that limit, so that the limit would not take effect until after the variance application is either granted * * * or denied. That would achieve exactly the same end as the process that is currently contained in the Indiana rules."

Response: Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 and 40 CFR 122.44(d)(1) both require imposition of water quality based effluent limits whenever there is reasonable potential for a discharge to cause or contribute to causing nonattainment of existing water quality standards. Nothing in those provisions, or anywhere else in the Clean Water Act or in EPA's regulations, creates an exception to this requirement to account for the fact that existing water quality standards may eventually change. Consequently, to the extent that 327 IAC 5–3–4.1(b)(1) prohibits Indiana from including WQBELs where there is reasonable potential that a discharge will cause or contribute to an exceedance of a standard simply because someone has merely requested a change to Indiana's existing water quality standards (but the standard has not yet been modified by issuance of the variance), it is inconsistent with Paragraph F.2 of Procedure 5 and 40 CFR 122.44(d)(1).

The commenter is correct that Indiana might be able to accomplish the same result in certain situations by granting the permittee a compliance schedule. However, under the Guidance, any such compliance schedule would have to meet the requirements governing compliance schedules in Procedure 9 in Appendix F to 40 CFR Part 132 (Indiana's Great Lakes compliance schedule provisions, which EPA is approving as being consistent with Procedure 9, are at 327 IAC 5–2–12.1). 327 IAC 5–3–4.1(b)(1), which prohibits Indiana from including WQBELs when a variance application has been applied for, is not limited only to situations when the requirements governing compliance schedules in Procedure 9 and 327 IAC 5–2–12.1 are met. Thus, 327 IAC 5–3–4.1(b) is not consistent with the Guidance.

Comment: A number of commenters believe that EPA should disapprove Indiana's rule at 327 IAC 5–2–11.7, which the commenters assert allows Indiana to "downgrade" Indiana's historically held third tier, highest quality waters that were identified in the 1990 water quality standards approved by EPA as Outstanding State Resource Waters, which are Indiana's equivalent to Outstanding Natural Resource Waters (ONRW). These commenters also believe that EPA should disapprove Indiana's Guidance rules regarding mixing zones in Lake Michigan at 327 IAC 5–2–11.4(b)(2)(A) and (B), (b)4)(A)(iii) and (b)(4)(C), and (b)(5)–(7) because these sections allow a mixing zone in Lake Michigan contrary to the statewide ban on mixing zones in lakes at 327 IAC 2–1–4(c) of Indiana's EPA approved 1990 rules. The commenters believe that these changes constitute "downgrading" Indiana's standards for Lake Michigan.

Response: The term "downgrading" generally refers to a decision to modify a designated use where the current designated use cannot be attained for one of the reasons specified at 40 CFR 131.10(g). EPA's regulations at 40 CFR 131.10 place significant restrictions on a State's ability to engage in such "downgrading."

EPA's regulations at 40 CFR 131.12 and Appendix E to 40 CFR Part 132 describe various levels of antidegradation protections that must be afforded to water bodies. These various levels of protection, which are known as "Tier I," "Tier II" and "Tier III," are not "use designations," and so the restrictions placed on the States' ability to modify "designated uses" set forth at 40 CFR 131.10 do not apply to State decisions with regard to which "tier" of antidegradation protection should be afforded to particular water bodies. EPA further notes that EPA's regulations leave the question of whether a particular water body constitutes a "Tier III" water (or ONRW) to the States' discretion. Consequently, EPA does not agree that it should disapprove Indiana's antidegradation provisions.

With regard to the commenters' concerns regarding Indiana's mixing zone provisions, the availability of mixing zones does not represent a change or "downgrade" in use and thus is not subject to 40 CFR 131.10. Nevertheless, while States generally have discretion to change mixing zone requirements, the States' mixing zone requirements must still ensure attainment of designated uses and, in the case of requirements applicable to the Great Lakes System, must be consistent with the Guidance. EPA believes that Indiana's mixing zone requirements do insure attainment of designated uses and are consistent with the Guidance. Consequently, EPA is approving those provisions of Indiana's rules, notwithstanding the possibility that those provisions of Indiana's rules may have relaxed Indiana's previously adopted mixing zone provisions.

Comment: Citing a May 4, 1999, letter from EPA to Indiana, a number of commenters believe that EPA should disapprove certain exemptions in Indiana's antidegradation rule at 327 IAC 5–2–11.7(c).

Response: The Guidance specifies certain minimum requirements which all Great Lakes States must include in their antidegradation policies and implementation procedures that are specific to protecting the waters of the Great Lakes System. Specifically, the Guidance establishes minimum requirements for States' antidegradation policies which are largely identical to those of 40 CFR 131.12, and implementation requirements that are specific to BCCs. Indiana's policy and implementation procedures are consistent with the requirements identified in the Guidance. To the extent that Indiana's revised rules contain changes addressing other elements of the State's antidegradation policy not addressed by the Guidance (i.e., procedures addressing non-BCCs), those elements are outside the scope of this action and will be addressed in a separate proceeding.

Comment: EPA received numerous comments asserting that Section D of Procedure 6 in Appendix F, the WET reasonable potential procedure, was not valid because not all WET data sets appear to be lognormally distributed (as readily acknowledged by EPA). Based on this observation, the commenters conclude that Section D of Procedure 6 is scientifically indefensible and, therefore, EPA must accept the other procedures submitted by the States of Ohio, Michigan, and Indiana. These commenters further assert that EPA has no basis for disapproving these State procedures as not being consistent with the Guidance. (The same comments were made about the Illinois procedure even though it is based primarily on the Guidance procedure and is being approved by EPA. Accordingly, the discussion below does not relate to Illinois.) EPA believes that these commenters misunderstand the scope of the scientific defensibility provision of the Guidance. They also fail to refute EPA's conclusion that Ohio's,

Michigan's and Indiana's procedures are not consistent with the Guidance.

The Guidance procedure for using effluent data to calculate a projected effluent quality (PEQ) for determining when a WET limit is needed Section D of Procedure 6 estimates an upper bound effluent value (95th percentile) by multiplying the maximum observed effluent value (expressed as toxic units) by a factor designed to take into account long-term effluent variability and the number of data available to make the projection. The size of the multiplying factor is determined by the number of data points in the data set, the variability of the effluent, the assumed distribution of the data, and the chosen confidence level for capturing the true 95th percentile (95 percent in the case of Table F6–1). Except in rare cases where there are large amounts of data, the projected 95th percentile will be greater than maximum observed effluent value.

Some commenters contended that Section D of Procedure 6—which uses multiplying factors that are based on the assumption that data are lognormally distributed—is scientifically indefensible within the meaning of 40 CFR 132.4(h), and that the States are therefore free to adopt other approaches. Section 132.4(h) allows States to adopt alternative methodologies or procedures different from those contained in the Guidance where a State demonstrates that a methodology or procedure is not scientifically defensible. EPA included this flexibility to address pollutants identified in the future for which some of the methodologies or procedures may not be technically appropriate. 58 Fed. Reg. 20843 (April 16, 1993). See also, Supplemental Information Document for the Water Quality Guidance for the Great Lakes System (March 23, 1995) (SID) at 58–59. No party contends that new pollutants pose unique technical attributes that render application of the existing WET methodologies or procedures invalid. Rather, these commenters simply contend that certain aspects of Procedure 6 promulgated by EPA are technically unsound and overly conservative. However, Section 132.4(h) is not a vehicle for parties to challenge anew the Guidance itself. The CWA requires the States to adopt policies, standards and procedures that are consistent with the Guidance promulgated by EPA. CWA § 118(c)(2)(C). EPA is reviewing State submissions to determine their consistency with the Guidance but has not reopened any provision of the Guidance in our review. The public had a full opportunity to provide its views on Procedure 6 during the rulemaking establishing the Guidance, and the time period for challenging the Guidance has passed. See CWA § 509(b). Therefore, none of the comments provide any basis for allowing the States to establish alternative methodologies and procedures pursuant to 40 CFR 132.4(h) to address whole effluent toxicity.

Even if Section 132.4(h) were relevant, none of the States has actually proposed an alternative approach of projecting effluent toxicity that attempts to meet even the basic parameters of the Guidance. While the States have flexibility to adopt approaches that make different assumptions about the distribution of WET data than is assumed in Procedure 6, no one has presented EPA with an analysis identifying a different distribution or statistical method that fits WET data better, either in general or in a particular case. More fundamentally, however, the procedures submitted by Ohio, Michigan and Indiana do not address in any manner the underlying premise of Procedure 6—that effluent quality is variable and, therefore, a method for assessing WET data must account for the likelihood that the maximum value in a particular data set is less than the true maximum that is likely to be experienced by the environment as a result of the discharge. In evaluating the potential for a discharge to cause or contribute to an exceedance of water quality standards, EPA believes it prudent to employ a procedure that minimizes the likelihood of misclassifying a discharge as not needing an effluent limitation, given the potential in such circumstances for unacceptable adverse impacts on the aquatic resource. Because the purpose of the PEQ reasonable potential procedure is to extrapolate from typically small data sets a reasonable worst case effluent quality that could be expected over the life of a permit, using a conservative assumption is in keeping with the purpose of the procedure. The reasonable potential determination is intended to allow the permitting authority to make a decision that will protect water quality with a high degree of confidence in the face of uncertainty and with a relatively small data set.

Rather than providing alternative methods of accounting for the uncertainty associated with small data sets by using an alternative mechanism that more precisely predicts likely maximum toxicity levels (*e.g.*, alternative multipliers or "safety factors"), the Michigan and Indiana procedures make no attempt to extrapolate likely toxicity levels (i.e., they lack any safety factor whatsoever). Indeed, these States' procedures move in the opposite direction by averaging the observed effluent data in some fashion and applying either a mandatory or optional adjustment downward based on a "failure" rate. Ohio's procedure is more complex and less predictable, but it also provides for "discounting" observed WET data rather than applying a safety factor. Thus, not only do these procedures fail entirely to consider the potential of the discharge to cause or contribute to an exceedance taking into account long-term effluent variability and the fact that a small number of data sets may not capture the worst case effluent quality, they actually allow a finding of "no reasonable potential" where available data has indicated unacceptable toxicity. EPA does not consider these approaches to be either as protective as the Guidance, or in accordance with applicable national regulations (40 CFR 22.44(d)(1)).

EPA also received comments that EPA should find Ohio's weight-of-evidence approach for determining reasonable potential for WET as protective as the Guidance. These commenters support the Ohio approach as superior in considering all data regarding the toxicity of an effluent and note especially a feature of the Ohio procedure that they say would use biosurvey data as a substitute for the multiplier in Table F6–1 when considering WET data.

EPA does expect permitting authorities to consider all relevant information in determining whether reasonable potential exists. EPA believes that this is best accomplished by considering each line of evidence regarding the effect of an effluent on the environment separately and without differential weighting of data drawn from different sources. As discussed in the Technical Support Document for Water Quality-based Toxics Control (EPA/505/2–90–001, March 1991) (TSD) and reflected in paragraph 3 of Section F of Procedure 5 in Appendix F, the chemical-specific, bioassessment, and WET characterization approaches each have unique as well as overlapping attributes, sensitivities, and program applications, no single approach for detecting impact should be considered uniformly superior to any other approach (See Chapter 3.1.3, p. 49). Consistent with this principle, data showing an effect or potential for an effect is sufficient to require effluent limits and the results of one assessment technique should not be used to contradict or overrule the results of the other techniques that indicate the need for an effluent limit. This is especially appropriate when the task at hand is not only to identify existing problems but to

predict the possibility of future adverse impacts and impose effluent limits to prevent those adverse impacts from occurring.

EPA recognizes some merit in the position that biological data can reduce the uncertainties about the effect of the discharge and thus could serve a similar purpose as the multipliers or "safety factors" used in the Guidance procedure. Taken as a whole, however, the Ohio procedure has the significant shortcoming discussed above of "discounting" WET data. Specifically, where biological data are unavailable to corroborate effluent toxicity data, Ohio's procedure would require that the maximum observed toxicity be at least three times greater than the expected toxicity limit, that the average toxicity exceed one-third the expected effluent limit, and that more than more than 30 percent of the test results exceed a projected wasteload allocation before it would be likely that a limit will be imposed. Where biological data are present to corroborate effluent data, it is not clear, as the commenter asserts, that a limit would be required if the maximum observed effluent value exceeded the projected effluent limit. In this situation, Ohio's procedure still could require that the maximum observed effluent value be greater than the projected wasteload allocation, that the average of the effluent test results exceed half the expected effluent limit for acute toxicity and two-thirds the expected effluent limit for chronic toxicity, and that more than 30 percent of the effluent values exceed the expected toxicity limit before a limit is imposed. Thus, Ohio's procedures will not necessarily require a limit even in situations where the effluent toxicity is observed in excess of the expected toxicity limit. As discussed above, such a procedure is inconsistent with the Guidance.

Another set of comments asserted that EPA must examine a State's whole approach to addressing WET and determine whether it reduces effluent toxicity to a similar extent as EPA's approach, rather than simply focusing on whether the State's procedures will result in imposition of effluent limits for WET in all situations where the Great Lakes Guidance would require imposition of such limits.

It is unclear how the commenter believes EPA's analysis is deficient and why a different analysis would show a different result. Certainly, the procedure that determines whether or not a permit includes a WQBEL for a particular pollutant or parameter (the reasonable potential procedure) is a critical element for determining the level of protection that will be achieved when implementing a water quality standard. Where a reasonable potential procedure is not as protective as the Guidance, a State's WET program cannot be considered to achieve the same level of protection as the Guidance.

EPA also notes that in addition to the requirements of the Procedure 6 of the Guidance itself, Section 301(b)(1)(C) of the Clean Water Act requires "limitation[s] * * * necessary to meet any applicable water quality standard." Moreover, EPA's regulations implementing Section 301(b)(1)(C) at 40 CFR 122.44(d)(1)(iv) and (v) require that NPDES permits contain "effluent limits for whole effluent toxicity" or chemical-specific limits in lieu of WET limits, whenever there is reasonable potential that a discharge will cause or contribute to an in-stream excursion above a numeric criterion for WET or a narrative criterion of no toxics in toxic amounts. Therefore, the CWA and EPA's implementing regulations require permitting authorities to impose WQBELs for WET when there has been a reasonable potential finding, and EPA does not believe it would be consistent with the CWA and EPA regulations to approve an alternative approach that omits this fundamental requirement. EPA notes that, in appropriate cases, a permitting authority can include a compliance schedule for the WQBEL that would allow for additional monitoring and identification and reduction of toxicants, followed by a reassessment of the need for a limit or the identification of a specific toxicant that could be subject to a WQBEL rather than WET.

Some commenters contended that EPA's actions with respect to Indiana's, Michigan's and Ohio's WET reasonable potential procedures were not consistent with statements by EPA that permitting authorities retain the right to determine whether data is relevant and valid.

EPA agrees that permitting authorities have the right to exercise reasonable discretion to reject unrepresentative or invalid data in making reasonable potential determinations. EPA does not agree, and the commenter fails to explain why it believes, that EPA's actions with respect to Indiana's, Michigan's and Ohio's WET reasonable potential procedures conflict with that position. Section D of Procedure 6 is neutral with respect to the validity of particular pieces of WET data (*e.g.*, were the quality assurance/quality control requirements of the method correctly followed) or whether that data is representative of the discharge (*e.g.*, was the sample taken during normal operations of the facility). It is designed to work on the assumption that the permittee has submitted data the permitting authority agrees are valid and representative of the discharge. If the commenter is saying that States have the discretion to determine that valid, representative data that show effluent toxicity are irrelevant in determining whether a WET limit is needed, EPA disagrees.

PA is nonetheless aware that there has been considerable concern about the possibility that variability in WET test results could erroneously indicate toxicity. EPA recently addressed this issue in the document, "Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program" (EPA 833–R–00–003, June 2000). This document clarifies several issues regarding WET variability and reaffirms EPA's earlier guidance and recommendations published in the Technical Support Document for Water Quality-Based Toxics Control (TSD, USEPA 1991). The document discusses analysis of WET data that shows WET test method precision is comparable to chemical-specific method precision. Significantly, the document recommends that, rather than adjusting the reasonable potential procedures, WET test method variability be minimized by adhering to the EPA test methods (especially the quality assurance/quality control procedures), representative sample collection, and other recommendations provided in the document related to evaluating the validity of specific WET test results. The **Federal Register** notice announcing the availability of this document and the document itself may be viewed or downloaded on the Internet at http://www.epa.gov/owm/npdes.htm.

E. Consequences of Today's Action

As a result of today's action, the Guidance provisions specified in today's rule apply in the Great Lakes System in the States specified in the rule until such time as a State adopts requirements consistent with the specific Guidance provisions at issue, and EPA approves those State requirements and revises the rule so that the provisions no longer apply in that State.

II. "Good Cause" Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public

interest, the agency may issue a rule without publishing a notice of proposed rulemaking. EPA has determined that there is good cause for promulgating today's rule final without publishing a notice of proposed rulemaking because EPA finds it unnecessary and contrary to the public interest. Today's rule does not promulgate any new regulatory provisions. Rather, in accordance with the procedures in 40 CFR132.5(f), today's rule identifies the provisions of Part 132 promulgated previously by EPA that shall apply to discharges in certain States within the Great Lakes System. Those provisions have already been subject to a notice of proposed rulemaking, and publication of a new proposed rule is therefore unnecessary. See 58 FR 20802 (April 16, 1993). In addition, while EPA's approval/disapproval decisions described in this notice do not constitute rulemaking, EPA has nonetheless received substantial public comment on these decisions. See 63 FR 10221 (March 2, 1998) and 63 FR 23285 (April 28, 1998) (notices of receipt of State Guidance submissions and requests for comment); 64 FR 49803 (September 14, 1999), and 64 FR 69019 (December 9, 1999) (notices of letters identifying inconsistencies and requests for comment). EPA also believes the public interest is best served by fulfilling the CWA's requirements without further delay and publication of a notice of proposed rulemaking therefore would be contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, as described in Section II, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to Sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, because this action does not promulgate any new requirements, but only makes certain existing provisions of 40 CFR Part 132 effective in several States, it does not impose any new costs. The costs of Part 132 were considered by EPA when it promulgated that regulation. Therefore, today's rule does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in Sections 203 and 204 of UMRA, or significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective September 5, 2000.

List of Subjects in 40 CFR Part 132

Administrative practice and procedure, Great Lakes, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth above, EPA amends 40 CFR Part 132 as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Text is added to § 132.6 to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

(a) Effective September 5, 2000, the requirements of Paragraph C.1 of Procedure 2 in Appendix F of this Part and the requirements of paragraph F.2 of Procedure 5 in Appendix F of this Part shall apply to discharges within the Great Lakes System in the State of Indiana.

(b) Effective September 5, 2000, the requirements of Procedure 3 in Appendix F of this Part shall apply for purposes of developing total maximum daily loads in the Great Lakes System in the State of Illinois.

(c) Effective September 5, 2000, the requirements of Paragraphs C.1 and D of Procedure 6 in Appendix F of this Part shall apply to discharges within the Great Lakes System in the States of Indiana, Michigan and Ohio.

[FR Doc. 00–19792 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301027; FRL–6596–8]

RIN 2070–AB

Avermectin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for the combined residues of the insecticide and miticide avermectin (a mixture of avermectins B_{1a} and B_{1b} and its delta-8,9-isomer) in or on basil at 0.05 parts per million (ppm) for an additional 19-month period. This tolerance will expire and is revoked on July 31, 2001. This action is in response to EPA's granting of an emergency exemption under

section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), authorizing use of the pesticide on basil. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of (FIFRA).

DATES: This regulation is effective August 4, 2000. Objections and requests for hearings, identified by docket control number OPP–301027, must be received by EPA on or before October 3, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided i : Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301027 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301027. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of October 29, 1997 (62 FR 56082) (FRL–5750–8), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of avermectin and its delta-8,9-isomer in or on basil at 0.05 ppm, with an expiration date of September 30, 1998. EPA extended the time-limited tolerance for avermectin on basil in the **Federal Register** of October 7, 1998 (63 FR 53835) (FRL–6033–7) with an expiration date of January 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of avermectin on basil for this year's growing season due to continued pressure on basil crops from leafminers. Leafminers damage marketable basil in a variety of ways. After having reviewed the submission, EPA concurs that emergency conditions exist and has determined that it is appropriate to re-establish this time-limited tolerance. EPA has authorized under FIFRA section 18 the use of avermectin on basil for control of leafminers in basil.

EPA assessed the potential risks presented by residues of avermectin in or on basil. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of October 29, 1997 (62 FR 56082). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 19-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on basil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a

hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301027 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301027, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined

that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.449 [Amended]

2. In § 180.449, amend the table in paragraph (b) by revising the expiration/revocation date for "basil" from "1/31/00" to read "7/31/01."

[FR Doc. 00–19795 Filed 8–3–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301019; FRL–6596–3]

RIN 2070–AB78

Diflubenzuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of diflubenzuron and its metabolites in or on rangeland grass. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 4, 2000. Objections and requests for hearings, identified by docket control number OPP–301019, must be received by EPA on or before October 3, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301019 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301019. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents

that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM#2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 5, 2000 (65 FR 17872) (FRL–6550–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP) for a tolerance by IR–4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. This notice included a summary of the petition prepared by Uniroyal Chemical Company, the registrant.

The petition requested that 40 CFR 180.377 be amended by establishing a tolerance for combined residues of the insecticide diflubenzuron, (N–[[4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA), in or on rangeland grass at 6.0 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of diflubenzuron and its metabolites on rangeland grass at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diflubenzuron are discussed in Unit II.A. of the Final Rule on Diflubenzuron Pesticide Tolerance published in the **Federal Register** of April 19, 1999 (64 FR 19050) (FRL–6075–4).

B. Toxicological Endpoints

1. *Acute toxicity.* A toxicological endpoint for acute dietary exposure (1 day) was not established since 1 day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 milligrams/kilograms (mg/kg) of diflubenzuron.

2. *Short- and intermediate-term toxicity.* The toxicological endpoint for short-term occupational or residential exposure (1 to 7 days) is sulfhemoglobinemia observed in the 14-day subchronic oral study in mice dosed with technical grade diflubenzuron. The no observed adverse effect level (NOAEL) in this study was 40 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 200 mg/kg/day.

The toxicological endpoint for intermediate-term occupational or residential exposure (1 week to several months) is methemoglobinemia observed in the 13-week subchronic feeding study in dogs. For the purpose of risk assessments, the NOAEL of 1.64 mg/kg/day in this study was considered to be 2 mg/kg/day so as to be consistent with the NOAEL of 2 mg/kg/day in the chronic study used to calculate the Reference Dose (RfD). The LOAEL in this study was 6.24 mg/kg/day.

Since an oral NOAEL was selected for a dermal endpoint, a dermal absorption factor of 0.5% was used for this risk assessment when converting dermal exposure to oral equivalents. Therefore, the dermal equivalent dose producing a NOAEL by the oral route is 400.0 mg/kg/day (i.e., 2.0 mg/kg/day divided by 0.005 = 400.0 mg/kg/day).

3. *Chronic toxicity.* EPA has established the RfD for diflubenzuron at 0.02 mg/kg/day. This RfD is based on the NOAEL of 2.0 mg/kg/day in the 52-week chronic oral study in dogs. An uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation) was used to determine the chronic Reference Dose (cRfD) of 0.02 mg/kg/day. The chronic Population Adjusted Dose (cPAD) is equal to the cRfD divided by the FQPA Safety Factor. Since the FQPA Safety Factor was reduced to 1X, the cPAD is equal to the cRfD.

4. *Carcinogenicity.* Based on the available evidence, which included adequate carcinogenicity studies in rats and mice and a battery of negative mutagenicity studies, diflubenzuron *per se* has been classified as Group E (evidence of non-carcinogenicity for humans). However, p-chloroaniline (PCA), a metabolite of diflubenzuron, is classified as a Group B2 carcinogen (probable human carcinogen). See Unit II. B. in the Final Rule on Diflubenzuron Pesticide Tolerance published in the **Federal Register** of April 19, 1999 (64 FR 19050).

For the purpose of calculating dietary risk assessments from exposure through food to these metabolites of diflubenzuron, the following procedure was used:

i. P-chlorophenylurea (CPU) and p-chloroacetanilide (PCAA), additional metabolites of diflubenzuron that are closely related to PCA and for which there are no adequate carcinogenicity data available, was considered to be potentially carcinogenic and to have the same carcinogenic potency (Q_1^*) as PCA.

ii. The sum of PCA, CPU, and PCAA residues in ingested food was used to estimate the dietary exposure of humans to the carcinogenic metabolites of diflubenzuron in food.

iii. In addition to ingested residues of these three metabolites, amounts of PCA, CPU, and/or PCAA formed *in vivo* following ingestion of diflubenzuron was also included when estimating the total exposure of humans to the

carcinogenic metabolites of diflubenzuron. The *in vivo* conversion of ingested diflubenzuron to PCA and/or CPU was estimated to be 2.0%, based on data in the rat metabolism study.

The Q_1^* (estimated unit risk) for PCA, based upon spleen sarcoma rates in male rats, was calculated to be 6.38 x 10^{-2} (mg/kg/day) in human equivalents. It has been determined that PCAA does not occur in animal or plant tissues in significant amounts.

C. Exposure Assessment

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.377) for the combined residues of diflubenzuron and its metabolites, in or on rice grain, rice straw, citrus, artichokes, walnuts, mushrooms, cottonseed, soybeans, and associated livestock. For the dietary risk assessment, anticipated residue levels were calculated for livestock, citrus and mushroom commodities. Anticipated residue estimates for diflubenzuron were not calculated for other raw agricultural commodities. Percent crop treated (PCT) data were utilized where available.

Risk assessments were conducted by EPA to assess dietary exposures in food from diflubenzuron and its metabolites as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information to conduct a routine chronic dietary exposure analysis for diflubenzuron based on likely maximum PCT as follows: 1% rangeland grass, 3% cottonseed, 8% grapefruit, 3.1% mushrooms, 2% oranges, 4% tangerines, 1% soybean, and 5% cattle bolus. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer–based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which diflubenzuron and its metabolites may be applied in a particular area.

i. *Acute exposure.* A risk assessment for acute dietary exposure (1 day) was not conducted. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 mg/kg of diflubenzuron.

ii. *Chronic exposure.* The RfD used for the chronic dietary analysis for diflubenzuron is 0.02 mg/kg bwt/day. The chronic Dietary Exposure Evaluation Model (DEEM) analysis used mean estimates of consumption (3-day average). Anticipated residues and PCT information for select commodities were used. Since EPA determined to reduce the 10X FQPA Safety factor to 1X, the cPAD and the cRfD are the same. The results of the analyses indicate that the chronic dietary risks from food associated with the existing and proposed uses of diflubenzuron and its metabolites do not exceed EPA's level of concern for the U.S. population or any population subgroup.

Cancer risk from consumption of PCA and related metabolites. The Agency has determined that there are three possible sources for dietary exposure to PCA and related compounds (CPU and PCAA) from food: residues in plants/fungi (mushrooms), residues in animal commodities (milk and liver) and *in vivo* conversion of diflubenzuron.

2. *From drinking water.* The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI–GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOC) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses.

To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to diflubenzuron in drinking water. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure was subtracted from the ratio of the negligible cancer risk to the Q* to obtain the maximum allowable chronic exposure to diflubenzuron in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

EPA has calculated DWLOCs for chronic (non-cancer) dietary exposure to diflubenzuron in surface and ground water for the U.S. population and children (1-6 yrs). They are 700 and 200 parts per billion (ppb), respectively. For chronic (cancer) exposure to CPU in surface and ground water, the DWLOC is 0.30 ppb for the U.S. population.

Tier II PRZM-EXAM modeling using the index reservoir (IR) scenario and the percent crop area adjustment factor for the use of diflubenzuron on cotton and citrus was modeled. The concentration of diflubenzuron in drinking water in a Mississippi cotton index reservoir scenario adjusted for a percent crop area factor of 0.49 is not expected to exceed 1.66 µg/L for the 1 in 10-year annual peak (acute) concentration, 0.12 µg/L for the 1 in 10-year annual mean (chronic) concentration, and 0.06 µg/L for the 36-year average concentration. The concentration of CPU in drinking water from the same application on cotton Is not expected to exceed 0.23 µg/L for the 36-year average concentration.

Based on the PRZM–EXAMS and SCI–GROW models, the EECs of diflubenzuron for chronic exposure are estimated to be 0.06 ppb for surface water and 0.0023 ppb for ground water.

3. *From non-dietary exposure.* Diflubenzuron is a restricted use pesticide and therefore not available for use by homeowners. However, non-agricultural uses of diflubenzuron may expose people in residential locations. Based on the low dermal absorption rate (0.5%), and the extremely low dermal and inhalation toxicity, exposure through these uses is expected to be insignificant.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether diflubenzuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diflubenzuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diflubenzuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* There is no risk from acute dietary exposure (1 day) to diflubenzuron as there is no toxic endpoint identified.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to diflubenzuron from food will utilize <1% of the cPAD for the U.S. population, for infants <1 year old, and children 1-6 years old. There are no residential uses for diflubenzuron that result in chronic residential exposure. In addition, despite the potential for chronic dietary exposure to diflubenzuron in drinking water, after calculating the DWLOCs and comparing them to conservative model EECs of diflubenzuron in surface water 0.06 ppb and ground water 0.0023 ppb. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Aggregate cancer risk for U.S. population.* For the U.S. population, cancer risk resulting from food exposure is 4.5×10^{-7}. The estimated 36-year average concentration (0.23 ppb) of CPU in surface water does not exceed EPA's level of concern (DWLOC) for CPU in drinking water (0.30 ppb) as a contribution to chronic (cancer) aggregate exposure. EPA has calculated that the cancer risk resulting from 0.23 ppb of CPU in drinking water is 4.2×10^{-7}. The aggregate cancer risk is thus 8.7×10^{-7} (4.5×10^{-7} for food + 4.2×10^{-7} for water).

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of diflubenzuron and its metabolites.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children in general.* In assessing the potential for additional sensitivity of infants and children to residues of diflubenzuron and its metabolites, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Developmental toxicity studies*—i. *Rats.* In the developmental study in rats, the maternal (systemic) NOAEL was 1,000.0 mg/kg/day highest dose tested (HDT). The developmental (fetal) NOAEL was 1,000.0 mg/kg/day, (HDT).

ii. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 1,000.0 mg/kg/day, HDT. The developmental (pup) NOAEL was 1,000.0 mg/kg/day, HDT.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOAEL was < 36 and < 42 mg/kg/day male and female, respectively. Lowest dose tested (LDT) based on hematological effects at all dose levels tested. The reproductive (pup) NOAEL was 427.0 mg/kg/day, based on decreases in the F–1 pup weight at the LOAEL of 2,454.0 mg/kg/day HDT.

iv. *Conclusion.* The toxicological data base for evaluating prenatal and postnatal toxicity for diflubenzuron is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above, there does not appear to be increased sensitivity to diflubenzuron for prenatal or postnatal effects. Based on the above, EPA concludes that reliable data support use of a 100-fold margin of exposure/uncertainty factor, rather than the 1,000-fold margin/factor, to protect infants and children.

3. *Acute risk.* There is no risk from acute dietary exposure (1 day) to diflubenzuron as there is no toxicological endpoint identified which could be attributable to a single dietary exposure. Therefore, a risk assessment for this exposure scenario was not conducted.

4. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diflubenzuron from food will utilize < 1 % of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diflubenzuron in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diflubenzuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for the analysis of diflubenzuron and its metabolites in rice grain (0.01 ppm), rice straw (0.01 ppm) and water (0.001 ppm). Three enforcement methods for diflubenzuron are published in PAM, Vol. II as Methods I, II, and III. Method II is a GC/ECD method that can separately determine residues of diflubenzuron, CPU, and PCA in eggs, milk, and animal tissues. All three methods have undergone successful Agency validations and are acceptable for enforcement purposes.

B. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for residues of diflubenzuron on rangeland grass. A compatibility issue is not relevant to the tolerance.

V. Conclusion

Therefore, the tolerance is established for combined residues of diflubenzuron and its metabolites, in or on rangeland grass at 6.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301019 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of

Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301019, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2000

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.377 is amended by revising paragraph (a)(2), and in the table in paragraph (c) removing the entry for "Grass, range".

§ 180.377 Diflubenzuron; tolerances for residues.

(a) * * *

(2) Tolerances are established for the combined residues of the insecticide diflubenzuron (*N*–[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) and its metabolites 4-chlorophenylurea and 4-chloroaniline in or on the following food commodities:

Commodity	Parts per million
Grass, rangeland	6.0

* * * * *

[FR Doc. 00–19794 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–208]

Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; to establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Telecom Act; and to apply the framework to pending petitions for designation as eligible telecommunications carriers.

DATES: Effective September 5, 2000 except for §§ 54.401(d), 54.403(a)(2), 54.403(a)(3), 54.403(a)(4)(ii), 54.405(b), 54.409(c), 54.411(d), and 54.415(c), which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Gene Fullano, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Twelfth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–45 released on June 30, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, we adopt measures to: (1) Promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; (2) establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Telecom Act; and (3) apply the framework to pending petitions for designation as eligible telecommunications carriers filed by Cellco Partnership d/b/a Bell Atlantic Mobile, Inc., Western Wireless Corporation, Smith Bagley, Inc., and the Cheyenne River Sioux Tribe Telephone Authority.

2. An important goal of the Telecommunications Act of 1996 is to preserve and advance universal service. The 1996 Act provides that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[-]cost areas, should have access to telecommunications and information services. * * *" In the Further Notice of Proposed Rulemaking (*FNPRM*), 64 FR 52738 (September 30, 1999), of this proceeding, we sought to identify the impediments to increased telecommunications deployment and subscribership in unserved and underserved regions of our Nation, including tribal lands and insular areas, and proposed particular changes to our universal service rules to overcome these impediments. Although approximately 94 percent of all households in the United States have telephone service today, penetration levels among particular areas and populations are significantly below the national average. For example, only 76.7 percent of rural households earning less than $5,000 have a telephone, and only 47 percent of Indian tribal households on reservations and other tribal lands have a telephone. These statistics demonstrate, most notably, that existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands.

3. Central to the issues addressed in the *FNPRM*, is the notion that basic telecommunications services are a fundamental necessity in modern society. As our society increasingly relies on telecommunications technology for employment and access to public services, such telecommunications services have become a practical necessity. The absence of telecommunications services within a home places its occupants at a disadvantage when seeking to contact, or be contacted by, employers and potential employers. The inability to contact police, fire departments, and medical service providers in an emergency situation may have, and in some areas routinely does have, life-threatening consequences. In geographically remote areas, access to telecommunications services can minimize health and safety risks associated with geographic isolation by providing people access to critical information and services they may need. Basic telecommunications services also may provide a source of access to more advanced services. For example, voice telephone is currently the most common means of household access to the Internet, and the same copper loop used to provide ordinary voice telephone service also may be used for broadband services. Thus, as use of advanced services among the general population increases, those without basic telecommunications services may find themselves falling further behind in a number of ways. In its *Falling Through the Net* report, the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) found that, while "[o]verall * * * the number of Americans connected to the nation's information infrastructure is soaring," the benefits of even basic telecommunications services have not reached certain segments of our population.

4. This Order represents the culmination of an ongoing examination of the issues involved in providing access to telephone service for Indians on reservations. This process began when the Commission convened two meetings in April and July of 1998, which brought Indian tribal leaders and senior representatives from other federal agencies to the Commission to meet with FCC Commissioners and Commission staff. The Commission then organized formal field hearings in January 1999 at the Indian Pueblo Cultural Center in Albuquerque, New Mexico, and in March 1999 at the Gila River Indian Community in Chandler, Arizona, at which Indian tribal leaders, telecommunications service providers, local public officials, and consumer advocates testified on numerous issues, including subscribership levels and the cost of delivering telecommunications services to Indians on tribal lands, as well as jurisdictional and sovereignty issues associated with the provision of telecommunications services on tribal lands. Based on information and analysis provided during these proceedings, the Commission initiated two rulemakings: one proposing changes to our universal service rules to promote deployment of telecommunications infrastructure and subscribership on tribal lands, and the other proposing changes to our wireless service rules to encourage the deployment of wireless service on tribal lands.

5. In this Order, we take the first in a series of steps to address the causes of low subscribership within certain segments of our population. The extent to which telephone penetration levels

fall below the national average on tribal lands underscores the need for immediate Commission action to promote the deployment of telecommunications facilities in tribal areas and to provide the support necessary to increase subscribership in these areas. We adopt measures at this time to promote telecommunications deployment and subscribership for the benefit of those living on federally-recognized American Indian and Alaska Native tribal lands, based on the fact that American Indian and Alaska Native communities, on average, have the lowest reported telephone subscribership levels in the country. Toward this end, we adopt amendments to our universal service rules and provide additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities in, areas that previously may have been regarded as high risk and unprofitable. By enhancing tribal communities' access to telecommunications services, the measures we adopt are consistent with our obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes to encourage tribal sovereignty and self-governance. Specifically, by enhancing tribal communities' access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase their access to education, commerce, government, and public services. Furthermore, by helping to bridge the physical distances between low-income consumers on tribal lands and the emergency, medical, employment, and other services that they may need, our actions ensure a standard of livability for tribal communities. To ensure their effectiveness in addressing the low subscribership levels on tribal lands, we intend to monitor the impact of the enhanced federal support measures and to adjust the measures as appropriate.

6. In response to the requests of Indian tribal leaders, we have adopted a statement of policy that recognizes the principles of tribal sovereignty and self-government inherent in the relationships between federally-recognized Indian tribes and the federal government. In conjunction with our efforts to adopt policies that further tribal sovereignty and tribal self-determination, we note the Commission's upcoming Indian Telecom Training Initiative, in which the Commission will bring together experts on telecommunications law and technologies to provide information to tribal leaders and other interested parties to promote telecommunications deployment and subscribership on tribal lands.

7. In this Order, we also offer guidance on those circumstances in which the Commission will exercise its authority to designate eligible telecommunications carriers under section 214(e)(6) of the Telecom Act. We conclude that, consistent with the Act and the legislative history of section 214(e) of the Telecom Act, state commissions have the primary responsibility for the designation of eligible telecommunications carriers under section 214(e)(2) of the Telecom Act. We direct carriers seeking designation as an eligible telecommunications carrier for service provided on non-tribal lands to first consult with the state commission, even if the carrier asserts that the state commission lacks jurisdiction. We will act on a section 214(e)(6) of the Telecom Act designation request from a carrier providing service on non-tribal lands only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction.

8. We recognize, however, that a determination as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a legally complex and fact-specific inquiry, informed by principles of tribal sovereignty, treaties, federal Indian law, and state law. Such jurisdictional ambiguities may unnecessarily delay the designation of carriers on tribal lands. In light of the unique federal trust relationship between the federal government and Indian tribes and the low subscribership levels on tribal lands, we establish a framework designed to streamline the eligibility designation of carriers providing service on tribal lands. Under this framework, carriers seeking a designation of eligibility for service provided on tribal lands may petition the Commission for designation under section 214(e)(6) of the Telecom Act. The Commission will proceed to a determination on the merits of such a petition if the Commission determines that the carrier is not subject to the jurisdiction of a state commission. We apply the framework adopted in this Order to several pending requests for eligible telecommunications carrier designation on tribal and non-tribal lands.

9. We also recognize that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We therefore commit to resolve requests for designation for the provision of service on non-tribal lands that are properly before us pursuant to section 214(e)(6) of the Telecom Act within six months of the date of filing. Similarly, we commit to resolve the merits of a request for designation for the provision of service on tribal lands within six months of our determination that the carrier is not subject to the jurisdiction of a state commission. We encourage state commissions to act accordingly, and resolve designation requests filed pursuant to section 214(e)(2) of the Telecom Act within six months.

II. Low-Income Initiatives To Improve Access to Telecommunications Services and Subscribership on Tribal Lands

A. Definitions of "Indian Tribe" and "Tribal Lands"

10. For purposes of this Order, we define the terms "Indian tribe," "reservation," and "near reservation" as those terms are defined in Subpart A of the regulations promulgated by the United States Department of the Interior's Bureau of Indian Affairs (BIA). In light of our decision to adopt rules to benefit low-income individuals living on Indian tribal lands, we use, for purposes of this Order, the definition of "Indian tribe" contained in section 20.1(p) of the BIA regulations. That definition includes "any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government for the special programs and services provided by the Secretary [of the Interior] to Indians because of their status as Indians." Although there are minor variations between this definition and the statutory definition of "Indian tribe" in section 479a(2) and cited in the *FNPRM*, the characteristic common to both definitions that is relevant for our purposes is that both refer to the list of entities compiled and published by the Secretary of the Interior.

11. For purposes of identifying the geographic areas within which the rule amendments set forth will apply, we define the term "tribal lands" to include the BIA definitions of "reservation" and "near reservation" contained in sections 20.1(v) and 20.1(r) of the BIA

regulations, respectively. The term "reservation" means "any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments." "Near reservation" means those areas or communities adjacent or contiguous to reservations that are designated as such by the Department of Interior's Commissioner of Indian Affairs, and whose designations are published in the **Federal Register**.

12. We define the term "tribal lands" to include the BIA definitions of "reservation" and "near reservation" because these definitions appear to encompass the geographic areas in which the Commission may adopt, consistent with principles of Indian sovereignty and the special trust relationship, rule changes to benefit members of federally-recognized Indian tribes. In particular, we agree with commenters who argue that Alaska Native Statistical Areas and other lands conveyed pursuant to the Alaska Native Claims Settlement Act, although not Indian reservations, should be included within the definition of tribal lands insofar as these lands are federally-recognized lands that are inhabited by Alaska Native tribes. The BIA definition of "near reservation" includes lands adjacent or contiguous to reservations that generally have been considered tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes. Again, we conclude that such lands properly should be included within our definition insofar as they are Indian lands on which principles of Indian sovereignty and the special trust relationship apply. To exclude the "near reservation" lands designated by the Department of the Interior or lands on which tribal members in Alaska live, in our view, would unfairly penalize tribal members who live in tribal communities, but for historic or other reasons, do not live on an Indian reservation.

13. We believe that using the BIA regulations to define and identify the geographic areas to which our rule amendments will apply offers significant advantages in the case of its administration. Specifically, the BIA definitions of "reservation" and "near reservation" provide a widely used and readily verifiable standard by which tribes may establish and carriers may verify the eligibility of individuals who qualify for the targeted assistance made available by this Order. We note that the classification "on or near a reservation" is used by BIA in administration of its financial assistance and social services programs for Indian tribes. If BIA or Congress should modify these definitions in the future, we intend such modifications to apply in equal measure to the classifications adopted in this Order without further action on our part. We believe that this action is consistent with our goal of using a widely used and readily verifiable standard for defining these terms.

B. Bases for Commission Action To Increase Subscribership on Tribal Lands

(1) Authority To Take Action To Improve Access to Telecommunications Services and Subscribership on Tribal Lands

14. Section 254(b) of the Telecom Act sets forth the principles that guide the Commission in establishing policies for the preservation and advancement of universal service. Included among these is the principle that "quality services should be available at just, reasonable, and affordable rates." Our authority to take action to remedy the disproportionately lower levels of infrastructure deployment and subscribership prevalent among tribal communities derives from sections 1, 4(i), 201, 205, as well as 254 of the Telecom Act. As discussed, the record before us suggests that the disproportionately lower-than-average subscribership levels on tribal lands are largely due to the lack of access to and/or affordability of telecommunications services in these areas (as compared with cultural or individual preferences that cause individuals to choose not to subscribe). Along with depressed economic conditions and low per capita incomes, commenters have identified the following factors as the primary impediments to subscribership on tribal lands: (1) The cost of basic service in certain areas (as high as $38 per month in some areas); (2) the cost of intrastate toll service (limited local calling areas); (3) inadequate telecommunications infrastructure and the cost of line extensions and facilities deployment in remote, sparsely populated areas; and (4) the lack of competitive service providers offering alternative technologies. We note that no tribal representative in this proceeding has suggested that cultural or personal preference accounts for low subscribership levels within or among particular tribes. Based on the substantial Indian tribal participation in this proceeding and in the Commission's proceedings in WT Docket No. 99–266 and BO Docket No. 99–11, we do not have any evidence to conclude that cultural or personal factors generally explain low subscribership levels on tribal lands.

15. We conclude that the unavailability or unaffordability of telecommunications service on tribal lands is at odds with our statutory goal of ensuring access to such services to "[c]onsumers in all regions of the Nation, including low-income consumers." In addition, the lack of access to affordable telecommunications services on tribal lands is inconsistent with our statutory directive "to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient Nationwide * * * wire and radio communication service, with adequate facilities at reasonable charges." In the *Universal Service Order*, 62 FR 32862 (June 17, 1997) the Commission stated that, where "necessary and appropriate," the Commission, working with an affected state or U.S. territory or possession, will open an inquiry to address instances of low or declining subscribership levels and take such action as is necessary to fulfill the requirements of section 254 of the Telecom Act.

16. Our authority to alter our rules in ways targeted to benefit tribal communities also must be informed by the principles of federal Indian law that arise from the unique trust relationship between the federal government and Indian tribes. That relationship has been characterized as "unlike that of any other two people in existence," and "marked by peculiar and cardinal distinctions which exist no where else." The Supreme Court has repeatedly "recognized the distinctive obligation of trust incumbent upon the [Federal] Government" in its dealings with Indian tribes. Moreover, Congress and the courts have recognized the federal government's responsibility to promote self-government among tribal communities as an important facet of the federal trust relationship. In *Morton* v. *Mancari*, for example, the Supreme Court upheld a federal regulation establishing a hiring preference for members of Indian tribes as consistent with the goal of promoting Indian self-government. In that case, the Court noted that "literally every piece of legislation dealing with Indian tribes and reservations * * * singles out for special treatment a constituency of tribal Indians living on or near reservations."

17. By enhancing tribal communities' access to telecommunications services, the measures we adopt today are consistent with our federal trust

responsibility to encourage tribal sovereignty and self-governance. Specifically, by enhancing tribal communities' access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase tribal communities' access to education, commerce, government, and public services. Furthermore, by helping to bridge physical distances between low-income individuals living on tribal lands and the emergency, medical, employment, and other services that they may need, our actions further our federal trust responsibility to ensure a standard of livability for members of Indian tribes on tribal lands.

(2) Subscribership Levels on Tribal Lands

18. Section 254(i) of the Telecom Act requires that the Commission and the states ensure that universal service is available at rates that are just, reasonable, and affordable. In the *Universal Service Order*, the Commission adopted the finding of the Joint Board that subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates. The Commission found that subscribership levels alone, however, do not reveal whether consumers are spending a disproportionate amount of income on telecommunications services or whether paying the rates charged for services imposes a hardship for those who subscribe. The Commission concurred in the recommendation of the Joint Board that a determination of affordability take into consideration both rate levels and non-rate factors, such as consumer income levels, that can be used to assess the financial burden subscribing to universal service places on consumers. The Commission also adopted the Joint Board's finding that the scope of a local calling area "directly and significantly impacts affordability" of universal service.

19. Consistent with our statutory goal of preserving and advancing universal service and of ensuring that consumers in all regions of the Nation have access to the services supported by federal universal service support mechanisms, we modify our universal service rules, as set forth, to increase telecommunications infrastructure deployment and subscribership on tribal lands. We take action at this time primarily for the benefit of low-income individuals living on tribal lands, as that term is defined, because of the critically low telephone subscribership levels that are reported in these areas. Specifically, statistics demonstrate that, although approximately 94 percent of all Americans have a telephone, only 47 percent of Indians on reservations and other tribal lands have a telephone. Similarly, an analysis of 1990 Census data found that Indians represent 89 percent of the Nation's population in the one hundred zip codes with the lowest subscribership levels. More recent studies of subscribership levels for individual tribes suggest that subscribership levels for many tribes remain significantly below the national average.

20. Consistent with recent research that demonstrates that telephone penetration correlates directly with income, federal statistics reveal that tribal communities are among the poorest populations in the United States. For example, according to 1990 data published by the Bureau of the Census, the per capita income of Native Americans living on tribal lands was only $4,478, as compared with the $14,420 per capita income in the United States as a whole. At the time of the 1990 Census data collection, almost 51 percent of American Indians residing on reservations and trust lands had incomes below the poverty level, compared to 13 percent of United States residents nationwide with incomes below this level. Unemployment levels for a sample of 48 tribes averaged 42 percent as compared to the national unemployment figure of 4.5 percent. The record before us suggests that there is a correlation between low subscribership levels and low incomes on tribal lands. Indeed, the majority of commenters identify low incomes or impoverishment as the key reason for low subscribership levels on tribal lands.

21. Based on our review of these statistics and the record before us, and consistent with the unique trust relationship between the federal government and members of Indian tribes, we conclude that specific action is needed to address the impediments to subscribership on tribal lands and to ensure affordable access to telecommunications services in these areas. Specifically, the significantly lower-than-average incomes and subscribership levels of members of federally-recognized Indian tribes warrant our immediate action to increase subscribership and improve access to telecommunications on tribal lands.

22. We conclude that the potential benefits to tribal members will only increase by extending to non-Indians living on tribal lands, as well as Indians, the measures we adopt Of this Order. First, we believe that, by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced. Implicit in our decision to extend the availability of enhanced federal support to all low-income individuals living on tribal lands, is our recognition of the likelihood that non-Indian, low-income households on tribal lands may face the same or similar economic and geographic barriers as those faced by low-income Indian households.

23. Second, we believe that increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community will result in greater incentives for eligible telecommunications carriers to serve in those areas: We anticipate that the availability of enhanced federal support for all low-income individuals living on tribal lands will maximize the number of subscribers in such a community who can afford service and, therefore, make it a more attractive community for carrier investment and deployment of telecommunications infrastructure. As the number of potential subscribers grows in tribal communities, carriers may achieve greater economies of scale and scope when deploying facilities and providing service within a particular community.

24. Finally, we believe that, by extending the availability of enhanced federal support to all low-income individuals residing on tribal lands, carriers will avoid the administrative burden associated with distinguishing between low-income individuals who are members of federally-recognized tribes living on tribal lands and all other low-income individuals living on tribal lands. By reducing the possible administrative burdens associated with implementation of the enhanced federal support, we intend to eliminate a potential disincentive to providing service on tribal lands.

25. At this time, we do not adopt commenters' suggestions to apply the actions taken in this Order more generally to all high-cost areas and all insular areas. Although the record demonstrates that subscribership levels are below the national average in low-income, rural areas and in certain insular areas, the significant degree to which subscribership levels fall below the national average among tribal communities underscores the need for immediate Commission intervention for

the benefit of this population. The record before us does not permit a determination that the factors causing low subscribership on tribal lands are the same factors causing low subscribership among other populations. Indeed, the presence of certain additional factors on tribal lands that may not be present in non-tribal areas, and which appear to create disincentives for carriers to provide service in these areas, suggests that the identical strategy adopted in this Order to boost subscribership levels on tribal lands may not be appropriate for increasing subscribership in other areas. Specifically, the following combination of factors may increase the cost of entry and reduce the profitability of providing service on tribal lands: (1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands.

26. We are concerned that to devise a remedy addressing all low subscribership issues for all unserved or underserved populations simultaneously might unnecessarily delay action on behalf of those who are least served, *i.e.*, tribal communities. We do not believe that we should delay action to benefit those who, based on national statistics and the record before us, comprise the most underserved segment of our population. We will, however, continue to examine and address the causes of low subscribership in other areas and among other populations within the United States and, in conjunction with the release of the 2000 Census data, we will take action as appropriate at that time to address low subscribership among such other populations.

27. Several incumbent local exchange carriers serving tribal communities indicate that subscribership levels among tribal communities within their service territories are higher than the nationwide average penetration rate for Indians on reservations and other tribal lands. These comments do not lead us to alter our conclusion that Commission action is warranted to improve subscribership levels for low-income individuals on tribal lands. As an initial matter, we recognize that penetration levels for particular tribal communities may exceed the 47 percent national average for Indians on tribal lands, just as certain tribes may be below the national average of 47 percent. This fact, however, is not inconsistent with our decision to adopt measures to benefit tribal communities generally because we are targeting our actions to low-income individuals on tribal lands, who we anticipate will have the lowest subscribership levels in these areas. Specifically, because research indicates that there is a correlation between income and subscribership levels, we anticipate that our actions will benefit tribal communities whose subscribership levels, as a function of low average per capita incomes, are closer to, or less than, the 47 percent national average for Indians on reservations.

28. Although we recognize the achievements of rural carriers serving tribal lands in improving subscribership levels in these areas, the fact that carriers employ various methodologies when measuring subscribership levels within their service territories limits the utility of particular statistics beyond the specific service territories. For example, statistics that measure the number or percentage of homes passed within a carrier's total service territory on a reservation do not reveal the number or percentage of households that, notwithstanding the fact that facilities are present, do not subscribe because they cannot afford telephone service. Even where subscribership statistics measure the number or percentage of households within a carrier's territory that have telephone service, those statistics provide no measure of reservation households outside of the carrier's service territory that have access to facilities or take service. Therefore, we conclude that nationwide and regional statistics that measure actual subscribership throughout tribal areas provide a more complete picture than do statistics that measure only the number of homes passed within particular service territories.

C. Enhanced Federal Lifeline and Expanded Link Up Support for Qualifying Low-Income Consumers Living on Tribal Lands

a. Enhanced Lifeline Support for Qualifying Low-Income Consumers Living on Tribal Lands

29. In this Order, we create a fourth tier of federal Lifeline support available to eligible telecommunications carriers serving qualifying low-income individuals living on tribal lands. This fourth tier of federal Lifeline support will consist of up to an additional $25 per month, per primary residential connection for each qualifying low-income individual living on tribal lands. This amount, in conjunction with the first-tier baseline (ranging from $3.50 to $4.35 after July 1, 2000) and $1.75 second-tier "non-matching" federal support amounts, will entitle each qualifying low-income consumer on tribal lands to a reduction in its basic local service bill of up to $31.10 per month. In taking this action, we follow the example of states such as New York and require all qualifying low-income individuals on tribal lands to pay a minimum monthly Lifeline rate of $1. As explained further, this enhanced Lifeline support should substantially reduce the Lifeline rate (*i.e.*, the monthly basic service rate) for all qualifying low-income consumers on tribal lands.

30. Consistent with the requirement of § 54.403(a) of our rules, we condition the receipt of this increased federal Lifeline support on carriers passing through the entire fourth-tier support amount to each qualifying low-income individual living on tribal lands by an equivalent reduction in the subscriber's monthly bill for local service. Specifically, we require each eligible telecommunications carrier to certify that it (1) will pass through the fourth-tier federal support amount to its qualifying low-income subscribers, and (2) has received the necessary approval of any non-federal regulatory authority authorized to regulate such carrier's rates that may be required to implement the required rate reduction. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with the universal service fund Administrator, the Universal Service Administrative Company (USAC), by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

31. Our primary goal, in taking this action, is to reduce the monthly cost of telecommunications services for qualifying low-income individuals on tribal lands, so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service. In view of (1) the extraordinarily low average per capita and household incomes in tribal areas,

(2) the excessive toll charges that many subscribers incur as a result of limited local calling areas on tribal lands, (3) the disproportionately low subscribership levels in tribal areas, and (4) the apparent limited awareness of, and participation in, the existing Lifeline program, we conclude that a substantial additional amount of support is needed to have an impact on subscribership. Our conclusion to provide up to an additional $25 for all qualifying low-income individuals living on tribal lands is consistent with the actions of state commissions that have instituted substantial rate reductions for their low-income residents. In each of these cases, substantial additional state funds have been made available to promote subscribership among qualifying low-income consumers in those jurisdictions. Our determination is informed by the experience of these jurisdictions and the increased subscribership levels achieved following their implementation of substantial Lifeline rate reductions. For example, in the four years (1992–1996) immediately following the District of Columbia Public Service Commission's (D.C. Commission) adoption of a $1 Lifeline rate for low-income residents 65 years of age and older and a $3 Lifeline rate for low-income residents under 65 years of age, the District of Columbia's overall subscribership levels increased by more than 4 percent, as compared with a nationwide increase of only 0.1 percent for the same time period. Similarly, while only 8,850 low-income individuals previously lacking telephone service initiated service in New York in the three years preceding the New York Public State Service Commission's adoption of a $1 Lifeline rate, 171,536 low-income individuals initiated service in the three years following adoption of the $1 Lifeline rate, an increase in new Lifeline subscribers of almost 2000 percent.

32. In adopting its $1 Lifeline program for low-income citizens in the District of Columbia, the D.C. Commission determined that a substantial rate reduction, along with the removal of other regulatory restrictions, was needed to stimulate interest among the low-income population generally, given its history of low subscription and in light of the potential importance of phone service, particularly to elderly residents, as a "Lifeline." Subscribership levels on tribal lands, the multitude of obstacles to increasing subscribership on tribal lands, and the critical health and safety function of a telephone to persons in extremely remote locations suggest that tribal populations represent a similarly "at risk" population. Just as the D.C. Commission determined that an aggressive regulatory approach was needed to raise the visibility of Lifeline and stimulate interest on the part of residents there, we believe that a similarly aggressive, multi-faceted approach is needed to address the problem of low subscribership on tribal lands.

33. In combination with the "non-matching" federal first-tier Lifeline support of up to $4.35 and second-tier support of $1.75 per month per Lifeline customer, the additional $25 in enhanced federal Lifeline support for qualifying low-income individuals living on tribal lands would reduce the cost of the most expensive basic service rates presented on the record (*e.g.*, $38 per month in areas of Alaska and $35 per month on the Wind River Reservation), to less than $10 per month. The record before us indicates that basic local service rates for subscribers living on or near reservations range from $5 to $38 per month, with most subscribers receiving rates of less than $20 per month. Thus, with the enhanced Lifeline support, low-income individuals on tribal lands whose local service rates are $32.10 or less per month would pay a monthly local service rate of $1. The enhanced support also would apply to any monthly mileage or zonal charges imposed as a condition for receiving basic local service. The enhanced support would not apply to state or federal taxes, state or federal universal service fees, or surcharges for 911 service that may appear as line items on a subscriber's bill for local service. By substantially reducing the monthly service costs for all qualifying low-income individuals on tribal lands, we find that the additional targeted Lifeline support provided here should eliminate or diminish the effect of unaffordability for those low-income individuals for whom it may be difficult to maintain telephone service even where facilities are present.

34. By creating this enhanced Lifeline support, we have attempted to reduce to $1 per month the basic service rate for the majority of income-eligible individuals residing on tribal lands. There are, however, some isolated instances where local telephone rates are high enough that, even with the enhanced Lifeline support, monthly service rates will be greater than $1. In addition, there are a myriad of charges, which vary from state to state, that also affect customers' bills, such as taxes, surcharges, and mileage charges. So, while we have taken significant steps toward reducing the monthly local service rates for low-income individuals on tribal lands with this program, we cannot assure each eligible customer that his or her local service bill will be $1 per month.

35. We have ample evidence that customer confusion and lack of awareness of Lifeline discounts have contributed to low subscribership levels on tribal lands. We encourage states to consider ways in which local charges may be simplified, particularly for low-income customers eligible to receive this enhanced Lifeline support, so as to make the Lifeline discounts easier to promote and explain to qualifying customers. We encourage the Joint Board to consider this issue in its review of Lifeline service for all low-income consumers.

36. In determining the appropriate level of enhanced Lifeline support for qualifying low-income individuals on tribal lands, we recognize that low-income individuals on tribal lands may spend a significantly greater percentage of their household income on local and toll services than do most other Americans as a result of the substantial toll charges they incur to place calls within their communities of interest. Based on data compiled by the Bureau of Labor Statistics, we observe that expenditures for residential local and toll telephone services comprise approximately two percent of the average U.S. household's annual expenditures. Assuming average local service charges of approximately $20 per month and toll charges of as much as $126 per month, a tribal member may spend as much as $1,752 per year on local and long distance telephone service. Assuming an average household income of $12,459 per year, a tribal household could spend approximately 14 percent of its annual income on telephone service. Given that an annual household income of $12,459 is unlikely to result in any savings, we assume that all or most of this amount is dedicated to household expenditures.

37. Even if we were to use the lowest local service charge on the record of $5 per month and assume intrastate toll charges of only $42 per month (or one-third of the $126 toll charge figure cited), total telephone services, excluding taxes and other charges, would cost $47 per month, or $564 per year. A tribal household earning $12,459 per year would spend, in this example, approximately 5 percent of its annual income on telephone service. Thus, in comparison to the two percent of household expenditures dedicated to telecommunications services in the average U.S. household, it appears that

tribal members on average commit a substantially greater percentage of household resources to pay for the same services.

38. Finally, we are mindful that a low-income individual currently receiving and paying for service without enhanced support will, upon adoption of these rules, receive a discounted rate for the same service, when that individual arguably could continue to pay the current rate without any enhancement. Nonetheless, we believe that our decision is consistent with our responsibility to ensure that our actions do not expand the federal universal service support mechanisms beyond that required to achieve our statutory mandate to preserve and advance universal service. As we noted in the *Universal Service Order*, however, the fact that an individual is connected to the network does not, in itself, reveal whether that individual is spending a disproportionate amount of income on telecommunications services. We have carefully examined the facts before us and structured the enhanced Lifeline support in a manner that is precisely targeted to provide qualifying low-income individuals with access to telecommunications services and to increase subscribership on tribal lands. Given that: (1) tribal members appear to spend a significantly higher proportion of their incomes on telecommunications services than do other Americans; (2) low-income tribal members' services may be more likely to be disconnected; (3) beneficiaries of enhanced support must be income eligible; and (4) qualifying individuals can use only as much support as is needed to cover the cost of the individuals' basic service rate less $1, we are persuaded that the level of support provided here does not exceed that required to preserve and advance universal service.

39. We also believe that our adoption of enhanced Lifeline support will encourage: (1) Eligible telecommunications carriers to construct telecommunications facilities on tribal lands that currently lack such facilities; (2) new entrants offering alternative technologies to seek eligible telecommunications carrier status to serve tribal lands; and (3) tribes, eligible telecommunications carriers, and states to address impediments to increased penetration that are caused by limited local calling areas. We discuss each of these in greater detail.

40. *Infrastructure Development.* By providing carriers with a predictable and secure revenue source, the enhanced Lifeline support just discussed, in conjunction with the expanded support that we provide under the Link Up program, is designed to create incentives for eligible telecommunications carriers to deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable. We note that, unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses. In addition, given that the financial resources available to many tribal communities may be insufficient to support the development of telecommunications infrastructure, we anticipate that the enhanced Lifeline and expanded Link Up support will encourage such development by carriers. In particular, the additional support may enhance the ability of eligible telecommunications carriers to attract financing to support facilities construction in unserved tribal areas. Similarly, it may encourage the deployment of such infrastructure by helping carriers to achieve economies of scale by aggregating demand for, and use of, a common telecommunications infrastructure by qualifying low-income individuals living on tribal lands.

41. The enhanced Lifeline and Link Up support adopted here also may help to foster principles of tribal sovereignty and tribal self-determination in two respects. First, the availability of enhanced federal support may provide additional incentives for tribes that wish to establish tribally-owned carriers to do so by diminishing the financial risk associated with providing service to low-income customers on tribal lands. Second, to the extent that tribal leaders can aggregate service requests of large numbers of qualifying individuals eligible for enhanced support, they may have more control in choosing the carriers serving their communities and increased bargaining power in their negotiations with carriers seeking to provide universal service on tribal lands.

42. To the extent that the cost to extend facilities, due to the geographic remoteness of a location or other geographic characteristics, is extraordinarily high, we recognize that the level of support provided here, in combination with existing levels of universal service high-cost support, may not always be sufficient to attract the necessary facilities investment. Accordingly, although we anticipate that the measures adopted in this Order will address a significant number of the obstacles to subscribership on tribal lands identified on the record before us, we anticipate that additional regulatory steps may be necessary to encourage the deployment of facilities in areas where the cost of deployment is extraordinarily high. We will address these issues, in consultation with the Joint Board, when we consider reform of the rural high cost mechanism, and implementation of section 214(e)(3) of the Telecom Act. For this reason, we do not adopt additional measures at this time to address the problem of inadequate facilities deployment in the most geographically remote tribal areas.

43. *Competitive Service Providers.* By providing additional federal support targeted to low-income individuals on tribal lands, without regard to the specific technology used to provide the supported telecommunications services, we recognize that different technologies may offer solutions to address low subscribership levels on tribal lands. For example, commenters have suggested that wireless service may represent a cost-effective alternative to wireline service in sparsely populated, remote locations where the cost of line extensions is prohibitively expensive. Moreover, as we discuss further, a wireless eligible telecommunications carrier service offering that features an expanded local calling area along with a predetermined number of calls or minutes of calling within a tribal member's community of interest, may represent a solution to the problem of limited local calling areas and excessive toll charges in tribal areas. The enhanced Lifeline support adopted in this Order is competitively neutral because any carrier, including a wireless carrier, that receives designation as an eligible telecommunications carrier and is permitted by tribal authorities to serve on tribal lands may provide enhanced Lifeline service to qualifying low-income individuals on tribal lands.

44. *Limited Local Calling Areas.* As noted, because the boundaries of local calling areas for wireline carriers are established by the states, we recognize that we do not have the authority to address the problem of limited local calling areas directly. We find, however, that the enhanced Lifeline support may help to alleviate the financial burden of the excessive toll charges that low-income individuals on tribal lands incur when their local calling area does not encompass their community of interest. First, the availability of enhanced Lifeline support, by reducing local service rates by as much as $25 per month, effectively "frees up" money formerly dedicated to local service charges that a subscriber now may apply to the subscriber's toll charges. Second, the enhanced Lifeline support may spur

competitive entry by non-wireline carriers whose calling plans offer an expanded local calling area. Finally, our decision to increase the level of Lifeline support to reduce basic local service rates for qualified, low-income individuals on tribal lands may encourage states to expand local calling areas for subscribers whose local calling area does not encompass their community of interest. Specifically, in instances where the entire federal Lifeline support amount (up to $31.10 where no state matching funds are provided) is not needed to offset a subscriber's local service rate because the rate is less than this amount, the additional remaining support may provide states with incentives to examine and, where appropriate, expand local calling areas on tribal lands. By reducing the financial burden associated with excessive toll charges and by reducing the number of calls subject to toll charges, we conclude that the actions we take today will help low-income individuals on tribal lands to maintain their access to telephone service.

45. We decline at this time to adopt other proposals included in the *FNPRM* for offsetting the cost of intrastate toll service, based on our expectation that the measures adopted in this Order, although not providing support directly for intrastate toll charges, nevertheless will help to alleviate some of the burden associated with high intrastate toll charges on tribal lands. Because we find that the provision of federal support to offset the cost of intrastate toll service would expand upon the definition of supported services in section 254(c) of the Telecom Act, and would raise issues of competitive neutrality to the extent that interexchange carriers would not be eligible to receive such enhanced Lifeline support, we do not adopt our proposal to support intrastate toll service. We ask the Joint Board, in connection with its upcoming review of the definition of supported services, to issue a recommendation as to whether the Commission should include intrastate or interstate toll services or expanded area service within the list of supported services on tribal lands or in other areas. Finally, in recognition of the states' traditional jurisdiction and expertise in determining the appropriate size and scope of local calling areas, we concur in the view expressed by NTIA and other parties that counsel against our direct involvement in this area.

b. Expanded Link Up

46. In this Order, we provide up to $100 of federal support under the Link Up program to reduce the initial connection charges and line extension charges of qualifying low-income individuals on tribal lands. Thus, in addition to the currently available Link Up support amount, *i.e.*, half of the first $60 of a qualifying subscriber's initial connection charges up to a maximum of $30, we will provide up to an additional $70 of federal Link Up support to cover 100 percent of the remaining charges associated with initiating service between $60 and $130, for a total maximum support amount of $100 per qualifying low-income subscriber. Adoption of this measure will provide up to $100 in federal Link Up support to qualifying low-income individuals on tribal lands with initial connection or line extension costs of $130 or more. Based on information and comment on the record pertaining to the costs associated with initiating service in many tribal areas, we conclude that the existing $30 maximum level of Link Up support is, in many cases, far short of the support amount needed to offset such charges. A recent study of American Indian and Alaska Native tribal communities on tribal lands found that average household telephone installation charges for responding tribes was $78. We note that all parties who commented on the appropriate amount by which to increase the level of Link Up support recommend an increase in the maximum level of support to $100 and that no party opposes this amount or proposes an alternative amount.

47. As proposed in the *FNPRM*, we also expand the types of charges covered by the Link Up program to include any standard charges imposed on qualifying low-income individuals on tribal lands as a condition of initiating service, including both line extension and initial connection charges, up to the $100 maximum. Although the Link Up program traditionally has operated only to reduce qualifying consumers' initial connection or initial installation charges (*e.g.*, switch activation fees), we conclude that the expanded Link Up support also should apply to reduce facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service to a qualifying low-income individual on tribal lands. We take this action in recognition of the fact that many low-income individuals on tribal lands face as a result of their remote locations certain supplementary charges for the installation of new lines and the initiation of service, in addition to the typical switch activation fees. For example, on Pueblo Picuris, in New Mexico, qualifying low-income consumers are charged an initial connection charge of approximately $130 per consumer and other consumers are charged approximately $160 per consumer, $113 of which represents a zonal charge to cover the cost of expanding the capacity of existing facilities located near that community. To the extent that parties have identified line extension and construction costs as obstacles to subscribership on tribal lands, this measure is designed to increase subscribership among qualifying low-income individuals by minimizing certain of these up-front costs. In addition, we conclude that several of the justifications supporting our adoption of enhanced Lifeline support also support our adoption of expanded Link Up support. Specifically, by adopting the expanded Link Up support, we intend to create incentives for (1) eligible telecommunications carriers to construct telecommunications facilities on tribal lands that currently lack such facilities; and (2) new entrants offering alternative technologies to seek eligible telecommunications carrier status to serve tribal lands.

48. We note that the expanded Link Up support for qualifying low-income individuals living on tribal lands is competitively neutral in that it will apply to any eligible telecommunications carrier's standard charges for initiating service to qualifying consumers on tribal lands. For example, the expanded Link Up support may be used to offset the charge associated with "activating service" for an eligible telecommunications carrier that offers satellite telephone service. We further note, however, that the expanded Link Up support cannot be applied to customer premises equipment, *i.e.*, equipment that falls on the customer side of the network interface device boundary between customer and network facilities. We adopt this limitation in light of the fact that the federal universal service support mechanisms generally support only the cost of facilities falling on the network side of the demarcation point and because the Commission's definition of supported services does not include customer premises equipment or inside wiring. Expanded Link Up support would be available for qualifying consumers on tribal lands to offset charges for facilities that are necessary to enable a non-wireline eligible telecommunications carrier to provide service to the demarcation point. For example, if the provision of

a fixed wireless or satellite service required the installation of a receiver on the roof of a subscriber's premises to bring service to a demarcation point, *i.e.*, a network interface device, expanded Link Up support could be used to offset the cost of installing such facilities. To the extent that a non-wireline carrier can isolate costs associated with the portion of a handset that receives wireless signals, we conclude that those costs would be covered as costs on the network side of the network interface device.

49. With respect to GTE's concern that the use of expanded Link Up support to cover line extension costs may not provide sufficient funding, we note that, as discussed, where the cost to extend facilities to a low-income individual's residence is extraordinarily high, additional regulatory action may be necessary to encourage the deployment of facilities in such areas. To the extent that extraordinarily high costs pose a barrier to service in certain tribal areas, we will examine those issues in a future order implementing section 214(e)(3) of the Telecom Act and in connection with our consideration of the Joint Board's recommendations regarding high-cost universal service reform for rural carriers. We likewise are not dissuaded by GTE's concern that the expanded Link Up support will encourage inefficient investment in telecommunications infrastructure. We do not anticipate that the expanded Link Up support will encourage inefficient investment in telecommunications infrastructure because: (1) Support for line extension or other construction costs is capped at $100 per qualifying low-income individual on tribal lands; (2) the line extension or other construction costs in many tribal areas will exceed the maximum amount covered under the expanded Link Up support; and (3) carriers therefore may have to absorb certain costs in excess of the maximum expanded Link Up support amount in order to induce low-income individuals to initiate service,. Moreover, to the extent that a competitive eligible telecommunications carrier offering an alternative to wireline technology can extend service to a remote tribal area at a substantially lower cost than a wireline carrier, we believe that it is a more economically efficient use of federal universal service funds to create incentives, in the first instance, for the lower-cost provider to provide the service.

50. Our decision to apply the expanded Link Up support exclusively to low-income individuals living on tribal lands at this time and further examine whether to extend this approach to other unserved populations, is consistent with Bell Atlantic's suggestion that we adopt a means-tested approach to funding line extensions and, before adopting such an approach, resolve whether it should be applied to other unserved areas. With respect to Bell Atlantic's further suggestion that we resolve, prior to taking action, how much of an increase in expanded Link Up support is needed to have a significant impact on penetration, we note that the actions we take are necessarily based on our best estimates of how much support is needed to impact subscribership levels. We intend that the measures we adopt in this Order and their impact on subscribership levels will be subject to ongoing examination and possible refinement as may be appropriate.

c. Implementation Issues Associated With Rule Changes To Provide Enhanced Lifeline Support and Expanded Link Up Support to Low-Income Consumers on Tribal Lands

51. We anticipate that carriers may require additional time, beyond the effective date of this Order, to implement the tariff and billing system changes that may be necessary for eligible telecommunications carriers to offer the enhanced Lifeline and expanded Link Up services we adopt in this Order. Accordingly, we have determined to extend until October 1, 2000 the date by which eligible telecommunications carriers must comply with the new rule § 54.403(a)(4) and § 54.411(a)(3) adopted in this Order. An eligible telecommunications carrier serving tribal lands must make available, upon request by a qualifying low-income individual living on tribal lands, the enhanced Lifeline and Link Up services adopted in this Order by no later than October 1, 2000. Although we encourage eligible telecommunications carriers to implement the necessary changes and offer the expanded Lifeline and Link Up services prior to this date where possible, we believe that this date gives carriers sufficient time to comply with these rule amendments. Because we find significant public interest in not delaying the benefits of these rules beyond that required to enable carriers to comply with them without undue burden, we decline to extend the deadline for their implementation beyond October 1, 2000.

52. In order to receive reimbursement during the calendar year 2000 for enhanced Lifeline and expanded Link Up services provided during the fourth quarter 2000, an eligible telecommunications carrier must submit to USAC by no later than September 1, 2000, a letter from a corporate officer of the carrier containing the following information and certifications: (1) An estimate of (a) the number of eligible low-income subscribers in each of the carrier's study areas that the carrier projects will receive non-enhanced federal Lifeline or Link Up discounts in the fourth quarter of 2000 (*i.e.*, number of eligible subscribers on non-tribal lands), and (b) the number of eligible low-income subscribers in each of the carrier's study areas that the carrier projects will receive enhanced Lifeline or expanded Link Up discounts in the fourth quarter of 2000 as a result of actions taken in this Order (*i.e.*, number of eligible subscribers on tribal lands); (2) a statement of the corporate officer that the estimates provided are based on the good-faith estimate of the corporate officer; (3) the carrier's monthly undiscounted service rates for subscribers eligible to receive enhanced Lifeline support; (4) the monthly amount of additional support for each low-income subscriber who the carrier projects will be eligible for enhanced Lifeline support; (5) the number of low-income individuals on tribal lands for whom the carrier expects to initiate service in the fourth quarter of 2000 and the number of other low-income individuals for whom the carrier expects to initiate service in the fourth quarter of 2000; (6) the amount charged to initiate service for low-income subscribers on tribal lands and the amount charged to initiate service for other low-income subscribers; (7) an estimate of total federal Lifeline and Link Up support that the carrier anticipates it will require in the fourth quarter of 2000; (8) a certification that the carrier will pass through all federal Lifeline support amounts to its qualifying low-income subscribers; (9) a certification that the carrier has received the necessary approval of any non-federal regulatory authority (*e.g.*, a state commission or tribal regulatory authority) that is authorized to regulate such carrier's rates that may be necessary to implement the required rate reduction; and (10) a certification that the carrier is publicizing the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for these services.

53. We emphasize that all eligible telecommunications carriers, including those that do not submit to USAC by September 1, 2000 the letter described, are required to make available the Lifeline and Link Up discounts adopted in this Order to all qualifying low-

income consumers not later than October 1, 2000. We also remind all eligible telecommunications carriers that, as a condition for receiving federal Lifeline or Link Up support payments from USAC, they must submit to USAC at regular intervals an FCC Form 497. We direct the Common Carrier Bureau and USAC to revise the FCC Form 497 Lifeline Worksheet as necessary to implement the decisions and rule changes adopted in this Order. We delegate to the Common Carrier Bureau the authority to modify the FCC Form 497, along with any other forms that may be required to implement the decisions in this Order.

d. Expanded Lifeline and Link Up Qualification Criteria for Low-Income Consumers on Tribal Lands

54. We amend § 54.409(b) of our rules to enable qualifying low-income individuals living on tribal lands within a state that *does not* provide intrastate matching funds under the Lifeline program (either for the benefit of the state's population generally or tribal members specifically), to qualify for Lifeline and Linkup support by certifying their participation in certain alternative means-tested assistance programs. Specifically, we expand the federal default qualification criteria for eligibility for Lifeline and Link Up assistance, as set forth in § 54.409(b), to permit low-income individuals living on tribal lands to establish their income eligibility by certifying their participation in one of the following federal assistance programs: (1) BIA general assistance; (2) Temporary Assistance for Needy Families (TANF) tribally-administered block grant program; (3) Head Start Programs (under income qualifying eligibility provision only); or (4) National School Lunch Program (free meals program only). Given that the household income thresholds for these newly added programs range from 100–130 percent of the federal poverty level or incorporate state-determined poverty thresholds, we conclude these income thresholds are consistent with those associated with the programs included in our current federal default list.

55. We take this action based on evidence on the record before us that the existing federal qualification criteria governing eligibility under the Commission's Lifeline and Link Up programs, to the extent that these criteria do not include low-income programs specifically targeted to Indians, serve as a barrier to participation in the Lifeline and Link Up programs by low-income members of Indian tribes. A low-income tribal member effectively may be excluded from participation in Lifeline and Link Up in instances where that individual receives assistance or benefits under a program other than one of the programs listed in § 54.409(b) of our rules. For example, a low-income tribal member who receives cash assistance benefits under the BIA general assistance program, but receives no assistance or benefits under any of the means-tested programs listed in § 54.409(b) of the Commission's rules, would not be eligible today to receive Lifeline and Link Up support by virtue of the individual's non-participation in any of the low-income programs listed under § 54.409(b). Accordingly, we have expanded the list of programs contained in § 54.409 to include means-tested programs in which, according to commenters, low-income tribal members are more likely to participate and, therefore, represent more suitable income proxies for low-income tribal members.

56. We also make available the expanded eligibility criteria enumerated to all low-income individuals living on tribal lands. This action is consistent with our rationale discussed for extending the benefits of the enhanced Lifeline and expanded Link Up support to all qualifying low-income individuals on tribal lands, as opposed to limiting these benefits solely to qualifying low-income tribal members on tribal lands. We believe that, by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced. We also anticipate that reducing barriers to participation in the Commission's Lifeline and Link Up programs for all low-income individuals residing on tribal lands will help to increase the number of subscribers in a tribal community who can afford service and, thereby, provide greater incentive for carriers to invest and deploy telecommunications infrastructure on tribal lands. In addition, making the identical set of eligibility criteria available to all low-income individuals on tribal lands should make it administratively less burdensome for an eligible telecommunications carrier serving tribal lands to provide Lifeline and Link Up services in those areas. In particular, we believe that it will be less burdensome for a carrier to verify the income eligibility of all potential Lifeline and Link Up subscribers in a tribal area using the same set of eligibility criteria.

57. We decline to expand our federal default qualification criteria to include participation in services provided by the Indian Health Service of the U.S. Department of Health and Human Services given that such services are available to Indian tribal members generally, rather than exclusively to low-income tribal members, and therefore are inappropriate qualification criteria for our purposes. In addition to proposing the addition of certain of the means-tested programs that we adopt here, one commenter suggests that we include the Low Income Home Energy Assistance Program (LIHEAP), Aid to Families with Dependent Children (AFDC), and Tribal Work Experience Program (TWEP). We note that LIHEAP is included currently in the federal default qualification criteria listed in § 54.409(b) of our rules. In light of our understanding that TANF has superseded the AFDC program, we do not include the AFDC program, but we do include the tribally-administered TANF block grant program. In addition, we do not include TWEP insofar as it appears that participation in BIA general assistance is a prerequisite to participation in TWEP and, given that our expanded default qualification criteria now include participation in the BIA general assistance program, TWEP participants need only certify their participation in the BIA general assistance program.

58. At this time, we also do not adopt a qualification procedure by which low-income individuals on tribal lands could establish their income eligibility by self-certifying that their income is below a particular level, such as that set by the Federal Poverty Guidelines, as one commenter has suggested. Because we believe, however, that this approach may reach more low-income consumers, including low-income tribal members, than the current method of conditioning eligibility on participation in particular low-income assistance programs, we will further examine, in consultation with the Joint Board, possible revisions to § 54.409 of the Commission's rules to provide for self-certification based solely on income level.

59. For qualifying low-income individuals who live on tribal lands in states that *do* provide intrastate matching funds under the Lifeline program and therefore are subject to state-created eligibility criteria, we adopt the suggestion of the Wisconsin Public Service Commission and revise our eligibility guidelines under § 54.409(a). Specifically, in addition to establishing qualification criteria under § 54.409(a) that are based "solely on income or factors directly related to income;" we conclude that a state containing any tribal lands also must

ensure that its qualification criteria are reasonably designed to apply to low-income tribal populations within that state. We conclude that this modification to § 54.409(a) is preferable to an alternative approach under which we would require states to adopt the identical expanded qualification criteria as those adopted for purposes of the federal default qualification criteria. Our decision today will give a state whose eligibility criteria inadvertently exclude low-income tribal populations impetus to take corrective action, while giving the state flexibility to adopt eligibility criteria best-suited to the tribal populations within that state. Consistent with the Joint Board's goal of increasing low-income subscribership and ensuring that the availability of Lifeline and Link Up is not limited to particular populations, we conclude that this approach will help to ensure that all qualifying residents on tribal lands will receive the intended benefits of the federal Lifeline and Link Up programs.

60. We will permit, however, a low-income individual who lives on tribal lands and who is excluded from participation in the Lifeline and Link Up programs because the individual is not enrolled in any of the programs listed in a state's qualification criteria to qualify for *federal* Lifeline and Link Up support by certifying his or her eligibility under one of the means-tested programs listed in § 54.409, as revised herein. We conclude that this action is necessary to hasten the process of bringing telecommunications services to unserved and underserved tribal lands and in recognition of the time needed for states to revise their qualification criteria where those criteria limit participation in Lifeline and Link Up to individuals who receive benefits under one or more low-income assistance programs in which low-income tribal members typically do not participate. For example, in a state where Lifeline and Link Up eligibility hinges on enrollment in the Medicaid program, a low-income tribal member who receives health services through the Indian Health Services and does not participate in Medicaid would not be eligible for Lifeline and Link Up support (state or federal) in that state by virtue of that state's qualification criteria. This measure recognizes the unique barriers facing low-income tribal members living on tribal lands who may have been excluded inadvertently from participation in Lifeline and Link Up as a result of a state's qualification criteria. This action is consistent with the Commission's statement in the *Universal Service Order* that, where a state provides matching funds under the Lifeline program, the state's qualification criteria should apply. Conversely, if a low-income individual living on tribal lands is excluded from participation in the Lifeline and Link Up programs because that individual participates in none of the programs used as income proxies in a state's qualification criteria and such individual agrees to forgo state matching funds, then we find that the justification for applying state qualification criteria in that circumstance no longer applies.

D. Requiring Eligible Telecommunications Carriers To Publicize the Availability of Lifeline and Link Up Support

61. In codifying section 214(e)(1)(B) of the Telecom Act, Congress recognized that merely providing a service is not enough to ensure that the needed support is received. Rather, it imposed an obligation to advertise the availability of the supported services and the charges for those services. There is evidence in the record that the lack of information concerning the availability of Lifeline and Link Up services contributes to low penetration rates. We are concerned that eligible telecommunications carriers are not advertising the availability of Lifeline and Link Up services or, if they are, that such efforts are not reasonably designed to reach those likely to qualify for the service. Based on the apparent lack of awareness of the availability of Lifeline and Link Up services in many rural, low-income communities and to remove any confusion concerning eligible telecommunications carriers' obligation to publicize the availability of these services, we conclude that this obligation should be codified in our rules.

62. We recognize, as pointed out by United Utilities, Inc. (UUI), the limitations of traditional advertising media in promoting awareness of low-income support mechanisms within particular low-income populations. Specifically, UUI, a Native-owned eligible telecommunications carrier serving "predominantly Alaskan native villages," describes how it achieved significant increases in both penetration rates and Lifeline subscribership through an intensive outreach effort in 26 native villages. As part of its outreach effort, UUI waived "service order and hook-up fees," identified and contacted each household that did not have service, and often spoke in its customers' Native language to inform them of the Lifeline program and toll blocking. According to UUI, as a result of this effort, the household penetration level in these 26 villages increased by 4.9 percent, and Lifeline subscribership increased from 395 to 1,263 subscribers. In its comments, UUI states that:

> [R]egional advertising media generate very limited results, as does the placing locally of posters. Placing ads in regional publications and placing posters can be ineffective when carriers do not make special efforts, as did UUI, to contact low income households in person, to speak to them in their own language, and to adequately explain the Lifeline program and toll blocking options. UUI would take the position that a lack of information does * * * contribute to the significantly low penetration rates on tribal lands.

We commend these efforts and encourage other carriers to undertake similar efforts to comply with the rule amendments that we adopt in this Order.

63. We amend § 54.405 and § 54.411 of our rules to require eligible telecommunications carriers to publicize the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. We emphasize that these rule amendments shall apply to all eligible telecommunications carriers and not merely to those serving tribal lands. We take this action based on evidence in the record that the lack of awareness of the Lifeline and Link Up programs contributes to low penetration rates and to eliminate any confusion concerning eligible telecommunications carriers' obligation to publicize the availability of these services.

64. We recognize that a method that is reasonably designed to reach qualifying low-income subscribers in one location may not be effective in reaching qualifying low-income subscribers in another location. For that reason, we do not prescribe in this Order specific, uniform methods by which eligible telecommunications carriers must publicize the availability of Lifeline and Link Up support. We do, however, require an eligible telecommunications carrier to identify communities with the lowest subscribership levels within its service territory and make appropriate efforts to reach qualifying individuals within those communities. For example, we would expect a carrier to take into consideration the cultural and linguistic characteristics of low-income communities within its service territory as well as the efficacy of particular methods in reaching the greatest number of qualifying low-income individuals within those communities. In addition, we require an eligible telecommunications carrier to provide

to qualifying low-income individuals, through whatever public awareness method it selects, consumer information on the availability of toll blocking and toll limitation services for the purpose of enabling the subscriber to control the amount of toll charges that he or she may incur.

65. If we determine that eligible telecommunications carriers are not adopting methods reasonably designed to reach qualifying low-income individuals, additional action may be needed to increase public awareness among such individuals. To that end, we may address in a Further Notice of Proposed Rulemaking more specific methods by which eligible telecommunications carriers must publicize the availability of Lifeline and Link Up services. Finally, we note that the Commission's upcoming Indian telecommunications training initiative will be devoted, in part, to familiarizing carriers and tribal representatives with the Lifeline and Link Up programs generally, and the changes made to those programs by this Order, in particular.

E. Lifeline Jurisdictional Issues

66. *State Approval Requirement for Second-Tier Support.* We modify § 54.403(a) of our rules to make second-tier federal Lifeline support available to an eligible telecommunications carrier that is not subject to state rate regulation on the condition that the carrier certifies that it: (1) Will pass through the second-tier $1.75 federal support amount to its qualifying low-income subscribers, and (2) has received the necessary approval of any non-federal regulatory authority that is authorized to regulate such carrier's rates that may be required to implement the required rate reduction (*e.g.*, a tribal regulatory authority). To the extent that an eligible telecommunications carrier is not subject to rate regulation by any non-federal regulatory authority, then the carrier need only certify for this purpose that it: (1) will pass through the second-tier $1.75 federal support amount to its qualifying low-income subscribers, and (2) is not subject to rate regulation by any non-federal regulatory authority. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with USAC by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

67. By eliminating the need for eligible telecommunications carriers not subject to state rate regulation to obtain state action or seek a Commission waiver in order to receive second-tier federal Lifeline support, this revision to § 54.403(a) of our rules ensures that no category of carriers is subjected to more burdensome administrative requirements than are imposed on all other eligible telecommunications carriers seeking second-tier federal Lifeline support. We conclude that this amendment maintains appropriate deference to tribal regulatory authorities because second-tier support will not be disbursed where a tribal regulatory authority that regulates the rates of an eligible telecommunications carrier does not permit an equivalent reduction in consumers' bills. In addition, by requiring eligible telecommunications carriers to certify that they are not subject to state rate regulation before we make available second-tier federal Lifeline support, this result is consistent with our overall deference to the states in areas of traditional state ratemaking.

68. *Third-Tier Lifeline Support.* In light of our determination to provide enhanced federal Lifeline support of up to $25 for low-income individuals living on tribal lands through the creation of a fourth tier of the Lifeline program, we do not adopt our proposal in the *FNPRM* to provide the third tier of federal Lifeline support to carriers serving tribal lands where no intrastate matching funds are provided. In granting a temporary waiver of the matching requirement for third-tier federal Lifeline support in the *Gila River Order*, the Bureau was aware that, absent a waiver, a tribal carrier not subject to the jurisdiction of a state commission, such as Gila River Telecommunications, Inc., could receive only first-tier Lifeline support in the amount of $3.50 per qualifying low-income subscriber. Central to the Bureau's determination to grant a temporary waiver of the second-tier state approval requirement and the third-tier state matching requirement, was the recognition that, in light of the "low penetration and income levels on reservations," providing tribal carriers with only $3.50 per qualifying low-income subscriber was inconsistent with the "Commission's policy of fostering access to the public telephone network for those most in need."

69. We note that, because we modify the state approval requirement of § 54.403(a) for the provision of second-tier Lifeline support and adopt enhanced Lifeline support for qualifying low-income individuals, eligible telecommunications carriers will be entitled to receive nonmatching federal support of up to $31.10 per month, per qualifying low-income subscriber. We conclude that it is not necessary to waive the third-tier state matching requirement because we anticipate the enhanced Lifeline amount of $31.10 per month per qualifying low income subscriber will constitute a sufficient level of support, even on tribal lands where no intrastate support is generated. We further believe that the enhanced Lifeline will increase qualifying low-income individuals' access to the public telephone network more effectively than would our proposal in the *FNPRM* to waive the third-tier matching requirement, which would yield a maximum additional level of support of only $1.75 per qualifying subscriber. Given that all parties who commented on this issue supported our proposal to waive the third-tier state matching requirement in § 54.403(a) as a means to direct additional federal Lifeline support to low-income individuals on tribal lands, we conclude that our decision to accomplish this result through the creation of a fourth tier of the Lifeline program, in lieu of waiving the third-tier state matching requirement, is not inconsistent with the comments addressing this issue.

70. We revise § 54.403(a), however, to permit a carrier that is not subject to state rate regulation to satisfy the third-tier intrastate matching requirement of § 54.403(a) by generating its own matching funds, independently of the actions of the state in which it operates. Although we recognize that many tribes and tribal carriers may not have adequate resources to generate the matching funds necessary to receive third-tier federal support, we find that the level of nonmatching federal Lifeline support that will be available for qualifying low-income individuals on tribal lands provides an adequate level of support. If a tribe or a carrier, including a wireless carrier, that is not subject to state rate regulation nevertheless wishes to provide matching funds in order to receive third-tier federal Lifeline support and reduce local rates further, we do not want to preclude such a result. Accordingly, we modify § 54.403(a) of our rules to provide third-tier federal Lifeline support, up to a maximum of $1.75 per qualifying low-income customer as calculated in § 54.403(a), to an eligible telecommunications carrier that certifies that it: (1) Is not subject to state rate regulation, and (2) will pass through the total amount of third-tier support (intrastate and federal) to its qualifying low-income subscribers by an

equivalent reduction in those subscribers' monthly bill for local telephone service. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with USAC by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

71. By maintaining the matching requirement of § 54.403(a) as a condition for receiving third-tier federal Lifeline support, we leave undisturbed a primary goal underlying the Commission's adoption of third-tier support, namely, the creation of an incentive for states (or tribal authorities, tribal carriers, or wireless carriers, as the case may be) to reduce local rates even further. In the *Universal Service Order*, the Commission determined that $5.25 represented a sufficient level of baseline federal Lifeline support. The Commission established the additional third tier of federal Lifeline support, which entitles an eligible telecommunications carrier to receive up to $1.75 of federal Lifeline support per qualifying low-income consumer in a state that generates support from the intrastate jurisdiction, in order to preserve states' incentive to reduce local rates beyond that achieved under the first and second tiers of Lifeline support, as deemed appropriate by the state. Accordingly, a carrier that is not subject to state rate regulation, but that certifies that it will pass through to its qualifying low-income subscribers a rate reduction equivalent to both the intrastate and federal third-tier support amounts, will be entitled to receive third-tier federal Lifeline support. For the foregoing reasons, however, we maintain the matching requirement of § 54.403(a) as a condition for receiving third-tier federal Lifeline support.

72. *Filing of Federal Lifeline Plan.* Finally, we observe that § 54.401(d) of the Commission's rules currently does not apply to an eligible telecommunications carrier that is not subject to the rate regulatory authority of a state commission. That section directs a state commission to file, or requires a state commission to direct an eligible telecommunications carrier to file, with USAC information demonstrating that the carrier's Lifeline plan meets the requirements of Subpart E of the Commission's rules. We amend § 54.401(d) to require eligible telecommunications carriers not subject to the rate regulatory authority of a state commission to file with USAC information demonstrating that the carrier's Lifeline plan meets the requirements of Subpart E of the Commission's rules.

III. Designating Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of The Telecom Act

A. Discussion

(1) Scope of Section 214(e)(6) of the Telecom Act

73. *State Commission Designation of Eligible Telecommunications Carriers.* In light of the statutory framework and legislative history, we conclude that Congress, in enacting section 214(e)(6) of the Telecom Act, did not intend to alter the basic framework of section 214(e) of the Telecom Act, which gives the state commissions the principal role in designating eligible telecommunications carriers under section 214(e)(2) of the Telecom Act. This interpretation of section 214(e) of the Telecom Act is consistent with the legislative history, which indicates that section 214(e)(6) of the Telecom Act is not intended to "restrict or expand the existing jurisdiction of State commissions over any common carrier," but is intended to provide a means for the designation of a carrier over which a state commission lacks jurisdiction.

74. We conclude that section 214(e)(6) of the Telecom Act requires the Commission to conduct a designation proceeding in instances where the relevant state commission lacks, for whatever reason, the authority to perform the designation. We are guided by the statutory framework, legislative history, and the record before us, to conclude that the threshold question in determining whether the Commission may exercise its authority under section 214(e)(6) of the Telecom Act is whether the state commission lacks jurisdiction over the carrier, for any reason. We agree with commenters who suggest that the inquiry should include, but not be limited to, whether a state commission lacks jurisdiction over the particular service or geographic area. The determination as to whether a state commission lacks jurisdiction over a particular carrier is a fact-specific inquiry that may depend on interpretations of federal, state, and tribal law where appropriate.

75. *Jurisdiction Over Carriers Serving Tribal Lands.* We are not persuaded by claims that the exercise of our authority under section 214(e)(6) of the Telecom Act is limited to designations of eligibility sought by tribally-owned carriers serving tribal lands. We conclude that neither the language of section 214(e)(6) of the Telecom Act nor its legislative history provides any indication that it applies only to tribally-owned carriers serving tribal lands. Section 214(e)(6) of the Telecom Act applies to any carrier "not subject to the jurisdiction of a state commission." Moreover, the legislative history supports this interpretation. In sum, we agree with those commenters who contend that the legislative history of section 214(e)(6) of the Telecom Act makes clear that, although the class of carriers to be covered by section 214(e)(6) of the Telecom Act was dominated by tribally-owned carriers, it was not restricted to them.

76. Nor do we find persuasive claims that the Commission generally has authority to make all eligible telecommunications carrier determinations over carriers providing telecommunications service on tribal lands. We do not believe that Congress intended the Commission to use section 214(e)(6) of the Telecom Act to usurp the role of a state commission that has jurisdiction over a carrier providing service on tribal lands. On the contrary, in adopting section 214(e)(6) of the Telecom Act, Congress recognized that some state commissions had asserted jurisdiction over tribal lands. Congress also acknowledged pending jurisdictional disputes between states and tribes and made clear that the adoption of section 214(e)(6) of the Telecom Act was not "intended to impact litigation regarding jurisdiction between State and federally-recognized tribal entities."

77. As discussed, the Commission's authority under section 214(e)(6) of the Telecom Act applies only when a carrier is not subject to the jurisdiction of a state commission. The determination as to whether a carrier providing service on tribal lands is subject to the jurisdiction of a state commission is a complicated and intensely fact-specific legal inquiry informed by principles of tribal sovereignty and requiring the interpretation of treaties, and federal Indian law and state law. Such determinations usually consider whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether the tribe has consented to state jurisdiction, either in treaties or otherwise. The inquiry as to whether a state commission has authority to regulate the provision of telecommunications service on tribal lands is a particularized one, and thus specific to each state and the facts and circumstances surrounding the provision of the service. As the U.S.

Supreme Court has stated, "there is no rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members."

78. *Jurisdiction Over Particular Services.* We further conclude that the technology used to provide the telecommunications service does not *per se* determine whether the state commission or this Commission has jurisdiction over the carrier for purposes of designating the carrier as eligible to receive federal universal service support. Specifically, we conclude that the provision of service by terrestrial wireless or satellite carrier does not *per se* place the carrier outside the parameters of the state commission designation authority under section 214(e)(2) of the Telecom Act. We believe that if Congress had intended to exempt particular services from the state commission designation process, it would have expressly done so in section 214(e) of the Telecom Act. We therefore agree with NTIA that there is nothing in the statute or the legislative history to support the notion that, by enacting section 214(e)(6) of the Telecom Act, Congress intended to remove from the state commissions the primary responsibility for designating wireless or satellite carriers as eligible telecommunications carriers.

79. We further conclude that state commission designation of a Commercial Mobile Radio Service (CMRS) provider pursuant to section 214(e)(2) of the Telecom Act does not constitute entry regulation in violation of section 332(c)(3) of the Telecom Act. Section 332(c)(3) of the Telecom Act bars state and local rate and entry regulation of CMRS providers, but allows the states to regulate "other terms and conditions of service." Section 332(c)(3) of the Telecom Act prohibits direct state regulation of entry by CMRS providers (*e.g.*, a regulation that requires the CMRS provider to obtain a certificate of public convenience and necessity from the state prior to providing service), but a regulation does not necessarily run afoul of section 332(c)(3) of the Telecom Act solely because it may make it more difficult for some carriers to offer service. We conclude that the prohibition on "entry" regulation in section 332(c)(3) of the Telecom Act does not prohibit states from designating CMRS providers as eligible telecommunications carriers because such designation relates to a carrier's right to receive federal universal service support, rather than a carrier's legal right to do business in a state. We need not decide for present purposes whether, or under what conditions, a particular state's eligible telecommunications carrier designation process as applied to a CMRS provider might constitute impermissible entry regulation, rather than permissible regulation of terms and conditions of service. Moreover, this conclusion does not affect our ability to determine whether a state commission's designation process or denial of eligibility may constitute a barrier to entry under section 253 of the Telecom Act.

80. We note that several states have already issued orders addressing designation requests from wireless carriers. We encourage states to move forward expeditiously to resolve pending requests in a pro-competitive manner designed to preserve and advance universal service.

(2) Section 214(e)(6) of the Telecom Act Designation Process for Carriers Serving Non-Tribal Lands

81. As discussed, the threshold question for determining whether the Commission may exercise its authority to designate a carrier as an eligible telecommunications carrier under section 214(e)(6) of the Telecom Act is whether the state commission lacks jurisdiction over the carrier, for any reason. Section 214(e) of the Telecom Act does not, however, define the circumstances under which a state commission may lack jurisdiction, nor does it address whether such jurisdictional determinations should be made by the state commission or this Commission. We conclude that carriers seeking designation from this Commission under section 214(e)(6) of the Telecom Act for service provided on non-tribal lands must first consult with the relevant state regulatory commission on the issue of whether the state commission has jurisdiction to designate the carrier, even if the carrier asserts that the state commission lacks jurisdiction over the carrier. In so doing, we note that jurisdictional challenges relating to the authority of the state commission to designate certain carriers or classes of carriers on non-tribal lands derive almost exclusively from interpretations of state law.

82. While a carrier may believe state law to preclude the state commission from exercising jurisdiction over the carrier for purposes of designation under section 214(e)(2) of the Telecom Act, we conclude, as a matter of federal-state comity, that the carrier should first consult with the state commission to give the state commission an opportunity to interpret state law. We conclude that state commissions should be allowed a specific opportunity to address and resolve issues involving a state commission's authority under state law to regulate certain carriers or classes of carriers. Only in those instances where a carrier provides the Commission with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation will we consider section 214(e)(6) of the Telecom Act designation requests from carriers serving non-tribal lands. We conclude that an "affirmative statement" of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier. Each carrier should consult with the state commission to receive such a notification, rather than relying on notifications that may have been provided to similarly situated carriers.

83. We are concerned, however, that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We believe it is unreasonable to expect prospective entrants to enter a high-cost market and provide service in competition with an incumbent carrier that is receiving support, without knowing whether they are eligible to receive support. If new entrants do not have the same opportunity to receive universal service support as the incumbent, such carriers may be unable to provide service and compete with the incumbent in high-cost areas. As the Commission has previously concluded, competitively neutral access to such support is critical to ensuring that all Americans, including those that live in high-cost areas, have access to affordable telecommunications services. We are therefore concerned that indefinite delays in the designation process will thwart the intent of Congress, in section 254 of the Telecom Act, to promote competition and universal service to high-cost areas. Accordingly, we commit to resolve, within six months of the date filed at the Commission, all designation requests for non-tribal lands that are properly before us pursuant to section 214(e)(6) of the Telecom Act. We also strongly encourage state commissions to resolve designation requests filed under section 214(e)(2) of the Telecom Act in the same time frame.

(3) Section 214(e)(6) of the Telecom Act Designation Process for Carriers Serving Tribal Lands

84. In this section, we establish a framework designed to streamline the

process for eligibility designation of carriers providing service on tribal lands. As discussed in greater detail, we conclude that carriers seeking eligibility designations for service provided on tribal lands may petition this Commission under section 214(e)(6) of the Telecom Act for a determination of whether the carrier is subject to the state commission's jurisdiction and, in instances where the state lacks jurisdiction, a decision on the merits of the designation request. Under this framework, a carrier seeking an eligibility designation for service provided on tribal lands will avoid any costs and delays associated with resolving the threshold jurisdictional determination in a state designation proceeding and possible court appeal of that state jurisdictional decision. Moreover, this framework will provide a safe harbor for carriers unwilling to have the jurisdictional question resolved by a state commission. This streamlined designation process for carriers serving tribal lands is intended to facilitate the expeditious resolution of such requests so as to increase the availability of affordable telecommunications services to tribal lands, while preserving the state commissions' jurisdiction consistent with federal, tribal, and state law. We believe that this process will balance carefully the principles of tribal sovereignty and the demonstrated need for access to affordable telecommunications services on tribal lands, against the appropriate exercise of state jurisdiction over carriers operating on such lands.

85. As discussed, we conclude that section 214(e)(6) of the Telecom Act directs the Commission to perform the eligibility designation in instances where the carrier is not subject to the jurisdiction of a state commission. Neither section 214(e)(2) of the Telecom Act nor section 214(e)(6) of the Telecom Act, however, address how such jurisdictional determinations should be made or by which commission. In the absence of specific guidance in the statute as to how such jurisdictional determinations should be made, we conclude that this Commission may resolve the threshold question of whether a carrier seeking eligibility designation for service provided on tribal lands is subject to the jurisdiction of the state commission. This conclusion is consistent with the execution of our duty to preserve and advance universal service under section 254 of the Telecom Act, principles of tribal sovereignty, and the unique federal trust relationship between Indians tribes and the federal government.

86. We recognize that a determination as to whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a legally complex inquiry extending beyond interpretations of state law to principles of tribal sovereignty, federal Indian law, and treaties. Evaluating the extent to which a state commission has jurisdiction over activities conducted on tribal lands, whether by members or non-members of a tribe, will involve questions of whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether a tribe has consented to state jurisdiction in treaties or otherwise. Thus, we find that such jurisdictional determinations, which will involve an analysis of principles of tribal sovereignty, federal Indian law, treaties, and state law, may be appropriately performed by this Commission.

87. The jurisdictional ambiguities associated with the question of whether a state may designate a carrier serving tribal lands may unnecessarily delay the provision of affordable services in high-cost areas. We intend this framework to facilitate the designation of carriers eligible to receive federal universal service support for service provided on tribal lands by permitting such carriers to seek resolution of the jurisdictional issue directly from this Commission. Absent this framework, the designation of such carriers as eligible to receive federal universal service support may be otherwise unnecessarily delayed pending resolution of the jurisdictional question, or potentially prevented entirely in those instances where the tribal authority will not support the carrier's submission to state commission jurisdiction.

88. Moreover, in establishing this framework for the designation of eligible telecommunications carriers serving tribal lands, we are guided by our recognition of, and respect for, principles of tribal sovereignty and self-determination. As described in the Commission's *Indian Policy Statement*, we acknowledge the principles of tribal sovereignty and self-government and the unique trust relationship between the Indian tribes and the federal government. We are mindful that the federal trust doctrine imposes on federal agencies a fiduciary duty to conduct their authority in matters affecting Indian tribes in a manner that protects the interest of the tribes. We are also mindful that federal rules and policies should therefore be interpreted in a manner that comports with tribal sovereignty and the federal policy of empowering tribal independence.

89. In light of our obligation to preserve and advance universal service under section 254 of the Telecom Act, principles of tribal sovereignty and self-determination, and our unique federal trust responsibility, we adopt the following framework for resolution of designation requests under section 214(e)(6) of the Telecom Act for carriers serving tribal lands. We conclude that a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service provided on tribal lands may petition the Commission for designation under section 214(e)(6) of the Telecom Act, without first seeking designation from the appropriate state commission. The petitioner must set forth in its petition the basis for its assertion that it is not subject to the state commission's jurisdiction, and bears the burden of proving that assertion. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. The Commission will release, and publish in the **Federal Register**, a public notice establishing a pleading cycle for comments on the petition. The Commission will also send the public notice announcing the comment and reply dates to the affected state commission by overnight express mail to ensure that the state commission is notified of the notice and comment period.

90. Based on the evidence presented in the record, the Commission shall make a determination as to whether the carrier has sufficiently demonstrated that it is not subject to the state commission's jurisdiction. In the event the Commission determines that the state commission lacks jurisdiction to make the designation and the petition is properly before the Commission under section 214(e)(6) of the Telecom Act, the Commission will decide the merits of the request within six months of release of an order resolving the jurisdictional issue. If the carrier fails to meet its burden of proof that it is not subject to the state commission's jurisdiction, the Commission will dismiss the request and direct the carrier to seek designation from the appropriate state commission. In such cases, we urge state commissions to act within a similar time frame (*i.e.*, six months) to resolve such requests as expeditiously as possible.

91. We emphasize that a carrier seeking a section 214(e)(6) of the Telecom Act designation for service provided on tribal lands must bear the

burden of demonstrating that it is not subject to the state commission's jurisdiction. As discussed, we reject the contention that section 214(e)(6) of the Telecom Act provides the Commission with the blanket authority to make all eligible telecommunications carrier designations over carriers providing service on tribal lands. In so doing, we recognize that the issue of whether a state commission may exercise jurisdiction over a carrier providing service on tribal lands is a particularized inquiry guided by principles of tribal sovereignty, federal Indian law, and treaties, as well as state law. Therefore, carriers seeking an eligibility designation from this Commission for the provision of service on tribal lands should provide fact-specific support demonstrating that the carrier is not subject to the state commission's jurisdiction for the provision of service on tribal lands. Such support should include any relevant case law, statutes, and treaties. We emphasize that this is a strict burden and that generalized assertions regarding the state commission's lack of jurisdiction will not suffice to confer jurisdiction on this Commission under section 214(e)(6) of the Telecom Act. We would also find informative any statements and analyses the tribal authority might provide regarding the petitioner's request for designation and the state commission's exercise of jurisdiction. For example, carriers may include with their petitions a letter from the appropriate tribal authority addressing the jurisdictional question or the merits of the designation request.

92. We decline to place on the affected state commission the burden of proving that it has jurisdiction over a particular carrier. To do so would suggest that state commission bear the burden of overcoming a general presumption that states do not have jurisdiction over carriers providing service on tribal lands. Such a presumption is inconsistent with our determination that the issue of whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a particularized inquiry, and thus specific to each state and the facts and circumstances surrounding the provision of the service.

93. We strongly encourage the participation of the affected state commissions and tribal authorities in this process. The determination of whether a particular carrier is subject to the state commission's jurisdiction for service provided on tribal lands is one that will be greatly informed by the participation of the tribes and state commission or other state officials. Based on our experience to date with section 214(e)(6) of the Telecom Act, we believe that there will be some state commissions that will not object to the Commission's designation of carriers serving tribal lands as eligible to receive federal universal service support. We look forward to working with the state commissions, tribal authorities, and members of industry to resolve these jurisdictional questions, and ultimately the designation requests, in an expeditious manner. To that end, we seek comment in a Further Notice of Proposed Rulemaking on additional measures that may be implemented to further facilitate the designation process for the provision of service on tribal lands.

94. We emphasize, however, that this process is limited in several respects. First, a carrier may avail itself of this process only to seek a designation of eligibility to receive federal universal service support for service provided on *tribal lands*. Petitioners seeking an eligibility designation under section 214(e)(6) of the Telecom Act for service provided on tribal lands must accurately describe the specific geographic areas they wish to serve, and must demonstrate that such areas satisfy the definition of tribal lands we adopt in this Order. As discussed, the federal government has a unique trust responsibility with respect to members of federally-recognized tribes. In addition, the determination of jurisdiction over a carrier serving tribal lands is an inquiry that will extend beyond questions of state law, and will be informed by principles of tribal sovereignty, federal law, and treaties. Thus, it is appropriate and reasonable that the Commission, in executing its statutory obligation to preserve and advance universal service, should determine whether a carrier seeking an eligibility designation for services provided on tribal lands is subject to the state commission's jurisdiction.

95. Second, a carrier may only avail itself of this process when it has not initiated a designation proceeding before the affected state commission. In order to avoid the potential for "forum-shopping" and the costs and confusion caused by a duplication of efforts between this Commission and state commissions, we will not make a jurisdictional determination under section 214(e)(6) of the Telecom Act if the affected state commission has initiated a proceeding in response to a designation request under section 214(e)(2) of the Telecom Act. Nothing we adopt today affects the ability of a state commission to make an eligible telecommunications carrier designation for a carrier serving tribal lands, where jurisdiction may otherwise be in dispute among the parties.

96. Finally, any determination made by this Commission pursuant to section 214(e)(6) of the Telecom Act relates only to a carrier's eligibility to receive *federal* universal service support for the provision of service on tribal lands. We emphasize that the Commission's determination of whether a particular carrier is subject to the state commission's jurisdiction for service provided on tribal lands is limited to the state commission's ability to designate the carrier as eligible to receive federal universal service support.

B. Pending Requests for Designation Pursuant to Section 214(e)(6) of the Telecom Act

(1) Cellco Petition for Designation as an Eligible Telecommunications Carrier for Maryland and Delaware

97. *Discussion.* Consistent with the Maryland Commission's request and our conclusions concerning the role state commissions play in the designation of carriers under section 214(e) of the Telecom Act, we dismiss without prejudice Cellco's request for designation of eligible telecommunications carrier status for service provided in Maryland. Although we do not reach the merits of the Cellco request for designation in Delaware in this Order, we conclude that the Delaware Commission's comments in this proceeding provide a sufficient basis for the exercise of our jurisdiction to consider the merits of the request for designation under section 214(e)(6) of the Telecom Act. We will discuss each of the requests in greater detail.

98. *Maryland Request.* At the request of the Maryland Commission, we dismiss Cellco's request for designation as an eligible telecommunications carrier in Maryland. In a letter to the Commission on April 18, 2000, the Maryland Commission stated its intent to assert jurisdiction over CMRS providers, including Cellco, for purposes of making eligible telecommunications carrier designations in Maryland. We are not persuaded by Cellco's statement that it has "informally confirmed with the professional staffs of the Maryland and Delaware commissions that these statutory exclusions are complete exclusions from the commissions' jurisdiction." We emphasize that carriers seeking a designation from this Commission for service provided on non-tribal lands must provide to us an affirmative statement from the state commission or a court of competent

jurisdiction that the carrier is not subject to the state commission's jurisdiction for purposes of eligible carrier designation.

99. We decline Cellco's invitation that we should interpret the relevant state law to conclude that it is not subject to the state commission's jurisdiction. We note that, while Cellco has cited provisions of applicable state law in both Delaware and Maryland to support its contention that the state regulatory commission has no designation authority over wireless carriers, we believe that, as a matter of federal-state comity, such interpretations are better performed by the affected state commissions. As this case demonstrates, in the absence of explicit state guidance in the form of an affirmative statement from the state commission or a court of competent jurisdiction regarding the interpretation of its state law, premature intervention by the Commission may lead to confusion and duplication of efforts with the state commission, and an improper exercise of our jurisdiction under section 214(e)(6) of the Telecom Act.

100. Should Cellco challenge the Maryland Commission's exercise of authority under section 214(e)(2) of the Telecom Act, resolution of the jurisdictional issue may be obtained either through the state commission proceeding or in a judicial proceeding. Should the state commission or courts ultimately determine that Cellco is not subject to the state commission's jurisdiction for purposes of the eligibility designation, the Commission will assume the designation responsibility under section 214(e)(6) of the Telecom Act upon request. We reiterate our expectation that state commissions will act as expeditiously as possible on requests for designation. Should Cellco submit to the Maryland Commission a request for designation under section 214(e)(2) of the Telecom Act, we strongly encourage the Maryland Commission to resolve this request within six months of the filing date.

101. *Delaware Request.* With regard to Cellco's request for designation as an eligible telecommunications carrier for service provided in Delaware, we conclude that the statements contained in comments filed by the Delaware Commission are sufficient to warrant our assertion of jurisdiction under section 214(e)(6) of the Telecom Act. In its comments, the Delaware Commission confirms that the Delaware General Assembly has, for almost two decades, withheld from the Delaware Commission jurisdiction over cellular service or other mobile radio services. Specifically, the Delaware Commission cites to Delaware law stating that it "shall have no jurisdiction over the operation of telephone service provided by cellular technology or by domestic public land mobile radio service or over the rates to be charged for such service or over property, property rights, equipment or facilities employed in such service." According to the Delaware Commission, it has consistently taken the position that it has not been granted regulatory jurisdiction over any aspect of telephone service provided by mobile, and now fixed, cellular wireless technology. The Delaware Commission states that it does not currently exercise any form of supervisory jurisdiction over wireless CMRS providers, including Cellco, and acknowledges that this Commission, not the Delaware Commission, "must be the entity to * * * supervise and enforce the proper application of such support by Cellco."

102. Consistent with the framework adopted in this Order, we conclude that we have jurisdiction to consider Cellco's request for designation as an eligible telecommunications carrier for services provided in Delaware. As a result, we will address Cellco's Delaware request for designation as an eligible telecommunications carrier within six months from the release date of this Order.

(2) Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for Wyoming

103. *Discussion.* Consistent with the framework adopted in this Order, we conclude that we have the authority under section 214(e)(6) of the Telecom Act to consider this petition. We commend the Wyoming Commission for its resolution of the threshold jurisdictional question, and encourage other state commissions to resolve such issues as expeditiously as possible. As with the Cellco Delaware request, we will promptly decide the merits of Western Wireless' request for designation in Wyoming within six months from the release date of this Order.

(3) Western Wireless Petition To Be Designated as an Eligible Telecommunications Carrier for the Crow Reservation in Montana

104. *Discussion.* Consistent with the framework we adopt in this Order, we will resolve the threshold question of whether Western Wireless is subject to the jurisdiction of the Montana Commission for purposes of determining eligibility for federal support for services provided on the Crow Reservation. As discussed, we have concluded that section 214(e)(6) of the Telecom Act does not provide the Commission with the *per se* authority to designate carriers based solely on the provision of service on tribal lands. As noted, determinations as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a fact-specific inquiry informed by principles of tribal sovereignty, treaties, state law, and federal Indian law. Consistent with the discussion, we conclude that Western Wireless should bear the burden of demonstrating that it is not subject to the jurisdiction of the Montana Commission for purposes of an eligibility designation for services provided on the Crow Reservation.

105. Consistent with the framework we establish and to permit Western Wireless a full and fair opportunity to present a case consistent with the guidance we give in this Order, we will reopen the record in this proceeding to allow Western Wireless an opportunity to supplement its claim that the Montana Commission lacks jurisdiction to make the designation for service provided on the Crow Reservation. Western Wireless shall notify the Commission in writing within 15 days of release of this Order whether it wishes to supplement the record consistent with the determinations in this Order. If Western Wireless chooses to supplement the record, it shall do so within 30 days of the date it notifies the Commission of its intent to do so. It shall also provide copies of the supplemental filing to the Montana Commission at the time of its filing with the Commission. In any event, the Commission will release, and publish in the **Federal Register**, a public notice announcing that the Montana Commission, and any other interested party, shall have 30 days to respond to Western Wireless' original petition and/or supplemental filing. To ensure that the Montana Commission receives prompt notification of the 30-day period, the Commission shall also send to the Montana Commission, by overnight express mail, the public notice announcing the comment cycle deadline. Should the Commission determine, on the basis of the record developed, that the Montana Commission does not have authority to perform the eligibility designation for Western Wireless' service provided on the Crow Reservation, the Commission will exercise its authority under section 214(e)(6) of the Telecom Act to decide the merits of the request within six

months after release of an order resolving the jurisdictional issue.

(4) Smith Bagley Petition To Be Designated as an Eligible Telecommunications Carrier in Arizona and New Mexico

106. *Discussion.* Consistent with the framework we adopt in this Order for the designation of carriers serving tribal lands, we dismiss without prejudice Smith Bagley's section 214(e)(6) of the Telecom Act request for designation as an eligible telecommunications carrier for tribal lands in Arizona and New Mexico. Both the Arizona and New Mexico Commissions are currently considering section 214(e)(2) of the Telecom Act requests for designation filed by Smith Bagley prior to the date of their filing with this Commission. As we concluded, in order to avoid the possibility of forum-shopping and the costs and confusion caused by a duplication of efforts between this Commission and state commissions, we decline to address a designation request under section 214(e)(6) of the Telecom Act if a request for eligible telecommunications carrier designation is pending at the state commission.

107. Accordingly, we dismiss without prejudice Smith Bagley's request for designation under section 214(e)(6) of the Telecom Act to permit the Arizona and New Mexico Commissions to complete their proceedings on the merits of Smith Bagley's pending requests. We request, however, that both state commissions act expeditiously in consideration of Smith Bagley's designation requests. We note that those requests have now been pending for over one year. As we have discussed, we are concerned that unreasonable delays in acting upon designation requests will hinder the availability of affordable telecommunications services in high-cost areas. We therefore strongly encourage the Arizona and New Mexico Commissions to resolve Smith Bagley's pending requests for designation as soon as possible.

(5) Cheyenne River Sioux Tribe Telephone Authority Petition for Designation as an Eligible Telecommunications Carrier

108. *Discussion.* In accordance with our conclusion that section 214(e)(6) of the Telecom Act requires the Commission to designate an eligible telecommunications carrier only when the state lacks jurisdiction under section 214(e)(2) of the Telecom Act, we dismiss Cheyenne Telephone Authority's petition without prejudice. We find no reason before us to disturb the South Dakota Commission's designation of the Cheyenne Telephone Authority as an eligible telecommunications carrier. In addition, we note that this conclusion is consistent with our prior statement that, "[a]ny carrier that is able to be or has already been designated as an eligible telecommunications carrier by a state commission is not required to receive such designation from the Commission."

109. In reaching this conclusion we note that, as with the case of the Cheyenne Telephone Authority, many tribes may have ongoing jurisdictional disputes with state commissions. We are hopeful that our decision not to disturb the finding of the state commission in this instance will encourage state commissions and tribes to move forward with the designation process for determining eligibility for federal universal service support despite disagreements relating to the state's exercise of jurisdiction over carriers providing service on tribal lands. We believe that to disturb a state commission's prior determination that a particular carrier is eligible for federal universal service support would have the unintended effect of forcing the tribal authority to choose between delaying its designation request pending a lengthy resolution of disputed jurisdictional issues or conceding jurisdiction to the state commission for other purposes in order to be eligible for federal universal service support.

IV. Procedural Matters

A. Paperwork Reduction Act

110. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval.

B. Final Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *FNPRM*. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

(1) Need for and Objectives of this Report and Order and the Rules Adopted Herein

112. The Commission issues this Twelfth Report and Order (Order) as a part of its implementation of the Act's mandate that "[c]onsumers in all regions of the Nation * * * have access to telecommunications and information services * * *." This Order implements that mandate by enhancing Lifeline and LinkUp support for low-income individuals living on tribal lands, as defined herein. This Order also outlines the process the Commission will follow in designating telecommunications carriers as eligible telecommunications carriers under section 214(e) of the Telecom Act for the purposes of receiving universal service support under section 254(e) of the Telecom Act. Our objective is to fulfill section 254 of the Telecom Act's mandate that "all regions of the Nation * * * have access to telecommunications" with respect to tribal lands, which have the lowest reported subscribership levels for telecommunications in the Nation.

(2) Summary of Significant Issues Raised by Public Comments in Response to the IRFA

113. We received no comments directly in response to the IRFA in this proceeding. Some comments generally addressed small business issues, but these issues are not a part of this present Order.

(3) Description and Estimate of the Number of Small Entities to Which Rules Will Apply

114. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the new rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. And finally, "small governmental jurisdiction" generally

means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. In this Order, the Commission stated that the new rules will affect all providers of interstate telecommunications and interstate telecommunications services. We further describe and estimate the number of small business concerns that may be affected by the rules adopted in this Order.

115. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

116. The most reliable source of information regarding the total numbers of common carriers and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

117. We have included small incumbent LECs in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

118. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules in this Order.

119. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in this Order.

120. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the decisions and rule changes adopted in this Order.

121. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater

precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in this Order.

122. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rules adopted in this Order.

123. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

124. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Order.

125. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in this Order.

126. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

127. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, 62 FR 1004 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area

Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses. As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

128. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

129. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

130. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

131. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

132. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules in this Order includes these eight entities.

133. *Multipoint Distribution Systems (MDS).* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

134. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules in this Order.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

135. In this Order, we adopt revisions to Part 54 that enhance universal service support for low-income individuals living on tribal lands, that remove certain administrative burdens that have prevented carriers not subject to state rate regulation, such as many tribal carriers, from providing certain tiers of Lifeline service to qualifying low-income consumers, and that clarify how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers.

136. With respect to our rules enhancing Lifeline and Link-Up assistance on tribal lands, carriers will be required to ascertain applicant eligibility for these forms of low-income universal service support. Ascertainment of applicant eligibility will entail determining whether a particular applicant is (1) a low-income applicant, under the criteria for income eligibility set forth; and (2) living on or near a reservation. This Order also clarifies and elaborates on carrier obligations to publicize the availability of Lifeline and Link-Up assistance, although no new carrier obligations are imposed. Furthermore, this Order changes the requirements placed upon carriers for the provision of second-tier and third-tier Lifeline support. A carrier not subject to state rate regulation may now obtain second-tier Lifeline support provided it certifies to the Administrator that it will pass through the full amount of any second-tier support it receives to qualifying low income subecribers, and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction. Such a carrier also may now obtain third-tier Lifeline support provided that the carrier or a tribe provides the local matching funds necessary to receive third-tier federal Lifeline support. Finally, because carriers are required to make low-income assistance available to qualifying customers, the rules and

decisions in this Order expanding the level and types of support available to any carrier's customers will require that carrier to make such expanded support available to its qualifying customers.

137. Our clarification of how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers will impose no additional reporting, recordkeeping, or other compliance requirements on carriers seeking eligible telecommunications carrier designation for the provision of service on tribal lands, but instead should diminish some carriers' legal costs by setting forth guidelines for carriers seeking such designation from the Commission. A state government, however, seeking to preserve a claim of its jurisdiction over any carrier seeking such designation from the Commission, will have to indicate to the Commission its jurisdictional claim in order for the Commission to refrain from entertaining such a designation proceeding until the state makes a final determination on its jurisdiction over that carrier.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

138. With respect to our rules enhancing Lifeline and LinkUp assistance on tribal lands, we emphasize that most of the information carriers will be required to examine in order to determine applicant eligibility are already collected pursuant to other federal programs for Indians and for low-income individuals, and are readily available. For example, BIA maintains and regularly publishes in the **Federal Register** lists of those areas in the Nation which fall under BIA's definition of "reservation" or are considered "near reservation." Moreover, carriers are already required to determine applicants' income eligibility under the existing Lifeline and LinkUp support mechanisms; this Order modifies those eligibility criteria merely by providing certain additional means-tested programs that low-income individuals living on tribal lands may use to establish their income eligibility. In order to apply these new eligibility criteria, carriers will not be required to make *de novo* evaluations of subscriber eligibility. Rather, carriers will only need to consult the decisions regarding particular applicants' low-income status already made by other government entities. Thus, the inquiry carriers will have to make to determine whether an applicant for the low-income support adopted in this Order meets the income eligibility requirement should not be substantially different from the inquiry carriers must already make for the Commission's existing low-income support mechanisms. Furthermore, our clarification of carrier obligations to publicize the availability of Lifeline and Link-Up assistance does not expand existing obligations or create additional ones; rather, this Order clarifies existing obligations under section 214(e) of the Telecom Act and our previous Orders. Additionally, the certifications required by our new rules for second and third tier Lifeline support impose at most a minimal burden on carriers seeking to obtain such support. Finally, to the extent the rules and decisions adopted in this Order require carriers to change their operations in order to deliver expanded support to qualifying customers, for example by changing their billing systems, we have some indication that the costs of making such modifications, if any, are minimal. Furthermore, to the extent the rules and decisions adopted in this Order entail any such costs, they also provide substantial financial benefits, by providing carriers with guaranteed revenue streams in place of billings subject to the risks of non-collection. We conclude that, in general, the compliance requirements entailed by the low-income support mechanisms adopted in this Order are not of a scope or magnitude substantially different from the compliance requirements entailed by our existing low-income support mechanisms.

139. With respect to our clarification of how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers we conclude that the cost to a state government of filing with the Commission a statement asserting jurisdiction over any carrier seeking such designation for the provision of service to tribal lands, in order for the Commission to refrain from acting on the designation petition until the state makes a final determination regarding its jurisdiction over that carrier, will be minimal. Furthermore, because such filings would be made by the authorized state government body, rather than a local governing authority, it is doubtful that any government authority making such a filing with the Commission would be considered a small entity.

(6) Report to Congress

140. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

C. Effective Date of Final Rules

141. Pursuant to 5 U.S.C. 553(d), the rules and rule changes adopted herein shall take effect thirty (30) days after their publication in the **Federal Register**.

V. Ordering Clauses

142. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, this Report and Order, Memorandum Opinion and Order is adopted. The collections of information contained within this Order are contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collections of information.

143. It is further ordered that part 54 of the Commission's rules, is amended, effective thirty (30) days after the publication of this Report and Order, Memorandum Opinion and Order in the **Federal Register**.

144. It is further ordered that Cellco's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice to the extent that it seeks designation for service in Maryland.

145. It is further ordered that Smith Bagley's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice.

146. It is further ordered that the record in Western Wireless' Petition for Designation as an Eligible Telecommunications Carrier on the Crow Reservation shall be reopened as discussed herein.

147. It is further ordered that Cheyenne River Sioux Tribe Telephone Authority's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice.

148. It is further ordered that authority is delegated to the Chief of the Common Carrier Bureau pursuant to § 0.291 of the Commission rules, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted in this Order.

149. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory

Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.400 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(a) *Qualifying low-income consumer.* A "qualifying low-income consumer" is a consumer who meets the qualifications for Lifeline, as specified in § 54.409.

* * * * *.

(e) *Eligible resident of Tribal lands.* An "eligible resident of Tribal lands" is a "qualifying low-income consumer," as defined in paragraph (a) of this section, living on or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v).

3. Amend § 54.401 by revising paragraph (d) to read as follows:

§ 54.401 Lifeline defined.

* * * * *

(d) The state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and stating the number of qualifying low-income consumers and the amount of state assistance. Eligible telecommunications carriers not subject to state commission jurisdiction also shall make such a filing with the Administrator. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.

4. Amend § 54.403 by revising paragraphs (a)(2) and (a)(3), adding a new paragraph (a)(4), and revising paragraph (b) to read as follows:

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

* * * * *

(2) *Tier Two.* Additional federal Lifeline support in the amount of $1.75 per month will be made available to the eligible telecommunications carrier providing Lifeline service to the qualifying low-income consumer, if that carrier certifies to the Administrator that it will pass through the full amount of Tier-Two support to its qualifying, low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(3) *Tier Three.* Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month in federal support, will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the carrier certifies to the Administrator that it will pass through the full amount of Tier-Three support to its qualifying low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(4) *Tier Four.* Additional federal Lifeline support of up to $25 per month will be made available to a eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e), to the extent that:

(i) This amount does not bring the basic local residential rate (including any mileage, zonal, or other non-discretionary charges associated with basic residential service) below $1 per month per qualifying low-income subscribers; and

(ii) The eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tier-Four amount to qualifying eligible residents of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) For a qualifying low-income consumer who is not an eligible resident of Tribal lands, as defined in § 54.400(e), the federal Lifeline support amount shall not exceed $3.50 plus the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with § 69.104 or § 69.152(d) and (q) of this chapter, whichever is applicable. For an eligible resident of Tribal lands, the federal Lifeline support amount shall not exceed $28.50 plus that same End User Common Line charge. Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

5. Revise § 54.405 to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers shall:

(a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers, and

(b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

6. Amend § 54.409 by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) To qualify to receive Lifeline service in a state that mandates state Lifeline support, a consumer must meet the eligibility criteria established by the state commission for such support. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income. A state containing geographic areas included in the definition of "reservation" and "near reservation," as defined in 25 CFR 20.1(r) and 20.1(v), must ensure that its qualification criteria are reasonably designed to apply to low-income individuals living in such areas.

(b) To qualify to receive Lifeline service in a state that does not mandate state Lifeline support, a consumer must participate in one of the following federal assistance programs: Medicaid;

food stamps; Supplemental Security Income; federal public housing assistance; and Low-Income Home Energy Assistance Program. In a state that does not mandate state Lifeline support, each eligible telecommunications carrier providing Lifeline service to a qualifying, low-income consumer must obtain that consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs listed in this paragraph and identifying the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

(c) Notwithstanding paragraphs (a) and (b) of this section, an individual living on a reservation or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v), shall qualify to receive Tiers One, Two, and Four Lifeline service if the individual participates in one of the following federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those meeting its income qualifying standard); or National School Lunch Program's free lunch program. Such qualifying low-income consumer shall also qualify for Tier-Three Lifeline support, if the carrier offering the Lifeline service is not subject to the regulation of the state and provides carrier-matching funds, as described in § 54.403(a)(3). To receive Lifeline support under this paragraph for the eligible resident of Tribal lands, the eligible telecommunications carrier offering the Lifeline service to such consumer must obtain the consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from at least one of the programs mentioned in this paragraph or paragraph (b) of this section, and lives on or near a reservation, as defined in 25 CFR 20.1(r)and 20.1(v). In addition to identifying in that document the program or programs from which that consumer receives benefits, an eligible resident of Tribal lands also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

7. Amend § 54.411 by adding new paragraphs (a)(3) and (d) and revising paragraph (b) to read as follows:

§ 54.411 Link Up program defined.

(a) * * *

(3) For an eligible resident of Tribal lands, a reduction of up to $70, in addition to the reduction in paragraph (a)(1) of this section, to cover 100 percent of the charges between $60 and $130 assessed for commencing telecommunications service at the principal place of residence of the eligible resident of Tribal lands. For purposes of this paragraph, charges assessed for commencing telecommunications services shall include any charges that the carrier customarily assesses to connect subscribers to the network, including facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service. The reduction shall not apply to charges assessed for facilities or equipment that fall on the customer side of demarcation point, as defined in § 68.3 of this chapter.

(b) A qualifying low-income consumer may choose one or both of the programs set forth in paragraphs (a)(1) and (a)(2) of this section. An eligible resident of Tribal lands may participate in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

* * * * *

(d) An eligible telecommunications carrier shall publicize the availability of Link Up support in a manner reasonably designed to reach those likely to qualify for the support.

8. Revise § 54.415 to read as follows:

§ 54.415 Consumer qualification for Link Up.

(a) In a state that mandates state Lifeline support, the consumer qualification criteria for Link Up shall be the same as the criteria that the state established for Lifeline qualification in accord with § 54.409(a).

(b) In a state that does not mandate state Lifeline support, the consumer qualification criteria for Link Up shall be the criteria set forth in § 54.409(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, an eligible resident of Tribal lands, as defined in § 54.400(e), shall qualify to receive Link Up support.

§ 54.417 [Removed]

9. Remove § 54.417.

[FR Doc. 00–19611 Filed 8–2–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 073100A]

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for arrowtooth flounder in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of arrowtooth flounder in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907 596 7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2000 TAC of arrowtooth flounder for the Western Regulatory Area was established as 5,000 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for arrowtooth flounder in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,900 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting

directed fishing for arrowtooth flounder in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of arrowtooth flounder for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19715 Filed 8–1–00; 10:19 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 073100B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific cod in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2000 total allowable catch (TAC) of Pacific cod in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 2000 TAC of Pacific cod in the Western Regulatory Area of the GOA was established as 20,625 metric tons by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000) and subsequent reserve release (65 FR 20919, April 19, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2000 TAC for Pacific cod in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific cod in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 2000 TAC for Pacific cod by vessels catching Pacific cod in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 2000 TAC for Pacific cod in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19714 Filed 8–1–00; 10:19 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 151
Friday, August 4, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 98–030–2]

RIN 0579–AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 98–030–1. We will consider all comments that we receive by August 21, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–030–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–030–1.

You may also file comments on this docket electronically, and review comments filed electronically, at the World Wide Web site http://comments.aphis.usda.gov.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For general program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737–1236; (301) 734–6799. For technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2000, we published in the **Federal Register** (65 FR 34113–34125, Docket No. 98–030–1) a proposal to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment would provide protection against fruit flies and the mango seed weevil. This proposal would provide an alternative to the currently approved treatments (various fumigation, cold, and heat treatments, and systems approaches employing techniques such as greenhouse growing) against fruit flies and the mango seed weevil in fruits and vegetables.

Comments on the proposed rule were required to be received on or before July 25, 2000. Several commenters have requested that we extend the comment period on Docket No. 98–030–1 to allow additional time for members of the public to review the proposed rule and to submit comments. While we believe that the original comment period allowed sufficient time for public review, there was a temporary malfunction in the E-Comments Web application (http://comments.aphis.usda.gov) established to receive electronically submitted comments on this proposed rule. This prevented the application from accepting comments over a period of approximately 10 days. To compensate for this disruption of service, we are reopening and extending the comment period on Docket No. 98–030–1 until August 21, 2000. This action will allow interested persons additional time to prepare and submit comments.

Done at Washington, DC, this 27th day of July 2000 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–19724 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 97–121–1]

RIN 0579–AA94

Animal Welfare; Inspection, Licensing, and Procurement of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals. We believe these actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 3, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 97–121–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 97–121–1.

Comments sent to the above location that specifically pertain to the information collection requirements of this action should also be sent to the locations specified in the section of this document under the heading "Paperwork Reduction Act."

You may read any comments that we receive on this docket in our reading room. The reading room is located in

room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the Act are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Part 1 defines various terms used in part 2. Part 2 (referred to below as the regulations) generally provides administrative requirements and sets forth institutional responsibilities of regulated persons under the Act. These administrative requirements and institutional responsibilities include the requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping.

We are proposing to amend the regulations to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals. Each of these changes is discussed in detail in this document.

Exemptions From Licensing Requirements

We are proposing to amend § 2.1 of the regulations to clarify our licensing requirements. This section requires a person to have a license to operate as a dealer, exhibitor, or operator of an auction sale. In § 2.1, paragraph (a)(3) provides exceptions to this requirement. One exception, in § 2.1(a)(3)(iii), is that any person who maintains a total of three or fewer breeding female dogs and/or cats and sells only the offspring of these dogs and cats for pets or exhibition does not have to obtain a license. The dogs and cats must have been born and raised on the premises, and the person must not otherwise be required to obtain a license.

The intent of § 2.1(a)(3)(iii) of the regulations is to exempt these de minimis operations. However, some individuals have contended that they are not required to have a license even when they keep more than three breeding female dogs and/or cats on the same premises as long as no single member of the household owns more than three. When several members of the same household (or other persons acting in concert) are each maintaining three female breeding dogs or cats on the same premises, the activities are no longer de minimis. To clarify the regulations, we are proposing to amend § 2.1(a)(3)(iii) to exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats on his or her premises, if no more than three breeding female dogs and/or cats are maintained on the premises, regardless of ownership; and who sells only the offspring of these dogs and/or cats, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license.

We are also proposing to amend § 2.1(a)(3)(iii) to include in the exemption from licensing persons who maintain three or fewer breeding female small exotic or wild mammals on a single premises. Recently, we have begun to regulate the handling, care, and treatment of small exotic or wild mammals commonly known as pocket pets. Pocket pets include hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, and other small mammalian species. We do not believe that the risk associated with the maintenance of three or fewer breeding female small exotic or wild mammals on a single premises warrants our inspection of the premises or requires the issuance of a license.

Currently, § 2.1(a)(3)(iv) of the regulations exempts from licensing any person who sells fewer than 25 dogs and/or cats per year for research, teaching, or testing purposes or to any research facility. The dogs and/or cats must have been born and raised on the person's premises, and the person must not otherwise be required to obtain a license. We are proposing to add that this exemption will apply only if fewer than 25 dogs and/or cats are sold per year from the premises or by members of the same household or other persons acting in concert, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes would continue to require a license.

Voluntary Licensees

We are proposing to remove § 2.1(b) from the regulations. In § 2.1, paragraph (b) provides that a person who is exempt from licensing under § 2.1(a)(3)(iv) may apply for a voluntary license. Our records show that the option for obtaining a voluntary license has rarely been exercised and that there are currently no voluntary licensees. We do not believe that it is necessary or appropriate to continue to offer this service because the unnecessary inspections divert resources from other areas. We are also proposing to remove the provisions in § 2.1(e)(1) of the regulations for renewal of a voluntary license. Because we are proposing to remove paragraph (b) of § 2.1, we are also proposing to redesignate paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e), respectively. In conjunction with these changes, § 2.1(a)(1) would be revised to provide that any person "operating or intending to operate" as a dealer, exhibitor, or operator of an auction sale must have a valid license.

Payment of Fees

In § 2.1, paragraphs (d)(2), (e)(1), and (e)(2) (redesignated as (c)(2), (d)(1), and (d)(2) in this proposal) provide that a license will not be issued until payment has cleared normal banking procedures. We are proposing to remove this provision. The U.S. Department of Agriculture (the Department) cannot control the speed at which payments will clear a financial institution and does not want to needlessly hold the issuance of a license. If payment is received as required in the regulations, we believe the Animal Care (AC) regional office should proceed with the issuance of the license if the applicant and the premises are in compliance with the regulations and standards. This would not only be more convenient for the applicant but would relieve the regional offices of the need to track each check to learn when it has cleared. If a check is returned unpaid by the financial institution, the license would be terminated in accordance with § 2.5(a)(4). The fee for a returned check

would also be increased from $15 to $20, which is consistent with the fee for returned checks in other agency programs.

In § 2.1, paragraphs (d)(2) and (e)(1) (redesignated as (c)(2) and (d)(1) in this proposal) require payment of license fees, but do not state when the license fee is due to avoid the termination of a license. Section 2.5 specifies that the license fee is due on or before the date of expiration of the license. To help facilitate the renewal of licenses and to encourage prompt payment of the applicable license fees, we are proposing to add this due date to § 2.1, in redesignated paragraphs (c)(2) and (d)(1).

Also, we are proposing to amend §§ 2.1(d)(2), 2.1(e)(1), 2.5(b), and 2.6(a) to require that fees be submitted to the appropriate AC regional office instead of the AC Regional Director (§ 2.1(d)(2) and (e)(1) are redesignated in this proposal as (c)(2) and (d)(1)). We are proposing this change because we believe that it is more appropriate to address the fees to an office rather than an official within the office.

Regulations and Standards Supplied to License Renewal Applicants

We are proposing to amend § 2.2 of the regulations, which concerns acknowledgment of regulations and standards by applicants for licenses and renewal of licenses. Currently, § 2.2(b) states that APHIS will supply a copy of the applicable regulations and standards to an applicant for license renewal with each request for a license renewal. Paragraph (b) also provides that, before a license will be renewed, the applicant for license renewal must acknowledge receipt of the regulations and standards and certify by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards.

We have found that most licensees do not need a new copy of the regulations and standards each year. The current text of the regulations and standards is readily available on the Internet (for example, through the APHIS home page at www.usda.aphis.gov) and copies are available from Animal Care inspectors. If we discontinue the practice of sending additional copies to licensees at the time of application for renewal, we could significantly reduce our costs for printing and postage without adversely affecting the program. Also, the applicant's signature on the application form certifies that the applicant is in compliance with the regulations and standards and will continue to comply with them.

Therefore, we are proposing to remove the provision in § 2.2(b) that APHIS will supply a copy of the regulations and standards with each request for a license renewal.

APHIS would continue to supply a copy of the regulations and standards to: (1) Initial license applicants as provided in § 2.2(a); (2) carriers, intermediate handlers, and exhibitors as provided in § 2.26; and (3) research facilities as provided in § 2.30(b). Of course, copies will continue to be provided upon request.

Prelicense Inspections

We are proposing to amend § 2.3 of the regulations, which requires applicants for licenses and renewal of licenses to demonstrate compliance with the regulations and standards.

In accordance with § 2.3(b), an applicant for an initial license must demonstrate during a prelicense inspection that he or she is in compliance with the regulations and standards. If the applicant's premises, animals, facilities, vehicles, equipment, other premises, or records do not meet the regulations and standards, APHIS will advise the applicant of the deficiencies and the corrective measures that must be addressed to comply with the regulations and standards prior to the issuance of a license. APHIS will perform up to two additional prelicense inspections, based on the schedule of the inspecting official, to verify whether the applicant is in compliance. If the applicant fails the third inspection, he or she forfeits the application fee and cannot reapply for a license for 6 months following the third inspection.

This proposed rule would provide that an applicant who fails the first inspection would be responsible for requesting the second inspection, and, if necessary, a third inspection, within 90 days from the date of the initial inspection. It is necessary that there be a time limit on the application process so that applications are not permanently pending and applicants are encouraged to proceed in a timely manner. We have found that many applicants demonstrate compliance with the regulations and standards at the initial prelicense inspection and that a third prelicense inspection is uncommon. The vast majority of applicants either successfully complete the licensing process within 90 days from their initial inspection or change their plans and drop their applications.

Notification of Expiration of a License

We are proposing to amend the regulations in § 2.5, regarding duration and termination of license.

Currently, § 2.5(b) provides that APHIS will notify a licensee by certified mail at least 60 days prior to the expiration date of the license. We do not believe that the use of certified mail is necessary. AC regional offices would still send notification to licensees prior to the expiration date of their licenses.

In addition, § 2.5(b) currently provides that a license will terminate on its anniversary date if an applicant fails to comply with the annual reporting requirements or fails to pay the required license fees prior to the expiration date of the license. However, in many cases, the expiration date and anniversary date of a license are not the same. This has led to confusion among licensees and administrative difficulties in AC regional offices. Therefore, we are proposing to remove the reference in § 2.5(b) to an anniversary date. Instead, we propose that a license will terminate on its expiration date if an applicant fails to comply with the annual reporting requirements, or if the appropriate AC regional office has not received the required fee for license renewal on or before the expiration date of the license.

Application and Annual License Fees

We are proposing to amend the regulations at § 2.6, which set out annual license fees. Currently, the regulations at § 2.1 require a $10 application fee for a license, license renewal, or changed class of license. Section 2.6 requires the payment of an annual license fee. A separate check or money order is required for each fee.

Upon review of the process for collecting fees for license renewals, we found that handling two forms of payment per applicant or licensee burdens the administrative resources in AC regional offices. It would seem to be equally inconvenient for licensees. To decrease the number of checks handled by the AC regional offices, we are proposing to combine the $10 application fee for license renewals (or for change of license class) with the annual license fee. This change would mean that persons already licensed would need to submit only one check or money order annually.

We are not proposing to combine the $10 application fee for an initial license with the annual license fee. At times, individuals apply for a license but never further pursue obtaining a license. If we required new applicants to submit the $10 application fee combined with the

appropriate annual license fee, we would have to refund the annual license fee if the individual decided not to pursue obtaining a license. This would cause the agency an undue amount of paperwork and employee hours. Therefore, we would continue to require initial license applicants to submit two checks or forms of payment.

To reflect the combination of the $10 application fee for license renewals or change of license class with the annual license fee, we would amend tables 1 and 2 in § 2.6(c) to show a $10 increase in license fees for persons already licensed. We would also remove references to application fees in §§ 2.1, 2.5, and 2.6 where the references apply to persons seeking a license renewal or change of license class.

Denial of Initial License Application

We are proposing to amend § 2.11 of the regulations, concerning denial of an initial license application. The current regulations provide that a license will not be issued to any applicant who: (1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6; (2) is not in compliance with any of the regulations or standards in subchapter A; (3) has had a license revoked or whose license is suspended; (4) has been fined, sentenced to jail or pled nolo contendere (no contest) under State or local cruelty to animal laws within 1 year of application; or (5) has made false or fraudulent statements, or provided any false or fraudulent records to the Department.

We have found that these restrictions do not cover all of the circumstances that make an applicant unsuitable for a license. Specifically, the regulations do not provide for the denial of a license if an applicant has violated Federal, State, or local laws or regulations, other than those described above.

For example, the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371–3378), among other things, provides authority to the Secretary of the Interior to ensure the humane treatment of wildlife shipped to the United States and designate wildlife species that are considered injurious to humans and prohibit their importation into the United States. Based on the current regulations, if a license applicant has violated the Lacey Act, he or she would still be eligible for a license issued by the Department.

An applicant who has violated local or State laws pertaining to animal cruelty or welfare may not be eligible for a State license as a dealer. However, based on the current regulations, if the applicant has not been fined, sentenced to jail, or pled nolo contendere, the applicant could still be eligible for a license issued by the Department.

We believe that persons who have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, negligence, transportation, ownership, neglect, or animal welfare would be unfit for a license under our regulations. Therefore, we propose to remove the provisions in § 2.11(a)(4) and (a)(5) and provide instead that a license will not be issued if the applicant pled nolo contendere or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or at any time if the Administrator determines that the circumstances render the applicant unfit to be licensed. Also, a license would not be issued if the applicant is or would be operating in violation or circumvention of any Federal, State, or local laws. Further, a license could be denied if the applicant has pled nolo contendere or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, has made false or fraudulent statements or provided false or fraudulent records to any government agency including the Department, or if the applicant is otherwise unfit to be licensed, and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

Also, we are proposing to amend § 2.11(b). In § 2.11, paragraph (b) provides that an applicant whose license application has been denied may request a hearing for the purpose of showing why his or her application should not be denied. The license denial is in effect until a final decision is issued. If the license denial is upheld, the applicant may reapply for a license 1 year from the date of the final order that denied the application. We are proposing to provide that an applicant may reapply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise. In some cases, an order requiring an applicant to wait beyond a 1-year period before reapplying for a license may be appropriate. In fact, based on the circumstances leading to the denial of an application, an applicant may be found to be unsuitable for holding a license at any time. In other cases it may be appropriate to allow an applicant to reapply in a shorter period of time or when a specific defect has been corrected.

Also, we are proposing to add a new § 2.11(d) to the regulations to encompass circumstances that are not included in the changes to § 2.11(a) proposed previously in this document. New § 2.11(d) would provide that a license will not be issued under circumstances that the Administrator determines could circumvent any order suspending, revoking, terminating, or denying a license under the Act. For the same reasons, we are also proposing to revise § 2.10(a), regarding licensees whose licenses have been suspended or revoked, to provide that a license will not be renewed during the period of suspension.

Termination of a License

We are proposing to add a new § 2.12 to the regulations to prescribe conditions that could result in APHIS terminating a license. Although § 2.5 refers to termination of license, the regulations do not list the circumstances that would result in the termination of a license. New § 2.12 would state that a license may be terminated for any of the same reasons that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice. A hearing would provide an opportunity for the applicant to present his or her case as to why the license should not be terminated.

Access to Premises Provided by a Responsible Adult

We are proposing to amend § 2.126 of the regulations, concerning access and inspection of records and property. Currently, § 2.126(a) requires that each dealer, exhibitor, intermediate handler, or carrier must, during business hours, allow APHIS officials: (1) To enter the place of business; (2) to examine the records required to be kept by the Act and the regulations in part 2; (3) to make copies of the records; (4) to inspect and photograph the facilities, property, and animals, as necessary to enforce the provisions of the Act and the regulations and the standards in subchapter A; and (5) to document, by the taking of photographs and other means, the conditions and areas of noncompliance. In § 2.126, paragraph (b) requires that facilities for proper examination of records and inspection of the property or animals must be provided to APHIS officials by the licensee.

APHIS conducts unannounced inspections of licensed facilities, and APHIS officials have encountered occasions when a licensee was not present or available upon their arrival. In a few of these cases, an adolescent was the only individual present to provide access to the premises.

However, during an inspection, APHIS officials must be able to ask questions and advise licensees of existing deficiencies and corrective measures that must be completed to come into compliance with the regulations and standards. APHIS officials must be able to convey this information to a responsible adult.

Therefore, we are proposing to revise paragraph (b) in § 2.126 to add a provision that a responsible adult shall be made available to accompany the officials during the inspection process.

Handling of Exotic or Wild Animals

We are proposing to amend § 2.131 of the regulations, regarding the handling of animals. Section 2.131 prescribes general requirements for the humane handling of animals during training and public exhibition. These requirements are intended to protect the animals and the public from harm.

Many exotic or wild animals used in exhibition are potentially dangerous, and all have special handling, veterinary care, and husbandry requirements. To properly maintain, handle, and train these animals, licensees should have adequate experience and knowledge of the species that they maintain on their premises. The current regulations require that a responsible and knowledgeable employee be present at all times during public contact and that dangerous animals be under the direct control and supervision of a knowledgeable and experienced handler during public exhibition. We are proposing to add a new requirement to § 2.131 that all licensees who maintain potentially dangerous animals must demonstrate adequate experience and knowledge of the species that they maintain. This requirement would appear in a new paragraph (a), and we would redesignate current paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively,

Procurement of Animals by Dealers

We are proposing to amend § 2.132 of the regulations, concerning procurement of random source dogs and cats, to provide clarification regarding the procurement of animals by Class B dealers. As set forth in § 2.132(a), Class B dealers may obtain live random source dogs and cats only from the following sources: Other dealers who are licensed under the Act and in accordance with the regulations in part 2; State, county, or city owned and operated animal pounds or shelters; and legal entities organized and operated under the laws of the State in which the entity is located as an animal pound or shelter.

Paragraph (b) specifies that a Class B dealer may not obtain live random source dogs and cats from individuals who have not bred and raised the animals on their own premises. This provision is unnecessary and potentially confusing because paragraph (a) already specifies the only permissible sources. Similarly, paragraph (c) is unnecessary. Paragraph (c) provides that nonrandom source dogs and cats may be obtained from persons who have bred and raised the animals on their own premises. It is not necessary to specify this because it is not otherwise prohibited. Accordingly, we propose to remove paragraphs (b) and (c) of § 2.132 and redesignate paragraphs (d) and (e) as (b) and (c).

In § 2.132, current paragraph (d), which would be redesignated as (b), provides that no person may obtain live random source dogs and cats by use of false pretenses, misrepresentation, or deception. We believe that this prohibition should not be restricted to random source dogs and cats. Accordingly, we are proposing to remove the term "random source" and add a reference to other animals. We are also proposing to make the same change in § 2.38(k)(2), relating to acquisitions by research facilities.

In § 2.132, current paragraph (e), which would be redesignated as (c), concerns the acquisition of dogs and cats from private or contract animal pounds and shelters. The reference to "random source" dogs and cats acquired from private or contract pounds and shelters is unnecessary because all dogs and cats acquired from a pound or shelter are necessarily random source animals. Accordingly, the reference to "random source" animals would be removed.

Also, we have found that some dealers have knowingly obtained animals from persons who are required to hold a valid and effective license and do not. Therefore, we are proposing to add a new paragraph (d) to § 2.132 to prohibit a Class B dealer or exhibitor from knowingly obtaining dogs, cats, and other animals from persons who are required to hold a current, valid, and unsuspended license and do not. The new paragraph would also require that, when dogs or cats are acquired from persons who are not licensed, a certification must be obtained from the person specifying that he or she is within one of the exemptions to the license requirements (*i.e.*, that the dogs or cats were born and raised on their premises and that, for animals for research purposes, they have sold fewer than 25 that year; or, for use as pets, that they maintain no more than three breeding females). We believe this would help prevent licensed dealers from supporting the operations of unlicensed dealers who are acting in violation of the Animal Welfare Act. We would also add a similar provision for acquisitions by research facilities in § 2.35.

Miscellaneous

We are proposing to update the definition of Administrator in § 1.1 to make it consistent with the definition found in other parts of 9 CFR, chapter I.

Section 2.4 currently provides that licensees or applicants for a license shall not "interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties." This proscription should also extend to registrants as well as licensees and applicants. Accordingly, the provision would be added to § 2.25 for registrants in general and to § 2.30 for research facilities.

The regulations currently require dealers, exhibitors, operators of auction sales, brokers, and research facilities who acquire animals from persons who are not licensed to record the driver's license number of the person. As written, the regulations do not allow the acquisition of animals from persons without a driver's license. Nevertheless, from time to time, animals are acquired from persons who do not have a driver's license. These infrequent occurrences have not been addressed consistently and the requirement has sometimes been overlooked where it could not be met. In order to reduce the burden on both buyers and sellers of animals and to achieve the purpose of the recordkeeping requirement, we propose to add provisions allowing the use of officially issued and numbered photographic identification cards for nondrivers. This change would be made in §§ 2.35(b)(3), 2.75(a)(1)(iii), 2.75(b)(1)(iii), and 2.76(a)(4).

Some of the forms referenced in 9 CFR part 2 are identified with Veterinary Services (VS) form numbers. Most of the VS forms have been replaced by forms that are identified with an APHIS form number; therefore, we are proposing to remove the VS form numbers that appear in §§ 2.5, 2.35, 2.38, 2.75, 2.78, and 2.102.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive

Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities. This discussion also serves as our cost-benefit analysis.

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

This proposed rule would amend the Animal Welfare Act regulations in 9 CFR part 2 to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals.

Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are exempt from licensing are the entities that would be affected by this proposed rule. A Class A dealer breeds and raises animals to be sold for research, teaching, testing, experimentation, exhibition, or for use as a pet. A Class B dealer is a person, including a broker and operator of an auction sale, whose business includes the purchase and/or resale of any animal. A Class C exhibitor or registered exhibitor is a person, including an animal act, carnival, circus, and public and roadside zoo, who shows or displays animals to the public. Research facilities include schools, institutions, organizations, or persons who use live animals in research, tests, or experiments.

The Number of Breeding Females

The regulations exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats and sells only the offspring of these dogs and/or cats for pets or exhibition. This proposed rule would extend this exemption from licensing to any person who maintains a total of three or fewer breeding female small exotic or wild mammals and sells only the offspring of these small exotic or wild mammals for pets or exhibition. This proposed rule would also clarify that the exemption applies only if a total of three or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, and prairie dogs, are maintained on a single premises, regardless of who owns the animals.

Unlicensed individuals in this category primarily sell the offspring of their animals to pet stores and private citizens and their number and the quantity of their sales are unknown. However, we expect that any affected individuals would be considered small entities. The entities affected would either have to obtain a license if more than three breeding females are on a premises or decrease the number of breeding females on the premises to three or fewer. Entities who choose to obtain a license as a result of this proposed rule would have to pay the associated fees. The regulations require an application fee of $10 and an annual license fee.

Because APHIS has only recently begun to require licenses for breeders of small exotic or wild mammals, only a small number of breeders who have become licensed would no longer need those licenses. For that small number, there would be cost savings in the amount of the annual license fee that would no longer be required.

Dogs and Cats Sold Per Year From a Premises

The regulations exempt from licensing any person who sells fewer than 25 dogs and/or cats per year for research, teaching, or testing purposes if the dogs and cats were born and raised on the person's premises. This proposed rule would clarify that this exemption would apply only if fewer than 25 dogs and/or cats are sold per year from the premises, regardless of who owns the dogs or cats.

This change would potentially affect three groups of entities: (1) Persons who are currently exempt from licensing because they sell fewer than 25 dogs and/or cats for research, teaching, or testing purposes, or to any research facility; (2) licensed Class B dealers who acquire dogs and/or cats from persons exempt from licensing; and (3) the research and education industries.

In fiscal year 1997, approximately 325 persons who sold dogs and/or cats for research, teaching, or testing purposes, or to any research facility, were exempt from licensing because they sold fewer than 25 dogs and/or cats. It is unknown how many premises will be affected by the clarification that the exemption from licensing applies to the premises and not to individuals. However, if this proposed rule becomes effective, individuals on affected premises would have to obtain a license, reduce their business, or discontinue business. At this time, we do not have enough information to predict the choices individuals will make among these alternatives.

In fiscal year 1997, persons exempt from licensing because they sold fewer than 25 dogs and/or cats for research, teaching, or testing purposes, or to any research facility, provided an estimated 4,524 dogs and 1,202 cats to the research, testing, and teaching industries.[1] These exempt persons received an average of $50 for a dog and $25 for a cat. Based on these values, we estimate that the total revenue of the exempted individuals was $256,250.

Class B dealers would be the next group potentially affected by this proposed rule. Nearly all dogs and cats supplied for use in the research industry by persons exempt from licensing were sold to the research industry through Class B dealers. Class B dealers obtain dogs and cats for sale to registered research facilities from pounds, Class A dealers, other Class B dealers, and persons exempt from licensing. In 1997, there were 1,047 Class B dealers; however, we estimate that approximately 37 of them supplied dogs and cats for research purposes. These Class B dealers obtained 5,726 dogs and cats, which is approximately one-third of the dogs and cats they provided for research, from persons exempt from licensing. The effect of this proposed rule on Class B dealers would depend on the number of persons currently exempt from licensing who would apply for a license or reduce the number of animals they sell from their premises. If the clarification that the exemption applies to the premises, regardless of ownership, causes a significant decrease in the number of dogs and cats available from these individuals, Class B dealers could lose a primary source of dogs and cats and would have to depend on other sources (i.e., Class A dealers, pounds, or shelters) to obtain dogs and cats. Class B dealers most likely would not acquire animals from Class A dealers because of the higher cost. Class A dealers who sell directly to research facilities charge $300 to $500 per dog and slightly less per cat. Pounds and shelters may not be able to supply Class B dealers with the number of dogs and/or cats they need to

[1] In fiscal year 1997, a total of 75,429 dogs and 26,091 cats from all sources were used in registered research facilities. According to the National Association for Biomedical Research, less than one-half of these dogs and cats were random source. Dogs and cats supplied by individuals exempt from licensing are random source and are supplied to research almost exclusively through Class B dealers. In fiscal year 1997, Class B dealers supplied approximately 36 percent of random source dogs and 23 percent of random source cats used in research. Class B dealers obtained approximately one-third of their animals from exempt sources.

maintain their current levels of operation.

The effect of this proposed rule on research facilities will primarily depend on the rule's effect on Class B dealers. Of the 101,520 dogs and cats used in research in fiscal year 1997, less than one-half were random source. Class B dealers supplied approximately 36 percent of the random source dogs and 23 percent of the random source cats used in research. Approximately one-third of these animals were obtained by the Class B dealers from persons exempt from licensing. Laws in many areas make Class B dealers the only viable source of these animals. Any increase in costs for the dogs and cats obtained by Class B dealers would likely be passed on to the research facilities that purchase the animals.

Clarification of the Regulations and Changes to Administrative Procedures

This proposed rule would make a number of changes to clarify the regulations and correct deficiencies we have found in enforcing the regulations. We are also proposing amendments to a number of administrative procedures to make them more efficient. In addition, this proposed rule would require certification at the time of purchase or acquisition of certain animals. These changes would not have a significant economic effect on affected entities because the changes should not alter the day-to-day operations for entities that are currently in compliance with the Act.

Small Entities

The Regulatory Flexibility Act requires that we specifically consider the economic effects of the proposed rule on small entities. As stated previously, the entities likely to be affected by this proposed rule are Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are exempt from licensing.

The Small Business Administration (SBA) has established size criteria by Standard Industrial Classification (SIC) for determining which economic entities meet the definition of a small entity.

According to the SBA, Class A dealers with less than $0.5 million in annual receipts are considered small. According to the 1997 Census of Agriculture, there were 10,045 dog and cat establishments in the category of all other annual production, which included Class A dealers. These dog and cat establishments had an average of $101,624 in annual receipts in 1997, which is well below the standard for a small entity. Class B dealers are categorized in the SIC as part of wholesale trade, other nondurable goods. According to SBA standards, if an entity in this category employs fewer than 100 employees, the entity is considered small. According to the 1997 Economic Census, the average wholesaler in other nondurable goods had just over six employees, which is far below the standard to be considered a small entity. We believe that the majority of the 37 Class B dealers potentially affected by the rule changes may be considered small. There are over 2,000 exhibitors licensed by or registered with APHIS. Under the SBA standards, an animal exhibitor is considered small if the entity has less than $5 million in annual receipts. According to the 1997 Economic Census, the average circus (including animal acts and sideshows) had about $3.3 million in annual receipts, the average zoo and botanical garden had $3.6 million in annual receipts, and the average nature park had $0.5 million in annual receipts. In 1998, there were 1,227 active animal research facilities. The SBA standard for a small research or testing facility is one with less than $5 million in annual receipts, except for commercial physical and biological research, for which the standard is fewer than 500 employees. According to the 1997 Economic Census, the average noncommercial research and development entity in the life sciences had $3.3 million in annual receipts, the average testing laboratory had $1.2 million in annual receipts, and the average commercial research and development entity in the life sciences had just over 20 employees. Therefore, the average entity in each of these categories would be considered small.

We do not have enough information to conclude the number of entities that this proposed rule would affect, particularly the proposed changes pertaining to the number of breeding females maintained on the same premises, regardless of ownership, and the number of dogs and/or cats that can be sold from a premises, regardless of ownership. However, most, if not all, affected entities are likely to be considered small based on SBA size standards.

We are inviting comments concerning potential effects of this rule on small entities. In particular, we are interested in determining the number of individuals who would be affected by the proposed changes in exemptions from the licensing requirements, which would limit the exemptions to three breeding female dogs and/or cats on a single premises, regardless of ownership, or to the sale of fewer than 25 dogs and/or cats for research from a single premises, regardless of ownership.

An alternative to this proposed rule would be to make no change to the Animal Welfare regulations. After consideration, we rejected this alternative because we believe that the proposed changes to the requirements are necessary to help ensure compliance with the intent and content of the regulations and the Animal Welfare Act.

This proposed rule contains information collection requirements. The requirement related to requesting reinspection will take an estimated 0.083 hours per response and involve an estimated 350 respondents. The requirement related to certification will take an estimated 0.083 hours per response and involve an estimated 150 respondents. Therefore, the effect is expected to be minimal. These requirements are described in this document under the heading "Paperwork Reduction Act."

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–121–1. Also, please send a copy of your comments to: (1) Docket No. 97–121–1, Regulatory

Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to require applicants who do not pass the initial prelicensing inspection to request re-inspection, and, if necessary, a third inspection, within 90 days following the first inspection to demonstrate that the premises, animals, facilities, vehicles, equipment, other premises, and records are in compliance with the regulations and standards. We are also proposing to require dealers, exhibitors, and research facilities that acquire dogs or cats from individuals who are not licensed to obtain a certification from the seller that the animals were born and raised on their premises and that they are eligible for an exemption from the licensing requirements.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection requirement. We need these comments to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Estimate of burden: The public reporting burden for applicants for the collection of information relating to requesting reinspection is estimated to average 0.083 hours per response. (The estimated annual number of respondents is 350.) The public reporting burden for dealers, exhibitors, and research facilities for the collection of information relating to certification of exemption from licensing is estimated to average 0.083 hours per response. (The estimated annual number of respondents is 150.)

Respondents: Applicants, dealers, exhibitors, and research facilities.

Estimated annual number of respondents: 500.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 500.

Estimated total annual burden on respondents: 41 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR parts 1 and 2 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 would be revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. In § 1.1, the definition of *Administrator* would be revised to read as follows:

§ 1.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

PART 2—REGULATIONS

3. The authority citation for part 2 would be revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

4. Section 2.1 would be amended as follows:

a. In paragraph (a)(1), the first sentence, by removing the word "desiring" and adding in its place the word "intending".

b. In paragraph (a)(2), the last sentence, by removing the reference to "paragraph (d)" and adding in its place a reference to "paragraph (c)".

c. By revising paragraphs (a)(3)(iii) and (a)(3)(iv).

d. By removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e), respectively, and by revising newly redesignated paragraphs (c) and (d).

§ 2.1 Requirements and application.

(a) * * *

(3) * * *

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than three breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership;

(iv) Any person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 25 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others where they collectively sell 25 or more dogs and/or cats, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

* * * * *

(c) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when:

(1) The applicant has met the requirements of this section and §§ 2.2 and 2.3; and

(2) The applicant has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the appropriate Animal Care regional office for an initial license, and, in the case of a license renewal, the annual license fee has been received by the appropriate

Animal Care regional office on or before the expiration date of the license.

(d)(1) A licensee who wishes a renewal must submit to the appropriate Animal Care regional office a completed application form and the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. The application form and the annual license fee must be received by the appropriate Animal Care regional office on or before the expiration date of the license. An applicant whose check is returned by the bank will be charged a fee of $20 for each returned check. A returned check will be deemed nonpayment of fee and will result in the denial of the license. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

(2) A license fee indicated in § 2.6 must also be paid if an applicant is applying for a changed class of license. The applicant may pay the fee by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of $20 for each returned check. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

* * * * *

5. In § 2.2, paragraph (b) would be revised to read as follows:

§ 2.2 Acknowledgment of regulations and standards.

* * * * *

(b) *Application for license renewal.* APHIS will renew a license after the applicant certifies by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards. APHIS will supply a copy of the applicable regulations and standards to the applicant upon request.

6. In § 2.3, paragraph (b) would be revised to read as follows:

§ 2.3 Demonstration of compliance with standards and regulations.

* * * * *

(b) Each applicant for an initial license must be inspected by APHIS and demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection will have two additional chances to demonstrate his or her compliance with the regulations and standards through a second inspection by APHIS. The applicant must request the second inspection, and if applicable, the third inspection, within 90 days following the first inspection. If the applicant fails inspection or fails to request re-inspections within the 90-day period, he or she will forfeit the application fee and cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. Issuance of a license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises, and records are in compliance with all regulations and standards in this subchapter.

7. In § 2.5, paragraphs (a)(4) and (b) would be revised to read as follows:

§ 2.5 Duration of license and termination of license.

(a) * * *

(4) The annual license fee has not been paid to the appropriate Animal Care regional office as required; *provided, however,* that a grace period of 30 days is provided subject to the payment of a late payment fee of $25.00 and, if applicable, any fee for a check that has been returned unpaid. There will not be a refund of the annual license fee if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (APHIS Form 7003), as required by § 2.7 of this part, and pay the required annual license fee. The required annual license fee must be received in the appropriate Animal Care regional office on or before the expiration date of the license or the license will expire and automatically terminate. Failure to comply with the annual reporting requirements or pay the required annual license fee on or before the expiration date of the license will result in automatic termination of the license.

* * * * *

8. In § 2.6, paragraphs (a) and (c) would be revised to read as follows:

§ 2.6 Annual license fees.

(a) For an initial license, the applicant must submit a $10 application fee in addition to the initial license fee prescribed in this section. Licensees applying for license renewal or changed class of license must submit only the license fee prescribed in this section. The license fee for an initial license, license renewal, or changed class of license is determined from table 1 or 2 in paragraph (c) of this section. Paragraph (b) of this section indicates the method used to calculate the license fee. All initial license and changed class of license fees must be submitted to the appropriate Animal Care regional office, and, in the case of license renewals, all fees must be received by the appropriate Animal Care regional office on or before the expiration date of the license.

* * * * *

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS AND OPERATORS OF AN AUCTION SALE CLASS "A" AND "B" LICENSE

Over	But not over	Initial license fee	Annual or changed class of license fee
$0	$500	$30	$40
500	2,000	60	70
2,000	10,000	120	130
10,000	25,000	225	235
25,000	50,000	350	360
50,000	100,000	475	485
100,000	.....	750	760

TABLE 2.—EXHIBITORS—CLASS "C" LICENSE

Number of animals	Initial license fee	Annual or changed class of license fee
1 to 5	$30	$40
6 to 25	75	85
26 to 50	175	185
51 to 500	225	235
501 and up	300	310

* * * * *

9. In § 2.10, paragraph (a) would be amended by adding a new sentence at the end of the paragraph to read as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) * * * No license will be renewed during the period that it is suspended.

* * * * *

10. Section 2.11 would be amended as follows:

a. By revising paragraphs (a)(4) and (a)(5), and by adding a new paragraph (a)(6).

b. By revising paragraph (b).

c. By adding a new paragraph (d).

§ 2.11 Denial of initial license application.

(a) * * *

(4) Has pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(5) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

* * * * *

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the Act.

11. A new § 2.12 would be added to read as follows:

§ 2.12 Termination of a license.

A license may be terminated for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

12. Section 2.25 would be amended by adding a new paragraph (c) to read as follows:

§ 2.25 Requirements and procedures.

* * * * *

(c) No registrant or person required to be registered shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

13. Section 2.30 would be amended by adding a new paragraph (d) to read as follows:

§ 2.30 Registration.

* * * * *

(d) No research facility shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

14. Section 2.35 would be amended as follows:

a. In paragraph (b), by removing the period at the end of paragraph (b)(7) and adding in its place a semicolon, and by adding a new paragraph (b)(8).

b. In paragraph (b)(3), by adding the words "(or photographic identification card for nondrivers issued by a State)" after the words "driver's license number".

c. In paragraph (d)(1), by removing the words "/VS Form 18–1" after "APHIS Form 7001" and removing the words "/VS Form 18–5" after "APHIS Form 7005".

d. In paragraph (d)(2), by removing the words "/VS Form 18–1" after "APHIS Form 7001" and removing the words "/VS Form 18–6" after "APHIS Form 7006".

§ 2.35 Recordkeeping requirements.

* * * * *

(b) * * *

(8) If dogs or cats are acquired from any person not licensed or registered under the Act and not a pound or shelter, the research facility must obtain a certification that the animals were born and raised on the person's premises and that the person has sold fewer than 25 dogs and/or cats that year.

* * * * *

15. Section 2.38 would be amended as follows:

a. In paragraph (h)(3), by removing the words "/VS Form 18–1" after "APHIS Form 7001".

b. In paragraph (i)(3), by removing the words "/VS Form 18–9" after the words "APHIS Form 7009".

c. By revising paragraph (k)(2).

§ 2.38 Miscellaneous.

* * * * *

(k) * * *

(2) No person shall obtain live dogs or cats by use of false pretenses, misrepresentation, or deception.

* * * * *

§ 2.75 [Amended]

16. Section 2.75 would be amended as follows:

a. In paragraphs (a)(2) and (a)(2)(i), by removing the words "/VS Form 18–5" after "APHIS Form 7005" each time they appear and by removing the words "/VS Form 18–6" after "APHIS Form 7006" each time they appear.

b. In paragraph (a)(3), by removing the words "/VS Form 18–1" after "APHIS Form 7001".

c. In paragraph (b)(2) by removing the words "/VS Form 18–19" after "APHIS Form 7019" and by removing the words "/VS Form 18–20" after "APHIS Form 7020".

d. In paragraphs (a)(1)(iii) and (b)(1)(iii) by adding the phrase "(or photographic identification card for nondrivers issued by a State)" immediately following the words "driver's license".

§ 2.76 [Amended]

17. In § 2.76, paragraph (a)(4) would be amended by adding the phrase "(or photographic identification card for nondrivers issued by a State)" immediately following the words "driver's license".

§ 2.78 [Amended]

18. In § 2.78, paragraph (d) would be amended by removing the words "/VS Form 18–1" after "APHIS Form 7001".

§ 2.102 [Amended]

19. In § 2.102, paragraph (a)(3) would be amended by removing the words "/VS Form 18–9" after "APHIS Form 7009".

20. In § 2.126, paragraph (b) would be revised to read as follows:

§ 2.126 Access and inspection of records and property.

* * * * *

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals must be extended to APHIS officials by the dealer, exhibitor, intermediate handler or carrier, and a responsible adult shall be made available to accompany APHIS officials during the inspection process.

21. In § 2.131, paragraphs (a), (b), (c), and (d) would be redesignated as paragraphs (b), (c), (d), and (e), respectively, and a new paragraph (a) would be added to read as follows:

§ 2.131 Handling of animals.

(a) All licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain.

* * * * *

22. Section 2.132 would be amended as follows:

a. By revising the section heading.

b. By removing paragraphs (b) and (c), and redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising newly redesignated paragraph (b).

c. In newly designated paragraph (c)(3), by removing the words "random source."

d. By adding a new paragraph (d).

§ 2.132 Procurement of dogs, cats, and other animals; dealers.

* * * * *

(b) No person shall obtain live dogs, cats, or other animals by use of false pretenses, misrepresentation, or deception.

* * * * *

(d) No dealer or exhibitor shall knowingly obtain any dog, cat, or other animal from any person who is required to be licensed but who does not hold a current, valid, and unsuspended license. No dealer or exhibitor shall knowingly obtain any dog or cat from any person who is not licensed, other than a pound or shelter, without obtaining a certification that the animals were born and raised on that person's premises and, if the animals are for research purposes, that the person has sold fewer than 25 dogs and/or cats that year, or, if the animals are for use as pets, that the person does not maintain more than three breeding female dogs and/or cats.

Done in Washington, DC, this 27th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–19725 Filed 8–3–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43085; File No. S7–17–00]

RIN 3235–AH96

Firm Quote and Trade-Through Disclosure Rules for Options

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is proposing to amend Rule 11Ac1–1 under the Securities Exchange Act of 1934 ("Exchange Act"), to require options exchanges and options market makers to publish firm quotes. The Commission also is proposing new Rule 11Ac1–7 under the Exchange Act to require a broker-dealer to disclose on its customer's confirmation statement when the customer's order for listed options was executed at a price inferior to a better published quote and what that better quote was, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission.

DATES: Comments should be submitted on or before September 18, 2000.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exhange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–17–00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*).

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Senior Special Counsel, at (202) 942–0075, Kelly Riley, Attorney, at (202) 942–0752, John Roeser, Attorney, at (202) 942–0762, Terri Evans, Special Counsel, at (202) 942–4162, and Heather Traeger, Attorney, at (202) 942–0763, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

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I. Executive Summary

Recent increases in the multiple listing of options classes previously listed on a single exchange have intensified the competition among the option exchanges and the need to further integrate the options markets into the national market system. The marked increase in multiple trading is indicative of the dynamic environment in which the options markets currently operate. For example, in August 1999, only 32 percent of equity options classes were traded on more than one exchange. By the end of June 2000, the number of equity options classes that were multiply-traded had risen to 48 percent, a 50 percent increase.

While the growth in multiple trading has increased the competition between markets, it also has dramatically altered the environment in which options market participants conduct their trading. In particular, multiple trading raises new best execution challenges for broker-dealers.[1] When an option is listed on only one exchange, broker-dealers do not have to decide where to route an order, and consequently, satisfying their best execution obligations is less rigorous than when they must consider the relative merits of routing orders to two or more market centers. With as many as five options exchanges currently trading certain options classes, broker-dealers are increasingly required to regularly and rigorously evaluate the execution quality available at each options exchange.

Directly relevant to a broker's ability to obtain best execution for its customers is the ability to get the best price available. The considerable growth in the number of options classes traded on more than one exchange has significantly increased the likelihood that an order may be executed at a price that is inferior to a quoted price available on another exchange ("intermarket trade-through"). According to preliminary data analyzed by the Commission's Office of Economic Analysis during the week of June 26, 2000, 5% of all trades in the 50 most active multiply-listed equity options were executed at prices inferior to the best price quoted on a competing market. Currently, it is difficult to ensure that a customer order sent to one exchange will receive the best available price because of the absence of fair access and an efficient mechanism allowing a market participant at one exchange to reach a better price published by another exchange. As a result, better prices quoted on another exchange do not always receive price priority, and customer orders may receive inferior executions.

Because of its concerns about the increasing likelihood of intermarket trade-throughs in the options markets, the Commission, on October 19, 1999, issued an Order directing the options exchanges to act jointly to file a national market system plan within 90 days for linking the options markets.[2] On January 19, 2000, the options exchanges submitted three separate linkage plans,[3] a detailed summary of which was published for comment in the **Federal Register** on March 2, 2000.[4] The Commission received comments on the proposed linkage plans from 24 market participants.[5] A thorough review of the comment letters received on the proposed linkage plans has led the Commission to consider alternate ways in which to accomplish its goal of protecting price priority and minimizing intermarket trade-throughs of customer orders.[6]

In assessing the best way to encourage fair access and linkage among the options markets, the Commission has carefully evaluated not only the comment letters submitted by interested persons, but also the impact of the recent increases in multiple trading and the availability of new technologies. This review has raised concerns that mandating a single linkage system in which all of the options exchanges must participate may have inherent limitations. The linkage plans proposed by the options markets offer significant advantages by reducing barriers to access between the markets. Nonetheless, the Commission is reluctant to mandate one single form of linkage, which may fail to adapt over time to changes in the markets and may impede the entry of new participants with different business models.

Moreover, a mandatory linkage plan may not maintain up-to-date technology. For example, one commenter expressed concern that any linkage system technology would become obsolete before or soon after the system was implemented.[7] The Commission believes that the growth of electronic routing systems may enable the options exchanges to access one another's markets directly through agreed-upon methods, or indirectly through broker-dealers. As a result, there may well be a variety of equally effective, or indeed more effective, ways in which technology may be employed by the markets to encourage price priority and decrease the likelihood of intermarket trade-throughs in the options markets.

Consequently, the Commission's proposals today are purposely limited in scope. The Commission's proposals are intended to facilitate the ability of market participants to obtain the best price for customer orders without mandating a specific linkage. As described below, in conjunction with its approval of an options intermarket linkage plan ("Amex/CBOE/ISE plan"),[8] the Commission today is proposing a new rule and amendments to an existing rule designed to provide customers with

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[1] In accepting orders and routing them to an exchange for execution, brokers act as agents for their customers and owe them a duty of best execution. A broker's duty of best execution is derived from common law agency principles and fiduciary obligations. It is incorporated both in self-regulatory organization's rules and, in the antifraud provisions of the federal securities laws through judicial and Commission decisions. This duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. As a result, broker-dealers must periodically assess the quality of competing markets. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[2] *See* Securities Exchange Act Release No. 42029, 64 FR 57674 (October 26, 1999) ("October 19, 1999 Order"). The October 19, 1999 Order directed the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), Pacific Exchange, Inc. ("PCX"), and Philadelphia Stock Exchange, Inc. ("Phlx") to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply-traded options. The Commission's Order also requested the International Securities Exchange LLC ("ISE") to participate with the options exchanges in the development of an intermarket linkage plan. The ISE was subsequently registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[3] Amex, CBOE, and ISE submitted identical plans and PCX and Phlx each submitted separate plans.

[4] *See* Securities Exchange Act Release No. 42456 (February 24, 2000), 65 FR 11402. At the same time, the full text of each of the plans was made available to interested persons on the Commission's website.

[5] A summary of comments received on the proposed linkage plans is available in the Commission's Public Reference Room (File No. 4–429).

[6] In its proposed release issued today on Disclosure of Order Routing and Execution Practices, the Commission states that it "recognizes that fair and efficient linkages to market centers publishing quotes are important to encouraging priced competition and strengthening price priority * * * At the same time, the Commission believes that wherever possible, market-based incentives, not government imposed systems, should determine the connections between markets." *See* Securities Exchange Act Release No. 43084 (July 28, 2000).

[7] *See* letter to Jonathon G. Katz, Secretary, Commission, from Peter Hajas, Chief Executive Officer, Knight Financial Products LLC, dated April 3, 2000.

[8] *See* Securities Exchange Act Release No. 43086, (July 28, 2000).

more information with which to evaluate the quality of executions achieved by their brokers and to require market makers to be firm for their quotes. Together these rules would provide incentives for the markets and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs, and would allow market participants to choose the form of mechanism employed.

In addition, some commenters have argued, in the context of the Commission's review of the linkage plans submitted by the exchanges, that the Commission's approval of a linkage plan should be viewed as an opportunity to mandate, among other things, the protection of customer limit orders and price/time priority.[9] The Commission concluded, however, in its Order approving the Amex/CBOE/ISE plan that it does not have sufficient information to satisfy itself that the potential benefits of a mandatory price/time priority requirement clearly justify the potential drawbacks, and that it would be premature at this time to mandate cross-market priority rules as elements of a linkage between the options markets.

A. Proposed Trade-Through Disclosure Rule

To begin, the Commission is proposing a new rule, Exchange Act Rule 11Ac1–7 ("Trade-Through Disclosure Rule"),[10] to require a broker-dealer to disclose to a customer when the customer's order to buy or sell a listed option was executed at a price inferior to the best quote published at the time of execution of the customer's order.

The proposed Trade-Through Disclosure Rule is intended to better inform customers about the implications of their brokers' execution decisions. If the fact of a trade-through was disclosed, along with the better available price, customers would have additional information with which to evaluate the quality of executions achieved by their brokers. The proposed new rule is not an absolute prohibition on trade-throughs. To the contrary, the Commission recognizes that, in certain circumstances, an execution at a price inferior to a quote displayed by another market may be consistent with an investor's particular investment strategy. For example, it is possible that a customer would prefer to receive an immediate execution at one price rather than pursue the opportunity to obtain a superior price. By requiring disclosure of executions at inferior prices when they occur, the rule is intended to ensure that the decision not to pursue publicly-displayed superior prices is rooted in the interests of customers, not intermediaries. Nonetheless, the Commission anticipates that an effective disclosure requirement would minimize the likelihood that a customer order does not receive an execution at the best available published quote.

In addition, as an incentive for markets to cooperate in developing effective means to access other markets to avoid trade-throughs, the Commission's proposal would except broker-dealers from the proposed disclosure requirements if they effect orders on options markets that participate in an intermarket linkage plan that has explicit provisions reasonably designed to limit trade-throughs. In such instances, the Commission expects that the value in requiring a broker-dealer to disclose the rare trade-through that may occur would be substantially reduced. The proposed Trade-Through Disclosure Rule would not, however, mandate that options exchanges participate in a specific linkage plan. Instead, the proposal contemplates that there ultimately may be multiple linkage plans approved by the Commission that contain provisions to effectively limit intermarket trade-throughs.

B. Proposed Amendments to the Quote Rule

The proposed Trade-Through Disclosure Rule would not be meaningful if the market publishing a better quote is not firm for a specified number of contracts at that quote. In particular, members of an exchange cannot develop effective means of access to displayed quotes of another exchange if those quotes are not firm. To that end, the Commission proposes to amend Exchange Act Rule 11Ac1–1 ("Quote Rule")[11] to require options exchanges and options market makers to publish firm quotes.[12] As discussed in greater detail below, the proposed amendments to the Quote Rule include certain accommodations to reflect the fact that the Options Price Reporting Authority ("OPRA") does not have the ability to disseminate quotes with size at this time. These accommodations require quotes to be firm for the size specified, but not displayed by, the options markets. The Commission also proposes, as an alternative, rule language that would allow options exchanges to be firm for their quotes in different sizes for orders from customer accounts than for orders from broker-dealer accounts. The Commission is proposing this alternative because options market makers may otherwise be inclined to limit their exposure to other professionals by widening their spreads or limiting their firm quote size, which would be to the detriment of public customers.

C. Approval of Linkage Plan

As noted above, the Commission today, in a separate release, approved the options market linkage plan proposed by the Amex, CBOE, and ISE, the Amex/CBOE/ISE plan.[13] This plan is an important step forward in linking the options markets and, if implemented, would eliminate many existing barriers to access between the participating markets and would provide members of those markets with better methods of access than exist today. Ultimately, it may prove to be the preferred means of linking the options exchanges. Nonetheless, the Commission's approval of the Amex/CBOE/ISE plan does not require those options exchanges that are not participants in the plan to become participants.[14] This approach is premised on the Commission's belief, discussed above, that there may be a number of means of achieving the Commission's goal of encouraging price priority and limiting intermarket trade-throughs of customer orders. The Commission's approval of the Amex/CBOE/ISE plan, coupled with the proposed new Trade-Through Disclosure Rule and amendments to the Quote Rule, is designed to encourage access to, and linkage among, the

[9] Price/time priority generally requires that if an exchange receives an order but was not the first exchange to display the best price, that exchange must route the order to the exchange that first displayed the best price.

[10] Proposed 17 CFR 240.11Ac1–7.

[11] 17 CFR 240.11Ac1–1.

[12] The Quote Rule has, to date, applied only to equity markets and market makers. *See* Securities Exchange Act Release No. 1445 (January 26, 1978), 43 FR 4342 (February 1, 1978), as amended in Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996); and 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[13] *See supra* note 8. The Commission's approval of the Amex/CBOE/ISE plan should not be construed as a rejection on the merits of either the Phlx or PCX submissions. Neither of those submissions could be approved as a national market system plan pursuant to Exchange Act Rule 11Aa3–2, 17 CFR 240.11Aa3–2, because neither plan was filed by two or more sponsors as required by the rule. In fact, the Commission would consider approving other national market system plans relating to intermarket linkage between the options markets submitted by two or more markets.

[14] The plan does, however, include express provisions pursuant to which other options exchanges may become participants by executing the plan, paying a fee applicable to new participants, and obtaining the Commission's approval of the plan as amended to reflect the new participant. *See* Amex/CBOE/ISE plan Sections 4(c) and 5(c)(ii).

competing options markets, without mandating the means to achieve this goal. The Commission is today soliciting comment on this flexible approach.

II. Background

Section 11A of the Exchange Act,[15] enacted as part of the Securities Act Amendments of 1975,[16] sets forth Congress' findings concerning the establishment of a national market system. Congress found, among other things, that it was in the public interest, and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of quote and transaction information, and the practicability of brokers executing investors' orders in the best market.[17] Congress asserted that linking all of the markets for qualified securities would "foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders."[18]

The national market system was intended by Congress to potentially encompass "all segments of corporate securities including all types of common and preferred stocks, bonds, debentures, warrants, and options."[19] Congress included all types of securities because it believed that many of the goals of a national market system, such as the availability of information with respect to price, volume, and quotations, would be universally beneficial, although perhaps implemented through subsets of a national market system.[20]

Congress did, however, recognize the differences between the markets and granted the Commission broad powers to implement a national market system without forcing all securities markets into a single mold.[21] Accordingly, Congress granted the Commission the authority to implement the objectives of the 1975 Amendments,[22] while allowing the Commission to recognize and classify markets, firms, and securities in any manner appropriate or necessary in the public interest or for the protection of investors.[23]

Many of the national market system initiatives were implemented in the equities markets at a time when standardized options trading was relatively new.[24] Therefore, the Commission deferred applying many of the national market system initiatives to options to give options trading an opportunity to develop.

In October 1977, in response to allegations of wide-spread manipulation in the market for exchange-traded options, the Commission initiated an investigation and special study of the options markets.[25] In the Options Study, the Commission acknowledged that Congress had intended to include options in a national market system, and set forth a number of issues to be explored before the options markets could be fully integrated into the national market system.[26] Subsequently, the Commission approved a national market system plan that collects and disseminates consolidated quotes and trades for the options markets.[27] Today, the options markets continue to operate with limited market integration facilities.[28]

With the onset of widespread multiple trading in options, the Commission is increasingly concerned about customer orders that are sent to one exchange being executed at prices inferior to quotes published by another market. The Commission believes further action is necessary at this time to encourage the removal of barriers to access, and the use of efficient vehicles to reach, better prices on another market. At the same time, the Commission believes that wherever possible, market-based incentives, not government-imposed systems, should determine the connections between the markets. For this reason, the Commission is today proposing an alternative to a government-imposed single intermarket linkage that would remove certain barriers to access and create incentives for options market

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[15] 15 U.S.C. 78k–1.

[16] Pub. L. No. 94–29, 89 Stat. 97 (1975) ("1975 Amendments"). In the 1975 Amendments, Congress directed the Commission to oversee the development of a national market system. Congress granted the Commission broad, discretionary powers to oversee the development of a fully integrated national system for the processing and settlement of securities transactions. *See also infra* note 19.

[17] Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C).

[18] Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C).

[19] Senate Committee on Banking, Housing, and Urban Affairs, Report to Accompany S. 249, S. Rep. 94–75, 94th Cong., 1st Sess. 7 (1975) ("Senate Report"). *See also* Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 2 (1975) ("Conference Report").

[20] *Id.*

[21] *See* Senate Report. *See also* Conference Report. The Committee of Conference stated that the unique characteristics of securities other than common stocks may require different treatment in a national market system.

[22] The two primary objectives of the 1975 Amendments were (1) "the maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements," and (2) "the centralization of all buying and selling interest so that each investor will have the opportunity for the best execution of his order, regardless of where in the system it originates." *See* Senate Report.

[23] Section 11A(a)(2) of the Exchange Act authorizes the Commission to designate, by rule, securities qualified for trading in the national market system. 15 U.S.C. 78k–1(a)(2).

[24] The trading of standardized options on securities exchanges began in 1973 with the organization of the CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973) 1 S.E.C. Doc. 11 (February 13, 1973). Currently, Amex, CBOE, ISE, PCX, and Phlx are the only national securities exchanges that trade standardized options.

[25] The result of the Commission's investigation was The Report of the Special Study of the Options Markets, issued on December 22, 1978 ("Options Study"). Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading).

[26] Options Study at 1029–1030. The Commission stated that it had "not begun to consider whether standardized options are appropriate for inclusion as qualified securities or whether it would be more appropriate to design a 'subsystem' of a national market system to comprehend standardized options trading." The Options Study delineated the following as among the issues to be explored in the options market: (1) A comprehensive quotation system for the dissemination of firm quotes; (2) market linkage and order routing systems to enable the best execution of orders; (3) nationwide limit order protection to ensure that agency orders receive auction-type trading protections; and (4) off-board trading restrictions.

[27] Currently, the options exchanges report their respective quotes and trades of OPRA, which operates pursuant to a national market system plan, approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). Quote and trade reporting are integral components of a national market system. *See* Section 11A(a)(1)(C)(iii) of the Exchange Act. 15 U.S.C. 78k–1(a)(1)(C)(iii). *See also infra* Section III.B.1.

[28] The Commission has repeatedly called for increased national market system initiatives in the options markets. *See* Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21428 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options" (November 1986); Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market" (November 1986); and Securities Exchange Act Release No. 26871 (May 26, 1989), 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an intermarket linkage). In 1989, the Commission adopted Exchange Act Rule 19c–5, which generally prohibits any exchange from adopting rules limiting its ability to list any stock options class because that options class is listed on another exchange. *See* Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (June 5, 1989). In 1990, then Chairman Breeden requested that the options exchanges develop an intermarket linkage plan. *See* letter from Chairman Breeden to the Registered Options Exchange dated January 9, 1990.

participants to develop access arrangements with each other.

III. Discussion of Proposed Rulemaking

A. Proposed Trade-Through Disclosure Rule

1. Background

In the 1975 Amendments, Congress declared that, "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the practicability of brokers executing investor's orders in the best market * * * "[29]. In accordance with these principles, the Commission determined that trade-throughs—that is, the execution of orders at prices inferior to prices offered on other markets—are "inconsistent with the goals of a national market system." [30] Consequently, the Commission has consistently sought to protect orders displayed at a better price from being traded through at inferior prices by encouraging executions of customer orders at the best prices. Further, the Commission has repeatedly emphasized a broker-dealer's duty of best execution of customer orders, which includes seeking the best price reasonably available. In the equity markets, the Intermarket Trading System ("ITS") Plan includes a trade-through rule protecting displayed bids and offers for ITS-eligible exchange-listed securities.[31] In conformance with the ITS Plan, each participating exchange and the National Association of Securities Dealers ("NASD") has adopted rules that limit trade-throughs in exchange-listed securities.[32] In the options markets, the Commission has repeatedly encouraged the exchanges to implement mechanisms to limit trade-throughs from occurring.[33] For a variety of reasons over the years, however, none of these efforts has been wholly successful.

In 1980, at the time the Commission ended the voluntary moratorium on expansion of standardized options trading, it asked for comment on several approaches to more fully integrate the options markets into the national market system, including a market linkage system similar to ITS, requiring brokerage firms to route retail orders on an order-by-order basis to the market center showing the best quotation, and an order exposure system for options public limit orders.[34]

The Commission's adoption of Exchange Act Rule 19c–5 in 1989 [35] created the need for some mechanism to ensure that customers' orders for multiply-traded options could be executed at the best available price. Accordingly, in 1990, the CBOE, New York Stock Exchange ("NYSE"), [36] Amex, and PCX filed with the Commission a proposed Joint Industry Plan providing for the creation and operation of an Options Intermarket Communications Linkage ("Linkage Plan").[37] The Commission sought comment on the Linkage Plan,[38] but neither the Linkage Plan nor its Model Trade-Through Rule was adopted, in part, because the options exchanges could not reach a consensus on several critical elements.

During the comment period on the Linkage Plan, an alternative plan was considered that involved the gradual phase-in of multiple trading, along with the adoption of exchange rules and operational enhancements linking the markets non-electronically ("Phase-In Plan").[39] Specifically, the Phase-In Plan would have provided for the re-routing of orders received through automated systems to other execution facilities, in conjunction with a trade-or-fade rule.[40] Again, however, the exchanges did not agree to the Phase-In Plan and it was not adopted.

In 1994, the markets adopted trade-or-fade rules, which require a market maker to revise its quote if it is unwilling to trade at its published quote with an order sent to it by a market maker from another exchange.[41] The trade-or-fade rules do not provide efficient means of access between the markets. They also provide little incentive to try to reach a better quote in another market, because that quote need not be firm when reached. Thus, the trade-or-fade rules have done little to promote price priority or discourage intermarket trade-throughs.

To provide investors with better information on the quality of the executions they are receiving and to provide incentives to market participants to develop means of access to the competing markets, without mandating a single linkage mechanism, the Commission today is proposing the Trade-Through Disclosure Rule, described below.

2. Proposed Trade-Through Disclosure Rule

a. Proposed Disclosure Requirement. Generally, proposed Exchange Act Rule 11Ac1–7 would require a broker-dealer to disclose to a customer when the customer's order is executed at a price inferior to a better published quote on another exchange and what that better published quote was.[42] A broker would

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[29] *See* Section 11A(a)(1)(C)(iv) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(iv). In fact, as early as 1973, the Commission had indicated that the facilities of a national market system should provide a broker-dealer with the ability to ensure that "his customer's order is executed in the best market available." SEC, Policy Statement on the Structure of a Central Market System, at 17 (March 29, 1973), reprinted in [1973] Sec. Reg. & L Rep. (BNA) No. 196 at D–1, D–4.

[30] *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26548 (June 27, 1985) (soliciting comment on issues relating to the designation of securities as national market system securities).

[31] *See* Securities Exchange Act Release No. 17703 (April 9, 1981), 22 S.E.C. Doc. 707.

[32] *See* Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520 (April 17, 1981). The NASD submitted a proposed trade-through rule for exchange-listed stocks, which the Commission approved on May 6, 1982. *See* Securities Exchange Act Release No. 18714, 47 FR 20429 (May 12, 1982). On June 21, 1985, the Commission requested comment on, among other things, the extent to which securities listed on The Nasdaq Stock Market, Inc. ("Nasdaq") should be subject to trade-through rules. *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584 (June 27, 1985). In addition, in recently adopting amendments to the ITS Plan to expand the linkage to all listed securities, the Commission concluded that the NASD should continue to consider modifications to its existing trade-through rule to cover non-ITS participants, but that such modifications were not a precondition to approval of the expanded linkage. *See* Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

[33] *See* supra note 28.

[34] *See* Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) ("Moratorium Termination Release")

[35] 17 CFR 240.19c–5. *See* Securities Exchange Act Release No. 26870, *supra* note 28.

[36] The NYSE has since sold its options business to the CBOE. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[37] The filing was amended on April 29, 1991, when the signatories to the Linkage Plan submitted a Model Option Trade-Through Rule as Exhibit A to the Linkage Plan. The Model Trade-Through Rule would have been incorporated into each of the options exchanges' rules. The Model Rule provided that, absent reasonable justification or excuse, a member in a participant market should avoid initiating a trade-through when purchasing or selling an options contract permitted to be transmitted through the proposed linkage.

[38] *See* Securities Exchange Act Release No. 30187 (January 14, 1992), 57 FR 2612 (January 22, 1992).

[39] The Phase-In Plan was put forth by the Securities Industry Association ("SIA") and endorsed by the Committee on Options Proposals ("COOP"). *See* letters to Jonathan G. Katz, Secretary, SEC, from Thomas P. Hart, Chairman, SIA Options and Derivative Products Committee, dated March 10, 1992; and Michael Schwartz, Chairman, COOP, dated March 11, 1992.

[40] *Id. See also* letter from Richard C. Breeden, Chairman, SEC, to Alger B. Chapman, Chairman & CEO, CBOE, dated June 30, 1992 (setting forth the Commission's understanding of the elements of the Phase-In Plan).

[41] *See* Securities Exchange Act Release Nos. 34431, 34432, 34444, 34434, and 34435 (July 22, 1994), 59 FR 38094 (August 1, 1994) (orders approving proposed rule changes filed by Amex, CBOE, NYSE, Phlx, and PCX, respectively). *See also* Amex Rule 958A, Commentary 01; CBOE Rule 8.51(b); PCX Rule 6.37(d); and Phlx Rule 1015(b).

[42] Proposed Exchange Act Rule 11Ac1–7(b)(1). The Commission believes that a broker-dealer should be allowed to rely on the market of

be required to make this disclosure on the customer's confirmation delivered pursuant to Exchange Act Rule 10b–10.[43] To satisfy this disclosure requirement, the Commission would expect such disclosure to be as prominent as the transaction price disclosed to the customer under Exchange Act Rule 10b–10.

A broker-dealer would not be required to provide such disclosure to its customer if it effects a transaction for a customer on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price.[44] Importantly, the proposed rule's disclosure requirement would not prohibit trade-throughs, but is intended to provide customers with important information about the quality of their executions. The Commission believes that the proposed rule would provide the individual customer with important information and facilitate an individual investor's ability to actively monitor whether his or her order routing firm is fulfilling its best execution obligations. It also would encourage broker-dealers to develop effective means of accessing better quotes published by other markets. The Commission notes, however, that the proposed Trade-Through Disclosure Rule would not replace the well-established duty that broker-dealers must provide best execution to their customers. To the contrary, broker-dealers remain obligated to seek the most favorable terms possible under the circumstances for their customers.[45]

The Commission solicits comment on whether there are any special considerations that should be taken into account in light of the fact that options trades are settled the day after the transaction.

b. Proposed Exception to Disclosure Requirement. As noted above, the proposed Trade-Through Disclosure Rule provides an exception from the customer disclosure requirements if the broker-dealer effects its customers' orders on an options exchange that participates in an effective national market system options linkage plan that includes provisions reasonably designed to limit intermarket trade-throughs. Preliminarily, the Commission believes that, at a minimum, to be reasonably designed to limit trade-throughs, a plan should contain provisions to: (1) Limit participants from trading through not only the quotes of other linkage plan participants, but also the markets of exchanges that are *not* participants in the plan; (2) require plan participants to actively surveil their markets for trades executed at prices inferior to those publicly quoted on other exchanges; and (3) make clear that the failure of a market with a better quote to complain within a specified period of time that its quote was traded-through may affect potential liability, but does not signify that a trade-through has not occurred.[46]

In addition, to comply with these standards, a participating exchange, generally, would have to adopt rules that would allow the exchange to sanction firms that repeatedly trade-through better prices of other exchanges, maintain policies and procedures that would limit the occurrence of trade-throughs, and maintain records that would identify trade-throughs and any review or remedial action taken by the exchange in response to such trade-throughs.

As stated above, to be reasonably designed to limit trade-throughs, the Commission preliminarily believes that a plan should limit trade-throughs of all markets displaying quotes in the consolidated quote system. The Commission recognizes that because of barriers to access and order routing obstacles, limiting trade-throughs of quotes on markets not participating in a linkage plan would be more difficult than limiting trade-throughs of quotes published by linked markets. The Commission seeks comment on potential approaches that could be employed in linkage plans to adequately limit trade-throughs of non-linked markets. The Commission also requests comment on whether instead of requiring the limitation of trade-throughs of non-linked markets, the exception from disclosure of trade-throughs should be limited only to trade-throughs of markets that participate in the linkage plan.

The Commission believes exchange linkage agreements are a straightforward method of removing barriers to access between exchanges. Because a linkage plan satisfying the proposed rule would provide for a mechanism to access superior quotes on another market and rules limiting such trade-throughs, the Commission believes there would be little value in requiring order routing firms to develop a disclosure process to deal with the unlikely event that there was a trade-through. Moreover, such an exception would provide an incentive for exchanges to enter into linkage agreements to limit trade-throughs, without mandating participation in a linkage or the method of linkage.

The Commission requests comment on the propriety of the proposed exception to the proposed Trade-Through Disclosure Rule for orders effected on exchanges that are participants in an effective national market system options linkage plan that includes provisions reasonably designed to limit customer orders from trading through better published prices. The Commission also seeks comment on what provisions such a linkage plan should be required to include and whether the minimum requirements identified by the Commission above are sufficient. Commenters are also invited to express their views as to whether an options exchange that is not a participant in an approved linkage plan should be required to provide to broker-dealers information about intermarket trade-throughs occurring on its market.

In response to the linkage plan proposals, several commenters suggested that the Commission require broker-dealers to route customers' orders on an order-by-order basis to the best quote.[47] The Commission does not currently believe that it is appropriate to mandate such a routing requirement, but would like commenters' views on whether it would be appropriate to except broker-dealers from the Commission's proposed disclosure requirements in new Rule 11Ac1–7[48] if broker-dealers systematically route customer orders on an order-by-order basis to the exchange with the best price at the time the order is routed.

c. Proposed Definition of Trade-Through. The proposed Trade-Through Disclosure Rule would define a trade-through as occurring when a customer

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execution to notify the broker-dealer of when a trade-through has occurred and the best quote at that time.

[43] 17 CFR 240.10b–10. Exchange Act Rule 10b–10 requires information to be delivered in writing (including electronically) at or before completion of the transaction. It does not require that all information be included in a single document.

[44] Proposed Exchange Act Rule 11Ac1–7(b)(2).

[45] *See supra* note 1.

[46] The Commission, in a separate release, is approving a national market system options linkage plan that generally requires members of participating markets to avoid initiating trade-throughs. *See supra* note 8. The Commission notes, however, that if the proposed Trade-Through Disclosure Rule is adopted as proposed, the Amex/CBOE/ISE plan approved today would have to be amended before broker-dealers effecting transactions on exchanges participating in the plan would be excepted from the disclosure requirements of the proposed Trade-Through Disclosure Rule.

[47] *See e.g.*, letters to Jonathan G. Katz, Secretary, Commission, from Douglas J. Engmann, President and Chief Executive Officer, ABN–AMRO, dated March 24, 2000; and Thomas Petterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers, the Timber Hill Group, dated April 3, 2000 and April 10, 2000.

[48] Proposed Exchange Act Rule 11Ac1–7.

order for listed options is executed at a worse price than the best quote published pursuant to a national market system plan for reporting quotations in listed options at the time of execution.[49] The proposal identifies seven circumstances in which a trade executed at a price inferior to a published price on another market would nevertheless not be considered a trade-through for purposes of the rule.[50] These circumstances are, in large part, the same as those exceptions proposed by the options exchanges in each of their linkage plan proposals.

In particular, because a broker-dealer should not be required to disclose to its customer that its order was executed at a price inferior to a "stale" quote, a trade would not be considered a trade-through if it occurs while OPRA is experiencing queuing. In the past, the aggregate message traffic generated by the options exchanges has, at times, surpassed OPRA's systems capacity,[51] which could result in the dissemination of quotes that are no longer accurate or accessible. Similarly, the definition of trade-through would exclude a trade executed at a price inferior to a price published by another exchange that has determined, for example, that as a result of unusual market conditions, it is incapable of accurately collecting and disseminating quotes, and thus would not require disclosure in such circumstances.[52]

In addition, a trade would not be considered a trade-through under the proposed rule when it occurs at a price inferior to a quote published by another market conducting a trading rotation for that options class, or when a customer order is executed as part of a trading rotation in that options class. During a trading rotation, each options series or class may not be open on all markets at the same time and may not be accessible. Moreover, two options exchanges have automated openings where their respective systems determine a single opening price and then automatically cross customer orders.[53] As a result, orders that are on the book prior to the opening do not have a chance to interact with better quotes or orders published by other markets.

The Commission also is proposing that it not be considered to be a trade-through in the event that an exchange member attempts to access a better published quote for a customer order, but the market publishing the better quote fails to respond to the order routed to it within 30 seconds of receiving the order, or the market publishing the better price experiences systems malfunctions that result in inaccessible quotes. In either case, the broker-dealer has attempted to access the superior published quote and has been unsuccessful. The Commission is proposing these exceptions because it does not believe that there is any value in requiring a broker-dealer to repeatedly attempt to access a clearly inaccessible quote.

Finally, the Commission is proposing to exclude transactions executed as part of a complex trade from the proposed Trade-Through Disclosure Rule. A complex trade involves two or more transactions that are contingent on each other, such as a spread[54] or a straddle.[55] The Commission is proposing to exclude such trades from the requirements to disclose trade-throughs because it believes that customers using these complex-trading strategies understand that inherent in executing the component parts of such strategies is the possibility that they may not receive the best-published price for each component part of the trade.

The Commission seeks comment on the propriety of the proposed exceptions to the proposed Trade-Through Disclosure Rule, and on whether there are any other circumstances in which a trade executed at a price inferior to a price offered on another market should nevertheless not be considered a trade-through for purposes of the proposed rule.

The Commission also seeks comment on whether a trade-through disclosure requirement should apply to all trade-throughs, or only to trade-throughs of a material price or amount. This question is particularly important in a decimals trading environment, where quotes may be for a smaller size, and trade-throughs for smaller amounts, and with respect to large orders, where the quote size may be small in relation to the order. One possible response would be to allow broker-dealers to include the size of the quote as part of the disclosure, so investors can better assess whether the size of the quote traded-through is meaningful compared to the size of their orders. Another response would be to exempt large block orders from the disclosure requirement because of their size in relation to the quote, their special handling need, and the awareness by customers with block orders of the quality of executions they receive.

d. *Rejection of Absolute Prohibition on Trade-Throughs.* The Commission considered whether to mandate a flat prohibition on trading at an inferior price. The Commission, however, was concerned, in part, that mandating a flat prohibition on trading at an inferior price would preclude investors from choosing to trade at an inferior price for reasons of better speed, size, or liquidity. The proposed rule would, instead, require that inferior executions be disclosed to investors, who would then be better informed and therefore better able to determine whether the quality of executions they receive are satisfactory.

B. Proposed Amendments to the Quote Rule

1. Background

One of the first national market system initiatives implemented by the Commission in the equity markets was the Quote Rule, Exchange Act Rule 11Ac1–1.[56] The Quote Rule requires all national securities exchanges and associations to establish procedures for collecting from their members bids, offers, and quotation sizes with respect to reported securities, and for making such bids, offers, and sizes available to quotation vendors. It also requires that quotation information made available to vendors be "firm," subject to certain exceptions.

The reliability and availability of quotation information are basic components of a national market system[57] and are needed so that broker-dealers are able to make best execution decisions for their customers' orders, and customers are able to make order

[49] Proposed Exchange Act Rule 11Ac1–7(b)(3).

[50] Proposed Exchange Act Rule 11Ac1–7(b)(4).

[51] *See, e.g.*, Securities Exchange Act Release No. 42849 (May 26, 2000), 65 FR 36180 (June 7, 2000) (approving a temporary capacity allocation plan). There are a number of events, such as the conversion to decimal pricing, that may result in an increase of peak message traffic, which could result in delayed quotes.

[52] 17 CFR 240.11Ac1–1(b)(3). Currently, each options exchange has rules that allow the exchange to suspend its firm quote requirements, for example, if a systems malfunction or other circumstance impairs the exchange's ability to disseminate or update market quotes in a timely and accurate manner. *See* Amex Rule 958A; CBOE Rule 8.51(a); PCX Rule 6.86(d); Phlx Rule 1015(a)(ix); and ISE Rule 804(d). The options exchanges may have to amend these rules to conform to the Quote Rule's exception for unusual market conditions. *See supra* note 70 and accompanying text.

[53] *See* CBOE Rule 6.2A and PCX Rule 6.64.

[54] A spread is an investment strategy that generally involves the simultaneous purchase or sale of options on the same underlying stock with different strike prices or expiration dates or both.

[55] A straddle is an investment strategy that generally involves the simultaneous purchase and sale of an equal number of calls and puts on the same underlying security with identical strike prices and expiration dates.

[56] *See supra* note 11.

[57] *See* Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 (1976) (proposing Exchange Act Rule 11Ac1–1).

entry decisions. Quotation information has significant value to the marketplace as a whole because a quotation reflects the considered judgment of a market professional as to the various factors affecting the market, including current levels of buying and selling interest.[58] Both retail and institutional investors rely on quotation information to understand the market forces at work at any given time and to assist in the formulation of investment strategies.

By its terms, the Quote Rule currently does not apply to options. At the time the Quote Rule was adopted in 1978, standardized options had been listed and traded on the options exchanges for only a few years, and the Commission had imposed a moratorium that restricted the expansion of options trading.[59] However, while the Commission intentionally excluded options from the requirements of the Quote Rule at that time, the Commission always thought that firm quotes ultimately should be required in the options markets. In 1980, when the Commission lifted the moratorium on options listings, it also set forth its vision on the future of options multiple trading, including the feasibility of firm quotes.[60] Successful implementation of a linkage among the markets was thought to depend upon the quality and reliability of quotation information disseminated by each market center. At that time, however, the Commission believed that the imposition of a firm quote requirement was unworkable.[61]

In conjunction with the Commission's adoption in 1989 of Rule 19c–5[62] on multiple trading of options, the Commission published a Staff concept release that discussed options market structure issues associated with multiple trading, and outlined suggestions for possible market structure enhancements. At that time, the release emphasized that the availability and reliability of comprehensive quotation information for options are important elements in considering the concerns traditionally associated with multiple trading.[63]

The release discussed whether the then-existing quote and trade reporting mechanism for options needed to be adapted for multiple trading by requiring that equity options quotes be firm. Market participants had, in the past, argued against a firm quote requirement in the options markets for a number of reasons.[64] These concerns, however, were recognized as largely moot due to the development of autoquote[65] and automatic execution[66] systems, which indicated that firm quotes were, at the very least, possible.[67]

Today, each options market requires its market makers to have firm quotes for some types of orders.[68] Therefore, the Commission believes that imposing a market-wide firm quote obligation on the options market participants should not be unduly burdensome. While the exchanges' firm quote rules and automatic execution systems provide their public customers with firm quote guarantees, these rules currently do not extend to other market participants. As described below, the Commission's proposal would modify the Quote Rule to require that options quotes be firm to both customers and other market participants.

The Commission is proposing a firm quote rule for options in conjunction with the proposed Trade-Through Disclosure Rule to ensure that the published quotes of options exchanges are accessible to orders from both customers and broker-dealers.[69] Currently, the options exchanges' quotes need not be firm for broker-dealer orders. Therefore, market markers on an exchange may not be able to trade with quotes on competing exchanges even when these market makers are representing customer orders. Yet market makers are expected to match the prices on competing exchanges or to trade with those quotes, before trading at an inferior price. The proposed Trade-Through Disclosure Rule is intended to reinforce efforts to honor the best-displayed price, and should encourage the development of improved methods to access better prices in other markets. A firm quote requirement for options is needed to ensure that these quotes will, in fact, be honored when orders are routed from other markets.

2. Proposed Amendments to the Quote Rule

The Quote Rule currently requires that the best bid, best offer, and size for each market quoting any security covered by the Quote Rule be collected and publicly disseminated.[70] These quotations must be firm, and a market maker, specialist, or other responsible broker or dealer generally is obligated to execute an order at a price at least as favorable as its published bid or offer up to the size of its published bid or offer.[71]

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[58] *See* Securities Exchange Act Release No. 11286 (March 11, 1975), 40 FR 15015 (1975) (letter sent from the Commission to the registered national securities exchanges requesting that the exchanges eliminate rules that restrict their access to, or use of, quotation information that is provided by an exchange to a quotation vendor).

[59] *See supra* notes 24 and 25 and accompanying text.

[60] *See* Moratorium Termination Release, supra note 34.

[61] In 1980, quotes were updated manually; thus, the options exchanges argued that it would be virtually impossible for a market maker to update its quotes in a timely fashion each time the underlying stock price moved.

[62] *See* Securities Exchange Act Release No. 26870, supra note 28.

[63] *See* Securities Exchange Act Release No. 26871, *supra* note 28.

[64] One major concern of market participants was that due to the derivative nature of options, and the need to adjust quotes in numerous series in response to a single price change in the underlying security, it would be impossible, or at least impractical, to require options market makers to honor their disseminated quotes. Further, it was thought to be difficult for an exchange to identify which member of a trading crowd was responsible for a quote and to provide a mechanism for quotes to be modified or withdrawn.

[65] The autoquote systems enable options market professionals to update their quotes in numerous options series simultaneously.

[66] The automatic execution systems provide, in effect, firm quotes for public customer orders.

[67] *See* Securities Exchange Act Release No. 26871, *supra* note 28.

[68] *See generally* Amex Rule 958A (requiring a specialist to sell/buy at least 10 contracts at the offer/bid displayed when the order reaches the trading post); CBOE Rule 8.51 (requiring a trading crowd to sell/buy at least the RAES contract limit applicable to a particular options class at the offer/bid displayed when a customer order reaches the trading station); PCX Rule 6.86 (requiring a trading crowd to provide a depth of 20 contracts for all non-broker-dealer orders at the bid/offer disseminated at the time an order is announced at the trading post); Phlx Rule 1015 (requiring that public customer orders be filled at the best market for a minimum of 10 contracts); and ISE Rule 804 (requiring a market maker to enter the number of contracts it is willing to buy or sell at in its quote and prohibiting a market maker from entering a bid or offer for less than 10 contracts).

[69] Section 11A(c)(1) of the Exchange Act grants the Commission the authority to prescribe, among other matters, rules and regulations to assure accurate and reliable quotations "with respect to any security other than an exempted security." 15 U.S.C. 78k–1(c)(1). The Commission believes that extending the requirements of the Quote Rule to listed options will further these interests.

[70] Exchange Act Rule 11Ac1–1(b) requires exchanges to establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers and sizes, and making such bids, offers, and sizes available to quotation vendors. 17 CFR 240.11Ac1–1(b). An exchange is relieved of its obligations to collect and disseminate quotation data if it determines pursuant to rules approved by the Commission that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting and disseminating quotation data and it notifies specified persons of that determination. 17 CFR 240.11Ac1–1(b)(3)(i). The Commission expects that each exchange would submit to the Commission for its approval proposed rule changes necessary to comply with the requirements of paragraph (b)(3) of Exchange Act Rule 11Ac1–1.

[71] This is referred to as the broker-dealer's "firm quote" obligation. The firm quote obligation under Exchange Act Rule 11Ac1–1(c) requires a responsible broker-dealer to: (i) communicate to its exchange, pursuant to procedures established by that exchange, its best bids, offers and quotation sizes for any subject security; and (ii) execute any

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In addition, the Quote Rule requires responsible broker-dealers to supply quotations to their exchange or association for dissemination to quotation vendors.[72] The Commission is proposing to expand the application of the Quote Rule to options traded on national securities exchanges.

a. *Proposed Amendments to Defined Terms.* Exchanges, associations, and responsible broker-dealers have obligations under the Quote Rule only with respect to subject securities. The Commission is proposing to expand application of the Quote Rule to include transactions in listed options by amending the definition of the term "reported security." As proposed, the term "reported security" would be modified to include any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan[73] or an effective national market system plan for reporting transactions in listed options.[74] By proposing to broaden the definition of the term "reported security" to include listed options,[75] the proposal would also include listed options within the definitions of "covered security,"[76] "exchange-traded security,"[77] and "subject security."[78] Thus, options exchanges and market makers would be obligated to publish their quotes and, as importantly, be firm for those quotes.

In addition, the Commission is proposing to amend the definition of "consolidated system" under Rule 11Ac1–1(a)(5)[79] to include a transaction reporting system operating pursuant to an effective national market system plan. The effect of this proposed amendment is to make clear that listed options would only be "subject securities" with respect to an exchange or association if, during the most recent calendar quarter, the aggregate trading volume on such exchange or association is more than 1% of the aggregate trading volume as reported by OPRA.

b. Quotation Size. Under the Quote Rule, each responsible broker or dealer is required to communicate to its exchange quotation sizes for any subject security,[80] and exchanges are required to collect and make available to quotation vendors quotation sizes and aggregate quotation sizes for subject securities.[81] Broker-dealers responsible for the quote must be firm up to its published size.[82]

Because the options markets do not disseminate to quotation vendors the size associated with their bids and offers,[83] the Commission is proposing two alternative amendments to the Quote Rule so that, at this time, broker-dealers and options exchanges would not be required to publish on a quote-by-quote basis the size associated with each quotation in listed options. Exchanges would, however, be required to establish by rule and periodically publish the size for which its best bid or offer in each options series[84] that is listed on the exchange is firm. The Commission is proposing these exceptions to the Quote Rule because of the existing limitations of the options exchanges' systems and of the OPRA system. Instead, market participants would be furnished by the exchanges with information relating to the size associated with the quotes in a particular series, as they are today. While the proposal, as drafted, permits each exchange to determine the size associated with quotes on its market, the Commission seeks comment as to whether the Commission should establish a minimum number of contracts for which quotes must be firm.

Commenters should also address whether the Commission should mandate that size be disseminated with each quotation. Comment on this issue was solicited at the time the Commission published for comment linkage plans submitted by the options markets. In response, the majority of commenters that addressed this issue favored the development of a system to provide the dissemination of quotes with size.[85] Some of those commenters, however, stated that quotations with size should not be required as part of a linkage plan.[86] Two of these commenters noted the desirability of disseminating quotes with size, but questioned whether existing options quotation systems would be able to handle quotes with size in the near future.[87]

Under both alternatives being proposed, if the rules of the exchange do not require its members to communicate to it quotation sizes for listed options, a responsible broker or dealer that is a member of that exchange would be relieved of its obligations under the Quote Rule to communicate to such exchange its quotation sizes for any listed option that is a subject security. Instead, each responsible broker or dealer would satisfy its firm quote obligation by executing any order to buy or sell a listed option that is a subject

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order to buy or sell a subject security presented to it by another broker-dealer at its published bid or offer in any amount up to its published quotation size, unless an exception applies. 17 CFR 240.11Ac1–1(c).

[72] *Id.*

[73] All national securities exchanges and national securities associations must file with the Commission a transaction reporting plan regarding transactions in listed equity and Nasdaq securities. *See* Exchange Act Rule 11Aa3–1(b)(1), 17 CFR 240.11Aa3–1(b)(1).

[74] Currently, the OPRA Plan is the only effective national market system plan that collects, processes, and makes available transaction reports for listed options.

[75] The Commission is proposing to define the term "listed option" in the Quote Rule by reference to Exchange Act Rule 15c3–1(c)(2)(x)(B)(*1*), which defines "listed option" as any option traded on a registered national securities exchange or automated facility of a registered national securities association. 17 CFR 240.15c3–1(c)(2)(x)(B)(1). *See* Proposed Exchange Act Rule 11Ac1–1(a)(27).

[76] The term "covered security" is defined as any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Exchange Act, 15 U.S.C. 78c(a)(51)(A)(ii). *See* Exchange Act Rule 11Ac1–1(a)(6), 17 CFR 240.11Ac1–1(a)(6).

[77] The term "exchange-traded security" is defined as any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange. *See* Exchange Act Rule 11Ac1–1(a)(10), 17 CFR 240.11Ac1–1(a)(10).

[78] Under the Quote Rule, the term "subject security" is defined to include any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system. *See* Exchange Act Rule 11Ac1–1(a)(25), 17 CFR 240.11Ac1–1(a)(25).

[79] 17 CFR 240.11Ac1–1(a)(5).

[80] *See supra* note 71.

[81] *See supra* note 70.

[82] Each responsible broker or dealer, subject to certain exceptions, must execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or offer in any amount up to its published quotation size. *See* Exchange Act Rule 11Ac1–1(c)(2), 17 CFR 240.11Ac1–1(c)(2). This obligation is subject to certain exceptions. *See* Exchange Act Rule 11Ac1–1(c)(3), 17 CFR 240.11Ac1–1(c)(3). In addition to the existing exceptions, the Commission is proposing to except responsible brokers or dealers from the firm quote requirements of proposed paragraph (d)(3)(i) if the order for the purchase or sale of a listed options is presented during a trading rotation in that listed option. Alternatives A and B, Proposed Exchange Act Rule 11Ac1–1(d)(3)(ii)(B).

[83] Currently, OPRA does not have the systems capability to collect and disseminate quotes with size. OPRA is, however, scheduled to have this capability by January 2001. Some options markets may, however, choose to continue not to disseminate quote size.

[84] The Commission is proposing to define the term "option series" in the Quote Rule. Under proposed Exchange Act Rule 11Ac1–1(a)(28), the term "option series" means contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

[85] Donahue Letter; Ianni Letter; Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; CBOE Letter; and Charles Schwab Letter.

[86] Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; and CBOE Letter.

[87] Susquehanna Letter and SIA Letter.

security, in an amount up to the size established by the exchange's rules.[88]

The two alternatives differ, however, in the flexibility that exchanges would have to establish the size for which its bid and offer is firm. Under proposed Alternative A, the size for which an exchange's best bid or offer is firm, as established by exchange rule, would have to be the same for orders received from customers as for orders received from broker-dealers.[89] Under proposed Alternative B, however, an exchange could establish different firm quote sizes for customer orders than for broker-dealer orders.[90]

The Commission is soliciting comment on the circumstances under which it is appropriate for exchanges to be permitted to establish rules that allow options market makers to be firm for broker-dealer orders in a size different than that for which they are firm for customer orders. In particular, should the Commission establish a minimum size for which options market makers' quotes must be firm for broker-dealer orders? The Commission would also like commenters views on whether the size for which options market makers' quotes are firm for customer orders should be the same, regardless of whether the orders are executed through an exchange's automatic execution system or otherwise.

c. Proposed Thirty Second Response Requirement. As discussed above, under the proposed Trade-Through Disclosure Rule, if a responsible broker or dealer fails to respond to an incoming order within the 30 seconds required pursuant to the Quote Rule, the routing broker or dealer may execute its customer's order at its own inferior quote and would not be required to disclose the unresponsive quote to its customer as a trade-through.[91] The Commission's 30-second proposal is based on the trade-through provisions of the Amex/CBOE/ISE plan, under which broker-dealers are excepted from trade-through liability when a receiving market fails to respond to an incoming linkage order within 30 seconds.[92]

As a complement to this provision, the Commission is proposing to require each responsible broker or dealer to respond to an order to buy or sell a listed option within 30 seconds by either: (i) Executing the entire order; or (ii) executing at least that portion of the order equal to the applicable firm quote size and revising its bid or offer.[93] A responsible broker's or dealer's applicable firm quote size would be its published quote size or, if a responsible broker or dealer has been relieved of the obligation to publish quote size, the minimum firm quote size established by its exchange's rules. If, as provided in Alternative B, an exchange is permitted to set different firm quote sizes for orders received from customers than for orders received from broker-dealers, a responsible broker's or dealer's applicable firm quote size could be different for customer orders than for broker-dealer orders.[94]

For example, if Market Maker A is not required to publish a quotation size but Market Maker A's exchange requires Market Maker A to be firm for customer orders up to 20 contracts, Market Maker A must respond within 30 seconds to a customer order for 30 contracts by filling the order for an amount equal to at least 20 contracts. If Market Maker A executes the entire order for 30 contracts, Market Maker A would not be obligated to move its quote. If Market Maker A executes only the part of the order representing its firm quote guarantee (*i.e.*, 20 contracts), Market Maker A would be required to move its quote to an inferior price.

The Commission preliminarily believes that it is appropriate to establish a time limit in which a broker-dealer that routes an order to another broker-dealer's quote must wait before being able to execute its customers' orders at its own inferior quote without being required to disclose the subsequent execution as a trade-through. If a market that is displaying a quote fails to respond to an incoming order that seeks execution at the displayed quote, the Commission believes it would be unreasonable to require a broker that executes its customer order at its own inferior quote to incur trade-through disclosure responsibility. Further, the Commission does not want to unduly delay the execution of orders by requiring a broker-dealer to wait an unreasonable amount of time for a response from an away market before it can execute the order without incurring disclosure responsibility. Thus, any time period that is established must balance the need for price priority against the need for efficient execution of orders.

Commenters should address the propriety of the proposed modification to the Quote Rule that would require a response within 30 seconds from a market that has published the best quote. Specifically, is it appropriate to have a specified time frame? If so, is 30 seconds appropriate, or is there another time frame, such as 15 seconds, or 45 seconds, that would be more appropriate?

IV. General Request for Comment

The Commission seeks comment on the proposals described in this release. In addition to the specific requests for comment throughout the release, the Commission asks commenters to address whether the proposed amendments to the Quote Rule and proposed Trade-Through Disclosure Rule would further the national market system goals set out in Section 11A of the Exchange Act,[95] and, in particular, the goals of assuring "the practicability of brokers executing investors' orders in the best market." Commenters are also asked to address whether disclosure to customers about the execution of their orders at a price that trades through another market is an adequate substitute for requiring that all customers' orders receive trade-through protection by mandating a linkage among the options markets.

In addition, the Commission seeks comment on whether it should order the options exchanges to become participants in the Amex/CBOE/ISE plan or any other linkage plan.

Commenters may also wish to discuss whether there are any legal or policy reasons why the Commission should consider a different approach. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[96] the Commission is also requesting information regarding the potential impact of the proposed amendments and rules on the economy on an annual basis. If possible, commenters should provide empirical data to support their views.

V. Paperwork Reduction Act

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[97] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 C.F.R. 1320.11. The Commission is proposing amendments

[88] Alternatives A and B, Proposed Exchange Act Rule 11Ac1–1(d)(2).

[89] Alternative A, Proposed Exchange Act Rule 11Ac1–1(d)(1).

[90] Alternative B, Proposed Exchange Act Rule 11Ac1–1(d)(1)(ii).

[91] Proposed Exchange Act Rule 11Ac1–7(b)(4)(vii).

[92] *See* Amex/CBOE/ISE plan Section 8(c)(iii)(B).

[93] Alternatives A and B, Proposed Exchange Act Rule 11Ac1–1(d)(3).

[94] Alternative B, Proposed Exchange Act Rule 11Ac1–1(d)(1)(ii).

[95] 15 U.S.C. 78k–1.

[96] Pub. L. No. 104–121, 110 Stat. 857.

[97] 44 U.S.C. 3501 *et seq.*

to the collection of information titled "Rule 11Ac1–1, Dissemination of Quotations" (OMB Control Number 3235–0461). The Commission is also proposing to create a new information collection entitled "Rule 11Ac1–7, Trade-Through Disclosure Rule." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

A. Summary of Collection of Information

The proposed Trade-Through Disclosure Rule, proposed Exchange Act Rule 11Ac1–7, would require a broker-dealer to disclose to a customer when its order is executed at a price inferior to a better published price on another market, as well as the better price. However, a broker-dealer would not be required to provide such disclosure to its customer if it effects the customer's transaction on a market that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price.

The Quote Rule, Rule 11Ac1–1, was adopted pursuant to Exchange Act Sections 2, 3, 5, 6, 9, 10, 11A, 15, 15A, 17, and 23. The proposed amendment to Exchange Act Rule 11Ac1–1 would require markets to establish procedures for collecting their members' bids, offers, and quotation sizes for options traded on a national securities exchange or an automated facility of a registered national securities association. The proposed amendment also would require that the quotation information made available to vendors be firm, subject to certain exceptions.

B. Proposed Use of Information

The proposed Trade-Through Disclosure Rule information would be used by customers to evaluate the quality of the trade executions they receive. It would also be used by broker-dealers to evaluate and make determinations related to their best execution obligations. The Commission and options markets would use the information collected pursuant to the proposed rule for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

Customers of broker-dealers, as well as other market participants, would use the firm quote information to determine the best prices available for, and level of trading interest in, listed options trading. The Commission and options markets would use the firm quote information for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations of broker-dealers.

C. Respondents

While the proposed Trade-Through Disclosure Rule generally would apply to all of the approximately 7,500 broker-dealers that were registered with the Commission as of December 31, 1999, of which approximately 3,800 broker-dealers conduct business with the general public, most provisions would apply only to the less than 330 broker-dealers that clear customer accounts pursuant to Exchange Act Rule 15c3–3.[98] The proposed amendments to the Quote Rule would apply to the approximately 1,044 broker-dealers registered with the Commission that function as options market makers or specialists.[99]

D. Total Annual Reporting and Recordkeeping Burden

1. Proposed Trade-Through Disclosure Rule

a. *Capital Costs.* If a broker-dealer effects trades on a market that participates in a linkage plan with provisions reasonably designed to limit trade-throughs, including trade-throughs of prices on unlinked markets, the broker-dealer has no paperwork capital costs under the proposed Trade-Through Disclosure Rule.

However, the proposed Trade-Through Disclosure Rule would require broker-dealers to make certain disclosures to customers if the broker-dealer effects trades on markets that do not participate in a linkage plan. Broker-dealers would incur paperwork costs to modify systems to permit them to receive information about when a trade-through has occurred and the price that was traded through. Further, broker-dealer systems would have to be modified to ensure that information about trade-throughs is matched with correct customer accounts, thus permitting broker-dealers to disclose to customers when trade-throughs occur.

Because broker-dealer processes, systems capability, and customer bases vary so widely, it is difficult to provide an estimated cost with which all parties will agree. Nevertheless, the Commission estimates that it would take a computer programmer at an hourly rate of approximately $50[100] between 500 and 1,000 hours[101] to modify the average broker-dealer's systems to receive trade-through information, at a cost of between $25,000 and $50,000 for each broker-dealer. There are approximately 7,500 broker-dealers that were registered with the Commission as of December 31, 1999. Of those, approximately 3,800 broker-dealers conduct business with the general public. Most introducing firms, however, rely on their clearing firms to generate confirmation statements for customers.[102] As a result, fewer than 330 broker-dealers would actually have to modify their systems, should any systems modifications be necessary. However, if all 330 registered broker-dealers that clear customer accounts pursuant to Exchange Act Rule 15c3–3[103] were required to make these systems modifications, the one-time paperwork cost is estimated to be between $8,250,000 and $16,500,000.

The Commission notes, however, that it is quite possible that the participants in the approved linkage plan would amend the plan to adequately limit trade-throughs, and that the Phlx and PCX would choose to join the linkage plan or submit their own linkage plan for Commission approval. If all options markets participate in a linkage plan that includes provisions reasonably designed to limit trade-throughs, no systems modifications would be necessary and broker-dealers would incur no paperwork costs.

b. *Burden Hours.* If a broker-dealer effects trades on a market that participates in a linkage with provisions reasonably designed to limit trade-throughs, including trade-throughs of prices on non-linked markets, the broker-dealer would have no paperwork burden under the proposed Trade-Through Disclosure Rule.

However, the proposed Trade-Through Disclosure Rule would require broker-dealers to make certain disclosures to customers if the broker-dealer effects trades on markets that do not participate in a linkage that has provisions reasonably designed to limit

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[98] 17 CFR 240.15c3–3.

[99] The number of specialist and market makers was determined by counting the number of registered broker-dealers that report non-zero market making profits or losses in their FOCUS reports.

[100] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Management and Professional Earnings in the Securities Industry 1999, published by the SIA ("SIA Report").

[101] The Commission estimates that it would take each broker-dealer that provides confirmation statements to customers between 500 and 1,000 hours to complete the required systems modifications.

[102] The Commission estimates that none of the 41 small broker-dealers who do not have a relationship with a clearing firm regularly represent customer options orders.

[103] 17 CFR 240.15c3–3.

trade-throughs. Specifically, if a customer order was traded-through, a broker-dealer would be required to disclose the trade-through to the customer. Currently, approximately 21,000,000 trades in multiply-listed options classes occur each year.

If the Amex, CBOE, and ISE amend their linkage plan to comply with the proposed Trade-Through Disclosure Rule's alternative to disclosure of trade-throughs, and the Phlx and PCX choose not to join the Amex/CBOE/ISE plan and also choose not to submit for Commission approval another linkage plan, the Commission estimates that approximately one-third of all trades annually, or 7,000,000 trades, in multiply-listed options classes would be subject to the disclosure requirement of the proposed Trade-Through Disclosure Rule. Of those 7,000,000 trades, the Commission estimates that as many as 5%, or 350,000 trades, would involve intermarket trade-throughs. For each trade-through, it is assumed that broker-dealers' systems would have already been reprogrammed to receive information about trade-throughs and to appropriately disclose such trade-throughs to their customers on the customer confirmation statements. Therefore, the Commission estimates that the paperwork burden of the disclosure for broker-dealers would be nominal because it would merely require a small amount of additional information on customer confirmation statements.

The Commission notes, however, that it is quite possible that the participants in the approved linkage plan would amend the plan to adequately limit trade-throughs, and that the Phlx and PCX will choose to join the linkage plan or submit their own linkage plan for Commission approval. If all options markets participate in a linkage plan that is reasonably designed to limit trade-throughs, there may ultimately be no paperwork burden associated with the proposed Trade-Through Disclosure Rule.

2. Proposed Amendments to the Quote Rule

a. *Capital Costs.* Applying the Quote Rule to options trading would require options self-regulatory organizations ("SROs") to collect bids and offers from their members. However, SROs generally are obligated already, pursuant to their participation in the OPRA plan, to collect bids and offers, and send them to OPRA for dissemination. To comply with the amended Quote Rule, SROs would be required to periodically publish the size (or sizes, if different categories are used) for which a quote must be firm. In addition, under the amended Quote Rule, SROs would be required to file proposed rule changes to identify unusual market conditions. The options markets would incur one-time costs to file and obtain approval of these rule changes, as well as other related rules. The Commission estimates that the five options SROs would need to file two rule changes initially to comply with the proposed amendments to the Quote Rule, for a total of 10 rule changes. The Commission estimates that a routine rule change requires approximately 25 hours of legal review at an hourly cost of $98.25,[104] plus one hour of secretarial time at an hourly cost of $30.40,[105] for a total cost of $2,487 per proposed rule change submitted for Commission approval. Therefore, the Commission estimates that the aggregate cost of two proposed rule changes filed by each of the five options SROs would total approximately $24,867.

Broker-dealers that are market-makers or specialists have existing obligations under SRO rules to communicate their bids and offers to their SROs, and already do so. Therefore, broker-dealers would incur no additional paperwork costs from the amended Quote Rule beyond those related to systems changes, discussed below, to comply with the amended Quote Rule. Specifically, market makers and specialists may, to comply with the amended Quote Rule, change their quote-setting practices by changing the factors used to establish quotes through automated quoting systems (*i.e.*, resetting the parameters). The Commission notes that almost all option quotes are currently set by automated quoting systems. The Commission estimates broker-dealer systems changes made to comply with the amended Quote Rule would require changes estimated to take approximately three to five minutes per options class. As there are approximately 3,000 options classes eligible for multiple listing, the Commission estimates that the total burden for one market could range from 180 to 250 hours. For all five markets, the total burden could range from 900 to 1,255 hours. The hourly rate of an exchange clerk that would make the required system changes is $32.50;[106] therefore, the total cost for these changes could range from $29,250 to $40,787.

b. Burden Hours. SROs may amend their rules to comply with the Quote Rule from time to time. The Commission estimates that the five options SROs would amend their respective rules at most once per year, for a total of five proposed rule changes. The Commission estimates that a routine proposed rule change takes 25 hours of legal review at an hourly cost of $98.25[107] plus one hour of secretarial time at an hourly cost of $30.40,[108] for a total cost of $2,487 per proposed rule change. Therefore, the total annual cost of five SRO proposed rule changes would impose a burden of $12,433.

Broker-dealers would not incur any additional paperwork cost from the Quote Rule beyond the systems changes discussed above. Market-makers and specialists are already required to make and provide quotes in options to their SROs. As a result, amending the Quote Rule to include options would require only that market makers and specialists be firm for their quotes, which would impose no additional paperwork burden on them.

E. General Information about the Collection of Information

Any collection of information pursuant to the proposed rules would be mandatory. Market centers that are national securities exchanges or national securities associations would be required to retain the collections of information required under the proposed Trade-Through Disclosure Rule and the amended Quote Rule for a period of not less than five years, the first two years in an easily accessible place. Broker-dealers would be required to retain the collections of information for a period of not less than three years, the first two years in an easily accessible place.

The information collected pursuant to the Quote Rule would be held by the broker-dealers and markets. The Commission and other securities regulatory authorities would obtain possession of the information only upon request. The information collected pursuant to the proposed Trade-Through Disclosure Rule would be sent

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[104] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 100.

[105] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Office Salaries in the Securities Industry 1999.

[106] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 100.

[107] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 100.

[108] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Office Salaries in the Securities Industry 1999.

to customers and also retained by the broker-dealers. The Commission, SROs, and other securities regulatory authorities would obtain possession of the information only upon request. Any collection of information that is received by the Commission, SROs and other securities regulatory authorities, would not be disclosed under the terms of the proposal, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and the clarity of the information to be collected; and (4) minimize the burden of collection on those who are to respond, including through the use of electronic or automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, with reference to File No. S7–17–00.

The Commission has submitted the proposed collection of information to OMB for approval. Members of the public should direct any general comments to both the Commission and OMB within 30 days. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this release. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–17–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549–0609.

VI. Costs and Benefits of Proposed Rules

As discussed above, the Commission is proposing a new rule—the Trade-Through Disclosure Rule—and amendments to the Quote Rule to provide customers with more information with which to evaluate the quality of executions achieved by their broker-dealers and to require that quotes for listed options be firm. Together, these rules would provide incentives for the options exchanges and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs, but would not mandate the form of mechanism employed.

The Commission has identified below certain costs and benefits to the proposed Trade-Through Disclosure Rule and the proposed amendments to the Quote Rule. The Commission requests comment on all aspects of this cost-benefit analysis, including identification of additional costs or benefits of the proposed changes. The Commission encourages commenters to identify or supply any relevant data concerning the costs or benefits of the proposed amendments.

A. Costs and Benefits of the Proposed Trade-Through Disclosure Rule

The proposed Trade-Through Disclosure Rule would require a broker-dealer to disclose to its customer (on the confirmation statement) when a trade-through has occurred. A broker-dealer would not be required to make this disclosure if the trade was effected on a market that is a participant in a Commission-approved intermarket linkage plan that contains provisions reasonably designed to limit trade-throughs.

1. Benefits

A trade-through is costly to an investor primarily because the investor receives an execution at a price that is not the best price available. A trade-through also has potential costs for the broker-dealer or customer responsible for the best quote because that quote or customer order does not receive the execution it would have if the order that was executed at a price inferior to the best quote were instead routed to it. Consequently, trade-throughs may increase the incidence of unexecuted customer limit orders.

The staff estimates that approximately 5% of all trades (or 7,964 trades for a total of 156,403 contracts) in the 50 most active multiply-listed option classes took place at prices inferior to the best price quoted on a competing exchange during the week of June 26, 2000.[109] To better describe the execution quality of small customer orders, the staff also estimates that 1% of all automatic execution trades (or 464 automatic execution trades for a total of 2,336 contracts) in the 50 most active multiply-listed option classes took place at prices inferior to the best price quoted on a competing exchange during the week of June 26, 2000.[110]

Investors would benefit from the proposed Trade-Through Disclosure Rule because they would be informed of whether their orders were executed at a price inferior to the best available price. With that information, investors would have the opportunity to reduce the likelihood that their orders would be executed at a price inferior to a price displayed by another market, by selecting broker-dealers that effect their transactions on markets that are participants in a linkage plan with provisions reasonably designed to limit trade-throughs. If all orders executed through automatic execution systems were executed at the best-published quote (*i.e.*, trade-throughs of automatic execution trades were eliminated), the estimated annual savings to investors trading through exchanges' automatic execution systems would be approximately $11,000,000 each year.[111] If all trades were considered, the elimination of trade-throughs would result in substantially higher annual savings to investors.[112]

The Commission requests comment on whether there is a better measure for

[109] The staff relied on data from OPRA for this analysis. All trades marked as spreads, straddles, late or stopped were excluded from the sample. To determine the quote in effect at the time of the trade, the highest offer and lowest bid on each competing exchange for a period of one minute prior and two minutes after the reported execution were identified. Quotes from an exchange that indicated it was experiencing fast market conditions during the time when the trade was executed were not included. Quotes that indicated that an option class was in rotation were also excluded. The staff recognizes that not all these trades in the sample could be fully executed at the best available quoted price because of size or other factors.

[110] Trades executed through automatic execution systems account for about 36% of all trades and about 12% of all contracts traded in the 50 most active multiply-traded options classes during the week of June 26, 2000. The procedure used for the analysis of automatic execution trades is similar to that described for all trades, except only automatic execution trades are included.

[111] The annual benefit estimate is obtained by applying the staff's trade-through findings for automatic execution trades in the 50 most active multiply-traded options classes to all multiply-listed classes and extending the results from one week to a full year.

[112] The Commission estimates the benefits of executing a maximum of 20 contracts at the best-quoted price for those trades identified as trade-throughs could total several hundred million dollars per year.

determining the benefits of the proposed rule than the evaluation of the trades currently executed at a price inferior to the best published quote. Commenters are also invited to express their views on the estimate of the number of trades executed at inferior prices. Would options exchanges' audit trail data, rather than OPRA data, provide a better estimate of the number and cost of trade-through executions? Is it possible to estimate the price and number of contracts that an order would have received had it been routed to an exchange showing a superior price? Is the week of June 26, 2000 representative of general trading patterns? Finally, the Commission would like commenters' views on investors' likely response to order confirmation statements disclosing that their orders were executed at prices inferior to the best prices available in the market, and the impact of such response.

2. Costs

The proposed rule may require broker-dealers and markets to incur capital costs, such as one-time costs to modify existing systems. For example, the proposal could impose one-time costs on markets and broker-dealers that must modify systems to determine when trade-throughs have occurred and to issue notifications to customers of trade-throughs. Further, to identify when an order trades through a posted quote, information systems would need to be developed that could identify the displayed quotes at the time of execution. Because the Commission would allow broker-dealers to rely on notifications from the markets when trade-throughs occur and the quote at that time, the costs of such information systems may be borne by the options markets. The Commission seeks comment on the costs of implementing such systems. The Commission requests commenters' views on whether the current OPRA feed is adequate to identify quotes from options markets. Would information in addition to the quote need to be made available to broker-dealers by the options markets? If so, the Commission requests comment on the anticipated costs of providing such information.

In addition, implementing the proposed rule could require broker-dealers to change the content of customer confirmation statements, issued in either electronic or paper form. The Commission requests estimates of the costs of changing customer confirmation statements. An alternative to changing confirmation statements would be for broker-dealers to route orders to exchanges participating in an approved linkage plan. Although the proposed rule does not require the implementation of such a plan, it does envision that an approved plan could be implemented.

Thus, one possible cost to the options markets of the Trade-Through Disclosure Rule could be a one-time cost to establish a linkage. In addition to the capital costs of establishing the linkage, costs could include regulatory costs, such as obtaining Commission approval of a linkage and of SRO rule changes necessary to implement a linkage. Further, there may be economic implications if a market chooses to participate in an approved linkage plan, because members may then be more likely to route orders to other exchanges that are quoting a better price.

The Commission estimates that capital costs for a linkage plan range from $1,000,000 to $1,500,000 initially, and yearly costs could range from $300,000 to $1,000,000. The Commission requests comment on the costs of developing a linkage between the markets, as well as the costs for individual markets to integrate their systems into such a plan.

B. Costs and Benefits of Proposed Amendments to the Quote Rule

The Commission proposes to amend the Quote Rule so that it applies to trading in listed options. The proposal makes certain accommodations for the fact that options markets do not currently disseminate to quotation vendors the size of their quotes. The Commission also proposes an alternative that would allow broker-dealers to be firm in different sizes for customer and broker-dealer orders. Finally, the proposal would require a broker-dealer to respond to an incoming order within 30 seconds by either: (1) Executing the order in full; or (2) partially executing the order up to the firm quote size and updating its quote.

1. Benefits

Amending the Quote Rule would eliminate discrepancies between the treatment of quotes in the options markets and the equity markets. Although options trading is not currently covered by the Commission's Quote Rule, each exchange's rules require their members' quotes to be firm up to a certain minimum size and establish the process for handling orders in excess of the exchange's firm quote size. Exchange rules also establish whether members' quotes must be firm for all orders or only some orders, such as only for public customer orders.

The Commission believes that applying the Quote Rule to options trading would provide a number of benefits. Firm quotes reduce uncertainty surrounding order routing decisions for broker-dealers that are seeking to fill customer orders at the best available price. If broker-dealers are confident that quotes are firm, investor orders may be routed to the market with the best price and receive an execution at that price. Under current practices, because broker-dealers cannot be confident that a price on another market is firm (due to existing market rules, including trade-or-fade rules), orders do not always receive the best available price. As discussed above, the staff estimates that 5% of all trades in the 50 most active multiply-listed classes took place at prices inferior to the best price quoted on a competing market during a one-week period in June 2000. Broker-dealers often state that such trade-throughs occur when market makers trade at inferior prices because they believe the better price on the other market may not be firm and the quote may "fade" if the broker-dealer were to attempt to execute against it. By requiring that posted prices be firm, a great deal of uncertainty about order execution quality could be reduced. This would be true even if the quote were permitted to be firm for different sizes for customer orders than for broker-dealer orders. The Commission is unable to quantify these benefits, and therefore requests comment and estimates.

In addition to providing certainty to broker-dealers making order routing decisions and seeking to fill orders at the best available price, extending the Quote Rule to the options markets may benefit broker-dealers by enhancing their ability to satisfy their regulatory obligations, including best execution. The Commission is unable to quantify these benefits, and therefore requests comment and estimates.

The Commission also believes that the proposed amendments to the Quote Rule would bolster investor confidence in the options markets by ensuring that quotes made by market participants are available for a specified number of options contracts, thus providing greater certainty for investors. In addition, by requiring the quotations in listed options to be firm, the proposed amendments may also lead to better informed investors, also increasing investor confidence in the market. The Commission requests comment and estimates on any other benefits that would result from applying the Quote Rule to options trading.

Specifically, the Commission requests comment on whether investors (including broker-dealers) have

experienced problems with the execution of their orders because options quotes have not proven to be firm. If so, how widespread are these problems and to what extent do they presently occur? Do these problems encourage broker-dealers to route orders to markets displaying inferior prices? The Commission also requests any data or information on the number of trades executed at inferior prices. Is it possible to estimate the price and quantity that a trade would have received had it been routed to a market showing a superior price?

Another benefit of applying the Quote Rule to options trading is that it would likely increase competition between markets. Because all quotes would be firm, a market participant would know that a posted quote that is superior to the best-published quote would be recognized as firm. Therefore, the posted quote may attract order flow. The ability to attract order flow with a market-improving quote encourages intermarket price competition, which benefits investors. The Commission requests comment on whether firm quotes would affect order routing decisions, including information and data about the impact, if any.

Currently, options markets do not disseminate quotes with size. Options markets determine the size for which their market makers or specialists must be firm. The proposed amendment to the Quote Rule would require each market to establish and periodically publish the sizes for which market makers or specialists must be firm. The Commission requests comment on the costs and benefits of permitting options markets to require different minimum sizes for customer orders than for broker-dealer orders. Would this help avoid market makers widening their spreads to protect themselves from other market professionals? Is it possible to quantify the benefits of having different minimum size requirements for customer and broker-dealer orders? What is the current experience with differential treatment for customer and broker-dealer orders, with particular regard to the markets' minimum size and auto-execution eligibility rules?

The Commission believes the proposed amendments to the Quote Rule will benefit investors whose orders, upon arrival at the options market, are either: (1) delayed, but then executed, or (2) delayed and never executed. The Commission further believes that its proposal would result in (1) fewer unexecuted investor orders due to quote changes after order arrival, or (2) fewer orders executed at prices less favorable to the investor than those prevailing at the time of order arrival. The Commission requests comment on the extent to which order execution is delayed following order arrival at a market, particularly for orders requiring manual execution. What execution prices do delayed orders receive relative to the quotes at order arrival? How many orders are cancelled due to delays incurred prior to exposure to the market?

Finally, the proposed rule would provide a similar standard for firm quotes in both equity and option markets. Does the current regulatory environment create confusion for investors experiencing different firm quote rules in different markets? If such confusion exists, what are the benefits that would be achieved by eliminating the confusion? Do investors have incorrect expectations about the nature of quotes in options markets? If so, do these incorrect expectations have a cost?

2. Costs

Applying the Quote Rule, as proposed, to options trading would require markets to collect bids and offers from their members. This would not impose a significant burden on markets because bids and offers generally are collected already by the markets and sent to (and disseminated through) OPRA. Currently, each of the options markets has rules that establish the maximum size of orders that its automatic execution system will execute. Markets would, however, be required to periodically publish the size (or sizes, if different categories are used) for which their quotes must generally be firm. There are likely to be expenses incurred by the markets related to periodically publishing their firm quote sizes. The Commission requests comment on the cost associated with the proposed requirements.

Amendment of the Quote Rule to include options may require markets to incur one-time costs. For example, options markets will need to enhance surveillance and enforcement mechanisms to ensure that SRO members are complying with the Quote Rule. Further, options market makers and specialists may need to reevaluate and change their quotes in light of the obligation to be firm that would be imposed by the proposed amendment to the Quote Rule. As the Commission is unable to quantify these costs, comment and estimates on the costs described above is requested.

Commenters are invited to express their views about the costs associated with the proposed 30-second response time for orders larger than the firm quote size. What are the costs, including opportunity costs, to investors in waiting 30 seconds for a report on such orders? What are the costs related to enabling the markets to respond to such an order within 30 seconds? Will options markets be able to respond within 30 seconds if both markets involved are not participants in the same linkage plan? The Commission seeks estimates for the costs to market makers of executing orders that they currently decline to fill at their displayed quote. If firm quotes were extended to broker-dealers as well as customers, would there be an increase in the risk to market makers from executing orders against other market professionals? What costs are currently incurred by SROs and other regulators in investigating market maker complaints that broker-dealers are misidentifying their trades as those of public customers? Would these costs be reduced if the amended Quote Rule were adopted? How would a difference in firm quote size between customer orders and broker-dealer orders affect the costs incurred by market makers and specialists?

In order to minimize costs, the Commission is proposing to amend the Quote Rule to conform as closely as possible to existing options market requirements and practices. The Commission seeks comment and supporting data on these and any other costs of the proposed amendments to the Quote Rule.

VII. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)[113] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. Because both the proposed amendments to the Quote Rule and the proposed Trade-Through Disclosure Rule would apply equally to all relevant market participants, the Commission does not believe that the proposals would have any anti-competitive effects. The Commission requests comment on any anti-competitive effects of the proposals.

In addition, Exchange Act Section 3(f)[114] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. The Commission believes that the proposed

[113] 15 U.S.C. 78w(a).

[114] 15 U.S.C. 78c(f).

Trade-Through Disclosure Rule would bolster investor confidence in the options markets by better informing customers about the quality of their executions and the implications of their broker-dealers' execution decisions. This increased investor confidence should promote market efficiency and capital formation. The proposed disclosure requirement likely would help minimize the number of customer orders that do not receive an execution at the best available published quote. Further, the proposed Trade-Through Disclosure Rule would assist broker-dealers in evaluating and complying with their best execution obligations. Finally, it would provide an incentive for securities markets to develop an effective means to access quotes on other markets to avoid trade-throughs. This should increase the efficiency of the markets.

The proposed amendments to the Quote Rule would also bolster investor confidence in the options markets by ensuring that quotes made by market participants are available for a specified number of options contracts, thus providing greater certainty for investors. Similarly, the increased investor confidence should promote market efficiency and capital formation. The proposed amendments to the Quote Rule also would assist broker-dealers in making their best execution determinations. Further, it would provide information to the market as a whole as to the various factors affecting the market, including the current levels of buying and selling interest. This should promote market efficiency, competition, and capital formation.

Finally, the Commission anticipates that any impact of these proposals on competition would be to promote competition. The Commission requests comment on all of these matters.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with the Regulatory Flexibility Act.[115] It relates to proposed Exchange Act Rule 11Ac1–7 and proposed amendment to Exchange Act Rule 11Ac1–1.

The proposed Trade-Through Disclosure Rule, proposed Rule 11Ac1–7, would require a broker-dealer to disclose when a customer order is executed at a price inferior to a price published by another market. However, a broker-dealer would not be required to provide such disclosure to its customer if it effects the customer transaction on a market that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price, even if the better price is on a market that is not part of the linkage plan.

The Quote Rule, Rule 11Ac1–1, currently requires markets to establish procedures for collecting from their members bids, offers, and quotation sizes for certain equity securities available to quotation venders. It also requires that the quotation information made available to vendors be firm, subject to certain exceptions. The proposed amendments to the Quote Rule would apply the Quote Rule to options trading on a national securities exchange or an automated facility of a national securities association.

A. Reasons for the Proposed Action

The significant increase in multiple trading that has occurred during the past year has dramatically altered the options trading environment and raised a number of issues, including new best execution challenges for broker-dealers. When an option is listed on only one market, broker-dealers do not have to decide where to route the order, and, consequently, satisfying their best execution obligations with respect to such options orders is less complex than when they must consider the relative merits of executing orders on several markets. Directly relevant to a broker's ability to get best execution for its customers is the ability to get the best price available. Currently, it is difficult to ensure that a customer order sent to one market will receive the best available price because there is no effective mechanism that allows broker-dealers on one market to access a better price displayed on another.

Therefore, the Commission is proposing the Trade-Through Disclosure Rule and the proposed amendments to the Quote Rule to help address this situation. The proposed Trade-Through Disclosure Rule would require a broker-dealer to disclose to its customer when the customer's order was executed at a price inferior to the best published quote. A broker-dealer would not be required to make this disclosure when the broker-dealer transacts the customer order on a market that participates in a Commission-approved linkage plan that has rules reasonably designed to limit trade-throughs, even when the better price is displayed by a non-linked market. Amending the Quote Rule to apply to the options markets would provide greater certainty about both options quotes and pricing generally in the options markets. The proposed amendments to the Quote Rule, along with the proposed Trade-Through Disclosure Rule, would assist broker-dealers in making their best execution evaluations.

B. Objectives and Legal Basis

As noted above, the proposed Trade-Through Disclosure Rule and the proposed amendments to the Quote Rule are intended to bolster investor confidence in the options markets by better informing customers about the quality of their executions and the implications of their broker-dealers' execution decisions. The proposed Trade-Through Disclosure Rule likely would help minimize the number of customer orders that do not receive an execution at the best available published quote. Further, the proposed Trade-Through Disclosure Rule would assist broker-dealers in evaluating and complying with their best execution obligations. Finally, it would provide an incentive for options markets to develop effective means to access quotes on other markets to avoid trade-throughs.

The proposed amendments to the Quote Rule would also bolster investor confidence in the options markets by ensuring that quotes made by market participants are available for a specified number of options contracts, thus providing greater certainty for investors. The proposed amendments to the Quote Rule also would assist broker-dealers in making their best execution determinations. Further, it would provide information to the market as a whole as to the various factors affecting the market, including the current levels of buying and selling interest.

The Commission is proposing the Trade-Through Disclosure Rule and the amendments to the Quote Rule under the authority set forth in Exchange Act Sections 3(b), 5, 6, 15, 11A, 17(a) and (b), 19, and 23(a).

C. Small Entities Subject to the Rules

Commission rules generally define a broker-dealer as a small entity for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person) that is not a small

[115] 5 U.S.C. 601. Pursuant to 5 U.S.C. 603 when an agency is engaged in a proposed rulemaking, "the agency shall prepare and make available for public comment an initial regulatory flexibility analysis."

entity.[116] The Commission estimates that as of December 31, 1999, approximately 41 Commission-registered broker-dealers were small entities that would be subject to the proposed Trade-Through Disclosure Rule.[117] However, the Commission estimates that none of the 41 registered broker-dealers that would be considered small entities for purposes of the statute regularly represent options orders on behalf of their customers. In addition, the Commission notes that only those broker-dealers that are also options specialists or market markers would be required to comply with the proposed amendments to the Quote Rule. As of December 31, 1999, our data indicates that only one broker-dealer that was a small entity was an options specialist or market maker.

The proposed amendments to the Quote Rule also would directly affect the national securities exchanges that trade listed options, none of which is a small entity as defined by Commission rules. Paragraph (e) of Exchange Act Rule 0–10 [118] states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Exchange Act Rule 11Aa3–1. The proposed amendments to the Quote Rule also would directly affect national securities associations. There is one national securities association, which is not a small entity as defined by 13 CFR 121.201.

D. Reporting, Recordkeeping, and other Compliance Requirements

The proposed Trade-Through Disclosure Rule would require a broker-dealer to disclose to its customer (on the confirmation statement) in the event that an options trade executed for the customer was made at a price inferior to a price published by another exchange. The broker-dealer would not be required to provide such disclosure to its customer if the options trade was executed on an exchange that participates in an approved linkage plan that has rules reasonably designed to limit customers' orders from being executed at prices that are inferior to a published price, even if that better published price is on a market that is not part of the linkage plan.

The proposed amendments to the Quote Rule would require a broker-dealer that is either a specialist or market maker to honor its quote for a size determined and disseminated by the options market where the specialist or market maker is quoting. The proposal also would require national securities exchanges and national securities associations to collect quote information from their members and disseminate that information to quotation venders.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes there are no rules that duplicate, overlap, or conflict with the proposed rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed rules, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rules, or any part thereof, for small entities.

The Commission believes that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goals of bolstering investor confidence, assisting broker-dealers in best execution determinations, and providing information as to the various factors affecting the market, including the current levels of buying and selling interest. For example, if all broker-dealers quoting prices in options are not required to comply with the proposed amendments to the Quote Rule, investors and market participants would be unable to determine true buying and selling interest, undermining investor confidence and the ability of a broker-dealer to make best execution decisions. Further, broker-dealers would not be certain that a quote was firm without knowing whether the broker-dealer making the quote is a small broker-dealer. In addition, if all broker-dealers were not obligated to comply with the proposed Trade-Through Disclosure Rule, all investors (those that are customers of small broker-dealers) would not benefit fully from the rule, potentially reducing the benefits of the rule.

For the same reasons, the Commission believes that exempting small entities from the proposed rules, in whole or in part, is not appropriate. In addition, the Commission has concluded preliminarily that it is not feasible to further clarify, consolidate, or simplify the proposed rules for small entities. The Commission has used performance elements in the proposed rules. The rules do not require a broker-dealer to satisfy its obligations in accordance with any specific design, but rather provide each broker-dealer, including small entities, with the flexibility to select the method of compliance that is most efficient and appropriate for its business operations. The Commission does not believe different performance standards for small entities would be consistent with the purpose of the proposed rules.

Further, the Commission believes that none of the above alternatives is applicable to the proposed amendment with regard to national securities exchanges or national securities associations. The markets are directly subject to the requirements of the rules and are not "small entities" because they are all national securities exchanges or national securities associations that do not meet the definition of small entity. Therefore, the Commission does not believe the alternatives to the proposed rules are applicable to the markets.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission requests comments regarding: (1) The number of small entities that may be affected by the proposed rules; (2) the existence or nature of the potential impact of the proposed rules on small entities discussed in the analysis; and (3) how to quantify the impact of the proposed rules. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed Regulation and Rules themselves.

IX. Statutory Authority

We are proposing the rules pursuant to our authority under Exchange Act Sections 3(b), 5, 6, 15, 11A, 17(a) and (b), 19, and 23(a).

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[116] 17 CFR 240.0–10(c).

[117] The Commission's estimate of 41 small entities includes all of the registered broker-dealers that do not have relationships with clearing firms.

[118] 17 CFR 240.0–10(e).

List of Subjects in 17 CFR Part 240

Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.11Ac1–1 is amended by revising paragraphs (a)(5), (a)(20); in the second sentence of paragraph (b)(3)(i) by revising the phrase "under paragraph (c)(2)" to read "under paragraphs (c)(2) and (d)(3)", and (d) and adding paragraphs (a)(26), (a)(27), (a)(28), and (e) to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* * * *

(5) The term *consolidated system* shall mean the consolidated transaction reporting system, including a transaction reporting system operating pursuant to an effective national market system plan.

* * * * *

(20) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan or an effective national market system plan for reporting transactions in listed options.

* * * * *

(26) The term *customer* shall mean any person that is not a registered broker-dealer.

(27) The term *listed option* shall have the meaning provided in § 240.15c3–1(c)(2)(x)(B)(*1*).

(28) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

* * * * *

[Alternative A for paragraph (d)]

(d) *Transactions in listed options.*

(1) An exchange or association that establishes by rule and periodically publishes the size associated with its best bid or offer in each options series that is a subject security listed on such exchange or association shall not be required, under paragraph (b) of this section, to collect and make available to quotation vendors the quotation size and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association.

(2) With respect to listed options, if, pursuant to paragraph (d)(1) of this section, the rules of an exchange or association do not require its members to communicate to it their quotation sizes, a responsible broker or dealer that is a member of such exchange or association shall:

(i) Be relieved of its obligations under paragraph (c)(1) of this section to communicate to such exchange or association its quotation sizes for any listed option that is a subject security; and

(ii) Comply with its obligations under paragraph (c)(2) of this section by executing any order to buy or sell a listed option that is a subject security, in an amount up to the size associated with its bid or offer as established by such exchange's or association's rules under paragraph (d)(1) of this section.

(3) *Thirty second response.*

(i) Each responsible broker or dealer, within thirty seconds of receiving an order to buy or sell a listed option must:

(A) Execute the entire order; or

(B)(*1*) Execute that portion of the order equal to at least:

(*i*) The minimum firm quote size established by an exchange's or association's rules pursuant to paragraph (d)(1) of this section, if such exchange or association does not collect and make available to quotation vendors quotation size and aggregate quotation size under paragraph (b) of this section; or

(*ii*) The size of the exchange's or association's quotation made available to quotation vendors by such exchange or association under paragraph (b) of this section; and

(*2*) Revise its bid or offer.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any subject security if:

(A) Any of the circumstances in paragraphs (c)(3) of this section exist; or

(B) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

[Alternative B for paragraph (d)]

(d) *Transactions in listed options.*

(1)(i) An exchange or association that establishes by rule and periodically publishes the size associated with its best bid or offer in each options series that is a subject security listed on such exchange or association:

(A) Shall not be required, under paragraph (b) of this section, to collect and make available to quotation vendors the quotation size and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association; and

(B) May allow, pursuant to such exchange rules, responsible brokers or dealers obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option that is a subject security for the account of a broker or dealer that is different from the quotation size for which it is obligated to execute such an order for the account of a customer.

(ii) An exchange or association that establishes and maintains procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers and dealers for listed options that are subject securities listed on such exchange or association may allow, pursuant to exchange rules, responsible brokers or dealers to publish a quotation size for which it will be obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option that is a subject security for the account of a broker or dealer that is different from its published quotation size for which it is obligated to execute such an order for the account of a customer.

(2) With respect to listed options, if, pursuant to paragraph (d)(1) of this section, the rules of an exchange or association do not require its members to communicate to it their quotation sizes, a responsible broker or dealer that is a member of such exchange or association shall:

(i) Be relieved of its obligations under paragraph (c)(1) of this section to communicate to such exchange or association its quotation sizes for any listed option that is a subject security; and

(ii) Comply with its obligations under paragraph (c)(2) of this section by executing any order to buy or sell a listed option that is a subject security, in an amount up to the size associated with its bid or offer as established by such exchange's or association's rules under paragraph (d)(1) of this section.

(3) *Thirty second response.*

(i) Each responsible broker or dealer, within thirty seconds of receiving an order to buy or sell a listed option must:

(A) Execute the entire order; or

(B)(*1*) Execute that portion of the order equal to at least:

(*i*) The minimum firm quote size established by an exchange's or association's rules pursuant to paragraph (d)(1) of this section, if such exchange or association does not collect and make available to quotation vendors quotation size and aggregate quotation size under paragraph (b) of this section; or

(*ii*) The size of the exchange's or association's quotation made available to quotation vendors by such exchange or association under paragraph (b) of this section; and

(*2*) Revise its bid or offer.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any subject security if:

(A) Any of the circumstances in paragraphs (c)(3) of this section exist; or

(B) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

(e) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

3. Section 11Ac1–7 is added to read as follows:

§ 240.11Ac1–7. Trade-through disclosure rule.

(a) *Definitions.* For purposes of this section:

(1) The term *complex trade* means a transaction in an options series that is executed in conjunction with a related transaction occurring at or near the same time for the purpose of executing a particular investment strategy.

(2) The term *customer* means any person that is not a registered broker-dealer.

(3) The term *effective national market system plan* shall have the meaning provided in § 240.11Aa3–2 (Rule 11Aa3–2 under the Act).

(4) The term *listed option* shall have the meaning provided in § 240.15c3–1(c)(2)(x)(B)(*1*).

(5) The term *options class* means all of the put option or call option series overlying a security, as defined in Section 3(a)(10) of the Act.

(6) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

(7) The term *receipt* means, with respect to an order sent to an away market displaying a superior price, the time at which the order is either represented in the trading crowd or received by the specialist.

(8) The term *trading rotation* means, with respect to a specified options class at a given exchange, the time period during which opening transactions in individual options series are being completed and continuous trading has not yet commenced in such options class.

(b) *Broker-dealer disclosure requirements.* (1) Any broker or dealer that effects a transaction in a listed option for the account of its customer must disclose to such customer, in conformance with the procedures set forth in § 240.10b–10:

(i) When such transaction is effected at a price that trades through a better price published at the time of execution; and

(ii) That better published price at the time of execution;

(2) A broker-dealer shall not be required to provide the disclosure set forth in paragraph (b)(1) of this section if it effects such transaction on a market that is a participant in an effective national market system options linkage plan that includes provisions reasonably designed to limit the incidence of customer orders being executed at prices that trade through a better published price, including prices published other than by a linkage plan participant.

(3) A customer order is executed at a price that trades through a better published price if:

(i) The price at which an order to purchase a listed option is executed is higher than the lowest offer at the time the order was executed published pursuant to a national market system plan for reporting quotations in listed options; or

(ii) The price at which an order to sell a listed option is executed is lower than the highest bid at the time the order was executed published pursuant to a national market system plan for reporting quotations in listed options.

(4) Notwithstanding paragraph (b)(2) of this section, a customer order is not considered to be executed at a price that trades through a better published price if:

(i) Such better published price cannot be accessed due to a failure, material delay, or malfunction of the systems of the market publishing the better price;

(ii) The quotation price reporting system provided for by the national market system plan for reporting quotations indicates that it is experiencing queuing;

(iii) Such better published price was published by an exchange whose members are relieved of their obligations under paragraph (c)(2) of § 240.11Ac1–1 because, pursuant to paragraph (b)(3) of § 240.11Ac1–1, such exchange is not required to meet its obligations under paragraph (b)(1) of § 240.11Ac1–1;

(iv) The market publishing such better price is in a trading rotation for that option class;

(v) The customer order is executed during a trading rotation in that options class;

(vi) The customer order is executed as part of a complex trade; or

(vii) The customer order is executed only after the market publishing the better price fails to respond to an order routed to it within 30 seconds of the order's receipt by that market.

Dated: July 28, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19728 Filed 8–3–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 84 and 183

46 CFR Part 25

[USCG 1999–6580]

RIN 2115–AF70

Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that domestic manufacturers of vessels install only certified navigation lights on all uninspected commercial vessels and recreational vessels. This change would align the standards for these lights with those for inspected commercial vessels and with those for all other mandatory safety equipment carried on board all vessels. The Coast Guard expects the resulting reduction in the use of noncompliant lights to improve safety on the water.

DATES: Comments and related material must reach the Docket Management Facility on or before October 3, 2000.

ADDRESSES: To make sure your comments and related material (referred

to USCG 1999–6580) do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Randolph J. Doubt, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–6810 or by e-mail at *rdoubt@comdt.uscg.mil*. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety at *http://www.uscgboating.org*. or the Web Site for the Docket Management Facility at *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG 1999–6580), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, by hand, by fax, or electronically to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or by hand, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and want to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. You may ask for one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

The Coast Guard published a notice of proposed rulemaking to establish requirements for approval, certification, installation, and performance of navigation lights on vessels of less than 20 meters in length in the **Federal Register** of September 7, 1978 (43 FR 39946), and a supplemental notice in that of December 29, 1980 (45 FR 85468). It published a notice withdrawing the proposed rulemaking in the **Federal Register** of January 7, 1982 (47 FR 826). It published a request for comments on regulatory control of navigation lights in the **Federal Register** of October 9, 1997 (62 FR 52673).

Background and Purpose

Until April 1997, a manufacturer of navigation lights for recreational vessels could voluntarily apply for a "Letter of Acceptance" from the U.S. Coast Guard for each model of navigation light marketed. Upon receipt of an application, the Coast Guard would review a laboratory report for the given model, documenting compliance with the technical requirements of the International and Inland Navigation Rules (together, "Navigation Rules"). Basing its judgement solely on the comparison of the report with the rules, the Coast Guard, if it did not object, would state that it did not object to the model being offered for sale and would grant a "Letter of Acceptance," which allowed the manufacturer to state "U.S. Coast Guard Accepted" on the package. This statement the public often confused with "U.S. Coast Guard Approved." Since April 1997, the Coast Guard no longer issues Letters of Acceptance. Consequently, other than statements provided by the manufacturer, there is no evidence of compliance with the technical requirements of the Navigation Rules available to a manufacturer, surveyor, owner, or inspector of a vessel, or to a boarding official.

Regulatory controls now exist only for lights manufactured specifically for inspected commercial vessels. These appear in 46 CFR subchapter J, which, in part, states that each light must "be certified by an independent laboratory to the requirements of [Underwriters Laboratories, Inc. (UL)] 1104 or an equivalent standard" and be so labeled. The "independent laboratory" must be recognized as bonafide and have been placed on a list by the Coast Guard (that list is available from G–MSE–3 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593–0001). Although lights currently certified for commercial inspected vessels are generally too large for uninspected commercial vessels and recreational vessels, a manufacturer may choose to install them; but none need install them.

The National Boating Safety Advisory Council (NBSAC), representing operators and manufacturers of vessels, State boating officials, and national boating organizations, and the National Association of State Boating Law Administrators (NASBLA) both passed resolutions asking that the Coast Guard initiate a certification program for navigation lights installed on recreational vessels offered for sale to the public. The Navigation Safety Advisory Council (NAVSAC) passed a similar resolution relating to uninspected commercial vessels. UL recommends in the report, "Recreational Boat Collision Accident Research", that the Coast Guard take stronger measures to ensure that navigation lights installed in recreational vessels meet the minimum requirements established by the Navigation Rules.

In response to the request for comments of October 9, 1997, State law-enforcement personnel, vessels' owners, marine professionals (manufacturers and marine surveyors), standard-setting organizations, manufacturers of navigation lights, and a laboratory testing navigation lights all submitted comments. Of the 34 respondents, 28 favored rulemaking. Some expressed concern about installing navigation lights in vessels with bow-high cruising trim angles that tend to obstruct sidelights' visibility. While it would not

require certification of installations of navigation lights, this proposed rule would require that certified lights be installed in compliance with the visibility requirements established by the Navigation Rules.

The rationale published in January 1982 for withdrawing the proposed rulemakings of September 1978 and December 1980 to establish regulatory controls, was that a newly established voluntary standard and Coast Guard enforcement policies eliminated the need for regulation. UL, in response to the request for comment October 9, 1997, advised that, to the contrary, there has been a steady decline in compliance over the past 20 years and that about half of the navigation lights for recreational vessels submitted for evaluation have failed to meet minimum performance requirements established by the Navigation Rules.

In response to the decline in compliance with the technical requirements for navigation lights established by the Navigation Rules, the proposed requirement of certification by third parties would curtail installations of noncompliant lights by providing evidence of compliance for manufacturers, surveyors, owners, inspectors, and boarding officials. The proposed requirement is similar to that for inspected commercial vessels, though less stringent, and aligns with the requirement of the International Navigation Rules (COLREGS) for "Approval" (33 CFR subchapter D, Annex I).

Discussion of Proposed Rule

The proposed rule draws from rules in 46 CFR subchapter J, Electrical Engineering, which require certification of navigation lights for inspected commercial vessels. It would direct manufacturers of all uninspected commercial vessels and recreational vessels to install only lights certified and labeled as meeting the technical requirements of the Navigation Rules. It would designate laboratories listed by the Coast Guard the certifying authorities for navigation lights. It would supply the section of the Inland Navigational Rules, Annex I, "Approval" (33 CFR 84.25), currently reserved, by establishing a requirement for certification of all navigation lights, while a subsequent amendment to Inland Navigation Rule 38 (Exemptions) would address requirements for owners and operators of existing vessels to allow for lights installed before its effective date.

The proposed changes are as follows:

(1) Add 33 CFR 84.25 to require that the construction of lights and shapes and the installation of lights meet requirements established by the Commandant.

(2) Add 33 CFR 183.465 to set forth the performance standard for certification of navigation lights for recreational vessels, adapting the standard from existing rules in 46 CFR subchapter J, for inspected commercial vessels.

(3) Add 46 CFR subpart 25.10, consisting solely of § 25.10–1, to set forth the performance standard for certification of navigation lights for uninspected commercial vessels, again adapting from 46 CFR subchapter J the standard for inspected commercial vessels.

To allow for the use of lights that may already be in stock, no rule would become effective until one year after publication of a final rule.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed this rule under that Order. We expect the economic effect of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Costs of the Proposed Rule

(1) Manufacturers of navigation lights would incur initial costs associated with laboratory testing of each model of light for compliance with the Navigation Rules. This could result in minor increases in market prices for certified lights. Those manufacturers would pass increases on to manufacturers of boats and eventually on to consumers. However, these increases should be so small that their effect on manufacturers of boats and on consumers should be negligible. Of the roughly 4,400 manufacturers of recreational boats in the United States, 90% install navigation lights on their boats. There are 6 different types of lights on the market, and each of their manufacturers may make multiple models of each type. Through a survey of the lights now available, we have determined that each manufacturer produces an average of 10 models for each type and introduces 3 new models a year. Certification would entail that a representative light of production quality, for each model, pass a performance test. We have identified 9 domestic manufacturers of lights that this rule might affect.

In conversations with the two testing laboratories approved by the Coast Guard, UL and Imanna Laboratory, we developed an estimate of $500 for a performance test of each model. These laboratories do offer a volume discount for multiple models tested, and this discount would decrease the cost for a test of each model to about $400. We would therefore calculate the cost of this rule as follows:

6 types of light × 10 models of light × 9 manufacturers × $400 per test of each model = $216,000.

To account for the one-year phase-in period, we had to determine the present value of this cost. The Department of Transportation uses a standard discount rate of 7%. The calculation is as follows: ($216,000)/(1.07)^1 = $201,869.16.

This figure would be the one-time cost for existing models of lights. However, if a manufacturer decided to introduce a new model of light, the manufacturer would have to have that model tested by a laboratory approved by the Coast Guard before the manufacturer could send it to market.

We must also account for the 3 new models of light that each manufacturer sends to market each year. We will sum 15 years of cost using a discount rate of 7%:

Σ [(9 manufacturers × 3 new models × $400)/(1.07)^n], n=2 * * * 15 = $80,663.80.

The total cost of labeling over 15 years would be:

$201,869.16 + $80,663.80 = $282,532.96.

(2) Manufacturers of navigation lights would have to offer new labeling with the certified lights. Most of it would be printable on an insert or on a sticker on a package (it is described in proposed 33 CFR 183.465). This proposed rule would not involve modification of the package to accommodate the labeling. We have gathered estimates from labeling companies, and we have determined that the manufacturer would pay about $240 for 1,000 labels. We will assume that each model of light needs 1,000 labels. Each of the 9 manufacturers produces an average of 10 models for each of 6 types and expects to introduce 3 new models a year. The calculations will be as follows:

[(9 manufacturers × 10 models for each type × 6 types × $200/1,000 labels × 1,000 labels)/(1+0.7)^1] + Σ [(9 manufacturers × 3 new models × $200/1,000 labels × 1,000 labels)/(1.07)^n], n=2 * * * 15 = $145,072.04.

This rule would also require that each light be marked "USCG" followed by the tested range of visibility, such as "2

nm", to indicate compliance. We believe that manufacturers are already marking their lights and own the necessary equipment for marking them, so this requirement should not impose any added costs.

Benefits of the Proposed Rule

(1) Certification would place navigation lights under regulatory control comparable to that affecting all other items of mandatory safety equipment. This would result in a general improvement in reliability, quality, and effectiveness of such lights, domestic and imported, available to domestic manufacturers of vessels.

(2) Certification would discourage the practice of installing lights that are custom-made by the manufacturer of a vessel but that have proved to be basically noncompliant with the Navigation Rules.

(3) Certification markings would provide evidence for manufacturers, surveyors, owners, and inspectors of vessels, or for boarding officials, in assessing the legality of installed lights.

(4) Certification would facilitate exports to countries enforcing the requirement of the COLREGS for approval of navigation lights (Annex I, 14.)

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we considered whether this proposed rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Small Business Administration (SBA) has set up size standards for each SIC code based on the number of employees or annual receipts. The only type of small entity that this rule would affect would be small businesses. Four out of the nine manufacturers of navigation lights qualify as small businesses by the size standards of the SBA. However, we have observed that the four businesses we have identified as small offer fewer models of each type of light than their larger competitors. These four offer between 1 and 5 models of each type, which is well below the average of 10 models each. Therefore, we do not believe that they would bear a disproportionate amount of the burden of this rule. They have annual revenues of $2.5m–$5.0m; $5.0m–$10m; $10m–$20m; and $20m–$50m. Therefore, the greatest possible cost of testing for one of these four ($400 × 6 light types × 5 models per type = $12,000) would be only .05% of the annual revenues of even the smallest company. This would not impose a significant burden on these companies, and it would not create a barrier to entry for companies that wish to enter the industry.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic effect on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], we want to assist small entities in understanding this proposed rule so that they can better evaluate its effect on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Randolph J. Doubt, Project Manager, Office of Boating Safety, by telephone at (202) 267–6810 or by e-mail at *rdoubt@comdt.uscg.mil*.

Collection of Information

This proposed rule would call for a new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the collections, a description of those who perform them, and an estimate of the total annual burden follow. The estimate covers the time for submitting a new model of light to the third-party certifier and for designing a label for each model of light.

Summary of the Collection of Information

The proposed rule would impose a new burden of collection of information on manufacturers of navigational lights for uninspected commercial vessels and recreational vessels. Each manufacturer of the lights would incur a one-time burden of submitting paperwork to the third-party certifier and of designing labeling for each model of light.

Need and Proposed Use for Information

This collection of information is necessary to accomplish the third-party certification and the labeling. The third party certifier would use the information to document and test the models of lights. Once the model had passed performance testing, the manufacturer of the light would design and provide a label for its product so the consumer would know that the product was certified.

Description of Respondents

This collection of information would affect the current manufacturers of navigational lights for recreational and uninspected vessels. It would also affect any future manufacturers that may enter the market.

Number of Respondents

There are 9 manufacturers of lights in the market. This collection of information will affect them all.

Frequency of Response

This collection would take place only when a manufacturer undertook to place a new light model on the market.

Burden of Response

We estimate that it would take one employee about one hour to prepare the paperwork to submit a light for performance tests. He or she would be an administrative assistant and, as such, would cost around $24 an hour. If each of these manufacturers submitted three new models of lights for testing each year, the burden for the submitted would be 27 hours and $648.

We also estimate that it would take one employee about one hour to update the labeling for each new model. He or she, too, would cost around $24 an hour. The burden for the labeling requirement would likewise be 27 hours and $648 if each of the nine manufacturers submitted 3 new models for testing each year.

Estimate of Total Annual Burden

Using the above estimates, the total burden in hours would be 54 and the total cost would be $1,296.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us

perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] governs the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a rule that requires a State, local, or tribal government or the private sector, to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A requirement for certification of navigation lights should not have any environmental impact. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 183

Marine Safety.

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 84 and 183, and 46 CFR part 25, as follows:

33 CFR PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

1. The citation of authority for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

2. Add text to § 84.25 to read as follows:

§ 84.25 Approval.

The construction of lights and shapes and the installation of lights on board the vessel must satisfy the Commandant.

33 CFR PART 183—BOATS AND ASSOCIATED EQUIPMENT

3. The citation of authority for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

4. Add § 183.465 to read as follows:

§ 183.465 Navigation light: Standard.

(a) Except as provided by paragraph (b) of this section, each navigation light must—

(1) Meet the technical standards of the applicable Navigation Rules;

(2) Be certified by a laboratory listed by the Coast Guard to the standards of UL 1104 or equivalent, although portable battery-powered lights need only meet the requirements of the standard applicable to them; and

(3) Bear a label stating the following:

(i) USCG Approval 183.465.

(ii) "MEETS _____." (Insert the identification name or number of the standard under paragraph (a)(2) of this section, to which the laboratory type-tested.)

(iii) "TESTED BY _____." (Insert the name or registered certification-mark of the laboratory listed by the Coast Guard that tested the fixture to the standard under paragraph (a)(2) of this section.)

(iv) Name of manufacturer.

(v) Number of model.

(vi) Visibility of the light in nautical miles.

(vii) Date on which the light was type-tested.

(viii) Identification of the bulb used in the compliance test.

(b) If a light is too small to attach the required label—

(1) Place the information from the label in or on the package that contains the light; and

(2) Mark each light "USCG" followed by the certified range of visibility in nautical miles, for example, "USCG 2nm". This mark must be visible, without removal of the light, once installed.

46 CFR PART 25—REQUIREMENTS

5. The citation of authority for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

6. Add subpart 25.10, consisting of § 25.10–1, to read as follows:

Subpart 25.10—Navigation Lights

§ 25.10–1 Requirements.

(a) Except as provided by paragraph (b) of this section, each navigation light must—

(1) Meet the technical standards of the applicable Navigation Rules;

(2) Be certified by a laboratory listed by the Coast Guard to the standards of UL 1104 or equivalent, although portable battery-powered lights need only meet the requirements of the standard applicable to them; and

(3) Bear a label stating the following:

(i) USCG Approval 183.465

(ii) "MEETS _____." (Insert the identification name or number of the standard under paragraph (a)(2) of this section, to which the light was type-tested.)

(iii) "TESTED BY _____." (Insert the name or registered certification-mark of the laboratory listed by the Coast Guard that tested the fixture to the standard under paragraph (a)(2) of this section.)

(iv) Name of Manufacturer.

(v) Number of Model.
(vi) Visibility of the light in nautical miles.
(vii) Date on which the light was type-tested.
(viii) Identification of bulb used in the compliance test.
(b) If a light is too small to attach the required label—
(1) Place the information from the label in or on the package that contains the light; and
(2) Mark each light "USCG" followed by the certified range of visibility in nautical miles, for example, "USCG 2nm". This mark must be visible, without removal of the light, once installed.

Dated: July 25, 2000.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

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BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–208]

Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rules.

SUMMARY: In this document, the Commission seeks comment on the adoption of a rule that would require resolution of the merits of any request for designation as an eligible telecommunications carrier under section 214(e) of the Telecom Act, filed either with this Commission or a state commission, to be resolved within six months of the filing date, or some shorter period. We also seek comment on alternative methods by which state commissions, tribal authorities, and this Commission can work together to further facilitate the expeditious resolution of designation requests from carriers serving tribal lands.

DATES: Comments are due August 7, 2000 and reply comments are due August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Gene Fullano, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on June 30, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Further Notice of Proposed Rulemaking, we seek comment on the adoption of a rule that would require resolution of the merits of any request for designation as an eligible telecommunications carrier under section 214(e) of the Telecom Act, filed either with this Commission or a state commission, to be resolved within six months of the filing date, or some shorter period. We also seek comment on alternative methods by which state commissions, tribal authorities, and this Commission can work together to further facilitate the expeditious resolution of designation requests from carriers serving tribal lands.

2. The Commission will take action in a further proceeding to address the remaining issues raised in the Further Notice of Proposed Rulemaking (*FNPRM*), 64 FR 52738 (September 30, 1999), that are not addressed in this Further Notice of Proposed Rulemaking. In particular, we will continue to examine and address the causes of low subscribership in other areas and among other populations, especially among low-income individuals in rural and insular areas. In addition, in areas where the cost to deploy telecommunications facilities is significantly above the national average, we anticipate that additional action may be necessary to encourage such deployment. Providing appropriate incentives for the deployment of facilities in such locations will be central to the issues that we will address, in consultation with the Federal-State Joint Board on Universal Service (Joint Board) in our consideration of rules to implement section 214(e)(3) of the Telecom Act and in considering the recommendations of the Joint Board for high-cost universal service reform for rural carriers.

II. Further Notice of Proposed Rulemaking

3. *Deadline for Resolving Section 214(e) of the Telecom Act Designation Requests.* In this Further Notice of Proposed Rulemaking, we seek comment on the imposition of a time limit during which requests for designation as an eligible telecommunications carrier under section 214(e) of the Telecom Act, filed either with this Commission or a state commission, must be resolved. As noted, we are concerned that lengthy delays in addressing requests for designation may hinder the availability of affordable telecommunications services in many high-cost areas of the Nation. We believe it is unreasonable to expect a prospective entrant to enter a high-cost market and provide service in competition with an incumbent carrier that is receiving support, without knowing whether it is eligible to receive support. If new entrants do not have the same opportunity to receive universal service support as the incumbent, such carriers may be unable to provide service and compete with the incumbent in high-cost areas. As the Commission has previously concluded, competitively neutral access to such support is critical to ensuring that all Americans, including those that live in high-cost areas, have access to affordable telecommunications services. We believe such a result to be contrary to Congress' intent in adopting section 254 of the Telecom Act.

4. We therefore seek comment on whether to adopt a rule that would require resolution of the merits of any request for designation under section 214(e) of the Telecom Act within a six-month period, or some shorter period. In addition, we seek comment on whether to require a similar time limit for the resolution of the jurisdictional issues associated with requests for eligibility designations on tribal lands, and what that time limit should be. We intend to consult with members of the Joint Board on this issue and invite comment from the Joint Board and interested parties. We also seek on comment on the Commission's authority to enforce any such requirement imposed on state commissions. For example, we seek comment on our authority under sections 201(b), 253, 254 of the Telecom Act, or *AT&T* v. *Iowa Utilities Board* to enforce any deadline imposed on resolution of requests for eligibility designations under section 214(e) of the Telecom Act.

5. *Alternative Frameworks for Resolving Designation Requests.* In light of the immediate need for expeditious resolution of designation requests from carriers serving tribal lands, we have adopted a framework for resolving designation requests filed at the Commission under section 214(e)(6) of the Telecom Act. This framework is designed to streamline the process for designation of eligible telecommunications carriers serving tribal lands in order to expedite the availability of affordable telecommunications services to tribal

communities. We are guided, however, by our desire to work cooperatively with the state commissions and tribal authorities to consider alternative methods for facilitating the expeditious resolution of eligibility designation requests. We therefore seek comment on additional ways in which the state commissions, tribal authorities, and this Commission can work together toward this end. We look forward to collaborating further with state commissions and tribal leaders to consider additional measures we can take to resolve eligibility designation requests on tribal lands as expeditiously as possible.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

(1) Need for and Objectives of the Proposed Rules

7. The Commission issues the Further Notice of Proposed Rulemaking contained herein as a part of its implementation of the Act's mandate that "[c]onsumers in all regions of the Nation * * * have access to telecommunications and information services * * *". The Further Notice of Proposed Rulemaking seeks comment on rules setting a deadline for the consideration of petitions for designation of carriers as eligible telecommunications carriers under section 214(e) of the Telecom Act for the purposes of receiving universal service support under section 254(e) of the Telecom Act. The Further Notice of Proposed Rulemaking also seeks comment on alternative methods for facilitating expeditious resolution of eligibility designation requests. Our objective is to fulfill section 254 of the Telecom Act's mandate that "all regions of the Nation * * * have access to telecommunications" with respect to tribal lands, which have the lowest reported subscribership levels for telecommunications in the Nation.

2. Legal Basis

8. The legal basis as proposed for this Further Notice of Proposed Rulemaking is contained in section 254 of the Telecom Act.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. And finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. The new rules proposed in this Further Notice of Proposed Rulemaking may affect all providers of interstate telecommunications and interstate telecommunications services. We further describe and estimate the number of small business concerns that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

10. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

11. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

12. We have included small incumbent LECs in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497

telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

14. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

15. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

16. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

17. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules proposed herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

18. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as

defined by SBA and the Commissioner's auction rules.

19. *SMR Licensees.* Pursuant to § 90.814(b)(1) of the Commission's rules, 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Further Notice of Proposed Rulemaking.

20. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the Further Notice of Proposed Rulemaking includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

21. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHZ Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

22. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, 62 FR 16004 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses. As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

23. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

24. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

25. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

26. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of

the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

27. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking includes these eight entities.

28. *Multipoint Distribution Systems (MDS).* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

29. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

30. Currently, there is no deadline for the consideration of petitions for designation of carriers as eligible telecommunications carriers under section 214(e) of the Telecom Act for the purposes of receiving universal service support under section 254(e) of the Telecom Act. Under the rules proposed in the Further Notice of Proposed Rulemaking, state commissions and the Commission would each have a set time frame within which to consider such petitions before them.

(5) Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. Wherever possible, the Further Notice of Proposed Rulemaking proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. Finally, the Further Notice of Proposed Rulemaking seeks comment on measures to avoid significant economic impact on small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

(6) Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.

32. None.

B. Comment Dates and Filing Procedures

33. We invite comment on the issues and questions set forth in the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in § 1.415 and § 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due August 7, 2000, and reply comments are due August 28, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

35. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Room 5–B540, Washington, DC 20554.

36. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5-B540, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

IV. Ordering Clauses

37. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, this Further

Notice of Proposed Rulemaking is adopted.

38. It is further ordered that authority is delegated to the Chief of the Common Carrier Bureau pursuant to § 0.291 of the Commission rules, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted.

39. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–19612 Filed 8–2–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–00–4511; Notice 1]

RIN 2127–AD50

Federal Motor Vehicle Safety Standards; Platform Lift Systems for Accessible Motor Vehicles Platform Lift Installations on Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); correction.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Louis Molino, Office of Crashworthiness Standards, at 202–366–1833.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This document corrects the supplemental notice proposing to establish two new safety standards: an equipment standard specifying requirements for platform lifts; and a vehicle standard for all vehicles equipped with such lifts. A correction notice is necessary because the SNPRM, as published, misidentified three references to figures and failed to include one figure. Additionally, the SNPRM incorrectly referred to a section of the proposed regulatory text that does not exist.

Therefore, the SNPRM (65 FR 46228, July 27, 2000) is corrected as follows:

1. On page 46234 in the second column, in line 5, the reference to figure 3 should be to figure 2. There is no figure 3.

2. On page 46249 in the third column, S5.1.2.4 references a figure 3. The correct reference is to figure 2.

3. On page 46250 in the first column, S5.2.4 refers to S5.1.4. There is no S5.1.4 and the reference should be deleted. On the same page in the second column, S5.4.2.2 references figure 2. The correct reference is to figure 1.

4. On page 46257, figure 2 is missing. Figure 2 is provided in this correction notice.

Issued on: July 27, 2000.

Stephen R. Kratzke,

Associate Administrator for Performance Safety Standards.

BILLING CODE 4910–59–P

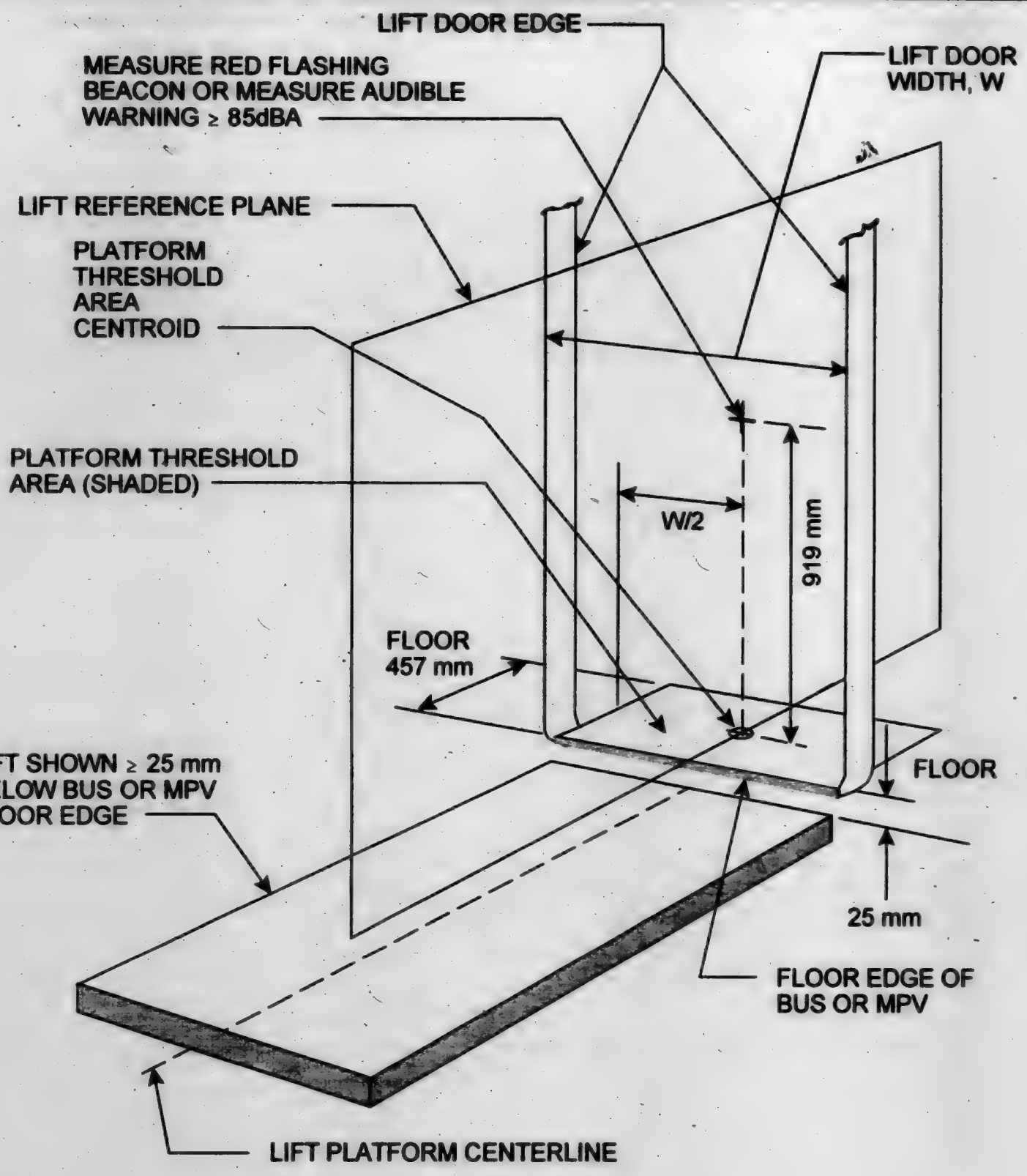

PLATFORM THRESHOLD AREA AUDIBLE WARNING MEASUREMENT POINT (S5.1.2.4)

FIGURE 2

[FR Doc. 00–19483 Filed 8–3–00; 8:45 am]
BILLING CODE 4910–59–C

Notices

Federal Register
Vol. 65, No. 151
Friday, August 4, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics

Notice of the Advisory Committee on Small Farms Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the USDA Advisory Committee on Small Farms.

SUPPLEMENTARY INFORMATION: The USDA Advisory Committee on Small Farms, consisting of 18 members, representing small farms, ranches, and woodlot owners and the diverse groups USDA programs serve, has scheduled a meeting for August 22–24, 2000 in Sacramento, California. The Committee meeting will be held 8 a.m.–5 p.m. on Tuesday, August 22, on Wednesday, August 23, 8 a.m.–5 p.m., and on Thursday, August 24, 8 a.m.–12 noon. During this time the Advisory Committee will: (1) Hear reports from working sub-committees, (2) hear comments from the general public, (3) finalize plans for achieving the committee objectives, and (4) determine how and when the Committee will make recommendations to the Secretary.

Dates and Locations: The Committee meeting venue will be the Hilton Sacramento Arden West, Sacramento, California. The Hilton is located at 2200 Harvard Street, Sacramento, California, 95815, telephone (916) 922–4700. A map and detailed directions to the hotel are available from the Committee's Executive Director. Notices with the meeting room name will be placed in the hotel lobby listing directions to it. Previous to the full Committee meting, on Monday, August 21, 2000 from 7:30–10:30 PM, the Sub-Committee on Humane Working Conditions in Production Agriculture will sponsor a public hearing session *focused on issues specifically related to the work force in agriculture.* Organizations or individuals wishing to make a statement should submit a request by letter, fax or e-mail to: Enrique Nelson Escobar, Executive Director, Mail Stop 2027, Room 1412, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250–3810. Telephone: 202–720–9354, Fax: 202–720–0443, or e-mail: eescobar@reeusda.gov. Each individual or group making an oral presentation will be limited to a total time of ten minutes. The hearing session will be at the Hilton Sacramento Arden West and notices with the meeting room name will be placed in the hotel lobby listing directions to it.

The Committee will convene for working sessions on Tuesday, August 22, 2000 from 8 a.m. to 12 noon; on Wednesday, August 23, 2000 from 8 a.m. to 12 noon and from 1:30 p.m. to 5 p.m.; and on Thursday, August 24, 2000 from 8 a.m. to 12 noon. On Tuesday, August 22, from 2 p.m. to 4 p.m., the general public will have an opportunity to provide oral and written comments to the Committee on issues related to small farms. The public hearing session will be at the Hilton Sacramento Arden West and notices with the meeting room name will be placed in the hotel lobby listing directions to it. Anyone wishing to make a statement should submit a request by letter, fax or e-mail to: Enrique Nelson Escobar, Executive Director, Mail Stop 2027, Room 1412, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250–3810. Telephone: 202–720–9354, Fax: 202–720–0443, or e-mail: eescobar@reeusda.gov. Each individual or group making an oral presentation will be limited to a total time of ten minutes.

Type of Meeting: Open to the public.

FOR FURTHER INFORMATION CONTACT: Enrique Nelson Escobar, Executive Director of the USDA Advisory Committee on Small Farms, Research, Education and Economics, U.S. Department of Agriculture, Mail Stop 2027, Room 1412, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250–3810. Telephone: 202–720–9354, Fax: 202–720–0443, or e-mail: eescobar@reeusda.gov.

Comments: The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Small Farms and will be kept on file for public review in the office of the USDA Small Farms Coordination, Room 1410 South Building, U.S. Department of Agriculture, Washington, DC . 20250.

Dated: July 31, 2000.

Susan E. Offutt,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 00–19739 Filed 8–3–00; 8:45 am]
BILLING CODE 3410–03–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 5, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 7, February 4, March 17, June 9, 16 and 23, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 1094, 5492, 14532, 36663, 37757 and 39122) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the

services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services, Offutt Air Force Base, Nebraska
Base Supply Center & HAZMART, Marine Corps Air Ground Combat Center, Building 1102, TwentyNine Palms, California
Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, McConnell Air Force Base, Kansas
Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, McChord Air Force Base, Washington
Food Service Attendant, Nellis Air Force Base, Nevada
Furnishings Management Services, Offutt Air Force Base, Nebraska
Grounds Maintenance, Little Rock Air Force Base, Arkansas
Pest Control, Offutt Air Force Base, Nebraska

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Rita L. Wells,

Deputy Executive Director.

[FR Doc. 00–19832 Filed 8–3–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before September 5, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative/General Support Services

Department of the Army, Office of the Surgeon General, 5111 Leesburg Pike, Room 538, Falls Church, Virginia, NPA: Columbia Lighthouse for the Blind, Washington, DC

Food Service Attendant

Oceana Naval Air Station, Virginia Beach, Virginia
NPA: Chesapeake Service Systems, Inc., Chesapeake, Virginia

Naval Weapons Station, Yorktown, Virginia, NPA: Association for Retarded Citizens of the Peninsula, Inc., Hampton, Virginia

Janitorial/Custodial

Naval and Marine Corps Reserve Center, 3655 S. Wilmot Road, Tucson, Arizona, NPA: Catholic Community Services of Southern Arizona, Tucson, Arizona
Youth Center (Ch–905), New Submarine Base New London, Groton, Connecticut, NPA: CW Resources, Inc., New Britain, Connecticut

On-Call Janitorial Services for GSA Leased Buildings in New York City

NPAs: Fedcap Rehabilitation Services, Inc., New York, New York, The Corporate Source, Inc., New York, New York, Goodwill Industries of Greater New York and Northern New Jersey, Inc., Astoria, New York

Publication Distribution and Toll Free Info Center

Department of Labor, Wage and Hour Division, Rochester, New York, NPA: Association for the Blind and Visually Impaired & Goodwill Industries of Greater Rochester, Inc., Rochester, New York

Rita L. Wells,

Deputy Executive Director.

[FR Doc. 00–19833 Filed 8–3–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Census of Governments Prelist Survey of Special Districts; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to Robert McArthur, Chief, Program Evaluation Branch, Governments Division, U.S. Census Bureau, Washington, DC 20233–6800 (301–457–1582).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request approval of data collection Form G–24, Prelist Survey of Special Districts. This form will be used to verify the existence of special districts for the 2002 Census of Governments, to obtain current mailing addresses, and to identify new districts. The quinquennial Census of Governments enumerates five types of local governments: county governments, municipal governments, township governments, school district governments, and special district governments. Lists of county, municipal, and township governments are kept up-to-date through the Boundary and Annexation Survey conducted annually by the Geography Division of the Bureau of the Census. School district governments and other "local education agencies" are kept current through data sharing arrangements with state education agencies and the National Center for Education Statistics. However, there is no national source of information on special district governments. We, therefore, enlist the help of county clerks and other county officials to provide information on changes in special districts, including the creation of new districts, disincorporation of existing districts, and address changes. An updated list is necessary for subsequent phases of the Census of Governments to ensure complete coverage and to minimize the need for remailings caused by inaccurate addresses.

II. Method of Collection

Each of 3,039 counties, consolidated city-county governments, and independent cities designated for the survey will be sent a printed list of previously identified special districts within their county areas. Respondents will be requested to review and update the list to identify those districts that are no longer active, districts with address changes, and districts that are not included in the list. For new special districts, respondents will be requested to provide, in addition to the district name, mailing addresses and the names of counties included in the service area.

The feasibility of electronic data collection will be explored in two states (as yet undetermined) by providing along with the printed paper requests instructions for accessing and reporting on spreadsheet files. Spreadsheet files will be prepared for each of the respondent counties to update and passwords provided to each respondent.

In addition, in keeping with Governments Division policy, we will accept printouts of respondents' own files and electronic responses prepared from respondents' own files.

III. Data

OMB Number: None.

Form Number: G–24.

Type of Review: Regular.

Affected Public: County governments, consolidated city-county governments, and independent cities.

Estimated Number of Respondents: 3,039.

Estimated Time Per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 1,520.

Estimated Total Annual Cost: $24,335.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 161.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madelaine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19719 Filed 8–3–00; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Transactions of U.S. Affiliates With Their Foreign Parents; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, DC 20230 (Telephone: 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent (Form BE–605) and Transactions of U.S. Banking Affiliate with Foreign Parent (Form BE–605 Bank), obtain quarterly cut-off sample data on transactions and positions between foreign-owned U.S. business enterprises and their "affiliated foreign group" (*i.e.*, their foreign parents and foreign affiliates of their foreign parents). The data are needed for compiling the international transactions accounts, input-output accounts, and national income and product accounts of the United States. The data are also needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

BEA is proposing the following three changes to the forms and instructions:

1. Revise and clarify the instructions for reporting of net income and capital gains by banks, dealers in financial instruments, and companies in finance, insurance, or real estate.

2. Modify the detail on services transactions on Form BE–605 by adding two categories—management and consulting and research and development—and dropping one—communications services. These changes will improve the usefulness of the detail on services by type without materially affecting the average burden imposed on respondents. Services by type are not collected on Form BE–605 Bank.

3. Eliminate a special instruction requiring that accruals under the terms of interest rate and foreign currency swap agreements be reported as "interest" on a net basis. This change will bring reporting into conformity with new international guidelines, which require such transactions to be treated as financial flows rather than interest.

II. Method of Collection

Forms BE–605 and BE–605 Bank are quarterly reports that must be filed within 30 days after the end of each quarter (45 days after the final quarter of the respondent's fiscal year) by every U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales, or net income (or loss) of over $30 million. Potential respondents are those U.S. business enterprises that reported in the last benchmark survey of foreign direct investment in the United States, along with those U.S. business enterprises that subsequently entered the direct investment universe. The data collected are cut-off sample data covering transactions and positions between foreign-owned U.S. business enterprises and their affiliated foreign groups. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0009.
Form Number: BE–605/BE–605 Bank.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit.
Estimated Number of Respondents: 3,950 per quarter; 15,800 annually.
Estimated Time Per Response: 1¼ hours.
Estimated Total Annual Burden: 19,750 hours.
Estimated Total Annual Cost: $592,500 (based on an estimated reporting burden of 19,750 hours and an estimated hourly cost of $30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19720 Filed 8–3–00; 8:45 am]
BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Award for Excellence in Economic Development—Request for Comments

ACTION: Reinstatement collection, comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia A. Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, telephone: (202) 482–5353.

SUPPLEMENTARY INFORMATION

I. Abstract

EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) Information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

II. Method of Collection

As part of the development of the Award for Excellence in Economic Development, EDA has designed a short nomination form. Nominees will submit the form to EDA, where they will be screened for completeness and forwarded to the Selection Panel for review. The information will be used by the Selection Panel to determine those applicants best meeting the preannounced selection criteria. The Selection Panel will include: Three representatives of the economic development practitioner community; one member from academe; three representatives of the Economic Development Administration; and up to two at-large members.

III. Data

OMB Number(s): 0610–0097.
Form Number: Not applicable.
Burden: 150 hours.
Type of Review: Reinstatement of previously-approved collection.
Affected Public: State, local or Tribal Government and not-for profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 150.

Estimated Total Annual Cost: $11,180.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19718 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Short Supply Regulations, Unprocessed Western Red Cedar; Information

ACTION: Proposed collect; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230 (or via the Internet at lengleme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Julissa Hurtado, Department of Commerce, Room 6881, 14th & Constitution Avenue, NW, Room 6881, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

The information is collected as supporting documentation for license applications to export western red cedar logs to enforce the Export Administration Act's prohibition against the export of such logs from state or Federal.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0025.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 35.

Estimated Time Per Response: 30 to 105 minutes per response.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19716; 8–3–00; 8:45 a.m.]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Request for Special Priorities Assistance; Proposed Information Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington DC 20230. (or via the Internet at *lengelme@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Julissa Hurtado, BXA ICB Liaison, Department of Commerce, 14th & Constitution Avenue, NW, room 6881, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

The information collected on BXA–999, from defense contractors and suppliers, is required for the enforcement and administration of the Defense Production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation Systems regulation.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0057.

Form Number: BXA–999.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Date: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19717; 8–3–00; 8:45 a.m.]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1097]

Grant of Authority; Establishment of a Foreign-Trade Zone, Victorville, CA

Pursuant to its authority udner the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Baord (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Southern California Logistics Airport Authority (the Grantee), a California public corporation, has made application to the Board (FTZ Docket 65–99, filed 12/16/99), requesting the establishment of a foreign-trade zone in the Victorville, California area, at the Southern California Logistics Airport, a Customs user fee airport; and,

Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 72642, 12/28/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 243, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of July 2000.

Foreign-Trade Zones Board.

Norman Y. Mineta,

Secretary of Commerce, Chairman and Executive Officer.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–19824 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1112]

Expansion of Foreign-Trade Zone 21; Charleston, SC, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, submitted an application to the Board for authority to expand FTZ 21 to include a site at the former Charleston Naval Base and Shipyard Park located in North Charleston, South Carolina (Site 14), within the Charleston Customs port of entry (FTZ Docket 54–99; filed 10/28/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 61820, 11/15/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 21 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 25th day of July 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19826 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1111]

Approval for Expanded Manufacturing Authority; Fina Oil and Chemical Company (Petrochemical Complex), Jefferson County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, The Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, has requested authority on behalf of the Fina Oil and Chemical Company (Fina), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 116B at the Fina oil refinery complex in Jefferson County, Texas. (FTZ Doc. 55–99, filed 11–8–99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 63786, 11–22–99);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest, if subject to the standard oil refinery restrictions;

Now therefore, the Board hereby approves the request subject to the FTZ

Act and the Board's regulations, including Sec. 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on inputs covered under HTSUS Subheadings # 2710.00.05—# 2710.00.10, # 2710.00.25, and # 2710.00.4510 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix "C");
—Products for export;
—And, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority is granted in accordance with Board Order 772, which established subzone 116B, and is subject to any restrictions or extensions of that authority.

Signed at Washington, DC, this 25th day of July 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19825 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–835]

Initiation of Antidumping Duty Investigation: Anhydrous Sodium Sulfate From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Shawn Thompson at (202) 482–0656 and (202) 482–1776, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1999).

The Petition

On July 10, 2000, the Department of Commerce (the Department) received a petition filed in proper form by Cooper Natural Resources and IMC Chemicals, Inc. (hereinafter collectively, "the petitioners"). The Department received information supplementing the petition throughout the initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of anhydrous sodium sulfate from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigation that they are requesting the Department to initiate (*see Determination of Industry Support for the Petition*, below).

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product in the region, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the merchandise described in the scope of the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, below. No party has commented on the petition's definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling is unnecessary. In this case, the petitioners represent over 50 percent of total production of the domestic like product in the United States. *See Initiation Checklist*, dated July 31, 2000 (*Initiation Checklist*), at page 3. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(c)(4)(A) of the Act.

Scope of Investigation

For purposes of this investigation, the product covered is anhydrous sodium sulfate, also referred to as "salt cake" or "disodium sulfate," from Canada. Anhydrous sodium sulfate is an

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

inorganic chemical with a chemical composition of Na_2SO_4. The "Chemical Abstract Service" number for anhydrous sodium sulfate is 7757–82–6. All forms and variations of anhydrous sodium sulfate are included within the scope of the investigation, regardless of grade, level of purity, production method, or form of packaging. Anhydrous sodium sulfate is currently classifiable under subheadings 2833.11.10 and 2833.11.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Although these HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (see Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27323 (May 19, 1997)), we are setting aside a period of time for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by August 31, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market price and U.S. price are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Export Price

The petitioner identified Saskatchewan Minerals and Millar Western Industries Ltd. as the major producers and exporters of subject merchandise in Canada.

The petitioner determined export price (EP) based on direct and contemporaneous sales or offers for sales to U.S. unaffiliated purchasers of anhydrous sodium sulfate, through invoices and affidavits. This information was obtained from industry sources in the United States. The petitioner calculated a net U.S. price by subtracting freight expenses.

Normal Value

With respect to normal value (NV), the petitioner provided home market prices based on invoices and affidavits. These products are comparable to the products exported to the United States which serve as the basis for EP. The petitioners calculated NV by deducting foreign movement expenses, commissions, and domestic packing expenses. The petitioners also adjusted NV for differences in credit expenses.

In addition, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of anhydrous sodium sulfate in the home market were made at prices below the cost of production (COP), in accordance with section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), sales, general, and administrative (SG&A) expenses, and packing. To calculate the foreign producers' COM, the petitioners used the production costs and consumption rates of one of the petitioning companies, adjusted for known differences between costs incurred to produce sodium sulfate in the United States and in Canada using publicly available data. To calculate depreciation and SG&A, the petitioners relied upon the experience of the same U.S. producer. We recalculated SG&A using the consolidated financial statements of GoldCorp Inc., the parent company of Saskatchewan Minerals because this information better reflects the experience of Saskatchewan Minerals. The petitioners also based financing expenses on the consolidated financial statements of this parent company. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe that sales of the foreign like product were made below the COP, in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

In addition, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Canada on constructed value (CV). The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute Canadian home market costs. We recalculated SG&A expenses as noted above. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon a 1999 management report for GoldCorp Inc.

Based on these separate comparisons, the estimated dumping margins for anhydrous sodium sulfate from Canada ranged from 19.29 to 100.10 percent.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home market were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below the COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316 at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of anhydrous sodium sulfate from Canada are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and production volumes. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist at page 4).

Initiation of Antidumping Investigation

Based upon our examination of the petition on anhydrous sodium sulfate, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of anhydrous sodium sulfate from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than August 24, 2000, whether there is a reasonable indication that imports of sodium sulfate from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19821 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 10, 2000, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (65 FR 30062). This review covers one manufacturer/exporter of the subject merchandise to the United States and the period of review (POR) of August 1, 1998, through July 31, 1999. The sole respondent did not respond to our supplemental questionnaire and subsequently withdrew from this review. As a result, we based our preliminary results on adverse facts available. We did not receive comments from any interested parties, and have made no changes to our preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2000, the Department published in the **Federal Register** (65 FR 30062) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172 (August 19, 1993); *see also* 61 FR 47871 (September 11, 1996)). We invited parties to comment on our preliminary results. We received no comments. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended, (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2000).

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085,7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080,

7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Period of Review

The POR is August 1, 1998, through July 31, 1999. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands produced by Hoogovens Staal B.V. (Hoogovens).

Changes Since the Preliminary Results

We received no comments from interested parties, and we have made no changes to our preliminary results.

Use of Facts Available

For reasons set forth in our preliminary determination, we have determined that the use of adverse facts available is warranted in this case. In addition, we preliminarily determined that the rate assigned to Hoogovens in the current review is corroborated. *See Cold-Rolled Carbon Steel Flat Products From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 30062 (May 10, 2000).

Section 776(b) of the Tariff Act permits the Department to use an inference that is adverse to a particular party under certain circumstances, and specifies that "[s]uch adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record." The rate we have applied to Hoogovens in the current review, 19.32 percent, is the actual rate calculated for Hoogovens in the amended final determination of the original less than fair value (LTFV) investigation.

In corroborating this rate, we note that Hoogovens has been the only respondent subject to this antidumping duty order since its inception. Hoogovens' rates, calculated for review periods subsequent to the LTFV, ranged from a high of 5.54 percent in the first administrative review period (August 18, 1993 through July 31, 1994) to a *de minimis* rate in the most recently completed segment of these proceedings (August 1, 1997 through July 31, 1998). However, these lower rates were calculated during review periods in which Hoogovens cooperated to the best of its ability. In the current review, Hoogovens failed to cooperate to the best of its ability. Based upon the premise that Hoogovens would have cooperated to the best of its ability if it had a dumping margin of less than 19.32 percent, and absent any evidence to the contrary, we have determined that 19.32 percent, the rate calculated for the amended final determination of the LTFV investigation, is probative of the rate that Hoogovens would have received had it fully cooperated in this review. Therefore, as adverse facts available we have assigned a margin of 19.32 percent to Hoogovens for the current review.

Final Results of Review

As a result of our review, we determine that the weighted-average margin for Hoogovens Staal B.V. for the period of August 1, 1998 through July 31, 1999 is 19.32 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be an *ad valorem* rate applied to the entered value of the subject merchandise. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hoogovens will be 19.32 percent; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the "all others" rate from the amended final determination in the less than fair value investigation. *See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 47871 (September 11, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and sections 351.213 and 351.221 of the Department's regulations.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19820 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of Time Limit for Final Results of New-Shipper Antidumping Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648 and (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

On March 30, 1999, the Department received a request from Yancheng Haiteng Aquatic Products & Foods Co., Ltd. to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On May 6, 1999, the Department published its initiation of this new shipper review covering the period September 1, 1998 through February 28, 1999 (64 FR 24328). On March 15, 2000, the Department published the preliminary results of review (65 FR 13939). On May 1, 2000, the Department extended the time limit for the final results of this new shipper review to June 23, 2000 (65 FR 25309). On June 28, 2000, the Department extended the time limit for the final results of this new shipper review to July 14, 2000 (65 FR 39868).

Extension of Time Limits for Final Results

Because of the complexities enumerated in the *Memorandum from Edward C. Yang to Joseph A. Spetrini, Extension of Time Limit for the Final Results of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China,* dated July 13, 2000, we find this case is extraordinarily complicated and thus are unable to complete this review by the scheduled deadline. Therefore, in accordance with section 351.214(i)(2) of the Department's regulations, the Department is extending the time period for issuing the final results of review until July 24, 2000.

Dated: July 14, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–19827 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Partial Rescission of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Recission of New Shipper Antidumping Duty Review.

EFFECTIVE DATE: August 4, 2000.

SUMMARY: On November 15, 1999, the Department of Commerce (the Department) published in the **Federal Register** (64 FR 61833) a notice announcing the initiation of six new shipper reviews of the antidumping duty order on freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC), covering the period September 1, 1998 through August 31, 1999. One new shipper review is now being rescinded as a result of the withdrawal of request for a new shipper antidumping duty review by Yixing Ban Chang Foods Co., Ltd. (Yixing).

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, AD/CVD Enforcement Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0648.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1999, Yixing, an exporter of the subject merchandise, requested an new shipper review of the antidumping duty order on crawfish from the PRC in accordance with 19 CFR 351.214(b). On November 14, 1999, in accordance with 19 CFR 351.221(c)(1)(i), we initiated a new shipper review of this order for the period September 1, 1998 through August 31, 1999. On February 25, 2000, Yixing withdrew its request for this review.

Rescission of Review

The Department's regulations at 19 CFR 351.214(f)(1) provide that a party may withdraw its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Although Yixing's request for withdrawal was more than 60 days from the date of initiation, consistent with the Department's past practice in context of administrative reviews conducted under section 751(a) of the Act, the Department has discretion to extend the time period for withdrawal on a case-by-case basis. (*See e.g. Iron Construction Casings from Canada: Notice of Rescission of Antidumping Duty Administrative Review,* 63 FR 45797 (August 27, 1998).) Rescission of this review would not prejudice any party in this proceeding, as Yixing would continue to be included in the PRC-wide rate to which it was subject at the time of its request for this new shipper review. Yixing is the only party that requested a review of Yixing of its sales for the September 1, 1998 through August 31, 1999 period and no other party has objected to its withdrawal of that request. Therefore, we are rescinding this review. This determination is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.214(f).

Dated: June 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19828 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Final Results of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of new shipper antidumping duty review.

SUMMARY: On March 15, 2000, the Department of Commerce (the Department) published the preliminary results of the new shipper review of sales to the United States by Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng) of freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC) (65 FR 13939). This review covers the period September 1, 1998 through February 28, 1999. We received no comments on our preliminary results, but we have made

changes to the program to account for clerical errors. In addition, we revised our results to reflect information received from the U.S. Customs Service. The final weighted-average dumping margin for Yancheng Haiteng is listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Sarah Ellerman, AD/CVD Enforcement Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0648 or (202) 482–4106, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On March 15, 2000, the Department published preliminary results of a new shipper review of the antidumping order on crawfish from the PRC for Yancheng Haiteng (65 FR 13939). We invited parties to comment on our preliminary results of review. We received no comments. The Department has conducted this new shipper review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 0306.19.00.10 and 0306.29.00.00. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Comments From Interested Parties and Changes Since the Preliminary Results

We received no comments from interested parties in response to our preliminary results. We corrected clerical errors made in the preliminary results. For more information regarding these corrections, see the *Memorandum to the File From Sarah Ellerman; Analysis for the Final Results of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Yancheng Haiteng Aquatic Products and Foods, Co., Ltd.*, dated July 24, 2000.

In addition, we received certain information from the U.S. Customs Service. As a result of this new information, we applied facts available to Yancheng Haiteng. For more information, refer to the Memorandum to Troy H. Cribb from Joseph A. Spetrini; *Issues for the Final Results of New Shipper Review of Freshwater Crawfish Tail Meat From the People's Republic of China; Yancheng Haiteng Aquatic Products and Foods Co., Ltd.*, dated July 24, 2000.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period September 1, 1998 through February 28, 1999:

Manufacturer/exporter	Margin (percent)
Yancheng Haiteng Aquatic Products & Foods Co., Ltd	36.42

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate instructions directly to the U.S. Customs Service. Furthermore, the following cash deposit rates will be effective upon publication of this notice of final results of review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Yancheng Haiteng, which was found to merit a separate rate for the final results of this review, the cash deposit rate will be the rate stated above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 201.63 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Dated: July 24, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19829 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–805]

Notice of Extension of Time Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Silicomanganese From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for the preliminary results of administrative review of the suspension agreement on silicomanganese from Ukraine.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the administrative review on the suspension agreement on silicomanganese from Ukraine.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Rick Johnson; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0165 or (202) 482–3818, respectively.

Extension of Preliminary Results

The Department published its notice of initiation of this review in the **Federal Register** on December 21, 1999 (64 FR 72644). Because it is not practicable to issue the preliminary results of review by the current deadline of August 1, 2000, the Department is extending the time limits for the preliminary results of the aforementioned review 120 days, to November 29, 2000, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended by the Uruguay Round Agreements Act of 1994 (for a further discussion, see the August 1, 2000 *Decision Memorandum from Edward C. Yang to Richard O. Weible: Request to Extend Preliminary Results*

in the Review of the Antidumping Duty Suspension Agreement on Silicomanganese from Ukraine).

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 31, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–19823 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part.

SUMMARY: In response to requests by American Silicon Technologies, Elkem Metals Company, and Globe Metallurgical, Inc. (collectively "petitioners"), and by Companhia Brasileira Carbureto De Calcio ("CBCC"), Ligas de Aluminio S.A. ("LIASA"), Eletrosilex S.A. ("Eletrosilex"), RIMA Industrial S.A. ("RIMA") and Companhia Ferroligas Minas Gerais—Minasligas ("Minasligas"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review ("POR") is July 1, 1998 through June 30, 1999.

We preliminarily determine that two respondents sold subject merchandise at less than normal value ("NV") during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct Customs to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument: (1) A statement of the issue(s), and (2) a brief summary of the argument (not to exceed five pages). Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor (RIMA), telephone: (202) 482–5831; Nova Daly (Eletrosilex), 482–0989; Mark Manning (LIASA), 482–3936, Zev Primor (CBCC), 482–4114; Alexander Amdur (Minasligas), 482–5346, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil (56 FR 36135). On July 15, 1999, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1998, through June 30, 1999 (64 FR 38181). On July 27, 1999, in accordance with 19 CFR 351.213(b)(1), LIASA requested that the Department conduct an administrative review of its sales and revoke the order with respect to LIASA pursuant to 19 CFR 351.222(e). Also on July 27, 1999, RIMA and Minasligas requested that the Department conduct an administrative review of their respective sales. On July 28, 1999, Eletrosilex requested that the Department conduct an administrative review of its sales. Also on July 28, 1999, CBCC requested that the Department conduct an administrative review of its sales and revoke the order with respect to CBCC pursuant to 19 CFR 351.222(e).

On July 30, 1999, petitioners requested that the Department conduct an administrative review of sales made by CBCC, Eletrosilex, LIASA, Minasligas, and RIMA. On August 30, 1999, in accordance with 19 CFR 351.221(b)(1), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review (64 FR 47167).

The Department issued questionnaires on October 19, 1999, to CBCC, Eletrosilex, LIASA, Minasligas, and RIMA, and received responses to Section A on December 2, 1999, from all respondents. The Department received responses to sections B, C, and D of the questionnaire from Eletrosilex on December 17, 1999, and from CBCC, LIASA, Minasligas, and RIMA on December 27, 2000. The Department issued supplemental questionnaires to LIASA on February 25, 2000, March 23, 2000, and June 6, 2000, and received responses on March 27, 2000, April 18, 2000, and June 12, 2000. The Department issued supplemental questionnaires to Minasligas on February 25, 2000, May 11, 2000, and June 2, 2000, and received responses on March 27, 2000, May 26, 2000, and June 7, 2000. The Department issued supplemental questionnaires to CBCC and Rima on February 25, 2000, and received responses on March 27, 2000. The Department issued a supplemental questionnaire to Eletrosilex on March 2, 2000, and did not receive a response.

On March 2, 2000, in accordance with section 751(a)(3)(A) of the Act, the Department published in the **Federal Register** its notice extending the deadline for the preliminary results until July 30, 2000 (65 FR 11285). The Department is conducting this review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by CBCC, LIASA, Minasligas, and RIMA. RIMA was verified from April 25, 2000, through May 4, 2000, CBCC was verified from May 8, 2000, through May 12, 2000, Minasligas was verified from June 13, 2000, through June 21, 2000 and LIASA was verified from June 19, 2000, through June 23, 2000. We used standard verification procedures including: on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU—Public File).

Facts Available ("FA")

Eletrosilex

In accordance with section 776 of the Act, we have determined that the use of adverse FA is warranted for Eletrosilex.

1. Application of FA

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, Eletrosilex failed to provide the necessary information in the form and manner requested. Thus, pursuant to section 776(a) of the Act, the Department is applying, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, not withstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

After careful analysis, we have determined that the use of FA with respect to Eletrosilex is appropriate. Eletrosilex failed to respond to the Department's request for additional information in its supplemental questionnaire dated March 2, 2000. Thus, Eletrosilex did not submit requested information by the established deadline. Furthermore, the information on the record is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or an appropriately calculated margin for Eletrosilex. *See* Memorandum Regarding the Application of Adverse Facts Available to Eletrosilex, dated July 27, 2000 ("Eletrosilex FA Memo"). For these reasons, the Department has determined that the use of FA is warranted.

2. Selection of FA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997).

Eletrosilex completely failed to respond to the Department's supplemental requests for information, which prevented the Department from making critical decisions involving the calculation of Eletrosilex's dumping margin. In addition, as required by section 782(d), Eletrosilex was put on notice, via Department extension letters and other correspondence, that failure to respond to the Department's supplemental request for information constituted a deficiency which could result in the use of FA. *See* Extension Letter from U.S. Department of Commerce to Eletrosilex, dated March 17, 2000; Letter from U.S. Department of Commerce to Eletrosilex, dated April 12, 2000. Moreover, section 782(e) is not applicable as the information Eletrosilex submitted is so incomplete that it cannot serve as a reliable basis for making a preliminary determination. Specifically, because of Eletrosilex's failure to provide: audited financial statements, explanations of affiliation issues, product specifications (regarding silicon content), values for billing adjustments, values for inland freight, reconciliation of direct and indirect selling expenses, reconciliation of packing expenses, reconciliation of U.S. imputed credit expenses, detail regarding the costs associated with furnace shut downs, reconciliation of ICMS and IPI taxes, and a reconciliation of total cost of manufacturing ("TOTCOM") figures, the Department has determined that the information on the record is insufficient for purposes of calculating a dumping margin. *See* Eletrosilex FA Memo. Accordingly, Eletrosilex did not act to the best of its ability to comply with the request for information and thus, under section 776(b) of the Act, an adverse inference is warranted. For further discussion of the Department's selection of FA, see Eletrosilex FA Memo.

Pursuant to section 776(b) of the Act, we are basing Eletrosilex's margin on adverse FA for purposes of these preliminary results. As adverse FA for Eletrosilex, we have used the highest rate determined for Eletrosilex in any segment of this proceeding. This rate is 93.20 percent. *See Silicon Metal From Brazil; Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305 (February 9, 1999) ("*1996–1997 Silicon Metal*").

3. Corroboration of Information Used as FA

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the less than fair value ("LTFV") investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action ("SAA")

accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

The SAA further provides that the term "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. The rate selected is a calculated rate from a prior segment of this proceeding. Thus, it is not necessary to question the reliability of the rate. *See e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 65 FR 6140 (February 8, 2000) and *1996–1997 Silicon Metal*.

As to the relevance of the margin used for adverse FA, the courts have stated that "by requiring corroboration of adverse inference rates, Congress clearly intended that such rates should be reasonable and have some basis in reality." *See F.Lli De Cecco Di Filippo Fara S. Martino S.p.A., v. U.S.*, _____ CAFC ____, Slip Op. 99–1318 (June 16, 2000).

In determining a relevant and reasonable adverse FA rate for Eletrosilex, the Department notes that margins for Eletrosilex have historically fluctuated between the present rate of 18.87 percent and the 93.20 percent rate, determined for the1996–1997 POR. *See Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil*, 65 FR 7497 (February 15, 2000) ("*1997–1998 Silicon Metal*"), and the *1996–1997 Silicon Metal*. Eletrosilex received a calculated rate of 18.87 percent for the 1997–1998 POR, an FA rate of 93.20 in the 1996–1997 POR, a calculated rate of 39.00 percent for the 1995–1996 POR, a calculated rate of 6.33 percent for the 1994–1995 POR, a calculated rate of 38.39 percent for the 1993–1994 POR, and a calculated rate of 51.84 percent for the 1992–1993 POR. *See: 1997–1998 Silicon Metal, 1996–1997 Silicon Metal, Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil*, 63 FR 6899 (February 11, 1998) ("*1995–1996 Silicon Metal*"), *Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 54087 (October 17, 1997), *Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 54094 (October 17, 1997) and *Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review in Accordance With Court Decision*, 65 FR 33297 (May 23, 2000), respectively. Furthermore, during the last three administrative reviews, whereas Eletrosilex has received margins of 18.87 percent, 93.20 percent, and 39.00 percent, other parties in this proceeding have had calculated rates below 10 percent. *See 1997–1998 Silicon Metal, 1996–1997 Silicon Metal, and 1995–1996 Silicon Metal*, respectively.

Noting that Eletrosilex's rates have moved up and down from one period of review to the next, and given Eletrosilex's failure to cooperate to the best of its ability in this review, we have no reason to believe that Eletrosilex's dumping margin would be any less than the highest rate at which we have previously found Eletrosilex to have dumped or that other available rates would ensure that Eletrosilex does not benefit by failing to cooperate fully. Thus, we used the highest rate determined for Eletrosilex of 93.20 percent.

Partial FA

Minasligas

The Department has determined, in accordance with section 776 of the Act, that the application of partial FA is warranted for Minasligas.

In the course of verification, the Department discovered a U.S. sale, made by Minasligas within the current POR, which Minasligas had not reported. Minasligas officials explained that the failure to report this sale was inadvertent. For further information regarding the discovery of this unreported sale, see Sales Verification Report for Minasligas, dated July 31, 2000.

For purposes of these preliminary results, the Department has concluded that because Minasligas failed to report this sale, an adverse FA is warranted for the sale. Consequently, as partial adverse FA we have preliminarily calculated a margin for that transaction using the actual price, which is on the record in verification documents, and the highest U.S. selling expenses from Minasligas' reported transactions.

Intent Not To Revoke

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes, *inter alia*, that the exporter and producer covered at the time of revocation: (1) sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2) (1999); *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Pure Magnesium from Canada*, 64 FR 12977, 12982 (March 16, 1999) ("*Pure Magnesium from Canada*").

I. CBCC

On July 28, 1999, CBCC submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from CBCC that for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. CBCC also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it sold the subject merchandise at less than NV.

On March 23, 2000, the Department requested additional information from CBCC and interested parties regarding CBCC's revocation request. We received comments from CBCC and from petitioners in April and May of 2000.

After review of the record, the Department preliminarily determines that although CBCC has had zero or *de minimis* dumping margins for the previous two review periods, during the current review CBCC's weight-averaged dumping margin is preliminarily determined to be 0.63 percent, an above *de minimis* rate. A rate must be below 0.50 percent to be *de minimis*. *See* 19 CFR 351.106(c). Consequently, CBCC failed to achieve sales of subject merchandise "at not less than NV for a period of at least three consecutive years" as required by the Department's regulations. Because one of the

requirements to qualify for revocation has not been met, the Department has not addressed the issues of commercial quantities and whether the continued application of the antidumping duty order is necessary to offset dumping with regard to CBCC. However, should this rate be revised to below 0.50 percent for the final results of review, it will be necessary to address these factors at that time. Interested parties are invited to comment on these factors in their case briefs.

As a result of our analysis of factual information submitted to us during the course of this review, we preliminarily intend not to revoke this order with respect to CBCC.

II. LIASA

On July 27, 1999, LIASA submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the order covering silicon metal from Brazil with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from LIASA that for a consecutive three-year period, including this review period, it had sold the subject merchandise in commercial quantities at not less than NV, and would continue do so in the future. LIASA also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under, 19 CFR 351.216, that subsequent to revocation, it sold the subject merchandise at less than NV.

On March 23, 2000, the Department requested additional information from LIASA and interested parties regarding LIASA's revocation request. We received comments from LIASA and from petitioners in April and May of 2000.

For these preliminary results, the Department has relied upon LIASA's sales activity during the 1996–1997, 1997–1998, and 1998–1999 review periods in making its decision regarding LIASA's revocation request. LIASA argues that, as part of its normal business operations, it sells "small" quantities of silicon metal to all, *i.e.*, foreign and domestic, customers. Accordingly, LIASA claims, the quantities of the subject merchandise sold to the United States are not small but rather "commercially representative" of LIASA's activity in all markets. *See* LIASA's Revocation Comments, dated April 18, 2000, at 4 ("LIASA's Comments"). Petitioners argue that LIASA's small individual sales are not relevant because the Department evaluates commercial quantities based on aggregate volumes of such sales during each of the consecutive PORs rather than the volumes of individual sales. *See* "Petitioners Rebuttal Comments," dated May 2, 2000, at 4.

In accordance with the regulations described above, we must determine whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. *See* 19 CFR 351.222(d)(1). In other words, the Department must determine whether the quantities sold during these time periods are reflective of the company's normal commercial activity. *See Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 64 FR 2175 (January 13, 1999) ("*Certain Corrosion-Resistant Carbon Steel Flat Products from Canada*"). Sales during a POR which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id.; see also, Pure Magnesium From Canada*. However, the determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts on the record of each proceeding. See section 751(d) of the Act; 19 CFR 351.222; *see also Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands* 65 FR 750, (January 6, 2000) ("*Brass from Netherlands*").

In the present case, we compared LIASA's aggregate U.S. sales during each of the PORs to the six-month period of investigation ("POI"). The POI was used as an appropriate benchmark because it reflects sales activity without the discipline of an antidumping order in place. The comparison indicates that LIASA's sales to the U.S. market during the three above-mentioned PORs represent 0.69 percent, 12.77 percent, and 1.6 percent, of the U.S. sales during the POI, respectively. When the POI sales are annualized, the sales for each of the three consecutive PORs decline even further to approximately 0.35 percent, 6.38 percent, and 0.8 percent, respectively, when compared to the POI sales volume. In *Brass from Netherlands*, the Department denied revocation by stating that the volume of merchandise sold to the United States was approximately two percent of the volume of merchandise sold in the benchmark investigative period. *Id.* at 752. Similarly, in the most recently completed segment of the proceeding, the Department denied revocation for CBCC because it failed to meet the commercial quantities threshold. In that particular administrative review, the Department determined that CBCC's aggregate sales during one of the three-consecutive years forming the basis for revocation, represented approximately 2 percent of the sales volume sold during the POI. Based on that finding, *inter alia*, the Department denied CBCC's revocation request. *See 1997–1998 Silicon Metal*. In the instant review, we find that in 1996–1997 and 1998–1999 PORs, LIASA's sales to the United States were significantly lower, as a percentage of its POI sales, than in cases mentioned above.

After review of the criteria outlined at sections 351.222(b) and 351.222(d) of the Department's regulations, the Department's practice, the comments of the parties, and the evidence on the record, we have preliminarily determined that the requirements for revocation have not been met. Based on the preliminary results of this review and the final results of the two preceding reviews, LIASA has not demonstrated three consecutive years of sales in commercial quantities. Therefore, because LIASA has not sold subject merchandise in commercial quantities during each of the three consecutive PORs, we do not intend to revoke the antidumping duty order as to LIASA. *See* Memorandum Regarding "Eighth Administrative Review: Commercial Quantities," dated July 30, 2000.

Additionally, because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issue of whether the continued application of the antidumping duty order is necessary to offset dumping with regard to LIASA. However, should this decision be revised for the final results of review, it will be necessary to address this factor at that time. Interested parties are invited to comment on this factor in their case briefs.

NV Comparisons

During the POR, all U.S. sales by Brazilian respondents were export price ("EP"), none were constructed export price ("CEP") sales. To determine whether sales of silicon metal by the Brazilian respondents to the United States were made at less than normal value, we compared EP to the NV, as

described in the "*EP*" and "*NV*" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP transactions.

Sales Reviewed

We have continued to employ the approach, adopted in the final results of the second review of this order, covering the 1992–1993 POR, in determining which U.S. sales to review for all companies. If a respondent sold subject merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR. *See Silicon Metal from Brazil, Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the "*Scope of Review*" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Further, as in the preceding segment of this proceeding, we have continued to treat all silicon metal meeting the description of the merchandise under the "*Scope of Review*" section, above (with the exception of slag and contaminated products) as identical products for purposes of model-matching. *See Silicon Metal From Brazil: Preliminary Results, Intent To Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits*, 64 FR 43161 (August 9, 1999).

Level of Trade ("LOT")

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In determining whether separate LOTs actually existed in the home and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

CBCC reported sales through one LOT, consisting of three customer categories (*i.e.*, original equipment manufacturers, distributors and silicon metal producers) which also represent three channels of distribution for its home market sales. CBCC reported only EP sales in the U.S. market. For EP sales, CBCC reported one customer category and one channel of distribution (*i.e.*, direct sales to an unaffiliated trading company, for sale to the U.S. market). CBCC claimed in its response that EP sales were made at the same LOT as home market sales to unaffiliated customers. For this reason, CBCC has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing CBCC's selling activities for the home and U.S. markets, we determined that essentially the same selling functions were provided for both markets. These selling functions in both markets were minimal in nature and usually limited to arranging for freight, if requested by the customer. No other selling functions or services were rendered for either home market (regardless of customer category) or EP sales. Therefore, based upon this information, we have preliminarily determined for CBCC that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for CBCC.

RIMA reported sales through one channel of distribution to one customer category (*i.e.*, end users) for home market sales. In the U.S. market, RIMA reported EP sales through one channel of distribution to one customer category (*i.e.*, end users). In its response, RIMA stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, RIMA has not requested a LOT adjustment.

In analyzing RIMA's services for the home and U.S. market, we determined that essentially the same services were provided for both markets. These services in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined for RIMA that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for RIMA.

LIASA reported one customer category (*i.e.*, "end-user") and one channel of distribution for its home market sales. LIASA reported only EP sales in the U.S. market. For EP sales, LIASA reported one customer category and one channel of distribution (*i.e.*, direct sales to unaffiliated "end-users" in the U.S. market). LIASA claimed in its response that EP sales were made at the same LOT as home market sales to unaffiliated customers. For this reason, LIASA has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing LIASA's selling activities for its EP sales, we noted that the sales involved basically the same selling activities associated with the home market LOT described above. These selling activities in both markets were minimal in nature and usually limited to arranging for freight, if requested by the customer. No other services were rendered for either home market or EP sales. Therefore, based upon this information, we have preliminarily determined for LIASA that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for LIASA.

Minasligas reported sales through one LOT consisting of one customer category (*i.e.*, original equipment manufacturers) which represents one channel of distribution for its home market sales. Minasligas reported only EP sales in the U.S. market. For EP sales, Minasligas reported one customer category and one channel of distribution (*i.e.*, direct sales to trading companies). Minasligas claimed in its response that its U.S. and home market sales were made at the same LOT. For this reason, Minasligas has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing Minasligas' selling activities for the home and U.S. market, we determined that essentially the same

services were provided for both markets. These selling activities in both markets were minimal in nature and limited to arranging for freight and delivery. No other services were rendered for either home market or EP sales. Therefore, based upon this information, we have preliminarily determined for Minasligas that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Minasligas.

EP

For CBCC, LIASA, RIMA, and Minasligas, we used the Department's EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by each producer outside the United States directly to the first unaffiliated purchaser in the United States prior to importation (or to unaffiliated trading companies for export to the United States) and CEP methodology was not otherwise warranted. We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, foreign inland freight, brokerage and handling, and international freight. Where foreign inland freight was reported inclusive of the value-added tax ("VAT"), we deducted the VAT from the gross freight cost. For Minasligas, we added duty drawback to the starting price. We made company-specific adjustments to EP as follows:

I. RIMA

We recalculated RIMA's inventory carrying costs and indirect selling expenses pursuant to corrections presented at verification. For further discussion of these changes, see Calculation Memorandum for RIMA dated July 30, 2000, and Report on the Verification of the Sales and Cost Responses for Rima, dated July 24, 2000, for further information regarding sales and cost verification.

II. Minasligas

We recalculated Minasligas' U.S. credit expense using corrected payment dates and interest rates. First, we used the date of payment by the U.S. customer to Minasligas for each sale rather than the date of payment by the bank to Minasligas. Second, for the interest rate, Minasligas reported a rate based on the Brazilian dollar Taxa Referencial ("TR") rate, the published Government of Brazil prime lending rate, while we calculated a U.S. dollar rate based on the Advance Exchange Contract ("ACC") information presented in Minasligas" March 27, 2000 and May 27, 2000 submissions. Further, we recalculated Minasligas' reported duty drawback adjustment by allocating all import duties, forgiven by the Brazilian government through duty drawback during the POR, over all of Minasligas' export sales of silicon metal during the POR. We also made adjustments for unreported bank charges that we found at verification. For further discussion, see Calculation Memorandum for Minasligas, dated July 31, 2000.

III. LIASA

Although LIASA stated in the narrative section of its questionnaire response that it reported U.S. credit expenses, it did not include this expense in its U.S. market database. We calculated LIASA's U.S. credit expense using its reported date of sale and date of payment. Since LIASA stated that it did not have any short-term borrowing in U.S. dollars, we calculated this expense using an interest rate obtained from the Federal Reserve's data for short-term commercial and industrial loans. For further discussion, see Calculation Memorandum for LIASA dated July 31, 2000.

NV

1. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for each respondent. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. Cost of Production ("COP") Analysis

In the review segment of this proceeding most recently completed prior to initiating this review, we disregarded home market sales found to be below the cost of production for LIASA. *See 1996–1997 Silicon Metal.* Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made by LIASA at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act.

On April 3, 2000, the petitioners in this proceeding filed a timely sales-below-cost allegation with regard to CBCC, RIMA, and Minasligas. In the cases of CBCC and Minasligas, the petitioners' allegation was based on the respondents' antidumping duty questionnaire responses. Upon review of the allegations, we found that petitioners' methodology provided the Department with a reasonable basis to believe or suspect that sales in the home market had been made at prices below the COP by both CBCC and Minasligas. Accordingly, pursuant to section 773(b)(1) of the Act, we have initiated an investigation to determine whether CBCC and Minasligas' sales of silicon metal were made at prices below COP during the POR. *See* Analysis of Petitioners' Allegation of Sales Below the COP for CBCC, dated May 23, 2000; Analysis of Petitioners' Allegation of Sales Below the COP for Minasligas, dated May 23, 2000.

With regard to petitioners' allegation against RIMA, petitioners' did not base their sales-below cost analysis of RIMA on company-specific data submitted in RIMA's supplemental questionnaire response submitted on March 27, 2000. When company-specific information has been placed on the record, any subsequent sales-below-cost allegation must take into account such information. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27336 (May 19, 1997). Therefore, because the petitioners did not take into account RIMA's most current reported sales and cost data, we find that the petitioners did not provide the Department with a reasonable basis to believe or suspect that sales in the home market have been made at prices below the COP. Accordingly, pursuant to section 773(b)(1) of the Act, we have not initiated an investigation to determine whether RIMA's sales of silicon metal were made at prices below COP during the POR. For further discussion of this decision, *see* Memoranda from Maisha Cryor to Thomas F. Futtner, dated July 24, 2000.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a product-specific COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling,

general and administrative expenses ("SG&A") expenses, including interest expenses and packing costs.

We relied on the home market sales and COP information submitted by each respondent in its questionnaire responses, except for the following company-specific adjustments described below.

Minasligas

1. In its response, Minasligas allocated its reported costs for silicon metal over different grades of silicon metal, while in its own books and records, it only records one cost for all grades of silicon metal (*see e.g.*, page D–14 of Minasligas' December 27, 1999 response). We calculated one cost for all grades of silicon metal, as Minasligas itself records in its books and records as verified by the Department. *See* Report on the Verification of Cost Information for Minasligas, dated July 31, 2000.

2. We recalculated variable overhead by: (1) reallocating certain variable overhead expenses by production quantities, as is the Department's practice (*see Notice of Preliminary Results of Antidumping Duty Administrative Review: Ferrosilicon From Brazil*, 62 FR 16763, 16766 (April 8, 1997)); (2) correcting the errors that we found at verification in other indirect costs; and (3) subtracting packaging costs, which were incorrectly double-reported as part of variable overhead and in the sales response.

3. We recalculated fixed overhead by using the corrected amount of depreciation expense that we found at verification.

4. We did not offset Minasligas' gross charcoal cost by the reported offset for charcoal fines sales because we found at verification that the reported gross charcoal cost already includes an offset for charcoal fines sales.

5. Since we compared both COP and home market prices on an ICMS tax-exclusive basis, we based the electricity cost on the reported gross electricity cost, and not on the reported cost net of the electricity cost paid with ICMS credits. *See 1997–1998 Silicon Metal*, at 7497, 7507.

Due to the proprietary nature of these issues, for further discussion, *see* Calculation Memorandum for Minasligas and Minasligas: Report on the Verification of Cost Information Submitted in the Administrative Review Covering July 1, 1998 through June 30, 1999, both dated July 31, 2000.

B. Test of Home Market Sales Prices for CBCC, Minasligas and LIASA

For CBCC, Minasligas and LIASA, we compared the per-unit COP figures for the POR to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts.

C. Results of COP Test for CBCC, Minasligas and LIASA

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product are at prices below the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in "substantial quantities." Where (1) 20 percent or more of the respondent's sales of a given product during the POR are made at prices below the COP and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to per-unit COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

We found that only CBCC and LIASA made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

Price-to-Price Comparisons

For those comparison products for which there were sales at prices above the COP (*i.e.*, sales by CBCC, LIASA, RIMA, and Minasligas), we based the respondents' NV on the prices at which the foreign like product was first sold to unaffiliated parties for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. We based NV on sales at the same level of trade as the EP sales. For level of trade, please see the "*Level of Trade*" section above. In accordance with section 773(a)(6) of the Act, we made adjustments to home market price, where appropriate for inland freight, brokerage and handling charges, and rebates. Where inland freight was reported inclusive of value-added taxes VAT, we deducted the VAT from the gross freight cost. To account for differences in circumstances of sale between the home market and the United States, where appropriate, we adjusted home market prices by deducting home market direct selling expenses (including credit) and commissions and adding an amount for late payment fees earned on home market sales, and by adding U.S. direct selling expenses (including U.S. credit expenses) and, where appropriate, deducting an amount for late payment fees earned on U.S. sales. For Minasligas, we recalculated home marking credit by using as an interest rate the simple average of monthly TR rates, as is the Department's practice (*see Silicon Metal From Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 42759, 42761 (August 8, 1997)). Where commissions were paid on home market sales and no commissions were paid on U.S. sales, we increased NV by the lesser of either: (1) The amount of commission paid on the home market sales or (2) the indirect selling expenses incurred on U.S. sales. *See* 19 CFR 351.410(e). In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act. Where home market prices were reported exclusive of VAT we made no adjustment. However, where home market prices were reported inclusive of VAT, we deducted the VAT from the gross home market price.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a "fluctuation" to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (Mar. 8, 1996).) Our preliminary analysis of dollar-real

exchange rates shows that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. As such, we preliminarily determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. We preliminarily find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999. We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in January 1999. Thus, we used a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates were merely fluctuating. Beginning on January 13, 1999, we used only daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely "fluctuating." (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as "fluctuating" or "normal" in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 65 FR 5554, 5563–64 (Feb. 4, 2000); and *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 64 FR 56759, 56763 (Oct. 21, 1999). Applying this methodology in the instant case, we used daily rates from January 13, 1999, through March 4, 1999. We then resumed the use of a benchmark, starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999. We resumed the use of the normal 40-day benchmark starting on April 3, 1999, through the close of the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 1998, through June 30, 1999, and we preliminarily determine not to revoke the order covering silicon metal from Brazil with respect to CBCC's and LIASA's sales of this merchandise.

Manufacturer/exporter	Weighted-average margin percentage
CBCC	0.63
Eletrosilex	93.20
LIASA	0.00
RIMA	0.00
Minasligas	0.00

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review except if the rate is less than 0.5 percent, and therefore, *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other manufacturers and/or exporters of this merchandise, the cash deposit rate will continue to be 91.06 percent, the "all others" rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19822 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062300A]

National Plan of Action for the Conservation and Management of Sharks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of draft plan.

SUMMARY: NMFS announces the availability of a draft National Plan of Action (NPOA) developed pursuant to the endorsement of the International Plan of Action (IPOA) for the Conservation and Management of Sharks by the United Nations' Food and Agriculture Organization Committee on Fisheries (COFI) Ministerial Meeting in February 1999. NMFS has prepared this draft plan based on consultation with scientific and technical experts and certain Federal and state agencies. Members of the public are encouraged to provide comments on the draft NPOA.

DATES: Comments must be received no later than September 30, 2000.

ADDRESSES: Written comments and requests for copies of the draft NPOA should be sent to Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or internet.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, (301) 713-2347; fax (301) 713-1917.

SUPPLEMENTARY INFORMATION: Noting the increased concern about the expanding catches of sharks and their potential negative impacts on shark populations, the IPOA calls on member nations to voluntarily develop national plans to ensure the conservation and management of sharks for their long-term sustainable use by applying the precautionary approach. Member nations are encouraged to develop and implement an NPOA if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks incidentally in fisheries for other species. Specifically, the IPOA calls on member nations to ensure that shark catches from directed and incidental fisheries are sustainable; assess threats to shark populations; protect critical habitats; provide special attention to vulnerable or threatened shark stocks; minimize unutilized incidental catches of sharks; encourage full use of dead sharks; improve species-specific catch and landings data and monitoring of shark catches; and consult with stakeholders in research, management, and educational initiatives within and between member nations. The United States has committed to developing this national plan, and reporting on its implementation to COFI, no later than the 25th COFI session in February 2001.

A proposed schedule, outline, background, and rationale were published in the Federal Register on September 30, 1999 (64 FR 52772). A revised schedule was published in the FEDERAL REGISTER on March 27, 2000 (65 FR 16186).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–19846 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 000721216–0216–01]

Announcement of the Establishment of a Joint Public-Sector Private-Sector Technology Demonstration Center

AGENCY: Technology Administration, Commerce.

ACTION: Notice of establishment of a Technology Demonstration Center.

SUMMARY: The United States Department of Commerce Technology Administration announces the establishment of a joint public-sector private-sector Technology Demonstration Center. The purpose of the Center will be to demonstrate state-of-the-art and future technological advances in a variety of technologies and to encourage future development. Demonstrations will consist of joint presentations by the United States Department of Commerce Technology Administration and private sector parties. The Center is a joint activity, conducted under the auspices of Cooperative Research and Development Agreements. This is not a grant program.

DATES: The Technology Demonstration Center is immediately available for interested parties.

ADDRESSES: Parties interested in participating in the Technology Demonstration Center should send inquiries to, Technology Demonstration, United States Department of Commerce, Technology Administration, Attn: Ms. Jacki Pickett, Washington DC, 20232.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Pickett, Technology Administration, (202) 482–1039.

SUPPLEMENTARY INFORMATION: Under the authorities granted by Title 15 United States Code sections 3704 and 3710a, the Under Secretary for Technology is establishing a Technology Demonstration Center in cooperation with one or more private sector entities.

The purpose of the Center will be to demonstrate state-of-the-art and future technological advances in a variety of technologies and to encourage future development. The demonstrations will consist of joint presentations by the United States Department of Commerce Technology Administration and private sector parties.

The Center will be established under the auspices of Cooperative Research and Development Agreements between the Technology Administration and one or more private sector parties. The Center will be for demonstration purposes only and will comply with applicable Federal regulations and Departmental requirements. The Center will not be used for sales of merchandise, solicitations, orders or for the advertisement of specific products or services. The Center will be physically located at the United States Department of Commerce's Herbert C. Hoover Building, in Washington D.C.

Dated: July 28, 2000.

Cheryl L. Shavers,

Undersecretary of Commerce for Technology.

[FR Doc. 00–19805 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Waiver of 10 U.S.C. 2534 for Certain Defense Items Produced in the United Kingdom

AGENCY: Department of Defense (DoD).

ACTION: Notice of waiver of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom.

SUMMARY: The Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of items enumerated from sources in the UK, unless otherwise restricted by statute.

EFFECTIVE DATE: This waiver is effective for one year, beginning August 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty, OUSD (AT&L), Director of Defense Procurement, Foreign Contracting, Room 3C762, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 697–9353.

SUPPLEMENTARY INFORMATION: Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to exercise the waiver authority in subsection (d), on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation "would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items" and if he determines that "that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country." The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense (Acquisition, Technology, and Logistics).

DoD has a reciprocal procurement Memorandum of Understanding (MOU) with the UK that was signed on December 13, 1994.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) finds that the UK does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation, including sections 8016 and 8067 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106–79). This waiver applies to procurement under solicitations issued during the period from August 19, 2000, to August 18, 2001. Similar waivers were granted for the period from August 4, 1998, to August 3, 2000 (63 FR 38815, July 20, 1998, and 64 FR 38696, July 20, 1999). For contracts entered into prior to August 4, 1998, this waiver applies to procurements of the defense items listed below under—

(1) Subcontracts entered into during the period from August j19, 2000, to August 18, 2001, provided the prime contract is modified to provide the Government adequate consideration such as lower cost or improved performance; and

(2) Options that are exercised during the period from August 19, 200, to August 18, 2001, if the option prices are adjusted for any reason other than the application of the waiver, and if the contract is modified to provide the Government adequate consideration such as lower cost or improved performance.

List of Items to Which This Waiver Applies

1. Air circuit breakers.
2. Welded shipboard anchor and mooring chain with a diameter of four inches or less.
3. Gyrocompasses.
4. Electronic navigation chart systems.
5. Steering controls.
6. Pumps.
7. Propulsion and machinery control systems.
8. Totally enclosed lifeboats.
9. Ball and roller bearings.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–19804 Filed 8–3–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Meeting With the Community College of the Air Force Board of Visitors To Review and Discuss Academic Policies and Issues Relative to the Operation of the College

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of Meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact First Lieutenant Matthew M. Groleau, Designated Federal Officer for the Board, at the address below no later than 4 p.m. on November 1, 2000. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. A minimum of 35 copies of the presentation materials must be given to First Lieutenant Matt Groleau no later than 3 days prior to the time of the board meeting for distribution. Visual aids must be submitted to First Lieutenant Matt Groleau on a 3½-inch computer disk in Microsoft PowerPoint format no later than 4 p.m. on November 1, 2000 to allow sufficient time for virus scanning and formatting of the slides.

DATES: The meeting will be held on Wednesday, November 15, 2000 at 8 a.m. on the First Floor Conference Room, Air University, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112.

FOR FURTHER INFORMATION CONTACT: First Lieutenant Matt Groleau, 334–953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama,

36112–6613, or through electronic mail at *matthew.groleau@maxwell.af.mil.*

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 00–19807 Filed 8–3–00; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Revised Performance Review Boards List of 2000 Members

Below is a revised list of individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Awards System.

Secretariat

Mr. Ronald L. Orr
Maj Gen James E. Sherrard III
Mr. Frank Tuck
Mr. Gary M. Erickson
Ms. Susan A. O'Neal
Mr. Harlan G. Wilder

Air Staff and "Others"

Mr. William A. Davidson
Mr. Gene L. Hathenbruck
Maj Gen Larry Northington
Mr. James C. Barone
Ms. Mary Lou Keener
Mr. Anthony J. DeLuca

Air Force Materiel Command

Lt Gen Charles H. Coolidge, Jr.
Brig Gen Wilber D. Pearson, Jr.
Mr. Harry E. Schulte
Ms. Cathlynn B. Sparks
Mr. Gregory W. Den Herder

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 00–19806 Filed 8–3–00; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Mandatory Use of USBank's PowerTrack System by DOD Freight Carriers

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services, proposes the mandatory use of PowerTrack as a transaction and payment system for all DOD freight carriers.

DATES: Comments must be submitted on or before October 3, 2000. Proposed effective dates for mandatory use of PowerTrack are: November 30, 2000 for air (includes small package express freight shipments), barge, pipeline, rail and sealift carries, and December 31, 2000, or all Guaranteed Traffic carriers.

ADDRESSES: Comments may be sent as follows: by fax: 703–428–3397 attn: Jerome Colton by e-mail: coltonj@mtmc.army.mil by mail or courier to: Headquarters, Military Traffic Management Command, ATTN: MTOP–MRM (Jerome Colton),Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Colton at 703–428–2384, e-mail moneypennyk@mtmc.army.mil.

SUPPLEMENTARY INFORMATION: A notice announcing the DOD Management Reform Memorandum #15 (MRM15) directed reengineering of the DOD transportation documentation and financial processes was published in the **Federal Register**, Vol. 64, No. 14, p. 3488, Friday, Jan 22, 1999. Through a joint effort, the DOD transportation and financial communities, in conjunction with the commercial transportation industry, have developed an electronic acquisition and payment process, which uses commercial documentation to procure and pay for transportation services. Over the past three years, DOD, in conjunction with the commercial transportation industry, has taken several major steps toward adopting transportation industry commercial practices. Specifically, the DOD is eliminating government unique documentation, including freight Government Bills of Lading and military manifests for commercial Sealift movement. Several prototypes have been conducted with commercial carriers. These prototypes tested the reengineered process in a demanding but controlled environment. Based on the success of the prototypes, Dr. John J. Hamre, Deputy Secretary of Defense, directed the implementation of PowerTrack service for commercial transportation of freight movements within the United States, worldwide air movements, and Sealift intermodal service. PowerTrack, a product of US Bank, Inc., is an online payment and transaction system that is projected to reduce the payment cycle from an average of 60 days to 3 days from notification that service has been performed. PowerTrack effectively supports up-front pricing, facilitates the exchange of electronic information between shipper and carrier, and provides an automated payment and reconciliation tool. These changes will streamline procedures, reduce paperwork, and eliminates the need for Government payment centers dedicated to paying transportation services.

PowerTrack is now being used for the majority of DOD's freight shipments both in terms of number of shipments and in terms of dollar value. Today over 300 commercial carriers utilize PowerTrack. These carriers haul approximately 95% of DOD's freight traffic. Based on the success of the MRM 15 reengineering initiative, DOD wishes to expedite implementation of PowerTrack to all commercial carriers doing business with DOD. Accordingly, it is proposed that effective November 30, 2000, all remaining carriers, to include, air express, air freight, barge, pipeline, rail and sealift carriers wishing to transport freight for the DOD must have an agreement with US Bank and be PowerTrack certified for the electronic payment of commercial transportation services. It is important that interested carriers begin the PowerTrack signup process by calling US Bank at 1–800–417–1844. Additional information on PowerTrack is available at www.usbank.com/powertrack.

If the proposed schedule implementing mandatory use of PowerTrack is adopted, the following actions will be taken effective:

November 30, 2000—For all carriers in the categories listed above that are not PowerTrack capable, their voluntary and negotiated rate tenders on file will be placed in a nonuse status. Carriers with non-binding contracts will not be used for DOD freight movements. MTMC will work with carries to modify those contracts that do not contain the PowerTrack requirement in an effort to meet the November 30, 2000 implementation date.

December 31, 2000—For carriers participating in Guaranteed Traffic (GT) movements, carriers that are not PowerTrack capable will not be considered for GT awards beyond this date. Carriers that are not PowerTrack capable but are currently performing under GT awards will be allowed to continue performance until expiration of the contract period. MTMC may, with the carrier's agreement, extend a GT award if required for operational reasons. Only those carriers that are PowerTrack certified will be eligible for the extension of Guaranteed awards after December 31, 2000.

Regulatory Flexibility Act

This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 USC 3501 *et seq.*, does not apply because no information collection requirements or recordkeeping responsibilities are imposed on offerors, contractors, or members of the public.

Thomas Hicks,

Assistant Deputy Chief of Staff for Operations and Plans.

[FR Doc. 00–19796 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Prospective Grant of Exclusive Patent License

AGENCY: U.S. Army Soldier and Biological Chemical Command, U.S. Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), SBCCOM hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Provisional Patent Application 60/184,376 entitled: "Automated Decision-Aid System for Hazardous Incidents (ADASHI)" to Optimetrics, Inc.

The Automated Decision-Aid System for Hazardous Incidents (ADASHI) is a unique computer-based integrated decision-aid support system for improving tactical response to a hazardous incident. ADASHI effectively integrates the specific technical functions required to control a hazardous event involving chemical, biological or radiological (CBR) materials. ADASHI will automatically monitor most aspects of the CBR event, whether it be a "What if?" simulated event for training purposes or a real event. ADASHI can also be utilized as an "over the shoulder" decision-support system to aid incident commanders in making better, more timely decisions by rapidly processing the multi-variant input data and providing critical information to that commander in a high-stress environment.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Gross, Technology Transfer Office, U.S. Army SBCCOM, ATTN: AMSSB–RAS–C, 5183 Blackhawk Road (Bldg E3330/245), APG MD 21010–5423; Phone: (410) 436–5387 or E-mail: rigross@sbccom.apgea.army.mil.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless within sixty days from the date of this published Notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–19797 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Integrated Total Army Personnel Data Base (ITAPDB) Data Element Standard Version 1.0 (V1.0)

AGENCY: Deputy Chief of Staff for Personnel, U.S. Army, DoD.

ACTION: Notice (Request for comments).

SUMMARY: The Department of the Army, Office of the Deputy Chief of Staff for Personnel announces a draft Integrated Total Army Personnel Data Base (ITAPDB) Data Standard Version 1.0 (V1.0), dated 3 August 2000. Comments are invited on: (a) Ways to enhance the quality and clarity of the information contained therein; and (b) ways to establish a common set of data element standards that will enable the Army to eliminate redundant data, ensure commonality of information, reduce data conversion cost, and align with DoD development initiatives.

DATES: Consideration will be given to all comments received by September 5, 2000. All comments received within 30 days of publication of this notice will be considered before any decision on whether to adopt this proposal.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Director, Information Systems, Office of the Deputy Chief of Staff for Personnel, ATTN: DAPE–ZXI (Ms. Golden Giddings/Ms. Angela McCoy), 300 Army Pentagon, Washington, DC 20310. Consideration will be given to all comments received within 30 days of the date of publication of this notice. E-mail address for Ms. Giddings is *giddigl@hqda.army.mil* and for Ms. McCoy is *mccoyak@hqda.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Oestreich, (703) 325–8877, *oestreip@perscom.army.mil.*

SUPPLEMENTARY INFORMATION: The ITAPDB establishes data element standards that will be shared among Army Information systems horizontally between Army communities and vertically between field level and DA human resource information systems. Establishing a common set of data element standards enables the Army to eliminate redundant data, ensure commonality of information, reduce data conversion costs, and align with DoD development initiatives. As ITAPDB Data Element Standard evolves, it will apply to intelligence, operations, fire support, logistics, safety, transportation, human resource, military police, medical, dental, finance, chaplain, legal, post operation, civilian personnel, moral and welfare, recreation, force management, education center, inspector general and contractor support mission areas as it pertains to people related exchange of information or data.

This standard is essential to achieve effective and efficient system interoperability among systems that support all Army human resources—soldier, civilian, or contractor in active or retired status.

Individuals desiring a copy of the draft ITAPDB Data Element Standard Version 1.0 should e-mail or write to Ms. Giddings or Mr. Oestreich at the above addresses.

Robert D. Buckstad,

Colonel, U.S. Army, Director, Information Systems.

[FR Doc. 00–19801 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Improvements to the Corpus Christi Ship Channel Near Corpus Christi, Texas as Published in House Document 99, 90th Congress, Second Session

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action to be addressed in the Draft EIS is to evaluate several deepening and widening alternatives to improve a deep-draft navigation channel that connects harbor facilities in the Corpus Christi area with the Gulf of Mexico. The study will focus on circulation and salinity changes associated with an improved channel

and develop dredged material disposal options that will include an evaluation of beneficial uses of dredged material. The project is being maintained at its authorized depth of 45 feet and includes about 34.5 nautical miles of deep-draft channel. The Corpus Christi area is located about 200 miles southwest of Houston, Texas. The local sponsor for the project is the Port of Corpus Christi Authority.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Carl Anderson, (409) 766–3914, Project Manager, Project Management Branch, or Dr. Terry Roberts, (409) 766–3035, Environmental Lead, Environmental Branch, Planning, Environmental, and Regulatory Division, P.O. Box 1229, Galveston, Texas 77553–1229.

SUPPLEMENTARY INFORMATION:

1. The study process began in 1990 when Congress directed the Secretary of the Army to study the feasibility of modifying the 45-foot channel to accommodate larger vessels, increase shipping efficiency, and enhance navigation safety. A reconnaissance study evaluated a deepening and widening plan to establish a Federal interest in the project. The study concluded there was a Federal interest in continuing studies in 1994. The feasibility study began in June 1999 and will determine the most cost-effective alternative for improving the channel while protecting the Nation's environment.

2. Alternatives: a. The six construction alternatives that will be evaluated in the feasibility phase are:

(1) Widening the existing 400-foot channel across Corpus Christi Bay between Ingleside and the Harbor Bridge.

(2) Add barge lanes across Corpus Christi Bay.

(3) Extend the La Quinta Channel approximately 8,000 feet.

(4) Deepen the channel to 52 feet from the Gulf of Mexico to the Viola Turning Basin and widen it across Corpus Christi Bay between Ingleside and the Harbor Bridge.

(5) Deepen the channel to 50 feet from the Gulf of Mexico to the Viola Turning Basin and widen it across Corpus Christi Bay between Ingleside and the Harbor Bridge.

(6) Deepen the La Quinta Channel to 50 feet.

b. A "No Action" alternative will be evaluated and presented for comparison purposes in evaluating the various construction alternatives.

3. Scoping: The scoping process will involve Federal, State, and local agencies, and other interested persons and organizations. A series of scoping workshops will be conducted to discuss various issues associated with the channel improvements and placement of dredged material. Separate Scoping Notices will be issued for the various workshops. Issues to be considered in this process include beneficial uses of dredged material, changes in salinity and circulation, water and sediment quality, erosion along the channel, and threatened and endangered species impacts. Any person or organization wishing to provide information on issues or concerns should contact the Corps of Engineers at the above address.

4. Coordination: Further coordination with environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species Act, Clean Water Act, National Historic Preservation Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), and the Coastal Zone Management Act (Texas Coastal Management Program). A Regulatory Agency Coordination Team has been formed to provide guidance and counsel on matters relating to the evaluation of environmental impacts of this project. The Team is composed of representatives from three Federal and six State regulatory agencies, the local sponsor, and the U.S. Army Corps of Engineers.

5. DEIS Preparation: It is estimated that the DEIS will be available to the public for review and comment in March 2002.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–19799 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–GK–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement, Osceola County, FL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), the Florida Fish and Wildlife Conservation Commission, and the South Florida Water Management District intend to prepare a Draft Environmental Impact Statement (DEIS) on the feasibility of implementing a plan for the Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Osceola County, Florida.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS may be addressed to Ms. Heather Carolan or Ms. Lizabeth R. Manners, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–2016/3923.

SUPPLEMENTARY INFORMATION:

1. Proposed Project

a. Lake Tohopekaliga, located in Central Florida, has previously undergone three extreme drawdowns in 1971, 1979, and 1987. The drawdowns are designed to improve aquatic habitat that has been negatively impacted by flood control practices, which have resulted in detrimental stable lake levels and nutrient enrichment. Following refill of Lake Tohopekaliga after the three previous drawdowns the numbers of fish food organisms, sport fish and forage fish increased significantly; new aquatic vegetation communities became established; and organic sediments decreased in the lakes.

b. The purpose of this project is to improve the environmental ecosystem of Lake Tohopekaliga and thus provide quality habitat for fisheries, birds and other wildlife. Beneficial effects associated with the drawdown plan include bottom substrate improvements as organic build-up is reduced. Reduction of muck will lead to an increase in diversity and density of desirable vegetation. The drawdown will also allow the control of nuisance aquatic plants, such as hydrilla, water hyacinth, cattails, alligator weed, smartweed and pickerelweed, which proliferate under the unnatural static lake level conditions. In addition, the water quality of Lake Tohopekaliga will be enhanced by the nutrient uptake and filtration abilities by the recruitment of native plant species. Restoring littoral habitat, which favors bass, will increase native fish species.

c. Approximately 2,844 acres (40%) of shoreline along Lake Tohopekaliga will be exposed during the drawdown. Organic bottom sediments should compact and consolidate during the scheduled low water period. Coverage of beneficial aquatic vegetation such as knotgrass, maidencane and bulrush should increase following refill due to germination of seeds exposed during the drawdown. The subsequent increase in vegetation communities should significantly increase fish food organisms and sport fish populations.

d. Muck removal will be performed to enhance aquatic habitat and improve

boating conditions. Approximately 5 million cubic yards of organic material will be removed. The material will be disposed of on upland sites or used to create in-lake wildlife islands. Wildlife islands serve as excellent rookery sites for wading birds and also serve as resting and basking areas for reptiles.

2. Alternatives

a. Several drawdown alternatives will be identified and evaluated during the study.

b. Potential environmental resources and issues to be evaluated in the DEIS include project impacts on:

(1) Fish and wildlife resources.

(2) Wetlands resources.

(3) Wildlife habitat & values.

(4) Vegetation.

(5) Water quality.

(6) Surface & groundwater resources.

(7) Endangered or threatened species.

(8) Historical or archeological resources.

(9) Aesthetics.

(10) Nuisance and exotic plant species.

(11) Downstream effects.

(12) Air quality & noise.

(13) Soils.

(14) Navigation and recreation.

(15) Freeze protection.

(16) Local tropical fish farms.

c. Because of the magnitude and duration of this project the U.S. Army Corps of Engineers, the Florida Fish and Wildlife Conservation Commission and the South Florida Water Management District have determined that a DEIS should be prepared for the Project pursuant to the National Environmental Policy Act (NEPA).

3. Scoping

The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies; and other interested persons and organizations. A scoping letter will be sent to interested Federal, State, local agencies and interested parties requesting comments and concerns regarding issues to consider during the study. Responses to this letter will help identify the potential environmental impacts to be evaluated in the DEIS. Additional comments are welcome and may be provided to the above address. Public meetings may be held in the future. Exact dates, times, and locations will be published in local papers.

4. Schedule

It is estimated that the DEIS will be available to the public by the spring of 2001.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–19798 Filed 8–3–00; 8:45 am]
BILLING CODE 3710–AJ–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS) for the American River Project, Long Term Evaluation, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), lead agency under the National Environmental Policy Act, and the California State Reclamation Board (The Board), lead agency under the California Environmental Quality Act, intend to prepare a joint document to evaluate the environmental effects of proposed flood control and ecosystem restoration components for the Sacramento, California, area.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and draft SEIS should be addressed to Ms. Patricia Roberson, Environmental Resources Branch, Planning Division, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–6705.

SUPPLEMENTARY INFORMATION:

1. Project Location

Sacramento is located where the American River joins the Sacramento River. The American River watershed, or drainage basin, covers approximately 2,100 square miles northeast of Sacramento and includes portions of Placer, El Dorado, and Sacramento Counties. Runoff from this basin flows through Folsom Reservoir and passes through Sacramento in a channel controlled by a system of levees. In addition to providing flood control to Sacramento, Folsom Dam and Reservoir are part of the Federal Central Valley Project, California's largest water delivery system. The primary study areas include Folsom Dam and Reservoir, lower American River, Sacramento Bypass, and the Yolo Bypass. These features are located within Sacramento, Yolo, Placer, and El Dorado Counties.

2. Proposed Action and Alternatives

The Corps and the Board are conducting a supplemental feasibility evaluation of alternative measures to provide additional flood protection to the City of Sacramento. This documentation and the accompanying SEIS/EIR are supplements to the 1996 American River Watershed Project Supplemental Information Report and SEIS/EIR, which in turn supplement the 1991 American River Watershed Investigation feasibility study and EIS. Alternatives to address resource problems and needs identified to date will include in whole or in part: (1) Enlarging Folsom Reservoir; (2) a downstream levee plan, which would involve raising and strengthening levees, raising bridges, and widening the Sacramento Bypass, and (3) a combination of downstream levee work and Folsom enlargement. Potential for ecosystem restoration will also be evaluated.

3. Scoping Process

a. Scoping is a process to identify the actions, alternatives, and effects to be evaluated in an environmental document. The public is invited to assist the Corps and non-Federal sponsor in scoping this SEIS. The Process provides an opportunity for the public to identify Significant resources in the study area that may be affected by the project. To facilitate this involvement, a series of public scoping meetings will be held in Folsom and Sacramento in August/September 2000. Individuals, organizations, and agencies are also encouraged to submit written scoping comments by September 30, 2000.

b. After the draft SEIS is prepared, it will be circulated to all interested parties for review and comment. Public meetings will be held to receive verbal and written comments. All comments will be considered and responded to in the final SEIS/EIR.

4. Availability

The draft SEIS/EIR is scheduled to be distributed for public review and comment in June 2001.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–19800 Filed 8–3–00; 8:45 am]
BILLING CODE 3710–EZ–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/606,113 entitled, "METHOD OF NEUTRALIZING ORGANOPHOSPHOROUS AGRICULTURAL CHEMICALS", filing date: June 8, 2000, Navy Case No. 82170.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, telephone (540) 653–8016.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: July 14, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19306 Filed 8–3–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department.

U.S. Patent Application Serial No. 09/266,868 entitled "Adaptive Routing Method for a Dynamic Network" Navy Case No. 80,215.

U.S. Patent Application Serial No. 09/513,245 Navy Case No. 80,244.

Requests for copies of the patent applications cited include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 14, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19307 Filed 8–3–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation, Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Norway.

This subsequent arrangement concerns the retransfer of 400g of U.S.-origin uranium and 100g of U.S.-origin plutonium, in the form of sintered mixed-oxide fuel pellets in sealed tubes, from the Euratom Supply Agency to the Government of Norway for irradiation and analysis. The sintered pellets contain 1.2g of the isotope U–235. The material is currently located at the Institut Transurane, Karlsruke, Germany, and will be shipped to the Institut for Energiteknikk (IFE), Halden, Norway. IFE Halden is a research institute within the fields of nuclear technology, man-machine communication, and energy technology.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 21, 2000.

For the Department of Energy.

Trisha Dedik,

Director, International Policy and Analysis for Arms Control and Nonproliferation, Office of Defense Nuclear Nonproliferation.

[FR Doc. 00–19762 Filed 8–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Inventions Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice of inventions available for license.

SUMMARY: The Department of Energy hereby announces that U.S. No. Patent 5,480,549, entitled "Method for Phosphate-Accelerated Bioremediation" and U.S. Patent No. 5,753,109, entitled "Apparatus and Method for Phosphate-Accelerated Bioremediation" are available for license, in accordance with 37 U.S.C. 207–209. A copy of the patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404.37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register.**

Issued in Washington, DC, on July 27, 2000.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 00–19763 Filed 8–3–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–417–00]

Colorado Interstate Gas Company; Notice of Tariff Filing

July 31, 2000.

Take notice that on July 25, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the proposed tariff sheets listed on Appendix A to the filing, to be effective September 1, 2000.

CIG states it manages it storage fields by controlling the injection and withdrawal cycles such that the reservoir pressure, calculated in pound/days, above original pressure conditions in the reservoir are balanced against those below original pressure conditions. CIG further states it manages these pound/day requirements through the use of a Reservoir Integrity Inventory Limit which is a graphical representation of a shipper's maximum allowable gas inventory in place on any day as a percentage of the shipper's contractual maximum inventory. To increase the flexibility of its storage service CIG proposes to revise the graph to allow shippers to retain more gas in storage between cycles while maintaining the pound/day balancing requirement. CIG further states to accomplish this objective, the period of time that shippers can maintain a full storage inventory must be slightly reduced.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19751 Filed 8–3–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–412–000, CP00–413–000 and CP00–414–000]

Cross Bay Pipeline Company, L.L.C. Transcontinental Gas Pipe Line Corporation; Cross Bay Pipeline Company, L.L.C.; Notice of Applications

July 31, 2000.

Take notice that on July 21, 2000, Cross Bay Pipeline Company, L.L.C. (Cross Bay) and Transcontinental Gas Pipe Line Corporation (Transco) filed jointly in Docket No. CP00–412–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations. Also take notice that on July 21, 2000, Cross Bay filed in Docket Nos. CP00–413–000 and CP00–414–000 applications pursuant to Section 7 of the NGA and the Commission's Rules and Regulations. By these applications, Cross Bay seeks certificates of public convenience and necessity authorizing it to construct, own, operate, and maintain natural gas facilities in order to become a new interstate natural gas pipeline company in New Jersey and New York. Cross Bay intends to provide up to 125,000 dth per day of new firm transportation between New Jersey and New York for any potential future customers. Transco seeks authority abandon, by transfer to Cross Bay, certain of its facilities in New Jersey and New York. Cross Bay's and Transco's proposals are more fully set forth in the applications which are on file with the Commission and open to public inspection. The filing(s) may also be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Any initial questions regarding these applications should be directed to Gisela B. Cherches, attorney for Cross Bay Operating Company, at P.O. Box 1396, Houston, Texas, 77251–1396, call (713) 215–2397.

Cross Bay seeks a certificate of public convenience and necessity authorizing the acquisition of certain facilities by Cross Bay from Transco and the construction and operation by Cross Bay of other natural gas pipeline facilities in New Jersey and New York. Cross Bay also seeks approval of its initial recourse rates for firm and interruptible open access transportation services, approval of its lease of pipeline capacity from Transco, and approval of its leasing of its capacity to Transco. Cross Bay further requests that the Commission grant it a Blanket Certificate of public convenience and necessity pursuant to Part 284, Subpart G of the Commission's Regulations authorizing the transportation of gas for others, and a Blanket Certificate of public convenience and necessity under Part 157, Subpart F of the Commission's Regulations authorizing certain limited future facility construction and operation. Transco seeks approval of the related abandonment of certain of its natural gas pipeline facilities located in New Jersey and New York so that they can be contributed to Cross Bay as one of Transco's contributions.

Cross Bay respectfully requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by December 15, 2000, and a final order granting the authorizations requested by June 15, 2001. Cross Bay says that this approval schedule is necessary to allow the project to be completed by December 1, 2002, the proposed in-service date for the project.

Cross Bay is a limited liability company formed under the laws of the State of Delaware. The members of Cross Bay are Transco Cross Bay Company (Transco Cross Bay), a Delaware corporation and wholly owned subsidiary of Transco, Texas Eastern Cross Bay Company (Texas Eastern Cross Bay), a Delaware corporation and wholly owned subsidiary of Texas Eastern Transmission Corporation (Texas Eastern), and KeySpan Cross Bay, L.L.C. (KeySpan Cross Bay), a Delaware limited liability company and wholly owned subsidiary of KeySpan Corporation. Transco Cross Bay and Texas Eastern Cross Bay each have a 37.50% ownership interest in Cross Bay and KeySpan Cross Bay has a 25% ownership interest in Cross Bay. Cross Bay Operating Company, a wholly owned subsidiary of Transco, will act as operator of Cross Bay, overseeing the construction of Cross Bay's facilities, operating the facilities and handling the day-to-day business affairs of Cross Bay.

Cross Bay's pipeline system will have a total firm transportation capacity of 614,628 Dth. per day. Of this total capacity, Cross Bay will have 125,000 Dth. per day of incremental firm capacity available to new shippers. Cross Bay will lease up to 489,628 Dth.

per day of capacity on a firm basis back to Transco. Transco says that the lease will enable Transco to continue to provide seamless transportation service to existing customers who are currently served through the facilities Transco will transfer to Cross Bay. The cost of this lease is $61,483 per month, plus an additional amount for its share of operation and maintenance expenses and property taxes.

In addition, Transco will lease to Cross Bay up to 125,000 Dth. per day of pipeline capacity from Transco's meter station at Linden, New Jersey, which interconnects with Texas Eastern's facilities, to the interconnection of Transco's system with Cross Bay's system at the Cross Bay compressor station to be constructed in Middlesex County, New Jersey. The cost of this lease is $31,878 per month.

Cross Bay says that there is no economic or operational impact on Transco's existing customers due to the transfer of facilities or the terms of the lease arrangements. Cross Bay says it will have no adverse impacts on existing pipelines or their captive customers, as it will serve incremental load. Cross Bay says its project will enhance reliability of service to existing customers of Transco by adding compression and will enhance service to existing customers of Texas Eastern by providing additional access to New York markets through Cross Bay. The Cross Bay project involves less than two miles of replacement pipeline in existing right-of-way and construction of a compressor station on a site for which Cross Bay has secured the right to purchase the land.

Cross Bay's pipeline system will consist of the following existing facilities and modifications to such facilities:

1. About 3.3 miles of existing 42-inch pipeline in Middlesex County, New Jersey, and about 33.7 miles of existing 26-inch pipeline crossing Middlesex and Monmouth Counties, New Jersey and Queens and Nassau Counties, New York, including the Morgan Meter & Regulator Station and the Long Beach Meter & Regulator Station, which are both located along that pipeline segment. [Transco presently owns and operates these facilities, and refers to them as the Lower New York Bay Extension. Transco will cause these facilities to be transferred to Cross Bay at net book value.]

2. Modifications to the two existing meter stations, Morgan and Long Beach.

3. Uprating, by hydrostatic testing, of the 33.7 mile 26-inch pipeline.

4. Replacement of 5 sections of the 42-inch pipeline and uprating by hydrostatic testing.

5. Construction of one new compressor station consisting of two 8,000 horsepower electric driven reciprocating compressors and metering facilities near Old Bridge in Middlesex County, New Jersey (Cross Bay Compressor Station) at a location on which Cross Bay has secured the rights to purchase the property.

6. Modifications to other appurtenant facilities.

Cross Bay estimates that the total cost of its project will be approximately $59.5 million. Cross Bay is proposing a capital structure consisting of 75% non-recourse debt and 25% partner-contributed equity. Cross Bay has assumed that the debt will bear interest at the rate of 8% for a term of twenty (20) years. However, Cross Bay plans to seek the most favorable financing terms available in the marketplace at the time the project is financed. Cross Bay proposes that the equity component of its capital structure earn a return of 14%.

The *pro forma* FERC Gas Tariff pursuant to which Cross Bay will provide transportation service is included in its application in Exhibit P. Cross Bay says that the terms and conditions of the tariff are structured to conform to the requirements of the Commission's Order Nos. 636 and 637. The tariff includes proposed Rate Schedule FT, under which Cross Bay will render firm transportation service to shippers, and proposed rate Schedule IT, under which Cross Bay will render interruptible transportation service. The tariff also provides for the ability to negotiate rates. Cross Bay says that any shippers subscribing to Cross Bay's firm transportation service will be given the option of paying a negotiated rate or a cost-based recourse rate for service under Rate Schedule FT. Cross Bay proposes that the initial recourse rate for firm transportation service under Rate Schedule FT will be a monthly reservation rate of $7.4161 per Dth./month, which is based on the straight fixed-variable rate design methodology. The initial rate for interruptible transportation service under Rate Schedule IT will be a commodity rate of $0.2438 per Dth./day.

Cross Bay requests that the Commission issue it a Blanket Certificate of public convenience and necessity pursuant to Section 284.221 of the Commission's Regulations authorizing Cross Bay to provide transportation service to the customers requesting and qualifying for transportation service under Cross Bay's FERC Gas Tariff. Cross Bay states that it will comply with the conditions set forth in Section 284.221(c).

Cross Bay also request that the Commission grant to it a Blanket Certificate of public convenience and necessity pursuant to Section 157.204 of the Commission's Regulations authorizing limited future facility construction, operation and abandonment as set forth in the Blanket certificate Regulations in part 157, Subpart F. Cross Bay states that it will comply with the terms, conditions and procedures specified in Part 157, Subpart F.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before August 21, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be laced on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all

other parties. However, commenters will not receive copies of all documents filed by the other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Cross Bay or Transco to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 00–19745 Filed 8–3–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–212–001]

Florida Gas Transmission Company; Notice of Proposed Compliance Filing

July 31, 2000.

Take notice that on July 27, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective August 25, 2000:

First Revised Sheet No. 186
Fifth Revised Sheet No. 187

FGT states that on March 8, 2000, NUI Corporation (City Gas Company of Florida Division) (NUI) filed a complaint contending that FGT violated applicable Commission policy, as well as FGT's tariff, by not permitting NUI to reduce its contract demand selectively by season in matching a bid submitted under FGT's right-of-first-refusal (ROFR) procedure. Subsequently, on July 14, 2000, the Commission issued an order in the referenced docket requiring FGT to clarify shippers' rights to uniformly reduce contract demand when exercising their ROFR rights. FGT states that in the instant filing, FGT is complying with the Commission's Order by adding tariff language allowing shippers exercising ROFR rights to reduce contract demand by either a uniform percentage reducing for each season or by the same absolute volume amount in each season.

Any person desiring to protest this filing shall file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19750 Filed 8–3–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–374–005]

Kern River Gas Transmission Company; Notice of Annual Threshold Report

July 31, 2000.

Take notice that on July 26, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing its Annual Threshold Report.

Kern River states that the purpose of this filing is to comply with the terms of its Settlement in this proceeding and with its tariff requirement to file an Annual Threshold Report, identifying the eligible firm shippers receiving a share of excess revenues and the amounts received.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 7, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19752 Filed 8–3–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–115–000, et al.]

Electric Rate and Corporate Regulation Filings; FortisUS Energy Corporation, et al.

July 27, 2000.

Take notice that the following filings have been made with the Commission:

1. FortisUS Energy Corporation

[Docket No. EC00–115–000]

Take notice that on July 20, 2000, FortisUS Energy Corporation tendered for filing, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. Section 824b (1994), and Part 33 of the Commission's regulations, 18 CFR Part 33, an application for authorization to dispose of jurisdictional facilities under an intra-corporate restructuring.

Comment date: August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER00–2075–001]

Take notice that on July 24, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing an amended filing consisting of an Amended Power Purchase Agreement (Amendment) with Dynegy Power Marketing, Inc. (Dynegy) dated July 19, 2000 and the Power Purchase Agreement between Virginia Power and Dynegy dated September 30, 1999 on a non-confidential basis. The

Company filed the amended filing in response to the Commission's June 23, 2000 deficiency letter in this proceeding.

Virginia Power requests that the Commission accept the Amendment under the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4).

The Company asks that the Commission grant a waiver to make the Amendment effective June 1, 2000.

Copies of the filing were served upon the parties of record, Dynegy Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER00–3132–000]

Take notice that on July 24, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to the executed Service Agreement with Wind Utility Consulting providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER00–3133–000]

Take notice that on July 24, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to the executed Service Agreement with Wind Utility Consulting providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Oleander Power Project, Limited Partnership

[Docket No. ER00–3240–000]

Take notice that on July 24, 2000, Oleander Power Project, Limited Partnership (Oleander) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, and to reassign transmission capacity. Oleander proposes to construct a natural gas-fired, simple cycle power plant with a nominal generating capacity of approximately 875 MW on a site located in Brevard County, Florida.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER00–3241–000]

Take notice that on July 24, 2000, the California Independent System Operator Corporation tendered for filing a Participating Generator Agreement between the ISO and Wheelabrator Shasta Energy Company for acceptance by the Commission.

The ISO states that this filing has been served on Wheelabrator Shasta Energy Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 12, 2000.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER00–3242–000]

Take notice that on July 24, 2000, the California Independent System Operator Corporation tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Wheelabrator Shasta Energy Company for acceptance by the Commission.

The ISO states that this filing has been served on Wheelabrator Shasta Energy Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 12, 2000.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Company

[Docket No. ER99–3603–001]

Take notice that on July 24, 2000, Pacific Gas and Electric Company tendered for filing a refund report in compliance with the April 26, 2000, Letter Order issued by the Federal Energy Regulatory Commission (Commission) approving the Offer of Settlement filed in the above-referenced docket on March 3, 2000.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–3016–000]

Take notice that on July 21, 2000, Ameren Services Company (ASC), tendered for filing an amendment to the Network Integration Transmission Service Agreement between Ameren Services and Illinois Municipal Electric Agency (IMEA). Ameren Services asserts that the purpose of the amended filing is to file Attachment B which was inadvertently omitted from the original filing.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. West Texas Utilities Company

[Docket No. ER00–3243–000]

Take notice that on July 24, 2000, West Texas Utilities Company (WTU), tendered for filing revised tariff sheets to its Wholesale Power Choice Tariff (WPC Tariff) to reflect changes being implemented in several sections of the WPC Tariff pursuant to agreement of WTU and the WPC Customers.

WTU seeks an effective date of June 15, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on the affected WPC Customers and on the Public Utility Commission of Texas.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool, Inc.

[Docket No. ER00–3244–000]

Take notice that on July 24, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with The Legacy Energy Group, LLC (Transmission Customer).

SPP seeks an effective date of July 18, 2000, for each of the service agreements. Copies of this filing were served on the Transmission Customer.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER00–3245–000]

Take notice that on July 24, 2000, Arizona Public Service Company (APS), tendered for filing notice that effective July 31, 2000, APS FERC Rate Schedule No. 201, effective date June 1, 1976 and filed with the Federal Energy Regulatory Commission by Arizona Public Service Company is to be canceled.

Notice of the proposed cancellation has been served upon The San Carlos Irrigation Project and The Arizona Corporation Commission.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Exelon Generation Company, L.L.C.; PECO Energy Company; Commonwealth Edison Company; Horizon Energy Company; AmerGen Energy Company, L.L.C.; AmerGen Vermont, LLC; Unicom Power Marketing, Inc.; Unicom Energy, Inc.

[Docket Nos. ER00–3251–000, ER99–1872–002, ER98–1734–002, ER98–380–012, ER99–754–004, ER00–1030–001, ER97–3954–012, ER00–2429–001]

Take notice that on July 24, 2000, Exelon Generation Company, L.L.C., PECO Energy Company, Commonwealth Edison Company, Horizon Energy Company, AmerGen Energy Company, L.L.C., AmerGen Vermont, LLC, Unicom Power Marketing, Inc., and Unicom Energy, Inc., tendered for filing the Application of Exelon Generation Company for Market-based Rate Authority and Application of Exelon Corporation Subsidiaries and Affiliates for Other Forms of Relief under Section 205 of the Federal Power Act.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Montana Power Company

[Docket No. ER00–3252–000]

Take notice that on July 24, 2000, Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Firm and Non-Firm Point-To-Point Transmission Service Agreements with Constellation Power Source, Inc., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Constellation Power Source, Inc.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Company

[Docket No. ER00–3253–000]

Take notice that on July 24, 2000, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Sonat Power Marketing, Inc., for non-firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 21, 2000.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER00–3246–000]

Take notice that on July 24, 2000, Arizona Public Service Company (APS), tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer name	APS–FPC/FERC rate schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority[1]	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	[2]65
Electrical District No. 1	68
Arizona Power Pooling Association	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	[2]207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

[1] Formerly Papago Utility Tribal Authority.
[2] 2 APS–FPC/FERC Rate Schedule in effect during the refund period.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19744 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–230–000, et al.]

Electric Rate and Corporate Regulation Filings; Trigen-Cholla LLC, et al.

July 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Trigen-Cholla LLC

[Docket No. EG00–230–000]

Take notice that on July 25, 2000, Trigen-Cholla LLC, 25 Tenth Street, Golden, Colorado 80401–0088 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company. The Applicant is in the process of constructing and will own two electric generation plants, each consisting of a single approximately 5-megawatt gas turbine, located in unincorporated Baca County, Colorado (the Facilities). The Facilities are scheduled to begin commercial operation July 1, 2000. All of the electric output of the Facilities will be sold at wholesale, initially to Tri-State Generation and Transmission Association, Inc.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Broad River Investors LLC

[Docket No. EG00–232–000]

Take notice that on July 27, 2000, Broad River Investors LLC (Applicant) with its principal office c/o SkyGen Energy LLC, Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, Illinois 60062, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of "exempt wholesale generator" status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will be engaged in owning and operating Units 4 and 5 (the Facility) at the Broad River Energy Center consisting of two (2) natural gas fueled simple cycle combustion turbines each having a maximum electrical output of approximately 180 MW. The Facility will be constructed in Cherokee County, at Gaffney, South Carolina. The Applicant also states that it will sell electric energy exclusively at wholesale to meet peaking electricity needs in the region.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. East Central Area Reliability Council

[Docket No. ER00–2234–001]

Take notice that on July 25, 2000, the East Central Area Reliability Council (ECAR), on behalf of Allegheny Power, American Electric Power Co., Big Rivers Electric Corp., Cinergy Corp., Consumers Energy Co., The Dayton Power and Light Co., The Detroit Edison Co., Duquesne Light Co., East Kentucky Power Cooperative, Inc., Enron–SE Corp, FirstEnergy Corp., Hoosier Energy REC, Indianapolis Power and Light Co., LG&E Energy Corp., Northern Indiana Public Service Co., Ohio Valley Electric Corp., and Southern Indiana Gas and Electric Co., tendered for filing an amendment to the Inadvertent Settlement Tariff that was accepted by the Commission on May 31, 2000. 91 FERC ¶ 61,197. This amendment, and Index of Parties, adds Enron-Wheatland-Indianapolis (ENWI) and Enron-Wheatland-Cinergy (ENWC), new ECAR Control Areas, as Parties to the Inadvertent Settlement Tariff. ECAR also requests that the Commission waive its notice requirements to allow this filing to go into effect by July 26, 2000. The filing is available on the ECAR's web site (www.ecar.org).

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER00–3254–000]

Take notice that on July 25, 2000, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Utica Power Authority for acceptance by the Commission.

The ISO states that this filing has been served on Utica Power Authority and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 17, 2000.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Hardee Power Partners Limited

[Docket No. ER00–3255–000]

Take notice that on July 25, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with the City of Lakeland, Florida (Lakeland) under HPP's market-based sales tariff.

HPP requests that the service agreement be made effective on June 26, 2000.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company

[Docket No. ER00–3256–000]

Take notice that on July 25, 2000, Consumers Energy Company (Consumers), tendered for filing executed transmission service agreements with Conectiv Energy Source, Inc. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of July 17, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER00–3257–000]

Take notice that on July 25, 2000, South Carolina Electric & Gas Company (SCE&G), tendered a service agreement establishing Allegheny Energy Supply Company, LLC as a non-firm point-to-point customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Allegheny Energy Supply Company, LLC and the South Carolina Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER00–3258–000]

Take notice that on July 25, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Utica Power Authority for acceptance by the Commission.

The ISO states that this filing has been served on Utica Power Authority and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 17, 2000.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–3259–000]

Take notice that on July 25, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing: (1) Nine signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), four of which are replacement pages for entities which have changed their corporate name and five of which are additional parties to the RAA; (2) request for Commission approval of the withdrawal of three parties from the RAA; (3) an amended Schedule 17 of the RAA adding the new entities to the list of RAA signatories, deleting the entities that are withdrawing or have withdrawn from the RAA, and reflecting the corporate name changes; (4) Notice of Cancellation for Edison Source to terminate its membership in PJM, to

cancel certain service agreements with PJM and to withdraw it as a signatory to the RAA; and (5) Notices of Cancellations for Cinergy Resources, Inc., and DuPont Power Marketing, Inc., to withdraw as signatories to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including the parties for which a signature page is being tendered with this filing, the parties that are withdrawing from the RAA, the PJM members, and each of the state electric regulatory commissions within the PJM control area.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Trigen-Cholla LLC

[Docket No. ER00–3262–000]

Take notice that on July 25, 2000, Trigen-Cholla LLC, tendered for filing pursuant to Rules 205 and 207 an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on or before August 1, 2000, subject to approval by the Commission, and accepting two power purchase agreements between it and Tri-State Generation and Transmission Association, Inc.

In transactions where Trigen-Cholla LLC will sell electric energy and/or capacity at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed with the purchasing party.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER00–3263–000]

Take notice that on July 25, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2).

Wisconsin Electric respectfully requests an effective date July 25, 2000.

Copies of the filing have been served on Wisconsin Public Service Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3264–000]

Take notice that on July 25, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement Nos. 315 and 316 to add The Energy Authority, Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is July 24, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PPL Electric Utilities Corporation

[Docket No. ER00–3265–000]

Take notice that on July 25, 2000, PPL Electric Utilities Corporation (PPL), tendered for filing an Interconnection Agreement and Addendum to Interconnection Agreement between PPL and International Paper Corporation.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Pepco Energy Services, Inc.

[Docket No. ER00–3276–000]

Take notice that on July 21, 2000, Pepco Energy Services, Inc., tendered for filing a Notice of Succession of Ownership and Operation.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Hardee Power Partners Limited

[Docket No. ER00–3260–000]

Take notice that on July 25, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with Florida Power Corporation (FPC) under HPP's market-based sales tariff.

Copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Hardee Power Partners Limited

[Docket No. ER00–3261–000]

Take notice that on July 25, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with The Energy Authority, Inc. (TEA) under HPP's market-based sales tariff.

HPP requests that the service agreement be made effective on June 26, 2000.

Copies of the filing have been served on TEA and the Florida Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19743 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene and Protests

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 6115–010.

c. *Date Filed:* June 5, 2000.

d. *Applicant:* Pyrites Associates.

e. *Name of Project:* Pyrites.

f. *Location:* The project is located on the Grass River in St. Lawrence County, New York. The project does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Michael B. Peisner, Esq., Curtis Thaxter Stevens Broder & Micoleau LLC, One Canal Plaza, P.O. Box 7320, Portland, Maine 04112.

i. *FERC Contact:* Any question on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. *Deadline for filing comments and or motions:* September 1, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the Project Number (6115–010) on any comments or motions filed.

k. *Description of Transfer:* Pyrites Associates is a general partnership organized under the laws of the state of New York, consisting of the general partners Hydro Development Group, Inc. (Hydro), and Hydra-Co Enterprises, Inc. (Hydra). The application states that the proposed transfer will result from CHI-Dexter, Inc., a Delaware corporation, purchasing the remaining interest of Hydra as a general partner in Pyrites Associates. Under the purchase transaction, Hydra will cease to be a general partner and CHI-Dexter will become a general partner in the partnership entity that will continue to operate under the name Pyrite Associates. The application states that the purchase transaction will arguably cause a technical dissolution of Pyrites Associates under Section 60 of New York's Partnership Law.

The applicant states that operation of the project will not change as a result of the proposed transfer and the current operator, Hydro, will continue as operator.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19746 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11842–000.

c. *Date filed:* June 26, 2000.

d. *Applicant:* Hydro Energy Development Corporation.

e. *Name of Project:* Big and Grade Creeks Project.

f. *Location:* On Big Creek and Grade Creek, in Skagit County, Washington. The project would utilize approximately 25.8 acres of federal lands within Mt Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Jacobs, Hydro Energy Development Corporation, 19515 North Creek Parkway, Suite 310, Bothell, WA 98011–8208, 425–487–6550.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All document (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A 120-foot-long, 20-foot-high concrete Big Creek diversion structure; (2) having an impoundment with a surface area of 0.2 acres and negligible storage, with normal water surface elevation of 1,630 feet msl; (3) a 13,184-foot-long, 48-inch-diameter steel penstock; (4) an 80-foot-long, 12-foot-high reinforced concrete weir wall Grade Creek Diversion structure; (5) having an impoundment with a surface area of 0.1 acres and negligible storage, with normal water surface elevation of 2,170 fee msl; (6) a 12,696-foot-long, 28-inch diameter steel penstock; (7) both penstocks would enter a single powerhouse containing two generating units having a total installed capacity of 9.2 MW; (8) a tailrace; (9) 15-mile-long, 34.5 kV transmission line; and (10) appurtenant facilities.

The project would have an annual generation of 40,588 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed scope of studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19747 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11843–000.

c. *Date filed:* July 3, 2000.

d. *Applicant:* Gene Arlin Shanks.

e. *Name of Project:* Elfin Inian Project.

f. *Location:* On Elfin Cove, near the town of Elfin Cove, Alaska. The project would utilize federal lands within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gene Arlin Shanks, P.O. Box 47, 129 Lindgard Lane, Elfin Cove, AK 99825, 907–239–2322.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) an intake structure; (2) a 1,100-foot long, 10-inch-diameter steel penstock; (3) a powerhouse containing two generating units having a total installed capacity of 128 kW; (4) A tailrace; (5) a 7.2 kV transmission line; and (6) appurtenant facilities. The project generation would be sold to a local utility.

A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application

may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received or or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secetary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19748 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11844–000.

c. *Date filed:* July 3, 2000.

d. *Applicant:* Indianford Water Power Company, Inc.

e. *Name of Project:* Indianford Project.

f. *Location:* On Rock River, in Rock County, Wisconsin, No federal Lands or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas J. Reiss, Jr., President, Indianford Water Power Company, Inc, P.O. Box 553, 319 Hart Street, Watertown, WI 53094, 920–261–7975.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance dated of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) An existing 463-foot long, 6-foot-high reinforced concrete gated dam; (2) an existing impoundment with a surface area of 10,460 acres, having a storage capacity of 55,793 acre-feet, and a normal water surface elevation of 775.73 feed msl; (3) an existing powerhouse containing two generating units having a total installed capacity of 500 kW, (4) a proposed 100-foot-long transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 73 MWh that would be sold to a local utility.

A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and

reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A completing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) names in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission , 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary

[FR Doc. 00–19749 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Business Ownership Representation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Business Ownership Representation, EPA ICR No. 1962.01, this is a new collection. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 5, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1962.01. For technical questions about the ICR contact Leigh Pomponio at EPA by phone at (202) 564–4364 or by email at pomponio.leigh@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Business Ownership Representation, OMB No. not yet assigned, EPA ICR No. 1962.01. This is a new collection.

Abstract: EPA will request that contractors selected for award reply to the Business Ownership Representation clause by checking the appropriate box to indicate the ethnic affiliation of the company ownership. EPA will use the collected information in aggregate to encourage full participation in the contractor selection process by identifying business communities that are under-represented in Agency awards, and sponsoring outreach efforts in those areas. Responses to the collection of information are voluntary, and responses will be treated as confidential business information in accordance with 40 CFR 2.201 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 04/24/00 (65 FR 21763). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 minutes per response. Burden means the total time, effort, or financial resources expended

by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large and small business receiving contracts from EPA.

Estimated Number of Respondents: 240.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 12 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1962.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19790 Filed 8–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for New Stationary Sources; New Residential Wood Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New source Performance Standards for New Residential Wood Heaters (Subpart AAA), OMB Control Number 2060–0161, expiration date: 9/30/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 5, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1176.06. For technical questions about the ICR, contact Robert C. Marshall, Jr. at EPA by phone at (202) 564–7021.

SUPPLEMENTARY INFORMATION:

Title: 40 CFR 60.530 thru 60.539(b), New source Performance Standards for New Residential Wood Heaters (Subpart AAA), OMB Control No. 2060–0161, EPA ICR No. 1176.06, expiring 9/30/00. This is an extension of a currently approved collection.

Abstract: Information is supplied to the Agency under the applicable rule by emission testing laboratories, manufacturers and commercial owners (e.g., distributors, retailers).

The information supplied by manufacturers to the Agency is used: (1) To ensure that the best demonstrated technology (BDT) is being used to reduce emissions from wood heaters, (2) to ensure that the wood heater tested for certification purposes is in compliance with the applicable emission standards, (3) to provide evidence that production-line wood heaters have emission performance characteristics similar to tested models and (4) to provide assurance of continued compliance.

Manufacturers submit a notification to the Agency stating the dates of certification testing, perform the certification testing at an accredited laboratory, supply detailed component drawings including manufacturing tolerances to the Agency, reapply for certification every five years, seal/store each tested model and maintain all necessary certification test records.

Most recordkeeping and reporting provisions of the rule consists of emissions-related data and other information not considered confidential. However, the confidentiality of certain information obtained by the Agency is safeguarded according to Agency policies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/31/2000 (65 FR 17258); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers/Sellers of new residential wood heaters.

Estimated Number of Respondents: 54.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 7,653 hours.

Estimated Total Annualized Non-labor Cost Burden: $1,500,573.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing

respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1176.06 and OMB Control No. 2060–0161 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19791 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–J65300–CO Rating LO, Upper Blue Stewardship Project, Implementation of Vegetation Management, Travel Management, Designation of Dispersed Camping Sites, White River National Forest, Dillon Ranger District, Summit County, CO.

Summary: Based on a limited review, EPA does not foresee having any environmental objections to the proposed project.

ERP No. D–AFS–J65324–WY Rating EC2, State of Wyoming School Section 16 T.12N., R.83W., 6th P.M., Issuing a Forest Road Special-Use-Permit for Access, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY.

Summary: EPA expressed concerns about potential impacts on fisheries, threatened/endangered species and the roadless character of the land.

ERP No. D–AFS–J67026–MT Rating LO, Rocky Mountain Front Mineral Withdrawal, Implementation, Helena and Lewis and Clark National Forests, Great Falls, MT.

Summary: EPA has no objection to the action as proposed.

ERP No. D–AFS–L65358–ID Rating EC2, Starbucky Restoration Project, Implementation of Vegetative Treatment, Road Construction and Watershed Improvements, Nez Perce National Forest, Red River Ranger District, Idaho County, ID.

Summary: EPA expressed concerns regarding potential for sediment entering Santiam and Buckhorn Creeks; probability of intrusions into Buckhorn watershed riparian zone by off-road vehicles; uncertainty of whether restoration projects would receive funding; and degradation from possible mine exploration activities in the watersheds. The EPA requested that these concerns be addressed in final EIS and ROD.

ERP No. D–BIA–L65352–WA Rating EC2, Colville Indian Reservation Integrated Resource Management Plan, Implementation, Colville Indian Reservation, Okanogan and Ferry Counties, WA.

Summary: EPA expressed concern that there appeared to be no clear NEPA process for use on projects that would tier off this document. EPA requested that the final document discuss the tiered NEPA process and also include additional information on potential air and water quality issues.

ERP No. D–FHW–H40169–MO Rating LO, US Route 65/US Route 36 in Livingston County, Transportation Improvements, Funding and COE Section 404 Permit, Livingston County, MO.

Summary: EPA expressed a lack of objections to the proposed project, but recommended that MoDOT evaluate compatibility of the C–1 sub-alignment, with the City of Chillicothe's draft land use plan.

ERP No. D–FHW–K53008–NV Rating EC2, Reno Railroad Corridor, Implementation of the Freight Railroad Grade Separation Improvements in the Central Portion of the City of Reno, Washoe County, NV.

Summary: EPA expressed concerns regarding the treatment of contaminated groundwater during construction, the treatment of stormwater during operation, the impact of the project on the Glendale Water Treatment Plant, PM–10 emissions during construction, and diesel emissions during operations. EPA requested the development of more stringent stormwater quality controls, fugitive dust PM–10 controls, and the reconsideration of build alternative along alternative alignments located away from heavily populated areas and riparian areas.

ERP No. D–GSA–D80030–DC Rating LO, Department of Transportation Headquarters, Proposal to Lease 1.3 to 1.35 Million Rentable Square Feet of Consolidated and Upgraded Space, Five Possible Sites, Located in the Central Employment Area, Washington, DC.

Summary: While EPA has no objection to the alternative as presented, it did request that GSA mitigate any adverse Environmental Justice impacts, impacts to historic resources/archeology, including historic views and traffic impacts on local streets that may develop as the project proceeds.

ERP No. D–NPS–B61024–MA Rating LO, Boston Harbor Islands National Recreation Area, Implementation, General Management Plan, Boston, MA.

Summary: EPA had no objections to the project described in the EIS.

ERP No. D–SFW–K99029–NV Rating EC2, Clark County Multiple Species Habitat Conservation Plan, Issuance of a Permit to Allow Incidental Take-of-79 Species, Clark County, NV.

Summary: EPA expressed concerns about mitigation that relies on increased funding and coordination for conservation measures primarily on existing public lands. EPA asked that the FEIS describe how the plan would result in improved on-the-ground conditions which would not otherwise be achieved through existing resource management plans. EPA also believes a commitment to growth which is town-centered, transit and pedestrian oriented, and has a greater mix of housing, commercial and retail uses would significantly enhance the benefits of the regional conservation planning effort. In addition, EPA urged the adoption of the 20-year permit duration versus the preferred alternative's 30-year permit.

ERP No. DS–AFS–J65287–UT Rating LO, Rhyohite Fuel Ecosystem Rehabilitation Project to the South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

Summary: Based on a limited review. EPA does not foresee having any environmental objections to the proposed project.

ERP No. RD–AFS–L61208–00 Rating EC2, Hells Canyon National Recreation Area (HCNRA), Comprehensive Management Plan, Revised and Updated Information on Five Alternatives, Implementation, Wallowa-Whitman National Forest, Nez Perce and Payette National Forests, Baker and Wallowa Counties, OR and Nez Perce and Adam Counties, ID.

Summary: EPA expressed concerns regarding potential impacts to water

quality and existing impaired waterbodies. EPA recommends that the EIS include plans to obliterate roads versus closing them; a comprehensive road plan that balances environmental effects, funding constraints, and access needs and includes maintenance and monitoring elements; and a strategy to restore impaired waters that is based on the 303(d) protocol.

Final EISs

ERP No. F–AFS–L65313–ID, Silver Creek Integrated Resource Project, Implementation, Middle Fork Payette River, Boise National Forest, Boise and Valley Counties, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65329–AK, Skipping Cow Timber Sale, Harvesting Timber, South half of Zarembo Island, Tongass National Forest, Wrangell Ranger District.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–L67037–ID, Dry Valley Mine—South Extension Project, Construction of two New Open Pit Mine, Special-Use-Permit, COE Section 404 Permit, Public and Private Land Used, Caribou County, ID.

Summary: EPA expressed concerns that the area surrounding the proposed project would be at risk without commitments in the ROD. EPA requested that the ROD require regular analysis and reporting of data, a strategy for dealing with unforeseen circumstances at the site, bonding adequate to reclaim the site, and clear acknowledgment that land application of wastewater has not been approved by BLM.

ERP No. F–COE–K36130–AZ, Tres Rios Feasibility Study Project, Ecosystem Restoration, Located at the Salt, Gila and Agua Fria Rivers, City of Phoenix, Maricopa County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–TVA–E70001–TN, Tim Ford Reservoir Land Management and Disposition Plan, Implementation, Tim Ford Reservoir, Franklin and Moore Counties, TN.

Summary: EPA continues to be concerned about potential water quality concerns involving shoreline development of the reservoir.

Dated: August 1, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–19847 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed July 24, 2000 Through July 28, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000260, FINAL EIS, FHW, ME, Augusta River Crossing Study, To Reduce Traffic Deficiences within the Transportation System Serving the City of Augusta, Funding, Kennebec River, Kennebec County, ME, Due: September 05, 2000, Contact: Mr. A. Graham Bailey (207) 622–8487.

EIS No. 000261, DRAFT EIS, BOP, CA, Lompoc United States Penitentiary (UPS) Construction and Operation of a New High-Security Facility and Ancillary Structures on One of Three Sites located in the City of Lompoc, Funding, Santa Barbara County, CA, Due: September 18, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 000262, FINAL EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements from Uniontown to Brownsville Area, Funding and COE Section 404 Permit, Fayette and Washington Counties, PA, Due: September 05, 2000, Contact: Daniel W. Johnson (717) 221–2276.

EIS No. 000263, FINAL EIS, FHW, TX, TX–45 Highway Project, Extending from Anderson Mill Road just west of US 183 to Farm-to-Market Road 685 (FM–685) east of IH–35, Funding, Williamson and Travis Counties, TX, Due: September 05, 2000, Contact: Mr. Walter Waidelich (512) 916–5988.

EIS No. 000264, FINAL EIS, COE, FL, Improving the Regulatory Process in Southwest Florida for the Review of Applications for the Fill of Wetlands (US Army COE Section 404 Permit), Lee and Collier Counties, FL, Due: September 05, 2000, Contact: Bob Barron (904) 232–2203.

EIS No. 000265, DRAFT EIS, SFW, OH, Little Darby National Wildlife Refuge Establishment in the Little Darby Creek Watershed for Restoration, Preservation, Enhancement and Protection of Fish and Wildlife Resources, Madison and Union Counties, OH, Due: September 28, 2000, Contact: Thomas J. Larson (612) 713–5430.

EIS No. 000266, FINAL EIS, DOE, Sodium-Bonded Spent Nuclear Fuel Treatment and Management, Candidate Disposal Sites are Argonne National Laboratory-West (ANL–W) located within the boundaries of the Idaho National Laboratory, ID and the Savannah River Sites (SRS) F-Area and L-Area, SC, Due: September 05, 2000, Contact: Susan M. Lesica (301) 903–8755.

EIS No. 000267, FINAL SUPPLEMENT, COE, FL, Central and Southern Florida Project for Flood Control and Other Purposes, Everglades National Park Modified Water Deliveries, New Information concerning Flood Mitigation to the 8.5 Square Mile Area (SMA), Implementation, South Miami, Dade County, FL, Due: September 05, 2000, Contact: Dennis Barnett (404) 562–5225.

EIS No. 000268, DRAFT EIS, COE, MO, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO, Due: September 18, 2000, Contact: D. Foley (314) 331–8648.

Amended Notices

EIS No. 000180, DRAFT EIS, NRS, MS, New Porters Bayou Watershed Plan, Reducing Flood and Drainage Damage To Cropland, Improvements to Watershed Channels, City of Shaw, Bolivar and Sunflower Counties, MS, Due: July 31, 2000, Contact: Homer L. Wilkes (601) 965–5205.

Officially Withdrawn by the Preparing Agency.

Dated: August 1, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–19848 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–1]

Notification of Proposed Policy Change; Superfund Construction Completion List

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed policy change.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to revise its policy with respect to the Construction Completion category established in the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). Existing Agency

policy had limited sites eligible for inclusion to the Construction Completion List (CCL) to sites that are on the NPL at the time a determination is made that all physical construction has been completed. As a result, deleted sites would never qualify for the CCL if physical construction remains at the time of deletion from the NPL.

The proposed policy would allow all sites that are on the NPL or have been deleted from the NPL to be eligible for the CCL when all physical construction under all authorities is complete and all other applicable construction completion policy criteria have been satisfied. This will allow Superfund to track and report completion of all construction activities at NPL sites.

DATES: Comments on the proposed policy change must be submitted by September 5, 2000.

ADDRESSES: Send comments to: Mr. Richard Jeng, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jeng, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 at (703) 603–8749 or e-mail *Jeng.Richard@epa.gov* or the RCRA/Superfund Hotline from 8:30 a.m. to 7:30 p.m., Monday-Friday, toll free at 1–(800)–424–9346.

SUPPLEMENTARY INFORMATION:

A. Background

During the initial years of the Superfund program, outside audiences often measured Superfund's progress in cleaning up sites by the number of sites deleted from the NPL as compared to the number of sites on the NPL. This measure, however, did not and still does not fully recognize the substantial construction and reduction of risk to human health and the environment that has occurred at NPL sites. In response, the National Contingency Plan Preamble **Federal Register** (FR) Notice (55 FR 8699, March 8, 1990) established a Construction Completion category of NPL sites to more clearly communicate to the public the status of cleanup progress among sites on the NPL.

A later Notification of Policy Change **Federal Register** Notice (58 FR 12142, March 2, 1993) introduced the Superfund Construction Completions List (CCL) "* * * to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities." A total of 155 sites were included on this initial list. The same notice that introduced the CCL also indicated that "* * * deleted sites will not qualify for the CCL if physical construction remains to be conducted under another statutory authority." As a result, EPA adopted the policy where only sites on the NPL (*i.e.*, not proposed or deleted sites) should qualify for inclusion to the CCL. In EPA's Close Out Procedures for National Priorities List Sites (Office of Solid Waste and Emergency Response Directive 9320.2–09 A–P, January 2000) guidance, EPA defined a construction completion site as a former toxic waste site where physical construction of all cleanup actions is complete, all immediate threats have been addressed, and all long-term threats are under control.

B. Notice of Proposed Policy Change

Construction Completion List (CCL) will now include sites deleted from the NPL.

EPA now believes it is important to assess all NPL Superfund sites, including those that have been deleted, to ensure that all construction of response actions has been completed. In doing so, EPA believes that although a site is deleted from the Superfund NPL, it should be accounted for on the CCL when EPA determines that all physical construction is complete under all statutory authorities and all applicable construction completion policy criteria have been satisfied. Any previously listed NPL Superfund site added to the CCL as a result of this proposed policy change will be subject to all report documentation requirements as currently required for construction completions at NPL sites. Program projections indicate that this proposed policy revision could eventually affect up to eight sites currently deleted from the NPL. This includes sites deleted from the NPL as a result of deferral of physical construction to another authority. Should the proposed policy change become effective during the current fiscal year, one of the eight sites will have all physical construction completed under all authorities and will be added to the CCL in fiscal year 2000.

Notice: This document does not substitute for EPA's statutes or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, states, or the regulated community. EPA may change this guidance in the future, as appropriate.

Dated: July 27, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–19789 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–3]

State Program Requirements; Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of public comment period on application for approval of the Maine Pollutant Discharge Elimination System.

SUMMARY: The State of Maine has submitted a request for approval of the Maine Pollutant Discharge Elimination System (MEPDES) Program pursuant to section 402 of the Clean Water Act. On December 30, 1999 (64 FR 73552) EPA published a notice requesting comments on the Maine application by February 29, 2000. On June 28, 2000 (65 FR 39899) EPA published an extension of the comment period until July 28, 2000. Today, EPA is extending the comment period on the State's request until August 21, 2000 in response a request from commenters, solely for the purposes of taking comment on the question of whether EPA should approve the State's application to administer its program in the lands or territories of the Indian Tribes in Maine.

DATES: EPA Region I will take written comments solely on the question of whether EPA should approve the State's application to operate its program in the lands or territories of the Indian Tribes in Maine through August 21, 2000 at its office in Boston, MA. EPA requests that copies of such written comments also be provided to the Maine Department of Environmental Protection (MEDEP).

ADDRESSES: Written comments must be submitted to: Stephen Silva, USEPA Maine State Office, 1 Congress Street—Suite 1100 (CME), Boston, MA 02114–2023. EPA requests that a copy of each comment be submitted to: Dennis Merrill, MEDEP, Statehouse Station #17, Augusta, ME 04333–0017.

Copies of documents Maine has submitted in support of its program approval request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at: EPA Region I, 11th Floor Library, 1

Congress Street—Suite 1100, Boston, MA 02114–2023, 617–918–1990 or 1–888–372–5427; and MEDEP, Ray Building, Hospital Street, Augusta, ME.

FOR FURTHER INFORMATION CONTACT: Stephen Silva at the address listed above or by calling (617) 918–1561 or Dennis Merrill at the address listed above or by calling (207) 287–7788. The State's submissions (which comprise approximately 128 pages in the application, 382 pages in the appendix, and 11 pages in a supplement with an additional 688 pages of attachments) may be copied at the MEDEP office in Augusta, or EPA office in Boston, at a cost of 15 cents per page. A copy of the entire initial submission (not including the supplement) may be obtained from the MEDEP office in Augusta for a $20 fee.

Part of the State's program submission and supporting documentation is available electronically at the following Internet address: http://www.state.me.us/dep/blwq/delegation/delegation.htm

Other Federal Statutes

Nothing in this extension of the public comment period changes any of the analyses or findings concerning other federal statutes which EPA made in its notice of December 30, 1999. See 64 FR 73554–73555.

Authority: This action is prepared under the authority of section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: July 26, 2000.

Ira W. Leighton,

Acting Regional Administrator, Region I.

[FR Doc. 00–19788 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 25, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0854.

Expiration Date: 01/31/2001.

Title: Truth-in-Billing Format—CC Docket No. 98–170.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 3099 respondents; 505.3 hours per response (avg.).; 1,565,775 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $9,000,000.

Frequency of Response: On occasion; Third Party Disclosure.

Description: Under Section 201(b) of the Communications Act, the charges, practices, and classifications of common carriers must be just and reasonable. The Commission believes that the telephone bill is an integral part of the relationship between a carrier and its customer. The manner in which charges are identified and articulated on the bill is essential to the consumer's understanding of the services that have been rendered, such that a carrier's provision of misleading or deceptive billing information may be an unjust and unreasonable practice in violation of Section 201(b). In the Truth-in-Billing and Billing Format Order on Reconsideration, the Commission addressed several petitions for reconsideration or clarification of the principles and guidelines contained in Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking (TIB Order), 64 FR 34487 (June 25, 1999). In the Order on Reconsideration, the Commission modified, as noted below, its collections of information to ensure that telephone bills contain information necessary for consumers to determine the validity of charges assessed on the bills and to combat telecommunications fraud. a. *Clear identification of service providers.* Telephone bills must clearly identify the name of the service provider associated with each charge. In the Order on Reconsideration, the Commission clarified that, where an entity bundles a number of services as a single package offered by a single company, such offering may be listed on the telephone bill as a single offering, rather than listed as separate charges by provider. Carriers providing bundled services in this manner must, however, make sure that an inquiry contact number or numbers appears on the bill for customer questions or complaints concerning the services provided through the bundle, as required by section 6.2401(d). The Commission also clarified that the carrier name of the telephone bill should be the name by which such company is known to its consumers for the provision of the respective service. (No. of respondents: 3099; hours per response: 10 hours; total annual burden: 30,990 hours). b. *Separation of charges by service provider and highlighting new services provider information.* In the TIB Order, the Commission required that all telephone bills containing wireline common carrier service (1) separate charges by service provider and (2) clearly and conspicuously show any change in service providers by identifying all service providers that did not bill for services on the previous billing statement and, where applicable, describing any new presubscribed or continuing relationship with the customer. In the Order on Reconsideration, the Commission modified its rule requiring highlighting of new service providers to only apply to providers that have a continuing arrangement with the subscriber that results in periodic charges on the subscriber's telephone bill. This change will ensure that services billed solely on a per-transaction basis, such as operator service and directory assistance, are not subject to the highlighting requirement. The Commission modified the language in the rule concerning when the highlighting requirement is triggered. (No. of respondents: 2295; hours per response: 465 hours; total annual burden: 1,067,175 hours). c. *Full and non-misleading bill charges.* The TIB Order requires that (1) bills for wireline service include for each charge a brief, clear, plain-language description of the services rendered; and (2) when a bill for local wireline service contains additional carrier charges, the bill must differentiate between those charges for which non-payment could result in termination of local telephone service and those for which it could not. In the Order on Reconsideration, the Commission retained its requirement that carriers distinguish on telephone bills those charges that consumers may refuse to pay without jeopardizing the provision of basic, local service, and charges for which non-payment may result in such disconnection. The Commission, however, clarified that a carrier need not label every charge as either deniable or non-deniable. (No. of respondents: 2295; hours per response: 197 hours; total annual burden: 452,115 hours). d. *Clear and Conspicuous Disclosure of Inquiry Contacts.* The TIB Order requires that all telephone bills display a toll-free number or numbers by which consumers may inquire about or dispute any charge on the bill. The

number(s) must be displayed in a manner that permits a customer to identify easily the appropriate number to use to inquire about a particular charge. In the Order on Reconsideration, the Commission modified the requirement by creating a limited exception where the customer does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet. (No. of respondents: 3099; hours per response: 5 hours; total annual burden: 15,495). The information will be used by consumers to help them understand their telephone bills. Consumers need this information to protect themselves against fraud and to help them resolve billing disputes if they wish. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary,

[FR Doc. 00–19298 Filed 8–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2425]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings; Correction [1]

July 24, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 3, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed by August 14, 2000.

Subject: Changes to the Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21).

Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 3.

Subject: Reexamination of the Comparative Standards for Noncommercial Educational Applicants (MM Docket No. 95–31).

Number of Petitions Filed: 17.

Subject: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS (GEN Docket No. 90–314, ET Docket No. 92–100).

Implementation of Section 309(j) of the Communications Act-Competitive Bidding, Narrowband PCS (PP Docket No. 93–253).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19299 Filed 8–3–00; 8:45 am]

BILLING CODE 6712–01–P

[1] This is a correction to Public Notice Report #2425, released on July 13, 2000, published in the **Federal Register** July 19, 2000, 65 FR 44786, to include two additional petitions which were inadvertently omitted from the listing for CC Docket Nos. 97–21 and 96–45. Therefore the dates established in the initial **Federal Register** publication for filing oppositions and replies will remain the same.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 15, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Phillip Eugene Kauffman, Barbara Kauffman; Christine Kauffman; Jason Kauffman; Ryan Kauffman; all of Carrollton, Georgia; and Scott Kauffman, Villa Rica, Georgia; all to acquire additional voting shares of Peoples Bancorp, Inc., Carrollton, Georgia, and thereby indirectly acquire additional voting shares of Peoples Bank of West Georgia, Carrollton, Georgia.

Board of Governors of the Federal Reserve System, July 26, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19311 Filed 8–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Cornerstone Bancorp, Inc., Palatine, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone National Bank and Trust Company (in organization), Palatine, Illinois.

2. Southern Michigan Bancorp, Inc., Coldwater, Michigan; to acquire 100 percent of the voting shares of Sturgis Bank & Trust Company, Sturgis, Michigan.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Frankston Bancorp, Inc., Frankston, Texas, and FDB, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First State Bank, Frankston, Texas.

Board of Governors of the Federal Reserve System, July 26, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19310 Filed 8–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, August 9, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–19898 Filed 8–2–00; 1:10 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Tilmicosin Phosphate Injection for Sheep; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness and target animal safety data that may be used in support of a new animal drug application (NADA) or supplemental NADA for veterinary prescription use of tilmicosin phosphate injection for treatment of bacterial pneumonia in sheep. The data, contained in Public Master File (PMF) 5673, were compiled under National Research Support Project–7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Tilmicosin phosphate injection, used for the treatment of sheep for bacterial pneumonia, is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, tilmicosin phosphate is subject to section 512 of the act (21 U.S.C. 360b), requiring that its uses in sheep be the subject of an approved NADA or supplemental NADA. Sheep are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP–7 Project, Southern Region, University of Florida, Gainesville, FL 32610, has provided effectiveness and target animal safety data for veterinary prescription use of tilmicosin phosphate injection in sheep for treatment of bacterial pneumonia due to *Pasteurella (Mannheimia) haemolytica*. These data are contained in PMF 5673.

Under 21 CFR 25.15(d) and § 25.33(d)(4) (21 CFR 25.33(d)(4)), sponsors of NADA's and supplemental NADA's for drugs in minor species, including wildlife and endangered species, are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement when the drug has been approved for use in another or the same species where similar animal management practices are used. The categorical exclusion applies unless, as in § 25.21 (21 CFR 25.21), extraordinary circumstances exist that indicate that the proposed action may significantly affect the quality of the human environment. Therefore, based upon information available, FDA agrees that when the application is submitted, the applicant may claim a categorical exclusion under § 25.33(d)(4) provided that the applicant can state that to the best of the applicant's knowledge, as in § 25.21, no extraordinary circumstances exist. It is assumed that the applicant has made a reasonable effort to determine that no extraordinary circumstances exist.

Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as: Data supporting extrapolation from a major species in which the drug is currently approved or authorized reference to such data; data concerning manufacturing methods, facilities, and controls; data concerning human food safety; and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA or supplement may contact Naba K. Das (address above).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 25, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–19300 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1384]

Prescription Drug User Fee Act (PDUFA); Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to hold a public meeting on the Prescription Drug User Fee Act (PDUFA). The legislative authority for PDUFA expires at the end of September 2002, and without further legislation the fees and resources provided under PDUFA will also expire. FDA is now considering what features it should advocate in proposing new or amended authorizing legislation. Section 903(b) of the Federal Food, Drug, and Cosmetic Act encourages FDA to consult with stakeholders, as appropriate, in carrying out agency responsibilities. Accordingly, FDA will convene a public meeting to hear stakeholder views on this subject. FDA is proposing four specific questions, and the agency is interested in responses to these questions and any other pertinent information stakeholders would like to share.

DATES: The public meeting will be held on September 15, 2000, at 9 a.m. Submit written comments by October 31, 2000. Registration to attend the meeting must be received by September 8, 2000.

ADDRESSES: The meeting will be held in the Auditorium, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC (between 3d and C St.).

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: FDADockets@oc.fda.gov, or via the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. More information about various aspects of PDUFA and this public meeting are available on the Internet at: http://www.fda.gov/oc/pdufa2/meeting2000.html.

REGISTRATION AND REQUEST FOR ORAL PRESENTATION: If you wish to make an oral presentation during the open public comment period of the meeting, you must specify on your registration form or with the registration contact person listed below that you wish to make a presentation. You must submit along with your registration form: (1) A brief written statement of the general nature of the views you wish to present, (2) the names and addresses of all persons who will participate in the presentation, and (3) an indication of the approximate time that you request to make your presentation. Depending on the number of people who register to make presentations, FDA may have to limit the time allotted for each presentation.

In order to register, you must submit your name, title, business affiliation, address, telephone, fax number (optional), and email address (optional).

REGISTRATION CONTACT: All registration materials should be sent to Patricia Alexander, Office of Consumer Affairs (HFE–40), Food and Drug Administration, Rockville, MD 20857, 301–827–4391, FAX 301–827–2866, e-mail: palexand@oc.fda.gov, or on the Internet at http://www.fda.gov/oc/pdufa2/meeting2000.html.

All registration will be accepted on a first-come, first-served basis. Speakers will be chosen in order of registration. All other comments should be sent to the FDA docket.

If you need special accommodations due to a disability, please inform the contact person when you register.

FOR FURTHER INFORMATION CONTACT: Virginia Cox, Office of the Commissioner (HF–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3409, FAX 301–594–6777, e-mail: vcox@oc.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, Congress passed PDUFA. PDUFA authorized FDA to collect fees from companies that produce certain human drug and biological products. The original PDUFA had a 5-year life; it ended in 1997, the same year Congress passed the FDA Modernization Act (FDAMA). Part of FDAMA included an extension of PDUFA (PDUFA II) for an additional 5 years.

PDUFA's original intent was to provide FDA with additional revenue so it could hire more reviewers and support staff and upgrade its information technology to speed up the application review process for human drug and biological products without compromising review quality. The revenues are provided by a set of three fees, with one-third of the total annual revenue coming from each of the following fees:

1. Application fees for the submission of certain human drug or biological application (in fiscal year (FY) 2000, $285,740 per application with clinical data, and $142,870 per application without clinical data or per supplemental application with clinical data);

2. Annual establishment fees paid for each establishment that manufactures prescription drugs or biologicals (in FY 2000, $141,971 per establishment); and

3. Annual product fees assessed on certain prescription drug and biological products (in FY 2000, $19,959 per product).

In the aggregate these fees are expected to generate $135 million this FY, and increase to about $162 million in FY 2002, the last year of PDUFA II. No separate fees are charged for investigational new drug applications. However, since the review of investigational new drug applications is included in the definition of the process for the review of human drug applications, as defined in PDUFA, FDA uses some of the application, establishment, and product fees collected for the review of investigational new drug applications.

In consultation with industry and the Congress, FDA agreed to meet a set of review performance goals that became more stringent each year if FDA also received sufficient fee resources to enable goal achievement. These goals applied to the review of original new human drug and biological applications, resubmissions of original applications, and supplements to approved applications. FDA met every PDUFA I performance goal and, to date, has met all but one PDUFA II performance goal. Industry also insisted on a statutory provision that fees could only be collected and spent each year if a large, inflation-adjusted portion of drug review costs would continue to be funded from appropriations rather than fees, so that the fees were funding additional drug review resources rather than replacing appropriations.

Under PDUFA II, the review goals continue to shorten. By 2002, the PDUFA II goals call for FDA to review and act on 90 percent of:

1. Standard new drug and biological product applications and efficacy supplements within 10 months;

2. Priority new drug and biological product applications and efficacy supplements (i.e., for products providing significant therapeutic gains) within 6 months;

3. Manufacturing supplements within 6 months, and those requiring prior approval within 4 months;

4. Class 1 resubmissions within 2 months, and Class 2 resubmissions within 6 months.

In addition, PDUFA II added a new set of procedural goals intended to

improve FDA's responsiveness to, and communication with, industry sponsors during the early years of drug development. These goals specify timeframes for activities such as scheduling meetings and responding to various sponsor requests. While PDUFA's original intent was to speed up the review process, PDUFA II's intent is to speed up the entire drug development process.

PDUFA has had a dramatic and undeniable impact on the drug review process. Total resources for drug review activities have increased from $120 million in 1992, before PDUFA was enacted, to an estimated $325 million in FY 2002, about half of which will come from fees paid by industry. These resources allowed FDA to increase its drug and biological review staff by almost 60 percent between 1993 and 1997, adding about 660 staff-years to the program by 1997. By the end of PDUFA II in 2002, FDA expects to have added another 313 staff-years of effort to this program. These additional staff, and resources to support them, have enabled FDA to respond more rapidly to new drug and biologic applications without compromising review quality.

While it is important to note that PDUFA's goals specify decision times, not approval times, both decision and approval times have decreased dramatically. Total approval time, the time from the initial submission of a marketing application to the issuance of an approval letter, has dropped from a pre-PDUFA median of 23 months to 12 months. Total approval time for priority applications, those for products providing significant therapeutic gains, has dropped from a median of over 12 months in the early PDUFA years to 6 months. In addition, because FDA has put greater effort into communicating what it expects applicants to submit, a higher percentage of applications are being approved. Before PDUFA, only about 60 percent of the applications submitted were ultimately approved. Now, about 80 percent are approved. For the consumer, this has meant more products available more quickly.

The agency has also encountered some challenges with PDUFA. Assuring that enough appropriated funds are spent on the process for the review of human drug applications to meet requirements of PDUFA, and at the same time spending our resources in a way that best protects the health and safety of the American people is becoming increasingly difficult. Each year, the amount that FDA must spend from appropriations on the drug review process is increased by an inflation factor. Yet, since 1992 FDA has not received increased appropriations to cover the costs of the across-the-board pay increases that must be given to all employees.

The result is that our workforce and real resources for most programs other than PDUFA have contracted each year since 1992 while we struggle to ensure that enough funds are spent on the drug review process to meet this PDUFA requirement. Several consecutive years of operating in this way have made it difficult to continue to further reduce staffing levels in FDA programs other than drug review. We are increasingly concerned that spending enough appropriations on the drug review process to meet the statutory conditions makes FDA less able to manage the resources available in a way that best protects the public health and merits public confidence. Just one example of an area we have not been able to fund adequately is responding to reports of adverse events related to the use of prescription drugs.

II. Scope of Discussion

The legislative authority for PDUFA II expires at the end of September 2002, and without further legislation the fees and resources they have provided will also expire. FDA is now considering what characteristics and conditions it should advocate in proposing new or amended authorizing legislation. Section 903(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)) encourages FDA to consult with stakeholders, as appropriate, in carrying out agency responsibilities. Accordingly, FDA will convene a public meeting on September 15, 2000. Interested persons are invited to attend and present their views.

A list of questions that we are asking interested parties to address at this meeting follows:

1. Since 1993 FDA has been receiving fees for the review of certain human drug and biological products. As a result, FDA has implemented management improvements that have substantially decreased the time for new drug review and made new medications available to the public faster. Do you view this as a benefit of the user fee program that should be maintained in the future? What are some of the other benefits that you think are important? How do you think the program can be strengthened? In addition, what do you see as the downside of a regulatory agency like FDA collecting user fees and what remedies would you propose for the future?

2. Should we continue to have performance goals for the drug and biological review process? If so, how should goals be determined?

3. If user fees fund FDA's drug and biological review processes, what percentage of the program's costs should be covered by fees, and how should those fees be used? The following table shows the percent of drug and biological review spending funded by industry fees since the beginning of PDUFA in 1993:

TABLE 1.

Year	1993	1994	1995	1996	1997	1998	1999
Fee percent	7%	24%	36%	36%	36%	40%	43%

The percent paid from fee revenues is currently estimated to exceed 50 percent of FDA's spending on drug review by 2002.

The following table shows the approximate percent of costs of overall drug regulation paid from industry fees in some other countries:

TABLE 2.

Country	Australia	Canada	United Kingdom
Fee percent	100%	70%	100%

4. Should fees collected from industry be used to pay for other costs FDA incurs to ensure that drugs in the American marketplace are safe and effective? Such additional costs might include monitoring adverse drug reactions, monitoring drug advertising, and routine surveillance, inspection and testing of drug manufacturers.

III. Comments

Interested persons may submit written comments to the Dockets Management Branch (address above), or via e-mail to FDADockets@oc.fda.gov, or via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/commentsdocket.cfm. by October 31, 2000. Comments are to be identified with the docket number found in brackets in the heading of this document. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Transcripts

You may request a transcript of the PDUFA public meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 10 cents per page. You may also examine the transcript of the meeting after September 30, 2000, at the Dockets Management Branch between 9 a.m. and 4 pm., Monday through Friday, as well as on the Internet at http://www.fda.gov/oc/pdufa2/meeting2000.html.

Dated: July 25, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–19301 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10015]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Evaluation of the Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) Programs—Beneficiary Survey;

Form No.: HCFA–10015 (OMB #0938–NEW);

Use: Medicare beneficiaries eligible for the Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) Programs will be surveyed. Numerous studies have shown that large numbers of potentially eligible QMB's and SLMB's do not participate in these programs. To further its goals under GPRA, the Health Care Financing Administration (HCFA) needs information on the effects of the QMB and SLMB programs. This project will help HCFA to develop a better understanding of the reasons for the low participation rates among the potential eligibles for both programs. Also, it will provide HCFA with information on the awareness of the QMB and SLMB programs; the paths and barriers to QMB and SLMB enrollment and the benefits of the QMB and SLMB coverage;

Frequency: Other: One-Time;

Affected Public: Individuals or Households;

Number of Respondents: 1,500;

Total Annual Responses: 1,500;

Total Annual Hours: 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan (HCFA–10015), Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

July 13, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19308 Filed 8–3–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing, Department of Health and Human Services (HHS), Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "National Emphysema Treatment Trial (NETT) System, HHS/HCFA/CHPP, 09–70–0531." HCFA and the National Heart, Lung and Blood Institute, which is part of the National Institutes of Health, are collaborating on an effort to study the effectiveness of lung volume reduction surgery. The study is called "National Emphysema Treatment Trial." The purpose of this multi-center randomized study is to evaluate the long-term outcomes of lung volume reduction surgery on function, morbidity and mortality, and to define appropriate patient selection criteria in order to determine which patients will likely benefit from lung volume reduction surgery.

The primary purpose of the system of records is to maintain data that will allow HCFA to collect and provide secure data on participants in the randomized phase of the study, pay claims, and to monitor and evaluate the clinical trial. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement and policy functions performed within the agency or by a contractor or consultant, another federal or state agency to enable such agency to administer a federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health

benefits program funded in whole or in part with federal funds, support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects, support constituent requests made to a congressional representative, support litigation involving the agency, and, combat fraud and abuse in certain health benefits programs. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: HCFA filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 18, 2000. To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Steven Sheingold, Ph.D., HCFA, Center for Health Plans and Providers, 7500 Security Boulevard, C4–10–07, Baltimore, Maryland 21244–1850. His telephone number is (410) 786–5896.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

A. Background

HCFA and the National Heart, Lung and Blood Institute, which is part of the National Institutes of Health, are collaborating on an effort to study the effectiveness of lung volume reduction surgery. The purpose of this multi-center randomized study is to evaluate the long-term outcomes of lung volume reduction surgery on function, morbidity and mortality, and to define appropriate patient selection criteria. Data related to health care services furnished to Medicare beneficiaries participating in the NETT will be collected and used to monitor and evaluate the trial and its interventions. The trial is designed to:

- Establish a multi-center randomized clinical trial in association with a prospective registry to evaluate the long-term efficacy, morbidity and mortality associated with intensive medical therapy with lung volume reduction surgery as compared with intensive medical therapy alone.
- Define patient selection criteria in order to determine which patients will likely benefit from lung volume reduction surgery.

The NETT contains information on beneficiaries participating in the study. HCFA and its evaluation contractor will use this information to monitor and evaluate the trial and its interventions. Individual patient data will be collected on the HCFA claim forms for fee-for-services and Medicare managed-care beneficiaries. The trial was scheduled to began in 1997 and will continue for 7 years from its actual start date or until the recruitment goal of 2600 patients is attained, whichever comes first.

B. Statutory and Regulatory Basis for System of Records

Authority for maintenance of the system is given under Section 1862(a)(1)(A) of the Social Security Act, and 42 U.S.C. 1395, which states that Medicare must provide coverage for items and services that are "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

II. Collection and Maintenance of Data in the System.

A. Scope of the Data Collected

The system of records will contain information about Medicare beneficiaries with emphysema, as well as referring and servicing physicians. Utilization and frequency of specific health care services, the provider, and the sites of services are provided as part of the trial. The system will also contain the beneficiary's name, address, date of birth, sex, health insurance claim number (HIC), telephone number, marital status, clinical outcomes, and morbidity and mortality rates.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release NETT information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of NETT. HCFA has the following policies and procedures concerning disclosures of information which will be maintained in the system. In general, disclosure of information from the system of records will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., developing and monitoring the quality of care provided to patients in the study, to monitor and evaluate the trial and its interventions.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record; and

(2) Remove or destroy at the earliest time all patient-identifiable information.

(d) Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HCFA may release

information from the NETT without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA function relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To another federal or state agency:

(1) To contribute to the accuracy of HCFA's proper payment of Medicare benefits, and/or

(2) To enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

Other federal or state agencies in their administration of a federal health program may require NETT information in order to support evaluations and monitoring of Medicare claims information of beneficiaries who are participating in the study, including proper reimbursement for services provided.

3. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

The NETT data will provide the research, evaluations and epidemiological projects a broader, longitudinal, national perspective of the status of patients participating in the study. HCFA anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. HCFA understands the concerns about the privacy and confidentiality of the release of data for a research use.

4. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of congress in resolving some issue relating to a matter before HCFA. The member of congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

Whenever HCFA is involved in litigation, or occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To HCFA contractors, including but not necessarily limited to fiscal intermediaries and carriers under Title XVIII of the Social Security Act; to administer some aspect of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, which program is or could be affected by fraud and abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA functions relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information.

7. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any state or local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in health benefits program funded in whole or in part by federal funds.

Other state agencies in their administration of a Federal health program may require NETT information for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

IV. Safeguards

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards

sufficient to protect the confidentiality of the data and to prevent authorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (*e.g.*, tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges. This class is used by the NETT data submission applications to receive and validate file uploads.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the NETT system.

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to AIS resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the NETT system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all NETT transmission connections to the system. As a result, Netscape controls all NETT information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards

All automated systems must comply with federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974, the Computer Security Act of 1987, OMB Circular A–130, revised, IRM Circular #10, HHS Automated Information Systems Security Program, the HCFA Information Systems Security Policy and Program Handbook, and other HCFA systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the Proposed System of Records on Individual Rights

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

09–70–0531

SYSTEM NAME:

"National Emphysema Treatment Trial (NETT) System, HHS/HCFA/CHPP".

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain information about Medicare beneficiaries with emphysema enrolled

in the randomized phase of the trial, as well as referring and servicing physicians.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain information about Medicare utilization and frequency of specific health care services, the provider and provider's speciality, provider's location or sites of services, cost of surgery, medical or pulmonary rehabilitation, extra-site therapy, medical services necessary for treatment, and self-administered drug therapy. The system will also contain the beneficiary's name, address, date of birth, sex, health insurance claim number (HIC), telephone number, marital status, clinical outcomes, and morbidity and mortality rates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under section 1862 (a)(1)(A) of the Social Security Act (the Act), and 42 U.S.C. 1395.

PURPOSE(S):

The primary purpose of the system of records is to maintain data that will allow HCFA to collect and provide secure data on participants in the randomized phase of the study, pay claims, and to monitor and evaluate the clinical trial. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement and policy functions performed within the agency or by a contractor or consultant, another federal or state agency to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects, support constituent requests made to a congressional representative, support litigation involving the agency, and, combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine use in this system meets the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information which will be maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To another federal or state agency:

(1) To contribute to the accuracy of HCFA's proper payment of Medicare benefits, and/or

(2) To enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

3. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

4. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government

is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

6. To HCFA contractors, including but not necessarily limited to fiscal intermediaries and carriers under title XVIII of the Social Security Act; to administer some aspect of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, which program is or could be affected by fraud and abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

7. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any state or local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in health benefits program funded in whole or in part by Federal funds.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in file folders, magnetic tapes and computer disks.

RETRIEVABILITY:

The Medicare and Medicaid records are retrieved by health insurance claim number.

SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the NETT system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

HCFA will retain identifiable data for a total period of fifteen (15) years from the date the information was last updated.

SYSTEM MANAGER AND ADDRESS:

HCFA, Director, Center for Health Plans and Providers, Program Analysis

and Performance Measurement Group, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The NETT will use Medicare enrollment records, Medicare beneficiaries or proxies, and medical providers (such as physicians, medical facilities, home health care providers) for a sample of enrollees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–18548 Filed 8–3–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, "Explanation of Medicare Benefits Records (EOMB), HHS/HCFA/BPO, System No. 09–70–0513." We are proposing to change the name of the SOR to "Medicare Benefits Notices (MBN), HHS/HCFA/CBS, System No. 09–70–0513." We are also proposing to add one new routine use for contractors and consultants, update any sections of the SOR that were affected by the recent reorganization, and to update language in the administrative sections to correspond with language used in other HCFA SOR. The primary purpose of the SOR to provide an explanation of Medicare claims processed and to advise beneficiaries of supplemental insurance, deductible status, appeals information and general Medicare information. Information retrieved from this SOR will be used to support regulatory and policy functions performed within the agency or by a contractor or consultant, support constituent requests made to a congressional representative, and to support litigation involving the agency related to this SOR. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: HCFA filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 18, 2000. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Maria Ramirez, Division of Contractor Customer Service Operations, Center for Beneficiary Services, HCFA, C2–02–10, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850. The telephone number is 410–786–1122.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified SOR

Statutory and Regulatory Basis for SOR

In 1981, HCFA established a SOR under the authority of sections 205, 226, 1811, and 1832 of Title XVIII of the Social Security Act (42 U.S.C. 405, 426, 1395c, and 1395k). Notice of this system, "Explanation of Medicare Benefits Records, (EOMB)," HHS/HCFA/BPO, System No. 09–70–0513, was published in the **Federal Register** on October 27, 1981 (46 FR 52706). These regulations established the requirement that an explanation of Medicare benefits be sent to beneficiaries advising them of Medicare benefits remaining, and whether the various deductible requirements have been satisfied.

II. Collection and Maintenance of Data in the System.

A. Scope of the Data Collected

The system includes Medicare hospital insurance benefits records, Part B benefits records, home health benefits records, and Medicare hospital benefits records. These are notices of utilization and explanation of Medicare benefits. They also advise beneficiaries of supplementary insurance, deductible status, appeals information, and general Medicare information.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release MBN information as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use."

We will only disclose the minimum personal data necessary to achieve the purpose of MBN. HCFA has the following policies and procedures concerning disclosures of information which will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*,

provide an explanation of Medicare claims processed to beneficiaries.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all individual-identifiable information; and

(3) Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HCFA may release information from the MBN without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA functions relating to purposes for this SOR.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give contractors or consultants whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever HCFA is involved in litigation, and occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved.

IV. Safeguards

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects, *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MBN system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS)

resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged-out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Security (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the MBN system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all MBN transmission connections to the system. As a result, Netscape controls all MBN information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server is maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974, the Computer Security Act of 1987, OMB Circular A–130, revised, Information Resource Management (IRM) Circular #10, HHS Automated Information Systems Security Program, the HCFA Information Systems Security Policy and Program Handbook, and other HCFA systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Proposed SOR on Individual Rights

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this SOR.

HCFA will monitor the collection and reporting of MBN data. HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: July 7, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

SYSTEM NAME:

Medicare Benefits Notices (MBN), HHS/HCFA/CBS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and Medicare intermediaries and carriers and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All recipients of Medicare Part A and Part B services and supplies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the following information for each beneficiary: Name; address; health insurance claims number (HIC); dates of service; and the contractor assigned claim control number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205, 226, 1811, and 1832 of Title XVIII of the Social Security Act (42 USC 405, 426, 1395c, and 1395k).

PURPOSE(S):

The primary purpose of the system of records is to provide an explanation of Medicare claims processed and to advise beneficiaries of supplemental insurance, deductible status, appeals information and general Medicare information. Information retrieved from this system of records will be used to support regulatory and policy functions performed within the agency or by a contractor or consultant, support constituent requests made to a congressional representative, and to support litigation involving the agency related to this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine use in this system meets the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the

constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's health insurance claims number or a contractor assigned claim control number.

SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MBN system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are placed in an inactive status at the close of the calendar year in which the benefit was paid, held two more years, transferred to a federal records center and destroyed after another six years.

SYSTEM MANAGER:

Director, Division of Contractor Customer Service Operations, Center for Beneficiary Services, HCFA, C2–26–21, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850. The telephone number is 410–786–2133.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable) and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system are provided by the beneficiary when applying for benefits or requesting payment, the physician or provider of services when requesting payment, and computations for amounts of payments and remaining benefits provided by the carriers and intermediaries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FR Doc. 00–18549 Filed 8–3–00; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Ricky Ray Hemophilia Relief Fund Program (OMB No. 0915–0244)—Extension

The Ricky Ray Hemophilia Relief Fund Act of 1998 (Pub. L. 105–369) established a trust fund to provide for compassionate payments with regard to certain individuals with blood-clotting disorders, such as hemophilia, who contracted HIV due to contaminated antihemophilic factor within specified time periods. The statute mandated payments to any individual with HIV who has any blood-clotting disorder and was treated with antihemophilic factor any time between July 1, 1982, and December 31, 1987. The Act also provides for payments to certain persons who contracted HIV from the foregoing individuals. Specified survivors of these categories of individuals may also receive payments. In order to receive a payment, either the individual who is eligible for payment, or his or her personal representative,

must file a petition for payment with sufficient documentation to prove that he or she meets the requirements of the statute. This data collection is required to provide the necessary medical and legal documentation that establishes eligibility for payment.

The estimated annual response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Petition form and Supporting Documentation	5,000	1	3	15,000
Physician Documentation	1,000	1	1	1,000
Total	6,000			16,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–19303 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL)

Program: Regulatory Requirements—00915–0108—Extension—This clearance request is for extension of approval for the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number, much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

OMB Approval No. 0915–0034, Lender's Application, Borrower Status, Loan Transfer, Contract for Loan Insurance:

Reporting

42 CFR 60.31(a), Lender annual application

42 CFR 60.38(a), Loan Reassignment

Notification

42 CFR 60.12(c)(1), Borrower deferment

OMB Approval No. 0915–0036, Lender's Application for Insurance Claim:

Reporting

42 CFR 60.35(a)(2), Lender skip-tracing activities

42 CFR 60.40(a), Lender documentation to litigate a default

42 CFR 60.40(c)(i), (ii), and (iii), Lender default claim

42 CFR 60.40(c)(2), Lender death claim

42 CFR 60.40(c)(3), Lender disability claim

42 CFR 60.40(c)(4), Lender report of student bankruptcy

OMB Approval No. 0915–0043, Repayment Schedule, Call Report

Notification

42 CFR 60.11(e), Establishment of repayment terms-borrower

42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement

42 CFR 60.34(b)(1), Establishment of repayment terms-lender

OMB Approval No. 0915–0204, Physicians Certification of Permanent and Total Disability

Reporting

42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability

OMB Approval No. 0915–227, Refinancing Application/Promissory Note

42 CFR 60.33(e), Executed application and note to borrower

The estimate of burden for the regulatory requirements of this clearance are as follows:

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
REPORTING			
Subpart D: Lender—22 Participating Lenders			
60.40(c)(1)(iv) Bankruptcy Report to the Secretary	139	12 min	28
60.42(d) Audit	22	240 min. (4 hrs.)	88
60.42(e) Evidence of Fraud	0	120 min. (2 hrs.)	0
60.43(b) Evidence of Cause for Administrative Hearing	0	180 min. (3 hrs.)	0
Subtotal	161		116
Subpart E: School—200 Participating Schools			
60.56(c) Biennial Audit	0	240 min. (4 hrs.)	0
60.60(b) Evidence of Cause for Administrative Hearing	0	180 min. (3 hrs.)	0
60.61(d) Bankruptcy Documentation	139	10 min	23
Subtotal	139		23
Total Reporting	300		139
NOTIFICATION			
Subpart B: Borrower—20,639 Borrowers			
60.8(a)(5) Sale or Transfer of Loan	Burden included in 60.38a		
60.8(b)(3) Status Change	20,500	10 min	3,417
60.61(d)* Bankruptcy	139	10 min	23
Subtotal	20,639		3,440
Subpart C: Loan/Lender—8 Participating Lenders			
60.18 Loan Consolidation	3,000	40 min	2,000
60.21(b)(2) Refund Check Transfer	0	30 min	0
60.21(b)(2) Refund Check Notification	0	15 min	0
Subpart D: Lender—22 Participating Lenders			
60.33(g) Denial of Loan	0	14 min	0
60.33(h) Borrower Indebtedness	3,000	1 min	50
60.34(c) Biannual Debt Status	202,126	10 min	33,688
60.35(a)(1) Delinquent Payment Notice to Borrower	11,713	30 min	5,857
60.35(c)(2) Delinquent Notice to Credit Reporting Agency.	11,713	15 min	2,928
60.35(e) Demand Letter	2,047	10 min	341
60.37(a) Right to Forbearance	4,480	5 min	373
60.37(c)(3) Reminder of Obligation to Pay	2,240	10 min	373
60.38(a) Notification to Borrower of Loan Reassignment	7,500	5 min	625
60.40(c)(1)(iv) and (c)(4) Default Notification to Courts	139	25 min	58
Subtotal	247,958		46,293
Subpart E: School—200 Participating Schools			
60.53 Change in Student Status Burden included with	Burden included with 60.61(a)(7)		
60.54 Notice of Refund Payment	0	25 min	0
60.57 Borrower Identifying Information	1,439	8 min	192
60.61(a)(1) Entrance Interview	0	35 min	0
60.61(a)(2) Exit Interview	1,439	50 min	1,199
60.61(a)(2) Student Departure Notification to Lender	200	35 min	117
60.61(a)(3) Unresolved Discrepancies to Lender	0	12 min	0
60.61(a)(7) Change in Student Address to Lender	2,878	10 min	480
Subtotal	5,956		1,988
Total Notification	274,553		51,721
RECORDKEEPING			
Subpart B: Borrower			
60.7(a)(2) Student Signed Stmt.—Gov. Debt Collection Procedures.	Burden included in 60.34(b)(2) and 60.61(a)(1)&(2)		

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
60.7(c)(2) Non-Student Signed Stmt.—Gov. Debt Collection.	0.00		0.00
Subpart D: Lender—22 Participating Lenders			
60.31(c) Procedures for Servicing & Collecting Loans	22	240 min. (4 hrs)	88
60.33(e) Promissory Note	Burden included in 60.42(a)(2)		
60.34(b)(2) Terms of Repayment Schedules	10,000	5 min	833
60.35(a)(1) Attempts to Collect Delinquent Payment	10,000	5 min	833
60.35(a)(2) Documentation of Skip-tracing	2,500	10 min	417
60.37(a)(1) Documentation of Borrower's Inability to Pay	2,500	15 min	625
60.37(c) Renewals of Forbearance	1,200	10 min	200
60.37(c)(1) Basis for Belief of Borrower Intent to Default	300	10 min.	50
60.40(a) Documentation of Insurance Claims	584	70 min.	681
60.42(a)(1) Loan Records	Burden included in 60.42(a)(2)		
60.42(a)(2) Borrower's Payment History	101,063	15 min.	25,266
Subtotal	126,169		28,993
Subpart E: School—200 Participating Schools			
60.51(f)(1) Documentation of Needs Analysis Adjustment	Burden included in 60.61(a)(5)		
60.51(f)(2) Documentation of Standard Student Budget Adjustments.	Burden included in 60.61(a)(5)		
60.56(a) Required Retention of HEAL Borrower Records 60.56(b) Five Year Retention of Student Records	Burden included in 60.61(a)(5)		
60.57 Retention of Reports to the Secretary	200	45 min.	150
60.61(a)(1) Entrance Interview.			
60.61(a)(2) Exit Interview	1,439	5 min.	120
60.61(a)(4) HEAL Check Receipt	0	300 min.	0
60.61(a)(5) Complete Records of HEAL Borrowers	50,000	15 min.	12,500
60.61(a)(6) Criteria for Student Budgets	50,000	2 min.	1,667
Subtotal	101,639		14,437
Total Recordkeeping	229,808		43,430
Total Annual Burden	504,661		95,290

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–19305 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act(Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 2000.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: August 13, 2000, 6 p.m.–8 p.m.; August 14 , 2000, 8:30 a.m.–5 p.m.; August 15, 2000, 8:30 a.m.–12 p.m.

Place: The Doubletree Hotel, Rockville, Maryland, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

The full Committee will meet beginning August 13 and adjourning August 15, during the hours cited above. Agenda items will include, but not be limited to: Welcome and introduction of Committee members; introduction of the Division of Interdisciplinary and Community-Based Programs (DICP), Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), staff supporting Committee activities; an overview of HRSA, BHPr, and the DICP infrastructure and missions; the election of a Committee Chair and Vice-Chair; general discussion among Committee members of its charge under Section 756 of the Public Health Service Act, to include discussion of Committee reports; and scheduling of the

next Committee meeting, which shall include but not be limited to: general discussion of topics to be addressed during the next Committee meeting.

Public comment will be permitted before lunch and at the end of the Committee meeting on August 14, 2000. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Mr. Leo Wermers, Principal Staff Liaison, Division of Interdisciplinary, Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1648.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of Interdisciplinary, Community-Based Programs will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement, may register to do so at the Doubletree Hotel, Rockville, Maryland, on August 14, 2000. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Mr. Wermers, Division of Interdisciplinary, Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1648.

Proposed agenda items are subject to change as priorities dictate.

Dated: July 25, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–19304 Filed 8–1–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 65 FR 45994–5 dated July 26, 2000).

This notice reflects the revised functional statement in the Division of Community and Migrant Health (RC4) in the Bureau of Primary Health Care.

Delete the functional statement for the Division of Community and Migrant Health in its entirety and replace with the following:

(1) Implements efforts to improve the organization and delivery of health services by serving as the point of accountability for Primary Health Care Services Delivery programs; (2) Provides leadership and direction for legislative activities in the program area; (3) Develops and establishes policies for such national programs and develops long and short-range program goals and objectives; (4) Is accountable for the administration of funds and other resources for grants, contracts, and clinical and programmatic consultation and assistance; (5) Ensures that assigned responsibilities are being carried out; (6) Coordinates the development and establishment of guidelines and standards for professional services and staff development; (7) Interprets policies, regulations, guidelines, standards, and priorities to higher echelons, to regionally located staff, grantee agencies, institutions and organizations; (8) Coordinates with other programs providing health services including voluntary, official, and other community agencies, and provides clinical and programmatic consultation and assistance, on request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation; (9) Establishes and provides liaison in program matters with other entities within BPHC and the Agency, within the Department and with other Federal agencies, consumer groups and national organizations concerned with health matters with State and local governments; (10) Participates in the development of forward plans, legislative proposals, and budgets; and (11) Coordinates the integration of primary care projects and services with other health care delivery systems.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: July 25, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–19778 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[0917–ZA06]

Reimbursement Rates for Calendar Year 2000

Notice is given that the Director of Indian Health Service, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)) and section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Calendar Year 2000 for Medicare and Medicaid Beneficiaries and Beneficiaries of other Federal Agencies. Indian Health Service facilities that are paid the inpatient rate set forth below may also bill for Medicaid physician services to the extent that those services meet applicable requirements under an approved State Medicaid plan.

Inpatient Hospital Per Diem Rate (Excludes Physician Services)

Calendar Year 2000

Lower 48 States	$1,157
Alaska	1,428

Outpatient per Visit Rate (Excluding Medicare)

Calendar Year 2000

Lower 48 States	$172
Alaska	304

Outpatient per Visit Rate (Medicare)

Calender Year 2000

Lower 48 States	$139
Alaska	308

Medicare Part B Inpatient Ancillary per Diem Rate

Calender Year 2000

Lower 48 States	$666
Alaska	913

Outpatient Surgery Rate (Medicare)

Established rates for freestanding Ambulatory Surgery Centers

Effective Date for Calender Year 2000 Rates

Consistent with previous annual rate revisions, the Calender Year 2000 rates will be effective for services provided on/or after January 1, 2000 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is not a major notice because we have determined that the economic impact will be negligible.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This rule will not have a significant economic effect on these governments or the private sector.

The Department has determined that this notice does not have a substantial effect on States or local governments under Executive Order 13132 and will not interfere with the roles, rights and responsibilities of States or local governments.

We are not preparing analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Dated: July 31, 2000.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 00–19779 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet. room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; ENERGY: Mr. Tom Knox, Department of Energy, Office of Contract & Resource Management, MA–52, Washington, DC 20585; (202) 586–8715; (These are not toll-free numbers).

Dated: July 28, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 8/4/00

Unsuitable Properties

Buildings (by State)

Colorado

Bldgs. 111, 111B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200030001

Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Idaho

Moore Hall U.S. Army Rsve Ctr
1575 N. Skyline Dr.
Idaho Falls Co: Bonneville ID 83401–
Landholding Agency: GSA
Property Number: 21199720207
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material GSA Number: 9–D–ID–544

Unsuitable Properties

Buildings (by State)

Washington

Federal Building
403 West Lewis Street
Pasco Co: Franklin WA 99301–
Landholding Agency: GSA
Property Number: 54200030003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material GSA Number: 9–G–WA–1178

[FR Doc. 00–19590 Filed 8–3–00; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Strategic Plan

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Solicitation of Comments for Strategic Plan.

SUMMARY: Office of Federal Housing Enterprise Oversight (OFHEO) is soliciting comments as it updates its Strategic Plan. In accordance with the requirements of the Government Performance and Results Act of 1993 that agencies update their Strategic Plans every three years, OFHEO is drafting its 2000–2005 Strategic Plan and soliciting the views and suggestions of those entities potentially affected by or interested in such a plan. OFHEO's current Strategic Plan may be viewed on the OFHEO web site, *www.OFHEO.gov* in the "About OFHEO" section.

DATES: Written comments regarding the Strategic Plan may be received through September 13, 2000.

ADDRESSES: All comments concerning the notice should be addressed to: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Comments may also be submitted via electronic mail to: "*StrategicPlan@ofheo.gov*".

FOR FURTHER INFORMATION CONTACT: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3821 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Federal Housing Enterprise Oversight (OFHEO) is charged by Congress, as established in Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, with the mandate of overseeing the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, Fannie Mae and Freddie Mac (the "Enterprises").

Three years ago, OFHEO adopted a Strategic Plan covering FY 1998–2003. Section 306 of the Government Performance and Results Act of 1993 (GPRA), 31 U.S.C. 1115 *et seq.*, requires that agencies update and revise their Strategic Plans every three years. OFHEO is currently drafting a new plan for FY 2000–2005 that will describe the agency's mission, strategic goals and objectives, and strategies to achieve them. This plan will provide a framework for the years ahead.

In today's notice, OFHEO is soliciting the views and suggestions that may be considered in the development of its plan. Additionally, OFHEO will publish a draft plan on the OFHEO web site in early September and will continue to encourage comments through the closing date of September 13, 2000. OFHEO will then submit its Strategic Plan pursuant to the statutory requirements.

Dated: August 1, 2000.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–19845 Filed 8–3–00; 8:45 am]
BILLING CODE 4220–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Clyde Bros/Johnson Circus Corp., Seagoville, TX, PRT–683118.

The applicant requests a permit to re-export and re-import captive-born tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Fort Worth Zoological Association, Fort Worth, TX, PRT–030194.

The applicant requests a permit to import 25 Lesser Long-nosed Bats (*Leptonycteris curasoae*) to be obtained from the wild in Mexico for the purpose of scientific research.

Applicant: Daniel E. Brewster, Broomfield, CO, PRT–030849.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Donald E. Thompson Troy, MO, PRT–031023.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Terry Humphrey, Troy, MO, PRT–031025.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Karl Douglas Nielson, Provo, UT, PRT–031156.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: 777 Ranch, Inc., Hondo, TX, PRT–013008.

The applicant requests a permit to authorize interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*), Eld's deer (*Cervus eldi*), Arabian oryx (*Oryx leucoryx*) and red lechwe (*Kobus leche*) from their captive herd for the purpose of enhancement of survival of the species. This notice covers activities for a period of three years. Permittee must apply for renewal annually.

Applicant: Wildlife Conservation Society, Flushing, NY, PRT–030897.

The applicant requests a permit to authorize interstate commerce of captive born Thick-billed parrots (*Rhynchopsitta pachyrhyncha pachyrhyncha*) for the purpose of enhancement of survival of the species through captive breeding. This notice covers activities for a period of five years.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Ceferino Machado, Hialeah Garden, FL, PRT–024024.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 31, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–19753 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–30115–0

Applicant: Bureau of Land Management (BLM)–Safford Field Office, Safford, Arizona; Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), Mexican spotted owl (*Strix occidentalis lucida*), desert pupfish (*Cyprinodon macularius*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*), and lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) on lands administered by the BLM-Safford Field Office in Arizona.

Permit No. TE–22582

Applicant: Marilyn Murov, Flagstaff, Arizona; Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the humpback chub (*Gila cypha*) within Arizona.

Permit No. TE–30902

Applicant: The Environmental Company, Inc., Santa Barbara, California; Applicant requests authorization to conduct presence/absence surveys for the northern aplomado falcon (*Falco femoralis septentrionalis*) in Arizona and New Mexico for the U.S. Air Force.

Permit No. TE–20819

Applicant: Turner Collie and Braden Inc.; Applicant requests authorization for recovery purposes to conduct presence/absence surveys and other recovery activities for the Comal Springs riffle beetle (*Heterelmis comalensis*), fountain darter (*Etheostoma fonticola*), and San Marcos salamander (*Eurycea nana*) in Hays and Comal Counties, Texas.

DATES: Written comments on these permit applications must be received on or before September 5, 2000.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Susan MacMullin,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–19757 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Zebra Mussel Coordination Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Zebra Mussel Coordination Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Zebra Mussel Coordination Committee will meet from 1 p.m. to 4:30 p.m., Monday, August 21, 2000 and 8 a.m. to 3 p.m., Tuesday, August 22, 2000.

ADDRESSES: The Zebra Mussel Coordination Committee Meeting will be held in the Magnolia Room at the Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at

703–358–2308 or by e-mail at: *sharon_gross@fws.gov* or Dr. Ed Theriot, Zebra Mussel Coordination Committee Chair, at 601–634–2678.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force Zebra Mussel Coordination Committee. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the Zebra Mussel Coordination Committee meeting include a review of the U.S. Army Corps of Engineers Zebra Mussel Research Program, an update on ANS Task Force activities, updates from each of the member agencies on agency zebra mussel activities, and a discussion of Committee actions to further coordination of zebra mussel activities.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: July 31, 2000.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Restoration.

[FR Doc. 00–19770 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Tuesday, Aug. 29, 2000, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: The meeting begins at 8 a.m. in the Eagle Lake Field Office Conference Room. The council will hear a report from its juniper management subcommittee and review proposed off-highway vehicle management guidelines developed by its off-highway vehicle subcommittee. At 10 a.m., the council will open the meeting to public comments on off-highway vehicle management on BLM-administered public lands. The public comments will be taken as part of a national series of BLM listening sessions on off-highway vehicle issues.

Members of the public can also comment on other public lands management issues during the public comment period. Depending on the number of persons wishing to speak, a time limit may be established.

FOR FURTHER INFORMATION: Contact BLM Alturas Field Manager Tim Burke at (530) 257–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–19756 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement Glen Echo Park, MD

ACTION: Release of Draft General Management Plan/Environmental Impact Statement for Public Review, and Announcement of Public Meetings.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service is releasing for public review the Draft General Management Plan/ Environmental Impact Statement (GMP/ EIS) for Glen Echo Park, Glen Echo, Maryland.

The GMP/EIS proposes a range of alternatives which address cultural and natural resources protection, socioeconomic concerns, traffic and pedestrian circulation, and visitor use.

Public involvement will be a key component in the preparation of the general management plan and environmental impact statement.

A public hearing is scheduled for September 7, 2000, at the Glen Echo Park Spanish Ballroom from 7 to 9 pm. Glen Echo Park is located at 7300 MacArthur Boulevard, Glen Echo, Maryland. At that time, you will have the opportunity to either present your comments in a public forum or submit them in writing. The comment period will extend for sixty (60) days, ending October 13, 2000.

The responsible official is Terry R. Carlstrom, Regional Director, National Capital Region, National Park Service. Written comments should be submitted to the Superintendent of George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 00–19727 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; nondiscrimination on the basis of disability in State and local government services (transition plan).

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the information of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Governments Services (Transition Plan).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State and Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usuable by individuals with disabilities ("program accessibility"). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a "transition plan" setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 6,000 respondents at 8 hours per transition plan.

(6) An estimate of the total public burden (in hours) associated with the collection: 48,000 hours annual burden.

In additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: July 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19773 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; nondiscrimination on the basis of disability in State and local government services (certification).

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Government Services (Certification).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of "places of public accommodation" and "commercial facilities."

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10 respondents per year at 32 hours per certification.

(6) An estimate of the total public burden (in hours) associated with the collection: 320 hours annual burden.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, N.W., Washington, DC 20530.

Dated: July 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19774 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; Title II of the Americans with Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected

agencies. Comments are encouraged and will be accepted for "sixty days" until October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disability Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,000 respondents per year at 0.75 hours per complaint form.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,750 hours annual burden.

If additional information is required contact; Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, N.W., Washington, DC 20530.

Dated: July 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19775 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; nondiscrimination on the basis of disability in State and local government services (self-evaluation).

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 15,000 respondents at 6 hours per self-evaluation.

(6) An estimate of the total public burden (in hours) associated with the collection: 90,000 hours annual burden.

If additional information is required contact: Ms. Brenda Dyer, Deputy Clearance Officer, United States

Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: July 31, 2000.

Brenda Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19776 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 28, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Ethylene Oxide.

OMB Number: 1218–0108.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 5,782.

Number of Annual Responses: 232,564.

Estimated Time Per Response: Varies from 5 minutes to provide information to the examining physician to 10 hours to develop a compliance plan.

Total Burden Hours: 49,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $7,056,200.

Description: The information-collection requirements specified in the Ethylene Oxide (EtO) Standard protect employees from the adverse health effects that may result from their exposure to EtO. The major information-collection requirements of the EtO Standard include notifying employees of their EtO exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Electrical Power Generation, Transmission, and Distribution.

OMB Number: 1218–0190.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion, Semi-annually, Annually.

Number of Respondents: 11,703.

Number of Annual Responses: 515,094.

Estimated Time Per Response: Varies from one minute to 15 minutes.

Total Burden Hours: 34,496.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657). Under paragraph 1910.137(a)(2)(vii), employers must certify that the electrical protective3 equipment used by their employees passed the tests specified in paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of the standard. The certification must identify the equipment that passed the test and the date of the test. This provision ensures that electrical protective equipment is reliable and safe for employee use and will provide adequate protection against electrical hazards. In addition, certification enables OSHA to determine if employers are in compliance with the equipment testing requirements of the standard.

Paragraph 1910.269(a)(2)(vii) of the Electric Power Generation, Transmission, and Distribution standard requires employers to certify that each employee received the training specified in paragraph (a)(2) of the standard. Employers must provide certification after an employee demonstrates proficiency in the work practices involved.

The training conducted under paragraph (a)(2) of the standard must also ensure that: Employees are familiar with the safety-related work practices, safety procedures, and other procedures, as well as any additional safety requirements in this standard, that pertain to their respective job assignments; employees are familiar with any other safety practices, including applicable emergency procedures (such as pole top and manhole rescue), addressed specifically by this standard that relate to their work and are necessary for their safety; and qualified employees have the skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment, can determine the nominal voltage of the exposed live parts, know the minimum approach distances specified by this standard for voltages when exposed to them, and understand the proper use of special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools

for working on or near exposed and energized parts of electric equipment.

Employees must receive additional training or retraining if: The supervision and annual inspections required by paragraph (a)(2)(iii) of this standard indicate that they are not complying with the required safety-related work practices; new technology or equipment, or revised procedures, require the use of safety-related work practices that differ from their usual safety practices; and they use safety-related work practices that are different than their usual safety practices while performing job duties.

The training requirements of this standard inform employees of the safety hazards of electrical exposure and provide them with the understanding required to minimize these safety hazards. In addition, employees receive proper training in safety-related work practices, safety procedures, and other safety requirements specified in the standard. The required training, therefore, provides information to employees that enables them to recognize how and where electrical exposures occur, and what steps to take, including work practices, to limit such exposure. Accordingly, the certification requirements specified by paragraph (a)(2)(vii) of the standard permits OSHA to determine if employers provided the required training to their employees.

Type of Review: Extension of a currently approved collection.

Agency: Mine safety and Health Administration (MSHA).

Title: Ground Control Plan.

OMB Number: 1219–0026.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 159.

Number of Annual Responses: 159.

Estimated Time Per Response: Varies from 9 hours for new plans to 5 for revised plans.

Total Burden Hours: 1,404.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $52.

Description: Ground control plans are reviewed by MSHA to ensure that surface coal mine operators' methods of controlling highwalls and spoil banks are consistent with prudent engineering design and will ensure safe working conditions for miners.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Consumer Expenditure Surveys: The Diary and Quarterly Interview.

OMB Number: 1220–0050.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (in minutes)	Estimated total burden
Quarterly—CE–300, CE–301, CE–302	9,975	Quarterly	39,900	90 Min	59,850
Reinterview—CE–380, CE–386	2,195	Annual	2,195	15 Min	549
Diary—CE–602 Recordkeeping	8,241	2 Weeks		105 Min	28,844
Diary—CE–601	8,241	3 Visits/2 Week Period.	24,723	25 Min	10,302
Reinterview—CE–680, CE–680(N)	1,376	One-time	1,376	12 Min	275
Totals	18,216		68,194	71 Min	99,820

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Consumer Expenditure Surveys are used to gather information on expenditures, income and other related subjects. These data are used to periodically update the national Consumer Price Index. In addition the data are used by a variety of researchers in academia, government agencies, and the private sector. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–19777 Filed 8–3–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. they specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT000001 (Feb. 11, 2000)
- CT000002 (Feb. 11, 2000)
- CT000003 (Feb. 11, 2000)
- CT000004 (Feb. 11, 2000)
- CT000005 (Feb. 11, 2000)

Massachusetts
- MA000001 (Feb. 11, 2000)
- MA000003 (Feb. 11, 2000)
- MA000007 (Feb. 11, 2000)
- MA000017 (Feb. 11, 2000)
- MA000018 (Feb. 11, 2000)
- MA000019 (Feb. 11, 2000)

Vermont
- VT000007 (Feb. 11, 2000)
- VT000009 (Feb. 11, 2000)
- VT000010 (Feb. 11, 2000)
- VT000013 (Feb. 11, 2000)

Volume II

District of Columbia
- DC000001 (Feb. 11, 2000)
- DC000003 (Feb. 11, 2000)

Maryland
- MD000001 (Feb. 11, 2000)
- MD000008 (Feb. 11, 2000)
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- FL000001 (Feb. 11, 2000)
- FL000014 (Feb. 11, 2000)
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Georgia
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Mississippi
- MS000057 (Feb. 11, 2000)

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- MI000001 (Feb. 11, 2000)
- MI000002 (Feb. 11, 2000)
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Michigan
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- WI000030 (Feb. 11, 2000)

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Iowa
- IA000004 (Feb. 11, 2000)
- IA000012 (Feb. 11, 2000)
- IA000013 (Feb. 11, 2000)
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Utah
- UT000001 (Feb. 11, 2000)
- UT000004 (Feb. 11, 2000)
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HI000001 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 27th day of July 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–19475 Filed 8–3–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (00–092)

Conduct of Employees, Notice of Waiver Pursuant to Section 207(j)(5), Title 18, United States Code

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: The Administrator of the National Aeronautics and Space Administration has determined, after consultation with the Director of the Office of Government Ethics, that it is in the national interest to waive the post-employment restrictions of Section 207, Title 18, United States Code, with respect to the former Deputy Director for Launch and Payload Processing, at Kennedy Space Center, Loren Shriver.

FOR FURTHER INFORMATION CONTACT: R. Andrew Falcon, Office of the General Counsel, NASA Headquarters, Washington, DC 20546, 202–358–2028.

SUPPLEMENTARY INFORMATION: Section 207(j)(5) of Title 18 of the United States Code authorizes the Administrator of the National Aeronautics and Space Administration to waive the post-employment restrictions of subsections 207(a)(1), 207(a)(2), and 207(c), to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Government in connection with a particular matter which requires such qualifications, where it has been determined that the national interest would be served by the participation of the former employee.

It has been established to my satisfaction that Loren Shriver, the former Deputy Director for Launch and Payload Processing at Kennedy Space Center, has outstanding technological qualifications in mission control, launch processing, and flight operations. Mr. Shriver has unique experience in the areas of Space Shuttle operations and launch integration. In his most recent position and as Space Shuttle Program Manager, Launch Integration, he acquired unique knowledge of flight hardware integration, test, and check out, and established the current standard technical determinations that are required to establish flight readiness. He headed the Program Requirements Control Board, which meets daily to enable NASA, the prime contractors, and subcontractors to resolve pre-flight anomalies related to orbiter and payload processing. In addition to his experience in Space Shuttle processing and launch, Mr. Shriver has expert knowledge of the Space Shuttle vehicle systems, flight hardware, mission integration and mission execution gained through his 15 years of service as a Space Shuttle astronaut, mission commander, and Deputy Chief of the Astronaut Office. I am satisfied that, as the Deputy Program Manager for Operations for the United Space Alliance in connection with the Space Flight Operations Contract, NAS 9–20000, he will be required to utilize these qualifications in the performance of his duties with respect to the processing and launch of the Space Shuttle and related systems, and that it will be in the national interest to permit him to appear before and communicate with Government officials on these matters.

Therefore, after consultation with the Office of Government Ethics, I have waived the post-employment prohibitions of subsections 207(a)(1), 207(a)(2), and 207(c) of Title 18 of the United States Code in order to permit direct communications between Mr. Shriver and employees of NASA and other Government agencies with respect to space flight activities.

Dated: July 27, 2000.

Daniel S. Goldin,

NASA Administrator.

[FR Doc. 00–19755 Filed 8–3–00; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company to withdraw its May 3, 1999, application, as supplemented March 16, 2000, for proposed amendment to Facility Operating License Numbers NPF–4 and NPF–7, for the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

The proposed amendment would have revised the Technical Specifications to ensure the emergency ventilation system is maintained operable consistent with the assumptions in the radiological dose consequences re-analysis from a large break loss-of-coolant accident, and to clearly identify that the ventilation

system is a shared system between the two units.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 16, 1999 (64 FR 32291). However, by letter dated July 25, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 3, 1999, supplement dated March 16, 2000, and the licensee's letter dated July 25, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 28th day of July 2000.

For the Nuclear Regulatory Commission.

Stephen Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19759 Filed 8–3–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 28, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Monday, August 28, 2000—1 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 26, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–19760 Filed 8–3–00; 8:45 am]

BILLING CODE 7590–01–U

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Forms RI 20–7 and RI 30–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 20–7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 12,480 RI 20–7 forms will be completed annually. Each form requires approximately 30 minutes to complete. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed annually. Each form requires approximately 1 hour to complete. The total annual burden is 6,490.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before October 3, 2000.

ADDRESS: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19769 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement With Change of an Information Collection: SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reinstatement with change of information collection. SF 2823, Designation of Beneficiary: Federal Employees' Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

We estimate 40,000 SF 2823 forms are completed annually by annuitants and 1,000 forms are completed by assignees. Each form takes approximately 15 minutes to complete for an annual estimated burden of 10,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

Laura Lawrence, Senior Insurance Benefits Specialist, Insurance Planning & Evaluation Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, AMB, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19767 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement Without Change of an Information Collection: Reemployment of Annuitants, 5 CFR 837.103

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reinstatement without change of an information collection. Section 837.103 of Title 5, Code of Federal Regulations, requires agencies to collect information from retirees who become employed in Government positions. Agencies need to collect timely information regarding the type and amount of annuity being received so the correct rate of pay can be determined. Agencies provide this information to OPM so a determination can be made whether the reemployed retiree's annuity must be terminated.

We estimate 3,000 reemployed retirees are asked this information annually. It takes each reemployed retiree approximately 5 minutes to complete for an annual estimated burden of 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–3540

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, AMB, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19768 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Director, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on July 20, 2000 (65 FR 45117). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1, 2000, and June 30, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during June 2000.

Schedule B

No Schedule B authorities were established or revoked during June 2000.

Schedule C

The following Schedule C authorities were established during June 2000:

Department of Agriculture

Staff Assistant to the Press Secretary. Effective June 2, 2000.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective June 2, 2000.

Department of Commerce

Special Assistant to the Deputy Director, Office of Policy and Strategic Planning. Effective June 2, 2000.

Special Assistant to the Assistant Secretary for National

Telecommunications and Information Administration. Effective June 5, 2000.

Deputy Director for External Affairs to the Director of External Affairs. Effective June 5, 2000.

Confidential Assistant to the Director of External Affairs. Effective June 8, 2000.

Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective June 19, 2000.

Special Assistant to the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office. Effective June 19, 2000.

Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective June 29, 2000.

Department of Defense

Confidential Assistant to the Assistant Secretary of Defense for Public Affairs. Effective June 8, 2000.

Foreign Affairs Specialist to the Deputy Assistant Secretary of Defense (Peacekeeping and Humanitarian Affairs). Effective June 19, 2000.

Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness. Effective June 19, 2000.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective June 21, 2000.

Department of Education

Special Assistant to the Director, Office of Public Affairs. Effective June 2, 2000.

Special Assistant to the Deputy Secretary. Effective June 21, 2000.

Special Assistant to the Director, Scheduling and Briefing, Office of the Secretary. Effective June 29, 2000.

Department of Health and Human Services

Special Assistant to the Chief of Staff. Effective June 29, 2000.

Department of Housing and Urban Development

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective June 2, 2000.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective June 2, 2000.

Special Projects Advisor to the Special Events Coordinator, Office of the Assistant Secretary for Administration. Effective June 21, 2000.

Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective June 29, 2000.

Department of the Interior

Special Assistant to the Deputy Assistant Secretary—Policy and International Affairs. Effective June 2, 2000.

Special Assistant to the Deputy Chief of Staff. Effective June 8, 2000.

Deputy Director, Office of Intergovernmental Affairs to the Deputy Chief of Staff. Effective June 21, 2000.

Department of Justice

Assistant Director to the Director, Intergovernmental Affairs. Effective June 1, 2000.

Department of Labor

Special Assistant to the Assistant Secretary of Labor. Effective June 2, 2000.

Secretary's Representative, Philadelphia, PA to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective June 2, 2000.

Special Assistant to the Deputy Secretary of Labor. Effective June 2, 2000.

Department of State

Special Assistant to the United States Representative to the American States, Bureau of Western Hemisphere Affairs. Effective June 1, 2000.

Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective June 2, 2000.

Program Officer to the Director, Foreign Press Centers. Effective June 2, 2000.

Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs. Effective June 19, 2000.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective June 21, 2000.

Department of Transportation

Special Assistant to the Associate Director for Media Relations and Special Projects. Effective June 19, 2000.

Department of the Treasury

Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs). Effective June 12, 2000.

Department of Veterans Affairs

Executive Assistant to the Assistant Secretary for Congressional Affairs. Effective June 28, 2000.

Export—Import Bank of the United States

Special Assistant to the President and Chairman. Effective June 2, 2000.

Farm Credit Administration

Secretary to the Chairman and CEO. Effective June 30, 2000.

Public Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective June 30, 2000.

Federal Maritime Commission

Counsel to a Commissioner of the Federal Maritime Commission. Effective June 19, 2000.

Federal Trade Commission

Director of Public Affairs (Supervisory Public Affairs Specialist) to the Chairman. Effective June 29, 2000.

National Transportation Safety Board

Special Assistant to the Board Member. Effective June 19, 2000.

Confidential Assistant to the Chairman. Effective June 23, 2000.

Office of Management and Budget

Public Affairs Officer to the Associate Director for Communications. Effective June 23, 2000.

Office of Personnel Management

Special Assistant to the Director, Office of Personnel Management. Effective June 21, 2000.

Small Business Administration

Regional Administrator, Region VII, Kansas City, MO, to the Administrator, Small Business Administration. Effective June 5, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19766 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27204]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 28, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the

Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 22, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 22, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Monongahela Power Company 70–9719

Notice of Proposal To Amend Articles of Incorporation; Make Cash Payments; Order Authorizing Solicitation of Proxies

Monongahela Power Company ("Monongahela Power"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, a wholly owned combination gas and electric utility subsidiary of Allegheny Energy, Inc. ("Allegheny"), a registered holding company, has filed a declaration with the Commission under sections 6(a)(2), 7(e) and 12(e) of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 54, 62(d) and 65 under the Act.

Monongahela Power proposes to solicit proxies from the holders of its outstanding shares of preferred stock ("Proxy Solicitation") for use at a special meeting ("Special Meeting") of its stockholders to consider a proposed amendment to its Articles of Incorporation (the "Articles") that would eliminate in its entirety paragraph (a) of subdivision (11) of section 1.5 of the Articles, a provision restricting the amount of unsecured debt issuable by Monongahela Power ("Proposed Amendment").[1]

Monongahela Power proposes that the Special Meeting take place on or about August 30, 2000. Adoption of an amendment to the Articles requires the affirmative vote at the Special Meeting by the holders of not less than two-thirds of the outstanding shares of each of (i) the preferred stock of all series ("Preferred Stock"),[2] voting together as one class, and (ii) the common stock.[3] If the Proposed Amendment receives the required number of votes, then Monongahela Power seeks authority to amend its Articles.

If the Proposed Amendment is adopted, Monongahela Power proposed to make a special cash payment of $1.00 per share ("Cash Payment") to each preferred stockholder whose shares of Preferred Stock are properly voted at the Special meeting (in person by ballot or by proxy) in favor of the Proposed Amendment. Monongahela Power proposes to disburse Cash Payments out of its general funds, promptly after adoption of the Proposed Amendment.

Monongahela Power requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d). It appears to the Commission that Monongahela Power's declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

Allegheny states, for purposes of rule 54, that the conditions specified in rule 53(a) are satisfied and that none of the adverse conditions specified in rule 53(b) exist. As a result, the Commission will not consider the effect on the Allegheny system of the capitalization or earnings of any Allegheny subsidiary that is an exempt wholesale generator or foreign utility company, as each is defined in sections 32 and 33 of the Act, respectively, in determining whether to approve the proposed transactions.

Fees, commissions, and expenses to be incurred in connection with the transactions described in the declaration are expected not to exceed $130,000. Monongahela Power states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies can become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19732 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[1] To issue unsecured debt over the limitation set out in the Articles, Monongahela Power currently must have a majority vote of the preferred stockholders. In S.E.C. file no. 70–9625, Monongahela Power seeks authority to acquire Mountaineer Gas Company, an indirectly owned gas utility subsidiary of Energy Corporation of America ("ECA"), a Colorado public utility holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act. Monongahela Power states that at the time of financing the proposed acquisition, Monongahela Power would like the flexibility to incur unsecured debt. Monongahela Power states that elimination of the provision will allow it to be more flexible and competitive.

[2] The five series of Preferred Stock consist of the 4.40% Series, of which 90,000 shares are outstanding; the 4.50% Series C, of which 60,000 shares are outstanding; the 6.28% Series D, of which 50,000 shares are outstanding; and the 7.73% Series L, of which 50,000 shares are outstanding.

[3] Allegheny is the holder of all of Monongahela Power's outstanding shares of common stock. Allegheny has advised Monongahela Power that it intends to vote all of the outstanding shares of common stock of Monongahela Power in favor of the Proposed Amendment.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24586; 812–11946]

CompleTel Europe N.V.; Notice of Application

July 28, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF THE APPLICATION: CompleTel Europe N.V. ("CompleTel" or "Applicant") requests an order exempting it from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date Applicant no longer may be deemed to be an investment company.

FILING DATES: The application was filed on January 14, 2000 and amended on July 26, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 25, 2000,and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request,and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, c/o Anthony Vertuno, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Washington, D.C. 20007.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Applicant, a Dutch public limited company formed in 1998, is a subsidiary of CompleTel LLC, a Delaware limited liability company. Applicant, through its wholly-owned subsidiaries, is a facilities-based provider of telecommunications services in Western Europe. As such, it owns and operates the telecommunication networks (including local fiber loops, telecommunications switches, switching facilities, network operations and customer care facilities) through which Applicant provides telecommunications services to its customers. Applicant's wholly-owned operating subsidiaries applied for and were granted telecommunications facility operator and service provider licenses for their respective markets in France, Germany and the United Kingdom and began deploying networks in its target markets.

2. To finance the acquisition, construction and deployment of its network facilities in each of its target markets, Applicant requires a significant amount of capital. In addition, as a key element of its deployment strategy, Applicant has developed a financing plan predicated on pre-funding each market's expansion to the point at which that market's operating cash flow is sufficient to fund both the operating costs (including working capital, debt service and cash flow deficits) and capital expenditures. Consistent with this financing plan, CompleTel has raised capital whenever it is available on attractive terms and may do so in the future in order to pre-fund its network construction and deployment in targeted markets in pursuit of its business plan.

3. As of April 15, 2000, Applicant had total assets of approximately $817.7 million, of which $118.5 million have been invested in property, equipment and other long-term assets, and $665.6 million in cash, "government securities" (as defined in section 2(a)(16) of the Act), and "investment securities" (as defined in section 3(a)(1)(C) of the Act) in accordance with Applicant's investment objectives of preserving principal and maintaining liquidity to meet daily cash needs and earning a competitive rate of return within the limits of these objectives. Applicant states that its investment securities may consist of money market funds or the European equivalent of money market funds and commercial paper rated A–1/P–1 denominated in U.S. dollars, euros and other Western European currencies ("Qualified Investments"). Applicant states that it holds Qualified Investments solely for the purpose of preserving capital pending the application of capital to its operations.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it "is engaged or proposes to engage in it the business of investing, reinvesting, owning, holding or trading in securities, and owns on proposes to acquire investment securities having a value exceeding 40 per cent of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines "investment securities" to include all securities except government securities, securities issued by employees' securities companies and securities issued by majority-owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Applicant states that, pending utilization in the construction and deployment of its networks and the development of its competitive local exchange business, the proceeds of its capital raising activities may be invested in Qualified Investments so as to cause Applicant's investment securities to exceed 40% of its total assets.

3. Section 6(c) of the Act permits the Commission to except any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants requests an exemption under section 6(c) from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date Applicant no longer may be deemed to be an investment company. Applicant believes that within this period its capital expenditures, including substantial investments in property, equipment and other long-term assets, will be sufficient to reduce its investment securities to less than 40% of its total assets.[1]

5. Applicant states that it has always been engaged primarily in the business of developing a Western European competitive local exchange carrier business. Applicant further states that its business activities to date have consisted primarily of the procurement of governmental authorizations, the acquisition of telecommunications equipment and facilities, the hiring of management and key personnel, the raising of capital, the construction and deployment of its fiber optic networks, the development, acquisition and integration of operation support systems and other back office systems, the negotiation of interconnection agreements with incumbent local exchange carriers and the development of its Internet service provider business. Applicant thus asserts that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Condtions

Applicant agrees that the requested exemption will be subject to the following conditions:

1. Applicant will not purchase or otherwise acquire any investment securities other than Qualified Investments.

2. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding or trading in securities.

3. Applicant will allocate and utilize its accumulated cash and securities for the purpose of funding the construction and deployment of its networks and the development of its competitive local exchange business and Internet and related services.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19731 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant states that it relied on rule 3a–2 under the Act for a period that began in February 1999. Rule 3a–2 provides a one year exemption from the definition of investment company for certain transient investment companies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43086, File No. 4–429]

Joint Industry Plan; Order Approving Options Intermarket Linkage Plan Submitted by the American Stock Exchange LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange LLC

July 28, 2000.

I. Introduction

On January 19, 2000, pursuant to an order issued by the Securities and Exchange Commission ("SEC" or "Commission"),[1] the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), International Securities Exchange LLC ("ISE"),[2] Pacific Exchange, Inc. ("PCX"), and Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission proposed plans for the purpose of creating and operating an intermarket options market linkage ("plans"). In accordance with Rule 11Aa3–2 of the Act,[3] Amex, CBOE, and ISE filed a plan (the "Amex/CBOE/ISE plan"). Separately, PCX and Phlx filed with the Commission proposals for alternative linkage plans. Although the three plans are identical with respect to a majority of the issues pertaining to a linkage, the exchanges were unable to reach agreement—and the plans differ—on several significant matters. Specifically, the exchanges failed to agree about whether the linkage should require that orders be routed to exchanges based on price/time priority,[4] who should have access to the linkage, and the appropriate remedy owed when one market trades at a price inferior to that displayed on another market (known as a "trade-through").

On March 2, 2000, a detailed summary of the Amex/CBOE/ISE plan, the PCX plan, and the Phlx plan was published for comment in the **Federal Register**.[5] The Commission received comments on the proposed linkage plans from 24 market participants.[6] This Order approves the Amex/CBOE/ISE plan, thus authorizing the Amex, CBOE, and ISE[7] to act jointly to implement an intermarket linkage as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Act.[8]

II. Background

In 1975, Congress directed the Commission to oversee the development of a national market system.[9] One of the principal purposes of the national market system is to assure "the practicability of brokers executing investors' orders in the best market."[10] In the equity and options market, price transparency and the duty of best execution owed by brokers to their customers are central to achieving this and other national market system goals. In the equity market, the Commission's Quote Rule[11] and the Intermarket Trading System[12] (which requires exchanges to avoid intentionally trading through another exchange's displayed quote) are additional components of the national market system that have assisted customers in receiving quality executions of their orders. At the time these additional national market system mechanisms were developed in the equity markets, however, the trading of standardized options was relatively new.[13] As a result, the Commission deferred applying these initiatives to the options markets to give options trading an opportunity to develop.

The absence in the options markets of firm quotes and intermarket linkages makes it more difficult for broker-dealers to ensure the best execution of customer orders for multiply-traded options. The obstacles to access between the options exchanges makes reaching any better quotes displayed on another market difficult in many cases. Moreover, other than exchange rules

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[1] On October 19, 1999, the Commission issued an order under Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78k–1(a)(3)(B), directing the options exchanges to file a national market system plan within 90 days to link the options markets. *See* Securities Exchange Act Release No. 42029, 64 FR 57674 (October 26, 1999) ("October 19, 1999 Order").

[2] The Commission's October 19, 1999 Order also requested the ISE to participate with the options exchanges in the development of an intermarket linkage plan. On January 19, 2000, ISE had not been approved as a national securities exchange. Therefore, the ISE was not able to be a signatory to a linkage plan at that time, even though it submitted a plan identical to that filed by Amex and CBOE. The ISE was subsequently registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[3] 17 CFR 240.11Aa3–2.

[4] Both PCX and Phlx proposed price/time priority as an element of the linkage. In general, a price/time priority rule would require an exchange that receives an order, but that was not the first exchange to display the best price, to route the order to the exchange that was the first to display the best price.

[5] *See* Securities Exchange Act Release No. 42456 (February 24, 2000), 65 FR 11402. At the same time, the full text of each of the plans was made available to interested persons on the Commission's website.

[6] Letters to the Commission from Salvatore F. Sodano, Chairman and Chief Executive Officer ("CEO"), Amex, dated January 19, 2000 and May 3, 2000 ("Amex Letter"); William J. Brodsky, CEO, CBOE, dated January 19, 2000, and two dated March 31, 2000 ("CBOE Letter"); U.S. Department of Justice to Commission ("DOJ Letter"); David Krell, President and CEO, ISE, dated January 19, 2000, and from Michael J. Simon, Senior Vice President and Secretary, ISE, dated April 3, 1999 ("ISE Letter"); Philip D. DeFeo, Chairman and CEO, PCX, dated April 3, 2000 ("PCX Letter"); William C. McGowan, Chairman, Options Committee, Securities Industry Association, dated April 11, 2000 ("SIA Letter"); Meyer S. Frucher, Chairman and CEO, Phlx, dated January 19, 2000 ("Phlx Letter"); Douglas J. Engmann, President and CEO, ABN–AMRO, dated March 24, 2000 ("ABN Letter"); Kevin M. Luthringhausen, Executive Managing Member, Botta Trading, LLC, dated April 10, 2000 ("Botta Letter"); George Brunelle, Brunelle & Hadjikow, dated April 25, 2000 ("Brunelle Letter"); Lon Gorman, Vice Chairman and President, Capital Markets & Trading Group, Charles Schwab & Co., Inc., dated April 18, 2000 ("Charles Schwab Letter"); Craig S. Tyle, General Counsel, Investment Company Institute, dated April 3, 2000 ("ICI Letter"); Thomas Peterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers, The Timber Hill Group, dated April 3, 2000 and April 10, 2000 ("Interactive Letter"); Peter Hajas, CEO, Knight Financial Products LLC, dated April 3, 2000 ("Knight Letter"); Samuel F. Lek, CEO, Lek Securities Corporation, ("Lek Letter"); Terry Brookshire, President, OptiMark Options/Derivatives, OptiMark Technologies, Inc., dated April 3, 2000 ("OptiMark Letter"); Richard F. Brueckner, Chief Operating Officer, Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation, dated April 5, 2000 ("Pershing Letter"); Andrew Cader, Senior Managing Director, Spear, Leeds & Kellogg, dated April 6, 2000 ("Spear, Leeds Letter"); Joel Greenberg, Managing Director, Susquehanna Investment Group, dated April 3, 2000 ("Susquehanna Letter"); Judy A. Basham, dated April 17, 2000 ("Basham Letter"); F. Steven Donahue, dated March 27, 2000 ("Donahue Letter"); P. Robert Fenwick, dated April 1, 2000 ("Fenwick Letter"); Mike Ianni, dated March 19, 2000, March 26, 2000, April 1, 2000, April 3, 2000, and April 4, 2000 ("Ianni Letter"); and Goldman, Sachs & Co. and Morgan Stanley Dean Witter & Co., dated July 20, 2000 ("Goldman/Morgan Letter"). A summary of comments received on the proposed linkage plans is available in the Commission's Public Reference Room (File No. 4–429).

[7] The Commission's Order does not require those options exchanges that are not participants in the plan to become participants in the Amex/CBOE/ISE plan. The plan does, however, include express provisions pursuant to which other options exchanges may become participants by executing the plan, paying a fee applicable to new participants, and obtaining the Commission's approval of the plan as amended to reflect the new participant. *See* Amex/CBOE/ISE plan, Sections 4(c) and 5(c)(ii).

[8] In addition, as described below, the Commission is separately proposing for comment a Trade-Through Disclosure Rule and modifications to the Commission's Quote Rule to apply to the options markets. *See infra* note 33 and accompanying text.

[9] Pub. L. No. 94–29 Stat. 97 (1975).

[10] 15 U.S.C. 78k-1(a)(1)(C)(iv).

[11] Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[12] The Intermarket Trading System ("ITS") Plan is an effective national market system linkage plan linking the equity markets. The ITS Plan was first approved on an interim basis in 1978. Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419 (April 24, 1978).

[13] The trading of standardized options on securities exchanges began in 1973, with the organization of CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973), 1 S.E.C. Doc.11 (February 13, 1973). Currently, Amex, CBOE, ISE, PCX, and Phlx are the only national securities exchanges that trade standardized options.

that require members' quotes to be firm for customer orders, market makers are not subject to a firm quote obligation. Thus, market makers' quotes are not required to be firm for broker-dealers' proprietary orders, or for agency orders routed from another exchange. Instead, options exchanges have adopted "trade-or-fade" rules, requiring market makers to move their quote if they are unwilling to trade at that price. Accordingly, firms representing customer orders cannot be certain that a better price quoted on another exchange is actually available to them.

Since the establishment of the options exchanges, the Commission has repeatedly called for market integration facilities for the options markets to achieve the national market system goals.[14] In 1991, in response to these calls, four of the five options exchanges[15] submitted a proposal for the development of a linkage.[16] The plan was never adopted, in part, because the exchanges did not agree on the feasibility of implementing a single linkage plan. More recently, Chairman Levitt wrote to the options exchanges emphasizing the need for the options markets to develop mechanisms, such as linkages, firm quotes, and trade-through protections, to protect customer orders.[17] Finally, because of the growing practice by the options exchanges of multiply trading options classes previously listed on a single exchange, the need for measures to ensure that such customer orders are not executed at prices inferior to prices quoted on another options exchange has become more acute. For this reason, on October 19, 1999, the Commission ordered the markets to submit a linkage plan within 90 days that, at a minimum, included uniform trade-through rules and expanded firm quote obligations to cover agency orders presented by competing exchanges.[18] In response to this Order, on January 19, 2000, Amex, CBOE, and ISE submitted the Amex/CBOE/ISE plan and PCX and Phlx each filed separate plans.

III. Description of the Amex/CBOE/ISE Plan

The Amex/CBOE/ISE plan proposes an intermarket linkage for the following three types of orders:

- Customer orders, where the market maker chooses not to "step up" to match a better price displayed on an away market;
- Principal orders of eligible market makers[19] and
- Orders intended to satisfy trade-through liability.

The means of routing these three types of orders, along with certain limitations on their routing, are discussed below.

A. Customer Orders Where Market Makers Choose Not To Step Up

The Amex/CBOE/ISE plan would permit an eligible market maker representing a customer order to transmit through the linkage a new type of order—a principal acting as agent order ("P/A Order").[20] If the size of the P/A Order is no larger than the Firm Customer Quote Size,[21] the Amex/CBOE/ISE plan provides that an eligible market maker that chooses to route the order away can send it through the linkage for execution in the automatic execution system of a participating exchange at the best price ("NBBO").[22] The exchange receiving the P/A Order through the linkage must execute it in its automatic execution system, if its disseminated quote is equal to or better than the limit price attached to the P/A Order ("reference price")[23] at the time the order arrives at the receiving exchange.

If the size of the P/A Order is larger than the Firm Customer Quote Size, the Amex/CBOE/ISE plan provides two alternatives to an eligible market maker that chooses to route the order. First, the eligible market maker can send a P/A Order representing the entire customer order through the linkage. If the receiving exchange's disseminated quote is equal to or better than the reference price of the order, the receiving exchange must execute that order for at least the Firm Customer Quote Size and, within 15 seconds of receipt of such P/A Order, inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. Second, an eligible market maker can send as a P/A Order that portion of the customer order equal to the Firm Customer Quote Size. Then, 15 seconds after reporting the execution of this P/A Order, if the receiving exchange continues to disseminate the same quote, and that quote is the NBBO, the market maker may send a second P/A Order. This second P/A Order must be for the lesser of 100 contracts or the entire remainder of the customer order the sending eligible market maker is representing. Under either alternative, if the receiving exchange does not execute the entire P/A Order, it must move its

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[14] See Report of the Special Study of the Options Markets to the SEC, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading); Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options" (November 1986); Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market" (November 1986); and Securities Exchange Act Release No. 26871 (May 26, 1989), 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an intermarket linkage). In 1990, then Chairman Breeden requested that the options exchanges develop an intermarket linkage plan. *See* letter from Chairman Breeden to the registered options exchanges dated January 9, 1990.

[15] At that time, the five options exchanges were the CBOE, PCX, Amex, Phlx, and the New York Stock Exchange ("NYSE"), which later sold its options business to the CBOE. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[16] *See* Securities Exchange Act Release No. 30187 (January 14, 1992), 57 FR 2612 (January 22, 1992) (soliciting comments on an intermarket linkage plan submitted by Amex, CBOE, NYSE, and PCX).

[17] *See* letters from Arthur Levitt, Chairman, SEC, to Richard F. Syron, Chairman and CEO, Amex; William J. Brodsky, Chairman and CEO, CBOE; Robert M. Greber, Chairman and CEO, PCX; and Meyer S. Frucher, Chairman and CEO, Phlx, dated February 10, 1999. *See also* letters from Chairman Levitt, to Salvatore Sodano, Chairman and CEO, Amex; William J. Brodsky, Chairman and CEO, CBOE; Philip D. DeFeo, Chairman and CEO, PCX; and Meyer S. Frucher, Chairman and CEO, Phlx; dated October 1, 1999.

[18] *See* note 1, *supra*.

[19] An "eligible market maker" is defined in the Amex/CBOE/ISE plan as a "market maker" that: (1) Is assigned to provide, and is providing, two-sided quotations in the eligible option class; (2) is participating in its market's automatic execution system in such eligible option class; and (3) is not prohibited from sending "principal orders" in such eligible option class through the linkage pursuant to the plan.

[20] A P/A Order is defined as an order for the principal account of a market maker authorized to represent customer orders, which reflects the terms of a related unexecuted customer order for which the market maker is acting as agent.

[21] Under the Amex/CBOE/ISE plan, the Firm Customer Quote Size is the lesser of: (1) The number of contracts the exchange sending the P/A Order guarantees it will automatically execute for customer orders that are entered directly in that market; or (2) the number of contracts the receiving exchange guarantees it will automatically execute for customer orders that are directly entered in that market. However, in no event, would a P/A Order be guaranteed fewer than 10 contracts.

[22] The term "NBBO" is defined as the national best bid and offer in a series of an eligible option class calculated by a participating exchange. Currently, a consolidated NBBO does not exist for the option markets. Instead, each options exchange separately calculates the best bid or offer for each multiply-traded options class.

[23] Except with respect to a satisfaction order, the reference price is equal to the quotation disseminated by the receiving exchange at the time the linkage order is transmitted. With respect to a satisfaction order, the reference price is the price to which the member in the sending exchange is entitled pursuant to the linkage plan. *See* Section III.C, *infra* for a discussion of satisfaction orders.

quote to a price inferior to the reference price of the P/A Order.

In addition, an eligible market maker that sends a P/A Order through the linkage and who does not receive a reply within 30 seconds may reject any response received thereafter purporting to report a total or partial execution of that order. The eligible market maker that sent the P/A Order must inform such executing exchange within 15 seconds that it is rejecting the execution.

Finally, the Amex/CBOE/ISE plan provides that the linkage should not be used as an order delivery system through which all or a substantial portion of a participant's customer orders are executed using P/A Orders routed through the linkage.

B. Principal Orders of Eligible Market Makers

The Amex/CBOE/ISE plan would allow eligible market makers to send proprietary orders through the linkage. Such orders must be at the NBBO. If the principal order is not larger than the Firm Principal Quote Size,[24] the exchange receiving such order through the linkage must execute it in its automatic execution system, if its disseminated quote is equal to or better than the reference price at the time the order arrives. If the principal order is larger than the Firm Principal Quote Size, the receiving exchange must execute the order in its automatic execution system for at least the Firm Principal Quote Size and, within 15 seconds of receipt of such order, inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. In addition, if the receiving exchange does not execute the entire principal order, it must move its quote to a price inferior to the reference price of the principal order. An eligible market maker may not send a second principal order in the same eligible option class for at least 15 seconds after it sent the first principal order, unless the receiving exchange changes its quote and that quote is the NBBO. If the receiving exchange's disseminated quote does not change for one minute after the automatic execution of the first principal order, the exchange that initially sent the principal order for automatic execution may send only principal orders for greater than the Firm Principal Quote Size.

As with P/A Orders sent through the linkage, an eligible market maker that sends a principal order through the linkage and who does not receive a reply within 30 seconds may reject any response received thereafter purporting to report a total or partial execution of that order. The market maker that sent the principal order must inform the receiving exchange within 15 seconds that it is rejecting the response.

As a limitation on eligible market makers' access to the linkage for sending principal orders, the Amex/CBOE/ISE plan would impose an "80/20 Test." Under this test, a market maker that effected 20 percent or more of its market maker volume by sending principal orders through the linkage in a calendar quarter would be prohibited from sending principal orders through the linkage for the next calendar quarter (*i.e.*, would not be an "eligible market maker" for that period). Outgoing P/A Orders would not be included in this calculation.

C. Satisfaction of Trade-Through Liability

The Amex/CBOE/ISE plan provides that members of participant markets should avoid initiating trade-throughs, subject to certain exceptions, absent reasonable justification and during normal market conditions. Any member of a plan participant that does initiate a trade-through would be liable to the market maker who complains that its quote was traded through. Under the plan, there are a number of proposed exceptions to this trade-through liability, which include systems malfunction, failure of the receiving market to respond to a P/A or principal order within 30 seconds, complex trades, trading rotations, and non-firm quotations on the market that was traded through.

The Amex/CBOE/ISE plan provides that if a market that had its quote traded through complains within the specified time period, the member that initiated such trade-through would have to satisfy the complaining market by adjusting the price or canceling the trade. If customer orders constituted either or both sides of the transaction involved in the trade-through, each customer order would receive whichever of the following is most beneficial to the customer:

- The price of the trade that caused the trade-through;
- The satisfaction price, if the trade-through was satisfied; The satisfaction price would equal the bid or offer, unless the transaction that constituted the trade-through was a block trade,[25] in which case satisfaction would be the price of the transaction that caused the trade-through; or
- The adjusted price, if there was an adjustment.

The member initiating the trade-through is responsible for any differences.

With respect to the appropriate size of satisfaction, in the absence of disseminated size, the Amex/CBOE/ISE plan would limit the satisfaction of a trade-through to the verifiable number of customer contracts that were included in the disseminated bid or offer of each exchange that was traded through, subject to certain limitations. In particular, if the number of contracts to be satisfied in one or more exchanges exceeds the size of the transaction that caused the trade-through, satisfaction will be limited to the size of the transaction that caused the trade-through.

IV. Discussion

A. Introduction

In Section 11A of the Act,[26] Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. In particular, Section 11A(a)(3)(B) of the Act[27] authorizes the Commission "by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities." Rule 11Aa3–2 establishes the procedures for filing, amending, and approving national market system plans.[28] Pursuant to paragraph (c)(2) of Rule 11Aa3–2, the Commission's approval of a national market system plan is conditioned upon a finding that the proposed plan "is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market

[24] Under the Amex/CBOE/ISE plan, the Firm Principal Quote Size means the number of contracts that a receiving exchange guarantees it will execute at its disseminated quote for incoming principal orders, but in no event shall this number be fewer than 10 contracts.

[25] The term "block trade" is defined as a trade that: (i) is of block size, defined as 500 or more contracts and a premium value of at least $150,000; (ii) is effected at a price outside of the NBBO; and (iii) involves either a cross (where a member of the exchange represents all or a portion of both sides of the trade) or any other transaction that is not the result of an execution at the current bid or offer on the exchange.

[26] 15 U.S.C. 78k–1.

[27] 15 U.S.C. 78k–1(a)(3)(B).

[28] 17 CFR 240.11Aa3–2.

system, or otherwise in furtherance of the purposes of the Act."[29]

After carefully considering the proposed linkage plans and the issues raised by the comment letters, the Commission has determined to approve, pursuant to Section 11A(a)(3)(B) of the Act,[30] and Rule 11Aa3–2 thereunder,[31] the Amex/CBOE/ISE plan, thus authorizing the Amex, CBOE and ISE to act jointly to implement the plan's intermarket linkage.[32] In approving the Amex/CBOE/ISE plan, the Commission finds that, as discussed in greater detail below, the Amex/CBOE/ISE plan is consistent with the Act in that it provides, among other things, a mechanism for assuring price priority for published quotes and obtaining the quoted price for customer orders, and therefore, would enhance investor protections and the maintenance of fair and orderly markets.

Specifically, the Commission believes that the continuing growth in the number of options classes traded on more than one exchange has significantly increased the need for a vehicle to assure price priority for published options quotes. Without an efficient linkage between the options markets, it is difficult for one options exchange to access better prices on another exchange. Given the recent increase in multiply-traded options classes, the absence of an efficient mechanism allowing one market to access a better price displayed by another exchange heightens the Commission's concern that better priced quotes may not be honored and that investors may not receive the best price available for their orders. The Commission believes that the Amex/CBOE/ISE plan, if implemented, would help reduce the frequency of intermarket trade-throughs of published quotations.

The Commission recognizes the limited scope of the Amex/CBOE/ISE plan. Notably, the Amex/CBOE/ISE plan does not attempt, among other things, to give priority to customer limit orders across markets or to encourage quote competition by rewarding market makers who establish the NBBO. The Commission, however, believes that it would be premature at this time to require the inclusion of either customer limit order protection or price/time priority as elements of a linkage between the options markets.

Moreover, while the Commission has determined at this time to approve the Amex/CBOE/ISE plan, the Commission recognizes that there may be a number of equally acceptable means of achieving the Commission's goal of encouraging price priority by limiting intermarket trade-throughs of customer orders. To that end, the Commission has separately proposed modifications to its Quote Rule to apply to the options exchanges and options market makers the same obligations, with certain modifications, currently imposed on equity markets and market makers. The Commission is also proposing a rule that would require a broker-dealer to disclose to customers when the customer's order is executed at a price inferior to the best available quote, unless the order is routed only to options exchanges that participate in a plan that limits trade-throughs.[33] The Commission believes that its approval of the Amex/CBOE/ISE plan, coupled with the rulemaking separately proposed, should minimize the probability of intermarket trade-throughs involving customer orders.

B. Price/Time Priority

One way to encourage market makers to quote competitively is through a rule that gives priority to quotes based on price and time. Generally, priority among orders and quotes within an exchange is based on price and time.[34] A requirement that priority across markets be based on price and time has also been suggested as a way to reward market makers who are the first in time at the best quote. In general, an intermarket requirement of price/time priority would require an exchange that receives an order, but that was not the first exchange to display the best price, to route the order to the exchange that was first at the best price. The PCX[35] and Phlx[36] each incorporated price/time priority as an element of their proposed linkage plans. As discussed above, the Amex/CBOE/ISE plan does not include price/time priority and instead, would allow the exchange initially receiving an order to step up to match the better price being disseminated by another market.

In addition to the PCX and Phlx, several commenters supported the notion of price/time priority as an element of an intermarket linkage plan. One commenter noted that without price/time priority, there is no incentive

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[29] 17 CFR 240.11Aa3–2(c)(2).

[30] 15 U.S.C. 78k–1(a)(3)(B).

[31] Pursuant to paragraph (c)(2) of Rule 11Aa3–2 under the Act, the Commission designates up to 180 days from the date of publication of notice of the filing of a national market system plan for its approval of the Amex/CBOE/ISE plan. The Commission finds that, due to the complexity of issues relating to an intermarket linkage between the options markets, it is necessary and appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets to designate this longer period. 17 CFR 240.11Aa3–2.

[32] The Commission's approval of the Amex/CBOE/ISE plan should not be construed as a rejection on the merits of either the Phlx or the PCX submissions. Neither of those submissions could be approved as a national market system plan pursuant to Rule 11Aa3–2 under the Act, 17 CFR 240.11Aa3–2, because neither was filed by two or more sponsors, as required by the Rule. In fact, the Commission would consider approving other national market system plans relating to intermarket linkages between the options markets, submitted by two or more markets.

[33] *See* Securities Exchange Act Release No. 43085 (July 28, 2000) (Firm Quote and Trade-Through Disclosure for Options Proposal). The Commission's proposal would require a broker-dealer to disclose to its customer when a transaction in listed options was effected at a price that trades through a better published price, and the better published price. The broker-dealer would be excepted from the disclosure requirement of the proposed rule if the transaction is effected on an options exchange that is a participant in an effective national market system options linkage plan that includes provisions to limit customer orders from being executed at a price that trades through a better published price, including prices published other than by a linkage plan participant. In addition, the Commission is proposing amendments to its Quote Rule, 17 CFR 240.11Ac1–1, to require quotes for listed options to be firm.

[34] The exchanges, however, have rules that grant certain market participants priority based on other factors. For example, exchanges' rules permit specialists, under certain circumstances, to trade ahead of others in a trading crowd with a certain percentage of every order, known as specialist guarantees. See CBOE Rule 8.87; ISE Rule 713(e); PCX Rule 6.82(d); Phlx Rule 1014(g); see also Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000) (File No. SR–Amex–00–30). In addition, some exchanges' rules, subject to certain requirements, grant order entry firms priority over members of the trading crowd to trade as principal with up to 40% of each of their customers' orders above a certain size, known as facilitation guarantees. See Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000) (File No. SR–Amex–99–36); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (File No. SR–CBOE–99–10); and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000) (File No. SR–PCX–99–18). Finally, all of the exchanges have automatic execution systems for small public customer orders that execute such orders against the accounts of market makers at each exchange's disseminated quote on a rotational basis without exposing such orders to the auction on the floor and its price/time priority rules.

[35] The PCX proposed that customer orders of 20 contracts or less would be automatically executed by the exchange that initially received the order only if that exchange was disseminating a quote with price/time priority, or if the exchange was at the NBBO (although not first in time) and provided price improvement for the order. If the exchange was not quoting at the NBBO at the time it initially received the order, it would be required to automatically generate a P/A Order and send it to the away market that was disseminating a quote with price/time priority, so long as the away exchange provided a firm customer quote of at least 20 contracts in the particular options class.

[36] The Phlx proposed a linkage plan that incorporated a strict price/time priority feature. The Phlx plan would require each exchange to build a front-end system to route all customer orders that would be eligible for automatic execution, as P/A Orders, either directly through the linkage or to the facilities manager if the exchange that initially received the order was not the first to disseminate the best price.

for market makers to show their best markets, thus making bid-ask spreads wider.[37] Other commenters argued that the best linkage plan would limit the imposition of price/time priority to small, non-contingent orders.[38]

A number of commenters stated, however, that strict price/time priority would undermine market competition by eliminating the ability of the exchanges to compete with each other on service factors, including: quick turnaround on fills, low costs, superior order handling systems, low-error rates, investor education, and enhanced liquidity and depth of the markets.[39] One commenter asserted that the price/time priority proposals were intended more to advance the perceived competitive positions of the exchanges supporting the proposals, than to benefit investors.[40] Another commenter suggested that the price/time priority proposals were actually anticompetitive because they would eliminate all forms of competition except one—the race to the quote.[41]

Other commenters contended that imposing an intermarket price/time priority rule would require the creation of a routing switch or consolidated limit order book ("CLOB") that would consist of a single execution facility, with a single point of failure, and that such a development would reduce incentives for the markets to innovate.[42]

Several commenters argued that decimalization, which may create pricing increments as small as a penny, would undermine a price/time priority requirement.[43] These commenters suggested that if a price/time priority requirement were imposed, an exchange could easily step ahead of another exchange or customer limit order by improving the NBBO by just a penny. This ability to improve the NBBO by as little as a penny could lead to competition based on which computer could update its quotes faster.[44]

At this time, the Commission believes that the proposed options intermarket linkage, even without a price/time priority component, is consistent with the requirements of the Act. The Commission does not, however, currently have sufficient information to satisfy itself that the potential benefits of a mandatory price/time priority requirement justify the potential drawbacks.

For example, the implementation of decimals is expected to have a dramatic impact on the minimum pricing increments in the options markets and may affect the behavior of market participants. At this point, however, before the U.S. securities markets have actually begun trading in decimals, it is impossible to gauge the impact of decimalization on the options markets. Because the Commission cannot reliably predict the effect of decimals on the quoting practices in the options markets, it would be premature to mandate a requirement that dictates order execution practices based on quoting practices that have not yet developed. Further, the Commission believes that it is prudent to wait until decimals are implemented to consider whether, in a decimals environment, an intermarket price/time priority requirement would or would not reduce competition among the exchanges.

Finally, the issue of whether price/time priority could negatively impact liquidity in a given market by requiring the routing of orders based on price alone, without consideration of the size demands of the order or an exchange's ability to execute the full size of the order, should be considered. For these reasons, the Commission believes that a price/time priority requirement is not a prerequisite to approval of an intermarket linkage plan in the options market. The Commission, nevertheless, continues to consider further ways to strengthen price competition and price priority within existing market structures.[45] In addition, the Commission is concerned about the impact on quote competition of payment for order flow and other non-price competition practices. To better inform the Commission about the nature, scope, and prevalence of payment for order flow and internalization arrangements and their influence on order routing patterns, the Commission's Office of Economic Analysis along with the Office of Compliance Inspections and Examinations plans to conduct a study of the development of these practices in the options markets since multiple listing.[46]

C. Customer Limit Order Protection

In its transmittal letter, the ISE proposed an alternative approach for handling P/A Orders that would provide a means of protecting customer limit orders. Under this alternative approach, if one market executes an order at another market's quoted price without quoting at that price, and if the other market's quote was for a customer limit order, the other market can require the first market to honor its displayed customer limit order. Also, under this alternative approach, if the exchange receiving an order decides to route an order to another market instead of stepping up to match the better quote, it would be required to route the order through the linkage based on price/time priority.

The Commission received three comments in support of a customer limit order protection component to a linkage.[47] One of these commenters believed that the Commission should not approve a linkage unless customer limit orders have the opportunity to interact with the flow of orders on other markets.[48] In addition, two commenters supported a customer limit order protection rule that would protect customer limit orders while continuing to allow a market maker to step up to match the NBBO.[49]

On the other hand, seven commenters either opposed or expressed serious reservations about the potential competitive impact, cost, feasibility, or utility of a customer limit order protection rule.[50] These commenters believed that such a rule would be tantamount to a CLOB, which could eventually turn the options markets into a single execution facility, with a potential single point of failure, rather than a system of competing markets.[51] Several commenters believed that this would create a disincentive for dealers to commit capital, disrupt trading, stifle innovation, and discourage firms from offering new services.[52]

In addition, two commenters expressed concern that a customer limit order protection rule could expose market makers who step up to match the NBBO to increased risk because such market makers could have to satisfy customer limit orders on another

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[37] Ianni Letter.

[38] DOJ Letter and Goldman/Morgan Letter.

[39] Amex Letter; Susquehanna Letter; Spear, Leeds Letter; Pershing Letter; SIA Letter; Charles Schwab Letter; and CBOE Letter.

[40] ISE Letter; *see also* Charles Schwab Letter.

[41] ISE Letter.

[42] Botta Letter; Charles Schwab Letter; and Knight Letter.

[43] Optimark Letter and Charles Schwab Letter.

[44] *See also* Spear, Leeds Letter.

[45] *See* Securities Exchange Act Release No. 43084 (July 28, 2000) (Disclosure of Order Routing and Execution Practices Proposal) and *supra* note 33.

[46] SEC Press Release No. 2000–97 (July 19, 2000) (Commission To Study Effect of Payment for Order Flow and Internalization in the Options Markets).

[47] Optimark Letter; Ianni Letter; and Pershing Letter.

[48] Optimark Letter.

[49] Ianni Letter and Pershing Letter.

[50] CBOE Letter; Botta Letter; Susquehanna Letter; Knight Letter; Spear, Leeds Letter; and Charles Schwab Letter; *see also* Amex Letter.

[51] CBOE Letter; Susquehanna Letter; and Charles Schwab Letter.

[52] Susquehanna Letter; Botta Letter; and Charles Schwab Letter.

market.[53] Therefore, one commenter stated, there would be less incentive for a market maker to provide liquidity, which could result in wider spreads or in market makers leaving the options exchanges' floors.[54] In addition, one commenter believed that for a customer limit order protection rule to be feasible, size would have to be disseminated to allow market makers to make informed decisions about whether to price match or route an order.[55]

Several commenters believed that the issue of limit order protection could be addressed by the exchanges imposing a customer limit order protection rule on their own members or allowing each specialist to determine the level of intermarket limit order protection it wishes to provide to limit orders sent to its market.[56] Commenters believed that, as a result of competitive pressures and exchanges' concerns about assisting firms in satisfying their best execution responsibilities, the markets would achieve the appropriate level of limit order protection without the Commission mandating it as part of a linkage.[57]

Finally, several commenters noted that adopting a customer limit order protection rule should not be allowed to delay an options market linkage.[58] In addition, some commenters believed that a customer limit order protection rule should be addressed in the context of the broader market structure debate.[59] In that regard, at least three exchanges committed to studying the idea of incorporating a customer limit order protection rule into an intermarket linkage plan.[60]

As discussed above, the Commission has determined, at this time, that a customer limit order protection requirement is not a prerequisite to approval of an options market linkage plan. While the Commission believes that such a rule could enhance limit order protections, the Commission believes that it is important not to delay the implementation of a linkage while resolving the issues raised by protecting limit orders across markets.

[53] Susquehanna Letter and Botta Letter.

[54] Susquehanna Letter.

[55] Spear, Leeds Letter. The Commission notes that, at this time, only the ISE displays customer limit orders with size.

[56] CBOE Letter; Susquehanna Letter; and Botta Letter; *see also* Charles Schwab Letter.

[57] CBOE Letter; Susquehanna Letter; and Charles Schwab Letter; *see also* SIA Letter and Amex Letter.

[58] Pershing Letter; ISE Letter; and Amex Letter; *see also* SIA Letter and CBOE Letter.

[59] SIA Letter and ISE Letter.

[60] CBOE Letter; Amex Letter; and ISE Letter.

D. Access to the Linkage

1. General Limitations

The Amex/CBOE/ISE plan provides access[61] to the linkage to eligible market makers on behalf of customer orders and by market makers and specialists on behalf of their principal accounts. Non-market maker broker-dealers would not have access to the linkage.

Several commenters supported limiting access to the linkage.[62] One commenter stated simply that access must be limited to the orders of retail customers.[63] Two commenters believed, however, that the proposed restrictions on proprietary access are not consistent with an open, accessible, and efficient marketplace and would perpetuate the current two-tiered market. These commenters noted that non-market maker broker-dealers would not have an efficient mechanism to execute orders for their proprietary accounts,[64] resulting in the use of slower, manual execution methods, which ultimately would decrease liquidity and pricing efficiency.[65] Finally, one commenter stated that the proposed distinction between broker-dealer and non-broker-dealer customers is unfair and unsupportable.[66]

Instead of implementing a new system for the linkage, one commenter proposed using existing routing systems to allow members of one exchange to access other exchanges, and permitting the exchange being accessed to charge a small fee to eliminate the concern that the linkage would allow unlimited free access to other exchanges. The same commenter argued that unlimited and unrestricted access should be available to anyone for publicly displayed bids and offers.[67] Finally, one commenter proposed that the exchanges grant access to each other's order routing systems either through private vendors or through direct linkages between markets, pursuant to accessibility standards established by the Commission.[68]

At this time, while the Commission would support broader access between options markets, the Commission does not believe it is essential that an options linkage plan provide broader access for proprietary traders. The Amex/CBOE/ISE plan eliminates barriers to routing customer orders between markets, helping to ensure that customer orders have an opportunity to access the best price available in the options market. To achieve this goal, the plan provides for routing customer orders to other markets through the linkage. The plan's approach of permitting eligible market makers, acting as agents for customer orders, to access the linkage provides customer orders with access to other markets.

The Amex/CBOE/ISE plan also allows eligible market makers to use the linkage to hit quotes on an away market, thus helping to protect the priority of the better displayed price. As discussed below, the Commission also recognizes the validity of concerns with respect to unlimited principal access.

Finally, the Commission finds that, at this time, the proposed exclusion of non-market maker broker-dealers from the linkage is not unreasonable. The Amex/CBOE/ISE plan limits access to the linkage to eligible market makers due to their affirmative obligations to the markets. The Commission believes that, by limiting who has access to the linkage, the Amex/CBOE/ISE plan reasonably attempts to address the concern that allowing broader access to the linkage could dilute the value of exchange memberships.

2. Limitation on Principal Access

As previously noted, the Amex/CBOE/ISE plan proposed to limit eligible market maker access to the linkage for sending principal orders to less than 20 percent of each market makers total volume (the 80/20 Test). A market maker effecting more than 20 percent of its volume in a calendar quarter through the linkage would be prohibited from sending principal orders through the linkage in the subsequent quarter. The PCX plan proposed to prohibit the transmission of principal orders, except to unlock or uncross markets or to satisfy trade-through liability. Under the Phlx plan, eligible market makers would be permitted to send principal orders through the linkage without limitation.

Commenters generally maintained that limited principal access should be permitted to the extent it facilitates the operation of the linkage, but that it should not become a surrogate for exchange membership.[69] Several

[61] Access would include, up to a specified size, automatic execution and firm quote treatment.

[62] Amex Letter; Susquehanna Letter; Botta Letter; and CBOE Letter.

[63] Knight Letter.

[64] Interactive Letter and Lek Letter.

[65] Spear, Leeds Letter. This commenter also opposed the limitation on market makers routing orders more frequently than every 15 seconds and routing orders for automatic execution more frequently than every minute. The commenter believed this would put competing market makers at a significant disadvantage when attempting to provide price equilibrium between markets.

[66] SIA Letter.

[67] Lek Letter.

[68] Charles Schwab Letter.

[69] Amex Letter; Susquehanna Letter; Botta Letter; and CBOE Letter.

commenters supported the Amex/CBOE/ISE plan's proposed 80/20 Test for volume restriction.[70] Another commenter argued, however, that each exchange should be permitted to independently adopt its own limitation, if any, on principal access.[71]

One commenter believed the 80/20 Test would put smaller market participants at a competitive disadvantage. This commenter preferred the PCX plan to the Amex/CBOE/ISE plan because it would allow for essentially unlimited principal trading to unlock or uncross a market.[72] Another commenter noted that the Commission and the exchanges should be mindful of the potential, practical difficulties associated with requiring a participant to unlock or uncross a market it has locked or crossed.[73]

The plan's limitation on principal access is designed to prevent the linkage from becoming a means of wide scale proprietary trading by broker-dealers on markets in which they are not members. The Commission finds that the 80/20 Test is a reasonable means to ensure that market makers use the linkage to prevent trade-throughs and honor other markets' quotes, as the plan intends, and not as a substitute for exchange membership. Otherwise, a trader on one exchange could gain virtually free access to another exchange through use of the linkage, without having to satisfy the exchange's membership requirements. The plan is not intended to displace membership in exchanges, or replace direct broker-dealer order routing connections to the exchanges. Thus, the plan does not preclude a market maker from obtaining direct access to a particular exchange by sending orders to such exchange through a member of that exchange or by becoming an exchange member itself.

The Commission recognizes that the 20 percent limitation on a market maker's principal activity in the Amex/CBOE/ISE plan is based on judgment, rather than practical experience with a linkage. The Commission believes that the 20 percent limitation is reasonable. If experience indicates that a different limit would be preferable, the percentages can be altered at a future date.

E. Trade-Through Provisions

As discussed above, the Amex/CBOE/ISE plan proposes that members in their markets should, absent reasonable justification and during normal market conditions, avoid initiating trade-throughs, subject to certain exceptions. Generally, commenters supported the trade-through protections provided for in the proposed plans.[74] One commenter noted that a linkage would enhance execution quality of customer orders by providing trade-through protection.[75] Another commenter specifically supported the Amex/CBOE/ISE plan's treatment of trade-throughs, which would limit satisfaction of a trade-through up to the verifiable number of customer contracts in the markets that were traded through, subject to the size of the transaction that caused the trade-through.[76] That commenter specifically opposed the Phlx's proposal, which would allow the total number of verifiable contracts to be satisfied to exceed the size of the transactions that caused the trade-through.[77]

One commenter believed that the trade-through provisions of the plans needed to be clarified.[78] First, this commenter noted that the proposed plans do not specify what time (*i.e.*, receipt or execution) would be used when evaluating whether a trade-through had occurred. Second, this commenter questioned whether a specialist would have to step up or send an order to a better market if the specialist had already sent that order and it had been rejected by a market that was previously at the NBBO.

One commenter noted that the plans do not provide any deterrent for initiating trade-throughs or ignoring linkage orders, other than the risk of a complaint by another market. The commenter believed that because the plans require the aggrieved party to complain about a trade-through within three minutes of the trade-through being reported by the Options Price Reporting Authority ("OPRA") and because damages are limited to making the aggrieved party whole, violators initiating trade-throughs will reap the benefits of doing so, while only occasionally having to return any gains. The commenter encouraged the Commission to include a penalty, in addition to making aggrieved parties whole, extend the time during which complaints could be lodged to thirty minutes, and require the exchanges to bear the responsibility for detecting trade-throughs. The commenter also recommended exchange surveillance to deter participants from ignoring orders routed through the linkage.[79]

The Commission notes that trade-throughs currently can occur in the options market because there is no efficient means for accessing quotes across those markets. The Commission believes that approval of the Amex/CBOE/ISE plan will improve execution of orders and promote best execution opportunities by providing not only a linkage to send customer orders to markets if they have a better quote, but also remedies in the event that a better bid or offer is traded through. Generally, under the Amex/CBOE/ISE plan, a trade-through would be determined at the time the order is executed to avoid having an exchange become liable for a quote that did not exist in its market at the time of execution.

The rule proposed in the Amex/CBOE/ISE plan does not flatly prohibit trade-throughs and does not provide a remedy to the quotes or orders traded through unless the aggrieved party complains.[80] Because the trade-through provision depends upon the aggrieved party complaining of the trade-through within an allotted period of time, the Commission concurs with one commenter's opinion that the Amex/CBOE/ISE plan may not eliminate trade-throughs in all instances. The plan is beneficial nevertheless because it provides an efficient means, and some incentive, to avoid trade-throughs. The exchanges also have competitive incentives to avoid trade-throughs to attract broker-dealers seeking to satisfy their obligation to assess the various markets in determining how to achieve best execution of their customers' orders.[81] Moreover, the Trade-Through Disclosure Rule, proposed today in a separate release, would also give broker-dealers and exchanges a substantial

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[70] Amex Letter; Susquehanna Letter; CBOE Letter; Ianni Letter; and SIA Letter.

[71] Knight Letter.

[72] Interactive Letter.

[73] SIA Letter.

[74] SIA Letter; ISE Letter; Ianni Letter; and Botta Letter.

[75] Knight Letter.

[76] SIA Letter.

[77] *Id.*

[78] Botta Letter.

[79] Interactive Letter.

[80] The Commission notes that its approval of the trade-through provision in the Amex/CBOE/ISE plan should not be interpreted to mean that unless a party initiating a trade-through is required to satisfy, cancel or adjust a trade, a trade-through has not occurred. Generally, if an order is executed in one market center at a price inferior to that available in another market center, a trade-through has occurred, regardless of whether the aggrieved party complains of the trade-through. By approving the Amex/CBOE/ISE trade-through provision, the Commission is merely approving a means to limit potential trade-throughs.

[81] In accepting orders and routing them to a market center for execution, brokers act as agents for their customers and owe them a duty of best execution. This duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. As a result, broker-dealers must periodically assess the quality of competing markets. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

incentive to avoid trade-throughs involving customer orders, because the proposed rule would require such trade-throughs to be disclosed to customers.[82] The proposed Trade-Through Disclosure Rule would except broker-dealers from the requirement to disclose trade-throughs to customers if such customers' orders are executed on markets that are participants in an effective national market system options linkage plan that includes provisions reasonably designed to limit the execution of customer orders at prices inferior to any published price, including prices published by exchanges that are not linkage plan participants. Finally, if the Commission were to apply to the options markets the execution quality disclosure rules proposed today for the equity markets,[83] the exchanges would have additional incentives to avoid trade-throughs that would impair the quality of the executions the markets would be required to disclose.

The Commission does not believe that it is appropriate to require an exchange trading through the quote or quotes on another market to satisfy such quote or quotes for a greater number of contracts than the trade causing the trade-through. The Commission believes that such a requirement may impose an excessive penalty on a market maker that may have inadvertently traded through more than one market, and could be an unjustified windfall to a market that would not have received the order because another market had priority and could have executed the order in full.

F. Governance and Voting Requirements

An Operating Committee, composed of one representative of each participating exchange, is proposed to administer the Amex/CBOE/ISE plan. The majority of commenters expressing views about the Operating Committee supported the Operating Committee's discretion to develop and implement the linkage, and to advise participants regarding deficiencies, problems, or recommendations.[84] Further, commenters agreed that this authority should include defining plan terms, such as whether a "complex trade" should be excepted from trade-through liability at least during the initial stages of the linkage implementation.[85] One commenter stated that the representatives of the participants would have the most familiarity with the linkage and should be able to address issues regarding the functionality and specifications of the linkage.[86] Two commenters suggested that the Operating Committee should include representatives from member firms in addition to the participating exchanges.[87]

The commenters disagreed as to whether a unanimous vote was appropriate to amend the plan. Two commenters believed that plan amendments should require a unanimous vote, while a simple-majority would be appropriate for other actions, such as plan administration.[88] The commenters opposing the unanimous vote proposal feared that improvements and innovations could be blocked by the interests of a single entity,[89] reminiscent of problems with the ITS Plan.[90] Two commenters stated their belief that only a super-majority should be required to amend the plan.[91]

The Commission finds that the governance and voting requirements proposed in the Amex/CBOE/ISE plan are consistent with the Act. The Commission concludes that the proposed discretion and authority that is granted to the Operating Committee to implement and operate the linkage is reasonable. In addition, the Commission finds that the plan provisions requiring that a Member Advisory Committee be established should enhance the operation of the linkage and the administration of the plan.

Further, the Commission finds that the unanimous voting requirement for plan amendments is consistent with the requirements of the Act. The Amex/CBOE/ISE plan differs significantly from the ITS plan because it limits the issues subject to a unanimous vote under the plan.[92] While the Commission recognizes that a unanimous voting requirement could potentially be used by one participant to block innovations that could enhance the linkage, such a provision also encourages participation in the plan by preventing the majority from forcing changes to the markets of dissenting participants.[93]

G. Dissemination of Quotations With Size

Currently, the options exchanges do not disseminate the number of contracts their quote represents. The Commission specifically requested comment on whether a linkage plan should require the options markets to disseminate quotes with size[94] and, if so, what a reasonable time frame would be for implementation. Further, the Commission asked how a quote size requirement should be balanced against concerns about options systems capacity constraints.

The majority of commenters favored the development of a system to provide the dissemination of quotes with size.[95] Some of those commenters, however, stated that quotations with size should not be required at this time or as part of the linkage plan.[96] Two of these commenters noted the desirability of disseminating quotes with size but questioned whether such modifications would ever be warranted because of the many variables associated with such an action, such as whether existing options quotation systems would be able to handle quotes with size in the near future.[97] Finally, one commenter suggested that the issue be addressed by an amendment to the OPRA plan, rather than as part of the linkage.[98]

The Commission agrees that the dissemination of quotes with size would increase transparency in the options market. The Commission notes that OPRA has already begun studying the feasibility of disseminating quotes with size. Implementing the systems changes

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[82] *See supra* note 33.

[83] *See supra* note 45.

[84] Amex Letter; CBOE Letter; and SIA Letter.

[85] Amex Letter; Ianni Letter; and SIA Letter.

[86] CBOE Letter.

[87] Pershing Letter and Goldman/Morgan Letter. The Commission notes that exchange members will be represented on the Member Advisory Committee.

[88] Amex Letter and CBOE Letter.

[89] Pershing Letter; Goldman/Morgan; and SIA Letter.

[90] Interactive Letter and Charles Schwab Letter.

[91] SIA Letter; and Ianni Letter.

[91] SIA Letter, and Ianni Letter.

[92] The proposed Amex/CBOE/ISE plan has many provisions that distinguish it from the ITS plan. The Commission believes those differences should prevent the ITS plan's shortcomings from becoming a problem in the options linkage. In particular, the ITS plan requires the unanimous consent of all participants to amend the plan to permit exchanges to become new participants, while the Amex/CBOE/ISE plan allows exchanges to become participants without any action by the then-current participants. The ITS plan is also a highly detailed document that, in many ways, limits the manner in which participants can innovate. The Commission believes that the Amex/CBOE/ISE plan has been drafted in a less restrictive manner that should allow participants to independently innovate without violating plan terms.

[93] The Commission has the authority, pursuant to Rule 11Aa3–2, to initiate a national market system plan amendment. *See* 17 CFR 240.11Aa3–2(b)(2).

[94] Currently, the options exchanges generally do not disseminate quotes with size. Rather, options quotes that are disseminated by OPRA reflect only the best bid and offer from each options exchange. Each exchange has rules establishing minimum firm quote requirements. Quotes that are disseminated over OPRA, however, do not indicate the *actual* depth of a given market. Thus, if the best displayed quote is based on a customer limit order that has a size greater than an exchange's firm quote requirement, its size is not communicated to the public.

[95] Donahue Letter; Ianni Letter; Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; CBOE Letter; and Charles Schwab Letter.

[96] Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; and CBOE Letter.

[97] Susquehanna Letter and SIA Letter.

[98] CBOE Letter.

necessary to add size to disseminated quotes, however, is a substantial undertaking and a variety of factors, including systems capacity,[99] must be considered. Therefore, the Commission has determined that the dissemination of quotes with size should not be mandated as part of the linkage plan.[100]

H. Firm Quote Size Requirements

The Amex/CBOE/ISE plan has provisions for designating the size for which a participant will be firm for its quotes. For customer orders, the Firm Customer Quote Size will be the lesser of: (1) The number of contracts the exchange sending the P/A Order guarantees it will automatically execute for customer orders that are entered directly in that market; or (2) the number of contracts the receiving exchange guarantees it will automatically execute for customer orders that are directly entered into that market. However, in no event, would a P/A Order be guaranteed for fewer than 10 contracts. For principal orders, the Firm Principal Quote Size will be the size guaranteed by a participant for incoming principal orders, but in no event, fewer than 10 contracts.

Several commenters suggested that these criteria were appropriate because: (1) They assure customer orders receive minimum guarantee execution sizes similar to those that would be in effect had the order initially been routed through the automatic execution facilities of the market displaying the best bid/offer; and (2) principal orders receive a minimum firm quote.[101] One commenter specified that the 10 contract minimum proposed in the Amex/CBOE/ISE plan was acceptable for P/A Orders executed in automatic execution systems, but the 20 contract minimum proposed in the PCX plan was unacceptable. That commenter supported the Amex/CBOE/ISE proposal to allow an exchange to elect whether to route all or part of an order through the linkage when the size of the order is larger than automatic execution eligible size.[102]

Other commenters stated that all quotes displayed by an exchange should be firm and subject to automatic execution of public orders up to the size displayed.[103] The commenters further stated that electronic access should not be halted unless a bona fide reason exists to halt all electronic trading.[104] One commenter asserted that an order that exceeds the minimum guarantee size should be filled based on the number of contracts available on the receiving exchange at receipt of the order. This commenter also stated that quotes should be firm to all market participants.[105] Finally, one commenter stated that exchanges do not currently comply with the firm quote rule and that by enforcing current firm quote obligations and eliminating rules permitting this noncompliance, the existing system would suffice to guarantee firm quote obligations.[106]

Another commenter proposed that the linkage be limited to small orders of 20 contracts or less because 20 contracts is the prevailing minimum size guarantee for automatic execution of orders. The commenter noted that this amount could be reasonably and uniformly increased.[107] Another commenter agreed with the notion of firm quote size for 20 contracts for each exchange.[108] Finally, one commenter recommended that the linkage initially be available for orders of ten contracts or fewer, but that it should over time be increased to fifty contracts or more.[109]

The Commission believes that it is important to have a firm customer quote requirement as an element of the plan to facilitate and ensure the efficient execution of customer orders.[110] The Amex/CBOE/ISE plan should ensure that a P/A Order would be treated comparably to customer orders received directly by the exchange showing the NBBO.[111] Moreover, the Commission believes that the Amex/CBOE/ISE plan allows the exchanges to continue to compete based on automatic execution size guarantees because the plan does not limit a participant's ability to increase its guarantee size.

The Commission notes that several commenters believed that quotes should be firm for greater size. The Commission believes that the plan adequately addresses this concern because there is sufficient flexibility in the Amex/CBOE/ISE plan to allow exchanges to execute orders that are greater than the firm quote customer size. For example, the Amex/CBOE/ISE plan allows an originating exchange to route an order for greater than the firm customer quote size to another exchange and permits the other exchange to execute the order in full.

I. Trade-or-Fade Provisions

Currently, options' exchanges rules do not require members' quotes to be firm for all orders. Instead, the exchanges have what are commonly known as trade-or-fade rules.[112] Generally, under the trade-or-fade rules, an order must be executed at the currently disseminated bid or offer, either by satisfying the full size of the order or by updating the disseminated quote to reflect that the previously disseminated quote is no longer available.[113] The Amex/CBOE/ISE plan continues to apply the exchanges' trade-or-fade rules in limited circumstances to both P/A Orders and principal orders.

Several commenters expressed concern that the plan did not expressly provide for the repeal of trade-or-fade rules by the options exchanges.[114] Commenters also asserted that the exchanges should provide firm quotes.[115] One commenter noted that without firm quotes, it would be difficult to determine the depth of trading interest, or the best execution price, or the best venue.[116]

The Commission has determined at this time to approve the Amex/CBOE/ISE plan, including the proposed trade-or-fade provisions. Although no exchange should be permitted to "back away" from its displayed quote, the Commission recognizes that there should be a mechanism that requires a

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[99] The Commission notes that the level of quote message traffic generated by the options exchanges has been straining OPRA's systems capacity recently. OPRA, along with its processor, Securities Industry Automation Corporation, and the exchanges have been working to address the capacity limitations so that the systems will be able to accept and disseminate the quotes generated by the options markets in real-time. The Commission believes that, due to systems capacity limitations, it would be inappropriate to mandate size at this time because burdening the current OPRA system with modifications to add size could result in a further deterioration of options quote integrity.

[100] The amendments to the Quote Rule for options proposed today include two alternative provisions allowing markets to specify, rather than individually publish, options quote size. *See supra* note 33.

[101] Amex Letter; Susquehanna Letter; SIA Letter; and CBOE Letter.

[102] SIA Letter.

[103] Fenwick Letter and Interactive Letter.

[104] Donahue Letter and Interactive Letter.

[105] Charles Schwab Letter.

[106] Lek Letter.

[107] DOJ Letter.

[108] Ianni Letter.

[109] Goldman/Morgan Letter.

[110] In a separate release, the Commission today proposed applying the firm quote requirements of Exchange Act Rule 11Ac1–1 to the options markets. *See supra* note 33.

[111] Customer orders routed to another exchange may not receive the same guaranteed size as customer orders originating on the exchange showing the NBBO.

[112] *See generally* Amex Rule 958A, Commentary .01; CBOE Rule 8.51(b); PCX Rule 6.37(d); and Phlx Rule 1015(b).

[113] Generally, if a market maker changes its quote instead of executing an order, and then immediately re-displays its previously disseminated quote when there is no change in market conditions warranting such an action, the market maker is considered to be engaging in conduct inconsistent with just and equitable principles of trade.

[114] Ianni Letter and Interactive Letter.

[115] Donahue Letter; ISE Letter; Interactive Letter; PCX Letter; Fenwick Letter; Lek Letter; and Charles Schwab Letter.

[116] Charles Schwab Letter.

market to change its quote if it refuses to trade at its published (or implied) quote with an order for a size that exceeds its firm quote requirement. Consequently, the Commission supports the retention of trade-or-fade rules to the extent that such rules prevent markets from refusing to trade at their disseminated prices and then continuing to disseminate the same quotes.

V. Conclusion

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act,[117] and Rule 11Aa3–2,[118] that the intermarket linkage plan submitted by Amex, CBOE, and ISE is approved and the Amex, CBOE, and ISE are authorized to act jointly in planning, developing, operating, or regulating the intermarket linkage plan as a means of facilitating a national market system.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19730 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release 34–43089; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

July 28, 2000.

Notice is hereby given that on June 2, 2000, the government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a request that the Commission grant GSCC registration as a clearing agency on a permanent basis.[1] The commission is publishing this notice and order to solicit comments from interested persons and to extend GSCC's temporary registration as a clearing agency through January 31, 2001.

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 17Ab2–1 promulgated thereunder,[3] the Commission granted GSCC's application for registration as a clearing agency on a temporary basis for a period of three years.[4] The Commission subsequently has extended GSCC's registration through July 31, 2000.[5]

In the most recent extension of GSCC's temporary registration, the Commission stated that it planned in the near future to seek comment on granting GSCC permanent registration as a clearing agency. This extension of GSCC's temporary registration will enable the Commission to do so.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[6] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Pubic Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All submissions should refer to File No. 600–23 and should be submitted by August 25, 2000.

It Is Therefore Ordered that GSCC's registration as a clearing agency (File No. 600–23) be and hereby is temporarily approved through January 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19734 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43090; File No. SR–Amex–00–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Adopting a Peer Review Requirement for Auditors of Listed Companies

July 28, 2000.

I. Introduction

On February 14, 2000, the American Stock Exchange LLC ("Exchange" or "Amex"), submitted to the Securities and exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the *Amex Company Guide* to adopt a peer review requirement for auditors of listed companies. The proposed rule change was published for comment in the **Federal Register** on May 26, 2000.[3] The Commission received one comment letter in favor of the proposal.[4] This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend the *Amex Company Guide* to require all independent public accountants auditing Exchange listed companies to have received an internal quality control review by an independent public accountant ("peer review"), or be enrolled in a peer review program that meets acceptable guidelines.[5] According to the Exchange, acceptable guidelines would include comparability to AICPA standards included in the Standards for Performing on Peer Reviews, as codified in the AICPA's SEC Practice Section Reference Manual, and oversight of the peer review program by an independent body comparable to the organizational structure of the Public Oversight Board, as codified in the AICPA's SEC Practice Section Reference Manual. Further, the proposal would require copies of peer review reports, accompanied by any letters of comment and letters of

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[117] 15 U.S.C. 78k–1(a)(3)(B).

[118] 17 CFR 240.11Aa3–2.

[1] Letter from Sal Ricca, President and Chief Operating Officer, GSCC (May 30, 2000).

[2] 15 U.S.C. 78q–1(b) and 78s(a).

[3] 17 CFR 240.17Ab2–1.

[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[5] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; and 42335 (January 12, 2000), 65 FR 3509.

[6] 15 U.S.C. 78s(a)(1).

[7] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42803 (May 22, 2000), 65 FR 34236.

[4] Letter from Ronald Walton, Chair, American Institute of Certified Public Accountants ("AICPA") SEC Practice Section Peer Review Committee, to Jonathan G. Katz, Office of the Secretary, Commission, dated June 16, 2000. This commenter supported the proposed rule change.

[5] The Exchange has noted that the Nasdaq Stock Market and certain banking agencies, such as the Federal Deposit Insurance Corporation, have implemented a peer review requirement.

response, to be maintained by the administering entity of the peer review program and be made available to the Exchange upon request.[6] Similarly, working papers of the administering entity and the independent oversight body would also be required to be retained for 90 days after the report is filed, and be made available to the Exchange upon request.

In addition, the Exchange believes that auditors of listed companies should be subject to a practice monitoring program under which the auditor's quality control system is reviewed by an independent peer auditor on a periodic basis. Consequently, after the initial peer review required by proposed Section 605(a) of the *Amex Company Guide*, independent auditors of listed companies would be required to receive a peer review that meets the guidelines of proposed Section 605(b) every three years pursuant to AICPA guidelines.[7]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange, in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[9] The Commission believes that the proposed rule change will protect investors by improving the reliability and effectiveness of audit committees of companies listed on the Exchange and by helping to ensure that an auditing firm's quality control systems are subject to a level of review that satisfies standards established by the accounting industry. In addition, the Commission believes that by requiring auditors to receive a peer review on a periodic basis, the proposal will help to ensure that auditors will continue to have quality control systems in place and follow independently established policies, procedures, and auditing standards. Finally, by requiring the administering entity and the independent oversight body of the peer review program to retain peer review records and to allow the Exchange access to these records, the Commission believes that the proposed rule change will help enable the Exchange to enforce the peer review requirement.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–00–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19735 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[6] The administering entity would be required to maintain the reports until the completion of the next peer review report. Telephone call between Sonia Patton, Attorney, Commission, and John Nachmann, Attorney, Office of the General Counsel, The Nasdaq-Amex Market Group, on March 28, 2000.

[7] Telephone call between Sonia Patton, Attorney, Commission, and John Nachmann, Attorney, Office of the General Counsel, The Nasdaq-Amex Market Group, on March 28, 2000.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43087; File No. SR–CBOE–00–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Prohibition of Certain Electronically Generated Orders From Being Entered in the Order Routing System

July 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is given that on February 9, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 6, 2000, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.[3] On April 28, 2000, the CBOE filed with the Commission Amendment No. 2 to the proposed rule change.[4] On July 10, 2000, the CBOE filed with the Commission Amendment No. 3 to the proposed rule change.[5] the Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to prohibit certain electronically generated orders from being entered on ORS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to restrict the entry of certain options orders that are created and communicated electronically, without manual input, into ORS.[6] For this purpose, the Exchange is proposing to adopt a new Rule 6.8A, *Electronically Generated and Communicated Orders*.

Proposed Rule 6.8A provides that Members may not enter nor permit the entry of, orders into ORS if those orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 3, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposed to create a new rule, "Electronically Generated and Communicated Orders," rather than including the proposed rule language as a subsection in another rule.

[4] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 27, 2000 ("Amendment No. 2"). In Amendment No. 2, among other things, the Exchange proposed to prohibit electronically generated orders only if they were eligible for execution on the Exchange's Retail Automatic Execution System ("RAES").

[5] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 6, 2000 ("Amendment No. 3"). In Amendment No. 3, among other things, the Exchange revised its statement regarding the purpose of the proposed rule change. In addition, the Exchange revised the proposed rule language to clarify that electronically created orders will be prohibited from entry into the Order Routing System ("ORS") if they are eligible for execution on RAES at the time they are sent to the Exchange. Amendment No. 3 also clarified the types of orders that are considered to be eligible for execution on RAES at the time they are sent.

[6] ORS is the Exchange's automated order trading and routing system comprised of the options order routing system, the automatic execution system (RAES), the electronic limit order book, and other electronic delivery and acceptance systems and terminals.

are created and communicated electronically without manual input and if such orders are eligible for execution on RAES at the time they are sent. Order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent. The proposed rule states that members are not prohibited form electronically communicating to the Exchange orders manually entered by customers into front-end communication systems (*e.g.*, Internet gateways, online networks, etc.).

The proposed rule clarifies that an order is eligible for execution on RAES if: (1) Its size is equal to or less than the maximum RAES order size for the particular series; (2) the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent; and (3) the order has either no contingency or has a contingency that is accepted for execution by the RAES system. A marketable order is a market order or a limit order where the specified price to sell is below or at the current bid, or if to buy is above or at the current offer. An order is tradable pursuant to the RAES auto step-up feature if the appropriate Floor Procedure Committee has designated the class as an auto step-up class and if the National Best Bid or Offer for the particular series is reflected by the current best bid or offer in another market by no more than the step-up amount as defined in Interpretation .02 of Rule 6.8.

The Exchange represents that its business model depends upon market makers for competition and liquidity. The Exchange represents that public customer orders submitted to the CBOE are provided with certain benefits pursuant to various rules of the Exchange, including Rule 6.8, *RAES Operations*, Rule 6.45, *Priority of Bids and Offers*, Rule 7.4, *Obligations for Orders*, and Rule 8.51, *Trading Crowd Firm Disseminated Market Quotes*. Allowing electronically generated and communicated customer orders to be routed directly of ORS and RAES would give customers with such electronic systems a significant advantage over market makers. The Exchange believes that this could undercut its business model. The Exchange notes that under the proposed rule change, computer generated orders can still be sent for execution on the Exchange; however, they may not be sent for execution through ORS.

Currently, CBOE member firms and customers who are not located on the trading floor may send option orders to the trading floor in various ways. First, pursuant to the CBOE's telephone policies, a customer in some option classes may telephone an order directly to a floor broker in the trading crowd, provided the firm taking the order complies with all applicable rules for handling the customer order. In other trading crowds, a member firm representative or a customer may telephone an order into a member firm booth on the trading floor. From here the order may be taken manually into the proper trading crowd and represented; alternatively, it may be sent electronically from the booth to a floor broker in the trading crowd who will represent it. A member firm representative may also send an order to the floor of the Exchange pursuant to that firm's proprietary order routing network. The CBOE represents that almost every member firm has its own network for routing orders to the CBOE. The firm would then route the order to the trading crowd in one of the two ways described above. Finally, a member firm may send an order to the Exchange through its interface with ORS. Eligible orders sent through ORS may be: (1) Automatically executed against orders in the limit order book; (2) placed in the limit order book; (3) automatically executed via RAES; or (4) routed to a Public Access Routing ("PAR") terminal in the trading crowd.

Under the proposed rule change, electronically generated and communicated orders that are eligible for execution on RAES at the time they are sent would be ineligible for routing through ORS. These orders could, however, be sent to the trading floor for execution as otherwise described above, *i.e.*, by telephone or through a member firm's proprietary order routing system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular by facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and promoting just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE.

All submissions should refer to File No. SR–CBOE–00–01 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19736 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43063; File No. SR–CHX–99–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Definition of Pre-opening Orders in Dual Trading System Issues

July 28, 2000.

I. Introduction

On January 3, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 [2] thereunder, a proposed rule change relating to the definition of preopening orders in Dual Trading System Issues. The proposed rule change was published for comment in the **Federal Register** on March 29, 2000.[3] The Commission received no comments on the proposal. On July 19, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal. The Commission is also soliciting comment on Amendment No. 1 to the proposed rule change from interested persons, and has approved the amendment on an accelerated basis, as discussed below.

II. Description of the Proposal

The Exchange has proposed to amend its Article XX, Rule 37(a)(4), which governs guaranteed executions of preopening orders, to define what constitutes a pre-opening order in Dual Trading System Issues. A Dual Trading System Issue is an issue that is traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and that is also traded on either the New York Stock Exchange or American Stock Exchange.

Currently, CHX Rule 37(a)(4) requires that a preopening order be accepted and filled at the primary market opening trade price. Pursuant to this language, orders received at the CHX before the primary market publishes its first print [5] are customarily filled at the first print price. According to the CHX, it has applied the rule in this manner because prints are the most common way of effecting an opening in a security. Nevertheless, on occasion a primary market may open a security by disseminating a quote without a corresponding print. Thus, when a security is opened by the primary market with a published quote, orders received by the CHX after such quote has been published are not considered preopening orders.

According to the Exchange, the lack of a specific definition of what is a preopening order has caused confusion and led to unintended execution guarantees. Specifically, the Exchange stated that there has been confusion about the status of orders received on the CHX after a primary market has published a quote but before a primary market has published a print. Therefore, the Exchange's proposal would clarify that orders received after a primary market opens a security with a published quote are not preopening orders for the purposes of CHX Rule 37(a)(4). Specifically, the Exchange proposed to define a preopening order as an order received prior to a primary market's opening of a subject security, which can occur either with a trade or a quote. Thus, an order received on the CHX after the primary maket publishes a quote but before the primary market has published a print will not be considered a preopening order for the purposes of CHX Rule 37(a)(4) and therefore not entitled to be filled at a subsequent primary market print.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5),[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission believes that the proposed definition helps to clarify the Exchange's rules regarding execution guarantees for Dual Trading System Issues. According to the Exchange, the lack of a specific definition regarding which type of orders will be executed at the primary market's opening trade price has caused confusion among investors. By providing a specific definition of a preopening order, the Exchange should be able to reduce confusion on this issue among investors and Exchange specialists and provide more certainty to investors on the execution price their orders are entitled to receive. The Commission believes that eliminating this confusion about how an order will be handled should enhance the efficiency of order executions on the CHX. Moreover, investors should be able to make informed decisions on where to route their orders for execution because they should have a clearer understanding about how their order will be handled and executed.

The Commission understands that the CHX's definition is consistent with the definition of preopening orders on other markets. Further, the Commission notes that there should not be confusion as to whether a primary market opens a security with a quote as opposed to a trade because, according to information provided by the CHX, information on how a stock opens (*i.e.*, whether it opens by a quote or a trade) is widely disseminated by market data vendors. Therefore, the Commission believes that the proposal should foster just and equitable principles of trade by specifically defining which orders are designated preopening orders and thus entitled to be executed at the primary market's opening trade price.

The Commission finds that good cause exists for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, the CHX amended the language of the definition of preopening order to better reflect its intent that preopening orders are orders received by the CHX before a primary market opens a subject security, which can occur by either a quote or a trade. The Commission finds that the language proposed in Amendment No. 1 further clarifies the CHX's definition of preopening orders. Therefore, because the Commission finds that Amendment No. 1 does not substantively change the meaning or

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 42566 (March 22, 2000), 65 FR 16677.

[4] Letter from Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, to Kelly Riley, Attorney, Division of Market Regulation, SEC, dated July 17, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced the originally proposed language defining a preopening order. As amended, CHX Rule 37(a)(4) will read: "[f]or purposes of this rule, preopening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote."

[5] A print is defined as an executed trade

[6] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

intent of the proposed rule, the Commission believes that good cause exists, consistent with Sections 6(b)(5)[8] and 19(b)[9] of the Act, to approve Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–31 and should be submitted by August 25, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the amended proposed rule change (SR–CHX–99–31) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19737 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).
[9] 15 U.S.C. 78f(b).
[10] 15 U.S.C. 78s(b)(2)
[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43090; File No. SR–MSRB–00–9]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules G–8 and G–15

July 31, 2000.

On July 14, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of technical amendments to MSRB Rules G–8, on books and records to be made by brokers, dealers and municipal securities dealers, and G–15, on confirmation, clearance and settlement of transactions with customers. The proposed rule change will become operative on September 19, 2000. The text of the proposed rule change is set forth below. Additions are *italicized*; deletions are [bracketed].

Rule G–8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a)–(e) No change.

(f) Compliance with Rule 17a–3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a–3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); *and* paragraphs (a)(xi) [; paragraph (a)(xii), paragraph (a)(xiii); paragraph (a)(xiv); paragraph (a)(xv); paragraph (a)(xvi); paragraph (a)(xvii); paragraph (a)(xviii); and paragraph (a)(xix)] *through (a)(xx)* shall in any event be maintained.

Rule G–15. Confirmation, Clearance and Settlement of Transactions with Customers

(a)–(c) No change.

(d) Delivery/Receipt vs. Payment Transactions.

(i) No change.

(ii) Requirement for Confirmation/Acknowledgment.

(A) No change.

(B) Definitions for Rule G–15(d)(ii).

(1) No change.

(2) "Qualified Vendor" shall mean a vendor of electronic confirmation and acknowledgement services that:

(a)–(c) No change.

(d) Notifies the Commission staff immediately in writing of any material change to its confirmation/affirmation systems. (For purposes of this subparagraph *(d)*[(D)] "material change" means any changes to the vendor's systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/acknowledgment systems, including: (i) Affect or potentially affect the capacity or security of its electronic trade confirmation/acknowledgement system; (ii) rely on new or substantially different technology; (iii) provide a new service as part of the Qualified Vendor's electronic trade confirmation/acknowledgment system; or (iv) affect or have the potential to adversely affect the vendor's confirmation/acknowledgment system's interface with a Clearing Agency.);

(e)–(g) No change.

(3) No change.

(C) No change.

(iii) No change.

(e) No change.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, the Proposed Rule Change

1. Purpose

The Board is proposing technical amendments to MSRB Rules G–8 and G–15 for the purpose of making the following non-substantive changes:

First, on March 16, 2000, the Commission approved amendments to MSRB Rule G–8, on books and records, MSRB Rule G–27, on supervision, and MSRB Rule G–9, on preservation of records (the "Supervision Amendments"), relating to supervisory procedures for reviewing

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

correspondence with the public.[3] The Supervision Amendments become effective on September 19, 2000. Among other things, they provide for maintaining records of written supervisory procedures and correspondence relating to a municipal securities representative's municipal securities activities.

Under current MSRB Rule G–8(f), a non-bank dealer is deemed to be in compliance with its recordkeeping obligations under MSRB Rule G–8 if it is in compliance with the SEC's recordkeeping rule,[4] provided that the dealer must still maintain certain types of records identified in MSRB Rule G–8 that are specifically required under Board rules and are unique to the municipal securities market. The technical amendment to MSRB Rule G–8(f) set forth in this filing requires a non-bank dealer relying on Exchange Act Rule 17a–3 for the maintenance of its books and records to nonetheless maintain the records of supervisory procedures and correspondence required by the recent amendments.

Second, the amendment proposed to MSRB Rule G–15(d)(ii)(B)(2)(d) makes a paragraph reference consistent with the Board's general usage of such references throughout the rules.

2. Basis

The Board believes the proposed rule change is consistent with 15B(b)(3)(C) [5] of the Exchange Act, which requires, in pertinent part, that the Board's rules:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Exchange Act because it ensures that existing rule provisions are accurate, understandable and consistent.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative until September 19, 2000,[6] which is more than thirty days after the date of its filing, the Board has submitted this proposed rule change to become effective pursuant to Section 19(b)(3)(A) [7] of the Exchange Act and Rule 19b–4(e)(6) [8] thereunder. In particular, the Board believes the proposed rule change qualifies as a "non-controversial filing" because the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–00–9 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19771 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

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[3] *See* Securities Exchange Act Release. No. 42538, 65 FR 15675 (March 23, 2000).

[4] Exchange Act Rule 17a–3, 17 CFR 240.17a–3.

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] This date coincides with the effective date of the Supervision Amendments.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43082; File No. SR–NASD–00–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Section 4.2 of the NASD Regulation, Inc. Bylaws Relating to the Size of the NASD Regulation, Inc. Board

July 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2000, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to change Section 4.2 of the NASD Regulation, Inc. ("NASD Regulation") By-laws relating to the size of the NASD Regulation Board to conform to a recently approved parallel change to the Nasdaq Stock Market, Inc. ("Nasdaq") By-laws. Proposed new language is italicized; proposed deletions are bracketed.

ARTICLE IV

BOARD OF DIRECTORS

* * * * *

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than ten Directors, the exact number to be determined by resolution adopted by the stockholder of

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[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

NASD Regulation from time to time. [Notwithstanding the preceding sentence, the number of Directors shall equal the number of directors on the Nasdaq Board.] Any new Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make a conforming and technical amendment to the NASD Regulation By-Laws relating to the size of the NASD Regulation Board. On June 26, 2000, the Commission approved amendments to the Nasdaq By-Laws to facilitate the Restructuring Plan ("Restructuring") approved by NASD members on April 14, 2000.[3] The Restructuring involves broadening the ownership of Nasdaq through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, institutional investors, and strategic partners. Among other things, the amendments to the Nasdaq By-Laws deleted a requirement that the number of directors on the Nasdaq Board be equal to the number of directors on the NASD Regulation Board, and added a new requirement authorizing the non-NASD shareholders of Nasdaq to nominate at least four directors of to the Nasdaq Board.[4]

The linkage between the sizes of the NASD Regulation and Nasdaq Boards was first proposed by the NASD and approved by the Commission in 1997.[5] The Board size linkage was part of a broader set of amendments designed to create an interlocking Board structure for the NASD, Nasdaq, and NASD Regulation, and provide for more streamlined corporate governance. At that time, Nasdaq and NASD Regulation were both 100 percent owned by the NASD. The linkage in the Board sizes were not required by the Undertakings entered into by the NASD and the Commission on August 8, 1996.[6]

The purpose of the proposed rule change is to conform a provision of the NASD Regulation By-Laws to a recently approved parallel provision in the Nasdaq By-Laws, which deleted a requirement that the NASD Regulation Board have the same number of directors as the Nasdaq Board. With the Restructuring underway, the equivalence in Board size no longer serves a corporate governance purpose. Furthermore, no purpose would be served by requiring NASD Regulation to increase the size of its Board when the Nasdaq Board adds four new non-NASD directors in the near future. Therefore, the NASD proposes to delete the Board size equivalence requirement from the NASD Regulation By-Laws, thereby making the Nasdaq and NASD Regulation By-Laws consistent on this issue, and completely delinking the Nasdaq and NASD Regulation Board sizes.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. The proposed rule change simply makes the NASD Regulation and Nasdaq By-Laws consistent by not requiring the Boards of each corporation to have the same number of directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–43 and should be submitted by August 25, 2000.

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[3] Securities Exchange Act Release No. 42963 (June 26, 2000 65 FR 41116 (July 3, 2000).

[4] *Id.*

[5] Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997).

[6] Securities Exchange Act Release No. 37538 (August 8 , 1996), 62 SEC Docket 1346, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 10934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056.

[7] 15 U.S.C. 78o–3(b)(96).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19738 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43061; File No. SR–Phlx–00–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of a Pilot Program Regarding Fees for Computer Equipment Services, Repairs or Replacements, and Relocation of Computer Equipment

July 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx request permanent approval of its pilot program which, requires all members on the options and equity trading floors to pay a fee for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer equipment.[4] The current pilot program is in effect from April 1, 2000 through June 30, 2000.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request permanent approval of Phlx's current three-month pilot program that amends Phlx's fee schedule for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer equipment.

First, pursuant to the current pilot program, the Phlx's schedule of dues, fees, and charges was amended to impose a fee on all members on the options and equity floors for computer equipment services, repairs, or replacements on the trading floors. Specifically, the Phlx charges $100 for every service call plus $75 an hour,[6] with a minimum of two hours charged per service call.[7] The Exchange staff anticipates that the majority of computer services, repairs, or replacements will continue to be completed within two hours. Currently, notwithstanding the pilot program, members are not bill for computer services, repairs, or replacements when new or refurbished equipment fails in the normal and customary manner of usage within 30 days of installation. In addition, members are not charged for repairing system-wide problems, rebooting central processing units, and adjusting cables or replacing certain extension cables.

These changes are intended to defray the cost of servicing, repairing, or replacing computer equipment on the options and equity trading floors, as well as to encourage care in using computer equipment.[8] The Exchange receives approximately 90 percent of calls on a routine basis to repair, replace, or otherwise service keyboards, track balls, printers, and other computer equipment from options or equity floor members' work stations.

Second, the Exchange has amended its schedule of dues, fees, and charges to impose a fee for member-requested relocation of a member's work station or any piece of their computer equipment on the options or equity trading floors. Under the current pilot program, the Exchange imposes a $100 service fee plus $75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.[9]

The post/equipment relocation fee should assist in defraying the costs associated with the moving of computer equipment. Member/participant-requested relocations on the trading floors can be very time-consuming and costly because nearly all relocations take place after hours or on the weekends.

Exchange staff and trading floor members are required to complete a pre-printed form prior to requesting repair or relocation service. A notice describing the equipment repair procedures was sent to all floor members prior to the implementation of the original three-month pilot program that was in effect from January 1, 2000 through March 31, 2000. Another notice will be sent to members and participants to inform them that these fees will be implemented on a permanent basis to members on the equity and options trading floors.

The Exchange staff has had the opportunity to review the procedures relating to computer equipment services, repairs, replacements, and relocations, which include instructions to members and Exchange staff as to where the service request forms will be located, directions as to how to

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx originally submitted the proposal on June 22, 2000. On July 19, 2000 the Phlx submitted a letter from Cynthia Hoekstra, Attorney, Phlx, to Jack Drogin, Assistant Director, Division of Market Regulation ("Division"), Commission, amending the filing ("Amendment No. 1"). In Amendment No. 1, the Phlx withdrew the portion of the filing extending the fees for computer equipment services, repairs or replacements, and member-requested relocation to the Exchange's Foreign Currency Option trading floor. Amendment No. 1 also requests that the permanent approval of the pilot program be retroactive to the date of the original filing on June 22, 2000. Because of the substantive nature of Amendment No. 1, the Commission deems the filing date to be July 19, 2000, the date Amendment No. 1 was filed.

[4] A fee will not be charged for new installation of computer equipment.

[5] *See* Securities Exchange Act Release No. 42654 (April 10, 2000), 65 FR 20500 (April 17, 2000).

[6] The computer equipment services, repairs, or replacements fee is charged per service call and per hour but not per person, unlike the computer relocation request fee. Telephone conversation between Cynthia Hoekstra, Attorney, Phlx, and Maria Chidsey, Attorney Division, Commission on July 6, 2000.

[7] Some component of this amount may reflect Pennsylvania sales tax.

[8] This proposed fee will apply to all such requests with no distinction between intentional abuse or normal wear and tear due to the difficulties associated with categorizing the types or repairs.

[9] For example, if two individuals take two hours to relocate a work station, the member will be charged $100 for the service call, plus $300 for moving the equipment ($75 four (two people x two hours)). Again, some component of this amount may reflect Pennsylvania sales tax.

complete the form, and which department is required to forward the forms to the accounting department. The procedures also include a provision that states that members will not be billed for computer equipment services, repairs, or replacements when new or refurbished equipment fails in the normal and customary usage within 30 days of installation. The procedures described above have proven to be an effective way to administer these requests, including the billing of fees and should continue to allow for the efficient handling of computer equipment services, repairs, or replacements, and member/participant-requested relocation of computer equipment.

The Exchange has determined that the fees for computer equipment services, repairs or replacements and relocation of computer equipment that are charged are appropriate and reflect the costs for these services that are incurred by the Exchange. After reviewing the matter, it was decided that the Exchange should continue to charge a fixed rate, as opposed to different rates for different computer repairs. The minimum charge of $250 per service call for computer equipment services, repairs, replacements, or relocations reasonably approximates the average costs for these services. However, the minimum charge may not cover all the costs involved in repairing, servicing, and relocating computer equipment. Members and participants will continue to be billed on a monthly basis for these charges.

2. Statutory Basis

For these reasons, the Exchange believes that its proposal to amend its schedule of dues, fees, and charges to include a fee for computer equipment services, repairs or replacements, and a fee for member/participant-requested relocation of computer equipment is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx represents that it does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Acts.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder because it establishes a due, fee, or other charge. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–53 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19733 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3381]

Culturally Significant Objects Imported for Exhibition Determinations: "The Still Lifes of Evaristo Baschenis: The Music of Silence"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Still Lifes of Evaristo Baschenis: The Music of Silence" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from November 20, 2000 thru March 4, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301—4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 25, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–19830 Filed 8–3–00; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Request for Public Comment on the Andean Trade Preference Act: Report to Congress

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking the views of interested parties on the operation of the Andean Trade Preference Act, as amended (19 U.S.C. 3201 *et seq.*) ("the ATPA"). Section 203(f) as amended requires the President to submit a report to the Congress regarding the operation of the ATPA on or before January 31, 2001, following the ninth anniversary of the enactment of the ATPA. The TPSC invites written comments concerning the issues to be examined in preparing such a report, including the considerations described in subsections 203(c) and (d) of the ATPA.

DATES: Public comments are due at USTR by September 11, 2000.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street NW., Room 523, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Western Hemisphere, Office of the United States Trade Representative, (202) 395–5190.

SUPPLEMENTARY INFORMATION: This report is the last one required of the Administration before the program's expiration on December 4, 2001. Renewal of the program will be considered in 2001. Interested parties are invited to submit comments on any aspect of the program's operation, including the status of beneficiary countries—Bolivia, Colombia, Ecuador, and Peru—under the criteria described in subsections 203(c) and (d) of the ATPA, 19 U.S.C. 3202(c) and (d). Issues to be examined in this report include: The program's effect on the volume and composition of trade and investment between the United States and the Andean beneficiary countries; its effect on the economic growth and development of the beneficiary countries; the extent to which the program has advanced narcotics eradication through sustainable alternative development efforts in coca-growing areas; and the degree to which the program has encouraged the trade and investment policies cited in the ATPA.

Written Notice

Persons submitting written comments should provide a statement in twenty copies, no later than 5 p.m., September 8, 2000, to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW., Washington, DC 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202–395–6186. All submissions must be in English and should conform to the information requirements of 15 CFR part 2003. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Peter F. Allgeier,

Associate U.S. Trade Representative for the Western Hemisphere.

[FR Doc. 00–19812 Filed 8–3–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7694]

Guidelines for Proficiency in Advanced Fire-Fighting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency in Advanced Fire-Fighting. A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) developed and recommended national performance measures for this proficiency. The Coast Guard has adapted the measures recommended by MERPAC.

DATES: Comments and related material must reach the Docket Management Facility on or before October 3, 2000.

ADDRESSES: Please identify your comments and related material by the docket number of this rulemaking [USCG 2000–7694]. Then, to make sure they enter the docket only once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this Notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

The measures proposed here are also available from Mr. Mark Gould or Mr. Gerald Miante, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, telephone 202–267–0229.

FOR FURTHER INFORMATION CONTACT: For questions on this Notice or on the national performance measures proposed here, write or call Mr. Gould or Mr. Miante where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard taking?

Table A–VI/3 of the Code accompanying the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, articulates qualifications for ensuring merchant mariners' attaining the minimum standard of competence through demonstrations of their proficiency in Advanced Fire-Fighting. The Coast Guard tasked MERPAC with referring to the Table, modifying and specifying it as it deemed necessary, and recommending national performance measures. The Coast Guard has adapted the measures recommended by MERPAC and is proposing them here for use as guidelines for assessing that proficiency. Next we set forth the Four Skills by which a mariner must demonstrate that proficiency and we give an example of a Performance Condition, a Performance Behavior, and

three Performance Standards for one of the skills.

Four Skills: Control fire-fighting operations aboard ships; organize and train fire parties; inspect and service fire-detection and fire-extinguishing systems and equipment; and investigate and compile reports on incidents involving fire.

The Performance Condition for the skill entitled, "investigate and compile reports on incidents involving fire" is: "In a mockup of a shipboard-fire or in a live fire-training facility, when presented with the remains of a fire in a fully involved and heavily damaged space (consistent with that of a ship of 500 Gross Tonnage (ITC) or more) for which the point(s) of origin and cause are unknown".

The Performance Behavior for the same skill is: "when asked, the candidate will describe the process of determining the point(s) of origin of the fire, using burn patterns; charred debris, material and structural damage, discoloration, and distortion, and other physical evidence."

The Performance Standards for the same skill are: "descriptions of physical evidence are relevant to determining the point of origin; process continually eliminates areas that are not points of origin; and the point(s) of origin is (are) identified correctly and completely."

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Performance Standards, he or she fails it.

Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to comply with STCW, as amended in 1995 and incorporated into domestic law at 46 CFR parts 10, 12, and 15 in 1997. Guidance from the International Maritime Organization on shipboard assessments of proficiency suggests that Parties develop standards and measures of performance for practical tests as part of their programs for training and assessing seafarers.

How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the national performance measures proposed here. (Although the Coast Guard does not seek public comment on the measures recommended by MERPAC, as distinct from the measures proposed here, those measures are available on the Internet at the Homepage of MERPAC, http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.) These measures are available on the Internet at http://dms.dot.gov. They are also available from Mr. Gould or Mr. Miante where indicated under **ADDRESSES.** If you submit written comments please include-

- Your name and address;
- The docket number for this Notice [USCG 2000–7694];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: July 27, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–19834 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Review and Approval From the Office of Management and Budget (OMB) of a Proposed Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the FAA is planning to submit a proposed information collection request to the Office of Management and Budget (OMB) for review and approval. Through this notice, the FAA is soliciting comment on the proposed, one-time information request of a Volcanic Ash User Needs Survey.

DATES: Comments must be received on or before October 3, 2000.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Mr. Steven Albersheim, Room 8320, Federal Aviation Administration, Aviation Weather Policy Division, ARW–100, 400, 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at 800 Independence Ave., SW., Washington, DC 20591, or on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Title: Volcanic Ash User Needs Survey.

Abstract: Volcanic activity, specifically volcanic ash, constitutes a severe hazard to aviation. Over the past 20 years there have been numerous reports and aircraft encounters with volcanic ash at cruise altitude. The FAA as part of its responsibility to safeguard the usage of the National Airspace System (NAS) has a variety of ways to alert users of the inherent dangers associated with volcanic ash. This includes surface observations, Volcanic Ash Advisories, pilot reports, volcanic ash graphics, Notice to Airmen, and significant meteorological statements. All of these products are generally available to users of the NAS during a volcanic eruption that results in an ash cloud that endangers the safety of flight or ground operations at the aerodrome. However, there is evidence that FAA needs to improve the quality of information and dissemination for products to flight crews, airline operations centers (*i.e.*, dispatchers and meteorologists), and airport managers. To accomplish this, the FAA plans to survey a variety of airline/airport service professionals and pilots to better understand their specific operational needs. The results of the survey will be used to identify the shortfalls in the existing alerting mechanism with the aim of defining firm requirements to improve the quality of information on volcanic eruptions/ash and its dissemination to users of the NAS.

The survey consists of four parts. The first part of the questionnaire identifies the respondent's function and responsibility with regard to the usage

of volcanic ash products. The second par of the survey requests participants to identify whether they have any operational experience with volcanic ash. If participants respond positively that they have had experience with volcanic ash, they are then requested to complete the third and fourth part of the survey. The third part of the survey requests participants to assess the quality of products available and means to improve them or develop any new products that may be required. The final part of the survey requests participants to describe their training needs to better understand existing products and how to improve decision making.

Description and number of proposed respondents: A survey has been designed to gather information from flight crews, dispatchers, and airport managers. It is anticipated that the FAA will survey approximately 50 flight crew members, 20 dispatchers in airline operations centers, 30 meteorologists in airline meteorological departments and 15 airport managers. The survey of these individuals is to be a one time event.

Burden hours: It is estimated that it will take about 30 to 60 minutes to answer the questionnaire. Using the higher 60 minute estimate, the total burden, if all respond, would be 115 hours for all respondents combined.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA is soliciting comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) Enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, on July 28, 2000.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 00–19842 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Receipt of Notice of Proposed Restriction on Stage 2 and 3 Operations at Flying Cloud Airport, Eden Prairie, MN

AGENCY: Federal Aviation Administraiton (FAA), DOT.

ACTION: Notice of proposed restrictions.

SUMMARY: The Federal Aviation Administration (FAA) has been notified by the Minneapolis-St. Paul Metropolitan Airports Commission (MAC) that it proposes to restrict jet aircraft not meeting Federal Aviation Regulations (FAR) Part 36 Stage 3 requirements from using the Flying Cloud Airport between the nighttime hours of 2200 and 0600 local time, and to restrict nighttime maintenance run-ups for all aircraft between the nighttime hours of 2200 and 0600 local time. Implementation of the proposed restrictions would be by an amendment to existing MAC Ordinance 51.

The MAC has provided notice of the proposed restriction and an opportunity to comment to the public pursuant to the Airport Noise and Capacity Act of 1990 and FAR Part 161. Notice of the proposed restrictions and availability of the analysis was locally published by the MAC on July 11, 2000.

EFFECTIVE DATE: A public hearing on the proposed restriction will be held at 7:00 PM on August 15, 2000, in the auditorium of the Hennepin Technical College, 9200 Flying Cloud Drive, Eden Prairie, MN. The comment period ends on August 30, 2000.

ADDRESSES: Comments on the proposed restrictions may be submitted to: Mark Ryan, Metropolitan Airports Commission, 2901 Metro Drive, Suite 525, Bloomington, MN 55425; Phone: (612) 726–8129; Fax: (612) 794–4407.

FOR FURTHER INFORMATION CONTACT: For further information, copies of the complete text of the proposed restrictions, and copies of the supporting analysis, contact Mark Ryan at the address or telephone number noted above. These documents are also available for public inspection at the above address.

Issued in Minneapolis, MN, on July 25, 2000.

Nancy M. Nistler,

Manager, Minneapolis Airports District Office.

[FR Doc. 00–19840 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (00–03–C–00–BIL) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Billings Logan International Airport, Submitted by the City of Billings for Billings Logan International Airport, Billings, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Billings Logan International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. J. Bruce Putnam, Director of Aviation and Transit, at the following address: 1901 Terminal Circle, Room 216, Billings, MT 59105–1996

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Billings Logan International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Manager, at (406) 449–5271. Address: Federal Aviation Administration; Airports District Office; FAA Building Suite 2; 2725 Skyway Drive; Helena, MT 59602. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–03–C–00–BIL) to impose and use PFC revenue at Billings Logan International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 27, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of billings, Billings Logan International Airport, Billings, MT, was substantially complete within the

requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 27, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2001.

Proposed charge expiration date: August 31, 2005.

Total requested for impose and use approval: $4,153,600.

Brief description of proposed projects: Terminal Area Improvements; Deicing Facility; Snow Removal Equipment; Electrical Improvements; Financing costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Billings Logan International Airport.

Issued in Renton, Washington on July 27, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–19843 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson, MS Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Huntsville, AL 35834.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, FAA Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9884. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 25, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 14, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–10–C–HSV.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2000.

Proposed charge expiration date: February 1, 2004.

Total estimated net PFC revenue: $1,498,644.

Brief description of proposed project(s): Security Vehicle 2000 and Body Armour; Taxiway "C" Crossfield Connector; Air Cargo Apron Expansion (Phase 3); Baggage Claims Expansion/Terminal Renovation; Air Carrier Apron/Access Road Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Huntsville-Madison County Airport Authority.

Issued in Jackson, MS on July 31, 2000.

Wayne Atkinson,

Manager, Jackson, MS Airports District Office, Southern Region.

[FR Doc. 00–19839 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Solano County, California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Solano County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Team Leader, Project Delivery Team North, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724. Telephone: (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and Solano Transportation Authority, will prepare an environmental impact statement (EIS) on a proposal to construct a 12-mile-long four-lane roadway using primarily existing local roads between Interstate 80 (I–80) on the north and State Route 12 (SR 12) on the south. The project is known as the Jepson Parkway project. The Jepson Parkway project spans four jurisdictions, including (proceeding from north to south) the City of Vacaville, Solano County, the City of Fairfield, and Suisun City. The project is needed to provide an integrated and continuous route for local north/south trips between Vacaville, areas of Solano County, Fairfield, and Suisun City,

consistent with adopted local plans. Although I–80 runs east/west through this area, this interstate freeway is currently one of the few roads that spans the distance between these jurisdictions. Therefore, the project would also serve as an alternative travel route to I–80. Additionally, the project is needed to relieve existing traffic congestion, improve safety, and accommodate future traffic associated with planned growth.

Alternatives to be considered may include: (1) A limited expressway that includes grade separations at selected locations; (2) bus and high occupancy vehicle (HOV) lanes, in addition to mixed-flow lanes; (3) alternative locations for selected portions of the corridor to reduce environmental impacts associated with the project; and (4) taking no action.

Because project construction will likely require a Clean Water Act Section 404 individual permit, project planning and development will be consistent with the Memorandum of Understanding concerning the NEPA/404 Integration Process for Surface Transportation Projects.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held at 7 p.m. on August 9, 2000 at the Suisun City Hall, 701 Civic Center Boulevard, Suisun City, California. A public hearing will be held for the draft EIS following preparation of various technical studies and approval for public availability by the FHWA. Public notice will be given as to the time and place of this hearing, currently projected for summer 2001. The draft EIS will be available for public and agency review and comment prior to the draft EIS public hearing.

To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway and Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 31, 2000.

C. Glenn Clinton,

Team Leader, Project Delivery Team North, Sacramento, California.

[FR Doc. 00–19819 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Environmental Impact Statement on the Central Link Light Rail Transit Project

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS).

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise the public, tribes and agencies that an SEIS will be prepared to evaluate a new alternative in Tukwila, Washington for the Central Link Light Rail Transit Project. This action is a supplement to the Central Link Light Rail Transit Project Final Environmental Impact Statement (November 1999).

DATES: *Agency Scoping Meeting:* An agency scoping meeting will be held on: Thursday, August 10, 2000, from 10:30 a.m. to 12:30 p.m., Tukwila Community Center, 12424 42nd Avenue South, Tukwila, WA.

Scoping comments may be submitted after the meeting.

FOR FURTHER INFORMATION CONTACT: John Witmer, Federal Transit Administration, 915 2nd Avenue Suite 3142, Seattle, WA 98174–1002, Telephone: 206–220–7964. James Irish, Sound Transit, 401 South Jackson St., Seattle, WA 98104–2826, Telephone: 206–398–5140

SUPPLEMENTARY INFORMATION: FTA and the Puget Sound Regional Transit Authority (Sound Transit) will prepare an SEIS on a new light rail alternative route in the City of Tukwila known as the Tukwila Freeway Route. The Tukwila Freeway Route alternative was proposed by the City of Tukwila and follows East Marginal Way, State Route 509, Interstate–5, and State Route 518, mostly using an elevated configuration within existing freeway right-of-way. Stations are proposed at (1) Boeing Access Road and (2) South 154th Street, which would include a 670-stall park-and-ride lot. This 5.5 mile alternative route would bypass the adopted route along Tukwila International Boulevard (State Route 99) and be completely within exclusive right-of-way.

Issued on: August 1, 2000.

Linda M. Gehrke,

Federal Transit Administration Deputy Regional Administrator.

[FR Doc. 00–19836 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on May 26, 2000, 65 FR 34247.

DATES: Comments must be submitted on or before September 5, 2000.

FOR FURTHER INFORMATION CONTACT: James J. Zok, Associate Administrator for Shipping Analysis and Cargo Preference, MAR–500, Room 8126, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number 202–366–0364 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title of Collection: Customer Service Surveys.

OMB Control Number: 2133–0528.

Type of Request: Revision of a currently approved collection.

Affected Public: Entities directly served by the MARAD.

Form(s): MA–1016; MA–1017; MA–1021.

Abstract: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of their satisfaction with existing services. This collection covers MARAD forms used to carry out such surveys covering MARAD programs and services. Responses to the "Customer Service Questionnaire" are needed to obtain prompt customer feedback on the quality of specific services and products

provided to the customer by MARAD. The information provided will be used to ascertain the customer's level of satisfaction. Responses to the "Program Performance Survey" are needed to obtain customers" views on MARAD's major programs and activities with which the customers were involved during the preceding year. Responses to the new "Conference/Exhibit Survey" are needed to obtain feedback from conference attendees on the quality and success of a particular MARAD sponsored conference or event. The information provided will be used by MARAD's senior management and MARAD's program managers to monitor the overall level of customer satisfaction and to identify areas for improvement.

Annual Estimated Burden Hours: 256 Hours:

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator.

Dated: August 1, 2000.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 00–19610 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7522]

Receipt of Petition for Decision That Nonconforming 2000–2001 BMW Z8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000–2001 BMW Z8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000–2001 BMW Z8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 5, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2000–2001 BMW Z8 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2000–2001 BMW Z8 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000–2001 BMW Z8 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2000–2001 BMW Z8 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000–2001 BMW Z8 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone*

Intrusion, 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 2000–2001 BMW Z8 passenger car models comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 201 *Occupant Protection in Interior Impact:* Replacement of components subject to standard with U.S. model components on vehicles that are not already so equipped.

The agency has been advised by BMW that the U.S. and European versions of the Z8 are the same with respect to their interior trim and sheet metal structure. BMW stated, however, that testing to certify the 2000 model year Z8 to the upper interior requirements of Standard 201 has not been completed as of July 12, 2000, even though the company had informed the agency in a previous submission that the vehicle met those requirements. As a consequence, the 2000 model year Z8 is not currently certified to the upper interior impact requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button.

Standard No. 214 *Side Impact Protection:* Installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 31, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 00–19741 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33907]

Nashville & Western Railroad Corp.—Operation Exemption—Cheatham County Rail Authority

Nashville & Western Railroad Corp. (N&WRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a line of railroad owned by the Cheatham County Rail Authority (Rail Authority). The line extends from Tennessee Central milepost 205.76, at Nashville, TN, to Tennessee Central milepost 185, at Ashland City, TN, a total distance of approximately 28.0 miles. N&WRR states that it will soon enter into agreements with the Central of Tennessee Railway & Navigation Company, Inc. (CoTRy) and the Rail Authority wherein N&WRR will succeed to the lease rights and obligations of the CoTRy under its lease and operating agreement with the Rail Authority. This change in operators is exempt under 49 CFR 1150.31(a)(3).[1]

According to the verified notice of exemption, the parties intended to finalize the transaction by August 1, 2000. This transaction is related to STB Finance Docket 33910, *William J. Drunsic—Continuance in Control Exemption—Nashville & Western Railroad Corp.*, wherein William J. Drunsic has filed a verified notice of exemption to continue in control of the N&WRR upon N&WRR's becoming a Class III carrier. While the change in operators exemption in STB Finance Docket No. 33907 will be effective on July 31, 2000 (7 days after the exemption was filed), the exemption in STB Finance Docket No. 33910 will not become effective until August 2, 2000 (7 days after the July 26, 2000 filing date of the notice for that exemption). Therefore, the change in operators transaction may not lawfully be consummated until August 2, 2000, at the earliest. Counsel for N&WRR has been contacted by telephone and has acknowledged that the transaction may not be consummated until August 2, 2000.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33907, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John F. McHugh, McHugh & Barnes, P.C., 20 Exchange Place, New York, NY 10005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 28, 2000.

[1] In order to qualify for a change in operators exemption, an applicant must give notice to shippers on the line. See 49 CFR 1150.32(b). To ensure that any shippers are informed of the change of operators on the line, N&WRR is directed to provide notice of the change to all shippers on the line and to certify to the Board that it has done so.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19780 Filed 8–3–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33910]

William J. Drunsic—Continuance in Control Exemption—Nashville & Western Railroad Corp.

William J. Drunsic (Drunsic), an individual, has filed a verified notice of exemption to continue in control of the Nashville & Western Railroad Corp. (N&WRR), upon N&WRR's becoming a Class III railroad.

According to the verified notice of exemption, the parties expected to finalize the transaction by August 1, 2000. The earliest the exemption can be consummated is August 2, 2000, the effective date of the exemption (7 days after the exemption was filed).[1]

This transaction is related to STB Finance Docket No. 33907, *Nashville & Western Railroad Corp.—Operation Exemption—Cheatham County Rail Authority*, wherein N&WRR will succeed to the lease rights and obligations of the Central of Tennessee Railway & Navigation Company under its lease and operating agreement with the Cheatham County Rail Authority.

Drunsic currently controls the Nashville & Eastern Railroad Corp. (N&ERR), which operates in the State of Tennessee. According to Drunsic, the lines of the N&WRR and N&ERR will not connect, and no plans exist to effect such a connection. The transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

[1] Counsel for Drunsic has been contacted by telephone and has acknowledged that the transaction may not be consummated until August 2, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33910, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John F. McHugh, McHugh & Barnes, P.C., 20 Exchange Place, New York, NY 10005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19782 Filed 8–3–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–35

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–35, Automatic Enrollment in Section 403(b) Plans.

DATES: Written comments should be received on or before October 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue ruling should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Automatic Enrollment in Section 403(b) Plans.

OMB Number: 1545–1694.

Revenue Ruling Number: Revenue Ruling 2000–35.

Abstract: Revenue Ruling 2000–35 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 403(b) plan in the absence of an affirmative election by the employee.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hours, 45 minutes.

Estimated Total Annual Burden Hours: 175.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 28, 2000.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 00–19850 Filed 8–3–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–33, Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

DATES: Written comments should be received on or before October 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue ruling should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

OMB Number: 1545–1695.

Revenue Ruling Number: Revenue Ruling 2000–33.

Abstract: Revenue Ruling 2000–33 specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 28, 2000.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 00–19851 Filed 8–3–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995. Today, the Office of Thrift Supervision (OTS) within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report (TFR), effective with the March 31, 2001 report. The following subjects are discussed in more detail below:

(1) Nontraditional lending, namely, high loan-to-value loans and subprime loans;
(2) Mortgage-backed securities;
(3) Asset-backed securities;
(4) Definition of mortgage loans;
(5) Junior liens;
(6) Credit cards
(7) Accumulated other comprehensive income;
(8) Home equity lines of credit outstanding;
(9) Nonmortgage loan activity;
(10) Deposit information and deposit insurance premium assessment information;
(11) Reciprocal balance accounts;
(12) Adjustments to capital;
(13) Average balance sheet data;
(14) Board of directors' interest rate risk limits;
(15) IRS Domestic Building and Loan Association (DBLA) Test;
(16) Mutual fund and annuity sales;
(17) Filings under the Securities and Exchange Act of 1934;
(18) Savings association and subsidiary web-site addresses;
(19) Holding company financial information;
(20) Transactions with affiliates;
(21) Fiduciary and related services;
(22) Residual interests in financial assets sold;
(23) Federal Home Loan Bank (FHLB) structured advances and other structured borrowings;
(24) Schedule YD, Yields on Deposits;
(25) Asset maturity data in Schedule SI;
(26) Margin accounts;
(27) Estimated market value rate shocks;
(28) Multifamily mortgages;
(29) Mortgage loan activity;
(30) Hedging activity;
(31) Eliminating confidential treatment for certain interest rate risk and past due data;
(32) Reporting frequency of Schedule CSS (Subordinated Organization Schedule).

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which OTS should modify the proposed revisions prior to giving its final approval. OTS will then submit the

revisions to Office of Management and Budget (OMB) for review and approval.

DATES: Submit comments on or before October 3, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0023. Hand deliver comments to 1700 G Street, NW, from 9 A.M. to 5 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (ifthe comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room,1700 G Street, NW, from 10 A.M. until 4 P.M. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: Trudy Reeves, Financial Reporting Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7317. Interested persons may also obtain additional information on the internet at www.ots.treas.gov/tfrpage.html, or by calling (202) 906–6078.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.
OMB Number: 1550–0023.
Form Number: OTS 1313.
Abstract: All Office of Thrift Supervision (OTS) regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter, or less frequently if so stated. OTS needs this information to monitor and supervise the thrift industry.

Current Actions: After reviewing its current supervisory and examination needs, OTS proposes to revise the Thrift Financial Report (TFR), effective with the March 31, 2001 report. These revised reporting requirements are also designed to complement the federal banking agencies' emphasis on risk-focused supervision. OTS had proposed on March 1, 2000 to collect additional information on high loan-to-value loans, trust assets, residual interests in financial assets sold, and structured liabilities beginning with the third quarter of 2000.

However, after considering comments on the proposal and other factors, OTS decided to postpone any changes to the TFR until March 2001. Comments received to the March 1, 2000 **Federal Register** Notice will also be considered as a response to this proposal.

This proposal also addresses certain aspects of Sections 307(b) and (c) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act). These sections direct the federal banking agencies to work jointly toward more uniform reporting, review the information that institutions currently report, and eliminate existing reporting requirements that are not warranted for safety and soundness or other public policy purposes.

Several reporting changes being proposed will introduce more uniformity for savings associations, banks, and bank holding companies to certain aspects of regulatory reporting. In this regard, over the past several years, banking organizations have sought greater consistency among the reporting requirements imposed on savings associations, banks, and bank holding companies.

Increasing the uniformity of reporting requirements, among the different types of institutions supervised by the federal financial institution regulators, is a necessary step toward achieving the goal of a single set of reporting requirements for the filing of core information that is set forth in Section 307(b) of the Riegle Act.

1. Nontraditional Lending

OTS is proposing to add a schedule to the TFR comprised of memoranda data on high loan-to-value loans and subprime lending, Schedule NL, Nontraditional Lending. Only those savings associations making such loans would be required to file these data items.

a. High Loan-to-Value Loans

OTS has considerable supervisory interest in high loan-to-value (LTV) lending. Currently, OTS expects associations to report loans with LTV ratios in excess of supervisory limits to their board of directors quarterly (12 CFR 560.101 (Appendix A, Interagency Guidelines for Real Estate Lending Policies)). However, OTS does not require associations to report LTV data on the TFR. Due to increased supervisory concern regarding high LTV lending, coupled with OTS's need to effectively monitor potential high risk lending, OTS proposes to collect balances, originations and purchases, sales, charge-off and recovery data, and delinquency data on permanent mortgage loans secured by 1–4 dwelling units with an LTV (1) between 90 and 100%, inclusive, and (2) greater than 100%. With this change, the TFR will be more useful in promptly identifying regulated savings associations involved in this activity. OTS invites comment on all aspects of the reporting of high LTV loans and particularly on whether the proposed TFR items on high LTV loans should be treated as confidential for a limited period of time in order to give associations time to resolve any issues surrounding the reporting of these loans?

b. Subprime Loans

Subprime lending is a potentially high-risk activity that can pose increased risk to the saving associations involved and to the deposit insurance funds if appropriate safeguards are not in place. FDIC-insured institutions have increasingly entered the subprime lending market in recent years, and industry analysts predict that many nonbank subprime specialists will seek to be acquired by FDIC-insured institutions to take advantage of the relatively less expensive, more stable funding source that insured deposits provide. The exact number of savings associations involved in subprime lending is not known with certainty; however, the Federal Deposit Insurance Corporation (FDIC) has estimated that approximately 150 insured institutions, of which 24 are savings associations, currently have significant investment in the subprime lending business. Despite a favorable economic environment, a disproportionate number of insured institutions that engage in subprime lending are problem institutions. The estimated number of insured subprime lenders represents just over one percent of all insured institutions, yet they account for nearly 20 percent of all problem institutions. The actual extent of insured institutions' involvement in subprime lending is not known because there is no periodic reporting of this activity to the banking agencies. The estimates that have been made come from examination data, but the quality and timeliness of the subprime lending data gleaned from examination reports is constrained by inconsistent reporting and by the length of the examination cycle. The issue of timeliness is particularly troublesome from a safety and soundness perspective, since subprime lending tends to be a volume-oriented business that encourages rapid portfolio growth. Consequently, there is no reliable way to regularly monitor individual institutions' subprime lending programs. In several instances, this has resulted in the unexpected and severe deterioration in the condition of an institution from one examination to the next. Accordingly, OTS and the other banking agencies are proposing to collect a number of new items on subprime lending. These proposed items would make possible the early detection and proper supervision of subprime lending programs through

offsite monitoring procedures. Associations involved in subprime lending would report quarter-end data for the following eight categories of subprime loans in their loan portfolios: (1) Revolving, open-end loans secured by 1–4 family residential properties extended under lines of credit, (2) closed-end loans secured by first liens on 1–4 family residential properties, (3) closed-end loans secured by junior liens on 1–4 family residential properties, (4) loans secured by other properties, (5) credit cards to individuals for household, family, and other personal expenditures, (6) consumer loans secured by automobiles, (7) other consumer loans, and (8) other subprime loans. This information would be reported as memorandum items in the new Nontraditional Lending Schedule. Associations involved in subprime lending would also report their past due and nonaccrual subprime loans, along with charge-offs, recoveries, purchases, originations, and sales of these loans. In these areas, two broader loan categories would be used: loans secured by real estate and loans not secured by real estate.

The quality and validity of the proposed subprime lending information to be collected in the TFR hinges on a workable definition of subprime lending. Subprime loans could be defined on the basis of either (a) loan portfolios or programs that possess certain characteristics or (b) individual loans with these characteristics. Whether the portfolio or program approach or the individual loan approach ultimately is adopted, OTS and the other banking regulatory agencies are proposing the following definition of subprime loans for purposes of financial reporting information to the regulatory agencies:

Subprime loans are extensions of credit to borrowers who, at the time of the loan's origination, exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers. Risk of default may be measured by traditional credit risk measures, *e.g.*, credit/repayment history and debt-to-income levels, or by alternative measures such as credit scores. Subprime borrowers represent a broad spectrum of debtors ranging from those who have exhibited repayment problems prior to origination of their loans due to an adverse event, such as job loss or medical emergency, to those who persistently mismanage their finances and debt obligations. Subprime lending does not include loans to borrowers who have had minor, temporary credit difficulties since the origination of their loans but are now current. Subprime loans may take the form of direct extensions of credit; loans purchased from other lenders, including delinquent or credit impaired loans purchased at a discount; and automobile or other financing paper purchased from other lenders or dealers.

OTS invites comment on all aspects of the proposed new TFR items on subprime lending. In particular, OTS seeks comment on the proposed definition of subprime loans generally and on the following issues relating to this definition:

(1) Should all individual subprime loans be reported in the proposed new TFR items or should only those subprime loans that are held in a segregated portfolio or program be reported? Do you foresee any difficulties in reporting individual subprime loans or segregated groups of subprime loans?

(2) Based on the proposed definition of subprime loans above, approximately what percentage of your savings association's loan portfolio would currently be categorized as subprime? Using your association's own internal definition of a subprime loan, what percentage of your loan portfolio does your savings association currently classify as subprime? Please indicate whether these percentages are based on an individual subprime loan approach or a segregated portfolio or program approach. To the extent possible, provide percentages for your association's loan portfolio under both approaches.

(3) What criteria does your association use to determine which loans are subprime? Are the criteria the same for all types of loans, e.g., mortgage, automobile, and credit cards? If not, how do they differ?

(4) In defining subprime loans, which factor(s) listed below are the best indicators of a higher risk of default?

(a) Higher loan fees.

(b) Higher interest rates. For example, should all loans made at a contract rate 200 basis points above the rate that is offered to a traditional savings association customer for the same type of loan be included as subprime loans?

(c) Debt-to-income ratios. For example, should a loan to a borrower with a specific debt-to-income ratio above a stipulated level automatically be a subprime loan?

(d) Delinquency history. For example, if, at the time of the loan's origination, the customer had two or more payments that were 30 days past due in the last 12 months or had loans charged off in the last 12 months, would the loan be subprime? What type of delinquency history would constitute a subprime borrower in your association's view?

(e) Loan-to-value ratio. Is there a loan-to-value ratio above which a loan secured by real estate would be considered subprime?

(f) Credit scores or other ratings. If your association uses credit scoring to determine whether a loan should be categorized as subprime, are the scores custom or generic bureau scores?

(1) If generic bureau scores were used, below what score cutoff would a loan be considered subprime?

(2) Does the score cutoff differ by loan type?

(g) Bankruptcy status. For example, how far back in the customer's credit history would your association go to determine whether a bankruptcy should affect your categorization of a loan?

(h) Lack of credit history.

(i) Other factors. Please identify any other factor that should be considered an indicator of a higher risk of default and explain why it should be considered.

(5) Should the definition of subprime be identical for all types of loans, or should it differ by type of loan, *e.g.*, mortgage, automobile, and credit cards?

(6) Can your association determine from its records whether borrowers with subprime characteristics have credit support (*e.g.*, public or private guarantees, co-signers, and insurance) on specific loans? If yes, do you categorize loans with such credit support as subprime loans?

(7) The proposed subprime loan definition relies on differences between traditional and "higher risk" borrowers? How should the agencies take into account shifts in that difference (*e.g.*, what happens if "traditional" lending standards drop)?

(8) Should the subprime loan definition distinguish between institutions that target higher risk borrowers as opposed to those institutions that serve a community in an economically disadvantaged area where the repayment ability of area borrowers can be or has been adversely affected?

(9) Should there be a *de minimus* level of subprime loans below which reporting is not required?

(10) Should smaller savings associations be treated differently from larger savings associations for reporting purposes?

(11) What types of loans or lending programs, if any, should be excluded from the definition of subprime loans or, if included in the definition, reported separately from other subprime loans? Please explain the reasons for the exclusion or separate reporting.

(12) Should the proposed TFR items on subprime loans be treated as

confidential for a limited period of time in order to give associations time to resolve issues surrounding which loans should and should not be reported as subprime?

Although this proposal would create several new line items, the burden of reporting this information will fall only upon those savings associations engaged in subprime lending, as defined. If the number of associations involved in this activity is consistent with the current estimate, these proposed new reporting requirements would affect approximately two percent of the associations that file TFRs. OTS would welcome any additional information commenters can provide on the number of associations that are subprime lenders in order to improve OTS's assessment of the potential reporting burden of this proposal.

2. Mortgage-Backed Securities

OTS proposes to combine mortgage-backed pass-through securities and mortgage derivatives into one section in the balance sheet (Schedule SC). Currently, mortgage derivative securities are reported on a line under investment securities, and mortgage pool securities are reported in a separate section between investment securities and loans. OTS proposes combining mortgage-backed securities into one section, which would replace the section on mortgage pool securities, and adding two lines under mortgage derivative securities to provide (1) those issued or guaranteed by FNMA, FHLMC, or GNMA, and (2) those collateralized by securities issued or guaranteed by FNMA, FHLMC, or GNMA. This would provide consistent information with the commercial bank Call Report, would be more consistent with the presentation of mortgage-backed securities in financial statements included with 34 Act filings, and would provide information on the degree of risk of the derivative investment. Consistent with the commercial bank Call Report, mortgage-backed bonds would be reported with other investments in the balance sheet on SC185.

3. Asset-Backed Securities

OTS proposes to add a line under "Investment Securities" on the balance sheet (Schedule SC) to collect securities collateralized by nonmortgage loans (asset-backed securities), including all securities backed by credit cards, other consumer loans, and commercial loans. Asset-backed securities are currently reported in the miscellaneous securities category, combined with other types of investment securities. The addition of this line item will provide important information concerning the holdings of these securities and, moreover, would facilitate reconciliation between Schedules SC and CMR. The other banking agencies have proposed collecting data on asset-backed securities on the March 2001 commercial bank Call Report.

4. Definition of Mortgage Loans

OTS proposes to redefine mortgages for TFR reporting, consistent with the commercial bank Call Report, to include all loans predicated upon a security interest in real property. That is, a loan secured wholly or substantially by a lien on real property for which the lien is central to the extension of the credit. A lien is considered central to the extension of credit if the borrower would not have been extended credit in the same amount or on terms as favorable without the lien on real property. All loans satisfying this definition would be reported as mortgages, regardless of whether secured by first or junior liens, regardless of the department within the association or its subsidiary that originated the loan, regardless of how the loans are categorized in the savings association's records for HOLA investment limits, and regardless of the purpose of the financing. The only real estate secured loans that will be reported as nonmortgage loans are those that are otherwise substantially secured, where the mortgage was taken as an abundance of caution (for example, auto loans), and where the terms as a consequence have not been made more favorable than they would have been in the absence of the lien. That is, if the loan is substantially secured by a mortgage and that is the only security for the loan, the loan should be reported as a mortgage even if the loan was based primarily on the "creditworthiness of the borrower." The current requirement for classification as a mortgage—that a loan be fully secured by the property and that an appraisal or other evaluation be performed—will no longer apply.

This change will put virtually all mortgages together on the balance sheet and will make the TFR definition of mortgages clearer and consistent with the commercial bank Call Report. Data item SC340, Revolving Loans Secured by 1–4 Dwelling Units in Consumer Loans would be eliminated and all revolving loans would be reported with mortgage loans.

5. Junior Liens

OTS proposes to add a breakdown between first liens and junior liens under "Permanent Mortgages" on 1–4 dwelling units in the balance sheet (Schedule SC) to better monitor the riskier junior lien market. Currently the TFR does not collect data on single-family residential junior liens. This change will make the TFR mortgage loan breakdown consistent with the commercial bank Call Report. This change will also be made to the breakdown of residential mortgages in the charge-off and recovery data on Schedule VA.

6. Credit Cards

OTS proposes to break out credit cards separately under the heading "Consumer Loans." Currently credit cards are combined with other similar plans such as overdraft lines on checking accounts. These other similar plans would be reported with "Other Consumer Loans." Because of the change in the definition of mortgage loans mentioned above and the elimination of revolving loans secured by 1–4 dwelling units from consumer loans, the distinction between closed-end and open-end consumer loans would be eliminated and the line for "Other, Including Leases" would contain both closed-end loans and open-end loans like those currently reported with credit cards. Credit cards would be broken out separately on the balance sheet (Schedule SC), charge-offs and recoveries (Schedule VA), and past due and nonaccrual (Schedule PD).

7. Accumulated Other Comprehensive Income

OTS proposes to add a subsection in the equity section of the balance sheet (Schedule SC) for accumulated other comprehensive income to conform the TFR to generally accepted accounting principles (GAAP). This section would include the existing line for unrealized gains (losses) on available-for-sale securities and an additional line for "other" that would include gains (losses) on cash flow hedges, foreign currency translation adjustments, and minimum pension liability adjustments.

8. Home Equity Lines of Credit Outstanding

OTS proposes to add a line in Schedule CC (Commitment and Contingencies) to provide data on the balance of outstanding home equity lines of credit that have not yet been drawn down; currently these amounts are included with Open-end Consumer Lines on CC410.

9. Nonmortgage Loan Activity

Because nonmortgage loans have become a larger, and, in most cases, riskier part of the industry's loan

portfolio, OTS proposes to add a line capturing sales of nonmortgage loans. Schedule CF currently reconciles the activity in mortgage loans, deposits, and mortgage pool securities; however, only one line for nonmortgage loan originations and purchases is available for nonmortgage loan activity. This line along with the proposed line would permit reconciliation of nonmortgage loans and would indicate the volume of nonmortgage loans that are originated and sold within the same quarter.

10. Deposit Information and Deposit Insurance Premium Assessment Information

OTS proposes to move the deposit data and deposit insurance premium assessment information from Schedule SI to a new schedule, Schedule DI (Deposit Information). Schedule SI was designed to contain supplementary data not collected elsewhere in the TFR. Because the number of items collected for deposit insurance premium assessment purposes has increased substantially over the past ten years, we believe it is preferable to move these data items to a separate schedule.

11. Reciprocal Balance Data for Deposit Insurance Premium Assessments

The FDIC Assessment Division has requested that OTS re-establish a line that was deleted in 1996 that collects reciprocal balance accounts deducted from insured deposits in calculating the deposit insurance premium. This line would be collected in the new Schedule DI and would be captioned: "Adjustments to Demand Deposits for Reciprocal Demand Balances with Commercial Banks and Other Savings Associations." These reciprocal demand balances are currently collected along with other items in SI247. This new line item would be included in the new Schedule DI, mentioned above.

12. Adjustments to Capital

Currently SI670, Other Adjustments to Equity Capital, is made up of various items, and for most savings associations this miscellaneous data item is the largest reconciling amount to capital. To provide a better breakout of this adjustment, OTS proposes adding the following three data items in the reconciliation of equity capital in Schedule SI: (1) Other comprehensive income; (2) other capital contributions (where no stock is issued); and (3) prior period adjustments.

13. Average Balance Sheet Data

OTS proposes to add three new data items in Schedule SI to collect average asset and liability data. This information will produce more accurate data for use in ratio analysis, will avoid skewed data when restructuring and acquisitions occur, and will enable calculation of better yield/cost data. Savings associations will have the option of calculating these averages using either daily or weekly balances. The three proposed quarterly averages are average total assets, average interest-earning assets, and average interest-costing liabilities.

14. Board of Directors' IRR Limits

OTS proposes to add two lines to collect the association's interest rate risk limits as set by their Board of Directors for the plus/minus 200 basis point rate shock scenarios. This information will be used for off-site monitoring to identify saving associations that may be in excess of their Board limits. These lines will be added to Schedule SI. All savings associations would be required to complete these lines.

15. IRS Domestic Building and Loan Association (DBLA) Test

OTS proposes to add a line for those savings associations that do not use the HOLA QTL test, but instead use the IRS Domestic Building and Loan Association (DBLA) Test. The addition of this line would more exactly identify savings associations that are using the IRS DBLA test and would enable the regions to better monitor the QTL status of those associations. This line would be added in Schedule SI following the lines for QTL. It would be required only of those associations using the DBLA test.

16. Mutual Fund and Annuity Sales

OTS proposes to eliminate the collection of data on quarterly sales of annuities, mutual funds, and proprietary products, SI800 through SI850. In place of these items, each savings association would respond to a "yes" or "no" question asking whether it sells private label or third party mutual funds and annuities. In addition, savings associations would report the total assets under their management in proprietary mutual funds and annuities. The data item collecting fee income from the sale and servicing of mutual funds and annuities would be retained. For savings associations with proprietary mutual funds and annuities, reporting the amount of assets under management should be significantly less burdensome than reporting the quarterly sales volume for these proprietary products. run

17. Filings Under the Securities and Exchange Act of 1934

Currently the OTS can determine the number of holding companies that file under the Securities and Exchange Act of 1934 only through the examination process. Because the Securities and Exchange Commission (SEC) does not maintain a listing of savings and loan holding companies that file with them, OTS proposes to add the following questions in the TFR to provide the user with immediate information on whether there is a filing available on this savings association or its holding company with the OTS or the SEC.

Add the following two yes/no questions in Schedule SQ (Supplemental Questions):

For the current quarter, is the reporting savings association required to file periodic securities disclosure documents (for example, Form 10–Q or 10–K) with the OTS, following the rules under the Securities Exchange Act of 1934? If the reporting association is in a holding company structure, for the current quarter, is the holding company required to file periodic securities disclosure documents (for example, Form 10–Q or 10–K) with the SEC, pursuant to the Securities Exchange Act of 1934?

18. Savings Association and Subsidiary Web Site Addresses

OTS proposes the addition of Internet home page addresses to assist in monitoring the activities of savings associations on their web sites and the addition of a question asking if the savings association provides transactional Internet banking to its customers, as defined in 12 CFR 555.300(b). The data item for the savings association's web site and question on transactional Internet banking will be collected in Schedule SQ (Supplementary Questions). We also propose adding a similar data item to collect web sites of subsidiaries in Schedule CSS (Subordinate Organization Schedule).

19. Holding Company Financial Information

More complex business plans, advances in technology, increased merger and acquisition activity, and earnings pressures have changed the nature of the relationship of the thrift with its affiliates. With finite examination resources, OTS must fully leverage its ability to collect information for the purpose of off-site monitoring and more precisely scope for its onsite examinations. Therefore, OTS proposes to add a schedule to the TFR to collect data on thrift holding companies. In general, the "top' owner (ownership

command can go no further) of the thrift would be required to file. Typically, one holding company report would be filed per savings association; however, more than one holding company report may be required when multiple top owners exist. Holding companies owning more than one savings association would be required to file only once. Bank holding companies would be excluded from reporting. In all of the above cases, the OTS Regional Director will specifically identify the holding company from which data is to be collected. The data collected would include: Total assets; total liabilities; total equity; intangible assets and deferred policy acquisition costs; debt maturing within the next 12 months (excluding deposits); all other debt (excluding deposits); net cash flow from operations; net income; and interest expense. The data will be based on holding company consolidated financial statements. The holding company would provide the data to the savings association, and the holding company schedule would be filed as part of the TFR, within the same timeframes as the TFR. As of March 31, 2000, there were 531 thrifts owned by thrift holding companies; therefore, 48% of all savings associations filing a TFR would be required to file the proposed holding company schedule.

20. Transactions with Affiliates

OTS proposes to add memoranda information in Schedule SI on certain transactions the savings association has with its affiliates. The term "affiliate" is defined in 12 CFR 563.41(b)(1). For purposes of the collection of this data, "affiliate" is defined as the holding company(s), any holding company subsidiary(s), a bank or thrift subsidiary of the savings association, and any company controlled by or for the benefit of shareholders, or which shares a majority of the same directors with the savings association or holding company. These data generally will not include transactions with subsidiaries of the savings association. Additionally, any transaction by a savings association or its subsidiaries with any person or entity is a transaction with an affiliate if the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. The items to be collected are: (1) Fees/expenses paid by the thrift to affiliates during the quarter including interest, management and service fees, tax sharing payments, and other general and administrative expenses; (2) the amount of assets sold to affiliates during the quarter; (3) the outstanding balance at the end of the quarter of: (a) Assets purchased from affiliates; (b) commitments to purchase assets from affiliates, and (c) extensions of credit to affiliates; (4) the percentage of the thrift's directors who are also directors of affiliates; and (5) the percentage of the thrift's officers who are also officers of the affiliates.

21. Fiduciary and Related Services

The OTS proposes to adopt the same schedule on trust activities that has been proposed by the other banking agencies. OTS and the other banking agencies propose to change the manner in which associations report information on their trust activities. The existing Annual Report of Trust Assets (FFIEC 001) and the quarterly TFR line SI350 (Approximate Value of Trust Assets Administered) would be replaced with a quarterly Fiduciary and Related Services Schedule (TFR Schedule FS). This new schedule would become part of the TFR and would be filed within the same timeframe as the TFR. Under this proposal, associations that have total fiduciary assets greater than $100 million or fiduciary income greater than 10 percent of their combined net interest and noninterest income, as well as all nondeposit trust companies that file TFRs, would be required to report certain trust information in Schedule FS quarterly. Less than five percent of those associations reporting to OTS would be required to file this new trust schedule on a quarterly basis. All other associations involved in trust activities would report select information at calendar year end only. The information proposed includes the number of accounts and the market value of trust assets for eight categories of fiduciary activities and a fiduciary and related services income statement. These associations would additionally report, at calendar year-end, data on corporate trust activities, collective investment funds and common trust funds, fiduciary settlements and other losses, and types of assets held in personal trust and agency accounts. The fiduciary and related services income statement and the items on fiduciary settlements and other losses would be treated as confidential information on an individual association basis, which would maintain the treatment accorded this information in the Annual Report of Trust Assets. The agencies have applied confidential treatment to this trust income and loss information because these data generally pertain to only a portion of a reporting association's total operations and not to the savings association as a whole. Collecting certain data in the new fiduciary schedule from the savings associations with larger trust activities each quarter will provide OTS with critical supervisory information relating to fiduciary activities on a timelier basis. This will enable OTS to identify trends and changing risk profiles relating to fiduciary activities more quickly.

Most of the 51 data items that would be reported quarterly in the fiduciary schedule are included in the current annual trust reports. Modifications have been made to some of the existing items to improve their value and usefulness. An additional 47 data items would only be collected annually in the December 31 report, which would be required of all associations with trust activities. The total number of separately reportable data items in the proposed fiduciary schedule represents a decrease of almost 40 percent in the number of reportable items in the current Annual Report of Trust Assets.

Although roughly half of the associations currently reporting trust activities annually would have a new quarterly filing requirement, these associations should already have a reporting system in place to track this information. In addition, savings associations with small trust activities would, at most, have to provide trust data in 36 items once each year. Thus, OTS believes this proposal should not produce a significant overall increase in reporting burden for savings associations with trust activities. OTS is proposing to add the new fiduciary schedule to the TFR instead of retaining a separate trust report in order to facilitate the timely collection and processing of the information. Savings associations filing the current annual trust reports generally must submit their reports within 45 days after year-end. Electronically submitted annual trust reports, first allowed for year-end 1998 reporting, have a 75-day filing deadline. By moving the reporting of fiduciary information into the TFR, the submission deadline for the TFR would apply to this reporting requirement. The length of time that savings associations with trust activities would have for completing the fiduciary schedule would be reduced from 75 days to 30 days. OTS invites comment on all aspects of the proposed Fiduciary Schedule. In particular, we seek comment on the following issues relating to this schedule:

(1) Do the proposed criteria for determining which savings associations should report quarterly adequately capture those savings associations that should report fiduciary activities more frequently than annually because of the extent of their involvement with these activities? If not, what should the criteria be?

(2) What types of difficulties, if any, will associations encounter in complying with the proposed reduction in the amount of time for reporting trust information in spite of the significant decrease in the amount of data that savings associations would be required to report?

(3) Are the categories of trust accounts for which asset and income information would be reported in the proposed Fiduciary Schedule an improvement over the current reporting structure of the Annual Report of Trust Assets (FFIEC 001) and are the proposed trust account categories clear? Is there an alternative categorization of trust accounts for asset and income reporting purposes that would increase the schedule's usefulness?

(4) Is net fiduciary and related services income, as it would be reported in the proposed schedule, a useful performance measure? Is the proposed single item for "Expenses" too broad or restrictive to allow for meaningful peer analysis? Should intracompany income credits be included, as proposed, in computing net fiduciary and related services income?

(5) Should individual association fiduciary income and loss information continue to be accorded confidential treatment with only aggregate income and loss data made available to the public, or should the agencies make some or all of this individual association data publicly available?

(6) What fiduciary-related trends and ratios should be reported in the Uniform Thrift Performance Report and how should they be presented?

(7) The FFIEC currently issues an annual publication, "Trust Assets of Financial Institutions," containing data reported in the Annual Report of Trust Assets (FFIEC 001). Should the FFIEC continue to produce such a publication and, if so, which types of data from the proposed schedule should the publication contain and how often should the FFIEC publish the data?

OTS recently issued Thrift Bulletin 48–16, which addressed how OTS will compute assessments under the complexity component for trust assets administered by a savings association. See 12 CFR 502.25. The Thrift Bulletin provides different assessment rates for trust assets administered in a fiduciary and non-fiduciary capacity. OTS will use the information reported on the proposed schedule to compute assessments.

22. Residual Interests in Financial Assets Sold

OTS proposed the following in a **Federal Register** Notice, dated March 1, 2000, for implementation in September 2000. We received no comments responding to that proposal. OTS subsequently decided to defer implementation of the proposal until March 2001.

Residual interests in financial assets sold (RIFAS) are certain financial assets retained after the transfer of loans, securities, or other financial assets, where the transfer is recorded as a sale under Statement of Financial Accounting Standards (SFAS) No. 125. RIFAS represent the right to receive "residual" cash flows from the transferred assets. The "residual" cash flows are those that are available after payment of all other contractual obligations to holders of other beneficial interests in the transferred assets, and after all payments for servicing fees and other costs. RIFAS may be acquired by either origination or purchase, and may be in either security or nonsecurity form. Examples of RIFAS include, but are not limited to, interest-only strips, spread accounts, and cash collateral accounts.

Credit enhancement RIFAS are those that are structured, through subordination provisions or other credit enhancement techniques, to absorb more than a pro-rata share of credit loss in relation to the transferred assets.

Depending on their form, RIFAS may be included in Schedule SC (Statement of Condition) in four lines: Mortgage Derivatives (SC150), Other Investment Securities (SC185), Interest-only Strip Receivables and Certain Other Instruments (SC855), and Other Assets (SC890). Because three of these lines (SC150, SC185, and SC890) may contain other instruments, OTS cannot currently determine the total residual interests retained or purchased by a savings association. Therefore, OTS proposes to add two memoranda lines in Schedule SI (Supplemental Information); one to collect credit enhancement residual interests in financial assets sold and one to collect other residual interests in financial assets sold. The addition of these two items will provide OTS with more complete information for monitoring and supervisory purposes.

23. Federal Home Loan Bank (FHLB) Structured Advances and Other Structured Borrowings

OTS proposed the following in a **Federal Register** Notice, dated March 1, 2000, for implementation in September 2000. We received no comments responding to that proposal. OTS subsequently decided to defer implementation of the proposal until March 2001.

In recent years, structured borrowings (especially FHLB structured advances) have become an increasingly popular funding source for savings associations. Because such borrowings often have complex embedded options, the use of these instruments can raise safety and soundness concerns. OTS proposes to change Schedule CMR (Consolidated Maturity/Rate) to collect estimates of the market value of structured borrowings to better evaluate the interest rate risk they pose. Market value data for structured borrowings may be provided at the option of the savings association, unless otherwise directed by OTS.

A detailed description of the proposed changes follows:

(1) Variable-rate, Fixed-maturity Liabilities, Schedule CMR form, page 32: Delete all existing cells under this heading. Outstanding balances for these instruments will be reported in new fields for deposits and borrowings as described below. Additionally, detailed information will be reported on these instruments on page 36 in Supplemental Reporting for Assets/Liabilities.

(a) Delete: CMR721 through CMR748

(b) Add:

Liabilities Reported in Supplemental Reporting for Assets and Liabilities

CMR749: Outstanding Balance of Variable-Rate, Fixed-Maturity Deposits (reported under liability code 200)

CMR751: Outstanding Balance of Variable-Rate, Fixed-Maturity Borrowings (reported under liability codes 220 or 229)

CMR753: Outstanding Balance of FHLB Structured Advances (reported under liability codes 280, 281, 282, 283 or 289)

CMR754: Outstanding Balance of Other Structured Borrowings (reported under liability code 290)

(2) Delete the column for Options on Liabilities, which will be replaced by the new reporting of structured borrowings. Delete: CMR941 through CMR950.

(3) Optional Supplemental Reporting for Assets/Liabilities, Schedule CMR form, page 36:

Rename this section as "Supplemental Reporting for Assets/Liabilities." The column headings in this schedule will be instrument-specific. The instrument codes that are currently reported in the Supplemental Reporting for Assets/Liabilities Schedule will use the existing column headings. New codes will be added for reporting: (a) Internal valuations of nonmortgage servicing rights (as reported on SC844); (b) certain nonsecurity financial instruments (as

reported on SC655); (c) FHLB structured advances (as reported on SC720); and (d) other structured borrowings (as reported on SC730 through SC760). For these new codes, the nine column headings will be the instrument's code, book value, and association-reported estimates of the instrument's value in the seven interest-rate scenarios (plus/minus 300, plus/minus 200, plus/minus 100, and no change). These instrument-specific fields (rather than fixed column definitions) will improve the ability of savings associations to report financial information in a more detailed manner than is currently collected and will improve interest rate risk measures produced by the OTS model. This change to the form will also facilitate the addition of future codes for new instruments with customized cell content.

24. Yields on Deposits—Schedule YD

Schedule YD contains compounded annual yields for certain new deposits. OTS proposes the deletion of this schedule in its entirety as it no longer provides sufficient use to OTS to justify its continuance.

25. Asset Maturity Data

OTS proposes to delete five lines that collect data on asset maturities on Schedule SI (Supplemental Information). Currently, only savings associations that meet the Schedule CMR (Consolidated Maturity/Rate) exemption criteria (assets less than $300 million and risk-based capital in excess of 12%) and that opt not to file Schedule CMR must provide these data. OTS no longer needs to collect these data.

26. Margin Accounts

OTS proposes to delete CMR542, Margin Accounts, as it is no longer used.

27. Estimated Market Value Rate Shocks

Thrift Bulletin 13a no longer requires associations to maintain interest rate risk limits for the plus and minus 400 basis point interest rate scenarios. Therefore, the OTS proposes deleting these fields from Schedule CMR on page 35 of the TFR form.

28. Multifamily Mortgages

OTS proposes to rename "5 or More Dwelling Units" to "Multifamily (5 or more) Residential Properties" throughout the TFR. The use of "multifamily residential properties" conforms to the wording in the OTS capital regulations, other OTS regulations, and in the commercial bank Call Report, clarifying that these are the same type of loans. Schedules CCR and CMR currently use the term "Multifamily Residential Mortgages."

29. Mortgage Loan Activity

OTS proposes to delete the breakdown of permanent mortgages between newly built and previously occupied residential property in Schedule CF (Cash Flow). OTS no longer uses this breakdown.

30. Hedging Activity

As a result of the application of Statement of Financial Accounting Standards (SFAS) No. 133, "Accounting for Derivative Instruments and Hedging Activities," the OTS proposes to delete two lines for amortization of deferred gains and losses and a line for the net cost of matched interest rate swaps in the income statement (Schedule SO). SFAS No. 133 will be effective for all associations during 2001.

31. Eliminating Confidential Treatment for Certain Interest Rate Risk and Past Due Data

The TFR is widely used by securities analysts, rating agencies, and large institutional investors as sources of thrift-specific data. OTS currently accords confidential treatment to the information associations report in Schedule CMR on the maturity and rate information used in assessing interest rate risk and information reported in Schedule PD on the amounts of loans, leases, and other assets past due 30 through 89 days and still accruing. OTS publishes aggregate data derived from these confidential items but does not publish the individual association data. In contrast, the information associations report on the amounts of their loans, leases, and other assets that are 90 days or more past due and still accruing or that are in nonaccrual status has been publicly available since 1990. Nevertheless, OTS has not precluded associations from publicly disclosing the data that OTS treats as confidential, provided individual borrower information is not released. In order to give the public, including thrifts, more complete information on the level of and trends in interest rate risk and asset quality at individual associations, OTS proposes to eliminate the confidential treatment for Schedule CMR beginning with the amounts reported as of March 31, 2001. Comment is requested from both voluntary and required filers of Schedule CMR on whether it will pose a hardship on savings associations if all or part of the data is made publicly available.

32. Reporting Frequency of Schedule CSS (Subordinate Organization Schedule)

In 1996, OTS reduced the reporting frequency of Schedule CSS from quarterly to annually in order to reduce reporting burden of the industry. While annual reporting of subordinate organizations was adequate at that time, we now have a need for more frequent reporting and propose to collect Schedule CSS on a semi-annual basis. In addition, as mentioned above, we propose to collect the web site addresses of subsidiaries in Schedule CSS to assist in monitoring the activities of subsidiaries on their web sites.

Type of Review: Revision.

Affected Public: Business or For Profit.

Estimated Number of Respondents and Recordkeepers: 1100.

Estimated Time Per Respondent: 33 hours average.

Estimated Total Annual Burden Hours: 145,200 hours.

Because these some of the proposed changes will not affect all savings associations that file the TFR, the burden hours reflected above are unchanged from the current burden. We invite comment on how savings associations think the burden will change given these form changes.

Request for Comments: In addition to the issues presented above, comments are invited on: (a) Whether the proposed revisions to the TFR collections of information are necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency?s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques, the Internet, or other forms of information technology; and (e) estimates of capital or sta rt up costs and costs of operation, maintenance, and purchase of services to provide information. OTS will summarize or include comments submitted in response to this notice with the request for OMB approval, and will include these comments in the public record.

Dated: July 31, 2000.

John E. Werner,

Director, Information Services.

[FR Doc. 00–19803 Filed 8–3–00; 8:45 am]

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Federal Register

Friday,
August 4, 2000

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86

Control of Emissions of Hazardous Air Pollutants from Mobile Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS–FRL–6839–2]

Control of Emissions of Hazardous Air Pollutants from Mobile Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: A range of compounds known as hazardous air pollutants are emitted from motor vehicles and fuels and are known or suspected to have serious health impacts. This document describes EPA's program to address emissions of hazardous air pollutants from mobile sources. In this document, we develop a framework to construct a national mobile source air toxics program and propose additional controls on gasoline to prevent increases in emissions of benzene. We also describe a plan to continue to conduct research and analysis on mobile source air toxics and make a commitment to revisit the issue of mobile source air toxics controls in a 2004 rulemaking.

More specifically, we look at the various compounds that are emitted by motor vehicles and identify those compounds that should be considered Mobile Source Air Toxics (MSATs). Our list of 21 MSATs includes various volatile organic compounds (VOCs) as well as metal compounds and diesel exhaust. We then evaluate the effectiveness of current controls in reducing on-highway emissions of these MSATs. Our analysis shows that the programs we currently have in place or have recently proposed are expected to yield significant reductions of mobile source air toxics. Between 1990 and 2020, these programs are expected to reduce on-highway emissions of benzene, formaldehyde, 1,3-butadiene, and acetaldehyde by 75 percent or more. In addition, we expect to see on-highway diesel PM emission reductions of over 90 percent.

We then consider whether there are additional air toxics controls that should be put in place at this time to further reduce on-highway MSAT inventories. With regard to fuels-based controls, we are proposing a gasoline benzene control program that requires refiners to maintain the current levels of over-compliance with RFG and anti-dumping toxics requirements. Because the proposed standard for each refinery is the same as the 1998–1999 average gasoline benzene level for that refinery, EPA currently anticipates that the proposed standards would impose only negligible costs, if any. With regard to additional vehicle-based controls, we conclude that it is not appropriate at this time to propose more stringent standards than the technology forcing standards found in our recently adopted Tier 2 and recently proposed HD2007 rule standards.

Finally, because of our concern about the potential future health impacts of exposure to the public of air toxics from the remaining emissions from mobile sources in the future, including emissions from nonroad equipment and fuels, we propose to continue our toxics-related research activities, in conjunction with other activities currently being conducted by the Agency. These include our National Air Toxics Activities (NATA) and the National Air Toxics Program: The Integrated Urban Strategy (UATS). Under this strategy, EPA will continue to improve our understanding of emissions inventories, assessments of exposure, and the need for and appropriateness of additional mobile source air toxics controls for on-highway and nonroad sources. Based on the information developed through this research, EPA is proposing to conduct a future rulemaking to evaluate whether such additional mobile source air toxic controls should be adopted. This rulemaking would be completed no later than 2004.

DATES: *Comments:* We must receive your written comments on this document by September 20, 2000.

Hearings: We will hold a public hearing on August 21, 2000, in Romulus, Michigan. The hearing will begin at 10 am and will continue until all testifiers have spoken.

ADDRESSES: *Comments:* You may send written comments in paper form and/or by e-mail. We must receive them by the date indicated under **DATES** above. Send paper and/or e-mail copies of written comments (in duplicate if possible) to the contact person listed below.

Docket: EPA's Air Docket makes materials related to this rulemaking available for review in Public Docket No. A–2000–12 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500 (on the ground floor in Waterside Mall), 401 M Street, S.W., Washington, D.C. 20460 between 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548, and by facsimile (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Hearings: We will hold a public hearing at the Crowne Plaza Detroit-Metro Airport Hotel, 8000 Merriman Road, Romulus, Michigan 48174. We request that parties who want to testify at a hearing notify the contact person listed below ten days before the date of the hearing. Please see section IX, "Public Participation" below for more information on the comment procedure and public hearings.

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4349; FAX: (734) 214–4816; E-mail: connell.carol@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed action would affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It would also affect you if you produce, distribute, or sell gasoline motor fuel.

The table below gives some examples of entities that may have to follow the proposed regulations. But because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [1]	SIC codes [2]	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Motor Vehicle Manufacturers.
Industry	336311 336312 422720 454312 811198	3592 3714 5172 5984 7549	Alternative Fuel Vehicle Converters.

Category	NAICS codes[1]	SIC codes[2]	Examples of potentially regulated entities
	541514	8742	
	541690	8931	
Industry	811112	7533	Commercial Importers of Vehicles and Vehicle Components.
	811198	7549	
	541514	8742	
Industry	324110	2911	Petroleum Refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents through the Internet: Today's document is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of the preamble, regulatory language and other documents associated with today's proposal are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for Internet connectivity.

Federal Register Web Site:
http://www.epa.gov/docs/fedrgstr/epa-air/
(Either select a desired date or use the Search feature)

Office of Transportation and Air Quality (OTAQ) Web Site:
http://www.epa.gov/otaq
(Look in "What's New" or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Introduction

A. Background

The 1990 Clean Air Act Amendments provide a key part of the foundation for our current national air toxics program. The Act provides a statutory framework designed to characterize, prioritize, and address the serious impacts of hazardous air pollutants (HAPs) on the public health and the environment through a strategic combination of regulatory approaches, partnerships, ongoing research and assessments, risk initiatives, and education and outreach.

Since 1990, our national air toxics control program for stationary sources has consisted primarily of technology-based emissions standards to reduce emissions of toxic air pollutants from major stationary sources, as required in section 112(d) of the Act. These actions have resulted, or are projected to result, in substantial reductions in HAP emissions.

Mobile source regulatory actions have also resulted in significant reductions of air toxics since 1990. In general, these mobile source air toxic reductions have been achieved through the implementation of controls put in place primarily to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, particulate matter (PM), and carbon monoxide (CO). For example, hydrocarbon controls for motor vehicles to reduce ozone formation also reduce emissions of gaseous air toxics such as benzene, 1,3-butadiene, and formaldehyde. Mobile source PM controls on diesel engines have considerably reduced diesel exhaust emissions as well. Additional toxics reductions have been achieved through fuel controls, including the federal reformulated gasoline (RFG) program, and through refiner over-compliance with toxics requirements of our RFG and conventional gasoline programs.

Today's proposal takes our mobile source toxics control program a step further by considering more specifically the contribution mobile sources make to national inventories of specific air toxics and by evaluating the appropriateness of setting additional standards to reduce contributions from on-highway vehicles. In performing our analysis of additional controls, we will follow the requirements specified in section 202(l)(2) of the Act: these motor vehicle or motor fuel standards must "reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under [section 202(a)], the availability and costs of the technology, and noise, energy, and safety factors, and lead time." Our program is also consistent with the National Air Toxics Program: The Integrated Urban Strategy (also called the Urban Air Toxics Strategy, or UATS) published July 19, 1999 (64 FR 38706).

With this background, we now turn to an overview of today's proposal. Section I of this preamble will give you a brief overview of our proposal and the rationale for proposing it. Subsequent sections expand on the identification of mobile source air toxics (MSATs), the impact of current and proposed motor vehicle emission control programs on MSAT emissions, and the evaluation of additional control programs for motor vehicles and their fuels. Additional sections deal with the contribution of nonroad engines to MSAT inventories and our plan to continue to evaluate MSAT emissions and evaluate the appropriateness of setting additional air toxics control standards in the future. The final sections deal with several subjects, including opportunities for public participation.

B. Brief Overview of Air Toxics

Before proceeding to a summary of today's action, we want to provide a brief overview of air toxics: what they are, their general health and environmental effects, and their sources. Today's action addressing motor vehicle air toxics occurs in the context of extensive earlier air toxics work, primarily relating to stationary sources of these pollutants. These topics are discussed in more detail later in this proposal and in the draft TSD.

• What are air toxics?

Air toxics, which are also known as "hazardous air pollutants" or HAPs, are those pollutants known or suspected to cause cancer or other serious health or environmental effects. They include pollutants like benzene found in gasoline, perchloroethylene emitted from dry cleaners, methylene chloride used as an industrial solvent, heavy metals like mercury and lead, polychlorinated biphenyls (PCBs), dioxins and some pesticides. While the harmful effects of air toxics are of particular concern in areas closest to where they are emitted, they can also be transported and affect other geographic areas. Some can persist for considerable time in the environment and/or bioaccumulate in the food chain.

• What are the sources of air toxics?

There are literally millions of sources of air toxics, including: major stationary sources [1] such as large industrial complexes like chemical plants, oil refineries and steel mills; small (area) stationary sources [2] such as dry cleaners, gas stations, and small manufacturers; and mobile sources such as cars, trucks, buses, and nonroad vehicles such as construction and farm equipment.

• What health and environmental effects do air toxics cause?

Hazardous air pollutants can cause many ill health effects. Many of these substances are known or suspected to be human carcinogens. Some of these chemicals are known to have negative effects on people's respiratory, neurological, immune, or reproductive systems. Some chemicals pose particular hazards to people with preexisting illnesses, or those of a certain age or stage in life, such as children or the elderly.

• What are mobile source air toxics?

We use the term "mobile source air toxics," or "MSATs," to signify those air toxics are emitted by nonroad engines and motor vehicles. Section 202(l) of the Act, which addresses controls for hazardous air pollutants from motor vehicles and motor vehicle fuels, does not specify which pollutants are to be evaluated as air toxics, other than benzene, formaldehyde, and 1,3-butadiene. As a result, the first thing a mobile source air toxics control program must do is develop a list of compounds to be addressed. Using the methodology described in section II of this proposal, we have identified 21 mobile source air toxics (MSATs), listed in Table I–1 below.

Of our 21 MSATs, thirteen (those marked with an asterisk in Table I–2) are also included on the list of urban HAPs for the Urban Air Toxics Strategy (see below). Of the remainder, all but one are specifically identified in the CAA section 112(b) HAP list. Diesel exhaust is not included in these other two lists because this pollutant was not included by Congress in the section 112(b) HAP list and, consequently, was not included in the group of pollutants that were considered for inclusion in the urban HAP list. It is, however, a pollutant that we identified in the UATS as a concern in urban areas.

TABLE I–1.—LIST OF MOBILE SOURCE AIR TOXICS (MSATs)

Acetaldehyde [a]	Diesel Exhaust	MTBE.
Acrolein [a]	Ethylbenzene	Naphthalene.
Arsenic compounds [a]	Formaldehyde [a]	Nickel compounds. [a]
Benzene [a]	n-Hexane	POM (Sum of 7 PAHs) [a]

[1] Major stationary sources are sources that emit, or have the potential to emit, 10 tons per year or more of any one HAP or 25 tons per year or more of a combination of HAPs.

[2] Area sources are those stationary sources that are not major sources.

TABLE I–1.—LIST OF MOBILE SOURCE AIR TOXICS (MSATS)—Continued

1,3-Butadiene[a]	Lead compounds[a]	Styrene.
Chromium compounds[a]	Manganese compounds[a]	Toluene.
Dioxin/Furans[a]	Mercury compounds[a]	Xylene.

[a] Also on the list of urban HAPs for the Urban Air Toxics Strategy.

• How are air toxics from mobile sources formed?

Mobile source air toxics come from four sources. First, some air toxics are present in fuel and are emitted to the air when it evaporates or passes through the engine as unburned fuel. Benzene, for example, is a component of gasoline. Cars emit small quantities of benzene in unburned fuel, or as vapor when gasoline evaporates. Second, mobile source air toxics are formed through engine combustion processes. A significant amount of automotive benzene comes from the incomplete combustion of compounds in gasoline such as toluene and xylene that are chemically very similar to benzene. Like benzene itself, these compounds occur naturally in petroleum and become more concentrated when petroleum is refined to produce high octane gasoline. Diesel exhaust emissions, as well as formaldehyde, acetaldehyde, and 1,3-butadiene, are also by-products of incomplete combustion. Third, some compounds, like formaldehyde and acetaldehyde, are also formed through a secondary process when other mobile source pollutants undergo chemical reactions in the atmosphere. Finally, metal air toxics result from engine wear or from impurities in oil or gasoline. They can also be present in fuel additives.

• What are the Urban HAPs?

The urban HAPs are the 33 compounds that have been identified by the Agency in the Urban Air Toxics Strategy (UATS)[3] as those HAPs posing the greatest threat to human health in the largest number of urban areas. These compounds are a subset of the 188 compounds listed in section 112(b) of the Clean Air Act. The 33 urban HAPs are as follows:

TABLE I–2.—LIST OF URBAN HAPS FOR THE URBAN AIR TOXICS STRATEGY

Acetaldehyde	Coke oven emissions	Mercury compounds
Acrolein	1,2-dibromomethane	Methylene chloride (dichloromethane).
Acrylonitrile	1,2-dichloropropane (propylene dichloride)	Nickel compounds.
Arsenic compounds	1,3-dichloropropene	Polychlorinated biphenyls (PCBs).
Benzene	Ethyl dichloride (1,2-dichloroethane)	Polycyclic organic matter (POM).
Beryllium compounds	Ethylene oxide	Quinoline.
1,3-Butadiene	Formaldehyde	1,2,7,8-tetrachlorodibenzo-p-dioxine (and cogeners and TCDF cogeners).
Cadmium compounds	Hexachlorobenzene	1,2,2,2-tetrachloroethane.
Carbon tetrachloride	Hydrazine	Tetrachloroethylene (perchloroethylene).
Chloroform	Lead compounds	Trichloroethylene.
Chromium compounds	Manganese compounds	Vinyl chloride.

C. Basic Components of Today's Proposal

Many motor vehicle and fuel emission control programs of the past have reduced air toxics. EPA has recently created or proposed several programs that further reduce air toxics emissions from a wide variety of mobile sources. These include our reformulated gasoline (RFG) program, which has substantially reduced mobile source air toxics in certain areas of the country, our national low emission vehicle (NLEV) program, our Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements, and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements. In addition, certain other mobile source control programs have been specifically aimed at reducing toxics emissions (*i.e.*, our lead phase-out programs).

While these mobile source standards were put in place primarily to reduce ozone and particulate matter inventories through VOC and diesel PM controls, and thereby to help states and localities come into attainment with the National Ambient Air Quality Standards (NAAQS), they have reduced and will continue to reduce on-highway emissions of gaseous air toxics very significantly.[4] By 2020, these programs are expected to reduce 1990 levels of on-highway emissions of benzene by 75 percent, formaldehyde by 87 percent, 1,3-butadiene by 75 percent, and acetaldehyde by 82 percent.

In addition, we have issued or proposed regulations to control diesel particulate matter (diesel PM) emissions from mobile sources, including the recent light- and heavy-duty vehicle programs mentioned above. By 2020, we expect to see on-highway diesel PM emission reductions of 94 percent from 1990 levels.

Nevertheless, there is a continuing public health concern about the ambient levels of several key air toxics. Today's proposal therefore contains a plan to address mobile sources of these air toxics. We begin by considering the different kinds of emissions from motor vehicles and identifying a list of compounds that should be considered Mobile Source Air Toxics (MSATs). We then evaluate the effectiveness of current and proposed controls in reducing on-highway emissions of these MSATs. We then consider whether there are additional air toxics controls that should be put in place at this time to reduce on-highway MSAT inventories even more. Based on this assessment, we are proposing standards that will require individual refiners to maintain their current gasoline benzene content levels. Finally, we describe a

[3] National Air Toxics Program: The Integrated Urban Strategy; Notice (64 FR 38706–38740 (19 July 1999)).

[4] Included among the numerous chemicals that make up total VOC emissions—that thus are reduced when VOCs are reduced—are several gaseous toxics (*e.g.*, benzene, formaldehyde, 1,3-butadiene, and acetaldehyde).

process to conduct research and analysis to continue to assess the need for and feasibility of additional mobile source air toxics controls. We are proposing to conduct another rulemaking to be completed by December 2004, based on the additional research and analysis we conduct and any additional information that becomes available in that timeframe. That future rulemaking would re-evaluate the various decisions on motor vehicle and fuel air toxics controls made in this rulemaking.

1. Identification of Mobile Source Air Toxics

There are hundreds of different compounds and elements that are known to be emitted from passenger cars, on-highway trucks, and various types of nonroad equipment. Today's action identifies a list of pollutants known to be emitted from motor vehicles or their fuels and considered by EPA to pose potential adverse human health risks. This list is not intended to be a fixed one; additional compounds may be added to the list, in a future rulemaking, as we learn more about the pollutants emitted from mobile sources and the health effects of those pollutants. Similarly, compounds may be removed from the list if new information on the pollutants emitted by mobile sources or their health effects supports a different conclusion. Based on the available data, we are proposing a list of 21 mobile source air toxics (MSATs). We are requesting comment both on the list we have developed and on our approach to developing that list.

2. Assessment of Emission Benefits From Current Standards

Once we identified the MSATs, we were able to assess the impact that current and future mobile source controls will have on national emissions inventories of these pollutants. Today's action describes how our current mobile source emission control programs are expected to reduce these emissions. The very good news is that, by 2020, we expect existing programs like the reformulated gasoline (RFG) program, national low emission vehicle (NLEV) program, Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements (Tier 2), and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements (HD2007 rule), to significantly reduce on-highway emissions of key air toxics. Between 1990 and 2020, these programs are expected to reduce on-highway emissions of benzene by 75 percent, formaldehyde by 87 percent, 1,3-butadiene by 75 percent, and acetaldehyde by 82 percent. In addition, we expect to see on-highway diesel PM emission reductions of 94 percent.

3. Consideration of Additional Controls at This Time

Although we anticipate substantial reductions in emissions of key toxic pollutants by 2020, the serious health effects associated with many of these compounds lead us to evaluate whether additional controls are appropriate at this time. For the purpose of our analysis, we divide potential control measures into two broad categories: vehicle-based controls and fuel-based controls. Vehicle-based controls include programs that would reduce evaporative and exhaust emissions from vehicles and engines. Fuel-based controls explore how changing fuel formulation can reduce air toxic emissions.

The only toxics control program we are proposing today is fuel-based. Specifically, we are proposing to require refiners and importers to maintain the gasoline benzene content of the fuel they produce or import at the current benzene levels of such gasoline for the foreseeable future. We are also seeking comment on whether additional volumes of gasoline produced above the volumes produced in a baseline year should be subject to a different benzene standard. The overall goal of this program is to ensure that benzene emissions due to gasoline fuel benzene do not increase above current emission levels. The details of this program are discussed in section V below, as well as the various vehicle and fuel controls EPA has considered.

With regard to vehicle-based air toxics controls, EPA believes that it is not appropriate at this time to propose additional motor vehicle or fuel based controls under section 202(l)(2), beyond the controls currently adopted or proposed by the Agency. This is based on consideration of the technical feasibility, cost, and other factors relevant to a proposal of further controls at this time. EPA is also proposing a regulatory provision providing for a future rulemaking that would determine, based on the information available at that time, whether additional motor vehicle or fuel controls would be appropriate under section 202 (l)(2) to control emissions of hazardous air pollutants from motor vehicles and their fuels. Finally, the rulemaking would consider the contribution of nonroad engines to emissions of air toxics and whether controls that reduce these emissions along with motor vehicle emissions are appropriate under the Act.

4. Technical Analysis Plan and Future Rulemaking

We believe our evaluation to date of the need for, and appropriateness of, additional mobile source toxics control measures provides adequate support for today's proposal. At this time, EPA is also engaged in other toxics-related research activities through the NATA activities and the UATS described below. This emerging information will help us in further evaluating potential additional mobile source air toxics controls in the future.

In light of this ongoing work, we are proposing to conduct a Technical Analysis Plan as described in section VII below. This Plan would coordinate work within the Agency in several key areas, including development of emission factors for nonroad sources, analysis of toxics exposures in microenvironments, and examination of additional fuel- and vehicle-based air toxics controls for both motor vehicles and engines and nonroad engines. This work would be fully coordinated with the new work with NATA and the UATS. This will allow us to take full advantage of what is collectively learned and provide a solid basis for future rulemaking. The results of this research and analysis would form the basis of a future rulemaking, as discussed below.

5. Nonroad Air Toxics

While section 202(l)(2) of the Act specifies that we set standards to control hazardous air pollutants from motor vehicles and motor vehicle fuels, we believe it is also necessary to discuss nonroad sources in today's proposal, making it a comprehensive mobile source air toxics program, for two important reasons. First, today's proposal is intended to be a companion piece to EPA's Urban Air Toxics Strategy. As described above, the Urban Air Toxics Strategy is intended to address air toxics inventories in urban areas. Because both on-highway and nonroad engines contribute to those inventories, it is important to address both categories in a comprehensive strategy to reduce urban air toxics. Second, currently available data suggests that nonroad sources contribute approximately the same amount to national inventories of key air toxics as on-highway sources. Therefore, a comprehensive control strategy must include nonroad sources. Section 213 of the Act allows us to control emissions from those classes or categories of new nonroad engines that cause or contribute to air pollution which may reasonably be anticipated to endanger

public health or welfare. To the extent emissions of MSAT from these engines is found to cause or contribute to air pollution problems, EPA may decide to adopt further nonroad controls in the future, as specified in section 213 of the Act.

At the same time, while we are including nonroad sources in our discussions of inventory impacts and expected reductions from current nonroad emission control strategies, we are not proposing new emission control standards for these engines in this proposal. This is because we are lacking relevant data that are required to assess the appropriateness of additional MSAT controls. These include speciation data for some categories of nonroad engines, geographic dispersion of emissions, and information, including cost information, about technologies that can reduce these emissions further. Our Technical Analysis Plan, described below, would help us obtain the data we need to consider and in the future evaluate whether additional nonroad air toxics controls are needed and appropriate.

D. EPA's Statutory Authority for Proposing Today's Action

We are proposing today's action under the authority of section 202(l) of the Clean Air Act. The gasoline benzene standards in today's action are proposed under section 211(c) of the Clean Air Act.

Section 202(l) of the Act consists of two parts. Section 202(l)(1) calls on EPA to study the need for and feasibility of controlling toxic air pollutants associated with motor vehicles and motor vehicle fuels. That study is to focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain. The Act specifies that, at a minimum, the study focus on emissions of benzene, formaldehyde, and 1,3-butadiene.

Section 202(l)(2) instructs us to set standards to control hazardous air pollutants from motor vehicles, motor vehicle fuels, or both. These standards, which may be revised from time to time, are to reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the motor vehicle standards established under section 202(a) of the Act, the availability and cost of the technology, and noise, energy and safety factors, and lead time. The regulations are to apply, at a minimum, to benzene and formaldehyde emissions.

We completed the study required under section 202(l)(1) in April 1993. The report, entitled "Motor Vehicle-Related Air Toxics Study," is available on our website (http://www.epa.gov/otaq/toxics.htm). Specific pollutants or pollutant categories discussed in this report include benzene, formaldehyde, 1,3-butadiene, acetaldehyde, diesel particulate, gasoline particulate, gasoline vapors, and selected metals. The emissions and exposure aspects of this report were recently updated in November 1999 for several of the air toxics covered in the 1993 study. That report, entitled "Analysis of the Impacts of Control Programs on Motor Vehicle Toxics Emissions and Exposure in Urban Areas and Nationwide," is also available on our website, and is described in more detail in section I.E., below. We sought peer review comments on both the 1993 and 1999 studies. We considered the 1993 comments in developing the 1999 document and will consider the 1999 comments in developing our future activities (e.g., in the development of version 4 of the Hazardous Air Pollutant Exposure Model, HAPEM4).

Today's action is pursuant to section 202(l)(2). In this action, we identify a list of MSATs and discuss the impacts of existing mobile source emission control programs on their emissions. In a separate rulemaking, the HD2007 rule, we are proposing stringent emission standards that would lead to significant reductions of the gaseous and PM components in diesel exhaust emissions. In today's proposal, we are proposing standards to maintain the benzene content of gasoline fuel at 1998–1999 levels for volumes produced in that time period. We are also seeking comment on whether additional volumes of gasoline produced above the volumes produced in a baseline year should be subject to a different benzene standard.

Today's proposal is based on all the information EPA has available at this time. EPA recognizes that there are various gaps in the data, and that further analysis and evaluation would be useful in evaluating the appropriateness of and need for additional future controls on motor vehicles or their fuels. Given the important contribution of mobile sources to the national inventory of air toxics, we are proposing a plan to conduct this additional work in the near future. The results of this additional research would form the basis for a future rulemaking to re-evaluate the question of whether additional controls on motor vehicles and nonroad engines or their fuels are appropriate under the Act based on all of the information available to the Agency at that time.

E. Motor Vehicle Air Toxics Studies

In 1993, EPA released a study of motor vehicle-related air toxics in compliance with section 202(l)(1) of the Clean Air Act.[5] The study provided estimates of motor vehicle emissions of several pollutants believed to pose the greatest risk to public health. Using these estimates of emissions, the study modeled the exposure and risk attributable to motor vehicle emissions and projected emissions, exposures, and risk for the year 2010.

Peer review of this study was completed in 1994.[6] The comments from the peer review included suggestions for improving EPA's exposure modeling and risk assessment methodology. In response to these comments, EPA updated its exposure model for motor vehicle-related air toxics. Also, since 1993, significant new information on vehicle emission rates has been developed as part of the Auto/Oil program, the development of the Complex Model for reformulated gasoline, CARB test programs, and other sources, and much more is known about the impact of fuel properties on toxic emissions. Furthermore, EPA has developed new programs, such as the NLEV and Tier 2 standards, which have significant effects on projections of toxic emissions and exposure. Finally, EPA has released an updated cancer risk assessment for benzene, a draft reassessment for 1,3-butadiene, and a draft assessment for diesel exhaust emissions.[7, 8, 9]

In light of all of this new information that has been developed since 1993, and in response to peer review comments, EPA has updated the estimates of emissions and exposure contained in

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[5] EPA, 1993. Motor Vehicle-Related Air Toxics Study. Report No. EPA 420–R–93–005. This report can be accessed at http://www.epa.gov/otaq/toxics.htm.

[6] Peer review comments on the 1993 study can be accessed at http://www.epa.gov/otaq/toxics.htm.

[7] EPA 1998. Environmental Protection Agency, Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. 1998. This report can be accessed at http://www.epa.gov/ncea/benzene.htm.

[8] EPA 1998. Environmental Protection Agency, Health Risk Assessment of 1,3-Butadiene. EPA/600/P–98/001A, February 1998. This report can be accessed at http://www.epa.gov/ncea/butadiene.htm.

[9] EPA 1999. Health Assessment Document for Diesel Emissions: SAB Review Draft. EPA/600/8–90/057D Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/diesel.htm.

[10] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030.

[11] For an explanation of the connection between diesel exhaust, which is one of our MSATs, and diesel PM, see section II.F.

the 1993 study.[10] The Agency is making further efforts to improve its understanding of toxic emissions, exposure, and risk associated with on-highway vehicles, nonroad equipment, and other sources as part of the National Air Toxics Assessment (NATA) process discussed below.

In the above air toxics studies, there are limitations in how ranges of exposures are modeled or characterized. For instance, the screening models the Agency has used do not consider "hotspots" for elevated air toxics concentrations. For this reason, EPA has not been able to conduct a complete exposure assessment. The Agency also needs to do more work on considering the costs and performance levels of pollution controls on air toxics. These activities would be included in the proposed Technical Analysis Plan discussed later in this preamble.

F. Other Air Toxics Activities

As we developed and prepared today's mobile source air toxics program, we worked in the context of two other important activities that are ongoing at the Agency. These are EPA's Integrated Urban Air Toxics Strategy (UATS) development and the National Air Toxics Assessment (NATA) activities. Because these two programs are also important parts of our efforts to reduce toxic emissions from all sources, this section contains a brief summary of their key components. Interested readers are encouraged to visit EPA's Toxics website for more information about these programs (www.epa.gov/otaq/toxics.htm).

1. Integrated Urban Air Toxics Strategy

EPA's Urban Air Toxics Strategy (the UATS) focuses on reducing the human health threats of air toxics in urban areas. In urban areas, toxic air pollutants raise special concerns because sources of emissions and people are concentrated in the same geographic areas, leading to large numbers of people being exposed to the emissions of many HAPs from many sources. In the UATS, EPA outlines future actions that we plan to take to reduce emissions of air toxics and improve our understanding of the health threats posed by air toxics in urban areas. The over-arching goal for the UATS is to reduce cancer and noncancer risks associated with air toxics in urban areas. Also, because air toxics in urban areas may threaten the health of some people more than others, depending on factors such as where they live in relation to toxic sources, we intend to characterize exposure and risk distributions both geographically and demographically. This will include particular emphasis on highly exposed individuals (such as those in geographic hot spots) and specific population subgroups (e.g., children, the elderly, and low-income communities).

The overall UATS goals are: (1) To reduce by 75 percent from 1990 levels the risk of cancer associated with air toxics from stationary sources (both large and small commercial and industrial sources); (2) to substantially reduce the noncancer health effects (e.g., birth defects and reproductive effects) associated with air toxics from small commercial and industrial sources; and (3) to address disproportionate impacts in certain areas (e.g., highly-exposed individuals in toxics "hot spots") or experienced by certain populations (e.g., children, the elderly, or minority and low-income communities).

As a first step in the UATS, EPA identified 33 of the 188 Section 112(b) toxic air pollutants that EPA concluded pose the greatest threat to public health in the largest number of urban areas (see Table I–2, above). It should be noted that while diesel exhaust emissions are not included as a specific pollutant in the list of 33 urban HAPs, many of the hazardous constituents of diesel exhaust emissions are included among them, and it is a pollutant that we identified in the UATS as a concern in urban areas.

The UATS outlines several steps that EPA will take to reduce urban air toxics and address risks, and as a part of the UATS, EPA has prepared an Action Plan. The key components of the Action Plan are as follows:

- Achieve reductions through regulatory actions and related projects. The strategy presents a framework for reducing air toxic emissions from all types of sources found in urban areas, including mobile sources, major industrial sources, and smaller stationary sources. Today's proposal contains mobile source-specific toxics regulations. We are also developing programs to reduce emissions from several area source categories (i.e., smaller commercial and industrial operations), and plan to complete regulations to address the new 13 sources identified in the UATS by 2004. Regulations are already under development or exist for the 16 other area source categories listed in the UATS.
- Collaborate with interested parties. We are working with state, local, and tribal agencies, environmental groups, environmental justice communities, and affected industries, including small businesses, to assure that any actions under the UATS are responsive to health concerns while promoting fairness, encouraging urban redevelopment, and minimizing regulatory burdens.
- Education and outreach efforts. We will make an effort to inform stakeholders about the UATS and get their input into designing programs to implement it.

2. National Air Toxics Assessment

National Air Toxics Assessment (NATA) activities are an important component of the UATS and EPA's overall goal of reducing exposure to air toxics. These assessment activities include air toxics monitoring, emissions inventory development, exposure modeling, research activities, and risk assessment. Over time, these activities will help us set program priorities, characterize risks, and track progress toward reducing exposure to air toxics. Specifically, our current NATA activities include expanding air toxics monitoring, improving and periodically updating emissions inventories, periodically conducting national- and local-scale air quality, multimedia and exposure modeling, characterizing risks associated with air toxics exposures, and continued research on health and environmental effects and exposures to both ambient and indoor sources of air toxics.

As part of these NATA activities, EPA is now conducting an initial national screening-level assessment to demonstrate our approach to characterizing air toxics risks nationwide. This initial screening-level assessment will help to characterize the potential health risks associated with inhalation exposures to the 33 urban HAPs and diesel exhaust emissions.[11] While such a broad-scale assessment is necessarily limited in the scope of the risks that it can assess quantitatively, and by the uncertainties inherent in the various types of data and methods currently available, it represents an important step in characterizing air toxics risks nationwide. Our initial national, screening-level air toxics assessment includes four major steps:

- Compiling a national emissions inventory of 1996 air toxics emissions from outdoor sources of air toxics emissions.

[10] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030.

[11] For an explanation of the connection between diesel exhaust, which is one of our MSATs, and diesel PM, see section II.F.

• Estimating 1996 air toxics ambient concentrations across the continental United States (and Puerto Rico and the Virgin Islands) for the 33 urban HAPs and diesel PM.

—Model evaluation comparing ambient concentrations with available monitored values.

• Estimating 1996 population exposures across the continental United States (and Puerto Rico and the Virgin Islands) to the 33 urban HAPs and diesel PM.

• Characterizing potential public health risks due to inhalation of these 33 urban HAPs.

In describing what NATA will include, it is also important to note the potentially important sources and pathways of risks to public health that are beyond the scope of this quantitative assessment. For example, while we recognize that indoor sources of air toxics emissions likely contribute substantially to the total exposures that people experience for a number of these HAPs, assessing these indoor sources of exposure cannot be done on a national scale at this time. Further, for a subset of these HAPs (*i.e.*, those that persist and bioaccumulate in the environment), dietary exposures (e.g., eating contaminated fish) likely contribute much more to the total risk associated with exposure to these pollutants than do the inhalation exposures that will be addressed in this assessment. These and other important aspects of total population exposures to air toxics will be addressed more fully over time as part of our NATA activities as more comprehensive data and assessment tools become available.

Additionally, NATA activities include other key activities that will support further risk characterizations on the local and national level in the future. These include:

• Developing and implementing a plan to characterize the concentrations of ambient air toxics through an expanded monitoring network. Data from existing state and local air monitoring programs will be compiled to summarize our current knowledge about ambient concentrations of air toxics. Existing ambient air toxics monitoring data will be compiled and summarized and then used as a "reality check" on model output.

• Improving existing monitoring networks, guided by data analysis and model predictions, to improve the collection of ambient concentration data for future model evaluations. As the monitoring program matures, trend sites will be established to assess the effectiveness of all of our air toxics control programs.

• Evaluating air toxics on a more local scale (e.g., an urban area) using more refined air quality modeling tools that factor in specific local information such as terrain (e.g., mountainous or flat) and local weather patterns. The results of national and local-scale modeling can be compared to provide a more complete context for the evaluation of air toxics.

• Comparing air toxics inventories from 1990 and 1996 on a toxicity-weighted basis to help inform future assessments of progress toward meeting the risk reduction goals.

• Recommending tools to state, local and tribal regulatory agencies for evaluating air toxics concentrations, exposures and risk. This will include a comparison of the results from national-scale models to those from more local-scale models.

While there continue to be significant uncertainties and gaps in methods, models, and data that limit our ability to assess risks to public health and the environment associated with exposures to air toxics, continued research will enable future assessment activities, both at the national screening-level and at more local refined levels, to yield improved assessments of cumulative air toxics risks.

II. What Are the Mobile Source Air Toxics?

A. Introduction

There are hundreds of different compounds and elements that are known to be emitted from passenger cars, on-highway trucks, and various nonroad equipment. Several of these compounds may have adverse effects on human health and welfare. In recognition of this fact, Congress instructed EPA, in section 202(l)(2) of the Act, to set emission control standards for hazardous air pollutants from motor vehicles and their fuels. Except for benzene and formaldehyde (specifically mentioned in 202(l)(2)), the Act does not specify the compounds that should be included in such a control program. Therefore, the first step in developing a mobile source air toxics control program is to identify the compounds that should be treated as hazardous air pollutants for purpose of section 202(l)(2). Since EPA data suggests that nonroad engines and vehicles emit the same pollutants, EPA will identify this list as a list of mobile source air toxics (MSATs).[12] EPA has used the methodology described below to develop this list of MSATs.

B. The Methodology Used To Identify Our List of Mobile Source Air Toxics

EPA developed the list of MSATs by first compiling all available recent (i.e., less than 10 years old) studies which speciated emissions from motor vehicles and their fuels. We then compared the list of compounds in EPA's Integrated Risk Information System (IRIS) database to the speciated lists of compounds in these studies. IRIS is a database of compounds that identifies EPA's consensus scientific judgment on the characterization of the potential adverse health effects that may result from a lifetime or acute exposure to various substance. IRIS may also indicate that based on the current data a compound can be found to have "evidence of noncarcinogenicity" i.e., the compound does not cause cancer.

By comparing the list of compounds in IRIS to these emission speciation studies, we generated a list of 21 compounds. An evaluation of the potential for adverse health effects reflected in IRIS and in the ongoing agency scientific assessments of these compounds indicates that the potential for adverse health effects from exposure to these compounds warrants inclusion as a MSAT.

It is important to note that inclusion on the list is not itself a determination by EPA that emissions of the compound in fact present a risk to public health or welfare, or that it is appropriate to adopt controls to limit the emissions of such a compound from motor vehicles or their fuels. The purpose of the list is more as a screening tool—it identifies those compounds emitted from motor vehicles or their fuels, and where the available information about their potential for adverse health or welfare effects indicates that further evaluation of emissions controls is appropriate. In conducting any such further evaluation, pursuant to sections 202(a) or 211(c) of the Act, EPA would consider whether emissions of the compound cause or contribute to air pollution which may reasonably be anticipated to endanger the public health or welfare. Such an evaluation would also consider the appropriate level of any controls, based on the criteria established in section 202(l)(2). Inclusion of a compound on the MSAT list does not decide these issues, but instead identifies those compounds for which such an

[12] We have chosen to call our list of toxics a mobile sources list to acknowledge that nonroad sources may also contribute emissions of these pollutants. For purposes of section 202(l)(2), each of the MSATs would be considered a "hazardous air pollutant from motor vehicles and motor vehicle fuels."

evaluation would appear to be warranted.

EPA also compared its universe of known compounds emitted from motor vehicles against other lists or sources of information on toxic substances, and did not identify any additional substance that we believe should be listed at this time. EPA believes this process allows for re-evaluation of the MSAT list in the future, as information is learned about additional compounds or new information is learned about the 21 compounds. Compounds may be added to or removed from the list in a rulemaking.

EPA invites comment on an alternative listing approach whereby any compound emitted from motor vehicles or their fuels that is listed under section 112(b) would be considered a MSAT. Additional compounds not on the section 112(b) list, such as diesel exhaust, would be considered a MSAT where EPA has sufficient scientific evidence, such as an EPA health assessment or similar analysis, indicating a potential for adverse effects on public health or welfare that would warrant inclusion on the list.

1. Identifying Pollutants Emitted From Mobile Sources

In identifying a list of MSAT, EPA first compiled all available recent studies which speciated emissions from motor vehicles and their fuels. To do this, EPA reviewed a number of databases that contain information on the various species of compounds emitted from motor vehicles and their fuels. It is difficult to get a precise picture of these emissions due to the variety and number of databases in the literature. This is particularly true for hydrocarbon (HC) speciation databases. Most toxic air pollutants are hydrocarbons by their chemical nature and thus will be detected only if the HCs are chemically separated and identified (speciated). Many test programs that characterize vehicle emissions identify only total hydrocarbons (THC) without separating out the individual species of hydrocarbons and many use different test methods. The issue is further complicated by the limited availability of these databases for certain vehicle classes.

We have recent (less than ten years old) speciation profiles for emissions from light-duty gas vehicles (LDGV), heavy-duty diesel vehicles (HDDV), heavy-duty gasoline vehicles (HDGV), gasoline powered nonroad engines, and turbine engine aircraft.[13] Data for other vehicle and engine types (e.g., light-duty diesel engines and nonroad diesel engines) either do not exist or are outdated (more than 10 years old) and thus are judged not to be representative of current emissions. However, it is unlikely that the lack of recent data for these vehicle and engine types would result in the absence of compounds from the list, since the combustion process is similar to vehicle and engine types for which we do have data. Forty-four speciation studies were found that met this age criteria. All of these speciation profiles attempt to accomplish more or less the same objective: separating and identifying the compounds that comprise the hydrocarbon portion and particulate phase of mobile source emissions.

With regard to alternative-fueled vehicles, most of the compounds included in their exhaust are included on our list of MSATs (e.g., formaldehyde, acetaldehyde). It should be noted that, depending on their fuel, these vehicles may also emit unburned ethanol and methanol, which were not included in our speciation data.

Low level ethanol mixtures (10% ethanol and 90% gasoline) are widely used in the United States. Higher level ethanol mixtures (e.g., 85% ethanol) are used as alternative fuel sources in a small number of flexible fuel vehicles. However, there is a paucity of data on potential inhalation effects of ethanol, and the compound is not listed in IRIS. Thus it is not included on the list of MSATs. EPA requests comment on whether it should be included.

Methanol is also a promising alternative fuel for motor vehicles, and a small number of flexible fuel vehicles operate on a methanol mixture (e.g., 85% methanol). Inhalation of methanol at high concentrations (greater than 1000 ppm) has caused birth defects in rats and mice and at low levels can cause symptoms such as eye irritation, headaches, dizziness, and nausea. Methanol is highly toxic by oral exposure routes and is listed in IRIS. Because of the small numbers of vehicles using methanol currently in use, EPA requests comment on whether this compound should also be included in our MSAT list.

EPA requests comment on our list of compounds associated with motor vehicles and their fuels provided here.

2. Using IRIS To Identify Pollutants With Potential Adverse Health Effects

The Integrated Risk Information System (IRIS) is an EPA database of scientific information that contains the Agency consensus scientific positions on potential adverse health effects that may result from lifetime (chronic) or short-term (acute) exposure to various substances found in the environment.[14] IRIS currently provides health effects information on over 500 specific chemical compounds. The information contained in the IRIS database includes an EPA finding for each compound that: (1) there is a health hazard, either cancer or noncancer, associated with exposure to the compound, (2) the compound is noncarcinogenic based on current data, or (3) the data is insufficient to determine if the compound is a hazard.

IRIS contains chemical-specific summaries of qualitative and quantitative health information. IRIS information may include the reference dose (RfD) for noncancer health effects resulting from oral exposure, the reference concentration (RfC) for noncancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with information on specific exposure situations, the summary health hazard information in IRIS may be used in evaluating potential public health risks from environmental contaminants.

Before a substance is listed on the IRIS database, it goes through a thorough scientific evaluation. This consensus and review process, managed by EPA's Office of Research and Development (ORD), consists of (1) an annual **Federal Register** announcement of the IRIS agenda and a call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessment and draft IRIS summaries, (4) internal EPA peer review, (5) external peer review, (6) Agency consensus review and management approval within EPA, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS database.

C. List of Mobile Source Air Toxics

By comparing the list of compounds in IRIS to the motor vehicle emissions identified in the speciation studies, we identified 21 MSAT. This list is set out in Table II–1. Each of these pollutants are known, probable, or possible human carcinogens (Group A, B or C) or were considered by the Agency to pose a risk

[13] See appendix I, chapter 2 of the TSD.

[14] EPA IRIS Database, http://www.epa.gov/ngispgm3/iris/index.html

of adverse noncancer health effects.[15] EPA requests comment on the appropriateness of the compounds on the list of compounds associated with motor vehicles and their fuels provided here as well as the need to consider other hazardous or toxic air pollutants for inclusion on the list.

It is difficult to identify the specific form of metals being emitted in motor vehicle exhaust because the databases only report the total amount of metal compound identified. As a result, we have chosen to list the entire group of metal compounds if any compound of the metal has been detected in motor vehicle exhaust and any compound of the metal is listed in IRIS as potentially causing adverse human health effects. For example, if we assume most chromium (Cr) emissions for mobile sources are unidentified as to the species, we would present the emissions as total chromium and not attempt to allocate these emissions because of the lack of accurate metal speciation information in most cases. When we assess the range of potential health impacts associated with exposure to chromium compounds, we consider the health effects associated with each compound for which we have information. For chromium, the most toxic form in IRIS is Cr+6; hence the health impacts described for chromium compounds include these most serious effects even though it is highly unlikely that all motor vehicle emissions are Cr+6. EPA believes this listing approach is a reasonable, health-protective way to handle the uncertainty surrounding motor vehicle emissions of metals. We also recognize that this is not an appropriate methodology for assessing the actual health risks of the entire group of metal compounds emitted from motor vehicles.

TABLE II–1.—PROPOSED LIST OF MOBILE SOURCE AIR TOXICS (MSATS)

Acetaldehyde	Diesel Exhaust	MTBE.[c]
Acrolein	Ethylbenzene	Naphthalene.
Arsenic Compound[a]	Formaldehyde	Nickel Compounds.[a]
Benzenen	n-Hexane	POM.[d]
1,3-Butadiene	Lead Compounds[a]	Styrene.
Chromium Compounds[a]	Manganese Compounds[a]	Toluene.
Dioxin/Furans[b]	Mercury Compounds[a]	Xylene.

[a] Although the different species of the same metal differ in their toxicity, the onroad mobile source inventory contains emissions estimates for total compounds of the metal identified in particulate speciation profiles (*i.e.*, the sum of all forms).

[b] This entry refers to two large groups of chlorinated compounds. In assessing their cancer risks, their quantitative potencies are usually derived from that of the most toxic, 2,3,7,8-tetrachlorodibenzodioxin.

[c] MTBE is listed due to its potential inhalation air toxics effects and not due to ingestion exposure associated with drinking water contamination.

[d] Polycyclic Organic Matter includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees centigrade. A group of seven polynuclear aromatic hydrocarbons, which have been identified by EPA as probable human carcinogens (benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, 7,12-dimethylbenz(a)anthracene, and indeno(1,2,3-cd)pyrene) are sometimes used as a surrogate for the larger group of POM compounds.

D. How Our List of MSATs Compares to Other Lists or Sources of Data on Toxics

There are other sources that provide information characterizing the cancer and noncancer health effects associated with exposure to air toxics. In identifying our MSAT list we relied upon the health effects data from the EPA IRIS database because it represents EPA's scientific consensus opinion on the health effects associated with exposure to various pollutants.

We also compared our emissions speciation data to four other lists of toxic air pollutants to confirm that our MSAT list is reasonable. The four lists of toxic air pollutants are: the Clean Air Act (CAA) section 112(b) list of hazardous air pollutants; California EPA (CalEPA) list of toxic air contaminants (TAC); U.S. Department of Health and Human Service Agency for Toxic Substances and Disease Registry (ATSDR) list of Minimal Risk Levels (MRLs); and International Agency for Research on Cancer (IARC) monographs on cancer.

Comparing these four lists against the emissions speciation studies, we identified two additional compounds not included on our list of 21 MSAT " propionaldehyde and 2,2,4-trimethylpentane. Both the Cal EPA TAC list and the CAA section 112(b) HAP list contain these compounds.

At this time EPA is not including propionaldehyde or 2,2,4-trimethylpentane in the list of MSATs because EPA has not drawn a conclusion on the potential adverse health effects associated with exposure to these pollutants. We request comment on whether these two compounds should be included on our MSAT list and, if so, why. Comments should include scientific information on the potential health effects of these pollutants.

E. Diesel Health Assessment Document

One of the key features of today's program is that we are proposing to designate diesel exhaust as a mobile source air toxic. The following paragraphs describe the most current information regarding the EPA's assessment of the health effects of exposure to diesel exhaust and provide information regarding actions by other agencies to evaluate the hazard associated with exposure to diesel exhaust.

EPA determined a reference concentration in 1993 to minimize noncancer health effects resulting from exposure to diesel exhaust. EPA has summarized available information to characterize the cancer and noncancer health effects from exposure to diesel exhaust emissions in the draft *Health Assessment Document for Diesel Emissions* (the Assessment). This information is also presented in the TSD.

The key components of the current draft Assessment are: (1) information about the chemical components of diesel exhaust and how they can influence toxicity, (2) the cancer and noncancer health effects of concern for humans, and (3) the possible impact or risk to an exposed human population. EPA is currently revising the Assessment based on a February 2000 review by the Agency's Science Advisory Board (SAB) Clean Air Scientific Advisory Committee (CASAC). A revised Assessment is expected to be available for peer review and public comment in late July 2000. The Assessment will be reviewed by

[15] A further discussion of the potential cancer and noncancer risks, and other dose-response information for each MSAT can be found in chapter 3 of the TSD.

CASAC late in 2000. The updated Assessment will inform the Technical Analysis Plan described in today's proposed program.

The proposed finding in EPA's draft Health Assessment Document, under review by CASAC, is that diesel exhaust is a likely human carcinogen in the lung at environmental levels of exposure and that exposure to diesel exhaust can pose a noncancer health hazard.

The concern for the cancer and noncancer health hazard resulting from diesel exhaust exposure is widespread. Several national and international agencies have designated diesel exhaust or diesel particulate matter as a "potential" or "probable" human carcinogen. The International Agency for Research on Cancer (IARC) considers diesel exhaust "probably carcinogenic to humans". Based on IARC findings, the State of California identified diesel exhaust in 1990 as a chemical known to the State to cause cancer and has listed diesel PM as a toxic air contaminant. The National Institutes for Occupational Safety and Health has classified diesel exhaust a "potential occupational carcinogen." The Department of Health and Human Services (DHHS) recently designated diesel exhaust particulates as "reasonably anticipated to be a human carcinogen" in its Ninth Report on Carcinogens.

F. Diesel Exhaust and Diesel Particulate Matter

Diesel exhaust include gaseous and particulate components. Gaseous components of diesel exhaust include organic compounds, nitrogen-containing compounds, sulfur compounds, carbon monoxide, carbon dioxide, water vapor, and excess air (nitrogen and oxygen). Among these gaseous organic compounds are benzene (a known human carcinogen), formaldehyde, acetaldehyde, and 1,3-butadiene (possible or probable human carcinogens). Particulate components include many organic compounds that are mutagenic as well as several trace metals (including chromium, manganese, mercury and nickel) that may have general toxicological significance (depending on the specific species). In addition, small amounts of dioxins have been measured in diesel exhaust, some of which may partition to the particle phase.

Because diesel exhaust is a mixture of particles and gases, the choice of a measure of exposure (*i.e.*, dosimeter) is important. EPA believes that exposure to whole diesel exhaust is best described, as many researchers have done over the years, by diesel particulate concentrations expressed in units of mass concentration (*e.g.*, $\mu g/m^3$). The choice of this dosimeter implies that the contribution of the gaseous components and diesel particulate constituents to toxicity are related by diesel particulate mass. This assumption is consistent with historic practice, but can only be validated when there is a better understanding of the toxicological mode of action for diesel exhaust.

While some of the cancer and noncancer hazard may be associated with exposure to the gaseous component of diesel exhaust, studies suggest that the particulate component plays a substantial role in carcinogenicity and noncancer effects. Investigations show that diesel particles (the elemental carbon core plus the adsorbed organics) induce lung cancer at high doses and that the particles, independent of the gaseous compounds, elicit an animal lung cancer response. The presence of non-diesel elemental carbon particles, as well as the organic-laden diesel particles, correlate with an adverse inflammatory effect in the respiratory system of animals. Additional evidence suggesting the importance of the role of particulate matter in diesel exhaust includes the observation that the extractable particle organics collectively produce cancer and adverse mutagenic toxicity in laboratory experiments.

Given the available information, we are proposing to list diesel exhaust as a mobile source air toxic pollutant. We invite scientific and policy rationales for listing only the particulate component of diesel exhaust as an MSAT.

III. How Are Motor Vehicle Emission Control Programs Reducing MSAT Emissions?

In the previous section we identified the 21 MSATs. We now turn to an evaluation of the impact of existing and planned controls on inventories of those air toxics by examining the emissions inventories and estimated reductions expected to be achieved by our various mobile source control programs.

The data and information available on emissions of these 21 MSATs vary considerably. While we have baseline inventory data for all of the MSATs except napthalene, we do not have inventory projections for all of them. Therefore, we are examining the projected impacts of our current and proposed mobile source control program by groupings of air toxics. More specifically, we have projections of future emissions for five gaseous toxics (benzene, formaldehyde, 1,3-butadiene, acetaldehyde, MTBE) and for diesel PM^{10} and we present these in this section. However, we do not have emissions projections for the remaining gaseous toxics (acrolein, POM, styrene, toluene, xylene, ethylbenzene, naphthalene, and n-hexane), but because these compounds are part of VOCs, we believe it is reasonable to utilize VOC emissions inventory projections to track the expected impact of our control programs on these other gaseous MSATs. Finally, we also do not have emissions inventory projections for the metals on the MSAT list (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxins/furans. While metal emissions and dioxin/furans emissions are associated with particles, and it is possible that they track PM emissions to some extent, we do not have good data on these relationships. Therefore, we are not presenting emission projections for these compounds in this document.

As we describe in the following discussion, there have been and will continue to be significant reductions in MSAT emissions as a result of implemented, promulgated, and proposed regulations. By 2020, we project on-highway emissions of gaseous toxics such as benzene, formaldehyde, 1,3-butadiene, and acetaldehyde, to decrease by 75 percent or more from 1990 levels as a result of our mobile source control programs up to and including our Tier 2 control program and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements (HD2007 rule). Under these current and proposed controls we expect on-highway diesel PM emissions to be reduced by more than 90 percent by 2020, as compared with 1990 levels. Nonroad engines and equipment also contribute substantially to levels of MSAT emissions and have only in recent years been subject to emission standards. Since nonroad engines are not subject to the same stringent controls as on-highway vehicles, the reductions from these sources are more moderate than those for on-highway sources.

The discussion in this section consists of two parts. First, we describe current inventories of MSAT emissions. Next, we describe how our on-highway emission control programs will reduce them. Interested readers should refer to

[10] In this notice the emissions inventory for diesel exhaust is looked at in terms of diesel PM, as that is what we have measured to date. Thus, even though we are proposing to list diesel exhaust as an MSAT, all emissions inventory and trends numbers are stated in terms of diesel PM.

chapter 4 of our Technical Support Document for more detailed information about the methodology we used to compile these inventories and the results of our analysis. We consider the impacts of our nonroad engine control programs on MSAT emissions in section VI of this preamble.

A. Baseline Inventories

We developed inventory estimates for several gaseous MSATs (acetaldehyde, benzene, 1,3-butadiene, formaldehyde, MTBE) and also for diesel PM as part of the 1999 study, "Analysis of the Impacts of Control Programs on Motor Vehicle Toxic Emissions and Exposure in Urban Areas and Nationwide," described in Section I.E, above (hereafter referred to as the 1999 EPA Motor Vehicle Air Toxics Study, or the 1999 Study).[17] We addressed these five gaseous MSATs and diesel PM because we had detailed information on the emission impacts of emission control technologies, fuel properties, and other parameters for these compounds.

The 1999 EPA Motor Vehicle Air Toxics Study provides 1990 and 1996 estimates of emissions for these compounds. The 1990 baseline represents estimated emissions before any of the programs added by the 1990 Clean Air Act Amendments were implemented. The 1996 estimates reflect toxics emissions with some of the new Clean Air Act programs in place, such as Phase 1 of the RFG program. We present emission estimates for these years in Table III–1. Note that since completion of the Study, we have updated our estimates of diesel PM emissions; these updated estimates are presented in Table III–1. It should also be noted that these estimates are only for on-highway vehicles.

TABLE III–1.—ANNUAL EMISSION SUMMARY FOR THE TOTAL U.S. FOR SELECTED AIR POLLUTANTS, ON-HIGHWAY VEHICLES ONLY

[Short tons[a] per year]

Compound	1990 baseline emissions	1996 emissions
1,3-butadiene	36,000	22,000
Acetaldehyde	41,000	27,000
Benzene	257,000	165,000
Formaldehyde	139,000	80,000
Diesel PM[b]	235,000	180,000
MTBE	55,000	65,000

[a] In this notice we report emissions in terms of short tons as opposed to metric tons. One short ton is 2,000 pounds. To convert to metric tons, multiply short tons by 0.9072. Note that all emissions and percentages in this and subsequent tables are rounded.

[b] The 1996 diesel PM estimate is based on the Tier 2 rulemaking inventories, updated to reflect the Updated Tier 2 Emissions Inventory for light-duty diesel exhaust and the proposed 2007 heavy-duty engine rule for heavy-duty diesel exhaust. For 1990, we used estimates from EPA's Trends Report for that year, as described below.

The 1996 National Toxics Inventory (NTI) prepared in connection with the Agency's NATA [18, 19] activities, described above, also contains emission estimates for 1,3-butadiene, acetaldehyde, benzene, formaldehyde and MTBE. The 1996 NTI emission estimates for these compounds differ slightly from those generated in the 1999 Study, due largely to revisions made to the NTI based on state comments. Since diesel exhaust are not included on the list of 112(b) hazardous pollutants, which is the focus of the 1996 NTI, diesel PM estimates have not been compiled there.

The 1996 National Toxics Inventory (NTI) prepared in connection with the Agency's NATA activities, described above, also contains emission estimates for 1,3-butadiene, acetaldehyde, benzene, formaldehyde and MTBE. The 1996 NTI emission estimates for these compounds differ slightly from those generated in the 1999 Study, due largely to revisions made to the NTI based on state comments. Since diesel exhaust are not included on the list of 112(b) hazardous pollutants, which is the focus of the 1996 NTI, diesel PM estimates have not been compiled there.

The 1996 NTI also contains 1996 emissions estimates for several other MSATs, and includes data for nonroad [20] as well as on-highway sources. We present these data in Table III–2. We also indicate the on-highway and nonroad percentages of the national inventories for these MSATs (the total national inventories include emissions from on-highway and nonroad mobile sources, major and area stationary sources, and other sources such as forest fires). Between the 1999 EPA Motor Vehicle Air Toxics Study and the 1996 NTI, we have baseline inventory data for all of the 21 MSATs except mercury compounds and naphthalene.[21] [22]

[17] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030. This report can be accessed at http://www.epa.gov/otaq/toxics.htm.

[18]–

[19] [Reserved].

[20] The nonroad inventory in the 1996 NTI includes emissions data for aircraft, commercial marine vessel, locomotives, and other nonroad engines. Note that under the Clean Air Act definition, nonroad does not include aircraft. For convenience, in this notice the term "nonroad" will include aircraft except where otherwise noted. It should be noted that the NONROAD model, on which the estimates for nonroad engines other than locomotive, commercial marine vessels, and aircraft are based, is still draft, and the emissions estimates based on this model are subject to change.

[21] [Reserved].

[22] Naphthalene emissions are not reported in the 1996 NTI separately from 16–PAH. Since diesel exhaust emissions are not included in the list of 112(b) hazardous pollutants that is the focus of the 1996 NTI, diesel PM emissions estimates have not been compiled there. See Chapter 3 of the TSD for the explanation of the linkage between diesel exhaust and diesel PM.

TABLE III–2.—1996 ON-HIGHWAY AND NONROAD EMISSION INVENTORIES OF PROPOSED MSATs 1996 NTI (SHORT TONS)

Compound	On-Highway		Nonroad		Mobile sources	
	Tons	Percent of total national emissions (percent)	Tons	Percent of total national emissions (percent)	Tons	Percent of total national emissions (percent)
1,3-Butadiene[a]	23,500	42	9,900	18	33,400	60
Acetaldehyde[a]	28,700	29	40,800	41	69,500	70
Acrolein[a]	5,000	16	7,400	23	12,400	39
Arsenic Compounds[a]	0.25	0.06	2.01	0.51	2.26	0.57
Benzene[a]	168,200	48	98,700	28	266,900	76
Chromium Compounds[a]	14	1.2	35	3	49	4.2
Dioxins/Furans[a, b]	0.0001	0.2	N.A.	N.A.	0.0001	0.2
Ethylbenzene	80,800	47	62,200	37	143,000	84
Formaldehyde[a]	83,000	24	86,400	25	169,400	49
Lead Compounds[a]	19	0.8	546	21.8	565	22.6
Manganese Compounds[a]	5.8	0.2	35.5	1.3	41.3	1.5
Mercury Compounds[a]	0.2	0.1	6.6	4.1	6.8	4.2
MTBE	65,100	47	53,900	39	119,000	86
n-Hexane	63,300	26	43,600	18	106,600	44
Napthalene	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Nickel Compounds[a]	10.7	0.9	92.8	7.6	103.5	8.5
POM (as sum of 7 PAH)[a]	42.0	4	19.3	2	61.3	6
Styrene	16,300	33	3,500	7	19,800	40
Toluene	549,900	51	252,200	23	802,100	74
Xylene	311,000	43	258,400	36	569,400	79

[a] Indicates also on the list of urban HAPs for the Integrated Urban Air Toxics Strategy.
[b] Mass given in tons of TEQ (toxic equivalency quotient). The EPA Office of Research and Development (ORD) has recently developed an inventory for dioxin and dioxin-like compounds using different methods than those used in the NTI. For 1995, the EPA-ORD estimate of on-highway emissions of dioxin compounds is 0.00005 tons TEQ, comprising 1.5 percent of the national inventory in that year.

The above inventory data reflect certain interesting characteristics of mobile source air toxics emissions. First, mobile sources account for the majority of the national inventory of three of the gaseous MSATs that are included on the urban HAP list. These three are 1,3-butadiene (60 percent), acetaldehyde (70 percent), and benzene (76 percent). Mobile sources account for 39 percent of the national inventory of acrolein, and 49 percent of the national inventory of formaldehyde, two other gaseous urban HAPs. All of these MSATs are formed as part of the combustion process. In addition, benzene is also released through evaporative emissions from gasoline.

Second, with regard to the other MSATs that are included on the urban HAP list, the mobile source contribution generally is small (arsenic compounds, chromium compounds, manganese compounds, nickel compounds, POM, and dioxins/furans). The sole exception is lead compounds. Mobile sources contribute 23 percent to national inventories of lead compound emissions, due primarily to nonroad sources and, more specifically, to the use of a lead-additive package used to boost the octane of aviation gasoline.[23] The mobile source contribution to the other metals on the urban HAP list comes primarily from engine wear, some fuel additives, or impurities in engine oil.

With regard to the gaseous MSATs that are not included on the urban HAP list (ethylbenzene, MTBE, n-hexane, styrene, toluene, and xylene), mobile source contributions are high because of the presence of these compounds in gasoline.

In addition, mobile sources account for almost all of diesel PM emissions. As shown in Table III–1, above, we estimate that 1996 on-highway diesel PM emissions are approximately 180,000 tons. We estimate that 1996 nonroad diesel PM emissions are approximately 346,000 tons, as discussed in section VI of this document.[24]

B. Impacts of Motor Vehicle Emission Controls on Emission Inventories

1. Description of Emission Control Programs

Many of the programs that we have put in place since the passage of the 1990 Clean Air Act Amendments to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, PM and CO have also reduced MSAT and diesel PM emissions. For example, measures to control hydrocarbons from motor vehicles are also effective in controlling gaseous toxics. In addition, certain programs address air toxics directly, such as the RFG program and the gasoline lead phase-out. In this section we briefly describe several categories of mobile source emission control measures that have helped reduce inventories of these harmful compounds. These programs include:

- More stringent vehicle standards and test procedures. The 1990 Clean Air Act Amendments set specific emission standards for hydrocarbons and for PM. Air toxics are present in both of these pollutant categories. As vehicle manufacturers develop technologies to comply with the hydrocarbon and particulate standards (e.g., more efficient catalytic converters), we expect air toxics to be reduced as well. Since 1990, we have developed a number of programs to address exhaust and evaporative hydrocarbon emissions and PM emissions. Some of the key programs are the Tier 1 and NLEV standards for light-duty vehicles and trucks; enhanced evaporative emissions standards; the supplemental federal test procedures (SFTP); urban bus standards;

[23] Aviation gasoline is used by a relatively small number of aircraft, those with piston engines, which are generally used for personal transportation, sightseeing, crop dusting, and similar activities.

[24] Note that the nonroad diesel PM emissions estimate is still draft and is subject to change.

and heavy-duty diesel and gasoline standards for the 2004/2005 time frame.

• Recent motor vehicle/fuel control initiatives. Two of our recent initiatives to control emissions from motor vehicles and their fuels are the Tier 2 control program and our recently proposed 2007 heavy-duty engine rule. Together these two initiatives define a set of comprehensive standards for light-duty and heavy-duty motor vehicles and their fuels. In both of these initiatives, we treat vehicles and fuels as a system. The Tier 2 control program establishes stringent tailpipe and evaporative emission standards for light-duty vehicles and a reduction in sulfur levels in gasoline fuel beginning in 2004. The proposed 2007 heavy-duty engine rule proposes stringent exhaust emission standards for heavy-duty engines and vehicles for the 2007 model year as well as reductions in diesel fuel sulfur levels starting in 2006.

• Limits on gasoline volatility. Volatility is a measure of how easily a liquid evaporates. As described earlier, some toxics such as benzene are present in gasoline and get into the air when gasoline evaporates. We imposed limits on gasoline volatility in the early 1990s to control evaporative emissions of both hydrocarbon and toxic compounds (most air toxics are hydrocarbons, so programs designed to reduce hydrocarbon emissions also reduce air toxics).

• Reformulated gasoline. The 1990 Clean Air Act Amendments required reformulated gasoline to be introduced in the nation's most polluted cities beginning in 1995. From 1995 through 1999, these gasolines were required to provide a minimum 16.5 percent reduction in air toxics emissions over typical 1990 gasolines, increasing to a 21.5 percent minimum reduction beginning in the year 2000. The air toxics reductions have been achieved mainly by further reducing gasoline volatility and by reducing the benzene, aromatics, sulfur, and olefin content of the gasoline.

• Phase-out of lead in gasoline. One of the first programs was the removal of lead from gasoline. The lead phase out began in the mid-1970s. It was completed January 1, 1996 when lead was banned from motor vehicle gasoline. The removal of lead from gasoline has essentially eliminated on-highway mobile source emissions of this highly toxic substance.

• Ensuring emissions are controlled while vehicle actually used. Many of our vehicle standards require certification of new engines and vehicles, but ensuring continued performance of emission controls can be difficult. The Clean Air Act establishes several programs to make sure vehicle emission controls are functioning properly in actual use. These programs include requirements for periodic emission inspections (I/M, or inspection and maintenance programs) and for computerized diagnostic systems that alert drivers and mechanics to malfunctioning emission controls.

We encourage the interested reader to refer to chapter 1 of our TSD for more detailed information about these programs.

2. Emission Reductions From Control Programs

We expect the mobile source emissions control programs described above to have beneficial impacts on the national inventories of MSATs. The remainder of this section summarizes our MSAT inventory projections. First, we present an overview of our inventory methodologies. Next, we present the results of our inventory projections. We encourage interested readers to refer to chapter 4 of our TSD for a more detailed discussion of these projections and how we developed them. The inventory projections in this section are for on-highway vehicles only, since we have the most complete information for this category of mobile sources. Projections of nonroad MSAT emissions are included in section VI of this preamble.

a. Overview of Inventory Sources

We have developed inventory projections for five gaseous MSATs, for VOC, and for diesel PM for the years 2007 and 2020 under our current and proposed control programs. These programs include the national low-emission vehicle (NLEV) program, the reformulated gasoline (RFG) program, the 2004 heavy-duty diesel and gasoline engine standards, the Tier 2/Sulfur controls, and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements (HD2007 rule).

The inventory projections for the five gaseous toxics are based on the 1999 EPA Moter Vehicle Air Toxics Study, and data from a spreadsheet model developed in support of the proposed 2007 heavy-duty engine rule.[25] The 1999 Study estimated on-highway motor vehicle air toxics emissions for ten urban areas (Atlanta, Chicago, Denver, Houston, Minneapolis, New York City, Philadelphia, Phoenix, Spokane, and St. Louis) and 16 geographic regions. These areas were selected to reflect the range of potential fuels, temperatures, and I/M programs observed in the U.S. The estimation methodology used in the 1999 Study was similar to that used in our original 1993 Motor Vehicle Related Air Toxics Study. In our approach, the MOBILE model is used to generate total organic gas (TOG) emissions from on-highway motor vehicles by vehicle class and model year. Toxics fractions, developed as a percentage of the toxic compound of interest contained in TOG emissions, are then applied to the MOBILE-based TOG emission rates (reported in grams per mile) to arrive at toxics emission rates (reported in grams per mile or milligrams per mile). These toxics fractions are developed as a function of vehicle class (*e.g.*, light-duty, heavy-duty), fuel type (*e.g.*, gasoline or diesel), fuel composition, and technology type (*e.g.*, non-catalyst, catalyst).

We do not have detailed emissions data for gaseous MSATs other than the five gaseous MSATs examined in the 1999 Study. However, we expect the trend for other gaseous MSATs, including acrolein, POM, styrene, xylene, toluene, ethylbenzene, naphthalene, and n-hexane, to follow that of VOC, since all of these compounds are VOCs. Therefore, to estimate projected inventory impacts from mobile source emission control programs, we use VOC inventories.

We believe this is appropriate because all of these compounds are constituents of VOCs, and we expect their inventories to decrease in proportion to decreases in overall VOC emissions. We recognize that some gaseous MSATs may not decrease at the same rate as VOCs overall. Without having more detailed emission data for each of the MSATs, however, we are unable to project how those rates may differ. We request comment on this approach, and on how to develop inventory projections for the other gaseous MSATs.

Our VOC and diesel PM emission estimates are derived from several sources. The 1996 and later values for light-duty vehicles are based on the Tier 2 rulemaking inventories, updated to reflect the Updated Tier 2 Emissions Inventory spreadsheet.[26] The 1996 and later values for heavy-duty engines and vehicles are based on data from a spreadsheet model developed in support of the proposed 2007 heavy-

[25] This spreadsheet model can be found in EPA Air Docket A–99–06, Item II–B–31.

[26] Details of this approach can be found in a memorandum by Harvey Michaels to Docket A–2000–12 titled "Adjustment to the Tier 2 Air Quality Inventory for the Mobile Source Air Toxics Proposed Rule".

duty engine rule.[27] The 1990 VOC emission estimate is based on the 1999 EPA Motor Vehicle Air Toxics Study,[28] and the 1990 diesel PM is from EPA's Trends Report.[29]

We are not reporting inventory trends for the metals on our list of MSATs (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxins/furans. Metals in mobile source exhaust can come from fuel, fuel additives, engine oil, engine oil additives, or engine wear. Formation of dioxin and furans requires a source of chlorine. Thus, while metal emissions and dioxin/furan emissions are associated with particles, there are a number of other factors that contribute to emission levels. While it is possible that these compounds track PM emissions to some extent, we do not have good data on these relationships.

b. Emission Reductions

Table III–4 presents the annual emission projections for on-highway vehicles in the years 2007 and 2020 for five gaseous toxics, VOC, and diesel PM with our current and proposed on-highway control programs.

TABLE III–4.—ANNUAL FIFTY-STATE EMISSIONS SUMMARY FOR SELECTED AIR POLLUTANTS WITH TIER 2 AND PROPOSED HEAVY-DUTY 2007 CONTROLS ON-HIGHWAY VEHICLES ONLY FROM 1990 TO 2020

[Thousand short tons per year]

Compound	1990	1996	2007	2020
Benzene	257	165	86	65
Acetaldehyde	41	27	14	8
Formaldehyde	139	80	35	17
1,3 Butadiene	36	22	11	9
MTBE[a]	55	65	25	18
VOC	7,585	4,819	2,662	1,838
Diesel PM	235	180	82	15

[a] These estimates do not include consideration of EPA's examination of options to phase down or otherwise control the use of MTBE under the Toxic Substances Control Act, or legislative authority that EPA has asked Congress to provide the Agency to address MTBE use in gasoline.

Table III–5 summarizes the percent reductions we expect in on-highway emissions of gaseous MSATs, VOC, and diesel PM from 1990 and 1996 levels in 2007 and 2020 as a result of our current and proposed on-highway control programs.

TABLE III–5.—SUMMARY OF FIFTY-STATE PERCENT EMISSION REDUCTIONS WITH TIER 2 AND PROPOSED HEAVY-DUTY 2007 CONTROLS ON-HIGHWAY VEHICLES ONLY IN 2007 AND 2020 FROM 1990 OR 1996

Compound	Reduction in 2007		Reduction in 2020	
	From 1990	From 1996	From 1990	From 1996
Benzene	67	48	75	61
Acetaldehyde	65	47	82	73
Formaldehyde	75	55	87	78
1,3 Butadiene	69	49	75	60
MTBE[a]	54	61	67	72
VOC	65	45	76	62
Diesel PM	65	48	94	92

[a] These estimates do not include consideration of EPA's examination of options to phase down or otherwise control the use of MTBE under the Toxic Substances Control Act, or legislative authority that EPA has asked Congress to provide the Agency to address MTBE use in gasoline.

The results of this analysis show that on-highway emissions of the five gaseous MSATs examined are expected to decline by approximately 75 percent by 2020 from 1990 levels with our existing and proposed controls. For some gaseous MSATs, the reductions are even greater. For example, we project both formaldehyde and acetaldehyde emissions will decrease by over 80 percent by 2020 from 1990 levels with our current and proposed controls. Likewise, VOC inventories from on-highway vehicles are projected to decrease as much as 75 percent between 1990 and 2020 and we assume that other gaseous toxics would decrease by approximately 75 percent as well. Finally, diesel PM emissions are expected to decline by over 90 percent by 2020 from 1990 levels.

Though these air toxics emissions reductions are substantial, we are not certain whether or not more control in the future is warranted for the remaining emissions from these air toxics. They have the potential to present serious health impacts to the public under certain circumstances that we have not been able to investigate fully. We also believe there is merit in considering further vehicle and fuel controls for both highway and nonroad sources for addressing the remaining emissions given the ever-changing nature of pollution control technology. These controls would be considered as part of our proposed Technical Analysis Plan outlined in section VII.

C. Summary

In this section, we presented our inventory projections for MSATs. These projections, which are limited to on-highway mobile sources, show that with

[27] This spreadsheet model can be found in EPA Air Docket A–99–06, Item II–B–31.

[28] The analysis methodology is described in a memorandum from Meredith Weatherby, Eastern Research Group, to Rich Cook, EPA, entitled "Estimating of 1990 VOC and TOG Emissions" in EPA Air Docket A–2000–12.

[29] EPA, 2000. National Air Pollution Emission Trends, 1900–1998 (March 2000). Office of Air Quality Planning and Standards, Research Triangle Park, NC. Report No. 454/R–00–002.

our current and proposed emission control programs up to and including Tier 2 and our recently proposed 2007 heavy-duty engine rule, on-highway emissions of gaseous MSATs are expected to decline by approximately 75 percent by 2020 from 1990 levels, and on-highway emissions of diesel PM are expected to decline by over 90 percent by 2020 from 1990 levels. These reductions will result from the more stringent VOC and PM controls that we have put into place over the last decade or have recently adopted (Tier 2) or proposed (HD2007).

IV. Evaluation of Additional Motor Vehicle-based Controls

This section discusses the relationship between EPA's vehicle-based control programs and the control of MSATs, the impact of our most recent efforts to control VOCs, and the need for additional control of MSATs.

A. MSATs and Motor Vehicle-based Controls

The majority of gaseous MSATs are hydrocarbons that are primarily the result of incomplete combustion of petroleum fuels (a small amount of raw fuel may also pass through the engine unburned). Technologies used to reduce exhaust hydrocarbons also reduce MSAT hydrocarbon species. This is true whether control is achieved through engine or component modifications, add-on devices, or the use of aftertreatment devices such as oxidation or three-way catalysts. We are not aware of vehicle or engine technologies that selectively reduce MSATs without reducing other hydrocarbons to a similar degree.

The other major source of hydrocarbon emissions from motor vehicles are fuel vapors. These emissions occur when components of the liquid fuel (gasoline or diesel) evaporate when onboard the vehicle. The emissions are normally separated into refueling emissions and evaporative emissions (hot soak, diurnal, and running losses). The nature and amount of potential MSATs associated with fuel vapors depend primarily on the fuel composition and the temperatures involved. Gasoline is volatile and evaporates at normal ambient temperatures, while diesel fuel is relatively non-volatile. Thus evaporative emissions are only an issue for gasoline-fueled vehicles (or vehicles using volatile alternative fuels such as methanol). Evaporative and refueling emissions are controlled by eliminating sources of potential liquid and vapor leaks within the vehicle fuel system and venting any vapors to an activated carbon canister or similar device. Activated carbon effectively adsorbs most hydrocarbon compounds, including the common evaporative-related MSATs.

Particulate matter emissions from motor vehicles are primarily composed of partially burned carbon and hydrocarbons from the fuel and engine oil, and to a lesser degree, metals and other inorganic compounds from contaminants or additives in the fuel or engine oil, or products of engine wear in the oil. Since our PM exhaust emission standards apply without regard to the source of the PM, manufacturers must account for all of these emissions. Manufacturers have significantly reduced PM emissions associated with unburned fuel and engine oil through combustion system and engine modifications.

B. EPA's Motor Vehicle-Based Emission Control Program

To understand the relationship between the Agency's current emission control program for on-highway vehicles and the control of MSATs, it is important to first understand the structure and scope of our current emission control programs. EPA's emission control program for on-highway vehicles has historically been divided into two broad vehicle/engine categories that we regulate: "light-duty" (vehicles 8,500 pounds gross vehicle weight rating (GVWR) or less) and "heavy-duty" (vehicles above 8,500 pounds GVWR).[30] Within these light-duty and heavy-duty categories, we further distinguish vehicles and sometimes establish different emission limits based on vehicle size or other factors. For example, within the light-duty category, in the past we have often had different programs for light-duty vehicles and light-duty trucks.

1. Light-Duty Vehicles

Before our regulations, cars emitted more than 9 grams per mile (gpm) HC in exhaust emissions. Our HC emission standards in the 1970s and 1980s cut these levels by more than an order of magnitude, to a level of 0.41 gpm in 1980. In 1991, we finalized Tier 1 controls for light-duty vehicles and light-duty trucks to be phased in from 1994 to 1996 (56 FR 25724). In 1998, we developed an innovative, voluntary nationwide program to make new cars, called National Low Emission Vehicles (NLEV), significantly cleaner than Tier 1 cars (63 FR 926). The NLEV program went into effect in the Northeast states in 1999 and will go into effect in the rest of the country in 2001. Table IV–1 illustrates the declining exhaust standards through the NLEV program that have resulted in HC reductions in the 1970s through the 1990s and are expected to result in future reductions.[31] In December 1999, the Agency finalized the Tier 2/sulfur rule establishing light-duty requirements that will be phased-in beginning with the 2004 model year. A more detailed discussion of the Tier 2 program follows in section C.

TABLE IV–1. HYDROCARBON (HC) EXHAUST EMISSION STANDARDS FOR LIGHT-DUTY VEHICLES (GPM)

Year	1970	1972	1975	1980	1994	2001
HC	2.2	3.4	1.5	0.41	0.31[1]	0.09[2]

[1] The 1994 standard is an nonmethane hydrocarbon (NMHC) standard.
[2] The 2001 standard is an nonmethane organic gas (NMOG) standard.

Our existing regulations contain test procedures to measure evaporative hydrocarbon emissions during a simulated parking event (diurnal emissions) and immediately following a drive (hot soak emissions). In 1993, we finalized more stringent evaporative emission test procedures which apply to light-duty and heavy-duty gasoline vehicles. These procedures were fully phased in by 1999 (58 FR 16002). The 1993 rule also addressed fuel spitback during refueling with a vehicle test to ensure that no spillage occurs when a vehicle is refueled at a rate of up to 10 gallons (37.9 liters) per minute. The Tier 2 rule included even more stringent requirements.

[30] EPA recently created the new category of "medium-duty passenger vehicles" (MDPVs) that includes passenger vehicles over 8,500 pounds GVWR.

[31] Our programs achieve VOC reductions through standards that limit HC, NMHC, or NMOG.

We have also finalized on-board refueling vapor recovery (ORVR) requirements for light-duty gasoline vehicles (59 FR 16262, April 6, 1994), and proposed to extend ORVR to heavy-duty gasoline vehicles between 8,500 and 10,000 lbs GVWR (64 FR 58471, October 29, 1999). ORVR is a nationwide program for capturing refueling emissions by collecting vapors from the vehicle gas tank and storing them in the vehicle during refueling. The fuel vapors are then purged into the engine air intake to be burned while the vehicle is being driven.

2. Heavy-Duty Vehicles

Table IV–2 summarizes the hydrocarbon and PM standards for heavy-duty engines. Also shown in the table are estimates of emission rates from uncontrolled engines. Not shown in the table are the standards in our recently proposed 2007 heavy-duty rulemaking.[32] In that NPRM we proposed exhaust emission standards of 0.14 NMHC and 0.01 PM for all heavy-duty engines.

TABLE IV–2.—HC AND PM EXHAUST EMISSIONS AND STANDARDS FOR HEAVY-DUTY ENGINES

	Gasoline (Otto-Cycle)	Diesel	
	Exhaust HC	Exhaust HC	Exhaust PM
Uncontrolled Emissions	10–13 g/bhp-hr	4 g/bhp-hr	0.7 g/bhp-hr
Current Standards	1.1 g/bhp-hr[a]	1.3 g/bhp-hr	0.10 g/bhp-hr
2004/5 Standards	0.25 g/bhp-hr[b]	0.4 g/bhp-hr[c]	0.10 g/bhp-hr

[a] Current standard is 1.9 g/bhp-hr for Otto-cycle vehicles over 14,000 GVWR.
[b] Standard has been proposed as a 2005 NMHC+NOx standard; level shown is estimated equivalent NMHC standard.
[c] Standard is a 2004 NMHC+NOx standard; level shown is estimated equivalent NMHC standard.

C. Feasibility of More Stringent Vehicle-Based Standards To Reduce MSATs

Section III of this proposal highlights the very significant reduction in toxics emissions that have been achieved as a result of EPA's on-highway emission control programs. Most recently, the Agency has finalized the Tier 2/sulfur requirements which will require manufacturers to incorporate the latest light-duty emission controls. EPA has also proposed new heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements that would also result in large emission reductions.[33] This section summarizes these two new technology-forcing programs.

1. Light-Duty Vehicles

Finalized in December 1999, the Tier 2/sulfur requirements phase-in a single set of tailpipe emission standards that will, for the first time, apply to all passenger cars, light-duty trucks (LDTs), and larger passenger vehicles. To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, nationwide gasoline sulfur requirements were also put into place. The Tier 2 program begins in 2004 for passenger cars and light LDTs (LDTs up to 6,000 pounds GVWR), while an interim program begins in 2004 for heavy LDTs (LDTs over 6,000 pounds GVWR). For heavy LDTs and MDPVs (medium-duty passenger vehicles), the Tier 2 standards will be phased in beginning in 2008, with full compliance in 2009. Thus, when fully implemented all vehicles designed for passenger use will have to meet the stringent new emission standards.

The Tier 2 program is designed to focus on reducing the ozone and particulate matter air quality impact for these vehicles. Ozone reductions will be achieved through control of nitrogen oxides and non-methane hydrocarbons. As discussed above, it is the control of NMHC through the NMOG standards that results in the control of the gaseous toxics. Control of PM emissions will occur through reductions in sulfur. The Tier 2 rule also established stringent PM standards. Because all Tier 2 standards are fuel neutral, the PM standards apply to both gasoline and diesel vehicles.

The Tier 2 standards will reduce new vehicle NO_X levels to an average of 0.07 grams per mile. The NMOG standards vary depending on which of the various "bins" (*i.e.*, certification categories) the manufacturers choose to use in complying with the average NO_X standard. However, we expect significant reductions in NMOG emissions from these vehicles as a result of the more stringent NMOG standards in the bins and the need to select bins to meet the NO_X average. When fully phased-in, we expect fleet average NMOG levels below the 0.09 g/mi level. The Tier 2 rule also finalized formaldehyde standards that harmonize federal standards with the California's LEV II program. The standards are primarily of concern for vehicles fueled with methanol because formaldehyde is chemically similar to methanol and is likely to be produced when methanol is not completely burned in the engine.

In order to meet strict Tier 2 standards on a fleet-wide average, manufacturers will have to use a combination of sophisticated calibration changes and emission system hardware modifications to increase and maintain high control system efficiency. They will be challenged to maintain tight air-fuel control and improved catalyst performance, especially achieving better catalyst thermal management. Minimizing the time necessary for the catalyst to reach its operating temperature will be especially critical, since the vast majority of emissions occur in the minute or less which passes before the catalyst "lights off." Many manufacturers are going to have to depend more on the precious metal palladium for oxidation of NMOG and CO emissions, as well as the reduction of NO_X, because palladium is more tolerant to high temperatures to increase in-use efficiency.

The Tier 2 standards for evaporative emissions represent, for most vehicles, more than a 50-percent reduction in diurnal plus hot soak standards from those that will be in effect in the years immediately preceding Tier 2 implementation. These standards should achieve similar reductions in gaseous MSATs, especially since activated carbon preferentially absorbs larger organic molecules. Under these requirements, it is likely that manufacturers will also need to upgrade materials and both increase the reliability of fuel/vapor hose connections and fittings and reduce the number used in the system.

[32] 65 FR 35429, June 2, 2000.

[33] 65 FR 35429, June 2, 2000.

Taken as a whole, the Tier 2 program presents the manufacturers with significant compliance challenges in the coming years. It will require the use of hardware and emission control techniques and strategies not used in the fleet today. Bringing essentially all passenger vehicles under the same emission control program regardless of their size, weight, and application is a major engineering challenge. While there may be other prototype technologies on the horizon which could potentially reduce cold-start emissions and therefore air toxics, given the cost and engineering burden associated with Tier 2, it is not appropriate to propose standards based on these technologies. We are not convinced that these technologies would be feasible and cost effective on a fleet-wide basis at this time. This is discussed in more detail in the TSD.

2. Heavy-Duty Vehicles

With regard to exhaust emission standards, the 2007 heavy-duty engine standards would reduce hydrocarbon emissions to levels approaching 0.1 g/bhp-hr for both gasoline and diesel. This would result in a significant reduction even when compared to the 2004 standards. Similarly, the proposed exhaust PM standard for heavy-duty diesel engines is very stringent. The proposed value of 0.01 g/bhp-hr is a 90-percent reduction from current standards which are currently being achieved with significant combustion chamber and engine modifications. Achieving a 0.01 g/bhp-hr standard will require the use of particulate trap-oxidizers. This technology will also result in HC emission reductions. It is further worth noting that the 2007 proposal includes provisions for a closed crankcase for turbocharged diesel engines. Crankcase emissions from these engines are a significant source of MSATs (PM and hydrocarbons) which has previously remained uncontrolled.

For chassis-certified gasoline-powered heavy-duty vehicles, EPA proposed that beginning in 2007 they meet exhaust hydrocarbon standards of similar stringency to those discussed above for Tier 2. These include hydrocarbon standards of 0.195 g/mi for vehicles of 8,500–10,000 lbs GVWR and 0.23 g/mi for vehicles of 10,001–14,000 lbs GVWR.

Fuel quality changes will enable gasoline and diesel-powered vehicles/engines to meet the more stringent standards over their full life. As part of the Tier 2 rule, EPA promulgated provisions limiting gasoline sulfur levels to 30 ppm average and 80 ppm cap. This program phases in beginning in 2004, and will enable a new generation of vehicle emission control for heavy-duty gasoline vehicles and also improve the emission performance of the current fleet. Sulfur is a fuel contaminant, and controlling sulfur will also reduce sulfate PM emissions. The 2007 heavy-duty proposal mentioned above also includes provisions to greatly reduce the sulfur content of current on-highway diesel fuel. Not only will this reduction enable the emission control technology now under development, but it will also reduce sulfate PM emissions as was the case for gasoline.

We have also proposed more stringent evaporative standards, which would force even further refinements in fuel/vapor systems. Onboard refueling vapor control is proposed to be effective for 2004 for all heavy-duty gasoline-powered vehicles. This would reduce emissions from current uncontrolled levels by 95 percent. In addition, as part of the 2007 proposal, evaporative emission standards are proposed to be reduced by 50 percent over current standards. Both refueling controls and further evaporative controls would reduce evaporative emissions of air toxics from heavy-duty vehicles even further.

The proposal for 2007 heavy-duty engine and vehicle standards contains extensive analysis and discussion of the technological feasibility. This analysis demonstrates that the proposed heavy-duty standards reflect the greatest degree of emission reduction achievable through the application of technology that will be available considering costs and other relevant factors. EPA expects that the recently proposed rulemaking to establish 2007 model year standards for heavy-duty diesel engines will satisfy the criteria in section 202(a) as well as 202(l)(2) and therefore defers to the technical decisions that will be made in that rulemaking. For further information on the diesel engine proposal see 65 FR 35430 (June 2, 2000).

3. Conclusion

The Tier 2 program represents a comprehensive, integrated package of exhaust, evaporative, and fuel quality standards. The Tier 2 program will achieve significant reductions in NMHC, NO_X, and PM emissions from all light-duty vehicles in the program. Emission control in the Tier 2 program will be based on the widespread implementation of advanced catalyst and related control system technology. The standards are so stringent that they will require the maximum level of control technology be used. To illustrate this point, it is worth noting that about 80 percent of all emissions from a Tier 2 vehicle will occur in the first 60 seconds of operation, before the catalyst "lights-off." Manufacturers will have to optimize their cold-start strategies and the efficiency of warmed systems to achieve the Tier 2 levels. Compliance with the Tier 2 standards will require the application of emission technology not widely used in the light-duty fleet today and in some cases the use of technological approaches still under development. Meeting the Tier 2 requirements will significantly reduce air toxics as a result of reductions in NMHC.

The emission control program for heavy-duty engines and vehicles has achieved major reductions in the emissions of criteria pollutants and their precursor emissions. New stringent emissions were established for heavy-duty diesel engines in a final rule promulgated in the fall of 1997 that will take effect in 2004. In October of 1999, we published a notice proposing to reaffirm the 2004 heavy-duty diesel engine emission standards. The notice also proposed new 2004 model year emission standards and related requirements for heavy-duty Otto-cycle vehicles/engines and supplemental test requirements for heavy-duty diesel engines.

We also recently announced a further initiative in control of heavy-duty vehicle/engine emissions in May 2000. This was done in the proposal to establish new heavy-duty diesel and Otto-cycle engine standards and vehicle emission standards for 2007. It also proposed new on-highway diesel fuel sulfur control requirements.

V. Evaluation of Additional Fuel-based Controls

In previous sections, we showed that the mobile source toxics inventory will continue to decline through 2020 due to existing programs. In this section we consider the role of fuels programs in reducing toxics emissions from mobile sources. Fuels contribute to air toxics emissions in two ways: evaporative emissions of the fuel, and exhaust emissions due to combustion of the fuel. One means of controlling toxics emissions from motor vehicles is to change the benzene content of the fuel.

In this section, we discuss our investigation of additional fuel-based controls for reducing toxics emissions. We begin with a discussion of the current gasoline-based toxics control programs, including a presentation of the over-compliance arising under the federal reformulated gasoline (RFG) and anti-dumping programs. This is followed by a discussion of why we believe that gasoline benzene control is

an appropriate initial focus for additional fuel controls to reduce MSATs. Next, we present our proposed anti-backsliding program for fuel benzene in both RFG and conventional gasoline (CG). As part of this discussion we address the issue of state controls of benzene levels in gasoline. We discuss potential future benzene controls that would be included as part of the investigation in our proposed Technical Analysis Plan. Finally, we discuss other fuel controls considered in EPA's development of this proposal.

A. What Current Gasoline Programs Control Toxics Emissions?

Current federal gasoline programs that control toxics emissions include the prohibition on leaded gasoline for highway use, the summertime volatility requirements, and the reformulated gasoline and anti-dumping programs. The first of these programs, the prohibition on leaded gasoline for use in motor vehicles, is a Clean Air Act requirement adopted in 1990 that was designed to complete the phase-out of leaded gasoline because of its contribution to national ambient lead levels. Lead is a probable human carcinogen with a variety of serious non-cancer health effects at low dose levels. The transition to unleaded gasoline began in 1974, and leaded gasoline has been banned for highway use since 1996 (see CAA Section 211(n)).

Under the second program, the federal volatility requirements, every area of the continental U.S. has a maximum summertime gasoline Reid vapor pressure (RVP). RVP is a volatility measurement of gasoline. Generally speaking, a fuel with a higher RVP evaporates more quickly than a fuel with a lower RVP. Thus, by instituting a maximum summertime RVP for each area, we control evaporative emissions of the volatile components of gasoline, including benzene and other gaseous toxics.

The federal reformulated gasoline (RFG) program includes, in addition to standards on VOC and NO_X emissions, several requirements related to toxics. Specifically, the RFG program (covering about one-third of the gasoline sold in the country) includes standards on the benzene content of fuel as well as standards governing the overall toxics emissions associated with evaporation and combustion of the fuel. Toxics emissions covered under the RFG program include exhaust and evaporative benzene, formaldehyde, acetaldehyde, 1,3-butadiene and polycyclic organic matter (POM). Under the Phase II RFG program which began in January 2000, a refinery's or importer's annual average total toxics emissions, as measured by the Complex Model,[34] must be 21.5 percent less than the toxics emissions attributable to the statutory baseline fuel. Additionally, a refinery's or importer's annual average RFG benzene content cannot exceed 0.95 percent by volume, and no batch may exceed 1.3 percent by volume. Alternatively, no batch of RFG may have a benzene content exceeding 1.0 percent by volume. Each refinery and importer must choose annually whether to comply with the average benzene requirement (0.95 volume percent) or the "per-gallon" benzene requirement (1.0 volume percent); essentially no refinery/importer chooses the latter compliance method.

EPA has also adopted standards to cover all fuel used outside of the RFG areas. These "anti-dumping" standards[35] include requirements for NOx performance and exhaust toxics performance. Exhaust toxics performance is measured using the Complex Model with all of the toxic compounds mentioned above except for evaporative benzene emissions. On a mass basis, exhaust benzene emissions comprise approximately 67 percent of total exhaust toxics emissions. Regarding exhaust toxics performance, the anti-dumping program requires that a refinery's or importer's total exhaust toxics emissions, as predicted by the Complex Model, not exceed that refinery's or importer's individual exhaust toxics emissions baseline, which is their 1990 performance level. Unlike the RFG program, the anti-dumping program does not specifically regulate the benzene content of conventional gasoline.

Based on 1998 compliance reports from refineries, average national compliance with the toxics portion of the reformulated gasoline and anti-dumping programs, including benzene requirements, exceeds the basic requirements. In other words, on average, refineries and importers produced gasoline in 1998 which over-complied with the applicable toxics and fuel benzene requirements. Table V–1 compares required levels or baseline levels, as applicable, of toxics emissions and fuel benzene under EPA's RFG and anti-dumping regulations with the actual levels achieved in 1998.

TABLE V–1.—OVER-COMPLIANCE WITH EXISTING BENZENE AND TOXICS STANDARDS

Type of gasoline	Reformulated	Conventional
Actual 1998 toxics performance (volume weighted)	30.3 percent reduction[a]	44 mg/mile.[b]
Required or baseline Phase I toxics performance	16.5 percent reduction	47 mg/mile.[c]
Actual 1998 benzene (volume weighted)	0.65 vol%	1.1 vol%.
Required or baseline benzene (annual average)	0.95 vol%	1.3 vol%.[d]

[a] For RFG, toxics performance is measured on the basis of *total* toxics with respect to the statutory baseline.
[b] For CG, toxics performance is measured on the basis of *exhaust* toxics with respect to an individual refinery's 1990 baseline.
[c] Under anti-dumping for CG, exhaust toxics in mg/mi per the Complex Model can be no higher than a refiner's 1990 annual average exhaust toxics emissions. The value of 47 mg/mi is the volume-weighted average of the standards applicable to all individual refineries.
[d] EPA does not currently regulate the fuel benzene level of CG. The value of 1.3 vol% is the volume-weighted average of the 1990 baseline levels for all refineries.

Thus RFG produced in 1998 exhibited an average total toxics emissions reduction which was nearly twice that required, and had average gasoline benzene levels which were approximately one-third less than the

[34] The Complex Model is a regulatory tool for estimating emissions for the reformulated gasoline and anti-dumping programs. The Complex Model inputs are eight specified fuel parameters: benzene, oxygen content (by oxygenate type), sulfur, RVP, aromatics, olefins, and the percents evaporated at 200F and 300F (E200 and E300). Complex Model outputs are the estimated emissions (VOC, toxics, NO_X) resulting from the fuel parameters specified. The Complex Model also calculates percent reductions of the input slate of fuel parameters and resulting emissions compared to a base set of fuel parameters and the resulting base emissions.

[35] The conventional gasoline standards are often referred to as the anti-dumping requirements because they prevent refiners from merely directing the clean gasoline to RFG areas and "dumping" the dirtier fuel in all other areas.

maximum average allowed. For CG, the over-compliance was less dramatic, amounting to approximately six percent for exhaust toxics. Although there is currently no standard for the benzene content of CG, in 1998 the CG benzene levels were approximately 15 percent lower than the average of benzene levels for individual 1990 refinery anti-dumping baselines.

Note that the information contained in Table V–1 reflects industry averages. In fact, not all refineries and importers over-comply. Approximately 90 percent of RFG refineries and importers over-complied in 1998. Most refineries and importers in over-compliance for RFG benzene are also in over-compliance for CG benzene. EPA believes that this over-compliance, particularly with respect to benzene, is due to a number of factors, including:

(1) *Benzene extraction for the petrochemical industry.* For certain refineries geographically located near petrochemical plants, it is profitable to remove benzene from reformate, a gasoline blending component, and sell it for petrochemical uses.

(2) *Dilution with oxygenates.* The oxygenate requirement of the RFG program, and refineries' and importers' use of oxygenates in conventional gasoline as gasoline extenders or for octane, reduce and dilute overall aromatics (*e.g.*, benzene, toluene and xylene, all of which are gaseous MSATs).

B. Why Is EPA Focusing on Benzene?

Benzene is an aromatic hydrocarbon that is present in gasoline as well as in exhaust and evaporative emissions. Benzene is also emitted from diesel engines, but at levels approximately one-fortieth that coming from gasoline vehicles. Emissions from gasoline-powered vehicles and engines contain several different toxic pollutants, including the following MSATs: benzene, 1,3-butadiene, acetaldehyde, formaldehyde, polycyclic organic matter (POM), and MTBE. However, on a mass basis, benzene makes up about 70 percent of the total amount of these gaseous toxics.[36] Thus if toxics emissions are going to be controlled through mobile sources, the benzene content of gasoline is an obvious area for priority consideration.

In addition to concerns about the sheer mass of benzene emissions, we are focusing on the benzene content of gasoline in this proposal because benzene emissions are one of two toxic compounds that section 202(l) of the Act indicates must be evaluated for control. We believe that individual States and environmental organizations will support this direction since they have expressed concerns specifically about fuel benzene content and ambient benzene concentrations.

We do not believe that it is appropriate at this time to propose controls on MSATs other than benzene through fuel modifications. Our reasons for this proposed determination follow.

Benzene is one of several toxic compounds that are part of vehicle emissions as well as a component of the fuel. Because refiners are able to directly control fuel benzene levels, benzene offers refiners the greatest degree of control over a specific toxic fuel component that is also present in emissions at substantial levels.

There are, however, some gaseous toxic components of vehicle emissions which, although not components of the fuel, can be controlled through fuel property limits. These include 1,3-butadiene, formaldehyde, acetaldehyde, and polycyclic organic matter (POM). Along with benzene, all of these compounds are currently controlled under the RFG program via a toxic emissions performance standard, and are prohibited from increasing above 1990 levels under the anti-dumping program for CG. As discussed previously, we are requesting comment on a toxics performance standard as an alternative to the proposed benzene anti-backsliding program. Since a performance standard necessarily allows refiners to trade off increases in one toxic compound with decreases in another, a new toxics emissions performance standard would not necessarily result in a reduction in benzene. In fact, an emissions performance standard could actually allow increases in benzene emissions. As discussed above, we believe that benzene should be the toxic pollutant targeted for control in this rulemaking. Still, benzene emissions do constitute up to 70 percent of total toxics emissions from gasoline, such that costs to control the non-benzene toxic emissions could be significant. As a result, we would expect refiners to aim for benzene control even under a new toxics performance standard, suggesting that the fuel benzene controls we are proposing today may be equivalent to the emission reductions that would be produced under a toxics performance standard. Control of these other toxics would most likely occur collectively through an emissions performance standard, and benzene would remain the primary means of toxics control in this case.

Formaldehyde is specifically listed in the CAA, along with benzene, as an MSAT that we must evaluate for control. We believe that additional controls on formaldehyde are not appropriate for today's proposal, though we will conduct further evaluation under our Technical Analysis Plan before making a determination. Formaldehyde control would require control of bulk fuel properties such as olefins or aromatics which could significantly affect octane and cost. Formaldehyde emissions are also expected to go down in the future. This means that any controls on formaldehyde may not be cost-effective, and EPA does not have enough information at this time to resolve this issue. Formaldehyde actually constitutes a significantly larger fraction of total hydrocarbons for diesel vehicles. Unfortunately, we do not have the data that would allow us to correlate individual diesel fuel properties with formaldehyde emissions. The alternative to controlling formaldehyde through diesel reformulation would be to set diesel engine standards for formaldehyde. As described above, our recently finalized Tier 2 rule and our proposed rulemaking to set new standards for 2007 model year heavy-duty engines and vehicles in fact address formaldehyde emissions from motor vehicles and heavy-duty trucks.

A number of other MSATs do not fall under the RFG or anti-dumping programs, and we do not currently have sufficient information on how changes in fuel properties affect emissions of these compounds. These include acrolein, styrene, dioxin/furans, xylene, toluene, ethylbenzene, naphthalene, and hexane. We are not aware of any model that would allow us to quantify how fuel controls could affect emissions of these compounds. We request comment or information about the effect of fuel controls on the aforementioned MSATs. We do know that bulk fuel aromatics control would reduce emissions of some of these compounds, but we are currently unable to quantify this effect. The relationship between other fuel properties and emissions of these compounds is even less clear. As a result, we cannot estimate the costs associated with controlling these compounds via fuels.

There are a number of metals that are emitted from motor vehicles, but these toxic compounds are being addressed in other actions. For instance, these metals generally arise from contaminants in lube oils. The recent rulemaking proposing new standards for heavy-duty engines and vehicles beginning in model year 2007 also proposes controls

[36] Per EPA's Complex Model (40 CFR 80.45).

on the use of used oil as a diesel fuel additive/extender. Finally, lead is no longer allowed to be used as an additive in motor gasoline.

We are not proposing controls to address emissions of MTBE in this rulemaking, even though MTBE is on our proposed list of MSATs. The primary mechanism for controlling MTBE emissions would be to limit the use of MTBE in gasoline. The Agency is currently pursuing a separate rulemaking under the Toxic Substances Control Act (TSCA) to consider the phase down or phase out the use of MTBE. We believe it is reasonable to defer consideration of MTBE controls to that rulemaking, which will address the important concerns of preserving water resources, as well as any air pollution impacts. In addition, the EPA and the United States Department of Agriculture jointly announced, on March, 2000, the Administration's legislative principles for protecting drinking water supplies, preserving clean air benefit and promoting renewable fuels and urged Congress to take action consistent with these principles, including providing EPA the authority to significantly reduce or eliminate the use of MTBE in gasoline.

Finally, changes to diesel fuel could result in reductions in a variety of toxic compounds, including aldehydes, dioxins/furans, POM, and of course diesel PM. At this time, however, there is insufficient data to allow us to quantify how changes in individual diesel fuel properties would affect emissions of these compounds. As a result, we cannot specify how refiners might change their operations or what capital equipment they might need to install in order to reformulate their diesel fuel, and thus we cannot estimate costs associated with this type of control. We request comment or information regarding the effect of diesel fuel reformulation on toxics emissions.

C. Given the Existing Over-Compliance, Why Is EPA Considering Additional Gasoline Benzene Controls?

Absent regulatory changes affecting toxic emissions and/or oxygenates, or reduction in the petrochemical demand for benzene, EPA expects that this average level of over-compliance will continue. Benzene emissions are critically dependent upon exhaust VOC control, which should continue to improve over the next 4–5 years due to the introduction of NLEV and Tier 2 vehicles. However, current benzene emission reductions are not guaranteed to continue. Therefore, because of the potential for serious health effects associated with air toxics from gasoline, EPA is proposing a toxics control program to maintain current benzene levels by creating an anti-backsliding program. Because it is an anti-backsliding program, it is not designed to reduce gasoline benzene content or benzene emissions beyond today's levels. However, it would prevent benzene emissions from increasing during the time period that we will be considering the need for and appropriateness of additional fuel-based toxics control programs.

D. What Type of Gasoline Control Program Is EPA Proposing Today?

The program EPA is proposing today focuses solely on gasoline benzene control and would require that a refinery's annual average gasoline benzene content not exceed the refinery's average gasoline benzene content during a baseline time period. We consider this approach to be an "anti-backsliding" measure, in that it does not allow gasoline benzene levels to increase, or "backslide," relative to the baseline. This section provides an overview of our proposed benzene control program while section H provides a more detailed discussion of the specific requirements of the program. We are also taking comment on an alternative approach involving a toxics emissions performance standard, which is described more fully in section I.

We are proposing that the benzene control program would begin in 2002. We believe this is an appropriate start date because refiners already have all of the information needed to establish their benzene baselines (see the baseline time period discussion below). Also, since the standards are intended to maintain 1998–1999 levels of over-compliance with benzene standards for RFG, and 1998–1999 benzene levels in CG, and thus are not technology-forcing, no lead time for capital equipment installation is necessary. As a result, gasoline benzene levels can be controlled at the earliest practical date. While we considered other effective dates, we believe the 2002 date is most practical. This is because the standards will not be finalized until December 2000, it will take several months for refiners to have their baselines approved, and it is desirable to have the program start on January 1. Therefore, 2002 is the earliest practicable effective date. We request comment on a start date of 2002.

We are also proposing that these benzene requirements would apply separately to federal RFG and CG. This is consistent with the separate treatment of these two gasoline types under the RFG and anti-dumping programs, and ensures that the benzene is not "moved" from one pool to the other to achieve compliance. As described more fully in section V.F.1 below, the proposed benzene anti-backsliding standards would apply only to a volume equal to the average of volume of gasoline produced during the baseline years (*i.e.*, 1998–1999). The Agency is taking comment on the appropriate standard to apply to any incremental gasoline that a refinery may produce beyond the amount of gasoline produced as an annual average in 1998–1999.

We are proposing a baseline time period of January 1, 1998 through December 31, 1999 ("1998–1999"). Thus, a refinery's baseline benzene content would be the average benzene content of all the gasoline produced during the two-year time period from 1998–1999. As an alternative, we could also choose a different pair of baseline years, such as 1999–2000, or a longer time frame, such as 1997–1999. Phase II RFG went into effect in January of this year, and the Agency is interested in public comment on the appropriateness of using the year 2000 as part of its benzene baseline. We request comment on the proposed baseline period (1998–1999), on alternative baseline periods, and specifically ask commenters to address the Agency's concerns pertaining to using the year 2000 in an alternative baseline.

Substantial emissions reductions have accrued as a result of the RFG program, and more are expected with the introduction of Phase II RFG. EPA has a significant interest in ensuring the continued production of RFG by domestic and foreign refineries. The proposed anti-backsliding standards for RFG and CG may have an impact on the future production of RFG, particularly for those refiners that are interested in expanding production or entering the RFG market for the first time. The Agency as described more fully in section V.F.1 below, is requesting comment on separate treatment of incremental volumes of RFG above baseline volumes based on 1998–1999 production.

Despite the fact that our proposed anti-backsliding program uses a two-year averaging period to establish baselines, we have chosen to propose a one-year averaging period for compliance purposes. The one-year averaging period is consistent with that used in the RFG, anti-dumping, and upcoming gasoline sulfur programs. It therefore represents a minimal additional reporting burden for refineries and importers. It also ensures

that temporal variations in ambient benzene concentrations due to varying fuel benzene content are kept to a minimum; a two-year averaging period, for instance, might allow fuel benzene levels in one year to be significantly higher than in the following year. Nonetheless, we request comment on the two-year averaging period option for compliance purposes, and on any other options which will maintain the anti-backsliding benefits of the proposed program.

EPA recognizes that some fluctuations in benzene levels may occur from one year to the next for a given refinery even if no long-term trend upward or downward is evident for that refinery. We are proposing that the baselines be applied to every single year after 2001 even though year-to-year fluctuations might push some refiners' benzene levels above their applicable standard in any given year. In response to this possibility, we are proposing a one-year deficit carryover provision. This provision would ensure that a refinery can meet its benzene standard while still allowing for the year-to-year fluctuations that may arise in the course of gasoline production. Therefore, our proposed program would give refineries maximum flexibility to comply with our anti-backsliding program. We request comment on this proposed approach.

Finally, we have chosen to propose an anti-backsliding program which controls gasoline benzene levels instead of a control which focuses on air toxics performance for two reasons. First, total benzene emissions constitute up to 70 percent of total toxics emissions (exhaust benzene emissions constitute roughly 65 percent of total exhaust toxics emissions). As a result, refineries would most likely focus on gasoline benzene control even if we proposed an equivalent toxics emissions performance standard. Second, gasoline benzene control also avoids the potential for offsetting benzene emissions increases with decreases in some other toxic pollutant such as 1,3-butadiene, formaldehyde, sulfur, or acetaldehyde. At the same time, there are a number of reasons why a toxics performance standard approach may also be desirable, and therefore, we are taking comment on it as an alternative anti-backsliding approach. This alternative toxics performance standard approach is described in more detail in section I.

E. Will the Proposed Benzene Standards Pre-Empt State Benzene Controls?

As EPA has explained in its federal fuel rulemakings, including in the preambles to the Tier2/sulfur gasoline rule and 1994 RFG rules, where EPA has adopted controls under section 211(c)(1) on the characteristics or components of gasoline provided to a particular area, section 211(c)(4)(A) of the Clean Air Act generally prohibits States from adopting their own controls respecting those characteristics or components unless the State controls are identical to EPA's.[37] Thus, EPA recognizes that by adopting specific controls on benzene content, as is proposed today, there is little question that States would be preempted pursuant to section 211(c)(4)(A) from adopting their own benzene controls for gasoline subject to the federal benzene standard.

EPA recognizes the concerns associated with the potential disruption caused by numerous "boutique" fuels (*i.e.*, state- and area-specific fuel types). In most situations, EPA believes that a uniform national program best balances protection of public health and protection of an efficient fuel distribution network. As the number of boutique fuels increases the less efficient the distribution system become. Therefore EPA's general expectation is that State fuels that differ from federal standards should be limited to situations where local or unique circumstances warrant control.

Today's proposal, however, is different from our previous fuel controls in two important respects. First, today's proposal, unlike many of our controls such as the federal sulfur regulations and the benzene standard for RFG, would not impose a uniform national standard that ensures significant emissions reductions in all areas of the country. EPA expects that under the proposed refinery-by-refinery standards, gasoline benzene levels around the country would not change from where they are today. This is particularly significant for areas receiving conventional gasoline where the average benzene levels are higher. In addition, several conventional gasoline areas in the country currently receive gasoline with benzene levels well above the national average.

Today's proposal also differs from many of our federal fuel controls such as the Tier 2/sulfur rule and our gasoline volatility program, in that it addresses a toxic component of gasoline, as compared to a fuel component that adversely affects efforts to achieve a NAAQS. This is important because section 211(c)(4)(C) of the Act allows for a waiver of preemption of state standards only where necessary to achieve a NAAQS. A similar mechanism is not clearly provided for States seeking to control ambient concentrations of toxics in their areas.

Thus, without some regulatory mechanism, this proposal could have the effect of preventing States from addressing local toxics concerns under all circumstances because a waiver may not be available. We therefore believe it is appropriate to consider options that would allow States to adopt more stringent conventional gasoline benzene standards in areas with higher than average benzene levels. EPA seeks comment on two alternatives.

One alternative would be to define the applicability of the rule such that the federal conventional gasoline benzene standards proposed today would not apply to gasoline intended for and used in States where the State adopts more stringent benzene controls under a benzene control program submitted to EPA for approval. Under this approach, State benzene controls that are more stringent than the federal standard would not be preempted by the benzene standard proposed today. This would facilitate the ability of States to adopt more stringent conventional gasoline benzene standards. It is important to note that this provision for more stringent State benzene controls would apply only to conventional gasoline areas. States in RFG areas would continue to be subject to the current federal benzene standard for RFG, which was issued under section 211(c)(1), as well as the benzene standard proposed today.

Under this approach, the regulations would establish a process analogous to the waiver process provided in section 211(c)(4)(C) of the Act and provide criteria that must be met before a State could adopt and enforce a more stringent standard. For example, the regulations could require the state to establish the following: that areas within the state are experiencing benzene air pollution problems and that there is a reasonable basis for the State's determination that there is a public health need for additional controls; how benzene levels in gasoline impact air quality; and that the standards and lead time provided in the state plan are reasonable and practicable considering factors such as cost and supply impacts. We request comment on all of these

[37] Section 211(c)(4)(A) provides: Except as otherwise provided in [211(c)(4)(B) or (C)], no state (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emissions control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine * * * if the Administrator has prescribed under [211(c)(1)] a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless the State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

criteria and invite suggestions for other criteria that we could use.

Under this approach, the State would also need to demonstrate that the State control is more stringent than the applicable federal requirement. We have considered several options for making this demonstration, and request suggestions for other means of comparison. One difficulty is that EPA's proposed program would control benzene at the refinery and importer level while any State standards would apply to a geographic area. In many cases, gasoline distributed in a given area may not have been produced by a refinery in the area; in fact, the refinery could be hundreds of miles from the area. One option we have considered for determining whether a State program is more stringent is to evaluate whether it would get more benzene control than today's proposed program. A State could determine the gasoline benzene levels in the area, and make predictions of any changes in those levels with the State program. This would require estimating the range of gasoline benzene levels in gasoline supplied to the area under the federal program, and any differences in the gasoline benzene levels that would result from a State program. Another option would require a State standard to be as low (in benzene) as the cleanest refinery baseline of the refineries most likely to supply the area.

EPA believes this first alternative would be a reasonable exercise of EPA's discretion under section 211(c)(1), because a federal backstop is not needed to avoid degradation in benzene levels in those areas where a State has adopted more stringent controls. Where a State adopts a more stringent benzene control for conventional gasoline sold in its area, it may request the EPA to remove the proposed federal benzene standard applicable to such gasoline. If EPA finds the State standard is in fact more stringent than the federal requirement otherwise applicable to gasoline intended for and used in that area and that the regulatory criteria are satisfied, the federal control would no longer be applicable to conventional gasoline used in that area. Because no federal benzene standard would apply to gasoline used in the area regulated by the State control, the State control would not be preempted by today's proposed federal benzene standard.[38]

EPA believes this approach is consistent with the authority provided in section 211(c)(1). Section 211(c)(1) authorizes EPA to determine both the level of control that is appropriate as well as the product to which the control should apply. EPA believes it is appropriate that this federal program, which is designed to avoid backsliding, should not interfere with State authority to adopt controls that are more stringent. This approach is similar to the scheme outlined in section 211(c)(4), which allows EPA to approve otherwise preempted State fuel controls into the State Implementation Plan (SIP) if the controls are needed to help achieve one or more of the NAAQS. This alternative provides a mechanism for waiving preemption of State benzene controls that is otherwise missing in section 211(c)(4).

A second alternative would be to avoid preempting State benzene controls in conventional gasoline areas in the first instance. This could be accomplished by establishing a control, on a refinery-by-refinery basis, based on the overall exhaust toxics performance rather than specifically on benzene levels. As with benzene, many refiners currently produce conventional gasoline that over-complies with the individual baselines for exhaust toxics performance assigned to each refinery. Much of this over-compliance, as explained earlier, is the result of lower benzene levels in gasoline. A more stringent exhaust toxics performance standard, like the proposed benzene standard, would ensure maintenance of this recent performance (in most cases over-compliance) but would not specify how that level of performance is to be achieved.[39] Like the refinery-by-refinery benzene standard being proposed today, a refinery-by-refinery exhaust toxics performance standard that reflects the recent level of performance achieved by that refinery would impose only negligible costs on refiners, if any. Moreover, because EPA would be regulating exhaust toxics performance and not benzene content, State benzene controls may not be preempted.[40]

EPA invites comments on the need to consider the above options for avoiding presumption of State controls, as well as the advantages and disadvantages of both of these approaches, including the potential preemptive effect of the approaches, and estimates of any costs associated with each of the approaches.

We would expect that refiners would likely segregate such State fuel in order to comply with the State control. We invite comment on whether EPA should require segregation to ensure that batches of gasoline that were not intended to be State batches would not be labeled as such simply to avoid including them in a refinery's compliance determination for today's proposed program. By ensuring that gasoline is correctly accounted for and ultimately correctly distributed, the environmental goals of the federal and State programs are met. We request comment on this issue of segregating State gasoline, including the feasibility and practicality of such an approach and the impacts of distribution of a separate State gasoline.

F. What Are the Expected Impacts of EPA's Proposed Program?

1. Expected Costs and Benefits

EPA believes that no refinery capital expenditures or operational changes would be needed to comply with the proposed anti-backsliding program since the proposal only requires that refineries continue doing what they did during 1998–1999 in terms of gasoline benzene content.

Refineries with low 1998–1999 benzene levels may believe that the proposed rule is penalizing them for being "cleaner" than required with respect to fuel benzene content. While EPA appreciates the fact that these refineries were indeed cleaner than necessary, EPA believes that refineries in 1998–1999 were likely to be operating in a manner that optimized their operations. Thus, the over-compliance during that time period must have been the most comfortable

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[38] EPA believes that if a particular federal control does not apply to gasoline used in a given area, that federal control should have no preemptive effect in that area under section 211(c)(4)(A). Thus, to determine the scope of federal preemption in conventional gasoline areas, EPA would only consider the conventional gasoline controls. The current conventional gasoline exhaust toxics performance standards, described in more detail below, use benzene as one of the inputs in the model used to evaluate the performance of a particular gasoline formulation. The level of benzene is not itself limited by any federal regulation for conventional gasoline. EPA believes it is reasonable to conclude that section 211(c)(4)(A) does not prohibit States from controlling benzene in conventional gasoline based on either the current conventional gasoline (CG) standards, or under today's proposal, where EPA's benzene control does not apply to that gasoline.

[39] The conventional gasoline toxics performance standard requires that exhaust toxics performance of current fuels be no less than the individual baseline, which was based on the performance of the gasoline produced in 1990. The performance of gasoline is modeled using EPA's Complex Model. The inputs used by the Complex Model to evaluate exhaust toxics performance for conventional gasoline include the levels of benzene, MTBE, ETBE, ethanol, aromatics, olefins, sulfur, RVP, and oxygen, as well as distillation values (E200 and E300). By regulating performance rather than the individual parameters that affect performance, the regulations give refiners flexibility in determining their fuel formulations, and preserve overall performance even if specific fuel characteristics vary.

[40] A state control on benzene would not be a control "respecting" exhaust toxics, for purposes of section 211(c)(4)(A).

operating position for refiners. Individual refiners whose gasoline contained very low levels of benzene must have been maximizing profits in the same way as refiners whose gasoline contained higher levels of benzene. Thus, there is no clear unfairness to setting standards for all refiners according to this optimized level, which had little year-to-year variation even over the three year period beginning in 1997.

Discussion of Incremental Volume Impact

The Agency recognizes that the demand for RFG is projected to increase over time, approximately 2% per year based on VMT projections. This raises an issue whether additional or different costs may be associated with this additional production to meet an increase in demand. EPA invites comment on this issue. The proposed benzene standards apply only to the annual average volume of RFG produced in the baseline years. The Agency intends to regulate the additional incremental production of RFG, and discusses options below. However, at this time we are not proposing a specific course of action and will take all comments into consideration when determining the appropriate standard to apply to the incremental RFG production in the final rule.

Specifically, EPA invites comment addressing four separate scenarios of potential increases in production of RFG: The first scenario would arise through increased production by refiners who currently produce RFG. These refiners may have current excess capacity and would expand their RFG production to meet rising demand. These refineries have established operations. They would have a baseline for their current production. The second scenario is refiners who might start producing RFG in the future. Some refiners who currently are only producing CG may decide to convert some of their production to RFG. They would not have an established baseline for the RFG production. The third scenario is importers, who are somewhat different since they often have no access to refining capacity themselves. Established importers would have a baseline. Therefore, to increase volume over the baseline volumes importers may have to find additional sources of RFG. That may cause them to seek additional volume from a new refining entity with benzene levels different from the established baseline. The last scenario consists of new refineries and importers who would not have established baselines. For each of these situations, EPA invites comment on costs associated with this increased production compared to costs with current production levels, information of the relative impacts on supply if any, and the predicted benzene levels of this increased production.

EPA seeks comment on two basic options for establishing a benzene standard for this increased production and requests ideas on other options that may be appropriate. Information received in the above request for comments will be useful to EPA in deciding the appropriate approach to take in setting a standard for this increase in production volume. EPA also invites comment on the relative merits of both approaches as applied to the different situations described above.

The first option would apply the same benzene content standard to all production. In other words, existing RFG refiners and importers that choose to expand production/importation would include all RFG produced in determining compliance with their 1998–1999 baseline benzene average. New RFG producers would need to meet the average benzene content currently found in the national RFG pool (*i.e.*, 0.66 vol%). This first option would ensure that the average benzene content of RFG would not degrade in the future.

The second option would set a separate standard that would apply only to the additional volume of RFG produced by a refinery or importer.[41] For these new barrels of RFG, EPA could require that the gasoline meet a less stringent standard, but no less stringent than the current RFG benzene standard of 0.95 vol% on average. This approach would preserve the benzene reductions that have been achieved to date for the existing inventory of RFG, while potentially allowing some limited increase above this level for the small amount of increased production. EPA requests comment on how benzene levels under this option are likely to compare to those that would be achieved under the first option.

Potential Interaction With Tier 2/Sulfur Gasoline Program and Possible MTBE Action

EPA is also seeking comment on the potential interaction, if any, of today's proposal with the promulgated Tier 2/sulfur reduction program and possible MTBE gasoline control programs. Regarding Tier 2 interaction with this proposal EPA, seeks comment on whether the implementation of Tier 2/sulfur there may lead to future compliance costs associated with this proposal. In addition to comments regarding potential costs differences, EPA requests comment on alternative benzene content standards that commenters believe would be appropriate under these circumstances and other alternative scenarios identified by commenters. EPA also seeks comment as to what extent, if any, the proposed benzene controls would affect the costs associated with future controls of MTBE content of gasoline. This information will be used to inform the Agency in its ongoing deliberations on the MTBE issue.

With regard to benefits, our proposed anti-backsliding program is not expected to reduce toxics emissions beyond what is currently being achieved. Instead, we would expect it to hold the average content of benzene in gasoline to 1998–1999 levels (gasoline in 2002, for example, would have the same benzene content, on average, as gasoline in 1998–1999). Because compliance with the proposed requirements would be determined at the refinery, and because fuel from a given refinery tends, on average, to be sold in a few specific areas (excluding fungible pipeline shipments), areas with relatively high gasoline benzene levels would be likely to continue to have relatively high gasoline benzene levels, unless a refiner voluntarily reduced its gasoline benzene content below its baseline levels. Fleet turnover to vehicles with lower standards (in other words, LEVs and Tier 2 vehicles) is expected to lower emissions of toxic compounds even as VMT increases, so benzene emissions will in fact continue to decrease, independent of our proposed anti-backsliding program.

2. Applicability of the Anti-Dumping Program

National Petrochemical & Refiners Association (NPRA) recently wrote to us requesting that we consider repealing the gasoline anti-dumping program which was established as part of the 1990 Clean Air Act Amendments.[42] A copy of this letter is included in the docket for this rule. The anti-dumping regulations require that each refiner's conventional gasoline, starting in 1995, produce no more emissions of NO_x and exhaust toxics emissions than were produced by that refiner's 1990

[41] Under this option we would need to establish not only a refinery-by-refinery baseline benzene content standard but also a refinery-by-refinery baseline on the volume of gasoline produced. Presumably these baselines would be based on the same time period.

[42] See EPA Air Docket A–2000–12, document number II–D–02.

gasoline. The primary purpose of the program was to prevent increased emissions from consumption of conventional gasoline due to the production of cleaner-burning reformulated gasoline.

NPRA believes that the combination of the Tier 2 sulfur controls, which begin phasing in by 2004, and the benzene standard being proposed today would on their own ensure compliance with the anti-dumping standards for NO_X and exhaust toxics emissions. In other words, with sulfur levels controlled to 30 ppm on average and benzene levels capped at current levels (which on average are less than those existing in 1990), refiners could not modify other gasoline parameters in order to violate their 1990 baseline standards for these two pollutants.

We request comment on the appropriateness of revising the anti-dumping program after full implementation of the Tier 2 sulfur controls and the benzene standards being proposed today. We also request comment on retaining the anti-dumping program, but waiving the testing and reporting requirements for all refiners and importers after implementation of the sulfur and benzene programs. Finally, we also request comment on the need to require further reductions in fuel benzene levels beyond those being proposed today before waiving the testing and reporting requirements associated with the anti-dumping program, to ensure that the waiver does not relax the current anti-dumping requirement for toxics.

G. Determination of the Need for Future Controls Deferred to Technical Analysis Plan and Future Rulemaking

In today's action we are not proposing to reduce the benzene content of gasoline below 1998–1999 levels. Although EPA has started to evaluate the emission benefits, costs, and technical issues associated with reducing fuel benzene levels below 1998–1999 average levels, a more precise evaluation of these issues cannot be made without much of the information that would be developed in the proposed Technical Analysis Plan. We are deferring a determination of the need for and appropriateness of additional controls related to benzene or other toxics until such time as more information is available.

Since reductions in fuel benzene content can produce substantial reductions in benzene emissions, fuel benzene control is a good approach to fuels-based toxics control. There are many ways of reducing gasoline benzene content. In fact, through our discussions with refineries and licensors of benzene reduction technology, we have identified four basic strategies that refineries could use to reduce benzene levels in their gasoline. The first strategy routes the precursor compounds (*i.e.*, those compounds that tend to form benzene in the reformer [43]) around the reformer. The second strategy separates a benzene-rich stream from reformate, the reformer product, and saturates [44] the benzene. In the third strategy benzene is separated from the reformate for sale to the petrochemical market. The fourth strategy involves separating either the benzene precursors or the benzene-rich product and other light compounds from the reformate, and saturating the benzene in an isomerate unit. While the first three strategies result in a net octane loss in the gasoline pool, the last strategy recovers that octane loss and can even increase the gasoline pool octane level. These and other potential benzene reduction strategies would be investigated in our Technical Analysis Plan.

In evaluating further mobile source air toxics, we will consider the appropriateness of both potential new controls and existing controls, considering costs and other relevant factors. Benzene reduction technologies (and in general, toxics reduction technologies and strategies), and how to best estimate the inventory benefits of additional control measures, are two areas for which we believe additional information is needed. Therefore, as mentioned above, we are deferring any further regulatory decisions until we can conduct our Technical Analysis Plan.

It should be noted that there are clear advantages in deferring a decision regarding the need for and appropriateness of further mobile source air toxics controls. As the gasoline and proposed diesel sulfur control programs are phased-in over the next few years, we can consider the effects of those programs, for example, the refinery impacts, as we estimate the costs and benefits of further controls. Also, currently there are significant data gaps in our nonroad emissions estimates and uncertainty in our estimated toxics inventories. We will be in a better position to address these limitations over the next few years. Furthermore, the nationwide benzene inventory will continue to decrease over time due to other programs, ensuring that adverse health effects associated with exposure to benzene will continue to decline. In the meantime, our proposed anti-backsliding provisions would prevent increases in the benzene content of gasoline. We also believe that within the next few years, additional data on ambient toxics levels will provide us with important information in evaluating further mobile source air toxics policy decisions.

H. What Are the Details of Today's Proposed Program?

This section explains the proposed benzene requirements, who must comply with the proposed standards, what gasoline is subject to the requirements, a possible credit banking and trading program, and compliance provisions.

1. Standards and Dates

We are proposing that each refinery and importer be assigned an individual baseline benzene value, separately for their reformulated and conventional gasolines, based on the quality of the gasoline produced or imported during the two-year period from 1998 through 1999. We are proposing that, beginning January 1, 2002, during each annual averaging period, the average benzene content for each type of gasoline listed above may not exceed the baseline benzene content for that type of gasoline for that refinery.

We are proposing a one-year deficit carryover which would permit refiners some flexibility in meeting their 1998–1999 baseline benzene levels. Under this flexibility, a refinery or importer would be allowed to be out of compliance with its benzene baseline for one year, but would have to make up the deficit and be in compliance the next year. EPA requests comments on this proposal and on a two-year averaging option wherein a refinery or importer's compliance would be determined every two years. EPA specifically requests comments on the potential environmental harms and costs or cost savings under such an option.

We request comment on whether the proposed 1998–1999 baseline is an appropriate baseline time period, and whether there would be any difference in requiring 1997–1998 to be the baseline period, or perhaps even a three-year baseline time period, 1997–1999, or some other time period. We specifically request comment on the year-to-year variability in a refinery's gasoline benzene levels. We also request

[43] A reformer is a refinery operating unit which produces a gasoline blending stream known as reformate. Reformate is very high in aromatics, such as benzene, and reformate is the main source of benzene and aromatics in finished gasoline.

[44] When benzene is saturated, hydrogen is added to the molecule to transform it from an aromatic compound to cyclohexane.

comment on the option of allowing a refinery to petition for a different baseline time period, if, during a portion of the baseline time period, refinery operations were significantly different from average operations, barring normal maintenance and turnarounds.

We also request comment on whether the proposed start of the program (January 1, 2002) allows sufficient time for refiners to prepare to meet the proposed requirements. We believe the proposed start date is appropriate since the requirements aim to capture recent performance as opposed to forcing further reductions. Because the proposed standards are average standards, which inherently allow batch-to-batch variability, we are not including compliance cushions in the setting of the gasoline benzene standard from each refinery's RFG and CG standard. There were no compliance cushions used in either the anti-dumping program or the RFG annual average benzene standard.

2. Entities Subject to the Proposed Regulation

The proposed benzene control program would apply to anyone who produces or imports gasoline for sale in the U.S., primarily petroleum refiners and importers. This includes anyone meeting our definition of a refiner (including blenders, in most instances) or an importer. Foreign refiners would in some cases be treated as a refiner.

3. California Gasoline

We are proposing that the requirements of the proposed benzene control program not apply to California gasoline. This is because California currently has a gasoline benzene standard that is more stringent than that required by the federal RFG program. Under California's program, a California refinery's annual average gasoline benzene content cannot exceed 0.8 vol%. This standard is more stringent than the federal RFG standards, which require that a refiner's RFG benzene not exceed 0.95 vol%, on average. California maximum benzene levels (on any batch subject to the averaging standard) are also more stringent than the federal RFG requirements. The current California maximum is 1.2 vol%, which will decrease to 1.1 vol% in 2003. The federal RFG maximum benzene level is 1.3 vol%. In 1998, California gasoline averaged less than 0.6 vol%. This average is below the current 0.65 vol% annual average for non-California, federal RFG. Additionally, beginning in 2003, California gasoline will become subject to a more stringent (refinery-based) benzene requirement of 0.7 vol% annual average. Given this upcoming reduction in the California averaging standard to a 0.7 vol% annual average, we do not expect average California gasoline benzene levels to increase.

While it is possible that California gasoline benzene levels could backslide compared to the levels in the baseline period, such a backslide is highly unlikely, or would be extremely minimal, given current California benzene levels and the upcoming more stringent standards. The goal of today's proposed program is to ensure that gasoline benzene levels around the country do not increase compared to the gasoline benzene levels during the baseline time period. We do not believe that excluding California from today's proposed program conflicts with this goal, and we do not expect any environmental detriment in California or the other 49 states as a result of excluding California gasoline from the proposed requirements.

This exclusion for California gasoline is consistent with other EPA fuel controls. California gasoline is currently excluded from some or all of the requirements of the RFG, anti-dumping, and gasoline sulfur programs. In the final RFG and anti-dumping rule (59 FR 7716, February 16, 1994), EPA exempted California refineries from most of the enforcement mechanisms, including reporting, associated with those programs because (1) California gasoline exceeded the federal performance standards for RFG; (2) the federal RFG areas in California were assured of meeting the federal RFG performance and content (benzene and oxygen) standards; and (3) the compliance and enforcement program was sufficiently rigorous. This exemption was extended for federal RFG Phase II (64 FR 49992, September 15, 1999). EPA has also exempted California gasoline from the recently promulgated gasoline sulfur requirements associated with the Tier 2 emission standards (65 FR 6698, February 10, 2000) because the current California gasoline sulfur requirement is at least as stringent as the new federal sulfur requirement.

Because it would not be included in the proposed program, we are proposing that California gasoline be segregated for the proposed benzene program as well as the other federal fuel programs. Though most California gasoline is produced and used in California, some is imported to or exported from California, and under the RFG and anti-dumping rules, such gasoline must be segregated and separately accounted. Segregation will ensure that low-benzene California gasoline is not part of a non-California refiner's benzene compliance determination, which would otherwise allow the refiner to use the low-benzene California gasoline to offset higher benzene gasoline destined for areas other than California.

We request comment on whether California should be excluded from the requirements of this proposed rule. If California gasoline were subject to today's proposed rule, it would be considered a separate type of gasoline for baseline and compliance determinations, just as we have proposed separate determinations for RFG and conventional gasoline.

4. Proposed Baseline Development and Submittal Requirements

a. *General requirements.* The purpose of establishing a benzene baseline for each refinery or importer is to determine the standards for that refinery under today's proposed rule. Each refinery or importer will have a reformulated gasoline benzene baseline value and a conventional gasoline benzene baseline value to the extent they produced or imported these fuels in the 1998–1999 baseline time period. We propose that refiners and importers would have to establish these benzene baselines for each individual refinery by submitting to us data establishing their annual average gasoline benzene levels based on the average of their 1998 and 1999 operations. No additional sampling or testing is required to establish a benzene baseline since this information is already required for both the reformulated gasoline and anti-dumping programs. We would review the data, and barring any discrepancies, approve benzene baselines for each refinery or importer.

We believe the process we have defined would minimize the burden to the industry and the time it will take for us to review and approve the benzene baselines. Specifically, refiners and importers must submit to us information which establishes (separately for RFG and CG) the batch report numbers, benzene levels and volumes of each batch, or composite, as applicable, of gasoline produced or imported in 1998 and 1999, as well as the annual average benzene levels calculated from this data. Within 120 days, we will review the application and notify the refiner of approval or of any discrepancies we find in the data submitted.

We are proposing that benzene baselines be submitted no later than June 30, 2001. EPA believes this would provide the industry with sufficient preparation time, and the Agency adequate review and approval time. EPA requests comment on whether this

deadline for benzene baseline submittals is appropriate.

b. *Proposed requirements for foreign refiners.* We are proposing that foreign refiners may follow the general requirements of our protocol for establishing individual refinery baselines (see 40 CFR 80.91–94 and also 40 CFR 80.410) by providing sufficient data to establish the volume of gasoline imported to the U.S. in 1998–1999 and the annual average benzene level of that gasoline. If the test method used to identify the benzene levels differs from the one specified in today's proposed action, the refiner would have to provide sufficient information about the test method to allow us to evaluate the appropriateness of the alternative. Because this information will be new to us, we may require more time to review and approve their 1998–1999 benzene baseline. But, consistent with our previous handling of foreign refiner submissions, once we have determined that the submission is complete, and the protocol has been followed, the foreign refiner may use the baseline while awaiting our formal approval. However, the refiner would be held to the baseline that is ultimately approved.

c. *Proposed requirements for importers and blenders.* To establish an individual benzene baseline, importers and blenders must have information on every batch of gasoline for at least twelve consecutive months within the two baseline years. Absent this data, we propose that they be assigned the industry average gasoline benzene baseline for that pool of gasoline.

d. *Proposed requirements for those with incomplete 1998–1999 benzene data.* Certain regulated parties did not produce or import gasoline into the U.S. during some or all of 1998–1999. EPA is proposing the following methodologies of determining the benzene baselines for these parties for the purposes of the proposed benzene control program:

(1) *Produced or imported for 12 consecutive months or more during the time period 1998–1999.* EPA is proposing to accept, at a minimum, 12 consecutive months' worth of data (which must include every batch produced or imported during that time period); any additional data (of acceptable quality) for the remainder of the baseline period must also be included in the determination.

(2) *Produced or imported for less than 12 consecutive months during 1998–1999.* EPA is proposing that refineries and importers in this situation use the 1998–1999 industry averages (separately for RFG and CG) as their 1998–1999 benzene baseline. We have estimated these values to be 0.66 vol% for RFG and 1.11 vol% for CG.

e. *Aggregation of refinery benzene baselines.* Consistent with the anti-dumping program, and with our position to maintain current performance with today's proposed action, we are proposing that multi-refinery refiners and importers be required to comply with the requirements of this proposal for their conventional gasoline on the same aggregate basis as their anti-dumping compliance is determined. Thus, each aggregate of a refiner would have a baseline conventional gasoline benzene level, computed after determining the baseline conventional gasoline benzene level of each refinery in the aggregate.

5. Flexibility Provisions

a. *Credit program.* This proposed anti-backsliding program does not include a credit trading program. However, EPA is seeking comment on the need for and viability of a credit trading program such as outlined below. While the agency believes it has provided sufficient flexibility with the proposed deficit carryover program, we are seeking comment on this credit trading approach as an alternative, or additional, means of providing compliance flexibility.

The current Reformulated Gasoline Rules provide a credit program that allows the transfer of benzene credits by refiners, importers, and blenders (see 40 CFR 80.67). In this program, benzene credits can be generated from a baseline average of 0.95 vol% benzene. This program will remain in place. Refiners that currently rely on this program, if any, will continue to be able to use it in meeting the basic RFG requirements in 40 CFR part 80, subpart D.

This credit generation and transfer approach could also be incorporated in the proposed anti-backsliding benzene standard. Refiners could generate credits by reducing the average benzene in their product below the anti-backsliding baseline. Under such a trading program, compliance could be achieved through a transfer of benzene credits provided that (1) the credits are generated in the same averaging period as they are used; (2) the credit transfer takes place not later than 15 working days following the end of the averaging period in which the benzene credits were generated; (3) the credits were properly created; and (4) the credits are transferred directly from the refiner, importer, or blender that created the credits to the refiner, importer, blender that used the credits to achieve compliance (*i.e.*, no brokering of credits).

Based on the fact that RFG and CG would have separate baselines, EPA believes it would be inappropriate to allow credit trading between the RFG and conventional gasoline pools. We request comment on the need for and appropriateness of adopting this type of credit program in the proposed anti-backsliding standard for both the reformulated and conventional gasoline pools. We are also seeking comment on whether any additional constraints might be included to limit credit transactions to ensure that the average benzene levels supplied to a given area do not degrade.

b. *Hardship provisions.* EPA is proposing to allow a refinery to temporarily produce and distribute gasoline which will cause it to exceed its baseline benzene level at the end of the averaging period based on the refiner's inability to produce complying gasoline because of extreme and unusual circumstances outside of the refiner's control that could not have been avoided through the exercise of due diligence. EPA is proposing to follow the "extraordinary circumstances" provisions as presented in 40 CFR 80.73 of the reformulated gasoline rule. EPA does not believe that the proposed benzene control program presents significant compliance challenges or compliance costs to the refiners. Thus, we are not proposing to include hardship provisions such as those included in the gasoline sulfur program for extreme economic hardship.

6. Downstream standards

Compliance with today's proposal occurs at the refinery or importer level, since each refinery, aggregate of refineries, or importer must comply with its average 1998-1999 baseline. As a result, there are no downstream standards associated with today's proposed rule.

7. Sampling and Testing

Overall we believe that our proposed anti-backsliding program will require refiners and importers to do little or no more than they are currently doing under the existing RFG and anti-dumping programs in terms of sampling and testing. The specific requirements are discussed below.

a. *Test method for benzene in gasoline.* We are proposing that ASTM standard method D3606–99 Standard Test Method for "Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography" be used for the measurement of benzene in gasoline.

This is the most recent update of this methodology.

b. *Requirement to test every batch of gasoline produced or imported.* We propose that the applicable per-batch or composite sampling and testing, as applicable for RFG and conventional gasoline, be continued under our proposed benzene control program. Since this program is only concerned with the annual average benzene level, there is no need for more batch testing than is already required.

c. *Sampling methods.* Sampling methods apply to all parties who conduct sampling and testing under the rule. We propose to require the use of sampling methods that were proposed in the July 11, 1997 **Federal Register** document for the RFG/CG rule (62 FR 37338, at 37341–37342, 37375–37376). These sampling methods include ASTM D 4057–95 (manual sampling), ASTM D 4177–95 (automatic sampling from pipelines/in-line blending), and ASTM D 5842 (this sampling method is primarily concerned with sampling where gasoline volatility is going to be tested, but it would also be an appropriate sampling method to use when testing for benzene).

d. *Gasoline sample retention requirements.* EPA is proposing to retain current gasoline sample retention requirements.

8. Recordkeeping and Reporting Requirements

Under today's proposal, refiners and importers would be required to keep, and make available to EPA, certain records that demonstrate compliance with their benzene baseline standard. The RFG/CG regulations currently require refiners and importers to retain records that include much of the information required in this proposed rule. Where this is the case, there would be no requirement for duplication of records or information.

Since there are no downstream standards under the proposed benzene regulations, only refiners and importers would be required to retain Product Transfer Documents (PTDs) and records of quality assurance programs (including, where applicable, benzene test results). Parties would be required to keep records for a period of five years.[45]

Refiners and importers would be required to submit an annual report that demonstrates compliance with the applicable benzene standards and data on individual batches of gasoline, including batch volume and benzene content. Based on our experience with other programs, we believe that requiring an annual benzene report and batch information will provide an appropriate and effective means of monitoring compliance with the average standards under the benzene program. Annual reports, on forms provided by the Agency, would be required to be received by EPA by the last day of February of the next calendar year.

EPA is proposing that parties that only blend oxygenates or butane into gasoline not be considered refiners under the proposed rule, and, as a result, would not be subject to the proposed reporting requirements.

We are also proposing that refiners and importers be required to arrange for a certified public accountant or certified internal auditor to conduct an annual review of the company's records that form the basis of the annual benzene compliance report (called an "attest engagement"). The purpose of the attest engagement is to determine whether representations by the company are supported by the company's internal records. Attest engagements are already required under the RFG/CG regulations. The refiner's attest engagement under the RFG/CG rule partially encompasses benzene rule compliance since the attest auditors are already required to verify benzene results for both CG and RFG. Consistent with the RFG regulations, the attest reports for benzene would be included in the presently required attest engagement submitted by May 31 of each year.

9. Exemptions for Research, Development, and Testing

We are proposing to provide an exemption from the proposed benzene requirements for gasoline used for research, development and testing purposes. We recognize that there may be legitimate research programs that require the use of gasoline with sufficiently high benzene levels such that extra effort would be required of the refiner to offset the benzene contribution of the research gasoline. As a result, we are proposing provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling or dispensing gasoline that would cause an exceedance of the refiner's annual average benzene standard, or cause the refiner to produce gasoline with sufficiently lower benzene to offset the benzene content of such gasoline if it were included, where such gasoline is necessary to conduct a research, development or testing program. Parties would be required to submit to EPA an application for exemption that describes the purpose and scope of the program and the reasons why use of the higher benzene gasoline is necessary. In approving any application, EPA may impose reasonable conditions such as recordkeeping, reporting, and volume limitations.

10. Liability and Penalty Provisions for Noncompliance

The liability and penalty provisions under the proposed rule are similar to the liability and penalty provisions of the RFG and other fuels regulations.[46] Regulated parties would be liable for committing certain prohibited acts, or causing others to commit prohibited acts. In addition, parties would be liable for a failure to meet certain affirmative requirements, such as the recordkeeping or PTD requirements, or causing others to fail to meet such requirements.

The provisions of section 211(d)(1) of the Clean Air Act (the Act) for the collection of penalties would apply for noncompliance with the proposed rule. The penalty provisions would subject any person who violates any requirement or prohibition of the rule to a civil penalty of up to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of the applicable average benzene standard would constitute a separate day of violation for each day in the averaging period. The penalty provisions are similar to the penalty provisions for violations of the RFG regulations.

I. Toxics Performance Standard

EPA requests comments on an alternative approach that would be based on a toxics performance standard instead of a gasoline benzene content standard. This alternative program would be very similar to the gasoline benzene program described above, but would require that the average toxics performance for gasoline produced at each refinery not increase over the toxics performance of gasoline produced by that refinery during the baseline period, 1998–1999. Annual toxics performance would be determined using the Complex Model in the same way it is determined for our RFG and anti-dumping programs. Like our proposal for the gasoline benzene standard, toxics performance would be determined separately for RFG and CG. Also, like

[45] Five years is the applicable statute of limitations for the RFG and other fuels programs. See 28 U.S.C. 2462.

[46] See 40 CFR § 80.5 (penalties for fuels violations); § 80.23 (liability for lead violations); § 80.28 (liability for volatility violations); § 80.30 (liability for diesel violations); § 80.79 (liability for violation of RFG prohibited acts); § 80.80 (penalties for RFG/CG violations).

our existing toxics performance requirements described above, the RFG standard would apply to total toxics emissions while the conventional gasoline standard would apply only to exhaust toxics performance. Other components of the program would work in the same way as for the gasoline benzene content standard, described in section H.

We believe that both of these approaches, the benzene content standard and the toxics performance standard, are consistent with the toxics requirements of the reformulated gasoline and anti-dumping programs, and either one could be used as the basis of a program that seeks to maintain current levels of fuel-based toxics control. However, a toxics performance standard (TPS) approach has some benefits compared to the gasoline benzene content approach. For example, a TPS may provide a toxics control program which offers more flexibility for refiners than the proposed benzene content program. This is because the TPS approach gives refiners more than one fuel parameter to adjust to achieve compliance with the requirements. At the same time, this flexibility varies by refiner, and may not be a benefit to many refiners given that benzene emissions, which are heavily influenced by gasoline benzene content, are the majority of toxics emissions. In addition, a TPS program may be preferable because it would limit emissions of several toxics, as a group, not just benzene.

These benefits, however, must be weighed against some issues that would be raised by adoption of a TPS. First, while a TPS gives refiners more flexibility, it is also the case that refiners may gain a large degree of toxics benefits, as measured by the Complex Model, simply through the gasoline sulfur reduction already required by 2004 instead of through toxics control. In other words, refiners may be able to maintain their current levels of toxics performance by reducing sulfur; this may even allow them to reduce the performance of their fuels with respect to emissions of other toxics as long as the overall toxics performance remains constant. EPA is concerned that codification of the current level of TPS over-compliance would effectively amount to a loss of the toxics benefits of the Tier 2 rule. A second issue associated with the TPS option is that it may not yield the same degree of benzene control as a gasoline benzene content standard, since refiners can opt to adjust aromatics or other fuel parameters instead of holding their benzene levels at or near their 1998–1999 average. EPA requests comment on the importance of each of these issues as well as on ways they can be alleviated if a toxics performance standard is finalized. EPA also seeks comment on whether a TPS approach will offer the same degree of benzene control as a gasoline benzene content standard.

A third alternative, which may alleviate some of the issues associated with a TPS, is to set a benzene emissions performance standard. Under this approach, annual average benzene emissions would be subject to comparison to baseline benzene emissions for 1998–1999, as measured by the Complex Model. Benzene emissions could be measured as they are in the existing fuel control programs, total for RFG, exhaust-only for CG, or we could measure total benzene emissions for both RFG and CG. EPA seeks comment on both alternatives. This approach is somewhat more stringent than the benzene fuel content standard in that it measures benzene emissions associated with a particular fuel formulation and not just the benzene content of the fuel. It is also more stringent than a TPS because it targets benzene specifically. Refiners may favor a benzene emissions performance standard because benzene emissions are a function of several gasoline constituents, and refiners would have greater flexibility when setting their fuel formulations. This option also has the benefit of specifically addressing and maintaining benzene emissions, which are not directly addressed under either the benzene content or the toxics performance standard approaches.

At the same time, EPA is concerned that the same issues described above for the toxics performance standard may also apply to a benzene toxics performance standard. In this case, sulfur controls will allow catalysts to perform more efficiently, resulting in lower exhaust benzene. In addition, a specific benzene emissions performance standard would be more constraining for refiners, in that adjustments to aromatics would impact a refiner's ability to comply with the requirements. EPA seeks comments on whether a benzene emissions performance standard should be applied. EPA also seeks comment on the importance of the issues described above as well as on ways they can be alleviated if a benzene emissions performance standard is finalized.

VI. Nonroad Sources of MSAT Emissions

In this section, we will look at MSAT emissions from nonroad mobile sources.[47] First, we will briefly review the nonroad MSAT emission inventories that were presented in Section III. Next, we will discuss how the current nonroad emission control programs will reduce these nonroad inventories, as well as briefly touch upon the expected benefits from our new actions targeting the control of emissions from currently unregulated nonroad categories.

We are looking at nonroad MSAT emissions separately from motor vehicle MSAT emissions primarily because our understanding of nonroad MSAT emissions is much more limited. This section ends with a discussion of the current gaps in our data that we will need to fill before we can comprehensively assess the need for, and appropriateness of, programs intended to further reduce nonroad MSAT emissions.

A. Nonroad MSAT Baseline Inventories

We previously presented the 1996 baseline inventories for several key nonroad MSAT emissions in Table III–2. This nonroad MSAT data was taken from the 1996 National Toxics Inventory (NTI). In general, the data show that nonroad vehicles tend to be significant contributors of those same MSAT emissions for which motor vehicles are also significant contributors. For some MSAT emissions, the nonroad inventories are comparable to, or even higher than, those for on-highway vehicles. Nonroad vehicles contribute as much as 39 percent of the national inventory of some MSAT emissions, such as acetaldehyde and MTBE, and contribute significantly to the national inventories of several others, including 1,3-butadiene, acrolein, benzene, formaldehyde, lead compounds, n-hexane, toluene and xylene.

Table III–4 shows our estimates of on-highway vehicle VOC and diesel PM emissions. Comparing the 1996 values in this table to the nonroad VOC and diesel PM numbers presented later in this section we see that the nonroad VOC inventory in 1996 was almost 80 percent of the on-highway inventory, while the nonroad diesel PM inventory for the same year was roughly twice that for on-highway diesel PM.

[47] "Nonroad" is a term that covers a diverse collection of engines, vehicles and equipment, as described in detail later in this section. The terms "off-road" and "off-highway" are sometimes used interchangeably with nonroad.

B. Impacts of Current Nonroad Mobile Source Emission Control Strategies

1. Description of the Emission Control Programs

The Clean Air Act Amendments of 1990 directed us to study the contribution of nonroad engines to urban air pollution, and to regulate them if warranted. Due to the variety of nonroad engine and equipment types and sizes, combustion processes, uses, and potential for emissions reductions, we have placed nonroad engines into several categories. These categories include land-based diesel engines (e.g., farm and construction equipment), small land-based spark-ignition (SI) engines (e.g., lawn and garden equipment, string trimmers), large land-based SI engines (e.g., forklifts, airport ground service equipment), marine engines (including diesel and SI, propulsion and auxiliary, commercial and recreational), locomotives, aircraft, and recreational vehicles (large land-based spark ignition engines used in off-road motorcycles, "all terrain" vehicles and snowmobiles). Brief summaries of our current and anticipated programs for these nonroad categories follow.

• *Land-based diesel engines.* Land-based nonroad diesel engines include engines used in agricultural and construction equipment, as well as many other applications (excluding locomotives, mining equipment, and marine engines). Under our Tier 1 standards phased in beginning in 1996, NO_X reductions of over 30 percent were required of new land-based nonroad diesel engines greater than 50 horsepower (hp).[48] Standards applicable to engines under 50 hp took effect for the first time in 1999. We have completed a second set of standards (Tier 2) which will be phased in from 2001 through 2006 and will require further NO_X reductions, as well as reductions in diesel PM emissions. Still more stringent NO_X standards for engines over 50 hp (Tier 3) have been adopted and will be phased in from 2006 through 2008. These Tier 2 and Tier 3 regulations will result in 50 percent reductions in VOC and 40 percent reductions in diesel PM beyond the Tier 1 regulations.[49] Finally, we are currently working on appropriate Tier 3 diesel PM standards for land-based nonroad diesel engines.

• *Small land-based SI engines.* Small land-based spark-ignition engines at or below 25 hp are used primarily in lawn and garden equipment such as lawn mowers, string trimmers, chain saws, lawn and garden tractors, and other similar equipment. Our Phase 1 emission controls for these engines took effect beginning in 1997 and will result in a roughly 32 percent reduction in VOC emissions.[50] We recently completed Phase 2 regulations for these engines which will result in additional reductions in combined HC and NO_X beyond the Phase 1 levels of 60 percent for nonhandheld engines and 70 percent for handheld engines.[51]

• *Large land-based SI engines.* We do not currently have emission standards in place for SI engines above 25 hp used in commercial applications. Such engines are used in a variety of industrial equipment such as forklifts, airport ground service equipment, generators and compressors. We are currently developing an emission control program for these engines.

• *Marine engines.* Due to the wide variety of marine engine types and applications we have broken them down into three general categories for regulatory purposes. The first category consists of gasoline outboard and personal watercraft engines. Our standards for these engines took effect in 1998 and become increasingly stringent over a nine year phase-in period, ultimately resulting in a 75 percent reduction in VOC.[52] The second category consists of commercial diesel marine engines. Our emission standards for these engines take effect in 2004 and are similar to our standards for land-based nonroad diesel engines.[53] These regulations will ultimately result in VOC reductions of 13 percent and diesel PM reductions of 26 percent for engines subject to the standards. The last category consists of both gasoline and diesel recreational sterndrive and inboard engines. We do not currently have emission regulations in place for this category of marine engine, but have begun developing them.

• *Locomotives.* Our regulations for locomotives and locomotive engines consist of three tiers, applicable depending on the date a locomotive is originally manufactured.[54] The first set of standards (Tier 0) applies to locomotives and locomotive engines originally manufactured from 1973 through 2001, any time they are manufactured or remanufactured. The second set of standards (Tier 1) applies to locomotives and locomotive engines manufactured from 2002 through 2004. The third set of standards (Tier 2) applies to locomotives manufactured in 2005 and later. While the Tier 0 and Tier 1 regulations are primarily intended to reduce NO_X emissions, the Tier 2 regulations will result in 50 percent reductions in VOC and diesel PM, as well as additional NO_X reductions beyond the Tier 0 and Tier 1 regulations.

• *Aircraft.* A variety of emission regulations have been applied to commercial gas turbine aircraft engines, beginning with limits on smoke and fuel venting in 1974. In 1984, limits were placed on the amount of unburned HC that gas turbine engines can emit per landing and takeoff cycle. Most recently (1997), we adopted the existing International Civil Aviation Organization (ICAO) NO_X and CO emission regulations for gas turbine engines. None of these actions has resulted in significant emissions reductions, but rather have largely served to prevent increases in aircraft emissions. We continue to explore ways to reduce emissions from aircraft throughout the nation.

• *Recreational Vehicles.* Large land-based spark ignition engines used in recreational vehicles include snowmobiles, off-road motorcycles and "all terrain" vehicles, and are presently unregulated. We are currently developing emission regulations for recreational vehicles.

In addition to the above engine-based emission control programs, fuel controls will also reduce emissions of air toxics from nonroad engines. For example, gasoline formulation (the removal of lead, limits on gasoline volatility and reformulated gasoline) will reduce nonroad MSAT emissions, because most gasoline-fueled nonroad vehicles are fueled with the same gasoline used in on-highway vehicles. An exception to this is lead in aviation gasoline. Aviation gasoline is a high octane fuel used in a relatively small number of aircraft (those with piston engines). Such aircraft are generally used for personal transportation, sightseeing, crop dusting, and similar activities.

As just discussed, most of our fuel controls aimed at gasoline cover both on-highway and nonroad vehicle fuel. The same is not true for diesel fuel. We have regulations in place that have dramatically reduced the sulfur levels in on-highway diesel fuel, and we have proposed further reductions in on-highway diesel fuel sulfur levels. These controls, however, do not apply to nonroad diesel fuel. Prior to the sulfur controls for on-highway diesel fuel, there was no distinction between nonroad and on-highway diesel fuel. We

[48] 59 FR 31306, June 17, 1994.
[49] 63 FR 56968, October 23, 1998.
[50] 60 FR 34582, July 3, 1995.
[51] 64 FR 15208, March 30, 1999 and 65 FR 24267, April 25, 2000.
[52] 61 FR 52088, October 4, 1996.
[53] 64 FR 73300, December 20, 1999.
[54] 63 FR 18978, April 16, 1998.

are considering the control of sulfur in nonroad diesel fuel, which would allow more effective diesel PM control technologies such as catalysts to be applied to nonroad engines and vehicles.

2. Emission Reductions From Current Programs

The programs just summarized are expected to result in reductions of national inventories of the MSAT emissions. This section summarizes our estimates of nonroad MSAT inventories into the future, based on the nonroad emission control programs we currently have in place. Interested readers are encouraged to refer to our Technical Support Document for a more detailed discussion of these projections. The discussion in this section consists of three parts. First, we discuss the inventories of four gaseous MSAT emissions: benzene, formaldehyde, acetaldehyde and 1,3-butadiene. Second, we discuss nonroad VOC emissions inventories as a surrogate for the other nonroad gaseous MSAT emissions. Finally, we discuss the trend of nonroad diesel PM emissions.

We are not reporting inventory trends for the metals on our list of MSATs (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxin/furans. Metals in mobile source exhaust can come from fuel, fuel additives, engine oil, engine oil additives, or engine wear. Formation of dioxin and furans requires a source of chlorine. Thus, while metal emissions and dioxins/furans emissions are associated with particles, there are a number of other factors that contribute to emission levels. While it is possible that these compounds track PM emissions to some extent, we do not have good data on these relationships.

a. *MSAT emissions.* Table VI–1 shows our estimates of four nonroad MSAT emissions. These estimates were based on the 1996 inventories contained in the 1996 NTI study.[55] The 1990 estimates were derived by applying toxic fractions to the nationwide VOC totals from the draft NONROAD model to the 1996 NTI numbers.[56] Toxic fractions represent the fraction of total VOC that a given MSAT makes up. By knowing the total VOC inventory and the toxic fraction for a given MSAT, we can estimate the inventory of that specific MSAT indirectly. The 2007 and 2020 estimates were derived from the draft NONROAD model, with the toxic fractions applied to the nationwide NONROAD VOC results. Toxic fractions were applied separately to the various sources of nonroad emissions (*e.g.*, diesel, gasoline, two-stroke, four-stroke, exhaust, evaporative) in the NONROAD model. Because the toxic fractions for the four MSATs shown vary from one another among the different nonroad emission sources, the percentage reductions of the four MSATs shown differ from each other.

TABLE VI–1.—ANNUAL TOXICS EMISSIONS SUMMARY FOR SELECTED AIR POLLUTANTS FOR THE TOTAL U.S. NONROAD MOBILE SOURCES FROM 1990 TO 2020

[Thousand short tons per year]

Compound	1990 emissions	1996 emissions	2007 emissions	2020 emissions
Benzene	100.2	98.7	75.4	69
Acetaldehyde	37.7	40.8	26.3	20
Formaldehyde	79.2	86.4	53.8	40.7
1,3-Butadiene	9.4	9.9	8.8	7.8

Table VI–2 summarizes the percent reductions from 1990 and 1996 levels represented by the inventories in Table VI–1. This table shows that the reductions expected from our existing nonroad control programs are significant, although not as substantial as the reductions of these pollutants for on-highway vehicles presented in section III.

TABLE VI–2.—SUMMARY OF PERCENT EMISSION REDUCTIONS IN 2007 AND 2020 FOR SELECTED AIR POLLUTANTS FOR THE TOTAL U.S. FROM 1990 OR 1996 NONROAD MOBILE SOURCES

Compound	Reduction in 2007		Reduction in 2020	
	From 1990	From 1996	From 1990	From 1996
Benzene	25	24	31	30
Acetaldehyde	30	36	47	51
Formaldehyde	32	38	49	53
1,3-Butadiene	7	11	18	21

b. *VOCs.* With the exception of the four MSATs shown in Table VI–1, we do not have detailed emissions data from nonroad mobile sources for the other gaseous MSAT emissions. Therefore, to estimate projected inventory impacts from our current nonroad mobile source emission control programs, we use VOC inventories. We believe this is appropriate because the gaseous MSAT emissions are constituents of total VOC emissions. By using VOC emissions as a surrogate, we are assuming that MSAT emissions track VOC reductions. In reality, however, some gaseous MSAT emissions may not decrease at the same rate as VOCs overall. Without having more detailed emission data for each of the MSAT emissions, however, we are unable to offer any insights on how those rates may differ. We request comment on how to develop inventory projections for the other gaseous MSAT emissions.

Our VOC emission inventories were developed using the draft NONROAD

[55] It should be noted that these estimates do not include locomotives, aircraft or commercial marine diesel engines. Thus, the 1996 estimates shown here differ slightly from those shown in Table III–2.

[56] The draft NONROAD model is a model we are developing to project emissions inventories from nonroad mobile sources. Because this is a draft model and subject to future revisions, the inventories derived from the draft NONROAD model and presented here are subject to change. The version of the NONROAD model that was used in this analysis is the one we also used in support of our recently proposed 2007 heavy-duty engine rule (65 FR 35429, June 2, 2000).

model. Because the draft NONROAD model does not include locomotives, commercial marine diesel engines, or aircraft we supplemented the draft NONROAD model inventories with the locomotive and diesel marine inventories developed in support of our regulations for those categories, and with aircraft emission inventories from the National Air Pollutant Emissions Trends, 1900–1996 report. The results of this analysis, presented in Table VI–3, show that VOC inventories are projected to decrease approximately 44 percent between 1996 and 2020 due to existing nonroad mobile source emission control programs. Comparing the results of this analysis with Table III–4, we see that expected nonroad VOC reductions are not as dramatic as those projected for on-highway vehicles, with nonroad and on-highway VOC inventories expected to be very similar by 2020. This analysis shows that our existing nonroad emission control programs will also result in significant gaseous MSAT reductions (assuming, as previously discussed, that gaseous MSAT emissions track VOC reductions).

TABLE VI–3.—ANNUAL VOC EMISSIONS SUMMARY FOR THE TOTAL U.S. NONROAD MOBILE SOURCES

Year	1996	2007	2020
Million short tons per year	3.6	2.2	2.0
Cumulative Percent Reduction from 1996	.....	39	44

c. *Diesel PM.* We estimated the nonroad diesel PM inventories using the draft NONROAD model. As explained earlier, because the draft NONROAD model does not include locomotives, commercial marine diesel engines, or aircraft we supplemented the draft NONROAD model inventories using other sources of information to cover these emissions. Table VI–4 shows our estimates of nonroad diesel PM emissions inventories. As can be seen, we expect nonroad diesel PM emissions to begin to drop with the implementation of some of our nonroad regulations. However, in the absence of additional controls, we expect that nonroad diesel PM emission inventories will begin to increase due to expected growth in the populations of nonroad vehicles and equipment. Comparing Table VI–4 to Table III–4 we see that, while the nonroad diesel PM inventory is roughly twice that for on-highway vehicles in 1996, nonroad emissions of diesel PM are expected to be three to four times as great as on-highway diesel PM emissions by 2020.

As was previously mentioned, we are considering appropriate Tier 3 diesel PM standards for land-based nonroad diesel engines. We believe that any specific new requirements for nonroad diesel PM we might propose would need to be carefully considered in the context of a proposal for nonroad diesel fuel standards. This is because of the close interrelationship between fuels and engines—the best emission control solutions may not come through either fuel changes or engine improvements alone, but perhaps through an appropriate balance between the two. Thus, we are working to formulate thoughtful proposals covering both nonroad diesel fuel and engines.

TABLE VI–4.—ANNUAL DIESEL PM EMISSIONS SUMMARY FOR THE TOTAL U.S. NONROAD MOBILE SOURCES

Year	1996	2007	2020
Thousand short tons per year	345.8	282.8	310.8
Cumulative Percent Reduction from 1996	.....	18	10

C. Gaps in Nonroad Mobile Source Data

There are significant gaps in our data on MSAT emissions from nonroad engines. As a result of these data gaps our understanding of nonroad MSAT inventories is less developed than our understanding of on-highway vehicle MSAT emissions. The largest single data gap is in the area of emission factors. While we have basic emission factors for VOC and PM for most of the nonroad categories, we have very little VOC speciation data for the given categories which would allow us to use VOC as a surrogate to estimate emissions of specific MSAT emissions. Given the large variety of nonroad engine sizes, types and uses, as well as the likelihood that this variety will result in some differences in VOC composition, it is important that we obtain or develop speciated VOC data specific to each nonroad category in order to more accurately project nonroad MSAT inventories. These gaps, too, must be filled in order to accurately assess the need for, and the most appropriate direction of, any future MSAT control program targeted specifically at nonroad mobile sources.

D. Summary

In this section we presented our inventory projections of MSAT emissions from nonroad mobile sources. We also briefly discussed the data gaps that need to be filled in order to better understand nonroad MSAT emissions. Our analysis shows that, without further emission control programs, some nonroad gaseous MSAT emissions are expected to decline by almost 50 percent by 2020. However, our analysis also shows that, absent additional controls, nonroad diesel PM emissions are expected to increase in the future.

VII. Technical Analysis Plan To Address Data Gaps and Reopening of Rulemaking

A. Technical Analysis Plan To Address Data Gaps

Because of the continuing potential future health impacts of exposure to the public of air toxics from mobile sources, we propose to continue our toxics-related research activities. Therefore, in addition to proposing today's controls, we believe we must continue to evaluate and re-assess the need for, and level of, controls for both on-highway and nonroad sources of air toxics in the future. Among the 21 compounds that EPA is proposing for inclusion on the list of MSATs, we believe that the Agency should focus its research in the next two years on benzene, diesel exhaust, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein for on-highway and nonroad mobile sources.[57] Agency screening analysis and consultation with the States indicate that these chemicals are likely to present the greatest risks to public health and welfare. This MSATs research will be coordinated with and extend the work that now is underway in the National Air Toxics Assessment (NATA) program that is part of the Urban Air Toxics Strategy.[58]

[57] EPA may also focus on other MSATs in the next two years, if new information shows that is appropriate.

[58] EPA's Office of Transportation and Air Quality, which is responsible for the MSATs program, will be working in coordination with the Office of Air Quality Planning and Standards (OAPQS), which manages NATA, and the Office of Radiation and Indoor Air, which is examining issues related to a wide range of indoor air pollutants. OTAQ will also rely on the health effects information and exposure and risk assessment guidelines of EPA's Office of

Continued

In conducting future research, EPA plans to address four critical areas where there are data gaps, or the need for additional research and analysis on the exposure of the public to air toxics, and the fuel and vehicle pollution controls that are available to reduce air toxic emissions. They are:

- Developing better air toxics emission factors for nonroad sources;
- Improving estimation of air toxics exposures in microenvironments;
- Improving consideration of the range of total public exposures to air toxics; and
- Increasing understanding of the effectiveness and costs of vehicle, fuel, and nonroad controls for air toxics.

Developing emission factors for nonroad sources. EPA wants to analyze the emissions of several types of commonly used nonroad engines to increase the engine test data it has on the air toxics from nonroad mobile sources. The Agency will then pool the data on air toxics emissions to develop better air toxics emissions factors for these sources.

Improving estimation of exposures in microenvironments. In the past, the Agency has used carbon monoxide (CO) measurements outdoors and indoors as a surrogate for estimating air toxics levels in different microenvironments (*e.g.*, inside vehicles, homes, shopping malls, office buildings, etc.). This approach has limitations. EPA is currently using the Hazardous Air Pollutant Exposure Model—Version 4 (HAPEM4), for estimating microenvironmental exposures in the National Scaling Assessment of NATA. HAPEM4 uses recent, direct technical assessments of the microenvironmental factors for individual chemicals to model the exposures in microenvironments. These microenvironmental factors and the results of their application are currently being peer reviewed. After that review, EPA will incorporate applicable comments into HAPEM4 microenvironmental factors that are needed to provide improved exposure estimates. In the future, it may prove necessary to have new field research undertaken to fill gaps in current data sets such as microenvironmental settings (*e.g.*, "houses with attached garages"). EPA will conduct field work in areas that the Agency judges are critical to provide reasonable exposure results for any major group of the U.S. population.

Another important aspect of considering microenvironmental exposures is the amount of time people spend in each microenvironment. HAPEM4 uses the recently developed Comprehensive Human Activity Database (CHAD) of information describing activities of various subgroups in the U.S. population in different microenvironmental settings. CHAD is a more expansive human activity diary data set than others EPA has used in exposure assessments to date, but the Agency recognizes that additional field research may be needed to expand human activity information for under-represented demographic groups, particularly in urban areas. EPA will update CHAD to take advantage of new data that becomes available through peer-reviewed studies. As CHAD is updated in the future, EPA will make necessary adjustments to ensure that HAPEM4 is providing the best reflection of each subgroup's activities and enable a reasonable subgroup analysis where EPA would be likely to gain additional insights about the health effects occurring for particular groups. In addition, the Agency will review the data to see where special analysis is warranted to isolate the subgroups facing greater risks.

Improving consideration of the range of public exposures. EPA's analysis to date has primarily examined average levels of exposure. However, as the Agency has stated in the Urban Air Toxics Strategy, EPA also wants to consider the disproportionate impacts of air toxics in "hotspot" areas. Hotspots are generally thought of as areas with elevated pollutant levels that could be associated with potentially serious health risks. The HAPEM3 modeling framework that EPA used for conducting the 1999 EPA Air Toxics Study described in Section I.E. above could not address this issue.[59] States and local air pollution control agencies have raised the hotspots issue as a major concern that needs to be addressed in a proper air toxics risk characterization.[60] Initially, EPA needs to develop and evaluate approaches that allow a reasonable examination of the concern over hotspots. Upon finding a reasonable way to address this issue, the Agency plans to assess the impacts of elevated air toxics in certain areas over the next two years. EPA will work with the State and local air pollution control agencies to ensure that the results of air toxics monitoring data analyses and urban monitoring pilot projects scheduled to be completed in the next year are considered in EPA's development of mobile source air toxics exposure and risk analyses.[61]

Additionally, EPA will evaluate the feasibility of improving the local-scale accuracy of the ASPEN model. More accurate and reliable local scale-modeling of ambient air toxics concentrations will better inform the Agency and the public about potential "hot spots." This information will also improve HAPEM exposure estimates.

Increasing understanding of the effectiveness and costs of vehicle, fuel, and nonroad air toxics controls. The Agency intends to conduct additional analysis on the types of controls that it could have for vehicles, fuels, and nonroad engines to lower emissions cost-effectively in a reliable and predictable manner. For the seven air toxics mentioned above, the Agency will analyze a variety of control options, including a reevaluation of previously considered control options, for both on-highway and nonroad sources. Based on the results of this work, EPA plans a more detailed engineering feasibility, performance, and cost analysis for the most promising technical approaches and a re-assessment of the level of air toxics controls for these sources.

In all of these research areas, EPA wants to work collaboratively with industry representatives, manufacturers of emissions control technology, State and local agencies, environmental groups, and other stakeholders. In keeping with this approach, the Agency plans to hold at least three technical workshops with all interested stakeholders to consider:

- Improvements EPA should make to ASPEN and HAPEM4 to enable the Agency to better assess the risks from air toxics;
- Ways to address the significance of the hotspots issue;[62] and

Research and Development in conducting its program.

[59] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030. This report can be accessed at http://www.epa.gov/otaq/toxics.htm.

[60] STAPPA/ALAPCO and NESCAUM raised this concern at an conference on mobile source air toxics that the Health Effects Institute managed for EPA in February 2000.

[61] EPA will characterize the exposure risks of air toxics in future analysis in the manner prescribed in the Agency's Guidance for Risk Characterization, February 1995.

[62] This workshop would include ways to qualify and quantify the geographic and exposure/risk impacts of mobile source emissions, considering both the ubiquitous ambient impact as well as potential hotspots. It would further assess how to examine for hotspots the geographic and exposure variability that exists for air toxics. Geographic variability includes the observed elevated urban area ambient concentrations of mobile source air toxics, peak ambient concentrations adjacent to roadways in urban and rural areas, and the elevated, mobile source-dependent emissions impacts (for example, waste transfer station

• Available vehicle, fuel, and nonroad control technologies for reducing air toxics.

The results of this research will provide the basis for any future rulemaking, as discussed below.

EPA solicits comments on this plan to support the Agency's future decisions on MSAT controls. The Agency also solicits submission of any documents with relevant technical research of which commenters believe the EPA may be unaware, or descriptions of research activities commenters believe the Agency should pursue.

B. Commitment for Further Rulemaking

EPA is also proposing a regulatory provision providing for a future rulemaking that will determine, based on the information available at that time, what additional motor vehicle or fuel controls would be appropriate to control emissions of hazardous air pollutants from motor vehicles and their fuels. This rulemaking would reassess the appropriateness of the then current standards under the Clean Air Act including the need for and technical and economical feasibility of further controls. The standards that have been promulgated by EPA or that are promulgated pursuant to today's proposal would stay in effect unless revised by this subsequent rulemaking procedure. EPA commits to issue a proposed rule by the end of 2003, and to take final action by the end of December of 2004.

As part of this rulemaking, EPA will reexamine the controls available for reducing emissions of benzene as well as the other hazardous air pollutants emitted from on-highway and nonroad vehicles and equipment and their fuels. EPA will reassess the reductions in toxics emissions expected to be achieved by the current suite of motor vehicle and fuel controls that will be implemented over the next several years as well as the potential for innovative control technologies to provide further reductions. In 2004, EPA will also be able to better determine the appropriateness of additional fuel controls in light of potential developments being considered by Congress, EPA and States with respect to MTBE and the oxygen content of gasoline. Finally, the review will consider the contribution of nonroad engines to emissions of air toxics and whether controls that reduce these emissions along with motor vehicle emissions are appropriate under the Act.

operations and bus, marine, aircraft, and locomotive terminal operations). Exposure variability includes recognition of factors that lead to different levels of human exposure, such as commuting, or living in a residence with an attached garage.

VIII. Public Participation

A. Comments and the Public Docket

Publication of this document opens a public comment period on this proposal. You may submit comments during the period indicated under **DATES** above. The Agency encourages all parties that have an interest in the program described in this document to offer comment on all aspects of the action. Throughout this proposal you will find requests for specific comment on various topics.

The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. We also encourage commenters who disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program. You should send all comments, except those containing proprietary information, to the EPA's Air Docket (see **ADDRESSES**) before the date specified above for the end of the comment period.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments. Such submissions should be labeled as "Confidential Business Information" and be sent directly to the person listed (see **FOR FURTHER INFORMATION CONTACT**), not to the public docket. This will help ensure that proprietary information is not placed in the public docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a non-confidential version of the document that summarizes the key data or information must be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive it, we will make it available to the public without further notice to the commenter.

B. Public Hearings

We will hold a public hearing as noted under **DATES** above. If you would like to present testimony at the public hearing, we ask that you notify the contact person listed above two weeks before the date of the hearing. You should include in this notification an estimate of the time required for the presentation, and any need for audio/visual equipment. We also suggest that sufficient copies of the statement or material to be presented be made available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material before the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearing for scheduling the order of testimony. Written transcripts of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing date to allow submittal of supplementary information.

IX. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866 because it raises novel legal or policy issues and is therefore subject to OMB review. The Agency believes that this regulation would result in none of the economic effects set forth in Section 1 of the Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, generally requires federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit

enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the standards as proposed seek to hold gasoline benzene fuel content to levels previously achieved by refiners in 1998 and 1999. The proposed standards would not require refiners to purchase equipment or to change their refining practices in new and unique ways. Today's proposed program also does not create requirements that would affect the ways in which fuels are transported or stored.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements (ICR) in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* We will announce in a separate **Federal Register** document that the ICR has been submitted to OMB.

The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information, unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgation an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA believes this proposed rule contains no federal mandates for state, local, or tribal governments or for the private sector as defined by the provisions of Title II of the UMRA. Nothing in the proposed rule would significantly or uniquely affect small governments.

2. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule may have federalism implications, as specified in Executive Order 13132, by preempting state and fuel benzene controls. The proposed standards will impose no direct compliance costs on states. Thus, Executive Order 13132 does not apply to this rule.

EPA consulted with state and local officials in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13094 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The proposed rule does not create any mandates or impose any obligations, and thus does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are

proposed in today's document. The standards referenced in today's proposed rule involve the measurement of gasoline fuel parameters. The measurement standards for gasoline fuel parameters referenced in today's proposal are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA believes this proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866.

X. Statutory Provisions and Legal Authority

The statutory authority for the fuels controls proposed in today's document can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended. Additional support for the procedural and enforcement-related aspects of the fuel controls in today's proposal, including the proposed recordkeeping requirements, come from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 14, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 80 and 86 of title 40, of the Code of Federal Regulations are amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

Authority: 42 U.S.C. 7414, 7521(l), 7545 and 7601(a).

2. Section 80.2 is amended by revising paragraph (d) to read as follows:

§ 80.2 Definitions.

* * * * *

(d) *Previously certified gasoline*, or *PCG*, means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards in subparts D, E, H, and I of this part, as appropriate.

* * * * *

3. Section 80.46 is amended by revising paragraphs (e) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(e) *Benzene.* (1) Benzene content shall be determined using ASTM standard method D–3606–99, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography"; except that

(2) Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D–3606–99 when present.

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 2622–98, D 3246–96, D 3606–99, D 1319–93, D 4815–93, and D 86–90 with the exception of the degrees Fahrenheit figures in Table 9 of D 86–90, are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

4. Subpart I is added to read as follows:

Subpart I—Gasoline Benzene

General Information

Sec.

80.580–80.585 [Reserved]
80.590 Who must register with EPA under the benzene program?

Gasoline Benzene Standards

80.595 What are the gasoline benzene standards for refiners and importers?
80.600 What gasoline is subject to the benzene standards and requirements?
80.605 How is the annual refinery or importer average benzene level determined?
80.610 What requirements apply to oxygenate blenders?
80.615 What requirements apply to butane blenders?
80.620 [Reserved]
80.625 What requirements apply to California gasoline?
80.635–80.685 [Reserved]

Baseline Determination

80.690 How does a refiner or importer apply for a benzene baseline?
80.695 How is a benzene baseline determined?
80.700 [Reserved]
80.705 What is the benzene baseline for refineries or importers with incomplete 1998–1999 data?
80.710–80.725 [Reserved]

Sampling, Testing and Retention Requirements for Refiners and Importers

80.730 What are the sampling and testing requirements for refiners and importers?
80.735 What gasoline sample retention requirements apply to refiners and importers?
80.740 What requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?
80.745 [Reserved]
80.750 What alternative benzene requirements apply to importers who transport gasoline by truck?
80.755–80.760 [Reserved]

Recordkeeping and Reporting Requirements

80.765 What records must be kept?
80.770 What are the benzene reporting requirements?

Exemptions

80.775 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?
80.780 What are the requirements for obtaining an exemption for gasoline used

for research, development or testing purposes?

Violation Provisions

80.785 What acts are prohibited under the gasoline benzene program?
80.790 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
80.795 Who is liable for violations under the gasoline benzene program?
80.800 [Reserved]
80.805 What penalties apply under this subpart?

Provisions for Foreign Refiners With Individual Benzene Baselines

80.810 What are the additional requirements for gasoline produced at foreign refineries having individual refiner benzene baselines?

Attest Engagements

80.815 What are the attest engagement requirements for gasoline benzene compliance applicable to refiners and importers?
80.820 [Reserved]

Additional Rulemaking

80.825 What additional rulemaking will EPA conduct?

Subpart I—Gasoline Benzene

General Information

§§ 80.580–80.585 [Reserved]

§ 80.590 Who must register with EPA under the benzene program?

(a) Refiners and importers who are registered by EPA under § 80.76 are deemed to be registered for purposes of this subpart.

(b) Refiners and importers subject to the standards in § 80.595 who are not registered by EPA under § 80.76 must provide to EPA the information required by § 80.76 by October 1, 2001, or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

Gasoline Benzene Standards

§ 80.595 What are the gasoline benzene standards for refiners and importers?

(a)(1) The refinery or importer annual average gasoline benzene standard is the baseline benzene level for that refinery or importer as determined at § 80.695.

(2) A refinery or importer has a separate annual average gasoline benzene standard for each of the following types of gasoline produced at that refinery or imported:

(i) Reformulated gasoline;

(ii) Conventional gasoline.

(b)(1) The annual average gasoline benzene standard is the maximum average benzene level allowed for gasoline produced at a refinery or imported by an importer during each calendar year starting January 1, 2002. Refiners who have chosen, under subpart E of this part, to comply with the requirements of subpart E of this part on an aggregate basis, must comply with the requirements of this subpart on the same aggregate basis.

(2) The benzene standard and all compliance calculations for benzene under this subpart are in percent by volume (vol%) and volumes are in gallons.

(3) The averaging period is January 1 through December 31 of each year.

(4) The standards under paragraph (a) of this section shall be met by the importer for all imported gasoline, except gasoline imported as Certified Benzene-FRGAS under § 80.810.

(5) The annual average benzene level is calculated in accordance with § 80.605.

§ 80.600 What gasoline is subject to the benzene standards and requirements?

For the purpose of this subpart, all reformulated gasoline, conventional gasoline and RBOB, collectively called "gasoline" unless otherwise specified, is subject to the standards and requirements under this subpart, as applicable, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) Gasoline that is exported for sale outside the U.S.

(c) Gasoline designated as California gasoline under § 80.625, and used in California.

(4) For RFG, the volume of RFG that exceeds the annual average volume of RFG produced during the 1998–1999 baseline years.

§ 80.605 How is the annual refinery or importer average benzene level determined?

(a) The annual refinery or importer average gasoline benzene level is calculated as follows:

$$B_a = \frac{\sum_{i=1}^{n}(V_i \times B_i)}{\sum_{i=1}^{n} V_i}$$

Where:

B_a = The refinery or importer annual average benzene value, as applicable.
V_i = The volume of applicable gasoline produced or imported in batch i.
B_i = The benzene content of batch i determined under § 80.730.
n = The number of batches of gasoline produced or imported during the averaging period.
i = Individual batch of gasoline produced or imported during the averaging period.

(b) The annual average calculation specified in paragraph (a) of this section shall be completed separately for each type of gasoline specified at § 80.595(a)(2).

(c) All annual refinery or importer average calculations shall be conducted to two decimal places.

(d) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the benzene content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(e) Refiners and importers must exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery;

(2) In the case of an importer, gasoline that was imported as Certified Benzene-FRGAS under § 80.810;

(3) Blending stocks transferred to others;

(4) Gasoline that has been included in the compliance calculations for another refinery or importer; and

(5) Gasoline exempted from standards under § 80.600.

(f) A refiner or importer may exceed its refinery or importer annual average benzene standard specified in § 80.595, separately for RFG and CG, for a given averaging period, creating a compliance

deficit, provided that in the calendar year following the year the standard is not met, the refinery or importer shall:

(1) Achieve compliance with the refinery or importer annual average benzene standard specified in § 80.595; and

(2) Use additional benzene credits sufficient to offset the compliance deficit of the previous year.

§ 80.610 What requirements apply to oxygenate blenders?

Oxygenate blenders who blend oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.615 What requirements apply to butane blenders?

Butane blenders who blend butane into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.620 [Reserved]

§ 80.625 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart *California gasoline* means any gasoline designated by the refiner or importer as for use in California.

(b) *California gasoline exemption.* California gasoline that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(c) *Requirements for California gasoline.* The requirements are as follows:

(1) Each batch of California gasoline must be designated as such by its refiner or importer;

(2) [Reserved]

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere;

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees must meet the product transfer document requirements under § 80.81(g); and

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California must comply with the standards and requirements of this subpart, regardless of any designation as California gasoline.

(d) *Use of California test methods and off site sampling procedures.* In the case of any gasoline that is not California gasoline and that is either produced at a refinery located in the State of California or is imported from outside the United States into the State of California, the refiner or importer may, with regard to such gasoline:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations instead of the sampling and testing methods required under § 80.730; and

(2) Determine the benzene content of gasoline at off site tankage as permitted in § 80.81(h)(2).

§§ 80.635–80.685 [Reserved]

Baseline Determination

§ 80.690 How does a refiner or importer apply for a benzene baseline?

(a)(1) A refiner or importer must submit an application to EPA which includes the information required under paragraph (c) of this section no later than June 30, 2001.

(2) Any refinery which was not in operation during 2001, or any importer which was not in business during 2001, must submit an application to EPA which includes the applicable information required under paragraph (c) of this section no later than 6 months prior to the introduction of gasoline into commerce.

(b) The benzene baseline request must be sent to: U.S. EPA, Attn: Benzene Program (6406J), 401 M Street SW, Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Benzene Program, 501 3rd Street NW, Washington, DC 20001.

(c) The benzene baseline application must include the following information:

(1) A listing of the names and addresses of all refineries owned by the company for which the refiner is applying for a benzene baseline, or the name and address of the importer applying for a benzene baseline.

(2)(i) The annual average benzene level for each type of gasoline, per § 80.595(a)(2), produced in 1998–1999 for each refinery for which the refiner is applying for a benzene baseline, or the annual average gasoline benzene baseline for gasoline imported in 1998–1999.

(ii) Calculation of the average benzene levels under this paragraph shall be in accordance with § 80.695.

(iii) For those with insufficient data pursuant to § 80.705, a statement that the refinery's or importer's baseline will be the default baseline specified at § 80.705(b).

(3) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the benzene baseline determination is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address of a company contact person.

(5) The following information for each batch of gasoline produced or imported in 1998–1999, separated by type of gasoline as listed at § 80.585(a)(2):

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Benzene content.

(d) Foreign refiners must follow the procedures specified in § 80.810(b) to establish individual benzene baseline values for a foreign refinery.

(e) Within 120 days of receipt of an application under this section, EPA will notify the refiner of approval of the refinery's baseline or of any deficiencies in the application.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, the corrected baseline applies ab initio and the annual average standards are deemed to be those applicable under the corrected information.

§ 80.695 How is a benzene baseline determined?

(a) A refinery's or importer's benzene baseline is calculated using the following equation:

$$B_{Base} = \frac{\sum_{i=1}^{n}(V_i \times B_i)}{\sum_{i=1}^{n} V_i}$$

Where:

B_{Base} = Benzene baseline value.
V_i = Volume of gasoline batch i produced or imported.
B_i = Benzene content of gasoline batch i produced or imported.
n = Total number of batches of gasoline produced or imported during January 1, 1998 through December 31, 1999.
i = Individual batch of gasoline produced or imported during January 1, 1998 through December 31, 1999.

(b) The calculation at § 80.695(a) shall be made separately for each type of gasoline listed at § 80.595(a)(2).

(c) Any refinery for which oxygenate blended downstream was included in compliance calculations for 1998–1999, pursuant to § 80.65 or § 80.101(d)(4), must include this oxygenate in the baseline calculations for benzene content under paragraph (a) of this section.

§ 80.700 [Reserved]

§ 80.705 What is the benzene baseline for refineries or importers with incomplete 1998–1999 data?

(a)(1) A refinery or importer must use the methodology specified at § 80.695 for determining a benzene baseline if it has benzene measurements on every batch of gasoline produced or imported for 12 or more consecutive months during January 1, 1998 through December 31, 1999.

(2) The determination in paragraph (a)(1) of this section is made separately for each type of gasoline listed at § 80.595(a)(2) produced or imported during January 1, 1998 through December 31, 1999.

(3) All consecutive and non-consecutive batch benzene measurements during January 1, 1998 through December 31, 1999 are to be included in the baseline determination, unless the refinery or importer petitions EPA to exclude such data on the basis of data quality, per § 80.91(d)(6) and receives permission from EPA to exclude such data.

(b) A refinery or importer that has benzene measurements on every batch of gasoline produced or imported for less than 12 consecutive months during January 1, 1998 through December 31, 1999 shall have the following benzene values as its benzene baseline for the purposes of this subpart:

(1) [Reserved]

(2) For conventional gasoline, 1.11 vol% benzene.

§§ 80.710–80.725 [Reserved]

Sampling, Testing and Retention Requirements for Refiners and Importers

§ 80.730 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) Beginning January 1, 2002, refiners and importers shall collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its benzene content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) For purposes of meeting the sampling and testing requirements of this section for conventional gasoline, any refiner may, prior to analysis, combine samples of gasoline from more than one batch of gasoline or blendstock and treat such composite sample as one batch of gasoline or blendstock pursuant to the requirements of § 80.101(i)(2).

(3) Any refiner who produces reformulated gasoline or conventional gasoline using computer-controlled in-line blending equipment may meet the testing requirement of paragraph (a)(1) of this section under the terms of an exemption granted under § 80.65(f)(4).

(b) *Sampling methods.* For purposes of paragraph (a) of this section, refiners and importers shall sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057–95, entitled "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(ii) Samples collected under the applicable procedures in ASTM method D 5842–95, entitled "Standard Practice for Sampling and Handling of Fuels for Volatility Measurement," may be used for measuring benzene content if there is no contamination present that could affect the benzene test result.

(2) Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95, entitled "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products."

(c) *Test method for measuring the benzene content of gasoline.* (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method provided in § 80.46(e) to measure the benzene content of gasoline they produce or import.

(2) Except as provided in § 80.750 and in paragraph (c)(1) of this section, any ASTM benzene test method for liquefied fuels may be used for quality assurance testing under § 80.800, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(e).

(d) *Incorporations by reference.* ASTM standard practices D 4057–95, D 4177–95 and D 5842–95 are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

§ 80.735 What gasoline sample retention requirements apply to refiners and importers?

(a) *Sample retention requirements.* Beginning January 1, 2002, any refiner or importer shall:

(1) Collect a representative portion of each sample of a batch or composite batch analyzed under § 80.730(a), of at least 330 ml in volume;

(2) Retain sample portions for the most recent 20 samples collected, or for each sample collected during the most recent 21 day period, whichever is greater;

(3) Comply with the gasoline sample handling and storage procedures under § 80.730(b) for each sample portion retained; and

(4) Comply with any request by EPA to:

(i) Provide a retained sample portion to the Administrator's authorized representative; and

(ii) Ship a retained sample portion to EPA, within 2 working days of the date of the request, by an overnight shipping service or comparable means, to the address and following procedures specified by EPA, and accompanied with the benzene test result for the sample determined under § 80.730(a).

(b) *Sample retention requirement for samples subject to independent analysis requirements.* (1) Any refiner or importer who meets the independent analysis requirements under § 80.65(f) for any batch of reformulated gasoline or RBOB will have met the requirements of paragraph (a) of this section, provided the independent laboratory meets the requirements of paragraph (a) of this section for the gasoline batch.

(2) For samples retained by an independent laboratory under paragraph (b) of this section, the test results required to be submitted under paragraph (a) of this section shall be the test results determined under § 80.65(e).

(c) *Sampling compliance certification.* Any refiner or importer shall include with each annual report filed under § 80.770, the following statement, which must accurately reflect the facts and must be signed and dated by the same person who signs the annual report:

> I certify that I have made inquiries that are sufficient to give me knowledge of the procedures to collect and store gasoline samples, and I further certify that the procedures meet the requirements of the ASTM procedures required under 40 CFR 80.730.

§ 80.740 What requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

(a) Any refiner who produces gasoline by blending blendstock into PCG must meet the requirements of § 80.730 to sample and test every batch of gasoline as follows:

(1) Sample and test to determine the volume and benzene content of the PCG prior to blendstock blending.

(2) Sample and test to determine the volume and benzene content of the gasoline subsequent to blendstock blending.

(3) Calculate the volume and benzene content of the blendstock, by subtracting the volume and benzene content of the PCG from the volume and benzene content of the gasoline subsequent to blendstock blending. The blendstock is a batch for purposes of compliance calculations and reporting.

(b) In the alternative, a refiner may sample and test each batch of blendstock when received at the refinery to determine the volume and benzene content, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average benzene standard and for reporting.

§ 80.745 [Reserved]

§ 80.750 What alternative benzene requirements apply to importers who transport gasoline by truck?

Importers who import gasoline into the United States by truck may comply with the following requirements instead of the requirements to sample and test every batch of gasoline under § 80.730:

(a) *Standards.* The imported gasoline must comply with the applicable average standards under § 80.595(a).

(b) *Terminal testing.* The importer may use test results for benzene content testing conducted by the terminal operator, for gasoline contained in the storage tank from which trucks used to transport gasoline into the United States are loaded, for purposes of demonstrating compliance with the standards in paragraph (a) of this section, provided the following conditions are met:

(1) The sampling and testing shall be performed after each receipt of gasoline into the storage tank, or immediately before each transfer of gasoline to the importer's truck.

(2) The sampling and testing shall be performed using the methods specified in §§ 80.730(b) and 80.46(e), respectively.

(3) At the time of each transfer of gasoline to the importer's truck for import to the U.S., the importer must obtain a copy of the terminal test result that indicates the benzene content of the truck load.

(c) *Quality assurance program.* The importer must conduct a quality assurance program, as specified in this paragraph, for each truck loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in §§ 80.730(b) and 80.46(e), respectively.

(3)(i) The quality assurance test results for benzene must differ from the terminal test result by no more than the ASTM reproducibility of the terminal's test results, as determined by the following equation:

$R = 0.13 (B) + 0.05$, for $0.1 \leq B \leq 1.5$ vol%

$R = 0.28 (B)$, for $B > 1.5$ vol%

Where:

R = ASTM reproducibility.
B = Benzene content based on the terminal's test result.

(ii) For measured benzene levels less than 0.1 vol%, use 0.1 vol% in the equation in paragraph (c)(3)(i) of this section.

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) *Party required to conduct quality assurance testing.* The quality assurance program under paragraph (c) of this section shall be conducted by the importer. In the alternative, this testing may be conducted by an independent laboratory that meets the criteria under § 80.65(f)(2)(iii), provided the importer receives, no later than 21 days after the sample was taken, copies of all results of tests conducted.

(e) *Assignment of batch numbers.* The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.765, and reporting under § 80.770.

(f) *EPA inspections of terminals.* EPA inspectors or auditors, and auditors conducting attest engagements under § 80.815, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) *Certified Benzene-FRGAS.* This section does not apply to Certified Benzene-FRGAS.

(h) *Effect of noncompliance.* If any of the requirements of this section are not met, all gasoline imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline benzene average standards in § 80.595, as applicable. Additionally, if any requirement is not met, EPA may notify the importer of the violation and, if the requirement is not fulfilled within 10 days of notification, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.730.

§§ 80.755–80.760 [Reserved]

Recordkeeping and Reporting Requirements

§ 80.765 What records must be kept?

(a) *Records that must be kept.* Beginning January 1, 2002, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, shall keep records that contain the following information:

(1) The product transfer document information required under §§ 80.77 and 80.106;

(2) For any sampling and testing for benzene content required under this subpart:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the test;

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test; and

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (a)(2)(iii) of this section.

(b) *Additional records that refiners and importers must keep.* Beginning January 1, 2002, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information:

(1) For each batch of gasoline produced or imported:

(i) The batch volume;

(ii) The batch number assigned under § 80.65(d)(3) and the appropriate designation under paragraph (b)(1)(i) of

this section; except that if composite samples of conventional gasoline representing multiple batches are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(iii) The date of production or importation; and

(iv) If appropriate, the designation of the batch as California gasoline under § 80.625, exempt gasoline for research and development under § 80.780, or for export outside the United States.

(2) The calculations used to determine the applicable baseline under § 80.695.

(3) The calculations used to determine compliance with the applicable benzene average standards of § 80.595.

(4) A copy of all reports submitted to EPA under § 80.770.

(c) *Additional records importers must keep.* Any importer shall keep records that identify and verify the source of each batch of Certified Benzene-FRGAS and Non-Certified Benzene-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.810(o).

(d) *Length of time records must be kept.* The records required in this section shall be kept for five years from the date they were created.

(e) *Make records available to EPA.* On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or upon approval by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

§ 80.770 What are the benzene reporting requirements?

Beginning with the 2002 averaging period, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require.

(a) *Refiner and importer annual reports.* Any refiner, for each of its refineries and/or aggregate(s) of refineries, and any importer for the gasoline it imports, shall submit a report for each calendar year averaging period that includes the following information for each type of gasoline specified at § 80.595(a)(2), as applicable:

(1) The EPA importer, or refiner and refinery facility registration numbers;

(2) The applicable standard under § 80.595;

(3) The total volume of gasoline produced or imported;

(4) The annual average benzene content of the gasoline produced or imported;

(5) For each batch of gasoline produced or imported during the averaging period:

(i) The batch number assigned under § 80.65(d)(3) and the appropriate designation under § 80.75; except that if composite samples of conventional gasoline representing multiple batches produced are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch; and

(iv) The benzene content of the batch as determined under § 80.730; and

(6) When submitting reports under this paragraph (a) of this section, any importer shall exclude Certified Benzene-FRGAS under § 80.810.

(b) *Additional reporting requirements for importers.* Any importer shall report the following information for Benzene-FRGAS imported during the averaging period:

(1) The EPA refiner and refinery registration numbers of each foreign refiner and refinery where the Certified Benzene-FRGAS was produced; and

(2) The total gallons of Certified Benzene-FRGAS and Non-Certified Benzene-FRGAS imported from each foreign refiner and refinery.

(c) *Report submission.* Any annual report required under this section shall be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(d) *Attest reports.* Attest reports for refiner and importer attest engagements required under § 80.85 shall be submitted to the Administrator by May 31 of each year for the prior calendar year averaging period.

Exemptions

§ 80.775 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or importer, for a brief period, to distribute gasoline which does not meet the requirements of this subpart provided the refiner or importer meets all the criteria, requirements and conditions contained in § 80.73 (a) through (e).

§ 80.780 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing ("R&D") purposes by submitting to EPA an application that includes all the information listed in paragraph (b) of this section.

(a) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the proposed test program must:

(1) Have a purpose that constitutes an appropriate basis for exemption;

(2) Necessitate the granting of an exemption;

(3) Be reasonable in scope; and

(4) Have a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(b) *Information required to be submitted.* To demonstrate each of the four elements in paragraphs (a)(1) through (4) of this section, the application required under this section must include the following information:

(1) A statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under § 80.785.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's beginning and ending dates;

(ii) An estimate of the maximum number of vehicles and engines involved in the program, and the number of miles and engine hours that will be accumulated on each;

(iii) The benzene content of the gasoline expected to be used in the program; and

(iv) The quantity of gasoline that exceeds the applicable benzene standard that is expected to be used in the program.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including at a minimum:

(i) A description of the technical and operational aspects of the program;

(ii) The site(s) of the program (including street address, city, county, state, and zip code);

(iii) The manner in which information on vehicles and engines used in the program will be recorded and made available to EPA;

(iv) The manner in which results of the program will be recorded and made available to EPA;

(v) The manner in which information on the gasoline used in the program (including quantity, benzene content, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to EPA;

(vi) The manner in which distribution pumps will be labeled to insure proper use of the gasoline where appropriate;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in paragraphs (b)(4)(iii), (iv) and (v) of this section, and the location in which such information will be maintained.

(c) *Additional requirements.* (1) The product transfer documents associated with R&D gasoline must identify the gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be designated by the refiner or importer as exempt R&D gasoline.

(3) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in the distribution system of the gasoline.

(4) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(d) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which may include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section, including restoration of motor vehicle emissions control systems. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void ab initio.

(e) *Effects of exemption.* Gasoline that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the gasoline is used in a manner that complies with the memorandum of exemption granted under paragraph (d) of this section.

Violation Provisions

§ 80.785 What acts are prohibited under the gasoline benzene program?

No person shall:

(a) *Averaging violation.* Produce or import gasoline that does not comply with the applicable benzene average standard under § 80.595.

(b) *Causing an averaging use violation.* Cause another person to commit an act in violation of paragraph (a) of this section.

§ 80.790 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the benzene standards of this subpart shall be determined based on the benzene level of the gasoline, measured using the methodologies specified in §§ 80.730(b) and 80.46(e). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the benzene level of gasoline if the evidence or information is relevant to whether the benzene level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46(e) and 80.730(b), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the benzene standards, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.795 Who is liable for violations under the gasoline benzene program?

(a) *Persons liable for violations of prohibited acts.*—(1) *Averaging violation.* Any refiner or importer who violates § 80.785(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner or importer who causes another party to violate § 80.785(a), is liable for a violation of § 80.785(b).

(3) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(4) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any refiner or importer who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner or importer who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

§ 80.800 [Reserved]

§ 80.805 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.795 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.795(a)(1) or (2) for a violation of the applicable benzene averaging standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period.

(c) Any person liable under § 80.795(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

Provisions for Foreign Refiners With Individual Benzene Baselines

§ 80.810 What are the additional requirements for gasoline produced at foreign refineries having individual refiner benzene baselines?

(a) *Definitions.* (1) A *foreign refinery* is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana

Islands (collectively referred to in this section as "the United States").

(2) A *foreign refiner* is a person who meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) *Benzene-FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery benzene baseline under § 80.695 and that is imported into the U.S.

(4) *Non-Benzene-FRGAS* means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery benzene baseline, gasoline produced at a foreign refinery with an individual refinery benzene baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual benzene baseline during a year when the foreign refiner has opted to not participate in the Benzene-FRGAS program under paragraph (c)(3) of this section.

(5) *Certified Benzene-FRGAS* means Benzene-FRGAS the foreign refiner intends to include in the foreign refinery's benzene compliance calculations under § 80.605, and does include in these compliance calculations when reported to EPA.

(6) *Non-Certified Benzene-FRGAS* means Benzene-FRGAS that is not Certified Benzene-FRGAS.

(b) *Baseline establishment.* Any foreign refiner may submit a petition to the Administrator for an individual refinery benzene baseline pursuant to § 80.695.

(1) The refiner shall follow the procedures specified in §§ 80.91 through 80.93 to establish the volume and benzene content of gasoline that was produced at the foreign refinery and imported into the United States during 1998 and 1999 for purposes of establishing a benzene baseline under § 80.695.

(2) In making determinations for foreign refinery baselines, EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, EPA will not assign an individual refinery benzene baseline.

(c) *General requirements for foreign refiners with individual refinery benzene baselines.* A foreign refiner of a refinery that has been assigned an individual benzene baseline according to § 80.695 must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Benzene-FRGAS, the foreign refiner must meet all provisions that apply to refiners under this subpart.

(2) In the case of Non-Certified Benzene-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall substitute the name Non-Certified Benzene-FRGAS for the names "reformulated gasoline" or "RBOB" wherever they appear in the following provisions:

(i) The designation requirements in this section.

(ii) The recordkeeping requirements under § 80.765.

(iii) The reporting requirements in § 80.770 and this section.

(iv) The product transfer document requirements in this section.

(vi) The prohibitions in this section and § 80.785.

(vii) The independent audit requirements under § 80.815, paragraph (h) of this section, §§ 80.125 through 80.127, 80.128(a), (b), (c), (g) through (i), and 80.130.

(3)(i) Any foreign refiner that has been assigned an individual benzene baseline for a foreign refinery under § 80.695 may elect to classify no gasoline imported into the United States as Benzene-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section shall:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual benzene baseline must designate each batch of Benzene-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Benzene-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Benzene-FRGAS prior to its being imported into the United States, it must include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Benzene-FRGAS was produced.

(3) On each occasion when Benzene-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the Benzene-FRGAS that meets the following requirements:

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Benzene-FRGAS;

(B) The identification of the gasoline as Certified Benzene-FRGAS or Non-Certified Benzene-FRGAS;

(C) The volume of Benzene-FRGAS being transported, in gallons;

(D) In the case of Certified Benzene-FRGAS:

(*1*) The benzene content as determined under paragraph (f) of this section; and

(*2*) A declaration that the Benzene-FRGAS is being included in the compliance calculations under § 80.605 for the refinery that produced the Benzene-FRGAS.

(ii) The certification shall be made part of the product transfer documents for the Benzene-FRGAS.

(e) *Transfers of Benzene-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Benzene-FRGAS is imported into the United States. A foreign refiner may remove the Benzene-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance calculations under § 80.605; and

(B) In the case of Certified Benzene-FRGAS, the volume and benzene content of the gasoline from the compliance calculations under § 80.605.

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the benzene content and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Benzene-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the Certified Benzene-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for benzene using the methodology specified in § 80.730 by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample; and

(iii) Review original documents that reflect movement and storage of the Certified Benzene-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Benzene-FRGAS was produced; and

(B) That the Benzene-FRGAS remained segregated from:

(*1*) Non-Benzene-FRGAS and Non-Certified Benzene-FRGAS; and

(*2*) Other Certified Benzene-FRGAS produced at a different refinery.

(3) The independent third party shall submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(e)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any United States importer of Certified Benzene-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the benzene value.

(ii) Where a vessel transporting Certified Benzene-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The benzene value determined at the port of entry is higher than the benzene value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Benzene-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline benzene compliance calculations under § 80.605.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of Benzene-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.815:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Benzene-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Benzene-FRGAS, and of Non-Certified Benzene-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Benzene-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Benzene-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Benzene-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Benzene-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Benzene-FRGAS was produced at the refinery that is the subject of the

attest engagement, and whether the Certified Benzene-FRGAS was mixed with any Non-Certified Benzene-FRGAS, Non-Benzene-FRGAS, or any Certified Benzene-FRGAS produced at a different refinery.

(5)(i) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified and Non-Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(ii) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel. Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Benzene-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130, § 80.815 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery benzene baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Benzene-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and benzene content, and transfers of title or custody, of any gasoline or blendstocks, whether Benzene-FRGAS or Non-benzene-FRGAS, produced at the foreign refinery during the period January 1, 1998 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and benzene content of Benzene-FRGAS;

(C) The proper classification of gasoline as being Benzene-FRGAS or as not being Benzene-FRGAS, or as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS;

(D) Transfers of title or custody to Benzene-FRGAS;

(E) Sampling and testing of Benzene-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.815 including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery benzene baseline, producing and exporting gasoline under an individual refinery benzene baseline, and all other actions to comply with the requirements of this subpart relating to the establishment and use of an individual refinery benzene baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates Title 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Benzene-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Benzene-FRGAS to the

United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery benzene baseline under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates Title 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery benzene baseline.

(1) The foreign refiner shall annually post a bond of the amount calculated using the following equation:

Bond = G x $ 0.01

Where:

Bond = Amount of the bond in U.S. dollars.

G = The largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates Title 18 U.S.C. 1001 and Clean Air Act section 113(c)(2);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds" (Available from the Government Printing Office or the Internet at http://www.fms.treas.gov/c570/index.html); and

(iii) Include a commitment that the bond will remain in effect for at least five (5) years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this subpart.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to EPA by a foreign refiner shall be in English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Benzene-FRGAS with any Non-Certified Benzene-FRGAS or Non-Benzene-FRGAS, and no person may combine Certified Benzene-FRGAS with any Certified Benzene-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Benzene-FRGAS or as Non-Benzene-FRGAS, and each batch classified as Benzene-FRGAS shall be further classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS.

(2) Gasoline shall be classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Benzene-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Benzene-FRGAS, any United States importer shall perform the following procedures:

(i) In the case of both Certified and Non-Certified Benzene-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Benzene-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Benzene-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Benzene-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the benzene value using the methodologies specified in § 80.730, by:

(*1*) The third party analyzing the sample; or

(*2*) The third party observing the importer analyze the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Benzene-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5) Any United States importer shall meet the requirements specified in § 80.595 for any imported gasoline that is not classified as Certified Benzene-FRGAS under paragraph (o)(2) of this section.

(p) *Truck imports of Certified Benzene-FRGAS produced at a refinery.* (1) Any refiner whose Certified

Benzene-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

(i) Certification under paragraph (d)(5) of this section;

(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;

(iii) Attest under paragraph (h) of this section; and

(iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures must ensure Certified Benzene-FRGAS remains segregated from Non-Certified Benzene-FRGAS and from Non-Benzene-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Benzene-FRGAS from that refinery from all other gasoline;

(ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Benzene-FRGAS, that prohibit the commingling of Certified Benzene-FRGAS with any of the following:

(A) Other Certified Benzene-FRGAS from other refineries.

(B) All Non-Certified Benzene-FRGAS.

(C) All Non-Benzene-FRGAS;

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Benzene-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States;

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Benzene-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section must be submitted to EPA along with the application for small refiner status and individual refinery benzene baseline and standards under § 80.240 and this section.

(q) *Withdrawal or suspension of a foreign refinery's baseline.* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, ab initio, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the gasoline benzene requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under § 80.695, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart I, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR part 80, subpart I, including 40 CFR 80.810 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000, and/or imprisonment for up to five years.

Attest Engagements

§ 80.815 What are the attest engagement requirements for gasoline benzene compliance applicable to refiners and importers?

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, and § 80.810, the attest engagements for refiners and importers must include the following procedures and requirements each year.

(a) *Baseline.* (1) Obtain the EPA benzene baseline approval letter for the refinery to determine the refinery's applicable benzene baseline and baseline volume under § 80.695.

(2) Obtain a written representation from the company representative stating the benzene value that the company used as its baseline and agree that number to paragraph (a)(1) of this section and to the reports to EPA.

(b) *EPA reports.*(1) Obtain and read a copy of the refinery's or importer's annual benzene reports filed with EPA for the year.

(2) Agree the yearly volume of gasoline reported to EPA in the benzene reports with the inventory reconciliation analysis under § 80.128.

(3) Calculate the annual average benzene level for all gasoline and agree that value with the value reported to EPA.

§ 80.820 [Reserved]

Additional Rulemaking

§ 80.825 What additional rulemaking will EPA conduct?

No later than December 31, 2003, the Administrator shall propose any requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels that the Administrator determines are

appropriate pursuant to section 202(l)(2) of the Act. The Administrator shall take final action on the proposal no later than December 30, 2004.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401–7521(l) and 7521(m)–7671q.

[FR Doc. 00–18640 Filed 8–3–00; 8:45 am]

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Federal Register

Friday,
August 4, 2000

Part III

Department of Justice

Environmental Protection Agency

40 CFR Chapter IV

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information; Final Rule

DEPARTMENT OF JUSTICE

40 CFR Chapter IV

[AG Order No. 2318–2000]

RIN 1105–AA70

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter IV

RIN 2050–AE80

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information

AGENCIES: Department of Justice and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) and the Department of Justice (DOJ) are promulgating a rule that provides for access to information concerning the potential off-site consequences of hypothetical accidental chemical releases from industrial facilities. Under section 112(r) of the Clean Air Act (CAA), facilities handling large quantities of extremely hazardous chemicals are required to include that information in a risk management plan (RMP) submitted to EPA. As required by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), this rule provides members of the public and government officials with access to that information in ways designed to minimize the likelihood of accidental releases, the risk to national security associated with posting the information on the Internet, and the likelihood of harm to public health and welfare.

DATES: This rule is effective on August 4, 2000.

ADDRESSES: Supporting information used to develop the proposed rule and the final rule is contained in Docket No. A–2000–20. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday (except government holidays), at Waterside Mall, Room M1500, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying. The assessments upon which this rule is based are also available on the Internet at http://www.usdoj.gov and http://www.epa.gov/ceppo.

FOR FURTHER INFORMATION CONTACT: Brenda Sue Thornton, Trial Attorney, Criminal Division, Terrorism and Violent Crime Section, Department of Justice, 601 D Street, N.W., Room 6500, Washington, DC 20530, (202) 616–5210; John Ferris, Chemical Engineer, (202) 260–4043, or Vanessa Rodriguez, Chemical Engineer, (202) 260–7913, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; or the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 (in the Washington, DC, metropolitan area, (703) 412–9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at http://www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION: This rule was published in the **Federal Register** as a proposed rule on April 27, 2000 (65 FR 24834). This **Federal Register** action announces EPA and DOJ's final decisions on the rule.

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I. Introduction

A. Statutory Authority and Background

As more fully described in the notice of proposed rulemaking (NPRM) (65 FR 24853 (April 27, 2000)), the federal government's efforts to prevent and mitigate chemical accidents are reflected in several pieces of legislation, including section 112(r) of the CAA, 42 U.S.C. 7412(r). In that section, Congress imposed a general duty on industrial facilities handling any extremely hazardous chemicals to do so safely (CAA section 112(r)(1)), and required EPA to establish a regulatory program for facilities that pose the greatest risk (CAA section 112(r)(7)). Congress directed that the regulatory program require covered facilities to develop and implement a risk management program for preventing accidental chemical releases and minimizing the consequences of releases that do occur. Congress further mandated that facilities perform an off-site consequences analysis (OCA) for one or more hypothetical accidental worst case and/or alternative release scenarios and report the results of the analysis in a risk management plan (RMP) to be submitted to federal, state, and local government agencies and made available to the public.

EPA issued the rules establishing the regulatory program required by CAA section 112(r) on January 31, 1994 (59 FR 4478) and June 20, 1996 (61 FR 31668, the "RMP rule"). In those rules, EPA continued the philosophy that EPA embraced in implementing the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Specifically, EPA recognized that regulatory requirements by themselves will not guarantee safety, and that providing the public with information about hazards in a community can and should lead government officials and the public to work with industry to prevent accidents. EPA thus relied on the public availability of RMPs to stimulate further chemical risk reductions efforts, which occur primarily at the local level where the risk is found.

Over 15,000 facilities are subject to the RMP rule. In an effort to reduce the burden of collecting and disseminating RMPs, EPA designed an electronic RMP

form that could be placed on the Internet for purposes of public access. However, the Federal Bureau of Investigation and other representatives of the law enforcement and intelligence communities raised concerns that releasing the OCA portions of RMPs via the Internet would enable individuals anywhere in the world anonymously to search electronically for industrial facilities in the U.S. to target for purposes of causing an intentional industrial chemical release. In response to those concerns, EPA posted RMPs on the Internet (*www.epa.gov/ceppo/*) without the sections of the RMP that contain OCA results (sections 2 through 5). However, those OCA sections, and any EPA electronic database created from those sections, were still subject to public release in electronic format pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552. On August 5, 1999, CSISSFRRA was enacted (Pub. L. No. 106–40) to provide at least a one-year exemption from FOIA for "OCA information," including the OCA portions of RMPs and any EPA database created from those portions. CSISSFRRA amended section 112(r)(7) of the CAA by adding a new subparagraph (h).

CSISSFRRA requires the President, by the end of the one-year period of the FOIA exemption, to decide how to disseminate OCA information. Specifically, CSISSFRRA requires the President to assess "the increased risk of terrorist and other criminal activity associated with the posting of [OCA] information on the Internet" and "the incentives created by public disclosure of [OCA] information for reduction in the risk of accidental releases" (CAA section 112(r)(7)(H)(ii)(I)). Based on those assessments, the President is required by August 5, 2000, to promulgate a regulation governing access to OCA information in a manner that minimizes the likelihood of chemical releases, however caused. Until that time, CSISSFRRA limits public access to OCA information but provides government officials access for purposes of preventing, planning for, or responding to chemical releases. The President delegated to the Attorney General and the Administrator of EPA the authority to conduct the required assessments and rulemaking (see the delegation memorandum at 65 FR 8631 (February 22, 2000)). The proposed and final rules are subject to approval by the Director of the Office of Management and Budget (OMB).

The risk and benefits assessments were completed and used as the basis for the proposed rule. The conclusions of those assessments are fully described in the NPRM. Briefly, the risk assessment found that an increased risk of terrorist or other criminal activity would accompany the release of certain items of OCA information via the Internet. That information could be used by terrorists or other criminals for purposes of targeting or maximizing the results of industrial chemical releases. The benefits assessment concluded that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. It also found that ease of public access to information is important to the public's use of that information. The risk and benefits assessments are available in the docket for this rulemaking and on the EPA and DOJ websites (*www.epa.gov/ceppo/* and *www.usdoj.gov*).

B. The Proposed Rule

Based on the risk and benefits assessments, EPA and DOJ proposed providing the public with several means of obtaining access to OCA information and information about the risk expressed by OCA information. The complete proposal is contained in the NPRM. A brief summary follows.

In order to minimize the risk of Internet dissemination of OCA information while still providing public access to that information, we proposed to provide the public with access to paper copies of OCA information for covered facilities at 50 or more federal reading rooms geographically distributed across the United States. At the reading rooms, members of the public would have access to OCA information for a limited number of facilities, located anywhere in the country, and would be able to read the information and take notes from it, but not remove or mechanically reproduce it. Reading rooms would be authorized to provide any member of the public with access to OCA information for up to 10 stationary sources per calendar month. Based upon an analysis of the geographic distribution of RMP-covered facilities, we concluded that the 10 per individual per calendar month limit would still permit most members of the public to have access to OCA information for facilities in whose "vulnerable zone" they live or work, as well as to OCA information for a few other facilities located elsewhere.

In addition, we proposed making the less sensitive items of OCA information available to the public on the Internet by posting them on EPA's website. Those items of OCA information included information about passive and active safety systems used by facilities; we explained that that information would facilitate risk reduction dialogues among members of the public, state and local officials, and facilities. Only the items of OCA information for which the risk assessment found there was a significant risk of use for terrorist or other criminal purposes would be excluded from Internet posting.

We also proposed creating a "risk indicator" system as a tool for providing the public with a means of understanding, via Internet inquiry, some aspects of the risk expressed by OCA information. Members of the public would be able to enter a specific address (such as that of a home, school, or place of employment) into the risk indicator system and learn if that address might be within the "vulnerable zone" of at least one facility that submitted an RMP to EPA. Members of the public who do not have access to the Internet would be able to obtain the same information by calling the EPA hotline or by mailing a request to the Administrator of EPA. The risk indicator system also would inform individuals of several means by which they could obtain the names of the facilities and additional information.

Further, we proposed authorizing and encouraging members of local emergency planning committees (LEPCs), state emergency response committees (SERCs), or local fire departments to allow members of the public to read, but not remove or mechanically copy, paper copies of OCA information for all of the covered facilities in the LEPC's jurisdiction and for any facilities whose vulnerable zone extended into the LEPC's jurisdiction. To further supplement public access, under the proposed rule, EPA would make available to the public additional information on chemical accident risk through an Internet website. The proposal also addressed how EPA would provide access to OCA information to federal, state, and local government officials for their "official use" by codifying the provisions of CSISSFRRA that appear in CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee). Finally, the proposal called for establishing further provisions as needed to implement CSISSFRRA, such as prohibiting the unauthorized release of OCA information and authorizing the Administrator to provide OCA information to qualified researchers under CAA section 112(r)(7)(H)(vii).

II. Discussion of Comments on the Proposed Rule

The proposed rule was published for comment in the **Federal Register** on April 27, 2000. The comment period ended on June 8, with 68 comments

submitted. Commentors represented industry, trade associations, public interest groups, journalists, environmental groups, law enforcement, emergency response groups, state/local entities, and the general public. In addition, on May 9, 2000, EPA and DOJ held a public hearing on the proposed rule at which nine presenters representing public interest groups, environmental research groups, state and local emergency planning groups, and the general public provided comments about the proposed regulation. We are responding to most comments on the proposed rule in this preamble. We respond to additional comments in a supplemental document included in the public docket for this rulemaking.

A. Risk and Benefits Assessments

As noted above, the assessments were available on the EPA and DOJ websites. We received comments on both the benefits assessment and the risk assessment expressing a wide range of opinion. We note at the outset that CSISSFRRA did not call for the assessments to be developed through a public rulemaking process (see CAA section 112(r)(7)(H)(ii)). Instead, CSISSFRRA required the President to conduct the assessments and then, "based on the assessments," to promulgate regulations governing the distribution of OCA information. In requiring regulations, CSISSFRRA ensured the public an opportunity to participate in the government's consideration of the extent to which and the manner in which OCA information should be made available based on the assessments. Preparation of the risk assessment, however, necessarily called for the exercise of expert judgment in sensitive areas of law enforcement and national security, areas in which the President is typically accorded broad discretion. We thus believe that Congress did not intend the assessments to be subject to public evaluation except to the extent they do, or do not, adequately support the rule being promulgated. We nonetheless appreciate the careful consideration that the assessments received from the public and respond below to the significant concerns that were raised.

In regard to the approach taken by both assessments, several commentors asserted that the assessments were fundamentally flawed because they failed to quantify the risk and benefit of disseminating OCA information. EPA and DOJ disagree with that comment. Given the short time frame the agencies had to develop the assessments and lack of a clear basis for estimating the probability of a chemical accident or criminal incident involving an industrial facility, it would have been difficult, if not impossible, to obtain or develop sufficient data to support such an analysis. To begin with, since OCA information is not yet publicly available, its effect on the risk and benefits to be assessed cannot be measured directly. In addition, because the RMP program took effect only last year and trends in terrorism are changing, there is little other data regarding the precise issues that the assessments were required to address.

Furthermore, EPA and DOJ believe that statistical evaluation of the benefits and costs relating to the release of OCA information on the Internet was not necessary to determine how OCA information should be disseminated, which is the purpose of this rulemaking exercise. In the benefits assessment, an analysis of the effect of public release of Toxic Release Inventory (TRI) data indicated that information dissemination leads to further risk reduction efforts. In the risk assessment, an analysis was conducted of trends related to weapons of mass destruction and recent terrorist events. Each assessment used those analyses as the basis for assessing the benefits and risks related to dissemination of OCA information. The findings that resulted from those analyses informed the rule. We believe that that methodology was appropriate for purposes of determining how best to disseminate OCA information.

1. Benefits Assessment

As noted above, the reaction to the benefits assessment was mixed. Many commentors agreed with the conclusions regarding the benefits of public disclosure of OCA information. Other commentors took issue with some of the assessment's findings.

Several commentors contended that there was no basis for drawing an analogy between the TRI program experience and what might be expected for OCA information because TRI data records are based on anticipated lawful releases, derived from estimates or actual measurements, while OCA information is based on hypothetical, unanticipated releases. We disagree that an analogy between TRI data and OCA information is inappropriate. As noted in the benefits assessment, although TRI data represent actual releases while OCA information represents hypothetical releases, our reason for examining the TRI program experience was the fact that TRI data are made publicly available in an easily used and understood format. The assessment noted a correlation between the ready accessibility of TRI data and the extensive use made of it by community and environmental groups, the news media, state and local governments, and industry, and concluded that a similar correlation might reasonably be expected from the dissemination of OCA information.

Some commentors disagreed with the benefits assessment's contentions that the publication of TRI data contributed to reductions in TRI emissions. They attributed TRI emissions reductions mainly to economic incentives, technical considerations, and CAA regulatory programs. The commentors were also critical of the methodology and the conceptual and statistical support for the assessment's analysis of the effect of negative media attention on TRI emissions reductions. They criticized, for example, the assessment's focus on the "worst polluting" facilities selected by EPA. They took issue with comparisons between large facilities with correspondingly large releases to small facilities with small releases, and comparisons between supposedly similar facilities that may have differed in terms of process or industry classification. They questioned, moreover, whether the analysis captured the full range of TRI data available beginning in 1987. Based on those criticisms, the commentors viewed the TRI analogy as an invalid basis for the benefits assessment's conclusion that wide public access to OCA information would help reduce the risk of chemical accidents.

As the assessment noted several times, a number of different factors contributed to TRI emissions reductions. Nonetheless, according to the literature reviewed for the assessment, the interest in TRI data—either in the form of published reports, negative press accounts, or the publication of TRI data by a company—was one of the factors affecting TRI emissions reductions. As explained in Appendix D of the assessment, the media relied on total emissions data to label certain facilities as the "worst polluters." EPA compared the total TRI emissions reduction rates of those "worst polluting" facilities with the overall TRI emissions reduction rates for all other facilities (both large and small) since TRI data were first published in 1989 (which includes data collected in 1987 and 1988). The "worst polluting" facilities featured in news accounts appeared to have reduced their emissions significantly more than did the other facilities. EPA also compared "worst polluting" facilities to others listed under the same TRI industry

classification because facilities in the same industry classification were likely to have similar processes. EPA recognizes that within a single industry classification there could be differences in chemical processes that might account for some of the differences in TRI emissions. Those variations, however, would not affect the results of the assessment's comparative analysis of TRI emissions reduction rates for facilities that were subject to significant negative publicity and those that were not. As indicated in Appendix D, moreover, even the reduction rates of facilities with relatively low levels of emissions that were the subject of negative press accounts were significantly greater than those of other facilities not subject to negative publicity. In light of that evidence, we continue to believe that if OCA information, like TRI data, were made publicly available in an easily understood format, there would be increased public understanding and dialogue about accidental release risk and risk reduction. We further believe that the resulting public pressure could lead to the adoption of additional risk reduction measures.

Other commentors contended that the benefits assessment should not use the term "risk reduction" when referring to the TRI program since TRI data does not communicate "risk," which is often understood to be the consequence of an event multiplied by the probability that the event will occur. They also questioned whether the OCA information has value for risk reduction. As the benefits assessment explained in detail in Chapter 6, however, OCA information by itself does not communicate risk; rather, OCA information in context and in comparison with other information can provide insights about risk. As stated in Chapter 6, "[F]rom this comparison and understanding of potential risk, unacceptable risks can be reduced. * * *"

Several commentors also claimed that the assessment's figures for the costs of chemical accidents were outdated and likely overstated because they did not take into account the significant risk reduction benefits of the RMP rule. They suggested, for example, that many companies reduced their inventories of hazardous chemicals in order to avoid being subject to the RMP rule. We believe that the costs of chemical accidents reported in the benefits assessment are based on the most current accurate data available. Some of the data come from the RMP five-year accident histories—data provided by the RMP facilities themselves.

We recognize that before RMPs were required, many responsible chemical facility owners and operators were aware of the need for chemical accident prevention as the result of efforts by a variety of organizations, including the Center for Chemical Process Safety, the American Chemistry Council (formerly the Chemical Manufacturers Association) via the Responsible Care™ program, the Occupational Safety and Health Administration, and others. The objective of the benefits assessment was not to quantify the cumulative impact of voluntary process safety initiatives or of the 1996 RMP rule. Instead, as required by CSISSFRRA, the focus of the assessment was to evaluate the nature and extent of risk reduction benefits that would likely occur if OCA information were widely available and easily accessible to the public. We remain convinced that the assessment correctly concluded that readily available, easily accessible and interpreted OCA information, in combination with RMP information, would stimulate public dialogue about chemical risks and would result in at least some of the 15,000 covered facilities implementing additional risk reduction measures.

Lastly, several commentors asserted that the benefits assessment overstated the importance of OCA information and underestimated the value of the data already released in executive summaries or available through local sources of risk information. The benefits assessment acknowledged that many facilities have provided OCA data in their executive summaries, and that individuals with sufficient effort and know-how could generate their own offsite consequence data from publicly available information. In fact, some organizations have already published their own databases of "worst-case" scenarios based upon data less accurate than OCA information. However, the assessment also noted that the amount of OCA data included in executive summaries varies widely, and that OCA data in executive summaries cannot be easily sorted or compared. In addition, OCA results prepared by those outside the company are often erroneous because they are based on incomplete or inaccurate information. The OCA information in an RMP is generated by the company submitting it, and takes into account site-specific information; consequently, the OCA information portions of RMPs contain the most reliable data for comparison purposes and for understanding risks. The assessment made clear, however, that OCA information for a single facility is of limited value, and is far more useful when evaluated in the context of the facility's entire RMP, and compared to OCA information reported by similar facilities or by facilities handling similar chemicals.

2. Risk Assessment

Like the benefits assessment, the risk assessment prompted a range of comments. Some commentors generally agreed with its conclusions. Others, citing DOJ's expertise, deferred to the assessment's findings, but urged DOJ to consider additional risks. In contrast, some commentors claimed that the assessment's conclusions were overstated in light of the availability of data comparable to OCA information or that it failed to consider factors that would reduce the risk assessed.

Some commentors expressed concern that the risk assessment understated the security concerns posed by the dissemination of OCA information. Some of those commentors asserted that the assessment should have considered the potential danger that OCA information could be disseminated by persons taking handwritten notes that could be posted on the Internet. In fact, the risk assessment addressed that potential risk. While the assessment recognized that dissemination of handwritten notes was cause for concern, it concluded that the risk posed by that was less than that posed by release of government documents containing OCA information. Handwritten notes would not carry the same presumption of accuracy and reliability generally associated with government documents. Handwritten notes also would require significant time and effort to transcribe, making them less likely to be used for purposes of creating a large electronic OCA database that could be posted on the Internet.

Other commentors stated that the risk assessment did not discuss other potential risks associated with the release of OCA information, such as exploitation of the data for purposes of conducting industrial espionage or locating precursor chemicals for purposes of creating illicit drugs. We note, however, that CSISSFRRA requires the risk assessment to weigh whether posting OCA information on the Internet would increase the risk of criminally-caused chemical releases. While the release of OCA information may pose other risks as well, we did not, and, given time constraints, could not, assess those risks.

By contrast, a number of commentors asserted that the assessment overstated or mischaracterized the risk posed by the dissemination of OCA information.

Those commentors made several points. First, one stated that the assessment did not discuss the "increased risk" posed by dissemination of OCA information on the Internet (quoting CAA section 112(r)(7)(H)(ii)(I)(aa)). Rather, the commentor offered, it merely concluded that OCA information would be helpful to a terrorist or criminal. In fact, however, the risk assessment did address the issue of "increased risk," as required by CSISSFRRA. It concluded that OCA information would provide someone seeking to target or maximize an industrial chemical release with helpful information that is not currently available, and, therefore, that posting OCA information on the Internet would increase the risk of a terrorist using the information for that purpose.

Other commentors argued that information identical or similar to OCA information is already publicly available, and, therefore, the risk assessment overstated the risk posed by posting OCA information on the Internet. The risk assessment acknowledged that some items of OCA information and information comparable to OCA information are currently available to the public. However, the risk assessment also found that the items of OCA information most likely to be used by a terrorist to plan or execute an attack (*e.g.*, the distance to endpoint, the population within the distance to endpoint, and public and environmental receptors affected) have not been assembled into a publicly available resource that would be as comprehensive and accessible as OCA information would be if posted on the Internet, particularly in its database form. While several commentors noted that RMP executive summaries are currently available on the Internet, both the risk and benefits assessments found that the quantity and quality of OCA data contained in the posted executive summaries vary considerably. Some executive summaries include all of the OCA data elements while others include little or none. Consequently, OCA data that have been released through the executive summaries do not constitute a comprehensive collection of OCA information. Moreover, OCA data included in the executive summaries cannot be electronically searched in a manner that would allow the sort of comparisons among RMP facilities that would facilitate targeting. The risk assessment thus reasonably concluded that full publication of OCA information on the Internet would pose a significantly greater risk than that currently posed by the public availability of executive summaries and other information, even though executive summaries have been posted on the Internet.

Similarly, some commentors questioned the risk posed by OCA information, since data similar to OCA information could be calculated using publicly available sources of information. The risk assessment found that calculating information like OCA information using available sources of data would be possible but would require significant effort and know-how. To date, no comprehensive collection of data on the off-site consequences of chemical releases is available on the Internet. To the extent that EPCRA information is available on the Internet, the risk assessment found that such information does not pose the same degree of risk as would OCA information because EPCRA information does not furnish the type of targeting data (such as the distance a chemical release would travel and the population that lives within that area) that could be used to plan terrorist events. Furthermore, the assessment found that some publicly available information similar to the key items of OCA information is only available through SERCs and LEPCs, and is not Internet-accessible. The risk assessment found that the ability to access information anonymously posed significant security concerns and that, for information attainable only through personal contact, for example, by contacting a SERC or LEPC, there is less of a risk that the information would be misused by criminals, who typically avoid such contact in executing their plans. Thus, to the extent that information similar to OCA information is currently available, it can be obtained only through means that do not pose a risk comparable to that which would be created by Internet access to OCA information.

Another commentor maintained that OCA information has already entered the public domain because every covered facility in its state had held the public meeting required by CSISSFRRA section 4. That section specifies that every covered facility must provide the public with a summary of the OCA portions of its RMPs at a meeting or in a public notice no later than February 1, 2000. We do not believe, however, that those meetings (and notices) provided OCA information in a way that presents a significant risk. Facilities were required to share only a summary of their OCA information, and facilities were free to do so in various ways, making it unlikely that the information they shared with the public was sufficiently detailed or uniform to make it easy to assemble and distribute over the Internet. Also, the meetings were a one-time requirement and thus are not an ongoing source of OCA information.

Several commentors questioned the risk assessment's conclusions regarding the helpfulness of OCA information to terrorists and criminals; they asserted that it does not provide a "roadmap" for terrorists and that it fails to provide all of the information that a terrorist would need to conduct an attack. The risk assessment, however, did not claim that OCA information provides a comprehensive "how-to" manual for attacks on chemical facilities. Nor did it claim that OCA information provides all of the information that would be sought by someone seeking to cause an intentional chemical release. Rather, the risk assessment found that OCA information supplies some pieces of information that would be useful to someone seeking to target or maximize an industrial chemical release. The risk assessment noted that information such as the population that could be affected, the distance that a plume of chemical could radiate, and the types of buildings and landmarks in the local area are precisely the type of information that would be of interest to a terrorist seeking to maximize the effect of an industrial chemical attack. Thus, even if OCA information does not provide a "roadmap" for terrorists or all of the necessary information for an attack, it still provides crucial pieces of information that would increase the risk of terrorist or other criminal activity.

A few commentors argued that several of the examples cited in the risk assessment were irrelevant to whether terrorists or criminals in the United States might seek to cause an industrial chemical release. In particular, those commentors considered irrelevant the examples of chemical releases that occurred in Bosnia and the incidents involving criminals in the United States who had personal knowledge of the industrial facilities they targeted. We disagree. Those incidents were included in the risk assessment because they establish specific, important points relevant to the risk assessment. The examples in Bosnia demonstrate that it is in fact possible to cause large-scale chemical releases using explosives or other means; and the two criminal incidents that occurred in the United States demonstrate that criminals in this country have indeed considered using—although they have not successfully caused—chemical releases to inflict mass casualties.

Lastly, two commentors asserted that the risk assessment should have taken into account the risk reduction that would be achieved by informing the

community of OCA information. We agree that the dissemination of OCA information can assist the community in preventing, preparing for, and responding to chemical releases, regardless of how they are caused, and thereby may mitigate the damage that such releases could cause. However, that point does not contradict the risk assessment's finding that the release of OCA information on the Internet would increase the risk of an intentional chemical release or other related criminal conduct. Moreover, while the benefits assessment concluded that public release of OCA information would likely result in a significant reduction in chemical risk, it did not find that the reduction in risk would offset the increase in risk that would accompany Internet dissemination of OCA information. As explained above, we do not have sufficient data to estimate the number of lives that could be lost or saved by various approaches to the dissemination of OCA information. But we are concerned that terrorists or criminals would use anonymous Internet access to OCA information to maximize the effects of a release, and that those effects are likely to be large compared to the effects of unintentional releases. Moreover, it will take time for the public release of OCA information to create the incentives that will in turn lead to risk reduction. The increased risk created by Internet dissemination of OCA information, by contrast, would be immediate. For those reasons, we do not believe that unfettered release of OCA information would achieve the statutory objective of minimizing the risks of chemical releases, however caused.

3. The Assessments and the Proposed Rule

We received a number of comments related to the assessments and their role in informing the proposed rule. Some commentors believed that the proposed rule appropriately balanced the findings of the assessments. Those commentors noted the tension between the concerns raised in the assessments, but offered that the proposed rule represented a reasonable accommodation of those concerns. Others asserted that the conclusions of the risk assessment were given too much weight in view of the evidence presented, or that the conclusions of the benefits assessment were given too little weight.

One commentor noted that while the benefits assessment chronicled actual, significant damages from accidental releases in terms of casualties, evacuations, and property damage, the risk assessment did not cite a successful terrorist attack on an industrial facility in the United States. The commentor was thus concerned that the proposed rule ignored the "very real risks" of chemical accidents in favor of what the commentor characterized as "greatly exaggerated fears of the unknown."

While there have thankfully been no successful terrorist or criminal chemical releases in the United States (although there have been several abroad), the risk assessment discussed two recent plots to cause chemical releases that were thwarted by law enforcement. As the risk assessment also pointed out, it is important to recognize that the consequences of an intentional release could be devastating. A chemical release intended and designed to cause maximum damage to property and life—as terrorist events increasingly are—would have dire consequences. The fact that an intentional release has not yet occurred in the United States does not mean that the risk of such an incident should be discounted or ignored. Nor does it mean that steps to prevent such an incident should not be taken. As the risk assessment concluded, trends suggest that the odds of such an event are increasing. The rule recognizes that fact and balances that concern with the benefits to be gained from providing the public with access to OCA information.

Similarly, one commentor asserted that the proposed rule sought to eliminate the risk associated with posting OCA information on the Internet rather than balancing that risk with the incentives for risk reduction that would be created by making the information available to the public. We disagree. CSISSFRRA requires the government to promulgate a regulation that "minimizes" the likelihood of accidental and intentional releases based upon the findings of the risk and benefits assessments. The proposed rule was designed to do so. It would not have eliminated all the risks cited by the risk assessment. To further reduce the risk, the proposal could have called for any member of the public to have access to OCA information for no more than one facility per month or even per year, or could have made reading rooms less numerous. Instead, the proposal called for any member of the public to obtain OCA information for up to 10 facilities per month at the 50 or more reading rooms across the country. It also called for an Internet-based risk indicator system to stimulate the public's interest in OCA information and the potential for risk reduction. The proposed rule thus was an attempt to minimize the risk of chemical releases, however caused, by providing the public with access to OCA information while establishing safeguards intended to discourage criminal use of the information.

Several commentors asserted that the proposed rule was "arbitrary and capricious" because it failed to make a rational connection between the facts found in the benefits assessment and the decisions made in regard to the rule. In particular, the commentors pointed to the benefits assessment's findings that the public will use information to reduce risks to the extent the information is easy to access, understandable, and in a format that facilitates comparison and analysis. They claimed that the proposed rule would make OCA information difficult to obtain. They argued that the proposed restrictions would thus undermine the potential benefits of releasing OCA information, and that EPA and DOJ essentially disregarded the benefits assessment's findings.

We agree that there must be a rational connection between the regulatory limitations established in this rulemaking and the findings in the benefits and risk assessments. However, the final rule should not, and cannot, respond to each of the assessments' findings standing alone. CSISSFRRA requires the final regulations to govern the distribution of OCA information in a manner that "minimizes the likelihood of accidental releases and the [increased risk of terrorist and other criminal activity associated with the posting of OCA information on the Internet] and the likelihood of harm to public health and welfare," in light of the assessments. To meet that requirement, the findings of both assessments must be considered to determine how best to distribute OCA information in a way that reduces the risk to public health and welfare of chemical releases, however caused. We believe the final rule is informed by the findings of both the benefits and the risk assessments.

Another commentor asserted that EPA and DOJ's justification for withholding OCA information from the Internet is "unique and arbitrary." The commentor argued that, if posting OCA information on the Internet is unacceptably dangerous due to the assistance it could give a terrorist in identifying a potential target and planning an attack, then many other types of information on the Internet could be seen as equally dangerous, such as baseball schedules and stadium seating capacities. The commentor explained that a terrorist could use that information to determine potential casualty figures for a planned attack during a game.

This criticism misinterprets the basis of our concern about OCA information. The risk assessment found evidence that terrorists are increasingly interested in using weapons of mass destruction (WMD) and that chemical releases can be triggered from an industrial facility, thereby converting that facility into a WMD. Based in part on that evidence, the assessment concluded that posting OCA information on the Internet would increase the risk of terrorists or criminals targeting chemical facilities for attack. OCA information provides data that is qualitatively superior to the sort of information cited by the commentor. In particular, OCA information includes the number of people, the size of the area, and the types of buildings and landmarks that could be affected by a chemical release. As the assessment emphasizes, that is *precisely* the type of information that terrorists seek for purposes of planning an attack. Stadium seating capacities and schedules, by contrast, provide information only about the number of people that could be affected. For those reasons, EPA and DOJ conclude that the release of some items of OCA information presents a terrorism risk that warrants their exclusion from the Internet. Moreover, the fact that chemical facilities, as opposed to baseball stadiums and many other places where the public congregates, are themselves potential WMD, makes clear that there is heightened risk in making OCA information easily available to terrorists or other criminals.

We also received a comment that the proposed rule makes OCA information more difficult to access than information currently reported under EPCRA section 312, even though the benefits assessment found that EPCRA section 312 information was not widely used because it was difficult to obtain. However, the commentor did not correctly characterize the benefits assessment's findings. The benefits assessment found that several reasons account for the infrequent use of EPCRA section 312 information. First, the public is not aware of the availability of the EPCRA information because limited resources have allowed only about half of the SERCs and LEPCs to publicize its availability. Second, the effort required by members of the public to locate their SERC or LEPC and request that information has been a disincentive. Lastly, EPCRA data is not in a format that is easily understood by the public.

As will be described in more detail later, under the final rule, the public will more likely be aware of OCA information and have the means to access and understand it. First, the EPA's website on the Internet—a widely accessible medium—will inform the public of the existence and availability of OCA information. Second, the website will provide contact information and instructions for obtaining access to OCA information, so members of the public will not have to locate that information for themselves. Third, OCA information will be accessible from more sources than is EPCRA section 312 information; while EPCRA section 312 information is available only through SERCs and LEPCs, OCA information will be available through federal reading rooms, as well as through SERCs, LEPCs, and other related state and local agencies that opt to provide access to local OCA information, as described in more detail later. Fourth, some OCA information will be readily accessible on the Internet. Finally, the public is more apt to use OCA information because it is easier to comprehend than is the EPCRA section 312 data. OCA information does not require calculations or analysis to determine the potential consequences of potential releases; it communicates that information directly and is designed to allow easy comparisons among RMP facilities.

B. General Comments on the Rule

We received comments raising a variety of general or overarching concerns with the proposed rule. One commentor asserted that the proposed rule does not further right-to-know efforts. Other commentors argued that terrorists will be able to get OCA information while the proposed rule's restrictions on OCA information will only harm the public. As stated above, DOJ and EPA agree that the public's right-to-know is an important element in the reduction of accidental releases and that risk reduction benefits will flow from the public's access to OCA information. Accordingly, the proposed rule provided the public with multiple avenues for obtaining access to OCA information, including federal reading rooms, LEPCs, SERCs, and fire departments that opt to provide read-only access. It also provided the public with hazard information through a risk indicator system and clarified that state and local government officials, as well as federal officials, can communicate the substance of OCA information to the public as long as they do not release the restricted forms of that information. While the proposed rule would not have permitted unfettered release of OCA information, it would have provided for dissemination of OCA information in ways that are consistent with right-to-know efforts and would have allowed the public and industry to better prevent and prepare for chemical releases, whether or not intentionally caused. As explained further in this preamble, the final rule adopts and improves on those public access provisions.

One commentor argued that the proposed system for providing the public with access to OCA information would undermine the utility of the CAA's citizen suit enforcement provision by denying members of the public the information they need to prosecute such suits. But as noted above, the system would not deny public access to OCA information, only control it. Federal, state, and local reading rooms, and the Internet would all be potential outlets for the information. As described later, we have also sought to improve the proposed system's ability to assure reasonable access to OCA information by all members of the public.

One commentor expressed concern that the proposed regulation would "disenfranchise" U.S. citizens located outside the country by withholding access to OCA information from them. The basis for that concern was our proposal to define "member of the public or person" as an individual located in the United States. We did not intend to withhold access to OCA information from any U.S. citizen. Rather, we intended only to limit our reading room obligation to establishing rooms in the United States, where the vast majority of persons affected by RMP facilities are located. Given the resource implications of establishing federal reading rooms, we considered it appropriate to commit to locating at least 50 rooms in the United States and retain discretion to locate more elsewhere. We continue to believe that that is the appropriate course to take.

As described later, we are developing an approach to operating reading rooms that will give us flexibility in where we locate them; to the extent we learn that there is demand for reading room access by U.S. citizens abroad, we will consider providing reading room access in appropriate locations. Nonetheless, we realize that the definition of "member of the public or person" need not be limited in the way proposed to accomplish our objective. The reading room provision of the rule itself specifies that the required reading rooms be located across the United States. Moreover, we realize that the proposed definition would have been problematic for some other rule provisions that used the terms "public" or "person." We have thus deleted the phrase "located in the United States" from the definition. At the same time,

we have revised the rule provision calling for a system that indicates whether an address is within a facility's vulnerable zone so that our obligation extends only to persons located within any state (defined to include the 50 states, the District of Columbia, and U.S. territories). The vast majority of persons affected by vulnerable zones are within a state, and we consider it reasonable and prudent to limit our obligation in order to limit the potential impact of that obligation on our resources. We expect, however, to answer inquiries from persons located outside the U.S. unless those inquiries become voluminous.

Several commentors voiced concern that, without ready access to OCA information, the public would be unable to hold EPA accountable for the effectiveness of the RMP program. We disagree. We do not believe that changes over time in any single set of data (*e.g.*, distance to endpoint) are sufficient to measure the effects of the RMP program on a facility's practices. Differences in OCA data may reflect differences in assumptions and models used in conducting the analysis. Other RMP information, including accident histories and information about prevention and response programs, offers a more comprehensive basis for measuring a facility's progress or comparing facilities' safety practices. Moreover, RMP information except for OCA information is already available on the Internet. Consequently, there is already a wealth of information that an individual can use to determine the compliance status of an individual facility, even without the additional OCA information offered by the proposed rule. We thus believe that the ready access to that information sufficiently enables interested individuals to evaluate the effectiveness of the RMP program.

One commentor claimed that the proposed rule distorted the notion of a "public record" because the proposed rule would not allow publicly released OCA information to be copied or carried away from reading rooms. The commentor noted that the proposal treated OCA information as "public" in the setting of the reading rooms but prohibited it from release to the public in the context of the Internet. We find that the proposal's treatment of OCA information is consistent with CSISSFRRA's statutory framework. Congress anticipated that OCA information in different forms could be disseminated differently; under CSISSFRRA the government is required to provide the public with access to paper copies of OCA information in limited quantities, and in addition the government is required to assess whether and how to provide OCA information on the Internet (CAA section 112(r)(7)(H)(ii)(II)). Thus, the proposed rule's approach to dissemination of OCA information was well within the scheme contemplated by the CSISSFRRA.

We received a comment that the proposed rule is illogical because it tracks members of the public who review OCA information at federal reading rooms but allows companies to release OCA information to the public without restriction. Both of those aspects of the proposed rule, however, flow from the statute itself. First, CAA section 112(r)(7)(H)(ii)(II)(aa) specifies that the final rule must provide access to paper copies of OCA information for a "limited number" of facilities. The only way the government can implement the "limited number" provision is to limit the number of facilities for which an individual can receive access to OCA information. Second, CAA section 112(r)(7)(H)(v)(III) contemplates that facilities will release their OCA information to the public if they so choose. It provides that the statute's restrictions on dissemination of OCA information do not apply to information released without restriction by facilities, and it requires facilities that provide OCA information to the public under those terms to notify the Administrator, who is directed to maintain a public list of such facilities. Congress thus clearly intended to allow facilities to release their OCA information as they consider appropriate. Congress' approach to facilities' release of their own information does not conflict with the concern expressed in the risk assessment that large quantities of OCA information would be disseminated in a searchable format on the Internet. Individual facilities separately releasing their OCA information does not significantly raise that concern.

Relatedly, one commentor asserted that the federal government should provide access to OCA information that facilities release without restriction. As noted above, CSISSFRRA requires EPA to make publicly available a list of the facilities that have notified EPA that they have released their OCA information without restriction. Approximately 1,000 facilities have notified EPA, and EPA has made a list of those facilities available on its website. That list will enable members of the public to obtain OCA information from those facilities. At the same time, CSISSFRRA does not require that EPA and DOJ make publicly available the OCA information released by listed facilities. Neither EPA nor DOJ will provide the OCA information merely because it has been released by the listed facilities, for the security reasons cited above.

Several commentors asserted that even greater restrictions should have been proposed because the rule would not stop OCA information from being hand-copied and posted on the Internet. We do not believe Congress intended for us to prevent members of the public from hand-copying the OCA data that they view. CAA section 112(r)(7)(H)(ii)(II)(aa) guarantees the public "access" to paper copies of OCA information for at least a limited number of facilities, and the utility of "access" would be greatly diminished if the public had to rely on memory alone to recall that information. Also, CAA section 112(r)(7)(H)(viii) expressly precludes mechanical and electronic copying of the electronic OCA information made available under that provision. It is silent with regard to copying by hand. The fact that Congress expressly precluded mechanical and electronic copies suggests that it was aware of the problem of copying and made an affirmative decision to prohibit only certain forms of copying. We thus believe that Congress' silence with regard to copying by hand is properly interpreted to mean that hand copies are to be permissible.

Another commentor claimed that the best manner of determining whether the proposed rule provided adequate public access to OCA information compared to other alternatives was to give the full RMP database to qualified researchers so that they could use it to conduct a peer review analysis of the proposal. CSISSFRRA mandates that the means of disseminating paper copies of OCA information be based upon assessments conducted by the government; it does not appear to contemplate the sort of peer review process that the commentor proposed. Further, it is unlikely that the short time frame provided by the statute would have allowed for such a process. Moreover, we do not believe that the commentor's method of assessing the various alternatives for providing the public with access to OCA information would be preferable to the method of analysis that we conducted through our assessments. We agree, however, that there are public benefits to providing qualified researchers with access to OCA information. CSISSFRRA does not require that this rulemaking establish a means of doing so, but we are working on devising and implementing a system for giving qualified researchers access to

OCA information, as required by CAA section 112(r)(7)(H)(vii).

One commentor asserted that it was unnecessary for the public to receive information about facilities outside their communities, and that a facility's OCA information should only be available to members of the community in which it is located. Such an approach, however, would be inconsistent with CSISSFRRA and the findings of the benefits assessment. CAA section 112(r)(7)(H)(ii)(II)(aa) expressly guarantees access to paper copies of OCA information for a limited number of facilities "located anywhere in the United States, without any geographical restriction." The benefits assessment also notes that a person interested in assessing a local facility's safety practices may find it useful to compare that facility's OCA information with that of similar facilities located elsewhere.

Some commentors suggested that the creation of 50 federal reading rooms, or approximately one per state, has environmental justice implications. The Environmental Justice Executive Order (Exec. Order No. 12898, 59 FR 7629 (1994)) requires that each federal agency conduct all activities affecting the environment or human health in a manner that does not discriminate by race, color, or national origin, and address, as appropriate, any disproportionately high and adverse human health or environmental effects on minority and low-income populations. Executive Order 12898 also encourages agencies to work to ensure that public documents relating to human health and the environment are readily accessible to the public. We believe that our approach, including various means of access in addition to federal reading rooms, will not have a disparate impact upon minority groups or low-income groups. As discussed below, we are committed to providing reasonable access to everyone seeking to view OCA information and have made changes to the rule reflecting that intention. We expect that the vast majority of federal reading rooms will be placed in urban areas with relatively large minority and low-income communities. Those locations will provide practical access to OCA information for those communities, some of which have historically suffered from a disproportionate environmental hazard burden. The rule provides for additional access to OCA information by allowing state and local government agencies to provide access under the "enhanced local access" section of the rule. Also, the vulnerability zone indicator system, which is accessible via email, telephone, and U.S. mail, will provide an individual with additional data on some aspects of the risk expressed by OCA information.

Some commentors also expressed concern that little had been done to involve minority and poor communities in the development or public review of the proposed rule, contrary to the Environmental Justice Executive Order. EPA and DOJ disagree. Especially in light of the relatively short period of time we had to conduct the risk and benefits assessments, as well as to propose and finalize this rule, we believe that we provided a reasonable opportunity for review of the proposed rule by minority and poor communities in compliance with that Executive Order. The proposed rule outlining the federal government's policy was published in the **Federal Register** and available on the EPA website. In addition, we provided additional notice of the proposal by holding a public hearing and providing individual notification to thousands of individuals across the country, including state and local government agencies.

Another commentor faulted the proposed rule for not acknowledging Indian country, tribal governments, or tribal equivalents of SERCs and LEPCs. CSISSFRRA itself does not address Indian country or tribes. It amends the CAA; which defines "state" in a way that does not include Indian country. However, CAA section 301(d) authorizes EPA to promulgate regulations specifying those CAA provisions for which it is appropriate to treat Indian tribes as states. EPA has promulgated that regulation (63 FR 7271 (Feb. 12, 1998)), which provides that tribes can take delegation of programs under CAA section 112, including the RMP program, if EPA finds they meet specified criteria. Thus, a tribe found to meet those criteria may be treated as a state and receive and disseminate OCA information to the same extent and in the same manner as any state under the rule being promulgated.

C. Rule's Impact on Risk Reduction

A number of commentors agreed that the proposed rule generally provided for public access to OCA information in a way that would minimize the likelihood and consequences of chemical releases, however caused. Some of those commentors noted that other information available in RMPs, under EPCRA or other programs, would, on their own or in tandem with OCA information, allow the public to learn about and understand the hazards and risks posed by chemical plants in their communities. In contrast, some commentors expressed concern that the proposed rule would not minimize overall risk, and even more significantly, might increase overall risk by making it too difficult for the public to access OCA information that could be used to reduce the likelihood of accidents.

Some commentors argued that the proposed rule would take away a risk reduction tool without decreasing existing dangers. We disagree with that statement. The agencies did not propose to "take away a risk reduction tool," since there still would be public access to OCA information. In order to reduce the risk associated with Internet posting of OCA information, the proposed rule delineated procedures for obtaining access to the information and limitations on the amount of information that could be obtained by any member of the public. It provided for access to up to 10 facilities' OCA information per individual per month, access that would allow members of the public in the vast majority of counties to obtain information for local facilities and a few additional facilities for a basis for comparison. In addition, the proposal in no way attempted to restrict the use of that risk reduction tool once obtained.

A few commentors argued that the proposed rule encouraged secrecy, which would breed incompetence and complacency. While we agree that secrecy can have such an effect, in this case the public will have access to OCA information, so facilities' information will be far from secret. In addition, other RMP information currently available on the Internet, including information concerning facilities' accident prevention programs, provide important information for assessing and comparing facilities' practices. Likewise, other publicly available environmental reports—such as those concerning accidents reported under EPCRA and the Comprehensive Environmental Response, Compensation, and Liability Act—are useful in evaluating a facility's safety practices. OCA information provides a particularly simple way of roughly assessing and comparing the hazards facilities pose, but it is not the only information capable of communicating such hazards, as a number of commentors pointed out.

Several commentors argued that, by making OCA information difficult to access, the proposed rule would force the public to rely on government officials for risk information without being able to check the accuracy of that information. Other commentors claimed that the public might resort to other forms of less reliable, more exaggerated information that would make local risk

reduction efforts more difficult. Relatedly, another commentor argued that, to the extent other, more exaggerated information is generated as a substitute for OCA information, terrorists and other criminals may be led to believe that consequences of a release would be greater, thereby increasing the risk of a release. The fundamental premise of those comments is that the rule would render OCA information inaccessible. We disagree. As mentioned above, we are committed to making OCA information reasonably available to the public and have made changes in the final rule to ensure such access. Consequently, local and state governments need not ask the public to trust their representations but may provide access to OCA information and other information that the public may use to verify government assertions about the risk of chemical releases.

Several commentors asserted that the proposed rule, in validating the idea that public dissemination of OCA information poses a risk, would have a "chilling effect" on local officials' communication of OCA data, thus curtailing accident prevention efforts that result from public awareness and pressure. We did not intend to create such a chilling effect. Indeed, we believe dialogue among government, the public, and industry is essential to further risk reduction efforts. As we explained in the proposal, we have attempted to address the concern about CSISSFRRA's perceived chilling effect by explaining in the rule the ways in which state and local government agencies may legitimately disseminate OCA information, or descriptions thereof, to the public. In fact, the rule encourages appropriate local and state agencies to provide public access to such information, which should counter any inference to the contrary. Further, it is worth reiterating that government officials may be held criminally liable only for "willful" violations of the restrictions on OCA information dissemination. In other words, the government would be required to demonstrate that the official knew his or her actions to be unlawful. EPA and DOJ moreover, will continue to provide guidance to state and local covered persons to explain the extent to which they may lawfully disseminate OCA information, or communicate the substance of that information, under the final rule.

Similarly, one commentor expressed concern that the proposed rule might discourage members of industry from participating in SERCs and public meetings at which OCA information is discussed. In particular, the commentor asserted that proposed section 1400.6(b) could be interpreted to render it unlawful for industry members serving on SERCs to provide OCA information for their facilities to the public, if those facilities have not formally decided to release that information. In many instances, whether CSISSFRRA is applicable will depend upon the context in which OCA information is being disseminated. For example, in the instance cited by the commentor, 1400.6(b)'s restrictions on dissemination apply only if the member of industry is distributing OCA information to the public in his or her capacity as a representative of the SERC. In addition, CSISSFRRA does not restrict his or her ability to participate in public discussions about OCA information; in fact, CSISSFRRA section 4 anticipates that members of industry will engage in such discussions with the public.

Several commentors argued that, if the rule makes public access to OCA information difficult, it should compensate for any resulting decrease in risk reduction incentives by requiring facilities to secure their sites and/or take prescribed risk reduction steps, such as reducing their inventory of dangerous chemicals or substituting safer chemicals to the extent feasible. Other commentors disagreed, asserting that requiring facilities to make themselves secure from terrorist attacks or to take other risk reduction measures would be an inappropriate remedy for the risk posed by broad release of OCA information. To begin with, we note that CSISSFRRA requires the final rule to "govern[] the distribution of [OCA] information." It does not call on the government to decide whether to impose further substantive requirements on facilities to reduce the risk of chemical releases, however caused. In the short time available to conduct the assessments and rulemaking on the distribution of OCA information, it was not possible for us to address the broader policy, programmatic, and legal issues posed by the commentors' suggestion for additional regulatory requirements. CSISSFRRA does, however, include a requirement that DOJ, in consultation with relevant federal, state, and local agencies, as well as members of industry and the public, conduct studies to examine the issue of site security at RMP facilities and the extent to which the RMP rule effectively addresses that issue. DOJ is working to comply with that requirement. In the meantime, EPA has issued a site security alert informing industry of various risks posed by criminal activity related to chemical facilities.

D. Reading Rooms

1. General Comments on Reading Rooms

As indicated above, the proposed rule called for providing the public with access to paper copies of OCA information through the creation of at least 50 federal reading rooms geographically distributed across the United States. Several commentors expressed concern that the costs of creating federal reading rooms could outweigh the benefits. Further, several other commentors suggested that it would be more appropriate for LEPCs, SERCs and/or other local groups to be the principal providers of OCA information; some commentors also urged EPA to help fund such efforts. Some commentors recommended that the reading room approach be abandoned or scaled down out of concern that reading rooms would not adequately safeguard the OCA information and could result in the widespread dissemination of OCA material. Other commentors questioned whether federal reading rooms would provide reasonable access, particularly for people who live some distance from reading rooms. Finally, other commentors supported the federal reading room approach but made suggestions about how to make reading rooms more effective and secure.

For the reasons discussed below, we continue to believe that providing the public with access to paper copies of OCA information is best done through reading rooms. We are developing an implementation approach for federal reading rooms that will allow read-only access to OCA information in a reasonably secure manner that is convenient for the public and efficient for the government. We do not believe that existing federal statutes authorize us to rely solely on LEPCs, SERCs, or other state or local entities to provide reading room access; requiring such agencies to do so, moreover, might raise constitutional concerns regarding the appropriate relationship of federal and state power. CSISSFRRA makes the federal government responsible for distributing OCA information. Nevertheless, LEPCs, SERCs, and other emergency prevention, planning, and response agencies can play an important part in facilitating public access to OCA information, and the final rule being promulgated encourages them to do so. We also intend to provide assistance to interested state and local agencies.

As for whether reading rooms can provide reasonable access, we are committed to establishing a network of federal reading rooms and other potential state and local outlets (further

described below) that would ensure that every member of the public has a reasonable opportunity to obtain access to OCA information. We believe that federal reading rooms can and will be an appropriate and cost-effective mechanism for providing the required public access to OCA information.

2. The Number of Paper Copies

We received a comment interpreting the limit on the number of RMP facilities for which an individual may view paper copies of OCA information as 10 per person per visit. Today's notice clarifies that the limit is 10 per person per month, regardless of the number of reading room visits a person makes. Any person may visit a reading room multiple times during a single calendar month to view the OCA information for the same 10 facilities. A person may not visit multiple reading rooms to view OCA information for more than 10 different facilities in a single month. We have changed the text of the regulation to clarify that point.

We received many comments on what the appropriate "limited number" should be. Some commentors expressed concern that the proposed limit of 10 per month was too generous considering the potential criminal use of that information and suggested a lower number, such as 10 per year. Several commentors indicated that the proposed limit of 10 was arbitrary, unreasonable, and/or would hamper the goal of providing the public with access to paper copies of OCA information because the proposed limit of 10 per month would be insufficient for citizens living or working in areas with high concentrations of RMP reporting facilities, or would hinder individuals wishing to conduct nationwide comparative research. Finally, some commentors stated that the limit of 10 per month was appropriate.

Several commentors also raised issues concerning the application of the 10 per month limit. One commentor suggested that the limit apply not to individuals but to organizations, so that an organization could not use its employees or members to compile collectively OCA information for more than the prescribed "limited number" of facilities. Another commentor argued that members of the public have a legitimate interest only in OCA information for facilities in their community, and that the limited number should thus be applied in a way that provides access to information only for such facilities. Two other commentors recommended that OCA information be provided only to state and local officials with emergency planning, prevention, or response responsibilities.

We note at the outset that CSISSFRRA requires that these regulations provide access for "any member of the public" to paper copies of OCA information for a limited number of facilities "located anywhere in the United States, without any geographical restriction" (CAA section 112(r)(r)(H)(ii)(II)(aa)). We thus do not have the discretion to deny the public access to paper copies of OCA information, to establish a limit that applies to organizations instead of individuals, or to restrict the geographical scope of the facilities for which a member of the public may request OCA information. The benefits assessment also makes clear that public access to OCA information would stimulate further risk reduction and that the public's ability to compare the hazards and safety practices of similar facilities located in different places is important to stimulating that risk reduction.

With respect to the appropriate numbers limit, we explained in the proposal that we chose a limit of 10 facilities per individual per month based on consideration of many of the issues expressed in the comments received. As required by the law, we weighed the risks that would result from unlimited reading room access to paper copies against the benefits that would accrue from public awareness of potential release hazards, as communicated through OCA information. A limit was proposed that would hinder the ability of an individual or group to gather large quantities of OCA information to post on the Internet, while allowing individuals in most parts of the country or in most counties to gain access to OCA data for all the facilities in their community and a few more for purposes of comparison.

In determining that limit, we conducted an analysis of the geographic distribution of RMP facilities across the nation. The analysis showed that 82% of all counties that have RMP facilities have no more than 10 such facilities. Because residents of most counties would be able to review OCA information for all the facilities in their county in a single visit to a federal reading room, EPA and DOJ believed that a limit of 10 per month would provide reasonable access for persons living or working in areas with RMP facilities. Moreover, under the 10 per month limit, in the great majority of those counties, residents would also be able to review OCA data for RMP facilities located outside their county.

At the same time, we recognized that the proposed limit of 10 per individual per month would not permit all members of the public to obtain OCA information for every facility in their own communities. The proposed rule, therefore, included provisions to authorize and encourage LEPCs, SERCs, and fire departments to supplement the access provided by federal reading rooms by providing read-only access to OCA information for facilities located in the LEPC's jurisdiction and facilities with vulnerable zones that extend into that jurisdiction. However, as discussed more fully below, we received comments that many LEPCs and SERCs would be unwilling and/or unable to provide such access.

In passing CSISSFRRA, Congress emphasized that members of the public should have access to OCA information, particularly for facilities in their local communities (see 145 Cong. Rec. S7545, daily ed. June 23, 1999 (statement of Sen. Chafee)). We agree that every member of the public should be able to access OCA information for facilities in the communities where he or she lives or works without making multiple trips to a federal reading room. We have thus decided to require federal reading rooms to provide any person with access to OCA information that the LEPC in whose jurisdiction the person lives or works is authorized to provide (*i.e.*, access to OCA information for facilities located in the jurisdiction of the LEPC and facilities with a vulnerable zone that extends into that jurisdiction). That access will be in addition to access to OCA information for up to 10 facilities located anywhere in the country, without geographical restriction. With reading room access to OCA information for local facilities assured, access to OCA information for 10 facilities located anywhere will allow members of the public to compare facilities in their community with similar facilities located elsewhere and to learn about facilities in communities where they might move or where relatives or friends live or work.

In providing federal reading room access to OCA information for a person's local facilities, we do not want to discourage LEPCs, SERCs, and others from providing local access to the same. Obviously, it will be more convenient for a member of the public to access information locally than at a federal reading room that may be located many miles away. Also, we want to encourage dialogue between members of the public and their local officials responsible for chemical emergency planning and response. By making local OCA information available locally, LEPCs,

SERCs, and other state and local agencies can encourage the public to become involved in chemical risk reduction efforts. As more fully discussed in the next section of this notice, we are committed to helping LEPCs, SERCs, and others provide that local access.

3. Operation of Reading Rooms

Some commentors suggested that federal reading rooms be open at nights and on weekends. We understand that some members of the public may find it difficult to reach reading rooms during the normal work week. However, due to cost, personnel, and security concerns, reading rooms will be located in federal buildings, which are typically open only during normal business hours. We will explore the extent to which reading rooms can also be open at other hours to accommodate members of the public.

As urged by several commentors, we have endeavored to develop a cost-effective and secure means of operating federal reading rooms. At some reading rooms, access will be available on a walk-in basis because the OCA data will be maintained at the reading room. At other reading rooms, however, the OCA data will not be maintained on-site, and therefore a person wishing to view OCA data at those reading rooms will need to contact a central office at a toll-free number at least three days prior to the date on which the person would like to view the OCA information at the reading room. During the toll-free call, the requestor will be asked to provide his or her name, telephone number, and the names of the facilities for which he or she is requesting OCA information. That information will enable the central office to schedule an appointment for the requestor at a reading room, relay the requested copies of OCA information to that reading room, and, if necessary, contact the requestor. That information will not be retained beyond the requestor's appointment date.

As discussed below, at the reading room, the requestor will need to display photo identification issued by a federal, state, or local government agency, sign a sign-in sheet, and certify that the requestor has not received access to OCA information for more than 10 facilities during that calendar month. The requestor will then receive access to the requested OCA information. Requestors will be limited to access to paper copies of OCA information for a total of 10 facilities during a calendar month, regardless of how many reading rooms they visit during a single month.

As discussed above, any person will also receive access at a federal reading room to OCA information that the LEPC in whose jurisdiction the person lives or works is authorized to provide (*i.e.*, access to OCA information for facilities located in the jurisdiction of the LEPC and facilities with a vulnerable zone that extends into that jurisdiction). Persons seeking such access will also be asked to sign in and to provide proof demonstrating that he or she lives or works in the LEPC jurisdiction for which the OCA information has been requested. They will not, however, be required to sign a certification.

4. The Number of Reading Rooms

We received a range of comments on the appropriate number of reading rooms. Several commentors suggested that fewer reading rooms would be adequate and appropriate while many commentors expressed concern that 50 reading rooms would not provide reasonable public access due to issues such as time and travel costs, especially in large states and for low income groups.

We are committed to providing reasonable access to OCA information. We intend to establish reading rooms in virtually every state, the District of Columbia, and outlying territories having RMP facilities. In addition, we will work to set up additional reading rooms in states that have a significant number of RMP facilities, such as California and Texas. While we anticipate establishing more than 50 reading rooms, we have not increased the number of rooms required by the rule because the need for additional rooms may be affected by the extent to which state or local government agencies provide access under the enhanced access provisions of the rule. Moreover, as we implement the reading room provision and learn more about the demand for reading rooms in different parts of the country, it may become appropriate to relocate reading rooms.

5. The Location of Reading Rooms

As for the specific locations of the federal reading rooms, a number of commentors suggested a number of factors to consider in determining locations. We agree with those suggestions and have decided to use the following criteria in making our decisions: equitable distribution across the United States and its territories; the density of the population surrounding the location; the availability of public transportation to the location; the ability to provide security at the location; and the availability of federal offices that could readily implement the reading room requirement at reasonable cost. Federal offices, it should also be noted, are handicapped accessible. The location of federal reading rooms will be posted on EPA's and DOJ's websites when they are determined.

6. Security Measures at Reading Rooms

We proposed that a reading room representative be required to view a government document identifying that individual before granting that individual access to OCA information. Some commentors stated that that requirement would have a chilling effect on the public's use of reading rooms because some people may be reluctant to show identification to the government. Other commentors urged that we require photo identification to ensure that the person presenting the identification is in fact the person to whom the identification was issued.

We recognize that some individuals may be reluctant to show identification to a government official. However, the personal identification requirement is a reasonable means of accomplishing the statutory requirement that individuals have access to "a limited number" of paper copies of OCA information. Further, as noted in the risk assessment, EPA and DOJ believe that the identification requirement will also decrease the likelihood that OCA information would be obtained by individuals seeking it for criminal purposes because such individuals prefer to conceal their activities. With respect to the type of identification, EPA and DOJ agree that photo identification issued by a local, state, or federal government agency (*e.g.*, a driver's license or passport) should be required. That requirement will significantly reduce the risk that someone will attempt to use identification not his or her own.

One commentor suggested that there should be some type of identification validation system to ensure the accuracy of an individual's identification document. EPA and DOJ have concluded that it would be too costly to create an independent identification validation mechanism. The responsibility for checking individuals' identification documents will be left to those operating the federal reading rooms. EPA and DOJ do not consider that to be a significant problem, since the majority of locations at which the reading rooms will be located are federal agencies that have security staff that already visually check the identification of all persons seeking entry to the federal facility or other areas of limited access. Individuals using the federal reading rooms will have their identification checked in the same manner as would any member of

the public seeking entry into federal buildings.

As discussed above, the final rule will require federal reading rooms to provide any member of the public with access to the OCA information that the LEPC where the person lives or works would be able to provide to them. To implement that provision, it will be necessary for reading rooms to check identification and documentation to ensure that a requestor receives access only to the local OCA information to which he or she is entitled (i.e., OCA information for stationary sources located within the jurisdiction of the LEPC in which the individual lives or works and for any other stationary sources that have a vulnerable zone that extends into that LEPC's jurisdiction). We will create guidelines for federal reading room personnel regarding such procedures.

In the NPRM we described procedures by which reading rooms would determine whether a requestor had exceeded the 10 per month allotment. We anticipated that reading rooms would keep daily sign-in sheets to record the name of any person who received access to OCA information and the name and number of facilities to which that person had received access. Whenever someone requested access to OCA information, reading room personnel would review the sign-in sheets for that day and the previous days during the month to determine how many, if any, facilities' OCA information that person had already received that month. We noted that sign-in sheets would be protected under the Privacy Act (5 U.S.C. 552a) and would be retained for three years.

We received several comments on the record keeping aspect of the proposed rule. Several commentors expressed concern that the use of sign-in sheets would raise privacy concerns, and one commentor expressed a related concern that the proposed rule was silent as to how the federal government would use the information. Other commentors agreed with the identification requirement and the concept of keeping some type of record, but recommended that the final rule require record keeping and a corresponding check on people using a reading room in order to ensure that they have not had access to OCA information for more than 10 facilities per month. Two commentors suggested that EPA and DOJ establish a national database as a means of enforcing the 10 paper copy per month limit.

We recognize that privacy concerns are raised whenever the government collects information about individuals. We also are mindful of the need, identified by the risk assessment and required by CSISSFRRA, to limit the number of facilities for which individuals can access OCA information in paper form. We thus have endeavored to design a system that will effectively implement the limitation but minimize the need for keeping records on individuals' access to OCA information.

Specifically, we will use the sign-in sheet system discussed in the NPRM (65 FR 24853 (April 27, 2000)), and keep the sign-in sheets in a manner that will minimize privacy concerns and that will not entail the creation of a system of records under the Privacy Act. The Privacy Act applies to records retrieved by name within systems of records. Federal reading rooms will not create an elaborate tracking system; they will not index or otherwise manipulate the sign-in sheets according to individuals' names. Instead, a reading room representative will visually inspect the sign-in sheet(s), which will be organized chronologically, for the month in which an individual seeks access to paper copies to see if that individual's name appears on the sign-in sheet(s) for dates earlier in the month and, if so, if that individual has already received OCA information for the allotted 10 facilities without geographical restriction.

We believe that the sign-in system will help deter individuals from seeking improperly to obtain OCA information exceeding the 10 facilities per month national limit. To further deter individuals from attempting to exceed their allotment by visiting more than one federal reading room in a month, reading room personnel will be instructed to provide access to OCA information only to individuals who have signed a certification that they have not exceeded their allotment. The certification will inform members of the public that they may be subject to criminal penalties under federal law for falsely certifying that they have not received OCA information for more than 10 facilities that month.

It should also be noted that the information recorded on sign-in sheets may be used by law enforcement in the event of a duly authorized investigation of a violation of civil or criminal law. For that reason, the reading rooms will retain the sign-in sheets for three years. In the event that the sign-in sheets are compiled into a system retrieved by name for purposes of such an investigation, they will be subject to the Privacy Act and will be handled accordingly. Federal law enforcement agencies have already established Privacy Act systems applicable to their indexed investigative records, and if the information from sign-in sheets were so compiled, it would receive those protections.

The reading room records will not be used beyond the purposes outlined above (*i.e.*, to ensure compliance with the 10 facility per month limit and to carry out authorized law enforcement investigations).

In deciding to adopt the sign-in certification approach, EPA and DOJ have decided not to institute a national database for enforcing the 10 facility per month limit, as some commentors recommended. We anticipate sign-in sheets with certifications should provide adequate assurance that the monthly limit on OCA information is not exceeded. However, after gaining experience with the federal reading rooms, we will evaluate whether the sign-in sheet system is in fact effective. For that purpose, we will review a sample of sign-in sheets for several reading rooms to determine if the existing system is adequately enforcing the limit. Based on that review, DOJ, EPA, and OMB will consider whether a national database or other tracking system should be instituted to enforce the limit.

One commentor asserted that the establishment of such records would violate the Paperwork Reduction Act of 1995 because it would not provide the government with information that has practical utility. That assertion is not correct. As discussed above, the information collected would have practical utility, namely to ensure that the statutory and regulatory limit on access to OCA information in paper form is properly applied.

7. Alternatives to Reading Rooms

We expressly asked for comments on whether, as an alternative to reading room access to information, paper copies should be released to the public upon request. Some commentors stated that there should be an alternative system of direct delivery of OCA paper copies to interested parties. They asserted that the proposed federal reading room system would be insufficient to provide OCA paper copy access to all interested citizens. In addition, they indicated that, because only a limited number of federal reading rooms would be established, some citizens would find it inconvenient to travel the distances necessary to access the information.

Other commentors opposed off-site distribution of paper copies or allowing individuals to take away paper copies from reading rooms. Some noted that such a system would pose a significant security risk because it would increase the risk of OCA information being

disseminated widely, thus violating the intent of CSISSFRRA. Some emphasized that paper copies, once outside the control of the government, could easily be scanned into an Internet database and that such a system would provide potential terrorists with the type of Internet access to OCA information that the proposed rule was designed to prevent. Further, in noting that potential terrorists may forgo attempts to gain access to OCA information if they must do so in person and submit to an identification check, some commentors stated that the mail delivery alternative would lessen the deterrence benefit of on-site access.

We have considered the alternatives of mail delivery of OCA information to interested citizens and the distribution of take-away copies, and have determined that both would present an unacceptable security risk. With respect to mail delivery upon request, any safeguards, such as a requirement of proof of residence at the delivery location, could easily be circumvented by an individual or group establishing a "phantom residence." We also agree with the commentors who noted that requiring persons to go to a federal reading room and provide identification would provide some deterrence to those potential terrorists who might wish to keep their interest in the information hidden. We further agree that, once paper copies have left the federal reading rooms, they can easily be scanned onto the Internet where they could be viewed anonymously by those with criminal intent. Anonymous access to significant amounts of OCA information is precisely what this rule is designed to prevent. As a result, the final rule will use reading rooms to provide access to paper copies because reading rooms allow for that access to occur within a controlled setting.

E. Enhanced Local Access to OCA Information

Commentors generally supported the proposed rule's provisions for enhanced local access as a promising means of facilitating the public's access to OCA information and public-private dialogue about chemical safety in their communities. Many of those commentors, however, also pointed out a number of obstacles to making enhanced local access a reality and suggested ways of overcoming those obstacles.

A key element of the proposal for enhanced local access was clarification that state and local government officials (as well as federal officials) may communicate to the public the substance of OCA information (*i.e.*, the OCA data elements reported in RMPs), even though they may not disseminate the official forms in which the data is reported and compiled (*i.e.*, the OCA portions of RMPs and EPA's OCA database). While developing the proposed rule, we learned that many state and local officials were concerned that CSISSFRRA may preclude them from communicating OCA data in any form. As we explained in the proposal, the "scope" section of "CSISSFRRA" (CAA section 112(r)(7)(H)(xii)(II)) expressly provides that the statute "does not restrict the dissemination of [OCA] information by any covered person [defined by CSISSFRRA as government officials and qualified researchers] in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from [OCA] information." In other words, while covered persons may not disseminate the OCA portions of RMPs or any EPA database created from those portions, they may discuss or otherwise communicate the data reported in those portions. We thus proposed capturing that important point in the proposed regulations.

We received comments supporting and questioning the proposed clarification. Several commentors from LEPCs and SERCs indicated the clarification was helpful but sought further guidance on how OCA data could be lawfully disseminated. Other commentors were concerned that the clarification was not consistent with the law, and that communication of OCA data was risky because it is dissemination of the information's content, not its format, that they believed poses the risk. Another commentor expressed concern that the clarification could be interpreted to allow dissemination of the restricted portions of RMPs with only minor changes in format, which would undermine the protections of CSISSFRRA.

After revisiting CSISSFRRA and its legislative history, we have concluded that the proposed rule's clarification not only is consistent with the law but virtually mirrors it. As noted above, CSISSFRRA itself provides that it does not restrict the dissemination of OCA information in any manner or form except in two specified forms—the OCA portions of an RMP and any EPA database created from those portions. RMPs, including the sections containing OCA data, are designed to make information contained therein easy to compile into an electronic database, which would be capable of Internet posting. The legislative history confirms that Congress intended to make clear that government officials could communicate the substance of OCA information if not the restricted forms of that information—in order to allow the type of public dialogue that is important to chemical emergency prevention, planning, and response. As one House member explained, CSISSFRRA was passed to address the risk posed by Internet posting of a large OCA database, not to prevent public officials from sharing OCA data for individual plants with their communities. (See 145 Cong. Rec. H6083, daily ed. July 21, 1999 (statement of Rep. Dingell)).

We share the concern voiced by one commentor that the protections provided by CSISSFRRA would be undone if minor changes in the format of OCA information were sufficient to allow a government official to disseminate lawfully the OCA portions of RMPs or EPA's OCA database. We believe CSISSFRRA's scope provision must be interpreted in a common sense manner that achieves Congress' intent both to protect OCA information from Internet dissemination and to allow government officials to discuss risk. As noted above, Congress' concern with the OCA portions of RMPs arose from the fact that they are easy to compile into an electronic database. Minor changes in format most likely would not change that problematic characteristic. We have thus removed the word "replicate" from the relevant provision of the final rule in order to avoid the implication that minor changes in the format of OCA information would be sufficient to permit their release. That change is consistent with the point made by the House member cited above who stated that OCA information may be used "in any other format that avoids compilation of a national database." Under that view, for example, discussion of OCA data at a public meeting would be appropriate because it would not be a form of communication amenable to the creation of such a database.

Several LEPCs asked us to further clarify how they may communicate the substance of OCA information (referred to as "OCA data elements" in the rule). We appreciate their concerns and plan to provide additional guidance in the future. Because it is impossible to foresee all the ways in which government officials may wish to communicate OCA data elements, we believe it would be most efficient and productive to work with representatives of LEPCs, SERCs, and other relevant government agencies in reviewing possible means of communication and responding to inquiries about the same.

Many commentors expressed doubt that the enhanced local access provisions would work as proposed. They noted that, because many LEPCs are inactive or have limited funding, few LEPCs would be willing or able to afford to provide secure OCA read-only access. Relatedly, a national organization of fire department officials expressed strong opposition to the proposed specification of fire departments as institutions that could volunteer to provide the public with local OCA information. One commentor suggested we authorize not only LEPCs and fire departments but also other local government agencies involved in chemical emergency planning, prevention, or response, such as police and planning departments. Local governments would then have several options for providing the public with read-only access.

We recognize that a large number of LEPCs are currently inactive, but EPCRA survey data indicate that most heavily populated industrial areas have active LEPCs. Those LEPCs are providing EPCRA information (chemical inventory data and contingency plans, some of which include possible consequences of hypothetical accidents) to the public. Although the final rule does not require LEPCs to disseminate OCA information, we expect that those with active EPCRA public information programs could easily provide enhanced local access to OCA information.

Since some areas of the country do not have active LEPCs, we have decided to expand the types of entities that are authorized to provide read-only access, as suggested by a commentor. The final rule provides that LEPCs and any other "related local government agency" may provide the public with read-only access to OCA information for facilities in the LEPC's jurisdiction and any other facilities with a vulnerable zone that extends into that LEPC's jurisdiction. Related local government agencies include fire, police, and planning departments and any other local government agency involved in chemical emergency planning, prevention, or response.

One commentor asked whether state agencies that take delegation of the CAA 112(r) program would be authorized to provide read-only access. The final rule expands the types of state entities that may provide read-only access to OCA information. Along with SERCs, any "related state government agency" (*e.g.*, emergency management, environmental protection, and natural resources departments involved in chemical emergency planning, prevention, or response) would be authorized to provide a person with access to OCA information that the LEPC in whose jurisdiction that person lives or works could provide. Thus, a state agency that takes responsibility for implementing the RMP program under CAA section 112(r) may provide that access. It is also worth noting that the final rule does not prescribe the locations where read-only access to OCA information may be provided by LEPCs, SERCs, and state and local government agencies. They may provide access at any facility they choose, including municipal buildings and courthouses.

As described earlier, to further address concerns that enhanced local access may not become a reality in every part of the country, we have also decided to require federal reading rooms to provide any member of the public with access to OCA information that the LEPC in whose jurisdiction the person lives or work would be authorized to provide. By expanding the number of state and local entities that may provide enhanced access and the scope of access to OCA information that federal reading rooms are required to provide, we believe the final rule will provide reasonable access to OCA information for all members of the public.

Several commentors recommended that the federal government provide LEPCs and SERCs with the resources necessary to provide local access, including a binder containing all of the OCA information that a particular LEPC would be authorized to show the public. A commentor also requested model procedures for operating a local OCA reading room. Further, a few commentors suggested that, in those communities with RMP reporting facilities that do not have LEPCs, EPA work with the local governments to establish them. We agree that federal assistance and guidance are warranted. As explained below, we intend to supply the binders suggested by one of the commentors to LEPCs, SERCs, and related local and state agencies that decide to provide enhanced local access. Providing that and other support to local access efforts will become an important component of the EPA's chemical accident prevention program.

Additional commentors stated that most LEPCs and SERCs would be unable to determine whether a facility outside their jurisdiction has a vulnerable zone that would affect their area. One commentor suggested that the final rule should simply authorize LEPCs to distribute the OCA for any facility within 25 miles of their local boundaries. We are not changing our approach in today's final rule. As noted above, we intend to provide any LEPC or related local agency willing to provide local access with a binder that contains the OCA information it is authorized to show the public. We will also work with SERCs and related state agencies to provide them with a similar resource (depending on the number of facilities in a state, binders may be too cumbersome, so there may be a need to explore other means of providing the information). Moreover, contiguous LEPCs can, and often do, work together to determine which RMP facilities have vulnerable zones that affect their areas. LEPCs, SERCs and other emergency planning organizations have historically engaged in joint planning activities to better prepare for emergencies. We are thus confident that the rule's provision allowing local or state agencies to share OCA information with adjoining jurisdictions can be implemented in a manner that would assist LEPCs and SERCs to determine which facilities outside their jurisdictions have vulnerable zones that extend into their jurisdiction.

Two SERCs and one LEPC commented that the proposal to authorize SERCs to provide individuals with OCA information on the basis of that individual's residence or workplace was too burdensome. They questioned whether SERCs would be able to verify the requestor's place of residence or workplace. We understand that SERCs and related state agencies will have to request and review proof of residence and/or workplace. Federal reading rooms will have to do the same for any person requesting OCA information on those bases. We believe that that requirement is necessary, however. SERCs have much broader jurisdictions than do the vast majority of LEPCs. Thus, the number of facilities within their jurisdictions is typically much greater. If SERCs were allowed to share OCA information for all the facilities in their jurisdictions with any member of the public, the risk of persons using SERCs to amass OCA information would be significant. To avoid that risk, we must limit the amount of OCA information a SERC or related state agency can share. We appreciate the extra work that that may involve, but believe it would be manageable. A driver's license or other identification can establish someone's home address while a pay stub can establish a work address. As we address the same issue in federal reading rooms, we will share our ideas and experiences with the states.

One commentor also questioned our authority to limit the release of OCA information to individuals on the basis of their residence or workplace. The

commentor claimed that there is no statutory authority for such a limitation. In fact, the local enhanced access provision is being implemented under CAA section 112(r)(7)(H)(ii)(II)(bb), which authorizes the regulation to allow public access to OCA information "as appropriate." In light of the previously discussed concerns that would arise were SERCs allowed to provide OCA information for the entire state, we believe that it is appropriate to adopt the residence and workplace limitation for local agency dissemination of OCA information.

Several commentors from LEPCs and SERCs expressed great reservation about the potential criminal liability associated with the improper disclosure of OCA information. Some stated that, because of those concerns, they have not requested the OCA information that they are entitled to obtain and are authorized to show the public. The final rule is intended to address those concerns. It makes clear that state and local (as well as federal) officials may communicate OCA data elements to the public in a form other than the OCA sections of RMPs and EPA's OCA database. It also authorizes LEPCs, SERCs, and related local and state agencies to show the OCA sections of RMPs to members of the public in accordance with specified geographical limitations. In a subsequent section of this preamble, we discuss what OCA information state and local officials may share with one another. Moreover, as we noted earlier, government officials may be held criminally liable for unlawfully disseminating OCA information only if they "willfully" violate CSISSFRRA (*i.e.*, by distributing OCA information with the knowledge that they are doing so unlawfully).

One commentor asserted that only local persons who live or work within the vulnerable zone of a facility should have access to local reading rooms. Several commentors also recommended that local reading room staff be required to implement the same security procedures that federal reading rooms will follow—asking users for photo identification and recording information about their access to OCA information. That, the commentors argued, would close a loophole in the proposal that would allow persons to obtain OCA information without being tracked. We understand that asking local providers of OCA information to follow security procedures would further reduce the risks identified by the risk assessment. However, we did not propose those security procedures at the local level because of the burden that that would create and the effect that that burden might have on the ability and willingness of local entities to provide OCA information access. We also took into account the fact that the vast majority of LEPCs have a relatively small number of RMP facilities located in, or affecting, their jurisdiction. We thus concluded that any risk posed by local read-only access without additional security procedures was small. The comments we received from LEPCs, SERCs, and others confirm our concerns about requiring local agencies to follow the type of security procedures that federal reading rooms will follow. Indeed, the comments indicate that local agencies will find it a challenge to provide local access, even with the help we intend to provide. We have thus decided not to impose any further requirements on local agencies willing to provide read-only access to local OCA information.

We also do not agree that local access should be restricted to local residents. First, implementing such a restriction would require local agencies to institute much, if not all, of the security procedures that we have decided would be too burdensome. Second, members of the public who do not live or work in a community may nevertheless have a legitimate interest in obtaining OCA information for that community. For example, a requestor may have relatives who live in the community, or may be considering purchasing a home or working in the area.

Lastly, several commentors recommended that LEPCs be authorized to provide take-away paper copies of local OCA information. Several others recommended against permitting LEPCs to do so. We have concluded that if users were permitted to obtain paper copies of OCA information LEPC-by-LEPC, it would not be long before a large collection would be accumulated and possibly posted on the Internet. For that reason, the final rule retains the proposed prohibition on LEPC and SERC dissemination of take-away paper copies of local OCA information.

F. Risk Indicator System (Vulnerable Zone Indicator System)

Many of the comments on the proposed risk indicator system were positive, stating that the system would provide useful information that would encourage the general public to become more active in addressing chemical safety concerns in their communities. At the same time, those and other commentors raised various concerns with the system and made suggestions for improving it. A few commentors considered the system so troublesome that they urged us to abandon it altogether.

Several commentors thought the proposed indicator system might frighten recipients of the information and had the potential for depressing property values. They noted that the system would communicate information based on worst-case release scenarios that are highly unlikely and that the information provided would necessarily be imprecise given the nature of RMP data. Based on those concerns, some commentors urged us not to implement the system, or to convert the system so that it would identify the RMP facilities near a particular address, but would not indicate whether facilities' vulnerable zones extend to that address. Other commentors recommended that we avoid potential misunderstandings by including in the system caveats explaining the nature and limitations of the vulnerable zone derivations.

We continue to believe that an indicator system can help spark the public's awareness of chemical risks in its community and interest in working with government and industry to reduce them. Members of the public can already use RMP*Info to locate nearby facilities by asking the system to search for facilities by zip code or county. We proposed an indicator system to allow members of the public to determine if their homes, schools, or other places of interest might be affected by a worst-case or alternative scenario release from a facility. The benefits assessment found that the public is more apt to use such interpreted data, and we thus developed the indicator system as a way of providing the public with information that communicates risk without disseminating OCA information itself. At the same time, we agree that it is important that users of the indicator system understand the nature and limitations of the information thereby provided. We will therefore design the system to include sufficient explanatory information so that users will not become unduly alarmed if the system reports that their address might be in a vulnerable zone. The system will display a notice explaining that it is designed to perform the limited function of helping users quickly determine whether the off-site consequences of any facility's worst-case or alternative release scenarios might affect a particular address. It will also explain the limitations of the data used to calculate the vulnerable zones.

Relatedly, several commentors thought the proposed name, "Risk Indicator System," was inaccurate because it would not provide an indication of "risk," understood to be

the probability of an event multiplied by the consequences of that event. Those commentors suggested changing the name of the indicator system to "Hazard Indicator System" or "Vulnerable Zone Indicator." We agree with those comments, and have decided in the final rule to change the name of the system to "Vulnerable Zone Indicator System" (VZIS). That name more accurately reflects the limited purpose and capabilities of the system.

Several commentors expressed concern that the proposed indicator system could be used to determine distance to endpoints and thus would provide useful targeting information. We do not agree. The indicator system will consist of very limited query and response software located in RMP*Info. The information provided by the system will be whether an address might be within a vulnerable zone. There will be no indication whether the address is at or near the outer boundary of a vulnerable zone. Nor will the system provide the name or location of the facility that is the origin of the vulnerable zone. Thus, no one would be able to determine from the indicator system the distance to endpoints reported as part of OCA information.

A number of commentors asserted that the proposed indicator system should be deployed only if it identifies the facility that is the origin of the vulnerable zone and/or the chemical involved in the hypothetical release defining the zone. They were concerned that, without that information, the system would alarm users without providing them with the information necessary to address their concerns. A number of other commentors recommended strongly against identifying facilities, arguing that to do so would compromise the security achieved by the rule's restrictions on access to OCA information. Some commentors suggested that the indicator system instruct users on how to obtain facility identities; one recommended including instructions on how to contact the facility or facilities directly.

We recognize that system users who learn that their address might be within a vulnerable zone would likely want to learn more about the hazards they may face. Indeed, we hope that that would be their reaction. However, we remain concerned that the indicator system would pose security concerns if the public could immediately obtain, on an anonymous basis, the name of the facility and chemical involved. Instead, we intend that the system furnish instructions on how to obtain the names of facilities in whose vulnerable zones they live or work.

Several commentors stated that the indicator system should not direct recipients of the indicator system data to LEPCs or SERCs for further information unless those agencies have agreed to provide access to such information. We agree in part with those commentors. We believe that chemical safety is most effectively addressed at the local level. SERCs, LEPCs, and other state and local entities are generally in closer contact than is EPA with local facilities and communities that would be affected by releases. For more than a decade, EPA has endeavored to work cooperatively with local agencies so that they can realize their potential to help prevent and respond to accidental releases. We therefore believe that SERCs, LEPCs, and other local entities can and should be encouraged to assume an important role in communicating OCA information to members of the public. While we do not intend for the indicator system to direct users specifically to SERCs and LEPCs, the indicator system will inform users of the several ways, including through their SERCs and LEPCs, through which they can obtain additional information about the facilities whose vulnerable zones might affect an address of interest. We have thus revised the last sentence in proposed § 1400.4(a) accordingly.

While we cannot at this time name all potential sources of information, at least facility names, locations, and vulnerable zones will be available at all federal reading rooms and all SERCs, LEPCs, or other state and local agencies that opt to provide local access to OCA information. The indicator system will note specifically state and local entities that do not seek and/or provide that information. The system will also advise users that, once they know the name of a facility, they can turn to RMP*Info to learn more about the facility's chemical accident history and the steps the facility is taking to prevent such accidents. Individuals may also contact a facility directly to request access to OCA information. The system will also inform users that they can obtain not only OCA information but further information on risk through contacting a SERC, LEPC, or other state or local "covered person." Federal, state, and local government officials are authorized and encouraged in the proposed rule to provide reading-room access to OCA information, and are permitted to convey and discuss the substance of OCA information, as long as they do so in a manner that does not disseminate the OCA sections of the RMPs or EPA's OCA database.

Several commentors also expressed concern about whether the indicator system would be easy for local covered persons to operate. EPA intends to provide an enhanced version of the RMP*Review software to those federal, state, and local covered persons providing local access so that they can easily identify the facilities whose vulnerable zones extend to a particular address, and provide that facility identification information to individuals who request it.

Some commentors worried that the indicator system would "rate" facilities for potential risk. Nothing in the proposed rule required the indicator system to include rating information, and no such requirement has been added to the final rule. The risk a facility poses is a function of many factors, at least some of which are site-specific. No computer system could adequately account for all relevant factors. As discussed below, we intend to maintain a website of chemical safety-related information that will assist the public in assessing hazards posed by facilities and measures that can reduce those hazards. In addition, RMP*Info already allows the public to learn about facilities' prevention and response programs.

G. Internet-Accessible OCA Information

As explained in detail in the NPRM, the risk assessment segregated the OCA information that would be helpful to terrorists or other criminals into three categories. The first category of OCA information provided a general account of the consequences of a chemical release in terms of the damage that might be inflicted on the community. It was composed of the distance to endpoint, the residential-population within the distance to endpoint, the public receptors, the environmental receptors, and the map or graphic of the worst-case or alternative release scenario. The second category of information consisted of OCA information that provided a rough sketch of what is involved in triggering a release from an RMP facility. Included in this category were the name of the chemical involved in the worst-case or alternative release scenario; the projected quantity of chemical released; the release rate; the duration of the release; and the scenario that results in the release. The third category of information consisted of OCA information on passive and active mitigation measures.

The risk assessment concluded that Internet access to categories one and two of OCA information posed the greatest risk of being used in relation to an attempted industrial chemical release. However, there were certain

items of OCA information within category two that posed less risk because they were fixed values that were widely known. Thus, the proposed rule would have posted on the Internet the OCA information in category three and parts of the information in category two, but withheld the remaining information in category two and all of category one.

We solicited public comment on whether any additional items of OCA information should be placed on the Internet or whether any items of OCA information that we have proposed posting should not be. The comments we received were divided. Some commentors asserted that the risk assessment's findings in regard to the dangers of posting category 2 information should be heeded and that no category 2 information should be placed on the Internet. Others argued that category 3 information should not be posted because the risk assessment found that it would be helpful to terrorists (although the assessment found that it would be much less so than would category 1 or 2 information). Still others argued that no OCA information, especially the passive and active mitigation system information in category 3, should be placed on the Internet.

Other commentors maintained that the OCA information that we proposed posting would be meaningless unless viewed in the context of the rest of the OCA information. Several commentors similarly argued that all OCA information should be placed on the Internet without restriction. Still another commentor believed that at least the chemical name should be included in the information posted.

We have considered those comments and still believe that the public will benefit from posting the items of OCA information that we proposed. Such information can be used for purposes of comparing various risk reduction characteristics of RMP facilities. Further, posting it would not create an unacceptable security risk. While some commentors have expressed concern about the release of information about active and passive mitigation measures, similar RMP information has already been released on the Internet and the release of that information was found by the risk assessment to pose the least degree of risk. Furthermore, such information is precisely the type of information that could be used by the public to further its dialogue with industry.

In regard to the comments that all OCA information be placed on the Internet, the risk assessment found that wholesale release of OCA information in that manner would unacceptably heighten the risk of intentional releases. Similarly, we disagree with the comment concerning the names of chemicals. While we recognize that there would be public benefit resulting from the posting of that information, we find that the risk that it could be used in concert with other OCA information for illicit purposes is too great to permit it to be posted. As one commentor noted, while an individual item of OCA information may not appear to pose a significant risk standing alone, its release could raise "mosaic" concerns: some items of OCA information may not raise significant security concerns considered individually but pose greater concerns when assembled with other items of OCA information. For example, some items of OCA information in category 2 can be used to calculate items of information that are in category 1. We believe that while the items of OCA information that we proposed posting will not pose mosaic problems, others would. Thus, only the items of OCA information that were proposed to be posted will be placed on the Internet.

H. Access to OCA Information by Government Officials

The proposed rule called for codifying CSISSFRRA's provisions regarding access to OCA information by state and local governmental officials for "official use." We received comments raising questions and concerns about various aspects of the proposed codification.

One commentor criticized the proposed definition of "official use," claiming that it would exclude the use of OCA information for purposes of enforcing the RMP rule or other legal requirements. We disagree. The proposed definition of "official use" is substantively identical to the statutory definition of that term. Consequently, to the extent that definition limits the use of OCA information, we have no discretion to change that result. However, we believe that the statutory and regulatory definition of "official use" does permit the use of OCA information in enforcement actions against facilities. "Official use" is defined as "an action of a federal, state, or local government agency or an entity [such as LEPC, SERC or volunteer fire or police department] intended to carry out a function relevant to preventing, planning for, or responding to accidental releases." (Final rule, § 1400.2(h)). Determining compliance with, and enforcing the terms of, the RMP rule is surely carrying out a function relevant to preventing, planning for, or responding to accidental releases. The same can be said about determining compliance with, and enforcing, EPCRA and other legal requirements related to chemical accident prevention, planning, and response.

Several commentors raised concerns about the proposed restrictions on state and local officials' dissemination of OCA information to their counterparts in other states. One commentor considered the restrictions arbitrary and claimed they would interfere with useful communications among states. Another commentor urged us to avoid hindering OCA information sharing between fire and emergency service personnel from jurisdictions involved in joint planning. By contrast, another commentor recommended that the rule not allow a state or local official access to OCA information for facilities not located in the official's state.

Based on our review of the statute and its legislative history, we believe that the proposed provisions for state and local official access are legally required. CSISSFRRA itself expressly provides that the final rule must allow for state and local officials to gain access to OCA information for facilities not only in their own state but in other states as well. EPA will provide state or local government officials with OCA information for their state upon request. In addition, to avoid unnecessarily broad dissemination of OCA information to state and local officials, CSISSFRRA requires that those officials specifically request information for facilities in other states, rather than provide that the federal government unilaterally distribute it to them. CSISSFRRA leaves no doubt, however, that the final rule must allow a state or local official, upon request, to access OCA information for official use for his or her state or any other states. Morever, as the benefits assessment points out, persons interested in evaluating the safety practices of local facilities may find it helpful to compare OCA information for those facilities with that of similar facilities located elsewhere. This statement is as true for government officials as it is for members of the general public.

Similarly, CSISSFRRA itself limits the extent to which a state or local official can share OCA information with officials of other states or of localities in other states. It specifies that the regulations allow such officials to share OCA information for their states with officials of contiguous states. We do not anticipate that this limitation will hinder useful communication among officials of different states and localities. Since under CSISSFRRA and the final

rule any state or local official may request OCA information for facilities in any state, it will not be necessary for state and local officials to disseminate their own information. A state or local official interested in obtaining information for a noncontiguous state may simply request it from EPA, and an official interested in sharing that information with another state's officials may suggest to those officials that they request it themselves.

The commentors' general point that the rule not hinder communications among government officials nevertheless is well taken. We have reviewed the relevant regulatory provisions and made several changes to improve their clarity and practicality. While the proposed rule authorized EPA to provide a state or local official with OCA information for "his or her" official use, the final rule deletes the quoted language so that every official in a state or locality with an official use for the information need not request it separately. Relatedly, we have revised the regulatory language to make clear that officials within a state or locality may share OCA information with one another for official purposes. Consequently, an official from a county planning department, for example, may request OCA information for official use and distribute it to his or her colleagues who also need to review the information "to carry out a function relevant to preventing, planning for, or responding to accidental releases."

As indicated above, CSISSFRRA provides government officials with access to OCA information for "official use." One commentor suggested that EPA ensure that the government official requesting OCA information has an "official 'need to know.'" We believe that approach is unnecessary and impracticable. CSISSFRRA contains a definition of "official use" that describes the purposes for which such officials may lawfully use OCA information. The final rule adopts the statutory definition verbatim. Before providing OCA information to a government official as required under CAA section 112(r)(7)(H)(iv) (regarding availability of OCA information during the first year following enactment of CSISSFRRA), we ask the official to state in writing that access is for "official use" as defined by the statute. If the official uses OCA information for other than official purposes, he or she might be exposed to administrative, and possibly criminal, sanctions. As an added precaution, and as required by CSISSFRRA, we will continue to provide officials receiving OCA information with a security notice that includes examples of what constitutes "official use."

Finally, several states and LEPCs commented on the logistics of obtaining and safeguarding OCA information. One commentor urged us not to charge local officials for paper copies of OCA information, particularly in light of the proposal that LEPCs and other state and local entities be allowed to make paper copies of OCA information available to the public in read-only form. Another commentor urged us to provide OCA information in an "organized" way, that is, according to LEPC jurisdiction. As stated above we intend to provide paper copies of OCA information, free of charge, for facilities on the basis of LEPC jurisdiction to LEPCs, SERCs, and others interested in providing read-only access. For local and state officials with limited electronic resources, we also intend to provide paper copies of OCA information for facilities within their state.

I. Other Provisions

The proposed rule also included provisions prohibiting government officials, as well as researchers who receive OCA information under CAA section 112(r)(7)(h)(vii), from disseminating OCA information and "OCA rankings" to the public except as authorized by the rule or a specified provision of CSISSFRRA. The proposed rule defined "OCA rankings" as "any statewide or national ranking of identified stationary sources derived from OCA information." One commentor criticized that definition, claiming that it is vague and raises due process issues. The commentor also was concerned that the definition would prevent state or local officials from ranking facilities based on parameters similar or even identical to the data reported in the OCA sections of RMPs.

The proposed definition was drawn virtually verbatim from CSISSFRRA, which prohibits government officials and qualified researchers from disseminating to the public OCA information "or any statewide or national ranking of identified stationary sources from such information" (CAA section 112(r)(7)(H)(v)(I)). We believe the statutory language, and thus the regulatory definition, are not unconstitutionally vague, as individuals clearly can identify in advance what constitutes a ranking of stationary sources, on a statewide or nationwide basis, and whether the OCA information provided to them was used to create the ranking. We do not believe the definition prevents state or local officials from using information other than OCA information to rank facilities. "OCA information" is defined by CSISSFRRA and the rule as the OCA portions of RMPs and any EPA database created from those portions; "RMP" is defined as the risk management plan submitted to EPA pursuant to the RMP rule. If state or local officials, without resort to OCA information, have developed or gained access to data similar or even identical to the OCA data reported in RMPs, they are not precluded from using that data to rank facilities.

III. Discussion of Final Rule

After considering the comments received, we have sought to craft a final rule that meets CSISSFRRA's requirements and reflects consideration of both assessments' findings. CSISSFRRA's requirements include providing any member of the public with access to paper copies of OCA information for a "limited number" of facilities (CAA section 1129r)(7)(H)(ii)(II)(aa)) and other access "as appropriate" (CAA section 112(r)(7)(H)(ii)(II)(bb)). The risk assessment concluded that posting certain portions of OCA information on the Internet would increase the risk that terrorists or other criminals will attempt to cause an industrial chemical release in the United States. Easy access to OCA information would assist someone seeking to identify the most lethal potential targets from among the 15,000 facilities that have submitted OCA information. The benefits assessment, however, concluded that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. Widespread access to OCA information would serve the functions Congress originally intended in enacting the CAA and requiring the collection of OCA information to inform members of the public of potential environmental hazards and to allow them to participate in decisions that affect their lives and communities.

While chemical accidents take a significant toll on life, property, and the environment each year, we believe that the property damage, personal injuries, and loss of life resulting from a single, successful terrorist attack on a chemical facility could be considerable and would likely cause more damage than would many accidental chemical releases. We therefore have attempted to balance those concerns by making as much OCA information as appropriate available online, but not posting the information that the risk assessment found would, if disseminated without restriction, pose a significant risk for terrorist or criminal purposes. Although

the Internet provides a tremendous benefit by offering people easy access to a wealth of information, we also recognize that it provides a new means for criminals and terrorists to carry out traditional criminal activities. The final rule provides several means for individuals to obtain OCA information not only for facilities within their community but also for a sufficient number of facilities located elsewhere, thereby enabling individuals to compare facilities' safety and prevention measures and records. Those means are described below.

Both the proposed and final rules have been approved by the Director of OMB.

A. Access to Paper Copies of OCA Information

The final rule creates federal reading rooms to fulfill CSISSFRRA's requirement to provide individuals with access to paper copies of OCA information of a limited number of facilities. A minimum of 50 federal reading rooms will be geographically located across the United States, with approximately one federal reading room per state. The number and location of those reading rooms may be adjusted based upon public demand and the agencies' experience in administering them.

Under the rule, any person shall be provided with access to a paper copy of the OCA information for up to 10 stationary sources per calendar month located anywhere in the country, without geographical restriction. In addition, the final rule directs federal reading rooms to provide access to paper copies of OCA information for facilities located within the LEPC jurisdictions where the individual lives or works and for any additional facilities that have vulnerable zones that extend into those LEPC jurisdictions. Individuals will be allowed to read and take handwritten notes from, but not remove or mechanically reproduce, the paper copy of OCA information.

Reading room personnel will be required to ascertain a requestor's identity by viewing a photographic identification for an individual issued by a government agency and obtain a signature on a sign-in sheet and a certification before providing that person with access to OCA information for up to 10 facilities per month without geographical restriction. Similarly, reading room personnel will be required to view documentation of where an individual lives or works and obtain a signature on a sign-in sheet before providing any person with access to the OCA information that the LEPC in whose jurisdiction lives or works would be authorized to provide. Reading rooms will also be required to keep records to ensure that no individual receives OCA information beyond the limits established by the rule.

B. Enhanced Access to Local OCA Information

Several provisions of the final rule are designed to enhance the public's access to OCA information for local stationary sources. In response to comments regarding the appropriate governmental agencies to provide enhanced access, EPA and DOJ have modified the final rule to permit related local government agencies and related state government agencies, as defined in the regulation, to provide access. The rule authorizes and encourages LEPCs and related local government agencies to provide read-only access to OCA information for sources located within an LEPC's jurisdiction and for any other stationary sources that have a vulnerability zone extending into that jurisdiction. Likewise, SERCs and related state government agencies are authorized and encouraged to provide read-only access to the same OCA information that the LEPC in whose jurisdiction the person lives or works would be authorized to provide. Federal reading rooms are similarly authorized to provide read-only access to OCA information. Such information will not be subject to the 10 facility per month limit.

The final rule also codifies the statutory provisions of CSISSFRRA that allow any member of an LEPC or SERC or any other state or local government official to convey to the public any OCA data elements orally or in writing, provided that the data elements are not conveyed in the format of sections 2 through 5 of an RMP or any electronic database that EPA has developed that includes OCA data elements.

C. Vulnerable Zone Indicator System

The final rule establishes a "vulnerable zone indicator system" (VZIS) which provides persons located in any state with a means of obtaining, via electronic mail or other inquiry, information regarding the risk expressed by OCA information without providing Internet access to the OCA information itself. Members of the public will be able to learn whether a specific address (such as that of a home, school, or place of employment) falls within a reported "vulnerable zone" (*i.e.*, within any RMP facility's worst-case or alternative release scenario's "distance to endpoint"). Electronic mail inquiries will usually receive a response within two working days. Members of the public who do not have access to the Internet will be able to obtain the same information by calling an EPA toll-free number or by sending regular mail to the Administrator of EPA. VZIS will consist primarily of query and response software located in RMP*Info.

VZIS will also provide individuals with information on how to identify the specific facilities affecting the address submitted to VZIS. It will also provide contact information and sources of additional information explaining chemical accident risk. Any federal reading room or local reading room providing enhanced access under this rule, for example, may be a source for identifying the facility or facilities whose vulnerable zones extend to the address entered into the indicator system, as well as the location of the facilities. System users will be provided with the addresses and telephone numbers of the federal reading rooms. The system will also supply users with up-to-date contact information for the SERCs and LEPCs, and note that only some LEPCs provide local OCA information access services. The indicator system will advise users that, once they know the name of the facility, they can use RMP*Info to learn more about the facility's chemical accident history and its accident prevention measures, and they may contact the facility directly to gain access to OCA information.

D. Internet Access to Selected OCA Information

The final rule makes some items of OCA information available to the public through the Internet by posting it on EPA's website. Those provisions of the final rule are identical to those in the proposed rule. The items of information that will be posted on the Internet are those that the risk assessment found would pose the least serious security risk if posted on the Internet. The following items of OCA information will be posted on the Internet, along with other RMP data elements available in EPA's RMP*Info:

- The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);
- The physical state of the chemical (RMP Sections 2.2; 3.2);
- The duration of the chemical release for the worst-case scenario (RMP Section 2.7);
- The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);
- The endpoint used for flammables for the worst-case scenario (RMP Section 4.5);
- The wind speed during the chemical release (RMP Sections 2.8; 3.8);

- The atmospheric stability (RMP Sections 2.9; 3.9);
- The topography of the surrounding area (RMP Sections 2.10; 3.10);
- The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and
- The active mitigation systems considered (RMP Sections 3.16; 5.11).

The final rule precludes the following items of OCA information from being posted on the EPA website based upon the risk assessment's findings that their release on the Internet would pose significant security concerns:

- The name of the chemical involved (RMP Sections 2.1.a; 3.1.a; 4.1; 5.1);
- The scenario involved (RMP Sections 2.4; 3.4; 4.3; 5.3);
- The quantity of chemical released (RMP Sections 2.5; 3.5; 4.4; 5.4);
- The release rate of the chemical involved for the worst-case scenario (RMP Section 2.6);
- The release rate of the chemical involved in the alternative release scenario (RMP Section 3.6);
- The duration of the chemical release in the alternative release scenario (RMP Section 3.7);
- The distance to endpoint (RMP Sections 2.11; 3.11; 4.6; 5.6);
- The endpoint used for flammables for the alternative release scenario (RMP Section 5.5);
- The residential population within the distance to endpoint (RMP Sections 2.12; 3.12; 4.7; 5.7);
- The public receptors within the distance to endpoint (RMP Sections 2.13; 3.13; 4.8; 5.8);
- The environmental receptors within the distance to endpoint (RMP Sections 2.14; 3.14; 4.9; 5.9); and
- Any map or other graphic used to illustrate a scenario (RMP Sections 2.16; 3.17; 4.11; 5.12).

E. Additional Information on Chemical Accident Risk

As a supplement to the provisions of this rule, EPA will make available to the public additional information on chemical accident risk through an Internet website. Some of that information is currently available through EPA's website. RMPs (except for the OCA information, sections 2 through 5) are currently accessible to the public through RMP*Info. Through Envirofacts, the public can easily access other information about facilities that have submitted RMPs. EPA's website also has links to a web-based chemical guide (*http://chemicalguide.com*). Another helpful link found on the EPA website that provides valuable information to the public is the NSC website (*http://www.nsc.org/xroads.cfm*), which is aimed at the news media and provides suggestions for information to request of facility management and local officials, for approaches to sifting through the information, and for presenting the information in a way that helps communities interpret local RMPs.

EPA is also developing new sources of information through which the public can learn about chemical accident risk. Research on accident histories based on the data provided in RMPs and other sources, both national and international in nature, will be posted on the EPA website. Moreover, EPA will expand the number of links to environmental organizations, industry trade groups, and academic institutions to provide the public with a comprehensive means of finding chemical risk and safety information. EPA will also provide guidance that it, along with other organizations, has developed to assist community members and interested groups to work with facility management and local officials to better understand and manage the risks posed by the storage of large quantities of toxic or flammable chemicals. EPA is developing examples of facilities and industries that can serve as models for "best practices" in chemical accident risk prevention and successful practices in RMP implementation. EPA and other organizations are developing background information about the nature of chemical accident risk, and that information will be posted on EPA's website when it becomes available. In addition, through a cooperative agreement, EPA and Clean Air Action (a non-profit organization) will develop a primer for lay persons on basic risk management terms and principles that help to provide a basis for understanding chemical accident risks. EPA will be making available an updated list of LEPC, SERC, and other emergency response contacts.

That information is intended to give the public a better understanding of the general nature of the risks associated with potential accidental releases posed by hazardous chemicals. In combination with OCA data about specific facilities, that information, we expect, will better enable the public to engage in productive dialogues at the local, state, and federal levels to prevent chemical accidents and to minimize the consequences of accidents that occur. EPA will provide that information through its Internet website, *http://www.epa.gov/ceppo*. Much of that information is already available there. EPA will continue to supplement that information as necessary or appropriate to provide the public with a full understanding of chemical accident risk and prevention.

F. Access to OCA Information by Government Officials and Other Provisions

The final rule adopts the proposed provisions for access to OCA information by federal, state, and local government officials, as well as qualified researchers. In accordance with CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee), the final rule provides state or local government officials with access, for official use, to OCA information for facilities located in their states, and, at the officials' request, for facilities located in other states. Also in keeping with that section, the final rule allows state or local government officials to share for official use OCA information for facilities within their state with one another and with state or local government officials in contiguous states. Similarly, the final rule allows federal government officials to share OCA information with each other for official use.

The final rule also establishes the other necessary provisions of the distribution system for OCA information. Specifically, it prohibits the dissemination of OCA information by government officials and qualified researchers (researchers who receive OCA information under CAA section 112(r)(7)(H)(vii)) to the public and to state and local officials except as authorized by the rule and a related CAA provision. It also authorizes the Administrator to disseminate OCA information as required by two other CAA provisions concerning qualified researchers and a read-only information technology system (CAA section 112(r)(7)(H)(viii)).

G. Effective Date and Implementation Schedule

The final rule is effective immediately so that we may continue to make OCA information available to government officials ("covered persons") without interruption. CSISSFRRA and its legislative history make clear that Congress intended government officials to have ongoing access to OCA information to help them perform their jobs, as related to chemical emergency planning, prevention, and response. CAA section 112(r)(7)(H)(iv) requires EPA to make OCA information available to government officials during the "transition period," the year following the enactment of CSISSFRRA when the assessments and the rulemaking must be conducted. (see 145 Cong. Rec. S7545, daily ed. June 23, 1999 (statement of Sen. Chafee)). However, that authority

ends on the earlier of the date of promulgation of the regulations or the one-year anniversary of the enactment of CSISSFRRA, August 5, 2000. In order to avoid a gap in government officials' access to OCA information, we believe that there is good cause to make the final rule effective immediately, pursuant to 5 U.S.C. 553(d)(3).

We will need time to implement and coordinate the operation of the federal reading room system. We believe we can complete that process within three months and begin opening reading rooms soon thereafter. We anticipate that federal reading room access will be available by December 31, 2000. To provide public access to OCA information as soon as possible, we will not wait for every reading room to be operational before opening any reading room. We will begin operating reading rooms as they become available, and will post on EPA's website the locations of reading rooms as they open.

The vulnerable zone indicator system will begin operation no later than October 5, 2000. That will permit us to develop, test, and deploy the software systems necessary for the implementation of VZIS. Further, the OCA information to be disseminated on the EPA website will be posted by December 31, 2000.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information that we considered in the development of this rule. The docket is a dynamic file because it allows members of the public and industry readily to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record for purposes of judicial review. *See* CAA section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).

The official record for this rulemaking has been established under Docket No. A–2000–20 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address specified in the **ADDRESSES** section at the beginning of this document.

B. Executive Order 12866

OMB has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). OMB also has determined that this rule would not be economically significant because it would have an annual effect on the economy of less than $100 million and would not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Under the terms of Executive Order 12866, OMB has reviewed the rule.

C. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 5, 1996).

D. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), does not apply to this rule because it is not economically significant under Executive Order 12866.

E. Executive Order 13084

Under Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," section 3, Consultation (63 FR 27655, May 19, 1998), federal agencies may not promulgate a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the regulating agencies consult with those governments before formal promulgation of the rule. This rule does not significantly or uniquely affect the communities of Indian tribal governments or impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nonetheless, we consulted two tribal organizations that represent tribal environmental officials (Tribal Association on Solid Waste & Emergency Response, and National Tribal Environmental Council) and neither expressed any concerns with the provisions of this rule.

F. Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires federal agencies to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, a federal agency may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency issuing the regulation consults with state and local officials early in the process of developing the proposed regulation. A federal agency also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The statute itself—CSISSFRRA—currently restricts the dissemination of OCA information by state and local officials and supersedes inconsistent provisions of state or local law. This rule only slightly narrows those statutory restrictions, allowing certain state and local entities to provide the public with read-only access to OCA information for local facilities. Nevertheless, we have consulted with seven organizations that represent state and local elected officials in developing this rule (*i.e.*, National Governors Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council on State Governments, International City/County Management Association, National Association of Counties, and National Association of Towns and Townships). We have also consulted with state and local

representatives of the Accident Prevention Subcommittee of the CAA Advisory Committee (under the Federal Advisory Committee Act (FACA)) about the implementation of the OCA provisions of CSISSFRRA. In response to concerns some have raised about the potential chilling effect of CSISSFRRA's restrictions on state and local officials' willingness to obtain OCA information and to communicate the substance of that information to the public, this rule includes a provision clarifying that state and local officials can share OCA data with the public as long as they do so in a way that does not disseminate or permit mechanical replication of the OCA sections of RMPs or provide access to EPA's OCA database. As noted above, this rule also authorizes some state and local officials to share OCA information itself in certain ways.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the agency's area of regulatory responsibility. Consequently, we consulted to the extent practicable with the seven organizations mentioned above. Other than requesting further clarification on the proposed rule, none of those organizations raised federalism concerns with the rule's approach.

G. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, agencies are required to give special consideration to the effect of federal regulations on small entities and to consider regulatory options that might mitigate any such effect. However, an agency need not prepare a regulatory flexibility analysis if the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

In accordance with 5 U.S.C. 605(b), we certify that this rule does not have a significant economic impact on a substantial number of small entities. Although the rule authorizes small government jurisdictions to provide read-only access to OCA information, it does not require those jurisdictions to provide that access. This rule contains a prohibition on local government officials (and other government officials) disclosing OCA information to the public except in authorized ways, but that prohibition already existed under CAA section 112(r)(7)(H)(v). Moreover, we do not expect that any burden resulting indirectly from the provisions of this rule will have a significant economic impact on the operations of local governments.

H. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1981.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; by e-mail at *farmer.sandy@epamail.epa.gov;* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The ICR for the proposed rule was listed as ICR No. 1656.08. To avoid confusion with the ICR for the full RMP Program (*i.e.*, RMP Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the CAA), the ICR has been changed for the final rule. The information requirements are not enforceable until OMB approves them.

This rule will impose minimal information collection requirements but will require record keeping. The respondent universe for this rule is state and local officials and members of the public.

None of the respondent activities for state and local agencies are mandatory and all depend on the state or local agency deciding to obtain OCA information and/or communicating the substance of the information or the information itself to the public. The respondent activities for those agencies include reading and understanding the Security Notice to federal, state, and local officials and researchers; requesting OCA information and certifying that they are covered persons; providing secure storage for the CD Rom or paper copies when not in use; learning how to use the database and software, if needed, to produce a copy of OCA information; providing a location for the public to review OCA information for local facilities; ensuring that members of the public do not remove or mechanically copy OCA information they review; and making OCA data available in formats other than the RMP format.

The number of respondents undertaking one or more of these activities is estimated to be at least one agency in each state, territory, and the District of Columbia. These agencies are assumed to be the SERCs and may be environmental protection agencies, emergency management agencies, or both. Based on a recent survey, EPA estimates that there are 1,500 active LEPCs (in compliance with EPCRA). These agencies may request OCA information from EPA for their own use for emergency planning. Out of these, we estimate that only 1,000 LEPCs will be providing local access by the third year covered by this ICR. EPA estimates the total burden hours for state and local agencies to be 86,000 hours annually (258,000 hours for three years) at a cost of $2,400,000 annually ($7,200,000 for three years).

For members of the public, the respondent activity includes calling for an appointment, displaying photographic identification, and signing a sign-in sheet and a certification form at a federal reading room. If an individual would like to obtain information on local facilities, he or she would need to provide documentation demonstrating his or her place of residence or employment. In addition, members of the public are assumed to use the VZIS system and to make follow-up calls to obtain additional information. It is assumed that approximately 20,000 people will use the VZIS system each year and that 5,000 of those will seek additional information. Those individuals without access to the Internet will be able to call an EPA toll-free number or send the request by mail. The total burden hours for the public are estimated to be 14,000 hours annually (42,000 hours for three years) at a cost of $293,000 annually ($879,000 for three years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. That includes the time needed to review instructions to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and

providing information; to adjust existing ways to comply with any previously applicable instructions and requirements; to train personnel; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The OMB control numbers for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

I. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it contains no requirements that might significantly or uniquely affect small governments. This rule requires small governments that wish to obtain OCA information to request it, and once they obtain it, they will be prohibited from disseminating it except in accordance with the rule. We do not expect that those provisions will impose a significant burden. Moreover, certain members of small governments would be authorized, but not required, to provide public access to OCA information in a manner that is less burdensome than would be required of federal covered persons. Therefore, no actions are deemed necessary under the Unfunded Mandates Reform Act of 1995.

J. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2). This rule will be effective August 4, 2000.

V. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged later in civil or criminal proceedings brought to enforce these requirements. This rule has been promulgated pursuant to CAA section 307(d).

List of Subjects in 40 CFR Part 1400

Environmental protection, Chemicals, Chemical accident prevention.

Dated: July 31, 2000.

Janet Reno,

Attorney General.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA and DOJ establish chapter IV of title 40 of the Code of Federal Regulations, consisting of subchapter A, part 1400, as follows:

CHAPTER IV—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF JUSTICE

SUBCHAPTER A—ACCIDENTAL RELEASE PREVENTION REQUIREMENTS; RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION 112(r)(7); DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

PART 1400—DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

Subpart A—General

Sec.

1400.1 Purpose.
1400.2 Definitions.

Subpart B—Public Access

1400.3 Public access to paper copies of off-site consequence analysis information.
1400.4 Vulnerable zone indicator system.
1400.5 Internet access to certain off-site consequence analysis data elements.
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Subpart C—Access to Off-Site Consequence Analysis Information by Government Officials

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1400.10 Limitation on public dissemination.
1400.11 Limitation on dissemination to state and local government officials.
1400.12 Qualified researchers.
1400.13 Read-only database.

Authority: 42 U.S.C. 7412(r)(7)(H)(ii).

Subpart A—General

§ 1400.1 Purpose.

Stationary sources subject to the Chemical Accident Prevention Provisions of 40 CFR part 68 are required to analyze the potential harm to public health and welfare of hypothetical chemical accidents and submit the results of their analyses to the U.S. Environmental Protection Agency as part of risk management plans. This part governs access by the public and by government officials to the portions of risk management plans containing the results of those analyses and certain related materials. This part also restricts dissemination of that information by government officials.

§ 1400.2 Definitions.

For the purposes of this part:

(a) Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) *Administrator* means the Administrator of the U.S. Environmental Protection Agency or his or her designated representative.

(c) *Attorney General* means the Attorney General of the United States or his or her designated representative.

(d) *Federal government official* means—

(1) An officer or employee of the United States; and

(2) An officer or employee of an agent or contractor of the federal government.

(e) *State or local government official* means—

(1) An officer or employee of a state or local government;

(2) An officer or employee of an agent or contractor of a state or local government;

(3) An individual affiliated with an entity that has been given, by a state or local government, responsibility for preventing, planning for, or responding to accidental releases, such as a member of a Local Emergency Planning Committee (LEPC) or a State Emergency Response Commission (SERC), or a paid or volunteer member of a fire or police department; or

(4) An officer or employee or an agent or contractor of an entity described in paragraph (e)(3) of this section.

(f) *LEPC* means a Local Emergency Planning Committee created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*

(g) *Member of the public or person* means an individual.

(h) *Official use* means an action of a federal, state, or local government agency or an entity described in paragraph (e)(3) of this section intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(i) *Off-site consequence analysis (OCA) information* means sections 2 through 5 of a risk management plan (consisting of an evaluation of one or more worst-case release scenarios or alternative release scenarios) for an identified facility and any electronic database created by the Administrator from those sections.

(j) *Off-site consequence analysis (OCA) data elements* means the results of the off-site consequence analysis conducted by a stationary source pursuant to 40 CFR part 68, subpart B, when presented in a format different than sections 2 through 5 of a risk management plan or any Administrator-created electronic database.

(k) *Off-site consequence analysis (OCA) rankings* means any statewide or national rankings of identified stationary sources derived from OCA information.

(l) *Qualified researcher* means a researcher who receives OCA information pursuant to 42 U.S.C. 7412(r)(7)(H)(vii).

(m) *Related local government agencies* means local government agencies, such as police, fire, emergency management, and planning departments, that are involved in chemical emergency planning, prevention, or response.

(n) *Related state government agencies* means state government agencies, such as emergency management, environmental protection, health, and natural resources departments, that are involved in chemical emergency planning, prevention, or response.

(o) *Risk management plan (RMP)* means a risk management plan submitted to the Administrator by an owner or operator of a stationary source pursuant to 40 CFR part 68, subpart G.

(p) *SERC* means a State Emergency Response Commission created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*

(q) *State* has the same meaning as provided in 42 U.S.C. 7602(d) (a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

(r) *Stationary source* has the same meaning as provided in 40 CFR part 68 subpart A, § 68.3.

(s) *Vulnerable zone* means the geographical area that could be affected by a worst-case or alternative scenario release from a stationary source, as indicated by the off-site consequence analysis reported by the stationary source in its risk management plan pursuant to the applicable requirements of 40 CFR Part 68. It is defined as a circle, the center of which is the stationary source and the radius of which is the "distance-to-endpoint," or the distance a toxic or flammable cloud, overpressure, or radiant heat would travel after being released and before dissipating to the point that it no longer threatens serious short-term harm to people or the environment.

Subpart B—Public Access

§ 1400.3 Public access to paper copies of off-site consequence analysis information.

(a) *General.* The Administrator and the Attorney General shall ensure that any member of the public has access to a paper copy of OCA information in the manner prescribed by this section.

(b) *Reading-room access.* Paper copies of OCA information shall be available in at least 50 reading rooms geographically distributed across the United States and its territories. The reading rooms shall allow any person to read, but not remove or mechanically reproduce, a paper copy of OCA information, in accordance with paragraphs (c) through (g) of this section and procedures established by the Administrator and Attorney General.

(c) *Limited number.* Any person shall be provided with access to a paper copy of the OCA information for up to 10 stationary sources located anywhere in the country, without geographical restriction, in a calendar month.

(d) *Additional access.* Any person also shall be provided with access to a paper copy of the OCA information for stationary sources located in the jurisdiction of the LEPC where the person lives or works and for any other stationary source that has a vulnerable zone that extends into that LEPC's jurisdiction.

(e) *Personal identification for access to OCA information without geographical restriction.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (c) of this section only after a reading room representative has

(1) Ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person; and

(2) Obtained the person's signature on a sign-in sheet and a certification that the person has not received access to OCA information for more than 10 stationary sources for that calendar month.

(f) *Personal identification for access to local OCA information.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (d) of this section only after a reading room representative has

(1) Ascertained where the person lives or works by viewing appropriate documentation; and

(2) Obtained the person's signature on a sign-in sheet.

(g) *Record keeping.* Reading room personnel shall keep records of reading room use and certifications in accordance with procedures established by the Administrator and the Attorney General. These records shall be retained for no more than three years. Federal reading rooms will not index or otherwise manipulate the sign-in sheets according to individuals' names, except in accordance with the Privacy Act.

§ 1400.4 Vulnerable zone indicator system.

(a) *In general.* The Administrator shall provide access to a computer-based indicator that shall inform any person located in any state whether an address specified by that person might be within the vulnerable zone of one or more stationary sources, according to the data reported in RMPs. The indicator also shall provide information about how to obtain further information.

(b) *Methods of access.* The indicator shall be available on the Internet or by request made by telephone or by mail to the Administrator to operate the indicator for an address specified by the requestor. SERCs, LEPCs, and other related state or local government agencies are authorized and encouraged to operate the indicator as well.

§ 1400.5 Internet access to certain off-site consequence analysis data elements.

The Administrator shall include only the following OCA data elements in the risk management plan database available on the Internet:

(a) The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);

(b) The physical state of the chemical (RMP Sections 2.2; 3.2);

(c) The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);

(d) The endpoint used for flammables in the worst-case scenario (RMP Section 4.5);

(e) The duration of the chemical release for the worst-case scenario (RMP Section 2.7);

(f) The wind speed during the chemical release (RMP Sections 2.8; 3.8);

(g) The atmospheric stability (RMP Sections 2.9; 3.9);

(h) The topography of the surrounding area (RMP Sections 2.10; 3.10);

(i) The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and

(j) The active mitigation systems considered (RMP Sections 3.16; 5.11).

§ 1400.6 Enhanced local access.

(a) OCA data elements. Consistent with 42 U.S.C. 7412(r)(7)(H)(xii)(II), members of LEPCs and SERCs, and any other state or local government official, may convey to the public OCA data elements orally or in writing, as long as the data elements are not conveyed in the format of sections 2 through 5 of an RMP or any electronic database developed by the Administrator from those sections. Disseminating OCA data elements to the public in a manner consistent with this provision does not violate 42 U.S.C. 7412(r)(7)(H)(v) and is not punishable under federal law.

(b) OCA information. (1) LEPCs and related local government agencies are authorized and encouraged to allow any member of the public to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs (i.e., sections 2 through 5) for stationary sources located within the jurisdiction of the LEPC and for any other stationary source that has a vulnerable zone that extends into that jurisdiction.

(2) LEPCs and related local government agencies that provide read-only access to the OCA sections of RMPs under this paragraph (b) are not required to limit the number of stationary sources for which a person can gain access, ascertain a person's identity or place of residence or work, or keep records of public access provided.

(3) SERCs and related state government agencies are authorized and encouraged to allow any person to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs for the same stationary sources that the LEPC in whose jurisdiction the person lives or works would be authorized to make available to that person under paragraph (b)(1) of this section.

(4) Any LEPC, SERC, or related local or state government agency that allows a person to read the OCA sections of RMPs in a manner consistent with this paragraph (b) shall not be in violation of 42 U.S.C. 7412(r)(7)(H)(v) or any other provision of federal law.

Subpart C—Access to off-site consequence analysis information by government officials.

§ 1400.7 In general.

The Administrator shall provide OCA information to government officials as provided in this subpart. Any OCA information provided to government officials shall be accompanied by a copy of the notice prescribed by 42 U.S.C. 7412(r)(7)(H)(vi).

§ 1400.8 Access to off-site consequence analysis information by federal government officials.

The Administrator shall provide any federal government official with the OCA information requested by the official for official use. The Administrator shall provide the OCA information to the official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

§ 1400.9 Access to off-site consequence analysis information by state and local government officials.

(a) The Administrator shall make available to any state or local government official for official use the OCA information for stationary sources located in the official's state.

(b) The Administrator also shall make available to any state or local government official for official use the OCA information for stationary sources not located in the official's state, at the request of the official.

(c) The Administrator shall provide OCA information to a state or local government official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

(d) Any state or local government official is authorized to provide, for official use, OCA information relating to stationary sources located in the official's state to other state or local government officials in that state and to state or local government officials in a contiguous state.

Subpart D—Other Provisions

§ 1400.10 Limitation on public dissemination.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers are prohibited from disseminating OCA information and OCA rankings to the public. Violation of this provision subjects the violator to criminal liability as provided in 42 U.S.C. 7412(r)(7)(H)(v) and civil liability as provided in 42 U.S.C. 7413.

§ 1400.11 Limitation on dissemination to state and local government officials.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers are prohibited from disseminating OCA information to state and local government officials. Violation of this provision subjects the violator to civil liability as provided in 42 U.S.C. 7413.

§ 1400.12 Qualified researchers.

The Administrator is authorized to provide OCA information, including facility identification, to qualified researchers pursuant to a system developed and implemented under 42 U.S.C. 7412(r)(7)(H)(vii), in consultation with the Attorney General.

§ 1400.13 Read-only database.

The Administrator is authorized to establish, pursuant to 42 U.S.C. 7412(r)(7)(H)(viii), an information technology system that makes available to the public off-site consequence analysis information by means of a central database under the control of the federal government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

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H.R. 1791/P.L. 106–254

Federal Law Enforcement Animal Protection Act of 2000 (Aug. 2, 2000; 114 Stat. 638)

H.R. 4240/P.L. 106–255

Cross-Border Cooperation and Environmental Safety in Northern Europe Act of 2000 (Aug. 2, 2000; 114 Stat. 639)

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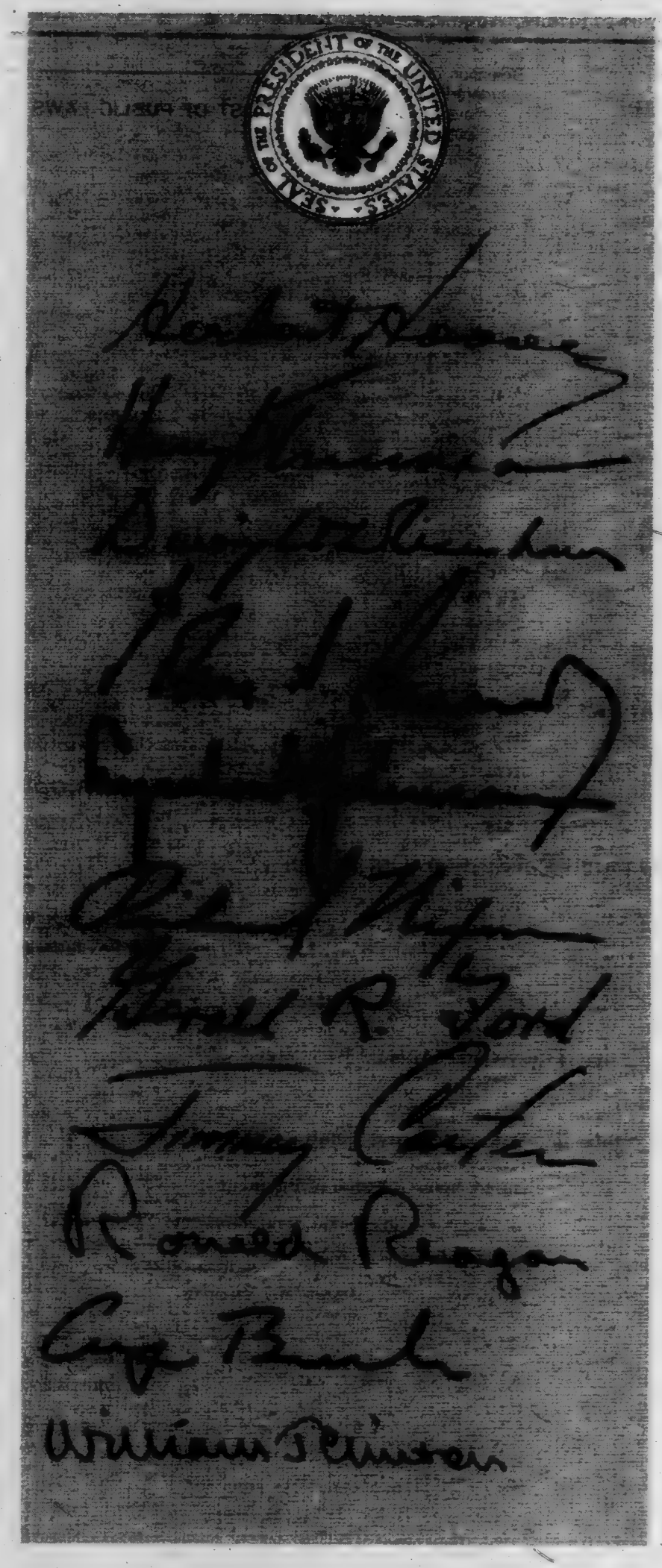

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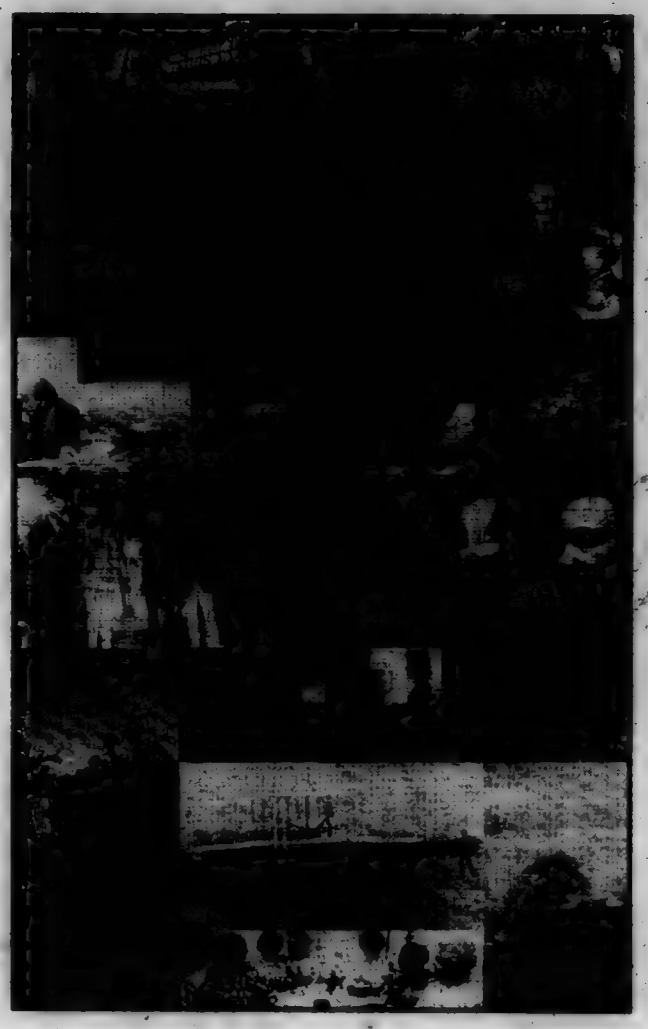

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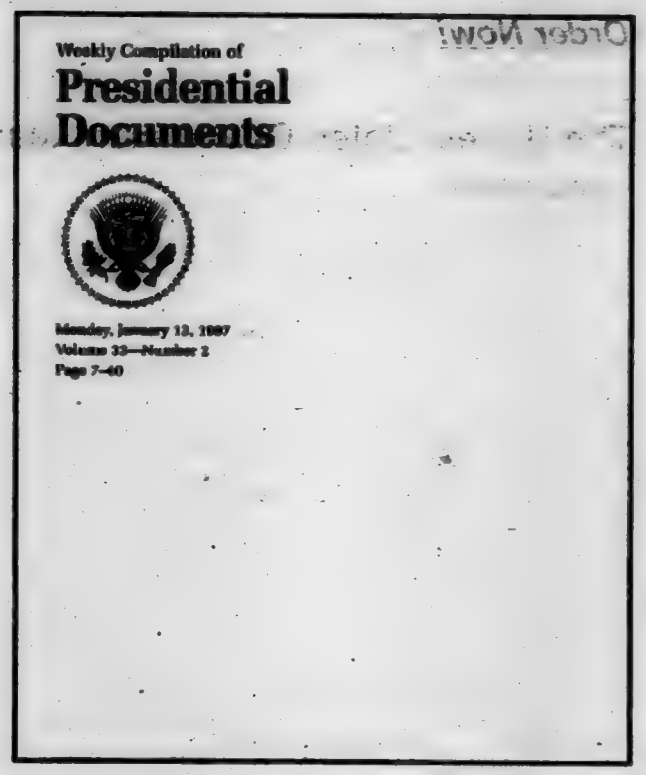

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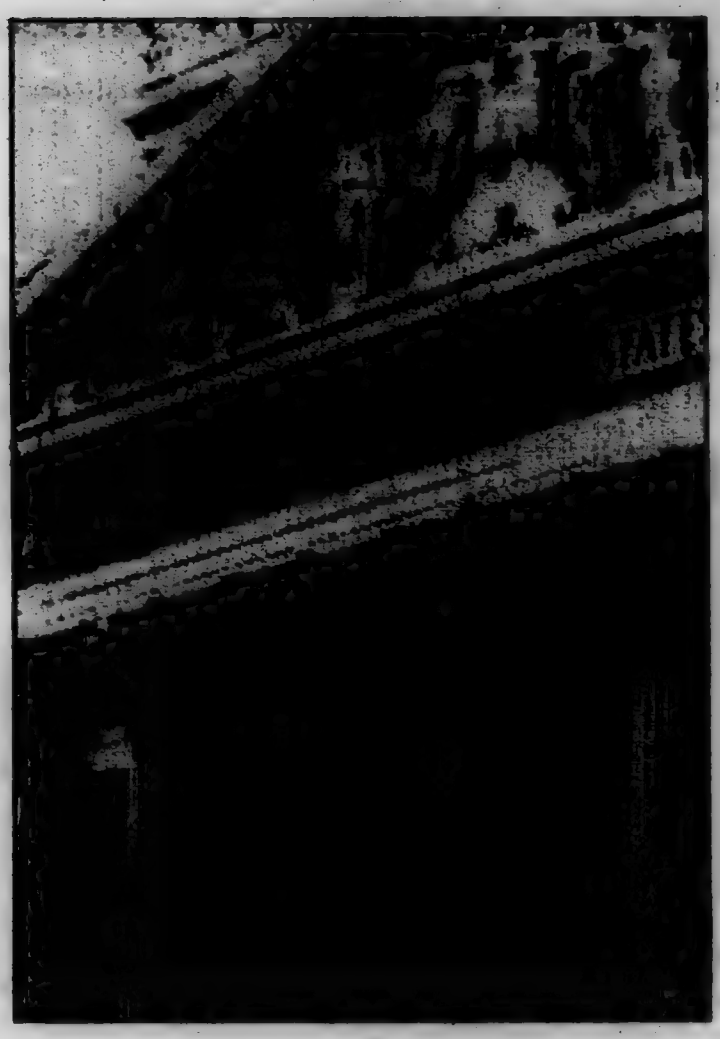

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Rules and Regulations

Federal Register
Vol. 65, No. 152
Monday, August 7, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550, 595, and 610

RIN 3206–AI61

Pay Administration; Back Pay; Holidays; and Physicians' Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to reflect three changes in law that are already effective. The final regulations clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies. They also reflect a change in the designation of holidays for certain Federal employees working overseas. Finally, they reflect an increase the maximum physicians' comparability allowance from $20,000 to $30,000 per year for employees who have served as a Government physician for more than 24 months.

DATES: *Effective Date:* The regulations are effective on September 6, 2000.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after September 6, 2000.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: These final regulations reflect three changes in law. Section 1104 of Public Law 105–261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), amends the back pay law (5 U.S.C. 5596(b)). Section 1104 adds a new provision to clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies. Section 1104 also adds a new provision to 5 U.S.C. 7121 to clarify that settlement of grievances and arbitration awards under 5 U.S.C. 7121 is subject to the same 6-year statute of limitations. This change in law became effective on October 17, 1998.

Section 7 of Public Law 105–266, the Federal Employees Health Care Protection Act of 1998 (October 19, 1998), amends 5 U.S.C. 5948(a). Section 7 increases the maximum physicians' comparability allowance (PCA) from $20,000 to $30,000 per year for an employee who has served as a Government physician for more than 24 months. Section 7 also provides that agencies may modify any PCA service agreement in effect on the effective date of the Act to increase the PCA for a physician up to the new maximum amount during the time remaining under the service agreement. However, section 7 provides that any modification of an existing service agreement to increase a PCA cannot cause the total PCA paid to the employee during the calendar year to exceed the new $30,000 maximum or any other applicable limitation (e.g., the aggregate limitation on pay under 5 U.S.C. 5307). These changes became effective on October 19, 1998. The Office of Management and Budget advises that agencies may authorize a PCA in excess of $20,000 only after revising their existing PCA plan and obtaining OMB approval of the changes.

Section 1107 of Public Law 105–261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), adds a new provision to 5 U.S.C. 6103 to change the designation of holidays for certain Federal employees who work at duty posts outside the United States. Section 1107 provides that whenever Monday is designated as a holiday under 5 U.S.C. 6103(a), the first regularly scheduled workday in the week is the holiday for a Federal employee at a duty post outside the United States whose basic workweek includes Monday, but is not the typical Monday through Friday work schedule found in the United States. The intent of this new provision of law is to create a 3-day weekend with a holiday on Sunday for Federal employees who work Sunday through Thursday with nonworkdays on Friday and Saturday. This change in law became effective on October 17, 1998.

Interim regulations to reflect these three changes in law were published in the **Federal Register** on December 28, 1999 (64 FR 72457). The **Federal Register** notice provided that OPM must receive comments on the interim regulations within 60 days, or by February 28, 2000. No comments were received on the interim regulations. Therefore, the interim regulations are adopted as final without any substantive changes.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 550, 595, and 610

Administrative practice and procedure, Claims, Government employees, Health professions, Holidays, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the interim regulations amending parts 550, 595, and 610 of title 5 of the Code of Federal Regulations, which were published at 64 FR 72457 on December 28, 1999, are adopted as final regulations with the following changes:

PART 610—HOURS OF DUTY

Subpart B—Holidays

1. The authority citation for part 610, subpart B, continues to read as follows:

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

2. Section 610.201 is revised to read as follows:

§ 610.201 Identification of holidays.

Agencies determine holidays under section 6103 of title 5, United States Code, and Executive Order 11582 of February 11, 1971.

3. In § 610.202, paragraph (a) is revised to read as follows:

§ 610.202 Determining the holiday.

* * * * *

(a) Except when employees are entitled to a different holiday under 5 U.S.C. 6103(b)(3), an employee's holiday is the day designated by 5 U.S.C. 6103(a) whenever part of the employee's basic workweek (as defined in § 610.102) or basic work requirement (as defined in 5 U.S.C. 6121(3)) is scheduled on that day.

* * * * *

[FR Doc. 00–19855 Filed 8–4–00; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–1 FR]

Winter Pears Grown in Oregon and Washington; Establishment of Quality Requirements for the Beurre D'Anjou Variety of Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes quality requirements for the Beurre D'Anjou (Anjou) variety of pears under the winter pear marketing order. The marketing order regulates the handling of winter pears grown in Oregon and Washington and is administered locally by the Winter Pear Control Committee (Committee). This rule will require that Anjou variety pears shipped to North America during the period of August 15 through November 1 of each year be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Establishing quality requirements for Anjou pears will enhance the ripening process. This rule is expected to result in higher quality Anjou pears reaching the market and to benefit producers, handlers, and consumers. A minimum quantity exemption from the quality and inspection requirements is also provided.

EFFECTIVE DATE: August 15, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes quality requirements under the order for Anjou variety pears. This rule will require that Anjou pears shipped to North America (Continental United States, Canada, or Mexico) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. The quality and inspection requirements will only apply to shipments to these three markets because shipments to other important markets outside of North America are transported in cold storage containers and arrive after November 1. This rule will also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the proposed inspection and quality requirements.

Section 927.51 of the order provides authority for the issuance, modification, suspension, or termination of regulations for grade, size, and quality for any variety of winter pears grown in any district during a specified period and for different requirements applicable to shipments for different export markets.

Section 927.60 provides that when such regulations are in effect, no person shall handle such pears unless they are inspected and certified by the Federal-State Inspection service as meeting such requirements. Section 927.60 further provides authority for the establishment of minimum quantity exemptions from such requirements.

Section 927.52 provides that any vote on size, grade, and quality regulations be conducted based upon an affirmative vote of not less than 80 percent of the applicable total number of votes for that variety. This section provides that for the Anjou variety of pears, each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by the member. Each district is given an additional vote for each 25,000 boxes of the average quantity of Anjou pears produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods. Using this formula, there are 453 applicable total votes for Anjou pears.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) of the applicable total number of votes voting in favor, that it be required that such pears have their core/pulp

temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntary comply with these two quality requirements because they are necessary for Anjou pears to ripen properly. In addition, the Committee has regularly provided handlers with research studies collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears meeting these minimum quality requirements prior to shipment to North American markets (Continental United States, Canada, or Mexico). The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should also have an average pressure of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements will prevent any producer from ultimately being able to have his fruit marketed. The requirements will simply ensure the proper handling practices that are necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements will be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption will eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule will apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 will naturally drop to the proposed minimum temperature because the pears are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation will no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure that a quality product is shipped to the consumer and to maintain reasonable returns to producers.

The Committee estimates the total 2000–2001 winter pear shipments at approximately 15,300,000 standard boxes. Of that amount, Anjou pear shipments are estimated at approximately 11,800,000 standard boxes. Last year, the total winter pear crop was about 13,800,000 standard boxes. Of that amount, Anjou pear shipments were approximately 10,100,000 standard boxes. In recent years approximately 7–8 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into the domestic market.

To facilitate communications between the Committee and growers, handlers, and other interested persons, this final rule also updates § 927.105 to include the Committee's current address.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,800 winter pear producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates, based upon handler shipment totals and an average price of $14 per standard box, that about 87 percent of winter pear handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistic Service, and the total number of winter pear producers, the average annual producer receipts are approximately $43,200, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of winter pears may be classified as small entities.

This rule will require that Anjou pears shipped to North America (Continental United States, Mexico, or Canada) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Shipments to other markets outside of North America are transported in cold storage containers and the fruit arrives after November 1. This rule will also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped

without regard to the inspection and quality requirements.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) in favor, that it be required that such pears have their core/pulp temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntarily comply with these two quality factors necessary to enhance the ripening process. In addition, the Committee has regularly provided handlers with a compilation of research data that has been collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program has worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears to meet these quality requirements prior to shipment. The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should have an average pressure test of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds that it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements will prevent any producer from ultimately being able to have his fruit marketed. The requirements will simply ensure that handlers follow the handling practices necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements will be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption will eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule will apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 will naturally drop to the minimum temperature because they are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation will no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure a quality product is shipped to the consumer and to maintain reasonable returns to producers.

This rule will impose some additional costs on handlers. Some of the additional costs may be passed on to producers. In recent years, approximately 9–10 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into North American markets. The Committee currently estimates the Anjou pear crop to be approximately 11,800,000 standard boxes. An average inspection rate for pears within the production area will approximate $0.05 per standard box. Therefore, it is estimated that the establishment of quality and inspection requirements will result in mandatory inspection costs of approximately $56,050 (9.5 percent × 11,800,000 standard boxes × inspection rate of $0.05 per standard box). The actual increase in costs to the industry because of mandatory inspection requirements will be significantly less; however, because approximately 65–75 percent of the Anjou pear crop is currently being inspected on a voluntary basis. These costs are expected to be significantly offset by the benefits of this final rule. The benefits for this final rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to the quality requirements, including a longer time period of mandatory inspection as well as continuing with the voluntary program. The Committee believes that the requirements in this final rule are the minimum level necessary to ensure a quality product. The Committee believes that voluntary compliance is no longer effective. The Committee believes that this action will benefit producers, handlers, and consumers.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meetings were widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 30, May 4, and June 2, 2000, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on July 3, 2000 (65 FR 41018). Copies of the rule were mailed or sent via facsimile to Committee members. Finally, the rule was made available

through the Internet by the Office of the Federal Register. A 15-day comment period ending July 18, 2000, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule needs to be in place by August 15, 2000, because shipments of Anjou pears from the 2000 crop are expected to begin shortly thereafter; (2) handlers are aware of this rule, which was discussed and recommended at several public meetings, and are prepared to operate under the quality and inspection requirements established herein; and (3) a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.105 is revised to read as follows:

§ 927.105 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement and order shall be forwarded to: Winter Pear Control Committee, 4382 SE International Way, Suite A, Milwaukie OR 97222–4635.

3. A new § 927.316 is added to read as follows:

§ 927.316 Handling regulation.

During the period August 15 through November 1, no person shall handle any Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that (1) the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and (2) any such pears have an average pressure test of 14 pounds. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19875 Filed 8–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00–930–3 FR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00225 to $0.0017 per pound. This rule also decreases the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.001125 to $0.00085 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737 telephone: (301) 734–5243; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 2000, and continue until amended, suspended, or

terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00225 to $0.0017 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree is decreased from $0.001125 to $0.00085 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 2, 2000, and unanimously recommended 2000–2001 expenditures of $455,000 and an assessment rate of $0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree and an assessment rate of $0.00085 per pound of cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were $497,780. Decreased assessment rates were recommended by the Board because the 2000 crop is expected to be large. In addition, the Board wants to reduce handler costs and keep its monetary reserve within the authorized maximum of approximately one year's operational expenses specified in § 930.42(a) of the order. The decreased assessment rates together with funds from the Board's operating reserve and interest income are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include $175,000 for personnel, $120,000 for compliance, and $75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were $222,780 for personnel, $100,000 for Board meetings, and $100,000 for compliance.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1998, tart cherry utilization for juice, wine, or brined uses was 28.3 million pounds for all districts covered under the order. The total processed amount for 1998 was 303.8 million pounds. Juice, wine, and brined tart cherries represented less than 10 percent of the total processed crop, and about 8 percent over the last three seasons (1996 through 1998).

In deriving the recommended the assessment rates, the Board estimated assessable tart cherry production for the 2000–2001 crop year at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $416,500 (245 million pounds × $0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $12,750 (15 million pounds × $0.00085 per pound). Therefore, the total assessment income for 2000–2001 is estimated at $429,250. This amount plus adequate supplies in the reserve and interest income will be sufficient to cover budgeted expenses. Funds in the reserve (currently $300,000) will be kept within the approximately one year's operational expenses permitted by the order (7 CFR 930.42(a)).

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts

the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00225 to $0.0017 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.001125 to $0.00085 per pound. The Board unanimously recommended 2000–2001 expenditures of $455,000 and the reduced assessment rates. The quantity of assessable tart cherries for the 2000–2001 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include $175,000 for personnel, $120,000 for compliance, and $75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were $222,780 for personnel, $100,000 for compliance, and $100,000 for Board meetings.

Decreased assessment rates were recommended by the Board this year because the Board expects the 2000 crop to be large. In addition, the Board wants to reduce handler costs and wants to keep its monetary reserve within the authorized maximum of approximately one year's operational expenses as specified in § 930.42(a).

The Board discussed the alternative of continuing the existing assessment rates, but concluded that the Board should operate as efficiently as possible and the amount collected at the higher rates could cause the operating reserve to exceed what is actually needed. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $416,500 (245 million pounds × $0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $12,750 (15 million pounds × $0.00085 per pound). Therefore, the total assessment income for 2000–2001 is estimated at $429,250. This amount plus adequate supplies in the reserve and interest income will be sufficient to cover budgeted expenses. Funds in the reserve (currently $300,000) will be kept within the approximately one year's operational expenses permitted by the order (7 CFR 930.42(a)).

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on May 22, 2000. Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 30-day comment period which ended June 21, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the fiscal period began July 1, 2000, and the assessment rates apply to all cherries received during the 2000–2001 and subsequent fiscal periods. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30–day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rates.

On and after July 1, 2000, the assessment rate imposed on handlers shall be $0.0017 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be $0.00085 per pound.

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19873 Filed 8–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV00–945–1 FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with change, the provisions of an interim final rule relaxing pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound cartons to better meet buyer needs: Prior to this action, only U.S. No. 1 and better grade potatoes could be shipped in cartons. This change was recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order. This rule continues in effect relaxed pack requirements which allow handlers to ship a substantial amount of U.S. No. 2 grade potatoes in cartons, thus meeting customer demand and maximizing producer returns.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the Idaho-Eastern Oregon potato marketing order. Prior to this action, pack requirements specified that all potatoes packed in cartons were to be inspected and certified as meeting U.S. No. 1 grade or better, and that potato size be conspicuously marked on all cartons (except when used as a master container). Grade and size requirements in the order are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), and the size must be marked consistent with § 51.1545 of the standards. Also, all varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1–15, and the White Rose and red skinned varieties from August 1–December 31 can be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements.

This rule continues in effect pack requirements which allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided each carton is permanently and conspicuously marked as to grade. This change allows handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The Committee met on January 18, 2000, and again by telephone on February 3, 2000, and unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 or better grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade.

To meet the needs of the food service industry, the Committee recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color that are perinanently and conspicuously marked as to grade. Currently, potatoes packed in cartons are required to grade at least U.S. No. 1. At its meeting on January 18, 2000, the unanimous consensus of the Committee was that pack requirements should be relaxed. The Committee subsequently conducted a telephone vote on February 3, 2000, and unanimously passed a motion to relax the pack requirements.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties encountered in handling the currently used 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar

codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. The Committee is responding to these changing market conditions so that handlers will remain competitive with the other areas and not lose sales.

The Committee also recognized the need to distinguish these U.S. No. 2 grade potatoes in cartons from the industry's traditional premium U.S. No. 1 grade pack in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that buyers not have the opportunity to re-lid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore the Committee included in their recommendation that fiberboard cartons be of one-piece construction, of a natural kraft color, and permanently and conspicuously marked to grade.

In addition to finalizing the interim final rule published at 65 FR 25625, this final rule also corrects an error in that interim final rule that removed the maturity requirement for Norgold variety potatoes. This rule restores that maturity requirement as was in effect in § 945.341(b)(2) prior to the changes made in 65 FR 25625, and restores the paragraphs that were redesignated as paragraphs (b)(2) and (b)(3) in the interim final rule, as paragraphs (b)(3) and (b)(4), respectively. That is, the Norgold variety shall meet the maturity requirement of slightly skinned (except from August 1–15 this variety can be moderately skinned).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 63 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the marketing order and about 1,600 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers and producers may be classified as small entities, excluding receipts from other sources.

This rule continues to relax the order's pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade. This change enables handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns. Prior to this action, the order required that all potatoes packed in cartons be inspected and certified to meeting U.S. No. 1 or better grade. At its meeting on January 18, 2000, it was the Committee's unanimous consensus that pack requirements should be relaxed. The Committee subsequently conducted a telephone vote on February 3, 2000, and unanimously passed the pack relaxation motion.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties experienced in handling 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. In recommending this change, the Committee is responding to changing market conditions so that handlers will remain competitive with other areas and not lose sales.

The Committee also recognized the need to distinguish U.S. No. 2 grade potatoes packed in cartons from the traditional premium U.S. No. 1 grade packed in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that buyers not have the opportunity to re-lid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore, the Committee included in its recommendation the provision that the fiberboard cartons be of one-piece construction, of a natural kraft color, and permanently and conspicuously marked as to grade.

During the meetings, the Committee discussed the impact one-piece 50-pound cartons of U.S. No. 2 potatoes might have on the industry. The Committee believes that the recommendation will increase the sale of U.S. No. 2 grade potatoes to the food service industry. Information from the Committee indicates that during an average season, approximately 10 percent of the fresh potato shipments from the production area are of U.S. No. 2 grade, and that approximately 20 percent of the potatoes going to the food service industry are of U.S. No. 2 grade. This action is expected to further increase shipments to the food service industry, and help the Idaho-Eastern Oregon potato industry benefit from the increased growth in the food service industry.

The relaxation of pack requirements allowing handlers to ship U.S. No. 2 grade potatoes in cartons might require the purchase of new equipment that can handle one-piece cartons. However, these costs are expected to be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in that manner. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

As alternatives to this action, the Committee considered various methods to distinguish cartons of U.S. No. 2 grade potatoes from the traditional premium carton pack of U.S. No. 1 grade potatoes. The Committee decided that it was important that there be a clear distinction between the packs to ensure that the shipments of U.S. No. 2 potatoes in cartons not negatively impact the market for U.S. No. 1 potatoes in cartons.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's January 18, 2000, meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend and participate in Committee deliberations. Like all Committee meetings, this was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 3, 2000. A copy of the rule was faxed and mailed to the Committee's staff, which in turn, made the rule available to Committee members and potato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 3, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, with change, as published in the **Federal Register** (65 FR 25625, May 3, 2000) will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action corrects maturity requirements for Norgold variety potatoes which were inadvertently removed; (2) no useful purpose would be achieved by delaying the effective date of this action; and (3) no comments were received in response to the interim final rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Accordingly, the interim final rule amending 7 CFR part 945 which was published at 65 FR 25625 on May 3, 2000, is adopted as a final rule with the following change:

1. The authority citation for part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674

2. In § 945.341, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4) and a new paragraph (b)(2) is added to read as follows:

§ 945.341 Handling regulation.

* * * * *

(b) * * *

(2) *Norgold varieties.* Each year from August 1 through August 15, "moderately skinned"; during other periods "slightly skinned."

* * * * *

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19874 Filed 8–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–88–AD; Amendment 39–11748; AD 2000–10–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes. That AD currently requires repetitive inspections to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. This document clarifies the applicable compliance time for certain airplanes. This correction is necessary to ensure that fatigue cracking on longeron splice fittings, which could result in reduced controllability of the horizontal stabilizer, is detected and corrected in a timely manner.

DATES: Effective June 30, 2000.

The incorporation by reference of Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 30, 2000 (65 FR 34061, May 26, 2000).

The incorporation by reference of Boeing Alert Service Bulletin 747–53A2410, Revision 2, including Addendum, dated October 30, 1997, as listed in the regulations, was approved previously by the Director of the **Federal Register** as of January 13, 1998 (62 FR 67550, December 29, 1997).

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 18, 2000, the Federal Aviation Administration (FAA) issued AD 2000–10–23, amendment 39–11748 (65 FR 34061, May 26, 2000), which applies to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes. That AD requires repetitive inspections to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. That AD was prompted by reports that fatigue cracking was found on longeron splice fittings. The actions required by that AD are intended to detect and correct such fatigue cracking, which could result in reduced controllability of the horizontal stabilizer.

Need for the Correction

Since the issuance of AD 2000–10–23, the manufacturer has informed the FAA that the correct compliance time for certain airplanes is unclear. Paragraph (a)(1) of the AD states the applicable compliance time, "For airplanes that have accumulated fewer than 17,000 total flight cycles or 63,000 total flight hours as of the effective date of this AD." Paragraph (a)(2) of the AD states the applicable compliance time, "For airplanes that have accumulated 17,000 total flight cycles or more, or 63,000 total flight hours or more, as of the effective date of this AD." The manufacturer points out that the use of the word "or" ("* * * fewer than 17,000 total flight cycles or 63,000 total flight hours * * *") in paragraph (a)(1) makes it possible that some airplanes may inadvertently be subject to the compliance times in both paragraphs (a)(1) and (a)(2).

The FAA has reviewed this wording and determined that a correction to AD 2000–10–23 is necessary. The FAA's intent is that the compliance times in paragraph (a)(1) apply to airplanes with

relatively fewer flight cycles. That is, as of the effective date of this AD, if an airplane's total number of flight cycles is less than 17,000, and the same airplane's total number of flight hours is less than 63,000, then the compliance times in paragraph (a)(1) apply. Therefore, this correction will revise paragraph (a)(1) to state that the compliance time in that paragraph applies to "airplanes that have accumulated fewer than 17,000 total flight cycles and 63,000 total flight hours as of the effective date of this AD."

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains June 30, 2000.

Since this action only corrects and clarifies a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–10–23 Boeing: Amendment 39–11748. Docket 97–NM–88–AD.

Applicability: Model 747–100, 747–200, 747–300, 747SR, and 747SP series airplanes; having line positions 201 through 886 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the longeron splice fittings at stringer 11, which could result in reduced controllability of the horizontal stabilizer, accomplish the following:

Initial Inspection

(a) Perform a one-time detailed visual inspection to detect cracking of the longeron fittings at stringer 11, on the left and right sides at body station 2598, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2410, Revision 2, dated October 30, 1997, including Addendum; or Boeing Service Bulletin 747–53A2410, Revision 3, dated March 12, 1998, including Addendum. After the effective date of this AD, only Revision 3 shall be used.

(1) For airplanes that have accumulated fewer than 17,000 total flight cycles and 63,000 total flight hours as of the effective date of this AD: Inspect at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 17,000 total flight cycles or 63,000 total flight hours, whichever occurs first.

(ii) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

(2) For airplanes that have accumulated 17,000 total flight cycles or more, or 63,000 total flight hours or more, as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 22,000 total flight cycles or 78,000 total flight hours, whichever occurs first.

(ii) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Note 2: Where there are differences between the AD and the service bulletin, the AD prevails.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat the inspection one time at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD, and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(1) Within 3,000 flight cycles or 18,000 flight hours after accomplishment of the most recent inspection, whichever occurs first.

(2) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Replacement and Repetitive Inspections

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, replace the cracked fitting with a new fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2410, Revision 2, dated October 30, 1997, including Addendum; or Boeing Service Bulletin 747–53A2410, Revision 3, dated March 12, 1998, including Addendum. After the effective date of this AD, only Revision 3 shall be used. Then, repeat the inspection specified in paragraph (a) of this AD at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD, and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(1) Within 17,000 flight cycles or 63,000 flight hours after replacement, whichever occurs first.

(2) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2410, Revision 2, including Addendum, dated October 30, 1997; or Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998.

(1) The incorporation by reference of Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998, was approved previously by the Director of the Federal Register as of June 30, 2000 (65 FR 34061, May 26, 2000).

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–53A2410,

Revision 2, including Addendum, dated October 30, 1997, was approved previously by the Director of the Federal Register as of January 13, 1998 (62 FR 67550, December 29 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) The effective date of this amendment remains June 30, 2000.

Issued in Renton, Washington, on July 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19670 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–24]

Establishment of Class D Airspace; Oak Grove, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Oak Grove, NC. The United States Marine Corps operates a part time control tower at the Marine Corps Outlying Landing Facility (MCOLF) Airport. Class D surface area airspace is required when the control tower is open to accommodate instrument approaches and for Instrument Flight Rules (IFR) operations at the airport. Therefore, the United States Marine Corps has requested the establishment of Class D airspace at this airport. This action establishes Class D airspace extending upward from the surface to and including 1,500 feet mean sea level (MSL) within a 4-mile radius of the MCOLF Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On June 23, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Oak Grove, NC (65 FR 39111). Designations for Class D airspace extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Oak Grove, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Oak Grove, NC [New]

Marine Corps Outlying Landing Facility Airport, NC
(lat. 35°02′01″ N, long. 77°14′59″ W)

That airspace extending upward from the surface to and including 1,5000 feet MSL within a 4-mile radius of Marine Corps Outlying Landing Facility Airport. This Class D airspace area is effective on a random basis. The effective days and times are continuously available from Cherry Point Approach Control.

* * * * *

Issued in College Park, Georgia, on July 27, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–19853 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–22]

Establishment of Class D Airspace; Boca Raton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Boca Raton, FL. Air traffic controllers at Boca Raton Airport, FL, will be certificated weather observers by October 5, 2000. Therefore, the airport will meet criteria for Class D airspace on October 5, 2000. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,500 feet mean sea level (MSL) within a 4.1-mile radius of the Boca Raton Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace

Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On June 20, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Boca Raton, FL (65 FR 38225). Designations for Class D airspace extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Boca Raton Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Boca Raton, FL [New]

Boca Raton Airport, FL
(Lat. 26°22'43" N, long. 80°06'28" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of Boca Raton Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 27, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–19852 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–12]

RIN 2120–AA66

Realignment of Jet Route J–151

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Jet Route J–151 by realigning a segment of the route between the Farmington, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Vulcan, AL, VORTAC. Specifically, this action realigns J–151 to form a direct route between the Vulcan and Farmington VORTACs. The FAA is taking this action because the current route segment between the Farmington VORTAC and the Candu navigational fix is unusable for navigation due to frequency interference.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 23, 2000, the FAA proposed to amend 14 CFR part 71 to realign a segment of J–151 that is unusable for navigation (65 FR 15586). Flight inspection revealed that the segment between the Farmington, MO, VORTAC, and the Candu navigational fix is affected by co-channel radio interference from another navigational aid that uses the same frequency. This problem renders the affected segment unusable for navigation purposes.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments. No comments to the proposal were received. Except for editorial changes, this rule is the same as that proposed in the notice.

The Rule

This action amends 14 CFR part 71 by realigning a segment of J–151. Currently, the segment of J–151 between the Farmington VORTAC and the Candu navigational fix has been found to be unusable for navigation due to frequency interference. The FAA has issued Flight Data Center Notices to Airmen advising users of this problem. To correct this problem, it is necessary to realign J–151 between the Farmington VORTAC and the Vulcan VORTAC as a direct route.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR section 71.1. The jet route listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–151 [Revised]

From Cross City, FL; Vulcan, AL; Farmington, MO; St Louis, MO; Des Moines, IA; O'Neill, NE; Rapid City, SD; Billings, MT; INT Billings 266° and Whitehall, MT, 103° radials; to Whitehall.

* * * * *

Issued in Washington, DC, on July 28, 2000.

Paul Gallant,

Acting Manager, Airspace and Rules Division.

[FR Doc. 00–19931 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 423

Exemption Granted Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Request for examption granted.

SUMMARY: In a **Federal Register** notice dated April 14, 2000, the Federal Trade Commission (the "Commission") requested public comment on a proposed exemption to its Trade Regulation Rule on Care labeling of Textile Wearing Apparel and Certain Piece Goods ("the Care Labeling Rule" or "the Rule"). The Esprit de Corp company petitioned the Commission for the proposed exemption, which would permit it to distribute three specific styles of apron camisoles without attaching permanent care labels to the garments, as otherwise required by the Care Labeling Rule. Only one comment, which supports the approval of the proposed exemption, was received.[1] On the basis of the petition, the sample garments submitted by the petitioner, and the comment received, the Commission believes that a permanent label on the garments would impair the appearance and usefulness of the items. In granting the petition, the Commission notes that care instructions for the camisoles still must be given on a hang tag, or on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product.

DATES: The exemption is effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2966.

SUPPLEMENTARY INFORMATION: The Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971), and amended on May 20, 1983, 48 FR 22733 (1983). The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating "what regular care is needed for the ordinary use of the product." (16 CFR 423.6(a) and (b)) The Rule defines a care label as a "permanent label or tag * * * that is attached or affixed in such a manner that it will not become separated from the product * * *." (16 CFR 423.1(a))

Section 423.8(b) of the Rule states that manufacturers or importers can ask for an exemption from the requirement of attaching a permanent care label for any textile wearing apparel product or product line if the label would harm the appearance or usefulness of the product. Section 423.8(c) of the Rule states that if an item is exempt from care labeling under subparagraph (b) of section 423.8, the consumers still must be given the required care information for the product, but the care information can be provided on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product.

List of Subjects in 16 CFR Part 423

Clothing, Labeling, Textiles, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–19899 Filed 8–4–00; 8:45 am]

BILLING CODE 6750–01–M

[1] Comment dated May 4, 2000, from John B. Pellegrini, of the law firm of Rose & Hardies, on behalf of the United States Association of Importers of Textiles and Apparel ("USA–ITA").

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 125, 225, and 358

[Docket No. RM99–8–000; Order No. 617]

Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies

Issued July 27, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its records retention regulations for public utilities and licensees, natural gas companies, and oil pipeline companies ("regulated companies"). The Commission is updating its regulations and eliminating unnecessary burdens on regulated companies as part of its ongoing program to reduce or eliminate burdensome and unnecessary regulatory requirements.

EFFECTIVE DATE: This final rule is effective January 1, 2001.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission,

888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Mary C. Lauermann (Technical Information), Office of Finance, Accounting and Operations, 888 First Street, NE, Washington, DC 20426, (202) 208–0067

Julia A. Lake (Legal Information), Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 208–2019

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Parts 125, 225, and 356 [1] of its regulations to update, reduce, and clarify records retention requirements for jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies. This final rule is part of the Commission's ongoing program to update and eliminate burdensome and unnecessary requirements. These changes will significantly reduce the burden of maintaining records for regulated companies. This process was also initiated to respond to requests made by the Office of Management and Budget (OMB) and the industry.

II. Background

Both the Federal Power Act [2] and the Natural Gas Act [3] require jurisdictional companies to keep records that the Commission may prescribe "as necessary or appropriate for purposes of administration" of these acts.[4] In 1977, the Commission assumed jurisdiction over transportation of oil by oil pipeline companies from the Interstate Commerce Commission by 705(a) of the Department of Energy Organization Act.[5] Section 20 of the Interstate Commerce Act [6] requires oil pipeline companies to keep records that the Commission determines are necessary to effectively regulate those companies. In 1983, the Commission last amended its records retention regulations applicable to the public utilities and licensees, natural gas companies, and oil pipeline companies.[7]

In response to an Office of Management and Budget (OMB) request during recertification of the information collection requirements of FERC Form 555, Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies, the Commission agreed to review the media and records retention requirements for the public utilities and licensees, natural gas companies, and oil pipeline companies. OMB also requested that the Commission review the possibility of reducing the records retention requirements for general ledgers from 50 years to 10 years and plant ledgers from 50 years to 25 years. In January, the Commission updated the media requirements [8] and this final rule is the result of a review of the current records retention regulations for public utilities and licensees, natural gas companies, and oil pipeline companies.

On December 21, 1999, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM99–8–000.[9] The Commission received eight comments on the NOPR representing the electric and gas pipeline industries.[10] No comments were received from oil pipeline companies or licensees.

III. Discussion

The Commission has made modifications to the current public utilities and licensees, natural gas companies, and oil pipeline companies records retention regulations. These changes to parts 125, 225, and 356 include revising the general instructions, shortening various records retention periods, increasing retention periods for a few categories of records, and removing all but one retention reserve item. Therefore, the final order will reduce or eliminate burdensome and unnecessary regulatory requirements for public utilities and licensees, natural gas companies, and oil pipeline companies. All respondents to the NOPR commended the Commission's efforts in reducing retention requirements. However, several respondents felt the Commission had not gone far enough in reducing requirements for accounting records and ledgers. Specific comments are addressed below.

A. Changes to Public Utilities and Licensees, and Natural Gas Companies General Instructions

The final rule makes the following changes to the general instructions of parts 125 and 225, incorporates the Commission's new regulation on record storage media, and clarifies the Commission's regulations on keeping records used to support costs in rate cases and depreciation.

1. 125.2(d) and 225.2(d)—Incorporate the accounting issuance AI99–2–000 [11] on record storage media.

2. 125.2(k) and 225.2(k)—Incorporate the need to keep records that will be used for "rate cases" until the next rate case.

3. 125.2(m) and 225.2(m)—Incorporate a paragraph on life or mortality study data needed to be retained for depreciation purposes.

The Commission also made some minor editorial corrections to reflect changes proposed in the NOPR.

The Commission believes that these changes are needed to bring clarity to the Commission's records retention instructions and regulations.

B. Shortening of Public Utilities and Licensees, and Natural Gas Companies Records Retention Periods

The Commission shortened certain retention periods in §§ 125.3 and 225.3 of the Commission's regulations to reduce the record keeping burden on the industries. The records retention periods for the following item numbers and description of records found in the regulations are reduced for both the public utilities and licensees, and natural gas companies except where noted:

Item Number and Description

2. (a) of Organizational documents.
3. (a) of Contracts and agreements (public utilities and licensees only).
3. (b) of Contracts and agreements.
4. (a) and (b) of Accountants' and auditors' reports.
6. (a)(1), (a)(2), (b)(1), and (b)(2) of General and subsidiary ledgers.
7. Journals.
8. (a) of Journal vouchers and journal entries.
9. Cash books.
10. Voucher registers.
11. (a), (b), (c), (d) of Vouchers.
12.1. (b) of Production—Nuclear (public utilities and licensees only).
15. (a), (b), (c) of Maintenance work orders.

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[1] 18 CFR parts 125, 225, and 356.

[2] Section 301, 16 U.S.C. 825(a).

[3] Section 8, 15 U.S.C. 717g(a).

[4] Section 402(a)(2) of the Department of Energy Organization Act transfers these Federal Power Act and Natural Gas Act responsibilities from the Federal Power Commission to the Federal Energy Regulatory Commission. 42 U.S.C. 7172(a)(2).

[5] 42 U.S.C. 7295.

[6] 49 App. U.S.C. 1 *et seq.*

[7] 48 FR 12722 (Mar. 28, 1983).

[8] 86 FERC ¶ 61,005 (1999).

[9] 65 FR 1484 (Jan. 10, 2000).

[10] The American Gas Association (AGA), The Association of Records Managers and Administrators—Houston Chapter (ARMA), ANR Pipeline Company and Colorado Interstate Gas Company (ANR & CIG), Edison Electric Institute (EEI), Southern Companies (Southern), The United Illuminating Company (UI), UtiliCorp United, Williston Basin Interstate Pipeline Company.

[11] 86 FERC ¶ 61,005 (1999).

16. (a), (b) of Plant ledgers.
17. (a), (b), (c), (d), (e), (f) of Construction work in progress ledgers.
18. (a), (b) of Retirement work in progress ledgers, work orders, and supplemental records.
18. (c) of Retirement work in progress ledgers, work orders, and supplemental records (public utilities and licensees only).
19. Summary sheets, distribution sheets, reports, and statements.
20. (a) Appraisals and valuations.
33. (a) and (b) of Revenue summaries.
34. (a)(1), (3), (5), (6) and (b), (c) of Tax records.
36. (b) of Records of deposits with banks.
38. (a) of Statistics.
41. Reports to Federal and State regulatory commissions.
42. Advertising.

Industry Comments—Retention of General Ledgers

ANR Pipeline Company and Colorado Interstate Gas Company (ANR & CIG), Edison Electric Institute (EEI), The United Illuminating Company (UI), Southern Companies (Southern), and Association of Records Managers and Administrators—Houston Chapter (ARMA) stated that the retention requirements for general ledgers, journal vouchers, and indexes thereto should be reduced to 10 years, or if the requirement for ledgers (both general and plant) is maintained at 25 years, then the retention requirements for supporting documentation (journal entries, vouchers, etc.) should be reduced to no more than 10 years. Additionally, clarification was requested for retaining general accounting records for 25 years.

Commission Response

The request to further reduce retention requirements to 10 years for general ledgers, journal vouchers and indexes thereto is granted, and the electric and gas schedules have been revised. However, companies must maintain sufficient records to support fully any current, future, or pending rate case (see the revised regulatory text for §§ 125.2(k) and 225.2(k)).

Industry Comments—Electric and Gas Versus Oil

EEI, UI, and Southern requested that record retention requirements in part 125 (and 225) be further reduced to conform to the retention periods in part 356. Additionally, EEI and UI wanted the Commission to provide substantive reasons for longer time periods for utilities and licensees than for oil pipelines for each category of information.

Commission Response

The retention period needs for both electric and gas differ greatly from those of oil due to the nature of the industries, the licensing aspects of hydroelectric projects, the certification process in gas, and the cost based ratemaking in both electric and gas. Additionally, the regulatory/statutory requirements of the electric and gas industries differ greatly from those of the oil industry. As stated in the NOPR, the oil industry retention requirements and the reductions in part 356 are based on a statutory mandate that limits oil pipeline company reparations recovery to 3 years from the time the cause of action accrues. Therefore, retention of records beyond statutorily mandated reparation periods in the oil industry is not necessary. The Commission denies the request.

Industry Comments—Business Purpose

EEI and UI requested the Commission provide a business purpose or regulatory need for periods in excess of 10 years (general ledgers), and substantive reasons for longer time periods for utilities and licensees than for oil pipelines.

Commission Response

The Commission has revised the retention period for general ledgers to 10 years for public utilities and licensees and natural gas pipeline companies, but denies the request to reduce the retention period to bring it in line with the period required for oil pipeline companies. The Commission needs sufficient data available for scrutiny in order to carry out its regulatory mandates. As rate case filings become more infrequent, it is imperative that the Commission, and its staff, have access to supporting rate-case documentation, as well as documentation that might be pertinent to complaint proceedings. Because there is no statutory mandate that limits utilities and licensees reparations recovery time frames, records must be maintained for a significant period longer than those for an oil pipeline which is subject to statutorily mandated recovery period of 3 years from the time the cause of action accrues.

Industry Comments—Commission Focus

EEI and UI stated that the revised retention requirements do not conform to the Commission's new stated focus. They stated that:

> The rationale for many of the current retention periods is no longer valid. Retention periods were established for many types of records based on audit cycles carried out by Commission staff. Under current regulation, many records have 6 or 10 year retention periods. This would make records available during one or two audit cycles that, historically, were on a 3 to 5 year basis. Based on the Commission's previous audit practices, this retention period made sense. Proposals in the NOPR do not reduce many of these prior requirements despite the fact that in 1998, the Commission changed its audit practices to focus on particular issues of concern.

Commission Response

We agree that the Commission has expressly changed its audit focus. That change illustrates the need for the retention of records as outlined in the final rule. The "ad hoc" nature of audits in the future requires that data necessary to complete those audits be retained for a period long enough to provide sufficient data for review. The final rule does reduce the overall retention requirements significantly from the current regulation. Additionally, records are not retained solely for the purpose of audit. Data must be maintained to support current, future, or pending rate cases submitted to the Commission.

Industry Comments—Service Applications

ANR & CIG requested a reduction in the proposed retention period for service applications to 1 year after the date of the application versus 4 years because the terms of the contract would supersede any in the service application.

Commission Response

The statute of limitations for imposing civil penalties for violations is 3 years. A 4 year retention period covers the statute of limitations time period of 3 years plus 1 additional year to conduct any extensive investigation. Service applications for awarded contracts are to be maintained for the same period so it is possible to go back, for audit purposes, to determine the circumstances that existed at that time and not just the current circumstances. The Commission denies the request.

Industry Comments—Gas Measurement Data

ANR & CIG requested that the retention period for gas measurement data be increased from 7 months to 1 year, which could be extended in the event of an unresolved dispute. The concern of the company is that, if measurement data for interconnections was destroyed after seven months because no dispute was filed, it would be difficult to identify and determine the cause of any equipment malfunctions. The companies stated that

a year would be sufficient to identify malfunctions in the absence of a complaint, but that seven months would be too short a time. The companies further stated that maintaining measurement data for a year would not be burdensome.

Commission Response

Considering that most companies maintain records for a complete business year regardless of when such records can be destroyed, the Commission grants this request and has revised the schedule to require gas measurement data be retained for a year. Additionally, the Commission takes this opportunity to clarify that for retention item 13(e) related to "well records, including clearing, bailing, shooting etc., records; rock pressure; open flow; production, gas analysts' reports etc.," records must be maintained for 1 year after the field or relevant production area is abandoned.

Industry Comments—Plant in Service

ANR & CIG, EEI, UI, and Southern requested clarification of the retention requirements for plant in service and the seeming conflict between §§ 125.2(g) and 225.2(g) and §§ 125.3 and 225.3 items 16 (a) and (b) plant ledgers. The companies wanted to know if there were any records related to plant in service which must be retained for a period that is longer than that set forth in the NOPR schedule, and whether the schedule or text controlled.

Commission Response

Sections 125.2(g) and 225.2(g) state that plant in service records must be maintained for 25 years or until the plant is removed from service, all removal/restoration activities are complete, and all costs are removed from the accounting records unless accounting adjustments from reclassification and original cost studies have been approved by the commission having jurisdiction. Therefore, if the plant in question has a life longer than 25 years, §§ 125.2(g) and 225.2(g) govern. Additionally, EEI and UI recommended that general instruction 125.2(g) be deleted as it does not add clarity to the requirement. The Commission denies this request. Sections 125.2(g) and 225.2(g) address more than just the retention periods for plant, they address additions, retirements, and betterments.

Industry Comments—Affiliates

The American Gas Association (AGA), EEI, and UI requested clarification of the changes to §§ 125.2(i) and 225.2(i) regarding imposing retention requirements on affiliates. AGA believes the Commission intends to impose retention requirements on a natural gas company or jurisdictional electric utility only with respect to situations where an affiliate performs services for it. EEI and UI are concerned that the proposed revised language may be interpreted to expand the Commission's authority inappropriately beyond the current regulation, and recommends the Commission not make the proposed change to the regulations.

Commission Response

The Commission grants the request for clarification, but denies EEI's request not to change the language in § 125.2(i). The Commission does not intend to expand its authority or retention requirements to non-regulated affiliates. Only those records supporting services provided to pipelines or utilities by affiliates must be maintained by the affiliates. Records supporting services performed for affiliates must be maintained by utilities to provide information related to the nature of the transaction, the amounts involved, and the accounts used to record the transactions.

Industry Comments—Technology Management

ARMA requested clarification of the requirements related to §§ 125.3 and 225.3—item 5 Information Technology Management which states "retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter."

Commission Response

The Commission clarifies that this item is strictly referring to software program documentation and any revisions thereto. The original source data used as input for data processing and data processing report outputs must be maintained for the retention period established for that data type, as identified elsewhere in the schedule. To further clarify, the schedule has been modified to include "software" as part of the item text.

Industry Comments—Standardization Across Media

ARMA felt that the non-standardization of retention periods across media types, *i.e.*, paper versus electronic record retention requirements could lead to confusion if an oil, gas, and/or electric company chose electronic records retention to meet Commission requirements. ARMA cited §§ 125.3 and 225.3 item 5 as the source of the confusion. Sections 125.3 and 225.3 item 5 states: "Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter."

Commission Response

This requirement speaks only to the documentation supporting computer programs still in use by the utility. As long as the program is active and viable the supporting documentation for that program should be retained. If the program has been superseded, the supporting software documentation can be destroyed. Additionally, ARMA states that "the Commission is not requiring the electronic, non-graphic, data and programs be maintained for the same periods as required paper documents. This is incorrect. Sections 125.3 and 225.3 item 5 addresses only computer software documentation and revisions thereto. The original source data used for input for data processing and data processing report printouts must be retained for the applicable periods identified elsewhere in the schedule.

Industry Comments—Uniform Retention Across Media

ARMA, EEI, UI, and Southern want the Commission to adopt uniform retention periods across media types and record types. ARMA stated that the Commission opened the door for companies to maintain records in various media, including digital media, tape disk, or image files.

Commission Response

The Commission purposefully established no specific media type to allow companies flexibility in the selection of media which would provide the ability to adapt quickly to changes in technology without the necessity of obtaining Commission approval of the use of media not provided for in the regulations. We do not see this as leading to confusion but rather to efficiencies of storage. EEI and UI recommend uniformity in retention periods and lowering requirements to maximize efficiencies of business operations. The proposed regulations provide uniformity by type of information to be retained. Further the retention periods are reduced from those presently in place. We believe that the revised regulations will provide for efficiencies and savings from reduced retention periods and unrestricted use of storage media.

Industry Comments—Mergers and Acquisitions

ARMA requested clarification to §§ 125.3 and 225.3 item 20(b)(1) Mergers

and Acquisitions. ARMA states that the use of the phrase "* * * or as ordered by the Commission" along with the identified 10 year time frame for retention of plant and depreciation records relevant to mergers and acquisitions does not provide a true retention guideline. ARMA suggests that a defined period, such as audit completion, should be used.

Commission Comments

The Commission does not concur with using audit completion as the retention requirement. The stated 10 year retention period is valid. A longer period would be on an exception basis as merited by the specifics of a particular case. The longer period would not be an across-the-board, generally applicable requirement. As such, this requirement would not be burdensome on the industry as a whole.

Industry Comments—Retention Costs

EEI and UI raised the issue that excessive record retention imposes substantial costs. They argued that documents with long retention requirements require migration of data to updated or new media several times during their lives. They stated that the migration of data to new media is "costly, time-consuming, and labor intensive" and that savings resulting from the current reduction in retention requirements will not be as significant as the Commission envisions. They pointed out that the Commission's accounting release on Records Storage Media [12] gave regulated utilities "flexibility to select storage media other than those previously prescribed, the new media requirements will not alleviate the burden of long retention requirements."

Commission Response

The Commission purposefully did not mandate a storage media in order to reduce additional burden on industry. Migration to updated media is only necessary for those records that are maintained on media that does not provide an archival feature, or cannot be moved to archival media.

Industry Comments—OMB Reauthorization of FERC Form 555

EEI and UI stated that the NOPR failed to adhere to the conditions contained in the Office of Management and Budget's (OMB) reauthorization of the FERC Form 555, "Preservation of Records of Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies" of July 22, 1998. The companies stated that the Commission followed OMB's terms of clearance for reduction of the retention period for plant ledgers (from 50 to 25 years), but did not reduce the retention period of general ledgers as outlined in the clearance (from 50 to 10 years).

Commission Response

The Commission has revised the retention period for general ledgers with this final rule to the 10 year period as requested in the OMB reauthorization and by industry.

Industry Response—Reporting Burden

EEI and UI believe that the estimated reporting burden included in the NOPR is inaccurate and low. The companies state that the revised retention requirements may allow utilities to reduce record storage costs, but reductions in labor costs will be minimal. Additionally, long retention requirements will require data to be transferred to different media several times during their lives as companies upgrade their systems.

Commission Response

Burden estimates were based on projected reductions to retention periods and only serve as an average. Staff found no definitive studies on the ratio of staffing to record storage, but substantial savings should result due to the reduction in retention periods coinciding with the opportunity to retain records in whatever medium companies select. Although EEI and UI performed a informal survey and determined that from 9 (small companies) to 26 (large companies) full-time staff were needed to comply with record retention requirements, a report on information management [13] concluded "There is definitely no simple relationship between the number of records maintained and the number of people needed to maintain them." The report continued that an informal survey determined that, in many cases, very few people can adequately manage a great deal of paper, especially when there is high control, high automation, and low retrieval rates. The Commission does not concur with industry's comments.

Industry Comments—Miscellaneous

Southern noted an apparent inadvertent omission in retention item 13.1 Production—Electric (less Nuclear), where an entry for "station and system generation reports and clearance logs" was omitted from the schedule, and the sub-items below that entry were associated with "generation and output logs with supporting data". The Commission concurs, and retention item 13.1(c) "Station and system generation reports and clearance logs," has been added. Additionally, sub-items 13.1(b)(1) and (b)(2) have been renumbered to sub-items 13.1(c)(1) Hydro-electric, and (2) Steam and others, and been properly associated with item 13.1(c). Retention items 13.1(c) through (f) have been renumbered to 13.1(d) through (g).

Southern requested clarification of the textual descriptions of retention items 34(c) and (d) tax records between the schedule and the NOPR appendix. The NOPR appendix was included for informational purposes only, and may have included preliminary language revised in the final NOPR; the language included in the regulatory text governs.

Southern noted that the retention period for retention item 38 Statistics, was listed as 5 years in the schedule and 3 years in the NOPR appendix, and requested clarification of the proposed retention period. The NOPR appendix was included for informational purposes only; the language included in the regulatory text governs, and the correct retention period is 5 years.

Southern requested clarification on whether the Commission would categorize customer service orders as contracts, work orders, or some other record item under the proposed rule. The characterization of a service order lies in the nature of the order, there is no generic definition or answer.

EEI and UI request clarification of the revised retention requirement for Journal Vouchers, retention item 8(b)(1) "Charging Plant Accounts," in the appendix to the NOPR. They point out that the change between the current and proposed retention periods is summarized as revised, but that the current period is 6 years and the proposed revised period is 25 years, and state that this represents an increase and not a reduction to the current schedule. All the Commission has done is clarify an already existing regulation. The current schedule identifies a retention period of 6 years for journal vouchers charging plant accounts, but also requires regulated companies to see current § 125.2(j) for additional governing language. Section 125.2(j) requires records related to plant be retained a minimum of 25 years. EEI and UI are correct that there has been no reduction in the retention requirement, but neither has there been an increase.

Southern requested adoption of consistent retention periods for the

[12] See note 8.

[13] Ann Balough, "The Cost of Information Management", *The Records & Retrieval Report, The Newsletter for Professional Information Managers*, Vol. 13, No. 10, Dec. 1997.

same or similar record types, *i.e.*, service contracts and commodity contracts. Southern points out that in § 125.3 items 3(a) service contracts, and 3(b) commodity contracts the retention periods are 3 years and 4 years respectively. Also, in § 125.3 item 29 customer service contracts, the retention period is 4 years. The Commission concurs and clarifies that the retention period for service, commodity, and customer service contracts is 4 years. Section 125.3 item 3(a) has been revised to reflect this clarification.

Audit Requirement Changes

In addition, the Commission is revising the public utilities and licensees and natural gas companies requirements that are tied to "FERC audit reports." The Commission no longer audits on a 3 year cycle. Instead it conducts industry wide audits on specific Commission accounting issues. The Commission's changes to its regulatory requirements regarding audits range between two and six years.

Item Number and Description

1. Annual reports or statements to stockholders.
26. Material ledgers.
29. Customers service applications and contracts.
30. Rate Schedules.

C. Additions to Public Utilities and Licensees and Natural Gas Companies Records Retention Periods

To continue to meet its regulatory requirements the Commission is adding records retention requirements for the following public utilities and licensees, and natural gas companies record categories:

Item Number and Description

20. (b) Appraisals and valuations.
21. (a) The original or reproduction of engineering records, drawings and other supporting data.
35. Statement of funds and deposits.

Retention item 20 (b) is added to include property or investments that are written up or down as a result of mergers or acquisitions, asset impairments, and other basis. The records retention item 20 (b) will be 10 years after the event. These added records retention requirements will allow the Commission adequate time to review these events as necessary.

Retention item 21 (a) maps, diagrams, profiles, photographs, field survey notes, plot plan, detail drawings, and records of engineering studies and similar records showing the location of proposed or as-constructed facilities is changed to include retention until retired. These records are needed for our environmental reviews, and therefore should be retained until the facilities are retired.

Retention item 35, Statement of funds and deposits, is revised in response to FERC policy statement on Post-Employment Benefits Other Than Pension [14] (PBOP), to require retention of records until the fund is dissolved or terminated. This information is necessary to allow the Commission to ensure the proper disposition of rate payer contributions for PBOPs.

D. Removal of Public Utilities and Licensees, and Natural Gas Companies Reserve Accounts

The Commission is removing all but one reserve item in both public utilities and licensees, and natural gas companies (see schedules at §§ 125.3 and 225.3). The removal of these reserve items allows the records retention schedule to reflect only the records the Commission needs to fulfill its mission. However, we will keep reserve item 37 as a place holder in the public utilities and licensees records retention schedule in order to align the public utilities and licensees and natural gas companies item numbers.

Industry Comments

Southern requested that the Commission refrain from deleting the reserve items and from renumbering the § 125.3 schedule, as such actions would require the company procedures and guidelines citing items in the schedule to be revised. Southern Company stated that re-numbering the schedule solely for the purpose of deleting [reserved] items creates an unnecessary burden for Southern.

Commission Response

The purpose of the NOPR was to bring the retention periods up-to-date. Therefore, this wholesale change and a complete renumbering of the regulatory text is appropriate. Removal of the reserved items better identifies only those records the Commission needs to fulfill its mission, and eliminates confusion for those entities that consist of both public utilities and licensees and natural gas companies. The Commission also feels that the prospective nature and the implementation date of the final rule provides sufficient time for companies to update their regulations prior to the new schedule going into effect. Therefore, the Commission denies this request.

[14] 61 FERC ¶61,330 (1992).

E. Changes to Oil Pipeline Companies General Instructions

The Commission is reorganizing the oil pipeline companies general instructions to better align them to the public utilities and licensees, and natural gas companies general instructions (see § 356.2). This reorganization makes the general instructions for all industries consistent.

F. Shortening of Oil Pipeline Companies Records Retention Periods

The Commission shortened certain oil pipeline companies retention periods for 7 of the 24 items to 3 years for § 356 (see schedule at § 356.3). These reductions represent a significant reduction in the reporting burden on the oil industry. They are based on the statutory mandate that limits oil pipeline company reparations recovery to 3 years from the time the cause of action accrues.[15] We are reducing the following oil pipeline companies records retention requirements to 3 years:

Item Number and Description

2. Minutes of Directors and other corporate meetings.
4. (a) Contracts and related papers.
7. (a) and (b) Ledgers.
8. (a) and (b) Journals.
9. (a) and (b) Vouchers.
11. Records of accounting.
24. (a) Annual financial operating reports.

G. Additions to Oil Pipeline Companies Records Retention Periods

The Commission revised records retention requirements for the following oil pipeline companies record items (see schedule at § 356.3):

Item Number and Description

12. (d) (1) Group method and depreciation rate.
12. (g) Files of detailed authorizations for expenditures.

Record item 12 (d) (1) is revised from 10 years to 3 years after disposition of property because the Commission needs to review these records at any time during the life of the asset. Retention item 12 (g) is also revised to extend the period from 3 years from acquisition to 3 years after disposition of property because the Commission must be able to review any records related to property or equipment at any time during the life of the asset.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an

[15] 49 U.S.C. 1, Sec. 16(3).

environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[16] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, procedural or that does not substantially change the effect of legislation or regulations being amended,[17] and also for information gathering, analysis, and dissemination.[18] The final rule changes do not substantially change the effect of the underlying legislation or change the forms. Accordingly, no environmental assessments are necessary.

V. Regulatory Flexibility Act

The Commission received no comments on its certification, in the NOPR, that the proposed rule would not have a significant economic impact on a substantial number of small entities and that an initial Regulatory Flexibility Act (RFA)[19] analysis is not required.

In *Mid-Tex Elect. Coop.* v. *FERC*, 773 F. 2d 327 (D. C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

This final rule will not have an adverse impact on small entities, nor will it impose upon them any significant costs of compliance. Rather, this rule will significantly reduce the record keeping burden on all jurisdictional entities, including small entities. Most entities regulated by the Commission do not fall within the RFA's definition of a small entity.[20] Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

The following collection of information contained in this final rule was submitted to the Office of Management and Budget (OMB) for review under 3507(d) of the Paperwork Reduction Act of 1995.[21] FERC identifies the information retained under parts 125, 225, and 356 as FERC Form 555. The reporting burden to implement this final rule is as follows:

Data collection	No. of respondents	No. of responses	Hrs. per response	Total annual hours
FERC–555	515	1	1080	556,200

The NOPR was submitted to OMB at the time of issuance. OMB terms of clearance, provided in their May 19, 2000 response, was that the NOPR "engendered significant public comment and that OMB will review the package at the final rule stage after FERC has completed any revisions to the information collection." Comments were received from EEI and UI and are addressed in Section III—Discussion. The retention requirements remain essentially the same as those in the NOPR, therefore, the estimated annual filing burden remains the same. The burden estimates for complying with this rule are set out in the preceding Table.

Total Annual Hours for Collection (Reporting + Record keeping, (if appropriate) = 556,200). Based on the Commission's experience with current record keeping requirement practices, it is estimated that about 1,080 hours[22] are needed to retain records per year, for a total annual burden of 556,200 hours. The Commission estimates that the final rule will significantly decrease the burden of the current regulations by shortening the retention periods for certain records.

Information Collection Costs: The Commission has projected the average annualized cost for all respondents to comply with these requirements to be:

Annualized Capital/Startup Costs: $0.00.

Annualized Costs (Operations & maintenance): $29,274,430.

Total Annualized Costs: $29,274,430.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[23] Accordingly, pursuant to OMB regulations the Commission provided notice of information collection to OMB.

Title: FERC Form 555, Preservation of Records of Public Utilities, Natural Gas Companies, and Oil Pipeline Companies.

Action: Data Collection.

OMB Control No.: 1902–0098, the respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On Occasion.

Necessity of Information: The final rule revises the requirements contained in 18 CFR parts 125, 225, and 356.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the recordkeeping. The official records maintained by the regulated companies in accordance with the Schedules provided in parts 125, 225, and 356 are used by the companies as the basis of their required rate filings and reports to the Commission. The Federal Power Act, the Natural Gas Act, and Interstate Commerce Act, require regulated companies to keep such records as the Commission may prescribe "as necessary or appropriate for purposes of administration" of these acts. One of the Commission's most important functions under these acts is ensuring that rates charged by regulated companies for certain transactions are "just and reasonable." Almost all the records the Commission requires to be retained are for the purpose of providing an adequate base of information to make decisions on the "reasonableness" of rates. Similarly, the length of retention periods have been based on the time that information will be needed to make decisions on the impact of rates. The records are necessary as they are used by the Commission's staff during compliance reviews and special analyses performed as deemed necessary by the Commission. These requirements conform to the Commission's plan for efficient information collection within the public utilities and licensees, natural gas companies, and oil pipeline companies.

[16] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

[17] 18 CFR 380.4(a)(2)(ii).

[18] 18 CFR 380.4(a)(5).

[19] 5 U.S.C. 601–612.

[20] 5 U.S.C. 601(3), citing to 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[21] 44 U.S.C. 3507(d).

[22] Previous to this proposed rule, the reporting burden was estimated at approximately 2400 hours per response.

[23] 5 CFR 1320.11.

[1] Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, email: *mike.miller@ferc.fed.us*).

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285).

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.fed.us)* and in FERC's Public Reference Room during normal business hours (8:30 A.M. to 5:00 P.M. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC. 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission's Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- —CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
- —CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
- —RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (e-mail to *Webmaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

This rule will take effect on January 1, 2001. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1966.[24] The Commission will submit the final rule to both houses of Congress and the General Accounting Office.[25]

List of Subjects

18 CFR Part 125

Electric power; Electric utilities; Reporting and record keeping requirements.

18 CFR Part 225

Natural gas; Reporting and record keeping requirements.

18 CFR Part 356

Pipelines; Reporting and record keeping requirements

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends parts 125, 225, and 356 Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 125—PRESERVATION OF RECORDS OF PUBLIC UTILITIES AND LICENSEES.

1. The authority for part 125 is revised to read as follows:

Authority: 16 U.S.C. 825, 825c, and 825h; 44 U.S.C. 3501 *et seq.*

2. Section 125.1 is revised to read as follows:

§ 125.1 Promulgation.

This Part is prescribed and promulgated as the regulations governing the preservation of records by public utilities subject to the jurisdiction of the Commission and by licensees holding licenses issued by the Commission, to the extent and in the manner set forth therein.

3. In § 125.2, paragraphs (a)(1) through (a)(3), and paragraphs (d) through (m) are revised to read as follows, and paragraph (n) is removed:

§ 125.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part apply to all books of account and other records prepared by or on behalf of the public utility or licensee. See item 40 of the schedule (§ 125.3) for those records that come into possession of the public utility or licensee in connection with the acquisition of property, such as purchase, consolidation, merger, etc.

(2) The regulations in this part should not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements or for preservation of records longer than those prescribed in this part.

(3) To the extent that any Commission regulations may provide for a different retention period, the records should be retained for the longer of the retention periods.

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(d) *Record storage media.* Each public utility and licensee has the flexibility to select its own storage media subject to the following conditions.

(1) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 125.3 unless there is a quality transfer from one media to another with no loss of data.

(2) Each public utility and licensee is required to implement internal control procedures that assure the reliability of, and ready access to, data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(3) Each transfer of data from one media to another must be verified for accuracy and documented. Software and hardware required to produce readable records must be retained for the same period the media format is used.

(e) *Destruction of records.* At the expiration of the retention period, public utilities and licensees may use any appropriate method to destroy records.

(f) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed

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[24] 5 U.S.C. 804(2).

[25] 5 U.S.C. 801(a)(1)(A).

and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within ninety (90) days from the date of discovery of the destruction.

(g) *Schedule of records and periods of retention.* (1) Records related to plant in service must be retained until the facilities are permanently removed from utility service, all removal and restoration activities are completed, and all costs are retired from the accounting records unless accounting adjustments resulting from reclassification and original costs studies have been approved by the regulatory commission having jurisdiction. If the plant is sold, the associated records or copies thereof, must be transferred to the new owners.

(2) Records related to hydroelectric facilities and additions, retirements, and betterments thereto must be retained until:

(i) The Commission has determined the actual legitimate original cost of the facilities, or the licenses are surrendered. If the plant is sold, the associated records or copies thereof, must be transferred to the new owners.

(ii) Records related to the determination of amortization reserves pursuant to section 10(d) of the Federal Power Act must be retained until a final determination and adjudication of the amortization reserves are made.

(h) *Retention periods designated "Destroy at option".* "Destroy at option" constitutes authorization for destruction of records at managements' discretion if it does not conflict with other legal retention requirements or usefulness of such records in satisfying pending regulatory actions or directives.

(i) *Records of services performed by associated companies.* Public utilities and licensees must assure the availability of records of services performed by and for associated or affiliated companies with supporting cost information for the periods indicated in § 125.3 as necessary to be able to readily furnish detailed information as to the nature of the transaction, the amounts involved, and the accounts used to record the transactions.

(j) *Index of records.* Public utilities and licensees must arrange, file, and index records so records may be readily identified and made available to Commission representatives.

(k) *Rate case.* Notwithstanding the minimum retention periods provided in these regulations, if a public utility or licensee wants to reflect costs in a current, future, or pending rate case, or if a public utility or licensee has abandoned or retired a plant subsequent to the test period of the utility's rate case, the utility must retain the appropriate records to support the costs and adjustments proposed in the current or next rate case.

(l) *Pending complaint litigation or governmental proceedings.* Notwithstanding the minimum requirements, if a public utility or licensee is involved in pending litigation, complaint procedures, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired, whichever is longer.

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4. Section 125.3 is revised to read as follows:

§ 125.3 Schedule of records and periods of retention.

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42. Advertising.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Reports to stockholders: Annual reports or statements to stockholders.	5 years.
2. Organizational documents:	
(a) Minute books of stockholders', directors', and directors' committee meetings.	5 years or termination of the corporation's existence, whichever occurs first.
(b) Titles, franchises, and licenses: Copies of formal orders of regulatory commissions served upon the utility.	6 years after final non-appealable order.
3. Contracts, including amendments and agreements (except contracts provided for elsewhere):	

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(a) Service contracts, such as for management, accounting, and financial services.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes pertaining to such contracts, whichever is later.
(b) Contracts with others for transmission or the purchase, sale or interchange of product.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes or governmental proceedings pertaining to such contracts, whichever is later.
(c) Memoranda essential to clarifying or explaining provisions of contracts listed above, including requests for discounts.	For the same periods as contracts to which they relate.
(d) Card or book records of contracts, leases, and agreements made, showing dates of expirations and of renewals, memoranda of receipts, and payments under such contracts.	For the same periods as contracts to which they relate.
4. Accountants' and auditors' reports:	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the utility (such as reports of public accounting firms and commission accountants).	5 years after the date of the report.
(b) Internal audit reports and working papers	5 years after the date of the report.
Information Technology Management	
5. Automatic data processing records (retain original source data used as input for data processing and data processing report printouts for the applicable periods prescribed elsewhere in the schedule): Software program documentation and revisions thereto.	Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter.
General Accounting Records	
6. General and subsidiary ledgers:	
(a) Ledgers:	
(1) General ledgers	10 years.
(2) Ledgers subsidiary or auxiliary to general ledgers except ledgers provided for elsewhere.	10 years.
(b) Indexes:	
(1) Indexes to general ledgers	10 years.
(2) Indexes to subsidiary ledgers except ledgers provided for elsewhere.	10 years.
(c) Trial balance sheets of general and subsidiary ledgers	2 years.
7. Journals: General and subsidiary	10 years.
8. Journal vouchers and journal entries including supporting detail:	
(a) Journal vouchers and journal entries	10 years.
(b) Analyses, summarization, distributions, and other computations which support journal vouchers and journal entries:	
(1) Charging plant accounts	25 years.
(2) Charging all other accounts	6 years.
9. Cash books: General and subsidiary or auxiliary books	5 years after close of fiscal year.
10. Voucher registers: Voucher registers or similar records when used as a source document.	5 years.
11. Vouchers:	
(a) Paid and canceled vouchers (one copy-analysis sheets showing detailed distribution of charges on individual vouchers and other supporting papers).	5 years.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	5 years.
(c) Paid checks and receipts for payments of specific vouchers	5 years.
(d) Authorization for the payment of specific vouchers	5 years.
(e) Lists of unaudited bills (accounts payable), list of vouchers transmitted, and memoranda regarding changes in audited bills.	Destroy at option.
(f) Voucher indexes	Destroy at option.
Insurance	
12. Insurance records:	
(a) Records of insurance policies in force, showing coverage, premiums paid, and expiration dates.	Destroy at option after expiration of such policies.
(b) Records of amounts recovered from insurance companies in connection with losses and of claims against insurance companies, including reports of losses, and supporting papers.	6 years.
Operations and Maintenance	
13.1 Production—Public utilities and licensees (less Nuclear):	
(a) Boiler-tube failure report	3 years.
(b) Generation and output logs with supporting data:	3 years.
(c) Station and system generation reports and clearance logs:	
(1) Hydro-electric	25 years.
(2) Steam and others	6 years.
(d) Generating high-tension and low-tension load records	3 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(e) Load curves, temperature logs, coal, and water logs	3 years.
(f) Gauge-reading reports	2 years, except river flow data collected in connection with hydro operation must be retained for life of corporation.
(g) Recording instrumentation charts	1 year, except where the basic chart information is transferred to another record, the charts need only be retained 6 months provided the record containing the basic data is retained 1 year.
13.2 Production—Nuclear: For informational purposes, refer to the document retention requirements of the Nuclear Regulatory Commission.	
14. Transmission and distribution—Public utilities and licensees.	
(a) Substation and transmission line logs	3 years.
(b) System operator's daily logs and reports of operation	3 years.
(c) Transformer history records	For life of transformer.
(d) Records of transformer inspections, oil tests, etc	Destroy at option.
15. Maintenance work orders and job orders:	
(a) Authorizations for expenditures for maintenance work to be covered by work orders, including memoranda showing the estimates of costs to be incurred.	5 years.
(b) Work order sheets to which are posted in detail the entries for labor, material, and other charges in connection with maintenance, and other work pertaining to utility operations.	5 years.
(c) Summaries of expenditures on maintenance and job orders and clearances to operating other accounts (exclusive of plant accounts).	5 years.
Plant and Depreciation	
16. Plant ledgers:	
(a) Ledgers of utility plant accounts including land and other detailed ledgers showing the cost of utility plant by classes.	25 years.
(b) Continuing plant inventory ledger, book or card records showing description, location, quantities, cost, etc., of physical units (or items) of utility plant owned.	25 years.
17. Construction work in progress ledgers, work orders, and supplemental records:	
(a) Construction work in progress ledgers	5 years after clearance to plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(b) Work orders sheets to which are posted in summary form or in detail the entries for labor, materials, and other charges for utility plant additions and the entries closing the work orders to utility plant in service at completion.	5 years after clearance to plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(c) Authorizations for expenditures for additions to utility plant, including memoranda showing the detailed estimates of cost, and the bases therefor (including original and revised or subsequent authorizations).	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(d) Requisitions and registers of authorizations for utility plant expenditures.	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(e) Completion or performance reports showing comparison between authorized estimates and actual expenditures for utility plant additions.	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(f) Analysis or cost reports showing quantities of materials used, unit costs, number of man-hours etc., in connection with completed construction project.	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(g) Records and reports pertaining to progress of construction work, the order in which jobs are to be completed, and similar records which do not form a basis of entries to the accounts.	Destroy at option.
18. Retirement work in progress ledgers, work orders, and supplemental records:	
(a) Work order sheets to which are posted the entries for removal costs, materials recovered, and credits to utility plant accounts for cost of plant retirement.	5 years after plant is retired.
(b) Authorizations for retirement of utility plant, including memoranda showing the basis for determination to be retired and estimates of salvage and removal costs.	5 years after plant is retired.
(c) Registers of retirement work	5 years.
19. Summary sheets, distribution sheets, reports, statements, and papers directly supporting debits and credits to utility plant accounts not covered by construction or retirement work orders and their supporting records.	5 years.
20. Appraisals and valuations:	

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(a) Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies. (Includes all records essential thereto.).	3 years after appraisal.
(b) Determinations of amounts by which properties or investments of the company or any of its associated companies will be either written up or written down as a result of:	
(1) Mergers or acquisitions	10 years after completion of transaction or as ordered by the Commission.
(2) Asset impairments	10 years after recognition of asset impairment.
(3) Other bases	10 years after the asset was written up or down.
21. The original or reproduction of engineering records, drawings, and other supporting data for proposed or as-constructed utility facilities: Maps, diagrams, profiles, photographs, field survey notes, plot plan, detail drawings, records of engineering studies, and similar records showing the location of proposed or as-constructed facilities.	Retain until retired.
22. Contracts relating to utility plant:	
(a) Contracts relating to acquisition or sale of plant	6 years after plant is retired or sold.
(b) Contracts and other agreements relating to services performed in connection with construction of utility plant (including contracts for the construction of plant by others for the utility and for supervision and engineering relating to construction work).	6 years after plant is retired or sold.
23. Records pertaining to reclassification of utility plant accounts to conform to prescribed systems of accounts including supporting papers showing the bases for such reclassifications.	6 years.
24. Records of accumulated provisions for depreciation and depletion of utility plant and supporting computation of expense:	
(a) Detailed records or analysis sheets segregating the accumulated depreciation according to functional classification of plant.	25 years.
(b) Records reflecting the service life of property and the percentage of salvage and cost of removal for property retired from each account for depreciable utility plant.	25 years.
Purchase and Stores	
25. Procurement:	
(a) Agreements entered into for the acquisition of goods or the performance of services. Includes all forms of agreements not specifically set forth in Subsection 7 such as but not limited to: Letters of intent, exchange of correspondence, master agreements, term contracts, rental agreements, and the various types of purchase orders:	
(1) For goods or services relating to plant construction	6 years.
(2) For other goods or services	6 years.
(b) Supporting documents including accepted and unaccepted bids or proposals (summaries of unaccepted bids or proposals may be kept in lieu of originals) evidencing all relevant elements of the procurement.	6 years.
26. Material ledgers: Ledger sheets of materials and supplies received, issued, and on hand	6 years after the date the records/ledgers were created.
27. Materials and supplies received and issued: Records showing the detailed distribution of materials and supplies issued during accounting periods	6 years.
28. Records of sales of scrap and materials and supplies:	
(a) Authorization for sale of scrap and materials and supplies	3 years.
(b) Contracts for sale of scrap materials and supplies	3 years.
Revenue Accounting and Collecting	
29. Customers' service applications and contracts: Contracts, including amendments for extensions of service, for which contributions are made by customers and others	4 years after expiration.
30. Rate schedules: General files of published rate sheets and schedules of utility service. Including schedules suspended or superseded	6 years after published rate sheets and schedules are superseded or no longer used to charge for utility service.
31. Maximum demand, and demand meter record cards	1 year, except where the basic chart information is transferred to another record the charts need only be retained 6 months, provided the basic data is retained 1 year.
32. Miscellaneous billing data: Billing department's copies of contracts with customers (other than contracts in general files)	Destroy at option.
33. Revenue summaries: Summaries of monthly operating revenues according to classes of service. Including summaries of forfeited discounts and penalties	5 years.
Tax	
34. Tax records:	

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(a) Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Subsection 11(b) for vouchers evidencing disbursements:	
(1) Income tax returns	2 years after final tax liability is determined.
(2) Property tax returns	2 years after final tax liability is determined.
(3) Sales and other use taxes	2 years.
(4) Other taxes	2 years after final tax liability is determined.
(5) Agreements between associate companies as to allocation of consolidated income taxes.	2 years after final tax liability is determined.
(6) Schedule of allocation of consolidated Federal income taxes among associate companies.	2 years after final tax liability is determined.
(b) Filings with taxing authorities to qualify employee benefit plans.	5 years after discontinuance of plan.
(c) Information returns and reports to taxing authorities	3 years after final tax liability is determined.
Treasury	
35. Statements of funds and deposits	For nuclear decommissioning funds, retain records for all items listed for 3 years after final decommissioning is completed. If amortization reserve funds related to licensed projects are maintained, retain until the Commission makes a final determination of the disposition of amortization reserves.
(a) Statements of periodic deposits with fund administrators or trustees.	Retain records for the most recent 3 years.
(b) Statements of periodic withdrawals from fund	Retain records for the most recent 3 years.
(c) Statements prepared by fund administrator or trustees of fund activity including:	Retain records until the fund is dissolved or terminated.
(1) Beginning of the year balance of fund;	
(2) Deposits with the fund;	
(3) Acquisition of investments held by the fund;	
(4) Disposition of investments held by the fund;	
(5) Disbursements from the fund, including party to whom disbursement was made;	
(6) End of year balance of fund.	
36. Records of deposits with banks and others:	
(a) Statements from depositories showing the details of funds received, disbursed, transferred, and balances on deposit.	Destroy at option after completion of audit by independent accountants.
(b) Check stubs, registers, or other records of checks issued	3 years.
Miscellaneous	
37. [Reserved]	
38. Statistics: Financial, operating and statistical reports used for internal administrative or operating purposes.	5 years.
39. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts and expenditures in connection with financing, construction and operations, including acquisitions and disposals of properties or investments.	3 years.
40. Records of predecessor companies	Retain consistent with the requirements for the same types of records of the utility.
41. Reports to Federal and State regulatory commissions including annual financial, operating and statistical reports.	5 years.
42. Advertising: Copies of advertisements by or for the company on behalf of itself or any associate company in newspapers, magazines, and other publications, including costs and other records relevant thereto (excluding advertising of appliances, employment opportunities, routine notices, and invitations for bids all of which may be destroyed at option).	2 years.

PART 225—PRESERVATION OF RECORDS OF NATURAL GAS COMPANIES

5. The authority for part 225 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp. p. 142.

6. Section 225.1 is revised to read as follows:

§ 225.1 Promulgation.

This part is prescribed and promulgated as the regulations governing the preservation of records by natural gas companies subject to the jurisdiction of the Commission, to the extent and in the manner set forth therein.

7. In § 225.2, paragraphs (a) (1) through (a) (3), and paragraphs (d) through (m) are revised to read as follows, and paragraph (n) is removed:

§ 225.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part must apply to all books of account and other records prepared by or on behalf of the natural gas company. See item 40 of the schedule for those records that come into possession of the natural gas company in connection with the acquisition of property, such as purchases, consolidation, merger, etc.

(2) The regulations in this part should not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements, or for preservation of records for periods longer than those prescribed in this part.

(3) To the extent that any Commission regulations may provide for a different retention period, the records should be retained for the longer of the retention periods.

* * * * *

(d) *Record storage media.* Each natural gas company has the flexibility to select its own storage media subject to the following conditions.

(1) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 225.3 unless there is a quality transfer from one media to another with no loss of data.

(2) Each natural gas company is required to implement internal control procedures that assure the reliability of and ready access to data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(3) Each transfer of data from one media to another must be verified for accuracy and documented. Software and hardware required to produce readable records must be retained for the same period the media format is used.

(e) *Destruction of records.* At the expiration of the records retention period, natural gas companies may use any appropriate method to destroy records.

(f) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within ninety (90) days from the date of discovery of the destruction.

(g) *Schedule of records and periods of retention.* (1) Records related to plant in service must be retained until the facilities are permanently removed from service, all removal and restoration activities are completed, and all costs are retired from the accounting records unless accounting adjustments resulting from reclassification and original costs studies have been approved by the regulatory commission having jurisdiction. If the plant is sold, the associated records or copies thereof, must be transferred to the new owners.

(2) Records related to additions, retirements, and betterments thereto must be retained until the Commission has determined the actual legitimate original cost of the facilities.

(h) *Retention periods designated "Destroy at option".* "Destroy at option" constitutes authorization for destruction of records at managements' discretion if it does not conflict with other legal retention requirements or usefulness of such records in satisfying pending regulatory actions or directives.

(i) *Records of services performed by associated companies.* The natural gas companies must assure the availability of records of services performed by associated or affiliated companies with supporting cost information for the periods indicated in § 225.3 as necessary to be able to readily furnish detailed information as to the nature of the transaction, the amounts involved, and the accounts used to record the transactions.

(j) *Index of records.* Natural gas companies must arrange, file, and index records so they may be readily identified and made available to Commission representatives.

(k) *Rate case.* Notwithstanding the minimum retention periods provided in these regulations, if a natural gas company intends to reflect costs in a current, pending, or future rate case, or if a natural gas company has abandoned or retired a plant subsequent to the test period of its last rate case, it must retain all relevant records.

(l) *Pending complaint litigation or governmental proceeding.* Notwithstanding the minimum requirements, if a natural gas company is involved in pending litigation, complaint procedures, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired whichever is longer.

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8. Section 225.3 is revised to read as follows:

§ 225.3 Schedule of records and periods of retention.

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24. Accumulated depreciation and depletion of natural gas plant account records.

Purchase and Stores

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28. Records of sales of scrap and materials and supplies.

Revenue Accounting and Collection

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30. Rate schedules.
31. Maximum demand and demand meter record cards.
32. Miscellaneous billing data.
33. Revenue summaries.

Tax

34. Tax records.

Treasury

35. Statements of funds and deposits.
36. Records of deposits with banks and others.
37. Records of receipts and disbursements.

Miscellaneous

38. Statistics.
39. Budgets and other forecasts.
40. Records of predecessors companies.
41. Reports to Federal and State regulatory commissions.
42. Advertising.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Reports to stockholders: Annual reports or statements to stockholders.	5 years.
2. Organizational documents:	
(a) Minute books of stockholders', directors', and directors' committee meetings.	5 years or termination of the corporation's existence, whichever occurs first.
(b) Titles, franchises, and licenses: Copies of formal orders of regulatory commissions served upon the natural gas company.	6 years after final non-appealable order.
3. Contracts including amendments and agreements (except contracts provided for elsewhere):	
(a) Service contracts, such as for management, accounting, and financial services.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes pertaining to such contracts, whichever is later.
(b) Contracts with others for transportation or for the purchase, sale or interchange of product.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes or governmental proceedings pertaining to such contracts, whichever is later.
(c) Memoranda essential to clarifying or explaining provisions of contracts listed above, including requests for discounts.	For the same periods as contracts to which they relate.
(d) Card or book records of contracts, leases, and agreements made that show dates of expirations, renewals, memoranda of receipts, and payments under such contracts.	For the same periods as contracts to which they relate.
4. Accountants' and auditors' reports:	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the natural gas company (such as reports of public accounting firms and Commission accountants).	5 years after the date of the report.
(b) Internal audit reports and working papers	5 years after the date of the report.
Information Technology Management	
5. Automatic data processing records (retain original source data used as input for data processing and data processing report printouts for the applicable periods prescribed elsewhere in the schedule): Software program documentation and revisions thereto.	Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter.
General Accounting Records	
6. General and subsidiary ledgers:	
(a) Ledgers:	
(1) General ledgers	10 years.
(2) Ledgers subsidiary or auxiliary to general ledgers except ledgers provided for elsewhere.	10 years.
(b) Indexes:	
(1) Indexes to general ledgers	10 years.
(2) Indexes to subsidiary ledgers except ledgers provided for elsewhere.	10 years.
(c) Trial balance sheets of general and subsidiary ledgers	2 years.
7. Journals: General and subsidiary	10 years.
8. Journal vouchers and journal entries including supporting detail:	
(a) Journal vouchers and journal entries	10 years.
(b) Analyses, summarizations, distributions, and other computations which support journal vouchers and journal entries:	
(1) Charging plant accounts	25 years.
(2) Charging all other accounts	6 years.
9. Cash books: General and subsidiary or auxiliary books	5 years after close of fiscal year.
10. Voucher registers: Voucher registers or similar records when used as a source document.	5 years.
11. Vouchers:	
(a) Paid and canceled vouchers (1 copy-analysis sheets showing detailed distribution of charges on individual vouchers and other supporting papers).	5 years.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	5 years.
(c) Paid checks and receipts for payments of specific vouchers	5 years.
(d) Authorization for the payment of specific vouchers	5 years.
(e) Lists of unaudited bills (accounts payable), list of vouchers transmitted, and memoranda regarding changes in audited bills.	Destroy at option.
(f) Voucher indexes	Destroy at option.
Insurance	
12. Insurance records:	
(a) Records of insurance policies in force, showing coverage, premiums paid, and expiration dates.	Destroy at option after expiration.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(b) Records of amounts recovered from insurance companies in connection with losses and of claims against insurance companies, including reports of losses, and supporting papers.	6 years.
Operations and Maintenance	
13. Production—Gas:	
(a) Recording instrument charts such as pressure (static and/or differential), temperature, specific gravity, heating value, etc.	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(b) Test of heating value at stations and outlying points	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(c) Records of gas produced, out, and holder stock	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(d) Analysis of (gas produced) B.T.U. and sulphur content	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(e) Well records, including cleering, bailing, shooting etc., records; rock pressure; open flow; production, gas analysts' reports etc.	1 year after field or relevant production area abandoned
(f) Gas measuring records	If the measurement data have not been disputed or adjusted, destroy after 1 year.
14. Transmission and distribution—Gas:	
(a) Substation and transmission line log	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(b) System operator's daily logs and reports of operation	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(c) Gas measuring records	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(d) Transmission line operating reports	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(e) Compression operation and reports	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(f) Recording instrument charts such as pressure (static and/or differential), temperature, specific heating value, etc.	If the measurement data have not been disputed or adjusted, destroy after 1 year.
14.1 Underground storage of natural gas:	
(a) Well records, reports, and logs which include data relating to pressures, injected volumes, withdrawn volumes, core analysis, daily volumes of gas injected into and withdrawn from reservoir, cushion, and working gas volumes for each reservoir.	1 year after reservoir, field, or relevant storage area is abandoned.
(b) Records containing information relating to reservoir gas leakage, showing the total gas leakage, and recycled gas.	1 year after reservoir, field, or relevant storage area is abandoned.
(c) Records on back pressure tests field data	1 year or until superseded.
(d) Records on back pressure test results, gas analysis	1 year or until superseded.
15. Maintenance work orders and job orders:	
(a) Authorizations for expenditures for maintenance work to be covered by work orders, including memoranda showing the estimates of costs to be incurred.	5 years.
(b) Work order sheets to which are posted in detail the entries for labor, material, and other charges in connection with maintenance, and other work pertaining to natural gas company operations.	5 years.
(c) Summaries of expenditures on maintenance and job orders and clearances to operating other accounts (exclusive of plant accounts).	5 years.
Plant and Depreciation	
16. Plant ledgers:	
(a) Ledgers of natural gas company's plant accounts including land and other detailed ledgers showing the cost of plant by class.	25 years.
(b) Continuing plant inventory ledger, book or card records showing description, location, quantities, cost, etc., of physical units (or items) of natural gas plant owned.	25 years.
17. Construction work in progress ledgers:	
(a) Construction work in progress ledgers	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(b) Work order sheets to which are posted in summary form or in detail the entries for labor, materials, and other charges for natural gas company's plant additions and the entries closing the work orders to plant in service at completion.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(c) Authorizations for expenditures for additions to natural gas company plant, including memoranda showing the detailed estimates of cost, and the bases therefor (including original and revised or subsequent authorizations).	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(d) Requisitions and registers of authorizations for natural gas company plant expenditures.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(e) Completion or performance reports showing comparison between authorized estimates and actual expenditures for natural gas company plant additions.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(f) Analysis or cost reports showing quantities of materials used, unit costs, number of man-hours etc., in connection with completed construction project.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(g) Records and reports pertaining to progress of construction work, the order in which jobs are to be completed, and similar records which do not form a basis of entries to the accounts.	Destroy at option.
(h) Well-drilling logs and well construction records	1 year after field or well is abandoned.
18. Retirement work in progress ledgers, work orders, and supplemental records:	
(a) Work order sheets to which are posted the entries for removal costs, materials recovered, and credits to natural gas company plant accounts for cost of plant retirement.	5 years after plant is retired.
(b) Authorizations for retirement of natural gas company plant, including memoranda showing the basis for determination of cost of plant to be retired, and estimates of salvage and removal costs.	5 years after plant is retired.
(c) Registers of retirement work	5 years.
19. Summary sheets, distribution sheets, reports, statements, and papers directly supporting debits and credits to natural gas company plant accounts not covered by construction or retirement work orders and their supporting records.	5 years.
20. Appraisals and valuations:	
(a) Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies. Includes all records essential thereto.	3 years after appraisal.
(b) Determinations of amounts by which properties or investments of the company or any of its associated companies will be either written up or written down as a result of:	
(1) Mergers or acquisitions	10 years after completion of transaction or as ordered by the Commission.
(2) Asset impairments	10 years after recognition of asset impairment.
(3) Other bases	10 years after the asset was written up or down.
21. The original or reproduction of engineering records, drawings, and other supporting data for proposed or as-constructed gas facilities: Maps, diagrams, profiles, photographs, field survey notes, plot plan, detail drawings, records of engineering studies, and similar records showing the location of proposed or as-constructed facilities.	Retained until retired or abandoned.
22. Contracts relating to natural gas plant:	
(a) Contracts relating to acquisition or sale of plant	6 years after plant is retired or sold.
(b) The primary records of gas acreage owned, leased or optioned excluding deeds and leases but including such records as lease sheets, leasehold cards, and option agreements.	6 years after plant is retired or sold.
23. Records pertaining to reclassification of natural gas plant accounts to conform to prescribed systems of accounts including supporting papers showing the bases for such reclassifications.	6 years.
24. Records of accumulated provisions for depreciation and depletion of gas plant and supporting computation of expense:	
(a) Detailed records or analysis sheets segregating the accumulated depreciation according to functional classification of plant.	25 years.
(b) Records reflecting the service life of property and the percentage of salvage and cost of removal for property retired from each account for depreciable natural gas plant.	25 years.
Purchases and Stores	
25. Procurement:	
(a) Agreements entered into for the acquisition of goods or the performance of services. Includes all forms of agreements not specifically set forth in Subsection 7 such as but not limited to: Letters of intent, exchange of correspondence, master agreements, term contracts, rental agreements, and the various types of purchase orders:	
(1) For goods or services relating to plant construction	6 years.
(2) For other goods or services	6 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(b) Supporting documents including accepted and unaccepted bids or proposals (summaries of unaccepted bids or proposals may be kept in lieu of originals) evidencing all relevant elements of the procurement.	6 years.
26. Material ledgers: Ledger sheets of materials and supplies received, issued, and on hand.	6 years after the date records/ledgers were created.
27. Materials and supplies received and issued: Records showing the detailed distribution of materials and supplies issued during accounting periods.	6 years.
28. Records of sales of scrap and materials and supplies:	
(a) Authorization for sale of scrap and materials and supplies	3 years.
(b) Contracts for sale of scrap and materials and supplies	3 years.
Revenue Accounting and Collection	
29. Customers' service applications and contracts: Contracts, including amendments for extensions of service, for which contributions are made by customers and others.	4 years after expiration.
30. Rate schedules: General files of published rate sheets and schedules of natural gas company service (including schedules suspended or superseded).	6 years after published rate sheets and schedules are superseded or no longer used to charge for services.
31. Maximum demand, pressure, temperature, and specific gravity charts and demand meter record card.	If the measurement data have not been disputed or adjusted, destroy after 7 months.
32. Miscellaneous billing data: Billing department's copies of contracts with customers (other than contracts in general files).	Destroy at option.
33. Revenue summaries: Summaries of monthly operating revenues according to classes of service. Including summaries of forfeited discounts and penalties.	5 years.
Tax	
34. Tax records:	
(a) Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Subsection 11(b) for vouchers evidencing disbursements:	
(1) Income tax returns	2 years after final tax liability is determined.
(2) Property tax returns	2 years after final tax liability is determined.
(3) Sales and other use taxes	2 years.
(4) Other taxes	2 years after final tax liability is determined.
(5) Agreements between associate companies as to allocation of consolidated income taxes.	2 years after final tax liability is determined.
(6) Schedule of allocation of consolidated Federal income taxes among associate companies.	2 years after final tax liability is determined.
(b) Filings with taxing authorities to qualify employee benefit plans	5 years after discontinuance of plan.
(c) Information returns and reports to taxing authorities	3 years after final tax liability is determined.
Treasury	
35. Statements of funds and deposits:	
(a) Statements of periodic deposits with fund administrators or trustees.	Retain records for the most recent 3 years.
(b) Statements of periodic withdrawals from fund	Retain records for the most recent 3 years.
(c) Statements prepared by fund administrator or trustees of fund activity including:.	Retain records until the fund is dissolved or terminated.
(1) Beginning of the year fund balance	
(2) Deposits with the fund;	
(3) Acquisition of investments held by the fund;	
(4) Disposition of investments held by the fund;	
(5) Disbursements from the fund, including party to whom disbursement was made; and,	
(6) End of year fund balance.	
36. Records of deposits with banks and others:	
(a) Statements from depositories showing the details of funds received, disbursed, transferred, and balances on deposit.	Destroy at option after completion of audit by independent accountants.
(b) Check stubs, registers, or other records of checks issued	3 years.
37. Records of receipts and disbursements:	
(a) Daily or other periodic statements of fund receipts or disbursements.	Destroy at option after completion of annual audit by independent accountants.
(b) Records or periodic statements of outstanding vouchers, checks, drafts, etc., issued and not presented.	Destroy at option after completion of annual audit by independent accountants.
(c) Reports of associates showing working fund transactions and summaries thereof.	Destroy at option after completion of annual audit by independent accountants.
(d) Reports of revenue collections by field cashiers, pay stations, etc.	Destroy at option after completion of annual audit by independent accountants.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
Miscellaneous	
38. Statistics: Financial, operating, and statistical reports used for internal administrative or operating purposes.	5 years.
39. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts, and expenditures in connection with financing, construction and operations, including acquisitions and disposals of properties or investments.	3 years.
40. Records of predecessor companies	Retain consistent with the requirements for the same types of records of the natural gas company.
41. Reports to Federal and State regulatory commissions including annual financial, operating, and statistical reports.	5 years.
42. Advertising: Copies of advertisements by or for the company on behalf of itself or any associate company in newspapers, magazines, and other publications, including costs and other records relevant thereto (excluding advertising of appliances, employment opportunities, routine notices, and invitations for bids all of which may be destroyed at option).	2 years.

9. Part 356 is revised to read as follows:

PART 356—PRESERVATION OF RECORDS FOR OIL PIPELINE COMPANIES

Sec.
356.1 Promulgation
356.2 General instructions.
356.3 Preservation of records for oil pipeline companies

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27; E.O. 12009, 3 CFR 1978 Comp. p. 142.

§ 356.1 Promulgation.

This part is prescribed and promulgated as the regulations governing the preservation of records by oil pipeline companies subject to the jurisdiction of the Commission, to the extent and in the manner set forth therein. This part is enforceable as of the date the oil pipeline company becomes subject to the jurisdiction of the Commission.

§ 356.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part apply to all books of account and other records prepared by or on behalf of the oil pipeline companies.

(2) The regulations in this part must not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements or for preservation of records longer than those prescribed in this part.

(3) To the extent that any Commission regulations may provide for a different retention period, the records should be retained for the longer of the retention periods.

(4) Unless otherwise specified in the schedule in § 356.3, duplicate copies of records may be destroyed at any time. Provided, however, that such duplicate copies must not contain significant information not shown on the originals.

(5) Records other than those listed in the schedule may be destroyed at the option of the oil pipeline company. Provided, however, that records which are used in lieu of those listed must be preserved for the periods prescribed for the records used for substantially similar purposes and that retention of records pertaining to added services, functions, plant, etc., the establishment of which cannot be presently foreseen, must conform to the principles embodied herein.

(6) Notwithstanding the provision of the records retention schedule, the Commission may, upon request of the oil pipeline company, authorize shorter retention periods for any records listed in § 356.3. The oil pipeline companies must show that the longer retention periods are no longer necessary or appropriate to protect the public interest, investors, or consumers. A waiver from any provision of these regulations may be made by the Commission upon its own initiative or upon submission of a written request by the company. Each request for waiver must demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.

(b) *Designation of supervisory official.* Each oil pipeline company subject to the provision of this part must designate one or more persons to supervise the oil pipeline company's program for preservation and authorized destruction of records.

(c) *Protection and storage of records.* Each oil pipeline company subject to these regulations must provide reasonable protection for records. The records must have protections from fire, floods, and other hazards. Storage spaces, will also prevent unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(d) *Record storage media.* (1) Each oil pipeline company has the flexibility to select its own storage media.

(2) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 356.3 unless there is a quality transfer from one media to another with no loss of data.

(3) Each oil pipeline company is required to implement internal control procedures that assure the reliability of and ready access to data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(e) *Destruction of records.* Oil pipeline companies may use any appropriate method to destroy permitted records.

(f) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed, and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within ninety (90) days from the date of discovery of such destruction.

(g) *Retention periods designated "Destroy at option".* "Destroy at option" constitutes authorization for destruction of records at managements' discretion if it does not conflict with other legal

retention requirements or usefulness of such records in satisfying pending regulatory action or directives.

(h) *Records of services performed by associated companies.* Oil pipeline companies must assure the availability of records of services performed by associated companies for the periods indicated in § 356.3 as necessary to be able to readily furnish detailed information as to the nature of transaction, the involved, and the accounts used to record the transactions.

(i) *Index of records.* Oil pipeline companies must arrange, file, and index records so they may be readily identified and made available to Commission representatives.

(j) *Rate case.* The schedule of records in § 356.3 shows the periods of time that designated records must be preserved. However, not withstanding the minimum retention periods provided in this regulation, if an oil pipeline company intends to reflect costs in a current, pending, or future rate case, or if an oil pipeline company has abandoned or retired plant subsequent to the test period of its last rate case, it must retain the appropriate records to support the costs, and adjustments proposed in the next or current rate case.

(k) *Pending complaint litigation or governmental proceeding.* Notwithstanding the minimum requirements, if an oil pipeline company is involved in pending litigation, complaint proceedings, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(l) *Companies going out of business.* The records referred to in these regulations may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all transactions are completed. When a company is merged with another company under jurisdiction of the Commission, the successor company must preserve records of the merged company in accordance with these regulations.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired.

§ 356.3 Preservation of records for oil pipeline companies.

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24. Reports to Federal Energy Regulatory Commission and other regulatory bodies.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Incorporation and reorganization:	
(a) Charter of certificate of incorporation and amendments	Permanently or at termination of the corporation's existence.
(b) Legal documents related to mergers, consolidations, reorganizations, receiverships, and similar actions which affect the identity or organization of the company.	Permanently or at termination of the corporation's existence.
2. Minutes to Directors', Executive Committees', Stockholders', and other corporate meetings.	5 years.
3. Titles, franchises, and authorities:	
(a) Certificates of public convenience and necessity issued by regulating bodies.	Until expiration or cancellation.
(b) Operating authorizations and exemptions to operate issued by regulating bodies.	Until expiration or cancellation.
(c) Copies of formal orders of regulatory bodies served upon the company.	1 year after expiration or cancellation.
(d) Deeds, charters, and other title papers	3 years after disposition of property.
4. Contracts and agreements:	
(a) Contracts and related papers for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 20).	4 years after expiration, provided there is no pending litigation or governmental inquiry or proceeding involved.
(b) Service contracts, such as for operational management, accounting, financial or legal service, and agreements with agents.	3 years after expiration or termination.
(c) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in paragraph (a) of this item.	3 years after expiration or termination.
5. Accountant's, auditor's, and inspector's reports:	
(a) Certifications and reports of examinations and audits conducted by public and certified public accountants.	3 years.
(b) Reports of examinations and audits conducted by internal auditors, time inspectors, weight inspectors, and others.	3 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
Treasury	
6. Long-term debt records:	
(a) Bond indentures, underwriting, mortgage, and other long-term credit agreements.	6 years after redemption.
Financial Accounting	
7. Ledgers:	
(a) General and subsidiary ledgers with indexes thereto	3 years.
(b) Balance sheets and trial balance sheets of general and subsidiary ledgers.	3 years.
8. Journals:	
(a) General journals	3 years.
(b) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries.	3 years.
(c) Schedules of recurring or standard journal entries with entry identifications.	Until superseded.
9. Vouchers:	
(a) Voucher registers or equivalent	5 years.
(b) Paid and canceled vouchers, expenditure authorizations, detailed distribution sheets, and other supporting data including original bills and invoices, except as otherwise provided herein.	5 years.
10. Accounts receivable, record, or register of accounts receivable	3 years after settlement.
11. Records of accounting codes and instructions	3 years after discontinuance.
Property and Equipment	
12. Property records:	
(a) Records which maintain complete information on cost or other value of all real property or equipment.	3 years after disposition of property.
(b) Records and additions and betterments made to property and equipment.	3 years after disposition of property.
(c) Records pertaining to retirements and replacements of property and equipment.	3 years after disposition of property.
(d) Records pertaining to depreciation:	
(1) When group method and depreciation rates are prescribed by the Commission.	3 years after disposition of property.
(2) Other	3 years after disposition of property.
(e) Records of equipment number changes	3 years after disposition of property.
(f) Records of motor and engine changes	Destroy at option.
(g) Files of detailed authorizations for expenditures, work or job orders showing estimated costs of additions and betterments, extensions, replacements, major repairs and dismantlements, approved by proper officials, together with supporting data.	3 years after disposition of property.
(h) Periodical inventories of property and equipment	3 years after prior inventory.
13. Engineering records:	
(a) Plans and specifications	3 years after the disposition of the property.
(b) Estimates of work, engineering studies, construction bids, and similar data pertaining to property changes actually made.	15 years.
Personnel and Payroll	
14. Payroll records:	
(a) Registers, abstracts, or summaries showing earnings, deductions, and amounts paid to each employee by pay periods.	3 years.
(b) Records showing the detailed distribution of salaries and wages to various accounts.	3 years.
Taxes	
15. Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Subsection 9(b) for vouchers evidencing disbursements:	
(a) Income tax returns	3 years after final tax liability is determined.
(b) Property tax returns	3 years after final tax liability is determined.
(c) Sales and other use taxes	3 years final tax liability is determined.
(d) Other taxes	3 years after final tax liability is determined.
(e) Agreements between associate companies as to allocation of consolidated income taxes.	3 years after final tax liability is determined.
(f) Schedule of allocation of consolidated Federal income taxes among associate companies.	3 years after final tax liability is determined.
16. Information returns and reports to taxing authorities	3 years, or for the period of any extensions granted for audits.
Purchase and Stores	
17. Material ledger, records of material and supplies on hand at all locations.	2 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
18. Inventories: General inventories of material and supplies on hand, with record of adjustments between accounts required to bring stores records into agreement with physical inventories.	2 years.
Transportation	
19. Oil and other products stocks and movement pipelines only:	
(a) Records and receipts, deliveries, pumpings, stocks, and over and short.	3 years.
(b) Run tickets showing quantities by tank measurement of meter reading of oil and other products received into the delivered from company's lines.	3 years.
(c) Statements of oil and oil products consumed as fuel including quantity value, and where consumed.	3 years.
(d) Statement of oil and other products lost by line breaks and leaks including quantity, value, and location of breaks and leaks.	3 years.
(e) Reports of power furnished by producers: monthly reports of the quantity of oil run in connection with which power was furnished by producers, and records of payment for such power.	3 years.
(f) Records of producers' property identifying ownership and location for producers' tanks or wells to which carrier's lines are connected.	3 years after disconnection.
(g) Division or other periodical inventory reports of oil and other products on hand.	3 years.
(h) Division orders: Directions received by carrier as to the division of interest and to whose account transported oil should be credited.	3 years after discontinuance.
(i) Directions received by the carrier for the transfer of division order interests from one interest owner to another.	3 years after discontinuance.
(j) Transfer orders for the transfer of ownership of oil or other products in carrier's custody.	3 years.
Tariffs and Rates	
20. Official file copies of tariffs, classifications, division sheets, and circulars relative to the transportation of property.	3 years after expiration or cancelation.
21. Authorities and supporting papers for transportation of property for free or at reduced rates.	3 years.
22. Copies of concurrences and powers of attorney	2 years after expiration or cancelation.
23. Correspondence and working papers in connection with the making of rates and compliance of tariffs, classifications, division sheets, and circulars affecting the transportation of property.	2 years after cancelation of tariff.
Reports and Statistics	
24. Reports to Federal Energy Regulatory Commission and other regulatory bodies, annual financial, operating and statistical reports, file copies, and supporting data.	5 years.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[DoD Reg. 5400.11.R]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule, with comments.

SUMMARY: As directed by Secretary of Defense memorandum dated May 25, 2000, the Department of Defense Privacy Program is being amended to include specific language for providing periodic Privacy Act training for DoD personnel who may be expected to deal with the news media or the public.

DATES: This rule is effective May 25, 2000. Comments must be received by October 6, 2000.

ADDRESSES: Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607–2943.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 310

Privacy.

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: Pub. L. 93?579, 88 Stat. 1896 (5 U.S.C. 552a).

2. § 310.72, paragraph (a)(2) is revised to read as follows:

§ 310.72 DoD training programs.

(a) * * *

(2) *Specialized training.* Training that provides information as to the application of specific provisions of this part to specialized areas of job performance. Personnel of particular concern include, but are not limited to personnel specialists, finance officers, DoD personnel who may be expected to deal with the news media or the public, special investigators, paperwork managers, and other specialists (reports, forms, records, and related functions), computer systems development personnel, computer systems operations personnel, statisticians dealing with personal data and program evaluations, and anyone responsible for implementing or carrying out functions under this part. Specialized training should be provided on a periodic basis.

* * * * *

Dated: July 31, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 00–19861 Filed 8–4–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is adding an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The proposed rule was published on May 18, 2000, at 65 FR 31505. No comments were received, therefore, the Department of the Navy is adopting this rule as final.

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by adding paragraph (u) as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(u) *System identifier and name:* N05813–4, Trial/Government Counsel Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C. 552a(j)(2) are (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(4)(G), (H), and (I), (e)(8), (f), and (g).

(ii) *Exemption.* Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(iii) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to subsections 5 U.S.C. 552a(k)(1) and (k)(2) are (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(iv) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(v) *Reason:* (1) From subsection (c)(3) because release of accounting of disclosure could place the subject of an investigation on notice that he/she is under investigation and provide him/her with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement investigations.

(2) From subsections (c)(4), (d), (e)(4)(G), and (e)(4)(H) because granting individuals access to information collected and maintained for purposes relating to the enforcement of laws could interfere with proper investigations and orderly administration of justice. Granting individuals access to information relating to the preparation and conduct of criminal prosecution would impair the development and implementation of legal strategy. Amendment is inappropriate because the trial/government counsel files contain official records including transcripts, court orders, and investigatory materials such as exhibits, decisional memorandum and other case-related papers. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffective investigation techniques, sources, and methods used by law enforcement personnel, and

could result in the invasion of privacy of individuals only incidentally related to an investigation.

(3) From subsection (e)(1) because it is not always possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. Information collected during criminal investigations and prosecutions and not used during the subject case is often retained to provide leads in other cases.

(4) From subsection (e)(2) because in criminal or other law enforcement investigations, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of an investigation, presenting a serious impediment to law enforcement investigations.

(5) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(6) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because compliance would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

(9) From subsection (f) and (g) because this record system is exempt from the individual access provisions of subsection (d).

(10) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Navy will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Navy's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

Dated: July 31, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 00–19859 Filed 8–4–00; 8:45 am]

BILLING CODE 5001–10–F

POSTAL SERVICE

39 CFR Part 20

Express Mail International Service

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service will offer a 5 percent discount off of regular postage for all Express Mail International Service (EMS) shipments paid for by an Express Mail Corporate Account (EMCA) or made by federal agencies using the federal financial system. The discount would apply only to the basic postage portion of EMS published rates. It would not apply to pick-up service charges, additional merchandise insurance coverage fees, or shipments made under an International Customized Mail agreement.

DATES: Effective: August 12, 2000. Comments on the interim rule must be received on or before September 6, 2000.

ADDRESSES: Written comments should be sent to the Manager, International Products, International Business, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370–IBU, Washington DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street SW, Washington DC 20260–6500.

FOR FURTHER INFORMATION CONTACT: Angus MacInnes, (202) 268–2268.

SUPPLEMENTARY INFORMATION: The Postal Service is changing conditions for certain mailing categories to automatically reduce every payment transaction by 5 percent for all EMS purchased at basic published prices and paid through an EMCA.

An EMCA is an advance deposit account developed for Express Mail, which enables customers to deposit funds with the Postal Service for payment of anticipated future Express Mail mailings. Express Mail Corporate Accounts can be used for domestic and international Express Mail. The discount will be available only for Express Mail sent internationally. Federal agencies will also be eligible for the discount. The discount will be deducted from the total postage amount on the mailer's monthly account rather than from each piece.

The 5 percent discount will be offered on postage only; it does not apply to pickup fees, any special fees, nor postage for shipments being made under an International Customized Mail agreement.

As required under the Postal Reorganization Act, these changes will result in conditions of mailing that do not apportion the costs of the service, so the overall value of the service to users is fair and reasonable, and not unduly or unreasonably discriminatory or preferential.

List of Subjects in 39 CFR Part 20

Foreign relations, international postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Amend the International Mail Manual by revising section 2 to read as follows:

2 CONDITIONS FOR MAILING

210 Express Mail International Service

* * * * *

212 Postage

212.1 Rates

212.11 Country Rates

See the Individual Country Listings for countries that offer Express Mail International Service.

212.12 Express Mail Corporate Account Discount Rates

Express Mail International Service (EMS) rates will be reduced by 5 percent for all payments made through an Express Mail Corporate Account (EMCA) or through the federal agency payment system. The discount applies only to the postage portion of EMS rates. It does not apply to pickup service charges (212.24), additional merchandise insurance coverage fees (211.51), or shipments made under an International Customized Mail agreement.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19393 Filed 8–4–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6844–7]

National Oil and Hazardous Substances, Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the Superfund Site from the National Priorities List (NPL).

SUMMARY: EPA Region 5 announces the deletion of the Windom Municipal Landfill Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substance Pollution Continency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA). EPA and the Minnesota Pollution Control Agency (MPCA) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: This "direct final" action will be effective October 6, 2000 unless EPA receives dissenting comments by September 6, 2000. If written dissenting comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd., (SR–6J), Chicago, IL 60604. Requests for comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Blvd., Chicago, IL 60604, 312–886–0900; and The Minnesota Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (SR–6J), U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, Il, (312) 886–7253, FAX (312) 886–7253, e-mail beard.gladys@epa.gov

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion
V. Action

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 5 announces the deletion of the Windom Municipal Landfill Site, Windom, Cottonwood County, Minnesota, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Minnesota have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on this action thirty days after publication of this action in the **Federal Register**.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Windom Site and explains how the Site meets the deletion criteria. Section V states EPA's action to delete the Site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if the Site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the Site will be conducted at least every five years after the initiation of the remedial action at the Site to ensure that the Site remains protective of public health and the environment. In the case of this Site, EPA conducted a Five-Year Review in February 1995 and a second one in December 1999. Based on these reviews, EPA determined that conditions at the Site remain protective of public health and the environment. As explained below, the Site meets the NCP's deletion criteria listed above. If new information become available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the Site:

(1) All appropriate response under CERCLA have been implemented and no further action by EPA is appropriate; (2) The Minnesota Pollution Control Agency concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and, (4) All relevant documents have been made available for public review in the local

Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete.

For deletion of the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The City operated a municipal landfill from the 1930's to 1974. The Site covers approximately 11.4 acres and accepted municipal refuse, and manufacturing waste including paint sludges, from the Toro Company. Concern about the proximity of the Site to the City's municipal well field prompted the MPCA to evaluate the potential of the landfill to impact the wells. Analysis of the groundwater consistently revealed volatile organic compounds downgradient of the landfill. The Site was listed on the National Priorities List in April 1986. On June 24, 1986, the MPCA issued a Request for Response Action (RFRA) to the City and the Toro Company, which required them to conduct a Remedial Investigation (RI), and Feasibility Study (FS), and to prepare a Response Action Plan (RAP).

The City conducted the RI to determine the extent and magnitude of contamination in 1987, and followed that with a Feasibility Study in 1988. The City submitted the RAP in January 1989, which was revised in March 1989, and subsequently, approved by the MPCA. The RAP included the following response action objectives:

- Protect the municipal water supply;
- Minimize leachate generation; and
- Control contaminant migration.

The EPA Region V Administrator concurred with the MPCA Record of Decision (ROD) and the selected remedy for the Site on September 29, 1989. The major components of the selected remedial action included: (i) protection of the municipal water supply through modifications to the existing water plant; (ii) minimization of leachate generated by grading and capping of the Site; and (iii) monitoring of groundwater quality with a contingency plan to be implemented if significant groundwater impacts are detected at the Site perimeter.

The groundwater at the Site is located in glacial outwash deposited from the Des Moines lobe during the Wisconsin glaciation. The glacial outwash is underlain by a thick, low permeability clay layer, which serves as a natural barrier to water flow and protects deeper aquifers from contamination. Depth to the water table is about 50 feet the ground surface. The saturated thickness of the sand and gravel deposit ranges from 50 to 150 feet. The direction of groundwater flow is generally to the southwest toward the Des Moines River, but can be locally affected by extended pumping from the municipal system.

Water quality monitoring in the early 1980s revealed that chlorinated volatile compounds (VOCs) were detected near the fill area, most notably 1,1,2,2-tetrachloroethene (PCE), 1,1,2-trichloroethene (TCE), cis-1,2-dichloroethene(DCE), and vinyl chloride (VC). As a result of active groundwater pumping and treatment and natural attenuation, contaminant concentrations have declined to the point that DCE and VC have become the only compounds detected consistently at the landfill since 1996. There have been no quantified detections of VC since April 1998. In fact there have been no quantified detections of any VOC compound analyzed at the Site since July 1998.

Various inorganics historically have been detected slightly above background levels. A notable exception is nitrate, which was detected at a level of 15 milligrams per liter (mg/l) at MW1. Inorgancis were dropped from the monitoring program in 1997. Two consecutive years of inorganic data indicated levels below the action levels, including MW1 where the nitrate concentration dropped to 0.1 mg/l.

The City well field is located northwest of the Site. City Well 7 is the closest well to the Site, and is approximately 500 feet northwest of the Site. City Well 7 was impacted with VOC concentrations, most notably VC as high as 26 micrograms per liter (ug/l) in April 1990. As a result, City Well 7 was removed from the municipal supply system. City Well 7 was used as a groundwater recovery well and connected to the spray treatment system at the landfill. City Well 7 operated as a recovery well until August of 1994. City Well 7 remains disconnected from the public water supply and monitoring shows there have been no detections of vinyl chloride since July 1993.

To protect the water supply, the filter units at the municipal water treatment plant were modified in September 1988. The purpose of the modifications was to enhance aeration of raw water and hence, remove low levels of VOCs. Modifications of the filter unit involved installation of: (1) a series of pressure spray nozzles on the header distribution pipe to the filter; and (2) power roof ventilators with mist eliminators in the filter venting system. These modifications break the raw water into fine droplets when sprayed onto the gravity filter and increase airflow through the existing vents.

The City constructed a new water treatment plant in 1997. The first step in the new water treatment plant process is aeration. The primary purpose of the aerator is to enhance oxidation of iron and manganese but this aerator also has the dual purpose of volatizing any VOCs. The aerator is comprised of numerous slotted trays through which a forced draft fan blows to aerate the water much like a stripping tower. After the aerator, the water flows to an open detention tank and filter basins that provide additional opportunities for volatilization.

Construction of the landfill cap began on June 1, 1989. The landfill surface was graded to obtain a minimum slope of 2 percent and a maximum slope of 25 percent. After grading, the landfill was covered with two layers of low-permeability material compacted in six-inch lifts. A six inch granular buffer was placed on the low-permeability material layer which, in turn, was covered by a layer of topsoil. Vegetation was established on the final cover. A gas venting system was also installed upon completion of the cap. The cap has been regularly inspected and maintenance performed as required. Maintenance has included mowing the vegetation, repairing minor erosion as necessary, and pocket gopher control.

The ROD called for initial periodic monitoring of groundwater with subsequent implementation of a contingency plan for contaminant migration control if established water quality limits were exceeded. The contingency action specified in the FS, and adopted in the ROD was a groundwater pump-out treatment system to control and treat the VOCs in the groundwater. When monitoring of City Well 7 and monitoring well MW-9C detected concentrations of vinyl chloride above the action level, initiation of groundwater remedial activities were triggered in accordance with the RAP.

A groundwater recovery well (RWA) was installed along the western property boundary in September 1989. An aquifer test, coupled with a pilot treatment test, was conducted in October 1989. The tests showed that spray treatment of groundwater at the Site was effective in removing VOCs from recovered groundwater and the spray treatment process did not pose a significant health threat.

Following approval of the final design, Recovery Wells B and C (RW–B and RW–C) were completed on October 24, 1990. On October 31, 1990, the final recovery system began operation. This system consisted of Wells RW–A and RW–C, and City Well 7 discharging through two spray guns to the main spray treatment area, and RW–B pumping to spray area B. This system operated continuously in this configuration, except for brief period of downtime for operation and maintenance, until August 1, 1994, when City Well 7 was removed from the treatment system. City Well 7 was removed from the recovery system because it had not had a detection of vinyl chloride since April 1993.

The system operated with the RW–B and RW–C configuration from August 1994 until April 9, 1998. RW–C was removed from the groundwater extraction system for the following reasons: it was always a clean well (except for a few one time unconfirmed VOC detections); landfill capture was able to be maintained without it; and it would change the groundwater flow stagnation points between recovery wells, thus enchancing cleanup. The system has operated with RW–A and RW–B since April 9, 1998.

Each of the remedial objectives specified in the ROD has been accomplished. The City water supply has been protected through modifications to the former water treatment plant along with the construction of the new water treatment plant. The landfill capping has effectively reduced infiltration thereby reducing the risk of further groundwater impacts. The groundwater recovery and treatment system has effectively contained the VOC-impacted groundwater on-site and the treatment has now reduced all concentrations to below the laboratory detection limits.

This site meets all the site completion requirements as specified in OSWER Directive 9320.2–3C, Procedures for Completion and Deletion of National Priorities List Sites and Update. In addition, the Safe Drinking Water Act (SDWA) (40 CFR Parts 141–146) establishes federal Maximum Contaminant Levels (MCLs) for public drinking water supplies. The MCL for vinyl chloride is 2.0 ug/1. Since there are non-detectable levels of vinyl chloride in each city well and the distribution system, the municipal water supply is in compliance with the SDWA and the established MCL for vinyl chloride.

Monitoring of the landfill monitoring wells and city wells will continue on a semi-annual basis to maintain protection of the city water supply. MPCA will maintain project oversight reviewing data submitted and approving the monitoring plans.

The City employees perform a monthly inspection of the Site as part of their routine monitoring. The inspections include an evaluation of soil erosion, settlement, vegetative cover maintenance, groundwater monitoring wells, and site security. Two times a year, typically April and October, a similar but more comprehensive inspection is performed by the PRPs.

The City of Windom, submitted a Five-Year Review and 1998-1999 Annual Evaluation Report to the MPCA in June 1999. This Five Year Review concluded that all remedial action objectives had been met and recommended that the groundwater extraction system be shut down and the site delisted from the NPL and the Minnesota Permanent List of Priorities (PLP). The MPCA concurred and the system was shut down on September 21, 1999. The Site was delisted from the PLP on February 2, 2000. A contingency plan is in place to reactivate the system if MCLs are exceeded in any monitoring well or municipal well. Semi-annual groundwater monitoring will continue until the next Five-Year Review, which is scheduled for June 2004. At that time, the MPCA will determine if groundwater monitoring will continue.

V. Action

The remedy selected for this Site has been implemented in accordance with the Records of Decision. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, threats to human health and the environment have been minimized. EPA and the State of Minnesota find that the remedy implemented continues to provide adequate protection of human health the environment.

The MPCA concurs with the EPA that the criteria for deletion of the Site have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective October 6, 2000. However, if EPA receives dissenting comments by September 6, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 21, 2000.

William E. Muno,

Acting Regional Administrator, EPA, Region 5.

Part 300, title 40 of chapter 1 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321 (c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site for "Windom Dump, Windom, Minnesota."

[FR Doc. 00–19786 Filed 8–4–00; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, 78, and 101

[ET Docket No. 95–18; FCC 00–233]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document confirms the Commission's decision to require new Mobile-Satellite Service (MSS) licensees in the reallocated 1990–2025 MHz and 2165–2200 MHz bands to bear the cost of relocating Broadcast Auxiliary Service (BAS, including the Cable Television Relay Service and the Local Television Transmission Service) licensees in the 1990–2110 MHz band, and Fixed Service (FS) microwave licensees from the 2165–2200 MHz bands in cases where sharing between MSS and FS is not possible. The Commission also declines a request for mandatory submission of information by incumbent BAS and FS licensees, and dismisses a petition requesting a freeze on new BAS licenses.

DATES: Effective September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, 202/418–2453, swhite@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order and Second Memorandum Opinion and Order*, adopted June 27, 2000, and released July 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Second Report and Order and Second Memorandum Opinion and Order

1. In this *Second Report and Order and Second Memorandum Opinion and Order*, the Commission confirms its decision to require new Mobile-Satellite Service (MSS) licensees in the 1990–2025 MHz and 2165–2200 MHz bands to relocate incumbent BAS and FS licensees with which they are unable to share spectrum. In the March 1997 *First Report and Order and Further Notice of Proposed Rule Making* in ETN Docket No. 95–18, 62 FR 19509, April 22, 1997, we allocated the 1990–2025 MHz and 2165–2200 MHz bands to the Mobile-Satellite Service (MSS).

2. In response to a *Petition for Further Limited Consideration* filed by ICO, Ltd., we reaffirm our decision in the *First Report and Order and Further Notice of Proposed Rule Making*, that new MSS licensees in the 1990–2025 MHz and 2165–2200 MHz band will be required to relocate incumbent licensees in those bands, at the expense of the MSS licensees. This decision is consistent with the policy we established in the *First Report and Order and Further Notice of Proposed Rule Making*, ET Docket No. 92–9, 58 FR 46457, September 2, 1993; and proposed throughout that proceeding. ICO presented no new arguments justifying a change to this policy.

3. In response to a *Petition for Expedited Reconsideration* filed by the ICO U.S.A. Service Group (IUSG), we decline to change our decision, made in the *Third Notice of Proposed Rule Making and Memorandum Opinion and Order and Order* in this proceeding, ET Docket No. 95–18, 63 FR 69606, December 17, 1998, to deny a request filed by IUSG to require incumbent BAS and FS licensees to submit extensive information to facilitate the relocation process. We note that much of the information requested by IUSG is already available in our data bases, and that the remainder would be made available by incumbent BAS and FS licensees in the relocation negotiation process.

4. In response to an *Emergency Petition for Further Limited Consideration* filed by IUSG, we decline as moot a request to impose a "freeze" on the licensing of new BAS facilities. We reject this petition because we made no prior decision on the issue of freezing BAS licenses, and therefore the issue was not ripe for reconsideration. Further, we address the freezing of BAS licenses in the *Second Report and Order*.

5. This allocation will require that the candidate bands be cleared of BAS incumbents in the 1990–2025 MHz band. In order to accommodate these incumbents, we confirm our decision to require MSS licensees to bear the costs of moving BAS licensees to their new band, at 2025–2110 MHz. The relocation of BAS licensees will occur in two phases. In Phase I, the BAS band, which currently consists of seven channels of 17 or 18 megahertz, will be narrowed by reducing the channels to 14.5 or 15 megahertz each, freeing 18 megahertz of spectrum at 1990–2008 MHz for initiation of MSS operations. When this 18 megahertz is fully occupied, and MSS licensees require the remaining 17 megahertz of spectrum, at 2008–2025, Phase II of the BAS relocation will begin, and the BAS band will be reduced to its final form of seven channels of 12.1 or 12.4 megahertz width, at 2025–2110 MHz. BAS licensees and MSS licensees will negotiate the terms of relocation, but generally, the costs of relocation will be borne by MSS.

6. The MSS allocation will also require relocation of FS microwave incumbents. We addressed this issue in the *First Report and Order and Further Notice of Proposed Rule Making* in ET Docket No. 92–9, 58 FR 46457, September 2, 1993, and will follow the same procedures, requiring that MSS licensees negotiate relocation with FS licensees and bear the cost of relocating them from the 2165–2200 MHz band.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *First Report and Order and Further Notice of Proposed Rule Making*[2] and the *Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order* (Third Notice)[3] in this docket, ET Docket No. 95–18. The Commission sought written comment on the proposals in the *First R&O/Further Notice* and the *Third Notice*, including comment on the IRFAs. The present Final Regulatory Flexibility Analysis (FRFA) in this *Second Report and Order and Second Memorandum Opinion and Order (Second R&O/Second MO&O)* conforms to the RFA.[4]

A. Need for, and Objectives of, this Second R&O/Second MO&O

8. This *Second R&O/Second MO&O* establishes rules to govern the relocation of Broadcast Auxiliary Service (BAS), Local Television Transmission Service (LTTS), and Cable Television Relay Service (CARS) licensees from the 1990–2025 MHz band to the remainder of the BAS band, at 2025–2110 MHz. The 1990–2025 MHz band has been reallocated to the Mobile-Satellite Service (MSS). This *Second R&O/Second MO&O* also establishes rules to govern the relocation of Fixed Service (FS) licensees from the 2165–2200 MHz spectrum, reallocated to the MSS, to FS bands above 4 GHz. These rules are designed to ensure an orderly and expeditious transition of these licensees from the 2 GHz spectrum so that MSS operations may be conducted in a designated segment of the spectrum. At the same time, the rules are designed to ensure that incumbent BAS, LTTS, CARS, and FS licensees suffer no harm from relocation.

B. Summary of Significant Issues Raised in Comments in Response to the IRFAs

9. No comments were filed in response to the IRFAs. Nonetheless, the Commission considered the impact of our rules governing the relocation of the BAS, LTTS, CARS, and FS licensees, some of whom may be small entities, from the 2 GHz spectrum. This 2 GHz spectrum was reallocated to the MSS, none of whose licensees will be small entities. The Commission considered several different relocation scenarios, some of which would have imposed the economic burden of relocation on BAS, LTTS, CARS, and FS licensees, including small entities. The

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[1] *See* 5 U.S.C. 601. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] First R&O/Further Notice, 12 FCC Rcd 7388, 62 FR 19509, April 22, 1997.

[3] *Third Notice*, 13 FCC Rcd 23949, 63 FR 69606.

[4] *See* 5 U.S.C. 604.

Commission rejected a variety of scenarios which would have shifted some or all of the economic burden of relocation from MSS licensees to BAS, LTTS, CARS, and FS licensees. See Section E *infra* for a discussion of the alternatives considered by the Commission.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7] The term "small entity" also has the same meaning as "small governmental jurisdiction," which means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[8]

(a) *BAS, LTTS, and CARS Licensees:* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio). CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. BAS and LTTS licensees are entities classified by the SBA as Category 4833 (Television Broadcasting Stations), which are small businesses if they have annual revenues below 10.5 million dollars.[9] CARS licensees are classified as Category 4841 (Cable and Other Pay Television Services), which are small businesses if they have annual revenues below 11 million dollars.[10]

(1) The Commission estimates that there are a total of approximately 2200 BAS, LTTS, and CARS licensees in the United States. Neither the Commission nor the Department of Commerce collect financial information on any broadcast facility, including these auxiliary facilities. We believe, however, that few, if any, of these licensees could be classified as small businesses. Most auxiliary transmitters are owned by parent stations that would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($10.5 million for a TV station and $11 million for a cable system). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

(b) *MSS Licensees:* The Commission has not developed a definition of small entities applicable to MSS licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Category 4899 (Communications Services "Not Elsewhere Classified" (NEC)). This definition provides that a small entity is one with $11.0 million or less in annual receipts.[11] Eight potential MSS licensees will be affected by this rule making proceeding. Given the extremely high start-up costs for MSS companies, none will be small entities.

(c) *FS Licensees:* The Commission has not developed a definition of small entities applicable to FS microwave licensees. Licensees in this service are State and local governments and SBA Categories 4813 (Telephone Communications, Except Radiotelephone),[12] 4619 (Pipelines, N.E.C.),[13] 4911 (Electric Services) and other utility companies,[14] and Major Group 47 (Transportation Services, i.e., railroads).[15] Therefore, the applicable definitions of small entity are the definition under the SBA rules applicable to these activities. This definition provides that small entities are Telephone Communications companies employing fewer than 1500 employees, Pipeline companies with annual receipts of less than $25 million, Electric Services companies generating less than 4 million megawatt hours annually, and Transportation Services, including railroads, with annual receipts of less than $5 million annually. Licensees in the FS also include State and local governments with populations of less than 50,000.

(1) Some FS licensees are likely to be small entities. Using Census Bureau data we estimate that 81,600 of the State and local Governments are small entities.[16] There are approximately 4200 FS microwave links licensed to Telephone Communications companies. The Commission has no data on how many of these links belong to each licensee. Therefore, the total number of telephone licensees must be 4200 or less, of whom a minority may be small entities. Approximately 4000 FS microwave links are licensed to Pipeline companies, Electric Services companies, Transportation Services including railroads, and local and State governments. The Commission has no data on how many of these links belong to each licensee. Therefore, the total number of Pipeline companies, Electric Services companies, Transportation Services including railroads, and local and State government licensees must be 4000 or less, of whom a minority may be small entities.

(d) Using the best data available, the Commission estimates that a large majority of BAS, LTTS, CARS, and FS licensees are not small entities. Because of the high costs attendant to the start-up of MSS operations, none of the eight MSS licensees affected by this rule making will be small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. The adopted rules would require affected BAS, LTTS, CARS, and FS licensees, some of whom may be small entities, to negotiate with MSS licensees for relocation (including replacement or retuning of equipment) or rechannelization or both. These negotiations would include negotiating timetables for relocation and costs. These negotiations are likely to require the skills of accountants and engineers to evaluate the economic and technical requirements of relocation, and of attorneys or other negotiators to conduct negotiations. The estimated cost per incumbent BAS, LTTS, CARS, or FS licensee of relocation negotiations is $2000 to $8000. The Commission has permitted BAS, LTTS, CARS, and FS licensees to negotiate collectively for relocation. Collective negotiations, if employed by these licensees, will reduce the costs of negotiation for each licensee.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The Commission decided that new MSS licensees, none of whom will be small entities, will be required to relocate or rechannelize incumbent BAS, LTTS, CARS, and FS licensees in the 2 GHz band, some of whom are likely to be small entities, at the expense of the new MSS licensees. The

[5] 5 U.S.C.. 603(b)(3).
[6] *Id.* 601(3).
[7] *Id.* At 632.
[8] *Id.* At 601(5).
[9] 13 CFR 121.210, Standard Industrial Classification (SIC) Code 4833.
[10] *Id.* SIC Code 4812.
[11] *Id.* SIC Code 4899.
[12] *Id.* SIC Code 4813.
[13] *Id.* SIC Code 4619.
[14] *Id.* SIC Code 4911.
[15] *Id.* SIC Major Group 47.
[16] See 5 U.S.C. 601(5).

Commission considered the alternative of requiring current BAS, LTTS, CARS, and FS licensees in the 2 GHz band to relocate or rechannelize at their own expense. The Commission rejected this alternative as excessively burdensome on these incumbent licensees, including small entities, and not in the public interest.

13. MSS commenters advocated requiring BAS, LTTS, and CARS licensees to finance their own relocation as their equipment depreciated and they purchased new equipment, claiming that the total costs of relocation, added to the high cost of launching satellites, would cripple the nascent MSS industry. MSS commenters also asserted, however, that there is a huge, underserved demand for MSS. We believe that MSS licensees will build the cost of relocating BAS, LTTS, and CARS licensees into their financial plans, and still will be able to provide service at a profit. In the alternative, MSS may choose to defer expeditious access to the spectrum currently heavily used by BAS, LTTS, and CARS licensees and defer deployment of MSS systems for ten years, in which case no relocation or rechannelization would be required.

14. MSS commenters advocated requiring MSS licensees to pay only the depreciated value of the equipment of incumbent FS licensees, some of which may be small entities. The Commission rejected this position, adhering to our requirement that MSS licensees must provide relocated incumbent FS licensees with comparable facilities in the bands to which the FS licensees are relocated.

15. In the case of involuntary relocation of BAS, LTTS, CARS, and FS licensees, the Commission applied the requirements of our *Emerging Technologies* policies: (1) payment of all relocation expenses by the MSS operator, (2) full comparability of replacement facilities, and (3) the right of the incumbents to demand that MSS licensees cure any defects, should the replacement facilities prove not to be fully comparable after relocation. The relocation requirements adopted by the Commission will guarantee that BAS, LTTS, CARS, and FS licensees, some of whom are likely to be small entities, will suffer no, or minimal, economic impact as a result of relocation.

Report to Congress: The Commission will send a copy of the *Second R&O/Second MO&O*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second R&O/Second MO&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

47 CFR Parts 74 and 101

Radio.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, parts 2, 74, 78, and 101 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302(a), 303, and 336, unless otherwise noted.

2. In § 2.106, the Table of Frequency Allocations is amended to read as follows:

a. Revise pages 48 and 49 of the Table.

b. In the list of United States footnotes, revise footnote US90, remove footnotes US111 and US219, and add footnotes US346 and US347.

c. In the list of non-Federal Government footnotes, revise footnotes NG23, NG118 and NG153, and add footnotes NG156 and NG168.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

S5.149 S5.341 S5.385 S5.386 S5.387 S5.388		
1930-1970 FIXED MOBILE S5.388	1930-1970 FIXED MOBILE Mobile-satellite (Earth-to-space) S5.388	1930-1970 FIXED MOBILE S5.388
1970-1980 FIXED MOBILE S5.388		
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.388 S5.389A S5.389B S5.389F		
2010-2025 FIXED MOBILE S5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.388 S5.389C S5.389D S5.389E S5.390	2010-2025 FIXED MOBILE S5.388
2025–2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE S5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) S5.392		

1755-1850 FIXED MOBILE G42	1755-1850	
1850-1990	1850-1990 FIXED MOBILE	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1990-2025	1990-2025 MOBILE-SATELLITE (Earth-to-space) NG156	Satellite Communications (25)
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) S5.391 S5.392 US90 US222 US346 US347	2025-2110 FIXED NG23 NG118 MOBILE S5.391 S5.392 US90 US222 US346 US347	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE SPACE RESEARCH (deep space) (Earth-to-space) S5.388			2110-2120 US252	2110-2150 FIXED NG23 MOBILE US252 NG153	Public Mobile (22) Fixed Microwave (101) Note: 2110-2150 MHz must be auctioned by September 30, 2002.
2120-2160 FIXED MOBILE S5.388	2120-2160 FIXED MOBILE Mobile-satellite (space-to-Earth) S5.388	2120-2160 FIXED MOBILE S5.388	2120-2200	2150-2160 FIXED NG23	Domestic Public Fixed (21) Fixed Microwave (101)
2160-2170 FIXED MOBILE S5.388 S5.392A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.388 S5.389C S5.389D S5.389E S5.390	2160-2170 FIXED MOBILE S5.388		2160-2165 FIXED NG23 MOBILE NG153	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.388 S5.389A S5.389F S5.392A				2165-2200 MOBILE-SATELLITE (space-to-Earth) NG23 NG168	Satellite Communications (25)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE S5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

* * * * *

United States (US) Footnotes

* * * * *

US90 In the band 2025–2110 MHz, the power flux-density at the Earth's surface produced by emissions from a space station in the space operation, Earth exploration-satellite, or space research services that is transmitting in the space-to-space direction, for all conditions and all methods of modulation, shall not exceed the following values in any 4 kHz sub-band:

(a) -154 dBW/m² for angles of arrival above the horizontal plane (δ) of 0° to 5°,

(b) $-154 + 0.5(\delta - 5)$ dBW/m² for δ of 5° to 25°, and

(c) -144 dBW/m² for δ of 25° to 90°.

* * * * *

US346 Except as provided by footnote US222, the use of the band 2025–2110 MHz by the Government space operation service (Earth-to-space), Earth exploration-satellite service (Earth-to-space), and space research service (Earth-to-space) shall not constrain the deployment of the Television Broadcast Auxiliary Service, the Cable Television Relay Service, or the Local Television Transmission Service. To facilitate compatible operations between non-Government terrestrial receiving stations at fixed sites and Government earth station transmitters, coordination is required. To facilitate compatible operations between non-government terrestrial transmitting stations and Government spacecraft receivers, the terrestrial transmitters shall not be high-density systems (see Recommendations ITU–R SA.1154 and ITU–R F.1247).

US347 In the band 2025–2110 MHz, non-Government Earth-to-space and space-to-space transmissions may be authorized in the space research and Earth exploration-satellite services subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to Government and non-Government stations operating in accordance with the Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG23 Frequencies in the band 2100–2200 MHz may also be assigned to stations in the International Fixed Public Radiocommunication Services located south of 25° 30′ North Latitude in the State of Florida and in U.S. insular areas in the Caribbean, except that no new assignments in the band 2150–2162 MHz will be made to such stations after February 25, 1974 and no new assignments in the band 2165–2200 MHz will be made to such stations after June 27, 2000.

* * * * *

NG118 In the band 2025–2110 MHz, television translator relay stations may be authorized to use frequencies on a secondary basis to other stations in the Television Broadcast Auxiliary Service that are operating in accordance with the Table of Frequency Allocations.

* * * * *

NG153 The bands 2110–2150 MHz and 2160–2165 MHz are reserved for future emerging technologies on a co-primary basis with the fixed and mobile services. Allocations to specific services will be made in future proceedings.

* * * * *

NG156 The band 1990–2025 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000, and on a secondary basis for all other initial applications. Not later than September 6, 2010, the band 1990–2025 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG166 The band 2165–2200 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to January 16, 1992, and on a secondary basis for all other initial applications. Not later than September 6, 2010, the band 2165–2200 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

3. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f) and 554.

4. Section 74.602 is amended by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(3)(i) After January 1, 2000, stations may adhere to the channel plan specified in paragraph (a) of this section, or to the following channel plan in Band A:

Channel A01—2008–2023 MHz
Channel A02—2023–2037.5 MHz
Channel A03—2037.5–2052 MHz
Channel A04—2052–2066.5 MHz
Channel A05—2066.5–2081 MHz
Channel A06—2081–2095.5 MHz
Channel A07—2095.5–2110 MHz

(ii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas 1–30 will be required to use the Band A channel plan in paragraph (a)(3)(i) of this section after completion of relocation by an Emerging Technologies licensee in accordance with § 74.690. Licensees declining relocation and licensees in Nielsen Designated Market Areas 31 and higher will be required to discontinue use of the 1990–2008 MHz band when informed by a Mobile-Satellite Service licensee that it intends to begin operations in the 1990–2008 MHz band.

(4)(i) When Mobile-Satellite Service licensees begin operations in the 2008–2025 MHz band, stations may adhere to the channel plan specified, but are forbidden to use Channel A01, or may adhere to the following channel plan in Band A:

Channel A01—2025–2037.4 MHz
Channel A02—2037.4–2049.5 MHz
Channel A03—2049.5–2061.6 MHz
Channel A04—2061.6–2073.7 MHz
Channel A05—2073.7–2085.8 MHz
Channel A06—2085.8–2097.9 MHz
Channel A07—2097.9–2110 MHz

(ii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas 1–30 will be required to use the Band A channel plan in paragraph (a)(4)(i) of this section after completion of relocation by an Emerging Technologies licensee in accordance with § 74.690. Licensees declining relocation and licensees in Nielsen Designated Market Areas 31 and higher will be required to discontinue use of the 2008–2025 MHz band when informed by a Mobile-Satellite Service licensee that it intends to begin operations in the 2008–2025 MHz band.

5. Section 74.690 is added to Subpart F to read as follows:

§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Broadcast Auxiliary Service licensees (Existing Licensees) in the 1990–2110 MHz band for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or alternatively, would discontinue use of the 2008–2025 MHz band when informed by a Mobile-Satellite Service licensee that it intends to begin operations in the 2008–2025 MHz band.

(b) Existing Licensees in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in these bands until an MSS Licensee completes relocation of the Existing Licensee's operations.

(c) The Commission will amend the operating license of the Existing Licensee to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment,

site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee might incur as a result of operation in another authorized band or migration to another medium;

(2) The MSS Licensee completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television Transmission frequencies and frequency coordination; and

(3) The MSS Licensee builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff. If within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the MSS Licensee must remedy the defects.

(e) Subject to the terms of this paragraph (e), Phase I of the relocation of Existing Licensees will be carried out in the following manner:

(1) Beginning September 6, 2010, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3). Parties may not decline to negotiate, though Existing Licensees may decline to be relocated. MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces the beginning of operations in the 1990–2008 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(3) must discontinue use of Channel A01 (1990–2008 MHz).

(2) Before negotiating with MSS Licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. Thereafter, all negotiations must produce solutions that adhere to the market area's band plan.

(3) After the date the first MSS Licensee begins operations, MSS Licensees must relocate Existing Licensees in Nielsen Designated Market Areas 31–100 within three years, unless any Existing Licensee declines relocation.

(4) Beginning on the date any MSS Licensee announces in writing to Existing Licensees its intention to begin operations in the 2008–2025 MHz band, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(4). MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces its intention to begin operations in the 2008–2025 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(4) must discontinue use of Channel A01 (2008–2023 MHz).

(5) After the date the first MSS Licensee begins operations in the 2008–2025 MHz band, MSS Licensees must relocate Existing Licensees in Nielsen Designated Market Areas 31–100 within three years, and in the remaining Nielsen Designated Market Areas within five years.

(6) Ten years after the date specified in paragraph (e)(1) of this section, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease all operations in the 1990–2025 MHz band within six months.

PART 78—CABLE TELEVISION RELAY SERVICE

6. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

§ 78.11 [Amended]

7. Section 78.11(f) is amended by removing the term "1990–2110 MHz" and adding in its place "2025–2110 MHz".

8. Section 78.18 is amended by designating the text following the heading of paragraph (a)(6) as paragraph (a)(6)(i) and adding paragraph (a)(6)(ii) to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) * * *

(i) * * *

(ii) After a licensee has been relocated in accordance with the provisions of § 78.40, operations will be in the band 2025–2110 MHz. The following channel plan will apply, subject to the provisions of § 74.604 of this chapter:

Frequency Band (MHz)
2025–2037.4
2037.4–2049.5
2049.5–2061.6
2061.6–2073.7
2073.7–2085.8
2085.8–2097.9
2097.9–2110

* * * * *

9. Section 78.40 is added to Subpart B to read as follows:

§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to Emerging Technologies.

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Cable Television Relay Service licensees (Existing Licensees) in the 1990–2110 MHz band for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or alternatively, would accept a sharing arrangement with the MSS Licensee that may result in an otherwise impermissible level of interference to the Existing Licensee's operations.

(b) Existing Licensees in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in these bands until an MSS Licensee completes relocation of the Existing Licensee's operations.

(c) The Commission will amend the operating license of the Existing Licensee to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee might incur as a result of operation in another authorized band or migration to another medium;

(2) The MSS Licensee completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television

Transmission frequencies and frequency coordination; and

(3) The MSS Licensee builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the MSS Licensee must remedy the defect.

(f) Subject to the terms of this paragraph (f), Phase I of the relocation of Existing Licensees will be carried out in the following manner:

(1) Beginning September 6, 2000, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this chapter. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated. MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces the beginning of operations in the 1990–2008 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(3) of this chapter must discontinue use of Channel A01 (1990–2008 MHz).

(2) Before negotiating with MSS Licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. Thereafter, all negotiations must produce solutions that adhere to the market area's band plan.

(3) After the date the first MSS Licensee begins operations, MSS Licensees must relocate Existing Licensees in Nielsen Designated Market Areas 31–100 within three years, unless any Existing Licensee declines relocation.

(4) Beginning on the date any MSS Licensee announces in writing to Existing Licensees its intention to begin operations in the 2008–2025 MHz band, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(4) of this chapter. MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces its intention to begin operations in the 2008–2025 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(4) of this chapter must discontinue use of Channel A01 (2008–2023 MHz).

(5) After the date the first MSS Licensee begins operations in the 2008–2025 MHz band, MSS Licensees must relocate Existing Licensees in the remaining Nielsen Designated Market Areas within three years.

(6) Ten years after the date specified in paragraph (f)(1) of this section, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease all operations in the 1990–2025 MHz band within six months.

§ 78.101 [Amended]

10. In § 78.101(a), the table is amended by removing the term "1,990 to 2,110" in the first column and adding in its place "2,025 to 2,110".

11. In § 78.103(e) the table is revised to read as follows:

§ 78.103 Emissions and emission limitations.

* * * * *

(e) * * *

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
1,990 to 2,110	17 or 18.[1]
6,425 to 6,525	8 or 25.
6,875 to 7,125	25.
12,700 to 13,250	25.
17,700 to 19,700	80.
31,000 to 31,300	25 or 50.

[1] After a licensee has been relocated in accordance with § 78.40, the maximum authorized bandwidth in the frequency band 2,025 to 2,110 MHz will be 12.1/12.4 MHz.

PART 101—FIXED MICROWAVE SERVICES

12. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

13. Section 101.69 is amended by adding paragraph (d) to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(d) Relocation of FMS licensees in the 2165–2200 MHz band by Mobile-Satellite Service (MSS) licensees will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

(1) Non-public safety incumbents will have a two-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year mandatory negotiation period.

14. Section 101.73 is amended by adding paragraph (d) to read as follows:

§ 101.73 Mandatory negotiations.

* * * * *

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2165–2200 MHz band. Mandatory negotiations will commence when the Mobile-Satellite Service (MSS) licensee informs the fixed microwave licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, comparable facilities provide an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, comparable facilities provide equivalent data loading bits per second (bps).

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. Comparable facilities provide reliability equal to the overall reliability of the FMS system. For digital systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmission, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog system is replaced with a digital system, only the resulting frequency response, harmonic distortion, signal-to-noise and its reliability will be considered in determining comparable reliability.

(3) *Operating Costs.* Operating costs are the cost to operate and maintain the FMS system. MSS licensees would compensate FMS licensees for any increased recurring costs associated with the replacement facilities (*e.g.*,

additional rental payments, and increased utility fees) for five years after relocation. MSS licensees could satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the FMS licensee would be equivalent to the 2 GHz system in order for the replacement system to be comparable.

15. Section 101.75 is amended by adding two sentences at the end of paragraph (d), to read as follows:

§ 101.75 Involuntary relocation procedures.

* * * * *

(d) * * * FMS licensees relocated from the 2165–2200 MHz band may not be returned to their former 2 GHz channels. All other remedies specified in this paragraph (d) are available to FMS licensees relocated from the 2165–2200 MHz band, and may be invoked whenever the FMS licensee demonstrates that its replacement facility is not comparable, subject to no time limit.

16. Section 101.83 is added to Subpart B to read as follows:

§ 101.83 Reimbursement of relocation expenses in the 2115–2150 MHz and 2165–2200 MHz bands.

(a) Whenever an ET licensee (including Mobile-Satellite Service licensees) in the 2115–2150 MHz or 2165–2200 MHz bands relocates an incumbent paired microwave link with one path in the 2115–2150 MHz band, and the paired path in the 2165–2200 MHz band, the ET licensee is entitled to reimbursement of 50% of its relocation costs from any subsequently entering ET licensee which would have been required to relocate the same fixed microwave link.

(b) The subsequently entering ET licensee must reimburse the relocating ET licensee before the subsequently entering licensee may begin operations in these bands, unless the subsequently entering ET licensee can demonstrate that, according to established interference criteria, it would not have interfered with the microwave link in question.

(c) The total costs of which 50% is to be reimbursed will not exceed $250,000 per paired fixed microwave link relocated, nor $150,000 if a new or modified tower is required.

[FR Doc. 00–19478 Filed 8–4–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1708, MM Docket No. 99–265; RM–9660]

Digital Television Broadcast Services; Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Noe Corporation L.L.C., licensee of station KNOE–TV, NTSC Channel 8, Monroe, Louisiana, substitutes DTV Channel 7 for DTV Channel 55 at Monroe, Louisiana. *See* 64 FR 43132, August 9, 1999. DTV Channel 7 can be allotted to Monroe at coordinates (32–11–45 N. and 92–04–10 W.) with a power of 5.0, HAAT of 519 meters, and with a DTV service population of 454 thousand. With this action, this proceeding is terminated.

DATES: Effective September 18, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–265, adopted August 2, 2000, and released August 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by removing DTV Channel 55 and adding DTV Channel 7 at Monroe.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–19888 Filed 8–4–00; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1707, MM Docket No. 99–317; RM–9743]

Digital Television Broadcast Service; Baton Rouge, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Louisiana Television Broadcasting Corporation, licensee of TV station WBRZ, substitutes DTV 13 for DTV Channel 42 at Baton Rouge, Louisiana. *See* 64 FR 59148, November 2, 1999. DTV Channel 13 can be allotted to Baton Rouge at coordinates (30–17–49 N. and 91–11–40 W.) with a power of 30, HAAT of 515 meters and with a DTV service population of 1751 thousand. With this action, this proceeding is terminated.

DATES: Effective September 18, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–317, adopted August 2, 2000, and released August 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR PART 73

Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by removing DTV Channel 42 and adding DTV Channel 13 at Baton Rouge.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–19886 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–96–1437]

RIN 2105–AC57

Maintenance of and Access to Records Pertaining to Individuals; Amendment

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Editorial correction to final rule.

SUMMARY: This amendment corrects an oversight in the last revision of the rules implementing the Privacy Act, by including the Maritime Administration as a DOT agency subject to these rules.

DATES: This correction is effective June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590; telephone (202) 366–9156, FAX (202) 366–9170; e-mail bob.ross@ost.dot.gov.

SUPPLEMENTARY INFORMATION: When DOT last revised its regulations implementing the Privacy Act (62 FR 23666; May 1, 1997), we unintentionally omitted the Maritime Administration as an agency of DOT subject to these regulations. It is and has been all along; hence, this correction merely clarifies that fact.

Analysis of Regulatory Impacts

This editorial correction is not a change in the existing rule; therefore, it is not a "significant regulatory action" within the meaning of Executive Order 12866, or significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979). It has no economic impact. I certify that this correction will not have a significant economic impact on a substantial number of small entities.

This editorial correction does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the correction does not contain any collection of information requirements requiring review under the Paperwork Reduction Act, as amended.

List of Subjects in 49 CFR Part 10

Privacy.

In accordance with the above, DOT amends 49 CFR Part 10 as follows:

PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

2. In § 10.5, in the definition of "Department", a new paragraph (j) is added and the introductory text of the section republished to read as follows:

§ 10.5 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

* * * * *

Department * * *

* * * * *

(j) Maritime Administration.

* * * * *

Issued in Washington, DC on July 27, 2000.

Rosalind A. Knapp,

Deputy General Counsel.

[FR Doc. 00–19764 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 65, No. 152
Monday, August 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 46 and 47

[Docket No. FV99–362]

RIN 0581–AB76

Perishable Agricultural Commodities Act: Increase in License and Complaint Filing Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule: withdrawal.

SUMMARY: The Department of Agriculture (USDA) is withdrawing a proposed rule published in the Federal Register on February 15, 2000 (65 FR 7462). The proposed rule would have amended the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to increase license fees and the PACA Rules of Practice Other than Formal Disciplinary Proceedings to increase complaint filing fees in reparation actions. Specifically, the annual license fee would have been increased from $550 to $600 for very small businesses, and increased from $550 to $850 for all other licensees. The informal complaint filing fee would have been increased from $60 to $100.

DATES: This proposed rule is withdrawn as of August 14, 2000.

ADDRESSES: The complete file for this notice is available for public inspection by appointment during normal business hours at USDA, 1400 Independence Avenue, SW, Room 2095—So. Bldg., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095—So. Bldg., P.O. Box 96456, Washington, D.C. 20090–6456, phone (202) 720–2272. E-mail charles.parrott@usda.gov.

SUPPLEMENTARY INFORMATION: The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

Historically, the PACA program has been funded through license fees and fees for filing reparation complaints. The PACA Amendments of 1995 (1995 Amendments) [1] increased the annual license from $400 to $550 (up to a maximum fee of $4000) for all licensees except retailers and grocery wholesalers, which were phased out of paying license fees over a 3-year period that concluded on November 14, 1998. Retailers account for approximately 30 percent of all PACA licensees, and provided about 35 percent of the program's revenue prior to being phased out of the license fee requirement. Funds acquired in excess of operating costs are maintained by AMS exclusively for the program's use, without fiscal year limitations, in a separate reserve fund. This reserve is used to offset unanticipated expenses, and provide flexibility to deal with rising program costs.

The 1995 Amendments authorize the Secretary of Agriculture to increase fees to operate the PACA program after November 14, 1998, through rulemaking, provided that the PACA program's financial reserves fall below 25 percent of the projected annual program costs. USDA proposed that license and complaint filing fees be increased when PACA program budget projections for fiscal years 2000 and 2001 showed that the program's assets would have fallen below the required 25 percent of projected expenditures in fiscal year 2001. Without a fee increase, the PACA program would have exhausted its reserves by the end of fiscal year 2003, and would have needed to begin reducing its level of services to the industry. In response, AMS proposed, on February 15, 2000, to increase license fees and fees charged for filing reparation complaints.

On June 20, 2000, however, President Clinton signed H.R. 2559 (Public Law 106–224), which included $30.45 million to be deposited into USDA's PACA reserve fund in fiscal year 2001, in order to maintain PACA license and complaint filing fees at current levels. In light of the funds provided to the PACA program by P.L. 106–224, USDA has concluded that it is unnecessary to continue this rulemaking. Therefore, USDA withdraws the proposed rule.

Authority: 7 U.S.C. 499a–499t.

Dated: August 2, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19915 Filed 8–4–00; 8:45 am]

BILLING CODE 3410–02–P

[1] Pub. L. 104–48, 109 Stat. 427 (1995).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209038–89]

RIN 1545–AO75

Foreign Trusts That Have U.S. Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 679 of the Internal Revenue Code relating to transfers of property by U.S. persons to foreign trusts having one or more United States beneficiaries. The proposed regulations affect United States persons who transfer property to foreign trusts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 6, 2000. Requests to speak (with outlines of oral comments) to be discussed at the public hearing scheduled for November 8, 2000, at 10 a.m. must be submitted by October 18, 2000.

ADDRESSES: Send submissions to: CC:MSP:RU (REG–209038–89), room 5226, Internal Revenue Service, POB

7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:MSP:RU (REG–209038–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Willard W. Yates at (202) 622–3880; concerning submissions and the hearing, Sonya M. Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 679 was added to the Internal Revenue Code (Code) by the Tax Reform Act of 1976 (1976 Act), Public Law 94–445, Sec. 1013(a), (90 Stat. 1614). Section 679 was amended significantly by the Small Business Job Protection Act of 1996 (1996 Act), Public Law 104–188, Secs. 1903(a)(1), 1903(a)(2), 1903(b), 1903(c) and 1903(f) (110 Stat. 1755).

1. Law Prior to 1976

Sections 671 through 678 (the grantor trust rules) treat grantors and other persons who hold certain powers or interests over a domestic or foreign trust as owners of the portion of the trust with respect to which they hold the powers or interests. If the grantor or other person is a U.S. citizen or resident, the grantor trust rules result in the taxation of the worldwide income of the trust (or portion thereof) to the grantor or other person.

Prior to the enactment of section 679, if a trust was not subject to the grantor trust rules (nongrantor trust), the income of the domestic or foreign trust generally was taxed to the trust to the extent the income was not currently distributed or required to be distributed to the beneficiaries of the trust. The income of a foreign nongrantor trust was taxed in basically the same manner as the income of a nonresident alien individual. Foreign trusts were subject to U.S. tax only on their U.S.-source income (other than capital gains) and on any income effectively connected with a U.S. trade or business (or treated as effectively connected with a U.S. trade or business). Like nonresident alien individuals, foreign nongrantor trusts were generally not subject to U.S. tax on foreign-source income.

Prior to the enactment of section 679, U.S. persons often established foreign nongrantor trusts that invested in assets that generated foreign-source income only. These foreign trusts avoided all U.S. tax on their income. In addition, these trusts generally invested in countries that did not tax interest or dividends paid to foreign investors, and the trusts generally were formed and administered in countries that did not tax trusts. Accordingly, in many cases these trusts paid no income tax anywhere in the world. Although U.S. beneficiaries were subject to U.S. tax when a foreign nongrantor trust distributed income to them, the use of foreign nongrantor trusts permitted tax-free accumulations of income, giving foreign trusts a significant advantage over domestic trusts.

2. Overview of 1976 Changes

Congress believed that allowing tax-free accumulation of income was inappropriate and provided an unwarranted advantage to foreign trusts over domestic trusts. Congress enacted section 679 as part of the 1976 Act to provide generally that where a U.S. person directly or indirectly transfers property to a foreign trust, the income of the foreign trust is taxable to the transferor if the trust has a U.S. beneficiary. Accordingly, the trust is treated as a grantor trust whether or not the transferor retains any power or interest with respect to the trust. Congress enacted exceptions for certain transfers for fair market value, for transfers by reason of death, and for transfers to certain employee benefit trusts.

3. Overview of 1996 Changes

Section 1903 of the 1996 Act made several changes to section 679. These changes focused primarily on areas where taxpayers could improperly avoid the application of section 679. For example, Congress was concerned that certain taxpayers attempted to come within the fair market value exception of section 679(a)(2), thereby avoiding the application of section 679(a)(1), by issuing trust obligations that might not be repaid. H.R. Rep. No. 542, 104th Cong., 2d Sess., pt. 2 at 25 (1996). Accordingly, the 1996 Act added new section 679(a)(3), which generally provides that obligations issued by the trust, by any grantor or beneficiary of the trust, or by any person related to any grantor or beneficiary are not taken into account in applying the fair market value exception except as provided in regulations.

The 1996 Act also added new sections 679(a)(4) and (5) to prevent taxpayers from improperly avoiding the application of section 679. Section 679(a)(4) ensures that certain foreign persons who transfer property to a foreign trust in anticipation of becoming U.S. persons (pre-immigration trusts) cannot avoid the rules of section 679 by transferring property, directly or indirectly, to a foreign trust and then becoming a resident of the United States within 5 years after the transfer. Section 679(a)(5) prevents U.S. individuals from circumventing section 679 by transferring property to a domestic trust and then causing the domestic trust to become a foreign trust.

In addition to the anti-avoidance measures, Congress added a new exception to the general rule of section 679(a)(1) for transfers of property to certain charitable trusts. Congress also enacted new section 679(c)(3), which provides that beneficiaries who first become U.S. persons more than 5 years after the date of a transfer are disregarded for purposes of applying section 679 with respect to that transfer.

The 1996 Act also amended section 6048 to expand the reporting requirements that apply to (i) a U.S. person who transfers property to a foreign trust, and (ii) a foreign trust that is treated as owned by a U.S. person under the grantor trust rules. The penalties under section 6677 for a failure to comply with these reporting requirements were also significantly increased. See Notice 97–34 (1997–2 C.B. 422) and Forms 3520 and 3520A.

In addition, a transfer of appreciated property by a U.S. person to a foreign trust may trigger the immediate recognition of any gain in the property under section 684. A transfer to a foreign trust that is treated as owned by a U.S. person under section 679 generally is exempt from this requirement at the time of the transfer. However, if the trust subsequently ceases to be treated as owned by the U.S. person, the change in the status of the trust may trigger gain at the time of the change.

Section 679 applies only for income tax purposes. The estate and gift tax provisions of the Code determine whether a transfer to a foreign trust is subject to the federal gift tax, or whether the corpus of a foreign trust is included in the gross estate of the U.S. transferor.

Explanation of Provisions

Section 1.679–1 U.S. Transferor Treated as Owner of Foreign Trust

Section 1.679–1(a) of the proposed regulations provides that a U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property transferred during each taxable year that the trust is treated as having a U.S. beneficiary. This rule applies without regard to whether the U.S. transferor retains any power described in sections 673 through 677. If the U.S. transferor is treated as the owner of a portion of a trust, under section 671 all income, deductions, and credits attributable to that portion must be taken into account by the U.S. transferor in determining the U.S. transferor's tax liability.

The determination of whether a foreign trust is treated as having a U.S. beneficiary is made under the rules set forth in § 1.679–2. Section 1.679–3 defines the term *transfer*. Section 1.679–4 provides exceptions to the general rule of § 1.679–1. Section 1.679–5 provides special rules for pre-immigration trusts, and § 1.679–6 describes the treatment of a domestic trust that becomes a foreign trust. Section 1.679–7 provides effective dates.

Congress intended section 679 to override section 678. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 209 (1975). Accordingly, § 1.679–1(b) provides that a U.S. transferor will be treated as the owner of the portion of a trust attributable to the property transferred to the trust by the U.S. transferor whether or not another person would be treated as the owner of the same portion of the trust under section 678.

Section 1.679–1(c)(1) defines the term *U.S. transferor* to mean any U.S. person who directly, indirectly, or constructively transfers property to a foreign trust.

Section 1.679–1(c)(2) defines the term *U.S. person* by reference to section 7701(a)(30). Accordingly, section 679 can apply not only to individuals, but also to entities. Section 1.679–1(c)(2) also provides that a U.S. person includes an individual who elects under section 6013(g) to be treated as a U.S. resident and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)–7(a).

Sections 1.679–1(c)(3), (4), (5), and (6) define the terms *foreign trust*, *property*, *related person*, and *obligation*, respectively.

The proposed regulations do not provide specific guidance on the treatment of joint owners that transfer property to a foreign trust. Treasury and the IRS invite comments with specific examples of areas that may need comments with specific examples of areas that may need clarification, such as, for example, the treatment of community property or the joint ownership of property by non-citizen spouses.

The rules of this section apply with respect to transfers to foreign trusts after November 6, 2000.

Section 1.679–2: Trusts Treated as Having a U.S. Beneficiary

The proposed regulations employ a broad approach in determining whether a foreign trust is treated as having a U.S. beneficiary. This broad approach is consistent with the legislative history of the 1976 Act. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 210 (1975).

Under § 1.679–2(a)(1), a foreign trust that has received property from a U.S. transferor is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor: (i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person; and (ii) if the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person. For purposes of section 679, foreign trusts generally are treated as having a U.S. beneficiary unless both of these requirements are satisfied.

Section 1.679–2(a)(2)(i) provides that, for purposes of applying these tests, income or corpus is considered to be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event.

The proposed regulations recognize that it may be possible for a U.S. person to obtain a future benefit from the trust under certain unexpected circumstances and that the possibility of such circumstances should not necessarily cause the foreign trust to be treated as having a U.S. beneficiary. Accordingly, § 1.679–2(a)(2)(ii) provides a narrow exception to the general determination of whether a U.S. person can obtain a benefit under the foreign trust. Persons who are not named as possible beneficiaries and are not members of a class of beneficiaries as defined in the trust instrument (or other relevant agreements, understandings, records and documents, as described below) are not taken into consideration for purposes of applying the general rule of § 1.679–2(a)(1) if the U.S. transferor demonstrates to the satisfaction of the Commissioner that their contingent interest in the trust is so remote as to be negligible. This exception does not apply with respect to persons to whom distributions could be made pursuant to a grant of discretion to the trustee or another person. For example, if the trust instrument provides that the trustee can distribute corpus to any of a large class of persons that could include U.S. persons, this exception would not apply.

The proposed regulations require an annual determination of whether a foreign trust is treated as having a U.S. beneficiary. Under § 1.679–2(a)(3), the possibility that a beneficiary who is not a U.S. person could become a U.S. person will not cause that beneficiary to be treated as a U.S. person for purposes of determining whether there is a U.S. beneficiary until the year in which the beneficiary actually becomes a U.S. person. However, if that non-U.S. beneficiary becomes a U.S. person for the first time more than 5 years after the date of the transfer, that beneficiary is not treated as a U.S. person for purposes of the U.S.-beneficiary determination even after the beneficiary actually becomes a U.S. person.

Section 1.679–2(a)(4) makes it clear that a trust may be treated as having a U.S. beneficiary not only by reference to the trust instrument, but also by reference to all other written and oral agreements and understandings relating to the trust. Also, a trust may be treated as having a U.S. beneficiary based on possible amendments to the trust instrument, possible application of local law that would require a U.S. beneficiary (unless the law is not reasonably expected to be applied under the facts and circumstances), or actual or reasonably expected disregard of the terms of the trust instrument by the parties to the trust.

A foreign trust is treated as having a U.S. beneficiary if it can benefit a U.S. person indirectly. Section 1.679–2(b) provides that an amount is treated as paid or accumulated to or for the benefit of a U.S. person if it can be paid to or accumulated for the benefit of a controlled foreign corporation (as defined in section 957(a)); a foreign partnership, if a U.S. person is a partner of such partnership; or a foreign trust or

estate, if such trust or estate has a U.S. beneficiary. In addition, a foreign trust is treated as having a U.S. beneficiary if a U.S. person can benefit indirectly from the foreign trust by receiving distributions from the trust through an intermediary, such as an agent or nominee, through the use of a debit or credit card, or any other means where a U.S. person may obtain an actual or constructive benefit from the trust.

The proposed regulations anticipate situations where a foreign trust's status as having a U.S. beneficiary changes. Section 1.679–2(c)(1) provides that if a foreign trust does not have a U.S. beneficiary initially, but subsequently acquires a U.S. beneficiary, the U.S. transferor is treated as having additional income in the first taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

Section 1.679–2(c)(2) provides that if a trust to which a U.S. transferor transferred property is initially treated as having a U.S. beneficiary, but subsequently ceases to be treated as having a U.S. beneficiary, the U.S. transferor is no longer treated as the owner beginning in the following taxable year (unless the U.S. transferor is otherwise treated as the owner under the grantor trust rules). The U.S. transferor is treated as making a transfer to the foreign trust that may be subject to the gain recognition rules of section 684.

The rules of this section apply with respect to transfers to foreign trusts after November 6, 2000.

Section 1.679–3 Transfers

Section 1.679–3(a) of the proposed regulations broadly defines the term transfer as any direct, indirect, or constructive transfer by a U.S. person to a foreign trust. The rules are generally consistent with the rules for determining whether a person is considered to be a grantor of a trust under § 1.671–2(e).

Section 1.679–3(b) provides that a transfer of property to a foreign trust from either a domestic or foreign trust that is owned by a U.S. person under sections 673 through 679 is treated as a transfer from the owner of the transferor trust. For example, if a U.S. person is treated as the owner of a domestic trust under section 676, and that domestic trust transfers property to a foreign trust, the U.S. person is treated as having transferred the property to the foreign trust.

Section 1.679–3(c) provides rules for determining when there is an indirect transfer. Under § 1.679–3(c)(1), a transfer to a foreign trust by any person to whom a U.S. person transfers property (referred to as an intermediary) is treated as an indirect transfer by a U.S. person if the transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of U.S. tax. Section 1.679–3(c)(2) deems a transfer to have been made pursuant to such a plan if the U.S. transferor is related to a U.S. beneficiary of the foreign trust, or has another relationship with the foreign trust that establishes a reasonable basis for concluding that the U.S. transferor would make a transfer to the foreign trust, and the U.S. person cannot demonstrate to the satisfaction of the Commissioner that: (i) The intermediary has a relationship with a U.S. beneficiary of the foreign trust that establishes a reasonable basis for concluding that the intermediary would make a transfer to the foreign trust, (ii) the intermediary acted independently of the U.S. transferor, (iii) the intermediary is not an agent of the U.S. transferor under generally applicable United States agency principles, and (iv) that the intermediary timely complied with the reporting requirements of section 6048 (including Notice 97–34), if applicable. This test is consistent with the legislative history of the 1976 Act. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 209 (1975). This test is also similar to the test in § 1.643(h)–1(a), although the presumption in the proposed regulations applies without regard to the period of time between the transfer from the U.S. person to the intermediary and from the intermediary to the foreign trust.

Section 1.679–3(c)(3) explains that if a transfer is treated as an indirect transfer, the intermediary generally is treated as an agent of the U.S. transferor, and the property is treated as transferred to the foreign trust by the U.S. transferor in the year the property is transferred, or made available, by the intermediary to the foreign trust. The fair market value of the property transferred generally is determined as of the date of the transfer by the intermediary to the foreign trust. Although the intermediary is not treated as having transferred that property to the foreign trust for purposes of section 679, the intermediary must comply with the reporting requirements of section 6048, if applicable.

Section 1.679–3(d) provides that a constructive transfer includes any assumption or satisfaction of a foreign trust's obligation. For example, a U.S. transferor's payment of a foreign trust's obligation to a third party is treated as a constructive transfer.

Congress anticipated that guarantees of a trust obligation would be treated as transfers. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 209 (1975). Section 1.679–3(e) provides rules regarding the treatment of guarantees as transfers. If a foreign trust borrows money or other property from either a U.S. or non-U.S. person who is not a related person with respect to the trust (referred to as the lender), and a U.S. person who is a related person with respect to the trust (referred to as the U.S. guarantor) guarantees the foreign trust's obligation, the U.S. guarantor is treated as having made a transfer to the foreign trust. The amount deemed transferred is the guaranteed portion of the adjusted issue price of the obligation plus any accrued but unpaid stated interest. Payments of principal by the trust with respect to the obligation are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property deemed transferred.

Section 1.679–3(f) provides specific rules regarding transfers by a U.S. person to an entity owned by a foreign trust if the U.S. person is related to the foreign trust. The transfer is treated as a transfer from the U.S. person to the foreign trust, followed by a transfer from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity.

Sections 1.679–3 applies to transfers after November 6, 2000.

Section 1.679–4 Exceptions to General Rule

Pursuant to sections 679(a)(1) and (a)(2), § 1.679–4(a) provides the following four exceptions to the general rule of § 1.679–1: (i) transfers to a foreign trust by reason of the death of the transferor; (ii) transfers to a foreign trust described in sections 402(b), 404(a)(4), or 404A; (iii) transfers to a foreign trust that has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing the trust's tax exempt status under section 501(c)(3); and (iv) transfers to the extent they are for fair market value.

Section 1.679–4(b) provides rules for determining whether a transfer to a

foreign trust is for fair market value. The rules generally follow the rules for determining fair market value under § 1.671–2(e). For purposes of this determination, an interest in the trust is not considered to be property received from the trust. A distribution to a foreign trust with respect to an interest held by such trust in an entity other than a trust or in a trust described in § 301.7701–4(c), (d), or (e) is considered to be a transfer for fair market value. For example, a dividend paid by a U.S. corporation to a foreign trust with respect to the foreign trust's stock ownership in the corporation is not a transfer that is subject to the general rule of section § 1.679–1.

Section 679(a)(3) provides that in determining whether a transfer is for fair market value, obligations received from the trust or certain related persons are not taken into account, except to the extent provided in regulations. As noted above, this provision reflects Congress' concern that certain taxpayers may have attempted to take advantage of the fair market value exception to section 679 by transferring property to a foreign trust in exchange for obligations issued by the trust (or related persons) that might not be repaid. Congress intended Treasury and the IRS to exercise their regulatory authority to consider whether there is a reasonable expectation that an obligation of the trust would be repaid. H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 335 (1996).

The proposed regulations, in exercising this authority, follow the approach in Notice 97–34 (1997–2 C.B. 422). The proposed regulations describe the circumstances under which an obligation of a foreign trust (or a person related to that trust) will be treated as a qualified obligation that is taken into account for purposes of determining whether a U.S. transferor received fair market value from a trust in exchange for a transfer by the U.S. transferor. If the U.S. transferor, in exchange for the property transferred, receives an obligation of the trust (or a related person) that is not a qualified obligation, the obligation is considered to have no value for purposes of determining whether the transferor received fair market value.

The term obligation is defined in § 1.679–1(c)(6). Section 1.679–4(d) provides that to be treated as a qualified obligation, an obligation must be reduced to writing by an express written agreement. The obligation must have a term not in excess of five years. For purposes of determining an obligation's term, the obligation's maturity date is the last possible date it can be outstanding under the terms of the obligation. Accordingly, demand loans and private annuity transactions do not constitute qualified obligations. In addition, all payments on a qualified obligation must be denominated in U.S. dollars. The yield to maturity cannot be less than 100 percent of the applicable Federal rate and cannot be greater than 130 percent of the applicable Federal rate. The U.S. transferor must extend the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than three years after the maturity date of the obligation. The extension is not necessary if the maturity date of the obligation does not extend beyond the end of the U.S. transferor's taxable year and is paid within such period. Finally, the U.S. transferor must report the status of the loan, including principal and interest payments, on Form 3520 for every year that the loan is outstanding.

Section 1.679–4(d) also incorporates other rules regarding qualified obligations from Notice 97–34. For example, under certain circumstances, the issuance of additional obligations by the foreign trust or a person related to the foreign trust may cause an obligation that had been a qualified obligation to lose such status. Renegotiation of the terms of the loan is treated as a new loan. If an obligation loses its status as a qualified obligation, the U.S. transferor is treated as making a transfer to the trust that may be subject to § 1.679–1. Principal repayments with respect to obligations that are not qualified obligations are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property originally transferred.

The rules of this section generally apply with respect to transfers to foreign trusts after November 6, 2000. Special effective dates, based on the guidance set forth in Notice 97–34, are provided for the rules that apply to obligations.

Section 1.679–5 Pre-immigration Trusts

The 1996 Act added section 679(a)(4) to address the potential abuse of nonresident aliens establishing foreign trusts shortly before becoming U.S. persons. Section 1.679–5 provides that if a nonresident alien individual becomes a U.S. person and the individual has a residency starting date (as determined under section 7701(b)(2)(A)) within 5 years after directly or indirectly transferring property to a foreign trust, the individual is deemed to transfer the property to the trust on the residency starting date. The amount deemed transferred is the portion of the trust attributable to the property transferred by the individual in the original transfer. Section 1.679–5(b) provides that if the nonresident alien individual is treated under the grantor trust rules as the owner of any portion of the trust and the individual ceases to be so treated, the 5–year period begins on the date the individual ceases to be so treated.

The property deemed transferred to the foreign trust on the residency starting date includes undistributed net income, as defined in section 665(a), attributable to the property transferred. Undistributed net income for periods before the individual's residency starting date is taken into account only for purposes of determining the portion of the trust that is attributable to property transferred.

If an individual is treated as making a deemed transfer pursuant to this provision, the reporting requirements of section 6048 apply to the deemed transfer as of the residency starting date.

The rules of this section apply to persons whose residency starting date is after November 6, 2000.

Section 1.679–6 Outbound Migrations of Domestic Trusts

The proposed regulations implement section 679(a)(5), which addresses the situation where a trust that is a domestic trust becomes a foreign trust. If an individual who is a U.S. person transfers property to a trust that is not a foreign trust, and the trust becomes a foreign trust while the U.S. person is alive, the U.S. individual is treated as a U.S. transferor and is deemed to transfer the property to a foreign trust on the date the domestic trust becomes a foreign trust. The property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property previously transferred. Undistributed net income for periods prior to the trust migration is taken into account only for purposes of determining the portion of the trust that is attributable to the property transferred by the U.S. person.

If a U.S. person is treated as making a deemed transfer pursuant to this provision, the reporting requirements of section 6048 apply to the deemed transfer as of the date of the deemed transfer.

The rules of this section apply to trusts that become foreign trusts after November 6, 2000.

Section 1.679–7 Effective Dates

This section of the proposed regulations provides effective dates with respect to §§ 1.679–1 through 1.679–6. These effective dates are discussed above in the context of each respective section. Notwithstanding the effective dates in the proposed regulations, the Internal Revenue Service may apply the effective dates that are applicable to section 679 of the Internal Revenue Code. In addition, the Internal Revenue Service is not restricted from applying general income tax principles to transactions prior to the effective dates of the proposed regulations to determine, for example, that a U.S. person has made a transfer to a foreign trust.

Certain Clarifications Regarding Section 958

The proposed regulations clarify that, under § 1.958–1(b), a person who is treated as the owner of any portion of a trust under section 679 and the other grantor trust rules is treated as the owner of the stock owned by the trust with respect to that portion. This change is merely intended as a clarification of existing law.

Existing § 1.958–2(c)(1)(ii)(b) provides that a person who is treated as the owner of any portion of a trust under sections 671 through 678 is treated as the owner of the stock owned by or for that portion of the trust for purposes of the constructive ownership rules of section 958(b). Because section 679 was not enacted until 1976, it is not referred to in the existing regulations, which were issued in 1966. The proposed regulations clarify that this treatment also applies to persons treated as the owner of any portion of a trust under section 679. This change is merely intended as a clarification of existing law.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 8, 2000, at 10 a.m. in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by November 6, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 18, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these proposed regulations is Willard W. Yates of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.679–1 also issued under 26 U.S.C. 643(a)(7) and 679(d).
Section 1.679–2 also issued under 26 U.S.C. 643(a)(7) and 679(d).,
Section 1.679–3 also issued under 26 U.S.C. 643(a)(7) and 679(d).
Section 1.679–4 also issued under 26 U.S.C. 643(a)(7), 679(a)(3) and 679(d).
Section 1.679–5 also issued under 26 U.S.C. 643(a)(7) and 679(d).
Section 1.679–6 also issued under 26 U.S.C. 643(a)(7) and 679(d). * * *

Par. 2. Sections 1.679–1, 1.679–2, 1.679–3, 1.679–4, 1.679–5, 1.679–6, and 1.679–7 are added under the undesignated center heading "Grantors and Others Treated as Substantial Owners" to read as follows:

§ 1.679–1 U.S. Transferor Treated as Owner of Foreign Trust

(a) *In general.* A U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property transferred if there is a U.S. beneficiary of any portion of the trust, unless an exception in § 1.679–4 applies to the transfer.

(b) *Interaction with sections 673 through 678.* The rules of this section apply without regard to whether the U.S. transferor retains any power or interest described in sections 673 through 677. If a U.S. transferor would be treated as the owner of a portion of a foreign trust pursuant to the rules of this section and another person would be treated as the owner of the same portion of the trust pursuant to section 678, then the U.S. transferor is treated as the owner and the other person is not treated as the owner.

(c) *Definitions.* The following definitions apply for purposes of this section and §§ 1.679–2 through 1.679–7:

(1) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.679–3) of property to a foreign trust.

(2) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), a nonresident alien individual who elects under section 6013(g) to be treated as resident of the United States, and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)–7(a) of this chapter.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines the term *foreign trust.*

(4) *Property.* The term *property* means any property including cash.

(5) *Related person.* A person is a *related person* if, without regard to the transfer at issue, the person is—

(i) A grantor of any portion of the trust (within the meaning of § 1.671–2(e)(1));

(ii) An owner of any portion of the trust under sections 671 through 679;

(iii) A beneficiary of the trust; or

(iv) A person who is related (within the meaning of section 643(i)(2)(B)) to

any grantor, owner or beneficiary of the trust.

(6) *Obligation.* The term *obligation* means any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.

(d) *Examples.* The following examples illustrate the rules of paragraph (a) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s father, who is a resident alien, *D* is *A*'s uncle, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Interaction with section 678. *A* creates and funds *FT*. *FT* may provide for the education of *B* by paying for books, tuition, room and board. In addition, *C* has the power to vest the trust corpus or income in himself within the meaning of section 678(a)(1). Under paragraph (b) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred to *FT* by *A* and *C* is not treated as the owner thereof.

Example 2. U.S. person treated as owner of a portion of FT. *D* creates and funds *FT* for the benefit of *B*. *D* retains a power described in section 676 and § 1.672(f)–3(a)(1). *A* transfers property to *FT*. Under sections 676 and 672(f), *D* is treated as the owner of the portion of *FT* attributable to the property transferred by *D*. Under paragraph (a) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred by *A*.

§ 1.679–2 Trusts treated as having a U.S. beneficiary

(a) *Existence of U.S. beneficiary*—(1) *In general.* The determination of whether a foreign trust has a U.S. beneficiary is made on an annual basis. A foreign trust is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor—

(i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, directly or indirectly, a U.S. person; and

(ii) If the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, directly or indirectly, a U.S. person.

(2) *Benefit to a U.S. person*—(i) *In general.* For purposes of paragraph (a)(1) of this section, income or corpus may be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of, a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event.

(ii) *Certain unexpected beneficiaries.* Notwithstanding paragraph (a)(2)(i) of this section, for purposes of paragraph (a)(1) of this section, a person who is not named as a beneficiary and is not a member of a class of beneficiaries as defined under the trust instrument is not taken into consideration if the U.S. transferor demonstrates to the satisfaction of the Commissioner that the person's contingent interest in the trust is so remote as to be negligible. The preceding sentence does not apply with respect to persons to whom distributions could be made pursuant to a grant of discretion to the trustee or any other person. A class of beneficiaries generally does not include heirs who will benefit from the trust under the laws of intestate succession in the event that the named beneficiaries (or members of the named class) have all deceased (whether or not stated as a named class in the trust instrument).

(iii) *Examples.* The following examples illustrate the rules of paragraphs (a)(1) and (a)(2) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Distribution of income to U.S. person. *A* transfers property to *FT*. The trust instrument provides that all trust income is to be distributed currently to *B*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Income accumulation for the benefit of a U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that from 2001 through 2010, the trustee of *FT* may distribute trust income to *C* or may accumulate the trust income. The trust instrument further provides that in 2011, the trust will terminate and the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust assets must be distributed to *C*. Because it is possible that income may be accumulated in each year, and that the accumulated income ultimately may be distributed to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through 2011. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 3. Corpus held for the benefit of a U.S. person. The facts are the same as in *Example 2*, except that from 2001 through 2011, all trust income must be distributed to *C*. In 2011, the trust will terminate and the trustee may distribute the trust corpus to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust corpus must be distributed to *C*. Because during each of *A*'s tax years from 2001 through 2011 trust corpus is held for possible future distribution to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of those years. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 4. Distribution upon U.S. transferor's death. *A* transfers property to *FT*. The trust instrument provides that all trust income must be distributed currently to *C* and, upon *A*'s death, the trust will terminate and the trustee may distribute the trust corpus to either or both of *B* and *C*. Because *B* may receive a distribution of corpus upon the termination of *FT*, and *FT* could terminate in any year, *FT* is treated as having a U.S. beneficiary in the year of the transfer and in subsequent years.

Example 5. Distribution after U.S. transferor's death. The facts are the same as in *Example 4*, except the trust instrument provides that the trust will not terminate until the year following *A*'s death. Upon termination, the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. All trust assets are invested in the stock of *X*, a foreign corporation, and *X* makes no distributions to *FT*. Although no U.S. person may receive a distribution until the year after *A*'s death, and *FT* has no realized income during any year of its existence, during each year in which *A* is living corpus may be held for future distribution to *B*, a U.S. person. Thus, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through the year of *A*'s death.

Example 6. Constructive benefit to U.S. person. *A* transfers property to *FT*. The trust instrument provides that no income or corpus may be paid directly to a U.S. person. However, the trust instrument provides that trust corpus may be used to satisfy *B*'s legal obligations to a third party by making a payment directly to the third party. Under paragraphs (a)(1) and (2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 7. U.S. person with negligible contingent interest. *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C*, and upon *C*'s death, all corpus is to be distributed to whomever of *C*'s three children is then living. All of *C*'s children are nonresident aliens. Under the laws of intestate succession that would apply to *FT*, if all of *C*'s children are deceased at the time of *C*'s death, the corpus would be distributed to *A*'s heirs. *A*'s living relatives at the time of the transfer consist solely of two brothers and two nieces, all of whom are nonresident aliens, and two first cousins, one of whom, *E*, is a U.S. citizen. Although it is possible under certain circumstances that *E* could receive a corpus distribution under the applicable laws of intestate succession, for each year the trust is in existence *A* is able to demonstrate to the satisfaction of the

Commissioner under paragraph (a)(2)(ii) of this section that *E*'s contingent interest in *FT* is so remote as to be negligible. Provided that paragraph (a)(4) of this section does not require a different result, *FT* is not treated as having a U.S. beneficiary.

Example 8. U.S. person with non-negligible contingent interest. A transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. Under the laws of intestate succession that would apply to *FT*, *B* and *C* would share equally in the trust corpus if *D* is not living at the time of *A*'s death. *A* is unable to demonstrate to the satisfaction of the Commissioner that *B*'s contingent interest in the trust is so remote as to be negligible. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 9. U.S. person as member of class of beneficiaries. A transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. If *D* is not then living, the corpus is to be distributed to *D*'s descendants. *D*'s grandson, *E*, is a resident alien. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 10. Trustee's discretion in choosing beneficiaries. A transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of, any person who is pursuing the academic study of ancient Greek, in the trustee's discretion. Because it is possible that a U.S. person will receive distributions of income or corpus, or will have income accumulated for his benefit, *FT* is treated as having a U.S. beneficiary. This result applies even if, during a tax year, no distributions or accumulations are actually made to or for the benefit of a U.S. person. *A* may not invoke paragraph (a)(2)(ii) of this section because a U.S. person could benefit pursuant to a grant of discretion in the trust instrument.

Example 11. Appointment of remainder beneficiary. A transfers property to *FT*. The trust instrument provides that the trustee may distribute current income to *C*, or may accumulate income, and, upon termination of the trust, trust assets are to be distributed to *C*. However, the trust instrument further provides that *D*, *A*'s uncle, may appoint a different remainder beneficiary. Because it is possible that a U.S. person could be named as the remainder beneficiary, and because corpus could be held in each year for the future benefit of that U.S. person, *FT* is treated as having a U.S. beneficiary for each year.

Example 12. Trust not treated as having a U.S. beneficiary. A transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of *C*. Upon termination of the trust, all income and corpus must be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Because no part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person, and if the trust is terminated no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person, *FT* is not treated as having a U.S. beneficiary.

Example 13. U.S. beneficiary becomes non-U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that, as long as *B* remains a U.S. resident, no distributions of income or corpus may be made from the trust to *B*. The trust instrument further provides that if *B* becomes a nonresident alien, distributions of income (including previously accumulated income) and corpus may be made to him. If *B* remains a U.S. resident at the time of *FT*'s termination, all accumulated income and corpus is to be distributed to *C*. In 2007, *B* becomes a nonresident alien and remains so thereafter. Because income may be accumulated during the years 2001 through 2007 for the benefit of a person who is a U.S. person during those years, *FT* is treated as having a U.S. beneficiary under paragraph (a)(1) of this section during each of those years. This result applies even though *B* cannot receive distributions from *FT* during the years he is a resident alien and even though *B* might remain a resident alien who is not entitled to any distribution from *FT*. Provided that paragraph (a)(4) of this section does not require a different result and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no other U.S. persons are reasonably expected to benefit from the trust, *FT* is not treated as having a U.S. beneficiary under paragraph (a)(1) of this section during tax years after 2007.

(3) *Changes in beneficiary's status*—(i) *In general.* For purposes of paragraph (a)(1) of this section, the possibility that a person that is not a U.S. person could become a U.S. person will not cause that person to be treated as a U.S. person for purposes of paragraph (a)(1) of this section until the tax year of the U.S. transferor in which that individual actually becomes a U.S. person. However, if a person who is not a U.S. person becomes a U.S. person for the first time more than 5 years after the date of a transfer to the foreign trust by a U.S. transferor, that person is not treated as a U.S. person for purposes of applying paragraph (a)(1) of this section with respect to that transfer.

(ii) *Examples.* The following examples illustrate the rules of paragraph (a)(3) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Non-U.S. beneficiary becomes U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C* and that, upon the termination of *FT*, all corpus is to be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Under paragraph (a)(3)(i) of this section, *FT* is not treated as having a U.S. beneficiary during the tax years of *A* in which *C* remains a nonresident alien. If *C* first becomes a resident alien in 2004, *FT* is treated as having a U.S. beneficiary commencing in that year under paragraph (a)(3) of this section. See paragraph (c) of this section regarding the treatment of *A* upon *FT*'s acquisition of a U.S. beneficiary.

Example 2. Non-U.S. beneficiary becomes U.S. person more than 5 years after transfer. The facts are the same as in Example 1, except *C* first becomes a resident alien in 2007. *FT* is treated as not having a U.S. beneficiary under paragraph (a)(3)(i) of this section with respect to the property transfer. However, if *C* had previously been a U.S. person during any prior period, the 5-year exception in paragraph (a)(3)(i) of this section would not apply in 2007 because it would not have been the first time *C* became a U.S. person.

(4) *General rules*—(i) *Records and documents.* Even if, based on the terms of the trust instrument, a foreign trust is not treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the trust may nevertheless be treated as having a U.S. beneficiary pursuant to paragraph (a)(1) of this section based on the following—

(A) All written and oral agreements and understandings relating to the trust;

(B) Memoranda or letters of wishes;

(C) All records that relate to the actual distribution of income and corpus; and

(D) All other documents that relate to the trust, whether or not of any purported legal effect.

(ii) *Additional factors.* For purposes of determining whether a foreign trust is treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the following additional factors are taken into account—

(A) If the terms of the trust instrument allow the trust to be amended to benefit a U.S. person, all potential benefits that could be provided to a U.S. person pursuant to an amendment must be taken into account;

(B) If the terms of the trust instrument do not allow the trust to be amended to benefit a U.S. person, but the law applicable to a foreign trust may require payments or accumulations of income or corpus to or for the benefit of a U.S. person (by judicial reformation or otherwise), all potential benefits that

could be provided to a U.S. person pursuant to the law must be taken into account, unless the U.S. transferor demonstrates to the satisfaction of the Commissioner that the law is not reasonably expected to be applied or invoked under the facts and circumstances; and

(C) If the parties to the trust ignore the terms of the trust instrument, or if it is reasonably expected that they will do so, all benefits that have been, or are reasonably expected to be, provided to a U.S. person must be taken into account.

(iii) *Examples.* The following examples illustrate the rules of paragraph (a)(4) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Amendment pursuant to local law. *A* creates and funds *FT* for the benefit of *C*. The terms of *FT* (which, according to the trust instrument, cannot be amended) provide that no part of the income or corpus of *FT* may be paid or accumulated during the taxable year to or for the benefit of any U.S. person, either during the existence of *FT* or at the time of its termination. However, pursuant to the applicable foreign law, *FT* can be amended to provide for additional beneficiaries, and there is an oral understanding between *A* and the trustee that *B* can be added as a beneficiary. Under paragraphs (a)(1) and (a)(4)(ii)(B) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Actions in violation of the terms of the trust. *A* transfers property to *FT*. The trust instrument provides that no U.S. person can receive income or corpus from *FT* during the term of the trust or at the termination of *FT*. Notwithstanding the terms of the trust instrument, a letter of wishes directs the trustee of *FT* to provide for the educational needs of *B*, who is about to begin college. The letter of wishes contains a disclaimer to the effect that its contents are only suggestions and recommendations and that the trustee is at all times bound by the terms of the trust as set forth in the trust instrument. Under paragraphs (a)(1) and (a)(4)(ii)(C) of this section, *FT* is treated as having a U.S. beneficiary.

(b) *Indirect U.S. beneficiaries*—(1) *Certain foreign entities.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of—

(i) A controlled foreign corporation, as defined in section 957(a);

(ii) A foreign partnership, if a U.S. person is a partner of such partnership; or

(iii) A foreign trust or estate, if such trust or estate has a U.S. beneficiary (within the meaning of paragraph (a)(1) of this section).

(2) *Other indirect beneficiaries.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of a U.S. person through an intermediary, such as an agent or nominee, or by any other means where a U.S. person may obtain an actual or constructive benefit.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b). Unless otherwise noted, *A* is a U.S. resident alien. *B* is *A*'s son and is a resident alien. *FT* is a foreign trust. The examples are as follows:

Example 1. Trust benefitting foreign corporation. *A* transfers property to *FT*. The beneficiary of *FT* is *FC*, a foreign corporation. *FC* has outstanding solely 100 shares of common stock. *B* owns 49 shares of the *FC* stock and *FC2*, also a foreign corporation, owns the remaining 51 shares. *FC2* has outstanding solely 100 shares of common stock. *B* owns 49 shares of *FC2* and nonresident alien individuals own the remaining 51 *FC2* shares. *FC* is a controlled foreign corporation (as defined in section 957(a), after the application of section 958(a)(2)). Under paragraphs (a)(1) and (b)(1)(i) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Trust benefitting another trust. *A* transfers property to *FT*. The terms of *FT* permit current distributions of income to *B*. *A* transfers property to another foreign trust, *FT2*. The terms of *FT2* provide that no U.S. person can benefit either as to income or corpus, but permit current distributions of income to *FT*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary and, under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT2* is treated as having a U.S. beneficiary.

Example 3. Trust benefitting another trust after transferor's death. *A* transfers property to *FT*. The terms of *FT* require that all income from *FT* be accumulated during *A*'s lifetime. In the year following *A*'s death, a share of *FT* is to be distributed to *FT2*, another foreign trust, for the benefit of *B*. Under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT* is treated as having a U.S. beneficiary beginning with the year of *A*'s transfer of property to *FT*.

Example 4. Indirect benefit through use of debit card. *A* transfers property to *FT*. The trust instrument provides that no U.S. person can benefit either as to income or corpus. However, *FT* maintains an account with *FB*, a foreign bank, and *FB* issues a debit card to *B* against the account maintained by *FT* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 5. Other indirect benefit. *A* transfers property to *FT*. *FT* is administered by *FTC*, a foreign trust company. *FTC* forms *IBC*, an international business corporation formed under the laws of a foreign jurisdiction. *IBC* is the beneficiary of *FT*. *IBC* maintains an account with *FB*, a foreign bank. *FB* issues a debit card to *B* against the account maintained by *IBC* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

(c) *Treatment of U.S. transferor upon foreign trust's acquisition or loss of U.S. beneficiary*—(1) *Trusts acquiring a U.S. beneficiary.* If a foreign trust to which a U.S. transferor has transferred property is not treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) for any taxable year of the U.S. transferor, but the trust is treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) in any subsequent taxable year, the U.S. transferor is treated as having additional income in the first such taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

(2) *Trusts ceasing to have a U.S. beneficiary.* If, for any taxable year of a U.S. transferor, a foreign trust that has received a transfer of property from the U.S. transferor ceases to be treated as having a U.S. beneficiary, the U.S. transferor ceases to be treated as the owner of the portion of the trust attributable to the transfer beginning in the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary (unless the U.S. transferor is treated as an owner thereof pursuant to sections 673 through 677). The U.S. transferor is treated as making a transfer of property to the foreign trust on the first day of the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary. The amount of the property deemed to be transferred to the trust is the portion of the trust attributable to the prior transfer to which paragraph (a)(1) of this section applied. For rules regarding the recognition of gain on transfers to foreign trusts, see section 684.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. *A* is a U.S. resident alien, *B* is *A*'s son, and *FT* is a foreign trust. The examples are as follows:

Example 1. Trust acquiring U.S. beneficiary. (i) In 2001, *A* transfers stock with a fair market value of $100,000 to *FT*. The stock has an adjusted basis of $50,000 at the time of the transfer. The trust instrument

provides that income may be paid currently to, or accumulated for the benefit of, *B* and that, upon the termination of the trust, all income and corpus is to be distributed to *B*. At the time of the transfer, *B* is a nonresident alien. *A* is not treated as the owner of any portion of *FT* under sections 671 through 677. *FT* accumulates a total of $30,000 of income during the taxable years 2001 through 2003. In 2004, *B* moves to the United States and becomes a resident alien. Assume paragraph (a)(4) of this section is not applicable under the facts and circumstances.

(ii) Under paragraph (c)(1) of this section, *A* is treated as receiving an accumulation distribution in the amount of $30,000 in 2004 and immediately transferring that amount back to the trust. The accumulation distribution is subject to the rules of section 668, providing for an interest charge on accumulation distributions.

(iii) Under paragraphs (a) (1) and (3) of this section, beginning in 2005, *A* is treated as the owner of the portion of *FT* attributable to the stock transferred by *A* to *FT* in 2001 (which includes the portion attributable to the accumulated income deemed to be retransferred in 2004).

Example 2. Trust ceasing to have U.S. beneficiary. (i) The facts are the same as in *Example 1*. In 2008, *B* becomes a nonresident alien. On the date *B* becomes a nonresident alien, the stock transferred by *A* to *FT* in 2001 has a fair market value of $125,000 and an adjusted basis of $50,000.

(ii) Under paragraph (c)(2) of this section, beginning in 2009, *FT* is not treated as having a U.S. beneficiary, and *A* is not treated as the owner of the portion of the trust attributable to the prior transfer of stock. For rules regarding the recognition of gain on the termination of ownership status, see section 684.

§ 1.679–3 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Transfers by certain trusts*—(1) *In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Example.* The following example illustrates this paragraph (b):

Example. In 2001, *A*, a U.S. citizen, creates and funds *DT*, a domestic trust. *A* has the power to revest absolutely in himself the title to the property in *DT* and is treated as the owner of *DT* pursuant to section 676. In 2004, *DT* transfers property to *FT*, a foreign trust. *A* is treated as having transferred the property to *FT* in 2004 for purposes of this section.

(c) *Indirect transfers*—(1) *Principal purpose of tax avoidance.* A transfer to a foreign trust by any person (intermediary) to whom a U.S. person transfers property is treated as an indirect transfer by a U.S. person to the foreign trust if such transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of United States tax.

(2) *Principal purpose of tax avoidance deemed to exist.* For purposes of paragraph (c)(1) of this section, a transfer is deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of United States tax if—

(i) The U.S. person is related (within the meaning of paragraph (c)(4) of this section) to a beneficiary of the foreign trust, or has another relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the U.S. transferor would make a transfer to the foreign trust; and

(ii) The U.S. person cannot demonstrate to the satisfaction of the Commissioner that—

(A) The intermediary has a relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the intermediary would make a transfer to the foreign trust;

(B) The intermediary acted independently of the U.S. person;

(C) The intermediary is not an agent of the U.S. person under generally applicable United States agency principles; and

(D) The intermediary timely complied with the reporting requirements of section 6048, if applicable.

(3) *Effect of disregarding intermediary*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, if a transfer is treated as an indirect transfer pursuant to paragraph (c)(1) of this section, then the intermediary is treated as an agent of the U.S. person, and the property is treated as transferred to the foreign trust by the U.S. person in the year the property is transferred, or made available, by the intermediary to the foreign trust. The fair market value of the property transferred is determined as of the date of the transfer by the intermediary to the foreign trust.

(ii) *Special rule.* If the Commissioner determines, or if the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the foreign trust under generally applicable United States agency principles, the property will be treated as transferred to the foreign trust in the year the U.S. person transfers the property to the intermediary. The fair market value of the property transferred will be determined as of the date of the transfer by the U.S. person to the intermediary.

(iii) *Effect on intermediary.* If a transfer of property is treated as an indirect transfer under paragraph (c)(1) of this section, the intermediary is not treated as having transferred the property to the foreign trust.

(4) *Related parties.* For purposes of this paragraph (c), a U.S. transferor is treated as related to a U.S. beneficiary of a foreign trust if the U.S. transferor and the beneficiary are related for purposes of section 643(i)(2)(B), with the following modifications—

(i) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), "at least 10 percent" is used instead of "more than 50 percent" each place it appears; and

(ii) The principles of section 267(b)(10), using "at least 10 percent" instead of "more than 50 percent," apply to determine whether two corporations are related.

(5) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Principal purpose of tax avoidance. A, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. In 2004, *A* decides to transfer an additional 1000X to the foreign trust. Pursuant to a plan with a principal purpose of avoiding the application of section 679, *A* transfers 1000X to *I*, a foreign person. *I* subsequently transfers 1000X to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having made a transfer of 1000X to *FT*.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. A, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. On July 1, 2004, *A* transfers XYZ stock to *D*, *A*'s uncle, who is a nonresident alien. *D* immediately sells the XYZ stock and uses the proceeds to purchase ABC stock. On January 1, 2007, *D* transfers the ABC stock to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *D* acted independently of *A* in making the transfer to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having transferred the ABC stock to *FT*. Under paragraph (c)(3) of this section, *D* is treated as an agent of *A*, and the transfer is deemed to have been made on January 1, 2007.

Example 3. Indirect loan to foreign trust. A, a U.S. citizen, previously created and funded *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. On July 1, 2004, *A* deposits 500X with *FB*, a foreign bank. On January 1, 2005, *FB* loans 450X to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *FB* has a relationship with *FT* that establishes a reasonable basis for concluding that *FB* would make a loan to *FT* or that *FB* acted independently of *A* in making the loan. Under paragraph (c)(1) of this section, *A* is deemed to have transferred 450X directly to *FT* on January 1, 2005. Under paragraph (c)(3) of this section, *FB* is treated as an agent of *A*. For possible exceptions with respect to

qualified obligations of the trust, see § 1.679–4.

Example 4. Loan to foreign trust prior to deposit of funds in foreign bank. The facts are the same as in *Example 3*, except that *A* makes the 500X deposit with *FB* on January 2, 2005, the day after *FB* makes the loan to *FT*. The result is the same as in *Example 3*.

(d) *Constructive transfers*—(1) *In general.* For purposes of paragraph (a) of this section, a constructive transfer includes any assumption or satisfaction of a foreign trust's obligation to a third party.

(2) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In each example, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Payment of debt of foreign trust. FT owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. In satisfaction of *FT*'s liability to *Y*, *A* transfers to *Y* property with a fair market value of 1000X. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of the property to *FT*.

Example 2. Assumption of liability of foreign trust. FT owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. *A* assumes *FT*'s liability to pay *Y*. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of property with a fair market value of 1000X to *FT*.

(e) *Guarantee of trust obligations*—(1) *In general.* If a foreign trust borrows money or other property from any person who is not a related person (within the meaning of § 1.679–1(c)(5)) with respect to the trust (lender) and a U.S. person (U.S. guarantor) that is a related person with respect to the trust guarantees (within the meaning of paragraph (e)(4) of this section) the foreign trust's obligation, the U.S. guarantor is treated for purposes of this section as a U.S. transferor that has made a transfer to the trust on the date of the guarantee in an amount determined under paragraph (e)(2) of this section. To the extent this paragraph causes the U.S. guarantor to be treated as having made a transfer to the trust, a lender that is a U.S. person shall not be treated as having transferred that amount to the foreign trust.

(2) *Amount transferred.* The amount deemed transferred by a U.S. guarantor described in paragraph (e)(1) of this section is the guaranteed portion of the adjusted issue price of the obligation (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)).

(3) *Principal repayments.* If a U.S. person is treated under this paragraph (d) as having made a transfer by reason of the guarantee of an obligation, payments of principal to the lender by the foreign trust with respect to the obligation are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property deemed transferred by the U.S. guarantor.

(4) *Guarantee.* For purposes of this section, the term guarantee—

(i) Includes any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another's obligation;

(ii) Encompasses any form of credit support, and includes a commitment to make a capital contribution to the debtor or otherwise maintain its financial viability; and

(iii) Includes an arrangement reflected in a comfort letter, regardless of whether the arrangement gives rise to a legally enforceable obligation. If an arrangement is contingent upon the occurrence of an event, in determining whether the arrangement is a guarantee, it is assumed that the event has occurred.

(5) *Examples.* The rules of this paragraph (e) are illustrated by the following examples. In all of the examples, *A* is a U.S. resident and *FT* is a foreign trust. The examples are as follows:

Example 1. Foreign lender. X, a foreign corporation, loans 1000X of cash to *FT* in exchange for *FT*'s obligation to repay the loan. *A* guarantees the repayment of 600X of *FT*'s obligation. Under paragraph (e)(2) of this section, *A* is treated as having transferred 600X to *FT*.

Example 2. Unrelated U.S. lender. The facts are the same as in *Example 1*, except *X* is a U.S. person that is not a related person within the meaning of § 1.679–1(c)(5). The result is the same as in *Example 1*.

(f) *Transfers to entities owned by a foreign trust*—(1) *General rule.* If a U.S. person is a related person (as defined in § 1.679–1(c)(5)) with respect to a foreign trust, any transfer of property by the U.S. person to an entity in which the foreign trust holds an ownership interest is treated as a transfer of such property by the U.S. person to the foreign trust followed by a transfer of the property from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples. In all of the examples, *A* is a U.S. citizen, *FT* is a foreign trust, and *FC* is a foreign corporation. The examples are as follows:

Example 1. A creates and funds *FT*, which is treated as having a U.S. beneficiary under § 1.679–2. *FT* owns all of the outstanding stock of *FC*. *A* transfers property directly to *FC*. Because *FT* is the sole shareholder of *FC*, *A* is unable to demonstrate to the satisfaction of the Commissioner that the transfer is properly attributable to *A*'s ownership interest in *FC*. Accordingly, under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. Under § 1.679–1(a), *A* is treated as the owner of the portion of *FT* attributable to the property treated as transferred directly to *FT*. Under § 1.367(a)–1T(c)(4)(ii), the transfer of property by *FT* to *FC* is treated as a transfer of the property by *A* to *FC*.

Example 2. The facts are the same as in *Example 1*, except that *FT* is not treated as having a U.S. beneficiary under § 1.679-2. Under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. *A* is not treated as the owner of *FT* for purposes of § 1.679–1(a). For rules regarding the recognition of gain on the transfer, see section 684.

Example 3. A creates and funds *FT*. *FC* has outstanding solely 100 shares of common stock. *FT* owns 50 shares of *FC* stock, and *A* owns the remaining 50 shares. On July 1, 2001, *FT* and *A* each transfer 1000X to *FC*. *A* is able to demonstrate to the satisfaction of the Commissioner that *A*'s transfer to *FC* is properly attributable to A's ownership interest in *FC*. Accordingly, under this paragraph (f), *A*'s transfer to *FC* is not treated as a transfer to *FT*.

§ 1.679–4 Exceptions to general rule.

(a) *In general.* Section 1.679–1 does not apply to—

(1) Any transfer of property to a foreign trust by reason of the death of the transferor;

(2) Any transfer of property to a foreign trust described in sections 402(b), 404(a)(4), or 404A;

(3) Any transfer of property to a foreign trust that has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing the trust's tax exempt status under section 501(c)(3); and

(4) Any transfer of property to a foreign trust to the extent the transfer is for fair market value.

(b) *Transfers for fair market value*—(1) *In general.* For purposes of this section, a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to

the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. For purposes of this section, a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter is considered to be a transfer for fair market value.

(2) *Special rule*—(i) *Transfers for partial consideration.* For purposes of this section, if a person transfers property to a foreign trust in exchange for property having a fair market value that is less than the fair market value of the property transferred, the exception in paragraph (a)(4) of this section applies only to the extent of the fair market value of the property received.

(ii) *Example.* This paragraph (b) is illustrated by the following example:

Example. A, a U.S. citizen, transfers property that has a fair market value of 1000X to *FT*, a foreign trust, in exchange for 600X of cash. Under this paragraph (b), § 1.679–1 applies with respect to the transfer of 400X (1000X less 600X) to *FT*.

(c) *Certain obligations not taken into account.* Solely for purposes of this section, in determining whether a transfer by a U.S. transferor that is a related person (as defined in § 1.679–1(c)(5)) with respect to the foreign trust is for fair market value, any obligation (as defined in § 1.679–1(c)(6)) of the trust or a related person (as defined in § 1.679–1(c)(5)) that is not a qualified obligation within the meaning of paragraph (d)(1) of this section shall not be taken into account.

(d) *Qualified obligations*—(1) *In general.* For purposes of this section, an obligation is treated as a qualified obligation only if—

(i) The obligation is reduced to writing by an express written agreement;

(ii) The term of the obligation does not exceed five years (for purposes of determining the term of an obligation, the obligation's maturity date is the last possible date that the obligation can be outstanding under the terms of the obligation);

(iii) All payments on the obligation are denominated in U.S. dollars;

(iv) The yield to maturity is not less than 100 percent of the applicable Federal rate and not greater that 130 percent of the applicable Federal rate (the applicable Federal rate for an obligation is the applicable Federal rate in effect under section 1274(d) for the day on which the obligation is issued, as published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter));

(v) The U.S. transferor extends the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than three years after the maturity date of the obligation (this extension is not necessary if the maturity date of the obligation does not extend beyond the end of the U.S. transferor's taxable year and is paid within such period); when properly executed and filed, such an agreement is deemed to be consented to for purposes of § 301.6501(c)–1(d) of this chapter; and

(vi) The U.S. transferor reports the status of the loan, including principal and interest payments, on Form 3520 for every year that the loan is outstanding.

(2) *Additional loans.* If, while the original obligation is outstanding, the U.S. transferor or a person related to the trust (within the meaning of § 1.679–1(c)(5)) directly or indirectly obtains another obligation issued by the trust, or if the U.S. transferor directly or indirectly obtains another obligation issued by a person related to the trust, the original obligation is deemed to have the maturity date of any such subsequent obligation in determining whether the term of the original obligation exceeds the specified 5-year term. In addition, a series of obligations issued and repaid by the trust (or a person related to the trust) is treated as a single obligation if the transactions giving rise to the obligations are structured with a principal purpose to avoid the application of this provision.

(3) *Obligations that cease to be qualified.* If an obligation treated as a qualified obligation subsequently fails to be a qualified obligation (*e.g.*, renegotiation of the terms of the obligation causes the term of the obligation to exceed five years), the U.S. transferor is treated as making a transfer to the trust in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)) as of the date of the subsequent event that causes the obligation to no longer be a qualified obligation. If the maturity date is extended beyond five years by reason of the issuance of a subsequent obligation by the trust (or person related to the trust), the amount of the transfer will not exceed the issue price of the subsequent obligation. The subsequent obligation is separately tested to determine if it is a qualified obligation.

(4) *Transfers resulting from failed qualified obligations.* In general, a transfer resulting from a failed qualified obligation is deemed to occur on the date of the subsequent event that causes the obligation to no longer be a qualified obligation. However, based on all of the facts and circumstances, the Commissioner may deem a transfer to have occurred on any date on or after the issue date of the original obligation. For example, if at the time the original obligation was issued, the transferor knew or had reason to know that the obligation would not be repaid, the Commissioner could deem the transfer to have occurred on the issue date of the original obligation.

(5) *Renegotiated loans.* Any loan that is renegotiated, extended, or revised is treated as a new loan, and any distribution of funds after such renegotiation, extension, or revision under a pre-existing loan agreement is treated as a transfer subject to this section.

(6) *Principal repayments.* The payment of principal with respect to any obligation that is not treated as a qualified obligation under this paragraph is taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(7) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In all of the examples, *A* is a U.S. resident and *FT* is a foreign trust. The examples are as follows:

Example 1. Demand loan. A transfers 500X to *FT* in exchange for a demand note that permits *A* to require repayment by *FT* at any time. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because *FT*'s obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 500X transfer to *FT*.

Example 2. Private annuity. A transfers 4000X to *FT* in exchange for an annuity from the foreign trust that will pay *A* 100X per year for the rest of *A*'s life. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because *FT*'s obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken

into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 4000X transfer to *FT*.

Example 3. Loan to unrelated foreign trust. *B* transfers 1000X to *FT* in exchange for an obligation of the trust. The term of the obligation is fifteen years. *B* is not a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because *B* is not a related person, the adjusted issue price of the obligation received by *B* is taken into account for purposes of determining whether *B*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section, even though the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section.

Example 4. Transfer for an obligation with term in excess of 5 years. *A* transfers property that has a fair market value of 5000X to *FT* in exchange for an obligation of the trust. The term of the obligation is ten years. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because the term of the obligation is greater than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 5000X transfer to *FT*.

Example 5. Transfer for a qualified obligation. The facts are the same as in *Example 4*, except that the term of the obligation is 3 years. Assuming the other requirements of paragraph (d)(1) of this section are satisfied, the obligation is a qualified obligation and its adjusted issue price is taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section.

Example 6. Effect of subsequent obligation on original obligation. *A* transfers property that has a fair market value of 1000X to *FT* in exchange for an obligation that satisfies the requirements of paragraph (d)(1) of this section. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Two years later, *A* transfers an additional 2000X to *FT* and receives another obligation from *FT* that has a maturity date four years from the date that the second obligation was issued. Under paragraph (d)(2) of this section, the original obligation is deemed to have the maturity date of the second obligation. Under paragraph (a) of this section, *A* is treated as having made a transfer in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)) as of the date of issuance of the second obligation. The second obligation is tested separately to determine whether it is a qualified obligation for purposes of applying paragraph (a) of this section to the second transfer.

§ 1.679–5 Pre-immigration trusts.

(a) *In general.* If a nonresident alien individual becomes a U.S. person and the individual has a residency starting date (as determined under section 7701(b)(2)(A)) within 5 years after transferring property to a foreign trust (the original transfer), the individual is treated as having transferred to the trust on the residency starting date an amount equal to the portion of the trust attributable to the property transferred by the individual in the original transfer.

(b) *Special rules*—(1) *Change in grantor trust status.* For purposes of paragraph (a) of this section, if a nonresident alien individual who is treated as owning any portion of a trust under the provisions of subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, subsequently ceases to be so treated, the individual is treated as having made the original transfer to the foreign trust immediately before the trust ceases to be treated as owned by the individual.

(2) *Treatment of undistributed income.* For purposes of paragraph (a) of this section, the property deemed transferred to the foreign trust on the residency starting date includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred. Undistributed net income for periods before the individual's residency starting date is taken into account only for purposes of determining the amount of the property deemed transferred.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. Nonresident alien becomes resident alien. On January 1, 2002, *A*, a nonresident alien individual, transfers property to a foreign trust, *FT*. On January 1, 2006, *A* becomes a resident of the United States within the meaning of section 7701(b)(1)(A) and has a residency starting date of January 1, 2006, within the meaning of section 7701(b)(2)(A). Under paragraph (a) of this section, *A* is treated as a U.S. transferor and is deemed to transfer the property to *FT* on January 1, 2006. Under paragraph (b)(2) of this section, the property deemed transferred to *FT* on January 1, 2006, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property originally transferred.

Example 2. Nonresident alien loses power to revest property. On January 1, 2002, *A*, a nonresident alien individual, transfers property to a foreign trust, *FT*. *A* has the power to revest absolutely in himself the title to such property transferred and is treated as the owner of the trust pursuant to sections 676 and 672(f). On January 1, 2008, the terms of *FT* are amended to remove *A*'s power to revest in himself title to the property transferred, and *A* ceases to be treated as the owner of *FT*. On January 1, 2010, *A* becomes a resident of the United States. Under paragraph (b)(1) of this section, for purposes of paragraph (a) of this section *A* is treated as having originally transferred the property to *FT* on January 1, 2008. Because this date is within five year's of *A*'s residency starting date, *A* is deemed to have made a transfer to the foreign trust on January 1, 2010, his residency starting date. Under paragraph (b)(2) of this section, the property deemed transferred to the foreign trust on January 1, 2010, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679–6 Outbound migrations of domestic trusts.

(a) *In general.* Subject to the provisions of paragraph (b) of this section, if an individual who is a U.S. person transfers property to a trust that is not a foreign trust, and such trust becomes a foreign trust while the U.S. person is alive, the U.S. individual is treated as a U.S. transferor and is deemed to transfer the property to a foreign trust on the date the domestic trust becomes a foreign trust.

(b) *Amount deemed transferred.* For purposes of paragraph (a) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property previously transferred. Undistributed net income for periods prior to the migration is taken into account only for purposes of determining the portion of the trust that is attributable to the property transferred by the U.S. person.

(c) *Example.* The following example illustrates the rules of this section. For purposes of the example, *A* is a U.S. resident alien, *B* is *A*'s son, who is a resident alien, and *DT* is a domestic trust. The example is as follows:

Example. Outbound migration of domestic trust. On January 1, 2002, *A* transfers property to *DT*, for the benefit of *B*. On January 1, 2003, *DT* acquires a foreign trustee who has the power to determine whether and when distributions will be made to *B*. Under section 7701(a)(3)(B) and § 301.7701–7(d)(ii)(A), *DT* becomes a foreign trust on January 1, 2003. Under paragraph (a) of this section, *A* is treated as transferring property to a foreign trust on January 1, 2003. Under paragraph (b) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679–7 Effective dates.

(a) *In general.* Except as provided in paragraph (b) of this section, the rules of §§ 1.679–1, 1.679–2, 1.679–3, and 1.679–4 apply with respect to transfers after August 7, 2000.

(b) *Special rules.* (1) The rules of § 1.679–4 (c) and (d) apply to an

obligation issued after February 6, 1995, whether or not in accordance with a pre-existing arrangement or understanding. For purposes of the rules of § 1.679–4 (c) and (d), if an obligation issued on or before February 6, 1995, is modified after that date, and the modification is a significant modification within the meaning of § 1.1001–3, the obligation is treated as if it were issued on the date of the modification. However, the penalty provided in section 6677 applies only to a failure to report transfers in exchange for obligations issued after August 20, 1996.

(2) The rules of § 1.679–5 apply to persons whose residency starting date is after August 7, 2000.

(3) The rules of § 1.679–6 apply to trusts that become foreign trusts after August 7, 2000.

Par. 3. In § 1.958–1, paragraph (b) is amended by adding a new sentence after the first sentence to read as follows:

§ 1.958–1 Direct and indirect ownership of stock.

* * * * *

(b) * * * For purposes of the preceding sentence, any person that is treated as the owner of any portion of a trust pursuant to sections 671 through 679 shall be treated as a beneficiary of the trust and shall be considered to own all of the stock owned directly or indirectly by or for such portion. * * *

* * * * *

§ 1.958–2 [Amended]

Par. 4. In § 1.958–2, paragraph (c)(1)(ii)(*b*) is amended by removing the language "678" and adding "679" in its place.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108522–00]

RIN 1545–AY25

Recognition of Gain on Certain Transfers to Certain Foreign Trusts and Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 684 of the Internal Revenue Code relating to recognition of gain on certain transfers to certain foreign trusts and estates. The proposed regulations affect United States persons who transfer property to foreign trusts and estates. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 6, 2000. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for November 8, 2000, must be submitted by October 18, 2000.

ADDRESSES: Send submissions to: CC:MSP:RU (REG–108522–00), room 5226, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:MSP:RU (REG–108522–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in Room 3313, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karen A. Rennie Quarrie at (202) 622–3880; concerning the submissions and hearing, Sonya M. Cruse at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 684 of the Internal Revenue Code (Code) was added by Section 1131(b) of the Taxpayer Relief Act of 1997 (the Act), Public Law 105–34 (111 Stat. 788) (August 5, 1997). The addition affects the transfer of property by United States persons to certain foreign trusts and foreign estates.

1. Prior Law

Prior to the enactment of section 684, section 1491, with certain exceptions, imposed a 35–percent excise tax on transfers of property by a United States person to a foreign trust or estate. Section 1491 applied to all transfers of appreciated property whether or not at fair market value and whether or not the transfer was made with donative intent. The excise tax was intended to curtail transfers of appreciated property to foreign trusts, because a foreign trust could dispose of the property and invest the proceeds of the sale outside the United States without incurring any U.S. tax. If the excise tax applied, the foreign trust could not increase the basis of the property contributed to the trust. Under section 1492(3), the U.S. transferor could make an election under section 1057 to treat a transfer of appreciated property to a foreign trust as a sale or exchange of such property and pay an income tax instead of an excise tax on the gain.

2. Overview of Changes

Section 1131 of the Act repealed sections 1491 through 1494 and section 1057 of the Code and enacted section 684. In so doing, Congress eliminated the excise tax on transfers of appreciated property to foreign trusts and foreign estates in favor of an income tax on transfers of appreciated property to foreign trusts and foreign estates. Unlike previous law, however, Congress provided explicit regulatory authority to make exceptions to the mandatory tax on such transfers. These regulations explain the application of section 684 and provide certain exceptions from its application.

Pursuant to section 684(a) of the Code, any transfer of property by a U.S. person to a foreign trust or estate is treated as a taxable disposition of the property, except to the extent provided in regulations. Such a transfer is treated as a sale or exchange of the property for its fair market value. The U.S. transferor must immediately recognize gain equal to the excess of the property's fair market value over its adjusted basis in the hands of the U.S. transferor.

Pursuant to section 684(b), a U.S. person will not be required to recognize gain on the transfer of property to a foreign trust if the U.S. transferor (or other person) is considered to be the owner of the trust under section 671.

Pursuant to section 684(c), if a domestic trust becomes a foreign trust, all trust assets are considered to be transferred to a foreign trust. Thus, appreciated property owned by the trust will be deemed sold on the date that the trust status changes from domestic to foreign, and gain must be recognized on that date.

Explanation of Provisions

Section1.684–1 Recognition of Gain on Transfers to Certain Foreign Trusts and Estates

Subject to certain exceptions discussed below, the proposed regulations provide a general rule of

immediate recognition of gain when a U.S. person transfers appreciated property to a foreign trust or estate. This immediate gain recognition applies even if the U.S. transferor might otherwise have been eligible to defer gain recognition under another provision of the Code. Losses are not permitted to be recognized under the provision. Moreover, if multiple assets are transferred, the U.S. transferor may not offset losses in some property against gains in other property under the provision.

A U.S. person who transfers property to a foreign trust must comply with the reporting requirements set forth in section 6048 of the Code. See Notice 97–34 (1997–1 C.B. 422), which provides guidance regarding the foreign trust reporting requirements under section 6048.

Section 1.684–2 Transfers

The proposed regulations define the term transfer broadly to mean any direct, indirect or constructive transfer. The determination of whether an indirect or constructive transfer has occurred is made under the rules set forth in proposed regulation § 1.679–3(c) and § 1.679–3(d), respectively, published elsewhere in this issue of the Federal Register.

The proposed regulations provide that, if a U.S. person is considered the owner of any portion of a trust, a transfer of property from that portion of the trust will be considered a transfer by the U.S. person that owns that portion of the trust. Thus, for example, a U.S. person cannot avoid the application of section 684 by first transferring property to a trust which he is treated as owning under the grantor trust rules, then having that trust transfer the property to a foreign trust that he is not treated as owning.

Section 1.684–3 Exceptions to the General Rule of Gain Recognition

Under the proposed regulations, certain types of transfers are excepted from the general rule of gain recognition set forth in § 1.684–1. A U.S. person who transfers property to a foreign trust will not be required to recognize gain on the transfer to the extent such trust is considered owned by any person. For example, if a U.S. person transfers property to a foreign trust that is treated as having a U.S. beneficiary under section 679 and the U.S. person is treated as the owner of the trust under that section, the general rule of gain recognition will not apply at that time. If, however, the trust subsequently ceases to be treated as owned by the U.S. person, § 1.684–2(e) provides that the U.S. person will be treated as having transferred the assets of the trust to a foreign trust immediately before the U.S. person ceases to be considered the owner of the original trust. As a result, the U.S. person will be subject to the general rule of gain recognition at that time (unless another exception, such as the exception for certain transfers on death, applies).

A transfer by a U.S. person to a trust which has received a ruling or determination letter from the IRS recognizing the trust's exempt status under section 501(c)(3) will be exempt from the general rule of gain recognition if the trust's ruling or determination letter has been neither revoked nor modified.

The proposed regulations also provide an exception for transfers by a U.S. person to a foreign trust at death if the property transferred is included in the U.S. person's gross estate for U.S. estate tax purposes and the basis of the property in the hands of the foreign trust is determined under section 1014(a) of the Code. For example, if a U.S. person previously transferred property to a foreign trust and was treated as the owner of the trust under section 679, for purposes of section 684 the cessation of ownership status upon the U.S. person's death is treated as a deemed transfer to the foreign trust by the decedent immediately before her death. If the person retained sufficient powers over the trust to cause the trust property to be included in her gross estate for estate tax purposes and the basis of the property in the hands of the foreign trust is determined under section 1014(a) of the Code, the general rule of gain recognition does not apply. However, to the extent the trust property is not included in her estate and the foreign trust does not receive a step-up in basis in the property under section 1014(a), the exception does not apply.

The proposed regulations also provide an exception to the general rule of gain recognition under § 1.684–1 if property is transferred for fair market value to an unrelated foreign trust. The determination of whether a foreign trust is a related foreign trust is made under the principles set forth in § 1.679–1(c)(5). Thus, for example, if a U.S. person sells property for fair market value to an unrelated foreign trust, the general rule of section 684 will not apply. However, if the sale is to a related foreign trust, immediate gain recognition is required (unless another exception applies), even if another provision of the Code would permit deferral of recognition.

Finally, the proposed regulations provide that the general rule does not apply to a distribution to a trust with respect to an interest held by the trust in a non-trust entity (*e.g.*, a corporation or partnership), or an interest in certain commercial trusts. For example, if a foreign trust owns stock of a U.S. corporation and the U.S. corporation makes a distribution to the trust that is properly characterized as a dividend with respect to the trust's stock ownership, section 684 does not apply.

Section 1.684–4 Outbound Migration of Domestic Trust

The proposed regulations provide that if a U.S. person transfers property to a domestic trust and, for any reason, the domestic trust becomes a foreign trust, the domestic trust will be deemed to have transferred all of its assets to a foreign trust. The domestic trust must immediately recognize gain unless an exception in § 1.684–3 applies at that time (*e.g.*, the U.S. person is living at the time of the trust's change in status and is treated as the owner of the trust under section 679). The domestic trust must also fulfill the reporting requirements set forth in section 6048 of the Code and Notice 97–34.

The proposed regulations incorporate the relief for inadvertent migrations set forth in § 301.7701–7(d)(2). For example, if a trust's status changes from domestic to foreign because of an inadvertent change in the trustee, the trust will avoid the application of the general gain recognition rule if, within 12 months, it makes necessary changes to the trustee in order to remain a domestic trust.

Section 1.684–5 Effective Dates

This section of the proposed regulations provides effective dates with respect to §§ 1.684–1 through 1.684–4. The rules apply with respect to transfers of property to foreign trusts or foreign estates made after August 7, 2000. The primary reason for this effective date is to immediately address taxpayer concerns with respect to the provision of regulatory exceptions to the general rule of gain recognition under section 684(a). It should be noted, however, that the Internal Revenue Service is not restricted from applying general income tax principles to transactions prior to the effective dates of the proposed regulations to determine, for example, that a U.S. person has made a transfer to a foreign trust.

Special Analysis

It has been determined that this notice of proposed rule making is not a significant regulatory action as defined

in Executive Order 12866. Therefore, regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rule making will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 8, 2000, at 10 a.m. in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the start of the hearing.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by November 6, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 18, 2000.

A period of ten (10) minutes will be allocated to each person for making comments.

An agenda showing the scheduling to the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Karen A. Rennie Quarrie of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.684–1 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–2 also issued under 26 U.S.C. 643(a)(7) and 684(a).,

Section 1.684–3 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–4 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–5 also issued under 26 U.S.C. 643(a)(7) and 684(a). * * *

Par. 2. Sections 1.684–1, 1.684–2, 1.684–3, 1.684–4 and 1.684–5 are added under the undesignated centerheading "Miscellaneous" to read as follows:

§ 1.684–1 Recognition of gain on transfers to certain foreign trusts and estates.

(a) *Immediate recognition of gain*—(1) *In general.* Any U.S. person who transfers property to a foreign trust or foreign estate shall be required to recognize gain at the time of the transfer equal to the excess of the fair market value of the property transferred over the adjusted basis (for purposes of determining gain) of such property in the hands of the U.S. transferor unless an exception applies under the provisions of § 1.684–3. The amount of gain recognized is determined on an asset-by-asset basis.

(2) *No recognition of loss.* Under this section a U.S. person may not recognize loss on the transfer of an asset to a foreign trust or foreign estate. A U.S. person may not offset gain realized on the transfer of an appreciated asset to a foreign trust or foreign estate by a loss realized on the transfer of a depreciated asset to the foreign trust or foreign estate.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), and includes a nonresident alien individual who elects under section 6013(g) to be treated as a resident of the United States.

(2) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.684–2) of property to a foreign trust or foreign estate.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines *foreign trust.*

(4) *Foreign estate.* Section 7701(a)(31)(A) defines *foreign estate.*

(c) *Reporting requirements.* A U.S. person who transfers property to a foreign trust or foreign estate must comply with the reporting requirements under section 6048.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. person and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer to foreign trust. A transfers property that has a fair market value of 1000X to *FT. A*'s adjusted basis in the property is 400X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT.* Under paragraph (a)(1) of this section, *A* recognizes gain at the time of the transfer equal to 600X.

Example 2. Transfer of multiple properties. A transfers property Q, with a fair market value of 1000X, and property R, with a fair market value of 2000X, to *FT.* At the time of the transfer, *A*'s adjusted basis in property Q is 700X, and *A*'s adjusted basis in property R is 2200X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT.* Under paragraph (a)(1) of this section, *A* recognizes the 300X of gain attributable to property Q. Under paragraph (a)(2) of this section, *A* does not recognize the 200X of loss attributable to property R, and may not offset that loss against the gain attributable to property Q.

Example 3. Transfer for less than fair market value. A transfers property that has a fair market value of 1000X to *FT* in exchange for 400X of cash. *A*'s adjusted basis in the property is 200X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT.* Under paragraph (a)(1) of this section, *A* recognizes gain at the time of the transfer equal to 800X.

Example 4. Exchange of property for private annuity. A transfers property that has a fair market value of 1000X to *FT* in exchange for *FT*'s obligation to pay *A* 50X per year for the rest of *A*'s life. The obligation has an issue price of 1000X. *A*'s adjusted basis in the property is 100X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT. A* is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though *A* might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code.

Example 5. Transfer of property to related foreign trust in exchange for qualified obligation. A transfers property that has a fair market value of 1000X to *FT* in exchange for *FT*'s obligation to make payments to *A* during the next four years. *FT* is related to *A* as defined in § 1.679–1(c)(5). The obligation, which has an issue price of 1000X, is treated as a qualified obligation within the meaning of § 1.679–4(d), and no person is treated as owning any portion of *FT. A*'s adjusted basis in the property is 100X. *A* is required to

recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though *A* might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code. Section 1.684–3(d) provides rules relating to transfers for fair market value to unrelated foreign trusts.

§ 1.684–2 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Indirect transfers*—(1) *In general.* Section 1.679–3(c) shall apply to determine if a transfer to a foreign trust or foreign estate, by any person, is treated as an indirect transfer by a U.S. person to the foreign trust or foreign estate.

(2) *Examples.* The following examples illustrate the rules of this paragraph (b). In all examples, *A* is a U.S. citizen, *FT* is a foreign trust, and *I* is *A*'s uncle, who is a nonresident alien. The examples are as follows:

Example 1. Principal purpose of tax avoidance. *A* creates and funds *FT* for the benefit of *A*'s cousin, who is a nonresident alien. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. In 2004, *A* decides to transfer additional property with a fair market value of 1000X and an adjusted basis of 600X to *FT*. Pursuant to a plan with a principal purpose of avoiding the application of section 684, *A* transfers the property to *I*. *I* subsequently transfers the property to *FT*. Under paragraph (b) of this section and § 1.679–3(c), *A* is treated as having transferred the property to *FT*.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. *A* creates and funds *FT* for the benefit of *A*'s cousin, who is a nonresident alien. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. On July 1, 2004, *A* transfers property with a fair market value of 1000X and an adjusted basis of 300X to *I*, a foreign person. On January 1, 2007, at a time when the fair market value of the property is 1100X, *I* transfers the property to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, under § 1.679–3(c)(2)(ii), that *I* acted independently of *A* in making the transfer to *FT*. Under this paragraph (b) and § 1.679–3(c), *A* is treated as having transferred the property to *FT*. Under this paragraph (b) and § 1.679–3(c)(3), *I* is treated as an agent of *A*, and the transfer is deemed to have been made on January 1, 2007. Under § 1.684–1(a), *A* recognizes gain equal to 800X on that date.

(c) *Constructive transfers.* Section 1.679–3(d) shall apply to determine if a transfer to a foreign trust or foreign estate is treated as a constructive transfer by a U.S. person to the foreign trust or foreign estate.

(d) *Transfers by certain trusts*—(1) *In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). In all examples, *A* is a U.S. person, *DT* is a domestic trust, and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer by a domestic trust. On January 1, 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis of 200X to *DT*. *A* retains the power to revoke *DT*. On January 1, 2003, *DT* transfers property which has a fair market value of 500X and an adjusted basis of 100X to *FT*. At the time of the transfer, *FT* has no U.S. beneficiary as defined in § 1.679–2 and no person is treated as owning any portion of *FT*. *A* is treated as having transferred the property to *FT* and is required to recognize gain of 400X, under § 1.684–1, at the time of the transfer by *DT* to *FT*.

Example 2. Transfer by a foreign trust. On January 1, 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis of 200X to *FT1*. At the time of the transfer, *FT1* has a U.S. beneficiary as defined in § 1.679–2 and *A* is treated as the owner of *FT1* under section 679. On January 1, 2003, *FT1* transfers property which has a fair market value of 500X and an adjusted basis of 100X to *FT2*. At the time of the transfer, *FT2* has no U.S. beneficiary as defined in § 1.679–2 and no person is treated as owning any portion of *FT2*. *A* is treated as having transferred the property to *FT2* and is required to recognize gain of 400X, under § 1.684–1, at the time of the transfer by *FT1* to *FT2*.

(e) *Transfers when foreign trust no longer treated as owned by a U.S. person*—(1) *In general.* If any portion of a foreign trust is treated as owned by a U.S. person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, and such portion ceases to be treated as owned by that person under such subpart, the U.S. person shall be treated as having transferred, immediately before the trust is no longer treated as owned by that U.S. person, the assets of such portion to a foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (e). In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Loss of U.S. beneficiary. (i) On January 1, 2001, *A* transfers property, which has a fair market value of 1000X and an adjusted basis of 400X, to *FT*. At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679–2, and *A* is treated as owning *FT* under section 679. Under § 1.684–3(a), § 1.684–1 does not cause *A* to recognize gain at the time of the transfer.

(ii) On July 1, 2003, *FT* ceases to have a U.S. beneficiary within the meaning of § 1.679–2, and as of that date neither *A* nor any other person is treated as owning any portion of *FT*. On that date, the fair market value of the property is 1200X, and its adjusted basis equals 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on July 1, 2003, and must recognize 850X of gain at that time under § 1.684–1.

Example 2. Death of grantor. (i) The initial facts are the same as in paragraph (i) of *Example 1*.

(ii) On July 1, 2003, *A* dies, and as of that date no other person is treated as the owner of *FT*. On that date, the fair market value of the property is 1200X, and its adjusted basis equals 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* immediately before his death, and generally is required to recognize 850X of gain at that time under § 1.684–1. However, an exception may apply under § 1.684–3(c).

Example 3. Release of a power. (i) On January 1, 2001, *A* transfers property that has a fair market value of 500X and an adjusted basis of 200X to *FT*. At the time of the transfer, *FT* does not have a U.S. beneficiary within the meaning of § 1.679–2. However, *A* retains the power to revoke the trust. *A* is treated as the owner of the trust under section 676 and, therefore, under § 1.684–3(a), *A* is not required to recognize gain under § 1.684–1 at the time of the transfer.

(ii) On January 1, 2007, *A* releases the power to revoke the trust and, as of that date, neither *A* nor any other person is treated as owning any portion of *FT*. On that date, the fair market value of the property is 900X, and its adjusted basis is 200X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on January 1, 2007, and must recognize 700X of gain at that time.

(f) *Transfers to entities owned by a foreign trust.* Section 1.679–3(f) provides rules that apply with respect to transfers of property by a U.S. person to an entity in which a foreign trust holds an ownership interest.

§ 1.684–3 Exceptions to general rule of gain recognition.

(a) *Transfers to grantor trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property by a U.S. person to a foreign trust to the extent that any person is treated as the owner of the trust under section 671. Section 1.684–2(e) provides rules regarding a subsequent change in the status of the trust.

(b) *Transfers to charitable trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property to a foreign trust that has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing the trust's exempt status under section 501(c)(3).

(c) *Certain transfers at death.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property by reason of death of the U.S. transferor if such property is

included in the gross estate of the U.S. transferor for Federal estate tax purposes and the basis of the property in the hands of the foreign trust is determined under section 1014(a).

(d) *Transfers for fair market value to unrelated trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property for fair market value to a foreign trust that is not a related foreign trust as defined in § 1.679–1(c)(5). Section § 1.671–2(e)(2)(ii) defines fair market value.

(e) *Certain distributions to trusts.* For purposes of this section, a transfer does not include a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter.

(f) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer to owner trust. In 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *FT*. At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679–2, and *A* is treated as owning *FT* under section 679. Under paragraph (a) of this section, § 1.684–1 does not cause *A* to recognize gain at the time of the transfer. See § 1.684–2(e) for rules that may require *A* to recognize gain if the trust is no longer owned by *A*.

Example 2. Property included in U.S. transferor's estate at death. (i) The initial facts are the same as *Example 1*.

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retained the power to revoke *FT*, thus, the value of all property owned by *FT* at *A*'s death is includible in *A*'s gross estate for U.S. estate tax purposes. Pursuant to paragraph (c) of this section, *A* is not required to recognize gain under § 1.684–1 to the extent the property is included in *A*'s gross estate and the basis of the property in the hands of the foreign trust is determined under section 1014(a).

Example 3. Property not included in U.S. transferor's estate at death. (i) The initial facts are the same as *Example 1*.

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retained no power over *FT* and the value of the property transferred to *FT* is not required to be included in *A*'s gross estate. Under § 1.684–2(e)(1), *A* is treated as having transferred the property to *FT* immediately before his death, and must recognize 1100X of gain at that time under § 1.684–1.

Example 4. Transfer of property for fair market value to an unrelated foreign trust. A sells a house with a fair market value of 1000X to *FT* in exchange for a 30-year note issued by *FT*. *A* is not related to *FT* as defined in § 1.679–1(c)(5). The note has an issue price of 1000X. *FT* is not treated as owned by any person. Pursuant to paragraph (d) of this section, *A* is not required to recognize gain under § 1.684–1.

§ 1.684–4 Outbound migrations of domestic trusts.

(a) *In general.* If a U.S. person transfers property to a domestic trust, and such trust becomes a foreign trust, the trust shall be treated for purposes of this section as having transferred all of its assets to a foreign trust and the trust is required to recognize gain on the transfer under § 1.684–1(a). The trust must also comply with the rules of section 6048.

(b) *Date of transfer.* The transfer described in this section shall be deemed to occur immediately before, but on the same date that, the trust meets the definition of a foreign trust set forth in section 7701(a)(31)(B).

(c) *Inadvertent migrations.* In the event of an inadvertent migration, as defined in § 301.7701(d)(2) of this chapter, a trust may avoid the application of this section by complying with the procedures set forth in § 301.7701–7(d)(2) of this chapter.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen, *B* is a U.S. citizen, *C* is a nonresident alien, *T* is a trust. The examples are as follows:

Example 1. Migration of domestic trust with U.S. beneficiaries. A transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust, for the benefit of *A*'s children who are also United States citizens. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701–7(d) of this chapter, *T* becomes a foreign trust. *T* has U.S. beneficiaries within the meaning of § 1.679–2 and *A* is, therefore, treated as owning *FT* under section 679. Pursuant to § 1.684–3(a), neither *A* nor *T* is required to recognize gain at the time of the migration. Section 1.684–2(e) provides rules that may require *A* to recognize gain upon a subsequent change in the status of the trust.

Example 2. Migration of domestic trust with no U.S. beneficiaries. A transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust for the benefit of *A*'s mother who is not a citizen or resident of the United States. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701–7(d) of this chapter, *T* becomes a foreign trust, *FT*. *FT* has no U.S. beneficiaries within the meaning of § 1.679–2 and no person is treated as owning any portion of *FT*. *T* is required to recognize gain of 600X on January 1, 2001. Paragraph (c) of this section provides rules with respect to an inadvertent migration of a domestic trust.

§ 1.684–5 Effective date.

(a) Sections 1.684–1 through 1.684–4 apply to transfers of property to foreign trusts and foreign estates after August 7, 2000.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 00–19896 Filed 8–2–00; 1:04 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

32 CFR Part 317

[DCAA Reg. 5410.10]

Privacy Act; Implementation

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Proposed rule.

SUMMARY: The Defense Contract Audit Agency is revising its Privacy Act Program to provide implementation policies and procedures.

DATES: Comments must be received on or before October 6, 2000 to be considered by this agency.

ADDRESSES: Send comments to Defense Contract Audit Agency, Information and Privacy Advisor, CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767–1005.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a

substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 317

Privacy.

1. Accordingly, 32 CFR part 317 is proposed to be revised as follows:

PART 317—DCAA PRIVACY ACT PROGRAM

Sec.

317.1 Purpose.
317.2 Applicability and scope.
317.3 Policy.
317.4 Responsibilities.
317.5 Information requirements
317.6 Procedures.

Authority: Pub.L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 317.1 Purpose.

This part provides policies and procedures for the Defense Contract Audit Agency's implementation of the Privacy Act of 1974 (DCAA Regulation 5410.10),[1] as amended, (5 U.S.C. 552a); DoD 5400.11 and DoD 5400.11–R, DoD Privacy Program[2] (32 CFR part 310); and is intended to promote uniformity within DCAA.

§ 317.2 Applicability and scope.

(a) This part applies to all DCAA organizational elements and takes precedence over all regional regulatory issuances that supplement the DCAA Privacy Program.

(b) This part shall be made applicable by contract or other legally binding action to contractors whenever a DCAA contract provides for the operation of a system of records or portion of a system of records to accomplish an Agency function.

§ 317.3 Policy.

(a) It is DCAA policy that personnel will comply with the DCAA Privacy Program; the Privacy Act of 1974; and the DoD Privacy Program (32 CFR part 310). Strict adherence is necessary to ensure uniformity in the implementation of the DCAA Privacy Program and create conditions that will foster public trust. It is also Agency policy to safeguard personal information contained in any system of records maintained by DCAA organizational elements and to make that information available to the individual to whom it pertains to the maximum extent practicable.

(b) DCAA policy specifically requires that DCAA organizational elements:

(1) Collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

(2) Collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

(3) Inform individuals who are asked to supply personal information for inclusion in any system of records:

(i) The authority for the solicitation.

(ii) Whether furnishing the information is mandatory or voluntary.

(iii) The intended uses of the information.

(iv) The routine disclosures of the information that may be made outside of DoD.

(v) The effect on the individual of not providing all or any part of the requested information.

(4) Ensure that records used in making determinations about individuals and those containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside of DoD, other than a Federal agency, unless the disclosure is made under DCAA Regulation 5410.8, DCAA Freedom of Information Act Program.[3]

(5) Keep no record that describes how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertain or is pertinent to and within the scope of an authorized law enforcement activity.

(6) Notify individuals whenever records pertaining to them are made available under compulsory legal processes, if such process is a matter of public record.

(7) Establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

(8) Establish rules of conduct for DCAA personnel involved in the design, development, operation, or maintenance of any system of records and train them in these rules of conduct.

(9) Assist individuals in determining what records pertaining to them are being collected, maintained, used, or disseminated.

(10) Permit individual access to the information pertaining to them maintained in any system of records, and to correct or amend that information, unless an exemption for the system has been properly established for an important public purpose.

(11) Provide, on request, an accounting of all disclosures of the information pertaining to them except when disclosures are made:

(i) To DoD personnel in the course of their official duties.

(ii) Under DCAA Regulation 5410.8, DCAA Freedom of Information Act Program.

(iii) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States conducting law enforcement activities authorized by law.

(12) Advise individuals on their rights to appeal any refusal to grant access to or amend any record pertaining to them, and file a statement of disagreement with the record in the event amendment is refused.

§ 317.4 Responsibilities.

(a) The Assistant Director, Resources has overall responsibility for the DCAA Privacy Act Program and will serve as the sole appellate authority for appeals to decisions of respective initial denial authorities.

(b) The Chief, Administrative Management Division, under the direction of the Assistant Director, Resources, shall:

(1) Establish, issue, and update policies for the DCAA Privacy Act Program; monitor compliance with this part; and provide policy guidance for the DCAA Privacy Act Program.

(2) Resolve conflicts that may arise regarding implementation of DCAA Privacy Act policy.

(3) Designate an Agency Privacy Act Advisor, as a single point of contact, to coordinate on matters concerning Privacy Act policy.

(4) Make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(c) The DCAA Privacy Act Advisor under the supervision of the Chief,

[1] Copies may be obtained from http://www.deskbook.osd.mil.

[2] Copies may be obtained from http://web7.whs.osd.mil.

[3] Copies may be obtained from http://www.deskbook.osd.mil.

Administrative Management Division, shall:

(1) Manage the DCAA Privacy Act Program in accordance with this part and applicable DCAA policies, as well as DoD and Federal regulations.

(2) Provide guidelines for managing, administering, and implementing the DCAA Privacy Act Program.

(3) Implement and administer the Privacy Act program at the Headquarters.

(4) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(5) Maintain and publish DCAA Pamphlet 5410.13, DCAA Compilation of Privacy Act System Notices.[4]

(6) Prepare promptly any required new, amended, or altered system notices for systems of records subject to the Privacy Act and submit them to the Defense Privacy Office for subsequent publication in the **Federal Register**.

(7) Prepare the annual Privacy Act Report as required by DoD 5400.11–R, DoD Privacy Program.

(8) Conduct training on the Privacy Act program for Agency personnel.

(d) Heads of Principal Staff Elements are responsible for:

(1) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this part.

(2) Ensuring that the provisions of this part are followed in processing requests for records.

(3) Forwarding to the DCAA Privacy Act Advisor, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(4) Ensuring the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(5) Providing recommendations to the DCAA Privacy Act Advisor regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(6) Providing the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the DCAA Privacy Act Advisor. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(e) The General Counsel is responsible for:

(1) Ensuring uniformity is maintained in the legal position, and the interpretation of the Privacy Act; 32 CFR part 310; and this part.

(2) Consulting with DoD General Counsel on final denials that are inconsistent with decisions of other DoD components, involve issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(3) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional Privacy Act Officer, through the DCAA Privacy Act Advisor, as required, in the discharge of their responsibilities.

(4) Coordinating Privacy Act litigation with the Department of Justice.

(5) Coordinating on Headquarters denials of initial requests.

(f) Each Regional Director is responsible for the overall management of the Privacy Act program within their respective regions. Under his/her direction, the Regional Resources Manager is responsible for the management and staff supervision of the program and for designating a Regional Privacy Act Officer. Regional Directors will, as designee of the Director, make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(g) Regional Privacy Act Officers will:

(1) Implement and administer the Privacy Act program throughout the region.

(2) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a DCAAR 5410.10 manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(3) Prepare input for the annual Privacy Act Report when requested by the DCAA Information and Privacy Advisor.

(4) Conduct training on the Privacy Act program for regional and FAO personnel.

(5) Provide recommendations to the Regional Director through the Regional Resources Manager regarding the releasability of DCAA records to members of the public.

(h) Managers, Field Audit Offices (FAOs) will:

(1) Ensure that the provisions of this part are followed in processing requests for records.

(2) Forward to the Regional Privacy Act Officer, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(3) Ensure the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(4) Provide recommendations to the Regional Privacy Act Officer regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(5) Provide the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the Regional Privacy Act Officer. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(i) DCAA Employees will:

(1) Not disclose any personal information contained in any system of records, except as authorized by this part.

(2) Not maintain any official files which are retrieved by name or other personal identifier without first ensuring that a notice for the system has been published in the **Federal Register**.

(3) Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this part to the appropriate Privacy Act officials for their action.

§ 317.5 Information requirements.

The Report Control Symbol. Unless otherwise directed, any report concerning implementation of the Privacy Program shall be assigned Report Control Symbol DD–DA&M(A)1379.

§ 317.6 Procedures.

Procedures for processing material in accordance with the Privacy Act of 1974 are outlined in DoD 5400.11–R, DoD Privacy Program (32 CFR part 310).

[4] Copies may be obtained from the Defense Contract Audit Agency, ATTN: DCAA–CMO, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. Electronic copies of DCAA Privacy notices may be obtained from http://www.defenselink.mil/privacy.

Dated: July 31, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19860 Filed 8–4–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 293

Wilderness—Primitive Areas; Fixed Anchors in Wilderness

AGENCY: Forest Service, USDA.

ACTION: Negotiated rulemaking committee meeting.

SUMMARY: The Secretary of Agriculture has established a negotiated rulemaking committee to develop recommendations for a proposed rule for the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. The Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee is composed of individuals representing a cross section of interests with a definable stake in the outcome of the proposed rule. The Committee has been established in accordance with the provisions of the Federal Advisory Committee Act and is engaged in the process of rulemaking pursuant to the provisions of the Negotiated Rulemaking Act. The Committee has held meetings in June and July and will hold the third meeting in August. All meetings of the committee are open to public attendance.

DATE: The next meeting of the advisory committee will be held in Golden, Colorado, on August 30–31. The meeting is scheduled from 8 a.m. to 5:30 p.m. on the first day and from 8 a.m. to 3:30 p.m. on the second day.

ADDRESSES: The advisory committee meeting will be held in the auditorium of the Rocky Mountain Regional Office, Forest Service, USDA, 740 Simms St., Golden, Colorado.

FOR FURTHER INFORMATION CONTACT: Jerry Stokes, Wilderness Program Manager, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–0925.

Dated: August 1, 2000.

James R. Furnish,

Deputy Chief, National Forest System.

[FR Doc. 00–19903 Filed 8–4–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AK12

Schedule for Rating Disabilities: Disabilities of the Liver

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the portion of the Digestive System that addresses disabilities of the liver. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: Comments must be received by VA on or before October 6, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900–AK12." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising that portion of the Digestive System that addresses disabilities of the liver. VA published an advance notice of proposed rulemaking in the Federal Register on May 2, 1991 (56 FR 20168), advising the public that it was preparing to revise and update the schedule for rating disabilities of the digestive system. This regulation proposes to amend only 38 CFR 4.112 and certain diagnostic codes in 38 CFR 4.114, in order to address hepatitis C and its sequelae, and to update evaluation criteria for other liver disabilities. Extensive new medical information has recently become available about hepatitis C, a liver disease that occurs frequently in veterans and at a prevalence rate which is likely higher than in the civilian population. To address hepatitis C and related liver disabilities adequately requires that we update the entire portion of the digestive system that pertains to liver disease.

In response to the advance notice of proposed rulemaking, we received comments from the American Legion and from several VA employees. One commenter addressed liver disabilities, suggesting, among other things, that we add hepatitis A, B, and C, and chronic inflammation of the liver and its residuals, to the rating schedule. The same commenter also suggested that other residuals need to be addressed and that cirrhosis is not the only residual of chronic hepatitis. Another commenter suggested that we address liver transplants in the revised schedule. We propose to address each of these suggestions from commenters in this revision, as discussed below.

In addition to publishing an advance notice, VA contracted with an outside consultant to recommend changes to the digestive system sections of the rating schedule to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review that portion of the rating schedule dealing with the digestive system and to make recommendations for changes. The comments of the consultants on liver disabilities are incorporated into the discussions below.

Current § 4.112, "Weight loss," addresses in general terms the issues of when weight loss is significant or important, how it is determined, and what is meant by inability to gain weight. Upon the advice of our contract consultants, we propose to make this information more specific, and therefore more useful for evaluation purposes, by stating that the term "substantial weight loss," for purposes of evaluating conditions in § 4.114, means a loss of greater than 20 percent of the individual's baseline weight, sustained for three months or longer; that the term "minor weight loss" means a loss of 10 to 20 percent of the individual's baseline weight, sustained for three months or longer; and that the term "inability to gain weight" means "substantial" (rather than the current term "significant") weight loss with inability to regain it despite appropriate therapy. In view of these changes, we

propose to remove the current reference to standard age, height, and weight tables, since it is more accurate to compare weight after onset of the illness with the individual's own usual, baseline, or premorbid weight, rather than with the "predicted average weight for height and age," which may never have applied to that individual.

Injury of the liver (diagnostic code 7311) is currently evaluated under the criteria for adhesions of the peritoneum (diagnostic code 7301). However, our specialist consultants noted that injury to the liver may result in abnormalities other than adhesions, such as damage to the liver parenchyma. We, therefore, propose to add the option of evaluating as cirrhosis of the liver (diagnostic code 7312) or chronic liver disease without cirrhosis (diagnostic code 7345) (see discussion below), depending on the specific residuals. These criteria would better encompass the possible residuals of liver injury. Our consultants also suggested that we add the phrase "including surgery" to the title of this diagnostic code. However, the current title is not restrictive as to what types of injury are included, and we, therefore, do not propose to adopt the suggested change.

Diagnostic code 7312 is currently titled "liver, cirrhosis of." We propose to broaden the scope of this code to include primary biliary cirrhosis and the cirrhotic phase of sclerosing cholangitis, two conditions that are not included in the current rating schedule but that are related to cirrhosis of the liver and have similar disabling effects. We propose to revise the title accordingly to "Cirrhosis of the liver, primary biliary cirrhosis, or cirrhotic phase of sclerosing cholangitis." Cirrhosis of the liver is currently evaluated at 100, 70, 50, or 30 percent, based on ascites, recurrent hemorrhage from esophageal varices, enlargement of the liver, muscle wasting, loss of strength, dilated abdominal veins, dyspepsia, weight loss, and impairment of health. The evaluation criteria rely on subjective terms, such as "pronounced," "severe," "moderately severe," and "moderate," and on the frequency of "tapping" (an outdated term) for ascites. We propose to delete the subjective and outdated terms, but to retain the same evaluation levels, add a 10 percent evaluation level, and base the evaluation on similar, but updated, criteria. We propose to base evaluation under diagnostic code 7312 on the presence or history of ascites (an accumulation of fluid in the abdominal cavity), hemorrhage from varices (enlarged, tortuous veins at the lower end of the esophagus) or portal gastropathy (erosive gastritis), hepatic encephalopathy, portal hypertension, splenomegaly (enlarged spleen), jaundice, and emaciation (or lesser degrees of weight loss), as well as on symptoms of generalized weakness, anorexia (lack of appetite), abdominal pain, and malaise (a vague feeling of bodily discomfort). These are all signs and symptoms of cirrhosis that occur at different stages of the disease. Ascites, hemorrhage, and hepatic encephalopathy are all major complications that usually occur only in advanced stages of cirrhosis, when there is portal hypertension (elevated blood pressure in the veins of the portal system, which may occur with severe liver disease) ("The Merck Manual," 374, 17th ed., 1999). We propose to assign a 100-percent evaluation if ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy is present and refractory (not readily yielding to treatment or unresponsive) to treatment, or if there is persistent jaundice, generalized weakness, and significant weight loss. We propose to assign a 70-percent evaluation if there is a history of two or more episodes of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy, but with periods of remission between attacks, and a 50-percent evaluation if there is a history of one episode of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy. We propose to assign a 30-percent evaluation if there is portal hypertension and splenomegaly, with weakness, anorexia, abdominal pain, malaise, and at least minor weight loss. We also propose to add a 10-percent evaluation level, to be assigned if there is weakness, anorexia, abdominal pain, and malaise. This would provide an appropriate evaluation level for individuals who have symptoms due to cirrhosis but do not meet the criteria for a 30-percent evaluation, as might occur in the early stages of the disease. These criteria are similar to those suggested by our consultants, except that we propose to exclude subjective terms such as "pronounced" and "mild." We also propose, to assure consistency in application of these criteria, to add a note stating that evaluation under this diagnostic code requires documentation of cirrhosis (by biopsy or imaging) and abnormal liver function tests, which are much more accurate methods for diagnosing cirrhosis. The proposed criteria are expressed in current medical terminology, are objective enough to assure consistent evaluations, and provide a broad range of evaluation percentages.

Residuals of liver abscess, diagnostic code 7313, are currently evaluated at 20 or 30 percent, based on whether there are "moderate" or "severe" symptoms. We propose to delete diagnostic code 7313 because our consultants advised us that abscesses of the liver now resolve without residual disability through the use of modern antibiotics and drainage techniques.

Diagnostic code 7343 is currently titled "new growths, malignant, exclusive of skin growths." We propose to change "new growths, malignant" to "malignant neoplasms," because that is current medical terminology, and to add "of the digestive system" to the title, because this would more clearly indicate that this code refers only to malignant neoplasms of this system. Under current diagnostic code 7343, a 100-percent evaluation is assigned, and then continued for one year following cessation of surgical, X-ray or antineoplastic chemotherapy. Rating is made on residuals at that time if there has been no local recurrence or metastases. In order to assure that an evaluation will be based on actual medical findings rather than on a regulatory assumption that there has been improvement, we are proposing to continue the total evaluation under this code indefinitely after treatment is discontinued, and to examine the veteran six months after treatment ends. If the results of this or any subsequent examination warrant a reduction in evaluation, the reduction would be implemented under the provisions of 38 CFR 3.105(e), which require a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The proposed revision would not only require a current examination to assure that all residuals are documented, but also offer the veteran more contemporaneous notice of any proposed action and expand the veteran's opportunity to present evidence showing that the proposed action should not be taken. If local recurrence or metastasis is not present, evaluation would be made on residuals. This change would provide criteria similar to those used in the evaluation of malignant neoplasms in other sections of the rating schedule that have recently been revised. (*See*, for example, diagnostic code 7528, malignant neoplasms of the genitourinary system, in 38 CFR 4.115b, and diagnostic code 7627, malignant neoplasms of gynecological system or breast, in 38 CFR 4.116.)

We also propose to change the title of DC 7344 from "new growths, benign" to "benign neoplasms," in accordance with current medical usage, and to revise the instructions to make clear that this condition is to be evaluated under a diagnostic code which reflects the resulting predominant disability or residual.

Diagnostic code 7345 is currently titled "infectious hepatitis." This is the former name for hepatitis A, the first type of viral hepatitis that was identified. Hepatitis A is a type of acute infectious disease that plays no role in the production of chronic hepatitis or cirrhosis (Merck, 377). For that reason, hepatitis A is so unlikely to present as chronic liver infection warranting service connection in veterans that it does not warrant a specific diagnostic code. We, therefore, propose to remove the title "infectious hepatitis." There are, however, a number of other conditions that may result in chronic liver disease without cirrhosis that are not included in the current schedule, including chronic viral hepatitis B and C, chronic active hepatitis, autoimmune hepatitis, hemochromatosis, and drug-induced hepatitis. These conditions have manifestations that are similar enough to allow their evaluation under a single set of criteria. We, therefore, propose to retitle diagnostic code 7345 "chronic liver disease without cirrhosis (including hepatitis B, chronic active hepatitis, autoimmune hepatitis, hemochromatosis, drug induced hepatitis, etc., but excluding bile duct disorders and hepatitis C)." We are proposing to exclude bile duct disorders from this category, although they are sometimes closely related to liver disorders, because they are addressed under other diagnostic codes in § 4.114. We propose to include hepatitis B infection (formerly called serum hepatitis), another type of viral hepatitis, in this group of conditions because, unlike hepatitis A infection, which we propose to exclude from the group, it does result in chronic liver infection in up to ten percent of cases.

A separate diagnostic code, 7354, is being proposed for hepatitis C, a type of viral hepatitis that was not identified until 1989, which can also result in chronic liver infection, cirrhosis, and malignancy of the liver. We are proposing to provide a separate diagnostic code for hepatitis C because there are still many unanswered questions about the disease, and public health epidemiologic concerns make it desirable for us to be able to track cases for statistical purposes. However, we propose to provide evaluation criteria for diagnostic code 7354 which are identical to those we are proposing for diagnostic code 7345, since the effects are similar. Until the hepatitis C virus was identified, hepatitis C infection was often categorized as "non-A, non-B hepatitis," a term used for any type of hepatitis that could not be identified as one of the known types (A or B). For that reason, we propose to add non-A, non-B hepatitis to the title, as a condition to be evaluated under diagnostic code 7354. We also propose to require that there be serologic evidence of hepatitis C infection and that the signs and symptoms listed in the criteria be due to hepatitis C infection (because some are nonspecific findings that could be from a variety of causes).

Evaluations under diagnostic code 7345 are currently based on the extent of liver damage, the severity of gastrointestinal symptoms, the frequency and duration of disabling episodes of symptoms, whether there are symptoms of fatigue, mental depression, or anxiety, and whether dietary restriction, rest therapy, or other therapeutic measures are required. We propose to base the evaluation for diagnostic codes 7345 and 7354 in part on the total duration of incapacitating episodes resulting from the manifestations and symptoms of these conditions, and to define an incapacitating episode in notes under diagnostic codes 7345 and 7354 as a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician. This is the same definition we provided in a notice of proposed rulemaking published in the **Federal Register** on February 24, 1997 (62 FR 8204) that would revise the evaluation criteria for intervertebral disc syndrome (diagnostic code 5293), another condition that would be evaluated on the basis of the total duration of incapacitating episodes. We propose to change the evaluation levels under 7345 from 100, 60, 30, 10, and zero percent to 100, 60, 40, 20, 10, and zero percent, the same levels that we proposed for the evaluation of intervertebral disc syndrome (except that we did not propose a zero-percent level for intervertebral disc syndrome), in order to maintain internal consistency in the rating schedule for conditions evaluated on the basis of the total duration of incapacitating episodes.

A zero-percent evaluation is currently assigned under diagnostic code 7345 if hepatitis is "healed, nonsymptomatic." We propose to retain the zero-percent level under diagnostic code 7345 and add it under diagnostic code 7354 for nonsymptomatic disease, but to remove the term "healed," because chronic liver disease may in some cases be nonsymptomatic even when not healed, and would still warrant no more than a zero-percent evaluation. Retaining a zero-percent evaluation level for chronic liver disease without cirrhosis would assure an appropriate evaluation of the condition in the absence of symptoms. Ten percent of those who are infected with the hepatitis B virus go on to develop chronic liver infection, and 75–85 percent of those infected with the hepatitis C virus develop chronic liver infection. However, tests to determine whether chronic liver infection is present when there is evidence of a past history of viral hepatitis are not routine and standardized. We are, therefore, proposing that a zero-percent evaluation be assigned to all nonsymptomatic veterans who have serologic evidence of having had a hepatitis B or C virus infection in order to assure appropriate handling of later-developing sequelae of hepatitis B and C.

According to our consultants, the most common symptom of chronic liver disease is fatigue. We, therefore, propose to list fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain as symptoms of chronic liver disease that might characterize an incapacitating episode. These are all symptoms of chronic liver disease (Merck, 354–385) and are more explicit than the indefinite language, such as "gastrointestinal disturbance" and "marked symptoms," that our consultants suggested. We propose to assign a 100-percent evaluation if there are near-constant incapacitating symptoms (such as fatigue, malaise (a vague feeling of bodily discomfort), nausea, vomiting, anorexia (lack of appetite), arthralgia (joint pain), and right upper quadrant pain); a 60-percent evaluation if there are incapacitating episodes having a total duration at least six weeks during the past 12-month period, but not occurring constantly, or there is daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly (enlarged liver); a 40-percent evaluation if there are incapacitating episodes having a total duration of at least four weeks, but less than six weeks, during the past 12-month period, or there is daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly; a 20-percent evaluation if there are incapacitating episodes having a total duration of at least two weeks, but less than four weeks, during the past 12-month period, or there is daily fatigue, malaise, and anorexia, but without

weight loss or hepatomegaly; a 10-percent evaluation if there are incapacitating episodes having a total duration of at least one week, but less than two weeks, during the past 12-month period, or there is intermittent fatigue, malaise, and anorexia; and a zero-percent evaluation if the condition is nonsymptomatic. These criteria encompass the usual disabling effects of this group of diseases and are in keeping with current medical information. In addition, they are more objective than the current criteria (which include such subjective terms as "minimal," "moderate," "marked," and "mild") and would thus help assure consistency of evaluations.

Although our consultants did not suggest that we remove "depression" and "anxiety" as criteria under diagnostic code 7345, we propose to do so. They are not prominent symptoms of chronic liver disease. If a mental disorder is medically determined to be secondary to liver disease, it would be separately evaluated under the mental disorders portion of the rating schedule.

In order to clarify the method of evaluation of the major sequelae of chronic liver disease, we propose to add a note under diagnostic codes 7345 and 7354 directing that sequelae of these conditions, such as cirrhosis or malignancy of the liver, be evaluated under an appropriate diagnostic code, as long as the same signs and symptoms are not used as the basis for evaluation under both 7354 and under another diagnostic code. (See 38 CFR 4.14.) We propose to add a second note under diagnostic codes 7345 and 7354 defining an incapacitating episode, as discussed above, and a third note under diagnostic code 7345 stating that hepatitis B infection must be confirmed by serologic testing in order to evaluate it under diagnostic code 7345. The criteria for the evaluation of hepatitis C under diagnostic code 7354 similarly require that there be serologic evidence of hepatitis C infection for evaluation under that code. This will enable VA to accurately determine which type of hepatitis a veteran has.

The ability to perform liver transplants is a significant medical advance that is not reflected in the current rating schedule. We, therefore, propose to add diagnostic code 7351 for liver transplants and to provide a 100-percent evaluation for an indefinite period from the date of hospital admission for transplant surgery, with a mandatory VA examination one year following hospital discharge. This would allow a reasonable period of time to assess whether rejection of the transplant or infection will occur, and for recovery from the surgery. We propose to provide instructions that the appropriate disability rating shall then be determined based on the examination, and subject to the provisions of 38 CFR 3.105(e). 38 CFR 3.105(e) requires a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The revision would not only require a current examination to assure that all residuals are documented, but also offer the veteran more contemporaneous notice of any proposed action and expand the veteran's opportunity to present evidence showing that the proposed action should not be taken. We propose to require a minimum evaluation of 30 percent following transplant, because of the need for long-term immunosuppressive medication and its associated problems. The proposed evaluation criteria are similar to those provided in 38 CFR 4.115b for evaluation following kidney transplant and in 38 CFR 4.104 for evaluation following cardiac transplant.

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This action would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This proposed rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: April 13, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. Revise § 4.112 to read as follows:

§ 4.112 Weight loss.

For purposes of evaluating conditions in § 4.114, the term "substantial weight loss" means a loss of greater than 20 percent of the individual's baseline weight, sustained for three months or longer; and the term "minor weight loss" means a weight loss of 10 to 20 percent of the individual's baseline weight, sustained for three months or longer. The term "inability to gain weight" means that there has been substantial weight loss with inability to regain it despite appropriate therapy.

(Authority: 38 U.S.C. 1155)

3. Section 4.114 is amended by:

A. Revising diagnostic codes 7311, 7312, 7343, 7344, and 7345.

B. Adding diagnostic codes 7351 and 7354.

C. Adding a new authority citation at the end of the section.

The revisions and additions read as follows:

§ 4.114 Schedule of ratings—Digestive system.

* * * * *

	Rating
7311 Residuals of injury of the liver. Depending on the specific residuals, evaluate as adhesions of peritoneum (diagnostic code 7301), cirrhosis of liver (diagnostic code 7312), or chronic liver disease without cirrhosis (diagnostic code 7345).	
7312 Cirrhosis of the liver, primary biliary cirrhosis, or cirrhotic phase of sclerosing cholangitis:	
With one of the following refractory to treatment: ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis), or; with persistent jaundice, generalized weakness, and substantial weight loss	100

	Rating
History of two or more episodes of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis), but with periods of remission between attacks	70
History of one episode of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis)	50
Portal hypertension and splenomegaly, with weakness, anorexia, abdominal pain, malaise, and at least minor weight loss	30
Symptoms such as weakness, anorexia, abdominal pain, and malaise	10
NOTE: For evaluation under diagnostic code 7312, documentation of cirrhosis (by biopsy or imaging) and abnormal liver function tests must be present.	
* * * * *	
7343 Malignant neoplasms of the digestive system, exclusive of skin growths	100
NOTE: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
7344 Benign neoplasms, exclusive of skin growths. Evaluate under an appropriate diagnostic code, depending on the predominant disability or the specific residuals after treatment.	
7345 Chronic liver disease without cirrhosis (including hepatitis B, chronic active hepatitis, autoimmune hepatitis, hemochromatosis, drug-induced hepatitis, etc., but excluding bile duct disorders and hepatitis C).	
Near-constant incapacitating symptoms (such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain)	100
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12-month period, but not occurring constantly, or; with daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly	60
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least four weeks, but less than six weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly	40
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least two weeks, but less than four weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia (without weight loss or hepatomegaly), requiring dietary restriction or continuous medication	20
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least one week, but less than two weeks, during the past 12-month period, or; intermittent fatigue, malaise, and anorexia	10
Nonsymptomatic	0
NOTE (1): Evaluate sequelae, such as cirrhosis or malignancy of the liver, under an appropriate diagnostic code, but do not use the same signs and symptoms as the basis for evaluation under DC 7354 and under a diagnostic code for sequelae. (See §4.14.).	
NOTE (2): For purposes of evaluating conditions under diagnostic code 7345, an incapacitating episode means a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician.	
NOTE (3): Hepatitis B infection must be confirmed by serologic testing in order to evaluate it under diagnostic code 7345.	
* * * * *	
7351 Liver transplant.	
For an indefinite period from the date of hospital admission for transplant surgery	100
Minimum	30
NOTE: A rating of 100 percent shall be assigned as of the date of hospital admission for transplant surgery and shall continue. One year following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.	
7354 Hepatitis C (or non-A, non-B hepatitis).	
With serologic evidence of hepatitis C infection and the following signs and symptoms due to hepatitis C infection:	
Near-constant incapacitating symptoms (such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain)	100
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12-month period, but not occurring constantly, or; with daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly	60

	Rating
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least four weeks, but less than six weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly	40
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least two weeks, but less than four weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia (without weight loss or hepatomegaly), requiring dietary restriction or continuous medication	20
Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least one week, but less than two weeks, during the past 12-month period, or; intermittent fatigue, malaise, and anorexia	10
Nonsymptomatic	0

NOTE (1): Evaluate sequelae, such as cirrhosis or malignancy of the liver, under an appropriate diagnostic code, but do not use the same signs and symptoms as the basis for evaluation under DC 7354 and under a diagnostic code for sequelae. (See § 4.14.).

NOTE (2): For purposes of evaluating conditions under diagnostic code 7354, an incapacitating episode means a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician.

(Authority: 38 U.S.C. 1155)

[FR Doc. 00–19761 Filed 8–4–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6844–6]

National Oil and Hazardous Substances; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed deletion of the Windom Municipal Landfill Superfund Site (Site) from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the Windom Municipal Landfill Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes Appendix B to Part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this proposal is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by September 6, 2000.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Boulevard, Chicago, Il 60604 (312)–886–0900 and the Minnesota Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard Associate Remedial Project Manager at (312) 886–7253. Written correspondence can be directed to Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: July 21, 2000.

William E. Muno,

Acting Regional Administrator, EPA Region V.

[FR Doc. 00–19787 Filed 8–4–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1710, MM Docket No. 00–133, RM–9885]

Digital Television Broadcast Service; Portland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by HMW, Inc., licensee of station WPXT, NTSC Channel 51, Portland, Maine, requesting the substitution of DTV Channel 36 for its assigned DTV Channel 4 at Portland. DTV Channel 36 can be allotted to Portland, Maine, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (43–51–06 N. and 70–19–40 W.). As requested, we propose to allot DTV Channel 36 to Portland with a power of 1000 and a height above average terrain (HAAT) of 265 meters. However, since the community of Portland is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before September 25, 2000, and reply comments on or before October 10, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street,SW., Room TW–A325, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, JoEllen Masters, Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006 (Counsel for HMW, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–133, adopted August 3, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–19687 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 76 and 78

[CS Docket No. 00–78; FCC 00–165]

Implementation of the Cable Operations and Licensing System (COALS) to Allow for Electronic Filing

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (FCC) proposes to amend its regulations governing the filing of forms and applications for the Cable Services Bureau. These proposed rule changes are designed to facilitate the FCC's implementation of the Cable Operations and Licensing Systems (COALS), a new electronic filing system. The Notice constitutes part of the FCC's ongoing review of its regulations consistent with the biennial review process mandated by Section 11 of the Communications Act. COALS will enable all cable services applicants, licensees and registrants to file electronically, thus increasing the speed and efficiency of the application and filing process. COALS will also make license and cable operational information more accessible to Commission staff and will enhance the availability of cable system information to the cable industry and the public.

DATES: Comments are due on or before September 6, 2000 and reply comments are due on or before September 21, 2000. Written comments by the public on the proposed information collections are due September 6, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before October 6, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to *springere@al.eop.gov*.

FOR FURTHER INFORMATION, CONTACT: Wayne McKee (202)418–2355 or Richard Kalb (202)418–1055, Cable Services Bureau, or via the internet at *wmckee@fcc.gov*. or rkalb@fcc.gov. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, CS Docket 00–78, adopted May 11, 2000 and released May 23, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via the internet at http://www.fcc.gov/csb.

Synopsis of the Notice of Proposed Rule Making

I. Introduction

1. In this Notice of Proposed Rulemaking ("NPRM"), we seek comment on our proposal to revise the rules governing the filing of forms and applications for the Cable Services Bureau ("CSB"). These include applications in the Cable Television Relay Service (CARS microwave applications), cable television operator registrations, and aeronautical frequency usage filings. These proposed rule changes are designed to facilitate our implementation of the Cable Operations and Licensing Systems ("COALS")—a new electronic filing system. This Notice constitutes part of our ongoing review of the Commission's regulations consistent with the biennial review process mandated by Section 11 of the Communications Act.

2. COALS will enable all cable services applicants, licensees, and registrants (hereinafter referred to as "electronic filers"), for the first time, to file all license-related applications and other filings electronically, thus increasing the speed and efficiency of the application and filing process.

3. COALS will also make license and cable operational information more accessible and more usable by Commission staff in carrying out our regulatory responsibilities. This will enable the Commission staff to monitor spectrum use and competitive conditions in the cable marketplace more easily and will promote more effective implementation of our spectrum management policies.

4. COALS will also enhance the availability of cable system information to the cable industry and the public. They will be able to access all cable system information by using any World Wide Web browser. These changes will benefit not only Commission licensees, but also members of the public that have historically had little or no access to such information. COALS will also allow persons seeking to obtain licensing information to search our database and retrieve the desired information via COALS. This will be more cost-effective than obtaining copies of Commission records manually from the Commission's copy contractor or the Commission's public reference rooms. Commission orders, public

notices, and other releases will be available on the Internet without charge.

5. In addition, the cost of filing applications or obtaining information will be reduced. Applicants will be charged normal filing fees for filing applications under COALS, but will save time and resources by filing electronically.

6. This NPRM reviews our current rules regarding information filed with the Commission, and proposes modifications only where necessary to fully implement COALS. Our objective in implementing COALS is to reduce costs to the Commission, cable operators, and the public by making the filing and review process faster and simpler.

7. Many of the rule changes proposed in this NPRM are merely procedural in nature. Section 553(b)(3)(A) of the Administrative Procedures Act provides an exception from notice and comment requirements for procedural rules. However, as a result of the development of COALS, we are proposing fundamental and extensive changes to the way we receive and process license applications, cable community registrations, aeronautical notifications and Forms 320 and 325. The changes needed to introduce COALS and to effectuate electronic filing and processing of most applications and notifications are sufficiently extensive that we believe it desirable to seek public comment on the full impact these changes may have on cable filers and the public. We provide notice and seek comment because we propose to change the data collection and management mechanisms, use a universal database to prepare, analyze, and report statistics, and use these proposals to form the basis for future rulemakings, compliance actions and other Commission initiatives.

8. In this NPRM, we seek comment on the following issues and proposals:

- whether we should require mandatory or optional electronic filing;
- how the CSB's application and licensing forms can be modified to make filing less burdensome;
- consolidating, and in some cases revising, the rules that determine whether a change to a pending CARS application or existing authorization is major or minor;
- amending return and dismissal procedures for defective or incomplete applications;
- standardizing the collection of information from cable applicants and licensees;
- requiring the submission of a Taxpayer Identification Number ("TIN") or its functional equivalent by applicants and licensees using COALS, consistent with the requirements of the Debt Collection Improvement Act of 1996; and
- eliminating unnecessary or duplicative filing and notice requirements.

A. Electronic Filing

1. Mandatory or Electronic Filing

9. *Background.* COALS gives us the capability to accept cable related forms and notifications electronically. A number of other processes within the Commission have already moved to electronic filing systems, and the Commission's policies have consistently encouraged electronic filing. The public has also requested that the Commission implement electronic filing of information wherever feasible to facilitate more user-friendly queries of Commission data. As a consequence, the Commission has recently sought comment on various changes to the rules that are intended to eliminate unnecessary filing and reporting requirements. In those proceedings, a number of commenters suggested that the Commission introduce electronic filing systems.

10. *Discussion.* With the introduction of COALS, we will have the ability to accept electronic filing of most regularly collected forms used by the Cable Services Bureau. We tentatively propose that during the second quarter of the year 2000, cable operators filing forms, applications, registrations, and notifications in the Cable Services Bureau have the option of filing electronically. We believe that allowing optional electronic filing for cable services is in the public interest because it will help to accomplish our goals of: (1) A smooth transition to COALS; (2) continual streamlining of our filing process; (3) affording parties a quick and economical means to file applications and other documents; and (4) making all filed information quickly and easily available to interested parties and the public. We believe that the effect of this option on applicants and licensees in cable services would be beneficial; indeed, COALS is intended to relieve the burden on all filers of the time and cost of paper filings. We request comment on these proposals.

11. While we propose to allow optional electronic filing for cable services, we seek comment on whether electronic filing should be made mandatory. We propose allowing optional filing because we recognize that those affected by our decision will be a diverse group, ranging from very small to very large entities. We recognize that some applicants may not have access to computers with the hardware and capability to utilize the software necessary to submit their applications electronically. Conversely, requiring electronic filing may eliminate possible confusion in a dual filing system and expedite our transition to COALS.

12. Accordingly, we seek comment on whether electronic filing should be made optional or mandatory. Commenters advocating mandatory electronic filing should propose a timetable for the transition to such filing.

13. Section 508 of the Rehabilitation Act of 1973, as amended, requires federal agencies to make materials available in accessible formats for persons with disabilities. Commenters may address ways to make COALS more accessible to individuals with disabilities in light of this obligation.

14. Finally, we request comment on whether it would benefit applicants, licensees, and registrants subject to electronic filing if the Commission maintained computer facilities at the Washington, DC headquarters for the public to use to file forms electronically. Commenters should discuss the resources needed to support this, e.g., the number of computers necessary for public use. We note, however, that any facility (e.g. public libraries, universities, "Internet cafes," etc.) that has Internet access capabilities can be used for COALS electronic filings. It is our intention to make electronic filing as widely valuable and successful as possible, and we request public input for further suggestions to meet this goal.

2. Electronic Payment

15. *Background.* Current Commission rules generally require applications or filings that require a fee be sent to the Commission's lockbox bank in Pittsburgh, Pennsylvania, with the correct fee and form.

16. *Discussion.* With implementation of COALS, we propose to allow cable applicants and filers to pay their filing costs electronically or to be sent to the Commission's lock box bank manually.

3. Electronic Signature

17. *Background.* Current Commission rules require that applicants and licensees provide original hand-written signatures on registrations and applications filed with the Commission.

18. *Discussion.* In allowing for electronic filing, COALS will allow applicants and licensees to sign filings with the Commission electronically. We propose that an electronic signature shall consist of the name of the

applicant transmitted electronically via COALS and entered on the application as a signature. We note that COALS will require pre-registration and that system users will be assigned a system identifier and associated password prior to their use of an electronic signature, as further discussed in paragraph 22.

4. Copy Requirements

19. *Background.* Current Commission rules require the filing of a specified number of copies of all applications and papers filed with the Commission in order to ensure that appropriate staff have access to the documents and that timely information is provided to the public.

20. *Discussion.* In this proceeding, we propose to eliminate the current copy requirements that are no longer necessary. We tentatively conclude that reducing the number of copies that parties have to file would serve the public interest because such requirements are unnecessary under COALS. In the past, multiple copies were required to make application and licensing information available to the public and to Commission employees. COALS, however, provides an unprecedented degree of accessibility to this information. Whether applications or pleadings are filed electronically or manually, all information will be available online to interested parties and to the Commission's staff. After implementation of COALS, any data that are filed manually will be entered or scanned as necessary and will be available in the same fashion as electronically filed information. Thus, there will no longer be a need for an applicant to file numerous paper copies. We propose to amend our rules so that applicants who file applications electronically will not be required to provide paper copies. We see comment on these proposals and tentative conclusions.

5. Use of Taxpayer Identification Numbers

21. *Background.* In 1996, Congress enacted the Debt Collection Improvement Act ("DCIA") as part of an effort to increase collection of delinquent government debts from private entities. As a result of DCIA, the Commission and executive agencies are required to monitor and provide information about their regulatees to the U.S. Treasury. This provision includes a requirement that the Commission collect Taxpayer Identifying Numbers ("TIN") and share them with the U.S. Treasury to ensure that the Commission does not refund monies to entities that have an outstanding debt to the federal government. TINs are 9-digit identifiers required of all individuals and employers to identify their tax accounts. Individuals use their Social Security Number as the TIN, while employers use the Employer Identification Number ("EIN") issued by the IRS to all employers. TINs are an integral part of the DCIA system and are necessary for the collection of delinquent debt owed to federal agencies. The TIN matches payment request with delinquent information. As a result, federal agencies have been required to share the TINs of benefit recipients since April 26, 1996, the effective date of DCIA. The Financial Management Service of the U.S. Treasury has recommended that agencies obtain the TIN when an agency first has direct contact with a person.

22. *Discussion.* The Commission has already taken steps to ensure proper collection of TINs from parties seeking to make filings using COALS. Development of COALS will require that we continue to collect TINs from CSB applicants and licensees because some of these parties may be the recipients of a refund for overpayment of filing and/or regulatory fees or auction bids.

23. We further propose that all parties seeking to file applications through COALS be required to submit a TIN as a prerequisite for using the system, for purposes of fee payment verification, and subsequently, that filers be issued a COALS system identifier and associated password for access to the electronic system. Under this proposal, individuals would use their Social Security Number as their TIN, while other entities would use their EINs as their TIN. Parties submitting manually filed forms and applications will continue to be required to supply their TIN on forms and applications, where applicable, because all such information will be placed on COALS and a TIN is necessary to track these applications.

24. We also note that the TIN is part of the required information for current manual and proposed electronic filers as identifiers for cable filing purposes, and is therefore available to the general public searching records. For example, the cable television registration statement requires a social security or entity identification number, either of which can be a TIN. Accordingly, this number will be available to those accessing a particular registration statement. We seek comment on whether a TIN number, for privacy and other reasons, should not be available to those searching the database electronically, even though the number will be available to those searching through the same records which may have been filed manually.

25. We note that under the proposal, parties other than cable operators and CARS licensees would have some access to COALS without providing a TIN. For example, parties seeking to find information electronically through COALS would not be required to submit a TIN, but rather would be permitted to access COALS using a general search criteria defined by COALS. Members of the public also would not be required to register to simply view applications or search the COALS database. We seek comment on whether requiring the use of TINs with the COALS systems would satisfy the requirements of the DCIA and would provide a unique identifier for parties filing applications with COALS that would ensure that the system functions properly. We tentatively conclude that the TIN is the logical choice for the system identifier because it is unique to each licensee and applicant, and these parties will likely have already obtained a TIN from the Internal Revenue Service in order to conduct their business. However, we note that it is still to be determined whether the TIN will be used as the COALS login.

B. Cable Services Bureau Operational Procedures

1. New Forms

26. *Background.* Currently, cable operators are required to file a registration statement with the Commission, which includes their legal name, mailing address and other operator information. Any change to the operator's legal name, mailing address or operational status must also be filed with the Commission. The operator is given the choice as to the format for the submission of this information, as no FCC forms for the provision of this information currently exist.

27. *Discussion.* We propose to create three new forms for the registration process. The first new form, FCC Form-xxx, will formalize and standardize the format for the cable television registration statement. At the same time, we propose to eliminate the requirement that the Commission give public notice of cable television registration statements. It has been our experience that registration statement public notices are not generally used to track registration data and do not generate public comment. Further, we propose to eliminate the requirement that 47 CFR 76.12 registrants disclose the date upon which they served 50 or more subscribers. This requirement no longer has a regulatory purpose. The second

new form, FCC Form-xxx, will formalize and standardize the format when a cable operator has a change in name, mailing address or operational status. The third form, FCC Form-xxx, will formalize and standardize the manner in which cable operators provide information to the Commission regarding usage of aeronautical frequencies. Under 47 CFR 76.615(b)(6), operators are required to provide a description of their routine monitoring procedures used for compliance with the aeronautical frequency usage rules. To facilitate electronic filing and review, we propose to allow operators to check a box in Form-xxx which certifies that their monitoring procedures fully comply with the requirements of § 76.614 of the Commission's rules. As a whole, these forms will facilitate electronic filing by creating a uniform format by which all cable operators provide their information, making it easier for Commission personnel to process the filings. In addition, we propose to modify FCC Form 327, used for applications in the Cable Television Relay Service, by revising Schedule C to eliminate redundant channeling and source information that are no longer required and transferring transmission tower information from the transmit D schedule (previously D[00]) to the C schedule. Furthermore, we intend to modify the Form 327 to conform with other electronically filed forms currently in use within the Commission and to eliminate requested information that is no longer necessary. We seek comment on this proposal.

2. Returns and Dismissals of Incomplete or Defective Submissions

28. *Background.* Currently, filing with the Commission involves the completion of a form and forwarding the completed application to the Commission. When incomplete or incorrectly filed forms or applications are received, the applicant is either contacted by phone or mail to correct the problem, or the submission is returned in accordance with CSB policies. The COALS filing system will reduce filing errors resulting from incomplete filings. For example, COALS will pre-fill ownership and address information for applicants who are already Commission licensees. It will also interactively check that required elements of applications are completed and prompt applicants to correct errors. We anticipate that this system will expedite the grant of applications and help to ensure the integrity of the data in our licensing database.

29. There will be two means for parties to electronically file applications with the Commission: batch and interactive. Batch filing involves data transmission in a single action, without any interaction with the Commission's COALS system. Batch filers will follow a set Commission format for entering data. Batch filers will then send, via file transfer protocol, batches of data to the Commission for compiling. COALS will compile such filings overnight and respond the next business day with a return or dismissal of any defective filings. Thus, batch filers will not receive immediate correction from the system as they enter the information. Interactive filing involves data transmission with screen-by-screen prompting from the Commission's COALS system. Interactive filers will receive prompts from the system identifying data entries outside the acceptable ranges of data for the individual fields at the time the data entry is made. Because interactive filers will be able to enter corrected information in real time, they are less likely to submit applications that are incomplete or incorrect.

30. *Discussion.* We propose to conform our filing rules for all CSB filers so that batch, interactive, and, where applicable, manual filers will be subject to the same requirements and procedures for defective or incomplete submissions. Interactively filed submissions will be screened in real time by the COALS system; therefore, errors will be unlikely but may occur in some instances where erroneous information is entered. In the case of batch and manually filed submissions, incomplete or erroneous filings will not be detected until after the submission is filed. Manually filed submissions, if erroneous, will not be returned until the CSB staff reviews the submission and detects the problem. In all cases, regardless of filing method, except as indicated below, we propose that a filer who submits a filing that is accepted by COALS, but is found subsequently to have missing or incorrect information, be notified of the defect. We seek comment on allowing operators 30 days from the date of this notification to correct or amend the submission if the amendment is minor. If the applicant files a timely corrected application, it will ordinarily be processed as a minor amendment in accordance with the Commission's rules. Thus it will have no effect on the initial filing date of the application or the applicant's filing priority. If, however, the amendment made by the applicant is not a simple correction but constitutes a major amendment to the application, it will be governed by the rules and procedures applicable to major amendments, i.e., it will be treated as a new application with a new filing date. Finally, if the applicant fails to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute. Notwithstanding the above, we propose that in all cases, submissions without a sufficient fee and manually filed applications that do not contain a valid signature will be immediately dismissed. We seek comment on these proposals.

C. Cable Services Bureau Licensing Procedures (CARS and Microwave Licenses)

1. Standardization of Major and Minor Filing Rules

31. *Background.* Under current CARS rules, the standards for distinguishing between major and minor filings, particularly amendments to applications and modifications of licenses, are defined under § 78.109 of the Commission's rules. The distinction between major and minor filings has significant procedural consequences in the application process, because a major amendment to an application causes the application to be considered newly filed, while a minor amendment generally has no impact on the filing date. Distinguishing between major and minor modifications to license applications is important, because major modifications are subject to the same public notice requirement as initial applications. Minor modifications, by contrast, do not trigger public notice obligations and, on occasion, do not require prior Commission approval.

32. *Discussion.* The implementation of COALS provides a unique opportunity to implement a single set of uniform standards for defining major and minor amendments and modifications of all CARS licenses. The Commission is authorized to adopt rules classifying amendments as either major or minor. Therefore we propose to adopt a single rule, as set out below, that defines categories of major and minor changes for purposes of defining whether an amendment to an application or request for license modification is major or minor. We are not, however, proposing to revise the types of applications which require public notice or frequency coordination.

MAJOR

Based on the above criteria, we tentatively conclude that the following changes should be considered major:

- Any increase in emission bandwidth beyond that authorized;

- Any change in the transmitting antenna system of a station, other than a CARS pickup station, including the direction of the main radiation lobe, directive pattern antenna gain or transmission line;
- Any horizontal change in the location of the antenna, other than a CARS pickup station transmitter;
- Any change in the type of modulation;
- Any change in the location of a station transmitter, other than a CARS pickup station transmitter, except a move within the same building or upon the tower or mast or a change in the area of operation of a CARS pickup station;
- Any change in frequency assignment including polarization;
- Any change in authorized operating power;
- Any substantial change in ownership or control;
- Any addition or change in frequency, excluding removing a frequency;
- Any request for partitioning or disaggregation;
- Any modification or amendment requiring an environmental assessment (as governed by 47 CFR 1.1301–1319);
- Any request requiring frequency coordination; or
- Any modification or amendment requiring notification to the Federal Aviation Administration as defined in 47 CFR part 17 subpart B.

MINOR

We tentatively conclude that any change not specifically listed above as major should be considered minor. This would include:

- Any name change not involving change in ownership or control of the license;
- Changes to administrative information, e.g., address, telephone number, or contact person.

33. We further propose to allow licensees to implement minor technical or physical modifications to their facilities without prior Commission approval; licensees would be required only to notify the Commission within 30 days of implementing the change. However, we note that there are times that applicants and licensees may submit multiple amendments or modifications that individually would be considered minor changes, but that, when considered together, would constitute a major change. In this connection, we propose that multiple minor changes be considered a major change to the extent that their cumulative effects relative to the original authorization or the last major change exceed the threshold(s) set forth above as major changes. We seek comment on this proposal. Commenters should address the standard we should adopt to alert applicants and licensees that multiple minor amendments or modifications will be considered a major change.

2. Filing of Pleadings Associated with Applications

34. *Background.* Currently, § 1.49 of the Commission's rules allows pleadings and documents filed in most Commission proceeding to be filed electronically.

35. *Discussion.* Once COALS is implemented, we intend to enhance COALS to allow pleadings and informal requests for Commission actions associated with applications or licenses in cable services to be filed electronically. Such pleadings include petitions to deny, petitions for reconsideration, applications for review, comments, motions for extension of time, and subsequently filed pleadings related to such filings (i.e., oppositions and replies). We expect such an enhancement to COALS to be forthcoming and that the system will be able to accept pleadings prepared in several popular software formats. In anticipation of such an enhancement, we propose to allow electronic filing of pleadings regarding CARS applications as an option, rather than a requirement. As a procedural example, electronic filers will be queried regarding which application is at issue. This query will enable us to easily associate pleadings with related applications and make the pleadings accessible to the public. In addition, parties submitting pleadings via COALS will continue to be required to service paper copies on all interested parties. We propose to allow electronic service where the party to be served consents in advance in their pleadings. We propose that when a party has agreed to electronic service of a document, the three-day mailing rule for computation of time purposes is inappropriate, and that service will be considered the same as facsimile service. We seek comment on this proposal.

3. Letter Requests

36. *Background.* The Commission's rules currently permit CARS licensees to request certain actions by letter instead of with a formal application filing. Each year CSB receives hundreds of letter requests, which must be processed manually. In addition, Section 308(a) of the Communications Act states that formal applications are not required during national emergencies or under other exceptional circumstances ("Special Situations")

37. *Discussion.* We seek comment on requiring requests relating to licenses or applications to be filed using COALS forms rather than continuing to accept and process letter requests. Commenters should address whether we should eliminate letter filings for applications, modifications, renewals, amendments, extensions, cancellations, special temporary authorizations, and name and address changes, except for the Special Situations set forth in Section 308(a) of the Communications Act. We note that our forms are widely available to the public on the FCC's web page and through a fax-on-demand service, and their use should be far less burdensome for the public than drafting a letter request. Parties can call 1–202–418–0177 from the handset of any fax machine and follow the recorded instructions. Using a form instead of a letter will also enable Commission staff to handle requests more quickly and accurately. We also note that even if manually filed with the Commission, COALS forms are more likely than a letter to be sent directly to the appropriate Bureau and division for processing. In addition, many requests for minor modifications could, if filed on a form, be automatically granted, thus relieving the Commission of a significant processing burden. Nonetheless, we are mindful that it may be unduly burdensome for some licensees to use a specific form rather than a letter to request minor changes to an application or license, such as a change of address. Therefore, interested parties should address whether letter requests should be permitted under certain circumstances, and if so, identify those circumstances.

D. Collection of Licensing and Technical Data

1. Overview

38. In reviewing our processing functions to adapt them to electronic filing, we propose to eliminate some existing data collection requirements and licensing requirements that no longer serve a useful purpose or that can be further streamlined. We seek comment on the types of technical data that we should collect from applicants and licensees, and whether there are particular data collection requirements that should be either added or deleted.

2. Change to North American Datum 83 Coordinate Data

39. *Background.* To perform its licensing role, CSB requires that certain applicants submit coordinate data with

their applications. Where applicable, applicants are required to submit coordinate data using the 1927 North American Datum ("NAD27") geographical survey. A more recent North American Datum ("NAD83") was completed in 1983, which provides updated coordinate data. NAD83 was adopted as the official coordinate system for the United States in 1989. On September 1, 1992, we issued a public notice noting the change and stating that we would be converting our databases to NAD83. At that time, however, in order to provide sufficient time to study the changes, we allowed applicants to continue indefinitely to provide coordinate data using NAD 27.

40. *Discussion.* We tentatively conclude that use of NAD83 will result in more accurate licensing decisions via the COALS system, and will also conform with the current Federal Aviation Administration regulations, which require the use of NAD83 data. In addition, it will conform with the Antenna Structure Registration ("ASR") system currently in use by the Commission's Wireless Telecommunications Bureau. We propose that all cable services submissions be required to provide such data using the NAD83 datum for sites located in the continental United States, Puerto Rico, the U.S. Virgin Islands, Alaska, Hawaii, Guam, American Samoa, and offshore sites adjacent to these areas (e.g., the Gulf of Mexico) to be expressed in terms of latitude and longitude referenced to NAD83. Sites located in the Northern Mariana Islands, Midway Island, and Wake Island should continue to be referenced to the applicable local datum. This exception for the Pacific insular areas is necessary because NAD83 is not applicable to these areas. We seek comment on our tentative conclusion and proposal.

II. Conclusion

41. We have set forth proposals to allow COALS to function more efficiently. A more efficient and fully functional COALS will mean that licensing information will be widely available to members of the public. We also believe that development of full electronic filing and widely available databases for the cable services will shorten application filing times for applicants, make the most recent data available to them concerning cable operators and other spectrum uses, and relieve the administrative burden on this Commission, enabling us to operate with greater efficiency. Accordingly, we tentatively conclude that it is in the public interest to implement the electronic filing of applications and other documents, and that COALS implementation, as well as the combined application and processing rules proposed herein, will help achieve that goal.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

42. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the policies and proposals in this NPRM. Written public comments concerning the effect of the proposal in the NPRM, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

43. *Need for Action and Objective of the Proposed Rule Change.* We undertake this proceeding to facilitate implementation of the COALS electronic filing system, so that cable services applicants and associated parties may file documents with greater speed and efficiency. The system will also make license and cable operational information more accessible to the Commission's staff, as well as the cable industry and the general public.

44. *Legal Basis.* The authority for the action proposed for the rulemaking is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended.

45. *Description and Estimate of the Number of Small Entities Impacted.* The IRFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

46. The Commission has developed its own definition of a "small cable company" and "small system" for the purpose of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable companies that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and other may have been involved in transactions that caused them to be combined with other cable companies. Consequently, we estimate that there are fewer than 1, 439 small entity cable companies that may be affected by the proposed rules changes in the Notice. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. We do not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

47. The Communications Act also contains a definition of a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

48. *Description of Projected Reporting, Recordkeeping, and other Compliance Requirements:* The Commission is proposing to reduce the burdens of certain reporting or information collection requirements.

49. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* The RFA requires an

agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Notice solicits comments on all alternatives to organize the electronic filing system. Any significant alternatives presented in the comments will be considered. In addition, we seek comment on whether electronic filing should be made optional or mandatory. For additional discussion of the effect on small business, see paragraphs 9 through 14. Small entities are encouraged to comment on this proposed rule change.

50. Federal Rules that May Overlap, Duplicate, or Conflict with the Proposed Rules: None.

B. Ex Parte

51. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

C. Filing of Comments and Reply Comments

52. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [date]and reply comments on or before [Date]. All relevant and timely comments will be considered before final action is taken in this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

53. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

54. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Paperwork Reduction Act of 1995 Analysis

This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19895 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 152
Monday, August 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of State & Local Tax Revenue.

Form Number(s): F–71, F–72, F–73.

Agency Approval Number: 0607–0112.

Type of Request: Extension of a currently approved collection.

Burden: 5,957 hours.

Number of Respondents: 5,906.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau is requesting a three-year extension of the current expiration date of the Quarterly Survey of State & Local Tax Revenue. These tax collections, amounting to nearly $700 billion annually, constitute almost one-half of all governmental revenues. Quarterly measurement of and reporting on these massive fund flows provides valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how the various levels of government fund their public sector obligations. These data are included in the quarterly estimates developed by the Bureau of Economic Analysis and are widely used by state revenue and tax officials, academicians, media representatives, and others.

The Census Bureau uses three forms to collect state and local government tax data for this long established data series. The Quarterly Survey of Property Tax Collections (form F–71) is sent to 5,800 local government tax collecting agencies in 530 county areas. While some counties are served by a single county level tax-collecting agency, others have county, city, township, and even school district collectors. Each agency is asked to report the total property tax collections during the past quarter (regardless of which governments ultimately receive the monies).

Form F–72, State Tax Collections-Quarterly Survey, is sent to a state level revenue, finance, or budget agency in each state to report tax collection data for the preceding 3-month period.

The Quarterly Survey-Selected Local Taxes (form F–73) goes to 55 local tax collecting agencies known to have substantial collections of local general sales and/or local individual income taxes.

Affected Public: State, local or Tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent on or before September 6, 2000, to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19866 Filed 8–4–00; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Report of Privately-Owned Residential Building or Zoning Permits Issued (Building Permits Survey)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to G. Daniel Sansbury, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 457–1321 (or via the Internet at g.daniel.sansbury@ccmail.census.gov).

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to request a three year extension of the currently approved Form C–404, Building Permits Survey. The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series are key economic indicators. Two such series are: (a) Housing Units Authorized by Building Permits; and (b) Housing Starts. Both are based on data from samples of permit-issuing places. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy.

The Census Bureau uses Form C–404 to collect data to provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family, and to select samples for the Census Bureau's demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed

geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas.

II. Method of Collection

We collect this information by mail and electronically through files we download or receive on diskettes.

Monthly, we collect this information by mail for 8,170 permit-issuing jurisdictions and electronically for 550 jurisdictions. Annually, we collect this information by mail for 10,180 jurisdictions.

III. Data

OMB Number: 0607–0094.

Form Number: C–404.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: 18,900.

Estimated Time per Response: 16 minutes for monthly respondents who report by mail, 3 minutes for monthly respondents who report electronically, and 25 minutes for annual respondents who report by mail.

Estimated Total Annual Burden Hours: 30,716.

Estimated Total Annual Cost: $507,121.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19867 Filed 8–4–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080100B]

Northeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington, DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments(s) and instructions should be directed to Allison Ferreira, NMFS, 1 Blackburn Drive, Gloucester, MA 01930 (978–281–9103).

SUPPLEMENTARY INFORMATION:

I. Abstract

Any individual or organization participating in Federally-controlled fisheries is required to obtain permits. The purpose and use of permits is to: (1) Register fishermen, fishing vessels, fish dealers and processors, (2) list the characteristics of fishing vessels and/or dealer/processor operations, (3) exercise influence over compliance (e.g. withhold issuance pending collection of unpaid penalties), (4) provide a mailing list for the dissemination of important information to the industry, (5) register participants to be considered for limited entry, and (6) provide a universe for data collection samples. Identification of the participants, their gear types, vessels, and expected activity levels is an effective tool in the enforcement of fishery regulations. This information is needed to measure the consequences of management controls as well. Participants in certain fisheries may also to be required to notify NOAA before fishing trips for the purpose of observer placement and to make other reports on fishing activities.

II. Method of Collection

Initial permit applications are made by form. After initial permit issuance, a pre-printed permit renewal form is generated via computer using current permit information. This form is then sent to the permit holder for updating. If no changes to the pre-printed form are required, the applicant simply needs to sign the form and return it with any other information (i.e. current state registration or Coast Guard document) required for permit renewal.

Automated reporting by means of a vessel monitoring system (VMS) is required for all vessels issued a full-time or part-time limited access sea scallop permit, or issued an occasional limited access sea scallop permit when fishing under the Georges' Bank Exemption Program, or scallop vessels fishing under the small dredge program. All remaining limited access multispecies, monkfish, and scallop vessels are required to report via a call-in system. Vessel owners issued a limited access multispecies, monkfish, occasional scallop, or combination permit may voluntarily elect to use the VMS in place of the call-in system. This reporting is required in order to monitor: (1) Usage of days-at-sea allocations, (2) compliance with vessel layover requirements, (3) compliance with "days-out-of-the-fishery" requirements, (4) compliance with closed area regulations, and (5) compliance with exempted fishery regulations.

III. Data

OMB Number: 0648–0202.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses and other for-profit organizations; individuals or households; and State, Local or Tribal Governments.

Estimated Number of Respondents: 43,203.

Estimated Time Per Response: Preprinted renewal forms require an estimated 15 minutes to complete, while an initial application requires an estimated 30 minutes per response. In order to obtain an Atlantic Bluefish Vessel permit an applicant would need

to complete a separate permit application, at an estimated response time of 30 minutes. Dealer permit applications take an estimated 5 minutes to complete. The vessel operator permit application is estimated to take an average of 1 hour to complete due to the color photograph submission requirement. Limited access vessel upgrade or replacement applications take approximately 3 hours to complete. Applications for retention of limited access permit history require an estimated 30 minutes. Applicants are expected to spend approximately 3 hours gathering and presenting the documentation needed for any limited access permit appeal.

Limited access multispecies, combination, occasional scallop, and monkfish vessels must notify NOAA via the call-in system of the start date and end date for each fishing trip. The estimated time per response is 2 minutes. It is estimated to take multispecies and monkfish vessels approximately 3 minutes to declare blocks of time out of the gillnet fishery. The burden of vessel monitoring for full-time and part-time limited access scallop vessels or authorized multispecies, combination and occasional scallop vessels is estimated to be 1 hour for installation of VMS unit, 5 minutes for verification of installation of the VMS unit, and 30 seconds per poll for automated polling of vessel position. Vessels required to have a fully functional VMS unit at all times may request to turn off the VMS (power down exemption) at approximately 30 minutes per request. Requests for observer coverage are estimated to require 2 minutes per request.

Limited access vessels fishing under DAS requirements that have assisted in Coast Guard search and rescue operations or assisted in towing a disabled vessel may apply for Good Samaritan credits at a burden of 30 minutes per applicant.

Owners or operators of vessels seeking to participate in the Cultivator shoal whiting, mid-water trawl, purse seine, Nantucket shoal dogfish, Southern New England (SNE) little tunny gillnet, or SNE cod landing limit exemption programs must request a letter of authorization from the Regional Administrator (letter of authorization). The estimated time required to request a letter of authorization is 5 minutes. Vessels fishing in the NAFO Regulatory Area that wish to be exempt from multispecies regulations while transiting the EEZ with multispecies on board, or landing multispecies in U.S. ports, must request a letter of authorization (5 minutes) in addition to possessing a valid High Seas Fishing Compliance permit under 50 CFR Part 300. A letter of authorization (5 minutes) is also required for permitted vessels intending to transfer selected species from one vessel to another as follows: Loligo and butterfish moratorium permit or Illex moratorium permit and vessels issued a mackerel or squid/butterfish incidental catch permit that intend to transfer Loligo, Illex or butterfish; vessels issued a multispecies or scallop permit that intend to transfer species other than regulated species; and multispecies vessels intending to transfer up to 500 lbs. of combined small-mesh multispecies per trip for use as bait.

Owners of charter/party vessels intending to fish in the Nantucket Lightship Closure Area must request a letter of authorization from the Regional Administrator, estimated to take 5 minutes. Vessels fishing under Charter/Party regulations in Gulf of Maine closed areas must obtain a Charter/Party Exemption Certificate for Gulf of Maine Closed Areas, at an estimated 2 minutes per request.

Owners of summer flounder vessels seeking to participate in the summer flounder small mesh exempted fishery must apply for a permit from the Regional Administrator, at an estimated 5 minutes per application. Vessels participating in the state waters winter flounder exemption must obtain a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the exempted fishery. The request for such a certificate is estimated to take 2 minutes.

Limited access scallop vessels fishing under the scallop DAS program must request a letter of authorization, with an estimated burden of 5 minutes, in order to fish for scallops with trawl nets. Limited access sea scallop vessels wishing to participate in either the state waters DAS exemption program or the state waters gear exemption program must notify the Regional Administrator by VMS or call-in notification. Participants in the sea scallop state waters exemption programs using VMS notification must notify the Regional Administrator prior to the first trip in the exemption program and prior to the first planned trip in the EEZ, at an estimated 2 minutes per response. Participants in these exemption programs using the call-in system must notify the Regional Administrator at least 7 days prior to fishing under the exemption, at an estimated 2 minutes per call. If participants using the call-in system wish to withdraw from either state waters exemption program prior to the end of the 7-day designated exemption period requirement, they must also call the Regional Administrator to notify of early withdrawal, at an estimated 2 minutes per call.

Surf clam and ocean quahog vessel owners or operators are required to call the National Marine Fisheries Service (NMFS) Office of Law Enforcement nearest to the point of offloading prior to the departure of the vessel from the dock. It requires approximately 2 minutes for a vessel owner or operator to notify law enforcement of the vessels departure from the dock to fish for surf clams or ocean quahogs in the EEZ.

In the lobster fishery, initial lobster area designations are estimated to take 5 minutes; requests for additional tags are estimated to take 2 minutes; and notification of lost tags is estimated to take 3 minutes.

In the Northeast multispecies fishery, a request for change in permit category designation requires approximately 2 minutes, and a request for transit to another port by a vessel required to remain in the GOM cod trip limit takes 2 minutes. For vessels fishing under the GOM cod landing limit for the monkfish fishery, an area declaration is estimated to take 3 minutes.

In the gillnet fisheries for multispecies and monkfish, the burden estimate for calling out of the fishery is 3 minutes. Gillnet category designation, including initial requests for gillnet tags, requires approximately 10 minutes. Requests for additional tags require an estimated 2 minutes. Notification of lost tags and requests for replacement tag numbers also require an estimated 2 minutes. It will take approximately 1 minute to attach each gillnet tag.

Requests for state quota transfers in the bluefish, summer flounder and scup fisheries are estimated to require 1 hour.

Estimated Total Annual Burden Hours: 36,872.

Estimated Total Annual Cost to Public: $1,138,233.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19924 Filed 8–4–00; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072800B]

Marine Mammals; File No. P368D

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, has requested an amendment to scientific research Permit No. 938.

DATES: Written or telefaxed comments must be received on or before September 6, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 938, issued on February 2, 1995 (60 FR 7753) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 938 authorizes the permit holder to take various species of marine mammals of the suborders Mysticeti, Odontoceti, Pinnipedia, and southern sea otter annually during: aerial and vessel surveys, behavioral observations, photographic identification, and VHF and TDR tagging. On August 16, 1999 the permit was amended to include authorization to place implantable and surface VHF tags and TDRs on up to 20 killer whales (*Orcinus orca*) off the California coast. The permit holder now requests authorization to place implantable VHF and TDR tags on up to 8 killer whales in southeast Alaska.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 1, 2000.

Ann D. Terbush,

Division Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service,

[FR Doc. 00–19925 Filed 8–4–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice to Amend Records Systems.

SUMMARY: The Defense Contract Audit Agency is amending two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. DCAA is also updating its address directory.

DATES: The actions will be effective on September 6, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Defense Contract Audit Agency, Information and Privacy Advisor, CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767–1005.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed actions are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: July 31, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 160.5

SYSTEM NAME:

Travel Orders *(May 18, 1999, 64 FR 26947).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'bills of lading, vouchers, contracts' and insert 'transportation authorization, agreements/contracts'.

* * * * *

RDCAA 160.5

SYSTEM NAME:

Travel Orders.

SYSTEM LOCATION:

Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219; DCAA Regional Offices; and field audit offices, whose addresses may be obtained from their cognizant regional office. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who performs official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's orders directing or authorizing official travel to include approval for transportation of automobiles, documents relating to dependents travel, transportation authorization, agreements/contracts and any other documents pertinent to the individual's official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C.133 and DoD Directive 5105.36 which is published in 32 CFR part 357.

PURPOSE(S):

To document all entitlements, authorizations; and paperwork associated with an employee's official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By fiscal year and alphabetically by surname. May be filed in numerical sequence by travel order number.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Records are destroyed after four years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Resources, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219; Regional Directors, DCAA; and Chiefs of Field Audit Offices, whose addresses may be obtained from their cognizant regional office. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made to those offices listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of record system notices. In personal visits the individual should be able to provide acceptable identification, that is, driver's license or employing office's identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Administrative offices; personnel offices; servicing payroll offices; employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS) *(November 20, 1997, 62 FR 62003).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'DCAA Management Information System (DMIS).

SYSTEM LOCATION:

Delete entry and replace with 'Defense Contract Audit Agency, Information Technology Division, 4075 Park Avenue, Memphis, TN 38111–7492.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry 'and contract'.

* * * * *

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (DMIS).

SYSTEM LOCATION:

Defense Contract Audit Agency, Information Technology Division, 4075 Park Avenue, Memphis, TN 38111–7492.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing contractor information; records containing reimbursable billing information; name, Social Security Number, pay grade and (optionally) address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an on-line database and on magnetic tape at secure offsite storage.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual employees, supervisors, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

DEFENSE CONTRACT AUDIT AGENCY OFFICES

(Alphabetically by State and City)

California

DCAA Western Regional Office, Attention: RCI–4, 16700 Valley View Avenue, Suite 300, La Mirada, CA 90638–5833.

Georgia

DCAA Eastern Regional Office, Attention: RCI–1, 2400 Lake Park Drive, Suite 300, Smyrna, GA 30080–7644.

Massachusetts

DCAA Northeastern Regional Office, Attention: RCI–2, 59 Composite Way, Suite 300, Lowell, MA 01851–5150.

Pennsylvania

DCAA Mid-Atlantic Regional Office, Attention: RCI–6, 615 Chestnut Street, Suite 1000, Philadelphia, PA 19106–4498.

Texas

DCAA Central Regional Office, Attention: RCI–3, 6321 East Campus Circle Drive, Irving, TX 75063–2745.

Virginia

DCAA Headquarters, Attention: CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

[FR Doc. 00–19858 Filed 8–4–00; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 1, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Section 704 Annual Performance Report (Parts I and II).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 336; Burden Hours: 11,760.

Abstract: This form accomplishes the Statutory mandate for data collection in Title VII of Rehabilitation Act of 1973, as amended (Act) and implementing regulations. These data collection requirements are found in sections 13, 706, 721, and 725 of the Act and 34 CFR part 366. In meeting these statutory and regulatory requirements the 704 Reports serve as: annual performance reports and are a basis for further funding grantees submitting the reports; a report of the training and technical assistance survey; the basis for mandatory on-site compliance reviews conducted by the Education Department on 15% of Centers for Independent Living (CILs) funded through the CIL program; an annual compliance self-evaluation with standards and indicators; and as a

source for an Annual Report to Congress.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–19876 Filed 8–4–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Savannah River Site Spent Nuclear Fuel Management Final Environmental Impact Statement, Aiken, SC

AGENCY: Department of Energy (DOE).

ACTION: Record of decision.

SUMMARY: The Savannah River Site Spent Nuclear Fuel Management Environmental Impact Statement (SRS SNF Management EIS, DOE/EIS–0279, March 2000) considered alternative ways of managing spent nuclear fuel (SNF) at DOE's Savannah River Site in Aiken, South Carolina. Based on that analysis, DOE has decided to implement the Preferred Alternative identified in the EIS. As part of the Preferred Alternative, DOE will develop and demonstrate the Melt and Dilute technology to manage about 97 percent by volume and 60 percent by mass of the aluminum-based SNF considered in the EIS (48 metric tons of heavy metal (MTHM) aluminum-based SNF).

Following development and demonstration of the technology (including characterization and qualification of the Melt and Dilute product to meet anticipated repository acceptance criteria), DOE will begin detailed design, construction, testing, and startup of a Treatment and Storage Facility (TSF). The SNF will remain in existing wet storage until treated and placed in dry storage in the TSF. The TSF will combine the transfer and treatment (Melt and Dilute) functions, to be constructed in the existing 105–L building, with a new dry storage facility to be constructed in L Area near the 105–L building.

DOE also has decided to use Conventional Processing (*i.e.*, the existing canyons) to stabilize about 3 percent by volume and 40 percent by mass of the aluminum-based SNF. If the TSF becomes available before these materials have been stabilized, DOE may use the Melt and Dilute technology rather than Conventional Processing for their stabilization. DOE has also decided to continue to store small quantities of higher actinide materials until DOE determines their final disposition.

In addition, DOE will ship approximately 20 MTHM of non-aluminum-based SNF from the SRS to the Idaho National Engineering and Environmental Laboratory (INEEL). If DOE identifies any imminent health and safety concerns involving any aluminum-based SNF before the TSF becomes available, DOE will use Conventional Processing to stabilize the material of concern.

ADDRESSES: Copies of the SRS SNF Management EIS and this Record of Decision may be obtained by calling a toll free number (1–800–881–7292), sending an e-mail request to "nepa@srs.gov," or by mailing a request to: Andrew Grainger, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Department of Energy, Building 742A, Room 185, Aiken, South Carolina 29808. The final SRS SNF Management EIS (including the 33-page Summary) and this Record of Decision are available on the Office of Environmental Management's web site, *http://www.em.doe.gov*, and on DOE's NEPA web site, *http://tis.eh.doe.gov/nepa/*.

FOR FURTHER INFORMATION CONTACT: Questions concerning the SRS SNF management program can be submitted by calling 1–800–881–7292, mailing them to Mr. Andrew Grainger at the above address, or sending them electronically to the Savannah River Operations e-mail address, "nepa@srs.gov."

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE previously completed the Interim Management of Nuclear Materials (IMNM) EIS (DOE/EIS–0220, October 1995), that included the management of 195 MTHM of aluminum-based SNF at the SRS. The primary purpose of the actions considered in the IMNM EIS was to correct or eliminate potential health and safety vulnerabilities related to some of the methods used to store nuclear materials (including SNF) at the SRS.

After completion of the IMNM EIS, DOE decided to stabilize about 175 MTHM of the 195 MTHM of aluminum-based SNF that was in storage at the SRS in 1995. DOE also decided the remaining 20 MTHM (out of 195 MTHM) of aluminum-based SNF at SRS was "stable" (*i.e.*, the SNF likely could be safely stored for about 10 more years, pending decisions on final disposition). That 20 MTHM of aluminum-based SNF is included in the SNF inventory considered in the SRS SNF Management EIS. In addition, the SRS SNF Management EIS considered approximately 20 MTHM of other SNF that is to be managed at the SRS as a result of prior NEPA analyses, as described below.

In 1995, DOE undertook a decision-making process to consolidate SNF across its nuclear facility complex. The Record of Decision (60 FR 28680, June 1, 1995; amended 61 FR 9441, March 8, 1996) for the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS (DOE/EIS–0203, April 1995) identified three facilities within the DOE complex where SNF should be managed. The facilities were chosen based on fuel types.

DOE decided that existing Hanford production reactor SNF would remain at Hanford, aluminum-based SNF would be consolidated at the SRS, and non-aluminum-based SNF would be consolidated at the INEEL. As a result, DOE will transfer about 20 MTHM of non-aluminum-based SNF from the SRS to INEEL and about 5 MTHM of aluminum-based SNF from INEEL to the SRS. Thus, the SRS SNF Management EIS evaluated the impacts of preparing 20 MTHM of non-aluminum-based SNF for shipment from the SRS to INEEL. The SRS SNF Management EIS also evaluated the management and treatment options for the 5 MTHM of aluminum-based SNF due to be received from INEEL.

In 1996, DOE issued a Record of Decision for the Final EIS on a Proposed

Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS–0218, February 1996). DOE decided (61 FR 25092, May 17, 1996) to accept approximately 18 MTHM of aluminum-based SNF (of United States origin) from foreign research reactors for management at the SRS, with additional SNF to be managed at INEEL. Shipments of foreign research reactor SNF to the SRS began in 1996 and are expected to continue until 2009. Consequently, the potential environmental impacts of managing and treating the 18 MTHM of aluminum-based foreign research reactor fuel were evaluated in the SRS SNF Management EIS.

The SRS SNF Management EIS also evaluated the treatment and storage of about 5 MTHM of aluminum-based domestic research reactor SNF. Shipments of spent domestic research reactor fuel to the SRS for management were assumed to continue until 2035. Finally, the SRS SNF Management EIS evaluated the storage and/or repackaging of higher actinide targets. These targets contain americium and curium isotopes that could be used in the production of elements with higher atomic numbers such as californium-252. Californium-252 is used as a neutron source for radiography and in the treatment of certain types of cancer, and for research in basic chemistry, nuclear physics, and solid-state chemistry. The mass of higher actinide targets stored at the SRS is less than 0.1 MTHM.

As detailed above, the total quantity of SNF to be managed by the SRS that is evaluated in the SRS SNF Management EIS is approximately 68 MTHM, composed of 48 MTHM aluminum-based SNF and 20 MTHM non-aluminum-based SNF.

The 48 MTHM of aluminum-based SNF to be managed and prepared for disposition are comprised as follows: 20 MTHM in existing wet storage; about 10 MTHM to be received from INEEL and domestic research reactors; and up to 18 MTHM to be received from foreign research reactors. The SRS must also manage about 20 MTHM of non-aluminum-based SNF until it is shipped to INEEL.

DOE expects to dispose of its aluminum-based SNF in a geologic repository after treatment or packaging. To achieve that goal, DOE is developing and preparing to implement a management strategy that includes preparing SRS aluminum-based SNF for disposal. DOE is committed to avoiding indefinite storage at the SRS of SNF in a form that is unsuitable for disposal. Therefore, DOE has identified management technologies and facilities for storing and treating this SNF in preparation for disposal.

Materials Analyzed

In order to facilitate the identification of appropriate treatment technologies for the SNF, DOE grouped the SNF based on characteristics such as fuel size, physical and chemical properties, and radionuclide inventory. SNF was assigned to six SNF groups. For the reader's convenience, the six SNF groups will be referred to according to the letters A through F as listed below:

Group A. Uranium and Thorium Metal Fuels
Group B. Material Test Reactor-Like Fuels
Group C. Highly Enriched Uranium (HEU)/Low Enriched Uranium (LEU) Oxides and Silicides
Group D. Loose Uranium Oxide
Group E. Higher Actinide Targets
Group F. Non-Aluminum-Clad Fuels.

The six SNF groups are described in the SRS SNF Management EIS beginning on page 1–7.

Technologies Analyzed

DOE identified seven technologies that could be used to prepare SNF at SRS for disposition: (1) Prepare for Direct Disposal/Direct Co-Disposal; (2) Repackage and Prepare to Ship to Other DOE Sites; (3) Melt and Dilute; (4) Mechanical Dilution; (5) Vitrification Technologies; (6) Electrometallurgical Treatment; and (7) Conventional Processing Technology.

Technologies 1 and 2 are "New Packaging Technology options;" technologies 3 through 6 are "New Processing Technology options." Most of the New Packaging Technology options and the New Processing Technology options are technologies that DOE previously has not applied to the management of aluminum-based SNF for the purpose of ultimate disposition. DOE assigned the highest confidence of success and greatest technical suitability to options that have relatively simple approaches.

These seven technologies are described in the SRS SNF Management EIS beginning at page 2–8. The applicability of the New Packaging Technology options to the SNF groups is shown in Table 2–1 (page 2–10), and the applicability of the New Processing Technology options to the SNF groups is shown in Table 2–2 (page 2–14). The applicability of Conventional Processing technology to the SNF groups is described on page 2–17 of the SRS SNF Management EIS.

Alternatives Considered

Considering the technology options applicable to the SNF groups and decisions previously made about managing certain types of SNF, DOE developed five broad categories of alternatives that could be used to manage SRS SNF: No-Action, Minimum Impact, Direct Disposal, Maximum Impact, and the Preferred Alternative. These alternatives are summarized below and in Table 2–8 (page 2–36 of the SRS SNF Management EIS), and described in more detail in the SRS SNF Management EIS beginning on page 2–35. For wastes generated under all alternatives, DOE would use the existing SRS waste management facilities to treat, store, dispose, or recycle the waste in accordance with applicable requirements.

Preferred Alternative

DOE's Preferred Alternative is to use a combination of technologies (Melt and Dilute, Conventional Processing, and Repackage and Prepare to Ship to Other DOE Sites) to manage the SNF. The Preferred Alternative is within the mid-range on the scale of potential environmental impacts and provides for the long-term protection of the environment. DOE expects that the materials resulting from the Melt and Dilute process and Conventional Processing would be acceptable for disposal in a geologic repository. The Preferred Alternative would meet all legal requirements and policy commitments. In addition, the Preferred Alternative is consistent with DOE's long-range plans to dispose of SNF.

Under the Preferred Alternative, DOE would use each technology to treat specific groups of SNF as described below and in the SRS SNF Management EIS (on page 2–38, and in Figure 2–15, page 2–40). Melt and Dilute would be used to treat Group B, most of Group C, and most of Group D. Conventional processing would be used for Group A, part of Group C, and part of Group D. Continued wet storage would be used for Group E. Repackage and Prepare to Ship to Other DOE Sites would be used for Group F.

DOE will continue to store small quantities of higher actinide materials until DOE determines their final disposition, and will continue to wet-store the Non-Aluminum-Clad SNF at SRS until the material is shipped to the INEEL. DOE could transfer the Non-Aluminum-Clad SNF to dry storage after the material has been relocated from the Receiving Basin for Offsite Fuel to the L-Reactor Disassembly Basin in support of activities to phase-out operations in

the Receiving Basin for Offsite Fuel by fiscal year 2007.

No Action

Under the No Action Alternative, DOE would continue to store the SNF in the wet basins at the SRS indefinitely with the exception of Group F, for which the alternative, Repackage and Prepare to Ship to Other DOE Sites, would be used. While the No Action Alternative would result in few immediate environmental impacts, it provides for the least overall protection of the environment because it would not prepare the SNF for eventual disposal in a repository. Over the potential 40 years of continued wet storage under the No Action Alternative, some fuel could deteriorate.

Conventional Processing facilities, if they were operating for other reasons, could be used to stabilize any SNF that presented an environmental, safety, or health vulnerability. Conventional Processing facilities, however, are extremely unlikely to be operating over the entire potential 40 years of continued wet storage, and under the No Action Alternative there would be no means to stabilize SNF that presented a health or safety vulnerability once the Conventional Processing facilities were shut down. In addition, this alternative is inconsistent with DOE's commitment to avoid indefinite SNF storage at the SRS in a form that is unsuitable for final disposition.

Minimum Impact

The Minimum Impact Alternative combines the technologies (Prepare for Direct Disposal/Direct Co-Disposal, Melt and Dilute, Repackage and Prepare to Ship to Other DOE Sites) that DOE believes would result in the lowest overall potential environmental impact from SNF management. Prepare for Direct Disposal/Direct Co-Disposal would be used for Groups A, B, and C. Melt and Dilute would be used to treat Group D. Repackage and Prepare to Ship to Other DOE Sites would be used for Groups E and F.

The Minimum Impact Alternative was not selected because the use of Prepare for Direct Disposal/Direct Co-Disposal for HEU aluminum-clad fuel has a high degree of technical uncertainty concerning the acceptance of this type of fuel in a geologic repository without treatment. DOE has committed to store its SNF at the SRS in a "road-ready"/ disposal form.

Even if most of the HEU aluminum-clad SNF could be directly disposed of, there is a small portion of that SNF that DOE believes could not be disposed of without treatment. A Melt and Dilute facility thus would have to be developed in any event for that small portion of SNF. Finally, for any SNF that presented a potential health and safety vulnerability, mitigating actions (*i.e.*, packaging and dry storage) would be delayed for several years.

Maximum Impact

The Maximum Impact Alternative analyzed in the SRS SNF Management EIS represents the upper bound on the range of potential environmental impacts. For the analyses, two technologies (Conventional Processing and Repackage and Prepare to Ship to Other DOE Sites) are used for the management of the SNF. Repackage and Prepare to Ship to Other Sites would be used for SNF from Groups E and F. Conventional Processing would be used to treat all remaining SNF groups, including the Mark-18 targets from Group E.

This alternative would generate the greatest volume of liquid high-level waste that would have to be stored and eventually vitrified into glass canisters in the Defense Waste Processing Facility at the SRS. DOE has a high level of confidence that the vitrified (borosilicate glass) waste canisters would meet geologic repository acceptance criteria because borosilicate glass has been tested and analyzed extensively under potential repository conditions.

Conventional Processing operations would continue until the aluminum-based SNF inventory was eliminated and the SNF receipt rate was low (*i.e.*, about 150 Materials Test Reactor-like elements per year and 12 High Flux Isotope Reactor assemblies per year). This state would be expected to occur around 2009. In parallel with the Conventional Processing operations, DOE could construct a Transfer, Storage, and Treatment Facility with capability to manage newly received SNF after Conventional Processing operations ceased.

As stated in the SRS SNF Management EIS and based on the Record of Decision on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (61 FR 25092, May 17, 1996), DOE prefers not to utilize Conventional Processing for reasons other than addressing safety and health concerns. In addition, H-Canyon capacity is already scheduled for several years to process materials other than those considered in the SRS SNF Management EIS, and therefore would not be available for several years to process SNF that did not present a health or safety vulnerability.

Direct Disposal

The Direct Disposal Alternative would use a combination of technologies (Conventional Processing, Prepare for Direct Disposal/Direct Co-Disposal, Melt and Dilute, and Repackage and Prepare to Ship to Other DOE Sites) to manage the SNF. This alternative is within the mid-range on the scale of potential environmental impacts.

Conventional Processing would be used for all of Group A, the Sterling Forest Oxide from Group D, and the failed or sectioned SNF from Group C because these materials present potential health and safety concerns and would not likely be suitable for placement in a geologic repository. Prepare for Direct Disposal/Direct Co-Disposal would be used for Group B and all SNF (except the failed and sectioned SNF) in Group C. Melt and Dilute would be used for a majority of the SNF in Group D. Repackage and Prepare to Ship to Other DOE Sites would be used for Groups E and F.

The Direct Disposal Alternative was not selected because there is a high degree of technical uncertainty regarding the potential acceptability of HEU aluminum-clad SNF for disposal in a geologic repository, and because costs of developing and building a Melt and Dilute Facility would have to be incurred to treat only a small portion of the SNF.

Environmentally Preferable Alternative

The environmentally preferable alternative is the Minimum Impact Alternative because implementation of this alternative would result in the lowest overall environmental impacts. The Minimum Impact Alternative was not selected because the use of Prepare for Direct Disposal/Direct Co-Disposal for HEU aluminum-clad fuel has a high degree of technical uncertainty concerning the ability of this type of SNF to be accepted in a geologic repository without treatment. If treatment were required to prepare SNF for disposal, further environmental impacts would result. Further, use of Melt and Dilute for any SNF that could not be directly disposed of would be costly. Finally, deferred treatment of any SNF with potential health and safety vulnerabilities is not considered a prudent course of action.

Comments on Savannah River Site Spent Nuclear Fuel Management Final Environmental Impact Statement

Three public comments were received on the final EIS. One comment from Coalition 21, a not-for-profit corporation that promotes nuclear technology, opposed the use of the Melt and Dilute technology because potentially valuable HEU would be discarded, and because this technology would be more dangerous than Conventional Processing due to the higher temperature required for the Melt and Dilute technology. The amount of HEU that would be discarded would be insignificant compared to the amount of enriched uranium available to commercial nuclear power plants. Moreover, there is an excess supply of uranium for commercial use for the foreseeable future. Finally, all of the HEU from the research reactor SNF has been irradiated and, if this material were recovered and blended down for use in commercial nuclear power plants, the presence of uranium-236 in the enriched uranium would make it less attractive for use in nuclear fuels. DOE has experience in the melting of HEU and has a good safety record.

While DOE acknowledges that some uncertainty surrounds the new technology, the development of the Melt and Dilute technology and the design of the TSF would ensure that safety standards are met and environmental releases are minimized. Further, safety analyses would be performed to ensure that the process would be safe and the risks to the public and plant personnel would be low.

The second public comment, from the United States Environmental Protection Agency (EPA), Region 4, stated that EPA continued to have environmental concerns about cumulative impacts of the project. DOE discussed this comment with EPA staff because no specific concerns were cited. EPA staff told DOE that this comment reflected the uncertainty regarding what alternative DOE ultimately would decide to implement. DOE has provided a thorough analysis of the cumulative impacts of SNF management at the SRS in Chapter 5 of the SRS SNF Management EIS, and believes that, by selecting the Preferred Alternative, it has addressed EPA's concerns.

The third public comment, from the Centers for Disease Control and Prevention, Public Health Service, Department of Health and Human Services, stated that the Department of Health and Human Services' concerns have been addressed in the final EIS, and that the Department had no additional comments.

Decision

DOE has decided to implement the Preferred Alternative identified in the SRS SNF Management EIS, which provides for long-term protection of the environment and minimizes potential short-term environmental impacts and health risks. Specifically:

1. DOE has decided to implement the Melt and Dilute technology for managing about 97 percent by volume and 60 percent by mass of the 48 MTHM of aluminum-based SNF considered in the SRS SNF Management EIS. Implementation of the Melt and Dilute technology will be achieved through development and demonstration of the technology using full-size irradiated fuel elements, characterization and qualification of the Melt and Dilute SNF product to meet anticipated geologic repository acceptance criteria, completion of full-scale facility design, and construction, testing, and startup of the TSF. These implementation steps will build on the development work done to date and will proceed in a disciplined manner to ensure that operation of the TSF is achieved. The fuel will remain in wet storage basins at the SRS until treated and placed in dry storage in the TSF. The specific steps in the DOE implementation program include continuation of the development program leading to a demonstration of the Melt and Dilute technology in FY 2002 using full-size irradiated research reactor SNF assemblies. Information from this program will support the detailed design effort and reduce engineering and operational uncertainties. Based upon preliminary review and feedback from the Nuclear Regulatory Commission and the DOE Office of Civilian Radioactive Waste Management, DOE believes that the work to characterize and qualify the product from the Melt and Dilute technology can be completed. DOE will pursue a disciplined implementation approach that builds on the success of the development, demonstration, and qualification efforts, and incorporates recent project management improvements instituted by DOE.

DOE plans to complete the conceptual design for the TSF in FY 2002, to be followed in FY 2003 by preparation of preliminary design, which will incorporate information gained from the Melt and Dilute technology demonstration. Preliminary design will be followed by final design in FY 2004 and FY 2005. When the preliminary design is completed, the construction cost estimate and schedule will be reviewed and validated to establish the project baselines for completing the TSF.

With this implementation strategy, DOE expects to have the TSF ready for Melt and Dilute and dry storage operations in FY 2008. DOE will ensure continued availability of the SRS Conventional Processing facilities until DOE has demonstrated implementation of the Melt and Dilute technology.

To implement the Melt and Dilute technology, DOE will construct a Melt and Dilute facility in the existing 105–L building at the SRS and build a dry storage facility in L Area, near the 105–L building. As a back-up to Melt and Dilute, DOE will continue to evaluate the Prepare for Direct Disposal/Direct Co-Disposal option of the New Packaging Technology and would pursue implementation of this option if Melt and Dilute were not feasible. DOE has decided that Group B SNF, most Group C SNF, and most Group D SNF would be stored and then treated using the TSF when it becomes available.

If DOE identifies any imminent health and safety concerns involving any aluminum-based SNF before TSF becomes operational, DOE has decided to use Conventional Processing to stabilize the material of concern. This decision is consistent with the Record of Decision on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, under which DOE decided to pursue one or more new technologies that would put the foreign research reactor SNF in a form or container that is eligible for direct disposal in a geologic repository. In addition, the Melt and Dilute technology is fully compatible and supportive of the nonproliferation objectives of the United States.

2. DOE has decided to use Conventional Processing to stabilize a small portion of materials before a new treatment facility is in place. The rationale for this processing is to avoid the possibility of urgent future actions, including expensive recovery actions that would entail unnecessary radiation exposure to workers, and, in one case, to manage a unique waste form (*i.e.*, core filter block).

This material includes the Experimental Breeder Reactor—II SNF, the Sodium Reactor Experiment SNF, the Mark-42 targets, and the core filter block from Group A; the failed or sectioned Tower Shielding Reactor, High Flux Isotope Reactor, Oak Ridge Reactor, and Heavy Water Components Test Reactor SNF and a Mark-14 target from Group C; and the Sterling Forest Oxide (and any other powdered/oxide fuel that may be received at SRS while

H-Canyon is still in operation) from Group D.

Although it is possible that Melt and Dilute technology could be applied to most of these materials, DOE considers timely alleviation of potential health and safety vulnerabilities to be the most prudent course of action because it would stabilize materials whose forms or types pose a heightened probability of releasing fission products in wet storage. Nonetheless, if these materials have not been stabilized before the TSF becomes available, the TSF may be used rather than Conventional Processing. Some of this fuel will be processed in H-Canyon where the highly enriched uranium would be blended down to low enriched uranium and stored pending potential sale as feed stock for commercial nuclear fuel.

3. DOE has decided to continue to wet-store the Mark-18, Mark-51 and the other higher actinide targets until DOE determines their final disposition. In addition, 20 MTHM of non-aluminum-based SNF will be shipped to INEEL.

In reaching these decisions, DOE considered a number of factors, including the paramount goal that the processes and facilities used to prepare aluminum-based SNF for disposal in a geologic repository be cost-effective and present only low risks to workers and the public.

Other factors considered in this decision include the environmental analyses reported in the SRS SNF Management EIS; estimated costs of the alternatives evaluated in the Report on the Savannah River Site Aluminum-based Spent Nuclear Fuel Alternatives Cost Study; nonproliferation impacts as reported in the DOE Office of Arms Control and Nonproliferation report, "Nonproliferation Impacts Assessment for the Management of the Savannah River Site Aluminum-Based Spent Nuclear Fuel;" the National Academy of Sciences report, "Research Reactor Aluminum Spent Fuel—Treatment Options for Disposal;" regulatory implications of the alternatives; DOE missions; and public comments on both the SRS SNF Management Draft and Final EIS, including those of the Defense Nuclear Facilities Safety Board.

DOE evaluated factors such as technical availability, nonproliferation and safeguards, cost, labor availability and core competency, and custodial care. There were no issues associated with these factors that indicated a clear advantage or disadvantage for a particular SNF management alternative.

Mitigation

DOE is committed to operating the SRS in compliance with all applicable laws, regulations, DOE orders, permits and compliance agreements. Section 4.3 of the SRS SNF Management EIS presents an overview of the mitigation measures that will be taken to minimize the risks associated with the construction and operation of the TSF (*e.g.*, strong "stop work" stipulations in the event that cultural resources or human remains are discovered, and runoff control). DOE considers these to be routine mitigation measures that do not require a mitigation action plan (see 10 CFR 1021.331(a)).

Issued at Washington, DC, July 24, 2000.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 00–19926 Filed 8–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 22, 2000, 1 p.m.–5 p.m.

ADDRESSES: Amarillo College, Business Center—Exhibit Hall, Polk Street Campus, Polk St. & 15th Avenue, Amarillo, Texas 79101.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; Phone (806) 477–3125; Fax (806) 477–5896 or e-mail: jjohnson@pantex.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 Agenda Review/Approval of Minutes
1:15 Co-Chair Comments
1:30 Task Force/Subcommittee Reports
2:00 Ex-Officio Reports
2:30 Updates—Occurrence Reports—DOE
3:00 Break
3:15 Presentation (to be decided)
4:15 Public Comments
4:30 Closing Comments
5:00 Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral satements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda.

The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX; phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays.

Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX; phone (806) 537–3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays.

Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on August 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–19927 Filed 8–4–00; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah Gaseous Diffusion Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Paducah, Kentucky. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 24, 2000, 5:30 p.m.–9 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Deputy Designated Federal Officer, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804; fax (270) 441–6801 or e-mail: sheppardjd@ornl.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Copies of the final agenda will be available at the meeting.

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order
6:10 p.m.—Approve Minutes
6:20 p.m.—Presentations with Board response and public comment
8 p.m.—Sub Committee Reports with Board response and public comment
8:30 p.m.—Administrative Issues
9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on August 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–19928 Filed 8–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, August 23, 2000, 6 p.m.–9 p.m.

ADDRESSES: Jemez Pueblo Walatowa Visitors Center, 7413 New Mexico State highway 4, Jemez Pueblo, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989–1662; fax (505) 989–1752 or e-mail: *adubois@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Opening activities 6–6:30 p.m.
2. Public Comment 6:30–7 p.m.
3. Reports:
   - Effects of the Cerro Grande Fire on the ER Program
   - Air Quality Audit by Dr. John Till
4. Committee Reports:
   - Waste Management
   - Environmental Restoration
   - Monitoring and Surveillance
   - Community Outreach
   - Budget
5. Other Board business will be conducted as necessary.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on August 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–19929 Filed 8–4–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–006]

Dominion Transmission, Inc. (Formerly CNG Transmission Corporation); Notice of Negotiated Rate Filing

August 1, 2000.

Take notice that on July 28, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing the following tariff sheet for disclosure of a recently negotiated rate transaction:

Original Sheet No. 399C

DTI requests an effective date of August 1, 2000, for the negotiated rate.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19869 Filed 8–4–00; 8:45 am]

BILLING CODE 6717–01–M

DERARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–195–003]

Equitrans, L.P.; Notice of Compliance Filing

August 1, 2000.

Take notice that on July 27, 2000, Equitrans, L.P. (Equitrans), tendered for filing proposed tariff sheets designed to reflect the sale by Equitrans to Dominion Transmission Company (Dominion) of its gas processing plants at Copley Run, Lewis County, West Virginia and at West Union, Doddridge County, West Virginia.

Equitrans states that the shippers will be able to contract directly with Dominion or any other gas processing service provider for gas processing service. Equitrans further states that it will agree to collect a default charge of $0.10 per Dth for gas processing services for any shipper transporting gas on the Equitrans' system and processed by Dominion but who has not contracted directly with Dominion. This conduit arrangement is to be in effect for a limited term of up to one year under the tariff sheets tendered herein.

Finally, Equitrans is hereby seeking to collect, without interest, through a surcharge mechanism underrecoveries of $148,164 for gas processing that took place in January through October of 1999 as contemplated under the existing annual adjustment procedures of its tariff and in accordance with the notification of the underrecoveries previously provided by Equitrans in filings made in this proceeding, with a proposed effective date of September 1, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19870 Filed 8–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–129–000]

Horizon Pipeline Company; Notice of Site Visit

August 1, 2000.

On August 14, 2000, the staff of the Office of Energy Projects (OEP) will conduct a pre-certification visit of the pipeline route proposed by Horizon Pipeline Company (Horizon) for the Horizon Pipeline Project. Inspection of the proposed route, which crosses portions of Illinois, will be conducted by automobile from a location to be determined. The inspection will continue along the route southward from McHenry County to DuPage County, Illinois. Representatives of Horizon will accompany the OEP staff.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–19868 Filed 8–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–2–003]

Overthrust Pipeline Company; Notice of Tariff Filing

August 1, 2000.

Take notice that on July 28, 2000, Overthrust Pipeline Company (Overthrust) tendered by filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of April 1, 2000.

First Revised Volume No. 1–A

Substitute Third Revised Sheet No. 4
Second Substitute Sixth Revised Sheet No. 70

Original Volume No. 1

Substitute Eighteenth Revised Sheet No. 6

Overthrust states that the filing is being made in compliance with Commission's letter order issued July 13, 2000, in Docket No. RP00–2–000.

Overthrust states that on March 24, 2000, it filed an Offer of Settlement (Settlement Agreement) in Docket No.

RP00–2–000, to resolve all outstanding issues in the rate case. By letter order issued July 13, 2000, the Commission approved the settlement as a fair and reasonable resolution of the issues in this proceeding.

Further, Overthrust states that one of the major elements of the Settlement Agreement was a continuation of the firm transportation reservation charge and interruptible rate established by settlement in Overthrust's prior rate case proceeding in Docket No. RP97–301. Therefore, no refunds are required.

Overthrust states that a copy of this filing has been served upon Overthrust's customers and the Wyoming Public Service Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–19871 Filed 8–4–00; 8:45am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–115–000, et al.]

FortisUS Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 1, 2000.

Take notice that the following filings have been made with the Commission:

1. FortisUS Energy Corporation

[Docket No. EC00–115–000]

Take notice that on July 28, 2000, FortisUS Energy Corporation tendered for filing, pursuant to 18 CFR 33.3(h), a copy of a contract related to its Application for Order Authorizing Disposition of Jurisdictional Facilities which was submitted on July 20, 2000. Confidential treatment of the contract, pursuant to 18 CFR 388.112, is requested.

Comment date: August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Trigen-Baca Operating Corporation

[Docket No. EG00–229–000]

Take notice that on July 25, 2000, Trigen-Baca Operating Corporation, 25 Tenth Street, Golden, Colorado 80401–0088 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a Delaware corporation. The Applicant proposes to operate two new electric generation plants, each consisting of a single approximately 5-megawatt gas turbine, in the process of construction in unincorporated Baca County, Colorado (the Facilities). The Facilities are scheduled to begin commercial operation July 1, 2000. All of the electric output of the Facilities will be sold at wholesale, initially to Tri-State Generation and Transmission Association, Inc.

Comment date: August 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Lockport Power Generation, LLC

[Docket No. EG00–231–000]

Take notice that on July 26, 2000, Lockport Power Generation, LLC (the Applicant) whose address is 600 Campus Park Drive, Florham Park, New Jersey 07931, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning and/or operating an approximately 200 MW natural gas fired electric generating facility located near Lockport, Illinois and selling electric energy at wholesale. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: August 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. NEO Chester-Gen LLC

[Docket No. EG00–233–000]

Take notice that on July 27, 2000, NEO Chester-Gen LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a 3.3 MW cogeneration facility, located in Chester, Pennsylvania and selling electric energy at wholesale.

Comment date: August 21, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. NRG Energy Center Dover LLC

[Docket No. EG00–234–000]

Take notice that on July 27, 2000, NRG Energy Center Dover LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning, operating, and expanding a 18 MW cogeneration facility, located in Dover, Delaware, and selling electric energy at wholesale.

Comment date: August 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Dynegy Midwest Generation, Inc.

[Docket No. EG00–235–000]

Take notice that on July 27, 2000, Dynegy Midwest Generation, Inc., 1000 Louisiana, Suite 5800, Houston, Texas filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Dynegy Midwest Generation, Inc. is a Delaware corporation, and is engaged directly and exclusively in owning and/or operating certain electric generating facilities in Illinois, and selling electric energy at wholesale.

Comment date: August 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

7. NEO Toledo-Gen LLC

[Docket No. EG00–236–000]

Take notice that on July 27, 2000, NEO Toledo-Gen LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a 750 kW cogeneration facility, located in Toledo, Ohio, and selling electric energy at wholesale.

Comment date: August 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. NEO Freehold-Gen LLC

[Docket No. EG00–237–000]

Take notice that on July 27, 2000, NEO Freehold-Gen LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a 2.1 MW cogeneration facility, located in Freehold, New Jersey, and selling electric energy at wholesale.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER00–1820–002]

Take notice that on July 27, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing tariff sheet changes in compliance with the Commission's order of July 12, 2000 in this proceeding.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket Nos. ER00–2445–001 and EL00–74–001]

Take notice that on July 24, 2000, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's July 7, 2000 order in these dockets, 92 FERC ¶ 61,013 (July 7 Order), submitted the following revised sheets to the Appendix to Attachment K of PJM's Open Access Transmission Tariff (Tariff) on file with the Commission:

Substitute Second Revised Sheet No. 174
Substitute Original Sheet No. 174a

and identical changes to the following pages of Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (OA):

Substitute First Revised Sheet No. 99
Substitute First Revised Sheet No. 99A

PJM states that the revised sheets implement the requirements of the July 7, 2000 Order that: (1) PJM provide advance notice of its intention to schedule generators in anticipation of an emergency; and (2) PJM permit a generator that specifies a minimum run time to elect to submit a cost-based bid following a posted emergency and return to market-based bidding the following operating day.

In compliance with the July 7, 2000 Order, PJM requests an effective date of July 7, 2000 for these revised Tariff and OA sheets.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. ISO New England Inc.

[Docket No. ER00–3233–000]

Take notice that on July 21, 2000, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) for informational purposes only its amended By-Laws.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Deseret Generation and Transmission Co-operative, Inc.

[Docket No. ER00–3277–000]

Take notice that on July 27, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed Confirmation Agreement for a firm power sale between Deseret and Idaho Power Company d/b/a Idacorp Energy (Idacorp). This Confirmation Agreement is filed pursuant to the Western Systems Power Pool Agreement regarding a long-term power purchase and sale transaction.

Deseret requests an effective date of July 1, 2000.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER00–3278–000]

Take notice that the California Independent System Operator (ISO), on July 27, 2000, tendered for filing a proposed Restated Interim Agreement between the ISO, Pacific Gas and Electric (PG&E), and the Sacramento Municipal Utility District (SMUD), FERC Electric Service Tariff No. 39. The ISO states that the Restated Interim Agreement serves the purposes of giving SMUD the opportunity to schedule and settle with the ISO through its chosen Scheduling Coordinator; having SMUD self-provide Regulation for the SMUD system, including providing direct Automatic Generation Control to the ISO's Energy Management System; providing SMUD the opportunity to participate in the ISO's markets in accordance with the ISO's proposed terms applicable to Metered Subsystems in exchange for SMUD's relinquishing its right to make schedule changes after the close of the ISO's Hour-Ahead Market; having SMUD provide real-time operating information to the ISO's Energy Management System by direct telemetry as soon as possible; and adding the option for the ISO or SMUD to terminate the Restated Interim Agreement on or after March 31, 2003.

The ISO states that this filing has been served on PG&E, SMUD, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–3279–000]

Take notice that July 27, 2000, the California Independent System Operator Corporation (ISO), on tendered for filing a Uniform Distribution Company Operating Agreement (UDC Operating Agreement or Agreement) between Lassen Municipal Utility District (Lassen MUD) and the ISO for acceptance by the Commission.

The UDC Operating Agreement establishes ISO specifications and procedures that govern the general operation of the facilities that form the interface between the UDC system and the ISO Grid. The Agreement also establishes maintenance coordination standards, load shedding, emergency

electrical planning, and information sharing and gathering procedures between the ISO and the UDC.

The ISO is requesting waiver of the 60-day notice requirement to allow the UDC Operating Agreement to be made effective as of July 1, 2000, the effective date of the agreement.

Copies of the filing were served upon Lassen MUD and the California Public Utilities Commission.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER00–3280–000]

Take notice that on July 27, 2000, Tucson Electric Power Company (TEP), tendered for filing a short-term umbrella service agreement for sales under TEP's Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 3.

Umbrella Service Agreement for Short-Term Transactions with the California Independent System Operator Corporation ("California ISO") dated July 24, 2000. Service commenced under this service agreement on June 27, 2000.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Rockingham Power, L.L.C.

[Docket No. ER00–3281–000]

Take notice that on July 27, 2000, Rockingham Power, L.L.C., tendered for filing a long-term service agreement (Power Purchase and Sales Agreement) covering transactions between Rockingham Power, L.L.C. (Rockingham) and Dynegy Power Marketing, Inc., under Rockingham's market-based rate schedule (Rate Schedule FERC No. 1), to be in effect as of June 30, 2000.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

Docket No. ER00–3282–000

Take notice that on July 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 82 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of July 3, 2000 to H.Q. Energy Services (U.S.) Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19900 Filed 8–4–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Acceptance for Filing and Soliciting Motions To Intervene and Protests

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* A New Major License.

b. *Project No.:* 2042–013.

c. *Date filed:* January 21, 2000.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Box Canyon Hydroelectric Project.

f. *Location:* On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho. About 709 acres within the project boundary are located on lands of the United States, including Kalispel Indian Reservation (493 acres), U.S. Forest Service Colville National Forest (182.93 acres), U.S. Department of Energy, Bonneville Power Administration (24.14 acres), U.S. Fish and Wildlife Service (2.45 acres), U.S. Army Corps of Engineers (5.29 acres), and U.S. Bureau of Land Management (1.44 acres).

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(1)–825(r).

h. *Applicant Contact:* Mr. Robert Gedds, Public Utility District No. 1 of Pend Oreille County, 130 North Washington St., Newport, WA 99156; (509) 447–3137.

i. *FERC Contact:* Mr. Timothy Welch, E-mail: *Timothy.Welch@FERC.FED.US* or telephone 202–219–2666.

j. *Deadline for filing motions to intervene and protest:* October 6, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The Box Canyon Project is located in the northeast corner of Washington state in Pend Oreille County. The project dam is located at river mile 34.4 from the Pend Oreille River's confluence with the Columbia River. The site is 13 miles form the Canadian border, 14 miles from the Idaho border, and 90 miles north of city of Spokane, WA. The existing Box Canyon Project consists of: (1) 46-foot-high, 160-foot-long reinforced concrete dam with integral spillway, (2) 217-foot-long, 35-foot-diameter diversion tunnel, (3) 1,170-foot-long forebay channel, (4) auxiliary spillway, (5) powerhouse containing four generating units with a combined capacity of 72 MW, (6) 8,850-acre reservoir at maximum operating pool elevation of 2030.6 feet, and other associated facilities. PUD No. 1 operates the project in a run-of-river mode.

PUD No. 1 purposes to upgrade all four turbines with new high efficiency, fish-friendly runners and to rewind the four generators to increase generating

capacity to 90 MW. No new structures will be built and no construction in the river will be required. No operational changes will be needed although peak flow through each turbine will be increased from 6,850 cfs to 8,100 cfs which will ultimately result in an 8% increase in average annual energy output.

m. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of NEPA scoping
Notice that the application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission within 30 days of the Notice that the application is ready for environmental analysis.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filing must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,
Secretary.

[FR Doc. 00–20074 Filed 8–4–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2482–023.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Hudson River Hydroelectric Project.

f. *Location:* On the Hudson River, at river miles 209 and 212, in the towns of Moreau, Corinth, (Saratoga County), Lake Luzerne, and Queensbury (Warren County), New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Hydro Licensing Coordinator, 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088, (315) 413–2787.

i. *FERC Contact:* Lee Emery, E-mail address, Lee.Emery@ferc.fed.us, or telephone (202) 219–2779.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions: October 6, 2000.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The Hudson River Project consists of two hydropower developments on the Hudson River: the Spier Falls development at river mile (RM) 212 and the Sherman Island development at RM 209. The Spier Falls development consists of: (1) a 1,721-foot-long dam consisting of (a) three non-overflow concrete gravity dams (52 feet, 553 feet, and 306 feet in length) with a maximum height of 145 feet; and (b) an 810-foot-long spillway up to 70 feet in height; (2) a reservoir with a surface area of 638 acres at a normal maximum water surface elevation of 436.8 feet National Geodetic Vertical Datum (NGVD), with usable storage of 2,526 acre-feet (ac-ft), and a gross storage capacity of 28,926 ac-ft; (3) a forbay canal; (4) two intake structures; one with 2¼-inch clear spaced trashracks and another with 5-inch clear spaced trashracks located in front of the gates; and a trashrake; (5) two penstocks and eight penstock openings (four of which are sealed); and (6) a powerhouse containing two vertical Francis turbines (installed capacities: 7.3 megawatts (MW) and 43.2MW); and (7) appurtenant equipment and controls. There is no bypassed reach. The development has an installed capacity of 50.6 MW and an annual average energy production of 214,372 megawatt-hours.

The development is operated in a peaking mode in tandem with the Sherman Island development. Reservoir

water levels fluctuate daily up to four feet with an occasional drawdown of eight feet for maintenance. Water from the powerhouse is discharged directly to the upper reach of the Sherman Island reservoir.

The Sherman Island development consists of: (1) A 949-foot-long buttressed and gravity dam with a spillway topped with 3.7-foot and 5.7-foot high wooden flashboards with a maximum height of 38 feet and a 584-foot-long non-overflow section with a maximum height of 67 feet; (2) a reservoir with a surface area of 305 acres with a gross storage capacity of 6,960 ac-ft, and a usable storage capacity of 1,060 ac-ft at a normal maximum water surface elevation of 353.3 feet NGVD; (3) a concrete wingwall; (4) a forebay; (5) an intake structure consisting of a power canal with 15 penstocks (three of which are sealed) and 3 ¼-inch clear spaced steel bar trashracks; (6) one powerhouse with four vertical Francis turbines with installed capacities of 7.2 megawatts (MW) each; and (7) a tailrace consisting of a concrete apron to prevent undermining of the powerhouse. The total installed capacity of the development is 28.8 MW and an annual average energy production of 144,452 megawatt-hours. There is a 4,000 foot-long bypassed reach between the dam and the powerhouse.

The Sherman Island development is operated in a peaking mode in tandem with the Spiers Falls development. Maximum normal vertical water surface fluctuation is 3.7 feet with an occasional fluctuation of 7.4 feet for maintenance. Water from the powerhouse is discharged to the upper reach of the Feeder Dam Project (FERC 2554) reservoir.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20,1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds: (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–20075 Filed 8–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, Comments, Recommendations, and Terms and Conditions

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11845–000.

c. *Date filed:* July 5, 2000.

d. *Applicant:* The Harrisburg Authority.

e. *Name of Project:* Harrisburg Water Supply Project.

f. *Location:* In Dauphin County, Pennsylvania. The project utilizes water from the Dehart Reservoir and does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Trent A. Hargrove, Chairman, The Harrisburg Authority, One Keystone Plaza, Suite 104, Front and Market Streets, Harrisburg, PA 17101, (717) 232–3777.

i. *FERC Contact:* Robert W. Bell (202) 219–2806.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D–4.

k. *Deadline for filing motions to intervene, protests and comments:* August 21, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The project consists of a proposed powerhouse on the 20-mile long, 42-inch diameter reinforce concrete pipe running between the DeHart Reservoir and the Harrisburg water treatment plant with one new generating unit having an installed capacity of 190-kW. The average annual generation would be 1,466,000 kWh.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h above.

All documents (original and eight copies should be filed with: David P. Boergers, secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE., Washington DC 20426.

Please include the Project Number 11845–000 on any comments, protests, or motions filed.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,
Secretary.

[FR Doc. 00–20076 Filed 8–4–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL99–3–002]

Certification of New Interstate Natural Gas Pipeline Facilities; Order Further Clarifying Statement of Policy

Issued July 28, 2000.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

On September 15, 1999, the Commission issued a Statement of Policy (Policy Statement) regarding its policy for certificating new pipeline construction.[1] On February 9, 2000, in Docket No. PL99–3–001, the Commission issued an order clarifying the Statement of Policy.[2] Six parties filed requests for rehearing, reconsideration, or clarification of the February 9 order.[3] This order addresses those requests.

I. Background

In the Policy Statement, the Commission explained the analytical steps it will use to evaluate proposals for certificating new construction. In this analysis, the threshold question applicable to an existing pipeline's proposal is whether the project can proceed without subsides from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on its existing customers, existing pipelines in the market and their captive customers, or the economic interests of landowners and communities affected by the route of the new pipeline. Where residual adverse

[1] Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy, 88 FERC ¶61,227 (1999).

[2] Order Clarifying Statement of Policy, 90 FERC ¶61,128 (2000).

[3] American Public Gas Association (APGA); FPL Energy, Inc. (FPL Energy); KeySpan Gas East Corp. and The Brooklyn Union Gas Co., (Keyspan); Pennsylvania Office of Consumer Advocate (Pennsylvania OCA); Process Gas Consumers Group, American Iron and Steel Institute, Georgia Industrial Group, American Forest and Paper Association, Alcoa, Inc., and United States Gypsum Co. (Process Gas); and Texas Eastern Transmission Corp. and Algonquin Gas Transmission Co. (Texas Eastern).

effects on the three interests remain after the pipeline makes an effort to minimize them, the Commission will evaluate the project by balancing the evidence of the project's public benefits against its residual adverse effects. The Policy Statement set forth in detail the considerations the Commission will apply to each of these steps. After analyzing the application based on these considerations, the Commission will approve an application for a certificate only if the public benefits outweigh any adverse effect.[4]

The Commission also stated that customers with a right of first refusal (ROFR) on pipelines with incrementally priced vintages of capacity can exercise their ROFR at their original contract rate except when the pipeline is fully subscribed and there is a competing bid for the capacity which is higher than the existing customer's maximum rate. In that case, the existing customer could be required to match the highest competing bid up to a maximum rate which could be either an incremental rate or a rolled-up rate in which costs for expansions are accumulated to yield an average expansion rate.

In the February 9 order clarifying the Policy Statement, the Commission explained that, to adjust the maximum rate applicable to shippers exercising their ROFR, the pipeline must establish a mechanism for reallocating costs between the historic and incremental rates so that all rates remain within the pipeline's cost-of-service. This mechanism can be established either through a general section 4 rate case or through the filing of *pro forma* tariff sheets to provide the Commission and parties with an opportunity to review the proposal prior to implementation. Once the review is complete, the pipeline can then implement the mechanism through a limited section 4 rate filing.

The Commission explained that when an existing customer's contract expires, and the conditions established in the Policy Statement exist (fully subscribed expansion subject to incremental rates, at least one bid above the existing rate, and a rate mechanism established in advance), the existing customer should be treated similarly to new customers for pipeline capacity, who face rates higher than the pre-expansion historic rate. When there is insufficient capacity to satisfy all the demands for service on the system, a higher matching rate will improve the efficiency and fairness of capacity allocation by allowing new shippers who place greater value on obtaining capacity than the exiting shipper to better compete for the limited capacity that is available. Based on this rationale, the Commission further clarified that it would not mandate a one-time contract renewal for existing ROFR customers at their current maximum rate.

Finally, the February 9 order clarified the effective date of the Policy Statement and the process applicable to a shipper's ROFR at the termination of its existing contract. The requests for rehearing reconsideration or clarification address the effective date and the ROFR pricing policy.

Contemporaneously with the February 9 Order Clarifying Policy Statement, the Commission issued Order No. 637, the final rule in Docket Nos. RM98–10–000 and RM98–12–000.[5] In Order No. 637, the Commission amended Part 284 of its open access regulations to among other things, narrow the ROFR to remove economic biases in the current rule, while still protecting captive customers' ability to resubscribe to long-term capacity. The Commission also discussed the interaction of the changes to the ROFR mechanism in Order No. 637 with the ROFR pricing policy set forth in the Policy Statement.

II. Requests for Rehearing, Reconsideration and/or Clarification

A. The Effective Date of the Policy Statement

Texas Eastern contends that the February 9 order was unresponsive to its request for clarification that the new policy applies to all certificate orders issued after September 15, 1999, regardless of the filing date of the underlying certificate applications. Texas Eastern states that its confusion arises due to the concurring opinion to the Policy Statement by three Commissioners which states that they would not apply the policy to certificate applications filed before July 29, 1998, the date on which the Commission issued its Notice of Proposed Rulemaking (NOPR) proposing, among other things, to make changes to its policies with respect to certificating pipeline construction activities.[6] Texas Eastern contends that a certificate application's filing date should not determine whether the Policy Statement is applicable; it should apply to all certificate orders issued after September 15, 1999. To do otherwise, it argues, would result in unduly discriminatory treatment of similarly situated certificate applicants.

B. The Right of First Refusal

Because the February 9 order was issued contemporaneously with Order No. 637 and because both orders addressed the ROFR pricing policy, APGA, FPL Energy, Keyspan, and Process Gas filed their petitions in both the Order No. 637 proceeding and in this Policy Statement proceeding. Philadelphia OCA filed two separate requests for rehearing on the ROFR issue, one in this proceeding and the other, jointly with the National Association of State Utility Consumer Advocates and the Ohio Office of Consumers' Counsel, in the Order No. 637 proceeding. Its arguments in the two rehearing requests are substantially the same. These petitioners argue that the ROFR pricing policy is inconsistent with the NGA, the Policy Statement, and Commission regulations. They also ask the Commission to clarify how the policy will work in specific factual situations.

III. Discussion

The purpose of the Policy Statement is to provide the natural gas industry with guidance by stating the analytical framework the Commission will use to evaluate proposals for certificating new construction. In the Policy Statement, the Commission also explains the new pricing policy for capacity subject to the right of first refusal. A policy statement is not a rule, and generally objections to such a statement are not directly reviewable. Rather, such review must await implementation of the policy in a specific case.[7] Therefore, the Commission declines to consider the issues raised in the requests for rehearing and reconsideration, but will consider such issues and arguments in the specific cases in which they arise.

As to Texas Eastern request for clarification of the effective date of the Policy Statement, we note that Texas Eastern among others raised this issue on rehearing in *Independence Pipeline Company*, Docket Nos. CP97–315–000 *et al.*, in which the certificate applications were filed prior to issuance of the

[4] If there are no adverse effects on any of these interests, no balancing of benefits against adverse effects would be necessary and the Commission would proceed to a preliminary determination or a final order.

[5] Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 63 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Preambles ¶31,091 (February 9, 2000).

[6] Regulation of Short-term Natural Gas Transportation Services 63 *Fed. Reg.* 42,982 (August 11, 1998), FERC Stats. & Regs., Proposed Regulations 1988–1998 ¶32,533 (1998).

[7] *See, e.g.*, Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 75 FERC ¶61,026 (1996), citing *American Gas Assoc. v. FERC*, 888 F.2d 136, 151–2 (D.C. Cir. 1989).

NOPR.[8] The Commission found that it would be unfair to apply the new Policy Statement to the underlying certificate applications since the applicants had no notice that the Commission was considering a change in its certificate policy at the time they filed their applications. Thus, the issue raised by Texas Eastern in its rehearing request regarding the effective date of the Policy Statement in this proceeding was raised in a specific case, the appropriate forum for such review.

In Order No. 637–A, issued May 19, 2000, the Commission responded to the issues raised by the petitioners in this proceeding with respect to the ROFR pricing policy.[9] Since the Commission addressed at length certain generally applicable concerns raised by the petitioners, we need not repeat our responses here. A number of the petitioner's questions about the ROFR pricing policy do not have general application but are specific to the factual circumstances on a particular pipeline system. As we stated in Order No. 637–A, such complex factual situations should be addressed as they arise in individual pipeline proceedings to implement the ROFR pricing policy.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–19596 Filed 8–4–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6847–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Health Committee (EHC) of the US EPA Science Advisory Board (SAB), will meet on August 30, 2000 in Courtroom B, at the International Trade Commission building, 400 E Street, SW., Washington DC. The meeting will begin 9:00 am and adjourn no later than 5 pm. All times noted are Eastern Daylight Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting

The Integrated Risk Information System (IRIS) data base contains EPA's consensus scientific position on potential adverse human health effects that may result from chronic exposure to specific agents in the environment. First publically available in 1988, the earliest IRIS assessments provided the results of the EPA deliberations culminating in consensus health hazard conclusions. Gradually the assessments included more of the details of the data and of the considerations which led to the consensus conclusions. Since 1995 (when the IRIS Pilot program was undertaken), EPA has taken several steps to ensure that the best available scientific information is included in IRIS assessments, including public requests for all relevant information to be submitted to EPA for consideration in the assessments, and external peer reviews of the assessments.

In response to a directive contained in an October 1999 report from Congress (HR 106–379) regarding EPA's appropriations for FY2000, EPA has evaluated the characterization of data variability and uncertainty in IRIS assessments. EPA's Office of Research and Development (ORD) National Center for Environmental Assessment (NCEA) first consulted with the SAB Executive Committee (EC) on Nov. 29, 1999, about a proposed approach to this study. This approach involved assembling a team of independent, qualified individuals, external to EPA, to evaluate a representative set of IRIS assessments. ORD/NCEA provided a progress report to the SAB at their March 2000 meeting (at which the EC suggested further enhancements to the study approach), and at the EC's July 12, 2000 meeting. The study undertaken reflects the SAB's advice on how best to proceed, given available resources and the Congress's deadline of October 2000.

Charge to the Committee

The Charge asks the EHC to respond to the following three questions:

(a) How well did the study conform to the study plan developed with the SAB EC (November 1999 and March 2000)?

(b) Does the SAB concur with the findings of the reviewers?

(c) What further improvements, if any, might the Agency make in IRIS documentation in response to the study results?

Availability of Review Materials

The principal review document, Characterization of Data Uncertainty and Variability in IRIS Assessments, Pre-Pilot vs Pilot/post-Pilot, is available on the Internet at the SAB website (http://www.epa.gov/sab), or by request to Ms. Karen Hogan, phone (202) 564–3403, or by email to *hogan.karen@epa.gov*.

For Further Information

Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Samuel Rondberg, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (301) 812–2560, FAX (410) 286–2689; or via e-mail at *samuelr717@aol.com*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Rondberg no later than noon (EDT) on August 21, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format:

[8] 91 FERC ¶ 61,102 (2000).

[9] Regulation of Short-term Natural Gas Transportation Services, Order No. 637–A, 65 Fed. Reg. 35,705 (June 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099 (slip op. at 234–254) (May 19, 2000).

WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 31, 2000.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00–19914 Filed 8–4–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 31, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0790.

Title: Availability of Inside Wiring Information—Section 68.110(c).

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 1200.

Estimated Time Per Response: 1 Hour (avg.).

Total Annual Burden: 1200 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $5000.

Frequency of Response: On occasion.

Needs and Uses: Pursuant to Section 68.110(c) telephone companies must provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. The information must be provided by the telephone company upon request of the building owner or agent thereof. The telephone company must charge the building owner a reasonable fee for this service, which shall not exceed the cost involved in locating and copying the documents. In the alternative, the telephone company may make these documents available for review and copying by the building owner. In this case, the telephone company may charge a reasonable fee, which shall not exceed the cost involved in making the documents available, and may also require the building owner to pay a deposit to guarantee the documents' return.

OMB Control No.: 3060–0791.

Title: Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–40.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 1.

Estimated Time Per Response: 36 Hours (avg.).

Total Annual Burden: 36 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: In CC Docket No. 93–240, the Commission considers the issue of the accounting rules and ratemaking policies that should apply to litigation costs incurred by carriers subject to Part 32 of its rules and regulations. The Commission determined that there should be special rules to govern the accounting treatment of federal antitrust judgements and settlements, in excess of avoided costs of litigation, but not for litigation expenses. The Commission concluded that these special rules should not apply to costs arising in other kinds of litigation. To receive recognition of its avoided costs of litigation, a carrier must make a demonstration.

OMB Control No.: 3060–0933.

Title: Community Broadband Deployment Database Reporting Form.

Form No.: FCC Form 460.

Type of Review: Extension.

Respondents: State, Local or Tribal Government; not for profit institutions; Number of Respondents: 30.

Estimated Time Per Response: .25 Hour (avg.).

Total Annual Burden: 7.5 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Pursuant to 47 USC Section 410(b) , on October 8, 1999, the FCC convened a Federal-State Joint conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment efforts was established.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19939 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 31, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0853.

Title: Receipt of Service Confirmation Form and Adjustment of funding Commitment and Modification to Receipt of Service confirmation form—Universal Service for Schools and Libraries.

Form No.: FCC Forms 486 and 500.

Type of Review: Extension.

Respondents: Business or Other for Profit; Not for Profit Institutions.

Number of Respondents: 40,000.

Estimated Time Per Response: 1.12 hrs (avg.).

Total Annual Burden: 45,000 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program schools and libraries must confirm that they are actually receiving the services eligible for support via FCC form 486. FCC Form 500 is used to adjust funding commitments and/or modify the dates for receipt of services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19890 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 28, 2000.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th St., SW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0775.

Title: Separate Affiliate Requirement for Independent Local Exchange Carrier (ILEC) Provision of International, Interexchange Services, 47 CFR Sec. 64.1901–64.1903.

Form Number: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 6,056 hours (avg).

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 60,563 hours.

Total Annual Cost: $1,003,000.

Needs and Uses: In CC Dockets 96–149 and 96–61, the FCC imposed recordkeeping requirements on independent local exchange carriers (ILECs). ILECs wishing to offer international, interexchange services must comply with the separate affiliate requirements of the Competitive Carrier Fifth Report and Order, which requires that an ILEC's international, interexchange affiliate must maintain books of account separate from such LECs' local exchange and other activities. The regulation does not require that the affiliate maintain books of account that comply with the Commission's Part 32 rules; rather, as a separate legal entity, the international, interexchange affiliate must maintain its own books of account. Thus, this regulation ensures that ILECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act, as amended.

OMB Control Number: 3060–0742.

Title: Telephone Number Portability, 47 CFR Part 52, Subpart C, Section 52.21–52.33.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,685.

Estimated Time Per Response: 2 to 85.5 hours.

Frequency of Response: Recordkeeping; on occasion reporting requirement; third party disclosure.

Total Annual Burden: 9,239 hours.

Total Annual Cost: N/A.

Needs and Uses: The 47 CFR Part 52, Subpart C implements the statutory requirements that local exchange carriers (LECs) provide number portability as set forth in Section 251 of the Telecommunications Act of 1996. The Commission requires the following information to be collected from various entities: (a) The request must specifically request long-term number portability in areas inside or outside the 100 largest Metropolitan Statistical Areas (MSAs), identify the area covered by the request, and provide a tentative date six or more months in the future when the carrier expects to need number portability in order to port prospective customers; (b) carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed; (c) incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order; for instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new costs incremental overhead costs claimed in their cost support are actually new costs incremental to and resulting from the provision of long-term portability; and (d) telecommunications carriers are required to provide information about their international and regional end-user telecommunications revenues that will enable the regional database administrator to allocate the cost of the number portability regional databases in competitively neutral manner. All the requirements will be used to implement Section 251 of the Communications Act, as amended.

OMB Control Number: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,400.

Estimated Time Per Response: 0.5 to 2 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 15,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The requirements implement Section 706 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services. All requirements will be used by the Commission and CLECs to facilitate the deployment of advanced data services and to implement Section 706 of the Act. The following collections of information implement Section 706:

(a) Showing regarding loop condition, 47 CFR 51.319(h)(5);

(b) Request for alternative physical access, 47 CFR Section 51.319(h)(7);

(c) Showing of significant degradation, 47 CFR Section 51.230(b)–(c);

(d) Information on type of technology, 47 CFR Section 51.231(b)–(c);

(e) Any party seeking designation of a technology as a known disturber should file a petition for declaratory ruling, 47 CFR Section 51.232(b);

(f) Showing of network harm, 47 CFR Section 51.233(b)–(c);

(g) List of equipment and affidavit, 47 CFR Section 51.323(b);

(h) Space limitation documentation, 47 CFR Section 51.321(f);

(i) Report of available collocation space, 47 CFR Section 51.321(h);

(j) Information on security training, 47 CFR Section 51.323(l)(3);

(k) Access to spectrum management procedures and policies, 47 CFR Section 51.231(a);

(l) Rejection and loop information, 47 CFR Section 51.231(a); and

(m) Notification of performance degradation, 47 CFR Section 51.233.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19691 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket 98–168; FCC 00–282]

Auction of Licenses for the 747–762 and 777–792 MHz Bands Postponed Until March 6, 2001 (Report No. AUC–00–31–I (Auction No. 31))

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document postpones the upcoming auction of licenses in the 747–762 and 777–792 bands originally scheduled to begin September 6, 2000, in order to provide additional time for bidder preparation and planning. The auction is rescheduled to begin March 6, 2001.

DATES: Auction No. 31 is will begin March 6, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Auctions Legal Branch at (202) 418–0660, or Lisa Stover, Auctions Operations at (717) 338–2804.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released July 31, 2000. The complete text of the public notice, including separate statements issued, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

The upcoming auction of licenses in the 747–762 and 777–792 MHz band, scheduled to begin on September 6, 2000 is postponed until March 6, 2001, in order to provide additional time for bidder preparation and planning. Therefore, the FCC Form 175 application filing window for Auction No. 31 is now closed. Any applications that were in the system will be deemed ineffective and purged from the system. Applicants wishing to participate must file in compliance with the deadlines listed. The new filing window for FCC Form 175 will open on January 11, 2001. The new schedule is as follows:

Filing Deadline for FCC Form 175—February 2, 2001; 6 pm ET

Upfront Payment Deadline—February 16, 2001; 6 pm ET

Bidding Preference Form Deadline—February 20, 2001; 6 pm ET

Mock Auction—March 1–2, 2001

Auction Start Date—March 6, 2001

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–19693 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1639; Report No. AUC–34–E (Auction No. 34)]

Status of FCC Form 175 Applications Eligible To Participate in the Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Services in the General Category Band (851–854 MHz) and Upper Band (861–865 MHz)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the 12 applicants that are eligible to participate in 800 MHz SMR Auction (Auction No. 34) and instructs those applicants on upfront payment information, bidding software and other pertinent information in reference to the auction. Also, this document identifies the 19 incomplete applications reported for this auction.

DATES: Auction No. 34 is scheduled to begin on Wednesday, August 16, 2000.

FOR FURTHER INFORMATION CONTACT: M. Nicole Oden, Auctions Legal Branch at (202) 418–0660 (regarding legal questions); Linda Sanderson, Auctions Operations (regarding bidding and general filing status) or Bob Reagle, Analyst, Auctions Operations (regarding bidding) at (717) 338–2888. For questions about payment or instructions for wiring upfront payments, contact Gail Glasser or Michelle Bennett, Auctions Accounting Group, at (202) 418–1995.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released July 24, 2000 ("*Auction No. 34 Public Notice*"). The complete text of the *Auction No. 34 Public Notice*, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov/wtb/auctions*.

List of Attachments Available at the FCC

Attachment A—List of Accepted Applicants
Attachment B—List of Incomplete Applicants
Attachment C—Electronic Filing and Review of the FCC Form 175
Attachment D—Accessing the FCC Network to file FCC Form 175

1. The Federal Communications Commission ("FCC") has received 31 FCC Form 175 applications to participate in Auction No. 34 scheduled to begin on Wednesday, August 16, 2000, for 1,053 licenses in the 800 MHz Band. The applications have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the following categories:

Accepted for Filing—12 Applications
Incomplete—19 Applications

Accepted: Applications accepted for filing are listed in Attachment A. These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Monday, July 31, 2000. *See* 47 CFR 1.2106. With respect to the FCC Form 175 applications, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications. *See* 47 CFR 1.65. Also, applicants are advised that Attachment A includes FCC account numbers that were automatically created by the FCC software system for each applicant, and which are applicable for bidding only.

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. These applicants may become qualified bidders only if they: (1) Resubmit their applications by 6:00 p.m. ET on Monday, July 31, 2000, to correct the minor deficiencies indicated; and (2) make the required upfront payments by 6:00 p.m. ET on Monday, July 31, 2000. Applicants must also maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules. In addition, applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant. These account numbers are applicable for bidding purposes only, should the applicant become eligible to participate in Auction No. 34.

2. The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than 6:00 p.m. ET on Monday, July 31, 2000. This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be rejected.

Upfront Payment Deadline

3. Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 34 are due at Mellon Bank, Pittsburgh, Pennsylvania, by 6:00 p.m. ET on Monday, July 31, 2000. Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers (TIN). No other payment method is acceptable for this auction. Applicants are reminded to use their TIN and not their FCC Account Numbers on the FCC Remittance Advice (FCC Form 159).

4. Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If such an application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its Taxpayer Identification Number (TIN) and wire transfer instructions, the upfront payment will be refunded automatically.

Other Important Information

5. Internet Access and Filing: Effective Monday, July 17, 2000, the Bureau permitted the filing of FCC Form 175 via the Internet. As a result, two of the attachments previously provided in the *Auction No. 34 Announcing Public Notice* have been updated. *See* 65 FR 39388 (June 26, 2000). Specifically, the Bureau has amended Attachment C and Attachment H. The amended attachments are included in this public notice as Attachment C and D.

6. Qualified Bidders: Approximately one week after upfront payments have been received, resubmitted FCC Form 175 applications have been processed and reviewed, and payments and applications have been correlated, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions on how to access the auction tracking tool software, a bidding schedule for the Mock auction, and the bidding schedule for the first day of the auction.

7. Prohibition of Collusion: Bidders are reminded that § 1.2105(c) of the Commission's rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For Auction No. 34, this prohibition

became effective at the filing deadline of short-form applications on Monday, July 17, 2000, and will end on the post-auction down payment due date. The post-auction down payment due date will be announced in a future public notice. If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under § 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic area. For further details regarding the prohibition against collusion refer to the *Auction No. 34 Announcing Public Notice.*

8. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. Winning bidders will be required to disclose in their long-form applications the specific terms, conditions and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Bidders found to have violated the anti-collusion rule may be subject to sanctions.

9. Ex Parte Rule: Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in § 1.2108 of the Commission's rules.

10. Mock Auction: All applicants found to be qualified bidders are eligible to participate in a mock electronic auction on Monday, August 14, 2000. In the *Qualified Bidders Public Notice*, the Bureau will announce when software for the mock auction will be posted on the World Wide Web.

11. Remote Bidding Software: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. To bid electronically, applicants should complete the software order form included in the *Auction No. 34 Announcing Public Notice* or contact the Auctions Hotline at (717) 338–2868. To ensure timely delivery of remote bidding software before the auction begins, the Commission requests receipt of software orders by 5:30 p.m. ET on Tuesday, August 1, 2000. The minimum hardware and software specifications required for the FCC remote bidding system are listed:

- CPU: Intel ® Pentium or above.
- RAM: 16 MB (more recommended if you have multiple applications open).
- Hard Disk: 33 MB available disk space.
- 1.44 MB Floppy Drive or CD–ROM Drive (to install the Remote Bidding System).
- Modem: v.32bis 28.8 kbps Hayes© compatible modem (56.6 kbps recommended).
- Monitor: VGA or above.
- Mouse or other pointing device.
- Microsoft® Windows™ 95™ or 98™.
- We recommend that you use Netscape® Communicator™ 4.73. However, you can also use Netscape Communicator 4.7 or 4.72.

To download Netscape Communicator 4.73 free of charge, access the Netscape download site at http://home.netscape.com/download/.

Note: The FCC Remote Bidding System has not been tested in a Macintosh, OS/2, or Windows NT™ environment. Therefore, the FCC will not support operating systems other than Microsoft Windows 95 or 98. This includes any other emulated Windows environment.

12. Long-Form Applications: All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule. *See* 47 CFR 1.2112(b).

13. Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

14. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–19894 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1657]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the ninth meeting of the Public Safety National Coordination Committee.

DATES: September 15, 2000 at 9:30 a.m.–12:30 p.m.

ADDRESSES: Department of Commerce, Herbert H. Hoover Building—HCHB Auditorium (First Floor), 1401 Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the ninth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: September 15, 2000.

Meeting Time: General Membership Meeting—9:30 a.m.–12:30 p.m.

Address: Department of Commerce, Herbert H. Hoover Building—HCHB Auditorium (First Floor), 1401 Constitution Avenue, N.W., Washington, D.C. 20230.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda

for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Public Discussion
7. Other Business
8. Upcoming Meeting Dates and Locations
9. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the ninth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this ninth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 00–19892 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2428]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

July 25, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 22, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98).

Number of Petitions Filed: 1.

Subject: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. (CC Docket No. 98–67).

Number of Petitions Filed: 5.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19854 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Workshop to Suggest National Priorities for Asphalt Roofing and Paving Fumes Health Effects and Exposure Reduction Research.

Times And Dates: 10 a.m.—5 p.m., September 11, 2000; 8:30 a.m.—3 p.m., September 12, 2000.

Location: Regal Cincinnati Hotel, 150 West 5th Street, Cincinnati, Ohio 45202–2393.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: To discuss current knowledge and gaps regarding asphalt health effects and exposure reduction research, and to suggest priorities for filling identified gaps.

Matters To Be Discussed: The agenda will include a brief plenary session followed by working group discussions of the following research areas: (1) Sampling and analytical, (2) toxicology and laboratory, (3) human studies and epidemiology and (4) control technology. Viewpoints and suggestions from industry, labor, academia, government agencies and the public are invited.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Frankie Smith, Office of the Director, Division of Applied Research and Technology, NIOSH, CDC, m/s R–2, 4676 Columbia Parkway, Cincinnati, OH 45226. Telephone (513) 458–7102, Email *Fsmith@cdc.gov.*

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–19884 Filed 8–4–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1425]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for human tissue intended for transplantation.

DATES: Submit written comments on the collection of information by October 6, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Human Tissue Intended for Transplantation—Part 1270 (21 CFR Part 1270)—(OMB Control Number 0910–0302)—Extension

Under section 361 of the Public Health Service Act (42 U.S.C. 264), FDA issued regulations to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, hepatitis C, and other organisms causing infectious disease through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet standards intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) and (b) require written procedures to be prepared and followed for: (1) All significant steps in the infectious disease testing process, and (2) all significant steps in determining the medical history of the donor. Any deviation from the written procedures are to be recorded and justified. Section 1270.33(a) requires records to be maintained concurrently with the performance of each significant step in the procedures of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records be retained regarding the determination of the suitability of the donors and such records required under § 1270.21. Section 1270.33(h) requires all records be retained at least 10 years beyond the date of transplantation, distribution, disposition, or expiration, of the tissue, whichever is latest. Section 1270.35 requires specific records to be maintained to document: (1) The results and interpretation of all required infectious disease tests and results, (2) the identity and relevant medical records of the donor, (3) the receipt and distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue-based products. Based on information provided by industry associations, there are approximately 224 manufacturers of conventional tissue and eye tissue. An estimated total of 309,000 conventional tissue products and 86,000 eye tissue products are manufactured per year. There are an estimated 6,500 donors of conventional tissue and 43,300 donors of eye tissue each year, with an estimated 12,900 unsuitable donors. In estimating the burden, FDA compared the agency regulations with the current voluntary standards of a number of industry organizations, such as the American Association of Tissue Banks and the Eye Bank Association of America. In those cases where a voluntary industry standard appears to be equivalent to the agency regulation, FDA has assumed that any recordkeeping burden would continue as customary and usual business practice of an establishment that are members of those organizations and therefore no additional burden is calculated. To account for establishments that may not be a member of an industry organization and would not perform these provisions as customary and usual practice, FDA is using 1 percent of the number of recordkeepers and total annual records as an estimation of the information collection burden on the tissue industry. The requirement for written procedures is considered a one-time burden, therefore, the information collection burden under § 1270.31(a) and (b) is for the recording and justifying of any deviations from the written procedures. The information collection burden for the regulation under § 1270.33 is being calculated with § 1270.35(a) because it

would be duplicating burden and difficult to calculate separately. The following recordkeeping estimates for the number of recordkeepers, total annual records, and hours per record are based on information provided by industry, and FDA experience.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1270.31(a) and 1270.31(b)	2	2	4	1.0	4
1270.33(a), (f), and (h), and 1270.35(a) and (b)	2	498	996	1.0	996
1270.35(c)	2	1,975	3,950	1.0	3,950
1270.35(d)	2	65	130	1.0	130
Total					5,080

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–19864 Filed 8–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1407]

International Conference on Harmonisation; Draft Guidance on Safety Pharmacology Studies for Human Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "S7 Safety Pharmacology Studies for Human Pharmaceuticals." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes general principles and recommendations for safety pharmacology evaluations. The draft guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse reactions to pharmaceuticals and to avoid unnecessary use of animals and other resources.

DATES: Submit written comments on the draft guidance by September 6, 2000.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGP's) (62 FR 8961, February 27, 1997), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedure for publishing ICH guidances. Beginning April 2000, we will no longer include the text of ICH guidances in the **Federal Register**. Instead, we will publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). The draft guidance will be left in the original ICH format. The final guidance will be reformatted to conform to GGP style before publication.

In March 2000, the ICH Steering Committee agreed that a draft guidance entitled "S7 Safety Pharmacology Studies for Human Pharmaceuticals" should be made available for public comment. The draft guidance is the product of the Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Safety Expert Working Group.

The draft guidance describes general principles and recommendations for safety pharmacology evaluations. The draft guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse reactions to pharmaceuticals and avoid unnecessary use of animals and other resources. The draft guidance generally applies to new chemical entities and biotechnology-derived products for human use. The draft guidance may be applied to marketed pharmaceuticals when appropriate. For example, adverse clinical events, a new patient population, or a new route of administration may raise concerns not previously addressed.

This draft guidance represents the agency's current thinking on safety pharmacology studies for human pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance by September 6, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19941 Filed 8–2–00; 3:33 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

National Native American Emergency Medical Services Association

AGENCY: Indian Health Service, IHS.

ACTION: Notice of single source cooperative agreement with the National Native American Emergency Medical Services Association.

SUMMARY: The Indian Health Service (IHS) announces the award of a cooperative agreement to the National Native American Emergency Medical Services Association (NNAEMSA) for a demonstration project to improve emergency medical services for Native American people by improving communications between the IHS and the Native American Emergency Medical Services providers and by supporting an Annual Educational Conference. The cooperative agreement is for a five-year project period effective July 1, 2000, to June 30, 2005. Total funding for the project is $280,000.

The award is issued under the authority of the Public Health Service Act, Section 301(a), and is included under the Catalog of Federal Domestic Assistance number 93.933.

The specific objectives of the project are:

1. The Association will publish, at least twice a year, a newsletter for members. The newsletter will be available in both hard copy and electronically.

2. The Association will present an Annual Educational Conference which supports training and continuing education for Native American EMS providers.

3. The Association will establish links with other national Indian organizations and with professional groups to serve as advocates for the EMS providers who work with Native American people nationwide.

Justification for Single Source

This project has been awarded on a non-competitive single source basis. NNAEMSA is the only nationwide organization that specifically represents approximately 70 individual Native American EMS programs. These EMS programs provide care to over half-million Native American people who live on Indian reservations or who live in non-reservation areas with significant Native American populations. The population served by these programs is the same as IHS's user population.

Use of Cooperative Agreement

A cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. The substantial programmatic involvement is as follows:

1. IHS staff will approve articles to be included in the newsletters and may, as requested by the Association, provide articles.

2. Working with the Association, IHS staff will be involved in the development of the Annual Educational Conference to include topics of concern to the Agency and will be included in presentations as requested.

FOR FURTHER INFORMATION CONTACT: For program information, contact W. Craig Vanderwagen, M.D., Director, Division of Clinical and Preventive Services, Office of Public Health, Indian Health Service, Room 6A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3024. For grants information, contact Ms. M. Kay Carpentier, Grants Management Officer, Division of Acquisitions and Grants Management, Indian Health Service, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, telephone (301) 443–5204.

Dated: July 21, 2000.

Michel E. Lincoln,

Acting Director.

[FR Doc. 00–19865 Filed 8–4–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–48]

Notice of Submission of Proposed Information Collection to OMB Affirmative Fair Housing Marketing Plan, Form HUD–935.2

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0013) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and

Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Affirmative Fair Housing Marketing Plan, Form HUD–935.2.

OMB Approval Number: 2529–0013.

Form Numbers: HUD–935.2.

Description of the Need for the Information and Its Proposed Use: This form is required of all applicants desiring to participate in HUD's insured housing programs, both single-family and multifamily. HUD uses this information to assess the adequacy of the applicant's actions under the Affirmative Fair-Housing Marketing Regulations (24 CFR 200.600) and the Affirmative Fair Housing Marketing Compliance Regulations (24 CFR 108).

Respondents: Business or other for-profit, not-for-profit institutions.

Frequency of Submission: on occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	3,006		1		3		9,018

Total Estimated Burden Hours: 9,018.
Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Wayne Eddins,
Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–19937 Filed 8–4–00; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–49]

Submission of Proposed Information Collection to OMB Utility Allowance Adjustment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0352) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–0274. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Utility Allowance Adjustment.

OMB Approval Number: 2502–0352.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The information will be used by the project owners to advise HUD and request approval of new utility allowances when the utility rate change results in a cumulative increase of 10 percent or more. If periodic adjustments to the utility allowance are not made, tenants would be required to pay a larger total tenant payment than is permissible.

Respondents: Business or other-for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Periodic Request	1,200		1		0.5		600

Total Estimated Burden Hours: 600.
Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 1, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–19938 Filed 8–4–00; 8:45 am]

BILLING CODE 4310–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–00–1320–EL–P; NDM 90166]

AGENCY: Bureau of Land Management, Montana State Office

ACTION: Notice of Invitation—Coal Exploration License Application NDM 90166

SUMMARY: Members of the public are hereby invited to participate with The Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Mercer County, North Dakota:

T. 145 N., R. 86 W., 5th P.M.
Sec. 4: Lot 2, SE¼NW¼, SW¼SW¼;
T. 144 N. R. 88 W., 5th P.M.
Sec. 2: Lots 3, 4, S½NW¼;
Sec. 6: Lots 3, 4, 5, 6, 7, SE¼NW¼, E½SW¼, SE¼;
Sec. 8: W½SW¼.
T. 145 N., R. 88 W., 5th P.M.
Sec. 4: Lots 1, 2, S½NE¼, N½SE¼;
Sec. 14: All;
Sec. 22: All;
Sec. 26: N½N½, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼;
Sec. 34: N½N½, SE¼NE¼, SW¼, NE¼SE¼, S½SE¼.
T. 146 N., R. 88 W., 5th P.M.
Sec. 14: S½SW¼;
Sec. 22: N½N½, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼.
T. 144 N., R. 89 W., 5th P.M.
Sec. 12: NE¼.
3,928.19 acres.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and The Coteau Properties Company, 2000 Schafer Street, Suite D, Bismarck, North Dakota 58502. Such written notice must refer to serail number NDM 90166 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Beulah Beacon newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the Beulah Beacon, Beulah, North Dakota.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by The Coteau Properties Company, is available for public inspection at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Either Stephen Van Matre, Mining Engineer, or Bettie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59017–6800, telephone (406) 896–5082 or (406) 896–5063, respectively.

Dated: July 17, 2000.

Edward L. Hughes,

Acting Chief, Branch of Solid Minerals.

[FR Doc. 00–18486 Filed 8–4–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1310–ES]

Availability of the Pinedale Anticline Record of Decision

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Pinedale Anticline Natural Gas Exploration and Development Project Environmental Impact Statement (EIS). The ROD specifies the decision of the BLM Wyoming State Director regarding natural gas exploration and development allowed, including restrictions and limitations, on Federal lands and minerals within the project area in Sublette County, Wyoming. Implementation of this decision will commence immediately (*i.e.*, it is issued full force and effect).

DATES: This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 3165.4(c) within 30 days of the date on which this Notice appears in the **Federal Register**. That date is anticipated to be on or about August 8, 2000.

ADDRESSES: If an appeal is filed, the notice of appeal must be filed in the office of the Bureau of Land Management, State Director, P.O. Box 1828, Cheyenne, Wyoming 82003 within 30 days of the date BLM publishes their notice of the decision in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bill McMahan, telephone: (307) 352–0224. Copies of the ROD may be obtained from the following BLM offices:
Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941 (telephone 307–367–5300);
Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901 (telephone 307–352–0224); or
Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline ROD records the decision made by the BLM Wyoming State Director, in consultation with the USDA—Forest Service, U.S. Army Corps of Engineers, and the State of Wyoming (cooperating agencies in the preparation of the EIS), for managing the Federal surface and mineral estate in the Pinedale Anticline Oil and Gas Exploration and Development Project Area (PAPA). The PAPA comprises approximately 197,345 acres of Federal, State, and private land. Of this total, approximately 157,719 surface acres (79.9 percent) are Federal managed by the BLM; 9,766 surface acres (5.0 percent) are administered by the State of Wyoming; and 29,860 acres (15.1 percent) are privately controlled.

The BLM approves the Pinedale Anticline Operators proposal for 700 producing well pads over the next 10 to 15 years within the PAPA. The approved development will be

implemented under the "Resource Protection (RP) Alternative on Federal Lands and Minerals," as modified. The ROD recognizes the PAPA as one which has been relatively undisturbed by development for natural gas and that there are important and highly sensitive natural resources and human values within or adjacent to the area which require consideration and protection from unnecessary or undue degradation (Federal Land Policy and Management Act [FLPMA]—section 302). The ROD recognizes that in order to develop 700 productive well pads in the PAPA, as many as 900 well pads may need to be constructed and drilled and that as many as 200 of these well pads may be plugged, abandoned and reclaimed because the wells would be dry holes or uneconomical to produce. The ROD also recognizes that not all of the well pads will be located on Federal lands/minerals. Some will be located on State and private lands/minerals. Therefore, monitoring for project consistency with the scope of EIS analysis will be based on a total of 700 producing well pads.

BLM believes that implementation of the "Resource Protection Alternative on Federal Lands and Minerals," as modified, will provide the best balance of multiple uses within the PAPA, and will sustain the long-term yield of resources while promoting stability of local and regional economies, environmental integrity, and conservation of resources for future generations (NEPA section 101 and FLPMA, section 302). The RP Alternative on Federal Lands and Minerals will provide for the management of the PAPA in a manner that allows for natural gas exploration and development while continuing to provide for the existing principal and major uses recognized by the land use plan for this area (*e.g.*, domestic livestock grazing; fish and wildlife habitat protection, utilization, and development; mineral exploration and production; utility and road rights-of-way; visual resource protection; outdoor recreation).

The ROD, to the extent allowed by law, incorporates restrictions and mitigative measures in consideration of the need to prevent unnecessary or undue degradation of important and sensitive resources and human values, and in consideration of Federal, State, local agency, public, and affected Indian tribe concerns raised during scoping and in comments received on the draft and final EIS. The ROD incorporates a process recommended by the Environmental Protection Agency (EPA), called Adaptive Environmental Management (AEM), which will provide for project implementation oversight to ensure maximum consideration for the reasonable protection of identified concerns through its development and implementation. The AEM Process will be designed to ensure that the implementation of the Pinedale Anticline Project is managed and monitored in a manner that will guide midcourse corrections in adapting to inevitable problems or changes associated with and inherent in each authorization for the implementation, operation, and abandonment of activities to develop the mineral resource.

The ROD authorizes the BLM Pinedale Field Manager or Authorized Officer to begin processing Applications for Permit to Drill (APDs), Sundry Notices (SNs), Rights-of-Way (ROWs), and Temporary Use Permits (TUPs) on public lands administered by the BLM for the Pinedale Anticline Project Operators and for companies contracted by the Operators. Approval of individual applications will authorize the implementation of the various components of the Pinedale Anticline Project (*e.g.*, access road and well pad construction, gas gathering pipeline and production facilities installation, etc.). The ROD provides the BLM Pinedale Field Manager approval to permit the following project components on BLM-administered Federal lands and minerals within the PAPA, subject to the constraints specified. Proposed development beyond the specified levels will require the preparation of a supplemental environmental impact analysis to the EIS.

900 Initial well pad locations on all lands and minerals within the PAPA.
700 Producing wells and/or well pads on all lands and minerals within the PAPA.
700 Production facilities at individual well locations.
Central production facilities.
4 Compressor facility sites.
Water wells for drilling/completion water.
1 BP Amoco Field Office.
~121.5 Miles of sales pipeline corridor for multiple pipelines.
~276.0 Miles of access road (including collector, local and resource roads).
~280.0 Miles of gathering pipeline system.

The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 3165.4(c). If an appeal is filed, your notice of appeal must be filed in this office (Bureau of Land Management, State Director, P.O. Box 1828, Cheyenne, Wyoming 82003) within 30 days of the date BLM publishes their notice of the decision in the **Federal Register**. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to 43 CFR 3165.4(c)) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed in 43 CFR 3165.4(c). Copies of the notice of appeal and petition for a stay must also be submitted to the Interior Board of Land Appeals and to the appropriate office of the Solicitor at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Dated: July 27, 2000.

Alan R. Pierson,

State Director.

[FR Doc. 00–19808 Filed 8–4–00; 8:45 am]
BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–00–1430–ES; AZA–31250]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Maricopa County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest. The following described lands, located near the Town of Buckeye, Maricopa County, have been found suitable for lease or conveyance to Maricopa County Parks and Recreation for a regional park.

Gila and Salt River Meridian, Arizona

T.3 N., R. 4 W.,
Sections, 1 S½N½,S½; 11, E½E½E½; 12, All; 13, All; 14, E½NE¼NE¼E½NE¼SE¼; 24, E½N½NW¼; 25, E½SE¼SE¼; 36, NE¼E½NW¼.

Containing approximately 2880.00 acres.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights as B7J Cattle Company, may have to that portion of the Douglas Grazing Allotment.

FOR FURTHER INFORMATION CONTACT: JoAnn Goodlow at the Phoenix Feild Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (623) 580–5548.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance or classification of the lands to the Field Office Manager, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments

Interested parties may submit comments involving the suitability of the land for: a Regional park, for Maricopa County. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: July 27, 2000.

Deborah K. Rawhouser,

Assistant Field Manager, Resource Use & Protection.

[FR Doc. 00–19872 Filed 8–4–00; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–1430–EU; Serial No. NMNM–104317]

Notice of Realty Action; Environmental Assessment for Noncompetitive Sale of Public Lands in Eddy County

AGENCY: Bureau of Land Management.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) is initiating the preparation of an Environmental Assessment (EA) for a direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat 2750, 43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 17 S., R. 30 E., NMPM,
Sec. 20: Lots 13, 14, 15,
S½SE¼SE¼NE¼SE¼.

Containing approximately 5 acres.

The land is hereby segregated from appropriation under the public land laws, including the mining laws, pending issuance of patent or 270 days from date of this notice, whichever occurs first.

The land is to be offered by direct sale to Ray Westall, the adjacent land owner, to correct an encroachment on public land. Mr. Westall will construct a pipe yard on the location.

The patent, when issued, will reserve all minerals to the United States and will be subject to existing rights-of-way. Detailed information concerning the reservation, as well as specific conditions of the sale, are available for review at the Carlsbad Field Office, Bureau of Land Management, 620 East Green, Carlsbad, New Mexico 88220.

For a period of 45 days from the date of this notice, interested parties may submit comments to Bobbe Young, Lead Realty Specialist, P.O. Box 1778, Carlsbad, NM 88220. Any adverse comments will be evaluated by the Field Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 28, 2000.

Douglas A. Melton,

Acting Field Manager.

[FR Doc. 00–19918 Filed 8–4–00; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 29, 2000. Pursuant to § 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 22, 2000.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Jefferson County

Rio Grande Southern Railroad Engine No. 20, 17155 W. 44th Ave., Golden, 00001003

Larimer County

Armstrong Hotel, 249–261 S. College Ave., Fort Collins, 00001002

IOWA

Dallas County

Bruce's Snowball Market #1 Addition (Downtown Perry, Iowa MPS), 921 Railroad St., Perry, 00001004

Downtown Perry Historic District (Downtown Perry, Iowa MPS) bet. 3rd St., Lucinda St., 1st Ave., and Railroad St., Perry, 00001005

Jones Business College, 1305 Otley Ave., Perry, 00001006

MARYLAND

Baltimore County

Baltimore County School No. 7, 200 Ashland Rd., Cockeysville, 00001007

MISSOURI

St. Louis County

Burkhardt Historic District, 16662–16678 Chesterfield Airport Rd., Chesterfield, 00001011

St. Louis Independent City

Balmer & Weber Music House Co. Building, 1004 Olive St., St. Louis, 00001008

Lucas Avenue Industrial Historic District, bounded by Washington, Delmar, 20th and 21st Sts., St. Louis, 00001009

South Side National Bank, 3606 Gravois Ave., St. Louis, 00001010

NEW YORK

Bronx County

Jerome Park Reservoir, Goulden, Reservoir and Sedgwick Aves., Bronx, 00001014

New York County

First Hungarian Reformed Church, 344–346 East 69th St., New York, 00001012
Lower East Side Historic District, roughly bounded by Allen St., E. Houston, Essex St., Canal St., Eldridge St., E. Broadway, and Grand St., New York, 00001015

Queens County

Douglaston Hill Historic District, roughly bounded by Douglaston Pkwy., Northern Blvd., 244th St., 243rd St., and Long Island R.R., Douglaston, 00001016
Firemen's Hall, 13–28 123rd St., College Point, 00001013

OREGON

Deschutes County

Congress Apartments, 221, 223, 225, 227, and 229 NW Congress St., Bend, 00001020
Multnomah County First Regiment Armory Annex, 123 NW Eleventh Ave., Portland, 00001017
Meier & Frank Warehouse, 1438 NW Irving St., Portland, 00001021
Tichner, Abraham, House, 114 SW Kingston Ave., Portland, 00001022
Weinhard Brewery Complex, 1131–1133 W. Burnside, Portland, 00001018

Union County

Dry Creek School, 69281 Summerville Rd., Summerville, 00001019

[FR Doc. 00–19885 Filed 8–4–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application for asylum and for withholding of removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 6, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–589. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used to determine whether an alien applying for asylum and/or withholding of removal in the United States is classifiable as a refugee, or eligible for protection under the Convention Against Torture, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 60,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 1, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–19856 Filed 8–4–00; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; arrival record.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 6, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Arrival Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94A OT. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is captured electronically as part of a pilot program established by the Service in cooperation with two participating carriers to streamline document handling and data processing. The information collected will be used by the Service to document an alien's arrival and departure to and from the United States and may be evidence of registration under certain provisions of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 3 minutes (.05 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 1, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–19857 Filed 8–4–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,717]

CV Materials, Ltd.; Urbana, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 30, 2000, in response to a petition filed on behalf of workers at CV Materials, Ltd., Urbana, Ohio.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 24th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19882 Filed 8–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,876]

ITT Industries, Fluid Handling Systems Oscoda, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 10, 2000, in response to a petition filed by the company on behalf of workers at ITT Industries, Fluid Handling Systems, Oscoda, Michigan.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 20th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19881 Filed 8–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than August 17, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 17, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 07/24/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,896	Knowles Electronics LLC (Comp)	Itasca, IL	07/05/2000	Microphones and Speaker Products.
37,897	Osram Sylvania (Wrks)	St. Mary's, PA	07/12/2000	Lamps.
37,898	Onix Process Analysis (Comp)	Angleton, TX	07/10/2000	Processors to Test Gas Quality.
37,899	Hannah Hardy, Inc. (Wrks)	New York, NY	07/13/2000	Dresses.
37,900	Oxy USA, Inc. (Comp)	Houston, TX	06/26/2000	Oil and Gas.
37,901	Oxo Welding Equipment Co (Wrk)	Troy, OH	07/10/2000	Welding Guns.
37,902	Toastmaster, Inc. (Comp)	Laurinburg, NC	07/07/2000	Household Clocks and Timbers.
37,903	Toni Industries, Inc. (Wrks)	New York, NY	07/03/2000	Dresses.
37,904	Staffing Solutions (Comp)	Colorado Spring, CO	06/28/2000	Contract Employees to Quantum Corp.
37,905	Cooper Industries/Light (Comp)	E. Grove Village, IL	07/10/2000	Lighting Fixtures.
37,906	Automation Technology (Comp)	Santa Cruz, CA	07/03/2000	Test Equipment—Hard Disk.
37,907	Indiana Knitwear (Wrks)	Greenfield, IN	06/22/2000	Shirts, Sweatpants, Shorts.
37,908	Sweatt Industries/Sentry (Wrks)	Odessa, TX	07/09/2000	Electrical Poleline—oilwell.
37,909	Duke Energy Field Service (Comp)	Ada, OK	07/07/2000	Natural Gas Gathering and Processing.
37,910	Mallinckrodt, Inc. (Comp)	Carlsbad, CA	07/05/2000	Critical Care Medical Equipment.
37,911	Pillowtex Corp (Wrks)	Rockymount, NC	07/12/2000	Pillows.
37,912	Aquatech, Inc. (Comp)	McMinnville, TN	07/06/2000	Denim Garment Finishing.
37,913	United Filters, Inc. (Comp)	Amarillo, TX	07/17/2000	String Wound Filters.
37,914	Joseph Timber LLC (Wrks)	Joseph, OR	07/14/2000	Dimension Lumber.
37,915	ASAP Sewing (Wrks)	Andrews, SC	07/12/2000	T-Shirts.
37,916	Alloy Machining Operation (Comp)	Miamisburg, OH	07/12/2000	Automatic Manifolds.

[FR Doc. 00–19879 Filed 8–4–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,385]

PF Technologies; Phoenix, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 17, 2000, in response to a petition filed by a company official on behalf of workers at PF Technologies, Phoenix, Arizona.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 25th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–19880 Filed 8–4–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; O*NET Data Collection Program

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information. This is done in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. With this notice, the Employment and Training Administration is soliciting comments concerning the proposed O*NET (Occupational Information Network) Data Collection Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or can be downloaded from the Internet at: *http://www.onetcenter.org/dataCollection/ombclearance.html* or from *www.doleta.gov/programs/onet*.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before October 6, 2000.

ADDRESSES: Send comments regarding the O*NET Data Collection Program to James Woods, Chief, Division of Evaluation and Skills Assessment, Office of Policy and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5637, Washington, D.C. 20210. The telephone number is 202–693–3660 (this is not a toll-free number). Comments may also be submitted via e-mail to: *O*NET@doleta.gov*.

FOR FURTHER INFORMATION CONTACT: James Woods, Chief, Division of Evaluation and Skills Assessment, telephone number 202–693–3660. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The O*NET Data Collection Program is planned to be a continuing activity to develop and maintain a current database on detailed characteristics of occupations. The resulting database will be the most comprehensive standard source of occupational information in the nation. O*NET will be at the center of an extensive network of occupational information used by a wide range of audiences, from individuals making career decisions, to public agencies and schools making workforce investment decisions, to employers making staffing

and training decisions. O*NET also will provide a common language and framework to meet administrative needs of various federal programs, including workforce investment and training programs of the Departments of Labor, Education, and Health and Human Services.

In 1999, the Employment and Training Administration received OMB approval to conduct the O*NET Data Collection Program Survey Pretest (OMB No. 1205–0400, exp. 11/99). The Pretest provided information on the impact of several survey features on response rates. The use of alternative sample sizes per establishment and the use of in-kind incentives were tested for their impact on response rates for businesses. Alternatives on outreach and types of return envelope postage were tested for their impact on employee response rates.

The Pretest has been completed, and its results indicated significant increases in response rates were achieved with an optimum combination of specific tested survey features. Pretest results are described in the supporting documentation to this ICR.

A. Survey of Establishments and Incumbent Workers

Information will be collected in a two-stage design, including a statistical sample of businesses expected to employ workers in the specific occupations being surveyed, and a sample of workers in the occupations within the sampled businesses. These workers will be asked to complete the survey instruments.

For selected occupations, two alternative methods will be used.

B. Survey of Membership of Occupational Associations

The first is to contact professional associations that include a majority of the occupation's incumbent workers in their membership and sample from their member roster. These sampled workers will be surveyed in the same manner as workers identified in the two-stage sample design.

C. Subject Matter Experts

The second alternative is to identify subject matter experts for selected occupations. The experts will be asked to complete the questionnaires, as well as the demographic items and the task list for the specific occupation being surveyed.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The O*NET Data Collection Program will collect information on up to 300 occupations in the first year, increasing the number of occupations in subsequent years to allow collection on all 974 O*NET occupations over three to five years. The O*NET occupations either match to, or represent more detailed breakouts of occupations from the 1998 Standard Occupational Classification.

O*NET uses five survey questionnaires: (1) Skills, (2) Generalized Work Activities, which are general types of job behaviors occurring on multiple jobs, (3) Abilities, (4) Work Context, the physical and social factors that influence the nature of work, and (5) Knowledge. (Copies of these questionnaires are also available from the Internet site already noted.) All but the Abilities questionnaire will be used to survey incumbent workers identified using the two-stage sample design. Abilities will be rated by analysts. While the sample of incumbent workers is designed to provide responses from four questionnaires, to reduce response burden each incumbent will be randomly assigned only one of the four questionnaires. Incumbents also will be asked to provide basic demographic information, and to complete a brief task inventory for their specific occupation. Incumbents will be offered the option of going to an Internet website to complete an on-line questionnaire.

The name of incumbent respondents will not be requested on the survey form and all individual responses will be maintained in strict confidentiality. The data from job incumbents and others will be used to develop mean ratings on the various items.

The resulting data will be subjected to extensive analysis, and will be made available to the public through scheduled updates to the O*NET database.

Type of Review: New.

Agency: Employment and Training Administration.

Title: O*NET Data Collection Program.

OMB Number: 1205–0NEW.

Affected Public: Employers (includes private and not-for-profit businesses and government); individuals (incumbent workers, subject matter experts).

Total Respondents: 24,000.

Frequency of Response: Annual.

Total Responses: 24,000.

Average Time Per Response: Employer response time is 1 hour, 35 minutes. Incumbent worker response time is 30 minutes. Subject matter expert response time is 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 22,183 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 1st day of August, 2000.

Gerard Fiala,

Administrator, Office of Policy and Research, Employment and Training Administration.

[FR Doc. 00–19883 Filed 8–4–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and

financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before October 6, 2000.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

1. Background

Section 77.1101(a) requires operators of surface coal mines and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire.

Section 77.1101(b) requires that all employees be instructed in current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire. The training and record keeping requirements associated with this standard are addressed under OMB No. 1219–0070 (Certificate of Training, MSHA Form 5000–23).

Section 77.1101(c) requires escape and evacuation plans to include the designation and proper maintenance of an adequate means for exiting areas where persons are required to work or travel including buildings, equipment, and areas where persons normally congregate during the work shift.

While escape and evacuation plans are not subject to approval by MSHA district managers, MSHA inspectors evaluate the adequacy of the plans during their inspections of surface coal mines and surface work areas of underground coal mines.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Escape and Evacuation Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)," or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

MSHA proposes to continue the information collection requirement related to escape and evacuation plans for surface coal mines and surface work areas of underground coal mines for an additional 3 years. MSHA believes that eliminating this requirement would expose miners to unnecessary risk of injury or death should a fire occur at or near their work location.

Type of Review: Extension.
Title: Escape and Evacuation Plans.
Recordkeeping: Indefinite.
OMB Number: 1219–0051.
Affected Public: Business or other for-profit institutions.
Cite/Reference/Form/etc.: 30 CFR 77.1101.
Total Respondents: 59.
Frequency: On occasion.
Total Responses: 59.
Average Time per Response: 4.45 hours.
Estimated Total Burden Hours: 263 hours.
Total Burden Cost (capital/startup): $0.
Total Annualized Capital/Startup Costs: $0.
Total Operating and Maintenance Costs: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 26, 2000.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 00–19401 Filed 8–4–00; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket No. SSD 99–27; ASLBP No. 00–778–06–ML]

Graystar, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned 10 CFR part 2, Subpart L proceeding is hereby replaced by appointing Administrative Judge Ann M. Young as Presiding Officer in place of Administrative Judge G. Paul Bollwerk, III.

All correspondence, documents, and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203. The address of the new Presiding Officer is: Administrative Judge Ann M. Young, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Issued at Rockville, Maryland, this 31st day of July 2000.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–19901 Filed 8–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2); Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating License No. DPR–77 for operation of the Sequoyah Nuclear Plant, Unit 1, and DPR–79 for Unit 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (Commission or NRC) now or hereafter in effect.

The Sequoyah units are pressurized water reactors located in Hamilton County, Tennessee.

II

By application dated February 11, 2000, TVA requested an exemption from the requirements of Title 10 of the Code of Federal Regulations, Section 50.44 (10 CFR 50.44), "Standard for Combustion Gas Control in Light-Water-Cooled Power Reactors," 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems [ECCS] for Light Water Nuclear Power Reactors," and 10 CFR Part 50, Appendix K, "ECCS Evaluation Models." These regulations set forth requirements for use of zircaloy or ZIRLO fuel rod cladding material by specifying acceptance criteria for ECCS and the fuel cladding performance evaluation for normal operation, anticipated operational occurrences and accident conditions. Specifically, 10 CFR 50.46 contains acceptance criteria for ECCS for light water nuclear power reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. Further, 10 CFR 50.46 states that ECCS cooling performance following postulated loss-of-coolant accidents (LOCA) must be calculated in accordance with an acceptable evaluation model. Appendix K to 10 CFR Part 50 contains the required and acceptable features for ECCS evaluation models. Finally, 10 CFR 50.44 contains requirements for the control of hydrogen gas that may be generated after a postulated LOCA in light water power reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. Because TVA proposes to use a fuel cladding that is not specified in the rule, TVA sought an exemption from these regulations in order to use a newly designed cladding and structural material, designated M5, developed by Framatome Cogema Fuels (FCF). The licensee's exemption request was submitted in conjunction with an application for operating license amendments to revise the Sequoyah Unit 1 and 2 Technical Specifications to allow use of the M5 alloy for fuel rod cladding. The proposed amendment will be issued concurrently with this exemption. Together, the exemption and amendments will allow M5 to be used at both Sequoyah units.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR Part 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

III

TVA proposes to use M5 for fuel rod cladding, fuel assembly spacer grids, fuel rod end plugs, the fuel assembly guide, and instrument tubes. M5 is an alloy composed of approximately 99 percent zirconium and 1 percent niobium, is designed for high fuel rod burnup conditions, and exhibits superior corrosion resistance and reduced irradiation-induced growth. In September 1997, FCF submitted Topical Report BAW–10227P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," for NRC staff review. The topical report justified the use of M5 as cladding and structural material in pressurized-water reactor cores and provided the licensing basis for the FCF advanced cladding and structural material. In a safety evaluation report (SER) dated February 4, 2000, NRC approved Topical Report BAW–10227P, concluding that the M5 properties and the mechanical design methodology, as defined in BAW–0227P, "are in accordance with SRP [Standard Review Plan] Section 4.2, 10 CFR 50.46, and 10 CFR Part 50, Appendix K and therefore, are acceptable for reload licensing applications up to rod averaged burnup levels of 62,000 MWd/MTU and 60,000 MWd/MTU for Mark B and Mark–BW fuel designs, respectively." The staff SER and the approved topical report were published on February 11, 2000, as BAW–10227P–A. The staff has determined that BAW–10227P–A is applicable to Sequoyah because the fuel designs are consistent with the requirements of the topical report.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities meet the appropriate acceptance criteria for ECCS. The rule, however, expressly applies only to reactors fueled with the use of zircaloy-clad or ZIRLO-clad fuel pellets. In its topical report, FCF demonstrated that the ECCS acceptance criteria, which are applied to reactors fueled with zircaloy- or ZIRLO-clad fuel, are also applicable to reactors fueled with M5 fuel rod cladding and structural material. The staff has determined that this finding is applicable to Sequoyah because the fuel designs are consistent with the requirements of the topical report. Thus, the performance of M5-clad material is similar to that of zircaloy- and ZIRLO-clad fuel and application of the regulation (*i.e.*, using zircaloy or ZIRLO) is not necessary to achieve the underlying purpose of 10 CFR 50.46.

The underlying purpose of 10 CFR 50.44 and 10 CFR Part 50, Appendix K, is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. These regulations set forth requirements for the plants that use either zircaloy- or ZIRLO-clad fuel. Specifically, Paragraph I.A.5 of 10 CFR Part 50, Appendix K, requires that the Baker-Just (B–J) equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. This equation conservatively bounds all post-LOCA scenarios. In the SE that approved Topical Report BAW–10227P, the NRC staff concluded that the B–J correlation is conservative for determining high temperature M5 oxidation for LOCA analysis, and that the correlation is acceptable for LOCA ECCS analysis up to the currently approved burnup levels. The staff has determined that this finding is applicable to Sequoyah because the fuel designs are consistent with the requirements of the topical report. Therefore, when M5 is used as fuel rod cladding and structural material, the B–J correlation conservatively bounds post-LOCA scenarios and ECCS evaluation model criteria will be met. Application of the rule (*i.e.*, the use of zircaloy or ZIRLO) is not necessary to achieve the underlying purpose of 10 CFR 50.44 and 10 CFR Part 50, Appendix K.

Based on this evaluation, the staff has determined that application of the criteria in 10 CFR 50.44 and 10 CFR Part 50, Appendix K, Paragraph I.A.5, is appropriate given the similarities in the performance of M5-clad fuel rods and zircaloy- and ZIRLO-clad fuel. Therefore, special circumstances exist to grant an exemption in that application of the regulations (*i.e.*, the use of zircaloy or ZIRLO) is not necessary to achieve the underlying purpose of the rules cited above.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety and is consistent with the common defense and security. The Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are

present, as noted in Section III above. Therefore, an exemption is hereby granted from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K, to allow use of the M5 alloy.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (65 FR 20209).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 29th day of July 2000.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19902 Filed 8–4–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 23c–1, SEC File No. 270–253, OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 23c–1 under the Investment Company Act of 1940, among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. The Commission staff estimates that approximately 19 closed-end funds rely on Rule 23c–1 annually to undertake approximately 115 repurchases of their securities. The Commission staff estimates that, on average, a fund spends approximately 2.5 hours on complying with the paperwork requirements listed above each time it undertakes a security repurchase under the rule. The total annual burden of the rule's paperwork requirements thus is estimated to be 287.5 hours.

In addition, the fund must file with the Commission, during the calendar month following any month in which a purchase permitted by rule 23c–1 occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The burden associated with filing Form N–23C–1, the form for this report, has been addressed in the submission for that form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: July 28, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19905 Filed 8–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions: Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242, and Rule 206(4)–4, SEC File No. 270–304, OMB Control No. 3235–0345.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 206(4)–3, which is entitled "Cash Payments for Client Solicitations," provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all registered investment advisers. The Commission believes that approximately 1,588 of the advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 11,180 total burden hours (7.04×1,588) for all advisers.

Rule 206(4)–4, which is entitled "Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients," requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)–4 are designed so that a client will have information about an adviser's financial condition and disciplinary events that may be material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. We

estimate that approximately 1,118 advisers are subject to this rule. The rule requires approximately 7.5 burden hours per year per adviser and amounts to approximately 8,385 total burden hours (7.5×1,118) for all advisers.

The disclosure requirements of rules 206(4)–3 and 206(4)–4 are mandatory. Information subject to the disclosure requirements of rules 206(4)–3 and 206(4)–4 is not submitted to the Commission, so confidentiality is not an issue. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19904 Filed 8–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions: Form F–80, SEC File No. 270–357, OMB Control No. 3235–0404, and Form 18, SEC File No. 270–105, OMB Control No. 3235–0121.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form F–80 is used by certain Canadian issuers to register securities to be issued in exchange offers or business combinations. All information provided on Form F–80 must be submitted to the Commission. The Commission uses very little of the collected information itself except on an occasional basis in the enforcement of the securities laws. Form F–80 is required to be filed on occasion and is a public document. Form F–80 takes approximately 2 hours to prepare and is filed by 2 respondents for a total of 4 burden hours.

Form 18 is used for the registration of securities of any foreign government or political subdivision on a U.S. Exchange. All information provided on Form 18 must be submitted to the Commission. The Commission uses very little of the collected information itself except on an occasional basis in the enforcement of the securities laws. Form 18 is filed on occasion and is a public document. Form 18 takes approximately 8 hours to prepare and is filed by 5 respondents for a total of 40 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 1, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19906 Filed 8–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24589; 812–12144]

Goldman Sachs Trust et al., Notice of Application

August 1, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order under section 10(e)(3) of the Investment Company Act of 1940 ("Act") suspending the operation of section 10(b) of the Act.

Summary of Application: Applicants request an order extending, until August 31, 2000, the thirty-day period provided for by section 10(e)(1) of the Act during which a vacancy on the boards of trustees ("Boards") of Goldman Sachs Trust ("GST") and Goldman Sachs Variable Insurance Trust ("GSVIT") may be filled by action of the Boards in order to bring the composition of the Boards into compliance with section 10(b) of the Act. Applicants further request that the order grant retroactive relief for the period from July 2, 2000, the expiration date of the statutory thirty-day period, to the date on which the order is issued.

Applicants: GST and GSVIT.

Filing Dates: The application was filed on June 30, 2000, and amended on July 28, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 4900 Sears Tower, Chicago, IL 60606–6303.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. GST and GSVIT (collectively, the "Trusts"), each a Delaware business trust, are open-end management investment companies comprised of multiple series and registered under the Act. GSVIT serves as an investment vehicle for separate accounts of participating insurance companies for the purpose of funding variable annuity contracts and variable life insurance policies ("Contracts"). Goldman Sach & Co. ("GSC") serves as principal

underwriter to the Trusts and is employed by the Trusts as a regular broker.

2. The Boards are identically organized with respect to the individual trustees. Prior to June 3, 2000, each Board was comprised of nine members, five of whom were not "interested persons," as defined in section 2(a)(19) of the Act, of GSC ("Disinterested Trustees"). Mr. Jackson Smart, a Disinterested Trustee, died on June 3, 2000, reducing each Board to eight members, four of whom are Disinterested Trustees. The Boards are seeking to identify a replacement Disinterested Trustee.

Applicants' Legal Analysis

1. Section 10(b) of the Act provides, in relevant part, that no registered investment company shall (1) employ as its regular broker any director, officer, or employee of such registered investment company, or any affiliated person of such director, officer or employee unless a majority of the board of directors of such registered investment company are not such brokers or affiliated persons of such brokers, (2) use as its principal underwriter any director, officer, or employee of such registered investment company or any person of which such director, officer or employee is an interested person unless a majority of the board of directors of such registered investment company are not such principal underwriters or interested persons of such principal underwriters, or (3) have as director, officer or employee any investment banker, or any affiliated person of any investment banker, unless a majority of the board of directors of such registered persons are persons who are not investment bankers or affiliated persons of any investment banker.

2. Section 10(e)(1) of the Act suspends the operation of Section 10(b) for a period of thirty days if action by the board of directors is required to fill a vacancy caused by the death, disqualification, or bona fide resignation of a director. Section 10(e)(3) authorizes the SEC, by order upon application, to prescribe a longer period as is not inconsistent with the protection of investors. Applicants request an order pursuant to section 10(e)(3) of the Act extending the thirty-day period provided for by section 10(e)(1) of the Act to August 31, 2000. Applicants further request that the order grant retroactive relief for the period from July 2, 2000, the expiration date of the statutory thirty-day period, to the date on which the order is issued. Applicants state that the requested relief meets the standard in section 10(e)(3) for the reasons discussed below.

3. Applicants state that under section 10(b), in order for GSC to continue to serve as principal underwriter and regular broker for the Trusts, each Board's vacancy must be filled by a Disinterested Trustee. Applicants state further that the remaining Board members have determined that it was the prudent course to retain GSC as the principal underwriter and a regular broker and retain each of the other Board members past July 2, 2000, the date upon which the thirty-day period provided by section 10(b)(1) would expire.

4. Applicants state that it is in the best interests of the Trusts' shareholders and the Contracts' owners for the Board to take the necessary time to identify a qualified and competent Disinterested Trustee.

5. Applicants state that retroactive relief is necessary because Mr. Smart's death was unexpected, and that thirty days is not sufficient time to prepare and file with the Commission, and for the Commission to consider, issue a notice and grant an order upon, an application for exemptive relief.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Trusts will ensure that 50 percent of the Boards' members will be Disinterested Trustees until the earlier of August 31, 2000, or the Boards' approval of an additional Disinterested Trustee.

2. Any action taken by the Boards during the period covered by the requested order will be approved by at least a majority of each Board's Disinterested Trustees.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19907 Filed 8–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24588; 812–11870]

Securities Management and Research, Inc., et al.; Notice of Application

August 1, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain join transactions.

Summary of the Application: The requested order would permit certain registered management investment companies to invest uninvested cash in an affiliated money market fund in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Securities Management and Research, Inc. (the "Adviser"), SM&R Investments, Inc. (the "Series Fund"), and all existing and future series thereof, SM&R Growth Fund, Inc., SM&R Equity Income Fund, Inc., and SM&R Balanced Fund, Inc. (together with the Series Fund, the "Funds").

Filing Dates: The application was filed on December 2, 1999, and amended on April 14, 2000 and June 12, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Applicants, c/o Teresa E. Axelson, Securities Management and Research, Inc., 2450 Southshore Blvd., Suite 400, League City, TX 77573.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Funds, each a Maryland corporation, are registered under the Act as open-end management investment companies.[1] The Series Fund currently offers four series, including the SM&R Money Market Fund (the "Money Market Fund"). The Money Market Fund is subject to the requirements of rule 2a–7 under the Act. The Adviser, a Florida corporation and a wholly-owned subsidiary of American National Insurance Company, is registered as a investment adviser under the Investment Advisers Act of 1940.[2] The Adviser serves as the investment adviser for each of the Funds.

2. Applicants state that each of the Funds has, or may have, uninvested cash ("Uninvested Cash") held by its custodian. Such Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors.

3. Applicants request an order to permit each of the Funds ("Investing Funds") to invest their Uninvested Cash in the Money Market Fund, and to permit the Money Market Fund to sell shares to, and to redeem shares from, the Investing Funds. investment of Uninvested Cash in shares of the Money Market Fund will be made, only to the extent that such investment is consistent with each Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Investing Funds to invest Uninvested Cash in the Money Market Fund.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because the Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be a position to gain undue influence over the Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because of the Money Market Fund sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' ("NASD") Conduct Rules). Applicants represent that the Money Market Fund will not acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include, among others, any person directly or indirectly controlling, controlled by, or under common control with the investment company and any investment adviser to the investment company. Applicants state that, because the Funds share a common investment adviser, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. As a result, section 17(a) would prohibit the sale of the shares of the Money market Fund to the Investing Funds, and the redemption of the shares by the Money Market Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the act permits the Commission to exempt persons or transactions from any provision of the act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Fund by the Investing Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Fund will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest their Uninvested Cash directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that the Money market Fund has the right to discontinue selling shares to any of the Investing Funds if the money Market Fund's board of directors determines that such sale would adversely affect its portfolio management or operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state

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[1] Applicants also request relief for all other registered management investment companies that are or become adviser or sub-advised by the Adviser and that are part of the same group of investment companies, as that term is defined in section 12(d)(1)(G) of the Act, as the Funds ("Future Funds" and together with the Funds, the "Funds"). All investment companies that currently intend to rely on the requested relief are named as applicants. Any other existing or future registered management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

[2] For purposes of this application, the term "Adviser" includes, in addition to Securities Management and Research, Inc., any other person controlling, controlled by or under common control with Securities Management and Research, Inc. that acts in the future as an investment adviser for the Funds.

that each Investing Fund, by purchasing shares of the Money Market Fund, the Adviser, by managing the assets of the Investing Funds investing in the Money Market Fund, and the Money Market Fund, by selling shares to the Investing Funds, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Investing Funds in shares of the Money Market Fund would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Fund sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. If the Adviser collects from the Money Market Fund a fee for acting as its investment adviser with respect to assets invested by the Investing Funds, before the next meeting of the board of directors of an Investing Fund that invests in the Money Market Fund ("Board") is held for the purpose of voting on an investment advisory contract under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the investment advisory fee under the existing advisory agreement attributable to, managing the assets of the Investing Fund that can be expected to be invested in the Money Market Fund. Before approving any investment advisory contract under section 15, the Board, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the investment advisory fees charged to the Investing Fund by the Adviser should be reduced to account for the investment advisory fees indirectly paid by the Investing Fund because of the investment advisory fee paid by the Money Market Fund to the Adviser. The minute books of the applicable Investing Fund will record fully the factors considered by the Board in approving the investment advisory contract, including the considerations of the Board relating to the advisory fees referred to above.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Fund only to the extent that the Investing Fund's aggregate investment in the Money Market Fund does not exceed 25 percent of the total assets of the Investing Fund. For purposes of this limitation, each Investing Fund and series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Fund will be in accordance with each Investing Fund's respective investment restrictions and policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, the Money Market Fund, and any future Fund that may rely on the order will be advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser.

6. The Money Market Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19908 Filed 8–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 7, 2000.

An open meeting will be held on Thursday, August 10, 2000 at 10 a.m., in room 1C30.

The subject matter of the open meeting scheduled for Thursday, August 10, 2000 will be: The Commission will consider adopting new rules to address three issues: (1) The selective disclosure by issuers of material nonpublic information (Regulation FD); (2) whether insider trading liability requires "use" or "knowing possession" of material nonpublic information (Rule 10b5–1); and (3) when a family or other non-business relationship gives rise to liability under the misappropriation theory of insider trading (Rule 10b5–2).

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Assistant General Counsel; or Sharon Zamore, Senior Counsel; or Jacob Lesser, Attorney, Office of the General Counsel (202–942–0890).

A closed meeting will be held on Thursday, August 10, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, August 10, 2000 will be: Institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: August 3, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–20056 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43092; File No. SR–Amex–00–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Creating an Options Principal Membership Seat Upgrade Program

July 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")[1] and Rule 196–4 thereunder,[2] notice is hereby given that on June 30, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing (i) to create an options principal membership seat upgrade program and (ii) to amend Article IV, Sections 1 (a)(1) and (b)(1) of the Exchange Constitution to increase the number of authorized regular memberships to accommodate the program. Below is the test of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange Constitution—Article IV

Admission to Membership

Number of Regular Memberships

SEC. 1(a)(1) Regular membership—There shall be *up to 864* [661] regular memberships in the Exchange[.], *inclusive of any regular memberships created through the options principal membership upgrade program.* The number of regular memberships shall be increased only if the Board of Governors requests The Amex Corporation to issue additional regular memberships. Any such issuance of additional regular memberships shall require the approval of a majority of the regular and options principal members voting together as a single class at a meeting called for the purpose of considering the request that new regular memberships be issued.

(2)–(3) No change.

Number of Options Principal Memberships

(b)(1) Options principal membership—There shall be 203 options principal memberships in the Exchange[.], *but this number shall be reduced by the number of options principal memberships upgraded to regular memberships.* The number of options principal memberships shall be increased only if the Board of Governors requests The Amex Corporation to issue additional options principal memberships. Any such issuance of additional options principal memberships shall require the approval of a majority of the regular and options principal members voting together as a single class at a meeting called for the purpose of considering the request that additional options principal memberships be issued.

(2)–(5) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The recent increase in the number of securities listed on the Exchange, especially options and Exchange-traded funds, has led to a greater demand for specialists and brokers to handle the increased volume. Specialists and brokers are required to be regular members of the Exchange. Exchange members requested that the Exchange explore the feasibility of a voluntary Options Principal Membership ("OPM") Seat Upgrade Program ("Program"), with the potential for upgrading 203 options principal memberships into regular memberships. In response to that request, the Exchange proposed the Program as one approach to creating additional regular memberships. The effective date of the Program will be determined by the Exchange once it is approved by the Commission.

The one-time fee to upgrade an OPM membership to a regular membership under the proposed Program will be $30,000 or $36,000, depending on whether the OPM owner elects to participate in the Program within 120 days of the effective date of the Program.

OPM owners that elect to upgrade to a regular membership within 240 days would be entitled to pay on a monthly basis for 12 months. After 240 days from Program effectiveness, an OPM owner would be required to pay a lump sum payment of $36,000 at the time of election. New applications for the Program would not be accepted after 18 months from the Program's effective date. At the end of the 18 month period, the Program would terminate unless the Exchange elects to continue it.[3] Fund proceeds, less administrative costs to the Exchange, would be distributed equally to regular seat owners of record at the time of distribution (excluding regular seat owners who upgraded their OPM seats).[4] The final distribution would occur no later than the end of the 21st month from the Program's effective date, because fund proceeds could be payable through the 20th month from the effective date of the Program.[5]

All payments made to the Exchange by OPMs under the Program would be deposited into a fund created and managed by the Exchange for the purpose of collecting proceeds for subsequent distribution to regular members (excluding regular seat owners who updated their OPM seats) as described above. Interest on fund deposits would accrue to the regular members. Participants that elect to upgrade to a regular membership within 240 days would be billed by the Exchange on a monthly basis and would be subject to Exchange policy on billing matters. Program participants who are delinquent in their installment payments by more than sixty days would forfeit all payments made to date and their seats would revert to OPM status.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of paragraphs (b) and (c) Section 6 of the Act,[6] in general, and furthers the objectives of Section

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At that time, the Exchange could consider changing the terms of the Program, including raising the cost of upgrading an OPM seat. The Commission notes and the Exchange acknowledges that it would be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act if it decides to extend or make any changes to the Program. Telephone call between Ivonne Lugo, Assistant General Counsel, Amex, and Sonia Patton, Attorney, Division of Market Regulation ("Division"), Commission, on July 13, 2000.

[4] Within 21 months of the Program's effective date, the Exchange would distribute the proceeds received from OPM owners that elected to upgrade to regular memberships within 18 months, regardless of whether it decides to continue the Program. Telephone call between Ivonne Lugo, Assistant General Counsel, Amex, and Sonia Patton, Attorney, Division, Commission, on July 13, 2000.

[5] For instance, an OPM owner that elects to participate in the Program on the 240th day would be entitled to make monthly payments for 12 months and would pay the last monthly installment the 20th month from the effective date of the Program.

[6] 15 U.S.C. 78f(b) and (c).

6(c)(4),[7] in particular, in that it is designed to increase or to remove any limitation on the number of memberships in the Exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–00–36 and should be submitted by August 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19910 Filed 8–4–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43099; File No. SR–CBOE–99–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2 and 3 to the Proposed Rule change by the Chicago board Options Exchange, Inc., Relating to Facilitation Crosses of Index Options Orders

July 31, 2000.

1. Introduction

On June 29, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's rule governing facilitation crosses as it applies to index option orders. Notice of the proposed rule change was published for comment in the **Federal Register** on August 20, 1999.[3] the Commission received two comment letters regarding the proposal.[4] On April 20, June 1, and July 18, 2000, the CBOE filed, respectively, Amendment Nos. 1, 2, and 3 to the proposal.[5] This order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1, 2 and 3.

II. Description of the Proposal

CBOE Rule 6.74(b) sets forth the procedures by which a floor broker representing the order of a member firm's public customer may cross it with a contra side order provided by the firm from its own proprietary account. In these circumstances, the firm is said to be "facilitating" the customer order, and the transaction is called a "facilitation cross."

Under the current version of the rule as applicable to index options,[6] a floor broker seeking to execute a facilitation cross must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the order that improves upon the price provided by the crowd. However, before the floor broker can execute the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under the current rule, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross any part of the order.

The proposed rule change would add new paragraph (e) to Rule 6.74, to apply to facilitation crosses in broad-based index options that are not traded in equity option crowds.[7] The proposal would entitle the floor broker, under certain conditions, to cross a specified percentage of the customer order on behalf of the member firm before market makers in the crowd could participate in the transaction. The floor broker would be permitted to exercise this right even when he proposes the facilitation cross a price that matches, but does not improve upon, the best bid or offer

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[7] 15 U.S.C. 78f(c)(4).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41742 (August 13, 1999), 64 FR 45578).

[4] *See* Section III below.

[5] The substantive modifications made by these amendments are incorporated in the description of the proposal in Section II below, and are further discussed in Section IV below.

[6] A related rule change recently approved by the Commission separately amended CBOE Rule 6.74 with respect to equity options. *See* Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000)(File No. SR–CBOE–99–10).

[7] *See* Amendment No. 3, which specifies that the proposed rule change, originally described as applicable to index options, would apply only to broad-based index options not traded in equity option trading crowds. "Broad-based index" is defined in CBOE Rule 24.1(i). The CBOE represents that broad-based index options currently not traded at equity options posts on the Exchange include Standard & Poor's 100 Stock Index options ("OEX", Standard & Poor's 500 Stock Index options ("SPX"), and options on the Dow Jones Industrial Average ("DJX").

provided by the crowd in response to his initial request for a market.[8]

Under the proposal, all public customer orders in the book and those represented in the trading crowd at the time the market was established would first need to be satisfied.[9] Afterward, the floor broker would be entitled to cross 20% of the remaining contracts with the facilitation order provided by the firm, which priority over members of the crowd.[10]

The proposed rule change would pertain only to orders of a certain minimum size determined by the appropriate Floor Procedure Committee of the Exchange on a class by class basis. That size could not be less than 50 contracts.[11]

As under existing procedures in Rule 6.74(b), the floor broker seeking to execute a facilitation cross under proposed paragraph (e) would be required, when initially asking for a market in the option series, to make all persons in the trading crowd, including the Order Book Official, aware of his request.

Proposed paragraph (e)(i) provides, in addition, that once the trading crowd has provided a market, it would remain in effect until (a) a reasonable amount of time has passed; (b) a significant change has occurred in the price of the underlying security of the option; or (c) the market is improved. In case of dispute, "significant change" would be determined on a case-by-case basis by two Floor Officials, based upon the extent of recent trading in the option and the underlying security and any other relevant factor.[12]

In the case of a multi-part or spread order, one leg alone of the order would need to meet the eligible size requirement to qualify for the provisions of the proposed rule change. In addition, the facilitating firm would be required to disclose on the order ticket for the public customer order all terms of the order, including any contingency involving, and all related transactions in, either options or underlying or related securities. The floor broker would be required to disclose all securities that are components of the public customer order before requesting bids and offers for the execution of all components of the order.[13]

If the same member firm of the Exchange is both the firm from which the customer order originated and the Designated Primary Market Maker ("DPM") for the class of options in which the transaction takes place, and the floor broker acting on behalf of the member firm takes advantage of the crossing right provided by the proposed rule change, the firm would not be entitled to any participation in the trade based on the guaranteed percentage ordinarily granted to DPMs.[14]

If the DPM in the options class is not the same member organization as the facilitating firm, and the trade takes place at the DPM's principal bid or offer, the DPM will be entitled to participate in a percentage of the contracts remaining after relevant public customer orders have been filled and the originating firm's crossing rights have been exercised. The percentage that the DPM will receive is determined by reference to the established DPM participation rate—subject to limitation. If the floor broker crosses the full 20% of the facilitating firm's entitlement, the number of contracts guaranteed to the DPM may not exceed 25% of the remainder of the order after the facilitating firm has taken its share.[15] If the floor broker does not cross 20%, the DPM may be entitled to more, but in no case will the DPM be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order (after relevant public customer orders have been satisfied).[16]

The proposed rule change makes clear, however, that it is not intended to prohibit either a floor broker or DPM from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remainder of the order.[17]

The proposed rule change also provides that the members of the crowd who establish the market in response to the floor broker's initial request would have priority over all other orders that were not represented in the crowd at the time the market was estblished, except for orders that improve upon those quotes. Further, a floor broker who holds a customer order and a facilitation order and who makes a request for a market would be deemed to be representing both the customer order and the facilitation order, so that the customer order and the facilitation order would also have priority over all other orders that were not being represented in the trading crowd at the time the market was established.[18]

III. Summary of Comments

The Commission received two comment letters regarding the proposed rule change, both from the Amex Options Markets Makers Association ("OMMA").[19] The OMMA states that the proposed rule change would harm investors because the allocation of a fixed percentage of trades to member firms seeking to cross orders would reward the firms for trading at an unfair price. The association also argues that the proposal would create a disincentive for price improvement.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly Sections 6(b)(5)[20] and 6(b)(8)[21] of the Act, and the rules and regulations thereunder.[22] The Commission believes that the proposal will enable the CBOE to better compete with other options exchanges in attracting the order flow or broker-

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[8] *See* Amendment No. 1, which extends the proposed guaranteed participation to the situation where the facilitation cross is proposed *at* the best bid or offer provided by the crowd.

[9] *See* Amendment No. 2.

[10] The same 20% participation would be guaranteed to the member firm whether the transaction takes place *at* or *between* the best bid or offer provided by the trading crowd in response to the floor broker's request for a market. *See* Amendment No. 1.

[11] *See* Amendment No. 1. The original proposal would have restricted the eligible order size to 500 contracts or more.

[12] *See* Amendment No. 1.

[13] *Id.*

[14] *Id.* The CBOE represents that none of the options classes covered by the proposed rule change currently is traded in a DPM trading crowd. However, the Exchange is including provisions in the proposed rule change concerning DPM participation guarantees because at some time in the future these options classes may be traded in DPM crowds. *See* Amendment No. 3

[15] *See* Amendment No. 3. Thus, if the original order was for 1,000 contracts, and the facilitating firm, crossing at the best bid or offer price given by the crowd, took its full share of 200 contracts (20%)—assuming no public customer order were represented in the book or in the crowd—the DPM would be entitled to 200 contracts (25% of the remaining 800) and the total combined participation guarantees of the facilitating firm and the DPM would be limited to 400 contracts, or 40% of the original order.

[16] *See* Amendment No. 3.

[17] *See* Amendment Nos. 1 and 3.

[18] *See* Amendment Nos. 1 and 2.

[19] Letters from Daniel Mintz, Chairman, Amex Option Market Makers Association, to the Securities and Exchange Commission, dated August 31, 1999, and September 15, 1999.

[20] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designated to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[21] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[22] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

dealer firms seeking to facilitate customer orders, without adversely impacting the prices those orders receive.

The Commission finds that the CBOE's proposal to grant a 20% participation right, under certain conditions, to member firms seeking to execute facilitation crosses on the Exchange is reasonable. Currently, CBOE market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction to the CBOE floor.

The Commission does not find persuasive the OMMA's argument that the proposal would allow member firms to trade at an unfair price. A member firm could never execute a facilitation cross, under the proposal, at an inferior price. It would be required at least to match the best bid or offer provided by the crowd in response to the floor broker's request for a market in order to participate in the transaction at all.

While the proposal entitles the member firm to 20% of a facilitation transaction, it leaves 80% of the order to the trading crowd. The Commission believes that because 80% of an order would remain available to the market maker or market makers quoting the best price, the proposal raises no serious concern that price competition will be eroded on the Exchange.[23]

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[24] Amendment No. 1 adds the provision, described above, that would provide a participation guarantee to a member firm seeking to facilitate a customer order even when it only matches, but does not improve upon, the prices given by the crowd in response to the floor broker's initial request for a market. Amendment No. 1 also reduces the minimum size of orders to which the proposed rule change would be applicable, from 500 to 50 contracts.

The Commission has already approved rules of several options exchanges that establish participation guarantees of 20% or more for firms seeking to facilitate orders at the best prices offered by other market participants.[25] Similarly, the Commission has already approved rules of several options exchanges that provide such guarantees for order sizes with a minimum of 50 contracts.[26] Thus, these aspects of Amendment No. 1 raise no new regulatory issues.

Amendment No. 1, as supplemented and revised by Amendment No. 2, also include further clarifications of procedures and priority rights under the proposed rule change consistent with CBOE's facilitation cross rule for equity options. These provisions strengthen the proposed rule change and raise no new regulatory issues.

Amendment No. 3 specifies that the proposed rule change would apply only to broad-based index options that are not traded in equity trading crowds, clarifying the proposal's applicability and raising no new issues. Amendment No. 3 also includes the provision described above concerning DPM participation, which limits the total percentage of an order that may be guaranteed, to the originating firm and the DPM combined, to no more than 40%. This limitation accords with rules that the Commission has previously found consistent with the Act.[27]

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)[28] and 19(b)(2)[29] of the Act to accelerate approval of Amendments Nos. 1, 2, and 3 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, an 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–35 and should be submitted by August 28, 2000.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–35), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,
Deputy Secretary.

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[23] As the Commission recently stated, it is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. However, for the immediate term, the Commission has approved participation guarantees of up to 40% of an order as not clearly inconsistent with the statutory standards of competition and free and open markets. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The proposed rule change, which would allocate only 20% of an order to the member firm, falls well within these parameters.

[24] 15 U.S.C. 78s(b)(2)

[25] *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000) (concerning File No. SR-Amex-99–36); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (concerning File No. SR–CBOE–99–10, for equity options); 42848 (May 26, 2000) (concerning File No. SR–PCX–99–18); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (concerning registration of the International Securities Exchange ("ISE") as a national securities exchange, and, among other features of the exchange, the ISE's facilitation provisions).

[26] *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000) (concerning File No. SR–Amex–99–36); 42835 (May 26, 2000) (concerning File No. SR–CBOE–99–10, for equity options); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (concerning ISE's facilitation provisions, among other features).

[27] *See supra,* note 23.

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43102; File No. SR–NASD–99–76]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Code of Procedure and Other Provisions

August 1, 2000.

On December 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulations, Inc. ("NASD Regulation"). filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule

19b–4 thereunder.[2] NASD Regulation has proposed amendments to the NASD Code of Procedure and other provisions of the NASD Rules. The proposed rule change and Amendment No. 1[3] to the proposal were published for comment in the **Federal Register** on May 10, 2000.[4] The Commission received one comment letter on the proposal.[5] This order approves the proposed rule change, as amended.

I. Description of the Proposal

NASD Regulation is proposing amendments to the NASD Code of Procedure (the "Code") and other provisions of the NASD Rules, that include: (1) Requiring members to designate, as the custodian of the record on the Ford BDW, persons who are associated with the firm at the time the forms are filed; (2) clarifying the authority of Hearing Officers and making some limited changes to that authority; (3) clarifying the scope of the Association's document production requirements; (4) providing for Hearing Panel review of staff determinations to impose limitations on member firms' business activities because of financial and/or operational difficulties; (5) providing for changes to the process for appeals of disciplinary actions, statutory disqualification proceedings, and certain other accelerated proceedings; (6) providing for a streamline process to impose bars or expulsions for the failure to provide information to the Association; and (7) providing for a process by which the Association can more expeditiously cancel memberships of firms that fail to meet the Association's eligibility and qualification standards.

Custodian of the Record

The Association is proposing to establish NASD Rule 3121 that would require members to designate, as the custodians of the record on the Form BDW, persons who are associated with the firms at the time the forms are filed.

Eligibility of Panel Members

In certain circumstances, the National Adjudicatory Council (NAC) or the Review Subcommittee of the NAC (Review Subcommittee) may appoint panels to conduct hearings. Under NASD Rule 1015, only one panel member can be from the NAC, unless a panel member is also a former NASD Regulation Director of NASD Governor. The Association believes that this unnecessarily limits the pool of potential panelists. Accordingly, the Association is proposing to eliminate this restriction.

Investigations

The NASD Rule 8220 Series permits the Department of Enforcement to initiate proceedings to suspend or cancel membership from the Association or suspend the association of a person with a member based upon the failure to provide information. These proceedings may be initiated for the failure to provide information pursuant to an Association request or the failure to make required filings with the Association, such as FOCUS reports, or to keep membership applications or supporting documents current. Because the Rule 8220 Series proceedings are brought on an accelerated basis, the Association is proposing to amend the Rule 8220 Series to:

(1) Limit the use of Rule 8220 Series proceedings to address the most serious on-going violations concerning associated persons and members who fail to provide the Association with requested information; and

(2) Limit the sanctions available under Rule 8220 proceedings to suspensions.

Finally, the Association is proposing to amend the service provision under the Rule 8220 Series to make it consistent with the service provision under the Rule 9530 Series, a similar rule series. The Association is proposing that both the Rule 8220 Series and the Rule 9530 Series service provisions permit personal service, service by facsimile, and service by overnight courier. The Association is further proposing to clarify that attempted delivery of a document by an overnight courier constitutes service under these provisions.

Severance of Cases

The Association is proposing to amend NASD Rule 9214 to authorize the Chief Hearing Officer to sever disciplinary proceedings involving multiple respondents into two or more proceedings. The proposed rule also lists the factors the Chief Hearing Officer must consider in determining whether to order severance.

Producing Documents

The Association is proposing amendments to NASD Rule 9253 to clarify the scope of the Association's document production requirements. NASD Rule 9251(a) requires the Association staff to make available to respondents documents prepared or obtained by the staff in connection with the investigations that led to the institution of a disciplinary proceeding. Exceptions to the production requirements are listed in NASD Rule 9251(b), and include examination and inspection reports and internal employee communications. Notwithstanding these exceptions, documents containing the staff's investigative techniques might become discoverable under Rule 9253, if staff members are called as witnesses during hearings. NASD Rule 9253 requires Association staff to produce written statements made or adopted by staff members, if they relate to the subject matter of those persons' testimony. It also requires the staff to produce contemporaneously recorded recitals of oral statements made by witnesses, if those written statements are substantially verbatim.

The proposed modifications of NASD Rule 9253 clarify that the only portions of routine examination or inspection reports, internal employee communications, and any other internal documents that are required to be produced, under this rule, are the portions outlining the substance of (and any conclusions regarding) oral statements made by persons who are not employees of the Association when evidence of those statements are offered by Association staff during disciplinary hearings.

Amending Complaints

The Association is proposing to modify its rules regarding amending complaints to more closely follow the Federal Rules of Civil Procedure ("FRCP"). The Association is proposing to eliminate the restriction in NASD Rule 9212 that amendments must be based on "new matters of fact or law." The Association is further proposing to modify NASD Rule 9212 to permit amendments to make complaints conform to the evidence presented, and to state that amendments to complaints will be freely granted when justice so requires. Association staff will still need to obtain Hearing Officer approval to amend complaints after answers have been filed.

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[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 17, 2000 ("Amendment No. 1"). Amendment No. 1 made substantive changes to the proposed rule language, including the deletion of certain provisions in the 9300 Series, Review of Disciplinary Proceeding by National Adjudicatory Council and NASD Board; Application for Commission Review.

[4] Securities Exchange Act Release No. 42751 (May 3, 1999), 65 FR 30163 (File No. SR–NASD–99–76).

[5] *See* Letter from George Brunelle, Brunelle & Hadjikow, to Jonathan G. Katz, Secretary, Commission, dated May 25, 2000.

Effective Dates of Sanctions

The Association is proposing to amend NASD Rules 9216, 9268, 9269, and 9360 to state that the effective dates of sanctions are the dates set by the Association staff, unless stated otherwise in orders, decisions, or settlement agreements. As a result of these changes, the Association believes that IM–8310–2 is no longer needed and, accordingly, is proposing to delete it. The NASD stated that this change will not affect its policy of automatically staying the imposition of the fines, disgorgement, and suspensions, pending review.

Summary Dispositions

The Association is proposing to modify NASD Rule 9264(a) to track the language in the FRCP, which permits parties to file a motion to eliminate issues that do not involve entire "causes of actions."

Further, the Association is proposing to modify NASD Rule 9264 to authorize Hearing Officers to deny, grant, or defer motions to dismiss without referring the matter to the full panel. The authority to grant such motions would be limited to jurisdictional issues, such as whether the complaint was filed within the two-year jurisdictional period. The Association believes that hearing Officers should be permitted to act on such motions, which generally involve technical legal questions, and do not require the input of industry representatives.

Default Decisions

The Association is proposing to modify NASD Rules 9269 to state that a motion to set aside a default decision should be made to the Hearing Officer that originally decided the motion for a default decision. If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. Appeals from such denials could be made to the NAC or the Review Subcommittee.

Office of General Counsel—Requests for Additional Briefing

Under the NASD Rules 9311 and 9312, the General Counsel of NASD Regulation is required to obtain Review Subcommittee or NAC authorization to order parties to brief particular matters. The Association is proposing to eliminate this requirement because the Association believes that it is an unnecessary use of resources. However, the Association is proposing to include in the rules a process by which parties may challenge, before the Review Subcommittee or the NAC, requests for additional briefing made by the General Counsel.

Procedures for Regulation of Activities of a Member Experiencing Financial or Operational Difficulties

Under the NASD Rule 9410 Series, the Department of Member Regulation issues notices and holds initial hearings to determine whether members must limit their business activities as a result of financial or operational difficulties. members can appeal Member Regulation's decisions to the NAC, and the NAC or the Review Subcommittee will appoint a Subcommittee to participate in the review. The Association is proposing to amend the rule series to provide that firms may appeal limitations issued by the Department of Member Regulation to Hearing Panels that will consist of a Hearing Officer and two other panelists. Under the proposal, the Department of Member Regulation would not hold hearings, and the NAC would not participate in appeals under this rule series.

Currently, under the NASD Rule 9410 Series, an NASD Governor may initiate the review of a decision issued by the NAC not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board received the proposed written decision of the NAC. The Association is proposing instead to allow the Executive Committee of the NASD Board to initiate the review of the Hearing Panel decision for a period of 15 days. In addition, the Department of Member Regulation's decision is currently stayed unless otherwise ordered by the NAC. The Association is proposing to modify this provision to provide that the Department of Member Regulation's recommendation is stayed unless ordered otherwise by the Executive Committee.

Other Proceedings

Two categories of expedited proceedings available under the NASD Rule 9510 Series are referred to as "Summary Proceedings" and "Non-Summary Proceedings." The Association is proposing several amendments to the rules that govern the Code's Summary and Non-Summary Proceedings. The Association is proposing to add a provision to the NASD Rules 9500 series stating that the Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

NASD Rule 9514(a)(1) requires that requests for hearings be filed within 7 days of receipt of suspension letters (or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice). The Association is proposing to amend NASD Rule 9514(a)(2) to clarify that if the member or person subject to the notice does not timely request a hearing under Rule 9514(a)(1), the notice shall constitute final Association action.

NASD Rule 9514(d)(2) states that Non-Summary Proceedings held under the Rule 9500 Series need to be held within 21 days after respondent requests a hearing. Hearing Panels may, during the initial 21-day period, extend the time in which the hearings shall be held by additional 21-day periods. The Association believes that these periods are too short, and is proposing amending the rule to extend the initial period to 40 days, with an additional 30 days for a further extension.

A member, associated person, or other person who has been suspended or limited by a final action of the Association under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. If the Association denies the request, the Association is proposing that the Review Subcommittee of the NAC, rather than the NASD Board, address an appeal from that denial, pursuant to NASD Rule 9516.

Eligibility Proceedings

The Association is proposing several changes to the NASD Rule 9520 Series that govern the process by which persons may become or remain associated with a member, notwithstanding the existence of a statutory disqualification or for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements. First, the NASD Rule 9520 Series does not state whether extensions of time or waivers of time limitations for filing of papers or holding of hearings may be granted. The Association is proposing to create NASD Rule 9524(a)(5) that permits such actions by consent of all the parties. Further, the eligibility rules do not state whether the disqualification Hearing Panel or the NAC may order that the record be supplemented. The Association is proposing to create NASD Rule 9524(a)(3)(c) to permit the Hearing Panel to order the Parties to supplement the record with any additional evidence the Hearing Panel deems necessary.

Currently, NASD Rule 9524(b)(3) misstates that a decision by NAC becomes effective upon service to the disqualified member, sponsoring

member, or disqualified person. However, only the denials are effective upon service on applicants (subject to the applicant requesting a stay of effectiveness from the Commission). Under Rule 19h–1 under the Act, approval decisions are not effective until the Commission has either sent an acknowledgment letter to NASD Regulation (usually within 30 days, and the SEC can request a further 60-day extension of that period), or the Commission has entered an order in cases that have involved a previously-entered SEC bar (there is no time limitation for the entry of such an order). The Association is proposing to clarify NASD Rule 9524(b)(3) to accurately reflect the provisions of Rule 19h–1.

The Association is further proposing that Association Rule 9524(a)(1) be amended to state that members of the Statutory Disqualification Committee may also serve on Hearing Panels.

NASD Rule 9524(a)(3) states that if the Association staff initiates the proceedings, the Association will give to the applicant all documents that were relied on by the Association in issuing its notice. However, most applications are started by member firms, not the Association. The Association is proposing to amend this rule to reflect this fact.

The Association is also proposing to amend NASD Rule 9524(a)(3) to provide that once an application is filed, the CRD staff will gather all of the information necessary to process the application, including:

(1) CRD records for the disqualified member or person, sponsoring member, and the proposed supervisor; and

(a) All of the information submitted by the disqualified member or sponsoring member in support of the application.

Proposed NASD Rule 9524(a)(3) would further provide that the CRD staff will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, the Office of the General Counsel of NASD Regulation, and the Department of Member Regulation. The rule also would require the Department of Member Regulation to submit its recommendation and supporting documents to the Hearing Panel and the disqualified member or sponsoring member within 10 business days of the hearing, unless the parties otherwise agree. Similarly, the disqualified member or sponsoring member would be required to submit its documents to the Hearing Panel and the Department of Member Regulation with 10 business days of the hearing, unless otherwise agreed.

The NASD is also amending the Rule 9520 Series dealing with the review procedures used by Association staff in the case of certain disqualifying events. In particular, the Association is proposing to amend NASD Rule 9522(e) to permit members to submit a written request for relief (rather than an MC–400 application)[6] in cases where the disqualified member or person is subject to an injunction that was entered 10 or more years prior to the proposed admission or association. Under Exchange Act Rule 19h–1,[7] the NASD is not required to provide any notice to the Commission of the proposed admission or association in these types of cases. The Association also proposes that members be able to file a written request for relief in cases where a member requests to change the supervisor of a disqualified person or where, for instance, the New York Stock Exchange has determined to approve the proposed association of a disqualified person and the NASD concurs wit the determination. Member Regulation would also be granted discretion to approve the written request for relief in these cases, if it deemed such action to be consistent with the public interest and the protection of investors.

The Association also proposes to amend the NASD Rule 9520 Series to permit Member Regulation to approve an MC–400 application for relief in those cases where the disqualifying event is excepted from the full notice requirements of Rule 19h–1, but where a short form notification to the Commission under Rule 19h–1 is still required. In these cases, the member would be required to file an MC–400, but Member Regulation would have the discretion to approve the application when consistent with the public interest and the protection of investors.

In addition, the Association is proposing new Rule 9523 to permit Member Regulation to recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan. The procedures set forth in proposed NASD Rule 9523 are modeled on current Rule 9216 concerning Acceptance, Waiver, and Consent procedures, and are intended to avoid the requirement of a formal hearing and decision by the Statutory Disqualification Committee (and its Hearing Panels) in cases that generally only involve the issue of what type of supervisory plan is appropriate for the disqualified member or person. Under proposed NASD Rule 9523, the member would be required to file an MC–400 application with the NASD. Member Regulation, however, would have the discretion to recommend the approval of the application in the event an appropriate supervisory plan is established. The member would be required to execute a letter consenting to the imposition of the supervisory plan. The letter and the supervisory plan would then be submitted to the Office of General Counsel or the Chairman of the Statutory Disqualification Committee for review and possible approval. While both the Office of General Counsel and the Committee Chairman would have authority to approve the application or refer it to the NAC, only the Committee Chairman would be permitted to reject the application.

Failure To Respond

As noted above (under the heading "Investigations"), the Association amended the proceedings initiated under the Rule 8220 Series to address the most serious on-going violations concerning associated persons and members that are failing to provide the Association with information. The Association is also proposing to create a new Rule 9540 Series that would apply to those who fail to provide the Association with information, required filings, or keep membership applications or supporting documents current.

Under the proposed NASD Rule 9540 Series, the Association would send notices information respondents that failure to provide the Association with previously requested information or required filings or the failure to keep its membership application or supporting documents current will result in suspensions, unless the information is provided to the Association within 20 days. Respondents would have five days to request a hearing to challenge a proposed suspension. These hearings would be conducted before three-member Hearing Panels, and the Hearing Panels would have the authority to order any fitting sanctions, including expulsions and bars. Respondents who fail to request a hearing to challenge the suspension during the six-month period following the receipt of a notice initiating proceedings under this rule series will be automatically barred or expelled.

[6] A member firm is required to file an MC–400 application under NASD Eligibility Rules when the firm sponsors the association of a person subject to disqualification. Telephone conversation between Bradford Ali, Attorney, NASDR, and Anitra Cassas, Attorney, Commission, on July 19, 2000.

[7] 17 CFR 240.19h–1.

Further, the Association is proposing to include in the proposed NASD Rule 9540 Series a process by which the Department of Member Regulation could quickly cancel the memberships of firms that fail to meet the Association's eligibility and qualification standards set forth in Article III of the Association's By-Laws. Under the proposal, the Association would send letters to members informing them that their memberships will be canceled within 20 days of receipt of the letters, unless the firm becomes eligible for continuance in membership within this time period. The members will be provided opportunities to request hearings within five days of service of the notices to challenge the proposed cancellations. The hearings would be held before Hearing Officers.

Miscellaneous Technical Revisions

1. Market Regulation's Role in Disciplinary Process

The Department of Market Regulation represents NASD Regulation under a delegation of authority from the Department of Enforcement, as stated in NASD Rule 9120(e). The Association is proposing amending the Code to clarify the Department of Market Regulation's role in the disciplinary process.

2. Service Of Papers—Address Changes

The Association is proposing to modify NASD Rule 9134(b)(1) to permit adjudicators to waive the requirement to send papers to CRD addresses when they are no longer valid, and there is a more current address available. This change would only relate to documents served on respondents after complaints have been served.

Further, the Association is proposing to amend NASD Rule 9135(a) to clarify that complaints shall be deemed timely filed so long as they are either mailed or delivered to the Office of Hearing Officers within the two-year jurisdictional period, as outlined in the By-Laws.

3. Remand Cases

The Association is proposing to amend NASD Rules 9344 and 9349 to clarify that the Review Subcommittee, in addition to NAC, may remand disciplinary cases to Hearing Panels.

4. Briefing Schedules

The Association is proposing to amend NASD Rule 9347(b) to clarify that the time periods listed in the rule are only applicable to the principle briefing schedule and not applicable to the briefing of subsequent collateral issues.[8]

II. Comments and Responses

The Commission received one comment letter regarding the proposed rule change, which objected to the proposed amendments to NASD Rule 9253.[9] The commenter contends that under proposed changes to NASD Rule 9253, when the SRO decides not to call a SRO staff member as a witness during a hearing, any exculpatory interviews the staff member conducted would become unavailable to the defense. The commenter stated that the effect of the proposed rule change would, therefore, allow SROs to deliberately conceal exculpatory evidence.

The NASD responded that under NASD Rule 9251(b)(2), the NASD Regulation staff may not withhold any material exculpatory evidence.[10] Thus, the proposed changes would not change the Association's obligation to produce material exculpatory information. NASD Regulation continues to believe that the proposal is an appropriate and reasonable resolution of the issues.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act, and the rules and regulations thereunder applicable to a national securities association.[11] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Sections 15A(b)(2), 15A(b)(6), 15A(b)(7), and 15A(b)(8) of the Act, as described below.[12] It also continues to preserve the independence of the regulatory staff of the NASD and the NASDR.[13]

Section 15A(b)(2) requires national securities associations to have the capacity to enforce compliance by their members and persons associated with members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the association.[14] Several of the provisions of the proposed rule change modify the disciplinary procedures of the Association to enhance its membership oversight capabilities. For example, the Commission believes that proposed NASD Rule 3121, which requires members to designate associated persons as the custodians of record on the Form BDW, may enhance the Association's capacity to enforce compliance by allowing the Association to more easily obtain records from their members. Further, the clarification, simplification and consolidation of the procedures in the NASD Rule 8220 Series, 9410 Series, 9510 Series, and 9520 Series further the Association's ability to effectively and expeditiously conduct these disciplinary proceedings.

In addition, the creation of the 9540 series enhances the Association's capacity and authority to enforce its rules. This series creates a more streamlined disciplinary procedure for those members and associated persons who fail to provide the Association with certain information, and for those firms that fail to meet the Association's eligibility and qualification standards eligibility and qualification standards set forth in Article III of the Association's By-Laws.

The Commission further finds that the proposed rule change is consistent with Section 15A(b)(6), which provides, among other things, that the rules of the Association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.[15] The creation of the NASD Rule 9540 Series, in particular, should enhance investor protection by allowing the Association to promptly cancel the membership of firms that fail to meet the Association's eligibility and qualification standards, such as a member firm that is not conducting a securities business.[16] At the same time, members will have an opportunity for a hearing to challenge the Association's determinations.

Section 15A(b)(7) requires that members and persons associated with members be appropriately disciplined for violation of any provision of the Act, the rules and regulations thereunder, the rules of the Municipal Securities

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[8] The briefing schedule for any subsequent collateral issues is set by the Association staff on behalf of the Hearing Subcommittee. Telephone conversation between Shirley Weiss, Associate General Counsel, NASDR, and Anitra Cassas, Attorney, Commission, on July 19, 2000.

[9] *See supra* note 5.

[10] *See* Letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated June 28, 2000.

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(2); 15 U.S.C. 78o–3(b)(6); 15 U.S.C. 78o–3(b)(7); and 15 U.S.C. 78o–3(b)(8).

[13] *See* Commission's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996).

[14] 15 U.S.C. 78o–3(b)(2).

[15] 15 U.S.C. 78o(b)(6).

[16] *See* Article II, Section 1(a) of the Association's By-Laws.

Rulemaking Board, or the rules of the association.[17] The Commission finds that the revisions to the Rule 8220 Series, which address the procedure for initiating disciplinary proceedings against a member for failing to provide requested information, provide an appropriate mechanism for disciplining members. Similarly, the creation of the NASD 9540 Series also provides for the appropriate discipline of members who fail to provide the Association with certain information or who fail to meet the Association's eligibility and qualification standards.

The Commission also finds that the proposed rule change is consistent with Section 15A(b)(8) of the Act, which requires that the rules of the association provide a fair procedure for the disciplining of members and persons associated with members.[18] For example, the provisions of the Rule 8220 Series have been revised to enhance the fairness of the disciplinary procedure. The Association has limited the use of the Rule 8220 proceedings to address only the most serious on-going violations, and has further limited the available sanctions to suspensions.

The Commission also finds that amendments to NASD Rule 9214, which authorizes the Chief Hearing Officer to sever disciplinary proceedings involving multiple respondents, are consistent with Section 15A(b)(8). In determining whether to order the severance, the Chief Hearing Officer must consider whether the same or similar evidence should be expected to be offered at each hearing, whether severance would conserve time and resources, and whether any party would suffer unfair prejudice. The Commission believes that this determination may result in a more timely and fair disciplinary procedure for all of the parties involved.

Proposed revisions to NASD Rule 9253 clarify that the only portions of routine examination or inspection reports, internal employee communications, and other internal documents that are required to be produced under the rule, are the portions outlining the substance of oral statements made by individuals who are not employees of the NASD when evidence of those statements are offered by NASD staff during disciplinary hearings.

One commenter expressed concern that the proposed changes to NASD Rule 9253 could make it more difficult for respondents to gain access to exculpatory information. However, the Commission notes that, under 9251(b)(2), the Association may not withhold material exculpatory evidence. Thus, the amendments to NASD Rule 9253 do not relieve the Association of the obligation to produce material exculpatory information. The Commission believes that the revised scope of document production still provides a fair procedure for disciplining members.

The Commission further finds that revisions to NASD Rule 9212 regarding amending complaints are consistent with the requirements of Section 15A(b)(8). The Association may need to amend complaints for a number of reasons, including adding respondents. Thus, the Association proposed to eliminate permitting amendments only for "new matters of fact or law." The Commission believes that this should ensure a more fair procedure. The Commission notes, however, that the Association may only amend a complaint once as a matter of course, before a respondent answers to complaint. Thus, respondents will not be subject to unchecked delays caused by unlimited amendments.

The Commission believes that the amendments to NASD Rule 9264 may promote fairness of disciplinary procedures by expediting hearings. Permitting parties to move to summarily dispose of issues that do not involve entire "causes of actions," and authorizing Hearing Officers to grant motions on jurisdictional issues without referring the matter to the full panel, may allow the proceedings to conclude in a more timely manner.

Similarly, the amendments to NASD Rules 9311 and 9312 may allow for a quicker resolution of the issues. Under the proposal, the General Counsel of NASD Regulation will be able to order parties to brief particular matters, without obtaining Review Subcommittee or NAC authorization. However, the Commission notes that the proposal also includes a process for parties to challenge the General Counsel's request for additional briefing.

The Commission finds that amendments to NASD Rule 9260, which governs default decisions, are also consistent with Section 15A(b)(8). The Hearing Officers who issue the default decision have the most familiarity with the issues. Thus, allowing these Hearing Officers to decide a motion to set aside the default decision, rather than referring the matter to NAC, should provide a more prompt resolution of the motion.

The Association made several revisions to the NASD Rule 9510 Series, which govern summary and non-summary proceedings. The amendments include: (1) A clarification that Hearing Officers have the same powers that they have in regular disciplinary proceedings (the Rule 9200 Series); (2) additional time to hold a hearing in non-summary proceedings; and (3) having appeals under NASD Rule 9516 be addressed by the Review Subcommittee of NAC rather than the NASD Board. The Commission believes that, consistent with Section 15A(b)(8), all of these amendments may promote more fair disciplinary proceedings. For example, the additional time for a hearing in non-summary proceedings should provide the Association and respondents with adequate time to prepare for hearings. The Commission notes that the additional time will not prejudice respondents because the suspension is not in effect during this time.

The Commission further finds that the proposed revisions to the NASD Rule 9520 series, which governs the process by which persons may become or remain associated with a member, and by which current members may obtain relief from the eligibility or qualification requirements, are consistent with Sections 15A(b)(8) and 19(d) of the Act. These revisions include: (1) Extending the time or waivers of time limitations for filing of papers or holding of hearings upon consent of all parties; (2) clarifying that the NASD's approval decisions are not effective until the Commission has either sent an acknowledgment letter to NASD Regulation or has entered an order in cases that involve a previously-entered SEC bar; (3) permitting members of the Statutory Disqualification Committee to serve on Hearing Panels; (4) providing that the CRD staff must gather all of the information necessary to process an application, that the CRD staff will prepare an index of these documents, and that the CRD will provide the index and copies of the documents to the various parties involved; (5) permitting members to submit a written request for relief, rather than an MC–400 application, in cases where the disqualified member is subject to an injunction that was entered 10 or more years prior to the proposed admission; and (6) permitting Member Regulation to recommend the membership or continuing membership of a disqualified member or sponsoring member, or association or continuing association of a disqualified person pursuant to a supervisory plan. The Commission believes that by simplifying and clarifying procedures for which persons may become or

[17] 15 U.S.C. 78o(b)(7).
[18] 15 U.S.C. 78o(b)(8).

remain associated with a member, and by which current members may obtain relief from the eligibility or qualification requirements, the Association is promoting fair disciplinary procedures.

Finally, the Commission finds that the amendments to the Code clarifying the NASD's Department of Market Regulation's role in the disciplinary process, the amendments to NASD Rule 9134(b) regarding service of papers on invalid addresses, the clarification to NASD Rules 9344 and 9340 regarding the ability of the Review Subcommittee to remand disciplinary cases to Hearing Panels, and the clarification to NASD Rule 9347(b) regarding briefing schedules are technical in nature, and, therefore, raise no new regulatory issues.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–99–76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19909 Filed 8–4–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New system of records and proposed new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, the Social Security Administration's Talking and Listening to Customers (hereinafter referred to as TLC). The proposed TLC system will maintain information collected for use in connection with SSA's implementation of a process for capturing and addressing customer-initiated complaints, compliments, and suggestions.

The proposed new system of records will provide for routine use disclosures in connection with our administration of the Social Security Act, or as mandated by Federal law. We invite public comment on this proposal.

[19] 17 CFR 200.30-3(a)(12).

DATES: We filed a report of the proposed new system of records with the Chairman of the Senate Governmental Affairs Committee, the Chairman of the House Reform and Oversight Committee, the Director, Office of Information and Regulatory Affairs, and the Office of Management and Budget on July 24, 2000. The proposed system of records, including the proposed routine uses, will become effective on September 5, 2000, unless we receive comments that would warrant the system of records not being implemented.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Hazel Brodie, Social Insurance Policy Specialist, Social Security Administration, Room 3–C–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–1744.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed TLC System

On September 11, 1993, President Clinton issued Executive Order (EO) 12862, "Setting Customer Service Standards." In part, EO 12862 states, "Putting people first means ensuring that the Federal government provides the highest quality service possible to the American people." Toward this end, the EO further specifically requires agencies to "make * * * complaint systems easily accessible" and "provide means to address customer complaints."

Talking and Listening to Customers (TLC) is the Social Security Administration's (SSA) answer to this Executive mandate. TLC is an agency-wide automated process that will enable SSA to capture, analyze, and address spontaneous customer complaints, compliments, and suggestions. Through TLC, we will document customers' input on a wide range of issues, including programs, policy, law, and service. This information will enhance SSA's ability to track and address individual customer concerns, as well as provide data to support the Agency's business planning, policy development, communication strategies, and operational and service improvements.

SSA will test the new TLC process and automated system in all regions, including the Office of Hearings and Appeals (OHA) sites. Following the test period, we will evaluate the pilot based on customer and employee reaction as well as the automated system performance.

II. Collection, Maintenance, and Use of Data in the Proposed TLC System

We will obtain the information from our customers that will be maintained in the TLC automated system of records. The information will pertain to complaints, compliments, and suggestions our customers provide about Social Security programs, policies, laws, and service.

The information maintained in the TLC system will include (if given): Identifying information such as the customer's name, Social Security number (SSN), Employer Identification Number (EIN) and/or Claim Number, telephone number, address, and information relative to the content and disposition of their complaint, compliment, or suggestion.

If a third party provides the information, the TLC system will include data provided by the third party about the customer, such as the customer's name, SSN, EIN, and/or Claim Number, telephone number, addresses, and information relative to their complaint, compliment, or suggestion.

We will maintain and retrieve this information by our customer's SSN, EIN, and/or Claim Number, if given. Thus, the TLC system will constitute a system of records under the Privacy Act.

III. Proposed Routine Use Disclosures of Data That Will Be Maintained in the Proposed TLC System

We are proposing to establish routine uses of information that will be maintained in the proposed system as discussed below.

A. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in a SSA matter on his or her behalf. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the office is acting on behalf of the individual whose record is requested.

B. Disclosure to a Congressional Office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a SSA matter on his or her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

C. Disclosure to student volunteers and other workers, who do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers, and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned duties.

D. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of a function relating to this system of records.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

E. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures, and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

IV. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(a)(7) and 552a(b)(3) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses lettered A–D will ensure the efficient administration of Social Security programs; the disclosures that would be made under routine use "E" are required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

V. Records Storage Medium and Safeguards for the Proposed TLC System

We will maintain information on the proposed TLC system in electronic form, in computer data systems, and in paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access.

Security measures include the use of access codes to enter the computer systems that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Also, all entrances and exits to SSA buildings are patrolled by security guards. Contractor personnel having access to data in the proposed systems of records will be required to adhere to SSA rules concerning safeguards, access, and use of the data. SSA personnel having access to the data on these systems will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in these systems. See 5 U.S.C. § 552a(i)(1).

VI. Effect of the Proposed TLC System of the Rights of Individuals

The proposed TLC system will maintain information that we will use to document and categorize customer input along various program, policy, and service lines, and to identify those areas of greatest interest and concern to our customers. This will allow us to target those concerns for additional research, thereby improving the quality of the service we provide. We will not use the information in any manner that will be adverse to the individuals to whom it pertains. Thus, we do not anticipate that the TLC system will have any unwarranted adverse effect on individuals.

Dated: July 24, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

60–0276

SYSTEM NAME:

Social Security Administration's (SSA) Talking and Listening to Customers (TLC).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Customer Service Integration, Room 938 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any SSA customer (individual or entity who is directly served by a department or agency), which includes the general public and Social Security claimants/beneficiaries who provide feedback via complaints, compliments, or suggestions to SSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information maintained in this system of records includes identifying information such as the customer's name, Social Security number (SSN), Employer Identification Number (EIN) and/or Claim Number, telephone number, and address, if given by the individual. Also, information concerning the content and disposition of customers' compliments, complaints, or suggestions will be maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12862, "Setting Customer Service Standards."

PURPOSE(S):

The TLC system will capture information our customers provide concerning complaints, compliments and/or suggestions about SSA programs, policy, laws, and service. We will use data from the TLC system to support SSA's business planning, policy development, communication strategies, and operational and service enhancements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry from that office made at the request of the subject of a record.

2. Disclosure to a Congressional Office in response to an inquiry from that office made at the request of the subject of a record.

3. Disclosure to student volunteers and other workers, who do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

4. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of a function relating to this system of records.

5. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are stored in electronic and paper form.

RETRIEVABILITY:

Records in this system are indexed and retrieved by Name, SSN, EIN and/or Claim Number.

SAFEGUARDS:

Security measures include the use of access codes to enter the database and the storage of the electronic records in secured areas which are accessible only to employees who require the information in performing their official duties. The paper records that result from the electronic site are kept in locked cabinets or in otherwise secure areas. SSA contractor personnel having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

RETENTION AND DISPOSAL:

The TLC tracking and management information maintained in this system are retained indefinitely or until it is determined that they are no longer needed. Means of disposal is appropriate to storage medium (e.g., deletion of individual records from the electronic site when appropriate, or shredding of paper records, etc.).

SYSTEM MANAGER(S) AND ADDRESS:

Social Security Administration, Office of Systems, Office of Information Management, Room 3420 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to the Systems Manager at the above address and providing his/her SSN, EIN and/or Claim Number, or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification, such as a voter registration card, credit card, etc. If an individual does not have any identification document sufficient to establish his/her identity, the individual must certify in writing that he/she is the person he/she claims to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that is contained in the record to which notification is being requested. If we determine that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information on behalf of another individual and has the consent of subject individual, he/she must be able to provide his/her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person he/she claims to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with SSA Regulations 20 CFR 401.45 and 401.50.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations 20 CFR 401.40 to 401.50.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations 20 CFR 401.65.

RECORD SOURCE CATEGORIES:

Data for the system are obtained primarily from the individuals to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 00–19619 Filed 8–4–00; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7671]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 2115–0056, 2115–0092, and 2115–0540

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of three Information Collection Requests (ICRs). They comprise Various International Agreement Safety Certificates and Documents, Barge Fleet Facility Records, and Ports and Waterways Safety—Title 33 CFR Subchapter P. Before submitting the ICRs to OMB, the Coast Guard is seeking comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before October 6, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2000–7671], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for this request. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000–7671], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Various International Agreement Safety Certificates and Documents.

OMB Control Number: 2115–0056.

Summary: These 11 forms are due to the adoption of the International Convention for Safety of Life at Sea, 1974 (SOLAS). The 11 forms are evidence of compliance with this convention for U.S. vessels on international voyages. Without the proper forms, U.S. vessels could be detained in foreign ports.

Need: By Executive Order 12234, the Coast Guard is responsible for the issuance of certificates as required by SOLAS 1974. SOLAS applies to all mechanically propelled cargo vessels of 500 or more gross tons (GT), and to all mechanically propelled passenger vessels carrying more than 12 passengers that engage in international voyages. The Coast Guard will issue certificates after performing inspections or safety-management audits of the vessels' systems and determining that the vessels meet the applicable requirements. SOLAS and 46 CFR 2.01–25 list certificates and documents that the Coast Guard may issue to vessels.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 38 hours a year.

2. *Title:* Barge Fleet Facility Records.

OMB Control Number: 2115–0092.

Summary: This collection of information requires the person in charge of a barge-fleeting facility to keep records of twice-daily inspections of barges' moorings and movements, and of movements of hazardous cargo in and out of the facility.

Need: The requirements of 33 CFR 165.803 aim at preventing barges from breaking away from fleeting facilities and drifting downstream out of control in the congested Lower Mississippi River.

Respondents: Operators of fleets of barges.

Frequency: On occasion.

Burden: The estimated burden is 30,618 hours a year.

3. *Title:* Ports and Waterways Safety—Title 33 CFR Subchapter P.

OMB Control Number: 2115–0540.

Summary: This collection of information allows the master, owner, or agent of a vessel affected by this rule to request deviation from the requirements governing navigation-safety equipment to the extent that there is no reduction in safety.

Need: 33 CFR Subchapter P allows any person directly affected by this rule to request a deviation from any of the requirements as long as it does not compromise safety. This collection enables the Coast Guard to evaluate the information the respondent supplies, to determine whether it justifies the request for deviation.

Respondents: Master, owner, or agent of a vessel.

Frequency: On occasion.

Burden: The estimated burden is 2,924 hours a year.

Dated: July 25 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00–19919 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–34]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 6, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of

Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30034.
Petitioner: Coalition of Airline Pilots Association.
Section of the FAR Affected: 14 CFR § 61.23(c)(1)(i).
Description of Relief Sought: To extend the duration of a first class medical certificate from 6 months to 1 year for CAPA-member union pilots exercising the privileges of an airline transport pilot certification.

[FR Doc. 00–19932 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–S–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–35]

RIN

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and dispositions of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28419.
Petitioner: United Parcel Service.
Section of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(c), 121.441(a)(1) and (b)(1), and appendix F to part 121.
Description of Relief Sought/ Disposition: To permit UPS to combine recurrent flight and ground training and proficiency checks for UPS's pilots in command (PIC), seconds in command (SIC), and flight engineers (FE) in a single annual training and proficiency evaluation program (SVTP).

Grant, 04/06/00, Exemption No. 6434B

Docket No.: 29483.
Petitioner: Jackson Police Department.
Section of the FAR Affected: 14 CFR 61.195(g)(1) and 91.109(a).
Description of Relief Sought/ Disposition: To permit Jackson PD pilots in training to use public aircraft to log the aeronautical experience required by § 61.39 to take the practical test for issuance of a pilot certificate and aircraft rating.

Denial, 02/28/00, Exemption No. 7133

Docket No.: 29867.
Petitioner: Jetstream Aviation.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Jetstream to operate its Cessna Model 310N (Registration No. N4165Q, Serial No. 310N–0065) and Piper PA–28 Cherokee 140 (Registration No. N657CA, Serial No. 28–22371) airplanes under part 135 without a TSO-C112 (Mode S) transponder installed on each airplane.

Grant, 03/01/00, Exemption No. 7134

Docket No.: 29836.
Petitioner: Southwest Airlines Co.
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Southwest to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 02/28/00, Exemption No. 7132

Docket No.: 29736.
Petitioner: Tulsa Air & Space Center Airshows, Inc.
Section of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To permit Tulsa Air & Space to operate its former military North America B–25 airplane (B–25), which is certificated in the limited category, for the purpose of carrying passengers on local flights for compensation or hire.

Grant, 02/18/00, Exemption No. 7126

[FR Doc. 00–19933 Filed 8–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–36]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW, Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 24237.
Petitioner: Department of the Air Force.
Section of the FAR Affected: 14 CFR 91.777(a)(2) and 91.179(b)(1).
Description of Relief Sought/ Disposition: To permit the Air Force to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segments in uncontrolled airspace.

Grant, 07/21/00, Exemption No. 4371E

Docket No.: 29974.
Petitioner: Mr. Joseph E. Fisher.
Section of the FAR Affected: 14 CFR 121.154 and 135.91.
Description of Relief Sought/ Disposition: To permit the operator of an aircraft to allow you to furnish, carry, and operate certain oxygen storage, generating, and dispensing equipment for your medical use onboard the aircraft on which you are traveling.

Denial, 07/25/00, Exemption No. 7285

Docket No.: 21882.
Petitioner: China Airlines, Ltd.
Section of the FAR Affected: 14 CFR 61.77(a) and (b), and 63.23(a) and (b).
Description of Relief Sought/ Disposition: To permit CAL airmen who operate two U.S.-registered Boeing 747–SP aircraft (Registration Nos. N4508H and N4522V) and three U.S.-registered Airbus A300–600R aircraft (Registration Nos. N88881, N88887, and N8888B) that are leased to a person who is not a citizen of the United States, for carrying persons or property for compensation or hire, to be eligible for special purpose airmen certificates.

Grant, 07/25/00, Exemption No. 4849H

Docket No.: 29648.
Petitioner: Aircraft Owners and Pilots Association.
Section of the FAR Affected: 14 CFR 135.21, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit the AOPA member-pilots to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135 .

Grant, 07/26/00, Exemption No. 7112A

Docket No.: 30068.
Petitioner: Douglas County AIDS Project.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit DCAP to conduct local sightseeing flights in the vicinity of Lawrence, Kansas, for its one-day charitable event in August 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/20/00, Exemption No. 7278

Docket No.: 29715.
Petitioner: East Hill Flying Club.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit East Hill to conduct local sightseeing flights at Tompkins County Airport for three one-day pancake breakfasts, one each in August 2000, September 2000, and May 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/20/00, Exemption No. 7279

Docket No.: 30018.
Petitioner: Mr. William Scholberg.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Mr. William Scholberg to conduct four local sightseeing flights, donated to the Saints Martha and Mary Episcopal Church's silent auction, at an airport in the vicinity to Apple Valley, MN, for compensation on hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/21/00, Exemption No. 7213A

Docket No.: 29271.
Petitioner: Mr. Kerrick R. Philleo.
Section of the FAR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit Mr. Kerrick R. Philleo to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza and Beechcraft Debonair airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 07/18/00, Exemption No. 6804A

Docket No.: 28723.
Petitioner: Ryan International Airlines, Inc.
Section of the FAR Affected: 14 CFR 91.203 (a) and (b).
Description of Relief Sought/ Disposition: To permit Ryan to operate temporarily its U.S.-registered aircraft following the incidental loss of mutilation of that aircraft's airworthiness certificate or registration certificate, or both.

Grant, 07/18/00, Exemption No. 6571B

[FR Doc. 00–19934 Filed 8–4–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–37]

Petitions for Exemption; Summary of petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I),

dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Dated: Issued in Washington, DC, on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29385.
Petitioner: Charity Airlift Incorporated.
Section of the FAR Affected: 14 CFR 125.1(b)(2).
Description of Relief Sought/ Disposition: To permit Charity Airlift to conduct noncommon carriage operations using a restricted-category Lockheed C–130 Hercules (C–130) aircraft carrying persons and/or cargo for compensation or hire under the provisions of part 125.

Denial, 07/31/00, Exemption No. 7280

Docket No.: 30055.
Petitioner: High Adventure Air Charters.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit High Adventure to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7288

Docket No.: 29998.
Petitioner: Air Jet, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Jet to operate certain aircraft under part 135 without a TSO–C112 (mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7290

Docket No.: 30079.
Petitioner: Airway Flight Services, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit AFSI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7287

Docket No.: 30083.
Petitioner: St. Charles Flying Service, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit St. Charles to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7289

Docket No.: 30123.
Petitioner: Condor Aero Club.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit CAC to conduct local sightseeing flights at Zelienople Municipal Airport, Zelienople, Pennsylvania, for the one-day Zelienople Horse Trading Days event in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/21/00, Exemption No. 7281

Docket No.: 29182.
Petitioner: Continental Express.
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Continental to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424.

Grant, 07/27/00, Exemption No. 6798A

[FR Doc. 00–19935 Filed 8–4–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–4548; Notice 2]

Denial of Petition for Import Eligibility Decision

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. § 30141(a)(1)(A). The petition, which was submitted by G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K"), a registered importer of motor vehicles, requested NHTSA to decide that certain 1989–1991 Volkswagen Golf 4-Door Sedans that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. In the petition, G&K contended that these vehicles are eligible for importation on the basis that (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1989–1991 Volkswagen Golf 4-Door Sedan), and (2) they are capable of being readily altered to conform to the standards.

NHTSA published a notice in the **Federal Register** on October 26, 1998 (63 FR 57158) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to the notice, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Volkswagen AG, the vehicle's manufacturer. In this comment, Volkswagen contended that the vehicles that are the subject of the petition are four-wheel drive vehicles which are not substantially similar to the Golf 4-Door Sedan with four-wheel drive that was originally manufactured and certified for sale in the United States and that these vehicles are not capable of being readily altered to conform to the standards. Specifically, Volkswagen observed that the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans with four-wheel drive that

are the subject of the petition are heavier than the heaviest Golf model certified for sale in the United States, have a different four wheel drive configuration, and approximately 100mm of additional ground clearance. As a consequence, Volkswagen asserted that crash testing would be required to assure that the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans comply with Federal Motor Vehicle Safety Standard Nos. 203, *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 208 *Occupant Crash Protection*, 212 *Windshield Mounting*, 219 *Windshield Zone Intrusion*, and 301 *Fuel System Integrity*.

Additionally, Volkswagen contended that the 1989–1991 Volkswagen Golf 4-Door Sedans produced in Germany for the European market would not comply with the Bumper Standard found at 49 CFR Part 581 because those vehicles have greater ground clearance than their U.S.-certified counterparts, and are equipped with front bumper mounted "bull bars" not found on U.S.-certified models. Volkswagen asserted that these features would affect the vehicles' bumper and crash test performance.

Volkswagen also observed that 1989–1991 Volkswagen Golf 4-Door Sedans produced in Germany for the European market are equipped with headlamps and signaling lamps that would not comply with Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, and would also require modification, including the installation of a center high mounted stop lamp, to comply with that standard.

Volkswagen further stated that a passive shoulder belt system would have to be installed on the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans to comply with Standard No. 208 *Occupant Crash Protection*. Volkswagen noted that the installation of such a system would require the attachment of anchorages in the tunnel area and on the front door and the attachment and welding of reinforcements to the B-pillar. Volkswagen also noted that a knee bar would have to be installed on the instrument panel for compliance with the passive restraint crash test requirements.

Volkswagen also asserted that the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans would not comply with Standard No. 212 *Windshield Mounting* because only clips were used for mounting the windshield on these vehicles, as opposed to the adhesive bonding method that was employed in the U.S. certified versions. Volkswagen further observed that the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans did not have the door beam structure that is necessary for compliance with Standard No. 214. Additionally, Volkswagen stated that the vehicles were manufactured with some foam seat parts that were not treated with flame resistant agents to comply with Standard No. 302.

G&K did not respond to Volkswagen's comments even though NHTSA accorded it an opportunity to do so. In light of the issues that Volkswagen has raised regarding the lack of substantial similarity between non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans and the U.S.-certified versions of those vehicles, NHTSA has concluded that the petitioner has failed to demonstrate that non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans are (1) substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115 and (2) are capable of being readily altered to comply with all applicable Federal motor vehicle safety standards. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. § 30141(b)(1), NHTSA will not consider a new import eligibility petition covering these vehicles until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–19921 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7710]

Notice of Receipt of Petition for Decision That Nonconforming 2001 Porsche 911 Turbo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 Porsche 911 Turbo passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 Porsche 911 Turbo passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 6, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

J.K. Technologies of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 2001 Porsche 911 Turbo passenger cars are eligible for

importation into the United States. The vehicles which J.K. believes are substantially similar are 2001 Porsche 911 Turbo passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 Porsche 911 Turbo passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2001 Porsche 911 Turbo passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 Porsche 911 Turbo passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of the word "Brake" for the international ECE warning symbol on the markings for the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour. The petitioner states that the entire instrument cluster will be replaced with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lamps; (c) installation of a high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off on vehicles that are not already so equipped.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of all vehicles and replacement of any components subject to the standard that are not identical to those installed on the vehicles' U.S. certified counterparts.

NHTSA has been advised by Porsche, in a June 16, 2000 submission to the agency, that the 2001 model 911 Turbo, available at dealers as of June 2000, is certified to all requirements of Standard 201, including the impact requirements for upper interior components.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard designated seating positions with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton.

Standard No. 214 *Side Impact Protection*: inspection of all vehicles and installation of reinforcing door beams on vehicles that are not already so equipped.

Petitioner states that the bumpers and bumper support structure on all vehicles must be inspected for compliance with the Bumper Standard found at 49 CFR Part 581, and replaced, if necessary, to assure compliance with that standard.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Petitioner also states that all vehicles must be inspected prior to importation for compliance with the Theft Prevention Standard at 49 CFR Part 541, and that U.S.-model anti-theft devices must be installed on a vehicles lacking that equipment.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–19922 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7657]

General Motors North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

General Motors North America, Inc., (GM) has determined that some 1995–1999 model year GM vehicles including Chevrolet and GMC light duty trucks, the Oldsmobile Bravada, Cadillac Escalade, and Pontiac Grand Prix, and Isuzu light duty trucks do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-operated window, partition, and roof panel systems*. The depression of the hazard warning flasher switch to its limit of travel may activate the retained accessory power (RAP) feature with no key in the ignition. This condition would not meet the operation requirements of S4 of FMVSS 118. A total of 973,922 GM vehicles and 1,540 Isuzu trucks may have this condition. Pursuant to 49 U.S.C. 30118(d) and

30120(h), GM has petitioned for a determination that the noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The hazard warning system flasher switch in the noncompliant vehicles is a pushbutton that operates as a "push-on /push-off" switch. To turn the hazard flasher lamps on, the switch is pushed down (depressed) and then released. To turn the hazard flasher lamps off, the switch is depressed a second time and then released.

S4 of FMVSS 118 specifies conditions under which power-operated windows and roof panels may be closed. The relevant portions of S4 require that either the ignition key be in the "ON", "START", or "ACCESSORY" positions (S4(a)), or, in S4(e), that activation be possible only during the interval between removal of the ignition key and opening of either front door. In the affected vehicles, it is possible for the RAP feature to be activated when the hazard flasher switch is at the bottom of travel, whether or not a key is in the ignition.

Under certain conditions, unintended or so-called "sneak circuits" may exist if the switch is being depressed and is manually held to its full extent of travel. The sneak circuits disappear when the switch is released. The presence of these sneak circuits can cause the RAP feature to be activated when the key is not in the ignition.

If activated, the RAP would remain operational for up to 20 minutes, depending on the vehicle model, or until a door handle is pulled, whichever occurs first. In some vehicles only the front door handles will deactivate the RAP, while in other models the rear door handles also will deactivate it. While the RAP is activated, it is possible to operate certain vehicle controls, including the power window and sunroof controls.

There are two methods by which RAP can be activated in these vehicles when the key has been removed from the ignition. The first requires depression of the hazard switch to the extreme bottom of travel with some lateral force applied to it. In most switches, RAP cannot be activated by this method, even intentionally by experts attempting to do so. In testing conducted by GM in relation to this condition, GM reports that no child activated RAP by this method.

The second method to activate RAP requires the simultaneous operation of the hazard switch and the service brake. Even if left alone and unattended in a parked vehicle, an individual child would not be likely to depress the hazard switch and the brake pedal simultaneously. In testing conducted by GM the company reports that no individual child ever simultaneously operated the brake and the hazard warning switch.

GM believes that this noncompliance with FMVSS 118 is inconsequential to motor vehicle safety. Its reasoning is that a number of specific events, each of which has a low possibility of occurring, all would have to occur before an opportunity would exist in which a person could be injured by a power operated window or sunroof.

The petitioner has indicated that the noncompliance will not result in any safety, reliability or serviceability concern for the vehicle operator.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 6, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 1, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–19920 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 28, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 6, 2000 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0069.

Form Number: None.

Type of Review: Extension.

Title: Administrative Offset, Collection of Past-Due Child Support Final Rule.

Description: The Debt Collection Improvement Act of 1996 authorizes the collection of past-due child support by offset of non-tax Federal payments. Executive Order 13019 of September 28, 1996 requires Treasury to promptly develop and implement procedures necessary to implement this authority.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 54.

Estimated Burden Hours Per Respondent: 103 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,562 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–19877 Filed 8–4–00; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 31, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by

calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 6, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0087.

Form Number: IRS Forms 1040–ES, 1040–ES (NR), and 1040–ES (Espanol).

Type of Review: Revision.

Title: Estimated Tax for Individuals (1040–ES); U.S. Estimated Tax for Nonresident Alien Individuals (1040–ES (NR)); and Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre El Empleo de Empleados Domesticos-Puerto Rico (1040–ES (Espanol))

Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if estimated tax has been properly computed and timely paid.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 14,563,250.

Estimated Burden Hours Per Respondent/Recordkeeper:

	1040–ES	1040–ES (NR)
Recordkeeping	52 min.	40 min.
Learning about the law or the form	28 min.	19 min.
Preparing the worksheets and payment vouchers	48 min.	49 min.
Copying, assembling, and sending the payment voucher to the IRS	10 min.	10 min.

	1040–ES (Espanol)
Mantener los récords	7 minutos.
Aprendiendo acerca de la ley	7 minutos.
Preparando las hojas de computaciones y los "Pago-Comprobantes'"	35 minutos.
Copiar, organizar y enviar los "Pago-Comprobantes" al IRS	10 minutos.

Frequency of response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 94,589,400 hours.

OMB Number: 1545–0130.

Form Number: IRS Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S).

Type of Review: Revision.

Title: U.S. Income Tax Return for an S Corporation (1120S); Capital Gains and Losses and Built-In Gains (Schedule D); and Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K–1)

Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 1,880,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120S	63 hr., 37min.	22 hr., 13 min.	40 hr., 59 min.	4 hr., 50 min.
Schedule D (1120S)	11 hr., 0 min.	4 hr., 38 min.	9 hr., 40 min.	1 hr., 20 min.
Schedule K–1 (1120S)	16 hr., 30 min.	10 hr., 25 min.	14 hr., 52 min.	1 hr., 4 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 477,877,810 hours.

OMB Number: 1545–0938.

Form Number: IRS Form 1120–IC-DISC, Schedule K (Form 1120–IC-DISC), and Schedule P (Form 1120–IC-DISC).

Type of Review: Revision.

Title: Interest Charge Domestic International Sales Corporation Return (1120–IC-DISC); Shareholder's Statement of IC-DISC Distributions (Schedule K); and Intercompany Transfer Price or Commission (Schedule P).

Description: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC-DISC) file Form 1120–IC-DISC to report their income and deductions. The IC-DISC is not taxed, but IC-DISC shareholders are taxed on their share of IC-DISC income. IRS uses Form 1120–IC-DISC to check the IC-DISC's computation of income. Schedule K (Form 1120–IC-DISC) is used to report income to shareholders; Schedule P (Form 1120–IC-DISC) is used by the IC-DISC to report its dealings with related suppliers, etc.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120–IC–DISK	94 hr., 56 min.	19 hr., 54 min.	30 hr., 43 min.	2 h4., 25 min.

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Schedule K	4 hr., 4 min.	18 min.	27 min.	0 min.
Schedule P	12 hr., 40 min.	1 hr., 29 min.	1 hr., 46 min.	0 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 229,435 hours.

OMB Number: 1545–1016.

Form Number: IRS Form 8613.

Type of Review: Extension.

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Business or other-profit.

Estimated Number of Respondents/Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 42 min.

Learning about the law or the form—2 hr., 28 min.

Preparing and sending the form to the IRS—2 hr., 42 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 17,820 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–19678 Filed 8–4–00; 8:45 am]

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Federal Register

Monday,
August 7, 2000

Part II

Environmental Protection Agency

40 CFR Parts 9 and 35
Drinking Water State Revolving Funds; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 35

[FRL–6846–5]

RIN 2040–AD20

Drinking Water State Revolving Funds

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: The national Drinking Water State Revolving Fund (DWSRF) program, which was established by the Safe Drinking Water Act (SDWA) Amendments of 1996, authorizes the U.S. Environmental Protection Agency (EPA) to award capitalization grants to States, which in turn may provide low-cost loans and other types of assistance to eligible public water systems to finance the costs of infrastructure projects needed to achieve or maintain compliance with SDWA requirements. States are also authorized to set aside a portion of their capitalization grants to fund a range of activities including source water protection, capacity development, and operator certification.

This interim final rule codifies the DWSRF Program Final Guidelines published in February 1997 and explains: what States must do to receive a capitalization grant; what States may do with capitalization grant funds intended for infrastructure projects; what States may do with funds intended for set-aside activities; and the roles of both the States and EPA in managing and administering the program. Each State has considerable flexibility to determine the design of its DWSRF program and to direct funding toward its most pressing compliance and public health needs.

DATES: This interim final rule is effective August 7, 2000. Public comments must be received by EPA, in writing, by October 6, 2000. Comments will be considered and, if necessary, EPA will issue a revised final rule changing today's interim final rule to respond to these comments.

ADDRESSES: Send written comments on this interim final rule to the Comment Clerk (Docket W–00–11), Water Docket (MC–4101), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW, East Tower Basement, Room EB57, Washington, DC 20460. Comments may also be submitted electronically to ow-docket@epa.gov.

Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commentors follow the following format: Type or print in ink, and cite, where possible, the paragraphs in this interim final rule to which each comment refers. Electronic comments must be submitted as a WordPerfect 5.1, 6.1, or 8.0 file or as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by Docket W–00–11. Comments and data will also be accepted on disks in the formats above. Electronic comments may be filed online at many Federal Depository Libraries. Commentors who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

The record for this interim final rule has been established under Docket W–00–11, which includes supporting documentation, and is available for review at the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW, East Tower Basement, Room EB57, Washington, DC 20460. For access to the Docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern Time), Monday through Friday, for an appointment and reference Docket W–00–11.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Kimberley Roy, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The telephone number is (202) 260–2794 and the e-mail address is roy.kimberley@epa.gov. For general information, contact the Safe Drinking Water Hotline, toll free at (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. (Eastern Time). DWSRF program information, including a copy of this interim final rule, are available on EPA's Office of Ground Water and Drinking Water website at http://www.epa.gov/safewater/dwsrf.html.

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Entities listed in § 35.3500 are regulated by this rule. Regulated categories and entities include:

Category	Regulated entities
Government	Governments/Agencies of the 50 States and the Commonwealth of Puerto Rico.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in § 35.3500 of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
J. Executive Order 12898: Environmental Justice

I. Statutory Authority

This interim final rule implements section 1452 of the SDWA (42 U.S.C. 300j–12) which establishes a national DWSRF program to assist public water systems in financing the cost of drinking water infrastructure projects needed to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the Act. Section 1452(g)(3) of the SDWA states that "the Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section."

II. Purpose

This interim final rule codifies and implements requirements for the national DWSRF program under section 1452 of the SDWA. This interim final rule supplements EPA's general grant regulations at 40 CFR part 31 which contain administrative requirements that apply to governmental recipients of EPA grants and subgrants. With the exception of requirements for the participation of minority and women's business enterprises (MBE/WBEs), EPA's general grant regulations at 40 CFR part 31 do not apply to recipients of loans and other types of assistance from a State DWSRF program Fund. The requirements for the participation of MBE/WBEs apply to assistance recipients under EPA's fiscal year 1993 Appropriations Act (Pub. L. 102–389). In developing this interim final rule, EPA has attempted to identify all the major program requirements. To that end, this rule includes items required by the SDWA and those additional program requirements that EPA considers necessary for effective program management.

This interim final rule applies to States (i.e., each of the 50 States and the Commonwealth of Puerto Rico) which receive capitalization grants and are authorized to establish a Fund under section 1452 of the SDWA. While eligible public water systems and other assistance recipients are not regulated by this interim final rule, they may be indirectly affected because it includes requirements that they must meet in order to receive funding from the State for purposes authorized under section 1452 of the SDWA. This interim final rule does not apply to Indian Tribes and Alaska Native Villages, the District of Columbia, and other jurisdictions (i.e., Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam) that receive grants under section 1452 because they are not authorized to establish a Fund. Grants under section 1452 to Indian Tribes and Alaska Native Villages, the District of Columbia, and other jurisdictions are administered by the EPA Regional Offices under separate guidance.

III. DWSRF Program Background

The SDWA authorizes EPA to award capitalization grants to States that have established DWSRF programs complying with the requirements of section 1452. States use a portion of these grants to capitalize a revolving Fund from which low-cost loans and other types of assistance are provided to publicly-owned and privately-owned community water systems and non-profit noncommunity water systems to finance the costs of infrastructure projects. States must also contribute to the capitalization of their DWSRF programs by depositing State monies equaling at least 20 percent of each grant into the Fund. Loan repayments made by assistance recipients to the States return to the Fund and provide a continuing source of financing for projects. States are responsible for developing a priority system that identifies how projects will be ranked for funding and a list of projects, in priority order, that are eligible for funding.

While it is essential to address infrastructure needs of public water systems, Congress recognized the value of establishing programs which will prevent drinking water problems in the future. Therefore, States may set aside a portion of their capitalization grants to fund activities that encourage enhanced water system management and help to prevent contamination problems through source water protection measures. The success of these set-aside activities will act to safeguard the DWSRF program funds that are provided for improving system compliance and public health protection. The SDWA also places particular emphasis on assisting small systems serving fewer than 10,000 people and on systems serving less affluent populations by providing greater funding flexibility for these systems.

A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State, including the Clean Water State Revolving Fund (CWSRF) program established under Title VI of the Clean Water Act (CWA). However, section 1452(g)(1)(B) of the SDWA requires that "the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with . . ." the State primacy agency, after consultation with other appropriate State agencies.

In view of this language and the overall role of the State primacy agency in SDWA programs, EPA has determined that Congress intended for the primacy agency to be the State agency which determines assistance priorities for the DWSRF program, including priorities assigned to projects and allocation of funds between the Fund and set-asides, regardless of whether or not a State combines financial administration of the Fund. Further, although the primacy agency has the authority to carry out oversight and related activities, memoranda of understanding or interagency agreements may be entered into with other State agencies to manage aspects of the DWSRF program which could include reviewing assistance applications and project bid documents, monitoring projects, and ensuring compliance with environmental review and other program requirements.

Beginning one year after a State establishes its Fund (i.e., one year after the State has received its first DWSRF program capitalization grant for projects), a State may transfer an amount equal to 33 percent of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from the CWSRF program to the DWSRF program. This provision linking the national DWSRF and the CWSRF programs signals Congressional intent for EPA and the States to implement and manage the two programs in a similar manner. To the

maximum extent practicable, EPA intends to administer the financial aspects of the national DWSRF program in a manner that is consistent with the policies and procedures of the national CWSRF program. Each State has considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs.

IV. Allocation of National Appropriation for DWSRF Program

Section 1452(m) of the SDWA authorizes Congress to appropriate a total of $9.6 billion for the national DWSRF program for fiscal years 1994 through 2003.

A. National Set-Asides

National set-asides are reserved from funds annually appropriated by Congress under section 1452 of the SDWA. These national set-asides are:

(1) Indian Tribes/Alaska Native Villages. Section 1452(i) of the SDWA indicates that the Administrator may reserve 1.5 percent from annually appropriated funds under section 1452 to make grants to Indian Tribes and Alaska Native Villages. Projects for Indian Tribes and Alaska Native Villages that have not otherwise received either grant or DWSRF program assistance under section 1452 for a specific project are eligible for grant financing under this provision. EPA published the Tribal Set-aside Program Final Guidelines (EPA 816–R–98–020) in October 1998 establishing requirements for the selection of projects, project management, and program oversight for these grants. The Tribal Set-aside Program is administered by the EPA Regional Offices.

(2) Health effects studies. Section 1452(n) of the SDWA requires the Administrator to reserve $10 million from annually appropriated funds under section 1452 to conduct health effects studies on drinking water contaminants. However, the Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, 1998, 1999, and 2000 (Public Law 105–65, Public Law 105–276, and Public Law 106–74, respectively) have precluded the Administrator from reserving these funds from annually appropriated funds under section 1452 and have instead provided funding for health effects studies from other sources.

(3) Unregulated contaminant monitoring. Starting in fiscal year 1998, section 1452(o) of the SDWA requires the Administrator to reserve $2 million from annually appropriated funds under section 1452 to pay for the costs of monitoring unregulated contaminants under section 1445(a)(2)(C).

(4) Small system technical assistance. Section 1452(q) of the SDWA indicates that the Administrator may reserve up to 2 percent of the funds appropriated under section 1452 in fiscal years 1997 through 2003 to carry out the technical assistance for small systems provisions of section 1442(e) to the extent that the total amount of funding appropriated under section 1442(e) is not sufficient. The total combined amount of funds made available under this set-aside and the funds appropriated under section 1442(e) cannot exceed $15 million per year.

(5) Operator training reimbursement. Section 1419(d)(1) of the SDWA requires the Administrator to provide grants to States to reimburse the costs of training and certifying operators of public water systems serving 3,300 persons or fewer to meet the requirements of the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems published in the **Federal Register** (64 FR 5916) on February 5, 1999. Congress has authorized $30 million annually for fiscal years 1997 through 2003 for grants for reimbursement under section 1419(d)(3). If the appropriation for any fiscal year is not sufficient to meet training and certification costs, the Administrator will, prior to any other allocation or reservation, reserve the necessary funds from those appropriated under section 1452.

B. Allotment to States

The funds available for allotment to the States for capitalization grants are those funds appropriated by Congress under section 1452 of the SDWA less the national set-asides. For fiscal year 1997 appropriations only, section 1452(a)(1)(D)(i) required EPA to allot funds according to the formula used for distributing public water system supervision (PWSS) grants in fiscal year 1995 under section 1443. The minimum proportional share that each State received was one percent of the funds available for allotment to all of the States. This interim final rule does not include this requirement for determining the State allotment formula for fiscal year 1997 appropriations.

Beginning with fiscal year 1998 appropriations, section 1452(a)(1)(D)(ii) of the SDWA requires EPA to allot funds to each State based on the State's proportional share of total eligible needs reported for the most recent Drinking Water Infrastructure Needs Survey conducted under section 1452(h) of the SDWA. The minimum proportional share that each State can receive is one percent of funds available for allotment to all of the States.

The first Drinking Water Infrastructure Needs Survey: First Report to Congress (EPA 812-R–97–001) was presented to Congress on January 29, 1997. Prior to finalizing this January 1997 report, EPA solicited public comment on six options for using the results to determine the allotment formula for fiscal year 1998, 1999, 2000, and 2001 appropriations and finalized the allotment formula in the **Federal Register** (62 FR 12900) on March 18, 1997.

Subsequent Drinking Water Infrastructure Needs Surveys are due to Congress every four years after the January 1997 report. The State allotment formula for fiscal year 2002 appropriations and subsequent appropriations will be adjusted to reflect the needs identified in the most recently published report.

C. Allotment to Other Jurisdictions and the District of Columbia

Section 1452(j) of the SDWA requires the Administrator to reserve up to 0.33 percent of the funds available for allotment to the States to provide grants to the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. Section 1452(a)(1)(D) of the SDWA requires the Administrator to reserve one percent of the funds available for allotment to the States to provide grants to the District of Columbia. These grants are administered by the EPA Regional Offices.

V. DWSRF Program Implementation

The DWSRF Program Interim Guidance was distributed on October 4, 1996, to allow States to begin to develop their DWSRF programs and to allow capitalization grants to be awarded as soon as possible. The notice of availability of the Interim Guidance was published in the **Federal Register** (61 FR 55635) on October 28, 1996, and announced a public comment period which ended on November 28, 1996. EPA subsequently held a series of public meetings with stakeholders to provide information about the program and to review the Interim Guidance. Comments received during the period of public comment and from attendees of the public meetings were critical in developing the DWSRF Program Final Guidelines.

The DWSRF Program Final Guidelines (EPA–816–R–97–005) were

signed by the Assistant Administrator for Water on February 28, 1997. The Final Guidelines were made widely available to stakeholders, including the appropriate State agencies that are recipients of the DWSRF program capitalization grants and were published in the **Federal Register** (63 FR 59844) on November 5, 1998.

Program requirements contained in the DWSRF Program Final Guidelines are superceded by this interim final rule. However, the Final Guidelines, the DWSRF program management manual, and other memoranda such as periodic question and answer documents will continue to provide guidance to States on DWSRF program implementation.

VI. Rule Development Process

This interim final rule is the result of a thorough stakeholder consultation process. Because States have the responsibility for managing and administering the DWSRF program, members of a State/EPA SRF Work Group (formed to address policy implementation issues for the national DWSRF and CWSRF programs) were given the opportunity to review and comment on previous drafts of this rule. The State/EPA SRF Work Group is comprised of State DWSRF managers, State CWSRF managers, and managers of State financial agencies as well as EPA Regional and Headquarters staff. In May 1998, comments on a draft outline of the interim final rule were solicited and discussed at a State/EPA SRF Work Group meeting in Washington, District of Columbia. All comments on the draft outline were considered in developing the first draft of this rule.

In September 1998, the first draft of this rule was sent to the State/EPA SRF Work Group for a 30 day comment period. Work Group members were encouraged to share the draft rule with their colleagues from other States. EPA received comments from 27 parties, 18 of whom were Work Group members. A number of comments that EPA considered significant (because they addressed policy issues or because they were submitted by more than one commentor) were discussed at a Work Group meeting in Seattle, Washington in November 1998. After the meeting, all comments were considered in developing the second draft of this rule.

The second draft of this rule was posted on the Internet on April 12, 1999, for a 45 day public comment period to give all interested parties an opportunity to comment. National stakeholder organizations, the State/EPA SRF Work Group, and State DWSRF managers were notified by EPA when the rule was posted. EPA received comments from 32 parties representing State government agencies, national trade organizations, and national State government organizations. All comments were considered in developing this interim final rule.

VII. Major Matters in This Rule

This interim final rule includes several modifications or additions to the DWSRF Program Final Guidelines based on policies that have evolved as the DWSRF program has been implemented. These modifications or additions to the Final Guidelines provide additional flexibility to States in implementing their programs. The policies released after the DWSRF Program Final Guidelines went through rounds of comment and revisions in memoranda, guidance documents, or were published in the **Federal Register** for public comment. The requirements in these policies are reflected in this interim final rule.

A. Withholdings of Funds (40 CFR 35.3515 (b)(1)(i) Through (b)(1)(iii))

In order to avoid a withholding of DWSRF program funds, each State is required to: (1) Ensure that new community water systems and new nontransient, noncommunity water systems demonstrate adequate technical, managerial, and financial capacity; (2) develop and implement a strategy to assist existing systems in acquiring and maintaining capacity; and (3) adopt and implement a program for certifying operators of community and nontransient, noncommunity water systems.

EPA published the Draft Guidance on Implementing the Capacity Development Provisions of the SDWA Amendments for public comment in February 1998 for a 60 day comment period and published Final Guidance (EPA–816–R–98–006) in July 1998. The Final Guidance established national policy regarding the implementation of capacity development related provisions of the SDWA including how EPA would assess State capacity development programs for purposes of making withholding decisions.

This interim final rule reflects the requirements in sections 1420(a) and 1452(a)(1)(G)(i) of the SDWA that EPA withhold 20 percent of a State's allotment unless the State has the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operations after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

EPA made the determination in the Final Guidance on Implementing the Capacity Development Provisions that, for fiscal year 1999 allotments only, States would receive 100 percent of their allotments if they had the necessary basis of authority (statutory authority or other means) and were in the process of a scheduled administrative rulemaking, or were otherwise developing implementing authorities with a realistic schedule and expectation to have fully functional programs as of October 1, 1999. States failing to meet this requirement at the time of their capitalization grant awards would have 20 percent of their allotments "held back." This 20 percent holdback of fiscal year 1999 allotments would become a permanent withholding for any State that could not demonstrate by September 30, 1999, that it would have a fully functional program in place on October 1, 1999.

EPA also made the determination in the Final Guidance on Implementing the Capacity Development Provisions that, for fiscal year 2000 allotments and beyond, withholdings would be based on an assessment of the status of the State program as of October 1 of the fiscal year for which the funds were allotted. This interim final rule only reflects the withholding provisions in the Final Guidance for fiscal year 2000 allotments and beyond.

This interim final rule reflects the requirements in sections 1420(c)(1) and 1452(a)(1)(G)(i) of the SDWA that EPA withhold funds from any State unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial capacity. The amount of a State's allotment that will be withheld is 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for each subsequent fiscal year. EPA made the determination in the Final Guidance on Implementing the Capacity Development Provisions that withholdings would be based on an assessment of the status of the State strategy as of October 1 of the fiscal year for which the funds were allotted. This interim final rule reflects the withholding provisions in the Final Guidance.

EPA published the Public Review Draft Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems in the **Federal Register** (63 FR 15084) for public comment on March 27, 1998, and the Final Guidelines in the **Federal**

Register (64 FR 5916) on February 5, 1999. This interim final rule reflects the requirements in sections 1419(b) and 1452(a)(1)(G)(ii) of the SDWA that, beginning on February 5, 2001 (two years after the Operator Certification Final Guidelines were published), EPA will withhold 20 percent of a State's allotment unless the State has adopted and is implementing a program for certifying operators of community and nontransient, noncommunity water systems that meets the requirements of section 1419 of the SDWA.

This interim final rule also states that the determination for withholdings will be based on an assessment of the status of the State program for each fiscal year. After seeking comment, EPA will finalize the specific process for reviewing and making withholding determinations for operator certification program submittals and publish it in the **Federal Register**. This process will be included as part of the Operator Certification Final Guidelines in Section III (Program Submittal Process), Subsection A (Submittal Schedule and Withholding Process), which is currently reserved in these Final Guidelines.

B. Use of Examples of Projects Eligible for Assistance From the Fund (40 CFR 35.3520(b))

During development of this interim final rule, several commentors expressed concern that the use of examples of projects that are eligible for assistance from the Fund could be perceived as exclusionary. Specifically, commentors were concerned that if there is a project that falls under a particular category but does not closely match an example, then it could be construed that the project would be ineligible. The use of examples of eligible projects is not exclusionary. Examples of eligible projects are used simply to clarify the types of projects that fall under a particular project category in order to improve the readability of this interim final rule. For instance, although water meters are not included in this interim final rule as a funding example under the transmission and distribution project category, they are eligible if owned and maintained by a public water system. Questions about the eligibility of specific types of projects are generally handled by EPA on a case by case basis.

C. Eligibility of Creation of New Public Water Systems for Assistance From the Fund (40 CFR 35.3520(b)(2)(vi))

Section 1452(a)(2) of the SDWA authorizes a State to provide assistance from the Fund to a public water system, which is defined in section 1401 of the SDWA as "a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals * * *" Several States expressed concern that this provision could be interpreted to prevent them from providing assistance to an entity (*e.g.*, homeowners' association, township) that has a public health problem and is not currently a public water system, but which would become a Federally regulated public water system upon construction of a piped system.

In response to State concerns, EPA proposed a policy on the eligibility of providing assistance from the Fund to create a public water system. This policy was published in the **Federal Register** (63 FR 32208) on June 12, 1998, for a 30 day comment period. EPA also held a stakeholder meeting to discuss the policy. After consideration of comments, a final policy was published in the **Federal Register** (63 FR 59299) on November 3, 1998. The final policy allows for assistance to be provided for the creation of a Federally regulated community water system to address an existing public health problem caused by unsafe drinking water provided by individual wells or surface water sources. This policy also applies to situations where a new regional community water system is created by consolidating several existing systems that have technical, financial, or managerial difficulties.

A proposed project may only receive assistance if the following conditions are met: (1) Upon completion of the project, the entity responsible for the loan must meet the definition of a Federal community water system; (2) the project must be on the State's priority list of projects eligible for funding and must address an actual public health problem with serious risks; (3) the project must be limited in scope to the specific geographic area affected by contamination; (4) the project can only be sized to accommodate a reasonable amount of growth expected over the life of the facility—growth cannot be a substantial portion of the project; (5) the project must meet the same technical, financial, and managerial capacity requirements that the SDWA requires of all DWSRF program assistance recipients; and (6) the project must be a cost-effective solution to the public health problem.

Condition (1) is specifically included in § 35.3520(a)(2). The statement in condition (2) that "the project must be on the State's priority list of projects eligible for funding," the statement in condition (4) that "the project can only be sized to accommodate a reasonable amount of growth expected over the life of the facility," and condition (5) are not specifically included in § 35.3520 (b)(2)(vi) of this interim final rule because the provisions in these conditions are addressed in other sections of the rule (§ 35.3555(c)(2), § 35.3520(e)(5), and § 35.3520(d)(2), respectively) as general requirements that all projects must meet to be eligible for assistance.

The latter part of condition (2) stating that a project "must address an actual public health problem with serious risks" and condition (6) are specifically included in § 35.3520 (b)(2)(vi). Condition (3) is clarified in § 35.3520(b)(2)(vi) by indicating that projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Condition (3) is also clarified in § 35.3520(b)(2)(vi) by indicating that projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. The latter part of condition (4) stating that "growth cannot be a substantial portion of the project" is specifically included in § 35.3520 (b)(2)(vi) of this interim final rule as an additional test that projects must meet to be eligible for assistance. As noted earlier, a general requirement for an applicant to receive DWSRF program funding is that a project must be sized only to accommodate a reasonable amount of growth expected over the life of the facility. However, if a substantial portion of a project to create a new system involves funding capacity for future populations anticipated by reasonable growth projections, then the project is not eligible. The purpose of conditions (3) and (4) is to focus the use of funds from the DWSRF program on solving existing public health problems rather than financing new development.

D. Ineligibility of Dams, Reservoirs, Water Rights, and Future Population Growth for Assistance From the Fund (40 CFR 35.3520(e)(1) Through (e)(3) and (e)(5))

During development of the DWSRF Program Final Guidelines and this interim final rule, many comments were received on EPA's decision to make the construction and rehabilitation of dams and reservoirs and the purchase of water rights ineligible for assistance from the Fund. In making the decision to restrict

these types of projects and activities from funding, EPA considered the intent of Congress in passing the SDWA Amendments and, in particular, the required criteria of section 1452(a)(2) that financial assistance under the DWSRF program "* * * may be used by a public water system only for expenditures * * * of a type or category which the Administrator has determined * * * will facilitate compliance with the national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of the Act."

EPA also considered the required criteria of section 1452(b)(3)(A) of the SDWA to focus limited dollars on projects needed to address the most serious risk to human health, to ensure that the nation's drinking water is safe through compliance with the national primary drinking water regulations, and to assist those systems with the greatest economic need. Examples of such projects include installation of filtration facilities to help systems meet the Surface Water Treatment Rule, treatment technologies to meet SDWA regulated contaminants, and consolidation of systems that fail to maintain adequate technical, financial, and managerial capacity.

EPA believes that the foremost purpose of the construction and rehabilitation of dams and reservoirs and the purchase of water rights is not to improve drinking water quality, but to satisfy demand for drinking water. Providing DWSRF program assistance for these types of projects will not further the objectives Congress set out in the SDWA to the same extent as the other projects eligible under this interim final rule. The position that the construction and rehabilitation of dams and reservoirs and the purchase of water rights are ineligible for assistance from the Fund has been maintained in this interim final rule in § 35.3520 (e)(1) through (e)(3).

The DWSRF Program Final Guidelines and this interim final rule do allow for specific exceptions to the restrictions on using DWSRF program funds for the purchase of water rights and for the construction and rehabilitation of reservoirs. The exception to the restriction on the purchase of water rights is for those rights that are owned by a system that is being purchased through consolidation as part of a capacity development strategy. The exceptions to the restriction on reservoirs are finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.

The DWSRF Program Final Guidelines and this interim final rule limit the use of DWSRF program funds for costs associated with population growth. Section 1452(g)(3) of the SDWA calls on EPA to publish guidance and regulations as may be necessary to carry out the program, including "guidance to avoid the use of funds made available under * * * [section 1452] to finance the expansion of any public water system in anticipation of future population growth." In the legislative history to the SDWA Amendments, Congress explained that EPA is not to implement this provision in a manner that would "* * * preclude the use of SRF financing for facilities with the capacity necessary to meet the objectives of the Safe Drinking Water Act for the population to be served by the facility over its useful life." [H. Conf. Rep. No. 104–741, at 89 (1996).]

It is clear that Congress did not intend for DWSRF program funds to be used to expand drinking water facilities solely in anticipation of future population growth. However, when read together, the language of the SDWA and its legislative history demonstrate that Congress did allow for the use of DWSRF program funds to accommodate a reasonable amount of population growth, which at the time that funding is provided, is expected to occur over the useful life of a facility. This concept is reflected in this interim final rule in § 35.3520(e)(5).

E. Inclusion of Eligible Project Reimbursement Costs Within Loans (40 CFR 35.3525(a)(2))

Several States wanted to have the flexibility to notify eligible privately-owned and publicly-owned systems that they will receive funding from the State, allow those systems to move ahead with construction, and then reimburse the systems for costs incurred in the time period between the notification and execution of the loan agreement. This flexibility would encourage systems to move ahead with construction in order to, for example, take advantage of seasonal construction cycles. This flexibility was particularly needed for privately-owned systems which cannot benefit from the refinancing provisions under section 1452(f)(2) of the SDWA.

In response to State concerns, EPA proposed a policy on the eligibility of reimbursement of incurred costs for approved projects. This policy was published in the **Federal Register** (63 FR 32208) on June 12, 1998, for a 30 day comment period. EPA also held a stakeholder meeting to discuss the policy. After consideration of comments, a final policy was published in the **Federal Register** (64 FR 1802) on January 12, 1999. The final policy stated that a project (for a privately-owned or publicly-owned system) that has been given approval, authorization to proceed, or any similar action by the State prior to initiation of construction would be eligible for reimbursement for construction costs incurred after such State action, provided that the project meets all of the requirements of the DWSRF program and certain criteria. Planning and design and associated pre-project costs are eligible for reimbursement regardless of when the costs were incurred.

A project must be on the State's fundable list, developed using a priority system approved by EPA. However, a project on the comprehensive list which is funded due to the bypass of a project on the fundable list may be eligible for reimbursement of costs incurred after the system has been informed that it will receive funding. Projects receiving reimbursement of incurred costs are also subject to all other DWSRF program requirements applicable to a recipient of funds, including an environmental review which must consider the impacts of the project based on the pre-construction site conditions. Failure to comply with the State's environmental review process cannot be justified on the grounds that costs have already been incurred, environmental impacts have already been caused, or contractual obligations have been made prior to the binding commitment. This interim final rule reflects the provisions in the final policy.

F. Assistance From the Fund for Disadvantaged Communities (40 CFR 35.3525(b))

Section 1452(d) of the SDWA allows a State to provide additional loan subsidies to benefit communities meeting the State's definition of "disadvantaged" or which the State expects to become "disadvantaged" as a result of the project, provided that "* * * for each fiscal year, the total amount of loan subsidies made by a State * * * may not exceed 30 percent of the amount of the capitalization grant received by the State for the year."

This interim final rule clarifies EPA's interpretation of this provision which is that the 30 percent allowance for loan subsidies to disadvantaged communities refers to the amount of loan subsidies (*e.g.*, loans which include principal forgiveness, negative interest rate loans) that can be provided from funds associated with a particular fiscal year's capitalization grant. If a State does not

take the entire 30 percent allowance for loan subsidies associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance from future capitalization grants. For example, if a State indicates that it will use an amount equal to 20 percent of the amount of a capitalization grant for loan subsidies, it cannot reserve the authority to take an additional 10 percent from a future capitalization grant. Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance.

A State must indicate in its Intended Use Plan (IUP) how much of the 30 percent allowance in loan subsidies it plans to make available to disadvantaged communities. To the maximum extent practicable, a State must identify in its IUP the projects that will receive disadvantaged assistance and the respective amounts. A State can then provide loan subsidies for those projects it has identified in its IUP. Because this approach provides a great deal of flexibility to States, EPA believes that there should be constraints on the time period that States can have to commit funds taken for loan subsidies. Therefore, this interim final rule requires States to commit capitalization grant and required State match dollars taken for loan subsidies in accordance with the binding commitment requirements in § 35.3550(e). In addition, States must commit any other dollars (e.g., principal and interest repayments, investment earnings) taken for loan subsidies to projects over the same time period during which binding commitments are made for the capitalization grant from which the allowance was taken.

G. Program Administration: Fees Paid Directly by an Assistance Recipient (40 CFR 35.3530(b)(2))

Many States assess fees on assistance recipients to supplement program administration and other program costs. Examples of these fees include annual loan servicing fees, application fees, loan origination fees, and processing fees. A State may assess fees on an assistance recipient which are paid directly by the recipient (discussed in this section). A State may also assess fees on an assistance recipient and provide the recipient with the funds for the fees as principal in a loan (discussed in the next section).

Fees assessed on assistance recipients, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration, other purposes for which capitalization grants can be awarded under section 1452, State match under sections 1452 (e) and (g)(2) of the SDWA, or combined financial administration of the DWSRF program and CWSRF program Funds where the programs are administered by the same State agency. Allowing fees to be used for combined financial administration enables States which administer the CWSRF and DWSRF programs under the same State agency to combine eligible funds to pay costs for financial oversight of the two programs and thereby ease their administrative burden. The uses of fees assessed on assistance recipients as provided in this interim final rule are consistent with the program income requirements of EPA's general grant regulations at 40 CFR 31.25 and offer a great deal of flexibility to States.

A State must provide information in its IUP on the rates and uses of fees it assesses on assistance recipients and give an accounting of the total dollar amount of funds it is holding in fee accounts. A State must establish in its Biennial Report that it has used the fees only for eligible purposes and must submit information on the total dollar amount in fee accounts as part of the detailed financial reports.

H. Program Administration: Fees Included as Principal in a Loan (40 CFR 35.3530(b)(3))

A State may assess fees on an assistance recipient and, within the principal of a loan, provide the recipient with the funds to pay the fees (*i.e.*, the recipient pays the fees from the proceeds of the loan). EPA determined that such fees are permissible if they enable the State to make a loan which "* * * facilitate(s) compliance with national primary drinking water regulations * * * or otherwise significantly further(s) the health protection objectives" of the SDWA under section 1452(a)(2). However, this interim final rule imposes requirements and limitations on the amount and use of fees included as principal in a loan.

Fees included as principal in a loan, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration or other purposes for which capitalization grants can be awarded under section 1452. Fees included as principal in a loan cannot be used for State match under sections 1452 (e) and (g)(2) of the SDWA or combined financial administration of the DWSRF program and CWSRF program Funds. EPA believes that the authorized uses for fees included as principal in a loan offer a great deal of flexibility to States.

After discussions with the State/EPA SRF Work Group during meetings in July 1998 and November 1998, the following three specific limitations on fees included as principal in a loan were included in this interim final rule: (1) Fees cannot be assessed on a disadvantaged community which receives a loan subsidy provided from the 30 percent allowance in § 35.3525(b)(2); (2) fees cannot cause the effective rate of a loan (which includes both interest and fees) to exceed the market rate; and (3) fees cannot be assessed if the effective rate of a loan could reasonably be expected to cause a system to fail to meet the technical, financial, and managerial capability requirements under section 1452 of the SDWA.

A State must provide information in its IUP on the rates and uses of fees included as principal in a loan and give an accounting of the total dollar amount of funds it is holding in fee accounts. A State must establish in its Biennial Report that it has used the fees only for eligible purposes and must submit information on the total dollar amount in fee accounts as part of the detailed financial reports.

I. Transfer and Cross-Collateralization of Funds Between the DWSRF and CWSRF Programs (40 CFR 35.3530 (c) Through (d))

Section 302 of the SDWA authorizes a State to transfer up to 33 percent of the amount of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from the CWSRF program to the DWSRF program. The Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, 1998 and 1999 (Pub. L. 105–65 and Pub. L. 105–276, respectively) authorize cross-collateralization between the DWSRF and CWSRF programs.

EPA released a draft policy entitled "Transfer/Cross-collateralization Policy for the DWSRF and CWSRF" in June 1998 which specifies the provisions that States must meet in order to gain EPA approval for incorporating transfers and cross-collateralization provisions into their programs. This draft policy was developed with substantial input from EPA Regional staff, the State/EPA SRF

Work Group, and national stakeholder organizations. The final policy will be published in the Federal Register. This interim final rule includes the transfer and cross-collateralization requirements for both the DWSRF program and the CWSRF program.

J. Authorized Set-Aside Activities (40 CFR 35.3535(a)(2))

As in the DWSRF Program Final Guidelines, set-aside funds may not be used for projects or project-related costs eligible for funding from the Fund or for those projects or project-related costs explicitly identified as ineligible for assistance from the Fund in this interim final rule. This requirement was included in this rule because EPA determined that projects that are eligible for loans or other types of assistance from the Fund should not also be eligible to receive assistance from the set-asides in the form of grants which would not be required to be repaid. In addition, set-aside funds should not be used to provide assistance to projects that are explicitly ineligible for assistance from the Fund since it has been determined that these types of projects will not further the objectives Congress set out in the SDWA to the same extent as the projects that are eligible in this interim final rule.

During development of this interim final rule, several commentors indicated that the requirement that set-aside funds may not be used for any projects that are eligible or explicitly ineligible for assistance from the Fund is overly restrictive because there are some eligible project costs that States would want the flexibility to be able to finance from the set-asides. Specifically, commentors noted that they wanted the flexibility to provide grants to small systems for drinking water infrastructure planning and design as part of a State's technical assistance program, with the reasonable expectation that as a result of a grant, a recipient would then be in a position to apply for a loan from the Fund at a future time. In addition, commentors wanted the flexibility to provide grants to systems for projects that would assist in implementation of capacity development provisions.

In response to commentor concerns, this interim final rule allows for two exceptions to the requirement that a State may not use set-aside funds for those projects or project-related costs that are eligible or explicitly ineligible for assistance from the Fund. These exceptions are: (1) A State may use set-aside funds for project planning and design costs for small systems, and (2) a State may use set-aside funds for costs associated with restructuring a system as part of a capacity development strategy. EPA believes that these exceptions provide the flexibility that commentors wanted.

K. State Program Management Set-Aside Match Requirement (40 CFR 35.3535(d)(2))

Section 1452(g)(2) of the SDWA states that "* * * each State may use up to an additional 10 percent of the funds allotted to the State under this section [for specified purposes] * * * if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993." This interim final rule states that "* * * a State is authorized to use the amount of State funds it expended on its PWSS program in fiscal year 1993 (including PWSS match) as a credit toward meeting its match requirement. The value of this credit can be up to, but not greater than, 50 percent of the amount of match that is required. After determining the value of the credit that it is eligible to receive, a State must provide the additional funds necessary to meet the remainder of the match requirement. The source of these additional funds can be State funds (excluding PWSS match) or documented in-kind services."

During development of this interim final rule, commentors had questions about how the match for the State program management set-aside is specifically calculated. Suggestions were made to include a specific example of how to calculate the match requirement in this interim final rule. Rather than include a lengthy example within the text of this rule, EPA worked to make the language describing the match for the set-aside more clear than it had been in the DWSRF Program Final Guidelines. The Final Guidelines, which can still serve as a resource for States, does include a lengthy example that States may refer to if they have any questions.

Commentors also suggested that a list of the specific types of in-kind services that are eligible for a State to use to meet the remainder of the match requirement should be included in this interim final rule. EPA determined that listing all of the eligible types of in-kind services in this interim final rule would be unnecessarily limiting and that in-kind services are sufficiently addressed in the DWSRF Program Final Guidelines and specific questions can be handled by EPA on a case by case basis.

L. Reserving Set-Aside Funds (40 CFR 35.3540(d))

The DWSRF Program Final Guidelines allowed States to "bank" (*i.e.*, reserve) certain set-aside funds and/or authority that it could not use in the current year for use in future years to give States flexibility in implementing set-aside activities. Several early capitalization grant applications indicated that States were reserving a high percentage of set-aside funds with the intention of using only a small percentage in the short-term and leaving the remaining funds as undrawn reserves. Because EPA was concerned that reserved set-aside funds would sit idle while needed infrastructure projects went unfunded, a proposed policy was developed to describe how set-aside funds should be managed in the DWSRF program. The proposal was distributed to EPA Regional staff, States, and the State/EPA SRF Work Group in February 1998. After several rounds of review and comment, an interim final policy entitled "Management of Set-asides for the DWSRF Program" was released and became effective on March 15, 1999.

The interim final policy allowed a State to reserve set-aside funds from a capitalization grant and expend them over a period of time, provided that the State identifies the amount of funds reserved in the IUP and describes the use of the funds in workplans approved by EPA. With the exception of the local assistance and other State programs set-aside authorized under section 1452(k) of the SDWA, a State may also reserve the authority to take from future capitalization grant awards those set-aside funds that it has not included in workplans. The State must identify in its IUP the amount of authority reserved from a capitalization grant for future use.

States can submit annual or multi-year workplans in accordance with schedules identified by EPA Regional staff to describe how funds will be used. The length of workplans must be less than four years, unless a longer term is approved by EPA, and must be updated if the State significantly changes planned activities or budgets. This interim final rule reflects the provisions in the interim final policy.

M. State Match Requirement (40 CFR 35.3550(g))

This interim final rule reflects the requirement in section 1452(e) of the SDWA that a State deposit into the Fund an amount from State monies that equals at least 20 percent of each capitalization grant payment. However,

this interim final rule does not include the provision in section 1452(e) which allowed States to defer their matching requirement for fiscal year 1997 appropriations. Specifically, for grant payments made to States from funds appropriated in fiscal year 1997, States were authorized to defer deposit of their matching amount to no later than September 30, 1999. This flexibility was provided to those States that needed additional time to secure State funding for the required matching amount. States were required to identify the source of the matching funds in their capitalization grant applications and to agree to provide the State match for grant payments already received from fiscal year 1997 appropriations by September 30, 1999. In addition, after September 30, 1999, States could not draw Federal dollars from the EPA Automated Clearing House (ACH) for projects until the deferred State match had been expended and the States reached proportionality with previously drawn Federal dollars.

N. Preparation of an IUP (40 CFR 35.3555(a))

This interim final rule reflects the requirement in the DWSRF Program Final Guidelines that a State prepare an annual IUP as long as the Fund or set-aside accounts remain in operation. During development of this interim final rule, several commentors objected to this requirement because they believe that the SDWA only ties the preparation of an IUP to the award of a capitalization grant and is silent on what is required of States after capitalization ends. Section 1452(b)(1) of the SDWA states that "after providing for public review and comment, each State that has entered into a capitalization grant agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State." Thus, a State that has entered into an agreement to receive a capitalization grant under section 1452 must prepare an IUP each year, regardless of whether it receives a capitalization grant in that year.

In addition, section 1452(c) requires that "the fund corpus shall be available in perpetuity for providing financial assistance under this section." This provision shows that Congress intended for State DWSRF programs to continue after capitalization ends. The primary means by which the public and EPA can ensure that this provision and the intent of Congress is satisfied is through review of the IUP. Therefore, the language in this interim final rule has not been changed as a result of the comments received.

O. Meaningful Public Review of the IUP (40 CFR 35.3555(b))

Section 1452(b)(1) of the SDWA requires a State to provide for public comment and review during the development of its IUP. Any State process that solicits input from a variety of interested parties, allows adequate time for the public to comment, and allows time for the State to address major comments meets the SDWA's public participation requirements for the IUP. This interim final rule reflects the requirement in the DWSRF Program Final Guidelines that a State seek "meaningful public review and comment" during the development of its IUP. During development of this interim final rule, comments were received that EPA should define the term "meaningful public review."

This interim final rule does not include specific requirements as to what constitutes "meaningful public review" of the IUP. Due to the variation among States, no single approach will work under all conditions. However, at a minimum, States should make an effort to include interested parties, such as environmental and public health groups, that extend beyond those on existing mailing lists when seeking public review. In addition, as a guide, States should strive to achieve the following objectives when seeking public review: (1) Assure that the public has the opportunity to understand official programs and proposed actions, and that the State fully considers the public's concerns; (2) assure that the State does not make any significant decision on any activity under section 1452 without consulting interested and affected segments of the public; (3) assure that the State action is as responsive as possible to public concerns; (4) encourage public involvement in implementing section 1452; (5) keep the public informed about significant issues and proposed project or program changes as they arise; (6) foster a spirit of openness and mutual trust between the State and the public; and (7) use all feasible means to create opportunities for public participation, and to stimulate and support public participation.

P. Priority System Requirements in the IUP (40 CFR 35.3555(c)(1))

This interim final rule requires that the IUP "* * * include a priority system for ranking individual projects for funding that provides sufficient detail for the public and EPA to readily understand the criteria used for ranking." During development of this interim final rule, several commentors indicated that EPA should not require a State to include its priority system in the IUP, but instead should allow a State to provide a summary of the priority system or a reference to where the priority system can be found. Commentors gave the following primary reasons for not wanting to include the priority system in the IUP: (1) Many of the priority systems are complex and are not readily understood by the public, especially if the systems are in regulation; (2) including the priority system within the text of the IUP simply elongates and clutters the IUP and discourages people from reading it; and (3) including the priority system gives the impression to the public that the State is seeking additional comments when, in actuality, the priority system has already undergone public review and comment.

The language in this interim final rule has not been changed as a result of the comments received because EPA believes that the public should be given every opportunity to understand the basis for ranking projects. EPA believes that the language in this rule does not preclude a State that has a very complicated priority system which is difficult for the public to understand from developing a detailed summary that describes the criteria used to assess the priority for ranking individual projects, including points. In addition, if a State does not want to include the priority system within the text of the IUP, it can include the system as an attachment that is distributed with the IUP. Finally, a State can indicate in the IUP that the priority system was developed with public comment and therefore it is not taking additional comments, but the State is providing the information so that the public can understand the basis for ranking of projects.

Q. Cash Draw Rules (40 CFR 35.3560 and 35.3565)

This interim final rule details the specific requirements for how States access capitalization grant funds through the EPA ACH, which is a Federal funds transfer system to electronically deposit funds into a grant recipient's bank account. In § 35.3560 of this interim final rule, the general cash draw rules are provided for how States access capitalization grant funds through the ACH, including the formula for calculating the proportionate Federal share. In § 35.3565 of this interim final rule, the specific cash draw rules are provided for how States access capitalization grant funds through the

ACH for each of the authorized types of assistance from the Fund.

EPA published a Guide to Using EPA's Automated Clearing House for the DWSRF Program (EPA–832–B98–003) in September 1998 to explain, in more detail, the process States must use to access capitalization grant funds through the ACH. This Guide provides easy to understand examples, using sample capitalization grant amounts, of how to calculate the proportionate Federal share and how to calculate the cash draw ratios for each of the types of assistance from the Fund.

In the future, the EPA ACH will be replaced by a new Federal funds transfer system called the Automated Standard Application for Payments (ASAP). This change to ASAP will not have any effect on the cash draw rules in this interim final rule.

R. Audit Requirements (40 CFR 35.3570(b))

The DWSRF Program Final Guidelines, published in February 1997 after release of the Single Audit Act Amendments of 1996, reflected EPA's previous audit strategy which was to require annual independent audits of the DWSRF program—a policy that was consistent with requirements in the CWSRF program. However, provisions of the Single Audit Act Amendments of 1996 necessitated changes to this strategy. Specifically, since independent audits were not required by the Single Audit Act Amendments of 1996, EPA revised its audit strategy to request voluntary agreements from States to conduct these audits. The strategy was based on EPA's belief that independent audits of financial statements, beyond the Single Audit Act, are important to ensure the financial integrity of the DWSRF program. On October 16, 1997, a memorandum entitled "Clean Water and Drinking Water State Revolving Fund Financial Audit Strategy" was released after discussions among representatives from EPA Headquarters and Regional Offices, the Office of the Inspector General, the Office of Management and Budget, and many States.

Under the revised audit strategy for the DWSRF program, a State must comply with the provisions of the Single Audit Act Amendments of 1996 and Office of Management and Budget's Circular A–133 and Compliance Supplement. States may agree to implement, on an annual basis, independent audits and document these agreements in the Operating Agreements or in other parts of the capitalization grant agreements. These independent audits are expected to be conducted according to Generally Accepted Government Auditing Standards (GAGAS) and provide an auditor's opinion on the DWSRF program financial statements, reports on internal controls, and reports on compliance with section 1452 of the Act, applicable regulations, and EPA's general grant requirements. Based on a determination by EPA, those States that do not conduct independent audits will be periodically audited by the EPA Office of Inspector General.

For those States that conduct independent audits, the audit report should be completed and submitted to EPA within one year of the end of the fiscal year adopted by the State for the DWSRF program. Specifically, copies of the audit report should be submitted to the EPA DWSRF Regional Coordinator and to the Western Audit Division, Divisional Inspector General for Audit. This interim final rule reflects the provisions in the revised audit strategy. Exclusive of requirements associated with the Single Audit Act, a State must include detailed financial statements presenting the financial status of the DWSRF program in its Biennial Report.

S. Application of Federal Cross-Cutting Authorities (Cross-Cutters) (40 CFR 35.3575)

There are a number of Federal laws, executive orders, and government-wide policies that apply by their own terms to projects and activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. These Federal cross-cutting authorities (*i.e.*, cross-cutters) include Federal laws such as the Endangered Species Act (ESA) and the Age Discrimination Act (ADA). A few cross-cutters apply by their own terms only to the State as the grant recipient because the authorities explicitly limit their application to grant recipients.

Federal cross-cutter requirements, which include environmental review requirements, must be applied to projects and activities receiving Federal dollars. Because each State's Fund consists of an indistinguishable combination of Federal, State, and recycled monies, EPA determined that Federal cross-cutter requirements must be applied to projects identified by the State whose cumulative funding is equivalent to the amount of the capitalization grant (*i.e.*, equivalency projects). The cross-cutter discussion in the DWSRF Program Final Guidelines resulted in some confusion among States as to how cross-cutter requirements must be applied to set-aside activities.

Due to requirements related to the deposit of funds in the DWSRF program, almost all of the funds used to conduct set-aside activities are Federal dollars. Therefore, Federal cross-cutter requirements must be applied to all set-aside activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts. However, in the case of most set-aside activities, the cross-cutter requirements will not be implicated because of the nature of the activities conducted under the set-asides. For example, if a State makes an expenditure from its set-aside accounts for the salaries of State employees, the requirements of cross-cutters such as the ESA and the National Historic Preservation Act (NHPA) are not implicated.

This interim final rule reflects EPA's determination that the requirements of Federal cross-cutters must be applied to all activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts, to the extent that cross-cutter requirements are applicable. The requirements of Federal cross-cutters must also be applied to all projects for which a State provides assistance in amounts up to the amount of the capitalization grant deposited into the Fund. Federal anti-discrimination law requirements apply to all programs, projects, and activities for which a State provides assistance from the DWSRF program. Minority and women's business enterprise (MBE/WBE) procurement requirements and environmental review requirements (discussed in the following sections) apply to specific types of DWSRF program actions and are treated separately in this interim final rule.

Generally, a State that elects to impose the requirements of the Federal cross-cutters to projects and activities in amounts that are more than the amount of the capitalization grant may only credit this excess to meet future cross-cutter requirements on assistance provided from the respective accounts. For example, if a State takes $2 million from a $10 million capitalization grant for set-aside activities and then proceeds to apply cross-cutter requirements to set-aside activities in an amount equal to $2.5 million (because the State has contributed $500,000 of its own funds to these activities), the State can only credit the excess $500,000 to meet future cross-cutter requirements for set-aside activities. A State cannot use this excess $500,000 to meet future cross-cutter requirements for projects funded from the Fund.

This interim final rule provides clarification with respect to the role of States in ensuring compliance with Federal cross-cutters. Although EPA is ultimately responsible for ensuring compliance with Federal cross-cutters, primarily through DWSRF program oversight and approval, States review the projects and activities being funded under the program. Therefore, this interim final rule indicates that States are responsible for ensuring that assistance recipients comply with the cross-cutter requirements, including initiating any required consultations with State or Federal agencies responsible for individual cross-cutters. For example, before a Federally-assisted action that may affect an endangered species can begin, the Department of Interior's Fish and Wildlife Service must be consulted pursuant to section 7 of the ESA. States must notify EPA when it is necessary for the Agency to resolve any issues that may arise during consultations with other Federal agencies.

A list of the Federal cross-cutters that apply to the DWSRF program is provided in Appendix A of the DWSRF Program Final Guidelines. This list is subject to change.

T. Minority and Women's Business Enterprise (MBE/WBE) Procurement Requirements (40 CFR 35.3575(d))

The requirements for the participation of MBE/WBEs apply to assistance recipients under EPA's fiscal year 1993 Appropriations Act (Public Law 102–389), which states that "the Administrator of the Environmental Protection Agency shall, hereafter, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts in support of authorized programs, including grants, loans and contracts * * * be made available to business concerns * * * owned or controlled by socially and economically disadvantaged individuals * * * [including] women."

This interim final rule requires that a State negotiate a fair share goal with the Regional Administrator (RA) of EPA for the participation of MBE/WBEs. The fair share goal must be based on the availability of MBE/WBEs in the relevant market area (*i.e.*, availability of MBE/WBEs State-wide or availability of MBE/WBEs in particular geographic areas of the State) to do the work under the DWSRF program. Each capitalization grant agreement must describe how a State will comply with MBE/WBE procurement requirements, including how it will apply the fair share goal to assistance recipients to which the requirements apply and how it will assure that assistance recipients take the following six affirmative steps described in the general grant regulations at 40 CFR 31.36(e): (1) Include small, minority and women's businesses on solicitation lists; (2) assure that small, minority and women's businesses are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women's businesses; (4) establish delivery schedules, when the requirements of the work permits, which will encourage participation by small, minority and women's businesses; (5) use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and (6) require the contractor to take the affirmative steps in (1) through (5) if the contractor awards subagreements.

Currently, the application of MBE/WBE requirements in the DWSRF program is described in a memorandum released on November 5, 1998, entitled "Application of Minority and Women-Owned Business Enterprise Requirements in the Clean Water and Drinking Water State Revolving Fund Programs" and in a memorandum released on December 29, 1998, entitled "FY 1999 MBE/WBE Terms and Conditions." These memoranda were released in response to the Supreme Court decision in *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200 (1995), which was a case arising out of the Department of Transportation. As a result of that decision, it became necessary to make changes in the application of MBE/WBE procurement requirements in all EPA grant programs.

These memoranda indicate that the fair share goal may be based either on the availability of MBE/WBEs State-wide or on the availability of MBE/WBEs in particular geographic areas of the State to do the work for procurement. The fair share goal applies to all procurement activities undertaken with assistance from the Fund or from set-aside accounts up to the amount of the capitalization grant (*i.e.*, "identified procurement activities"). The State may elect to apply the fair share goal in place for the year in which the DWSRF program assistance is awarded to the recipient or for the year in which the procurement action occurs. The method a State elects to use to apply the fair share goal must be described in the Operating Agreement or in another part of the capitalization grant agreement. For identified procurement activities, the State must assure that the recipients of funding for these activities take the six affirmative steps as described in 40 CFR 31.36(e). A State must submit a MBE/WBE Utilization Report (EPA Form 5700–52A) to EPA within 30 days after the end of each Federal fiscal quarter.

EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) is in the process of a rulemaking to address the use of MBE/WBE firms in procurements under EPA financial assistance agreements and will consolidate these requirements in a new 40 CFR part 33. This rulemaking process will address the application of MBE/WBE requirements in the DWSRF program, including reporting requirements. When the OSDBU's rule is promulgated, the MBE/WBE requirements in that rule will supercede the requirements in this interim final rule.

U. Environmental Review Requirements (40 CFR 35.3580)

As stated previously, cross-cutter requirements, which include environmental review requirements, must be applied to all set-aside activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts. In § 35.3580 (c), it is indicated that a State may elect to apply the procedures at 40 CFR part 6 and related subparts, which set out the requirements for EPA actions which are subject to the National Environmental Policy Act (NEPA), or apply its own "NEPA-like" State environmental review process (SERP) for conducting environmental reviews, provided that specific elements are met. In implementing environmental review requirements applicable to the DWSRF program, EPA has taken an approach similar to that of the CWSRF program whereby States must develop and implement environmental provisions for projects and activities receiving assistance.

EPA recognizes that there are types of activities conducted under set-asides that are not likely to have a potential environmental impact. Therefore, in this interim final rule, EPA has identified types of set-aside activities for which a State is not required to conduct environmental reviews because they are not likely to have a potential environmental impact. A State does not need to include provisions in its SERP for excluding these types of activities.

EPA's Office of Federal Activities (OFA) is currently revising 40 CFR part 6. However, this effort to revise 40 CFR part 6 is not expected to affect the environmental review requirement provisions in this interim final rule or

the SERPs that are currently approved and in effect in the States, since State environmental review procedures, although they may be based on 40 CFR part 6, are implemented under State statutes and authorities.

VIII. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Reviews

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's interim final rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute. This rule pertains to grants which the APA expressly exempts from notice and comment rulemaking requirements. 5 U.S.C. 553(a)(2). Moreover, the Safe Drinking Water Act, as amended, also does not require EPA to issue a notice of proposed rulemaking prior to issuing this rule.

Although this interim final rule is not subject to the RFA, EPA nonetheless has assessed the potential of this rule to adversely impact small entities subject to the rule. The Agency has determined that this rule does not adversely impact small entities because small entities are not subject to this rule.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0185. OMB approved the information collection requirements contained in the February 1997 DWSRF Program Final Guidelines. This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request was submitted to the OMB for review. OMB has approved ICR 2040–0185 for use with this rule and authorized the inclusion of the OMB control number in 40 CFR part 9.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definition of "Federal intergovernmental mandate" duties that arise from conditions of Federal assistance. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to this rule, therefore it will not significantly or uniquely affect them. Many small governments will actually benefit through receipt of assistance from the DWSRF program. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

F. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 7, 2000.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This interim final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This interim final rule mainly codifies and makes minor changes to the DWSRF Program Final Guidelines under which the program has been operating since 1997. Apart from the minor changes, this rule adds new provisions that increase State flexibility, so it does not have federalism implications as that phrase is defined for purposes of Executive Order 13132. Further, because this is a rule that primarily conditions the use of Federal assistance, it does not impose substantial direct compliance costs on the States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State governments in developing this rule. Specifically, members of a State/EPA SRF Work Group comprised of State DWSRF managers, State CWSRF managers, and managers of State financial agencies were given the opportunity to review and comment on drafts of this rule. In addition, stakeholders, including representatives from State government agencies and State government organizations, were given an opportunity to comment on a draft of the rule which was posted on the Internet for public comment. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in section VII. of this preamble.

H. Executive Order 13045: Children's Health

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This interim final rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. This rule only applies to each of the 50 States and the Commonwealth of Puerto Rico that receive capitalization grants and are authorized to establish a Fund under section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j–12. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure

that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

No action from this rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 35

Environmental protection, Drinking water, Grant programs—environmental protection, Public health, Safe drinking water act, State revolving funds, Water supply.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, EPA is proposing to amend Title 40, chapter 1 of the Code of Federal Regulations to read as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended under the indicated heading by adding new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
Drinking Water State Revolving Funds.	
* * * * * * *	
35.3540 (c)	2040–0185
35.3545 (a)–(f)	2040–0185
35.3550 (a)–(p)	2040–0185
35.3555 (a)–(d)	2040–0185
35.3560 (a), (d)–(g)	2040–0185
35.3565 (a)–(f)	2040–0185
35.3570 (a)–(d)	2040–0185
35.3575 (a)–(e)	2040–0185
35.3580 (a)–(h)	2040–0185
35.3585 (b)–(c)	2040–0185
* * * * * * *	

PART 35—STATE AND LOCAL ASSISTANCE

3. Part 35 is amended by adding Subpart L to read as follows:

Subpart L—Drinking Water State Revolving Funds

Sec.

35.3500 Purpose, policy, and applicability.
35.3505 Definitions.
35.3510 Establishment of the DWSRF program.
35.3515 Allotment and withholdings of funds.
35.3520 Systems, projects, and project-related costs eligible for assistance from the Fund.
35.3525 Authorized types of assistance from the Fund.
35.3530 Limitations on uses of the Fund.
35.3535 Authorized set-aside activities.
35.3540 Requirements for funding set-aside activities.
35.3545 Capitalization grant agreement.
35.3550 Specific capitalization grant agreement requirements.
35.3555 Intended Use Plan (IUP).
35.3560 General payment and cash draw rules.
35.3565 Specific cash draw rules for authorized types of assistance from the Fund.
35.3570 Reports and audits.
35.3575 Application of Federal cross-cutting authorities (cross-cutters).
35.3580 Environmental review requirements.
35.3585 Compliance assurance procedures.

Appendix A to Subpart L—Criteria for evaluating a State's proposed NEPA-like process.

Subpart L—Drinking Water State Revolving Funds

Authority: Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j–12.

§ 35.3500 Purpose, policy, and applicability.

(a) This subpart codifies and implements requirements for the national Drinking Water State Revolving Fund program under section 1452 of the Safe Drinking Water Act, as amended in 1996. It applies to States (*i.e.*, each of the 50 States and the Commonwealth of Puerto Rico) which receive capitalization grants and are authorized to establish a Fund under section 1452. The purpose of this subpart is to ensure that each State's program is designed and operated in such a manner as to further the public health protection objectives of the Safe Drinking Water Act, promote the efficient use of all funds, and ensure that the Fund corpus is available in perpetuity for providing financial assistance to public water systems.

(b) This subpart supplements section 1452 of the Safe Drinking Water Act by codifying statutory and program requirements that were published in the Final Guidelines for the Drinking Water State Revolving Fund program (EPA 816–R–97–005) signed by the Assistant Administrator for Water on February 28,

1997, as well as in subsequent policies. This subpart also supplements general grant regulations at 40 CFR part 31 which contain administrative requirements that apply to governmental recipients of Environmental Protection Agency (EPA) grants and subgrants. EPA will not impose additional major program requirements without providing an opportunity for affected parties to comment.

(c) EPA intends to implement the national Drinking Water State Revolving Fund program in a manner that preserves for States a high degree of flexibility to operate their programs in accordance with each State's unique needs and circumstances. To the maximum extent practicable, EPA also intends to administer the financial aspects of the national Drinking Water State Revolving Fund program in a manner that is consistent with the policies and procedures of the national Clean Water State Revolving Fund program established under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381–1387.

§ 35.3505 Definitions.

The following definitions apply to terms used in this subpart:

Act. The Safe Drinking Water Act (Public Law 93–523), as amended in 1996 (Public Law 104–182). 42 U.S.C. 300f *et seq.*

Administrator. The Administrator of the EPA or an authorized representative.

Allotment. Amount available to a State from funds appropriated by Congress to carry out section 1452 of the Act.

Automated Clearing House (ACH). A Federal payment mechanism that transfers cash to recipients of Federal assistance using electronic transfers from the Treasury through the Federal Reserve System.

Binding commitment. A legal obligation by the State to an assistance recipient that defines the terms for assistance from the Fund.

Capitalization grant. An award by EPA of funds to a State for purposes of capitalizing that State's Fund and for other purposes authorized in section 1452 of the Act.

Cash draw. The transfer of cash from the Treasury through the ACH to the DWSRF program. Upon a State's request for a cash draw, the Treasury will transfer funds to the DWSRF program account established in the State's bank.

CWSRF program. Each State's clean water state revolving fund program authorized under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381–1387.

Disadvantaged community. The entire service area of a public water system that meets affordability criteria established by the State after public review and comment.

Disbursement. The transfer of cash from the DWSRF program account established in the State's bank to an assistance recipient.

DWSRF program. Each State's drinking water state revolving fund program authorized under section 1452 of the Act, as amended, 42 U.S.C. 300j–12. This term includes the Fund and set-asides.

Fund. A revolving account into which a State deposits DWSRF program funds (*e.g.*, capitalization grants, State match, repayments, net bond proceeds, interest earnings, *etc.*) for the purposes of providing loans and other types of assistance for drinking water infrastructure projects.

Intended Use Plan (IUP). A document prepared annually by a State, after public review and comment, which identifies intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

Net bond proceeds. The funds raised from the sale of the bonds minus issuance costs (*e.g.*, the underwriting discount, underwriter's legal counsel fees, bond counsel fee, and other costs incidental to the bond issuance).

Payment. An action taken by EPA to increase the amount of funds available for cash draw through the ACH. A payment is not a transfer of cash to the State, but an authorization by EPA to make capitalization grant funds available for transfer to a State after the State submits a cash draw request.

Public water system. A system as defined in 40 CFR 141.2. A public water system is either a "community water system" or a "noncommunity water system" as defined in 40 CFR 141.2.

Regional Administrator (RA). The Administrator of the appropriate Regional Office of the EPA or an authorized representative of the Regional Administrator.

Set-asides. State and local activities identified in sections 1452(g)(2) and (k) of the Act for which a portion of a capitalization grant may be used.

Small system. A public water system that regularly serves 10,000 or fewer persons.

State. Each of the 50 States and the Commonwealth of Puerto Rico, which receive capitalization grants and are authorized to establish a Fund under section 1452 of the Act.

§ 35.3510 Establishment of the DWSRF program.

(a) *General.* To be eligible to receive a capitalization grant, a State must establish a Fund and comply with the other requirements of section 1452 of the Act and this subpart.

(b) *Administration.* Capitalization grants must be awarded to an agency of the State that is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart. The State agency that is awarded the capitalization grant (*i.e.*, grantee) is accountable for the use of the funds provided in the capitalization grant agreement under general grant regulations at 40 CFR part 31.

(1) The authority to establish assistance priorities and to carry out oversight and related activities of the DWSRF program, other than financial administration of the Fund, must reside with the State agency having primary responsibility for administration of the State's public water system supervision (PWSS) program (*i.e.*, primacy) after consultation with other appropriate State agencies.

(2) If a State is eligible to receive a capitalization grant but does not have primacy, the Governor will determine which State agency will have the authority to establish priorities for financial assistance from the Fund. Evidence of the Governor's determination must be included with the capitalization grant application.

(3) If more than one State agency participates in implementation of the DWSRF program, the roles and responsibilities of each agency must be described in a Memorandum of Understanding or interagency agreement.

(c) *Combined financial administration.* A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State if otherwise not prohibited by State law under which the Fund was established. A State must assure that all monies in the Fund, including capitalization grants, State match, net bond proceeds, loan repayments, and interest are separately accounted for and used solely for the purposes specified in section 1452 of the Act and this subpart. Funds available from the administration and technical assistance set-aside may not be used for combined financial administration of any other revolving fund.

(d) *Use of funds.* (1) Assistance provided to a public water system from the DWSRF program may be used only for expenditures that will facilitate compliance with national primary drinking water regulations applicable under section 1412 or otherwise significantly further the public health protection objectives of the Act.

(2) The inability or failure of any public water system to receive assistance from the DWSRF program, or any delay in obtaining assistance, does not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of section 1452 of the Act.

§ 35.3515 Allotment and withholdings of funds.

(a) *Allotment.* (1) *General.* Each State will receive a minimum of one percent of the funds available for allotment to all of the States.

(2) *Allotment formula.* Funds available to States from fiscal year 1998 appropriations and subsequent appropriations are allotted according to a formula that reflects the infrastructure needs of public water systems identified in the most recent Needs Survey submitted in accordance with section 1452(h) of the Act.

(3) *Period of availability.* Funds are available for obligation to States during the fiscal year in which they are authorized and during the following fiscal year. The amount of any allotment not obligated to a State by EPA at the end of this period of availability will be reallotted to eligible States based on the formula originally used to allot these funds, except that the Administrator may reserve up to 10 percent of any funds available for reallotment to provide additional assistance to Indian Tribes. In order to be eligible to receive reallotted funds, a State must have been obligated all funds it is eligible to receive from EPA during the period of availability.

(4) *Loss of primacy.* The following provisions do not apply to any State that did not have primacy as of August 6, 1996:

(i) A State may not receive a capitalization grant from allotments that have been made if the State had primacy and subsequently loses primacy.

(ii) For a State that loses primacy, the Administrator may reserve funds from the State's allotment for use by EPA to administer primacy in that State. The balance of the funds not used by EPA to administer primacy will be reallotted to the other States.

(iii) A State will be eligible for future allotments from funds appropriated in the next fiscal year after primacy is restored.

(b) *Withholdings.*—(1) *General.* EPA will withhold funds under each of the following provisions:

(i) *Capacity development authority.* EPA will withhold 20 percent of a State's allotment from any State that has not obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operations after October 1, 1999, demonstrate technical, financial, and managerial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations. The determination of withholding will be based on an assessment of the status of the State program as of October 1 of the fiscal year for which the funds were allotted.

(ii) *Capacity development strategy.* EPA will withhold funds from any State unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial capacity. The amount of a State's allotment that will be withheld is 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for each subsequent fiscal year. The determination of withholding will be based on an assessment of the status of the State strategy as of October 1 of the fiscal year for which the funds were allotted. Decisions of a State regarding any particular public water system as part of a capacity development strategy are not subject to review by EPA and may not serve as a basis for withholding funds.

(iii) *Operator certification program.* Beginning on February 5, 2001, EPA will withhold 20 percent of a State's allotment unless the State has adopted and is implementing a program for certifying operators of community and nontransient, noncommunity public water systems that meets the requirements of section 1419 of the Act. The determination of withholding will be based on an assessment of the status of the State program for each fiscal year.

(2) *Maximum withholdings.* The maximum amount of funds that will be withheld if a State fails to meet the requirements of both the capacity development authority and the capacity development strategy provisions is 20 percent of the allotment in any fiscal year. The maximum amount of funds that will be withheld if a State fails to meet the requirements of the operator certification program provision and either the capacity development authority provision or the capacity development strategy provision is 40 percent of the allotment in any fiscal year.

(3) *Reallotment of withheld funds.* The Administrator will reallot withheld funds to eligible States based on the formula originally used to allot these funds. In order to be eligible to receive reallotted funds under the withholding provisions, a State must have been obligated all funds it is eligible to receive from EPA during the period of availability. A State that has funds withheld under any one of the withholding provisions in paragraphs (b)(1)(i) through (b)(1)(iii) of this section is not eligible to receive reallotted funds made available by that provision.

(4) *Termination of withholdings.* A withholding will cease to apply to funds appropriated in the next fiscal year after a State complies with the specific provision under which funds were withheld.

§ 35.3520 Systems, projects, and project-related costs eligible for assistance from the Fund.

(a) *Eligible systems.* Assistance from the Fund may only be provided to:

(1) Privately-owned and publicly-owned community water systems and non-profit noncommunity water systems.

(2) Projects that will result in the creation of a community water system in accordance with paragraph (b)(2)(vi) of this section.

(3) Systems referred to in section 1401(4)(B) of the Act for the purposes of point of entry or central treatment under section 1401(4)(B)(i)(III).

(b) *Eligible projects.*—(1) *General.* Projects that address present or prevent future violations of health-based drinking water standards are eligible for assistance. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are eligible for assistance if they are needed to maintain compliance or further the public health protection objectives of the Act.

(2) Only the following project categories are eligible for assistance from the Fund:

(i) *Treatment.* Examples of projects include installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the Act.

(ii) *Transmission and distribution.* Examples of projects include

installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source.* Examples of projects include rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage.* Examples of projects include installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation.* Eligible projects are those needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems.* Eligible projects are those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. A project must be a cost-effective solution to addressing the problem. A State must ensure that the applicant has given sufficient public notice to potentially affected parties and has considered alternative solutions to addressing the problem. Capacity to serve future population growth cannot be a substantial portion of a project.

(c) *Eligible project-related costs.* In addition to costs needed for the project itself, the following project-related costs are eligible for assistance from the Fund:

(1) Costs for planning and design and associated pre-project costs. A State that makes a loan for only planning and design is not required to provide assistance for completion of the project.

(2) Costs for the acquisition of land only if needed for the purposes of locating eligible project components. The land must be acquired from a willing seller.

(3) Costs for restructuring systems that are in significant noncompliance with any national primary drinking water regulation or variance or that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the systems are ineligible under paragraph (d)(2) or (d)(3) of this section.

(d) *Ineligible systems.* Assistance from the Fund may not be provided to:

(1) Federally-owned public water systems and for-profit noncommunity water systems.

(2) Systems that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the assistance will ensure compliance and the owners or operators of the systems agree to undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

(3) Systems that are in significant noncompliance with any national primary drinking water regulation or variance, unless:

(i) The purpose of the assistance is to address the cause of the significant noncompliance and will ensure that the systems return to compliance; or

(ii) The purpose of the assistance is unrelated to the cause of the significant noncompliance and the systems are on enforcement schedules (for maximum contaminant level and treatment technique violations) or have compliance plans (for monitoring and reporting violations) to return to compliance.

(e) *Ineligible projects.* The following projects are ineligible for assistance from the Fund:

(1) Dams or rehabilitation of dams.

(2) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy.

(3) Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.

(4) Projects needed primarily for fire protection.

(5) Projects needed primarily to serve future population growth. Projects must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the facility.

(6) Projects that have received assistance from the national set-aside for Indian Tribes and Alaska Native Villages under section 1452(i) of the Act.

(f) *Ineligible project-related costs.* The following project-related costs are ineligible for assistance from the Fund:

(1) Laboratory fees for routine compliance monitoring.

(2) Operation and maintenance expenses.

§ 35.3525 Authorized types of assistance from the Fund.

A State may only provide the following types of assistance from the Fund:

(a) *Loans.* (1) A State may make loans at or below the market interest rate, including zero interest rate loans. Loans may be awarded only if:

(i) An assistance recipient begins annual repayment of principal and interest no later than one year after project completion. A project is completed when operations are initiated or are capable of being initiated.

(ii) A recipient completes loan repayment no later than 20 years after project completion except as provided in paragraph (b)(3) of this section.

(iii) A recipient establishes a dedicated source of revenue for repayment of the loan which is consistent with local ordinances and State laws or, for privately-owned systems, a recipient demonstrates that there is adequate security to assure repayment of the loan.

(2) A State may include eligible project reimbursement costs within loans if:

(i) A system received approval, authorization to proceed, or any similar action by a State prior to initiation of project construction and the construction costs were incurred after such State action; and

(ii) The project met all of the requirements of this subpart and was on the State's fundable list, developed using a priority system approved by EPA. A project on the comprehensive list which is funded when a project on the fundable list is bypassed using the State's bypass procedures in accordance with § 35.3555(c)(2)(ii) may be eligible for reimbursement of costs incurred after the system has been informed that it will receive funding.

(3) A State may include eligible planning and design and other associated pre-project costs within loans regardless of when the costs were incurred.

(4) All payments of principal and interest on each loan must be credited to the Fund.

(5) Of the total amount available for assistance from the Fund each year, a State must make at least 15 percent available solely for providing loan assistance to small systems, to the extent such funds can be obligated for eligible projects. A State that provides assistance in an amount that is greater

than 15 percent of the available funds in one year may credit the excess toward the 15 percent requirement in future years.

(6) A State may provide incremental assistance for a project (e.g., for a particularly large, expensive project) over a period of years.

(b) *Assistance to disadvantaged communities.* (1) A State may provide loan subsidies (e.g., loans which include principal forgiveness, negative interest rate loans) to benefit communities meeting the State's definition of "disadvantaged" or which the State expects to become "disadvantaged" as a result of the project. Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance described in paragraph (b)(2) of this section.

(2) A State may take an amount equal to no more than 30 percent of the amount of a particular fiscal year's capitalization grant to provide loan subsidies to disadvantaged communities. If a State does not take the entire 30 percent allowance associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance of the allowance from future capitalization grants. In addition, a State must:

(i) Indicate in the Intended Use Plan (IUP) the amount of the allowance it is taking for loan subsidies;

(ii) Commit capitalization grant and required State match dollars taken for loan subsidies in accordance with the binding commitment requirements in § 35.3550(e); and

(iii) Commit any other dollars (e.g., principal and interest repayments, investment earnings) taken for loan subsidies to projects over the same time period during which binding commitments are made for the capitalization grant from which the allowance was taken.

(3) A State may extend the term for a loan to a disadvantaged community, provided that a recipient completes loan repayment no later than 30 years after project completion and the term of the loan does not exceed the expected design life of the project.

(c) *Refinance or purchase of local debt obligations.*—(1) *General.* A State may buy or refinance local debt obligations of municipal, intermunicipal, or interstate agencies where the debt obligation was incurred and the project was initiated after July 1, 1993. Projects must have met the eligibility requirements under section 1452 of the Act and this subpart to be eligible for refinancing. Privately-owned systems are not eligible for refinancing.

(2) *Multi-purpose debt.* If the original debt for a project was in the form of a multi-purpose bond incurred for purposes in addition to eligible purposes under section 1452 of the Act and this subpart, a State may provide refinancing only for the eligible portion of the debt, not the entire debt.

(3) *Refinancing and State match.* If a State has credited repayments of loans made under a pre-existing State loan program as part of its State match, the State cannot also refinance the projects under the DWSRF program. If the State has already counted certain projects toward its State match which it now wants to refinance, the State must provide replacement funds for the amounts previously credited as match.

(d) *Purchase insurance or guarantee for local debt obligations.* A State may provide assistance by purchasing insurance or guaranteeing a local debt obligation to improve credit market access or to reduce interest rates. Assistance of this type is limited to local debt obligations that are undertaken to finance projects eligible for assistance under section 1452 of the Act and this subpart.

(e) *Revenue or security for Fund debt obligations (leveraging).* A State may use Fund assets as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State in order to increase the total amount of funds available for providing assistance. The net proceeds of the sale of the bonds must be deposited into the Fund and must be used for providing loans and other assistance to finance projects eligible under section 1452 of the Act and this subpart.

§ 35.3530 Limitations on uses of the Fund.

(a) *Earn interest.* A State may earn interest on monies deposited into the Fund prior to disbursement of assistance (*e.g.*, on reserve accounts used as security or guarantees). Monies deposited must not remain in the Fund primarily to earn interest. Amounts not required for current obligation or expenditure must be invested in interest bearing obligations.

(b) *Program administration.* A State may not use monies deposited into the Fund to cover its program administration costs. In addition to using the funds available from the administration and technical assistance set-aside under § 35.3535(b), a State may use the following methods to cover its program administration and other program costs.

(1) A State may use the proceeds of bonds guaranteed by the Fund to absorb expenses incurred issuing the bonds. The net proceeds of the bonds must be deposited into the Fund.

(2) A State may assess fees on an assistance recipient which are paid directly by the recipient and are not included as principal in a loan as allowed in paragraph (b)(3) of this section. These fees, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration, other purposes for which capitalization grants can be awarded under section 1452, State match under sections 1452(e) and (g)(2) of the Act, or combined financial administration of the DWSRF program and CWSRF program Funds where the programs are administered by the same State agency.

(3) A State may assess fees on an assistance recipient which are included as principal in a loan. These fees, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration or other purposes for which capitalization grants can be awarded under section 1452. Fees included as principal in a loan cannot be used for State match under sections 1452(e) and (g)(2) of the Act or combined financial administration of the DWSRF program and CWSRF program Funds. Additionally, fees included as principal in a loan:

(i) Cannot be assessed on a disadvantaged community which receives a loan subsidy provided from the 30 percent allowance in § 35.3525(b)(2);

(ii) Cannot cause the effective rate of a loan (which includes both interest and fees) to exceed the market rate; and

(iii) Cannot be assessed if the effective rate of a loan could reasonably be expected to cause a system to fail to meet the technical, financial, and managerial capability requirements under section 1452 of the Act.

(c) *Transfers.* The Governor of a State, or a State official acting pursuant to authorization from the Governor, may transfer an amount equal to 33 percent of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from

the CWSRF program to the DWSRF program. The following conditions apply:

(1) When a State initially decides to transfer funds:

(i) The State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification for the DWSRF program and the CWSRF program that State law permits the State to transfer funds; and

(ii) The Operating Agreements or other parts of the capitalization grant agreements for the DWSRF program and the CWSRF program must be amended to detail the method the State will use to transfer funds.

(2) A State may not use the transfer provision to acquire State match for either program or use transferred funds to secure or repay State match bonds.

(3) Funds may be transferred after one year has elapsed since a State established its Fund (*i.e.*, one year after the State has received its first DWSRF program capitalization grant for projects), and may include an amount equal to the allowance associated with its fiscal year 1997 capitalization grant.

(4) A State may reserve the authority to transfer funds in future years.

(5) Funds may be transferred on a net basis between the DWSRF program and CWSRF program, provided that the 33 percent transfer allowance associated with DWSRF program capitalization grants received is not exceeded.

(6) Funds may not be transferred or reserved after September 30, 2001.

(d) *Cross-collateralization.* A State may combine the Fund assets of the DWSRF program and CWSRF program as security for bond issues to enhance the lending capacity of one or both of the programs. The following conditions apply:

(1) When a State initially decides to cross-collateralize:

(i) The State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification for the DWSRF program and the CWSRF program that State law permits the State to cross-collateralize the Fund assets of the DWSRF program and CWSRF program; and

(ii) The Operating Agreements or other parts of the capitalization grant agreements for the DWSRF program and the CWSRF program must be amended to detail the method the State will use to cross-collateralize.

(2) The proceeds generated by the issuance of bonds must be allocated to the purposes of the DWSRF program and CWSRF program in the same proportion as the assets from the Funds that are used as security for the bonds. A State must demonstrate at the time of bond issuance that the proportionality requirements have been or will be met. If a default should occur, and the Fund assets from one program are used for debt service in the other program to cure the default, the security would no longer need to be proportional.

(3) A State may not combine the Fund assets of the DWSRF program and the CWSRF program as security for bond issues to acquire State match for either program or use the assets of one program to secure match bonds for the other program.

(4) The debt service reserves for the DWSRF program and the CWSRF program must be accounted for separately.

(5) Loan repayments must be made to the respective program from which the loan was made.

§ 35.3535 Authorized set-aside activities.

(a) *General.* (1) A State may use a portion of its capitalization grants for the set-aside categories described in paragraphs (b) through (e) of this section, provided that the amount of set-aside funding does not exceed the ceilings specified in this section.

(2) A State may not use set-aside funds for those projects or project-related costs listed in § 35.3520(b), (c), (e), and (f), with the following exceptions:

(i) Project planning and design costs for small systems; and

(ii) Costs for restructuring a system as part of a capacity development strategy.

(b) *Administration and technical assistance.* A State may use up to 4 percent of its allotment to cover the reasonable costs of administering the DWSRF program and to provide technical assistance to public water systems.

(c) *Small systems technical assistance.* A State may use up to 2 percent of its allotment to provide technical assistance to small systems. A State may use these funds for activities such as supporting a State technical assistance team or contracting with outside organizations or other parties to provide technical assistance to small systems.

(d) *State program management.* A State may use up to 10 percent of its allotment for State program management activities.

(1) This set-aside may only be used for the following activities:

(i) To administer the State PWSS program;

(ii) To administer or provide technical assistance through source water protection programs (including a Class V Underground Injection Control Program), except for enforcement actions;

(iii) To develop and implement a capacity development strategy; and

(iv) To develop and implement an operator certification program.

(2) Match requirement. A State must provide a dollar for dollar match for expenditures made under this set-aside.

(i) The match must be provided at the time of the capitalization grant award or in the same year that funds for this set-aside are expected to be expended in accordance with a workplan approved by EPA.

(ii) A State is authorized to use the amount of State funds it expended on its PWSS program in fiscal year 1993 (including PWSS match) as a credit toward meeting its match requirement. The value of this credit can be up to, but not greater than, 50 percent of the amount of match that is required. After determining the value of the credit that it is eligible to receive, a State must provide the additional funds necessary to meet the remainder of the match requirement. The source of these additional funds can be State funds (excluding PWSS match) or documented in-kind services.

(e) *Local assistance and other State programs.* A State may use up to 15 percent of its capitalization grant to assist in the development and implementation of local drinking water protection initiatives and other State programs. No more than 10 percent of the capitalization grant amount can be used for any one authorized activity.

(1) This set-aside may only be used for the following activities:

(i) A State may provide assistance only in the form of loans to community water systems and non-profit noncommunity water systems to acquire land or conservation easements from willing sellers or grantors. A system must demonstrate how the purchase of land or easements will protect the source water of the system from contamination and ensure compliance with national primary drinking water regulations. A State must develop a priority setting process for determining what parcels of land or easements to purchase or use an established priority setting process that meets the same goals. A State must seek public review and comment on its priority setting process and must identify the systems that received loans and include a description of the specific parcels of land or easements purchased in the Biennial Report.

(ii) A State may provide assistance only in the form of loans to community water systems to assist in implementing voluntary, incentive-based source water protection measures in areas delineated under a source water assessment

program under section 1453 of the Act and for source water petitions under section 1454 of the Act. A State must develop a list of systems that may receive loans, giving priority to activities that facilitate compliance with national primary drinking water regulations applicable to the systems or otherwise significantly further the health protection objectives of the Act. A State must seek public review and comment on its priority setting process and its list of systems that may receive loans.

(iii) A State may make expenditures to establish and implement wellhead protection programs under section 1428 of the Act.

(iv) A State may provide assistance, including technical and financial assistance, to public water systems as part of a capacity development strategy under section 1420(c) of the Act.

(v) A State may make expenditures from its fiscal year 1997 capitalization grant to delineate and assess source water protection areas for public water systems under section 1453 of the Act. Assessments include the identification of potential sources of contamination within the delineated areas. These assessment activities are limited to the identification of contaminants regulated under the Act or unregulated contaminants that a State determines may pose a threat to public health. A State must obligate funds within 4 years of receiving its fiscal year 1997 capitalization grant.

(2) A State may make loans under this set-aside only if an assistance recipient begins annual repayment of principal and interest no later than one year after completion of the activity and completes loan repayment no later than 20 years after completion of the activity. A State must deposit repayments into the Fund or into a separate account dedicated for this set-aside. The separate account is subject to the same management oversight requirements as the Fund. Amounts deposited into the Fund are subject to the authorized uses of the Fund.

§ 35.3540 Requirements for funding set-aside activities.

(a) *General.* If a State makes a grant or enters into a cooperative agreement with an assistance recipient to conduct set-aside activities, the recipient must comply with general grant regulations at 40 CFR part 30 or part 31, as appropriate.

(b) *Set-aside accounts.* A State must maintain separate and identifiable accounts for the portion of its capitalization grant to be used for set-aside activities.

(c) *Workplans.*—(1) *General.* A State must submit detailed annual or multi-year workplans to EPA for approval describing how set-aside funds will be expended. For the administration and technical assistance set-aside under § 35.3535(b), the State is only required to submit a workplan describing how it will expend funds needed to provide technical assistance to public water systems. In order to ensure that funds are expended efficiently, multi-year workplan terms negotiated with EPA must be less than four years, unless a longer term is approved by EPA.

(2) *Submitting workplans.* A State must submit workplans in accordance with a schedule negotiated with EPA. If a schedule has not been negotiated, the State must submit workplans no later than 90 days after the capitalization grant award. If a State does not meet the deadline for submitting its workplans, the set-aside funds that were required to be described in the workplans must be transferred to the Fund to be used for projects.

(3) *Content.* Workplans must at a minimum include:

(i) The annual funding amount in dollars and as a percentage of the State allotment or capitalization grant;

(ii) The projected number of work years needed for implementing each set-aside activity;

(iii) The goals and objectives, outputs, and deliverables for each set-aside activity;

(iv) A schedule for completing activities under each set-aside activity;

(v) Identification and responsibilities of the agencies involved in implementing each set-aside activity, including activities proposed to be conducted by a third party; and

(vi) A description of the evaluation process to assess the success of work funded under each set-aside activity.

(4) *Amending workplans.* If a State changes the scope of work from what was originally described in its workplans, it must amend the workplans and submit them to EPA for approval.

(d) *Reserving set-aside funds.* (1) A State may reserve set-aside funds from a capitalization grant and expend them over a period of time, provided that the State identifies the amount of funds reserved in the IUP and describes the use of the funds in workplans approved by EPA. For the administration and technical assistance set-aside under § 35.3535(b), the State is only required to submit a workplan to reserve funds needed to provide technical assistance to public water systems.

(2) With the exception of the local assistance and other State programs set-aside under § 35.3535(e), a State may reserve the authority to take from future capitalization grants those set-aside funds that it has not included in workplans. The State must identify in the IUP the amount of authority reserved from a capitalization grant for future use.

(e) *Fund and set-aside account transfers.* (1) A State may transfer funds among set-aside categories described in § 35.3535(b) through (e) and among activities within these categories, provided that set-aside ceilings are not exceeded.

(2) A State may transfer funds between the Fund and set-asides, provided that set-aside ceilings are not exceeded. Set-aside funds may be transferred at any time to the Fund. If a State has taken payment for the set-aside funds to be transferred to the Fund, it must make binding commitments for these funds within one year of the transfer. Monies intended for the Fund may be transferred to set-asides only if the State has not yet taken a payment that includes those funds to be transferred in accordance with the payment schedule negotiated with EPA.

(3) The capitalization grant agreement must be amended prior to any transfer among the set-aside categories or any transfer between the Fund and set-asides.

§ 35.3545 Capitalization grant agreement.

(a) *General.* A State must submit a capitalization grant application to EPA in order to receive a capitalization grant award. Approval of an application results in EPA and the State entering into a capitalization grant agreement which is the principal instrument by which the State commits to manage the DWSRF program in accordance with the requirements of section 1452 of the Act and this subpart.

(b) *Content.* In addition to the items listed in paragraphs (c) through (f) of this section, the capitalization grant agreement must contain or incorporate by reference the Application for Federal Assistance (EPA Form 424) and other related forms, IUP, negotiated payment schedule, State environmental review process (SERP), demonstrations of the specific capitalization grant agreement requirements listed in § 35.3550, and other documentation required by the Regional Administrator (RA). The capitalization grant agreement must also define the types of performance measures, reporting requirements, and oversight responsibilities that will be required to determine compliance with section 1452 of the Act.

(c) *Operating agreement.* At the option of a State, the framework and

procedures of the DWSRF program that are not expected to change annually may be described in an Operating Agreement. The Operating Agreement may be amended if the State negotiates the changes with EPA.

(d) *Attorney General certification.* With the capitalization grant application, the State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification that:

(1) The authority establishing the DWSRF program and the powers it confers are consistent with State law;

(2) The State may legally bind itself to the proposed terms of the capitalization grant agreement; and

(3) An agency of the State is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart.

(e) *Roles and responsibilities of agencies.* If more than one State agency participates in the implementation of the DWSRF program, the State must describe the roles and responsibilities of each agency in the capitalization grant application and include a Memorandum of Understanding or interagency agreement describing these roles and responsibilities.

(f) *Process for evaluating capability and compliance.* A State must include in the capitalization grant application a description of the following:

(1) The process it will use to assess the technical, financial, and managerial capability of all systems requesting assistance to ensure that the systems are in compliance with the requirements of the Act.

(2) If a State provides assistance to systems that lack technical, financial, and managerial capability, the process it will use to ensure that the systems undertake feasible and appropriate changes in operations to comply with the requirements of the Act over the long-term.

(3) If a State provides assistance to systems in significant noncompliance with any national primary drinking water regulation or variance, the process it will use to ensure that the systems return to compliance.

§ 35.3550 Specific capitalization grant agreement requirements.

(a) *General.* A State must agree to comply with this subpart, the general grant regulations at 40 CFR part 31, and specific conditions of the grant. A State must also agree to the following requirements and, in some cases, provide documentation as part of the capitalization grant application.

(b) *Comply with State statutes and regulations.* A State must agree to comply with all State statutes and regulations that are applicable to DWSRF program funds including capitalization grant funds, State match, interest earnings, net bond proceeds, repayments, and funds used for set-aside activities.

(c) *Demonstrate technical capability.* A State must agree to provide documentation demonstrating that it has adequate personnel and resources to establish and manage the DWSRF program.

(d) *Accept payments.* A State must agree to accept capitalization grant payments in accordance with a payment schedule negotiated between EPA and the State.

(e) *Make binding commitments.* A State must agree to enter into binding commitments with assistance recipients to provide assistance from the Fund.

(1) Binding commitments must be made in an amount equal to the amount of each capitalization grant payment and accompanying State match that is deposited into the Fund and must be made within one year after the receipt of each grant payment.

(2) A State may make binding commitments for more than the required amount and credit the excess towards the binding commitment requirements of subsequent grant payments.

(3) If a State is concerned about its ability to comply with the binding commitment requirement, it must notify the RA and propose a revised payment schedule for future grant payments.

(f) *Deposit of funds.* A State must agree to promptly deposit DWSRF program funds into appropriate accounts.

(1) A State must agree to deposit the portion of the capitalization grant to be used for projects into the Fund.

(2) A State must agree to maintain separate and identifiable accounts for the portion of the capitalization grant to be used for set-aside activities.

(3) A State must agree to deposit net bond proceeds, interest earnings, and repayments into the Fund.

(4) A State must agree to deposit any fees, which include interest earned on fees, into the Fund or into separate and identifiable accounts.

(g) *Provide State match.* A State must agree to deposit into the Fund an amount from State monies that equals at least 20 percent of each capitalization grant payment.

(1) A State must identify the source of State match in the capitalization grant application.

(2) A State must deposit the match into the Fund on or before the date that a State receives each payment for the capitalization grant, except when a State chooses to use a letter of credit (LOC) mechanism or similar financial arrangement for the State match. Under this mechanism, payments to this LOC account must be made proportionally on the same schedule as the payments for the capitalization grant. Cash from this State match LOC account must be drawn into the Fund as cash is drawn into the Fund through the Automated Clearing House (ACH).

(3) A State may issue general obligation or revenue bonds to derive the State match. The net proceeds from the bonds issued by a State to derive the match must be deposited into the Fund and the bonds may only be retired using the interest portion of loan repayments and interest earnings of the Fund. Loan principal must not be used to retire State match bonds.

(4) If the State deposited State monies in a dedicated revolving fund after July 1, 1993, and prior to receiving a capitalization grant, the State may credit these monies toward the match requirement if:

(i) The monies were deposited in a separate revolving fund that subsequently became the Fund after receiving a capitalization grant and they were expended in accordance with section 1452 of the Act;

(ii) The monies were deposited in a separate revolving fund that has not received a capitalization grant, they were expended in accordance with section 1452 of the Act, and an amount equal to all repayments of principal and payments of interest from loans will be deposited into the Fund; or

(iii) The monies were deposited in a separate revolving fund and used as a reserve for a leveraged program consistent with section 1452 of the Act and an amount equal to the reserve is transferred to the Fund as the reserve's function is satisfied.

(5) If a State provides a match in excess of the required amount, the excess balance may be credited towards match requirements associated with subsequent capitalization grants.

(h) *Provide match for State program management set-aside.* A State must agree to provide a dollar for dollar match for expenditures made under the State program management set-aside in accordance with § 35.3535(d)(2). This match is separate from the 20 percent State match requirement for the capitalization grant in paragraph (g) of this section and must be identified as an eligible credit, deposited into set-aside

accounts, or documented as in-kind services.

(i) *Use generally accepted accounting principles.* A State must agree to ensure that the State and public water systems receiving assistance will use accounting, audit, and fiscal procedures conforming to Generally Accepted Accounting Principles (GAAP) as promulgated by the Governmental Accounting Standards Board or, in the case of privately-owned systems, the Financial Accounting Standards Board. The accounting system used for the DWSRF program must allow for proper measurement of:

(1) Revenues earned and other receipts, including but not limited to, loan repayments, capitalization grants, interest earnings, State match deposits, and net bond proceeds;

(2) Expenses incurred and other disbursements, including but not limited to, loan disbursements, repayment of bonds, and other expenditures allowed under section 1452 of the Act; and

(3) Assets, liabilities, capital contributions, and retained earnings.

(j) *Conduct audits.* In accordance with § 35.3570(b), a State must agree to comply with the provisions of the Single Audit Act Amendments of 1996. A State may voluntarily agree to conduct annual independent audits.

(k) *Dedicated repayment source.* A State must agree to adopt policies and procedures to assure that assistance recipients have a dedicated source of revenue for repayment of loans, or in the case of privately-owned systems, assure that recipients demonstrate that there is adequate security to assure repayment of loans.

(l) *Efficient expenditure.* A State must agree to commit and expend all funds as efficiently as possible and in an expeditious and timely manner.

(m) *Use funds in accordance with IUP.* A State must agree to use all funds in accordance with an IUP that was prepared after providing for public review and comment.

(n) *Biennial report.* A State must agree to complete and submit a Biennial Report that describes how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreements. The State must submit this report to the RA according to the schedule established in the capitalization grant agreement.

(o) *Comply with cross-cutters.* A State must agree to comply with all applicable Federal cross-cutting authorities.

(p) *Comply with provisions to avoid withholdings.* A State must agree to demonstrate how it is complying with the requirements of capacity development authority, capacity development strategy, and operator certification program provisions in order to avoid withholdings of funds under § 35.3515(b)(1)(i) through (b)(1)(iii).

§ 35.3555 Intended Use Plan (IUP).

(a) *General.* A State must prepare an annual IUP which describes how it intends to use DWSRF program funds to support the overall goals of the DWSRF program and contains the information outlined in paragraph (c) of this section. In those years in which a State submits a capitalization grant application, EPA must receive an IUP prior to the award of the capitalization grant. A State must prepare an annual IUP as long as the Fund or set-aside accounts remain in operation. The IUP must conform to the fiscal year adopted by the State for the DWSRF program (e.g., the State's fiscal year or the Federal fiscal year).

(b) *Public review requirements.* A State must seek meaningful public review and comment during the development of the IUP. A State must include a description of the public review process and an explanation of how it responded to major comments and concerns. If a State prepares separate IUPs (one for Fund monies and one for set-aside monies), the State must seek public review and comment during the development of each IUP.

(c) *Content.* Information in the IUP must be provided in a format and manner that is consistent with the needs of the RA.

(1) *Priority system.* The IUP must include a priority system for ranking individual projects for funding that provides sufficient detail for the public and EPA to readily understand the criteria used for ranking. The priority system must provide, to the maximum extent practicable, that priority for the use of funds will be given to projects that: address the most serious risk to human health; are necessary to ensure compliance with the requirements of the Act (including requirements for filtration); and assist systems most in need, on a per household basis, according to State affordability criteria. A State that does not adhere to the three criteria must demonstrate why it is unable to do so.

(2) *Priority lists of projects.* All projects, with the exception of projects funded on an emergency basis, must be ranked using a State's priority system and go through a public review process prior to receiving assistance.

(i) The IUP must contain a fundable list of projects that are expected to receive assistance from available funds designated for use in the current IUP and a comprehensive list of projects that are expected to receive assistance in the future. The fundable list of projects must include: the name of the public water system; the priority assigned to the project; a description of the project; the expected terms of financial assistance based on the best information available at the time the IUP is developed; and the population of the system's service area at the time of the loan application. The comprehensive list must include, at a minimum, the priority assigned to each project and, to the extent known, the expected funding schedule for each project. A State may combine the fundable and comprehensive lists into one list, provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

(ii) The IUP may include procedures which would allow a State to bypass projects on the fundable list. The procedures must clearly identify the conditions which would allow a project to be bypassed and the method for identifying which projects would receive funding. If a bypass occurs, a State must fund the highest ranked project on the comprehensive list that is ready to proceed. If a State elects to bypass a project for reasons other than readiness to proceed, the State must explain why the project was bypassed in the Biennial Report and during the annual review. To the maximum extent practicable, a State must work with bypassed projects to ensure that they will be prepared to receive funding in future years.

(iii) The IUP may allow for the funding of projects which require immediate attention to protect public health on an emergency basis, provided that a State defines what conditions constitute an emergency and identifies the projects in the Biennial Report and during the annual review.

(iv) The IUP must demonstrate how a State will meet the requirement of providing loan assistance to small systems as described in § 35.3525(a)(5). A State that is unable to comply with this requirement must describe the steps it is taking to ensure that a sufficient number of projects are identified to meet this requirement in future years.

(3) *Distribution of funds.* The IUP must describe the criteria and methods that a State will use to distribute all funds including:

(i) The process and rationale for distribution of funds between the Fund and set-aside accounts;

(ii) The process for selection of systems to receive assistance;

(iii) The rationale for providing different types of assistance and terms, including the method used to determine the market rate and the interest rate;

(iv) The types, rates, and uses of fees assessed on assistance recipients; and

(v) A description of the financial planning process undertaken for the Fund and the impact of funding decisions on the long-term financial health of the Fund.

(4) *Financial status.* The IUP must describe the sources and uses of DWSRF program funds including: the total dollar amount in the Fund; the total dollar amount available for loans, including loans to small systems; the amount of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); the total dollar amount in set-aside accounts, including the amount of funds or authority reserved; and the total dollar amount in fee accounts.

(5) *Short- and long-term goals.* The IUP must describe the short-term and long-term goals it has developed to support the overall goals of the DWSRF program of ensuring public health protection, complying with the Act, ensuring affordable drinking water, and maintaining the long-term financial health of the Fund.

(6) *Set-aside activities.* (i) The IUP must identify the amount of funds a State is electing to use for set-aside activities. A State must also describe how it intends to use these funds, provide a general schedule for their use, and describe the expected accomplishments that will result from their use.

(ii) For loans made in accordance with the local assistance and other State programs set-aside under § 35.3535(e)(1)(i) and (e)(1)(ii), the IUP must, at a minimum, describe the process by which recipients will be selected and how funds will be distributed among them.

(7) *Disadvantaged community assistance.* The IUP must describe how a State's disadvantaged community program will operate including:

(i) The State's definition of what constitutes a disadvantaged community;

(ii) A description of affordability criteria used to determine the amount of disadvantaged assistance;

(iii) The amount and type of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); and

(iv) To the maximum extent practicable, an identification of projects that will receive disadvantaged assistance and the respective amounts.

(8) *Transfer process.* If a State decides to transfer funds between the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The total amount and type of funds being transferred during the period covered by the IUP;

(ii) The total amount of authority being reserved for future transfer, including the authority reserved from previous years; and

(iii) The impact of the transfer on the amount of funds available to finance projects and set-asides and the long-term impact on the Fund.

(9) *Cross-collateralization process.* If a State decides to cross-collateralize Fund assets of the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The type of monies which will be used as security;

(ii) How monies will be used in the event of a default; and

(iii) Whether or not monies used for a default in the other program will be repaid, and if they will not be repaid, what will be the cumulative impact on the Funds.

(d) *Amending the IUP.* The priority lists of projects may be amended during the year under provisions established in the IUP as long as additions or other substantive changes to the lists, except projects funded on an emergency basis, go through a public review process. A State may change the use of funds from what was originally described in the IUP as long as substantive changes go through a public review process.

§ 35.3560 General payment and cash draw rules.

(a) *Payment schedule.* A State will receive each capitalization grant payment in the form of an increase to the ceiling of funds available through the ACH, made in accordance with a payment schedule negotiated between EPA and the State. A payment schedule that is based on a State's projection of binding commitments and use of set-aside funds as stated in the IUP must be included in the capitalization grant agreement. Changes to the payment schedule must be made through an amendment to the grant agreement.

(b) *Timing of payments.* All payments to a State will be made by the earlier of 8 quarters after the capitalization grant is awarded or 12 quarters after funds are allotted to a State.

(c) *Funds available for cash draw.* Cash draws will be available only up to the amount of payments that have been made to a State.

(d) *Estimated cash draw schedule.* On a schedule negotiated with EPA, a State must provide EPA with a quarterly schedule of estimated cash draws for the Federal fiscal year. The State must notify EPA when significant changes from the estimated cash draw schedule are anticipated. This schedule must be developed to conform with the procedures applicable to cash draws and must have sufficient detail to allow EPA and the State to jointly develop and maintain a forecast of cash draws.

(e) *Cash draw for set-asides.* A State may draw cash through the ACH for the full amount of costs incurred for set-aside expenditures based on EPA approved workplans. A State may draw cash in advance to ensure funds are available to meet State payroll expenses. However, cash should be drawn no sooner than necessary to meet immediate payroll disbursement needs.

(f) *Cash draw for Fund.* A State may draw cash through the ACH for the proportionate Federal share of eligible incurred project costs. A State need not have disbursed funds for incurred project costs prior to drawing cash. A State may not draw cash for a particular project until the State has executed a loan agreement for that project.

(g) *Calculation of proportionate Federal share*—(1) *General.* The proportionate Federal share is equal to the Federal monies intended for the Fund (capitalization grant minus set-asides) divided by the total amount of monies intended for the Fund (capitalization grant minus set-asides plus required State match). A State may calculate the proportionate Federal share on a rolling average basis or on a grant by grant basis.

(2) *State overmatch.* (i) The proportionate Federal share does not change if a State is providing funds in excess of the required State match.

(ii) Federal monies may be drawn at a rate that is greater than that determined by the proportionate Federal share calculation when a State is given credit toward its match amount as a result of funding projects in prior years (but after July 1, 1993), or for crediting excess match in the Fund in prior years and disbursing these amounts prior to drawing cash. If the entire amount of a State's required match has been disbursed in advance, the proportionate Federal share of cash draws would be 100 percent.

§ 35.3565 Specific cash draw rules for authorized types of assistance from the Fund.

A State may draw cash for the authorized types of assistance from the Fund described in § 35.3525 according to the following rules:

(a) *Loans*—(1) *Eligible project costs.* A State may draw cash based on the proportionate Federal share of incurred project costs. In the case of incurred planning and design and associated pre-project costs, cash may be drawn immediately upon execution of the loan agreement.

(2) *Eligible project reimbursement costs.* A State may draw cash to reimburse assistance recipients for eligible project costs at a rate no greater than equal amounts over the maximum number of quarters that capitalization grant payments are made. A State may immediately draw cash for up to 5 percent of each fiscal year's capitalization grant or 2 million dollars, whichever is greater, to reimburse project costs.

(b) *Refinance or purchase of local debt obligations*—(1) *Completed projects.* A State may draw cash up to the portion of the capitalization grant committed to the refinancing or purchase of local debt obligations of municipal, intermunicipal, or interstate agencies at a rate no greater than equal amounts over the maximum number of quarters that capitalization grant payments are made. A State may immediately draw cash for up to 5 percent of each fiscal year's capitalization grant or 2 million dollars, whichever is greater, to refinance or purchase local debt.

(2) *Portions of projects not completed.* A State may draw cash based on the proportionate Federal share of incurred project costs according to the rule for loans in paragraph (a)(1) of this section.

(3) *Purchase of incremental disbursement bonds from local governments.* A State may draw cash based on a schedule that coincides with the rate at which costs are expected to be incurred for the project.

(c) *Purchase insurance for local debt obligations.* A State may draw cash for the proportionate Federal share of insurance premiums as they are due.

(d) *Guarantee for local debt obligations*—(1) *In the event of default.* In the event of imminent default in debt service payments on a guaranteed local debt, a State may draw cash immediately up to the total amount of the capitalization grant that is dedicated for the guarantee. If a balance remains after the default is satisfied, the State must negotiate a revised cash draw schedule for the remaining amount dedicated for the guarantee.

(2) *In the absence of default.* A State may draw cash up to the amount of the capitalization grant dedicated for the guarantee based on actual incurred project costs. The amount of the cash draw would be based on the proportionate Federal share of incurred project costs multiplied by the ratio of the guarantee reserve to the amount guaranteed.

(e) *Revenue or security for Fund debt obligations (leveraging)*—(1) *In the event of default.* In the event of imminent default in debt service payments on a secured debt, a State may draw cash immediately up to the total amount of the capitalization grant that is dedicated for the security. If a balance remains after the default is satisfied, the State must negotiate a revised schedule for the remaining amount dedicated for the security.

(2) *In the absence of default.* A State may draw cash up to the amount of the capitalization grant dedicated for the security using either of the following methods:

(i) *All projects method.* A State may draw cash based on the incurred project costs multiplied by the ratio of the Federal portion of the reserve to the total reserve multiplied by the ratio of the total reserve to the net bond proceeds.

(ii) *Group of projects method.* A State may identify a group of projects whose cost is approximately equal to the total of that portion of the capitalization grant and the State match dedicated as a security. The State may then draw cash based on the incurred costs of the selected projects only, multiplied by the ratio of the Federal portion of the security to the entire security.

(3) *Aggressive leveraging.* Where the cash draw rules in paragraphs (e)(1) and (e)(2) of this section would significantly frustrate a State's leveraged program, EPA may permit an exception to these cash draw rules and provide for a more accelerated cash draw. A State must demonstrate that:

(i) There are eligible projects ready to proceed in the immediate future with enough costs to justify the amount of the secured bond issue;

(ii) The absence of cash on an accelerated basis will substantially delay these projects;

(iii) The Fund will provide substantially more assistance if accelerated cash draws are allowed; and

(iv) The long-term viability of the State program to meet drinking water needs will be protected.

(f) *Loans to privately-owned systems.* In cases where State monies cannot be used to provide loans to privately-owned systems, a State may draw 100 percent Federal monies for costs incurred by privately-owned systems. When Federal monies are drawn for incurred costs, the State must deposit or have previously deposited into the Fund the required match associated with the amount of cash drawn. Every 18 months, the State must submit documentation showing that it has met its proportionate Federal share within the last 6 months. If a State is unable to document that it has met its proportionate Federal share, State match deposited into the Fund must be expended before Federal monies are drawn for costs incurred by publicly-owned systems until the State meets its proportionate Federal share.

§ 35.3570 Reports and audits.

(a) *Biennial report*—(1) *General.* A State must submit a Biennial Report to the RA describing how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreements, including the most recent audit of the Fund and the entire State allotment. The State must submit this report to the RA according to the schedule established in the capitalization grant agreement. Information provided in the Biennial Report on other EPA programs eligible for assistance from the DWSRF program may not replace the reporting requirements for those other programs.

(2) *Financial report.* As part of the Biennial Report, a State must present the financial status of the DWSRF program, including the total dollar amount in fee accounts. This report must, at a minimum, include the financial statements and footnotes required under GAAP to present fairly the financial condition and results of operations.

(3) *Matters to establish in the biennial report.* A State must establish in the Biennial Report that it has complied with section 1452 of the Act and this subpart. In particular, the Biennial Report must demonstrate that a State has:

(i) Managed the DWSRF program in a fiscally prudent manner and adopted policies and processes which promote the long-term financial health of the Fund;

(ii) Deposited its match (cash or State LOC) into the Fund in accordance with the requirements of § 35.3550(g);

(iii) Made binding commitments with assistance recipients to provide assistance from the Fund consistent with the requirements of § 35.3550(e);

(iv) Funded only the highest priority projects listed in the IUP and

documented why priority projects were bypassed in accordance with § 35.3555(c)(2);

(v) Provided assistance only to eligible public water systems and for eligible projects and project-related costs under § 35.3520;

(vi) Provided assistance only for eligible set-aside activities under § 35.3535 and conducted activities consistent with workplans and other requirements of § 35.3535 and § 35.3540;

(vii) Provided loan assistance to small systems consistent with the requirements of § 35.3525(a)(5) and § 35.3555(c)(2)(iv);

(viii) Provided assistance to disadvantaged communities consistent with the requirements of § 35.3525(b) and § 35.3555(c)(7);

(ix) Used fees for eligible purposes under § 35.3530(b)(2) and (b)(3) and assessed fees included as principal in a loan in accordance with the limitations in § 35.3530(b)(3)(i) through (b)(3)(iii);

(x) Adopted and implemented procedures consistent with the requirements of § 35.3530(c) and § 35.3555(c)(8) if funds were transferred between the DWSRF program and CWSRF program;

(xi) Adopted and implemented procedures consistent with the requirements of § 35.3530(d) and § 35.3555(c)(9) if Fund assets of the DWSRF program and CWSRF program were cross-collateralized;

(xii) Reviewed all DWSRF program funded projects and activities for compliance with Federal cross-cutting authorities that apply to the State as a grant recipient and those which apply to assistance recipients in accordance with § 35.3575;

(xiii) Reviewed all DWSRF program funded projects and activities in accordance with approved State environmental review procedures under § 35.3580; and

(xiv) Complied with general grant regulations at 40 CFR part 31 and specific conditions of the grant.

(4) *Joint report.* A State which jointly administers the DWSRF program and the CWSRF program may submit a report that addresses both programs. However, programmatic and financial information for each program must be identified separately.

(b) *Audit.* (1) A State must comply with the provisions of the Single Audit Act Amendments of 1996, 31 U.S.C. 7501–7, and Office of Management and Budget's Circular A–133 and Compliance Supplement.

(2) A State may voluntarily agree to conduct annual independent audits which provide an auditor's opinion on the DWSRF program financial statements, reports on internal controls, and reports on compliance with section 1452 of the Act, applicable regulations, and general grant requirements. The agreement to conduct voluntary independent audits should be documented in the Operating Agreement or in another part of the capitalization grant agreement.

(3) Those States that do not conduct independent audits will be subject to periodic audits by the EPA Office of Inspector General.

(c) *Annual review*—(1) *Purpose.* The purpose of the annual review is to assess the success of the State's performance of activities identified in the IUP, Biennial Report (in years when it is submitted), and Operating Agreement (if used) and to determine compliance with the capitalization grant agreement, requirements of section 1452 of the Act, and this subpart. The RA will complete the annual review according to the schedule established in the capitalization grant agreement.

(2) *Records access.* After reasonable notice by the RA, the State or assistance recipient must make available such records as the RA reasonably considers pertinent to review and determine State compliance with the capitalization grant agreement and requirements of section 1452 of the Act and this subpart. The RA may conduct on-site visits as deemed necessary to perform the annual review.

(d) *Information management system*—(1) *Purpose.* The purpose of the information management system is to assess the DWSRF programs, to monitor State progress in years in which Biennial Reports are not submitted, and to assist in conducting annual reviews.

(2) *Reporting.* A State must annually submit information to EPA on the amount of funds available and assistance provided by the DWSRF program.

§ 35.3575 Application of Federal cross-cutting authorities (cross-cutters).

(a) *General.* A number of Federal laws, executive orders, and government-wide policies apply by their own terms to projects and activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. A few cross-cutters apply by their own terms only to the State as the grant recipient because the authorities explicitly limit their application to grant recipients.

(b) *Application of cross-cutter requirements.* Except as provided in paragraphs (c) and (d) of this section and in § 35.3580, cross-cutter requirements apply in the following manner:

(1) All projects for which a State provides assistance in amounts up to the amount of the capitalization grant deposited into the Fund must comply with the requirements of the cross-cutters. Activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts must comply with the requirements of the cross-cutters, to the extent that the requirements of the cross-cutters are applicable.

(2) Projects and activities for which a State provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the Fund or set-aside accounts are not subject to the requirements of the cross-cutters.

(3) A State that elects to impose the requirements of the cross-cutters on projects and activities for which it provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the Fund or set-aside accounts may credit this excess to meet future cross-cutter requirements on assistance provided from the respective accounts.

(c) *Federal anti-discrimination law requirements.* All programs, projects, and activities for which a State provides assistance are subject to the following Federal anti-discrimination laws: Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102.

(d) *Minority and Women's Business Enterprise (MBE/WBE) procurement requirements.* A State must negotiate a fair share goal with the RA for the participation of MBE/WBEs. The fair share goal must be based on the availability of MBE/WBEs in the relevant market area to do the work under the DWSRF program. Each capitalization grant agreement must describe how a State will comply with MBE/WBE procurement requirements, including how it will apply the fair share goal to assistance recipients to which the requirements apply and how it will assure that assistance recipients take the following six affirmative steps:

(1) Include small, minority and women's businesses on solicitation lists;

(2) Assure that small, minority and women's businesses are solicited whenever they are potential sources;

(3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women's businesses;

(4) Establish delivery schedules, when the requirements of the work permits, which will encourage participation by small, minority and women's businesses;

(5) Use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and

(6) Require the contractor to take the affirmative steps in paragraphs (d)(1) through (d)(5) of this section if the contractor awards subagreements.

(e) *Complying with cross-cutters.* A State is responsible for ensuring that assistance recipients comply with the requirements of cross-cutters, including initiating any required consultations with State or Federal agencies responsible for individual cross-cutters. A State must inform EPA when consultation or coordination with other Federal agencies is necessary to resolve issues regarding compliance with cross-cutter requirements.

§ 35.3580 Environmental review requirements.

(a) *General.* With the exception of activities identified in paragraph (b) of this section, a State must conduct environmental reviews of the potential environmental impacts of projects and activities receiving assistance.

(b) *Activities excluded from environmental reviews.* A State must conduct environmental reviews of source water protection activities under § 35.3535, unless the activities solely involve administration (e.g., personnel, equipment, travel) or technical assistance. A State is not required to conduct environmental reviews of all the other eligible set-aside activities under § 35.3535 because EPA has determined that, due to their nature, they do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the human environment. A State does not need to include provisions in its SERP for excluding these activities. Activities excluded from environmental reviews remain subject to other applicable Federal cross-cutting authorities under § 35.3575.

(c) *Tier I environmental reviews.* All projects that are assisted by the State in amounts up to the amount of the capitalization grant deposited into the Fund must be reviewed in accordance with a SERP that is functionally equivalent to the review undertaken by EPA under the National Environmental Policy Act (NEPA). With the exception of activities excluded from environmental reviews in paragraph (b) of this section, activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts must also be reviewed in accordance with a SERP that is functionally equivalent to the review undertaken by EPA under the NEPA. A State may elect to apply the procedures at 40 CFR part 6 and related subparts or apply its own "NEPA-like" SERP for conducting environmental reviews, provided that the following elements are met:

(1) *Legal foundation.* A State must have the legal authority to conduct environmental reviews of projects and activities receiving assistance. The legal authority and supporting documentation must specify:

(i) The mechanisms to implement mitigation measures to ensure that a project or activity is environmentally sound;

(ii) The legal remedies available to the public to challenge environmental review determinations and enforcement actions;

(iii) The State agency that is primarily responsible for conducting environmental reviews; and

(iv) The extent to which environmental review responsibilities will be delegated to local recipients and will be subject to oversight by the primary State agency.

(2) *Interdisciplinary approach.* A State must employ an interdisciplinary approach for identifying and mitigating adverse environmental effects including, but not limited to, those associated with other cross-cutting Federal environmental authorities.

(3) *Decision documentation.* A State must fully document the information, processes, and premises that influence its decisions to:

(i) Proceed with a project or activity contained in a finding of no significant impact (FNSI) following documentation in an environmental assessment (EA);

(ii) Proceed or not proceed with a project or activity contained in a record of decision (ROD) following preparation of a full environmental impact statement (EIS);

(iii) Reaffirm or modify a decision contained in a previously issued categorical exclusion (CE), EA/FNSI or EIS/ROD following a mandatory 5 year environmental reevaluation of a proposed project or activity; and

(iv) If a State elects to implement processes for either partitioning an environmental review or categorically excluding projects or activities from environmental review, the State must similarly document these processes in its proposed SERP.

(4) *Public notice and participation.* A State must provide public notice when: a CE is issued or rescinded; a FNSI is issued but before it becomes effective; a decision that is issued 5 years earlier is reaffirmed or revised; and prior to initiating an EIS. Except with respect to a public notice of a CE or reaffirmation of a previous decision, a formal public comment period must be provided during which no action on a project or activity will be allowed. A public hearing or meeting must be held for all projects and activities except for those having little or no environmental effect.

(5) *Alternatives consideration.* A State must have evaluation criteria and processes which allow for:

(i) Comparative evaluation among alternatives, including the beneficial and adverse consequences on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation; and

(ii) Devising appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse impacts.

(d) *Tier II environmental reviews.* A State may elect to apply an alternative SERP to all projects and activities (except those activities excluded from environmental reviews in paragraph (b) of this section) for which a State provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the Fund or set-aside accounts, provided that the process:

(1) Is supported by a legal foundation which establishes the State's authority to review projects and activities;

(2) Responds to other environmental objectives of the State;

(3) Provides for comparative evaluations among alternatives and accounts for beneficial and adverse consequences to the existing and future environment;

(4) Adequately documents the information, processes, and premises that influence an environmental determination; and

(5) Provides for notice to the public of proposed projects and activities and for the opportunity to comment on alternatives and to examine environmental review documents. For projects or activities determined by the State to be controversial, a public hearing must be held.

(e) *Categorical exclusions (CEs).* A State may identify categories of actions which do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the human environment and which the

State will exclude from the substantive environmental review requirements of its SERP. Any procedures under this paragraph must provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(f) *Environmental reviews for refinanced projects or reimbursed project costs.* A State must conduct an environmental review which considers the impacts of a project based on conditions of the site prior to initiation of the project. Failure to comply with the environmental review requirements cannot be justified on the grounds that costs have already been incurred, impacts have already been caused, or contractual obligations have been made prior to the binding commitment.

(g) *EPA approval process.* The RA must review and approve any State "NEPA-like" and alternative procedures to ensure that the requirements for Tier I and Tier II environmental reviews have been met. The RA will conduct these reviews on the basis of the criteria for evaluating NEPA-like reviews contained in Appendix A to this subpart.

(h) *Modifications to approved SERPs.* Significant changes to State environmental review procedures must be approved by the RA.

§ 35.3585 Compliance assurance procedures.

(a) *Causes.* The RA may take action under this section and the enforcement provisions of the general grant regulations at 40 CFR 31.43 if a determination is made that a State has not complied with its capitalization grant agreement, other requirements under section 1452 of the Act, this subpart, or 40 CFR part 31 or has not managed the DWSRF program in a financially sound manner (e.g., allows consistent and substantial failures of loan repayments).

(b) *RA's course of action.* For cause under paragraph (a) of this section, the RA will issue a notice of non-compliance and may prescribe appropriate corrective action. A State's corrective action must remedy the specific instance of non-compliance and adjust program management to avoid non-compliance in the future.

(c) *Consequences for failure to comply.* (1) If within 60 days of receipt of the non-compliance notice a State fails to take the necessary actions to obtain the results required by the RA or fails to provide an acceptable plan to achieve the results required, the RA may suspend payments until the State has taken acceptable actions. Once a State has taken the corrective action deemed necessary and adequate by the RA, the suspended payments will be released and scheduled payments will recommence.

(2) If a State fails to take the necessary corrective action deemed adequate by the RA within 12 months of receipt of the original notice, any suspended payments will be deobligated and reallotted to eligible States. Once a payment has been made for the Fund, that payment and cash draws from that payment will not be subject to withholding. All future payments will be withheld from a State and reallotted until such time that adequate corrective action is taken and the RA determines that the State is back in compliance.

(d) *Dispute resolution.* A State or an assistance recipient that has been adversely affected by an action or omission by EPA may request a review of the action or omission under general grant regulations at 40 CFR part 31, subpart F.

Appendix A to Subpart L—Criteria for Evaluating a State's Proposed NEPA-Like Process

The following criteria will be used by the RA to evaluate a proposed SERP:

(A) *Legal foundation.* Adequate documentation of the legal authority, including legislation, regulations or executive orders and/or Attorney General certification that authority exists.

(B) *Interdisciplinary approach.* The availability of expertise, either in-house or otherwise, accessible to the State agency.

(C) *Decision documentation.* A description of a documentation process adequate to explain the basis for decisions to the public.

(D) *Public notice and participation.* A description of the process, including routes of publication (e.g., local newspapers and project mailing list), and use of established State legal notification systems for notices of intent, and criteria for determining whether a public hearing is required. The adequacy of a rationale where the comment period differs from that under NEPA and is inconsistent with other State review periods.

(E) *Alternatives consideration.* The extent to which the SERP will adequately consider:

(1) Designation of a study area comparable to the final system;

(2) A range of feasible alternatives, including the no action alternative;

(3) Direct and indirect impacts;

(4) Present and future conditions;

(5) Land use and other social parameters including relevant recreation and open-space considerations;

(6) Consistency with population projections used to develop State implementation plans under the Clean Air Act;

(7) Cumulative impacts including anticipated community growth (residential, commercial, institutional, and industrial) within the project study area; and

(8) Other anticipated public works projects including coordination with such projects.

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Federal Register

Monday,
August 7, 2000

Part III

Department of Education

Office of Elementary and Secondary Education; Intent To Repay to the State of Alabama Department of Education Funds Recovered as a Result of a Final Audit Determination; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Intent to Repay to the State of Alabama Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grant-back funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234th), the Secretary of Education (Secretary intends to repay to the State of Alabama Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the principal amount of funds returned to the Department as the result of final audit determinations. The U.S. Department of Education's (Department) recovery of funds followed a Cooperative Audit Resolution and Oversight Initiative (CAROI) agreement entered into by the Lawrence County Board of Education and the Alabama State Department of Education to resolve issues relating to Lawrence County's compliance with the use of Federal funds. The CAROI agreement signed on March 25, 1997 required that Lawrence County repay a total of $110,779.78, which was subsequently returned to the Department on March 19, 1997. This notice describes the SEA's plan, submitted on behalf of Lawrence County Board of Education, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Department intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before September 6, 2000.

ADDRESSES: All written comments should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Federal Office Building 6, Room 3W230, Washington, D.C. 20202–6132. Comments may also be sent through the Internet to: MaryJean_LeTendre@ed.gov

FOR FURTHER INFORMATION CONTACT: S. Colene Nelson, U.S. Department of Education, 400 Maryland Avenue, SW, Federal Office building 6, Room 3E335, Washington, DC 20202–6132. Telephone: (202) 260–0979. Internet address: Colene_Nelson@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $110,779.78 from the Alabama SEA in satisfaction of claims arising from an audit of the Lawrence County Board of Education, conducted by the Alabama Department of Examiners of Public Accounts for fiscal years (FY) 1990 through 1993.

Some claims involved the LEA's administration of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended in 1988, a program providing financial assistance to State and local educational agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families (Chapter 1). Additional claims involved the administration of the Even Start Program which provides funds for family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

Specifically with respect to Chapter 1 for FY 1990 and 1991, the auditors found that competitive bids had not been taken for facilities renovations and, thus, the payments for those renovations were found to be in conflict with Federal procurement standards. The auditors questioned $11,900.00 of Chapter 1 funds. The auditors also found that a part-time clerical assistant was paid $480.00 through accounts payable rather than the normal payroll process. Other violations of Federal guidelines for compensation of personal services included:

(1) Twenty-five percent of a janitor's salary was paid from Chapter 1 funds where central office space occupied by Chapter 1 offices appeared to be less than five percent of the total floor space ($5,126.06 in questioned costs);

(2) Salary payments exceeding the approved budget totaled $17,361.67 and were identified as questioned costs of Chapter 1.

Thus, questioned costs for FY 1990 and 1991 totaled $34,867.73 of Chapter 1 monies.

For FY 1992 and 1993, a part-time employee was paid from Chapter 1 funds without approved from the Lawrence County Board for employment, resulting in questioned costs of $1,481.25. Furthermore, the Chapter 1 director was paid $732.66 more than his approval salary in FY 1992, resulting in that amount of questioned costs. Also, the Chapter 1 Even Start Director was paid $5,735.57 more than his approved salary during FY 1993, resulting in that amount of questioned costs.

The auditors further found that in FY 1993 the LEA purchased computer labs without obtaining timely approval and failing to follow proper purchasing procedures. $182,165.99 was identified in questioned costs. Lastly, audit work revealed that during FY 1991 through 1993 Chapter 1 and Even Start funds as well as General Fund resources were expended for the renovation of a school building. However, there was no documentation reflecting the Lawrence County School Board of Education's approval of the renovation, nor supporting compliance with Alabama's building codes or their administrative and financial rules. No competitive bids were found to have been taken for materials or labor related to the renovation. Questioned costs under Chapter 1 were $66,913.95 and those under Even Start were $13,263.39. Total questioned costs for FY 1992 and 1993 were $270,292.81. (Use of funds for construction or renovation is no longer allowable under either the Title I or Even Start program statutes.)

Summarily, audit exceptions resulting in a return of funds initially totaled $305,160.54 covering four fiscal years, 1990 through 1993. This amount was reduced to $110,780 because the SEA determined that some of the funds in question were actually used to provide satisfactory program services to eligible Title I students. Of this amount, $10,995.35 related to the Even Start questioned costs, and the balance ($99,784.65) to Chapter 1.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h, provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices or procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program, provided that

the SEA or LEA was notified of any noncompliance with such requirements and given a reasonable period of time to remedy that noncompliance;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exceptions; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve in achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of $83,085—75 percent of the principal amount recovered by the Department—and has submitted a plan on behalf of the LEA for use of $74,838 of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Title I, Part A, of ESEA, successor to Chapter 1, as well as $8,247 of the grantback funds to provide funds for family-centered education projects to help parents become full partners in their children's education under Title I, Part B, of ESEA.

According to the plan, the LEA will equitably distribute the $74,838 of grantback funds under Title I to the K–12 Title I schools in the district to purchase computers. Computer equipment will be used for each school listed below. There are two targeted assistance schools: Hatton Elementary and East Lawrence Elementary. Also, there are nine schools operating schoolwide programs: Hazlewood Elementary, Hazlewood High School, R.A. Hubbard School, Courtland High School, East Lawrence Middle, Moulton Elementary, Moulton Middle, Speake School, and Mt. Hope School. The LEA recently completed system networking for internet access. The updated equipment will help provide enhanced opportunities for Lawrence County's disadvantaged students attending high poverty schools to achieve to challenging academic standards. The amount of $8,247 will be used for Even Start personnel salaries and benefits.

D. The Assistant Secretary's Determination

The Assistant Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Assistant Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Assistant Secretary at the present time. If this information is not accurate or complete, the Assistant Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Assistant Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Assistant Secretary's Intent to Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Department must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, a notice is hereby given that the Assistant Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of $83,085.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Assistant Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Assistant Secretary.

(2) All funds received under the grantback arrangement must be obligated in accordance with the SEA's plan but, in no event, after September 30, 2000 as required under 459(c) of GEPA.

(3) The SEA, on behalf of the LEA, will, not later than December 31, 2000, submit a report to the Assistant Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditure of funds awarded under the grantback arrangement.

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(Catalog of Federal Domestic Assistance Numbers: 84.010, Title I, Improving Basic Programs Operated by Local Education Agencies; 84.213, Even Start—State Education Agencies)

Dated: July 31, 2000.

Thomas M. Corwin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–19802 Filed 8–4–00; 8:45 am]

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Federal Register

Monday,
August 7, 2000

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1240

Honey Research, Promotion, and Consumer Information Order; Revision of Subpart C—Referendum Procedures and Proposed Amendments and Referendum Order; Final Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[FV–00–702 FR]

Honey Research, Promotion, and Consumer Information Order; Revision of Subpart C— Referendum Procedures

ACTION: Final rule.

SUMMARY: This rule revises the procedures which the U.S. Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether honey producers, producer-packers, importers, and handlers subject to the Honey Research, Promotion, and Consumer Information Act (Act) favor implementation of changes to the Honey Research, Promotion, and Consumer Information Order (Order) based on the 1998 amendments to the Act. This rule revises the referendum procedures under the Order to allow handlers to vote on changes to the program. These procedures will also be used in future referenda on the program.

DATES: Effective September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Kathie M. Birdsell, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; e-mail *kathie.birdsell@usda.gov*.

SUPPLEMENTARY INFORMATION: The honey research and promotion program operates under the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1240). The Order is authorized by the Honey Research, Promotion, and Consumer Information Act (Act) [Pub. L. 98–590, 7 U.S.C. 4601–4613]. The Act was amended on June 23, 1998, and requires the U.S. Department of Agriculture (USDA or the Department) to obtain public comments and conduct a national referendum on making similar amendments to the Order.

Prior documents. USDA published proposed referendum procedures in the **Federal Register** on May 15, 2000 (65 FR 30924) with a 60-day comment period. This final rule addresses the three comments that were received by the June 14, 2000, deadline.

In addition, a proposed rule on amending the Order was published in the **Federal Register** on February 28, 2000 (65 FR 10600) with a 60-day comment period. USDA is publishing a second proposed rule on the amendments, which reflects the comments which were received, separately in this issue of the **Federal Register**.

Votable amendments. The votable amendments would: (1) Require the National Honey (Board) to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorize the Board to develop recommendations for purity standards and an inspection and monitoring system in order to enhance the image of honey and honey products; (3) add two handler members who are also importers to the Board; (4) decrease the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound on handlers; and (6) increase the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

Automatic amendments. The following amendments will be made to the Order regardless of the outcome of the referendum: (1) Changing the two importer/exporter positions on the Board to two importer positions; (2) eliminating the public member position; (3) revising nomination and eligibility requirements; (4) requiring that at least 50 percent of the Board members be honey producers; (5) providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminating the requirement to file for an exemption under the program; and (7) removing obsolete language.

Question and Answer Overview

Why Are These Procedures Being Published?

USDA is going to conduct a referendum on proposed amendments to the honey research and promotion program in September 2000, and revised procedures are needed to allow handlers to vote. The current procedures only allow producers, producer-packers, and importers to vote because they are the only ones who currently pay assessments to the National Honey Board (Board). One of the proposed amendments would require handlers to pay assessments to the Board for the first time. Therefore, the referendum rules are being changed to give handlers the opportunity to vote on whether they want to pay assessments. These procedures are being made public in advance of the referendum to help ensure that members of the honey industry know the eligibility criteria for voting and other pertinent information.

When Is the Referendum?

The voting period for the referendum will be from September 5 through 29, 2000. The Agricultural Marketing Service (AMS) will mail all known eligible voters a ballot, details on the proposed amendments, and voting instructions no later than August 28, 2000.

Who Is Eligible To Vote in the Referendum?

Most honey producers, producer-packers, importers, and handlers who produced, handled, or imported honey or honey products during calendar years 1998 and 1999 will be eligible to vote in the referendum. However, certain producers, producer-packers, handlers, and importers would not be eligible to vote. If you produced, produced and handled, or imported less than 6,000 pounds of honey or honey products per year and you distributed that honey directly through local retail outlets such as roadside stands, farmers markets, or groceries, you would be ineligible to vote in the referendum unless you voluntarily paid assessments in 1998 and 1999.

How Many Voters Need To Approve the Amendments in Order for Them To Be Made?

In order for the votable amendments to become effective, they must be approved by a majority of the voters in the referendum and those voters must represent 50 percent or more of the honey produced and handled and honey and honey products imported by the voters in the referendum.

If I am a Producer, How Will my Vote Be Counted?

If you are a producer, you are entitled to one vote which includes the number of pounds of honey you produced in 1998 and 1999.

If I am a Producer-packer, How Will my Vote Be Counted?

One of the proposed amendments to the Order would implement a new assessments on handlers. Therefore, as a producer-packer, you will be entitled to one vote as a producer and one vote as a handler. Your producer vote will include the number of pounds of honey you produced during 1998 and 1999, and your handler vote will include the number of pounds of domestic honey you handled during 1998 and 1999.

If I am a Handler, How Will my Vote Be Counted?

You are entitled to one vote as a handler based on the number of pounds of domestic honey you handled during

1998 and 1999. If you also imported honey, you may cast a ballot as an importer on the honey and honey products on which you paid the import assessment in 1998 and 1999.

If I am an Importer, How Will my Vote Be Counted?

You are entitled to cast two ballots, one for the handler portion of your assessments and one for the importer portion of your assessment. Each ballot will include the number of pounds of honey and honey products you imported during 1998 and 1999.

Is a Cooperative Considered a Producer or a Handler for the Purposes of the Referendum?

A cooperative is considered a handler for the purposes of voting in the referendum. Individual producers who belong to cooperatives are entitled to cast a ballot for the domestic honey that they produce. A cooperative may cast a ballot covering the number of pounds of domestic honey handled by the cooperative in 1998 and 1999. If a cooperative is also an importer, the cooperative may also cast a ballot covering the foreign honey and honey products that the cooperative imported as importer of record in 1998 and 1999.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible producers, producer-packers, importers, and handlers will receive a ballot and voting instructions in the mail from USDA. Producers, producer-packers, importers, and handlers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on September 29, 2000.

How will USDA Make Certain That only Eligible Persons Vote in the Referendum?

USDA will use records from the Board concerning persons who have paid assessments or requested an exemption from assessments. In addition, there are penalties for providing false information to the federal government. By signing a ballot, a voter certifies that he or she is eligible to vote and that the information on the ballot is correct. A person who knowingly or willingly provides false information on the ballot is subject to a fine of up to $10,000, imprisonment for up to five years, or both.

How will USDA Make Certain that Every Eligible Person has the Opportunity to Vote?

Persons may call 1–888–729–0917 (toll-free) to request a ballot if they do not receive a ballot and they believe they are eligible to vote. These persons will be required to provide documentation of their eligibility to vote.

Executive Orders 12866 and 12988

This rule has been determined to be "not significant" for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In addition, this rule has been reviewed under E.O.12988, Civil Justice Reform. The rule is not intended to have retroactive effect and would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act allows producers, producer-packers, importers, and handlers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law. In the petition, the person may request a modification of the Order or an exemption from the Order. Petitions must be filed no later than two years after: (1) the effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Final Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has examined the impact of this rule on small entities.

There are approximately 2,885 producers, 400 producer-packers, and 348 importers who currently pay assessments under the Order. In addition, there are 121 handlers who would pay assessments if the votable amendments to the Order are implemented. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000. The majority of honey producers, producer-packers, importers, and handlers may be classified as small entities.

Previously, there were approximately 3,633 eligible voters in referenda on the honey program (2,885 producers and 400 producer-packers casting producer ballots and 348 importers casting importer ballots). Under this rule, there will be an additional 869 potential voters (400 producer-packers, 348 importers, and 121 handlers casting handler ballots).

This rule amends the referendum procedures under the Order in accordance with the 1998 changes to sections 4611 and 4613 of the Act. The procedures, as amended, will initially be used to conduct a referendum among producers, producer-packers, importers, and handlers to determine whether they favor implementation of the votable amendments to the Order. The authority to conduct this referendum is provided in section 4613 of the Act, as amended. The automatic amendments will become part of the Order regardless of the outcome of the referendum. USDA will also use the revised procedures for any subsequent referenda involving the continuation, suspension, termination, or amendment of the Order.

Section 4611(b) of the Act provides that the votable amendments to the Order must be approved by a majority of eligible voters who vote. The majority voting in the affirmative must also represent a majority of the quantity of honey and honey products produced, imported, and handled among all those voting. Section 4613(d)(1)(B) also directs that no individual provision of the proposed amendments to the Order shall be subject to a separate vote in the referendum.

Under section 4613(d)(2) of the Act, producers, producer-packers, importers, and handlers owing assessments on honey produced, or honey or honey products imported during the two calendar years preceding the referendum (the representative period) are eligible to vote in the referendum. Since the referendum will be conducted in 2000, the representative period for this referendum will be calendar years

1998 and 1999. Handlers will be allowed to vote in this referendum because section 4613(d)(3)(A) of the Act directs that producer-packers, importers, and handlers will be allowed to vote as if the votable amendments to the Order had been in place during the representative period.

Each current producer who produced honey in 1998 and 1999 will be entitled to cast one ballot which includes the number of pounds of honey produced during 1998 and 1999.

Each producer-packer will be entitled to one vote as a producer and one vote as a handler. The producer vote will include the number of pounds of honey produced in 1998 and 1999. The handler vote will include the number of pounds of domestic honey handled in 1998 and 1999.

Each handler will be entitled to one vote based on the number of pounds of domestic honey handled during 1998 and 1999.

Each importer will be entitled to cast two ballots, one for the handler portion of the assessments and one for the importer portion of the assessments. Each ballot will include the number of pounds of honey and honey products imported during 1998 and 1999.

USDA will keep the honey industry informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producer-packers, handlers, and importers choose to vote, the burden of casting a ballot would be offset by the benefits of having the opportunity to vote on whether they approve the votable amendments.

The information collection requirements related to this rule are described below and are designed to minimize the burden on producers, producer-packers, importers, and handlers voting in referenda.

The Secretary considered requiring eligible voters vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot will be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act. This rule will increase the information collection burden previously approved by OMB for the honey program referendum ballot by adding 869 additional potential voters (described above). As required by OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the revised referendum ballot was submitted to OMB and has been approved for use under OMB Number 0581–0093.

The estimated number of additional potential voters (respondents) indicated in the May 15, 2000, proposed rule has been increased from 550 to 869. This increase reflects a comment submitted by the Board which correctly pointed out that all 348 importers will be eligible to cast votes as handlers. Therefore, the estimated additional burden under the revised ballot has been revised as shown below.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The increase in burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Handlers and producer-packers and importers voting as handlers.

Estimated Number of Respondents: 869.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 43 hours [343 hours (requested) – 300 hours (currently approved) = 43 hours (increase)].

The estimated additional annual cost of providing the information by 869 persons eligible to vote as handlers would be $430.00 or $0.50 per voter. The increase of 43 total burden hours has been added to the previous burden total of 300 hours under OMB No. 0581–0093.

Background

As stated above, Congress amended the Act on June 23, 1998. The amendments to the Act authorize the Secretary to make related changes to the Order after conducting an industry-wide referendum on the votable amendments.

The votable amendments would: (1) Require the National Honey (Board) to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorize the Board to develop recommendations for purity standards and an inspection and monitoring system in order to enhance the image of honey and honey products; (3) add two handler members who are also importers to the Board; (4) decrease the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound on handlers; and (6) increase the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

The following amendments will automatically be made to the Order regardless of the outcome of the referendum: (1) Changing the two importer/exporter positions on the Board to two importer positions; (2) eliminating the public member position; (3) revising nomination and eligibility requirements; (4) requiring that at least 50 percent of the Board members be honey producers; (5) providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminating the requirement to file for an exemption under the program; and (7) removing obsolete language.

This rule allows producer-packers, importers, and handlers to cast ballots as handlers in the referendum on the votable amendments to the Order and in future referenda, if the votable amendments are approved. Previously, only producers, producer-packers in their capacity as producers, and importers were eligible to vote. In addition, the revised procedures specify that only producers, producer-packers in their capacity as producers, and importers will be eligible to vote in future referenda if the votable amendments are not approved in the upcoming referendum.

The amended referendum procedures in this final rule will replace Subpart—Procedure for the conduct of Referenda in Connection With the Honey, Research, Promotion, and Consumer Information Order (7 CFR 1240.200–1240.207). The revised subpart will be redesignated as Subpart C—Referendum Procedures and will include sections covering definitions, voting, instructions, subagents, ballots, referendum report, and confidential information. While the definitions for producer, producer-packer, and handler in the existing order will not change as a result of the February 28, 2000, proposed rule on amendments to the Order, the definition of importer in the referendum procedures will be changed

to be consistent with the proposed definition of importer in the Order.

In addition, this rule will redesignate Subpart—General Rules and Regulations (7 CFR 1240.100–1240.125) as subpart B.

Comments on the revised referendum procedures. In response to the May 15, 2000, proposed rule on these procedures, a producer, a honey industry group, and the Board submitted comments. All three comments expressed concern that there may be confusion regarding handlers' voting rights. They correctly pointed out that each voter is entitled to vote the poundage on which the voter would pay assessments if the amendments are approved in the referendum. Therefore, to clarify that handler ballots only include domestic honey, we have inserted the word "domestic" where appropriate in the supplementary information portions of this rule and in the definition of "eligible handler" in § 1240.201(e) of the procedures.

The Board's comment also expressed concern about handlers who also produce and import honey and about handlers who purchase honey from producer-packers or importers. This issue relates to the fact that a person may meet more than one voting criteria and may be eligible to cast more than one ballot. The Board also requested that AMS utilize three separate ballots. It has been determined that these comments do not require any additional changes to the referendum procedures, but AMS has decided to utilize three separate ballots. One ballot will be for producers and producer-packers covering the pounds of honey produced. A second ballot will be for the pounds of domestic honey handled by producer-packers and handlers. The third ballot will be for importers (including producers, producer-packers, and handlers who are also importers) and cover the pounds of foreign honey and honey products imported. Similarly, importers will also be entitled to cast a handler ballot for the handler portion of the assessments they would pay on imported honey and honey products if the votable amendments are approved.

The Board's comment also raised additional issues. The Board stated that the terminology in the Question and Answer Overview (Q&A's) incorrectly characterized the importer's voting rights as one vote as a producer and one vote as an importer. The comment quoted the Act which states that each importer shall have one vote as an importer and one vote as a handler. The comment has been adopted and the terminology corrected in the Q&A's and elsewhere in this final rule.

The Board also requested USDA to include the penalty for filing false information with USDA in the Q&A's, and this comment has been adopted.

In addition, the Board requested an explanation of the voting rights of cooperatives and producers who market honey through cooperatives. This comment has been adopted, and the Q&A's now include discussion on this subject.

The Board also requested that the number of ballots cast and the number of ballots determined to be invalid be included in the referendum report. Although this is information normally appears in the report, we have revised § 1240.206 to specify that the referendum report include this information.

Lastly, the Board requested USDA to publish the names of all voters on a web site for a period of two days following the voting deadline to allow persons to challenge voters via e-mail. Although USDA understands the value of a challenge process, the Act prevents the Department from adopting the comment. Section 12(d) of the Act states that "The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any producer, importer, or handler of honey or honey products shall be held strictly confidential and shall not be disclosed."

Adoption of proposed changes. This final rule adopts with change the amendments which were published in the May 15, 2000, proposed rule. The changes provide that handlers, producer-packers, and importers may cast ballots as handlers in the upcoming referendum on votable amendments to the Order. In addition, this rule revises the definition of importer so that the definition of this term is identical in the referendum procedures and in the amended Order. This rule also redesignates the rules and regulations subpart of the honey program as Subpart B and designates the referendum procedures as subpart C. As a result of comments received, this rule also slightly revises the definition of "eligible handler" to clarify that handlers vote on the basis of the domestic honey or honey products handled.

Additional USDA change. The Department has decided to change the name of the subpart containing these referendum procedures in the interest of plain language in regulations. The original name, which was also included in the May 15, 2000, proposed rule, was "Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order." This final rule shortens the name to "Referendum Procedures."

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1240 of Title 7, Chapter XI of the Code of Federal Regulations, is amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for 7 CFR Part 1240 to read as follows:

Authority: 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

2. Revise the heading for Subpart—General Rules and Regulations to read as follows:

Subpart B—General Rules and Regulations

3. Designate Subpart—Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order as Subpart C and revise it to read as follows:

Subpart C—Referendum Procedures

Sec.

1240.200 General.
1240.201 Definitions.
1240.202 Voting.
1240.203 Instructions.
1240.204 Subagents.
1240.205 Ballots.
1240.206 Referendum report.
1240.207 Confidential information.

§ 1240.200 General.

Referenda to determine whether eligible producers, importers, and, in the case of an order assessing handlers, handlers favor the continuation, suspension, termination, or amendment of the Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1240.201 Definitions.

(a) *Act* means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590; 98 Stat. 3115; enacted October 30, 1984; 7 U.S.C. 4601–4613, as amended) and any amendments thereto.

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has

been delegated or may hereafter be delegated to act in the Administrator's stead.

(c) *Board* or *National Honey Board* means the Honey Board, the administrative body provided for under section 7(c) of the Act and established under § 1240.30.

(d) *Department* means the United States Department of Agriculture.

(e) *Eligible handler* means any person defined as a handler or producer-packer in the Order, or importer in this subpart, who handles domestic honey or honey products, and is covered by an order and subject to assessment on domestic honey handled during the representative period.

(f) *Eligible importer* means any person defined as an importer in this subpart, who is engaged in the importation of honey or honey products, and is subject to pay assessments to the Board on honey or honey products imported during the representative period.

(g) *Eligible producer* means any person defined as a producer or producer-packer in the Order who produces honey and is subject to pay assessments to the Board on such honey produced during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced;

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced; or

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(h) *Importer* means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products.

(i) *Order* means the Honey Research, Promotion, and Consumer Information Order.

(j) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

(k) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(l) *Representative period* means the period designated by the Secretary pursuant to the Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1240.202 Voting.

(a) *Eligibility.* (1) Each person who is, as defined in this subpart, an eligible producer; an eligible importer; or, in the case of an order assessing handlers, an eligible handler shall be entitled to vote in the referendum.

(2) In conducting a referendum for the sole purpose of determining whether persons favor the implementation of amendments to the Order in accordance with changes to the Act made by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185, enacted June 23, 1998), producer-packers, importers, and handlers shall be allowed to vote as if:

(i) The proposed amendments to the Order were in place during the representative period; and

(ii) They were subject to assessment based on the quantity of honey or honey products handled during the representative period.

(b) *Number of ballots cast.* (1) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: *Provided*, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot covering only such producer's share of the ownership.

(2) In the case of an order assessing handlers, each person who is an eligible handler, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum.

(3) Each person who is a producer-packer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast one ballot as an eligible producer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(4) Each importer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast in the referendum one ballot as an importer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(c) *Proxy voting.* Proxy voting is not authorized, but an officer or employee of an eligible corporate producer; importer; and, in the case of an order assessing handlers, handler; or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) *Casting of ballots.* All ballots are to be cast by mail as instructed by the Secretary.

§ 1240.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter; and

(2) The quantity of honey or honey products produced, imported, and, in the case of an order assessing handlers, handled.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers, importers, and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1240.204 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1240.205 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1240.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, the number of ballots cast, the number of valid ballots, and other information pertinent to analysis of the referendum and its results.

§ 1240.207 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of honey or honey products shall be held strictly confidential and shall not be disclosed.

Dated: July 26, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19942 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[FV–00–701 PR2]

RIN 0581–AB84

Honey Research, Promotion, and Consumer Information Order; Proposed Amendments and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make a number of changes to the honey research and promotion program. The honey program is operated by the National Honey Board (Board) under the supervision of the Agricultural Marketing Service (AMS), an agency of the United States Department of Agriculture (USDA or the Department). The program is currently financed by assessments paid by honey producers, producer-packers, and importers. These amendments are authorized by amendments to the Honey Research, Promotion, and Consumer Information Act (Act). The Order needs to be amended as a result of these changes to the Act.

DATES: The voting period for the referendum will be September 5 through 29, 2000.

FOR FURTHER INFORMATION CONTACT: Kathie M. Birdsell, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9917 (toll free); facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: The honey research and promotion program will be changed by amending the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1240) . The changes to the Order are being made as a result of changes made by Congress to the Honey Research, Promotion, and Consumer Information Act (Act) (Pub. L. 98–690; enacted October 30, 1984; 7 U.S.C. 4601–4613, as amended) on June 23, 1998 (Pub. L. 105–185). The honey program operates under the Act.

Prior documents. A proposed rule on amending the Order was published in the **Federal Register** on February 28, 2000 (65 FR 10600) with a 60-day comment period. The comment period ended on April 28, 2000.

In addition, USDA published a proposed rule on the referendum procedures which will be used in the referendum on the votable amendments in the **Federal Register** on May 15, 2000 (65 FR 30924) with a 30-day comment period. The final rule on the referendum procedures is being published separately in this issue of the **Federal Register**. Current producers, producer-packers, handlers, and importers who were also producers, producer-packers, handlers, and importers during 1998 and 1999 (representative period) will be eligible to vote in the referendum.

Question and Answer Overview

Why Is the Honey Program Being Changed?

The honey program is being changed because the Act which authorizes the program was amended in 1998. The amendments to the Act require the same changes to be made to the program.

What Are the Major Changes That Would Be Made to the Honey Program?

The major changes affect (1) assessments under the program, (2) the composition and size of the National Honey Board (Board) which administers the program under Department of Agriculture (USDA) supervision, (3) the types of activities the Board may conduct, and (4) exemption and recordkeeping procedures.

How Would the Assessments be Changed?

The honey program is currently funded by an assessment of 1 cent per pound on honey produced in the United States and 1 cent per pound on imported honey and honey products. The assessment on domestically produced honey would be increased from 1 cent per pound to 1.5 cents per pound as follows: producers would pay 0.75 cent per pound (down from 1 cent per pound), and handlers would pay 0.75 cent per pound (a new assessment). Producer-packers would pay 1.5 cents on the U.S. honey that they produce and handle. The importer assessment would be increased from 1 cent per pound to 1.5 cents per pound to equal the new rate for domestic honey. Previously, there was no handler assessment. The industry must approve these changes in the referendum or they will not be made.

What Is the Purpose of the Assessment Increase?

The assessment increase would be needed to fund the additional Board activities that would be required if the industry approves them in the referendum. These extra activities include spending 8 percent of its income on production research and developing purity standards and a monitoring system.

How Would the Size and Composition of the Board Change?

The Board is currently composed of seven producers, two importers (or one importer and one exporter), two handlers, one representative of a cooperative, one public member, and their alternates.

Regardless of the vote in the referendum, the importer-exporter positions on the Board will be changed to two importer positions to provide more importer input into Board deliberations. In addition, the public member position will be eliminated based on the amended Act.

If approved in the referendum, two handler-importer positions would be added to the Board. This would increase representation of handlers and importers on the Board in order to reflect their increased financial obligations under the program.

How will the activities of the Board change?

Regardless of the outcome of the referendum, the Board will be allowed to develop a voluntary quality assurance program that will be enforced by USDA.

If approved in the referendum, the Board would use 8 percent of its funds annually for beekeeping and production research to support U.S. honey producers. In addition, the Board would be allowed to develop purity standards and an inspection and monitoring system to enhance the image of honey and honey products for the benefit of the entire industry.

How would exemption and recordkeeping requirements change?

Producers, producer-packers, handlers (if covered by the program), and importers who sell (1) less than 6,000 pounds of honey annually and (2) the honey is sold through local retail outlets, such as roadside stands, farmers markets, or groceries will no longer have to request an exemption from the Board in order to avoid paying assessments under the program. In addition, producers would be required to keep records for a period of two years just like producer-packers, handlers, and importers. The Board and the Department need access to certain industry records in order to enforce the assessment and reporting provisions of the program.

Who will be allowed to vote on the amendments?

Current producers, producer-packers, and importers who were subject to

assessments in calendar years 1998 and 1999 will be allowed to vote in the referendum. In addition, current handlers who were in operation in calendar years 1998 and 1999 and would be subject to assessments if the changes to the program are made will also be allowed to vote.

How will the referendum be conducted?

The referendum will be conducted by mail ballot from AMS headquarters in Washington, D.C. AMS will mail ballots and voting information to all known producers, producer-packers, handlers, and importers on or before August 29, 2000. AMS will issue a news release when the ballots are mailed and again half way through the voting period to remind voters to submit their ballots. All of the amendments will be voted on as a package. The ballot will be postage-paid to save the voter the cost of mailing it to AMS.

Ballots must be received by AMS no later than Friday, September 29, 2000, in order to be counted in the referendum. Therefore, voters are encouraged to mail their ballots several days in advance of the deadline.

What do I do if I do not receive a ballot?

You may call the referendum agents at 1–888–720–9917 (toll-free) to discuss whether you are eligible to vote and to request a ballot and voting materials.

How many voters need to approve the amendments in order for them to become effective?

That depends on the number of ballots submitted. The votable amendments must be approved (1) by a majority of the eligible producers, producer-packers, handlers, and importers voting in the referendum and (2) that majority must have produced, handled, and imported 50 percent or more of the honey produced and handled and the honey and honey products imported by all eligible voters during 1998 and 1999.

How will AMS determine the number of pounds of honey that I produced, handled, or imported?

To simplify the voting process, each ballot for a producer, producer-packer, and importer will include the number of pounds of honey that the voter paid assessments in 1998 and 1999. The handler ballot will include an estimate of the number of pounds of honey the handler would have paid assessments on during that same period. This information will be provided to AMS by the Board.

If I produce, handle, and import honey, will I receive more than one ballot?

Yes. If you produce, handle, and import honey, you will receive three ballots: (1) one for the number of pounds of domestic honey that you produced in 1998 and 1999; (2) one for the number of pounds of domestic honey that you handled in 1998 and 1999; and (3) one for the number of pounds of foreign honey and honey products that you imported in 1998 and 1999.

Does that mean that I will pay three assessments if the votable amendments are approved in the referendum?

Yes. If you produce, handle, and import honey, you will pay: (1) 0.75 cent on each pound of domestic honey that you produce; (2) 0.75 cent on each pound of domestic honey that you handle; and (3) 1.5 cents on each pound of honey and honey products that you import.

If the voters approve the votable amendments, when will they take effect?

It is likely that all of the amendments would take effect on January 2, 2001. However, some of them would take several months to implement. For example, in order to make the changes in Board members, new nominations would have to be made by the National Honey Nominations Committee and submitted to the Secretary of Agriculture for consideration. This process takes several months. Therefore, it is possible that the new Board appointments would not be made until mid-2001. In addition, the U.S. Customs Service, which collects the assessments on imported honey and honey products, needs time to change the import assessment at all ports of entry. Therefore, it is likely that the new assessment rates would not become effective before April 1, 2001.

What happens if the honey industry does not approve the votable amendments?

If the honey industry does not approve the votable amendments, then only the non-votable amendments will take effect. This means: (1) The two importer-exporter positions on the Board will be changed to two importer positions; (2) the public member position will be eliminated; (3) nomination and eligibility requirements for handlers, importers, and representatives of cooperatives will become effective for the next term of office; (4) at least 50 percent of the Board members will have to be producers; (5) the Board could develop a voluntary quality assurance program with enforcement by USDA; (6) small companies will no longer be required to file for an exemption under the program in order to avoid paying assessments; and (7) producers will be required to maintain records.

Executive Orders 12866 and 12988

This rule has been determined to be "not significant" for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act allows producers, producer-packers, importers, and handlers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law. In the petition, the person may request a modification of the Order or an exemption from the Order. Petitions must be filed not later than two years after: (1) The effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Afterwards, the Secretary will issue a ruling on the petition.

If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has examined the impact of the proposed changes to the honey program on small honey producers, producer-packers, handlers, and importers.

The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts of no more than $500,000. Small producer-packers, handlers, and importers fit into the SBA definition for small agricultural service firms with annual receipts of less than $5 million.

According to National Honey Board (Board) records, 2,885 producers paid $1,864,590 in assessments in 1999. That

represents $646 in assessments on 64,600 pounds of honey per producer. At the average wholesale price for honey in 1999 of 65.5 cents per pound, the average producer had $42,313 in receipts, well below the $500,000 threshold.

Similarly, Board records indicate that 348 importers paid $1,743,021 in assessments in 1999. That represents $5,008 in assessments on 500,800 pounds of honey per importer. At the average wholesale price for honey of 65.5 cents per pound, the average importer had $328,024 in receipts, well below the $5 million threshold.

There are approximately 121 handlers and 400 producer-packers who would pay assessments on the domestic honey that they handle if the votable amendments to the Order are approved in the referendum. In 1999, 184,296,200 pounds of domestic honey were handled. At the average wholesale price for honey of 65.5 cents per pound, the value of that honey was $120,714,011 or $231,696 per handler or producer-packer, which is also below the $5 million threshold.

Therefore, a majority of the producers, producer-packers, handlers, and importers who would be affected by the changes to the Order may be considered small entities. In addition, an estimated three handler/importer organizations whose membership includes these entities would be affected by the changes to the Order.

The votable amendments would add a 0.75 cent per pound assessment on honey handlers, decrease the producer assessment from 1 cent per pound to 0.75 cent per pound, and increase the assessment on imported honey from 1 cent per pound to 1.5 cents per pound. An assessment of 0.75 cent per pound represents only 1.1 percent of the 1999 average price of honey of 65.5 cents per pound (wholesale). The 1.5 cent per pound assessment on imports would be a 50 percent increase for importers. However, 1.5 cents represents only 2.3 percent of the 1999 average wholesale price. Therefore, the assessment changes are not expected to create a burden for small entities.

Basing projections on the assessments remitted or reported over the five-year period from 1995 to 1999, the Board would collect approximately $4,860,000 in assessments annually, a $1.3 million increase in revenue from assessments collected in 1999, if the amendments are approved.

The proposed amendments would have many benefits for the producers, producer-packers, handlers, and importers directly affected by them. They would also have benefits for consumers and various segments of the marketing chain, including food service operators.

The non-votable changes in the nomination procedures for Board members would benefit handlers, importers, and marketing cooperatives by giving them increased input on the individuals who are nominated by the National Honey Nominations Committee (Committee). The proposed eligibility requirements for persons serving as importer members and alternates on the Board and the proposed requirement to eliminate the authority for an exporter to serve in an importer position on the Board would also benefit importers by providing them more representation on the Board and, thus, more input into Board decisions on how their assessment dollars are spent.

If the votable amendments are approved, importer representation would be further increased by the addition of two handler-importer members and alternates to the Board. These proposed positions would also give handlers increased representation on the Board, reflecting the fact that they would start paying assessments.

The non-votable change in the term of office for the Committee will greatly facilitate the ability of state beekeeper associations to submit nominees to serve on the Committee to USDA in a timely manner and help assure that the Secretary is able to appoint new members to the Committee prior to the beginning of the term of office. The non-votable requirement that 50 percent of the members of the Board must be producers reflects the amended provisions of the Act.

In addition, producers, handlers, and importers would benefit from the non-votable changes on reconstituting the Board. Reconstitution of Board members would be based on changes in the geographical distribution of honey production in the United States and on changes in the proportion of assessments paid on domestic honey and on imported honey and honey products, and this should provide more equitable treatment and fairness of representation on the Board for producers, handlers, and importers alike.

The votable amendment which would require the Board to reserve 8 percent of the assessments it collects on research to increase the efficiency of the honey industry and to enhance the image of honey and honey products has the potential to provide the consumer with new products; to provide beekeepers with better production methods; to ensure that any quality or purity standards are fair to both the domestic industry and imports; and to add new markets for honey.

All segments of the honey industry could benefit from the non-votable amendments to implement a quality assurance program and a related inspection and monitoring system because they have the potential to increase wholesale and retail confidence in the quality of the honey that is marketed. This means that consumers, food service operators, and manufacturers would be likely to have more confidence in the quality of honey and honey products available on the market. This, in turn, is expected to generate increased sales of honey in the United States and abroad, which would benefit producers, handlers, and importers alike. Handlers would also have confidence in the purity of the honey they are buying from producers or importers.

The minimum purity standards and inspection and monitoring system that will be voted upon in the referendum have the potential to further increase confidence within the honey industry and among consumer and commercial buyers.

The non-votable amendment which would add reporting and recordkeeping requirements for producers would assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation. This information would help guide the Board in its decision making as well as be provided to industry members for their use in making individual marketing decisions. The amendment would also assist the Board in enforcing the assessment and reporting provisions of the Order which would help ensure that everyone who is subject to assessments is paying assessments.

The non-votable amendment that eliminates the requirement for persons who are eligible to claim an exemption to file an application for an application would significantly reduce the paperwork burden on the industry as well as reduce the Board's costs in managing the program.

The non-votable amendment which sets guidelines for the timing of referenda reduces the possibility that the operations of the Board will be disrupted so frequently that the effectiveness of the Board's programs would be compromised.

In addition, removing obsolete provisions from the Order would make the Order more understandable to the public, the industry, and the Board and its staff.

Paperwork and recordkeeping impact. The Transaction Report used in the assessment collection process would have to be revised to reflect the new assessments rates.

One non-votable amendment would require producers to maintain and make available to the Board and the Secretary books and records. Another would require producers to periodically report to the Board information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, only handlers, importers, and producer-packers are required to maintain records and provide reports to the Board or the Secretary. This information is necessary for enforcement of the Act. It is most likely that the information requested from producers would be obtained through periodic audits.

Based on this expanded reporting authority, there are also plans to collect information periodically from producers for statistical purposes. At this time, the Board's plans are tentative on how and when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the proposed information collection. The form or mailer for collecting the information will be submitted to OMB for approval prior to its use and the industry will be notified.

Another non-votable amendment would reduce the reporting burden for certain producers, producer-packers, handlers, and importers who qualify for exemption from assessment based on the quantity of honey or honey products produced, handled, or imported. Pursuant to the 1998 changes to the Act, the Order would no longer require individuals to file an application with the Board in order to attain exempt status.

The recordkeeping and reporting requirements related to the proposed amendments to the Order are designed to minimize the burden on producers, producer-packers, handlers, and importers. In addition, any information collection that cannot occur through forms already in use would pose a minimal additional burden.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,873 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, 3 handler/importer organizations, and 1 cooperative representative) would be $40,839 or $5.03 per producer, $31.03 per producer-packer, $26.36 per handler, $0.11 per importer, $15 per handler/importer organization, and $5.00 per cooperative representative, and represents an overall increase in burden for each of these groups.

The impact of the recordkeeping requirement provided for in this proposed rule on small entities would be minimal. This recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of the small entities affected. It is anticipated that a significant number of these small entities currently keep these records for commercial and/or tax purposes.

With regard to alternatives, the provisions of the amendments to the Order in this proposal have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements while maintaining consistency with the provisions of the Act, as amended.

The proposed forms to be modified would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act, as well as the proposed amendments to the Order. The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act. In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), AMS has submitted the information collection and recordkeeping requirements that may be imposed if the proposed amendments become effective to OMB for approval under OMB Control Nos. 0581–0093 and 0505–0001.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The proposed recordkeeping and information collection requirements are essential to carry out the intent of the Act, as amended.

In addition, there would also be a new burden on handlers voting for the first time in the upcoming referendum, and producer-packers and importers would be entitled to cast votes as handlers as well as producers or importers. The referendum ballot, which represents the information collection requirements relating to the referendum, is addressed in the final rule on the referendum procedures which is being published separately in this issue of the **Federal Register**.

A non-votable amendment to the Order would increase the recordkeeping burden on producers. The Order currently requires handlers, importers, and producer-packers to retain their books and records for at least two years beyond the marketing year of their applicability. The Order would be changed to conform to the Act, as amended, by also requiring producers to maintain and retain books and records for two years. It is anticipated that producers already maintain and retain the books and records which contain this information for commercial and/or tax purposes. Therefore, this recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of producers.

Another non-votable amendment to the Order would add authority for the Board to require producers to maintain records and, at such time and such manner that the Board may prescribe, report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information would be obtained from producers through periodic audits.

Based on this expanded reporting authority, the Board also plans to collect information periodically from producers for statistical purposes. At this time, the Board's plans are tentative on how and when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the possible information collection.

A votable amendment would impose a new 0.75 cents per pound assessment on handlers of honey and honey products, decrease the producer assessment from 1 cent to 0.75 cents per pound, and increase the assessment on imported honey and honey products from 1 cent to 1.5 cents per pound. If the amendments are approved in the referendum, the Transaction Report, which is currently used to report purchase and assessment information, would be modified to reflect the new assessment rates.

Information provided on the Transaction Report is collected under OMB No. 0581–0093. There would be a slight increase in the reporting burden

for handlers and producer-packers in order to complete additional assessment information covering their handling activity on the Transaction Report. However, the added reporting burden would be minimal. The extra information to be collected represents a small portion of the total information that handlers and producer-packers are already required to fill out and submit on the same form for each purchase.

The background information form used by the Secretary to determine if nominees to the Board are eligible to serve would be revised and submitted as a new form (AMS–755). It would be added to the information collection under OMB No. 0581–0093. This form is completed and submitted to USDA by individuals who are nominated for member and alternate positions on the Board.

To conform to the 1998 amendments to the Act, another non-votable amendment would revise qualification requirements for serving on the Board. This information would be collected on the Board's Candidate Profile (No. 4 below), and would be used by the Board's staff and the National Honey Nominations (Committee) to determine the qualifications of candidates to the Board. The Candidate Profile would be submitted as a new form and added to the information collection under OMB No. 0581–0093. It is anticipated that the basic background information to be collected would be readily accessible or otherwise maintained from records currently maintained by those persons who would be candidates to serve on the Board.

It should be noted that the amendments to the Order contained in this proposed rule would reduce the reporting burden for those producers, producer-packers, and importers who previously have been required to file an application with the Board in order to qualify for exemption from assessments. Based on the changes to the Act in 1998, persons subject to the Act would no longer be required to file an application for exempt status.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,873 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, 3 handler/importer organizations, and 1 cooperative representative) would be $40,839 or $5.03 per producer, $31.03 per producer-packer, $26.36 per handler, $0.11 per importer, $15 per handler/importer organization, and $5.00 per cooperative representative, and represents an overall increase in burden for each of these groups.

The new recordkeeping requirement involving 2,700 hours for producers and producer-packers would be added to the program's recordkeeping burden under OMB No. 0581–0093. The previously approved recordkeeping burden totals 12,525 hours. This total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the new annual recordkeeping burden would equal 5,451 hours, after including the additional 2,700 hours.

The estimated annual burden of 1,355 hours in providing additional information on the Transaction Report would be added to the previous burden under OMB No. 0581–0093. The previously approved burden totals 9,100 hours. However, this total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the estimated new annual burden for completion of the Transaction Report would equal 8,128 hours, after including the additional 1,355 hours.

The estimated annual burden of 10 hours for completing the background information form (AMS–755) represents a new burden to be reported under OMB No. 0581–0093. The removal of the exemption application requirement would eliminate the estimated annual burden of 41.5 hours as reported under OMB No. 0581–0093. The estimated annual burden of 12.5 hours for completing the Candidate Profile represents a new burden to be reported under OMB No. 0581-0093 for the first time.

The provisions of the amendments to the Order in this proposal have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping or reporting costs or requirements.

The proposed forms to be modified would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act, as well as the proposed amendments to the Order. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. These forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The information sought is not available from other sources because such information relates specifically to persons covered by the Act and Order. Therefore, there is no practical method for collecting the required information without the proposed recordkeeping requirements and use of forms described in this rule.

The new recordkeeping requirement included in this proposed rule is:

(1) *A requirement for producers to maintain books and records to facilitate administration and enforcement of the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents (Recordkeepers): Producers and producer-packers.

Estimated Number of Respondents (Recordkeepers): 5,400.

Estimated Number of Responses per Respondent (Recordkeeper): 1.

Estimated Total Annual Burden on Respondents (Recordkeepers): 2,700 hours.

Information collection requirements included in this proposed rule resulting in an increase or decrease in burden are:

(2) *A Transaction Report to be completed by first handlers, producer-packers, and importers.*

Estimate of Increased Burden: Public reporting burden for the collection of additional information from handlers and producer-packers is estimated to average an additional 3 minutes per each response [18 minutes (requested) – 15 minutes (currently approved)=3 minutes (increase)].

Respondents: Handlers and producer-packers.

Estimated Number of Respondents: 521.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 8,128 hours [8,128 hours (requested) – 9,100 hours (currently approved) = 972 (decrease)]. Note: The previously approved burden of 9,100 hours is not correct due to an overstatement in the number of respondents. If the previous burden were recalculated based on 521 respondents, it would equal 6,773 hours. This means that the 8,128 hours now requested would represent an increase in burden of 1,355 hours instead of a decrease of 972 hours.

(3) *A background information form (AMS–755) to be completed by candidates nominated for appointment to the Board.*

Estimate of Burden: Public reporting burden for the collection of information from two nominees for each of the estimated five member and five

alternate position openings annually is estimated to average 0.5 hours per response.

Respondents: Producers, producer-packers, handlers, importers, and cooperative representatives.

Estimated Number of Respondents: 20

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 10.0 hours [10.0 hours (requested) − 0.0 hours (new form) = 10.0 hours (increase)].

(4) *A Candidate Profile form used by Board staff and the Committee to determine qualifications to serve on the Board.*

Respondents: Handlers and producer-packers.

Estimated Number of Respondents: 521.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 8,128 hours [8,128 hours (requested) − 9,100 hours (currently approved) = 972 (decrease)]. Note: The previously approved burden of 9,100 hours is not correct due to an overstatement in the number of respondents. If the previous burden were recalculated based on 521 respondents, it would equal 6,773 hours. This means that the 8,128 hours now requested would represent an increase in burden of 1,355 hours instead of a decrease of 972 hours.

The following information collection would be added by this rule:

(5) *A report from honey handler/importer organizations for certification of eligibility to nominate Board members.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 1.5 hours per response for each organization.

Respondents: Honey handler and importer organizations.

Estimated Number of Respondents: 3.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4.5 hours (new)

The following information collection would be eliminated by this rule:

(6) *A producer or importer application to be completed by producers and importers seeking exemption from assessment.*

Estimate of Burden: Public reporting burden for this collection of information from producers, producer-packers, and importers is estimated to average 0.083 hours per response.

Respondents: Producers, producer-packers, and importers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Decrease in Total Annual Burden on Respondents: 41.5 hours [0.0 hours (form discontinued) − 41.5 hours (currently approved) hours (decrease) = 41.5 hours (decrease)].

Comments on the regulatory and paperwork impact of the proposed amendments to the Order were invited in the February 28, 2000, proposed rule. Three comments were submitted by the April 28, 2000, deadline.

One commenter believes that the estimated total annual cost of maintaining records and providing information to the Board and USDA, as stated in the February 28, 2000, proposed rule, is overstated. The commenter asserted that the estimated number of responses per respondent on the Transaction Report may be overstated. According to the commenter, Board records showed that the actual number of responses was 30 for each respondent rather than the 52. With 30 responses per respondents, the revised total annual burden on respondents for the Transaction Report would be 4,689 hours. This would be a decrease of 4,411 hours from the currently approved annual burden. The commenter's observation that importers do not complete the Transaction Report is accurate. The PRA section of the February 28, 2000, proposed rule incorrectly indicated that importers are required to complete the report. However, importers were not included in the calculation of the estimated total annual burden on respondents. The commenter's estimated number of responses is based on the number of Transaction Reports received last year, and the number of Transaction Reports submitted will likely change from year to year. Therefore, no change is made as a result of this comment.

Another commenter believes that the estimated total annual cost of maintaining records and providing information to the Board and USDA is too low. According to the commenter, the annual cost per producer of $5.03 is low when considering the time involved in reading, studying, and writing comments regarding the proposed changes to the Order. However, the annual cost per producer only entails the actual time spent in maintaining and providing required information to the Board and USDA. This annual cost does not include the time spent by a commenter who voluntarily submits comments. Therefore, no change was made as a result of this comment.

Another commenter suggested that, for those who are both a producer-packer and a handler, the expense of recordkeeping would be more than the actual assessment. This may be correct. However, every effort has been made to minimize the costs of maintaining records and providing information. Therefore, no change is made as a result of this comment.

A comment was received in which the commenter suggested that requiring producers and first handlers' to submit reports would be unnecessary. However, the requirement is necessary for enforcement. Without authority to require reports, it would be difficult to conduct compliance investigations. Therefore, no change is made as a result of this comment.

Background

As explained above, the Act, which authorizes the honey research and promotion program, was amended in 1998. Subsequently, the U.S. Department of Agriculture (USDA or the Department) requested interested persons to submit proposals for making comparable changes to the program, which operates under the Honey Research, Promotion, and Consumer Information (Order).

The National Honey Board (Board)—with the support of three honey industry groups—submitted a proposal containing regulatory text for all of the changes authorized or required by the 1998 amendments to the Act. Proposals submitted by eight other organizations or persons did not include regulatory text. Therefore, the Department published the Board's proposal, with a few changes, as a proposed rule in the Federal Register on February 28, 2000 (65 FR 10600), with a 60-day comment period. The eight other submissions were made part of the rulemaking record and are considered comments on the proposed changes.

Proposal

The Board proposed the following amendments to the Order:

In §§ 1240.1 through 1240.28 of the Order, definitions would be added for the terms "Department," "honey production," "industry information," "national honey marketing cooperative," "plans and projects," "qualified national organization representing handler interests," and "qualified national organization representing importer interests." Each of these new definitions was added to sections 4602 (19) through (24) of the Act as part of the 1998 amendments. Currently, the Order does not contain definitions for these terms. The definitions have also been arranged in alphabetical order for ease of reference.

Definitions would be revised for the terms "handle," "honey," "Honey Board," and "research." The definition of the term "handle" would be amended to exclude the purchase of honey or a honey product by a consumer or other end-user, which conforms to the revised definition set out in section 4602(7) of the Act.

The definition of the term "honey" would be modified to include comb honey. USDA has recognized in the past that the intent of the Act is to assess comb honey. This proposed revision would resolve any confusion in this area.

The term "Honey Board" would reappear under the definition heading of "National Honey Board" which then clarifies that the terms "National Honey Board," "Honey Board," and "Board" all refer to the National Honey Board created by the Act.

The definition of "research" would be revised to include studies that test the effectiveness of market development and promotion efforts as well as studies on bees as provided for in the 1998 amendments to section 4601(b) of the Act.

Section 1240.30 would be revised to change the composition of the Board to 14 members consisting of: seven producers; two handlers; two handlers who are also importers, if approved in referendum; two importers; and one representative (i.e., officer, director, or employee) of a national honey marketing cooperative. The public member position would be eliminated as well as specific representation for honey exporters. These changes are authorized by the 1998 amendments to section 4606(c)(2) of the Act. Except for the addition to the Board of two handlers who are also importers, these changes would become effective regardless of the outcome of the referendum. See also discussion on producer representation under *USDA Changes to Proposal.*

Presently, the Board has 13 members consisting of: seven producers; two handlers; two importers or one importer and one exporter; one cooperative representative; and one public member. The cooperative representative must be an officer or employee of a honey marketing cooperative but does not necessarily have to be from a "national" honey marketing cooperative.

Section 1240.31 would be revised to remove obsolete language regarding the length of the terms of office of the initial Board members. This section would also be revised to provide that terms of office be staggered periodically as recommended by the Board and as determined by the Secretary to maintain continuity of Board membership and to avoid situations where a majority of the members' terms end at the same time. The Order currently provides for staggered terms only with respect to the seating of members on the initial Board. Section 4606(c)(8) of the Act as amended in 1998 provides for periodic staggering of Board terms. This amendment does not require approval in the referendum in order to take effect.

In § 1240.32 concerning nominations, a number of revisions would be made to conform the Order with the 1998 amendments to the Act with regard to the nomination process for Board members. For instance, references to state associations representing exporters would be deleted from § 1240.32(a) since section 4606(c)(2) of the amended Act no longer provides for exporter representation on the Board. Similarly, references to the Board member and alternate positions representing the general public would be removed from this section to correspond with the elimination of these positions by the 1998 amendments to the Act. References to the initial Committee formed after the Order was implemented as well as language on the first annual meeting of the Committee would also be deleted from § 1240.32 since such provisions are no longer relevant. Furthermore, as provided in section 4606(b)(2) of the amended Act, § 1240.32 would be amended to reflect the Secretary's authority to stagger the terms of Committee members. These revisions do not require approval in the referendum in order to take effect.

In addition, § 1240.32(a)(3) would be revised so that the term of office for Committee members would begin on July 1 instead of January 1. This change would accommodate the nomination of Committee members by state beekeeper associations, which often meet in the winter months. Currently, it is difficult for the associations to meet and elect their nominees, for the nominees to complete and submit background information forms, and for the Secretary to review the nominations and make a determination prior to the beginning of the term of office on January 1. Having the term of office commence on July 1 would allow adequate time for the nomination process to be completed prior to the beginning of the term. In addition, since the Committee's main meeting is usually in the fall, new members would be appointed by the Secretary in time to participate in that meeting if the term of office begins on July 1. This change would go into effect regardless of the outcome of the referendum.

Section 1240.32(b) would be revised with regard to the process the Committee would follow in considering recommendations of nominees and submitting nominations to the Secretary for handler, importer, handler-importer, and cooperative representative positions on the Board. Based on sections 4606(c)(2) (B) through (E) of the Act, as amended, the Committee would be required to consider the recommendations of "qualified organizations representing handler interests," "qualified organizations representing importer interests," and "qualified national honey marketing cooperatives." The requirements for qualification or certification of these organizations are set forth in section 4606(c)(6) of the Act. These requirements were added to the Act to ensure that the recommendations being made to the Committee would be from organizations that truly represent the various industry segments. If, in a given instance, there is not a qualified national organization that represents handler or importer interests, the Committee would consider the recommendations of individual handlers who have paid assessments on the honey they have handled or the recommendations of individual importers who have paid assessments on the honey they have imported. This revision would become effective regardless of the outcome of the referendum.

Currently, candidates for nomination to the Board for handler or importer positions may be recommended to the Committee by any industry organization that represents the interests of handlers or importers. There are no certification or qualification requirements that need to be met by the industry organization making the recommendations.

With regard to nominations for the cooperative position on the Board, the current Order does not provide a process whereby recommendations are initiated by qualified national honey marketing cooperatives. The current Order also does not limit cooperative nominations to persons affiliated with honey marketing cooperatives that are "national" in character. The current Order does require that the representative be an officer or employee of the cooperative. In contrast, the proposed revision of § 1240.32(b) would expand eligibility to include all directors of a cooperative's board. This takes into account the possibility that one may serve on the board of directors of a cooperative but not necessarily be an officer of the cooperative.

The Act, as amended, requires the Committee to make the following

nominations: (1) one producer member (and alternate) from each of the seven regions established by the Secretary; (2) two handler members (and two alternates) from recommendations made by qualified national organizations representing handler interests; (3) two importer members (and two alternates) from recommendations made by qualified national organizations representing importer interests; (4) two handler members who are also importers (i.e., handler-importers) and two alternates from recommendations made by qualified national organizations representing handler or importer interests; and (5) one member (and one alternate) who are officers, directors, or employees of a national honey marketing cooperative from recommendations made by qualified national honey marketing cooperatives. Therefore, this proposed rule would revise § 1240.32 of the Order to adopt this new Board composition and to remove the obsolete references to the current Board structure. The two handler-importer positions on the Board are subject to voter approval in the referendum before taking effect.

Section 1240.32(b) would also be revised to require that at least 75 percent of an importer's gross income generated by the sale of honey and honey products during any three of the preceding five years be from the sale of imported honey and honey products in order to be eligible for nomination to one of the importer member or alternate positions on the Board. This conforms to section 4606(c)(5)(B) of the Act as amended in 1998. Presently, the Order does not establish a minimum gross income level for importer member eligibility. This change would take effect regardless of the outcome of the referendum.

As mandated by section 4606(c)(4) of the Act, and not subject to voter approval in the referendum, § 1240.32(b)(6) in the proposal would be amended with respect to the administrative reconstitution of the Board if certain criteria are met. The 1998 amendments to the Act made changes in Board reconstitution requirements in order to provide more equitable treatment and fairness of representation on the Board. See discussion on Board reconstitution under *USDA Changes to Proposal* in which references to reconstitution of the Board would be moved from § 1240.32 to § 1240.33.

The proposal would require the Board to review every five years: (1) the geographic distribution of domestically produced honey assessed under the Order, (2) the changes in the annual average percentage of assessments owed by importers under the Order relative to assessments owed by producers and handlers of domestic honey and honey products, and (3) whether there are any changes in the proportion of assessments owed on imports by importers and handler-importers.

As a result of this review, and if necessary to reflect changes in the proportion of domestic and imported honey assessed, the Board would recommend for the Secretary's approval changes in the regional representation of honey producers. And, if the proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period or if the proportion of assessments owed by importers compared with the proportion of assessments owed by producers and handlers of domestic honey and honey products changed by more than 6 percent from the base period proportion, the Board would recommend to the Secretary: (1) The reallocation of handler-importer member positions as handler positions; (2) the reallocation of importer member positions as handler-importer positions; (3) the reallocation of handler-importer positions as importer member positions; or (4) the addition of Board members.

For the initial review conducted by the Board, the base period proportions would be the proportions determined by the Board for fiscal year 1996. Otherwise, the base period proportions would be the proportions determined during the prior review.

Recommendations made by the Board shall be based on the five-year average of annual assessments, excluding the two years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products and whether any change in the average in the annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

The provision on Board reconstitution in § 1240.32(b)(6) of the current Order provides authority for the Board to review the fairness of representation on the Board among producer regions, but not the adequacy of representation among handlers and importers serving on the board. In addition, the criteria for evaluating representation on the Board are more permissive in the current Order when compared to the assessment-based criteria provided for in the proposed new version. Also, the current Order, while requiring the Board to conduct a review every five years, does not mandate that the Board propose changes to representation among producer regions as a result of such review.

In § 1240.35 on Board meeting procedures, the quorum requirement would be changed from seven to eight members assuming the voters approve the amendments in the referendum allowing the size of the Board to increase from 13 to 14 members. This would maintain the practice that more than half of the Board members must be present at Board meetings for official Board action to be taken. Note, if the voters in the referendum do not approve the amendments, the number of Board members would decrease from 13 to 12 and the quorum requirement would not be raised. This would occur because the public member position would be eliminated regardless of the outcome of the referendum.

In § 1240.36, a grammatical change would be made, replacing the word "of" with the word "at" in the second sentence without changing the meaning. This change would go into effect regardless of the outcome of the referendum.

In § 1240.38, the Board's duty to investigate potential violations of the Order in paragraph (d) would be expanded to also include the authority to investigate violations of any rule or regulation implemented to carry out the Order. The Board would continue to be required to report any findings to the Secretary.

An editorial change would be made in § 1240.38(l) covering the Board's authority to appoint working committees. The provision currently states that members of committees be "drawn from" producers, handlers, importers, exporters, members of wholesale or retail outlets, or other members of the public. The proposed new language reads simply that the committees "may include" these representatives. This revision does not alter the eligibility of who is able to serve on working committees. This revision to § 1240.38(l) would go into effect regardless of the outcome of the referendum.

In addition, throughout § 1240.38 the words "plan" and "plans" are inserted in place of "project" and "projects" in certain instances. For example, the repeated use of the phrase "programs and projects" would read "programs and plans." In addition to programs and projects being closely synonymous in meaning and somewhat redundant when used together, the use of "plan" or "plans" better describes the Board's planning activities. Also, the term "industry information" would be inserted alongside the other permissible

program activities of research, promotion, and consumer education as provided for in section 4601(b)(1) of the amended Act and elsewhere. These changes to § 1240.38 would go into effect regardless of the outcome of the referendum.

In the text of § 1240.39 as well as the section title and the heading immediately preceding the section, "industry information" would be added to reflect the Board's authority to conduct this type of activity along with research, promotion, and consumer education. The addition of "industry information" as an authorized activity appears in section 4601(b)(1) of the Act and elsewhere. The word "programs" would also be added wherever the words "plans and/or projects" appear. This is consistent with the Act, which frequently uses the word "programs" in connection with research, promotion, industry information, and consumer education activities. These changes would go into effect regardless of the outcome of the referendum.

A new paragraph would be added to § 1240.39 authorizing the Board to conduct research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the proposed changes to the Order authorized by the 1998 amendments to the Act would strengthen the honey industry by expanding research in areas that would help solve production problems, reduce costs of production, and enhance the image of honey as a pure and natural product. Such research authority is specifically provided for in sections 4601(a) through (b) of the Act.

Another new paragraph would be added to § 1240.39 authorizing the Board to conduct activities which may lead to the development of new markets or marketing strategies for honey or honey products, as well as activities to increase the efficiency of the honey industry and to enhance the image of honey and honey products. The authority to conduct these activities is specifically provided for in section 4601(b)(1)(C) of the amended Act. This paragraph would become effective regardless of the outcome of the referendum.

Another new paragraph would be added to § 1240.39 to address the Board's authority to carry out activities and develop procedures for the inspection or monitoring of honey and honey products being sold for domestic consumption or for export from the United States. This includes the authority to develop minimum purity standards. Sections 4607(a)(8) and 4607(b) of the amended Act provide specific authority for the Board to develop and conduct these activities. Any program involving the establishment of minimum purity standards as well as systems for inspection or monitoring of honey or honey products would be subject to prior approval by the Secretary. In addition, the Board's power to develop purity standards or inspection or monitoring programs that are mandatory must first be approved by voters in the referendum.

Sections 1240.39 and 1240.40 would be amended to allow activities to be funded with donations or other funds available to the Board in addition to assessment funds. Section 4606(e)(1) of the amended Act created the specific authority for the Board to accept voluntary contributions to finance expenses covered in its budget including activities in research, promotion, consumer education, and industry information as well as expenses for the administration of the Board. These changes to §§ 1240.39 and 1240.40 would go into effect regardless of the outcome of the referendum.

In § 1240.40 on budget and expenses, industry information would be included in the types of activities for which the Board is authorized to incur expenses based on its authorization as a permissible activity under section 4601(b)(1) and elsewhere in the Act. This revision does not require approval in the referendum.

Also in § 1240.40, a new paragraph would be added to require the Board to reserve at least 8 percent of all assessments collected each year for expenditure on research programs designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the additional assessment funding for such research projects, including an 8 percent allocation for production research, would allow the industry to leverage its resources to make research both practical for and applicable to the industry's needs. Any allocated funds remaining at the end of the year would be carried forward for allocation and expenditure in subsequent years. The 8 percent figure was selected because it provides the funding level the industry felt would be adequate for the intended research. Allocating 8 percent of the Board's funds to this type of research is specifically provided for in section 4606(f)(2) of the amended Act. In order to become effective, this provision must be approved in the referendum.

Section 1240.41 would be amended so that handlers as well as producer-packers in their capacity as handlers would pay assessments. Currently, only producers and importers as well as producer-packers in their capacity as producers are subject to assessment under the Order.

First handlers would be responsible for paying assessments on the honey they handle as well as collecting and remitting assessments from producers. The total assessment on honey produced in the United States would be increased from $0.01 per pound to $0.015 per pound. Payment of this total amount would be allocated among producers, handlers, and producer-packers. The assessment rate to be levied on producers for honey produced and handled would be $0.0075 per pound of honey. This is a decrease from the current assessment rate of $0.01 per pound paid by producers. A new assessment levied on handlers would be $0.0075 per pound of honey handled. Producer-packers would pay a $0.0075 assessment on the honey they produce as well as a $0.0075 assessment on the honey for which they act as a first handler, even if the honey handled was from the producer-packer's own production.

The new assessment rates for producers, handlers, and producer-packers is authorized by section 4606(e)(3) of the Act. Sections 4608(a) and 4608(e) provide new requirements affecting first handlers with regard to the payment of the handler assessment as well as the collection and payment of the producer's assessment. These proposed changes to the Order at § 1240.41 covering the new assessment rates as well as the authority to subject handlers to assessment must first be approved in the referendum. If the amendments are not approved in the referendum, the current rate of $0.01 per pound payable by domestic producers would remain in effect, and handlers would not be subject to assessment.

Section 1240.41 would also be revised so that the total assessment on honey and honey products imported into the United States would be increased from $0.01 per pound to $0.015 per pound in order to equal the combined rate paid by producers and handlers on domestic honey. Of this $0.015 total, $0.0075 would represent the assessment due from the importer, and $0.0075 would represent the assessment due from a handler and paid by the importer on behalf of the handler. The full assessment on imported honey would be due at the time of entry of the honey

into the United States. The authority for increasing the assessment on imported honey is found in section 4606(e)(3)(B) of the Act and is subject to referendum approval before being implemented. If the amendments are not approved in the referendum, the current rate of $0.01 per pound payable by importers on honey and honey products would remain in effect.

Section 1240.41 would also be amended so that importers are ultimately responsible for the payment of assessments in the event the U.S. Customs Service (Customs) did not collect the amounts owed at the time of entry. While the current Order makes reference to importers being subject to late payment charges, it does not expressly provide that importers are liable for paying the assessment directly to the Board if Customs fails to collect the amount. This change is authorized by section 4608(i)(2) of the Act. In addition, reference in the Order to the collection of assessments by the Secretary would be removed since the Secretary does not undertake the collection responsibility. These changes clarifying the Secretary's role as to assessment collection as well as the ultimate liability of importers for assessment payment do not require approval in the referendum.

Section 1240.41 would also be amended to make producers subject to late-payment charges and interest penalties on past-due assessments similar to handlers, importers, and producer-packers. Presently, the Order only mentions that a producer is responsible for payment of the assessment to the Board should the first handler fail to collect the assessment. Subjecting producers to late-payment charges and interest penalties for assessments owed to the Board would be consistent with the sanctions other program participants face for failing to pay amounts due to the Board. This change would go into effect regardless of the outcome of the referendum.

Since the honey price support loan program, as provided in the Agricultural Act of 1949 [7 U.S.C. § 1446(b)], has been discontinued, § 1240.41(g) of the current Order would be revised by referring to a more generic loan program. This generic reference would adequately accommodate any new recourse loan program or other loan program that might be developed by USDA's Farm Service Agency. The other features of this provision would not be changed. The Board's proposal would have this provision on loan programs appear at § 1240.41(m). However, see discussion under *USDA Changes to Proposal* in which this provision would appear at § 1240.41(k). This change does not require approval in the referendum.

In § 1240.42 on exemption from assessment, an exemption would be added for handlers handling less than 6,000 pounds of honey per year. The 6,000-pound limit is identical to the exemption amount for producers, producer-packers, and importers. Providing the exemption for handlers conforms to section 4606(e)(4)(B) of the amended Act. This amendment would not take effect unless the referendum is approved.

In addition, § 1240.42(c) in the current Order would be removed. This section requires that a person file an application with the Board in order to receive an exemption from paying assessments. With the removal of this provision, no direct action would be necessary for a producer, producer-packer, handler, or importer to qualify for exemption, other than to maintain relevant records.

Based on the number of persons eligible to claim an exemption, eliminating the application requirement would significantly reduce the reporting requirement for applicants as well as the consequent recordkeeping demands on the Board's staff. The elimination of the exemption application requirement in § 1240.42(c) conforms to the 1998 amendments to the Act, which struck a similar provision from section 4606(e)(4)(B), as redesignated. This change would go into effect regardless of the outcome of the referendum.

A minor editorial change would also be made to § 1240.42 by inserting the word "United" to precede "States" for purposes of clarification and correctness.

The Board proposes that § 1240.43 of the Order be removed in its entirety. This section authorizes the payment of refunds to States operating a similar assessment program. Coverage of this same subject in § 1240.42(f) would also be stricken. Both § 1240.43 and § 1240.42(f) of the Order discuss how States operating programs similar to those authorized by the Act may obtain refunds of assessments from the Board. These provisions were originally included in the Order because a program existed in California at the time. Since the California program no longer exists, and no other similar State plans exist, the provisions in the Order referencing State plans are no longer relevant and therefore would be removed. The elimination of these provisions from the Order would take effect regardless of the outcome of the referendum.

The section on operating reserves at § 1240.44 in the current Order would be redesignated as § 1240.43.

A new § 1240.44 would be added to authorize the Board to develop and recommend to the Secretary a system or program for monitoring the purity of honey and honey products being sold for domestic consumption and for export. The authority to develop and carry out such programs, including the establishment of minimum purity standards, is based on sections 4607(a) through (b) of the amended Act. This section must be approved in the referendum to become effective.

A new § 1240.45 would also be added to authorize the Board, subject to the approval of the Secretary, to develop and implement a voluntary quality assurance program concerning purity standards for honey and honey products. Components of this program could include, among other things, the establishment of an official seal of approval to be displayed on honey and honey products which meet the standards of purity established under the program, actions to encourage persons in the honey industry to participate in the program, actions to encourage consumers to purchase honey and honey products containing the official seal of approval, and periodic inspections by the Secretary of honey and honey products of individuals who participate in the program. The components provided in this new provision parallel those set forth in sections 4607(a) and (c) of the amended Act. This section does not require approval in the referendum.

A new § 1240.46 would also be added to the Order authorizing the Board to recommend, subject to the Secretary's approval, the establishment of minimum purity standards for honey. Authority for this provision is based on section 4607(a) of the amended Act. This section must be approved in the referendum to become effective.

New §§ 1240.44, 1240.45, and 1240.46 would address concerns about the disparate quality of honey available to consumers as well as the need to maintain a positive and wholesome marketing image for honey and honey products.

Section 1240.50 would be revised to make producers subject to reporting requirements similar to handlers, importers, and producer-packers. This would cover producers subject to assessment as well as those currently exempt. In 1996, section 4608(f)(1) of the Act was amended to add recordkeeping and reporting requirements for producers. Requiring producers to be subject to reporting

requirements similar to others in the honey program would facilitate enforcement of the Order. Without this reporting requirement, it has been difficult for the Board to investigate producers for potential noncompliance with the Order. This reporting requirement would also assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation.

Section 1240.50 would also be revised to provide the Board the authority to request reports from producers and producer-packers on the quantity of honey produced and the total number of bee colonies maintained. This change is authorized by the 1998 amendments to the Act. Section 1240.50 already contains reporting requirements for handlers and producer-packers with regard to the total quantity of honey acquired or handled as well as the total quantity of honey imported in the case of importers. Section 1240.50 would also be revised so that these reporting requirements would include coverage for "honey products" in addition to "honey" as provided in the current Order for handlers, producer-packers, and importers. Section 4608(f)(1) provides authority for these changes.

The changes in reporting requirements in § 1240.50 involving producers, producer-packers, handlers, and importers would go into effect regardless of the outcome of the referendum.

In addition, § 1240.51 would be amended to require that producers as well as handlers, importers, and producer-packers maintain and make available for inspection their books and records. This applies to those subject to assessment as well as those currently exempt. Making producers subject to recordkeeping requirements similar to others in the program would facilitate enforcement of the Order. Without this requirement, it has been difficult for the Board to carry out compliance investigations against producers for possible violation of the Order. This change would go into effect regardless of the outcome of the referendum.

Section 1240.51 would also be revised to provide the authority for employees or agents of the Board or USDA to inspect the books and records of individuals subject to the Act and Order. The existing Order provides no authority for "agents" to inspect books and records. One reason for extending this authority to agents is to provide the Board the flexibility of utilizing the services of an outside auditing firm to assist with its compliance efforts. This change is authorized by section 4608(f)(2). This change would go into effect regardless of the outcome of the referendum.

In § 1240.52, a specific penalty would be added for persons convicted of disclosing confidential information. The penalty consists of a fine of up to $1,000, imprisonment for up to 1 year, or both, as well as removal from office or employment. These proposed changes to § 1240.52 of the Order are authorized by section 4608(g) of the Act and do not require approval in the referendum.

In § 1240.61, a change was made to remove the word "projects" and replace it with the word "plans."

In § 1240.62 on suspension or termination of the Order, there would be a change to allow handlers, if subject to assessment, to vote in continuance referenda every five years or referenda on request as provided for in sections 4612(c),through (d) of the Act. This change would only go into effect if the referendum is approved. Obsolete provisions referring to the first continuance referendum would be removed regardless of the outcome of the referendum.

Section 1240.62 would also be revised with regard to petitions for referenda so handlers would be included in calculating the 10 percent which is needed for submitting a petition to have a referendum. The authority for this change is provided by section 4612(d)(1) of the Act and would only go into effect if the amendment making handlers subject to assessment is approved in the referendum.

Also added to § 1240.62 is a requirement that referenda at the request of the Board or by petition of program participants can be held no more than once every two years. If continuation of the Order is approved in a referendum held at the request of the Board or by petition, then the next periodic referendum to determine the continuation of the Order shall be held no sooner than five years from the date of the referendum on request. These changes are made pursuant to sections 4612(c) through (d) of the Act. These changes are not subject to approval in the referendum.

USDA Changes to Proposal

The Department has modified the Board's proposal to make it consistent with the Act when necessary as well as provide clarity, consistency, and correctness when appropriate with respect to word usage and terminology. For example, in some cases, references to "Honey Board" or "National Honey Board" were changed to "Board" for simplicity. In certain instances, gender-specific references were replaced with gender-neutral language.

The Department did not change the title of the Order, as proposed by the Board, to include a reference to "industry information" for consistency with the Act's title which was not changed by the 1998 amendments to the Act. However, a subpart designation has been added to apply to §§ 1240.01 through 1240.67.

In the definition of "Act," the Department did not change the Act's name to reference "industry information" as proposed because, while the Act was amended, the title was not.

The Board proposed defining "National Honey Board" instead of "Honey Board" to include the Board's common reference. The Department retained "Honey Board" as the term defined but included "National Honey Board" as a synonym.

The definition of "part and subpart" was not changed to refer to the Order as it was proposed to be renamed by the Board.

The term "plans and projects" is not a new definition being added to the Order as indicated in the proposal. A definition for this term does appear in the present Order at § 1240.21. The proposal would amend the existing definition by adding the words "industry information" to the existing text.

A minor change in the definition of "Committee" was made for syntax and clarity.

In the definitions of "qualified national organization representing handler interests" at § 1240.23 and "qualified national organization representing importer interests" at § 1240.24, several section cross-references were added. A minor change was also made to the latter definition for purposes of syntax and clarity. In addition, portions of the text from each definition on eligibility requirements were moved to § 1240.32 on nominations and revised slightly for purposes of brevity and clarity. For example, "the association or organization" was shortened to "the organization" in almost every instance.

In the definition of "research" at § 1240.25, the words "products containing honey" were replaced with "honey products" for consistency with language in the Act and Order. The definition of "research" was also revised to add clarification to the proposal's reference to "studies on bees" in accordance with sections 4601(a)(9) through (10), 4601(b)(1)(C) through (D), and 4606(f)(2)(A) of the Act.

In § 1240.30 and elsewhere, the word "national" was placed in front of references to "honey marketing cooperative" to be consistent with usage of this term in section 4606(c)(2)(E) and elsewhere in the Act.

In § 1240.31 on terms of office, several changes were made in order to make the language consistent with USDA procedures and terminology, such as the substitution of gender-neutral language. Another revision added authority for the Secretary to make a determination on staggered Board terms individually. This change was made pursuant to language added to section 4606(c)(8) of the Act, which refers only to the Secretary's authority in making determinations on staggered terms. In the last sentence following "alternate" in § 1240.31, the word "member" was stricken to parallel similar word usage elsewhere in the section.

In § 1240.32, subparagraph (b)(6) as it appeared in the proposal was stricken since it covers actions of the Board as opposed to actions of the Committee, which is the subject of § 1240.32. The text of former subparagraph (b)(6) would be reinserted, with several modifications, as a new § 1240.33 titled "Board reconstitution."

A new provision was added to § 1240.32(b)(8) on the basic eligibility requirements for those nominated to fill Board seats as handler-importers. To be nominated for the handler-importer position, a handler must also have been an importer of record of at least 40,000 pounds of honey during any three of the preceding five years. These requirements are contained in section 4606(c)(2)(C) of the Act. The creation of two handler-importer positions on the Board must be approved in the referendum to become effective.

In § 1240.32(b)(9), changes were made to underscore the possibility that a full slate of nominees may not be submitted should Board members serve in staggered terms. The proposal and current Order use set numbers in terms of filling the different Board positions. The language is modified to better convey that the number of nominations will directly correspond to the number of positions due to become vacant.

In § 1240.32(b)(12), language was added providing that organizations seeking certification as a qualified national organization for purposes of making nomination recommendations must agree to notify nonmembers of Board nomination opportunities as well as consider the nomination of nonmembers interested in serving on the Board. This language was added to conform with section 4606(c)(6)(F) of the Act.

Finally, a new § 1240.32(b)(13) was added to state that the certification of an organization by the Secretary shall be final, pursuant to section 4606(c)(6)(C) of the Act.

A new § 1240.33 contains the text on Board reconstitution. This topic is currently covered under § 1240.32(b)(6) in the Order. The Board's proposal to amend the Order also covers this topic in § 1240.32(b)(6). It is recommended that the subject of Board reconstitution be moved from § 1240.32 to § 1240.33 for purposes of organization and clarity. Section 1240.32 primarily covers the activities of the Committee and the nomination process for Board members. Board reconstitution covers the process whereby the Board evaluates possible changes in representation to the Board based on such factors as changes in the geographic distribution of honey producers, changes in the proportion of domestic and imported honey assessed, or the source of assessments on imported honey or honey products. It would be clearer from an organizational standpoint for this topic to be covered in a new § 1240.33.

In the new § 1240.33 covering Board reconstitution, the word "shall" was substituted in place of "may" before the word "recommend" in paragraph (b) of the proposed text to clarify the Board's responsibility to move forward with reconstituting the Board if warranted by the results of the review. Section 4606(c)(4)(B) of the Act requires the Board to recommend reconstitution of the Board to the Secretary if certain criteria as provided in the section are met. A provision was also added to emphasize that, notwithstanding any action on reconstitution, at least 50 percent of the members serving on the Board shall be honey producers, pursuant to section 4606(c)(7) of the Act. Several other minor editorial changes were made including use of the word "continuance" in place of "continuation" in modifying referendum.

The Board's proposal includes no modifications to § 1240.34 on vacancies. However, § 1240.34(a) needs to be revised to include the cross-reference to the new § 1240.33 on Board reconstitution in place of § 1240.32(b)(6).

Section 1240.34(a) of the existing Order provides an exception where a producer member or alternate serving on the Board may complete the term of office in situations where, due to Board adjustment of regions, the member or alternate is no longer from the region from which the person was appointed. Section 4606(c)(4) of the Act addresses changes in geographic regions for producer representation and reallocation of handler, importer, and handler-importer positions on the Board. For purposes of consistency, the exception in § 1240.34(a) allowing producers affected by geographic redistricting to finish out their term would be extended to allow those members serving in handler, importer, or handler-importer Board positions to complete their terms in situations where their position is subject to reallocation by the Board.

In § 1240.38 on Board duties and in § 1240.40(a), a requirement was added that budgets be submitted to the Secretary for approval 60 days in advance of the beginning of the fiscal period. The Act and current Order do not specify any time frame for submitting the budget to the Secretary. The 60-day period formalizes current USDA policy and allows adequate time for review and approval prior to the start of the fiscal period. A minor change was made to § 1240.38(e) by inserting "consumer" to precede "education" and deleting the word "development." And "industry information" was added to the list of allowable program activities in § 1240.38(l) as provided for in 1998 amendments to the Act.

Several changes were made to the Board's proposal involving § 1240.39. A paragraph was added providing that the Board shall conduct "an independent evaluation" of the effectiveness of the Order and its programs at least once every five years. This requirement appears in Commodity Promotion and Evaluation [7 U.S.C. 7401]. Section 1240.39(e) of the current Order does contain a provision on periodic program evaluations; however, it does not require that the review be conducted by an independent source.

As a result of adding the paragraph on independent evaluations, the paragraphs in § 1240.39 were redesignated.

Also in § 1240.39, the proposed provision on activities and procedures for monitoring the purity of honey and honey products was modified by striking the words "and prevention" from the phrase "including programs or activities for identification and prevention of adulterated honey." Pursuant to section 4607(b)(2) in the Act, the Board has the authority to "develop and recommend . . . a system for identifying honey."

Finally, the phrase "research, education, industry information, and promotion" in § 1240.39 of the proposal was replaced with "research, promotion, consumer education, and industry information" to be consistent

with similar references elsewhere in the section.

In § 1240.40(a), the words "industry information" were added to "research, promotion, and consumer education" to be consistent with similar references elsewhere in the provision.

In § 1240.40(c), the word "projects" was not changed to "plans" as suggested in the proposal. The word "projects" is retained so as to mirror the same language in section 4606(f)(2) of the Act on this point.

Section 1240.41(a) of the current Order and the proposal was removed because it is not necessary.

In the discussion of assessment rates in § 1240.41, changes were made to clarify that handlers, importers, and producer-packers are subject to assessments for both honey and honey used in honey products while producers are assessed only on honey produced. This is based on section 4606(e)(3) of the Act. "U.S." was added where necessary to specify honey produced domestically versus honey produced outside the United States.

Discussion of the assessment rate on imported honey and honey products was expanded for purposes of clarification. For example, one change clarifies that importers must pay assessments through Customs to the Board. Both the current Order and the proposal provide that the importer is required to pay the assessment to the Board at the time the honey or honey products enter the United States. There is no specific mention of Customs acting as the payment intermediary. Congress made a similar clarification in section 4608(c) of the Act.

In § 1240.41, language on the prescribed interest rate set by the Board and approved by the Secretary was removed and replaced with language specifying that the rate of interest shall be prescribed in regulations issued by the Secretary.

A new paragraph (i) was added to § 1240.41 specifying that persons failing to remit assessments in a timely manner may also be subject to actions under federal debt collection procedures.

Finally, in § 1240.41 on government loan programs, the "USDA Commodity Credit Corporation" was substituted for "CCC," and other minor changes were made to the sentence to accommodate this change. Also, "USDA" was inserted before "loan program" in the first sentence for purposes of clarity. This provision was redesignated from § 1240.41(m) in the Board's proposal to § 1240.41(k).

Paragraphs (j) and (k) in § 1240.41 of the Board's proposal were redesignated as paragraphs (l) and (m) of § 1240.41.

In § 1240.42(a) on exemption from assessment, the words "or honey products" were added to the exemption language since the calculation of the 6,000 pound minimum amount to qualify for exemption from assessment can include both honey and honey products in the case of producer-packers, handlers, and importers. This is consistent with section 4606(e)(4)(A) of the Act as amended in 1996. In § 1240.42(c), the reference to a person who "claims" an exemption was replaced with language referring to a person who has been exempt. This change was made because section 4606(e)(4) of the Act eliminated the requirement of filing a claim with the Board as a prerequisite to being exempt from assessments. Several other minor changes in word order and phraseology were also made.

In § 1240.44 on activities involving the inspection and monitoring of honey, the words "and the Secretary shall have the authority to approve or disapprove" were added to mirror similar language in section 4607(d) of the Act and to underscore the Secretary's oversight authority. The proposal provides that the Board is "authorized to develop and recommend to the Secretary" a system or program for monitoring the purity of honey. However, the Board's proposal contains no mention of the Secretary's authority to approve such system or program as is provided for in the 1996 amendments to the Act.

Also in § 1240.44, the words "or program" were inserted to follow the word "system" in several instances for purposes of consistency throughout the section. Also, several other minor changes in punctuation were made to follow similar construction in section 4607(b) of the Act.

In § 1240.45, language regarding the Secretary's authority to approve or disapprove the establishment of a voluntary quality assurance program was inserted to be consistent with similar language in section 4607(d) of the Act and to underscore the Secretary's authority on this point. A paragraph was also added providing that a producer, handler, or importer must participate in the voluntary quality assurance program in order to be eligible to display the official seal of approval. This addition is based on sections 4607(c)(2)(A) and (c)(3) of the Act. Finally, a provision was inserted to provide that a voluntary quality assurance program and any related rule or regulation for its development and operation may be "in addition to or independent of" any program, rule, or regulation involving an inspection and monitoring system established under the authority of § 1240.44. This language was taken from sections 4607(a)(8) and (c)(1) of the amended Act.

In § 1240.46 on minimum purity standards, the words "develop and" were inserted before "recommend" and "and related rules and regulations" were added to immediately follow "minimum purity standards" for consistency with section 4607(a)(8) of the Act.

In § 1240.50, minor grammatical corrections were made. Also, the articles "the" and "a" were inserted at various points in the text.

In § 1240.51 on books and records, a change was made in reference to those subject to exemption since it is no longer necessary to file a claim with the Board in order to be exempt from assessments. In addition, the word "agent" was added for use with employees since section 4608(f)(2) of the amended Act provides authority for employees or agents of the Board or USDA to inspect and review books and records.

In § 1240.52 on confidential treatment, a revision is made so that the confidentiality provisions with respect to books, records, or reports would apply to officers and employees of the USDA and employees and agents of the Board. Members and alternates of the Board are specifically excluded from inspecting or reviewing books and records under section 4608(f)(2) of the amended Act in the first place. This change is authorized by section 4608(g)(1) of the amended Act. Presently, the Order as well as the Board's proposal extend the confidentiality provisions to "any person."

In § 1240.52(a), a minor edit was made substituting the word "the" in place of "a" to precede "number."

Section 1240.52(c) of the proposal, which covers the penalties for disclosure of confidential information, was removed. The specific penalties for violating the confidentiality provisions of the Act and Order, as provided for in section 4608(g) of the Act, are self-executing and, therefore, are not included in the Order.

In § 1240.62 on the suspension or termination of Order, several minor revisions were made such as adding "(5)" after the word "five" and adding "(2)" after the word "two". Also the phrase "subject to assessment under the Order" was inserted in both paragraphs (b) and (c) to provide greater clarity and completeness.

Comments

A total of 30 comments were received on the proposed amendments. These

include the original eight comments that were received in response to USDA's request for proposals in 1999, some of which were resubmitted by the commenter. Seventeen (17) commenters supported the amendments, 12 commenters opposed one or more of the amendments, and one commenter merely expressed an opinion on the direction the Board should take.

Twenty-seven (27) of the comments contained several recommendations, a number of which have been adopted. For the aspects of the comments that deal with the paperwork impact of the proposed changes to the Order, see the Regulatory Flexibility Act and Paperwork Reduction Act section of this proposed rule.

One comment was received from a commenter suggesting that a definition for "handler-importer" be included in the Order. The commenter recommended that this definition be added in order to clarify the representation requirements for a handler who also must meet certain import thresholds to qualify for nomination to the Board. The definition is also needed, according to the commenter, because the term "handler-importer" is used in several sections of the proposed Order. We accept the commenter's definition of "handler-importer" and have included it in the definitions as § 1240.10. Section numbers for all other definitions have been revised to account for the addition of this new definition.

A comment was submitted on § 1240.08 which defines the term "handle." The commenter requested an explanation of what it means to sell honey and what is meant by "a current of commerce." The term "handle" as defined in the proposed Order and Act is clear, and we find no reason to change the definition by revising or adding to general and common terms contained in the definition.

A comment was submitted on § 1240.12 which defines the term "honey production." The commenter requested that the definition address the differences in organic and generic honey production. No change is made as a result of the commenter's request as the definition for "honey production" encompasses all beekeeping operations, which includes organic operations.

One comment was submitted on § 1240.26 which defines the term "research." The commenter suggested that the definition should clearly indicate that all research activities are to be directed to domestic honey. However, the Act does not specify that research is to be directed to domestic honey. In addition, the funds that would pay for research would come from both domestic and import assessments. Research on imported honey may be needed in developing the proposed inspection and monitoring system, voluntary quality assurance program, and minimum purity standards. Therefore, no change to the term "research" was made as a result of this comment.

A comment was submitted on § 1240.32 which addresses nominations to the Board. The commenter suggested that wording be added to the section that would specify that state associations should be industry related rather than simply social associations which may be interested in the honey industry. The commenter requested that associations' articles of incorporation or bylaws be verified to prove they are industry related associations. The word "beekeeper" has been added so that "State association" reads "State beekeeper association" in § 1240.32 (a)(1) as a result of the comment. This change provides that only State beekeeper associations may nominate individuals to serve on a National Honey Nominations Committee.

One commenter requested that for clarity and consistency in § 1240.32 (b)(7) the word "such" be changed to "a." This comment has been adopted by changing "such" to "an," which is more grammatically correct.

A comment was received on § 1240.32 (b)(11) which outlines the criteria for an organization to be certified as a qualified national organization representing importer interests. The commenter suggested that criterion (iv) is too general in stating only that "geographic territory" be covered by the active membership of the organization. The commenter notes that a national organization should have members from across the nation. We agree with the commenter's suggestion and language to § 1240.32(b)(11)(iv) has been added that "substantial geographic territory" must be covered by the active membership of a national organization.

A comment was received on § 1240.32 (b)(12)(i) which requires national handler and importer organizations, that are qualified to submit recommendations for nominations, to notify handlers or importers who are not members of the organizations of opportunities for nomination to the Board. The commenter requested clarification as to exactly what type of notification must be given to nonmembers. The commenter suggested that a mailing from the Board or general notices in trade publications could sufficiently notify nonmembers. We agree that the requirement to notify nonmembers of nomination opportunities is not specific. Further, the commenter's suggestion of Board mailings and trade publication notices may be valid methods of notification. However, specifying means by which notification must be given would limit the methods open to organizations. For this reason, the Order is flexible in outlining the methods of notification so that organizations have the opportunity to notify nonmembers in the method that they deem most effective. However, wording was also added to § 1240.32 (b)(12)(ii) to clarify the requirement of notification of handlers or importers who are not members of the organizations of opportunities for nomination to the Board.

A second comment was received on § 1240.32(b)(12)(i). The commenter requested a change to this section that would clarify that qualified national organizations are not required to notify nonmembers of upcoming Board nomination opportunities. The commenter was concerned that wording in the Order implies that every member of the general public must be notified. The commenter asserted that notification through the trade press or other sources should be used and provides specific wording to be added to the Order. We agree that notification to every nonmember of qualified national organizations is not feasible and have added wording as discussed in the previous comment. However, as stated in the previous comment, it would not be appropriate to require a specific mode of notification.

A comment was received on § 1240.35(a) which outlines Board procedure. The commenter requested that the requirement of the number of members needed to constitute a quorum be changed from "eight" to "a majority" of members. The commenter suggested that this change will allow the Board size to be modified, as needed, without specifically changing the number required for a quorum. Since eight members are a majority of the proposed 14 member Board, this comment is accepted, and the section has been revised, as appropriate.

Another comment was submitted addressing § 1240.35(a). The commenter recommends that at least 50 percent of the Board members present to constitute a quorum be producers. The commenter notes that an amendment to the Act provides that at least 50 percent of the members to the Board be producers and that this concept should be applied to the quorum requirements for Board meetings. We agree that a quorum should reflect the membership of the Board, and, therefore, at least 50 percent

of the members present at the meeting should be producers. In response, wording in this section has been changed as appropriate.

One comment was received on § 1240.38(k) which describes the Board's duties. The commenter suggested that this section should include the category "handler-importers" in the list of those to be notified by the Board of all Board meetings. The commenter was correct in noting that this section needed to be revised to account for the changes in Board membership. Therefore, the section has been revised accordingly.

One comment was submitted on § 1240.39(a)(2). The commenter noted that wording contained in the Order restricts the Board from engaging in quality control or grade standards. In light of the proposed amendments, we agree that the wording in this section should be changed. Therefore, references to quality control and grade standards were deleted.

Two comments were received in respect to § 1240.41(k) which addresses the process under which an assessment will be deducted on honey subject to a USDA loan program. The commenters requested that a provision be made that the assessment only be deducted from the proceeds of a loan or the loan deficiency payment if it is a non-recourse loan. One commenter suggested that wording in the Order may be confusing as to the collection of assessments on honey subject to a USDA loan program. The commenters assert that § 1240.41(k) only applies to loans in which collection from the assessment comes into question. We agree that no question exists on loans marketed through some channel of commerce. It is only when the producer forfeits the right to the product that the assessment would be deducted from the loan payment by USDA. Currently USDA only administers a recourse loan program for honey. Therefore, no change is made as a result of the commenter's request, that "non-recourse" be added to this section following "USDA" and before "loan." The general reference to a USDA loan program contained in the Order sufficiently accounts for any new recourse, non-recourse, or other loan program that may be developed by USDA's Farm Service Agency.

One comment was received on § 1240.42(d) which describes exemptions from assessments. The commenter suggested that terminology be added to clarify that the Board's authority to recommend exempting exported honey from assessments be limited to exported domestic honey. No change is made as a result of this comment as the Order does not currently provide for the exemption of any exported honey from assessments. The commenter's proposed provision would need to be addressed by the Board if a recommendation is made for exempting exports from assessments. This same commenter submitted additional comments on § 1240.42 which are not addressed here as they were not applicable to the 1998 amendments to the Act or proposed changes to the Order but simply expressed opinions.

There were several comments on the proposed quality assurance program, purity standards, and inspection and monitoring system. Importers and persons with interests in foreign honey and honey products suggested that the purity standards could be viewed as non-tariff trade barriers and undermine U.S. policy which seeks to remove tariff and non-tariff trade barriers. We disagree. Both domestic and imported honey would be subject to the same standards. In addition, none of these provisions can be implemented without public rulemaking on the details of the programs.

These commenters also contend that an inspection and monitoring system would allow the Board to usurp the authority of the Food and Drug Administration (FDA). They requested that a provision be added that would require a comprehensive international study to be conducted by scientists from FDA before purity standards are implemented. We accept the basic concept of the recommendation that any system or program for monitoring the purity of honey and honey products should have fair and equal test parameters for domestic and imported honey. We also agree that any purity standards should be based on scientific studies of honey from the United States and each country of origin for foreign country. Therefore, we have revised §§ 1240.44 and 1240.46 accordingly. Regarding the request that the FDA conduct a global study on honey, we have not adopted this portion of the recommendation as the Act authorizes, under the honey program, an inspection and monitoring system, if approved in a referendum.

An importer also commented that the Board is not capable of carrying out an unbiased quality assurance or purity program. We disagree. In addition, the Board will be authorized to make recommendations to the Secretary, and the Secretary is not required to approve the recommendations. Further the amended Act authorizes USDA inspectors to carry out this function.

A domestic producer commented that any quality assurance or purity monitoring program would discriminate against domestic producers because it would not be feasible to conduct inspections in foreign production areas. The commenter's request is addressed by a change made in response to another comment in which wording has been included that any system or program for monitoring the purity of honey and honey products should have fair and equitable test parameters for domestic and imported honey. In addition any such systems and programs would have to be approved by the Secretary prior to implementation.

One comment was submitted on § 1240.50(a) which outlines the reports required of each handler, importer, producer, or producer-packer. The commenter suggested that the term in this section "producer-packers" should be changed to "producers-packers." We find that the present wording is grammatically correct. Consequently, no change to the Order is needed as a result of this comment.

Comments were submitted on § 1240.51 which deals with books and records to be kept by those subject to the program. One commenter proposed that books and records be required to be maintained for seven years rather than the two years presently required. Though changes were made to this section as a result of the 1998 amendments, there was no change made regarding the time period requirement for maintaining books and records. Therefore, no change is made as a result of this comment.

Another comment was submitted on § 1240.51. The commenter stated that the wording in this section could suggest that any person exempt from assessments, including those not involved in the honey industry, are required to maintain books and records. The commenter proposed that "under this subpart" be added for clarification. We accept this commenter's suggestion and have added the suggested wording.

In addition, commenters made a number of recommendations which cannot be adopted because they are inconsistent with or not authorized by the amended Act. These recommendations include: require promotion of U.S. honey; change the referendum voting criteria; increase the statute of limitations for filing a petition under section 4609 of the Act from two years to 10 years; remove the definition of a national honey marketing cooperative; add changes to the definition of "exporter," "honey production," "marketing," "producer," and "promotion" allow only producers

to serve on the Board; require that handlers and producers who are eligible to serve on the Board obtain a majority of their income from honey production; increase representation of importers on the Board; have two referenda (one for producers and importers and one for handlers); raise the import assessment up to 15 cents per pound; make the handler responsible for payment of the producer assessment should the first handler fail to collect from the producer; do not allow the quality assurance program to include a seal of approval; do not eliminate the public member position; do not add two handler-importer members to the Board; change the two handler positions on the Board to two producer-packer positions; do not eliminate the authority for one of the importer positions to be filled by an exporter; do not allow the Board to develop and implement a quality assurance program or an inspection and monitoring system; and do not allow the Board to collect information from producers.

In addition, some of the commenters' recommendations relate more to the regulations which would be developed to implement the quality assurance program. These regulations would be recommended by the Board, published for public comment by the Secretary, and then, if approved by the Secretary, would be implemented. The persons who submitted these comments can express their views to the Board as it develops the implementing regulations and participate in the rulemaking process that will follow.

There were also several recommendations that relate to the regulations that would be developed to implement the authority to develop purity standards and a monitoring and inspection system. If these amendments are approved in the referendum, the implementing regulations would also be recommended by the Board, published for public comment by the Secretary, and then, if approved by the Secretary, would be implemented. The commenters can exercise their right to vote in the referendum on these votable amendments. Then, if the amendments are approved, they can make their views known to the Board and participate in the rulemaking process.

In summary, a new § 1240.10 has been added and §§ 1240.32(b)(7), 1240.32(b)(11)(iv), 1240.32(b)(12)(i) and (ii), 1240.35(a), 1240.38(k), 1240.39(a)(2), 1240.41(k), 1240.44(b), 1240.46, and 1240.51 have been revised as a result of comments received that were deemed to have merit.

Referendum Order

It is hereby directed that a referendum be conducted among eligible honey producers, producer-packers, handlers, and importers to determine whether they favor amending the Honey Research, Promotion, and Information Order (Order). Current producers, producer-packers, handlers, and importers who produced, handled, and imported honey or honey products during 1998 and 1999 (representative period) and are not exempt from assessments are eligible to vote in the referendum.

The voting period for the referendum will be from September 5 through 29, 2000. Ballots will be mailed to all known honey producers, producer-packers, handlers, and importers on or before August 29, 2000. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1–888–720–9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than September 29, 2000, to be counted.

Martha B. Ransom, Margaret B. Irby, and Kathie M. Birdsell, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2535-s, Stop 0244, Washington, DC 20250–0244, are designated as the referendum agents of the Secretary to conduct the referendum. The Referendum Procedures (7 CFR 1240.200 through 1240.207) issued under the Order and published separately in this issue of the **Federal Register** will be used to conduct the referendum.

In the referendum, the voters will vote on whether the following amendments should be made to the Order: (1) Require the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) allow the Board to develop recommendations for purity standards and an inspection and monitoring system to enhance the image of honey and honey products; (3) add two handler-importers to the Board; (4) decrease the assessment honey producers pay from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound paid by handlers; and (6) increase the assessment paid by importers from 1 cent per pound to 1.5 cents per pound on imported honey and honey products.

The following proposed amendments to the Order will become effective after the referendum, regardless of the outcome: (1) Change the two importer-exporter positions on the Board to two importer positions; (2) eliminate the public member position; (3) revise nomination and eligibility requirements for handlers, importers, and representatives of cooperatives to serve on the Board; (4) require that at least 50 percent of the Board members be honey producers; (5) allow the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminate the requirement for small companies to file for an exemption under the program; and (7) require producers to maintain records. In addition, revised and new definitions for certain terms would be added and obsolete language would be removed from the Order.

There were several additional amendments to the Act in 1998 that do not require amendment of the Order. One of these adds a two-year statute of limitations for persons filing petitions under section 4609 of the Act. In addition, the Act was amended to provide that each producer-packer and importer who votes in referenda will have one vote as a handler and one vote as a producer or importer, assuming that the producer-packer or importer would owe assessments as a handler in addition to owing assessments as a producer or importer, if the votable amendments are approved in the referendum. Further, the Act was amended to provide that the votable amendments will become effective if (1) the amendments are approved or favored by a majority of the producers, producer-packers, importers, and handlers voting in the referendum and (2) that majority produced, imported, and handled 50 percent or more of the pounds of honey and honey products produced, imported, and handled during the representative period by the voters in the referendum. The amended Act also provides that no individual provision of the amended Order shall be subject to a separate vote in the referendum.

If the votable amendments are approved, the same voting criteria for passage will apply in all subsequent referenda. If the votable amendments are not approved, handler approval will not be necessary in future referenda.

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1240 be amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for Part 1240 to read as follows:

Authority: 7 U.S.C. 4601–4613; 7 U.S.C. 7401.

2. Revise the heading for 7 CFR Part 1240 to read as set forth above.

3. Add a heading for a new subpart A, consisting of §§ 1240.1 through 1240.67, to read as follows:

Subpart A—Honey Research, Promotion, and Consumer Information Order

§ 1240.43 [Removed]

4. Remove § 1240.43

5.–6. Redesignate §§ 1240.1 through 1240.22 and 1240.44 as follows:

§ 1240.1 through 1240.22 and 1240.44 [Redesignated]

Old section	New section
1240.1	1240.27
1240.2	1240.1
1240.3	1240.19
1240.4	1240.11
1240.5	1240.13
1240.6	1240.21
1240.7	1240.8
1240.8	1240.9
1240.9	1240.22
1240.10	1240.14
1240.11	1240.6
1240.12	1240.23
1240.13	1240.26
1240.14	1240.4
1240.15	1240.16
1240.16	1240.3
1240.17	1240.29
1240.18	1240.2
1240.19	1240.28
1240.20	1240.7
1240.21	1240.20
1240.22	1240.18
1240.44	1240.43

7. Revise newly designated § 1240.2 to read as follows:

§ 1240.2 Board.

Board or *National Honey Board* means Honey Board, the administrative body established pursuant to § 1240.30.

8. Revise newly designated § 1240.3 to read as follows:

§ 1240.3 Committee.

Committee means the National Honey Nominations Committee established pursuant to § 1240.32.

9. Add a new § 1240.5 to read as follows:

§ 1240.5 Department.

Department means the United States Department of Agriculture.

10. Revise newly designated § 1240.8 to read as follows:

§ 1240.8 Handle.

Handle means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. This term shall include selling unprocessed honey that will be consumed without further processing or packaging. This term shall not include the transportation of unprocessed honey by a producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer. This term shall not include the purchase of honey or a honey product by a consumer or other end-user of the honey or honey product.

11. Add a new § 1240.10 to read as follows:

§ 1240.10 Handler-importer

Handler-importer means a person who handles honey or honey products of domestic origin and who also, during any three of the preceding five years, was an importer of record or at least 40,000 pounds of honey.

12. Revise newly designated § 1240.11 to read as follows:

§ 1240.11 Honey.

Honey means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees, including comb honey.

13. Add a new § 1240.12 to read as follows:

§ 1240.12 Honey production.

Honey production means all beekeeping operations related to managing honey bee colonies to produce honey, harvesting honey from the colonies, extracting honey from the honeycombs, and preparing honey for sale and further processing.

14. Revise newly designated § 1240.14 to read as follows:

§ 1240.14 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

15. Add a new § 1240.15 to read as follows:

§ 1240.15 Industry information.

Industry information means information or a program that will lead to the development of new domestic and foreign markets, new marketing strategies, or increased efficiency for the honey industry, or an activity to enhance the image of honey and honey products and of the honey industry.

16. Add a new § 1240.17 to read as follows:

§ 1240.17 National honey marketing cooperative.

National honey marketing cooperative means a cooperative that markets its products in at least two of the following four regions of the United States, as determined by the Secretary:

(a) The Atlantic Coast, including the District of Columbia and the Commonwealth of Puerto Rico;

(b) The Mideast;

(c) The Midwest; and

(d) The Pacific, including the states of Alaska and Hawaii.

17. Revise newly designated § 1240.20 to read as follows:

§ 1240.20 Plans and projects.

Plans and *projects* means those research, promotion, industry information, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

18. Add a new § 1240.24 to read as follows:

§ 1240.24 Qualified national organization representing handler interests.

Qualified national organization representing handler interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for handler, handler-importer, alternate handler, and alternate handler-importer members of the Board under § 1240.32.

19. Add a new § 1240.25 to read as follows:

§ 1240.25 Qualified national organization representing importer interests.

Qualified national organization representing importer interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for importer, handler-importer, alternate importer, and alternate handler-importer members of the Board under § 1240.32.

20. Revise newly designated § 1240.26 to read as follows:

§ 1240.26 Research.

Research means any type of systematic study or investigation, including studies testing the effectiveness of market development

and promotion efforts, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

21. Revise § 1240.30 to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board (elsewhere in this part called the Board) is established to administer the terms and provisions of this part. The Board shall consist of fourteen (14) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be honey importers; two members and two alternates shall be handlers of honey who are also importers; and one member and one alternate shall be an officer, director, or employee of a national honey marketing cooperative. The Board shall be appointed by the Secretary from nominations submitted by the Committee, pursuant to § 1240.32. Notwithstanding any other provision of this part, at least 50 percent of the members of the Board shall be honey producers.

22. Revise § 1240.31 to read as follows:

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except that terms may be staggered periodically as recommended by the Board and as determined by the Secretary or as determined by the Secretary alone. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. Each Board member and alternate member shall continue to serve until the member or alternate's successor meets all qualifications and is appointed by the Secretary.

23. Amend § 1240.32 as follows:

a. By revising paragraphs (a)(1) and (a)(3), and (b)(1) and (b)(2) respectively;

b. Removing paragraph (b)(6);

c. Redesignating paragraphs (b)(7) and (b)(8) as (b)(6) and (b)(7) respectively;

d. Revising newly designated paragraphs (b)(6) and (b)(7); and

e. Adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13).

The revisions and additions to § 1240.32 read as follows:

§ 1240.32 Nominations.

* * * * *

(a) * * *

(1) There is established a National Honey Nominations Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State beekeeper association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42 (a) and (b) to make nominations for that State.

* * * * *

(3) Members of the Committee shall serve for three-year terms, except that the term of appointments to the Committee may be staggered periodically, as determined by the Secretary. The term of office shall begin on July 1.

* * * * *

(b) * * *

(1) The Committee shall nominate the members and alternate members of the Board and submit such nominations promptly to the Secretary for approval.

(2) The Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

* * * * *

(6) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than the producer-packer produced shall be eligible for nomination or appointment to the Board as a producer or as an alternate to a producer.

(7) In nominating importer members to the Board, no importer who, during any three of the preceding five years, did not receive at least 75 percent of the gross income generated by the sale of honey and honey products from the sale of imported honey and honey products shall be eligible for nomination or appointment to the Board as an importer or as an alternate to an importer.

(8) In nominating handler-importers to the Board, no handler who, during any three of the preceding five years, was not an importer of record of at least 40,000 pounds of honey shall be eligible for nomination or appointment to the Board as a handler-importer or as an alternate to a handler-importer.

(9) Six months before the new Board term begins, the Committee shall submit to the Secretary nominations for positions on the Board. The number of nominations will directly correspond to the number of producer, handler, importer, handler-importer, and cooperative member positions due to become vacant. Selection of nominees by the Committee will be pursuant to the following:

(i) Nominations for producer members and alternate producer members will be from one of the seven regions established by the Secretary in which a vacancy will occur;

(ii) Nominations for handler members and alternate handler members will be based on recommendations made by qualified national organizations representing handler interests, or, if the Secretary determines that there is not a qualified national organization representing handler interests, by individual handlers who have paid assessments to the Board on honey or honey products handled;

(iii) Nominations for importer members and alternate importer members will be based on recommendations made by qualified national organizations representing importer interests, or, if the Secretary determines that there is not a qualified national organization representing importer interests, by individual importers who have paid assessments to the Board on imported honey or honey products;

(iv) Nominations for handler members and alternate handler members who are also importers (i.e., handler-importers) will be based on recommendations made by qualified national organizations representing importer interests or qualified national organizations representing handler interests: *Provided*, That, if the Secretary determines that there is not a qualified national organization representing handler or importer interests, then the Committee shall nominate members and alternate members from individual handlers or importers who have paid assessments to the Board on imported honey or honey products; and

(v) Nominations for a member and alternate member who are officers, directors, or employees of national honey marketing cooperatives will be based on recommendations made by qualified national honey marketing cooperatives.

(10) Qualified national organization representing handler interests. To be certified by the Secretary as a qualified national organization representing handler interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's membership is comprised primarily of honey handlers;
(ii) The organization represents a substantial number of handlers who handle a substantial volume of honey in at least 20 states;
(iii) The organization has a history of stability and permanency;
(iv) A primary or overriding purpose of the organization is to promote the economic welfare of honey handlers;
(v) A portion of the operating funds of the organization are derived from handlers; and
(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(11) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:
(i) The organization's total paid membership is comprised of a significant number of importers or the organization's total paid membership represents at least a majority of the volume of honey imported into the United States;
(ii) The organization has a history of stability and permanency;
(iii) A primary or overriding purpose of the organization is to promote the economic welfare of honey importers;
(iv) Substantial geographic territory is covered by the active membership of the organization;
(v) A portion of the operating funds of the organization are derived from importers; and
(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(12) As a condition of certification by the Secretary as a qualified national organization representing handler or importer interests, an organization shall agree to:
(i) Notify handlers and importers who are not members of the organization of Board nomination opportunities for which the organization is certified to make recommendations to the Committee; and
(ii) Consider the nomination of handlers and importers who are not members when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

(13) A certification determination by the Secretary of a qualified organization representing handler or importer interests shall be final.

24. Add a new § 1240.33 to read as follows:

§ 1240.33. Board reconstitution.

(a) Every five years, the Board shall review the geographic distribution of the quantities of domestically produced honey assessed under this subpart and the changes in the annual average percentage of assessments owed by importers under this subpart relative to assessments owed by producers and handlers of domestic honey, including whether any changes in assessments owed on imported quantities are owed by importers or handler-importers. The Board shall conduct the initial review required by this paragraph prior to the initial continuance referendum conducted pursuant to the Act.

(b)(1) If warranted as a result of this review, the Board shall recommend for the Secretary's approval:
(i) Changes in the regional representation of honey producers;
(ii) The reallocation of handler-importer member positions as handler member positions;
(iii) The reallocation of importer member positions as handler-importer positions;
(iv) The reallocation of handler-importer member positions as importer member positions; and/or
(v) The addition of Board members.

(2) If such allocations are necessary to reflect changes in the proportion of domestic and imported honey assessed under this subpart or the source of assessments on imported honey or honey products, the Board may not recommend a reallocation or addition of members pursuant to paragraphs (b)(1), (ii), (iii), (iv), and (v) of this section unless:
(i) The proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section; or
(ii) The proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers and handlers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section.

(c) Except as provided in paragraph (d) of this section, recommendations made under paragraph (b) of this section shall be based on:
(1) The 5-year average annual assessments, excluding the 2 years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that is conducted under paragraph (a) of this section; and
(2) Whether any change in the average annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

(d) The base period proportions for determining the magnitude of change under paragraph (c) of this section shall be the proportions determined during the prior review conducted under this section. In the case of the initial review, the base period proportions shall be the proportions determined by the Board for fiscal year 1996.

(e) Notwithstanding any other provision of this section, at least 50 percent of the members of the Board shall be honey producers.

(f) Any such reallocation or addition of members shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

25. Amend § 1240.34 by revising paragraph (a) to read as follows:

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant: *Provided,* That if as a result of Board reconstitution pursuant to § 1240.33, a producer member or alternate is no longer from the region from which such person was appointed, or if a member, whose position is based on their status as a handler, importer, or handler-importer is subject to reallocation by the Board, the affected member and/or alternate may serve out the term for which such person was appointed.

* * * * *

26. Amend § 1240.35 by revising paragraph (a) to read as follows:

§ 1240.35 Procedure.

(a) A majority of members, of which at least 50 percent are producers, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

* * * * *

27. Revise § 1240.36 to read as follows:

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

28. Amend § 1240.38 by revising paragraphs (c), (d), (e), (g), (k), (l), and (m) to read as follows:

§ 1240.38 Duties.

* * * * *

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part;

(e) To develop programs and plans and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs and plans of research, promotion, advertising, consumer education, or industry information and the payment of the costs thereof with funds collected pursuant to this part;

* * * * *

(g) To periodically prepare and make public and to make available to producers, handlers, producer-packers, and importers, reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

* * * * *

(k) To notify honey producers, producer-packers, handlers, handler-importers, and importers of all Board meetings through press releases or other means.

* * * * *

(l) To appoint and convene, from time to time, working committees which may include producers, handlers, producer-packers, importers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, consumer education, and industry information programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the declared purpose of the Act.

29. Revise the heading preceding § 1240.39 to read as follows:

Research, Promotion, Consumer Education, and Industry Information

30. Revise § 1240.39 to read as follows:

§ 1240.39 Research, promotion, consumer education, and industry information.

(a) *Scope of activities.* The Board shall develop and submit to the Secretary for approval any plans, programs, or projects authorized in this section. Such plans, programs, and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans, programs, or projects for consumer education, industry information, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(2) The establishment and conduct of marketing research and development plans to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient: *Provided,* That supply management programs or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of, this subpart;

(3) The development and expansion of honey and honey product sales in foreign markets;

(4) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(5) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees;

(6) The conduct of activities which may lead to the development of new markets or marketing strategies for honey or honey products. In addition, the Board may conduct activities designed to increase the efficiency of the honey industry or activities to enhance the image of honey and honey products and the honey industry;

(7) Activities and procedures for monitoring the purity of honey and honey products being sold for domestic consumption, or for export from the United States, including programs or activities for identification of adulterated honey;

(8) Periodic evaluation by the Board of each plan, program, or project authorized under this part to insure that each plan, program, or project contributes to an effective and coordinated program of research, promotion, consumer education, and industry information and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan, program, or project does not further the purposes of the Act, then the Board shall terminate such plan, program, or project; and

(9) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, consumer education, and industry information programs, and pay for the costs of such contracts or agreements with funds received by the Board.

(b) *Independent evaluation.* In addition to any evaluation that may be carried out pursuant to paragraph (a)(8) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of this subpart and other plans, programs, and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under paragraph (b) of this section.

31. Amend § 1240.40 by revising paragraphs (a) and (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 1240.40 Budget and expenses.

(a) Sixty days in advance of the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including expenses of the Committee and probable costs of research, promotion, consumer education, and industry information.

(b) The Board is authorized to incur expenses for: research, promotion, consumer education, and industry information; such other expenses for the administration, maintenance, and

functioning of the Board and the Committee as may be authorized by the Secretary; any operating reserve established pursuant to § 1240.43; and those administrative costs incurred by the Department specified in paragraph (d) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this subpart, and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained in that section.

(c) The Board shall reserve at least 8 percent of all assessments collected during a year for expenditure on approved research projects designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees. If any of the funds reserved under this paragraph are not allocated to approved research projects in a year, the remaining reserved funds shall be carried forward for allocation and expenditure in subsequent years to be used on projects described in this paragraph.

* * * * *

32. Revise § 1240.41 to read as follows:

§ 1240.41 Assessments.

(a) *Domestic honey and honey products.* (1) The assessment rate to producers and producer-packers on honey produced by them in the U.S. and handled shall be $0.0075 per pound of honey produced.

(2) The assessment rate to handlers, including producer-packers in their capacity as handlers, on U.S. produced honey shall be $0.0075 per pound of honey handled.

(b) *Imported honey and honey products.* The assessment rate on honey or honey products imported into the United States shall be $0.015 per pound of honey or honey products imported, which equals the combined rate at which domestic honey produced in the U.S. and handled is assessed. Of this $0.015 total, $0.0075 per pound represents the assessment due from the importer and $0.0075 represents the assessment due from the handler and paid by the importer on behalf of the handler. The importer of imported honey and honey products shall pay the assessment of $0.015 per pound to the Board through the U.S. Customs Service at the time of entry of such honey and honey products into the United States. Should the U.S. Customs Service fail to collect an assessment from an importer, the importer shall be responsible for the payment of the assessment to the Board.

(c) *General.* (1) Except as provided in § 1240.42 and in paragraphs (b), (d), and (k) of this section, the first handler shall be responsible for the collection of such assessment from the producer and from the handler and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(2) Producer-packers shall pay to the Board the assessment on all honey or honey products for which they act as first handler, in addition to the assessment owed on honey they produce.

(3) Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(4) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to this part. Such regulations may provide for different handler, importer, producer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(d) *Late Payment.* (1) There shall be a late-payment charge imposed on any handler, importer, producer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, producer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (f) of this section. The amount of the late-payment charge shall be set by the Board subject to approval by the Secretary.

(2) There shall also be imposed on any handler, importer, producer, or producer-packer subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, producer, or producer-packer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(3) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(e) *Honey under loan.* Whenever a loan is made on honey under an USDA loan program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative approved by the USDA Commodity Credit Corporation that deducts the assessment from its member producers. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(f) *Advance payment.* The Board is authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

33. Amend § 1240.42 as follows:

a. By revising paragraph (a);

b. Removing paragraphs (c) and (f);

c. Redesignating paragraphs (d) and (e) as (c) and (d), respectively; and

d. Revising newly designated paragraphs (c) and (d).

The revisions to § 1240.42 read as follows:

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, a producer-packer who produces and handles less than 6,000 pounds of honey or honey products per year, an importer who imports less than 6,000 pounds of honey or honey products per year, or a handler who handles less than 6,000 pounds of honey or honey products per year shall be exempt from assessment provided such honey or honey products are distributed directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary during such year.

* * * * *

(c) If, after a person has been exempt from paying assessments for any year under this section, and such person no longer meets the requirements of this section for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced, handled, or imported by such person during the year for which the person claimed the exemption.

(d) The Board may recommend to the Secretary that honey exported from the United States be exempted from the provisions of this subpart and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

34. Add a new § 1240.44 to read as follows:

§ 1240.44 Inspection and monitoring system.

(a) The Board is authorized to develop and recommend to the Secretary, and the Secretary shall have the authority to approve or disapprove, a system or program for monitoring the purity of honey and honey products being sold for domestic consumption in, or for export from, the United States. Such system or program may include inspection and testing procedures to monitor the purity of honey or to detect adulterated honey.

(b) The Board may recommend and the Secretary may issue rules and regulations as are necessary to implement such system or program as authorized by the Act. Such system or program would require that research be conducted so that fair and equitable test parameters are established for the monitoring and inspection of both domestic and imported honey.

35. Add a new § 1240.45 to read as follows:

§ 1240.45 Voluntary quality assurance program.

(a) The Board is authorized to develop and carry out a voluntary quality assurance program concerning purity standards for honey and honey products. The Secretary shall have the authority to approve or disapprove such program.

(b) The program may include the following components:

(1) The establishment of an official Board seal of approval to be displayed on honey and honey products which meet such standards of purity as are established under the program;

(2) Actions to encourage producers, handlers, and importers to participate in the program;

(3) Actions to encourage consumers to purchase honey and honey products bearing the official seal of approval; and

(4) Periodic inspections by the Secretary, or other parties approved by the Secretary, of honey and honey products of persons who participate in the program.

(c) To be eligible to display the official seal of approval under paragraph (b)(1) of this section on a honey or honey product, a producer, handler, or importer shall participate in the voluntary program described in paragraph (a) of this section.

(d) Any program and related rules and regulations for establishing and carrying out a voluntary quality assurance program may be in addition to or independent of any program, rule, or regulation involving an inspection and monitoring system under § 1240.44.

36. Add a new § 1240.46 to read as follows:

§ 1240.46 Minimum purity standards.

The Board is authorized to develop and recommend to the Secretary and the Secretary shall have the authority to approve or disapprove the establishment of minimum purity standards and related rules and regulations for honey and honey products designed to maintain a positive and wholesome marketing image for honey and honey products. Any such standards would require that research be conducted so that fair and equitable test parameters are established for determining the purity of both domestic and imported honey.

37. Revise § 1240.50 to read as follows:

§ 1240.50 Reports.

Each handler, importer, producer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such time and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For producers or producer-packers: the quantity of honey produced and the total number of bee colonies maintained.

(b) For handlers or producer-packers: the total quantity of honey acquired during the reporting period; the total quantity of honey and honey products handled during such period; the amount of honey acquired from each producer, giving the name and address of each producer; the assessments collected during the reporting period; the quantity of honey processed for sale from a producer-packer's own production; and a record of each transaction for honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(c) For importers: The total quantity of honey and honey products imported during the reporting period and a record of each importation of honey or honey products during such period, giving the quantity, date, country of origin, and port of entry.

(d) For persons who have an exemption from assessments under § 1240.42(a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

38. Revise § 1240.51 to read as follows:

§ 1240.51 Books and records.

Each handler, importer, producer, producer-packer, or any person who is exempt from assessments under this subpart shall maintain and during normal business hours make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting such inspections. Such books and records shall be maintained for two years beyond the first period of their applicability.

39. Revise § 1240.52 to read as follows:

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department and shall not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

40. Revise § 1240.61 to read as follows:

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or plans, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

41. Amend § 1240.62 as follows:

a. By revising paragraph (b);

b. Removing paragraph (c);

c. Redesignating paragraph (d) as (c); and

d. Revising newly designated paragraph (c).

The revisions to § 1240.62 read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(b) Except as otherwise provided in paragraph (c) of this section, five (5) years from the date the Secretary issues an Order authorizing the collection of assessments on honey under provisions of this subpart, and every five (5) years thereafter, the Secretary shall conduct a referendum to determine if honey producers, handlers, producer-packers, and importers subject to assessment favor the termination or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers, handlers, producer-packers, and importers subject to assessment under this subpart to determine if the honey producers, handlers, producer-packers, and importers favor termination or suspension of this subpart. A referendum under this paragraph may not be held more than once every two (2) years. If the Secretary determines, through a referendum conducted pursuant to this paragraph, that continuation of this subpart is approved, any referendum otherwise required to be conducted under paragraph (b) of this section shall not be held less than five (5) years after the date the referendum was conducted under this paragraph.

Dated: July 28, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–19943 Filed 8–3–00; 8:45 am]

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Federal Law Enforcement Animal Protection Act of 2000 (Aug. 2, 2000; 114 Stat. 638)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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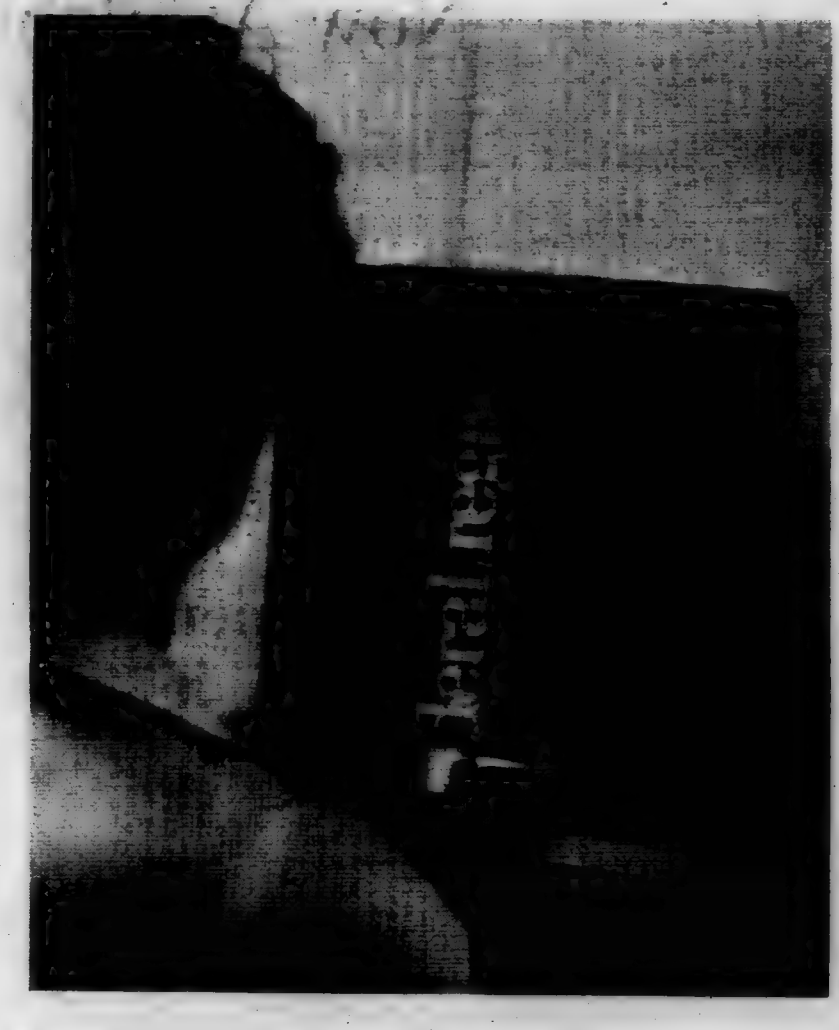

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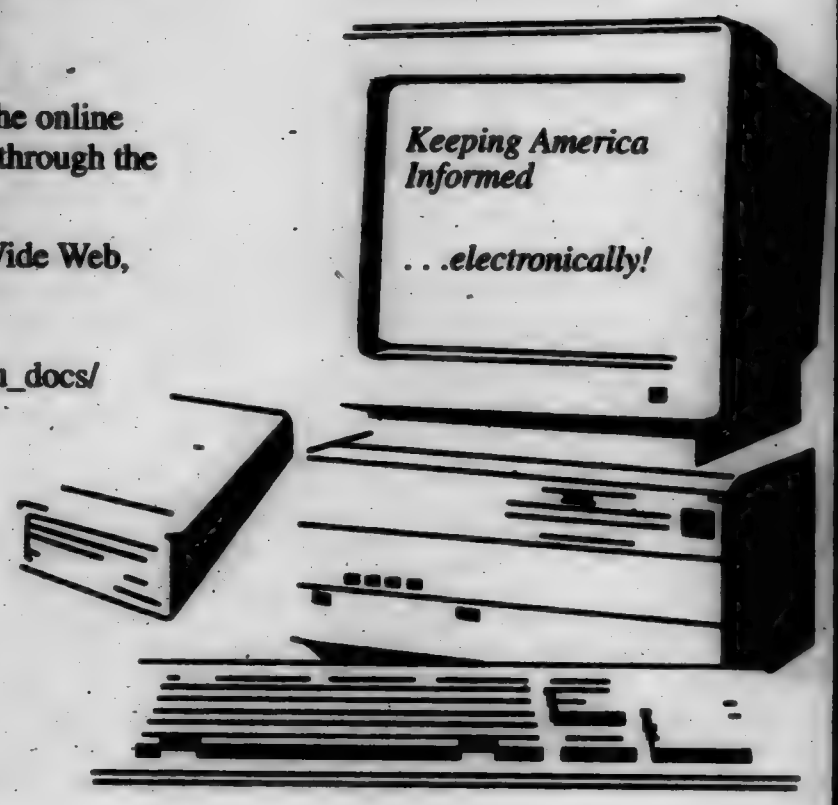

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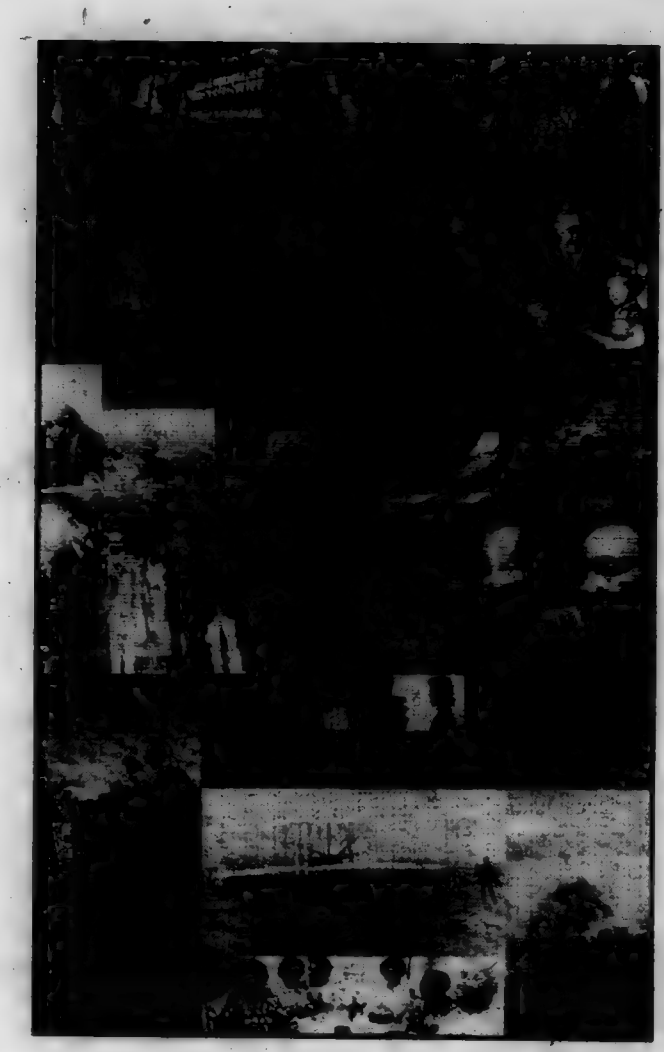

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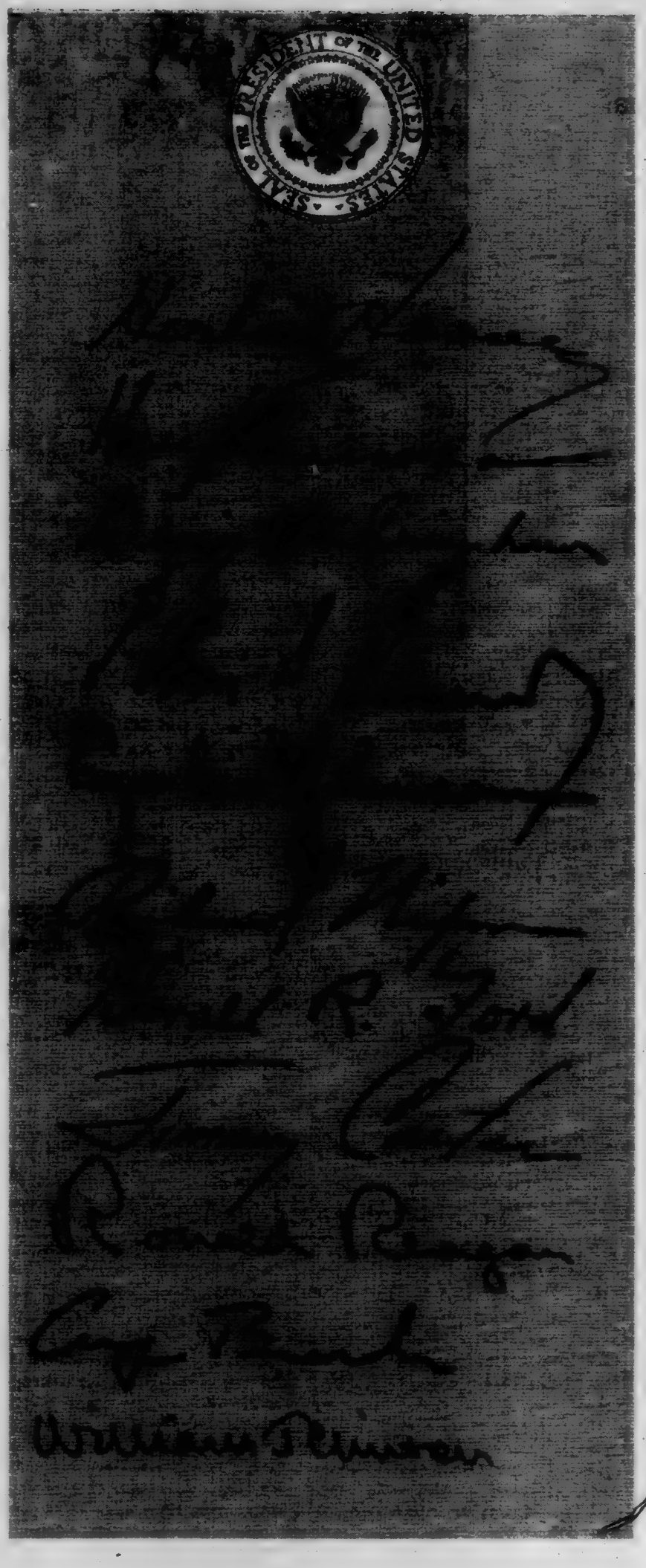

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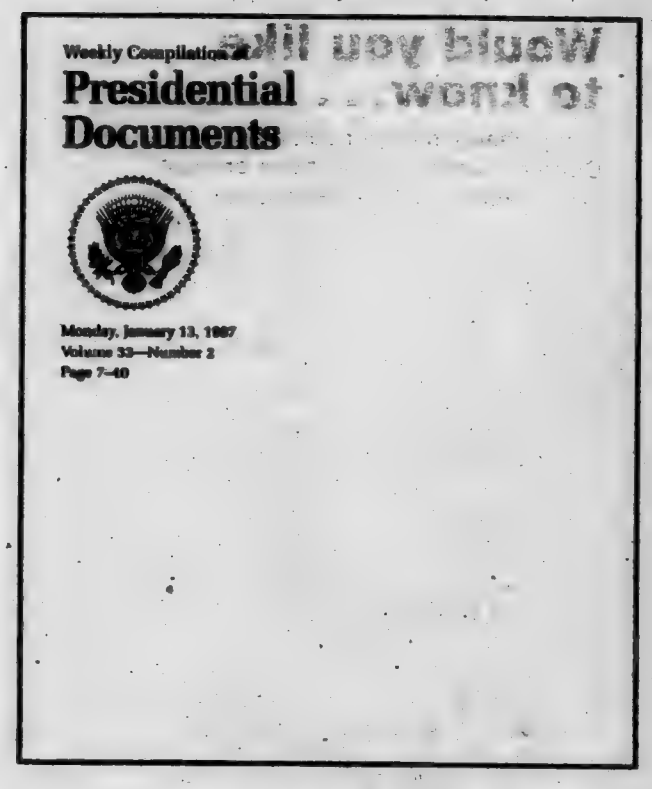

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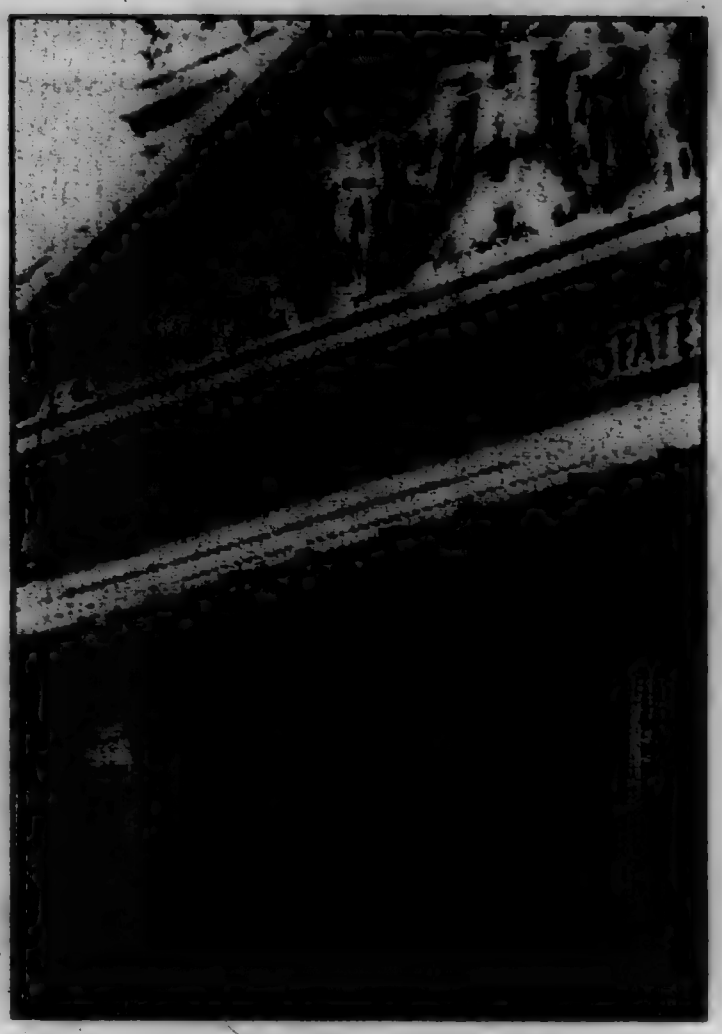

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